

South Dakota Public Utilities Commission

EL19-003 - In the Matter of the Application by Crowned Ridge Wind, LLC for a Permit of a Wind Energy Facility in Grant and Codington Counties – Evidentiary Hearing

June 11, 2019, 1:00 p.m.

Room 413 – Capitol Building, 500 E. Capitol Ave., Pierre, S.D.

Please Print Legibly

Full Name	City/State
Christopher Ollson	Ancaster, ON, CANADA
Richard Lampeter	Maynard, MA
Jay Heley	Grand Forks, ND
Robert McCunney	Boston, MA.
Sarah Sappington	Bismarck, ND
Al Robish	Strandburg, SD
Sam Massey	Juno Beach, FL
Andrew Baker	Overland Park, KS
Mark Thompson	Juno Bch, FL
TYLER WILHELM	JUNO BEACH, FL
Brittany Bruce	Juno Beach, FL
Gerry Oberg	Juno Beach FL.
Darryl Hant	Juno Beach, FL
Rose Anne Colanto	Sun City, AZ.
David Ganje	Sun City, AZ
Kiel MR	Twin Brooks SD
Amber Christensen	Strandburg SD
Miles Schumacher	Sioux Falls SD
Brian Murphy	Juno Beach FL

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**June 11, 2019, 1:00 p.m.**

**Room 413 – Capitol Building, 500 E. Capitol Ave., Pierre, S.D.**

**Please Print Legibly**

Full Name

Melissa Lynch

City/State

Watertown, SD

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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION  
BY CROWNED RIDGE WIND II, LLC FOR  
A PERMIT OF A WIND ENERGY FACILITY  
IN GRANT AND CODINGTON COUNTIES

EL19-003  
ORIGINAL

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Transcript of Proceeding  
June 11, 2019  
1:00 p.m.  
Volume II, Pages 115-327

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

COMMISSION STAFF

Karen Cremer  
Greg Rislov  
Adam de Hueck  
Darren Kearney  
Kaitlyn Baucom

A P P E A R A N C E S

Miles Schumacher and Brian Murphy,  
appearing on behalf of Crowned Ridge Wind II;  
  
David Ganje,  
appearing on behalf of the Intervenor;  
  
Kristen Edwards and Mikal Hanson,  
appearing on behalf of Staff.

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

1           The following transcript of proceedings was  
2 held in the above-entitled matter at the South Dakota  
3 State Capitol, 500 East Capitol Avenue, Pierre,  
4 South Dakota, on the 11th day of June, 2019, commencing  
5 at 1:00 p.m.

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16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

2	STAFF WITNESS	PAGE
3	DAVID HESSLER	
4	Direct Examination by Mr. Mikal Hanson	19
	Cross-Examination by Mr. Murphy	41
5	Cross-Examination by Mr. Ganje	57
	Commissioner Questions	98
6	Redirect Examination by Mr. Mikal Hanson	106
7	APPLICANT WITNESSES	PAGE
8	ANDREW BAKER	
9	Direct Examination by Mr. Schumacher	133
	Cross-Examination by Mr. Ganje	136
10	Cross-Examination by Ms. Edwards	142
	Commissioner Questions	144
11	Redirect Examination by Mr. Schumacher	153
	Recross-Examination by Mr. Ganje	154
12	Recross-Examination by Ms. Edwards	158
13	SARAH SAPPINGTON	
14	Direct Examination by Mr. Schumacher	168
	Cross-Examination by Mr. Ganje	174
15	Cross-Examination by Mr. Mikal Hanson	188
	Commissioner Questions	202
16	Redirect Examination by Mr. Schumacher	215
	Recross-Examination by Mr. Mikal Hanson	217
17	TYLER WILHELM	
18	Direct Examination by Mr. Murphy	221
19	Cross-Examination by Mr. Ganje	232
	Cross-Examination by Ms. Edwards	250
20	Commissioner Questions	257
	Redirect Examination by Mr. Murphy	270
21	Recross-Examination by Mr. Ganje	271
	Recross-Examination by Ms. Edwards	275

1	<u>I N D E X (Continued)</u>	
2	APPLICANT WITNESSES	PAGE
3	SAM MASSEY	
4	Direct Examination by Mr. Murphy	278
	Cross-Examination by Mr. Ganje	281
5	Cross-Examination by Ms. Edwards	286
	Commissioner Questions	292
6	Recross-Examination by Ms. Edwards	296
7	MARK THOMPSON	
8	Direct Examination by Mr. Murphy	299
	Cross-Examination by Mr. Ganje	301
9	Cross-Examination by Ms. Edwards	308
	Commissioner Questions	310
10	JAY HALEY	
11	Direct Examination by Mr. Schumacher	342
12	Cross-Examination by Mr. Ganje	372
	Cross-Examination by Mr. Mikal Hanson	375
13	Commissioner Questions	384
	Redirect Examination by Mr. Schumacher	402
14	Recross-Examination by Mr. Ganje	404
15	RICH LAMPETER	
16	Direct Examination by Mr. Schumacher	415
	Cross-Examination by Mr. Mikal Hanson	418
17	Commissioner Questions	422
	Recross-Examination by Mr. Mikal Hanson	431
18	DR. ROBERT MCCUNNEY	
19	Direct Examination by Mr. Murphy	432
20	Cross-Examination by Ms. Edwards	436
	Commissioner Questions	438
21	Recross-Examination by Ms. Edwards	447
22	DR. CHRISTOPHER OLLSON	
23	Direct Examination by Mr. Murphy	450
	Cross-Examination by Mr. Ganje	458
24	Cross-Examination by Mr. Mikal Hanson	483
	Commissioner Questions	485
25		

1	<u>I N D E X (Continued)</u>	
2	PUC STAFF WITNESSES	PAGE
3	TOM KIRSCHENMANN	
4	Direct Examination by Mr. Mikal Hanson	497
	Cross-Examination by Mr. Schumacher	512
5	Cross-Examination by Mr. Ganje	513
	Commissioner Questions	518
6	Redirect Examination by Mr. Mikal Hanson	538
7	PAIGE OLSON	
8	Direct Examination by Ms. Edwards	541
	Cross-Examination by Mr. Ganje	544
9	Commissioner Questions	548
	Redirect Examination by Ms. Edwards	550
10	Recross-Examination by Mr. Schumacher	551
11	DARREN KEARNEY	
12	Direct Examination by Ms. Edwards	552
	Cross-Examination by Mr. Ganje	557
13	Commissioner Questions	562
	Redirect Examination by Ms. Edwards	572
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

I N D E X (Continued)

APPLICANT EXHIBITS

A1	Crowned Ridge Application
A1-A	Appendix A - Figures
A1-B	Appendix B - Agency Coordination Dates and and Correspondence
A1-C	Appendix C - Dakota Skipper and Poweshiek Skipperling Survey Report
A1-D	Appendix D - '17-18 Raptor Nest Survey Report
A1-E	Appendix E - Avian Use Survey Report
A1-F	Appendix F - Bat Habitat Assessment Report
A1-G	Appendix G - Bat Acoustic Survey Report
A1-H	Appendix H - Sound Level Modeling Report
A1-I	Appendix I - Shadow Flicker Modeling Report
A1-J	Appendix J - County Conditional Use Permits
A1-K	Appendix K - Property Value Effect Studies
A1-L	Appendix L - Decommissioning Plan
A1-M	Appendix M - Telecommunication Studies
A2	Jay Haley Direct Testimony
A3	Kimberly Wells Direct Testimony
A4	Mark Thompson Direct Testimony
A5	Tyler Wilhelm and Sam Massey Direct and Exhibits
A6	Supplemental Figure 3a
A7	Responses to PUC Staff's First Set of DR's
A7-1	Attachment to DR 1-1
A7-2	Attachment 2 to DR 1-7 Confidential
A7-3	Attachment 1 to DR 1-13 Confidential
A7-4	Attachment 1 to DR 1-7 Confidential
A7-5	Attachment 1 to DR 1-9 Confidential
A7-6	Attachment to DR 1-10
A8	EAPC Wind Energy's Letter and Updated Appendices A through D for Appendix H
A9	EAPC Wind Energy's Letter and Updated Appendices A through D for Appendix I
A10	EAPC Wind Energy's Letter and Updated Landowner Participation Status for Appendix H
A11	EAPC Wind Energy's Letter and Updated Landowner Participation Status for Appendix I
A12	US Fish & Wildlife Service's Letter regarding Environmental Comments
A13	US Fish & Wildlife Service's Memo regarding Region 6 guidance for Minimizing Effects from Power Line Projects within the Whooping Crane Migration Corridor



I N D E X (Continued)

APPLICANT EXHIBITS

1	A14	US Fish & Wildlife Service, Region 6
2		Mountain-Prairie Region's Outline for a Bird
3		and Bat Conservation Strategy: Wind Energy
4		Projects
5	A15	2013 US Fish & Wildlife Service's Revised
6		Voluntary Guidelines for Communication Tower
7		Design, Siting, Construction, Operation,
8		Retrofitting, and Decommissioning
9	A16	Responses to PUC Staff's Second Set of DR's
10	A16-1	Attachment 1 to 2-30 Confidential
11	A16-2	Attachment 1 to 2-15
12	A16-3	Attachment 1 to 2-8
13	A16-4	Attachment 1 to 2-13
14	A17	Supplement to 1-11; Appendixes A, B & D
15	A18	Supplement to 1-12; Appendixes B & D
16	A19	Responses to PUC Staff's Second Set of DR's
17	A20	Responses to Amber Christenson and Kristi
18		Mogen's First Set of DR's
19	A20-1	Attachment 1 to 1-6
20	A20-2	Attachment 1 to 1-8
21	A20-3	Attachment 1 to 1-9
22	A20-4	Attachment 1 to 1-10
23	A20-5	Attachment 1 to 1-11
24	A20-6	Attachment 1 to 1-12
25	A20-7	Attachment 1 to 1-13
	A20-8	Attachment 1 to 1-17
	A20-9	Attachment 1 to 1-18
	A20-10	Attachment 1 to 1-20
	A20-11	Attachment 1 to 1-22
	A20-12	Attachment 1 to 1-23
	A20-13	Attachment 1 to 1-46
	A20-14	Attachment 1 to 1-152 - Applicant's Responses
		to Staff
	A20-15	Attachment 1 to 2-8
	A20-16	Attachment 1 to 2-13
	A20-17	Attachment 1 to 2-15
	A20-18	Supplement to 1-12; Appendix E
	A20-19	Supplement to 1-12; Appendix F
	A20-20	Supplement to 1-12; Appendix H
	A21	Supplemental Testimony of Mark Thompson
	A22	Supplemental Testimony of Jay Haley
	A22-1	Exhibit 1 - Supplemental Material that
		Updates Sound Study to Reflect Landowner
		Participation Status

I N D E X (Continued)

APPLICANT EXHIBITS

A22-2	Exhibit 2 - Tables: Crowned Ridge Sound Level Tabular Results Sorted by Receptor ID
A22-3	Exhibit 3 - Supplemental Material that Updates Shadow Flicker Study to Reflect Landowner Participation Status
A23	Tyler Wilhelm and Sam Massey Supplemental
A24	Christopher Ollson Supplemental
A24-1	Exhibit 1 - Christopher Ollson CV
A24-2	Exhibit 2 - "Health Effects and Wind Turbines: A Review of the Literature"
A24-3	Exhibit 3 - "Effects of Wind Turbine Noise on Self-Reported & Objective Measures of Sleep"
A24-4	Exhibit 4 - "Impact of Wind Turbine Sound on Annoyance, Self-Reported Sleep Disturbance and Psychological Distress"
A24-5	Exhibit 5 - "Before-After Field Study of Effects of Wind Turbine Noise on Polysomnographic Sleep Parameters"
A24-6	Exhibit 6 - "Health-based Audible Noise Guidelines Account for Infrasound and Low-Frequency Noise Produced by Wind Turbines"
A24-7	Exhibit 7 - "Measurement and Level of Infrasound from Wind Farms and Other Sources"
A24-8	Exhibit 8 - "Wind Turbines and Health, A Critical Review of the Scientific Literature"
A24-9	Exhibit 9 - "Low-frequency Noise Including Infrasound From Wind Turbines & Other Sources"
A24-10	Exhibit 10 - "Wind Turbines and Human Health"
A24-11	Exhibit 11 - "Exposure to Wind Turbine Noise: Perceptual Responses and Reported Health Effects"
A24-12	Exhibit 12 - "Estimating Annoyance to Calculated Wind Turbine Shadow Flicker is Improved When Variables Associated with Wind Turbine Noise Exposure are Considered"
A24-13	Exhibit 13 - "Notes on the Identification and Evaluation of Optical Emissions from Wind Turbines"
A24-13A	Exhibit 13 - "Notes on the Identification and Evaluation of Optical Emissions from Wind Turbines" (in English)
A24-14	Exhibit 14 - "Wind Turbines and Photosensitive Epilepsy"
A24-15	Exhibit 15 - "Wind Turbines Flicker and Photosensitive Epilepsy"

I N D E X (Continued)

APPLICANT EXHIBITS

1		
2		
3	A24-16	Exhibit 16 - "Potential of Wind Turbines to Elicit Seizures Under Various Meteorological Conditions"
4		
5	A24-17	Exhibit 17 - "Update of UK Shadow Flicker Evidence Base"
6	A25	Kimberly Wells Direct Testimony adopted by Sarah Sappington
7	A26	Responses to PUC Staff's Third Set of DR's
8	A26-1	Attachment 1 to 3-2 Confidential
9	A26-2	Attachment 1 to 3-5
10	A26-3	Attachment 1 to 3-10
11	A27	Responses to PUC Staff's Fourth Set of DR's
12	A28	Letter regarding Allocation of Tax Revenues
13	A29	Amendment to the Application Crowned Ridge
14	A30	Letter regarding Kimberly Wells
15	A31	Supplemental Responses to PUC Staff's First Set of DR's
16	A31-1	Attachment - Notice of Entry of Findings of Fact
17	A32	Responses to PUC Staff's Fifth Set of DR's
18	A32-1	Attachment to Staff 5-1 Confidential
19	A32-2	Attachment 1 - Figure 3
20	A33	Applicant's Responses to Intervenor's Third Set
21	A34	Applicant's Responses to Intervenor's Second Set
22	A35	PUC Letter Forward Updated Maps
23	A35-1	Revised Figure 2 - Public Land and Facilities
24	A35-2	Revised Figure 3 - Project Map
25	A35-3	Revised Figure 3a - Project Map
	A35-4	Revised Figure 6 - Environmental Constraints
	A35-5	Revised Figure 7 - Constraints Map
	A35-6	Revised Figure 8 - Topographic Map
	A35-7	Revised Figure 9a - Surficial Geology
	A35-8	Revised Figure 9b - Geology Cross-sections
	A35-9	Revised Figure 10 - Bedrock Geology
	A35-10	Revised Figure 11 - Soil Types
	A35-11	Revised Figure 12 - Water Resources
	A35-12	Revised Figure 13 - Land Use
	A36	Supplemental Responses to PUC Staff's DR 2-41
	A37	Rebuttal Testimony of Mark Thompson
	A37-1	GE Power and Water - Original - Technical Documentation Wind Turbine Generator Systems 1 & 2MW Platform - 50/60 Hz A37-2 Confidential
	A37-2	Applicant's Response to Staff DR 5-2

I N D E X (Continued)

APPLICANT EXHIBITS

- A37-3 GE Recommendation "Setback Consideration  
Generic xxHz EN r04"
- A38 Chris Ollson Rebuttal Testimony
- A38-1 Noise Annoyance in Canada
- A38-2 UK National Noise Attitude Survey 1999/2000
- A38-3 The Association Between Self-Reported and  
Objective Measures of Health and Aggregate  
Annoyance Scores Toward Wind Turbine  
Installations
- A38-4 Ann Assessment of Quality of Life Using the  
WHOQOL-BREF Among Participants Living in the  
Vicinity of Wind Turbines
- A38-5 The Effects of Environment and Classroom Noise  
on the Academic Attainments of Primary School  
Children
- A38-6 Low-Frequency Noise Incl. Infrasound from Wind  
Turbines and Other Sources
- A38-7 The Pattern of Complaints about Australian  
Wind Farms Does Not Match the Establishment  
and Distribution of Turbines: Support for the  
Psychogenic, 'Communicated Disease Hypothesis
- A39 Andrew Baker Rebuttal Testimony
- A39-1 Qualifications
- A39-2 Valbridge Property Advisors Value Impact Study
- A39-3 The Windy City: Property Value Impacts of Wind  
Turbines in an Urban Setting
- A40 Dr. Robert McCunney Rebuttal Testimony
- A40-1 Curriculum Vitae
- A40-2 Guidelines for the Diagnosis and Management of  
Asthma
- A40-3 The Scope for Biased Recall of Risk-Factor  
Exposure in Case-Control Studies: Evidence  
from a Cohort Study of Scottish Men
- A40-4 The Placebo and Nocebo Phenomena: Their  
Clinical Management and Impact on Treatment  
Outcomes
- A40-5 Nocebo Effect of Informed Consent in  
Interventional Procedures
- A40-6 The Nocebo Effect in the Context of Statin  
Intolerance
- A40-7 Fright Factors About Wind Turbines and Health  
in Ontario Newspapers Before and After the  
Green Energy Act

I N D E X (Continued)

APPLICANT EXHIBITS

3	A40-8	The Pattern of Complaints about Australian
4		Wind Farms Does Not Match the Establishment
5	A40-9	and Distribution of Turbines: Support for the
6		Psychogenic, 'Communicated Disease' Hypothesis
7		Can Road Traffic Mask Sound from Wind
8	A41	Turbines? Response to Wind Turbine Sound at
9		Different Levels of Road Traffic Sound
10	A41-1	Richard Lampeter Rebuttal Testimony
11	A41-2	Curriculum Vitae
12	A41-3	Wind Turbine Health Impact Study: Report of
13		Independent Expert Panel - January 2012
14	A41-4	Assessing Sound Emissions from Proposed Wind
15		Farms and Measuring the Performance of
16		Completed Projects
17		Noise Control Engineering Journal
18	A42	March-April 2011
19	A42-1	Sarah Sappington Rebuttal Testimony
20	A43	Maps
21	A43-1	Jay Haley Rebuttal Testimony
22		Crowned Ridge Wind Farm Shadow Flicker Iso -
23	A43-2	Lines Overview Map
24		Crowned Ridge Wind Farm Sound Pressure Iso -
25	A43-3	Lines Overview Map
	A43-4	Crowned Ridge Sound Level Tabular Results
		Sorted by Sound Level Realistic
	A43-5	Crowned Ridge Sound Level Tabular Results
		Sorted by Sound Level (16 Turbines removed)
		Crowned Ridge Sound Level Tabular Results
		Sorted by Receptor ID Realistic
	A44	Tyler Wilhelm & Sam Massey Rebuttal Testimony
	A44-1	Letter from Dennis Schmeling
	A44-2	Updated Maps
	A45	Applicant's Responses to Intervenor's Fifth
		Set of DR's to Crowned Ridge Wind
	A45-1	Attachment 1 to 5-2
	A45-2	Attachment 1 to 5-5
	A45-3	Attachment 1 to 5-7
	A45-4	Attachment to 1 to 5-12
	A46	Applicant's Responses to Staff's Sixth Set of
		DR's to Crowned Ridge Wind Confidential
	A46-1	Attachment 1 to 6-1
	A46-2	Attachment 1 to 6-2
	A47	The Ohio Power Siting Board - Amended
		Testimony of David Hessler

I N D E X (Continued)

APPLICANT EXHIBITS

3	A48	Public Service Commission of Wisconsin -
4		David Hessler's Exhibit 4 - Low-Frequency
		Noise and Infrasound from Wind Turbines,
		Noise Control Engineering Journal
5	A49	PSC Docket No. 2535-CE-100 - Ex.-Clean
6		Wisconsin - Hessler - 4 Low-Frequency Noise
		and Infrasound from Wind Turbines, Noise
		Control Engineering Journal
7	A50	Transcript of Public Service Commission of WI
		October 10, 2012, Docket N. 2535-CE-100
8	A51	Minnesota Regulation on Sound - 7030.0050
		Noise Area Classification and 7030.0040 Noise
9		Standards
	A53	Final Land Status Map
10	A54	Replacement Final Land Status Map
	A55	Proposed Turbine Drops and Moves
11	A56	Appendix D Sound ISO-Lines Map Book Hessler
	A57	Appendix C-3 Sound Results Table Rev 6
12	A58	Final Land Status and Hessler 7 on Intervenor
	A59	Final Land Status and Hessler 7 Turbine Moves
13	A60	Hessler 7 on Hessler Identified
		Nonparticipants
14	A61	Joint Stipulation of Agreed to Conditions
		Between Crowned Ridge and PUC Staff
15	A62	FAA Pending Turbine Locations
	A63	Amended Condition 26 (Sound Level)
16	A64	Granquist Option Confidential
	A65	Papio Valley Land Confidential
17	A66	Crowned Ridge Wind's Letter regarding Extreme
		Cold Weather Package
18	A67	Appendix C-1 Shadow Results Table Rev5
	A68	Appendix C-2 Shadow Results Table Rev5
19	A69	Insurance Confidential
20	A70	Turbines and Grasslands

I N D E X (Continued)

PUC STAFF EXHIBITS

S1 David Hessler Direct Testimony and Exhibits  
 S1-A Staff's Responses to Applicant's First DR  
 S2 Darren Kearney Direct Testimony and Exhibits  
 S3 Tom Kirschenmann Direct Testimony and Exhibits  
 S4 Paige Olson Direct Testimony and Exhibits  
 S5 Additional Staff Data Requests  
 S5 Additional Staff Data Requests Confidential  
 S6 Supplemental Responses to Staff DR 6  
 S7 Staff's Proposed Lek Monitoring Condition

JUDICIAL NOTICE - SB16

INTERVENORS EXHIBITS

I1 Public Service Commission of Wisconsin - A  
 Cooperative Measurement Survey and Analysis of  
 Low Frequency and Infrasound at the Shirley  
 Wind Farm in Brown County, Wisconsin  
 I2 NARUC - 2011 - Assessing Sound Emissions from  
 Proposed Wind Farms & Measuring the Performance  
 I3 Paul Schomer and Pranav Krishna Pamidighantam -  
 A Possible Criterion for Wind Farms  
 I4 Research Gate - Health Effects from Wind  
 Turbines Low-Frequency Noise & Infrasound: Do  
 Wind Turbines Make People Sick? That is the  
 Issue  
 I5 David Hessler and George Hessler, Jr. -  
 Recommended Noise Level Design Goals and Limits  
 at Residential Receptors for Wind Turbine  
 Developments in the US  
 I6 Partial Transcript of the Evidentiary Hearing  
 of EL18-026  
 I7 Canons of Ethics for the Institute of Noise  
 Control Engineering of the USA  
 I8 Night Time Noise Guidelines 2009 (WHO)  
 I9-A Ollson 2014 Suncor Statement  
 I9-B Ollson 2014 Suncor Statement  
 I10 Ollson 2014 Presentation  
 I11 Thyen Exhibit A Memorandum 2007  
 I12 Thyen Exhibit B Release Letter 2012  
 I13 Thyen Exhibit C Sound Map 2019.5.24  
 I14 IAIA Assessment  
 I15-A DR to Intervenors 4-1  
 I15-B Jay Haley Resume

I N D E X (Continued)

## INTERVENORS EXHIBITS

I16 SD License Search Mr. Haley  
I17-A ND License Search Mr. Haley  
I17-B ND License Search Mr. Haley  
I18 MN License Search Mr. Haley  
I19 MN License Affidavit Mr. Haley  
I20 Mr. Haley Cover Letter App H 1/22/19  
I21 Mr. Haley Cover Letter App I 1/22/19  
I22 Mr. Haley Cover Letter Updated Appendices  
Sound A-D 2/19/19  
I23 Mr. Haley Cover Letter Updated Appendices  
Flicker A-O 2/19/19  
I24 Mr. Haley Cover Letter Landowner Participation  
Sound 2/26/19  
I25 Mr. Haley Cover Letter Landowner Participation  
Flicker 2/26/19  
I26 Mr. Haley Cover Letter Additional Structures  
Sound Ex 1 2/19/19  
I27 Mr. Haley Cover Letter Additional Structures  
Flicker Ex 3 2/19/19



1           CHAIRMAN HANSON: At this time we will reconvene  
2 the evidentiary hearing and everything that was iterated  
3 during the opening of the hearing stands at this time. I  
4 won't regurgitate what I went through previously.

5           Ms. Cremer, you are in charge.

6           MS. CREMER: Thank you, Chairman Hanson.

7           Good afternoon, everyone. I'll call the  
8 evidentiary hearing for EL19-003, Crowned Ridge Wind, LLC  
9 for a permit for a wind energy facility in Grant and  
10 Codington Counties back into session following the  
11 recess.

12           And I just have a few reminders. Speak clearly  
13 and at a reasonable pace. The mics. are push to touch.  
14 When the light is green, it's on. When you're not  
15 speaking, turn it off.

16           Please mute your cell phone when you're in this  
17 room. And this is how we will proceed from here forward.  
18 We'll have the case in chief from Crowned Ridge. That  
19 will be followed by the Intervenor's case. And that will  
20 be followed by Staff's case. Crowned Ridge as the  
21 Applicant will have the final rebuttal.

22           Witnesses that have filed multiple rounds of  
23 testimony must offer all of their testimony when they are  
24 initially called. Cross-examination will include all of  
25 the witnesses' testimony.

1           As all the parties have prefiled testimony and  
2 we have all had the opportunity to read it, please just  
3 have your witness give a brief summary of their testimony  
4 so that we can go to cross-examination.

5           Are there any exhibits the parties have  
6 stipulated to? And, if so, if someone could recap that  
7 for us.

8           MS. EDWARDS: This is Kristen Edwards for Staff.  
9 At this time, if it's agreeable with the parties, I would  
10 read into the record what I sent out this morning. I  
11 sent out an exhibit list and I've provided copies now to  
12 the Hearing Examiner.

13           It does not include anything that Applicant  
14 filed this morning because I was otherwise detained this  
15 morning. So anything after A54 is not included. In  
16 addition, there's a blank spot where A52 should have  
17 been, A52 is a cover letter, so you need to write that in  
18 there.

19           For the exhibits that were stipulated to,  
20 everything filed by the Applicant up to A54, with the  
21 exception of the following: A1-H, A1-I, A2, A3, A5, A8,  
22 A9, A10, A11, A22-1.

23           Did you have A22?

24           MR. GANJE: Indeed. That is one that we would  
25 not stipulate to, and we advised you of that.

1 MS. EDWARDS: Sorry. I failed to mark on here.  
2 A22, A22-2, A22-3, A25, A30, A43, A43-1, A43-2, A43-3,  
3 A43-4, A43-5. All of Staff's exhibits and all of  
4 Intervenors' exhibits are stipulated to.

5 MS. CREMER: So to be clear, what you read off  
6 are the ones that are not stipulated to?

7 MS. EDWARDS: Correct.

8 MS. CREMER: Other than Staff and --

9 MS. EDWARDS: And all of Staff's exhibits and  
10 all of Intervenors' exhibits are stipulated to, correct.

11 MR. GANJE: Yes. If it may please the  
12 Commission, I'll go back to A22 in a moment just for  
13 clarification.

14 But she read off those exhibits to which we did  
15 not stipulate. The proposed stipulation is subject to  
16 the approval of the Commission, and it is that the  
17 exhibits or testimony identified in the exhibit list  
18 created by the PUC Staff counsel may be admitted in this  
19 proceeding except for the ones that she's described here  
20 today on the record which would include some testimony  
21 and some exhibits, provided that objections on the  
22 grounds of authenticity, hearsay, double hearsay, due  
23 process, lack of foundation, improper opinion, relevance,  
24 qualification of a witness, nonresponsive witness,  
25 speculation, legal conclusion, or other legal grounds for

1 objection, as well as motions to strike testimony or  
2 evidence and the right to cross-examine shall be  
3 preserved in favor of the Intervenor on all the  
4 testimony and exhibits that have been stipulated to and  
5 have not been stipulated to herein.

6 And I would have a question if counsel for Staff  
7 would repeat the A22 list again.

8 MS. EDWARDS: Included in the list that is not  
9 stipulated to is -- or are Exhibits A22 and then A22-1  
10 through A22-3.

11 MR. GANJE: That is correct. Thank you.

12 MS. CREMER: Crowned Ridge, would you agree with  
13 the list by Staff?

14 MR. SCHUMACHER: Yes, we do. Thank you.

15 MS. CREMER: Thank you.

16 And, Mr. Ganje, you agreed with the list as  
17 read?

18 MR. GANJE: I do.

19 MS. CREMER: Thank you.

20 As all the parties have stipulated to the  
21 admission of these aforementioned exhibits, they are  
22 admitted into the record, noting Mr. Ganje's list of  
23 possible objections.

24 That brings us to opening statements. Crowned  
25 Ridge, did you want to do an opening statement?

1 MR. SCHUMACHER: No, thank you.

2 MS. CREMER: Thank you.

3 Intervenors can do an opening statement now or  
4 they can waive that until they put their case in chief  
5 on.

6 MR. GANJE: We would reserve, please.

7 MS. CREMER: Thank you. And Staff.

8 MS. EDWARDS: Waived.

9 MS. CREMER: All right. Crowned Ridge, you may  
10 call your first witness.

11 MR. SCHUMACHER: Thank you. Applicant calls  
12 Andrew Baker.

13 (The oath is administered by the court reporter.)

14 DIRECT EXAMINATION

15 BY MR. SCHUMACHER:

16 Q. State your name, business title, and company for the  
17 record.

18 A. Sure. My name is Andrew Brock Baker. I'm a  
19 director at Valbridge Property Advisors, commercial real  
20 estate company in Kansas City.

21 Q. And you may want to move just a little bit closer to  
22 the microphone.

23 A. Sure.

24 Q. What is your role with the Crowned Ridge Wind  
25 Project?

1 A. Sure. In November of last year, NextEra Energy  
2 Resources hired me to do a value impact study on the  
3 proposed project to see if and how it might impact  
4 surrounding property values.

5 Q. Please provide a short overview of your education  
6 and experience.

7 A. Sure. I graduated college from Case Western Reserve  
8 University in 2008. I majored in economics. Since I  
9 graduated college, I've been working as a fee appraiser,  
10 which means a company hires me for a fee to do an  
11 appraisal.

12 And I got my certified general license in the state  
13 of Kansas and Missouri in 2012. Kansas has a reciprocity  
14 agreement with South Dakota so I was able to get a  
15 temporary license in South Dakota to do this project.

16 I've appraised all different types of property  
17 types, commercial properties, agricultural land. And so  
18 in 2015 I received my MAI designation from the Appraisal  
19 Institute, which is the highest designation for  
20 commercial appraisers of the Appraisal Institute.

21 Q. Mr. Baker, did you file Prefiled Rebuttal Testimony  
22 on May 24, 2019, that is marked as Exhibit A39 with  
23 accompanying exhibits marked A39-1, A39-2, and A39-3?

24 A. Yes.

25 Q. Do you have any changes or correction to your

1 testimony or the exhibits?

2 A. No.

3 Q. In that event, Mr. Baker, could you please provide a  
4 short summary of your prefiled testimony?

5 A. Sure.

6 So I am here to talk about the Intervenor's permit  
7 condition, I believe it's No. 37. And let me just read  
8 that really quickly. It says, "To offer each  
9 nonparticipating landowner within two miles of the  
10 boundary footprint reimbursement of a preconstruction  
11 property appraisal up to \$2,500 per landowner. This  
12 offer shall be completed before any construction is  
13 completed and reimbursement must be made by the Applicant  
14 within 30 days of submission of the receipt to the PUC."

15 And so this recommendation, permit condition, is  
16 based on the incorrect assumption that this is going to  
17 impact surrounding property values. I completed a value  
18 impact study last December on the property, and I did  
19 that -- I reviewed zoning conditions in each of the  
20 counties. I toured the areas to see what the surrounding  
21 land uses generally were. And then from that, I  
22 researched academic literature, reviewed three studies  
23 that had over 50,000 sales of homes that were completed  
24 in the United States that used a regression analysis to  
25 see how wind turbines might impact property values.

1 I then completed a paired sales analysis for  
2 agricultural land in Brookings County. I interviewed a  
3 number of brokers in Brookings County, South Dakota, who  
4 had had experience selling land, people on the ground who  
5 really are getting in there with their hands and talking  
6 to buyers and sellers.

7 I did another paired sales analysis in Spearville,  
8 Kansas, which is a town that's completely surrounded by  
9 wind turbines. There's, I believe, six turbines within a  
10 mile of there. Sales of homes that occurred shortly  
11 before and shortly after the wind project was completed.  
12 Also interviewed buyers and sellers over there.

13 Based on the totality of the evidence, it's clear to  
14 me that the project won't impact surrounding properties  
15 measurably.

16 Q. Thank you, Mr. Baker.

17 MR. SCHUMACHER: That concludes Applicant's  
18 direct examination of this witness.

19 MS. CREMER: Thank you.

20 Mr. Ganje, did you have cross?

21 MR. GANJE: Thank you. Yes.

22 CROSS EXAMINATION

23 BY MR. GANJE:

24 Q. Good morning, Mr. Baker.

25 A. Good morning. Good afternoon.



1 Q. I'll let you determine that. I apologize.

2 The basis of your opinion is a study you did in  
3 Brookings County, South Dakota; is that correct?

4 A. It's based on the totality of the work I did.

5 Q. And as regards an analysis of South Dakota sales,  
6 where were those sales located?

7 A. They were located in Brookings County.

8 Q. And what was your conclusion regarding those sales  
9 in Brookings County?

10 A. That based upon my interviews and the paired sales  
11 analysis that I did, that it didn't impact the property  
12 value.

13 Q. And did you attach a list of the sales from  
14 Brookings County with your report?

15 A. Yes. There's a sale write-up of each of the sales.

16 Q. And you also interviewed, I believe, two brokers  
17 licensed to practice in Brookings County, South Dakota?

18 A. I thought it was -- let me see.

19 Yes. Two brokers, a county assessor, and somebody  
20 who works at a farmland manager company.

21 Q. Did you provide any notes on your interview with  
22 those brokers in your report?

23 A. Yeah. I talked about what our discussion with each  
24 of them are.

25 Q. How many rural residences -- I'm not talking about

1 farmstead or farm operations but rural residences did you  
2 analyze to produce your value impact study?

3 A. Sure. So I pulled all the sales in Brookings County  
4 since 2011. I would have loved to have had some rural  
5 residences in there but I didn't have any sales. So  
6 none.

7 Q. There were none.

8 And what was the average, what they call, the  
9 average market for sale for the properties in Brookings  
10 County near the wind farm preconstruction and  
11 postconstruction as you've determined in your report?

12 A. Say that again. What were the average sales?

13 Q. What was the average time on the market? Let me put  
14 it that way.

15 A. Sure.

16 Sale 1, it was sold at auction. Sale 2 was sold at  
17 auction. Sale 3 was sold at auction. And sale 4 was --  
18 it was sold -- it was put on the market but I'm not sure  
19 how long it was on the market.

20 Q. And did you identify the location of those vis-a-vis  
21 operating wind farms in Brookings County?

22 A. I do.

23 Q. Did you do an analysis of those that were near wind  
24 farms as against those that were a distance of two to  
25 three miles away?

1 A. Yes.

2 Q. Did you do a similar analysis for Grant and  
3 Codington County?

4 A. Well, Grant and Codington County did not have any  
5 wind turbines at present, but I did look in Deuel County  
6 and Day County.

7 Q. With regard to Grant and Codington County, there are  
8 outstanding options or easements with regard to the  
9 construction of turbines, aren't there?

10 A. I assume so, yes.

11 Q. Did you take into consideration any maps where there  
12 were an identification the Applicant showed you of  
13 potential turbine sites in Grant or Codington County when  
14 you did your analysis?

15 A. Yes. I looked at those maps.

16 Q. Okay. So then was that a part of your analysis of  
17 Grant County?

18 A. No. We go on past sales. We look backward.

19 Q. And what was the date of your report, please?

20 A. December 13, 2018.

21 Q. Are you aware of any sales of land in Grant County  
22 that took place during the calendar year 2018 in which  
23 the land had an identified Geronimo Energy wind easement  
24 indicated in a part of the auction sale bill for the  
25 sale?

1 A. I am not.

2 Q. Are you aware that a closing took place in 2018 with  
3 regard to the sale of 135 acres of land which included  
4 and identified sale item called Geronimo Energy wind  
5 easement which closed in that county on November 26 of  
6 2018?

7 MR. SCHUMACHER: I'm going to interpose an  
8 objection here. That assumes facts not in evidence.

9 MR. GANJE: I'm not putting anything in  
10 evidence. I'm asking about his knowledge. It's a proper  
11 question for cross-examination. The extent of his  
12 knowledge is an appropriate question in  
13 cross-examination.

14 I'm sorry, Ms. Cremer. I should not have argued  
15 with counsel.

16 MS. CREMER: I would agree with you there. And  
17 I will overrule the objection.

18 You may answer.

19 A. Yeah. I haven't looked at any sales in Grant County  
20 because they don't have a wind farm there.

21 Q. And you didn't look at any sales in Grant County  
22 that had easements or options regarding potential wind  
23 farm or wind turbines, did you?

24 A. No. No, I did not.

25 Q. And would your answer be the same for Codington

1 County?

2 A. Yes.

3 Q. I think in your impact study you define a term and  
4 you call it "local owner"; is that correct?

5 A. Say that again.

6 Q. I think in your impact study you use a defined term  
7 called "local owner"; is that correct?

8 A. Local owner? I'm not familiar with that term.

9 Q. Would you be kind enough to look at page 16 of your  
10 study?

11 A. Sure.

12 Yes.

13 Q. Did you determine how many comparable local owners  
14 existed of a similar nature in Grant County as a part of  
15 your study?

16 A. No.

17 Q. Did you determine as a part of your study how many  
18 so-called local owners existed in Codington County?

19 A. No.

20 Q. Did you do any analysis in which you compared sales  
21 in the project area which had wind easements with sales  
22 in the project area which did not have any designated  
23 wind easements?

24 A. No.

25 Q. At the time you did the study that you've testified

1 to here today, were you licensed in South Dakota?

2 A. I was.

3 MR. GANJE: I have no further questions.

4 MS. CREMER: Thank you. Staff.

5 CROSS-EXAMINATION

6 BY MS. EDWARDS:

7 Q. When did you begin your analysis in Brookings  
8 County?

9 A. When I was engaged. I believe I was engaged in late  
10 20 -- late November of 2018.

11 Q. So you began your analysis in November of 2018?

12 A. Yes.

13 Q. And when did you become licensed here?

14 A. I became licensed on -- well, what happened is I got  
15 the engagement letter, and then sent my information to  
16 the South Dakota Appraisal Department. And I think they  
17 signed the -- the license on December 5, I believe.

18 Q. So is that to say you engaged in appraisal work for  
19 a period of time without a license?

20 A. No. I -- this is pretty typical. It takes a few  
21 days to get a license. You get an engagement letter. By  
22 the time I issued this report and completed my analysis,  
23 I was a licensed appraiser.

24 Q. Okay. Did I understand you right to say there were  
25 no sales in Brookings County since 2011?

1 A. Day County and -- Day County there were no sales  
2 around the turbines. I also looked in Deuel County and  
3 there were no sales around the turbines.

4 Q. Were there sales around the turbines in Brookings  
5 County?

6 A. Yes. And that was analyzed.

7 Q. In the course of your work, did you have a chance to  
8 review any of the prior dockets before the Commission?

9 A. I have reviewed documents. I don't know  
10 specifically what you're referring to.

11 Q. Prior dockets. I'm sorry. I should have been more  
12 specific. Any prior wind siting dockets that have  
13 recently been before this Commission.

14 A. I looked at a map -- a map of where the wind  
15 turbines were going to be that was provided by the client  
16 at the time.

17 Q. Have you had a chance to review any of the prior  
18 property value analyses done in South Dakota?

19 A. In South Dakota?

20 Q. In the prior dockets.

21 A. Oh. Yes. There was another analysis that was done  
22 in North Dakota that I reviewed.

23 Q. Have you ever reviewed any analyses --

24 MS. EDWARDS: I'm going to withdraw that  
25 question. No further questions.

1 MS. CREMER: Thank you.

2 Chairman Hanson.

3 CHAIRMAN HANSON: Caught me off-guard. Good  
4 afternoon.

5 THE WITNESS: Good afternoon.

6 CHAIRMAN HANSON: Thank you for traveling all  
7 the way here to enlighten us on property values.  
8 Appreciate it.

9 Your testimony appears that you had a reciprocal  
10 license; is that correct?

11 THE WITNESS: Yes.

12 CHAIRMAN HANSON: So you were licensed in  
13 Kansas. Other states that you're licensed in?

14 THE WITNESS: I have a permanent license in  
15 Kansas and Missouri.

16 CHAIRMAN HANSON: Call them permitted [sic]  
17 licenses as opposed to reciprocal?

18 THE WITNESS: Yes.

19 CHAIRMAN HANSON: Okay. They're the same thing.

20 THE WITNESS: I have a permanent annual license  
21 in Kansas and Missouri. I have a reciprocal temporary  
22 license with South Dakota.

23 CHAIRMAN HANSON: You said you -- in determining  
24 your valuations, you examined auctions?

25 THE WITNESS: Yes.



1           CHAIRMAN HANSON:   Primarily auctions?

2           THE WITNESS:   No.   Not primarily auctions.   I  
3   looked at all the sales in the county.   And it's somewhat  
4   typical for ag land in the county to be sold at auction.

5           CHAIRMAN HANSON:   In order to get a fair market  
6   value, you really need to compare similar properties and  
7   similar situations, locations, types of properties, et  
8   cetera; correct?

9           THE WITNESS:   Correct.

10          CHAIRMAN HANSON:   And do you feel you  
11   accomplished that by not -- well, do you feel that you  
12   accomplished that?

13          THE WITNESS:   I do.

14          CHAIRMAN HANSON:   Why would you not go to, as  
15   you answered Mr. Ganje's questions, that you did not  
16   examine another county in proximity that did not have  
17   wind turbines?   Wouldn't it make sense to examine  
18   properties with wind turbines and compare like properties  
19   to those without?

20          THE WITNESS:   Yeah.   I think there's a location  
21   adjustment that needs to be made.   Generally, the  
22   adjacent properties are going to be experiencing the  
23   effects of the wind turbines the greatest.   And so I  
24   wanted to not have to consider a location adjustment.

25          CHAIRMAN HANSON:   In your analysis, market

1 analysis, you wouldn't be using replacement minus  
2 depreciation; you'd probably be looking at just the  
3 market value of properties. Did you look at the third  
4 method as from the income standpoint?

5 THE WITNESS: No.

6 CHAIRMAN HANSON: One would assume not necessary  
7 to do that; however, we have a number of hunting  
8 preservation in South Dakota. And if wind turbines were  
9 to affect a hunting operation, would it not make sense to  
10 examine those via an income approach?

11 THE WITNESS: Yeah. I am not aware of a hunting  
12 operation in the footprint. I know that there are  
13 hunting operations that are located very close to wind  
14 turbines in South Dakota so --

15 CHAIRMAN HANSON: But you did not look -- you  
16 didn't examine for that.

17 THE WITNESS: I looked at all the sales, yeah.  
18 We looked at all the sales we could get.

19 CHAIRMAN HANSON: You didn't search out  
20 different types of income approaches in -- on the  
21 footprint, though. You didn't search -- you're  
22 testifying you did not look for any type of operation  
23 other than an ag -- or indicated. Would that be correct?

24 THE WITNESS: Yep. That was the data that we  
25 had, yes.

1           CHAIRMAN HANSON: Well, your testimony was short  
2 and sweet, and I'm not going to make it any longer.  
3 Appreciate your testimony.

4           Thank you.

5           COMMISSIONER NELSON: Good afternoon.

6           Just so I'm clear, in your analysis, did you  
7 find sales of rural residences in Brookings County --

8           THE WITNESS: No.

9           COMMISSIONER NELSON: -- since 2011?

10          THE WITNESS: No. Not that were adjacent to  
11 wind turbines.

12          COMMISSIONER NELSON: How do you define a rural  
13 residence as you just used it?

14          THE WITNESS: You mean as you used it?

15          COMMISSIONER NELSON: Well, you introduced the  
16 term to us so I'm using your term.

17          THE WITNESS: Sure. It's farmland that has a  
18 residence on it.

19          COMMISSIONER NELSON: And so is there a limit on  
20 the amount of acreage that you'd include when you talk  
21 about a rural residence?

22          And let me tell you where I'm going here.

23          THE WITNESS: Sure.

24          COMMISSIONER NELSON: I mean, when you use the  
25 term "rural residence," is that what we commonly think of

1 as an acreage where you've got a house and maybe five or  
2 10 acres or is it a house on 160 acres or both?

3 THE WITNESS: I would probably say for a value  
4 impact study, you know, it would be nice to look at it on  
5 the basis of as small of land as possible. Because  
6 obviously the bigger the land, the more the land will be  
7 a percentage of the value.

8 COMMISSIONER NELSON: And so -- but you did not  
9 find any sales of rural residences in Brookings County  
10 since 2011; correct?

11 THE WITNESS: Correct. That were located  
12 adjacent to wind turbines.

13 COMMISSIONER NELSON: And when you say  
14 "adjacent," how far away do you include in the word  
15 "adjacent"?

16 THE WITNESS: Hopefully within, I would say, a  
17 mile or two.

18 COMMISSIONER NELSON: No further questions.

19 COMMISSIONER FIEGEN: Thank you. And it's --  
20 it's kind of hard to ask questions because there's lots  
21 of probablies, lots of hopefullys. I feel like the  
22 record isn't becoming completely clear.

23 I'm just going to go back to your auctions,  
24 because you gave us four examples of items that you  
25 looked at, and three of them were auctions. So I am

1     assuming that wasn't just a resident. I guess I want to  
2     ask you, those auctions, is that with farmland or just  
3     the resident?

4             THE WITNESS: That was the farmland.

5             COMMISSIONER FIEGEN: Okay. And earlier in your  
6     testimony, you said you talked to a number of brokers.

7             THE WITNESS: Yes. And I think that's very  
8     important, to talk to people on the ground and who are  
9     doing this.

10            COMMISSIONER FIEGEN: So why only two? When I  
11     heard you say a number, I thought only 8, 10, 12, and  
12     then, all of a sudden, when you were cross-examined, you  
13     said only two.

14            THE WITNESS: Sure. I did talk to additional  
15     brokers. I talked to everybody I could. I talked to  
16     appraisers in Watertown and Sioux Falls. I wanted to  
17     only include, though, interviews with people who had  
18     actually sold a property next to and actually had, you  
19     know, knowledge of this and are on the ground talking to  
20     buyers and sellers about the property they're listing.

21            COMMISSIONER FIEGEN: So another question came  
22     up in cross-examination of if you had the opportunity  
23     to -- you know, we had other wind projects. We certainly  
24     had Prevailing Winds. Have you heard of Prevailing  
25     Winds?

1 THE WITNESS: Yes.

2 COMMISSIONER FIEGEN: Did you look at --

3 THE WITNESS: I did. That's a new project. We  
4 appraisers are backward-looking people. Okay. We want  
5 to look at the actual sales data.

6 And so if a project's just a year old or  
7 whatever, there probably isn't going to be very many good  
8 sales for us to use. So we want projects that have been  
9 in operation for a number of years because it's more  
10 likely that we'll have good sale data to use.

11 COMMISSIONER FIEGEN: Sure. So I think we had  
12 Crocker. We had Deuel Harvest. We had several. And I'm  
13 going to have to go check my memory tonight when we're  
14 done with the evidentiary hearing because I could have --  
15 I mean, my memory is that there was Brookings County  
16 residents that were close to wind turbines that were  
17 evaluated and, I believe, that were say -- I'm going to  
18 have to look because now my memory is very foggy since  
19 it's conflicting with what you're saying today. So I  
20 guess I'll go check that out.

21 You said you were hired -- or approximately in  
22 November. Now I can't remember. And you wrote your  
23 report in -- when did you write your report?

24 THE WITNESS: December. I finished it December  
25 13, is the date.

1           COMMISSIONER FIEGEN:   Okay.   So when you look at  
2   land value, we have been told in a different evidentiary  
3   hearing -- do you believe one month or 30 days or 15  
4   days, or whatever you did for your report and your  
5   investigation in South Dakota with residents close to  
6   wind turbines, do you believe that is a thorough,  
7   comprehensive evaluation?

8           THE WITNESS:   Well, one thing you've got to  
9   realize is that, in South Dakota, when you compare it to  
10   a state like Kansas, for instance, there are a lot more  
11   wind projects in Kansas.   They've been around a lot  
12   longer so they've had a lot more experience with this.

13           I was -- honestly, when I was engaged, I was  
14   hoping there was going to be a lot more projects for me  
15   to look at and a lot more sales data for me to analyze.  
16   I used the best I had.   I talked to the best brokers I  
17   could.   And so, yes, I think given the limitations, this  
18   is a thorough investigation.

19           COMMISSIONER FIEGEN:   So you talked about  
20   North Dakota.   You talked about Kansas.   You talked about  
21   different evaluations.   Did you bring all of that other  
22   information?

23           Because like Iowa actually has had wind turbines  
24   and Minnesota has had wind turbines longer probably than  
25   South Dakota, and probably more of them.

1 THE WITNESS: Uh-huh.

2 COMMISSIONER FIEGEN: Did you -- so what you're  
3 telling me right now is that your few weeks' evaluation  
4 is a comprehensive, that this Commission can make a  
5 comprehensive decision?

6 Because at other projects we've heard --

7 THE WITNESS: Yeah. So, obviously, I try to  
8 make my reports readable and short, because these things  
9 normally get passed around to people and you don't always  
10 know -- you know, they want to read the report and get to  
11 the point, I guess.

12 You know, I've done these in Kansas and Missouri  
13 too. And so, yeah, this definitely takes into account  
14 the totality of work I've done on this so --

15 COMMISSIONER FIEGEN: Okay. Thank you.

16 COMMISSIONER NELSON: I'm just going to say to  
17 Commissioner Fiegen, your memory is correct.

18 COMMISSIONER FIEGEN: Thank you, Lord. I was  
19 getting nervous there.

20 (Discussion off the record.)

21 MS. CREMER: Crowned Ridge, do you have  
22 redirect?

23 MR. SCHUMACHER: Thank you.

24

25



REDIRECT EXAMINATION

2 BY MR. SCHUMACHER:

3 Q. Mr. Baker, the question of local ownership came up.  
4 Is that one of the established criteria that you would  
5 typically employ in doing an appraisal?

6 A. No.

7 Q. And then with regard to the summary and report that  
8 you provided, do the conclusions you reached in that  
9 report include your years of experience analyzing  
10 property near wind projects --

11 A. Yes.

12 Q. -- in Kansas and other states?

13 A. Yes. I've done these paired sales analysis in  
14 Kansas and Missouri.

15 MR. SCHUMACHER: Okay. Thank you.

16 MS. CREMER: That would take us to recross but  
17 only as to Commission questions or redirect.

18 Mr. Ganje.

19 MR. GANJE: Thank you.

20 I believe that two of the Commissioners went  
21 into the area of sales and the area of auction sales and  
22 the value of them and making an opinion. In that regard,  
23 I would like to offer an impeachment exhibit and have it  
24 marked.

25 MS. CREMER: Yeah. Please proceed.

1 (Exhibit I28 is marked for identification.)

2 MR. GANJE: May I approach the witness and hand  
3 him the exhibit?

4 MS. CREMER: Yes.

5 (Attorney hands witness the exhibit.)

6 RE CROSS-EXAMINATION

7 BY MR. GANJE:

8 Q. Mr. Baker, I show you --

9 MR. SCHUMACHER: I'm going to object that  
10 Applicant doesn't know what this exhibit is. He did not  
11 provide us a copy.

12 MR. GANJE: My apologies. My sincere apologies.  
13 May I?

14 MS. CREMER: Yep. Did you have copies for  
15 anyone else?

16 MR. GANJE: Yes, we do.

17 (The document is distributed.)

18 MR. GANJE: May I proceed?

19 MS. CREMER: Yes. Please.

20 MR. GANJE: Thank you.

21 Q. (BY MR. GANJE) Mr. Hanson [sic], I have had marked  
22 and handed you Exhibit I28. Have you had a chance to  
23 look at that?

24 A. Yes.

25 Q. Does that identify property that is sold in Twin

1 Brooks Township near Milbank, South Dakota?

2 A. That's what it says.

3 Q. And does this bill of sale or sale bill, as it were,  
4 identify that this property -- it comes with a Geronimo  
5 Energy for a wind easement condition as a part of the  
6 advertised language for the sale?

7 A. Yeah. The last sentence says, "There are two  
8 easements on the property. One with Geronimo Energy for  
9 a wind easement and one for access to neighboring  
10 fields."

11 Q. Thank you.

12 MR. SCHUMACHER: Excuse me. I need to interpose  
13 an objection with regard to any further questions on the  
14 exhibit.

15 A portion of it appears to be something that  
16 came out of a flyer or a newspaper or somewhere else.  
17 And then there's additional information typed on the  
18 bottom that is clearly hearsay. We have no foundation  
19 for where that information came from. We have no way of  
20 being able to determine whether or not the information at  
21 the bottom of this exhibit is accurate.

22 I'm afraid that we're going to have to object  
23 that this truly is hearsay.

24 MS. CREMER: You know, I'm assuming we're going  
25 down an impeachment path because he said that. My

1 experience is you don't need to offer an exhibit for  
2 impeachment purposes. You ask him questions about it.  
3 He's either going to know about it, or he's not.

4 So does that answer your question?

5 MR. SCHUMACHER: (Nods.)

6 MS. CREMER: Thank you.

7 Q. (BY MR. GANJE) Mr. Baker, did you take this sale  
8 into consideration when you made a determination  
9 concerning values or the effect on values in Grant  
10 County, South Dakota, as a part of your report?

11 A. Yeah. I've answered this. I did not look at sales  
12 in Grant County because there's no wind farm in Grant  
13 County. So no.

14 Q. Is it your opinion that an option or an easement or  
15 a right-of-way given with regard to a potential wind farm  
16 facility has no effect on the real estate?

17 A. Say that again.

18 MR. GANJE: I'll ask that the court reporter  
19 kindly reread my question.

20 MS. CREMER: And, Mr. Ganje, you really, really  
21 need to talk into your mic. We're all having a struggle  
22 to hear you.

23 MR. GANJE: I apologize. There's two reasons.  
24 One, I'm a bit hoarse, and, one, my mom trained me over  
25 the years not to be too loud. So I apologize.

1 (Reporter reads back the last question.)

2 A. Yeah. Those are three different things. An  
3 easement, it could, it could not affect the sale price.  
4 It depends on what the easement is. The right-of-way is  
5 the same thing, it could or could not affect the sale  
6 price. An option, I take it you mean a sale option? Is  
7 that what you mean?

8 Q. I'll let you finish the answer, and then I may have  
9 other questions.

10 A. Oh. I thought you said an option affects the sale  
11 price. I don't know what that means.

12 MR. GANJE: No further questions.

13 MS. CREMER: Thank you.

14 Staff.

15 MS. EDWARDS: Briefly.

16 In response to Commissioner questions about  
17 Brookings County, I have an impeachment exhibit. Could I  
18 approach the witness.

19 MS. CREMER: Certainly.

20 MS. EDWARDS: I'm not going to label this  
21 exhibit because I do not intend to offer it. I e-mailed  
22 Applicants a copy. I gave Mr. Ganje a copy because I  
23 know he doesn't have his computer in front of him. And I  
24 believe somebody's bringing up more copies. I have some  
25 for the commissioners.

1 (The document is distributed.)

2 RECROSS-EXAMINATION

3 BY MS. EDWARDS:

4 Q. Mr. Baker, can you please turn to the page on -- I  
5 believe I have tabbed it for you so it would be the first  
6 page. Exhibit 1 is a rural residential transaction  
7 summary table.

8 A. Yep.

9 Q. Are you familiar at all with this document? I  
10 should ask.

11 A. Nope. This is the first time I've seen it.

12 Q. Okay. Do you have any reason to disagree with these  
13 findings?

14 A. I haven't read it.

15 Q. Okay. Maybe I should ask you to look at them.

16 Can you flip to the second tab? The page is titled  
17 "Sales Analysis BK."

18 A. Okay. Yes.

19 Q. And in what county, at the top of the page, does it  
20 say that sale occurred?

21 A. Brookings.

22 Q. Okay. And if you flip back to the first page that I  
23 directed your attention to, is that on that chart, BK-1?

24 Take a second to look at it, if you need.

25 A. These pages aren't numbered, which is kind of hard.

1 Q. I'm sorry.

2 A. So I don't know what page you're -- this is the  
3 first page I have that has a marking on it.

4 Q. Oh, forgive me. If you go --

5 MS. CREMER: Maybe if you just stood beside him  
6 and asked the question and point it to him.

7 Q. I apologize. It's been several months since I  
8 looked at this either. Yep. That's the page I'm  
9 speaking about.

10 Do you see BK-1 on there?

11 A. Yes. Sorry. Yes.

12 Q. Do you recall what county that was in?

13 A. Brookings.

14 Q. And a few pages back do you see BK-2?

15 A. Yes.

16 Q. And what county is that in?

17 A. Brookings.

18 MS. EDWARDS: All right. I'm not going to go  
19 any further down that road. But thank you very much.

20 I have no further questions.

21 MS. CREMER: Thank you.

22 Commission, did that -- anyone have any further  
23 questions? No.

24 Crowned Ridge, do you have any final redirect?

25 MR. SCHUMACHER: No, thank you.

1 MS. CREMER: Thank you.

2 You may step down. Thank you.

3 (The witness is excused.)

4 MS. CREMER: Please call your next witness.

5 MR. SCHUMACHER: The Applicant calls Sarah  
6 Sappington.

7 (The oath is administered by the court reporter.)

8 MR. GANJE: Madam Examiner, may I lodge an  
9 objection at this time?

10 MS. CREMER: To what?

11 MR. GANJE: Well, I'm going to object to the  
12 testimony presented by this witness on several grounds.  
13 This witness is -- by way of offer of proof, this witness  
14 will be testifying to matters involving conclusions and  
15 opinions that were created by another party that is an  
16 employee of the Applicant and that is hearsay, if there  
17 is another party that created conclusions and opinions.  
18 And I will cite the pages by way of offer of proof.

19 Ms. Wells is an employee, I believe, of the  
20 Applicant, if I'm not mistaken. And Ms. Wells provided  
21 the preliminary testimony. And this witness is the  
22 substitute witness for Ms. Wells.

23 Well, the problem is, on page 6 of Ms. Wells's  
24 testimony, which this witness would be testifying to,  
25 there is an opinion with regard to impact or anticipated



1 results. On page 6, line 10, there is an opinion  
2 regarding any possible or nonadverse impact. On page 7,  
3 there is an opinion or a conclusion with regard to no  
4 impact regarding the project.

5 On page 9, there is a statement by Ms. Wells  
6 that there are no impacts expected. On page 9, there is  
7 another statement about the proposed activity that will  
8 be undertaken by the Applicant in order to secure the  
9 property from any damage or destruction; in other words,  
10 a representation.

11 On page 10, there is another opinion or  
12 conclusion with regard to impacts that will be either  
13 avoided or not -- do not exist.

14 I could go on, but that's the point of my offer  
15 of proof.

16 CHAIRMAN HANSON: Mr. Ganje, excuse me, as  
17 you're going through those, if you could touch on not  
18 just the page but the line as well.

19 MR. GANJE: I will do that. And I will stop my  
20 examples there and I will start over for the benefit of  
21 the Commission. And again, I apologize for rushing  
22 through.

23 What we have here is --

24 MS. CREMER: And I'm going to interrupt you at  
25 this point.

1           Crowned Ridge, do you have a response? I think  
2 we know where he's going.

3           MR. SCHUMACHER: Yes, I do. Thank you.

4           Ms. Sappington's testimony will demonstrate that  
5 she is clearly qualified and participated in the work  
6 that led to these conclusions and able to make those  
7 conclusions on her own.

8           MS. CREMER: And, Mr. Ganje, I can let you go  
9 further, but I will say that we frequently allow expert  
10 witnesses to adopt the testimony of others.

11           Now you can ask her questions throughout, you  
12 know, what she based her opinion on and flush that out,  
13 but at this point I'm going to allow her to testify.

14           MR. GANJE: With all due respect, Madam  
15 Examiner, then I would ask that this matter be appealed  
16 to the decision of the Commission. And I am glad to  
17 provide further clarification of the points where we have  
18 what is called a double hearsay and a denial of due  
19 process.

20           Because this witness is coming in here when the  
21 Applicant could bring the other party here. The other  
22 party is an employee. The other party is the principal  
23 party that came to various conclusions about impact and  
24 other consequential things affecting the Application. I  
25 don't get an opportunity to examine that other party, the

1 author of significant events or significant opinions.

2 So this is not a situation where we have an  
3 expert testifying based on a study done by the University  
4 of Chicago professor or so forth. This is a witness who  
5 is going to be testifying as a substitute for somebody  
6 that did a substantial amount of alleged work in support  
7 of this Application and who we should have a right to  
8 cross-examine under the concepts of due process and under  
9 the concepts of hearsay, if not double hearsay.

10 That's the basis of my concern. And in that  
11 regard, I respectfully appeal the examiner's decision and  
12 ask that the Commission would rule on my objection to  
13 this witness.

14 COMMISSIONER NELSON: Overruled.

15 CHAIRMAN HANSON: Just one minute.

16 We heard testimony from Mr. Hessler, and I was  
17 trying to remember from all the things that I've read in  
18 this docket -- I know that he testified on noise, but I  
19 don't know that he testified on shadow flicker at all. I  
20 don't think he did.

21 MR. MIKAL HANSON: No. No.

22 CHAIRMAN HANSON: It was all noise.

23 MR. MIKAL HANSON: No, he did not.

24 CHAIRMAN HANSON: Thank you.

25 Do you plan to testify -- I didn't see it in

1       yours -- noise. I see shadow flicker and such. She's  
2       not here to testify on noise?

3               MR. SCHUMACHER: She is not, Commissioner. She  
4       is here to testify on environmental impact.

5               CHAIRMAN HANSON: I was just considering that  
6       from the standpoint of Mr. Hessler having said he was  
7       traveling today and not available and I wanted to make  
8       certain that Intervenors weren't undercut from that  
9       standpoint.

10              I'm going to overrule only on the basis that  
11       there is the opportunity, if there is a specific item  
12       that comes up as testimony as presented as we go through  
13       the process and there's a question you wish to ask, you  
14       have that opportunity at that time.

15              I need to know, are you able to have Wells  
16       participate?

17              MR. SCHUMACHER: Thank you for asking,  
18       Mr. Chairman. This was a reason why we sought an  
19       additional hearing day, so that we could have Ms. Wells  
20       here to testify.

21              We did not receive any support from Mr. Ganje in  
22       attempting to find another time to bring Ms. Wells in to  
23       testify. The very tight schedule of the Commission  
24       precluded setting an additional day for her to be here.

25              We did have numerous conversations with Staff

1     trying to find a workaround for that and were unable to  
2     do so, and her colleague, Ms. Sappington is here. And I  
3     think you will find from her testimony fully qualified to  
4     adopt and testify on the matters that Ms. Wells would  
5     have spoken to.

6             MR. GANJE: Mr. Commissioner, with one short  
7     note, I want the record to reflect that my honorable  
8     opponent, counsel for the Applicants, never approached me  
9     to discuss reconsideration or re-dating of Ms. Wells.  
10    I've never been a part of any such conversation. And I  
11    would be accommodating to such a matter. That has been  
12    my practice style for too many years.

13            So that is an incorrect statement. I was not  
14    approached. Perhaps the Staff was, but not David Ganje.

15            CHAIRMAN HANSON: Mr. Hanson? Ms. Edwards?

16            MR. MIKAL HANSON: Yeah. I wasn't here at that  
17    time.

18            MS. EDWARDS: I don't believe we got Notice of  
19    Appearance from Mr. Ganje at that time either. It was  
20    done very early in the process so I assume he hadn't been  
21    engaged yet and wasn't a part of that conversation.

22            CHAIRMAN HANSON: I'm at a loss to overrule. I  
23    want to hear the testimony. Without the testimony, it's  
24    extremely material to what we're doing here. At the same  
25    time -- well, I'm going to allow her to have a recess

1 with the attorneys. If you wish to say something, go  
2 ahead.

3 COMMISSIONER NELSON: Well, yeah. And  
4 hopefully, this will be helpful, and maybe it won't be.  
5 But my reasoning is this: It is not impossible for two  
6 people to have the same opinions. And what I am  
7 understanding is that she has come here and she is  
8 saying, I have the same opinion as Ms. Wells and I am  
9 willing to defend that. And if that is what she is  
10 coming here for, and she's going to swear under oath that  
11 that's what she's doing, I find that to be acceptable.

12 Now you can then ask the questions as to, okay,  
13 how did you get to that opinion? That's certainly open  
14 on the table. But for her to come here and say, I have  
15 the same opinion, I'm fine with that. And hence, that's  
16 why I move to overrule.

17 CHAIRMAN HANSON: Excuse me. Before you step  
18 out -- Staff, would you tell Commissioner Fiegen?

19 I just have one question I wanted you to be able  
20 to hear it.

21 Did you conduct investigations on the  
22 information that you're presenting here?

23 MS. SAPPINGTON: Yes.

24 CHAIRMAN HANSON: And you -- with that amount of  
25 investigation that you personally did, you arrived at

1 these conclusions?

2 MS. SAPPINGTON: Yes.

3 CHAIRMAN HANSON: Okay. Thank you.

4 MR. SCHUMACHER: If I may interject something, I  
5 would be very happy to conduct an offer of proof for this  
6 witness to testify and identify the fact that she worked  
7 hand in hand with Ms. Wells every step of the way in  
8 preparing Ms. Wells's testimony and, in fact, did the  
9 underlying work to which Kimberly Wells would have  
10 testified.

11 CHAIRMAN HANSON: We'll have you do that after  
12 they return. Thank you.

13 (A short recess is taken.)

14 MS. CREMER: I'm going to call this back into  
15 session. I think we're all good to go.

16 Commissioner Fiegen.

17 COMMISSIONER FIEGEN: I really did mean a  
18 minute. I just needed a quick question of the advisors.

19 So is it my understanding Ms. Wells could not be  
20 here physically or on the phone this week and that's why  
21 you asked earlier if she could come in another week or  
22 two, but because of the time limit, the Commission didn't  
23 allow this, so this is your witness that's going to adopt  
24 her testimony, which we have done before? I just wanted  
25 to clarify that was my knowledge.

1 MR. SCHUMACHER: Yes. That is correct. And, in  
2 fact, previously adopted her testimony on April 10.

3 COMMISSIONER FIEGEN: Okay.

4 MR. SCHUMACHER: And it's on the docket.

5 COMMISSIONER FIEGEN: That's all I needed to  
6 know. Thank you.

7 I was just asking my advisors first before I  
8 asked that publicly.

9 MS. CREMER: And so then it went to the  
10 Commissioners. And my understanding is you're all fine  
11 with her testifying --

12 COMMISSIONER FIEGEN: We're fine with your  
13 ruling.

14 MS. CREMER: -- and you can give it the weight  
15 it deserves?

16 CHAIRMAN HANSON: That's correct.

17 MS. CREMER: Thank you.

18 You may proceed, Crowned Ridge.

19 MR. SCHUMACHER: Thank you.

20 DIRECT EXAMINATION

21 BY MR. SCHUMACHER:

22 Q. Please state your name, business title, and company  
23 for the record.

24 A. My name is Sarah Sappington. I work with SWCA  
25 Environmental Consultants out of Bismarck, North Dakota.



1 I'm the director of the Bismarck, North Dakota SWCA  
2 office.

3 Q. And what is your role with respect to the Crowned  
4 Ridge Wind Project?

5 A. SWCA conducted the environmental studies and  
6 permitting for the project.

7 MR. GANJE: If I may excuse my honorable  
8 counsel, Madam Examiner, may I have a standing objection  
9 based on the grounds that I previously indicated in my  
10 prior comments?

11 MS. CREMER: Yes, you may.

12 MR. GANJE: Thank you.

13 Q. (BY MR. SCHUMACHER) Please provide an overview of  
14 your education and experience.

15 A. Yes. I received my master's and my bachelor's  
16 degrees from Brigham Young University in 2003 and 2001 in  
17 anthropology with an emphasis in archeology. I have been  
18 permitted as a Registered Professional Archeologist in  
19 the United States and have worked in the Midwest and West  
20 for 16 years for SWCA. I currently conduct environmental  
21 permitting, regulatory compliance, archaeological  
22 investigations, and also cultural and natural resources  
23 management.

24 Q. And in your professional capacity, have you had the  
25 opportunity to work with Kimberly Wells?

1 A. Yes.

2 Q. Please describe your working relationship with  
3 Kimberly Wells.

4 A. Yes. I report directly to Kimberly Wells as part of  
5 the Crowned Ridge Project. We have gone back and forth  
6 and worked hand in hand on the environmental permitting  
7 and studies for the Crowned Ridge Wind Project.

8 Q. And with regard to the -- let me ask it this way:  
9 Are you aware that Kimberly Wells's Prefiled Direct  
10 Testimony and exhibits on January 28, 2019, that's marked  
11 as Exhibit A3?

12 A. Am I aware of them? Yes.

13 Q. And did you have any role in working with Kimberly  
14 Wells in preparation of that testimony?

15 A. Yes. We helped prepare her testimony.

16 Q. Did you also adopt the testimony of Kim Wells on  
17 April 10, 2019, which testimony has been prefiled and  
18 marked as Exhibit A25?

19 A. Yes.

20 Q. Do you have any changes or corrections to this  
21 testimony?

22 A. No.

23 Q. Did you also file Prefiled Rebuttal Testimony on  
24 May 24, 2019, that is marked as Exhibit A42, accompanied  
25 by an exhibit marked as A42-1?

1 A. Yes.

2 Q. And do you have any changes or corrections to that  
3 Rebuttal Testimony?

4 A. There's one minor change, and that was in response  
5 to Paige Olson, the State Historic Preservation Office.  
6 When reports would go in to her, we said end of June.  
7 I'd like to say it would be end of June, beginning of  
8 July.

9 Q. Please provide a summary of the prefiled testimony  
10 that you have adopted or filed.

11 A. Yes. Crowned Ridge Wind has conducted desktop  
12 analyses and site specific field studies for sensitive  
13 cultural and natural resources for the project. During  
14 this time we have worked with numerous state agencies,  
15 including the United States Fish & Wildlife Service, the  
16 South Dakota Game, Fish & Parks, the State Historic  
17 Preservation Office, and also local and county  
18 authorities as needed.

19 During this process, we've also made sure to look  
20 through and adhere to regulations and guidelines such as  
21 the United States Fish & Wildlife Land-Based Wind Energy  
22 Guidelines and the United States Fish & Wildlife Eagle  
23 Conservation Plan Guidance, as well as state cultural  
24 resources laws and other water resources laws such as the  
25 Clean Water Act.

1           Field studies and desktop studies again have  
2 commenced on this project since the beginning of 2007.  
3 Numerous field studies have been completed for the  
4 project, including avian point count studies and avian  
5 use studies, raptor nest and eagle surveys, Dakota  
6 skipper and Poweshiek skipperling habitat assessment,  
7 habitat field surveys, and also adult occupancy surveys,  
8 grouse lek surveys, whooping crane habitat assessment,  
9 bat habitat assessment, as well as bat acoustic  
10 monitoring, wetland and stream surveys, and also cultural  
11 resource surveys in the form of a Level I Records Search  
12 and a Level III Intensive Survey for cultural resources,  
13 as well as coordination with local tribes for traditional  
14 cultural properties studies.

15           During this time Crowned Ridge has -- okay. Sorry.

16           During this time Crowned Ridge has continued to work  
17 with state agencies to make sure that guidelines and  
18 recommendations they are giving to avoid and minimize and  
19 mitigate any impacts to the project as detailed in the  
20 Application.

21           Some of those avoidance and minimization and  
22 mitigation measures include not siting any infrastructure  
23 on United States Fish & Wildlife easements for grasslands  
24 or combination grassland/wetland easements, not siting  
25 within protected basins with the United States Fish &

1 Wildlife's wetland easements, avoiding cultural  
2 resources, making sure to avoid impacts and minimize any  
3 impacts to wetlands, siting all turbines away at least  
4 1.5 miles from eagle nests, and also making sure that  
5 there are best management practices put into place to  
6 avoid any other impacts to species or resources.

7 Q. Did you personally participate in or conduct the  
8 studies, surveys, and assessments that you described for  
9 us?

10 A. Yes.

11 Q. And at this point is your work complete on this  
12 project?

13 A. We have completed the environmental surveys as  
14 detailed in the Application. Right now we are in process  
15 of a few minor refinements. These are for areas such as  
16 collection lines where the landowner has asked for a few  
17 minor adjustments. This is part of the normal process as  
18 we get closer to construction compliance era.

19 So we want to make sure that, again, all the  
20 commitments in the applications such as avoiding wetlands  
21 and avoiding cultural resources are taken into account.  
22 So there are just minor refinements that are being made  
23 right now.

24 MR. SCHUMACHER: Thank you.

25 I have no further questions for this witness.

1 At this time I would offer Exhibit A25, which is her  
2 prefiled -- or excuse me -- her adoption of Kim Wells's  
3 testimony. And, in addition, Exhibit A42, which is her  
4 Rebuttal Testimony, and Exhibit A42-1.

5 MS. CREMER: Did you say A42 and A42-1?

6 MR. SCHUMACHER: Yes. That's correct.

7 MS. CREMER: Thank you.

8 Is there any objection by Staff?

9 MR. MIKAL HANSON: No.

10 MS. CREMER: And I'm -- I'm getting there.

11 MR. GANJE: Sorry.

12 MS. CREMER: Intervenor.

13 MR. GANJE: Thank you.

14 I would object on the grounds of lack of  
15 foundation and on hearsay and double hearsay and on a  
16 denial of due process in this instance.

17 Thank you.

18 MS. CREMER: Thank you. And I would overrule  
19 that objection. And I'm sorry. And the Exhibits A25,  
20 A42, and A42-1 are admitted.

21 Cross-examination by Intervenor.

22 MR. GANJE: Thank you.

23 CROSS-EXAMINATION

24 BY MR. GANJE:

25 Q. Ms. Sappington, am I pronouncing your name

1 correctly?

2 A. Yes. It's Sappington.

3 Q. Thank you. I have an eternal problem with mine so I  
4 try to respect others.

5 With regard to an avian study completed on behalf of  
6 Crowned Ridge, was there an avian study completed on  
7 behalf of Crowned Ridge for the area of the project  
8 formerly known as the Cattle Ridge Project?

9 A. Yes.

10 Q. Would you be kind enough to show me in the exhibits  
11 or in your reports the documents that shows that that  
12 area was covered under the avian study?

13 A. In the testimony in the Application?

14 Q. Yes.

15 A. The testimony -- my main testimony, page 3,  
16 indicates the avian point count surveys were completed  
17 from April to November 2017 and raptor nest aerial  
18 surveys were completed from April and May 2017 and into  
19 the spring of 2018.

20 Q. I would refer you to Exhibit A1-E, if you or your  
21 counsel would be kind enough to put that in front of you.

22 COMMISSIONER FIEGEN: Could we repeat that?

23 MR. GANJE: I'm talking about Exhibit A1-E.

24 MS. CREMER: D as in dog?

25 MR. GANJE: E as in Edward. And then page 2.

1           May I approach the witness to conform maps?

2           MS. CREMER: Certainly.

3           (Counsel approaches the witness.)

4   A.   Where would you like to go?

5   Q.   Page 2.

6           MR. GANJE: It might be easier, Madam Examiner,  
7 if I asked a few questions standing up to make it go a  
8 bit faster.

9           MS. CREMER: If you could pull a mic. -- so  
10 you're not trying to share a mic., either pull that mic.  
11 behind Cheri or maybe there's one over by Mr. Murphy.

12           (Discussion off the record.)

13   Q.   (BY MR. GANJE) Now you're on page 2?

14   A.   Correct.

15   Q.   Thank you very much. And is that a map of the  
16 project area that you used in the course of preparing  
17 this report?

18   A.   Yes.

19   Q.   Very good. Now I notice on the legend in the bottom  
20 left-hand corner of that exhibit certain identified  
21 symbols.

22           MR. GANJE: Does the Commission have the subject  
23 exhibit in front of them?

24           Thank you.

25   Q.   There is a dotted line and a rectangular box in the



1 legend which describes itself as study area; is that  
2 correct?

3 A. Correct.

4 Q. And are those the areas in which you did the avian  
5 matter, the avian survey on this project?

6 A. Correct.

7 Q. Okay. I ask you now to look at the northeastern  
8 portion of the subject proposed project. And the  
9 boundary parameters are found in an orangish-brown color.

10 MR. GANJE: Again, I apologize to the  
11 Commission. One of my other failings is I'm partially  
12 color-blind, but I believe the color is an orangish-brown  
13 which shows the exterior boundary of the project area.

14 Q. Do you see that?

15 A. Yes.

16 Q. Now my question then to you is, knowing that the --  
17 the striped line in black does not include the  
18 northeastern portion of the subject project area, does  
19 it?

20 A. The dashed line does not include that northern  
21 portion. Is that what you asked?

22 Q. That is what I asked.

23 A. Correct.

24 Q. So then no avian study report was done for that  
25 portion of the project, was it?

1 A. No Avian Use Survey. However, the raptor nest  
2 surveys did include this area. And the raptor nest  
3 surveys do include nests for raptors and eagles and  
4 golden eagles.

5 Q. Thank you.

6 Was the South Dakota Game, Fish & Parks asked to  
7 review and provide feedback concerning ecologically  
8 sensitive areas within the project area as a part of your  
9 study?

10 A. South Dakota Game, Fish & Parks was engaged from the  
11 beginning of this project and earlier iterations starting  
12 in 2007 up to the present time. And I believe all of  
13 those correspondences are in the Application. And I  
14 forget which appendix.

15 Q. Thank you.

16 I will ask you again to refer to that large binder  
17 that you previously spoke about.

18 I would ask you please to refer to A1-B page 80.

19 A. Page 8-0?

20 Q. 8-0. That is correct.

21 A. Let me just get my bearings so I can look at this  
22 real quick.

23 (Witness examines document.)

24 A. Okay.

25 Q. Is that a map that you used to do your study as a

1 part of your communications with the South Dakota Game,  
2 Fish & Parks division?

3 A. Yes. This letter and map is dated July 12, 2017, to  
4 the South Dakota Game, Fish & Parks.

5 Q. And is the -- referring now to page 80 of the  
6 exhibit, please. Is page 80 the colored area, the area  
7 of interest that was studied by your company?

8 A. This was studied as of July 2017.

9 Q. Yes. And does that study area include the  
10 northeastern portion of the proposed project that I  
11 referred to you in a previous question and showed you on  
12 a previous map?

13 A. Are you referring to that northeast portion?

14 Q. That is correct.

15 A. No. This map does not have it. I would like to  
16 point out this communication was in July 2017. The  
17 northeastern portion on this Cattle Ridge was not added  
18 to the project until after November 2017.

19 Q. Did you provide a supplemental map with the  
20 different areas of the project after this one as a part  
21 of your report or studies?

22 A. In further communications, including e-mail  
23 correspondence and also sending of shapefiles to the  
24 South Dakota Game, Fish & Parks, it does have the full  
25 project boundary. And we also requested that again, as I

1     stated, for the raptor nest surveys so that we could have  
2     that full project area.

3     Q.    Your answer confuses me a little bit.  Is your  
4     answer that, no, that northeastern portion of the  
5     proposed project was not ever studied as a part of the  
6     report that your company did for the Applicant?

7     A.    No.  That is not what I'm saying.

8     Q.    What is your -- go ahead.  Go ahead.

9     A.    We did study the full extent of the project area as  
10    detailed in the Application.  If you'll look through the  
11    Application, the full project area is studied.  And,  
12    again, as I said, there were communications with  
13    South Dakota Game, Fish & Parks and also the  
14    United States Fish & Wildlife Service regarding the full  
15    extent of the project area.

16    Q.    Did you ever revise a map to reflect that?

17    A.    I would have to look through the rest of the  
18    communications to see if there is a map in here that  
19    shows that area.  But, again, shapefiles were sent for  
20    the full extent of the project area to the South Dakota  
21    Game, Fish & Parks.

22    Q.    Do you have a statement from them indicating that  
23    the additional area called the former Cattle Ridge wind  
24    farm project was included in the final studies that were  
25    done by your company for the Applicant?

1 A. I would have to look through all the correspondence  
2 to see if that is referenced. But, again, I know that  
3 there are e-mails and there are numerous phone calls  
4 referencing these areas for the full extent of the  
5 project.

6 Q. Would you be kind enough to point out for the record  
7 those e-mails and correspondence from the document you  
8 have in front of you?

9 A. If you'll let me take a couple of minutes, of  
10 course.

11 (Witness examines document.)

12 A. Okay.

13 MR. GANJE: Would the court reporter kindly read  
14 back the last substantive question?

15 (Reporter reads back the last question.)

16 A. Yes. So if we go to Appendix E, which is Exhibit  
17 A1-B, page 90, there's a communication e-mail from Kely  
18 Mertz to Casey Heimerl. In it, it indicates that there  
19 was an updated request for the current area of the  
20 attached with shapefiles attached. That is page 90.

21 And also again, communications from Casey Heimerl to  
22 Ms. Kely Mertz with the updated shapefile of those raptor  
23 records for the entire project area. This was in April  
24 of 2018.

25 Q. Thank you.

1           Do those documents describe the area to include the  
2       former Cattle Ridge area in the northeast portion of the  
3       proposed project?

4       A.    The e-mail says the attached shapefiles depict the  
5       corridor of the project, and that is the current project  
6       as of April 2018, which included the Cattle Ridge area.

7       Q.    And are there maps that accompany that, that support  
8       that position?

9       A.    There are not maps in here.  Again, we provided a  
10      GIS shapefile to the South Dakota Game, Fish & Parks that  
11      has that project area.

12      Q.    Has a -- strike that.

13            Has the wildlife conservation strategy been  
14      completed for this particular project?

15      A.    The wildlife conservation strategy is in process.  
16      It will be filed with the Commission 30 days prior to the  
17      start of construction.

18      Q.    Wasn't it a process in March of this year?

19      A.    The wildlife conservation strategy takes into  
20      account impacts --

21      Q.    No.  I'm not asking you for a definition.  I'm  
22      asking you for a response to my question, please.

23            MR. SCHUMACHER:  Excuse me.  He should let the  
24      witness answer the question.

25            MS. CREMER:  She's going to end up answering it

1 at some point anyway so just --

2 You can finish your answer.

3 THE WITNESS: Thank you.

4 A. The wildlife conservation strategy takes into  
5 account those commitments and items that are actually in  
6 the Application as of right now. All that information  
7 for birds and bats and for other species is put into that  
8 wildlife conservation strategy. As I previously stated,  
9 that has been in process, it is in process, and it will  
10 be filed with the Commission 30 days prior to  
11 construction.

12 Q. You haven't completed it yet?

13 A. As I said, it is in process. It includes all the  
14 information that is in the Application.

15 Q. In March of this year, the response of the missing  
16 Ms. Wells -- or Ms. Wells, my apologies, indicated that  
17 the Applicant is currently completing the wildlife  
18 conservation strategy. We're now in June, and you're  
19 telling us it's not done.

20 A. Can you point to me where you're looking at, please?

21 Q. I don't know if your counsel has this, but this  
22 would be A16, page 9. Do you have that? I'm sorry. You  
23 may not have it in front of you.

24 (Witness examines document.)

25 A. I'm on Exhibit A16, page 9.

1 Q. Okay.

2 I am referring to the response of Kim Wells who  
3 indicated that -- at question 220, the Applicant  
4 currently is completing the wildlife conservation survey.

5 So my question to you is it's still not done?

6 A. Looking at this response, it says Applicant is  
7 currently completing the wildlife conservation strategy.  
8 And as I discussed, it is still in process and it will be  
9 filed with the Commission 30 days prior to construction  
10 as required by the Commission.

11 Q. Has it been determined if any permits were -- from  
12 the Army Corps of Engineers is required to comply with  
13 the Clean Water Act in this project?

14 A. The project will fall under the Nationwide Permit  
15 12. Any impacts to wetlands or water bodies would follow  
16 under that Nationwide Permit 12. If there needs to be  
17 any kind of permit, Crowned Ridge would submit for that  
18 permit. But as of right now, as detailed in the  
19 Application, everything would fall under that Nationwide  
20 Permit 12.

21 Q. Thank you.

22 Has the Applicant applied for that, to your  
23 knowledge?

24 A. Nationwide Permit 12, again, stipulates that this is  
25 done for all kinds of projects. It falls under the Clean



1 Water Act, and it is approved and authorized --

2 Q. That wasn't my question, ma'am.

3 MR. GANJE: I apologize for interrupting, but  
4 would the court reporter please read my question back.

5 (Reporter reads back the last question.)

6 Q. I didn't ask for a definition or an explanation of  
7 the permit, but I rather asked whether you knew if the  
8 Applicant had applied for it.

9 A. And what I'd like to do is be able to explain what  
10 the nationwide permit is.

11 Q. No. You have to answer my question. I'm sorry.

12 MR. SCHUMACHER: Objection. She is answering  
13 the question.

14 MS. CREMER: Why don't you just go ahead and  
15 answer his question, and your counsel will either follow  
16 up or --

17 A. The nationwide permit does not need to be applied  
18 for because the nationwide permit is granted nationwide  
19 for specific cases, including wind farm energy  
20 development.

21 Q. I still don't have an answer.

22 A. There is no applying for this permit because it is a  
23 nationwide permit.

24 Q. I notice you mentioned, ma'am, in your testimony  
25 some correspondence from a party called Kely Mertz and

1 perhaps others.

2 Is there correspondence in this Application or  
3 e-mails in this Application from you or to you?

4 A. I'm sorry. What was the question again?

5 MR. GANJE: I'll ask the court reporter to  
6 repeat it, please.

7 (Reporter reads back the last question.)

8 A. If we look at my testimony, Rebuttal Testimony, my  
9 name is on those correspondence. I don't believe there  
10 are any e-mails filed by me with my name on them.

11 Kely Mertz is a colleague that works at SWCA. I've  
12 worked directly with her on this project.

13 Q. And who did she work directly with?

14 A. Kely Mertz works directly with me on this project.

15 Q. I'm having trouble seeing how, you know, fluent you  
16 are in this testimony because I could not see, in the  
17 exhibits, where you were part of an e-mail chain or that  
18 you issued an e-mail or that you issued correspondence or  
19 received correspondence.

20 Is there such information in this Application?

21 A. Again, my name is on the testimony, the Rebuttal  
22 Testimony. I don't believe my name is on any e-mails,  
23 but I have worked directly with those at SWCA. We are a  
24 team. Kely Mertz is the project manager for this  
25 project, and I have worked directly with her as well as

1 Kimberly Wells and others on this project.

2 Q. And you worked with them you said closely, I  
3 believe; correct?

4 A. Yes.

5 Q. Where are the e-mails where they copied you? Where  
6 are your e-mails to them? I'm at a loss here.

7 MR. SCHUMACHER: Objection. That's been asked  
8 and answered.

9 MR. GANJE: It hasn't been -- I'll respond if  
10 you will entertain a response.

11 MS. CREMER: I will not.

12 Can you answer the question he was asking, maybe  
13 expand on that a little to answer his question?

14 A. Not all of the e-mail correspondence that goes on  
15 between Crowned Ridge and SWCA is included in this  
16 Application. My name would be on those kinds of  
17 communications. But I do not see my name on any e-mail  
18 directly, for example, on the Exhibit E, which was for --  
19 or Exhibit A1-E, which was correspondence with  
20 South Dakota Game, Fish & Parks, which my colleague Kely  
21 Mertz conducted.

22 MR. GANJE: I have no further questions.

23 MS. CREMER: Thank you.

24 Staff.

25 MR. MIKAL HANSON: Thank you, Ms. Cremer.

CROSS-EXAMINATION

1  
2 BY MR. MIKAL HANSON:

3 Q. Ms. Sappington, can you briefly just outline the  
4 efforts that Crowned Ridge has made to minimize the  
5 impact of the construction and operation of this wind  
6 farm on wetlands?

7 A. Yes. If you'll give me a minute, I'll go into the  
8 Application so I can go directly through that for you.

9 Q. I was just looking for a generalization, if that's  
10 all right. But sure.

11 A. No. Sure. I can do that.

12 Section 10 and also Section 11 and 12 all detail  
13 avoidance and minimization efforts to avoid wetlands. As  
14 stated previously, any protected basins which are located  
15 on U.S. Fish & Wildlife Service wetland easements are  
16 being avoided by the project.

17 Also, there have been desktop studies and field  
18 studies done to identify all the wetlands and streams or  
19 water bodies within the construction easement. Those  
20 field studies have been also confirmed where those are  
21 located so the infrastructure will not be placed on  
22 those.

23 For areas where collector lines might intersect  
24 wetland areas, those areas would be bored under.

25 Q. And in construction, you're going to try to work

1 around those areas, if possible.

2 A. Yes. Additional items that would be taken into  
3 consideration would be utilizing best management  
4 practices that are detailed in the storm water pollution  
5 prevention plan, and that is made sure so that if there  
6 are soils or sediments during construction, those areas  
7 are either fenced off or protected so that wetlands are  
8 not being disturbed, wetlands and water bodies are not  
9 being disturbed, except as appropriate where they would  
10 fall under the Nationwide Permit 12 for temporary  
11 impacts.

12 Q. My same question but with wildlife. How have you  
13 minimized the effects to wildlife?

14 A. Yes. So, again, we have put a buffer, a 1.5-mile  
15 buffer, around eagles, eagle nests. Eagle nests are  
16 important to avoid. Additionally, there are best  
17 management practices done. There are numerous wildlife  
18 studies. So the avian point counts, the raptor nest  
19 surveys, the Dakota skipper and Poweshiek skipperling  
20 surveys, grouse lek surveys, whooping crane habitat  
21 assessment.

22 So all that desktop and field studies provides an  
23 iterative review process whereas Crowned Ridge works to  
24 refine the infrastructure and make sure they're staying  
25 outside of areas of impact for wildlife.

1           Additionally, during construction there will not be  
2 construction in Dakota skipper habitat during the adult  
3 occupancy survey period, which is during the summer for  
4 about a month. Both Fish & Wildlife Service and  
5 South Dakota Game, Fish & Parks have noted this is very  
6 important to stay out of that Dakota skipper habitat  
7 during the adults survey.

8           Additionally, Crowned Ridge has also committed to  
9 making sure that there are avoidances to grouse leks  
10 during the lekking period. And they've put a 2-mile  
11 buffer on grouse leks during the construction period  
12 during that lekking period in the springtime.

13 Q. And my same question in regard to cultural or  
14 historic sites.

15 A. Yeah. So Crowned Ridge has worked very closely with  
16 the State Historic Preservation Office in first doing the  
17 desktop surveys to identify those cultural resources site  
18 locations and then also intensive field surveys for  
19 cultural resources.

20           They've done this hand in hand with the tribes to  
21 identify traditional cultural properties. And just so  
22 you know, I have done this for 16 years, and this is the  
23 most tribal consultation I have ever seen done on a  
24 project, which is very impressive. The amount of work it  
25 has taken to coordinate with the tribes and to avoid

1 impacts to cultural resources is very exhaustive and  
2 extensive.

3 Q. And I want to back up. I'm new. What's a Dakota  
4 skipper? What kind of animal is that?

5 A. Yes. The Dakota skipper and there's also the  
6 Poweshiek skipperling, they are tiny, little butterflies,  
7 and they're a little brown and orange butterfly.

8 Q. All right. Thank you.

9 If during construction the person putting up one of  
10 these wind towers comes upon a cultural heritage site,  
11 what's supposed to happen at that point?

12 A. Yeah. So there's a couple different things that  
13 will happen with cultural resources site. As we get into  
14 the construction compliance phase of the project,  
15 cultural sites would be fenced off with the tribal  
16 monitor to ensure no impacts to cultural resources sites.

17 Q. I'm seeing that with one that's known. I'm saying  
18 if you discover one.

19 A. Sure. There's also an Unanticipated Discovery Plan  
20 that has been prepared for the project. And so in the  
21 event that something is encountered during the project,  
22 that unanticipated plan would go into effect whereby the  
23 State Historic Preservation Office would be contacted as  
24 well as Crowned Ridge folks and tribal folks as needed.

25 Construction people are also trained up on these

1 cultural resources so in the event that they know what to  
2 look for if something does pop up during construction.

3 Q. Is that going to be in some contract that Crowned  
4 Ridge has with these -- to your knowledge?

5 A. A contract with who?

6 Q. The subcontractors, whoever's building it.

7 A. Crowned Ridge takes its safety and training of  
8 construction folks very seriously and, again, they will  
9 provide that Unanticipated Discoveries Plan to the  
10 construction folks so they have knowledge of cultural  
11 resources.

12 Q. In your submitted testimony, you state there was a  
13 storm water pollution prevention plan. Is that something  
14 drawn up for this project, or it's out there? Can you  
15 explain that?

16 A. So the storm water pollution prevention plan is done  
17 for just about every single project. This plan is in  
18 process and will be submitted to the Commission prior to  
19 construction. That process, that plan, will identify all  
20 those best management practices for construction to avoid  
21 impacts as said to wetlands, water bodies, making sure  
22 there are plans for reseeding and re-vegetation and other  
23 construction practices.

24 Q. Thank you.

25 I want to go to leks now. The grouse. Again, I'm



1 learning. What is a lek, for myself and the general  
2 public here? What is that?

3 A. Yes. So grouse are these little -- they look like  
4 prairie chickens. They're also called prairie chickens.  
5 They kind of look like chickens. They have a white  
6 breast.

7 And when they lek, that is their mating season. And  
8 so the male actually struts around and he has little air  
9 sacs on his chest that puff out and that's how he  
10 impresses the female in order to mate. So that mating  
11 season is called the lekking season. And a lek location  
12 would be those areas during the lekking season, during  
13 that mating season, that they mate.

14 Q. And don't they historically use those sites year  
15 after year?

16 A. You know, prairie chickens and prairie grouse are  
17 very interesting. Historically, they can use the same  
18 areas and, you know, that is what Crowned Ridge has done,  
19 is to avoid those historic known locations.

20 As noted in the Application, there have been Avian  
21 Use Surveys which have identified leks. There's also the  
22 South Dakota Game, Fish & Parks was asked for their  
23 historic data on grouse leks and there were grouse lek  
24 surveys conducted.

25 Q. On the project site?

1 A. Yes.

2 Q. And they were identified; is that correct?

3 A. Yes.

4 Q. Did Game, Fish & Parks, in their consultation with  
5 you, suggest that there be a buffer zone from the wind  
6 turbines from a known identified lek?

7 A. Yes. And I believe that was addressed in one of the  
8 Data Requests, and so if you'll let me turn to that.

9 Q. Sure.

10 MS. CREMER: Let's take a break now. 3:15.

11 (A short recess is taken.)

12 MS. CREMER: I'm going to call this back into  
13 order after this short break.

14 And I believe you were going to answer a  
15 question. Was there a question in front of you, to the  
16 witness?

17 MR. MIKAL HANSON: There is. I can repeat it.

18 MS. CREMER: Why don't you, yeah, start us off.

19 Q. (BY MR. MIKAL HANSON) My question where we were at  
20 when we broke was, to your knowledge, did Game, Fish &  
21 Parks provide Crowned Ridge with a recommendation of how  
22 far away their turbines should be from a lek?

23 A. And you're talking about in preconstruction or  
24 postconstruction?

25 Q. I thought a known lek and it wasn't during

1 construction, it was actually during operation, was my  
2 understanding of their recommendation.

3 A. And are you discussing specifically Exhibit S7?

4 Q. Yeah.

5 A. Okay.

6 Q. I believe they recommended that to be a mile. Is  
7 there a recommendation such as that?

8 A. Yes. So the Staff exhibit that I'm looking at says  
9 that Crowned Ridge during project development for leks  
10 that are one mile from the wind turbine. Is that what  
11 you're referring to?

12 Q. Yes.

13 A. Okay. Just want to make sure we're on the same  
14 page.

15 Q. Exactly.

16 Now, to your knowledge, do you interpret that to  
17 mean just during construction, not during operation?

18 A. So what this is saying is, from my understanding,  
19 this is postconstruction grouse lek monitoring.

20 Q. Okay.

21 A. So that would be after construction, during  
22 operation.

23 Q. To your knowledge, did Crowned Ridge kind of comply  
24 with that or follow that recommendation?

25 A. So Crowned Ridge doesn't believe that

1 postconstruction grouse lek monitoring is required.  
2 Based on the empirical data collected at the site so far,  
3 so starting back in 2007, 2008, as well as 2016, the data  
4 received from South Dakota Game, Fish & Park on this  
5 historic lek locations as well as the Avian Use Surveys  
6 in 2017 and 2018 did not indicate active leks in the lek  
7 location -- or leks are very low for the project area.

8 Based on that and the fact that this project is  
9 located in an agricultural area where impacts to  
10 grasslands have already been minimized to the extent  
11 practicable, that Crowned Ridge does not believe that  
12 postconstruction monitoring is warranted for this  
13 project.

14 Q. Okay. So actually, there's going to be two issues.  
15 Let's go with -- the first one is the recommendation that  
16 the turbines be a mile away from known leks. That's a  
17 recommendation that Crowned Ridge did not accept or  
18 follow; is that right?

19 A. That's correct. So in April 2017 -- would you like  
20 me to go into more detail?

21 Q. Is there a recommendation that you guys made of .3  
22 miles? Is that the recommendation that you guys kind of  
23 follow?

24 A. Yes. So the buffer that Crowned Ridge put forth and  
25 has used is a .3 miles from known lek locations. And,

1 again, based on the fact that this area is agricultural,  
2 there are roadways and other things that intersect known  
3 lek locations, in between the lek locations and turbines,  
4 and also that given these constraints, as other projects  
5 have also elected to use a reduced buffer, Crowned Ridge  
6 did go with a 0.3-mile buffer from known lek locations  
7 from turbines.

8 Q. Are you aware -- let me ask this. Are there studies  
9 that you're aware of where somebody has determined  
10 whether the presence of a wind turbine makes the grouse  
11 leave a known lek area? Are there such studies?

12 A. So to my knowledge, there are not known studies just  
13 on grouse leks. There are studies on indirect effects  
14 for birds. You know, there are the study for Schaffer  
15 and Buhl that shows indirect effects for birds that, in  
16 some cases, birds may be displaced by wind turbines or by  
17 projects. They may also be attracted to those areas.  
18 And they may also be indifferent to those areas.

19 The same would be for indirect effects to grouse  
20 leks. It's unknown whether these are temporary impacts,  
21 whether there are permanent impacts. There's just not  
22 enough well-known data for us to determine what those  
23 impacts to grouse leks and other birds for indirect  
24 effects are.

25 Where Crowned Ridge is committed to those direct

1 effects, making sure that those turbines are located a  
2 third of a mile away from those known lek locations and  
3 that, during the lekking period, which is the most  
4 important part of that grouse lek's life, during that  
5 breeding season, that Crowned Ridge has committed for  
6 this project to be two miles away from those known lek  
7 locations during the lekking period that no construction  
8 will take place during that time.

9 Q. Okay. And that's just construction, not operation?

10 A. Correct.

11 Q. So would it be fair to say, because there's no  
12 studies, the operation of a wind turbine could cause the  
13 grouse to leave, it could cause them no disruption, or it  
14 could even cause them to try to congregate around a wind  
15 turbine; we just don't know at this time?

16 A. I would agree with that assessment.

17 Q. Okay. Now have you seen what's been marked and  
18 identified as Staff Exhibit 7?

19 A. Yes.

20 Q. Okay. And correct me if I'm wrong, but I'm going to  
21 summarize it. This is a recommendation by Staff that has  
22 consulted with Game, Fish & Parks, that would be a  
23 condition that Crowned Ridge do some studies after  
24 completion of the project, is it not?

25 A. Correct.

1 Q. And the condition would request that Crowned Ridge  
2 do, for two years, a study to find out whether the wind  
3 turbines have some type of effect on the grouse leks;  
4 correct?

5 A. This is a postconstruction grouse lek monitoring.  
6 So it is to see, as I would understand it, you know, are  
7 those leks in those same locations during  
8 postconstruction.

9 Q. It wouldn't prevent Crowned Ridge from building the  
10 project. It's not a preventative condition. It would  
11 just ask them to monitor them after the construction.

12 A. Correct. And, as stated, you know, based on the  
13 empirical evidence that we've collected on this project,  
14 lek activity at the site, specifically in the 2017 and  
15 2018 surveys that were conducted, there were no active  
16 leks during that period. So Crowned Ridge believes that  
17 this postconstruction monitoring is not warranted at this  
18 time.

19 Q. But they do note some known leks on their map, do  
20 they not?

21 A. Yep. Those are lek locations provided by  
22 South Dakota Game, Fish & Parks as known historic  
23 locations of leks.

24 Q. And this doesn't require you to go find anymore,  
25 research to see if there are more; right?

1 A. Correct.

2 Q. Wouldn't such a survey answer the question that  
3 we've just been talking about: Do wind turbines affect  
4 grouse and their mating?

5 A. Not necessarily. I mean, I think it would depend on  
6 what the study was set up to do. You know,  
7 postconstruction monitoring in this case is not quite  
8 defined. It just says postconstruction grouse lek  
9 monitoring. So that would be seeing, are they in their  
10 lek locations, from what I understand it.

11 Q. There's a limited number of leks that have been  
12 identified on the map, are there not?

13 A. Correct.

14 Q. And mating seasons of grouse is well-known, and it's  
15 not very long?

16 A. It is during the springtime for several months, I  
17 believe.

18 Q. Months or weeks?

19 A. Months. I believe the lekking period is from March  
20 until June. So that would be three months. Into June.  
21 Possibly four, depending on exactly how long.

22 Q. If it was refined to say to a more limited time  
23 frame, this wouldn't be that expensive to do, would it?

24 A. You know, I work for SWCA Environmental Consultants  
25 so I can't make that kind of commitment for Crowned



1 Ridge.

2 Q. I understand. But doesn't your company do this type  
3 of thing, these type of wildlife studies?

4 A. Yes, we do wildlife studies. We've done  
5 postconstruction monitoring, especially for fatalities  
6 and mortality rates with birds.

7 Q. In fact, there's going to be some on this project  
8 with the bats and birds?

9 A. Correct.

10 Q. My question is, based on your training and  
11 experience, this wouldn't be that expensive to do, would  
12 it?

13 A. You know, I can't comment on exactly how expensive  
14 it would be on this specific case.

15 Q. All right. That's fair.

16 There's probably going to be one season during  
17 construction and, as I understand, Crowned Ridge has  
18 agreed that, during that season, that they will not be  
19 constructing within two miles of a known lek?

20 A. That is correct.

21 Q. And I don't -- I don't want to go too far, but  
22 there's still a wildlife conservation strategy? Is that  
23 what I understood was still going to be completed?

24 A. Yes. The wildlife conservation strategy is still in  
25 process. Again, it will be submitted to the Commission

1 prior to construction.

2 Q. And that is a condition or is that -- that just  
3 standard practice, or can you explain that?

4 A. That's standard practice.

5 MR. MIKAL HANSON: Can I take just a second?

6 MS. CREMER: Uh-huh.

7 Q. This area is an area called -- often called the  
8 Coteau area, kind of up on a ridge; is that correct?

9 A. Yeah. That's just one of the areas that's  
10 identified, the Prairie Coteau is one of the areas the  
11 project is in.

12 Q. For eastern South Dakota prairie chickens and  
13 grouse, is that Coteau area really the only left  
14 remaining habitat for grouse and prairie chickens as far  
15 as you're aware of as a wildlife expert?

16 A. No. Prairie chickens are across the entire state.

17 Q. If I limit eastern South Dakota.

18 A. I believe, no. I believe that they're all over  
19 South Dakota. And all over eastern South Dakota.

20 MR. MIKAL HANSON: We have no further questions.

21 MS. CREMER: Thank you.

22 Commissioner Nelson.

23 COMMISSIONER NELSON: Is it your opinion that  
24 locating a wind turbine less than one and a half miles  
25 from an eagle nest stands the chance of harming the

1 eagles?

2 THE WITNESS: Crowned Ridge believes that a  
3 one-and-a-half-mile buffer around those known eagle nests  
4 is sufficient.

5 COMMISSIONER NELSON: Okay. I guess I'll ask it  
6 again. What is your opinion as an expert?

7 THE WITNESS: I believe that that is a  
8 sufficient distance.

9 COMMISSIONER NELSON: And anything less than  
10 that would be harmful?

11 THE WITNESS: Not necessarily. I think it  
12 depends on what the regulations are. But, again, Crowned  
13 Ridge uses those Land-Based Wind Energy Guidelines to  
14 site things and also looks at the Eagle Conservation Plan  
15 Guidance, and I believe that 1.5 miles is a sufficient  
16 distance.

17 COMMISSIONER NELSON: Thank you.

18 MS. CREMER: Commissioner Fiegen.

19 COMMISSIONER FIEGEN: Thank you.

20 You actually started to visit about it, and that  
21 was my question, was the tribal meetings that you had.

22 Were you at those meetings?

23 THE WITNESS: I was not personally at those  
24 meetings.

25 COMMISSIONER FIEGEN: Who was at those meetings?

1           THE WITNESS:   So we have folks from SWCA that  
2   were at those meetings.

3           COMMISSIONER FIEGEN:   So that's your  
4   organization --

5           THE WITNESS:   That is my company.

6           COMMISSIONER FIEGEN:   -- organization out of  
7   Bismarck?

8           THE WITNESS:   Yep.

9           COMMISSIONER FIEGEN:   Anyone else?

10          THE WITNESS:   Yes.   And representatives from  
11   Crowned Ridge.

12          COMMISSIONER FIEGEN:   Okay.   And so in the  
13   testimony that you adopted, it appears that there were  
14   three tribes that you worked with; is that correct?

15          THE WITNESS:   So let me just double-check.  
16   Yeah.

17          COMMISSIONER FIEGEN:   So it's on -- let me see.  
18   I don't have page numbers so I'm really struggling with  
19   your testimony because it's hard for me to figure out.   I  
20   might not have printed properly or something.

21          So it's January 28.   Oh, it's Kimberly's Direct  
22   Testimony I'm looking at.   And, yeah, you adopted it, I  
23   guess.

24          THE WITNESS:   Yes.

25          COMMISSIONER FIEGEN:   Do you know where that's

1 at?

2 THE WITNESS: Yes.

3 COMMISSIONER FIEGEN: Okay, perfect. Were there  
4 three tribes?

5 THE WITNESS: Tribal members for the  
6 Sisseton-Wahpeton Oyate, the Yankton Sioux, Spirit Lake  
7 Nation were selected to represent the tribes. So there  
8 were also Rosebud Sioux and several other tribal  
9 preservation officers that were involved as well. But  
10 those were the three tribes that were selected to  
11 represent the group of tribes for this project.

12 COMMISSIONER FIEGEN: And I certainly appreciate  
13 it, just like you stated, that you saw more intensive  
14 work group that worked on this. And they found -- does  
15 it say that they found 960 Native American sites? Was  
16 this in this area or in a -- go ahead.

17 THE WITNESS: This is for the Crowned Ridge  
18 Project.

19 COMMISSIONER FIEGEN: It is. Wow. Okay.

20 THE WITNESS: And those were traditional  
21 cultural property sites identified by the tribal members.

22 COMMISSIONER FIEGEN: All right. Thank you.

23 I'm going to ask someone else, and I just can't  
24 find it right now, because they indicated that there was  
25 only one tribe that they worked with. But I'll ask that

1 another day, whenever I find that testimony back. So I  
2 certainly appreciate that.

3 I'm going to go back to the lek just a few  
4 minutes and I'll probably go back and listen to the  
5 testimony so I can hear Mr. Hanson's questions and your  
6 responses.

7 He said something about you did not accept the  
8 mile buffer zone from a known lek. Was that proposed  
9 by -- which group? The mile buffer.

10 THE WITNESS: So in April 2017, South Dakota  
11 Game, Fish & Parks made a recommendation in one of their  
12 letters for the mile buffer around leks when siting and  
13 placing infrastructure.

14 COMMISSIONER FIEGEN: Okay. That's what I  
15 thought I heard, but I just wanted to make sure so I  
16 didn't have to go read all the testimony.

17 (Discussion off the record.)

18 THE WITNESS: And that was also in Data Request  
19 238 that Crowned Ridge responded to that question as  
20 well.

21 COMMISSIONER FIEGEN: Then Mr. Hanson and you  
22 were certainly having discussion about the leks. Can you  
23 rephrase -- or at least -- I didn't hear it all, and I  
24 didn't want to interrupt Mr. Hanson.

25 Did you say there is no known leks in the area

1 according to your research but the Game, Fish & Parks has  
2 some historical lek areas?

3 THE WITNESS: There were no active leks located  
4 during the Avian Use Surveys in 2017 and 2018. Previous  
5 versions in 2007, 2008, and 2016 indicated there were  
6 historic lek locations. But during SWCA's surveys, we  
7 did not actually see that there was active lekking going  
8 on in the project area.

9 COMMISSIONER FIEGEN: And I saw the 2016 April  
10 survey was done in April and May. When were your surveys  
11 done? Because I didn't see the 2017 and 2018. Right now  
12 anyway I can't find them.

13 THE WITNESS: The Avian Use Surveys were  
14 completed in 2017 and 2018.

15 COMMISSIONER FIEGEN: So that includes -- that's  
16 inclusive of the leks?

17 THE WITNESS: Yes.

18 COMMISSIONER FIEGEN: Okay. I think I'm just  
19 about done, Commissioner Chairman Hanson.

20 I believe that's it. So thank you, first of  
21 all, again for working with the tribes and your group. I  
22 know you probably didn't personally do that but I  
23 certainly appreciate you guys taking the extra effort to  
24 do that. Thanks.

25 THE WITNESS: Thank you.

1           CHAIRMAN HANSON: It's not evening yet.

2           COMMISSIONER FIEGEN: But it may be after you're  
3 done.

4           CHAIRMAN HANSON: We'll see how close we can  
5 get. Good afternoon, Ms. Sappington.

6           THE WITNESS: Good afternoon.

7           CHAIRMAN HANSON: You have a really interesting  
8 vocation. I guess that's all relative. I think my  
9 vocation is real interesting. Most people would think  
10 it's pretty boring.

11           I have a granddaughter who raises butterflies  
12 every year and hatches them out and has a big celebration  
13 on letting them fly away and all of those things. It's a  
14 lot of fun. She would love having a conversation with  
15 you.

16           You are not a wildlife biologist, are you?

17           THE WITNESS: That's correct. I'm an  
18 archeologist.

19           CHAIRMAN HANSON: Right. And yet with  
20 Commissioner Nelson's question, it was one that I had as  
21 well pertaining to eagles. You said within your  
22 bailiwick at least, you feel that one and a half mile  
23 distance is okay?

24           THE WITNESS: And I would speak on behalf of the  
25 SWCA team. Yes.



1           CHAIRMAN HANSON:   Okay.   And you've studied  
2   this?   You have examined significance of one and a half  
3   miles versus two miles or three miles or whatever?

4           THE WITNESS:   I have not personally done that.  
5   I know our biologists have studied eagles, and the folks  
6   that we have that have looked specifically at the eagle  
7   issues, the bird issues, they would be able to speak to  
8   the actual distance.   But from what I understand, this  
9   one and a half mile for this project is a sufficient  
10  buffer for eagle nests.

11          CHAIRMAN HANSON:   And granted, one and a half  
12  miles is somewhat of a precedent to an extent for us.  
13  I'm a little troubled by it.   Would you be surprised to  
14  know that eagles have -- can fly 100 miles looking for  
15  food?

16          THE WITNESS:   I'm not surprised by that, no.

17          CHAIRMAN HANSON:   So one and a half miles seems  
18  kind of short.   At the same time, if we had 100 miles, we  
19  wouldn't have any wind farms, would we?

20          THE WITNESS:   Correct.

21          CHAIRMAN HANSON:   That's the only reason I'm a  
22  little troubled by it.   One and a half miles just doesn't  
23  seem far enough for me.

24          In Ms. Wells's testimony, she states that, based  
25  on current species information, no federally or state

1 listed aquatic species would be impacted by the project.  
2 I note the word "current species."

3 Is that still the case, current species'  
4 information?

5 THE WITNESS: Yes.

6 CHAIRMAN HANSON: And you adopt that testimony  
7 as well?

8 THE WITNESS: Yes.

9 CHAIRMAN HANSON: Okay. And my pages -- I have  
10 her testimony and your adopted testimony and so that's  
11 why I don't give you page numbers. I'll just try and  
12 read to you as best I can. I don't think it will be  
13 foreign to you.

14 In one arena of the information that you  
15 provided and that Ms. Wells provides to us, it speaks of  
16 what measures will CRW implement to avoid, minimize, or  
17 mitigate impacts to wildlife species. And then there's a  
18 considerable grocery list.

19 The last one states that to complete one year of  
20 postconstruction mortality monitoring and adhere to the  
21 wildlife response and reporting system. Although on your  
22 Rebuttal Testimony, it states that Crocker Wind will  
23 adopt -- it says, "Applicant generally is agreeable to  
24 the condition that states." And again, when I see  
25 adjectives or verbs defining information -- it states --

1 the paragraph states, "Applicant agrees to undertake two  
2 years of independently-conducted postconstruction avian  
3 and bat mortality monitoring for the project."

4 So in one case saying complete one year and on  
5 the other it's saying two years. However, on the  
6 two-year, it's a qualification saying that Applicant's  
7 generally agreeable to this lengthy paragraph. So do you  
8 know what -- and this is on page 22 of your Rebuttal  
9 Testimony, on line 17 through 27. And I'm wondering if  
10 you could enlighten us on to what the Applicant is not  
11 agreeable to, if the Applicant is only generally  
12 agreeable to these.

13 THE WITNESS: Again, as looking at the Rebuttal  
14 Testimony, page 22, lines 17 through 27, Applicant is  
15 generally agreeable to the condition, it says two years  
16 of postconstruction monitoring. As you have stated  
17 earlier in the previous testimony that was filed, it was  
18 one year.

19 Based on the empirical evidence of this -- all  
20 the surveys have been conducted over 10 years. There's  
21 been a lot of avian surveys over this project starting in  
22 2007. And, you know, we can go back and enumerate how  
23 many avian studies have been done. Eagle use of the area  
24 has been low. Bird use of the area has been low.

25 And so I think that what you're seeing is, you

1 know, generally the Applicant thought one year was  
2 sufficient, but in looking at past cases, Crocker Wind,  
3 Prevailing Winds, Dakota Range I and II, the Applicant is  
4 seeing that that is almost a precedent set for these  
5 projects and so the Applicant is generally agreeable to  
6 conduct those two years of postconstruction monitoring.

7 CHAIRMAN HANSON: I'll accept that as the  
8 Applicant agrees to undertake two years.

9 Have any whooping cranes, to your knowledge,  
10 ever passed through this area?

11 THE WITNESS: No. The closest whooping crane to  
12 the project area was 15 miles to the northwest of the  
13 project area, and that was sighted in 2015.

14 CHAIRMAN HANSON: Great answer. Thank you.  
15 2015. Northwest how far?

16 THE WITNESS: Sixteen miles away from the  
17 project area.

18 CHAIRMAN HANSON: If I ask you again, will you  
19 say 17 miles?

20 THE WITNESS: No.

21 CHAIRMAN HANSON: The Applicant is currently  
22 preparing a WCS that will discuss indirect effects.  
23 However, what about the direct effects?

24 THE WITNESS: Yeah. The wildlife conservation  
25 strategy will discuss both direct and indirect. I

1 believe the question had been about indirect effects,  
2 which is why the answer was specific to indirect effects.

3 CHAIRMAN HANSON: Thank you.

4 And that will be filed with the Commission prior  
5 to start of construction.

6 THE WITNESS: Correct.

7 CHAIRMAN HANSON: That would be really valuable  
8 to have more than 10 minutes prior to construction  
9 certainly.

10 THE WITNESS: Can I make a comment on that?

11 CHAIRMAN HANSON: You can always comment on  
12 anything I say. That's why you're here.

13 THE WITNESS: Yeah. So the wildlife  
14 conservation strategy really takes into effect all the  
15 commitments that are already made in the Application. It  
16 brings together all the information on the Avian Use  
17 Surveys. It goes through the land based wind energy  
18 guideline tiered decision-making that happens, you know,  
19 starting with those desktop surveys, going to the site  
20 specific field surveys. And it brings all of that  
21 information together in that decision.

22 So nothing that you're seeing in the Application  
23 will be any different from what you see in the wildlife  
24 conservation strategy. There may be some minor granular  
25 details on indirect effects, just a bit more that's

1     stated in the Application. But, again, it will lay out  
2     what's already there, as well as provide information for  
3     the postconstruction monitoring, mortality monitoring for  
4     the project.

5             CHAIRMAN HANSON: Thank you.

6             The last page of Ms. Wells's first presentation,  
7     and this is my last question, I get nervous when I see  
8     someone talking about sensitivity training. On page --  
9     well, I don't have a page number. The last page. And  
10    there's a series of numbers. It looks like it would be  
11    probably No. 11. "Education and interpretation  
12    opportunities regarding tribal resource preservation  
13    and/or Native American perspectives which may include  
14    sensitivity training when needed."

15            Who would be receiving sensitivity training?  
16    Commissioners or --

17            THE WITNESS: No. This would be specifically  
18    for construction personnel. So the construction  
19    personnel know the seriousness of our tribal resources  
20    and of the tribal members.

21            You know, Crowned Ridge has committed and is  
22    very serious about engaging the tribal members on this  
23    project, as discussed with Commissioner Fiegen. And so  
24    really, it's to make sure that as folks come in and  
25    participate on this project, that they are aware of the

1 importance that tribes place on these resources and that  
2 they're not doing anything that would disrespect those  
3 resources or tribal members that will also be on the  
4 ground with them potentially, you know, fencing the areas  
5 and those kinds of things.

6 CHAIRMAN HANSON: Excellent. Would landowners  
7 be invited to participate so that they could gain  
8 knowledge on things of this nature?

9 THE WITNESS: I could not make that commitment  
10 but you could ask Crowned Ridge that for sure.

11 CHAIRMAN HANSON: All right. Thank you very  
12 much for your testimony.

13 THE WITNESS: You're welcome.

14 MS. CREMER: Redirect?

15 MR. SCHUMACHER: Very briefly, thank you. If I  
16 may approach the witness?

17 MS. CREMER: Certainly.

18 (Counsel approaches the witness.)

19 REDIRECT EXAMINATION

20 BY MR. SCHUMACHER:

21 Q. Commissioner Hanson asked some questions about  
22 postconstruction avian monitoring. I have provided you  
23 with a copy of the joint proposed permit condition  
24 stipulation between the Applicant and Staff.

25 Would you review condition No. 32 on Exhibit A61

1     that's been prefiled? And I believe counsel for the  
2     Intervenors has been provided a copy.

3     A.    Okay. I've reviewed it.

4     Q.    And having reviewed that, do you have a better  
5     understanding of the Applicant's commitment to  
6     postconstruction avian and bat mortality monitoring?

7     A.    Yes. It states the Applicant agrees to undertake a  
8     minimum of two years of postconstruction avian and bat  
9     mortality monitoring for the project.

10           MR. SCHUMACHER: Thank you very much.

11           No further redirect. Thank you.

12           MS. CREMER: Thank you.

13           Recross but only as to Commission questions or  
14     redirect. And it would be the Intervenors.

15           MR. GANJE: Just taking a second to look at the  
16     conditions which were not previously submitted to me,  
17     except perhaps later this morning.

18                                 (Pause.)

19           MR. GANJE: I see there is two years in there.  
20     No recross.

21           MS. CREMER: Thank you.

22           Staff.

23           MR. MIKAL HANSON: Yes. Thank you, Ms. Cremer.  
24     I do have just one area I want to cover.

25



RECROSS-EXAMINATION

1  
2 BY MR. MIKAL HANSON:

3 Q. Ms. Sappington, if you would look at your prefiled  
4 testimony that's Rebuttal Testimony from May 24, 2019,  
5 and if you would go to page 12. It's kind of a question  
6 on the lek survey.

7 Isn't your response to a question that the lek  
8 surveys were conducted for the project in 2007, 2008, and  
9 2016?

10 A. Yes. That is what the Rebuttal Testimony says.

11 Q. And so this study that you were talking about 2018,  
12 that wasn't a lek study; that was some other type of  
13 study?

14 A. That was the Avian Use Surveys which identified that  
15 there were no active leks during that Avian Use Survey.

16 Q. And an Avian Use Survey is somebody watching for  
17 flying birds?

18 A. Watching for flying birds, or there's incidental  
19 observations of any kind of birds in those areas during  
20 the point counts.

21 Q. Do you know if it was during mating season for the  
22 grouse?

23 A. The point count surveys were conducted for a year.  
24 So, yes, point counts would have been conducted during  
25 that lekking period March through June.

1 Q. Grouse are on the ground, though, are they not, most  
2 of the time?

3 A. Yes.

4 Q. All right. So specifically looking for leks was  
5 only done in 2007 through 2008, and 2016?

6 A. Correct.

7 MR. MIKAL HANSON: All right. I don't have any  
8 other questions.

9 MS. CREMER: Thank you.

10 Any -- I always have to get the word right --  
11 final redirect?

12 MR. SCHUMACHER: Thank you. Applicant will pass  
13 this witness. Thank you.

14 MS. CREMER: Thank you.

15 You may step down. Thank you.

16 THE WITNESS: Thank you.

17 (The witness is excused.)

18 MS. CREMER: You may call your next witness.

19 MR. MURPHY: Thank you. Crowned Ridge calls  
20 Sam Massey and Tyler Wilhelm.

21 (The oath is administered to Sam Massey and  
22 Tyler Wilhelm by the court reporter.)

23 MS. CREMER: Before we go any further, is this  
24 your witnesses, Mr. Murphy?

25 MR. MURPHY: Yes.

1 MS. CREMER: Do you want to just give an  
2 explanation? It is unusual for us but -- to have two of  
3 them up there at one time. Can you explain?

4 MR. MURPHY: They work in the same department  
5 hand in hand on this project as developers of the  
6 project. We thought it would be more effective for them  
7 to file joint testimony rather than separate testimony.

8 MS. CREMER: And, Mr. Ganje, did you have any  
9 comment? Your mic.'s on.

10 MR. GANJE: It's highly unusual, and it's  
11 difficult to stay focused as counsel representing  
12 Intervenors when they're tag teaming, effectively  
13 witnesses bouncing, perhaps, back and forth, which I  
14 think is unfair. I've actually never had this happen in  
15 my career. I think it's much fairer for the Applicant to  
16 take them sequentially, and I don't see any reason why  
17 they can't, other than the fact that I and perhaps others  
18 may be confused. I know I may be.

19 And I just -- that isn't the normal way we do  
20 it, because a head is much clearer when you have one  
21 witness at a time and that witness's statements are  
22 cross-examined and directly examined, particularly when  
23 we have multiple questioners here. We're going to have  
24 multiple questioners questioning two witnesses maybe. I  
25 don't think it's the right way to do things.

1 MS. CREMER: So you object.

2 MR. GANJE: I do.

3 MS. CREMER: Okay. Staff.

4 MS. EDWARDS: Thank you. Typically, if you have  
5 witnesses that are cumulative or redundant to one  
6 another, only one gets to testify. You don't cure that  
7 tank by just sharing the mic. I do fear it would be a  
8 nightmare for the court reporter and I don't want to  
9 place any difficulty on her.

10 MS. CREMER: So you object.

11 MS. EDWARDS: I'm relatively neutral on it, but  
12 if there's difficulty for Cheri, I would certainly  
13 object.

14 MS. CREMER: So, Cheri, I would just ask you as  
15 the court reporter, is this going to be difficult to  
16 distinguish the answers?

17 (Comments off the record by the court reporter.)

18 MS. CREMER: Did you guys want to weigh in?

19 CHAIRMAN HANSON: Sustained.

20 COMMISSIONER NELSON: Yeah. I would sustain the  
21 objection. If they are truly sharing testimony, it would  
22 seem that by the time one is done, they might both be  
23 done. But definitely need to go one at a time.

24 COMMISSIONER FIEGEN: Yes. And we've went one  
25 at a time before. And if somebody didn't know, they just

1 said there's another witness that will answer that  
2 question.

3 CHAIRMAN HANSON: I should have used the mic.  
4 previously when I said sustained.

5 MS. CREMER: All right. There's your answer.  
6 And so you can proceed however with whichever one first.  
7 Thank you.

8 MR. MURPHY: Thank you. We'll call Tyler  
9 Wilhelm first.

10 DIRECT EXAMINATION

11 BY MR. MURPHY:

12 Q. Please state your name, business title, and company  
13 for the record.

14 A. My name is Tyler Wilhelm, and I'm a project manager  
15 at NextEra Energy Resources, LLC.

16 Q. What is your role with Crowned Ridge Wind?

17 A. As the project developer of Crowned Ridge Wind, I'm  
18 responsible for the community outreach, land leasing,  
19 managing all aspects of the development efforts.

20 Q. Please provide a short overview of your education  
21 and experience.

22 A. I've been employed with NextEra Energy Resources  
23 since 2015 in the capacity of land services  
24 representative, associate project manager, and project  
25 manager. I've actively developed projects in four

1 midwestern states. And I currently oversee all of the  
2 development efforts in the State of South Dakota for  
3 NextEra Energy Resources.

4 Prior to joining NextEra, I obtained my bachelor's  
5 degree from the University of South Dakota.

6 Q. Did you file Prefiled Direct Testimony and exhibits  
7 on January 29, 1919 -- I'm sorry -- 2019, that is marked  
8 as A5?

9 A. Yes, I did.

10 Q. Do you have any changes or corrections to the  
11 Prefiled Direct Testimony and exhibits?

12 A. No, I do not.

13 Q. Did you file prefiled supplemental testimony on  
14 April 9, 2019, that is marked as A23?

15 A. Yes, I did.

16 Q. Do you have any changes or corrections to this  
17 testimony?

18 A. No, I do not.

19 Q. Did you file Prefiled Rebuttal Testimony on May 23,  
20 2019, that is marked as A44 and accompanying exhibits  
21 marked as A44-1 and A44-2?

22 A. Yes.

23 Q. Do you have any changes or corrections to this  
24 testimony or exhibits?

25 A. No, I do not, but I would like the opportunity to

1 address the Commission on the changes to one of the  
2 exhibits.

3 Q. And that is my next question.

4 A. Oh, I apologize.

5 Q. Are you familiar with Exhibit A54, which is the  
6 final land status map, and Exhibit A59 that sets forth  
7 the wind turbine changes as a result of the final land  
8 status map and the proposed Condition 28 which is based  
9 in part on the Hessler proposal related to the use of  
10 alternative turbine locations?

11 MR. GANJE: I will object to this line of  
12 questioning, Madam. I can't be sure because --

13 COMMISSIONER FIEGEN: We can't hear you.

14 MR. GANJE: And I can't be quite sure what map  
15 this is because all of their maps pretty much have the  
16 same original designation. But I think I have in front  
17 of me the map he's referring to, and this map is -- was  
18 not created by this witness. He was not the author of  
19 the map, did not create the map. And no foundation has  
20 been laid for the map and for the technical terms and  
21 representations found in that map.

22 So we're a little ahead of ourselves by using  
23 this witness as a person who is going to give some type  
24 of a credibility, I suspect, to something that is not in  
25 the record and I don't think he's capable of putting it

1 in the record.

2 MR. MURPHY: May I respond? I think I can.

3 MS. CREMER: Yeah. Why don't you respond first?

4 MR. MURPHY: My understanding is it was one of  
5 the not objected to stipulations that we did this  
6 morning. It is in the record. It was filed. It has  
7 been marked as an exhibit.

8 And I will let Mr. Wilhelm explain better if you  
9 like, but he is in charge of this project for Crowned  
10 Ridge Wind and this map was made at his direction. And  
11 as I asked him, was he familiar with it, he is familiar  
12 with it. He can go into even further detail of why he's  
13 familiar with it.

14 MS. CREMER: If you just want to cover a little  
15 bit more foundation then, I think that would help. Thank  
16 you.

17 MR. MURPHY: Be happy to.

18 Q. (BY MR. MURPHY) Mr. Wilhelm, can you explain why  
19 you are familiar with Exhibit A54?

20 A. Yes. Some of the changes that have been captured on  
21 this map are from a land leasing perspective. All of the  
22 land leasing representatives on the project who  
23 ultimately report to me and I oversee that. That was a  
24 large majority of the changes that were depicted on this  
25 map.



1 Q. Were you involved in the internal discussions, what  
2 we call the Hessler proposal, to use seven alternative  
3 turbines? And can you explain?

4 MR. GANJE: I object. And for the record, Madam  
5 Examiner, if I could have standing objections based on  
6 lack of foundation, lack of authenticity, and the fact  
7 that this witness is now going into a technical map that  
8 appears to have been prepared by an EAPC company, a  
9 company called EAPC, and involves quite a bit of apparent  
10 detail just by looking at it, which would require  
11 naturally the foundation and introduction of the map  
12 itself by the preparer of the map, by the author of the  
13 map. And we'd ask for a standing objection to the line  
14 of questions that are directed to this map.

15 MS. EDWARDS: Can I sort of weigh in?

16 MS. CREMER: Sure.

17 MS. EDWARDS: That's not the map we have for  
18 A54. Is there something -- I mean, is that a different  
19 map and mismarked or -- that's not what I have prefiled.

20 MR. GANJE: May I also walk up to the map and  
21 have a look at it again?

22 MS. CREMER: Certainly.

23 COMMISSIONER FIEGEN: What exhibit is this  
24 supposed to be?

25 MS. CREMER: It says A54.

1           MR. MIKAL HANSON: Mr. Ganje, you've got A55 in  
2 your hand. I don't know.

3           MR. GANJE: Yeah. I do. Yeah, I have been  
4 given --

5           MR. MIKAL HANSON: And that's 54, I think.

6           MR. GANJE: I have been given perhaps now in the  
7 course of this proceeding since I started here about 12  
8 different maps all labeled as 3A which makes it very  
9 confusing and difficult.

10          CHAIRMAN HANSON: While we're in this  
11 discussion, let's be off the record.

12                       (Discussion off the record.)

13          MS. CREMER: Ms. Edwards, you had a question, I  
14 think, in front of us. I'll let you finish.

15          MS. EDWARDS: I guess I was just confused  
16 because my map didn't look like the blown-up exhibit that  
17 they have, but they just put identification stickers on  
18 there, little Post-It stickers, and that was the  
19 difference.

20                So I believe, with that, it is the same map I  
21 have as Exhibit A54.

22          MS. CREMER: Thank you.

23                And, Mr. Ganje.

24          MR. GANJE: My last statement was a request for  
25 a standing objection.

1 MS. CREMER: And that is granted. And you may  
2 continue, Crowned Ridge.

3 Q. (BY MR. MURPHY) If I remember correctly where I  
4 was, I was going to ask you to take the Exhibit 59 and  
5 provide context to this map of what turbine changes were  
6 made based on that exhibit.

7 A. Sure. So the -- now that we've gotten past the  
8 colored stickies and what they're going to help identify,  
9 I can walk us through that.

10 MR. GANJE: Excuse me. Did my honorable counsel  
11 now refer to this as Exhibit 59? I believe he did.

12 MR. MURPHY: No, I did not. I referred to  
13 Exhibit 59 as the exhibit that expresses the turbine  
14 changes and I asked the witness to use that exhibit and  
15 explain it in the context of the map, which is Exhibit  
16 A54.

17 MR. GANJE: I object to the question. I'm  
18 utterly confused now. We're bouncing back from maps that  
19 aren't in front of me. And I'm not trying to make my  
20 honorable opposition to work hard, but what are our  
21 reference points? I'm not following it. And I object as  
22 an ambiguous question.

23 MS. CREMER: Well, my understanding is he's  
24 going to look at A59 and compare it to A54 and tell us  
25 the difference; is that correct?

1           MR. MURPHY: He's going to tell you how they  
2 relate to each other.

3           MS. CREMER: Right. Okay.

4           Does that help, Mr. Ganje?

5           MR. GANJE: Well, and on the big placard in  
6 front of the Commission, is that intended to be A54?

7           MR. MURPHY: It's not intended to. It is.

8           MR. GANJE: But it has stickies and markers on  
9 it; correct? You know, that does make it confusing. And  
10 I'm not trying to be a smart aleck about it, but, you  
11 know, where are we going to stop? Do we pull off each  
12 sticky and then go somewhere? It's just confusing for  
13 me, and in that regard I object.

14          MS. CREMER: At this point I'm going to overrule  
15 and allow Crowned Ridge to continue. And if it doesn't  
16 become clear, we can revisit the issue.

17 A. Sure. So this updated exhibit demonstrates our  
18 final land status for the project as proposed. There was  
19 changes to three primary pieces of land that allowed for  
20 collection access to turbines that were previously  
21 stranded. That was the Papio Valley easement --  
22 collection easement area, the John Fox collection  
23 easement area, and the -- Mr. Granquist collection  
24 easement area that have all been resolved. The yellow  
25 stickies on the board represent turbines that will be

1 dropped due to expired leases that were on the project.

2 And as a result of the final land status map, if I  
3 need to go through each one of those to walk you through  
4 it, I'm more than happy to do so. I thought the stickies  
5 would help just showing over all, but if I need to go  
6 turbine by turbine, that would be helpful. Sure.

7 COMMISSIONER FIEGEN: Well, because this was  
8 filed so late, I would certainly appreciate the  
9 continuous explanation.

10 A. So on turbine 56 and 57, and I'll point to those  
11 right now, those are located on the Lindgren property,  
12 which is an expired lease, and they have voiced to us  
13 that they no longer want to renew an agreement or  
14 participate moving forward. So those turbines will be  
15 removed.

16 As a result of that property becoming a  
17 nonparticipating property, we have this blue tab here  
18 which reflects a shift that will be conducted to a  
19 turbine within the 250 feet of flexibility to ensure  
20 noise and shadow flicker compliance on that  
21 nonparticipating property which I just identified as the  
22 Lindgrens.

23 The next turbine I'll go to is CR 79. This is  
24 another turbine that will be dropped because of the lack  
25 of collection from the William Comes property which is

1     sited nearby. That turbine is stranded and we have  
2     elected to drop that turbine. We also have turbine CR  
3     Alt 20, the CR Alt 19. Those are located on expired wind  
4     easement agreements and we do not have the ability to  
5     proceed with those properties at this time so those  
6     turbines are being marked as dropped turbines.

7             With those being marked as nonparticipating, we will  
8     then result with shifting turbine CR Alt 22, and that is  
9     to ensure noise and shadow flicker compliance on those  
10    two now considered nonparticipating properties.

11            So to summarize thus far, we have one, two, three,  
12    four, five, six, seven turbine drops and two turbine  
13    shifts as a result of our final land status fabric.

14            Remaining turbines that I'd like to go through are  
15    those that are identified with a green tab. Those are  
16    what we refer to as the Hessler seven. Those are  
17    turbines that we will elect to drop and replace with  
18    alternate turbine locations within the project area for  
19    sound optimization efforts, which was part of the Hessler  
20    proposal.

21            MS. CREMER: And this is Karen Cremer.

22            Just to clarify, could you just give us the  
23    number of the so-called Hessler seven? The numbers?

24            THE WITNESS: Sure. Those are turbines CR 16,  
25    CR 19, CR 23, CR 49, CR 60, CR 67, and CR 68.

1           CHAIRMAN HANSON: Before you sit down, would you  
2 show us on the left side, the west side of the project  
3 you pointed to a couple of turbines that are not -- and I  
4 didn't quite catch those.

5           THE WITNESS: These over here?

6           CHAIRMAN HANSON: Correct.

7           THE WITNESS: That's CR 17 and CR 40. Those  
8 have been identified as turbine drop locations and those  
9 were elected to be dropped because of noise and shadow  
10 flicker exceedances.

11           These were labeled in -- I can't remember what  
12 data response it was, but we did address those two data  
13 turbines in a data responses, and as a result, we will  
14 drop those two turbine locations to ensure compliance.

15           CHAIRMAN HANSON: Thank you.

16           Would you touch your pen on those two spots  
17 again for me, please.

18                           (Witness complies.)

19           CHAIRMAN HANSON: Thank you. Thank you.

20 Q.   (BY MR. MURPHY) Just for clarity, Mr. Wilhelm,  
21 everything that you just narrated is in Exhibit 59,  
22 including the turbine numbers and the reasons they were  
23 dropped; correct?

24 A.   Yes. That's correct.

25 Q.   Do you have a short summary of your testimony?

1     A.     Sure.   Developing activities for the project  
2     commenced over 10 plus years ago.   Primarily within the  
3     two last years, development activities have advanced.  
4     We've gone through the permitting process at the local  
5     levels.   Over my involvement with the project, I've had  
6     the opportunity to meet quite a few residents within the  
7     Grant County and Codington Counties, all that are --  
8     which are excited for the development advancements that  
9     have been made and the associated benefits that come with  
10    these projects.

11           I'm excited to say that we were able to come up with  
12    seven locations that were proposed by Hessler to make  
13    advances in sound optimization efforts.   And I appreciate  
14    everybody's time.

15           Thank you.

16           MR. MURPHY:   With that, I'd tender the witness  
17    for cross-examination.

18           MS. CREMER:   Thank you.

19           Mr. Ganje.

20           MR. GANJE:    Thank you.

21                           CROSS-EXAMINATION

22    BY MR. GANJE:

23    Q.    Mr. Wilhelm, so please correct me so that I  
24    understand your management position.   What is your  
25    specified management position here?



1 A. I'm a project manager at NextEra Energy Resources.  
2 I'm the project developer of the Crowned Ridge Wind  
3 Project.

4 Q. Are you an employee of Crowned Ridge?

5 A. I'm a representative of Crowned Ridge Wind, yes.

6 Q. But that wasn't my question. Are you an employee of  
7 Crowned Ridge?

8 A. I'm employed by NextEra Energy Resources, LLC, and  
9 Crowned Ridge Wind, LLC is an affiliate of NextEra Energy  
10 Resources.

11 Q. So your employer is NextEra; correct?

12 A. Yes.

13 Q. As the project manager, do you write checks in the  
14 name of Crowned Ridge for the purpose of developing the  
15 project?

16 A. I do not personally write checks. No, sir.

17 Q. In fact, Crowned Ridge as an LLC, it has no checking  
18 account, does it?

19 A. I would have to defer that question to one of our  
20 other witnesses.

21 Q. Well, I'll ask you from your knowledge, does it have  
22 a banking account that it uses to pay bills related to  
23 the development of this project?

24 A. I will defer that question to one of our other  
25 witnesses.

1 Q. Based on your knowledge, please answer.

2 A. I would like to defer that question to one of our  
3 other witnesses.

4 MR. GANJE: Madam Examiner, I'll ask you to  
5 instruct the witness to please answer the question to the  
6 best of his knowledge.

7 MS. CREMER: And I believe he has answered it to  
8 the best of my knowledge.

9 COMMISSIONER NELSON: I don't think so.

10 MS. CREMER: Okay. To the best of your  
11 knowledge.

12 A. As far as can you help me understand what type of  
13 checks we're talking about being cut? Is this landowner  
14 payments or --

15 Q. Any kind of business checks used in the course of  
16 developing a project. You have to pay different people,  
17 vendors, maybe landowners. It runs the gamut. It's a  
18 general question. It's not too difficult, I think.

19 A. I would say yes.

20 Q. You'd say yes to what?

21 A. Yes, that payments are made from Crowned Ridge Wind,  
22 LLC.

23 Q. Isn't it true that Crowned Ridge, according to the  
24 Data Request that you guys responded to in regard to one  
25 of my questions, indicated that Crowned Ridge had no

1 balance sheet or financial statement for the last three  
2 years?

3 A. Can you point me to where that was listed, please.

4 Q. It will take a minute. You don't remember answering  
5 that? That was quite recent.

6 MR. MURPHY: Objection. The witness has asked  
7 him to refer to the document that he's speaking from.

8 Q. Sir, I do have the Data Request. I'm sorry to make  
9 you have to search for it. It's Intervenor's Data  
10 Request 4-2.

11 MR. MURPHY: Do you have an exhibit number that  
12 we can point the witness to?

13 MR. GANJE: I don't believe that I do. But I am  
14 prepared to hand him a copy of the Data Request, as this  
15 is cross-examination. Unless he has it available. I'll  
16 be glad to provide this.

17 MR. MURPHY: Please do.

18 MR. GANJE: May I approach?

19 MS. CREMER: Yes.

20 (Counsel approaches the witness.)

21 Q. (BY MR. GANJE) Have you had a chance, sir, to look  
22 at the response to my Data Request to the Applicant?

23 A. Yes, sir.

24 Q. Okay. Will you now answer the question, please?

25 MR. MURPHY: Objection. I'd like him to

1 rephrase the question.

2 MR. GANJE: Well --

3 MR. MURPHY: The reason is the Data Request does  
4 not say what the question was posed, so I would ask you  
5 to look at the Data Request and state the question again.

6 MR. GANJE: I'll be glad to do that.

7 Q. (BY MR. GANJE) Now, sir, you've now had a chance to  
8 look at the Data Request 4.2?

9 A. Yes, sir.

10 Q. Okay. And the question in 4.2 was: Please provide  
11 the annual balance sheet and annual profit and loss  
12 statement for the Applicant for the last three years.  
13 And then I said, if necessary, I would sign an  
14 appropriate protective agreement on this matter.

15 And do you recall what the response was?

16 A. Yes, I do have the response in front of me.

17 Q. Okay. Very good. Now it's on your screen. You're  
18 better than I. Thank you.

19 And what was that response?

20 A. There is no balance sheet or annual profit and loss  
21 statement for Crowned Ridge Wind, LLC.

22 Q. Thank you.

23 Has any NextEra facility in the State of South  
24 Dakota ever been involved in an aeronautical accident  
25 where an airplane flew into one of the towers owned or

1       operated by NextEra?

2       A.    I cannot speak on behalf of any incident that you  
3       may be referring to.

4       Q.    Are you aware of such an incident?

5       A.    I cannot speak on behalf of any incident you're  
6       referring do.

7       Q.    I'm not asking whether you can speak.  I'm asking if  
8       you're aware of it.

9       A.    I am aware of such an incident.  Yes, sir.

10      Q.    Are you aware that it took place in 2014 in  
11      Hyde County, South Dakota?

12      A.    I do know that it took place in South Dakota.  I  
13      cannot confirm what year or what county.

14      Q.    Has NextEra or any of the affiliates of NextEra  
15      identified in your several data responses over the last  
16      couple of months ever had a lien placed on land owned by  
17      landowners because of nonpayment or dispute over payment  
18      concerning construction contracts?

19      A.    Not to my knowledge, no.

20      Q.    You do know about that.  Okay.

21               MR. GANJE:  I'll present a couple of documents  
22      to the witness, if you'll bear with me for a moment,  
23      please.

24               (Counsel gives document to the witness.)

25      Q.    Sir, I've set upon you by paperclip one, two, three,

1 four documents. Do you have those in front of you?

2 A. I do.

3 Q. And are you aware of a NextEra company called  
4 Pegasus?

5 A. I am not familiar with any development efforts  
6 outside the State of South Dakota. I'm not personally  
7 involved with those.

8 Q. And what is the business address of NextEra in  
9 Florida?

10 A. It is -- give me one second, please.

11 Q. Certainly.

12 A. It's 700 Universe Boulevard, Juno Beach, Florida  
13 33408.

14 Q. Thank you.

15 And I'd ask you to look at the second document that  
16 I put in front of you, which is called Claim of Lien.

17 Does it identify the construction project as owned  
18 by Pegasus Wind, LLC of 700 Universe Boulevard, Juno  
19 Beach, Florida?

20 A. Yes. That's how it's stated in this document. Yes,  
21 sir.

22 Q. And isn't it true that NextEra as a company has a  
23 tendency to create multiple different subsidiaries or  
24 companies to do different projects in the wind energy  
25 siting business?

1 A. Yes, sir. I think that's pretty common amongst  
2 business types, yes.

3 Q. That's true. Thank you.

4 You are pretty much the general project manager or  
5 have been throughout the process; is that right?

6 A. Primarily over the last two years of the project's  
7 development, yes, sir.

8 Q. Thank you.

9 I've been having a little trouble today, and it may  
10 be me, but I want to ask you about the Crowned Ridge  
11 avian study. If you could put that map in front of you.

12 A. I would not like to sponsor any responses in regards  
13 to avian surveys.

14 Q. Well, I understand that you might not like to and I  
15 apologize for the inconvenience, but I'm asking you if  
16 you would look at --

17 MR. MURPHY: Objection. What the witness is  
18 inarticulately saying, this is not his area of expertise.  
19 The area of expertise of that witness was the previous  
20 witness's. And if this was a question posed to avian  
21 studies, it should have been posed to that witness.

22 MS. CREMER: Let's do this. Let's let him ask  
23 his question first. Sometimes they're so generic the  
24 person can answer. So let him ask first.

25 MR. GANJE: Would you be kind enough to repeat

1 the question.

2 (Reporter reads back the last question.)

3 (Discussion off the record.)

4 Q. (BY MR. GANJE) The question is, I'm going to refer  
5 to the avian study that was done for this project of  
6 which you're the general manager. And I'm going to ask  
7 you if you would point out to me, please, on one of your  
8 application maps where it is identified that there is a  
9 full and complete avian study of the project.

10 A. Is this in our general application, sir?

11 Q. Yes.

12 MR. MURPHY: Tyler, do you need help locating?

13 THE WITNESS: Yeah. I would appreciate some  
14 help. Thank you.

15 Q. Were you able to pull the map up with the help of  
16 your colleagues?

17 A. Yes, sir. I have Exhibit A1-E.

18 Q. I think that would be it. Thank you.

19 And so I would be referring a question or two now to  
20 you with regard to A1-E, which is a map.

21 That map shows a study area for avian issues by a  
22 dotted line, does it not, in the legend?

23 A. Yes, it does.

24 Q. And does that dotted line include the  
25 northeastern-most portion of the proposed project?



1 A. The dotted line does not cover the most northern  
2 portion of the -- the northeastern portion of the project  
3 in Grant County. I believe this was the same question  
4 that was directed to witness --

5 Q. No. I didn't ask you if it was directed to somebody  
6 else but I wanted your response.

7 Are you aware that there is a completed avian  
8 project for that northeastern quadrant of the proposed  
9 project?

10 MR. MURPHY: Objection. The previous witness  
11 has already answered this question. That's what she was  
12 sponsoring, this map and these studies. I'm not seeing  
13 where this witness needs to be also examined on the  
14 environmental issues.

15 MR. GANJE: This is a part of the application  
16 that this witness signed. This application is the  
17 general manager -- I mean, this gentleman is the general  
18 manager. These are common things that a manager would  
19 know who's going to be developing a very significant,  
20 large wind energy project. Certainly one would assume a  
21 reasonable manager in his position would be knowledgeable  
22 of that. And it's fair for me to ask it of this witness  
23 who's different than the other witnesses.

24 MS. CREMER: And when you respond, that's fine,  
25 but a lot of your response is really closing argument.

1 So if you could confine it to just a response and not an  
2 argument.

3 MR. GANJE: Yes.

4 MS. CREMER: I believe you could probably answer  
5 if you know the answer. If you don't know the answer,  
6 that's the answer.

7 A. I do not have the answer to that.

8 Q. Has the Applicant informed the Commission of all  
9 permits with respect to approval or mitigation processes  
10 in this siting?

11 A. Is this still concerning the avian surveys or is  
12 this in general?

13 Q. No, it isn't. I apologize, I'm not trying to  
14 confuse you. I'm asking a general question.

15 A. Yes. I believe that the Commission has been advised  
16 of all applicable permits.

17 Q. Okay. Has the Applicant submitted an application or  
18 paperwork to the FAA for a determination of a no hazard  
19 permit?

20 A. Yes, we have. We have filed for an aeronautical  
21 study with the FAA.

22 Q. And when did you do that?

23 A. That, I believe, was in December of 20 -- I would  
24 need to -- if you don't mind, let me refer to the  
25 application.

1 Q. Certainly.

2 (Witness examines document.)

3 A. December of 2018.

4 Q. And have you gotten a response or a permit back yet?

5 A. We have received determinations for some of the  
6 turbine locations but not all of them at this time.

7 Q. So you don't have a complete, what's called no  
8 hazard permit?

9 A. For all of our proposed turbine locations, we do  
10 not.

11 Q. When was the last time you advised the Commission of  
12 the status of that permit application?

13 A. In one of our data responses, we were asked about an  
14 update as to when we would be receiving those  
15 determinations, and we responded with July of this year,  
16 which is still consistent.

17 Q. Consistent with what?

18 A. With when we expect to receive the determinations of  
19 no hazard for all proposed turbine locations.

20 Q. And if you didn't receive a full permit, you would  
21 not proceed with the planned siting?

22 A. We cannot plan to construct any turbine that does  
23 not have a determination of no hazard associated with  
24 that general location.

25 Q. Thank you.

1           I direct your attention to Appendix M of the  
2 executive summary of the Application. Do you have this  
3 in front of you?

4       A.    Yes, sir. I do.

5       Q.    Okay. Does Appendix M in the Application state,  
6 "The Department of Energy has considerable issues with  
7 turbine placement in the area and the developer is  
8 currently working with the agency to mitigate their  
9 concerns at the site"?

10           Is that a statement in the Application?

11       A.    Yes, it is.

12       Q.    Okay. So what are the concerns of the Department of  
13 Energy?

14       A.    The concerns were expressed based off of a general  
15 project area. They were not defined to specified turbine  
16 locations. And it is our intent to proceed with them  
17 once we have determinations of no hazard in hand from the  
18 FAA, which would allow us to provide more information on  
19 specified turbine locations, which would allow us to  
20 continue conversations with the Department of Energy on  
21 more specific elements to the site.

22       Q.    So the Department of Energy raised a criticism of  
23 the proposed site; is that correct?

24       A.    Of the general project area.

25       Q.    Yeah. Okay. And have you resolved those concerns

1 yet?

2 A. No, sir. As I stated, we're going to proceed with  
3 the FAA in receiving our determinations of no hazard  
4 before we would further move forward with the Department  
5 of Energy and discuss any concerns with specified turbine  
6 locations.

7 Q. Did you provide in your Application or supplemental  
8 material in support of the Application copies of the  
9 correspondence with the Department of Energy concerning  
10 this matter?

11 A. I do not believe that we provided correspondence.  
12 No, sir.

13 Q. So the Commission as it sits now doesn't exactly  
14 know what the specific concerns are that had been raised  
15 by the Department; is that correct?

16 A. They would have the level of understanding of  
17 general concerns based off of, again, the project area,  
18 which is the project boundary, not specified turbine  
19 locations, which would be resolved with the Department of  
20 Energy.

21 Q. I am so sorry. I think you are confused about my  
22 question. I'll ask the court reporter to read my  
23 question back. And I'll just alert you, my question  
24 refers to information you all are providing to the  
25 Commission here for this Application.

1           MR. GANJE: If you would be kind enough to read  
2 the question back.

3           (Reporter reads back the last question.)

4           A. Correct. As in there's no more additional --  
5 there's no additional level of information other than  
6 general concerns. Correct.

7           Q. You've had no correspondence since the date of the  
8 Application with the Department of Energy on this matter?

9           A. It was discussed that we would proceed with  
10 correspondence with the Department of Energy upon  
11 receiving our determinations of no hazard, which, again,  
12 provides the additional level of information needed to  
13 mitigate any type of concerns that there may be, general  
14 concerns.

15          Q. But has there been correspondence or communication  
16 since the date of the Application between you and the  
17 Department of Energy?

18          A. Not between myself and the Department of Energy, no,  
19 sir.

20          Q. Any of your colleagues?

21          A. I would say yes. Yes, sir. Yes.

22          Q. Now you've presented quite a reconfigured project  
23 map on the easel here today with some stickies and  
24 colored things on it to show changes; correct?

25          A. That's correct.

1 Q. And this is based on a -- the changes you had to  
2 make because of the deadline, I think, of last Friday to  
3 give a final proposed map for the plan; is that correct?

4 A. Some of those changes, yes, sir.

5 Q. Well, I asked your attorneys for you guys to bring  
6 today copies of the agreements that showed that you've  
7 cleaned up the problems that existed last week and made  
8 the project quite incomplete. Did you bring those --  
9 copies of those agreements with landowners that resulted  
10 in the changes now shown on the map on the easel today?

11 A. All of the land easement agreements that we enter  
12 into with the project's landowners are confidential  
13 information. So, no, those are not available today.

14 Q. Well, they would be available for the Commission to  
15 look at it to confirm that what you said on Friday with  
16 your map is really the truth, wouldn't they?

17 MR. MURPHY: Objection. This has already been  
18 ruled on by the Commission earlier today. This exact  
19 issue offered to show the Commission the easement option  
20 and the purchase option, and they said they did not need  
21 to see it. So I object to this line of questioning.

22 MS. CREMER: And I would sustain that objection.

23 Q. (BY MR. GANJE) I believe in last week's  
24 testimony -- let me strike that.

25 Sir, you listened to Mr. Hessler or were present

1 during his testimony last week concerning this  
2 Application, weren't you?

3 A. I did step out after the motion to dismiss period  
4 ended, as I was tasked with providing the final land  
5 status within 24 hours so I got out of here pretty quick.  
6 I believe Mr. Hessler's testimony took place after that.

7 Q. Did you listen to it since then?

8 A. I have, yes, sir.

9 Q. Okay. So you're familiar with the testimony?

10 A. Yes.

11 Q. Okay. If I recall his testimony, he recommended  
12 that there be changes, that is a movement of 16 turbines  
13 that were presently indicated on your map and that they  
14 should be placed elsewhere; is that correct?

15 A. Correct, that Mr. Hessler's proposal did recommend  
16 16 turbine location changes.

17 Q. Okay. I understand from your testimony today that  
18 you are suggesting by this most recent iteration of the  
19 project that there will be seven turbine relocations  
20 based on Hessler's recommendation; is that correct?

21 A. Seven of the turbines -- seven of the 16 turbine  
22 locations recommended by Mr. Hessler were taken into  
23 consideration. Yes, sir.

24 Q. That's an interesting way to say it.

25 My question is, did you testify earlier -- perhaps I



1 missed it, and I do miss things. Did you testify earlier  
2 and provide this Commission with information as to where  
3 on this project map you're going to relocate those seven  
4 turbines?

5 A. We have not specified exactly what alternate  
6 turbines will be utilized in place of those seven. But  
7 those seven -- our alternate turbine locations are  
8 available as well as all noise and shadow flicker, you  
9 know, impacts on nonparticipating and participating. So,  
10 you know, regardless of the seven that would be utilized,  
11 that information is readily available to the Commission.

12 Q. Well, no, it isn't. Isn't it true that you have not  
13 reported to this Commission today, on the first day of  
14 the hearing on the merits of this proceeding, that you  
15 haven't picked or selected where you're going to put  
16 those turbines?

17 A. We have not identified the exact seven alternate  
18 locations that will be utilized.

19 Q. You're not going to move 16 of them?

20 A. We have agreed to moving seven turbine locations.

21 Q. You haven't agreed to move 16?

22 A. That's correct. We agreed to move seven.

23 Q. No, no, that isn't correct. Either you agreed to or  
24 you didn't agree to move 16 of them according to  
25 Hessler's testimony?

1 MR. MURPHY: Objection on two grounds. One,  
2 asked and answered. Two, it's argumentative.

3 MS. CREMER: In my mind, it has been answered.  
4 You can't answer it with a simple yes or no. The math  
5 has to be done.

6 So I would sustain.

7 MR. GANJE: No further questions.

8 MS. CREMER: Thank you.

9 Staff.

10 MS. EDWARDS: Thank you. Hopefully, I'll be  
11 fairly brief. I think most of mine were covered.

12 CROSS-EXAMINATION

13 BY MS. EDWARDS:

14 Q. When you say "dropped" in reference to turbines on  
15 this map, do you mean moved to alternate locations or  
16 removed from the project?

17 A. Removed from consideration or made as an alternate.  
18 So basically as being dropped, we refer to that as a  
19 primary turbine location that is now a secondary  
20 consideration or removed.

21 So for the purposes of the exercise we went through  
22 up here, it applies to either-or.

23 Q. Sure. Then would the end result be a lower output,  
24 power output of the project? Or is it a zero sum?

25 A. One of the reasons -- one of the considerations that

1     went into selecting the seven was because it was,  
2     roughly, a wash between the NCF of the project.

3     Q.    Okay.  And when you talk about those seven, the  
4     so-called Hessler turbines -- and I appreciate that name,  
5     I think he will too -- will any of the impacts on  
6     landowners increase beyond what was represented in the  
7     Application?

8     A.    No.

9     Q.    And why is that?

10    A.    When we did a close analysis of those seven turbine  
11    shifts, we realized that impacts as far as sound  
12    optimization would go down, which is why those turbines  
13    were considered.

14    Q.    But if you move them to alternate locations, will  
15    those alternate locations increase impacts beyond  
16    anything that was represented in the Application?

17    A.    Not to my knowledge, no.

18    Q.    Okay.  And in your Rebuttal Testimony on page 2 --  
19    do you have that in front of you?  Rebuttal.

20    A.    I'll get there.  One second.

21         Okay.

22    Q.    On that page, there's a discussion about shadow  
23    flicker at a nonparticipating residence.  Are you  
24    familiar with that?  Do you recall that discussion in  
25    your testimony?

1 A. That's correct. Yes. I do recall that.

2 Q. First of all, do any of the changes reflected on  
3 Exhibit A54, that map next to you, do any of the changes  
4 reflected on that address this situation?

5 A. Sorry. One moment. I'm pulling up another exhibit  
6 here.

7 So if I remember the question correctly, this was  
8 taken into consideration. Turbine 16 was removed from  
9 consideration, which was one of the seven of  
10 Mr. Hessler's proposals.

11 Q. Thank you.

12 So is it fair to say that that situation is  
13 resolved?

14 A. That's correct.

15 Q. All right. That takes care of a bunch of questions.  
16 Thank you.

17 In your original testimony, Direct Testimony, and I  
18 think you can answer this without turning to it, you  
19 mentioned a 500-foot shift for turbines. Is it accurate  
20 to say that Applicant is accepting of a 250-foot setback  
21 as ordered in recent dockets?

22 A. That's correct.

23 Q. Okay. And moving on to -- there was a line of  
24 questioning about the FAA determination of no hazard. Is  
25 it possible that a number -- a material number of

1 turbines would have to be eliminated when this review by  
2 the FAA is completed?

3 A. There's currently five turbines that are pending  
4 determinations from the FAA. So to answer your question,  
5 it would be five turbines essentially that, if they did  
6 not receive the necessary approvals, that would need to  
7 be eliminated.

8 Q. Are there enough alternate sites available that  
9 those five would be able to be made up elsewhere?

10 A. Yes. We could accommodate those five, if needed. I  
11 will also say that the locations of those five turbines  
12 are within very, very close proximity to previous  
13 locations that were already approved. So it's just a  
14 matter of going back through the process. There's no  
15 material change to those locations that's being reviewed.

16 Q. Why are they still being reviewed? What's taking so  
17 long?

18 A. When we filed our locations with the FAA for all of  
19 our proposed turbines, we received positive  
20 determinations back for all 130 proposed locations -- or  
21 all of the proposed locations that we have as you see on  
22 the project map. There was a discrepancy for five  
23 turbines on the exact GPS location that was tied to it.  
24 So whether that be five feet off or 10 feet off, there  
25 was a discrepancy. So we had to refile and restart the

1 process for those five specific locations.

2 Q. Sure. Okay.

3 In your Supplemental Testimony, you discussed claims  
4 for crop damage. To your knowledge, in any phases of  
5 this project to include preparation or even the  
6 transmission line, have there been any crop damage claims  
7 or complaints?

8 A. There was complaints made at our informational  
9 hearing. Since then, all outstanding crop compensation  
10 that was owed to landowners has been paid and caught up  
11 for the Crowned Ridge Wind wind farm, minus two specific  
12 landowners who we're working with, and they've actually  
13 elected to not sign the crop compensation form.

14 Q. Meaning they won't be compensated for the crop  
15 damage or -- I don't really follow that.

16 A. Meaning that maybe their view of the project has  
17 changed and they don't want to be associated with the  
18 project in that regard from a crop compensation  
19 standpoint. We've produced every piece of paperwork and  
20 had executed as necessary to provide the compensation  
21 that's due from damages, except for the two where --

22 Q. So do they host turbines? Or will they host  
23 turbines?

24 A. There has been two turbines removed from one of the  
25 landowner's properties. And the other one is a --

1     there's no turbines on that gentleman's property, and  
2     that one is, I believe, underground collection, but I can  
3     look and confirm that.

4     Q.   For the one with the turbines removed, the two  
5     turbines, was that one of the easements that expired, or  
6     was that not included in that map?

7     A.   No.   That is not an expired easement.

8     Q.   So you just released him from his easement?

9     A.   From the participating easement?

10    Q.   Correct.

11    A.   No, ma'am.

12                 MR. GANJE:  I didn't hear the answer.  I  
13    apologize.

14                 THE WITNESS:  I said "no, ma'am."

15    Q.   But you removed the turbines?  Is that what you  
16    said?

17    A.   Yeah.  We're keeping the easement on the property.  
18    Yes, ma'am.  But we are not -- we have removed the  
19    turbines from the property but we are keeping the active  
20    easement agreement on the property continuing.

21    Q.   Okay.  I follow you now.  Thank you.

22                 What is the -- or do you have an update on the  
23    completion date of this project?

24    A.   The commercial operations date for this project is  
25    December 31, 2019.

1 Q. And you still believe you can meet that date?

2 A. Yes, ma'am.

3 Q. Can you elaborate on the DOE concerns with this  
4 project?

5 A. Sure. So as I was discussing earlier or explaining  
6 earlier, that the DOE expressed general concerns with the  
7 project, which is based off of a project area. To  
8 understand what concerns fully, you know, may be or if  
9 any still exist would be based off of more detailed  
10 material such as defined turbine locations. So other  
11 than looking at a 53,000 acre, roughly, project area,  
12 they would be looking at specified turbine locations.

13 Before we continue those conversations with them  
14 and -- we would like to be able to solidify our turbine  
15 locations with the FAA to know that we have a clean, you  
16 know, solidified project.

17 Q. Do you know if the concerns that -- are radar based  
18 concerns or aviation specific concerns or communication  
19 concerns? Do you have any detail on that?

20 A. I do not. I'm not the best person to answer that  
21 question. That would be tailored towards one of our  
22 other witnesses.

23 Q. Do you have the specific witness that you would  
24 suggest I ask?

25 A. That would be Sam Massey.



1 Q. Perfect. Thank you.

2 MS. EDWARDS: I think that's all I have for you.  
3 Thank you.

4 MS. CREMER: Commissioner Fiegen.

5 COMMISSIONER FIEGEN: Thank you, Mr. Wilhelm for  
6 being here. Is this the first time you've had the  
7 opportunity to be the project manager of a single project  
8 like this? Or --

9 THE WITNESS: This is my first project where I  
10 am, you know, the lead project manager. Yes, ma'am.

11 COMMISSIONER FIEGEN: This is a tough project  
12 because of the movement of ownership, the length of land  
13 agents out in the field. Also when leases expire. And  
14 so you have certainly -- when I have looked at all the  
15 wind projects that we have had in front of us, this is  
16 probably one of the most complicated way to the end  
17 because it's so many changes, and so wow.

18 Okay. I'm going to go to my first question.  
19 And it was already asked by Staff, but I want to talk a  
20 little bit more about it.

21 It talked about December 2019 as being your  
22 project completion date. Is that because of the PPA with  
23 your purchaser of your energy and capacity and all that?

24 THE WITNESS: It's for a couple reasons. One,  
25 that is part of the commercial agreement that we have in

1 place. But, two, that's something that we've coordinated  
2 with our engineering and construction teams on and  
3 something that's agreeable to them as well.

4 COMMISSIONER FIEGEN: So what would happen if it  
5 doesn't get done before December '19? Can it go into  
6 2020?

7 THE WITNESS: You know, as stated in our  
8 Application, we talked about the first quarter of 2020.  
9 You know, it's our goal to reach December 31, 2019. It's  
10 where our customer is at as far as when they would like  
11 to receive the power buy.

12 You know, it does become commercially  
13 challenging after a certain point, but it's something  
14 that we feel confident in hitting.

15 COMMISSIONER FIEGEN: So what happens to your  
16 PPA if you don't reach December '19?

17 THE WITNESS: That's something that would need  
18 to be discussed with -- between senior management and our  
19 commercial folks as far as what would happen.

20 COMMISSIONER FIEGEN: Okay. Next question, how  
21 many alternate sites do you have now? There's just been  
22 so many moving parts that I haven't even had time to  
23 count them. So you've used some of the alternate sites  
24 already. How many do you have left?

25 THE WITNESS: And if you would just give me one

1 second, I too have looked at several iterations of the  
2 project over the last few days.

3 COMMISSIONER FIEGEN: Sure. I can do that.

4 And if you wanted to file that, you certainly  
5 could, if you don't want to -- if you want to count  
6 tonight, you can file that.

7 THE WITNESS: Sure. For right now, I would say  
8 that there's six. There's six alternates right now.

9 COMMISSIONER FIEGEN: That you can use.

10 THE WITNESS: That we could potentially  
11 consider. Yes, ma'am.

12 COMMISSIONER FIEGEN: So now I'm going to go to  
13 your, let's see, January 29 Direct Testimony. And on  
14 page 5 of 15, at the bottom, it talks about you having 99  
15 percent of the necessary property rights.

16 Does that mean easements? I mean, you have  
17 99 percent of the easements?

18 THE WITNESS: Yes, ma'am. So that when that  
19 statement was made, it would apply to 99 percent of the  
20 necessary easements in place to host the project that was  
21 proposed.

22 COMMISSIONER FIEGEN: So that was mathematically  
23 calculated? Like how many easements do you have in this  
24 project?

25 THE WITNESS: Total easements? One second.

1           COMMISSIONER FIEGEN: Because when I looked at a  
2 map -- oh, now I've got to figure out which map that was,  
3 if it was in your application or if it was additional  
4 filings. The one that I looked at last Thursday, there  
5 were several areas that were not signed and they were  
6 pending.

7           THE WITNESS: Sure. So in my initial Direct  
8 Testimony, the reference was 99 percent of property  
9 easements necessary. We've since corrected and refiled  
10 maps that showed pending agreements due to expired wind  
11 farm easement agreements, which led up to today where we  
12 have solidified our land fabric.

13           No further land acquisition is needed or  
14 easements needed to host the project. So today we would  
15 be at 100 percent complete for the project.

16           COMMISSIONER FIEGEN: So when you did your  
17 Direct Testimony -- I'm trying to get to the question on  
18 your Direct Testimony and how you figured out that 99.

19           So there were 100 easements and there was only  
20 one that was missing January 29? Is that what you're  
21 telling me?

22           THE WITNESS: It was -- upon filing Direct  
23 Testimony, it was all easements in hand except for one,  
24 was the 99 percent.

25           COMMISSIONER FIEGEN: Okay. Thank you.

1           On 7-15, let's see, of that same testimony, it  
2 just talks about -- it talks again about the tribal  
3 consultations, but it only has one tribe. And that's --  
4 I couldn't remember exactly where that testimony was, but  
5 it actually is in yours.

6           So there was somebody that testified prior to  
7 you that stated that you worked with several tribes, but  
8 this one says one. Can you help me understand if it was  
9 you that only met one or the whole project?

10          THE WITNESS: Before I answer the question, can  
11 you point me to where you're --

12          COMMISSIONER FIEGEN: Sure. It's still in that  
13 January, I think it was 29th or whatever. It's page 7 of  
14 15, and it's line 7.

15          THE WITNESS: So in response to that statement,  
16 I personally have only met with the Sisseton-Wahpeton  
17 Oyate tribe. But I do know that because of the size of  
18 the project, additional resources were sought from  
19 neighboring tribes to help cover the project area, as it  
20 is fairly large.

21          So my involvement has only been with the one  
22 tribe.

23          COMMISSIONER FIEGEN: Okay. That makes sense.

24          So I know I can go do my own study of the final  
25 map, but right now I haven't had time to do that. So on

1 shadow flicker and sound, is there somebody else I can  
2 ask that will come up and talk about the final map, the  
3 final shadow flicker, the final sound, or is that you?

4 THE WITNESS: That would be somebody else.

5 COMMISSIONER FIEGEN: Okay.

6 I'm going to go back to the crop. And you had a  
7 formula -- now I can't remember if it was your testimony.  
8 There was a formula that Crowned Ridge uses for crop  
9 damages. Does that also include compaction? Is  
10 compaction part of that?

11 THE WITNESS: Yes. It's all affected areas,  
12 whether that be from our pre-development or during the  
13 construction process where we may compact the ground and  
14 ultimately hurt the yield on that piece of property.

15 COMMISSIONER FIEGEN: So it actually may be not  
16 only one year but two years or three years until that  
17 compaction is aerated and --

18 THE WITNESS: Depending on the level of  
19 compaction from, say, a crane, yeah, there's a  
20 possibility that there could be multiple years.

21 COMMISSIONER FIEGEN: I also saw in this  
22 Application or testimony somewhere about 240 days. Can  
23 you enlighten me on how you settle and what the 240 days  
24 were when you make a settlement on crop damage, if you  
25 have up to 240 days and is that because of the growing

1 season? Because a lot of times people wouldn't know that  
2 until -- enlighten me on what the 240 days reference was.

3 THE WITNESS: So the 240 days references the  
4 amount of time to where the impacted area would be  
5 calculated and a mutual agreement brought forth that  
6 shows this is the impacted area. That's a general time  
7 allotted to us as the operator to fix that issue or to  
8 cover that issue. But there's nothing stopping, you  
9 know, the landowner from having an assessment done on  
10 their own to expedite that process for us, you know, to  
11 meet ultimately the executed crop compensation form.

12 COMMISSIONER FIEGEN: Okay. Thank you.

13 I think I'll ask about setbacks with your sound  
14 and shadow flicker expert.

15 I believe -- I don't think this is confidential,  
16 but if it is, you can just tell me. On page 12 of 15 on  
17 that same testimony from January 29, it has the benefits  
18 of the wind facility. That wasn't confidential, was it?  
19 I don't think it is. I don't have it marked as  
20 confidential. January 29, 2019, on the back page, page  
21 12 of 15, it has the benefits of the wind facility  
22 listed.

23 THE WITNESS: Sure.

24 COMMISSIONER FIEGEN: So No. 7 on line 16, it  
25 has land lease payments to landowners of approximately 40

1 million. Is that for like a 25-year life of the project?  
2 Is that what it looks like?

3 THE WITNESS: Yes, ma'am.

4 COMMISSIONER FIEGEN: And 130 wind turbines?

5 THE WITNESS: Yes, ma'am.

6 COMMISSIONER FIEGEN: Okay. Thank you. That's  
7 my last question.

8 Thanks.

9 (Discussion off the record.)

10 MS. CREMER: Let's reconvene at 5:25.

11 (A short recess is taken.)

12 MS. CREMER: Let's go back on the record and we  
13 would be at Chairman Hanson.

14 CHAIRMAN HANSON: Are you ready?

15 THE WITNESS: Yes, sir.

16 CHAIRMAN HANSON: I don't have any questions for  
17 you.

18 MS. CREMER: You get the gold star today.

19 COMMISSIONER NELSON: Let's give Chairman Hanson  
20 a break more often.

21 I do have a couple.

22 THE WITNESS: Sure.

23 COMMISSIONER NELSON: Would it be correct that,  
24 in choosing to drop turbine No. 79, that you have  
25 eliminated the turbine closest to Intervenor Lynch's



1 property?

2 THE WITNESS: That's correct.

3 COMMISSIONER NELSON: And would it be true that  
4 by dropping turbine 67 and 68, you dropped the two  
5 turbines closest to Intervenor Christenson's property?

6 THE WITNESS: That's correct.

7 COMMISSIONER NELSON: Thank you.

8 I want to go back to the conversation you had  
9 with Commissioner Fiegen regarding the alternate sites.  
10 And I just want to make sure that my math is correct, my  
11 mental math.

12 As I counted, you have dropped 10 turbines. You  
13 had 16 alternate turbines. And so by replacing those 10,  
14 you end up with the six alternate sites left that you  
15 referred to; is that correct?

16 THE WITNESS: So my math that I used was that we  
17 are electing to drop 17 primaries and we're electing to  
18 take into consideration -- and those seven that I just  
19 first note is that for the noise and shadow flicker  
20 exceedances or expired leases. Then we had these seven  
21 turbines which I refer to as the Hessler seven, which put  
22 us at 14. We started at 20. And that's where I got the  
23 6.

24 Now I would like to kind of clarify that  
25 statement that when we are electing to use all 10

1 turbines as primaries, we are in turn calling the former  
2 primary location as an alternate. So we would ultimately  
3 have more to consider, but from the way that the question  
4 was asked, I answered it as in like there's six that  
5 really weren't accounted for based off of our  
6 conversations.

7 COMMISSIONER NELSON: Okay. So that leads me to  
8 maybe a bit of a concern. So I'm understanding that even  
9 though you've said you've dropped these turbines, you've  
10 really now converted them to alternate sites and they  
11 could, in fact, come back to life; is that correct?

12 THE WITNESS: For the turbines that we are doing  
13 for the Hessler seven, those are the ones that we are  
14 flip-flopping. For the ones that we have agreed to for  
15 other reasons, for the expired leases, one of those being  
16 turbine 79, Alt 19, Alt 20, those are what we're  
17 considering as dropped. I'm sorry it's murky but --

18 COMMISSIONER NELSON: Yeah. And I'm glad I  
19 asked that question. Because I thought all of the  
20 dropped ones were in the same dead, done category but I'm  
21 understanding now that's not the case. So I need to get  
22 different colored markings on my map also then.

23 And you understand, obviously, that makes our  
24 job a little bit more difficult when we thought those  
25 seven might be done and now we're hearing they might be

1 coming back.

2 THE WITNESS: Do you mind if I clarify?

3 COMMISSIONER NELSON: Please do.

4 THE WITNESS: When you say they may be coming  
5 back, we're marking them as an alt, as in, worst-case  
6 scenario, that we cannot consider another turbine  
7 location. We're committing to those seven turbines  
8 being -- the Hessler seven, we're committing to not using  
9 those seven. We'd like to reserve the right of having  
10 just an alternate to consider in the event that something  
11 else was to occur that's unknown to us at this time  
12 during the construction process.

13 COMMISSIONER NELSON: And so it would be my  
14 understanding before you would reinvigorate any of the  
15 Hessler seven, you would go through all the rest of your  
16 designated alternate sites.

17 THE WITNESS: That's correct. Yes, sir.

18 COMMISSIONER NELSON: Okay. That helps. I  
19 appreciate that.

20 So I'm going to go back to this Exhibit A1-M  
21 that has the statement, "The Department of Energy had  
22 considerable issues with turbine placement in the area  
23 and the developer's currently working with the agency to  
24 mitigate their concerns at the site."

25 You've been asked this question several times.

1 I have not heard an answer yet but I just want to make  
2 sure. I want to know what those "considerable issues"  
3 are. My understanding was that you said that Mr. Massey  
4 can answer that question. Is that correct?

5 THE WITNESS: He's better suited to answer that  
6 question. Yes, sir. He can answer the question. Yes,  
7 sir.

8 COMMISSIONER NELSON: Thank you. Because it  
9 says, "We're working with the -- the developer's working  
10 with the agency." So obviously somebody in your outfit  
11 knows the answer to that question.

12 THE WITNESS: That's correct.

13 COMMISSIONER NELSON: So I will just say, if  
14 Mr. Massey doesn't know the answer, you're coming back.

15 THE WITNESS: Okay. Fair enough.

16 COMMISSIONER NELSON: Thank you. No further  
17 questions.

18 COMMISSIONER FIEGEN: May I just clarify the  
19 answer that he gave on the Hessler?

20 MS. CREMER: Yeah.

21 COMMISSIONER FIEGEN: So I think I heard you  
22 right but I don't think I was listening fast enough. So  
23 the Hessler seven, I need to look at all of those now  
24 when I analyze the project as alternates. So I still  
25 need to look at those? Or does this mean you're coming

1 back to the Commission -- you've dropped them. Does it  
2 mean you've dropped them and you'll come back to the  
3 Commission if you need one of those? Or help me  
4 understand.

5 THE WITNESS: Those -- if I had to explain,  
6 those seven turbine locations are the last seven turbines  
7 that we would possibly consider utilizing out of the  
8 entire project. The only reason why we would like to  
9 reserve the right to use them as an alternate is if for  
10 some reason we were constrained and needed to activate  
11 one of those to meet the proposed capacity of the  
12 project. But again, last seven to be considered.

13 COMMISSIONER FIEGEN: Okay. So as a  
14 Commissioner, I need to look at those when I look at this  
15 Application, and I just wanted to make sure. So this is  
16 my bite at the apple this time, not like a couple months  
17 from now if you come back. You're asking me to look at  
18 these alternate sites now as alternates.

19 THE WITNESS: I think through the compliance  
20 period, right, we would be able to determine exactly what  
21 we would be proceeding with and what we would not. Does  
22 that help answer the question? Where we are actually  
23 determining all of the primary turbine locations versus  
24 alternate. And if -- to answer your question, you can  
25 consider those as alternate turbine locations at the

1 time, yes.

2 COMMISSIONER FIEGEN: Thank you.

3 MS. CREMER: Redirect, Crowned Ridge.

4 MR. MURPHY: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. MURPHY:

7 Q. I just have one question, and it's along the lines  
8 of the questioning of the Commission. It's to clarify  
9 the record.

10 If you would turn to the proposed conditions and  
11 Condition 28. And if you need a copy, just let me know.

12 A. Yeah. I think -- oh, no. I've got it right here.

13 Q. And this is Exhibit A61. You're there?

14 A. Yes, sir.

15 Q. Okay. And you've read it? 28?

16 A. Yes.

17 Q. With your recollection of Condition 28, can you  
18 better explain the conditions under which a primary  
19 that's listed there that we would not use and would turn  
20 into an alt would come back and be a primary?

21 A. I'll go ahead and read the entirety of 28. I think  
22 that would be best. "The Applicant agrees to use  
23 alternative turbine locations instead of the following  
24 primary turbine locations: CR 16, CR 19, CR 23, CR 60,  
25 CR 49, CR 67, and CR 68. If during construction at an

1 alternative turbine Applicant determines that the  
2 location is not suitable for a turbine due to  
3 geotechnical, cultural, environmental issues, or other  
4 constructability issues, the Applicant shall file an  
5 affidavit with the Commission setting forth why the  
6 alternative turbine cannot be used and identifying which  
7 primary turbine will be used. If there is a dispute over  
8 the use of a primary turbine, the Applicant and PUC Staff  
9 shall meet and attempt to resolve the dispute within 10  
10 business days of the filing of the affidavit. If the  
11 dispute cannot be resolved within 10 business days, the  
12 Applicant shall file a request for a material deviation  
13 with the Commission."

14 Q. Do you have anything to add to that condition?

15 A. No, I do not.

16 MR. MURPHY: That's all for redirect I have.

17 MS. CREMER: Thank you.

18 Recross only as to Commission questions and  
19 redirect. And it would be Intervenor.

20 MR. GANJE: Thank you.

21 RECROSS-EXAMINATION

22 BY MR. GANJE:

23 Q. Are you prepared to commit to what alternative sites  
24 will be used to move the so-called Hessler turbines  
25 you've agreed to move before the end of this hearing?

1 A. No, sir.

2 Q. Would you please identify for the record the five  
3 turbines that are at risk because of the FAA's concerns  
4 by a number?

5 A. I actually do not have those turbine locations in  
6 front of me, but it's something that I could work to  
7 provide. I could provide additional information on that  
8 moving forward. I just don't have it in front of me  
9 right now.

10 MR. GANJE: I would move that the Commission  
11 order the Applicant to provide those by tomorrow so that  
12 we know -- or start to get a better picture of what the  
13 map is because it's still very much of a moving map.

14 MS. CREMER: So I'd ask Crowned Ridge, can you  
15 get that information tomorrow?

16 THE WITNESS: Yes, ma'am.

17 MS. CREMER: Thank you.

18 MR. GANJE: Excuse me. I'm looking at my notes,  
19 which aren't very legible. It will be a minute.

20 COMMISSIONER FIEGEN: Just a procedural  
21 question.

22 Will Sam, is it Massey -- will he be coming up  
23 also?

24 MR. MURPHY: Yeah.

25 COMMISSIONER FIEGEN: Okay. Because I forgot to



1 ask one question. So I can ask him.

2 MS. CREMER: Yes. I'm sorry. Go ahead.

3 MR. GANJE: I didn't want to interrupt the  
4 Commission.

5 Q. (BY MR. GANJE) I understand from testimony, I think  
6 in response to Commissioner Nelson, that you said that  
7 you were going to eliminate turbines 68 and 69; is that  
8 correct?

9 A. That would be 67 and 68.

10 Q. 67 and 68. But your testimony is unclear about  
11 this, although you did respond to his question.

12 Do I understand that you're still going to keep them  
13 as alternatives? Because this new definition of dropping  
14 does not really mean dropping.

15 A. We are not considering those turbine locations as  
16 primary turbine locations. As I voiced and tried to  
17 explain, as it was a little bit confusing, that we would  
18 like -- because we were taking the steps to optimize the  
19 project and consider alternative locations to optimize  
20 the sound impacts on nonparticipants, we would like to  
21 hold the right to have these locations that we're moving  
22 from as alternates moving forward in the event that we  
23 are constrained and need to utilize one of those  
24 locations.

25 Q. So then they're still viable. You're preserving

1 your right to perhaps, under whatever circumstances you  
2 deem reasonable, declare those sites for turbines;  
3 correct?

4 A. I would like to point to Staff condition -- permit  
5 Condition No. 28 where I think I read through that  
6 extensively and answered your question.

7 Q. Well, you're still reserving the right to use those  
8 turbines; correct?

9 A. We would like the right to use those turbines, if  
10 needed.

11 Q. Well, it's not a like. You've negotiated directly  
12 with the Staff and made that a possible actual condition  
13 of the permit, haven't you?

14 A. We have agreed to use seven alternative turbine  
15 locations in place of those that I noted, and we have  
16 also said that if there is a dispute over the use of a  
17 primary turbine, the Applicant and PUC Staff shall meet  
18 and attempt to resolve the dispute within 10 business  
19 days of filing the affidavit. We'd like the right to be  
20 able to use one of those in the event it's needed.

21 Q. Well, you're reserving the right. It's not a like,  
22 it's a reserve. This condition would give you that  
23 right, don't you agree?

24 A. Can you repeat the question, please?

25 Q. Certainly. This condition would give you that

1 right. Don't you agree?

2 A. I believe it does.

3 Q. I believe one of the honorable Commissioners  
4 mentioned -- or mentioned on the record that he would now  
5 need a different colored map. Will a new updated map be  
6 provided that has all this stuff in it that you've  
7 testified to today?

8 A. I would be happy to file an additional map that  
9 better clarifies what some of those sticky notes were we  
10 were pointing to earlier.

11 MR. GANJE: No further questions.

12 MS. CREMER: Thank you.

13 Staff.

14 MS. EDWARDS: Thank you.

15 RE CROSS-EXAMINATION

16 BY MS. EDWARDS:

17 Q. I'm going to go back, hopefully briefly, to a topic  
18 that Commissioner Fiegen touched on with commercial  
19 operation date.

20 A. Uh-huh.

21 Q. In your experience, how long does it take to build a  
22 wind farm of this relative size?

23 A. I've seen wind farms go up between four and eight  
24 months.

25 Q. Four and eight months. And a transmission line?

1 A. It depends if we're talking about all the  
2 construction happening at once or staggered start. But,  
3 you know, we have seen transmission lines and wind farms  
4 go up in four to eight months.

5 Q. Okay. And if you turn to Exhibit A61, that's the  
6 proposed conditions. If you would --

7 A. Uh-huh.

8 Q. Can you bring up Condition 27?

9 A. Sure.

10 Q. Do you have that in front of you?

11 A. I do.

12 Q. Would you agree that condition 27 necessarily  
13 implicates at least a 30-day cushion? So between when  
14 you are expecting to get a final layout -- or final word  
15 from the FAA, there's going to be at least 30 days after  
16 that; correct? Pursuant to this condition?

17 A. That was a proposed date when we received  
18 determinations back. But ultimately, that would be  
19 needed before we could file our preconstruction  
20 compliance filings.

21 Q. So wouldn't that be putting you end of August for a  
22 start date?

23 A. Yes.

24 Q. So then if it's four to eight months, there's really  
25 no way you can meet the end of December; right?

1 A. Well, it's a goal of ours per our commercial  
2 agreement. We did talk about, in our Application, about  
3 within the first quarter of 2020 if necessary. But  
4 that's -- I believe the question was our proposed  
5 commercial operations date and that's where we are,  
6 December 31.

7 Q. And are you comfortable that you still have an  
8 offtaker for the power if you don't meet that date?

9 A. It's something that would have to be handled by our  
10 commercial team, it would be part of several  
11 conversations, but again, that's our goal.

12 MS. EDWARDS: Thank you. No further questions.

13 MS. CREMER: Does that prompt anything from  
14 Commissioners?

15 If not, final redirect?

16 MR. MURPHY: No. No further questions from  
17 Crowned Ridge.

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

19 (The witness is excused.)

20 MS. CREMER: Call your next witness.

21 MR. MURPHY: Call Sam Massey.

22 MS. CREMER: And I would just remind you that  
23 you're under oath. You were sworn in earlier.

24 THE WITNESS: Yes, I do recall.

25 MS. CREMER: So you may begin.

DIRECT EXAMINATION

1  
2 BY MR. MURPHY:

3 Q. Please state your name, business title, and company  
4 for the record.

5 A. Yes. My name is Sam Massey. My title is director  
6 of renewable development for NextEra Energy Resources.

7 Q. What is your role with Crowned Ridge Wind?

8 A. My role with Crowned Ridge Wind is as a developer  
9 with a specific focus on our commercial opportunities and  
10 commercial agreements as well as liaison to senior  
11 management for major decisions.

12 Q. Please provide a short overview of your education  
13 and experience.

14 A. So I started working with NextEra in 2015 on our  
15 small scale solar team. I moved to our utility scale  
16 renewable development team in 2016. Prior to joining  
17 NextEra, I was in the U.S. Navy for 10 years, and I  
18 received a bachelor's from the U.S. Naval Academy and a  
19 B.A. from MIT.

20 Q. Did you file Prefiled Direct Testimony and exhibits  
21 on January 29, 2019, that is marked as A5?

22 A. I did.

23 Q. Do you have any corrections or changes to the  
24 Prefiled Direct Testimony and exhibits?

25 A. I do not.

1 Q. Did you file prefiled Supplemental Testimony on  
2 April 9, 2019, that is marked as A23?

3 A. Yes.

4 Q. Do you have any correction or changes to this  
5 testimony?

6 A. No.

7 Q. Did you file Prefiled Rebuttal Testimony on May 23,  
8 2019, that is marked as A44 and accompanying exhibits  
9 marked as A44-1 and A44-2?

10 A. Yes.

11 MR. MURPHY: Given that the other witness which  
12 was a panel witness already provided a short summary, I'm  
13 not going to ask this witness for a summary of his  
14 testimony, but I would like at this time, given that both  
15 witnesses sponsored A5 and that was an outstanding  
16 exhibit to be moved into evidence, I would like to move  
17 that into evidence at this time.

18 MS. CREMER: And you trailed off there at the  
19 end. You'd like to or you want to?

20 MR. MURPHY: I would most definitely want to.

21 MS. CREMER: To move at this time. Okay.

22 Intervenors.

23 MR. GANJE: To the extent that A5 includes or  
24 refers to or uses any of the reports or testimony of the  
25 party identified as Jay Haley, who is representing or

1 works with a company that did the flicker report and  
2 sound modeling report, I would object on the grounds of  
3 lack of foundation. I would object on the grounds of  
4 hearsay.

5 I would object on the grounds of the fact that  
6 we do not have the testimony of that witness who is one  
7 of the principal witnesses, I believe, of the Applicant  
8 in the records yet. And I plan on challenging that  
9 testimony and, in that regard, do not agree that any of  
10 the testimony and exhibits of A5 would be appropriate to  
11 be admitted or received at this time.

12 There are several reasons beyond that, but I  
13 believe the basis for the objection is hearsay, lack of  
14 foundation. I have questions about their credentials and  
15 the reliability of Mr. Jay Haley, which will be raised  
16 later. But if that evidence gets in through this means,  
17 the backdoor, it would be highly prejudicial to my  
18 client, and in that regard I object.

19 MS. CREMER: Staff.

20 MS. EDWARDS: Staff has no objection.

21 MS. CREMER: I'm going to admit it at this time.  
22 We can always strike parts of it later if you would like.  
23 You know, we would consider it at that time. So at this  
24 time I'm going to admit it.

25 MR. MURPHY: Thank you. The witness is



1 available for cross-examination.

2 MS. CREMER: Thank you.

3 Intervenor.

4 CROSS-EXAMINATION

5 BY MR. GANJE:

6 Q. Can you identify for the record the five turbines  
7 that the Federal Aviation Administration has indicated  
8 are at risk or problematic and subject to their concern  
9 or challenge?

10 A. I cannot.

11 MR. GANJE: Excuse me. I'm going to grab a  
12 couple notes.

13 Q. Could you please indicate for the record who your  
14 employer is?

15 A. My employer is NextEra Energy Resources.

16 Q. Are you an employee of -- okay. You're not an  
17 employee of the Applicant in this proceeding, are you?

18 A. I'm a representative of the Applicant.

19 Q. Right. I understand that. Could you kind of  
20 describe the -- you gave a pretty nice description of  
21 your job, but I don't know what it means -- you do  
22 commercial opportunities for NextEra?

23 A. Sure. I can provide a little bit more clarification  
24 on that. So I'm a developer similar to Mr. Wilhelm. We  
25 have some overlapping responsibilities. I would say my

1 focus is more on a broader area and commercial engagement  
2 with the customers and working internally on approvals  
3 but not necessarily on the day-to-day development of the  
4 project.

5 Q. Okay. Well, then -- well, my clients, the  
6 Intervenors, do not agree with or do not support the  
7 approval of the permit. If there are conditions granted  
8 and if a permit is granted, as a condition of any permit  
9 that may be granted by the Commission under the  
10 Application or as it may be amended including any permit  
11 conditions that may be required, will NextEra and its  
12 successor and interest, if any, unconditionally and  
13 irrevocably guarantee all and any of the terms,  
14 covenants, conditions, agreements, undertakings, and  
15 obligations that may be required to be performed and  
16 observed by the Applicant under any approved siting  
17 permit if granted to construct, operate, and maintain a  
18 facility under this Application?

19 MR. MURPHY: Objection. Objection as to form.  
20 It's compound to me. It's also testimony more than a  
21 question and argument more than a question. I would have  
22 no objection if you could break it down into pieces, but  
23 it's a paragraph.

24 MS. CREMER: I would sustain that objection. It  
25 is a compound question.

1 Q. (BY MR. GANJE) Is NextEra willing to guarantee the  
2 performance of any Permit Application given by this  
3 Commission in this proceeding?

4 MR. MURPHY: Objection. Vague as to guarantee.  
5 I have no idea what that means in that context.

6 MR. GANJE: By way of offer of proof, Madam  
7 Examiner, guarantee and performance is a common term in  
8 the commercial world. This gentleman, part of his duties  
9 are commercial.

10 When one says guaranteed performance, that means  
11 somebody's standing behind the completion and the  
12 operation and the construction of the facility. We have  
13 had testimony here that admitted Crowned Ridge is a  
14 shell. I think it's a very fair question.

15 MR. MURPHY: I don't have any objection with  
16 that explanation. That was very helpful.

17 MS. CREMER: I would agree. I think you defined  
18 what you meant by guarantee.

19 MR. GANJE: Thank you.

20 A. So I think I understand the question. We are  
21 committed to having filed an Application that is  
22 consistent with all the rules and requirements of all the  
23 jurisdictions for the project area, if that was your  
24 question. If not, could you please restate it?

25 Q. Yes. It was -- you're getting close. But see,

1     there's two entities here.  There's the entity that's the  
2     Applicant.  That's Crowned Ridge.  You don't even work  
3     for them.  You work for NextEra.

4             I'm asking if NextEra as an entity, separate  
5     business, if they or it will guarantee the performance of  
6     the obligations that may be determined by this honorable  
7     Commission should it grant a permit?

8     A.     So the project will be committed to agreeing to the  
9     conditions imposed by the Commission.

10            And to be clear, Crowned Ridge Wind is a wholly  
11     owned and direct affiliate of NextEra Energy Resources.  
12     So there is a relationship there.

13            I'm not sure if I answered your question.  I'm not  
14     trying to be --

15     Q.     I'm sorry.  You didn't.  And I'm not trying to make  
16     it a tricky question.

17     A.     Sure.

18     Q.     Because I'm just saying we've got an entity that has  
19     money, NextEra, and we've got one that don't, Crowned  
20     Ridge.  And I don't want to see a project half done, you  
21     know, for a lot of reasons that aren't important here,  
22     perhaps.  But I don't want to see a project incomplete or  
23     a project that isn't maintained or a project that isn't  
24     capitalized.

25            So I'm simply asking, will NextEra, the corporation

1 or LLC -- I'm not sure which it is, but that isn't the  
2 point. The point is, will it guarantee the performance  
3 of all aspects of the permit conditions and the permit if  
4 it's granted by this honorable Commission?

5 A. So, yes, the Applicant is guaranteeing compliance --

6 Q. Not the Applicant. I don't mean to be rude. But  
7 the Applicant is Crowned Ridge. NextEra is the big  
8 cheese. That's a big company. I'm asking if it will  
9 guarantee the performance of whatever terms and  
10 conditions the honorable Commission may consider should  
11 it grant a permit?

12 A. NextEra Energy Resources isn't a party to this.

13 Q. Okay. So what's your answer?

14 A. No.

15 (Pause.)

16 MR. MURPHY: Is this a staring contest, or do we  
17 have another question?

18 MR. GANJE: I don't have good enough sight to  
19 stare.

20 I have no further questions for this witness.

21 MS. CREMER: Thank you.

22 Staff.

23 MS. EDWARDS: Thank you.

24 While I ask my first question, I'd ask  
25 Mr. Paulson to hand the witness Exhibit S2 off the stand.

1 If you would, please. I knew I'd get him up here  
2 somehow.

3 COMMISSIONER FIEGEN: He's in the record.

4 MS. EDWARDS: Close to the witness stand.

5 COMMISSIONER FIEGEN: That's Mr. Eric Paulson.  
6 Working for Staff.

7 MS. EDWARDS: Not the confidential, but the  
8 public. The big one.

9 CROSS-EXAMINATION

10 BY MS. EDWARDS:

11 Q. Can you turn to page 439 of that document? It's 439  
12 of 626.

13 A. Yes. One second.

14 MR. MIKAL HANSON: What's the exhibit number?

15 MS. EDWARDS: I'm sorry. Exhibit S2, public  
16 version.

17 A. Okay. I'm on page 439 of 626.

18 Q. Do you see Staff Data Request 2-35?

19 A. I do.

20 Q. And in that Data Request, were you responsible at  
21 all for that? Or can you speak to it?

22 A. I can speak to it, yes.

23 Q. Now in that Data Request, in your response, isn't it  
24 true that you stated that the Department of Energy had,  
25 "considerable issues" with turbine placement?

1 A. I believe so. Can I just take a second to reread  
2 this quickly?

3 Q. Sure.

4 A. Thanks.

5 (Witness examines document.)

6 A. Yes. That's correct.

7 Q. So how do we reconcile that with the testimony we  
8 just heard that there were five issues?

9 A. So at the time that this correspondence was  
10 performed between -- between the project and the  
11 Department of Energy -- maybe it will be helpful -- can I  
12 give you a little bit more clarification on the entire  
13 process here?

14 Q. Please do.

15 A. So what we do when we site a wind project is we  
16 perform electromagnetic interference studies basically to  
17 make sure that the project won't interfere with any  
18 existing uses of the electromagnetic spectrum of energy.

19 So that could be cell towers, anyone licensed or  
20 registered with the FCC. Those are sort of the  
21 nonfederal bucket.

22 What we're referring to here is what we would call a  
23 federal beam path study. So what we do -- this is  
24 customary on all of our projects, and probably every  
25 other wind developer as well -- is we reach out to the

1 federal agencies, typically the National Transportation  
2 Information Administration. They're sort of the  
3 clearinghouse for that, as I understand it, and they work  
4 with the other federal agencies like Department of  
5 Agriculture, Department of Commerce, and, for example, in  
6 this case the Department of Energy.

7 So we provided them with an array at this time. I  
8 believe this was in August 2018. And at the time, the  
9 Department of Energy expressed that they had some issues.

10 I would like to say for the record that the National  
11 Transportation Information Administration did say that  
12 they were -- I believe they said no harmful interference  
13 anticipated. But, regardless of that, we did work with  
14 the DOE. We reestablished our turbine array with the  
15 expectation that there shouldn't be anymore interference  
16 with the DOE beam paths that they stated.

17 What we're doing now, I think as Mr. Wilhelm  
18 expressed, is we're waiting to get our finalized  
19 determinations of no hazard from the Federal Aviation  
20 Administration to make sure that we can actually build on  
21 those locations, and then we're going to return to the  
22 DOE and confirm with them that we've mitigated those  
23 considerable issues that they identified originally.

24 Q. When we talk about Department of Energy, is this a  
25 WAPA concern, Western Area Power Administration?



1 A. Not to my knowledge.

2 Q. To your knowledge, have any of your consultants  
3 reviewed the beam paths that DOE's concerned about?

4 A. So we perform those engagements, I believe,  
5 internally through our own analytics team engaging  
6 directly with the Federal Government.

7 Q. Do you expect there to be any issues as a result of  
8 that review?

9 A. No.

10 Q. Did you listen to any of the hearing last week, last  
11 Thursday?

12 A. A brief portion of it.

13 Q. Okay. There was a mention of railroads. Can you  
14 update us on the process or where you're at on getting  
15 permit crossings for the railroad?

16 A. Yes.

17 Q. From the railroad.

18 A. Right. So our consultant is currently working with  
19 BNSF, the railroad operator owner in question for this  
20 project. And I'll give a little bit of color on how that  
21 process generally works and then where we are in that  
22 process for this specific project.

23 Generally, we work with an outside consultant who  
24 dialogues with the railroad operator. In BNSF's case,  
25 we've worked with them many, many times at different

1 project locations across the country. I would say that  
2 it is a very clearcut established process that we  
3 generally view as important and critical to the project  
4 but, based on our experience, low risk because it's done  
5 so often, keeping in mind that the railroad companies are  
6 pretty much used to being approached by utilities, gas  
7 operators, anyone looking to cross their infrastructure.

8 And so typically, BNSF will engage with our  
9 consultant. They'll talk about the different technical  
10 and legal requirements they expect from that crossing  
11 engagement. And they have an application. They provide  
12 it to us. It's very cut and dry. We respond. Generally  
13 agree or have some discussions about sort of a  
14 compromise. And then we finalize the crossing agreement.  
15 And that's how we get, you know, the right to cross their  
16 infrastructure.

17 In the case of Crowned Ridge, I understand that  
18 we've reached out to them. We haven't actually finalized  
19 and submitted our Application to them, but we will be  
20 doing that shortly. I believe it's in the next couple of  
21 weeks sometime. Sometime in June. And we expect to have  
22 that complete sometime this summer.

23 Q. Thank you.

24 You mentioned BNSF. Is that the only rail line that  
25 you will potentially cross?

1 A. To my knowledge, yes.

2 Q. Okay. Thank you.

3 And the previous witness testified a little bit  
4 about construction timelines. How confident are you that  
5 this project will be fully operational by the end of this  
6 year?

7 A. Very confident. I would reiterate what Mr. Wilhelm  
8 said. This is a very typical project schedule for us,  
9 both for the transmission line as well as the project  
10 size.

11 Many times there could be a wide variance in the  
12 amount of time it takes. Typically, that's not  
13 necessarily, you know, because of the project itself.  
14 It's how much resource we dedicate to that project.

15 And, you know, we looked at this project and  
16 balanced it with the other projects in our portfolio for  
17 2019 commercial operation. And the company is fully  
18 aligned on dedicating the resources necessary to get  
19 Crowned Ridge done in time for our scheduled December 31,  
20 2019 commercial operation date.

21 Q. Do you know if that date's flexible at all, to your  
22 knowledge? And if that's confidential --

23 A. Do you mean flexible from a commercial perspective?

24 Q. Right. Yes.

25 A. It is confidential. I will say that both parties

1 are very committed towards getting that complete by the  
2 end of 2019. I don't speak directly for our customer  
3 but, you know, I think they would work with us were it to  
4 potentially move, but I think we're both very focused on  
5 getting that done by the COD target date.

6 MS. EDWARDS: No further questions. Thank you.

7 MS. CREMER: Thank you.

8 Chairman Hanson.

9 CHAIRMAN HANSON: Thank you.

10 Good afternoon, Mr. -- good evening, Mr. Massey.

11 THE WITNESS: Good evening.

12 CHAIRMAN HANSON: What type and amounts of  
13 insurance do you plan to carry?

14 THE WITNESS: So we are contractually required  
15 to carry a minimum amount of insurance. I do not know  
16 the dollar value off the top of my head. Typically, it's  
17 definitely in the seven figure range. I couldn't tell  
18 you the precise number right now.

19 In excess of that, we also have access to  
20 multiple levels of umbrella insurance, either through the  
21 project or through our parent.

22 CHAIRMAN HANSON: Would you get those numbers  
23 for us and information for us, please?

24 THE WITNESS: Yes.

25 CHAIRMAN HANSON: And the types of insurance

1 coverage?

2 THE WITNESS: Yes.

3 CHAIRMAN HANSON: Do you carry these types of  
4 insurance on your existing wind farms?

5 THE WITNESS: Yes.

6 CHAIRMAN HANSON: Thank you.

7 THE WITNESS: You're welcome.

8 COMMISSIONER NELSON: I apologize to all for  
9 belaboring this, but I'm still not understanding your  
10 answers regarding the considerable issues the Department  
11 of Energy raised.

12 Can you very specifically tell me what the  
13 issues were the Department of Energy has with the  
14 project?

15 THE WITNESS: So there were specific beam paths  
16 that they identified.

17 COMMISSIONER NELSON: Okay. Let me stop you  
18 there. Beam paths would be something that you would deal  
19 with NTIA on; correct?

20 THE WITNESS: My understanding is NTIA is sort  
21 of the clearinghouse here with the different federal  
22 agencies.

23 COMMISSIONER NELSON: Correct. So if you're  
24 dealing with NTIA on that issue, how does DOE enter into  
25 that?

1           THE WITNESS:   Being one of the federal agencies  
2   that has a nonregistered beam emitting facility, that's  
3   how our interaction starts with the NTIA.

4           COMMISSIONER NELSON:   And so what particular  
5   beam paths does DOE have that they have concerns with?

6           THE WITNESS:   I don't know specifically which  
7   beam paths.   What I understand is that there were some  
8   that were -- the turbine configuration we had at the time  
9   did present some interference that the DOE had concerns  
10   about.   We've since moved those turbine locations to make  
11   sure that they are not interfering.

12          COMMISSIONER NELSON:   And you just haven't heard  
13   back from DOE on a final approval?

14          THE WITNESS:   We're waiting --

15          COMMISSIONER NELSON:   Is that correct?

16          THE WITNESS:   We're waiting to get the finalized  
17   determinations of no hazard from the FAA so that -- you  
18   know, rather than having to go through this twice, we can  
19   get those in hand and then go back to the DOE and say,  
20   Okay, this is what we've got.   We want to confirm with  
21   you that this satisfies your concerns.

22          COMMISSIONER NELSON:   But your testimony is that  
23   you've moved the ones that they indicated were  
24   problematic?

25          THE WITNESS:   To my understanding, that's

1 correct.

2 COMMISSIONER NELSON: Thank you. That's all the  
3 questions I've got.

4 COMMISSIONER FIEGEN: Thank you. I don't really  
5 have a question for you, but I'm going to ask you anyway.

6 THE WITNESS: Okay.

7 COMMISSIONER FIEGEN: Because your counsel  
8 talked a little bit when Mr. Wilhelm was up. And it was  
9 about the easements that the Commission asked you guys to  
10 secure last Thursday night, Friday. And your counsel  
11 said back to someone that we did not request those or  
12 whatever.

13 What I thought what was said during that  
14 discussion earlier -- man, was that earlier today, I  
15 guess, it wasn't even yesterday -- earlier today, that  
16 that is confidential. Intervenors have not signed a  
17 confidential agreement, but the Commission could view  
18 those?

19 THE WITNESS: That is my understanding.  
20 Correct.

21 COMMISSIONER FIEGEN: So we could ask for those.  
22 And so I'm actually suggesting that we have the  
23 opportunity to make sure that we get to look at those  
24 before we make a determination.

25 THE WITNESS: Okay.

1 MS. CREMER: Was that it?

2 COMMISSIONER FIEGEN: Yes.

3 MS. CREMER: Redirect, Crowned Ridge?

4 MR. MURPHY: No redirect.

5 MS. CREMER: Okay. That would take us to  
6 recross but that would only be as to Commission  
7 questions.

8 Intervenors?

9 MR. GANJE: No questions.

10 MS. CREMER: Thank you.

11 Staff.

12 MS. EDWARDS: I just have one question, and I  
13 didn't print off Confidential S2 because there was a lot  
14 of information I didn't want to leave hanging out of  
15 there. So Mr. Kearney is going to give you his computer  
16 so you can look at S2.

17 RECROSS-EXAMINATION

18 BY MS. EDWARDS:

19 Q. This is Confidential S2. And when you have that in  
20 front of you, can you turn to page --

21 MR. MURPHY: Just a question of clarification.  
22 Is this going to go to confidential information? This  
23 question? If it is, I have no issue with it. I just  
24 want to make sure that those who have not signed an NDA  
25 are not in the room and that we go into confidential



1 session.

2 MS. EDWARDS: I am going to ask him, and you can  
3 make the decision whether or not it calls for  
4 confidential. It might. On page 391 it discusses what  
5 types of insurance the project will carry, and that is  
6 listed in the PPA. The PPA is confidential. So that's  
7 up to you.

8 MR. MURPHY: So, Sam, that's your call, whether  
9 you believe it's highly confidential and we should go  
10 into a closed session.

11 (The witness is excused.)

12 THE WITNESS: I mean, I'm happy to answer  
13 questions up to the point where it would be confidential.

14 Q. (BY MS. EDWARDS) Right. I don't intend to go into  
15 figures. I'm just -- in response to a question  
16 Commissioner Hanson had as to what type of insurance you  
17 carry, I believe it's laid out in that portion of the  
18 PPA; correct?

19 A. It would appear so, yeah. It's been a while since  
20 I've looked through this portion.

21 Q. Can you turn to article, I believe, 16 of the PPA?

22 A. Okay.

23 Q. And would you agree that that lays out the insurance  
24 coverage that the project will have?

25 A. Yes. That's correct.

1 Q. Okay. I don't think I'll go into it any further.  
2 Thank you.

3 A. You're welcome.

4 MS. CREMER: Did you have a question, Gary?

5 CHAIRMAN HANSON: No. I was thanking her.

6 MS. EDWARDS: I have no further questions.

7 MS. CREMER: Thank you.

8 Final redirect, Crowned Ridge.

9 MR. MURPHY: No redirect.

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

11 We'll quick talk about it here. I think we can  
12 call one more witness for at least direct. Get them  
13 started.

14 MR. MURPHY: I'm happy -- we're happy to stay as  
15 long as or as short as you and the Commission want us to  
16 be here.

17 MS. CREMER: Well, you say that now.

18 MR. MURPHY: We have been prewarned.

19 MS. CREMER: Yes, you were. So please call your  
20 next witness.

21 MR. MURPHY: I call Mark Thompson.

22 (The oath is administered by the court reporter.)

23 MS. CREMER: I'm sorry. Please proceed.

24 MR. MURPHY: Thank you.

25

DIRECT EXAMINATION

1  
2 BY MR. MURPHY:

3 Q. Please state your name, business title, and company  
4 for the record.

5 A. My name is Mark Thompson. I'm a manager of wind  
6 engineering for NextEra Energy Resource.

7 Q. What is your role with Crowned Ridge Wind?

8 A. I manage all the engineering resources required to  
9 develop projects such as Crowned Wind wind.

10 Q. Please provide a short overview of your education  
11 and experience.

12 A. I have a Bachelor's of Science degree in electrical  
13 engineering that was issued by the University of  
14 Technology, Kingston, Jamaica. I have a master's in  
15 business administration that was issued by Nova  
16 Southeastern University in Florida. I'm also a certified  
17 Six Sigma Black Belt. I have 17 years experience in  
18 engineering, engineering design of transmission lines,  
19 substations, wind farms, with both Florida Power & Light  
20 and NextEra Energy Resource.

21 Q. Did you file Prefiled Direct Testimony and exhibits  
22 on January 29, 2019, that is marked as A4?

23 A. Yes.

24 Q. Do you have any changes or corrections to the  
25 prefiled testimony and exhibits?

1 A. No.

2 Q. Did you file prefiled Supplemental Testimony on  
3 April 9, 2019, that is marked as A21?

4 A. Yes.

5 Q. Do you have any changes or corrections to this  
6 testimony?

7 A. No.

8 Q. Did you file Prefiled Rebuttal Testimony on May 23,  
9 2019, that is marked as A37 and accompanying exhibits  
10 marked as A37-1 Confidential, A37-2, and A37-3?

11 A. Yes.

12 Q. Do you have any changes or corrections to this  
13 testimony or the exhibits?

14 A. No.

15 Q. Please provide a short summary of your prefiled  
16 testimony.

17 A. So my prefiled testimony, I wanted to highlight that  
18 affiliates -- NextEra affiliates such as Crowned Ridge  
19 Wind has extensive experience in the construction,  
20 operation, and maintenance of wind facilities all over  
21 the United States.

22 The design for Crowned Wind Ridge [sic] -- I'm  
23 sorry. The design for Crowned Ridge Wind does take into  
24 consideration the permit requirements and also the  
25 geotechnical requirements needed to build the project.

1           We ensure that we are conforming to the NESC  
2           standard for safety. We are also making sure that  
3           erosion and contamination will be eliminated by having  
4           site specific SPCC plan and SWIF plan.

5           During the construction process, we will ensure that  
6           NextEra affiliates will be managing the site. And by  
7           managing the site, we mean that all of the contractors  
8           hired to build the site will have to conform to the  
9           requirements needed to meet the PUC permit.

10          That individual would also ensure that any  
11          complaints from landowners or persons affected by the  
12          project will be effectively dealt with.

13          During the operation of the site, the site will be  
14          monitored on a 24-hour basis. We will use a SCADA system  
15          to make sure that the wind farm is operated safely and  
16          effectively at all times.

17          Q.    Thank you.

18               MR. MURPHY:   With that, I offer the witness for  
19               cross-examination.

20               MS. CREMER:   Thank you.

21               Intervenors.

22               MR. GANJE:    Thank you.

23                               CROSS-EXAMINATION

24               BY MR. GANJE:

25          Q.    Mr. Thompson, in a response to Staff's second Data

1 Request, Question 2-7, the Applicant indicated that  
2 additional geotechnical testing was completed. Are those  
3 results of the testing now available and in this  
4 Application record?

5 A. The testing -- they are completed. However, I'm  
6 unable to say whether or not the completed file was  
7 updated with the Commission.

8 Q. Does the Applicant currently have a national  
9 pollutant discharge elimination system permit?

10 A. I'm sorry. Could you repeat the question?

11 Q. Certainly. Does the Applicant in this proceeding  
12 have its national pollutant discharge elimination system  
13 general permit in place?

14 A. I would have to refer to one of my colleagues on the  
15 environmental side to say whether or not the discharge  
16 permit is -- have been applied for and they have that in  
17 hand.

18 Q. You don't know?

19 A. No. I don't know.

20 Q. At this date, has the Applicant received all  
21 required permits from the Department of Transportation  
22 that it would need for this project?

23 A. As it pertains to transportation of equipment, that  
24 is something that the engineering, procurement, and  
25 construction group applies for, and to my knowledge,

1     that's something that they will have to apply for and  
2     they will have in hand before they start transporting  
3     major equipment and material for construction.

4     Q.    So you don't know?

5     A.    No.   I don't know.

6     Q.    Will the Applicant agree in this Application to  
7     comply with the standard of best available technology for  
8     all acts in the construction and operation of this  
9     facility?

10    A.    Are you referring to reporting of such accident that  
11    might occur during the construction phase of the project?

12    Q.    No.   What I'm referring to is a broader question  
13    than that.

14           What I'm asking is -- well, first of all, I'll  
15    define best available technology.   That will help you, I  
16    think.   Okay.

17           Best available technology means the most stringent  
18    pollution controls and all acts regarding construction of  
19    the facility and operations of the facility technologies  
20    that are available.

21           So I'm asking if the Applicant will agree to  
22    maintain that standard for this project?

23    A.    During the construction process and operation  
24    process, the project usually -- not usually -- they do  
25    put together their SPCC plan that is specific to the

1 site. That plan usually govern pollutants and how they  
2 can mitigate them. So I said yes, if that's something  
3 that's in those plan, yes, they will abide by it.

4 Q. Well, what I'm asking for is a commitment that's  
5 broader than that. I'm asking whether this Applicant  
6 will agree to use the standard of best available  
7 technology regarding all aspects of construction of the  
8 facility and operations of the facility.

9 MR. MURPHY: Objection. Even though I agree you  
10 tried to define it, I'm fairly certain that the witness  
11 does not understand the definition of best available  
12 technology in the context of this question.

13 MS. CREMER: I was just going to ask you, that's  
14 not a term of art that I'm familiar with either, best  
15 available technology. And I just -- do you have  
16 someplace that's defined or that you could point him to  
17 as to what is -- or is that just something generic, best  
18 available technology?

19 MR. GANJE: It is indeed generic. And the  
20 question is fair in the regard that this honorable  
21 witness is coming here as a technical person. He is  
22 their wind expert. He is an engineer. He is  
23 knowledgeable about these matters. He's already referred  
24 to one particular form of technology compliance in his  
25 statement and partial answer to my question.



1           So I believe it's relevant to the Commission  
2 understanding what type of a commitment this Applicant  
3 will put on the table, and I'm asking him if he'll commit  
4 to that.

5           MR. MURPHY: So my objection goes deeper then.

6           I think the opposing counsel has clearly stated  
7 this is a vague and unclear standard. And this is an  
8 engineering expert. He deals with concrete understanding  
9 of what he's committing to, and the opposing counsel is  
10 asking him to commit to a vague standard, and I would  
11 object to that.

12          MS. CREMER: And I'm going to sustain.

13          CHAIRMAN HANSON: One moment, please.

14          MR. GANJE: My apologies, sir.

15          CHAIRMAN HANSON: Cheri, would you repeat that  
16 question?

17          (Reporter reads back the last question.)

18          CHAIRMAN HANSON: Thank you. Best available  
19 technology is a phrase that I'm very familiar with and  
20 have worked with for years.

21          Do you understand what --

22          THE WITNESS: Yes.

23          CHAIRMAN HANSON: Okay. Thank you.

24          I would allow him to answer.

25          COMMISSIONER FIEGEN: And I support Ms. Cremer's

1 ruling.

2 COMMISSIONER NELSON: Well, yeah, I'm going to  
3 support Ms. Cremer's ruling also. I think it's a very  
4 fair question, but for Mr. Wilhelm, not for this witness.  
5 I mean, that's a question for the top guy, not the  
6 engineer guy.

7 CHAIRMAN HANSON: Well, excuse me. If we can  
8 dialogue a little bit. He's represented as an expert  
9 witness. He's an engineer. He's a sixth degree black  
10 belt.

11 THE WITNESS: Yeah. Six Sigma Black Belt.  
12 Statistical analysis.

13 CHAIRMAN HANSON: Okay. And certainly, if he  
14 does not have that knowledge, he just says I don't have  
15 that knowledge. But he knows what best available  
16 technology is. He knows what he knows. And all he's got  
17 to do is say, Hey, I don't know.

18 I see no one's changing their position. I guess  
19 you don't have to answer.

20 In shotokan or taekwondo?

21 THE WITNESS: I don't know which one it is.  
22 It's just statistical analysis.

23 CHAIRMAN HANSON: Off the record.

24 (Discussion off the record.)

25 MS. CREMER: You can continue, Mr. Ganje.

1 MR. GANJE: Thank you.

2 Q. (BY MR. GANJE) Sir, will this Applicant agree to  
3 commit to best management practices for all aspects of  
4 the construction and operation of this facility if this  
5 honorable Commission grants a permit with conditions?

6 A. NextEra Energy's philosophy is we will always do the  
7 right thing. We are the leader in the industry for the  
8 mere fact that we are always seeking better ways and the  
9 best ways to do things.

10 As I know today, we will conform to that need to use  
11 the best practices that we know of and the best  
12 technology that we know of to build and design this  
13 project.

14 Q. My question is based on a commonly known phrase  
15 called best management practices. You're familiar with  
16 that?

17 A. Yes.

18 Q. So my next question is, is the Applicant prepared to  
19 commit to use best management practices for all aspects  
20 regarding the construction and operation of this facility  
21 if a permit is granted?

22 A. If we analyze the best management practices that is  
23 available to us and we deem it truly best practice, yes,  
24 we will.

25 MR. GANJE: No further questions.

1 MS. CREMER: Thank you.

2 Staff.

3 CROSS-EXAMINATION

4 BY MS. EDWARDS:

5 Q. Following up on some of Mr. Ganje's questions, you  
6 stated that the geotech. work has been completed for the  
7 project; correct?

8 A. Yes.

9 Q. Has the project identified any locations that may  
10 not be suitable for wind turbines as a result of that  
11 data?

12 A. Currently, we have not identified any locations that  
13 were originally marked as suitable for turbines, the  
14 geotechnical information did not eliminate those  
15 locations.

16 Q. Is the remaining geotech. work needed for any of the  
17 alternative sites that we discussed today?

18 A. No. We usually include our alternate sites in the  
19 overall geotechnical work that we do.

20 Q. Thank you.

21 In your Supplemental Testimony, at the very last  
22 page, page 4 of 4, you discussed MISO emergency events.  
23 Do you recall that?

24 A. Yes, I do.

25 Q. And you stated that the turbines are being equipped

1 with extreme cold weather packages. Can you explain what  
2 that does?

3 A. So extreme cold weather packages are available both  
4 from a software program -- software and programming  
5 standpoint, meaning you will program your turbines to run  
6 at a certain temperature.

7 That includes different heaters that have to be  
8 activated, different controls that would have to be  
9 activated in order to enable the turbine to run under  
10 certain cold weather conditions.

11 Q. So is there then not a temperature at which the  
12 turbines have to be shut down for their own protection?

13 A. Turbines will shut down at a certain temperature if  
14 icing starts to develop on the blades.

15 Q. Is there a low temperature at which it becomes  
16 dangerous for the turbine to run? Does it have to shut  
17 down not just for icing but because it becomes brittle  
18 or -- in the cold?

19 A. I'm not aware of that condition.

20 Q. Okay. You also mentioned unseasonable hot weather.  
21 Is there a temperature at which the turbines have to be  
22 shut down for heat reasons?

23 A. Not shut down but they would have to be curtailed.  
24 There are certain devices within the turbine that would  
25 not allow them to produce at their optimum at a certain

1 temperature.

2 Q. Do you know what temperature that is?

3 A. That is 34 degrees Fahrenheit for the ones that  
4 we're using. I'm sorry. Celsius. I'm so sorry.

5 Q. I was going to say if you can't operate above 34  
6 degrees Fahrenheit, there's about two months a year  
7 you're out.

8 34 degrees Celsius, so that's -- help me out here --  
9 about 100 degrees Fahrenheit?

10 A. It's about 101, 102.

11 Q. Okay. Thank you.

12 MS. EDWARDS: I don't have any further  
13 questions. Thank you.

14 MS. CREMER: Thank you.

15 Commissioner Nelson.

16 COMMISSIONER NELSON: I'd like to go back to the  
17 questions that were asked about your Supplemental  
18 Testimony by Ms. Edwards in regard to cold weather  
19 operation.

20 It's commonly known that this past January all  
21 of the wind turbines in North Dakota, South Dakota,  
22 Minnesota had to shut down at minus 22. You've talked  
23 about here in your testimony that these turbines will be  
24 equipped with an extreme cold weather package.

25 So my question is, with that package, how cold

1 can it be and they still operate and at what point do  
2 they have to stop operating?

3 THE WITNESS: Efficiency -- the output of the  
4 turbine is what determines how efficient those units are  
5 operating. The cold weather package would allow the  
6 turbine to continue to put out the output expected at  
7 this minus 22 degrees. Without the cold weather package,  
8 you'll find that the output becomes -- is diminished and,  
9 as such, it makes sense to shut the turbines down if it's  
10 not producing the output that's needed. Because it's not  
11 only the real output but it's also the pseudo or var.  
12 output that's required for the efficient operation of the  
13 wind farm. If you don't have both, you're not having an  
14 operation that's efficient enough for you to continue to  
15 operate.

16 Not only that too, at these cold temperatures,  
17 what you'll find is that it affects the conduit or  
18 transmission line that's used to move this power, and if  
19 you can't move the power, it doesn't make sense for you  
20 to generate.

21 COMMISSIONER NELSON: Okay. I'm going to ask  
22 the question again. With the cold weather package, is  
23 there a point at which the turbines would still need to  
24 be shut down because of cold temperatures?

25 THE WITNESS: Yes.

1 COMMISSIONER NELSON: And what is that point?

2 THE WITNESS: I don't have that temperature with  
3 me right now, but I could certainly figure that out.

4 COMMISSIONER NELSON: I would ask that that be  
5 submitted to us. And I'll just tell you the reason. I  
6 mean, it was a big deal for MISO when, all of a sudden,  
7 they lost all the wind generation in these three states  
8 on a very cold night.

9 And I think we, all of us, the folks in your  
10 business and the folks in our business, need to be more  
11 proactive in making sure that any of the new wind farms  
12 that are put together are able to endure through those  
13 kind of events. And so it's a big deal from that  
14 perspective. So I would appreciate any kind of  
15 additional information you could give us.

16 COMMISSIONER FIEGEN: Thank you.

17 Just following up with Commissioner Nelson. Did  
18 I hear you say that the transmission lines can't move  
19 power when it's cold? Or I don't know exactly what I  
20 just heard you say.

21 THE WITNESS: No. Let me clarify that.

22 You could have a scenario where the transmission  
23 line itself is the limiting factor. Meaning if something  
24 happens for the line to go down that moves the power from  
25 the wind farm, then your wind farm is now rendered



1 inoperable, meaning it cannot move the power that it's  
2 generating.

3 And when you have ice storms such as the one  
4 that we had last winter, you'll find that the  
5 transmission lines, whether the infrastructure or other  
6 connecting devices with it, if those go out, then it  
7 hinders the wind farm from generating and moving that  
8 power that's available.

9 COMMISSIONER FIEGEN: We're going to go back to  
10 this really cold weather because, you know, it does  
11 happen here, and it happens in January and February  
12 normally -- I'm not going to say always because I know my  
13 transmission people are maybe listening. Usually when  
14 it's really, really, really, really cold, I guess I --  
15 does ice build up when it's that 30 below? So is that  
16 really a limiting factor when it's cold or is that more  
17 icy conditions are you talking about?

18 Because I was very confused -- I'm still  
19 confused of what you said to Commissioner Nelson.  
20 Because having electricity for our people when it's cold  
21 is very important. And we understand storms, but when  
22 it's really cold and when we look at generation in the  
23 Midwest, a lot of times the wind isn't part of that  
24 generation mix, a lot of times.

25 THE WITNESS: So let me go back a little bit.

1           So the wind farms are typically in areas that  
2   are very windy. And with wind and ice, your weak link  
3   becomes that transmission line. Now with the cold  
4   weather package affixed to your turbines, the turbines  
5   will run. But if you have a failure in the conduit,  
6   meaning the transmission line to move that power, that's  
7   where you have the deficiency, because of wind and ice  
8   affecting your structures and your transmission line.  
9   But your wind farm with the ice -- with the cold weather  
10   package will continually be available.

11           COMMISSIONER FIEGEN: Okay. You're talking  
12   about ice then. You're not talking about necessarily  
13   that cold, cold, cold weather that -- I mean --

14           THE WITNESS: Right.

15           COMMISSIONER FIEGEN: I mean, it could be both  
16   but -- okay.

17           I'm going to go to your Direct Testimony, page 8  
18   of 12. And I certainly appreciate that your Direct  
19   Testimony has numbers. Actually, your rebuttal doesn't  
20   so we're going to struggle through that. But your Direct  
21   Testimony has numbers so we're going to go to page 8 of  
22   12.

23           And it talks about the wind technicians on line  
24   2. Do you see that? The wind technicians are located --  
25   and I'm just going to let you be able to go there.

1 THE WITNESS: I'm sorry. I'm pulling up my --

2 COMMISSIONER FIEGEN: Your Direct Testimony.

3 THE WITNESS: My Direct Testimony.

4 COMMISSIONER FIEGEN: Yeah. Your Direct

5 Testimony, January 29, 2019, Mark Thompson, black belt of  
6 statistics.

7 THE WITNESS: What line?

8 COMMISSIONER FIEGEN: It starts on line 2, the  
9 sentence starts on line 2.

10 THE WITNESS: What page? Sorry.

11 COMMISSIONER FIEGEN: Page 8. I'm sorry. Page  
12 8. And it's even numbered. Not all testimony is  
13 numbered. I think that has to be a new requirement at  
14 the Commission. But this is numbered.

15 So line 2 starts at the wind technicians. Do  
16 you see that?

17 THE WITNESS: Yes.

18 COMMISSIONER FIEGEN: Okay. And, you know, it  
19 talks about -- in that sentence it talks about that  
20 they're located at the building and they constantly  
21 monitor. So does that mean those wind technicians are  
22 there 24 hours a day seven days a week if they constantly  
23 monitor and inspect?

24 THE WITNESS: No. The wind techs are not there  
25 on site 24/7, but they do have direct contact with the

1 central control center so that they're available for  
2 operations or actions in the field as needed.

3 COMMISSIONER FIEGEN: Okay. Because for me that  
4 sentence reads differently, but okay.

5 So on line 10, those 10 wind technicians, are  
6 they all full time located where they work out of this  
7 Crowned Ridge area? They're 10 full time?

8 THE WITNESS: Yes.

9 COMMISSIONER FIEGEN: Let's see. In your  
10 Rebuttal Testimony that you submitted on May 24, I  
11 believe, if I count the pages possibly how you would  
12 count them, maybe page 7 out of 10, your ice shedding  
13 report. And you might not even have to go there. But it  
14 looks like you're willing to submit that to the  
15 Commission, is that correct, in your rebuttal on May 24?  
16 Your ice shedding report?

17 THE WITNESS: I don't recall committing to an  
18 ice shedding report.

19 COMMISSIONER FIEGEN: Okay. Let me go look at  
20 it. I had it up but -- this is the one that's not  
21 numbered, but a lot of them are. But we're going to  
22 change that; right, Chairman Hanson?

23 Okay. I'm going to just guess that it's page 7  
24 of 10. Well, maybe it's 7 -- yeah. 7 of 10. Because  
25 your first page was 1 of 10 so --

1 THE WITNESS: Oh. It's line 17?

2 COMMISSIONER FIEGEN: Yeah. Yes.

3 THE WITNESS: It's --

4 COMMISSIONER FIEGEN: Do not put "yeah" on  
5 there. I said "yes."

6 Go ahead.

7 THE WITNESS: This refers to incidents of blade  
8 throw, blade defragmentation, or blade shed. So it's a  
9 failure of a blade, a wind turbine blade.

10 COMMISSIONER FIEGEN: So blade shed is not ice  
11 shed.

12 THE WITNESS: Right.

13 COMMISSIONER FIEGEN: Oh, okay. I'm just going  
14 to relook at this. So I might ask a question at the end  
15 but I'm done now.

16 Thank you.

17 MS. CREMER: Chairman Hanson.

18 CHAIRMAN HANSON: Thank you.

19 Mr. Thompson.

20 THE WITNESS: Yes, sir.

21 CHAIRMAN HANSON: Your job description and your  
22 responsibilities are pretty heavy. It looks like you  
23 have primary responsibilities in some areas and general  
24 responsibilities in other areas. I'm really tempted to  
25 ask you a question about best available technology. I'm

1 going to skip that, though.

2 You're not planning to have any weak links, are  
3 you?

4 THE WITNESS: We never do. Because when we  
5 build, we expect that whatever we build, we're going to  
6 make sure that it will generate the revenue that we need,  
7 and only if it's built to the best available technology  
8 that we know of, we can meet that requirement to both us  
9 and our customers.

10 CHAIRMAN HANSON: Thank you for your assistance  
11 with that question. Because if you have a severe cold  
12 package on these facilities, you're spending some extra  
13 serious dollars to do that. So I appreciate your  
14 answering that the way you did.

15 I really enjoyed reading your testimony because  
16 there's so much meat and potatoes about the project in  
17 it. I'm curious. On page 2 of your, I believe it's  
18 direct, you state that the project -- it's the bottom  
19 line on page 23. You state that -- you don't need to  
20 turn to it. It says, "The project will primarily utilize  
21 two different turbines."

22 So if you are primarily using those, it kind of  
23 implies to me that you might be using some other ones.

24 THE WITNESS: I can clarify that. We won't be  
25 using any other turbine other than the two listed in the

1 Application, the Permit Application.

2 CHAIRMAN HANSON: Thank you.

3 Regarding the meat and potatoes and the --

4 COMMISSIONER FIEGEN: Could we strike any food  
5 type of analogies?

6 CHAIRMAN HANSON: I'd love to go off the record  
7 right now but I'm not going to.

8 Regarding the information that you provided to  
9 us which provides a tremendous six-course meal of  
10 information that I very much appreciate, was there  
11 assistance that was given to you in preparation of this?  
12 Because I noticed some of it is similar, if not exact, to  
13 testimony that's written by others who have testified.

14 THE WITNESS: Yes. We -- as a team, the team  
15 developing crowned wind -- Crowned Ridge Wind -- get that  
16 right -- we coordinate. From the engineering standpoint,  
17 my role is to make sure that what's in the design meets  
18 the requirement, the permit requirement as stipulated by  
19 the PUC.

20 So you will find some overlap as far as  
21 information in various testimony, and it's because of the  
22 coordination and the collaboration that we do as a team  
23 to develop this Permit Application and the various  
24 testimonies.

25 CHAIRMAN HANSON: In that regard, did you review

1 blueprints and specifications pertaining to what you've  
2 testified here? Do you have a foundation other than  
3 someone telling you this is what we're going to do?

4 THE WITNESS: So typically for the design, as a  
5 manager, I manage the resource, meaning I have engineers  
6 that work for me. But, yes, my role is to make sure  
7 what's been put out, what's been designed, conforms with  
8 the bigger picture.

9 And, yes, so I reviewed the design for the wind  
10 farm as far as the foundations, collection system, the  
11 substation is concerned, and also the documentation that  
12 comes from General Electric as far as what they can  
13 provide. How did that fit with the design? What is it  
14 that we should do to make sure that we're conforming to  
15 the various entities' regulation? So, yes, in that sense  
16 I do review to that level.

17 CHAIRMAN HANSON: Thank you.

18 Commissioner Fiegen asked you some questions on  
19 page 8 regarding employees, and that was one of my  
20 curiosities as well.

21 Are any of these employees being shared with any  
22 of the other Crowned Ridge projects? Are we double  
23 counting any of them?

24 THE WITNESS: Based on my discussion with the  
25 site manager, the regional manager, we're not double



1 counting. The number of personnel that they designate  
2 for this site is based on turbine count. That's how they  
3 determine how many technicians they need. And from what  
4 I have heard and what he has told me, they're not double  
5 counting.

6 CHAIRMAN HANSON: So we're not misleading folks  
7 in that area about the number of employees who are likely  
8 to settle thereby with their families?

9 THE WITNESS: To my knowledge, no. We're not  
10 misleading them.

11 CHAIRMAN HANSON: Thank you, Mr. Thompson, for  
12 your testimony.

13 COMMISSIONER FIEGEN: I just had one follow up.  
14 I forgot to ask you on the turbines and Commissioner  
15 Hanson reminded me of that.

16 Did you select the turbines as NextEra and  
17 decide the two, or did the purchaser of your power weigh  
18 in on your turbine that you decided on?

19 THE WITNESS: No. The selection of the turbines  
20 is purely done by personnel inside NextEra.

21 COMMISSIONER FIEGEN: Okay. Thank you.

22 MS. CREMER: Redirect?

23 MR. MURPHY: No redirect.

24 MS. CREMER: Intervenors, did you have any  
25 further questions?

1 MR. GANJE: No.

2 MS. CREMER: Staff.

3 MS. EDWARDS: No.

4 MS. CREMER: Well, thank you. You may step  
5 down.

6 THE WITNESS: Thank you.

7 (The witness is excused.)

8 MS. CREMER: Everyone looked. It was 7:00.

9 One thing: You need to sign in today and every  
10 day, if you haven't already. Just I was told to remind  
11 everyone of that.

12 Commissioners, what time would you like to begin  
13 tomorrow?

14 CHAIRMAN HANSON: What I'd like to?

15 MS. CREMER: What time should we?

16 CHAIRMAN HANSON: Let's do 9:00 or 8:30 so  
17 people have an opportunity to make phone calls and things  
18 of that nature. That always seems to come up in the  
19 morning.

20 COMMISSIONER FIEGEN: 8:30 sounds good.

21 MS. CREMER: That work for you, Cheri?

22 So is there any other business?

23 MR. GANJE: Yes. I have a couple of  
24 housekeeping things, so to speak. It shouldn't take very  
25 long.

1           I move that the Applicant provide the  
2 geotechnical work that they say is now done to the  
3 Commission and to the Intervenors. I assume that's not  
4 confidential. But, in any event, I move that the  
5 Commission instruct, order, the Applicant to provide that  
6 tomorrow.

7           And my second motion is I move that the  
8 Applicant provide the Commission the land agreements that  
9 were the basis for the Friday map disclosure requirement  
10 that the Applicant gave on late Friday afternoon so that  
11 the Commission -- and if they are confidential, the  
12 Commission itself can review those land agreements and  
13 see if indeed -- if they're in place.

14           I would move on both instances that the  
15 Commission require the Applicant to provide them by  
16 tomorrow.

17           MS. CREMER: So I would ask the Commissioners,  
18 do you have a need for the geotech. information?

19           CHAIRMAN HANSON: Is that something that you are  
20 capable of providing?

21           MR. MURPHY: I worked on a project in Ontario  
22 where we had to review the geotech., and I have not  
23 reviewed it here. One, it's confidential, it's highly  
24 confidential information. Two, it's probably 3 or 400  
25 pages long.

1           If the Commission desired to know the results or  
2     some conclusions that came out of that, I could go back  
3     to the team and see if that's easily attainable. But I  
4     would highly doubt the Commission wants the whole  
5     geotech. report, and it would be confidential.

6           CHAIRMAN HANSON: You said it's how many pages?

7           MR. MURPHY: The one I reviewed, and this was a  
8     transmission line, I think it was 3, 400 pages --

9           CHAIRMAN HANSON: Three or 400?

10          MR. MURPHY: Yes.

11          CHAIRMAN HANSON: You're tapering off.

12          MR. MURPHY: I'm sorry.

13          CHAIRMAN HANSON: Thanks. But there is a  
14     summary that you have available?

15          MR. MURPHY: I would have to check. I think we  
16     would have to develop that summary. I am not familiar in  
17     this project with the geotech. that was done. I'm doing  
18     it by analogy about another project that I've worked on.

19          CHAIRMAN HANSON: Excuse me. I'm just trying to  
20     ascertain whether or not that's something that would  
21     provide the Intervenor with information that they need  
22     at this juncture. I'm not seeing that.

23          Darren, do you -- okay.

24          So on the geotech. one, it appears we're not --  
25     yes, no? Okay. That would be three nos.

1 MS. CREMER: Okay. So on the geotech., there's  
2 no need to provide them.

3 And then on the land agreements that were  
4 entered into last week -- and everybody wanted --

5 COMMISSIONER FIEGEN: And I asked.

6 MS. CREMER: Oh, you asked them.

7 COMMISSIONER FIEGEN: And they said yes.

8 COMMISSIONER NELSON: I did need them, but since  
9 Kristie got a commitment already --

10 MR. MURPHY: I have hard copies that I can  
11 provide to the Commission right now. I don't know if you  
12 want us to file it confidential. It's, I mean, your  
13 discretion. Either -- I'm happy to do it either way, but  
14 I did bring hard copies today because I thought it might  
15 be a question.

16 MR. DE HUECK: File it confidential.

17 MS. CREMER: Yes. File it confidentially for  
18 sure.

19 MR. MURPHY: Okay. Happy to.

20 MS. CREMER: Staff, you seem to be all excited.

21 MR. MIKAL HANSON: I did get excited.

22 David Hessler is prepared to come on the telephone at  
23 11 o'clock tomorrow. Can we reserve that time?

24 The other thing is, if their noise expert could  
25 testify tomorrow morning, maybe there isn't a need to

1 call him and ask him any more questions. And at that  
2 point after their noise expert testifies, let's -- can we  
3 ask to see whether anybody has any further questions of  
4 Mr. Hessler?

5 MS. CREMER: Sure. That works for me.

6 How about you?

7 MR. MURPHY: Yes. He's next on the list.

8 MS. CREMER: Okay. So, as I understand it, what  
9 did we decide? 8:30 tomorrow. We are in recess until  
10 then, and I will see everyone on Wednesday at 8:30.

11 (The hearing is in recess at 7:05 p.m.)  
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1 STATE OF SOUTH DAKOTA)

2 :SS

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 11th day of  
11 June, 2019, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 29th day of  
14 June, 2019.

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

<b>\$</b>	<b>1-8</b> <sup>[1]</sup> - 121:12	141:9, 169:20, 190:22, 230:24, 248:12, 248:16, 248:21, 249:19, 249:21, 249:24, 252:8, 263:24, 265:13, 270:24, 297:21	<b>2011</b> <sup>[6]</sup> - 125:10, 127:12, 138:4, 142:25, 147:9, 148:10	<b>232</b> <sup>[1]</sup> - 117:19
<b>\$2,500</b> <sup>[1]</sup> - 135:11	<b>1-9</b> <sup>[2]</sup> - 120:16, 121:13	<b>160</b> <sup>[1]</sup> - 148:2	<b>2012</b> <sup>[4]</sup> - 125:8, 126:7, 127:22, 134:13	<b>238</b> <sup>[1]</sup> - 206:19
<b>'</b>	<b>1.5</b> <sup>[2]</sup> - 173:4, 203:15	<b>168</b> <sup>[1]</sup> - 117:14	<b>2013</b> <sup>[1]</sup> - 121:5	<b>24</b> <sup>[7]</sup> - 134:22, 170:24, 217:4, 248:5, 315:22, 316:10, 316:15
<b>'17-18</b> <sup>[1]</sup> - 120:6	<b>1.5-mile</b> <sup>[1]</sup> - 189:14	<b>17</b> <sup>[8]</sup> - 123:4, 211:9, 211:14, 212:19, 231:7, 265:17, 299:17, 317:1	<b>2014</b> <sup>[4]</sup> - 127:20, 127:21, 127:21, 237:10	<b>24-hour</b> <sup>[1]</sup> - 301:14
<b>'19</b> <sup>[2]</sup> - 258:5, 258:16	<b>1/22/19</b> <sup>[2]</sup> - 128:5, 128:6	<b>174</b> <sup>[1]</sup> - 117:14	<b>2015</b> <sup>[5]</sup> - 134:18, 212:13, 212:15, 221:23, 278:14	<b>24/7</b> <sup>[1]</sup> - 315:25
<b>'Communicated</b> <sup>[2]</sup> - 124:13, 125:4	<b>10</b> <sup>[28]</sup> - 122:16, 123:20, 126:7, 148:2, 149:11, 161:1, 161:11, 168:2, 170:17, 188:12, 211:20, 213:8, 232:2, 253:24, 265:12, 265:13, 265:25, 271:9, 271:11, 274:18, 278:17, 316:5, 316:7, 316:12, 316:24, 316:25	<b>188</b> <sup>[1]</sup> - 117:15	<b>2016</b> <sup>[6]</sup> - 196:3, 207:5, 207:9, 217:9, 218:5, 278:16	<b>240</b> <sup>[5]</sup> - 262:22, 262:23, 262:25, 263:2, 263:3
<b>/</b>	<b>100</b> <sup>[5]</sup> - 209:14, 209:18, 260:15, 260:19, 310:9	<b>19</b> <sup>[5]</sup> - 117:4, 230:3, 230:25, 266:16, 270:24	<b>2017</b> <sup>[13]</sup> - 175:17, 175:18, 179:3, 179:8, 179:16, 179:18, 196:6, 196:19, 199:14, 206:10, 207:4, 207:11, 207:14	<b>25-year</b> <sup>[1]</sup> - 264:1
<b>/s</b> <sup>[1]</sup> - 327:17	<b>101</b> <sup>[1]</sup> - 310:10	<b>1919</b> <sup>[1]</sup> - 222:7	<b>2018</b> <sup>[17]</sup> - 139:20, 139:22, 140:2, 140:6, 142:10, 142:11, 175:19, 181:24, 182:6, 196:6, 199:15, 207:4, 207:11, 207:14, 217:11, 243:3, 288:8	<b>250</b> <sup>[2]</sup> - 117:19, 229:19
<b>0</b>	<b>102</b> <sup>[1]</sup> - 310:10	<b>1999/2000</b> <sup>[1]</sup> - 124:5	<b>2019</b> <sup>[26]</sup> - 115:8, 116:4, 134:22, 170:10, 170:17, 170:24, 217:4, 222:7, 222:14, 222:20, 255:25, 257:21, 258:9, 263:20, 278:21, 279:2, 279:8, 291:17, 291:20, 292:2, 299:22, 300:3, 300:9, 315:5, 327:11, 327:14	<b>250-foot</b> <sup>[1]</sup> - 252:20
<b>0.3-mile</b> <sup>[1]</sup> - 197:6	<b>106</b> <sup>[1]</sup> - 117:6	<b>1:00</b> <sup>[2]</sup> - 115:8, 116:5	<b>2019.5.24</b> <sup>[1]</sup> - 127:23	<b>2535-CE-100</b> <sup>[2]</sup> - 126:5, 126:7
<b>1</b>	<b>11</b> <sup>[6]</sup> - 115:8, 122:17, 123:21, 188:12, 214:11, 325:23	<b>2</b>	<b>202</b> <sup>[1]</sup> - 117:15	<b>257</b> <sup>[1]</sup> - 117:20
<b>1</b> <sup>[41]</sup> - 120:15, 120:16, 120:16, 121:7, 121:8, 121:8, 121:9, 121:12, 121:12, 121:13, 121:13, 121:14, 121:14, 121:15, 121:15, 121:16, 121:16, 121:17, 121:17, 121:18, 121:18, 121:19, 121:20, 121:20, 121:23, 122:6, 123:7, 123:7, 123:8, 123:13, 123:24, 125:20, 125:20, 125:21, 125:21, 125:23, 125:23, 128:11, 138:16, 158:6, 316:25	<b>115-327</b> <sup>[1]</sup> - 115:9	<b>2</b> <sup>[14]</sup> - 120:15, 122:3, 122:7, 123:16, 138:16, 175:25, 176:5, 176:13, 251:18, 314:24, 315:8, 315:9, 315:15, 318:17	<b>2020</b> <sup>[3]</sup> - 258:6, 258:8, 277:3	<b>255</b> <sup>[1]</sup> - 117:20
<b>1-1</b> <sup>[1]</sup> - 120:14	<b>11th</b> <sup>[2]</sup> - 116:4, 327:10	<b>2-13</b> <sup>[2]</sup> - 121:9, 121:20	<b>2021</b> <sup>[1]</sup> - 115:24	<b>26</b> <sup>[2]</sup> - 126:15, 140:5
<b>1-10</b> <sup>[2]</sup> - 120:17, 121:13	<b>12</b> <sup>[16]</sup> - 122:18, 123:21, 149:11, 179:3, 184:15, 184:16, 184:20, 184:24, 188:12, 189:10, 217:5, 226:7, 263:16, 263:21, 314:18, 314:22	<b>2-15</b> <sup>[2]</sup> - 121:8, 121:20	<b>2022</b> <sup>[1]</sup> - 117:16	<b>27</b> <sup>[4]</sup> - 211:9, 211:14, 276:8, 276:12
<b>1-11</b> <sup>[2]</sup> - 121:9, 121:14	<b>13</b> <sup>[5]</sup> - 122:20, 122:22, 123:22, 139:20, 150:25	<b>2-30</b> <sup>[1]</sup> - 121:7	<b>2023</b> <sup>[1]</sup> - 117:16	<b>270</b> <sup>[1]</sup> - 117:20
<b>1-12</b> <sup>[5]</sup> - 121:10, 121:14, 121:21, 121:21, 121:22	<b>130</b> <sup>[2]</sup> - 253:20, 264:4	<b>2-35</b> <sup>[1]</sup> - 286:18	<b>2024</b> <sup>[1]</sup> - 117:16	<b>271</b> <sup>[1]</sup> - 117:21
<b>1-13</b> <sup>[2]</sup> - 120:15, 121:15	<b>133</b> <sup>[1]</sup> - 117:9	<b>2-41</b> <sup>[1]</sup> - 123:22	<b>2025</b> <sup>[1]</sup> - 117:16	<b>275</b> <sup>[1]</sup> - 117:21
<b>1-152</b> <sup>[1]</sup> - 121:18	<b>135</b> <sup>[1]</sup> - 140:3	<b>2-7</b> <sup>[1]</sup> - 302:1	<b>2026</b> <sup>[1]</sup> - 117:16	<b>278</b> <sup>[1]</sup> - 118:4
<b>1-17</b> <sup>[1]</sup> - 121:15	<b>136</b> <sup>[1]</sup> - 117:9	<b>2-8</b> <sup>[2]</sup> - 121:8, 121:19	<b>2027</b> <sup>[1]</sup> - 117:16	<b>28</b> <sup>[8]</sup> - 170:10, 204:21, 223:8, 270:11, 270:15, 270:17, 270:21, 274:5
<b>1-18</b> <sup>[1]</sup> - 121:16	<b>14</b> <sup>[2]</sup> - 122:23, 265:22	<b>2-mile</b> <sup>[1]</sup> - 190:10	<b>2028</b> <sup>[1]</sup> - 117:16	<b>281</b> <sup>[1]</sup> - 118:4
<b>1-20</b> <sup>[1]</sup> - 121:16	<b>142</b> <sup>[1]</sup> - 117:10	<b>2/19/19</b> <sup>[4]</sup> - 128:7, 128:8, 128:11, 128:12	<b>2029</b> <sup>[1]</sup> - 117:16	<b>286</b> <sup>[1]</sup> - 118:5
<b>1-22</b> <sup>[1]</sup> - 121:17	<b>144</b> <sup>[1]</sup> - 117:10	<b>2/26/19</b> <sup>[2]</sup> - 128:9, 128:10	<b>2030</b> <sup>[1]</sup> - 117:16	<b>29</b> <sup>[8]</sup> - 222:7, 259:13, 260:20, 263:17, 263:20, 278:21, 299:22, 315:5
<b>1-23</b> <sup>[1]</sup> - 121:17	<b>15</b> <sup>[7]</sup> - 122:24, 151:3, 212:12, 259:14, 261:14, 263:16, 263:21	<b>20</b> <sup>[5]</sup> - 142:10, 230:3, 242:23, 265:22, 266:16	<b>2031</b> <sup>[1]</sup> - 117:16	<b>292</b> <sup>[1]</sup> - 118:5
<b>1-46</b> <sup>[1]</sup> - 121:18	<b>153</b> <sup>[1]</sup> - 117:11	<b>2001</b> <sup>[1]</sup> - 169:16	<b>2032</b> <sup>[1]</sup> - 117:16	<b>296</b> <sup>[1]</sup> - 118:6
<b>1-6</b> <sup>[1]</sup> - 121:12	<b>154</b> <sup>[1]</sup> - 117:11	<b>2003</b> <sup>[1]</sup> - 169:16	<b>2033</b> <sup>[1]</sup> - 117:16	<b>299</b> <sup>[1]</sup> - 118:8
<b>1-7</b> <sup>[2]</sup> - 120:15, 120:16	<b>158</b> <sup>[1]</sup> - 117:12	<b>2007</b> <sup>[8]</sup> - 127:22, 172:2, 178:12, 196:3, 207:5, 211:22, 217:8, 218:5	<b>2034</b> <sup>[1]</sup> - 117:16	<b>29th</b> <sup>[2]</sup> - 261:13, 327:13
	<b>16</b> <sup>[17]</sup> - 123:3, 125:16,	<b>2008</b> <sup>[5]</sup> - 134:8, 196:3, 207:5, 217:8, 218:5	<b>2035</b> <sup>[1]</sup> - 117:16	<b>2MW</b> <sup>[1]</sup> - 123:24
		<b>2009</b> <sup>[1]</sup> - 127:20	<b>2036</b> <sup>[1]</sup> - 117:16	
			<b>2037</b> <sup>[1]</sup> - 117:16	<b>3</b>
			<b>2038</b> <sup>[1]</sup> - 117:16	<b>3</b> <sup>[11]</sup> - 122:4, 122:8, 123:13, 123:17, 128:12, 138:17, 175:15, 196:21, 196:25, 323:24, 324:8
			<b>2039</b> <sup>[1]</sup> - 117:16	<b>3-10</b> <sup>[1]</sup> - 123:8
			<b>2040</b> <sup>[1]</sup> - 117:16	<b>3-2</b> <sup>[1]</sup> - 123:7
			<b>2041</b> <sup>[1]</sup> - 117:16	<b>3-5</b> <sup>[1]</sup> - 123:7
			<b>2042</b> <sup>[1]</sup> - 117:16	<b>30</b> <sup>[7]</sup> - 135:14, 151:3, 182:16, 183:10, 184:9, 276:15, 313:15
			<b>2043</b> <sup>[1]</sup> - 117:16	<b>30-day</b> <sup>[1]</sup> - 276:13
			<b>2044</b> <sup>[1]</sup> - 117:16	<b>301</b> <sup>[1]</sup> - 118:8
			<b>2045</b> <sup>[1]</sup> - 117:16	
			<b>2046</b> <sup>[1]</sup> - 117:16	
			<b>2047</b> <sup>[1]</sup> - 117:16	
			<b>2048</b> <sup>[1]</sup> - 117:16	
			<b>2049</b> <sup>[1]</sup> - 117:16	
			<b>2050</b> <sup>[1]</sup> - 117:16	
			<b>2051</b> <sup>[1]</sup> - 117:16	
			<b>2052</b> <sup>[1]</sup> - 117:16	
			<b>2053</b> <sup>[1]</sup> - 117:16	
			<b>2054</b> <sup>[1]</sup> - 117:16	
			<b>2055</b> <sup>[1]</sup> - 117:16	
			<b>2056</b> <sup>[1]</sup> - 117:16	
			<b>2057</b> <sup>[1]</sup> - 117:16	
			<b>2058</b> <sup>[1]</sup> - 117:16	
			<b>2059</b> <sup>[1]</sup> - 117:16	
			<b>2060</b> <sup>[1]</sup> - 117:16	
			<b>2061</b> <sup>[1]</sup> - 117:16	
			<b>2062</b> <sup>[1]</sup> - 117:16	
			<b>2063</b> <sup>[1]</sup> - 117:16	
			<b>2064</b> <sup>[1]</sup> - 117:16	
			<b>2065</b> <sup>[1]</sup> - 117:16	
			<b>2066</b> <sup>[1]</sup> - 117:16	
			<b>2067</b> <sup>[1]</sup> - 117:16	
			<b>2068</b> <sup>[1]</sup> - 117:16	
			<b>2069</b> <sup>[1]</sup> - 117:16	
			<b>2070</b> <sup>[1]</sup> - 117:16	
			<b>2071</b> <sup>[1]</sup> - 117:16	
			<b>2072</b> <sup>[1]</sup> - 117:16	
			<b>2073</b> <sup>[1]</sup> - 117:16	
			<b>2074</b> <sup>[1]</sup> - 117:16	
			<b>2075</b> <sup>[1]</sup> - 117:16	
			<b>2076</b> <sup>[1]</sup> - 117:16	
			<b>2077</b> <sup>[1]</sup> - 117:16	
			<b>2078</b> <sup>[1]</sup> - 117:16	
			<b>2079</b> <sup>[1]</sup> - 117:16	
			<b>2080</b> <sup>[1]</sup> - 117:16	
			<b>2081</b> <sup>[1]</sup> - 117:16	
			<b>2082</b> <sup>[1]</sup> - 117:16	
			<b>2083</b> <sup>[1]</sup> - 117:16	
			<b>2084</b> <sup>[1]</sup> - 117:16	
			<b>2085</b> <sup>[1]</sup> - 117:16	
			<b>2086</b> <sup>[1]</sup> - 117:16	
			<b>2087</b> <sup>[1]</sup> - 117:16	
			<b>2088</b> <sup>[1]</sup> - 117:16	
			<b>2089</b> <sup>[1]</sup> - 117:16	
			<b>2090</b> <sup>[1]</sup> - 117:16	
			<b>2091</b> <sup>[1]</sup> - 117:16	
			<b>2092</b> <sup>[1]</sup> - 117:16	
			<b>2093</b> <sup>[1]</sup> - 117:16	
			<b>2094</b> <sup>[1]</sup> - 117:16	
			<b>2095</b> <sup>[1]</sup> - 117:16	
			<b>2096</b> <sup>[1]</sup> - 117:16	
			<b>2097</b> <sup>[1]</sup> - 117:16	
			<b>2098</b> <sup>[1]</sup> - 117:16	
			<b>2099</b> <sup>[1]</sup> - 117:16	
			<b>2100</b> <sup>[1]</sup> - 117:16	



<div>308 [1] - 118:9</div> <div>31 [4] - 255:25, 258:9, 277:6, 291:19</div> <div>310 [1] - 118:9</div> <div>32 [1] - 215:25</div> <div>33408 [1] - 238:13</div> <div>34 [3] - 310:3, 310:5, 310:8</div> <div>342 [1] - 118:11</div> <div>37 [1] - 135:7</div> <div>372 [1] - 118:12</div> <div>375 [1] - 118:12</div> <div>384 [1] - 118:13</div> <div>391 [1] - 297:4</div> <div>3:15 [1] - 194:10</div> <div>3A [1] - 226:8</div> <div>3a [2] - 120:13, 123:17</div>	<div>50/60 [1] - 123:24</div> <div>500 [1] - 116:3</div> <div>500-foot [1] - 252:19</div> <div>512 [1] - 119:4</div> <div>513 [1] - 119:5</div> <div>518 [1] - 119:5</div> <div>53,000 [1] - 256:11</div> <div>538 [1] - 119:6</div> <div>54 [1] - 226:5</div> <div>541 [1] - 119:8</div> <div>544 [1] - 119:8</div> <div>548 [1] - 119:9</div> <div>550 [1] - 119:9</div> <div>551 [1] - 119:10</div> <div>552 [1] - 119:12</div> <div>557 [1] - 119:12</div> <div>56 [1] - 229:10</div> <div>562 [1] - 119:13</div> <div>57 [2] - 117:5, 229:10</div> <div>572 [1] - 119:13</div> <div>59 [4] - 227:4, 227:11, 227:13, 231:21</div> <div>5:25 [1] - 264:10</div>	<div>7:00 [1] - 322:8</div> <div>7:05 [1] - 326:11</div>	<div>8</div> <div>8 [8] - 122:14, 123:19, 149:11, 314:17, 314:21, 315:11, 315:12, 320:19</div> <div>8-0 [2] - 178:19, 178:20</div> <div>80 [3] - 178:18, 179:5, 179:6</div> <div>8:30 [4] - 322:16, 322:20, 326:9, 326:10</div>	<div>9</div> <div>9 [8] - 122:15, 161:5, 161:6, 183:22, 183:25, 222:14, 279:2, 300:3</div> <div>90 [2] - 181:17, 181:20</div> <div>960 [1] - 205:15</div> <div>98 [1] - 117:5</div> <div>99 [6] - 259:14, 259:17, 259:19, 260:8, 260:18, 260:24</div> <div>9:00 [1] - 322:16</div> <div>9a [1] - 123:19</div> <div>9b [1] - 123:20</div>	<div>A</div> <div>A1 [1] - 120:3</div> <div>A1-A [1] - 120:3</div> <div>A1-B [3] - 120:4, 178:18, 181:17</div> <div>A1-C [1] - 120:5</div> <div>A1-D [1] - 120:6</div> <div>A1-E [6] - 120:6, 175:20, 175:23, 187:19, 240:17, 240:20</div> <div>A1-F [1] - 120:7</div> <div>A1-G [1] - 120:7</div> <div>A1-H [2] - 120:8, 130:21</div> <div>A1-I [2] - 120:8, 130:21</div> <div>A1-J [1] - 120:9</div> <div>A1-K [1] - 120:9</div> <div>A1-L [1] - 120:10</div> <div>A1-M [2] - 120:10, 267:20</div> <div>A10 [2] - 120:19, 130:22</div> <div>A11 [2] - 120:20, 130:22</div>	<div>A12 [1] - 120:21</div> <div>A13 [1] - 120:22</div> <div>A14 [1] - 121:3</div> <div>A15 [1] - 121:5</div> <div>A16 [3] - 121:7, 183:22, 183:25</div> <div>A16-1 [1] - 121:7</div> <div>A16-2 [1] - 121:8</div> <div>A16-3 [1] - 121:8</div> <div>A16-4 [1] - 121:9</div> <div>A17 [1] - 121:9</div> <div>A18 [1] - 121:10</div> <div>A19 [1] - 121:10</div> <div>A2 [2] - 120:11, 130:21</div> <div>A20 [1] - 121:11</div> <div>A20-1 [1] - 121:12</div> <div>A20-10 [1] - 121:16</div> <div>A20-11 [1] - 121:17</div> <div>A20-12 [1] - 121:17</div> <div>A20-13 [1] - 121:18</div> <div>A20-14 [1] - 121:18</div> <div>A20-15 [1] - 121:19</div> <div>A20-16 [1] - 121:20</div> <div>A20-17 [1] - 121:20</div> <div>A20-18 [1] - 121:21</div> <div>A20-19 [1] - 121:21</div> <div>A20-2 [1] - 121:12</div> <div>A20-20 [1] - 121:22</div> <div>A20-3 [1] - 121:13</div> <div>A20-4 [1] - 121:13</div> <div>A20-5 [1] - 121:14</div> <div>A20-6 [1] - 121:14</div> <div>A20-7 [1] - 121:15</div> <div>A20-8 [1] - 121:15</div> <div>A20-9 [1] - 121:16</div> <div>A21 [2] - 121:22, 300:3</div> <div>A22 [6] - 121:23, 130:23, 131:2, 131:12, 132:7, 132:9</div> <div>A22-1 [3] - 121:23, 130:22, 132:9</div> <div>A22-2 [2] - 122:3, 131:2</div> <div>A22-3 [3] - 122:4, 131:2, 132:10</div> <div>A23 [3] - 122:5, 222:14, 279:2</div> <div>A24 [1] - 122:6</div> <div>A24-1 [1] - 122:6</div> <div>A24-10 [1] - 122:16</div> <div>A24-11 [1] - 122:17</div> <div>A24-12 [1] - 122:18</div> <div>A24-13 [1] - 122:20</div> <div>A24-13A [1] - 122:22</div> <div>A24-14 [1] - 122:23</div> <div>A24-15 [1] - 122:24</div> <div>A24-16 [1] - 123:3</div> <div>A24-17 [1] - 123:4</div> <div>A24-2 [1] - 122:7</div>	<div>A24-3 [1] - 122:8</div> <div>A24-4 [1] - 122:9</div> <div>A24-5 [1] - 122:10</div> <div>A24-6 [1] - 122:12</div> <div>A24-7 [1] - 122:13</div> <div>A24-8 [1] - 122:14</div> <div>A24-9 [1] - 122:15</div> <div>A25 [5] - 123:5, 131:2, 170:18, 174:1, 174:19</div> <div>A26 [1] - 123:6</div> <div>A26-1 [1] - 123:7</div> <div>A26-2 [1] - 123:7</div> <div>A26-3 [1] - 123:8</div> <div>A27 [1] - 123:8</div> <div>A28 [1] - 123:9</div> <div>A29 [1] - 123:9</div> <div>A3 [3] - 120:11, 130:21, 170:11</div> <div>A30 [2] - 123:10, 131:2</div> <div>A31 [1] - 123:10</div> <div>A31-1 [1] - 123:11</div> <div>A32 [1] - 123:12</div> <div>A32-1 [1] - 123:13</div> <div>A32-2 [1] - 123:13</div> <div>A33 [1] - 123:14</div> <div>A34 [1] - 123:15</div> <div>A35 [1] - 123:16</div> <div>A35-1 [1] - 123:16</div> <div>A35-10 [1] - 123:21</div> <div>A35-11 [1] - 123:21</div> <div>A35-12 [1] - 123:22</div> <div>A35-2 [1] - 123:17</div> <div>A35-3 [1] - 123:17</div> <div>A35-4 [1] - 123:18</div> <div>A35-5 [1] - 123:18</div> <div>A35-6 [1] - 123:19</div> <div>A35-7 [1] - 123:19</div> <div>A35-8 [1] - 123:20</div> <div>A35-9 [1] - 123:20</div> <div>A36 [1] - 123:22</div> <div>A37 [2] - 123:23, 300:9</div> <div>A37-1 [2] - 123:23, 300:10</div> <div>A37-2 [3] - 123:24, 123:25, 300:10</div> <div>A37-3 [2] - 124:3, 300:10</div> <div>A38 [1] - 124:4</div> <div>A38-1 [1] - 124:4</div> <div>A38-2 [1] - 124:5</div> <div>A38-3 [1] - 124:5</div> <div>A38-4 [1] - 124:7</div> <div>A38-5 [1] - 124:9</div> <div>A38-6 [1] - 124:10</div> <div>A38-7 [1] - 124:11</div> <div>A39 [2] - 124:13, 134:22</div> <div>A39-1 [2] - 124:14,</div>
<div>4</div> <div>4 [6] - 122:9, 126:3, 126:5, 138:17, 308:22</div> <div>4-1 [1] - 127:24</div> <div>4-2 [1] - 235:10</div> <div>4.2 [2] - 236:8, 236:10</div> <div>40 [2] - 231:7, 263:25</div> <div>400 [3] - 323:24, 324:8, 324:9</div> <div>402 [1] - 118:13</div> <div>404 [1] - 118:14</div> <div>41 [1] - 117:4</div> <div>415 [1] - 118:16</div> <div>418 [1] - 118:16</div> <div>422 [1] - 118:17</div> <div>431 [1] - 118:17</div> <div>432 [1] - 118:19</div> <div>436 [1] - 118:20</div> <div>438 [1] - 118:20</div> <div>439 [3] - 286:11, 286:17</div> <div>447 [1] - 118:21</div> <div>450 [1] - 118:23</div> <div>458 [1] - 118:23</div> <div>483 [1] - 118:24</div> <div>485 [1] - 118:24</div> <div>49 [2] - 230:25, 270:25</div> <div>497 [1] - 119:4</div>	<div>6</div> <div>6 [9] - 120:23, 121:3, 122:12, 123:18, 126:11, 127:6, 160:23, 161:1, 265:23</div> <div>6-1 [1] - 125:23</div> <div>6-2 [1] - 125:23</div> <div>60 [2] - 230:25, 270:24</div> <div>626 [2] - 286:12, 286:17</div> <div>67 [5] - 230:25, 265:4, 270:25, 273:9, 273:10</div> <div>68 [6] - 230:25, 265:4, 270:25, 273:7, 273:9, 273:10</div> <div>69 [1] - 273:7</div>						
<div>5</div> <div>5 [3] - 122:10, 142:17, 259:14</div> <div>5-1 [1] - 123:13</div> <div>5-12 [1] - 125:21</div> <div>5-2 [2] - 123:25, 125:20</div> <div>5-5 [1] - 125:20</div> <div>5-7 [1] - 125:21</div> <div>50,000 [1] - 135:23</div>	<div>7</div> <div>7 [14] - 122:13, 123:18, 126:12, 126:12, 126:13, 161:2, 198:18, 261:13, 261:14, 263:24, 316:12, 316:23, 316:24</div> <div>7-15 [1] - 261:1</div> <div>700 [2] - 238:12, 238:18</div> <div>7030.0040 [1] - 126:8</div> <div>7030.0050 [1] - 126:8</div> <div>79 [3] - 229:23, 264:24, 266:16</div>						

134:23 <b>A39-2</b> [2] - 124:14, 134:23 <b>A39-3</b> [2] - 124:15, 134:23 <b>A4</b> [2] - 120:12, 299:22 <b>A40</b> [1] - 124:16 <b>A40-1</b> [1] - 124:16 <b>A40-2</b> [1] - 124:17 <b>A40-3</b> [1] - 124:18 <b>A40-4</b> [1] - 124:19 <b>A40-5</b> [1] - 124:21 <b>A40-6</b> [1] - 124:22 <b>A40-7</b> [1] - 124:23 <b>A40-8</b> [1] - 125:3 <b>A40-9</b> [1] - 125:5 <b>A41</b> [1] - 125:6 <b>A41-1</b> [1] - 125:7 <b>A41-2</b> [1] - 125:7 <b>A41-3</b> [1] - 125:8 <b>A41-4</b> [1] - 125:10 <b>A42</b> [5] - 125:11, 170:24, 174:3, 174:5, 174:20 <b>A42-1</b> [5] - 125:11, 170:25, 174:4, 174:5, 174:20 <b>A43</b> [2] - 125:12, 131:2 <b>A43-1</b> [2] - 125:12, 131:2 <b>A43-2</b> [2] - 125:13, 131:2 <b>A43-3</b> [2] - 125:14, 131:2 <b>A43-4</b> [2] - 125:15, 131:3 <b>A43-5</b> [2] - 125:16, 131:3 <b>A44</b> [3] - 125:17, 222:20, 279:8 <b>A44-1</b> [3] - 125:18, 222:21, 279:9 <b>A44-2</b> [3] - 125:18, 222:21, 279:9 <b>A45</b> [1] - 125:19 <b>A45-1</b> [1] - 125:20 <b>A45-2</b> [1] - 125:20 <b>A45-3</b> [1] - 125:21 <b>A45-4</b> [1] - 125:21 <b>A46</b> [1] - 125:22 <b>A46-1</b> [1] - 125:23 <b>A46-2</b> [1] - 125:23 <b>A47</b> [1] - 125:24 <b>a48</b> [1] - 126:3 <b>A49</b> [1] - 126:5 <b>A5</b> [7] - 120:12, 130:21, 222:8, 278:21, 279:15, 279:23, 280:10	<b>A50</b> [1] - 126:7 <b>A51</b> [1] - 126:8 <b>A52</b> [2] - 130:16, 130:17 <b>A53</b> [1] - 126:9 <b>A54</b> [12] - 126:10, 130:15, 130:20, 223:5, 224:19, 225:18, 225:25, 226:21, 227:16, 227:24, 228:6, 252:3 <b>A55</b> [2] - 126:10, 226:1 <b>A56</b> [1] - 126:11 <b>A57</b> [1] - 126:11 <b>A58</b> [1] - 126:12 <b>A59</b> [3] - 126:12, 223:6, 227:24 <b>A6</b> [1] - 120:13 <b>A60</b> [1] - 126:13 <b>A61</b> [4] - 126:14, 215:25, 270:13, 276:5 <b>A62</b> [1] - 126:15 <b>A63</b> [1] - 126:15 <b>A64</b> [1] - 126:16 <b>A65</b> [1] - 126:16 <b>A66</b> [1] - 126:17 <b>A67</b> [1] - 126:18 <b>A68</b> [1] - 126:18 <b>A69</b> [1] - 126:19 <b>A7</b> [1] - 120:14 <b>A7-1</b> [1] - 120:14 <b>A7-2</b> [1] - 120:15 <b>A7-3</b> [1] - 120:15 <b>A7-4</b> [1] - 120:16 <b>A7-5</b> [1] - 120:16 <b>A7-6</b> [1] - 120:17 <b>A70</b> [1] - 126:19 <b>A8</b> [2] - 120:17, 130:21 <b>A9</b> [2] - 120:18, 130:22 <b>abide</b> [1] - 304:3 <b>ability</b> [1] - 230:4 <b>able</b> [15] - 134:14, 155:20, 162:6, 164:15, 166:19, 185:9, 209:7, 232:11, 240:15, 253:9, 256:14, 269:20, 274:20, 312:12, 314:25 <b>above-entitled</b> [2] - 116:2, 327:10 <b>Academic</b> [1] - 124:9 <b>academic</b> [1] - 135:22 <b>Academy</b> [1] - 278:18 <b>accept</b> [3] - 196:17, 206:7, 212:7 <b>acceptable</b> [1] - 166:11	<b>accepting</b> [1] - 252:20 <b>access</b> [3] - 155:9, 228:20, 292:19 <b>accident</b> [2] - 236:24, 303:10 <b>accommodate</b> [1] - 253:10 <b>accommodating</b> [1] - 165:11 <b>accompanied</b> [1] - 170:24 <b>accompany</b> [1] - 182:7 <b>accompanying</b> [4] - 134:23, 222:20, 279:8, 300:9 <b>accomplished</b> [2] - 145:11, 145:12 <b>according</b> [3] - 207:1, 234:23, 249:24 <b>account</b> [6] - 152:13, 173:21, 182:20, 183:5, 233:18, 233:22 <b>Account</b> [1] - 122:12 <b>accounted</b> [1] - 266:5 <b>accurate</b> [2] - 155:21, 252:19 <b>acoustic</b> [1] - 172:9 <b>Acoustic</b> [1] - 120:7 <b>acquisition</b> [1] - 260:13 <b>acre</b> [1] - 256:11 <b>acreage</b> [2] - 147:20, 148:1 <b>acres</b> [3] - 140:3, 148:2 <b>Act</b> [4] - 124:24, 171:25, 184:13, 185:1 <b>actions</b> [1] - 316:2 <b>activate</b> [1] - 269:10 <b>activated</b> [2] - 309:8, 309:9 <b>active</b> [6] - 196:6, 199:15, 207:3, 207:7, 217:15, 255:19 <b>actively</b> [1] - 221:25 <b>activities</b> [2] - 232:1, 232:3 <b>activity</b> [2] - 161:7, 199:14 <b>acts</b> [2] - 303:8, 303:18 <b>actual</b> [3] - 150:5, 209:8, 274:12 <b>AD</b> [1] - 128:7 <b>Adam</b> [1] - 115:15 <b>add</b> [1] - 271:14	<b>added</b> [1] - 179:17 <b>addition</b> [2] - 130:16, 174:3 <b>Additional</b> [4] - 127:5, 127:6, 128:10, 128:11 <b>additional</b> [15] - 149:14, 155:17, 164:19, 164:24, 180:23, 189:2, 246:4, 246:5, 246:12, 260:3, 261:18, 272:7, 275:8, 302:2, 312:15 <b>additionally</b> [3] - 189:16, 190:1, 190:8 <b>address</b> [4] - 223:1, 231:12, 238:8, 252:4 <b>addressed</b> [1] - 194:7 <b>adhere</b> [2] - 171:20, 210:20 <b>adjacent</b> [5] - 145:22, 147:10, 148:12, 148:14, 148:15 <b>adjectives</b> [1] - 210:25 <b>adjustment</b> [2] - 145:21, 145:24 <b>adjustments</b> [1] - 173:17 <b>administered</b> [4] - 133:13, 160:7, 218:21, 298:22 <b>administration</b> [2] - 288:11, 299:15 <b>Administration</b> [4] - 281:7, 288:2, 288:20, 288:25 <b>admission</b> [1] - 132:21 <b>admit</b> [2] - 280:21, 280:24 <b>admitted</b> [5] - 131:18, 132:22, 174:20, 280:11, 283:13 <b>adopt</b> [6] - 162:10, 165:4, 167:23, 170:16, 210:6, 210:23 <b>adopted</b> [6] - 123:5, 168:2, 171:10, 204:13, 204:22, 210:10 <b>adoption</b> [1] - 174:2 <b>adult</b> [2] - 172:7, 190:2 <b>adults</b> [1] - 190:7 <b>advanced</b> [1] - 232:3 <b>advancements</b> [1] - 232:8 <b>advances</b> [1] - 232:13	<b>advertised</b> [1] - 155:6 <b>advised</b> [3] - 130:25, 242:15, 243:11 <b>Advisors</b> [2] - 124:14, 133:19 <b>advisors</b> [2] - 167:18, 168:7 <b>aerated</b> [1] - 262:17 <b>aerial</b> [1] - 175:17 <b>aeronautical</b> [2] - 236:24, 242:20 <b>affect</b> [4] - 146:9, 157:3, 157:5, 200:3 <b>affected</b> [2] - 262:11, 301:11 <b>affecting</b> [2] - 162:24, 314:8 <b>affects</b> [2] - 157:10, 311:17 <b>affidavit</b> [3] - 271:5, 271:10, 274:19 <b>Affidavit</b> [1] - 128:5 <b>affiliate</b> [2] - 233:9, 284:11 <b>affiliates</b> [4] - 237:14, 300:18, 301:6 <b>affixed</b> [1] - 314:4 <b>aforementioned</b> [1] - 132:21 <b>afraid</b> [1] - 155:22 <b>afternoon</b> [9] - 129:7, 136:25, 144:4, 144:5, 147:5, 208:5, 208:6, 292:10, 323:10 <b>ag</b> [2] - 145:4, 146:23 <b>agencies</b> [6] - 171:14, 172:17, 288:1, 288:4, 293:22, 294:1 <b>Agency</b> [1] - 120:4 <b>agency</b> [3] - 244:8, 267:23, 268:10 <b>agents</b> [1] - 257:13 <b>Aggregate</b> [1] - 124:6 <b>ago</b> [1] - 232:2 <b>agree</b> [17] - 132:12, 140:16, 198:16, 249:24, 274:23, 275:1, 276:12, 280:9, 282:6, 283:17, 290:13, 297:23, 303:6, 303:21, 304:6, 304:9, 307:2 <b>agreeable</b> [8] - 130:9, 210:23, 211:7, 211:11, 211:12, 211:15, 212:5, 258:3 <b>Agreed</b> [1] - 126:14 <b>agreed</b> [9] - 132:16,
--	--	---	---	--

201:18, 249:20, 249:21, 249:22, 249:23, 266:14, 271:25, 274:14 <b>agreeing</b> [1] - 284:8 <b>agreement</b> [9] - 134:14, 229:13, 236:14, 255:20, 257:25, 263:5, 277:2, 290:14, 295:17 <b>agreements</b> [11] - 230:4, 247:6, 247:9, 247:11, 260:10, 260:11, 278:10, 282:14, 323:8, 323:12, 325:3 <b>agrees</b> [4] - 211:1, 212:8, 216:7, 270:22 <b>agricultural</b> [4] - 134:17, 136:2, 196:9, 197:1 <b>Agriculture</b> [1] - 288:5 <b>ahead</b> [9] - 166:2, 180:8, 185:14, 205:16, 223:22, 270:21, 273:2, 317:6 <b>air</b> [1] - 193:8 <b>airplane</b> [1] - 236:25 <b>aleck</b> [1] - 228:10 <b>alert</b> [1] - 245:23 <b>aligned</b> [1] - 291:18 <b>alleged</b> [1] - 163:6 <b>Allocation</b> [1] - 123:9 <b>allotted</b> [1] - 263:7 <b>allow</b> [10] - 162:9, 162:13, 165:25, 167:23, 228:15, 244:18, 244:19, 305:24, 309:25, 311:5 <b>allowed</b> [1] - 228:19 <b>almost</b> [1] - 212:4 <b>alt</b> [2] - 267:5, 270:20 <b>Alt</b> [5] - 230:3, 230:8, 266:16 <b>alternate</b> [23] - 230:18, 249:5, 249:7, 249:17, 250:15, 250:17, 251:14, 251:15, 253:8, 258:21, 258:23, 265:9, 265:13, 265:14, 266:2, 266:10, 267:10, 267:16, 269:9, 269:18, 269:24, 269:25, 308:18 <b>alternates</b> [4] - 259:8, 268:24, 269:18, 273:22 <b>alternative</b> [9] - 223:10, 225:2, 270:23, 271:1, 271:6, 271:23, 273:19, 274:14, 308:17 <b>alternatives</b> [1] - 273:13 <b>Amber</b> [1] - 121:11 <b>ambiguous</b> [1] - 227:22 <b>Amended</b> [2] - 125:24, 126:15 <b>amended</b> [1] - 282:10 <b>Amendment</b> [1] - 123:9 <b>American</b> [2] - 205:15, 214:13 <b>amount</b> [7] - 147:20, 163:6, 166:24, 190:24, 263:4, 291:12, 292:15 <b>amounts</b> [1] - 292:12 <b>analogies</b> [1] - 319:5 <b>analogy</b> [1] - 324:18 <b>analyses</b> [3] - 143:18, 143:23, 171:12 <b>Analysis</b> [2] - 127:10, 158:17 <b>analysis</b> [21] - 135:24, 136:1, 136:7, 137:5, 137:11, 138:23, 139:2, 139:14, 139:16, 141:20, 142:7, 142:11, 142:22, 143:21, 145:25, 146:1, 147:6, 153:13, 251:10, 306:12, 306:22 <b>analytics</b> [1] - 289:5 <b>analyze</b> [4] - 138:2, 151:15, 268:24, 307:22 <b>analyzed</b> [1] - 143:6 <b>analyzing</b> [1] - 153:9 <b>AND</b> [1] - 115:5 <b>ANDREW</b> [1] - 117:8 <b>Andrew</b> [3] - 124:13, 133:12, 133:18 <b>animal</b> [1] - 191:4 <b>Ann</b> [1] - 124:7 <b>Annoyance</b> [4] - 122:9, 122:18, 124:4, 124:6 <b>annual</b> [4] - 144:20, 236:11, 236:20 <b>answer</b> [48] - 140:18, 140:25, 156:4, 157:8, 180:3, 180:4, 182:24, 183:2, 185:11, 185:15, 185:21, 187:12, 187:13, 194:14, 200:2, 212:14, 213:2, 221:1, 221:5, 234:1, 234:5, 235:24, 239:24, 242:4, 242:5, 242:6, 242:7, 250:4, 252:18, 253:4, 255:12, 256:20, 261:10, 268:1, 268:4, 268:5, 268:6, 268:11, 268:14, 268:19, 269:22, 269:24, 285:13, 297:12, 304:25, 305:24, 306:19 <b>answered</b> [10] - 145:15, 156:11, 187:8, 234:7, 241:11, 250:2, 250:3, 266:4, 274:6, 284:13 <b>answering</b> [4] - 182:25, 185:12, 235:4, 318:14 <b>answers</b> [2] - 220:16, 293:10 <b>anthropology</b> [1] - 169:17 <b>anticipated</b> [2] - 160:25, 288:13 <b>anyway</b> [3] - 183:1, 207:12, 295:5 <b>AO</b> [1] - 128:8 <b>apologies</b> [4] - 154:12, 183:16, 305:14 <b>apologize</b> [12] - 137:1, 156:23, 156:25, 159:7, 161:21, 177:10, 185:3, 223:4, 239:15, 242:13, 255:13, 293:8 <b>App</b> [2] - 128:5, 128:6 <b>apparent</b> [1] - 225:9 <b>appeal</b> [1] - 163:11 <b>appealed</b> [1] - 162:15 <b>appear</b> [1] - 297:19 <b>Appearance</b> [1] - 165:19 <b>appearing</b> [3] - 115:19, 115:21, 115:22 <b>Appendices</b> [4] - 120:18, 120:19, 128:6, 128:7 <b>Appendix</b> [27] - 120:3, 120:4, 120:5, 120:6, 120:6, 120:7, 120:7, 120:8, 120:8, 120:9, 120:9, 120:10, 120:10, 120:18, 120:19, 120:20, 120:21, 121:21, 121:21, 121:22, 126:11, 126:11, 126:18, 126:18, 181:16, 244:1, 244:5 <b>appendix</b> [1] - 178:14 <b>Appendixes</b> [2] - 121:9, 121:10 <b>apple</b> [1] - 269:16 <b>applicable</b> [1] - 242:16 <b>APPLICANT</b> [9] - 117:7, 118:2, 120:2, 121:2, 122:2, 123:2, 124:2, 125:2, 126:2 <b>Applicant</b> [68] - 129:21, 130:13, 130:20, 133:11, 135:13, 139:12, 154:10, 160:5, 160:16, 160:20, 161:8, 162:21, 180:6, 180:25, 183:17, 184:3, 184:6, 184:22, 185:8, 210:23, 211:1, 211:10, 211:11, 211:14, 212:1, 212:3, 212:5, 212:8, 212:21, 215:24, 216:7, 218:12, 219:15, 235:22, 236:12, 242:8, 242:17, 252:20, 270:22, 271:1, 271:4, 271:8, 271:12, 272:11, 274:17, 280:7, 281:17, 281:18, 282:16, 284:2, 285:5, 285:6, 285:7, 302:1, 302:8, 302:11, 302:20, 303:6, 303:21, 304:5, 305:2, 307:2, 307:18, 323:1, 323:5, 323:8, 323:10, 323:15 <b>Applicant's</b> [10] - 121:18, 123:14, 123:15, 123:25, 125:19, 125:22, 127:3, 136:17, 211:6, 216:5 <b>Applicants</b> [2] - 157:22, 165:8 <b>Application</b> [47] - 120:3, 123:9, 162:24, 163:7, 172:20, 173:14, 175:13, 178:13, 180:10, 180:11, 183:6, 183:14, 184:19, 186:2, 186:3, 186:20, 187:16, 188:8, 193:20, 213:15, 213:22, 214:1, 244:2, 244:5, 244:10, 245:7, 245:8, 245:25, 246:8, 246:16, 248:2, 251:7, 251:16, 258:8, 262:22, 269:15, 277:2, 282:10, 282:18, 283:2, 283:21, 290:19, 302:4, 303:6, 319:1, 319:23 <b>APPLICATION</b> [1] - 115:4 <b>application</b> [9] - 240:8, 240:10, 241:15, 241:16, 242:17, 242:25, 243:12, 260:3, 290:11 <b>applications</b> [1] - 173:20 <b>applied</b> [4] - 184:22, 185:8, 185:17, 302:16 <b>applies</b> [2] - 250:22, 302:25 <b>apply</b> [2] - 259:19, 303:1 <b>applying</b> [1] - 185:22 <b>appointed</b> [1] - 327:8 <b>Appraisal</b> [3] - 134:18, 134:20, 142:16 <b>appraisal</b> [4] - 134:11, 135:11, 142:18, 153:5 <b>appraised</b> [1] - 134:16 <b>appraiser</b> [2] - 134:9, 142:23 <b>appraisers</b> [3] - 134:20, 149:16, 150:4 <b>appreciate</b> [14] - 144:8, 147:3,				
---	--	--	--	--

<p>205:12, 206:2, 207:23, 229:8, 232:13, 240:13, 251:4, 267:19, 312:14, 314:18, 318:13, 319:10</p> <p><b>approach</b> [6] - 146:10, 154:2, 157:18, 176:1, 215:16, 235:18</p> <p><b>approached</b> [3] - 165:8, 165:14, 290:6</p> <p><b>approaches</b> [4] - 146:20, 176:3, 215:18, 235:20</p> <p><b>appropriate</b> [4] - 140:12, 189:9, 236:14, 280:10</p> <p><b>approval</b> [4] - 131:16, 242:9, 282:7, 294:13</p> <p><b>approvals</b> [2] - 253:6, 282:2</p> <p><b>approved</b> [3] - 185:1, 253:13, 282:16</p> <p><b>April</b> [14] - 125:10, 168:2, 170:17, 175:17, 175:18, 181:23, 182:6, 196:19, 206:10, 207:9, 207:10, 222:14, 279:2, 300:3</p> <p><b>aquatic</b> [1] - 210:1</p> <p><b>archaeological</b> [1] - 169:21</p> <p><b>archeologist</b> [1] - 208:18</p> <p><b>Archeologist</b> [1] - 169:18</p> <p><b>archeology</b> [1] - 169:17</p> <p><b>Area</b> [2] - 126:8, 288:25</p> <p><b>area</b> [67] - 141:21, 141:22, 153:21, 175:7, 175:12, 176:16, 177:1, 177:13, 177:18, 178:2, 178:8, 179:6, 179:9, 180:2, 180:9, 180:11, 180:15, 180:19, 180:20, 180:23, 181:19, 181:23, 182:1, 182:2, 182:6, 182:11, 196:7, 196:9, 197:1, 197:11, 202:7, 202:8, 202:13, 205:16, 206:25, 207:8, 211:23,</p>	<p>211:24, 212:10, 212:12, 212:13, 212:17, 216:24, 228:22, 228:23, 228:24, 230:18, 239:18, 239:19, 240:21, 244:7, 244:15, 244:24, 245:17, 256:7, 256:11, 261:19, 263:4, 263:6, 267:22, 282:1, 283:23, 316:7, 321:7</p> <p><b>areas</b> [26] - 135:20, 173:15, 177:4, 178:8, 179:20, 181:4, 188:23, 188:24, 189:1, 189:6, 189:25, 193:12, 193:18, 197:17, 197:18, 202:9, 202:10, 207:2, 215:4, 217:19, 260:5, 262:11, 314:1, 317:23, 317:24</p> <p><b>arena</b> [1] - 210:14</p> <p><b>argued</b> [1] - 140:14</p> <p><b>argument</b> [3] - 241:25, 242:2, 282:21</p> <p><b>argumentative</b> [1] - 250:2</p> <p><b>Army</b> [1] - 184:12</p> <p><b>array</b> [2] - 288:7, 288:14</p> <p><b>arrived</b> [1] - 166:25</p> <p><b>art</b> [1] - 304:14</p> <p><b>article</b> [1] - 297:21</p> <p><b>ascertain</b> [1] - 324:20</p> <p><b>aspects</b> [5] - 221:19, 285:3, 304:7, 307:3, 307:19</p> <p><b>Assessing</b> [2] - 125:8, 127:12</p> <p><b>assessment</b> [6] - 172:6, 172:8, 172:9, 189:21, 198:16, 263:9</p> <p><b>Assessment</b> [3] - 120:7, 124:7, 127:23</p> <p><b>assessments</b> [1] - 173:8</p> <p><b>assessor</b> [1] - 137:19</p> <p><b>assistance</b> [2] - 318:10, 319:11</p> <p><b>associate</b> [1] - 221:24</p> <p><b>Associated</b> [1] - 122:19</p> <p><b>associated</b> [3] - 232:9, 243:23,</p>	<p>254:17</p> <p><b>Association</b> [1] - 124:5</p> <p><b>assume</b> [5] - 139:10, 146:6, 165:20, 241:20, 323:3</p> <p><b>assumes</b> [1] - 140:8</p> <p><b>assuming</b> [2] - 149:1, 155:24</p> <p><b>assumption</b> [1] - 135:16</p> <p><b>Asthma</b> [1] - 124:17</p> <p><b>attach</b> [1] - 137:13</p> <p><b>attached</b> [4] - 181:20, 182:4, 327:11</p> <p><b>Attachment</b> [39] - 120:14, 120:15, 120:15, 120:16, 120:16, 120:17, 121:7, 121:8, 121:8, 121:9, 121:12, 121:12, 121:13, 121:13, 121:14, 121:14, 121:15, 121:15, 121:16, 121:16, 121:17, 121:17, 121:18, 121:18, 121:19, 121:20, 121:20, 123:7, 123:7, 123:8, 123:11, 123:13, 123:13, 125:20, 125:20, 125:21, 125:21, 125:23, 125:23</p> <p><b>attainable</b> [1] - 324:3</p> <p><b>Attainments</b> [1] - 124:9</p> <p><b>attempt</b> [2] - 271:9, 274:18</p> <p><b>attempting</b> [1] - 164:22</p> <p><b>attention</b> [2] - 158:23, 244:1</p> <p><b>Attitude</b> [1] - 124:5</p> <p><b>attorney</b> [1] - 154:5</p> <p><b>attorneys</b> [2] - 166:1, 247:5</p> <p><b>attracted</b> [1] - 197:17</p> <p><b>auction</b> [6] - 138:16, 138:17, 139:24, 145:4, 153:21</p> <p><b>auctions</b> [6] - 144:24, 145:1, 145:2, 148:23, 148:25, 149:2</p> <p><b>Audible</b> [1] - 122:12</p> <p><b>August</b> [2] - 276:21, 288:8</p> <p><b>Australian</b> [2] -</p>	<p>124:11, 125:3</p> <p><b>authenticity</b> [2] - 131:22, 225:6</p> <p><b>author</b> [3] - 163:1, 223:18, 225:12</p> <p><b>authorities</b> [1] - 171:18</p> <p><b>authorized</b> [1] - 185:1</p> <p><b>available</b> [27] - 164:7, 235:15, 247:13, 247:14, 249:8, 249:11, 253:8, 281:1, 302:3, 303:7, 303:15, 303:17, 303:20, 304:6, 304:11, 304:15, 304:18, 305:18, 306:15, 307:23, 309:3, 313:8, 314:10, 316:1, 317:25, 318:7, 324:14</p> <p><b>Avenue</b> [1] - 116:3</p> <p><b>average</b> [4] - 138:8, 138:9, 138:12, 138:13</p> <p><b>avian</b> [24] - 172:4, 175:5, 175:6, 175:12, 175:16, 177:4, 177:5, 177:24, 189:18, 211:2, 211:21, 211:23, 215:22, 216:6, 216:8, 239:11, 239:13, 239:20, 240:5, 240:9, 240:21, 241:7, 242:11</p> <p><b>Avian</b> [10] - 120:6, 178:1, 193:20, 196:5, 207:4, 207:13, 213:16, 217:14, 217:15, 217:16</p> <p><b>Aviation</b> [2] - 281:7, 288:19</p> <p><b>aviation</b> [1] - 256:18</p> <p><b>avoid</b> [9] - 172:18, 173:2, 173:6, 188:13, 189:16, 190:25, 192:20, 193:19, 210:16</p> <p><b>avoidance</b> [2] - 172:21, 188:13</p> <p><b>avoidances</b> [1] - 190:9</p> <p><b>avoided</b> [2] - 161:13, 188:16</p> <p><b>avoiding</b> [3] - 173:1, 173:20, 173:21</p> <p><b>aware</b> [16] - 139:21,</p>	<p>140:2, 146:11, 170:9, 170:12, 197:8, 197:9, 202:15, 214:25, 237:4, 237:8, 237:9, 237:10, 238:3, 241:7, 309:19</p> <p><b>B</b></p> <p><b>B.A</b> [1] - 278:19</p> <p><b>bachelor's</b> [3] - 169:15, 222:4, 278:18</p> <p><b>Bachelor's</b> [1] - 299:12</p> <p><b>backdoor</b> [1] - 280:17</p> <p><b>backward</b> [2] - 139:18, 150:4</p> <p><b>backward-looking</b> [1] - 150:4</p> <p><b>bailiwick</b> [1] - 208:22</p> <p><b>BAKER</b> [1] - 117:8</p> <p><b>Baker</b> [11] - 124:13, 133:12, 133:18, 134:21, 135:3, 136:16, 136:24, 153:3, 154:8, 156:7, 158:4</p> <p><b>balance</b> [3] - 235:1, 236:11, 236:20</p> <p><b>balanced</b> [1] - 291:16</p> <p><b>banking</b> [1] - 233:22</p> <p><b>Base</b> [1] - 123:5</p> <p><b>Based</b> [2] - 171:21, 203:13</p> <p><b>based</b> [32] - 122:12, 135:16, 136:13, 137:4, 137:10, 162:12, 163:3, 169:9, 196:2, 196:8, 197:1, 199:12, 201:10, 209:24, 211:19, 213:17, 223:8, 225:5, 227:6, 234:1, 244:14, 245:17, 247:1, 248:20, 256:7, 256:9, 256:17, 266:5, 290:4, 307:14, 320:24, 321:2</p> <p><b>basins</b> [2] - 172:25, 188:14</p> <p><b>basis</b> [7] - 137:2, 148:5, 163:10, 164:10, 280:13, 301:14, 323:9</p> <p><b>Bat</b> [3] - 120:7, 120:7, 121:4</p>
--	---	--	---	---

<p><b>bat</b> [5] - 172:9, 211:3, 216:6, 216:8</p> <p><b>bats</b> [2] - 183:7, 201:8</p> <p><b>Baucom</b> [1] - 115:16</p> <p><b>Beach</b> [2] - 238:12, 238:19</p> <p><b>beam</b> [8] - 287:23, 288:16, 289:3, 293:15, 293:18, 294:2, 294:5, 294:7</p> <p><b>bear</b> [1] - 237:22</p> <p><b>bearings</b> [1] - 178:21</p> <p><b>became</b> [1] - 142:14</p> <p><b>become</b> [3] - 142:13, 228:16, 258:12</p> <p><b>becomes</b> [4] - 309:15, 309:17, 311:8, 314:3</p> <p><b>becoming</b> [2] - 148:22, 229:16</p> <p><b>Bedrock</b> [1] - 123:20</p> <p><b>BEFORE</b> [1] - 115:11</p> <p><b>Before-After</b> [1] - 122:10</p> <p><b>began</b> [1] - 142:11</p> <p><b>begin</b> [3] - 142:7, 277:25, 322:12</p> <p><b>beginning</b> [3] - 171:7, 172:2, 178:11</p> <p><b>behalf</b> [8] - 115:19, 115:21, 115:22, 175:5, 175:7, 208:24, 237:2, 237:5</p> <p><b>behind</b> [2] - 176:11, 283:11</p> <p><b>belaboring</b> [1] - 293:9</p> <p><b>believes</b> [2] - 199:16, 203:2</p> <p><b>below</b> [1] - 313:15</p> <p><b>Belt</b> [2] - 299:17, 306:11</p> <p><b>belt</b> [2] - 306:10, 315:5</p> <p><b>benefit</b> [1] - 161:20</p> <p><b>benefits</b> [3] - 232:9, 263:17, 263:21</p> <p><b>beside</b> [1] - 159:5</p> <p><b>best</b> [31] - 151:16, 173:5, 189:3, 189:16, 192:20, 210:12, 234:6, 234:8, 234:10, 256:20, 270:22, 303:7, 303:15, 303:17, 304:6, 304:11, 304:14, 304:17, 305:18, 306:15, 307:3, 307:9, 307:11, 307:15, 307:19, 307:22, 307:23, 317:25, 318:7</p>	<p><b>better</b> [8] - 216:4, 224:8, 236:18, 268:5, 270:18, 272:12, 275:9, 307:8</p> <p><b>between</b> [11] - 187:15, 197:3, 215:24, 246:16, 246:18, 251:2, 258:18, 275:23, 276:13, 287:10</p> <p><b>Between</b> [2] - 124:5, 126:14</p> <p><b>beyond</b> [3] - 251:6, 251:15, 280:12</p> <p><b>Biased</b> [1] - 124:18</p> <p><b>big</b> [7] - 208:12, 228:5, 285:7, 285:8, 286:8, 312:6, 312:13</p> <p><b>bigger</b> [2] - 148:6, 320:8</p> <p><b>bill</b> [3] - 139:24, 155:3</p> <p><b>bills</b> [1] - 233:22</p> <p><b>binder</b> [1] - 178:16</p> <p><b>biologist</b> [1] - 208:16</p> <p><b>biologists</b> [1] - 209:5</p> <p><b>Bird</b> [1] - 121:3</p> <p><b>bird</b> [2] - 209:7, 211:24</p> <p><b>birds</b> [10] - 183:7, 197:14, 197:15, 197:16, 197:23, 201:6, 201:8, 217:17, 217:18, 217:19</p> <p><b>Bismarck</b> [3] - 168:25, 169:1, 204:7</p> <p><b>bit</b> [18] - 133:21, 156:24, 176:8, 180:3, 213:25, 224:15, 225:9, 257:20, 266:8, 266:24, 273:17, 281:23, 287:12, 289:20, 291:3, 295:8, 306:8, 313:25</p> <p><b>bite</b> [1] - 269:16</p> <p><b>BK</b> [1] - 158:17</p> <p><b>BK-1</b> [2] - 158:23, 159:10</p> <p><b>BK-2</b> [1] - 159:14</p> <p><b>black</b> [3] - 177:17, 306:9, 315:5</p> <p><b>Black</b> [2] - 299:17, 306:11</p> <p><b>blade</b> [6] - 317:7, 317:8, 317:9, 317:10</p> <p><b>blades</b> [1] - 309:14</p> <p><b>blank</b> [1] - 130:16</p> <p><b>blind</b> [1] - 177:12</p> <p><b>blown</b> [1] - 226:16</p>	<p><b>blown-up</b> [1] - 226:16</p> <p><b>blue</b> [1] - 229:17</p> <p><b>blueprints</b> [1] - 320:1</p> <p><b>BNSF</b> [3] - 289:19, 290:8, 290:24</p> <p><b>BNSF's</b> [1] - 289:24</p> <p><b>Board</b> [1] - 125:24</p> <p><b>board</b> [1] - 228:25</p> <p><b>bodies</b> [4] - 184:15, 188:19, 189:8, 192:21</p> <p><b>Book</b> [1] - 126:11</p> <p><b>bored</b> [1] - 188:24</p> <p><b>boring</b> [1] - 208:10</p> <p><b>bottom</b> [5] - 155:18, 155:21, 176:19, 259:14, 318:18</p> <p><b>Boulevard</b> [2] - 238:12, 238:18</p> <p><b>bouncing</b> [2] - 219:13, 227:18</p> <p><b>boundary</b> [5] - 135:10, 177:9, 177:13, 179:25, 245:18</p> <p><b>box</b> [1] - 176:25</p> <p><b>break</b> [4] - 194:10, 194:13, 264:20, 282:22</p> <p><b>breast</b> [1] - 193:6</p> <p><b>breeding</b> [1] - 198:5</p> <p><b>BREF</b> [1] - 124:8</p> <p><b>Brian</b> [1] - 115:19</p> <p><b>brief</b> [3] - 130:3, 250:11, 289:12</p> <p><b>briefly</b> [4] - 157:15, 188:3, 215:15, 275:17</p> <p><b>Brigham</b> [1] - 169:16</p> <p><b>bring</b> [7] - 151:21, 162:21, 164:22, 247:5, 247:8, 276:8, 325:14</p> <p><b>bringing</b> [1] - 157:24</p> <p><b>brings</b> [3] - 132:24, 213:16, 213:20</p> <p><b>brittle</b> [1] - 309:17</p> <p><b>broader</b> [3] - 282:1, 303:12, 304:5</p> <p><b>Brock</b> [1] - 133:18</p> <p><b>broke</b> [1] - 194:20</p> <p><b>brokers</b> [7] - 136:3, 137:16, 137:19, 137:22, 149:6, 149:15, 151:16</p> <p><b>Brookings</b> [20] - 136:2, 136:3, 137:3, 137:7, 137:9, 137:14, 137:17, 138:3, 138:9, 138:21, 142:7,</p>	<p>142:25, 143:4, 147:7, 148:9, 150:15, 157:17, 158:21, 159:13, 159:17</p> <p><b>Brooks</b> [1] - 155:1</p> <p><b>brought</b> [1] - 263:5</p> <p><b>brown</b> [3] - 177:9, 177:12, 191:7</p> <p><b>Brown</b> [1] - 127:11</p> <p><b>bucket</b> [1] - 287:21</p> <p><b>buffer</b> [12] - 189:14, 189:15, 190:11, 194:5, 196:24, 197:5, 197:6, 203:3, 206:8, 206:9, 206:12, 209:10</p> <p><b>Buhl</b> [1] - 197:15</p> <p><b>build</b> [8] - 275:21, 288:20, 300:25, 301:8, 307:12, 313:15, 318:5</p> <p><b>building</b> [3] - 192:6, 199:9, 315:20</p> <p><b>built</b> [1] - 318:7</p> <p><b>bunch</b> [1] - 252:15</p> <p><b>business</b> [17] - 133:16, 168:22, 221:12, 234:15, 238:8, 238:25, 239:2, 271:10, 271:11, 274:18, 278:3, 284:5, 299:3, 299:15, 312:10, 322:22</p> <p><b>butterflies</b> [2] - 191:6, 208:11</p> <p><b>butterfly</b> [1] - 191:7</p> <p><b>buy</b> [1] - 258:11</p> <p><b>buyers</b> [3] - 136:6, 136:12, 149:20</p> <p><b>BY</b> [41] - 115:4, 133:15, 136:23, 142:6, 153:2, 154:7, 154:21, 156:7, 158:3, 168:21, 169:13, 174:24, 176:13, 188:2, 194:19, 215:20, 217:2, 221:11, 224:18, 227:3, 231:20, 232:22, 235:21, 236:7, 240:4, 247:23, 250:13, 270:6, 271:22, 273:5, 275:16, 278:2, 281:5, 283:1, 286:10, 296:18, 297:14, 299:2,</p>	<p>301:24, 307:2, 308:4 6</p>
<b>C</b>				
<p><b>C-1</b> [1] - 126:18</p> <p><b>C-2</b> [1] - 126:18</p> <p><b>C-3</b> [1] - 126:11</p> <p><b>calculated</b> [2] - 259:23, 263:5</p> <p><b>Calculated</b> [1] - 122:19</p> <p><b>calendar</b> [1] - 139:22</p> <p><b>Canada</b> [1] - 124:4</p> <p><b>cannot</b> [9] - 237:2, 237:5, 237:13, 243:22, 267:6, 271:6, 271:11, 281:10, 313:1</p> <p><b>Canons</b> [1] - 127:19</p> <p><b>capable</b> [2] - 223:25, 323:20</p> <p><b>capacity</b> [4] - 169:24, 221:23, 257:23, 269:11</p> <p><b>capitalized</b> [1] - 284:24</p> <p><b>Capitol</b> [2] - 116:3</p> <p><b>captured</b> [1] - 224:20</p> <p><b>care</b> [1] - 252:15</p> <p><b>career</b> [1] - 219:15</p> <p><b>carry</b> [5] - 292:13, 292:15, 293:3, 297:5, 297:17</p> <p><b>case</b> [13] - 129:18, 129:19, 129:20, 133:4, 200:7, 201:14, 210:3, 211:4, 266:21, 267:5, 288:6, 289:24, 290:17</p> <p><b>Case</b> [2] - 124:18, 134:7</p> <p><b>Case-Control</b> [1] - 124:18</p> <p><b>cases</b> [3] - 185:19, 197:16, 212:2</p> <p><b>Casey</b> [2] - 181:18, 181:21</p> <p><b>catch</b> [1] - 231:4</p> <p><b>category</b> [1] - 266:20</p> <p><b>Cattle</b> [5] - 175:8, 179:17, 180:23, 182:2, 182:6</p> <p><b>caught</b> [2] - 144:3, 254:10</p> <p><b>celebration</b> [1] - 208:12</p> <p><b>cell</b> [2] - 129:16, 287:19</p> <p><b>Celsius</b> [2] - 310:4,</p>				



<p>310:8  <b>center</b> [1] - 316:1  <b>central</b> [1] - 316:1  <b>certain</b> [9] - 164:8,  176:20, 258:13,  304:10, 309:6,  309:10, 309:13,  309:24, 309:25  <b>certainly</b> [23] - 149:23,  157:19, 166:13,  176:2, 205:12,  206:2, 206:22,  207:23, 213:9,  215:17, 220:12,  225:22, 229:8,  238:11, 241:20,  243:1, 257:14,  259:4, 274:25,  302:11, 306:13,  312:3, 314:18  <b>CERTIFICATE</b> [1] -  327:2  <b>certified</b> [2] - 134:12,  299:16  <b>Certified</b> [2] - 327:6,  327:19  <b>CERTIFY</b> [1] - 327:8  <b>cetera</b> [1] - 145:8  <b>chain</b> [1] - 186:17  <b>Chairman</b> [9] - 129:6,  144:2, 164:18,  207:19, 264:13,  264:19, 292:8,  316:22, 317:17  <b>CHAIRMAN</b> [90] -  115:11, 115:12,  129:1, 144:3, 144:6,  144:12, 144:16,  144:19, 144:23,  145:1, 145:5,  145:10, 145:14,  145:25, 146:6,  146:15, 146:19,  147:1, 161:16,  163:15, 163:22,  163:24, 164:5,  165:15, 165:22,  166:17, 166:24,  167:3, 167:11,  168:16, 208:1,  208:4, 208:7,  208:19, 209:1,  209:11, 209:17,  209:21, 210:6,  210:9, 212:7,  212:14, 212:18,  212:21, 213:3,  213:7, 213:11,  214:5, 215:6,  215:11, 220:19,</p>	<p>221:3, 226:10,  231:1, 231:6,  231:15, 231:19,  264:14, 264:16,  292:9, 292:12,  292:22, 292:25,  293:3, 293:6, 298:5,  305:13, 305:15,  305:18, 305:23,  306:7, 306:13,  306:23, 317:18,  317:21, 318:10,  319:2, 319:6,  319:25, 320:17,  321:6, 321:11,  322:14, 322:16,  323:19, 324:6,  324:9, 324:11,  324:13, 324:19  <b>challenge</b> [1] - 281:9  <b>challenging</b> [2] -  258:13, 280:8  <b>chance</b> [6] - 143:7,  143:17, 154:22,  202:25, 235:21,  236:7  <b>change</b> [3] - 171:4,  253:15, 316:22  <b>changed</b> [1] - 254:17  <b>changes</b> [27] - 134:25,  170:20, 171:2,  222:10, 222:16,  222:23, 223:1,  223:7, 224:20,  224:24, 227:5,  227:14, 228:19,  246:24, 247:1,  247:4, 247:10,  248:12, 248:16,  252:2, 252:3,  257:17, 278:23,  279:4, 299:24,  300:5, 300:12  <b>changing</b> [1] - 306:18  <b>charge</b> [2] - 129:5,  224:9  <b>chart</b> [1] - 158:23  <b>check</b> [4] - 150:13,  150:20, 204:15,  324:15  <b>checking</b> [1] - 233:17  <b>checks</b> [4] - 233:13,  233:16, 234:13,  234:15  <b>cheese</b> [1] - 285:8  <b>Cheri</b> [8] - 115:24,  176:11, 220:12,  220:14, 305:15,  322:21, 327:17,  327:18</p>	<p><b>CHERI</b> [1] - 327:5  <b>chest</b> [1] - 193:9  <b>Chicago</b> [1] - 163:4  <b>chickens</b> [7] - 193:4,  193:5, 193:16,  202:12, 202:14,  202:16  <b>chief</b> [2] - 129:18,  133:4  <b>Children</b> [1] - 124:10  <b>choosing</b> [1] - 264:24  <b>CHRIS</b> [1] - 115:12  <b>Chris</b> [1] - 124:4  <b>Christenson</b> [1] -  121:11  <b>Christenson's</b> [1] -  265:5  <b>Christopher</b> [2] -  122:6, 122:6  <b>CHRISTOPHER</b> [1] -  118:22  <b>circumstances</b> [1] -  274:1  <b>cite</b> [1] - 160:18  <b>City</b> [2] - 124:15,  133:20  <b>Claim</b> [1] - 238:16  <b>claims</b> [2] - 254:3,  254:6  <b>clarification</b> [5] -  131:13, 162:17,  281:23, 287:12,  296:21  <b>clarifies</b> [1] - 275:9  <b>clarify</b> [8] - 167:25,  230:22, 265:24,  267:2, 268:18,  270:8, 312:21,  318:24  <b>clarity</b> [1] - 231:20  <b>Classification</b> [1] -  126:8  <b>Classroom</b> [1] - 124:9  <b>clean</b> [1] - 256:15  <b>Clean</b> [3] - 171:25,  184:13, 184:25  <b>cleaned</b> [1] - 247:7  <b>clear</b> [6] - 131:5,  136:13, 147:6,  148:22, 228:16,  284:10  <b>clearcut</b> [1] - 290:2  <b>clearer</b> [1] - 219:20  <b>clearinghouse</b> [2] -  288:3, 293:21  <b>clearly</b> [4] - 129:12,  155:18, 162:5, 305:6  <b>client</b> [2] - 143:15,  280:18  <b>clients</b> [1] - 282:5</p>	<p><b>Clinical</b> [1] - 124:20  <b>close</b> [8] - 146:13,  150:16, 151:5,  208:4, 251:10,  253:12, 283:25,  286:4  <b>closed</b> [2] - 140:5,  297:10  <b>closely</b> [2] - 187:2,  190:15  <b>closer</b> [2] - 133:21,  173:18  <b>closest</b> [3] - 212:11,  264:25, 265:5  <b>closing</b> [2] - 140:2,  241:25  <b>COD</b> [1] - 292:5  <b>Codington</b> [8] -  129:10, 139:3,  139:4, 139:7,  139:13, 140:25,  141:18, 232:7  <b>CODINGTON</b> [1] -  115:5  <b>Cohort</b> [1] - 124:19  <b>Cold</b> [1] - 126:17  <b>cold</b> [25] - 309:1,  309:3, 309:10,  309:18, 310:18,  310:24, 310:25,  311:5, 311:7,  311:16, 311:22,  311:24, 312:8,  312:19, 313:10,  313:14, 313:16,  313:20, 313:22,  314:3, 314:9,  314:13, 318:11  <b>collaboration</b> [1] -  319:22  <b>colleague</b> [3] - 165:2,  186:11, 187:20  <b>colleagues</b> [3] -  240:16, 246:20,  302:14  <b>collected</b> [2] - 196:2,  199:13  <b>collection</b> [8] -  173:16, 228:20,  228:22, 228:23,  229:25, 255:2,  320:10  <b>collector</b> [1] - 188:23  <b>college</b> [2] - 134:7,  134:9  <b>color</b> [4] - 177:9,  177:12, 289:20  <b>color-blind</b> [1] -  177:12  <b>colored</b> [5] - 179:6,</p>	<p>227:8, 246:24,  266:22, 275:5  <b>combination</b> [1] -  172:24  <b>comfortable</b> [1] -  277:7  <b>coming</b> [8] - 162:20,  166:10, 267:1,  267:4, 268:14,  268:25, 272:22,  304:21  <b>commenced</b> [2] -  172:2, 232:2  <b>commencing</b> [1] -  116:4  <b>comment</b> [4] - 201:13,  213:10, 213:11,  219:9  <b>Comments</b> [2] -  120:22, 220:17  <b>comments</b> [1] -  169:10  <b>Commerce</b> [1] - 288:5  <b>commercial</b> [19] -  133:19, 134:17,  134:20, 255:24,  257:25, 258:19,  275:18, 277:1,  277:5, 277:10,  278:9, 278:10,  281:22, 282:1,  283:8, 283:9,  291:17, 291:20,  291:23  <b>commercially</b> [1] -  258:12  <b>COMMISSION</b> [3] -  115:1, 115:11,  115:13  <b>Commission</b> [70] -  126:3, 126:7,  127:10, 131:12,  131:16, 143:8,  143:13, 152:4,  153:17, 159:22,  161:21, 162:16,  163:12, 164:23,  167:22, 176:22,  177:11, 182:16,  183:10, 184:9,  184:10, 192:18,  201:25, 213:4,  216:13, 223:1,  228:6, 242:8,  242:15, 243:11,  245:13, 245:25,  247:14, 247:18,  247:19, 249:2,  249:11, 249:13,  269:1, 269:3, 270:8,</p>
--	---	--	--	--

<p>271:5, 271:13, 271:18, 272:10, 273:4, 282:9, 283:3, 284:7, 284:9, 285:4, 285:10, 295:9, 295:17, 296:6, 298:15, 302:7, 305:1, 307:5, 315:14, 316:15, 323:3, 323:5, 323:8, 323:11, 323:12, 323:15, 324:1, 324:4, 325:11</p> <p><b>Commissioner</b> [35] - 117:5, 117:10, 117:15, 117:20, 118:5, 118:9, 118:13, 118:17, 118:20, 118:24, 119:5, 119:9, 119:13, 152:17, 164:3, 165:6, 166:18, 167:16, 202:22, 203:18, 207:19, 208:20, 214:23, 215:21, 257:4, 265:9, 269:14, 273:6, 275:18, 297:16, 310:15, 312:17, 313:19, 320:18, 321:14</p> <p><b>COMMISSIONER</b> [139] - 115:12, 147:5, 147:9, 147:12, 147:15, 147:19, 147:24, 148:8, 148:13, 148:18, 148:19, 149:5, 149:10, 149:21, 150:2, 150:11, 151:1, 151:19, 152:2, 152:15, 152:16, 152:18, 163:14, 166:3, 167:17, 168:3, 168:5, 168:12, 175:22, 202:23, 203:5, 203:9, 203:17, 203:19, 203:25, 204:3, 204:6, 204:9, 204:12, 204:17, 204:25, 205:3, 205:12, 205:19, 205:22, 206:14, 206:21, 207:9, 207:15, 207:18, 208:2, 220:20, 220:24, 223:13, 225:23, 229:7,</p>	<p>234:9, 257:5, 257:11, 258:4, 258:15, 258:20, 259:3, 259:9, 259:12, 259:22, 260:1, 260:16, 260:25, 261:12, 261:23, 262:5, 262:15, 262:21, 263:12, 263:24, 264:4, 264:6, 264:19, 264:23, 265:3, 265:7, 266:7, 266:18, 267:3, 267:13, 267:18, 268:8, 268:13, 268:16, 268:18, 268:21, 269:13, 270:2, 272:20, 272:25, 286:3, 286:5, 293:8, 293:17, 293:23, 294:4, 294:12, 294:15, 294:22, 295:2, 295:4, 295:7, 295:21, 296:2, 305:25, 306:2, 310:16, 311:21, 312:1, 312:4, 312:16, 313:9, 314:11, 314:15, 315:2, 315:4, 315:8, 315:11, 315:18, 316:3, 316:9, 316:19, 317:2, 317:4, 317:10, 317:13, 319:4, 321:13, 321:21, 322:20, 325:5, 325:7, 325:8</p> <p><b>commissioner</b> [1] - 157:16</p> <p><b>Commissioners</b> [7] - 153:20, 168:10, 214:16, 275:3, 277:14, 322:12, 323:17</p> <p><b>commissioners</b> [1] - 157:25</p> <p><b>commit</b> [5] - 271:23, 305:3, 305:10, 307:3, 307:19</p> <p><b>commitment</b> [6] - 200:25, 215:9, 216:5, 304:4, 305:2, 325:9</p> <p><b>commitments</b> [3] - 173:20, 183:5, 213:15</p> <p><b>committed</b> [7] - 190:8,</p>	<p>197:25, 198:5, 214:21, 283:21, 284:8, 292:1</p> <p><b>committing</b> [4] - 267:7, 267:8, 305:9, 316:17</p> <p><b>common</b> [3] - 239:1, 241:18, 283:7</p> <p><b>commonly</b> [3] - 147:25, 307:14, 310:20</p> <p><b>communication</b> [4] - 179:16, 181:17, 246:15, 256:18</p> <p><b>Communication</b> [1] - 121:5</p> <p><b>communications</b> [6] - 179:1, 179:22, 180:12, 180:18, 181:21, 187:17</p> <p><b>community</b> [1] - 221:18</p> <p><b>compact</b> [1] - 262:13</p> <p><b>compaction</b> [4] - 262:9, 262:10, 262:17, 262:19</p> <p><b>companies</b> [2] - 238:24, 290:5</p> <p><b>company</b> [20] - 133:16, 133:20, 134:10, 137:20, 168:22, 179:7, 180:6, 180:25, 201:2, 204:5, 221:12, 225:8, 225:9, 238:3, 238:22, 278:3, 280:1, 285:8, 291:17, 299:3</p> <p><b>comparable</b> [1] - 141:13</p> <p><b>compare</b> [4] - 145:6, 145:18, 151:9, 227:24</p> <p><b>compared</b> [1] - 141:20</p> <p><b>compensated</b> [1] - 254:14</p> <p><b>compensation</b> [5] - 254:9, 254:13, 254:18, 254:20, 263:11</p> <p><b>Complaints</b> [2] - 124:11, 125:3</p> <p><b>complaints</b> [3] - 254:7, 254:8, 301:11</p> <p><b>complete</b> [8] - 173:11, 210:19, 211:4, 240:9, 243:7, 260:15, 290:22, 292:1</p>	<p><b>completed</b> [23] - 135:12, 135:13, 135:17, 135:23, 136:1, 136:11, 142:22, 172:3, 173:13, 175:5, 175:6, 175:16, 175:18, 182:14, 183:12, 201:23, 207:14, 241:7, 253:2, 302:2, 302:5, 302:6, 308:6</p> <p><b>Completed</b> [1] - 125:9</p> <p><b>completely</b> [2] - 136:8, 148:22</p> <p><b>completing</b> [3] - 183:17, 184:4, 184:7</p> <p><b>completion</b> [4] - 198:24, 255:23, 257:22, 283:11</p> <p><b>compliance</b> [10] - 169:21, 173:18, 191:14, 229:20, 230:9, 231:14, 269:19, 276:20, 285:5, 304:24</p> <p><b>complicated</b> [1] - 257:16</p> <p><b>complies</b> [1] - 231:18</p> <p><b>comply</b> [3] - 184:12, 195:23, 303:7</p> <p><b>compound</b> [2] - 282:20, 282:25</p> <p><b>comprehensive</b> [3] - 151:7, 152:4, 152:5</p> <p><b>compromise</b> [1] - 290:14</p> <p><b>computer</b> [2] - 157:23, 296:15</p> <p><b>concepts</b> [2] - 163:8, 163:9</p> <p><b>concern</b> [4] - 163:10, 266:8, 281:8, 288:25</p> <p><b>concerned</b> [2] - 289:3, 320:11</p> <p><b>concerning</b> [6] - 156:9, 178:7, 237:18, 242:11, 245:9, 248:1</p> <p><b>concerns</b> [22] - 244:9, 244:12, 244:14, 244:25, 245:5, 245:14, 245:17, 246:6, 246:13, 246:14, 256:3, 256:6, 256:8, 256:17, 256:18, 256:19, 267:24, 272:3, 294:5, 294:9, 294:21</p>	<p><b>concludes</b> [1] - 136:17</p> <p><b>conclusion</b> [4] - 131:25, 137:8, 161:3, 161:12</p> <p><b>conclusions</b> [8] - 153:8, 160:14, 160:17, 162:6, 162:7, 162:23, 167:1, 324:2</p> <p><b>concrete</b> [1] - 305:8</p> <p><b>condition</b> [20] - 135:7, 135:15, 155:5, 198:23, 199:1, 199:10, 202:2, 210:24, 211:15, 215:23, 215:25, 271:14, 274:4, 274:12, 274:22, 274:25, 276:12, 276:16, 282:8, 309:19</p> <p><b>Condition</b> [7] - 126:15, 127:7, 223:8, 270:11, 270:17, 274:5, 276:8</p> <p><b>Conditional</b> [1] - 120:9</p> <p><b>Conditions</b> [2] - 123:4, 126:14</p> <p><b>conditions</b> [14] - 135:19, 216:16, 270:10, 270:18, 276:6, 282:7, 282:11, 282:14, 284:9, 285:3, 285:10, 307:5, 309:10, 313:17</p> <p><b>conduct</b> [5] - 166:21, 167:5, 169:20, 173:7, 212:6</p> <p><b>conducted</b> [11] - 169:5, 171:11, 187:21, 193:24, 199:15, 211:2, 211:20, 217:8, 217:23, 217:24, 229:18</p> <p><b>conduit</b> [2] - 311:17, 314:5</p> <p><b>confident</b> [3] - 258:14, 291:4, 291:7</p> <p><b>confidential</b> [23] - 247:12, 263:15, 263:18, 263:20, 286:7, 291:22, 291:25, 295:16, 295:17, 296:22, 296:25, 297:4, 297:6, 297:9,</p>
---	--	---	--	---

<p>297:13, 300:10, 323:4, 323:11, 323:23, 323:24, 324:5, 325:12, 325:16</p> <p><b>Confidential</b> <sup>[15]</sup> - 120:15, 120:15, 120:16, 120:16, 121:7, 123:7, 123:13, 123:24, 125:22, 126:16, 126:16, 126:19, 127:6, 296:13, 296:19</p> <p><b>confidentially</b> <sup>[1]</sup> - 325:17</p> <p><b>configuration</b> <sup>[1]</sup> - 294:8</p> <p><b>confine</b> <sup>[1]</sup> - 242:1</p> <p><b>confirm</b> <sup>[5]</sup> - 237:13, 247:15, 255:3, 288:22, 294:20</p> <p><b>confirmed</b> <sup>[1]</sup> - 188:20</p> <p><b>conflicting</b> <sup>[1]</sup> - 150:19</p> <p><b>conform</b> <sup>[3]</sup> - 176:1, 301:8, 307:10</p> <p><b>conforming</b> <sup>[2]</sup> - 301:1, 320:14</p> <p><b>conforms</b> <sup>[1]</sup> - 320:7</p> <p><b>confuse</b> <sup>[1]</sup> - 242:14</p> <p><b>confused</b> <sup>[6]</sup> - 219:18, 226:15, 227:18, 245:21, 313:18, 313:19</p> <p><b>confuses</b> <sup>[1]</sup> - 180:3</p> <p><b>confusing</b> <sup>[4]</sup> - 226:9, 228:9, 228:12, 273:17</p> <p><b>congregate</b> <sup>[1]</sup> - 198:14</p> <p><b>connecting</b> <sup>[1]</sup> - 313:6</p> <p><b>Consent</b> <sup>[1]</sup> - 124:21</p> <p><b>consequential</b> <sup>[1]</sup> - 162:24</p> <p><b>conservation</b> <sup>[13]</sup> - 182:13, 182:15, 182:19, 183:4, 183:8, 183:18, 184:4, 184:7, 201:22, 201:24, 212:24, 213:14, 213:24</p> <p><b>Conservation</b> <sup>[3]</sup> - 121:4, 171:23, 203:14</p> <p><b>consider</b> <sup>[10]</sup> - 145:24, 259:11, 266:3, 267:6, 267:10, 269:7, 269:25,</p>	<p>273:19, 280:23, 285:10</p> <p><b>considerable</b> <sup>[7]</sup> - 210:18, 244:6, 267:22, 268:2, 286:25, 288:23, 293:10</p> <p><b>Consideration</b> <sup>[1]</sup> - 124:3</p> <p><b>consideration</b> <sup>[10]</sup> - 139:11, 156:8, 189:3, 248:23, 250:17, 250:20, 252:8, 252:9, 265:18, 300:24</p> <p><b>considerations</b> <sup>[1]</sup> - 250:25</p> <p><b>Considered</b> <sup>[1]</sup> - 122:20</p> <p><b>considered</b> <sup>[3]</sup> - 230:10, 251:13, 269:12</p> <p><b>considering</b> <sup>[3]</sup> - 164:5, 266:17, 273:15</p> <p><b>consistent</b> <sup>[3]</sup> - 243:16, 243:17, 283:22</p> <p><b>constantly</b> <sup>[2]</sup> - 315:20, 315:22</p> <p><b>constrained</b> <sup>[2]</sup> - 269:10, 273:23</p> <p><b>Constraints</b> <sup>[2]</sup> - 123:18, 123:18</p> <p><b>constraints</b> <sup>[1]</sup> - 197:4</p> <p><b>construct</b> <sup>[2]</sup> - 243:22, 282:17</p> <p><b>constructability</b> <sup>[1]</sup> - 271:4</p> <p><b>constructing</b> <sup>[1]</sup> - 201:19</p> <p><b>Construction</b> <sup>[1]</sup> - 121:6</p> <p><b>construction</b> <sup>[54]</sup> - 135:12, 139:9, 173:18, 182:17, 183:11, 184:9, 188:5, 188:19, 188:25, 189:6, 190:1, 190:2, 190:11, 191:9, 191:14, 191:25, 192:2, 192:8, 192:10, 192:19, 192:20, 192:23, 195:1, 195:17, 195:21, 198:7, 198:9, 199:11, 201:17, 202:1, 213:5, 213:8,</p>	<p>214:18, 237:18, 238:17, 258:2, 262:13, 267:12, 270:25, 276:2, 283:12, 291:4, 300:19, 301:5, 302:25, 303:3, 303:8, 303:11, 303:18, 303:23, 304:7, 307:4, 307:20</p> <p><b>consultant</b> <sup>[3]</sup> - 289:18, 289:23, 290:9</p> <p><b>Consultants</b> <sup>[2]</sup> - 168:25, 200:24</p> <p><b>consultants</b> <sup>[1]</sup> - 289:2</p> <p><b>consultation</b> <sup>[2]</sup> - 190:23, 194:4</p> <p><b>consultations</b> <sup>[1]</sup> - 261:3</p> <p><b>consulted</b> <sup>[1]</sup> - 198:22</p> <p><b>contact</b> <sup>[1]</sup> - 315:25</p> <p><b>contacted</b> <sup>[1]</sup> - 191:23</p> <p><b>contamination</b> <sup>[1]</sup> - 301:3</p> <p><b>contest</b> <sup>[1]</sup> - 285:16</p> <p><b>context</b> <sup>[4]</sup> - 227:5, 227:15, 283:5, 304:12</p> <p><b>Context</b> <sup>[1]</sup> - 124:22</p> <p><b>continually</b> <sup>[1]</sup> - 314:10</p> <p><b>continue</b> <sup>[7]</sup> - 227:2, 228:15, 244:20, 256:13, 306:25, 311:6, 311:14</p> <p><b>Continued</b> <sup>[1]</sup> - 118:1, 119:1, 120:1, 121:1, 122:1, 123:1, 124:1, 125:1, 126:1, 127:1, 128:1</p> <p><b>continued</b> <sup>[1]</sup> - 172:16</p> <p><b>continuing</b> <sup>[1]</sup> - 255:20</p> <p><b>continuous</b> <sup>[1]</sup> - 229:9</p> <p><b>contract</b> <sup>[2]</sup> - 192:3, 192:5</p> <p><b>contractors</b> <sup>[1]</sup> - 301:7</p> <p><b>contracts</b> <sup>[1]</sup> - 237:18</p> <p><b>contractually</b> <sup>[1]</sup> - 292:14</p> <p><b>Control</b> <sup>[5]</sup> - 124:18, 125:10, 126:4, 126:6, 127:19</p> <p><b>control</b> <sup>[1]</sup> - 316:1</p> <p><b>controls</b> <sup>[2]</sup> - 303:18, 309:8</p> <p><b>conversation</b> <sup>[4]</sup> -</p>	<p>165:10, 165:21, 208:14, 265:8</p> <p><b>conversations</b> <sup>[5]</sup> - 164:25, 244:20, 256:13, 266:6, 277:11</p> <p><b>converted</b> <sup>[1]</sup> - 266:10</p> <p><b>Cooperative</b> <sup>[1]</sup> - 127:10</p> <p><b>coordinate</b> <sup>[2]</sup> - 190:25, 319:16</p> <p><b>coordinated</b> <sup>[1]</sup> - 258:1</p> <p><b>Coordination</b> <sup>[1]</sup> - 120:4</p> <p><b>coordination</b> <sup>[2]</sup> - 172:13, 319:22</p> <p><b>copied</b> <sup>[1]</sup> - 187:5</p> <p><b>copies</b> <sup>[8]</sup> - 130:11, 154:14, 157:24, 245:8, 247:6, 247:9, 325:10, 325:14</p> <p><b>copy</b> <sup>[7]</sup> - 154:11, 157:22, 215:23, 216:2, 235:14, 270:11</p> <p><b>corner</b> <sup>[1]</sup> - 176:20</p> <p><b>corporation</b> <sup>[1]</sup> - 284:25</p> <p><b>Corps</b> <sup>[1]</sup> - 184:12</p> <p><b>correct</b> <sup>[88]</sup> - 131:7, 131:10, 132:11, 137:3, 141:4, 141:7, 144:10, 145:8, 145:9, 146:23, 148:10, 148:11, 152:17, 168:1, 168:16, 174:6, 176:14, 177:2, 177:3, 177:6, 177:23, 178:20, 179:14, 187:3, 194:2, 196:19, 198:10, 198:20, 198:25, 199:4, 199:12, 200:1, 200:13, 201:9, 201:20, 202:8, 204:14, 208:17, 209:20, 213:6, 218:6, 227:25, 228:9, 231:6, 231:23, 231:24, 232:23, 233:11, 244:23, 245:15, 246:4, 246:6, 246:24, 246:25, 247:3, 248:14, 248:15, 248:20, 249:22, 249:23,</p>	<p>252:1, 252:14, 252:22, 255:10, 264:23, 265:2, 265:6, 265:10, 265:15, 266:11, 267:17, 268:4, 268:12, 273:8, 274:3, 274:8, 276:16, 287:6, 293:19, 293:23, 294:15, 295:1, 295:20, 297:18, 297:25, 308:7, 316:15, 327:11</p> <p><b>corrected</b> <sup>[1]</sup> - 260:9</p> <p><b>correction</b> <sup>[2]</sup> - 134:25, 279:4</p> <p><b>corrections</b> <sup>[9]</sup> - 170:20, 171:2, 222:10, 222:16, 222:23, 278:23, 299:24, 300:5, 300:12</p> <p><b>correctly</b> <sup>[3]</sup> - 175:1, 227:3, 252:7</p> <p><b>Correspondence</b> <sup>[1]</sup> - 120:4</p> <p><b>correspondence</b> <sup>[16]</sup> - 179:23, 181:1, 181:7, 185:25, 186:2, 186:9, 186:18, 186:19, 187:14, 187:19, 245:9, 245:11, 246:7, 246:10, 246:15, 287:9</p> <p><b>correspondences</b> <sup>[1]</sup> - 178:13</p> <p><b>Corridor</b> <sup>[1]</sup> - 120:24</p> <p><b>corridor</b> <sup>[1]</sup> - 182:5</p> <p><b>Coteau</b> <sup>[3]</sup> - 202:8, 202:10, 202:13</p> <p><b>Counsel</b> <sup>[1]</sup> - 176:3</p> <p><b>counsel</b> <sup>[18]</sup> - 131:18, 132:6, 140:15, 165:8, 169:8, 175:21, 183:21, 185:15, 215:18, 216:1, 219:11, 227:10, 235:20, 237:24, 295:7, 295:10, 305:6, 305:9</p> <p><b>count</b> <sup>[8]</sup> - 172:4, 175:16, 217:23, 258:23, 259:5, 316:11, 316:12, 321:2</p> <p><b>counted</b> <sup>[1]</sup> - 265:12</p> <p><b>Counties</b> <sup>[2]</sup> - 129:10, 232:7</p>
--	--	--	---	---



<p><b>COUNTIES</b> <sup>[1]</sup> - 115:5</p> <p><b>counties</b> <sup>[1]</sup> - 135:20</p> <p><b>counting</b> <sup>[3]</sup> - 320:23, 321:1, 321:5</p> <p><b>country</b> <sup>[1]</sup> - 290:1</p> <p><b>counts</b> <sup>[3]</sup> - 189:18, 217:20, 217:24</p> <p><b>COUNTY</b> <sup>[1]</sup> - 327:3</p> <p><b>County</b> <sup>[40]</sup> - 120:9, 127:11, 136:2, 136:3, 137:7, 137:9, 137:14, 137:17, 138:3, 138:10, 138:21, 139:3, 139:4, 139:5, 139:6, 139:7, 139:13, 139:17, 139:21, 140:19, 140:21, 141:1, 141:14, 141:18, 142:8, 142:25, 143:1, 143:2, 143:5, 147:7, 148:9, 150:15, 156:10, 156:12, 156:13, 157:17, 232:7, 237:11, 241:3</p> <p><b>county</b> <sup>[11]</sup> - 137:3, 137:19, 140:5, 145:3, 145:4, 145:16, 158:19, 159:12, 159:16, 171:17, 237:13</p> <p><b>couple</b> <sup>[11]</sup> - 181:9, 191:12, 231:3, 237:16, 237:21, 257:24, 264:21, 269:16, 281:12, 290:20, 322:23</p> <p><b>course</b> <sup>[6]</sup> - 143:7, 176:16, 181:10, 226:7, 234:15, 319:9</p> <p><b>court</b> <sup>[12]</sup> - 133:13, 156:18, 160:7, 181:13, 185:4, 186:5, 218:22, 220:8, 220:15, 220:17, 245:22, 298:22</p> <p><b>covenants</b> <sup>[1]</sup> - 282:14</p> <p><b>cover</b> <sup>[6]</sup> - 130:17, 216:24, 224:14, 241:1, 261:19, 263:8</p> <p><b>Cover</b> <sup>[8]</sup> - 128:5, 128:6, 128:6, 128:7, 128:8, 128:9, 128:10, 128:11</p> <p><b>coverage</b> <sup>[2]</sup> - 293:1, 297:24</p> <p><b>covered</b> <sup>[2]</sup> - 175:12,</p>	<p>250:11</p> <p><b>CR</b> <sup>[20]</sup> - 229:23, 230:2, 230:3, 230:8, 230:24, 230:25, 231:7, 270:24, 270:25</p> <p><b>Crane</b> <sup>[1]</sup> - 120:24</p> <p><b>crane</b> <sup>[4]</sup> - 172:8, 189:20, 212:11, 262:19</p> <p><b>cranes</b> <sup>[1]</sup> - 212:9</p> <p><b>create</b> <sup>[2]</sup> - 223:19, 238:23</p> <p><b>created</b> <sup>[4]</sup> - 131:18, 160:15, 160:17, 223:18</p> <p><b>credentials</b> <sup>[1]</sup> - 280:14</p> <p><b>credibility</b> <sup>[1]</sup> - 223:24</p> <p><b>CREMER</b> <sup>[148]</sup> - 129:6, 131:5, 131:8, 132:12, 132:15, 132:19, 133:2, 133:7, 133:9, 136:19, 140:16, 142:4, 144:1, 152:21, 153:16, 153:25, 154:4, 154:14, 154:19, 155:24, 156:6, 156:20, 157:13, 157:19, 159:5, 159:21, 160:1, 160:4, 160:10, 161:24, 162:8, 167:14, 168:9, 168:14, 168:17, 169:11, 174:5, 174:7, 174:10, 174:12, 174:18, 175:24, 176:2, 176:9, 182:25, 185:14, 187:11, 187:23, 194:10, 194:12, 194:18, 202:6, 202:21, 203:18, 215:14, 215:17, 216:12, 216:21, 218:9, 218:14, 218:18, 218:23, 219:1, 219:8, 220:1, 220:3, 220:10, 220:14, 220:18, 221:5, 224:3, 224:14, 225:16, 225:22, 225:25, 226:13, 226:22, 227:1, 227:23, 228:3, 228:14, 230:21,</p>	<p>232:18, 234:7, 234:10, 235:19, 239:22, 241:24, 242:4, 247:22, 250:3, 250:8, 257:4, 264:10, 264:12, 264:18, 268:20, 270:3, 271:17, 272:14, 272:17, 273:2, 275:12, 277:13, 277:18, 277:20, 277:22, 277:25, 279:18, 279:21, 280:19, 280:21, 281:2, 282:24, 283:17, 285:21, 292:7, 296:1, 296:3, 296:5, 296:10, 298:4, 298:7, 298:10, 298:17, 298:19, 298:23, 301:20, 304:13, 305:12, 306:25, 308:1, 310:14, 317:17, 321:22, 321:24, 322:2, 322:4, 322:8, 322:15, 322:21, 323:17, 325:1, 325:6, 325:17, 325:20, 326:5, 326:8</p> <p><b>Cremer</b> <sup>[6]</sup> - 115:14, 129:5, 140:14, 187:25, 216:23, 230:21</p> <p><b>Cremer's</b> <sup>[2]</sup> - 305:25, 306:3</p> <p><b>criteria</b> <sup>[1]</sup> - 153:4</p> <p><b>Criterion</b> <sup>[1]</sup> - 127:13</p> <p><b>critical</b> <sup>[1]</sup> - 290:3</p> <p><b>Critical</b> <sup>[1]</sup> - 122:15</p> <p><b>criticism</b> <sup>[1]</sup> - 244:22</p> <p><b>Crocker</b> <sup>[3]</sup> - 150:12, 210:22, 212:2</p> <p><b>crop</b> <sup>[10]</sup> - 254:4, 254:6, 254:9, 254:13, 254:14, 254:18, 262:6, 262:8, 262:24, 263:11</p> <p><b>Cross</b> <sup>[23]</sup> - 117:4, 117:5, 117:9, 117:10, 117:14, 117:15, 117:19, 117:19, 118:4, 118:5, 118:8, 118:9, 118:12, 118:12, 118:16, 118:20, 118:23, 119:4, 119:5, 119:8,</p>	<p>119:12, 123:20</p> <p><b>CROSS</b> <sup>[10]</sup> - 136:22, 142:5, 174:23, 188:1, 232:21, 250:12, 281:4, 286:9, 301:23, 308:3</p> <p><b>cross</b> <sup>[18]</sup> - 129:24, 130:4, 132:2, 136:20, 140:11, 140:13, 149:12, 149:22, 163:8, 174:21, 219:22, 232:17, 235:15, 281:1, 290:7, 290:15, 290:25, 301:19</p> <p><b>CROSS-EXAMINATION</b> <sup>[9]</sup> - 142:5, 174:23, 188:1, 232:21, 250:12, 281:4, 286:9, 301:23, 308:3</p> <p><b>Cross-Examination</b> <sup>[22]</sup> - 117:4, 117:5, 117:9, 117:10, 117:14, 117:15, 117:19, 117:19, 118:4, 118:5, 118:8, 118:9, 118:12, 118:12, 118:16, 118:20, 118:23, 118:24, 119:4, 119:5, 119:8, 119:12</p> <p><b>cross-examination</b> <sup>[10]</sup> - 129:24, 130:4, 140:11, 140:13, 149:22, 174:21, 232:17, 235:15, 281:1, 301:19</p> <p><b>cross-examine</b> <sup>[2]</sup> - 132:2, 163:8</p> <p><b>cross-examined</b> <sup>[2]</sup> - 149:12, 219:22</p> <p><b>Cross-sections</b> <sup>[1]</sup> - 123:20</p> <p><b>crossing</b> <sup>[2]</sup> - 290:10, 290:14</p> <p><b>crossings</b> <sup>[1]</sup> - 289:15</p> <p><b>Crowned</b> <sup>[106]</sup> - 115:19, 120:3, 122:3, 123:9, 125:12, 125:13, 125:14, 125:15, 125:16, 125:19, 125:22, 126:14, 126:17, 129:8, 129:18, 129:20, 132:12, 132:24, 133:9, 133:24, 152:21, 159:24,</p>	<p>162:1, 168:18, 169:3, 170:5, 170:7, 171:11, 172:15, 172:16, 175:6, 175:7, 184:17, 187:15, 188:4, 189:23, 190:8, 190:15, 191:24, 192:3, 192:7, 193:18, 194:21, 195:9, 195:23, 195:25, 196:11, 196:17, 196:24, 197:5, 197:25, 198:5, 198:23, 199:1, 199:9, 199:16, 200:25, 201:17, 203:2, 203:12, 204:11, 205:17, 206:19, 214:21, 215:10, 218:19, 221:16, 221:17, 224:9, 227:2, 228:15, 233:2, 233:4, 233:5, 233:7, 233:9, 233:14, 233:17, 234:21, 234:23, 234:25, 236:21, 239:10, 254:11, 262:8, 270:3, 272:14, 277:17, 278:7, 278:8, 283:13, 284:2, 284:10, 284:19, 285:7, 290:17, 291:19, 296:3, 298:8, 299:7, 299:9, 300:18, 300:23, 316:7, 319:15, 320:22</p> <p><b>crowned</b> <sup>[2]</sup> - 300:22, 319:15</p> <p><b>CROWNED</b> <sup>[1]</sup> - 115:4</p> <p><b>CRR</b> <sup>[1]</sup> - 115:24</p> <p><b>CRW</b> <sup>[1]</sup> - 210:16</p> <p><b>cultural</b> <sup>[21]</sup> - 169:22, 171:13, 171:23, 172:10, 172:12, 172:14, 173:1, 173:21, 190:13, 190:17, 190:19, 190:21, 191:1, 191:10, 191:13, 191:15, 191:16, 192:1, 192:10, 205:21, 271:3</p> <p><b>cumulative</b> <sup>[1]</sup> - 220:5</p> <p><b>cure</b> <sup>[1]</sup> - 220:6</p> <p><b>curiosities</b> <sup>[1]</sup> -</p>
---	--	--	---	---

<p>320:20  <b>curious</b> [1] - 318:17  <b>current</b> [5] - 181:19, 182:5, 209:25, 210:2, 210:3  <b>Curriculum</b> [2] - 124:16, 125:7  <b>curtailed</b> [1] - 309:23  <b>cushion</b> [1] - 276:13  <b>customary</b> [1] - 287:24  <b>customer</b> [2] - 258:10, 292:2  <b>customers</b> [2] - 282:2, 318:9  <b>cut</b> [2] - 234:13, 290:12  <b>CV</b> [1] - 122:6  <b>cwittler@venturecomm.net</b> [1] - 115:25</p>	<p><b>dangerous</b> [1] - 309:16  <b>Darren</b> [3] - 115:16, 127:4, 324:23  <b>DARREN</b> [1] - 119:11  <b>dashed</b> [1] - 177:20  <b>Data</b> [16] - 127:5, 127:6, 194:8, 206:18, 234:24, 235:8, 235:9, 235:14, 235:22, 236:3, 236:5, 236:8, 286:18, 286:20, 286:23, 301:25  <b>data</b> [14] - 146:24, 150:5, 150:10, 151:15, 193:23, 196:2, 196:3, 197:22, 231:12, 231:13, 237:15, 243:13, 308:11  <b>date</b> [16] - 139:19, 150:25, 246:7, 246:16, 255:23, 255:24, 256:1, 257:22, 275:19, 276:17, 276:22, 277:5, 277:8, 291:20, 292:5, 302:20  <b>date's</b> [1] - 291:21  <b>dated</b> [1] - 179:3  <b>Dated</b> [1] - 327:13  <b>Dates</b> [1] - 120:4  <b>dating</b> [1] - 165:9  <b>David</b> [7] - 115:20, 125:24, 126:3, 127:3, 127:16, 165:14, 325:22  <b>DAVID</b> [1] - 117:3  <b>day-to-day</b> [1] - 282:3  <b>days</b> [18] - 135:14, 142:21, 151:3, 151:4, 182:16, 183:10, 184:9, 259:2, 262:22, 262:23, 262:25, 263:2, 263:3, 271:10, 271:11, 274:19, 276:15, 315:22  <b>DE</b> [1] - 325:16  <b>de</b> [1] - 115:15  <b>dead</b> [1] - 266:20  <b>deadline</b> [1] - 247:2  <b>deal</b> [3] - 293:18, 312:6, 312:13  <b>dealing</b> [1] - 293:24  <b>deals</b> [1] - 305:8  <b>dealt</b> [1] - 301:12</p>	<p><b>December</b> [15] - 135:18, 139:20, 142:17, 150:24, 242:23, 243:3, 255:25, 257:21, 258:5, 258:9, 258:16, 276:25, 277:6, 291:19  <b>decide</b> [2] - 321:17, 326:9  <b>decided</b> [1] - 321:18  <b>decision</b> [6] - 152:5, 162:16, 163:11, 213:18, 213:21, 297:3  <b>decision-making</b> [1] - 213:18  <b>decisions</b> [1] - 278:11  <b>declare</b> [1] - 274:2  <b>Decommissioning</b> [2] - 120:10, 121:6  <b>dedicate</b> [1] - 291:14  <b>dedicating</b> [1] - 291:18  <b>deem</b> [2] - 274:2, 307:23  <b>deeper</b> [1] - 305:5  <b>defend</b> [1] - 166:9  <b>defer</b> [3] - 233:19, 233:24, 234:2  <b>deficiency</b> [1] - 314:7  <b>define</b> [4] - 141:3, 147:12, 303:15, 304:10  <b>defined</b> [6] - 141:6, 200:8, 244:15, 256:10, 283:17, 304:16  <b>defining</b> [1] - 210:25  <b>definitely</b> [4] - 152:13, 220:23, 279:20, 292:17  <b>definition</b> [4] - 182:21, 185:6, 273:13, 304:11  <b>defragmentation</b> [1] - 317:8  <b>degree</b> [3] - 222:5, 299:12, 306:9  <b>degrees</b> [6] - 169:16, 310:3, 310:6, 310:8, 310:9, 311:7  <b>demonstrate</b> [1] - 162:4  <b>demonstrates</b> [1] - 228:17  <b>denial</b> [2] - 162:18, 174:16  <b>Dennis</b> [1] - 125:18  <b>department</b> [1] - 219:4</p>	<p><b>Department</b> [24] - 142:16, 244:6, 244:12, 244:20, 244:22, 245:4, 245:9, 245:15, 245:19, 246:8, 246:10, 246:17, 246:18, 267:21, 286:24, 287:11, 288:4, 288:5, 288:6, 288:9, 288:24, 293:10, 293:13, 302:21  <b>depict</b> [1] - 182:4  <b>depicted</b> [1] - 224:24  <b>depreciation</b> [1] - 146:2  <b>describe</b> [3] - 170:2, 182:1, 281:20  <b>described</b> [2] - 131:19, 173:8  <b>describes</b> [1] - 177:1  <b>description</b> [2] - 281:20, 317:21  <b>deserves</b> [1] - 168:15  <b>Design</b> [2] - 121:6, 127:16  <b>design</b> [8] - 299:18, 300:22, 300:23, 307:12, 319:17, 320:4, 320:9, 320:13  <b>designate</b> [1] - 321:1  <b>designated</b> [2] - 141:22, 267:16  <b>designation</b> [3] - 134:18, 134:19, 223:16  <b>designed</b> [1] - 320:7  <b>desired</b> [1] - 324:1  <b>desktop</b> [6] - 171:11, 172:1, 188:17, 189:22, 190:17, 213:19  <b>destruction</b> [1] - 161:9  <b>detail</b> [5] - 188:12, 196:20, 224:12, 225:10, 256:19  <b>detailed</b> [6] - 172:19, 173:14, 180:10, 184:18, 189:4, 256:9  <b>details</b> [1] - 213:25  <b>detained</b> [1] - 130:14  <b>determination</b> [5] - 156:8, 242:18, 243:23, 252:24, 295:24  <b>determinations</b> [11] - 243:5, 243:15, 243:18, 244:17,</p>	<p>245:3, 246:11, 253:4, 253:20, 276:18, 288:19, 294:17  <b>determine</b> [7] - 137:1, 141:13, 141:17, 155:20, 197:22, 269:20, 321:3  <b>determined</b> [4] - 138:11, 184:11, 197:9, 284:6  <b>determines</b> [2] - 271:1, 311:4  <b>determining</b> [2] - 144:23, 269:23  <b>Deuel</b> [3] - 139:5, 143:2, 150:12  <b>develop</b> [4] - 299:9, 309:14, 319:23, 324:16  <b>developed</b> [1] - 221:25  <b>developer</b> [6] - 221:17, 233:2, 244:7, 278:8, 281:24, 287:25  <b>developer's</b> [2] - 267:23, 268:9  <b>developers</b> [1] - 219:5  <b>developing</b> [5] - 232:1, 233:14, 234:16, 241:19, 319:15  <b>development</b> [13] - 185:20, 195:9, 221:19, 222:2, 232:3, 232:8, 233:23, 238:5, 239:7, 262:12, 278:6, 278:16, 282:3  <b>Developments</b> [1] - 127:17  <b>deviation</b> [1] - 271:12  <b>devices</b> [2] - 309:24, 313:6  <b>Diagnosis</b> [1] - 124:17  <b>dialogue</b> [1] - 306:8  <b>dialogues</b> [1] - 289:24  <b>difference</b> [2] - 226:19, 227:25  <b>different</b> [22] - 134:16, 146:20, 151:2, 151:21, 157:2, 179:20, 191:12, 213:23, 225:18, 226:8, 234:16, 238:23, 238:24, 241:23, 266:22, 275:5, 289:25, 290:9, 293:21,</p>
<p style="text-align: center;"><b>D</b></p>				
<p><b>DAKOTA</b> [2] - 115:2, 327:1  <b>Dakota</b> [62] - 115:24, 116:2, 116:4, 120:5, 134:14, 134:15, 136:3, 137:3, 137:5, 137:17, 142:1, 142:16, 143:18, 143:19, 143:22, 144:22, 146:8, 146:14, 151:5, 151:9, 151:20, 151:25, 155:1, 156:10, 168:25, 169:1, 171:16, 172:5, 178:6, 178:10, 179:1, 179:4, 179:24, 180:13, 180:20, 182:10, 187:20, 189:19, 190:2, 190:5, 190:6, 191:3, 191:5, 193:22, 196:4, 199:22, 202:12, 202:17, 202:19, 206:10, 212:3, 222:2, 222:5, 236:24, 237:11, 237:12, 238:6, 310:21, 327:7, 327:13  <b>damage</b> [5] - 161:9, 254:4, 254:6, 254:15, 262:24  <b>damages</b> [2] - 254:21, 262:9</p>				

309:7, 309:8, 318:21 <b>Different</b> [1] - 125:6 <b>differently</b> [1] - 316:4 <b>difficult</b> [5] - 219:11, 220:15, 226:9, 234:18, 266:24 <b>difficulty</b> [2] - 220:9, 220:12 <b>diminished</b> [1] - 311:8 <b>direct</b> [9] - 136:18, 197:25, 212:23, 212:25, 244:1, 284:11, 298:12, 315:25, 318:18 <b>Direct</b> [41] - 117:4, 117:9, 117:14, 117:18, 118:4, 118:8, 118:11, 118:16, 118:19, 118:23, 119:4, 119:8, 119:12, 120:11, 120:11, 120:12, 120:12, 123:5, 127:3, 127:4, 127:4, 127:5, 170:9, 204:21, 222:6, 222:11, 252:17, 259:13, 260:7, 260:17, 260:18, 260:22, 278:20, 278:24, 299:21, 314:17, 314:18, 314:20, 315:2, 315:3, 315:4 <b>DIRECT</b> [5] - 133:14, 168:20, 221:10, 278:1, 299:1 <b>directed</b> [4] - 158:23, 225:14, 241:4, 241:5 <b>direction</b> [1] - 224:10 <b>directly</b> [12] - 170:4, 186:12, 186:13, 186:14, 186:23, 186:25, 187:18, 188:8, 219:22, 274:11, 289:6, 292:2 <b>director</b> [3] - 133:19, 169:1, 278:5 <b>disagree</b> [1] - 158:12 <b>discharge</b> [3] - 302:9, 302:12, 302:15 <b>disclosure</b> [1] - 323:9 <b>discover</b> [1] - 191:18 <b>Discoveries</b> [1] - 192:9 <b>Discovery</b> [1] - 191:19 <b>discrepancy</b> [2] - 253:22, 253:25 <b>discretion</b> [1] - 325:13 <b>discuss</b> [4] - 165:9, 212:22, 212:25, 245:5 <b>discussed</b> [7] - 184:8, 214:23, 246:9, 254:3, 258:18, 308:17, 308:22 <b>discusses</b> [1] - 297:4 <b>discussing</b> [2] - 195:3, 256:5 <b>Discussion</b> [7] - 152:20, 176:12, 206:17, 226:12, 240:3, 264:9, 306:24 <b>discussion</b> [7] - 137:23, 206:22, 226:11, 251:22, 251:24, 295:14, 320:24 <b>discussions</b> [2] - 225:1, 290:13 <b>Disease</b> [1] - 124:13 <b>Disease'</b> [1] - 125:4 <b>dismiss</b> [1] - 248:3 <b>displaced</b> [1] - 197:16 <b>dispute</b> [6] - 237:17, 271:7, 271:9, 271:11, 274:16, 274:18 <b>disrespect</b> [1] - 215:2 <b>disruption</b> [1] - 198:13 <b>distance</b> [5] - 138:24, 203:8, 203:16, 208:23, 209:8 <b>distinguish</b> [1] - 220:16 <b>Distress</b> [1] - 122:10 <b>distributed</b> [2] - 154:17, 158:1 <b>Distribution</b> [2] - 124:12, 125:4 <b>Disturbance</b> [1] - 122:9 <b>disturbed</b> [2] - 189:8, 189:9 <b>division</b> [1] - 179:2 <b>DO</b> [1] - 327:8 <b>Docket</b> [2] - 126:5, 126:7 <b>docket</b> [2] - 163:18, 168:4 <b>dockets</b> [5] - 143:8, 143:11, 143:12, 143:20, 252:21 <b>document</b> [14] - 154:17, 158:1, 158:9, 178:23, 181:7, 181:11, 183:24, 235:7, 237:24, 238:15, 238:20, 243:2, 286:11, 287:5 <b>documentation</b> [1] - 320:11 <b>Documentation</b> [1] - 123:24 <b>documents</b> [5] - 143:9, 175:11, 182:1, 237:21, 238:1 <b>DOE</b> [10] - 256:3, 256:6, 288:14, 288:16, 288:22, 293:24, 294:5, 294:9, 294:13, 294:19 <b>DOE's</b> [1] - 289:3 <b>dog</b> [1] - 175:24 <b>dollar</b> [1] - 292:16 <b>dollars</b> [1] - 318:13 <b>done</b> [45] - 143:18, 143:21, 150:14, 152:12, 152:14, 153:13, 163:3, 165:20, 167:24, 177:24, 180:25, 183:19, 184:5, 184:25, 188:18, 189:17, 190:20, 190:22, 190:23, 192:16, 193:18, 201:4, 207:10, 207:11, 207:19, 208:3, 209:4, 211:23, 218:5, 220:22, 220:23, 240:5, 250:5, 258:5, 263:9, 266:20, 266:25, 284:20, 290:4, 291:19, 292:5, 317:15, 321:20, 323:2, 324:17 <b>dotted</b> [4] - 176:25, 240:22, 240:24, 241:1 <b>double</b> [8] - 131:22, 162:18, 163:9, 174:15, 204:15, 320:22, 320:25, 321:4 <b>double-check</b> [1] - 204:15 <b>doubt</b> [1] - 324:4 <b>down</b> [19] - 155:25, 159:19, 160:2, 218:15, 231:1, 251:12, 277:18, 282:22, 298:10, 309:12, 309:13, 309:17, 309:22, 309:23, 310:22, 311:9, 311:24, 312:24, 322:5 <b>DR</b> [13] - 118:18, 118:22, 120:14, 120:15, 120:15, 120:16, 120:16, 120:17, 123:22, 123:25, 127:3, 127:6, 127:24 <b>Dr</b> [1] - 124:16 <b>DR's</b> [10] - 120:14, 121:7, 121:10, 121:11, 123:6, 123:8, 123:11, 123:12, 125:19, 125:22 <b>drawn</b> [1] - 192:14 <b>drop</b> [6] - 230:2, 230:17, 231:8, 231:14, 264:24, 265:17 <b>dropped</b> [14] - 229:1, 229:24, 230:6, 231:9, 231:23, 250:14, 250:18, 265:4, 265:12, 266:9, 266:17, 266:20, 269:1, 269:2 <b>dropping</b> [3] - 265:4, 273:13, 273:14 <b>Drops</b> [1] - 126:10 <b>drops</b> [1] - 230:12 <b>dry</b> [1] - 290:12 <b>due</b> [9] - 131:22, 162:14, 162:18, 163:8, 174:16, 229:1, 254:21, 260:10, 271:2 <b>duly</b> [1] - 327:8 <b>duly-appointed</b> [1] - 327:8 <b>during</b> [49] - 129:3, 139:22, 171:13, 171:19, 172:15, 172:16, 189:6, 190:1, 190:2, 190:3, 190:7, 190:10, 190:11, 190:12, 191:9, 191:21, 192:2, 193:12, 194:25, 195:1, 195:9, 195:17, 195:21, 198:3, 198:4, 198:7, 198:8, 199:7, 199:16, 200:16, 201:16, 201:18, 207:4, 207:6, 217:15, 217:19, 217:21, 217:24, 248:1, 1 2 262:12, 267:12, 270:25, 295:13, 301:5, 301:13, 303:11, 303:23 <b>duties</b> [1] - 283:8	217:24, 248:1, 1 2 262:12, 267:12, 270:25, 295:13, 301:5, 301:13, 303:11, 303:23 <b>duties</b> [1] - 283:8
<b>E</b>	
<b>e-mail</b> [7] - 179:22, 181:17, 182:4, 186:17, 186:18, 187:14, 187:17 <b>e-mailed</b> [1] - 157:21 <b>e-mails</b> [7] - 181:3, 181:7, 186:3, 186:10, 186:22, 187:5, 187:6 <b>Eagle</b> [2] - 171:22, 203:14 <b>eagle</b> [9] - 172:5, 173:4, 189:15, 202:25, 203:3, 209:6, 209:10, 211:23 <b>eagles</b> [7] - 178:3, 178:4, 189:15, 203:1, 208:21, 209:5, 209:14 <b>EAPC</b> [6] - 120:17, 120:18, 120:19, 120:20, 225:8, 225:9 <b>early</b> [1] - 165:20 <b>easel</b> [2] - 246:23, 247:10 <b>easement</b> [21] - 139:23, 140:5, 155:5, 155:9, 156:14, 157:3, 157:4, 188:19, 228:21, 228:22, 228:23, 228:24, 230:4, 247:11, 247:19, 255:7, 255:8, 255:9, 255:17, 255:20, 260:11 <b>easements</b> [20] - 139:8, 140:22, 141:21, 141:23, 155:8, 172:23, 172:24, 173:1, 188:15, 255:5, 259:16, 259:17, 259:20, 259:23, 259:25, 260:9, 260:14, 260:19, 260:23, 295:9 <b>easier</b> [1] - 176:6 <b>easily</b> [1] - 324:3	

<p><b>East</b> <sup>[1]</sup> - 116:3</p> <p><b>eastern</b> <sup>[3]</sup> - 202:12, 202:17, 202:19</p> <p><b>ecologically</b> <sup>[1]</sup> - 178:7</p> <p><b>economics</b> <sup>[1]</sup> - 134:8</p> <p><b>education</b> <sup>[6]</sup> - 134:5, 169:14, 214:11, 221:20, 278:12, 299:10</p> <p><b>Edward</b> <sup>[1]</sup> - 175:25</p> <p><b>EDWARDS</b> <sup>[39]</sup> - 130:8, 131:1, 131:7, 131:9, 132:8, 133:8, 142:6, 143:24, 157:15, 157:20, 158:3, 159:18, 165:18, 220:4, 220:11, 225:15, 225:17, 226:15, 250:10, 250:13, 257:2, 275:14, 275:16, 277:12, 280:20, 285:23, 286:4, 286:7, 286:10, 286:15, 292:6, 296:12, 296:18, 297:2, 297:14, 298:6, 308:4, 310:12, 322:3</p> <p><b>Edwards</b> <sup>[18]</sup> - 115:22, 117:10, 117:12, 117:19, 117:21, 118:5, 118:6, 118:9, 118:20, 118:21, 119:8, 119:9, 119:12, 119:13, 130:8, 165:15, 226:13, 310:18</p> <p><b>effect</b> <sup>[5]</sup> - 156:9, 156:16, 191:22, 199:3, 213:14</p> <p><b>Effect</b> <sup>[3]</sup> - 120:9, 124:21, 124:22</p> <p><b>effective</b> <sup>[1]</sup> - 219:6</p> <p><b>effectively</b> <sup>[3]</sup> - 219:12, 301:12, 301:16</p> <p><b>Effects</b> <sup>[7]</sup> - 120:23, 122:7, 122:8, 122:11, 122:18, 124:9, 127:14</p> <p><b>effects</b> <sup>[12]</sup> - 145:23, 189:13, 197:13, 197:15, 197:19, 197:24, 198:1, 212:22, 212:23, 213:1, 213:2, 213:25</p> <p><b>efficiency</b> <sup>[1]</sup> - 311:3</p> <p><b>efficient</b> <sup>[3]</sup> - 311:4, 311:12, 311:14</p> <p><b>effort</b> <sup>[1]</sup> - 207:23</p> <p><b>efforts</b> <sup>[7]</sup> - 188:4, 188:13, 221:19, 222:2, 230:19, 232:13, 238:5</p> <p><b>eight</b> <sup>[4]</sup> - 275:23, 275:25, 276:4, 276:24</p> <p><b>either</b> <sup>[13]</sup> - 156:3, 159:8, 161:12, 165:19, 176:10, 185:15, 189:7, 249:23, 250:22, 292:20, 304:14, 325:13</p> <p><b>either-or</b> <sup>[1]</sup> - 250:22</p> <p><b>EL18-026</b> <sup>[1]</sup> - 127:18</p> <p><b>EL19-003</b> <sup>[2]</sup> - 115:4, 129:8</p> <p><b>elaborate</b> <sup>[1]</sup> - 256:3</p> <p><b>elect</b> <sup>[1]</sup> - 230:17</p> <p><b>elected</b> <sup>[4]</sup> - 197:5, 230:2, 231:9, 254:13</p> <p><b>electing</b> <sup>[3]</sup> - 265:17, 265:25</p> <p><b>Electric</b> <sup>[1]</sup> - 320:12</p> <p><b>electrical</b> <sup>[1]</sup> - 299:12</p> <p><b>electricity</b> <sup>[1]</sup> - 313:20</p> <p><b>electromagnetic</b> <sup>[2]</sup> - 287:16, 287:18</p> <p><b>elements</b> <sup>[1]</sup> - 244:21</p> <p><b>Elicit</b> <sup>[1]</sup> - 123:3</p> <p><b>eliminate</b> <sup>[2]</sup> - 273:7, 308:14</p> <p><b>eliminated</b> <sup>[4]</sup> - 253:1, 253:7, 264:25, 301:3</p> <p><b>elimination</b> <sup>[2]</sup> - 302:9, 302:12</p> <p><b>elsewhere</b> <sup>[2]</sup> - 248:14, 253:9</p> <p><b>emergency</b> <sup>[1]</sup> - 308:22</p> <p><b>Emissions</b> <sup>[4]</sup> - 122:21, 122:22, 125:8, 127:12</p> <p><b>emitting</b> <sup>[1]</sup> - 294:2</p> <p><b>emphasis</b> <sup>[1]</sup> - 169:17</p> <p><b>empirical</b> <sup>[3]</sup> - 196:2, 199:13, 211:19</p> <p><b>employ</b> <sup>[1]</sup> - 153:5</p> <p><b>employed</b> <sup>[2]</sup> - 221:22, 233:8</p> <p><b>employee</b> <sup>[7]</sup> - 160:16, 233:4, 233:6, 281:16, 281:17</p> <p><b>employees</b> <sup>[3]</sup> - 320:19, 320:21, 321:7</p> <p><b>employer</b> <sup>[3]</sup> - 233:11, 281:14, 281:15</p> <p><b>EN</b> <sup>[1]</sup> - 124:3</p> <p><b>enable</b> <sup>[1]</sup> - 309:9</p> <p><b>encountered</b> <sup>[1]</sup> - 191:21</p> <p><b>end</b> <sup>[13]</sup> - 171:6, 171:7, 182:25, 250:23, 257:16, 265:14, 271:25, 276:21, 276:25, 279:19, 291:5, 292:2, 317:14</p> <p><b>ended</b> <sup>[1]</sup> - 248:4</p> <p><b>endure</b> <sup>[1]</sup> - 312:12</p> <p><b>Energy</b> <sup>[36]</sup> - 121:4, 124:24, 134:1, 139:23, 140:4, 155:5, 171:21, 203:13, 221:15, 221:22, 222:3, 233:1, 233:8, 233:9, 244:6, 244:13, 244:20, 244:22, 245:5, 245:9, 245:20, 246:8, 246:10, 246:17, 246:18, 267:21, 281:15, 285:12, 286:24, 287:11, 288:6, 288:9, 288:24, 293:11, 293:13, 299:20</p> <p><b>ENERGY</b> <sup>[1]</sup> - 115:5</p> <p><b>energy</b> <sup>[11]</sup> - 129:9, 155:8, 185:19, 213:17, 238:24, 241:20, 257:23, 278:6, 284:11, 287:18, 299:6</p> <p><b>Energy's</b> <sup>[5]</sup> - 120:17, 120:18, 120:19, 120:20, 307:6</p> <p><b>engage</b> <sup>[1]</sup> - 290:8</p> <p><b>engaged</b> <sup>[6]</sup> - 142:9, 142:18, 151:13, 165:21, 178:10</p> <p><b>engagement</b> <sup>[4]</sup> - 142:15, 142:21, 282:1, 290:11</p> <p><b>engagements</b> <sup>[1]</sup> - 289:4</p> <p><b>engaging</b> <sup>[2]</sup> - 214:22, 289:5</p> <p><b>engineer</b> <sup>[3]</sup> - 304:22, 306:6, 306:9</p> <p><b>Engineering</b> <sup>[4]</sup> - 125:10, 126:4, 126:6, 127:19</p> <p><b>engineering</b> <sup>[9]</sup> - 258:2, 299:6, 299:8, 299:13, 299:18, 302:24, 305:8, 319:16</p> <p><b>engineers</b> <sup>[1]</sup> - 320:5</p> <p><b>Engineers</b> <sup>[1]</sup> - 184:12</p> <p><b>English</b> <sup>[1]</sup> - 122:23</p> <p><b>enjoyed</b> <sup>[1]</sup> - 318:15</p> <p><b>enlighten</b> <sup>[4]</sup> - 144:7, 211:10, 262:23, 263:2</p> <p><b>ensure</b> <sup>[7]</sup> - 191:16, 229:19, 230:9, 231:14, 301:1, 301:5, 301:10</p> <p><b>enter</b> <sup>[2]</sup> - 247:11, 293:24</p> <p><b>entered</b> <sup>[1]</sup> - 325:4</p> <p><b>entertain</b> <sup>[1]</sup> - 187:10</p> <p><b>entire</b> <sup>[4]</sup> - 181:23, 202:16, 269:8, 287:12</p> <p><b>entirety</b> <sup>[1]</sup> - 270:21</p> <p><b>entities</b> <sup>[1]</sup> - 284:1</p> <p><b>entities'</b> <sup>[1]</sup> - 320:15</p> <p><b>entitled</b> <sup>[2]</sup> - 116:2, 327:10</p> <p><b>entity</b> <sup>[3]</sup> - 284:1, 284:4, 284:18</p> <p><b>Entry</b> <sup>[1]</sup> - 123:11</p> <p><b>enumerate</b> <sup>[1]</sup> - 211:22</p> <p><b>Environment</b> <sup>[1]</sup> - 124:9</p> <p><b>Environmental</b> <sup>[4]</sup> - 120:22, 123:18, 168:25, 200:24</p> <p><b>environmental</b> <sup>[8]</sup> - 164:4, 169:5, 169:20, 170:6, 173:13, 241:14, 271:3, 302:15</p> <p><b>Epilepsy</b> <sup>[2]</sup> - 122:24, 122:25</p> <p><b>equipment</b> <sup>[2]</sup> - 302:23, 303:3</p> <p><b>equipped</b> <sup>[2]</sup> - 308:25, 310:24</p> <p><b>era</b> <sup>[1]</sup> - 173:18</p> <p><b>Eric</b> <sup>[1]</sup> - 286:5</p> <p><b>erosion</b> <sup>[1]</sup> - 301:3</p> <p><b>especially</b> <sup>[1]</sup> - 201:5</p> <p><b>essentially</b> <sup>[1]</sup> - 253:5</p> <p><b>established</b> <sup>[2]</sup> - 153:4, 290:2</p> <p><b>Establishment</b> <sup>[2]</sup> - 124:12, 125:3</p> <p><b>estate</b> <sup>[2]</sup> - 133:20, 156:16</p> <p><b>Estimating</b> <sup>[1]</sup> - 122:18</p>	<p>13</p> <p><b>et</b> <sup>[1]</sup> - 145:7</p> <p><b>eternal</b> <sup>[1]</sup> - 175:3</p> <p><b>Ethics</b> <sup>[1]</sup> - 127:19</p> <p><b>evaluated</b> <sup>[1]</sup> - 150:17</p> <p><b>Evaluation</b> <sup>[2]</sup> - 122:21, 122:22</p> <p><b>evaluation</b> <sup>[2]</sup> - 151:7, 152:3</p> <p><b>evaluations</b> <sup>[1]</sup> - 151:21</p> <p><b>evening</b> <sup>[3]</sup> - 208:1, 292:10, 292:11</p> <p><b>event</b> <sup>[7]</sup> - 135:3, 191:21, 192:1, 267:10, 273:22, 274:20, 323:4</p> <p><b>events</b> <sup>[3]</sup> - 163:1, 308:22, 312:13</p> <p><b>evidence</b> <sup>[9]</sup> - 132:2, 136:13, 140:8, 140:10, 199:13, 211:19, 279:16, 279:17, 280:16</p> <p><b>Evidence</b> <sup>[2]</sup> - 123:5, 124:18</p> <p><b>Evidentiary</b> <sup>[1]</sup> - 127:18</p> <p><b>evidentiary</b> <sup>[4]</sup> - 129:2, 129:8, 150:14, 151:2</p> <p><b>Ex</b> <sup>[2]</sup> - 128:11, 128:12</p> <p><b>Ex.-Clean</b> <sup>[1]</sup> - 126:5</p> <p><b>exact</b> <sup>[4]</sup> - 247:18, 249:17, 253:23, 319:12</p> <p><b>exactly</b> <sup>[8]</sup> - 195:15, 200:21, 201:13, 245:13, 249:5, 261:4, 269:20, 312:19</p> <p><b>Examination</b> <sup>[53]</sup> - 117:4, 117:4, 117:5, 117:6, 117:9, 117:9, 117:10, 117:11, 117:11, 117:12, 117:14, 117:14, 117:15, 117:16, 117:16, 117:18, 117:19, 117:19, 117:20, 117:21, 117:21, 118:4, 118:4, 118:5, 118:6, 118:8, 118:8, 118:9, 118:11, 118:12, 118:12, 118:13, 118:14, 118:16, 118:16, 118:17, 118:19, 118:20, 118:21, 118:23,</p>
---	--

<p>118:23, 118:24, 119:4, 119:4, 119:5, 119:6, 119:8, 119:8, 119:9, 119:10, 119:12, 119:12, 119:13</p> <p><b>EXAMINATION</b> [24] - 133:14, 136:22, 142:5, 153:1, 154:6, 158:2, 168:20, 174:23, 188:1, 215:19, 217:1, 221:10, 232:21, 250:12, 270:5, 271:21, 275:15, 278:1, 281:4, 286:9, 296:17, 299:1, 301:23, 308:3</p> <p><b>examination</b> [11] - 129:24, 130:4, 136:18, 140:11, 140:13, 149:22, 174:21, 232:17, 235:15, 281:1, 301:19</p> <p><b>examine</b> [7] - 132:2, 145:16, 145:17, 146:10, 146:16, 162:25, 163:8</p> <p><b>examined</b> [6] - 144:24, 149:12, 209:2, 219:22, 241:13</p> <p><b>Examiner</b> [8] - 130:12, 160:8, 162:15, 169:8, 176:6, 225:5, 234:4, 283:7</p> <p><b>examiner's</b> [1] - 163:11</p> <p><b>examines</b> [5] - 178:23, 181:11, 183:24, 243:2, 287:5</p> <p><b>example</b> [2] - 187:18, 288:5</p> <p><b>examples</b> [2] - 148:24, 161:20</p> <p><b>exceedances</b> [2] - 231:10, 265:20</p> <p><b>excellent</b> [1] - 215:6</p> <p><b>except</b> [5] - 131:19, 189:9, 216:17, 254:21, 260:23</p> <p><b>exception</b> [1] - 130:21</p> <p><b>excess</b> [1] - 292:19</p> <p><b>excited</b> [4] - 232:8, 232:11, 325:20, 325:21</p> <p><b>excuse</b> [11] - 155:12, 161:16, 166:17, 169:7, 174:2,</p>	<p>182:23, 227:10, 272:18, 281:11, 306:7, 324:19</p> <p><b>excused</b> [5] - 160:3, 218:17, 277:19, 297:11, 322:7</p> <p><b>executed</b> [2] - 254:20, 263:11</p> <p><b>executive</b> [1] - 244:2</p> <p><b>exercise</b> [1] - 250:21</p> <p><b>exhaustive</b> [1] - 191:1</p> <p><b>exhibit</b> [27] - 130:11, 131:17, 153:23, 154:3, 154:5, 154:10, 155:14, 155:21, 156:1, 157:17, 157:21, 170:25, 176:20, 176:23, 179:6, 195:8, 224:7, 225:23, 226:16, 227:6, 227:13, 227:14, 228:17, 235:11, 252:5, 279:16, 286:14</p> <p><b>Exhibit</b> [60] - 121:23, 122:3, 122:4, 122:6, 122:7, 122:8, 122:9, 122:10, 122:12, 122:13, 122:14, 122:15, 122:16, 122:17, 122:18, 122:20, 122:22, 122:23, 122:24, 123:3, 123:4, 126:3, 127:22, 127:22, 127:23, 134:22, 154:1, 154:22, 158:6, 170:11, 170:18, 170:24, 174:1, 174:3, 174:4, 175:20, 175:23, 181:16, 183:25, 187:18, 187:19, 195:3, 198:18, 215:25, 223:5, 223:6, 224:19, 226:21, 227:4, 227:11, 227:13, 227:15, 231:21, 240:17, 252:3, 267:20, 270:13, 276:5, 285:25, 286:15</p> <p><b>EXHIBITS</b> [10] - 120:2, 121:2, 122:2, 123:2, 124:2, 125:2, 126:2, 127:2, 127:9, 128:2</p> <p><b>Exhibits</b> [7] - 120:13, 127:3, 127:4, 127:4,</p>	<p>127:5, 132:9, 174:19</p> <p><b>exhibits</b> [29] - 130:5, 130:19, 131:3, 131:4, 131:9, 131:10, 131:14, 131:17, 131:21, 132:4, 132:21, 134:23, 135:1, 170:10, 175:10, 186:17, 222:6, 222:11, 222:20, 222:24, 223:2, 278:20, 278:24, 279:8, 280:10, 299:21, 299:25, 300:9, 300:13</p> <p><b>exist</b> [2] - 161:13, 256:9</p> <p><b>existed</b> [3] - 141:14, 141:18, 247:7</p> <p><b>existing</b> [2] - 287:18, 293:4</p> <p><b>expand</b> [1] - 187:13</p> <p><b>expect</b> [5] - 243:18, 289:7, 290:10, 290:21, 318:5</p> <p><b>expectation</b> [1] - 288:15</p> <p><b>expected</b> [2] - 161:6, 311:6</p> <p><b>expecting</b> [1] - 276:14</p> <p><b>expedite</b> [1] - 263:10</p> <p><b>expensive</b> [3] - 200:23, 201:11, 201:13</p> <p><b>experience</b> [14] - 134:6, 136:4, 151:12, 153:9, 156:1, 169:14, 201:11, 221:21, 275:21, 278:13, 290:4, 299:11, 299:17, 300:19</p> <p><b>experiencing</b> [1] - 145:22</p> <p><b>expert</b> [10] - 162:9, 163:3, 202:15, 203:6, 263:14, 304:22, 305:8, 306:8, 325:24, 326:2</p> <p><b>Expert</b> [1] - 125:8</p> <p><b>expertise</b> [2] - 239:18, 239:19</p> <p><b>expire</b> [1] - 257:13</p> <p><b>expired</b> [8] - 229:1, 229:12, 230:3, 255:5, 255:7, 260:10, 265:20, 266:15</p> <p><b>explain</b> [12] - 185:9,</p>	<p>192:15, 202:3, 219:3, 224:8, 224:18, 225:3, 227:15, 269:5, 270:18, 273:17, 309:1</p> <p><b>explaining</b> [1] - 256:5</p> <p><b>explanation</b> [4] - 185:6, 219:2, 229:9, 283:16</p> <p><b>Exposure</b> [3] - 122:17, 122:20, 124:18</p> <p><b>expressed</b> [4] - 244:14, 256:6, 288:9, 288:18</p> <p><b>expresses</b> [1] - 227:13</p> <p><b>extensive</b> [2] - 191:2, 300:19</p> <p><b>extensively</b> [1] - 274:6</p> <p><b>extent</b> [8] - 140:11, 180:9, 180:15, 180:20, 181:4, 196:10, 209:12, 279:23</p> <p><b>exterior</b> [1] - 177:13</p> <p><b>extra</b> [2] - 207:23, 318:12</p> <p><b>Extreme</b> [1] - 126:17</p> <p><b>extreme</b> [3] - 309:1, 309:3, 310:24</p> <p><b>extremely</b> [1] - 165:24</p>	<p>280:5, 307:8</p> <p><b>Fact</b> [1] - 123:12</p> <p><b>factor</b> [2] - 312:23, 313:16</p> <p><b>Factor</b> [1] - 124:18</p> <p><b>Factors</b> [1] - 124:23</p> <p><b>facts</b> [1] - 140:8</p> <p><b>Fahrenheit</b> [3] - 310:3, 310:6, 310:9</p> <p><b>failed</b> [1] - 131:1</p> <p><b>failings</b> [1] - 177:11</p> <p><b>failure</b> [2] - 314:5, 317:9</p> <p><b>fair</b> [9] - 145:5, 198:11, 201:15, 241:22, 252:12, 268:15, 283:14, 304:20, 306:4</p> <p><b>fairer</b> [1] - 219:15</p> <p><b>fairly</b> [3] - 250:11, 261:20, 304:10</p> <p><b>fall</b> [3] - 184:14, 184:19, 189:10</p> <p><b>Falls</b> [1] - 149:16</p> <p><b>falls</b> [1] - 184:25</p> <p><b>familiar</b> [14] - 141:8, 158:9, 223:5, 224:11, 224:13, 224:19, 238:5, 248:9, 251:24, 304:14, 305:19, 307:15, 324:16</p> <p><b>families</b> [1] - 321:8</p> <p><b>far</b> [15] - 148:14, 194:22, 196:2, 201:21, 202:14, 209:23, 212:15, 230:11, 234:12, 251:11, 258:10, 258:19, 319:20, 320:10, 320:12</p> <p><b>farm</b> [19] - 138:1, 138:10, 140:20, 140:23, 156:12, 156:15, 180:24, 185:19, 188:6, 254:11, 260:11, 275:22, 301:15, 311:13, 312:25, 313:7, 314:9, 320:10</p> <p><b>Farm</b> [3] - 125:12, 125:13, 127:11</p> <p><b>farmland</b> [4] - 137:20, 147:17, 149:2, 149:4</p> <p><b>Farms</b> [6] - 122:14, 124:12, 125:3, 125:9, 127:12, 127:13</p> <p><b>farms</b> [9] - 138:21, 138:24, 209:19,</p>
---	---	--	--	---



275:23, 276:3, 293:4, 299:19, 312:11, 314:1 <b>farmstead</b> [1] - 138:1 <b>fast</b> [1] - 268:22 <b>faster</b> [1] - 176:8 <b>fatalities</b> [1] - 201:5 <b>favor</b> [1] - 132:3 <b>FCC</b> [1] - 287:20 <b>fear</b> [1] - 220:7 <b>February</b> [1] - 313:11 <b>federal</b> [5] - 287:23, 288:1, 288:4, 293:21, 294:1 <b>Federal</b> [3] - 281:7, 288:19, 289:6 <b>federally</b> [1] - 209:25 <b>fee</b> [2] - 134:9, 134:10 <b>feedback</b> [1] - 178:7 <b>feet</b> [3] - 229:19, 253:24 <b>female</b> [1] - 193:10 <b>fenced</b> [2] - 189:7, 191:15 <b>fencing</b> [1] - 215:4 <b>few</b> [10] - 129:12, 142:20, 152:3, 159:14, 173:15, 173:16, 176:7, 206:3, 232:6, 259:2 <b>FIGEN</b> [95] - 115:12, 148:19, 149:5, 149:10, 149:21, 150:2, 150:11, 151:1, 151:19, 152:2, 152:15, 152:18, 167:17, 168:3, 168:5, 168:12, 175:22, 203:19, 203:25, 204:3, 204:6, 204:9, 204:12, 204:17, 204:25, 205:3, 205:12, 205:19, 205:22, 206:14, 206:21, 207:9, 207:15, 207:18, 208:2, 220:24, 223:13, 225:23, 229:7, 257:5, 257:11, 258:4, 258:15, 258:20, 259:3, 259:9, 259:12, 259:22, 260:1, 260:16, 260:25, 261:12, 261:23, 262:5, 262:15, 262:21, 263:12, 263:24, 264:4, 264:6,	268:18, 268:21, 269:13, 270:2, 272:20, 272:25, 286:3, 286:5, 295:4, 295:7, 295:21, 296:2, 305:25, 312:16, 313:9, 314:11, 314:15, 315:2, 315:4, 315:8, 315:11, 315:18, 316:3, 316:9, 316:19, 317:2, 317:4, 317:10, 317:13, 319:4, 321:13, 321:21, 322:20, 325:5, 325:7 <b>Fiegen</b> [9] - 152:17, 166:18, 167:16, 203:18, 214:23, 257:4, 265:9, 275:18, 320:18 <b>Field</b> [1] - 122:10 <b>field</b> [11] - 171:12, 172:1, 172:3, 172:7, 188:17, 188:20, 189:22, 190:18, 213:20, 257:13, 316:2 <b>fields</b> [1] - 155:10 <b>Fifth</b> [2] - 123:12, 125:19 <b>figure</b> [4] - 204:19, 260:2, 292:17, 312:3 <b>Figure</b> [14] - 120:13, 123:13, 123:16, 123:17, 123:17, 123:18, 123:18, 123:19, 123:19, 123:20, 123:20, 123:21, 123:21, 123:22 <b>figured</b> [1] - 260:18 <b>figures</b> [1] - 297:15 <b>Figures</b> [1] - 120:3 <b>file</b> [22] - 134:21, 170:23, 219:7, 222:6, 222:13, 222:19, 259:4, 259:6, 271:4, 271:12, 275:8, 276:19, 278:20, 279:1, 279:7, 299:21, 300:2, 300:8, 302:6, 325:12, 325:16, 325:17 <b>filed</b> [15] - 129:22, 130:14, 130:20, 171:10, 182:16, 183:10, 184:9,	186:10, 211:17, 213:4, 224:6, 229:8, 242:20, 253:18, 283:21 <b>filing</b> [3] - 260:22, 271:10, 274:19 <b>filings</b> [2] - 260:4, 276:20 <b>Final</b> [4] - 126:9, 126:10, 126:12, 126:12 <b>final</b> [20] - 129:21, 159:24, 180:24, 218:11, 223:6, 223:7, 228:18, 229:2, 230:13, 247:3, 248:4, 261:24, 262:2, 262:3, 276:14, 277:15, 294:13, 298:8 <b>finalize</b> [1] - 290:14 <b>finalized</b> [3] - 288:18, 290:18, 294:16 <b>financial</b> [1] - 235:1 <b>findings</b> [1] - 158:13 <b>Findings</b> [1] - 123:11 <b>fine</b> [4] - 166:15, 168:10, 168:12, 241:24 <b>finish</b> [3] - 157:8, 183:2, 226:14 <b>finished</b> [1] - 150:24 <b>First</b> [4] - 120:14, 121:11, 123:10, 127:3 <b>first</b> [26] - 133:10, 158:5, 158:11, 158:22, 159:3, 168:7, 190:16, 196:15, 207:20, 214:6, 221:6, 221:9, 224:3, 239:23, 239:24, 249:13, 252:2, 257:6, 257:9, 257:18, 258:8, 265:19, 277:3, 285:24, 303:14, 316:25 <b>Fish</b> [31] - 120:21, 120:22, 121:3, 121:5, 171:15, 171:16, 171:21, 171:22, 172:23, 172:25, 178:6, 178:10, 179:2, 179:4, 179:24, 180:13, 180:14, 180:21, 182:10, 187:20, 188:15,	190:4, 190:5, 193:22, 194:4, 194:20, 196:4, 198:22, 199:22, 206:11, 207:1 <b>fit</b> [1] - 320:13 <b>five</b> [13] - 148:1, 230:12, 253:3, 253:5, 253:9, 253:10, 253:11, 253:22, 253:24, 254:1, 272:2, 281:6, 287:8 <b>fix</b> [1] - 263:7 <b>flew</b> [1] - 236:25 <b>flexibility</b> [1] - 229:19 <b>flexible</b> [2] - 291:21, 291:23 <b>Flicker</b> [9] - 120:8, 122:4, 122:19, 122:24, 123:4, 125:12, 128:8, 128:10, 128:12 <b>flicker</b> [12] - 163:19, 164:1, 229:20, 230:9, 231:10, 249:8, 251:23, 262:1, 262:3, 263:14, 265:19, 280:1 <b>flip</b> [3] - 158:16, 158:22, 266:14 <b>flip-flopping</b> [1] - 266:14 <b>flopping</b> [1] - 266:14 <b>Florida</b> [5] - 238:9, 238:12, 238:19, 299:16, 299:19 <b>fluent</b> [1] - 186:15 <b>flush</b> [1] - 162:12 <b>fly</b> [2] - 208:13, 209:14 <b>flyer</b> [1] - 155:16 <b>flying</b> [2] - 217:17, 217:18 <b>focus</b> [2] - 278:9, 282:1 <b>focused</b> [2] - 219:11, 292:4 <b>foggy</b> [1] - 150:18 <b>folks</b> [11] - 191:24, 192:8, 192:10, 204:1, 209:5, 214:24, 258:19, 312:9, 312:10, 321:6 <b>follow</b> [8] - 184:15, 185:15, 195:24, 196:18, 196:23, 254:15, 255:21, 321:13 <b>followed</b> [2] - 129:19,	129:20 15 <b>following</b> [7] - 116:1, 129:10, 130:21, 227:21, 270:23, 308:5, 312:17 <b>food</b> [2] - 209:15, 319:4 <b>footprint</b> [3] - 135:10, 146:12, 146:21 <b>FOR</b> [1] - 115:4 <b>foreign</b> [1] - 210:13 <b>forget</b> [1] - 178:14 <b>forgive</b> [1] - 159:4 <b>forgot</b> [2] - 272:25, 321:14 <b>form</b> [5] - 172:11, 254:13, 263:11, 282:19, 304:24 <b>former</b> [3] - 180:23, 182:2, 266:1 <b>formerly</b> [1] - 175:8 <b>formula</b> [2] - 262:7, 262:8 <b>forth</b> [7] - 163:4, 170:5, 196:24, 219:13, 223:6, 263:5, 271:5 <b>forward</b> [5] - 129:17, 229:14, 245:4, 272:8, 273:22 <b>Forward</b> [1] - 123:16 <b>foundation</b> [10] - 131:23, 155:18, 174:15, 223:19, 224:15, 225:6, 225:11, 280:3, 280:14, 320:2 <b>foundations</b> [1] - 320:10 <b>four</b> [9] - 148:24, 200:21, 221:25, 230:12, 238:1, 275:23, 275:25, 276:4, 276:24 <b>Fourth</b> [1] - 123:8 <b>Fox</b> [1] - 228:22 <b>frame</b> [1] - 200:23 <b>Frequency</b> [6] - 122:13, 124:10, 126:3, 126:5, 127:11, 127:14 <b>frequency</b> [1] - 122:15 <b>frequently</b> [1] - 162:9 <b>Friday</b> [5] - 247:2, 247:15, 295:10, 323:9, 323:10 <b>Fright</b> [1] - 124:23 <b>front</b> [21] - 157:23, 175:21, 176:23, 181:8, 183:23,
--	---	---	---	--

<p>194:15, 223:16, 226:14, 227:19, 228:6, 236:16, 238:1, 238:16, 239:11, 244:3, 251:19, 257:15, 272:6, 272:8, 276:10, 296:20 <b>full</b> [11] - 179:24, 180:2, 180:9, 180:11, 180:14, 180:20, 181:4, 240:9, 243:20, 316:6, 316:7 <b>fully</b> [4] - 165:3, 256:8, 291:5, 291:17 <b>fun</b> [1] - 208:14</p>	<p>232:20, 232:22, 234:4, 235:13, 235:18, 235:21, 236:2, 236:6, 236:7, 237:21, 239:25, 240:4, 241:15, 242:3, 246:1, 247:23, 250:7, 255:12, 271:20, 271:22, 272:10, 272:18, 273:3, 273:5, 275:11, 279:23, 281:5, 281:11, 283:1, 283:6, 283:19, 285:18, 296:9, 301:22, 301:24, 304:19, 305:14, 307:1, 307:2, 307:25, 322:1, 322:23 <b>Ganje</b> [31] - 115:20, 117:5, 117:9, 117:11, 117:14, 117:19, 117:21, 118:4, 118:8, 118:12, 118:14, 118:23, 119:5, 119:8, 119:12, 132:16, 136:20, 153:18, 156:20, 157:22, 161:16, 162:8, 164:21, 165:14, 165:19, 219:8, 226:1, 226:23, 228:4, 232:19, 306:25 <b>Ganje's</b> [3] - 132:22, 145:15, 308:5 <b>GARY</b> [1] - 115:11 <b>Gary</b> [1] - 298:4 <b>gas</b> [1] - 290:6 <b>Gate</b> [1] - 127:14 <b>GE</b> [2] - 123:23, 124:3 <b>General</b> [1] - 320:12 <b>general</b> [20] - 134:12, 193:1, 234:18, 239:4, 240:6, 240:10, 241:17, 242:12, 242:14, 243:24, 244:14, 244:24, 245:17, 246:6, 246:13, 256:6, 263:6, 302:13, 317:23 <b>generalization</b> [1] - 188:9 <b>generally</b> [12] - 135:21, 145:21, 210:23, 211:7,</p>	<p>211:11, 211:15, 212:1, 212:5, 289:21, 289:23, 290:3, 290:12 <b>generate</b> [2] - 311:20, 318:6 <b>generating</b> [2] - 313:2, 313:7 <b>generation</b> [3] - 312:7, 313:22, 313:24 <b>Generator</b> [1] - 123:24 <b>generic</b> [3] - 239:23, 304:17, 304:19 <b>Generic</b> [1] - 124:3 <b>gentleman</b> [2] - 241:17, 283:8 <b>gentleman's</b> [1] - 255:1 <b>Geology</b> [3] - 123:19, 123:20, 123:20 <b>George</b> [1] - 127:16 <b>geotech</b> [8] - 308:6, 308:16, 323:18, 323:22, 324:5, 324:17, 324:24, 325:1 <b>geotechnical</b> [6] - 271:3, 300:25, 302:2, 308:14, 308:19, 323:2 <b>Geronimo</b> [4] - 139:23, 140:4, 155:4, 155:8 <b>GIS</b> [1] - 182:10 <b>given</b> [9] - 151:17, 156:15, 197:4, 226:4, 226:6, 279:11, 279:14, 283:2, 319:11 <b>glad</b> [4] - 162:16, 235:16, 236:6, 266:18 <b>goal</b> [3] - 258:9, 277:1, 277:11 <b>Goals</b> [1] - 127:16 <b>gold</b> [1] - 264:18 <b>golden</b> [1] - 178:4 <b>govern</b> [1] - 304:1 <b>Government</b> [1] - 289:6 <b>GPS</b> [1] - 253:23 <b>grab</b> [1] - 281:11 <b>graduated</b> [2] - 134:7, 134:9 <b>granddaughter</b> [1] - 208:11 <b>Granquist</b> [2] - 126:16, 228:23 <b>Grant</b> [15] - 129:9, 139:2, 139:4, 139:7,</p>	<p>139:13, 139:17, 139:21, 140:19, 140:21, 141:14, 156:9, 156:12, 232:7, 241:3 <b>GRANT</b> [1] - 115:5 <b>grant</b> [2] - 284:7, 285:11 <b>granted</b> [9] - 185:18, 209:11, 227:1, 282:7, 282:8, 282:9, 282:17, 285:4, 307:21 <b>grants</b> [1] - 307:5 <b>granular</b> [1] - 213:24 <b>grassland/wetland</b> [1] - 172:24 <b>Grasslands</b> [1] - 126:19 <b>grasslands</b> [2] - 172:23, 196:10 <b>great</b> [1] - 212:14 <b>greatest</b> [1] - 145:23 <b>green</b> [2] - 129:14, 230:15 <b>Green</b> [1] - 124:24 <b>Greg</b> [1] - 115:15 <b>grocery</b> [1] - 210:18 <b>ground</b> [6] - 136:4, 149:8, 149:19, 215:4, 218:1, 262:13 <b>grounds</b> [9] - 131:22, 131:25, 160:12, 169:9, 174:14, 250:1, 280:2, 280:3, 280:5 <b>group</b> [5] - 205:11, 205:14, 206:9, 207:21, 302:25 <b>grouse</b> [26] - 172:8, 189:20, 190:9, 190:11, 192:25, 193:3, 193:16, 193:23, 195:19, 196:1, 197:10, 197:13, 197:19, 197:23, 198:4, 198:13, 199:3, 199:5, 200:4, 200:8, 200:14, 202:13, 202:14, 217:22, 218:1 <b>growing</b> [1] - 262:25 <b>guarantee</b> [8] - 282:13, 283:1, 283:4, 283:7, 283:18, 284:5, 285:2, 285:9 <b>guaranteed</b> [1] - 283:10</p>	<p><b>guaranteeing</b> [1] - 16 285:5 <b>guard</b> [1] - 144:3 <b>guess</b> [11] - 149:1, 150:20, 152:11, 203:5, 204:23, 208:8, 226:15, 295:15, 306:18, 313:14, 316:23 <b>Guidance</b> [2] - 171:23, 203:15 <b>guidance</b> [1] - 120:23 <b>guideline</b> [1] - 213:18 <b>Guidelines</b> [6] - 121:5, 122:12, 124:17, 127:20, 171:22, 203:13 <b>guidelines</b> [2] - 171:20, 172:17 <b>guy</b> [2] - 306:5, 306:6 <b>guys</b> [7] - 196:21, 196:22, 207:23, 220:18, 234:24, 247:5, 295:9</p>
<p><b>G</b></p>				<p><b>H</b></p>
<p><b>gain</b> [1] - 215:7 <b>Game</b> [19] - 171:16, 178:6, 178:10, 179:1, 179:4, 179:24, 180:13, 180:21, 182:10, 187:20, 190:5, 193:22, 194:4, 194:20, 196:4, 198:22, 199:22, 206:11, 207:1 <b>gamut</b> [1] - 234:17 <b>GANJE</b> [100] - 130:24, 131:11, 132:11, 132:18, 133:6, 136:21, 136:23, 140:9, 142:3, 153:19, 154:2, 154:7, 154:12, 154:16, 154:18, 154:20, 154:21, 156:7, 156:18, 156:23, 157:12, 160:8, 160:11, 161:19, 162:14, 165:6, 169:7, 169:12, 174:11, 174:13, 174:22, 174:24, 175:23, 175:25, 176:6, 176:13, 176:22, 177:10, 181:13, 185:3, 186:5, 187:9, 187:22, 216:15, 216:19, 219:10, 220:2, 223:11, 223:14, 225:4, 225:20, 226:3, 226:6, 226:24, 227:10, 227:17, 228:5, 228:8,</p>				<p><b>habitat</b> [8] - 172:6, 172:7, 172:8, 172:9, 189:20, 190:2, 190:6, 202:14 <b>Habitat</b> [1] - 120:7 <b>Haley</b> [19] - 120:11, 121:23, 125:12, 127:24, 128:3, 128:3, 128:4, 128:4, 128:5, 128:5, 128:6, 128:6, 128:7, 128:8, 128:9, 128:10, 128:11, 279:25, 280:15 <b>HALEY</b> [1] - 118:10 <b>half</b> [9] - 202:24, 203:3, 208:22, 209:2, 209:9, 209:11, 209:17, 209:22, 284:20 <b>hand</b> [18] - 154:2, 167:7, 170:6, 176:20, 190:20, 219:5, 226:2, 235:14, 244:17, 260:23, 285:25, 294:19, 302:17, 303:2 <b>handed</b> [1] - 154:22 <b>handled</b> [1] - 277:9 <b>hands</b> [2] - 136:5, 154:5 <b>hanging</b> [1] - 296:14</p>

<p><b>Hanson</b> <sup>[26]</sup> - 115:22, 117:4, 117:6, 117:15, 117:16, 118:12, 118:16, 118:17, 118:24, 119:4, 119:6, 129:6, 144:2, 154:21, 165:15, 206:21, 206:24, 207:19, 215:21, 264:13, 264:19, 292:8, 297:16, 316:22, 317:17, 321:15</p> <p><b>HANSON</b> <sup>[106]</sup> - 115:11, 129:1, 144:3, 144:6, 144:12, 144:16, 144:19, 144:23, 145:1, 145:5, 145:10, 145:14, 145:25, 146:6, 146:15, 146:19, 147:1, 161:16, 163:15, 163:21, 163:22, 163:23, 163:24, 164:5, 165:15, 165:16, 165:22, 166:17, 166:24, 167:3, 167:11, 168:16, 174:9, 187:25, 188:2, 194:17, 194:19, 202:5, 202:20, 208:1, 208:4, 208:7, 208:19, 209:1, 209:11, 209:17, 209:21, 210:6, 210:9, 212:7, 212:14, 212:18, 212:21, 213:3, 213:7, 213:11, 214:5, 215:6, 215:11, 216:23, 217:2, 218:7, 220:19, 221:3, 226:1, 226:5, 226:10, 231:1, 231:6, 231:15, 231:19, 264:14, 264:16, 286:14, 292:9, 292:12, 292:22, 292:25, 293:3, 293:6, 298:5, 305:13, 305:15, 305:18, 305:23, 306:7, 306:13, 306:23, 317:18, 317:21, 318:10, 319:2, 319:6, 319:25, 320:17,</p>	<p>321:6, 321:11, 322:14, 322:16, 323:19, 324:6, 324:9, 324:11, 324:13, 324:19, 325:21</p> <p><b>Hanson's</b> <sup>[1]</sup> - 206:5</p> <p><b>happy</b> <sup>[9]</sup> - 167:5, 224:17, 229:4, 275:8, 297:12, 298:14, 325:13, 325:19</p> <p><b>hard</b> <sup>[6]</sup> - 148:20, 158:25, 204:19, 227:20, 325:10, 325:14</p> <p><b>harmful</b> <sup>[2]</sup> - 203:10, 288:12</p> <p><b>harming</b> <sup>[1]</sup> - 202:25</p> <p><b>Harvest</b> <sup>[1]</sup> - 150:12</p> <p><b>hatches</b> <sup>[1]</sup> - 208:12</p> <p><b>hazard</b> <sup>[10]</sup> - 242:18, 243:8, 243:19, 243:23, 244:17, 245:3, 246:11, 252:24, 288:19, 294:17</p> <p><b>head</b> <sup>[2]</sup> - 219:20, 292:16</p> <p><b>Health</b> <sup>[9]</sup> - 122:7, 122:12, 122:14, 122:16, 122:17, 124:6, 124:23, 125:7, 127:14</p> <p><b>Health-based</b> <sup>[1]</sup> - 122:12</p> <p><b>hear</b> <sup>[8]</sup> - 156:22, 165:23, 166:20, 206:5, 206:23, 223:13, 255:12, 312:18</p> <p><b>heard</b> <sup>[11]</sup> - 149:11, 149:24, 152:6, 163:16, 206:15, 268:1, 268:21, 287:8, 294:12, 312:20, 321:4</p> <p><b>Hearing</b> <sup>[2]</sup> - 127:18, 130:12</p> <p><b>hearing</b> <sup>[12]</sup> - 129:2, 129:3, 129:8, 150:14, 151:3, 164:19, 249:14, 254:9, 266:25, 271:25, 289:10, 326:11</p> <p><b>hearsay</b> <sup>[12]</sup> - 131:22, 155:18, 155:23, 160:16, 162:18, 163:9, 174:15,</p>	<p>280:4, 280:13</p> <p><b>heat</b> <sup>[1]</sup> - 309:22</p> <p><b>heaters</b> <sup>[1]</sup> - 309:7</p> <p><b>heavy</b> <sup>[1]</sup> - 317:22</p> <p><b>Heimerl</b> <sup>[2]</sup> - 181:18, 181:21</p> <p><b>held</b> <sup>[1]</sup> - 116:2</p> <p><b>help</b> <sup>[14]</sup> - 224:15, 227:8, 228:4, 229:5, 234:12, 240:12, 240:14, 240:15, 261:8, 261:19, 269:3, 269:22, 303:15, 310:8</p> <p><b>helped</b> <sup>[1]</sup> - 170:15</p> <p><b>helpful</b> <sup>[4]</sup> - 166:4, 229:6, 283:16, 287:11</p> <p><b>helps</b> <sup>[1]</sup> - 267:18</p> <p><b>hence</b> <sup>[1]</sup> - 166:15</p> <p><b>HEREBY</b> <sup>[1]</sup> - 327:8</p> <p><b>herein</b> <sup>[1]</sup> - 132:5</p> <p><b>heritage</b> <sup>[1]</sup> - 191:10</p> <p><b>HESSLER</b> <sup>[1]</sup> - 117:3</p> <p><b>Hessler</b> <sup>[30]</sup> - 125:24, 126:5, 126:11, 126:12, 126:12, 126:13, 127:3, 127:16, 163:16, 164:6, 223:9, 225:2, 230:16, 230:19, 230:23, 232:12, 247:25, 248:22, 251:4, 265:21, 266:13, 267:8, 267:15, 268:19, 268:23, 271:24, 325:22, 326:4</p> <p><b>Hessler's</b> <sup>[6]</sup> - 126:3, 248:6, 248:15, 248:20, 249:25, 252:10</p> <p><b>highest</b> <sup>[1]</sup> - 134:19</p> <p><b>highlight</b> <sup>[1]</sup> - 300:17</p> <p><b>highly</b> <sup>[5]</sup> - 219:10, 280:17, 297:9, 323:23, 324:4</p> <p><b>hinders</b> <sup>[1]</sup> - 313:7</p> <p><b>hired</b> <sup>[3]</sup> - 134:2, 150:21, 301:8</p> <p><b>hires</b> <sup>[1]</sup> - 134:10</p> <p><b>Historic</b> <sup>[4]</sup> - 171:5, 171:16, 190:16, 191:23</p> <p><b>historic</b> <sup>[6]</sup> - 190:14, 193:19, 193:23, 196:5, 199:22, 207:6</p> <p><b>historical</b> <sup>[1]</sup> - 207:2</p> <p><b>historically</b> <sup>[2]</sup> - 193:14, 193:17</p>	<p><b>hitting</b> <sup>[1]</sup> - 258:14</p> <p><b>hoarse</b> <sup>[1]</sup> - 156:24</p> <p><b>hold</b> <sup>[1]</sup> - 273:21</p> <p><b>homes</b> <sup>[2]</sup> - 135:23, 136:10</p> <p><b>honestly</b> <sup>[1]</sup> - 151:13</p> <p><b>honorable</b> <sup>[10]</sup> - 165:7, 169:7, 227:10, 227:20, 275:3, 284:6, 285:4, 285:10, 304:20, 307:5</p> <p><b>hopefully</b> <sup>[4]</sup> - 148:16, 166:4, 250:10, 275:17</p> <p><b>hopefullys</b> <sup>[1]</sup> - 148:21</p> <p><b>hoping</b> <sup>[1]</sup> - 151:14</p> <p><b>host</b> <sup>[4]</sup> - 254:22, 259:20, 260:14</p> <p><b>hot</b> <sup>[1]</sup> - 309:20</p> <p><b>hours</b> <sup>[2]</sup> - 248:5, 315:22</p> <p><b>house</b> <sup>[2]</sup> - 148:1, 148:2</p> <p><b>housekeeping</b> <sup>[1]</sup> - 322:24</p> <p><b>Hueck</b> <sup>[1]</sup> - 115:15</p> <p><b>HUECK</b> <sup>[1]</sup> - 325:16</p> <p><b>Human</b> <sup>[1]</sup> - 122:16</p> <p><b>hunting</b> <sup>[4]</sup> - 146:7, 146:9, 146:11, 146:13</p> <p><b>hurt</b> <sup>[1]</sup> - 262:14</p> <p><b>Hyde</b> <sup>[1]</sup> - 237:11</p> <p><b>Hypothesis</b> <sup>[2]</sup> - 124:13, 125:4</p> <p><b>Hz</b> <sup>[1]</sup> - 123:24</p>	<p><b>I</b></p> <p><b>I1</b> <sup>[1]</sup> - 127:10</p> <p><b>I10</b> <sup>[1]</sup> - 127:21</p> <p><b>I11</b> <sup>[1]</sup> - 127:22</p> <p><b>I12</b> <sup>[1]</sup> - 127:22</p> <p><b>I13</b> <sup>[1]</sup> - 127:23</p> <p><b>I14</b> <sup>[1]</sup> - 127:23</p> <p><b>I15-A</b> <sup>[1]</sup> - 127:24</p> <p><b>I15-B</b> <sup>[1]</sup> - 127:24</p> <p><b>I16</b> <sup>[1]</sup> - 128:3</p> <p><b>I17-A</b> <sup>[1]</sup> - 128:3</p> <p><b>I17-B</b> <sup>[1]</sup> - 128:4</p> <p><b>I18</b> <sup>[1]</sup> - 128:4</p> <p><b>I19</b> <sup>[1]</sup> - 128:5</p> <p><b>I2</b> <sup>[1]</sup> - 127:12</p> <p><b>I20</b> <sup>[1]</sup> - 128:5</p> <p><b>I21</b> <sup>[1]</sup> - 128:6</p> <p><b>I22</b> <sup>[1]</sup> - 128:6</p> <p><b>I23</b> <sup>[1]</sup> - 128:7</p> <p><b>I24</b> <sup>[1]</sup> - 128:8</p>	<p><b>I25</b> <sup>[1]</sup> - 128:9</p> <p><b>I26</b> <sup>[1]</sup> - 128:10</p> <p><b>I27</b> <sup>[1]</sup> - 128:11</p> <p><b>I28</b> <sup>[2]</sup> - 154:1, 154:22</p> <p><b>I3</b> <sup>[1]</sup> - 127:13</p> <p><b>I4</b> <sup>[1]</sup> - 127:14</p> <p><b>I5</b> <sup>[1]</sup> - 127:16</p> <p><b>I6</b> <sup>[1]</sup> - 127:18</p> <p><b>I7</b> <sup>[1]</sup> - 127:19</p> <p><b>I8</b> <sup>[1]</sup> - 127:20</p> <p><b>I9-A</b> <sup>[1]</sup> - 127:20</p> <p><b>I9-B</b> <sup>[1]</sup> - 127:21</p> <p><b>IAIA</b> <sup>[1]</sup> - 127:23</p> <p><b>ice</b> <sup>[10]</sup> - 313:3, 313:15, 314:2, 314:7, 314:9, 314:12, 316:12, 316:16, 316:18, 317:10</p> <p><b>icing</b> <sup>[2]</sup> - 309:14, 309:17</p> <p><b>icy</b> <sup>[1]</sup> - 313:17</p> <p><b>ID</b> <sup>[2]</sup> - 122:3, 125:17</p> <p><b>idea</b> <sup>[1]</sup> - 283:5</p> <p><b>identification</b> <sup>[3]</sup> - 139:12, 154:1, 226:17</p> <p><b>Identification</b> <sup>[2]</sup> - 122:20, 122:22</p> <p><b>Identified</b> <sup>[1]</sup> - 126:13</p> <p><b>identified</b> <sup>[23]</sup> - 131:17, 139:23, 140:4, 176:20, 193:21, 194:2, 194:6, 198:18, 200:12, 202:10, 205:21, 217:14, 229:21, 230:15, 231:8, 237:15, 240:8, 249:17, 279:25, 288:23, 293:16, 308:9, 308:12</p> <p><b>identify</b> <sup>[12]</sup> - 138:20, 154:25, 155:4, 167:6, 188:18, 190:17, 190:21, 192:19, 227:8, 238:17, 272:2, 281:6</p> <p><b>identifying</b> <sup>[1]</sup> - 271:6</p> <p><b>II</b> <sup>[4]</sup> - 115:4, 115:9, 115:19, 212:3</p> <p><b>III</b> <sup>[1]</sup> - 172:12</p> <p><b>impact</b> <sup>[18]</sup> - 134:2, 134:3, 135:17, 135:18, 135:25, 136:14, 137:11, 138:2, 141:3, 141:6, 148:4, 160:25, 161:2, 161:4,</p>
---	--	--	--	---	--



162:23, 164:4, 188:5, 189:25 <b>Impact</b> [4] - 122:9, 124:14, 124:20, 125:7 <b>impacted</b> [3] - 210:1, 263:4, 263:6 <b>Impacts</b> [1] - 124:15 <b>impacts</b> [22] - 161:6, 161:12, 172:19, 173:2, 173:3, 173:6, 182:20, 184:15, 189:11, 191:1, 191:16, 192:21, 196:9, 197:20, 197:21, 197:23, 210:17, 249:9, 251:5, 251:11, 251:15, 273:20 <b>impeachment</b> [4] - 153:23, 155:25, 156:2, 157:17 <b>implement</b> [1] - 210:16 <b>implicates</b> [1] - 276:13 <b>implies</b> [1] - 318:23 <b>importance</b> [1] - 215:1 <b>important</b> [7] - 149:8, 189:16, 190:6, 198:4, 284:21, 290:3, 313:21 <b>imposed</b> [1] - 284:9 <b>impossible</b> [1] - 166:5 <b>impresses</b> [1] - 193:10 <b>impressive</b> [1] - 190:24 <b>improper</b> [1] - 131:23 <b>Improved</b> [1] - 122:19 <b>IN</b> [2] - 115:4, 115:5 <b>inarticulately</b> [1] - 239:18 <b>incident</b> [4] - 237:2, 237:4, 237:5, 237:9 <b>incidental</b> [1] - 217:18 <b>incidents</b> [1] - 317:7 <b>Incl</b> [1] - 124:10 <b>include</b> [19] - 129:24, 130:13, 131:20, 147:20, 148:14, 149:17, 153:9, 172:22, 177:17, 177:20, 178:2, 178:3, 179:9, 182:1, 214:13, 240:24, 254:5, 262:9, 308:18 <b>included</b> [7] - 130:15, 132:8, 140:3, 180:24, 182:6, 187:15, 255:6 <b>includes</b> [4] - 183:13, 207:15, 279:23, 309:7 <b>including</b> [6] - 171:15, 172:4, 179:22, 185:19, 231:22, 282:10 <b>Including</b> [1] - 122:15 <b>inclusive</b> [1] - 207:16 <b>income</b> [3] - 146:4, 146:10, 146:20 <b>incomplete</b> [2] - 247:8, 284:22 <b>inconvenience</b> [1] - 239:15 <b>incorrect</b> [2] - 135:16, 165:13 <b>increase</b> [2] - 251:6, 251:15 <b>indeed</b> [3] - 130:24, 304:19, 323:13 <b>Independent</b> [1] - 125:8 <b>independently</b> [1] - 211:2 <b>independently-</b> <b>conducted</b> [1] - 211:2 <b>indicate</b> [2] - 196:6, 281:13 <b>indicated</b> [12] - 139:24, 146:23, 169:9, 183:16, 184:3, 205:24, 207:5, 234:25, 248:13, 281:7, 294:23, 302:1 <b>indicates</b> [2] - 175:16, 181:18 <b>indicating</b> [1] - 180:22 <b>indifferent</b> [1] - 197:18 <b>indirect</b> [9] - 197:13, 197:15, 197:19, 197:23, 212:22, 212:25, 213:1, 213:2, 213:25 <b>individual</b> [1] - 301:10 <b>industry</b> [1] - 307:7 <b>information</b> [36] - 142:15, 151:22, 155:17, 155:19, 155:20, 166:22, 183:6, 183:14, 186:20, 209:25, 210:4, 210:14, 210:25, 213:16, 213:21, 214:2, 244:18, 245:24, 246:5, 246:12, 247:13, 249:2, 249:11, 272:7, 272:15, 292:23, 296:14, 296:22, 308:14, 312:15, 319:8, 319:10, 319:21, 323:18, 323:24, 324:21 <b>Information</b> [2] - 288:2, 288:11 <b>informational</b> [1] - 254:8 <b>informed</b> [1] - 242:8 <b>Informed</b> [1] - 124:21 <b>Infrasound</b> [8] - 122:12, 122:14, 122:16, 124:10, 126:4, 126:6, 127:11, 127:14 <b>infrastructure</b> [7] - 172:22, 188:21, 189:24, 206:13, 290:7, 290:16, 313:5 <b>initial</b> [1] - 260:7 <b>inoperable</b> [1] - 313:1 <b>inside</b> [1] - 321:20 <b>inspect</b> [1] - 315:23 <b>Installations</b> [1] - 124:7 <b>instance</b> [2] - 151:10, 174:16 <b>instances</b> [1] - 323:14 <b>instead</b> [1] - 270:23 <b>Institute</b> [3] - 127:19, 134:19, 134:20 <b>instruct</b> [2] - 234:5, 323:5 <b>insurance</b> [8] - 292:13, 292:15, 292:20, 292:25, 293:4, 297:5, 297:16, 297:23 <b>Insurance</b> [1] - 126:19 <b>intend</b> [2] - 157:21, 297:14 <b>intended</b> [2] - 228:6, 228:7 <b>intensive</b> [2] - 190:18, 205:13 <b>Intensive</b> [1] - 172:12 <b>intent</b> [1] - 244:16 <b>interaction</b> [1] - 294:3 <b>interest</b> [2] - 179:7, 282:12 <b>interesting</b> [4] - 193:17, 208:7, 208:9, 248:24 <b>interfere</b> [1] - 287:17 <b>interference</b> [4] - 287:16, 288:12, 288:15, 294:9 <b>interfering</b> [1] - 294:11 <b>interject</b> [1] - 167:4 <b>internal</b> [1] - 225:1 <b>internally</b> [2] - 282:2, 289:5 <b>interpose</b> [2] - 140:7, 155:12 <b>interpret</b> [1] - 195:16 <b>interpretation</b> [1] - 214:11 <b>interrupt</b> [3] - 161:24, 206:24, 273:3 <b>interrupting</b> [1] - 185:3 <b>intersect</b> [2] - 188:23, 197:2 <b>Intervenor</b> [6] - 174:12, 174:21, 264:25, 265:5, 271:19, 281:3 <b>Intervenor's</b> [2] - 123:14, 123:15 <b>INTERVENORS</b> [2] - 127:9, 128:2 <b>Interveners</b> [17] - 115:21, 126:12, 127:24, 132:3, 133:3, 164:8, 216:2, 216:14, 219:12, 279:22, 282:6, 295:16, 296:8, 301:21, 321:24, 323:3, 324:21 <b>Interveners'</b> [6] - 125:19, 129:19, 131:4, 131:10, 135:6, 235:9 <b>Interventional</b> [1] - 124:21 <b>interview</b> [1] - 137:21 <b>interviewed</b> [3] - 136:2, 136:12, 137:16 <b>interviews</b> [2] - 137:10, 149:17 <b>Intolerance</b> [1] - 124:22 <b>introduced</b> [1] - 147:15 <b>introduction</b> [1] - 225:11 <b>investigation</b> [3] - 151:5, 151:18, 166:25 <b>investigations</b> [2] - 166:21, 169:22 <b>invited</b> [1] - 215:7 <b>involved</b> [4] - 205:9, 18 225:1, 236:24, 238:7 <b>involvement</b> [2] - 232:5, 261:21 <b>involves</b> [1] - 225:9 <b>involving</b> [1] - 160:14 <b>Iowa</b> [1] - 151:23 <b>irrevocably</b> [1] - 282:13 <b>ISO</b> [1] - 126:11 <b>Iso</b> [2] - 125:12, 125:13 <b>ISO-lines</b> [1] - 126:11 <b>issue</b> [6] - 228:16, 247:19, 263:7, 263:8, 293:24, 296:23 <b>Issue</b> [1] - 127:15 <b>issued</b> [5] - 142:22, 186:18, 299:13, 299:15 <b>issues</b> [17] - 196:14, 209:7, 240:21, 241:14, 244:6, 267:22, 268:2, 271:3, 271:4, 286:25, 287:8, 288:9, 288:23, 289:7, 293:10, 293:13 <b>item</b> [2] - 140:4, 164:11 <b>items</b> [3] - 148:24, 183:5, 189:2 <b>iterated</b> [1] - 129:2 <b>iteration</b> [1] - 248:18 <b>iterations</b> [2] - 178:11, 259:1 <b>iterative</b> [1] - 189:23 <b>itself</b> [5] - 177:1, 225:12, 291:13, 312:23, 323:12	
	<b>J</b>
	<b>Jamaica</b> [1] - 299:14 <b>January</b> [14] - 125:8, 170:10, 204:21, 222:7, 259:13, 260:20, 261:13, 263:17, 263:20, 278:21, 299:22, 310:20, 313:11, 315:5 <b>JAY</b> [1] - 118:10 <b>Jay</b> [6] - 120:11, 121:23, 125:12, 127:24, 279:25, 280:15 <b>job</b> [3] - 266:24,

281:21, 317:21 <b>John</b> [1] - 228:22 <b>joining</b> [2] - 222:4, 278:16 <b>joint</b> [2] - 215:23, 219:7 <b>Joint</b> [1] - 126:14 <b>Journal</b> [3] - 125:10, 126:4, 126:6 <b>Jr</b> [1] - 127:16 <b>JUDICIAL</b> [1] - 127:8 <b>July</b> [5] - 171:8, 179:3, 179:8, 179:16, 243:15 <b>junction</b> [1] - 324:22 <b>June</b> [11] - 115:8, 116:4, 171:6, 171:7, 183:18, 200:20, 217:25, 290:21, 327:11, 327:14 <b>Juno</b> [2] - 238:12, 238:18 <b>jurisdictions</b> [1] - 283:23	181:6, 184:17, 191:4, 193:5, 195:23, 196:22, 200:25, 202:8, 209:18, 217:5, 217:19, 234:15, 239:25, 246:1, 265:24, 281:19, 312:13, 312:14, 318:22 <b>kindly</b> [2] - 156:19, 181:13 <b>kinds</b> [3] - 184:25, 187:16, 215:5 <b>Kingston</b> [1] - 299:14 <b>Kirschenmann</b> [1] - 127:4 <b>KIRSCHENMANN</b> [1] - 119:3 <b>knowing</b> [1] - 177:16 <b>knowledge</b> [29] - 140:10, 140:12, 149:19, 167:25, 184:23, 192:4, 192:10, 194:20, 195:16, 195:23, 197:12, 212:9, 215:8, 233:21, 234:1, 234:6, 234:8, 234:11, 237:19, 251:17, 254:4, 289:1, 289:2, 291:1, 291:22, 302:25, 306:14, 306:15, 321:9 <b>knowledgeable</b> [2] - 241:21, 304:23 <b>known</b> [23] - 175:8, 191:17, 193:19, 194:6, 194:25, 196:16, 196:25, 197:2, 197:6, 197:11, 197:12, 197:22, 198:2, 198:6, 199:19, 199:22, 200:14, 201:19, 203:3, 206:8, 206:25, 307:14, 310:20 <b>knows</b> [4] - 268:11, 306:15, 306:16 <b>Krishna</b> [1] - 127:13 <b>Kristen</b> [2] - 115:22, 130:8 <b>Kristi</b> [1] - 121:11 <b>Kristie</b> [1] - 325:9 <b>KRISTIE</b> [1] - 115:12	<b>L</b> <b>label</b> [1] - 157:20 <b>labeled</b> [2] - 226:8, 231:11 <b>lack</b> [7] - 131:23, 174:14, 225:6, 229:24, 280:3, 280:13 <b>laid</b> [2] - 223:20, 297:17 <b>Lake</b> [1] - 205:6 <b>Lampeter</b> [1] - 125:6 <b>LAMPETER</b> [1] - 118:15 <b>Land</b> [9] - 123:16, 123:22, 126:9, 126:10, 126:12, 126:12, 126:16, 171:21, 203:13 <b>land</b> [33] - 134:17, 135:21, 136:2, 136:4, 139:21, 139:23, 140:3, 145:4, 148:5, 148:6, 151:2, 213:17, 221:18, 221:23, 223:6, 223:7, 224:21, 224:22, 228:18, 228:19, 229:2, 230:13, 237:16, 247:11, 248:4, 257:12, 260:12, 260:13, 263:25, 323:8, 323:12, 325:3 <b>Land-Based</b> [2] - 171:21, 203:13 <b>Landowner</b> [6] - 120:20, 120:21, 121:24, 122:5, 128:8, 128:9 <b>landowner</b> [5] - 135:9, 135:11, 173:16, 234:13, 263:9 <b>landowner's</b> [1] - 254:25 <b>landowners</b> [10] - 215:6, 234:17, 237:17, 247:9, 247:12, 251:6, 254:10, 254:12, 263:25, 301:11 <b>language</b> [1] - 155:6 <b>large</b> [4] - 178:16, 224:24, 241:20, 261:20 <b>last</b> [37] - 134:1, 135:18, 155:7, 157:1, 181:14, 181:15, 185:5, 186:7, 210:19, 214:6, 214:7, 214:9, 226:24, 232:3, 235:1, 236:12, 237:15, 239:6, 240:2, 243:11, 246:3, 247:2, 247:7, 247:23, 248:1, 259:2, 260:4, 264:7, 269:6, 269:12, 289:10, 295:10, 305:17, 308:21, 313:4, 325:4 <b>late</b> [4] - 142:9, 142:10, 229:8, 323:10 <b>laws</b> [2] - 171:24 <b>lay</b> [1] - 214:1 <b>layout</b> [1] - 276:14 <b>lays</b> [1] - 297:23 <b>lead</b> [1] - 257:10 <b>leader</b> [1] - 307:7 <b>leads</b> [1] - 266:7 <b>learning</b> [1] - 193:1 <b>lease</b> [2] - 229:12, 263:25 <b>leases</b> [4] - 229:1, 257:13, 265:20, 266:15 <b>leasing</b> [3] - 221:18, 224:21, 224:22 <b>least</b> [6] - 173:3, 206:23, 208:22, 276:13, 276:15, 298:12 <b>leave</b> [3] - 197:11, 198:13, 296:14 <b>led</b> [2] - 162:6, 260:11 <b>left</b> [5] - 176:20, 202:13, 231:2, 258:24, 265:14 <b>left-hand</b> [1] - 176:20 <b>legal</b> [3] - 131:25, 290:10 <b>legend</b> [3] - 176:19, 177:1, 240:22 <b>legible</b> [1] - 272:19 <b>lek</b> [33] - 172:8, 189:20, 193:1, 193:7, 193:11, 193:23, 194:6, 194:22, 194:25, 195:19, 196:1, 196:5, 196:6, 196:25, 197:3, 197:6, 197:11, 198:2, 198:6, 199:5, 199:14, 199:21, 200:8, 200:10, 201:19, 206:3, 1 9 206:8, 207:2, 207:6, 217:6, 217:7, 217:12 <b>Lek</b> [1] - 127:7 <b>lek's</b> [1] - 198:4 <b>lekking</b> [9] - 190:10, 190:12, 193:11, 193:12, 198:3, 198:7, 200:19, 207:7, 217:25 <b>leks</b> [25] - 190:9, 190:11, 192:25, 193:21, 193:23, 195:9, 196:6, 196:7, 196:16, 197:13, 197:20, 197:23, 199:3, 199:7, 199:16, 199:19, 199:23, 200:11, 206:12, 206:22, 206:25, 207:3, 207:16, 217:15, 218:4 <b>length</b> [1] - 257:12 <b>lengthy</b> [1] - 211:7 <b>less</b> [2] - 202:24, 203:9 <b>Letter</b> [19] - 120:17, 120:18, 120:19, 120:20, 120:21, 123:9, 123:10, 123:16, 125:18, 126:17, 127:22, 128:5, 128:6, 128:6, 128:7, 128:8, 128:9, 128:10, 128:11 <b>letter</b> [4] - 130:17, 142:15, 142:21, 179:3 <b>letters</b> [1] - 206:12 <b>letting</b> [1] - 208:13 <b>Level</b> [12] - 120:8, 122:3, 122:13, 125:14, 125:15, 125:15, 125:16, 125:16, 126:15, 127:16, 172:11, 172:12 <b>level</b> [5] - 245:16, 246:5, 246:12, 262:18, 320:16 <b>levels</b> [2] - 232:5, 292:20 <b>Levels</b> [1] - 125:6 <b>liaison</b> [1] - 278:10 <b>license</b> [9] - 134:12, 134:15, 142:17, 142:19, 142:21, 144:10, 144:14, 144:20, 144:22
---	---	---

<p><b>License</b> [5] - 128:3, 128:3, 128:4, 128:4, 128:5</p> <p><b>licensed</b> [8] - 137:17, 142:1, 142:13, 142:14, 142:23, 144:12, 144:13, 287:19</p> <p><b>licenses</b> [1] - 144:17</p> <p><b>lien</b> [1] - 237:16</p> <p><b>Lien</b> [1] - 238:16</p> <p><b>Life</b> [1] - 124:7</p> <p><b>life</b> [3] - 198:4, 264:1, 266:11</p> <p><b>Light</b> [1] - 299:19</p> <p><b>light</b> [1] - 129:14</p> <p><b>likely</b> [2] - 150:10, 321:7</p> <p><b>limit</b> [3] - 147:19, 167:22, 202:17</p> <p><b>limitations</b> [1] - 151:17</p> <p><b>limited</b> [2] - 200:11, 200:22</p> <p><b>limiting</b> [2] - 312:23, 313:16</p> <p><b>Limits</b> [1] - 127:16</p> <p><b>Lindgren</b> [1] - 229:11</p> <p><b>Lindgrens</b> [1] - 229:22</p> <p><b>Line</b> [1] - 120:23</p> <p><b>line</b> [34] - 161:1, 161:18, 176:25, 177:17, 177:20, 211:9, 223:11, 225:13, 240:22, 240:24, 241:1, 247:21, 252:23, 254:6, 261:14, 263:24, 275:25, 290:24, 291:9, 311:18, 312:23, 312:24, 314:3, 314:6, 314:8, 314:23, 315:7, 315:8, 315:9, 315:15, 316:5, 317:1, 318:19, 324:8</p> <p><b>lines</b> [9] - 126:11, 173:16, 188:23, 211:14, 270:7, 276:3, 299:18, 312:18, 313:5</p> <p><b>Lines</b> [2] - 125:13, 125:14</p> <p><b>link</b> [1] - 314:2</p> <p><b>links</b> [1] - 318:2</p> <p><b>list</b> [10] - 130:11, 131:17, 132:7, 132:8, 132:13, 132:16, 132:22,</p>	<p>137:13, 210:18, 326:7</p> <p><b>listed</b> [6] - 210:1, 235:3, 263:22, 270:19, 297:6, 318:25</p> <p><b>listen</b> [3] - 206:4, 248:7, 289:10</p> <p><b>listened</b> [1] - 247:25</p> <p><b>listening</b> [2] - 268:22, 313:13</p> <p><b>listing</b> [1] - 149:20</p> <p><b>Literature</b> [2] - 122:7, 122:15</p> <p><b>literature</b> [1] - 135:22</p> <p><b>Living</b> [1] - 124:8</p> <p><b>LLC</b> [10] - 115:4, 129:8, 221:15, 233:8, 233:9, 233:17, 234:22, 236:21, 238:18, 285:1</p> <p><b>local</b> [9] - 141:4, 141:7, 141:8, 141:13, 141:18, 153:3, 171:17, 172:13, 232:4</p> <p><b>located</b> [14] - 137:6, 137:7, 146:13, 148:11, 188:14, 188:21, 196:9, 198:1, 207:3, 229:11, 230:3, 314:24, 315:20, 316:6</p> <p><b>locating</b> [2] - 202:24, 240:12</p> <p><b>location</b> [12] - 138:20, 145:20, 145:24, 193:11, 196:7, 243:24, 248:16, 250:19, 253:23, 266:2, 267:7, 271:2</p> <p><b>Locations</b> [1] - 126:15</p> <p><b>locations</b> [62] - 145:7, 190:18, 193:19, 196:5, 196:25, 197:3, 197:6, 198:2, 198:7, 199:7, 199:21, 199:23, 200:10, 207:6, 223:10, 230:18, 231:8, 231:14, 232:12, 243:6, 243:9, 243:19, 244:16, 244:19, 245:6, 245:19, 248:22, 249:7, 249:18, 249:20, 250:15, 251:14,</p>	<p>251:15, 253:11, 253:13, 253:15, 253:18, 253:20, 253:21, 254:1, 256:10, 256:12, 256:15, 269:6, 269:23, 269:25, 270:23, 270:24, 272:5, 273:15, 273:16, 273:19, 273:21, 273:24, 274:15, 288:21, 290:1, 294:10, 308:9, 308:12, 308:15</p> <p><b>lodge</b> [1] - 160:8</p> <p><b>look</b> [48] - 139:5, 139:18, 140:21, 141:9, 146:3, 146:15, 146:22, 148:4, 150:2, 150:5, 150:18, 151:1, 151:15, 154:23, 156:11, 158:15, 158:24, 171:19, 177:7, 178:21, 180:10, 180:17, 181:1, 186:8, 192:2, 193:3, 193:5, 216:15, 217:3, 225:21, 226:16, 227:24, 235:21, 236:5, 236:8, 238:15, 239:16, 247:15, 255:3, 268:23, 268:25, 269:14, 269:17, 295:23, 296:16, 313:22, 316:19</p> <p><b>looked</b> [17] - 139:15, 140:19, 143:2, 143:14, 145:3, 146:17, 146:18, 148:25, 159:8, 209:6, 257:14, 259:1, 260:1, 260:4, 291:15, 297:20, 322:8</p> <p><b>looking</b> [16] - 146:2, 150:4, 183:20, 184:6, 188:9, 195:8, 204:22, 209:14, 211:13, 212:2, 218:4, 225:10, 256:11, 256:12, 272:18, 290:7</p> <p><b>looks</b> [5] - 203:14, 214:10, 264:2, 316:14, 317:22</p> <p><b>Lord</b> [1] - 152:18</p>	<p><b>loss</b> [4] - 165:22, 187:6, 236:11, 236:20</p> <p><b>lost</b> [1] - 312:7</p> <p><b>loud</b> [1] - 156:25</p> <p><b>love</b> [2] - 208:14, 319:6</p> <p><b>loved</b> [1] - 138:4</p> <p><b>low</b> [5] - 196:7, 211:24, 290:4, 309:15</p> <p><b>Low</b> [7] - 122:13, 122:15, 124:10, 126:3, 126:5, 127:11, 127:14</p> <p><b>Low-frequency</b> [6] - 122:13, 122:15, 124:10, 126:3, 126:5, 127:14</p> <p><b>lower</b> [1] - 250:23</p> <p><b>Lynch's</b> [1] - 264:25</p>	<p><b>management</b> [13] - 200:16, 169:23, 173:5, 189:3, 189:17, 192:20, 232:24, 232:25, 258:18, 278:11, 307:3, 307:15, 307:19, 307:22</p> <p><b>Management</b> [2] - 124:17, 124:20</p> <p><b>manager</b> [19] - 137:20, 186:24, 221:14, 221:24, 221:25, 233:1, 233:13, 239:4, 240:6, 241:17, 241:18, 241:21, 257:7, 257:10, 299:5, 320:5, 320:25</p> <p><b>managing</b> [3] - 221:19, 301:6, 301:7</p> <p><b>map</b> [63] - 143:14, 176:15, 178:25, 179:3, 179:12, 179:15, 179:19, 180:16, 180:18, 199:19, 200:12, 223:6, 223:8, 223:14, 223:17, 223:19, 223:20, 223:21, 224:10, 224:21, 224:25, 225:7, 225:11, 225:12, 225:13, 225:14, 225:17, 225:19, 225:20, 226:16, 226:20, 227:5, 227:15, 229:2, 239:11, 240:15, 240:20, 240:21, 241:12, 246:23, 247:3, 247:10, 247:16, 248:13, 249:3, 250:15, 252:3, 253:22, 255:6, 260:2, 261:25, 262:2, 266:22, 272:13, 275:5, 275:8, 323:9</p> <p><b>Map</b> [10] - 123:17, 123:17, 123:18, 123:19, 125:13, 125:14, 126:9, 126:10, 126:11, 127:23</p> <p><b>maps</b> [10] - 139:11, 139:15, 176:1, 182:7, 182:9, 223:15, 226:8,</p>
<p style="text-align: center;"><b>M</b></p>				
<p><b>ma'am</b> [12] - 185:2, 185:24, 255:11, 255:14, 255:18, 256:2, 257:10, 259:11, 259:18, 264:3, 264:5, 272:16</p> <p><b>Madam</b> [8] - 160:8, 162:14, 169:8, 176:6, 223:12, 225:4, 234:4, 283:6</p> <p><b>MAI</b> [1] - 134:18</p> <p><b>mail</b> [7] - 179:22, 181:17, 182:4, 186:17, 186:18, 187:14, 187:17</p> <p><b>mailed</b> [1] - 157:21</p> <p><b>mails</b> [7] - 181:3, 181:7, 186:3, 186:10, 186:22, 187:5, 187:6</p> <p><b>Main</b> [1] - 115:24</p> <p><b>main</b> [1] - 175:15</p> <p><b>maintain</b> [2] - 282:17, 303:22</p> <p><b>maintained</b> [1] - 284:23</p> <p><b>maintenance</b> [1] - 300:20</p> <p><b>major</b> [2] - 278:11, 303:3</p> <p><b>majored</b> [1] - 134:8</p> <p><b>majority</b> [1] - 224:24</p> <p><b>male</b> [1] - 193:8</p> <p><b>man</b> [1] - 295:14</p> <p><b>manage</b> [2] - 299:8, 320:5</p>				

227:18, 240:8, 260:10 <b>Maps</b> [3] - 123:16, 125:11, 125:18 <b>March</b> [5] - 125:10, 182:18, 183:15, 200:19, 217:25 <b>March-April</b> [1] - 125:10 <b>mark</b> [1] - 131:1 <b>MARK</b> [1] - 118:7 <b>Mark</b> [6] - 120:12, 121:22, 123:23, 298:21, 299:5, 315:5 <b>marked</b> [27] - 134:22, 134:23, 153:24, 154:1, 154:21, 170:10, 170:18, 170:24, 170:25, 198:17, 222:7, 222:14, 222:20, 222:21, 224:7, 230:6, 230:7, 263:19, 278:21, 279:2, 279:8, 279:9, 299:22, 300:3, 300:9, 300:10, 308:13 <b>markers</b> [1] - 228:8 <b>market</b> [7] - 138:9, 138:13, 138:18, 138:19, 145:5, 145:25, 146:3 <b>marking</b> [2] - 159:3, 267:5 <b>markings</b> [1] - 266:22 <b>Mask</b> [1] - 125:5 <b>MASSEY</b> [1] - 118:3 <b>Massey</b> [12] - 120:12, 122:5, 125:17, 218:20, 218:21, 256:25, 268:3, 268:14, 272:22, 277:21, 278:5, 292:10 <b>master's</b> [2] - 169:15, 299:14 <b>Match</b> [2] - 124:12, 125:3 <b>mate</b> [2] - 193:10, 193:13 <b>Material</b> [2] - 121:23, 122:4 <b>material</b> [7] - 165:24, 245:8, 252:25, 253:15, 256:10, 271:12, 303:3 <b>math</b> [4] - 250:4, 265:10, 265:11, 265:16	<b>mathematically</b> [1] - 259:22 <b>mating</b> [6] - 193:7, 193:10, 193:13, 200:4, 200:14, 217:21 <b>MATTER</b> [1] - 115:4 <b>matter</b> [9] - 116:2, 162:15, 165:11, 177:5, 236:14, 245:10, 246:8, 253:14, 327:10 <b>matters</b> [3] - 160:14, 165:4, 304:23 <b>MCCOMSEY</b> [1] - 327:5 <b>McComsey</b> [3] - 115:24, 327:17, 327:18 <b>McCunney</b> [1] - 124:16 <b>MCCUNNEY</b> [1] - 118:18 <b>meal</b> [1] - 319:9 <b>mean</b> [26] - 147:14, 147:24, 150:15, 157:6, 157:7, 167:17, 195:17, 200:5, 225:18, 241:17, 250:15, 259:16, 268:25, 269:2, 273:14, 285:6, 291:23, 297:12, 301:7, 306:5, 312:6, 314:13, 314:15, 315:21, 325:12 <b>meaning</b> [7] - 254:14, 254:16, 309:5, 312:23, 313:1, 314:6, 320:5 <b>means</b> [7] - 134:10, 157:11, 280:16, 281:21, 283:5, 283:10, 303:17 <b>meant</b> [1] - 283:18 <b>measurably</b> [1] - 136:15 <b>Measurement</b> [2] - 122:13, 127:10 <b>measures</b> [2] - 172:22, 210:16 <b>Measures</b> [2] - 122:8, 124:6 <b>Measuring</b> [2] - 125:9, 127:12 <b>meat</b> [2] - 318:16, 319:3 <b>meet</b> [10] - 232:6, 256:1, 263:11,	269:11, 271:9, 274:17, 276:25, 277:8, 301:9, 318:8 <b>meetings</b> [5] - 203:21, 203:22, 203:24, 203:25, 204:2 <b>meets</b> [1] - 319:17 <b>members</b> [5] - 205:5, 205:21, 214:20, 214:22, 215:3 <b>Memo</b> [1] - 120:22 <b>Memorandum</b> [1] - 127:22 <b>memory</b> [4] - 150:13, 150:15, 150:18, 152:17 <b>Men</b> [1] - 124:19 <b>mental</b> [1] - 265:11 <b>mention</b> [1] - 289:13 <b>mentioned</b> [6] - 185:24, 252:19, 275:4, 290:24, 309:20 <b>mere</b> [1] - 307:8 <b>merits</b> [1] - 249:14 <b>Mertz</b> [7] - 181:18, 181:22, 185:25, 186:11, 186:14, 186:24, 187:21 <b>met</b> [2] - 261:9, 261:16 <b>Meteorological</b> [1] - 123:3 <b>method</b> [1] - 146:4 <b>mic</b> [6] - 156:21, 176:9, 176:10, 220:7, 221:3 <b>mic.'s</b> [1] - 219:9 <b>microphone</b> [1] - 133:22 <b>mics</b> [1] - 129:13 <b>Midwest</b> [2] - 169:19, 313:23 <b>midwestern</b> [1] - 222:1 <b>might</b> [15] - 134:3, 135:25, 176:6, 188:23, 204:20, 220:22, 239:14, 266:25, 297:4, 303:11, 316:13, 317:14, 318:23, 325:14 <b>Migration</b> [1] - 120:24 <b>MIKAL</b> [17] - 163:21, 163:23, 165:16, 174:9, 187:25, 188:2, 194:17, 194:19, 202:5, 202:20, 216:23, 217:2, 218:7, 226:1,	226:5, 286:14, 325:21 <b>Mikal</b> [11] - 115:22, 117:4, 117:6, 117:15, 117:16, 118:12, 118:16, 118:17, 118:24, 119:4, 119:6 <b>Milbank</b> [1] - 155:1 <b>mile</b> [12] - 136:10, 148:17, 195:6, 195:10, 196:16, 198:2, 203:3, 206:8, 206:9, 206:12, 208:22, 209:9 <b>miles</b> [20] - 135:9, 138:25, 173:4, 196:22, 196:25, 198:6, 201:19, 202:24, 203:15, 209:3, 209:12, 209:14, 209:17, 209:18, 209:22, 212:12, 212:16, 212:19 <b>Miles</b> [1] - 115:19 <b>million</b> [1] - 264:1 <b>mind</b> [4] - 242:24, 250:3, 267:2, 290:5 <b>mine</b> [2] - 175:3, 250:11 <b>minimization</b> [2] - 172:21, 188:13 <b>minimize</b> [4] - 172:18, 173:2, 188:4, 210:16 <b>minimized</b> [2] - 189:13, 196:10 <b>Minimizing</b> [1] - 120:23 <b>minimum</b> [2] - 216:8, 292:15 <b>Minnesota</b> [3] - 126:8, 151:24, 310:22 <b>minor</b> [5] - 171:4, 173:15, 173:17, 173:22, 213:24 <b>minus</b> [4] - 146:1, 254:11, 310:22, 311:7 <b>minute</b> [5] - 163:15, 167:18, 188:7, 235:4, 272:19 <b>minutes</b> [3] - 181:9, 206:4, 213:8 <b>misleading</b> [2] - 321:6, 321:10 <b>mismarked</b> [1] - 225:19 <b>MISO</b> [2] - 308:22, 312:6	<b>miss</b> [1] - 249:1 <b>missed</b> [1] - 249:1 <b>missing</b> [2] - 183:15, 260:20 <b>Missouri</b> [5] - 134:13, 144:15, 144:21, 152:12, 153:14 <b>mistaken</b> [1] - 160:20 <b>MIT</b> [1] - 278:19 <b>mitigate</b> [6] - 172:19, 210:17, 244:8, 246:13, 267:24, 304:2 <b>mitigated</b> [1] - 288:22 <b>mitigation</b> [2] - 172:22, 242:9 <b>mix</b> [1] - 313:24 <b>MN</b> [2] - 128:4, 128:5 <b>Modeling</b> [2] - 120:8, 120:8 <b>modeling</b> [1] - 280:2 <b>Mogen's</b> [1] - 121:11 <b>mom</b> [1] - 156:24 <b>moment</b> [4] - 131:12, 237:22, 252:5, 305:13 <b>money</b> [1] - 284:19 <b>monitor</b> [4] - 191:16, 199:11, 315:21, 315:23 <b>monitored</b> [1] - 301:14 <b>monitoring</b> [18] - 172:10, 195:19, 196:1, 196:12, 199:5, 199:17, 200:7, 200:9, 201:5, 210:20, 211:3, 211:16, 212:6, 214:3, 215:22, 216:6, 216:9 <b>Monitoring</b> [1] - 127:7 <b>month</b> [2] - 151:3, 190:4 <b>months</b> [12] - 159:7, 200:16, 200:18, 200:19, 200:20, 237:16, 269:16, 275:24, 275:25, 276:4, 276:24, 310:6 <b>morning</b> [9] - 130:10, 130:14, 130:15, 136:24, 136:25, 216:17, 224:6, 322:19, 325:25 <b>mortality</b> [6] - 201:6, 210:20, 211:3, 214:3, 216:6, 216:9 <b>most</b> [11] - 190:23, 198:3, 208:9, 218:1,
---	--	---	--	--

240:25, 241:1, 248:18, 250:11, 257:16, 279:20, 303:17 <b>motion</b> [2] - 248:3, 323:7 <b>motions</b> [1] - 132:1 <b>Mountain</b> [1] - 121:3 <b>Mountain-Prairie</b> [1] - 121:3 <b>move</b> [23] - 133:21, 166:16, 245:4, 249:19, 249:21, 249:22, 249:24, 251:14, 271:24, 271:25, 272:10, 279:16, 279:21, 292:4, 311:18, 311:19, 312:18, 313:1, 314:6, 323:1, 323:4, 323:7, 323:14 <b>moved</b> [5] - 250:15, 278:15, 279:16, 294:10, 294:23 <b>movement</b> [2] - 248:12, 257:12 <b>Moves</b> [2] - 126:10, 126:12 <b>moves</b> [1] - 312:24 <b>moving</b> [9] - 229:14, 249:20, 252:23, 258:22, 272:8, 272:13, 273:21, 273:22, 313:7 <b>MR</b> [210] - 130:24, 131:11, 132:11, 132:14, 132:18, 133:1, 133:6, 133:11, 133:15, 136:17, 136:21, 136:23, 140:7, 140:9, 142:3, 152:23, 153:2, 153:15, 153:19, 154:2, 154:7, 154:9, 154:12, 154:16, 154:18, 154:20, 154:21, 155:12, 156:5, 156:7, 156:18, 156:23, 157:12, 159:25, 160:5, 160:8, 160:11, 161:19, 162:3, 162:14, 163:21, 163:23, 164:3, 164:17, 165:6, 165:16, 167:4, 168:1, 168:4, 168:19, 168:21, 169:7, 169:12, 169:13, 173:24, 174:6, 174:9, 174:11, 174:13, 174:22, 174:24, 175:23, 175:25, 176:6, 176:13, 176:22, 177:10, 181:13, 182:23, 185:3, 185:12, 186:5, 187:7, 187:9, 187:22, 187:25, 188:2, 194:17, 194:19, 202:5, 202:20, 215:15, 215:20, 216:10, 216:15, 216:19, 216:23, 217:2, 218:7, 218:12, 218:19, 218:25, 219:4, 219:10, 220:2, 221:8, 221:11, 223:11, 223:14, 224:2, 224:4, 224:17, 224:18, 225:4, 225:20, 226:1, 226:3, 226:5, 226:6, 226:24, 227:3, 227:10, 227:12, 227:17, 228:1, 228:5, 228:7, 228:8, 231:20, 232:16, 232:20, 232:22, 234:4, 235:6, 235:11, 235:13, 235:17, 235:18, 235:21, 235:25, 236:2, 236:3, 236:6, 236:7, 237:21, 239:17, 239:25, 240:4, 240:12, 241:10, 241:15, 242:3, 246:1, 247:17, 247:23, 250:1, 250:7, 255:12, 270:4, 270:6, 271:16, 271:20, 271:22, 272:10, 272:18, 272:24, 273:3, 273:5, 275:11, 277:16, 277:21, 278:2, 279:11, 279:20, 279:23, 280:25, 281:5, 281:11, 282:19, 283:1, 283:4, 283:6, 283:15, 283:19, 285:16, 285:18, 286:14, 296:4, 296:9, 296:21, 297:8, 298:9, 298:14, 298:18, 298:21, 298:24, 299:2, 301:18, 301:22, 301:24, 304:9, 304:19, 305:5, 305:14, 307:1, 307:2, 307:25, 321:23, 322:1, 322:23, 323:21, 324:7, 324:10, 324:12, 324:15, 325:10, 325:16, 325:19, 325:21, 326:7 <b>MS</b> [189] - 129:6, 130:8, 131:1, 131:5, 131:7, 131:8, 131:9, 132:8, 132:12, 132:15, 132:19, 133:2, 133:7, 133:8, 133:9, 136:19, 140:16, 142:4, 142:6, 143:24, 144:1, 152:21, 153:16, 153:25, 154:4, 154:14, 154:19, 155:24, 156:6, 156:20, 157:13, 157:15, 157:19, 157:20, 158:3, 159:5, 159:18, 159:21, 160:1, 160:4, 160:10, 161:24, 162:8, 165:18, 166:23, 167:2, 167:14, 168:9, 168:14, 168:17, 169:11, 174:5, 174:7, 174:10, 174:12, 174:18, 175:24, 176:2, 176:9, 182:25, 185:14, 187:11, 187:23, 194:10, 194:12, 194:18, 202:6, 202:21, 203:18, 215:14, 215:17, 216:12, 216:21, 218:9, 218:14, 218:18, 218:23, 219:1, 219:8, 220:1, 220:3, 220:4, 220:10, 220:11, 220:14, 220:18, 221:5, 224:3, 224:14, 225:15, 225:16, 225:17, 225:22, 225:25, 226:13, 226:15, 226:22, 227:1, 227:23, 228:3, 228:14, 230:21, 232:18, 234:7, 234:10, 235:19, 239:22, 241:24, 242:4, 247:22, 250:3, 250:8, 250:10, 250:13, 257:2, 257:4, 264:10, 264:12, 264:18, 268:20, 270:3, 271:17, 272:14, 272:17, 273:2, 275:12, 275:14, 275:16, 277:12, 277:13, 277:18, 277:20, 277:22, 277:25, 279:18, 279:21, 280:19, 280:20, 280:21, 281:2, 282:24, 283:17, 285:21, 285:23, 286:4, 286:7, 286:10, 286:15, 292:6, 292:7, 296:1, 296:3, 296:5, 296:10, 296:12, 296:18, 297:2, 297:14, 298:4, 298:6, 298:7, 298:10, 298:17, 298:19, 298:23, 301:20, 304:13, 305:12, 306:25, 308:1, 308:4, 310:12, 310:14, 317:17, 321:22, 321:24, 322:2, 322:3, 322:4, 322:8, 322:15, 322:21, 323:17, 325:1, 325:6, 325:17, 325:20, 326:5, 326:8 <b>multiple</b> [6] - 129:22, 219:23, 219:24, 238:23, 262:20, 292:20 <b>murky</b> [1] - 266:17 <b>MURPHY</b> [60] - 218:19, 218:25, 219:4, 221:8, 221:11, 224:2, 224:4, 224:17, 224:18, 227:3, 227:12, 228:1, 228:7, 231:20, 232:16, 235:6, 235:11, 235:17, 235:19, 235:19, 235:20, 235:20, 235:21, 235:21, 235:22, 235:22, 235:23, 235:23, 235:24, 235:24, 235:25, 235:25, 235:26, 235:26, 235:27, 235:27, 235:28, 235:28, 235:29, 235:29, 235:30, 235:30, 235:31, 235:31, 235:32, 235:32, 235:33, 235:33, 235:34, 235:34, 235:35, 235:35, 235:36, 235:36, 235:37, 235:37, 235:38, 235:38, 235:39, 235:39, 235:40, 235:40, 235:41, 235:41, 235:42, 235:42, 235:43, 235:43, 235:44, 235:44, 235:45, 235:45, 235:46, 235:46, 235:47, 235:47, 235:48, 235:48, 235:49, 235:49, 235:50, 235:50, 235:51, 235:51, 235:52, 235:52, 235:53, 235:53, 235:54, 235:54, 235:55, 235:55, 235:56, 235:56, 235:57, 235:57, 235:58, 235:58, 235:59, 235:59, 235:60, 235:60 239:17, 240:12, 241:10, 247:17, 250:1, 270:4, 270:6, 271:16, 272:24, 277:16, 277:21, 278:2, 279:11, 279:20, 280:25, 282:19, 283:4, 283:15, 285:16, 296:4, 296:21, 297:8, 298:9, 298:14, 298:18, 298:21, 298:24, 299:2, 301:18, 304:9, 305:5, 321:23, 323:21, 324:7, 324:10, 324:12, 324:15, 325:10, 325:19, 326:7 <b>Murphy</b> [10] - 115:19, 117:4, 117:18, 117:20, 118:4, 118:8, 118:19, 118:23, 176:11, 218:24 <b>must</b> [2] - 129:23, 135:13 <b>mute</b> [1] - 129:16 <b>mutual</b> [1] - 263:5				239:17, 240:12, 241:10, 247:17, 250:1, 270:4, 270:6, 271:16, 272:24, 277:16, 277:21, 278:2, 279:11, 279:20, 280:25, 282:19, 283:4, 283:15, 285:16, 296:4, 296:21, 297:8, 298:9, 298:14, 298:18, 298:21, 298:24, 299:2, 301:18, 304:9, 305:5, 321:23, 323:21, 324:7, 324:10, 324:12, 324:15, 325:10, 325:19, 326:7 <b>Murphy</b> [10] - 115:19, 117:4, 117:18, 117:20, 118:4, 118:8, 118:19, 118:23, 176:11, 218:24 <b>must</b> [2] - 129:23, 135:13 <b>mute</b> [1] - 129:16 <b>mutual</b> [1] - 263:5
<b>N</b>				
<b>name</b> [19] - 133:16, 133:18, 168:22, 168:24, 174:25, 186:9, 186:10, 186:21, 186:22, 187:16, 187:17, 221:12, 221:14, 233:14, 251:4, 278:3, 278:5, 299:3, 299:5 <b>narrated</b> [1] - 231:21 <b>NARUC</b> [1] - 127:12 <b>nation</b> [1] - 205:7 <b>national</b> [3] - 288:10, 302:8, 302:12 <b>National</b> [2] - 124:5, 288:1 <b>Nationwide</b> [5] - 184:14, 184:16, 184:19, 184:24, 189:10 <b>nationwide</b> [5] - 185:10, 185:17, 185:18, 185:23 <b>Native</b> [2] - 205:15, 214:13 <b>natural</b> [2] - 169:22, 171:13				



<p><b>naturally</b> <sup>[1]</sup> - 225:11</p> <p><b>nature</b> <sup>[3]</sup> - 141:14, 215:8, 322:18</p> <p><b>Naval</b> <sup>[1]</sup> - 278:18</p> <p><b>Navy</b> <sup>[1]</sup> - 278:17</p> <p><b>NCF</b> <sup>[1]</sup> - 251:2</p> <p><b>ND</b> <sup>[2]</sup> - 128:3, 128:4</p> <p><b>NDA</b> <sup>[1]</sup> - 296:24</p> <p><b>near</b> <sup>[4]</sup> - 138:10, 138:23, 153:10, 155:1</p> <p><b>nearby</b> <sup>[1]</sup> - 230:1</p> <p><b>necessarily</b> <sup>[6]</sup> - 200:5, 203:11, 276:12, 282:3, 291:13, 314:12</p> <p><b>necessary</b> <sup>[9]</sup> - 146:6, 236:13, 253:6, 254:20, 259:15, 259:20, 260:9, 277:3, 291:18</p> <p><b>need</b> <sup>[37]</sup> - 130:17, 145:6, 155:12, 156:1, 156:21, 158:24, 164:15, 185:17, 220:23, 229:3, 229:5, 240:12, 242:24, 247:20, 253:6, 258:17, 266:21, 268:23, 268:25, 269:3, 269:14, 270:11, 273:23, 275:5, 302:22, 307:10, 311:23, 312:10, 318:6, 318:19, 321:3, 322:9, 323:18, 324:21, 325:2, 325:8, 325:25</p> <p><b>needed</b> <sup>[18]</sup> - 167:18, 168:5, 171:18, 191:24, 214:14, 246:12, 253:10, 260:13, 260:14, 269:10, 274:10, 274:20, 276:19, 300:25, 301:9, 308:16, 311:10, 316:2</p> <p><b>needs</b> <sup>[3]</sup> - 145:21, 184:16, 241:13</p> <p><b>negotiated</b> <sup>[1]</sup> - 274:11</p> <p><b>neighboring</b> <sup>[2]</sup> - 155:9, 261:19</p> <p><b>NELSON</b> <sup>[45]</sup> - 115:12, 147:5, 147:9, 147:12, 147:15, 147:19, 147:24,</p>	<p>148:8, 148:13, 148:18, 152:16, 163:14, 166:3, 202:23, 203:5, 203:9, 203:17, 220:20, 234:9, 264:19, 264:23, 265:3, 265:7, 266:7, 266:18, 267:3, 267:13, 267:18, 268:8, 268:13, 268:16, 293:8, 293:17, 293:23, 294:4, 294:12, 294:15, 294:22, 295:2, 306:2, 310:16, 311:21, 312:1, 312:4, 325:8</p> <p><b>Nelson</b> <sup>[5]</sup> - 202:22, 273:6, 310:15, 312:17, 313:19</p> <p><b>Nelson's</b> <sup>[1]</sup> - 208:20</p> <p><b>nervous</b> <sup>[2]</sup> - 152:19, 214:7</p> <p><b>NESC</b> <sup>[1]</sup> - 301:1</p> <p><b>Nest</b> <sup>[1]</sup> - 120:6</p> <p><b>nest</b> <sup>[7]</sup> - 172:5, 175:17, 178:1, 178:2, 180:1, 189:18, 202:25</p> <p><b>nests</b> <sup>[6]</sup> - 173:4, 178:3, 189:15, 203:3, 209:10</p> <p><b>neutral</b> <sup>[1]</sup> - 220:11</p> <p><b>never</b> <sup>[4]</sup> - 165:8, 165:10, 219:14, 318:4</p> <p><b>new</b> <sup>[6]</sup> - 150:3, 191:3, 273:13, 275:5, 312:11, 315:13</p> <p><b>newspaper</b> <sup>[1]</sup> - 155:16</p> <p><b>Newspapers</b> <sup>[1]</sup> - 124:23</p> <p><b>next</b> <sup>[12]</sup> - 149:18, 160:4, 218:18, 223:3, 229:23, 252:3, 258:20, 277:20, 290:20, 298:20, 307:18, 326:7</p> <p><b>NextEra</b> <sup>[37]</sup> - 134:1, 221:15, 221:22, 222:3, 222:4, 233:1, 233:8, 233:9, 233:11, 236:23, 237:1, 237:14, 238:3, 238:8, 238:22, 278:6, 278:14, 278:17,</p>	<p>281:15, 281:22, 282:11, 283:1, 284:3, 284:4, 284:11, 284:19, 284:25, 285:7, 285:12, 299:6, 299:20, 300:18, 301:6, 307:6, 321:16, 321:20</p> <p><b>nice</b> <sup>[2]</sup> - 148:4, 281:20</p> <p><b>night</b> <sup>[2]</sup> - 295:10, 312:8</p> <p><b>Night</b> <sup>[1]</sup> - 127:20</p> <p><b>nightmare</b> <sup>[1]</sup> - 220:8</p> <p><b>Nocebo</b> <sup>[3]</sup> - 124:19, 124:21, 124:22</p> <p><b>Noise</b> <sup>[22]</sup> - 122:8, 122:11, 122:12, 122:13, 122:15, 122:17, 122:20, 124:4, 124:5, 124:9, 124:10, 125:10, 126:4, 126:4, 126:5, 126:6, 126:8, 127:14, 127:16, 127:19, 127:20</p> <p><b>noise</b> <sup>[11]</sup> - 163:18, 163:22, 164:1, 164:2, 229:20, 230:9, 231:9, 249:8, 265:19, 325:24, 326:2</p> <p><b>nonadverse</b> <sup>[1]</sup> - 161:2</p> <p><b>none</b> <sup>[2]</sup> - 138:6, 138:7</p> <p><b>nonfederal</b> <sup>[1]</sup> - 287:21</p> <p><b>Nonparticipants</b> <sup>[1]</sup> - 126:13</p> <p><b>nonparticipants</b> <sup>[1]</sup> - 273:20</p> <p><b>nonparticipating</b> <sup>[7]</sup> - 135:9, 229:17, 229:21, 230:7, 230:10, 249:9, 251:23</p> <p><b>nonpayment</b> <sup>[1]</sup> - 237:17</p> <p><b>nonregistered</b> <sup>[1]</sup> - 294:2</p> <p><b>nonresponsive</b> <sup>[1]</sup> - 131:24</p> <p><b>normal</b> <sup>[2]</sup> - 173:17, 219:19</p> <p><b>normally</b> <sup>[2]</sup> - 152:9, 313:12</p> <p><b>North</b> <sup>[5]</sup> - 143:22, 151:20, 168:25,</p>	<p>169:1, 310:21</p> <p><b>northeast</b> <sup>[2]</sup> - 179:13, 182:2</p> <p><b>northeastern</b> <sup>[8]</sup> - 177:7, 177:18, 179:10, 179:17, 180:4, 240:25, 241:2, 241:8</p> <p><b>northeastern-most</b> <sup>[1]</sup> - 240:25</p> <p><b>northern</b> <sup>[2]</sup> - 177:20, 241:1</p> <p><b>northwest</b> <sup>[2]</sup> - 212:12, 212:15</p> <p><b>nos</b> <sup>[1]</sup> - 324:25</p> <p><b>Notary</b> <sup>[2]</sup> - 327:7, 327:18</p> <p><b>note</b> <sup>[4]</sup> - 165:7, 199:19, 210:2, 265:19</p> <p><b>noted</b> <sup>[3]</sup> - 190:5, 193:20, 274:15</p> <p><b>notes</b> <sup>[4]</sup> - 137:21, 272:18, 275:9, 281:12</p> <p><b>Notes</b> <sup>[2]</sup> - 122:20, 122:22</p> <p><b>nothing</b> <sup>[2]</sup> - 213:22, 263:8</p> <p><b>NOTICE</b> <sup>[1]</sup> - 127:8</p> <p><b>Notice</b> <sup>[2]</sup> - 123:11, 165:18</p> <p><b>notice</b> <sup>[2]</sup> - 176:19, 185:24</p> <p><b>noticed</b> <sup>[1]</sup> - 319:12</p> <p><b>noting</b> <sup>[1]</sup> - 132:22</p> <p><b>Nova</b> <sup>[1]</sup> - 299:15</p> <p><b>November</b> <sup>[7]</sup> - 134:1, 140:5, 142:10, 142:11, 150:22, 175:17, 179:18</p> <p><b>NTIA</b> <sup>[4]</sup> - 293:19, 293:20, 293:24, 294:3</p> <p><b>number</b> <sup>[16]</sup> - 136:3, 146:7, 149:6, 149:11, 150:9, 200:11, 214:9, 230:23, 235:11, 252:25, 272:4, 286:14, 292:18, 321:1, 321:7</p> <p><b>numbered</b> <sup>[5]</sup> - 158:25, 315:12, 315:13, 315:14, 316:21</p> <p><b>numbers</b> <sup>[8]</sup> - 204:18, 210:11, 214:10, 230:23, 231:22, 292:22, 314:19,</p>	<p>314:21 23</p> <p><b>numerous</b> <sup>[5]</sup> - 164:25, 171:14, 172:3, 181:3, 189:17</p> <p><b>O</b></p> <p><b>o'clock</b> <sup>[1]</sup> - 325:23</p> <p><b>oath</b> <sup>[6]</sup> - 133:13, 160:7, 166:10, 218:21, 277:23, 298:22</p> <p><b>object</b> <sup>[18]</sup> - 154:9, 155:22, 160:11, 174:14, 220:1, 220:10, 220:13, 223:11, 225:4, 227:17, 227:21, 228:13, 247:21, 280:2, 280:3, 280:5, 280:18, 305:11</p> <p><b>objected</b> <sup>[1]</sup> - 224:5</p> <p><b>objection</b> <sup>[31]</sup> - 132:1, 140:8, 140:17, 155:13, 160:9, 163:12, 169:8, 174:8, 174:19, 185:12, 187:7, 220:21, 225:13, 226:25, 235:6, 235:25, 239:17, 241:10, 247:17, 247:22, 250:1, 280:13, 280:20, 282:19, 282:22, 282:24, 283:4, 283:15, 304:9, 305:5</p> <p><b>objections</b> <sup>[3]</sup> - 131:21, 132:23, 225:5</p> <p><b>Objective</b> <sup>[2]</sup> - 122:8, 124:6</p> <p><b>obligations</b> <sup>[2]</sup> - 282:15, 284:6</p> <p><b>observations</b> <sup>[1]</sup> - 217:19</p> <p><b>observed</b> <sup>[1]</sup> - 282:16</p> <p><b>obtained</b> <sup>[1]</sup> - 222:4</p> <p><b>obviously</b> <sup>[4]</sup> - 148:6, 152:7, 266:23, 268:10</p> <p><b>occupancy</b> <sup>[2]</sup> - 172:7, 190:3</p> <p><b>occur</b> <sup>[2]</sup> - 267:11, 303:11</p> <p><b>occurred</b> <sup>[2]</sup> - 136:10, 158:20</p> <p><b>October</b> <sup>[1]</sup> - 126:7</p> <p><b>OF</b> <sup>[6]</sup> - 115:2, 115:4, 115:5, 327:1, 327:3</p>
--	--	--	---	--



<b>Parameters</b> [1] - 122:11 <b>parameters</b> [1] - 177:9 <b>parent</b> [1] - 292:21 <b>Park</b> [1] - 196:4 <b>Parks</b> [18] - 171:16, 178:6, 178:10, 179:2, 179:4, 179:24, 180:13, 180:21, 182:10, 187:20, 190:5, 193:22, 194:4, 194:21, 198:22, 199:22, 206:11, 207:1 <b>part</b> [24] - 139:16, 139:24, 141:14, 141:17, 155:5, 156:10, 165:10, 165:21, 170:4, 173:17, 178:8, 179:1, 179:20, 180:5, 186:17, 198:4, 223:9, 230:19, 241:15, 257:25, 262:10, 277:10, 283:8, 313:23 <b>Partial</b> [1] - 127:18 <b>partial</b> [1] - 304:25 <b>partially</b> [1] - 177:11 <b>Participants</b> [1] - 124:8 <b>participate</b> [5] - 164:16, 173:7, 214:25, 215:7, 229:14 <b>participated</b> [1] - 162:5 <b>participating</b> [2] - 249:9, 255:9 <b>Participation</b> [6] - 120:20, 120:21, 121:24, 122:5, 128:8, 128:9 <b>particular</b> [3] - 182:14, 294:4, 304:24 <b>particularly</b> [1] - 219:22 <b>parties</b> [5] - 130:1, 130:5, 130:9, 132:20, 291:25 <b>parts</b> [2] - 258:22, 280:22 <b>party</b> [10] - 160:15, 160:17, 162:21, 162:22, 162:23, 162:25, 185:25, 279:25, 285:12 <b>pass</b> [1] - 218:12	<b>passed</b> [2] - 152:9, 212:10 <b>past</b> [4] - 139:18, 212:2, 227:7, 310:20 <b>path</b> [2] - 155:25, 287:23 <b>paths</b> [6] - 288:16, 289:3, 293:15, 293:18, 294:5, 294:7 <b>Pattern</b> [2] - 124:11, 125:3 <b>Paul</b> [1] - 127:13 <b>Paulson</b> [2] - 285:25, 286:5 <b>Pause</b> [2] - 216:18, 285:15 <b>pay</b> [2] - 233:22, 234:16 <b>payment</b> [1] - 237:17 <b>payments</b> [3] - 234:14, 234:21, 263:25 <b>Pegasus</b> [2] - 238:4, 238:18 <b>pen</b> [1] - 231:16 <b>pending</b> [3] - 253:3, 260:6, 260:10 <b>Pending</b> [1] - 126:15 <b>People</b> [1] - 127:15 <b>people</b> [13] - 136:4, 149:8, 149:17, 150:4, 152:9, 166:6, 191:25, 208:9, 234:16, 263:1, 313:13, 313:20, 322:17 <b>per</b> [2] - 135:11, 277:1 <b>percent</b> [6] - 259:15, 259:17, 259:19, 260:8, 260:15, 260:24 <b>percentage</b> [1] - 148:7 <b>Perceptual</b> [1] - 122:17 <b>perfect</b> [2] - 205:3, 257:1 <b>perform</b> [2] - 287:16, 289:4 <b>Performance</b> [2] - 125:9, 127:12 <b>performance</b> [6] - 283:2, 283:7, 283:10, 284:5, 285:2, 285:9 <b>performed</b> [2] - 282:15, 287:10 <b>perhaps</b> [9] - 165:14, 186:1, 216:17, 219:13, 219:17, 226:6, 248:25,	274:1, 284:22 <b>period</b> [12] - 142:19, 190:3, 190:10, 190:11, 190:12, 198:3, 198:7, 199:16, 200:19, 217:25, 248:3, 269:20 <b>permanent</b> [3] - 144:14, 144:20, 197:21 <b>PERMIT</b> [1] - 115:5 <b>permit</b> [37] - 129:9, 135:6, 135:15, 184:17, 184:18, 185:7, 185:10, 185:17, 185:18, 185:22, 185:23, 215:23, 242:19, 243:4, 243:8, 243:12, 243:20, 274:4, 274:13, 282:7, 282:8, 282:10, 282:17, 284:7, 285:3, 285:11, 289:15, 300:24, 301:9, 302:9, 302:13, 302:16, 307:5, 307:21, 319:18 <b>Permit</b> [8] - 184:14, 184:16, 184:20, 184:24, 189:10, 283:2, 319:1, 319:23 <b>Permits</b> [1] - 120:9 <b>permits</b> [4] - 184:11, 242:9, 242:16, 302:21 <b>permitted</b> [2] - 144:16, 169:18 <b>permitting</b> [4] - 169:6, 169:21, 170:6, 232:4 <b>person</b> [5] - 191:9, 223:23, 239:24, 256:20, 304:21 <b>personally</b> [8] - 166:25, 173:7, 203:23, 207:22, 209:4, 233:16, 238:6, 261:16 <b>personnel</b> [4] - 214:18, 214:19, 321:1, 321:20 <b>persons</b> [1] - 301:11 <b>perspective</b> [3] - 224:21, 291:23, 312:14 <b>perspectives</b> [1] - 214:13 <b>pertaining</b> [2] -	208:21, 320:1 <b>pertains</b> [1] - 302:23 <b>phase</b> [2] - 191:14, 303:11 <b>phases</b> [1] - 254:4 <b>Phenomena</b> [1] - 124:19 <b>philosophy</b> [1] - 307:6 <b>phone</b> [4] - 129:16, 167:20, 181:3, 322:17 <b>Photosensitive</b> [2] - 122:23, 122:25 <b>phrase</b> [2] - 305:19, 307:14 <b>physically</b> [1] - 167:20 <b>picked</b> [1] - 249:15 <b>picture</b> [2] - 272:12, 320:8 <b>piece</b> [2] - 254:19, 262:14 <b>pieces</b> [2] - 228:19, 282:22 <b>Pierre</b> [1] - 116:3 <b>placard</b> [1] - 228:5 <b>place</b> [15] - 139:22, 140:2, 173:5, 198:8, 215:1, 220:9, 237:10, 237:12, 248:6, 249:6, 258:1, 259:20, 274:15, 302:13, 323:13 <b>Placebo</b> [1] - 124:19 <b>placed</b> [3] - 188:21, 237:16, 248:14 <b>placement</b> [3] - 244:7, 267:22, 286:25 <b>placing</b> [1] - 206:13 <b>Plan</b> [5] - 120:10, 171:23, 191:19, 192:9, 203:14 <b>plan</b> [16] - 163:25, 189:5, 191:22, 192:13, 192:16, 192:17, 192:19, 243:22, 247:3, 280:8, 292:13, 301:4, 303:25, 304:1, 304:3 <b>planned</b> [1] - 243:21 <b>planning</b> [1] - 318:2 <b>plans</b> [1] - 192:22 <b>Platform</b> [1] - 123:24 <b>plus</b> [1] - 232:2 <b>point</b> [33] - 152:11, 159:6, 161:14, 161:25, 162:13, 172:4, 173:11, 175:16, 179:16, 181:6, 183:1,	183:20, 189:18, 25 191:11, 217:20, 217:23, 217:24, 228:14, 229:10, 235:3, 235:12, 240:7, 258:13, 261:11, 274:4, 285:2, 297:13, 304:16, 311:1, 311:23, 312:1, 326:2 <b>pointed</b> [1] - 231:3 <b>pointing</b> [1] - 275:10 <b>points</b> [2] - 162:17, 227:21 <b>pollutant</b> [2] - 302:9, 302:12 <b>pollutants</b> [1] - 304:1 <b>pollution</b> [4] - 189:4, 192:13, 192:16, 303:18 <b>Polysomnographic</b> [1] - 122:11 <b>pop</b> [1] - 192:2 <b>portfolio</b> [1] - 291:16 <b>portion</b> [16] - 155:15, 177:8, 177:18, 177:21, 177:25, 179:10, 179:13, 179:17, 180:4, 182:2, 240:25, 241:2, 289:12, 297:17, 297:20 <b>posed</b> [3] - 236:4, 239:20, 239:21 <b>position</b> [5] - 182:8, 232:24, 232:25, 241:21, 306:18 <b>positive</b> [1] - 253:19 <b>possibility</b> [1] - 262:20 <b>possible</b> [6] - 132:23, 148:5, 161:2, 189:1, 252:25, 274:12 <b>Possible</b> [1] - 127:13 <b>possibly</b> [3] - 200:21, 269:7, 316:11 <b>Post</b> [1] - 226:18 <b>Post-It</b> [1] - 226:18 <b>postconstruction</b> [19] - 138:11, 194:24, 195:19, 196:1, 196:12, 199:5, 199:8, 199:17, 200:7, 200:8, 201:5, 210:20, 211:2, 211:16, 212:6, 214:3, 215:22, 216:6, 216:8 <b>potatoes</b> [2] - 318:16, 319:3
---	---	--	---	--



<p><b>potential</b> [3] - 139:13, 140:22, 156:15</p> <p><b>Potential</b> [1] - 123:3</p> <p><b>potentially</b> [4] - 215:4, 259:10, 290:25, 292:4</p> <p><b>Power</b> [5] - 120:23, 123:23, 125:24, 288:25, 299:19</p> <p><b>power</b> [11] - 250:24, 258:11, 277:8, 311:18, 311:19, 312:19, 312:24, 313:1, 313:8, 314:6, 321:17</p> <p><b>Poweshiek</b> [4] - 120:5, 172:6, 189:19, 191:6</p> <p><b>PPA</b> [6] - 257:22, 258:16, 297:6, 297:18, 297:21</p> <p><b>practicable</b> [1] - 196:11</p> <p><b>practice</b> [5] - 137:17, 165:12, 202:3, 202:4, 307:23</p> <p><b>practices</b> [10] - 173:5, 189:4, 189:17, 192:20, 192:23, 307:3, 307:11, 307:15, 307:19, 307:22</p> <p><b>Prairie</b> [2] - 121:3, 202:10</p> <p><b>prairie</b> [7] - 193:4, 193:16, 202:12, 202:14, 202:16</p> <p><b>Pranav</b> [1] - 127:13</p> <p><b>pre</b> [1] - 262:12</p> <p><b>pre-development</b> [1] - 262:12</p> <p><b>precedent</b> [2] - 209:12, 212:4</p> <p><b>precise</b> [1] - 292:18</p> <p><b>Precision</b> [1] - 115:24</p> <p><b>precluded</b> [1] - 164:24</p> <p><b>preconstruction</b> [4] - 135:10, 138:10, 194:23, 276:19</p> <p><b>prefiled</b> [14] - 130:1, 135:4, 170:17, 171:9, 174:2, 216:1, 217:3, 222:13, 225:19, 279:1, 299:25, 300:2, 300:15, 300:17</p> <p><b>Prefiled</b> [11] - 134:21, 170:9, 170:23, 222:6, 222:11, 222:19, 278:20,</p>	<p>278:24, 279:7, 299:21, 300:8</p> <p><b>prejudicial</b> [1] - 280:17</p> <p><b>preliminary</b> [1] - 160:21</p> <p><b>preparation</b> [3] - 170:14, 254:5, 319:11</p> <p><b>prepare</b> [1] - 170:15</p> <p><b>prepared</b> [6] - 191:20, 225:8, 235:14, 271:23, 307:18, 325:22</p> <p><b>preparer</b> [1] - 225:12</p> <p><b>preparing</b> [3] - 167:8, 176:16, 212:22</p> <p><b>presence</b> [1] - 197:10</p> <p><b>present</b> [5] - 139:5, 178:12, 237:21, 247:25, 294:9</p> <p><b>Presentation</b> [1] - 127:21</p> <p><b>presentation</b> [1] - 214:6</p> <p><b>presented</b> [3] - 160:12, 164:12, 246:22</p> <p><b>presenting</b> [1] - 166:22</p> <p><b>presently</b> [1] - 248:13</p> <p><b>preservation</b> [3] - 146:8, 205:9, 214:12</p> <p><b>Preservation</b> [4] - 171:5, 171:17, 190:16, 191:23</p> <p><b>preserved</b> [1] - 132:3</p> <p><b>preserving</b> [1] - 273:25</p> <p><b>Pressure</b> [1] - 125:13</p> <p><b>pretty</b> [9] - 142:20, 208:10, 223:15, 239:1, 239:4, 248:5, 281:20, 290:6, 317:22</p> <p><b>Prevailing</b> [3] - 149:24, 212:3</p> <p><b>prevent</b> [1] - 199:9</p> <p><b>preventative</b> [1] - 199:10</p> <p><b>prevention</b> [3] - 189:5, 192:13, 192:16</p> <p><b>previous</b> [8] - 179:11, 179:12, 207:4, 211:17, 239:19, 241:10, 253:12, 291:3</p> <p><b>previously</b> [9] - 129:4, 168:2, 169:9, 178:17, 183:8,</p>	<p>188:14, 216:16, 221:4, 228:20</p> <p><b>prewarned</b> [1] - 298:18</p> <p><b>price</b> [3] - 157:3, 157:6, 157:11</p> <p><b>primaries</b> [2] - 265:17, 266:1</p> <p><b>primarily</b> [6] - 145:1, 145:2, 232:2, 239:6, 318:20, 318:22</p> <p><b>Primary</b> [1] - 124:9</p> <p><b>primary</b> [12] - 228:19, 250:19, 266:2, 269:23, 270:18, 270:20, 270:24, 271:7, 271:8, 273:16, 274:17, 317:23</p> <p><b>principal</b> [2] - 162:22, 280:7</p> <p><b>print</b> [1] - 296:13</p> <p><b>printed</b> [1] - 204:20</p> <p><b>proactive</b> [1] - 312:11</p> <p><b>probables</b> [1] - 148:21</p> <p><b>problem</b> [2] - 160:23, 175:3</p> <p><b>problematic</b> [2] - 281:8, 294:24</p> <p><b>problems</b> [1] - 247:7</p> <p><b>procedural</b> [1] - 272:20</p> <p><b>Procedures</b> [1] - 124:21</p> <p><b>proceed</b> [11] - 129:17, 153:25, 154:18, 168:18, 221:6, 230:5, 243:21, 244:16, 245:2, 246:9, 298:23</p> <p><b>Proceeding</b> [1] - 115:7</p> <p><b>proceeding</b> [7] - 131:19, 226:7, 249:14, 269:21, 281:17, 283:3, 302:11</p> <p><b>proceedings</b> [3] - 116:1, 327:9, 327:12</p> <p><b>process</b> [34] - 131:23, 162:19, 163:8, 164:13, 165:20, 171:19, 173:14, 173:17, 174:16, 182:15, 182:18, 183:9, 183:13, 184:8, 189:23, 192:18, 192:19, 201:25, 232:4,</p>	<p>239:5, 253:14, 254:1, 262:13, 263:10, 267:12, 287:13, 289:14, 289:21, 289:22, 290:2, 301:5, 303:23, 303:24</p> <p><b>processes</b> [1] - 242:9</p> <p><b>procurement</b> [1] - 302:24</p> <p><b>produce</b> [2] - 138:2, 309:25</p> <p><b>produced</b> [1] - 254:19</p> <p><b>Produced</b> [1] - 122:13</p> <p><b>producing</b> [1] - 311:10</p> <p><b>Professional</b> [3] - 169:18, 327:6, 327:19</p> <p><b>professional</b> [1] - 169:24</p> <p><b>professor</b> [1] - 163:4</p> <p><b>profit</b> [2] - 236:11, 236:20</p> <p><b>program</b> [2] - 309:4, 309:5</p> <p><b>programming</b> [1] - 309:4</p> <p><b>project</b> [189] - 134:3, 134:15, 136:11, 136:14, 141:21, 141:22, 150:3, 161:4, 169:6, 171:13, 172:2, 172:4, 172:19, 173:12, 175:7, 176:16, 177:5, 177:8, 177:13, 177:18, 177:25, 178:8, 178:11, 179:10, 179:18, 179:20, 179:25, 180:2, 180:5, 180:9, 180:11, 180:15, 180:20, 180:24, 181:5, 181:23, 182:3, 182:5, 182:11, 182:14, 184:13, 184:14, 186:12, 186:14, 186:24, 186:25, 187:1, 188:16, 190:24, 191:14, 191:20, 191:21, 192:14, 192:17, 193:25, 195:9, 196:7, 196:8, 196:13, 198:6, 198:24, 199:10, 199:13, 201:7,</p>	<p>202:11, 205:11, 207:8, 209:9, 210:1, 211:3, 211:21, 212:12, 212:13, 212:17, 214:4, 214:23, 214:25, 216:9, 217:8, 219:5, 219:6, 221:14, 221:17, 221:24, 224:9, 224:22, 228:18, 229:1, 230:18, 231:2, 232:1, 232:5, 233:1, 233:2, 233:13, 233:15, 233:23, 234:16, 238:17, 239:4, 240:5, 240:9, 240:25, 241:2, 241:8, 241:9, 241:20, 244:15, 244:24, 245:17, 245:18, 246:22, 247:8, 248:19, 249:3, 250:16, 250:24, 251:2, 253:22, 254:5, 254:16, 254:18, 255:23, 255:24, 256:4, 256:7, 256:11, 256:16, 257:7, 257:9, 257:10, 257:11, 257:22, 259:2, 259:20, 259:24, 260:14, 260:15, 261:9, 261:18, 261:19, 264:1, 268:24, 269:8, 269:12, 273:19, 282:4, 283:23, 284:8, 284:20, 284:22, 284:23, 287:10, 287:15, 287:17, 289:20, 289:22, 290:1, 290:3, 291:5, 291:8, 291:9, 291:13, 291:14, 291:15, 292:21, 293:14, 297:5, 297:24, 300:25, 301:12, 302:22, 303:11, 303:22, 303:24, 307:13, 308:7, 308:9, 318:16, 318:18, 318:20, 323:21, 324:17, 324:18</p> <p><b>Project</b> [9] - 123:17, 123:17, 133:25, 169:4, 170:5, 170:7,</p>
---	---	--	---	--

<p>175:8, 205:18, 233:3</p> <p><b>project's</b> [3] - 150:6, 239:6, 247:12</p> <p><b>Projects</b> [3] - 120:23, 121:4, 125:9</p> <p><b>projects</b> [18] - 149:23, 150:8, 151:11, 151:14, 152:6, 153:10, 184:25, 197:4, 197:17, 212:5, 221:25, 232:10, 238:24, 257:15, 287:24, 291:16, 299:9, 320:22</p> <p><b>prompt</b> [1] - 277:13</p> <p><b>pronouncing</b> [1] - 174:25</p> <p><b>proof</b> [5] - 160:13, 160:18, 161:15, 167:5, 283:6</p> <p><b>proper</b> [1] - 140:10</p> <p><b>properly</b> [1] - 204:20</p> <p><b>properties</b> [14] - 134:17, 136:14, 138:9, 145:6, 145:7, 145:18, 145:22, 146:3, 172:14, 190:21, 230:5, 230:10, 254:25</p> <p><b>Property</b> [4] - 120:9, 124:14, 124:15, 133:19</p> <p><b>property</b> [31] - 134:4, 134:16, 135:11, 135:17, 135:18, 135:25, 137:11, 143:18, 144:7, 149:18, 149:20, 153:10, 154:25, 155:4, 155:8, 161:9, 205:21, 229:11, 229:16, 229:17, 229:21, 229:25, 255:1, 255:17, 255:19, 255:20, 259:15, 260:8, 262:14, 265:1, 265:5</p> <p><b>proposal</b> [4] - 223:9, 225:2, 230:20, 248:15</p> <p><b>proposals</b> [1] - 252:10</p> <p><b>proposed</b> [27] - 131:15, 134:3, 161:7, 177:8, 179:10, 180:5, 182:3, 206:8, 215:23, 223:8, 228:18, 232:12, 240:25, 241:8,</p>	<p>243:9, 243:19, 244:23, 247:3, 253:19, 253:20, 253:21, 259:21, 269:11, 270:10, 276:6, 276:17, 277:4</p> <p><b>Proposed</b> [4] - 125:8, 126:10, 127:7, 127:12</p> <p><b>protected</b> [3] - 172:25, 188:14, 189:7</p> <p><b>protection</b> [1] - 309:12</p> <p><b>protective</b> [1] - 236:14</p> <p><b>provide</b> [36] - 134:5, 135:3, 137:21, 154:11, 162:17, 169:13, 171:9, 178:7, 179:19, 192:9, 194:21, 214:2, 221:20, 227:5, 235:16, 236:10, 244:18, 245:7, 249:2, 254:20, 272:7, 272:11, 278:12, 281:23, 290:11, 299:10, 300:15, 320:13, 323:1, 323:5, 323:8, 323:15, 324:21, 325:2, 325:11</p> <p><b>provided</b> [15] - 130:11, 131:21, 143:15, 153:8, 160:20, 182:9, 199:21, 210:15, 215:22, 216:2, 245:11, 275:6, 279:12, 288:7, 319:8</p> <p><b>provides</b> [4] - 189:22, 210:15, 246:12, 319:9</p> <p><b>providing</b> [3] - 245:24, 248:4, 323:20</p> <p><b>proximity</b> [2] - 145:16, 253:12</p> <p><b>PSC</b> [1] - 126:5</p> <p><b>pseudo</b> [1] - 311:11</p> <p><b>Psychogenic</b> [2] - 124:13, 125:4</p> <p><b>Psychological</b> [1] - 122:10</p> <p><b>public</b> [3] - 193:2, 286:8, 286:15</p> <p><b>PUBLIC</b> [2] - 115:1, 115:11</p> <p><b>Public</b> [6] - 123:16, 126:3, 126:7, 127:10, 327:7,</p>	<p>327:18</p> <p><b>publicly</b> [1] - 168:8</p> <p><b>PUC</b> [18] - 119:2, 120:14, 121:7, 121:10, 123:6, 123:8, 123:10, 123:12, 123:16, 123:22, 126:14, 127:2, 131:18, 135:14, 271:8, 274:17, 301:9, 319:19</p> <p><b>puff</b> [1] - 193:9</p> <p><b>pull</b> [4] - 176:9, 176:10, 228:11, 240:15</p> <p><b>pulled</b> [1] - 138:3</p> <p><b>pulling</b> [2] - 252:5, 315:1</p> <p><b>purchase</b> [1] - 247:20</p> <p><b>purchaser</b> [2] - 257:23, 321:17</p> <p><b>purely</b> [1] - 321:20</p> <p><b>purpose</b> [1] - 233:14</p> <p><b>purposes</b> [2] - 156:2, 250:21</p> <p><b>pursuant</b> [1] - 276:16</p> <p><b>push</b> [1] - 129:13</p> <p><b>put</b> [20] - 133:4, 138:13, 138:18, 173:5, 175:21, 183:7, 189:14, 190:10, 196:24, 226:17, 238:16, 239:11, 249:15, 265:21, 303:25, 305:3, 311:6, 312:12, 317:4, 320:7</p> <p><b>putting</b> [4] - 140:9, 191:9, 223:25, 276:21</p>	<p><b>Questions</b> [13] - 117:5, 117:10, 117:15, 117:20, 118:5, 118:9, 118:13, 118:17, 118:20, 118:24, 119:5, 119:9, 119:13</p> <p><b>questions</b> [49] - 142:3, 143:25, 145:15, 148:18, 148:20, 153:17, 155:13, 156:2, 157:9, 157:12, 157:16, 159:20, 159:23, 162:11, 166:12, 173:25, 176:7, 187:22, 202:20, 206:5, 215:21, 216:13, 218:8, 225:14, 234:25, 250:7, 252:15, 264:16, 268:17, 271:18, 275:11, 277:12, 277:16, 280:14, 285:20, 292:6, 295:3, 296:7, 296:9, 297:13, 298:6, 307:25, 308:5, 310:13, 310:17, 320:18, 321:25, 326:1, 326:3</p> <p><b>quick</b> [4] - 167:18, 178:22, 248:5, 298:11</p> <p><b>quickly</b> [2] - 135:8, 287:2</p> <p><b>quite</b> [8] - 200:7, 223:14, 225:9, 231:4, 232:6, 235:5, 246:22, 247:8</p>	<p><b>Raptor</b> [1] - 120:6</p> <p><b>raptors</b> [1] - 178:3</p> <p><b>rates</b> [1] - 201:6</p> <p><b>rather</b> [3] - 185:7, 219:7, 294:18</p> <p><b>re</b> [2] - 165:9, 192:22</p> <p><b>re-dating</b> [1] - 165:9</p> <p><b>re-vegetation</b> [1] - 192:22</p> <p><b>reach</b> [3] - 258:9, 258:16, 287:25</p> <p><b>reached</b> [2] - 153:8, 290:18</p> <p><b>read</b> [18] - 130:2, 130:10, 131:5, 131:14, 132:17, 135:7, 152:10, 158:14, 163:17, 181:13, 185:4, 206:16, 210:12, 245:22, 246:1, 270:15, 270:21, 274:5</p> <p><b>readable</b> [1] - 152:8</p> <p><b>readily</b> [1] - 249:11</p> <p><b>reading</b> [1] - 318:15</p> <p><b>reads</b> [8] - 157:1, 181:15, 185:5, 186:7, 240:2, 246:3, 305:17, 316:4</p> <p><b>ready</b> [1] - 264:14</p> <p><b>real</b> [5] - 133:19, 156:16, 178:22, 208:9, 311:11</p> <p><b>Realistic</b> [2] - 125:15, 125:17</p> <p><b>realize</b> [1] - 151:9</p> <p><b>realized</b> [1] - 251:11</p> <p><b>really</b> [29] - 135:8, 136:5, 145:6, 156:20, 167:17, 202:13, 204:18, 208:7, 213:7, 213:14, 214:24, 241:25, 247:16, 254:15, 266:5, 266:10, 273:14, 276:24, 295:4, 313:10, 313:14, 313:16, 313:22, 317:24, 318:15</p> <p><b>Realtime</b> [2] - 327:6, 327:19</p> <p><b>reason</b> [8] - 158:12, 164:18, 209:21, 219:16, 236:3, 269:8, 269:10, 312:5</p> <p><b>reasonable</b> [3] - 129:13, 241:21, 274:2</p>
		<p><b>Q</b></p> <p><b>quadrant</b> [1] - 241:8</p> <p><b>qualification</b> [2] - 131:24, 211:6</p> <p><b>Qualifications</b> [1] - 124:14</p> <p><b>qualified</b> [2] - 162:5, 165:3</p> <p><b>Quality</b> [1] - 124:7</p> <p><b>quarter</b> [2] - 258:8, 277:3</p> <p><b>questioners</b> [2] - 219:23, 219:24</p> <p><b>questioning</b> [5] - 219:24, 223:12, 247:21, 252:24, 270:8</p>	<p><b>R</b></p> <p><b>r04</b> [1] - 124:3</p> <p><b>radar</b> [1] - 256:17</p> <p><b>rail</b> [1] - 290:24</p> <p><b>railroad</b> [5] - 289:15, 289:17, 289:19, 289:24, 290:5</p> <p><b>railroads</b> [1] - 289:13</p> <p><b>raised</b> [4] - 244:22, 245:14, 280:15, 293:11</p> <p><b>raises</b> [1] - 208:11</p> <p><b>Range</b> [1] - 212:3</p> <p><b>range</b> [1] - 292:17</p> <p><b>raptor</b> [7] - 172:5, 175:17, 178:1, 178:2, 180:1, 181:22, 189:18</p>	27

<p><b>reasoning</b> [1] - 166:5</p> <p><b>reasons</b> [8] - 156:23, 231:22, 250:25, 257:24, 266:15, 280:12, 284:21, 309:22</p> <p><b>Rebuttal</b> [24] - 123:23, 124:4, 124:13, 124:16, 125:6, 125:11, 125:12, 125:17, 134:21, 170:23, 171:3, 174:4, 186:8, 186:21, 210:22, 211:8, 211:13, 217:4, 217:10, 222:19, 251:18, 279:7, 300:8, 316:10</p> <p><b>rebuttal</b> [4] - 129:21, 251:19, 314:19, 316:15</p> <p><b>recap</b> [1] - 130:6</p> <p><b>receipt</b> [1] - 135:14</p> <p><b>receive</b> [5] - 164:21, 243:18, 243:20, 253:6, 258:11</p> <p><b>received</b> [10] - 134:18, 169:15, 186:19, 196:4, 243:5, 253:19, 276:17, 278:18, 280:11, 302:20</p> <p><b>receiving</b> [4] - 214:15, 243:14, 245:3, 246:11</p> <p><b>recent</b> [3] - 235:5, 248:18, 252:21</p> <p><b>recently</b> [1] - 143:13</p> <p><b>Receptor</b> [2] - 122:3, 125:17</p> <p><b>Receptors</b> [1] - 127:17</p> <p><b>recess</b> [7] - 129:11, 165:25, 167:13, 194:11, 264:11, 326:9, 326:11</p> <p><b>reciprocal</b> [3] - 144:9, 144:17, 144:21</p> <p><b>reciprocity</b> [1] - 134:13</p> <p><b>recollection</b> [1] - 270:17</p> <p><b>recommend</b> [1] - 248:15</p> <p><b>Recommendation</b> [1] - 124:3</p> <p><b>recommendation</b> [12] - 135:15, 194:21, 195:2, 195:7, 195:24, 196:15, 196:17, 196:21,</p>	<p>196:22, 198:21, 206:11, 248:20</p> <p><b>recommendations</b> [1] - 172:18</p> <p><b>Recommended</b> [1] - 127:16</p> <p><b>recommended</b> [3] - 195:6, 248:11, 248:22</p> <p><b>reconcile</b> [1] - 287:7</p> <p><b>reconfigured</b> [1] - 246:22</p> <p><b>reconsideration</b> [1] - 165:9</p> <p><b>reconvene</b> [2] - 129:1, 264:10</p> <p><b>record</b> [35] - 130:10, 131:20, 132:22, 133:17, 148:22, 152:20, 165:7, 168:23, 176:12, 181:6, 206:17, 220:17, 221:13, 223:25, 224:1, 224:6, 225:4, 226:11, 226:12, 240:3, 264:9, 264:12, 270:9, 272:2, 275:4, 278:4, 281:6, 281:13, 286:3, 288:10, 299:4, 302:4, 306:23, 306:24, 319:6</p> <p><b>records</b> [3] - 172:11, 181:23, 280:8</p> <p><b>recross</b> [5] - 153:16, 216:13, 216:20, 271:18, 296:6</p> <p><b>Recross</b> [10] - 117:11, 117:12, 117:16, 117:21, 117:21, 118:6, 118:14, 118:17, 118:21, 119:10</p> <p><b>RECROSS</b> [6] - 154:6, 158:2, 217:1, 271:21, 275:15, 296:17</p> <p><b>Recross-Examination</b> [10] - 117:11, 117:12, 117:16, 117:21, 117:21, 118:6, 118:14, 118:17, 118:21, 119:10</p> <p><b>RECROSS-EXAMINATION</b> [6] - 154:6, 158:2, 217:1, 271:21, 275:15,</p>	<p>296:17</p> <p><b>rectangular</b> [1] - 176:25</p> <p><b>redirect</b> [17] - 152:22, 153:17, 159:24, 215:14, 216:11, 216:14, 218:11, 270:3, 271:16, 271:19, 277:15, 296:3, 296:4, 298:8, 298:9, 321:22, 321:23</p> <p><b>Redirect</b> [8] - 117:6, 117:11, 117:16, 117:20, 118:13, 119:6, 119:9, 119:13</p> <p><b>REDIRECT</b> [3] - 153:1, 215:19, 270:5</p> <p><b>reduced</b> [1] - 197:5</p> <p><b>redundant</b> [1] - 220:5</p> <p><b>reestablished</b> [1] - 288:14</p> <p><b>refer</b> [11] - 175:20, 178:16, 178:18, 227:11, 230:16, 235:7, 240:4, 242:24, 250:18, 265:21, 302:14</p> <p><b>reference</b> [4] - 227:21, 250:14, 260:8, 263:2</p> <p><b>referenced</b> [1] - 181:2</p> <p><b>references</b> [1] - 263:3</p> <p><b>referencing</b> [1] - 181:4</p> <p><b>referred</b> [4] - 179:11, 227:12, 265:15, 304:23</p> <p><b>referring</b> [12] - 143:10, 179:5, 179:13, 184:2, 195:11, 223:17, 237:3, 237:6, 240:19, 287:22, 303:10, 303:12</p> <p><b>refers</b> [3] - 245:24, 279:24, 317:7</p> <p><b>refile</b> [1] - 253:25</p> <p><b>refiled</b> [1] - 260:9</p> <p><b>refine</b> [1] - 189:24</p> <p><b>refined</b> [1] - 200:22</p> <p><b>refinements</b> [2] - 173:15, 173:22</p> <p><b>Reflect</b> [2] - 121:24, 122:4</p> <p><b>reflect</b> [2] - 165:7, 180:16</p> <p><b>reflected</b> [2] - 252:2, 252:4</p> <p><b>reflects</b> [1] - 229:18</p> <p><b>regard</b> [23] - 139:7, 139:8, 140:3, 153:7,</p>	<p>153:22, 155:13, 156:15, 160:25, 161:3, 161:12, 163:11, 170:8, 175:5, 190:13, 228:13, 234:24, 240:20, 254:18, 280:9, 280:18, 304:20, 310:18, 319:25</p> <p><b>regarding</b> [19] - 120:21, 120:22, 123:9, 123:10, 126:17, 137:8, 140:22, 161:2, 161:4, 180:14, 214:12, 265:9, 293:10, 303:18, 304:7, 307:20, 319:3, 319:8, 320:19</p> <p><b>regardless</b> [2] - 249:10, 288:13</p> <p><b>regards</b> [2] - 137:5, 239:12</p> <p><b>Region</b> [2] - 120:23, 121:3</p> <p><b>Region's</b> [1] - 121:3</p> <p><b>regional</b> [1] - 320:25</p> <p><b>registered</b> [1] - 287:20</p> <p><b>Registered</b> [3] - 169:18, 327:5, 327:19</p> <p><b>regression</b> [1] - 135:24</p> <p><b>regulation</b> [1] - 320:15</p> <p><b>Regulation</b> [1] - 126:8</p> <p><b>regulations</b> [2] - 171:20, 203:12</p> <p><b>regulatory</b> [1] - 169:21</p> <p><b>regurgitate</b> [1] - 129:4</p> <p><b>reimbursement</b> [2] - 135:10, 135:13</p> <p><b>reinstantiate</b> [1] - 267:14</p> <p><b>reiterate</b> [1] - 291:7</p> <p><b>relate</b> [1] - 228:2</p> <p><b>related</b> [2] - 223:9, 233:22</p> <p><b>relationship</b> [2] - 170:2, 284:12</p> <p><b>relative</b> [2] - 208:8, 275:22</p> <p><b>relatively</b> [1] - 220:11</p> <p><b>Release</b> [1] - 127:22</p> <p><b>released</b> [1] - 255:8</p> <p><b>relevance</b> [1] - 131:23</p> <p><b>relevant</b> [1] - 305:1</p> <p><b>reliability</b> [1] - 280:15</p> <p><b>relocate</b> [1] - 249:3</p> <p><b>relocations</b> [1] -</p>	<p>248:19</p> <p><b>relook</b> [1] - 317:14</p> <p><b>remaining</b> [3] - 202:14, 230:14, 308:16</p> <p><b>remember</b> [8] - 150:22, 163:17, 227:3, 231:11, 235:4, 252:7, 261:4, 262:7</p> <p><b>remind</b> [2] - 277:22, 322:10</p> <p><b>reminded</b> [1] - 321:15</p> <p><b>reminders</b> [1] - 129:12</p> <p><b>removed</b> [10] - 125:16, 229:15, 250:16, 250:17, 250:20, 252:8, 254:24, 255:4, 255:15, 255:18</p> <p><b>rendered</b> [1] - 312:25</p> <p><b>renew</b> [1] - 229:13</p> <p><b>renewable</b> [2] - 278:6, 278:16</p> <p><b>repeat</b> [8] - 132:7, 175:22, 186:6, 194:17, 239:25, 274:24, 302:10, 305:15</p> <p><b>rephrase</b> [2] - 206:23, 236:1</p> <p><b>replace</b> [1] - 230:17</p> <p><b>replacement</b> [1] - 146:1</p> <p><b>Replacement</b> [1] - 126:10</p> <p><b>replacing</b> [1] - 265:13</p> <p><b>Report</b> [8] - 120:5, 120:6, 120:6, 120:7, 120:7, 120:8, 120:8, 125:7</p> <p><b>report</b> [24] - 137:14, 137:22, 138:11, 139:19, 142:22, 150:23, 151:4, 152:10, 153:7, 153:9, 156:10, 170:4, 176:17, 177:24, 179:21, 180:6, 224:23, 280:1, 280:2, 316:13, 316:16, 316:18, 324:5</p> <p><b>reported</b> [1] - 249:13</p> <p><b>Reported</b> [5] - 115:24, 122:8, 122:9, 122:17, 124:5</p> <p><b>reporter</b> [14] - 133:13, 156:18, 157:1, 160:7, 181:13,</p>
--	---	---	---	---

185:4, 186:5, 218:22, 220:8, 220:15, 220:17, 245:22, 298:22, 327:9 <b>Reporter</b> [10] - 181:15, 185:5, 186:7, 240:2, 246:3, 305:17, 327:6, 327:19, 327:19 <b>reporting</b> [2] - 210:21, 303:10 <b>Reporting</b> [1] - 115:24 <b>reports</b> [4] - 152:8, 171:6, 175:11, 279:24 <b>represent</b> [3] - 205:7, 205:11, 228:25 <b>representation</b> [1] - 161:10 <b>representations</b> [1] - 223:21 <b>representative</b> [3] - 221:24, 233:5, 281:18 <b>representatives</b> [2] - 204:10, 224:22 <b>represented</b> [3] - 251:6, 251:16, 306:8 <b>representing</b> [2] - 219:11, 279:25 <b>request</b> [5] - 181:19, 199:1, 226:24, 271:12, 295:11 <b>Request</b> [13] - 206:18, 234:24, 235:8, 235:10, 235:14, 235:22, 236:3, 236:5, 236:8, 286:18, 286:20, 286:23, 302:1 <b>requested</b> [1] - 179:25 <b>Requests</b> [3] - 127:5, 127:6, 194:8 <b>require</b> [3] - 199:24, 225:10, 323:15 <b>required</b> [9] - 184:10, 184:12, 196:1, 282:11, 282:15, 292:14, 299:8, 302:21, 311:12 <b>requirement</b> [5] - 315:13, 318:8, 319:18, 323:9 <b>requirements</b> [5] - 283:22, 290:10, 300:24, 300:25, 301:9 <b>reread</b> [2] - 156:19, 287:1	<b>research</b> [2] - 199:25, 207:1 <b>Research</b> [1] - 127:14 <b>researched</b> [1] - 135:22 <b>reseeding</b> [1] - 192:22 <b>reserve</b> [6] - 133:6, 134:7, 267:9, 269:9, 274:22, 325:23 <b>reserving</b> [2] - 274:7, 274:21 <b>residence</b> [5] - 147:13, 147:18, 147:21, 147:25, 251:23 <b>residences</b> [5] - 137:25, 138:1, 138:5, 147:7, 148:9 <b>resident</b> [2] - 149:1, 149:3 <b>residential</b> [1] - 158:6 <b>Residential</b> [1] - 127:17 <b>residents</b> [3] - 150:16, 151:5, 232:6 <b>resolve</b> [2] - 271:9, 274:18 <b>resolved</b> [5] - 228:24, 244:25, 245:19, 252:13, 271:11 <b>Resource</b> [1] - 299:20 <b>resource</b> [5] - 172:11, 214:12, 291:14, 299:6, 320:5 <b>Resources</b> [10] - 123:21, 134:2, 221:15, 221:22, 222:3, 233:1, 233:8, 233:10, 281:15, 285:12 <b>resources</b> [23] - 169:22, 171:13, 171:24, 172:12, 173:2, 173:6, 173:21, 190:17, 190:19, 191:1, 191:13, 191:16, 192:1, 192:11, 214:19, 215:1, 215:3, 261:18, 278:6, 284:11, 291:18, 299:8 <b>respect</b> [4] - 162:14, 169:3, 175:4, 242:9 <b>respectfully</b> [1] - 163:11 <b>respond</b> [6] - 187:9, 224:2, 224:3, 241:24, 273:11, 290:12	<b>responded</b> [3] - 206:19, 234:24, 243:15 <b>response</b> [24] - 157:16, 162:1, 171:4, 182:22, 183:15, 184:2, 184:6, 187:10, 210:21, 217:7, 231:12, 235:22, 236:15, 236:16, 236:19, 241:6, 241:25, 242:1, 243:4, 261:15, 273:6, 286:23, 297:15, 301:25 <b>Response</b> [2] - 123:25, 125:5 <b>responses</b> [5] - 206:6, 231:13, 237:15, 239:12, 243:13 <b>Responses</b> [17] - 120:14, 121:7, 121:10, 121:11, 121:18, 122:17, 123:6, 123:8, 123:10, 123:12, 123:14, 123:15, 123:22, 125:19, 125:22, 127:3, 127:6 <b>responsibilities</b> [4] - 281:25, 317:22, 317:23, 317:24 <b>responsible</b> [2] - 221:18, 286:20 <b>rest</b> [2] - 180:17, 267:15 <b>restart</b> [1] - 253:25 <b>restate</b> [1] - 283:24 <b>result</b> [9] - 223:7, 229:2, 229:16, 230:8, 230:13, 231:13, 250:23, 289:7, 308:10 <b>resulted</b> [1] - 247:9 <b>Results</b> [7] - 122:3, 125:14, 125:15, 125:16, 126:11, 126:18, 126:18 <b>results</b> [3] - 161:1, 302:3, 324:1 <b>Resume</b> [1] - 127:24 <b>Retrofitting</b> [1] - 121:6 <b>return</b> [2] - 167:12, 288:21 <b>Rev</b> [1] - 126:11 <b>Rev5</b> [2] - 126:18, 126:18 <b>revenue</b> [1] - 318:6 <b>Revenues</b> [1] - 123:9	<b>review</b> [11] - 143:8, 143:17, 178:7, 189:23, 215:25, 253:1, 289:8, 319:25, 320:16, 323:12, 323:22 <b>Review</b> [2] - 122:7, 122:15 <b>reviewed</b> [13] - 135:19, 135:22, 143:9, 143:22, 143:23, 216:3, 216:4, 253:15, 253:16, 289:3, 320:9, 323:23, 324:7 <b>revise</b> [1] - 180:16 <b>Revised</b> [13] - 121:5, 123:16, 123:17, 123:17, 123:18, 123:18, 123:19, 123:19, 123:20, 123:20, 123:21, 123:21, 123:22 <b>revisit</b> [1] - 228:16 <b>RICH</b> [1] - 118:15 <b>Richard</b> [1] - 125:6 <b>Ridge</b> [109] - 115:19, 120:3, 122:3, 123:9, 125:12, 125:13, 125:14, 125:15, 125:16, 125:19, 125:22, 126:14, 126:17, 129:8, 129:18, 129:20, 132:12, 132:25, 133:9, 133:24, 152:21, 159:24, 162:1, 168:18, 169:4, 170:5, 170:7, 171:11, 172:15, 172:16, 175:6, 175:7, 175:8, 179:17, 180:23, 182:2, 182:6, 184:17, 187:15, 188:4, 189:23, 190:8, 190:15, 191:24, 192:4, 192:7, 193:18, 194:21, 195:9, 195:23, 195:25, 196:11, 196:17, 196:24, 197:5, 197:25, 198:5, 198:23, 199:1, 199:9, 199:16, 201:1, 201:17, 203:2, 203:13, 204:11, 205:17, 206:19, 214:21, 215:10, 218:19, 221:16, 221:17, 227:2, 228:15, 233:2, 233:4, 233:5, 233:7, 233:9, 233:14, 233:17, 234:21, 234:23, 234:25, 236:21, 239:10, 254:11, 262:8, 270:3, 272:14, 277:17, 278:7, 278:8, 283:13, 284:2, 284:10, 284:20, 285:7, 290:17, 291:19, 296:3, 298:8, 299:7, 300:18, 300:23, 316:7, 319:15, 320:22 <b>RIDGE</b> [1] - 115:4 <b>ridge</b> [3] - 202:8, 224:10, 300:22 <b>right-of-way</b> [2] - 156:15, 157:4 <b>rights</b> [1] - 259:15 <b>Risk</b> [1] - 124:18 <b>risk</b> [3] - 272:3, 281:8, 290:4 <b>Risk-Factor</b> [1] - 124:18 <b>Rislov</b> [1] - 115:15 <b>Road</b> [2] - 125:5, 125:6 <b>road</b> [1] - 159:19 <b>roadways</b> [1] - 197:2 <b>ROBERT</b> [1] - 118:18 <b>Robert</b> [1] - 124:16 <b>role</b> [9] - 133:24, 169:3, 170:13, 221:16, 278:7, 278:8, 299:7, 319:17, 320:6 <b>room</b> [2] - 129:17, 296:25 <b>Rosebud</b> [1] - 205:8 <b>roughly</b> [2] - 251:2, 256:11 <b>rounds</b> [1] - 129:22 <b>RPR</b> [1] - 115:24 <b>rude</b> [1] - 285:6 <b>rule</b> [1] - 163:12 <b>ruled</b> [1] - 247:18 <b>rules</b> [1] - 283:22 <b>ruling</b> [3] - 168:13, 306:1, 306:3 <b>run</b> [4] - 309:5, 309:9, 309:16, 314:5 <b>runs</b> [1] - 234:17 <b>rural</b> [9] - 137:25,
---	---	---	---

138:1, 138:4, 147:7, 147:12, 147:21, 147:25, 148:9, 158:6 <b>rushing</b> [1] - 161:21	117:13, 166:23, 167:2 <b>Sappington's</b> [1] - 162:4 <b>Sarah</b> [4] - 123:6, 125:11, 160:5, 168:24 <b>SARAH</b> [1] - 117:13 <b>satisfies</b> [1] - 294:21 <b>saw</b> [3] - 205:13, 207:9, 262:21 <b>SB16</b> [1] - 127:8 <b>SCADA</b> [1] - 301:14 <b>scale</b> [2] - 278:15 <b>scenario</b> [2] - 267:6, 312:22 <b>Schaffer</b> [1] - 197:14 <b>schedule</b> [2] - 164:23, 291:8 <b>scheduled</b> [1] - 291:19 <b>Schmeling</b> [1] - 125:18 <b>Schomer</b> [1] - 127:13 <b>School</b> [1] - 124:9 <b>Schumacher</b> [10] - 115:19, 117:9, 117:11, 117:14, 117:16, 118:11, 118:13, 118:16, 119:4, 119:10 <b>SCHUMACHER</b> [32] - 132:14, 133:1, 133:11, 133:15, 136:17, 140:7, 152:23, 153:2, 153:15, 154:9, 155:12, 156:5, 159:25, 160:5, 162:3, 164:3, 164:17, 167:4, 168:1, 168:4, 168:19, 168:21, 169:13, 173:24, 174:6, 182:23, 185:12, 187:7, 215:15, 215:20, 216:10, 218:12 <b>Science</b> [1] - 299:12 <b>Scientific</b> [1] - 122:15 <b>Scope</b> [1] - 124:18 <b>Scores</b> [1] - 124:6 <b>Scottish</b> [1] - 124:19 <b>screen</b> [1] - 236:17 <b>SD</b> [1] - 128:3 <b>search</b> [4] - 146:19, 146:21, 172:11, 235:9 <b>Search</b> [4] - 128:3, 128:3, 128:4, 128:4	<b>season</b> [10] - 193:7, 193:11, 193:12, 193:13, 198:5, 201:16, 201:18, 217:21, 263:1 <b>seasons</b> [1] - 200:14 <b>Second</b> [3] - 121:7, 121:10, 123:15 <b>second</b> [13] - 158:16, 158:24, 202:5, 216:15, 238:10, 238:15, 251:20, 259:1, 259:25, 286:13, 287:1, 301:25, 323:7 <b>secondary</b> [1] - 250:19 <b>section</b> [1] - 188:12 <b>Section</b> [1] - 188:12 <b>sections</b> [1] - 123:20 <b>secure</b> [2] - 161:8, 295:10 <b>sediments</b> [1] - 189:6 <b>see</b> [40] - 134:3, 135:20, 135:25, 137:18, 159:10, 159:14, 163:25, 164:1, 177:14, 180:18, 181:2, 186:16, 187:17, 199:6, 199:25, 204:17, 207:7, 207:11, 208:4, 210:24, 213:23, 214:7, 216:19, 219:16, 247:21, 253:21, 259:13, 261:1, 283:25, 284:20, 284:22, 286:18, 306:18, 314:24, 315:16, 316:9, 323:13, 324:3, 326:3, 326:10 <b>seeing</b> [8] - 186:15, 191:17, 200:9, 211:25, 212:4, 213:22, 241:12, 324:22 <b>seeking</b> [1] - 307:8 <b>seem</b> [3] - 209:23, 220:22, 325:20 <b>Seizures</b> [1] - 123:3 <b>select</b> [1] - 321:16 <b>selected</b> [3] - 205:7, 205:10, 249:15 <b>selecting</b> [1] - 251:1 <b>selection</b> [1] - 321:19 <b>Self</b> [3] - 122:8, 122:9, 124:5 <b>Self-Reported</b> [3] -	122:8, 122:9, 124:5 <b>sellers</b> [3] - 136:6, 136:12, 149:20 <b>selling</b> [1] - 136:4 <b>sending</b> [1] - 179:23 <b>senior</b> [2] - 258:18, 278:10 <b>sense</b> [6] - 145:17, 146:9, 261:23, 311:9, 311:19, 320:15 <b>sensitive</b> [2] - 171:12, 178:8 <b>sensitivity</b> [3] - 214:8, 214:14, 214:15 <b>sent</b> [4] - 130:10, 130:11, 142:15, 180:19 <b>sentence</b> [4] - 155:7, 315:9, 315:19, 316:4 <b>separate</b> [2] - 219:7, 284:4 <b>sequentially</b> [1] - 219:16 <b>series</b> [1] - 214:10 <b>serious</b> [2] - 214:22, 318:13 <b>seriously</b> [1] - 192:8 <b>seriousness</b> [1] - 214:19 <b>Service</b> [8] - 121:3, 126:3, 126:7, 127:10, 171:15, 180:14, 188:15, 190:4 <b>Service's</b> [3] - 120:21, 120:22, 121:5 <b>services</b> [1] - 221:23 <b>session</b> [4] - 129:10, 167:15, 297:1, 297:10 <b>set</b> [3] - 200:6, 212:4, 237:25 <b>Set</b> [12] - 120:14, 121:7, 121:10, 121:11, 123:6, 123:8, 123:11, 123:12, 123:14, 123:15, 125:19, 125:22 <b>Setback</b> [1] - 124:3 <b>setback</b> [1] - 252:20 <b>setbacks</b> [1] - 263:13 <b>sets</b> [1] - 223:6 <b>setting</b> [2] - 164:24, 271:5 <b>Setting</b> [1] - 124:15 <b>settle</b> [2] - 262:23, 321:8 <b>settlement</b> [1] -	262:24 <b>seven</b> [35] - 225:2, 230:12, 230:16, 230:23, 232:12, 248:19, 248:21, 249:3, 249:6, 249:7, 249:10, 249:17, 249:20, 249:22, 251:1, 251:3, 251:10, 252:9, 265:18, 265:20, 265:21, 266:13, 266:25, 267:7, 267:8, 267:9, 267:15, 268:23, 269:6, 269:12, 274:14, 292:17, 315:22 <b>several</b> [12] - 150:12, 159:7, 160:12, 200:16, 205:8, 237:15, 259:1, 260:5, 261:7, 267:25, 277:10, 280:12 <b>severe</b> [1] - 318:11 <b>Shadow</b> [7] - 120:8, 122:4, 122:19, 123:4, 125:12, 126:18, 126:18 <b>shadow</b> [11] - 163:19, 164:1, 229:20, 230:9, 231:9, 249:8, 251:22, 262:1, 262:3, 263:14, 265:19 <b>shall</b> [6] - 132:2, 135:12, 271:4, 271:9, 271:12, 274:17 <b>shapefile</b> [2] - 181:22, 182:10 <b>shapefiles</b> [4] - 179:23, 180:19, 181:20, 182:4 <b>share</b> [1] - 176:10 <b>shared</b> [1] - 320:21 <b>sharing</b> [2] - 220:7, 220:21 <b>shed</b> [3] - 317:8, 317:10, 317:11 <b>shedding</b> [3] - 316:12, 316:16, 316:18 <b>sheet</b> [3] - 235:1, 236:11, 236:20 <b>shell</b> [1] - 283:14 <b>shift</b> [2] - 229:18, 252:19 <b>shifting</b> [1] - 230:8 <b>shifts</b> [2] - 230:13,
--	---	---	--	---



251:11 <b>Shirley</b> [1] - 127:11 <b>short</b> [17] - 134:5, 135:4, 147:1, 152:8, 165:6, 167:13, 194:11, 194:13, 209:18, 221:20, 231:25, 264:11, 278:12, 279:12, 298:15, 299:10, 300:15 <b>shorthand</b> [2] - 327:9 <b>shortly</b> [3] - 136:10, 136:11, 290:20 <b>shotokan</b> [1] - 306:20 <b>show</b> [5] - 154:8, 175:10, 231:2, 246:24, 247:19 <b>showed</b> [4] - 139:12, 179:11, 247:6, 260:10 <b>showing</b> [1] - 229:5 <b>shown</b> [1] - 247:10 <b>shows</b> [6] - 175:11, 177:13, 180:19, 197:15, 240:21, 263:6 <b>shut</b> [8] - 309:12, 309:13, 309:16, 309:22, 309:23, 310:22, 311:9, 311:24 <b>sic</b> [3] - 144:16, 154:21, 300:22 <b>Sick</b> [1] - 127:15 <b>side</b> [3] - 231:2, 302:15 <b>sight</b> [1] - 285:18 <b>sighted</b> [1] - 212:13 <b>Sigma</b> [2] - 299:17, 306:11 <b>sign</b> [3] - 236:13, 254:13, 322:9 <b>signed</b> [5] - 142:17, 241:16, 260:5, 295:16, 296:24 <b>significance</b> [1] - 209:2 <b>significant</b> [3] - 163:1, 241:19 <b>similar</b> [6] - 139:2, 141:14, 145:6, 145:7, 281:24, 319:12 <b>simple</b> [1] - 250:4 <b>simply</b> [1] - 284:25 <b>sincere</b> [1] - 154:12 <b>single</b> [2] - 192:17, 257:7 <b>Sioux</b> [3] - 149:16,	205:6, 205:8 <b>Sisseton</b> [2] - 205:6, 261:16 <b>Sisseton-Wahpeton</b> [2] - 205:6, 261:16 <b>sit</b> [1] - 231:1 <b>site</b> [24] - 171:12, 190:17, 191:10, 191:13, 193:25, 196:2, 199:14, 203:14, 213:19, 244:9, 244:21, 244:23, 267:24, 287:15, 301:4, 301:6, 301:7, 301:8, 301:13, 304:1, 315:25, 320:25, 321:2 <b>sited</b> [1] - 230:1 <b>sites</b> [19] - 139:13, 190:14, 191:15, 191:16, 193:14, 205:15, 205:21, 253:8, 258:21, 258:23, 265:9, 265:14, 266:10, 267:16, 269:18, 271:23, 274:2, 308:17, 308:18 <b>Siting</b> [2] - 121:6, 125:24 <b>siting</b> [9] - 143:12, 172:22, 172:24, 173:3, 206:12, 238:25, 242:10, 243:21, 282:16 <b>sits</b> [1] - 245:13 <b>situation</b> [3] - 163:2, 252:4, 252:12 <b>situations</b> [1] - 145:7 <b>six</b> [7] - 136:9, 230:12, 259:8, 265:14, 266:4, 319:9 <b>Six</b> [2] - 299:17, 306:11 <b>six-course</b> [1] - 319:9 <b>sixteen</b> [1] - 212:16 <b>Sixth</b> [1] - 125:22 <b>sixth</b> [1] - 306:9 <b>size</b> [3] - 261:17, 275:22, 291:10 <b>skip</b> [1] - 318:1 <b>skipper</b> [7] - 120:5, 172:6, 189:19, 190:2, 190:6, 191:4, 191:5 <b>skipperling</b> [4] - 120:5, 172:6, 189:19, 191:6 <b>Sleep</b> [3] - 122:8,	122:9, 122:11 <b>small</b> [2] - 148:5, 278:15 <b>smart</b> [1] - 228:10 <b>so-called</b> [4] - 141:18, 230:23, 251:4, 271:24 <b>software</b> [2] - 309:4 <b>Soil</b> [1] - 123:21 <b>soils</b> [1] - 189:6 <b>solar</b> [1] - 278:15 <b>sold</b> [7] - 138:16, 138:17, 138:18, 145:4, 149:18, 154:25 <b>solidified</b> [2] - 256:16, 260:12 <b>solidify</b> [1] - 256:14 <b>someone</b> [5] - 130:6, 205:23, 214:8, 295:11, 320:3 <b>someplace</b> [1] - 304:16 <b>sometime</b> [3] - 290:21, 290:22 <b>sometimes</b> [1] - 239:23 <b>somewhat</b> [2] - 145:3, 209:12 <b>somewhere</b> [3] - 155:16, 228:12, 262:22 <b>sorry</b> [28] - 131:1, 140:14, 143:11, 159:1, 159:11, 172:15, 174:11, 174:19, 183:22, 185:11, 186:4, 222:7, 235:8, 245:21, 252:5, 266:17, 273:2, 284:15, 286:15, 298:23, 300:23, 302:10, 310:4, 315:1, 315:10, 315:11, 324:12 <b>sort</b> [5] - 225:15, 287:20, 288:2, 290:13, 293:20 <b>Sorted</b> [4] - 122:3, 125:15, 125:16, 125:17 <b>sought</b> [2] - 164:18, 261:18 <b>sound</b> [8] - 230:19, 232:13, 251:11, 262:1, 262:3, 263:13, 273:20, 280:2 <b>Sound</b> [23] - 120:8,	121:24, 122:3, 122:9, 125:5, 125:5, 125:6, 125:8, 125:13, 125:14, 125:15, 125:15, 125:16, 125:16, 126:8, 126:11, 126:11, 126:15, 127:12, 127:23, 128:7, 128:9, 128:11 <b>sounds</b> [1] - 322:20 <b>Sources</b> [3] - 122:14, 122:16, 124:11 <b>South</b> [49] - 115:24, 116:2, 116:4, 134:14, 134:15, 136:3, 137:3, 137:5, 137:17, 142:1, 142:16, 143:18, 143:19, 144:22, 146:8, 146:14, 151:5, 151:9, 151:25, 155:1, 156:10, 171:16, 178:6, 178:10, 179:1, 179:4, 179:24, 180:13, 180:20, 182:10, 187:20, 190:5, 193:22, 196:4, 199:22, 202:12, 202:17, 202:19, 206:10, 222:2, 222:5, 236:23, 237:11, 237:12, 238:6, 310:21, 327:7, 327:13 <b>SOUTH</b> [2] - 115:2, 327:1 <b>Southeastern</b> [1] - 299:16 <b>SPCC</b> [2] - 301:4, 303:25 <b>speaking</b> [3] - 129:15, 159:9, 235:7 <b>speaks</b> [1] - 210:15 <b>Spearville</b> [1] - 136:7 <b>species</b> [6] - 173:6, 183:7, 209:25, 210:1, 210:2, 210:17 <b>species'</b> [1] - 210:3 <b>specific</b> [18] - 143:12, 164:11, 171:12, 185:19, 201:14, 213:2, 213:20, 244:21, 245:14, 254:1, 254:11, 256:18, 256:23, 278:9, 289:22, 293:15, 301:4,	303:25 <b>specifically</b> [8] - 143:10, 195:3, 199:14, 209:6, 214:17, 218:4, 293:12, 294:6 <b>specifications</b> [1] - 320:1 <b>specified</b> [7] - 232:25, 244:15, 244:19, 245:5, 245:18, 249:5, 256:12 <b>spectrum</b> [1] - 287:18 <b>speculation</b> [1] - 131:25 <b>spending</b> [1] - 318:12 <b>Spirit</b> [1] - 205:6 <b>spoken</b> [1] - 165:5 <b>sponsor</b> [1] - 239:12 <b>sponsored</b> [1] - 279:15 <b>sponsoring</b> [1] - 241:12 <b>spot</b> [1] - 130:16 <b>spots</b> [1] - 231:16 <b>spring</b> [1] - 175:19 <b>springtime</b> [2] - 190:12, 200:16 <b>SS</b> [1] - 327:2 <b>STAFF</b> [4] - 115:13, 117:2, 119:2, 127:2 <b>Staff</b> [43] - 115:22, 121:19, 123:13, 123:25, 126:14, 127:5, 127:6, 127:6, 130:8, 131:8, 131:18, 132:6, 132:13, 133:7, 142:4, 157:14, 164:25, 165:14, 166:18, 174:8, 187:24, 195:8, 198:18, 198:21, 215:24, 216:22, 220:3, 250:9, 257:19, 271:8, 274:4, 274:12, 274:17, 275:13, 280:19, 280:20, 285:22, 286:6, 286:18, 296:11, 308:2, 322:2, 325:20 <b>Staff's</b> [15] - 120:14, 121:7, 121:10, 123:6, 123:8, 123:10, 123:12, 123:22, 125:22, 127:3, 127:7, 129:20, 131:3, 131:9, 301:25
---	--	---	---	---

<p><b>staggered</b> [1] - 276:2</p> <p><b>stand</b> [2] - 285:25, 286:4</p> <p><b>standard</b> [8] - 202:3, 202:4, 301:2, 303:7, 303:22, 304:6, 305:7, 305:10</p> <p><b>Standards</b> [1] - 126:9</p> <p><b>standing</b> [6] - 169:8, 176:7, 225:5, 225:13, 226:25, 283:11</p> <p><b>standpoint</b> [6] - 146:4, 164:6, 164:9, 254:19, 309:5, 319:16</p> <p><b>stands</b> [2] - 129:3, 202:25</p> <p><b>star</b> [1] - 264:18</p> <p><b>stare</b> [1] - 285:19</p> <p><b>staring</b> [1] - 285:16</p> <p><b>start</b> [8] - 161:20, 182:17, 194:18, 213:5, 272:12, 276:2, 276:22, 303:2</p> <p><b>started</b> [5] - 203:20, 226:7, 265:22, 278:14, 298:13</p> <p><b>starting</b> [4] - 178:11, 196:3, 211:21, 213:19</p> <p><b>starts</b> [5] - 294:3, 309:14, 315:8, 315:9, 315:15</p> <p><b>state</b> [17] - 133:16, 134:12, 151:10, 168:22, 171:14, 171:23, 172:17, 192:12, 202:16, 209:25, 221:12, 236:5, 244:5, 278:3, 299:3, 318:18, 318:19</p> <p><b>State</b> [9] - 116:3, 171:5, 171:16, 190:16, 191:23, 222:2, 236:23, 238:6, 327:7</p> <p><b>STATE</b> [2] - 115:2, 327:1</p> <p><b>statement</b> [16] - 132:25, 133:3, 161:5, 161:7, 165:13, 180:22, 226:24, 235:1, 236:12, 236:21, 244:10, 259:19, 261:15, 265:25, 267:21, 304:25</p> <p><b>Statement</b> [2] -</p>	<p>127:20, 127:21</p> <p><b>statements</b> [2] - 132:24, 219:21</p> <p><b>states</b> [11] - 144:13, 153:12, 209:24, 210:19, 210:22, 210:24, 210:25, 211:1, 216:7, 222:1, 312:7</p> <p><b>States</b> [9] - 135:24, 169:19, 171:15, 171:21, 171:22, 172:23, 172:25, 180:14, 300:21</p> <p><b>Statin</b> [1] - 124:22</p> <p><b>statistical</b> [2] - 306:12, 306:22</p> <p><b>statistics</b> [1] - 315:6</p> <p><b>Status</b> [8] - 120:20, 120:21, 121:24, 122:5, 126:9, 126:10, 126:12, 126:12</p> <p><b>status</b> [7] - 223:6, 223:8, 228:18, 229:2, 230:13, 243:12, 248:5</p> <p><b>stay</b> [3] - 190:6, 219:11, 298:14</p> <p><b>staying</b> [1] - 189:24</p> <p><b>step</b> [8] - 160:2, 166:17, 167:7, 218:15, 248:3, 277:18, 298:10, 322:4</p> <p><b>steps</b> [1] - 273:18</p> <p><b>stickers</b> [2] - 226:17, 226:18</p> <p><b>stickies</b> [5] - 227:8, 228:8, 228:25, 229:4, 246:23</p> <p><b>sticky</b> [2] - 228:12, 275:9</p> <p><b>still</b> [23] - 184:5, 184:8, 185:21, 201:22, 201:23, 201:24, 210:3, 242:11, 243:16, 253:16, 256:1, 256:9, 261:12, 268:24, 272:13, 273:12, 273:25, 274:7, 277:7, 293:9, 311:1, 311:23, 313:18</p> <p><b>stipulate</b> [2] - 130:25, 131:15</p> <p><b>stipulated</b> [10] - 130:6, 130:19, 131:4, 131:6, 131:10,</p>	<p>132:4, 132:5, 132:9, 132:20, 319:18</p> <p><b>stipulates</b> [1] - 184:24</p> <p><b>stipulation</b> [2] - 131:15, 215:24</p> <p><b>Stipulation</b> [1] - 126:14</p> <p><b>stipulations</b> [1] - 224:5</p> <p><b>stood</b> [1] - 159:5</p> <p><b>stop</b> [4] - 161:19, 228:11, 293:17, 311:2</p> <p><b>stopping</b> [1] - 263:8</p> <p><b>storm</b> [3] - 189:4, 192:13, 192:16</p> <p><b>storms</b> [2] - 313:3, 313:21</p> <p><b>stranded</b> [2] - 228:21, 230:1</p> <p><b>strategy</b> [12] - 182:13, 182:15, 182:19, 183:4, 183:8, 183:18, 184:7, 201:22, 201:24, 212:25, 213:14, 213:24</p> <p><b>Strategy</b> [1] - 121:4</p> <p><b>stream</b> [1] - 172:10</p> <p><b>streams</b> [1] - 188:18</p> <p><b>strike</b> [5] - 132:1, 182:12, 247:24, 280:22, 319:4</p> <p><b>stringent</b> [1] - 303:17</p> <p><b>striped</b> [1] - 177:17</p> <p><b>Structures</b> [2] - 128:10, 128:11</p> <p><b>structures</b> [1] - 314:8</p> <p><b>struggle</b> [2] - 156:21, 314:20</p> <p><b>struggling</b> [1] - 204:18</p> <p><b>struts</b> [1] - 193:8</p> <p><b>studied</b> [6] - 179:7, 179:8, 180:5, 180:11, 209:1, 209:5</p> <p><b>Studies</b> [3] - 120:9, 120:10, 124:18</p> <p><b>studies</b> [30] - 135:22, 169:5, 170:7, 171:12, 172:1, 172:3, 172:4, 172:5, 172:14, 173:8, 179:21, 180:24, 188:17, 188:18, 188:20, 189:18, 189:22, 197:8, 197:11, 197:12, 197:13, 198:12, 198:23, 201:3,</p>	<p>201:4, 211:23, 239:21, 241:12, 287:16</p> <p><b>study</b> [34] - 134:2, 135:18, 137:2, 138:2, 141:3, 141:6, 141:10, 141:15, 141:17, 141:25, 148:4, 163:3, 175:5, 175:6, 175:12, 177:1, 177:24, 178:9, 178:25, 179:9, 180:9, 197:14, 199:2, 200:6, 217:11, 217:12, 217:13, 239:11, 240:5, 240:9, 240:21, 242:21, 261:24, 287:23</p> <p><b>Study</b> [6] - 121:24, 122:4, 122:10, 124:14, 124:19, 125:7</p> <p><b>stuff</b> [1] - 275:6</p> <p><b>style</b> [1] - 165:12</p> <p><b>subcontractors</b> [1] - 192:6</p> <p><b>subject</b> [5] - 131:15, 176:22, 177:8, 177:18, 281:8</p> <p><b>submission</b> [1] - 135:14</p> <p><b>submit</b> [2] - 184:17, 316:14</p> <p><b>submitted</b> [8] - 192:12, 192:18, 201:25, 216:16, 242:17, 290:19, 312:5, 316:10</p> <p><b>subsidiaries</b> [1] - 238:23</p> <p><b>substantial</b> [1] - 163:6</p> <p><b>substantive</b> [1] - 181:14</p> <p><b>substation</b> [1] - 320:11</p> <p><b>substations</b> [1] - 299:19</p> <p><b>substitute</b> [2] - 160:22, 163:5</p> <p><b>successor</b> [1] - 282:12</p> <p><b>sudden</b> [2] - 149:12, 312:6</p> <p><b>sufficient</b> [5] - 203:4, 203:8, 203:15, 209:9, 212:2</p> <p><b>suggest</b> [2] - 194:5, 256:24</p>	<p><b>suggesting</b> [2] - 248:18, 295:22</p> <p><b>suitable</b> [3] - 271:2, 308:10, 308:13</p> <p><b>suited</b> [1] - 268:5</p> <p><b>SULLY</b> [1] - 327:3</p> <p><b>sum</b> [1] - 250:24</p> <p><b>summarize</b> [2] - 198:21, 230:11</p> <p><b>summary</b> [12] - 130:3, 135:4, 153:7, 158:7, 171:9, 231:25, 244:2, 279:12, 279:13, 300:15, 324:14, 324:16</p> <p><b>summer</b> [2] - 190:3, 290:22</p> <p><b>Suncor</b> [2] - 127:20, 127:21</p> <p><b>Supplement</b> [5] - 121:9, 121:10, 121:21, 121:21, 121:22</p> <p><b>supplemental</b> [4] - 179:19, 222:13, 245:7, 300:2</p> <p><b>Supplemental</b> [14] - 120:13, 121:22, 121:23, 121:23, 122:4, 122:5, 122:6, 123:10, 123:22, 127:6, 254:3, 279:1, 308:21, 310:17</p> <p><b>Support</b> [2] - 124:12, 125:4</p> <p><b>support</b> [7] - 163:6, 164:21, 182:7, 245:8, 282:6, 305:25, 306:3</p> <p><b>supposed</b> [2] - 191:11, 225:24</p> <p><b>Surficial</b> [1] - 123:19</p> <p><b>surprised</b> [2] - 209:13, 209:16</p> <p><b>surrounded</b> [1] - 136:8</p> <p><b>surrounding</b> [4] - 134:4, 135:17, 135:20, 136:14</p> <p><b>Survey</b> [10] - 120:5, 120:6, 120:6, 120:7, 124:5, 127:10, 172:12, 178:1, 217:15, 217:16</p> <p><b>survey</b> [7] - 177:5, 184:4, 190:3, 190:7, 200:2, 207:10, 217:6</p> <p><b>surveys</b> [30] - 172:5, 172:7, 172:8, 172:10, 172:11,</p>
--	--	---	--	--

173:8, 173:13, 175:16, 175:18, 178:2, 178:3, 180:1, 189:19, 189:20, 190:17, 190:18, 193:24, 199:15, 207:6, 207:10, 211:20, 211:21, 213:19, 213:20, 217:8, 217:23, 239:13, 242:11 <b>Surveys</b> [6] - 193:21, 196:5, 207:4, 207:13, 213:17, 217:14 <b>suspect</b> [1] - 223:24 <b>sustain</b> [5] - 220:20, 247:22, 250:6, 282:24, 305:12 <b>Sustained</b> [1] - 220:19 <b>sustained</b> [1] - 221:4 <b>SWCA</b> [10] - 168:24, 169:1, 169:5, 169:20, 186:11, 186:23, 187:15, 200:24, 204:1, 208:25 <b>SWCA's</b> [1] - 207:6 <b>swear</b> [1] - 166:10 <b>sweet</b> [1] - 147:2 <b>SWIF</b> [1] - 301:4 <b>sworn</b> [1] - 277:23 <b>symbols</b> [1] - 176:21 <b>system</b> [5] - 210:21, 301:14, 302:9, 302:12, 320:10 <b>Systems</b> [1] - 123:24	<b>target</b> [1] - 292:5 <b>tasked</b> [1] - 248:4 <b>Tax</b> [1] - 123:9 <b>team</b> [10] - 186:24, 208:25, 277:10, 278:15, 278:16, 289:5, 319:14, 319:22, 324:3 <b>teaming</b> [1] - 219:12 <b>teams</b> [1] - 258:2 <b>Technical</b> [1] - 123:23 <b>technical</b> [4] - 223:20, 225:7, 290:9, 304:21 <b>technicians</b> [6] - 314:23, 314:24, 315:15, 315:21, 316:5, 321:3 <b>technologies</b> [1] - 303:19 <b>technology</b> [14] - 299:14, 303:7, 303:15, 303:17, 304:7, 304:12, 304:15, 304:18, 304:24, 305:19, 306:16, 307:12, 317:25, 318:7 <b>techs</b> [1] - 315:24 <b>Telecommunication</b> [1] - 120:10 <b>telephone</b> [1] - 325:22 <b>temperature</b> [8] - 309:6, 309:11, 309:13, 309:15, 309:21, 310:1, 310:2, 312:2 <b>temperatures</b> [2] - 311:16, 311:24 <b>temporary</b> [4] - 134:15, 144:21, 189:10, 197:20 <b>tempted</b> [1] - 317:24 <b>tendency</b> [1] - 238:23 <b>tender</b> [1] - 232:16 <b>term</b> [8] - 141:3, 141:6, 141:8, 147:16, 147:25, 283:7, 304:14 <b>terms</b> [3] - 223:20, 282:13, 285:9 <b>testified</b> [9] - 141:25, 163:18, 163:19, 167:10, 261:6, 275:7, 291:3, 319:13, 320:2 <b>testifies</b> [1] - 326:2 <b>testify</b> [12] - 162:13, 163:25, 164:2, 164:4, 164:20, 164:23, 165:4, 167:6, 220:6, 248:25, 249:1, 325:25 <b>testifying</b> [6] - 146:22, 160:14, 160:24, 163:3, 163:5, 168:11 <b>testimonies</b> [1] - 319:24 <b>Testimony</b> [58] - 120:11, 120:11, 120:12, 121:22, 121:23, 123:5, 123:23, 124:4, 124:13, 124:16, 125:6, 125:11, 125:12, 125:17, 125:24, 127:3, 127:4, 127:4, 127:5, 134:21, 170:10, 170:23, 171:3, 174:4, 186:8, 186:22, 204:22, 210:22, 211:9, 211:14, 217:4, 217:10, 222:6, 222:11, 222:19, 251:18, 252:17, 254:3, 259:13, 260:8, 260:17, 260:18, 260:23, 278:20, 278:24, 279:1, 279:7, 299:21, 300:8, 308:21, 310:18, 314:17, 314:19, 314:21, 315:2, 315:3, 315:5, 316:10 <b>testimony</b> [100] - 129:23, 129:25, 130:1, 130:3, 131:17, 131:20, 132:1, 132:4, 135:1, 135:4, 144:9, 147:1, 147:3, 149:6, 160:12, 160:21, 160:24, 162:4, 162:10, 163:16, 164:12, 165:3, 165:23, 167:8, 167:24, 168:2, 170:14, 170:15, 170:16, 170:17, 170:21, 171:9, 174:3, 175:13, 175:15, 185:24, 186:8, 186:16, 186:21, 192:12, 204:13, 204:19, 206:1, 206:5, 206:16, 209:24, 210:6, 210:10, 211:17, 215:12, 217:4, 219:7, 220:21, 222:13, 222:17, 222:24, 231:25, 247:24, 248:1, 248:6, 248:9, 248:11, 248:17, 249:25, 251:25, 252:17, 261:1, 261:4, 262:7, 262:22, 263:17, 273:5, 273:10, 279:5, 279:14, 279:24, 280:6, 280:9, 280:10, 282:20, 283:13, 287:7, 294:22, 299:25, 300:2, 300:6, 300:13, 300:16, 300:17, 310:23, 315:12, 318:15, 319:13, 319:21, 321:12 <b>testing</b> [3] - 302:2, 302:3, 302:5 <b>thanking</b> [1] - 298:5 <b>THE</b> [165] - 115:1, 115:2, 115:4, 115:11, 144:5, 144:11, 144:14, 144:18, 144:20, 144:25, 145:2, 145:9, 145:13, 145:20, 146:5, 146:11, 146:17, 146:24, 147:8, 147:10, 147:14, 147:17, 147:23, 148:3, 148:11, 148:16, 149:4, 149:7, 149:14, 150:1, 150:3, 150:24, 151:8, 152:1, 152:7, 183:3, 203:2, 203:7, 203:11, 203:23, 204:1, 204:5, 204:8, 204:10, 204:15, 204:24, 205:2, 205:5, 205:17, 205:20, 206:10, 206:18, 207:3, 207:13, 207:17, 207:25, 208:6, 208:17, 208:24, 209:4, 209:16, 209:20, 210:5, 210:8, 211:13, 212:11, 212:16, 212:20, 212:24, 213:6, 213:10, 213:13, 214:17, 215:9, 215:13, 218:16, 230:24, 231:5, 231:7, 240:13, 255:14, 257:9, 257:24, 258:7, 258:17, 258:25, 259:7, 259:10, 259:18, 259:25, 260:7, 260:22, 261:10, 261:15, 262:4, 262:11, 262:18, 263:3, 263:23, 264:3, 264:5, 264:15, 264:22, 265:2, 265:6, 265:16, 266:12, 267:2, 267:4, 267:17, 268:5, 268:12, 268:15, 269:5, 269:19, 272:16, 277:24, 292:11, 292:14, 292:24, 293:2, 293:5, 293:7, 293:15, 293:20, 294:1, 294:6, 294:14, 294:16, 294:25, 295:6, 295:19, 295:25, 297:12, 305:22, 306:11, 306:21, 311:3, 311:25, 312:2, 312:21, 313:25, 314:14, 315:1, 315:3, 315:7, 315:10, 315:17, 315:24, 316:8, 316:17, 317:1, 317:3, 317:7, 317:12, 317:20, 318:4, 318:24, 319:14, 320:4, 320:24, 321:9, 321:19, 322:6 <b>thereby</b> [1] - 321:8 <b>they've</b> [5] - 151:11, 151:12, 190:10, 190:20, 254:12 <b>third</b> [2] - 146:3, 198:2 <b>Third</b> [2] - 123:6, 123:14 <b>THOMPSON</b> [1] - 118:7 <b>Thompson</b> [9] - 120:12, 121:22, 123:23, 298:21, 299:5, 301:25, 315:5, 317:19,
<b>T</b>	
<b>tab</b> [3] - 158:16, 229:17, 230:15 <b>tabbed</b> [1] - 158:5 <b>Table</b> [3] - 126:11, 126:18, 126:18 <b>table</b> [3] - 158:7, 166:14, 305:3 <b>Tables</b> [1] - 122:3 <b>Tabular</b> [4] - 122:3, 125:14, 125:15, 125:16 <b>taekwondo</b> [1] - 306:20 <b>tag</b> [1] - 219:12 <b>tailored</b> [1] - 256:21 <b>talks</b> [6] - 259:14, 261:2, 314:23, 315:19 <b>tank</b> [1] - 220:7 <b>tapering</b> [1] - 324:11	



<p>321:11</p> <p><b>thorough</b> [2] - 151:6, 151:18</p> <p><b>three</b> [18] - 135:22, 138:25, 148:25, 157:2, 200:20, 204:14, 205:4, 205:10, 209:3, 228:19, 230:11, 235:1, 236:12, 237:25, 262:16, 312:7, 324:9, 324:25</p> <p><b>throughout</b> [2] - 162:11, 239:5</p> <p><b>throw</b> [1] - 317:8</p> <p><b>Thursday</b> [3] - 260:4, 289:11, 295:10</p> <p><b>Thyen</b> [3] - 127:22, 127:22, 127:23</p> <p><b>tied</b> [1] - 253:23</p> <p><b>tiered</b> [1] - 213:18</p> <p><b>tight</b> [1] - 164:23</p> <p><b>timelines</b> [1] - 291:4</p> <p><b>tiny</b> [1] - 191:6</p> <p><b>title</b> [6] - 133:16, 168:22, 221:12, 278:3, 278:5, 299:3</p> <p><b>titled</b> [1] - 158:16</p> <p><b>today</b> [22] - 131:20, 142:1, 150:19, 164:7, 239:9, 246:23, 247:6, 247:10, 247:13, 247:18, 248:17, 249:13, 260:11, 260:14, 264:18, 275:7, 295:14, 295:15, 307:10, 308:17, 322:9, 325:14</p> <p><b>together</b> [4] - 213:16, 213:21, 303:25, 312:12</p> <p><b>TOM</b> [1] - 119:3</p> <p><b>Tom</b> [1] - 127:4</p> <p><b>tomorrow</b> [8] - 272:11, 272:15, 322:13, 323:6, 323:16, 325:23, 325:25, 326:9</p> <p><b>tonight</b> [2] - 150:13, 259:6</p> <p><b>took</b> [6] - 139:22, 140:2, 237:10, 237:12, 248:6, 327:9</p> <p><b>top</b> [3] - 158:19, 292:16, 306:5</p> <p><b>topic</b> [1] - 275:17</p> <p><b>Topographic</b> [1] - 123:19</p>	<p><b>total</b> [1] - 259:25</p> <p><b>totality</b> [3] - 136:13, 137:4, 152:14</p> <p><b>touch</b> [3] - 129:13, 161:17, 231:16</p> <p><b>touched</b> [1] - 275:18</p> <p><b>tough</b> [1] - 257:11</p> <p><b>toured</b> [1] - 135:20</p> <p><b>Toward</b> [1] - 124:6</p> <p><b>towards</b> [2] - 256:21, 292:1</p> <p><b>Tower</b> [1] - 121:5</p> <p><b>towers</b> [3] - 191:10, 236:25, 287:19</p> <p><b>town</b> [1] - 136:8</p> <p><b>Township</b> [1] - 155:1</p> <p><b>traditional</b> [3] - 172:13, 190:21, 205:20</p> <p><b>Traffic</b> [2] - 125:5, 125:6</p> <p><b>trailed</b> [1] - 279:18</p> <p><b>trained</b> [2] - 156:24, 191:25</p> <p><b>training</b> [5] - 192:7, 201:10, 214:8, 214:14, 214:15</p> <p><b>transaction</b> [1] - 158:6</p> <p><b>Transcript</b> [3] - 115:7, 126:7, 127:18</p> <p><b>transcript</b> [1] - 116:1</p> <p><b>transcription</b> [1] - 327:12</p> <p><b>transmission</b> [14] - 254:6, 275:25, 276:3, 291:9, 299:18, 311:18, 312:18, 312:22, 313:5, 313:13, 314:3, 314:6, 314:8, 324:8</p> <p><b>Transportation</b> [2] - 288:1, 302:21</p> <p><b>transportation</b> [2] - 288:11, 302:23</p> <p><b>transporting</b> [1] - 303:2</p> <p><b>traveling</b> [2] - 144:6, 164:7</p> <p><b>Treatment</b> [1] - 124:20</p> <p><b>tremendous</b> [1] - 319:9</p> <p><b>tribal</b> [12] - 190:23, 191:15, 191:24, 203:21, 205:8, 205:21, 214:12, 214:19, 214:20, 214:22, 215:3, 261:2</p> <p><b>Tribal</b> [1] - 205:5</p> <p><b>tribe</b> [4] - 205:25,</p>	<p>261:3, 261:17, 261:22</p> <p><b>tribes</b> [12] - 172:13, 190:20, 190:25, 204:14, 205:4, 205:7, 205:10, 205:11, 207:21, 215:1, 261:7, 261:19</p> <p><b>tricky</b> [1] - 284:16</p> <p><b>tried</b> [2] - 273:16, 304:10</p> <p><b>trouble</b> [2] - 186:15, 239:9</p> <p><b>troubled</b> [2] - 209:13, 209:22</p> <p><b>true</b> [7] - 234:23, 238:22, 239:3, 249:12, 265:3, 286:24, 327:11</p> <p><b>truly</b> [3] - 155:23, 220:21, 307:23</p> <p><b>truth</b> [1] - 247:16</p> <p><b>try</b> [5] - 152:7, 175:4, 188:25, 198:14, 210:11</p> <p><b>trying</b> [10] - 163:17, 165:1, 176:10, 227:19, 228:10, 242:13, 260:17, 284:14, 284:15, 324:19</p> <p><b>turbine</b> [80] - 139:13, 195:10, 197:10, 198:12, 198:15, 202:24, 223:7, 223:10, 227:5, 227:13, 229:6, 229:10, 229:19, 229:23, 229:24, 230:1, 230:2, 230:8, 230:12, 230:18, 231:8, 231:14, 231:22, 243:6, 243:9, 243:19, 243:22, 244:7, 244:15, 244:19, 245:5, 245:18, 248:16, 248:19, 248:21, 249:7, 249:20, 250:19, 251:10, 252:8, 256:10, 256:12, 256:14, 264:24, 264:25, 265:4, 266:16, 267:6, 267:22, 269:6, 269:23, 269:25, 270:23, 270:24, 271:1, 271:2, 271:6, 271:7, 271:8, 272:5,</p>	<p>273:15, 273:16, 274:14, 274:17, 286:25, 288:14, 294:8, 294:10, 309:9, 309:16, 309:24, 311:4, 311:6, 317:9, 318:25, 321:2, 321:18</p> <p><b>Turbine</b> [14] - 122:8, 122:9, 122:11, 122:17, 122:19, 122:20, 123:24, 124:6, 125:5, 125:7, 126:10, 126:12, 126:15, 127:17</p> <p><b>turbines</b> [99] - 135:25, 136:9, 139:5, 139:9, 140:23, 143:2, 143:3, 143:4, 143:15, 145:17, 145:18, 145:23, 146:8, 146:14, 147:11, 148:12, 150:16, 151:6, 151:23, 151:24, 173:3, 194:6, 194:22, 196:16, 197:3, 197:7, 197:16, 198:1, 199:3, 200:3, 225:3, 228:20, 228:25, 229:14, 230:6, 230:14, 230:17, 230:24, 231:3, 231:13, 248:12, 248:21, 249:4, 249:6, 249:16, 250:14, 251:4, 251:12, 252:19, 253:1, 253:3, 253:5, 253:11, 253:19, 253:23, 254:22, 254:23, 254:24, 255:1, 255:4, 255:5, 255:15, 255:19, 264:4, 265:5, 265:12, 265:13, 265:21, 266:1, 266:9, 266:12, 267:7, 269:6, 271:24, 272:3, 273:7, 274:2, 274:8, 274:9, 281:6, 308:10, 308:13, 308:25, 309:5, 309:12, 309:13, 309:21, 310:21, 310:23, 311:9, 311:23, 314:4, 318:21, 321:14,</p>	<p>321:16, 321:19</p> <p><b>Turbines</b> [23] - 122:7, 122:13, 122:14, 122:16, 122:16, 122:21, 122:23, 122:23, 122:24, 123:3, 124:8, 124:11, 124:12, 124:15, 124:23, 125:4, 125:5, 125:16, 126:4, 126:6, 126:19, 127:14, 127:15</p> <p><b>turn</b> [11] - 129:15, 158:4, 194:8, 266:1, 270:10, 270:19, 276:5, 286:11, 296:20, 297:21, 318:20</p> <p><b>turning</b> [1] - 252:18</p> <p><b>twice</b> [1] - 294:18</p> <p><b>Twin</b> [1] - 154:25</p> <p><b>two</b> [52] - 135:9, 137:16, 137:19, 138:24, 148:17, 149:10, 149:13, 153:20, 155:7, 156:23, 166:5, 167:22, 196:14, 198:6, 199:2, 201:19, 209:3, 211:1, 211:5, 211:6, 211:15, 212:6, 212:8, 216:8, 216:19, 219:2, 219:24, 230:10, 230:11, 230:12, 231:12, 231:14, 231:16, 232:3, 237:25, 239:6, 240:19, 250:1, 250:2, 254:11, 254:21, 254:24, 255:4, 258:1, 262:16, 265:4, 284:1, 310:6, 318:21, 318:25, 321:17, 323:24</p> <p><b>two-year</b> [1] - 211:6</p> <p><b>Tyler</b> [8] - 120:12, 122:5, 125:17, 218:20, 218:22, 221:8, 221:14, 240:12</p> <p><b>TYLER</b> [1] - 117:17</p> <p><b>type</b> [12] - 146:22, 199:3, 201:2, 201:3, 217:12, 223:23, 234:12, 246:13, 292:12, 297:16,</p>
--	--	--	--	--

<p>305:2, 319:5 <b>typed</b> [1] - 155:17 <b>Types</b> [1] - 123:21 <b>types</b> [8] - 134:16, 134:17, 145:7, 146:20, 239:2, 292:25, 293:3, 297:5 <b>typical</b> [3] - 142:20, 145:4, 291:8 <b>typically</b> [8] - 153:5, 220:4, 288:1, 290:8, 291:12, 292:16, 314:1, 320:4</p>	<p>180:14, 300:21 <b>units</b> [1] - 311:4 <b>Universe</b> [2] - 238:12, 238:18 <b>University</b> [3] - 163:3, 169:16, 222:5 <b>university</b> [3] - 134:8, 299:13, 299:16 <b>unknown</b> [2] - 197:20, 267:11 <b>unless</b> [1] - 235:15 <b>unseasonable</b> [1] - 309:20 <b>unusual</b> [2] - 219:2, 219:10 <b>up</b> [47] - 130:20, 135:11, 137:15, 149:22, 153:3, 157:24, 164:12, 176:7, 178:12, 182:25, 185:16, 191:3, 191:9, 191:25, 192:2, 192:14, 200:6, 202:8, 219:3, 225:20, 226:16, 232:11, 240:15, 247:7, 250:22, 252:5, 253:9, 254:10, 260:11, 262:2, 262:25, 265:14, 272:22, 275:23, 276:4, 276:8, 286:1, 295:8, 297:7, 297:13, 308:5, 312:17, 313:15, 315:1, 316:20, 321:13, 322:18 <b>Update</b> [1] - 123:4 <b>update</b> [3] - 243:14, 255:22, 289:14 <b>Updated</b> [8] - 120:17, 120:18, 120:19, 120:20, 123:16, 125:18, 128:6, 128:7 <b>updated</b> [5] - 181:19, 181:22, 228:17, 275:5, 302:7 <b>Updates</b> [2] - 121:24, 122:4 <b>Urban</b> [1] - 124:15 <b>US</b> [5] - 120:21, 120:22, 121:3, 121:5, 127:17 <b>USA</b> [1] - 127:19 <b>uses</b> [6] - 135:21, 203:13, 233:22, 262:8, 279:24, 287:18</p>	<p><b>utilities</b> [1] - 290:6 <b>UTILITIES</b> [2] - 115:1, 115:11 <b>utility</b> [1] - 278:15 <b>utilize</b> [2] - 273:23, 318:20 <b>utilized</b> [3] - 249:6, 249:10, 249:18 <b>utilizing</b> [2] - 189:3, 269:7 <b>utterly</b> [1] - 227:18</p>	<p><b>vocation</b> [2] - 208:8, 208:9 <b>voiced</b> [2] - 229:12, 273:16 <b>Volume</b> [1] - 115:9 <b>Voluntary</b> [1] - 121:5</p>	<p><b>welcome</b> [3] - 215:13, 35 293:7, 298:3 <b>well-known</b> [2] - 197:22, 200:14 <b>Wells</b> [12] - 120:11, 123:5, 123:10, 164:15, 167:9, 169:25, 170:3, 170:4, 170:14, 170:16, 184:2, 187:1 <b>wells</b> [14] - 160:19, 160:20, 160:22, 161:5, 164:19, 164:22, 165:4, 165:9, 166:8, 167:7, 167:19, 183:16, 210:15 <b>Wells's</b> [2] - 170:9, 174:2 <b>wells's</b> [4] - 160:23, 167:8, 209:24, 214:6 <b>west</b> [2] - 169:19, 231:2 <b>Western</b> [1] - 288:25 <b>western</b> [1] - 134:7 <b>wetland</b> [4] - 172:10, 173:1, 188:15, 188:24 <b>wetlands</b> [9] - 173:3, 173:20, 184:15, 188:6, 188:13, 188:18, 189:7, 189:8, 192:21 <b>whereas</b> [1] - 189:23 <b>whereby</b> [1] - 191:22 <b>whichever</b> [1] - 221:6 <b>white</b> [1] - 193:5 <b>WHO</b> [1] - 127:20 <b>whoever's</b> [1] - 192:6 <b>whole</b> [2] - 261:9, 324:4 <b>wholly</b> [1] - 284:10 <b>whooping</b> [4] - 172:8, 189:20, 212:9, 212:11 <b>Whooping</b> [1] - 120:23 <b>WHOQOL</b> [1] - 124:8 <b>WHOQOL-BREF</b> [1] - 124:8 <b>WI</b> [1] - 126:7 <b>wide</b> [1] - 291:11 <b>Wildlife</b> [11] - 120:21, 120:22, 121:3, 121:5, 171:15, 171:21, 171:22, 172:23, 180:14, 188:15, 190:4 <b>wildlife</b> [23] - 182:13, 182:15, 182:19,</p>
<p><b>U</b></p>	<p><b>V</b></p>	<p><b>W</b></p>		
<p><b>U.S</b> [3] - 188:15, 278:17, 278:18 <b>UK</b> [2] - 123:4, 124:5 <b>ultimately</b> [5] - 224:23, 262:14, 263:11, 266:2, 276:18 <b>umbrella</b> [1] - 292:20 <b>unable</b> [2] - 165:1, 302:6 <b>Unanticipated</b> [2] - 191:19, 192:9 <b>unanticipated</b> [1] - 191:22 <b>unclear</b> [2] - 273:10, 305:7 <b>unconditionally</b> [1] - 282:12 <b>Under</b> [1] - 123:3 <b>under</b> [17] - 163:8, 166:10, 175:12, 184:14, 184:16, 184:19, 184:25, 188:24, 189:10, 270:18, 274:1, 277:23, 282:9, 282:16, 282:18, 309:9 <b>undercut</b> [1] - 164:8 <b>underground</b> [1] - 255:2 <b>underlying</b> [1] - 167:9 <b>understood</b> [1] - 201:23 <b>undertake</b> [3] - 211:1, 212:8, 216:7 <b>undertaken</b> [1] - 161:8 <b>undertakings</b> [1] - 282:14 <b>unfair</b> [1] - 219:14 <b>United</b> [9] - 135:24, 169:19, 171:15, 171:21, 171:22, 172:23, 172:25,</p>	<p><b>vague</b> [3] - 283:4, 305:7, 305:10 <b>Valbridge</b> [2] - 124:14, 133:19 <b>Valley</b> [2] - 126:16, 228:21 <b>valuable</b> [1] - 213:7 <b>valuations</b> [1] - 144:24 <b>value</b> [12] - 134:2, 135:17, 137:12, 138:2, 143:18, 145:6, 146:3, 148:3, 148:7, 151:2, 153:22, 292:16 <b>Value</b> [3] - 120:9, 124:14, 124:15 <b>values</b> [6] - 134:4, 135:17, 135:25, 144:7, 156:9 <b>var</b> [1] - 311:11 <b>Variables</b> [1] - 122:19 <b>variance</b> [1] - 291:11 <b>Various</b> [1] - 123:3 <b>various</b> [4] - 162:23, 319:21, 319:23, 320:15 <b>vegetation</b> [1] - 192:22 <b>vendors</b> [1] - 234:17 <b>verbs</b> [1] - 210:25 <b>version</b> [1] - 286:16 <b>versions</b> [1] - 207:5 <b>versus</b> [2] - 209:3, 269:23 <b>via</b> [1] - 146:10 <b>viable</b> [1] - 273:25 <b>VICE</b> [1] - 115:12 <b>Vicinity</b> [1] - 124:8 <b>view</b> [3] - 254:16, 290:3, 295:17 <b>vis</b> [2] - 138:20 <b>vis-a-vis</b> [1] - 138:20 <b>visit</b> [1] - 203:20 <b>Vitae</b> [2] - 124:16, 125:7</p>	<p><b>Wahpeton</b> [2] - 205:6, 261:16 <b>waiting</b> [3] - 288:18, 294:14, 294:16 <b>waive</b> [1] - 133:4 <b>waived</b> [1] - 133:8 <b>walk</b> [3] - 225:20, 227:9, 229:3 <b>wants</b> [1] - 324:4 <b>WAPA</b> [1] - 288:25 <b>warranted</b> [2] - 196:12, 199:17 <b>wash</b> [1] - 251:2 <b>watching</b> [2] - 217:16, 217:18 <b>water</b> [8] - 171:24, 184:15, 188:19, 189:4, 189:8, 192:13, 192:16, 192:21 <b>Water</b> [5] - 123:21, 123:23, 171:25, 184:13, 185:1 <b>Watertown</b> [1] - 149:16 <b>ways</b> [2] - 307:8, 307:9 <b>WCS</b> [1] - 212:22 <b>weak</b> [2] - 314:2, 318:2 <b>Weather</b> [1] - 126:17 <b>weather</b> [13] - 309:1, 309:3, 309:10, 309:20, 310:18, 310:24, 311:5, 311:7, 311:22, 313:10, 314:4, 314:9, 314:13 <b>Wednesday</b> [1] - 326:10 <b>week</b> [7] - 167:20, 167:21, 247:7, 248:1, 289:10, 315:22, 325:4 <b>week's</b> [1] - 247:23 <b>weeks</b> [2] - 200:18, 290:21 <b>weeks'</b> [1] - 152:3 <b>weigh</b> [3] - 220:18, 225:15, 321:17 <b>weight</b> [1] - 168:14</p>		

183:4, 183:8, 183:17, 184:4, 184:7, 189:12, 189:13, 189:17, 189:25, 201:3, 201:4, 201:22, 201:24, 202:15, 208:16, 210:17, 210:21, 212:24, 213:13, 213:23 <b>Wildlife's</b> [1] - 173:1 <b>Wilhelm</b> [17] - 120:12, 122:5, 125:17, 218:20, 218:22, 221:9, 221:14, 224:8, 224:18, 231:20, 232:23, 257:5, 281:24, 288:17, 291:7, 295:8, 306:4 <b>WILHELM</b> [1] - 117:17 <b>William</b> [1] - 229:25 <b>willing</b> [3] - 166:9, 283:1, 316:14 <b>wind</b> [96] - 129:9, 135:25, 136:9, 136:11, 138:10, 138:21, 138:23, 139:5, 139:23, 140:4, 140:20, 140:22, 140:23, 141:21, 141:23, 143:12, 143:14, 145:17, 145:18, 145:23, 146:8, 146:13, 147:11, 148:12, 149:23, 150:16, 151:6, 151:11, 151:23, 151:24, 153:10, 155:5, 155:9, 156:12, 156:15, 180:23, 185:19, 188:5, 191:10, 194:5, 195:10, 197:10, 197:16, 198:12, 198:14, 199:2, 200:3, 202:24, 209:19, 213:17, 223:7, 224:10, 230:3, 238:24, 241:20, 254:11, 257:15, 260:10, 263:18, 263:21, 264:4, 275:22, 275:23, 276:3, 287:15, 287:25, 293:4, 299:5, 299:9, 299:19, 300:20, 300:22, 301:15, 304:22, 308:10, 310:21, 311:13, 312:7, 312:11, 312:25, 313:7, 313:23, 314:1, 314:2, 314:7, 314:9, 314:23, 314:24, 315:15, 315:21, 315:24, 316:5, 317:9, 319:15, 320:9 <b>Wind</b> [73] - 115:19, 120:17, 120:18, 120:19, 120:20, 121:4, 122:7, 122:8, 122:9, 122:11, 122:13, 122:14, 122:14, 122:16, 122:16, 122:17, 122:19, 122:19, 122:21, 122:22, 122:23, 122:24, 123:3, 123:24, 124:6, 124:8, 124:10, 124:12, 124:15, 124:23, 125:3, 125:5, 125:5, 125:7, 125:8, 125:12, 125:13, 125:19, 125:22, 126:4, 126:6, 127:11, 127:12, 127:13, 127:14, 127:15, 127:17, 129:8, 133:24, 169:4, 170:7, 171:11, 171:21, 203:13, 210:22, 212:2, 221:16, 221:17, 233:2, 233:5, 233:9, 234:21, 236:21, 238:18, 254:11, 278:7, 278:8, 284:10, 299:7, 299:9, 300:19, 300:23, 319:15 <b>WIND</b> [2] - 115:4, 115:5 <b>Wind's</b> [1] - 126:17 <b>Winds</b> [3] - 149:24, 149:25, 212:3 <b>Windy</b> [1] - 124:15 <b>windy</b> [1] - 314:2 <b>winter</b> [1] - 313:4 <b>Wisconsin</b> [4] - 126:3, 126:5, 127:10, 127:11 <b>wish</b> [2] - 164:13, 166:1	<b>withdraw</b> [1] - 143:24 <b>WITNESS</b> [161] - 117:2, 144:5, 144:11, 144:14, 144:18, 144:20, 144:25, 145:2, 145:9, 145:13, 145:20, 146:5, 146:11, 146:17, 146:24, 147:8, 147:10, 147:14, 147:17, 147:23, 148:3, 148:11, 148:16, 149:4, 149:7, 149:14, 150:1, 150:3, 150:24, 151:8, 152:1, 152:7, 183:3, 203:2, 203:7, 203:11, 203:23, 204:1, 204:5, 204:8, 204:10, 204:15, 204:24, 205:2, 205:5, 205:17, 205:20, 206:10, 206:18, 207:3, 207:13, 207:17, 207:25, 208:6, 208:17, 208:24, 209:4, 209:16, 209:20, 210:5, 210:8, 211:13, 212:11, 212:16, 212:20, 212:24, 213:6, 213:10, 213:13, 214:17, 215:9, 215:13, 218:16, 230:24, 231:5, 231:7, 240:13, 255:14, 257:9, 257:24, 258:7, 258:17, 258:25, 259:7, 259:10, 259:18, 259:25, 260:7, 260:22, 261:10, 261:15, 262:4, 262:11, 262:18, 263:3, 263:23, 264:3, 264:5, 264:15, 264:22, 265:2, 265:6, 265:16, 266:12, 267:2, 267:4, 267:17, 268:5, 268:12, 268:15, 269:5, 269:19, 272:16, 277:24, 292:11, 292:14, 292:24, 293:2, 293:5, 293:7, 293:15, 293:20, 294:1, 294:6, 294:14, 294:16, 294:25, 295:6, 295:19, 295:25, 297:12, 305:22, 306:11, 306:21, 311:3, 311:25, 312:2, 312:21, 313:25, 314:14, 315:1, 315:3, 315:7, 315:10, 315:17, 315:24, 316:8, 316:17, 317:1, 317:3, 317:7, 317:12, 317:20, 318:4, 318:24, 319:14, 320:4, 320:24, 321:9, 321:19, 322:6 <b>Witness</b> [6] - 178:23, 181:11, 183:24, 231:18, 243:2, 287:5 <b>witness</b> [73] - 130:3, 131:24, 133:10, 136:18, 154:2, 154:5, 157:18, 160:3, 160:4, 160:12, 160:13, 160:21, 160:22, 160:24, 162:20, 163:4, 163:13, 167:6, 167:23, 173:25, 176:1, 176:3, 182:24, 194:16, 215:16, 215:18, 218:13, 218:17, 218:18, 219:21, 221:1, 223:18, 223:23, 225:7, 227:14, 232:16, 234:5, 235:6, 235:12, 235:20, 237:22, 237:24, 239:17, 239:19, 239:21, 241:4, 241:10, 241:13, 241:16, 241:22, 256:23, 277:19, 277:20, 279:11, 279:12, 279:13, 280:6, 280:25, 285:20, 285:25, 286:4, 291:3, 297:11, 298:12, 298:20, 301:18, 304:10, 304:21, 306:4, 306:9, 322:7 <b>witness's</b> [2] - 219:21, 239:20	<b>WITNESSES</b> [3] - 36 117:7, 118:2, 119:2 <b>witnesses</b> [13] - 129:22, 162:10, 218:24, 219:13, 219:24, 220:5, 233:20, 233:25, 234:3, 241:23, 256:22, 279:15, 280:7 <b>witnesses'</b> [1] - 129:25 <b>WITTLER</b> [1] - 327:5 <b>Wittler</b> [3] - 115:24, 327:17, 327:18 <b>wondering</b> [1] - 211:9 <b>word</b> [4] - 148:14, 210:2, 218:10, 276:14 <b>words</b> [1] - 161:9 <b>workaround</b> [1] - 165:1 <b>works</b> [7] - 137:20, 186:11, 186:14, 189:23, 280:1, 289:21, 326:5 <b>world</b> [1] - 283:8 <b>worst</b> [1] - 267:5 <b>worst-case</b> [1] - 267:5 <b>wow</b> [2] - 205:19, 257:17 <b>write</b> [5] - 130:17, 137:15, 150:23, 233:13, 233:16 <b>write-up</b> [1] - 137:15 <b>written</b> [1] - 319:13 <b>wrote</b> [1] - 150:22
<b>X</b>		
<b>xxHz</b> [1] - 124:3		
<b>Y</b>		
<b>Yankton</b> [1] - 205:6 <b>year</b> [19] - 134:1, 139:22, 150:6, 182:18, 183:15, 193:14, 193:15, 208:12, 210:19, 211:4, 211:6, 211:18, 212:1, 217:23, 237:13, 243:15, 262:16, 291:6, 310:6 <b>years</b> [26] - 150:9, 153:9, 156:25, 165:12, 169:20, 190:22, 199:2, 211:2, 211:5, 211:15, 211:20,		

212:6, 212:8, 216:8,  
216:19, 232:2,  
232:3, 235:2,  
236:12, 239:6,  
262:16, 262:20,  
278:17, 299:17,  
305:20

**yellow** <sup>[1]</sup> - 228:24

**yesterday** <sup>[1]</sup> - 295:15

**yield** <sup>[1]</sup> - 262:14

**Young** <sup>[1]</sup> - 169:16

## **Z**

**zero** <sup>[1]</sup> - 250:24

**zone** <sup>[2]</sup> - 194:5, 206:8

**zoning** <sup>[1]</sup> - 135:19