



STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

enXco Development Corporation  
Merricourt Wind Project  
Siting Application

Case No. PU-08-932

TRANSCRIPT OF  
HEARING

Taken At  
Dakota Family Restaurant  
103 West Main Street  
Ashley, North Dakota  
May 12, 2011

BEFORE THE HON. AL WAHL  
-- TEMPORARY ADMINISTRATIVE LAW JUDGE --

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Exhibit 22

EDF Renewable Development, Inc.

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Transcript of May 12, 2011 hearing  
Emineth & Associates Court Reporters

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COMMISSIONERS PRESENT:

COMMISSIONER TONY CLARK, Chairman  
COMMISSIONER KEVIN CRAMER

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2a	Merricourt Wind Power Project, Volume I: A Class III Cultural Resource Inventory in McIntosh and Dickey Counties, ND	19	19
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No.	Description	Off'd Rec'd	
12	April 12, 2011, letter to the North Dakota Public Service Commission from Eric F. Swanson; Addendum to Biological Conditions and Effects Summary; April 8, 2011, letter to Chris Sternhagen from Jeffrey K. Towner, Fish and Wildlife Service	22	22
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1           (The proceedings herein were had and made  
2 of record, commencing at 10:00 a.m., Thursday, May  
3 12, 2011, as follows:)

4           JUDGE WAHL: Good morning. I am Al Wahl,  
5 the administrative law judge pursuant to temporary  
6 appointment designated by the Office of  
7 Administrative Hearings upon the request of the  
8 North Dakota Public Service Commission to serve as  
9 the hearing officer for this hearing.

10           This is the hearing of the application of  
11 enXco Development Corporation for a certificate of  
12 site compatibility to authorize construction of a  
13 150-megawatt wind power project consisting of up to  
14 100 wind turbine generators and associated  
15 facilities located in Dickey and McIntosh Counties,  
16 North Dakota, which will be identified as the  
17 Merricourt Wind Power Project. This is North  
18 Dakota Public Service Commission Case No.  
19 PU-08-932.

20           The hearing for this case was initially  
21 scheduled to be held December 21, 2010. The  
22 hearing initially scheduled was canceled because of  
23 a winter storm which made travel imprudent, and the  
24 hearing was rescheduled to be held February 10,  
25 2011. The hearing was held on February 10 as

1 rescheduled, but those hearings were mistakenly  
2 scheduled to be held in Edgeley in LaMoure County.

3 The hearing was, therefore, scheduled to  
4 be held April 15, 2011, in Ellendale in Dickey  
5 County in accordance with the requirements of  
6 statute. However, April 15, 2011, brought another  
7 snowstorm and that hearing was canceled the morning  
8 of the day when it became apparent that travel was  
9 imprudent.

10 The hearing was rescheduled by order of  
11 the Commission to be held today in Ashley, McIntosh  
12 County, North Dakota, also in accordance with the  
13 requirements of statute and more convenient perhaps  
14 to persons who may be affected by the facility.

15 Before proceeding with the hearing, I will  
16 ask the Commissioners for their comments and any  
17 decisions for the hearing. Commission Chairman  
18 Tony Clark.

19 COMMISSIONER CLARK: Thank you, Judge, and  
20 thanks to everyone who is here today. As you  
21 gathered from the preliminary statement, this has  
22 been a long time coming, we're glad to finally have  
23 it, and this time in mid-May finally blizzards  
24 didn't stop us, but as of about a week or so ago,  
25 that might not have been the case, at least in

1 parts of the state. So it's been a long winter on  
2 the Plains, but we're happy to finally have the  
3 hearing.

4 Before I make a few opening comments, I do  
5 note some of you may have noticed there's only two  
6 of us here today. Commissioner Kalk does send his  
7 best and in the interest of ensuring that this  
8 could go forward in a timely manner, he acquiesced  
9 to agreeing to this particular date because it was  
10 the earliest date we could get it on our schedules  
11 that worked. Unfortunately, his daughter is  
12 attending Arizona State University and is -- the  
13 semester is done and he had long had this on his  
14 schedule to go help her pack up. In order not to  
15 have his only child living on the streets of  
16 Phoenix, he thought it was probably best that he  
17 stay for that. And we certainly understand it, but  
18 nonetheless he does send his best, and we do have a  
19 court reporter here and everything is also audio  
20 recorded so he will be afterwards able to go over  
21 the transcript and participate fully in the  
22 proceeding.

23 As is always our admonition at these types  
24 of hearings, what we tell the audience is if you  
25 have something that you want to say, if you want

1 something on the record, in other words, if you  
2 want something that the Commission can actually  
3 make a determination on and that we can take into  
4 our decisionmaking process, this is the hearing to  
5 have it documented. Public Service Commission  
6 proceedings are a little bit different than other  
7 proceedings that you may be used to, if you have  
8 been to county commission meetings or if you have  
9 been to a legislative hearing, or so on and so  
10 forth. It's a little more formal than those. It's  
11 a little bit more like a court proceeding in some  
12 ways, but please be assured the reason that we do  
13 it that way is not because we want to discourage  
14 your involvement. In fact, it's just the opposite.  
15 It's because the law says we basically have to have  
16 a record like this developed where you have  
17 witnesses that are under oath and you have a record  
18 developed and based on evidence.

19 But what that means is if you have  
20 something that you want us to consider and you're  
21 thinking about it, you decide, well, maybe I'll  
22 wait and then after the hearing is closed, you  
23 catch us out in the hallway and say, hey, that was  
24 really great, but what I would really like you to  
25 know is this. Unfortunately, the law says that I

1 and my fellow Commissioners can't take that into  
2 consideration.

3 So this really is your chance and we do  
4 encourage you to get up and speak what's on your  
5 mind. It's a remarkable time in the energy  
6 development history in North Dakota. We've seen a  
7 lot of investment in the state. At the same time,  
8 we want to ensure that that investment is done in  
9 the right way, and that's why we hold these  
10 hearings in the communities that are affected.

11 So thank you. Thank you for being here  
12 and I look forward to a good hearing.

13 JUDGE WAHL: Commissioner Kevin Cramer.

14 COMMISSIONER CRAMER: I would just echo  
15 Tony's welcome and give also my appreciation for  
16 your patience as a community and county, certainly  
17 the same to the company who has been very  
18 responsive to not just the obvious climate and  
19 weather challenges, but also some of the more  
20 localized as well as, say, legal challenges. And  
21 so we appreciate that. We think we've worked out  
22 why we're here, let's put it that way, and I'm  
23 grateful for that.

24 I'm also grateful that we're naturally  
25 rather than on the 12th floor of the Capitol, not

1 because I don't like the 12th floor of the Capitol,  
2 but this whole system is designed to maximize the  
3 opportunity and the participation of the public.  
4 And energy development, as you know, is big stuff  
5 in North Dakota. I just got off of a radio show  
6 talking about oil pipeline leaks and the first  
7 question was about a wind farm and the second  
8 question was about wind farms and then the good  
9 question was how many wind farms are we going to  
10 see. And so obviously there's a high level of  
11 interest, understandably. My motto is it's good to  
12 be us. It's just that being us requires diligence  
13 and care and making sure that while we champion and  
14 advocate the economic advantages of the development  
15 we see taking place in our state as well as the  
16 opportunity it presents to meet the growing demand  
17 for energy in our country, we also have to ensure  
18 it is done in a manner that is safe and reliable  
19 and ensures the continuing operational integrity of  
20 our system.

21 Thank you for your participation. Our job  
22 is done best when you help us do it. That's why  
23 we're here. So look forward to hearing from all of  
24 you. Thank you, Judge.

25 JUDGE WAHL: Thank you, Commissioners.

1           The record will show it is a little past  
2 10:00 a.m., May 12, 2011, the time and date set by  
3 the Notice of Filing and Notice of Hearing issued  
4 by the North Dakota Public Service Commission April  
5 15, 2011, in Case No. PU-08-932 for a hearing of  
6 the application of enXco Development Corporation  
7 for a certificate of site compatibility to  
8 authorize construction of a wind power project  
9 located in Dickey and McIntosh Counties, North  
10 Dakota, which will be identified as the Merricourt  
11 Wind Power Project as is set forth in the Notice of  
12 Filing and Notice of Hearing and shown by the map  
13 which is part of the notices.

14           The Commission's Notice of Filing and  
15 Notice of Hearing for this hearing specified the  
16 following issues to be considered and determined  
17 upon this hearing:

18           First, will the location, construction,  
19 and operation of the proposed facilities produce  
20 minimal adverse effects on the environment and upon  
21 the welfare of the citizens of North Dakota?

22           Second, are the proposed facilities  
23 compatible with the environmental preservation and  
24 the efficient use of resources?

25           And, third, will the proposed facility

1 locations minimize adverse human and environmental  
2 impact while ensuring continuing system reliability  
3 and integrity and ensuring that energy needs are  
4 met and fulfilled in an orderly and timely fashion?

5 Mr. Swanson, please state your appearance  
6 for the record and identify associate counsel.

7 MR. SWANSON: Thank you, Judge. Good  
8 morning, Judge, Commissioners, counsel and members  
9 of the public. Eric Swanson appearing on behalf of  
10 enXco Development Corporation. I have been  
11 admitted pro hac vice for the purposes of appearing  
12 in this proceeding, and with me is Jeff Nelson from  
13 the Vogel Law Firm.

14 JUDGE WAHL: Mr. Armstrong, please state  
15 your appearance for the record and the appearance  
16 of Commission staff who will participate in the  
17 hearing.

18 MR. ARMSTRONG: Mitch Armstrong, Special  
19 Assistant Attorney General on behalf of the  
20 Commission. With me is Jerry Lein, a public  
21 utility analyst. I move that Mr. Lein be allowed  
22 to ask questions today.

23 JUDGE WAHL: Motion granted. Let me just  
24 add to Commissioner Clark's comments and encourage  
25 you not to hesitate to come forward to address the

1 Commissioners regarding anything which you think  
2 they should know about this wind power project.

3 Those of you who have previously appeared  
4 to address county commissions, city counsels, that  
5 sort of thing, this is not much different except  
6 for the administration of the oath. I will simply  
7 ask you to identify yourself, your post office  
8 address, your residence address, and I will tell  
9 you that you may proceed. You should then feel  
10 free to address the Commissioners, tell them what  
11 you want them to know. They may have questions for  
12 you, but I don't expect that you should feel  
13 challenged at all by that. They simply want to  
14 understand what you want them to know. The lawyers  
15 may have questions for you, but I can assure you  
16 that they're not going to cross-examine you. They  
17 simply want to understand what you want the  
18 Commission to understand and, indeed, what you want  
19 them to understand as well as the Commission.

20 Now, on the completion of enXco's  
21 presentation, we will take a recess, let's say 10  
22 minutes, but as long as necessary, and during that  
23 recess I'll be glad to visit with you to answer any  
24 questions you may have about how you can make your  
25 presentation to the Commissioners. If you have

1 maps, photographs, other documents, I'll be glad to  
2 get those marked as exhibits for you, tell you how  
3 we are going to handle exhibits, I'll help you  
4 handle the exhibits as necessary. I can't, of  
5 course, discuss with you enXco's application. I  
6 can't tell you what to say to the Commissioners, I  
7 can't advise you what to say to the Commissioners,  
8 but I can certainly help you tell the Commissioners  
9 what you want them to know, so don't hesitate to  
10 come forward. If you decide you're not going to  
11 say anything, you don't come and talk to me and  
12 then you hear somebody else address the  
13 Commissioners and you say, boy, you know, I should  
14 say something, too, but I didn't talk to that guy  
15 so I can't, that's not true. I will not close the  
16 hearing until I've asked a couple of times, is  
17 there anyone else who wishes to address the  
18 Commission? Notwithstanding that you haven't  
19 talked to me, don't hesitate to come forward, take  
20 a seat at the table, and I assure you you won't  
21 have any problem.

22 All right. Mr. Swanson, you may proceed.

23 MR. SWANSON: Thank you, Judge. First,  
24 start with just a brief explanation of the case  
25 that we'll be putting on and take care of some

1 housekeeping matters from the prior hearing, as  
2 well.

3 At the February hearing in Edgeley we  
4 introduced nine exhibits. We then introduced a  
5 late-filed Exhibit 10 upon agreement with PSC  
6 counsel, and today we have two new exhibits that we  
7 will be offering to the record as well, so we'll  
8 run through those.

9 But, more importantly, I, too, want to  
10 echo some of the comments of the judge and  
11 Commissioners. This is your hearing as much as it  
12 is enXco's. We welcome your participation. We  
13 didn't expect to have another hearing in this  
14 matter when we met in Edgeley, but thank you for  
15 coming. Thank you even more for those of you who  
16 have come either one, two or even three times  
17 before, a couple times only to find out that the  
18 hearing had been canceled because of weather. We  
19 very much appreciate your interest in the project,  
20 as well. The fact that we are having an additional  
21 hearing does provide us a great opportunity to  
22 again talk about the project that we're very  
23 excited about, that we continue to be very  
24 committed to, and it gives us the opportunity to  
25 update the record on a couple of items since last

1 time.

2 We'll be presenting -- after running  
3 through the exhibits, we'll be presenting three  
4 witnesses, Chris Sternhagen, who is the project  
5 manager with enXco Development Corporation; Jen  
6 Turnbow from KLJ, who is the project manager for  
7 the environmental review; and Jay Haley, who is the  
8 noise and shadow flicker expert, the same three  
9 witnesses who testified back in February in  
10 Edgeley. We also have other company resources  
11 available, if necessary.

12 So with that, Judge, I think with your  
13 indulgence I'll just go through the list of the  
14 exhibits as they were introduced in the February  
15 hearing.

16 JUDGE WAHL: All right. Let me just ask,  
17 Mr. Armstrong, I assume you will not make an  
18 opening statement?

19 MR. ARMSTRONG: Correct, Judge.

20 JUDGE WAHL: You may proceed, Mr. Swanson.

21 MR. SWANSON: Thank you, Judge. Now you  
22 caught me with an ice cube in my mouth, too.

23 COMMISSIONER CLARK: If I could have --  
24 something I should have mentioned, it will probably  
25 be helpful for Kevin as well, when we're dealing

1 with documents, if they could be referred to by  
2 their number, I think it would probably be helpful  
3 for us. We've got loaded on our computers the case  
4 file, but being able to flip quickly would be very  
5 helpful. Thank you.

6 JUDGE WAHL: Commissioner, counsel, do we  
7 have that available? I've got a -- I'm looking at  
8 the docket card and I'm looking at the exhibits  
9 list. I'm not sure I see a docket number.

10 COMMISSIONER CLARK: If you have the  
11 docket number, that's ideal for us, but if not,  
12 referring to the name of the filing I think might  
13 be enough at least we can scan quickly. Ideally  
14 would be the document number, but you may not have  
15 that in front of you.

16 JUDGE WAHL: I don't have that. Okay.  
17 You may proceed, Mr. Swanson.

18 MR. SWANSON: Thank you, Judge. So first  
19 running through the nine exhibits that were offered  
20 in Edgeley at the February hearing. Exhibit 1 was  
21 the Application for a Certificate of Site  
22 Compatibility for the Merricourt Wind Power  
23 Project.

24 JUDGE WAHL: All right. And you're  
25 offering the exhibit?

1 MR. SWANSON: Yes.

2 JUDGE WAHL: Mr. Armstrong?

3 MR. ARMSTRONG: No objection.

4 JUDGE WAHL: Exhibit 1 is received.

5 MR. SWANSON: Exhibit 2a was the  
6 Merricourt Wind Power Project, Volume 1: A Class  
7 III Cultural Resource Inventory in McIntosh and  
8 Dickey Counties. We would offer that.

9 JUDGE WAHL: Mr. Armstrong?

10 MR. ARMSTRONG: No objection.

11 JUDGE WAHL: Exhibit 2a is received.

12 MR. SWANSON: Exhibit 2b was the  
13 Merricourt Wind Power Project, Volume 2, a map set  
14 accompanying Exhibit 2a. We would offer that.

15 JUDGE WAHL: Mr. Armstrong?

16 MR. ARMSTRONG: No objection.

17 JUDGE WAHL: Exhibit 2b is received.

18 MR. SWANSON: Exhibit 3a was the  
19 Merricourt Wind Power Project, Wetland Delineation  
20 Report for Dickey and McIntosh Counties dated  
21 September 2010. We would offer Exhibit 3a.

22 JUDGE WAHL: Mr. Armstrong?

23 MR. ARMSTRONG: No objection.

24 JUDGE WAHL: Exhibit 3a is received.

25 MR. SWANSON: Exhibit 3b was a further

1 portion of that wetland delineation report for  
2 Dickey and McIntosh Counties dated December 2010.  
3 We would offer 3b.

4 JUDGE WAHL: Mr. Armstrong?

5 MR. ARMSTRONG: No objection.

6 JUDGE WAHL: Exhibit 3b is received.

7 MR. SWANSON: Exhibit 4 is the Merricourt  
8 Wind Power Project Biological Conditions and  
9 Effects Summary. We would offer Exhibit 4.

10 JUDGE WAHL: Mr. Armstrong?

11 MR. ARMSTRONG: No objection.

12 JUDGE WAHL: Exhibit 4 is received.

13 MR. SWANSON: We would also offer Exhibit  
14 5, which was responses to Supplemental Information  
15 Staff Requests for the Certificate of Site  
16 Compatibility, and Exhibit 5 is also the exhibit  
17 that included some maps that we referred to in the  
18 February hearing, and for members of the public, at  
19 a break we do have multiple additional copies of  
20 those maps available.

21 JUDGE WAHL: Mr. Armstrong?

22 MR. ARMSTRONG: No objection.

23 JUDGE WAHL: Exhibit 5 is received.

24 MR. SWANSON: We would offer Exhibit 6,  
25 which is the Shadow Flicker -- Preliminary Shadow

1 Flicker Study for the Merricourt project by EAPC.

2 JUDGE WAHL: Mr. Armstrong?

3 MR. ARMSTRONG: No objection.

4 JUDGE WAHL: Exhibit 6 is received.

5 MR. SWANSON: We would then offer Exhibit  
6 7, a January 31, 2011, letter to Grady Wolf of KLJ  
7 from the Army Corps of Engineers.

8 JUDGE WAHL: Mr. Armstrong?

9 MR. ARMSTRONG: No objection.

10 JUDGE WAHL: Exhibit 7 is received.

11 MR. SWANSON: We would offer Exhibit 8,  
12 which was a Commission-offered exhibit, December  
13 20, 2010, letter to the North Dakota Public Service  
14 Commission from Jeffrey Towner of the Fish and  
15 Wildlife Service.

16 JUDGE WAHL: Mr. Armstrong?

17 MR. ARMSTRONG: No objection.

18 JUDGE WAHL: Exhibit 8 is received.

19 MR. SWANSON: We would offer Exhibit 9,  
20 which is Certification Relating to Order Provisions  
21 signed by enXco Development Corporation.

22 JUDGE WAHL: Mr. Armstrong?

23 MR. ARMSTRONG: No objection.

24 JUDGE WAHL: Exhibit 9 is received.

25 MR. SWANSON: And we would offer Exhibit

1 10, which was a late-filed exhibit, Updated  
2 Biological Conditions and Effects Summary for  
3 Dickey and McIntosh Counties.

4 JUDGE WAHL: Mr. Armstrong?

5 MR. ARMSTRONG: No objection.

6 JUDGE WAHL: Exhibit 10 is received.

7 MR. SWANSON: Then, Judge, two new  
8 exhibits. First, we would offer Exhibit 11, which  
9 is a copy of the transcript of the February 10,  
10 2011, hearing in Edgeley. I do have multiple  
11 copies available if that would be helpful to the  
12 Commissioners and staff.

13 JUDGE WAHL: Mr. Armstrong?

14 MR. ARMSTRONG: No objection.

15 JUDGE WAHL: Exhibit 11 is received.

16 MR. SWANSON: And we would also offer  
17 Exhibit 12, which is an April 12, 2011, filing. It  
18 includes a cover letter from my office and Addendum  
19 to the Biological Conditions and Effects Summary  
20 and a U.S. Fish and Wildlife Service letter of  
21 April 8th, 2011. And, again, we have additional  
22 copies of that available.

23 JUDGE WAHL: Mr. Armstrong?

24 MR. ARMSTRONG: No objection.

25 JUDGE WAHL: Exhibit 12 is received.



1 of project development, including siting and  
2 design, site assessment, resource assessment,  
3 permitting and assistance in finance and client  
4 relations. I am the primary project manager for  
5 the development phase of the Merricourt Wind Power  
6 Project.

7 Q. And could you briefly describe your  
8 history with the project, too, please?

9 A. Sure. The Merricourt Wind Power Project  
10 is -- will consist of 100 1.5-megawatt wind  
11 turbines, GE model sle, situated on 80-meter towers  
12 and utilizing a 77-meter rotor diameter hub. We  
13 have been developing this site and this project for  
14 over seven years. I have been heavily involved  
15 with the community and the landowners participating  
16 in that time.

17 Some of the additional facilities to be  
18 built include access roads to each wind turbine, an  
19 underground electrical collector system between  
20 each wind turbine and a collector substation,  
21 padmount transformers at the base of each wind  
22 turbine, an operations and maintenance facility and  
23 a collector substation.

24 The collector system will be installed at  
25 a minimum depth of 48 inches and operate at 34.5

1 kilovolts. This system will deliver power from  
2 each wind turbine to the collector substation where  
3 the power will be conditioned and stepped up to 230  
4 kilovolts. From here the power will be delivered  
5 to an interconnect substation to be built directly  
6 adjacent to the proposed collector substation.  
7 This facility will be designed, permitted and  
8 constructed separately from the Merricourt project  
9 by Montana-Dakota Utilities.

10 From this interconnect substation the  
11 power will be distributed to the regional  
12 transmission grid through Montana-Dakota Utilities'  
13 existing 230-kV transmission line. Necessary  
14 upgrades to this transmission line are the  
15 responsibility of Montana-Dakota Utilities and are  
16 being planned, designed and constructed separately  
17 from the proposed Merricourt wind farm.

18 All project facilities are being planned  
19 on land under easement with enXco. The project  
20 will encompass approximately 18 square miles in  
21 portions of eastern McIntosh County and western  
22 Dickey County.

23 EnXco, with the assistance of local  
24 consulting and engineering firms, used a deductive  
25 approach to site assessment and facility siting for

1 the proposed project. This process evaluated an  
2 area of approximately 50 square miles, nearly three  
3 times the size of the final layout, for site  
4 suitability and assessed over 18 different wind  
5 turbine layouts to determine the best location of  
6 layout for this particular project.

7 EnXco used evaluation criteria as set  
8 forth by the North Dakota Public Service  
9 Commission, enXco best practices, as well as data  
10 collected from local consultants, state and federal  
11 agencies, local authorities, regional tribal  
12 authorities, and local landowners as well as their  
13 agricultural tenants.

14 As proposed, all wind turbines are sited a  
15 minimum distance of 1.1 times the tip height from  
16 the edge of all jurisdictional roads rights-of-way,  
17 and the closest wind turbine to an occupied  
18 residence is 1,646 feet, over 200 feet more than is  
19 recommended by the North Dakota Public Service  
20 Commission. All wind turbines are sited a minimum  
21 of two and a half times the rotor diameter from  
22 unsigned land. Additional setbacks that were  
23 included in the design include wetland, waterfowl  
24 production areas, cultural resources, transmission  
25 lines, just to name a few.

1           In the development of the Merricourt Wind  
2 Power Project enXco has received a concurrence  
3 letter from the State Historic Preservation Office  
4 and the Kulm Wetland Management District for the  
5 United States Fish and Wildlife Service. We've  
6 received determinations of no hazard from the  
7 Federal -- from the FAA. Additionally, we have  
8 received a nonjurisdictional wetland determination  
9 from the U.S. Army Corps of Engineers, and an April  
10 8th letter from the Bismarck Ecological Services  
11 Office of the United States Fish and Wildlife  
12 Service indicated that the impact of the project as  
13 proposed is unlikely to rise to the level of take  
14 for whooping cranes. This letter also acknowledges  
15 that the service believes the Merricourt project  
16 has sufficiently avoided designated critical  
17 habitat of the piping plover.

18           Construction of the Merricourt wind farm  
19 is projected to bring approximately 200 to 300  
20 temporary jobs to the area as well as significant  
21 investment into local businesses. Additionally,  
22 the operations of the project will employ  
23 approximately 10 to 12 full-time technical jobs for  
24 project operations and maintenance, as well as  
25 provide significant tax revenue to the state and

1 local communities and significant revenue for local  
2 participants.

3 Mr. Commissioners, in conclusion, we  
4 believe that the proposed project is a great fit  
5 for the State of North Dakota and the local  
6 communities. It will provide jobs and revenue to  
7 the State of North Dakota as well as contribute  
8 clean renewable energy to the region, while also  
9 minimizing -- avoiding minimizing and mitigating,  
10 if necessary, adverse effects to both the  
11 environment and the citizens of North Dakota.  
12 EnXco remains strongly committed to the Merricourt  
13 Wind Power Project and we look forward to the day  
14 that we can commission the turbine operations.

15 Q. At the hearing in February, Mr.  
16 Sternhagen, you talked a little bit more about the  
17 community interactions and involvement in the  
18 process. Could you expand on that a little bit?

19 A. Sure. Throughout the development of the  
20 Merricourt Wind Power Project we routinely and  
21 actually on a fairly regular basis hold community  
22 meetings where we invite local participants and  
23 folks that may be interested in participating or  
24 have questions about the project. These are  
25 generally held every six months, usually in the

1 local communities. In fact, we've held many of  
2 them right here in this room, and it gives an  
3 opportunity for our landowners and participants and  
4 local citizens to provide us input on project  
5 development concerns and just a good opportunity  
6 for Q-and-A with those folks, and that happens  
7 throughout the development phase and even in the  
8 construction for the wind project.

9 Q. And there are a couple of issues where I  
10 know we'll have a discussion and some updating of  
11 the record, but as far as turbine locations, for  
12 example, the maps that were entered into the record  
13 as part of Exhibit 5 before, have there been any  
14 changes in the project since the February hearing?

15 A. There's been no changes to the layout as  
16 previously submitted.

17 Q. Let's turn briefly then to a couple of  
18 issues to update the record. At the last hearing  
19 we discussed on the record that this is intended to  
20 be a turnkey project that would be turned over to  
21 Northern States Power Company. Can you give the  
22 Commission an update on the situation with Northern  
23 States Power?

24 A. Sure. In 2008 enXco and Xcel entered into  
25 a power purchase and sale agreement for the

1 Merricourt Wind Power Project as well as an  
2 accompanying engineering, procurement and  
3 construction contract. These agreements  
4 contemplate the sale and construction of the  
5 Merricourt project and include certain commitments  
6 and obligations for each party.

7           Recently Xcel Energy has attempted to  
8 terminate these contracts and essentially back out  
9 of their obligations to the Merricourt project.  
10 EnXco is disputing the termination of these  
11 contracts and has begun legal action against Xcel  
12 that demands they close on the purchase and sale  
13 agreement of the project and begin construction  
14 immediately.

15           Q.    And also at the last hearing there was  
16 significant discussion about the status of the  
17 ongoing dialogue with the U.S. Fish and Wildlife  
18 Service. Can you provide an update on that, as  
19 well?

20           A.    Yes. Since the last hearing enXco has  
21 completed an addendum to the previously submitted  
22 Biological Conditions and Effects Summary. This is  
23 submitted as late-filed Exhibit 12. This addendum  
24 was drafted with the assistance of the U.S. Fish  
25 and Wildlife Service and as a result of the

1 previously ongoing discussions with the service I  
2 indicated in my previous testimony.

3           This addendum includes, among other  
4 things, revisions to the habitat preservation  
5 efforts included in the initial Biological  
6 Conditions and Effects Summary, a commitment to  
7 develop a habitat conservation plan for the  
8 threatened piping plover as well as an Avian and  
9 Bat Protection Plan.

10           Also since the last hearing enXco has  
11 completed a draft of the Avian and Bat Protection  
12 Plan which is currently under review by the United  
13 States Fish and Wildlife Service and we have begun  
14 a Section 10 consultation under the Endangered  
15 Species Act and the development of a Habitat  
16 Conservation Plan.

17           In response to those efforts, U.S. Fish  
18 and Wildlife Service provided enXco a letter dated  
19 April 8th, 2011, also included in late-filed  
20 Exhibit 12. With regards to whooping cranes, the  
21 impact of the project as proposed is unlikely to  
22 rise to the level of take. Additionally, the U.S.  
23 Fish and Wildlife Service indicated that the  
24 project as proposed appears to have sufficiently  
25 avoided designated critical habitat for the

1 threatened piping plover.

2 Q. And at that February hearing there was  
3 discussion that enXco at that time did not intend  
4 to pursue a habitat conservation plan or an  
5 incidental take permit. Could you summarize the  
6 developments that led to the current position?

7 A. Yeah. First, let me clarify that  
8 essentially based on discussions with the U.S. Fish  
9 and Wildlife, as well as a detailed review from two  
10 different environmental consulting firms, there is  
11 presently no biological science that indicates this  
12 specific species is at risk from the Merricourt  
13 project. And in two years of avian studies we did  
14 not locate any piping plovers or suitable piping  
15 plover nesting habitat within the project area.

16 It's also important to note that in our  
17 initial consultation with the service, they  
18 indicated to us that the potential effect of the  
19 project on the piping plovers was limited to  
20 impacts on nesting birds, and the U.S. Fish and  
21 Wildlife Service at that time recommended that  
22 enXco maintain a minimum setback of one-half mile  
23 from any designated piping plover critical habitat,  
24 the recommendation that we not only pursued, but  
25 exceeded in the development of the siting of the

1 Merricourt project.

2           However, in late 2010, the service  
3 indicated to us their concern in this regard was no  
4 longer limited to nesting piping plovers, but on  
5 migrating and foraging piping plovers, as well. It  
6 is the U.S. Fish and Wildlife's concern, absent any  
7 specific biological study data, mind you, that  
8 piping plovers could be susceptible to direct blade  
9 strikes if they migrate through the forage within  
10 the project area. It wasn't until this time in  
11 late 2010 that the U.S. Fish and Wildlife Service  
12 recommended a site-specific Habitat Conservation  
13 Plan for the piping plover. From this discussion  
14 enXco began to review and evaluate this new concern  
15 of the Fish and Wildlife Service, and this was the  
16 basis of our ongoing discussion with the service at  
17 the time of the last hearing.

18           Similar to the U.S. Fish and Wildlife  
19 concern regarding the potential effects of the  
20 project on whooping cranes, we attempted to resolve  
21 the new piping plover concern through alternative  
22 measures. However, the lack of available  
23 biological science indicating the potential effect  
24 on that species limited our abilities in this  
25 regard and we decided the most prudent course of

1 action was to develop a Habitat Conservation Plan  
2 and seek take authorization to provide insurance  
3 against the project's possible, but unlikely, take  
4 of piping plover.

5 Concurrently we worked out a strategy with  
6 the service that, if necessary, would allow the  
7 project to be constructed and operated until such  
8 time as take authorization could be obtained from  
9 the service. This was done to eliminate even the  
10 remote chance that a take could occur prior to take  
11 authorization. This strategy is also reflected in  
12 the Addendum to the Biological Conditions and  
13 Effects Summary as submitted as late-filed Exhibit  
14 12.

15 Q. And could you address briefly what happens  
16 if Fish and Wildlife does not issue take  
17 authorization? Is that a legitimate concern at  
18 this point?

19 A. We don't think that it's a strong concern  
20 because the Fish and Wildlife Service indicated  
21 specifically to us that they routinely grant  
22 incidental take permits for the piping plover.

23 Q. And is it your expectation that there will  
24 be any additional management measures set out in  
25 the Habitat Conservation Plan?

1           A.    A definite?

2           Q.    Correct.

3           A.    Right now we've only agreed to very  
4    limited project curtailment in the unlikely event  
5    that piping plovers are found to be present in or  
6    near the project area and susceptible to take, and  
7    only until the take permit is obtained.  At this  
8    time we do not expect that there will be excessive  
9    curtailment obligations in the Habitat Conservation  
10   Plan as such measures would exceed the reasonable  
11   test under the Endangered Species Act.

12          Q.    One other item I wanted to address with  
13   you.  When we had the hearing in February, there  
14   was some discussion of the project timeline and you  
15   indicated at that time construction was expected to  
16   begin in May of this year.  We're now in May of  
17   this year.  What can you tell the Commission about  
18   the expected timeline going forward?

19          A.    Well, as indicated in our pending lawsuit,  
20   we have requested that Xcel Energy fulfill their  
21   obligations to close the purchase and sale  
22   agreement transaction so that we can start  
23   construction as soon as possible.  While we remain  
24   strongly committed to the Merricourt project, we  
25   can't guarantee if or when we'll be able to start

1 construction. However, we most certainly will not  
2 be able to start construction unless and until we  
3 receive a Certificate of Site Compatibility from  
4 the North Dakota Public Service Commission.

5 Q. Any closing thoughts for the Commission  
6 before I turn you over to Mr. Armstrong and others  
7 for questioning?

8 A. I just would reiterate to the Commission  
9 and the general public here that enXco is strongly  
10 committed to the Merricourt Wind Power Project. We  
11 firmly believe that this is a great project for the  
12 local community and the State of North Dakota. We  
13 believe that as proposed this project includes more  
14 conservation measures for both avian and bat  
15 species than most, if not all, wind projects in the  
16 State of North Dakota presently.

17 MR. SWANSON: I have no further questions,  
18 Judge.

19 JUDGE WAHL: Mr. Armstrong, questions for  
20 the witness?

21 MR. ARMSTRONG: Thank you, Judge.

22 **EXAMINATION**

23 **BY MR. ARMSTRONG:**

24 Q. Mr. Sternhagen, I would like to talk to  
25 you about the U.S. Fish and Wildlife Service first.

1 I'm looking at their April 8th letter which is part  
2 of Exhibit 12. It talks about funding suitable  
3 habitat acquisition. What's the status of  
4 acquiring the replacement habitat, so to speak?

5 A. We are -- we've made a commitment to the  
6 United States Fish and Wildlife Service to  
7 essentially fund habitat acquisition either through  
8 fee simple or easement interest acquisition, and we  
9 are presently in discussions with some third-party  
10 groups, such as the North Dakota Natural Resource  
11 Trust, to administer those funds and actually  
12 handle the implementation of acquisition, so those  
13 discussions are ongoing.

14 Q. And is it your understanding that that  
15 satisfies the U.S. Fish and Wildlife Service as it  
16 relates to whooping cranes?

17 A. Yes.

18 Q. And the Avian and Bat Protection Plan,  
19 that's currently under review with Fish and  
20 Wildlife Service?

21 A. Correct.

22 Q. With respect to the construction schedule,  
23 what I heard was -- and tell me if I'm wrong --  
24 what I heard was you don't know when construction  
25 will start, it depends on the legal issues and

1 other things being worked out?

2 A. That's correct. We're very hopeful to be  
3 able to start construction as soon as we possibly  
4 can. However, the lack of a site certificate of  
5 compatibility does not allow for that to happen and  
6 we do have the ongoing dispute with Xcel that we're  
7 addressing presently.

8 Q. Do you know -- do you know, I mean, if a  
9 certificate is issued, is construction expected to  
10 begin at that time, or are there still remaining  
11 issues with respect to that?

12 A. At the present time I really can't tell  
13 you for certain as to if construction would start  
14 immediately. I would say that we have completed  
15 the development portion of the project and  
16 fulfilled our obligations under the purchase and  
17 sale agreement which would allow construction to  
18 start. However, we are in dispute with NSP and  
19 that process may need to play out.

20 Q. And I guess just so the record is clear,  
21 when we talk about NSP and Xcel, you're basically  
22 referring to the same person --

23 A. Yes. That's correct.

24 Q. -- or entity?

25 MR. ARMSTRONG: I have no further

1 questions at this time.

2 JUDGE WAHL: Mr. Lein, any questions for  
3 the witness?

4 MR. LEIN: No questions.

5 JUDGE WAHL: Questions from the  
6 Commission? Commissioner Clark.

7 **EXAMINATION**

8 **BY COMMISSIONER CLARK:**

9 Q. Just so I understand some of the timelines  
10 and the -- excuse me -- and the terminology that's  
11 used, you talked about incidental take permits, and  
12 I know reading the U.S. Fish and Wildlife Service  
13 letter that was filed that discusses the fact that  
14 they concluded that it's unlikely to have a take on  
15 the whooping crane, is this letter considered an  
16 incidental take permit, or is that some other  
17 separate piece of paper that you get from them?

18 A. Yeah. An incidental take permit would be  
19 a separate item that's obtained under the  
20 Endangered Species Act.

21 Q. Okay. And specifically what does that  
22 piece of paper need?

23 A. The incidental take permit essentially  
24 allows for an otherwise unlawful action to  
25 incidentally take a threatened or endangered

1 species without liability under the Endangered  
2 Species Act.

3 Q. Okay. So enXco has that piece of paper in  
4 hand for the whooping crane; is that correct?

5 A. No. No. We were able to address the  
6 potential for an adverse effect on the whooping  
7 cranes without having to obtain that, and so  
8 essentially with the measures that we have put  
9 forth and proposed under the project, it's unlikely  
10 a take would occur and, therefore, there's no need  
11 to get the incidental take permit.

12 Q. You don't need to go that step. And, once  
13 again, run over the -- where we're at with the  
14 piping plover in regard to that same issue. It  
15 sounds like you're on the path to them concluding  
16 that it's unlikely to have a take, but not quite  
17 there yet?

18 A. Well, what we have done so far, is we  
19 have -- as you can read in the April 8th letter, we  
20 have sufficiently avoided the designated critical  
21 habitat for piping plovers to the southwest of the  
22 project site. The initial concern from the service  
23 was that the project's operation and construction  
24 may affect nesting piping plovers on that habitat,  
25 and they recommended that we avoid that habitat by

1 a minimum of a half-mile. We did that. The  
2 current site is actually over a mile away.

3 What we are working with the service on  
4 now essentially is a new concern that they brought  
5 to our attention very late in the development,  
6 which is the fact that there's a chance that the  
7 birds may migrate through or forage within the  
8 project area and there's a potential for a direct  
9 blade strike. However, there's no biological data  
10 that suggests that. It's a simple concern that was  
11 brought up by the service. So after ongoing  
12 discussions with them to try to establish and  
13 understand better that concern -- why there was a  
14 concern, what we may be able to do to avoid  
15 minimizing -- mitigating it, essentially we came to  
16 the conclusion that with the lack of biological  
17 data, it was very challenging to do that and it  
18 would be prudent to pursue an incidental take  
19 permit.

20 Q. Okay. Got it. And then remind me again  
21 of the timeline. You said that this issue of  
22 transient or migrating piping plovers was raised in  
23 late 2010; is that correct?

24 A. Yes.

25 Q. And to your knowledge, is this the first

1 time that this issue has been raised in any of the  
2 wind farms that you've dealt with anywhere in this  
3 region? And here's the reason I ask thinking about  
4 it. This is the first time I've heard about it.  
5 We've had a fair amount of experience in siting  
6 wind farms and looking at -- I'm not an expert on  
7 the range of the piping plover, but it seems it's  
8 quite wide. You've got the entire Northern Great  
9 Plains and then you've got Great Lakes piping  
10 plovers and you've got Atlantic piping plovers, so  
11 in theory there's a pretty large geography of the  
12 United States that could be a migrating area for  
13 piping plovers. Is this something that we're  
14 likely to see in other wind farms, run into it in  
15 other wind farms?

16 A. That is a very interesting question. When  
17 we first started our consultation with the service  
18 and this issue was brought up, one of the first  
19 things we did was to go back and look at some of  
20 the other projects that have been sited and  
21 constructed, the locations of those in relation to  
22 potential breeding areas for plovers, and we  
23 identified that there are projects that are up and  
24 operational that are in far more environmentally  
25 sensitive areas for these species and we addressed

1 that with the service, and the service, themselves,  
2 acknowledged to us that this was a new concern,  
3 that they did not bring these concerns to light  
4 with previous wind power projects, but that it is  
5 our expectation from the service that all projects  
6 going forward would be subjected to the same  
7 concern if they're located in the appropriate  
8 portions of the breeding range for the piping  
9 plover.

10 Q. In theory how big an area are we talking  
11 about this is going to affect as far as project  
12 development? It obviously goes well beyond the  
13 boundaries of McIntosh County.

14 A. Yeah. We do have a map here of the  
15 breeding range -- the known breeding range for the  
16 piping plovers, but I'll highlight that very little  
17 is known about the migratory patterns of these  
18 birds, so that was one of the challenges of trying  
19 to address the concern of the service is there's  
20 simply not a lot of science out there that suggests  
21 how these birds migrate, where they migrate, at  
22 what height they fly at, how they interact with  
23 wind turbines, and so you can imagine that it's  
24 very difficult to solve the problem that isn't  
25 really clearly defined. You know, it's a lot like

1 -- it's just been very challenging, I guess, so  
2 there's very little.

3 A part of the effort in the addendum, the  
4 Avian and Bat Protection Plan and the Habitat  
5 Conservation Plan that we proposed is to fund some  
6 additional research to help us get a better  
7 understanding of these birds and their interaction  
8 to wind turbines so that hopefully future  
9 development can benefit from it.

10 Q. So the bottom line is because of the lack  
11 of data, you weren't able to go in the same room  
12 with the U.S. Fish and Wildlife Service that you  
13 were able to go with the whooping cranes so instead  
14 one of the things you're looking at is the  
15 incidental take permit?

16 A. Correct.

17 Q. You just can't establish what the  
18 likelihood of take would be?

19 A. Correct.

20 JUDGE WAHL: Commissioner Cramer.

21 **EXAMINATION**

22 **BY COMMISSIONER CRAMER:**

23 Q. Thank you again for your testimony. I  
24 think we covered most of the issues last time.  
25 Since the last hearing, as you know, there have

1     been some blade failures on wind farms that are  
2     currently operational in North Dakota specific to  
3     fiberglass blades on some GE 1.5-megawatt turbines  
4     as well as other turbines.  What blades are being  
5     proposed for this farm?

6           A.     For this project the turbine supply  
7     agreement with General Electric essentially calls  
8     for them to source all of the turbine components,  
9     blades, hubs, tower sections.  I don't have that  
10    specific data available to me, unfortunately.

11          Q.     Have these incidents in North Dakota and  
12    other places, I might add -- there are a number in  
13    Illinois that have failed similar to the ones in  
14    North Dakota.  Have they caused you to inquire with  
15    GE about that?  Do you have any information?  Have  
16    you made any contact with them, raised any  
17    concerns?

18          A.     We may have.  My specific office would not  
19    as I handle development, but I will mention that  
20    enXco does have a large operations and maintenance  
21    service section and we are one of the only warranty  
22    -- only technicians that are basically able to do  
23    warranty work for GE technicians, so I would  
24    believe, based on our expertise in that field,  
25    that, yes, that issue has been addressed, but I

1 don't have any knowledge of it.

2 COMMISSIONER CRAMER: I think so far the  
3 failure of these -- the blades specifically haven't  
4 created a danger so much as a gross inconvenience,  
5 not to mention an economic challenge either for the  
6 company or the insurance companies, but,  
7 nonetheless, it's heightened awareness, if you  
8 will, of the issues.

9 Other than that, I hesitate to get into  
10 some of the economic questions because they're not  
11 germane to the siting and it may wander into the  
12 fact that your dispute with NSP involves -- could  
13 involve a rate case currently in front of us so I  
14 just put that out as disclosure, but thank you. I  
15 have nothing further.

16 JUDGE WAHL: Anything further,  
17 Commissioner Clark?

18 COMMISSIONER CLARK: No. Thank you.

19 JUDGE WAHL: Followup, Mr. Swanson?

20 MR. SWANSON: I have none, Judge.

21 JUDGE WAHL: Followup, Mr. Armstrong?

22 MR. ARMSTRONG: No, Judge.

23 JUDGE WAHL: Mr. Lein?

24 MR. LEIN: No.

25 JUDGE WAHL: Your next witness, Mr.

1 Swanson. Thank you very much, Mr. Sternhagen.

2 MR. SWANSON: Next, Judge, we would call  
3 Jennifer Turnbow to the stand.

4 JUDGE WAHL: Ms. Turnbow, as you know,  
5 your testimony is required to be under oath and I'm  
6 required by law to advise you regarding perjury  
7 before administering the oath. Perjury is a false  
8 statement of material fact which you do not believe  
9 to be true. In North Dakota perjury is a Class C  
10 felony, punishable by a fine up to \$5,000,  
11 imprisonment for a period of up to five years, or  
12 both. Will you raise your right hand, please?

13 **JENNIFER TURNBOW,**  
14 being first duly sworn, was examined and testified  
15 as follows:

16 JUDGE WAHL: Mr. Swanson.

17 MR. SWANSON: Thank you, Judge.

18 JUDGE WAHL: Before we proceed, counsel,  
19 Commissioners, I stand corrected. I do have  
20 document numbers for the exhibits, so if anyone,  
21 including the witness, refers to an exhibit, if  
22 you'll just take a breath, I will have the docket  
23 number for the Commissioners. You may proceed.

24 MR. SWANSON: Thank you, Judge.

25

**EXAMINATION**

1

2 **BY MR. SWANSON:**

3 Q. Good morning, Ms. Turnbow.

4 A. Good morning.

5 Q. First, could you just state again for the  
6 record your name and your position?7 A. My name is Jennifer Turnbow and I work at  
8 Kadrmas, Lee & Jackson, which is an engineering,  
9 surveying and planning company, and I'm an  
10 environmental planner at Kadrmas, Lee & Jackson and  
11 I have been the project manager for the Public  
12 Service Commission application and many of the  
13 field studies that have been conducted for the  
14 Merricourt Wind Power Project.15 Q. And Mr. Sternhagen gave a brief discussion  
16 of the overall approach to this project and I know  
17 you gave one, as well, in February, but, again, for  
18 the benefit of folks who maybe weren't at that  
19 prior hearing, can you give just a quick overview  
20 of the overall approach to the project that you  
21 took?22 A. As Chris alluded to, we did do a very  
23 deductive approach for the project and we began  
24 with collecting baseline information which was then  
25 supplemented, and we built a GIS database that

1 became the foundation of collecting this  
2 information. Through many field studies, desktop  
3 assessments, agency coordination we built on all of  
4 this information.

5 We first started out and we studied a much  
6 bigger, larger study area and then through these  
7 desktop assessments, literature reviews, agency  
8 coordination and detailed field studies we  
9 eventually narrowed the study area down. As Chris  
10 had mentioned, we're now currently around 18  
11 squares miles, but we started out with 50 and then  
12 narrowed down to 30.

13 I would also like to mention through this  
14 process we had a lot of coordination with many  
15 different agencies. We met with the U.S. Fish and  
16 Wildlife Service many times, the interagency  
17 committee, the Kulm Wetland Management District,  
18 the State Historic Preservation Office and tribal  
19 representatives from Sisseton-Wahpeton, Standing  
20 Rock and Rosebud. We also met with McIntosh and  
21 Dickey Counties.

22 Q. And there was significant discussion  
23 earlier and there's significant discussion in the  
24 record of all the various study work, but could you  
25 at least walk us through some of the key studies

1 that were done under your direction on this  
2 project?

3 A. Yes. I will now walk through some of just  
4 the major studies and not go through all the  
5 different studies that we did. There are about 14  
6 or 15 and that can be looked up in Exhibit No. 11  
7 with the transcript of February 10th, 2011.

8 JUDGE WAHL: Exhibit 11 was the late-filed  
9 exhibit document number 74.

10 THE WITNESS: An avian assessment and  
11 survey and a supplemental sharp-tailed grouse leks  
12 survey were conducted by Dr. Bob Anderson of North  
13 Dakota Birding. The purpose of this report was to  
14 locate raptor nests and sharp-tailed grouse leks  
15 within the wind resource area as well as any  
16 federally listed species. The results of this  
17 survey identified 10 active raptor nests and 17  
18 active sharp-tailed grouse leks. The setbacks to  
19 these leks and to the raptor nests have been  
20 incorporated into the project.

21 The results of the literature review and  
22 U.S. Fish and Wildlife coordination that they did  
23 find that there's designated piping plover critical  
24 habitat which is known as McIntosh 2 and this  
25 designated critical habitat is over a mile south

1 from the nearest turbine.

2 Also, the project is within the whooping  
3 crane migration corridor. However, it is on the  
4 eastern edge, approximately 64 miles from the  
5 centerline of the 205-mile corridor. No whooping  
6 cranes or piping plovers were sited during these  
7 surveys.

8 Another study that was conducted by WEST  
9 was the whooping crane habitat review. The purpose  
10 of this review was to develop and implement a  
11 desktop review and analysis of whooping crane  
12 habitat resources in the wind resource area and to  
13 compare these resources outside the wind resource  
14 area. This analysis included a comparison of land  
15 cover type such as wetlands within the project, to  
16 reference areas of the same dimensions located  
17 immediately adjacent to the wind resource area  
18 boundary to the north, south, east and west. This  
19 analysis assumed that all wetlands were potential  
20 whooping crane habitat.

21 This analysis showed that habitat for  
22 migrating whooping cranes exists in and around the  
23 wind resource area and alternate areas. However,  
24 the wind resource area does not contain the only  
25 suitable whooping crane stopover habitat. The

1 closest whooping crane observation occurred in 1992  
2 approximately six miles north of the project area.

3 A piping plover survey was conducted in  
4 2010 by Dr. Bob Anderson of North Dakota Birding.  
5 The purpose of this survey was to determine the  
6 presence or absence of piping plovers on selected  
7 wetlands within the wind resource area. There were  
8 no piping plovers located in wetlands surveyed,  
9 including the designated critical habitat. There  
10 also was very little, if any, potential habitat for  
11 piping plovers due to the high water levels during  
12 the year 2010.

13 Kadrmas, Lee & Jackson conducted a wetland  
14 whooping crane habitat assessment in October 2010  
15 and then later reassessed this assessment for  
16 whooping cranes and also piping plovers. The U.S.  
17 Fish and Wildlife North Dakota field office  
18 indicated an indirect impact of potential whooping  
19 crane habitat within a half-mile of turbines or  
20 associated facilities due to the possibility that  
21 whooping cranes may avoid these wetlands as a  
22 result of their preference for isolated areas.

23 As such, Kadrmas, Lee & Jackson quantified  
24 wetland acreages within a half-mile of the 100  
25 primary turbine locations and access roads. This

1 was done by using aerial photography from the years  
2 2000, 2003, 2005, 2009 and 2010. We also  
3 supplemented the aerial photography using national  
4 wetland inventory data and the wetland delineation  
5 data by KLJ.

6 To further assess the potential for piping  
7 plovers habitat in the project area during dryer  
8 years, a desktop level assessment was also  
9 conducted in which soil types at two designated  
10 piping plover critical habitats were analyzed to  
11 identify commonalities. Of the common soil types  
12 identified at the two sites, the soil types that  
13 had the high salinity were then selected and  
14 identified for the project area. Aerial  
15 photography from 2003, 2005, 2009 and 2010 were  
16 then analyzed offering a reflection of dry, average  
17 and wet years.

18 It is anticipated that the use of  
19 approximately 1,710 acres of potential whooping  
20 crane roosting habitat in the form of wetlands and  
21 13.93 acres of piping plover nesting habitat may be  
22 disrupted due to their proximity of turbines and  
23 associated facilities. I do need to point out that  
24 with the 13.93 acres of potential piping plover  
25 habitat, this may take years of perfect biological

1 conditions for it to be potential habitat. These  
2 acreages which I just mentioned will be used for  
3 the compensatory habitat for disrupting the use of  
4 potential habitat in the establishment of habitat  
5 conservation fund for the purpose of fee simple  
6 property which Chris had also discussed in his  
7 testimony.

8 A bat assessment was conducted by Dr. Erin  
9 Gillam from NDSU in 2009. The purpose was to  
10 conduct a baseline survey of bat activity and  
11 possible species occurrence. Bat activity was  
12 highest in late July and early August, and a total  
13 of five species of bats were identified. The  
14 impacts to hardwood shelterbelts will be avoided  
15 during construction of this project to preserve  
16 habitat for bats.

17 A Class III cultural resource inventory  
18 was conducted by Kadrmas, Lee & Jackson in 2009 and  
19 2010. Tribal monitors from the Sisseton-Wahpeton  
20 and Standing Rock Tribes accompanied the  
21 archaeologists during this inventory. A total of  
22 166 previously undocumented resources were  
23 recorded. Since all facilities are avoiding  
24 cultural resources, a finding of no significant  
25 sites affected and no historic properties affected

1 determination was made. The State Historic  
2 Preservation Office concurred with this  
3 determination on September 4th, 2010.

4 A field wetland delineation was conducted  
5 by Kadrmas, Lee & Jackson in the years 2009 and  
6 2010. Additionally, the U.S. Fish and Wildlife,  
7 Kulm Wetland Management District mapped and  
8 identified 66 wetland basins under their easement.  
9 The U.S. Army Corps of Engineers has reviewed the  
10 wetland delineation report, and the project does  
11 not contain any jurisdictional wetlands.  
12 Therefore, a Section 404 permit will not be needed  
13 for the project.

14 Q. (MR. SWANSON CONTINUING) And could you  
15 just briefly summarize the overall review work and  
16 the conclusions that were drawn then after the  
17 study work?

18 A. Yes. There is many avoidance,  
19 minimization and mitigation measures and a lot of  
20 agency coordination that has happened through the  
21 life of this project. All of these avoidance,  
22 minimization and mitigation measures along with our  
23 supplemental filings to the Public Service  
24 Commission are stated in the PSC application and  
25 through our testimony. And a result of all of this

1 is that there are no major impacts and it has been  
2 covered through the avoidance, minimization and  
3 mitigation measures.

4 Q. And with the exception of the additional  
5 materials now provided in Exhibit 12, have any of  
6 these conclusions changed since the February  
7 hearing?

8 A. No.

9 MR. SWANSON: That's all I have, Judge.

10 JUDGE WAHL: Mr. Armstrong?

11 MR. ARMSTRONG: I have no questions for  
12 this witness.

13 JUDGE WAHL: Mr. Lein?

14 MR. LEIN: No questions.

15 JUDGE WAHL: Questions from the  
16 Commission? Commissioner Clark?

17 COMMISSIONER CLARK: I have none. Thank  
18 you.

19 JUDGE WAHL: Commissioner Cramer?

20 COMMISSIONER CRAMER: I have none, either.

21 JUDGE WAHL: Thank you very much, Ms.  
22 Turnbow.

23 MR. SWANSON: Thank you, Judge. Then we  
24 would call Jay Haley.

25 JUDGE WAHL: Mr. Haley, as you know, your

1 testimony is required to be under oath and I'm  
2 required by law to advise you regarding perjury  
3 before administering the oath. Perjury is a false  
4 statement of material fact which you do not believe  
5 to be true. In North Dakota perjury is a Class C  
6 felony, punishable by a fine up to \$5,000,  
7 imprisonment for a period of up to five years, or  
8 both. Will you raise your right hand, please?

9

**JAY HALEY,**

10 being first duly sworn, was examined and testified  
11 as follows:

12 JUDGE WAHL: Mr. Swanson.

13 MR. SWANSON: Thank you, Judge.

14

**EXAMINATION**

15 **BY MR. SWANSON:**

16 Q. Good morning, Mr. Haley.

17 A. Good morning.

18 Q. First for the record, could you state your  
19 name and your position?

20 A. My name is Jay Haley. I'm a mechanical  
21 engineer and partner with EAPC Architects and  
22 Engineers out of Grand Forks, North Dakota. We're  
23 a full-service consulting firm providing  
24 architecture, industrial engineering, wind  
25 engineering, which is the group that I head up.

1           Q.     And could you give -- I know we discussed  
2     this some in the February hearing, but could you  
3     give just a brief personal background of your  
4     qualifications?

5           A.     Sure.  I have been involved in the wind  
6     industry for a little over 20 years.  My firm, we  
7     have been involved in the majority of the wind  
8     projects in North and South Dakota.  Our consulting  
9     practice spans throughout North America, so that  
10    means Canada, the U.S., some projects in Mexico.  
11    We've worked on projects as far as Argentina,  
12    Venezuela, Puerto Rico, as well.

13          Q.     Do you have a ballpark idea of how many  
14    projects you have been involved in?

15          A.     Every project is different, so we don't  
16    work on every project from start to finish, but  
17    maybe, as in this case, we are only involved with  
18    respect to noise and shadow flicker, but with that  
19    being said, we have been involved in over 30,000  
20    megawatts of energy of wind power projects.

21          Q.     And why don't we divide and let's talk  
22    about the noise study work first.  Can you describe  
23    the overall approach you took to the study and the  
24    kinds of analyses you conducted?

25          A.     Sure.  We worked in conjunction with enXco

1 in the manner that they provided us with the wind  
2 turbine locations and we then performed the noise  
3 calculations. We did it in an iterative process  
4 where we first performed the calculations using  
5 what we call worst-case assumptions, and basically  
6 that means that -- excuse me. That means that we  
7 don't expect there to be any attenuation of the  
8 sound from the ground. We also don't take any  
9 credit for atmospheric attenuation. And I guess  
10 those are probably the two main assumptions that  
11 are made in the worst-case scenario.

12 So based on that we performed the noise  
13 calculations and identified problematic turbines.  
14 EnXco then made decisions whether to remove the  
15 turbines from the array or to leave them in there  
16 for further consideration when we did the refined  
17 analysis.

18 Q. And could you describe that refined  
19 analysis?

20 A. In the refined analysis we then do take  
21 credit for the sound attenuation from the surface  
22 of the ground, the surface material of the ground  
23 and also the hills which may be in between the  
24 source and the point where the sound may be heard.  
25 In that case we also still did not take credit for

1 atmospheric attenuation.

2 Q. And through that process were there  
3 turbine locations that were removed?

4 A. In the worst-case scenario there were  
5 eight homes that ended up having noise levels above  
6 the 45-decibel threshold that had been established.  
7 When we did the refined analysis using realistic  
8 assumptions, there were no turbines that exceeded  
9 the 45 decibels.

10 Q. And for the shadow flicker analysis was  
11 there a similar overall approach that was taken?

12 A. Very similar. We did the worst-case  
13 scenario, provided the feedback to enXco, they made  
14 decisions about whether to remove turbines or leave  
15 them in for further refined consideration.

16 Q. And could you describe again for the  
17 record briefly the results of that analysis?

18 A. In the worst-case analysis we identified  
19 five homes that exceeded a threshold of 25 hours  
20 per year of shadow flicker. Once we performed the  
21 more realistic analysis, there were no homes above  
22 25. In fact, the top four homes that were  
23 experiencing shadow flicker throughout the year  
24 ranged from 16 to 18 hours. Those were the top  
25 four homes.

1           Q.     And what was the difference for the shadow  
2 flicker analysis between the worst case, if you  
3 will, and the more realistic analysis?

4           A.     In the worst-case analysis, we make a  
5 couple of assumptions. One is that there's never a  
6 cloudy day, the sun will always be shining from  
7 sunup to sundown. We also assume that it's always  
8 windy. The significance of that is that if it's  
9 not windy, the blades will not be rotating and,  
10 therefore, there's no opportunity for shadow  
11 flicker. We assume in the worst case that it's  
12 always windy so the blades are always in motion.  
13 And the third thing is we assume that the turbine,  
14 itself, will always be facing directly at the sun,  
15 which casts a worst-case maximum shadow on the  
16 ground.

17          Q.     So at the end of the shadow flicker  
18 analysis again, what was the ultimate conclusion  
19 and were there any turbines that were removed  
20 through your analysis?

21          A.     I believe that there were a few turbines  
22 that were removed from the array. There were no  
23 turbines that were actually removed. They  
24 maintained the original locations throughout the  
25 study. It was just a matter of in some cases

1 certain problematic turbines were removed  
2 completely.

3 Q. And overall with your experience on other  
4 projects, can you give a sense of the noise or  
5 shadow flicker impact of the final turbine  
6 locations in this project compared to other  
7 projects that you've work on?

8 A. This project ranks among the lowest in  
9 terms of impacts due to noise or shadow flicker.  
10 We've been involved in a number of projects that  
11 have been permitted and built that have exceeded  
12 the values that we see on this project.

13 MR. SWANSON: Thank you. That's all I  
14 have, Judge.

15 JUDGE WAHL: Mr. Armstrong?

16 MR. ARMSTRONG: Do you have a copy of  
17 Exhibit 5, Mr. Swanson, the map?

18 MR. SWANSON: Yes.

19 JUDGE WAHL: Exhibit 5 is document number  
20 55.

21 **EXAMINATION**

22 **BY MR. ARMSTRONG:**

23 Q. Mr. Haley, I'm showing you Exhibit 5. At  
24 the last hearing Mr. Grosz was here for the public  
25 and testified about some concerns he had -- are you

1 familiar -- in this area here with the turbine  
2 noise. I guess my question for you is, he  
3 expressed some concern about when the wind is high,  
4 then it goes down, the turbines keep going with  
5 that torque. Does your analysis on noise take into  
6 consideration that type of procedure? Is that what  
7 happens?

8 A. The noise calculations that are performed  
9 are based on the ISO 9613 standard, and in that  
10 standard the way that the equations are developed  
11 is they model, I guess you consider it, sort of a  
12 worst-case scenario where there's essentially like  
13 a temperature inversion where noise is going to  
14 travel farther, say, on a calm evening when the air  
15 starts to cool down. So it's modeling it already  
16 in sort of a worst-case noise propagation mode,  
17 which under normal daytime operating conditions is  
18 quite different. The noise is not going to travel  
19 nearly as far under normal daytime conditions as  
20 the ones that are modeled according to the  
21 standard.

22 Q. So is it then, I guess, your testimony  
23 that what we see in your reports is worse than what  
24 you had actually expected it to be?

25 A. There probably are times that you may

1 experience the sound propagation near the levels  
2 that are modeled, but under most conditions it  
3 would be quite a bit less than that.

4 MR. ARMSTRONG: That's all the questions I  
5 have.

6 JUDGE WAHL: Mr. Lein?

7 MR. LEIN: No questions.

8 JUDGE WAHL: Questions from the  
9 Commission? Commissioner Clark?

10 COMMISSIONER CLARK: No. Thank you.

11 JUDGE WAHL: Commissioner Cramer?

12 **EXAMINATION**

13 **BY COMMISSIONER CRAMER:**

14 Q. Just one, Jay. Could you describe in  
15 terms I can even understand what atmospheric  
16 attenuation is and how it's part of the formula  
17 between the real life situation or more likely  
18 situation?

19 A. Sure. The sound travels at different  
20 speeds depending on the atmospheric conditions, and  
21 I guess humidity, for example, is going to affect  
22 how fast and how far that sound is going to travel.  
23 Air temperature is another thing, the denser the  
24 air is. In colder conditions denser air is going  
25 to transmit the sound differently than warmer,

1 moister air.

2 Q. What impact then does -- I guess in  
3 offices we call it white noise -- just other noise  
4 that, of course, can be created by wind -- what  
5 impact does the noise of the wind have on the noise  
6 of the turbine and how it may affect somebody in  
7 their home?

8 A. What you're referring to is what the noise  
9 codes would call the ambient or the background  
10 noise, and certainly if there were sufficient  
11 background noise from the rustling of trees, the  
12 rustling of crops, traffic on roads, and so forth.  
13 That certainly is going to mask some of the effects  
14 of the noise emission from the wind turbines. We  
15 did not take that into account in our studies. So,  
16 I guess, from that standpoint the study would have  
17 been more conservative.

18 COMMISSIONER CRAMER: With that, I have  
19 nothing further. Thank you.

20 JUDGE WAHL: Further questions from the  
21 Commission? Followup, Mr. Swanson?

22 MR. SWANSON: No, Judge. Thank you.

23 JUDGE WAHL: Mr. Armstrong?

24 MR. ARMSTRONG: No, Judge.

25 JUDGE WAHL: Mr. Lein?

1 MR. LEIN: No.

2 JUDGE WAHL: Thank you very much, Mr.  
3 Haley.

4 MR. SWANSON: That concludes our  
5 witnesses, Judge.

6 JUDGE WAHL: Mr. Armstrong, anything  
7 further from the Commission?

8 MR. ARMSTRONG: No, Judge.

9 JUDGE WAHL: All right. Let's be in  
10 recess for about 10 minutes. Let's say by my  
11 watch, about 25 after 11 or as long as it takes for  
12 me to talk to anyone who wants to talk to me. Mr.  
13 Moe, I will begin with you, please, and we'll be in  
14 recess.

15 (Recess taken.)

16 (Moe Exhibits 1, 2 and 3 were marked for  
17 identification.)

18 JUDGE WAHL: This is North Dakota Public  
19 Service Commission hearing in the matter of enXco  
20 Development Corporation, Case No. PU-08-932. We're  
21 resuming. We'll begin with public testimony. Mr.  
22 Moe, please.

23 Mr. Moe, as you know, your testimony is  
24 required to be under oath and I'm required by law  
25 to advise you regarding perjury before

1 administering the oath. Perjury is a false  
2 statement of material fact which you do not believe  
3 to be true. In North Dakota perjury is a Class C  
4 felony, punishable by a fine up to \$5,000,  
5 imprisonment for a period of up to five years, or  
6 both. Will you raise your right hand, please?

7 **JOHN MOE,**  
8 being first duly sworn, was examined and testified  
9 as follows:

10 **EXAMINATION**

11 **BY JUDGE WAHL:**

12 Q. Mr. Moe, please state your name for the  
13 record.

14 A. John Moe.

15 Q. What is your residence address?

16 A. 8770 62nd Avenue Southeast, Fredonia,  
17 58440.

18 Q. Is your post office address the same as  
19 your residence address?

20 A. Yes. Yes.

21 Q. Mr. Moe, I understand that you have  
22 exhibits, documents which you wish to offer as  
23 exhibits for the Commission to consider. I'm  
24 handing you what has been marked for identification  
25 as Exhibit Moe 1.

1           JUDGE WAHL: That's the photocopy,  
2 counsel, entitled Birds Ground Xcel Wind Deal.

3           Q.    (JUDGE WAHL CONTINUING) Mr. Moe, will you  
4 tell the Commission what that exhibit is, please,  
5 and how -- where you obtained it?

6           A.    This is a copy from the Star Tribune. It  
7 was after they canceled the wind project, Xcel  
8 backed out, and it's just an article out of the  
9 Minneapolis Star Tribune.

10          Q.    Do you know the date of the paper?

11          A.    It was the next day after it happened.

12          Q.    All right.

13          A.    I don't know the date.

14          Q.    All right. And you wish to offer this  
15 exhibit in evidence?

16          A.    Yes.

17                JUDGE WAHL: Mr. Swanson?

18                MR. SWANSON: I won't interpose an  
19 objection, Judge, although obviously a newspaper  
20 article can't necessarily stand for the truth of  
21 what it reports and we don't have the reporter here  
22 to cross-examine, but as illustrative of the  
23 publicity around this project we have no objection.

24                JUDGE WAHL: Mr. Armstrong?

25                MR. ARMSTRONG: I would just echo the same

1 comments, so no objection.

2 JUDGE WAHL: Exhibit Moe 1 is received.

3 Q. (JUDGE WAHL CONTINUING) Next, Mr. Moe, I  
4 hand you what has been marked for identification as  
5 Exhibit Moe 2, and I will ask you to tell the  
6 Commission, please, what that exhibit is.

7 A. American Bird Conservatory. It's about  
8 the wind towers and the different effects it does  
9 to wildlife and everything, the bird kill and  
10 things like that. And I work with the people from  
11 Prairie Wetlands Learning Center in Fergus Falls.

12 Q. And they directed you to this information?

13 A. They're a learning center for kids and  
14 they bring -- when I was there, they had 50 young  
15 people in their -- they have a thousand acres there  
16 in Fergus Falls. It's Prairie Learning Center.

17 JUDGE WAHL: Counsel, this is a document  
18 entitled American Bird Conservancy's Policy  
19 Statement and Bird-Smart Wind Guidelines.

20 Q. (JUDGE WAHL CONTINUING) Do you wish to  
21 offer this as an exhibit for the Commission's  
22 consideration, Mr. Moe?

23 A. Yes.

24 JUDGE WAHL: Mr. Swanson?

25 MR. SWANSON: Again, Judge, just as

1 illustrative of one organization's views, we have  
2 no objection.

3 JUDGE WAHL: Mr. Armstrong?

4 MR. ARMSTRONG: No objection.

5 JUDGE WAHL: Exhibit Moe 2 is received.

6 Next exhibit, Mr. Moe, is marked for  
7 identification as Moe 3. Counsel, this is the  
8 document entitled Birds and Wind Farms, American  
9 Bird Conservancy.

10 Q. (JUDGE WAHL CONTINUING) Would you tell  
11 the Commission, Mr. Moe, what that exhibit is, what  
12 it shows?

13 A. It's basically just an addition to the  
14 other.

15 Q. And this was obtained from the same source  
16 as the previous exhibit?

17 A. Yes. Some of that came off the Internet,  
18 too. I think this one did.

19 Q. All right. And you wish to offer this as  
20 an exhibit for the Commission's consideration?

21 A. Yes.

22 JUDGE WAHL: Mr. Swanson?

23 MR. SWANSON: As with Exhibit 2, Judge, as  
24 illustrative of this organization's views, no  
25 objection.

1 JUDGE WAHL: Mr. Armstrong?

2 MR. ARMSTRONG: I have no objection.

3 JUDGE WAHL: Exhibit Moe 3 is received.

4 Q. (JUDGE WAHL CONTINUING) Mr. Moe, you may  
5 proceed with anything additional you wish to say to  
6 the Commission.

7 A. Well, the first thing I want to say is I'm  
8 not against the wind towers. I'm just against  
9 where they want to put the wind towers. You know,  
10 the crane -- the whooping crane -- and I really  
11 never paid that much attention to those big birds,  
12 but over the last three, four years -- and I don't  
13 think they stay here, I think they just kind of  
14 migrate through here, but I've seen five of them.  
15 I've seen a pair right behind my barn in the  
16 cornfield next to the slough there. They were here  
17 today, gone tomorrow. I've seen three over by  
18 the -- on Highway 56 over there not too far from my  
19 place.

20 The other thing, if you ever flew over  
21 this area here from the White Stone Battle Field to  
22 Wishek, if you fly over that area, it's all water.  
23 I mean, you get down in the low areas or you go  
24 west of Wishek, we don't have as much water, even  
25 down in the Oakes area. A lot of that that you

1 see -- well, we've got so much water now, but  
2 usually that evaporates, we don't have, so the  
3 major part of the flyway like the diver, the skop  
4 or the bluebill, they migrate right through our  
5 area because most of our ponds, they don't dry up,  
6 and they have. But yesterday afternoon I was with  
7 a friend of mine and he was catching minnows, he's  
8 a fisherman, and the freshwater shrimp, that's what  
9 the skop live on, and they're in trouble anyways.  
10 If you go and it's a quiet night here and you look  
11 out in these ponds, black and white, they're diver  
12 ducks, that's what they eat, and they need that  
13 because they go way up into Alaska and Canada.  
14 There's a few nests here. But the problem is if  
15 they don't have enough energy and they don't have  
16 enough food, well, they don't -- you know, they're  
17 losing what they hatch. Instead of maybe having 10  
18 eggs, they probably have five.

19 But it's kind of like us. I mean, when  
20 we're going down the freeway, you're hungry, you  
21 see a sign that's cafe -- and I don't know how  
22 these birds do it, but it's the same when they go  
23 to the grocery store, they've got to stop and  
24 refuel themselves. They've been flying from  
25 Honduras and Mexico and they're down there. They

1     come up here, but they have to stop, and I noticed  
2     that this spring, I mean, thousands of them. Well,  
3     they're going to -- and I don't think they ever  
4     ate. You know, there's a blinking light on those  
5     things. How many are going to fly into the wind  
6     towers? I don't know, but I'm sure there's a lot.

7             Then all the shore birds we have here.  
8     Why don't -- why don't they take -- put the wind  
9     farm down like on the corridor of Highway 29 down  
10    by Wahpeton. Everything is dead down there,  
11    anyway. I mean, it's major farm country. Couldn't  
12    they put the wind towers in the tree rows there?  
13    That's just my suggestion.

14            I think that's about it.

15            JUDGE WAHL: Mr. Swanson, any questions  
16    for Mr. Moe?

17            MR. SWANSON: No questions, Judge.

18            JUDGE WAHL: Mr. Armstrong?

19            MR. ARMSTRONG: No, Judge.

20            JUDGE WAHL: Mr. Lein?

21            MR. LEIN: No questions.

22            JUDGE WAHL: Any questions from the  
23    Commission? Commissioner Clark.

24            COMMISSIONER CLARK: No questions, but  
25    thank you for being here.

1 THE WITNESS: Thank you.

2 JUDGE WAHL: Commissioner Cramer?

3 COMMISSIONER CRAMER: Just thank you.

4 JUDGE WAHL: Thank you very much, Mr. Moe.  
5 Mr. Schnering. Mr. Schnering, as you know, your  
6 testimony is required to be under oath and I'm  
7 required by law to advise you regarding perjury  
8 before administering the oath. Perjury is a false  
9 statement of material fact which you do not believe  
10 to be true. In North Dakota perjury is a Class C  
11 felony, punishable by a fine up to \$5,000,  
12 imprisonment for a period of up to five years, or  
13 both. Will you raise your right hand, please?

14 **DONALD C. SCHNERING,**

15 being first duly sworn, was examined and testified  
16 as follows:

17 **EXAMINATION**

18 **BY JUDGE WAHL:**

19 Q. Please state your name for the record.

20 A. Donald C. Schnering.

21 Q. What is your residence address, Mr.  
22 Schnering?

23 A. 207 South McIntosh Street in Lehr, North  
24 Dakota.

25 Q. Is your residence address the same as your

1 post office address?

2 A. It is not.

3 Q. And what is your post office address?

4 A. P.O. Box 85.

5 Q. Mr. Schnering, do you appear on behalf of  
6 any other organization, entity or group?

7 A. Partially. I am the mayor of Lehr and for  
8 the economic benefits of Lehr, I appear for them.  
9 I'm also appearing for myself from my past work  
10 experience and knowledge I've gained over the years  
11 and my opinion only.

12 Q. All right. You may proceed.

13 A. Thank you. I used to work for Alliant  
14 Energy in Wisconsin for 32 years and retired in  
15 2006. I know of Northern States Power, and I have  
16 not worked for them, nor do I represent them in any  
17 way whatsoever. I've also been a member of Nature  
18 Conservancy for many years and worked on biological  
19 projects as a volunteer. I'm concerned about the  
20 environment. I'm a hunter and fisherman. And I  
21 respect Mr. Moe's concern about the ducks and all  
22 the different things that could hit the wind  
23 turbine blades.

24 In reading through this mailout I got as  
25 mayor, it says while there have been no confirmed

1 fatalities at wind farm sites, piping plovers have  
2 been documented colliding with human-made  
3 structures such as transmission lines. Now, that  
4 really makes me scratch my head. With all of this  
5 testimony that I have heard as related to the  
6 blades taking out endangered species, and not one  
7 documented endangered species has been killed in  
8 North Dakota that I can see here, and if there has  
9 been, it's been very, very few. The transmission  
10 lines are everywhere.

11           It seems -- I'm all for U.S. Fish and  
12 Wildlife, but I'm also for wind farms. I used to  
13 work in a very large coal-fired power plant. It's  
14 two 500-megawatt units burning all western coal,  
15 and I did the environmental testing with continuous  
16 emissions monitoring and I'm very aware of how much  
17 CO2 is put in, sulfur dioxide and nitrous oxides  
18 and mercury, you name it. It's not the best way to  
19 make power.

20           And what I'm seeing now from Fish and  
21 Wildlife, which I adore -- I really adore them, but  
22 they are making such a stink about this -- pardon  
23 my French -- that even if somebody sees one of  
24 these piping plovers, you've got to shut the wind  
25 farm down. That is totally ridiculous, in my

1 opinion. Partially because maybe these birds are  
2 smart enough to notice the rotating blades, either  
3 through vibration or vision, or both, to not hit  
4 them, not go by them. The same thing with the  
5 ducks. Certainly it could happen.

6 We've got a wind farm in Kulm. Now, the  
7 Fish and Wildlife knows of a whole bunch of dead  
8 birds from birds deaths or bats. I've seen one bat  
9 since I've lived here, that's in Lehr and I've  
10 lived here about four and a half years -- one. I  
11 mean, there's not a lot of bats here.

12 It just seems like you're trying to choke  
13 the life out of wind power and not for a good  
14 enough reason, because if you're so worried about  
15 rotating blades that don't kill piping plovers or  
16 whooping cranes, why aren't we burying all of our  
17 transmission lines which are proven to kill them?

18 Well, let's all try and get real here. It  
19 just doesn't make any sense to me to take this line  
20 with no evidence of death, and it just doesn't make  
21 any sense, but transmission lines, well, they're  
22 okay. Well, the same person saying that  
23 transmission lines and wind farms are bad for  
24 power, you're making a statement, wind power for  
25 one is not the way to go, because if you're going

1 to curtail their power production because somebody  
2 seen a piping plover, oh, shut it off for a week or  
3 two in case he comes back, you're saying, well,  
4 power company, I want you to build something else.  
5 Well, right now the only something else that are  
6 available, it's not hydro, that's already  
7 developed. You're saying instead of wind, let's go  
8 with a big, old coal plant or, even better, a  
9 nuclear plant. No emissions except for when  
10 something really goes wrong like we've seen in  
11 Japan. It just goes to show you that nuclear is  
12 probably going to be on the way out because of all  
13 the engineering involved, they've got a 30-foot sea  
14 wall and guess what, Murphy's law comes into play,  
15 they had a 40-foot wave. Well, their generator  
16 engines were all on the main floor and they got  
17 wet, they got soaked, so, therefore, they didn't  
18 run, so all the best engineering in the world  
19 wasn't good enough for nuke.

20 So we're really coming right back to a  
21 big, old coal plant. Now, what is Fish and  
22 Wildlife's idea of putting a big, old coal plant  
23 around here somewhere -- anywhere. That has an  
24 environmental impact far, far greater than the  
25 possibility of hitting a bird with a wind blade,

1 because that's all we're talking about here, is  
2 possibility. You don't have any death facts, not a  
3 one.

4 Well, so where are we really here? I like  
5 Fish and Wildlife, but what they're doing here is  
6 trying to kill wind through all the details except  
7 for death, death of birds. Well, that just doesn't  
8 make any sense to anybody who has an open mind.  
9 Now, they've already decided that these wind towers  
10 are going to kill our birds just like the ducks and  
11 everything else, but they haven't. Doesn't that  
12 tell you something? This rotation, the vibration,  
13 the noise, whatever it is, they're avoiding them.  
14 Doesn't make a bit of sense to me.

15 I think with that, I've said enough except  
16 for the economic part here, I guess. For small  
17 towns here in this area, there's going to be a lot  
18 of house rentals for the workers building these  
19 towers, which will help the restaurants, the bars  
20 and the gas stations obviously, also adding, I see  
21 here, was it 10 to 12 jobs -- permanent jobs.  
22 Well, that's part of what's wrong with small town  
23 North Dakota or small town anywhere in the west,  
24 getting some more jobs and having people with more  
25 money to spend in the stores that are getting

1 something from having a tower on their property.  
2 That's all positive things in an area where our  
3 towns are going from a peak in 1930 population  
4 down, it's just drawing a very sharp curve down on  
5 the population curve because of the lack of jobs  
6 and the lack of new money coming in here. Anywhere  
7 would benefit economically from these towers.

8           And I still haven't seen anything from  
9 Fish and Wildlife that says it killed anything.  
10 I'm sure they do. It's possible. I've heard in  
11 California they killed some birds, but with strong  
12 winds and whatever, birds can't seem to navigate  
13 perfectly, and that's probably why they're hitting  
14 the transmission lines to begin with.

15           I guess that's all I got.

16           JUDGE WAHL: Mr. Swanson?

17           MR. SWANSON: No questions, Judge.

18           JUDGE WAHL: Mr. Armstrong?

19           MR. ARMSTRONG: No questions.

20           JUDGE WAHL: Mr. Lein?

21           MR. LEIN: No questions.

22           JUDGE WAHL: Questions from the  
23 Commission? Commissioner Clark?

24           COMMISSIONER CLARK: No questions, but  
25 thank you for being here.

1 JUDGE WAHL: Commissioner Cramer?

2 COMMISSIONER CRAMER: Just thank you.

3 JUDGE WAHL: Thank you very much, Mr.  
4 Schnering.

5 Is there anybody else who wishes to  
6 address the Commission? Anyone else?

7 If not, Mr. Swanson, any closing  
8 statement?

9 MR. SWANSON: Just thank you again, folks,  
10 for coming out. We appreciate it, appreciate your  
11 interest in the project, and we very much look  
12 forward to bringing this project to fruition here.

13 JUDGE WAHL: Mr. Armstrong?

14 MR. ARMSTRONG: Nothing further, Your  
15 Honor.

16 JUDGE WAHL: Closing comments by the  
17 Commission. Commissioner Clark.

18 COMMISSIONER CLARK: Just echo everyone  
19 else's comments. Thanks for being here and your  
20 patience and having this hearing fully completed.

21 It's always interesting, you learn a  
22 little bit more about wind farms and different  
23 challenges with each one that we site, and so we'll  
24 be able to take this all into consideration now as  
25 we move through the environmental permitting of

1 this particular project.

2           And then finally I'd just like to thank  
3 the hospitality of the community. Whoever set up  
4 the coffee and cookies, this was good because  
5 usually when we come to these hearing rooms, I've  
6 noticed that they put the coffee and cookies about  
7 as far from the Commissioners as they possibly can  
8 so during the course of the hearing to refill, we  
9 have to make our way through the crowd and today it  
10 was right up here by us, so this is wonderful, I  
11 could sneak over and grab a cup now and then.

12           Thank you for being here and thank you for  
13 the hospitality. We look forward to having an  
14 opportunity to take this amongst the Commission.  
15 We won't be making a decision obviously today, but  
16 we'll have a work session within a few weeks and  
17 have a chance to discuss it amongst ourselves.

18           JUDGE WAHL: Commissioner Cramer.

19           COMMISSIONER CRAMER: Well, just add my  
20 expression of gratitude as well as to everybody  
21 involved, certainly the community. Thank you for  
22 helping us conclude before noon because I saw the  
23 buffet being set up in the cafe so that looks  
24 wonderful.

25           Also, again, just thank you to the company

1 and the other stakeholders involved for your  
2 patience in helping us maneuver these somewhat  
3 sensitive legal requirements. While we, on the one  
4 hand, want to accommodate the development, we also  
5 are nothing if not transparent, as you've noticed.  
6 It's a characteristic of our state that I'm quite  
7 proud of and our government. So we appreciate all  
8 that, appreciate your input.

9 Like Tony said, we won't be making a  
10 decision today, but I would suspect that it  
11 wouldn't be terribly long from now since we've had  
12 a lot of evidence for a long time, and so I suspect  
13 we'll get a proposed order -- it wouldn't be too  
14 terribly long before we're able to take some action  
15 on this. Thank you.

16 JUDGE WAHL: Thank you very much,  
17 Commissioners, and thank you all very much, Ashley.

18 With that, the North Dakota Public Service  
19 Commission hearing in the matter of enXco  
20 Development Corporation, Case No. PU-08-932, is  
21 closed.

22 (Concluded at 11:47 p.m., the same day.)

23 -----

24

25

1 CERTIFICATE OF COURT REPORTER  
2

3 I, Denise M. Andahl, a Registered  
4 Professional Reporter,

5 DO HEREBY CERTIFY that I recorded in  
6 shorthand the foregoing proceedings had and made of  
7 record at the time and place hereinbefore  
8 indicated.

9 I DO HEREBY FURTHER CERTIFY that the  
10 foregoing typewritten pages contain an accurate  
11 transcript of my shorthand notes then and there  
12 taken.

13 Bismarck, North Dakota, this 6th day of  
14 June, 2011.

15  
16 

17 Denise M. Andahl  
18 Denise M. Andahl  
19 Registered Professional Reporter  
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