

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Minnkota Power Coop, Inc.            )    Case No.  
345 kV Transmission Line -         )    PU-09-670  
Center to Grand Forks               )      
Siting Application                    )    

TRANSCRIPT OF  
HEARING

                                  Taken At  
Baker Courtroom, UND School of Law  
215 Centennial Drive Stop 9003  
Grand Forks, North Dakota  
February 27, 2012

                                  BEFORE ALLEN C. HOBERG  
-- ADMINISTRATIVE LAW JUDGE --

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COMMISSIONERS PRESENT:

COMMISSIONER TONY CLARK, Chairman  
COMMISSIONER KEVIN CRAMER  
COMMISSIONER BRIAN P. KALK

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MINNKOTA POWER COOP,  
INC.

-----

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FOR THE NORTH DAKOTA  
PUBLIC SERVICE  
COMMISSION.

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ALSO PRESENT:

MR. JERRY LEIN, Public Service  
Commission Staff

MR. GERAD PAUL, Attorney for Minnkota

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**APPLICANT'S EXHIBITS:**

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T1	Map		116
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1           (The proceedings herein were had and made  
2 of record, commencing at 9:00 a.m., Monday,  
3 February 27, 2012, as follows:)

4           JUDGE HOBERG: All right. Let's go on the  
5 record. It's nine o'clock, February 27th, 2012,  
6 we're in the Baker Moot Courtroom at the UND School  
7 of Law in Grand Forks, North Dakota, for the  
8 administrative hearing in the matter of the siting  
9 application of Minnkota Power Cooperative, Inc.

10           My name is Allen Hoberg. I'm an  
11 administrative law judge with the Office of  
12 Administrative Hearings. I'm the designated  
13 hearing officer today.

14           As a courtesy, please, to the Commission,  
15 would you please turn off your cell phones or other  
16 devices for the duration of this hearing?

17           We'll take appearances from counsel for  
18 the applicant and Commission counsel at this time.  
19 Ms. Smith, please.

20           MS. SMITH: Mollie Smith with Fredrikson &  
21 Byron, and with me is Gerad Paul from Minnkota.

22           JUDGE HOBERG: Thank you. Are you hearing  
23 that back there okay? I know it seemed like the  
24 one just came on. I'll ask again.

25           Mr. Sagsveen, please.

1           MR. SAGSVEEN: Matthew Sagsveen. I'm an  
2 Assistant Attorney General, and I'm representing  
3 the Public Service Commission.

4           JUDGE HOBERG: And with you?

5           MR. SAGSVEEN: I'm sorry. Jerry Lein,  
6 Commission staff.

7           JUDGE HOBERG: And you would like him to  
8 be able to ask questions, too?

9           MR. SAGSVEEN: If I could.

10          JUDGE HOBERG: Granted. And, of course,  
11 to my left are the members of the North Dakota  
12 Public Service Commission, Commissioner Kevin  
13 Cramer, Commission Chairman Tony Clark and  
14 Commissioner Brian Kalk.

15                 I'm going to give a brief summary and talk  
16 about public testimony, and after that the  
17 Commissioners will make their opening comments.  
18 And our court reporter today is Denise Andahl.

19                 The Commission certainly encourages public  
20 testimony at administrative hearings. The hearing  
21 is really the only opportunity for the Commission  
22 to receive evidence, in other words, information  
23 from the applicant or the public, in making its  
24 decision. So today is your only opportunity to  
25 present evidence or information to the Commission

1 unless, of course, you come to the next hearing,  
2 and I'll talk about that in a little bit. The next  
3 segment of this hearing is March 1st.

4 Can I just get a show of hands, please, if  
5 you're interested in presenting information today,  
6 members of the public? Can I get a show of hands,  
7 please?

8 No one interested in presenting  
9 information to the Commission today? Well, I'll  
10 ask again later. Again, the Commission encourages  
11 people -- the public to come up and speak.

12 How many students do we have in the  
13 audience today? We have a few students. I  
14 understand maybe a class will be getting out so  
15 maybe we'll get a few more shortly.

16 Okay. As some background for this matter,  
17 on September 7th, 2011, the Commission issued  
18 Corridor Certificate No. 121 to Minnkota Power  
19 Cooperative designating a transmission facility  
20 corridor for approximately 260 miles of  
21 transmission line and associated facilities to be  
22 constructed from the Center Substation near Center,  
23 North Dakota, to the Prairie Substation, near Grand  
24 Forks, North Dakota.

25 On December 2nd of 2011 Minnkota filed

1 applications for a modification to the designated  
2 corridor, a waiver of procedures and time  
3 schedules, and a transmission facility route to be  
4 designated within the modified corridor as was  
5 shown on a map attached.

6 Minnkota requests the Commission waive  
7 requirements under North Dakota Century Code  
8 Chapter 49-22 that separate hearings be held  
9 concerning the waiver requests, the corridor  
10 modification and the route permit.

11 Three separate hearings were scheduled in  
12 regard to this matter. We've already held one  
13 hearing in Washburn on February 22nd. This is the  
14 second hearing, then a third hearing will be held  
15 in Carrington, as I indicated, on March 1st.

16 The three issues for each of these  
17 hearings with regard to this application are as  
18 follows:

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

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

1           And, third, will the proposed facility  
2 locations minimize adverse human and environmental  
3 impact while ensuring continuing system reliability  
4 and integrity and ensuring that energy needs are  
5 met and fulfilled in an orderly and timely fashion?

6           At this time I'll call on the  
7 Commissioners for their opening comments.  
8 Commissioner Clark, please.

9           COMMISSIONER CLARK: Thank you, Judge, and  
10 welcome to everyone who is here today.

11           This is a little bit of a unique setting  
12 for us. It's the first time that we've held a  
13 hearing here in this particular courtroom. It  
14 was -- Kelsey keeps saying that it was my  
15 brainchild, but I'm not so sure that's true. I  
16 think it was his and he's just making me think that  
17 it was mine.

18           Several months ago I came up to Grand  
19 Forks and spoke to a law student group and we  
20 started talking about administrative law,  
21 regulatory proceedings, and it's something that you  
22 may not be entirely familiar with because it is  
23 sort of a little unique niche within the law. It's  
24 somewhat quasi-judicial, it's quasi-administrative,  
25 it's quasi-policymaking, so it's a little bit

1 different than a lot of other things, but it's also  
2 an area of law and practice that is very busy in  
3 North Dakota right now.

4 We have a lot of cases before the Public  
5 Service Commission with all of the energy-related  
6 work that's going on, the Industrial Commission  
7 which does the extraction and production side of  
8 oil and gas, there's a lot of work in front of it,  
9 and, of course, there are other agencies. So we  
10 thought it would be a good idea the next  
11 opportunity that availed itself to have a hearing  
12 in this part of the state, we would do it here at  
13 the law school and you would have an opportunity to  
14 sit in and see exactly what goes on in proceedings  
15 like this. So we hope that you enjoy it.

16 For members of the public who may be here  
17 and interested in the proceeding, I'll just go  
18 through a few things. As the judge indicated, this  
19 opportunity that you have here today is really the  
20 only opportunity to put information in front of the  
21 Commission that we can use. So it's somewhat  
22 different from perhaps county commission  
23 proceedings, legislative proceedings, city council  
24 proceedings that you may be a little bit more  
25 familiar with where you can catch the commissioner

1 out in the hall afterwards and say, Well, that was  
2 really interesting, but what you need to know is  
3 this. That doesn't work here.

4           Unfortunately, if it's not said on the  
5 record, even if we hear it in passing, we can't  
6 take it into consideration as we go about  
7 processing this particular case. So if there is  
8 anything that you have to say, anything at all,  
9 please, when it comes time, do avail yourself of  
10 the Commission. Even -- I know the judge asked for  
11 a raise of hands. Even if you hear something along  
12 the way from the company testimony that causes you  
13 to think, well, you know what, I really do feel  
14 like I need to say something or if another public  
15 witness gets up and says something that you think  
16 needs to be added to or perhaps a different  
17 perspective added, please do at that time get up  
18 and testify.

19           A little bit about this case for those who  
20 may not be familiar with it. This is a  
21 transmission line siting case. They can be handled  
22 a couple of different ways in state law. The way  
23 that this is being done, there is -- first, we've  
24 had a number of proceedings already in this  
25 particular case. It's a fairly long line, runs

1 from about Center to about Grand Forks. There's  
2 several hundred miles in North Dakota.

3 The company has already gone through  
4 what's called a corridor proceeding, which is the  
5 wider area in which the transmission line may  
6 ultimately go, is permitted first, and we had three  
7 hearings leading up to the issuance of a corridor  
8 certificate which the Commission has granted, but  
9 that doesn't speak to the actual specific route.  
10 So we're in a routing proceeding which actually  
11 specifies where, if it's approved, the line will  
12 actually go, the tower specs, where the towers will  
13 be placed within that somewhat larger corridor.

14 So this is a routing proceeding. We've  
15 had one portion of the hearing in Washburn already.  
16 State law says that we have to have at least one  
17 hearing and it has to be in at least one of the  
18 counties in which it's going. Because this is such  
19 a long line, the Commission, in its discretion, has  
20 decided to have three hearings to make it easier to  
21 facilitate public participation. We've had one in  
22 Washburn already. We've got one here in Grand  
23 Forks, which will facilitate the easterly portion  
24 of the hearing. And then we have proposed a  
25 hearing for March 1st in Carrington. We'll see how

1 the weather holds out. That one, we hope we'll be  
2 able to make it, but, of course, we have -- the  
3 blizzard that may be projected, we may not be able  
4 to hold it, but as of today we're planning on being  
5 in Carrington, I believe, on the 1st of March. And  
6 at that point we will have had three hearings.

7 The Commission doesn't make any decisions  
8 today. We just take information on the record and  
9 we'll at a later date begin to assemble it all into  
10 a potential order.

11 So welcome, thanks, and we hope you enjoy  
12 the day.

13 JUDGE HOBERG: Thank you, Commissioner.  
14 Commissioner Cramer, please.

15 COMMISSIONER CRAMER: Thank you, Your  
16 Honor, and thanks to UND School of Law for their  
17 hospitality today in providing this fantastic  
18 facility. We often meet in courtrooms and  
19 oftentimes we meet in the back of barrooms. You  
20 just never know, depends on the community we're in.  
21 And so this is nicer than most, I will assure you.

22 Great to see the students here and to see  
23 some old friends, as well.

24 Tony has laid it out nicely with regard to  
25 public participation. I mean, the whole point of

1 being here is to maximize the opportunity for the  
2 public to participate, to hear from the company and  
3 to ensure of certain things, but also to make sure  
4 that we hear from you. And you will hear this  
5 admonishment several times, but whatever you do, do  
6 not leave this place today wishing you had said  
7 something you did not. Although you do have  
8 another chance in Carrington, this is a much more  
9 convenient opportunity if you're here today. So we  
10 want to do that.

11 For the students, I might just elaborate a  
12 bit on what Commissioner Clark had said. The Rules  
13 of Evidence do apply, and you will notice that they  
14 do apply. I can assure you and assure the public,  
15 do not let that formality dissuade you. While the  
16 Rules of Evidence apply in an administrative  
17 hearing, they are applied rather liberally because,  
18 by virtue of our election and the staff -- the  
19 professional staff we have, we are considered  
20 experts and so we're able to sort of give  
21 appropriate weight to all of the evidence that  
22 might be presented today as well as testimony. So  
23 please don't let that dissuade you.

24 With regards to evidence, this is not a  
25 criminal case, so the standard is not reasonable

1     doubt, nor is it a civil case where the standard is  
2     clear and convincing evidence, but rather the  
3     standard is the greater weight of the evidence or  
4     preponderance of the evidence. And so we do our  
5     jobs best when there's a lot of information on the  
6     record. We can, as I said, use our expertise to  
7     give appropriate weight to that evidence.

8             With that, we look forward to a good,  
9     thorough hearing on this case. It's an important  
10    case, 260 miles of brand-new transmission line.  
11    345 kV is no small matter. It's a major footprint  
12    on the landscape. We are an energy-producing and  
13    exporting state, and so we understand the value of  
14    that, but we do not take lightly the fact that it  
15    is an imposition on hundreds of landowners, and we  
16    want to make sure it's done in the best possible  
17    way. That is our task, to ensure that it has  
18    minimal adverse impact on cultural and natural  
19    resource, the citizens of our state, and, of  
20    course, that the resources are used in an efficient  
21    manner.

22             We think we do it pretty well, but we do  
23    it best with participation from the public, so we  
24    look forward to a good day. Thank you for being  
25    here.

1           JUDGE HOBERG: Thank you, Commissioner  
2 Cramer. Commissioner Kalk, please.

3           COMMISSIONER KALK: Well, thank you all  
4 very much for being here today. My fellow  
5 colleagues laid it out pretty well, but we're here  
6 today to get your input. That's the most important  
7 thing, get your input, the good, the bad,  
8 everything you like about the project, don't like  
9 about the project, so we can go back to Bismarck  
10 and make the best decision.

11           So thank you for coming today, look  
12 forward to a good hearing.

13           JUDGE HOBERG: Thank you, Commissioner  
14 Kalk.

15           I neglected to add that there is a fourth  
16 issue. The fourth issue is, is it appropriate for  
17 the Commission to approve a 1,000-foot-wide  
18 corridor as requested in the application?

19           And I can certainly vouch for the  
20 Commission, administrative law is -- and  
21 administrative hearings is a vastly growing area of  
22 law in North Dakota that we hear not only at the  
23 Commission, but in my office, too.

24           There is an attendance sheet, I believe,  
25 circulating. Mr. Lein, has that started around

1 yet, the attendance sheet?

2 MR. LEIN: Yes, it should be going around.

3 JUDGE HOBERG: We would appreciate it if  
4 everyone would sign that. And if you do think you  
5 might want to give testimony, there should be a  
6 space there to indicate that you may want to give  
7 testimony. And I'll explain that and talk about  
8 how we're going to do that later.

9 So here's the hearing procedure we're  
10 going to follow in this matter today. I'll call on  
11 the applicant first, and I believe Ms. Smith will  
12 have three witnesses again, as she did in Washburn;  
13 is that correct?

14 MS. SMITH: Yes, Your Honor.

15 JUDGE HOBERG: And she'll ask questions of  
16 them on direct examination. Following her  
17 questions of the witness, then I'll ask Commission  
18 staff if they have any questions of the witness, so  
19 Mr. Lein and Mr. Sagsveen may also have some  
20 questions. Following that, then the Commissioners  
21 may have some questions of the witnesses, and  
22 following that I'll allow such further questions as  
23 may be necessary of the witnesses that are being  
24 offered by the applicant.

25 Then I will call on public testimony and,

1 again, the Commission encourages members of the  
2 public to come up and speak. If you do come up and  
3 speak, you'll come up to the front here, and I do  
4 need to swear you in, much as I swear in all of the  
5 other witnesses, the witnesses for the applicant,  
6 because all testimony at administrative hearings is  
7 required to be under oath. And you should know,  
8 also, that if you do come up and speak, they may  
9 ask questions, the applicant and the Commission  
10 staff, and the Commissioners may ask questions of  
11 you, too, about the testimony you're going to give.  
12 It doesn't always happen, but they may have some  
13 questions for you, but please don't be hesitant if  
14 you have some information to present to the  
15 Commission.

16 As the Commission has indicated, they  
17 won't be issuing a decision on this matter today.  
18 Obviously we're going to be having the third  
19 segment of the hearing in Carrington on March 1st,  
20 and after that they'll consider all of the evidence  
21 from the three hearings, and then they're charged  
22 with issuing findings of fact, conclusions of law  
23 and an order in regard to the application.

24 If the applicant doesn't agree with the  
25 final decision of the Public Service Commission,

1 they have -- they may have appeal rights or other  
2 rights under the Administrative Agencies Practices  
3 Act, Chapter 28-32 of the North Dakota Century Code  
4 and under the Commission's rules, North Dakota  
5 Administrative Code, Article 69-02.

6 As the Commissioner indicated, the burden  
7 of proof is on the applicant in this hearing to  
8 show by the greater weight of the evidence that it  
9 is entitled to what it is seeking in the  
10 application.

11 Any questions about the procedures today,  
12 Ms. Smith?

13 MS. SMITH: No, Your Honor.

14 JUDGE HOBERG: Thank you. Mr. Sagsveen?

15 MR. SAGSVEEN: No, Your Honor.

16 JUDGE HOBERG: Any questions or concerns  
17 by those of you out in the audience?

18 Okay. As we go along, the applicant has  
19 exhibits, and I believe the exhibits are also in  
20 the back, Ms. Smith; is that correct?

21 MS. SMITH: Yes, there should be a set in  
22 the back.

23 JUDGE HOBERG: But they'll also have some  
24 enlarged exhibits for the witnesses to refer to up  
25 here. It's probably going to be better if you wait

1 till a recess if you're interested in the enlarged  
2 exhibits to come up, because it's going to be a  
3 little complicated to come through the gates and  
4 come up behind the staff there. But if you want to  
5 see one of those enlarged exhibits, perhaps better  
6 to wait until a recess.

7 But the evidence -- I should say that the  
8 evidence from the three previous hearings in regard  
9 to the corridor certificate is also of record in  
10 this matter, meaning all of the exhibits from those  
11 three previous hearings and all of the testimony  
12 from those three previous hearings, which the  
13 applicant does have with you today; is that  
14 correct?

15 MS. SMITH: Yes, Your Honor.

16 JUDGE HOBERG: And then the exhibits from  
17 the Washburn hearing, which were A through P, you  
18 also have here, but you don't intend to offer those  
19 again today; correct?

20 MS. SMITH: No. We'll go through them,  
21 but we won't offer them.

22 JUDGE HOBERG: Okay. So we have lots of  
23 evidence in regard to this matter. If you have any  
24 questions about any of the exhibits from the three  
25 previous hearings before we get to these three sets

1 of hearings or from the exhibits for this hearing,  
2 perhaps approach Ms. Smith or one of the members of  
3 the applicant if you're interested in any of those  
4 exhibits.

5 Any other preliminary matters to discuss  
6 before we begin with the evidence, Ms. Smith?

7 MS. SMITH: No, Your Honor, other than to  
8 review the three witnesses briefly.

9 JUDGE HOBERG: Okay. Please.

10 MS. SMITH: The first witness will be Mike  
11 Hennes, the system projects manager for Minnkota,  
12 and he's also the project manager for this project.  
13 Mr. Hennes will testify regarding the general  
14 factors that played a role in selection of the  
15 proposed project route, public coordination during  
16 the route selection process, anticipated  
17 construction schedule and notification and  
18 coordination efforts that will take place during  
19 construction and the status of local permitting.

20 Our second witness will be Duane Phillips  
21 with Stanley Consultants, Inc. He is the manager  
22 for the project engineering team. Mr. Phillips  
23 will testify regarding project construction, the  
24 engineering and design factors that were considered  
25 during development of the proposed project route

1 and the five corridor modifications that have been  
2 requested by Minnkota, and Mr. Phillips will also  
3 provide an overview of the proposed route.

4 Our final witness will be Brian Hunker  
5 with HDR Engineering, Inc. Mr. Hunker is the  
6 environmental consulting project manager for this  
7 project, and he will testify regarding the  
8 environmental studies that have been performed and  
9 the environmental analysis conducted with respect  
10 to the proposed project route.

11 JUDGE HOBERG: Thank you, Ms. Smith.  
12 Anything preliminarily, Mr. Sagsveen?

13 MR. SAGSVEEN: No, Your Honor.

14 JUDGE HOBERG: Please call your first  
15 witness.

16 MS. SMITH: Mike Hennes.

17 JUDGE HOBERG: And, of course, I need to  
18 swear you in, Mr. Hennes. And actually this is for  
19 the benefit of all three of the witnesses. They  
20 sort of know the drill by now. But I'm required by  
21 law to tell all witnesses at administrative  
22 hearings that the maximum penalty for perjury in  
23 this state is a Class C felony, punishable by a  
24 maximum five years imprisonment, \$5,000 fine, or  
25 both. And, of course, perjury is essentially not

1 telling the truth in a hearing such as this.

2

**MICHAEL HENNES,**

3 being first duly sworn, was examined and testified  
4 as follows:

5 JUDGE HOBERG: Thank you. Ms. Smith,  
6 please.

7 MS. SMITH: Thank you.

8

**DIRECT EXAMINATION**

9

**BY MS. SMITH:**

10 Q. Could you please state your full name for  
11 the Commission?

12 A. Michael Hennes.

13 Q. And you're employed by Minnkota Power  
14 Cooperative, Inc.; is that right?

15 A. That is correct.

16 Q. And what is your business address?

17 A. 1822 Mill Road in Grand Forks, North  
18 Dakota.

19 Q. And you are system projects manager with  
20 Minnkota?

21 A. That is correct.

22 Q. And could you discuss briefly your  
23 education and work history?

24 A. I received my bachelor of science degrees  
25 in electrical engineering and engineering

1 management from this great University of North  
2 Dakota. And I began my career with Basin Electric  
3 out in the western part of the state in 1975. I  
4 did spend 10 years back with the University of  
5 North Dakota in the Department of Atmospheric  
6 Sciences, working on aviation weather research. I  
7 also then joined Minnkota Power in 1994 as an  
8 electrical engineer and I also worked as a project  
9 engineer and engineering manager.

10 Q. And you are the project manager for this  
11 particular project; is that right?

12 A. That is correct.

13 Q. And what are your responsibilities as  
14 project manager?

15 A. As project manager, I have overall  
16 responsibility for the budgeting, scheduling and  
17 the coordination of the permitting, the design, the  
18 right-of-way acquisition, and construction of the  
19 proposed Center to Grand Forks project.

20 JUDGE HOBERG: Let me interrupt a second.  
21 Are you hearing that okay back there? It's coming  
22 through all right?

23 Okay. Thank you. Please continue.

24 Q. (MS. SMITH CONTINUING) Could you please  
25 tell the Commission about the various people or

1 groups of people that make up the team for this  
2 project?

3 A. The team is made up of Minnkota staff and  
4 outside consultants. The team leads from the  
5 Minnkota staff are responsible for engineering,  
6 environmental, permitting, right-of-way and legal,  
7 procurement, communications, public relations and  
8 also construction management.

9 We've hired the services of Stanley  
10 Consultants as our primary consultant responsible  
11 for project design and the construction management  
12 component of the project. They have consulted with  
13 Kadrmas, Lee & Jackson, a local firm, for doing the  
14 survey and right-of-way acquisition.

15 We also have retained the services of HDR  
16 Engineering, and they're our primary environmental  
17 and permitting lead on the project.

18 Q. And then if you'll look at what's been  
19 previously marked as Exhibit A, and it's already  
20 been admitted, but could you identify that for us?

21 A. Yes. It's the copy of Minnkota's Route  
22 Permit and Application for Corridor Modification  
23 and Waiver Request for this project, which were  
24 filed with the Commission on December 2nd, 2011.

25 Q. And then if you'll look at what's been

1 marked previously and also admitted as Exhibit B in  
2 the hearing binder, can you identify that for us?

3 A. Yes. It's a copy of a letter and  
4 accompanying maps filed with the Commission on  
5 January 20th of 2012.

6 Q. And what do the letter and maps discuss?

7 A. The letter discusses one additional  
8 modification of the proposed modified project  
9 corridor which was in Eddy County and four minor  
10 right-of-way alignment adjustments. Three were  
11 made to accommodate landowner requests and one was  
12 to avoid a cultural resource site. These  
13 adjustments were made in McLean, Eddy, Wells and  
14 Grand Forks Counties. The maps illustrate the  
15 corridor change and the alignment adjustments.

16 Q. And during the Certificate of Corridor  
17 Compatibility application hearings, the Commission  
18 heard detailed testimony regarding the need for  
19 this project, but could you just provide a brief  
20 overview of why Minnkota is proposing to construct  
21 this project?

22 A. This project addresses the need to secure  
23 a source to meet Minnkota's long-term energy supply  
24 requirements. Minnkota has agreements with  
25 Minnesota Power and Square Butte Cooperative that

1 allow Minnkota to increase base load generation  
2 resources without constructing a new coal-fired  
3 plant. This was accomplished by acquiring  
4 additional output from the existing Young 2 plant.

5 The proposed project also provides the  
6 means for transporting the additional base load  
7 generation to Minnkota's service territory. And  
8 the project also addresses identified grid  
9 reliability issues. The proposed project will  
10 improve the reliability of the grid to serve load  
11 in northeast North Dakota and northwestern  
12 Minnesota.

13 Q. And what is Minnkota's anticipated  
14 schedule for the project?

15 A. The project was initially started in 2009  
16 with a four-year timeline. Minnkota has recently  
17 moved to a five-year schedule based on our revised  
18 anticipated Public Service Commission's issuance of  
19 the route permit in the first quarter of 2012.

20 The project schedule involves the  
21 equipment procurement, for the manufacture and the  
22 delivery of long-term items, which has been ongoing  
23 since 2009. We do anticipate the start of  
24 construction in the spring of 2012, and our  
25 anticipated in-service date is the end of the

1 fourth quarter in 2013.

2 Q. Now, the schedule you just discussed is  
3 somewhat different than what was discussed during  
4 the Certificate of Corridor Compatibility hearings.  
5 Could you discuss those changes and why they were  
6 made?

7 A. The schedule presented at the corridor  
8 hearings did anticipate a fall 2011 construction  
9 start. The change in the project schedule is  
10 primarily due to a delay in the Rural Utility  
11 Service's environmental consultation with the U.S.  
12 Fish and Wildlife Service regarding the project's  
13 Section 7 mitigation plan for minimizing impacts to  
14 the whooping crane.

15 Also, additional time was taken to address  
16 landowner concerns when finalizing the route,  
17 particularly in the areas where the corridor  
18 approved by the Commission was wider than Minnkota  
19 had originally proposed, the thousand foot. As a  
20 result, the Route Permit Application was filed  
21 later than initially anticipated.

22 Q. And could you explain just in a little bit  
23 more detail what you're referencing with regard to  
24 the U.S. Fish and Wildlife Service and the delay?

25 A. The delay was primarily driven by trying

1 to recognize the U.S. Fish and Wildlife Service's  
2 recommendations and guidelines for endangered  
3 species, and in particular the whooping crane  
4 issue. The project had no issues with those  
5 guidelines in meeting the criteria for bird marking  
6 and identification on the new line as per the  
7 regional U.S. Fish and Wildlife Service's  
8 guidelines, but we were challenged by the  
9 additional guideline of finding 120 miles of  
10 existing Minnkota transmission line to also mark.

11 We did meet the U.S. Fish and Wildlife  
12 recommendations by proposing to bury local  
13 distribution lines. Minnkota had challenges  
14 identifying that 120 miles of transmission line  
15 through the corridor, which basically one-half  
16 of -- the eastern half of the corridor is from the  
17 Missouri River to Jamestown, and the only  
18 additional asset that Minnkota had at its disposal  
19 was existing transmission line that isn't suitable  
20 for marking along its entire length.

21 So we worked with the U.S. Fish and  
22 Wildlife and they have indicated in review of the  
23 drafts of our biological assessment that the  
24 burying of distribution lines can be used in lieu  
25 of marking existing transmission lines.

1           The RUS as the lead federal agency makes  
2 the final determination in this matter.

3           Q.    Then if you'll look at what's been  
4 previously marked and admitted as Exhibit C, can  
5 you just tell us what that is?

6           A.    Yes.  This is a map of the proposed  
7 project route within the proposed modified project  
8 corridor, and it's also on display on the first  
9 board.

10          Q.    Yes, it is also on the board.  What  
11 approach did Minnkota take to selecting the  
12 proposed project route?

13          A.    Once a corridor was approved, route  
14 selection was influenced mainly by landowner  
15 discussions during the right-of-way procurement  
16 process.

17                Landowner requests to move the line within  
18 their own property boundaries were evaluated from a  
19 technical and an economic basis.  Most of these  
20 requests for route modifications were accommodated.

21                For a request to reroute the line off of a  
22 landowner's property, every effort was made to  
23 contact neighboring landowners for input on the  
24 suggested reroute.  In the majority of these  
25 instances, neighboring landowners rejected the

1 suggested reroute and the route remained in the  
2 location originally proposed.

3 Q. And what were some of the factors that  
4 Minnkota took into account in developing the  
5 proposed project route?

6 A. Again, input from landowners was the  
7 primary factor, but also the avoidance of wetlands,  
8 archeological and environmentally sensitive areas  
9 were considered in the final route selection.

10 Existing wind leases also played a factor  
11 along the route. The proposed route is following  
12 the recommendations of the potential developers in  
13 these areas.

14 Q. And how did Minnkota involve both  
15 landowners and agencies in selecting the project  
16 route?

17 A. Minnkota's route selection process focused  
18 on engaging in one-on-one discussions with the  
19 landowners.

20 Several meetings were also organized to  
21 talk to groups of landowners in select areas to  
22 hear their common concerns.

23 Meetings and discussions with agency and  
24 advocacy groups were held to gather input on the  
25 final route alignment. These groups included the

1 Grand Forks County Prairie Partners, Audubon  
2 Dakota, the North Dakota Department of Trust Lands,  
3 Western Area Power Administration, the Grand Forks  
4 International Airport, UND Aviation School, and  
5 several wind farm developers, including OTESCO and  
6 Infinity.

7 We also used ongoing project-related  
8 outreach, including newsletter mailings and updates  
9 to the project website.

10 Q. Mr. Phillips is going to discuss the  
11 proposed corridor modifications in more detail, but  
12 could you just briefly explain why Minnkota is  
13 requesting modifications to the corridor that was  
14 approved by the Commission?

15 A. Each of the corridor modifications is  
16 requested in order to accommodate a routing request  
17 made by landowners, agencies and other members of  
18 the public during the public hearings on Minnkota's  
19 Certificate of Corridor Compatibility application  
20 or made during the route selection process that  
21 took place after those hearings.

22 As Mr. Phillips will also discuss during  
23 his testimony, the maps provided with the corridor  
24 modification and waiver request demonstrate, all of  
25 the modifications are relatively minor and were

1 required where the 150-foot-wide route was moved  
2 just slightly outside the previously defined  
3 corridor area.

4 Q. And what is the status of right-of-way  
5 acquisition?

6 A. The right-of-way team has negotiated  
7 options and easements for 73 percent of the  
8 project's 250-mile-long proposed route, and that's  
9 73 percent in miles, and the number of landowners  
10 is just slightly greater than that if you use that  
11 statistic.

12 Q. And what is Minnkota's plan for  
13 construction of the project? For instance, where  
14 does Minnkota plan to begin construction and end  
15 construction?

16 A. During 2012 the primary contractors will  
17 begin construction in the eastern line segment  
18 between Cooperstown and Grand Forks. The tree  
19 clearing and fencing contractor will also start in  
20 this section, but will most likely be working on  
21 the western portion of the project in 2012.

22 There will be off-season work at the  
23 Missouri River crossing and other environmentally  
24 sensitive areas.

25 The primary contractors will move into the

1 western half of the project in the spring of 2013,  
2 with the project completion anticipated again at  
3 the end of 2013.

4 Q. And how does Minnkota plan to keep  
5 landowners and local authorities informed  
6 throughout the construction process?

7 A. Project personnel will notify landowners  
8 prior to any work being conducted on their property  
9 and will be available on an on-call basis to manage  
10 any issues or concerns. They'll also continue to  
11 publish our project newsletters, and we were  
12 developing an interactive project website to help  
13 make realtime construction maps and information  
14 available to any interested party. The project  
15 also has a toll-free hotline which will be  
16 maintained with that construction area information,  
17 and we'll also maintain a direct email contact with  
18 landowners who sign up for that service.

19 Q. And with respect to other utilities and  
20 road authorities that are along the proposed route,  
21 how will Minnkota coordinate with those entities?

22 A. The construction manager will provide  
23 advanced planning resources to look ahead and make  
24 the necessary Utility One calls prior to augering  
25 the foundation excavations.

1           The road authorities will also have an  
2 opportunity to review the traffic plans proposed in  
3 their immediate areas prior to the start of  
4 construction. Specific communication requirements  
5 will be accommodated along with the proposed public  
6 notifications planned via newsletters, media,  
7 hotline, emails and other public announcements.

8           Again, the interactive website is being  
9 developed to help make these realtime construction  
10 maps and information available to the public.

11          Q.    What steps has or will Minnkota take in  
12 order to be prepared for any emergency situations  
13 that may arise either during or after construction  
14 of the project?

15          A.    The primary contractors are required to  
16 provide field safety officers. The construction  
17 manager will provide the field safety officers with  
18 the contact information and the response areas for  
19 the local emergency responders along the project  
20 route.

21               Minnkota will develop an emergency  
22 communications plan with the local EMS,  
23 firefighters, law enforcement and also the local  
24 county officials.

25               Procedures for notifying landowners of

1 emergency situations are in place for all of  
2 Minnkota's 3,000 existing miles of transmission  
3 lines presently in service, and those procedures  
4 will also be used for this project once it is in  
5 service, as well.

6 Q. And what steps will Minnkota take to  
7 ensure that the project is constructed in  
8 compliance with all applicable permits and in a  
9 manner that minimizes environmental impacts?

10 A. Minnkota plans to retain the services of  
11 an environmental inspector, and this inspector will  
12 be responsible for the training of construction  
13 personnel as they come onto the jobsites,  
14 overseeing correct placement of exclusion fencing  
15 or markers for identifying environmentally  
16 restricted areas, such as wetlands, streams.

17 They also will be responsible for  
18 monitoring construction for compliance with  
19 environmental conditions and requirements. This  
20 inspector will also monitor for site restoration  
21 following completion of construction activities.

22 Q. And then if you'll look at what's been  
23 previously marked and admitted as Exhibit D, can  
24 you identify that for us?

25 A. This is a copy of a certificate relating

1 to the order provisions sent to Minnkota by the  
2 Commission which has been executed by Minnkota.

3 Q. And who executed the document for  
4 Minnkota?

5 A. It was signed by Mr. Wally Lang, the vice  
6 president of transmission for Minnkota.

7 MS. SMITH: And at the previous hearing, I  
8 believe we did not have the tree and shrub  
9 mitigation specifications. We do have those, so I  
10 will distribute those now.

11 JUDGE HOBERG: And is that Exhibit Q?

12 MS. SMITH: No. This is a part of Exhibit  
13 D.

14 JUDGE HOBERG: A part of. Okay.

15 MS. SMITH: Yep. So, yes, we would just  
16 request that this be part of Exhibit D.

17 JUDGE HOBERG: Okay. Any objection to  
18 that?

19 MR. SAGSVEEN: No, Your Honor.

20 JUDGE HOBERG: All right. Then we'll  
21 consider that part of Exhibit D.

22 Q. (MS. SMITH CONTINUING) And in the  
23 certification it talks about -- in the tree and  
24 shrub mitigation specifications, in paragraph 8 it  
25 talks about the width of clear cuts through

1 windbreaks, shelterbelts and all other wooded  
2 areas, and that that is to be limited to 50 feet or  
3 less unless otherwise approved by the Commission.  
4 Is Minnkota requesting that the Commission approve  
5 a different clear cut width for the proposed  
6 project?

7 A. Yes, we are. With respect to the width of  
8 clear cuts through windbreaks, shelterbelts and all  
9 other wooded areas, Minnkota requests the  
10 Commission to authorize it to clear cut the entire  
11 150-foot-wide right-of-way, if necessary.

12 Q. And when would it be necessary for  
13 Minnkota to clear cut the entire right-of-way?

14 A. To meet the North American Electric  
15 Reliability Corporation, or NERC, standards for  
16 transmission line reliability, any tree that may  
17 inadvertently come into contact with a high-voltage  
18 transmission line is required to be identified and  
19 removed. This may require the clearing of the  
20 entire 150-foot-wide right-of-way in heavily wooded  
21 areas.

22 Also extremely tall trees in poor health  
23 just outside of the 150-foot right-of-way may also  
24 need to be selectively removed to meet NERC  
25 requirements.

1           Q.     And we'll talk just briefly about the  
2 local permits. Are there any county or township  
3 land use permits that are required for the project?

4           A.     Yes. Most of the counties and some  
5 individual townships require conditional use  
6 permits for this project.

7           Q.     And what counties or townships do require  
8 a conditional use permit?

9           A.     All the counties require a conditional use  
10 permit for approval of the project with the  
11 exception of Burleigh and Steele Counties. In  
12 those counties the individual townships will issue  
13 the conditional use permits.

14                     And the townships issuing conditional use  
15 permits are Painted Woods and Wilson Township in  
16 Burleigh County, Addie Township in Griggs County,  
17 Sharon and Franklin Townships in Steele County, and  
18 Fairfield, Logan and Lorretta Townships in Grand  
19 Forks County.

20           Q.     And what is the status of obtaining  
21 conditional use permits?

22           A.     In the counties, Eddy County has no formal  
23 process, but the county commissioners did issue a  
24 letter authorizing approval.

25                     All other counties have issued or

1       conditionally issued a conditional use permit for  
2       the project.

3               As far as the townships, all have issued  
4       or conditionally issued a permit or issued a letter  
5       of approval.

6               Q.     And based on the studies and analyses that  
7       have been conducted and on the testimony you have  
8       presented here today, what are some of the  
9       conclusions that Minnkota has reached regarding the  
10      proposed project as well as the proposed route?

11              A.     Minnkota has previously provided detailed  
12      testimony on the proposed project's need and  
13      importance to the region's electrical transmission  
14      infrastructure.  In the three years of preparatory  
15      work leading to today's route permit hearings, the  
16      need to make reliability and load serving  
17      improvements to secure the lowest cost solution to  
18      provide future generations with a dependable  
19      electrical supply has not diminished.  The proposed  
20      route is a result of Minnkota's extensive efforts  
21      to accommodate landowners' and other stakeholders'  
22      requests when selecting a route within the approved  
23      corridor, while also selecting a route that  
24      presents the least overall impact.

25              MS. SMITH:  I have no further questions.

1 JUDGE HOBERG: Thank you, Ms. Smith.

2 Mr. Sagsveen, do you have any questions of  
3 Mr. Hennes?

4 MR. SAGSVEEN: I do, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. SAGSVEEN:

7 Q. You mentioned that you have submitted  
8 paperwork to the FAA. Were you or have you been  
9 involved in that process or would that maybe be Mr.  
10 Phillips?

11 A. Mr. Phillips and Mr. Fasteen are the  
12 primary leads working with aviation, but I can  
13 answer questions on a general nature.

14 Q. I read in -- or in Exhibit 1 it indicates  
15 that you've submitted the paperwork to the FAA and  
16 I don't believe that there was a conclusion or  
17 resolution with the FAA, but if there is, could  
18 you -- and if I'm wrong, correct me, but could you  
19 update the Commission on the status of the talks  
20 with the FAA about the Grand Forks Airport, please?

21 A. The ongoing discussion with the airport  
22 authority and the interested parties from the  
23 school of aviation are continuing. There is a  
24 complicating factor in that there's another  
25 transmission line that runs through Grand Forks

1 County south of the airport, and this line is owned  
2 by the Western Area Power Administration, and the  
3 owners of that transmission line are in the process  
4 of upgrading that transmission line to also meet  
5 NERC requirements. That line was one of several in  
6 the state that was upgraded from a 115 line to a  
7 230 kV line to get additional capacity and it was  
8 upgraded on its existing structures.

9 Western Area Power Administration is now  
10 attempting to raise that line to meet the NERC  
11 clearance requirements for a 230 kV line. This  
12 requires the Western Area Power Administration to  
13 file an application with the FAA to increase the  
14 clearances to allow for a taller structure.

15 Minnkota is working with Western Area  
16 Power Administration to minimize the overall impact  
17 of both transmission lines to the airspace for the  
18 Grand Forks Airport. So we will work within their  
19 requested airspace that the Western Area Power  
20 Administration has made. So the status is that the  
21 Western Area Power application for consideration  
22 for slightly taller structures is still under  
23 public comment period.

24 Q. So are you testifying that the WAPA  
25 request for upgrade is impacting the Minnkota's

1 process with the FAA at the moment?

2 A. That's correct, because we have to cross  
3 over the WAPA line, and the ultimate determination  
4 for that crossing won't be resolved until the  
5 Western Area Power Administration issue is  
6 resolved.

7 Q. And do you have a timeline that you're  
8 aware of for that resolution?

9 A. I don't. Mr. Phillips may be able to  
10 answer that question directly.

11 Q. So is that the only -- the last issue with  
12 respect to the FAA and the Grand Forks County line  
13 in the airport area?

14 A. Again, that's correct. Minnkota is  
15 working with Western Area Power to minimize the  
16 impact, but, again, WAPA is asking for some  
17 additional clearance to accommodate their need to  
18 raise their structure and that ultimately affects  
19 the height of our structure.

20 Q. And so there aren't any other remaining  
21 issues with respect to the FAA?

22 A. No.

23 Q. Would Mr. Phillips be able to testify in  
24 more detail about the route modifications in Grand  
25 Forks County, or is that something that you could

1 discuss?

2 MS. SMITH: I think that would be Mr.  
3 Phillips.

4 THE WITNESS: That's fine.

5 MR. SAGSVEEN: I don't have any further  
6 questions, Your Honor.

7 JUDGE HOBERG: Thank you.

8 Mr. Lein, any questions?

9 MR. LEIN: No questions, Your Honor.

10 JUDGE HOBERG: Thank you.

11 Commissioner Clark, please.

12 COMMISSIONER CLARK: Just a couple.

13 Thanks.

14 **EXAMINATION**

15 **BY COMMISSIONER CLARK:**

16 Q. So the questions about the alkali flats  
17 and what was done with that somewhat large corridor  
18 that was permitted should be directed towards Mr.  
19 Phillips; is that --

20 A. I would be glad to answer that.

21 Q. Okay. Refresh my memory. The Commission  
22 had expanded the corridor in that, I'll describe it  
23 as somewhat central Grand Forks County alkali flats  
24 area. Could you talk about any modifications that  
25 were made or not between the initial corridor

1 application and the route permit that we have  
2 today?

3 A. There was two interested parties. The  
4 Dakota Audubon and the Prairie Partners were  
5 concerned with some native -- native grasslands,  
6 and that land is owned by the State Trust  
7 Department, so the State Trust Department asked us  
8 to consider moving to the western edge of their  
9 parcel, so we did move the transmission route to  
10 the western edge of that parcel, and we did that in  
11 consultation with the Prairie Partners and the  
12 Dakota Audubon.

13 Q. Okay. And that's where it hugs that  
14 western edge of the corridor for about two miles;  
15 is that correct?

16 A. That's correct.

17 Q. And then jogs over, I assume, because of  
18 that wetland that's there. You're unable to run  
19 right through the wetland so you move east after  
20 that?

21 A. That's correct. And, again, that was  
22 at -- that particular landowner is a buffalo  
23 rancher, and his preference was for us to be on the  
24 eastern part of his parcel, so we accommodated  
25 that.

1 Q. Okay. Thanks. With regard to this line  
2 crossing, the Western line crossing, tell me which  
3 of the lines is the Western line that you're having  
4 to cross. I see that it must be the one that runs  
5 basically diagonal southwest to northeast; is that  
6 correct --

7 A. Correct.

8 Q. -- as opposed to the -- there's one that  
9 basically parallels Highway 2. That one is not  
10 being crossed?

11 A. That's correct.

12 Q. And is your line proposed to go over the  
13 Western line, or does the Western line go over  
14 yours?

15 A. It's convention that the higher voltage  
16 line crosses over the top of a lower voltage line.

17 Q. Okay.

18 A. So Western Area has agreed to leave their  
19 conductor at its existing height at that crossing  
20 location, they would use special structures to  
21 accommodate that, so our overall height won't  
22 change to accommodate Western's increase, but  
23 Western will be putting taller poles basically to  
24 the north and south of that crossing location,  
25 which is why they filed for the additional airspace

1 clearance.

2 COMMISSIONER CLARK: Okay. Those are all  
3 the questions I have. Thanks.

4 JUDGE HOBERG: Thank you, Commissioner  
5 Clark.

6 Commissioner Cramer, please.

7 COMMISSIONER CRAMER: Mine have been  
8 answered. Thank you, though.

9 JUDGE HOBERG: Thank you.  
10 Commissioner Kalk, please.

11 **EXAMINATION**

12 **BY COMMISSIONER KALK:**

13 Q. Just one, Mike. Tell me the -- you talk  
14 about landowner requests, you evaluated technical  
15 and cost basis. Is there like a formula that was  
16 used that it cost X amount of dollars, you wouldn't  
17 do it? I mean, how do you get to that, because  
18 some landowner requests were met and some weren't?

19 A. Anytime that we do deviate from the route  
20 there is an economic cost to that because of the  
21 choice of structure type typically to put a corner  
22 in. Anytime you turn a corner you add cost to the  
23 project.

24 So the process of overall evaluation is  
25 what other impact would we be lessening if we

1 choose to work with the landowner and accommodate  
2 their request by, you know, deviating from our  
3 initial route application. So the factors that we  
4 looked at were, you know, does it lessen impact to  
5 cultural or wetlands.

6 And most of the time where we do agree to  
7 spend additional dollars to change the route is  
8 that it also helps us to avoid identified cultural  
9 or maybe move a pole out of a wetland or near a  
10 wetland. So there's -- this cost-benefit ratio  
11 kind of is -- you know, there's no formula for it,  
12 but it's basically how do we best meet the needs of  
13 the local landowners and yet minimize the overall  
14 impacts. So that was our goal. If we could -- say  
15 we'll spend a few dollars, but it does help satisfy  
16 the landowner request, but it also helps us meet  
17 the minimum impact criteria, then the investment  
18 was made.

19 Q. I guess what I'm trying to figure out, if  
20 the landowner wanted to move the line, if it was  
21 \$5,000, \$10,000, \$20,000, it sounds like -- you're  
22 saying you used a formula, but it also sounds like  
23 maybe a lot of just intuition, you know, this  
24 doesn't seem to make sense or it does make sense.

25 A. That's correct. It's a case-by-case

1 basis, and sometimes for technical reasons moving  
2 the line to satisfy one landowner puts it closer to  
3 another residence or, you know, has impact on a  
4 cultural, historical and the cost to move is in the  
5 hundreds of thousands of dollars, not the tens of  
6 thousands of dollars.

7 Q. Do you have somewhere documented where  
8 you've received requests to move lines and you  
9 weren't able to move them?

10 A. I think this would be documented in the  
11 individual processes with the right-of-way agents  
12 with the landowners. You know, we have a procedure  
13 for a landowner makes a request to move the line  
14 and we analyze that request and we respond back to  
15 that landowner with whether we can accommodate that  
16 request or not.

17 Q. So every landowner that asked to move a  
18 line should have gotten some type of answer back  
19 from you written or verbal?

20 A. Most of the conversations are verbal. We  
21 did not have written followup with these  
22 landowners.

23 JUDGE HOBERG: The question was, did all  
24 of them get verbal or written?

25 THE WITNESS: Yes, they all got verbal or

1 written.

2 Q. (COMMISSIONER KALK CONTINUING) I guess I  
3 did have one more question. We may have talked  
4 about this before, but based on current usage, how  
5 long will this transmission line meet demand? Is  
6 it the next 30 years or 40 years?

7 A. We typically like to plan in a 50-year  
8 time frame, so this transmission line -- you know,  
9 some of the decisions made for the conductor size  
10 and the capability of the line does look forward  
11 into that 30- to 50-year time frame.

12 COMMISSIONER KALK: Okay. Thank you.

13 JUDGE HOBERG: Thank you, Commissioner  
14 Kalk.

15 Commissioner Cramer, please.

16 **EXAMINATION**

17 **BY COMMISSIONER CRAMER:**

18 Q. Well, let's explore this a little more,  
19 and I suspect that, depending on some landowners  
20 eventually who do testify today, there will be a  
21 chance for rebuttal, as we know.

22 What could I expect today from landowners  
23 that weren't in Washburn in terms of possible  
24 concerns that may or may not have been addressed?

25 A. Well, I hope that you hear from the

1 landowners that we did meet with any of them that  
2 expressed concerns and we -- like I said in my  
3 testimony, that we spent every effort trying to  
4 analyze their request from a technical and an  
5 economic basis, and we were and are willing to work  
6 with the majority of landowners to meet those  
7 requests, but there is a few, you know, exceptions  
8 that we could not meet.

9           And the majority of the time is when a  
10 landowner asks us to impact another landowner and  
11 that landowner does not agree to host -- you know,  
12 to remove the poles from another landowner's  
13 property to put them on theirs. That's the primary  
14 reason. Most of the successful answers to this  
15 were with the landowner just rerouting on their own  
16 land, where it didn't impact another landowner. So  
17 that's where our highest success is.

18           Q.     So a willing -- maybe reluctantly willing,  
19 but willing landowner that was asked to move it on  
20 their land, they're, again, reluctant to, but  
21 willing to at least host it, but in another place,  
22 you're able to pretty well take care of those for  
23 the most part?

24           A.     And that's correct. I think the few  
25 instances we'll probably hear in our Carrington

1 hearing were impacted by the wind leases that are  
2 existing. They limited our ability to accommodate  
3 individual landowner requests without impacting the  
4 proposed output of the wind farm, so --

5 Q. Let's talk about that for a minute then.  
6 If there's a wind lease that exists, wind not being  
7 a mineral, of course, what -- what subordinates?  
8 Is it the chronology?

9 A. Chronology, yes.

10 Q. Okay. So if there's already a wind lease,  
11 then you're limited?

12 A. That's correct.

13 Q. Okay. And I suspect the landowner is not  
14 likely to acquiesce to a transmission line in lieu  
15 of a pending possibly -- possible lucrative wind  
16 lease?

17 A. That's why we worked with the wind  
18 developers to help -- have them review our proposed  
19 transmission line on the impact of the proposed  
20 transmission -- or excuse me -- proposed wind farm,  
21 and the only -- they would give us concurrence on  
22 our location if it could be demonstrated that it  
23 didn't affect the overall capacity factor of the  
24 wind farm, so, otherwise, it didn't impact the  
25 placement of planned turbines.

1           Q.     With that in mind, of course, we're ten  
2 months from the current production tax credit  
3 expiring. Does that change the cost-benefit  
4 analysis and the risk involved in the possible --  
5 possibly having that expire and no wind farms being  
6 built?

7           A.     That changes the equation, yes.

8           COMMISSIONER CRAMER: I have nothing  
9 further.

10          JUDGE HOBERG: Thank you, Commissioner  
11 Cramer.

12          Anything further from the Commissioners?

13          No.

14          Ms. Smith, anything further of Mr. Hennes?

15          MS. SMITH: No, Your Honor.

16          JUDGE HOBERG: Mr. Sagsveen?

17          MR. SAGSVEEN: No, Your Honor.

18          JUDGE HOBERG: Thank you, Mr. Hennes.

19          THE WITNESS: Thank you.

20          JUDGE HOBERG: I'm just curious, how is  
21 the attendance sheet doing? Has everybody signed  
22 the attendance sheet so we have a record of who's  
23 present? Okay.

24                 As I indicated earlier, after the next two  
25 witnesses of the applicant, then we'll get to the

1 public testimony section and I'll be looking at the  
2 attendance sheet. You can hold onto it for now.  
3 We'll probably take a recess after the applicant's  
4 witnesses.

5 Please call your next witness.

6 MS. SMITH: Duane Phillips.

7 THE WITNESS: Good morning.

8 JUDGE HOBERG: Good morning, Mr. Phillips.

9 You heard the admonition I gave earlier in regard  
10 to perjury; correct?

11 THE WITNESS: I did.

12 **DUANE PHILLIPS,**

13 being first duly sworn, was examined and testified  
14 as follows:

15 JUDGE HOBERG: Ms. Smith, please.

16 **DIRECT EXAMINATION**

17 **BY MS. SMITH:**

18 Q. Could you state your full name for the  
19 Commission?

20 A. Yes. My name is Duane Phillips.

21 Q. And you're employed by Stanley  
22 Consultants, Inc.; is that right?

23 A. That is correct.

24 Q. And what is your business address?

25 A. My business address is 8000 South Chester

1 Street, Suite 500, Centennial, Colorado.

2 Q. And could you just briefly explain your  
3 work history and your education?

4 A. Yes. My educational background is in  
5 electrical engineering and also nuclear  
6 engineering. I've got over 32 years of experience  
7 in the energy business, including generation,  
8 substation, transmission and distribution areas. I  
9 have over 24 years of project and construction  
10 experience designing, building and operating  
11 high-voltage power delivery systems, and I have  
12 been a project manager for about 15 high-voltage  
13 transmission projects which cover about 750 miles.

14 Q. And could you discuss your role with  
15 respect to this proposed project?

16 A. My role with this project is the project  
17 manager or the lead of the engineering team, which  
18 includes system study work, project conceptual  
19 work, the corridor selection process, the  
20 preliminary design, aerial and ground survey work,  
21 detailed electrical study work, technical field  
22 study work, the right-of-way process and  
23 acquisition, the final detailed engineering and  
24 design, and will also include construction  
25 management and support.

1           Q.     And have there been any changes in the  
2 proposed project right-of-way width, the design or  
3 associated facilities since the public hearings on  
4 the Certificate of Corridor Compatibility  
5 application?

6           A.     There have been no changes other than  
7 selecting a route centerline and determining the  
8 structural locations along the route centerline.

9           Q.     And turning to project construction, could  
10 you discuss for us the personnel that will be  
11 involved in the construction of this proposed  
12 project?

13          A.     Yes.   The personnel who will be involved  
14 will be the construction manager, who will manage  
15 our construction and field activities during  
16 construction and will represent Minnkota as the  
17 owner.

18                   Then there will be a survey team out there  
19 that provides staking of the structural locations,  
20 of the right-of-way boundaries and marking of the  
21 sensitive areas that need to be avoided during  
22 construction.

23                   Then there will be a clear clearing and  
24 fencing contractor that will clear areas along the  
25 right-of-way, replace or move fencing if it is

1 required, and install gates and fencing and provide  
2 right-of-way access for construction and  
3 maintenance.

4 Then we'll have a foundation contractor  
5 that will install drilled pier concrete foundations  
6 for each one of the structures.

7 And there will be a line contractor that  
8 will install the structures and basically build the  
9 line.

10 And then we'll also have field engineers,  
11 an environmental inspector and construction  
12 inspectors that will monitor construction and  
13 ensure that the line is built to design and  
14 construction specifications.

15 Q. And are there any limitations on when  
16 construction may occur for any portions of the  
17 project?

18 A. Yes, there are. There have been  
19 environmentally sensitive areas that have been --  
20 excuse me -- identified as requiring construction  
21 in an off-season period. Good examples of these  
22 are the Missouri River basin area and the alkali  
23 flats native grassland areas.

24 Some areas with a higher density of  
25 wetlands will be constructed off-season for ease of

1 constructions efforts and also to facilitate less  
2 disturbance to the ground during construction.

3 Q. And will Minnkota conduct environmental  
4 monitoring during the construction of the project?  
5 And I know you've already mentioned there would be  
6 an environmental inspector.

7 A. Yes, monitoring will be conducted  
8 throughout the construction period. Prior to  
9 construction personnel working in an area, any  
10 identified environmentally sensitive areas will be  
11 clearly marked in order to prevent disturbance.

12 In addition, construction personnel will  
13 all be trained in the recognition and handling of  
14 environmentally sensitive areas, what to avoid and  
15 what to do if an unexpected area or artifacts are  
16 discovered. And, as mentioned, there will be an  
17 environmental inspector assigned full-time.

18 Q. And what are the steps that are involved  
19 in construction of a project like this?

20 A. The major areas involved are the  
21 right-of-way preparation, the actual construction  
22 period and then restoration.

23 Q. Could you start with preparation and  
24 discuss for us what preparation of the right-of-way  
25 involves?

1           A.     Yeah.   Right-of-way preparation involves  
2     the right-of-way being periodically marked to  
3     identify the edges of the right-of-way, so  
4     construction activities for the most part remain  
5     inside the right-of-way boundaries.   And sensitive  
6     areas will be marked to provide inadvertent  
7     disturbance during construction.

8           Trees and shrubs are then cleared.   And  
9     then we move aside the good topsoil in agricultural  
10    areas.   And then staking of specific structure  
11    locations.   There is some compaction of specific  
12    work areas within the right-of-way.   And then  
13    access points along roads, ditches, et cetera, are  
14    then graded to allow access.

15          Q.     And could you discuss the construction  
16    process for the project?

17          A.     Yes.   The construction process involves  
18    fence gates being installed and fences being moved  
19    or replaced, and that, again, is just to allow  
20    access to the right-of-way.

21                 Then the foundation, the contractor will  
22    auger or drill out the foundation excavations and  
23    then the concrete is poured.   After the concrete  
24    cures, the structure is then put together or framed  
25    and lifted into place and secured on the

1 foundation. And then the wires are then strung  
2 through the structures and set at the proper  
3 tension, which is called stringing and sagging.

4 Q. And what steps will be taken to restore  
5 the right-of-way following construction?

6 A. After construction has been completed in a  
7 given area, the right-of-way then gets cleaned up  
8 of any construction materials, the soil then gets  
9 de-compacted using deep soil techniques, the  
10 topsoil is then pushed back in place and returned  
11 to the preexisting grade. Then temporary access  
12 measures, any that had to be put in, are then taken  
13 out. And then there's a land review with the  
14 landowner following work in that area to make sure  
15 that the restoration was completed satisfactory.

16 Q. And what steps will Minnkota take to  
17 minimize impacts that may take place during  
18 construction?

19 A. There are a number of things that we like  
20 to do to try to minimize impacts. One is cleaning  
21 up the right-of-way, making sure that all of the  
22 spoils, if you will, and construction till get  
23 cleaned up.

24 During the construction period public  
25 safety around excavations is very important.

1 Excavated sites will be filled the same day or will  
2 have safety measures to prevent accidents.

3 Interruption of land use activities, the  
4 landowner liaisons and the right-of-way agents will  
5 work to inform landowners when construction will be  
6 in any area and work with the landowner to minimize  
7 interruptions.

8 Disruption of sensitive areas, the  
9 construction contractors have training to identify  
10 those areas and what to do near them. All  
11 sensitive areas will be marked. Environmental  
12 inspector will also be out there to monitor  
13 construction activities near sensitive areas.

14 Then we're also concerned about the  
15 traffic flow, so traffic plans will be developed  
16 and publicized so that the public knows where the  
17 construction activities will be and when we plan on  
18 being out there to try to minimize traffic  
19 problems.

20 And then during restoration, compaction of  
21 soil, construction contractors are contractually  
22 liable to de-compact the soil, and that will be  
23 monitored by the construction inspection team.

24 And then road maintenance while we're out  
25 there, as well. So preexisting conditions will be

1 determined and agreed to with the county and  
2 township road supervisors, and the construction  
3 contractors are also contractually obligated to  
4 maintain the roads and to restore the roads back to  
5 the preexisting conditions at least, and that will  
6 also be monitored by the construction inspection  
7 team.

8 Q. Now, talk a little bit about route  
9 development, some of the criteria and factors that  
10 play a role in the development of the project  
11 route. Could you first tell us what was considered  
12 from an engineering and design perspective during  
13 the process of selecting this route?

14 A. Yes. The major considerations we had were  
15 compliance with the Siting Act and the siting  
16 criteria, minimizing environmental impacts,  
17 addressing agency concerns, addressing landowner  
18 concerns, and then, lastly, a feasibility from a  
19 design and construction perspective.

20 Q. And were the exclusion area, avoidance  
21 area, selection and policy criteria set forth in  
22 the Commission's rules considered by Minnkota when  
23 selecting the proposed route?

24 A. Yes, they were, and a discussion of those  
25 criteria is provided in Section 3 of the Route

1 Permit Application, and the exclusion and avoidance  
2 area criteria will be discussed further by the next  
3 witness, Mr. Brian Hunker.

4 Q. And were the factors set forth in North  
5 Dakota Century Code Section 49-22-09 considered  
6 when selecting the project route?

7 A. Yes, they were, and a discussion of those  
8 factors is provided in Section 7 of the Route  
9 Permit Application.

10 Q. And then if you'll turn to Exhibit E1  
11 through E10, and I think we focus on the last  
12 couple of pages of E10 this time around, E8, E9 and  
13 E10, I guess, and we also have those up on the  
14 easels to look at. But if you have those in front  
15 of you, using those maps, could you walk through  
16 the project route for the Commission and discuss  
17 the selection criteria that were taken into account  
18 during that process?

19 A. Yes, I will.

20 JUDGE HOBERG: And, again, are these maps  
21 back in the back of the room?

22 MS. SMITH: They are. There should be a  
23 binder in the back that has these maps in them and  
24 then the boards have the same maps that we're  
25 talking about that are in the exhibit binders.

1 JUDGE HOBERG: That's E what, E8?

2 MS. SMITH: E8, E9 and E10.

3 THE WITNESS: I'll backlash here. When we  
4 had the corridor hearings, we had identified that  
5 there was a number of corridor critical points.  
6 One was the western terminus at the Center  
7 Substation and one was the eastern terminus at the  
8 Prairie Substation just outside of Grand Forks.  
9 And then we had two critical crossings. One was at  
10 the Missouri River, which we talked about at the  
11 Washburn hearing, and the other one was at the  
12 Sheyenne River, which is -- which is located in the  
13 left center of Exhibit E, or Echo, 8. And so  
14 really it was the crossing on the Sheyenne River  
15 that drove the corridor selection through this area  
16 and into Grand Forks County.

17 I will talk about the route as being  
18 placed within the corridor and any areas that we  
19 had challenges with.

20 Pretty much from the Sheyenne River in the  
21 left center of Exhibit Echo 8, the route just  
22 follows the thousand-foot-wide corridor coming out  
23 of Griggs County, going into the western portion of  
24 Steele County, and then entering Nelson County  
25 where we take a diagonal up through.

1           That takes us off Exhibit Echo 8 and takes  
2 us onto Echo 9, which begins down by Aneta. Then,  
3 again, we are just moving up through the middle of  
4 the corridor that was approved, and then crossing  
5 over the Nelson-Grand Forks county line and then  
6 going into Grand Forks County. And, again, through  
7 this area, although the route just basically  
8 follows the center of the corridor that was  
9 approved, and that takes us into -- in and through  
10 the western portion of Grand Forks County and off  
11 the Echo 9 exhibit and then brings us over to the  
12 Echo 10 exhibit to the left-hand side -- the lower  
13 left-hand side, and, again, this is just moving  
14 through the middle of the corridor to where we come  
15 parallel with -- with a diagonal portion that goes  
16 across that alkali flats region that we talked  
17 about during the corridor hearings and was  
18 addressed earlier. That goes across the English  
19 Coulee retention system and goes into an area that  
20 out of the corridor hearings was widened out.

21           Through this area, as was testified  
22 earlier, there were two main concerns that drove  
23 that area. One was that native grass line that was  
24 owned by the North Dakota Trust Land, avoiding  
25 that, so staying on the west side of that corridor,

1 and then the shifting to the east side of that  
2 corridor to accommodate the wetlands that were on  
3 the western portion of that corridor and allaying  
4 the concerns through that area.

5 Then we enter into the last township,  
6 Brenna Township in Grand Forks County, where the  
7 corridor was widened a little bit, as well. And  
8 after a number of meetings with landowners,  
9 although we had moved the route centerline down to  
10 the southern portion of that widened corridor area,  
11 which basically goes across the quarter section of  
12 a line through that area, that also goes through  
13 that section just south of the Grand Forks Airport  
14 where we needed FAA approval for that area, and  
15 then basically comes up and parallels some existing  
16 lines coming to the Prairie Substation.

17 Q. (MS. SMITH CONTINUING) And could you --  
18 you mentioned the FAA. Could you just discuss a  
19 little bit further the FAA approval and that  
20 process?

21 A. Yes, I will. Mr. Hennes went through a  
22 very good explanation of where we're at with the  
23 FAA. The one thing that I did want to add is at  
24 this point in time right now, we have FAA approval  
25 for the structure heights through that section, so

1 the only FAA approval that we would need for the  
2 heights of the structures is if we have to increase  
3 those heights because of the WAPA line change.

4 Q. All right. And then if you'll look at  
5 Exhibit G1 through G5, and actually we'll just  
6 focus on the last two pages, G4 and G5, and we're  
7 going to put boards up of those, as well, so we'll  
8 give just a minute to do that.

9 A. Excuse me.

10 Q. And G1 through G5 addresses the corridor  
11 modifications that Minnkota is requesting and G4  
12 and G5 are the closest ones to Grand Forks. Could  
13 you walk us through those particular exhibits and  
14 explain the corridor modifications?

15 A. Yes, I will. The corridor modification  
16 that's located on Exhibit Golf 4 was the one where,  
17 after meetings with Dakota Audubon and Prairie  
18 Partners and with field meetings with the Prairie  
19 Partners and also discussions with the North Dakota  
20 Trust Land, their largest concern in that area was  
21 for us to move to the west side of that corridor to  
22 avoid two parcels that were native grassland in  
23 that area.

24 And then we had conversations with the  
25 landowners to the north of that. There is a very

1 large wetland area that was -- that encompasses a  
2 little over 50 percent of the width of the proposed  
3 corridor. And originally we had thought to take  
4 that corridor up basically just to the east side of  
5 that wetland, and in conversations with those  
6 landowners, and Mr. Hennes had testified to that  
7 earlier, the landowner had asked us to push it over  
8 closer to the road in that area, which is 19th  
9 Street, which then took it slightly out of the  
10 corridor that was approved. So that was basically  
11 made on that northern portion at the landowner's  
12 request up there.

13 On Exhibit Golf 5, this was an area where  
14 the corridor had been expanded down to the quarter  
15 line, and in conversations with landowners along  
16 this east-west run there, the landowners had asked  
17 us to move the structures as close to the quarter  
18 line as was possible.

19 So in accomplishing that it ended up that  
20 the right-of-way, the 150-foot right-of-way, then  
21 was on both sides or straddled that quarter line  
22 and took us just a little bit out of the corridor  
23 that was approved. So, again, that is one area  
24 that we're asking for an expansion of that  
25 corridor.

1 MS. SMITH: I have no further questions.

2 JUDGE HOBERG: Thank you, Ms. Smith.

3 Mr. Sagsveen, please.

4 MR. SAGSVEEN: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 **BY MR. SAGSVEEN:**

7 Q. You mentioned your work with the Prairie  
8 Partners in the alkali flats. Have you resolved --  
9 is Minnkota in a situation or position now where  
10 they've resolved its issues with the Prairie  
11 Partners in the alkali flats?

12 A. To my knowledge, yes. We had arranged, I  
13 mentioned earlier, a field meeting with the Prairie  
14 Partners who went out with us and looked at our  
15 proposed centerline out there, suggested a couple  
16 of changes, we have made those changes, and they  
17 have told us that they were -- that they were --  
18 that those changes were satisfactory.

19 Q. So when you look at Exhibit E10 where the  
20 proposed route parallels the WAPA line, then it  
21 crosses the English Coulee, Prairie Partners didn't  
22 have any other objections or any comments to the  
23 location of that line in that area?

24 A. No, they did not. Their main concern was  
25 with -- was with those native grassland sections

1 just north of that diagonal portion, so they did  
2 not have any issues with where we were paralleling  
3 and going across that English Coulee retention  
4 area.

5 Q. And those parcels were in Exhibit G4,  
6 those were the primary concerns?

7 A. Actually, the parcels would be just south  
8 of what's exhibited on Exhibit G4. If you look at  
9 Echo 10, it's the parcels in that section right  
10 there, which will be Section -- my eyes aren't  
11 quite as good as they used to be.

12 Q. Section 25?

13 A. That sounds correct.

14 Q. You don't -- you don't need to describe  
15 the exact section. I think I have a good idea  
16 where. The Commissioners can follow up if they  
17 would like to.

18 A. It's in Section 36.

19 Q. Okay. Thank you. And the construction  
20 within the alkali flats you mentioned or other  
21 sensitive areas, there would be off-season  
22 construction. Can you describe what you mean by  
23 that?

24 A. Yes. What I mean by off-season is that  
25 for many of the areas the off-season is driven by

1 the environmental concerns, particularly migratory  
2 species, which Mr. Hunker can talk about in a lot  
3 more detail as to the exact dates of that. So in  
4 those areas like the native grassland areas, the  
5 Missouri River basin, those are areas that will be  
6 driven by those species and not interrupting or not  
7 impacting them during the construction period.

8 The other -- the other area that, I guess,  
9 I would classify as off-season construction are  
10 areas that we know are wet -- wetter during other  
11 times of the year to minimize the disruptions.  
12 That English Coulee retention system is a good  
13 example of that, of that being an area that we  
14 heard at the corridor hearings that there are a lot  
15 of grassland-type birds that are out there in the  
16 English Coulee retention system, in particular  
17 floods back during the spring. I mean, that's part  
18 of the purpose of it, so we would want to get in  
19 there during -- during the dryer portions on there,  
20 not only to minimize the wildlife impact, but also  
21 to minimize disruption and just like getting the  
22 heavier construction equipment in there.

23 Q. You also mentioned the Sheyenne River. In  
24 your studies, the flood studies -- the hydrology  
25 studies, have you modeled or prepared for

1 additional flow from the Devils Lake outlets that  
2 are being planned and constructed?

3 A. Yes, we have. The hydrology study that  
4 was performed took into account potential impacts  
5 from Devils Lake coming down the Sheyenne River and  
6 what we would -- what could be anticipated for a  
7 100-year floodplain level through the area that  
8 we're going across.

9 Q. When I look at Exhibit E10, I see two red  
10 dots where the line -- after it turns north and it  
11 turns east towards Grand Forks. I presume that  
12 you've acquired waivers from those structures?

13 A. Yes, we do.

14 MR. SAGSVEEN: And I forget, do you plan  
15 on admitting the waivers -- are we going to --  
16 through Mr. Hunker?

17 MS. SMITH: Yes, through Mr. Hunker.

18 MR. SAGSVEEN: I don't believe I have any  
19 additional questions.

20 JUDGE HOBERG: Thank you, Mr. Sagsveen.  
21 Mr. Lein, anything?

22 MR. LEIN: No questions, Your Honor.

23 JUDGE HOBERG: Thank you.

24 Commissioner Clark, please.

25

**EXAMINATION**

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**BY COMMISSIONER CLARK:**

Q. Just real quick to tie back on what Mr. Sagsveen just asked. So the occupied residences, they've all received waivers -- you've received waivers from those that are within the 500-foot avoidance area?

A. Yes, we have.

Q. They just haven't been admitted to the record yet?

MS. SMITH: That's correct.

Q. (COMMISSIONER CLARK CONTINUING) Is that true of the entire line, or are we just talking about the particular portion, the eastern end of the project?

A. That is correct, for the entire line, sir.

COMMISSIONER CLARK: Okay. Thank you.

JUDGE HOBERG: Thank you, Commissioner Clark. Anything further, Commissioner Clark?

COMMISSIONER CLARK: No.

JUDGE HOBERG: Commissioner Cramer, please.

COMMISSIONER CRAMER: Well, I'm going to ask about -- as I look at landowners that have since walked in since we started, I'm fairly

1 certain we're going to have at least one that will  
2 testify that is not part of E8, 9 or 10, but  
3 probably E7. E1 through 10 have all been --

4 JUDGE HOBERG: Yes, they have all been  
5 admitted.

6 COMMISSIONER CRAMER: They've all been  
7 admitted. Okay. All right. Then I think what I  
8 will do is just wait until perhaps that landowner  
9 testifies, in case he does not, but --

10 JUDGE HOBERG: Okay. Thank you,  
11 Commissioner Cramer.

12 Commissioner Kalk, please.

13 **EXAMINATION**

14 **BY COMMISSIONER KALK:**

15 Q. Thank you, Duane, for your testimony.  
16 You've got the same cold I do.

17 A. Yes, I do.

18 Q. Let me ask you this. Tony talked about  
19 some of the homes within 500 feet. If there's room  
20 inside the corridor, why didn't you just deviate  
21 the route farther north or south to get them out of  
22 that 500-foot range? Because it looks like in  
23 several spots you could have just deviated well  
24 within the corridor and moved farther away.

25 A. In most of those instances we're within

1 500 feet, we are -- we are just within that 500  
2 feet, and had we moved the route centerline, that  
3 would have had other impacts, for instance, impacts  
4 to land used by moving those structures further out  
5 into tilled fields and that type of thing, and it  
6 was actually more preferable to the landowners in  
7 that area that we remained on the route centerline  
8 that we were on.

9 Q. Can you say that -- can you say that  
10 across the board, though, because it just seems  
11 some spots -- maybe get a little more detailed --  
12 that you could have just wandered a little bit  
13 farther away from, because they're not all running  
14 down the roads. There's one northeast of Aneta  
15 that's not adjacent to any roads. It's across a  
16 field.

17 MS. SMITH: Can I ask what exhibit you're  
18 referring to?

19 COMMISSIONER KALK: I'm on E9.

20 Q. (COMMISSIONER KALK CONTINUING) Northeast  
21 of Aneta there's a home that's within the 500-foot  
22 range and there's no road there. You could have  
23 easily, it looks like. So, I mean, can you say  
24 with absolute certainty that that's what the  
25 landowner wanted, they didn't want it wavered out a

1 little bit farther?

2 A. Well, we had those discussions with each  
3 one of the landowners, so when we proposed the  
4 centerline, we would propose the centerline, we  
5 would talk about that proposed centerline. For  
6 instance, the Aneta diagonal that goes through that  
7 portion of Aneta, we are very limited by the  
8 wetlands that are on either side of that. So to  
9 change that angle or to move it east or west or  
10 north and south would have then incurred further  
11 wetland impacts, that we really try to get a  
12 centerline in there that minimizes to the greatest  
13 extent possible and then we would go and have a  
14 conversation with that landowner. In all nine of  
15 the cases, though, if the landowner had not been  
16 amenable to --

17 Q. They wouldn't have signed the waivers?

18 A. Yeah, they wouldn't have signed the  
19 waivers and we would have -- we would have had to  
20 have changed the route centerline for each one of  
21 those.

22 So in each one it was a conversation with  
23 the landowner to talk about -- to talk about design  
24 and what was going on on either side of that  
25 landowner, and in all nine cases the landowners

1 were amenable to that.

2 COMMISSIONER KALK: Okay. Thank you.

3 JUDGE HOBERG: Thank you, Commissioner  
4 Kalk.

5 Commissioner Clark, please.

6 **FURTHER EXAMINATION**

7 **BY COMMISSIONER CLARK:**

8 Q. Real quickly, in some other transmission  
9 line cases we have had, and the one that comes to  
10 mind is Xcel 345, the Cap X projects from St. Cloud  
11 to Fargo, they indicated that they would be  
12 employing the use of helicopters as part of the  
13 construction practices as a way to minimize impact  
14 on the land, so on and so forth. Are those being  
15 anticipated for construction of this 345?

16 A. I don't have the exact numbers with me,  
17 but at least half of the construction contractors  
18 that are bidding on the project have indicated that  
19 they will plan on using a helicopter to string in  
20 the wire, which -- which will greatly minimize the  
21 traffic down the right-of-way.

22 Q. At what point will you know if those  
23 contractors who bid to do the project will be the  
24 ones that are selected and whether helicopters will  
25 be employed? I mean, understanding that either

1     might be an acceptable construction practice, I  
2     think the testimony we've received in other cases  
3     has been that there's minimization of impact on the  
4     landscape when helicopters are being able to be  
5     employed. I'm wondering when the Commission would  
6     be able to know if those contractors have been  
7     employed.

8           A.     The line construction contractor bid is  
9     out right now, as a matter of fact. We had a  
10    prebid meeting this week. So we can -- we can have  
11    that information available for the Carrington  
12    hearing to at least ask the line contractors if  
13    that's what their intent is, and I can go back in  
14    and look at the presentation notes that they gave  
15    us and see which ones talked about it and which  
16    ones hadn't.

17          Q.     Is there a preference given in the bid  
18    specs to those who employ those construction  
19    practices?

20          A.     The bid -- the bid specifications under  
21    RUS contract guidelines are pretty limited and  
22    they're pretty specific associated with the RUS  
23    guidelines that will be one of the considerations  
24    looked at. I don't know that it has that much of a  
25    heavy weighting factor on that contractor, though.

1 COMMISSIONER CLARK: Okay. Thank you.

2 JUDGE HOBERG: So it's not -- there's no  
3 preference in the --

4 THE WITNESS: There's no specific  
5 preference to that, no, but it is a consideration.

6 JUDGE HOBERG: Thank you, Commissioner  
7 Clark.

8 Any further questions, Commissioners?

9 COMMISSIONER CRAMER: No. Thank you.

10 JUDGE HOBERG: Thank you. Ms. Smith,  
11 please.

12 MS. SMITH: I have nothing further.

13 JUDGE HOBERG: Mr. Sagsveen?

14 MR. SAGSVEEN: No, Your Honor.

15 JUDGE HOBERG: Thank you, Mr. Phillips.

16 THE WITNESS: Thank you.

17 JUDGE HOBERG: Just so the audience knows,  
18 we have one more applicant witness and then we're  
19 going to take a short recess so I can look at the  
20 attendance sheet, and then we'll take public  
21 testimony.

22 MS. SMITH: You might need to check and  
23 see if she needs a break.

24 JUDGE HOBERG: Denise, are you okay?

25 (Discussion had off the record.)

1 JUDGE HOBERG: Let's take a five-minute  
2 recess then.

3 (Recess taken.)

4 JUDGE HOBERG: All right. Let's go back  
5 on the record. We're back after a short recess.

6 Commissioner Cramer is still here. He's  
7 going to be sitting in the back, he has some other  
8 matters to attend to, too, but he's still here.

9 All right. We're at the third witness.  
10 Mr. Hunker, is that correct?

11 MS. SMITH: That's correct.

12 JUDGE HOBERG: All right. Mr. Hunker, did  
13 you hear the admonition I gave earlier in regard to  
14 perjury?

15 THE WITNESS: I did.

16 **BRIAN HUNKER,**

17 being first duly sworn, was examined and testified  
18 as follows:

19 JUDGE HOBERG: Thank you. Ms. Smith,  
20 please.

21 **DIRECT EXAMINATION**

22 **BY MS. SMITH:**

23 Q. Could you please state your name for the  
24 Commission?

25 A. Brian Hunker.

1 Q. And you're employed by HDR Engineering,  
2 Inc.; is that correct?

3 A. Correct.

4 Q. And what is your business address?

5 A. 701 Xenia Avenue South, Suite 600,  
6 Minneapolis, Minnesota.

7 Q. And what is your educational background?

8 A. Received a bachelor of science in  
9 environmental studies from the University of  
10 Wisconsin-Madison. And I have 10 years of  
11 environmental consulting experience on energy  
12 projects.

13 Q. And could you tell the Commission just  
14 briefly about your work history?

15 A. Sure. Throughout my career I have gained  
16 project management, compliance and permitting  
17 experience working on linear energy transmission  
18 projects, transmission and pipeline projects. I  
19 have a broad understanding of the regulatory  
20 framework relating to federal and state  
21 environmental review documentation, led routing  
22 studies, gathered environmental and land use data  
23 through windshield surveys and field studies,  
24 analyzed data using GIS, participated in public  
25 agency meetings, stakeholder outreach and public

1 open houses.

2 Q. And what is your role with respect to this  
3 project?

4 A. Environmental consulting project manager.

5 Q. So you were involved in the environmental  
6 analysis of the route; is that right?

7 A. Correct.

8 Q. And also in the preparation of the Route  
9 Permit Application?

10 A. Yes.

11 Q. And we'll talk a little bit about the  
12 compliance with the Public Service Commission  
13 siting rules, starting with the exclusion areas.  
14 Could you discuss whether any exclusion areas are  
15 crossed by the proposed route?

16 A. Yes. As shown in Table 3.1-1 of the Route  
17 Permit Application, one exclusion area will be  
18 spanned by the project. This exclusionary area are  
19 areas critical to the life stages of threatened and  
20 endangered species. This would be critical habitat  
21 for the federally threatened piping plover.

22 The Missouri River is designated critical  
23 habitat for the piping plover. The project will  
24 span the Missouri River, and it is important to  
25 note that no direct impacts to the critical habitat

1 will occur. Structures will be placed  
2 approximately 150 feet away from the river's edge.  
3 Minnkota will not construct across the Missouri  
4 River during the piping plover's typical breeding  
5 season, and during construction no equipment will  
6 be located within the Missouri River.

7 The Rural Utilities Service, or RUS, has  
8 engaged the United States Fish and Wildlife Service  
9 in a Section 7 consultation process as a part of  
10 the National Environmental Policy Act, or NEPA,  
11 process to ensure that the project will not  
12 endanger the continued existence of any listed  
13 species or adversely modify designated critical  
14 habitats.

15 Q. And I'll ask you next about avoidance  
16 areas, but I think you might have to sit back a  
17 little bit. It's kind of giving you some feedback  
18 when you're talking.

19 Could you discuss for us whether there are  
20 any avoidance areas that are crossed by the project  
21 route?

22 A. Sure. The avoidance areas crossed by the  
23 project route are discussed in Table 3.2-1 of the  
24 Route Permit Application, and I will briefly  
25 discuss the avoidance areas present and how the

1 project will avoid these areas.

2 First avoidance area are designated or  
3 registered state management areas. This would be  
4 the Wilber -- there's one WMA, the Wilber Boldt  
5 WMA, that is crossed by the project route.  
6 Minnkota coordinated with the North Dakota Game and  
7 Fish Department, and no structures will be located  
8 within and no lines will cross the WMA. Minnkota  
9 has obtained an overhang easement from the North  
10 Dakota Game and Fish Department, and access will be  
11 maintained and recreational activity may continue.

12 Second are historical structures (not  
13 designated as exclusion or avoidance areas). There  
14 are two types of cultural resources along the  
15 project route. These are the archaeological sites  
16 that are typically on the ground surface or below  
17 the surface. Next are architectural sites that are  
18 historic buildings or structures.

19 There are 29 archeological sites that were  
20 identified within the project right-of-way. Twelve  
21 structures will be located within six archeological  
22 site boundaries. And structure locations will  
23 avoid impacts to site features.

24 So you can think of a site boundary as  
25 drawn around a cluster of features, such as a stone

1 circle or a cairn. And, in other words, the site  
2 is not completely filled with resources, but has  
3 holes between the features, and the transmission  
4 structures will be located in these areas without  
5 features.

6 Minnkota is coordinating with the State  
7 Historic Preservation Office, or SHPO, on these  
8 structure locations. And there are 36  
9 architectural resources that were identified within  
10 the project's architectural area of potential  
11 effects, or APE, that is defined as a half-mile on  
12 either side of the transmission -- or a half-mile  
13 on either side of the project right-of-way  
14 centerline and one mile on either side of the  
15 project right-of-way centerline at the Missouri  
16 River. Of these properties, one property was  
17 listed within the National Register of Historic  
18 Places and nine are recommended as eligible for  
19 listing.

20 One of the historic structures eligible  
21 for listing on the National Register of Historic  
22 Places has been identified as being adversely  
23 visually affected by the proposed project.  
24 Mitigation will be implemented to minimize this  
25 visual impact, and this mitigation will be

1 screening with vegetation and the RUS and SHPO have  
2 concurred with the proposed mitigation.

3 Third avoidance area are facilities within  
4 500 feet of a residence.

5 So Minnkota developed a route to avoid  
6 occupied homes by maximizing setbacks to the extent  
7 practical. In some instances, it was preferable  
8 for the project route to pass within 500 feet of an  
9 occupied residence due to other routing factors.

10 So there are nine occupied or vacant, but  
11 habitable, homes within the 500 feet of the  
12 transmission facility, and one vacant, not  
13 habitable, home that is located within the project  
14 route and will be removed.

15 Minnkota has obtained waivers of the  
16 500-foot setback requirement from the nine occupied  
17 or habitable homes and the one vacant, not  
18 habitable, home.

19 Q. And, Mr. Hunker, I'm going to show you  
20 what's been previously marked as Exhibit Q, and I'm  
21 going to hand these out, as well. So I'll let you  
22 look at that while I'm handing the rest out. And  
23 could you identify what Exhibit Q contains?

24 A. These are the signed waivers.

25 Q. Okay. And are these waivers for the nine

1 occupied, or habitable, homes and the vacant,  
2 uninhabitable home?

3 A. Correct.

4 MS. SMITH: I would offer Exhibit Q.

5 JUDGE HOBERG: Any objection to Exhibit Q?

6 MR. SAGSVEEN: No objection, Your Honor.

7 JUDGE HOBERG: Exhibit Q is admitted.

8 MS. SMITH: Thank you.

9 Q. (MS. SMITH CONTINUING) And I think we're  
10 just finishing with the residences, so could you  
11 talk about any remaining avoidance areas that are  
12 crossed by the project route?

13 A. Sure. The next avoidance area are water  
14 sources for organized rural water districts. The  
15 McClusky Canal will be crossed by the project route  
16 at two locations. One structure will be placed on  
17 the uplands of the canal, and no direct impacts to  
18 the McClusky Canal or on water availability for  
19 rural water districts are anticipated.

20 Minnkota will obtain a special -- Minnkota  
21 will obtain special use permits from the United  
22 States Bureau of Reclamation for spanning the canal  
23 at one location and installation of structures on  
24 the Bureau of Rec land at a second location.

25 Rural water pipelines are potentially

1 present, and no impacts are anticipated as Minnkota  
2 will survey for the underground utilities in order  
3 to avoid impacts.

4 Fifth avoidance area are areas of  
5 recreational significance (not designated as  
6 exclusion areas).

7 The North Country National Scenic Trail,  
8 Lewis and Clark National Historic Trail, and the  
9 Chain of Lakes Area -- the Chain of Lakes  
10 Recreation Area (McClusky Canal) are crossed by the  
11 project route. Minnkota will span the trails and  
12 the Chain of Lakes Recreation Area.

13 No structures will be located within the  
14 Chain of Lakes Recreation Area (the McClusky  
15 Canal). Minnkota will obtain a special use permit  
16 from the United States Bureau of Reclamation for  
17 spanning the Chain of Lakes Recreation Area.

18 Visual impacts have been minimized by  
19 placing structures away from features to the extent  
20 practical. And access to the resources will be  
21 maintained so that recreational activities may  
22 continue.

23 There are no reasonable -- there is no  
24 reasonable alternative to crossing these resources  
25 since the trails run along the Missouri River and

1 the McClusky Canal.

2 The project route will cross the Missouri  
3 River near an existing transmission line and will  
4 cross the Chain of Lakes Recreation Area parallel  
5 to State Highway 41.

6 Q. And will any significant adverse effects  
7 resulting from the location, construction, and  
8 operation of the project as they relate to the  
9 selection criteria set forth in the Commission's  
10 rules be at an acceptable minimum or managed and  
11 maintained at an acceptable minimum?

12 A. Yes. Please see Section 3.3 and Table  
13 3.3-1 of the Route Permit Application for the  
14 selection criteria.

15 Q. And then if you'll look at what's been  
16 previously marked and admitted as Exhibit H, could  
17 you identify that exhibit for us?

18 A. Yes. This exhibit contains updated  
19 versions of Section 4.1, which is the general route  
20 description, and Table 5.17-1, which is a summary  
21 of route impacts, and both of those are in the  
22 Route Permit Application.

23 Q. And so as far as Section 4.1, that talks  
24 about the description of the route location  
25 specifically, and the updates that are made include

1 the route modifications; is that right?

2 A. Correct.

3 Q. And what sort of, in general terms,  
4 updates were included in Table 5.17-1?

5 A. The updates take into account the  
6 alignment modifications identified in Exhibit B and  
7 the final structure placement provided in Exhibit  
8 F.

9 Examples of the specific updates include a  
10 reduction in the number of homes within 500 feet of  
11 the transmission facility from 11 to 10, and about  
12 a one-acre increase in prime farmland impacts, and  
13 one less structure in a floodplain, therefore, a  
14 slight reduction in floodplain impact, but overall  
15 the impacts -- or overall the changes are minor  
16 from what was filed in the application.

17 Q. And let's talk a bit about the studies  
18 that were prepared for this particular project and  
19 when the reports were filed with the Commission,  
20 starting kind of an overview of what was filed with  
21 the Certificate of Corridor Compatibility  
22 Application, the Route Permit Application and what  
23 we've already admitted as exhibits in this hearing.

24 A. Sure. A number of environmental studies  
25 were conducted over the course of developing the

1 project corridor. These studies that were filed  
2 with the Certificate of Corridor Compatibility  
3 Application include macro-corridor study, scoping  
4 report, environmental assessment with scoping,  
5 cultural resources Class I literature search, and a  
6 raptor nest survey.

7 Additional studies were conducted during  
8 development of the project route and reports  
9 associated with some of these studies were provided  
10 within the route application. These include the  
11 deeply buried site report, historic building  
12 inventory and evaluation report, Sheyenne River  
13 hydrology study technical memo.

14 Some of the reports not completed -- or  
15 were not completed until after the Route Permit  
16 Application was filed, but were completed prior to  
17 today's hearing. These reports include the  
18 historic property treatment plan, the revised  
19 architectural APE technical memo, Class III  
20 cultural resources inventory, and first addendum to  
21 that Class III, and a second addendum to that Class  
22 III inventory, deeply buried site technical memo, a  
23 wetland delineation report, and one addendum, and a  
24 tree sampling plan.

25 Q. And could you discuss for us as far as one

1 of the reports that was filed with the Route Permit  
2 Application, the Historic Building Inventory and  
3 Evaluation Report?

4 A. Sure. The RUS and the SHPO requested that  
5 the state consider the potential for adverse  
6 effects to historic structures and buildings. The  
7 goal of this study was to provide information  
8 regarding the type and distribution of historic  
9 buildings and structures within the architectural  
10 APE.

11 This inventory identified 36 architectural  
12 resources within the APE, and only one would be  
13 adversely visually affected by the proposed  
14 project. Mitigation will be implemented to  
15 minimize the visual effects, and SHPO has concurred  
16 with this proposed mitigation.

17 Q. And then if you'll look at what's been  
18 marked and admitted as Exhibit I, it's a Historic  
19 Property Treatment Plan with a SHPO concurrence  
20 letter, is that treatment plan and that concurrence  
21 letter the same plan that you were just referencing  
22 as far as the mitigation for that one home that  
23 would be impacted?

24 A. Correct.

25 Q. And let's talk a little bit about the

1 reports that were filed since the Route Permit  
2 Application was filed. If you'll look at what's  
3 been marked as Exhibit J, and that's already been  
4 admitted, could you just identify that exhibit for  
5 us again?

6 A. Sure. Exhibit J is the Revised  
7 Architectural APE Technical Memo with the SHPO  
8 concurrence.

9 Q. And what are the findings and conclusions  
10 in that memo?

11 A. This technical memo is an update to the  
12 Historic Building Inventory that was provided in  
13 Appendix E of the Route Permit Application and  
14 covers the Revised Architectural APE due to  
15 alignment shifts within the modified corridor  
16 areas.

17 This technical memo found that all  
18 buildings documented within the revised APE did not  
19 have sufficient age or integrity to merit  
20 consideration as a historic property, and SHPO  
21 concurred with this conclusion.

22 Q. And then if you'll look at what's been  
23 marked and admitted as Exhibit K, and it's in the  
24 separate binder. I think it's sitting over right  
25 there. Could you identify what's contained in

1 Exhibit K for us?

2 A. Yes. Exhibit K contains the Class III  
3 cultural resources inventory, the first addendum  
4 and the second addendum to the Class III cultural  
5 resources inventory, with SHPO concurrence letters.

6 Q. Okay. And could you discuss the overall  
7 conclusion of those three reports?

8 A. Sure. These three studies identified 29  
9 architectural -- I'm sorry -- archeological  
10 resource sites within the project right-of-way,  
11 eight sites that were identified within SHPO's  
12 database and 21 that were previously unrecorded.  
13 Structure locations will avoid impacts to site  
14 features, and SHPO concurred with the inventories'  
15 determinations of no historic properties affected  
16 and no significant sites affected, as well as the  
17 recommendations regarding areas remaining for  
18 shovel testing, the avoidance areas and the  
19 National Register status.

20 Q. And then if you'll look at what's been  
21 previously marked and admitted as Exhibit L, could  
22 you identify that for us?

23 A. Yes. Exhibit L is the deeply buried site  
24 technical memo with SHPO concurrence.

25 Q. And what's the purpose of that particular

1 memo?

2 A. It's an update to the deeply buried site  
3 report that was provided in Appendix D of the Route  
4 Permit Application and covers alignment shifts that  
5 were made after the initial report was completed.

6 Q. And then if you'll look at Exhibit M, the  
7 wetland delineation report and the delineation  
8 report addendum, could you discuss the overall  
9 findings and conclusions of those two reports?

10 A. Sure. These two reports documented 32  
11 structures that will be located within wetlands  
12 causing approximately 107 acres of temporary impact  
13 and about 2,500 square feet of permanent impact.  
14 The wetland impacts may be permitted by the U.S.  
15 Army Corps of Engineers Nationwide Permit Number  
16 12, and a preconstruction notification will be  
17 filed approximately 45 days prior to construction.

18 Q. And then if you'll look at Exhibit N, it's  
19 a tree and shrub inventory plan, could you discuss  
20 the purpose of the tree sampling plan?

21 A. Yes. This plan identifies a process for  
22 inventorying trees and shrubs within high-density  
23 areas within the 150-foot-wide right-of-way. And a  
24 tree inventory report and a tree replacement plan  
25 will be developed and filed with the Commission,

1 and Minnkota will comply with the Commission's tree  
2 and shrub replacement specifications.

3 Q. And then if you will look at what's been  
4 previously marked and admitted as Exhibit O, and  
5 there's O1 through O3, could you describe what that  
6 exhibit depicts?

7 A. Yes. Exhibit O1 through O3 depict 16  
8 properties, or approximately two miles of route,  
9 that will need to be shovel tested.

10 Q. And those properties are marked in gold;  
11 is that right?

12 A. Yes, they're marked in gold on the  
13 exhibits.

14 Q. Right. And they are up on the boards.  
15 Thanks for reminding me.

16 A. Correct.

17 Q. Could you explain why shovel testing has  
18 not yet been completed on those particular parcels?

19 A. Sure. Initially Minnkota did not have  
20 permission to survey these parcels. And once  
21 survey permission was obtained, pedestrian surveys  
22 were completed. Weather conditions, such as frozen  
23 ground, have prohibited completing shovel testing  
24 on the areas shown on Exhibit O.

25 And shovel testing is a standard

1 methodology for archeological surveys that  
2 determines whether subsoils contain any cultural  
3 materials that are not visible on the surface.  
4 Typically soil is hand shoveled and screened to  
5 find cultural material. When the ground is frozen,  
6 it's very difficult to screen or sift the soil  
7 through the screen.

8 In general, the shovel testing confirms  
9 that a structure will avoid impacting the site's  
10 features.

11 Q. And when do you anticipate that the  
12 remaining shovel testing will be completed and a  
13 report prepared?

14 A. Shovel testing will be completed in the  
15 spring of 2012 following a ground thaw, and a  
16 report addressing these areas will be prepared and  
17 submitted to the SHPO once the shovel testing is  
18 complete.

19 Q. And turning to any planned surveys, in  
20 addition to the formal studies and surveys that  
21 have already been done, are there any other surveys  
22 that are planned prior to construction of the  
23 project?

24 A. Yes. Minnkota will conduct some  
25 preconstruction surveys that will help minimize

1 impacts to biological resources. These surveys  
2 include the piping plover habitat occupancy survey,  
3 sharp-tail grouse lek survey, grassland bird  
4 survey, Dakota skipper survey, and a raptor nest  
5 survey.

6 Q. And we've heard testimony regarding the  
7 NEPA review process. What is the current status of  
8 the NEPA review process?

9 A. Currently the RUS anticipates issuing a  
10 finding of no significant impact, or a FONSI, in  
11 late February.

12 Q. And then if you'll look at what's been  
13 previously marked and admitted as Exhibit P, can  
14 you identify that document for us?

15 A. Yes. Exhibit P is an updated permits and  
16 approvals checklist.

17 Q. And in your opinion, based on your study  
18 and review, the exhibits and testimony presented  
19 here today, and the siting statutes and rules, will  
20 construction of the proposed project produce  
21 minimal adverse environmental effects?

22 A. Yes.

23 MS. SMITH: I have no further questions.

24 JUDGE HOBERG: Thank you, Ms. Smith.

25 Perhaps you could remind us, though, what

1 was the procedure for the shovel testing, the  
2 results from SHPO on that. How is that going to be  
3 handled?

4 MS. SMITH: Those -- I'm not sure what  
5 you're asking, I guess.

6 JUDGE HOBERG: You said -- you testified,  
7 Mr. Hunker, that you hadn't received SHPO approval  
8 for the shovel testing that was done -- going to be  
9 done in the spring of the year. Are you going to  
10 be filing something late with that?

11 MS. SMITH: No, we're not filing a  
12 late-filed exhibit. We would ask that it be a  
13 condition of the order prior to construction in  
14 those areas that it be filed.

15 JUDGE HOBERG: Okay. Thank you.

16 Mr. Sagsveen, please.

17 MR. SAGSVEEN: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. SAGSVEEN:**

20 Q. Mr. Hunker, you -- one of the last things  
21 you said is that you anticipate the FONSI being  
22 issued in late February. Now that we're in late  
23 February, is it 2013, or do you anticipate within  
24 the next few days or soon?

25 A. Correct. Hopefully within the next week

1 or two.

2 Q. Okay. And you also mentioned that there  
3 were, I think, over a hundred wetlands that fell  
4 within the Corps of Engineers nationwide permit.  
5 Remind me, there's not any NEPA requirement for an  
6 EA or EIS for nationwide permits; is that correct?

7 A. Not for nationwide permits. They've  
8 already been approved.

9 Q. And so are all the wetlands -- is RUS  
10 requiring that all of the wetlands be looked at  
11 under the nationwide permit or are all wetlands  
12 falling under the nationwide permit?

13 A. Correct. Currently we have stated to the  
14 Corps of Engineers that all wetlands are  
15 jurisdictional and, therefore, they fit under the  
16 nationwide permit, and we qualify for the  
17 nationwide permit because our impacts are so low  
18 and they fall under that threshold.

19 Q. I believe I also heard you testify, Mr.  
20 Hunker, that no lines will cross the WMA with  
21 respect to the Wilber Boldt, but you're obtaining  
22 an overhang easement. Could you explain? Either I  
23 heard you incorrectly or maybe there's some  
24 qualification to that.

25 A. Sure. Basically the right-of-way is going

1 to overhang the Wilber Boldt WMA. The actual  
2 transmission facility will be located outside of  
3 the WMA, so the overhang easement is for the  
4 right-of-way.

5 MR. SAGSVEEN: I don't have any additional  
6 questions.

7 JUDGE HOBERG: Thank you, Mr. Sagsveen.  
8 Mr. Lein, anything?

9 **CROSS-EXAMINATION**

10 **BY MR. LEIN:**

11 Q. Just one. With the tree and shrub  
12 mitigation, there's a sampling plan with the  
13 application and so I'm thinking that you're asking  
14 for approval of that sampling plan, but you  
15 understand there will also be a replacement plan  
16 that will have to be approved by the Commission  
17 prior to starting construction?

18 A. Yes. We're going to -- we're going to  
19 work on the replacement plan after we complete the  
20 inventory.

21 MR. LEIN: Okay. Thank you. No further  
22 questions.

23 JUDGE HOBERG: Thank you. Mr. Sagsveen.

24 MR. SAGSVEEN: I just have one more  
25 question, Your Honor.

**FURTHER CROSS-EXAMINATION**

1  
2 **BY MR. SAGSVEEN:**

3 Q. With respect to Exhibit Q, could I draw  
4 your attention to the letters to -- looks like the  
5 cover letter is to Lois Peterson. It's one of the  
6 largest documents. It's not separately identified  
7 so I apologize.

8 JUDGE HOBERG: I think it's about the  
9 second one in, isn't it?

10 MR. SAGSVEEN: There's only one to Lois  
11 Peterson, so it --

12 JUDGE HOBERG: Right.

13 Q. (MR. SAGSVEEN CONTINUING) I just wanted  
14 to draw your attention to the last page of this  
15 document. It looks like it's just a signature  
16 page. Could you tell me what the purpose of the  
17 multiple signature page is for? Could you just --  
18 could Minnkota not get everyone together in the  
19 same room to sign? And then just reassure me that  
20 the last page was signed, I guess, by Minnkota at  
21 some point or by somebody.

22 MS. SMITH: Can I actually reference you  
23 to that because I think it's more of a legal  
24 question than really a witness question?

25 JUDGE HOBERG: Sure. Ms. Smith.

1 MS. SMITH: Is that all right? Mr. Paul  
2 Mahlen did sign on behalf of Minnkota. It's just  
3 the way it's copied, honestly. His signature is on  
4 the first couple of pages, so you'll see how that  
5 works.

6 And, yes, they could not get everyone in  
7 one place because everyone has a different  
8 interest, and so it happens with most legal  
9 documents, you send it out and as long as you have  
10 an original signature from each one at some point,  
11 you have a complete document.

12 Q. (MR. SAGSVEEN CONTINUING) So all the  
13 relevant -- Mr. Hunker, all the relevant landowners  
14 to these parcels have signed the appropriate  
15 documents?

16 A. Correct.

17 MR. SAGSVEEN: I don't have any additional  
18 questions, Your Honor.

19 JUDGE HOBERG: Thank you, Mr. Sagsveen.

20 Commissioner Clark, please.

21 **EXAMINATION**

22 **BY COMMISSIONER CLARK:**

23 Q. Just one. My assumption is the reason  
24 that all the archeological sites that are  
25 identified along the route that are going to have

1 to be shovel tested are in the western third of the  
2 project, is that related to the fact that's  
3 primarily untilled native pasture and most of the  
4 rest of the line is over cropland?

5 A. Correct. Typically shovel testing is done  
6 on areas where the ground visibility is poor due to  
7 taller grasses, so, yes, there is more pastureland  
8 out there.

9 COMMISSIONER CLARK: Okay. Thanks.

10 JUDGE HOBERG: Thank you, Commissioner  
11 Clark.

12 Commissioner Cramer, please.

13 COMMISSIONER CRAMER: I have nothing.  
14 Thank you.

15 JUDGE HOBERG: Commissioner Kalk, please.

16 **EXAMINATION**

17 **BY COMMISSIONER KALK:**

18 Q. Just a couple. Are you the best witness  
19 to answer questions about Exhibit Q?

20 MS. SMITH: No. We would probably have to  
21 bring somebody else up depending on what the  
22 questions are.

23 COMMISSIONER KALK: Well, just the general  
24 questions are, when I asked about setbacks before,  
25 I got the impression that there was a lot of them

1 around 500 feet. In looking through this, there's  
2 some as close as 191 feet, 195 feet, 200 feet from  
3 the transmission line to the residence. That's  
4 pretty close. That's different than what I thought  
5 before when I asked the question.

6 JUDGE HOBERG: Mr. Hunker, is that  
7 something --

8 THE WITNESS: I think I would like to give  
9 that question to somebody else.

10 MS. SMITH: Yeah.

11 JUDGE HOBERG: Who might that be?

12 MS. SMITH: Well, let us discuss it, if we  
13 may --

14 JUDGE HOBERG: Okay.

15 MS. SMITH: -- and we can bring up  
16 somebody to address that. I'm not quite certain  
17 what the question is.

18 COMMISSIONER KALK: The question is,  
19 that's really close, and I want to know that  
20 there's some data done that there's not some danger  
21 because of that. 500 feet is set for a reason. I  
22 understand there's a waiver involved, but --

23 MS. SMITH: And I would reference you to  
24 our testimony in the corridor hearings regarding  
25 EMF and all of the testimony that came up there

1 because we have addressed, I think, those  
2 safety-type concerns and as far as previous  
3 testimony, if you're outside of the right-of-way,  
4 you are at a safe distance. We can have somebody  
5 address those.

6 COMMISSIONER KALK: Right. I agree with  
7 all that, but I don't recall ever talking about as  
8 close as 190 feet in any of that testimony.

9 MS. SMITH: If you want us to bring  
10 somebody else up to address that, we certainly can.

11 COMMISSIONER KALK: What I would like to  
12 do is take a break and let me talk to our attorney  
13 a little bit, too.

14 JUDGE HOBERG: Let's do that. We have  
15 some public witnesses that have some short time  
16 frames, so maybe when, and if, you're going to  
17 bring on rebuttal -- well, you'll bring somebody up  
18 at that time.

19 MS. SMITH: Sure.

20 JUDGE HOBERG: Okay. All right. Any  
21 further questions of Mr. Hunker from the  
22 Commissioners? Nothing.

23 Ms. Smith, anything further?

24 MS. SMITH: No, Your Honor.

25 JUDGE HOBERG: Mr. Sagsveen?

1 MR. SAGSVEEN: No, Your Honor.

2 JUDGE HOBERG: Thank you, Mr. Hunker.

3 All right. I'm looking at the attendance  
4 sheet, and did everyone get a chance to sign the  
5 attendance sheet? Anybody who didn't? Everybody  
6 sign the attendance sheet?

7 I see three individuals who wish to  
8 testify, Jeff and Jessie Topp and I think that's  
9 Todd Leake. Would that be correct? Am I missing  
10 anyone who indicated they wished to testify?

11 Mr. Leake, could you raise your hand? I'm  
12 not sure what -- do you still wish to testify?

13 MR. LEAKE: Yes.

14 JUDGE HOBERG: Is that all right, I'm  
15 going to take the Topps first because they have  
16 some time constraints? Is that satisfactory?

17 All right. So at this time we'll take  
18 public testimony and Jeff Topp and Jessie Topp are  
19 going to testify together. I'll swear you both in,  
20 but, as I understand it, Jessie is going to help  
21 with the exhibits and then perhaps make some  
22 comments at the end, but it's chiefly going to be  
23 you, Mr. Topp; is that correct?

24 MR. TOPP: Yes, that is correct. Is it  
25 okay if I stand, Your Honor?

1 JUDGE HOBERG: Yeah, if you would like to.

2 MR. TOPP: I'm more comfortable on my  
3 feet.

4 JUDGE HOBERG: Would you like a podium?

5 MR. TOPP: That's okay.

6 JUDGE HOBERG: All right. Okay. I do  
7 need to swear you in as a witness, and, as I  
8 understand, you were not here earlier when I gave  
9 the admonition in regard to perjury, and I'm  
10 required by law to tell all witnesses at  
11 administrative hearings that the maximum penalty  
12 for perjury in this state is a Class C felony,  
13 punishable by a maximum five years imprisonment,  
14 \$5,000 fine, or both. And, of course, perjury is  
15 essentially not telling the truth in a hearing such  
16 as this.

17 (Jeff Topp and Jessie Topp were sworn.)

18 **JEFF TOPP,**

19 being first duly sworn, was examined and testified  
20 as follows:

21 JUDGE HOBERG: Why don't you state your  
22 names for the record. We have the spelling on the  
23 attendance sheet. It's T-o-p-p; correct?

24 THE WITNESS: Yes, that's correct.

25 JUDGE HOBERG: And tell us a little bit

1 about the background. Now, as I understand it,  
2 you're not from this segment of the -- that's on E9  
3 through 10 -- or is it 8 through 10, but you would  
4 be ordinarily in the Carrington hearing?

5 THE WITNESS: Yes, that is correct, Your  
6 Honor.

7 JUDGE HOBERG: And why is it that you wish  
8 to testify today?

9 THE WITNESS: The reason I'd like to --  
10 is this one on? The reason I'd like to testify  
11 today is because on March 1st I have a -- to  
12 recertify as a private applicator in Carrington  
13 from nine o'clock in the morning till noon, and  
14 sometimes that test can last a little longer.  
15 That's one reason.

16 The other reason is my daughter needs to  
17 get back to college. She's a junior, going to  
18 graduate this year after three years at North  
19 Dakota State University in ag communications. So  
20 that would be helpful.

21 And, number two, these proceedings have  
22 kind of turned my backyard into a hostile  
23 environment, so I think it might be more helpful if  
24 I were here today.

25 JUDGE HOBERG: Okay. Please proceed.

1           THE WITNESS:  There's a couple things that  
2   I'd like to set a little straight on the record.  
3   One is, Mike Hennes today made a comment that they  
4   try to -- have tried to cooperate with all  
5   landowner requests in the past, and I'll testify to  
6   the extreme of that.

7           Number two, I've signed an access  
8   agreement for Minnkota after I got served papers by  
9   the Eddy County Sheriff's Department.  I did check  
10  with legal counsel.  I did sign those.  I did fax  
11  them back to their legal counsel, Tami Norgard.  I  
12  believe she's with the Vogel firm.

13          And part of the problem that I've had all  
14  along is the stonewall from Minnkota.  I have yet  
15  to ever talk to an individual from Minnkota Power  
16  Company.  I've talked to JLK (sic) several times.  
17  And maybe I got the initials wrong.

18          JUDGE HOBERG:  One of the consultants?

19          THE WITNESS:  One of the consultants.  
20  Kevin Cummings, I've talked to him.  It's always  
21  been an initiated call pretty much the vast  
22  majority of the time by myself to his phone number.  
23  He has been to my place a couple times.

24          Anyway, I have documentation to show that  
25  I did fax it back to Tami Norgard.  I do not have a

1 signed copy ever returned to me from them that give  
2 them access to come on and do their walk-across and  
3 whatever they needed to do.

4 If you'll remember, I was in Carrington  
5 and testified back on June 17th.

6 JUDGE HOBERG: At the corridor hearings?

7 THE WITNESS: At the corridor hearings  
8 that were held in Carrington on June 17th, 2011.  
9 And you -- this body chose to expand that corridor,  
10 and I thank you for that. And I want to go on the  
11 record and it be extremely, extremely clear that my  
12 family plans on working with Minnkota Power Company  
13 to make sure that the power gets from Center, North  
14 Dakota, to Grand Forks. I want the suits in the  
15 back of the room to understand that my phone is on  
16 24 hours a day. You can call me at 701-652-5156.  
17 I stand willing to try, to the best of my ability,  
18 to do whatever I can to make sure that the people  
19 in Grand Forks get their power.

20 We -- as I testified in Carrington on the  
21 17th of June, we have a farming and ranching  
22 operation, as you know, and the corridor is going  
23 to come extremely close to our operation, which we  
24 have many concerns about. We've tried to negotiate  
25 with Minnkota through their representatives to try

1 to make other passages.

2 Kevin Cummings, once the corridor was  
3 expanded, after -- it would have been sometime in  
4 September when the Commission met at one of their  
5 hearings or work sessions, they expanded the  
6 corridor and they came up with a couple of  
7 different routes, and I'd like to talk about those  
8 routes right now, if you will.

9 JUDGE HOBERG: Is that that large exhibit?

10 THE WITNESS: Yeah, this is the large  
11 exhibit.

12 JUDGE HOBERG: Is there someplace you can  
13 put it up or are you going to --

14 MS. TOPP: I can maybe put it up there.

15 JUDGE HOBERG: That's the one I marked as  
16 T1; correct?

17 THE WITNESS: Yeah, T1 is the exhibit that  
18 you used and that will be there for you folks to  
19 use at any time you need. The yellow one on this  
20 sheet is property on which we either own or  
21 operate. The vast majority of it we own as a  
22 family.

23 And if you had the opportunity to -- if  
24 you can turn it, Jessie, a little bit more so that  
25 they can see. We pretty much have a contiguous

1 line from Highway 15 on the top of the map with the  
2 yellow line all the way down to Highway 200. It's  
3 a 15-mile corridor. So all of that in light  
4 yellow --

5 JUDGE HOBERG: Everything in light yellow?

6 THE WITNESS: Everything in light yellow  
7 we manage and operate. So from the top yellow line  
8 where you see right there, that's Highway 15 east  
9 of New Rockford, all the way down to Highway 200.

10 JUDGE HOBERG: Maybe you could describe  
11 this map for us. What does it show in the total  
12 green area there?

13 THE WITNESS: The total green area is just  
14 cropland and pasture.

15 JUDGE HOBERG: You know, the county and  
16 everything else.

17 THE WITNESS: Oh. Jessie, the red line --  
18 you see that red, that's Eddy-Foster -- no, down  
19 there. That's the Eddy-Foster county line --

20 JUDGE HOBERG: Okay.

21 THE WITNESS: -- that we're looking at  
22 right there.

23 JUDGE HOBERG: Okay. What sections,  
24 approximately?

25 THE WITNESS: Well, where the quadrant,

1 the red lines go through the yellow there, that  
2 would be Sections 34 and 35, would be north of the  
3 county line, in 148-64 in Columbia Township in Eddy  
4 County. And then below that, kind of that reddish  
5 line, would be Section 3-147-64 in Larrabee  
6 Township in Foster County. When --

7 JUDGE HOBERG: Before we go any further,  
8 you're offering that as an exhibit; correct?

9 THE WITNESS: Absolutely. You guys can  
10 have it. You can play with it. You can do  
11 whatever you'd like.

12 JUDGE HOBERG: Okay. Ms. Smith, do you  
13 have any objection to Exhibit T1?

14 MS. SMITH: I don't have any objection so  
15 long as I can get a copy at some point.

16 JUDGE HOBERG: Yeah, I'm not sure how --  
17 is there any way you can downsize that so you can  
18 provide it for the official record?

19 THE WITNESS: Yeah, my crop insurance  
20 agent will have all kinds of them in smaller forms,  
21 so --

22 JUDGE HOBERG: That would be appreciated,  
23 if we could get a copy of that perhaps before the  
24 Carrington or sometime around that time.

25 THE WITNESS: Sure.

1           JUDGE HOBERG: Any objection, Mr.  
2 Sagsveen?

3           MR. SAGSVEEN: No, Your Honor.

4           JUDGE HOBERG: All right. I'll admit T1.  
5 Please continue.

6           THE WITNESS: So when this body expanded  
7 the corridor, Kevin Cummings from KLJ came and  
8 visited me, and he had -- there were two expanded  
9 corridors that this body had recommended. One is  
10 the red line on the north side of the map, and that  
11 goes between Section -- it goes right through the  
12 middle of Section 27, 26 and 28. And when Kevin  
13 Cummings came to my house and looked at that, I  
14 said -- I looked at that corridor and I said, Well,  
15 whoever put thought into that corridor did their  
16 homework, because it keeps it more than a half-mile  
17 away from any residential area, it goes across some  
18 farmland towards the west side, and then it pretty  
19 much goes across nothing but pastureland and  
20 ranchland from there on to the east.

21           I said, That's a wise corridor. But I  
22 said, You just started World War III for me,  
23 because I have a neighbor that resides and owns  
24 some of the land in Section 28 and the next  
25 sections to the west of that. He would go across

1 three-quarters of a mile of his half section of his  
2 farmland and a half section of his hayland, and I  
3 said, If I were you, I'd send a different  
4 representative, because, I said, you're going to  
5 get a lambasting of your life, and I said, you may  
6 need a flak jacket, but, I said, be prepared for  
7 every four-letter word in the book. I said, It's a  
8 great route. I would approve that route. That  
9 route goes across two and a half miles of our  
10 property. I have no problem with that route, stays  
11 plenty far away from my home structure, no problem,  
12 sign in a second.

13 The second route was the south red line,  
14 and that was going to come south of our farm a full  
15 mile, goes across -- in fact, it will go across at  
16 least three quarters of farmland, maybe four  
17 quarters, maybe up to two miles of our farmland. I  
18 said, I have no problem with that corridor. I  
19 said, I think at the west end of it over by  
20 Branford, you may have some issues with a gentleman  
21 by the name of Gary Weigum, who testified. But I  
22 said, This again is a good corridor. It stays a  
23 full half-mile away from anyone's farm buildings,  
24 it won't have a direct impact on any -- any of the  
25 expansion projects that any farm may have in the

1 future.

2 So that was -- those were the two comments  
3 on the widening of the corridor that you folks  
4 proposed. I said, I still have a major problem  
5 with the one coming through our farmyard. It's too  
6 close, as I testified. And with that, then I said,  
7 How about a couple of shift changes? You know, why  
8 can't -- you know, I said, I'm still surprised --  
9 when I testified in Carrington, I said, I suggested  
10 going only a half-mile north of our farm, as I  
11 testified. And he didn't really give me an answer  
12 why -- why. He said, These are the routes that  
13 were picked up.

14 Anyway, since that time my life has become  
15 rather difficult because there's been some people  
16 that have switched positions, there's been  
17 jockeying. There's still -- there's been no, no  
18 correspondence, zero, with Minnkota, none at all.

19 On October -- on October 7th I made a -- I  
20 implemented a phone call to Kevin at KLJ, asking  
21 him to return a phone call to me. On October 10th,  
22 again, I placed a call to Kevin and left a message,  
23 would you please -- would you please call me? I'd  
24 like to try to, you know, talk about -- maybe  
25 there's some other optional shift changes that we

1 could propose to you folks so we could work  
2 something out?

3 On October 10th Kevin did call me back and  
4 I said, I have a proposed feedlot that was going to  
5 go right south of our farm. And I would like to  
6 enter that in as Exhibit -- what did you mark that,  
7 Your Honor?

8 JUDGE HOBERG: T2, I believe.

9 THE WITNESS: -- T2. And I said, This --  
10 this preliminary engineering design -- and design  
11 study and a comprehensive nutrient management study  
12 was done on June 9th, 2009. And this was for a  
13 2,000-head feedlot that would go right south of my  
14 current farmyard and would put us up to within less  
15 than 250 feet of that power line coming through  
16 there. And so I'd like to enter this. You can  
17 have this. But, again, it shows that way before  
18 any power line was ever being talked about, our  
19 farming operation that my daughter and my sons and  
20 my wife and my mother have has been on expansion  
21 mode in a pretty big way. And I'll show more of  
22 that in other exhibits that I'm going to try to use  
23 later today. So you can have this.

24 JUDGE HOBERG: Any objection?

25 MS. SMITH: I would have to look at that

1 one to actually be able to comment.

2 JUDGE HOBERG: All right.

3 THE WITNESS: The map -- the long sheet  
4 out is the design and it shows where it would be  
5 laid out at in the design. So I'm just trying to  
6 build a case, is all I'm trying to do here, folks.

7 On October 12th Kevin did call me back.

8 JUDGE HOBERG: Just a minute. Just a  
9 minute. Ms. Smith, it's a bit noisy going through  
10 that.

11 MS. SMITH: Well, do you want me to look  
12 at this now or look at this later and then rule on  
13 it?

14 JUDGE HOBERG: Yeah, why don't we just  
15 hold off a little bit, yeah.

16 MS. SMITH: Okay.

17 JUDGE HOBERG: Please continue.

18 THE WITNESS: On October -- on October  
19 12th, Kevin did call me back, from KLJ, Kevin  
20 Cummings, and he did set up a meeting with me in  
21 the morning at 8:30 at my farm.

22 In attendance that day was a relative of  
23 mine by the name of Raymond Topp. Raymond Topp  
24 owns a big chunk of the land in Section 4-147-64,  
25 which would be the northeast quarter of that

1 section in Larrabee Township in Foster County, and  
2 his son lives there plus there's another household  
3 dwelling there, and his -- Raymond's brother owns  
4 the section of land in Section 33-148-64, which is  
5 in Columbia Township in Eddy County.

6           And Raymond Topp and I proposed to Kevin  
7 of KLJ that we would propose a line shift along the  
8 west edge of Section 33, going north to the section  
9 line, staying on Section 33 and going east, they  
10 could jog up -- we own -- now we own the quarter in  
11 the Southeast Quarter of Section 28-148-64. And I  
12 said, If you wanted to get off of Roger's, you  
13 could jump on ours, I have no problem with that,  
14 and you could continue on across Section 34 and the  
15 West Half of Section 35, you could jog down to the  
16 south and meet up with your original corridor. I  
17 said, We have no problem with that, and, in fact,  
18 if you wanted to continue on east, it would make  
19 sense to me, but I'm trying to stay on our property  
20 so that I don't have an impact on anyone else. It  
21 would make more sense to me if you would continue  
22 on east another mile or, let's see -- yeah, another  
23 mile and you would bump into a quarter of state  
24 land owned by the State of North Dakota over in  
25 Section 36, and you could cut diagonally down to

1 your original corridor again and you would not --  
2 you would be staying away from Ryan Topp and his  
3 breeding pasture concerns that he testified to on  
4 June 17th, 2011, you would also stay away -- plenty  
5 far away from Jason Otto, who lives -- now, you're  
6 going to make me start thinking -- it would be in  
7 Cherry Lake Township, it would probably be in, I  
8 want to say, Section 6 would be the next quarter to  
9 the east of there -- it would stay plenty far away  
10 from his and you can connect up with your original  
11 corridor and continue on east as you proposed.

12           Again, I said to Kevin, I said, Your best  
13 route is the north route. Whoever designed that  
14 one did a great job. The south route is a great  
15 route. I'm giving you alternatives.

16           Also, I said, If you can't agree on that,  
17 I said, I would propose another route. The next  
18 route change would be to go south -- Jessie -- of  
19 the county line and run right on our property in  
20 Section 3 for a mile and jog back to the original  
21 route. This conversation took place on the 13th of  
22 October.

23           He said that he would go and talk to Roger  
24 Topp, the landowner in Section 33, which he did,  
25 and he did call back to my cell phone, and Kevin

1 from KLJ did leave a recorded message to say that,  
2 I met with Roger and Roger has no problems with  
3 that and would be willing to work with us.

4 MS. SMITH: I have to object to that.  
5 It's hearsay.

6 JUDGE HOBERG: I understand it's hearsay.

7 THE WITNESS: Your Honor, I have it right  
8 here on my voicemail and it identifies himself and  
9 I would love to enter my cell phone into --

10 JUDGE HOBERG: I don't think we want your  
11 cell phone.

12 THE WITNESS: The message is here. I got  
13 it.

14 JUDGE HOBERG: I'll overrule the objection  
15 and I'll allow the testimony.

16 THE WITNESS: Do you want the testimony or  
17 do you want to hear it?

18 JUDGE HOBERG: I want the testimony,  
19 please.

20 THE WITNESS: You don't want to hear it  
21 off of here?

22 JUDGE HOBERG: No. No, unless you want to  
23 provide a tape for us.

24 THE WITNESS: Well, I'll get you a tape,  
25 if that's what you want. But --

1           JUDGE HOBERG: Well, the problem is we  
2           can't -- we can't -- we can't review the thing  
3           right now, anyway. I'm going to allow the hearsay  
4           testimony.

5           THE WITNESS: Okay. But I do have it. He  
6           left -- he left a message. Also -- I'll play it  
7           for you outside later.

8           Also, when we had the conversation with  
9           Kevin and Raymond Topp in my house, this is an  
10          exact quote from Kevin at KLJ, his quote was, he  
11          said, In my opinion -- and he said, I'm not the  
12          decisionmaker, quote, on the face of it, this is a  
13          very doable deal.

14          MS. SMITH: I'm going to object again,  
15          Your Honor.

16          JUDGE HOBERG: Well, it's a party in  
17          interest. I mean, he's a consultant of yours;  
18          correct?

19          MS. SMITH: I'm just going to object that  
20          it's hearsay and you --

21          JUDGE HOBERG: Yes, but it is a party -- I  
22          mean, you're the applicant. That's one of your  
23          consultants; correct?

24          MS. SMITH: Yes.

25          JUDGE HOBERG: Okay. I'll note your

1 objection. I'll allow the quote.

2 THE WITNESS: Thank you, Your Honor. And  
3 I can make sure that Raymond Topp that was also  
4 there -- I'll put more pressure on him to be in  
5 Carrington. I don't know if he will, but I'll put  
6 more pressure on him and then she'll have two  
7 people to object to.

8 Anyway, so we -- we tried very hard to try  
9 to work with these folks. And after the 13th with  
10 the meeting with KLJ and, Kevin, I asked him  
11 specifically, Please document. I want you to  
12 document that we are more than willing to work with  
13 Minnkota in any way possible to get this line to  
14 Grand Forks. And he said he would, and he did. I  
15 don't have his records. I suppose I'd have to  
16 subpoena them. But he did do that, I believe.

17 And, anyway, after -- after that meeting  
18 on the 13th, I did receive back a phone call from  
19 Kevin Cummings from KLJ on the 17th, and he stated  
20 to me that it was being forwarded on to, I believe  
21 he said, someone in Denver and his superiors and  
22 they would do some looking at the proposed jog  
23 shifts.

24 Since October 17th of 2011, I have heard  
25 nothing, zero, not written, not verbal, not phone

1 calls. It's been cold. There's been no  
2 negotiating from these folks at all, and I find it  
3 very difficult to negotiate with myself. Normally  
4 I try, but doesn't go real well. So I'm kind of at  
5 a loss.

6 I did call Kevin Cummings on Friday, the  
7 24th, this last Friday. February 24th, 2012, I did  
8 call him and said, Kevin, what's going on? I said,  
9 I hear nothing. You know, what -- I'm trying to  
10 make all kinds of different proposals, I want to  
11 get this project -- I don't want to be a holdup  
12 here. And he said, Well, it will be up to the PSC,  
13 and that was a direct quote.

14 So that brings me to that point where, you  
15 know, I guess I have some contradiction with some  
16 of the testimony that's been here that these guys  
17 are willing to try to work with you, because  
18 they're not. I mean, they're not willing to work  
19 with us.

20 I mean, I'm to the point today, I offer  
21 into testimony, they can go across any of the land  
22 in yellow except for, except for, the South Half,  
23 Section 34-148-64 at no cost. It will cost them  
24 nothing. If that's not legal, I'll ask them that  
25 they give the money to a 501(c) corp. I don't want

1 anything for you guys to go across my land,  
2 nothing, but you stay on my land, I don't care.  
3 You can build power lines and circles out there, I  
4 don't give a rip. Please don't go south of my  
5 farm. You're going to adhere and stymie any growth  
6 that I have into the future. I cannot grow and go  
7 north, as I testified in Carrington.

8 And, in fact, I would refer you back to  
9 the testimony given in Carrington on June 17th,  
10 2011.

11 JUDGE HOBERG: We have that testimony.  
12 It's in the record.

13 THE WITNESS: I've read it back  
14 extensively and I've got some things that I want to  
15 answer again on there. Okay?

16 JUDGE HOBERG: Do you want to summarize it  
17 then?

18 THE WITNESS: Yeah, I'd like to. Trust  
19 me, I'm not going to read the whole thing. I'm not  
20 that good a reader.

21 JUDGE HOBERG: I was a little worried  
22 about that, but you can summarize it.

23 THE WITNESS: I'm told that -- I've been  
24 rehearsing for a long time and I'm not an attorney.

25 JUDGE HOBERG: Sure. Sure.

1           THE WITNESS: But give me some latitude,  
2 please, Your Honor.

3           On page 234 of that testimony, and it was  
4 Mr. Clark -- Commissioner Clark, and he -- I'll  
5 paraphrase, he said, You know, I thank you for  
6 doing -- coming and basically it goes to the point  
7 where I was trying to make a point that I'm willing  
8 to let you go -- let's go north of the farm, I'll  
9 do that, and I think I've done that. That was on  
10 page 234 and 235 of testimony.

11           And then when you go to page 239 and 238  
12 of the testimony, and Commissioner Kalk, I believe,  
13 said -- and I may have these two wrong, but he  
14 said, Wouldn't it make more sense, he said, because  
15 you're hemmed in by the -- by the road to the south  
16 of you, anyway, why wouldn't you just jump across  
17 the road to the south and go that way. And so I've  
18 made that proposal. I mean, I might have one of  
19 you wrong or the other, but you can go back and  
20 look, it's there. I've tried very hard to  
21 cooperate to the very best of our abilities to do  
22 those things.

23           And so we spelled it out going to the  
24 north for one of the Commissioners. We spelled it  
25 out going to the south for one of the

1 Commissioners, and I hear nothing. I hear  
2 absolutely nothing back from Minnkota, zero. And  
3 if they have testimony that would show that they've  
4 contacted me in writing, contacted me in person. I  
5 don't know by name a person other than the couple  
6 gentlemen, Mr. Phillips I heard him today testify  
7 and Hennes, I believe. I don't know anyone at  
8 Minnkota. They've never contacted us. I would  
9 think that if this was that important of a project,  
10 that they would want to try to cooperate.

11 JUDGE HOBERG: You have been dealing only  
12 with Kevin Cummings?

13 THE WITNESS: That's it. So as far as I  
14 know and as far as I'm concerned, Kevin Cummings is  
15 the face of Minnkota Power. Nobody has ever  
16 contacted me any differently.

17 You know, I can go back to the original --  
18 the very original site and, you know, this has  
19 maybe been put in, but they moved closer to our  
20 place. From what the original proposed route was,  
21 they moved closer to our farmyard by about five to  
22 eight hundred feet closer. And today you heard  
23 testimony from, I believe it was, Mr. Phillips. I  
24 believe -- I wrote this down, I believe Mr.  
25 Phillips testified it's -- sometimes we don't want

1 to move further into farmland because it would jog  
2 a route to get further away from somebody's  
3 buildings. Well, in this case they took a lot of  
4 liberties and come a whole lot closer to my yard  
5 out in the middle of a field.

6 JUDGE HOBERG: How close to your yard?

7 THE WITNESS: They're less than a  
8 quarter-mile right now, sir -- Your Honor. And in  
9 my build pattern, it's going to be very difficult  
10 for us to continue to expand. My sons and my  
11 daughter are part of our operation. We're a  
12 fourth-generation farming operation. And if you're  
13 going to run a power line right through what  
14 someday will probably be the middle of our  
15 farmyard, at the rate we're expanding, you might as  
16 well -- they might as well buy me out, because I'd  
17 just as -- if we're going to go to condemnation,  
18 you know, we need to think about in the realm of,  
19 the way I've got it figured, 22 to 50 million  
20 dollars. So if you want to buy me out, it would  
21 probably be easier, because if you're going to  
22 stymie my future generations of our family for the  
23 next 70 years, it doesn't make sense.

24 That's why I'm here saying let's work  
25 something out. In fact -- and I've got all kinds

1 of pictures that will verify and back up that  
2 there's a creek going north of our farm. If you'd  
3 like me to enter those, Your Honor, into --

4 JUDGE HOBERG: I think you'd be better off  
5 to describe the situation.

6 THE WITNESS: Okay.

7 JUDGE HOBERG: Pictures --

8 THE WITNESS: Well, pictures may lie.

9 COMMISSIONER CRAMER: We can see them.

10 JUDGE HOBERG: We can see them, yeah. We  
11 can see them.

12 THE WITNESS: Okay. So I cannot go north,  
13 Commissioners. I can't. It's impossible. You  
14 know, my family has got -- I have some personal  
15 reservations with your 500-foot corridors. I have  
16 buildings that are over 600 feet long on my -- that  
17 my family has constructed and you're talking about  
18 500-foot corridors. Guys, what century are we in?  
19 Come on. These -- I have neighbors that are  
20 building shops that are 150 feet wide and 250 feet  
21 long. I got a small one. Ours is only 60 feet  
22 wide by 152 feet long. It was built in the early  
23 1980s. If you want to be proactive, think -- think  
24 proactive.

25 I'm not sitting here -- I want to again

1 make it so clear that we are here to cooperate to  
2 get this power line through, but we need to think  
3 in the century that we're operating in here today,  
4 gentlemen.

5 JUDGE HOBERG: Even though I indicated  
6 that I didn't want to keep your pictures, they're  
7 apparently originals, you can certainly describe  
8 some things to us and maybe show us if that's what  
9 you want to do.

10 THE WITNESS: I have a calving barn that  
11 is 70 feet wide by 250 feet long in my farmyard.  
12 My son just got his pilot's license a year ago.  
13 South of those trees south of my farm we have  
14 intent to put a landing strip, because we have a  
15 farm at Turtle Lake, North Dakota, we'll be 30  
16 center pivots, the first irrigation project out of  
17 the Garrison Diversion Canal at mile marker 7.5.  
18 My family is a part-owner in that. That's been a  
19 year and a half. We have another 8,000-acre  
20 farming operation at Spiritwood, North Dakota, that  
21 we're in a joint venture with other people.

22 We're in an aggressive expansion stream,  
23 and if you allow this power line to go on the south  
24 edge of my yard, I'm sorry, we'll go there kicking  
25 and screaming and we're going to go through

1 condemnation.

2 I've proposed routes to work with.  
3 They're very workable routes. We want to work with  
4 these people. In fact, I'm willing right now, and  
5 we've talked as a family, not only to give them  
6 free passage except everywhere -- everywhere on  
7 that half section. We're willing to pay them at  
8 the same rate they're willing to pay us per tower  
9 to go along the three-quarter-mile jog if they  
10 choose that route in the West Half of Section  
11 35-148-64. Got that written down?

12 I mean, I don't know if anybody has ever  
13 done that, but we're willing to do -- stay on our  
14 property, please. The best route is still the  
15 north one that you gentlemen proposed, absolutely.  
16 There's no doubt it's the best route. But I have  
17 been beat up enough by my neighbors. Stay on my --  
18 stay on our family's property. I don't have a  
19 problem. I don't know what more we can try to do,  
20 but I can't negotiate with myself.

21 And I have one thing in closing before I'm  
22 going to turn it over to my daughter to do our  
23 close. I don't believe -- and this won't impact  
24 our family if you choose any route that goes across  
25 our land and you'll have to. I don't believe that

1     you're -- the amount of money that you're paying is  
2     right. Doesn't affect me anymore now, does it?

3             And the reason I'm stating that is  
4     because, as you all know, our market value is going  
5     up 31 percent this fall; correct? What did our  
6     market value do last year? From my calculations,  
7     Minnkota is adversely affecting all of my neighbors  
8     and every landowner in this by about 50 percent of  
9     the value. In our area they're using \$1,800 an  
10    acre. That number should be \$2,400 an acre,  
11    gentlemen, 2,400, by my calculations. If you want  
12    to take -- I don't know who came up with the  
13    increase in the market value. I didn't. I've read  
14    a lot about it. It's going to affect all of us as  
15    landowners and they're still sitting here saying  
16    1,800. Now, something is wrong, and you guys know  
17    that, because we're going up in market value. And  
18    you guys can read the paper the same as I can and  
19    they're asking for 1,800 through our corridor.  
20    It's not right. Doesn't affect me. I've already  
21    stated the record. I'll stand by that.

22             JUDGE HOBERG: Thank you, Mr. Topp.

23             THE WITNESS: So I would like my daughter  
24    to do our close.

25             JUDGE HOBERG: All right.

1 MS. TOPP: Where would you like this?

2 JUDGE HOBERG: Just set it down over  
3 there, please. We'll get it.

4 MS. TOPP: I'm here on behalf of my  
5 brothers and I who are -- both my brothers are back  
6 home farming, and my goal is to -- upon graduation  
7 to go back to the family farm.

8 And as the next generation, we have to  
9 look to the future and plan how to meet the growing  
10 demand for food. That's why we're in agriculture.

11 On our farm the way that my brothers and I  
12 plan to do that and to contribute to that growing  
13 need is to expand the farm and ranch that has been  
14 in our family for four generations.

15 Unfortunately, this proposed transmission  
16 line may keep us from expanding if it goes south of  
17 our farm and would impose with our plans to expand.

18 I believe that planning for the future  
19 means to think of the well-being of yourself and  
20 others. And I believe that, as my dad has talked  
21 today, that's what my family is doing and we're  
22 thinking about how our farm and ranch can meet the  
23 growing demand of a population that's expected to  
24 double in the next 50 years, but we're also  
25 thinking about the safety of those who live and

1 work on our farm.

2 We're also thinking of the best way to get  
3 the power from point A to point B, and we're  
4 thinking of those recipients, and that's why our  
5 family is willing to work with Minnkota Power.

6 And so I just want to say that we just --  
7 we're here today to inform PSC of our situation and  
8 to express our willingness to work with Minnkota  
9 Power. It's never been an issue of getting this  
10 power. We just want PSC to know how willing we are  
11 to work with them.

12 I'm excited to see what the future has in  
13 store, and I hope that the PSC and Minnkota Power  
14 understand our willingness to work with them, and I  
15 only hope that we can work together to get this  
16 power route and also to allow our operation to  
17 continue doing what we do.

18 JUDGE HOBERG: Thank you, Jessie and Jeff.  
19 Just hold on a second. There may be some questions  
20 of you. Ms. Smith, please.

21 **CROSS-EXAMINATION**

22 **BY MS. SMITH:**

23 Q. Just a couple of questions. The first  
24 question is, so I'm looking at what you've got here  
25 marked as T2, this feedlot expansion plan. Mr.

1 Topp, you were at the corridor hearing, right, you  
2 said?

3 A. Yes, I was.

4 Q. And you didn't present this at the  
5 corridor hearing, did you?

6 A. No, I did not.

7 Q. Okay. And have you ever provided a copy  
8 of this to Minnkota?

9 A. I offered it to Kevin at KLJ when he was  
10 in my house on October 13th. I offered it to him  
11 the same as you see it right there and he did not  
12 want to take it, but I did offer it.

13 Q. And you mentioned an airstrip. You did  
14 not testify regarding an airstrip at the corridor  
15 hearing, did you?

16 A. No, I did not.

17 MS. SMITH: I have no further questions.

18 JUDGE HOBERG: Thank you, Ms. Smith.

19 Mr. Sagsveen.

20 MR. SAGSVEEN: Are we going to --

21 JUDGE HOBERG: I'm sorry. Are you talking  
22 about the exhibit?

23 MR. SAGSVEEN: Exhibit 2, can I have an  
24 opportunity to look at it before we --

25 JUDGE HOBERG: Absolutely.

1 MR. SAGSVEEN: Mr. Topp, the feedlot  
2 that's illustrated in Exhibit T2, you plan to have  
3 that directly south of your farmstead; is that --

4 THE WITNESS: That is where the  
5 engineering study was done by KLJ to put it. Does  
6 not -- you know, that's where -- that's where it  
7 was proposed to go, yes.

8 JUDGE HOBERG: I'm sorry. Proposed by  
9 who?

10 THE WITNESS: Well, myself and by KLJ --  
11 excuse me -- by K2S Engineering. Excuse me.

12 JUDGE HOBERG: That's better.

13 THE WITNESS: Excuse me. Excuse me. May  
14 the record -- may the record -- too many K's. K2S  
15 Engineering. And that study was done through a  
16 grant through the NRCS, so that study was paid for  
17 by taxpayers.

18 JUDGE HOBERG: And what is NRCS just for  
19 the record?

20 THE WITNESS: Natural Conservation  
21 Resource Services.

22 JUDGE HOBERG: Thank you.

23 MR. SAGSVEEN: I don't have any objection  
24 to this exhibit, Your Honor.

25 MS. SMITH: I'll just need to look at it.

1 I'm sorry.

2 JUDGE HOBERG: Yeah. Sure.

3 **CROSS-EXAMINATION**

4 **BY MR. SAGSVEEN:**

5 Q. Mr. Topp, I'm going to have to apologize  
6 for the descriptions that you've used on the maps.  
7 I couldn't quite follow all of the section  
8 testimony. But if you could look at what -- I'm  
9 just going to put this in front of you. It's maps  
10 that we have that are in Exhibit 1. And for the  
11 record, it's Figure 2, page 29 of 50. And could  
12 you just identify that map and point out your  
13 farmstead within this map?

14 JUDGE HOBERG: Is that in the application?

15 MR. SAGSVEEN: Yeah. Exhibit 1 is the  
16 application, Your Honor.

17 Q. (MR. SAGSVEEN CONTINUING) Again, I'll  
18 just restate my question. Is that your farmstead  
19 in the middle of that map?

20 A. Yes. My farmstead is in Section 34 and 35  
21 in Eddy County. In the center of this map,  
22 whatever you say I guess I'll have to agree with.  
23 I don't see the number. Figure 2, page 29 of 50,  
24 that's correct.

25 Q. And the proposed route proceeds south of

1 your farmstead; is that correct?

2 A. Yes, the proposed route goes south of my  
3 farmstead and it originally was further to the  
4 south and then someone moved it further north  
5 towards me again.

6 Q. And when you say "originally it was  
7 further south," do you mean in the corridor  
8 application the proposed right-of-way was further  
9 south?

10 A. Yeah, I have a center -- you know, I've  
11 got a documentation that was originally given to  
12 me. You know, maybe you could --

13 JUDGE HOBERG: Well, can you answer the  
14 question based on that documentation?

15 THE WITNESS: It will take me a little bit  
16 to read it, but, yes, I can. I'm not that familiar  
17 with it. I've kept all these correspondence in my  
18 files.

19 JUDGE HOBERG: Sure.

20 MR. SAGSVEEN: And, Your Honor, I just  
21 want to get a picture --

22 THE WITNESS: It's under a notice of  
23 option to purchase easement.

24 JUDGE HOBERG: Okay. What was your  
25 question again, Mr. Sagsveen?

1 Q. (MR. SAGSVEEN CONTINUING) I just want to  
2 get a picture of, was the proposed right-of-way  
3 different -- the corridor -- the application  
4 process than we are today -- my understanding of  
5 your testimony is the route -- proposed route has  
6 gotten closer to his house. And is that --

7 A. Yeah, that's -- that's correct. It moved  
8 closer from this original document that was sent to  
9 me to ask for signature.

10 JUDGE HOBERG: The route, itself?

11 THE WITNESS: Yeah.

12 MR. SAGSVEEN: The proposed route.

13 JUDGE HOBERG: Right. Yeah.

14 Q. (MR. SAGSVEEN CONTINUING) I believe --  
15 and I don't recall the exact testimony, but if you  
16 recall, we expanded the corridor within that area  
17 based upon testimony. Is that --

18 A. That's absolutely correct that this body  
19 expanded that corridor. You are absolutely  
20 correct. And that's what's been so frustrating to  
21 my family.

22 Q. And so your proposal, what you were saying  
23 you would be comfortable with, is for -- again, on  
24 Figure 2 of page 29 of 50 -- for the proposed route  
25 to go to the north of your farmstead?

1           A.     Yeah.  That's what I've been testifying to  
2     all along.  Or I even -- it was either Commissioner  
3     Kalk or Commissioner Clark had suggested in their  
4     rebuttal back in Carrington on June 17th of 2011  
5     how about a line shift down to the county line and  
6     jump south of that road, because their question was  
7     that road inhibits your growth pattern, anyway, and  
8     breaks it up, and I agreed, I said yes.  And so  
9     I've even made that proposal to KLJ.  I mean, these  
10    are all on the table.

11                    JUDGE HOBERG:  Yes.

12           Q.     (MR. SAGSVEEN CONTINUING)  And just so I  
13    understand, is the road to the south of your  
14    farmstead also the county line?

15           A.     Yes, that is correct.  It is a township  
16    road.

17           Q.     Okay.

18           A.     Goes for one mile.

19                    JUDGE HOBERG:  Does she need to be  
20    excused?

21                    THE WITNESS:  She says she's okay for a  
22    little bit.

23                    JUDGE HOBERG:  I know she has a commitment  
24    in Fargo at 1:15 or something like that.

25                    THE WITNESS:  1:30.

1 JUDGE HOBERG: 1:30.

2 MR. SAGSVEEN: I don't have any further  
3 questions, Your Honor.

4 JUDGE HOBERG: Thank you, Mr. Sagsveen.  
5 Commissioner Clark, please.

6 **EXAMINATION**

7 **BY COMMISSIONER CLARK:**

8 Q. I have just a couple. First, thanks for  
9 being here to testify.

10 And this may all become clear when I get a  
11 reduced-size copy of the map that you were showing,  
12 but I'm just trying to get a description of who  
13 owns what in that particular area. You talked a  
14 little bit about it and I think it's shown on the  
15 map. But --

16 A. Section 33.

17 Q. Right. You're right on the line. It  
18 looks like your operation is basically right on the  
19 line between 34 and 35, but mostly on 34; is that  
20 right?

21 A. Yeah. The road goes right through the  
22 middle of our yard.

23 Q. Okay.

24 A. I have three houses on one side, large  
25 Quonsets, machine lots --

1 Q. Sure.

2 A. -- on the one side, and cattle operation,  
3 farm shops, main house and office and Quonsets.

4 Q. So do you operate all of 34?

5 A. A hundred percent, yes.

6 Q. Okay.

7 A. It's owned by family members --

8 Q. Right.

9 A. -- that are represented here today.

10 Q. But you'd have ability to sign easements  
11 for all three?

12 A. Yes, that is absolutely correct. And also  
13 the East Half of 35 are represented here today --  
14 or West Half -- excuse me -- West Half -- West Half  
15 of 35.

16 Q. Okay. It looks like the wetlands area  
17 sort of extends in that West Half of 35. Are there  
18 any concerns about routing a line through that  
19 particular area? It looks like seasonally it may  
20 be wet. Is that accurate?

21 A. Seasonally -- right now the water table  
22 has dropped dramatically through that whole area,  
23 and you could pretty much drive a loader tractor  
24 through the vast majority except the deepest areas,  
25 that is correct.

1 Q. Okay.

2 A. But, again, as my testimony started  
3 earlier on in June, you've got to cross that --  
4 you've got to cross it one way or another. And  
5 north of our farm right now at the north end of 34,  
6 it's pretty dry up there right now today.

7 Q. And 33 is controlled by an adjacent  
8 landowner; is that right?

9 A. Yeah. His name is Roger Topp.

10 Q. Okay.

11 A. And his brother, Raymond, was in my -- in  
12 my house on October 13th, as I testified, and he  
13 did go visit with his brother, Roger, in New  
14 Rockford, and then Kevin from KLJ went there a  
15 couple hours later, so --

16 Q. Sure. And you were testifying that you  
17 would be okay running the line up the very west  
18 edge of 34 and then across the North Half of 34,  
19 just not the South Half; is that right?

20 A. I testified that going up 33 to the north.  
21 If you wanted to go up 34 to the north, that's  
22 fine, too.

23 Q. Just on that very west edge?

24 A. Yeah, we're agreeable with that.

25 Q. The East Half of 35 is controlled by

1 another landowner?

2 A. That's correct. That's Ryan Topp or his  
3 mother, Kathy Erickson.

4 Q. Okay. And then is all of 36 state land?

5 A. No. Only the East Half of 36 --

6 Q. Okay.

7 A. -- is state land.

8 Q. Ryan Topp?

9 A. Mine is in yellow that the gentleman  
10 handed me.

11 Q. Okay. And so does Ryan Topp control the  
12 East -- or excuse me -- the West Half of 36?

13 A. Yeah. I believe it's his mother, Kathy  
14 Erickson, does.

15 Q. Okay. Sections 3 and 2 to the south of  
16 12th Street, or the county line --

17 A. 3 -- 3 is controlled by us.

18 Q. Okay.

19 A. 2 is Ryan Topp.

20 Q. Okay.

21 A. And in your -- in your cross-examination  
22 in Carrington you had asked about jumping across, I  
23 believe, that road to the south, and so I've made  
24 those provisions and proposals to KLJ, also. I  
25 mean, I can live with that. I mean, it's going to

1 be a little more difficult for an airplane because  
2 you're going to want to run a runway northwest and  
3 southeast, but we'll live with that. We'll figure  
4 it out.

5 Q. The primary concern is crossing that South  
6 Half of 34 and the access that you have to your  
7 farm?

8 A. Absolutely. I mean, I'll pull all these  
9 pictures out. I'd gladly share them with you. I  
10 can't go north and I can't go east. And we are  
11 expanding quite rapidly.

12 Q. Thank you. That does help refresh my  
13 memory with regard to the ownership issues.

14 And then one was just a comment that I  
15 had, and this is a question that we get oftentimes  
16 at hearings -- or comments that we hear with regard  
17 to easement provisions and what the utility  
18 provides and what they offer, and we're always  
19 happy to hear those concerns.

20 Unfortunately, I think a lot of times, the  
21 Commission can't do much about that. The terms and  
22 conditions with regard to easements and what's  
23 offered landowners, so on and so forth, is really  
24 strictly a matter for District Court to decide.

25 The Commission's siting procedure takes

1 into consideration all sorts of things, a lot of  
2 the very things that you've talked about here  
3 today, but payment to landowners and compensation  
4 that's provided, so on and so forth, much like the  
5 condemnation proceedings are solely the purview of  
6 the District Court, not that we don't appreciate  
7 hearing about them, because, of course, we talk to  
8 other policymakers, but the legislature would have  
9 to make that change if we were to be able to deal  
10 with them.

11 A. I understand that.

12 Q. Thank you.

13 A. You know, I just don't want to -- I  
14 honestly -- we don't want to go through  
15 condemnation, so we want to figure something out.

16 COMMISSIONER CLARK: Thank you.

17 JUDGE HOBERG: Thank you, Commissioner  
18 Clark.

19 Commissioner Cramer, please.

20 COMMISSIONER CRAMER: Thank you.

21 **EXAMINATION**

22 **BY COMMISSIONER CRAMER:**

23 Q. And thank you, Jeff, for your testimony  
24 again. I'm pretty sure this was probably in the  
25 June corridor testimony, but remind me again, you

1 alluded to the number of homes on your property.  
2 How many families are -- actually live on this  
3 farmstead?

4 A. Four. And one -- the middle dot on the --  
5 in Section 35 has -- there's eight people live in  
6 that house, there's one lives in the south house,  
7 in the summertime there's three live in the north  
8 house, and then the further one to the west and the  
9 north there's four live in one.

10 Q. Okay. Are any of your photos aerial  
11 photos?

12 A. They all are. I mean, I would love to put  
13 them in.

14 Q. No. I understand. And the judge  
15 certainly isn't restricting you from doing that. I  
16 think he's just trying to help expedite the  
17 process --

18 A. Well, if it would be helpful --

19 Q. -- and not do anything that wasn't  
20 necessary.

21 What I was going to say is, what we're  
22 looking at is a map -- well, what you're looking at  
23 is a map based on an aerial view, and I can pull it  
24 up pretty close, but it gets pretty fuzzy, and so,  
25 in all honesty, if you had a photo -- a quality

1 photo of the whole -- the whole thing, I would find  
2 that helpful, frankly.

3 JUDGE HOBERG: Why don't you show that to  
4 the counsel, too, and Mr. Sagsveen.

5 THE WITNESS: May I approach?

6 JUDGE HOBERG: Yeah. Please.

7 THE WITNESS: This one is 2006. It's a  
8 shot from the south.

9 COMMISSIONER CRAMER: Okay.

10 THE WITNESS: And at the south end of  
11 there, here is about where the power line is coming  
12 through and there's a new set of trees going all  
13 the way around our yard that we put in three years  
14 ago. And this green space from here to there is  
15 all that feedlot proposed.

16 JUDGE HOBERG: Are you getting that,  
17 Denise?

18 MS. SMITH: I'm sorry. I can't get  
19 anything.

20 JUDGE HOBERG: Yeah. Yeah.

21 THE WITNESS: I'll give it to you and go  
22 back. This one is dated 1999 and this is 2006.

23 JUDGE HOBERG: Is there any way you can  
24 get a reduced copy of that to put in the record --  
25 I don't want to take your original photos with the

1 frames and everything -- or some picture that will  
2 be reasonably representative of that?

3 THE WITNESS: Whatever you would like I'll  
4 do.

5 COMMISSIONER CRAMER: Well, it helps --  
6 just seeing that helps me understand better the map  
7 that I'm looking at.

8 JUDGE HOBERG: But having seen it, I think  
9 in fairness we need to put it in the record.

10 COMMISSIONER CRAMER: That's fine.

11 JUDGE HOBERG: If you can provide that.

12 THE WITNESS: What I'll do is, I'll just  
13 jerk them out of the frames and you can fold them  
14 up, because that's how they come to us, so it's not  
15 a problem.

16 JUDGE HOBERG: You don't need the picture  
17 back?

18 THE WITNESS: You know, I --

19 COMMISSIONER CLARK: You can scan it.

20 JUDGE HOBERG: Just scan it.

21 COMMISSIONER CLARK: Mail it to us.

22 JUDGE HOBERG: If you could scan it, that  
23 would -- that's what I'm thinking.

24 COMMISSIONER CRAMER: What about this,  
25 before we leave here, we could take a picture of

1 it. I mean, we all have cameras.

2 MS. SMITH: Or maybe a photocopier.

3 COMMISSIONER CRAMER: Or even a photocopy  
4 if there's a color copier around here. But I  
5 can -- we can take a photo of a photo. Those are  
6 nice, large photos and it wouldn't be hard to do  
7 that at all.

8 JUDGE HOBERG: Would you have any  
9 objection if we marked a photo or a scanned copy or  
10 something as Exhibit 3, those two pictures he just  
11 showed the Commission?

12 MS. SMITH: No. That's fine.

13 JUDGE HOBERG: Mr. Sagsveen?

14 MR. SAGSVEEN: That's Exhibit T3?

15 JUDGE HOBERG: T3.

16 MR. SAGSVEEN: I have no objection.

17 JUDGE HOBERG: We'll do that afterward --  
18 sometime afterwards. If not today, then --  
19 hopefully today. So that will be T3 then, those  
20 two pictures you just showed the Commission.

21 THE WITNESS: Sure. That's fine.

22 JUDGE HOBERG: Commissioner Cramer,  
23 please.

24 COMMISSIONER CRAMER: I think most of my  
25 questions are going to be for a rebuttal witness,

1 so I appreciate your being here.

2 JUDGE HOBERG: Okay. Thank you.

3 Commissioner Kalk, please.

4 **EXAMINATION**

5 **BY COMMISSIONER KALK:**

6 Q. Just one. Just thank you for your  
7 testimony. Without going through the whole thing  
8 again, you know, this Commission opened up the  
9 corridor. What's your best guess why they didn't  
10 work with you to make this out? Just in one  
11 sentence. It was clear to me that we opened the  
12 corridor so we can avoid this kind of problem. Do  
13 you have any -- your best guess why this wasn't  
14 worked out?

15 A. I have no -- well, I could guess. I  
16 believe that the Commission received a couple  
17 letters maybe from some of my neighbors. And if  
18 you guys are -- can think through sometimes,  
19 there's dynamics that take place. That may be one.  
20 But I honestly -- I have absolutely no idea.

21 COMMISSIONER KALK: Okay.

22 THE WITNESS: They asked me to weigh in  
23 and I said yes.

24 COMMISSIONER KALK: Thank you.

25 THE WITNESS: And I don't know why. I

1 can't negotiate with myself.

2 JUDGE HOBERG: Thank you, Commissioner  
3 Kalk.

4 Any further questions of the Topps? Mr.  
5 Sagsveen.

6 MR. SAGSVEEN: Your Honor, I'm just going  
7 to get my map back and then I'm going to just ask  
8 one follow-up question.

9 **FURTHER CROSS-EXAMINATION**

10 **BY MR. SAGSVEEN:**

11 Q. Figure 2, page 29 of 50, when you look at  
12 that map, it looks like there's a large wetland. I  
13 mean, it looks like -- on the map it's illustrated  
14 in bright green, and I just want to get  
15 clarification. When I look at the photos which are  
16 going to be entered as Exhibit 3, it doesn't  
17 look -- it looks like it's all farmland to the  
18 north and a large tree row to the east side of the  
19 road -- the north-south road, or you have pasture?

20 A. No. It's farmland, but there is a break  
21 there between the tree rows, and you can see it on  
22 the pictures. There is a break through it, so it  
23 wouldn't be a problem.

24 Q. Is that kind of a perennial stream area,  
25 or is there -- is there any water that flows

1 through that area, or is it primarily pasture  
2 and/or farmland?

3 A. Everything on the west side in Section 34  
4 was farmed in 1974.

5 Q. And the north side?

6 A. That was in Section 34 on the north side.

7 Q. Okay.

8 A. North of the farm in Section 34 everything  
9 was farmed there in 1972, so it does -- you know,  
10 if you go to my FSA office, it's all identified as  
11 cropland even though it's pastureland today,  
12 because we find it best and most useful purpose.

13 MR. SAGSVEEN: I don't have any additional  
14 questions.

15 THE WITNESS: But, again, you move closer  
16 to the water rather than further away.

17 JUDGE HOBERG: Okay. Thank you.

18 Any further questions of the Topps?

19 MS. SMITH: I just have a couple, Your  
20 Honor.

21 **FURTHER CROSS-EXAMINATION**

22 **BY MS. SMITH:**

23 Q. I'm just trying to understand on the  
24 feedlot that you're proposing, where are you  
25 proposing -- and maybe we could borrow Mr.

1 Sagsveen's figure again that you were looking at  
2 just now, Figure 2, page 29 of 50.

3 MS. SMITH: Would you mind if he looked at  
4 your copy?

5 Q. (MS. SMITH CONTINUING) I'm just trying to  
6 understand where your feedlot is being proposed.

7 A. Yeah.

8 Q. And maybe if you can tell us in relation  
9 to the houses.

10 A. It would be easier again if I had my  
11 picture up here.

12 Q. Just generally.

13 A. Well, generally it's going to go south of  
14 the buildings and it will run about 350 feet  
15 further south, and then it goes along to the west  
16 along the new trees that are planted and all the  
17 way to the north -- to the very north edge of the  
18 farm. It was a 2,000-head feedlot that was  
19 proposed.

20 Q. It was proposed. Is it still proposed?

21 A. Yeah.

22 Q. And when you say the north edge of the  
23 farm, what are you referencing?

24 A. It's going to run up against the tree  
25 belt.

1           Q.     The tree belt in Section 34, the very  
2 northernmost section -- section line in 34?

3           A.     Well, it's the one that's right northeast  
4 of the buildings -- or northwest of the  
5 buildings -- excuse me -- next to the lower land  
6 that goes east and west.

7           Q.     Okay. And how far is the feedlot -- so  
8 then it comes directly south of the buildings 350  
9 feet?

10          A.     Yeah, it's going to go at least south of  
11 those buildings 350 feet, up to the new tree belt  
12 that's planted in there, and then that new tree  
13 belt is about eight -- eight rows wide, and it will  
14 take about another 200 feet so it gets you within  
15 your new proposed -- or the original proposed  
16 corridor. I get lost. It's going to be about  
17 200 -- 200-and-some feet from that.

18                   MS. SMITH:   Okay.

19                   JUDGE HOBERG:   Any further questions of  
20 the Topps?

21                   MS. SMITH:   I don't think so, Your Honor.

22                   JUDGE HOBERG:   Thank you, Topps.

23                   Now, you're going to provide us a reduced  
24 copy of the Exhibit T1, the large map; correct?

25                   THE WITNESS:   Yeah. We'll get on that yet

1 today. I'll try to get that done.

2 JUDGE HOBERG: Can we have -- Ms. Smith  
3 will need one and then we'll need five, six copies  
4 for the Commission, too, of that.

5 THE WITNESS: Do you want the red lines  
6 that I drew in on it of all the different proposed  
7 routes?

8 JUDGE HOBERG: Yes, please. Yes. Yes.

9 THE WITNESS: Okay.

10 JUDGE HOBERG: Yes. And then you're going  
11 to get us either a scanned or whatever of the -- of  
12 the two pictures; correct?

13 THE WITNESS: Correct.

14 JUDGE HOBERG: Okay. We're going to take  
15 a short recess here because Ms. Smith has had no  
16 opportunity to look at the Exhibit 2 yet, so we're  
17 just going to take five minutes. I hate to do  
18 that, but I think Denise probably needs a break,  
19 too, and then we're going to get to the rest of the  
20 testimony, just a short recess here. So let's  
21 stand in recess.

22 THE WITNESS: Are we done?

23 JUDGE HOBERG: Yes. Thank you very much.

24 (Recess taken.)

25 JUDGE HOBERG: Okay. Let's go back on the

1 record. I believe we just have Mr. Leake -- Todd  
2 Leake who is going to testify. Anyone else besides  
3 Mr. Leake who wished to testify, present  
4 information to the Commission?

5 Mr. Leake, please, could you come forward?

6 While he's walking up, did you have any  
7 objection to Exhibit T2?

8 MS. SMITH: I just can't find a map that  
9 shows it, but, otherwise, no. I just can't find a  
10 map that shows where it's located.

11 JUDGE HOBERG: Well, we had him describe  
12 it to some extent.

13 MS. SMITH: Yeah, I'll go with that  
14 description.

15 JUDGE HOBERG: All right. Then I'll admit  
16 Exhibit T2.

17 Please be seated, Mr. Leake. You probably  
18 heard the admonition I gave in regard to perjury a  
19 couple times; correct?

20 MR. LEAKE: Yes, I did.

21 **TODD LEAKE,**  
22 being first duly sworn, was examined and testified  
23 as follows:

24 JUDGE HOBERG: Thank you. And we have the  
25 spelling of your name on the attendance sheet

1 L-e-a-k-e; correct?

2 THE WITNESS: Yes, that's correct.

3 JUDGE HOBERG: All right. Why don't you  
4 tell us a little bit about you and then what you  
5 want to tell the Commission, please.

6 THE WITNESS: I live at -- in Fairfield  
7 Township. I farm there. And my concerns are --  
8 there's multiple concerns I have with the route as  
9 it goes through Fairfield, Oakville Townships. And  
10 the first one I'd like to address --

11 COMMISSIONER CLARK: Could you describe  
12 the county?

13 JUDGE HOBERG: Yeah, could you give us the  
14 county, please?

15 THE WITNESS: Oh, Grand Forks County.

16 JUDGE HOBERG: And what were the townships  
17 again?

18 THE WITNESS: Fairfield and Oakville.

19 JUDGE HOBERG: Are we there? Okay.  
20 Please continue.

21 THE WITNESS: The first problem that I  
22 have with the procedure that Minnkota has  
23 undertaken here was indicated by Mr. Hennes earlier  
24 today when he indicated that Minnkota had talked  
25 with all applicable jurisdictions, counties,

1 townships and the like.

2           Fairfield Township in which I reside and  
3 also Oakville Township are zoned under state  
4 statutes and require conditional use permits.  
5 Conditional use permits require a public hearing.  
6 He indicated that several townships had given them  
7 letters of approval. I don't know what legal  
8 status a letter of approval indicates.

9           I assume that there may be more zoned  
10 townships along the proposed route all the way to  
11 the power plant, and I would like to ask the Public  
12 Service Commission to investigate to see if the  
13 proper conditional use permits from zoned townships  
14 have been acquired and approved in a proper manner.

15           As to date, no conditional use permit  
16 hearing has been held in either Fairfield or  
17 Oakville Township, to my knowledge, and not allowed  
18 for citizen participation in that, because it has  
19 not been held.

20           I'm quite aware of the provisions of the  
21 zoning of Fairfield and Oakville Township as I  
22 personally participated when the zoning was done  
23 and when the amendments were made to those zoning  
24 regulations and resolutions.

25           The second thing I have that are issues is

1 the corridor that proceeds through the alkali flats  
2 area. I understand this is the right-of-way  
3 hearing, not the corridor hearing, but I think that  
4 reconsideration should be done by both Minnkota and  
5 the PSC as to the appropriateness of siting this  
6 power line through this area.

7 Not only does it go through the retention  
8 pool of the English Coulee control structure, but  
9 the history of this area has not been suitable for  
10 large-scale structures such as the ones proposed by  
11 Minnkota. I am not a geologist, I'm not a soils  
12 engineer. I assume there might be ways around this  
13 problem of the artesian nature of the alkali flats  
14 area.

15 I speak only from some experience with the  
16 siting for the Grand Forks County landfill some  
17 number of years ago when engineering firms in  
18 similar areas to the alkali flats originally  
19 proposed that it was suitable for the site, that  
20 was the Grand Forks city -- I'm only using this as  
21 an example -- and further EIS that was required by  
22 Turtle River Township in that matter brought to  
23 light that it would have been a disastrous  
24 undertaking to have sited the landfill in Turtle  
25 River Township as it was designed because the soils

1 didn't have the carrying capacity for the weight of  
2 the landfill.

3 We all want to do due diligence and avoid  
4 having public infrastructure malfunction or not be  
5 available to the public because of engineering over  
6 -- failures of engineering oversight.

7 The third problem I have with this is the  
8 continuing problem that we seem to be having with  
9 the location of this power line south of the Grand  
10 Forks International Airport. I'm a pilot. Years  
11 ago I attended UND flight school. I don't think  
12 that it's a prudent routing for this power line to  
13 be taken south of an international airport serviced  
14 by passenger aircraft, public, private aircraft.

15 With the new revelations that these power  
16 lines will have to be even higher, I think as a  
17 route planning agency, the PSC ought to take this  
18 very seriously. It's a very busy airport, has more  
19 operation -- or right up there in the top five -- I  
20 believe top five airports for operations in the  
21 Rocky Mountain region.

22 And there are -- I don't see any  
23 particular advantages to having put the power line  
24 across the alkali flats through the control  
25 structure in this low-weightbearing soils -- or



1 your land crossed by the proposed route?

2 A. No, it is not.

3 MS. SMITH: I don't have any further  
4 questions.

5 JUDGE HOBERG: Thank you. Mr. Sagsveen?

6 MR. SAGSVEEN: I don't have any questions,  
7 Your Honor.

8 JUDGE HOBERG: Mr. Lein?

9 MR. LEIN: No questions, Your Honor.

10 JUDGE HOBERG: Thank you. Commissioner  
11 Clark.

12 COMMISSIONER CLARK: Perhaps more a  
13 comment than question. I appreciate your thoughts  
14 on the issues related to conditional use permits,  
15 and so on and so forth, from local governments. We  
16 typically try to -- we take that very seriously.

17 Our orders are usually conditioned on  
18 getting those, so even if there are some that are  
19 outstanding during the course of the hearing,  
20 oftentimes we'll make them conditional on getting  
21 all of those intact or they won't be able to begin  
22 construction until they do.

23 There are circumstances under which the  
24 Commission can overrule a local township, but that  
25 has to be specially requested. It has not to this

1 point been done. So I would anticipate that  
2 barring something like that, which we don't have  
3 anything in the record yet, the company would have  
4 to get all those prior to construction. Thank you.

5 JUDGE HOBERG: Thank you, Commissioner  
6 Clark.

7 Commissioner Cramer, please.

8 **EXAMINATION**

9 **BY COMMISSIONER CRAMER:**

10 Q. With regard to the -- you referenced the  
11 airport and the prudence. Have you -- are you in  
12 any contact with any of the airport officials or  
13 have you talked to anybody that's expressed a  
14 concern, or are you aware of their position with  
15 regard to the -- or any concerns they've raised?

16 A. I've contacted the ND School of --

17 JUDGE HOBERG: Aviation.

18 THE WITNESS: Well, Aeronautics --

19 JUDGE HOBERG: Aeronautics.

20 THE WITNESS: -- Space Studies, I have  
21 contacted the airport manager and I have contacted  
22 the Runway Safety Office in Chicago. Their  
23 assessment of this was that they would have to work  
24 with their organizations to come up with testimony  
25 that they wanted to provide to the PSC. This was

1 back in the route planning stage. Apparently  
2 Minnkota, according to earlier testimony today, is  
3 working with UND Flight School and I'm not privy to  
4 any of that.

5 COMMISSIONER CRAMER: Very good. I have  
6 nothing further. Thank you.

7 JUDGE HOBERG: Thank you, Commissioner  
8 Cramer.

9 Commissioner Kalk, please.

10 Nothing further. Any further questions of  
11 the witness?

12 MS. SMITH: No, Your Honor.

13 JUDGE HOBERG: Thank you, Mr. Leake.

14 THE WITNESS: Thank you.

15 JUDGE HOBERG: Is there anyone else who  
16 wishes to present testimony to the Commission? No  
17 one else.

18 Seeing no one else, Ms. Smith, I believe  
19 you were going to call a rebuttal witness for at  
20 least one question and perhaps --

21 MS. SMITH: Yes, and I may have forgotten  
22 one of the questions, but I know the other one.  
23 I'd call Duane Phillips.

24 JUDGE HOBERG: All right. Mr. Phillips,  
25 please. And I don't need to swear you in. You're

1 still considered to be under oath from your  
2 previous testimony, Mr. Phillips.

3 Ms. Smith.

4 THE WITNESS: I understand that, Your  
5 Honor.

6 MS. SMITH: Thank you.

7 **DUANE PHILLIPS,**

8 having been previously duly sworn, was examined and  
9 testified as follows:

10 **REDIRECT EXAMINATION**

11 **BY MS. SMITH:**

12 Q. I think we have E10 up there on the --  
13 well, actually E10 is not the one we need. We have  
14 E6 up there, and that's the one that we need, on  
15 the board and then it's also one of the exhibits in  
16 the binder.

17 Mr. Phillips, could you talk about the  
18 area around the Topp farm and the routes that have  
19 been looked at and what will and what will not work  
20 from a design perspective?

21 A. I will. After the corridor hearings and  
22 when the Certificate of Corridor Compatibility came  
23 out, it was issued, there was an expanded corridor  
24 through this portion of Eddy and Foster Counties  
25 through that area.

1           Once that expanded corridor came out, we  
2 did a sit-down as a team and looked at some  
3 potential route alternatives through that area. As  
4 Mr. Topp identified earlier and as I believe he has  
5 on his exhibit, I wasn't able to clearly see them,  
6 but those looked accurately depicted as though what  
7 we had come up with. So we thank Mr. Topp for --  
8 for his appreciation of those routes.

9           But those route potentials were then --  
10 and we went out and had extensive meetings with  
11 landowners and each one presented a number of  
12 challenges to us, but with the testimony that we  
13 had at the corridor hearings, we really went --  
14 went on a landowner impact and with landowner --  
15 with landowner input more than anything else.

16           And overwhelmingly the north route and the  
17 south route, as Mr. Topp discussed, were -- were  
18 disapproved by the landowners in the area. Really  
19 when you look at the proposed centerline as it is  
20 now, we have -- we have two landowners represented  
21 that are not in favor of that route. One is on the  
22 eastern portion of that expanded -- excuse me --  
23 the western portion of that expanded corridor.  
24 There's a landowner who spoke at the corridor  
25 hearings, Mr. Weigum, of who we have not had

1 successful negotiations with, and then Mr. Topp  
2 talked about the properties he had.

3 Mr. Topp is correct, we went through a  
4 number of different options associated with looking  
5 at that. The challenge that we have from those  
6 direct ones is to be able to meet all of the  
7 requirements of all the interested parties that are  
8 in that area, both landowners, and that would  
9 include the Topp family that Mr. Jeff Topp  
10 represents.

11 I would like to draw the Commission's  
12 attention, and everybody else, to Figure 2, page  
13 29. That was one of the pages that we were looking  
14 at earlier that kind of zooms in a little bit on  
15 the properties in question here. Excuse me.

16 The challenges that we have in this area  
17 is, as Mr. Topp identified, a number of solutions  
18 to go across his properties that we took a look at.  
19 One was to come up and go along -- and go along the  
20 section line in Section 34 and 35. And one of the  
21 items that we looked at associated with this was  
22 what the neighboring landowners had to say about  
23 shifting a line in different locations in their  
24 properties.

25 And so if the landowners -- if the

1 neighboring landowners are not in favor of a shift  
2 that's in that area, it becomes very hard to  
3 justify that if we're not minimizing some impact  
4 associated with that.

5           If we were to place the route on the north  
6 side of Section 34, the issue that we run into is  
7 that large wetland that is in the northeast corner  
8 of Section 34 being -- being pretty difficult to  
9 span and thus incurring additional wetland impacts  
10 which, of course, is one of the siting criteria  
11 that Mr. Hunker talked about.

12           The other one would be able to come down  
13 and to turn back south and get on that original  
14 alignment in Section 35 of that township, there was  
15 another -- there was another large wetland area  
16 that is in that area that, again, would be very  
17 difficult to span across that would increase  
18 wetland impacts.

19           Now, we had conversations with the  
20 neighbors to the east of that, and those landowners  
21 to the east of that were unwilling to move the line  
22 to the northern section and then come down. So  
23 that was our challenge through that area.

24           Really the options that were talked about,  
25 the most -- the most reasonable and plausible one

1 was the shift coming into the western portion of  
2 34, coming down into Foster County on the northern  
3 side of Section 3. The challenge that we have  
4 there, though, is that we would then have to shift  
5 back up in Section 3 to go back to the original  
6 alignment, which then puts the line in that  
7 southeast corner of Section 34 because the  
8 landowner in Section 2 to the east of that is not  
9 in favor of that type of alignment.

10 So this is an area that has been very  
11 challenging to us to get through. We have had a  
12 lot of conversations with landowners -- with  
13 neighboring landowners through that area and  
14 certainly can get back with Mr. Topp again and see  
15 if we can't work something out.

16 Q. As far as what's been proposed, did you  
17 hear the testimony from Mr. Topp talking about the  
18 location of the proposed feedlot?

19 A. Yes, I did. I have to confess that I just  
20 have a general area in terms of that. I haven't  
21 had to take a look at a detailed map.

22 Q. My understanding from his testimony is  
23 that it was going to extend 350 feet south of the  
24 buildings near his -- that are part of his  
25 property, shown in kind of the middle of -- between

1 35 -- Sections 35 and 34. If that were the case,  
2 if it's 350 feet south of that southernmost  
3 building, would the line as proposed accommodate  
4 that feedlot?

5 A. From Mr. Topp's testimony and listening to  
6 him and looking at the aerial map and the distances  
7 that he was talking about, it does not appear to me  
8 that the proposed centerline would interfere with  
9 that feedlot.

10 MS. SMITH: Okay. And I believe there  
11 were questions from Mr. Kalk about waivers, and I  
12 think I will allow Mr. Kalk to ask those questions.  
13 I'm not sure if I can paraphrase them, if that's  
14 all right.

15 COMMISSIONER KALK: I don't have any more.

16 MS. SMITH: Okay. Thanks. I have no  
17 further questions then.

18 JUDGE HOBERG: Thank you, Ms. Smith.

19 Mr. Sagsveen.

20 **RE-CROSS-EXAMINATION**

21 **BY MR. SAGSVEEN:**

22 Q. I'm going to draw your attention again to  
23 Figure 2, page 29 of 50. On Section 34 you  
24 mentioned that there was a large wetland in the  
25 northwest corner of Section 34?

1           A.     The northeast corner.

2           Q.     Northeast corner.  When you say "wetland,"  
3 I looked at the photos that Mr. Topp brought in.  
4 It looked like dry pastureland to me.  Is it  
5 wetland-type soils primarily that makes you call it  
6 a wetland?  Or I don't see any -- obviously I  
7 didn't see any standing water there.

8           A.     Well, this is always a challenge to the  
9 design engineer in me, because -- because wetlands  
10 are determined by -- by an environmental method of  
11 where wetlands are delineated and spaced on a soil  
12 type and vegetation type and those type of things.  
13 So you can look at aerial mapping sometimes and  
14 that wetland may not be a year-round wet area.  
15 However, if that is a delineated wetland, then it  
16 does count as a wetland even though those  
17 boundaries may be held further that we -- than what  
18 would appear on like an aerial photography because  
19 there is crop on them.

20                   JUDGE HOBERG:  Delineated by whom, Mr.  
21 Phillips?

22                   THE WITNESS:  In this case it was  
23 delineated by HDR, the environmental consultant,  
24 and agreed upon with the U.S. Army Corps of  
25 Engineers and in some cases U.S. Fish and Wildlife,

1 if they're U.S. Fish and Wildlife wetlands.

2 Q. (MR. SAGSVEEN CONTINUING) So in this case  
3 there might be that perennial stream that may flow  
4 through there, depending on high water years, but  
5 at this point, whenever this map was created, that  
6 was a delineated potential wetland area?

7 A. Yes, that's correct.

8 Q. You made a number of references to  
9 landowners that objected to the line or the route  
10 being shifted. When you say "landowners," you mean  
11 landowners who already have the line going through  
12 their property or neighboring landowners who would  
13 have the line go through their property if it was  
14 shifted?

15 A. That was both.

16 Q. Okay.

17 A. So landowners that were along the  
18 alternatives that we looked at were opposed to  
19 those alternatives, and the landowners that are  
20 along what is the proposed centerline through this  
21 area have been overwhelmingly in favor of where it  
22 is located now.

23 MR. SAGSVEEN: I don't have any further  
24 questions.

25 JUDGE HOBERG: Thank you, Mr. Sagsveen.

1 Commissioner Clark, please.

2 COMMISSIONER CLARK: I do have a few.

3 **FURTHER EXAMINATION**

4 **BY COMMISSIONER CLARK:**

5 Q. Mr. Phillips, let's take, for example, the  
6 suggested route that Mr. Topp had talked about that  
7 would run the line up the west side of Section 34  
8 on his land and then across the north side of  
9 Section 34 on his land and then down the east side  
10 of -- I'm sorry -- the west side of 35 still on his  
11 land, so all on his land, you wouldn't need -- it  
12 shouldn't be of any concern to any other landowner.

13 As I understand your testimony, you  
14 indicated there were some concerns about some  
15 wetlands that may be delineated there. Is it  
16 technically infeasible to route through them, or  
17 from an engineering standpoint can you go through  
18 land such as that type on his property?

19 A. It is not technically infeasible to go  
20 through it. It just makes it very challenging both  
21 from the wetland boundaries, from a soils  
22 condition. Typically soils in wetland areas are  
23 not as stable for -- for the foundation design. If  
24 you're going to span those type of things, you end  
25 up with very large, very tall structures, with very

1 large foundations that have a much larger impact.

2 Q. Let me ask it this way. Can the line be  
3 safely built through areas like that?

4 A. Yes.

5 Q. The reason I ask is, it seems as though we  
6 have two criteria the Commission are trying to  
7 weigh -- or at least I'm trying to weigh in my  
8 mind. You talked about wetlands and protecting  
9 them, but I'm also concerned about protecting  
10 landowners and actual people and the impact on  
11 their welfare. And one of the other criteria that  
12 the Commission has to use as set out in our -- set  
13 out in the hearing notice is the welfare of the  
14 citizens of the state, not just delineated  
15 wetlands.

16 I'm wondering if it might be appropriate  
17 -- I'm going to respond to that. It would seem  
18 like you have a landowner who is willing to keep it  
19 on their land, it shouldn't concern any other  
20 landowners in the area, so you really don't need to  
21 talk to them. And it's really in relationship to  
22 his business practices. Why, knowing that it can  
23 be safely constructed, would Minnkota not consider  
24 that?

25 A. The concern again is -- is -- is -- the

1 size of those wetlands that are up in that area.  
2 If you were to look at the northeast corner of  
3 Section 34, that would put a prohibitively large  
4 span in there with structures that are most likely  
5 going to be in the 200-foot range and are ones that  
6 we're going to have to put navigational lights and  
7 those things up there.

8 But the larger concern from us from a  
9 design and engineering standpoint is if we come  
10 down on Mr. Topp's land in Section 35, you are  
11 asking us to put a very large corner structure in  
12 the southeast quarter of Section 35 just south of  
13 that wetland, and that would be a very large  
14 structure. Is it technically feasible? Yes,  
15 probably it is.

16 Q. You had generally indicated in your  
17 rebuttal from Ms. Smith that in meetings with other  
18 landowners -- I suspect it means landowners who  
19 would have been affected under various scenarios --  
20 a number had issues with them. Can you describe,  
21 what were the issues? Was some of it it's on my  
22 neighbor's land, forget it, I don't want it on  
23 mine, in which case it puts the utility company in  
24 a tough spot because obviously Mr. Topp has said he  
25 doesn't want it on`his, either, in the current

1 location.

2 A. The issues through the area -- and I can't  
3 speak to each individual landowner issue right now  
4 without having the notes in front of me, but this  
5 area was interesting from the perspective that once  
6 we started looking at the alternative routes --  
7 like I mentioned, the landowners in the area, we  
8 found two groups. One was the ones that were very  
9 opposed to alternative solutions through this area,  
10 and the other was the landowners that were -- that  
11 are along what we have proposed as the centerline  
12 now became very much in favor of that alignment to  
13 the point that most of those landowners came in  
14 within a relatively short period of time and signed  
15 options with us, saying that -- saying that through  
16 this area this is where they felt the best location  
17 was.

18 Q. But to the extent that it's kept on Mr.  
19 Topp's land, and Mr. Topp testified today, should  
20 they really care? Or was that -- was that even  
21 presented to them? Were the scenarios that you  
22 were presenting strictly those that would have  
23 affected line shifts elsewhere?

24 A. Well, the alternatives presented to the  
25 landowners were alternatives that were the ones

1 discussed, that northern route, the southern route  
2 or any alternatives that went on other landowners'  
3 property other than the visual impact of having  
4 excessively tall and large structures that might  
5 require aviation-type lights on them.

6 I mean, other than that, we would not go  
7 to neighboring landowners and ask them what they  
8 thought about a reroute that would have been solely  
9 on Mr. Topp's land.

10 COMMISSIONER CLARK: Okay. Thank you for  
11 your testimony.

12 JUDGE HOBERG: Thank you, Commissioner  
13 Clark.

14 Commissioner Cramer, please.

15 **FURTHER EXAMINATION**

16 **BY COMMISSIONER CRAMER:**

17 Q. Well, I just want to be really clear. So  
18 you offered alternatives to the neighbors that did  
19 not ever put a structure on their land and they  
20 objected, or was it just that they'd have to be  
21 taller structures? What did they object to?

22 A. I'm afraid I don't understand the  
23 question.

24 Q. Well, the question is that Mr. Topp  
25 testified, and I think I just heard you say, that

1 you offered the neighbors alternatives that put no  
2 structures on the neighbors' land, it all remains  
3 on Mr. Topp's land, albeit higher structures  
4 because making, I guess, hard angle or something,  
5 and these neighbors objected. Is that what you  
6 said?

7 A. No. One of the -- one of the alternatives  
8 when we were talking about going over larger  
9 wetlands, we talked about having to require a  
10 taller structure.

11 Q. Yes.

12 A. In other areas, I'll be honest, that  
13 northern line route that went basically along the  
14 northern end -- northern portion of the corridor,  
15 if you look up there, there's a number of large  
16 wetlands up there. Even when we looked at those  
17 large wetlands, spanning those and having to have  
18 excessively tall poles that may or may not require  
19 aviation lighting, the neighbors that we had talked  
20 to about that, they didn't want the flashing  
21 lights.

22 So, you know, between that and others, but  
23 we would have not -- we would have not specifically  
24 talked to landowners if we were going to do a route  
25 adjustment solely on Mr. Topp's land. We wouldn't

1 have asked the neighbors, What do you think about  
2 this?

3 Q. Is it possible to have a route deviation  
4 solely on Mr. Topp's land?

5 A. It is possible to have a route solely on  
6 Mr. Topp's land, but with the restrictions that Mr.  
7 Topp has asked us to take a look at, we have not  
8 found what we feel is an adequate solution.

9 Q. Okay. But you did testify that there's a  
10 feasible solution?

11 A. Yes.

12 Q. I don't know if you remember my comments  
13 in Washburn, but it was testified that it's going  
14 to cost \$3.8 million to satisfy mitigation for --

15 JUDGE HOBERG: Whooping cranes.

16 Q. (COMMISSIONER CRAMER CONTINUING) --  
17 whooping cranes, yeah, or markers -- bird markers  
18 and \$3.8 million here and \$3.8 million there to  
19 satisfy other jurisdictions, and birds is one  
20 thing, but this is really getting to the heart of  
21 probably the fact that our notice lists welfare to  
22 citizens lower than cultural and natural resources.  
23 That only means that it's just in the order. It  
24 doesn't mean that it's a priority one way or the  
25 other.

1           I have a question about these neighbors,  
2           and I'm sure we'll hear from some on March 1st. If  
3           the weather allows us to have a hearing in  
4           Carrington, I look forward to that. But if I  
5           understand your testimony, and you say "we" a lot,  
6           does that mean you have had a lot of contact with  
7           these neighbors, or are you speaking on behalf of  
8           sort of the organization in general?

9           A.    I am speaking on behalf of the  
10           organization in general.

11           Q.    Okay.

12           A.    I'm the project manager that involves the  
13           right-of-way acquisition team, which is a  
14           representative of Minnkota of the project.

15           Q.    Okay. The reason I ask that question is  
16           because, of course, we heard Mr. Topp testify that  
17           he's had very little personal contact with  
18           anybody -- well, frankly, he's had none from  
19           anybody other than this Kevin Cummings from KLJ.  
20           Does that seem appropriate to you or is he -- is he  
21           misinformed? Are we misinformed? Does it seem  
22           like he should have maybe had more contact if he's  
23           trying to negotiate a -- what seems to me at least  
24           to be a reasonable alternative?

25           A.    Well, if you go back through Mr. Topp's

1 testimony, he mentions a number of conversations  
2 he's had with Mr. Cummings. Mr. Cummings is a  
3 right-of-way agent that worked in this area, he's a  
4 representative for the project, he is -- he is  
5 completely the appropriate person to have these  
6 conversations.

7 Every time Mr. Cummings has a suggestion  
8 from Mr. Topp, those get looked at and those get  
9 reviewed from both a cultural perspective,  
10 environmentally sensitive areas, those type of  
11 perspectives, from a design perspective as to what  
12 we think is reasonable or what we think we can do  
13 or any concerns we have in that area, and all those  
14 things are weighed out in order to come up with a  
15 solution to make a decision on those requests.

16 Q. Is it more difficult to span the Missouri  
17 River than it is to span this wetland, do you  
18 think?

19 A. No. No. And I say no on that because the  
20 Missouri River has fairly defined boundaries and  
21 the soils that we're seeing on either side of the  
22 Missouri River and the design that we have for the  
23 Missouri River are lending themselves to design  
24 structures. But if you were to span a 2,100-foot  
25 wetland, which some of these wetlands in this area

1 approach that, that's the type of structure that  
2 you're going to be looking at, is the same kind as  
3 what we -- we have going across the Missouri River.

4 Q. Have you had -- have you ever experienced  
5 anything like a landowner offering to pay the  
6 company rather than be paid by the company to put a  
7 structure on their land?

8 A. I'm not quite sure I heard pay the company  
9 today, but, yeah, we've had landowners --

10 Q. Oh, I heard.

11 A. -- on other projects say that. And I  
12 might have missed that earlier.

13 COMMISSIONER CRAMER: Yeah. Okay. I  
14 don't think I have anything else. Thank you.

15 JUDGE HOBERG: Thank you, Commissioner  
16 Cramer.

17 Commissioner Kalk, please.

18 **FURTHER EXAMINATION**

19 **BY COMMISSIONER KALK:**

20 Q. Well, I agree with my colleagues' line of  
21 questioning 100 percent. Just one slight addition.  
22 How much land did you gain if in that Section 34  
23 stay on Mr. Topp's land if you went south as close  
24 as you could to the main road and ran it south of  
25 his place? How much further south could you run

1 it, while still staying north of that road?

2 Because it's a gradual run south.

3 A. That's in Section 34?

4 Q. In 35. How much more space could you give  
5 him to expand his operation by going further south?

6 A. We can go all the way down to the section  
7 line. So -- well, I mean, we can take -- we can  
8 take --

9 Q. But how much is that, roughly? You've got  
10 a better map than me in front of you.

11 A. Oh, it's probably about, just a rough  
12 guess taking a look at it, right around 800 feet, I  
13 believe.

14 Q. So would that be something that would be  
15 very difficult to engineer?

16 A. No, not at all.

17 Q. So why wouldn't that have been something  
18 that maybe was offered to Mr. Topp?

19 A. That's something that was discussed. As  
20 Mr. Topp testified, that's not -- that's not  
21 getting out of that southern portion of Section 34,  
22 which he's repeatedly asked us to do.

23 COMMISSIONER KALK: Thank you.

24 JUDGE HOBERG: Thank you, Commissioner  
25 Kalk.

1 Any further questions of Mr. Phillips?

2 MS. SMITH: Just a couple questions.

3 **REDIRECT EXAMINATION**

4 **BY MS. SMITH:**

5 Q. How far away from the southernmost home in  
6 Section 35, I guess it would be, is the proposed  
7 right-of-way for the transmission line?

8 A. Again, I know we looked at this for the  
9 corridor hearings and talked about it during that,  
10 and I don't remember the exact number right off the  
11 top of my head. I believe it's in the range of  
12 1,500 to 1,800 feet.

13 Q. Okay. And is it feasible for -- given the  
14 size of a project such as this, is it feasible for  
15 Minnkota to have individual contact with every  
16 landowner?

17 A. Minnkota as Minnkota employees?

18 Q. Yes.

19 A. No, it is not, and that's -- Mr. Hennes  
20 has testified to that at both the corridor and the  
21 route hearings, that's one of the reasons that we  
22 have consultants.

23 MS. SMITH: All right. I have no further  
24 questions.

25 JUDGE HOBERG: Thank you, Ms. Smith.



1 those homesteads, which during any conversations I  
2 know of was not something that was --

3 Q. But are you not able to leave Section 3 at  
4 the very northwest -- I'm sorry -- northeast corner  
5 of it and cross diagonally into 35, which is also  
6 controlled by Mr. Topp?

7 A. Yes, we can do that.

8 Q. Was that looked at?

9 A. I don't know if a diagonal was  
10 specifically looked at through that area, but --

11 Q. Would there be a feasible -- there's other  
12 areas where it moves -- it takes diagonals?

13 A. Yeah.

14 Q. There's no technical problems?

15 A. No, there's no technical problems. And  
16 there's nothing, I can see them, on the north side  
17 of Section 3, as long as we're not moving over into  
18 the northwest corner of Section 4, that would  
19 prohibit that.

20 Q. It would seem to be if we're trying to --  
21 and even if there was some sort of easement  
22 required, even just a little bit, overhead on  
23 Section 2, it might involve another landowner, but  
24 at the same time if it's moving it away from a  
25 known potential problem impact on citizen welfare,

1 would that be something Minnkota would consider,  
2 although it would appear that you could stay on 3  
3 almost altogether? Would you care to comment on  
4 that?

5 A. Well, just a comment on that. To come  
6 down and to make some sort of -- whether it's a  
7 turn directly north or whether it's a slight angle  
8 turn of the northwest corner -- northeast corner --  
9 excuse me -- of Section 3, back up into 35 and go  
10 back out on the original alignment, I don't see any  
11 challenges for that based on -- based on a  
12 landowner request.

13 Q. Would it -- would that be preferable to,  
14 in your mind, running along the north edge of 34  
15 and down 35 with those wetlands there that you're  
16 concerned about?

17 A. Oh, without a doubt, Commissioner. That  
18 would be -- that would be, from a technical  
19 perspective, much more preferable than running  
20 along the northern portion of 34 and coming down in  
21 35.

22 COMMISSIONER CLARK: All right. Thank  
23 you.

24 JUDGE HOBERG: Commissioner Cramer,  
25 please.

**FURTHER EXAMINATION**

**BY COMMISSIONER CRAMER:**

1 Q. I want to get back -- as long as we're on  
2 the south side here, satisfy my curiosity. Mr.  
3 Topp testified that it appeared to him that the  
4 previous centerline during the corridor hearing,  
5 which was, I guess, the presumed route at the time,  
6 realizing that wasn't a route hearing, but a  
7 corridor hearing, was actually a little further  
8 away than this route -- proposed route ends up  
9 being from his home. Is that true; do you know?  
10 Did this line move a little closer to the south  
11 edge of his property -- or his homestead?

12 A. I had the opportunity on one of the breaks  
13 to go back and look at the corridor maps for the  
14 proposed corridor that was submitted for the  
15 corridor hearings. And based on a quick look of  
16 that and in review of some of our notes, no, it is  
17 not. It has not shifted at all.

18 COMMISSIONER CRAMER: Okay. Well, okay.  
19 I have nothing further. Thank you.

20 JUDGE HOBERG: Thank you, Commissioners.

21 Any further questions of Mr. Phillips?  
22 Mr. Sagsveen, please.  
23  
24  
25

**RECROSS-EXAMINATION**

1  
2 **BY MR. SAGSVEEN:**

3 Q. I just have a few additional questions. I  
4 think -- I intended to ask some follow-up questions  
5 with respect to Mr. Leake's testimony.

6 He indicated the alkali flats present --  
7 in his understanding, presented some unique soil  
8 issues, specifically some load-bearing issues, if I  
9 recall, and he also mentioned the structure within  
10 the English Coulee reservoir that he thought was a  
11 problem. Could you address the soils in those  
12 areas and whether or not there's a structure within  
13 the reservoir of the English Coulee retention area  
14 and how you plan on -- how you're addressing that  
15 structurally?

16 A. The soil borings and the geotechnical  
17 information that we have at this time through this  
18 diagonal portion in Grand Forks County known as the  
19 alkali flats region and up to the areas of the  
20 English Coulee retention system do not show any  
21 load-bearing issues associated with the soils. My  
22 understanding is the soils have a higher alkali or  
23 higher salinity content, but that does not impose a  
24 design problem in terms of structure bearing.

25 We are working with the English Coulee

1 retention system, which, I believe, is the Grand  
2 Forks Water Board, to talk -- to talk and have them  
3 review the structure placements within the English  
4 Coulee retention system. They have asked us to  
5 place the reveals of the concrete foundations  
6 higher than their hundred-year floodplain level,  
7 which they are. And, otherwise, they have no -- no  
8 concerns with the structure placement as being  
9 proposed today.

10 Q. And not to beat this wetland issue to  
11 death, I just have a couple follow-up questions.

12 You mentioned the challenges associated  
13 with going through the north section of -- Section  
14 34, and I'll draw your attention to Figure 2, which  
15 is Map 29 of 50. And when I look at Section 35,  
16 would you be spanning -- is that -- I see you  
17 spanning a wetland there. What's different about  
18 Section 34 than it is about section -- the southern  
19 part of 35 where the proposed route is going to  
20 cross, if there is any difference?

21 A. Of the proposed centerline, sir? Is that  
22 what you're talking about, or on other route  
23 options?

24 Q. I guess if you were to cross to the north  
25 of Mr. Topp's land, it looks like there's a wetland

1 identified there or wetland soils, and then from  
2 the south and east side of Mr. Topp's land in  
3 Section 35 the proposed route crosses a wetland  
4 area. Is there something different about where the  
5 proposed route is actually going across versus  
6 where Mr. Topp was talking about to the north of  
7 his property?

8 A. Yes. The big difference is the width of  
9 the wetland in those two areas. The wetland in the  
10 northeast corner is significantly wider and larger  
11 along the section line and, in particular, his  
12 concern of coming down again on the west side of  
13 the quarter line in Section 35, that wetland span  
14 there is almost half a mile you can see. You can  
15 see that the edge of the wetland comes -- comes  
16 basically up to the lower portion of the number 3  
17 in there and would go all the way down to where  
18 we're at, so that's well over 2,000 feet in that  
19 area, and then that would be a corner structure  
20 down there versus the two structures as proposed  
21 now crossing a wetland that's approximately 900  
22 feet, and they're able to get a little bit away  
23 from those wetland boundaries into better soil  
24 conditions. So those would be my concerns.

25 Q. Does this -- we heard Mr. Hunker testify

1 about the nationwide permits, and I think he  
2 mentioned maybe 170ish wetland areas that were  
3 going to have poles in it. Is this -- would this  
4 be one of those types of areas, or is this  
5 different than the 170 other areas that fall within  
6 the nationwide permit?

7 A. Well, I believe, and I'd have to go back  
8 and look at Mr. Hunker's testimony that there were  
9 170 -- or there were upwards of a hundred wetland  
10 areas that we were crossing, not ones that we had  
11 structures located in. So we would be going across  
12 this wetland, yes, but we don't right now currently  
13 have any structures within the wetland boundary in  
14 this area.

15 Q. And to the best of your understanding, do  
16 you need nation -- do you need approval to cross a  
17 wetland as opposed to putting a pole in a wetland?

18 A. The approvals for crossing wetlands and  
19 the approvals for having a structure placed in the  
20 wetlands has to do with the impact to the wetland,  
21 itself. Going across a wetland, you don't really  
22 have an impact of that. It just needs to be  
23 identified.

24 Placing a structure inside of the  
25 boundaries of a wetland then has a permanent impact

1 to that wetland boundary, and my understanding is  
2 based on the amount of impact to a wetland that a  
3 project has would determine what level of  
4 permitting would be required.

5 MR. SAGSVEEN: I don't have any additional  
6 questions, Your Honor.

7 JUDGE HOBERG: Thank you, Mr. Sagsveen.  
8 Any further questions of Mr. Phillips?

9 MS. SMITH: No, Your Honor.

10 MR. LEIN: I'll ask one.

11 JUDGE HOBERG: Mr. Lein.

12 **CROSS-EXAMINATION**

13 **BY MR. LEIN:**

14 Q. Do we know if this wetland is too big for  
15 a Section 12 permit? Is it a court jurisdictional  
16 wetland so we'd be looking at a 404 permit  
17 requirement?

18 A. I do not know the answer to that. I do  
19 not believe it is large enough that it would change  
20 the permitting on that, but I would have to go back  
21 and verify that.

22 Q. And one other question is, I notice that  
23 wetland is not so big if you cross it a little bit  
24 further south rather than trying to cross it on the  
25 section line. Was that considered or was there an

1 objection to crossing more away from the section  
2 line?

3 A. Are you talking about the wetland in the  
4 northeast corner of Section 34?

5 Q. Yes.

6 A. Yes, that was one of the things that we  
7 looked at. Unfortunately, what that does, that  
8 puts that transmission line closer to the occupied  
9 residences in that area than it would be on the  
10 south side and then, therefore, increases the  
11 impact. It also goes across other tilled land up  
12 in those areas, and we still have the challenge of  
13 the wetland in Section 35.

14 I mean, if we could have moved to the  
15 eastern side of Section 35, if the landowners had  
16 been amenable to that, then we could have come down  
17 off the section line a little bit, just like you  
18 have suggested, sir, and then come across and then  
19 come down and really eliminate most of these  
20 wetland concerns through this area, but the  
21 landowner was not amenable to that. Yes, those  
22 were all looked at.

23 MR. LEIN: Okay. No further questions.

24 JUDGE HOBERG: Anything further of Mr.  
25 Phillips?

1 Thank you, Mr. Phillips.

2 THE WITNESS: Thank you.

3 JUDGE HOBERG: Any other evidence to bring  
4 to the attention of the Commission at this hearing?

5 MS. SMITH: No, Your Honor.

6 MR. SAGSVEEN: I don't have any, Your  
7 Honor.

8 JUDGE HOBERG: All right. As you know, we  
9 have a hearing -- or the third segment of this  
10 hearing scheduled for March 1st, which is Thursday,  
11 at the Chieftain Conference Center in Carrington.  
12 That will be the last segment of the route permit  
13 and corridor modification hearing.

14 After that the Commission will consider  
15 all of the evidence from the three hearings and, as  
16 I indicated, they will be issuing a final decision  
17 with findings of facts, conclusions of law and an  
18 order, and we'll discuss exactly the time frame for  
19 that at the completion of the hearing in  
20 Carrington.

21 If there's nothing else to bring to the  
22 attention of the Commission at this time, we'll  
23 recess the hearing until March 1st, nine o'clock,  
24 in Carrington. Thank you all very much.

25 Oh, I'm sorry. Commission comments.

1 Let's -- let's not go off the record yet.

2 COMMISSIONER CLARK: Thanks, Judge, and  
3 thanks to everyone for being here today. As Judge  
4 Hoberg indicated, we don't make any decisions, of  
5 course, today.

6 A little bit more specificity on the  
7 timeline. Hopefully we can get the hearing in in  
8 Carrington. If not, we'll reschedule that. But  
9 typically what will happen is -- of course, in this  
10 case we have a court reporter so we'll have a  
11 transcript, and that takes several weeks to be done  
12 and available for the Commission's use, sometimes  
13 there are late-filed exhibits that may be coming in  
14 so that may take a few weeks.

15 The Commission will next schedule what's  
16 known as a work session, these are all public  
17 meetings, which is the Commission's first chance to  
18 talk amongst ourselves and with our staff about a  
19 pending case, and then sometime after at least one  
20 work session, oftentimes more, then we begin the  
21 process of preparing an order. And so, you know,  
22 really six to eight weeks is probably the minimum  
23 time frame. It can be longer if there's some  
24 late-filed information to get in the record.

25 Nonetheless, thanks to everyone who

1 testified today. Thanks to the UND students who  
2 hung in there, some of you all day long. Hopefully  
3 you found it interesting and learned something  
4 along the way, too. So thanks a lot and thanks for  
5 the facilities here that we're allowed to use.

6 JUDGE HOBERG: Thank you, Commissioner  
7 Clark.

8 Commissioner Cramer.

9 COMMISSIONER CRAMER: Well, I, too, just  
10 want to say thank you to everybody for their  
11 accommodations. Thanks to those that testified.  
12 We take it seriously and there's a lot yet ahead of  
13 us before we make a final decision.

14 I would say the beautiful thing, the great  
15 thing about serving in North Dakota is not just  
16 North Dakotans' accessibility to its leaders, but,  
17 more importantly, your servants' accessibility to  
18 you. It really does make this a special place and  
19 as sometimes painful as the process can be, I  
20 wouldn't have it any other way. So thank you.

21 JUDGE HOBERG: Thank you, Commissioner  
22 Cramer.

23 Commissioner Kalk, please.

24 COMMISSIONER KALK: Thank you.

25 JUDGE HOBERG: All right. Now we'll stand

1 in recess. It's approximately 1:10. We'll close  
2 the hearing.

3 (Concluded at 1:13 p.m., the same day.)

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CERTIFICATE OF COURT REPORTER

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

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

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

Bismarck, North Dakota, this 5th day of March, 2012.

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Denise M. Andahl  
Registered Professional Reporter

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