

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

|                                           |          |                  |
|-------------------------------------------|----------|------------------|
| <b>Basin Electric Power Cooperative</b>   | <b>:</b> |                  |
| <b>345 kV Transmission Line - Mercer,</b> | <b>:</b> | <b>Case No.</b>  |
| <b>Dunn, McKenzie, Williams Counties</b>  | <b>:</b> | <b>PU-11-696</b> |
| <b>Siting Application</b>                 | <b>:</b> |                  |

**TRANSCRIPT OF**  
**PUBLIC HEARING**

Taken At  
165 Railroad Street  
Killdeer, North Dakota  
September 4, 2013

**BEFORE BONNY M. FETCH**  
**-- ADMINISTRATIVE LAW JUDGE --**

**A P P E A R A N C E S**

**COMMISSIONERS PRESENT:**

COMMISSIONER BRIAN P. KALK, President  
COMMISSIONER JULIE FEDORCHAK  
COMMISSIONER RANDY CHRISTMANN

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FOR THE BASIN ELECTRIC  
POWER COOPERATIVE.

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FOR THE PUBLIC SERVICE  
COMMISSION.

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**COMMISSION STAFF PRESENT:**

MR. JERRY LEIN, Public Utility Analyst

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EXHIBITS

| <u>No.</u> | <u>Description</u>                                                                                                                          | <u>O</u> | <u>R</u> |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|
| 1          | Map of Project                                                                                                                              | 30       | 30       |
| 2          | Application - Waiver of<br>Procedures and Time Schedules<br>and a Consolidated Certificate<br>of Corridor Compatibility and<br>Route Permit | 30       | 30       |
| 3          | Amendment to the Application for<br>Certificate of Corridor<br>Compatibility and Route Permit                                               | 30       | 30       |
| 4          | Structure Locations Filing<br>(8-22-13)                                                                                                     | 30       | 30       |
| 5          | Structure Location Revision                                                                                                                 | 30       | 30       |
| 6          | Certification Relating to Order<br>Provisions and Tree and Shrub<br>Mitigation                                                              | 30       | 30       |
| 7          | Schedule                                                                                                                                    | 30       | 30       |
| 8          | Structure Diagrams                                                                                                                          | 30       | 30       |
| 9          | Re-Route Maps                                                                                                                               | 30       | 30       |
| 10         | Graph - Williston Basin Winter<br>Peaks                                                                                                     | 30       | 30       |
| 11         | Integrated System Map                                                                                                                       | 30       | 30       |
| 12         | Bakken Area Long Range<br>Transmission Study                                                                                                | 30       | 30       |

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| <u>No.</u> | <u>Description</u>                                                  | <u>O</u> | <u>R</u> |
|------------|---------------------------------------------------------------------|----------|----------|
| 13         | Corridor and Alternative Map                                        | 30       | 30       |
| 14         | Geologically Unstable Areas                                         | 30       | 30       |
| 15         | Maps Showing Residences within 500' of Project                      | 30       | 30       |
| 16         | Waivers                                                             | 30       | 30       |
| 17         | Commercial Property Map - Williston                                 | 30       | 30       |
| 18         | Killdeer Battlefield Map                                            | 30       | 30       |
| 19         | Survey Permission Status - Route Map                                | 30       | 30       |
| 20         | Biographical Outline                                                | 30       | 30       |
| 21         | EMF Report                                                          | 30       | 30       |
| 22         | Electromagnetic Spectrum                                            | 30       | 30       |
| 23         | GPS Accuracy Measurements                                           | 30       | 30       |
| 24         | Signal Strength Measurements                                        | 30       | 30       |
| 25         | Biographical Outline                                                | 30       | 30       |
| 26         | Magnetic Fields                                                     | 30       | 30       |
| 27         | EMF Guidelines                                                      | 30       | 30       |
| 28         | Route - Map Depicting Easements Acquired                            | 30       | 30       |
| 29         | Route Maps                                                          | 30       | 30       |
| 30         | September 3, 2013, Letter                                           | 30       | 30       |
| 31         | Late-filed Exhibit - Updated List of Required Permits and Approvals | 222      | 223      |

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| <u>No.</u> | <u>Description</u>                                                                   | <u>O</u> | <u>R</u> |
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| 32         | Document Submitted by the Center<br>for Heritage Renewal                             | 259      | 260      |
| 33         | Late-Filed Exhibit - Current<br>View Shed Analysis from the<br>National Park Service | 317      | 318      |
| 34         | Late-filed Exhibit - National<br>Park Service Map                                    | 318      | 318      |
| 35         | Document Submitted by Badlands<br>Conservation Alliance                              | 365      | 366      |
| 36         | Statement of Killdeer Mountain<br>Alliance                                           | 443      | 443      |
| 37         | Prepared Direct Testimony of J.<br>Michael Silva                                     | 432      | 432      |
| 38         | Prepared Direct Testimony of Dr.<br>Peter Valberg                                    | 446      | 446      |

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1           (The following proceedings were had and  
2       made of record herein, commencing at 9:29 a.m., MT,  
3       Wednesday, the 4th day of September, 2013:)

4           JUDGE FETCH: Good morning, everyone.  
5       Okay. Order, please. Welcome, everyone. Let the  
6       record show that it is 9:30 a.m., mountain daylight  
7       time, on September 4, 2013, and we're present at  
8       the Killdeer City Hall in Killdeer, North Dakota,  
9       for the first of three hearings scheduled in the  
10      matter of applications filed on March 15, 2013, by  
11      Basin Electric Power Cooperative for a waiver of  
12      procedures and time schedules and a corridor  
13      certificate and route permit to authorize  
14      construction of approximately 197.1 miles of 345  
15      kilovolt electric transmission line and associated  
16      facilities from the existing Antelope Valley  
17      Substation near Beulah, North Dakota, to a new  
18      Tande 345 kilovolt substation to be constructed  
19      near Tioga, North Dakota. And this is Public  
20      Service Commission Case Number PU-11-696.

21           On July 23, 2013, Basin Electric filed an  
22      amendment to the application.

23           My name is Bonny M. Fetch, and I am an  
24      independent administrative law judge from the  
25      Office of Administrative Hearings in Bismarck, and

1 I am the procedural administrative law judge  
2 designated to conduct this hearing.

3 And at this time we'll state appearances  
4 for the record. Casey Jacobson is on record as  
5 counsel for Basin Electric.

6 Ms. Jacobson, please identify who will be  
7 testifying for Basin Electric and who else is  
8 present with you.

9 MS. JACOBSON: Good morning,  
10 Commissioners, Judge. My name is Casey Jacobson  
11 and I'm a lawyer for Basin Electric.

12 We will have seven witnesses that will be  
13 testifying at today's hearing. I will go through  
14 their names and what they intend to testify to in a  
15 brief opening statement I have.

16 Additionally, behind me I have my  
17 administrative assistant, Darlene Steffan, and also  
18 an intern with us, Anine Lambert, and they will be  
19 assisting me with the hearing today.

20 JUDGE FETCH: All right. Thank you.

21 And Mitch Armstrong is on record as  
22 counsel representing the Commission.

23 Mr. Armstrong, please identify any Commission staff  
24 present with you and indicate whether they will be  
25 testifying.

1           MR. ARMSTRONG: Thank you, Your Honor.  
2       Mitch Armstrong, Special Assistant Attorney General  
3       on behalf of the Commission. With me is Jerry  
4       Lein, a public utility analyst at the Commission.  
5       I request that Mr. Lein be allowed to ask questions  
6       at the hearing today.

7           JUDGE FETCH: All right. That's granted.

8           All right. I see there are a number of  
9       members of the public here, and I'm going to go  
10      through some explanation or information for you.

11          There are several different types of  
12      Public Service Commission evidentiary hearings that  
13      the Commission may hold. For an application  
14      hearing, there may be at least five types or  
15      categories of participants in the hearing besides  
16      the hearing officer. That's the applicant, Basin  
17      Electric; one or more intervenors; public  
18      participants who are either here in support or  
19      opposition; the commissioners; and Commission  
20      counsel and staff.

21          There are no intervenors in this hearing.  
22      The applicant and if there were intervenors are  
23      considered full participants in the hearing. Full  
24      participants are able to present evidence and ask  
25      questions of witnesses. If Commission staff were

1 presenting a case, they would be a full participant  
2 also.

3 Public participants, members of the  
4 public, either in support or opposition, are not  
5 full participants. That means they are not a  
6 party. They may not present evidence or ask  
7 questions of witnesses, but they may present  
8 information to the Commission in the public  
9 interest.

10 So if you are here today as a member of  
11 the public and you intended to present some  
12 information to the Commission, you'll be able to do  
13 that after the applicant, which is Basin Electric,  
14 has presented their case.

15 It's my understanding that Basin  
16 Electric's case is going to take anywhere from  
17 three hours or thereabouts, and then depending on  
18 what questions Mr. Armstrong and the commissioners  
19 have, that will be additional time. So don't  
20 expect to be able to come forward until probably  
21 mid to late afternoon. That's the best time  
22 estimate that we have at this time.

23 Let me at this time -- I know some of you  
24 probably came to present information and some of  
25 you probably came to observe. For the members of



1 the public, either -- who -- who wish to give  
2 information today, either in support or opposition,  
3 would you please raise your hand? Okay. I see  
4 probably about eight hands. Okay. Thank you.

5 Mr. Lein is going to pass out a sign-in  
6 sheet, and would you please indicate your name on  
7 that and I'm not sure what other categories are  
8 there, but if you're going to present any  
9 information or testify today, indicate that behind  
10 your name. And then -- and as you sign up,  
11 indicate whether you're here in support or  
12 opposition to the applications, and that way the  
13 Commission will get an idea, you appeared and why  
14 you're here, are you supporting or are you  
15 opposing?

16 All right. At this time members of the  
17 Public Service Commission present today are Brian  
18 Kalk, Commission Chair, who holds the portfolio in  
19 this matter; Randy Christmann and Julie Fedorchak.  
20 And at this time I'm going to ask commissioners to  
21 give any opening comments they have, beginning with  
22 Commissioner Kalk.

23 COMMISSIONER KALK: Thank you, Your Honor.  
24 Thank you, everyone, for coming out today. And  
25 I -- Judge Fetch really laid it out how the case

1 goes. I just want to put some perspective around  
2 it, I guess, from my experience on the Commission  
3 and we also -- this Commission decided a Minnkota  
4 power line, the one from Center, North Dakota, to  
5 Grand Forks two years ago, and so I'm anticipating  
6 a lot of the things that we saw in the Minnkota  
7 line we're going to see here again today.

8 And the big thing for us today is we're  
9 having a public input meeting in the town of  
10 Killdeer. We'll be in -- we'll be in Williston  
11 next week. We'll be in Tioga tomorrow. And the  
12 company is going to present the same case  
13 essentially in all three places, but what will be  
14 different is the public input.

15 So that's really what we're here -- I'm  
16 not -- we're here to hear the whole case, but I'm  
17 really most excited to hear what your concerns are,  
18 your ideas. And so when that time comes, please  
19 come up and tell us what your concerns are, but  
20 also if you could give us a recommendation.

21 One of the things that -- that I  
22 experienced in the Minnkota line is I don't want  
23 this, I don't like this, I don't want this, I don't  
24 like this. That doesn't give us much to go with  
25 when we go back, because we're trying to figure out

1 the best route to put this project through. And so  
2 that's where it's really helpful if there can be  
3 recommendations that you provide the Commission so  
4 when we get back to our office, we can really look  
5 at it.

6 To put a little more perspective -- I  
7 guess my perspective around it is it was 2006 or  
8 '7, I think it was, where I was in town here with  
9 Ruby Perhus. Ruby worked over here at the local  
10 office and her husband, Dave, ranches south of  
11 town, and they were talking about the town of  
12 Killdeer kind of on the down slide, the people  
13 leaving, everything's kind of going the wrong way  
14 in town.

15 And you come to town today, there's a new  
16 motel out there, the town is booming. The streets  
17 are ripped up, of course, but that's because  
18 there's more growth. So we are -- we're dealing  
19 with growing pains.

20 And this power line today is a direct  
21 result of those growing pains. So that's kind of,  
22 I guess, the perspective that -- you know, whether  
23 you have one issue of a town losing size or another  
24 issue of a town eventually growing, I'd prefer to  
25 have the latter, if you will, a growing -- growing

1 facility, so --

2 I also noticed coming into town today that  
3 south of town, about nine miles, there's another  
4 major power line. So this area has certainly seen  
5 power lines developed in it, as well as I saw a  
6 project down there -- when I worked at NDSU, that  
7 worked on dealing with soil health. We're dealing  
8 with salinity in the area. So these are all the  
9 kinds of things that I'm aware of working on that  
10 you make sure you take care of your resources, you  
11 make sure you meet your needs of electricity.

12 And that's one of the challenges that  
13 we're facing today in the Public Service  
14 Commission. We're one of many agencies that has a  
15 say in this project. This one is unique in the  
16 sense there's something called a federal nexus to  
17 where Basin Electric has a federal nexus through  
18 WAPA, but the feds have some jurisdiction on this  
19 case. So you'll hear talk about an environmental  
20 impact statement.

21 So one of the things that I'll be watching  
22 very closely is how the federal EIS, it's called --  
23 how that plays itself out. That's a whole separate  
24 track. Many of the things that you're talking  
25 about, the concerns that I expect that I'll hear

1 will be concerns you should have also expressed  
2 through the federal EIS process, because -- a  
3 different body that issues that, but there will be  
4 a record decision that comes out of the federal  
5 EIS, which I'm sure, in my opinion, will tie into  
6 our order.

7 In the past, we've looked heavily at that  
8 shared jurisdiction. So if you haven't taken an  
9 opportunity to comment on that -- I'm not sure if  
10 that comment period is closed -- but there's always  
11 that ability, I think, to submit your comments to  
12 different agencies. There will be local  
13 jurisdiction on it, but I guess I'm trying to set  
14 the stage here is that there will be no decisions  
15 made today.

16 This is -- we're going to take the input  
17 today, as well as we will tomorrow up in Tioga and  
18 next week. We'll be looking at all these other  
19 agencies that are involved, and then we're going to  
20 get back to our office and try to figure out the  
21 best route to find this power line.

22 The -- I've got a couple other comments  
23 here quickly. I really think that's it. I -- I'm  
24 expecting probably six, eight, nine hours we're  
25 going to be here today, and that's okay because

1     this is a very important project. The company is  
2     going to make their case as to why they need it and  
3     what they've done. We need to get your input back  
4     as to the concerns.

5             I will refer back to the Minnkota power  
6     line. It was 256 miles and 220 miles was very easy  
7     to site. It seemed like it just worked out very  
8     well. But there was 30 miles in there that was  
9     very, very difficult with all the concerns that  
10    were there. So at the end of all the hearings, we  
11    went back, we opened up the corridor and we said,  
12    Okay, company, we've widened your corridor. Now  
13    you go back and work with the landowners and figure  
14    out a better route. And sure enough, Minnkota did  
15    that. It took a little bit more time, but they  
16    came back with another route and at the end of the  
17    day it worked out.

18            So this is another very big line that I'm  
19    anticipating there's parts of it that will go very  
20    smooth, but there are also parts that will be very,  
21    very contentious. And so that's why as we go  
22    through this process, you know, please come up and  
23    say your piece. Remember, at the end of the day  
24    we're all trying to work together, I think, to meet  
25    the needs of taking care of our resources and

1 making sure of electricity for our -- for our  
2 customers.

3 So thank you.

4 JUDGE FETCH: Thank you, Commissioner  
5 Kalk.

6 Commissioner Christmann.

7 COMMISSIONER CHRISTMANN: Well, Judge, you  
8 and Commissioner Kalk have covered most of the  
9 things I was going to say, except for I'll just add  
10 a bit of a personal perspective to this. I come  
11 from a farm and ranch operation for -- been doing  
12 it all my life till just this past winter when I  
13 started doing this. And I don't think anybody  
14 dislikes farming and haying around power poles any  
15 more than I do.

16 I don't think any of us that have  
17 cattle -- even though I've never had a problem with  
18 the power line people when they're in there doing  
19 maintenance, leaving any gates open -- I don't  
20 think any of us that have cattle ever really  
21 believe that those guys are capable of closing  
22 gates, and so you always kind of wonder and that  
23 sort of thing.

24 But the other side of the coin is the fact  
25 that when I turn my power on, if I think about it,

1     which we typically don't, that power's coming  
2     across some poles that are going on somebody else's  
3     land and they wish those poles weren't there. And  
4     I'm pretty glad that they are because I want those  
5     lights to come on when I hit the switch.

6             And so we need to figure out a way to get  
7     energy to where it needs to go and yet do it in the  
8     best possible way.

9             Several decades ago Basin Electric, in  
10    fact, built a new transmission line across some of  
11    our property, and -- and we really felt it ought to  
12    be over on the neighbor's side and worked on  
13    achieving that. The neighbors thought it ought to  
14    be over on our side. At the end of the day, we got  
15    stuck with it.

16            But, you know, through the hearing process  
17    what we came away with was even though we didn't  
18    exactly prevail on that, it really ended up being  
19    kind of the logical place. Not the place we wanted  
20    it, but in the logical place. And so there was a  
21    fair hearing. And I -- my family felt good about  
22    that decades ago. I hope to be able to bring that  
23    same thing to the Commission now, and that's why  
24    we're out here.

25            So if anybody is feeling a little bit



1     intimidated just because we have sport coats or  
2     something on and that sort of thing, the folks at  
3     this table are regular folks and we want to hear  
4     from you. That's why we're out here. That's how  
5     we end up making not necessarily the decision that  
6     each individual wants, because we have people on  
7     different sides of the coin that want different  
8     things, but it's how we make the best decision  
9     overall for the most people.

10             And that's what I'm hoping we can do here,  
11     but to do that we need to hear from you. That's  
12     why we're out here and that's why I'm glad to see  
13     the room full.

14             JUDGE FETCH: Thank you, Commissioner  
15     Christmann.

16             Commissioner Fedorchak.

17             COMMISSIONER FEDORCHAK: Well, good  
18     morning, everybody. I have the lucky position of  
19     going last all day, so -- not only in my opening  
20     comments but in all my questions, so I get to rely  
21     on Randy and Brian to ask all the tough stuff and  
22     I'll bat cleanup.

23             I just want to offer a few personal  
24     comments and perspectives as well. As you heard  
25     Commissioner Christmann say and Commissioner Kalk,

1 we're all North Dakotans, those of us at this table  
2 as well as most everyone in the room. I'm a fourth  
3 generation North Dakotan raising fifth generation  
4 North Dakotans. I come from Williston. I have a  
5 lot of interest in this part of the state, as well  
6 as the rest of the state.

7 And so as we're looking at this project,  
8 we're looking at it through the eyes of people who  
9 really care and are concerned about the future of  
10 North Dakota.

11 Thank you all for coming. This is  
12 democracy at work. There are many places in the  
13 world where this would not happen. It would  
14 just -- the project would go up and that would be  
15 the end of it. In fact, we're hearing about places  
16 like that every day in the news. So kudos to all  
17 of you for coming and taking advantage of the  
18 freedom you have to express your thoughts. It will  
19 make this process better and it will result in a  
20 better project in the end. I'm quite confident  
21 about that.

22 I want to reflect just a moment on what  
23 brings us here. I think Randy and Brian both  
24 talked about that, but I'll offer a few thoughts  
25 too.

1           My grandfather came from Norway when he  
2 was 18, and he left Norway because there was no  
3 opportunity there. And it's interesting for me to  
4 reflect because when I was 18 -- well, actually  
5 probably 21, I, too, left North Dakota because  
6 there was no opportunity here. And I was able to  
7 come back and I'm thankful for that. I'm  
8 especially thankful that my kids now also will have  
9 an opportunity probably to find a job and an  
10 opportunity in North Dakota, and people from all  
11 over the country are finding that very same thing.

12           So what we're talking about today is  
13 balance, and it's difficult. This is not -- these  
14 are not easy solutions. It's tough when you're  
15 talking about your land and your community and  
16 things changing, but the processes that we're --  
17 we're facing in North Dakota today are about  
18 balance, about striking that balance and having  
19 opportunities and a hope for the future for the  
20 future North Dakotans and preserving all that we  
21 treasure and hold dear.

22           I'm confident that we're North Dakotans  
23 and we can find a good balance, and being here and  
24 being part of that is the first step.

25           Today is the beginning of -- of the next

1 step of this project. We'll learn a lot about  
2 what's being proposed. We'll learn a lot about  
3 what's been done, about many things that aren't  
4 done. And so we'll get -- move this down to the  
5 next step, and I'm confident that with all your  
6 participation and input, we'll be able to make this  
7 project better and hopefully come out with a very  
8 reasoned, respectful approach that addresses as  
9 much of the public concerns as possible.

10 So thank you for coming. I can't -- I  
11 want to echo Randy's comments, and I'm not calling  
12 him commissioner because I want to emphasize that  
13 we are really normal, really normal, and there have  
14 been many times when I've been sitting in your  
15 seats wondering should I speak or should I not, and  
16 I really encourage you to take this opportunity to  
17 let us know what your thoughts and concerns are.

18 Thank you.

19 JUDGE FETCH: Thank you, Commissioners.  
20 And in the spirit of full disclosure, I was born in  
21 Zap, so that's real close by too.

22 COMMISSIONER KALK: Is there a sign out  
23 there, Judge, that says "Bonny Fetch was born  
24 here"?

25 JUDGE FETCH: Yes, actually there is. The

1 house I was born in is no longer there, but the  
2 rest of it is.

3 I'm not going to repeat what the issues  
4 for the hearing are because they were published in  
5 the notice of hearing, but I am going to turn now  
6 to tell you a bit about the hearing procedure  
7 today.

8 One thing I'm actually kind of concerned  
9 about are all the people having to stand, because  
10 this is going to be a very, very long time. There  
11 is one open chair here in front if someone wants to  
12 come in and take that. Other than that, if Scott  
13 is anywhere around or -- there he is -- and  
14 there -- you know, if some other chairs at least  
15 can be located for people, that would be -- that  
16 would be good.

17 All right. This is the hearing procedure  
18 that will be followed today. Basin Electric will  
19 proceed to present its case for granting the  
20 applications, and each witness called by Basin will  
21 be subject to cross-examination by Mr. Armstrong.  
22 Commission staff, Mr. Lein, may also ask questions.  
23 And then I'll turn it over to members of the Public  
24 Service Commission for questions that they may  
25 have, and I may also ask questions.

1           In an evidentiary hearing like this, the  
2       Commission must base its decision on the evidence  
3       and information presented at the hearing. The  
4       Commission may not base its decision on information  
5       obtained outside the hearing. So everything that  
6       the Commission can consider must be presented  
7       during the hearing today. Documentary evidence  
8       must be introduced and marked as an exhibit and  
9       admitted into the record.

10           And the -- to this point, we have 30  
11       exhibits marked and stipulated by the two counsel  
12       for the record. So those are admitted.

13           As I mentioned earlier, members of the  
14       public may not present evidence, as such, or ask  
15       questions of the witnesses, but they may present  
16       information to the Commission. And you've heard  
17       from each of them that they want to hear from you.

18           So following the conclusion of Basin's  
19       case, I will ask then for members of the public to  
20       come forward.

21           The burden of proof is on the applicant,  
22       Basin Electric, to show by the greater weight of  
23       the evidence that the applications should be  
24       approved by the North Dakota Public Service  
25       Commission.

1           And at this time I'm going to ask  
2       Ms. Jacobson to proceed, if you wish, to make a  
3       brief opening statement and after that we will  
4       proceed to the witnesses.

5           MS. JACOBSON: Commissioners, Judge Fetch,  
6       members of the PSC, Mr. Armstrong, good morning.  
7       Thank you for your time and attention as we seek a  
8       certificate of corridor compatibility and a route  
9       permit for the AVS to Neset 345 kV transmission  
10      project to be constructed in Mercer, Dunn,  
11      McKenzie, Williams and Mountrail Counties.

12           On March 15, 2013, Basin Electric filed  
13      its consolidated application for a certificate of  
14      corridor compatibility and a route permit project.  
15      On that same day, Basin Electric filed an  
16      application for waiver of procedures and time  
17      schedules requesting that the Commission waive  
18      certain time schedules and procedural requirements.  
19      The first one was filing of separate applications  
20      for a certificate of corridor compatibility and a  
21      route permit; two, separate publication of notices  
22      for certificates of corridor compatibility and a  
23      route permit; three, requirements of separate  
24      hearings on the waiver request, certificate of  
25      corridor compatibility application and a route

1 permit application; four, certain waiting periods;  
2 and five, the minimum core width requirements.

3 On July 13 -- July 23, 2013, Basin  
4 Electric filed an amendment to the application.

5 On August 22 we delivered to the Public  
6 Service Commission a map detailing the final  
7 transmission line structure locations.

8 It is Basin Electric's responsibility to  
9 prove that we will comply with all applicable laws,  
10 rules and regulations and otherwise meet the  
11 criteria that would make approvals and waivers  
12 appropriate. We certainly accept that  
13 responsibility and welcome the opportunity to  
14 explain the project and answer questions that the  
15 commissioners, staff and any members of the public  
16 may have.

17 To that end, Basin Electric was made aware  
18 last week of a proposal to survey an area along the  
19 route for potential designation to the National  
20 Register of Historic Places. We have been in  
21 contact with the State Historic Preservation Office  
22 to discuss this issue.

23 At this time we will remove the proposed  
24 Gumbo Creek Substation from this application before  
25 us here today, but intend to move forward with the



1 rest of the project. Basin Electric will continue  
2 to work with and coordinate our efforts on this  
3 project with SHPO to ensure appropriate responses  
4 to areas of historical and cultural significance.  
5 The Killdeer Mountain Battlefield issue will be  
6 discussed in greater detail by Cris Miller.

7 Our case in chief will be presented  
8 through the testimony of seven witnesses and 29  
9 exhibits.

10 The first witness will be Mr. Duey  
11 Marthaller. He's the project manager. He will  
12 talk about the project in a general detail and give  
13 the schedule.

14 The second witness is Becky Kern. She'll  
15 talk about the load growth and Basin Electric's  
16 member territory in North Dakota.

17 The third witness is Mr. Matthew Stoltz.  
18 He will testify regarding the need for the project  
19 and what will happen if the project is not built as  
20 proposed.

21 The fourth witness is Mr. Miller. He will  
22 describe the methodology used in evaluating and  
23 identifying the proposed corridor and route and the  
24 ramifications if the project is not built as  
25 approved. He'll also discuss in greater detail the

1 decision to move the substation from the  
2 application.

3 The fifth witness is Mr. Mike Silva.  
4 He'll testify regarding EMF, electromagnetic,  
5 effects and GPS for agriculture operation issues.

6 The sixth witness is Dr. Peter Valberg.  
7 He will testify regarding the health effects of  
8 power line EMF.

9 And the last witness is Mr. Mike Murray,  
10 who will describe the route and discuss its terms  
11 and selection of right-of-way considerations.

12 At today's hearing, our testimony will  
13 focus on the route from the Charlie Creek  
14 Substation to the 85 crossing and from the Charlie  
15 Creek Substation back to AVS. This totals  
16 approximately 91 miles of the approximately  
17 200-mile project.

18 Tomorrow in Tioga we'll discuss the route  
19 starting from angle point four west of U.S. Highway  
20 85 and 2 to the Neset and Tande Substations near  
21 Tioga.

22 In Williston on September 12 we'll discuss  
23 the route from the U.S. Highway 85 crossing to the  
24 area just north of the Judson Substation east of  
25 Williston.

1           That concludes my opening statement. And  
2           if this would be the appropriate time, Judge, I  
3           will call the first witness.

4           JUDGE FETCH: I'll -- I'll ask whether  
5           Mr. Armstrong has any preliminary comments you want  
6           to make.

7           MR. ARMSTRONG: No preliminary comments,  
8           Your Honor, other than Ms. Jacobson did note where  
9           they will focus on as far as the hearings today,  
10          tomorrow and next week. But, of course, if any  
11          member of the public wishes to have a comment about  
12          the Tioga area or the Williston area and happen to  
13          be present today, they certainly can make it at  
14          this hearing as well as the future hearings.

15          JUDGE FETCH: Thank you.

16          All right. We're going to now begin with  
17          the formal part of the hearing, so I'm going to ask  
18          if you have a cell phone, pager or any other  
19          electronic device that makes beeping noises or  
20          ringing noises, please at this time turn those off  
21          or put them on mute, silence them, whatever.

22          If you -- we will be taking a midmorning  
23          break. We have a court reporter who will need to  
24          have a little bit of rest, and my understanding is  
25          that Basin Electric is going to be providing lunch

1       sometime around noon. So at whatever appropriate  
2       time, we'll be breaking then.

3               Other than that, if you need to get up and  
4       leave, please feel free to do so with the least  
5       amount of disruption possible. Thank you.

6               All right. Are all your witnesses present  
7       in the room, Ms. Jacobson?

8               MS. JACOBSON: Yes, they are.

9               JUDGE FETCH: All right. Raise your  
10       hands, please, witnesses. All witness testimony is  
11       taken under oath and is subject to penalties for  
12       perjury. In North Dakota, perjury is a Class C  
13       felony, which is punishable by a maximum fine of  
14       \$5,000, a maximum five years in prison or both.

15               (Witnesses sworn.)

16               JUDGE FETCH: Thank you. That'll save us  
17       a little time. All right.

18               It's tight quarters up here for witnesses,  
19       but please call your first witness, Ms. Jacobson.

20               MS. JACOBSON: Thank you, Your Honor. My  
21       first witness is Mr. Duey Marthaller.

22               JUDGE FETCH: All right. Please proceed.

23               **DUEY MARTHALLER,**  
24       having been first duly sworn, was examined and  
25       testified as follows:

**DIRECT EXAMINATION**

**BY MS. JACOBSON:**

Q. Could you please give us your name, business address and occupation?

A. My name is Duey Marthaller. I'm employed as the manager of civil engineering for Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, North Dakota.

Q. And what's your educational background?

A. I received a bachelor of science degree in civil engineering from North Dakota State University and a master's of science degree in civil engineering from Colorado State University in 1981.

Q. What's your employment history with Basin Electric?

A. I've been the manager of -- of civil engineering for 16 years. Prior to that I worked for Basin Electric as a civil engineer for 18 years. Throughout my 34-year career at Basin Electric, I have routed or supervised the routing of approximately 500 miles of high-voltage transmission lines in three states.

Q. And what's your responsibilities with the project?

1           A.    I'm the project manager. As project  
2 manager, I'm responsible for coordination of all  
3 aspects of the project, including budgeting,  
4 scheduling, routing, right-of-way acquisition,  
5 engineering, permitting and construction.

6           Q.    Mr. Marthaller, before we discuss the  
7 project, let's talk a little bit about Basin  
8 Electric. Could you please describe who Basin  
9 Electric is.

10          A.    Basin Electric is a regional wholesale  
11 electric generation and transmission cooperative  
12 organized under the laws of the State of North  
13 Dakota and headquartered in Bismarck, North Dakota.  
14 Basin Electric provides power to 137 member  
15 cooperatives serving more than 2.8 million  
16 customers.

17          Q.    What areas does Basin Electric serve?

18          A.    Basin Electric has members in nine states:  
19 North Dakota, South Dakota, Nebraska, Montana,  
20 Minnesota, Iowa, Colorado, Wyoming and New Mexico.  
21 Their service territory comprises 540,000 square  
22 miles.

23                   Basin Electric has two Class A members  
24 that serve western North Dakota and eastern  
25 Montana. Those cooperatives are Central Power

1 Electric Cooperative headquartered in Minot, North  
2 Dakota, and Upper Missouri G&T, headquartered in  
3 Sidney, Montana.

4 Q. And who controls Basin Electric?

5 A. Basin Electric and its member systems are  
6 owned by the members at the end of the line. Each  
7 of our Class A members has one seat on our  
8 11-member board of directors.

9 Q. What are the business principles on which  
10 Basin Electric operates?

11 A. Like most cooperatives, Basin Electric  
12 operates on the basis of setting rates equal to our  
13 cost of service, plus a margin. When deemed  
14 appropriate by the board of directors, that margin  
15 is returned to the members.

16 Q. Mr. Marthaller, are you familiar with  
17 Exhibit 1, which was previously entered?

18 A. Yes.

19 Q. And is the map over there Exhibit 1?

20 A. Yes, it is.

21 Q. Using this exhibit, can you please provide  
22 a general description of the project?

23 A. The proposed project consists of  
24 approximately 197 miles of new 345 kV electric  
25 transmission line connecting the existing AVS 345

1     kV Substation -- I'll use the pointer here to point  
2     out that location. There it is. It's just north  
3     of Beulah -- to the proposed Tande 345 kV  
4     Substation. Tande Substation is up here by Tioga.

5             This general map is -- you can -- you can  
6     recognize the counties here. This is northwestern  
7     North Dakota.

8             The project also includes a .9-mile 230 kV  
9     transmission line from the proposed Tande  
10    Substation to the existing 230 kV Neset Substation  
11    located near Tioga. It's a very, very small  
12    segment on the map here, right there, between Tande  
13    and Neset.

14            Approximately 31 miles of the 345 kV line  
15    between the proposed Judson and Tande Substations  
16    will be double-circuited with a 115 kV line of  
17    Mountrail-Williams Electric Cooperative. Here is  
18    the location of that double circuit, approximately.

19            Also, a 2.5-mile section of the proposed  
20    line west of AVS in Mercer County will eventually  
21    be double-circuited with an existing Basin Electric  
22    345 kV line. That's right here at the Antelope  
23    Valley Station.

24            The project includes construction of two  
25    new substations, Judson and Tande -- Judson is



1 right at Williston. Tande, again, is over by  
2 Tioga -- and upgrades to three existing  
3 substations, AVS, Charlie Creek, over here by  
4 Grassy Butte, and Neset, the existing substation up  
5 by Tioga.

6 Q. Could you please tell the Commission about  
7 the various people or groups of people that have  
8 assisted with the project?

9 A. Basin Electric has assigned team leads in  
10 engineering, environmental permitting,  
11 right-of-way, legal, procurement, communications  
12 and construction management. In addition, we have  
13 used environmental, right-of-way and engineering  
14 consultants for the project.

15 Q. Will the project be owned by Basin  
16 Electric?

17 A. Yes. Although, the 115 kV portion of the  
18 project will be owned by Mountrail-Williams  
19 Electric Cooperative.

20 Q. Previously Exhibit 4 was entered into  
21 evidence and is the structural locations. Can you  
22 discuss the significance of this document?

23 A. This document details the exact placement  
24 of each of the structures for the entire project.  
25 If there are any deviations at all to these

1 structure placements, Basin Electric must seek  
2 Commission approval.

3 Q. Since the filing, are there any changes to  
4 the structure locations?

5 A. Yes. There is one change due to the  
6 removal of the Gumbo Creek Substation from the  
7 proposed project. Mr. Cris Miller, senior  
8 environmental project administrator, will discuss  
9 this in greater detail.

10 Q. Can you describe the schedule for the  
11 project?

12 A. Basin Electric is planning to start  
13 construction on the AVS to Judson portion of the  
14 proposed project in the spring of 2014 and complete  
15 this portion by the end of 2015. The additions to  
16 AVS and Charlie Creek Substations will also be  
17 constructed during this time.

18 Construction of the Judson Substation will  
19 begin in 2014.

20 Construction on the segment from Judson to  
21 Neset will begin in the spring of 2017 and be  
22 completed in the fall or early winter of 2017.

23 The additions at Neset and the  
24 construction of the Tande Substation will also be  
25 during this time.

1           Q.     In the application filed with the PSC on  
2     March 15, 2013, the construction of the Judson to  
3     Tande portion was in 2015. In the amendment filed  
4     on July 23, this segment is now being built in  
5     2017. Why is the schedule change being proposed?

6           A.     Project completion date is based on the  
7     projected date the facilities are needed for  
8     serving load and system reliability. Mr. Matthew  
9     Stoltz will discuss dates the segments are needed  
10    in greater detail.

11          Q.     What is the cost of the project?

12          A.     The total cost of the project is estimated  
13    to be about \$375 million.

14          Q.     Please describe the proposed structure  
15    design.

16          A.     The proposed single-circuit transmission  
17    line will be constructed using single-pole  
18    galvanized steel or H-frame self-supporting  
19    structures. I believe you have as an exhibit the  
20    diagrams of those structures, the drawings of those  
21    structures.

22                 The 345/115 kV and 345/345 kV  
23    double-circuit transmission line segments will be  
24    constructed using single-pole self-supporting  
25    structures. All 345 kV segments will be

1 constructed within 150-foot-wide right-of-way.

2 The single-circuit 230 kV portion of the  
3 line will be within 125-foot right-of-way. These  
4 structures will minimize the impact on any land  
5 crossed.

6 The angle structures will also be single  
7 poles and will have concrete foundations with no  
8 guy wires. The regular inline structures will be  
9 directly buried in the ground. In addition, some  
10 special situations -- situations will require  
11 H-frame structures or structures requiring two  
12 poles. The structures will have permanent working  
13 ladders, which are not accessible from the ground.

14 Approximately 1,200 structures will be  
15 needed for the project. The typical structure will  
16 be about 115 feet tall. The top of the pole will  
17 be about 15 inches in diameter and the bottom at  
18 ground line will be about 50 inches in diameter.

19 For the entire project, if you add up all  
20 of the land the structures occupy, this equals  
21 approximately one acre of land.

22 Q. Why is Basin Electric using 125-foot and  
23 150-foot right-of-way?

24 A. The right-of-way width is determined by  
25 the distance the suspended conductor will blow out

1 during high-wind conditions, plus the distance  
2 needed to maintain safe electrical clearances. In  
3 addition, space is needed for construction and  
4 maintenance activities.

5 Q. And what factors determine the height of  
6 the structures?

7 A. Major factors which determine structure  
8 height include electrical clearance, work practices  
9 and topography.

10 Q. How have landowner concerns influenced the  
11 design of the proposed project?

12 A. All transmission structures will be  
13 self-supported steel structures with no guy wires,  
14 thereby minimizing the impact to all lands.

15 Q. What conductors is Basin Electric  
16 proposing to use for the project?

17 A. The transmission line will have three  
18 current-carrying conductors. The conductors will  
19 be 1.8 inches in diameter. Each conductor has 76  
20 strands of aluminum and 19 strands of steel. Above  
21 the conductors will be one 1/2-inch diameter  
22 optical ground wire and one 7/16th-inch diameter  
23 steel wire.

24 These wires provide lightning protection  
25 and optical fibers for communications. The minimum

1 conductor clearance to ground will be 30 feet at  
2 212 degrees Fahrenheit conductor temperature.

3 Q. What is the type and depth of foundations  
4 for the structures?

5 A. Starting in late 2012, a geotechnical  
6 investigation of the soils along the proposed route  
7 was done. A typical embedment for inline  
8 structures will be 22 feet.

9 Q. And what standards has Basin Electric  
10 adopted for the design of the project?

11 A. The transmission line will be constructed  
12 according to standards of the Rural Utilities  
13 Service, the National Electric Safety Code, the  
14 Institute of Electrical and Electronics Engineers,  
15 the American Society of Civil Engineers, the  
16 American Institute of Steel Construction and the  
17 American Concrete Institute. In addition, Basin  
18 Electric has its own standards.

19 Q. In addition to the standards, what other  
20 factors did you consider when you designed the  
21 project?

22 A. When we look at details of the design, we  
23 look at a number of different areas. One is the  
24 amount of load, the amount of power that has to be  
25 transferred from one end to the other, where the

1 energy comes from, operating parameters, terrain,  
2 water bodies, environmental impacts,  
3 constructability and long-term -- long-term  
4 operation and maintenance.

5 Q. On average, how many structures are needed  
6 for every one mile of transmission line?

7 A. Approximately six to seven structures per  
8 mile with spans ranging from 750 to 1,100 feet.  
9 Special structure-spotting considerations are  
10 necessary when crossing roads and bodies of water.  
11 The right-of-way will be 150 feet wide for the 345  
12 kV portion, which amounts to 18.2 acres per mile of  
13 transmission line.

14 Q. What are the minimum clearances over  
15 cultivated land, pasture, roads and other  
16 utilities?

17 A. The minimum clearance -- clearances are:  
18 For cultivated or pastureland, roads and  
19 highways, 30 feet.

20 Railroads, 38 feet.

21 Line crossings, 15 to 19 feet depending on  
22 the voltage of the line being crossed.

23 These clearances are provided at a maximum  
24 conductor temperature of 212 degrees Fahrenheit.

25 The clearance at lower temperatures will be

1 greater. These clearances meet or exceed code  
2 standards.

3 Q. Once the structures are located, can any  
4 single structure be moved easily?

5 A. Every structure height, position and type  
6 is very specific to its location. Changes to any  
7 one structure, almost without exception, requires  
8 changes to adjacent structures.

9 Q. Earlier you mentioned a portion of the  
10 project will be double-circuited with our member  
11 Mountrail-Williams Electric Cooperative. What does  
12 that mean and why is that being done?

13 A. It means that the line will support two  
14 circuits, 345 kV and 115 kV. In 2012, while  
15 discussing plans for the line with  
16 Mountrail-Williams Electric Cooperative, we were  
17 told they needed a 115 kV line in this same area,  
18 so it made sense to place the two circuits on one  
19 structure, thereby minimizing impacts to  
20 landowners.

21 Q. Earlier you testified that a portion of  
22 the line would eventually be double-circuited with  
23 an existing Basin Electric 345 kV line near  
24 Antelope Valley Station. Can you please discuss  
25 that.



1           A.     The area near AVS will eventually be mined  
2     for coal by Coteau Properties. An existing 345 kV  
3     line owned by Basin Electric will need to be moved  
4     to accommodate this mining. This line will be  
5     moved onto structures of the proposed project in  
6     this area.

7           Q.     Mr. Marthaller, can you please identify  
8     any standards regarding tree growth within the  
9     right-of-way?

10          A.     Basin Electric must follow requirements of  
11     the Federal Energy Regulatory Commission and the  
12     North American Energy Reliability Corporation  
13     regarding vegetation that could cause a line  
14     outage.

15                 Transmission -- transmission line faults  
16     due to vegetation have resulted in regional power  
17     outages. Generally, Basin Electric must clear all  
18     trees and shrubs that exceed a maximum height of  
19     12 feet. However, in the Badlands and around  
20     drainage areas, the woodland vegetation is located  
21     in deep ravines and canyon. It is likely that many  
22     of these areas would be spanned in such a manner  
23     that the vegetation would pose no hazard to the  
24     line and clearing would be unnecessary.

25          Q.     Would you please describe the construction

1 procedures and workforce needed for construction of  
2 the proposed project?

3 A. Construction is done in a sequential  
4 manner, consisting of a series of small crews  
5 spread out over the length of the line. As one  
6 crew completes work in an area, the next crew  
7 enters and proceeds the next -- proceeds with the  
8 next construction activity.

9 The construction activities for  
10 installation of the transmission line include:  
11 Structure staking, gate installation, foundation  
12 installation, structure hauling, structure framing,  
13 structure erection, conductor installation using a  
14 helicopter, conductor clipping and reclamation.

15 The various crews will include  
16 approximately a total of 40 to 50 workers. The  
17 actual manpower needs vary from project to project,  
18 depending on time constraints, contractor  
19 procedures, terrain, seasonal conditions and other  
20 factors.

21 After construction is complete, Basin  
22 Electric will complete a final inspection of the  
23 right-of-way, identifying items which require  
24 corrective action. When corrections have been  
25 verified, the contractor will be released from

1 further responsibility.

2 Basin Electric's right-of-way division  
3 will oversee the reclamation work as needed. A  
4 contractor specializing in right-of-way reclamation  
5 will break up compacted areas, fill in ruts, and  
6 seed grasses in order to return the area to the  
7 original condition.

8 Q. And who will be performing the  
9 construction?

10 A. Construction will be performed by  
11 qualified licensed contractors. Basin Electric  
12 will oversee construction at all times.

13 Q. What housing provisions have been made for  
14 this workforce?

15 A. Since construction will involve a sequence  
16 of activities performed by rather small crews  
17 spread out over the length of the line, most  
18 workers usually stay in commercial accommodations  
19 near their work location. A few workers may bring  
20 travel trailers and place them in trailer parks in  
21 towns along the route, where these facilities are  
22 available.

23 Q. You mentioned that the installation of  
24 gates is a part of the construction process. Where  
25 are these installed?

1           A.     When crossing existing fence lines, Basin  
2     Electric will install barb wire gap gates with a  
3     16-foot opening. If required by property owners or  
4     tenants, gates will be locked.

5           Q.     How is the clearing of trees on the  
6     right-of-way carried out?

7           A.     Stumps will be finished off with a level  
8     cut at an elevation not more than three inches  
9     above the ground. If requested by the landowner,  
10    trees will be cut to lengths and delivered to the  
11    landowner for his use. Material not wanted by the  
12    landowner will be disposed of at an approved  
13    disposal area.

14          Q.     What is done with the spoil from any  
15    excavation?

16          A.     Unused spoils from all excavations will be  
17    spread at the structure site if approved by the  
18    landowner. Otherwise, it will be removed from the  
19    right-of-way.

20          Q.     What steps has Basin Electric taken or  
21    will take in order to be prepared for an emergency  
22    situation that may arise, either during or after  
23    construction?

24          A.     The line route is submitted to local  
25    emergency agencies. The responder will have GPS

1 coordinates to facilitate prompt navigation to the  
2 site.

3 Q. What efforts has Basin Electric undertaken  
4 or will undertake to ensure the workforce  
5 constructing the project are safe?

6 A. Basin Electric has a safety program for  
7 all contractors that work for the cooperative. The  
8 program states requirements for contractors and the  
9 contractor employees.

10 All potential contractors will be  
11 evaluated against the safety program, and only  
12 contractors that meet the requirements will be  
13 allowed to bid on the project.

14 Q. Did Basin Electric consider placing this  
15 project underground?

16 A. Yes.

17 Q. Would it be reasonable or feasible to do  
18 this?

19 A. No. Placing this line underground is  
20 neither feasible nor reasonable for this project.  
21 The cost would be at least ten times greater than  
22 overhead construction. Also, underground cable  
23 requires extensive excavation, which would create  
24 significantly more disturbance than overhead  
25 construction.

1           Q.     What will the maintenance on the proposed  
2 project be typically like?

3           A.     The normal maintenance on transmission  
4 lines revolves around inspection. Every six months  
5 the line is flown to see if the line is in good  
6 condition. Periodically, linemen perform detailed  
7 inspections of individual structures.

8           Q.     I would now like to ask you a series of  
9 questions relating to the North Dakota Public  
10 Service Commission's transmission facility corridor  
11 and route policy criteria. What is Basin  
12 Electric's policy with respect to maximizing  
13 potential benefits through location and design of  
14 its facilities?

15          A.     Basin Electric performs comprehensive  
16 transmission studies to identify facilities that  
17 are needed to ensure a reliable transmission  
18 system. The location and voltage of these  
19 facilities is determined by transmission planning  
20 experts to maximize the benefits of these lines.  
21 Mr. Matthew Stoltz will discuss this further in his  
22 testimony.

23          Q.     What is Basin Electric's policy concerning  
24 the training and use of available labor in North  
25 Dakota for the general and specialized skills

1 required?

2       A.     Basin Electric has a long-standing policy  
3 of recruiting and training workers from North  
4 Dakota. We have developed a partnership with  
5 Bismarck State College to provide the coursework  
6 for our apprenticeship programs in both our  
7 transmission systems -- system maintenance division  
8 and power plant maintenance areas. We also work  
9 with the University of North Dakota, North Dakota  
10 State University, University of Mary, Bismarck  
11 State College and North Dakota State College of  
12 Science to fill internships and full-time  
13 vocational, technical and professional positions.

14             It is Basin Electric's practice to hire  
15 qualified North Dakota workers. Basin Electric  
16 includes qualified North Dakota companies on its  
17 bidders' lists for materials and construction work.  
18 The actual labor force used on our construction  
19 projects is hired by the contractors.

20             The construction personnel are highly  
21 trained in this very specialized area of  
22 construction. However, certain portions of the  
23 construction sequence do not require specialized  
24 training. We anticipate that for these tasks, the  
25 contractor will likely employ local people.

1           Q.     What efforts has Basin Electric made to  
2 economize the cost of construction and operation of  
3 the project?

4           A.     Basin Electric has an obligation to its  
5 member cooperatives to construct facilities at the  
6 least cost while maintaining reliability and  
7 safety. All materials and services are  
8 competitively bid by qualified suppliers. Basin  
9 Electric will combine purchases with other projects  
10 to take advantage of volume pricing. Basin  
11 Electric maintains its own facilities, minimizing  
12 the cost of contracted services.

13          Q.     Has Basin Electric involved local  
14 government entities and citizens in the planning  
15 process?

16          A.     Basin Electric initiates and maintains  
17 close contact with all pertinent federal, state and  
18 local agencies prior to construction of a facility.  
19 For this project, we have met with county  
20 commissioners, zoning boards and city  
21 organizations. We involve the public by conducting  
22 public scoping meetings, mailing information and  
23 visiting landowners.

24          Q.     Would you please tell the Commission what  
25 type of commitment Basin Electric has to its North



1 Dakota consumers regarding their electric power  
2 supply?

3 A. Basin Electric is contractually committed  
4 to meet all of the additional power requirements  
5 above their allocation from Western Area Power  
6 Administration for the North Dakota rural electric  
7 cooperatives that are our members.

8 Q. What is Basin Electric's policy regarding  
9 labor relations?

10 A. Basin Electric management has always  
11 maintained an equitable, fair and harmonious  
12 relationship with labor. Basin Electric uses both  
13 union and nonunion contractors.

14 Q. What is Basin Electric's policy and what  
15 efforts has the cooperative made in the  
16 coordination of facilities?

17 A. Basin Electric works closely with Western  
18 Area Power Administration, Montana-Dakota Utilities  
19 and other utility companies and our member systems  
20 to share facilities and avoid duplication. This is  
21 demonstrated by the double-circuiting of portions  
22 of this proposed project.

23 Q. What is Basin Electric's position on the  
24 monitoring of environmental impacts?

25 A. Basin Electric's policy is that

1 environmental impacts should be monitored and steps  
2 taken to mitigate and alleviate those impacts which  
3 have adverse effects. The environmental impact  
4 statement will discuss expected impacts and  
5 mitigation efforts proposed for the project.  
6 Mr. Miller will discuss this in greater detail.

7 Q. What is the policy of Basin Electric  
8 regarding the use of existing and proposed  
9 rights-of-way and other existing or proposed  
10 transmission facilities?

11 A. Basin Electric strives to avoid  
12 duplication in transmission facilities. We have  
13 agreements with Montana-Dakota Utilities and  
14 Western Area Power Administration which enable us  
15 to use facilities jointly. These agreements have  
16 resulted in economic savings to consumers and the  
17 avoidance of unnecessary duplication of  
18 transmission lines and substations.

19 Q. Mr. Marthaller, Basin Electric has applied  
20 for a waiver of procedures and time schedules, as  
21 well as a consolidated certificate of corridor  
22 compatibility and a route permit. Will the need  
23 for the waivers be addressed by other witnesses?

24 A. Yes. Matthew Stoltz, the manager of  
25 transmission services, will address our need for

1 the project, and Mr. Miller will discuss the  
2 environmental impacts of the project.

3 Q. Based on your knowledge of the project, do  
4 you believe the location, construction and  
5 operation of the proposed facilities produce  
6 minimal adverse effects on the environment and upon  
7 the welfare of the citizens of North Dakota?

8 A. Yes.

9 Q. Are the proposed facilities compatible  
10 with the environmental preservation and the  
11 efficient use of resources?

12 A. Yes. Mr. Cris Miller will cover this in  
13 greater detail in his testimony.

14 Q. Will the proposed facility locations  
15 minimize adverse human and environmental impact  
16 while ensuring continuing system reliability and  
17 integrity and ensuring that energy needs are met  
18 and fulfilled in an orderly and timely fashion?

19 A. Yes.

20 Q. Is it appropriate for the Commission to  
21 waive procedures and time schedules as requested,  
22 including the request for a single consolidated  
23 application and hearing for a corridor certificate  
24 and route permit?

25 A. Yes.

1           Q.     Mr. Miller -- or Marthaller, excuse me,  
2     earlier you testified that Basin Electric submitted  
3     an amendment in July detailing some route changes.  
4     Have there been any changes to the route or  
5     corridor since the July 2013 filing?

6           A.     Yes. There have been four changes.

7           Q.     Using Exhibit 9, can you please discuss  
8     these route changes?

9           A.     Okay. The first change is near AVS,  
10    primarily in Section 23, Township 145, Range 88 in  
11    Mercer County. This change was made to better  
12    accommodate the Coteau Properties mining plan, as  
13    well as the future relocation of a Basin Electric  
14    transmission line as described earlier in my  
15    testimony.

16                The present route is depicted in yellow on  
17    the map and is a slight northern shift from the  
18    July 2013 route shown in pink.

19                The second route change is primarily in  
20    Section 20, Township 152, Range 101 in McKenzie  
21    County. This change was made at the landowner's  
22    request to avoid planted trees.

23                The third change is near Williston,  
24    primarily in Section 35, Township 156, Range 101 in  
25    Williams County. This change was -- was done to

9 Q. Does this complete your testimony?

|    |                                       |
|----|---------------------------------------|
| 11 | JUDGE FETCH: Thank you, Ms. Jacobson. |
|----|---------------------------------------|

14 MR. ARMSTRONG: Yes. Thank you.

16 BY MR. ARMSTRONG:

|    |          |
|----|----------|
| 23 | A. Sure. |
|----|----------|

24 Q. Could you tell us what the present status  
25 is of the environmental impact statement process?

1           A.    Cris Miller will address that in detail.

2           Q.    Okay.  How about as far as mitigation of  
3 potential impacts?  Will another witness discuss  
4 that in greater detail?

5           A.    Yes.

6           Q.    Can you tell us what happens -- or why  
7 this project is needed?  What happens if it is not  
8 built?

9           A.    Matthew Stoltz will address that.

10           MR. ARMSTRONG:  Okay.  I'm -- I'm thinking  
11 most of my questions will be for another witness,  
12 so I --

13           THE WITNESS:  I'll answer any that are  
14 appropriate for me.

15           MR. ARMSTRONG:  I will defer to Mr. Lein  
16 at this time.

17           MR. LEIN:  I have no questions.  Thank  
18 you.

19           JUDGE FETCH:  All right.  Thank you.

20           Then at this time we'll proceed to the  
21 commissioners, and I know they're going to have  
22 some really lucid questions.

23           Commissioner Kalk.

24           COMMISSIONER KALK:  Thank you, Your Honor.

25

**EXAMINATION**

**BY COMMISSIONER KALK:**

Q. And thank you, Duey, for your testimony. And I think to Mitch's point of most of our questions will probably go to the next witness, but I did have -- or I did have -- I do appreciate when the boss, if you will, of a project starts it out and kind of sets the stage. There was a couple general questions that I had for you.

The -- let's see here. It's clear that you've reviewed our decision with the Minnkota Power Company, and you've already -- a lot of the things that you've asked -- or you've already answered are questions that we've asked of Minnkota. So I appreciate the company doing that work ahead of time because you really laid out some of the questions that we would have probably asked, the workers and workforce and all of that.

The -- the question I have just for you is from a strategic level, if you will. You're asking for us to combine these two hearings, to have this hearing essentially be a corridor and a route hearing. Could you talk about that a little bit more, why you think it's appropriate that we just combine those two.

1           A.     In the course of -- of routing a  
2     transmission line, you know, you work with  
3     landowners in a lot of detail, and so you -- by the  
4     time you -- you get to the point where we are now,  
5     you know, you have -- we have purchased a lot of  
6     easements and so, in effect, our corridor is our  
7     route at this point in time. So we feel that it's  
8     appropriate that you combine those because we're so  
9     far along on that process.

10          Q.     Okay. Thank you. Because that's --  
11     that's what I thought, but I wanted to make sure  
12     you asked -- answered that on the record, because  
13     just for the public, there's oftentimes that a  
14     corridor might be six miles wide in different  
15     projects, but over time in North Dakota history and  
16     law the -- the corridor has continued to shrink  
17     smaller. So essentially I would concur with what  
18     you just said, that's -- so we'll make that  
19     decision as well.

20                 What percentage of right-of-way do you  
21     have in place right now?

22          A.     It's about 75 percent of the right-of-way  
23     we have purchased, and Mike Murray will address  
24     that in more detail, but just to give you a rough  
25     number.





1 Q. That's you?

2 A. Yes.

3 Q. Okay.

4 A. Anything related to engineering,  
5 Commissioners, you can ask me.

6 Q. Okay. So these single-pole structures,  
7 I'm used to the old traditional one --

8 A. The lattice type.

9 Q. -- with four -- four corners, and I can  
10 see that these probably look nicer and don't take  
11 up as much space, but are these out in -- in any  
12 places that have weather conditions like we have,  
13 do we know a lot about the integrity of them  
14 when -- when the ice is frozen onto the lines and  
15 the wind is blowing hard?

16 A. Yes, we do. And the technology of these  
17 structures has come a long way in recent years.  
18 And these structures are designed to the same loads  
19 as the lattice structures that you're familiar  
20 with, and we have been installing these tubular  
21 steel structures for -- in substations for 30 years  
22 and on transmission lines since about the year  
23 2000.

24 And they have performed just exceptionally  
25 well. They're very efficient structures.

1           An interesting statistic or piece of  
2 information related to those structures is those  
3 structures are actually heavier than those lattice  
4 structures. There's more steel in them, and a  
5 tubular shape is a very efficient mechanical shape.  
6 Very, very efficient at resisting loads.

7           Q.    What's the expected life cycle of them?

8           A.    It would -- I -- 50 years or more. I mean  
9 we would expect they're -- they're going to be  
10 galvanized steel structures. There are galvanized  
11 steel structures that are a hundred years old and  
12 doing quite well. We do not put a life on the  
13 structures.

14          Q.    Okay. And then you mentioned 16-foot  
15 gates as you go across fenced land.

16          A.    Mm-hmm.

17          Q.    Then is it just a straight route that --  
18 do you have kind of a roadway that you're planning  
19 on having that follows so you can drive through  
20 from one to the other or do you work with the  
21 landowners in arranging things to drive off of your  
22 corridor a little bit if it's -- you know, so  
23 you're not making ruts down steep hills and that  
24 sort of thing when you go from one gate to the  
25 next?

1           A.     Yeah.  A couple things regarding that.  
2     First of all, the -- where the gate is placed.  The  
3     gate is placed -- it would be in -- the first  
4     choice is the centerline of our right-of-way as it  
5     crosses that fence.  Okay.  If there's -- if there  
6     is -- if the farmer, say, has a gate that's very  
7     close to that that's existing, you know, we will  
8     work with that -- that landowner and say, Well,  
9     let's just rebuild your existing gate, you use it,  
10    we'll use it and then they provide us access to get  
11    to our right-of-way using that existing gate.

12                   And, let's see, as far as how many gates  
13           are installed, in -- any off-right-of-way access is  
14           secured from the landowner as a separate agreement  
15           from -- from the easement.

16 COMMISSIONER CHRISTMANN: I have no other  
17 questions for Mr. Marthaller.

18 JUDGE FETCH: Thank you, Commissioner.

19 Commissioner Fedorchak.

20 COMMISSIONER FEDORCHAK: Thank you, Duey.

21 EXAMINATION

22 BY COMMISSIONER FEDORCHAK:

23 Q. I believe these are engineering questions,  
24 but they may not be, so -- but you are the project  
25 manager so some of them are kind of overview

1 questions.

2 First of all, can you speak to what is the  
3 total megawatt capacity increase that this line  
4 will provide for the system?

5 A. Becky will -- will speak to, you know, the  
6 load growth and then Matthew Stoltz will speak to  
7 the capacity to meet that growth.

8 Q. Okay.

9 A. So they'll have detailed information for  
10 you in their testimony.

11 Q. Okay. And they'll talk, too, about what  
12 sort of elements this project has for increasing  
13 capacity, so adding on, say, so you don't have to  
14 site a new line into the future? Have you taken  
15 into consideration in the planning building this in  
16 a way that you can increase the capacity beyond  
17 this down the road?

18 A. Matthew will address that.

19 Q. Okay. Then you touched on this in your --  
20 in your testimony, so I'll ask you. Are there  
21 other challenges -- you mentioned cost being a big  
22 challenge with going underground. Are there other  
23 challenges beyond -- besides cost that makes  
24 burying this cable difficult or challenging, a  
25 high-voltage cable? Are there other things, other

1 reasons why besides cost that that's not possible?

2 A. Yes, there is. These cables get quite  
3 large and the technology has -- you know, has come  
4 a long way in recent years, but with the cables  
5 being so large, when -- you really almost have to  
6 bring them in by ship. And so when you look at  
7 these cables that are used underground, it's  
8 generally underwater that they're used and there  
9 are ships that bring in the cables in huge reels,  
10 you know, to string them and place them under the  
11 water.

12 Now, getting the cable -- getting that  
13 size of cable, you know, to an overland  
14 construction setup would be very, very difficult.  
15 And so the -- the segments of cable that you use to  
16 construct it are going to have to be shorter than  
17 what -- you know, than what we use for overhead  
18 construction because the diameter is so big.

19 So since they're shorter, there's more  
20 splices, and so the splicing of this big cable is  
21 very expensive and very difficult to do.

22 Q. I'm not following why burying they have to  
23 be shorter. You have to -- you have to hang them,  
24 so you're still bringing them out to the site.

25 A. Okay. I'll -- the conductor -- I

1 testified our conductor is 1.8 inches in diameter.  
2 The underground conductor is going to be several  
3 inches in diameter.

4 Q. Okay.

5 A. You know, it's like -- compared to 1.8,  
6 it's going to be several inches. And so when you  
7 reel that cable onto a reel to transport it, it's  
8 going to take a huge reel, so you get a lot less  
9 length of cable on a given reel that can be  
10 transported, so then there's a lot more splices.

11 Q. I see. So the actual cable you're using  
12 is different for underground. Why is it so much  
13 thicker, the underground cable?

14 A. The underground cable has to do with heat  
15 buildup. And when the overhead conductor is out in  
16 the elements, you know, the heat from the electrons  
17 flowing in the wire is dissipated into the air and  
18 so it maintains a certain temperature. When you  
19 enclose that -- that cable with the power  
20 transmitting, heat is generated and heat needs to  
21 be dissipated. So the cable has to be bigger and  
22 the insulation is also a factor because it's in  
23 contact with the earth, so in effect it's grounded.  
24 So you have to provide a dielectric material  
25 between the conductor and the earth, and so that

1 dielectric material takes up space as well.

2 Q. How deep would you have to bury a  
3 high-voltage cable like this for safety -- I'm  
4 assuming for safety reasons, if nothing else.

5 A. Well, no, safety isn't an issue with it  
6 because of that dielectric. I mean it's insulated  
7 in itself. But you would want to bury it so that  
8 it would be below frost line and that it wouldn't  
9 be -- similar to a pipeline. You don't want it to  
10 be disturbed. You need to cross under other  
11 things, so I -- I would estimate that it would be  
12 in the -- six to eight feet would be the minimum  
13 depth.

14 Q. Are they doing this in other parts of the  
15 country more widely than -- than the overhead  
16 lines?

17 A. I know of lower voltages. You know, for  
18 example, a housing development where a -- you know,  
19 a 30 kV or a 50 kV range line needs to be -- needs  
20 to go into an area to serve that area and there's  
21 just no other options, so that line will be buried.  
22 But 345 kV, I am personally not aware of any places  
23 where it's used in a standard overland bulk  
24 transmission system facility.

25 Q. Okay. Have you -- has the company looked



1 at burying certain segments or would that be  
2 possible in certain areas, say, where it's more  
3 sensitive culturally or environmentally, burying  
4 the -- the lines?

5 A. No. No. We -- we have not. We're not  
6 proposing to do that.

7 Q. I know you're not proposing. Is that  
8 feasible?

9 A. It's -- it's not feasible due to the cost  
10 and what I outlined in my testimony.

11 COMMISSIONER FEDORCHAK: Okay. I think  
12 that's all my questions for you. Thank you, Duey.

13 JUDGE FETCH: All right. Follow-up from  
14 the commissioners? Commissioner Kalk.

15 COMMISSIONER KALK: Thank you, Your Honor.

16 **FURTHER EXAMINATION**

17 **BY COMMISSIONER KALK:**

18 Q. Duey, just to follow up to Commissioner  
19 Fedorchak's question. Is the engineering possible  
20 to switch between an overhead configuration and an  
21 underground configuration?

22 A. Yes, it is.

23 Q. Via a substation or is it just a --

24 A. It's facilities that are -- equipment  
25 that -- that is used to transmit to the different

1 conductor.

2 Q. Okay.

3 A. You know, the conductor coming from  
4 overhead, you have to maintain your electrical  
5 clearances and insulate from the structure that  
6 supports it, and then go to this conductor that's  
7 insulated from the dielectric material, because as  
8 it comes down this structure and goes underground,  
9 you know, you could conceivably come up and touch  
10 it. So it's got to be insulated and protected  
11 from -- from, you know, doing damage.

12 Q. Okay. And then the last question I had  
13 was the -- you testified earlier that the  
14 maintenance was much easier with overhead. So I  
15 would assume that would mean that the life cycle of  
16 an overhead is longer, but I want to make sure  
17 what -- get your thoughts on that.

18 A. Okay. I -- I don't believe I said that  
19 the -- that the maintenance is -- is less on an  
20 overhead. Certainly the -- the maintenance on  
21 these types of lines in using these monopole  
22 structures, steel, the maintenance is very minimal.  
23 Really, the maintenance that we have on these lines  
24 is when we have storm damage and that just doesn't  
25 happen very often. So I -- I don't know. Does

1       that answer your question?

2           Q.     Well, I'm just trying to get my mind clear  
3       around, okay, when you visualize an aboveground  
4       power line, it would seem to me it's easier to see  
5       if something is wrong, it's easier to fix things.  
6       I thought that's kind of what you talked about as  
7       one of the reasons why overhead was preferred.

8           A.     Certainly that's true. I mean you see it,  
9       it's broken, you fix it. But now with -- with  
10      fault-detection equipment, you know, say the line  
11      is underground and the fault occurs, we can locate  
12      that fault fairly easily. But to go in and fix it,  
13      splicing these large conductors underground is --  
14      is a huge task and requires special equipment,  
15      access, all of that.

16                 So in that regard, a fault occurs on the  
17      underground line, going in to repair it would be  
18      significantly more work than repairing an overhead  
19      line.

20           Q.     Would the time delay also be longer --

21           A.     It depends upon --

22           Q.     -- or I assume it would be more work and  
23      would be a longer time.

24           A.     Yeah, it certainly -- it certainly would.  
25      Splicing these big conductors, insulated, you know,

```
1    you can -- you can picture how that might occur.
2    It's a huge, huge undertaking.
```

3 COMMISSIONER KALK: Okay. Thank you.

4 COMMISSIONER FEDORCHAK: One more.

5 JUDGE FETCH: Commissioner Fedorchak.

|   |                     |
|---|---------------------|
| 6 | FURTHER EXAMINATION |
|---|---------------------|

7 BY COMMISSIONER FEDORCHAK:

8 Q. At the same time as it might be more  
9 challenging to fix them underground, underground  
10 cables would have some benefits from being -- you  
11 know, the natural protection, not being exposed to  
12 winter snowstorms and that sort of thing; correct?

|    |             |
|----|-------------|
| 13 | A. Correct. |
|----|-------------|

14 Q. So there would be somewhat of a trade-off  
15 there in terms of maintenance?

|    |         |
|----|---------|
| 16 | A. Yes. |
|----|---------|

17 | COMMISSIONER FEDORCHAK: Okay.

18 JUDGE FETCH: Any more questions from the  
19 commissioners? We want to be sure the  
20 commissioners get their questions answered.

21 All right. Any more questions for this  
22 witness from Ms. Jacobson?

23 MS. JACOBSON: No, Your Honor.

24 JUDGE FETCH: Mr. Armstrong?

25 MR. ARMSTRONG: Yes, Your Honor.

**FURTHER CROSS-EXAMINATION**

**BY MR. ARMSTRONG:**

Q. Mr. Marthaller, you talked about with the underground -- potential for the underground line. Is it possible to bore and then place the line or does it have to be surface excavation?

A. Directional -- I don't know of any project where directional boring has been used for a conductor of that size. I'm not aware of anything like that being done. Now, boring for a short distance and then putting this -- putting the underground conductor inside a conduit, you know, like say you're crossing a highway or something, that -- that could be done.

Q. Yeah. And you say a short distance. What do you consider a short distance?

A. 150 feet or less.

Q. Do you know how far you could bore a line?

A. No.

Q. Do you know if it's -- Commissioner Kalk asked you if it's engineeringly feasible to have this line underground. Is it engineeringly feasible to bore it over 150 feet; do you know?

A. I don't know. I don't know of any -- of any project where directional boring has been used

1 for a high-voltage conductor.

2 Q. How do they do it underwater, then?

3 A. Generally, it's laid on the bed of the --  
4 of the water, you know, the bed of the lake. We --  
5 when we investigated this project very early on, we  
6 did a cost estimate for a crossing of Lake  
7 Sakakawea, two miles -- similar to where the Basin  
8 Electric's CO<sub>2</sub> line crosses.

9 And we did a preliminary engineering study  
10 of that crossing. Black & Veatch did the detailed  
11 work for us. And that -- that -- one of their big  
12 concerns was getting this conductor to the site  
13 because there's no waterway to do that. And then  
14 the same point of putting it on land, you know, but  
15 the cost of it was \$60 million at that time and  
16 that was probably about four years ago. But they  
17 qualified that estimate to a great degree in that  
18 really the constructability of that cable across  
19 the lake really needs to be investigated further.

20 MR. ARMSTRONG: That's all I have.

21 JUDGE FETCH: Mr. Lein, did you have any  
22 more questions?

23 MR. LEIN: No questions. Thanks.

24 JUDGE FETCH: Commissioner Fedorchak.

25 COMMISSIONER FEDORCHAK: I do have one

1 more.

2 **FURTHER EXAMINATION**

3 **BY COMMISSIONER FEDORCHAK:**

4 Q. I just want to make sure we exhaust this  
5 subject fully. So I'm understanding correctly, one  
6 of the biggest challenges with the underground is  
7 actually getting the physical cable to the site.  
8 How would you do it?

9 A. That's -- that's absolutely a huge  
10 construction issue. You would have to do it by  
11 truck. And so you have to take this conductor and  
12 put it on reels, and then the reels would be  
13 mounted on a truck and they would be transported to  
14 the site.

15 Q. Any idea how many trucks that would take?

16 A. No, I don't have any idea.

17 Q. Or what kind of wear and tear it would  
18 have on the roads?

19 A. It's going to be a lot more trucks than  
20 what we're proposing --

21 Q. Mm-hmm.

22 A. -- you know, with the -- with the  
23 1.8-inch-diameter conductor. Many more.

24 COMMISSIONER FEDORCHAK: All right. I  
25 think that's it for me. Thank you.

1 JUDGE FETCH: Thank you.

2 Commissioners, any further follow-up?

3 Thank you.

4 Any further questions of anyone for this  
5 witness?

6 MS. JACOBSON: No, Your Honor.

7 JUDGE FETCH: All right. Thank you.

8 You're excused. We're going to proceed with the  
9 next witness. This one is -- is projected to be  
10 much shorter, so we'll take this witness -- the  
11 court reporter's looking at me. We started at  
12 9:30, so that's an hour and 15 minutes. If we're  
13 not done within 20, 25 minutes, we will take a  
14 break.

15 MS. JACOBSON: Thank you, Your Honor. The  
16 next witness is Ms. Becky Kern.

17 JUDGE FETCH: All right. Please proceed.

18 **BECKY KERN,**

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

21 **DIRECT EXAMINATION**

22 **BY MS. JACOBSON:**

23 Q. Please state your name, business address  
24 and occupation.

25 A. My name is Becky Kern. My business



1 address is 1717 East Interstate Avenue, Bismarck,  
2 North Dakota. I am the manager of utility planning  
3 for Basin Electric Power Cooperative.

4 Q. Please state your educational background  
5 and work experience.

6 A. I received a bachelor of science degree in  
7 electrical engineering from North Dakota State  
8 University in 2002. I began employment with Basin  
9 Electric in 2003 as a power supply engineer. I've  
10 worked for Basin Electric for ten years.

11 Q. What does your work as the manager of  
12 utility planning involve?

13 A. My work involves the development of the  
14 long-term load forecasting for Basin Electric and  
15 its members and the long-term power supply planning  
16 activities, which include the development of Basin  
17 Electric's integrated resource plan.

18 The integrated resource plan is an  
19 in-depth look at Basin Electric's current operating  
20 system, future load growth and the framework for  
21 future expansion, including both power supply and  
22 demand-side resource expansion.

23 Q. And what have been your responsibilities  
24 in connection with the project?

25 A. I was responsible for overseeing the

1 preparation of Basin Electric's load forecasts,  
2 which help Basin Electric transmission engineers  
3 determine if additional transmission is needed.

4 Q. What is Basin Electric's obligation to its  
5 137 members with regard to the delivery and supply  
6 of power?

7 A. Basin Electric has all requirements  
8 contracts with its members. We are obligated to  
9 sell and our members are obligated to buy electric  
10 power to meet all of their needs through the year  
11 2050. They in turn provide retail electric service  
12 to their members at the end of the line.

13 Q. What obligations does Basin Electric have  
14 to its member-owned cooperatives with respect to  
15 providing electric service?

16 A. Basin Electric is a not-for-profit  
17 organization and, as such, we are to provide  
18 service at the least cost.

19 Q. Earlier you mentioned one of your duties  
20 is to prepare the load forecasts for Basin  
21 Electric. How do you conduct these studies?

22 A. The load forecasts are performed either  
23 every other year or every three years with annual  
24 updates and are approved by the Rural Utilities  
25 Services. In order to assure all segments of the

1 cooperative's structure are involved, a load  
2 forecast technical committee was established. This  
3 committee consists of representatives from the  
4 distribution cooperatives, the generation and  
5 transmission cooperatives and Basin Electric.

6 The load forecast is prepared on a  
7 distribution cooperative basis and is a thorough  
8 study of the cooperative's electric loads and the  
9 factors that affect those loads in order to  
10 determine as accurately and as practically as  
11 possible the cooperative's future requirements for  
12 energy and capacity.

13 The basis for econometric modeling is to  
14 identify factors in the economy that have  
15 historically affected electrical consumption. This  
16 is accomplished by using regression analysis  
17 software that establishes a mathematical  
18 relationship between economic factors and power  
19 usage.

20 The mathematical relationship, which is in  
21 the form of algebraic equations, represents the  
22 econometric model. Different models are developed  
23 for each member, depending on the type of load they  
24 serve. Examples of these models include  
25 residential, oil, coal, ethanol and

1 biodiesel-related forecasts.

2           There are certain instances that a  
3 mathematical equation cannot be developed to  
4 predict the future, and in these cases judgmental  
5 forecasts are created with the help of the  
6 distribution cooperatives serving the loads because  
7 of their local knowledge and expertise.

8           The results of the load forecasts are then  
9 translated into a model that represents Basin  
10 Electric's system on a delivery-point basis. This  
11 allows the planning of infrastructure improvements  
12 to be made where needed.

13           Q.   How is the process monitored?

14           A.   The load forecast is monitored on a  
15 monthly basis to ensure that the forecast is  
16 performing as expected. Also, due to the detailed  
17 information available from the large commercial  
18 sector, individual projects can be monitored to  
19 ensure that they are proceeding as planned. If the  
20 load deviates significantly from the forecast,  
21 modifications can be made for future load  
22 forecasts.

23           Q.   Exhibit 10 was previously entered into  
24 evidence. Can you explain what this exhibit  
25 represents?

1           A.     It is a graph showing the forecasted load  
2     growth in the winter season of the Williston Basin  
3     area that came out of Basin Electric's 2011 load  
4     forecast, that is shown in red, and the two  
5     subsequent updates to that forecast shown in green  
6     for 2012 and purple for 2013. All three of these  
7     were approved by RUS.

8                 The forecasts are shown for our member  
9     cooperatives that reside in the Williston Basin  
10    area, which includes the Watford City area. Those  
11    member cooperatives included in this representation  
12    includes all of Upper Missouri G&T Electric  
13    Cooperative's distribution cooperative members,  
14    which are Burke-Divide Electric Cooperative,  
15    Goldenwest Electric Cooperative, Lower Yellowstone  
16    Rural Electric Cooperative, McCone Electric  
17    Cooperative, McKenzie Electric Cooperative,  
18    Mountrail-Williams Electric Cooperative, Roughrider  
19    Electric Cooperative, Sheridan Electric  
20    Cooperative, Slope Electric Cooperative and  
21    Southeast Electric Cooperative; and the three  
22    distribution cooperative members of Central Power  
23    Electric Cooperative, which are Verendrye Electric  
24    Cooperative, McLean Electric Cooperative and North  
25    Central Electric Cooperative; and Basin Electric's

1 distribution cooperative member, Grand Electric  
2 Cooperative.

3 The 345 kV transmission project discussed  
4 today was justified using the 2011 forecast and  
5 reaffirmed with the development of the two  
6 subsequent forecast updates. All three forecasts  
7 show more than 1,000 megawatts of load growth from  
8 January 2011 through the end of the forecast period  
9 of 2025 for the Williston Basin area.

10 The load forecast discussed in Section 2.1  
11 of the application is a more defined load-serving  
12 region surrounding Watford City, Williston and  
13 Tioga.

14 Q. Can you please tell the Commission the  
15 magnitude of load growth for members in this area?

16 A. Based on the 2013 load forecast update,  
17 which is the most recent load forecast, Basin  
18 Electric's members -- Basin Electric's members with  
19 load obligations within the Williston Basin are  
20 forecasted to grow more than 1,000 megawatts from  
21 now through 2025. This represents more than a  
22 7 percent growth per year.

23 Q. Can you discuss in greater detail the  
24 growth in the Williston Basin area?

25 A. The load growth is primarily related to

1 the expanding oil and gas industry and the  
2 infrastructure needed to support the expanding  
3 development, which includes pipelines, rail,  
4 natural gas plants, homes, businesses and roads.

5 Q. Was an independent load forecast performed  
6 for the Williston Basin oil and gas loads?

7 A. Upon completion of the 2012 load forecast  
8 update, Basin Electric partnered with the North  
9 Dakota Transmission Authority, Montana-Dakota  
10 Utilities and the oil and gas industry through the  
11 North Dakota Petroleum Council, commissioned  
12 Kadrmas, Lee & Jackson, a North Dakota consulting  
13 firm, to complete an oil- and gas-related  
14 electrical load growth forecast for the Williston  
15 Basin area of North Dakota and Montana. This  
16 forecast was completed in October 2012.

17 My staff participated in meetings with KLJ  
18 and oil companies in the development of the study.  
19 It contained expected electrical demand related to  
20 43 counties within the Williston Basin area and  
21 specifically 22 key oil-producing counties in the  
22 western and north central region of North Dakota.  
23 The study performed by KLJ validated the  
24 oil-related load growth that Basin Electric  
25 forecasted in its own load forecast.

1           Q.    Is your department responsible for  
2 determining the need of the proposed project?

3           A.    Partly.  Once the forecast is prepared by  
4 the utility planning group, it is given to the  
5 transmission services department, who in turn  
6 prepares studies to determine if additional  
7 transmission is needed.  The next witness,  
8 Mr. Matthew Stoltz, will testify more about the  
9 specific study that he prepared that justified the  
10 need for the proposed project.

11          Q.    Are you familiar with efforts to capture  
12 flared natural gas at well sites for use in the  
13 creation and delivery of power in North Dakota?

14          A.    Yes.

15          Q.    Can you please describe whether these  
16 efforts would meet the growing electrical demands  
17 you previously testified to?

18          A.    The capturing of flared natural gas and  
19 use in electrical generation could assist in the  
20 production of power to serve or offset the  
21 increasing load growth on a temporary basis.  
22 However, there are technical challenges, such as  
23 the availability and composition of flare gas  
24 associated with this type of electrical generation.

25          Q.    Does this conclude your direct testimony?



1 A. Yes.

2 JUDGE FETCH: Thank you.

3 Mr. Armstrong, questions?

4 MR. ARMSTRONG: Yes. Thank you.

5 **CROSS-EXAMINATION**

6 **BY MR. ARMSTRONG:**

7 Q. How many additional megawatts will this  
8 line provide?

9 A. Mr. Matthew Stoltz will have to comment on  
10 that.

11 Q. Is -- and these might be questions for  
12 him, also, but I mean is it designed to meet the  
13 load growth -- how far out?

14 A. Mr. Matthew Stoltz can comment on that.

15 Q. What happens if this line is not built?

16 A. Matthew Stoltz.

17 MR. ARMSTRONG: I will wait for  
18 Mr. Stoltz.

19 JUDGE FETCH: Thank you.

20 Mr. Lein, do you have any questions?

21 MR. LEIN: Just one.

22 **EXAMINATION**

23 **BY MR. LEIN:**

24 Q. With this forecast, then -- with this  
25 forecast, then, this is just the cooperative loads;

1 right? This isn't MDU's load at all?

2 A. That is correct.

3 MR. LEIN: Okay. No further questions.

4 Thanks.

5 JUDGE FETCH: All right. Thank you.

6 We'll turn to the Commission.

7 Commissioner Kalk.

8 COMMISSIONER KALK: Thank you, Your Honor.

9 Thank you, Jerry -- for Jerry's question too.

10 Jerry anticipated my question.

11 **EXAMINATION**

12 **BY COMMISSIONER KALK:**

13 Q. So have you looked at sharing some of this  
14 capacity with MDU and others?

15 A. Matthew Stoltz will comment on the joint  
16 study work that is performed with Western Area  
17 Power Administration and MDU.

18 Q. Okay. Tell me again your title, Becky.

19 A. Manager of utility planning.

20 Q. Okay. So you're talking about how you're  
21 going to meet future needs from more of a  
22 generation viewpoint?

23 A. Yes.

24 Q. Okay. So where did all this generation  
25 come from? I know we're including plugging into a

1 coal plant, but wasn't that coal plant at capacity  
2 before?

3 A. The plant was fully utilized. We do have  
4 some surplus generation that has historically been  
5 taken to market to other utilities, so we're using  
6 existing generation. We have also entered into  
7 power purchase agreements, also building new  
8 generation in western North Dakota, as you guys are  
9 familiar with our Pioneer and Lonesome Creek  
10 Station.

11 Q. Which we've sited some different places.  
12 Sure.

13 A. Mm-hmm.

14 Q. Okay. The -- the Gumbo Creek Substation  
15 removal, is that something you want to talk about?

16 A. Nope.

17 Q. That will also go down the road. Hmm.  
18 You talked about flared gas. The -- what studies  
19 would you be able to point to that showed this was  
20 the best alternative?

21 A. The transmission plan?

22 Q. Yes. That showed that other generation --  
23 other alternatives for generation were looked at  
24 and this was deemed to be the best. Is there a  
25 part of your testimony -- is there a part of what's

1        been filed that can be -- that is in the record  
2        right now?

3           A.    I believe Matthew Stoltz will be  
4   commenting on generation versus transmission.

5 COMMISSIONER KALK: Okay. All right.  
6 Well, thank you.

7 JUDGE FETCH: Thank you.

8 Commissioner Christmann.

9 COMMISSIONER CHRISTMANN: Thank you, Your  
10 Honor.

11

EXAMINATION

12 BY COMMISSIONER CHRISTMANN:

Q. Your Exhibit No. 10 for the -- for the load growth, the lines don't go across so it's kind of hard to follow and get a good gauge of -- of how much difference there is, but when I look from the last -- last blue line going vertically and go out ten years, it looks like the amount of increase that you projected in 2011 and then when I look at that amount to the increased increase in the 2013 study, that is over half as much as what you were originally figuring the increase would be altogether, as close as I can gauge here.

|    |         |
|----|---------|
| 24 | A. Yes. |
|----|---------|

25 Q. So how can this possibly be big enough?

1 If it was needed based on the 2011 study and we  
2 already know that the need is more than 50 percent  
3 larger than it was then, it tells me that if this  
4 gets approved, we're not even going to have it done  
5 and we're going to be siting another one. So why  
6 don't we do something even bigger?

7 A. We've added additional generation that  
8 came after the commitment of this transmission line  
9 that also helps support this additional load  
10 growth, the additional generation that we were  
11 siting. We've also -- I think the -- our alternate  
12 route that we have may be another project that may  
13 be coming forward later.

14 COMMISSIONER CHRISTMANN: Okay. Thank  
15 you. No other questions.

16 JUDGE FETCH: Thank you.

17 Commissioner Fedorchak.

18 COMMISSIONER FEDORCHAK: Sure. I think I  
19 just have two questions.

20 **EXAMINATION**

21 **BY COMMISSIONER FEDORCHAK:**

22 Q. First of all, you kind of gave a technical  
23 description of your load forecasts. Can you give a  
24 simpler one in your own words, just like  
25 eighth-grade version. How do you guys do this?

1           A.    We look at historical patterns that have  
2           occurred and try to trend that to future economic  
3           conditions. And so there's mathematics that are  
4           created in forming those equations at how history  
5           can pattern the future, as well as just judgmental  
6           discussion with the local distribution co-ops and  
7           local industry.

8           Q.    But we don't have much history with this.  
9           It's --

10          A.    That's right.

11          Q.    -- changing rapidly?

12          A.    That is correct.

13          Q.    So how do you --

14          A.    And so --

15          Q.    -- take that into account?

16          A.    A lot of this was handled through  
17               judgmental forecasts in coordination with our local  
18               member distribution co-ops and their relationship  
19               with the industry and through discussions with  
20               industry.

21          Q.    Okay. Then on your Exhibit No. 10, which  
22               is a really telling graph, could you speak to the  
23               changes that occurred between your 2012 update and  
24               your 2013 update? Because those are some pretty  
25               significant changes just at the end of the graph

1       between those two forecasts. What happened? What  
2       are you seeing that contributed to that significant  
3       jump? It's like -- again, I can't really tell, but  
4       300 megawatts, perhaps maybe more.

5           A.     The primary difference was located in the  
6       McKenzie Electric service territory, which is in  
7       the Watford City/Killdeer area, so it's right in  
8       this area. There was significant -- through the  
9       study that was done by KLJ, as well as working with  
10      our distribution cooperative member, McKenzie,  
11      additional work through discussions with oil  
12      industry, they've moved into that area and planning  
13      further development in that area.

14          Q.     How comfortable are you that you have a  
15      correct assessment now looking out to 2024?

16          A.     The numbers have been changing on us every  
17      year. They've been steadily going upward, so I  
18      think right now we're fairly conservative. It may  
19      come back maybe there will be additional  
20      development as we move forward. We are also  
21      conducting another load forecast study right now  
22      that is anticipated to be done first or second  
23      quarter of '14.

24          Q.     Okay. And then coming back ten years to  
25      2015, the changes are pretty significant on this

1 graph for that too. Tell me as a load forecaster,  
2 how do you feel about that?

3 A. You know, one of the other things that's  
4 in these forecasts is the Keystone XL Pipeline as  
5 it goes through some of our territory and its  
6 impacts there. There are some pumping stations  
7 that affect our Grand Electric Co-op member. So  
8 depending on what happens there, you know, if it  
9 gets built, it goes forward, is there a phase one  
10 or a phase two? There's been some changes to that  
11 as well. And so we've been continually monitoring  
12 that, you know, and those things continue to  
13 change.

14 Q. Do you include worst-case scenarios, or  
15 however you want to say it, like prepare for every  
16 project happening?

17 A. No. This is as of right now more of a  
18 most likely. We also prepare a bandwidth forecast  
19 that ultimately it could be something bigger than  
20 this. This is what most likely is anticipated to  
21 happen based on the discussions that we're having  
22 right now.

23 COMMISSIONER FEDORCHAK: Okay. Thank you,  
24 Judge. I think that's it. Thanks, Becky.

25 JUDGE FETCH: Thank you.



1 Commissioner Christmann, I think you had a  
2 follow-up.

3 COMMISSIONER CHRISTMANN: I'm sorry. That  
4 last line of questioning is what I was going to add  
5 to. Thank you.

6 | JUDGE FETCH: All right. Thank you.

|   |                    |
|---|--------------------|
| 7 | Commissioner Kalk. |
|---|--------------------|

8 COMMISSIONER KALK: Yes, Your Honor, just  
9 one more question.

10 **FURTHER EXAMINATION**

11 BY COMMISSIONER KALK:

12 Q. The -- are you familiar with Southwest  
13 Power Pool?

|    |         |
|----|---------|
| 14 | A. Yes. |
|----|---------|

15 Q. If Basin entered into something like a  
16 Southwest Power Pool, would that affect this  
17 transmission line's need?

18           A.    I do not believe so.  We'll still need the  
19   transmission line to serve the local area of this  
20   region.

21 COMMISSIONER KALK: All right. Thank you.

22 JUDGE FETCH: Thank you. Any further  
23 questions from the commissioners?

24 All right. Any further questions from  
25 Mr. Armstrong or Ms. Jacobson?

1 MR. ARMSTRONG: I have one --

2 JUDGE FETCH: Mr. Armstrong.

3 MR. ARMSTRONG: -- maybe area, anyway.

4 **FURTHER CROSS-EXAMINATION**

5 **BY MR. ARMSTRONG:**

6 Q. Is this line designed to meet the --  
7 which, the 2011 forecast, the 2012 update or the  
8 2013 update? What's this line going to meet?

9 A. It was initially needed for the 2011,  
10 reaffirmed with the '12 and the '13 as far as the  
11 need. We've also done other projects after that,  
12 so it will -- I mean it's a timing issue on the  
13 need. There may be additional needs beyond this,  
14 though.

15 Q. And maybe you're not the witness to  
16 testify to this, but as I understand with the  
17 additional -- the increase in the McKenzie County  
18 area, there was a north Killdeer loop being  
19 contemplated; is that correct?

20 A. That is. And I think Cris may be  
21 commenting on that.

22 MR. ARMSTRONG: Okay. I'll save those  
23 questions for him, then.

24 JUDGE FETCH: Any further questions from  
25 anyone?

1 MS. JACOBSON: No, Your Honor.

2 JUDGE FETCH: No further takers. All  
3 right. This witness is excused.

4 We are going to take a -- I think we're  
5 going to need 15 minutes. The facilities are a  
6 little limited. 15-minute break.

7 (Recessed at 11:04 a.m. to 11:26 a.m.)

8 JUDGE FETCH: All right, everyone, come  
9 back to order, please. All right. It is 11:25.  
10 We're back on the record.

11 And at this time we'll proceed with the  
12 next witness. Ms. Jacobson, please identify the  
13 witness.

14 MS. JACOBSON: Mr. Matthew Stoltz. I  
15 believe he's ready to go, so --

16 JUDGE FETCH: All right. Let's proceed.

17 MATTHEW STOLTZ,  
18 having been first duly sworn, was examined and  
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. JACOBSON:

22 Q. Would you please state your name, business  
23 address and your occupation?

24 A. My name is Matthew Stoltz. I'm employed  
25 as the manager of transmission services. My

1 base -- my business address is 1717 East Interstate  
2 Avenue, Bismarck, North Dakota.

3 Q. What's your educational background?

4 A. I earned an associate of applied science  
5 degree from Bismarck Junior College in 1981. I  
6 received a bachelor of science degree in electrical  
7 engineering from North Dakota State University in  
8 1985.

9 Q. What is your employment history and work  
10 experience?

11 A. I worked for the Western Area Power  
12 Administration, subsequently referred to as  
13 Western, from 1986 to 1999 and performed project  
14 management and transmission studies functions.  
15 Prior to Western, I was employed by Ulteig  
16 Engineers from 1985 to 1986 performing distribution  
17 system studies and construction inspection.

18 I was hired by Basin Electric Power  
19 Cooperative in 1999 as an electrical engineer in  
20 the transmission planning division. In 2004, I was  
21 promoted to manager of transmission services.

22 My current responsibility is to prepare  
23 transmission studies required to support generation  
24 interconnections and requests for transmission  
25 service. I also supervise network load delivery

1 studies that determine transmission system  
2 additions required to accommodate projected load  
3 growth.

4 Q. What have been your responsibilities in  
5 connection with the project?

6 A. I was responsible for the transmission  
7 studies which determined the need for the project.

8 Q. And can you describe the integrated  
9 system, or the IS?

10 A. The integrated system, subsequently  
11 referred to as IS, of the Western, Basin Electric  
12 and Heartland Consumer Power District is the  
13 backbone of the high-voltage transmission grid in  
14 the upper Great Plains region of eastern Montana,  
15 North Dakota and South Dakota.

16 This jointly developed transmission system  
17 evolved from the 1962 joint transmission system  
18 agreement, subsequently referred to as JTS, with  
19 the Bureau of Reclamation, Basin Electric and 103  
20 cooperative and municipal preference customers in  
21 the region.

22 This agreement enabled Basin Electric to  
23 lease capacity on the federal transmission system  
24 and deliver output from its first power plant to  
25 our members throughout the region.

1 Under the JTS agreement, the parties  
2 planned, constructed and operated transmission  
3 facilities needed to serve the customers of the  
4 region on an integrated single-system basis. In  
5 1977, the U.S. Congress transferred the power  
6 marketing functions of the Bureau of Reclamation to  
7 Western and Western assumed the responsibility for  
8 the operation of the JTS.

9 In response to the Federal Energy  
10 Regulatory Commission, subsequently referred to as  
11 FERC, open access transmission orders 888 and 889,  
12 which set forth billing methodologies inconsistent  
13 with the JTS methodology, the JTS agreements were  
14 terminated. The IS agreement between Western,  
15 Basin Electric and Heartland replaced the JTS  
16 agreements and provides open-access transmission  
17 service to customers in the region.

18 The IS facilities consist of 9,447 miles  
19 of interconnected high-voltage transmission lines,  
20 of which 1,554 miles of line are owned by Basin  
21 Electric. These facilities deliver power from  
22 federal hydroelectric plants and other generation  
23 facilities owned by the IS participants.

24 Q. How is the IS planned and operated?

25 A. Although the transmission facilities are

1 currently owned by individual IS members, the  
2 entire IS is planned and operated on an integrated  
3 basis through the coordinated efforts of all the  
4 participants. Western is the IS tariff  
5 administrator and transmission system operator.

6 The IS follows a prescribed planning  
7 process. The planning process meets the FERC 890  
8 rules and the North American Electric Reliability  
9 Corporation, subsequently referred to as NERC,  
10 reliability standards. The purpose is to satisfy  
11 the compliance requirements of FERC order 890 and  
12 NERC planning standards.

13 The purpose of FERC order 890 is to create  
14 an open and transparent process that allows  
15 stakeholder input. Ensuring adequate transmission  
16 system performance is accomplished by evaluating  
17 the near-term and long-term transmission conditions  
18 and identifying system additions needed in the IS  
19 to meet network load-serving needs.

20 Q. What factors does the IS examine in  
21 determining eligibility in the IS?

22 A. There are multiple factors influencing the  
23 need for transmission investment. The most  
24 important goal is to maintain system reliability  
25 and operating criteria while meeting customer

1 demand. Also, it is important to identify and  
2 replace obsolete or physically weak facilities.

3 Often the interconnection of new  
4 generation requires upgraded transmission  
5 facilities. Relief of transmission congestion is  
6 another reason that transmission facilities are  
7 added.

8 Q. Will the proposed project be part of the  
9 IS?

10 A. Yes. The project is a networked  
11 transmission addition required to meet customer  
12 demand. It will be operated as part of the IS.  
13 Also our intention is to place it in the IS tariff.

14 A facility can be eligible for IS  
15 inclusion if it is operated in a networked  
16 configuration that allows service to be sold to any  
17 customer of the IS. Agreement of the IS  
18 transmission owners is required to obtain inclusion  
19 of a facility into the IS tariff.

20 Q. Earlier you mentioned that you were  
21 responsible for the transmission studies which  
22 determined the need for the project. How do you  
23 conduct these studies?

24 A. Transmission studies are conducted with  
25 the use of power system simulation software. With



1     this simulation software, we model the electrical  
2     characteristics of the transmission system. The  
3     program then calculates the voltages and power  
4     flows on the transmission lines and substation,  
5     allowing us to analyze whether or not the system is  
6     adequate for the loads indicated in the study.

7             One of the most important parts of  
8     conducting transmission studies is being able to  
9     analyze the future electrical loads on the  
10    transmission system. This is required because it  
11    can take up to six years to design, permit and  
12    construct a major transmission line.

13            Once the electrical loads have been  
14    projected by Basin Electric utility planning group  
15    and placed into the computer model, various outages  
16    of the existing transmission system are then  
17    simulated. These outages tell us if the existing  
18    transmission system is capable of handling the  
19    projected low growth in the area.

20            If the transmission system outages  
21    indicate inadequate transmissions into an area, we  
22    place into the model various transmission lines or  
23    substations in order to determine the best  
24    alternatives to solve this deficiency.

25            Q.     Are there any standards that you must meet

1 in the design of the transmission system?

2 A. Yes. The transmission system must be  
3 designed so it meets criteria set by NERC.  
4 Specifically, these NERC standards are listed by  
5 NERC as transmission planning standards 1 through 4  
6 and are often referred to as TPL standards. FERC  
7 has identified NERC as the federal reliability  
8 authority for electrical utilities in the United  
9 States.

10 NERC criteria states that transmission  
11 owners should not have unplanned service  
12 interruptions into an area if there is an outage of  
13 one network transmission facility. This criteria  
14 enables transmission owners to maintain reliable  
15 service in an area if a storm or other weather  
16 event should happen to take one line out of service  
17 or if maintenance on a transmission line is  
18 required.

19 Q. Mr. Stoltz, Basin Electric has applied for  
20 a waiver of procedures based on certain conditions  
21 which require expedited construction of the  
22 project. How did you determine that that need  
23 existed?

24 A. Basin Electric conducts transmission  
25 studies with neighboring utilities, such as

1 Montana-Dakota Utilities Company, subsequently  
2 referred to as MDU, and Western to review the  
3 adequacy of the existing transmission system. This  
4 is done through the FERC 890 study process.

5 Basin Electric and its members, Western  
6 and MDU transmission planners have been  
7 cooperatively monitoring the area of northwestern  
8 North Dakota for a number of years. Our studies  
9 indicated that load growth would impact system  
10 voltage and transmission line loadings without  
11 improvements.

12 In 2011, Basin Electric's utility planning  
13 division provided Basin Electric and Western  
14 transmission planners new load data for this area.  
15 Based on this information, Basin Electric and  
16 Western transmission planners determined a  
17 dedicated study effort of the area was required.  
18 Updated load forecasts were provided to us in 2012  
19 and the study process was repeated.

20 Q. An earlier witness testified that the  
21 Judson to Neset segment will be constructed in  
22 2017. Why was this change made?

23 A. The 2013 load forecast increased the  
24 expected load in the Watford City area compared to  
25 the previous forecast. To accommodate this load

1 growth, Basin is considering additional  
2 transmission facilities in that area in the near  
3 future.

4 The increases in capacity these facilities  
5 provide should defer the need of the Judson to  
6 Naset 345 kV line segment. Our analysis indicates  
7 that this segment of the project can be placed into  
8 service two years after the remainder of the  
9 project. Also, from an engineering and  
10 construction perspective, it is more efficient to  
11 stage the development of this project.

12 Providing extra construction seasons for  
13 this project -- for this portion of the project  
14 will spread out engineering and construction  
15 resources across a longer time period.

16 Q. Exhibit 12 was previously entered into  
17 evidence. Can you explain what the document is?

18 A. This is the 2012 Bakken area transmission  
19 study prepared by the transmission services  
20 department of Basin Electric on behalf of the IS.  
21 This study included the 2012 Basin Electric,  
22 Western and MDU load forecasts. It was coordinated  
23 with the other the regional transmission owners and  
24 the stakeholder group via the IS planning process.

25 Q. What are the results of the study?

1           A.     The result of this study determined a new  
2     345 kV line was required to connect the existing  
3     Neset Substation near Tioga to the AVS Substation.  
4     This project would create a high-voltage 345 kV  
5     path into the Williston and Tioga areas.

6           Q.     Mr. Stoltz, how does this project affect  
7     the reliability of the transmission system in this  
8     area of northwestern North Dakota?

9           A.     By the year 2018, the Bakken area load is  
10    expected to approach 1900 megawatts. The  
11    transmission analysis indicates the transmission  
12    system will not be able to accommodate this level  
13    of load growth. The proposed AVS-Neset 345 kV  
14    project, along with some capacitor bank additions,  
15    will increase the Bakken area load-serving limit to  
16    approximately 1900 megawatts. Based on the 2012  
17    forecast, the 1900 megawatt load limit should  
18    provide adequate capacity through the year 2018.

19          Q.     If the proposed project does not get built  
20    as proposed, what would happen to the electrical  
21    system in northwestern North Dakota?

22          A.     The existing transmission capacity will  
23    curtail future load growth unless this facility is  
24    constructed.

25          Q.     Does the proposed location, construction

1 and operation of the project ensure continued  
2 system reliability and integrity?

3 A. Yes. The proposed transmission line will  
4 increase transmission system capacity while meeting  
5 NERC criteria. The Bakken area load-serving limit  
6 will rise to approximately 1900 megawatts to  
7 accommodate forecasted load growth.

8 Q. Does the proposed project ensure that the  
9 energy needs of the area will be fulfilled in an  
10 orderly and timely fashion?

11 A. Yes.

12 Q. Will the transmission line benefit the  
13 area through which Basin Electric is proposing to  
14 construct?

15 A. Yes. This transmission line will provide  
16 a direct benefit for service into the area,  
17 allowing reliable service to area customers.

18 Q. Are there any plans for expansion of this  
19 line?

20 A. Not at this time for this particular  
21 project, but additional 345 kV transmission will be  
22 needed in western North Dakota in the near future.

23 Q. Are you familiar with the route of the  
24 proposed project?

25 A. Yes.

1           Q.    Are you familiar with landowners' requests  
2 to parallel existing transmission lines?

3           A.    Yes.

4           Q.    Can you please tell the Commission why  
5 that would not ensure system reliability?

6           A.    The benefit of a networked transmission  
7 system with multiple lines connected to a  
8 load-serving area is that in the event of an outage  
9 of one line, the remaining lines will assume the  
10 burden of the outaged line and continue to carry  
11 power flow into the area.

12                   Placing transmission lines in adjacent  
13 right-of-ways adds risk because a single event,  
14 such as a tornado or ice storm, could cause a loss  
15 of all the facilities in the corridor. Then, there  
16 may not be enough remaining transmission lines left  
17 in service to continue serving the network load.  
18 Therefore, to the maximum extent possible, the  
19 recommendation is to place transmission lines in  
20 separated corridors.

21           Q.    Is it possible to build larger generation  
22 facilities to meet the electrical demand instead of  
23 building the proposed project?

24           A.    Basin Electric has several generation  
25 projects in service or under construction in

1 western North Dakota and eastern Montana. The  
2 electrical load is scattered across the entire  
3 Bakken area. Transmission is required to move the  
4 power from the generation to the load-delivery  
5 substations.

6 The scale of the required transmission to  
7 support a generation-only solution would be similar  
8 to the proposed project.

9 Also, the proposed project provides a  
10 strong connection from the Bakken area to the  
11 adjacent electrical grid in the Antelope Valley  
12 Station area, which is in turn connected to the  
13 multistate regional transmission grid. Therefore,  
14 the least expensive sources of power in the region,  
15 including area regional transmission organizations,  
16 can be scheduled into the area.

17 Q. Does this conclude your testimony?

18 A. Yes.

19 JUDGE FETCH: Thank you, Mr. Stoltz.

20 Mr. Armstrong, any questions?

21 MR. ARMSTRONG: Yes. Thank you.

22 **CROSS-EXAMINATION**

23 **BY MR. ARMSTRONG:**

24 Q. Mr. Stoltz, are you -- I'm trying to  
25 remember if you were the witness who could tell me



1 about the status of the EIS process.

2 A. No, I'm not. That's Mr. Cris Miller.

3 Q. Okay. As far as -- you said this project  
4 is needed to -- or it will curtail future load  
5 growth. What's that mean?

6 A. Well, what that means is as we go forward  
7 in time, the load continues to grow as expected,  
8 the system capacity is fixed at today's value. We  
9 have to meet that NERC criteria or else we'd be  
10 subject to sanctions if we have an event and we  
11 operate outside that criteria. That criteria  
12 includes low voltages and line overloads.

13 So we'd monitor the system with operating  
14 guides and we'd have to limit the load-serving  
15 ability in that region based on those operating  
16 guides that are designed to help us respect that  
17 NERC operating criteria. So, for example, if we  
18 set a guide for this winter for X number of  
19 megawatts in that pocket and that value of load was  
20 in excess of that number, we'd have to curtail in  
21 some fashion. We'd have to determine that some  
22 loads could simply not be served and would have to  
23 be taken out of service. So if we go forward in  
24 time, that problem would just continue to get worse  
25 as load continued to grow above that operating

1 limit.

2 Q. How do you determine which load would get  
3 taken out of service?

4 A. Typically, it's last on, first off.

5 Q. Why is this line the best way to prevent  
6 that from happening?

7 A. Right now today's system is -- contains a  
8 345 kV line from the AVS Station to the Charlie  
9 Creek Substation, and you probably drove beneath  
10 that line as you came up here to Killdeer. And at  
11 Charlie Creek Substation there's a conversion to  
12 230 kV, which is a lower voltage. And Western Area  
13 Power has a line that goes from Charlie Creek  
14 Substation up to Williston. And then that line  
15 continues to Tioga via a line Basin built recently  
16 and ties into the Tioga substation. And then  
17 there's a 230 kV line that goes from Tioga over to  
18 Minot and then a line from Minot back to the Leland  
19 Olds station. So it forms a complete loop around  
20 Lake Sakakawea via the 345 kV line and the 230 kV  
21 lines.

22 Now --

23 Q. Okay.

24 A. Oh, I'm sorry.

25 Q. Please finish your answer.

1           A.     Okay. Today that system works pretty  
2 well. It provides a complete loop from the coal  
3 fields up into the load-serving area and back to  
4 the coal fields again around Lake Sakakawea. But  
5 in the future as load continues to grow, outages  
6 along that loop will cause trouble. So what we're  
7 trying to do is build a parallel line at 345 kV to  
8 back up critical segments of that loop.

9                     So the first segment would be AVS to  
10 Charlie Creek to back up the existing line, and  
11 then from Charlie Creek up to Williston and over to  
12 Tioga to back up that remaining portion of that  
13 loop.

14          Q.     With all the studies that have been done,  
15 when does this line become -- is it always going to  
16 be a backup line or is it going to be supplying,  
17 you know, first power, if you will?

18          A.     Oh, no, it's not going to be a backup  
19 line. It's going to take over primary load  
20 responsibility. It's going to be a high-voltage  
21 backbone into that area. 345 kV operation is very  
22 robust, it's very high capacity.

23                     If you want to use an analogy that's  
24 easier to understand, a 345 kV line from an  
25 electrical perspective is like an interstate

1 highway, if you want to transition from an  
2 electrical system to the highway system. So think  
3 of 345 kV as interstate highway, like I-94;  
4 whereas, 230 kV is more like an improved state  
5 highway, like Highway 85, something like that. You  
6 know, fairly high capacity, but it does have its  
7 limits if you push it too hard.

8 Q. And I think you were talking some about  
9 the possibility of -- you heard me ask the previous  
10 witness about the north Killdeer loop. Are you  
11 familiar with that?

12 A. Yes, I am. What happened in 2013 was the  
13 forecast was redone and suddenly the McKenzie load  
14 was estimated to come in much higher than it was  
15 when we initially started planning this project.  
16 So we still want to pursue the backbone line, the  
17 AVS/Charlie Creek/Williston/Tioga line. That's the  
18 backbone. But now we needed to add a spur from  
19 someplace towards AVS up into this Watford City  
20 area to provide a backup for the critical section  
21 of the line out of Charlie Creek and also provide  
22 our member, McKenzie, with a couple of  
23 load-delivery substations, as well, because their  
24 system -- their system currently serves out of  
25 Watford City, but as they reach into the area east

1 and north of there, their 115 kV delivery system  
2 doesn't have enough capacity. They need to have a  
3 higher voltage delivery in the middle of this load  
4 center. So this north Killdeer loop will provide  
5 that benefit. The main focus now is to get the  
6 backbone built first.

7 Q. Okay. But that north Killdeer loop that  
8 we've been talking about is not part of what you're  
9 asking to be sited today?

10 A. No, it's not.

11 Q. Okay. What -- this line, how much more  
12 capacity will it bring to the area?

13 A. When that line's laid into the existing  
14 transmission system, we expect it to provide about  
15 500 megawatts new capacity to the entire  
16 load-serving area.

17 You have to be a little bit careful  
18 because the line itself -- the 345 kV line is rated  
19 to carry a very, very high amount of power, but  
20 it's not done in isolation. It has to fit in with  
21 the rest of the transmission grid in the area. So  
22 when you plug it into the transmission grid,  
23 actually the -- that line becomes the most serious  
24 outage. So the outage of that line leaves us with  
25 a system capacity increase of 500 megawatts.

1           Q.     Okay.  So looking at the studies that  
2     Ms. Kern talked about also, it looks like  
3     there's -- the expected future load growth is more  
4     than 500 megawatts; would you agree with that?

5           A.     Absolutely.

6           Q.     What is being done then, as far as you  
7     know, either with Basin or with other companies to  
8     meet the other load growth?

9           A.     Well, the north Killdeer loop would be  
10    another component of meeting future load growth.  
11    Also we're installing generation in the area which  
12    we could run if we got into a --

13           THE REPORTER:  You need to really slow  
14    down.

15           THE WITNESS:  Oh, okay.

16           THE REPORTER:  You're really cruising.

17           THE WITNESS:  I'm sorry.  I'm just so  
18    excited to tell the story.  Okay.  I'm going to  
19    take a drink first.

20           JUDGE FETCH:  Let the record reflect  
21    that's water.

22           THE WITNESS:  Oh.  Won't be in about an  
23    hour.

24                    Okay.  So we expect the 345 kV  
25    transmission line to add about 500 megawatts to the

1 ability of the regional grid to serve load in this  
2 area.

3 Q. (MR. ARMSTRONG CONTINUING) My question  
4 was what is -- the studies that Ms. Kern talked  
5 about showed, I believe, more than 500 megawatts  
6 needed. What's being done either by Basin or with  
7 other companies to address the shortfall, if you  
8 will?

9 A. Okay. Those numbers were created in April  
10 of 2014. We're currently processing that impact.  
11 It looks like the north Killdeer loop will provide  
12 part of the solution to serve that load growth.  
13 Then also we've got the generation we're installing  
14 at Lonesome Creek and Pioneer that we can run if we  
15 have to.

16 So the plan to get us through 2020 or so  
17 with the new load forecast would be a combination  
18 of this backbone line and the north Killdeer loop  
19 and area generation, and then perhaps ultimately if  
20 the load continues to grow as expected, we're  
21 pondering a 345 kV line conceptually around the  
22 east side of Lake Sakakawea, from the coal fields  
23 into Minot, and perhaps even connecting Minot to  
24 Tioga, but that's still very conceptual.

25 Q. And you talked about the IS and how MDU

1 and Western were involved in that process. MDU has  
2 service territory up in this region, also; correct?

3 A. That's correct.

4 Q. Is MDU able to service some of its  
5 customers through the Basin line?

6 A. MDU is a customer of the IS, so it's in  
7 the same fashion that Basin's a customer. Basin  
8 and MDU and several others take service off the IS.  
9 So they use that system in that manner. They pay  
10 the IS tariff rate to serve that load.

11 Q. What I'm getting at, is this planned  
12 together with those people who service this area so  
13 that Basin's not building a line and MDU's not  
14 building a line and other providers aren't building  
15 lines so that, you know, we're having orderly  
16 development and not unnecessary duplication?

17 A. No. The IS is an integrated plan so we  
18 take input from the IS customers, including MDU, to  
19 create one plan. There's not competing plans in  
20 the IS footprint.

21 Q. How far out does that plan go?

22 A. Ten years. We're trying to get to the  
23 year 2023 with our plan.

24 Q. So how long is this line and the  
25 associated projects like we were talking about



1 before supposed to last before more load is needed?

2 A. Well, the line is going to provide  
3 capacity through 2018 or so, it looks like now,  
4 with the new load forecast, so we're going to  
5 immediately need to add additional facilities to  
6 continue serving the load beyond that time period.

7 Q. Recognizing that, is there anything -- you  
8 know, looking back, there may be a bigger line or  
9 more -- you know, something else would be better?

10 A. Well, as far as a bigger line, you mean a  
11 higher voltage capacity? We had considered 500 kV,  
12 but remember, once this line is in service, it  
13 becomes the critical outage. So irrespective of it  
14 being 345 kV or 500 kV, that outage would still be  
15 the limiter of the area. So it didn't make any  
16 sense to go to a higher voltage from that  
17 perspective.

18 Also, the area grid, the highest voltage  
19 is 345 kV, so it blends nicely with that. And 500  
20 kV facilities are much more expensive to construct.  
21 So we believe 345 kV voltage is the optimal  
22 operating voltage and optimal capacity.

23 Like I mentioned before, the line itself  
24 is going to have plenty of thermal capacity to  
25 carry power. It's just a matter of getting the

1 adjacent grid beefed up as well once we need to do  
2 that because of these future load additions.

3 Q. Are you -- being an electrical engineer,  
4 I'm wondering if you heard the testimony about the  
5 potential of areas with underground lines  
6 potentially and if you have any expertise and if  
7 that's possible and for how long and in any  
8 particular areas. Do you have any training or  
9 knowledge in that area?

10 A. I don't have any specialized training or  
11 knowledge in underground construction. I know  
12 generally that it's at least ten times more  
13 expensive. It has to be trenched in, which is  
14 disruptive to the --

15 Q. How about just if it's possible and how --  
16 how long it would -- it could not affect the  
17 delivery of power or anything like that?

18 A. Electrical performance, the problem with  
19 the underground cabling is it's compacted  
20 underground so you have thermal dissipation  
21 problems. So apples to apples, it can't carry as  
22 much power as an overhead line because the overhead  
23 line, the heat is conducted away through the air,  
24 so that has an advantage. But, really, I can't  
25 really opine anything beyond that.

1 Q. Do you have any idea of how long you could  
2 have a buried line distancewise?

3 A. How long?

4 Q. Yes.

5 A. I don't have an idea how long it would be.

6 MR. ARMSTRONG: I will defer to Mr. Lein.

7 MR. LEIN: Just one question.

8 **EXAMINATION**

9 **BY MR. LEIN:**

10 Q. The addition of that extension loop as a  
11 phase two, how much additional capacity do you  
12 think you would bring into the area from that?

13 A. We're still trying to work out the exact  
14 details of the benefit of that loop, but I expect  
15 it would provide another 2 or 3 hundred megawatts  
16 of load-serving ability, because what that loop  
17 does is it -- it provides a loop service to  
18 McKenzie and takes that 200 megawatt incremental  
19 load growth that McKenzie is expected to experience  
20 off the table, so to speak. So I'm guessing if I  
21 had to give you a ballpark number, it would be  
22 about 300 megawatts of capacity for that region.

23 Q. So the first part of the line -- of this  
24 line coming out of AVS would be carrying  
25 800 megawatts? Is that --

1           A.     Well, there's two lines -- there's going  
2     to be two lines, and once we're done, there's the  
3     existing AVS/Charlie Creek line and then we'll have  
4     a parallel number two line, so to speak. And  
5     between those two we should get between 800 and a  
6     thousand megawatts capacity along that corridor  
7     between AVS and Charlie Creek that we can move up  
8     to the Watford City and Williston areas.

9 MR. LEIN: Okay. Thank you.

10 JUDGE FETCH: At this time we'll go to the  
11 Commission. Commissioner Kalk.

12 COMMISSIONER KALK: Thank you, Your Honor.  
13 Thank you, Matt, for your testimony. I have the  
14 same problem. I talk too fast. She scolds me  
15 about once a hearing, so --

16

EXAMINATION

17 BY COMMISSIONER KALK:

18 Q. The -- are you familiar with the 230 kV  
19 line, I think it was, the Commission sited from  
20 Williston-Tioga a few years ago?

21           A.    Absolutely.  I was involved in planning  
22   that line.

23 Q. So that was a quick project, if you will.  
24 It kind of came out of nowhere.

|    |            |
|----|------------|
| 25 | A.    Yep. |
|----|------------|

1           Q.    And we worked hard to get it through there  
2    in the right area.  How much is that line helping  
3    you extend the time frame of construction from the  
4    Williston to the Naset area right now?  Because  
5    you're extending that time -- you're taking longer  
6    to construct it.

7           A.    So the question is how long -- or does  
8    that line provide us an extension to the need to  
9    build the 345 line between those two --

10          Q.    How are those related, maybe is a better  
11    question.

12          A.    Well, right.  We needed to have a  
13    connection from Tioga to Williston, and that 230 kV  
14    line provided the capacity we were looking for back  
15    when it was developed.  I think it was back in 2009  
16    or so.  But now the load forecast has --

17          Q.    It's --

18          A.    -- gone past that, so now we need to have  
19    additional reinforcement.  So now today we expect  
20    by 2018 that the outage of that new line is going  
21    to be the limiter up in that area, so our 345 kV  
22    line proposal is going to just parallel that line  
23    and carry the bulk of the power from Williston into  
24    Tioga.

25          Q.    Okay.  One of things that is always

1     challenging for me to get my head around is how the  
2     NERC standards and reliability are maybe not  
3     practical to what the average landowner would like.  
4     The way, I think, NERC looks at it, they would like  
5     to see more 345 lines than less, rather than like  
6     one 765 line. I'd be curious to hear your thoughts  
7     on that.

8           A.     Well, like I mentioned before previously,  
9     you have to be careful when you add new lines so  
10    you don't put all your eggs in one basket. So a  
11    765 kV line could carry an incredible amount of  
12    power, but then should that line trip, the rest of  
13    the system has to pick up that load instantly. And  
14    so the question will be, well, can you do that. So  
15    the advantage of having two 345 kV lines versus a  
16    single 765 line is you have that redundancy.

17          Q.     Absolutely. Okay. The -- we talked about  
18    the integrated system, and in the transmission  
19    planning MDU will own all -- not MDU -- Basin will  
20    own all of this line?

21          A.     That's correct.

22          Q.     Okay. So how would MDU, then, bid into  
23    this market to share with you? You're not part of  
24    MISO. You don't belong to MISO.

25          A.     No. At this time we're not in an RTO,

1       so --

2           Q.     So how do we get MDU or other  
3 investor-owned to benefit from this line?

4           A.     Well, the IS is almost like a mini RT0.  
5 In fact, in many ways it really is. So when the  
6 line is added to the IS, any IS customer can use  
7 the line and pay the transmission tariff.

8           Q.     Okay. So as long as they pay the tariff,  
9 they -- and who controls the operation of this  
10 line? Like the MISO headquarters is in  
11 Minneapolis/St. Paul area. Where is this line  
12 going to be controlled out of?

13          A.     The IS is controlled and administered by  
14 Western Area Power Administration, and their  
15 operations office is in Watertown, South Dakota,  
16 and their corporate office is in Billings, Montana.

17          Q.     Okay. The -- is it fair to assume that  
18 this line is being built to meet additional demand,  
19 but this line is also being built because some of  
20 Basin's system is getting old and maybe needs to  
21 get retired down the line, so this is meeting a new  
22 demand but also maybe helping rebuild our backbone  
23 that's been out there for 50-some years? I've  
24 heard that a lot anecdotally and I just wanted to  
25 get your thoughts on that comment.

1           A.     Up in this area the 115 kV system, which  
2     is becoming now a distribution system, is very old,  
3     but there's no way that that system could  
4     accommodate this amount of load growth, which is  
5     why we built in that 230 kV overlay a couple years  
6     ago and now why we're looking at 345 kV on top of  
7     that.

8                     So as far as replacing that distribution  
9     system, this line is -- is not going to replace the  
10    distribution system because it doesn't serve load  
11    directly. You have to transfer the load amongst  
12    several different substations to move it to the  
13    retail customers to get to the 115 system.

14                    So I wouldn't say that this line is going  
15    to help replace any 115 facilities because as they  
16    wear out, they'll be replaced in kind.

17           Q.     Sure. Okay. I was just trying to get a  
18    feel for let's say we had no oil boom going on  
19    right now. Would Basin Electric still be investing  
20    in transmission to replace what's already been out  
21    there for many years?

22           A.     Well, based on the initial plan back in  
23    2007, which was, say, a moderate oil boom scenario,  
24    this 230 kV line we built between Williston and  
25    Tioga and then WAPA's line that was built between



1 Williston and Charlie Creek was sufficient. So at  
2 that time we didn't anticipate the growth that has  
3 happened since that 2007 or so forecast. So I'd  
4 say no, that if we hadn't seen the boom of the  
5 recent, say, four or five years, we would not be  
6 building the 345 kV line as planned.

7 Q. Okay. I'm trying to get down to -- a  
8 roundabout way, maybe trying to get you to answer  
9 the question that I get a lot is we understand we  
10 need this line to continue the oil development. We  
11 understand there's some value for the average  
12 person, but the average person in the street, how  
13 are they going to benefit from this line if they're  
14 not an oil producer, if they don't directly have  
15 oil royalties?

16 I've got a buddy that lives just south of  
17 Arnegard and he gives it to me every day, "How is  
18 this line going to benefit me?" So I think that's  
19 a question that we maybe will hear later today.

20 A. Okay. The line provides additional  
21 transmission into the area so you have more  
22 reliability, so that affects everybody. So, for  
23 example, last winter, we had an operating guide  
24 that if we had trouble in the city of Williston,  
25 we're going to trip load if the voltage got too

1 low, and it would have affected everybody in that  
2 area. Also in Watford City, we could have lost  
3 that substation if we would have lost either of the  
4 230 connections to Williston or down to Charlie  
5 Creek.

6 So having more transmission is a good  
7 thing. It's just more paths into the area so if  
8 events happen like ice storms, tornadoes or  
9 whatever and you lose some existing facilities, the  
10 more paths you have, the more reliable your system  
11 is.

12 So for the average person, they would  
13 just -- they probably wouldn't see the benefit and  
14 hopefully they never notice because their lights  
15 always stay on, so they would never really see a  
16 benefit. They would just enjoy the higher  
17 reliability of the transmission system.

18 Q. What you're saying is this south loop  
19 around the lake, if you will, is one more major  
20 backbone line which will increase reliability for  
21 the western part of North Dakota?

22 A. That's correct.

23 Q. Okay. The -- just one more quick look  
24 here, Your Honor.

25 Oh, the IS tariff, that's not a

1 PSC-blessed tariff. That's going to be a  
2 FERC-approved tariff?

3 A. That's correct. It's -- the IS tariff is  
4 a FERC tariff.

5 Q. How did your filings go with FERC? Have  
6 those been -- those don't get approved until it's  
7 built. When does that FERC tariff get approved?

8 A. I don't know the details of that. I'm  
9 sorry, I can't provide you with more information  
10 regarding the FERC tariff. It -- it's approved --

11 Q. But there wouldn't be anything unique  
12 about what we're doing here than anywhere else in  
13 the country. It's probably a standard tariff  
14 language for a 345 in the system?

15 A. The cost would be laid into the tariff and  
16 the rate would be recalculated, but I'm not sure if  
17 that requires a FERC tariff filing or not.

18 COMMISSIONER KALK: Okay. That's -- all  
19 right. Thank you.

20 THE WITNESS: Mm-hmm.

21 JUDGE FETCH: Thank you, Commissioner.  
22 Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Thanks, Your  
24 Honor.

25

**EXAMINATION**

**BY COMMISSIONER CHRISTMANN:**

Q. What was the term you used for the fork that would go up to north and east of Watford City? Did you call it the Killdeer loop or --

A. The conceptual name is the Killdeer loop, just to give it a name.

Q. Okay. What would be the timing of getting moving on siting that?

A. Well, from my perspective, I'd like to see it in service by 2016 or so, so I think the timing of that would be fairly quick to make that happen.

Q. Okay. And for those of us that aren't electrical engineers, you built this line and make it the appropriate capacity to get the power you need all the way up the line, past Watford City, on to Williston, on to Tioga. Then how can you take that volume of electrons out of there and get it up to Watford City on the Killdeer loop and still have enough to go on this line as originally planned?

A. Well, that's the key feature of the Killdeer loop. Remember, our initial plan is to have a backbone 345 kV line from AVS to Charlie Creek, then one line -- a 345 from Charlie Creek up to Williston and Tioga.

1           When you speak of volume of power being  
2       moved, the additional load in the McKenzie area was  
3       just dragging too much power out of Charlie Creek  
4       north on that single line. So the concept of the  
5       Killdeer loop line is to provide a second path  
6       around the east side of that McKenzie area. So it  
7       would take that load that would normally be served  
8       from Charlie Creek up through Watford City to  
9       Williston and serve it for an alternate source, and  
10      we connect that line back into the line we're  
11      talking about today and provide a mini loop around  
12      Watford City at 345 kV.

13           So it would take the pressure off of the  
14      proposed line from Charlie Creek to Williston and  
15      move it on to this Killdeer loop 345 kV line.

16           Q.   Well explained. I'm just --

17           A.   Okay.

18           Q.   And then if we're not going to do the  
19      Judson to Naset segment till 2017, why aren't we  
20      just canceling that hearing tomorrow and putting  
21      that off for a couple of years? If we approve that  
22      corridor now and in two or three years something is  
23      discovered up there that makes it a bad location,  
24      we're starting all over again. Is there a good  
25      reason to approve something four years out?

1           A.     What I worry about is that the next load  
2 forecast is going to come in incrementally higher  
3 than the previous forecast, and that's been the  
4 case for the last -- well, five years at least. So  
5 if we back off of developing or permitting that  
6 line section, then suddenly we'll be caught short  
7 again trying to play catch-up with these additions.

8                     So my preference would be let's get the  
9 permit, let's get the right-of-way and we can hold  
10 off the actual construction if we need to, but if  
11 we have to respond quicker, we always have that  
12 ability to build something faster. Might cost  
13 more, but we could still get it done as long as we  
14 have all the permitting and right-of-way in place.

15                    COMMISSIONER CHRISTMANN: Okay. Thank  
16 you. I have no further questions.

17                    JUDGE FETCH: Thank you.

18                    Commissioner Fedorchak.

19                    COMMISSIONER FEDORCHAK: Thank you,  
20 Matthew.

21 **EXAMINATION**

22 **BY COMMISSIONER FEDORCHAK:**

23           Q.     If you could back up a bit on some of  
24 these fancy terms, FERC order 890 and NERC planning  
25 standards and all of this that you mentioned in

1     your testimony. Why -- why should we -- why do we  
2     need to care about those? What do they do?

3           A. Well, first of all, the NERC planning  
4     standards back when we had the -- I think it was  
5     2003 blackout up in the northeast -- NERC is the  
6     National Electric Reliability Corporation. They  
7     basically lowered the hammer on the utility  
8     industry and set up these mandatory standards we  
9     have to follow, and they prescribe criteria. You  
10    can't overload facilities. We have to constantly  
11    monitor our entire grid and make sure that under  
12    typical outages we don't deviate from a certain  
13    voltage or loading of facilities.

14           Now, if we have a blackout in our system,  
15    they'll come in and investigate us, and if they  
16    find that we intentionally allowed the system to  
17    operate beyond our load-serving capacity, they will  
18    fine us significant amounts of money because we  
19    violated these standards. So that's what we worry  
20    about primarily.

21           And that's a good thing for the country  
22    because it's just a double-check that the utilities  
23    are operating in a responsible fashion and  
24    providing reliable service to their customers, but  
25    it provides a burden on us to meet that criteria.

1           The FERC 890 business is -- it's an issue  
2     with providing stakeholders an opportunity to  
3     participate in the planning process, and typically  
4     this is driven by like the third-party generation  
5     developers, the wind developers and whatnot.  
6     They -- back many years ago they were feeling that  
7     they were blocked out of the planning process, and  
8     this allowed them a venue to show what they were  
9     trying to accomplish and how they can help upgrade  
10    the system -- what their needs are to upgrade the  
11    system. So that's what that process is all about.  
12    And the IS holds regular open stakeholder meetings  
13    to obtain their input to our plans.

14        Q.    Okay. I think that the next person on the  
15    list was going to talk about -- oh, no, you're  
16    talking about ramifications. Okay. Then I'll ask  
17    you this question: If there was a blackout, at  
18    what time of year would be the most likely to  
19    experience a blackout --

20        A.    What I worry --

21        Q.    -- based on the current system and the  
22    demands on it?

23        A.    Good question. In this area up in the  
24    Bakken area, the winter peak load is significantly  
25    higher than the summer peak. So what I worry about



1 is an ice storm taking out multiple lines. And  
2 that's happened in Williston. An ice storm took  
3 out the entire city for about four days. I think  
4 that was two years ago. So -- and also if the  
5 power is out when it's 30 below, that's much more  
6 impactful to people than if it's in the summertime,  
7 you know. In the summertime you just get  
8 uncomfortable and your food could spoil, but in the  
9 wintertime people could be put in danger if they  
10 lost their power during a major storm. So I worry  
11 about the winter conditions more than anything  
12 else.

13 Q. Have any of the outside regulators like  
14 FERC or NERC, have they looked at our system and  
15 expressed concern over what they're seeing at all  
16 in terms of reliability, ability to meet the load,  
17 getting too close? Do you wake up -- or do you  
18 wake up sweating at night worrying about these  
19 things?

20 A. No. I think we're in really good shape.  
21 We have a good plan laid out, and if we can  
22 implement this plan, we'll be able to meet these  
23 NERC criteria and meet the load for the -- at least  
24 the near future. And then for the foreseeable  
25 future we've got some additional ideas which we

1     need to implement to meet those needs as they  
2     occur. So I'm pretty happy with our system today.

3           Q.     Okay. Good. You mentioned an IS tariff,  
4     you and Commissioner Kalk were talking about that.  
5     Tell us about an IS tariff, what it is, who pays  
6     for it, that sort of thing.

7           A.     Oh, it's simply a cost, dollars per  
8     megawatt to move power to load. So, for example,  
9     you take all the costs that were used to build the  
10    IS system, all the depreciated cost of the old  
11    facilities, plus as you add new facilities, you  
12    capitalize them and add them to the tariff, the  
13    rate base. And so you might have a billion dollars  
14    of investment or whatever the number is, I'm not  
15    sure what it is, and you divide by the actual  
16    megawatts you serve and that gives you a dollars  
17    per megawatt cost of an entity to move power to  
18    load. And so all the customers, Basin, WAPA, MDU,  
19    all pay the same tariff for that load-serving  
20    service.

21          Q.     So in your application you say you're  
22    going to apply to have this -- place it in the IS  
23    tariff. So in a simplified way, am I correct to  
24    assume, then, that that will spread the cost of  
25    this improvement over multistate ratepayers, not

1 just the co-op members in this area?

2 A. Absolutely. It's a socialized tariff so  
3 the entire IS footprint, which includes eastern  
4 Montana, North Dakota, South Dakota, Minnesota,  
5 northwestern Iowa and a little bit of western  
6 Nebraska, all those customers pay the same tariff  
7 and all those costs across the entire grid are  
8 embedded in that tariff. So they will all share  
9 the cost of these projects.

10 And, for example, if we built a line in  
11 Iowa or Nebraska or whatever and it was in the IS  
12 tariff, then customers in North Dakota help pay  
13 that as well. So it's socialized across the entire  
14 IS footprint.

15 Q. And has this been approved for the IS  
16 tariff or you have to -- you're going to request  
17 that?

18 A. We're going to request that, but typically  
19 these large network load-serving projects, they  
20 have to be approved because the IS is in the  
21 business to serve load and that's what this project  
22 is going to do.

23 Q. Okay. Now, totally different angle here.  
24 Can you -- would you be the correct person to talk  
25 about double circuit -- some of the lines being

1 double circuits and what advantages those provide  
2 and why you didn't double-circuit the whole line?

3 A. Yeah. I can answer that question.

4 Double-circuiting -- the advantage of  
5 double-circuiting is you use a narrow corridor to  
6 provide two lines and it's cheaper because you only  
7 have one structure supporting two lines. The  
8 disadvantage is now you've got two lines on one  
9 structure, so should that structure fail, you lose  
10 both lines simultaneously.

11 So in the application like we talked about  
12 up in the Mountrail-Williams area where you've got  
13 345 kV line sharing a 115 line on a double circuit,  
14 that's a good way to go because we don't really  
15 care from a technical perspective if we lose that  
16 115 kV line because it doesn't carry that much  
17 power. In fact, it's not even networked. It's  
18 just a load-serving line. So we can lose that  
19 corridor, that stretch of line, and not have any  
20 problems, so let's double-circuit that.

21 Where we have trouble is if we were to put  
22 two 345 kV lines on a single double circuit, say  
23 two major load-serving 345 kV lines on a single  
24 tower, then we run the risk of losing that line --  
25 both lines simultaneously. So that's a last

1 resort. If we cannot do anything else, then we'll  
2 put those on double-circuit towers, but if not, we  
3 want to keep those lines spread apart on separate  
4 corridors.

5 The other advantage is, for example, we  
6 had talked about building this Killdeer loop line.  
7 One question could be, well, could you  
8 double-circuit that with the proposed line north of  
9 Charlie Creek. Well, then we're missing the  
10 advantage of trying to move the proposed Killdeer  
11 line into this load-serving area. So having two  
12 lines in separate areas enables us to provide  
13 support to a more remote area, where if you put the  
14 lines in the same corridor, then you lose that  
15 ability and you have to build additional lines out  
16 from that corridor to the load-serving areas.

17 Q. Okay. So that sort of leads well to my  
18 question about upgrading -- why you could or  
19 couldn't just use the existing loop that is here,  
20 on my map it's this blue 230 kV that goes from  
21 Antelope Valley all the way up to Williston. It's  
22 the same loop that we're following. Could you have  
23 just upgraded that into a 345 kV?

24 A. Which loop are you referring to?

25 Q. I don't know what you guys call it. It's

1 a 230 kV line that goes from AVS all the way to  
2 Charlie Creek and up to Williston.

3 A. Oh, that's the proposed 345 kV line?

4 Q. No. It's an existing line. 230.

5 JUDGE FETCH: Commissioner, can you  
6 identify what map that is?

7 COMMISSIONER FEDORCHAK: Sure. Figure  
8 1.2-1 I think from the original application. It's  
9 the line that you're following along Highway 85  
10 north to some extent.

11 MR. MARTHALLER: The existing WAPA line.

12 THE WITNESS: Oh, okay. I'm sorry.

13 MR. MARTHALLER: The existing 345 between  
14 AVS and Charlie Creek.

15 THE WITNESS: Okay. Today as we speak,  
16 that line that you're referring to is the WAPA 230  
17 kV line from Charlie Creek up to Williston. It  
18 goes through Watford City. That line is the major  
19 section of the transmission system in that area.  
20 We can't take it out of service. We simply cannot  
21 afford to remove it from service for any length of  
22 time and still serve the load. So it can't be  
23 touched as far as modifying it in any fashion.

24 And, secondly, if we did -- if we could  
25 take it out of service and then rebuild it with a

1     345 kV/230 double circuit, we'd be in that same  
2     boat again where if we lost two of those major  
3     facilities in one event, one lost tower, we'd be in  
4     terrible shape from a transmission load-serving  
5     perspective.

6           Q.     Okay. You mentioned in your testimony one  
7     of the -- or in answer to a question, I believe,  
8     one of the options down the road for serving what  
9     you know is going to be -- this only goes to 2018,  
10    and your testimony says that you should plan these  
11    five to six years in advance, so we should be  
12    planning now for that ideally, but we're here. So  
13    one of the options for down the road is an east  
14    lake line. Why didn't you do that one first? Why  
15    didn't you do that one now and then what about that  
16    wouldn't work today to meet your needs?

17          A.     Well, we're trying to phase in these  
18    additions as much as possible because we don't want  
19    to -- we don't want to invest a tremendous amount  
20    of money up front and what if the load doesn't  
21    come? What if some event happens in the petroleum  
22    industry where the Bakken area plateaus or tapers  
23    off and then we've gotten ahead of ourselves in  
24    this billion dollars of transmission and not used  
25    it all?

1           So the plan we have today is to build  
2 segments. And so AVS, Charlie Creek, Williston,  
3 Tioga is the first segment, and then this Killdeer  
4 loop line would perhaps be a second segment and  
5 then this line around the east side of the  
6 reservoir could be a third segment as we need that.

7           But initially the critical need was to  
8 back up the existing AVS-Charlie Creek up to the  
9 Williston transmission system. That's why we  
10 pushed this concept first instead of the line  
11 around the east side of the reservoir, because all  
12 the loads are in the Watford City, Williston, Tioga  
13 area, so we could reach those easier from our  
14 existing infrastructure with this plan we're  
15 proposing today.

16          Q.    Okay. So you said you can reach it  
17 easier. Would it be possible for you to reach it  
18 and address the needs of the -- this area by going  
19 the other way around the lake?

20          A.    If we abandon this project and instead try  
21 to develop a line around the east side of Lake  
22 Sakakawea, it would be significantly longer and I  
23 think it would have its own permitting challenges  
24 on its own. And it would not work as well because  
25 the overloaded facilities are in this Charlie Creek



1 up to Watford City, Williston area and you're  
2 building a facility that's further away and not as  
3 efficient as fixing those problems with a line  
4 that's directly connected to the facilities that  
5 are being overloaded today.

6 Q. And Charlie Creek, is that right by  
7 Killdeer here?

8 A. I'm sorry. It's the -- the Charlie Creek  
9 Substation is located at the intersection of  
10 Highway 85 and 200. It's the western terminal of  
11 that 345 kV line from AVS. It's a major  
12 transmission node that we're trying to use to  
13 provide a cornerstone of our transmission system in  
14 the area.

15 Q. And what's the nearest town by Charlie  
16 Creek?

17 A. Grassy Butte.

18 Q. Grassy Butte.

19 Okay. So if I'm understanding you  
20 correctly, you could do the loop around the east  
21 side. It would be longer, it would be more  
22 expensive, and it wouldn't meet the need, which is  
23 between Williston and Grassy Butte?

24 A. It would be less efficient. Would not  
25 provide as much capacity as our present plan would

1 provide by itself.

2 Q. Okay. Okay. Now, in terms of other  
3 solutions, do you feel like the -- the local power  
4 providers, cooperatives and Basin have done -- have  
5 exhausted what can be done to meet this need  
6 through demand-side management efforts? So working  
7 with companies to -- to spread their load out or  
8 volunteer to not run their computers at certain  
9 times, you know, just like demand side, working  
10 with people to reduce the demand or spread it out  
11 over the day so you don't have peaks? Talk a  
12 little bit about that and what the constraints are  
13 with what's happening here.

14 A. That's a good idea and that's been used in  
15 other areas to shave the peak of the system off and  
16 save on infrastructure, but in this area the load  
17 is so flat during peak conditions, you have a lot  
18 of heating load, you have a lot of industrial load  
19 with very high load factor. I don't think peak  
20 shaving would be very efficient because you don't  
21 have the sharp peaks and dips each day. It's more  
22 of a flatter response in this particular area, so I  
23 don't think demand-side management would be that  
24 effective in meeting these needs.

25 Q. So it's too -- the load is constant?

1           A.    Well, it's more constant than -- well,  
2    it's not completely constant, but I think the  
3    high-load factor reduces the effectiveness of  
4    demand-side management, but beyond that I really  
5    don't know enough to provide any other opinions.

6           Q.    All right. And then I think my final  
7    question on page eight of your -- of your  
8    conversation and testimony, you say, "The scale of  
9    the required transmission to support a  
10   generation-only solution would be similar to the  
11   proposed project."

12                   Can you just talk a little bit about that,  
13   just, you know, more conversationally?

14           A.    Sure. We looked at the concept of  
15   installing generation in the Watford City,  
16   Williston area above what we already had planned,  
17   so we pondered just as a mental exercise  
18   600 megawatts of new generation to see if that  
19   would back off the need for the transmission.  
20   Well, it turned out that to enable the local  
21   transmission system to accept that much power to  
22   offset the load growth in that area requires  
23   transmission to move that power from that injection  
24   out to the different delivery substations. And you  
25   ended up with a very similar topography of the

1 transmission system than what we're proposing  
2 today.

3 So our conclusion was let's follow a  
4 traditional transmission solution and try to obtain  
5 the generation off the grid with some local backup  
6 instead of a generation-only solution.

7 Q. So you'd have the generation siting and  
8 plus the transmission siting to get it out to the  
9 customers?

10 A. That's right. And then if the load ever  
11 did disappear, you'd have that generation stranded  
12 and you'd need the same transmission to move it  
13 back to the market too. So it was risky from that  
14 perspective as well.

15 COMMISSIONER FEDORCHAK: Okay. That's all  
16 my questions. Thank you.

17 THE WITNESS: Mm-hmm.

18 JUDGE FETCH: Thank you, Commissioner.  
19 Any follow-up from other commissioners?

20 All right. Any further questions for this  
21 witness? Ms. Jacobson?

22 MS. JACOBSON: No, Your Honor.

23 JUDGE FETCH: Mr. Armstrong?

24 MR. ARMSTRONG: Just a few.  
25

**FURTHER CROSS-EXAMINATION**

**BY MR. ARMSTRONG:**

Q. The expected load growth, what if it doesn't get as high as expected? Is this line going to be overbuilt?

A. I don't think so. We could use the line in service today, that's my opinion, because what we worry about today is we have a tough time taking outages. For example, we've had maintenance outages we could not take during the summer and winter times, so the line would provide a backup to today's system. So I think we could use a line in service today, so the existing plan would not be stranded from that perspective. That's why we're trying to grow into the load growth of transmission additions instead of trying to build too much at once.

Q. We've talked about the expected load growth as a result of the Bakken, and is it -- is it expected to grow because of residential, because of oil well sites, because of large industrial? Has there been any sort of evaluation of -- of like a breakdown between that expectation and where it's coming from more specifically?

A. Well, I'm not the expert to answer that

1 question. Becky Kern would answer that in her  
2 testimony. But a resource you could use would be  
3 that Kadrmas, Lee, Jackson study that was done  
4 independently of Basin and WAPA, and I think that  
5 was posted on the North Dakota Transmission  
6 Authority website. They talk about the different  
7 types of loads and how they calculate their  
8 forecast, which actually came in higher than our  
9 forecast, but it's a combination of factors. But I  
10 really can't answer much more than that.

11 Q. Do you know practically how it works?  
12 Like if somebody's going to build a residential  
13 subdivision, do they -- do they contact Basin  
14 beforehand and make sure there's going to be enough  
15 power to get there or do they come in at the end  
16 and say, Hey, we need power?

17 A. They contact their local provider, which  
18 is usually an electric co-op or MDU, and then that  
19 information is fed up to MDU or Basin Electric from  
20 their co-op. So we're not talking to individual  
21 developers.

22 Q. Right. But I mean as far as the people  
23 who are going to be using this anticipated load for  
24 this line, do they typically talk to your providers  
25 before they -- they build or do they just come in

1 and then all of a sudden there's this immediate  
2 need for the power?

3 A. I've heard both ways. I don't know what  
4 is typical, but I've heard people just appearing,  
5 but then I've heard of customers that work really  
6 well with the co-op members.

7 MR. ARMSTRONG: Okay. That's all I had.

8 JUDGE FETCH: Mr. Lein, did you have any  
9 questions?

10 MR. LEIN: No questions. Thank you.

11 JUDGE FETCH: Any further questions?  
12 Commissioner Fedorchak.

13 **FURTHER EXAMINATION**

14 **BY COMMISSIONER FEDORCHAK:**

15 Q. I'm looking at the list of witnesses and  
16 I'm not sure if you're the person to talk about  
17 some of the cultural concerns, historic resources,  
18 et cetera, or do you have one later on in the  
19 process?

20 A. Cris Miller can address the cultural  
21 resource issues.

22 Q. Okay. And then what about route concerns,  
23 like through the grasslands, through the park,  
24 through -- those sorts of things? You? Cris?

25 A. I can talk about the routing from a high

1 level. And the way typically it works is I  
2 recommend essentially a line from point A to point  
3 B, but my involvement in the actual details of the  
4 route is not -- not too involved, so they'd be more  
5 able to answer those questions than I can.

6 COMMISSIONER FEDORCHAK: Okay. All right.  
7 Thank you.

8 JUDGE FETCH: Any other questions?  
9 You are excused. Thank you.

10 THE WITNESS: Thanks.

11 JUDGE FETCH: All right. It's 12:30, just  
12 about, Mountain time, 1:30 Central time, and  
13 Mr. Miller is the next witness, I believe.

14 MS. JACOBSON: Yes, Your Honor.

15 JUDGE FETCH: And he's your lengthiest  
16 witness. I'm going to ask the Commission at this  
17 time do you wish to proceed with this next witness  
18 or do you want to take lunch recess?

19 COMMISSIONER KALK: It's time to take a  
20 break; wouldn't you think?

21 JUDGE FETCH: A lunch break or a  
22 five-minute break?

23 COMMISSIONER KALK: A lunch break, but a  
24 short lunch break.

25 JUDGE FETCH: Well, looking at the number



1 of people that are going to have to get through,  
2 we'll take till -- we'll take an hour.

3 (Recessed at 12:26 p.m. to 1:33 p.m.)

4 JUDGE FETCH: All right. We're back on  
5 the record. It is about 1:34 p.m., mountain  
6 daylight time.

7 And at this time, Ms. Jacobson, would you  
8 identify your next witness, please.

9 MS. JACOBSON: Sure. The next witness is  
10 Mr. Cris Miller.

11 JUDGE FETCH: All right. Please proceed.

12 **CRIS MILLER,**  
13 having been first duly sworn, was examined and  
14 testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MS. JACOBSON:**

17 Q. Mr. Miller, please state your name,  
18 address and occupation.

19 A. My name is Cris Miller. My business  
20 address is 1717 East Interstate Avenue, Bismarck,  
21 North Dakota. I'm employed by Basin Electric Power  
22 Cooperative as a senior environmental project  
23 administrator.

24 Q. Would you please state your educational  
25 background and professional experience?

1           A.    I earned a bachelor of science degree from  
2           the North Dakota State University, Fargo, North  
3           Dakota, in 1982 with a major in civil engineering.  
4           I've been employed with Basin Electric since 1991.

5           Q.    Mr. Miller, what have been your  
6           responsibilities in connection with the project?

7           A.    I am responsible for the overall  
8           preparation and coordination of the environmental  
9           analysis of this project within Basin Electric and  
10          through our consultant, Burns & McDonnell  
11          Engineering Company. This involved working with an  
12          interdisciplinary consultant team, contacting and  
13          meeting with public officials, coordinating  
14          activities with other Basin Electric departments  
15          and reviewing and coordinating reports that have  
16          been submitted to the Rural Utilities Service,  
17          referred to as RUS, and Western Area Power  
18          Administration, referred to as Western, the United  
19          States Forest Service, referred to as the Forest  
20          Service, the United States Corps of Engineers,  
21          referred to as the Corps, and the North Dakota  
22          Public Service Commission and other interested  
23          agencies.

24          Q.    What is the purpose of your testimony in  
25          this proceeding?

1           A.    I will describe the methodology used to  
2 delineate the proposed corridor and route and to  
3 demonstrate with respect to environmental  
4 considerations that the proposed corridor and route  
5 are in accordance with the North Dakota Energy  
6 Conversion and Transmission Facility Siting Act and  
7 North Dakota Public Service Commission rules.

8           Q.    You mentioned RUS, the Forest Service and  
9 Western. What is their involvement with the  
10 project?

11          A.    The proposed project requires review  
12 subject to the National Environmental Policy Act,  
13 otherwise known as NEPA, due to four federal nexus  
14 actions. The federal agencies included in the NEPA  
15 review are RUS, Western, the Corps and the Forest  
16 Service. Western, RUS and the Forest Service are  
17 developing an environmental impact statement,  
18 otherwise known as an EIS, for the project. RUS is  
19 the lead agency and Western and the Forest Service  
20 are acting as cooperating agencies.

21          Q.    Is the NEPA process a separate process  
22 from the PSC siting process we are attending here  
23 today?

24          A.    Yes. It is an independent and separate  
25 process by a federal agency in cooperation with

1 other federal agencies.

2 Q. What is the history and status of the NEPA  
3 review of the project?

4 A. The NEPA evaluation for this proposed  
5 project began in mid-2011. Since then, the  
6 agencies have been conducting studies and  
7 evaluating the proposed environmental impacts. A  
8 draft EIS was published in the Federal Register in  
9 December of 2012. The public comment period on  
10 this draft closed in January of 2013.

11 A notice of intent to prepare a  
12 supplemental draft EIS was issued on August 16,  
13 2013. In April 2013, additional load was  
14 identified that required a change to the original  
15 draft EIS. The change resulted in the addition of  
16 three substations and an additional 78 miles of  
17 transmission line. Thus, the final record of  
18 decision will reflect the proposed project and the  
19 addition of a transmission line that was identified  
20 as an alternative route in the original draft EIS.

21 The additional 78-mile line and three  
22 substations are referred to as the north Killdeer  
23 loop project. A record of decision issued by each  
24 of the federal agencies is required prior to Basin  
25 Electric beginning construction of the AVS to Neset

1 345 kV transmission project. That record of  
2 decision is expected in April of 2014.

3 Q. So the north Killdeer loop project has  
4 been incorporated into the AVS to Neset 345 kV  
5 project NEPA work?

6 A. Yes. That's correct. However, the north  
7 Killdeer loop project is not included in the  
8 project we are discussing today. A separate  
9 application for the certificate of corridor  
10 compatibility and route permit will be filed at a  
11 later date with the PSC for the north Killdeer loop  
12 project.

13 Q. Mr. Miller, the Siting Act discusses  
14 corridors and routes for transmission lines. Can  
15 you please describe what corridors and routes are?

16 A. The Siting Act defines a corridor as the  
17 general location of a transmission facility and a  
18 route is the specific location within a corridor.

19 Q. Mr. Miller, what is the size of the  
20 corridor in this projects?

21 A. The corridor is 197 miles in length and  
22 the route and corridor widths are one and the same.  
23 The 345 kV and the 345/115 kV portions of the  
24 project have a 150-foot-wide corridor, and a  
25 single-circuit 230 kV segment has a

1       hundred-foot-wide corridor.

2               As the corridor and route are the same  
3 widths, throughout the rest of my testimony when  
4 referring to the route, I'll be referring to the  
5 route and corridor unless specifically mentioned.

6       Q.     Are you familiar with Section  
7 69-06-05-02(5) of the North Dakota Administrative  
8 Code?

9       A.     Yes.

10       Q.     Can you please describe what it says?

11       A.     The width of the corridor must be at least  
12 10 percent of its length but not less than one mile  
13 or greater than six miles unless otherwise  
14 determined by the Commission.

15       Q.     Mr. Miller, earlier you testified that the  
16 corridor in this project is 150 feet. Why is it  
17 appropriate for the Commission to approve the  
18 corridor?

19       A.     Section 49-22-07.2 of the North Dakota  
20 Century Code provides that the Commission may waive  
21 procedures and time schedules upon a finding that  
22 the appropriate facility is of such length, design,  
23 location or purpose that it will produce minimal  
24 adverse effects.

25               Based upon the investigation and analysis

1 set forth in Basin Electric's consolidated  
2 application, approving this request is appropriate  
3 because the proposed project will produce minimal  
4 adverse effects through its design, location and  
5 purpose. In determining whether the proposed  
6 project will result in minimal adverse effects,  
7 Basin Electric evaluated the project using the  
8 criteria set forth in the Siting Act, the Siting  
9 Rules and the Commission's guidelines.

10 In connection with obtaining funding for  
11 the proposed project from RUS, Basin Electric has  
12 been and continues to be involved in a federal  
13 review process to determine the proposed project's  
14 compliance with the NEPA. The extensive corridor  
15 analysis conducted by Basin Electric prior to and  
16 during the RUS review process supports granting  
17 Basin Electric's corridor waiver request and  
18 allowing Basin Electric to propose a hundred-foot  
19 and 150-foot-wide corridor.

20 As the first step in preparing the NEPA  
21 documents, Basin Electric initially identified two  
22 six-mile-wide preliminary study corridors, which  
23 were selected to allow for consideration of  
24 multiple corridor routing options. Basin Electric  
25 then sought public input from residents in and near

1 the preliminary study corridors, as well as a host  
2 of federal, state, local agencies and governmental  
3 representatives to assist Basin Electric in  
4 identifying the most appropriate macro-corridors  
5 within the preliminary study corridors.

6 A network of 46 individual 1,000-foot-wide  
7 route corridor segments were initially developed  
8 within the six-mile-wide macro-corridors to avoid  
9 constraints and take advantages of opportunity  
10 areas while simultaneously taking public and agency  
11 comments under consideration.

12 Of those 46 segments, one 1,000-foot-wide  
13 corridor was selected and identified in the draft  
14 EIS. Within that 1,000-foot corridor, Basin  
15 Electric identified a 150-foot-wide route which  
16 will be assessed in RUS's final action.

17 Considering the in-depth environmental  
18 review of potential corridors provided during the  
19 RUS process, allowing Basin Electric to present its  
20 application for certificate of corridor  
21 compatibility in one of the 150-foot-wide corridors  
22 identified as a result of the RUS process will  
23 ensure that the proposed project is designed and  
24 located in a manner that will minimize any  
25 potential adverse effects, as well as avoid



1       confusion for landowners, agencies, governmental  
2       representatives and tribal representatives.

3               Thus, under the circumstances presented,  
4       it would be appropriate for the Commission to  
5       approve the 100- and 150-foot corridor.

6       Q.     Can you please give a general description  
7       of the route using Exhibit 1?

8       A.     Sure. The proposed route right-of-way  
9       encompasses approximately 3,610 acres of land.  
10      Approximately 24 acres of land will be required for  
11      permanent land conversion for the two new  
12      substations.

13             The route lies within the counties of  
14      Mercer, Dunn, McKenzie, Williams and Mountrail  
15      Counties in central and western North Dakota and is  
16      oriented to avoid exclusion and avoidance areas to  
17      the extent practicable.

18             The route crosses lands located in the  
19      Missouri plateau, the Little Missouri Badlands, the  
20      Missouri River breaks and floodplain, and the  
21      glaciated prairie of Williams and Mountrail  
22      Counties.

23             Based on the United States Geologic Survey  
24      GAP Land Cover Data Set, of the approximately  
25      197 miles of transmission line, the route crosses

1 approximately 88 miles of prairie grasslands,  
2 18 miles of shrub, 4 miles of sparse vegetation, 3  
3 miles of wetlands and 6.5 miles of lands considered  
4 woodlands.

5 The remaining 77 and a half miles of the  
6 route crosses lands that are considered cropland,  
7 which represents 39 percent of the route.

8 The route crosses lands predominantly  
9 owned by private entities and individuals.  
10 Approximately 6.4 miles of the route cross lands  
11 owned by the State of North Dakota. There are two  
12 federally owned and managed land segments crossed  
13 by the project. Approximately 8.5 miles are within  
14 the Little Missouri National Grasslands managed by  
15 the Forest Service and 3.2 miles of lands referred  
16 to as the Lewis and Clark Wildlife Management Area.  
17 The Lewis and Clark Wildlife Management Area  
18 includes lands owned by the Corps but managed by  
19 the North Dakota Game and Fish Department.

20 Q. Who participated in the route selection  
21 process?

22 A. A multidisciplinary team at Basin Electric  
23 including environmental, engineering and  
24 right-of-way personnel worked together in the route  
25 selection process. In addition, consultants to

1 Basin Electric, including staff from Burns &  
2 McDonnell Engineering Company, played a major role  
3 in the route delineation process.

4 Q. Would you describe the general philosophy  
5 and objectives used by Basin Electric in the  
6 delineation and selection of the proposed route?

7 A. The process used by Basin Electric in the  
8 analysis of the study area and eventual  
9 identification of the route is based upon a  
10 deductive approach that is from the general to the  
11 specific. This approach entails starting with a  
12 broad study area and then narrowing and refining it  
13 by incorporating data and other input gathered from  
14 landowners, public agencies and environmental  
15 databases to the point where all defined routes are  
16 identified in the study area.

17 The ultimate goal of the route selection  
18 process was to locate a suitable line route between  
19 the two end points, while adhering to the PSC's  
20 avoidance and exclusion criteria and minimizing  
21 environmental, cultural, socioeconomic impacts,  
22 engineering and construction costs.

23 Landowners, including the federal  
24 agencies, and land managers' preferences for the  
25 proposed route location strongly influenced the

1 project's route.

2 Further restrictions were identified by  
3 the rapidly changing landscape in the cities and  
4 towns in western North Dakota due to commercial and  
5 industrial development, the development of a  
6 transportation bypass and a proposed major airport  
7 relocation project in Williston.

8 Further, with perhaps the exception of  
9 Mercer County, the entire project falls within the  
10 direct Bakken oil development area. With the  
11 installation of new oil wells and supporting  
12 infrastructure, all have provided additional  
13 challenges to the routing efforts.

14 Q. Mr. Miller, did Basin Electric incorporate  
15 public input in the route selection process?

16 A. Yes. Public scoping meetings -- public  
17 scoping meetings were held on November 15 and 16 of  
18 2011 in compliance with the scoping provisions of  
19 the NEPA implementation regulations. These  
20 meetings were conducted in Williston and Killdeer.

21 The purpose of the meetings was to aid in  
22 the federal decision-making process and to assist  
23 in the formulation of issues to be addressed by  
24 RUS' EIS.

25 The comments received during this meeting

1 were also considered in the route selection  
2 process. The project's correspondence from  
3 officials and agencies contacted are presented in  
4 Appendix A of the application. In total, over 50  
5 agencies, organizations or officials were contacted  
6 for input. 14 Native American tribes were also  
7 contacted to solicit their input on the project.

8 A public comment hearing on the draft EIS  
9 was held January 15 and 16, 2012, in Killdeer and  
10 Williston. The comments received during these  
11 meetings were considered in the route selection  
12 process. A public comment hearing on the  
13 supplemental draft EIS is expected to occur in  
14 October 2013.

15 Q. Mr. Miller, please describe the route  
16 selection process within the two alternative EIS  
17 corridors using Exhibit 13.

18 A. In the initial stages of the draft EIS,  
19 two project alternatives were identified and  
20 evaluated. Each alternative analyzed a  
21 six-mile-wide corridor. Studies were performed  
22 that identified human and natural attributes that  
23 presented concerns for either alternative.

24 Human attributes included municipal or  
25 other populated areas, public lands, roads,

1 transmission lines and railroads. Natural  
2 attributes include wildlife, vegetation, wetlands,  
3 special status species, topography and cultural  
4 resources.

5 The initial macro-routes were evaluated  
6 with consideration of constraints present within  
7 the study area such as cities and towns, Lake  
8 Sakakawea, the Little Missouri River, the Missouri  
9 River, Theodore Roosevelt National Park, the  
10 Little Missouri National Grasslands and areas of  
11 rough and steep terrain near the Missouri River and  
12 the Little Missouri River.

13 A network of 46 individual 1,000-foot  
14 route corridors were developed within the  
15 six-mile-wide macro-routes to avoid constraints and  
16 take advantage of opportunity areas while  
17 considering public and agency comments. Two  
18 1,000-foot route corridors alternatives were  
19 identified using 31 of the 46 route segments.  
20 Within the preferred 1,000-foot route alternative,  
21 a 150-foot-wide route was selected.

22 Q. Mr. Miller, why was the proposed route  
23 chosen over the alternatives that were analyzed?

24 A. The final route alternative was chosen  
25 after careful analysis of the regional electrical

1 system factors related to construction and  
2 operation requirements. This analysis was focused  
3 on a location that would meet the project's purpose  
4 and need, be consistent with planned and  
5 anticipated system needs, meet design and  
6 reliability standards, avoid and minimize impacts  
7 to environmentally and sensitive resources, be  
8 reasonable, technically feasible and economically  
9 viable.

10 Q. Mr. Miller, were there engineering  
11 guidelines that were considered in the route  
12 selection process?

13 A. Yes. Areas that were considered less  
14 suitable for construction and operation of a  
15 transmission line included: Crossings involving  
16 other high-voltage transmission lines; steep slopes  
17 which could pose maintenance and erosion problems;  
18 areas requiring unusually long spans; areas lacking  
19 reasonable access for construction and maintenance;  
20 areas of questionable foundation stability; and  
21 areas with existing infrastructure.

22 Q. Mr. Miller, earlier you stated that a  
23 factor in selection of the proposed route is the  
24 PSC avoidance and exclusion criteria. Please  
25 describe what an exclusion criteria means.

1           A.     The North Dakota Administrative Code  
2 Chapter 69-06-08-02, paragraph 1, states,  
3 "Exclusion criteria means areas that must be  
4 excluded in the consideration of a route for a  
5 transmission facility."

6           Q.     Please describe what an avoidance area  
7 means.

8           A.     North Dakota Administrative Code Chapter  
9 69-0 6-08-02, paragraph 2, states, "Avoidance  
10 criteria means criteria that removes areas from  
11 consideration for transmission facility routes  
12 unless it is shown that under the circumstances  
13 there are no reasonable alternatives."

14          Q.     Mr. Miller, do the PSC Siting Act and  
15 Rules provide any further direction regarding  
16 avoidance and exclusion areas?

17          A.     Yes. Section 49-22-05-05.1 provides that  
18 the 500 feet for an inhabited rural residence  
19 avoidance area may be waived by the owner of the  
20 inhabited rural residence in writing.

21                 Also, Chapter 69-06-08-02 of the North  
22 Dakota Administrative Code provides that exclusions  
23 and avoidance areas may be located within a  
24 corridor, but at no given point may such an area or  
25 areas encompass more than 50 percent of the



1 corridor width unless there is no reasonable  
2 alternative.

3 Q. Mr. Miller, I am going to ask you a series  
4 of questions regarding the PSC transmission  
5 facility corridor and route criteria exclusion  
6 areas. Does the proposed route contain any  
7 exclusion areas?

8 A. No.

9 Q. Mr. Miller, at any given point within the  
10 route does an avoidance area exist?

11 A. Yes. There are six avoidance areas  
12 identified within the proposed route. They are:  
13 Grasslands; management areas; areas that are  
14 geologically unstable; areas that have recreational  
15 significance; the route is located within 500 feet  
16 of four rural residences; and the route is located  
17 within 500 feet of two businesses.

18 Q. Mr. Miller, let's discuss each one of  
19 these avoidance areas individually. You mentioned  
20 there are grasslands located within the route.  
21 Please discuss where those can be found.

22 A. The project crosses approximately  
23 8.5 miles of lands managed by the Forest Service as  
24 part of the Little Missouri National Grasslands  
25 Management Area. In consultation with the Forest

1 Service, they identified both Long X Divide and the  
2 Lone Butte Management Areas as roadless areas that  
3 must be avoided in the routing of the project and,  
4 thus, they have been avoided. The proposed route  
5 is compatible with the Forest Service's land use  
6 plan.

7 Q. Mr. Miller, Basin Electric is requesting  
8 that the PSC waive a finding that under the  
9 circumstances there is no reasonable alternative to  
10 the route as it concerns the Little Missouri  
11 National Grasslands. Pursuant to the PSC  
12 regulations, the Commission, in determining whether  
13 avoidance areas should be designated for a  
14 facility, must consider the following: The  
15 proposed management of adverse impacts; the orderly  
16 siting of facilities; system reliability and  
17 integrity; the effective use of resources; and  
18 alternative routes.

19 Mr. Miller, please explain why under the  
20 circumstances there is no reasonable alternative to  
21 the route proposed by Basin Electric as it concerns  
22 the Little Missouri National Grasslands.

23 A. To achieve the project's intent to supply  
24 additional load capacity and enhance reliability to  
25 the region, the project is required to interconnect

1 to our existing Charlie Creek Substation located  
2 southeast of Grassy Butte. The lands immediately  
3 surrounding the Charlie Creek Substation are  
4 national grasslands.

5 As the project moves north out of the  
6 Charlie Creek Substation, it travels across both  
7 private and federal lands. As the project nears  
8 the area near the Little Missouri River area, the  
9 project crosses additional lands where the majority  
10 of the lands are Forest Service managed lands.

11 The routing alternatives through this  
12 region are extremely difficult due to the physical  
13 landforms, such as the rugged Badlands areas to the  
14 west and also the Killdeer Mountains to the east.  
15 Both of these physical features present extreme  
16 access issues due to the rough terrain and also  
17 additional recreational and aesthetic  
18 considerations. The proposed route through this  
19 area follows other existing electrical and liquid  
20 transmission lines along U.S. Highway 85.

21 Any placement of linear projects on Forest  
22 Service lands requires the Forest Service to  
23 evaluate the impacts of the project and to  
24 ascertain compatibility with the Forest Service  
25 management plan for those areas crossed.

1           Through the development of the EIS, Basin  
2   Electric has coordinated the placement of the  
3   project with the Forest Service. The project  
4   avoids Forest Service lands that are designated  
5   roadless areas where the placement of a  
6   transmission project would be incompatible with  
7   those land management unit's plans.

8           Both the Lone Butte and Long X Divide land  
9   management units have been designated as roadless  
10   areas by the Forest Service. The Forest Service's  
11   final action would be to grant a special use permit  
12   to Basin Electric for use of these lands should  
13   their determination be that the placement of the  
14   transmission project is compatible with the land  
15   management units the Forest Service administers.  
16   That action is expected to occur in April 2014.

17           For the reasons I have described, there  
18   are no reasonable route alternatives other than  
19   locating on the Little Missouri National  
20   Grasslands.

21           Q.   You identified a management area as an  
22   avoidance area located within the route. Please  
23   discuss that.

24           A.   The project crosses lands owned by the  
25   Corps and managed by the North Dakota Game and Fish

1 Department. These lands are known as the Lewis and  
2 Clark Wildlife Management Area and are located just  
3 south of the Missouri River in McKenzie County near  
4 U.S. Highway 85.

5 Early coordination efforts with the Corps  
6 and the North Dakota Game and Fish identified a  
7 utility corridor that the agencies preferred.

8 Q. Mr. Miller, please explain why under the  
9 circumstances there is no reasonable alternative to  
10 the route proposed by Basin Electric as it concerns  
11 the Lewis and Clark Wildlife Management Area.

12 A. In order to cross either Lake Sakakawea or  
13 the Missouri River upstream of the reservoir, the  
14 opportunities to locate outside of the Lewis and  
15 Clark Game Management Area are extremely limited.

16 To the east, Lake Sakakawea presents an  
17 extreme constructability constraint. Furthermore,  
18 the city of Williston lies to the east and the  
19 recreational aspects to that river segment both  
20 precluding routing to the east of U.S. 85. To the  
21 west of Lewis and Clark Wildlife Management Area  
22 lies the community of Trenton; Fort Buford, a  
23 national historic site; and irrigated lands, all of  
24 which are avoidance or exclusion areas.

25 Both the North Dakota Game and Fish and

1 the Corps strongly encourage our placement of the  
2 route within an identified utility corridor that  
3 already contains on existing 230 kV transmission  
4 line and several pipelines that are located  
5 immediately alongside U.S. Highway 85. Since the  
6 current route reflects the desired location by both  
7 agencies, there is no reasonable route alternative.

8 Q. The third avoidance area you mentioned  
9 were areas which are geologically unstable. Can  
10 you please discuss where these areas are located  
11 using Exhibit 14.

12 A. The lands that were identified as unstable  
13 due to landslide areas are generally located near  
14 the Missouri and Little Missouri Rivers and project  
15 segments in the Badlands.

16 Q. Mr. Miller, please explain why under the  
17 circumstances there is no reasonable alternative to  
18 the route proposed by Basin Electric as it concerns  
19 the areas that are geologically unstable.

20 A. The project crossing these lands is  
21 inevitable due to the length of the Little Missouri  
22 River and the Badlands areas within the overall  
23 project area. The majority of the geologic  
24 unstable areas will be spanned by the route.

25 Geotechnical assessments will be conducted

1 at the structure locations to minimize potential  
2 development of landslides during construction.  
3 Thus, there is no reasonable alternative as it  
4 concerns areas which are geologically unstable.

5 Q. The fourth avoidance area you identified  
6 were areas of recreational significance. Can you  
7 please discuss those.

8 A. Various recreational opportunities exist  
9 within our project area: fishing, boating, hiking,  
10 hunting and camping are the most popular. The  
11 Missouri and the Little Missouri Rivers, the Little  
12 Missouri National Grasslands and the Lewis and  
13 Clark Wildlife Management Area are all public lands  
14 that provide these opportunities, as well as  
15 opportunities on private lands are present.

16 Q. Mr. Miller, please explain why under the  
17 circumstances there is no reasonable alternative to  
18 the route presented by Basin Electric as it  
19 concerns the areas of recreational significance.

20 A. The opportunities for recreational  
21 activity in the project area are great. Direct  
22 impacts to recreational areas from the construction  
23 and the operation of the project will be minor and  
24 primarily temporary.

25 As explained earlier, since the route is

1 needed at the Charlie Creek Substation and at the  
2 Judson Substation, there is no other alternative  
3 than routing through the recreational areas.

4 Q. The fifth avoidance area you mentioned  
5 present within the route are four residences  
6 located within 500 feet of the line. Can you  
7 please discuss the first of the four residences  
8 using Exhibit 15.

9 A. The first one is a rural residence  
10 referred to as the Orf property and is a residence  
11 located in McKenzie County in the south half of  
12 Section 18, Township 146 North, Range 98 West.

13 Q. Please discuss the second of the four  
14 residences using page two of Exhibit 15.

15 A. The second one is the Turner residence  
16 that's located in the area just north of the  
17 Missouri River crossing in Williams County in the  
18 southwest quarter of the southeast quarter of  
19 Section 6, Township 153 North, Range 101 West.

20 Q. Please discuss the third of the four  
21 residences using page three of Exhibit 15.

22 A. The third residence is the Zahn residence  
23 located just south of the future Judson Substation  
24 in the northeast quarter of the southwest quarter  
25 of Section 23, Township 154 North, Range 102 West



1 in Williams County.

2 Q. Please discuss the last residence located  
3 within 500 feet of the proposed route using  
4 Exhibit 15.

5 A. The fourth residence is the Mortenson  
6 residence and is located in the northwest quarter  
7 of Section 32, Township 150 North, Range 99 West in  
8 Williams County.

9 Q. Mr. Miller, Exhibit 17 was previously  
10 entered into evidence. Can you explain what those  
11 documents are.

12 A. Yes. It's waivers obtained from all four  
13 landowners that have residences located within  
14 500 feet of the proposed project.

15 Q. Mr. Miller, could you please discuss the  
16 businesses within 500 feet of the proposed route  
17 and the area that surrounds them using Exhibit 17?

18 A. Just north of U.S. Highway 2 and west of  
19 Williston, the route is located between two  
20 commercial buildings doing business as Pat's Off  
21 Road and Stroker, Inc. -- Incorporated. The route  
22 crosses other undeveloped commercial property as it  
23 progresses to the Judson Substation.

24 Q. Mr. Miller, please explain why under the  
25 circumstances there is no reasonable alternative to

1 the route proposed by Basin Electric as it concerns  
2 these two places of business.

3 A. The Judson Substation lies just to the  
4 north of these two properties in the same section  
5 of land. This section was previously predominantly  
6 zoned agricultural with an area zoned residential  
7 in the southwest corner of the section.

8 As a response to the Bakken development,  
9 the area has quickly become a patchwork of  
10 industrial, commercial and a portion remains  
11 agricultural. It would be near impossible to route  
12 the project into the Judson Substation without  
13 being within 500 feet from a place of business as  
14 the majority of this area has been zoned  
15 commercial.

16 Q. Mr. Miller, at any given point within the  
17 route does an avoidance area encompass more than  
18 50 percent of the corridor width?

19 A. Yes.

20 Q. Why is that?

21 A. As previously discussed, both the Little  
22 Missouri National Grasslands and the Lewis and  
23 Clark Wildlife Management Area represent avoidance  
24 areas that the route encompasses greater than  
25 50 percent of the corridor width. No reasonable

1 alternative exists to route around these avoidance  
2 areas as previously discussed.

3 Q. Mr. Miller, earlier you testified that no  
4 exclusion areas exist in the route in the form of  
5 archaeological sites. Were there any cultural  
6 sites found within the 197-mile route?

7 A. Yes. Cultural sites were identified  
8 during the Class III inventory. The sites were  
9 further evaluated by members of the archaeological  
10 investigative team from Metcalf & Associates with  
11 concurrence from the Forest Service, Western and  
12 the North Dakota State Historical Society.

13 In a few instances, sites would be  
14 eligible for the National Register of Historic  
15 Places; therefore, the route was adjusted in order  
16 to avoid the sites.

17 There were 11 identified cultural sites  
18 whose eligibility to the National Historic Registry  
19 is yet to be determined. These sites are being  
20 investigated further by our archaeological  
21 consultant in concert with the State Historical  
22 Preservation Office, otherwise known as SHPO, and  
23 Western's archaeologist to determine their  
24 eligibility.

25 Further testing on the locations that

1 would be disturbed by the structure placements will  
2 be done. Should these sites be determined to be  
3 eligible for listing on the National Historic  
4 Register, the route will be modified to avoid these  
5 sites in their entirety.

6 All cultural sites within the right-of-way  
7 will be identified and flagged accordingly so they  
8 are not disturbed during construction. Therefore,  
9 no impacts to cultural resources are anticipated  
10 for the project.

11 Q. Has the entire route been surveyed for  
12 cultural resources?

13 A. No. Approximately 20 percent of the route  
14 remains to be surveyed. Exhibit 19 shows the areas  
15 that have not been surveyed in red.

16 Q. Mr. Miller, why are there areas of land  
17 along the route that haven't been surveyed?

18 A. Basin Electric has not been successful in  
19 acquiring survey permissions for the remaining  
20 lands. Once access is given, Basin Electric will  
21 survey this area. This will be done before any  
22 construction on these segments has begun.

23 Q. Mr. Miller, Exhibit 18 was previously  
24 admitted into evidence. Is the large map over  
25 there Exhibit -- a larger version of Exhibit 18?

1           A.     Yes.

2           Q.     Mr. Miller, can you describe what you know  
3     about the study efforts of the Killdeer Mountain  
4     Battlefield area?

5           A.     This last July, North Dakota State  
6     University was awarded a grant from the United  
7     States Department of Interior National Park Service  
8     to study the historical significance of five known  
9     battlefields in North Dakota. One of the study  
10    areas is the Killdeer Mountain Battlefield study  
11    area, which is indicated on Exhibit 18 by the  
12    purple-hashed mark. This study area is  
13    approximately 26 square miles.

14                We understand that the survey effort will  
15    be utilized to support a potential application  
16    which could result in the inclusion of the  
17    battlefield study area in the National Register of  
18    Historic Places. Before that can occur, studies  
19    must be done and various federal and state  
20    approvals need to be obtained. Further, landowners  
21    have opportunities for public comment and  
22    participation as most of this area is on private  
23    land.

24                On Tuesday, August 27, 2013, the North  
25    Dakota SHPO informed Basin Electric of the study.

1 The AVS to Neset 345 transmission project proposed  
2 route is within the battlefield study area.

3 An interim report of our project's Class  
4 III surveys was provided to SHPO in February of  
5 2013. No significant cultural sites were  
6 identified in either the Class I or the Class III  
7 surveys that would be impacted by this project.

8 Since the NDSU study is a new development  
9 that came after the Class I and Class III  
10 inventories and requisite reports were completed  
11 and submitted to the review agencies, Basin  
12 Electric contacted the NDSU researchers and SHPO.

13 Q. Can you describe what issues were raised  
14 in your recent discussion -- in your recent  
15 discussions with SHPO?

16 A. The SHPO related two issues that they want  
17 Basin Electric to address prior to any construction  
18 taking place. First, SHPO is requesting Basin  
19 Electric to perform a visual integrity analysis of  
20 the project. Second, SHPO is requesting Basin  
21 Electric complete a magnetometer survey of the  
22 project route within the study area.

23 Q. Has Basin Electric assessed the visual  
24 effects associated with the project?

25 A. Yes. The project has incorporated

1 multiple mitigation measures that reduce the visual  
2 impacts. Measures such as utilization of  
3 single-pole structures, which provide a much  
4 smaller footprint than the traditional four-legged,  
5 steel-lattice structures that have traditionally  
6 been used in the construction of transmission --  
7 transmission lines of this size.

8           Additionally, the use of material that is  
9 either galvanized or weathered steel blends into  
10 the surroundings.

11           Basin Electric has asked SHPO for their  
12 preference of structure material used in the study  
13 area and will abide by their preference.

14           As I just testified, SHPO made a request  
15 that a visual impact analysis be performed from the  
16 perspective of the Medicine Hole and the Killdeer  
17 Battlefield Monument site. This effort has already  
18 been initiated and will be incorporated into the  
19 current NEPA process.

20           Q. Will Basin Electric perform the surveys  
21 requested by SHPO?

22           A. Basin Electric will work with our  
23 consultant and SHPO to perform the magnetometer  
24 surveys prior to any construction taking place.

25           Q. What other efforts has Basin Electric done

1 in the Killdeer Mountain Battlefield area with  
2 respect to cultural resources?

3 A. Based on these recent discussions with  
4 SHPO and the pursuit of the battlefield study area  
5 for a potential listing on the National Register of  
6 Historic Places, Basin Electric has determined that  
7 we will remove Gumbo Creek Substation from the  
8 application before the PSC today. Basin Electric  
9 will pursue an alternative location for the  
10 substation, and it will be included in a future  
11 siting application to the PSC.

12 Q. Will the proposed project preclude the  
13 Killdeer Mountain Battlefield from being listed on  
14 the National Register of Historic Places?

15 A. The existence of a transmission line  
16 within the boundary of a study area in itself does  
17 not preclude the ability of the battlefield, once  
18 evaluated and accepted by all the necessary  
19 oversight bodies and processes, to gain listing on  
20 the National Register of Historic Places, just as  
21 the current farming and existing infrastructure,  
22 including oil well sites within the study area,  
23 does not preclude a listing.

24 Should the Commission or the Commission  
25 staff have questions regarding the nomination



1 process for a listing on the National Register, we  
2 have the project lead from our archaeological firm  
3 with us here today. His name is Dr. Kimball Banks.

4 Q. Did Basin Electric consider any alternate  
5 routes in the study area?

6 A. The last witness, Mr. Mike Murray, will  
7 testify in more detail about the route of the study  
8 area. The route was a product of numerous  
9 iterations of routing through many existing land  
10 features in the area, the need to avoid the city of  
11 Killdeer, U.S. Highway 200, the Killdeer airport,  
12 existing 345 and 115 transmission lines, oil  
13 pipelines, oil pads, oil-related infrastructure,  
14 existing residences, the Killdeer Mountains and  
15 also input from the landowners.

16 Q. Mr. Miller, North Dakota Century Code  
17 Section 49-22-09 of the North Dakota Energy  
18 Conversion and Transmission Facility Siting Act  
19 lists 11 factors to guide the PSC in evaluation of  
20 corridors and routes. I will now ask you a series  
21 of questions related to the relevant factors.

22 Did Basin Electric evaluate the impacts to  
23 public health and welfare, natural resources and  
24 the environment expected from the project?

25 A. Yes. Basin Electric's application

1 addressed these issues. Specifically, the  
2 construction and operation techniques were  
3 addressed in Chapter 3, and impacts to the  
4 environment and mitigation measures in relation to  
5 the route were addressed in Chapter 4 of the  
6 application.

7 The project will not have any significant  
8 impacts to public health and welfare, natural  
9 resources or the environment.

10 Q. Did Basin Electric evaluate technologies  
11 to minimize adverse environmental effects?

12 A. The project utilizes the most recent  
13 transmission technologies and systems that minimize  
14 impacts to the environment. Specifically, the  
15 incorporation of self-supporting single-pole  
16 structures and taking the opportunity to  
17 double-circuit with our distribution cooperatives'  
18 115 kV systems with Basin Electric's 345 lines will  
19 minimize the impact to current land uses as well as  
20 minimize the impacts to biological and cultural  
21 resources.

22 Q. Did the project evaluate the irreversible  
23 and irretrievable commitment of natural resources?

24 A. Yes. The irreversible and irretrievable  
25 resources commitments are related to the use of

1 nonrenewable resources and the effects that the use  
2 of these resources have on future generations.

3 Irreversible effects primarily result from use or  
4 destruction of a specific resource that cannot be  
5 replaced within a reasonable time frame.

6 Irretrievable resource commitments involve the loss  
7 in value of an affected resource that cannot be  
8 restored as a result of the action.

9           There are few commitments of resources  
10 associated with this project that are irreversible  
11 and irretrievable. Those resources are primarily  
12 related to construction, specifically aggregate  
13 resources, concrete, steel and hydrocarbon fuel.

14           Q. Did the project evaluate direct and  
15 indirect economic impacts?

16           A. Yes. The direct economic impacts included  
17 impacts associated with a small amount of  
18 agricultural land being removed from production due  
19 to the transmission line. In general, the areas  
20 surrounding each structure can still be utilized  
21 for its existing land use, and landowners will be  
22 compensated for the land occupied by the  
23 transmission line. The remaining direct and  
24 indirect economic impacts are primarily positive.

25           Personal income will be generated for the

1 residents of the county and the state by  
2 circulation and recirculation of the dollars paid  
3 out by Basin Electric as business expenditures and  
4 state and local taxes.

5 Q. Does the project impact existing  
6 development plans of state, local government and  
7 private entities at or in the vicinity of the  
8 route?

9 A. It is reasonably foreseeable that areas  
10 within the route will be considered for gas and oil  
11 development. The location of the route is not  
12 expected to inhibit the potential for future gas  
13 and oil development with the current methods  
14 currently employed in the oil and gas industry.

15 The 2010 Williston comprehensive plan  
16 identified small areas in the eastern terminus of  
17 the route as possible future industrial land use.  
18 The recent oil and gas activity associated with the  
19 development has caused rapid development of the  
20 commercial and industrial properties surrounding  
21 the project.

22 Q. What are the effects on biological  
23 resources within the route?

24 A. Chapter 4 of the application discusses in  
25 great detail the potential impacts of biological

1 resources such as wetlands, vegetation, wildlife  
2 and rare and unique species. Basin Electric has  
3 implemented measures to avoid and minimize the  
4 effects on biological resources.

5 The impact of the project on biological  
6 resources is expected to be minimal. The project  
7 will be designed to minimize impacts to avian  
8 species.

9 Q. Are there any impacts to threatened and  
10 endangered species caused by the project?

11 A. Threatened and endangered species concerns  
12 of the project will be addressed by the U.S. Fish  
13 and Wildlife. A biological assessment for the  
14 project is being prepared by Western for submittal  
15 to the agency. The U.S. Fish and Wildlife Service  
16 will address issues specific to their agency's  
17 responsibility through a biological opinion. Basin  
18 Electric will incorporate any additional mitigation  
19 measures identified through the consultation  
20 process.

21 Q. Will the project have any impacts to the  
22 operation of airports?

23 A. The project passes near five existing  
24 public airports. These are the Weydahl Field near  
25 Killdeer, the City of Williston's Sloulin Airfield,

1 Tioga Municipal, Beulah Airport and the Watford  
2 City Municipal Airport.

3 Screening analysis indicates that the FAA  
4 obstruction analysis was required for the  
5 structures that will be located near the Killdeer  
6 and Williston airports.

7 Federal Aviation Administration issued a  
8 determination of no hazard to air navigation for  
9 the structures near the Killdeer airport. I will  
10 discuss the issues around the city of Williston's  
11 airport at the hearing on September 12.

12 Q. Has the project addressed issues raised by  
13 agencies?

14 A. Agency comments varied accordingly to  
15 agency function and jurisdiction, but agency  
16 comments generally emphasized a desire to minimize  
17 impacts to environmental resources, which Basin  
18 Electric has done. Each of the federal agencies  
19 that the route affects will be required to issue  
20 separate authorizations for the project  
21 specifically for their managed lands. Any issue  
22 specific to that land management area will be  
23 addressed directly.

24 Q. Please explain how this route represents  
25 the orderly siting of transmission facilities.

1           A.     The route that is presented here is a work  
2     product of input from multiple local, county, state  
3     and federal offices as well as a multitude of  
4     landowners' input. Basin Electric believes that  
5     this route is a balance between a viable,  
6     cost-effective project and one that satisfactorily  
7     minimizes the impact of such a large-scale project  
8     such as ours.

9           Q.     Please explain how this route results in  
10    the efficient use of resources.

11          A.     From the natural resource point of view,  
12    the route crosses two significant rivers and two  
13    federal agency managed lands. These are the Little  
14    Missouri National Grasslands and the area near the  
15    Missouri River crossing, both of which could be  
16    considered the most sensitive land areas in the  
17    project.

18                 Both federal agencies responsible for the  
19    project -- or for the management of these areas  
20    have been engaged since early in the scoping phase  
21    and have provided clear direction as to the  
22    preferred route alignment.

23                 With the route incorporating this input  
24    from the United States Forest Service and the  
25    United States Army Corps of Engineers, the project

1 is located in areas that are compatible with those  
2 agencies' land and resource management plans. Both  
3 of the federal agencies will have final action  
4 determination in issuing their respective  
5 authorization for our project's occupancy.

6 From a more global perspective, this  
7 significant project that represents a vital  
8 resource in the transmission infrastructure  
9 required to support the region, as Mr. Stoltz has  
10 presented here today, incorporates design features  
11 such as self-supporting, single-pole structures  
12 that present a minimal print to the environment,  
13 that when weighed against each other benefit versus  
14 impacts, in my opinion represents an efficient use  
15 of resources.

16 Q. Please explain the alternatives analyzed  
17 and rejected.

18 A. Earlier I testified that initially two  
19 six-mile-wide EIS corridors were identified.  
20 Within these EIS corridors, a network of 46  
21 1,000-foot corridors was developed with a final  
22 route alternative chosen after careful analysis.

23 Q. Mr. Miller, is the route proposed by Basin  
24 Electric based solely on economic considerations?

25 A. No.



1           Q.     Mr. Miller, I will now ask you a series of  
2     questions related to the PSC transmission facility  
3     selection criteria. How does the preferred route  
4     demonstrate that significant adverse effects, if  
5     any, upon agriculture will be kept to an acceptable  
6     minimum?

7           A.     In selecting the final route, Basin  
8     Electric attempted to select a route that would  
9     minimize impact to agricultural production. Basin  
10    Electric believes that one of the best methods to  
11    minimize impacts to agriculture is to place  
12    transmission structures on rangeland and grassland  
13    to the extent possible.

14                The majority of the route utilizes  
15    single-pole, self-supporting structures placed on  
16    quarter section lines and the edge of fields or  
17    property lines to reduce impacts to farming  
18    operations.

19                The construction and operation of this  
20    project will have minimal effect upon agricultural  
21    production. Temporary construction disturbances  
22    will be confined to the right-of-way and access  
23    road. Should soil compaction occur along the  
24    right-of-way, Basin Electric will return the land  
25    to its preconstruction state if at all possible.

1 Further, the landowner will be compensated for crop  
2 loss that occurs as a result of construction.

3 Q. What impact will construction and  
4 operation of the proposed project have on land  
5 which an owner can demonstrate that soil,  
6 topography, drainage and an available water supply  
7 that makes the land economically suitable for  
8 irrigation?

9 A. There are no lands currently being  
10 irrigated along the proposed route. Further, the  
11 routing philosophy of utilization of section lines  
12 as much as possible in areas of agricultural fields  
13 would have minimal impacts to future irrigation  
14 projects.

15 Q. What impact will construction and  
16 operation of the project have on surface -- surface  
17 draining and flow patterns?

18 A. No impacts are expected.

19 Q. Do you anticipate any significant adverse  
20 effects on noise-sensitive land uses resulting from  
21 the location, construction and maintenance of the  
22 proposed project?

23 A. Sensitive noise receptors within the area  
24 include rural residents living in scattered  
25 locations on farmsteads and those living in

1 developed areas. However, these areas were avoided  
2 to the extent practicable during the detailed  
3 routing process.

4 Temporary noise impacts would result from  
5 construction activities, most likely consisting of  
6 the sounds of equipment, backup warning devices and  
7 diesel engine operation.

8 Temporary construction noise will be  
9 limited to no more than a few days at any  
10 particular location along the proposed line and  
11 would be mitigated by scheduling work to daylight  
12 hours, particularly when near sensitive receptors.

13 Q. Will the proposed project have any visual  
14 impacts to adjacent areas?

15 A. Visual resources within the proposed route  
16 largely consist of broad expanses of cultivated  
17 fields, rangeland and grasslands. The route  
18 traverses the region known as the Badlands and also  
19 crosses two major river valleys.

20 The route is within the view shed of the  
21 eastern edge of the Theodore Roosevelt National  
22 Park, Little Missouri National Grasslands, Lewis  
23 and Clark National Historic Trail, Killdeer  
24 Mountain Battlefield and the Killdeer Mountain Four  
25 Bears Scenic Byway.

1           Because of the gently rolling terrain in  
2     the proposed route, the transmission structures  
3     will be visible in the general proximity. To  
4     minimize visual impacts to these areas, the project  
5     will incorporate the recommendations of the Forest  
6     Service and the SHPO as to the structural material  
7     utilized in these visually sensitive areas.

8           The project has promoted the use of  
9     weathering steel material in areas where it is  
10    determined that a brown structure would minimize  
11    the visual impacts of the project. The weathering  
12    steel material provides blending on the lands where  
13    the Badlands provide a backdrop to the structure.

14          It is generally thought that the  
15    galvanized structure material provides blending in  
16    areas where the structures are day-lighted to the  
17    observer and thus have a lower impact to the visual  
18    environment. The area identified to date for  
19    utilization of the weathering steel structures is  
20    the Little Missouri River Valley.

21          Approximately 15 structures have been  
22    identified to be weathering steel material as the  
23    route falls below the rim of the valley to minimize  
24    visual impacts of the project.

25          Q.    Do you anticipate any significant impacts

1 on areas of extractive or storage resources?

2 A. No. Oil and gas development is ongoing in  
3 northwest North Dakota. In areas that the project  
4 and oil activities are in close proximity, Basin  
5 Electric and the oil companies have coordinated to  
6 minimize impacts to individual projects.

7 There are no known oil well permits issued  
8 for areas within the route. The area is also  
9 served by the local rural water district to meet  
10 the local potable water needs. No known water well  
11 exploration is occurring within the route.

12 Further, Basin Electric has coordinated  
13 with Coteau in the area surrounding AVS to minimize  
14 any potential impacts to coal mining.

15 Q. Do you anticipate any significant impacts  
16 to wetlands?

17 A. There are wetlands that are localized  
18 areas within the proposed route. The route spans  
19 approximately 29 acres of wetlands. As no  
20 structures are located within known wetlands and no  
21 wetlands vegetation will be cleared, no impacts to  
22 wetlands are anticipated.

23 Q. Do you anticipate any significant impacts  
24 on woodlands or wooded areas?

25 A. There are approximately 114 acres of

1 wooded areas, including shelterbelts, within the  
2 route. A large percentage of the wooded area is  
3 located in the Badlands area of our project. In  
4 these areas, the transmission structures are  
5 typically placed on the high ground and the wooded  
6 areas are located in the draws and valleys.

7 Therefore, the ability to maintain the  
8 appropriate clearance heights to satisfy the  
9 requirements of the North American Electric  
10 Corporation is easily achievable as testified  
11 earlier by Mr. Marthaller.

12 The necessity to remove these woody  
13 species will be identified in the tree and shrub  
14 survey that will be performed on the final route  
15 right-of-way. A tree and shrub mitigation plan  
16 will be developed for the project and will be  
17 approved by the Commission.

18 Q. Mr. Miller, will it be possible to route  
19 in the preferred route so as to not violate any  
20 city or county zoning ordinance?

21 A. Yes. Seven material laydown yards, two  
22 substations and approximately 152 miles of  
23 transmission line require conditional use permits  
24 from local governments. The counties of Mercer and  
25 McKenzie and Williams require conditional use

1 permits for transmission lines greater than 115 kV.  
2 No conditional use permits are required in Dunn or  
3 Mountrail Counties. Mercer County issued a  
4 conditional use permit for the segment of our  
5 project that is within Mercer County on August 22,  
6 2013. Conditional use permits are currently being  
7 pursued in McKenzie and Williams Counties.

8 The Judson Substation has already received  
9 zoning authorization through Williams County in  
10 April of 2012. On August 26, 2013, the Mountrail  
11 planning and zoning recommended a change in zoning  
12 and a conditional use permit for the Tande  
13 Substation. This request is on the agenda for the  
14 September 17, 2013, Mountrail County Commission.

15 Q. Does this conclude your direct testimony?

16 A. Yes.

17 JUDGE FETCH: Thank you. Mr. Armstrong,  
18 do you have any questions?

19 MR. ARMSTRONG: Yes. Thank you.

20 **CROSS-EXAMINATION**

21 **BY MR. ARMSTRONG:**

22 Q. Mr. Miller, my questions are -- for  
23 purposes of today's hearing, are going to focus on  
24 the area south of Williston, south of Lake  
25 Sakakawea, more in the area of where the hearing's

1       being held today.

2               What was done -- well, let's start off  
3       with the EIS. What does having a supplemental  
4       EIS -- what effect does that have on the original  
5       EIS?

6           A.    The original EIS -- we are at the state of  
7       a draft EIS was prepared and went out for  
8       public comment. It was published in the Federal  
9       Register and they had a hearing back in  
10      January 2012.

11               And that process was going along until, as  
12      Mr. Stoltz testified, the need for the north  
13      Killdeer loop got brought out. So subsequently,  
14      since both alternatives were -- that are being  
15      proposed and evaluated in the draft EIS are now  
16      both action actions, RUS is now preparing a  
17      supplemental draft EIS that actually describes that  
18      there is now a third alternative.

19               We had alternative A, which is basically  
20      our project that we're siting here today.  
21      Alternative B was the line that went on the east  
22      side of the Killdeer Mountains and went around, but  
23      we still interconnected to the Charlie Creek  
24      Substation.

25               The supplemental EIS now will be



1 evaluating a couple more alternatives, and the main  
2 alternative is alternative C, which is actually  
3 doing both alternatives, so --

4 Q. And does that -- having it in the  
5 supplemental stage, does that still allow people to  
6 comment on the full original route?

7 A. Yes. What it is, it's a -- the two  
8 alternatives that were evaluated in the draft, it's  
9 doing what's being proposed and we're doing both.  
10 Once a supplemental is prepared, there will be a  
11 notice of availability published in the Federal  
12 Register and then that draft is out for public  
13 comment, and then RUS will also then have a hearing  
14 within that comment period.

15 Q. In looking through the application  
16 materials and the original, if you will, the draft  
17 EIS, there were comments submitted on the national  
18 grasslands. What was done to ensure that this  
19 power line, if approved, would not have an adverse  
20 impact on the Little Missouri National Grasslands?

21 A. Yeah. The preponderance of the comments  
22 that were received were to ensure that we stayed  
23 out of the roadless areas. And through a routing  
24 process and -- and working with the Forest Service,  
25 that was accomplished by moving over towards U.S.

1 Highway 85, along the highway's back slope of the  
2 right-of-way.

3 Q. Why couldn't the grasslands be just  
4 avoided completely?

5 A. Well, as Mr. Stoltz presented, we have to  
6 interconnect -- to have a successful project to  
7 achieve our purpose and need, we need to deliver  
8 power from Charlie Creek Substation up to the north  
9 side of the Little Missouri into McKenzie County  
10 and up to Williston on to Tioga.

11 The Little Missouri National Grassland  
12 encompasses quite a bit of country out here in the  
13 west, once you head on the west side of Killdeer  
14 here. So just the geographic expanse of the Little  
15 Missouri Grasslands, it's impossible to avoid.

16 Q. Are there other power lines passing  
17 through the grasslands?

18 A. Yes, there are. There are existing --  
19 well, Western Area Power and a distribution co-op,  
20 so the -- those roadless areas are not encumbered  
21 by infrastructure.

22 Q. As I understand it from the application,  
23 you have to get a special use permit from the  
24 Forest Service to pass the grasslands?

25 A. That is correct.

1           Q.    What's involved in that process and where  
2           does that stand?

3           A.    The process going through a special use  
4           permit for the Forest Service, you -- we need to do  
5           almost the identical studies. You have to do the  
6           cultural -- cultural surveys. They have a -- their  
7           own species listing that you have to identify and  
8           evaluate.

9                   A document that's called a biologic  
10          evaluation, a BE for short, is prepared and  
11          submitted to the Forest Service. So that is  
12          looking at their plants and animals that are --  
13          that are, I guess, of concern to the Forest  
14          Service.

15          Q.    So where does that fit in between this  
16          proceeding today, the NEPA proceeding? Where does  
17          that fall? After both of those?

18          A.    What they'll do is the Forest Service, you  
19          know, as a cooperating agency with this current  
20          NEPA process, so the -- the record of decision in  
21          that NEPA world will need to be completed. And the  
22          Forest Service then has an additional step of  
23          issuing a special use permit and that also then has  
24          an opportunity for public comment.

25          Q.    In the NEPA process, then, you know, how

1 does it work if you -- you know, if the line moves  
2 at all from where it's, you know, proposed to be  
3 right now?

4 A. As the background to that is that  
5 macro-corridor, so all that -- and that's why you  
6 went through with the public input, you -- and  
7 agency input. You basically find the opportunities  
8 to place a transmission line or avoidance areas or  
9 exclusion areas within that macro-corridor.

10 So as long as you adhere to, you know,  
11 the -- your criteria of go to where it's  
12 avoidance -- or stay away from avoidance, go where  
13 the opportunities are, so if it's a grassland over  
14 on this quarter section but you move across the  
15 road, it's the same grasslands. You know, it's not  
16 a special unique habitat for a plant or animal  
17 species, so in essence it's kind of neutral.

18 Q. So in the NEPA process you're getting  
19 approval for the macro-corridor that you are  
20 proposing?

21 A. No. The macro-corridor, that's when the  
22 original -- the initial steps of going through a  
23 NEPA process is you do a macro-corridor and  
24 alternatives evaluation. And that's how we got to  
25 the six-mile-wide corridors that we have on there

1 carried through.

2 And it's through those iterations where --  
3 where we evaluated a thousand-foot-wide corridor  
4 within that six-mile-wide corridor is how we  
5 narrowed it down to this 150-foot that we're  
6 discussing here today.

7 Q. What kind of approval -- I mean what's  
8 kind of the final piece of the NEPA process? Do  
9 they give you an approval? Do they give you a  
10 certificate? What do they give you?

11 A. Their final action is called a record of  
12 decision, and so that's actually a document that  
13 other agencies, you know, internal staff and the  
14 other cooperating agencies basically have signed  
15 off. But each individual federal agency will issue  
16 their own record of decision.

17 Q. And what do they approve, a thousand-mile  
18 corridor or how do they approve it?

19 A. No. They -- they're not as specific, you  
20 know, as the Public Service Commission, but we are  
21 evaluating down to that 150-foot-wide corridor.

22 Q. But NEPA's will be broader, then?

23 A. In this case, the NEPA evaluation is the  
24 150-foot-wide route that we're undertaking here in  
25 the Public Service Commission. That's correct.

1           Q.    Okay.  So this process and NEPA is  
2           basically looking at the same area?

3           A.    Correct.

4           Q.    So if -- if the line moves from -- for  
5           whatever reason, if there needs to be an amendment  
6           or anything like that, that would trigger both an  
7           amendment to each procedure sometime later on?

8           A.    No.  NEPA is a little bit more broader  
9           than that.  I mean Public Service Commission, your  
10          rules are -- you have a centerline.  Any adjustment  
11          off that centerline requires, you know, Commission  
12          action.

13                   In the NEPA world it's a little bit more  
14          general.  We're evaluating the actual impacts, but  
15          we're also identifying best management practices,  
16          mitigation plans.  So then if -- if you go on  
17          similar type of lands or lands that are within  
18          our -- in our project area, that we know how to  
19          actually, I guess, you know, construct the line or  
20          what constraints there would be during the actual  
21          construction and operation of the line.

22          Q.    And I guess I'm kind of assuming the  
23          Forest Service is somehow involved in that so that  
24          you don't go through that whole process and then  
25          can't get a permit to cross their land later on.

1           A.     That's correct. They are -- they are a  
2 cooperating agency with RUS, so --

3           Q.     Did you work with the Forest Service on  
4 where to put -- that you were proposing to place  
5 the line in the Little Missouri National  
6 Grasslands?

7           A.     Yes. Yes, we have. And our original  
8 route alignment or corridors, when we went through  
9 initial scoping, our lines actually were proposed  
10 to cross what ended up being the wilderness area.  
11 So it was during that agency and that public input  
12 where we recognized that the roadless areas were  
13 there and then we set out to go find the path to  
14 avoid those lands.

15          Q.     And I guess kind of where I'm getting at  
16 in looking at the maps, it does maybe look like you  
17 could cross less Little Missouri National  
18 Grasslands in areas if you -- you know, just less  
19 area, less distance, but is the -- where you're at  
20 now a process that's been worked out with the  
21 Forest Service?

22          A.     The Little Missouri National Grassland is  
23 not a -- you know, a continuous block. It is  
24 interspersed with private and public land. So as  
25 Mr. Marthaller testified earlier and Mr. Murray

1 will go on in a lot greater detail, you know, our  
2 route is an iterative process of all input, you  
3 know, individual landowners, agencies, public.

4 Q. And going to the Killdeer Mountain  
5 Battlefield survey area, have you looked at that  
6 and made a -- I guess a determination from Basin's  
7 perspective whether it views it as an exclusion  
8 area, avoidance area or if it falls where at within  
9 the siting criteria?

10 A. Like I testified earlier here today, until  
11 last week this battlefield as a -- you know, as a  
12 defined boundary, it was -- this is a new concept  
13 to us. In fact, it's my understanding just today  
14 that the SHPO office actually has put a boundary  
15 on -- on that actual area.

16 So prior to that, yes, we knew there was a  
17 monument site that exists north of our project. We  
18 knew of the Medicine Hole, you know, that has some  
19 significance, certainly a significant area. But  
20 technically were we in the Killdeer Mountains? No,  
21 we're off the side.

22 Any of these other I call it sites, you  
23 know, we're not directly impacting, but we are in  
24 the view shed and that gets into another analysis,  
25 and that's where the NEPA -- the EIS will evaluate,



1     you know, the visual impact and integrity on these  
2     sites.

3             If you want to, you know, talk some more  
4     details of the Killdeer Battlefield and, you know,  
5     what that really represents, I really will defer  
6     that to Mr. Kimball Banks. I'll hold those  
7     questions off for him.

8             Q.     But looking at I believe it's Exhibit 19,  
9     as I understand the exhibit, anyway, the -- the  
10    aqua lines up in Section 33, that's the designated  
11    area so far?

12            A.     Correct.

13            Q.     And that's what you're talking about as  
14    being north of the site?

15            A.     Correct.

16            Q.     And the buffer appears to be about a half  
17    mile south. That would be the buffer?

18            A.     Yeah. Or a little over three -- half a  
19    mile, three-quarters of a mile is the boundary.

20            Q.     Do you know how much of the -- and then I  
21    guess the -- just to make sure we're on the same  
22    page here, the purple-and-white line is what I  
23    understand to be the study area?

24            A.     That's my understanding as well. I guess  
25    it encompasses 26 square miles, is what I've been

1 told.

2 Q. Okay. And there's the -- obviously the  
3 proposed route and corridor is the yellow line  
4 going through there?

5 A. That's correct.

6 Q. And you testified about the Class III  
7 studies that were done. I believe you said about  
8 70 percent of the project was done Class III. And  
9 I guess what I'm wondering is how much of this area  
10 within this study area of Killdeer Mountain  
11 Battlefield has the Class III been performed on, if  
12 you know?

13 A. Yes, I do. I think the lineal length of  
14 our project through the study area is around eight  
15 and a half miles. All Class III pedestrian surveys  
16 have been performed through this area with the  
17 exception of one-half mile.

18 Q. Was anything found in the study area?

19 A. Remember, we survey our -- our width of  
20 our 150-foot-wide route. I believe there are some  
21 small sites identified, but our project and our --  
22 our structural locations avoid those sites. And,  
23 again, Mr. Kimball Banks will be able to expound a  
24 lot more on those questions.

25 JUDGE FETCH: I'm going to just pause here

1 for a second, Mr. Armstrong. To clarify for the  
2 record, this map that you've been looking at  
3 corresponds to Exhibit 18, not 19.

4 MR. ARMSTRONG: Correct.

5 JUDGE FETCH: All right. Please proceed.

6 Q. (MR. ARMSTRONG CONTINUING) And in the  
7 process of that, was there any mitigative measures  
8 or -- or any recommendations from -- from your  
9 consultants or through SHPO to avoid siting a power  
10 line in that area?

11 A. Well, again, until just last week --  
12 whether this was an avoidance area or not, I guess  
13 that's kind of open for discussion. But as far as  
14 since we were made known, we had some conversations  
15 with the SHPO office. I believe the SHPO office  
16 filed a document today on the -- or yesterday with  
17 the Commission.

18 So what they're asking for and Basin  
19 Electric is certainly -- we'll do gladly, is that  
20 they want to do additional studies beyond our  
21 normal Class III pedestrian surveys within our  
22 route, and those are specifically that magnetometer  
23 surveys, so they're looking out there for metal  
24 objects. So Basin Electric will gladly do that.

25 They're also asking that on each one of

1     our structure locations that we do additional  
2     shovel testing under disturbance areas. So what  
3     they're really after is they want to make sure that  
4     any cultural features or artifacts that might be  
5     disturbed are found and evaluated prior to any  
6     disturbance.

7           Q.     Do you -- what's your understanding, I  
8     guess, of what the end game of the study is,  
9     though? Is it to get listed as a national historic  
10    site?

11          A.     That is my understanding from what I read  
12    in the newspapers. That would be correct. I do  
13    know that there's -- well, that -- whoever's  
14    proposing this -- to answer that, that's my  
15    understanding, it certainly is a potential listing.  
16    I do know that there's a lot of processes that  
17    would undertake in order for that listing to occur.

18          Q.     The SHPO letter you were referencing they  
19    filed yesterday, it's dated September 3, and it's  
20    been admitted as Exhibit 30, and it discusses, I  
21    think, kind of four recommendations they have at  
22    this time. One is removal of the Gumbo Creek  
23    Substation, which Basin has done; correct?

24          A.     That's correct.

25          Q.     The other one is a visual effects

1       assessment.   What is that?

2           A.     What we do is from the point of view -- so  
3       they've requested two locations.  One is up at the  
4       Medicine Hole and the other one is at the state  
5       site, the state monument.  And what happens is a  
6       trained person with a -- it's a -- to simplify it,  
7       it's a good camera, but he also has his  
8       latitude/longitude and a bearing.  So he takes his  
9       picture and then he gets the proper orientation.  
10      And then basically you go back to the office and  
11      it's the computer world.  We know what our  
12      structure locations are at.  We know what the  
13      structure heights are at.  So they embed our -- our  
14      project inside that photograph to simulate what the  
15      future would look like should we build the project.

16                So you go through that process, and then  
17      it's the team of, you know, whoever's got the  
18      input, whether it's the SHPO, whether it's the  
19      federal agencies, and then they have to make some  
20      type of an assessment whether that visual integrity  
21      of that feature, whether it's Medicine Hole,  
22      whether it's the state monument, is, you know --  
23      what do you call it -- affected negatively by our  
24      project.

25           Q.     Right.  I guess what I'm making an

1 assumption here and tell me if I'm wrong, but they  
2 would come back with -- if they thought it was  
3 affected, they could come back with either it's not  
4 affected or anywhere from it's affected and there's  
5 nothing you can do about it?

6 A. One of the things with the visual, you  
7 know, is it a cookie cutter, like is it engineering  
8 calculation? No, it's not. It's a qualitative  
9 assessment. We believe that our single-pole  
10 structures, you know, they're nice and slender, as  
11 opposed to the four-post steel lattice, you know,  
12 so the visual effect of our project is going to be  
13 a lot more reduced from what has been done in the  
14 past. Our spans being 850 to a thousand foot in  
15 length, so we've got approximately five and a half,  
16 six, in that ballpark per mile for the number of  
17 structures that are placed in that environment.

18 There are also the -- whether we use  
19 weathered steel and/or galvanized steel for the  
20 color of the material. Weathering steel basically  
21 is the regular steel and then it will rust over  
22 time, so it gets darker.

23 So like I said before, if you're looking  
24 down where you have a background, perhaps a darker  
25 structure to blend into the background. If you're

1 looking -- your point of view is down low and  
2 you're looking up and you have daylight, a  
3 galvanized structure will blend into the skyline a  
4 lot more easily.

5 Q. I -- I'm assuming it's a little too early,  
6 but are you anticipating -- is there any sort of  
7 anticipation of what a visual effects assessment  
8 will result in this area?

9 A. That's one of the -- a visual assessment  
10 is done by the agencies and unfortunately we don't  
11 get to do that, so I'll hold judgment to those  
12 agencies that will do that evaluation.

13 Q. Are there other power lines going through  
14 that area?

15 A. Yes. This area, you know, it's -- as the  
16 battlefield study area, is it pristine? You know,  
17 there's the existing ranches, residences. There's  
18 distribution lines. Further to the south there is  
19 our transmission line. There's oil fields. And I  
20 think perhaps, you know, it's probably the  
21 accumulation of all of these things affecting this  
22 area might be a little bit of a -- you know, is  
23 there a tipping point of too much infrastructure in  
24 one area? But, yes, there is a lot of existing  
25 infrastructure.

1           Q.    And is there -- I mean it's kind of maybe  
2   a little bit of a guess right now, but is there a  
3   reason this area can't just be avoided by the line?

4           A.    If you were to ask me three years ago in  
5   the planning process, yes.  If these issues were  
6   brought up, we would say yes, there were some  
7   opportunities.  At this point in time, you know, as  
8   our corridor was developed with the input of the  
9   public, with the agencies, there's been a  
10  considerable amount of time and effort put into the  
11  defining of this route.

12                The city of Killdeer, we've got the  
13  airport that we had to avoid and, you know, miss  
14  the monument site as we knew it at that time, so --

15           Q.    Did -- you mentioned something about SHPO  
16  and just today with some boundaries on this line.  
17  What are you talking about there?

18           A.    I think -- well, it would probably be best  
19  if I defer that to Mr. Kimball Banks to talk about  
20  the archaeological processes.

21           Q.    I'm gathering Basin is agreeable to  
22  conducting the magnetometer studies and taking  
23  whatever mitigative measures are necessary if  
24  cultural sites are found along the route in the  
25  corridor?



1           A.     Certainly.  It's our understanding that,  
2     you know, NDSU received a grant to do that.  Like  
3     most studies, I'm sure their dollars don't flow  
4     very far.  Basin Electric would pay -- you know,  
5     make that direct payment for those surveys to occur  
6     of the -- on our route.

7           Q.     What are you -- you know, typically in a  
8     site, whether it be for a power line or a pipeline  
9     or whatever, the State Historical Preservation  
10    Office will concur with mitigative measures and all  
11    of that and that they would concur that no historic  
12    properties are affected.  What and when would you  
13    envision that happening for this line given the  
14    issues recently brought up?

15          A.     Our -- our efforts in 2011 and 2012 were  
16    actually summarized in an interim report and  
17    submitted to the SHPO office back in February of  
18    2013.  They'll -- that's been on file.  But  
19    typically what the State Historic Preservation  
20    Office will do is wait till the end of the project  
21    to make a final concurrence letter.  Like you  
22    stated earlier that we have our defined route, but  
23    there might be some alterations or revisions to it.  
24    So they do not want to go through a -- you know, a  
25    concurrence letter -- have multiple concurrence

1 letters on the same project. They want to do their  
2 final concurrence action once.

3 Q. Sure. In that, usually we have -- with  
4 power lines there's people who won't grant access  
5 for the surveys and usually, you know, if the line  
6 is approved, it's conditioned on SHPO concurrence  
7 with that. What I'm more wondering is if you're  
8 anticipating a lengthier procedure given what's  
9 going on now or if we're just in kind of a whole  
10 new area with what's happening with the Killdeer  
11 Battlefield site as far as end result from SHPO on  
12 that.

13 A. Okay. As far as the surveys through this  
14 area, Basin Electric has acquired the vast majority  
15 of the easements and the surveys have already been  
16 performed. So doing these additional required  
17 surveys, you know, we envision that to happen  
18 rather quickly.

19 Q. But the study that's going to be done in  
20 the area, do you know how long that's supposed to  
21 take?

22 A. These additional magnetometer surveys,  
23 they can -- they're rather easily done. It's just  
24 a matter of coordination. Now, the visual  
25 simulation, that process has already begun and that

1 is kind of their -- the assessment is done on the  
2 federal level. I assume that's going to take  
3 several months to work its way through.

4 Q. What about the -- what I was actually  
5 talking about was the NDSU survey of the -- I guess  
6 the entire area. Do you know what the timeline is  
7 for that?

8 A. No, I do not. I understand there might be  
9 a timeline for the money's availability, so I  
10 believe it's two years.

11 MR. ARMSTRONG: Okay. I have no further  
12 questions.

13 JUDGE FETCH: All right. At this time,  
14 then, we'll go to the Commission. Commissioner  
15 Kalk.

16 COMMISSIONER KALK: Thank you, Your Honor.  
17 Cris, thank you for your testimony. And  
18 thanks, members of the public. I really appreciate  
19 everybody hanging in there. This just takes a long  
20 time to get through it, but hopefully you're --  
21 you're gleaning information out of this discussion  
22 which will help you shape your comments. This is  
23 the way we -- we set it up. The company goes  
24 first. It's their case to make, and we have played  
25 different times about trying to put the public

1 input first, but then it seems like it actually  
2 goes longer, and then there's a lot of questions  
3 that may come out during this part of it that will  
4 help some of your discussion later.

5 **EXAMINATION**

6 **BY COMMISSIONER KALK:**

7 Q. So but that -- Cris, back to you, I guess.  
8 The -- appreciate your work on this. The -- before  
9 I got elected to the PSC, I did -- was in the  
10 Marine Corps for 20 years. And I had your job of  
11 NEPA compliance for the Marine Corps in the whole  
12 West Coast and very familiar with all the things  
13 you're talking about.

14 But I wanted to step back a little bit  
15 about the scoping meetings that you held back in  
16 November of 2011. The -- obviously, that's not a  
17 PSC requirement. It has to do with NEPA.

18 In a general sense, what kind of issues  
19 came up in the scoping meetings at that time?

20 A. The RUS actually has a -- you know, a  
21 scoping summary report --

22 Q. Okay.

23 A. -- that's available and that summarizes  
24 it. In my words, the comments that we received  
25 from the national environmental -- you know,

1 natural resources, preservation, impact to the  
2 biological resources. Certainly the -- since we  
3 had proposed to go across roadless areas, that was  
4 one of the -- the majority of the comments that  
5 were received was to stay out of those roadless  
6 areas and that certainly was -- was done. We  
7 rerouted around that area.

8 Q. But there was no -- I don't want to use  
9 the word "concern," but there was no awareness of  
10 the issues that may come up on the Killdeer  
11 Battlefield at that time?

12 A. The comment I believe that we had was the  
13 preservation of the Killdeer Mountains, but as far  
14 as a direct -- direct comment as far as the  
15 battlefield proper, no.

16 Q. Okay. Well, that being said, we are where  
17 we're at and that's where -- and we have to move  
18 forward. So when did this first hit your radar  
19 screen, "this" meaning the Killdeer Mountains  
20 issues, I'll call them -- Killdeer Battlefield  
21 issues? When did this first hit your radar screen?

22 A. Last Tuesday afternoon.

23 Q. So that literally was the first time that  
24 you'd heard about this.

25 A. Yeah.

1           Q.     Okay.   Fair enough.

2                   The -- Mitch, Mr. Armstrong, talked a lot  
3     about it, but one of the things that always gets  
4     challenging for the Commission is when companies  
5     have so many permits that are out there, it's like  
6     trying to herd cats to get all these permits  
7     together at the same time so we can make some kind  
8     of decision.   So oftentimes we'll put them in an  
9     order, we approve it contingent upon all these  
10    permits being given.

11                  So is there somewhere that you could  
12    provide a list of all the permits that are  
13    required?   And if you don't have it, maybe that  
14    could be a late-filed exhibit that we could gauge  
15    with the NEPA permit.   We need the county ones.   So  
16    I don't know if that's something, Mitch, if you  
17    could offer out or, Cris, if that's something that  
18    you could point us to.

19           A.     Yeah.   We -- I -- go ahead.

20                  MR. ARMSTRONG:   I would just -- we've got  
21    7.0, tab 7-7 of the application has a list.   If  
22    there's any additional ones that may result from  
23    anything newly discovered or anything like that, it  
24    should be supplemented or updated.   I'll just  
25    propose a late-filed Exhibit 31 as an updated

1 identification of required permits and approvals  
2 and the status of where they're at as of the date  
3 of submission.

4 COMMISSIONER KALK: As this discussion  
5 shapes out in the Killdeer Battlefield. Okay.  
6 Thank you.

7 Q. (COMMISSIONER KALK CONTINUING) And then a  
8 couple other questions, Cris. You talked about the  
9 federal nexus for the four agencies and the Corps  
10 of Engineers, the Service and RUS. Who actually  
11 signs the record of decision?

12 A. Each agency will at the end of the day.

13 Q. So who -- there must be a lead agency,  
14 though.

15 A. The lead agency is Rural Utilities  
16 Service.

17 Q. Okay. So they'll each sign the record.  
18 The RUS will be the lead.

19 What time frame are you looking at that  
20 potentially being signed?

21 A. March or April of 2014.

22 Q. Do you think that will shift because of  
23 the recent developments on the Killdeer  
24 Battlefield?

25 A. It's possible.

1           Q.    Always.  There's no way to definitely  
2 answer that.

3           A.    No way to answer that.  Certainly.  But --

4           Q.    But --

5           A.    But what I'd like to say, though, is, you  
6 know, like this bringing in the north Killdeer  
7 loop, because both alternatives were evaluated in  
8 the draft EIS, you know, comments were received and  
9 all the evaluation has been done on the  
10 alternatives, so the supplemental EIS should be  
11 rather -- you know, it was -- RUS is preparing that  
12 now.  It wasn't a very large endeavor to do so  
13 because all the information was already there.  It  
14 was repackaging to create this other alternative.

15          Q.    Okay.  The -- and let's suppose that  
16 somehow this line would move somewhere else.  There  
17 would no doubt be other issues that would be  
18 developed because of that.  I mean that's just a  
19 general comment.

20                The -- the -- my experience with these  
21 agencies has been that oftentimes they'll proceed  
22 down the path they've already started, but they'll  
23 offer up mitigation measures.  Have you had any  
24 discussions with them about potential mitigation  
25 measures on any of the route?



1           A.    Yeah.  Certainly not only the predominant  
2           discussion for mitigation issues, the environment  
3           is discussed in the development of the biological  
4           assessment.

5           Q.    Okay.

6           A.    That's -- you've heard of the U.S. Fish  
7           and Wildlife Service, you know, the BA that gets  
8           submitted by Western, but all along it's through --  
9           again, you'll find what our environmental impacts  
10          are and which ways we can do to make those -- to  
11          minimize them.  So at the end of the day there are  
12          commitments in the EIS process.

13          Q.    Fair enough.  Okay.  The -- has there been  
14          any discussion about things like bird flight  
15          deflectors on the route?

16          A.    Certainly.  And that discussion is, again,  
17          in the development of the BA with the U.S. Fish and  
18          Wildlife Service.

19          Q.    Okay.

20          A.    So right now Basin Electric is proposing  
21          to -- of the 197 miles, I believe all but 13 miles  
22          is going to be excluded from the bird flight  
23          diverters, in essence, the areas around the  
24          Badlands.

25          Q.    That would further highlight the issue of

1     seeing it, I suppose.

2           A.     Well, you know, the Badlands -- for the  
3     whooping crane to have suitable stopover habitat,  
4     you know, they like your wetlands and they also  
5     need grain feeds. They also like, you know, the  
6     topography. So do they like flying down into a  
7     valley? No, they do not. So, you know, the high  
8     terrain, rough Badland areas is basically -- is  
9     being evaluated as unsuitable habitat stopover for  
10    whooping crane.

11          Q.     Okay. The -- did you work, Cris, on  
12    the -- when we worked on the -- with Basin, the big  
13    wind farm south of Minot, the big Verendrye wind  
14    farm?

15          A.     I did not directly work with that, no.

16          Q.     Because one of those things that came out  
17    of it, Basin ended up buying a whole bunch of  
18    property to mitigate the flyover. So I don't know  
19    if something you may have done there may be  
20    something that comes into play here. We'll see how  
21    that plays out, I guess, as well.

22                 The -- couple other thoughts here. One  
23    thing that I find interesting is that because of  
24    all the energy development in the state, we're  
25    finding a lot more of the cultural resources in the

1 state that we never knew were there. In siting  
2 pipelines down Highway 85, companies have found all  
3 kinds of things that have been there obviously for  
4 centuries.

5 Suppose you did everything the way you're  
6 planning it, but during construction you -- you  
7 find a burial ground. What would be the protocol  
8 of what you do then and will there be somebody on  
9 site trained to know what to do?

10 A. What the project will do is we'll develop  
11 an unanticipated discovery plan --

12 Q. Okay.

13 A. -- so that -- you know, certainly we do  
14 the surveys ahead of time to know where the  
15 cultural sites are at and the issues. But like  
16 most things, you never know if you dig a little  
17 deeper, you might find something. So that plan  
18 will describe what actions are taken. It depends  
19 on what -- what lands, if it's private lands,  
20 federal lands, state lands. They all have a  
21 different path to take to walk through it.

22 Q. But Basin will have someone out there?  
23 That will be their whole job, or someone?

24 A. Someone. That's correct.

25 Q. You said all the county zoning ordinances

1       have met -- approved, if you will, the counties  
2       have approved this?

3           A.     No.     Only -- we've received only Mercer  
4       County.   The two other counties, their applications  
5       are --

6           Q.     Oh, there are hearings coming up.

7           A.     That's correct.

8           Q.     The list of permits required, we talked  
9       about.

10                   Other than the Killdeer Battlefield, which  
11       we've spent a lot of time, I think, talking about  
12       in your testimony, what would be the other  
13       significant -- any other significant areas of  
14       concern along the route that you're watching really  
15       closely?

16           A.     From a, you know, threatened and  
17       endangered species kind of aspect, you know, the  
18       Missouri River crossing, there's the pallid  
19       sturgeon, piping plover.   One thing about our  
20       construction, we will not be entering the Missouri  
21       River itself.   We span that.   We'll use helicopters  
22       to move our -- the conductor across.

23                   The -- a lot of surveys have already been  
24       done.   The surveys for piping plover and least tern  
25       in that area of the floodplain along the Missouri

1 River, we did that this summer to help facilitate  
2 the Corps allowing us to do some geotechnical  
3 borings on that location. So we know there's  
4 potential habitat around there, but we know from  
5 our direct surveys that there's none being there.

6           Going through the Badlands we know that  
7 there's the big horn sheep in some of our areas.  
8 So, for instance, a way to mitigate impacts to big  
9 horn sheep, our construction will be outside of  
10 their lambing season. So in those areas it's, you  
11 know, no service from March 15 I believe till like  
12 August 15. I don't know if the dates are quite  
13 right, but in essence we will incorporate  
14 time-of-the-year construction in order to minimize  
15 our direct impact to certain species, whether it's  
16 big horn sheep or nesting birds, et cetera.

17           COMMISSIONER KALK: Okay. Thank you. And  
18 just a last comment for full disclosure for the  
19 crowd, Cris and I both grew up in Bottineau, a  
20 little bit apart. When I asked his sister out one  
21 time on a date, she said no, but I will not hold  
22 that against you, Cris. Thank you.

23           JUDGE FETCH: All right. We're going to  
24 take --

25           THE WITNESS: That is full disclosure.

1 JUDGE FETCH: We are going to take at this  
2 time a 15-minute recess.

3 (Recessed at 3:01 p.m. to 3:22 p.m.)

4 JUDGE FETCH: All right. Could we come  
5 back to order, please. All right. We -- the  
6 company is in the process of setting up some  
7 electronic maps. And while they're doing that,  
8 we're going to finish with some questions for this  
9 witness.

10 And the company still has three witnesses  
11 left to put on, so it will be a little while yet.  
12 But what we're going to do -- because some of you  
13 have come from some distance or right here, and I  
14 want to give you an opportunity to give your  
15 information to the Commission.

16 So after we finish this witness, we're  
17 going to break in the order. We have agreement  
18 from the company and the Commission's attorney and,  
19 we are going to at that time open up comments from  
20 the public so that if some of you had intended to  
21 have a say, you'll have an opportunity to do that  
22 in case you have to leave. So we're going to make  
23 that -- that change in the order to accommodate any  
24 of you who want to come and speak.

25 So at this time we're going to continue

1 with this witness, with Mr. Miller. And at this  
2 time I believe we were at Commissioner Christmann.

3 COMMISSIONER CHRISTMANN: Thank you, Your  
4 Honor. I'll try and be quick here too.

5 **EXAMINATION**

6 **BY COMMISSIONER CHRISTMANN:**

7 Q. When you go through the real Badlands area  
8 near the Missouri River, you said you span the  
9 river so you don't disrupt that. But in the real  
10 rough terrain of those hills, do you have to doze a  
11 track to move along there and set poles or are you  
12 able to somehow do that with helicopter or  
13 something as well?

14 A. Actually, a little bit of both. Our route  
15 was -- part of that selection process is  
16 constructability, and so we identify how we can get  
17 to those structure locations, not just for  
18 construction but also for maintenance.

19 In areas where it's extremely rough  
20 terrain, we will support construction by  
21 helicopter. So we actually have identified it, but  
22 I believe there are four structure sites or  
23 thereabouts.

24 Q. Okay. And my only other one, way back  
25 last winter I looked at this thing and when I saw

1     that you had to go that far south for the Charlie  
2     Creek Substation, I wondered, Why are we going  
3     through the Killdeer Mountains? Why over here east  
4     of Killdeer don't you angle down and get on the  
5     south side of the highway and there would be less  
6     stuff? Are there some natural obstacles down there  
7     or things that cause that to be problematic, as  
8     well, or is it that we're just far in this plan?

9           A.     What -- when the corridor selection  
10    process was reviewed and analyzed, our starting  
11    point was Antelope Valley Station and we needed to  
12    terminate at Charlie Creek Station. And if you --  
13    as you recall living in Hazen, you know, Highway  
14    200, so basically Highway 200 is straight east and  
15    west. So basically that is a straight east-west  
16    corridor as it happens to go through this area.

17           Mr. Stoltz also, you know, discussed about  
18    reliability issues. Our existing AVS to Charlie  
19    Creek 345 substation started -- heads west of AVS,  
20    but then it also angles down I believe on the --  
21    it's on the east side of Dunn Center a considerable  
22    distance and then it heads west of Charlie Creek,  
23    sneaks back up.

24           When they routed that line back in the mid  
25    to late '70s, that I guess southerly diversion was



1 basically to preserve the coal reserves that were  
2 identified -- if you recall, that was the startup  
3 of all the coal plants in Mercer County -- and the  
4 coal reserves on the west side of Dunn Center was  
5 potential mining activity. So that's why that --  
6 that route was headed to the south, to avoid that  
7 area.

8 Now into this day and time the -- I guess  
9 the probability of opening up another surface mine  
10 in western North Dakota is -- has gotten a lot  
11 slimmer, so that's why we didn't avoid that area.

12 COMMISSIONER CHRISTMANN: Okay. Thank  
13 you.

14 JUDGE FETCH: Commissioner Fedorchak.

15 COMMISSIONER FEDORCHAK: I, too, will try  
16 to be quick, but also recognize you're the  
17 company's longest witness and this is our chance to  
18 get information on the record, as well, so I have a  
19 few questions for you.

20 **EXAMINATION**

21 **BY COMMISSIONER FEDORCHAK:**

22 Q. On page 13 of your testimony you talked  
23 about the residences that you got waivers from, and  
24 you mentioned two businesses, but I didn't hear you  
25 say -- I might have missed it -- that you have

1       waivers from them as well. Do you have waivers  
2       from the businesses or how are they being  
3       addressed?

4               MS. JACOBSON: Your Honor.

5               JUDGE FETCH: Yes, Ms. Jacobson.

6               MS. JACOBSON: I believe in the Siting  
7       Act, the waivers only apply to the residences --

8               COMMISSIONER FEDORCHAK: Okay.

9               MS. JACOBSON: -- not the businesses, so  
10       therefore we have no waivers from the businesses.

11              COMMISSIONER FEDORCHAK: Do they get to  
12       object at all?

13              MS. JACOBSON: I suppose they have the  
14       opportunity to come as anyone else.

15              COMMISSIONER FEDORCHAK: Okay. All right.

16              THE WITNESS: But I do want to say that we  
17       do have the easements through that land, through  
18       the Orf and the -- not the Orf, but the Stroker and  
19       Jeff's [sic] Off Road.

20              Q. (COMMISSIONER FEDORCHAK CONTINUING) Okay.  
21       So they signed easements, so they're obviously --  
22       that's in agreement.

23              Regarding the -- the historical resource  
24       study, do you have concerns about the quality of  
25       that study considering that it missed this --

1 mentioning this battlefield?

2 A. I have my opinions. I think Mr. Kimball  
3 Banks would answer that -- is maybe a lot better to  
4 answer this. But it is my understanding when we  
5 did the Class I literature search from the State  
6 Historic Preservation Office and our subsequent  
7 filings of our interim Class III report, there is  
8 no -- that's why I say I believe it's just today  
9 where they identified a potential site and put the  
10 site boundaries around there.

11 So for whatever reason -- and I'll let the  
12 State Historic Preservation Office speak for  
13 themselves, but when we -- we have a project study  
14 area, we make that request, here's our study area,  
15 what are your known cultural sites within a study  
16 area. We went through that process as we  
17 understand it, and the results of that process then  
18 identify this battlefield study area, so --

19 Q. Okay. Was that because it wasn't in  
20 the -- the actual State Historical Society  
21 component wasn't in the corridor? It was outside  
22 of it and is outside of it or --

23 A. No. The corridor itself -- the  
24 battlefield area is within our corridor. Our  
25 route's within the corridor.

1           Q.     But the actual site that the State  
2     Historical Society, according to that map, that  
3     teal-shaped site that the State Historical Society  
4     recognizes is outside your corridor?

5           A.     That was within -- the actual state  
6     battlefield monument, that was identified in our  
7     file search. That's correct.

8           Q.     Oh, that was. Okay.

9           A.     It's a battlefield study area that's shown  
10    in that purple hashmark of the exhibit, that was  
11    not shown.

12          Q.     And I noticed on the roll call of the  
13    people who attended the scoping meetings, there  
14    were State Historical Society or historic  
15    preservation officers in attendance, and you did  
16    not receive any written or verbal testimony at  
17    their -- at that meeting about this?

18          A.     About the battlefield itself, no, we did  
19    not.

20          Q.     Okay. Have you heard from landowners  
21    since this has come out in the last week? Have you  
22    heard from landowners either saying, Geez, we're  
23    really -- we didn't realize this, we're more  
24    concerned now or this doesn't matter to us?  
25    Because most of these lands are held by private

1 individuals, is my understanding.

2 A. Yes, they are. But I specifically have  
3 not talked to landowners directly, but I believe  
4 Mr. Mike Murray, our real estate person who will be  
5 coming up to testify, he can probably speak more to  
6 that end.

7 Q. Okay. All right. And then my final  
8 question is regarding the environmental and  
9 recreational objections. Can you just kind of  
10 speak generally about what you've heard from folks  
11 who have some concerns about either the  
12 environmental impacts or the recreational impacts  
13 and what those are, if you can kind of categorize  
14 them and how you've tried to address them.

15 A. Well, I think to categorize the comments  
16 that we've received is -- one is, you know, the  
17 roadless areas, so it's a pristine area and so they  
18 want to maintain that pristine state. Yes,  
19 avoiding those roadless areas. I believe that is  
20 accomplished.

21 As far as other recreational activities, I  
22 think one of -- I guess the benefit of living in a  
23 state like North Dakota, there's certainly a lot of  
24 recreational activities available to us. I'm very  
25 thankful for that myself. So the opportunities are

1       there. There's a lot of public and private and  
2       state-owned lands that are available to us. I  
3       guess we're blessed to that end.

4               The crossing of a transmission line across  
5       that type of area, you know, just like everything,  
6       once it's initially there, it's something new so  
7       you kind of recognize it, but over time, you see it  
8       a second or third or downstream time, to me it  
9       becomes part of the landscape.

10              COMMISSIONER FEDORCHAK: Okay. Yeah, I  
11       noticed you called the rusty steel weathering  
12       steel. My dad should have used that to try to pass  
13       off a rusty car he gave me when I was young. He  
14       could have just called it weathered. Might have  
15       even been cool.

16              I think that concludes my questions for  
17       now. Thank you.

18              JUDGE FETCH: Any other questions from the  
19       commissioners? Any follow-up?

20              COMMISSIONER KALK: Your Honor, I would  
21       just make the comment --

22              JUDGE FETCH: Commissioner Kalk.

23              COMMISSIONER KALK: -- that the way I'm  
24       envisioning you're envisioning this is that now  
25       we're done, we'll have public testimony, but then

1 we're not done here by any means. We're --

2 JUDGE FETCH: No.

3 COMMISSIONER KALK: -- going to bring back  
4 all the company, so if we decide to ask Cris more  
5 questions after this is done -- that's what, I  
6 guess, my intent would be is that after we get the  
7 public input, then we can -- so we're not done here  
8 by any means.

9 JUDGE FETCH: Are there any other  
10 questions at this time for Mr. Miller?

11 MS. JACOBSON: I have an additional couple  
12 questions, Your Honor.

13 JUDGE FETCH: Okay. Ms. Jacobson.

14 **REDIRECT EXAMINATION**

15 **BY MS. JACOBSON:**

16 Q. Okay. Mr. Miller, the Class I literature  
17 research that was done, what area of land was that  
18 performed on?

19 A. On the macro-corridors of both  
20 alternatives in equal worlds, so from Antelope  
21 Valley Station to Charlie Creek, up to Williston to  
22 Tioga, and also on the east -- the alternative B in  
23 the NEPA world going up the east side of the  
24 Killdeer Mountains.

25 Q. So the macro-corridors were what size?

1           A.     Six miles in width, 197 miles in length.

2           Q.     So the --

3           A.     With the addition of the -- the second  
4 alternative, so add another 67 miles onto it.

5           Q.     So the Class I literature research that  
6 was done in the Killdeer Mountain Battlefield area  
7 was done on a six-mile-wide corridor and the route  
8 was within that six miles; is that correct?

9           A.     That's correct.

10          Q.     Okay. And right before the break,  
11 Commissioner Kalk was asking you some questions  
12 about bird diverters, and I think there might have  
13 been a misstatement. Can you tell the  
14 commissioners and members of the public the  
15 portions of the route that will have -- that we  
16 anticipate the bird diverters will be located on?

17          A.     The route as we're looking at here today  
18 is 197 miles in length. We are going to exclude  
19 13 miles of that route from placing of bird  
20 diverters. That's what Western Area Power is  
21 proposing to the U.S. Fish and Wildlife Service.

22                 MS. JACOBSON: No further questions, Your  
23 Honor.

24                 JUDGE FETCH: Thank you. Mr. Armstrong.

25



**RECROSS-EXAMINATION**

**BY MR. ARMSTRONG:**

Q. Which areas will there not be bird diverters on?

A. In the areas that Western has deemed to be not suitable to stop overhead habitat for whooping cranes, so in essence the Badlands area. So areas right around Charlie Creek and near the Little Missouri River. So it's a high terrain, high, you know, draws heavy -- so a bird such as a whooping crane, that takes a long time to land, just kind of glides, and takes a long time to take off, they do not like flying down into lower holes. It's a self-preservation.

MR. ARMSTRONG: Nothing further.

JUDGE FETCH: Mr. Lein?

MR. LEIN: Nothing. Thank you.

JUDGE FETCH: Any other questions for this witness?

All right. Thank you, Mr. Miller.

Okay. And as Chairman Kalk just indicated, this is not the end of the company's case, and normally we would proceed to finish their case before we open it up to the public. But we're diverting from that -- that usual schedule at this

1 time because I know you've been -- many of you have  
2 been sitting here all day, and we want -- the  
3 Commission wants to hear from you and wants to give  
4 you this chance.

5 So at this time I'm going to open up the  
6 floor for members of the public who wish to come  
7 forward and testify.

8 And, once again, I have the sign-in sheet  
9 here so I have an idea of how many individuals are  
10 going to want to testify. But at this time if  
11 you're going to be testifying, raise your right  
12 hand, please. Okay. Someone out there, do you  
13 want to come in. So probably about nine hands.

14 All right. All -- all testimony, and that  
15 includes information that you're going to give, is  
16 taken under oath. And I'm going to administer the  
17 oath to all of you. So please raise your right  
18 hand. And earlier I instructed as to penalties for  
19 perjury.

20 (Witnesses sworn.)

21 JUDGE FETCH: Okay. I don't have any  
22 particular order, so whoever wishes to proceed  
23 first. Have a seat, please, and identify yourself,  
24 please.

25 THE WITNESS: My name is Gerard Baker.

1 JUDGE FETCH: Gerard Baker?

2 THE WITNESS: Yes.

3 JUDGE FETCH: All right.

4 **GERARD BAKER,**

5 having been first duly sworn, was examined and  
6 testified as follows:

7 **STATEMENT**

8 **BY MR. BAKER:**

9 MR. BAKER: And, first of all, I'd like to  
10 thank you very much for taking the time. It's been  
11 a very long day and I appreciate the opportunity to  
12 be here.

13 I did miss some of your testimony because  
14 I went to Medicine Hole and I did see some of the  
15 area that we're talking about today, and I know I  
16 missed some very exciting testimony and I apologize  
17 for that.

18 I will tell you that right now I live  
19 in -- south of Rapid City, South Dakota. I'm a  
20 Mandan, Hidatsa member of the Three Affiliated  
21 Tribes, grew up -- growing up on a ranch northwest  
22 of a little town called Mandaree.

23 Again, I'm a Mandan, Hidatsa. I come from  
24 the Three Affiliated Tribes, originally coming from  
25 Awagaxa, member of the Awatixa Hidatsa, Awikaxa,

1       Nupta and Nup'tadi.

2               I grew up in a log house that my father  
3       built. I grew up in a log house that -- and raised  
4       on my father's ranch. Unfortunately, I am the --  
5       one of the generations that never had the  
6       opportunity to live in the bottom lands of the  
7       Missouri River, but fortunately I'm the one that --  
8       we still had enough of our elders to sit and listen  
9       to the stories. And I grew up within visual site  
10      of the place that you call Killdeer Mountains, a  
11      place that we call Singer Butte, because Singer  
12      Butte is a major place of the gatherings of our  
13      spirits. Where they gather in the spring and the  
14      fall to sing. Where they gather from the cardinal  
15      points of our peoples, the Mandan, Hidatsa, from  
16      the ceremony that we call the earth-naming  
17      ceremony, and their center ceremony is a place that  
18      we call -- you call now the Medicine Hole that  
19      overlooks the place in question of the battle of  
20      the Killdeer Mountains.

21              I heard about this place when I was young,  
22      not from the books, not from the textbooks, not  
23      from history books, but from the lips of the  
24      elders, from the minds and from the ears and from  
25      the voices of what they heard coming from their

1 oral histories that come directly down from  
2 ancestors from the past.

3 And coming up here when I was very young  
4 and seeing the sites and we knew the stories of the  
5 Killdeers, we knew the stories of the battle that  
6 took place -- not with our people, but with the  
7 people, the Lakota and with the Army, but we knew  
8 those stories intimately.

9 In coming up here -- again, I went up  
10 there today to look at it again and to see an area  
11 that was pretty much still intact as the way I  
12 remember it except some of the new farms and  
13 obviously some of the oil that's there now. I just  
14 want to encourage you to take a reconsideration of  
15 not putting what you plan to put there. Because,  
16 again, history and the start of North Dakota is so  
17 unique.

18 My professional life has been within  
19 National Park Service. I retired as the assistant  
20 director of the National Park Service after 35  
21 years of service, and most of my service involved  
22 being a superintendent of some very what I think  
23 important areas of history: Being the  
24 superintendent of Mount Rushmore, being the  
25 superintendent of Little Big Horn Battlefield,

1     leading the charge of putting together the Lewis  
2     and Clark Bicentennial that came through North  
3     Dakota, and putting together a program that we call  
4     the Tent of Many Voices that we called upon the  
5     peoples of this country to tell their history. And  
6     most of our sites were sites that we looked upon  
7     such as the Killdeer Battle, looked upon these  
8     sites as still has the visual integrity that it had  
9     when the actions happened.

10           And we did this not for ourselves, ladies  
11     and gentlemen, we did this for the future, and we  
12     also did this for the peoples that are coming  
13     before us. And I encourage you, when you start  
14     thinking about these areas, to think about those --  
15     not us. Think about those children that are not  
16     yet born, that are not going to have the  
17     opportunity if we put these sites there, if we put  
18     in visual intrusion there, they're not going to  
19     have the opportunity to look at those sites.  
20     They'll go up there today -- or when this happens  
21     to go up there and use their imaginations without  
22     seeing a power line there, without seeing roads  
23     there, without seeing inspectors come through there  
24     when you're trying to view a historic site that is  
25     pure or somewhat pure.

1           And I realize today we can't have pure  
2   visual areas, I know that, but at the same time we  
3   can have areas that we still have today that are  
4   somewhat pure. We can still go up there and use  
5   our imaginations. We can still go up there and  
6   tell stories not only about that battle but about  
7   what happened since that battle and use the basis  
8   of our history from that battle. Not only about  
9   the Indian way of life, but about the early  
10  settlers, the westerners, the ranchers, the people  
11  that had the proud -- proud anchor of this land.

12           So, again, when you start thinking about  
13  this and start looking at your different  
14  alternatives, I encourage you should shy away from  
15  this area. And you said you like to have advice.  
16  I just -- the only advice I have is move it out of  
17  the area, north or south, and so we can again have  
18  the pure area that we can have to take our children  
19  to one of these days and stand in the middle of  
20  that battlefield and talk about this battle and  
21  talk about the people of this battle and what they  
22  were fighting for, the protection of their lands,  
23  fighting for their children and fighting for their  
24  children's children.

25           Thank you for this time.

1 JUDGE FETCH: Thank you, Mr. Baker. Would  
2 you stay just a moment in case there are questions.

3 THE WITNESS: Sure.

4 JUDGE FETCH: Ms. Jacobson, do you have  
5 any?

6 MS. JACOBSON: No, I don't, Your Honor.

7 JUDGE FETCH: Mr. Armstrong?

8 EXAMINATION

9 BY MR. ARMSTRONG:

10 Q. Just for the record, Mr. Baker, what is  
11 your address?

12 A. My address is 24050 Hardesty Road, Rapid  
13 City, South Dakota 57702.

14 Q. And you're here testifying personally?

15 A. I am here testifying personally because I  
16 have a great interest in history.

17 MR. ARMSTRONG: Okay. Nothing further.

18 JUDGE FETCH: Thank you.

19 Mr. Lein?

20 MR. LEIN: No questions.

21 JUDGE FETCH: Commissioners. Commissioner  
22 Kalk.

23 COMMISSIONER KALK: Thank you, Your Honor.

24

25



**EXAMINATION**

**BY COMMISSIONER KALK:**

Q. Thank you, Mr. Baker, for taking the time today to listen to all the company's testimony and coming all the way up here.

The -- just a couple questions, I guess. The -- with your background in parks and rec service, did you participate at all in the scoping meetings and when did you first become aware of this project?

A. I became aware of this project probably a -- within the last year, if not longer. I've always heard -- I became aware of the project obviously with the oil coming into this country.

Q. Sure. Yeah.

A. And I became aware of this project within the last couple months, I would say.

Q. So did anyone that -- contact you about making comments during the scoping of this -- not for the PSC, but for the NEPA?

A. No. They just made me aware of what was going on and if I had -- and I knew I had the opportunity because of my past background in NEPA and the EIS process and different projects I've been involved with in the park service.

1           Q.     Fair enough.   Because that's what -- I  
2     assumed you knew that process very well.

3                     So how would you advise this Commission  
4     when we deal with the federal agencies working  
5     through their NEPA?

6           A.     What I would really advise this Commission  
7     is one thing I haven't heard that much today and I  
8     know there's a process within the NEPA process to  
9     contact the tribes, but I haven't heard much  
10    discussion at all today about contacting the  
11    tribes.   And I know there is a process to do that,  
12    but typically with government agencies, a  
13    government agency will send one letter to a tribe  
14    and think that's good enough.   It is not.   It's my  
15    processes -- it's my understanding and it's been my  
16    experience before -- well, most government agencies  
17    will send one letter to a tribe and the tribe does  
18    not respond and they'll say, Well, they don't care  
19    or they haven't got -- they're doing something  
20    else.   And, yes, they do care.   It's just that  
21    there is a lot of things happening on tribal  
22    reservations, as you folks are well aware, from the  
23    welfare programs, to the socioeconomic programs  
24    that we're trying to get ahead on, and so they have  
25    to do a lot more, which means pick up that phone

1 and get ahold of the tribal agency.

2 Every tribe right now has a culture site,  
3 every tribe has a THPO office, every tribe has  
4 individuals that can respond to that. Even though  
5 this tribe here is not really involved with Fort  
6 Berthold, for example, we're in close proximity.  
7 This tribe that's involved with the battle is the  
8 Dakotas from Fort Yates, from the -- from the  
9 Lakota and the Sioux tribes. And so they can get  
10 ahold of them and still have that help with that --  
11 help the assistants up here with that story.

12 In the same time, you're talking about the  
13 Medicine Hole, I heard about that, and talking  
14 about that view shed, and we have people back home  
15 that still utilize this area as a sacred area.  
16 This is a very, very sacred area to our tribes up  
17 here.

18 And so I very much recommend, very highly  
19 recommend that you get ahold of the tribes and  
20 start working with the tribes as much as you  
21 possibly can.

22 Q. Okay. Thank you, Mr. Baker.

23 Do you view this -- let me rephrase the  
24 question. Do you have any insight as to why there  
25 wasn't movements made to designate the battlefield

1 as a larger historic site until now?

2 A. I don't know that, sir. I can't tell you  
3 that.

4 COMMISSIONER KALK: All right. Thank you,  
5 Mr. Baker. Thank you for your testimony. I really  
6 appreciate you coming up here today.

7 THE WITNESS: Thank you.

8 JUDGE FETCH: Thank you, Commissioner.  
9 Commissioner Christmann.

10 COMMISSIONER CHRISTMANN: I have no  
11 questions, Your Honor.

12 JUDGE FETCH: Thank you.  
13 Commissioner Fedorchak.

14 **EXAMINATION**

15 **BY COMMISSIONER FEDORCHAK:**

16 Q. I was just looking through the NEPA study  
17 because I know there was a listing of the tribes at  
18 some point because I was wondering the same thing,  
19 what has been their involvement, how were they  
20 consulted, what did they say. Here we go.  
21 Consultation. So they were invited to participate,  
22 a whole list of folks, and so I guess we can dig  
23 into the NEPA study to see what was said, if  
24 anything, if they've had concerns.

25 I also -- have you talked to any of the

1 folks from your tribe in North Dakota, others,  
2 saying you were coming here or were they  
3 interested? You know, have you heard from any  
4 folks about this?

5 A. No, I have not talked to anybody yet.

6 COMMISSIONER FEDORCHAK: Okay. All right.  
7 I think that's all my questions. Again, thank you  
8 for coming. Appreciate it.

9 JUDGE FETCH: Commissioner Kalk.

10 COMMISSIONER KALK: Thank you.

11 **FURTHER EXAMINATION**

12 **BY COMMISSIONER KALK:**

13 Q. Mr. Baker, I forgot the most important  
14 question, for me, I guess, anyway. The -- so  
15 you're -- maybe if you could give us on a map what  
16 exactly you're proposing. You're saying keep it  
17 out of -- are you keeping it out of a certain area  
18 or keeping it all out of the proposed study area?

19 A. What I would recommend is keep it  
20 completely off the existing study area that is --  
21 that is identified as the battle site.

22 Q. Okay. So if this existing study area  
23 comes back and it's smaller or larger -- let's say  
24 it comes back larger, I mean how would you  
25 recommend this Commission deal with that because

1 | this is a study that's taking place right now?

2           A.     I would have to look at the study as well,  
3     and with that study -- with whatever you look at, I  
4     would have to concur with that or not concur at  
5     this point in time. I would have to see the study  
6     as well.

7 | COMMISSIONER KALK: All right. Thank you.

8 THE WITNESS: That's a good government  
9 answer.

10 JUDGE FETCH: Any other questions,  
11 Commissioners? I just have one for you.

12

EXAMINATION

13 | BY JUDGE FETCH:

14 Q. You're Mandan, Hidatsa?

|    |                |
|----|----------------|
| 15 | A. Yes, ma'am. |
|----|----------------|

16 Q. Do you know Fannie Whiteman?

17           A.     That is one of my grandmas.

|    |                  |
|----|------------------|
| 18 | Q. She named me. |
|----|------------------|

19 | A. I know. I know.

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20 | JUDGE FETCH: It's nice to see you.
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21 COMMISSIONER CHRISTMANN: As long as we're  
22 getting personal, I believe Mr. Baker had a  
23 spectacular basketball career when I was a young  
24 fellow. And you know, I always remembered the  
25 name, and so I'm kind of honored to meet you today.

1 And thanks for the memories.

2 THE WITNESS: You bet. And with that,  
3 I've got to tell you, my high school is now a state  
4 penitentiary. Off the record, the nuns had guns  
5 back then.

6 MR. ARMSTRONG: Your Honor, I do have one  
7 follow-up.

8 JUDGE FETCH: Sorry. One more question.

9 **FURTHER EXAMINATION**

10 **BY MR. ARMSTRONG:**

11 Q. Mr. Baker, what are your thoughts -- you  
12 heard the testimony of Mr. Miller, I believe, about  
13 a visual assessment and mitigative measures to help  
14 any impact of the visual assessment of the line. I  
15 don't know if you're familiar with what that  
16 involves based on your former position and if the  
17 preservation offices and the associated studies  
18 reveal that they're okay with different colored  
19 poles or, you know, some other mitigating measures.  
20 Did you have any thoughts on that knowing that it's  
21 obviously not completed yet?

22 A. Knowing the fact that it's not completed,  
23 I would think that -- and from my past experience,  
24 that the visual mitigation, if you look at  
25 alternatives, maybe the first alternative would be

1 something that would be completely out of the way,  
2 and maybe that's not feasible at this point in  
3 time. Again, the thing that would help out again  
4 is to include the tribes, and not only the tribes,  
5 the young people who are involved in the THPO  
6 offices, but obviously the traditional people, the  
7 medicine people that could come up there and  
8 actually do their own survey, if you will, from  
9 a -- from a traditional standpoint.

10 I think that would say a lot, and  
11 obviously they would base their conclusions on  
12 considerations of other visual intrusions, if you  
13 will, of the existing oil there now.

14 MR. ARMSTRONG: Thank you.

15 JUDGE FETCH: Any other questions from  
16 either the commissioners or either counsel? Thank  
17 you, Mr. Baker.

18 All right. Whoever wants to proceed next.

19 MR. BARTH: My name is Aaron Barth. I'm  
20 with -- I'll wait to speak into the microphone.  
21 Okay.

22 JUDGE FETCH: Please state your name.

23 **AARON BARTH,**  
24 having been first duly sworn, was examined and  
25 testified as follows:



**STATEMENT**

**BY MR. BARTH:**

MR. BARTH: Yes. Thank you. Thank you, Your Honor. My name is Aaron Barth. I'm the assistant director of North Dakota State University's Center for Heritage Renewal. Director Tom Isern is, as said, the director. He's shaping the young minds of tomorrow at NDSU, so I will be speaking in -- collectively for us.

And just before I start reading this, of course, what -- what academics and folks in the legal profession do and maybe at home, too, is we critique each other and we do that to get a -- you know, to refine the process and such, so there is going to be critiques in here. And I used to work, before I went back to school, to both -- graduate school to do a PhD in history at NDSU, the focus being on the Northern Great Plains and the U.S.-Dakota Wars, I worked for Metcalf Archaeology and was a couple doors down from Kimball as well. So I have respect for Kimball.

Basin Electric, I worked on projects for them, as well, and it's always good to work with them, and with the Historical Society, too.

So with that said, the abstract here. So

1 the Killdeer Mountain Battlefield is where Dakota  
2 and Lakota fighters fought the Northwest Expedition  
3 of Brigadier General Alfred Sully.

4 It's an exceedingly significant historic  
5 site worthy of preservation and respect.  
6 Unfortunately, proposals here under review call for  
7 a power transmission line to be built across the  
8 core of the battlefield. This is an unacceptable  
9 denigration of the integrity of the site.

10 Further, the study documents on which the  
11 proposals are based are unacceptably deficient.  
12 The Center for Heritage Renewal applauds the heroic  
13 efforts of Basin Electric to build the  
14 infrastructure of development and life in western  
15 North Dakota. Its concern is with the heedless and  
16 needless destruction of heritage resources of  
17 incalculable value, specific to the historic site  
18 of the Battle of Killdeer Mountain on July 28,  
19 1864, which arguably is the Gettysburg of the Great  
20 Plains.

21 The center was established by the State  
22 Board of Higher Education on May 17, 2006. Its  
23 authorized mission is to, quote, identify, preserve  
24 and capitalize on the heritage resources of North  
25 Dakota and the northern plains. The center is

1 charged both to assist -- and I quote again, assist  
2 state agencies, private organizations and the  
3 people of the state and region in generating  
4 prosperity and quality of life from heritage  
5 resources, and also to provide, quote, expertise  
6 and action in the fields of historic preservation  
7 and heritage tourism. Because of its express  
8 mission and objectives, the Center for Heritage  
9 Renewal provides this submission to the Public  
10 Service Commission.

11 JUDGE FETCH: Mr. Barth, you have -- what  
12 you have passed out to the Commission --

13 MR. BARTH: Yes.

14 JUDGE FETCH: -- is a -- what is this, ten  
15 pages?

16 MR. BARTH: Mm-hmm.

17 JUDGE FETCH: And did you prepare this?

18 MR. BARTH: Yes. It is coauthored by Tom  
19 Isern and myself.

20 JUDGE FETCH: Okay. If you want to submit  
21 this for the record, you do not need to read this  
22 document into the record.

23 MR. BARTH: Okay.

24 JUDGE FETCH: You -- is there any  
25 objection to this being entered as an exhibit?

1       Either counsel?

2               MR. ARMSTRONG:   Not here.

3               JUDGE FETCH:    Pardon?

4               MR. ARMSTRONG:   None here.

5               JUDGE FETCH:    Ms. Jacobson?

6               MS. JACOBSON:   No, Your Honor.

7               JUDGE FETCH:    All right.   I'm going to  
8 admit this into the record as Exhibit 32.

9               MR. BARTH:    Thank you.

10              JUDGE FETCH:   And the -- I will permit  
11 you, however, if you want to give a brief  
12 summation.

13              MR. BARTH:    That's a good idea.   Yeah.

14              JUDGE FETCH:   Thank you.

15              MR. BARTH:    Yeah.   There's academic  
16 brevity and then there's actual brevity, so I --  
17 right.

18              So we have on page four -- in fact, we  
19 have five points, the significance of the battle,  
20 and these outline exactly the players involved and  
21 why the battlefield boundaries -- the proposed ones  
22 as you see in the purple-white dashed outline are  
23 the way they are.   And just in listening to all  
24 these conversations, too, something that this  
25 doesn't allude to, we hear that there is a Class I

1 literature search that was done at the State  
2 Historical Society.

3 And what I think some of -- some of the  
4 confusion here is that the Class I literature  
5 search, when you do that, what your -- the results  
6 that that produces is all of the archaeology sites  
7 that are attached to each township, section and  
8 range. What isn't attached to that are all the  
9 last 150 years of U.S.-Dakota War historiography,  
10 both in academic, regional, county histories.  
11 There's a bibliography at the end of this as well.  
12 And so a lot of that stuff is not going to be  
13 attached to those literature searches.

14 So when Metcalf goes or Basin Electric  
15 goes and they do a literature search, it's, you  
16 know, Paul Beck's new book from the University of  
17 Oklahoma Press, 2013, right, on the U.S.-Dakota  
18 Wars, *Columns of Vengeance*. I'm sure everybody has  
19 it on their shelf already. But that's not going to  
20 show up in these Class I searches.

21 But, you know, and maybe this is -- speaks  
22 to a greater divide between the social sciences and  
23 the humanities, and maybe the onus is on us after  
24 this to have a greater conversation with one  
25 another too.

1                   So the Class I search is going to yield  
2   the archaeology, but not 150 years of U.S.-Dakota  
3   Wars history.

4 I guess if folks want to question me or I  
5 could just go back to Fargo now too.

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6 | JUDGE FETCH:  Not quite yet.
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7 | MR. BARTH: Okay.

8 JUDGE FETCH: All right. At this time,  
9 Ms. Jacobson, do you have any questions?

10 MS. JACOBSON: I don't, Your Honor.

11 JUDGE FETCH: Mr. Armstrong?

12 MR. ARMSTRONG: Yes.

13

EXAMINATION

14 BY MR. ARMSTRONG:

15 Q. Mr. Barth, are you involved in the study  
16 in this area in some fashion?

17           A.     Yes.  I'm one of the research assistants  
18     for the recent grant to the National -- that we  
19     received, NDSU received from the National Park  
20     Service.

21 Q. You heard Mr. Miller talk about, I guess,  
22 what his understanding is is that study is --

|    |           |
|----|-----------|
| 23 | A. Right. |
|----|-----------|

24 Q. I don't want you to repeat it, but is  
25 there any -- could you explain to us a little bit

1 more what it is or did he pretty much hit it on the  
2 head?

3 A. Well, yeah. In 2010 a report was released  
4 by the National Park Service, and it was a  
5 collaboration between the State Historical Society,  
6 the National Park Service -- I think there are some  
7 other names on there as well -- but they wanted to  
8 delineate just through maps what might be the  
9 broader area of this battle. There is 4,400  
10 combatants. And this is -- these were combatants  
11 before General Sully turned the cannon on the women  
12 and children of the native encampment as well.  
13 Sully was out here for total war, or today what we  
14 call genocide or attempted genocide.

15 So those sorts of things were going on at  
16 Killdeer as well. Did I -- I'm sorry,  
17 Mr. Armstrong.

18 Q. Well, I'm just wondering in general what  
19 is the study, what's the ultimate purpose of the  
20 study, what's the end game of the study?

21 A. Right. The end game is to get this on the  
22 radar of the National Park Service so we don't have  
23 to run into something like this again.

24 Q. When -- when I think of a study and I look  
25 at this map, I guess my initial impression and like

1     you were talking about academics and legal -- this  
2     may be legal logic, but my impression from looking  
3     at the map is a study that started off with a wide  
4     area --

5           A.     Mm-hmm.

6           Q.     -- and probably bring it down into --

7           A.     Yeah.

8           Q.     -- a more defined area.

9           A.     Exactly. And -- and we were hoping that  
10     we'd be able to talk to all the different private  
11     landowners involved before it got this public;  
12     right? Yeah. This won't leave the room; right?  
13     Yeah, I'm just kidding.

14           JUDGE FETCH: This is a public hearing,  
15     Mr. Barth.

16           MR. BARTH: Right. Exactly. Yeah.

17           JUDGE FETCH: And it will be widely  
18     publicized.

19           MR. BARTH: Right. Right. Yeah. But,  
20     yeah, so that has to be -- you know, you might get  
21     some push and pull a little bit on the battlefield  
22     area, but what is identified there is the core area  
23     in the eastern side where Sully engaged. And for  
24     the sake of brevity, I'll say Native America  
25     engaged Native America. And then as you see in the



1 western part is carved out where the retreat -- or  
2 the perceived retreat.

3 The idea of Native America was to draw  
4 Sully into the Killdeer Mountains and effectively  
5 use them to their advantage. This didn't work out  
6 as best planned, but -- and we can also think of  
7 Killdeer Mountains as the prologue to the Battle of  
8 Greasy Grass or what's commonly known as Little Big  
9 Horn, too, 12 years later.

10 Q. So --

11 JUDGE FETCH: Might it be helpful to put  
12 that map back up so -- is there any way --

13 Q. (MR. ARMSTRONG CONTINUING) I just wanted  
14 to clarify for the record that the map we're  
15 looking at is Exhibit 18. I don't --

16 A. Right.

17 Q. I don't have a way to do that, but I think  
18 there is equipment earlier that had it higher,  
19 but -- so how long is it supposed to take?

20 A. Right. I'd say about two years. Two  
21 years, maybe longer.

22 Q. And that study is through the State  
23 Historical Preservation Office or not?

24 A. No. This is -- this is something through  
25 the National Park Service, the American Battlefield

1     Protection Program, and that's the formal title of  
2     it. And it -- it draws from a larger national  
3     process that looks at Civil War battle sites.

4           Q.     And as I understand it, though, if you  
5     want to get it a designated site, that would have  
6     to go through the State Historical Preservation  
7     Office?

8           A.     Yes. I mean there are numerous state and  
9     private entities that need to be -- you know, we  
10    have to have a dialogue with before it gets to  
11    that, but yes.

12          Q.     In order to get designated, though,  
13    doesn't it have to come --

14          A.     It'll have to --

15          Q.     -- from the state?

16          A.     It'll have to go through a review board.  
17    Yeah.

18          Q.     Which is through the State Historic  
19    Society and the State --

20          A.     Yes.

21          Q.     -- Historic Preservation Office?

22          A.     Yes.

23          Q.     And, you know, we have some kind of  
24    preliminary, at least, recommendations from the  
25    State Historic Preservation Office about ways to

1 mitigate any work in that area. Have you had a  
2 chance to look at that or consider those or have  
3 conversations with that office about that?

4 A. Not entirely, no. This thing turned  
5 public. We were -- I think we heard about the  
6 proposed transmission line whenever Lauren's story  
7 broke in *The Bismarck Tribune* too.

8 Q. Is -- is your concern -- well, I guess  
9 first of all, are you here testifying on behalf of  
10 yourself or are you testifying on behalf of --

11 A. No. This is North Dakota State  
12 University's Center for Heritage Renewal.

13 Q. Okay. So you're here testifying on behalf  
14 of the Center for Heritage Renewal?

15 A. Yes. Yes.

16 Q. Is it your -- is your concern with the  
17 site that -- the visual impact or what is the -- I  
18 mean is it -- I guess you didn't say in your  
19 testimony. Is it your testimony that you don't  
20 want this line through this area? Is it your  
21 testimony that something needs to be done more  
22 before it goes through this area? What is --

23 A. Oh, for the sake of brevity, I was just  
24 adhering to Your Honor's --

25 Q. Sure.

1           A.    Yeah, it is in there, though.

2           Q.    Okay.  And what is that, I guess,  
3           position?

4           A.    Well, ultimately we need to slow down here  
5           and figure out a better route for that line that  
6           you see going through this, and Mr. Baker hit it  
7           right on the head.

8           Q.    If there are, I guess, mitigation measures  
9           proposed by the State Historic Preservation Office  
10          that they are comfortable with, would you -- you  
11          know, I guess I'm talking a little hypothetical  
12          here because we don't necessarily know what they  
13          are, but would your reaction be to be comfortable  
14          with those or would you want to see what they are  
15          first, I guess?

16          A.    I'd want to see what they are first  
17          because, you know, the multivocal nature of history  
18          in the democratic -- it's a more democratic process  
19          nowadays, so we need to talk to people like  
20          Mr. Baker and we need to talk to people down in  
21          Standing Rock and everywhere else, landowners and  
22          you name it, to bring everybody into the fold  
23          before we figure out --

24          Q.    Is there any particular reason that your  
25          center wasn't involved in the EIS process or

1     commenting on that when this was going on back in I  
2     think 2010, 2011?

3           A.     I can't say. You know, I -- I can't speak  
4     for anybody else that -- I would be only on the  
5     receiving end, so I can't speak.

6           Q.     I guess as far as you, then, were you just  
7     not aware of it or --

8           A.     I was aware of the 2010 National Park  
9     Service boundaries, the report that was released.

10          Q.     I apologize, there's a fly that --

11          A.     I've got one over here too.

12          Q.     -- doesn't like my voice.

13                 MR. ARMSTRONG: That's all I have for now.

14                 MR. BARTH: Thank you.

15                 JUDGE FETCH: All right. We'll turn to  
16     the Commission. Commissioner Kalk.

17                 COMMISSIONER KALK: Thank you, Your Honor.

18                                                 **EXAMINATION**

19     **BY COMMISSIONER KALK:**

20           Q.     Thank you, Aaron, for your testimony. A  
21     little more, I guess, on your credentials. So  
22     you -- have you finished your doctorate yet or are  
23     you working on it or --

24           A.     I'm a -- I went from PhD student to  
25     candidate just a couple months ago. I have --

1     since I was trained as an academic, I'll talk about  
2     one of my academic publications, but I have an  
3     article out this month on Whitestone Hill, which is  
4     the year prior to Killdeer. Yeah.

5         Q.     Okay. So that was my setup to this: You  
6     already answered one of my questions about when did  
7     you first become aware of the project, but when did  
8     you start this paper?

9         A.     This paper here?

10        Q.     The one you're -- you admitted today.  
11   When did this paper start?

12        A.     About a day and a half ago.

13        Q.     So, you know, this is my job to be  
14   critical; right?

15        A.     Certainly.

16        Q.     I also got one of those doctoral things  
17   from NDSU, too, and the first thing they would tell  
18   me is they'd say you can't put a paper together  
19   like this in two days. How would you respond to  
20   that?

21        A.     I would say Tom Isern and I did.

22        Q.     Okay. So what did you use for -- I'm  
23   questioning your data and your references.

24        A.     Sure. The bibliography?

25        Q.     Yep. I mean it's two days, right, so I'm

1 not -- I just --

2 A. Oh, well, we have -- I mean we have -- Tom  
3 Isern runs, and I, the system as well. We run  
4 regular seminars on the U.S.-Dakota Wars. So we've  
5 already had an investment in -- in this project,  
6 and we also have lines in the water with the North  
7 Dakota Humanities Council to engage the public in  
8 broader conversations like this.

9 Q. Okay.

10 A. So we've been putting bibliographies  
11 together for -- that's a good question, though.  
12 Thank you.

13 Q. But I think it's my job to try to clarify  
14 the record for things that might or might not come  
15 down the road, but what I think I've heard you say  
16 is that you have a body of knowledge that allowed  
17 you to put this together very quickly.

18 A. Mm-hmm.

19 Q. You just shaped it into a different  
20 format.

21 A. Certainly. Yeah.

22 Q. Okay. The -- I like your -- I appreciate  
23 your Gettysburg of the plains. That's a very -- I  
24 mean it's a novel concept, but when I was a young  
25 lieutenant stationed out in Quantico, you know, we

1       toured the battlefield of Gettysburg and we toured  
2       Chancellorsville and a bunch of those places, and  
3       there's power lines and highways that run right  
4       through those battlefields. And they prioritized  
5       based on a lot of different factors what areas they  
6       were to preserve the most, but they still had to  
7       build roads.

8           A.     Right.

9           Q.     So wouldn't it seem reasonable that we --  
10       we still were able to build some roads and some  
11       power lines and some pipelines out here and still  
12       preserve the nature of the battlefield?

13          A.     Well, in the eastern third of the country,  
14       I think it's a little more population congested;  
15       whereas, in western North Dakota, it seems like  
16       we've got a lot more leeway and room to maneuver.

17                 You know, there's been suggestions maybe  
18       about Highway 200, along that corridor. And,  
19       again, as Mr. Baker alluded to, I mean we're  
20       dealing with -- this is a fraction of the land in  
21       western North Dakota. Can we possibly find another  
22       way around?

23                 And we want to be as constructive as  
24       possible too. We're not by any ways trying to be  
25       obstructionist with construction or getting people



1 electricity by any means. We, you know, applaud  
2 the development in western North Dakota, but can we  
3 find some other way around this --

4 Q. Sure.

5 A. -- this area here.

6 Q. Because I certainly can't read the future,  
7 but the way I see this playing out is that the U.S.  
8 Fish and Wildlife and the Corps of Engineers are  
9 really going to get down and figure out what they  
10 think, and that's going to become almost the lead  
11 document --

12 A. Mm-hmm.

13 Q. -- in some of the decisions that might  
14 follow.

15 A. Yeah.

16 Q. But on that note, how are you going to get  
17 this information to the U.S. Fish and Wildlife  
18 Service, to the Rural Utilities Services so they  
19 can include it in their decision process? Because  
20 if we include it in ours but they don't include it  
21 in theirs, we could have a big gap there.

22 A. Another one of our research associates,  
23 Dr. Richard Rothes, is in contact with the USDA,  
24 RUS as well. And so those are conversations that  
25 haven't happened yet, but we are in contact with



1           Q.    Is there some old -- is there some history  
2           that's documented that you researched and, oh,  
3           here's the line or what?

4           A.    Well, yeah. The primary accounts are in  
5           the official Civil War record and that's available  
6           online. If -- I usually go to -- like Cornell  
7           University has it online, but it was developed in  
8           conversation -- like that outline, that boundary  
9           was -- I was on a part of the team that developed  
10          that. That was collaboration between the National  
11          Park Service and the State Historical Society. And  
12          they would have defaulted to again the primary  
13          sources, the Civil War record.

14                So Sully would have his -- General Sully  
15          and his officer core were going to have official  
16          reports that they submit up the chain of command to  
17          John Polk in Milwaukee and then that's going to  
18          eventually go to D.C.

19                And so these are -- these are the notes or  
20          the documents we're looking at. And then there's  
21          the other aspects, too, where they're talking about  
22          the material culture, where you actually after you  
23          chatted with landowners and if everything is okay  
24          with everybody, we're talking multiple  
25          conversations here, then you do that on-the-ground

1 metal detector survey or, you know, to search for  
2 the bullets, for the -- for anything, any piece of  
3 material, culture that -- and there's -- you know,  
4 there's people -- private land out there too. So  
5 there's going to be conversations with private  
6 landowners who just from working their land,  
7 they're the ones who know it best.

8 Q. Okay. And then as I look through at these  
9 landowners, of course the ones that are identified  
10 on my map are -- it appears are the ones who this  
11 transmission line would cross, not the other ones.

12 A. Right.

13 Q. And I see about seven or eight of them.  
14 And so in this, what is it, roughly 30 square miles  
15 there's quite a few more. Did those landowners  
16 kind of get together and petition the center to try  
17 and get this land into -- into this study area? Is  
18 that who brought this forward is the landowners?

19 A. I -- I think -- no. I can't speak for the  
20 landowners. How this particular project came up is  
21 that I was a researcher and a coauthor on another  
22 project at New Ulm, Minnesota, which is the  
23 prologue to what we're seeing right here, as well,  
24 with the American Battlefield Protection Program,  
25 so in New Ulm, Minnesota. So I worked on that one

1 as well. And just keeping lines of information  
2 open with the National Park Service, we suggested  
3 to them that, hey, there's -- you know, it's as  
4 though when you're in Minnesota that the history  
5 stops in Minnesota. And so we said, no, there's a  
6 whole thing going on in North Dakota and this  
7 needs -- this is important stuff, and they loved  
8 it.

9 And so we said, okay, from here let's  
10 proceed and -- and we'll try to get this  
11 battlefield protection program study off the  
12 ground, and it wasn't meant to go down like this.

13 Q. So -- so we, being you, wanted to get it  
14 going. Would you say these landowners generally  
15 are -- are happy and excited about this study?

16 A. Maybe not right now, but I don't know.  
17 We -- we -- we intend to talk to each individual  
18 landowner.

19 Q. Well, how many have you talked to so far?

20 A. We haven't talked to any specific about  
21 this study because we just received word two --  
22 about what, in July -- or two weeks ago that we  
23 actually got the grant.

24 Q. Excuse me a minute. You're telling me  
25 that you want us to be going 200 miles away to

1 Standing Rock and talking to them about what to do  
2 here --

3 A. Yes.

4 Q. -- when you're trying to implement a study  
5 and impose it on landowners who have had this land  
6 for over a century and you haven't talked to any of  
7 them?

8 A. We're not trying to impose anything on  
9 anyone. Yeah.

10 Q. Well, you're trying to do something and  
11 you said you haven't talked to any of them yet?

12 A. It got -- it got public before we had a  
13 chance to talk to individual landowners.

14 Q. But you had time to draw a detailed line  
15 like that and figure this all out and do this  
16 research and write this paper, but not time to talk  
17 to any of the landowners?

18 A. I believe -- well, I can't speak for Isern  
19 or Rothes since they aren't here, but we have full  
20 intention of having conversation with each -- each  
21 landowner. Yes.

22 Q. Well, being one, not in this area, but  
23 being one --

24 A. Mm-hmm.

25 Q. -- I would be rather offended if -- if a

1 government agency took something this far without  
2 having talked to me first.

3 COMMISSIONER CHRISTMANN: I have no other  
4 questions. Thank you.

5 JUDGE FETCH: Thank you.

6 Commissioner Fedorchak.

7 COMMISSIONER FEDORCHAK: Thank you, Aaron.

8 **EXAMINATION**

9 **BY COMMISSIONER FEDORCHAK:**

10 Q. Let me ask you a couple questions first  
11 about your conclusions of -- now we have gnats.  
12 We've had bees, flies and gnats.

13 -- your criticism of the process. Hold on  
14 a second here. I've got it outlined. The first --  
15 under the deficiencies of the process, and you lay  
16 out a whole bunch of them and I appreciate this  
17 information. To the extent that we can effect  
18 this, I will take it under advisement. My sense is  
19 that you all who are responsible for notifying  
20 folks like us about these historical resources need  
21 to get together and improve the process or at least  
22 recommend to us how to make it better.

23 A. I agree.

24 Q. Because we count on you and put a lot of  
25 faith in the SHPO designations that these things

1     have been appropriately looked at by the experts  
2     who make this their career. We don't -- we can't  
3     do all that. We rely on the experts to tell us  
4     what's out there.

5             So this is a very disturbing unfolding of  
6     events in the last week and a half, and I do hope  
7     that you all in the historical and cultural  
8     preservation world get together and come up with a  
9     process to avoid this in the future.

10            That said, I realize that's not -- that's  
11     not your fault and maybe it's a good doctoral  
12     presentation -- doctoral topic for you.

13            A.     I'm used to being critiqued.

14            Q.     Anyway, you say the minimal level --  
15     this -- what was done on the Class III literature  
16     search, the surveys, does not even meet the minimum  
17     requirements for a level one survey because it  
18     lacks the required review of the literature that  
19     guidelines say should proceed and guide field  
20     survey work. Can you -- have you already addressed  
21     that?

22            A.     Yes. Yeah.

23            Q.     Okay. That's the whole lack of research.  
24     But is that required or is that just how it should  
25     be done?



1           A.    In -- I can't speak for the historical  
2           society, you know, their regulatory agents, but as  
3           I see it, it's because the local county histories  
4           and the state histories and the national histories  
5           aren't fixed to that -- that device in the Class I  
6           literature search. And so what would only come up  
7           would be the archaeology, you know, the material  
8           culture --

9           Q.    Yep.

10          A.    -- which is -- which is -- it's different,  
11          but it's in the same realm; right?

12          Q.    But it's still considered a legitimate  
13          Class I literature search the way it's being  
14          performed today?

15          A.    I disagree. The center disagrees.

16          Q.    Okay. But do the others who deem these  
17          things, Class I literature searches disagree or  
18          agree? I mean somebody has a standard for this;  
19          right?

20          A.    Yeah. But it's also specific to a firm  
21          project to project. So it's -- you know, that's --  
22          so you might have one project where it delves in  
23          this or that way and you get cultural resources  
24          addressed much more rigorously; whereas, another  
25          project might be less sensitive.

1           Q.     Okay.

2           A.     Yeah.

3           Q.     So there isn't a set standard. It sort of  
4 is up to the experts involved to determine what's  
5 needed?

6           A.     And there's the regulatory reviewer,  
7 right, for the historical society, who's going  
8 to -- yes.

9           Q.     All right. My other question comes from  
10 the testimony that you provided that says, "The  
11 points of historical significance associated with  
12 the battle of Killdeer Mountain are many and  
13 cumulative, in sum making the Killdeer Mountain  
14 Battlefield the single-most historic site in North  
15 Dakota."

16          A.     Mm-hmm.

17          Q.     Do you really stand by that statement that  
18 this is the single-most historic site in North  
19 Dakota?

20          A.     Well, yeah. It was the military that was  
21 ordered out here to put down or attempt to put down  
22 what was the -- then called the Minnesota Uprising  
23 in the Minnesota River Valley. And that event will  
24 cleared it out and Native America was eventually  
25 forced on reservations and it resulted in forced

1 assimilation and these sorts of things and then  
2 opened the way for all of our -- I'm from North  
3 Dakota originally -- great grandfather, one of them  
4 from Sweden, another German-Ohioan, as well, from  
5 Braddock and up around New Rockford and such.

6           So it opened the way for there's no room  
7 in what we call the old world, right, and so they  
8 slipped in behind that. And so, yes, it was a  
9 very -- this site is a reflection -- direct  
10 reflection of that.

11          Q.    Okay. Again, concerning that the  
12 single-most historic site in North Dakota wouldn't  
13 show up on the State Historical Office's radar  
14 prior to one week before a power line going through  
15 it, something seems off there.

16          A.    Yeah.

17          Q.    Okay. Then in your project you guys are  
18 dealing with a bunch of private landowners that own  
19 most of the area within that -- that's been  
20 designated within the purple-and-white dash. Your  
21 goal is to get this -- you said to get on the radar  
22 of the National Park Service, but what can you  
23 like -- do you have a long-term goal of trying to  
24 acquire these lands or how -- I guess it's hard for  
25 me to imagine how you're going to preserve them

1     when they're owned by people who have the right to  
2     develop them however they want today.

3           A.     Oh, certainly. Yeah. I mean this -- this  
4     isn't any sort of attempt or anything like that  
5     dealing with like -- the North Dakota private  
6     property rights are protected by the constitution,  
7     and, of course, we're -- NDSU obviously respects  
8     that. I mean not only respects that, we abide by  
9     that. It would be impossible to do anything to  
10    private property rights.

11                  And so what this is is -- at this stage is  
12    outlining it just on a map, and I realize that that  
13    map over there with names affixed to it is a very  
14    personal thing too. And, again, I'm sorry this is  
15    taking place in this -- I truly am sorry this is  
16    taking place publicly like this rather than -- but,  
17    you know, life -- life happens, so --

18           Q.     Yeah. And, well, you know, one of these  
19    landowners could go put a water park in there --

20           A.     Certainly.

21           Q.     -- right in the middle of it --

22           A.     Certainly.

23           Q.     -- and that wouldn't require public  
24    hearing.

25           A.     Mm-hmm.

1           Q.     And then what?

2           A.     I think you'd have a water park then.

3     Yeah.

4           Q.     Okay.  So you're hoping to just get them  
5     informed, knowledgeable, help get their support in  
6     preserving these areas?

7           A.     Yes.  Yeah.  Until a broader -- not just a  
8     national story, but even a global story that's  
9     centered right here in west central North Dakota.

10           COMMISSIONER FEDORCHAK:  Okay.  All right.  
11     Thank you for your participation and coming all the  
12     way out here.  It's -- you know, again, this is a  
13     balance.  It strikes me as a balance in this regard  
14     of protecting history and our historic treasures  
15     while also creating a future for people in the  
16     future to create a history.  So we're in the --  
17     again, a balancing stage here.

18           THE WITNESS:  Yeah.  It's a tightrope.  
19     Yeah.  Thank you so much.  Yeah.

20           JUDGE FETCH:  Commissioner Kalk, did you  
21     have a follow-up?

22           COMMISSIONER KALK:  Just a follow-up  
23     question and comment.  Just -- the first is a  
24     comment.  Just -- you know, Aaron, thank you for  
25     putting this together.  You know, one of the

1 critiques I've always had about academia even being  
2 part of it was people in academia do research that  
3 doesn't do anything oftentimes. Well, you've done  
4 some research here that's going to definitely do  
5 something. So I appreciate your work putting this  
6 together. I appreciate bringing it before us  
7 today, and I guarantee it will do something in this  
8 process.

9 MR. BARTH: My pleasure. Yeah.

10 **FURTHER EXAMINATION**

11 **BY COMMISSIONER KALK:**

12 Q. The last question I had, though, was have  
13 you looked at this entire route and is there any  
14 other areas of concern you'd like to make us aware  
15 of besides this Killdeer Battlefield as potentially  
16 significant that perhaps someone has missed?

17 A. Right. And when I say this, I only speak  
18 to Sully's actions in July of 1864. So as that  
19 stands right there, we're comfortable with -- with  
20 as that boundary stands there. But, you know, as  
21 these processes unfold, you know, some -- there  
22 might be -- there might be --

23 Q. There may be more battlefields out there.

24 A. Right. There might be a landowner that  
25 says, Hey, I found this on my land, and --

1 Q. Sure.

2 A. -- we could -- you know, it doesn't  
3 necessarily mean the boundaries have to be  
4 expanded, but we could know about that at least  
5 now, yeah, the new information out there.

6 Q. But back to the point I'm getting to --

7 A. Right.

8 Q. -- this is the only area that you have any  
9 concern about as far as historical battlefields  
10 dealing with General Sully?

11 A. Yes.

12 COMMISSIONER KALK: Okay. Thank you.

13 JUDGE FETCH: And Commissioner Christmann,  
14 did you have a follow-up?

15 COMMISSIONER CHRISTMANN: Yeah, just a  
16 comment, Your Honor. Mr. Barth, I want you to know  
17 that even though I am opinionated, I am fair. In  
18 case you leave for NDSU before we get done tonight,  
19 rest assured, when Basin Electric's right-of-way  
20 supervisor, Mr. Murray, gets up there, if I find  
21 out that he's got that yellow line drawn across  
22 there and hasn't talked to any of those landowners,  
23 I'm going to be just as hard on him as I was on  
24 you.

25 MR. BARTH: Okay. I appreciate your

1 justice.

2 JUDGE FETCH: Thank you.

3 Anything else, Commissioners?

4 Either counsel?

5 MR. ARMSTRONG: Yeah, Your Honor.

6 JUDGE FETCH: Mr. Armstrong.

7 MR. ARMSTRONG: Ms. Jacobson would be  
8 before me if she --

9 MS. JACOBSON: Sure. I just have one  
10 question.

11 EXAMINATION

12 BY MS. JACOBSON:

13 Q. Mr. Barth, earlier in your testimony you  
14 talked about a 2010 document from the National Park  
15 Service that defined the boundaries. Do you have a  
16 more formal title or what is the title of that  
17 document that --

18 A. Yeah. It falls under the language used by  
19 the National Park Service, so it would be under  
20 like battlefield surveys of North Dakota. I'd be  
21 happy to follow up and get that information to  
22 everyone here. I don't -- it was kind of a  
23 scramble to get out here, but --

24 Q. Sure. So it was a document from the  
25 National Park Service?



1           A.     It's a public document and you could  
2     access it.  Anybody could access it and download  
3     it.

4 Q. Okay. And so that was the first time that  
5 this boundary area was defined or what was the --  
6 what's the significance?

7 A. Published, right. Yeah. Does that  
8 answer?

9 MS. JACOBSON: Yes. No further questions.

10 JUDGE FETCH: Would you like that as a  
11 late-filed exhibit, Ms. Jacobson?

12 MS. JACOBSON: No, Your Honor. I was  
13 just -- he talked about a document, so I wanted to  
14 make sure I knew --

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15 JUDGE FETCH: All right.
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16 MS. JACOBSON: -- which one specifically  
17 he was talking about.

18 JUDGE FETCH: And if it's a public  
19 published document, really it doesn't need to be  
20 entered as an exhibit.

21 Mr. Armstrong, you had a question.

22

FURTHER EXAMINATION

23 BY MR. ARMSTRONG:

24 Q. Mr. Barth, I'm trying to get an idea of --  
25 as I understand it, the ultimate goal of your

1 project -- your group's project is to get the  
2 attention -- I think you said get this on the radar  
3 of the National Park Service?

4 A. Well, yeah. To bring this story into the  
5 broader fold of the nation as things are happening.

6 Q. And would that be to -- I mean the  
7 ultimate goal would be to get registered as a  
8 national historical site?

9 A. Yes.

10 Q. Do you know if having a power line through  
11 that would prevent it being registered as a  
12 national historic site?

13 A. Some of that's alluded to in the document  
14 in front of you, just issues of integrity and view  
15 shed and these sorts of things.

16 Q. Okay. So -- well, what's your group's  
17 analysis on whether it would affect that? I mean  
18 would it affect it or not? You heard Mr. Miller's  
19 testimony that he didn't believe it would.

20 A. Right. And then Mr. Baker countered that.  
21 Right. But there is -- it's -- it's in here. As  
22 far as influencing it, there's actual language from  
23 the National Park Service, as well, and the  
24 language starts at the bottom of page six and it  
25 ends at the top of page seven, and I'll just -- if

1 I may, I'll read that real quick.

2 JUDGE FETCH: Go ahead.

3 MR. BARTH: So it says, "Significant  
4 changes in land use since the Civil War do diminish  
5 the integrity of the battlefield landscape. Heavy  
6 residential, commercial and industrial development;  
7 cellular tower and wind turbine installation; and  
8 large highway construction are common examples of  
9 such changes. Battlefield landscapes with these  
10 types of changes are generally considered as having  
11 little or no integrity."

12 Q. Okay. And what I'm wondering is as I look  
13 at the map Exhibit 18, at least how I'm familiar  
14 with those maps, I can see a lot of area on there  
15 that looks to be actively farmed, disturbing the  
16 land, so on and so forth. Would you, I guess,  
17 generally agree with that? Have you been out to  
18 this area yourself personally?

19 A. I have. Yeah. Just last April I was at  
20 the -- there's two soldier graves out there.

21 Q. Is it an area that's being farmed?

22 A. Yeah. There's farming and there's cattle  
23 ranching going on too.

24 Q. And at least as I read SHPO's letter from  
25 yesterday, what they're basically saying is we

1 recommend Basin do additional archaeological  
2 studies at the sites where any poles would go,  
3 which would be magnetometer, through the whole  
4 quarter and right-of-way and then additional  
5 studies at the actual sites where they dig, and  
6 also do a visual assessment analysis and then  
7 remove the Gumbo Station. As I understood Basin's  
8 testimony, they're willing to do at least those  
9 three things.

10 If it comes out that the Historical  
11 Preservation Office determines that that is enough  
12 to have no historical properties affected, a  
13 recommendation of that, and that's also the entity  
14 that would then further the application for it  
15 being registered as a historic site, I guess my  
16 question is why wouldn't -- why would that be  
17 something that we shouldn't take into  
18 consideration?

19 A. Because it's one hypothetical. We could  
20 have future conversations easily with Basin and the  
21 historical society and maybe come to some -- you  
22 know, some constructive solution. I mean it's just  
23 through dialogue, right, that -- and with -- with  
24 everybody through this process. Yeah.

25 Q. And I'm just wondering if there's anything

1 in -- and I understand there's more dialogue to  
2 take place --

3 A. Mm-hmm.

4 Q. -- but there is a government agency who is  
5 charged with determining, you know, and being  
6 consulted about whether a historical property is  
7 affected by the manner of construction, what's  
8 being constructed, what mitigating measures are in  
9 place. What -- why wouldn't that be something we  
10 should be guided by?

11 A. Well, up to this point as of what, just in  
12 July or a couple weeks ago, Basin was made aware of  
13 this and we in turn were made aware of this power  
14 line as well. So, you know, I can't sit here -- I  
15 don't want to sit here and say, Well -- you know,  
16 start pointing fingers and such. We're at the  
17 point where we are. So I'd really like just to  
18 have conversations.

19 Q. Well, I mean I understand you may like  
20 that, but you mentioned right at the beginning how  
21 you thought it was good to have a give-and-take  
22 about everybody's processes and comment on them.  
23 So I'm wondering if you're aware of some process  
24 within the State Historic Preservation Office that  
25 if they concur with the mitigation measures, why

1       that process should not be enough, I guess.

2           A.     Right. And I can't speak for them, yeah,  
3       and them -- whether they sign off on a particular  
4       part or not, and it's best to let them --

5           Q.     Ultimately what I'm kind of getting at is  
6       whether the real issue with this area is just that  
7       you can see it and it's in a potentially historic  
8       area. Is that what it is?

9           A.     Well, the -- yeah. I mean what was  
10      alluded to earlier, too, is that they have the  
11      ability to take photos and photoshop these -- I'll  
12      use the -- for the photoshopping. They can  
13      photoshop these 110-foot-tall poles in and then we  
14      can look at it then, but by that point it already  
15      seems like it's -- you know, what -- I've been a  
16      part of these processes up to this point, too, but  
17      it seems like by the time we're looking at those,  
18      everybody's already ready to put the poles in and  
19      such. Maybe that is something that can take place  
20      at an earlier stage in future processes or  
21      something.

22                   But, yeah, it's going to influence the  
23      integrity. Now, if they get built, we'll go  
24      forward with our research and such, but it will be  
25      up to a future state review board to see whether or

1 not it has integrity to be on the National  
2 Register.

3 Q. And that's -- I guess you maybe answered  
4 my last question was, I mean as I understand it, if  
5 this power line is approved and does go through  
6 there, you're still going to be able to conduct the  
7 studies that you've been charged with doing?

8 A. Yeah. I'm fairly good with the past, but  
9 the future I have a real problem with.

10 Q. Well, you're not aware of any reason the  
11 studies would not be able to continue, are you?

12 A. Oh, the -- we'll go forth, yeah, with the  
13 studies. And, you know, there's five different  
14 segments. This is one of five different segments  
15 in North Dakota.

16 MR. ARMSTRONG: That's all I have.

17 MR. BARTH: Okay. Thank you.

18 JUDGE FETCH: Any further questions?

19 MS. JACOBSON: No, Your Honor.

20 JUDGE FETCH: Commissioners?

21 Thank you, Mr. Barth.

22 MR. BARTH: Thank you. Thank you,  
23 everyone.

24 COMMISSIONER KALK: Drive safe.

25 MR. BARTH: Okay. Thank you.

1 JUDGE FETCH: All right. Who would like  
2 to come up next?

3 VALERIE NAYLOR,  
4 having been first duly sworn, was examined and  
5 testified as follows:

6 STATEMENT

7 BY MS. NAYLOR:

8 MS. NAYLOR: Good afternoon. I'm Valerie  
9 Naylor. I'm the superintendent of Theodore  
10 Roosevelt National Park and the general  
11 superintendent of North Dakota Group Parks. My  
12 address is P.O. Box 7, Medora, North Dakota.

13 The National Park Service has three  
14 specific concerns that are affected by this  
15 proposal, and I want to try to clarify a few things  
16 from the previous testimony.

17 The battlefield is not my area of  
18 expertise, but the American Battlefield Protection  
19 Program of 1996, as amended by the Civil War  
20 Battlefield Protection Act of 2002, directs the  
21 Secretary of Interior to update the Civil War Sites  
22 Advisory Commission report on the nation's Civil  
23 War battlefields.

24 The American Battlefield Protection  
25 Program was created by Congress to assist local



1 communities in preserving and protecting these very  
2 special places unimpaired. And so the 2010 report  
3 that was just discussed is the Update to the Civil  
4 War Sites Advisory Commission Report on the  
5 Nation's Civil War Battlefields, State of North  
6 Dakota, June 2010.

7 JUDGE FETCH: Could you say that a little  
8 more slowly?

9 MS. NAYLOR: Yes, ma'am. It's a mouthful.  
10 It's the Update to the Civil War Sites Advisory  
11 Commission Report on the Nation's Civil War  
12 Battlefields, State of North Dakota, produced in  
13 June of 2010 by the American Battlefield Protection  
14 Program of the National Park Service. And that's a  
15 Washington office program of the National Park  
16 Service that was established to assist communities  
17 in protecting the battlefields.

18 The Killdeer Mountain Battlefield is one  
19 of five of these Civil War Sites Advisory  
20 Commission Battlefields listed in North Dakota.

21 The most recent report here updated in  
22 2010 says that the Killdeer Mountain Battlefield is  
23 the most at risk of those five and the most  
24 threatened due to energy development and is in need  
25 of additional protection.

1           The good news is the report also says that  
2     the rocky hills and surrounding plains of the  
3     Killdeer Mountain have changed little since the  
4     Civil War and that the battlefield is in good  
5     condition and has not been fragmented or destroyed.

6           The consideration to establish this type  
7     of selective listing is establishing a high level  
8     of historic significance and the survival of key  
9     features, including the setting, the feeling and  
10    association criteria for integrity of the cultural  
11    landscape. Any impact or damage to these features  
12    would adversely affect the integrity of the area.

13          So the Civil War Sites Advisory Commission  
14    established a study area and a core area for the  
15    battlefield in 1993. I think that was asked of the  
16    previous person.

17          Since then, the American Battlefield  
18    Protection Program has been able to adjust the  
19    study area and the core area boundary based on new  
20    and better methodology.

21          The proposed transmission line would go  
22    through the core area of the battlefield, which  
23    could cause irreversible negative effects. So this  
24    map here shows the study area in yellow and the  
25    core area surrounded by the red line and it shows

1       where the power line would go.

2               So that was established not by Mr. Barth,  
3       but by the National Park Service starting in 1993  
4       and then updated more recently as new methodologies  
5       are developed.

6               It was just recently that the National  
7       Park Service awarded the \$90,000 grant to the  
8       Center for Heritage Renewal at North Dakota State  
9       University. They've really only known about it for  
10      a couple of weeks. And that study is to survey and  
11      study the Killdeer Mountain Battlefield.

12              Given our mission, the National Park  
13      Service, and the intense investment of scarce  
14      National Park Service funds, we have a vested  
15      interest in all projects that may individually or  
16      cumulatively affect the integrity of the Killdeer  
17      Mountain Battlefield, including this project. The  
18      American Battlefield Protection Program will want  
19      to be consulted and involved in any decisions made  
20      that could affect the integrity of the battlefield.

21              So I do have a copy of the report. It  
22      explains how the study area was developed and how  
23      the core area and such were developed as well.

24              The idea is that this study, which was  
25      commissioned through North Dakota State University,

1 will provide us a lot more information about this  
2 important battlefield and determine more about the  
3 boundaries and what happened there, and then we'll  
4 all have more information so that we can better  
5 protect that battlefield for future generations.

6 Our other concerns have to do with the  
7 North Unit of Theodore Roosevelt National Park.  
8 This alternative being discussed today does go  
9 pretty close to the North Unit of the park.

10 With the explosion of energy development  
11 in the North Dakota Badlands, we must remain  
12 vigilant to protect the ecological integrity and  
13 the scenic views of all three units of the park.

14 This treasured national park is extremely  
15 significant to the nation, to North Dakota and to  
16 more than 600,000 visitors who enjoy it annually.

17 We're also concerned about the Lone Butte  
18 inventoried roadless areas and the Long X Divide  
19 suitable for wilderness areas on the U.S. Forest  
20 Service lands that adjoin the North Unit of the  
21 park. These areas are very important to the visual  
22 integrity and habitat continuity for the North Unit  
23 and for the Theodore Roosevelt wilderness.

24 Our visual impact studies show that  
25 portions of the 115-foot-high transmission line

1 would be visible from up to 30 percent of the North  
2 Unit of the park.

3 Now, the company has made some changes  
4 after the initial agency scoping to keep that power  
5 line further away from the park and to initially --  
6 or to avoid actually entering the roadless areas.  
7 However, it still has impacts to those areas and  
8 impacts to the national park and to the view shed.

9 The transmission line is just one of many  
10 infrastructure projects that affect or could affect  
11 the park. Each individual project has a minor to  
12 moderate effect, but the cumulative impacts from  
13 the Bakken oil boom and its infrastructure are  
14 enormous.

15 Each piece of industrial infrastructure  
16 that is added to the mix further degrades the  
17 integrity of the National Park and the surrounding  
18 landscape and contributes to habitat fragmentation  
19 for the wildlife that rely on the North Unit and  
20 surrounding roadless areas for their survival.

21 I would also mention the Lewis and Clark  
22 National Historic Trail, which is located within  
23 and proximate to the area under consideration for  
24 development of this transmission project. The  
25 Lewis and Clark National Historic Trail was

1 established by Congress in an amendment to the  
2 National Trails System Act in 1978. The National  
3 Park Service administers the trail and is charged  
4 under this act with the identification and  
5 protection of the historic route, remnants and  
6 artifacts of the Lewis and Clark expedition.

7 In addition, the National Park Service has  
8 responsibility under the Organic Act to conserve  
9 unimpaired the scenery and the natural and historic  
10 resources of the national park system for the  
11 enjoyment of this and future generations.

12 In North Dakota, the historic trail  
13 follows the Missouri River. Trail visitors retrace  
14 the historic route along or on the Missouri River  
15 or by traveling the trail auto-tour route.

16 The project may have impacts to trail  
17 resources and the visitor experience where it  
18 crosses the historic trail or is visible from the  
19 trail or the auto-tour route. The proposed  
20 corridor crosses the trail at the Missouri River  
21 near Williston, and the expedition likely camped at  
22 several locations within the proposed Missouri  
23 River crossing corridor.

24 The National Park Service urges avoidance  
25 or minimization of adverse impacts to the trail

1 resources from the proposed project.

2 There is a great deal of local, regional  
3 and national significance in recognizing and  
4 preserving the resources of the Lewis and Clark  
5 National Historic Trail.

6 The supplemental draft environmental  
7 impact statement is still being produced and we do  
8 not have full information on the proposed  
9 facilities and their environmental impacts. There  
10 is no final environmental impact statement and  
11 there's no record of decision.

12 An environmental impact statement should  
13 examine a range of reasonable alternatives, and yet  
14 it only actually analyzed two of the action  
15 alternatives and now we understand that Basin  
16 Electric wants to build both of the alternatives.  
17 That's not really within the spirit of the National  
18 Environmental Policy Act. An environmental impact  
19 statement is a planning document and a disclosure  
20 document, not a decision document.

21 The EIS process should analyze a range of  
22 reasonable alternatives, take and consider public  
23 comments and then choose one that works.

24 With the information we have at this time,  
25 I believe that the location, construction and

1 operation of the proposed facilities do not produce  
2 minimal adverse effects on the environment and upon  
3 the welfare of the citizens of North Dakota and do  
4 not appear to be compatible with environmental  
5 preservation and efficient use of resources. At  
6 this point it appears that the proposed facility  
7 locations do not minimize adverse human and  
8 environmental impact.

9 Therefore, we would ask you that you not  
10 waive the procedures or time schedules as requested  
11 in the application and not approve any corridor or  
12 route at this time. There's still a lot of  
13 information that has not been disclosed to the  
14 public and environmental impacts that have not been  
15 analyzed. And, in fact, the entire process -- the  
16 dual processes of this hearing and the  
17 environmental impact statement are pretty confusing  
18 to the public.

19 I know that those who are proponents of  
20 the project may think that the historic  
21 preservation people and the environmentalists and  
22 even the agencies, people like me, may not want a  
23 transmission line at all, but -- or they may be  
24 asking, Well, where can we build it. And I think  
25 that's a really good question and I think that's a



1 question that is really the purpose of the  
2 environmental impact statement.

3 An EIS is a planning document and it's not  
4 something that's just done to comply with the law  
5 after one alternative has already been selected.  
6 The purpose is to analyze a range of alternatives,  
7 take and consider public comments and then choose  
8 one that works for the people and for the human  
9 environment.

10 So I would think that this hearing may be  
11 a little bit premature as the other process moves  
12 forward. There is still a lot of work to be done.

13 Thank you for the opportunity.

14 JUDGE FETCH: Thank you, Ms. Naylor.

15 Ms. Jacobson, do you have any questions?

16 MR. ARMSTRONG: Yes, Your Honor.

17 **EXAMINATION**

18 **BY MS. JACOBSON:**

19 Q. Ms. Naylor, you talked about a National  
20 Park Service study area that was done in 1993.

21 A. Mm-hmm.

22 Q. Is that the same boundary that we're  
23 talking about today or was it smaller?

24 A. I don't know that. This is the one that  
25 was in the 2010 report, so I don't know what the

1 1993 boundary was, but I know that they have  
2 refined it since then.

3 Q. Okay. So there was an area that was  
4 defined in 1993?

5 A. As I understand it, yes.

6 Q. Okay.

7 A. That's correct.

8 Q. The document that you're -- that you've  
9 referred to, the Update on Civil War Sites Advisory  
10 Commission, talks about conservation easement or  
11 preservation easements. Would it be your position  
12 from the National Park Service that that's your  
13 intention for this area or --

14 A. Well, it's not my intention at all because  
15 I don't work for the Battlefield Protection  
16 Program, but I don't think that's their intention,  
17 either, necessarily. It's certainly not to try to  
18 establish this area as some type of unit of the  
19 national park system, you know, like a national  
20 historic site. But just perhaps to -- the study by  
21 North Dakota State University will give us the  
22 information that we might need to nominate it as a  
23 national registered property. And we have lots of  
24 national registered properties that are privately  
25 owned and the National Park Service works a lot

1 with landowners and communities to preserve areas  
2 that are not within national parks as such.

3 Q. So your goal would just be a nomination on  
4 the national --

5 A. That's as I understand it, that that's --  
6 that's what they're looking for. It's with  
7 providing this grant to North Dakota State  
8 University through what I understand was quite a  
9 rigorous and competitive process for the Center for  
10 Heritage Renewal to study this area and learn more  
11 about it so that we can all be better informed  
12 about our history here in North Dakota.

13 Q. Okay. Thank you.

14 You discussed impacts on habitat. Could  
15 you state specifically what -- what your concerns  
16 are related to habitat?

17 A. Yeah. My concerns are fragmentation of  
18 habitat in the Badlands, especially in the area  
19 where there's so much oil development going on is  
20 really severe. You know, wildlife need to move.  
21 They need to move long distances in many cases, and  
22 there are so many new roads, wells, power lines,  
23 pipelines, rail facilities, all kinds of things  
24 going on in the Badlands right now, and that  
25 habitat is being severely fragmented by all this.

1 And a power line is just one little piece of that,  
2 but everything is just one little piece and it  
3 leads to great fragmentation.

4 And if we're going to have the outstanding  
5 wildlife resources that we have that live in and  
6 around the North Unit, for example, the big horn  
7 sheep, occasional elk, the deer, all of those --  
8 the wildlife that we hold so dear here in North  
9 Dakota, we need to provide continuity of habitat.  
10 And that's quickly disappearing, especially from  
11 that particular area.

12 Fortunately, we have about 29,000 acres of  
13 wilderness in the North Unit, which sounds like a  
14 lot, but it's not. Fortunately, we have those  
15 adjacent roadless areas right now on the national  
16 grassland that provides some continuity of habitat  
17 where there's not development for those wildlife  
18 species. But that's something we need to be  
19 looking at on a large scale because wildlife needs  
20 room to roam. They need habitat.

21 MS. JACOBSON: No further questions, Your  
22 Honor.

23 JUDGE FETCH: Thank you.

24 Mr. Armstrong.

25 MR. ARMSTRONG: Thank you.

**EXAMINATION**

**BY MR. ARMSTRONG:**

Q. Ms. Naylor, is your testimony today on behalf of the National Park Service, yourself or who are you --

A. On behalf of the National Park Service. I wanted to speak comprehensively for the National Park Service. I'm the park superintendent, so specifically my greatest area of concern is the national park. But I did consult with the American Battlefield Protection Program and the regional office concerning -- and also the Lewis and Clark National Historic Trail so that I could present testimony for all National Park Service concerns related to this project.

Q. What prior to today has been your involvement? Have you been involved in the EIS process?

A. Yes. I attended the first agency meeting in November of 2011 and then we sent representatives, as well, to the public meetings that were held just shortly thereafter. And then I really didn't hear anything more until the draft EIS was released and then I commented on that.

Q. What's your understanding of the National

1 Park Service's role in the EIS process?

2 A. Well, it's been fairly minimal. I mean we  
3 attended, like I said, the agency meeting. We made  
4 comments at that time. We attended the public  
5 meetings for informational purposes, and we also  
6 made comments on the draft environmental impact  
7 statement that was released.

8 Q. I guess I'm kind of understanding that  
9 those comments did not involve the Killdeer  
10 Mountain Battlefield.

11 A. No. That's correct. No, they did not.  
12 They were specific to Theodore Roosevelt National  
13 Park, and then also the Lewis and Clark National  
14 Historic Trail made comments at that time.

15 Q. Pardon me, but I've read a lot of  
16 information on here. We've got a big file. My  
17 vague recollection of the park service's  
18 involvement in the EIS was some concerns raised  
19 about the view shed where the proposed line was  
20 going around the North Unit of the park. And I  
21 seem to recall, and correct me if I'm wrong, if  
22 your recollection is different, some adjustments  
23 made to the line either in location or in the type  
24 of poles that -- it was at least my understanding  
25 that that seemed to satisfy the park in that area.

1 Do you have anything further to shed on that?

2 A. Well, I don't know if it satisfied us, but  
3 I do -- as I mentioned earlier, I do appreciate  
4 that the company took that into account and tried  
5 to make some adjustments there to avoid the  
6 roadless areas and also to keep it a little farther  
7 away from the North Unit.

8 However, I thought that this body would  
9 like to know that, in fact, there are still  
10 portions of it that will be seen from up to  
11 30 percent of the North Unit. I just wanted to  
12 make sure that that was documented here as well.

13 As far as our involvement in the  
14 battlefield, I usually don't speak for any areas --  
15 or never speak for areas that the park service  
16 doesn't have a direct connection to, but since we  
17 do have this American Battlefield Protection  
18 Program, I thought that I should bring that up, as  
19 well, because it is something that we are concerned  
20 with.

21 Q. Sure. And I understand that. The part of  
22 the -- I guess the reason for that question is just  
23 that it came up so late, I guess, in this process  
24 and it seemed like there was a lot leading up to  
25 it. So I'm trying to figure out, I guess, how new

1     this really is and how much of an interest it is  
2     and what the concerns may be with the proposed line  
3     and its location.

4           A.     Right. Well, I will tell you that my  
5     first knowledge that the park service was involved  
6     with the battlefield was when the grant was awarded  
7     to NDSU two or three weeks ago, personally.  
8     However, the American Battlefield Protection  
9     Program, Washington, certainly it's been on their  
10    radar for quite some time.

11          Q.     And you discussed in your testimony.  
12    Particularly like around the Lewis and Clark Trail  
13    I think it was, about taking mitigation --  
14    mitigation measures where you're going to impact --

15          A.     Sure.

16          Q.     -- those areas. Have you, listening  
17    today, had a chance to hear some of the mitigation  
18    measures that have been proposed in that area and  
19    have any comment on whether those will actually  
20    mitigate any potential impacts?

21          A.     It would be inappropriate for me to  
22    comment. I think the people from the Lewis and  
23    Clark Trail would need to do that, but I did listen  
24    today and I think there have been some measures  
25    taken. Yes.



1 MR. ARMSTRONG: Okay. I had one other  
2 question for you, but it's escaping me at the  
3 moment. I'll ask it again later if it pops up.

4 MS. NAYLOR: Okay.

5 JUDGE FETCH: Mr. Lein.

6

EXAMINATION

7 BY MR. LEIN:

8 Q. Is there a map or something available  
9 showing which parts of the line are visible from  
10 the park?

11           A.     Yes, actually.  You know, we do -- we have  
12     the capability to do a view shed analysis on almost  
13     anything that pops up around the national park.  
14     And so whenever there's an oil well or a power line  
15     or something that could be visible from the park,  
16     we run a view shed analysis through our geographic  
17     information system's lab.  Fortunately, we have one  
18     of the best GIS analysts in the country, and so  
19     this does show exactly what proportion -- I know  
20     everybody here can't see this, but this does show  
21     what areas of the power line would be viewed and  
22     from how much of the North Unit.

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23         We run these in different ways, depending
24         on what the infrastructure is. What this one does
25         is shows where the line is going to go, what
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1 percentage of the North Unit you can see it from.

2 So I --

3 JUDGE FETCH: Do you just have the one  
4 copy?

5 MS. NAYLOR: I do, but I can print out  
6 another one. You're welcome to have this, if you'd  
7 like.

8 JUDGE FETCH: Would you bring that  
9 forward, please.

10 MS. NAYLOR: Sure.

11 MR. LEIN: Could we make it an exhibit?

12 JUDGE FETCH: Mr. Lein asked if we can  
13 make this an exhibit. We certainly can. And I'll  
14 pass this on to the commissioners to have a look.

15 Is there any objection?

16 MS. JACOBSON: Your Honor, I would just  
17 have a question for Ms. Naylor. How did you obtain  
18 Basin Electric's route data in preparation of that  
19 map? What route -- what is that based on?

20 MS. NAYLOR: I think that was based on --  
21 I would have to know the date on that, and now I  
22 don't have my copy. What is the date on that, sir?

23 MR. ARMSTRONG: The date is December 19,  
24 2012, on the bottom right-hand corner.

25 MS. NAYLOR: Okay. So that was based on

1 the information from the -- or I guess in some part  
2 of the process prior to this establishment of the  
3 draft EIS.

4 MS. JACOBSON: So did you use Basin  
5 Electric's GIS data to perform your study or was it  
6 just a line that was shown on a map in an exhibit  
7 and then you prepared it?

8 MS. NAYLOR: Yeah. Our GIS analysts  
9 prepared it based on where it went on the map and  
10 based on the known height of the towers.

11 MS. JACOBSON: Your Honor, I wouldn't  
12 object, but I would just like to make note that it  
13 isn't entirely clear where the data came from  
14 that's -- how our line is depicted on that map, and  
15 so there's a potential that it might not be  
16 reflected accurately.

17 MS. NAYLOR: And that is a potential  
18 because this was done in -- when did you say, sir?  
19 2012?

20 MR. ARMSTRONG: If I'm reading the right  
21 date, it says 2012-12-19, so I'm assuming that's  
22 December 19.

23 MS. NAYLOR: So something may have changed  
24 since then and we can run a new analysis. I  
25 didn't --

1 JUDGE FETCH: How about this? How about a  
2 late-filed exhibit of something more current.

3 MS. NAYLOR: That would be better with me  
4 as well.

5 MR. ARMSTRONG: And, Your Honor, I --  
6 that's fine with me. I also have a question. I  
7 know she's discussed a report and she's been  
8 flipping through it and she also put a map up on  
9 this -- the board that may be beneficial if we are  
10 going to evaluate her testimony about the core area  
11 and such up here, and I don't know if we could have  
12 a copy of that just --

13 MS. NAYLOR: I borrowed that map just  
14 because I thought it would help explain what was  
15 going -- you know, discussed before I came up.

16 MR. ARMSTRONG: And where is that map  
17 from?

18 MS. NAYLOR: You'd have to talk to --

19 JUDGE FETCH: Is that map somewhere in the  
20 materials?

21 MR. ARMSTRONG: I don't believe so.

22 JUDGE FETCH: I thought I saw something  
23 like that.

24 MR. ARMSTRONG: I don't believe I've seen  
25 that map before, Your Honor.

1 JUDGE FETCH: All right. Well, we could  
2 get two late-filed exhibits, a copy of the map that  
3 is displayed and a copy of the GIS of the watershed  
4 or the water view.

5 MS. NAYLOR: The view shed. Yes.

6 JUDGE FETCH: View shed.

7 MS. NAYLOR: Definitely. I can tell you  
8 that this map was produced by the National Park  
9 Service from the 2010 report. It's just that the  
10 power line wasn't in it at that time.

11 JUDGE FETCH: Okay.

12 MS. NAYLOR: So I can get you a copy of  
13 that -- well, you have that from the report, the  
14 published report, and I can get you an updated view  
15 shed analysis if anything has changed since  
16 December of 2012.

17 JUDGE FETCH: All right. Is that  
18 satisfactory?

19 MR. ARMSTRONG: That's satisfactory. I do  
20 have --

21 JUDGE FETCH: All right. We'll say  
22 Exhibit 33 would late filed -- your fly is over  
23 here, Mr. Armstrong -- a late-filed exhibit, 33,  
24 and that will be at whatever is -- a current view  
25 shed -- what was the rest of the terminology?

1 MS. NAYLOR: Analysis.

2 JUDGE FETCH: Current view shed analysis.

3 MS. NAYLOR: We will do that.

4 JUDGE FETCH: Okay. And -- all right.

5 And what about the map there, then?

6 MS. NAYLOR: I can certainly give you the  
7 National Park Service map that shows the boundaries  
8 of the study area and also the core area. It is in  
9 this report but in a small form, and I can  
10 certainly.

11 JUDGE FETCH: We'll label that late-filed  
12 Exhibit 34.

13 MS. NAYLOR: Okay. And when would you  
14 like those?

15 MR. ARMSTRONG: When can you get them?

16 MS. NAYLOR: Perhaps next week sometime or  
17 so.

18 MR. ARMSTRONG: Sooner is always better  
19 than later.

20 MS. NAYLOR: Okay.

21 JUDGE FETCH: That will be fine.

22 MS. NAYLOR: Thank you.

23 JUDGE FETCH: Okay. That's a map of the  
24 study area or is that the core area? That's the  
25 core area.

1 MS. NAYLOR: The study area is the yellow  
2 and the core area is outlined in red, and that's  
3 from the 2010 report.

4 JUDGE FETCH: Thank you.

5 All right. Mr. Armstrong.

6 MR. ARMSTRONG: Yeah. I had -- what's the  
7 exhibit number for the view shed, Your Honor?

8 JUDGE FETCH: 33.

9 **FURTHER EXAMINATION**

10 **BY MR ARMSTRONG:**

11 Q. What's going to be the view shed analysis,  
12 just looking briefly at this map that you've  
13 provided?

14 A. It will be similar or identical to that  
15 one, depending on if there's been any changes.

16 Q. As I'm looking at this anyway, it shows  
17 the North Unit of the park in the tan area.

18 A. Mm-hmm.

19 Q. And it doesn't, I guess, tell me where the  
20 line is viewable from.

21 A. Oh, well, yeah, it doesn't show where it's  
22 viewable from. It tells you what percentage of the  
23 North Unit it's viewable from. So you see where  
24 the line goes north and south --

25 Q. Yes.

1           A.    -- and it's in the green area. The green  
2    area would be -- I think it says like 0 to  
3    10 percent of the park, but the yellow areas would  
4    be the ones where you could see it from 20 to  
5    30 percent of the national park. And then the  
6    orange, red, those areas -- it's not going through  
7    those areas, fortunately, but if it were, it would  
8    show you that it would be visible from even more of  
9    the park area.

10          Q.    Okay. So what -- at least as I'm reading  
11    this --

12          A.    Mm-hmm.

13          Q.    -- we've got -- and maybe you'll see it,  
14    but it says Section 31 and 30 here --

15          A.    Mm-hmm.

16          Q.    -- this section here is where it's  
17    viewable from --

18          A.    30 percent of the park.

19          Q.    -- 20 to 30 percent of the park.

20          A.    Correct.

21          Q.    And so it would be that. And then this  
22    section down here in Section 18 and 7 here --

23          A.    Right.

24          Q.    -- same thing?

25          A.    That's correct.



1           Q.     And it looks to me, anyway, like that's  
2     the two areas we're talking about.

3           A.     Yes.   That's correct, sir.

4           JUDGE FETCH:   Ms. Naylor, when you provide  
5     those late-filed exhibits, please be certain to  
6     send them to the -- to Mr. Armstrong and  
7     Ms. Jacobson and file them with the Commission.

8           MS. NAYLOR:   I will do that.   Thank you.

9           JUDGE FETCH:   Thank you.

10          Any other questions from Mr. Lein or  
11     Mr. Armstrong?

12          MR. ARMSTRONG:   None.

13          MR. LEIN:     That's good for me.   Thank you.

14          JUDGE FETCH:   All right.   We'll go to the  
15     Commission.   Commissioner Kalk.

16          COMMISSIONER KALK:   Thank you, Your Honor.  
17     Just a question or clarification.   For late-filed  
18     exhibits, if the -- if the witness just gives it to  
19     the Commission and the Commission docket it, is  
20     that okay?   That might be more efficient for the  
21     witnesses.   I don't know that part of it.   I'm just  
22     thinking it might be easier to provide one to us to  
23     docket than trying to give three copies to all of  
24     us.

25          MR. ARMSTRONG:   If the -- if the witness

1 gets what's entitled to be a late-filed -- or  
2 intended to be a late-filed exhibit to the  
3 Commission, we will make sure -- the attorneys will  
4 make sure it gets documented appropriately and  
5 filed accordingly.

6 JUDGE FETCH: Okay. So all you need to  
7 provide is to the Commission.

8 MS. NAYLOR: And I may do that  
9 electronically?

10 JUDGE FETCH: You may.

11 MS. NAYLOR: Okay. That would be easiest  
12 and fastest for you. Thank you.

13 JUDGE FETCH: All right.

14 COMMISSIONER KALK: Thank you, Your Honor.

15 **EXAMINATION**

16 **BY COMMISSIONER KALK:**

17 Q. Thank you, Ms. Naylor, for your testimony.  
18 Just two quick questions. Give me a little class  
19 on National Park Service organization. Who would  
20 your boss be?

21 A. Well, I'm a national park superintendent  
22 for the three parks in North Dakota --

23 Q. Okay.

24 A. -- the general superintendent, and I  
25 report to the regional director in Omaha. There

1 are seven regions, and the regional directors  
2 report to the director of the National Park  
3 Service.

4 Q. And which secretary do you report to?  
5 Secretary of Interior?

6 A. Interior, yes.

7 Q. Okay. So your comments going forward will  
8 have very -- you'll have easier access perhaps to  
9 the NEPA process than others, I think the way this  
10 will probably lay itself out, just because of where  
11 you're at.

12 But I do appreciate your comment about  
13 it's confusing at best. The -- NEPA is a federal  
14 rule. That's their business and this is state  
15 business --

16 A. Right.

17 Q. -- but it is very confusing how it all  
18 lays out, but I would say that I don't think this  
19 hearing is premature at all. I think it's because  
20 of this hearing a lot of these issues are coming to  
21 light. So it's good we get these cards on the  
22 table and we'll sort through it.

23 A. That's a good point. The hearing being  
24 scheduled did bring a lot of these issues to light.

25 Q. Absolutely.

1           A.    We appreciate that.

2           Q.    The one question I did have is your  
3 comment about habitat fragmentation.

4           A.    Mm-hmm.

5           Q.    Isn't there a fence around all the park?

6           A.    There is, but it only keeps the bison in.  
7 It doesn't keep anything else in or out. Well, it  
8 keeps cattle out and bison in, but it's permeable  
9 to every other wildlife species, and we need to  
10 have the animals going in and out of the park.  
11 They can't survive in the park alone.

12          Q.    So then my personal observation of elk  
13 hunting two years ago when I watched the elk graze  
14 in the park and they would never leave because of  
15 the fence, I mean it seemed like that fence was  
16 pretty good, where it's already had habitat  
17 fragmentation because of the fence.

18          A.    No. The fence does not keep elk in the  
19 park. Of course, the elk are not in the North Unit  
20 regularly.

21          Q.    Okay.

22          A.    Only a few elk from this Killdeer Mountain  
23 area go over to the North Unit generally, but the  
24 South Unit is the one with the greater elk  
25 population.

1           Q.     Okay.

2           A.     But the elk have -- can jump that fence,  
3 but there are also many places where there are  
4 erosional holes and such where elk can go in and  
5 out.

6           Q.     So you don't view the fence as anything  
7 that's even more of a barrier for habitat  
8 fragmentation than a power line?

9           A.     No, I really don't at all because of --  
10 the wildlife do go through it all the time, and  
11 they migrate seasonally in and out of the park.  
12 That's why the hunters are successful outside of  
13 the park. They do come back into the park a lot of  
14 times in the fall because our habitat is less  
15 heavily used and it's a good place for spending the  
16 winter and having calves and such.

17          Q.     Sure.

18          A.     But the elk, the deer, everything goes in  
19 and out. The bison are supposed to always stay in.  
20 They don't always. The wild horses stay in and the  
21 cattle are supposed to stay out. Sometimes they  
22 don't, but most of the time they do.

23                   COMMISSIONER KALK:   Okay. Thank you.

24                   JUDGE FETCH:   And I don't think  
25 Commissioner Kalk was at all intending to imply

1 | that he hunts in the national park.

2 | COMMISSIONER KALK: No.

3 MS. NAYLOR: I know he would not do that.

4 JUDGE FETCH: Commissioner Christmann.

5 COMMISSIONER CHRISTMANN: Thank you, Your  
6 Honor.

7 | EXAMINATION

8 BY COMMISSIONER CHRISTMANN:

9 Q. Ms. Naylor, earlier I think I understood  
10 you right to say your vision for this would not be  
11 to be part of the federal park system, but -- and  
12 then you said some other terminology that --

13           A.     Yeah, a National Register listing. There  
14     are different types of National Register listings.  
15     You know, for example, we have six national  
16     historic landmarks in North Dakota, the closest one  
17     being the Knife River flint quarries -- Lynch Knife  
18     River Flint Quarry just a few miles east of here.  
19     There are a number of other national historic  
20     landmarks in the state. Some of them are privately  
21     owned, some are part of the national park area,  
22     some are state owned. You know, it just depends.

23           There are other types of registered  
24   listings. We have a national historic district at  
25   the Elk Horn Ranch, for example. And then there

1 are buildings that are on the National Register of  
2 Historic Places that are of local significance.

3 So there are all kinds of different  
4 National Register listings. They're not all the  
5 same. There's landmarks and historic districts and  
6 sites and such.

7 Q. Okay. Thank you. I just wanted to get  
8 that down.

9 A. I think the study would show maybe what  
10 might be appropriate for the Killdeer Mountain  
11 Battlefield.

12 COMMISSIONER CHRISTMANN: Okay. Thanks.

13 JUDGE FETCH: Thank you. Commissioner  
14 Fedorchak.

15 **EXAMINATION**

16 **BY COMMISSIONER FEDORCHAK:**

17 Q. Valerie, thank you for being here, for  
18 gutting it out for the whole day and for your  
19 comments. Appreciate that.

20 At its current route, can you be more  
21 specific about how close the line comes to the  
22 park?

23 A. It's about a mile and a half. He has my  
24 map now, but -- my own one and only copy; right?

25 Q. Okay. A mile and a half.

1           A.    Yeah.  It's a mile and a half from the  
2           boundary of the park.  And, again, there have been  
3           some mitigation measures, but I wanted to point out  
4           to this Commission that there were still areas  
5           where it would affect the view shed from some of  
6           the scenic overlooks and other places in the North  
7           Unit.

8           Q.    Mm-hmm.  The national parks are an  
9           exclusion area by our criteria, meaning we couldn't  
10          go through them.  What is the National Park Service  
11          policy on power lines, generally?

12          A.    Well, we would not generally put a power  
13          line within a national park unless it was something  
14          that came to service the park, a small one.  We do  
15          have a WAPA line that goes through the North Unit,  
16          but that right-of-way was established before the  
17          park was established, I believe, prior to 1948 when  
18          the North Unit was added to the national park.  And  
19          so we honor that and work with WAPA when they  
20          upgrade the line or whatever.  It would be better  
21          for us if it were not in the park, but that is a  
22          right-of-way that they have.

23          Q.    Okay.  So in some of the larger parks like  
24          Yellowstone or -- how do they get power?

25          A.    Well, there's smaller lines that feed the



1 park. Most of the time they're underground. For  
2 example, in Medora all power lines are underground  
3 and in the national park they are, too, as our  
4 telephone lines are. So if you drive, you know, in  
5 the South Unit and you drive up to Peaceful Valley  
6 Ranch, they have power, but that's all underground,  
7 as is the phone line.

8 Q. All right. In the -- couple questions on  
9 process since you expressed some concerns about how  
10 this is proceeding. You attended the scoping  
11 meetings and I've seen some -- I've looked through  
12 all the letters and comments submitted, and there's  
13 one submitted from the National Park Service signed  
14 by Mark Weekley.

15 A. Okay. He's the superintendent of the  
16 Lewis and Clark National Historic Trail, so he's my  
17 counterpart for that unit of the park system.

18 Q. Okay. So he's expressing concerns, but he  
19 didn't outline any of the concerns that you  
20 outlined today.

21 A. Yeah, I did -- I did use what he had  
22 there.

23 Q. Oh, yeah, you used his, and then --

24 A. Yeah.

25 Q. -- but the additional ones beyond this he

1       didn't mention. So did you submit a comment that  
2       I'm just missing here --

3           A.     Yes.

4           Q.     -- outlining those same things?

5           A.     No. I outlined things relating to  
6       Theodore Roosevelt National Park. He outlined  
7       things relating to the Lewis and Clark National  
8       Historic Trail. Today I made comments for both  
9       plus the American Battlefield Program.

10          Q.     So you submitted formal comments. They're  
11       just not included in here.

12          A.     Okay. Yes, I did. I did in December 2011  
13       after the agency scoping meeting and again after  
14       the -- earlier this year, I believe, after the  
15       draft environmental impact statement was released.

16          Q.     And do you feel like your comments have  
17       been -- have -- how satisfied are you with the  
18       efforts being made to address the concerns that  
19       you've outlined?

20          A.     I think they've addressed them to some  
21       extent, but there hasn't been much back and forth  
22       or consultation, you know, or anything throughout.

23          Q.     Okay. Then on the issue of the  
24       alternatives, I had the page and now I lost it.  
25       I'm never going to find it again, but I saw in here

1     like six or seven different alternatives segmented  
2     out that were studied.

3           A.     Early on.   Yeah.

4           Q.     Okay.   That's not -- you said that there  
5     hasn't been enough study of the alternatives --

6           A.     Well --

7           Q.     -- so talk more about that and the fact  
8     that -- and how it relates to the ones I'm seeing  
9     in here --

10          A.     Mm-hmm.

11          Q.     -- that were studied.

12          A.     Yeah.   Well, early on -- and this is  
13     always how it works.   You come up with a large  
14     number of alternatives for an environmental impact  
15     statement -- I think Commissioner Kalk would  
16     agree -- and you narrow it down to a range of  
17     reasonable alternatives.   I mean your first group  
18     of alternatives might be huge, just everything you  
19     can think of, brainstorming, and then you throw out  
20     those that are not reasonable or that wouldn't  
21     work, and then you come down to a smaller number of  
22     alternatives until you decide on the ones that you  
23     want to analyze in your environmental impact  
24     statement.

25                 So this -- for a project of this scope,

1     they only had two alternatives, other than the  
2     no-action alternative, which is always a viable  
3     alternative, is to take no action at all, the  
4     no-build alternative, so to speak.

5             So in this particular case they only  
6     analyzed two alternatives, which maybe is all  
7     right, but now they're, I believe -- and this is  
8     beyond the scope of this hearing, but I understand  
9     that they want to build the second alternative too.  
10    So now both of the alternatives analyzed, if  
11    they're both built, they're hardly alternatives.

12            I just think there might be some other  
13    alternatives out there that would avoid some of  
14    these critical and sensitive areas that could be  
15    analyzed and so that the power line could be built  
16    without affecting some of these critical places and  
17    further fragmenting the Badlands.

18            Q.    Okay.  So they looked at them early on,  
19    but they didn't study them in depth?  They just --

20            A.    Yeah.  I'm sure they had good reasons for  
21    that.  They have qualified NEPA analysts and such,  
22    but I just think that in light of all of this  
23    information, it might be a good idea to reevaluate  
24    some of that and see if there might be another  
25    alternative that would meet the needs.

1           Q.    Okay.  Oh, and then another quick  
2           question.  How is -- how is attendance at the park  
3           these days?

4           A.    Attendance is great.  In fact, our busiest  
5           day of the year, to my knowledge, was Sunday over  
6           Labor Day, and I had never seen the North Unit as  
7           busy as I saw it on Sunday.

8           Q.    Wow!  So is it record attendance this year  
9           would you say?

10          A.    No, I don't think it's record attendance.  
11          It depends on how you count it, but it's high.  Our  
12          record year was -- well, 1982 was probably our  
13          busiest year in recent memory, and last year was  
14          the -- I believe the busiest year since 1982.  And  
15          then this year because we were closed at Painted  
16          Canyon for a while this spring, our numbers won't  
17          show as high, but our days during the summer were  
18          very busy this year.  And the North Unit is seeing  
19          quite a lot of increased visitation from new  
20          residents in the state who work hard and need a  
21          place to go to relax and see some nature when they  
22          have a day off.

23          Q.    So in your view, is that a good thing or  
24          how -- this increased attendance and, you know,  
25          more activity?

1           A.     Well, some of it is good in that we like  
2     to reach audiences that we might not reach  
3     otherwise and gain new supporters for the national  
4     park and we like to provide a place for all people  
5     of the United States and beyond to come and enjoy  
6     our national parks. That's why we have that  
7     heritage. I mean there are some negatives.  
8     Certainly the park is being affected, particularly  
9     in the North Unit with all the development around  
10    it, and there certainly has been an increase in  
11    incidents with a lot of new people in the area,  
12    just different things having -- you know, driving  
13    under the influence and drugs and such, crimes that  
14    we never saw before in those places. So that's a  
15    definite effect that's occurring. So our law  
16    enforcement staff is busy right now.

17               COMMISSIONER FEDORCHAK: Okay. Thank you.  
18    That's all my questions.

19               MS. NAYLOR: Thank you.

20               JUDGE FETCH: Any follow-up from  
21    commissioners?

22               Any further questions from either counsel?

23               MR. ARMSTRONG: None here.

24               JUDGE FETCH: Thank you, Ms. Naylor.

25               MS. NAYLOR: Thanks, all of you, for your

1 time.

2 JUDGE FETCH: Thank you.

3 COMMISSIONER KALK: Who's minding the  
4 store?

5 MS. NAYLOR: I've got a pretty good staff.

6 JUDGE FETCH: All right. Let's have  
7 someone else come up.

8 MR. SAND: There will be two of us here.  
9 I don't know if you were able to get your name  
10 on --

11 JUDGE FETCH: State your name.

12 MR. SAND: I'm Rob Sand. 93 112th Avenue  
13 Northwest, Killdeer, North Dakota.

14 JUDGE FETCH: Go ahead.

15 **ROB SAND AND LORI JEPSON,**  
16 having been first duly sworn, were examined and  
17 testified as follows:

18 **STATEMENT**

19 **BY MR. SAND:**

20 MR. SAND: Okay. What I'll do is begin  
21 with -- we're kind of sharing this thing, but I'll  
22 read the -- Lori and I are representing the  
23 Killdeer Mountain Alliance, which is an alliance,  
24 not a membership organization.

25 Killdeer Mountain Alliance. The Killdeer

1 Mountain Alliance is a loose alliance of local  
2 landowners, Native Americans, hunters, outdoor  
3 enthusiasts, scientists, historians, archaeologists  
4 and others who love the Killdeer Mountains and  
5 agree with the mission statement.

6 The mission statement: The Killdeer  
7 Mountain Alliance exists to preserve the cultural,  
8 spiritual, ecological, archaeological and  
9 historical integrity of the Killdeer Mountains of  
10 western North Dakota and protect them from  
11 industrial development that harms the American  
12 Indian sites, plant and wildlife habitat, ranching,  
13 hunting, tourism, scenic beauty and recreation for  
14 which the Killdeer Mountains are known and loved.

15 And for more information, people can visit  
16 our Facebook site, which is Killdeer Mountain  
17 Alliance. That will keep you up on the  
18 conversations.

19 **STATEMENT**

20 **BY MS. JEPSON:**

21 MS. JEPSON: I'm Lori Jepson, Killdeer,  
22 North Dakota, 11430 Main Street.

23 JUDGE FETCH: Is that J-e-p-s-o-n?

24 MS. JEPSON: Correct.

25 JUDGE FETCH: Thank you.



1 MS. JEPSON: We are deeply concerned that  
2 Basin Electric Power Cooperative is proposing to  
3 construct new transmission lines and a 12-acre  
4 substation along the south face of the Killdeer  
5 Mountains. We ask the Public Service Commission to  
6 reject this part of the proposed route for the  
7 following reasons:

8 The Killdeer Mountains are important to  
9 all North Dakotans for historic, archaeological,  
10 ecological, cultural and recreational reasons.

11 The mountains hold deep historical and  
12 cultural significance for the Mandan, Hidatsa,  
13 Arikara, Lakota, Dakota and other tribes.

14 In spite of mitigation efforts, the  
15 proposed transmission line and substation would  
16 negatively impact the view and the experience of  
17 the beautiful Killdeer Mountains, from both the  
18 highways and from higher on the mountain.

19 The proposed transmission line and  
20 substation would pass within the boundary of the  
21 70,000-plus-acre Killdeer Mountains Battlefield  
22 area as identified in the 2010 National Park  
23 Service study.

24 The proposed substation would have been in  
25 the core battlefield area. We are pleased that

1     this location has been removed from the proposal,  
2     but the proposed transmission line route remains a  
3     concern.

4             Basin Electric's archaeological findings  
5     of no significant cultural sites was apparently  
6     based on State Historic Preservation Office records  
7     for the battlefield boundaries, which were not  
8     current at the time. These records are in the  
9     process of being updated now to match the  
10    battlefield boundaries identified in the National  
11    Park Service study.

12            However, the National Park Service study  
13    was published in 2010 with the State Historical  
14    Preservation Office as a respondent on the  
15    document. The 2010 date of the document completion  
16    precedes Basin Electric's proposal of their  
17    transmission routes, so that information was  
18    available to the Basin Electric archaeologist as  
19    well as on the Internet.

20            It appears that the Historic Preservation  
21    Office did not communicate adequately with Basin  
22    Electric's archaeological consultant about this and  
23    vice versa.

24            In addition, the State Historic  
25    Preservation Office surely knew that the Killdeer

1     Battlefield qualified for the National Register of  
2     Historic Places.

3             If either of these pieces of information  
4     had been communicated to Basin Electric in their  
5     planning process, today's discussion would probably  
6     not be happening, because according to their own  
7     testimony, they said that they avoided every site  
8     in this project that was known to be eligible for  
9     the National Register of Historic Places.

10            We ask the Commission to request that  
11     Basin Electric submit a revised route based on the  
12     amended information.

13            Another reason to delay this decision is  
14     that funding has recently been approved for the  
15     two-year collaborative study of the Killdeer  
16     Mountain Battlefield area. North Dakotans deserve  
17     to know the outcome of this study before a decision  
18     is made about a transmission line through or near  
19     the Killdeer Mountain area.

20            Basin Electric now wants approval of a  
21     second transmission line to meet the needs of the  
22     oil and gas industry, and the second line they are  
23     proposing is the alternative they originally  
24     presented to the Killdeer Mountain route. Does  
25     this mean that their proposal no longer lists a

1 range of reasonable alternatives that are required  
2 by the National Environmental Policy Act, NEPA? If  
3 this doesn't meet that requirement, they should be  
4 required to develop other alternatives.

5 In addition, the environmental impact  
6 statement required by NEPA is still in draft stage.  
7 And will it be completed before a final decision is  
8 made?

9 Related to this, the proposed route is a  
10 major threat through electrocutions and line  
11 strikes to nesting, hunting, dispersing and  
12 migrating golden eagles. According to the eagle  
13 researcher, Dr. Margi Coyle, the portion near the  
14 Killdeer Mountains would run adjacent to three  
15 golden eagle nesting territories and directly  
16 through golden eagle hunting territory.

17 We have been told that the  
18 Sisseton-Wahpeton Tribe has not been consulted in  
19 the environmental impact statement and has not  
20 received a copy of the cultural resource report.  
21 We ask that you look into this and ensure that  
22 they, as descendants of some of those who fought in  
23 the Killdeer Mountain Battle, are consulted.

24 Finally, the Killdeer Mountains are  
25 included on the recent list of 49 special places by

1 the governor and the North Dakota Industrial  
2 Commission as having unique historical, culture and  
3 recreational significance to North Dakotans.

4 Although our focus is on protecting the  
5 Killdeer Mountains, we respectfully ask the Public  
6 Service Commission to reject any portion of this  
7 proposed transmission line that would negatively  
8 impact these 40 places. We owe this to our  
9 children, our grandchildren and ourselves.

10 You have asked that we make  
11 recommendations for alternatives. We recommend  
12 that the Killdeer Mountain portion of the route be  
13 removed -- be moved to a location that addresses  
14 all of the concerns we described today.

15 Thank you.

16 JUDGE FETCH: Thank you. Ms. Jacobson, do  
17 you have any questions for Mr. Sand or Ms. Jepson?

18 MS. JACOBSON: I do have one question.

19 **EXAMINATION**

20 **BY MS. JACOBSON:**

21 Q. Ms. Sand [sic], you testified that the  
22 battlefield area qualifies for the National  
23 Register of Historic Places. What is that  
24 statement based on?

25 A. (BY MS. JEPSON) Based on the 2010 study.

1 And, actually, the person had it in her hand right  
2 before --

3 JUDGE FETCH: Are you referring to  
4 Ms. Naylor?

5 MS. JEPSON: Yes. Is she still here?

6 Q. (MS. JACOBSON CONTINUING) Do you have any  
7 background in archaeology or cultural resources?

8 A. No. I'm a local resident, nurse  
9 practitioner at the clinic.

10 Q. Okay. So are you familiar with the  
11 process for the nomination for a listing of the  
12 National Register of Historic Places? Do you know  
13 what that process entails?

14 A. I'm not. Rob, are you?

15 MR. SAND: No.

16 Q. (MS. JACOBSON CONTINUING) Okay. You  
17 talked about electrocution to eagles and eagles'  
18 nests are found in the area. Do you have any  
19 specific locations that those are or --

20 A. Margi Coyle -- Dr. Margi Coyle will be  
21 speaking at the Williston session and she'll have  
22 complete documentation for you.

23 MS. JACOBSON: Okay. Sounds good. I have  
24 no further questions.

25 JUDGE FETCH: Thank you. Mr. Armstrong.

1 MR. ARMSTRONG: Just a couple.

2 EXAMINATION

3 BY MR. ARMSTRONG:

4 Q. You talked about the list of special  
5 places. Are you aware if this proposed route  
6 crosses any of the other places on the list?

7 A. (BY MR. SAND) I'm not aware of any. It  
8 isn't even fully published because some of those  
9 are sensitive areas that aren't being shared by the  
10 state, but it's the Industrial Commission that  
11 identified those.

12 Q. Am I correct that as of -- I mean as we  
13 sit here today, both of your objections right now  
14 is to the area, I guess, depicted on Exhibit 18 --  
15 in Exhibit 18?

16 A. Correct. I guess there's one exception, I  
17 should say. I do know that the national -- or the  
18 North Unit of the park, the Long X Divide roadless  
19 area and Lone Butte are -- are some of those that  
20 were looked at by the governor, so apparently  
21 they're on that list.

22 MR. ARMSTRONG: Okay. That's all the  
23 questions I have.

24 JUDGE FETCH: Mr. Lein, do you have any  
25 questions?

1 MR. LEIN: Nothing.

2 JUDGE FETCH: All right. We'll go to the  
3 Commission. Commissioner Kalk.

4 COMMISSIONER KALK: Thank you, Your Honor.

5 EXAMINATION

6 BY COMMISSIONER KALK:

7 Q. Thank you both for your testimony and your  
8 patience today to get to this point, and especially  
9 thanks for being a nurse practitioner. All the  
10 people we need up here -- we need good doctors,  
11 good nurse practitioners, good everything. It's  
12 just -- I could never do what you do. So thank you  
13 for coming out today.

14 The -- could you both -- you gave us --  
15 gave us your addresses, but could you maybe use the  
16 exhibit Mr. Armstrong was talking about and kind of  
17 give me a better feel for a section of where your  
18 property is actually just to kind of get a feel?

19 A. (BY MR. SAND) You're on one over there.  
20 You're right there.

21 COMMISSIONER KALK: So, Mitch, if you  
22 could kind of walk through that -- you're closer  
23 and my eyes can't see that far.

24 MS. JEPSON: Rob would be over here.

25 MR. SAND: No, I'm up here and you're



1 right here, Lori.

2 JUDGE FETCH: So what were you pointing  
3 to? Section 32.

4 MR. SAND: I'm on Section 32, the  
5 northeast quarter, and Lori and Loren are on part  
6 of Section 1 of -- in a separate township, but --

7 JUDGE FETCH: All right. Thank you.

8 Q. (COMMISSIONER KALK CONTINUING) Okay.  
9 Thank you both very much. Your recommendation was  
10 pretty easy to understand. You just don't want it  
11 in the battlefield area. But what if the route  
12 moved completely to the north? Judging by where  
13 your properties are at, you could certainly still  
14 see this power line. Would you have objections to  
15 that?

16 A. (BY MS. JEPSON) Actually, they did visit  
17 with my husband in -- regarding another location,  
18 and they haven't gotten back to him on that.  
19 And what section is Brandi in?

20 MR. SAND: Well, are you talking about --

21 MS. LABER: Section 18.

22 MS. JEPSON: Section 18, so --

23 MS. LABER: Because it was further south.  
24 Loren Jepson is your husband.

25 MS. JEPSON: Mm-hmm. Right.

1           Q.    (COMMISSIONER KALK CONTINUING)  I'm just  
2   trying to get a feel for it, is that -- so you're  
3   saying that if we're back here again three months  
4   from now and we're looking at a route that's to the  
5   north and it's right through your property, you  
6   would not have objections to that?

7           A.    (BY MS. JEPSON)  My husband mentioned  
8   that.  He said, you know, your contest could get  
9   this right through our property.

10          Q.    Absolutely.  Absolutely.

11          A.    But I -- I feel that the whole point of  
12   our alliance is to protect an area that is  
13   significant to Killdeer.  Do I want it right  
14   through my other property?  Not necessarily.

15          Q.    Fair enough.  That's why I asked the  
16   question.  You're obviously genuine in your  
17   concerns.  The -- just -- I guess that would be the  
18   only questions.  Oh, just -- you said there will be  
19   another -- another witness later to talk about the  
20   golden eagle concern?

21          A.    Dr. Margi Coyle will be speaking in  
22   Williston.

23                   COMMISSIONER KALK:  Okay.  All right.  
24   Thank you both for your testimony.

25                   JUDGE FETCH:  Thank you.

1 Commissioner Christmann.

2 **EXAMINATION**

3 **BY COMMISSIONER CHRISTMANN:**

4 Q. Are most of the landowners in this area  
5 part of your alliance?

6 A. (BY MR. SAND) I would say no. The  
7 alliance doesn't -- it's not a membership. So we  
8 don't really have a list of everyone. Oh, excuse  
9 me. We don't really have a list of anyone. I  
10 understand that -- I know that a number of the  
11 landowners have already signed easement agreements  
12 or whatever, and I think that some of them would  
13 like this route or would rather not trade off  
14 the -- there's concerns about the government  
15 intrusion, and I think that will be spoken to by  
16 other landowners. It's not a concern that I have.

17 Q. Okay. And I want to ask you two as public  
18 citizens that come out this question, but I need to  
19 set it up. From the Beulah-Hazen area we've had  
20 mine development over the years and a number of  
21 times in my recollection when a mine site has been  
22 expanded, folks come in and they find this point in  
23 geography is too important to disturb, that point,  
24 and all of these at the time, you know, are just  
25 about the most important point in the world, you

1 know, that one thing can't be disturbed. And if we  
2 saved all of them, nothing would ever happen.

3 So for those who are wanting power further  
4 to the north and west, when they come to me and  
5 say, The battle happened 150 years ago and you  
6 haven't studied it yet, and now you want to wait --  
7 I think Mr. Barth said it would be two or more  
8 years to do the study, so now after 150 years, now  
9 we first have to wait a couple years to do the  
10 study.

11 What would be your response to that fellow  
12 citizen who's wanting power?

13 A. (BY MS. JEPSON) Until the oil showed up,  
14 there was no money to do the study. I mean there's  
15 a lot more funds available in North Dakota for  
16 everything. We have funds in Killdeer that we've  
17 never had available until there was additional  
18 money. We originally come together as a group  
19 based on the school land, which is state land  
20 available to all hunters, hikers, trekkers, which  
21 is just adjacent to our property.

22 We know we can't mitigate what is  
23 happening on private property, but we ask the state  
24 could you please preserve something that you have  
25 the right to preserve. And that's how we started,

1 and it's kind of enveloped different entities,  
2 historical society people, archaeological people,  
3 wildlife and that's where we got our base.

4 But should we save something in North  
5 Dakota? Yes. Does it have to be everything? No.  
6 But we have a duty to our children and our  
7 grandchildren.

8 I'm actually new to this area. I've only  
9 been here 13 years, but I understand that there is  
10 a picture scape of the battlefield and you could  
11 hold it up and look at the terrain and it would be  
12 exactly the same nearly. So there is a  
13 responsibility to save something of our heritage.

14 The other option is that the school land  
15 has never been tilled, so if you're going to look  
16 at something, there is likely going to be some  
17 artifact there that would be significant. That's  
18 my scope.

19 MR. SAND: Okay. This is not  
20 about not-in-my-backyard issue for me, and I -- and  
21 many of the people who have joined it -- because a  
22 lot of those folks don't live here. And one could  
23 say, Well, you have no right to comment then. But  
24 this is a -- this is part of our heritage. This is  
25 part of our history. You heard what Mr. Baker had

1 to say.

2 I think almost everyone in this state  
3 would say Killdeer Mountains are a special place.  
4 And -- and then we know so little about the  
5 battles. My mother went to school here and grew up  
6 here and they didn't know anything about it, and I  
7 think other people who went to school here in  
8 Killdeer and stuff really didn't hear much about  
9 the local history.

10 And that's -- and maybe -- to me history  
11 is important. It's important for so many different  
12 reasons, but we can learn a lot. And in this  
13 alliance, those of us who are locals have learned  
14 so much from the Native Americans who have told  
15 their stories to some extent. I've got a lot more  
16 to learn. And then all these other folks that have  
17 joined in, it's like -- like we almost didn't know  
18 how special this place was. Yes, it means a lot in  
19 our heart, but it's special to this state and to  
20 this nation.

21 Thank you.

22 COMMISSIONER CHRISTMANN: Well, and thank  
23 you for hanging with us all day and sticking  
24 around. Appreciate it.

25 JUDGE FETCH: Thank you.

1 Commissioner Fedorchak.

2 COMMISSIONER FEDORCHAK: Just one really  
3 quick question.

4 EXAMINATION

5 BY COMMISSIONER FEDORCHAK:

6 Q. Lori, it looks to me like if I'm reading  
7 this correctly, you're the Jepson people. Does the  
8 line go through your property right now?

9 A. (BY MS. JEPSON) No.

10 Q. Section 7?

11 A. No.

12 MR. ARMSTRONG: Jepson Family LLP.

13 MS. JEPSON: Right. Yeah. It could,  
14 yeah.

15 Q. (COMMISSIONER FEDORCHAK CONTINUING)

16 It's -- as it's currently routed it does?

17 A. Well, actually not --

18 Q. Or maybe you don't own that corner.

19 MS. JEPSON: Can you answer that?

20 MS. LABER: I'm Shauna Laber and I'm the  
21 property and right-of-way agent who actually worked  
22 with her husband, and I worked with the Jepsons.  
23 The -- the family that has the LLP are my -- your  
24 niece and nephew; right?

25 MS. JEPSON: My brother-in-law.

1 MS. LABER: Isn't -- isn't Lisa Hoots  
2 and --

3 MS. JEPSON: No. That's --

4 JUDGE FETCH: All right. All right.

5 MS. LABER: These would be relatives on  
6 your husband's side.

7 JUDGE FETCH: Are you under oath, ma'am?

8 MS. LABER: No.

9 JUDGE FETCH: Okay. Please sit down.

10 Ms. Jepson, do you own that property that  
11 was just pointed out?

12 MS. JEPSON: That was just pointed out,  
13 no.

14 JUDGE FETCH: All right.

15 MS. JEPSON: 18.

16 COMMISSIONER FEDORCHAK: Okay. Thank you.

17 I have no other questions, but thank you for  
18 coming. Appreciate it.

19 JUDGE FETCH: Any follow-up,  
20 Commissioners?

21 Ms. Jacobson, any follow-up?

22 MS. JACOBSON: No, Your Honor.

23 JUDGE FETCH: Mr. Armstrong?

24 MR. ARMSTRONG: No, Your Honor.

25 JUDGE FETCH: Mr. Lein? I think I've



1 covered the room.

2 All right. Thank you very much. You're  
3 excused.

4 And at this time we're going to take a  
5 15-minute recess, but before you get up, those of  
6 you who are going to still be testifying from the  
7 public, raise your hands. I -- one, two, three,  
8 four -- five. Okay. Not everyone's signed the  
9 sheet.

10 All right. We'll come back in 15 minutes.

11 (Recessed at 5:33 p.m. to 5:47 p.m.)

12 JUDGE FETCH: All right. We'll proceed at  
13 this time with further witnesses from the public,  
14 individuals who want to testify.

15 First off, state your name, please.

16 MS. SWENSON: Jane Swenson. I'm staff for  
17 the Badlands Conservation Alliance.

18 JUDGE FETCH: Give one to the court  
19 reporter, please. Thank you.

20 MS. SWENSON: Did you need anything else  
21 from me besides my name?

22 JUDGE FETCH: Your testimony.

23 **JANE SWENSON,**

24 having been first duly sworn, was examined and  
25 testified as follows:

**STATEMENT**

**BY MS. SWENSON:**

MS. SWENSON: Okay. I guess, first, I need to say it's kind of like we're between a sacred park and a holy mountain. And we have been -- BCA has been involved in this process since early on, since as soon as it became public, at any rate. I'm sure there was much work done before we were ever aware of it.

But if one looks through all of our comments over that amount of time, we have always tried to offer all parties concerned other alternatives, saying this is -- this is kind of really a rotten route in our opinion, and this one, how can you say that that one's better? Because our concerns have to do with wildlife and holy places and humans' part in that.

So I'm going to read you real quick here what I brought, and I'm not reading you all these pages.

JUDGE FETCH: Okay. I was going to say, if you wish, the Commission can accept this as an exhibit and you can summarize it.

MS. SWENSON: Okay.

JUDGE FETCH: But I need to ask whether

1       either counsel has any objection. Ms. Jacobson?

2               MS. JACOBSON: I would have a question.

3       Ms. Swenson, in the document that's the photo  
4       simulation --

5               MS. SWENSON: Mm-hmm.

6               MS. JACOBSON: -- I see it's from Burns &  
7       McDonnell, that's Basin Electric's consultant in  
8       this project.

9               MS. SWENSON: Mm-hmm.

10              MS. JACOBSON: Is this -- are these  
11       pictures -- did you alter them in any way?

12              MS. SWENSON: No, I did not. I copied it  
13       right off the map.

14              MS. JACOBSON: Okay.

15              MS. SWENSON: And put the little info at  
16       the bottom.

17              JUDGE FETCH: With that, are there any  
18       objections?

19              MS. JACOBSON: Sorry. I'm paging through  
20       it. There's multiple pages here. Another question  
21       for the witness, Your Honor, if I so may.

22              JUDGE FETCH: Yes.

23              MS. JACOBSON: Ms. Swenson, I see you have  
24       some links -- some Internet links.

25              MS. SWENSON: I do.

1 MS. JACOBSON: What is the significance or  
2 what are these?

3 MS. SWENSON: Oh, okay. So are you  
4 talking about the letter at the very end?

5 MS. JACOBSON: There's not a page number  
6 on here, but it starts out saying Underground  
7 Transmission Lines.

8 MS. SWENSON: Okay. That is part of my  
9 testimony and is information I'm offering --

10 JUDGE FETCH: Why don't we do it this way:  
11 Why don't you go ahead and summarize your testimony  
12 and then I'll allow you to offer.

13 MS. SWENSON: Okay. So let me just to  
14 make things easier for you, I hope, say that this  
15 is just a letter that we wrote before. These  
16 attachments have to do with my testimony today.  
17 Okay. It's worth it. Let's go. Okay.

18 First I said, "Badlands Conservation  
19 Alliance is here this morning," so we'll skip that  
20 part and go right to BCA opposes the waiver on the  
21 grounds that significant routing issues exist in  
22 this application.

23 Additionally, Basin Electric is seeking  
24 funding from the USDA Rural Utilities Service, and  
25 a range of reasonable alternatives as required by

1 law under the National Environmental Policy Act  
2 process has been weakly applied and largely  
3 ignored.

4 The North Dakota PSC should refrain from  
5 further action until such attention to NEPA has  
6 been rectified. This proposed power line will have  
7 anything but minimal adverse impacts.

8 We oppose the certificate of corridor  
9 compatibility and route permit on the grounds that  
10 they will not produce minimal adverse effects on  
11 the environment and upon the welfare of the  
12 citizens of North Dakota, but rather diminish those  
13 qualities. This project largely reflects the  
14 ongoing exploitation of rural communities by  
15 industry, well outside the intent and spirit of a  
16 rural cooperative.

17 I am staff for the Badlands Conservation  
18 Alliance. I'm also a native North Dakotan. I'm  
19 60 years old. I have no doubt that every mile  
20 along this proposed power line is special to  
21 someone, if not to many. I know mine is to me, as  
22 is theirs to each of their neighbors.

23 However, there are sites that do qualify  
24 statewide and nationally as special places. In  
25 keeping with the mission statement of the Badlands

1 Conservation Alliance, I will stick to public  
2 places, including Theodore Roosevelt National Park,  
3 the federally owned and managed U.S. Forest Service  
4 roadless areas to the immediate south and east of  
5 Theodore Roosevelt National Park, and public  
6 interests in Killdeer Mountains, all areas on the  
7 newly released list that the North Dakota  
8 Industrial Commission is reviewing as special  
9 places on the western North Dakota landscape.

10 The mega Basin Electric power lines --

11 JUDGE FETCH: Okay. Ms. Swenson --

12 MS. SWENSON: Yes.

13 JUDGE FETCH: -- if you're going to read  
14 from this, then we don't need the documents in. So  
15 one or the other.

16 MS. SWENSON: Okay.

17 JUDGE FETCH: So just give a brief  
18 overview, if you would.

19 MS. SWENSON: I've been involved in this  
20 process --

21 JUDGE FETCH: Move up to the microphone.

22 MS. SWENSON: I've been involved in this  
23 process -- BCA has been involved in this process  
24 from the beginning, when it became public. I've  
25 been here all day.

1           JUDGE FETCH:   Okay.   And what point are  
2   you trying to make?

3           MS. SWENSON:   The point I'm making is that  
4   each of us that is here, the ones before me and the  
5   ones behind me, all came with good faith, so let us  
6   do that.   So -- so I will proceed.   Okay.   I think  
7   it would be quicker for me to read it.

8           JUDGE FETCH:   Well, I think maybe so, but,  
9   you know, do it -- move along a little more  
10   quickly, please.

11          MS. SWENSON:   In the one million acres  
12   Little Missouri National Grasslands, there are less  
13   than 40,000 acres that are managed as suitable for  
14   wilderness, that means federal minerals, no leases.  
15   Okay.   40,000 out of a million.

16          Long X Divide immediately to the south of  
17   the North Unit is one of those.   Lone Butte that is  
18   across the highway is a roadless area.   Yes, it is  
19   leased, but it is leased with no surface occupancy.

20          Running a power line through the eye of a  
21   needle between those two otherwise roadless areas  
22   and down right past the North Unit of the park will  
23   do away with the patch of wildlife habitat that is  
24   becoming ever, ever, ever, ever more rare in North  
25   Dakota.

1           The North Unit was always the wild unit.  
2       It's not so wild anymore. Outside of it's getting  
3       kind of wild. This is a very, very special area.  
4       We don't have a lot of opportunities left to  
5       protect that kind of intact wildlife habitat.

6           You know, dang it, I'm sorry -- I'm sorry,  
7       Basin Electric, it's a bad route. But as -- as an  
8       organization, I will tell you that we've had  
9       trouble ever since the beginning to just say, okay,  
10      go with the Killdeer route. That's better. No  
11      national park over there. But the people on the  
12      Killdeer route have the same Badlands that are up  
13      there and they're as precious there as they are  
14      there. So how do we just say choose B, choose B?

15           So we have tried to say what other  
16      alternatives are there, and we -- we offered an  
17      alternative because you need a reasonable range of  
18      alternatives for the NEPA process to be real. You  
19      can't just do it with no alternatives because you  
20      miss the whole point.

21           So we said, Okay, what about all that  
22      flared gas? I mean there's nothing to be proud  
23      about that in North Dakota, that we're flaring  
24      30 percent of our natural gas. A hundred million  
25      dollars a month we're burning up. That's



1       embarrassing. That's bad. That's bad for  
2       investors.

3               Can we look at that? What opportunities  
4       are there? I haven't seen anybody looking at that.  
5       Okay.

6               Here's another one: If -- if the PSC, if  
7       the Rural Utilities Services in D.C. decides that  
8       you're going to build a mega power line, I mean  
9       this is colossal. This is six structures half as  
10      tall as the Capitol Building every six miles for  
11      200 miles, plus we're going to add 80 more.  
12      This -- this is not just about wildlife habitat.  
13      This is about human psyche. This is a huge  
14      industrial thing we are building like we've never  
15      seen in western North Dakota, and we're going to  
16      run it past our park, our national park.

17              I was there camping a couple weeks ago at  
18      the North Unit and my husband knows darn well that  
19      when we go camping like that, I don't talk about  
20      work. I'm hiding from work. I think about oil too  
21      much anyway. But standing at overlooks I was  
22      approached by people from out of state, because we  
23      have North Dakota license plates, that came up and  
24      said, "This is my national park too. What are you  
25      doing here, North Dakota?" You know, what are we

1       doing here, North Dakota?

2               We've done everything, all of this so dang  
3       fast. This is one more of those opportunities  
4       where maybe we can take some time and be  
5       thoughtful. I mean maybe we can.

6               This hearing has given me more faith that  
7       there's a possibility of being thoughtful here  
8       about how we do something.

9               And, you know, I guess to get out of your  
10      hair, the last thing I say is that if you decide  
11      you're going to go down 85 and just go past that  
12      national park and past those roadless suitable for  
13      wilderness areas and spirituality and wildlife and  
14      recreation and everything else be damned, you need  
15      to at least consider being clever and going under  
16      that Little Missouri River.

17              The photo that we referred to is -- is at  
18      the south end of the Lone Butte roadless area.  
19      And, you know, this photo kind of bugs me.

20              JUDGE FETCH: Which photo are you  
21      referring to?

22              MS. SWENSON: Just wait, I'm going to get  
23      it. Here you go. This one.

24              JUDGE FETCH: Okay. So describe that.

25              MS. SWENSON: This is -- this is Lone

1 Butte roadless area. The fence you see right here,  
2 on the south side of that, that's Holly and Lynn  
3 Dewhirst's private land. This is U.S. Forest  
4 Service right here. What -- what you see is the  
5 beginning of Lone Butte, just the base, the  
6 southern base of Lone Butte.

7 And when you're looking out this way, the  
8 way this picture is oriented, you're pretty much  
9 looking at private land. You're catching some  
10 Forest Service, but you're mostly catching private  
11 land.

12 The reason this picture bugs me -- you  
13 know, the south is like here's where all the little  
14 sticks are going to go with the wires on them, all  
15 those red arrows. Okay. What bugs me about this  
16 picture is that whoever took it went to the south  
17 end of that roadless area and stood on the south  
18 face of the butte and took their picture across the  
19 way, and they missed the roadless area, because you  
20 have to walk around to the front of the butte to  
21 see the roadless area. And that's where you show  
22 your -- that's where you get your picture that  
23 shows the impact.

24 This whole line is -- is going to keep  
25 going, going, going, going. So what we're saying

1 is consider -- consider putting that line  
2 underground from the beginning of the roadless  
3 area, Lone Butte, down through the Little Missouri  
4 River Valley and come up on the other side. Okay.  
5 Might it cost some more? I imagine it would. You  
6 know, but it goes kind of back to that old  
7 advertisement about some things are priceless.  
8 This one's priceless. This one's priceless.

9 Is it -- is it easy to do and common to do  
10 and et cetera, et cetera? You know, I don't know,  
11 but I tried to help you get thinking about it by  
12 doing some research. And that's where -- you know  
13 online is a dangerous place, but that's what this  
14 is about. Okay.

15 So these are some places I went. But I do  
16 want you to note that the top one is from Burns &  
17 McDonnell, and they're talking -- it's a  
18 promotional fact sheet of many, many projects that  
19 they've done. And one of them is 70 miles of new  
20 345 kV transmission line, of which 24 miles is  
21 underground.

22 Okay. Me, personally, and my love of that  
23 place and the potential I think it has for the  
24 future of North Dakota, we don't need 24 miles. We  
25 probably need about a third of that.

1           You know, let's be proud of ourselves.  
2       We've done this so fast, we've done a whole lot of  
3       things wrong. Let's do this one right.

4           That's it. Would have been faster to  
5       read.

6           JUDGE FETCH: On the contrary. The  
7       Commission can read what you've prepared here, but  
8       delivering a summation of the salient points is  
9       very important.

10          Let me ask, Ms. Jacobson, do you have any  
11       questions or at this time any objections to the  
12       document that Ms. Swenson has passed out?

13          MS. JACOBSON: I have one concern with  
14       page -- the page that starts Exhibit A on where  
15       this document was from, discussing underground  
16       cables.

17          MS. SWENSON: Yeah. And, you know,  
18       honestly, I'm not an academic. So -- so -- so I  
19       went and said, Okay, you can't ask for something  
20       that's totally impossible; right? So I was finding  
21       that, yes, it is possible. Okay. On the bottom of  
22       the page with the websites, there's a thing in red  
23       that says, "This page is attached as it did not  
24       maintain its integrity when copied," and if you  
25       turn the page, that's it.

1 MS. JACOBSON: Okay. So it's part of the  
2 document that starts out with Overview of the  
3 Potential for Undergrounding, that's where you got  
4 it from?

5 MS. SWENSON: Yes.

6 MS. JACOBSON: Okay. I have no objections  
7 to the exhibit.

8 JUDGE FETCH: Thank you. Mr. Armstrong.

9 MR. ARMSTRONG: No objection.

10 JUDGE FETCH: All right. Thank you. I'm  
11 going to admit the document with all the  
12 attachments into the record as Exhibit 35.

13 Did you have questions, Ms. Jacobson?

14 MS. JACOBSON: I don't, Your Honor.

15 JUDGE FETCH: All right. Thank you.

16 Mr. Armstrong?

17 MR. ARMSTRONG: I don't have any  
18 questions.

19 JUDGE FETCH: Thank you.

20 Mr. Lein?

21 MR. LEIN: No questions, Your Honor.

22 JUDGE FETCH: All right, then. We'll go  
23 to the Commission. Commissioner Kalk.

24 COMMISSIONER KALK: Thank you, Your Honor.

25

**EXAMINATION**

**BY COMMISSIONER KALK:**

Q. Thank you, Ms. Swenson, for your testimony, being here all day today. We've visited before, so it's good to see you again.

The -- you were here for the testimony before when I was talking to the company, I believe, about, you know, put a local face on this thing, how this affects the local guy or gal in the Cenex station. And their answer was reliability for the grid. With the robust system going on we don't have reliability, we've got some problems.

How do we tell that farmer or rancher that is counting on this project for reliability to keep the water from freezing up for their cattle? How do we tell them if we don't build this power line?

A. You know, this is not about that farmer or rancher. You know, that farmer or rancher has been fine for a long time. This is not about that farmer or rancher. This is about industry. And, you know, there's not necessarily anything wrong with that, but that's what it's about. It's not about the farmer/rancher. It's not about the person that lives in Watford City. It's about industry.

1           Q.     So when we -- so do you -- was your group  
2     around in the '60s and '70s when the transmission  
3     build-out really took place in North Dakota?

4           A.     No.

5           Q.     Do you think that the group would have  
6     taken this same approach back when -- I'll give you  
7     that this is predominantly a lot of industry load,  
8     but would you have taken the same approach when we  
9     were electrifying rural America?

10          A.     No.

11          Q.     So that is a significant change then, in  
12     your mind?

13          A.     It is a significant change and it is a  
14     significant -- significantly different world we  
15     live in.

16          Q.     Okay. Fair enough.

17          A.     You know, I remember all my relatives  
18     getting electricity. It was a pretty big deal.

19          Q.     Absolutely. My father worked for --

20          A.     Water too.

21          Q.     -- Slope Electric for 40 years, and it was  
22     a big deal when they got the --

23          A.     Yeah.

24          Q.     -- light to go in the barn.

25          A.     Yeah. It's a proud -- it's a proud deal.



1 Proud heritage Basin Electric has.

2 Q. Your thoughts about -- about natural gas  
3 plants. So does that mean that speaking for your  
4 agency that you'd be in support of natural gas  
5 electricity plants throughout the state and  
6 increasing those?

7 A. You know, I was supposed to have a twin  
8 who I don't have today, one of our BCA board  
9 people, who knows way more about natural gas than I  
10 do. And she will be in Williston on -- next  
11 Thursday, and I'm pretty limited in my knowledge.  
12 Would we accept an increase of some small  
13 distributed, some small --

14 Q. Because I understood your testimony as  
15 this would be -- an alternative would be natural  
16 gas.

17 A. Let's look at how we can use that flare  
18 gas so that we don't have to build at this level.

19 Q. Okay. So I'll ask her that question then  
20 at the next hearing.

21 A. Yeah, please.

22 JUDGE FETCH: And who is that?

23 MS. SWENSON: Connie Triplett.

24 Q. (COMMISSIONER KALK CONTINUING) Okay. And  
25 I'm not saying I've drawn any conclusions one way

1 or the other with this comment, but if somehow the  
2 company was directed to underground the part of the  
3 Little Missouri crossing that you talked about,  
4 would you support this project?

5 A. Well, it would sure change how I looked at  
6 it.

7 Q. Would you support it?

8 A. How BCA looked at it.

9 Q. Would you support it?

10 A. You know, I work for a board. I'd have to  
11 go say --

12 COMMISSIONER KALK: Fair enough. All  
13 right. Thank you very much.

14 MS. SWENSON: Mm-hmm.

15 JUDGE FETCH: Thank you.

16 Commissioner Christmann.

17 **EXAMINATION**

18 **BY COMMISSIONER CHRISTMANN:**

19 Q. Getting back to the natural gas  
20 suggestion, do you have a proposal for us or an  
21 idea of how we would transport that last  
22 30 percent, which is kind of distributed out and --  
23 and pretty far-reaching wells all over the place,  
24 how would we get that to a processing plant to make  
25 electricity out of it or is this a question for

1 Senator Triplett?

2 A. I'm sure she's more qualified than I am.  
3 You know, I would say that it isn't just -- it  
4 isn't just the isolated wells that are making up  
5 that 30 percent. There's a lot of other reasons  
6 why that 30 percent appears on the bottom line.

7 Q. I was going through your testimony now.  
8 It's about the eighth page in, but it's from  
9 something that says page 36 and it has a lot of the  
10 European countries listed on there.

11 A. Yeah.

12 Q. In looking specifically at the bottom  
13 chart -- do you have it there yet?

14 A. I know which one you're talking about,  
15 so -- okay.

16 Q. Correct me if I'm wrong about something,  
17 but here's what I notice about this. The biggest  
18 underground lines that they have under -- the  
19 biggest lines that they have underground are 150  
20 kV?

21 A. No.

22 Q. It says -- it's -- the heading is low,  
23 medium and high voltage, but then the order of the  
24 graph is the opposite. It starts with 60 to 150  
25 and then goes to MV, which I'm assuming is medium

1 voltage, and LV, which must be low voltage, or do I  
2 understand this all wrong?

3 A. Yeah. But look at the little -- you know,  
4 and there I should have used a highlighter. Look  
5 at the graph above that that says voltages of 150  
6 to 400 kV. That's -- that's the part that concerns  
7 me. And so amounts in kilometers under land, under  
8 sea with the 400 kV land, under sea, Austria has  
9 56, Denmark has 134, Finland has 34, France has 11,  
10 Germany has 62. Under water, Denmark has 16,  
11 Finland has 99, Germany has 423 kilometers. Okay?

12 Q. Okay.

13 A. So all I'm saying is that let's think big.  
14 It's possible. Other people have done it. We can  
15 do this too. Come on, North Dakota.

16 Q. Okay. And my last question for you is --

17 A. Mm-hmm.

18 Q. -- having to do with the impact on  
19 wildlife. And I'll agree a bird or bat could fly  
20 against this and be harmed. Beyond that,  
21 specifically what is your concern with the  
22 wildlife?

23 A. It's -- you know, I guess I'm not going to  
24 repeat. I could point back at the park  
25 superintendent. It's fragmenting, fragmenting,

1     fragmenting, fragmenting, fragmenting. And every  
2     project that comes along, when it goes through the  
3     process, you will find consultants and agencies  
4     saying that it will have minimal scope. It will  
5     have minimal impact.

6             Well, you know, one little thing might,  
7     but we're -- we're piling on. We're piling on  
8     good. And so we have so few areas left in North  
9     Dakota that don't have roads and power lines and  
10    oil wells and tank batteries and railroad transport  
11    facilities and stockyards and -- you know, we have  
12    so few.

13            Q.    But is there some -- I mean you talk about  
14    fragmentation, but is there some evidence to  
15    suggest that deer or rabbits or turtles or some  
16    animal is afraid to go under a power line?

17            A.    They don't like disturbance. You know,  
18    it's like if somebody was always knocking on your  
19    window at night when you were trying to sleep, it  
20    might bug you. Well, if you're a Sprague's pipit  
21    and somebody's always knocking on your window,  
22    you'd just give up. You know, and there are some  
23    that really do give up, and Sprague's pipit is one  
24    of those. You know, mule deer, the numbers will  
25    tumble. They'll be cut in half. They'll just

15 JUDGE FETCH: Thank you.

17

EXAMINATION

19 Q. Jane, thank you. Jane and I have talked  
20 about these things quite extensively over the last  
21 few years, and I've always enjoyed our  
22 conversations and I appreciate your hard work and  
23 your sincerity to this cause. It is important. I  
24 agree with you in that regard.

25 | A couple questions for you. You mentioned

1 in your discussion -- and I agree with Judge Fetch  
2 that your spontaneous testimony was very good and  
3 I'm glad you deviated from your written stuff.

4 A. Okay.

5 Q. So you mentioned that this is a mega  
6 structure the likes of which we've never seen in  
7 North Dakota, but we crossed one driving out here,  
8 a 345 kV power line. So what is it about this  
9 particular one, which I -- from my understanding of  
10 what I've read is actually built in a way that is  
11 less obvious and more subtle than the existing  
12 340 -- thirty -- what is -- 345 -- I'm sorry, it's  
13 gotten late -- kV that exists throughout the state  
14 that are the big people kind of like looking power  
15 lines, those guys. These are going to be smaller  
16 and less obtrusive. What is it about this --

17 A. People-looking.

18 Q. Well, they look like -- I don't know, I  
19 always think they look like big metal people.

20 What is it about this that you think is  
21 different than those and it bothers you more?

22 A. That it's not been here before.

23 Q. But we passed one coming here.

24 A. Where?

25 Q. On -- it's right across Highway 200. You

1 know, it just -- it follows -- I can't -- I mean  
2 there's a whole loop of it that goes around. It  
3 doesn't go through the park. It doesn't go through  
4 the park, but we certainly have these in North  
5 Dakota.

6 A. You know, and absolutely we do and, you  
7 know, when somebody like me goes for a ride, I go  
8 (indicating) and try to see through them. I try to  
9 see through them. Okay. What did it look like  
10 before? What was it like? Oh, boy, it must have  
11 been incredible. Okay. Here we have a spot that  
12 still is incredible.

13 Q. Okay. So that leads me to my second  
14 question, which is that the corridor -- the things  
15 that you've ticked off -- listed off that you don't  
16 like, the roads, the power lines, you know,  
17 pipelines -- no, I don't know that you said  
18 pipelines, but these various industrial structures,  
19 the corridor through -- that this follows through  
20 the park already has a major highway and another  
21 transmission line. So does your conservation  
22 alliance group see any value in keeping it in the  
23 same place? Is that a value or is it better to  
24 move it someplace where there isn't one so now it's  
25 new?



1           A.     There is a value in figuring out something  
2     else.   There's a value in figuring out and thinking  
3     in a new enlightened way to try to solve some of  
4     these problems because of what we do still have in  
5     western North Dakota.

6           Q.     Mm-hmm.   So we hear sometimes that, you  
7     know, we should be doing these things in corridors  
8     and we should be doing things more thoughtfully,  
9     place things together and try to minimize impact in  
10    that way.   And I find it somewhat frustrating that  
11    here is a project that's attempting to do that and  
12    it's wrong.   So, you know --

13          A.     It's wrong because --

14          Q.     -- if we were going to move it someplace  
15    where there isn't a power line already or a road,  
16    both of which are right there --

17          A.     And it's -- I would agree that it's no  
18    easy solution.   There is no easy solution.   There  
19    is no easy solution.   A corridor that exists past a  
20    national park between two roadless areas that are  
21    incredibly rare is just wrong.   It's just wrong.

22          Q.     So I understand the roadless areas, are  
23    they between -- is one on one side of 85 and the  
24    other on the other side of 85?   So there's a road  
25    going through the two roadless areas already?

1           A.    It's going between them. I mean that's  
2    life.

3           Q.    And this will go right alongside the road.

4           A.    That's life in the real world these days.  
5    So -- so I'm -- I don't know, you know.

6    Personally, I'm not sure where this transmission  
7    line is going to go. I know there's a lot of  
8    people that really want it.

9           Q.    Well, and the unfortunate thing about this  
10   is that, you know, it isn't about the farmers and  
11   ranchers. It isn't. We all recognize that. This  
12   is about growth. This is about industrial growth  
13   and serving that. It's also about serving the  
14   people who are here as a result of that growth, and  
15   those people, you know, are coming from other  
16   places. They now have a job and they can, you  
17   know, buy food for their family and pay their rent.  
18   And there's value to that too.

19          A.    Mm-hmm.

20          Q.    So I mean that's where we get into this  
21   balance and we have to -- I appreciate very much  
22   your drawing out some alternatives. Some -- that's  
23   what I like about you is you don't just complain,  
24   you try to find solutions. I very much appreciate  
25   that and we'll take it under serious advisement.

1 But the electrons on a wire don't know the  
2 difference between a house wanting it with a mom  
3 who's cooking supper or an oil well. They just  
4 know there's demand and that's where they go --

5 A. But you know.

6 Q. -- and it all comes together.

7 A. But you and I know.

8 COMMISSIONER FEDORCHAK: Yeah, it -- but  
9 we have to provide it all together to serve it. I  
10 mean you can't distinguish -- like we can't do this  
11 because the oil companies need it and we don't want  
12 to support any more growth. What about the people  
13 who also want to turn their lights on? They need  
14 it, too, and you can't distinguish we'll serve them  
15 and not them. It all goes together. So that's why  
16 this is -- this is a challenge to -- you know, the  
17 load is there. So do we try to do that in a  
18 reasonable, constructive way and timely, which is  
19 an issue here, or -- or not?

20 And so -- anyway, I don't want to get into  
21 a debate about it. It's -- I appreciate your  
22 comments. I very much do. I want to protect the  
23 park and those precious areas. I bring my kids  
24 there myself and they are precious and I want to  
25 keep them that way too. And I believe that we can

1 find a reasonable solution to do this and meet some  
2 of these specific needs and suggestions of folks  
3 and the need for the power as well. So that's all  
4 of my questions.

5 MS. SWENSON: Hope so. Slow down, think  
6 big. Can I just say that BCA is not opposed to oil  
7 and gas development in North Dakota. Do we think  
8 that things have gone way too fast? Do we think we  
9 need to be thinking about a few things,  
10 strategizing, having a comprehensive plan, deciding  
11 if there's any places that are sacred out there?  
12 But we're not opposed to oil and gas. Okay.

13 JUDGE FETCH: Commissioner Christmann, I  
14 think you had a follow-up.

15 COMMISSIONER CHRISTMANN: Yeah, just --  
16 sorry, Judge, but I just probably won't be able to  
17 pay full attention unless I ask this question.

18 **FURTHER EXAMINATION**

19 **BY COMMISSIONER CHRISTMANN:**

20 Q. I thought I had hunted for, fished for or  
21 just stood and admired about everything in North  
22 Dakota, but could I get a one-sentence explanation  
23 of what a Sprague's pipit is?

24 A. Sprague's. It's just a little tiny bird  
25 about this high that's endemic to -- to prairie, to

1 mixed grass prairie, and which means it can't live  
2 without it. And it needs an area -- I think the  
3 U.S. Fish and Wildlife Service says about 200 acres  
4 to 700 acres it needs for nesting.

5 Q. Okay. Thank you. It's a bird.

6 A. It's a bird.

7 Q. Okay.

8 A. And it soars way high in the sky and sings  
9 its song as it falls.

10 COMMISSIONER CHRISTMANN: All right.  
11 Thank you.

12 JUDGE FETCH: Thank you. Commissioner  
13 Kalk, any follow-up?

14 COMMISSIONER KALK: Just one quick one,  
15 Your Honor.

16 **FURTHER EXAMINATION**

17 **BY COMMISSIONER KALK:**

18 Q. Thank you for all your testimony, and it's  
19 always a great opportunity for commissioners to  
20 learn things because there's just so much  
21 information that comes this way.

22 I do have really a direct question for  
23 you, though. The -- with your concerns about these  
24 power poles, I would assume that your group is  
25 against wind turbines as well?

1           A.    You know, I don't think you can compare  
2 those. I think it's apples to oranges.

3           Q.    How so?

4           A.    How so?

5           Q.    They both take up landscape, you've got  
6 the view shed. Actually, turbines have --

7           A.    But --

8           Q.    -- potentially more --

9           A.    But there -- but you think they are more  
10 disturbing? I think that something that marches  
11 200 miles with the potential to march 280 miles  
12 across the landscape and be half as tall as the  
13 Capitol has more of an impact on our psyche than --  
14 and on our landscape --

15          Q.    Wind turbines are taller than the Capitol.

16          A.    -- than confined --

17          Q.    I'm just trying to be very candid with the  
18 discussion, as well, but I mean turbines are --  
19 they're a generation, so --

20          A.    You know, I --

21          Q.    -- we could end up with -- let's suppose  
22 the Commission does not approve this power line.  
23 Some group could come in and build natural gas base  
24 load and then put 600 wind turbines to meet  
25 600 megawatts of demand in western North Dakota and

1     that perhaps would be a bigger impact of our  
2     natural resources having 600 turbines in an area  
3     than a power line running from base load coal down  
4     in Antelope Valley.

5           A.     You know what, you can't make up these  
6     things and expect me to give you a snap answer.  
7     That's why they have NEPA processes. You know,  
8     there's no way. Plus I work for a board.

9           Q.     Fair enough. I just -- we've sited a lot  
10    of wind turbines in the state, a lot, and I've  
11    never heard BCA come to any of our hearings with  
12    these similar types of concerns.

13          A.     You know, we're western North Dakota.

14          Q.     We've sited them in western North Dakota.

15          A.     We're western North Dakota public lands.  
16    Public lands. Little Missouri state school land,  
17    Theodore Roosevelt. You know, we're growing some.  
18    You know, I just commented at oil and gas about  
19    Lostwood, Fort Union. Our concentration -- we're  
20    the Badlands Conservation Alliance, so --

21                COMMISSIONER KALK: Public lands. Fair  
22    enough. Okay. Thank you.

23                JUDGE FETCH: Perhaps in the future if  
24    some wind turbines come under question, they'll be  
25    there. And, yes, they are taller than the Capitol.

1 Any follow-up, Ms. Jacobson?

2 MS. JACOBSON: None, Your Honor.

3 JUDGE FETCH: Thank you.

4 Mr. Armstrong.

5 MR. ARMSTRONG: Just one area.

6 EXAMINATION

7 BY MR. ARMSTRONG:

8 Q. These underground transmission lines I  
9 think that you're discussing in the Burns &  
10 McDonnell page and the one following, do you know  
11 how they're built, if they're bored or if they're  
12 surface trenched?

13 A. You know, from what I was reading, there's  
14 options. A lot of times they are trenched. I  
15 would suggest that that not be done for this short  
16 distance. I think -- I truly think that we have  
17 the ingenuity and the skill and the engineers out  
18 there right now in western North Dakota to figure  
19 out how to do this. We can do this by boring.  
20 That's -- that's what I would recommend.

21 Q. I'm gathering you don't necessarily know  
22 if that's feasible in this area one way or the  
23 other?

24 A. I do not know the geology from that -- how  
25 deep you have to go to make that feasible.



1 MR. ARMSTRONG: Thank you.

2 MS. SWENSON: But I bet there's a lot of  
3 geologists around here that could tell us that.

4 JUDGE FETCH: Anything further from  
5 anyone? All right. Thank you.

6 Okay. Who is next?

7 MR. SKURUPEY: Hi, my name is John  
8 Skurupey, and I'll spell that for you,  
9 S-k-u-r-u-p-e-y. And I'm the general manager from  
10 McKenzie Electric Cooperative in Watford City,  
11 North Dakota.

12 MR. ARMSTRONG: Judge, if I could, did we  
13 enter --

14 JUDGE FETCH: We did. That is entered as  
15 Exhibit 35. Thank you.

16 I'm sorry. It was John Skurupey?

17 MR. SKURUPEY: Yes.

18 JUDGE FETCH: And what -- you're general  
19 manager for?

20 **JOHN SKURUPEY,**  
21 having been first duly sworn, was examined and  
22 testified as follows:

23 **STATEMENT**

24 **BY MR. SKURUPEY:**

25 MR. SKURUPEY: McKenzie Electric in

1     Watford City, North Dakota. We are a member of  
2     Basin.

3             I'm speaking in support of this line, but  
4     I think I need to start out by clarifying something  
5     and that is that a lot of statements have been made  
6     here today about McKenzie Electric and McKenzie  
7     Electric's load growth, almost like we've been  
8     singled out. And I want people to all understand  
9     that we're just a part of the puzzle. I feel like  
10    I've got a target on my back right now, and  
11    that's -- that shouldn't be the case.

12            Yes, we're a fast-growing cooperative.  
13    Matthew did a great job discussing the technical  
14    aspects of the transmission system as it exists  
15    today. And McKenzie Electric, primarily at Watford  
16    City, at the Watford City delivery point, are  
17    feeling the largest -- some of the pain of the  
18    growing that's taking place, the growth that's  
19    taking place in that, even though the transmission  
20    line between Charlie Creek and Williston has been  
21    upgraded to 230 kV, McKenzie Electric at Watford  
22    City this past year, this past winter was notified  
23    by the Western Area Power Administration that there  
24    was a potential that we could be load limited to  
25    70 megawatts at the Watford City delivery.

1           What that means is if -- if we get a phone  
2   call from Western Area Power Administration -- of  
3   course, this is system contingent, of course. In  
4   other words, if something happened on the system,  
5   like the 345 line to Charlie Creek went down or the  
6   230 transformer at Charlie Creek went down, we  
7   would have been load limited to 70 megawatts, and  
8   that's inclusive of McKenzie Electric and MDU  
9   loads.

10           Had that happened, we would have been  
11   given notification and we would have had 30 minutes  
12   to respond. And that 30 minutes response time  
13   would have required us to shed our load, our  
14   collective load down to something less than  
15   70 megawatts.

16           So who do you shed? If we don't -- if we  
17   don't get to 70 megawatts in 30 minutes, Western  
18   arbitrarily opens up breakers. So they don't care  
19   who they shut off. It could be a hospital,  
20   whoever, and you're -- you're just out of luck.

21           So McKenzie Electric -- and actually there  
22   was an outage that did occur where we did actually  
23   have to curtail some load on our system, but it's  
24   also important to understand that part of our rate  
25   structure is inclusive of an electric heat rate.

1 And that electric heat rate is an incentive for  
2 consumers, members to install electric heat as a  
3 primary heating source in their home or business.  
4 And when the power does go out, there -- in the  
5 middle of winter, there is the potential -- and  
6 anybody that wants to refute this, I'll argue with  
7 them till the day I die -- there is a risk of life  
8 and limb when -- when there's an outage and you  
9 live on electric heat. It could be in the middle  
10 of a blizzard, whatever, and you don't have the  
11 ability to get out to someplace else, it could  
12 happen.

13 Yes, McKenzie Electric is growing. We've  
14 grown since 2005 300 percent. In 2012 alone we  
15 grew 69 percent. We average approximately 85 new  
16 wells per month over the past 18 months, and that's  
17 on the low end. Numerous ancillary loads walk in  
18 the door every month, pipeline loads, man camps,  
19 residential developments, you name it, we've got  
20 it.

21 Infield drilling, one can argue, makes  
22 salary growth. I mean we've built out our  
23 distribution system, all the main feeders are  
24 primarily in for the most part, and now as these  
25 producers come in and start hitting in the

1 multi-well pads on the now tied-down leases, one  
2 could conceivably argue that our growth rate should  
3 accelerate. And the gas companies that have gas  
4 plants on our system will probably agree with you  
5 because that's what we're seeing.

6           We've got two new gas plants going in just  
7 northeast of Watford City right now. Each one of  
8 them is 15 megawatts of load. Each one of them  
9 brings with it eight megs -- four separate  
10 compressors that run roughly eight megs each. So  
11 each gas plant collectively with its compression is  
12 a 50-megawatt load. And when we're talking two of  
13 them northeast of Watford, that's a hundred  
14 megawatts that we're going to see in '14 and '15  
15 total just from gas loading. Maybe not us. Maybe  
16 some of those gas compressors will be off our  
17 system, but nonetheless the load will be here  
18 somewhere.

19           So what are the alternatives? If this  
20 line does not go in and if it doesn't go in in a  
21 timely fashion, we're going to be stuck curtailing  
22 loads. And what does that mean? Do we tell that  
23 next residential development, "I'm sorry, but"?

24           And it's -- it's that human side that  
25 needs to be considered most of all. These oil

1 producers, they have the ability to use AJAX  
2 engines, on-site generation. Yeah. That's another  
3 environmental impact and who knows what those  
4 emissions are out of those pieces of equipment? I  
5 don't know, but it's an impact. Yes, it increases  
6 their cost of production, and their reliability  
7 using those things is far less than what station  
8 power is.

9 So here we are at McKenzie Electric.  
10 We're already consistent contingent load limited,  
11 meaning reliability is not adequate today. Loads  
12 are growing daily, and without significant  
13 investment in transmission infrastructure, all  
14 growth will be negatively impacted.

15 If development can't be served by central  
16 station power, the economic, environmental impacts  
17 will paint a far different picture than the one --  
18 than one with adequate and reliable power source.  
19 Timing is critical given the transmission grid is  
20 already behind.

21 That's all I have.

22 JUDGE FETCH: Thank you.

23 Ms. Jacobson?

24 MS. JACOBSON: No questions, Your Honor.

25 JUDGE FETCH: Thank you.

Mr. Armstrong.

## EXAMINATION

**BY MR. ARMSTRONG:**

Q. Other than this proposed line, what is in the works to provide more load to your area?

A. More -- more generation? Basin is installing a total of six peaking units in western North Dakota right now. I think one just became commercially --

MS. JACOBSON: Today.

MR. SKURUPEY: -- today, and they're working on the other units going forward, I think. In '14 and '15 are the other ones.

Q. (MR. ARMSTRONG CONTINUING) And how -- I'm trying to understand, I guess, the balance between those types of generation and the -- this line in, you know --

A. Okay. I'm going to kind of step into the Basin Electric realm here, so bear with me if I come across a little bit off, but I believe I know what I'm talking about. Some may argue with that, but the peaking units are not base load units. Peaking units are made to handle peak loading situations, so they're designed in such a way that if they were to run 24/7/365, they would rapidly

1       deteriorate and no longer be functional, unlike a  
2       combined cycle unit, which is something that can  
3       run 24/7/365.

4                   This transmission allows us access to  
5   already installed generation throughout the system,  
6   throughout the grid, and therefore transmission is  
7   the low cost, most -- probably the fastest  
8   alternative to getting us the power supply that we  
9   need today.

10 MR. ARMSTRONG: That's all the questions I  
11 have.

12 JUDGE FETCH: Mr. Lein, did you have any  
13 questions?

14

EXAMINATION

15 BY MR. LEIN:

16 Q. Do you know what McKenzie's peak load is  
17 nowadays?

18           A.     This past winter -- we're a winter-peaking  
19     cooperative, which was stated earlier. This past  
20     winter we peaked at just about 150 megawatts.

21 Q. Okay. And I was just curious if you know  
22 what Watford City's total load would be at that  
23 substation where they were going to cut you down to  
24 70.

25 | A. Actually, I'm not really sure I have that



1 number, but I do know that we did have a  
2 transmission line go down just north of Killdeer  
3 here this summer, as a matter of fact last month,  
4 where we lost 13 miles of transmission line due to  
5 high winds. And we ended up hanging all of our  
6 system load on Watford City, and our total system  
7 load, including the MDU load, got up to about  
8 108 megawatts at the Watford City delivery, which  
9 has a transformer capacity of 100 megawatts.

|    |          |
|----|----------|
| 10 | Q. Okay. |
|----|----------|

11 | A. So we were overloading Watford City.

12 MR. LEIN: Okay. Thanks. I was just  
13 trying to get an idea. That's all.

|    |                         |
|----|-------------------------|
| 14 | JUDGE FETCH: Thank you. |
|----|-------------------------|

15 Go to the Commission. Commissioner Kalk.

16 COMMISSIONER KALK: Thank you, Your Honor.

17 And Jerry's our electrical engineer, so he's the  
18 one following all this stuff.

19

EXAMINATION

20 BY COMMISSIONER KALK:

21 Q. The -- thank you, John, for your  
22 testimony. The -- do you have a service area  
23 agreement with MDU around the city?

24 | A. Of Watford City.

|    |                     |
|----|---------------------|
| 25 | Q. Of Watford City? |
|----|---------------------|

1           A.    Yes.  Well, it's in the works.  We have a  
2   map.  The language is yet to be --

3           Q.    So could you kind of just give me the  
4   rough features as we go around town, like where  
5   would be your south limit, your north limit, east  
6   and west, where you pick up city growth?

7           A.    It's not that easy.

8           Q.    Of course.

9           A.    It's kind of a jigsaw.

10          Q.    Okay.  But let me go back and rephrase,  
11   then.

12                    So would it be safe to assume that the  
13   growth of Watford City is now in your service  
14   territory, not MDU's?

15          A.    Because of the service area agreement and  
16   the provision in there, the growth will be somewhat  
17   shared going forward.  So we're going to start  
18   getting some concentrated load growth, yes, if  
19   that's what you're driving at.

20          Q.    I was meeting with MDU the other day about  
21   how they're going to provide gas to some of these  
22   areas.

23          A.    Yes.

24          Q.    So -- so do you have a number of -- you  
25   talked about how many new wells there might be, but

1 back to put a human face on it, how many residents  
2 do you think you're going to be bringing on in the  
3 next few years or how many have you brought on?

4 A. That's such a tough thing to put a finger  
5 on, but I can tell you this: About two years ago  
6 Reservation Telephone, the local cooperative --  
7 telephone cooperative, did an impromptu survey of  
8 the population around Watford City, within a mile  
9 of Watford City, I think it was, and they came up  
10 with over 10,000 people. The man camps are hard  
11 to -- it -- who knows how many people are in them?  
12 You just can't put a number to it.

13 But I do know that there's a lot of  
14 residential development going on right now, a lot  
15 of dirt is being moved, there's a lot of apartments  
16 that have been built, a lot of hotels are being  
17 installed.

18 Q. Okay.

19 A. It's hard to put a number on.

20 Q. Absolutely. And then just a last comment.  
21 I appreciate your -- your comments about these gas  
22 plants because the Commission has sited these and  
23 they're a great use. You capture the gas. You  
24 take the wet gas and make ethylene, propane and all  
25 these other things into it. But I did not realize

1     that they each had a 50-megawatt load. So even  
2     capturing the gas is going to generate huge  
3     electric loads.

4           A.     That's correct. And that's an interesting  
5     thing, also, because when we had the outage where  
6     we had to shed load this past -- I think it was  
7     this past winter -- don't quote me on that, but we  
8     ended up contacting the gas plant and asked them to  
9     shed some compression loading. And you know that  
10    when they shed compression, all of those wells that  
11    are delivering the raw gas go to flare. So there's  
12    also that environmental aspect of it.

13           COMMISSIONER KALK: All right. Thank you,  
14    John.

15           JUDGE FETCH: Thank you.

16           Commissioner Christmann.

17           COMMISSIONER CHRISTMANN: I don't have any  
18    questions, Your Honor. That was very interesting.  
19    Thanks for hanging with us all day. That was an  
20    important perspective.

21           MR. SKURUPEY: Yeah, and it's getting  
22    close to my bedtime, just so you know.

23           JUDGE FETCH: Thank you.

24           Commissioner Fedorchak.

25           COMMISSIONER FEDORCHAK: Are you being

1 sent to bed without supper?

2 (Laughter.)

3

**EXAMINATION**

4

**BY COMMISSIONER FEDORCHAK:**

5 Q. I just have one question. You mentioned  
6 on-site generation, which kind of -- that the -- a  
7 lot of the wells have that capacity to have some  
8 on-site generation. So can you just talk a little  
9 bit about that and what it is and how it is -- is  
10 it off grid?

11 A. Yes, it's off grid. Basically all they do  
12 is pull up a little generator, just like you would  
13 for your house, and then they run diesel. It's my  
14 understanding that they can spend between 20 and 30  
15 thousand dollars a month in rental and fuel costs.

16 Q. And under what circumstances do they do  
17 that now?

18 A. When we can't get to them fast enough.

19 Q. How long will they do that? A month? A  
20 year?

21 A. That's why they have -- they call us every  
22 day and ask us where we're at on getting there.  
23 It's -- they run them for extended periods of time.  
24 What they'll do is they'll run gas for diesel power  
25 generation if they believe something might not get

1 power for, let's say, 6 to 8 to 12 months. If it's  
2 longer than that, then they -- then they opt to go  
3 to AJAX engines, which just burn the flare gas.  
4 And, again, all those emissions were -- and I think  
5 they have to permit those as well. I'm not  
6 positive, but -- but that's, I think, their  
7 methodology.

8 COMMISSIONER FEDORCHAK: Okay.  
9 Interesting. Thank you. Appreciate it, John.

10 MR. SKURUPEY: Yep.

11 JUDGE FETCH: Any follow-up from  
12 commissioners?

13 How about from either counsel?

14 Mr. Lein?

15 MR. LEIN: No.

16 JUDGE FETCH: Thank you, Mr. Skurupey.

17 MR. SKURUPEY: Thank you.

18 JUDGE FETCH: All right. I think we have  
19 about three more people who want to testify.

20 **CHRIS BAUMGARTNER,**  
21 having been first duly sworn, was examined and  
22 testified as follows:

23 **STATEMENT**

24 **BY MR. BAUMGARTNER:**

25 MR. BAUMGARTNER: Good evening. My name

1 is Chris Baumgartner. I am the co-manager for  
2 Roughrider Electric Cooperative with offices in  
3 Hazen and Dickinson, and my work address is 801  
4 Highway Drive, Hazen.

5 With full disclosure, from 1992 to May of  
6 2012, I was an employee of Basin Electric in their  
7 member relations and communications group and left  
8 in May to take my current position.

9 At Roughrider -- Roughrider Electric  
10 serves 7,000 member owners across seven western  
11 North Dakota counties. There's Oliver, Mercer,  
12 Stark, Dunn, Billings, Golden Valley and Hettinger.  
13 Roughrider Electric is a Class C member of Basin  
14 Electric. We deliver power generated by Basin  
15 Electric that comes to us through the integrated  
16 system via contracts secured through the Upper  
17 Missouri Generation Transmission Cooperative.

18 As with any major project such as the  
19 proposed transmission line, prudence requires that  
20 we study the necessity of such a large endeavor.  
21 Our cooperative has seen an average annual growth  
22 of 6 percent in sales every year since 2006, and we  
23 are forecasting growth at the same rate for the  
24 next ten years.

25 This new transmission line will not only

1 allow for additional capacity, but will also serve  
2 as backup source for power delivery into the  
3 Roughrider system. As a member-owned cooperative,  
4 Roughrider takes every effort to focus our  
5 attention on serving the needs of our customers.

6 We are not a profit-driven organization  
7 and exist rather to ensure the high quality of life  
8 for our members with the use of dependable and  
9 affordable electricity. It is this perpetual  
10 balance of cost and system reliability and  
11 certainly with the constant awareness and respect  
12 for the environment where we live and where we  
13 work.

14 We believe the sense of awareness is also  
15 present at Basin Electric, our power supply  
16 cooperative. It is equally important that all  
17 development and system improvements occur after the  
18 necessary actions have been taken to ensure the  
19 respect for the natural environment to all of our  
20 neighbors, our friends who call North Dakota home.

21 Basin has a long history of working  
22 closely with landowners, communities, environmental  
23 groups, as well as local and state governments and  
24 their membership to identify cultural and  
25 environmental-sensitive areas and to reduce or



1 eliminate some of the negative impacts.

2 We feel that Basin has done so in this  
3 project, and they've identified not only the least  
4 expensive option to construct and operate this  
5 transmission line, but also have invested the  
6 necessary time and resources to prepare, plan and  
7 construct it in the most environmental and  
8 responsible manner.

9 As a cooperative, as a representative of  
10 one of the member owners of Basin Electric, we  
11 would expect nothing less from them, and we  
12 strongly encourage you to support this project.

13 Thank you.

14 JUDGE FETCH: Ms. Jacobson, any questions?

15 MS. JACOBSON: No, Your Honor.

16 JUDGE FETCH: Thank you.

17 Mr. Armstrong, any questions?

18 **EXAMINATION**

19 **BY MR. ARMSTRONG:**

20 Q. The only question I have is you talked  
21 about the 6 percent growth since 2006. Are you --  
22 is your system to your customers close to capacity  
23 or where are you at with that?

24 A. We are continuing to add capacity within  
25 our system. We added a couple substations last

1 year and we have two more that we are currently  
2 working on, again to take delivery out of either  
3 the IS or of the common use -- it would be the  
4 sub-transmission level that we operate with MDU.  
5 So we are working -- we are working on -- at the  
6 distribution level to ensure capacity.

7 Q. What role does this line have in that  
8 process?

9 A. This -- this line here, one of our  
10 delivery points off of the IS is the Charlie Creek  
11 Substation, which has been referenced here today.  
12 We take delivery out of that in two forms. Really,  
13 there's a 115 line that we take delivery out of  
14 that that runs into another substation that we  
15 have, and then that voltage is dropped down again  
16 to 41.6.

17 But then also there's a 345 line that runs  
18 from Charlie Creek down to a substation near South  
19 Heart, which we also take delivery out of. So any  
20 injection of additional power into the Charlie  
21 Creek Substation is going to be a benefit to  
22 Roughrider Electric.

23 MR. ARMSTRONG: That's all I have.

24 JUDGE FETCH: Mr. Lein, any questions?

25

**EXAMINATION****BY MR. LEIN:**

Q. Same question I had for John. Peak load?

A. Right around a hundred megawatts.

MR. LEIN: Thanks.

JUDGE FETCH: Thank you.

Commissioner Kalk.

COMMISSIONER KALK: Thank you, Your Honor.

**EXAMINATION****BY COMMISSIONER KALK:**

Q. And thank you, Chris, for your testimony.  
The -- I spent the day down in New England with  
LaWanna Wilhelm not too long ago, and she walked me  
through what you guys are doing down there, and it  
appeared to me that there's a lot of new residences  
going up in her service area.

A. Yes.

Q. So your 6 percent, break that out into  
your best guess at residents, you know, like people  
going back into farms or -- you know, it looked  
like a lot of people had moved back to the  
farmstead that were their grandparents' that they  
had lived at for years.

A. You are seeing some of that, and I  
should -- you know, that's Slope Electric and

1 Roughrider and, yes, I do also co-manage Slope  
2 Electric. And, again, we're seeing growth in all  
3 sectors, and in Roughrider we're about 25 percent  
4 residential.

5 Q. Okay.

6 A. We've gotten to the point where 75/25  
7 commercial load versus residential. At Slope it's  
8 about the same. It's about the same.

9 Q. Okay.

10 A. But to your point, you're absolutely  
11 seeing people move back to those areas. We call  
12 them ranchettes or small farms. Folks are moving  
13 back. It's a different time than it was just a few  
14 years ago.

15 Q. Commissioner Christmann doesn't like the  
16 term ranchette, just so you know.

17 A. Yes, I --

18 Q. He's a rancher. The -- Commissioner  
19 Fedorchak asked earlier today about demand-side  
20 management, and a very good question. And I'm  
21 aware that you have demand-side management  
22 programs, but my understanding is that they're good  
23 to -- to shave the growth curve, but to meet what  
24 we need to meet now, you couldn't get there with  
25 demand-side management.

1           A.    You're exactly right.  You know, and we  
2   call it load factor.  And I'll take, for example, a  
3   utility that has a lot of residential.  And what  
4   you're going to see typically, their load curve in  
5   a day is you're going to see -- starting to see a  
6   peak, you know, come on in the morning, that's six  
7   to nine to ten o'clock in the morning, and then  
8   that may fall off a little bit.  And then in the  
9   evening, those evening hours from four to eight  
10  o'clock you're going to see that peak again.

11                   And so in that particular case a  
12  load-side -- a demand-side management would  
13  initiate programs to shave those peaks somewhat  
14  because you're going to have this various load  
15  curve.  In cooperatives like Roughrider and Slope,  
16  we don't really have that.  Power comes on and it  
17  stays on and you see little blips at periods of the  
18  day, but because 70-plus percent of our load is  
19  commercial -- it's the kind of load that is turned  
20  on and it stays on.  So you're going to have to  
21  shut somebody off from an industrial standpoint and  
22  you're going to have to rotate.  You'd get shut off  
23  today, you'd be tomorrow, you'd be the third day.  
24  You'd have to do some kind of program like that.

25                   Those types of programs have not been

1 anything we've explored at this point, and I don't  
2 know that our members would be welcome to that.

3 COMMISSIONER KALK: All right. Thank you,  
4 Chris.

5 JUDGE FETCH: Thank you.

6 Commissioner Christmann.

7 COMMISSIONER CHRISTMANN: Well, Your  
8 Honor, I hadn't really taken into consideration  
9 that this was important going south, as well, but I  
10 have no questions except for to thank Chris for  
11 being with us today.

12 JUDGE FETCH: Commissioner Fedorchak.

13 **EXAMINATION**

14 **BY COMMISSIONER FEDORCHAK:**

15 Q. Chris, thank you.

16 You mentioned that this is one of the  
17 least-cost options that Basin explored. How  
18 important do you -- how important do you think cost  
19 is as a factor in this project and how important is  
20 it to customers?

21 A. It is such at the forefront for us in our  
22 cooperative business. So when you say for us, it  
23 is such of great importance because we are always  
24 trying to do things the most efficient way possible  
25 at cost. As I said, we are not profit driven. And

1     our industry in and of itself has other factors  
2     from -- you know, being a former Basin employee, I  
3     know all these factors that go along with  
4     generating power and the additional costs that are  
5     put on generation, various fuel costs, regulatory  
6     costs, other things.

7             From the distribution side, as I've been  
8     on this side of our business for the last year, we  
9     have pole replacement, we have places where we're  
10    putting in a lot more underground than we ever did  
11    before. Equipment is much more expensive,  
12    conductors much more expensive. Underground in  
13    itself is more expensive. So we have other cost  
14    pressures on us and there's things we watch every  
15    day.

16            So this is something certainly to do it  
17    the most efficient and cost-effective way. That's  
18    really in our nature. And so it is very important,  
19    and some of those costs we can't control. We have  
20    very little control. This one here, if we can  
21    choose option A versus B and option A is more  
22    efficient, we're going to advocate for option A.

23            Q.    I can hear public comments coming in, and  
24    they're not without merit, that we have a lot of  
25    money now, so why shouldn't we spend it and make

1     it, you know, better or this way or that way. And  
2     you're in our shoes. What do you tell folks  
3     with -- that say that and offer that argument?

4           A.     I've been watching you today. I'm glad  
5     I'm not in your shoes. It's -- in our role, again,  
6     it's that constant balance between what is the  
7     right thing to do and what is practical. We look  
8     at it -- we are trying to serve our members, and  
9     you represent the -- many of those members and the  
10    citizens of North Dakota to try and find the best  
11    solution possible. You're never going to obviously  
12    make everyone agreeable and happy.

13                There's been some very passionate,  
14    heartfelt testimony today from those that would  
15    advocate we do something else, and I, too, as a  
16    representative of a cooperative, I hear that and I,  
17    too, am seeking what are some alternatives. My  
18    suggestion to you is doing exactly what you're  
19    doing. Look at all of the options, weigh them out  
20    objectively, and at the end of the day we're  
21    talking about certain people's needs here.

22                And, yes, as my colleague, John, said,  
23    this demand is being driven by industry, but it's  
24    people that are driving the industry and people  
25    that are affected. And as I drove up today from



1 Dickinson and shared the road and the construction,  
2 I noticed that there were all kinds of folks on  
3 that road. There was -- I assume there was  
4 truckdrivers, there was -- there was folks involved  
5 in agriculture and there might have been  
6 schoolteachers, there might have been folks that  
7 have nothing to do with the oil, but yet they share  
8 that highway.

9 The transmission grid is shared by all of  
10 us, whether we're directly involved with the oil or  
11 not. And so what we're trying to do here is to  
12 ensure that that grid is able to properly supply  
13 the needs for all those in this part of the  
14 country, whether you're involved in the industry or  
15 not. We -- as you pointed out, the electron  
16 doesn't know the difference. It goes to where the  
17 need is.

18 COMMISSIONER FEDORCHAK: Okay. Thanks.  
19 That's all my questions.

20 JUDGE FETCH: Thank you.

21 Any more questions from the commissioners?

22 How about counsel?

23 MR. ARMSTRONG: No, Your Honor.

24 JUDGE FETCH: Thank you.

25 MR. BAUMGARTNER: Thank you.

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**ALLAN DOLEZAL,**

having been first duly sworn, was examined and  
testified as follows:

**STATEMENT**

**BY MR. DOLEZAL:**

MR. DOLEZAL: My name is Allan Dolezal.  
My wife and I, Kaye -- or my wife, Kaye, and I farm  
and ranch. We're retired. We live on that map.  
We live in the Section 1 of 145-96, and we own the  
east half of 2 and a portion -- the southwest half  
of 2. We're -- a mile and a half of our property  
will be crossed by Basin Electric.

We didn't sign the easement without a lot  
of thinking and visiting with an attorney, but --  
and we're also situated kitty-corner from that  
proposed substation in 31. And I'm kind of sad to  
see that they backed out of that.

We've lived here -- I've lived out there  
all my life. I was born there. And you had one of  
the previous testifiers say something about age.  
Well, they claim when I was born, Killdeer Mountain  
was only three feet high.

But I've been there a long time, and we  
don't like to see -- I -- that power line, we  
haggled with them and them -- they -- they worked

1 with us, and they moved it so we wouldn't have to  
2 look out the front door.

3 But the thing that bothers me the most  
4 with this proposal is that National Park Service,  
5 people using that as an excuse to move that line.  
6 We spent over 50 years of our lives building a  
7 farm, and it's nice. Real nice. And to think that  
8 somebody -- a federal official, is what irks me, is  
9 going to come on that land and with -- I've got to  
10 read it in the local paper, *The Bismarck Tribune* or  
11 *Dickinson Press*, there's a \$90,000 taxpayer-funded  
12 hunt for artifacts by a professor at North Dakota  
13 State that's probably earning a hundred thousand  
14 and has never called us. And that irks me.

15 We have -- there is no respect for private  
16 property rights. And I don't think that should be  
17 used as an excuse by the people that are using it  
18 as an excuse.

19 We came here at 9:30 this morning, and I  
20 know you people got -- there's a numbness setting  
21 in, I'm sure, but, you know, we've heard a lot of  
22 negative things, hardly nothing positive. We're  
23 not in the horse-and-buggy age. Anyone that's been  
24 there, doesn't know what they're talking about.  
25 You know, we don't want to go back there. And I

1       like electricity and I like that air conditioning  
2       the last two weeks and to go home and turn the  
3       light on.

4                   And I'm for it. I just want to speak in  
5   support.

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6 | JUDGE FETCH: Thank you.
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7 Ms. Jacobson, any questions?

8 MS. JACOBSON: No questions, Your Honor.

9 JUDGE FETCH: Mr. Armstrong?

10 MR. ARMSTRONG: No questions.

11 JUDGE FETCH: Mr. Lein.

12 MR. LEIN: No questions. Thanks.

13 JUDGE FETCH: Commissioners.

|    |                     |
|----|---------------------|
| 14 | Commissioners Kalk? |
|----|---------------------|

15

EXAMINATION

16 BY COMMISSIONER KALK:

17 Q. Geez, Allan, thank you for waiting all day  
18 on your testimony and your spirit. I mean, like  
19 you've said, we've been here for a while so we've  
20 got to push through; right?

|    |          |
|----|----------|
| 21 | A. Yeah. |
|----|----------|

22 Q. Just like the Bison and that  
23 fourth-quarter drive; right?

24 A. There you go. There you go.

25 Q. They didn't let up all the way through.

1           A.    I don't want to -- I don't want to knock  
2           North Dakota State. I went to school there, but I  
3           don't like that professor down there that's going  
4           to come up here.

5           Q.    I figured as much.

6           A.    Yeah.

7           Q.    Well, I mean, you know, you're exactly the  
8           individual that I think we really wanted to hear  
9           from today because you heard Commissioner  
10          Christmann's comments earlier when he talked about  
11          that, and you came up and said your piece. You've,  
12          I'm guessing, talked to some of your neighbors?

13          A.    Oh, yeah.

14          Q.    And --

15          A.    The ones that have spent a lifetime there  
16          making a living want to be recognized. We want a  
17          phone call or a knock on the door. We don't want  
18          to read it in the paper.

19          Q.    So you feel that Basin has met your  
20          requirements of putting the power line in the spot  
21          that you've asked them to?

22          A.    Yes. We -- we agreed to it, they moved  
23          it. We agreed to it. Like I said, it took a week  
24          or two, but we agreed to it. But we did that.  
25          Nobody pressured us.

1           Q.    What do you think about these comments  
2    about the Killdeer Battlefield?  You've lived out  
3    there your whole life.  I mean do you think by  
4    building a power line and doing the work that the  
5    SHP0 might be asking that you're going to be  
6    endangering these artifacts?

7           A.    You know, it kind of baffles me.  How  
8    could a power line affect history?  If you put it  
9    up or don't put it up, what's the change of it,  
10   unless you want to go out there and look at it.  
11   But it isn't going to affect the history of that.  
12   We're proud of -- that that part of that battle was  
13   on our property, but I can't see that it's going to  
14   affect the history of it one way or the other.

15               And especially where they were going to  
16   put that substation.  I -- I'm kind of sad that  
17   Basin backed out of that.  I know the land.  It's  
18   kitty-corner.  I can throw a rock and hit it from  
19   our property.  That land is -- it's ordinary  
20   farmland here.  The guy takes off a half a dozen  
21   bales out of that ten acres, maybe.  It's -- it's  
22   strange.  I don't know.  I just can't think that  
23   way, though.

24           Q.    All right.

25           A.    And we're -- we're moving ahead, folks,

1 whether you agree with it or not.

2 COMMISSIONER KALK: Thank you, Allan, for  
3 your testimony.

4 MR. DOLEZAL: Yeah.

5 JUDGE FETCH: Thank you.

6 Commissioner Christmann.

7 **EXAMINATION**

8 **BY COMMISSIONER CHRISTMANN:**

9 Q. Sir -- Allan?

10 A. Yes.

11 Q. John next-door to you, is that, I assume,  
12 a relative?

13 A. John?

14 Q. Dolezal.

15 A. Yeah.

16 Q. What's that, your --

17 A. That's a cousin.

18 Q. Cousin.

19 And then what about J.D. further out west?

20 A. Another cousin.

21 Q. Okay. J.D. is married to my wife's cousin  
22 and --

23 A. Oh, really.

24 Q. -- John kept my checks from bouncing for  
25 years.

1           A.    Oh, they get that from my side of the  
2   family.

3 COMMISSIONER CHRISTMANN: Thank you. I  
4 have no questions.

5 JUDGE FETCH: All right. Hold on just a  
6 minute.

7 MR. DOLEZAL: Oh, okay. Sorry.

8 Do you have a question, Commissioner  
9 Fedorchak?

10 COMMISSIONER FEDORCHAK: Just one quick  
11 question.

12

EXAMINATION

13 BY COMMISSIONER FEDORCHAK:

14 Q. You've lived there your whole life. Have  
15 you found any artifacts on your land?

16 A. Oh, that's -- thank you for mentioning  
17 that. I invite all of you -- we're kind of proud  
18 of -- my wife and I are kind of proud of our place,  
19 and we invite you if you're ever -- come to the  
20 battlefield. Craig will invite you, but stop at  
21 our place. We have a collection that's rather  
22 nice, all picked up on our property and -- yeah,  
23 stop in and take a look at them.

24 COMMISSIONER FEDORCHAK: Thank you.

25 Appreciate it. Thanks for sticking around today.



1 JUDGE FETCH: Any further questions?

2 All right. Thank you.

3 Is there anyone else?

4 **CRAIG DVIRNAK,**

5 having been first duly sworn, was examined and  
6 testified as follows:

7 **STATEMENT**

8 **BY MR. DVIRNAK:**

9 MR. DVIRNAK: My name is Craig Dvirnak.  
10 I'm a local rancher. Address, 11129 Main Street  
11 Northwest.

12 My comments today mainly are towards this  
13 battlefield protection program that we've heard  
14 testimony on today. What I've heard today is  
15 preserving heritage, preserving sight line of view  
16 of the battlefield site. I am ground zero on this.

17 My ranch site, the building site is where  
18 the main battle took place, where the main  
19 encampment was. And so I have listened to a lot of  
20 heartfelt testimony on preservation, testimony on  
21 what we need to do to preserve this area.

22 In the past, our family has worked or  
23 tried to work with the State Historical Society in  
24 preserving not only our land but heritage and  
25 culture.

1           Before all this oil field drilling took  
2 place, we approached them at working with us, and  
3 one of the main things that came up today and that  
4 was sight view, trying to -- we asked them to work  
5 with us, and in working with -- in conjunction with  
6 an oil company to placement of wells, placement of  
7 roads to where it wouldn't be as detrimental to the  
8 culture and to the history of that area.

9           At that time -- and it was baffling to  
10 us -- we were just kind of blindsided in their  
11 comments. Their comments to us was, in so many  
12 words, being we only have one acre in this area, we  
13 wouldn't be greatly impacted by that, whether there  
14 was placement of wells. Their comment to us was,  
15 Well, the likelihood of them placing a well on our  
16 one acre would not probably happen.

17           So when you have a group of people  
18 proposing a study of this area and wanting us to  
19 come on board, supposedly coming on board -- they  
20 have not been in touch with us to this date -- we  
21 have reservations on why -- why come to us now to  
22 help you when certain people have not wanted to be  
23 there for us when we asked for it.

24           Boy, if -- if you go back in history and  
25 you -- and the reason that this battle took place

1     was -- goes back to the Minnesota Uprisings back in  
2     Minnesota. The reasons that the Minnesota  
3     Uprisings happened was you have Native Americans  
4     that got put onto reservations, and they got put  
5     onto reservations because the government said you  
6     can't -- we can't put up with you. We made -- they  
7     made treaties with the Indians.

8             In the past, it probably hasn't worked out  
9     so well for them. The Minnesota Uprisings happened  
10    because the Native Americans were put on  
11    reservations. The government says if you go onto  
12    these reservations, we'll give you so much food, so  
13    much clothing and so much money per month.

14            The Minnesota Uprisings happened because  
15    it was Civil War time. The food and the clothing  
16    was there. The money was not. The people that  
17    were supposed to be distributing these -- these  
18    goods said that we will not give you the food, we  
19    will not give you the clothing until the money gets  
20    here. So you have women and children that were  
21    starving and, thus, incurred the Minnesota  
22    Uprisings.

23            So now you have government agencies coming  
24    to you and saying, Work with us in preserving this  
25    culture. We look at that as private landowners

1     that it didn't work so well for the Indians in the  
2     past. What can you guarantee us that you won't do  
3     something similar to this to us; that whatever you  
4     propose to us now, that five years, ten years down  
5     the road that you renege on on your proposals?

6             That's where we're coming from. That's  
7     where Allan Dolezal was coming from too. Why  
8     should we really trust you when you haven't  
9     contacted us and been forthright in your proposed  
10    studies?

11            JUDGE FETCH: So your issue is you take  
12    issue with the NDSU grant, the study of the --

13            MR. DVIRNAK: Yes.

14            JUDGE FETCH: -- of the area?

15            MR. DVIRNAK: Yes.

16            JUDGE FETCH: Okay.

17            MR. DVIRNAK: As far as the transmission  
18    line, it doesn't come across mine. It comes across  
19    the fence from mine, within -- it's right off the  
20    road from me. So do I wish it was elsewhere? Yes  
21    and no. Is it going to really affect me? It will  
22    affect me because it will -- it will give me a  
23    steady power supply.

24            And where I'm coming from with that is a  
25    few years back, probably two years ago, and I

1 believe this was mid-winter, lights were going dim,  
2 microwave wasn't working right and we're going,  
3 Wow, what's going on here. And come to find out  
4 that they were at peak load and we are the end of  
5 the line on that -- on that one line. And so we  
6 experienced some of that power shortage.

7 And that was brought up here today that it  
8 will be a reliable power -- steady power source.  
9 So if this line don't go through where it's at now,  
10 it's going to go through somewhere. Where do you  
11 stop? Where do you move it to that it don't impact  
12 somebody?

13 The line of sight thing, a few years  
14 back -- this was before all this oil business got  
15 started -- there was -- in the local paper there  
16 was a realtor that had a listing of some property  
17 for sale, and one of the big selling points that it  
18 had was a beautiful view of the Killdeer Mountains.  
19 And my wife and I are scratching our heads and  
20 we're saying, Well, which neighbor of ours is  
21 selling some property?

22 Well, further inquiring into this, this  
23 land was a half a mile east of Killdeer here. So  
24 in a straight-line view from there to the Killdeer  
25 Mountains is 10, 12 miles. So where do you move a

1 power line that it don't have effect of the view of  
2 Killdeer Mountain or Killdeer Mountain Battlefield  
3 area?

4 So if you don't put this through where  
5 they're proposing now, where do you put it through  
6 that it don't affect somebody's line of view of the  
7 battlefield site or the Killdeer Mountains? How  
8 far do you got to go? Do you got to go 20, 30  
9 miles?

10 So for the -- for the project, I'm for it,  
11 even though it's just across the fence from me.

12 JUDGE FETCH: Any questions, Ms. Jacobson?

13 MS. JACOBSON: No, Your Honor.

14 JUDGE FETCH: Thank you.

15 Mr. Armstrong?

16 **EXAMINATION**

17 **BY MR. ARMSTRONG:**

18 Q. What section are you in?

19 A. In this proposed study area?

20 Q. Yeah.

21 A. My wife and I own six and a quarter  
22 sections.

23 Q. All right. So --

24 A. So if you look on the map and it will be  
25 the west half of Section 34. Okay. This right

1 here, this blue area right here, Section 33, that  
2 is where my ranch site is. We control --

3 Q. Is your --

4 A. We control the west -- my wife and I own  
5 the west half of Section 34, we own Section 33, we  
6 own three quarters in Section 32, we own all of 29,  
7 all of 28, all of 21 and all of 20. So when they  
8 say that they want to do a study pertaining to this  
9 battlefield site, why all of a sudden? When we  
10 asked the State Historical Society in the past to  
11 work with us in placement of oil wells and oil  
12 field roads, they washed their hands of us and left  
13 us to ourselves.

14 So now you've got not only a state agency,  
15 but a federal agency coming to us and saying, Work  
16 with us. Why would we? Why would we have interest  
17 in this when we asked for it in the past and  
18 they --

19 JUDGE FETCH: Okay. You've already  
20 testified to that. Thank you.

21 MR. DVIRNAK: Okay.

22 JUDGE FETCH: Any other questions,  
23 Mr. Armstrong?

24 Q. (MR. ARMSTRONG CONTINUING) The only other  
25 question I have -- follow-up question to that is I

1 know that you've testified there's oil wells and  
2 other things in there, but it seems like you have a  
3 fairly large piece of property in that area.

4 Realizing that the view is kind of in the eyes of  
5 the beholder, but given all that's going on in that  
6 area, what's your perspective on what you envision  
7 this power line adding or detracting from the view?

8 A. Depends on where you're standing. When  
9 you -- when you ask the perspective of the view,  
10 where are you standing and looking at? If you're  
11 standing at the one acre that the state has, very  
12 few people look to the south where this proposed  
13 line is supposed to go through. When they're  
14 standing on site at that one acre that the state  
15 has, they're looking to the north towards the  
16 mountains. The power line is at their back. So  
17 does that answer your question?

18 Q. Yeah. I guess in general I was wondering  
19 you, as a person who's out there all the time, what  
20 your opinion is of if the proposed power line will  
21 affect the view.

22 A. As in oil wells, as in other -- other  
23 power lines in the area, as they first initially go  
24 in, you say to yourself, Wow, that really kind of  
25 affects me in my view. But it's like anything



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1 | else, after it's there for a while, it just becomes
2 | part of the landscape.
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3 MR. ARMSTRONG: I have no further  
4 questions.

5 JUDGE FETCH: Thank you.

6 | Mr. Lein?

7 MR. LEIN: No questions.

8 JUDGE FETCH: Commissioner Kalk.

9 COMMISSIONER KALK: Thank you, Your Honor.

10 EXAMINATION

11 BY COMMISSIONER KALK:

12 Q. And thank you, Craig, for your testimony.  
13 The -- coming up here today I didn't anticipate the  
14 Killdeer Battlefield discussion nearly this  
15 detailed. I anticipated a lot more landowner  
16 concerns about during construction, those kind of  
17 things. What concerns do you have if we get into  
18 the construction phase as far as making sure the  
19 roads are maintained, where they may have a laydown  
20 area? Do you have any kind of construction kind of  
21 concerns that we should be aware of?

22           A.    No.  No.  We're -- out here we're impacted  
23   by oil pipelines, by gas lines, by just regular  
24   truck traffic, and it becomes the norm after a  
25   while that, you know, this is going on.  Just like

1 highway construction in the state is going on all  
2 over and it's -- it's there for a while. You know  
3 things will get better as time goes on and this  
4 infrastructure gets in there, the -- the chaos that  
5 comes with it, it will be here and gone and things  
6 will settle down within time.

7 Q. And then it's your property. You wish to  
8 do with it what you want to do with it.

9 A. Oh, yes, very much so.

10 Q. Fair enough.

11 Have you expressed your concerns with the  
12 county commissioners?

13 A. On the proposal of --

14 Q. At some point there will be a county vote  
15 on this for a permit or something. I'd just  
16 encourage everyone here today to make sure you're  
17 talking to all levels of government. So if you  
18 haven't expressed your desire with the county  
19 commissioners, you probably should do that too.

20 A. Pertaining to this transmission line?

21 Q. Absolutely.

22 A. No.

23 COMMISSIONER KALK: Thank you.

24 JUDGE FETCH: Thank you.

25 Commissioner Christmann.

**EXAMINATION**

**BY COMMISSIONER CHRISTMANN:**

Q. Again, thanks for hanging on. My only question is when you talked about the lights flickering, I'm kind of confused right in this area. Are you on Roughrider or McKenzie?

A. I'm on McKenzie.

COMMISSIONER CHRISTMANN: Okay. Thank you.

JUDGE FETCH: Thank you.

Commissioner Fedorchak.

COMMISSIONER FEDORCHAK: Thank you, Craig. I have no questions.

MR. DVIRNAK: Okay. Thank you.

JUDGE FETCH: Thank you.

Any further questions? All right. Thank you.

Were there some others going to be testifying? Just one more? All right. Then I won't need to instruct about not giving redundant testimony.

Come forward.

**MARY SAND,**

having been first duly sworn, was examined and testified as follows:

**STATEMENT**

**BY MS. SAND:**

MS. SAND: My name is Mary Sand. I'm submitting the statement of Susan Veigel Dickey, a fourth-generation Killdeer Mountain landowner.

I told the judge earlier that because what Susan wants, which is to have the route removed from the Killdeer Mountain Battlefield, has been covered today pretty much in the Killdeer Mountain Alliance statement, that I would just submit this because I know that Susan has already e-mailed it. So --

JUDGE FETCH: Let me just ask, as you brought that up earlier, where is Ms. Dickey?

MS. SAND: Ms. Dickey is an acquaintance, so I don't know where she is, but she's out of state.

JUDGE FETCH: She's out of state and not able to be here?

MS SAND: And she couldn't be here, so --

JUDGE FETCH: And did you say she submitted this to the Commission earlier?

MS SAND: Yes. She's already e-mailed it, she said.

JUDGE FETCH: All right. Do you have a

1 copy of her statement?

2 MS SAND: I do. And I'll give that to  
3 you.

4 JUDGE FETCH: And -- okay. The  
5 Commission -- let me ask whether the Commission has  
6 received Ms. Dickey's written comments.

7 COMMISSIONER KALK: Your Honor, it's  
8 probably in the public input file, and this would  
9 be -- it would fine to submit it here, I think, and  
10 the Commission could give it appropriate weight,  
11 even if we already have it in the public input.

12 JUDGE FETCH: All right. You can bring  
13 the comments forward.

14 MS SAND: Thank you. And here's the  
15 printout. Thank you.

16 JUDGE FETCH: All right. Thank you.

17 Did you have any testimony of your own?  
18 Were you going to present any of your own  
19 testimony?

20 MS SAND: No. Just the Killdeer Montana  
21 Alliance testimony.

22 JUDGE FETCH: Thank you. All right. Any  
23 other members of the public who wish to testify?

24 All right. Seeing no others, then I'm  
25 going to turn back to the case for Basin Electric.

1 Certainly, those members of the public still  
2 present here, you're welcome to stay for the  
3 balance of the hearing. All right?

4 All right. And, Ms. Jacobson, it's now  
5 7:30 local time, 8:30 Central time. So you have  
6 three more witnesses?

7 MS. JACOBSON: Yes, Your Honor, if we  
8 could just take a short break right now and then  
9 visit about some procedural things on the break and  
10 also I need to use the rest room.

11 JUDGE FETCH: We'll take ten minutes.

12 (Recessed at 7:25 p.m. to 7:42 p.m.)

13 JUDGE FETCH: All right. We are back on  
14 the record.

15 And at this time, Ms. Jacobson, who is  
16 your next witness?

17 MS. JACOBSON: Mike Silva. And I believe  
18 he's ready to go.

19 JUDGE FETCH: Okay. All right. Were you  
20 here earlier when I swore everyone in?

21 MR. SILVA: Yes, Your Honor.

22 JUDGE FETCH: All right. Thank you.  
23 Mr. Silva, proceed.

24

25

1                                   **J. MICHAEL SILVA,**  
2       having been first duly sworn, was examined and  
3       testified as follows:

4 **DIRECT EXAMINATION**

5 BY MS. JACOBSON:

6 Q. Can you please state your name and  
7 occupation for the Commission?

8           A.     Michael Silva, S-i-l-v-a. I'm a research  
9     engineer and president of Enertech Consultants.

10 Q. And what's your business address?

11           A.     4494 Salmar, S-a-l-m-a-r, Avenue,  
12     Campbell, California.

13 Q. And can you please describe your  
14 involvement in the project?

15 A. Yes. I was asked by Basin Electric to  
16 perform two tasks related to the proposed  
17 transmission project. I was asked to evaluate the  
18 electric and magnetic field levels, or EMF levels,  
19 and I was asked to comment on the use of the global  
20 positioning system, or GPS, for agricultural or  
21 other operations near the proposed 345 kV  
22 transmission line.

23 Q. Mr. Silva, I show you what's been marked  
24 as Exhibit 37. Judge, is that the correct number?

25 JUDGE FETCH: No. I -- well, hold on one

1 second. 36 [37].

2 MS. JACOBSON: 36 [37].

3 Q. (MS. JACOBSON CONTINUING) Could you  
4 identify what Exhibit 36 [37] is, Mr. Silva?

5 A. Yes. That's the testimony that I  
6 prepared.

7 MS. JACOBSON: Your Honor. I'd move into  
8 evidence Exhibit 36 [37].

9 JUDGE FETCH: Any objection,  
10 Mr. Armstrong?

11 MR. ARMSTRONG: No objection.

12 JUDGE FETCH: Exhibit 36 [37] is admitted.

13 Q. (MS. JACOBSON CONTINUING) Mr. Silva, did  
14 you prepare a report with your findings?

15 A. Yes.

16 Q. And could you please describe the findings  
17 in your report?

18 A. Yes. I've prepared a report on the  
19 calculated EMF levels and it's contained in the  
20 tables within the report. I found that there was  
21 nothing unusual or different about the EMF levels  
22 from the proposed 345 kV projects. The calculated  
23 EMF levels are similar to and generally lower than  
24 other transmission lines of this voltage class that  
25 have been in service since the 1950s.



1           Q.    Mr. Silva, earlier you discussed that part  
2           of your work with the project involved some  
3           research and a report on GPS issues. Can you  
4           discuss your conclusion related to that?

5           A.    Yes. Based on the theoretical work I did  
6           and some practical measurements that I performed  
7           under transmission lines, including in one case  
8           four 345 kV lines at a single location in which I  
9           evaluated the performance of GPS receivers under  
10          these lines, I believe that GPS will be able to  
11          receive the satellite signals from near and under  
12          the proposed transmission line.

13                And this is also borne out by the fact  
14          that cell phone companies in the United States and  
15          Canada commonly mount cell phone antenna base  
16          stations on power line towers and that cell phone  
17          companies also mount GPS antennas that they use for  
18          highly accurate timing directly onto high-voltage  
19          transmission lines, including 345 kV lines.

20                And this supports -- further supports my  
21          conclusion that it would be unlikely that the 345  
22          kV line would interfere with the use of GPS.

23                MS. JACOBSON: No further questions, Your  
24          Honor.

25                JUDGE FETCH: Thank you, Ms. Jacobson.

Mr. Armstrong, any questions?

## CROSS-EXAMINATION

**BY MR. ARMSTRONG:**

Q. In your studies did you conclude there would be any adverse effects either as a result of EMF or to the GPS functioning as a result of this line?

A. No, I did not believe there would be an effect.

MR. ARMSTRONG: Okay. No further questions.

JUDGE FETCH: Thank you. Mr. Lein?

MR. LEIN: Just a quick one.

## EXAMINATION

BY MR. LEIN:

Q. You said that the EMF was probably lower on this project than others. Is that due to the conductor configuration or height from the ground or what is that?

A. That's very good. That's both of those. Primarily due to the way the wires are configured in a triangular shape and a little bit because there's extra ground clearance than the minimum required by the National Electric Safety Code.

MR. LEIN: Okay. Thanks.

1 JUDGE FETCH: You do know he is an  
2 electrical engineer.

3 THE WITNESS: Ah. No, I didn't. Now I  
4 know.

5 JUDGE FETCH: All right. Thank you.  
6 Commissioner Kalk.

7 COMMISSIONER KALK: Thank you, Your Honor.

8 **EXAMINATION**

9 **BY COMMISSIONER KALK:**

10 Q. Thank you, Mike, for being here today.  
11 Have you testified in front of this Commission  
12 before?

13 A. Once before, Your Honor.

14 Q. For which -- which hearing was it? It was  
15 Minnkota, wasn't it?

16 A. Yes, Commissioner, it was Minnkota.

17 Q. Fair enough. And the -- when you look at  
18 the -- what you did in that line to what you did in  
19 this line, you said this line actually has less  
20 than the other lines you look at or just less  
21 generally?

22 A. Well, it depends on which lines you  
23 compare it to, but generally as 345 lines are often  
24 built, this line generally has lower EMF.

25 Q. All right. And then tell me how you

1     have -- you take a conceptual study and there's  
2     something you might do on the ground confirms that  
3     study.

4           A.     For EMF or for the GPS work?

5           Q.     Both of them, actually.

6           A.     Okay. Well, for the GPS, I'll do first.  
7     My co-author on this work was a professor from  
8     Washington State University. We did a theoretical  
9     analysis of what's called scattering. The GPS  
10    satellites are in space about 12,000 miles away,  
11    and so you receive the signals at the receiver.  
12    And so you can do calculations of an object that's  
13    between you and the satellite, how much scattering  
14    occurs of those microwave signals.

15                I would not have thought there would be  
16    much scattering, which means you lose some of the  
17    signal strength. Just as a rule of thumb, if the  
18    object, let's just say a transmission line wire, is  
19    much smaller than the wavelength of the signal,  
20    there's not going to be much of an effect.

21                So our calculations confirmed that it  
22    would be 3 to 4 percent scattering, which is none,  
23    it's nonexistent.

24                So what I did in terms of the practical, I  
25    obtained at the time the highest quality precision

1 ag and precision aviation GPS receiver made by  
2 Trimble and some other companies, and I went to  
3 several locations in the United States where there  
4 were 345 and 500 kV power lines. And I would start  
5 several hundred feet away from the line, recording  
6 the strength of the signals I received from -- in  
7 this case five different satellites. And so I was  
8 logging the signal strength every second, and in my  
9 testimony there's a graph of that as I started  
10 approaching the line. So what you're looking  
11 for -- to see, does the strength of the received  
12 signal drop off. And I drove under the power lines  
13 all the way through and didn't see a drop-off.

14 However, when I drove under some trees  
15 with really dense foliage, I did see -- in my  
16 exhibit you can see that one of the satellites --  
17 you can see the signal starting to tail off just a  
18 little bit because of the foliage.

19 I also did this in the rain in other types  
20 of power lines in other states and never did I see  
21 any influence on the received signal.

22 In addition, I plotted your position on a  
23 graph. You can take the longitude and latitude  
24 that your receiver is recording and you can put it  
25 in a spreadsheet and plot it and it should be a

1 straight line, and so you can see if there's any  
2 departure from that, that you've got a positioning  
3 error introduced, and I didn't see a problem with  
4 that, either.

5 Q. Okay. Thank you.

6 And then just to put a finer point on it,  
7 if somewhere in the next two days of hearings we  
8 have people, citizens come in and testify that they  
9 feel this power line will throw off their GPS in  
10 their tractors, you would not hold much merit to  
11 those comments?

12 A. Yes. I've investigated a couple of those  
13 complaints where people thought there was a GPS  
14 interference problem and they could see a power  
15 line off in the distance and they just assumed that  
16 that was it. And one in case it was walkie-talkies  
17 that were being used that was causing the  
18 interference. In another case it was the ignition  
19 system noise that was causing the interference.

20 Q. But not the power line?

21 A. No.

22 COMMISSIONER KALK: Thank you, Mr. Silva.

23 JUDGE FETCH: Thank you.

24 Commissioner Christmann.

25

**EXAMINATION**

**BY COMMISSIONER CHRISTMANN:**

Q. So the people that complain of this, you think, are either reiterating something they heard or having some other issues like the ignition system issues that you mentioned?

A. They're probably having some other issues. I did mention that you could lose one satellite if you drove really close to one of the lattice-type towers. But since you're tracking usually several satellites, that shouldn't have much of an effect. This line it would be even less likely because they're using these single steel poles and not a 30-foot-wide or 25-foot-wide steel tower.

The people that make this equipment, I've dealt with them, particularly with Trimble, with some of their research people. They know where their equipment's going to be used. They know it's going to be used in agriculture and they know it's going to be used under power lines, and they do test it under power lines.

The GPS signal itself is a spectrum signal, and so it's more robust in resisting noise or interference, for example, from power lines.

I haven't found any credible or published

1 incident of a power line causing interference in  
2 that way. If you had a handheld GPS unit and you  
3 went and stood inside one of those large lattice  
4 towers that the commissioner said looked like a  
5 steel man or something, yeah, you could block the  
6 signals inside of that, if you were standing inside  
7 of the tower or something. But just by driving by  
8 a tower, you shouldn't be losing the lock of your  
9 positioning accuracy.

10 Q. But so to the extent there is something,  
11 it's the tower and not the wires or any  
12 electromagnetic fields or anything? It's the  
13 physical tower that does that with a handheld?

14 A. A very large tower could do it with a  
15 handheld if you were right against it. The  
16 electromagnetic fields from a power line are  
17 generally the largest ones at 60 cycles per second.  
18 So to have interference, you need something that's  
19 causing a microwave type of interference, which is  
20 a billion cycles. GPS operates at one -- with a  
21 civilian signal operates at about 1.5 billion  
22 cycles a second. The military signal operates at  
23 approximately 1.2 billion cycles per second. Power  
24 lines operate at 60 hertz or 60 cycles per second,  
25 and they're not really generating EMF in that



1 frequency band.

2 When you found -- when I found  
3 interference with either the walkie-talkie or with  
4 ignition -- the ignition system is gap-type noise,  
5 sparking, and it can have, you know, fairly broad  
6 band. It was a harmonica of the walkie-talkie, and  
7 in my -- my testimony there are some military  
8 radars, some FM radio stations and other things  
9 that are harmonics, which is a multiple of the main  
10 frequency, that can approach the cell phone --  
11 excuse me, the GPS frequency.

12 Cell phones operate at either about 900  
13 million cycles per second or 1.9 million cycles per  
14 second. They're small microwave radios, too. And  
15 my point in my testimony is the cell phone  
16 companies are mounting antennas on some companies'  
17 towers in the U.S. and Canada.

18 Cell phone companies also use GPS  
19 themselves. The main system in the United States,  
20 in Europe is called GSM, and it is -- you're  
21 assigned time slots. You're -- when you talk on a  
22 cell phone, you're assigned time slots, and you  
23 need very precise timing signals. And so the cell  
24 phone companies use GPS, not for positioning, but  
25 for the atomic clocks that are on each of those

1       satellites. Each satellite has four atomic clocks.

2               And so the cell phone companies get their  
3       time signal, as do power companies. So power  
4       companies time their frequency, their 60 hertz, and  
5       some of their switching and other operations using  
6       GPS.

7               But one of my points is that the cell  
8       phone companies themselves are putting the GPS  
9       antennas on the sites of towers, on the legs of  
10      towers and sometimes at the top of towers, and they  
11      wouldn't be doing that if there was an interference  
12      problem.

13              COMMISSIONER CHRISTMANN: Okay. I have  
14      nothing further, Your Honor. Thank you.

15              JUDGE FETCH: Thank you, Commissioner.  
16              Commissioner Fedorchak.

17              COMMISSIONER FEDORCHAK: No questions.  
18      Thank you.

19              JUDGE FETCH: Any further questions for  
20      this witness? Thank you.

21              Ms. Jacobson, what was Exhibit 36?

22              MS. JACOBSON: 36 is the testimony --  
23      testimony of Mike Silva.

24              JUDGE FETCH: Okay. We're -- let's label  
25      that 37. I'm going to back up just a moment and

1 clarify something for the record. When Mary Sand  
2 handed me the statement of Susan Veigel Dickey,  
3 she -- attached to that was a statement of the  
4 Killdeer Mountain Alliance, and the Killdeer  
5 Mountain Alliance, Rob Sand and Lori Jepson were  
6 here and testified and this is their statement. So  
7 I'm going to admit their statement, their testimony  
8 into the record as Exhibit 36 since they were here  
9 and presented testimony.

10 The statement of Susan Veigel Dickey, who  
11 was not here to testify, will be placed into the  
12 public input file of the Commission, and the  
13 Commission can give whatever weight it believes the  
14 statement should -- should get when you make your  
15 decision. Does that make sense to everyone?

16 All right. So the statement of the  
17 Killdeer Mountains Alliance, their testimony is  
18 Exhibit 36. And then Exhibit 37 will be  
19 Mr. Silva's testimony -- statement of his  
20 testimony.

21 All right. Thank you. It's getting late.  
22 Sorry.

23 Please proceed.

24 MS. JACOBSON: Your Honor, the next  
25 witness is Dr. Peter Valberg.

1                               **DR. PETER VALBERG,**  
2       having been first duly sworn, was examined and  
3       testified as follows:

4                                                       **DIRECT EXAMINATION**

5       **BY MS. JACOBSON:**

6               Q.     Dr. Valberg, can you please state your  
7       name and occupation?

8               A.     Yes. My name is Peter Valberg. That's  
9       spelled V, as in Victor, a-l-b-e-r-g, and I'm an  
10      environmental health consultant with Gradient,  
11      which is a company that does human health risk  
12      assessment in Cambridge, Massachusetts.

13              Q.     And what is your business address?

14              A.     The business address is 20 University  
15      Road, Cambridge, Massachusetts.

16              Q.     And can you just summarize briefly your  
17      educational experience?

18              A.     I have a graduate degree in both physics  
19      and human physiology. I went to the physics  
20      department at Harvard University to get my PhD  
21      degree in physics, and then I followed that up with  
22      additional training at the Harvard University  
23      School of Public Health where I got a degree in  
24      human physiology. And subsequent to that time I  
25      did research in a combination of human physiology

1 and physics, and that essentially prepared me to  
2 understand a great number of things about how the  
3 human body might interact with electric and  
4 magnetic fields.

5 I was at Harvard University until about  
6 1990, and since that time I've been a consultant at  
7 Gradient working on human health risk assessment,  
8 and one of my areas is the area of ionizing and  
9 nonionizing radiation and how that exposure might  
10 affect your health.

11 Q. And, Dr. Valberg, what's been your  
12 involvement in the project?

13 A. I was asked by Basin Electric to take a  
14 look at EMF generally and be prepared to explain  
15 how research in this area has progressed, and what  
16 is currently known about applicable standards and  
17 guidelines for power line EMF exposure and how  
18 those might relate to the kinds of values that we  
19 have in Mike Silva's report on the EMF impact of  
20 these particular lines.

21 Q. Dr. Valberg, I'm showing you what's been  
22 marked as Exhibit 38, and could you please identify  
23 it?

24 A. Yes. This is the written testimony that  
25 was prepared to present before this board and the

1 commissioners, and it was prepared by myself to  
2 explain EMF health effects.

3 MS. JACOBSON: Your Honor, I'd move for  
4 admission of Exhibit 38.

5 JUDGE FETCH: Any objection?

6 MR. ARMSTRONG: No objection.

7 JUDGE FETCH: Exhibit 38 is admitted.

8 Q. (MS. JACOBSON CONTINUING) Dr. Valberg, in  
9 your professional opinion are there any adverse  
10 health effects to be expected due to EMF exposure  
11 from the project?

12 A. Well, to make a long story short, the  
13 answer is no. The actual line of reasoning is  
14 explained in the written testimony, and it relates  
15 to the fact that the kinds of exposures to power  
16 line EMF that you have in this situation are not  
17 established to have health effects. And, in fact,  
18 if you compare the levels of exposure that you  
19 would get either at the right-of-way or even under  
20 the lines at the point of maximum exposure, they  
21 are below those standards that have been developed  
22 by international agencies for continuous public  
23 exposure without expectation of adverse effects.

24 MS. JACOBSON: Your Honor, no further  
25 questions.

1 JUDGE FETCH: Thank you.

2 Mr. Armstrong.

3 MR. ARMSTRONG: No questions.

4 JUDGE FETCH: Mr. Lein.

5 MR. LEIN: No questions.

6 JUDGE FETCH: We'll go to the Commission.

7 Commissioner Kalk.

8 COMMISSIONER KALK: Thank you, Your Honor.

9 **EXAMINATION**

10 **BY COMMISSIONER KALK:**

11 Q. Dr. Valberg, it seems like such a waste  
12 that we have a guy here from Harvard and we're not  
13 going to ask you a bunch of questions.

14 A. Well, that's why I'm -- if anything is  
15 bothering you, I'm happy to try to address it.

16 Q. Thank you. The -- to try to put -- I keep  
17 saying this -- a human face on it, so in your  
18 research and your experience, if someone is  
19 standing under this 345 kV line 24 hours a day, 7  
20 days a week, would that have a negative effect on  
21 them?

22 A. In my analysis of the relevant science and  
23 the kind of public health opinions that are out  
24 there, the answer is no, they would not -- they  
25 would not have an effect.

1           Q.     So in your opinion there is no scenario  
2     that this could endanger human health. That would  
3     be the extreme level, I would think, unless they  
4     fall off a pole or something, but that's not the  
5     EMF problem.

6           A.     Well, that's not quite the case. I think  
7     one of the things that you see in my report and the  
8     exhibits attached to it is that electric and  
9     magnetic fields are produced by any kind of  
10    electrical wiring or electrical appliances. And in  
11    the literature and in fact in reports from the  
12    National Institute of Environmental Health  
13    Sciences, you have tabulations of magnetic fields,  
14    for example, produced by motors and, you know,  
15    shavers and --

16          Q.     Oh, sure.

17          A.     -- all sorts of appliances that people use  
18    on an everyday basis. And those levels are, in  
19    fact, higher or can be higher than what you would  
20    experience under the line. Now, they aren't  
21    continuous. They are intermittent. But to the  
22    extent that we have no evidence that either  
23    intermittent or continuous magnetic field exposure  
24    results in adverse health effects, I would say  
25    that, yes, both of those things kind of support



1 each other, combined with the fact that the society  
2 as a whole has been using power line EMF  
3 frequencies for over a hundred years now and we  
4 don't have any patterns of disease in national  
5 health statistics that would suggest that that type  
6 of exposure is causing an increased risk of  
7 disease.

8 Q. Okay. Can you take -- I shouldn't say  
9 "can you." The research that you've had on humans,  
10 can you extrapolate that over to animals to where  
11 if someone in the next two hearings comes in and  
12 says, My cattle grazing underneath this is going to  
13 harm my cattle, my cattle grazing underneath  
14 here -- it will harm their effects to reproduce,  
15 would you be able to offer any insight on those  
16 potential scenarios that might come up?

17 A. Yes, I would. And I think the point that  
18 you make is a very good one that, in fact, a lot of  
19 the laboratory work that was funded by the United  
20 States Congress and was essentially handed out to  
21 researchers by the National Institutes of Health  
22 was to do work on laboratory animals to see whether  
23 or not exposures to electric and magnetic fields  
24 could cause adverse effects in a system where you  
25 could very closely control the exposure and you

1     could also do very careful experiments to see if  
2     any cells, tissues, organs had been affected.

3             The reason they did those were primarily  
4     because those results were relevant to what we  
5     might expect in humans, and, in fact, the same kind  
6     of logic applies to those experiments and their  
7     relevance to farm animals. And those experiments  
8     did not show effects, for example, on animal  
9     behavior or reproductive capability that you would  
10    say, well, that might have occurred in farm  
11    animals. So I think that you're right, those  
12    negative results in the laboratory animal  
13    experiments can be extrapolated.

14            Furthermore, there have been real  
15    experiments with farm animals that have actually  
16    been housed underneath transmission lines. I think  
17    many of these were done by the Bonneville Power  
18    Administration, and they also showed a lack of  
19    effect.

20            Now, science can never prove a total  
21    negative, but I think what we have here in terms of  
22    the weight of evidence is that it doesn't support  
23    the establishment of standards that would be  
24    protective of either animal health and behavior or  
25    human health and behavior because the few positive

1 results are just not consistent.

2 Q. The -- I have to ask the flip side of the  
3 question. You're obviously an expert in your  
4 field. Would I be able to find an expert in the  
5 field that would completely contradict what you're  
6 telling me today?

7 A. EMF continues to -- partly to my  
8 amazement, it continues to be a controversial  
9 issue. And so if you were to go to the Internet  
10 and type in, you know, magnetic field, power lines,  
11 health effects and so forth, I think you would call  
12 up thousands of sites, many of which would say,  
13 yes, there are effects. And I think what these  
14 sites are saying essentially is that in the very  
15 broad spectrum of scientific literature that you  
16 have on EMF research, there are some studies that  
17 show certain positive effects. They're not very  
18 reproducible and they don't seem to paint a very  
19 coherent picture, but you can pick them up.  
20 They're not -- it's not that all the studies are  
21 negative.

22 But my position is that this is just the  
23 nature of science is that you're always going to  
24 have some positive effects and you have to have  
25 replication, you have to have some sort of

1 consistent mechanism that gives you those effects  
2 before public health agencies will take note of  
3 them.

4 So the short answer to your question is,  
5 yes, you could find people who --

6 Q. People, not necessarily with the  
7 experience and level that you bring to the table.

8 A. Well, some of these people publish in  
9 areas of EMF, so I think you can find people who  
10 have, you know, I would say reasonable credibility,  
11 but I disagree with their opinion. And I think  
12 partly I'm also comparing EMF to other areas of  
13 health risk assessment that I'm very familiar with  
14 to say yes, we cannot completely rule out that  
15 there is a zero risk. But compared to all of the  
16 other places where we can put our time, energy and  
17 resources to improve our health and so on, I think  
18 there is pretty uniform agreement that the effect  
19 of power line EMF is way down in terms of a  
20 priority.

21 Q. There's no regulation of EMF by the --  
22 here we go with acronyms -- by the EPA or any other  
23 body such as that, is there?

24 A. No. There are no regulations in the  
25 United States, and even the international

1 guidelines are health guidelines. They are not  
2 enforceable standards.

3 Q. So could we assume that since there's  
4 nothing -- let me rephrase that.

5 It's my perception that if there is an  
6 agreement of science, the EPA will find a way to  
7 regulate it. The fact that the EPA and other  
8 agencies have not found a way to regulate this  
9 shows me there's really no science that can back  
10 any kind of regulation behind it.

11 A. And, yes, I would tend to agree with that.  
12 The regulators want to regulate and that, in fact,  
13 if they found credible science on which they could  
14 develop a standard, I think they would. So rather  
15 than saying that the lack of regulation is  
16 alarming, I would say in fact the lack of  
17 regulation is reassuring that no, you know, hazard  
18 of real note has been identified.

19 COMMISSIONER KALK: All right. Thank you.

20 JUDGE FETCH: Thank you.

21 Commissioner Christmann.

22 COMMISSIONER CHRISTMANN: Your Honor, I  
23 enjoyed this, but I don't have a single question.

24 JUDGE FETCH: Thank you.

25 Commissioner Fedorchak.

1 COMMISSIONER FEDORCHAK: Yes.

2 EXAMINATION

3 BY COMMISSIONER FEDORCHAK:

4 Q. So do these have electromagnetic fields?

5 A. Yes. Your cell phone has electromagnetic  
6 fields, but as Mike Silva pointed out, those are a  
7 much different frequency, so those -- cell phones  
8 operate up in the gigahertz; namely, either .9 or  
9 1.9 gigahertz, which is a billion cycles per  
10 second. A much different frequency that 60 cycles  
11 per second.

12 Q. If you're talking exposure, how does it  
13 compare to power line exposure, somebody who's  
14 talking on this on fairly -- or holding it or  
15 having it at their bed or sitting by it most of the  
16 day? Not that I do that, really.

17 A. For radio frequency fields, there are  
18 standards. The Federal Communications Commission  
19 and, in fact, international agencies also set  
20 standards for what the exposure is allowable for  
21 public exposure and worker exposure, and cell  
22 phones and cell phone base stations fall below  
23 those levels.

24 So, yes, if you're on the cell phone,  
25 you're getting some of the now called nonionizing

1 radio waves that are being absorbed by your body,  
2 but again, the level is low enough. I mean the  
3 basic principle in all of toxicology is that the  
4 dose makes the poison. So the exposure in terms of  
5 actual electromagnetic energy that's absorbed from  
6 a cell phone is vastly larger than from power  
7 lines.

8 Not only are the power line fields very  
9 weak, but they're very poorly absorbed by the body.  
10 They essentially go right through it, which to me  
11 is good news, I mean, nothing is absorbed. But for  
12 a cell phone, some of the energy is actually  
13 absorbed. The amount is very small and that's the  
14 amount that's being regulated by the exposure  
15 standards.

16 Q. Just to make sure I understood you, did  
17 you say the exposure and the amount absorbed from  
18 cell phone use would be much greater than what you  
19 would have from the electrical wires?

20 A. Yes. If you were to express the exposure  
21 in terms of watts of energy, how many watts of  
22 energy am I absorbing from my cell phone versus how  
23 many watts of energy am I absorbing from this  
24 nearby power line, the answer is correct, yes, the  
25 watts of energy would be much higher for the cell

1 phone.

2 Q. Okay. And I want to make sure I  
3 understand, too, are there or are there not  
4 standards for how far houses should be located from  
5 these wires, that sort of thing?

6 A. There are no regulatory standards as to  
7 how far your houses should be located. There was a  
8 period of time when in the state of California they  
9 had some guidelines as to how far they wanted  
10 school buildings and so forth from power lines, but  
11 those are really more a matter of policy. They  
12 really were not based on a particular level  
13 creating a hazard versus some other distance not  
14 causing a hazard.

15 Q. Okay. And the same for the international  
16 health guidelines. You mentioned that. What are  
17 those and who set them and who follows them?

18 A. Well, the main commission there is the  
19 International Commission on Nonionizing Radiation  
20 Protection, and that acronym is ICNRP, if you take  
21 the first letter of each of those words. And they  
22 have been around for a long time and they are an  
23 independent body. They're not really a  
24 governmental body, but they're a body of  
25 independent scientists who get together and look at



1 the scientific literature periodically and try to  
2 determine what the standards are, not only for  
3 power line frequencies but for other frequencies as  
4 well.

5 And they reviewed -- back in a time period  
6 when the EMF controversy was perhaps more intense  
7 for power lines, they reviewed it. In 1998 it  
8 was -- the standard they set at that point was 833  
9 milligauss was the 60 hertz standard that was a  
10 24/7 continuous exposure not expected to cause any  
11 adverse health effects.

12 In 2010, that same body re-reviewed the  
13 literature again, looked at all the stuff that had  
14 come out since their previous decision, and  
15 interestingly enough, they actually increased the  
16 allowable exposure to 2,000 milligauss, and they  
17 said that this was now their public standard for  
18 24/7 exposure.

19 So I think the -- there are people who are  
20 concerned about it. As I said, it's in the  
21 Internet. You may, in fact, get people who are  
22 worried about the EMF, but I think what you need to  
23 do is to look at, first of all, legitimate agencies  
24 and so forth, and then secondly look at what are  
25 power -- what are the actual guidelines that they

1 suggest and the fact that these agencies look at  
2 the science as it comes out. If something came out  
3 that was really established and alarming, they  
4 would incorporate that into their reasoning.

5 COMMISSIONER FEDORCHAK: Okay. Great.  
6 Thank you very much.

7 JUDGE FETCH: Any other questions from the  
8 commissioners?

9 All right. Any further questions from  
10 counsel? Mr. Lein?

11 Thank you -- sorry, it's late. I had to  
12 check my cheat sheet here. Thank you, Dr. Valberg.

13 THE WITNESS: You're welcome.

14 JUDGE FETCH: All right. Ms. Jacobson, I  
15 believe you wanted to call a rebuttal witness.

16 MS. JACOBSON: Yes. That's correct. The  
17 witness is Dr. Kimball Banks.

18 JUDGE FETCH: Dr. Banks, did you take the  
19 oath previously?

20 DR. BANKS: Yes, I did.

21 JUDGE FETCH: All right. Thank you.

22 Go ahead, Ms. Jacobson.

23 **KIMBALL BANKS,**  
24 having been first duly sworn, was examined and  
25 testified as follows:

**DIRECT EXAMINATION**

**BY MS. JACOBSON:**

Q. Dr. Banks, could you please state your name and occupation?

A. My name is Kimball Banks, K-i-m-b-a-l-l B-a-n-k-s. I'm regional manager for Metcalf Archaeological Consultants. The address is 510 Airport Boulevard, Suite C, Bismarck.

Q. And can you give the Commission a short history of your employment history and work experience?

A. Since 2009, I've been the regional manager in Metcalf's Bismarck office. Before that, I've had a total of about 35 years of involvement in various stages -- or various aspects of cultural resource management, 26 of which were in federal service, first with the Bureau of Indian Affairs and then with the Bureau of Reclamation. Prior to that, I worked for the Colorado River Tribes, Navaho Tribe, and I ran the cultural resource management program at New Mexico State University.

Q. And what's your involvement with the project?

A. Basin contracted with my company to conduct the cultural resource inventories for

1 compliance with NEPA and other applicable  
2 cultural -- federal and state cultural resource  
3 legislation.

4 Q. Dr. Banks, there's been a lot of testimony  
5 today about the various types of cultural surveys  
6 that have been performed on the project, and can  
7 you please discuss how Metcalf went about their  
8 Class I literature research?

9 A. Okay. The State Historical Society has  
10 guidelines for conducting cultural resource surveys  
11 within the state. The first step is to conduct  
12 what they call a Class I site and manuscript file  
13 search. In other words, what we do is we go up and  
14 search the site files at the Historical Society for  
15 all known sites within the project area. Those are  
16 all recorded sites. And then we also search the  
17 manuscripts to identify any survey -- cultural  
18 resource surveys that have taken place within the  
19 project area.

20 The objective of that is to provide Basin  
21 with an idea of what, you know, is the likelihood  
22 they are going to encounter cultural resources,  
23 either historic, architectural or archaeological,  
24 within their project area, and it -- you know, to  
25 the extent to which the area has been subjected to

1 cultural resource surveys.

2 The site files are all of those sites that  
3 have been recorded in the State of North Dakota and  
4 are on file there.

5 Q. Dr. Banks, earlier you stated that the  
6 State Historical Society has guidelines for doing  
7 these Class I surveys. Did you follow those  
8 guidelines in your work for Basin Electric?

9 A. Yes, we did.

10 Q. Was there anything indicated about the  
11 Killdeer Mountain Battlefield in the Class I  
12 research or surveys that you did?

13 A. The only indication the Killdeer  
14 Battlefield was the state historic site, the  
15 one-acre historic site, and the site that the  
16 gentleman who lives there pointed out on the board.  
17 That was the only evidence or only recorded  
18 evidence for the Killdeer Mountain Battlefield.

19 Q. And what was the area of land that you did  
20 the Class I survey on?

21 A. We did a six-mile-wide swath centered on  
22 the centerline of the construction corridor.

23 Q. Okay. And earlier it was testified that  
24 the Class III surveys were done on all but one-half  
25 mile within the Killdeer Mountain Battlefield; is

1       that correct?

2           A.     That is correct.

3           Q.     And what did those Class III surveys --  
4       what did you find in those surveys in the Killdeer  
5       Mountain Battlefield area?

6           A.     Okay. First off, we inventoried  
7       150-foot-wide construction corridor or easement. I  
8       would like to say that we obtain landowner  
9       permission before we go on their lands. If the  
10      landowner did not want us on their land, we would  
11      not go on their land, hence that half mile. We  
12      found one farmstead, one prehistoric artifact  
13      scatter, one multi -- what we call multicomponent  
14      site that had Depression era historic artifacts and  
15      then some prehistoric materials. Six prehistoric  
16      isolated artifacts, single artifacts. We also  
17      found what was originally a site lead, but we were  
18      not able to determine that that was actually there.  
19      And then we were not able to relocate two sites  
20      that were on file at the State Historical Society.

21          Q.     Was there anything related to the battle  
22      found in the Class III surveys that you or --

23          A.     No.

24          Q.     Okay. Does the Killdeer Mountain  
25      Battlefield area have any federal or state

1 protection or special legal status that you're  
2 aware of?

3 A. No. Right now the Park -- to the Park  
4 Service, if you look at their report that's been  
5 mentioned before, they identify it as a potential  
6 area. That area is not set in stone. It's only  
7 there -- it exists basically out in space. It's  
8 never been fully defined legally or any other way.

9 Q. Are you familiar with the listing process  
10 for sites for the National Register of Historic  
11 Places?

12 A. Yes, I am.

13 Q. And can you just tell the Commission  
14 briefly how one goes about getting a site on that  
15 Register?

16 A. Well, there are a number -- it can be done  
17 any number of ways. An individual could start it,  
18 a conservation group, an NGO. The two I'm familiar  
19 with is, one, it's instituted by the state, itself,  
20 the State Historical Society. And then when I was  
21 in federal service, the agency I worked with  
22 started the process.

23 It has to be done in conjunction with the  
24 SHPO. The SHPO has to have buy-in on it and  
25 approve it, and they go through a review process

1 and then they send it to the National Park Service  
2 for their review. And ultimately if it is declared  
3 to be on the National Register, then it's filed  
4 with the National Register, which is the Secretary  
5 of the Interior.

6 Q. And what are some of the requirements in  
7 order to get a property listed on the Register --

8 A. Okay.

9 Q. -- generally?

10 A. It has to be significant -- I'm -- I'm  
11 going to say -- yeah, I'm not going to get this  
12 totally right. But it has to be significant either  
13 in American history, prehistory or architecture.  
14 It has to be what they call a district site,  
15 structure, object or building. And it has to  
16 possess certain qualities of integrity, which  
17 include location, design, workmanship, materials,  
18 and there's two others.

19 And then it has to meet one of four  
20 criteria to be eligible, and it either has to be  
21 associated with a significant event, an  
22 important -- a person important in either local,  
23 regional or state or national history. It has to  
24 have architectural significance or it has to be  
25 able to have potential contributed information



1 important to history or prehistory.

2 Q. And what is the role of the landowner in  
3 this process?

4 A. The landowner has to approve of the  
5 process. I will say that there's -- in doing our  
6 surveys, if we come across a site and the SHPO  
7 agrees we can identify that site as potentially  
8 eligible, that's afforded the same protections  
9 under the National Historic Preservation Act as if  
10 the site was actually listed on the Register.

11 But to be listed -- formally listed on the  
12 Register, you have to have the landowner's approval  
13 on that. The whole process is not designed to  
14 affect any -- you know, any aspect of property. I  
15 mean property rights are paramount, so --

16 Q. And earlier it was discussed the  
17 additional survey work that Basin Electric will be  
18 doing. If anything is found related to any  
19 objects, what happens to those?

20 A. To the objects themselves?

21 Q. Yes.

22 A. They belong to the landowner. If the  
23 landowner -- you know, we would return them to the  
24 landowner, or if the landowner did not want them or  
25 agreed to it, then they would be curated to the

1 State Historical Society.

2 Q. Earlier there was testimony regarding  
3 involvement of Native American tribes, and can you  
4 just discuss briefly from your involvement as the  
5 archaeologist to the project on how the tribes were  
6 involved from a cultural resource perspective?

7 A. Okay. I was not involved directly with  
8 any Native American consultations. That's  
9 WAPA's -- or Western's responsibility, but as I  
10 understand it, they sent out letters to a group --  
11 a number of tribes within the -- within the project  
12 area or around the project area, and I believe  
13 that's included in the EIS.

14 As I understand it, the only response they  
15 got was from the Standing Rock Sioux Tribe, and as  
16 I understand it Basin has been in negotiations with  
17 them as to, you know, what they want out of the  
18 deal, you know.

19 Q. What's the status of the Class III  
20 surveys?

21 A. The Class III surveys have been completed  
22 except for those areas where we've not had access  
23 or where Basin is in the process of possibly  
24 changing the route or -- or minor alterations.

25 Q. So earlier you discussed an interim

1 report. What's the significance of that report in  
2 relation to the whole approval process from SHPO?

3 A. The interim report was produced primarily  
4 so that Western could enter into consultations with  
5 the tribes. They provide tribes with copies of  
6 that report along with, as I understand it, the  
7 environmental impact statement as well.

8 MS. JACOBSON: I have no further  
9 questions, Your Honor.

10 JUDGE FETCH: Thank you.

11 Mr. Armstrong?

12 MR. ARMSTRONG: Thank you.

13 **CROSS-EXAMINATION**

14 **BY MR. ARMSTRONG:**

15 Q. Point of clarification, Mr. Banks. You  
16 mentioned something about a site being potentially  
17 eligible. Could you expound on that a little bit?

18 A. Under the National Historic Preservation  
19 Act, which is the primary act governing cultural  
20 resources, if -- if a federal agency and the state  
21 agree to it, they can agree to decide it's  
22 potentially eligible. They don't have to go  
23 through the whole nomination process because that  
24 takes time. Generally, in my experience, it's  
25 taken at least two years. But if the federal and

1 the state agency agree that it's potentially  
2 eligible, it's afforded the same protections, if  
3 you -- and I use that term loosely -- under the  
4 National Historic Preservation Act as a site that  
5 is already listed.

6 I might add that by protection, I don't  
7 mean that that site is preserved for anything or  
8 that you cannot do, you know, construction in  
9 that -- within that site's boundaries, but you have  
10 to follow the process. I mean all the National  
11 Historic Preservation Act is a process. It  
12 doesn't -- you know, it doesn't stop development.  
13 It's not -- it's not set to stop development or  
14 anything like that. It's just a process to get  
15 public involvement and to -- you know, to either  
16 protect that site either physically in space or,  
17 you know, abstract the data out that that site  
18 represents.

19 Q. So when you're conducting a cultural  
20 resources inventory and developing the report that  
21 goes along with it, do you typically recommend  
22 mitigative measures, avoidance measures with --  
23 with cultural sites that are located? That's  
24 correct, isn't it?

25 A. I would say more often than not it's

1 avoidance measures primarily because clients such  
2 as Basin do not want to take the time that it would  
3 take to actually go through the whole process of,  
4 you know, declaring a site potentially eligible and  
5 then to have to go through a whole mitigation  
6 process to offset any impacts to that site from  
7 construction.

8 Q. So they typically avoid it --

9 A. Right.

10 Q. -- or if for some reason it can't be, then  
11 you would recommend mitigation?

12 A. To the -- yeah. But you'd have to develop  
13 a mitigation plan that would have to be approved by  
14 the state and the federal agency and then you'd  
15 have to go through and, you know, implement that  
16 mitigation plan before construction could take  
17 place.

18 Q. And then that's a recommendation you make  
19 and the company typically agrees to it, then you  
20 submit the plan to the state office?

21 A. And in this case it would be Western.

22 Q. Okay. So Western would --

23 A. Western then -- I'm going to -- I think I  
24 know where you're going on this. Western then  
25 would consult with the SHPO to see if that plan is

1     adequate and acceptable, and probably with Native  
2     American tribes as well. And then if it was, then  
3     we'd go out and carry out that plan.

4           Q.     Well, usually where it ends is after the  
5     Class III and the whole corridor or route has been  
6     surveyed, it becomes a recommendation that no  
7     historic properties are affected and the State  
8     Historic Preservation Office would concur in that.

9           A.     Right.

10          Q.     This project obviously has not been  
11     completed all along the proposed route.

12          A.     That's correct.

13          Q.     I understand that there has been Class III  
14     surveys of -- I believe the number was  
15     approximately 70 percent.

16          A.     Right.

17          Q.     And are you familiar with the results of  
18     the Class III surveys that have been conducted?

19          A.     We recorded 107 -- I think around 170  
20     sites and about 30 of those have been sites that  
21     have been previously recorded and we went back and  
22     relocated them.

23          Q.     Are there any sites on this project that  
24     cause -- that Basin has not either avoided -- well,  
25     are there any that they have not avoided, I guess,

1     that you're aware of?

2           A.     There are some that they have not avoided.  
3     We are going back in to evaluate the significance  
4     on that, and I believe that there's one that they  
5     cannot avoid that is -- has been declared  
6     potentially eligible, and that will be mitigated.  
7     The mitigation will be limited to where the actual  
8     pole is going to be sited on that site.

9           Q.     So do you know what site that is, what it  
10    involves?

11          A.     Not off the top of my head.

12          Q.     Do you know where it's at around the  
13    project area?

14          A.     Again, not off the top of my head.

15          Q.     What -- you've -- I believe I've seen you  
16    sitting through all of the testimony today and I --  
17    is that correct?

18          A.     Yes, it is.

19          Q.     I presume you've listened to the  
20    discussion on the battlefield area.

21          A.     Mm-hmm.

22          Q.     What, if anything, do you propose to be  
23    done there? I mean it --

24          A.     If we had found -- if that battlefield  
25    had -- as mapped out had been included in the file

1 searches, we would have recommended that Basin  
2 avoid it just because of what you've heard today.  
3 It was not. Again, it has not been declared --  
4 it's not been declared eligible. It's not on the  
5 National Register. So right now it is -- there's  
6 nothing stopping development on that, across that  
7 site. If the state and Western decided that it  
8 agreed that it was potentially eligible, then they  
9 would have to take steps to mitigate any impacts.

10 Q. And you probably heard the -- the  
11 discussion about removing the Gumbo Creek  
12 Substation, the visual effects assessment, the  
13 magnetometer and the detailed investigation at the  
14 sites of the poles. Is it -- do you have an  
15 opinion whether those are reasonable measures to  
16 avoid unnecessary impact to the area wherever it  
17 may fall on the legal spectrum?

18 A. I'm going to waffle on that and say that  
19 the state has agreed to that. Now, whether I  
20 personally agree to that is my own personal  
21 opinion, but the state has agreed that that's  
22 acceptable.

23 Q. Is part of your analysis when you're doing  
24 these Class IIIs or anything like that kind of in  
25 determining where they fall on exclusion/avoidance



1 areas such as that? Do you get into that with  
2 the --

3 A. No.

4 Q. -- service's criteria --

5 A. No.

6 Q. -- or the Commission's criteria?

7 A. Because as I understand it, the  
8 Commission's criteria don't apply to cultural  
9 resources per se.

10 Q. Okay. What do you mean by that?

11 A. Well, my understanding of an exclusion  
12 area is -- applies more to natural features, like  
13 wetlands and things like that.

14 Q. You testified about being familiar with  
15 the process on getting something registered. Do  
16 you think -- in your experience, if you know, does  
17 having a power line in this area, would that  
18 somehow affect whether it could be a registered  
19 area?

20 A. I personally don't think it would. I  
21 don't know -- I can't think of any -- any site on  
22 the National Register -- well, I won't go quite  
23 that far. Most sites on the National Register have  
24 had some -- you know, some developments post when  
25 they were occupied or used. For instance, somebody

1 here earlier today said Gettysburg and there are  
2 transmission lines going through there, but that's  
3 still -- I don't know if that's on the Register,  
4 but it is a nationally recognized -- probably a  
5 national historic landmark, but they've had  
6 developments on it.

7 The state just nominated or agreed to push  
8 forward the nomination for the Whitestone  
9 Battlefield in the eastern part of the state, which  
10 is also associated with the Minnesota Uprising, and  
11 it's got farm -- you know, modern farm developments  
12 or farm houses in that area.

13 So there's nothing -- you know, you don't  
14 have to have a -- the point is you don't have to  
15 have a pristine site for it to be on the  
16 eligible -- on the Register. I think the best way  
17 to couch it is there comes a tipping point where,  
18 you know, there's too much development in a  
19 situation like this. I don't know what that  
20 tipping point would be.

21 Q. And even if it were, is my understanding  
22 correct from the testimony, that it still wouldn't  
23 prevent any of the private landowners in the area  
24 from doing whatever they want?

25 A. There's nothing to prevent private

1 landowners from doing what they want. This is --  
2 that's one of the misconceptions I deal with all  
3 the time. This is not a law of taking. Property  
4 rights prevail, period.

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

7 JUDGE FETCH: Mr. Lein?

8 MR. LEIN: I have no questions.

9 JUDGE FETCH: All right. Thank you.

10 Commissioner Kalk.

11 COMMISSIONER KALK: Thank you, Your Honor.

12 **EXAMINATION**

13 **BY COMMISSIONER KALK:**

14 Q. Thank you, Dr. Banks, for your testimony  
15 and your patience today.

16 So just a couple of -- Mitch did a great  
17 job of getting all the questions, I think, that I  
18 had out there. But you said private landowners --  
19 you know, it's their property. So at the end of  
20 the day if Basin had easements to go across all the  
21 area that's contentious today, they could just  
22 build it with our approval. I mean if they already  
23 had the easements, then all this process becomes  
24 irrelevant?

25 A. Well, they could build it provided Western

1     had complied with NEPA and the National Historic  
2     Preservation Act. Both those acts are -- all they  
3     are are processes --

4           Q.     Right.

5           A.     -- and the objective is to get public  
6     input on the effects.

7           Q.     Because that was my experience with NEPA,  
8     as well; it was a process. At the end of the day  
9     there was an outcome, and I remember many times  
10    there'd be no alternative other than the one we had  
11    and we'd have reburial taking place of -- I mean it  
12    was important stuff, but we would deal with the  
13    cultural things as they came.

14                   So in your experience seeing how this  
15    plays out, the NEPA documents, how do you think the  
16    interplay between the SHPO's action and the NEPA  
17    decision will play itself out? I know you can't  
18    predict the future, but you've got experience in a  
19    lot more of this area than I have.

20           A.     You mean in terms of the battlefield  
21    itself?

22           Q.     Of the process. Do you think that the --  
23    you can't predict, but the -- the federal agencies  
24    that are working through this, they'll have to make  
25    a decision to either go somewhere else and start

1 the process again or push through. Do you have any  
2 insight on what that thought would be if you were  
3 recommending -- you will be recommending to Basin  
4 at some point, I'm sure, what to do there. Not  
5 today, but --

6 A. Well, I'm going to recommend -- you know,  
7 obviously, like I say, the SHPO has provided a  
8 letter, you know, with their recommendations. I  
9 suspect that Western will agree to those  
10 recommendations. And if that's the case and -- and  
11 both parties agree, then there's nothing to  
12 construct -- or to stop Basin from constructing  
13 that power line.

14 Q. So the SHPO has the recommendation,  
15 Western agrees, the record of decision sees nothing  
16 in there perhaps to contradict that, they sign the  
17 rod, they move forward.

18 A. Yeah. I will -- I will -- I would say  
19 that that's -- I'm not taking into account any  
20 Native American concerns that may arise. That --  
21 that I can't predict. I -- I gave up predicting  
22 that one a long time ago.

23 COMMISSIONER KALK: Thank you.

24 JUDGE FETCH: Thank you.

25 Commissioner Christmann.

**EXAMINATION**

**BY COMMISSIONER CHRISTMANN:**

Q. Sir, which is the half mile that didn't get surveyed?

A. I forget the property. It was next to the gentleman -- the first gentleman that testified in -- the landowner here that testified in support of the project, I believe.

MS. JACOBSON: Commissioner Christmann, I believe it's Section 2, Gary and Earl Weydahl, that half mile.

COMMISSIONER CHRISTMANN: Okay. No further questions. Thank you.

JUDGE FETCH: Thank you.

Commissioner Fedorchak.

**EXAMINATION**

**BY COMMISSIONER FEDORCHAK:**

Q. So summarize for us your thoughts on the conclusion that Tom Isern and Aaron Barth had that the study documents in which the proposals are based are unacceptably deficient.

A. I disagree. When we do a file search, we don't write histories. I mean these are -- we prepare planning documents, and what clients need, like Basin need, they need to know physically what

1 is out there. The history stuff is not our milieu.  
2 They want to know what is physically out there so  
3 that they can plan a route -- you know, so they can  
4 plan their route and anticipate what, you know,  
5 possible problems they might run into, vis-à-vis  
6 cultural resources, and to do that they need to  
7 know what's on the ground.

8 The historical aspect is, you know, we  
9 will -- when we prepare our final report, then we  
10 will incorporate the historical aspect and put it  
11 in a larger context, you know, both  
12 archaeologically and historical. You know, our  
13 interim report is basically just a summary of what  
14 we've done and what we've found so far, but our  
15 final report will then put it in a larger context.

16 Q. And did you walk this part? I mean did  
17 you do a ground survey through this area of the  
18 corridor?

19 A. My staff -- through the entire eight  
20 miles?

21 Q. Through the battlefield area.

22 A. Yes. I did not, but my staff did.

23 Q. Your staff did?

24 A. Yes.

25 Q. But for the half mile.

1           A.     Except for the half mile, because we did  
2     not have permission.

3 Q. And I apologize if you've already  
4 described what you found there, but did you find  
5 artifacts?

6           A.     None of them were -- we found both  
7     historic and prehistoric.  None of them were  
8     associated with the battle.

9 Q. Okay. And my final question is what time  
10 period is prehistory?

11 COMMISSIONER KALK: Yesterday.

12 Q. (COMMISSIONER FEDORCHAK CONTINUING)

13 Because that does not seem possible to me.

14           A.     Some of my staff say I'm prehistoric,  
15     so --

|    |                                           |
|----|-------------------------------------------|
| 16 | Q. I want to live in the prehistory time. |
|----|-------------------------------------------|

17           A.    Yeah.  Well, I'm a lot older than most of  
18   my staff, so --

19           Prehistory is defined -- primarily I guess  
20    you could call it before written history. In this  
21    country it starts about 1780 when the first  
22    Europeans appeared, so anything before that is --  
23    prehistory is that era where we don't have any  
24    written records, basically.

25 COMMISSIONER FEDORCHAK: Okay. Thank you.



1 JUDGE FETCH: Commissioner Christmann.

2 **FURTHER EXAMINATION**

3 **BY COMMISSIONER CHRISTMANN:**

4 Q. As an expert in cultural and historic  
5 issues, did it concern you today when you heard one  
6 of the key players in the study that the government  
7 is funding already have his mind made up what the  
8 results of the study were and proclaimed that one  
9 side was on a mission to genocide?

10 A. Okay. As way of background, I was  
11 involved in the preparation of the national  
12 historic -- the nomination of the Whitestone  
13 Battlefield, which preceded this one. I think that  
14 the whole Minnesota Uprising -- when I look at that  
15 historically, it affected military policy towards  
16 Native Americans in the Northern Plains up until  
17 1890 in the massacre at Wounded Knee. It set the  
18 stage for that. And you could extrapolate it  
19 essentially and say that it affected -- you know,  
20 it was basically a scorched-earth policy, and you  
21 could say that Sherman took that lesson and applied  
22 it in his march to Georgia. Now, that's  
23 speculation on my part.

24 One of these days I've thought about  
25 researching that when I have the time, which I

1     doubt I ever will. But in a larger context, you  
2     know, it's a very important site. You know, I  
3     won't deny that. My problem is that the boundaries  
4     of that site have not been fully identified yet,  
5     which poses a big problem as far as development  
6     goes in that area. It may be that that is the  
7     boundary. I don't know.

8             I've worked with military records enough  
9     to know that -- from that era to know that it's  
10    very difficult to define exactly what the  
11    boundaries of those battles are because when they  
12    recorded -- you know, the military kept detailed  
13    records, but what they were keeping detailed  
14    records of were events -- on the events and not  
15    locations. And it's very difficult from their  
16    records to extrapolate exactly where certain  
17    actions took place.

18            COMMISSIONER CHRISTMANN: Thank you.

19            JUDGE FETCH: Any further questions from  
20    the Commission?

21            Any further questions from counsel?

22            MS. JACOBSON: No, Your Honor.

23            JUDGE FETCH: Mr. Armstrong?

24            MR. ARMSTRONG: No, Your Honor.

25            THE WITNESS: I'll say thank you for

1 letting me be the cleanup batter, so --

2 JUDGE FETCH: Thank you.

3 THE WITNESS: Thank you.

4 JUDGE FETCH: Any other witnesses,  
5 Ms. Jacobson?

6 MS. JACOBSON: No, Your Honor.

7 JUDGE FETCH: All right.

8 COMMISSIONER KALK: Your Honor, just a  
9 question for the attorney, if I could. So the last  
10 three witnesses that testified, we won't have --  
11 this is the last opportunity to talk to them or  
12 will they be with us -- who will be with us the  
13 next two days?

14 MS. JACOBSON: That's correct. The last  
15 three that testified will only be here today.

16 COMMISSIONER KALK: Okay. So this is our  
17 chance to talk with them.

18 JUDGE FETCH: Did you want to re-call  
19 anyone, Commissioner Kalk?

20 COMMISSIONER KALK: No, I didn't, but that  
21 was why, I think, some of the questions I put out  
22 there were in anticipation of them not being able  
23 to rebut it, so if there's something that comes up  
24 that these witnesses would like -- that you'd like  
25 them to come back to, you'll have to deal with that

1 on your own, I guess.

2 MS. JACOBSON: Well, right. And if it  
3 does come up tomorrow, we can probably have them  
4 arranged to be in Williston for the next week.

5 COMMISSIONER KALK: Thank you.

6 JUDGE FETCH: All right. Is there any  
7 other matter that counsel, either of you, wish to  
8 bring to the attention of the Commission?

9 MS. JACOBSON: No, Your Honor.

10 MR. ARMSTRONG: No, Your Honor.

11 JUDGE FETCH: There are two more hearings  
12 scheduled on this matter, one tomorrow in Tioga and  
13 one on September 12 in Williston. And so the  
14 hearing will -- this hearing -- I will very shortly  
15 close the hearing today. But that does not mean  
16 the record of this matter is closed because we have  
17 two more hearings to go.

18 So other -- if there is nothing further --  
19 last chance. All right. If there's nothing  
20 further today, then I'm going to close the hearing,  
21 noting the correct time is 8 -- I'm going to say  
22 8:44 p.m. Mountain time, 9:44 p.m. Central time.

23 The hearing is closed. Thank you.

24 (Concluded at 8:44 p.m., MT, the same  
25 day.)

1 CERTIFICATE OF COURT REPORTER  
2

3 I, Stephanie A. Smith, a Registered  
4 Professional Reporter,

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

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

13 Dated at Bismarck, North Dakota, this 30th  
14 day of September, 2013.

15  
16

17 -----  
18 Stephanie A. Smith  
19 Registered Professional Reporter  
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