

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

TRANSCRIPT OF
PUBLIC HEARING

Taken At
14120 Highway 2
Williston, North Dakota
September 12, 2013

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

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COMMISSIONERS PRESENT:

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

MS. CASEY J. JACOBSON
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FOR THE PUBLIC SERVICE
COMMISSION.

COMMISSION STAFF PRESENT:

MR. JERRY LEIN, Public Utility Analyst

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1 (The following proceedings were had and
2 made of record herein, commencing at 10:14 a.m.,
3 Thursday, the 12th day of September, 2013:)

4 JUDGE FETCH: Okay. We are going to come
5 to order. Let the record show that it is
6 10:15 a.m., Central time, on September 12, 2013,
7 and we are present at the NDSU Extension Center in
8 Williston, North Dakota, for a hearing scheduled in
9 the matter of applications filed on March 15, 2013,
10 by Basin Electric Power Cooperative for a waiver of
11 procedures and time schedules and a corridor
12 certificate and route permit to authorize
13 construction of approximately 197.1 miles of 345 kV
14 electric transmission line and associated
15 facilities from the existing AVS Substation near
16 Beulah, North Dakota, to a new Tande 345 kV
17 substation to be constructed near Tioga, North
18 Dakota.

19 This is PSC Case Number PU-11-696. On
20 July 23, 2013, Basin Electric filed an amendment to
21 the application.

22 My name is Bonny M. Fetch and I'm an
23 independent administrative law judge from the
24 Office of Administrative Hearings, and I am the
25 procedural administrative law judge designated to

1 conduct this hearing.

2 The hearing was originally scheduled to be
3 held at City Hall and was moved to this location.
4 Signs have been posted at City Hall to redirect
5 people here and also there is an individual there
6 redirecting people.

7 Before we proceed, I'm going to ask you to
8 silence your cell phones, put them on mute or turn
9 them off, and any other electronic devices that may
10 make any beeping noises or noises that could be
11 disruptive to the hearing.

12 This is the third hearing on this matter.
13 Hearings were held last week in Killdeer and in
14 Tioga, and this is the third location for the same
15 hearing.

16 At this time we'll state appearances for
17 the record. Casey Jacobson is on record as counsel
18 for Basin Electric. Ms. Jacobson, please identify
19 who will be testifying for Basin Electric today.

20 MS. JACOBSON: Thank you, Your Honor.
21 Today's testimony will include five witnesses:
22 Mr. Duey Marthaller, Ms. Becky Kern, Mr. Matthew
23 Stoltz, Mr. Cris Miller and Michael Murray, and all
24 of those witnesses have testified in the earlier
25 two hearings.

1 JUDGE FETCH: All right. Thank you.

2 And Mitchell Armstrong is on record as
3 counsel representing the Commission.

4 Mr. Armstrong, identify any Commission staff
5 present with you and indicate whether they will be
6 testifying.

7 MR. ARMSTRONG: With me is Jerry Lein, a
8 public utility analyst for the Commission. I do
9 not expect Mr. Lein to testify.

10 JUDGE FETCH: Will he be asking questions?

11 MR. ARMSTRONG: Yes.

12 JUDGE FETCH: All right. Thank you.

13 There are several different types of
14 Public Service Commission evidentiary hearings the
15 Commission may hold. For an application hearing,
16 there may be at least five different types or
17 categories of participants in the hearing besides
18 the hearing officer. The applicant, one or more
19 intervenors, public participants, the commissioners
20 and Commission counsel and staff.

21 There are no intervenors in this hearing
22 or formal protestants. The applicant, which is
23 Basin Electric, is a full participant in the
24 hearing. If there were intervenors, they would
25 also be a full participant, able to present

1 evidence and ask questions of witnesses. If
2 Commission staff were presenting a case, they would
3 be a full participant too. That's not the case in
4 this particular hearing.

5 Public participants are not full
6 participants. They may not present evidence or ask
7 questions of witnesses, but may present information
8 to the Commission in the public interest.

9 So first I will call upon the applicant,
10 Basin Electric, to present their case in this
11 matter, and after the applicant has presented their
12 case and any questions are -- are concluded, then I
13 will call upon members of the public who wish to
14 come forward and give information or statements for
15 the Commission.

16 Let me at this time ask, are there members
17 of the public out there who are going to -- intend
18 to present information today? Raise your hands. I
19 see one. Anyone else?

20 Okay. I recognize there may be other
21 members of the public present who are here to
22 listen to the proceedings and -- and that's fine.

23 Mr. Lein is going to pass around a sheet
24 that we ask that you sign. All right. Thank you.

25 Members of the Public Service Commission

1 present today are Brian Kalk, the Commission Chair
2 who holds the portfolio in this matter; Randy
3 Christmann; and Julie Fedorchak.

4 And at this time I'm going to ask
5 commissioners for their opening comments. We'll
6 begin with Commissioner Kalk.

7 COMMISSIONER KALK: Thank you, Your Honor,
8 and thank you, everyone, for coming out today.

9 The -- Judge Fetch I think set the
10 groundwork very well. The big thing I want to put
11 out first is that this is the third time that we've
12 heard the case from the company, so I'm guessing
13 for myself, I probably won't have nearly as many
14 questions as we had the first couple hearings. So
15 if you don't see the commissioners asking a lot of
16 questions at this hearing, it's because we spent 12
17 hours with questions the first day and 6 hours the
18 second day, so we may have some unique information.

19 As this thing unfolds -- the reason we're
20 up here today is really twofold. One is to let the
21 company have all the time they need to make their
22 case and the second is to get the public input
23 about concerns that are around this project, good
24 things, bad things.

25 I appreciate Senator Triplett being up

1 here today. Senator, I look forward to hearing
2 your thoughts later on in the hearing, I'm sure.

3 But I'll tell you that of all the things,
4 in my opinion, that we do in the Public Service
5 Commission, the siting of power lines is by far the
6 most difficult, the most complex, the most
7 landowner intensive. So it really, really helps us
8 if we get good information and then we can get back
9 to the Capitol in Bismarck and we can look at all
10 the things that are involved in the project and
11 make the best decision. So we make better
12 decisions if we get better information.

13 A couple things on this particular
14 hearing. The -- we've had landowner questions
15 about property rights and about easements. Public
16 Service Commission -- we really don't have any
17 jurisdiction on easements. So we -- we certainly
18 pick the final route or we're part of that decision
19 in the final route, but we'll ask the questions
20 about how many easements are in place, and right
21 now I think the company said roughly 70 percent at
22 one of their previous hearings. But as this thing
23 unfolds, the easements is a legal process, so
24 that's one thing that we haven't heard a lot about
25 in this case, but I suspect that maybe we'll hear

1 something about that today.

2 The -- as far as for the company, as we
3 get deeper into the hearing today, like I said,
4 I've seen this case -- now will be the third time,
5 but this will be unique because this will be the
6 hearing that we've talked a lot about the river
7 crossing. A lot of questions that have come up on
8 the river crossing we've said we'll address that in
9 the Williston hearing. So I look forward to very
10 detailed explanation about the permits required to
11 cross the river, making sure that we've considered
12 the high-water marks and things like that as the
13 river ebbs and flows.

14 And other than that, the only thing I
15 would add and say is I think the Commission is
16 honored today to be in the birthplace of
17 Commissioner Julie Fedorchak.

18 So with that, thank you for coming out
19 today and look forward to your testimony.

20 JUDGE FETCH: Thank you.

21 Commissioner Christmann.

22 COMMISSIONER CHRISTMANN: Well, much of
23 what I was going to say has already been said. I
24 do appreciate the opportunity to be here. I'm glad
25 some members of the public are here to testify or

1 even to just listen.

2 My family has experience in this kind of
3 thing with our own ranching operation and having
4 transmission lines go sometimes in places where we
5 would have rather that they not have gone. The
6 most recent example of it was a situation where we
7 very much wanted it to go completely somewhere else
8 and I thought had a very good case for why it
9 should. By the time everything was done, it ended
10 up on our property, but some good things came out
11 of the hearing, too, and the -- and in the end
12 we've been treated quite well on it.

13 And so the point of this all is that --
14 that we bring these things on the road. We don't
15 sit in Bismarck and try and make the decisions in a
16 vacuum. We come out. We want to hear from people.
17 That's how we can make the best decisions because
18 in a situation like this, there's not an answer
19 that makes everyone happy. But there can be a
20 process where everyone has the opportunity to make
21 sure that we have all the information that we ought
22 to and where a well thought-out conclusion is
23 reached. Like I say, it won't please everyone, but
24 it can be well thought out and all the information
25 can have been provided.

1 And so that's what we're here for. If you
2 didn't raise your hand and decide later that
3 something was not pointed out in the hearing or
4 anything like that, at any point until we wrap up,
5 we want to hear from folks. That's how we make our
6 best decisions.

7 And Brian mentioned it, but I, too, want
8 to thank Senator Triplett for being here all the
9 way from Grand Forks. We served many years
10 together in the state senate. It seems to have
11 aged me a lot more than it does her, but it was
12 always a pleasure working with Senator Triplett and
13 I look forward to it again today.

14 JUDGE FETCH: Thank you, Commissioner.
15 Commissioner Fedorchak.

16 COMMISSIONER FEDORCHAK: Good morning,
17 everybody. I've been getting a lot of grief from
18 these guys this morning asking me where is my
19 billboard saying, "Home of Julie Fedorchak." We
20 haven't really found that yet.

21 COMMISSIONER KALK: Right below Phil.

22 COMMISSIONER FEDORCHAK: I don't think
23 that will ever exist, but it makes for a good joke.

24 It's great to be in Williston, my
25 birthplace, hometown, lived here as a child. I

1 have two siblings in this area and have spent a lot
2 of time my whole life in this part of North Dakota.
3 It's very near and dear to my heart. Even just
4 flying over it and seeing the beauty of this part
5 of North Dakota is a special experience.

6 And so it makes me all the more conscious
7 of the project at hand and -- and wanting to make
8 sure that we do this in the best possible way that
9 we can.

10 Yesterday at the Public Service Commission
11 we had a delegation of visitors from the country of
12 Moldova, which is a small little former Russian
13 republic in a landlocked country in eastern Europe.
14 And these folks are still working to set up their
15 democracy and make it functional. And they were
16 very curious about our public input process.

17 And so it's really interesting to be out
18 here on a regular basis having these hearings
19 throughout our state and inviting the public to
20 come and everybody gets a chance to speak. And
21 it's a great process. We are very interested in
22 hearing from you. I'm thrilled that there's a
23 number of folks here from this community.

24 We've heard the case from the company and
25 we'll hear some new things, I'm sure, today, but

1 largely what I hope to gain today is more input
2 from the folks who are going to be living with this
3 project in their backyard and -- and ideas for how
4 we can make this the best possible project.

5 So thank you very much for coming. Thank
6 you, Basin Electric, as well. You're a good
7 neighbor. You're a good company for our state.
8 You've been here for years. Done a lot of good for
9 people, bringing power to this part of the world.
10 And -- and so it's -- it's great knowing we have an
11 invested partner in this project who has been here
12 for the long haul in our state. And I'm hopeful
13 that in the end that's going to also help have the
14 best possible project.

15 So many thanks, and please be patient as
16 we work through the process today. Sometimes it
17 takes a little longer than the folks from the
18 public anticipate coming in, but we'll be as
19 expeditious as we can.

20 Thank you.

21 JUDGE FETCH: Thank you, Commissioners.

22 The issues that we're going to be
23 addressing in this hearing were published in the
24 notice of hearing and I'm not going to read those
25 again.

1 I think we're ready to proceed with the
2 first witness from Basin. I am going to repeat a
3 couple of instructions for witnesses. All
4 testimony at this hearing is taken under oath and
5 is subject to penalties for perjury. By law, I'm
6 required to inform witnesses as to those penalties,
7 and I will do that at this time.

8 In North Dakota, perjury is a Class C
9 felony, which is punishable by a maximum fine of
10 \$5,000, a maximum five years in prison or both.

11 And for -- I saw about three people come
12 in after the earlier instruction. If you have a
13 cell phone or other electronic device that will
14 ring or beep, please silence that at this time.

15 And with that, Ms. Jacobson, we'll proceed
16 with Basin's first witness.

17 MS. JACOBSON: Thank you, Your Honor. The
18 first witness is Mr. Marthaller.

19 JUDGE FETCH: All right. Mr. Marthaller,
20 please raise your right hand.

21 (Witness sworn.)

22 JUDGE FETCH: All right. Ms. Jacobson,
23 please.

24 MS. JACOBSON: Thank you, Your Honor.
25

1 **DUEY MARTHALLER,**

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

4 **DIRECT EXAMINATION**

5 **BY MS. JACOBSON:**

6 Q. Can you please state your full name and
7 occupation.

8 A. My name is Duey Marthaller. I'm manager
9 of civil engineering for Basin Electric Power
10 Cooperative in Bismarck, North Dakota.

11 Q. And what is your responsibility for the
12 project we're here for today?

13 A. I'm the project manager.

14 Q. And as the project manager, what are you
15 responsible for?

16 A. I'm responsible for all aspects of the
17 project: permitting, design, construction.

18 Q. And can you please just describe the
19 project?

20 A. Yes. This is, as has been stated, the AVS
21 to Naset 345 kV transmission project. It's
22 approximately 197 miles of 345 kV line.

23 I'll refer to the map here on the easel to
24 my right and in front. It begins at Antelope
25 Valley Station, which is a Basin Electric power

1 plant near Beulah, North Dakota. It proceeds about
2 70 miles over to our existing Charlie Creek
3 Substation near Grassy Butte and then proceeds
4 north to the Williston area to a substation that
5 we're calling Judson, and then from Judson over to
6 the Tioga area at a substation called Neset.

7 In addition to the 345 kV circuit, there's
8 a couple portions of this line that are -- that
9 have an additional circuit on it. There's
10 approximately 31 miles of line up in this area here
11 that we have our double-circuiting with a 115 kV
12 line from our member co-op, Mountrail-Williams, and
13 then there's a two-and-a-half-mile segment down by
14 AVS where we will double-circuit with an existing
15 Basin Electric 345 kV line that we are going to --
16 we need to relocate in a few years due to mining
17 activity around the power plant.

18 Q. Can you explain why the double-circuiting
19 portion is done in an area from the Judson to the
20 Tande Substation?

21 A. Yes. Mountrail-Williams is building out a
22 115 kV system as their -- their backbone supply
23 lines to their substations, and we knew about this
24 line -- or they told us about it and we partnered
25 with them to share a right-of-way so that they

1 wouldn't have to, in a couple years after we build
2 ours, go and create another right-of-way in that
3 area.

4 Q. And you discussed several substations.
5 Can you tell us which ones are new and which ones
6 are existing facilities?

7 A. The AVS Substation is existing, the
8 Charlie Creek Substation is existing and the Neset
9 Substation is existing. The new substations are
10 Judson and Tande.

11 Q. Mr. Marthaller, what's the project
12 schedule?

13 A. The Antelope Valley -- the portion from
14 Antelope Valley through Charlie Creek up to Judson
15 will be constructed in 2014 and 2015. The portion
16 between Judson and Neset will be constructed in
17 2017.

18 Q. And can you describe the structure design?

19 A. We're using single-pole steel structures,
20 galvanized, and in some areas we will be using
21 H-frame structures, which are two -- two-pole
22 structures. In some cases at angle structures
23 where we have two circuits, we'll be using more
24 than one pole at the angles.

25 In addition, the angle structures will be

1 supported on concrete foundations, but the regular
2 inline structures will be direct embedded.

3 MS. JACOBSON: No further questions, Your
4 Honor.

5 JUDGE FETCH: Thank you, Ms. Jacobson.
6 Mr. Armstrong, any questions?

7 **CROSS-EXAMINATION**

8 **BY MR. ARMSTRONG:**

9 Q. Just, I guess, my main question is whether
10 you're the witness I ask these questions to. Are
11 you the witness who I would ask questions about the
12 issues with the Williston airport?

13 A. No.

14 Q. Okay. How about as far as the residences
15 and businesses south of the city of Williston
16 towards the river crossing?

17 A. No.

18 MR. ARMSTRONG: Okay. I have no
19 questions.

20 JUDGE FETCH: Does Mr. Lein have any
21 questions?

22 MR. LEIN: No questions, Your Honor.

23 JUDGE FETCH: All right. Thank you.

24 Then at this time the commissioners may
25 ask questions. I'll go to Commissioner Kalk.

1 COMMISSIONER KALK: Thank you, Your Honor.

2 EXAMINATION

3 BY COMMISSIONER KALK:

4 Q. Just one question, Duey.

5 The -- if I stop at the Cenex station in
6 town and I get asked the question, "How is this
7 line benefiting the people in rural Williston," how
8 would I answer that question in your opinion?

9 A. Well, I think I can answer part of that.
10 You may want to address that to -- to either Becky
11 or -- or Matthew. You know, Basin Electric --
12 Basin Electric serves rural America. That is --
13 that is our function and that's how Basin Electric
14 was started, by rural cooperatives, because they
15 needed a power supply beyond the supply that
16 Western Area Power, you know, allocates to them.
17 And so that is our core business, is supplying
18 power to rural America.

19 The -- the electrical systems in this --
20 in this area are old. The loads were lower in the
21 past. The loads are higher now. The existing
22 transmission system doesn't have the capacity to
23 deliver the power that's needed in the region, and
24 so we are rebuilding it.

25 The end result for this -- you know, for

1 the rural area is going to be a much more robust,
2 reliable system than they have now.

3 COMMISSIONER KALK: Okay. Thank you,
4 Duey. No further questions, Your Honor.

5 JUDGE FETCH: Thank you.
6 Commissioner Christmann.

7 **EXAMINATION**

8 **BY COMMISSIONER CHRISTMANN:**

9 Q. If this were to proceed according to the
10 schedule that you're hoping for, by the end of 2015
11 you would be at the Judson Substation and have that
12 built and then that's where you would stop until
13 2017; correct?

14 A. That's correct.

15 Q. And when we were in Tioga last week, we
16 talked about the dramatic need for power by
17 Mountrail-Williams. And so I suppose being at
18 Judson Substation provides some of that, but I just
19 want to reaffirm. I think you answered this last
20 week, but I just want to make sure. If the power
21 needs grow faster than expected and this is
22 approved, is Basin ready to move forward with --
23 with the project earlier than 2017, the segment
24 from Judson over to Naset, to make sure that power
25 gets there?

1 A. Yes, we are. And we have more than
2 75 percent of the right-of-way purchased between
3 Judson and -- and Tande. We have all those
4 structures spotted, you know, the height and all of
5 that's been defined. Those structures are --
6 are -- the preliminary design is done for those
7 structures. We have not released them to our
8 fabricator, but it's a -- we can -- you know, we
9 can do that in -- in very short order. The
10 fabrication of those structures can be done with a
11 lead time of about 90 days or so.

12 And, so, yes, we are prepared to build
13 that line if we need it sooner than our schedule of
14 2017.

15 Q. And that's how the easements are being
16 prepared, too, that it probably won't happen till
17 then, but if you needed to start sooner, the
18 easements that you've already acquired, those
19 landowners understand that, that it might come
20 earlier?

21 A. You should direct that question to Mike
22 Murray just to be sure.

23 COMMISSIONER CHRISTMANN: Okay. All
24 right. Thank you. I have no further questions.

25 JUDGE FETCH: Thank you.

1 Commissioner Fedorchak.

2 COMMISSIONER FEDORCHAK: Thank you, Duey.

3 **EXAMINATION**

4 **BY COMMISSIONER FEDORCHAK:**

5 Q. Could you just summarize -- I know there's
6 lots of detail in the applications about different
7 measures, but summarize for me the highlights of
8 what the company has done and is going to continue
9 to do to minimize the environmental and cultural
10 impacts of this project. If you want to defer this
11 to somebody else, but you're the project manager,
12 so kind of the big picture items.

13 A. I can -- I think I can speak to -- I think
14 you should have Cris Miller address it relative to
15 like cultural sites and, you know, wetlands, those
16 kinds of things, but I'll address it relative to
17 just how we do construction, you know, in -- in
18 very local impacts.

19 You know, we have -- we purchase an
20 easement and so we have an easement of 150 feet.
21 That 150 feet is needed to construct the line.
22 We -- during the course of construction, we're
23 going up and down that right-of-way many times, you
24 know, to install a foundation and install the
25 structure, string the line. We'll be stringing the

1 line using a helicopter, so we will not be
2 traversing down the right-of-way for that.

3 We go out of our way to -- well, I could
4 start out by saying we go and install gates at --
5 at intersections of fences in our right-of-way.
6 Those gates are very good quality gates. The
7 landowner is welcome to use those. If the
8 landowner wants those gates locked, you know, we
9 will lock the gates.

10 And then after construction, we have a --
11 hire a reclamation contractor. It's not the
12 construction contractor. It's a reclamation
13 contractor, goes in and loosens up the soil where
14 the -- where the -- from the wheel tracks, you
15 know, from driving trucks up and down the
16 right-of-way, reseeds it, and we monitor that
17 reseeding to make sure that it -- that it holds.

18 And when we're done, we work with the
19 landowner, make sure that they're satisfied with --
20 with, you know, what has been done and we move on.
21 If there isn't, then we -- then we make it right
22 till the landowner is satisfied.

23 Q. And when you plan for construction in a
24 more environmentally sensitive area, perhaps, like
25 the park -- near the park and through the national

1 grasslands -- I put that in quotes because every
2 environmental area is sensitive -- but areas that
3 are somewhat more protected, how long will you be
4 constructing through that area? How long will the
5 disruption of the actual construction process be?

6 A. Okay. We can set about six structures a
7 day. So, you know, that -- well, let me back up a
8 little bit. We will have a crew come through
9 and -- and drill the hole. Okay. Drilling the
10 hole is -- you can drill probably three holes a
11 day. And then we'll be setting structures behind
12 that. We can set about six structures a day. So
13 that's a -- a drilling crew comes through, a
14 setting crew comes through. And at that time the
15 structure is erected with the conductor support
16 arms, all the insulator hardware is on and there
17 are sheaves, pulleys placed at the end insulator
18 and string.

19 Then the helicopter comes through and
20 strings the wire, and the wire stringing really
21 doesn't involve occupying that area until we come
22 in and do the final clipping of the conductor into
23 the hardware. So it's a -- it's a sequential
24 operation.

25 So does that answer your question? It's

1 like three days, you could say, you know, for --
2 for going through a mile of line to drill the hole,
3 one day for the construction erection to come
4 through that, and -- and after that it's one day or
5 less for the clipping operation.

6 Q. Okay. And about how many trucks
7 associated with, say, the drilling crew, the
8 setting crew? Is that 20 trucks, is it 5? I mean
9 is it a huge entourage of vehicles or give me a
10 sense for the size of that.

11 A. Each one of those operations are separate
12 and require separate equipment. The drilling
13 operation is going to be a drilling rig and maybe
14 two pickups. The -- the structure setting
15 operation is going to require a crane and support
16 for that, which would be, you know, three pickups,
17 which are -- you know, we call them line trucks.

18 Q. Mm-hmm.

19 A. And then the clipping operation is just a
20 line truck.

21 COMMISSIONER FEDORCHAK: Okay. Okay.

22 Thank you, Duey.

23 THE WITNESS: You're welcome.

24 JUDGE FETCH: Thank you. Any more
25 questions from the commissioners?

1 All right. Thank you.

2 Ms. Jacobson, do you have any questions?

3 MS. JACOBSON: No, Your Honor.

4 JUDGE FETCH: Mr. Armstrong?

5 MR. ARMSTRONG: No.

6 JUDGE FETCH: Thank you, Mr. Marthaller.

7 THE WITNESS: Thank you.

8 JUDGE FETCH: All right. Please call your
9 next witness.

10 MS. JACOBSON: Ms. Kern.

11 JUDGE FETCH: And is it Becky Kern?

12 MS. KERN: Yes.

13 JUDGE FETCH: All right. You need to
14 speak up nice and loudly. Maybe bring that
15 microphone a little closer. Thank you.

16 Please raise your right hand.

17 (Witness sworn.)

18 JUDGE FETCH: All right. Thank you.

19 Ms. Jacobson.

20 **BECKY KERN,**

21 being first duly sworn, was examined and testified
22 as follows:

23 **DIRECT EXAMINATION**

24 **BY MS. JACOBSON:**

25 Q. Can you please state your full name and

1 occupation?

2 A. My name is Becky Kern. I'm the manager of
3 utility planning for Basin Electric Power
4 Cooperative.

5 Q. And what does your position as manager of
6 utility planning involve?

7 A. My work involves the development of the
8 long-term load forecasting for Basin Electric and
9 its members and the long-term power supply planning
10 activities, which includes the development of Basin
11 Electric's integrated resource plan.

12 JUDGE FETCH: Okay. Slow down just a bit.
13 The court reporter -- you know, she can type pretty
14 fast, but we don't want to wear her out.

15 Q. (MS. JACOBSON CONTINUING) Can you
16 describe the load-forecasting process?

17 A. The load forecasts are performed either
18 every other year or every three years with annual
19 updates and are approved by the Rural Utilities
20 Service. In order to assure all segments of the
21 cooperative's structure are involved, a load
22 forecast technical committee was established. This
23 committee consists of representatives from the
24 distribution cooperatives, the generation and
25 transmission cooperatives and Basin Electric.

1 The load forecast is prepared on a
2 distribution cooperative basis and is a thorough
3 study of the cooperative's electric loads and the
4 factors that affect those loads in order to
5 determine as accurately and as practically as
6 possible the cooperative's future requirements for
7 energy and capacity.

8 The results of the load forecast 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. And when were the load forecasts performed
14 that justify the need for this project?

15 A. The load forecast that justified the need
16 for this project was completed in early 2011 and
17 reaffirmed with the 2012 load forecast update in
18 early 2012 and again in early '13 with the 2013
19 load forecast update.

20 Q. And can you please describe the results of
21 the initial 2011 load forecast and then the updates
22 that you previously discussed?

23 A. The 2011 load forecast, the 2012 and the
24 2013 load forecast all forecasted more than
25 1,000 megawatts of load growth in the Williston

1 Basin area. The newest load forecast, being the
2 2013 load forecast update, has 1,000 megawatts of
3 load growth between now and 2025, which represents
4 more than a 7 percent growth per year.

5 Q. And besides the project that we're talking
6 about here today, what else is Basin Electric doing
7 to meet the demand that you talk about?

8 A. Basin Electric has committed to additional
9 electrical generation in western North Dakota. We
10 are building and developing six 45-megawatt
11 combustion turbines. The first of those units went
12 commercial last week. Three additional units are
13 anticipated to go commercial either later this year
14 or early next year and two additional units are
15 anticipated one year later. Basin --

16 Q. No further -- oh, sorry.

17 A. Basin Electric has also issued a power
18 supply request for proposal and are currently
19 reviewing responses to determine what additional
20 power supply needs are needed for Basin Electric
21 and its members.

22 MS. JACOBSON: No further questions, Your
23 Honor.

24 JUDGE FETCH: Thank you.

25 Mr. Armstrong, any questions?

1 MR. ARMSTRONG: No questions.

2 JUDGE FETCH: Mr. Lein, did you have any
3 questions?

4 MR. LEIN: No.

5 JUDGE FETCH: All right. Thank you.

6 Go to the commissioners. Commissioner
7 Kalk.

8 COMMISSIONER KALK: Thank you, Your Honor.

9 **EXAMINATION**

10 **BY COMMISSIONER KALK:**

11 Q. And thank you, Becky, for your testimony
12 before and today.

13 Just -- didn't have any questions until
14 your last comment about this RFP, request for
15 proposal. So just so the public, I guess, follows
16 through on some of the discussion we've had before,
17 this 345 line is not the answer by any means to
18 Basin's power needs. It's a part of the equation.
19 You talked about the six 45-megawatt plants, which
20 this Commission is involved in siting.

21 With this request for proposal, how many
22 megawatts is that for?

23 A. It's not necessarily for a specific
24 amount. It's to look at what's out there and
25 available and possibly delay construction of other

1 facilities. We're looking at a couple -- possibly
2 some additional wind generation in the state as
3 well as what's available in other utilities.
4 Basin's got a nine-state service territory and
5 we've got a lot of optimization that can be done,
6 and so we're trying to filter through that right
7 now. And it also provides us with additional
8 information when our 2014 load forecast is
9 completed in early 2014.

10 Q. Okay. So there's no way this request for
11 proposal would affect the need for this 345 kV
12 line?

13 A. No.

14 Q. Potentially, Minnkota moving power from
15 the east to the west or other parts of your service
16 area, I'm guessing?

17 A. It provides us what other opportunities
18 are out there and we're continuing those
19 discussions.

20 COMMISSIONER KALK: All right. Trying to
21 get Minnkota into this game too. Thank you.

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

24 COMMISSIONER CHRISTMANN: I have no other
25 questions for this witness.

1 JUDGE FETCH: Thank you.

2 Commissioner Fedorchak.

3 COMMISSIONER FEDORCHAK: Sure.

4 **EXAMINATION**

5 **BY COMMISSIONER FEDORCHAK:**

6 Q. Becky, I'm not sure who at Basin would be
7 involved in this, but when it comes to looking at
8 alternatives, I would guess that falls into your
9 portfolio, like how can we meet this generation,
10 this need for power. Tell me about the other
11 options you explored that didn't involve
12 constructing this big transmission line.

13 A. In our group, the cooperative planning
14 group at Basin Electric, my group focuses primarily
15 on generation alternatives. Within the
16 transmission planning group, they will look at
17 transmission alternatives. And as Matt Stoltz has
18 testified earlier and may comment again today, this
19 transmission or something similar to this would
20 also be needed if a large generating facility was
21 put in place of this facility.

22 It is a joint analysis between our group
23 and the transmission planners as far as what
24 ultimately needs to be built.

25 Q. Do you consult with -- are you exploring

1 totally outside-the-box alternatives, other than
2 building another generation? Any other
3 alternatives for meeting these needs without
4 building this line, the distributed generation type
5 of alternatives? Have you looked into those --

6 A. Our integrated --

7 Q. -- and coordinated that type of thing?

8 A. Our integrated resource plan that I had
9 mentioned earlier that's coordinated within our
10 group looks at both demand-side and supply-side
11 resources. We look at Basin building facilities,
12 some other individual coming in and building
13 generation. We look at existing power supplies out
14 there that other utilities may already own that are
15 a surplus to them. We look through all of that and
16 that's what gets to our power supply request for
17 proposal that I just recently talked about. We
18 also look at the load-serving capability of
19 localized regions, which Matt Stoltz has talked
20 about previously, and that's why this transmission
21 project is being built is to increase the
22 reliability in this load-serving area.

23 Q. Have you or others from Basin explored or
24 had conversations with other areas in North America
25 that have had similar booms like this to see how

1 did they meet their power needs and is there
2 anything creative there that we could be mirroring
3 here?

4 A. I'm not familiar personally if anything
5 like that has been done.

6 COMMISSIONER FEDORCHAK: Okay. Okay.
7 That's all my questions. Thank you.

8 JUDGE FETCH: Thank you. Any more
9 questions, follow-up from the commissioners? Thank
10 you.

11 Ms. Jacobson, do you have any questions?

12 MS. JACOBSON: No, Your Honor.

13 JUDGE FETCH: Mr. Armstrong or Mr. Lein?

14 MR. ARMSTRONG: No, Your Honor.

15 MR. LEIN: No, Your Honor.

16 JUDGE FETCH: Thank you.

17 Your next witness.

18 MS. JACOBSON: Mr. Stoltz.

19 JUDGE FETCH: All right. Is it Matt
20 Stoltz?

21 MR. STOLTZ: Matthew Stoltz.

22 JUDGE FETCH: Please raise your right
23 hand.

24 (Witness sworn.)

25 JUDGE FETCH: Thank you. And I've

1 instructed before, I'm just reminding you to speak
2 slowly enough so that the court reporter can catch
3 everything you have to say.

4 THE WITNESS: Thank you.

5 JUDGE FETCH: Thank you.

6 Ms. Jacobson.

7 MS. JACOBSON: Thank you, Your Honor.

8 **MATTHEW STOLTZ,**

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

11 **DIRECT EXAMINATION**

12 **BY MS. JACOBSON:**

13 Q. Can you please state your name and
14 occupation.

15 A. My name is Matthew Stoltz. I'm the
16 manager of transmission services for Basin Electric
17 Power Cooperative.

18 Q. And what does your job as manager of
19 transmission services entail?

20 A. My current responsibility is to prepare
21 transmission studies required to support generation
22 interconnections and requests for transmission
23 service. I also supervise network load delivery
24 studies that determine transmission system
25 additions required to accommodate projected load

1 growth.

2 Q. Can you describe why this project is
3 needed?

4 A. By 2018 the Bakken area load is expected
5 to approach 1900 megawatts. The transmission
6 analysis indicates the transmission system will not
7 be able to accommodate this level of load. The
8 proposed AVS-Neset 345 kV line, along with some
9 capacitor bank additions, will increase the Bakken
10 area load-serving limit to approximately
11 1900 megawatts.

12 Based on the 2012 forecast, the
13 1900-megawatt load limit should provide adequate
14 capacity through the year 2018.

15 Q. How does the project improve reliability
16 in this region?

17 A. This project would create a high-voltage
18 345 kV path into the Williston and Tioga areas from
19 the AVS transmission system and provide redundancy
20 via that new transmission path.

21 Q. The previous witness testified that Basin
22 Electric is building additional generation to meet
23 some of this electrical demand. Would it be
24 possible to build more of that to meet the demand?

25 A. We have several generation projects in

1 service or under construction in western North
2 Dakota and eastern Montana. The electrical load is
3 scattered across the entire Bakken area.

4 Transmission is required to move the power from
5 generation to the load-delivery substations. The
6 scale of the required transmission to support a
7 generation-only solution would be similar to the
8 proposed project.

9 MS. JACOBSON: No further questions.

10 THE WITNESS: Oops.

11 MS. JACOBSON: Oh, taking a break.

12 THE WITNESS: I'm going slow.

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

21 MS. JACOBSON: Nothing further?

22 THE WITNESS: Nothing further.

23 JUDGE FETCH: Thank you. Mr. Armstrong,
24 any questions?

25 MR. ARMSTRONG: No, Your Honor.

1 JUDGE FETCH: Mr. Lein?

2 MR. LEIN: No, Your Honor.

3 JUDGE FETCH: Thank you.

4 Commissioner Kalk.

5 COMMISSIONER KALK: Thank you, Your Honor.

6 **EXAMINATION**

7 **BY COMMISSIONER KALK:**

8 Q. Just one, Matthew. And I commend you on
9 being able to slow down. I've been working on it
10 for five years.

11 The -- just one question for you. The --
12 Basin Electric has other high-voltage lines in the
13 area that perhaps you could just run this line
14 parallel to your other high-voltage lines. Why
15 wouldn't you want to run this line parallel to
16 other high-voltage lines?

17 A. Running parallel is not optimal because
18 we're worried about a single event, such as a
19 tornado or ice storm or some kind of other natural
20 disaster type of event that would damage both lines
21 in some fashion and we lose both lines
22 simultaneously. So we prefer to keep these
23 critical load-serving lines in separate corridors
24 to the maximum extent possible. Realizing that
25 there are conditions where that's not possible,

1 well, then we would have to route them in adjacent
2 corridors, but preferably that we'd keep them
3 separate by some distance for those reasons.

4 COMMISSIONER KALK: All right. Thank you.
5 No further questions, Your Honor.

6 JUDGE FETCH: Thank you.

7 Commissioner Christmann.

8 **EXAMINATION**

9 **BY COMMISSIONER CHRISTMANN:**

10 Q. Mr. Stoltz, the poles that are proposed
11 here sure look appealing from a landowner's
12 perspective. There's less to farm around than the
13 old traditional structures that we used to use, but
14 we also don't want these things going down every
15 time there's an ice storm, either. Can you talk
16 just a little bit about the history or how well
17 proven the dependability of these types of
18 structures are?

19 A. Duey is the expert in the pole design and
20 construction, but I can tell you what I've learned
21 from talking with him. These poles are proven
22 designs. We've used them on the Belfield-Rhame 230
23 kV line, which has been in service for four, five
24 years now, and we have them in service -- and that
25 between Tioga and Williston that was placed in

1 service, I believe, in 2011.

2 So it's an established design. And if I
3 recall correctly, Duey mentioned that the amount of
4 steel in those poles is actually -- there's more
5 steel in those poles than that lattice-type
6 structure you're used to seeing along I-94 or along
7 the corridor, you see all those lattice towers
8 there. There's more steel in those poles.

9 So I think the design is proven. It has
10 the advantage, like you mentioned, of less
11 disturbed footprint at the ground level. And also
12 I've been told by our maintenance people it's a
13 very maintenance-friendly design, requires very
14 little maintenance activity to keep it in service.

15 COMMISSIONER CHRISTMANN: Okay. Thank
16 you. Nothing further.

17 JUDGE FETCH: Thank you.

18 Commissioner Fedorchak.

19 **EXAMINATION**

20 **BY COMMISSIONER FEDORCHAK:**

21 Q. Matthew, do you have anything additional
22 to add to Becky's comments about alternatives that
23 Basin explored in trying to meet this need in a
24 different way?

25 A. Initially, we were looking at a

1 generation-only solution and we injected generation
2 resources theoretically into the Williston area.
3 And we found that to get that 500-megawatt
4 improvement we're looking for, we -- that existing
5 system, the 230 kV system that exists now between
6 Charlie Creek, Williston over to Tioga could not
7 accept that amount of injection.

8 Remember, we have to take that injection
9 and distribute it to the load-serving substation,
10 so you need a certain amount of high-voltage
11 transmission anyway to make that happen. So by the
12 time we laid in transmission to move that injection
13 to the area loads, we ended up having a very
14 similar topography than just this transmission-only
15 solution. And plus this gives the ability for us
16 to reach over to the AVS network, which is tied to
17 the adjacent MISO and SPP regions, ultimately, to
18 be able to grab that cheapest resource off the
19 market and schedule it into the area to acquire
20 that flexibility.

21 If we had this generation-only solution
22 with no additional transmission hooking us to the
23 regional grid, we'd be islanded more or less with
24 that local generation and it would be tied to the
25 cost of production for that generation.

1 Also, we had looked conceptually at the
2 flare gas generation. I know everybody is
3 interested in that. And that's a new technology,
4 but my experience with that, which has been rather
5 brief, is they come in like, say, half a megawatt
6 units. And if you want to get 500 megawatts
7 injection off a flare gas scenario, then you need
8 like a thousand of these little units scattered all
9 across the system. And that would be, I think,
10 very difficult to operate and maintain a system
11 like that.

12 And in talking to our distribution
13 providers, our member co-ops, they're really
14 worried about safety in that regard because if you
15 have a distribution line that extends several
16 miles, you know, from the delivery substation out
17 to the ultimate loads where these flare gas
18 generators would be located and I've been told if
19 you have an outage to that line, if you have
20 generation on -- normally you check the delivery
21 substation, make sure that's de-energized because
22 you want to make sure when you work on the line or
23 repair it, that it's safe to work with. But now if
24 you have generation located downstream, you
25 actually have to go to each of those sites and make

1 sure that they are disconnected and not in service,
2 they're not back-feeding onto that distribution
3 line.

4 So by the time you check all those
5 connections to make sure the line's truly out of
6 service, it takes up an exceptional amount of time.
7 So they're worried about response time for
8 repairing. So those -- all of those considerations
9 just lead us back to the traditional combined
10 generation/transmission solution, which is what
11 we're proposing to solve this Bakken area
12 load-serving problem.

13 Q. Okay. Have you looked at any
14 possibilities of going to some of the sources for
15 the highest loads, say the gas plants where we
16 learned last week that they might take up to
17 100 megawatts just for one large gas plant, and
18 find a solution just for them and work with them in
19 a solution just for them so you kind of minimize
20 some of those really heavy draws on the system?

21 A. Well, those gas plants are, like you said,
22 a major load. They're anywhere from 30 to up to
23 100 megawatts. I believe there's one at Tioga that
24 could approach a hundred megawatts. But luckily
25 that's right next to the 235 kV substation. And,

1 in fact, in 2017 if our current schedule holds,
2 we'll have a 345 kV delivery there as well. So
3 they seem to be building these larger loads near
4 this transmission corridor, so that is our
5 intention then is to support them in that fashion.

6 Does that answer your question?

7 Q. Well, sort of, but that's still on the
8 grid. I'm looking at something that would remove
9 them from the grid so that they wouldn't be a draw
10 on the overall and then there would be more to
11 spread out to the others.

12 A. Oh, so you're referring to like a
13 self-generation-type scenario --

14 Q. Yeah.

15 A. -- where they process the gas, they have
16 the gas there and they burn it themselves and
17 generate their own power off the grid?

18 Q. Correct.

19 A. Okay. That's not been an option that
20 they've pursued. They would rather come and get
21 the power from the co-op member systems and from
22 the Basin, WAPA, IS transmission system. I'm
23 guessing it's just a matter of economics and
24 reliability.

25 COMMISSIONER FEDORCHAK: Okay. All right.

1 I think that's all for now.

2 Thanks, Matt.

3 THE WITNESS: You're welcome.

4 JUDGE FETCH: Any follow-up from the
5 Commission?

6 Commissioner Kalk.

7 COMMISSIONER KALK: Thank you, Your Honor.

8 **FURTHER EXAMINATION**

9 **BY COMMISSIONER KALK:**

10 Q. Just one follow-up, Matthew. Given
11 current technology, would you agree that the least
12 air emissions that you could have in this project
13 would be the current project the way it's laid out
14 where we take the generation and move it down this
15 transmission line rather than having a thousand
16 distributed points? There's less emissions now
17 than there would be if you used all these
18 distributed generation points?

19 A. Yeah. I'm not an expert in that side of
20 the business, but I would suspect the economies of
21 scale would prefer a single or a large -- large
22 generation solution so you could capture that --
23 that pollution injection in one spot and process it
24 instead of having it scattered across a larger
25 footprint. But I really -- I'm just speculating

1 that's the case. It seems logical from my
2 perspective.

3 COMMISSIONER KALK: All right. Thank you.

4 JUDGE FETCH: Thank you.

5 Any further questions from the Commission?

6 All right. Ms. Jacobson, did you have any
7 questions?

8 MS. JACOBSON: No, Your Honor.

9 JUDGE FETCH: Thank you.

10 Mr. Armstrong or Mr. Lein?

11 MR. ARMSTRONG: No, Your Honor.

12 MR. LEIN: No, Your Honor.

13 JUDGE FETCH: Thank you, Mr. Stoltz.

14 COMMISSIONER FEDORCHAK: Sorry, Judge. I
15 do have one.

16 JUDGE FETCH: Oh, Commissioner Fedorchak.

17 **FURTHER EXAMINATION**

18 **BY COMMISSIONER FEDORCHAK:**

19 Q. In terms of planning, Matthew, when -- do
20 you guys get a heads-up from these gas plants when
21 they're coming in or these big heavy loads? Do
22 they say, "Can you accommodate us?" Is there any
23 sort of a discussion that goes on or do they show
24 up and then your co-ops and you are just obligated
25 to meet their needs?

1 A. The large gas plants I think cooperate
2 really closely with the co-ops because they need a
3 large lead time themselves to construct their
4 facility. So my sense is that -- from what I've
5 heard from the members is that they have the lead
6 time for the large gas plants. That's not a
7 problem.

8 The problem is getting the facilities
9 built to accommodate their schedule. So the gas
10 plant lead time -- they may give you two years, but
11 in the case of a large power line like we're
12 considering today, it may take four years to build
13 it. So not that it necessarily can happen to meet
14 their needs on their schedule, but I think they, to
15 the best of their ability, talk to the local
16 members and tell them when they would desire the
17 power. It's just a matter of can Basin and the
18 members meet their needs, and that's the struggle.

19 COMMISSIONER FEDORCHAK: Okay. Thanks.

20 JUDGE FETCH: All right. Thank you.

21 Any other questions for this witness?

22 All right. Thank you, Mr. Stoltz.

23 All right. Let's call your next witness.

24 MS. JACOBSON: Mr. Miller.

25 JUDGE FETCH: Is it Cris Miller?

1 MR. MILLER: Yes, it is.

2 (Witness sworn.)

3 JUDGE FETCH: All right. Thank you. Can
4 you bring that mike a little closer.

5 MR. MILLER: Yes. Is that better?

6 JUDGE FETCH: That's much better. Thank
7 you.

8 Ms. Jacobson.

9 **CRIS MILLER,**

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

12 **DIRECT EXAMINATION**

13 **BY MS. JACOBSON:**

14 Q. Can you please state your name and
15 occupation.

16 A. My name is Cris Miller and I'm an
17 environmental administrator with Basin Electric.

18 Q. And what is your involvement with the
19 project we're discussing here today?

20 A. To summarize, it's to coordinate all the
21 permitting required for the project from the local,
22 county, township, state and federal permits.

23 Q. Can you discuss the history and status of
24 the NEPA review for this project?

25 A. Certainly. Back in the fall of 2011, we

1 initiated the project with -- with the Western Area
2 Power and Rural Utilities Service. Scoping
3 meetings were -- occurred in Williston and in
4 Killdeer. A draft EIS was prepared on the project
5 that was published in the Federal Register in
6 December of 2012. There was a public hearing on
7 that draft EIS in January of 2013.

8 And where we are today because of the
9 recent development of the inclusion of the north
10 Killdeer loop project as part of this overall
11 project, a supplemental draft EIS is now being
12 prepared by the federal agencies. We expect that
13 supplemental draft EIS to be published in the
14 Federal Register perhaps in October of this year.

15 Q. And, Mr. Miller, when do you expect an
16 overall decision on the NEPA review for the
17 project?

18 A. We anticipate a record of decision by the
19 federal agency sometime in the spring of 2014,
20 perhaps March, April.

21 Q. Mr. Miller, at the Killdeer hearing you
22 testified extensively about the avoidance areas
23 that are located within the corridor and route of
24 the project, and can you just give a highlight of
25 what those -- what the avoidance areas are?

1 A. Certainly. We identified six avoidance
2 areas for the project. They were the grasslands,
3 the management areas, areas that were geologically
4 unstable, areas that have recreational
5 significance, and then areas that were within
6 500 feet of rural residences and 500 feet of
7 businesses.

8 Q. And, Mr. Miller, Exhibit 17 was previously
9 entered into evidence. And can you just talk about
10 in greater detail the -- the last avoidance area
11 you mentioned, the businesses located within
12 500 feet of the project?

13 A. Certainly. If everybody's looking at
14 Exhibit 17, basically at the bottom of the page is
15 the east-west -- that's U.S. 2 just adjacent to the
16 facility that we're in. And as we cross U.S. 2, we
17 start getting into the commercial/industrial area.
18 So our line goes in between two businesses.

19 As it goes to the north, it makes the
20 adjustment back on lands that are currently still
21 zoned agricultural into the Judson Substation. One
22 thing I guess we can note is on these commercial
23 businesses and on these turns, there are no
24 structures in those businesses. So it's just the
25 overhang easement of, you know, the conductors

1 aboveground.

2 Q. And, Mr. Miller, using this exhibit, can
3 you just describe briefly where the structures plan
4 to be located in relation to the two businesses
5 that you've referenced?

6 A. Okay. It's my understanding the -- on the
7 south side of U.S. 2 as that angle point -- as it
8 changes from an east-west orientation to a
9 north-south, there will be a structure on the south
10 side of U.S. 2, and the next structure is at the
11 north end of that north-south alignment as it turns
12 to the west. So it splits the Pat's Off Road and
13 the Stroker properties.

14 Q. And why was the route chosen to go through
15 these two businesses? Did you have any other
16 alternatives that you considered?

17 A. There were a lot of alternatives that were
18 considered, but as we see around ourselves as we
19 drove in here today, this land area is undergoing
20 dramatic and very rapid change. The area to the
21 west of these businesses are -- is a residential
22 area that was pretty well in existence and been
23 around for a while.

24 The Judson Substation was purchased from
25 an individual landowner and who I believe owned the

1 majority of the rest of the lands around here, so
2 we had somewhat of a path for our transmission
3 line, but as we were developing, routing, going
4 through our permitting process, a lot of these
5 industrial/commercial properties were developed and
6 sold off and we're at where we're at today.

7 Q. Thank you, Mr. Miller.

8 At the hearing last week in Tioga,
9 Commissioner Kalk asked Basin Electric about
10 whether the project would impact any missile silos
11 or other military operations. And can you talk
12 about that, please?

13 A. Certainly. The cable affairs of the Minot
14 Air Force Base was contacted and a map was provided
15 and reviewed by their staff, and there are no
16 military installations affecting our project. I
17 believe the last what we understand as the missile
18 silo infrastructure stops just on the west side of
19 Ross, which is east of our project area.

20 MS. JACOBSON: Your Honor, is -- would the
21 next exhibit be number 42?

22 JUDGE FETCH: Yes.

23 Q. (MS. JACOBSON CONTINUING) Mr. Miller, I
24 gave you what's been marked as Exhibit 42, and
25 could you please identify it?

1 A. Yeah. It's the area immediately around
2 the city of Williston and the areas to the north.
3 So on the exhibit you'll see our project route
4 identified in red. You'll see the city of
5 Williston identified. You'll also see the city of
6 Williston's -- what's called the Sloulin Field
7 International Airport. It sits on the northwest
8 corner of Williston, just on the west side of U.S.
9 2.

10 MS. JACOBSON: Your Honor, Commissioners
11 and staff, the exhibit is located in the testimony
12 binder behind the Williston tab. And at this time
13 I would move for admission of Exhibit 42 into
14 evidence.

15 JUDGE FETCH: Any objections,
16 Mr. Armstrong?

17 MR. ARMSTRONG: I'd like to look at it
18 first.

19 THE WITNESS: While you're looking, I'd
20 like to state just what else is on this exhibit.
21 The city of Williston is --

22 JUDGE FETCH: Just hold on a minute,
23 please.

24 THE WITNESS: Okay.

25 MS. JACOBSON: It's at the very end of the

1 binder behind the yellow folder. There's a blue
2 tab that says Williston.

3 MR. ARMSTRONG: My binder does not have
4 that.

5 JUDGE FETCH: My binder does not have
6 that, either. Commissioners, do you have that?

7 COMMISSIONER FEDORCHAK: Behind Tioga
8 there's another one.

9 JUDGE FETCH: Do you have any extra
10 copies?

11 MS. JACOBSON: It's in the evidence books,
12 not the testimony books.

13 JUDGE FETCH: Okay. I have that. There
14 should be a yellow divider tab --

15 MR. ARMSTRONG: I've got it now.

16 JUDGE FETCH: -- and there are maps in
17 there.

18 MR. ARMSTRONG: Yeah, I have no objection
19 to this.

20 JUDGE FETCH: All right. The exhibit is
21 admitted as 42.

22 Q. (MS. JACOBSON CONTINUING) And,
23 Mr. Miller, is Exhibit 42 also the map that's
24 represented in the larger version up here?

25 A. Yes, it is.

1 Q. And, Mr. Miller, can you please talk about
2 whether or not the project would impact the
3 relocation project of the Williston airport?

4 A. Yes. But prior -- I'd like to explain a
5 little bit more on the map now that everybody has
6 it in front of you. So you see the relationship of
7 the existing airport and the city is undergoing a
8 relocation project, so they're evaluating various
9 site alternatives. They're doing an environmental
10 assessment, an EA, to the FAA, Federal Aviation
11 Administration. So they're evaluating basically
12 four alternatives, three new alternatives and then
13 remaining at their existing airport.

14 To answer Ms. Jacobson's question, the
15 airport relocation project in siting a major
16 transmission line presents a set of circumstances
17 where there are two concurrent significant major
18 infrastructure projects trying to progress through
19 their individual public input processes and receive
20 their appropriate public and agency approvals.

21 The City of Williston is currently
22 investigating options to accommodate current and
23 proposed airport demands through a planning and
24 public NEPA process. These efforts are coordinated
25 with their lead federal agency, the Federal

1 Aviation Administration.

2 The proposed project is considering four
3 airport alternatives of which one alternative is
4 remaining at the existing Sloulin Airport site.

5 JUDGE FETCH: Please slow down just a bit.

6 THE WITNESS: Okay. It is anticipated
7 that the owner's preferred alternative will be made
8 public in late 2013 through a public hearing and
9 publication and of a draft environmental
10 assessment. Due to issues related specifically
11 with the airport project, the designation of an
12 owner's preferred airport site has been delayed
13 from that project's initial timeline.

14 The three airport relocation alternatives
15 are located northwest of the city of Williston and
16 encompass a very large geographical area.

17 To totally avoid the planning area for the
18 airport relocation, Basin Electric would have been
19 required to add an estimated additional 20 miles or
20 approximately 10 percent of the total project onto
21 our route length. The airport relocation project
22 timeline was to complete the NEPA process in the
23 spring of 2014.

24 Both of these two projects occupy the same
25 general area and have common project timelines.

1 Through communication with the airport project
2 staff, Basin Electric elected to propose their
3 route across what we believe to be the least likely
4 project alternative.

5 Should the City of Williston pursue
6 airport alternative number two, Basin Electric will
7 relocate and will resubmit a reroute application
8 through this area. Basin Electric is working
9 through city and project engineering staff to
10 jointly plan and coordinate both projects --
11 project activities to the best of our abilities.

12 In addition, Federal Aviation
13 Administration obstruction analysis was performed
14 on the structures near the three remaining
15 alternatives. The Federal Aviation Administration
16 analysis indicated that the structures did not
17 create navigation hazards to the two proposed
18 alternatives. However, the studies indicated that
19 a navigation hazard is created to the existing
20 airport by the proposed structures.

21 The analysis indicates that the minimum
22 decision altitude for instrument flight rules for a
23 VHF omnidirectional range approach to runway 11 is
24 impacted.

25 Once the city has identified a preferred

1 alternative, assuming it is not remaining at the
2 existing airport, Basin Electric will request the
3 City of Williston to allow the modification of the
4 minimum decision altitude for the VHF
5 omnidirectional range approach to runway 11.

6 It is anticipated because of the upcoming
7 relocation of the Sloulin Field that the overall
8 impact would be minimal to the operation of this
9 airport.

10 As previously testified by Mr. Marthaller,
11 the timeline for actual construction of the Judson
12 to Naset segment of our project is up to two years
13 behind the AVS and Judson segments. This
14 additional time will allow both the airport
15 relocation project and the transmission line the
16 opportunity to mature, which will allow for the
17 orderly planning of both projects.

18 Basin Electric anticipates that prior to
19 constructing this project segment, the City of
20 Williston and Williams County would provide
21 concurrent notifications that the two projects can
22 proceed with an acceptable level of impact to one
23 another. These planning actions would be
24 coordinated with FAA to ensure safe aircraft
25 operations.

1 As described in the application, the route
2 passes near five existing public airports. Those
3 are the Weydahl Field near Killdeer, the City of
4 Williston's Sloulin Airfield, the Tioga Municipal,
5 the Beulah Airport and the Watford City Municipal
6 Airport.

7 In addition, there are five private
8 airstrips identified within the project area. The
9 private and public airports were identified by data
10 acquired from the National Flight Data Center of
11 the FAA. The nearest private airport is located in
12 Williams County and is approximately two miles from
13 our project.

14 A recent recheck of the FAA data indicated
15 that the private airport that was approximately one
16 mile from our project is now no longer identified
17 on the FAA site. Review of the recent aerial
18 photography indicates the area is now a rail oil
19 transload facility near the city of Epping.

20 The screening analysis indicated that the
21 FAA obstruction analysis was also required for
22 structures located near the Killdeer Airport.
23 Federal Aviation Administration issued a
24 determination of no hazard to air navigation for
25 the structures near the Killdeer Airport.

1 Q. Mr. Miller, can you describe the process
2 that Basin Electric has been undergoing regarding
3 the river crossing?

4 A. The -- this is specific to the Missouri
5 River crossing. The Missouri River crossing and
6 the adjacent lands to the south are managed by the
7 Corps. Actually, the land south of the Missouri
8 River is owned by the Corps and co-managed with the
9 North Dakota Game and Fish.

10 The river crossing itself requires several
11 permits. The most significant permit is a Section
12 10 obstruction -- navigation obstruction permit
13 from the Army Corps of Engineers. That permit has
14 been applied for.

15 MS. JACOBSON: No further questions, Your
16 Honor.

17 JUDGE FETCH: Thank you.

18 Mr. Armstrong, any questions?

19 MR. ARMSTRONG: Yes, Your Honor.

20 **CROSS-EXAMINATION**

21 **BY MR. ARMSTRONG:**

22 Q. Since you have Exhibit 42 in front of you,
23 Mr. Miller, just walk me through and summarize a
24 little bit, you know, what impact the proposed line
25 will have on the airport planning process and on

1 the existing airport.

2 A. Okay. Obviously in the planning process,
3 since our route goes right across the runway for
4 the proposed airport site two, it would have
5 significant impact. That's why we believe it to be
6 the least likely. But of the remaining two
7 options, alternative sites four and five, the
8 obstruction analysis indicated that there was no
9 impact of our structures onto the operation of
10 those two airport locations.

11 As far as the -- our project's impact to
12 the existing airport, it's really kind of a nuance
13 of -- of FAA. If you recall, as we sited -- Basin
14 Electric sited the Williston to Tioga 230 line,
15 interesting to note that's in between the airport
16 and our proposed project. You also see an existing
17 MDU 230 line just off the side of the existing
18 airport, but they do not cause this obstruction.

19 The obstruction that we're talking about
20 is the minimum decision altitude, and it's not a --
21 I guess a base elevation. I guess you want to look
22 at it as an altitude. So as a -- I guess I'll back
23 up.

24 This impact also only occurs when the
25 planes go from a northwest to southeast approach to

1 the airport, which is the most -- kind of the
2 minimal winds. The majority of the winds in North
3 Dakota, you know, come out of the north and
4 northwest. So traditionally the planes would
5 arrive from the south and approach into the wind to
6 the northwest. So it's a small amount of
7 opportunity that actually gets affected.

8 But as the plane comes down on an
9 instrument type of approach, say it's a cloudy day,
10 foggy day and they don't see the airport, that
11 minimum decision altitude is when they reach that
12 altitude, the pilot has to make a decision: Do
13 they see the airport? If they do, they continue on
14 their approach. If they don't, they have to abort.

15 So because the terrain going north of
16 Williston -- as it goes to the northwest, it
17 actually rises. So in theory, you know, a ten-foot
18 building could actually be -- cause an impact to
19 this minimum decision altitude as well. It just
20 happened to be the circumstances.

21 Because the -- as I said, the -- we've
22 been working with the City of Williston and the
23 airport manager. In this future time, so if their
24 project goes forward with the relocation, so the
25 life of the Sloulin Field is known to be of short

1 duration, that overall impact to the overall
2 operation of the airport is recognized to be small
3 and our communication with the City of Williston
4 is -- that's something that's acceptable to them as
5 well.

6 Q. Okay. So if I'm hearing you correctly,
7 obviously proposed airport site two, if that is
8 selected and built, would require a reroute if this
9 line is approved?

10 A. Absolutely.

11 Q. Proposed sites four and five require some
12 clearance from the FAA and an agreement with the
13 city or not?

14 A. No. Proposed airport sites four and five,
15 there is no impact of our structures. We have
16 that -- FAA has done that obstruction analysis and
17 came back with a no hazard determination.

18 Q. Okay. And there's nothing -- if one of
19 those sites were selected, nothing further with the
20 city, either; is that correct?

21 A. That's correct.

22 Q. And so with this Sloulin Field -- well,
23 first off, is it decided yet that one of these
24 sites is going to be a future airport or is it
25 possible the Sloulin Field will continue to be the

1 airport for the city of Williston?

2 A. That's an alternative that they're
3 evaluating, so I can't answer that.

4 Q. So if the Sloulin Field remains the
5 airport, what is the impact of the line?

6 A. I would say that if the Sloulin Field was
7 their long-term airport project, the -- that
8 minimum decision altitude would probably be another
9 decision-making that the City of Williston would
10 have to have at that time.

11 Q. How about as far as the FAA? Has -- so
12 what has to be done with the FAA for the location
13 of this line in conjunction with the Sloulin
14 Airfield?

15 A. The FAA -- each airport in the United
16 States that's controlled by the FAA, they have
17 what -- they have, you know, flight rules, flight
18 approach requirements. So if that minimum decision
19 altitude is changed, FAA just acknowledges that,
20 puts that in their flight books and that is the
21 approach requirements coming into the Sloulin
22 Airfield. So at the end of the day, that minimum
23 decision altitude -- FAA is kind of a concurring
24 body. They're not a review and acceptance body.

25 Q. So do you have to get some sort of

1 agreement by the City of Williston or how does that
2 work?

3 A. Certainly. The City of Williston would
4 have to make that request to change that minimum
5 decision altitude. Absolutely.

6 Q. Have you had discussions with the city
7 about that or is it too early?

8 A. No. No. We certainly have. As I've
9 testified, we've been working in concert with the
10 airport project engineering staff and we met with
11 the airport manager and conversations with the
12 mayor as well.

13 Q. In relation to those two lines between
14 this proposed line and the Sloulin Field, how are
15 the poles, towers -- how are they as far as height
16 in relation to those other lines?

17 A. I can't speak to MDU's lines, but in
18 general I would say their lines are smaller. But
19 it's not the structure height. It's because the
20 elevation changes as you go to the northwest, so
21 you've got to look at it -- it's an altitude, not a
22 structure height on top of the ground.

23 Q. Speed above sea level?

24 A. Yes.

25 Q. Okay. Moving on to around the city of

1 Williston area, I think it's -- let me get the
2 right exhibit number. I'll go with Exhibit 17.

3 A. Okay.

4 Q. That is the area that goes through these
5 two businesses, and as I understand it those
6 businesses are located within 500 feet of the line?

7 A. That's correct.

8 Q. What -- why would you say there's no
9 reasonable alternative to siting the line in that
10 area?

11 A. As we come up off the river and -- because
12 the Judson Substation is located around here, so we
13 have -- basically it's a constraint -- you know,
14 this map is kind of a small snapshot. Larger area
15 is also -- what do we want to call it -- congested
16 with commercial and industrial properties as well.
17 So it's -- I guess it's an opportunity that was
18 available. And there are residential areas to the
19 west and -- and to the south -- immediately to the
20 west and west of the Judson Substation as well.

21 Q. I'm also looking at, as I'm asking you
22 these questions, the map book that's with
23 Exhibit 3, and it's actually sheet 21 of 29 in the
24 selection criteria portion of that map book. I
25 believe that's the same area. Starting with, I

1 guess, 17 here, is this area, is that within the
2 city limits of Williston; do you know?

3 A. No, it's not. It's county.

4 Q. Okay. Do you know if it's
5 extraterritorial zoning or --

6 A. No. It's -- it's just a -- Williams
7 County has the zoning, I guess, authority over this
8 land area.

9 Q. Is that location at all hinged to the
10 river crossing?

11 A. Certainly the river crossing played into
12 the role of where we're at as you come up from the
13 south. As Mr. Marthaller testified earlier, I
14 believe it was at Killdeer, the Judson Substation
15 was kind of identified as a joint project with
16 Mountrail-Williams with their -- I believe it was
17 referred to as the Stateline 115 kV project, and
18 then Basin Electric also then sited our -- what we
19 refer to as the Williston tie project, which is our
20 interconnection from the Judson Substation --

21 MS. JACOBSON: Mr. Miller, sorry to
22 interrupt you here, but can you use Exhibit 3 that
23 we previously identified? Can you direct your
24 testimony to the screen above so we can all know
25 what areas you're specifically talking about?

1 THE WITNESS: Okay. Can that get zoomed
2 in?

3 So we're -- Judson Substation is sitting
4 right here. In the previous Williston tie project,
5 we -- and through PSC siting, we went back from
6 this location back to Western's Williston
7 Substation. So there's an existing 230/115
8 double-circuit segment through here.

9 Can you go north, please, Shauna? And
10 then out of the Judson Substation area, we
11 co-located a 345/115 for approximately two miles
12 where Mountrail-Williams 115 then took off to the
13 west to their Stateline substation, which supported
14 the ONEOK gas processing facility.

15 Q. (MR. ARMSTRONG CONTINUING) Okay. And you
16 were talking about the poles a little bit and kind
17 of micrositing of the poles. What is done in areas
18 where businesses or residents within 500 feet
19 are -- to make sure -- you know, I don't -- I guess
20 first, maybe, what are the chances of a pole
21 collapse or something, and if there is that
22 possibility, are they sited far enough away from
23 any existing structures to avoid, you know,
24 collision if there is that chance?

25 A. Yes. Mr. Marthaller would certainly be

1 better prepared to answer the engineering
2 questions, but I can state that, you know, our --
3 our right-of-way width is 150 feet. So that
4 certainly is -- provides the adequate clearance for
5 a structure falling over and also if the -- they
6 had a cable break or wind pushing things off, that
7 that cable would land within the right-of-way.

8 Q. So is there then an effort done to make
9 sure that the -- I mean as I understand the pole
10 joints that have been discussed at past hearings
11 were anywhere from I think 95 feet to potential of
12 145 feet tall. Is that --

13 A. That's probably correct.

14 Q. Okay. So are they sited at a sufficient
15 distance from any buildings, you know, residences,
16 businesses, in order to avoid more catastrophic
17 collapse, I guess?

18 A. Yeah. Certainly now you're getting into
19 specific structure spotting and such. I think I
20 probably should defer to Mr. Marthaller to answer
21 that specific question.

22 Q. And as far as crossing the river, do
23 you -- you talked about the pole locations for the
24 Missouri River. Talk about the pole locations in
25 the area of the business. Do you know where the

1 pole locations will be at the river crossing?

2 A. Yes. And those would be identified in the
3 submittal that we had in I believe it's July, and
4 then it's also shown on the maps here as well.

5 So on the north side of the river it's in
6 between the railroad crossing and the high-water
7 mark of the Missouri River, so that's referred to
8 as structure number 46. But these are the angle
9 points, not the structure locations.

10 Q. So is the -- I'm, I guess, assuming the
11 river is completely spanned with a pole on each
12 side?

13 A. Correct. So the actual structures
14 themselves, they're out of the high-water mark of
15 the Missouri River. We took into consideration the
16 hundred-year floodplain. We worked with the Army
17 Corps of Engineers and they provided us with a base
18 elevation that we would then -- the engineers took
19 into consideration to maintain the required
20 clearance from the water to our conductor.

21 Q. And looking at the maps, I'm going to, I
22 guess, ask you a question right now about the river
23 crossing, and I'm looking at map 15 or Exhibit 15.
24 It's the second map in that group.

25 A. Yes.

1 Q. The center of the -- the proposed route
2 appears to, I guess, basically go through a
3 building there. Do you know what that building is?

4 A. The building no longer exists. We're
5 unfortunately -- as you talked about the rapidly
6 changing environment around here, right now that is
7 an oil pad. It's a 14-well oil pad that's being
8 developed to withdraw oil underneath the Missouri
9 River floodplain.

10 Q. Would the existence of this line in close
11 proximity to that pad have any impact on -- on the
12 operation of that; do you know?

13 A. No, we do not believe so. The owner of
14 that is Continental Resources, and Basin
15 Electric -- once Continental bought that in fee and
16 Basin Electric, the right-of-way and engineering,
17 have worked in concert to help eliminate any impact
18 to both projects.

19 Q. And you mentioned the rapid development in
20 this area. What has been done -- I guess when I
21 look at Exhibit 17, it looks to me like there's
22 building going on there or, you know, maybe along
23 an established area, but what has been done to make
24 sure that, I guess, no new buildings are in that
25 area, new occupied residences within 500 feet to

1 address those types of issues?

2 A. Mr. Murray might be able to better answer
3 that. I know what we have done with the easements
4 that we do acquire, they're filed with the -- with
5 the county. And like a lot of things up here,
6 it's -- the filing process themselves get in the
7 record books, so it's assigned to that land tract,
8 sometimes there's a delay, but constant
9 communication with the business owners and county
10 planning and zoning staff as well.

11 Q. And I gather from your answer, you don't
12 know the status of the easements in that location?

13 A. I'll have Mr. Murray address that.

14 Q. And I guess as I understand the easements,
15 they're for the 150-foot right-of-way?

16 A. That's correct.

17 Q. And the 500-foot for -- requirement for
18 occupied residences to have a waiver, do you know,
19 is there somebody that would be checking that or I
20 assume Basin would agree if the line is approved to
21 obtain a waiver for those residences in any of
22 those areas?

23 A. Yes. I believe we -- the existing
24 residence and from the residence up here, I believe
25 it's the Zahn residence -- and I don't know which

1 exhibit that actually is, but he -- that same
2 gentleman owns the rest of that area that's platted
3 as kind of a residential area that's to the south
4 and west of our alignment.

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

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

9 MR. LEIN: Just one.

10 **EXAMINATION**

11 **BY MR. LEIN:**

12 Q. Did I miss it or was there an FAA permit
13 or something for that airport pending or has it
14 been received or --

15 A. For which airport?

16 Q. For the existing airport.

17 A. There was an obstruction analysis
18 performed for our structures near -- through this
19 area, and the -- that obstruction analysis
20 indicated that proposed airport sites four and five
21 were -- no impacts were determined, but it was a
22 minimum decision altitude impact at the existing
23 Sloulin airfield was identified. So that is an
24 analysis from the FAA. That's correct.

25 Q. So I mean do they have to sign off and say

1 that it can go there?

2 A. What can go there, Jerry?

3 Q. This line can go where it's going to go?

4 A. Well, once -- once the -- you know, it all
5 depends on the City of Williston. If they select
6 airports -- alternative sites four and five, they
7 did the analysis so there's no impact of our
8 project to those locations. If they stay with
9 the -- I guess if our project is built and when
10 it's built, there is that impact to the minimum
11 decision altitude at the existing airport. And
12 if -- as their project is identified, the City of
13 Williston will make a request to the FAA to change
14 that minimum decision altitude.

15 And then, of course, if you're going back
16 up to this airport site two, if that is the City of
17 Williston's selected airport location project, we
18 would need to come back and do a reroute across
19 that area.

20 Q. So it looked to me, if I'm looking at the
21 map, that --

22 JUDGE FETCH: Jerry, I think you need to
23 get that microphone in front of you.

24 Q. (MR. LEIN CONTINUING) Looking at the map
25 there, it looks to me you're about five or six

1 miles away from that airport runway.

2 A. It's a little over four miles. That's
3 correct.

4 Q. Okay.

5 A. And it has to do with the elevation change
6 from where the airport is at. So it's an altitude,
7 not an elevation.

8 MR. LEIN: Okay. Yeah. I have no further
9 questions.

10 JUDGE FETCH: All right. Thank you.

11 We're going to take a brief recess. Take
12 ten minutes and then we'll come back with
13 commissioners' questions.

14 (Recessed at 11:41 a.m. to 11:59 a.m.)

15 JUDGE FETCH: Okay. It is 12 o'clock noon
16 and we are back on the record. And at this time we
17 will continue with questioning of Cris Miller. We
18 are taking questions at this time from the
19 commissioners.

20 Commissioner Kalk.

21 COMMISSIONER KALK: Thank you, Your Honor.

22 **EXAMINATION**

23 **BY COMMISSIONER KALK:**

24 Q. Thank you, Cris, for your testimony. You
25 are our favorite witness. I think you're up to

1 five and a half hours now, so we'll try to add to
2 that a little bit.

3 The -- to follow through with what
4 Mr. Lein was talking about, the -- with the
5 airports, the -- when would alternative two, if you
6 will, drop off the list of potential airports, your
7 best guess, or let me -- presuming that's not their
8 choice.

9 A. Yeah. That would be the City of
10 Williston's, through their NEPA process. It's our
11 understanding it's going to be late this fall or
12 perhaps later in -- early in 2014, but it's when
13 their EA gets completed and they'll have a public
14 hearing on that.

15 Q. Okay. So that would be -- will that be a
16 decision point of the March -- your proposed March
17 of 2014 final record of decision for NEPA?

18 A. That would be correct.

19 Q. Okay. So that decision will feed into the
20 NEPA decision. Okay.

21 In the same line of discussion, the Corps
22 of Engineers' permit for the river crossing, will
23 that be issued separately or will that be issued as
24 part of the March 2014 NEPA?

25 A. It is a separate permit, but the Corps of

1 Engineers will -- just like the other federal
2 agency, you know, as far as service, they have a
3 NEPA side, but their final action is the issuance
4 of those permits. So they won't issue that permit
5 until their NEPA process and their record of
6 decision is signed, so they're concurrent.

7 Q. Okay. Thank you, Cris.

8 The -- you had some discussion about you'd
9 located -- you'd talked to the air base and there
10 was no facilities they were concerned about. I
11 appreciate the follow-up on that. And then you had
12 some comments about you'd located all the private
13 airfields and there was no concern with the private
14 airfields. My question is airfields used by crop
15 dusters that are reported to the North Dakota
16 Aeronautics Commission, would those type of
17 airports be listed as private airfields for the FAA
18 or is there a gap in there where we should
19 contact -- or you should contact the Aeronautics
20 Commission?

21 A. Good question, Commissioner. The North
22 Dakota Aeronautics Commission was contacted and
23 their response was they do not track the private
24 airfields. They're tracked by the FAA. Somewhere
25 in there is perhaps a missing link.

1 Q. We had a hearing just the other day and
2 they told us just the opposite.

3 A. Okay.

4 Q. Okay. Well, is that somewhere in the
5 record that the Aeronautics Commission deferred it
6 to the FAA?

7 A. It's not in the record. It's a
8 communication.

9 Q. That's fine. It's in your testimony
10 today, if you will.

11 Okay. The -- Mr. Armstrong talked about
12 as we get -- work our way through town once we
13 cross the river. What is the study area that you
14 studied as you went through town, the town being
15 Williston area? So the potential -- Commission
16 widening the corridor giving you some alternatives
17 if some of these things change over the next couple
18 years?

19 A. The Highway 85, you know, the bridge
20 crossing, basically that was on the eastern side of
21 our macro-corridor that was evaluated through NEPA,
22 and it was through early on in our process where we
23 engaged the agencies. And the Army Corps of
24 Engineers and the North Dakota Game and Fish, their
25 management of the Lewis and Clark Wildlife

1 Management Area early on requested that any linear
2 transmission project be relocated and be located
3 adjacent to the other transmission infrastructure.
4 So basically it pushed us over to what they
5 referred to as a utility corridor because they have
6 the highway, there's an existing Western Area Power
7 230 kV transmission line and then there's also
8 underground -- I know there's a water pipeline that
9 was just recently put through there. I believe
10 there's also a gas pipeline there as well.

11 So all the utilities are in one area.
12 It's easy to manage and then minimizes the impacts
13 to the recreational land use further to the west.

14 Q. So once the line crossed the river and you
15 got into town here, did that corridor widen out
16 then, the study corridor?

17 A. Well, whether it's in the town itself,
18 it's still, I believe, just county out there
19 through this area. But the corridor still is six
20 miles, so the river crossing pushed us over to the
21 eastern side. Certainly, if you look at the map,
22 the Highway 85 and all the residences over here,
23 certainly that was not a consideration for routing.
24 You have all the commercial/industrial complex here
25 along Highway 85. So, again, Judson Substation was

1 already a known location.

2 COMMISSIONER KALK: Okay. Thank you,
3 Cris. Let me look at my notes here real quick. I
4 think that was it. Thank you, Cris.

5 THE WITNESS: Okay.

6 JUDGE FETCH: Thank you. We'll go to
7 Commissioner Christmann.

8 **EXAMINATION**

9 **BY COMMISSIONER CHRISTMANN:**

10 Q. Cris, can we bring up this map that shows
11 the -- the airport proposed sites. Thank you.

12 When I look at this map -- and the yellow
13 is the bypass; right?

14 A. Yes.

15 Q. So I can't see it on this aerial view, but
16 from the times I've driven that, I always felt like
17 I was going a lot farther west. Is this the
18 existing bypass or is this a proposal?

19 A. That's that proposed bypass that's being
20 constructed around the city of Williston. I
21 believe they've done some temporary bypass, but
22 there's a permanent solution for the bypass and
23 that's what's reflected by the yellow.

24 Q. Okay. That's what I thought. And then
25 the existing airport must be proposed site one, I

1 presume.

2 A. I --

3 Q. Do you know?

4 A. I --

5 Q. It seems like -- well, you have two, four
6 and five and the existing one would be something,
7 but is there another proposed site that I'm not
8 seeing on here? Is it further away or why do we
9 go -- why do we have four identified and five
10 numbers?

11 A. The airport project engineering firm
12 supplied us with this information and that's what
13 we have. So I -- I guess we can presume that
14 alternative site one was to stay at the existing
15 field, but I do not know that.

16 Q. But we don't -- there's not a three that's
17 just off the map or something that you're aware of
18 or --

19 A. That's correct.

20 Q. Okay. If this route and corridor were
21 approved and the city started favoring proposed
22 airport site number two, would Basin then oppose
23 that choice in that it's going to cost you extra,
24 you already have this route and corridor, so trying
25 to cause the city to switch to four and five or the

1 existing site?

2 A. Certainly not. I mean this was what's
3 identified in the planning process. That's what we
4 have these planning processes for, so the City of
5 Williston gave us this information. So our project
6 planned for that occurrence and we made the
7 commitment to the City of Williston and to
8 ourselves that if project site number two was
9 selected, that we would do that reroute.

10 If I can go back to your previous
11 question, Commissioner Christmann, about site
12 number three, perhaps one other potential or
13 possibility is alternative site number three was --
14 was identified but has already been dismissed as
15 not a viable alternative.

16 Q. Okay.

17 A. That could be the situation as well.

18 Q. Okay. And then I think lastly if this is
19 approved and they choose site number two, would
20 Basin feel that it's the city's responsibility to
21 pay the additional costs for Basin to find a new
22 corridor and get that all approved?

23 A. No, it would not. It would be at our
24 expense.

25 COMMISSIONER CHRISTMANN: Okay. I have no

1 further questions. Thank you.

2 JUDGE FETCH: Thank you.

3 Commissioner Fedorchak.

4 **EXAMINATION**

5 **BY COMMISSIONER FEDORCHAK:**

6 Q. Thank you, Cris. You've talked at some
7 length about the -- the challenges with the
8 existing airfield, the existing airport and the
9 approach into that from the north, but I'm not
10 fully understanding this difference between
11 elevation and tower height. It seems to me like if
12 you're going up a hill, the tower is going to be
13 higher and they're going to hit it. So -- and why
14 is that not a concern and can you just go through
15 that again in terms of safety concerns of somebody
16 coming in on an instrument landing?

17 A. Okay. It's an instrument landing where
18 they do not see -- it's a decision altitude where
19 they do not see the airfield. So on a clear day
20 they see the airfield, they'll continue on their
21 approach. But it's when they have to -- they're
22 flying with an instrument rating, it's foggy so
23 they cannot see the airfield. So that altitude --
24 so it's, you know, above seeing level. And as you
25 reach that, that's the point where they -- do I

1 make a decision, do I see the airport? If I do,
2 proceed on. If I don't -- as far -- as opposed to
3 a structure height. So the structure height --
4 this is just for an example, a hypothetical of
5 100 feet. Well, if that 100-foot structure was
6 applied lower down the hillside, you know, closer
7 to the airport, you increase that structure -- or
8 that top of the structure is 100 foot above that
9 base elevation. So as you're going up this hill,
10 you will intersect the altitude. That's the
11 easiest way I can explain it. It is somewhat
12 confusing, I'd agree, but it's -- it is to do with
13 the -- you know, the air flight operation and a
14 pilot and someone more of the aeronautical
15 engineering, I guess, background probably can
16 explain it a lot better than I can.

17 Q. Well, maybe I'll ask the pilots on the way
18 home tonight.

19 A. Yeah. That would be good. Hope it's not
20 foggy.

21 Q. No. But could you -- are you not going to
22 have poles there? I mean why do you guys not think
23 this is a problem?

24 A. Why we don't think it's a problem is
25 should -- or when the decision is made from the

1 City of Williston's perspective of what airport
2 relocation project they go with, and let's just say
3 that they are going with -- I'll go with site four
4 just for a hypothetical. If they decided to go
5 there, they'll establish a project timeline and
6 what -- so is it a three-, four-year project? The
7 Sloulin Airfield has a known life and then that
8 airport will be not utilized in the future.

9 Should that be selected and once our -- we
10 actually go to construction, the obstruction
11 doesn't occur until we actually place the
12 structure. So as Mr. Marthaller testified, if we
13 build in this timeline of 2017, so basically it's
14 another, you know, four years from now where --
15 where that obstruction would actually occur.

16 So the City of Williston would request
17 from the FAA and their operating guide for the
18 airport to change that minimum decision altitude
19 from whatever it exists to the appropriate height
20 that's required so we don't have this conflict. So
21 it's not a physical change. It's an operating
22 guideline to use that airport. If you're using the
23 runway, you know, and you have that approach from
24 the northwest to the southeast, your minimum
25 decision altitude is whatever that new number is.

1 So it's an operating guideline book.

2 Q. Oh, so the pilots know they have to make a
3 decision by this height?

4 A. Correct. It's -- when pilots fly into
5 different airports, every airport has a unique
6 operating guideline.

7 Q. Okay. The light bulb just went on. Thank
8 you.

9 Can you also talk to me -- Commissioner
10 Kalk brought this up and I wanted to pursue it a
11 little bit more, this issue of private air
12 strips --

13 A. Okay.

14 Q. -- because you have asked the Aeronautics,
15 they've said it's FAA. I don't know if you have or
16 haven't gotten that information from the FAA, but
17 the last thing we want to do is go through this
18 whole thing and then have time closed for public
19 input and then somebody with a private airfield
20 said, Oh, this isn't -- you know, I need -- these
21 structures are going to be in the way of my
22 operations. It doesn't -- even if the Aeronautics
23 and FAA have said it's not a problem, it is a
24 problem and we'll have to deal with it. So how can
25 we be assured ahead of time that this has been

1 appropriately examined?

2 A. The list of the FAA for the private
3 airports are -- were identified. The ones that
4 were identified are shown on page 5-32 of our
5 application, and it's the map of the transportation
6 and utilities.

7 Q. This is your big wide application, the big
8 exhibit book or this one?

9 A. No. Volume I of our application.

10 Q. Okay.

11 A. I believe it's page 5-32.

12 Q. Okay. 5-32.

13 JUDGE FETCH: You said that was Volume I?

14 THE WITNESS: Yes, of the application.

15 JUDGE FETCH: Page 5-32?

16 COMMISSIONER FEDORCHAK: What is it
17 that -- 5-32?

18 THE WITNESS: Page 5-32 and it's Figure
19 5.3-1.

20 Q. (COMMISSIONER FEDORCHAK CONTINUING) Hmm,
21 this book has got so many different sections. I
22 don't have a page 532.

23 A. Five.32 -- 5-32, so that's the beginning.

24 Q. Can you state what page that's on? Page
25 number at the bottom?

1 A. It is 5-32. It's Figure 5.3-1. The page
2 number is not technically on it, but it's in
3 between page 5-31 and 5-33 of the application.

4 MR. ARMSTRONG: It's the map.

5 THE WITNESS: It's the map.

6 Q. (COMMISSIONER FEDORCHAK CONTINUING) Oh,
7 okay. There we go.

8 A. Yeah. So on this map, what we have is
9 the -- from the FAA data set is the public and the
10 private airports. And if you look at our project
11 route, the private airfields are identified by
12 the -- kind of a purplish airplane.

13 Q. Mm-hmm.

14 A. So there's basically -- you know, real
15 close ones, there were five private airports that
16 were, I'll say, rather -- or within four, five
17 miles of our route. The one that I previously
18 testified was within approximately a mile, a little
19 more than a mile, by the city of Epping. That's
20 called that Moen Airfield and that's up in Williams
21 County. That is no longer listed on the FAA, and
22 like I say, we looked at a recent aerial photograph
23 and now it's an oil transload facility.

24 Q. Okay.

25 A. Going around the other -- to the closest

1 private airfield that's been identified, it's
2 called -- referred to as the Ring Rock Ranch, and
3 our route is approximately two miles from that
4 private airport.

5 Q. And that doesn't prevent them from doing
6 what they need to do?

7 A. That's correct.

8 Q. Okay. All right. Thank you.

9 And then if you could follow up, I believe
10 when I was talking to Mr. Marthaller he suggested
11 asking you about the cultural impacts and what the
12 company has done to identify and minimize impacts
13 to cultural. And you're kind of an environmental
14 guru, too, so maybe you can speak in more depth on
15 what the company has done to minimize adverse
16 environmental impacts as well on this project.

17 A. Okay. From the cultural perspective what
18 we do is we identify the project area and we go
19 through that macro-corridor analysis. Once that
20 macro-corridor was identified -- remember that's
21 six miles in width -- we then make the request to
22 the agencies, and in the State of North Dakota it's
23 the State Historic Preservation Office, and we ask
24 them to do their literature search, so what -- what
25 has already been previously identified from

1 previous cultural surveys and it's on their
2 inventory, so then they provide that data. So that
3 helps assist us in our routing process that we do
4 not go into, you know, an existing area that's a
5 high probability of cultural resources.

6 One thing that's unique about a
7 transmission project, even though our route and our
8 corridor is continuous, but our actual footprint is
9 800 to a thousand foot or, you know, that type of
10 range, so our actual input, that permanent loss for
11 our entire 197 miles, you know -- I can't recall
12 the number of structures we have, but the total
13 acres that are permanently lost is only
14 approximately about one acre. If you add up all
15 the foundation footprints for our entire project,
16 we basically are looking at one acre of -- being
17 lost, whether it's on agricultural land or
18 grassland or pastureland, et cetera.

19 So the actual permanent loss, permanent
20 change of the existing use is actually -- actually
21 pretty minimal at the end of the day.

22 As Mr. Marthaller described, you know, we
23 have that construction activity around where that
24 structure is being placed. We use helicopters to
25 help string the conductor from pole to pole. So

1 the -- you know, the right-of-way itself, if there
2 is areas that we're spanning, like a wetland or a
3 cultural site, we do not disturb that. So our
4 disturbance is not continuous. Certainly it's
5 going to be at those structure locations, and then
6 it's the art of finding the right path for that
7 equipment to get to those structure locations.

8 So that, in itself, you know, is kind of
9 unique to a transmission line where you cannot have
10 that continuous impact.

11 Concerning the single-pole structure, I
12 think we talked about that a lot, that that
13 provides a small footprint from a visual
14 perspective, from the actual impact to the
15 environment.

16 Other things that the project
17 incorporates, certainly the wetlands that we do
18 span, they will not be -- we won't run any
19 equipment through there. We certainly will not
20 place a structure inside of a wetland. So, in
21 essence, we minimize those sensitive lands, et
22 cetera.

23 We also do robust searches from existing
24 data sets from -- whether it's the North Dakota
25 Game and Fish, U.S. Fish and Wildlife Service or

1 other national -- the NREC to identify lands that
2 are, you know, like sensitive habitats, sensitive
3 grasslands or areas suitable for some unique
4 species. So those areas are identified from the
5 data sets. We also go out there and do our surveys
6 to help, you know, verify that they're present or
7 absent.

8 We also, you know, perform preconstruction
9 surveys of -- for birds or nesting birds, et
10 cetera. If they're identified, we employ then ways
11 to minimize potential impacts, whether we delay
12 construction to get it out of that nesting season
13 or -- or there are -- depending on the type of
14 species that are being evaluated, some species,
15 even though they're nesting, they have a tolerance
16 for, you know, activity a certain distance away.
17 Others are more sensitive. So there can be all
18 processes employed, like a biological monitor to
19 ensure that no negative impacts are occurring or,
20 again, the other likelihood is just to delay that
21 construction.

22 Certainly through -- like through the
23 Badlands area, the big horn sheep, there's
24 identified lambing grounds. We are -- we go
25 through that area. The North Dakota Game and Fish

1 has directed us to eliminate the -- any
2 construction activity during their lambing season.
3 That's certainly been incorporated into our
4 project.

5 In the back of our application,
6 Commissioner, there is a whole table, and it would
7 be on page 5-166, again 5-166. So it would be
8 Table 5.13-6. So in here we've listed the
9 Potential Project Considerations for the Federally
10 Listed Species. And then we also go on to the next
11 section in 5.14, there's a summary of -- of the
12 project impacts and the proposed mitigation that
13 the project has employed over all the resource
14 areas, from socioeconomic impacts, land use,
15 infrastructure, public health and safety, air
16 quality, noise.

17 So there's -- it's quite extensive to go
18 through here today, but those are all mitigation
19 measures that the project has made commitments to
20 and are listed on those tables.

21 Q. Okay. Thank you.

22 I would just have to say the permanent
23 loss that you state, the less than one acre, would
24 you agree that the definition of a loss is fairly
25 subjective and your definition is quite, maybe,

1 technical?

2 A. Well, when we say permanent loss, that
3 means that by us taking that structure and
4 embedding either -- you know, a direct embed with
5 that gravel and the structure or we pour concrete
6 foundation, that's what I equate as a permanent
7 loss. You will not go back and farm that. It will
8 not -- there would be a baseball field, you know,
9 or be home plate of a baseball area for
10 recreational. That's why I refer to it as
11 permanent loss.

12 Now, if it's farmland around it, the
13 farmer can certainly farm right up to that. So I
14 guess, yeah, it's semantics of what is permanent
15 loss or somewhat larger for a little buffer area,
16 but --

17 COMMISSIONER FEDORCHAK: All right. Thank
18 you.

19 JUDGE FETCH: Thank you.

20 Any follow-up questions? Commissioner
21 Kalk.

22 COMMISSIONER KALK: Thank you, Your Honor.

23 **FURTHER EXAMINATION**

24 **BY COMMISSIONER KALK:**

25 Q. Cris, just one follow-up. The -- the SHPO

1 letter of concurrence, if you will, outside the
2 area of the Killdeer Battlefield that we discussed
3 at length in Killdeer, is there any areas of
4 concerns that SHPO is -- does the SHPO have any
5 areas of concerns outside the Killdeer Battlefield
6 area at this time?

7 A. Not other than that battlefield, that's
8 correct.

9 Q. Okay. So basically we have concurrence
10 except for that area?

11 A. Well, I -- the -- we haven't received
12 concurrence. We have done all our cultural surveys
13 of the lands that we have survey permissions for.
14 There is -- our impacts are to be minimal or
15 nonexistent. So, you know, that's what the survey
16 says. It says that we should be okay. The actual
17 concurrence won't -- won't happen until SHPO has
18 all the surveys in place and that's that letter.

19 To be clear, though, there is still an
20 area that we're still studying inside the U.S.
21 Forest Service lands just north of Charlie Creek,
22 that there are some sites that have been
23 identified, and we're working with their cultural
24 person, too, to find our path forward through that
25 area.

1 COMMISSIONER KALK: Okay. Thank you.

2 Thank you, Your Honor.

3 JUDGE FETCH: Commissioner Fedorchak, did
4 you have a follow-up?

5 COMMISSIONER FEDORCHAK: I do. And this
6 is -- I'm asking this because of the interest in
7 getting things on the record because this is our
8 last hearing, but we were -- I read in the
9 newspaper today that we have been sent a letter
10 from all the five tribes. I have not seen the
11 letter and I don't know that we actually have that
12 letter on file yet. Maybe it arrived today, but I
13 haven't seen the letter from the five tribes.

14 Is that letter going to be part of the
15 record or what's the -- I'm asking an expert on
16 this type of --

17 JUDGE FETCH: I haven't seen a letter,
18 either, Commissioner Fedorchak. Until one is
19 produced, it's hard to say. If it is sent directly
20 to the Commission, it can come into the public
21 input file. It is not considered evidence for the
22 record, but the Commission can take whatever notice
23 it wishes to and give whatever weight it wishes to.

24 Maybe someone is here from the public with
25 the letter. I don't know. But I haven't seen it,

1 either. I did see that in the newspaper.

2 **FURTHER EXAMINATION**

3 **BY COMMISSIONER FEDORCHAK:**

4 Q. Well, in the newspaper article reporting
5 on the letter that we were supposed to be
6 receiving -- and I hope that we do get it so it's
7 part of the record, quite honestly -- they -- the
8 concern that was laid out by the reporter as the
9 biggest concerns from the tribes is the proper
10 handling of any remains. Can you speak to how you
11 would -- how would you handle those during a
12 construction process if you were to find that type
13 of an artifact?

14 A. Certainly. I think if you back up to what
15 the State Historic Preservation Office required us
16 to do, you know, the additional requirements was to
17 do that additional survey. So not the magnetometer
18 for the metals, but what they also requested is at
19 each structure location to actually go out there
20 and do shovel probing or subsurface investigation
21 to actually clear that site.

22 So it would be through that process that
23 our disturbance areas, whether it's known or
24 unknown -- and that survey's going to be done here
25 yet this fall. So versus waiting till actual

1 construction started and finding out, so --
2 through -- it's through that performance of those
3 surveys we should be able to identify whether the
4 site is clear or not.

5 As far as unanticipated discovery of human
6 remains, there is a lot of protection with federal
7 and state laws and there are very strict guidelines
8 that you need to follow when those human remains
9 are identified. And a project normally has what we
10 call an unanticipated discovery plan and the
11 project construction team has a copy of that. It's
12 on file with the Public Service Commission and it's
13 also in our NEPA documents as well.

14 And they'll clearly lay out the processes,
15 notifications, et cetera, that need to occur should
16 human remains be identified --

17 Q. Okay.

18 A. -- or encountered, I should say.

19 Q. And, again, since this is our last chance
20 to talk publicly about this on the record, can you
21 walk through what the company's plans are with
22 regard to what SHPO has asked you to do on the
23 Killdeer Battlefield and what your response will be
24 if you find, you know, a fair amount of battlefield
25 artifacts?

1 A. What we're -- for the SHPO letter -- so we
2 are preparing to get those surveys performed or our
3 archaeological team is doing that and preparing a
4 sampling plan in concurrence with the State
5 Historic Preservation Office. Once that plan has
6 approval -- I also know that there's -- through the
7 106 process itself, so, you know, you have the
8 federal agencies dealing on a
9 government-to-government basis with the tribes.
10 That process has been going on for -- for a while,
11 and I do know there is some subsequent meetings
12 that are going to occur through that process.
13 Perhaps there's some other project requirements
14 that will be identified. So we -- until that
15 occurs, I -- I can't speak to what they would be.

16 Q. Okay. But there's a visual assessment and
17 geophysical investigations?

18 A. And the -- and additional structure
19 surveys as well.

20 Q. Okay.

21 A. Speaking for the visual, those -- the
22 photography aspect of that process actually began
23 last week, so that visual simulation is being
24 developed. Once it's prepared, it will be given to
25 the federal agencies that will be doing that

1 evaluation through the performance with the NEPA.

2 The magnetometer surveys, that's what --
3 one of the sampling plans are being worked through
4 with our cultural resource contractor and the SHPO
5 office, to ensure that that study is performed with
6 the right methodology. And then also the sampling
7 plan for, you know, the actual structure locations
8 itself, the subsurface, that is what -- that
9 sampling plan is being developed as we speak.

10 Q. Has the company reached out to the tribes
11 since this all came -- became known and have you
12 had contact with them? Are you trying to get them
13 on board here and get their support?

14 A. What -- like the surprises two weeks
15 ago -- until two weeks ago, you know, this
16 battlefield study and this thing kind of took us
17 kind of somewhat of a surprise. We certainly knew
18 the battlefield area was identified as a state
19 monument. We thought our project was, you know,
20 off and away.

21 As far as the study goes, we are still
22 evaluating that input. Certainly, the tribal -- I
23 believe it's a resolution that was identified in
24 the paper here today -- hasn't been filed. So
25 we're still trying to identify just what all those

1 concerns are.

2 As far as reaching out to the tribes, and
3 that's through that 106 process, so we have to, you
4 know, abide by the federal government's
5 requirements of going through NEPA. So it's from
6 that government-to-government process and we have
7 to be respectful of that as well. So we do know
8 that that process is in the -- ongoing and it's a
9 current work effort.

10 Q. Okay. So I understand there's a process,
11 but is there a process that allows you just to call
12 them up and say, Hey, can we talk about this, and
13 kind of have that direct, or do you have to have
14 some sort of federal agency intervening?

15 A. I would say -- you know, yeah, there is
16 a -- a process where we could contact them
17 directly. That's correct.

18 Q. Okay. But you haven't -- you aren't doing
19 that or you have or you're not aware?

20 A. Nothing has been directly done. I guess
21 we're -- we'll see this resolution and see how --
22 we'll have to develop a response and develop a plan
23 on how to walk through this together. Yes.

24 COMMISSIONER FEDORCHAK: Okay. Good. I'm
25 glad to hear that you're working on that type of a

1 plan.

2 All right. Thank you, Cris.

3 JUDGE FETCH: Thank you. Any other
4 questions from the Commission?

5 COMMISSIONER KALK: I've got to go one
6 more time, Your Honor.

7 JUDGE FETCH: Commissioner Kalk.

8 **FURTHER EXAMINATION**

9 **BY COMMISSIONER KALK:**

10 Q. To put a finer point on this very complex
11 discussion, if NEPA comes back, record of decision
12 says the project should be approved, if the State
13 Historical Society comes back and says they concur
14 with your plan, do you know of any reason why the
15 Public Service Commission should not accept those
16 results as being accurate?

17 A. No, I do not.

18 COMMISSIONER KALK: Thank you, Cris.

19 JUDGE FETCH: Commissioners, any more
20 questions?

21 COMMISSIONER CHRISTMANN: Just one
22 comment, if I may, Your Honor.

23 JUDGE FETCH: Commissioner Christmann.

24 COMMISSIONER CHRISTMANN: For our guests
25 that may be here only to learn or to -- and/or

1 comment and don't work with this stuff all the
2 time, SHPO that we keep referring to is the State
3 Historic Preservation Office, and they always are
4 given an opportunity to weigh in on things like
5 that.

6 JUDGE FETCH: Thank you. I think that's
7 very helpful. I always think there should be a
8 list of acronyms. Every field, every profession
9 has many acronyms, and if you're not working with
10 it regularly, it's hard to know what's going on.
11 Thank you.

12 Anything else, Commissioners?

13 Ms. Jacobson, do you have any questions?

14 MS. JACOBSON: No, Your Honor.

15 JUDGE FETCH: Mr. Armstrong?

16 MR. ARMSTRONG: No, Your Honor.

17 JUDGE FETCH: Mr. Lein?

18 MR. LEIN: No, Your Honor.

19 JUDGE FETCH: All right. Thank you,
20 Mr. Miller.

21 All right. At this time, who is your next
22 witness, Ms. Jacobson?

23 MS. JACOBSON: Mr. Murray.

24 JUDGE FETCH: All right. I have to look
25 back. Is it Mark Murray?

1 MR. MURRAY: Mike.

2 JUDGE FETCH: Mike. Close.

3 Please raise your right hand.

4 (Witness sworn.)

5 JUDGE FETCH: Thank you.

6 Ms. Jacobson.

7 **MIKE MURRAY,**

8 being first duly sworn, was examined and testified
9 as follows:

10 **DIRECT EXAMINATION**

11 **BY MS. JACOBSON:**

12 Q. Can you please state your full name and
13 occupation.

14 A. My name is Mike Murray and I am the
15 property and right-of-way supervisor at Basin
16 Electric Power Cooperative.

17 Q. And can you summarize the right-of-way
18 contacts that have been made for this project?

19 A. Yes. We started our landowner contacts
20 back in November of 2011. We contact landowners
21 for many reasons. It's to discuss the project and
22 the route, trying to educate the landowners, to
23 receive survey permissions, discuss any issues that
24 they may have and also to work out adjustments
25 where feasible.

1 From there we go into negotiating the
2 easement itself, and we have actually been
3 negotiating with landowners since May of 2012.

4 Q. How many total landowners are crossed by
5 this project and what percentage of the
6 right-of-way has Basin Electric acquired?

7 A. We crossed 311 landowners, and I believe
8 last week in Tioga and Killdeer I testified that we
9 were at 77 percent. We have signed three
10 additional landowners since those hearings, so
11 we're up to 78 percent.

12 Q. Mr. Murray, there's been some discussion
13 today about the avoidance areas, specifically the
14 areas where homes are located within 500 feet of
15 the project. And could -- do you have any more
16 information to add about the distance from those
17 residences to the line or whether or not they're
18 occupied or not?

19 A. Yes, I can do that. We currently have
20 four residences occupied and unoccupied that are
21 within 500 feet of the line. One is south towards
22 our Charlie Creek Substation and that is an
23 unoccupied residence that we were recently advised
24 that there may be a trespasser due to housing
25 restrictions in the area. The landowner is going

1 to check into it, but she did grant us the waiver,
2 and we are 320 feet from that residence. But in
3 her mind, she said there should be nobody living
4 there.

5 The other two that are occupied are up
6 north of the Missouri River. One is the Turner
7 property and we are 460 feet from that property.
8 We do have a waiver on that.

9 There is the Zahn property adjacent to the
10 Judson Substation. We are approximately 435 feet
11 from that, and we do have a waiver on that
12 property.

13 And then the fourth one is the Westphal,
14 otherwise known as the Mortenson waiver, and that
15 is an abandoned farmstead that we are 150 feet
16 from. The landowner has given us a waiver. We
17 decided to pursue the waiver even though it was
18 abandoned just in case somebody would occupy it in
19 the future.

20 Q. Mr. Murray, there's been some discussion
21 today about what Basin Electric is doing to ensure
22 that no additional businesses or residences are
23 located within 500 feet. And can you talk about
24 the route selection process in terms of avoiding
25 any of those things that may pop up?

1 A. Yes. We have a staff of agents that
2 are -- and engineers that are continually driving
3 and verifying this route, verifying the new
4 activity, whether it be residential, commercial,
5 industrial. Our information is as current as two
6 weeks ago. We drove the entire route and
7 identified no additional residences or commercial
8 establishments within 500 feet. And as part of our
9 process through -- leading up to construction, we
10 will continue to verify that information.

11 Q. And, Mr. Murray, did any landowner express
12 concerns about the project in relation to a private
13 airstrip?

14 A. No.

15 Q. Okay. Thank you.

16 Mr. Murray, could you just please now
17 discuss the route from the Charlie Creek Substation
18 to just north of the Judson Substation and talk
19 about some of the concerns with the routing for the
20 project?

21 A. Sure. Our project actually starts down
22 here, as testified earlier, for this segment
23 anyway, at the Charlie Creek Substation right off
24 of Highway 200 and 85. It does progress north
25 going through some U.S. Forest Service land at a

1 diagonal. This was terrain related, this diagonal.
2 It provided appropriate span lengths for our
3 structures to get across that rugged terrain up to
4 angle point four.

5 From there, we do start heading north.
6 There was a community cemetery that we needed to
7 avoid over here. We do head north across the
8 Forest Service land. At this point we are running
9 along the east side of the section line. That was
10 done to accommodate a landowner's future homesite
11 that's going to be located up in this area here.
12 So we did work with all the landowners on the east
13 side of the road, got their concurrence, continued
14 our route north, at which point we jumped back over
15 to the other side of the section line to position
16 ourselves across this very large and rugged area
17 here.

18 So we were able to get across that, align
19 ourselves back up with the quarter line. And as
20 I'm going, you'll see all these red stars. Those
21 are all residences that we needed to avoid with
22 this line. And this is the one -- you'll see it's
23 rather close. I just discussed that Orf waiver
24 where they feel the trespasser resides.

25 So as we're going north along the quarter

1 line, everything's going well here. We make a
2 slight adjustment here due to this is a -- a new
3 commercial/residential development. It's a planned
4 development that we needed to avoid. So we did
5 have to step off the quarter line at that point.

6 We do continue north, at which point we
7 needed to start aligning ourselves with the -- the
8 corridor, as you would call it, to avoid -- with
9 the U.S. Forest Service and to avoid the roadless
10 area which exists through this portion here. We
11 did work with the Forest Service to align with the
12 existing Western line, transmission line, and the
13 highway to get through this location before we
14 branch back out.

15 This diagonal here is also working in
16 conjunction with the Forest Service in locating our
17 line and accommodating an existing oil development,
18 oil pad that was also being built in that area. So
19 we did all meet together in the field and got
20 concurrence to make sure that we weren't impacting
21 each other's proposals.

22 As we continue north, the terrain starts
23 to get very rugged as we start to drop towards the
24 Little Missouri River, so you will see some
25 adjustments here, and that was to align with a

1 constructible river crossing.

2 As we cross the river, we start climbing
3 back up the banks. Again, rugged terrain and --
4 yeah, rugged terrain and then we do start a very
5 long diagonal here. This diagonal addressed many,
6 many oil wells, residences, and we tried to take
7 advantage of, as you can see, all the different
8 cropland through here. We tried to take advantage
9 of staying on the pastureland as we were going
10 through this location.

11 As we continue to the northwest up here to
12 angle point 27 -- oh, I should say also we did have
13 one landowner issue with this portion of the route.
14 He preferred that we would parallel Highway 85 and
15 the existing WAPA 230 line and the BakkenLink
16 Pipeline. Right-of-way and engineering did go out
17 and pursue that option. We eventually ruled it out
18 when we could not get survey permission to most of
19 that property. The landowners felt that they were
20 already inundated with infrastructure, and we would
21 have still had to stay about a thousand feet,
22 1200 feet away from that WAPA line just for
23 reliability purposes.

24 So we continued on this alignment. We did
25 another diagonal as we're starting to head over to

1 position ourselves for the Highway 85 crossing.
2 And this alignment did provide a very constructible
3 Highway 85 process.

4 As you can see, we're missing a lot of
5 residences, oil well sites. It just made a very
6 good route.

7 As we cross 85, again we've got some
8 rugged terrain issues up in here. We do continue
9 on on a diagonal, missing the city of Watford City,
10 coming across -- oh, no, that's not Watford City.
11 Sorry about that. Not far enough north yet.

12 As you can see, lots of cropland through
13 this area, and so the routing was a little bit more
14 of a challenge here. What we did is we did come up
15 to a quarter line, come across, worked with the
16 landowners to stay on this quarter line to avoid
17 most of this cropland. Obviously couldn't avoid
18 this one location as we're coming north, and we
19 needed to stay east of this big butte here as we're
20 coming north.

21 As we continue on north staying on the
22 quarter line, you've got some commercial
23 development here. I'm sorry, here's Watford City.
24 We've got a lot of commercial development right
25 here, lots of residences that tend to be along your

1 section lines. So we continue north along the
2 quarter line. Highway 85 crossing here west of
3 Watford City.

4 Continue on north along the quarter lines.
5 Quarter lines also provide a nice break between
6 property owners. It's a natural break, normally
7 fence lines, crop use lines, you know, maybe
8 pasture on one side, crop on the other.

9 As we get to section -- or angle point 34,
10 we do start another long diagonal here, again
11 terrain related, taking advantage of the
12 pastureland as we're coming across.

13 Continue north, trying to miss all the
14 cropland on both sides here to angle point 36, at
15 which point we need to start heading over towards
16 our Judson Substation. So we make another long
17 diagonal, as you can see mostly all pastureland
18 going through here.

19 We did have one landowner issue in here we
20 did look at trying to route around, but it just
21 wasn't at all possible with all the activity, the
22 infrastructure and the residences out there.

23 So we continue on. As we come over here,
24 we did make -- we got kind of a funny bump in the
25 line here. There was a proposed homesite, a water

1 wellsite. We needed to work with the landowners to
2 make this portion of the route work. That's why
3 you have kind of a goofy look there.

4 As we come up to Highway 85, again another
5 Highway 85 crossing. Continue in a diagonal over
6 here to angle point 41, and we needed to extend
7 this diagonal out and -- as we're heading north to
8 avoid another platted and proposed
9 commercial/residential development area on this
10 property right here. So we needed to get around
11 that property, angling back to the northeast to
12 avoid the rugged terrain that exists here, also
13 some residences.

14 And as we get up close to the Corps land
15 here, this was positioned -- in our conversations
16 between Cris Miller and the Corps, they had a
17 preferred corridor that they wanted us to follow
18 along with the highway, Western's 230 line and a
19 couple pipelines across the Corps property.

20 So we do -- at this point we start through
21 the corridor along the Corps property, come up to
22 the Missouri River crossing. We did have one of
23 our waivers at this location right here coming
24 across. Otherwise, we were able to work out any
25 concerns with the landowners -- any concerns with

1 the landowners coming up through the river here.

2 This is the Lippert property. This is
3 where that Atlanta -- the big well pad site for
4 Continental Resources, the Atlanta wellsite. And
5 then this property up here is being developed also.
6 Lippert is in the process of developing that into
7 residential.

8 So we stay on our angle over here to
9 the -- this piece of property right here worked out
10 with the State of North Dakota. Come back to angle
11 point 50 to align ourselves with the quarter line
12 and continue on north to the Highway 2 crossing.

13 We do make a little bit of a jog here. We
14 did have a residence here that we could not get a
15 waiver from, so we did need to stay more than
16 500 feet away from that residence, so at which
17 point we do jog over, coming through the commercial
18 property. We have concurrence through -- with the
19 residences and the commercial property with the
20 exception of one. We have about 15 feet of
21 easement on the east side of this property, and we
22 are in communication with that -- that commercial
23 owner.

24 The reason we don't have it yet is that
25 has switched hands four times since we have started

1 our negotiations and tracking the title on that
2 property, and every time we think we're getting
3 somewhere, we're dealing with a new owner. So we
4 have talked to that owner. He has verbally
5 committed to working with us as long as we can
6 guarantee there will not be a structure on his
7 parcel, at which time there is not. We can span
8 that.

9 As we come up, again we make a couple of
10 sharp 90-degree angles to get into the Judson
11 Substation. All commercial. This property is all
12 developing here through the commercial. You can
13 see this is all residential here. It was very,
14 very difficult to find another avenue into that
15 substation.

16 As we testified at the Killdeer or Tioga
17 hearing, I can't recall which one, the reason this
18 line does not show up on the map is that was a
19 joint project from the Williston Substation over to
20 Judson and north between Mountrail-Williams and
21 Basin Electric and that has already been sited and
22 permitted.

23 So our project actually continues here
24 just a little bit north -- come back down to the
25 starting point -- sorry about that. We just have

1 to switch maps here. It's too long of a project.

2 Okay. Here's the point of beginning. At
3 this -- the existing sited and permitted line
4 actually for Basin terminates here and then
5 Mountrail-Williams continues on to the west. So
6 our line will continue from this point. It does go
7 north, makes a couple of 90-degree angles here, and
8 that's based on landowner preference, working with
9 the landowners.

10 Section 36 -- my eyes aren't going to work
11 real well here. Can you zoom in a little bit?

12 Okay. Anyway, I think this is 36 here,
13 and what that is is there's a lot of cultural
14 activity there, and so the bypass itself had to
15 offset it off of that piece of property, which is
16 owned by the State Trust -- the Department of
17 Trust. And so in working with the landowner to
18 allow appropriate spacing for the larger farm
19 equipment, we did have to offset our line even more
20 from that bypass, and this is at the landowner's
21 preference.

22 As we continue north to angle point three,
23 we come back to the east here to angle point four.
24 Again lots of development that we're trying to work
25 and snake our way through. This is all -- lots of

1 landowner contact through here.

2 As we're coming north again along the --
3 to the east of the section line here, that was to
4 avoid residences, give -- it's offset to allow farm
5 operations with the bigger equipment, again, to get
6 around our poles based on landowner preference.

7 As we get up here to angle point five,
8 we're actually running along the north side of the
9 quarter line because of this large industrial
10 complex that's taking place here. So typically we
11 like to stay on the quarter line. We did need to
12 move north of the quarter line as we're coming
13 across -- coming across the east. You'll see a
14 little bit of a bump here. Again, that's a
15 cultural site that we needed to bump across -- or
16 bump over the top of.

17 Coming -- this is Highway 2/85 crossing.
18 As we come across -- and this is stuff I testified
19 on in Tioga, but I'm going to continue over to this
20 point just to accommodate a landowner that's in
21 attendance today.

22 As we come across to angle point five, we
23 did need to make a slight diagonal to the north.
24 This is an active gravel pit that we're working
25 with the landowner on trying to avoid.

1 here.

2 Q. Okay. If you could stop for one second.
3 When you say "here" and "here," that's not really
4 going to show up on the record.

5 A. Okay. I'm sorry.

6 Q. So what you're saying is you tried to go
7 from, say, like 51 to 54 and then the second one
8 you said you were kind of trying to do 51 around to
9 56?

10 A. Correct. In talking in terms of angle
11 points, from angle point 51 we did look at possibly
12 coming through here to angle point 54, but there
13 were some waivers there we could not get. There's
14 some residential waivers. We did have some
15 opposition to getting too close to the residences
16 there.

17 We also looked at coming over here, but
18 this is -- again, we have a lot of residences
19 between 51, if you would go west half, a mile north
20 and then towards the Judson sub, but a lot of
21 commercial activity.

22 If your question is did we look at going
23 further west and coming in directly from the west,
24 directly west of the Judson sub, I would have to
25 defer to engineering. I don't know if that was

1 even evaluated.

2 MR. ARMSTRONG: Okay. I think you
3 answered all my other questions in your testimony.
4 Thank you.

5 JUDGE FETCH: Mr. Lein, do you have any
6 questions?

7 MR. LEIN: No, Your Honor.

8 JUDGE FETCH: All right. We'll go to
9 Commissioner Kalk.

10 COMMISSIONER KALK: Thank you, Your Honor.

11 **EXAMINATION**

12 **BY COMMISSIONER KALK:**

13 Q. Thank you, Mike, for your testimony today
14 and the other days.

15 Just a clarification. When the proposed
16 power line is transiting through Forest Service
17 area, how would those easements lay out? How is
18 that going to unfold? Do you already have their
19 permission to go through those areas or is that
20 something that has yet to be granted?

21 A. That is yet to be granted. That is part
22 of the NEPA process.

23 Q. Okay.

24 A. And Cris Miller could testify on that,
25 but --

1 Q. No, that's what I thought, but I wanted to
2 double-check on that.

3 The -- could you have -- go back to the
4 river crossing for the Little Missouri and pull
5 that slice of map back up. The question I'm trying
6 to get to is I've been over that crossing numerous
7 times, but I cannot remember, is there a --
8 currently a power line that transits that water
9 body?

10 A. Yes.

11 Q. So can you show me on the map -- give me
12 where that power line is at in relation to the
13 current power line -- or the proposed power line?
14 And I'm glad you're operating the map, not me,
15 because I couldn't do that.

16 A. She's got several she's trying to flip
17 through here.

18 Q. The court reporter is enjoying the break.

19 A. Okay. Are you talking the --

20 Q. I'm talking the Little Missouri, right by
21 the park, if you will.

22 A. Okay.

23 Q. So in terms of angle point 24 and 25 as it
24 runs north to 26, could you try to describe where
25 the existing power line is that crosses the Little

1 Missouri?

2 A. The existing power line is over here
3 towards Highway 85. And that's what the landowner
4 was asking us to do is to move it further to the
5 west and immediately parallel that just -- to the
6 WAPA's 230 existing line.

7 Q. Okay. And I'm familiar with the
8 BakkenLink hearings because those were quite
9 contentious and pipeline law is different than
10 power line law. But I'm trying to reconcile, do
11 you need a Corps of Engineer permit to cross the
12 Little Missouri?

13 A. That would be a Cris Miller question.

14 Q. Okay. Because the question I'm trying to
15 drive to is that we testified -- the company
16 testified for the big Missouri crossing that the
17 Corps drove that decision of how you'd cross the
18 river, and why the Corps would do something
19 different here or if the Corps doesn't need a
20 permit. That's the question we'll have to get to,
21 I guess.

22 A. Yeah.

23 COMMISSIONER KALK: Other than that, I
24 don't have any other questions. Thank you.

25 THE WITNESS: You're welcome.

1 JUDGE FETCH: All right. Commissioner
2 Christmann.

3 COMMISSIONER CHRISTMANN: Thank you, Your
4 Honor.

5 **EXAMINATION**
6 **BY COMMISSIONER CHRISTMANN:**

7 Q. Mr. Murray, sometimes as you're going
8 through these, and I'm not dealing with any of them
9 specifically, but you say, Well, we went around
10 this area because a resident would not sign a
11 waiver or we couldn't get the easement, but yet not
12 all the easements are signed. So how do you
13 determine when one is hopeless and one you're still
14 working on then?

15 A. And that's a good question. Many times
16 hopeless is go away and then they just stop
17 communicating with you. As long as they're still
18 answering the phone and we can still show up and
19 visit with them, they're never hopeless. A lot of
20 times most -- I would say 99 percent of the time
21 they give you something to work with what their
22 concerns are. When you cannot, that's when we
23 start looking at routing around them, is there an
24 alternative, is there a way to avoid the situation.
25 Many times you can, but sometimes you can't. You

1 just cannot satisfy every landowner's concerns, but
2 we do make every effort to.

3 When I say we're avoiding a residence --
4 okay. I was a little confused on your question. A
5 residence that we cannot get a waiver from?

6 Q. Well, in any case. I was just trying to
7 figure out because sometimes you have -- have
8 altered your route --

9 A. Mm-hmm.

10 Q. -- because you said landowner issues. But
11 not everything is acquired yet, so --

12 A. Right.

13 Q. -- I was trying to figure out how you
14 determine when you'll alter the route and -- and
15 when you just keep negotiating.

16 A. Right. And many locations where I stated
17 we altered the route, those easements are signed.
18 Those were adjustments made at the landowner's
19 request or in working with the neighbors.

20 COMMISSIONER CHRISTMANN: Okay. I don't
21 think I have any other questions.

22 JUDGE FETCH: Thank you.

23 Commissioner Fedorchak.

24

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EXAMINATION

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BY COMMISSIONER FEDORCHAK:

Q. My question is similar to Commissioner Christmann but a little more pointed. So perhaps -- so you've mentioned going around gravel pits and future home sites and -- and that sort of thing and the company's done a really nice job of meeting landowner needs, it sounds like, wherever you can. We've also heard, though, there is some people who have homes -- you know, the original homesteads, and those, perhaps in those people's mind, haven't gotten the same consideration because you're not going around them. How do you guys decide that? If it had been the gravel pit, would you have made the extra effort to go around it?

A. If it's a homesite that's existing, I mean you can see the buildings there, we will make an effort to go around it. Many times those decisions drive us to talk to the neighbors and you cannot always find that alternative route or -- or an agreeable route, I should say, around those locations.

But as I testified in a current -- a previous hearing, too, many times we've made those adjustments and then come back -- you know, for a

1 proposed site, made those adjustments, come back
2 five, ten years later and those homes never
3 materialize too. So it's a fine balancing act on
4 where do you make these adjustments and where can
5 you not, but we always make the attempt. It's just
6 not always feasible.

7 Q. I was speaking more not of a homesite, but
8 original homestead land, say a family's homestead
9 quarter that they just don't want it through,
10 versus, you know, a gravel pit where there's
11 something there that you maybe can't get through as
12 easily but you can go through an old homesite.
13 It's just sort of the person's loss if you do.

14 A. Right. Right. And we don't necessarily
15 avoid all gravel pits. We try to get to the
16 outside perimeter of it where there's still going
17 to be a loss of gravel, but we do sign agreements
18 with those landowners stating that if they have a
19 loss in revenue, that we will make that right with
20 them on the gravel. So we're not necessarily
21 always avoiding the gravel pits, but we're trying
22 to get out of the heart of it.

23 Q. Mm-hmm.

24 A. With those homestead sites, like I said,
25 most of the time we can avoid it if it's at all

1 possible. We can't always get concurrence or
2 acceptance to get around that site.

3 Q. Yeah. Okay. You walked us through the
4 route through the park, and I'm wondering, Shauna,
5 if you could pull that up again, please, those
6 close-up maps. I think this is it. Just go back
7 down and talk about -- okay. So right about there.
8 Yeah. You're following 85 --

9 A. Right here?

10 Q. Right there.

11 -- and then you go way out. Talk about
12 why you didn't just continue following 85
13 throughout there going north rather than venturing
14 off east there.

15 A. Right. And I'm probably not the best one
16 to discuss this because it's with the U.S. Forest
17 Service that all those conversations took place
18 with Cris Miller, but my understanding is it was to
19 get it out further away from the national park. I
20 mean this was a thread -- a needle that -- you
21 know, we needed to thread a needle right there, and
22 then we had to step it back out again.

23 Q. Okay. And maybe you're not aware, but
24 where's the Twin Buttes and Lone -- what's the name
25 of the --

1 A. The Lone Butte Roadless Area is this
2 hashed -- you can see the hashed lines in the map.

3 JUDGE FETCH: And can you describe some
4 kind of location?

5 THE WITNESS: Okay. Let's -- yeah.
6 Sections 19, 20 --

7 MS. LABER: Do you want me to zoom in?

8 THE WITNESS: Yeah, it's pretty far away.
9 19, 29 and 30 in Township 147 North, Range 98 West,
10 and also Section 24 in Township 147, Range 99 West.

11 JUDGE FETCH: Thank you.

12 Q. (COMMISSIONER FEDORCHAK CONTINUING) So
13 are you going through Lone Butte?

14 A. It may all be considered a management
15 area, but again Cris Miller would have to answer
16 that. We're going through the corridor designated
17 where there's already a road --

18 Q. Okay.

19 A. -- Highway 85 crossing through the
20 roadless area.

21 Q. All right. Okay. And then can you -- in
22 Tioga you had a map that showed in red the
23 easements that you have not been able to obtain.
24 Can you pull that map up here through this area and
25 talk -- and highlight those outstanding easements,

1 if you will?

2 MS. JACOBSON: Commissioner, we don't have
3 that exhibit available electronically. It is
4 Exhibit 28 in the book, though.

5 THE WITNESS: Do we have a board on that?
6 No. Do you have it in front of you?

7 Q. (COMMISSIONER FEDORCHAK CONTINUING) I do.

8 A. Okay. As you're starting from Charlie
9 Creek and heading north, right around Charlie Creek
10 you're going to see quite a bit of red, and red
11 indicates easements that are not signed. Most of
12 that is national grasslands and that's all stuff
13 that's in the permitting process.

14 As you continue north, you're going to see
15 a couple little sporadic pieces. Those are --
16 there are some landowner concerns there, issues.
17 As you get up to what we just discussed, threading
18 the needle there by the Highway 85 crossing there,
19 that is again U.S. Forest Service property that's
20 all going to become part of the permit once that's
21 received through the NEPA process.

22 Continue north through the diagonals
23 there, you will see one stretch of red there on
24 that first diagonal north of the park. That's a
25 landowner that prefers that we parallel the

1 existing 230 line and Highway 85 corridor.

2 And then as you cross Highway 85 south of
3 Watford City, we do have some -- little pieces of
4 red there, unsigned easements. Those are -- that's
5 landowners that we have not signed due to
6 compensation issues.

7 As we're going north right where you see
8 the word "Arnegard," there's a little bit of red
9 there. That's a commercial area that we're coming
10 through. Not developed yet but in the process of
11 being, and we've been negotiating with that
12 landowner. Again, that is a compensation issue.

13 As you go north of Highway 200 there, 85,
14 you'll see the first diagonal. That is again a
15 compensation and route issue.

16 And then even the next diagonal to the
17 north of that again, that's a piece of property
18 where they tried to push it completely off of their
19 property and they wanted it all on their
20 neighbor's. They just -- they're going through
21 some -- a splitting of the property amongst the
22 family and it's all being retitled, that property
23 is. So that's what's going on there.

24 As you come over towards the Highway 85
25 crossing there by Alexander, we are working on

1 those parcels and getting close to getting those
2 signed.

3 And then as you get north, there's a very
4 long stretch of red there by the Missouri River.
5 That's all Corps land. So -- I shouldn't say all
6 Corps land. There is one private landowner on the
7 south side that we're working with him -- actually
8 working with him and a surveyor. He is in the
9 process of subdividing his property, so he just
10 wants to make sure that our route is not going to
11 impact the parcels that he's subdividing, so we're
12 working very closely with them.

13 And then you've got all that Corps land
14 and then that takes you up to Judson there.

15 COMMISSIONER FEDORCHAK: Okay. All right.
16 Thank you. I believe that's all my questions.

17 JUDGE FETCH: Thank you.

18 I think, Commissioner Christmann, you had
19 a follow-up.

20 COMMISSIONER CHRISTMANN: I did.

21 **FURTHER EXAMINATION**

22 **BY COMMISSIONER CHRISTMANN:**

23 Q. Did I understand you right when, I think
24 it was at the Tioga hearing, you mentioned a couple
25 of these that were compensation issues. If you

1 decide you need to up the ante to persuade those
2 people to sign, that other similar parcels that had
3 already signed would have their payments increased,
4 as well, so that they're not disadvantaged by
5 signing early? Did I understand that?

6 A. You are correct. Basin Electric as a
7 cooperative, we feel that all landowners should be
8 treated fairly for like property. So cropland is
9 going to get paid the same as if they would have
10 signed from day one or signed two years later, you
11 know. We don't want it to be a punishment for the
12 landowner to sign early. And a lot of times that's
13 a fear in their mind; that, you know, I'm going to
14 sign early, but you're going to get to the end and
15 you're going to start upping your ante with the
16 landowners at the end of the line.

17 So we will go back -- and we've done it on
18 our previous projects. We have a history and a
19 reputation of doing that. We will make it even
20 with them.

21 COMMISSIONER CHRISTMANN: Okay. No other
22 questions.

23 JUDGE FETCH: Thank you.

24 Any others? Commissioner Kalk.

25 COMMISSIONER KALK: Thank you, Your Honor.

1 Just one last follow-up.

2

FURTHER EXAMINATION

3

BY COMMISSIONER KALK:

4

Q. I believe you answered the question I was asking you when you talked to Commissioner

5

6

Fedorchak. I just want to clarify. So I believe

7

you said that U.S. -- the Forest Service kind of

8

directed that line to move farther to the east, and

9

if this line was moved back to the west at the

10

Little Missouri crossing, it would actually be

11

easier to see from the park than where it is right

12

now?

13

A. I believe that is correct, but that is

14

also where I wanted to defer that question to Cris

15

Miller.

16

COMMISSIONER KALK: Okay. Thank you.

17

THE WITNESS: Yep.

18

JUDGE FETCH: Any others from the

19

Commission?

20

All right. Any other questions,

21

Ms. Jacobson?

22

MS. JACOBSON: No, Your Honor.

23

JUDGE FETCH: Mr. Armstrong?

24

MR. ARMSTRONG: No, Your Honor.

25

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

1 MR. LEIN: No, Your Honor.

2 JUDGE FETCH: All right. Thank you.

3 I believe you're going to probably need to
4 recall Mr. Miller?

5 MS. JACOBSON: Mr. Miller.

6 JUDGE FETCH: All right. I -- did you
7 have any questions, Ms. Jacobson?

8 MS. JACOBSON: I'll just start it off and
9 then --

10 JUDGE FETCH: Go ahead.

11 MS. JACOBSON: -- defer to the
12 commissioners.

13 **CRIS MILLER,**

14 having been previously duly sworn, was examined and
15 testified further as follows:

16 **REDIRECT EXAMINATION**

17 **BY MS. JACOBSON:**

18 Q. Mr. Miller, there was some discussion
19 earlier about the route on -- near the Little
20 Missouri in the grassland area, and can you just
21 talk about the process with the federal agencies
22 for why the route is where it's at?

23 A. Certainly. Can you go -- have the map go
24 down a little bit or maybe bigger? Yeah, just a
25 little bit.

1 As you see -- you know, as Mr. Murray
2 identified as these crosshatched areas, the west
3 side of Highway 85 is called the Long X Divide Land
4 Management Unit of the U.S. Forest Service, and
5 it's the Lone Butte Management Area that's on the
6 east side of Highway 85. On this map, the green is
7 U.S. Forest Service. So both Long X Divide and the
8 Lone Butte Management Areas are designated as
9 roadless by the U.S. Forest Service.

10 So it was at our agency scoping meetings
11 and our public scoping meetings where that was
12 brought to our attention. So -- and a lot of
13 comments that we received through those scoping
14 processes were certainly to avoid the roadless
15 areas, and that's -- you know, that was then a goal
16 of our project, to avoid those roadless areas.

17 So our route alignment then was on the --
18 basically immediately adjacent to U.S. Highway 85
19 through this area on the bottom of the map.

20 As Mr. Murray testified, you know, from
21 angle point 18 to 20 we angled to the east. It's
22 not just that it's on Forest Service land or that
23 was our easiest path forward, but if you see going
24 to the north here, this extreme rough terrain, this
25 drainage here is what you view as you travel along

1 Highway 85. It would present constructability
2 issues. It just -- you couldn't have access to it.
3 It was unavailable to a project such as ours.

4 On the map here, too, you kind of see this
5 highlighted, light-colored -- that's kind of an
6 existing trail. So the U.S. Forest Service told us
7 about -- there's an oil pad that's being developed
8 up here in the northeast corner of Section 18.
9 I've just been informed that there's another oil
10 pad being considered for the Forest Service,
11 they've got an application, in the southeast corner
12 of 18 as well.

13 So as the Forest Service issues their
14 special use permit, what they want to do is to
15 ensure entities, different companies that have, you
16 know, projects on the Forest Service lands, that
17 we've worked together and that one's not impacting
18 the others, so we worked cooperatively.

19 What else? Just -- you asked about
20 Western Area Power's existing power line. It
21 actually crosses the Missouri River through this
22 area. And, technically, as Ms. Naylor testified at
23 Killdeer, that their line is actually within the
24 park lands. It's not within the fenced area of the
25 park, but the park actually owns some property on

1 the east side of Highway 85. So it's technically
2 federal lands, National Park Service lands, but
3 that's where the Western 230 line is aligned.

4 MS. JACOBSON: I have no other questions
5 for this witness, Your Honor.

6 JUDGE FETCH: Mr. Armstrong.

7 MR. ARMSTRONG: Your Honor, I have no
8 questions. I would just like to verify, I think,
9 for the record that the maps that Mr. Miller and
10 Mr. Murray have been testifying about are the maps
11 in Exhibit 29, just so it's on the record, you
12 know, where the angle points and everything are
13 that have been discussed during their testimony.

14 JUDGE FETCH: Thank you.

15 Commissioners, did you have any follow-up
16 questions?

17 COMMISSIONER KALK: No, Your Honor.

18 JUDGE FETCH: Commissioner Fedorchak.

19 COMMISSIONER FEDORCHAK: Did you have any?

20 COMMISSIONER CHRISTMANN: I do not. Thank
21 you.

22 COMMISSIONER FEDORCHAK: Just one, Cris.

23 **FURTHER EXAMINATION**

24 **BY COMMISSIONER FEDORCHAK:**

25 Q. So I was confused when we talked about

1 Long X Divide and Lone Butte being roadless areas.
2 Were those designated roadless areas after Highway
3 85 went through there, because Highway 85 goes
4 right through those two.

5 A. That is correct. It's my understanding it
6 was an executive order from -- at the end of the
7 Clinton administration, and it was -- and that's --
8 so that land management designation wasn't, you
9 know, quote, vetted through a public process. It
10 was an administrative order from the President of
11 the United States.

12 COMMISSIONER FEDORCHAK: Okay. That's all
13 my questions. Thank you.

14 JUDGE FETCH: Any other questions for this
15 witness?

16 MS. JACOBSON: No, Your Honor.

17 MR. ARMSTRONG: No.

18 JUDGE FETCH: All right. Thank you.

19 Did Basin wish to re-call any other
20 witnesses?

21 MS. JACOBSON: No, we do not. Not at this
22 time.

23 JUDGE FETCH: Mr. Armstrong, did you wish
24 to have any other -- any more questions for any
25 other witnesses?

1 MR. ARMSTRONG: I don't think we need it
2 at this time, Your Honor.

3 JUDGE FETCH: Mr. Lein?

4 MR. LEIN: No, Your Honor.

5 JUDGE FETCH: Commissioners, did you have
6 any questions for any other Basin witnesses?

7 COMMISSIONER KALK: No, Your Honor.

8 COMMISSIONER CHRISTMANN: No.

9 JUDGE FETCH: Okay. Thank you.

10 All right. Then we are going to take a
11 recess. And when we come back, then we will take
12 comments from the public.

13 COMMISSIONER KALK: How long a break, Your
14 Honor?

15 JUDGE FETCH: 45 minutes. It's 1:15. We
16 will come back at two o'clock.

17 (Recessed at 1:14 p.m. to 2:06 p.m.)

18 JUDGE FETCH: All right. It's a little
19 after two o'clock p.m., Central time. Basin has
20 concluded its case and we are now going to move to
21 take any testimony from members of the public.

22 Before we do that, earlier I asked for a
23 show of hands, but I think some other people came
24 in. So who out there from members of the public is
25 wanting to testify this afternoon? Raise your

1 hand.

2 Okay. I'm counting three -- I think four
3 people, maybe. Senator Triplett, were you going to
4 be testifying?

5 SENATOR TRIPLETT: Yes.

6 JUDGE FETCH: Okay. Sorry. So four
7 people.

8 I think some of you are here representing
9 yourself rather than other groups, and I know one
10 person has a time constraint, so I'm going to let
11 those individuals testify first.

12 But there are a couple of other procedural
13 matters before we proceed. Questions have come up
14 during the recess about what happens to documents
15 that are e-mailed in or are -- in this case one was
16 given to me. The individual who is the apparent
17 author of the document is not here to testify and
18 simply submitted comments -- and what happens to
19 those documents. And for an explanation of that,
20 I'm going to go to the legal counsel advisor for
21 the Commission, Mitch Armstrong, and ask you to
22 explain.

23 MR. ARMSTRONG: Yes. Thank you, Your
24 Honor.

25 Basically what happens to those e-mails,

1 they go into a public input file and they are not a
2 part of the official record of the proceedings here
3 today, comments like that. That's why we have the
4 public hearing for people to testify under oath and
5 be subject to examination and questioning. So they
6 don't become a part of -- they're not an exhibit,
7 they're not a part of the official record. They
8 are documents filed with the Commission that can be
9 reviewed by staff or others at the Commission
10 for -- for necessary follow-up, but there would be
11 another step in the process if they had to become
12 part of the official record.

13 JUDGE FETCH: Okay. Thank you,
14 Mr. Armstrong.

15 An important part of -- of due process is
16 that any witnesses -- in order to consider their
17 testimony for fact of the matter asserted, those
18 witnesses must be present for cross-examination.
19 And I think Mr. Armstrong has given a good
20 explanation of, you know, the documents can be sent
21 to the Commission, but if the person isn't there to
22 be cross-examined, they're not considered as fact.
23 And the Commission staff and whatever can look at
24 them and determine if any further action will
25 result.

1 And since some of you who are going to be
2 testifying were not present this morning when I
3 gave some instruction, I'm going to repeat a few
4 things. All witness testimony at this hearing is
5 taken under oath and is subject to penalties for
6 perjury, and you heard me swear in each of the
7 company's witnesses. By law I'm required to inform
8 witnesses what the penalties for perjury are.
9 Perjury in the state of North Dakota is a Class C
10 felony. It's punishable by a maximum fine of
11 \$5,000, maximum five years imprisonment or both.

12 So when you come forward, state your name.
13 I will administer the oath and then you'll be able
14 to give your testimony.

15 And with that, I'm going to call on
16 members of the public. And I know someone had a
17 concern about picking a granddaughter up from
18 school, so I'm going to let that person come
19 forward first.

20 MR. BROSTUEN: I appreciate that, Your
21 Honor.

22 JUDGE FETCH: State your full name,
23 please.

24 MR. BROSTUEN: My name is Chris Brostuen
25 and --

1 JUDGE FETCH: Oh, could you please spell
2 the last name.

3 MR. BROSTUEN: And first name is
4 C-h-r-i-s, and the last name is B-r-o-s-t-u-e-n.

5 JUDGE FETCH: Brostuen?

6 MR. BROSTUEN: That is correct.

7 JUDGE FETCH: All right. Please raise
8 your right hand.

9 (Witness sworn.)

10 JUDGE FETCH: All right. Thank you. Go
11 ahead.

12 **CHRIS BROSTUEN,**
13 being first duly sworn, was examined and testified
14 as follows:

15 **STATEMENT**

16 **BY MR. BROSTUEN:**

17 MR. BROSTUEN: As stated, my name is Chris
18 Brostuen. I represent Mountrail-Williams Electric
19 Co-op. The business address for Mountrail-Williams
20 Electric Cooperative is P.O. Box 1346, Williston,
21 North Dakota 58802-1346.

22 Your Honor, Commissioners and counsel, I
23 thank you for the opportunity to provide testimony
24 on behalf of Mountrail-Williams Electric
25 Cooperative in support of Basin Electric's

1 construction of the 345 kV transmission line.

2 Mountrail-Williams Electric's loads have
3 increased dramatically over the last three years,
4 growing at an average annual rate of 35.2 percent,
5 and through 2013 we're continuing that trend,
6 showing an annual growth rate of 40.8 percent.

7 The Bakken and Three Forks oil shale
8 formations lie within the Mountrail-Williams
9 service territory. The oil production, as -- as
10 you know, requires electricity for the oil pumpers,
11 for the gas lines, oil pipelines, secondary
12 recovery, many different support industries and, of
13 course, new apartments and homes for the workers
14 and their families. This accounts for much of the
15 cooperative's load growth the last five years.

16 The cooperative has developed a load
17 forecast of our energy and demand for the period of
18 2011 through 2025. We did this in accordance with
19 the Rural Utilities Service, RUS, guidelines. The
20 forecast is considered a judgmental forecast based
21 on the trends and future projections that were
22 developed through the experience and knowledge of
23 the cooperative's board of directors and employees
24 and -- and power supplier and validated in meetings
25 and discussions that have been held with the

1 various oil industry companies that the co-op
2 serves.

3 In the load forecast, the co-op's load was
4 projected to grow from the 2009 peak of
5 78.8 megawatts to a 2012 peak of 194.5 megawatts
6 and then finally peaking in 2025 at
7 682.8 megawatts. So substantial growth. This
8 represents about a three and a half times load
9 growth just projected in the next -- next 12 years.

10 So in conclusion, yes, Mountrail-Williams
11 Electric Cooperative does need reliable
12 transmission infrastructure in northwest North
13 Dakota in order to meet the future needs of our
14 member consumers. And we believe that this 345 kV
15 transmission line project is appropriate.

16 Thank you.

17 JUDGE FETCH: All right. Thank you.

18 Ms. Jacobson, do you have any questions?

19 MS. JACOBSON: No, Your Honor.

20 JUDGE FETCH: Mr. Armstrong?

21 MR. ARMSTRONG: No, Your Honor.

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

24 MR. LEIN: No, Your Honor.

25 JUDGE FETCH: Commissioners. Commissioner

1 Kalk?

2 COMMISSIONER KALK: No, Your Honor. Thank
3 you, Chris, for taking the time to testify today.

4 THE WITNESS: Thank you.

5 JUDGE FETCH: Commissioner Christmann.

6 **EXAMINATION**

7 **BY COMMISSIONER CHRISTMANN:**

8 Q. Chris, do you get your power exclusively
9 from Basin Electric or can you buy power from
10 wherever you want?

11 A. We also receive or buy power through the
12 Western Area Power Administration in addition to
13 Basin Electric Power.

14 Q. We talked to some people with the gas
15 processing plant yesterday that's within your
16 service area --

17 A. Mm-hmm.

18 Q. -- and they process the gas and pipe
19 everything away. And just -- we kind of hit on it
20 earlier with one of the witnesses, but not quite
21 directly, I think.

22 A. Mm-hmm.

23 Q. But is there ever consideration given to
24 getting together with some of these gas processors
25 and putting your own generation or getting them

1 to -- to do the next step and turn that into
2 electricity so that you can get it right from your
3 own service area?

4 A. In the past we've had those discussions,
5 but we would do that in harmony and in a
6 hand-in-hand basis with Basin Electric Power. They
7 would probably be the entity buying the power and
8 then -- and then contracting that back to the co-op
9 because of our power requirement contracts.

10 COMMISSIONER CHRISTMANN: Okay. Thank
11 you.

12 THE WITNESS: Yep.

13 JUDGE FETCH: Thank you.

14 Commissioner Fedorchak.

15 COMMISSIONER FEDORCHAK: I don't have any
16 questions. And as somebody who occasionally relies
17 on grandparents to pick up children from school, I
18 appreciate you making that a priority.

19 THE WITNESS: Thank you, Commissioner.

20 JUDGE FETCH: Any --

21 COMMISSIONER KALK: Your Honor, I had a
22 follow-up, actually, to Randy's question.

23 JUDGE FETCH: Okay. Commissioner Kalk.

24

25

EXAMINATION

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BY COMMISSIONER KALK:

Q. Chris, just a follow-up to Randy's. I wanted to clarify just for myself. Isn't the way the co-op structure is set up that Basin is the generation and transmission and you are the distribution, so you really aren't even supposed to be in the generation business?

A. That is correct, Commissioner.

Q. The way -- is that federal law that sets that up that way or is that just a co-op model, if you will?

A. It's the co-op model that was -- I believe was set up when we became members of Basin Electric when they were founded many, many years ago.

COMMISSIONER KALK: All right. Thank you.

JUDGE FETCH: Any further questions, Ms. Jacobson or Mr. Armstrong?

MS. JACOBSON: No, Your Honor.

JUDGE FETCH: All right. Thank you very much.

THE WITNESS: Thank you.

JUDGE FETCH: All right. Was there anyone else under a particular time constraint or who maybe has a very brief --

1 MS. HARTSOCH: I have a brief.

2 JUDGE FETCH: All right. We have a
3 winner.

4 State your name.

5 MS. HARTSOCH: My name is Cheryl D.
6 Hartsoch, C-h-e-r-y-l, D, H-a-r-t-s-o-c-h.

7 (Witness sworn.)

8 JUDGE FETCH: All right. Thank you.

9 **CHERYL D. HARTSOCH,**

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

12 **STATEMENT**

13 **BY MS. HARTSOCH:**

14 MS. HARTSOCH: My address is 5505 113th
15 Drive, Ray, North Dakota. I'm here to represent
16 Mountrail-Williams Electric Cooperative. I have
17 been a director on the board for the last 16 years.

18 Your Honor, Commissioners and counsel,
19 thank you. Again, I am providing testimony on
20 behalf of Mountrail-Williams Electric Cooperative
21 in support of Basin Electric's building of a 345 kV
22 transmission line.

23 We live in a very active, aggressively
24 busy western North Dakota area that has found our
25 need of electricity requirements going up at a very

1 rapid pace. It has been a struggle at times for
2 Mountrail-Williams to meet that rapid load growth.

3 Because the load has dramatically
4 increased the last few years, Mountrail-Williams
5 Electric Cooperative developed their load forecast
6 in accordance with the Rural Utilities Service, or
7 RUS, guidelines and the load forecast was of
8 600-plus megawatts in the year 2025.

9 The board of directors of
10 Mountrail-Williams sent a supporting resolution up
11 to Basin Electric stating, "Whereas the board of
12 directors of Mountrail-Williams Electric
13 Cooperative has reviewed the study and its
14 conclusions; therefore, be it resolved that the
15 board of directors of Mountrail-Williams Electric
16 Cooperative does hereby adopt and approve the 2011
17 load forecast as a reasonable forecast of the
18 future demand and energy requirements for
19 Mountrail-Williams Electric Cooperative through the
20 year 2025."

21 Well, this was a huge step for us as a
22 board to send this up to Basin to -- knowing that
23 Basin Electric has the obligation to provide the
24 electricity for us, but we are grateful for the
25 steps already taken to meet our needs up here in

1 this corner of the -- of the state.

2 In conclusion, Mountrail-Williams Electric
3 Cooperative needs reliable transmission
4 infrastructure in northwest North Dakota in order
5 to achieve our members'/customers' needs of
6 reliable electricity and also the working together
7 to serve this region by allowing Mountrail-Williams
8 the right-of-way in the same electrical structures
9 in some of the routing. This cooperative believes
10 that the current proposal is the most appropriate
11 for the Mountrail-Williams Electric Cooperative
12 members.

13 Thank you.

14 JUDGE FETCH: Thank you.

15 Any questions, Ms. Jacobson?

16 MS. JACOBSON: No, Your Honor.

17 JUDGE FETCH: Mr. Armstrong?

18 MR. ARMSTRONG: Nope.

19 JUDGE FETCH: Mr. Lein?

20 MR. LEIN: Just -- just one real quick, if
21 you don't mind.

22 **EXAMINATION**

23 **BY MR. LEIN:**

24 Q. Those load forecasts, is that something
25 that Mountrail-Williams does in-house or do you

1 have consultants?

2 A. We -- it was a long process. Yes. I
3 can't -- I shouldn't even say for sure because it's
4 been a while. You know, it's been back in --
5 studied back in 2011, but -- no, it was a -- it's
6 kind of a conservative estimate, I think.

7 JUDGE FETCH: The question was do you --
8 did Mountrail-Williams do this load forecast or did
9 you have a consultant?

10 THE WITNESS: I really don't remember, so
11 I can't answer fully.

12 MR. LEIN: That's fine. No questions.
13 Thank you.

14 THE WITNESS: All right.

15 JUDGE FETCH: All right.

16 Commissioners. Commissioner Kalk.

17 COMMISSIONER KALK: No questions. Just
18 thank you for coming out today and for your work
19 with the co-op.

20 JUDGE FETCH: Thank you.

21 Commissioner Christmann?

22 COMMISSIONER CHRISTMANN: I have no
23 questions, either, but appreciate you sticking
24 around for the day.

25 JUDGE FETCH: Commissioner Fedorchak?

1 COMMISSIONER FEDORCHAK: No. Thank you,
2 Cheryl. No questions for you.

3 JUDGE FETCH: All right. Thank you.

4 All right. Two remaining witnesses,
5 whoever stands up and gets up here first.

6 MS. COYLE: Do I submit this first or
7 after --

8 JUDGE FETCH: I'm sorry. What?

9 MS. COYLE: Do I submit these to you
10 before or after I speak? And then I was needing
11 the PowerPoint, so is that possible?

12 JUDGE FETCH: Okay. Do you have that set
13 up?

14 MS. COYLE: I had called in before and so
15 I was told it would be available. I'm sorry.

16 MS. LABER: Do you have a thumb drive?

17 THE WITNESS: I do have a thumb drive.
18 Thank you.

19 JUDGE FETCH: Do you have copies for all
20 the commissioners?

21 MS. COYLE: I have just copies -- the
22 three copies I was told to make for -- so I just
23 have three copies for whoever would like to have
24 them.

25 JUDGE FETCH: Okay. One goes to the court

1 reporter.

2 MS. COYLE: Okay.

3 JUDGE FETCH: And one goes to
4 Ms. Jacobson.

5 MS. COYLE: Okay.

6 JUDGE FETCH: And one goes to
7 Mr. Armstrong.

8 MS. COYLE: Thank you.

9 COMMISSIONER KALK: Your Honor, could I
10 just ask if the PowerPoint presentation is the same
11 as what's being handed out or --

12 MS. COYLE: Not exactly, no. I've taken
13 certain images from these documents and that
14 PowerPoint I'll make reference to.

15 COMMISSIONER KALK: Okay.

16 MS. COYLE: All the information that's
17 been presented is pretty much in those documents,
18 but not everything.

19 JUDGE FETCH: Do you want to take a seat
20 for a moment, please.

21 MS. COYLE: Sure.

22 JUDGE FETCH: State your full name.

23 MS. COYLE: Anne Marguerite Coyle.

24 JUDGE FETCH: Anne Marie.

25 MS. COYLE: Anne, A-n-n-e, Marguerite,

1 M-a-r-g-u-e-r-i-t-e, Coyle, C-o-y-l-e.

2 JUDGE FETCH: All right. Raise your right
3 hand.

4 (Witness sworn.)

5 JUDGE FETCH: All right. And I believe
6 you talked to Commission staff yesterday about
7 whether -- and Mr. Armstrong or Commission staff,
8 Mr. Lein, about whether you could present a
9 PowerPoint and how many copies you'd need to --
10 you'd need to bring.

11 THE WITNESS: Correct.

12 JUDGE FETCH: All right. All right.
13 Proceed.

14 **ANNE MARGUERITE COYLE,**
15 having been first duly sworn, was examined and
16 testified as follows:

17 **STATEMENT**

18 **BY MS. COYLE:**

19 MS. COYLE: Can I be the one moving the
20 PowerPoint?

21 MS. LABER: Oh, yeah.

22 MS. COYLE: Would that be okay?

23 MS. LABER: I was just trying to find
24 this.

25 MS. COYLE: No. You're fine. Thank you

1 for doing it. If everybody can see, I can --

2 JUDGE FETCH: For the record, first state
3 if you're representing someone, who you're
4 representing, who you're associated with, that sort
5 of thing. Give some background.

6 MS. COYLE: Do you need my address as
7 well?

8 JUDGE FETCH: (Nods head.)

9 MS. COYLE: Okay. 521 Sixth Avenue
10 Southeast, Jamestown, North Dakota. I represent
11 myself as a professor of biology at Jamestown
12 College, although I do not speak on behalf of the
13 college. And I come here on behalf of the research
14 that I've conducted, and I'll describe my
15 background and credentials. Is that -- if that
16 would suit the -- the audience.

17 JUDGE FETCH: Very briefly.

18 MS. COYLE: Okay. I have, I think -- I
19 have an undergraduate degree in biology, geology
20 and political science, a second equivalent
21 undergraduate degree in biology, a master's in
22 biology, PhD in biology with a -- with a focus on
23 GIS and statistics. And I'm a wildlife biologist,
24 conservation biologist and ecologist and have been
25 the leading expert on golden eagles in North Dakota

1 for the last ten years, conducting research in the
2 Badlands of North Dakota on those. As well as I
3 have housed and put together the entire raptor
4 database for golden eagles, bald eagles and
5 ferruginous hawks and prairie falcons on behalf of
6 the federal agencies.

7 The agencies that I have been funded by
8 and my funding agencies are on the board. So the
9 data that you get and receive from those agencies
10 was the data that I consolidated and worked with.
11 There is additional data since then. My research
12 stopped at surveys in 2011.

13 I also sit on and work with as a
14 consultant for the agencies on these issues. My
15 research is focused on anthropologic disturbance on
16 populations.

17 I also work in coordination with the North
18 American Working Group for the Conservation of the
19 Golden Eagle. This is an organization that was
20 founded by those individuals, those senior
21 researchers that were instrumental in the early
22 foundation of the peregrine falcon recovery
23 programs, as well as the condor recovery programs.

24 The North American Working Group for the
25 Conservation of the Golden Eagle was founded on the

1 basis that we, as experts in North America,
2 especially in the lower 48 states, were seeing a
3 downward trend in the populations of nesting golden
4 eagles in the areas we were studying.

5 So today I speak on behalf of the research
6 and the involvement in those organizations.

7 First of all, I would like to address the
8 Commission and Basin Electric and everybody here
9 and thank you very much for allowing me to come and
10 speak today, and I look forward to cooperative
11 efforts in the future. I have offered my services,
12 as you'll see in the packets I've provided.

13 I do have a letter -- I'm just going to
14 borrow this -- dated December 2, 2011, to
15 Mr. Dennis Rankin, and I weighed in on this issue
16 back in 2011. And my statements are noted in that
17 letter, and so I will reiterate those and -- and
18 offer additional comments to this proposed -- may I
19 say proposed plan.

20 I also have provided maps that I will be
21 using during this presentation. The other things
22 that I have also presented are some information on
23 the research that I've conducted in much more
24 detail than what I'll speak on today.

25 First I would like to, I guess, make sure

1 that the Commission and all people involved in this
2 process understand that the National Environmental
3 Protection Act requires a series of alternatives
4 and reasonable alternatives to be presented in
5 their final EIS before decisions are made.

6 I weighed in on some of the proposals that
7 were made, and from my understanding the current
8 draft EIS has been reduced down and altered, and I
9 believe there's a required supplemental draft EIS
10 now that the federal government's waiting to see.
11 And it's my understanding that the two alternative
12 routes are now not alternatives but what they are
13 going to propose in their preferred alternatives.

14 If that's the case, then I would ask the
15 Commission to please respect the NEPA process and
16 understand that there are no reasonable
17 alternatives than in this draft. And what we're
18 talking about, even though I hear continually
19 through these meetings a reference to the route,
20 there should not be a route at this point in the
21 process. NEPA requires alternatives.

22 And so I have also heard made statements
23 in the news that Basin Electric would like sympathy
24 for the fact that they've already acquired
25 easements from landowners and already started the

1 land acquisition process for that in cooperation
2 with the landowners, and I'm confused by that,
3 considering the fact that NEPA requires alternative
4 routes. And if I were, as a researcher, to pursue
5 spending on a proposed budget without that budget
6 being approved, that would be a very careless
7 mistake. So my concern is the process, first of
8 all.

9 And so I don't think that should be a
10 consideration to whether this proposal is accepted
11 or not, because we're too early in the process.
12 And the federal government has -- if I'm
13 understanding the process correctly in my
14 correspondence with them, has not completely
15 weighed in on this and they are still waiting for
16 that supplemental EIS and that process is still in
17 its infancy, and we have a long ways to go in those
18 comments and recommendations that should be coming
19 from the federal government.

20 So I'm going to be weighing in on this as
21 this is a proposal and these are my
22 recommendations, and I am more than willing to work
23 with the Commission and anybody in Basin Electric
24 to help mitigate for not only golden eagles, but
25 all of the wildlife that is going to be impacted by

1 this route.

2 I have been impressed with the fact that
3 Basin Electric -- and I'm not sure how to advance.
4 Oh, okay. Here we go. These are just some of my
5 cooperatives, so you don't need to deal with them.

6 So one thing I'd also like to add is that
7 this is one route, but it's serving a number of
8 other things. So we'll get to the impact of it,
9 but I'd like to start by referring to the document
10 itself. There is an EIS -- and I think it's on
11 page 3-72, and I'm not sure how these are all
12 numbered, but that's the page I'm going to start
13 with as far as some of my comments.

14 JUDGE FETCH: Do you have that on a
15 PowerPoint?

16 THE WITNESS: No, I don't. It's their
17 document.

18 JUDGE FETCH: My understanding was that
19 the PowerPoint would be the same --

20 THE WITNESS: No, I didn't say that.

21 JUDGE FETCH: -- as your presentation.

22 THE WITNESS: No. No. I said the
23 PowerPoint -- no. Nope. But I'm referring to an
24 EIS, which is what the whole case is, and everybody
25 had the EIS, I thought, so isn't it appropriate

1 that I be able to refer to an exhibit?

2 JUDGE FETCH: That's fine. That's fine.
3 But I don't want the commissioners to get lost here
4 with, you know --

5 THE WITNESS: Okay. I just didn't know
6 how to advance this. I can go back --

7 COMMISSIONER KALK: Your Honor, if I
8 could, this Commission has no -- we are not privy
9 to the EIS document at this time. We have Basin's
10 application, and the EIS is a separate process.
11 We'd love to hear her comments, but we don't have
12 the EIS document. That's the federal agency's
13 document.

14 THE WITNESS: Okay.

15 COMMISSIONER KALK: So we don't have it.

16 THE WITNESS: But they've been making
17 reference to that document, if I've not been
18 mistaken.

19 COMMISSIONER KALK: Absolutely. But to
20 give us the page number, it --

21 THE WITNESS: Okay. That's fine. So can
22 I just refer to the document based on the comments
23 they've already made today?

24 MR. ARMSTRONG: If I could, my
25 understanding --

1 JUDGE FETCH: Mr. Armstrong.

2 MR. ARMSTRONG: Thank you, Your Honor.

3 The EIS -- draft EIS is part of -- let me
4 get the exhibit number -- the draft EIS is part of
5 Exhibit 2, the application. It would be in Volume
6 III. I believe it's the first document in Volume
7 III, the draft EIS for our reference on it, so --

8 COMMISSIONER KALK: Thanks.

9 MR. ARMSTRONG: Is that -- I guess I would
10 ask Ms. Jacobson to confirm, but that's my
11 recollection in my binders.

12 THE WITNESS: Am I -- am I allowed to
13 proceed by addressing the comments?

14 JUDGE FETCH: Hold on just a moment.

15 THE WITNESS: Okay.

16 JUDGE FETCH: We're trying to locate where
17 we're at.

18 THE WITNESS: Oh, okay. I didn't know
19 that.

20 JUDGE FETCH: All right. Did you say
21 Volume III?

22 MR. ARMSTRONG: It's -- my recollection is
23 it's in Volume III of Exhibit 2. I think it's the
24 first document in there.

25 MS. JACOBSON: That's correct. Under tab

1 C, appendix C, draft environmental impact
2 statement.

3 JUDGE FETCH: Okay. Does the
4 Commission -- do you have that? Have you located
5 it?

6 COMMISSIONER KALK: I'm fine, Your Honor.
7 I'm happy with it.

8 JUDGE FETCH: Okay. All right.

9 THE WITNESS: Sorry.

10 JUDGE FETCH: Go ahead.

11 THE WITNESS: Okay. It was in reference
12 to comments made earlier by Basin Electric on
13 mitigation for and the questions by the Commission
14 to them, and at this point we don't have to look at
15 the PowerPoint so I'll just speak off the document.
16 And there was a question, I think, by Commissioner
17 Kalk that what was some of the mitigation that was
18 going on in Forest Service lands and such, and I
19 would just like to refer to that because they have
20 noted that in their biological resource document in
21 the EIS of raptor species that may occur within the
22 study area.

23 I'm just going to note that part of my
24 presentation today is to help educate on what does
25 exist there and some of the regulations that are

1 found in the management plan and ways in which we
2 recommend as -- as people in the field to managing
3 agencies and then their recommendations move
4 forward from the management perspective.

5 There are many golden eagles or many
6 raptors in the study area. They do mention that
7 may occur within the study area. These do occur in
8 the study area, and those are bald eagles, golden
9 eagles, red-tailed hawks, and I could go on. But
10 there are additional ones in there that are not
11 included in that EIS form that need to be
12 addressed, and hopefully my statements here today
13 are to encourage Basin Electric to work more
14 closely with the U.S. Fish and Wildlife Service.
15 They're really the agency that oversees migratory
16 birds. I respect that they're working also with
17 the North Dakota Game and Fish Department.

18 JUDGE FETCH: You need to slow down just a
19 bit.

20 THE WITNESS: Okay. Sorry. Oh, I should
21 be more sympathetic because I've been watching you
22 all day sympathetically and then I go talking a
23 mile a minute. Sorry.

24 So the managing agency that oversees those
25 migratory birds and those raptors and when it comes

1 to, let's say, a take situation or even a
2 preventative would be the Fish and Wildlife
3 Service. So working with them is just some -- a
4 strong recommendation I would make.

5 Also, they refer to mitigation of -- of a
6 thousand-foot buffer around -- around nest sites,
7 and I'll get to it here in a little bit. We'll
8 talk about that, but that 1,000-foot buffer only
9 equates to be about .185 miles. And on federal
10 lands or lands that are managed by the federal
11 government or if you are acquiring any loans which
12 may be part of this process that are
13 federal-subsidized loans, then we recommend
14 a .5-mile buffer minimum around any golden eagle
15 nest in particular. That may vary from species to
16 species.

17 And we are currently, as the North
18 American Working Group and with the Fish and
19 Wildlife Service, working on more of the
20 territorial protection. That's not in the plans
21 now, but they are moving towards that. And it's
22 something you'll -- you'll see that I'll be
23 presenting and what I would strongly ask the Basin
24 Electric to consider.

25 Timing is another thing that I would ask

1 for them to consider as well. And so I think with
2 this document there's a lot of work that needs to
3 be done. So my first comment is to please work
4 with them. Yes. There's the Bald and Golden Eagle
5 Act, which will be impacted and/or of
6 consideration, as well as the Migratory Bird Act.

7 There's -- I think the other aspect of
8 this that I would like to note is they mention low
9 impact, and I've heard that mentioned a number of
10 times, and acreage of only one-acre footprint. I
11 have no idea where those calculations are coming
12 from and I would like to see those calculations,
13 because from a wildlife management perspective,
14 we're looking at a high impact, especially when
15 I'll talk about from my research, from the Raptor
16 Rehabilitation Center in Minnesota, the University
17 of Minnesota, the zoo who pulls in raptors as well
18 as from other well-known studies, electrocution and
19 power line strikes are a well-known,
20 well-documented fatality and mortality issue for
21 golden eagles and other raptors. So we're not
22 looking at low impact. We're looking at high
23 impact, especially when those mortalities are
24 taking out breeding adults. And there you're
25 looking at a potential direct hit for the

1 population.

2 So I would ask for the terminology in this
3 document -- I don't think they're -- really this
4 document is in depth enough nor is it really
5 addressing the serious concerns that are
6 well-known.

7 In fact, there's a great article I saw
8 recently that Basin Electric has acquired new
9 software called Geographic Information Systems with
10 Esri, and it's a software program and they've
11 promoted themselves now using that. I encourage
12 you to use that. And Esri has come out with a
13 document and research of how --

14 JUDGE FETCH: Okay. You really need to
15 slow down.

16 THE WITNESS: Oh, I'm sorry. Okay.

17 COMMISSIONER KALK: It's okay, Anne, I do
18 it all the time.

19 THE WITNESS: I'm sorry. I'm used to
20 lecturing, though. I should just slow down. Okay.

21 And in that Esri document there is
22 research where they're starting to work with
23 electric companies to use their software, to
24 mitigate for grassland birds and all of these
25 things. So, you know, if you have that tool of GIS

1 and you're using it now, then I encourage you to
2 work with myself and other agencies to maximize the
3 use of that tool, because I see it being promoted
4 and your company being promoted using that. And
5 there's a lot of potential there for that. So I'd
6 just like to encourage you in that route as you
7 investigate the potential of using that -- that
8 wonderful tool.

9 And also continue to work with the Avian
10 Power Line Interaction Committee. There's tons of
11 research on how to mitigate, and it's not just
12 about a raptor-friendly pole, which I would like to
13 see which is -- I have yet to see much information
14 on the details and the specifications of the power
15 line construction, the actual infrastructure, any
16 stations, and what modifications might be made to
17 prevent a take. So that just addresses that
18 document in general.

19 So -- and there was a mention, too, these
20 types of power lines rarely cause fatalities or
21 mortalities to these nests. I'd like to see that
22 research, as well, and what is rarely? That's a
23 subjective term. If I rarely get arsenic in my
24 water, it could have a huge impact. So what is
25 rarely? I would like to understand some of these

1 terms. And I would ask the Commission to please
2 pursue a full understanding on that.

3 What I am showing you here is just what my
4 research did, so how it applies to this particular
5 project. I'm looking at -- we have a diverse
6 landscape, and the main point of this slide is to
7 say this is one project in a sea of many projects.
8 We cannot look at this one project as a single
9 entity on the landscape. We are a multiuse
10 landscape out here and we're looking at a
11 cumulative impact, and some of the things that
12 power lines are going to support are heavy, heavy
13 impact to habitat. You draw that power line, now
14 you're going to have more wells. You're going to
15 have even potential on the future uranium mines.
16 We have proposed uranium mines in western North
17 Dakota. Killdeer Mountains actually has a deposit
18 on it, and everybody who knows about uranium knows
19 that.

20 My concern is if we start building
21 infrastructure, where is our protection for the
22 future and how do we mitigate that? So this is not
23 a low-impact project and this is not a low-impact
24 route. And if you do the GIS analysis, what you're
25 going to see is when it comes to habitat, when it

1 comes to national parks, when it comes to sacred
2 lands, when it comes to roadless areas and
3 wilderness and when it comes to big horn sheep and
4 the critical species and when it comes to the North
5 Dakota Game and Fish Department's 100 species of
6 concern list that you can acquire online, you are
7 going to see that this route -- this preferred
8 route is one of the highest impacts for all of
9 those considerations. It has not mitigated for
10 those considerations.

11 And where you find golden eagles, you're
12 going to find artifacts and you're going to find
13 cultural resources. They are in conjunction
14 because golden eagles were so sacred to those
15 people.

16 So I think with using that GIS tool, we
17 can be better at cooperating and coordinating our
18 efforts, and I would love to offer my services to
19 help Basin Electric find alternative solutions. I
20 would -- I volunteer. My research -- I don't get
21 paid for it. I do all this for free. I am willing
22 to continue to do that. I came here and so, you
23 know, I -- I would love to help the Commission or
24 anybody find -- we need -- I lived in Killdeer for
25 most of my research. I lived in Medora, so I was

1 out here west for ten years. I know the ranchers,
2 I helped the ranchers. I sat on the tourist
3 committee for Killdeer. I'm very closely tied.
4 Those people are like family to me.

5 So getting them the resources they need,
6 absolutely. But doing it in a proactive way, a
7 preventative way for our future is imperative and
8 important, and finding the least impact is really
9 important to consider all of those.

10 So my research -- that database that I put
11 together serves as one of the founding databases
12 that went into a national raptor database. So
13 these golden eagle nests and such in North Dakota
14 are known by the national raptor community, and
15 it's to help with mitigation and conservation. So
16 we have a great database to start working with.

17 Now, I will mention with that, not all the
18 agencies are always coordinating. So just going to
19 the Game and Fish will not get you all of that
20 information. It is really important that Basin
21 Electric and any other person out there working
22 coordinate with all of the agencies that are
23 managing these lands.

24 Okay. These are some of the things that I
25 addressed that will become apparent how this

1 project may impact them. Juvenile telemetry. I
2 tagged 18 birds and we monitored those movements.
3 I surveyed over 700 nest sites. We have about 450
4 that are still in existence. Many of those are
5 still being rebuilt. Some are falling off cliffs,
6 some are being destroyed intentionally right now.
7 We are having all kinds of issues we're dealing
8 with. But the thing is is that those nests may be
9 rebuilt from time to time.

10 So how has this research shown how Basin
11 Electric's power line may impact them? We're going
12 to look at habitat use, the effects of these
13 disturbances, migration and dispersal and potential
14 mitigation. These are just some of the things that
15 I dealt with in my research.

16 This shows you a map of all of the nest
17 sites that we have on record. Mind you, there's
18 many nest sites that have been built since this,
19 many nest sites that even during my research we
20 would find new nest sites that we didn't know
21 about.

22 And I'm just assuming everybody here kind
23 of has an idea -- if I could, I could get up and
24 point, but the lightest area -- oh, do you have a
25 pointer? If I don't shake -- I'm going to shake.

1 So here is the Killdeer Mountains and this
2 is the proposed route that goes up through here
3 near the park and up along there. So what you're
4 seeing there is the density of nests. I didn't
5 have the time to plot -- plot the whole proposed
6 route on here that you're talking about because I'm
7 still waiting to see all of the alternative routes
8 so I can weigh in on all the alternatives again.
9 But what I want you to note is regardless of which
10 route you propose, nest density is greatest along
11 these rivers and along the Little Missouri all the
12 way down.

13 And your buttes are going to be your high
14 impact areas, and that means Killdeer Mountain.
15 Killdeer Mountain is a very unique one that I'll
16 talk about here. So this is -- this is golden
17 eagle habitat. This is also ferruginous hawk
18 habitat and burrowing owls and many other species
19 of concern.

20 I'm going to focus on the golden eagles.
21 We also have bald eagles up in that area as well,
22 both nesting -- rarely, but nesting, and migratory
23 route. They're also using the confluence up here
24 and these river areas for feeding and as well as
25 hunting, as well as migration routes.

1 This shows you just some research I did
2 where I just did a survey, a random sample to find
3 out having historical nests versus doing a survey.
4 For those of you that understand the statistics,
5 this is just confirming the density of nests from
6 one survey. And you can see these corridors are
7 really important right through here.

8 This is showing you the territories. So
9 what I did was I could actually calculate with --
10 using a statistical modeling that I developed
11 calculating the territories. I'm not going to go
12 into details there. My goal with this is just to
13 show you where the key territories are in western
14 North Dakota. Again, the density right through
15 where we want to put these lines.

16 So working very closely with U.S. Fish and
17 Wildlife Service to help protect these areas is
18 really important, because electrocutions and line
19 strikes and power strikes -- power line strikes are
20 confirmed in North Dakota, and it is a take under
21 the Migratory Bird Act and Bald and Golden Eagle
22 Act.

23 So for cost, it's best for the company to
24 work proactively, rather than deal with the
25 litigation. The federal agency -- I work with the

1 Fish and Wildlife Service. We are all willing to
2 work with the companies on this. It's a win-win
3 situation. It's less court costs, it's less hassle
4 to find a way to prevent takes, and it's better for
5 the birds too. And then the companies can --
6 instead of be looked at as the killer of eagles,
7 could be promoting themselves, using it as a
8 positive PR, look, we're working with them to
9 protect these eagles.

10 And people in western North Dakota love
11 their eagles. They really do. I had a hundred
12 percent landowner cooperation for my project.
13 People even came to church and the bar with eagle
14 nest locations. They were so proud. I think it's
15 to our advantage to work cooperatively, to find
16 these solutions.

17 This is kind of distorted because the
18 PowerPoint is not working in its normal form, but
19 it's showing you that buttes -- these buttes are
20 really important areas, these high rocky areas for
21 nesting birds.

22 This shows you the North Unit of the park.
23 This shows you where one of the alternative routes
24 is heading through. This is telemetry data from
25 two young juveniles from adjacent nests that I

1 tagged. So each point is a location. These are
2 locations from juvenile A. These are points and
3 locations from juvenile B.

4 You can see how much they use their nest
5 sites, as well as alternative nests. So protecting
6 just the nest is not going to get you a full
7 protection of those birds, because they
8 consistently through our research use alternative
9 nest sites. So the territory itself is very
10 important, also the hunting grounds around it.

11 So any lines that go through here have
12 potential risk for mortality. So just trying to
13 identify these -- these critical areas and, you
14 know, in some cases if you go -- one, moving the
15 power line is the best option, getting them out of
16 there, and then ensuring you have all the
17 raptor-friendly equipment and poles on is really
18 primary. And there's too many poles out there
19 without raptor-friendly equipment on and we are
20 having way too many fatalities.

21 This is just showing the territories and
22 the dispersal use of those juveniles relative to
23 territories that we know of, and so they're using
24 areas that we're not even aware that have nests.
25 So it's -- there's a lot of land out there that we

1 may not even know is critical habitat, so the
2 research is still working. And this is just
3 showing you more of that.

4 When I talk about cumulative effect, what
5 you're seeing is the yellow dots are golden eagle
6 nests, the blue dots are oil wells. These birds
7 are already enduring incredible amounts of stress.
8 When you're a bird like that, it takes on average
9 20 percent success rate for catching your prey. So
10 you can imagine going to the grocery store and only
11 20 percent of the time you come back with food.
12 It's pretty exhausting.

13 So they live on a brink of survival that
14 we don't think of, and so people say, Well, what's
15 it matter if there's a power line there? What's it
16 matter if there's some construction? These birds
17 live at a different energy budget than we do, and
18 small impacts on the landscape can have big impacts
19 on them. If they drop their prey once, then they
20 have to start over and then they have another
21 20 percent chance of getting another prey. And
22 just by doing that, timing of construction is
23 critical. It can push an adult off the nest too
24 early. The chicks will freeze and die.

25 So making sure the timing -- and our

1 timing is they start nesting in February, and
2 according to our telemetry data now, they don't
3 always leave the territory until September or
4 October, and in some cases they stay on the
5 territory year around.

6 So how do we deal with that with
7 construction? That becomes challenging, but the
8 more research and the more cooperation and
9 coordination, the better we can be at finding
10 solutions for that. So this is the challenge those
11 birds are looking at. It's not just one power
12 line. It's ATV drivers, it's people using trails,
13 it's people hiking, it's housing development, it's
14 oil wells. It's this cumulative impact. And for
15 all wildlife out there. You can't look at these
16 independently. That's a multi-varied analysis.
17 It's a cumulative effect.

18 And so the other thing is that we don't
19 always know where all the nests are, so I did see
20 that they were going to do surveys and I'm really
21 encouraged by that and encourage aerial surveys.

22 With our best technology, our best
23 technicians, we did a calculation to estimate how
24 accurate we are as researchers in the field
25 identifying nest sites for consultants, as well,

1 who are going on lands to mitigate for oil wells
2 and such. With the best technology, with GIS
3 flying, with my moving map, high technology, the
4 best pilot and technician, 48 percent accuracy in
5 finding where nests are. These are nests we
6 already knew about. We'd have somebody blindly fly
7 them, 48 percent with the best technology.

8 So we're encouraging aerial flights only.
9 Not on-foot surveys. You have less than 20 percent
10 of detecting a nest from on-foot surveys and
11 48 percent with flights, so we encourage two
12 flights. That's what we're up against.

13 This is a habitat suitability map that I
14 came up with. It's not exact. It's at a large
15 scale, so we're looking at kilometers of distance
16 to be used at, not at small scale -- or small
17 ecological scale or large map scale. You can't use
18 it for detail like 30-meter resolution or
19 something. You can't look at it where the nest
20 exactly is, but it shows you in a general level
21 where critical nesting habitat is. And it's right
22 in the heart of all of the development in North
23 Dakota, including this project.

24 So this information has told us a lot. It
25 also tells us habitat use dispersals. So this

1 power line -- even in agricultural areas where you
2 think you're out of range of eagles, they're using
3 these little knobs and they're using this
4 agricultural area as migratory pathways and
5 dispersal routes. So making sure those -- even
6 though it's in an ag area, you say, oh, it's not a
7 critical area for raptors, please still put those
8 raptor enforcements and raptor-friendly stuff on
9 your equipment, because we're seeing -- this is
10 their migration route down to South Dakota. Here's
11 some small migration routes.

12 And here's the big one. So this is only
13 of 18 birds, and you can see where the heart of all
14 of that activity is, right where this power line is
15 going through. So that's kind of the core. You're
16 going right through the core of eagle habitat.

17 Here's the national park right here. This
18 is one bird and this is that one bird's movements.
19 It's just crossing all over. And so this could
20 have a high -- you can think of how many times that
21 bird is going to cross over that power line, how
22 many -- what's the probability of it eventually
23 having a strike or landing on a power line or
24 having electrocution? High probability. And these
25 are just some of the other birds in some of the

1 other areas.

2 And from our telemetry, we did have
3 electrocutions and -- as one of our causes. So we
4 know confirmed from North Dakota, from my research,
5 as well as other data that's been turned in, we
6 have those. So trying to just minimize those,
7 really important, because of the litigation issue
8 on -- if you just want to look at it from a number
9 end and a hassle end, the cost. If you want to be
10 ethical and moral and think about the long-term
11 survival of this population because it's on a
12 downward trend -- and we're really concerned
13 whether we're going to have golden eagles in North
14 Dakota. Of all the 18 juveniles we tagged, they
15 all died. We have zero recruitment according to
16 our research. Any added loss could impact the
17 potential future population in North Dakota.
18 That's what we're facing.

19 We're looking at it also as a North
20 American group in the lower 48, because every key
21 energy development place in those lower 48 are
22 overlapped with eagle habitat. So we're looking at
23 a potential endangered species listing in the
24 future. We're trying to prevent that because then
25 that makes it a hassle for everybody.

1 So the more we can work proactively -- and
2 I say this not just as a tree hugger. I'm -- I
3 always get called that by the locals before they
4 know me, but my father was in the oil industry, so
5 I understand the industrial side. I was a
6 landowner. I understand the landowner getting that
7 energy. We can find solutions.

8 And so the other thing I'd like to talk
9 about is the Killdeer Mountain in particular. I
10 think it's absolutely important with the park and
11 wilderness, those areas are key, critical habitat
12 for nesting golden eagles. They don't like a lot
13 of disturbance. So if we can avoid those critical
14 areas of the national park, if we can avoid
15 wilderness, that's going to be tremendous, and that
16 includes places like Killdeer Mountains.

17 We documented through my research a unique
18 behavior that's never been documented in any golden
19 eagle population worldwide that we know of at this
20 point -- I'm working on a paper, it's been
21 submitted -- group hunting. It's a fascinating
22 thing. From a research perspective, it's really
23 important and it's cool that it's here in North
24 Dakota.

25 Every one of these dark spots is a

1 territory where group hunting occurred, and
2 Killdeer Mountains is one of our most critical
3 areas for research. Three nesting pairs live on
4 that mountain, and they actually cooperatively
5 hunt, which has never been documented. We would
6 like more opportunity to continue our research to
7 understand what goes on there.

8 So just one other added concern with
9 respect to Killdeer. Here we have just another
10 image of the park and where these territories
11 overlap. This is around that corridor that you're
12 going through, Killdeer Mountains through -- up
13 through this area. This is a number of birds
14 tagged, and each red dot is the location of their
15 place that they landed. And we have daily -- I
16 think we get eight locations per day on a bird for
17 years. Different birds died and such but -- so
18 there you have that.

19 And with that, there is one other
20 document, if I could pull it up off my jump drive,
21 if I could get out of this. Is there a way I can?

22 MS. LABER: Yeah. Take the cursor and
23 move it to the left.

24 THE WITNESS: Oh, awesome. Thank you.

25 JUDGE FETCH: All right. This doesn't

1 need to be part of the record. This is trying to
2 get the technology to work.

3 THE WITNESS: Oh, yeah. Sorry. Oh, it's
4 not on there. It's okay. It's this exhibit here,
5 though. So I can't get it up on there. But if I
6 had my computer, I would.

7 But this is showing you where this line
8 lands relative to the Killdeer Mountains nesting
9 territory, and it's just to the south of it, just
10 adjacent to this group nesting area that I was
11 talking about. And it runs just to the south.
12 This is going to be all critical hunting habitat.

13 You're looking at a major threat to this
14 population of birds right here. And so there's
15 probably many more. I just pulled one because I
16 was concerned with the Killdeer. My goal is that
17 we work with Basin Electric to prevent this, to
18 move this. This is way too close to these birds
19 and to try to find alternative routes.

20 So I hope when we see that final EIS that
21 we see, let's be proactive and work together before
22 you find other alternative routes and maybe find
23 solutions for those.

24 Thank you.

25 JUDGE FETCH: Okay. Counsel, you both

1 have copies of what -- is it Dr. Coyle?

2 THE WITNESS: Yes.

3 JUDGE FETCH: -- presented. I presume she
4 would like these entered as evidence.

5 THE WITNESS: Yes, please.

6 JUDGE FETCH: Is there any objection?

7 MS. JACOBSON: No, Your Honor.

8 JUDGE FETCH: Mr. Armstrong?

9 MR. ARMSTRONG: No, Your Honor.

10 JUDGE FETCH: All right. The packet --
11 full packet has been given to the court reporter,
12 and that should be marked as -- and admitted as
13 Exhibit 43.

14 All right. At this time we'll entertain
15 questions. Ms. Jacobson?

16 MS. JACOBSON: No questions at this time.

17 JUDGE FETCH: Mr. Armstrong?

18 MR. ARMSTRONG: Just one, I believe.

19 **EXAMINATION**

20 **BY MR. ARMSTRONG:**

21 Q. I've got to -- in one of your documents it
22 discusses the need to ensure all power lines and
23 associated structures are constructed with
24 raptor-friendly equipment. So I guess what I was
25 gathering from that is it's not that power lines

1 can't be anywhere near the eagles. It's that they
2 should have certain equipment on them to minimize
3 risk?

4 A. No. Those are two separate things.

5 Q. Okay. So --

6 A. They should all have them regardless of
7 how close you are to the nest, because this entire
8 western North Dakota is a corridor for migrating
9 raptors. In addition to that, I've stated in there
10 I also encourage them to move them out of core
11 habitat.

12 So I'm asking and recommend both, because
13 every power line should have raptor-friendly
14 equipment, even like the point I was making was the
15 agricultural area. Seems like it's away from
16 critical nesting habitat, it's not in the rugged
17 area where you'd find a nest, but those birds are
18 still using it to hunt, they're using it to
19 disperse through and they're still using it to
20 migrate.

21 In addition to that, I've asked that the
22 Commission and Basin consider moving the lines
23 away, find a maximum -- don't look at your minimum.
24 Our recommendation or the federal government's
25 recommendation for power -- any disturbance near a

1 golden eagle nest is .5 miles. They want it
2 outside that buffer.

3 But what I'm saying is what we found from
4 our recent data and what we're moving to is we're
5 realizing that's not far enough. And so if they
6 would be proactive and move it as far out of that
7 nesting territory and feeding habitat territory,
8 they're going to be looking at less takes, less
9 chances for electrocutions, less hassles for
10 litigation and better -- better results for the
11 birds as well. So I'm asking for two.

12 MR. ARMSTRONG: Okay. That's all the
13 questions I have.

14 THE WITNESS: Thank you.

15 JUDGE FETCH: Thank you.

16 Mr. Lein?

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

19 JUDGE FETCH: All right. At this time
20 we'll go to the commissioners. Commissioner Kalk.

21 COMMISSIONER KALK: Thank you, Your Honor.

22 **EXAMINATION**

23 **BY COMMISSIONER KALK:**

24 Q. And thank you, Dr. Coyle, for your
25 testimony.

1 A. Thank you.

2 Q. We could have a challenge with both you
3 and I talking too fast, so we'll --

4 A. I'm sorry.

5 Q. That's both of us.

6 The -- one thing I always enjoy about my
7 job is the chance to get to talk to people that are
8 more knowledgeable than me about things, and so I
9 appreciate your research, appreciate your coming
10 here today. But I do have a series of questions I
11 want to kind of walk through with you.

12 A. Sure.

13 Q. The -- my background prior to being on the
14 Commission was work with the Marine Corps and
15 Department of Defense as the environmental
16 compliance individual. Probably did over a hundred
17 different NEPA documents from Cat Ex's to EAs to
18 EIS, and so I think I'm pretty familiar with the
19 process.

20 A. Okay.

21 Q. And the process that -- the way I
22 understood it, is that you develop a range of
23 alternatives --

24 A. Mm-hmm.

25 Q. -- and you work your way down to a

1 preferred alternative. Now, I understand in this
2 case Basin has a supplemental and that will work
3 itself out, but even at the end of the day, you
4 have a preferred alternative that would move itself
5 forward. So isn't that the way you see this, too,
6 that there will be a preferred alternative?

7 A. Oh, there will be after. But that
8 process -- if my understanding is correct, they
9 have to go through all of the weigh-in from all of
10 the federal agencies and be in compliance with some
11 of the regulations, and I don't see that there yet.

12 Q. So you're disputing that process to this
13 point?

14 A. I'm just saying I want to see that process
15 fulfilled completely --

16 Q. So how --

17 A. -- and I want to see -- like the National
18 Park Service, I think their final EIS, before a
19 decision was made, they had seven alternatives and
20 one of those was the preferred alternative, but
21 then they had the public commenting process too.
22 And so I'm hoping that when that final EIS document
23 comes out from them that we'd see multiple
24 alternatives, a range of alternatives to show and
25 convince us as the public that they've really

1 weighed in on this whole thing and come to the
2 tribes or come to the experts, the Fish and
3 Wildlife Service, and really gotten solid feedback
4 to have a solid idea that that is the preferred
5 alternative.

6 We know what maybe the preferred
7 alternative for Basin is, but what about all the
8 other -- other interest groups out there? And
9 then -- then have that process forward. And I
10 think that's what we're looking for.

11 Q. The -- so in the document there usually
12 always is the preferred alternative with all the
13 others and how far they were carried through in the
14 process, so we're tracking there together.

15 A. Yeah. Okay.

16 Q. The -- did you participate in the scoping
17 meetings that Basin held almost two years ago and
18 where you provided, let's say, the comments you
19 gave today at that time?

20 A. No, I was not aware of them. I, you know,
21 don't always know what's going on that way, but I
22 was made aware of -- I think it was during the two
23 thousand -- I mean when I sent in that document in
24 2011, that was my input.

25 Q. Okay.

1 A. Was in two -- December 2, 2011. So that's
2 where I gave my input.

3 Q. So are you actively -- let me rephrase
4 this.

5 How are you actively providing your input
6 to the U.S. Fish and Wildlife Service and the
7 Forest Service now?

8 A. On this issue?

9 Q. Yes.

10 A. Well, they consult with me frequently. So
11 it's -- I mean I'm not the entity that Basin should
12 be going to. I just got wind that this was going
13 on, and after having written my document in 2011,
14 noticing the preferred route was the preferred
15 route, I asked them not to do -- you know, that was
16 key to going through the highest impact area, I
17 felt a need to step out of my professor role and
18 come and talk on that because my concern was that
19 they weren't going to the U.S. Fish and Wildlife
20 Service which would ensure these things.

21 Q. But don't they -- they have to go to the
22 Fish and Wildlife Service.

23 A. Exactly, they do.

24 Q. That's -- they're a -- they're a
25 participating --

1 A. And so I'm just reinforcing --

2 (The reporter interrupted the proceedings
3 due to participants speaking simultaneously.)

4 THE WITNESS: Okay. Sorry.

5 Q. (COMMISSIONER KALK CONTINUING) That's --

6 A. Yes, they do.

7 Q. They have to.

8 A. Right.

9 Q. Okay. So to say they're not going to the
10 Fish and Wildlife Service, they have to for the
11 NEPA process.

12 A. I didn't say they weren't. And if I did,
13 I misspoke.

14 Q. So then what is --

15 A. I said I wanted to make sure that they
16 were.

17 Q. Okay.

18 A. And so --

19 Q. Okay.

20 A. -- I guess I'm curious about your question
21 because I thought the public was able to weigh in
22 on the process.

23 Q. Oh, absolutely.

24 A. Okay.

25 Q. But that was, I think, the --

1 A. And I guess I'm offering my services.

2 JUDGE FETCH: Hold on. Let the
3 commissioner finish his sentence.

4 THE WITNESS: Okay. Sorry.

5 Q. (COMMISSIONER KALK CONTINUING) That was
6 my premise that I'm trying to make sure that we're
7 tracking on. It is not my place to decide things
8 that the U.S. Fish and Wildlife decides.

9 A. But --

10 Q. So I think what I'm trying to understand
11 is you're giving me the information to make a
12 decision as a Public Service Commissioner on this
13 route, but I'm hopeful that you're giving this same
14 information to the Fish and Wildlife Service, the
15 U.S. Forest Service --

16 A. Yes.

17 Q. -- so when they make their decision --
18 because, quite honestly, I'm not an expert in avian
19 species. I'm a water guy. My doctorate is natural
20 resources with water, waste water. And so if the
21 U.S. Fish and Wildlife Service has the same
22 information that you've given me --

23 A. Mm-hmm.

24 Q. -- and they come back and say this looks
25 fine --

1 A. Mm-hmm.

2 Q. -- it would be hard for me to dispute
3 that. How would you view that if you've given the
4 Fish and Wildlife Service all this information and
5 they come back and say, noted, but we don't concur?
6 How do you view that as a researcher?

7 A. Well, I guess I'm not -- I mean I'm not
8 going to -- I don't think it's my position to -- to
9 comment on an un -- something that hasn't happened.
10 So I'm -- I'm not sure that I can answer that
11 because I'm not sure that they're going to say
12 that.

13 I guess my role as an expert and a
14 consultant for them -- they come to me sometimes to
15 ask questions. They're the managing entity. What
16 I've stated here numerous times is that my
17 presentation here is that I'm addressing all the
18 concerns. I'm outlining them for them. Okay. For
19 Basin, for you, for the Commission. And I'm
20 encouraging the Commission and Basin to follow NEPA
21 and go through the U.S. Fish and Wildlife Service.
22 That's --

23 Q. Absolutely.

24 A. That's my -- and my data today is just to
25 show you why that process is so important.

1 Q. Very well.

2 A. Okay. Then I'm offering my services in
3 addition to that, not only to the Fish and Wildlife
4 Service or the Forest Service, but to Basin and to
5 you to be what I do for anybody else that comes to
6 me to ask for information or to help mitigate in --
7 in the first way.

8 Yes, I've already worked with the Forest
9 Service and the Fish and Wildlife Service and I
10 think they would concur with me.

11 Now, just because one entity, one
12 individual, let's say a biologist on the Forest
13 Service staff does not concur to me -- or agree
14 with me, I will still dispute them because I'm the
15 expert and they're using my data. So I would then
16 challenge them in return.

17 Q. So you're saying your research here is the
18 unique research to this area and perhaps the best
19 research, so it would stand to reason the Fish and
20 Wildlife Service should use your data?

21 A. Yes, and they are. And they -- in fact, I
22 was hired by them so they have -- the database
23 they're working with is the database that a lot of
24 people put together over many years and then I
25 digitized and built on --

1 Q. So your goal today was --

2 A. -- and sent back to them.

3 Q. -- to reinforce to the Commission the
4 importance of this information that the Fish and
5 Wildlife Service already has?

6 A. Correct.

7 Q. Fair enough.

8 A. And the Forest Service has and the BLM and
9 the Game and Fish.

10 Q. My experience with -- okay. Could you
11 update me on -- I know the -- I believe I know the
12 bald eagle was removed from the threatened and
13 endangered species list --

14 A. Mm-hmm.

15 Q. -- is that correct?

16 A. Yes.

17 Q. What is the status of the golden eagle?

18 A. It is not protected by the T and E,
19 threatened and endangered. It is under the Bald
20 and Golden Eagle Act. Both are under the Bald and
21 Golden Eagle Act. So they have a separate act all
22 to themselves, including they're protected also by
23 the Migratory Bird Act. So they have double
24 protection.

25 Q. Okay. Then, once again, back to my

1 experience, which may or may not be relevant to
2 this, is that when we were dealing with projects of
3 species of this nature, we had to go through the
4 process of having a take permit --

5 A. Mm-hmm.

6 Q. -- and then -- because these things
7 happen --

8 A. Right.

9 Q. -- but then there was also a mitigation.

10 JUDGE FETCH: I'm -- okay.

11 THE WITNESS: I'm just agreeing with him.

12 JUDGE FETCH: Two people cannot talk at
13 one time.

14 THE WITNESS: I'm sorry. It's just
15 getting -- I'm sorry.

16 Q. (COMMISSIONER KALK CONTINUING) The judge
17 does it to me all the time.

18 Okay. What I'm getting to is that you
19 make reference to lawsuits and fines and all this,
20 but my understanding of the NEPA process is that if
21 companies -- like in my case, the Department of
22 Defense, you go through the process, you consult
23 with the Fish and Wildlife Service. More than
24 likely a take permit is granted or not granted, but
25 by going through the consultation, there is no --

1 you remove yourself from that risk because you've
2 consulted with the agencies.

3 A. As long as you've gone through the entire
4 process of that, yes.

5 Q. Okay. Fair enough.

6 A. And that is something they're looking for
7 and encouraging, that -- because if that
8 cooperation happens, usually the -- from my
9 understanding -- and this is where it steps out of
10 my realm. Okay. My -- my point here is not to be
11 a manager or a law enforcement person. My point is
12 to say, look, my research has shown electrocutions
13 that were under the take and let's prevent that.
14 That's my statement here. So if that encourages
15 them to follow the NEPA process to work with the
16 Fish and Wildlife Service, that's my whole goal.

17 Q. Okay.

18 A. Yeah. And so that they can go through --
19 and there's a self-reporting program and whole
20 website on there for them, and if they do that,
21 usually what happens is they have to follow certain
22 protocol by having raptor-friendly poles.

23 Q. Absolutely.

24 A. They have to mitigate and move lines if
25 they need to. So that's my whole goal for being

1 here. If they do that and they then follow permit
2 and follow the recommendations of the Fish and
3 Wildlife so they minimize that chance of take, then
4 they're granted those permits, then we -- then
5 that's the win-win I'm looking for.

6 Q. Perfect.

7 A. Yep.

8 Q. The -- couple more questions, if I could.
9 In your research with bald eagles -- back up --
10 golden eagles, what is the -- the limiting factor
11 for their reproduction?

12 A. Well, there's a number of things that go
13 into that idea of limiting factor. There's
14 multiple things. It's not one.

15 Q. Is there a prioritized list?

16 A. Yes. Well, that's a very difficult
17 question to ask. What I can say is one of the main
18 limiting factors is you take a breeding adult out.
19 You strike -- let's take these two scenarios. You
20 have a nest that abandons, the adult survives. You
21 lose chicks, you lose productivity that year.
22 Productivity for the year decreases slightly
23 because you don't have three more chicks going to
24 that population, or one. Usually you don't have
25 very high success on productivity.

1 If you hinder the female's ability to hunt
2 and one chick dies out of the three, you've lowered
3 productivity. If you've stressed the female and
4 she has less egg production, that's a hit to
5 productivity. If you take the female out, that's a
6 strong hit.

7 That's why electrocutions are a bigger
8 deal in a sense because if you kill it, she cannot
9 re-nest the next year. You've lost a breeding
10 adult. That's why when I say take or something,
11 it's not -- it's just the honest truth that we're
12 losing an adult from the population. So that's
13 big.

14 Q. So if I could, the -- there's no way to
15 prioritize how a transmission line would correlate
16 to less reproduction any more than an oil well or a
17 highway? It's those factors, whatever might
18 develop those factors?

19 A. If the power line poses a threat of
20 electrocution which it takes a bird out --

21 Q. Fair enough. I see what your point is.

22 A. You see, and that's a tricky, slippery
23 slope to get on because, you know, that's the
24 challenge with science. We like to have facts and
25 sometimes there's -- we can't produce that. And

1 so, you know, I'm not going to pit any one
2 industry, a windmill against the power company
3 against oil. That's not the point here. Any one
4 of those could be a problem. And so what we want
5 to do with any one of those is minimize their
6 potential impact and not favor one over the other.
7 It could even be the Maah Daah Hey Trail and horse
8 riders. What I want to do is just minimize that
9 impact and still be able to have the electricity we
10 need or the oil we need and so on.

11 So it's a good question, but one of the --
12 I would say this, that at the North American
13 Working Group we did identify some of the top
14 threats. It varied region to region. If you had
15 tons of windmills in your area, windmill strikes
16 were going to be more likely impacting your birds.
17 Here -- but one of the -- electrocutions and power
18 lines made the top three --

19 Q. Okay. You --

20 A. -- at the national thing. So it was a
21 significant factor.

22 Q. You anticipated one of my next questions,
23 that the North Dakota Commission has sited over a
24 thousand wind turbines in the last six to eight
25 years. Extensive, I would say, experience now

1 dealing with whooping cranes, the whooping crane
2 flyway.

3 A. Right.

4 Q. The company has agreed to put bird flight
5 deflectors on this line, but I've not heard from
6 you at any of our wind hearings.

7 A. And, you know, I would love to be able
8 to -- in fact, I just saw the news the other night
9 and said, I'm going to have to make another call or
10 write another letter. You'll hear from me. It's
11 not that I'm prioritizing one or the other. It's
12 that I'm one person, I teach 20 contact hours. I
13 get about four and a half hours' sleep in the last
14 three weeks running, at least, and I don't get paid
15 for any of this. So the \$113 of copies that I
16 made, I'm just chunked out of my \$2,000 of savings
17 that I have to my name --

18 Q. But --

19 A. -- so I can't do it all. I would love to.
20 I would fight the windmill. I'm not preferential.
21 It's just this goes through the corridor of golden
22 eagle habitat. The windmills, I don't think, are
23 going through as much, but they are going through
24 the migratory pathway. So I would offer you the
25 same consideration to them, as well, because I'm

1 not going to -- I would be just as concerned with
2 that.

3 Q. So when we've had discussions with -- the
4 U.S. Fish and Wildlife Service comes to as many
5 wind hearings as they can make as well.

6 A. Yeah.

7 Q. Would you have any insight as to why the
8 U.S. Fish and Wildlife Service has not made this
9 Commission aware of the concern that golden eagles
10 have?

11 A. I -- I don't know because I talked with
12 them and they're concerned.

13 Q. Okay. Fair enough. Because you can't
14 speak for them?

15 A. Yeah, I cannot. Yeah. Yeah.

16 Q. Just one more second here.

17 A. Sure.

18 COMMISSIONER KALK: I think that's it.
19 Thank you, Doctor.

20 THE WITNESS: Okay. Thank you.

21 JUDGE FETCH: Thank you.

22 Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Well, Your
24 Honor, that was a lot of words in a hurry. Does
25 Stephanie need to stretch her fingers or is she --

1 JUDGE FETCH: I think we can proceed and
2 finish up here and then we'll probably take a
3 break.

4 COMMISSIONER CHRISTMANN: Okay.

5 **EXAMINATION**

6 **BY COMMISSIONER CHRISTMANN:**

7 Q. Okay. Ms. Coyle, two things that you've
8 stressed and I'm maybe misunderstanding something,
9 so I'm going to give you what I see as conflicting
10 things in --

11 A. Mm-hmm.

12 Q. -- your testimony so you can clarify them
13 in your words.

14 A. Sure.

15 Q. I'm kind of hearing you say this is prime
16 territory for these golden eagles. If we build
17 this thing through here, we're going to have a lot
18 of hits and deaths and it's just going to cause a
19 lot of problems. I --

20 A. I said it could potentially.

21 JUDGE FETCH: Okay. Hold on. Just please
22 wait for the commissioner to finish his question.

23 THE WITNESS: Okay.

24 Q. (COMMISSIONER CHRISTMANN CONTINUING) On
25 the other hand, I'm hearing you saying that there's

1 very few of these there, they're not technically
2 endangered, but that we can't afford the loss. You
3 mentioned one chick dies, it's a problem. A hen --
4 are they called hens -- the mother dies and they're
5 out of their reproductive stage forever.

6 So, I don't know, is it such a concern
7 because there are so many of them and we're likely
8 to have a lot of hits or because there's so few of
9 them that we just can't hardly afford to lose even
10 one?

11 A. I'm not sure you quoted me accurately. I
12 don't know how to get back in here. Can you
13 restate that question, please?

14 Q. I'm trying to grasp your thoughts --

15 A. Okay.

16 Q. -- as to whether -- are there so many
17 eagles in this area that building something will
18 cause so many problems or are there so few eagles
19 that we can't afford to take a chance at even
20 losing one or two?

21 A. I don't think I ever said there were so
22 many, and it's not a matter of numbers. It's a
23 matter of -- I think his question was on
24 productivity, so regardless if you have a hundred
25 eagles or a thousand eagles, what's the probability

1 of them hitting it? And the probability is high
2 because their nesting habitat -- this runs through
3 wherever those birds are and however many there
4 are, and we've documented approximately 56 nesting
5 pairs.

6 What I said about numbers, historically we
7 can't make a determination of what the population
8 was numbers of years ago, but we know that that
9 population that I've been studying for the last
10 13 years has seen a potential downward trend. So
11 regardless if you have a thousand or a hundred, if
12 you have losses in adults, you're going to see a
13 cause of a decrease in productivity. And if you
14 have a continued decrease in productivity, you're
15 going to have a population that continues to
16 decrease. And if you don't change that, then you
17 could see the loss of that species in this area.

18 So what we're trying to do is prevent
19 that. And the birds that we do have here, if you
20 looked at their activity and where their nest site
21 density is, this project goes through the most
22 densely nesting areas and the most highly impacting
23 the population because the eagles we do have are
24 using that as a core area. So that increases the
25 probability of having a contact with a bird.

1 So what my suggestion is is finding a
2 route that has less of a probability so you have
3 less of an impact on your population.

4 Q. Okay. And then, you know, I do not know
5 much about these eagles.

6 A. Yeah.

7 Q. I know more about other carnivores like
8 fox and coyotes.

9 A. Okay.

10 Q. So with those, it's been my experience
11 that, you know, they're cyclical, but over the
12 course of a decade or two there's just always about
13 so many of them there, and the more you hunt them,
14 the better food availability is for the other ones
15 that survive and so they seem to produce better and
16 they're just almost always there, about the same
17 amount there.

18 Is food an issue with these if one gets --
19 if some get killed, do others have better survival
20 rate?

21 A. That's -- that's a good question. And,
22 first, I'd like to clarify your assumption on the
23 other predators. That is not the case if you don't
24 have replacement of them. If you have a
25 population, it may be more food for the others, but

1 what you do is if you keep taking the breeding
2 adults out, then recruitment might start to go up,
3 but if their mortality exceeds your birth rate,
4 you're going to have a decline in population
5 regardless of what species it is. So in this
6 particular case, no.

7 And what we're seeing is is we're seeing
8 an overall downward trend in breeding adults, which
9 means that -- and from my telemetry it showed that
10 all 18 tagged birds died. If you have zero
11 recruitment, you're looking at a sink population,
12 which we call it. So any additional death is only
13 going to continue to impact your population. You
14 will not have a rebound.

15 And, yes, food can be a limiting aspect
16 here, but in these populations if we have three
17 nesting birds, we're really lucky, we actually have
18 pretty good food resources, but it brings on
19 another question which is interesting, because the
20 more you fragment your habitat and the more
21 fragmentation that happens, the less grasslands you
22 have, the more natural areas and wilderness you
23 impact, the overall prey availability will
24 decrease.

25 Golden eagles and raptors are apex

1 predators. You will then see a secondary impact
2 not only from line strikes, but that's the other
3 concern we have is our game populations are
4 decreasing, so even though you may have certain
5 species increase like, I don't know, great-horned
6 owls -- they're a great opportunistic species --
7 you'll see a decrease in overall prey availability.
8 So with our pronghorn -- pronghorn is a great
9 example because golden eagles feed on pronghorn.
10 Rabbits, too, prairie dogs. So the more prairie
11 dog towns you lose due to habitat fragmentation,
12 the more pronghorns you lose, you're going to see a
13 secondary impact on your population, a decrease in
14 prey availability and a continued decrease of
15 eagles. And that's one of our main concerns also.
16 So, yeah, good point.

17 Q. Thank you. Tell me about the
18 raptor-friendly -- is it raptor-friendly poles or
19 raptor-friendly equipment on poles?

20 A. It's both because I don't know -- it's not
21 my expertise so I'm not going to speak on it. It's
22 just that I know it exists. I know there's a lot
23 of documentation that I've seen, and I don't dare
24 speak on that because it's not my place.

25 But I'm just encouraging that to be -- I

1 know there's a ton out there with information on it
2 and it's part of the Avian -- oh, what's it called?
3 I think you guys mentioned it in there. Basin is
4 already aware of it because I think they're working
5 with it. So I just encourage that to continue, but
6 I just wanted to see more details on that so we are
7 sure that all of the equipment is -- is in that
8 fashion so we can minimize impacts. Yeah.

9 Q. One of the things that you didn't get to
10 hear that we heard about more either in Killdeer or
11 Tioga, and I hope I'm paraphrasing correctly, we
12 heard today from Mountrail-Williams on the
13 extraordinary demand growth they're expecting, and
14 McKenzie Electric is actually the one that seems to
15 be in the most hurry to get power to. They weren't
16 here today, but their growth is -- it seems almost
17 more dramatic here, at least immediately.

18 So when you talk about working more with
19 U.S. Fish and Wildlife, with yourself, with Game
20 and Fish and all the variety of agencies, when
21 people and jobs are needing power, what's a
22 reasonable amount of time to spend planning this?

23 A. Well, I think it all is under great
24 consideration. It's not for me to judge what's a
25 reasonable time. I'm not sure I understand your

1 question. I'm not an expert on that. I just know
2 that there's a process that's in place and there's
3 a process in place for a reason, that all of these
4 considerations are -- are of grave concern. The
5 health and well-being of the environment, water
6 quality and species diversity is imperative for our
7 humanity, for our future. There's numerous
8 examples of that in history.

9 I think it would be a very short-term
10 jumping decision not to look at the future
11 generation's resources and what's available to
12 them. I don't think it's our right to -- to do
13 activities that continually impact species that
14 would eventually cause the decline and health of an
15 environment that we won't be here to use, that
16 future generations will be. I think it would be --
17 and given the fact that I was out here in western
18 North Dakota for years where people were living
19 pretty modestly and I see extraordinary excess use
20 of wealth, when I look at the fact that United
21 States consumes 25 percent of the world's resources
22 with less than 5 percent of the population and I
23 don't see people starving here like I met people in
24 Uganda and Kenya starving, I think it's worth us
25 taking our time to look at this and not be greed

1 driven because we have future children to consider.

2 And what's the point of having children if
3 we're going to leave them a trashed world with no
4 resources, with no golden eagles to look up in the
5 sky and say, Wow, that's amazing. Because they
6 represent the apex predator that we are. If we
7 lose them, that's a foreshadowing of our own
8 future.

9 So I think the time is not urgent. I
10 think the urgency is making sure that they have the
11 future for them. And I don't see anybody in
12 western North Dakota starving.

13 And I know that from my family and my
14 brother who is living in a recession who is a
15 mechanic, has no college education, who's bankrupt
16 and -- and dealing with food to his children and he
17 would not sacrifice the landscape. I don't
18 understand your question, I guess.

19 Q. Well, the question was is there any limit
20 to how long we would drag this through studies and
21 continually looking at --

22 A. I think ensuring --

23 Q. -- different options to mitigate any
24 potential damages to the wildlife?

25 A. I think until we're sure that we have a

1 future saved.

2 Q. Okay. And then let me switch from
3 costs -- or from time to costs. I think this is
4 like a \$375 million project. What do you think is
5 a reasonable additional cost to put on the
6 ratepayers that are going to end up paying -- Basin
7 Electric isn't really going to pay this, it will
8 eventually be the ratepayers -- to find alternative
9 routes and different equipment to use on the poles
10 or different poles and the variety of things that
11 could be done? How much more would be a reasonable
12 amount to spend?

13 A. How much does the CEO of Basin Electric
14 make and their top executives?

15 JUDGE FETCH: That's an improper -- the
16 Commission is asking questions. It's not up to you
17 to ask questions of the Commission.

18 THE WITNESS: It's a rhetorical question.
19 I think my point is that this is not a corporation
20 that's serving the people in -- in such a utopic
21 way. And I think we all need to accept the fact
22 that there is a cost that gets placed on the
23 wildlife and the people that want to enjoy it.
24 At -- what is the cost of losing lands for hunting?
25 What is the cost for losing lands for fishing?

1 What's the cost of losing an entire species? I
2 don't see those dollars in any budget. I don't see
3 the cost of losing even one eagle. Where is the
4 cost there? And I don't see people that desperate
5 for electricity.

6 I understand we need the infrastructure
7 and I don't think that I ever once during this
8 hearing said that I was opposed to this
9 development, opposed to serving. In fact, I said
10 I've lived in western North Dakota and these people
11 are my friends and I consider them family. And I
12 want them served. Served respectfully and well,
13 but I also speak on their behalf in the fact that
14 they don't want their land trashed in that process.

15 And so I think that there's a compromise
16 to be made and I don't think we have to pit one
17 side against the other in this situation. I think
18 this is about working cooperatively, altruistically
19 and together. And so I don't see that, but I do
20 see a cost that's never in the budget sheets, and
21 that's what's the cost of clean water, what's the
22 cost of grasslands. Grasslands happen to be one of
23 the most endangered ecosystems in the world today.
24 We're living on it. Every time we do disturbance,
25 we're destroying it. We're losing species

1 diversity. What's the cost of species diversity?

2 You may ask me, Well, what should we care?
3 Genetic diversity -- when you have climate change,
4 when you have a blight in your crop, you want
5 genetic diversity. You want that unusual gene in
6 that unique plant that might be out in the
7 grasslands that may give you some solution to some
8 pest or things disturbing you.

9 You may find one unique species out there
10 that may have a unique gene that cures cancer.
11 Genetic diversity is our future for humanity. And
12 every species we lose, every genetic, unique
13 species we lose, we lose an opportunity -- an
14 engineering opportunity for our future.

15 Q. (COMMISSIONER CHRISTMANN CONTINUING)

16 Okay. I think --

17 A. We have to compromise.

18 Q. -- we're kind of getting off of costs.

19 A. But that is a cost.

20 Q. Okay. One --

21 A. It's a huge cost.

22 Q. One other question.

23 JUDGE FETCH: Hold on. Hold on. Wait for
24 a question.

25 Q. (COMMISSIONER CHRISTMANN CONTINUING)

1 Thank you. It's kind of a multiple part one, but
2 you had mentioned something, and I don't recall the
3 terminology of it or the distance, but it had to do
4 with the distance and it was a small fraction of a
5 mile, and you said a half a mile is more than norm,
6 but even that's not enough. What was it that --

7 A. What's your question?

8 Q. What was the distance that you were
9 referring to?

10 A. They referred to 1,000 feet is a
11 recommendation -- or I think they had consulted the
12 Game and Fish Department and they had buffered --
13 there was no nest, according to their document,
14 within 1,000 feet.

15 Q. Okay. And so if we took it up to
16 2,600 feet, based on just your expertise of the
17 Badlands area, is it possible to put a power line
18 through the Badlands or would that mean that to get
19 power to McKenzie County, it would somehow have to
20 go completely around there?

21 A. That's just what the Forest Service
22 management plan and most of the Fish and Wildlife
23 recommendations in the past have been, and I would
24 just say that's going to be the minimum. They can
25 do it. I'm asking them, if they can, to maximize

1 that and even go further, if possible, because what
2 we're seeing is, is from the new data that's coming
3 out, is that research that we didn't have when
4 those recommendations were made. Those
5 recommendations aren't even really founded on any
6 solid research.

7 So the solid research that's coming out
8 now is conflicting with that saying that may not be
9 enough, and especially when it comes to a power
10 line. If it comes to construction that may go in,
11 it's out of sight, it goes in when the nests aren't
12 occupied and then it's there, it may not impact as
13 much. So your oil wells will probably be a little
14 better there, but when you have a power line that's
15 a permanent structure that has a threat for line
16 strikes because that area surrounding is used for
17 hunting and dispersal and migration, I just want to
18 encourage them to move it further, if they can,
19 because that -- that .5 buffer really isn't founded
20 on science. And the science that I've found says
21 they're using that a lot for flying and that's when
22 they end up hitting these things or when they land
23 on them.

24 So my encouragement is just, you know,
25 keep it as far as you can. And it's about

1 be less. I predicted there to be about 200-some
2 potential territories, we call them, but we don't
3 know if they're all occupied. And so -- and that
4 was back in 2011. No surveys have been done to
5 look for new nests or manage this since then.

6 So that's the other challenge is we don't
7 have the funding anymore. It got cut. Nobody's
8 out there monitoring. And so that's where we
9 really want to rely on the companies to do their
10 work and work together so we can save them.

11 Q. Okay. And I've gotten your two main
12 points on following the process, ultimately
13 possibly moving the line and getting the
14 raptor-friendly equipment, those two things.

15 A. Yeah.

16 Q. But tell me, do you see a line through
17 this area that could be workable? Do you think --
18 are you talking threading the needle through this
19 area, or when you say moving the line, are you
20 saying we need a whole different route, like around
21 Killdeer and elsewhere?

22 A. Well, I know in one of the earlier
23 alternatives I thought there was a route further to
24 the -- what was it, to the east? It was to the
25 east maybe. I -- I am really hesitant to speak on

1 where I would recommend it because that takes
2 landowners, that takes their cost, that takes the
3 eagles, that takes the big horn sheep, the
4 wilderness, the sacred lands. I mean that -- I
5 would say an alternative route to there, not going
6 more west, but maybe finding kind of a chute down
7 away from the wilderness, away from the park for
8 certain. I mean those are such core areas.
9 Somewhere -- but without a map, without sitting
10 down and really thinking about it, I don't want to
11 make a public statement to that.

12 But I'm willing to work with them if they
13 do come up with other alternatives to say, Hey,
14 yeah, that's a lot better. I mean the Fish and
15 Wildlife would be great people to work with on
16 that, too, because they're the ones ready to do
17 that. They're in that process, so yeah.

18 Q. And then your endorsement of this GIS
19 application, is that something that helps identify
20 this process --

21 A. Mm-hmm.

22 Q. -- or how is that relevant here?

23 A. Well, I thought it was cool --

24 Q. What does it do?

25 A. Yeah. It's geographic information system.

1 So what it is is it's a really high-powered mapping
2 program that takes different layers of maps. So
3 you can take all the public utilities that you have
4 existing, put that on a map. Then -- and it's
5 virtual. Then you can take all the critical
6 habitat and put it on a map. Then you can put any
7 proposed routes -- put them on a map. You can put
8 where houses are -- landowners' houses are, put
9 them on a map, and any other information that you
10 want to put into your evaluation. So, you know, if
11 you do any evaluation, like with this route, where
12 is the most optimal route taking into consideration
13 all these factors, it does that and it helps you
14 see virtually and visually the -- it allows you to
15 overlay all of those layers.

16 That's how the maps were that I made up
17 there where I could show the oil wells next to the
18 eagle nests. And then you can start to see and
19 even conduct some analyses as where is the minimum
20 cost route, and they even do cost analyses in the
21 program.

22 And so you can put into a cost wilderness
23 as a cost, park -- being too close to the park is a
24 cost. You could program it so that each eagle nest
25 is buffered by a certain distance or a territory.

1 And then it comes up with some
2 alternatives. And then you can do different routes
3 and modify it. And that's why I was excited they
4 had that because that could be a real good tool
5 for -- for all of us in considering everybody's
6 considerations and concerns.

7 Q. Okay. I'm sorry. I'm familiar with GIS.
8 I just thought there was some specific application
9 to this eagle and raptor that --

10 A. It's just that we have the data
11 digitized --

12 Q. Okay.

13 A. -- and so it would be easy to overlay --

14 Q. Overlay it. Okay.

15 A. -- and they could get that with the
16 federal government and work with them. And that's
17 what the government usually does, is they have all
18 that. Now, some of that's sensitive data so they
19 can't give it out, but you could work cooperatively
20 with them to find a way to do that.

21 Q. Okay. There's an existing power line
22 through this area. Has that been detrimental to
23 the -- the golden eagles and the bald eagles in
24 your estimation?

25 A. Well, you'd have to check with the federal

1 agent. I just get the raw data as to where -- that
2 we have electrocutions, you know, so I know we've
3 had a number of electrocutions. He's the one that
4 processes any take or anything that's gone through
5 his thing.

6 Q. Okay.

7 A. I can check the location of where my
8 electrocution -- the bird that I collected
9 personally that was electrocuted, and it was out
10 here and I don't know its exact location. So that
11 data should be available through the federal agent
12 to find out.

13 And with that route, you know, I will say
14 that it makes some sense to say, wow, there's
15 already a line here, there's already a road here.
16 What's -- it doesn't seem to make sense to use a
17 corridor. In some areas that may be the case.
18 Coupling up with things would minimize impact
19 elsewhere. In this particular case, the challenge
20 is is cumulative impact is bad in an area where you
21 have critical habitat.

22 So at this point it doesn't work in that
23 way because we have the park and wilderness and
24 core eagle and big horn sheep habitat. So now what
25 you're looking at is not minimizing your impact

1 somewhere else as much as cumulative impact in that
2 core area. If this was like, say, one option on
3 the Killdeer route is to move it along 200 because
4 200 is already a corridor, it takes it off the
5 mountain, in that case coupling up your power lines
6 and stuff like that would probably work from an
7 environmental perspective.

8 In this particular area, because you have
9 a national park and proposed wilderness, you're
10 just adding on multiple things that degrade
11 already, you know, threatened habitat that we could
12 use. And so you don't want to do that there. If
13 you're looking at it from an environmental
14 perspective, you know, yeah, as far as those costs.

15 Q. Would you have an estimation of the number
16 of miles through the park that is critical?

17 A. Oh, the whole park is critical.

18 Q. I mean through that corridor with the
19 proposed route now.

20 A. Oh, I can't. I mean the whole area is
21 fairly critical. What you'll have to do or they'll
22 or whoever is to identify all those territories.
23 Like they can take the map that I've given the
24 Forest Service or Fish and Wildlife and they can
25 help and sit down and find out what -- if there is

1 a route that would even -- I mean there's so many
2 territories throughout that. I don't -- I can't --

3 Q. Okay.

4 A. -- I mean I didn't have time to run that
5 route.

6 Q. Right.

7 A. And I could. If somebody gave me the GIS
8 location of the route, I could give you a map that
9 would show you kind of the threatened areas, but I
10 don't know that off the top of my head.

11 Q. Okay.

12 A. Good question, though --

13 Q. And then in terms of the process, this is
14 our -- from Randy and I, it's our first big
15 transmission line siting, and Brian's been at this
16 a few times, I think. So my understanding of the
17 process is this is moving forward and it's moving
18 forward in tandem with this whole NEPA and federal
19 process.

20 A. Okay.

21 Q. Our -- any sort of order that we would
22 grant would be contingent on the federal order.

23 A. Okay.

24 Q. So from my perspective, I'm really
25 counting on that process to move itself and carry

1 it out --

2 A. Okay.

3 Q. -- and -- and all the experts who
4 understand this far better than I do and are much
5 better equipped to say what the best route is from
6 an environmental standpoint and take all those
7 factors into consideration. That process will work
8 and ours -- any order that we would do would be
9 contingent on that process. So I think from your
10 perspective, hopefully that gives you some comfort
11 knowing that we aren't and never have suggested
12 that we're circumventing that or that the company
13 isn't somehow immune from having to do that. They
14 are required to do that. That's just the way it
15 is, so --

16 A. Okay. That's helpful. Thank you.

17 Q. And hopefully you'll stay involved in that
18 process --

19 A. Yes.

20 Q. -- and these --

21 A. Yeah.

22 Q. -- issues will be addressed.

23 A. Thank you.

24 COMMISSIONER FEDORCHAK: So thanks again
25 for your time.

1 THE WITNESS: Thank you.

2 JUDGE FETCH: Any follow-up from the
3 Commission?

4 COMMISSIONER KALK: Yes, Your Honor.

5 JUDGE FETCH: Commissioner Kalk.

6 **FURTHER EXAMINATION**

7 **BY COMMISSIONER KALK:**

8 Q. Doctor, I love having good witnesses. Not
9 that the other ones weren't good. Okay. I
10 appreciate the passion.

11 The -- I think Commissioner Fedorchak -- I
12 know she did a much better job explaining what I
13 was trying to explain earlier about this shared
14 process, but it does -- if perchance the NEPA comes
15 back and they don't do something that this
16 Commission thinks we want to do, we still can do
17 it. That's why it's imperative that you're here
18 today.

19 But also it's -- even more so you've got
20 to get this information to the decision-makers in
21 NEPA so when I think the Rural Utilities Service
22 signs the record of decision, whatever that says,
23 that your information is included in that.

24 A. Yeah.

25 Q. So I just had two follow-ups. The --

1 what's the wing span of an adult male?

2 A. Well, females are 20 percent larger
3 usually on average, so --

4 Q. So there you go. I'm -- okay. So what
5 is --

6 A. So about this. About -- they can be about
7 seven -- seven feet. It varies. Don't quote me on
8 that. We can look it up. To be honest, I --

9 Q. Let me rephrase --

10 A. -- that wasn't critical to my research.
11 Sorry.

12 Q. Let me rephrase the question.

13 A. Okay.

14 Q. What's the wing span of the largest
15 raptor, the golden eagle?

16 A. Condor.

17 Q. Oh, let me rephrase it again. What's the
18 wing span of the largest golden eagle on average?

19 A. I don't -- around seven feet. About as
20 long as my -- my arms are here, so that's an
21 approximate and that's not exact.

22 Q. Okay. Where I'm going with this couple
23 questions is that if the lines themselves are
24 farther apart than the wing span of the animal, the
25 bird, it would seem to me there's no way they can

1 be electrocuted from these lines because there's no
2 contact points. So electrocution for a 345, as
3 long as these lines are farther apart than that, I
4 don't know how they would get electrocuted.

5 A. And that's outside of my expertise. So
6 that's great. That's why I just simply say I ask
7 for raptor-friendly equipment and poles and we go
8 from there.

9 Q. But I would give you the argument that a
10 smaller line, a 115 kV line which will eventually
11 be built because of this, there may be that impact.

12 A. Yeah. And that's this secondary
13 development I was talking about with the oil wells,
14 the fact that this is going to run, and we know
15 that tons of development is going to branch off of
16 that; right?

17 Q. Sure.

18 A. So, yeah, I mean even stock ponds. So I'm
19 not an expert on these lines. All I'm asking is
20 that they make those considerations and that
21 because this big line is going in, we do know
22 there's going to be offshoots and with that we've
23 got to consider that whole package.

24 COMMISSIONER KALK: All right. Thank you
25 very much.

1 THE WITNESS: Yeah. Thank you.

2 JUDGE FETCH: Any further questions from
3 the Commission?

4 Ms. Jacobson?

5 MS. JACOBSON: No, Your Honor.

6 JUDGE FETCH: Mr. Armstrong?

7 MR. ARMSTRONG: No.

8 JUDGE FETCH: Mr. Lein?

9 MR. LEIN: No, Your Honor.

10 JUDGE FETCH: All right. Thank you very
11 much.

12 THE WITNESS: Thank you very much. I
13 appreciate it.

14 JUDGE FETCH: And thank you, to Basin, for
15 lending its PowerPoint equipment. We are going to
16 take a ten-minute recess.

17 (Recessed at 3:47 p.m. to 4:00 p.m.)

18 JUDGE FETCH: Okay. Let's come back to
19 order. All right. The time is four o'clock p.m.,
20 Central time. We're back on the record.

21 And at this time we have someone from the
22 public already seated. Would you state your full
23 name, please.

24 THE WITNESS: Constance,
25 C-o-n-s-t-a-n-c-e, Triplett, T, as in Tom,

1 r-i-p-l-e-t-t. I generally go by Connie.

2 JUDGE FETCH: All right. Thank you.

3 (Witness sworn.)

4 JUDGE FETCH: Thank you.

5 All right. And state if you're
6 representing someone and then give your testimony.

7 **CONSTANCE TRIPLETT,**

8 being first duly sworn, was examined and testified
9 as follows:

10 **STATEMENT**

11 **BY MS. TRIPLETT:**

12 MS. TRIPLETT: Absolutely. Thank you.

13 My name is Connie Triplett. I live in
14 Grand Forks, North Dakota, and I'm here in actually
15 a variety of circumstances, wearing at least three
16 different hats, I guess.

17 I'm here as a citizen of the state with a
18 particular fondness for the landscape and history
19 and culture of the Badlands, despite the fact that
20 I live on the far opposite side of the state. I
21 get out here as often as I can. I'm here as a
22 member of a conservation-minded group which focuses
23 primarily on public lands. I'm here as a lawyer
24 with a concern that federal laws are not being
25 adequately complied with. And I'm here as a state

1 legislator with some pretty serious concerns about
2 state law and process. And by that I don't mean
3 anything that you all are doing here as the PSC,
4 but rather other agencies' processes which I'm
5 going to tell you about.

6 From each of these perspectives, I
7 respectfully request that the Commission deny Basin
8 Electric's application for waiver of procedures and
9 timelines. I will argue that Basin has overstated
10 the urgency of the project and that shortening the
11 timelines is not necessary. Further, I will argue
12 that the adverse effects from this project as
13 proposed are clearly more than minimal and
14 therefore that you, as the Public Service
15 Commission, have no authority under state law to
16 waive those procedures and timelines set out in
17 statute.

18 I will also suggest that there are
19 alternate means to site energy conversion
20 facilities in western North Dakota, which I think
21 will result in a more efficient use of resources
22 and a better final product. And I will make an
23 effort to say, as I'm going along, which of those
24 hats I'm wearing as I discuss so that I don't leave
25 you wrong impressions.

1 I do want to emphasize that I am not
2 against the use of electricity. I believe in
3 electricity. I am not against transmission lines.
4 I am in favor of electric reliability. I am in
5 favor of planning ahead.

6 But I'm also in favor of following state
7 and federal law in the process of siting such
8 transmission facilities. I am in favor of
9 transparency and thoroughness in government
10 decisions which affect the lives of the citizens of
11 North Dakota. I'm also in favor of a little
12 humility when we try to guess what the future may
13 hold. Estimating 20 years out is a long time.
14 Whatever we're estimating for 20 years out is
15 likely to be wrong in one direction or another.

16 You know, 20 years ago, who would have
17 ever considered that I could sit here with an
18 electric laptop and not have it plugged in, right,
19 that it would work without being plugged in,
20 wirelessly? Maybe most electronic appliances will
21 be powered wirelessly from satellite in 20 years
22 and maybe power lines will be obsolete. So I think
23 we have to do what we do with a little sense of
24 humility.

25 But first I think urgency is the most

1 important question to your decision about waiver.
2 At page five of Volume I of its application for
3 waiver, Basin asserts that it needs the waivers,
4 quote, to prevent potentially significant delays to
5 the project, end quote. And further it asserts
6 that if delayed, Basin, quote, will not be able to
7 meet the needs of its members, end of quote.

8 The first statement I think is correct.
9 If the Commission speeds up the process, by
10 definition the process will go faster, and,
11 therefore, if you don't speed up the process, Basin
12 will experience delays relatively speaking. So
13 that's just kind of a non sequitur. But if there
14 is no specific showing of a need for speed, then
15 the slower version is the preferred timeline
16 specified in statute and, in fact, is required.

17 So the real question is whether Basin will
18 be able to meet the needs of its members for a
19 reliable source of energy for the foreseeable
20 future if you don't give them the waiver. I
21 believe the answer is unequivocally yes.

22 The same frenetic development which has
23 caused the need for a major increase in electricity
24 can also produce electricity. I am, of course,
25 talking about generating electricity from natural

1 gas, of which we have an overabundant supply right
2 here in western North Dakota and right where the
3 electricity is needed.

4 I suspect that the three of you keep up
5 with the national trends in the various areas in
6 which you have responsibility, so you likely know
7 that natural gas now supplies approximately as much
8 electricity in this country as does coal.

9 I believe it was just a little over a year
10 ago, spring of 2012, when it was reported that
11 natural gas and coal were each supplying about
12 36 percent of the nation's electric needs and all
13 other sources combined were supplying the remaining
14 28 percent. You also know that Basin has built or
15 is building six natural gas peaking plants in
16 western North Dakota. They reported on that this
17 morning. I'm sure you also know that Basin has
18 recently commissioned a full-scale natural gas
19 electric generation facility in South Dakota. So
20 they know how to do this.

21 One benefit of generating electricity from
22 natural gas is that a natural gas facility can be
23 planned, designed, sited, permitted and built
24 apparently within about 24 months. It's been done
25 all over this country. Basin Electric has

1 demonstrated in the last couple of years that it
2 also knows how to do that with the South Dakota
3 plant.

4 Another benefit of natural gas is that it
5 can be piped near to where additional electric
6 generation is needed, minimizing the need for long
7 transmission lines.

8 Another point regarding the long-term
9 need. I do understand that the needs analysis was
10 completed for this project without any
11 consideration of whether the oil industry might
12 move toward the concept of distributed generation
13 as they set up multi-well pads where the gas from
14 existing wells, the first hole-to-production kind
15 of well, could provide a substitute fuel for diesel
16 engines, relieving some of the traffic on our
17 roads, and also a small electric plant right on
18 site that would need to be -- that would not need
19 to be hooked to the grid. It might happen. It
20 might not. There's a lot of research ongoing about
21 such issues and it is certainly technically
22 possible.

23 Now, I want to say that I -- I know a
24 little bit about electricity. I know how to turn a
25 light switch on and off. I will tell you that I

1 don't know how to wire a switch so that it will
2 work on both sides of a room because I've tried
3 that and failed, so that gives you the limits.

4 I do understand the difference between
5 electric generation and electric transmission. I
6 understand the need for connectivity with the
7 larger grid. I learned a new word this morning
8 from one of these gentlemen who referred to
9 something as islanding. I like that word. That
10 islanding of generation is certainly not the
11 preferred way to deliver electricity, but it may
12 not be the end of the world in a sensitive area.

13 I also believe that natural gas
14 generation, whether a peaking plant built by Basin
15 or by an industry group on its own behalf, is
16 clearly available to prevent an emergency situation
17 in North Dakota. So my comments about natural gas
18 are not necessarily intended to suggest to Basin or
19 to its member cooperatives how to accomplish their
20 objectives over the long-term. That's their job,
21 not mine.

22 My reason for bringing this up is to make
23 the point as clearly as I can that I believe there
24 is no emergency here. There is no urgency which
25 would legally allow you to waive the standard

1 requirements of the Energy Conversion Facilities
2 Act, the siting act.

3 So moving on to a slightly different
4 topic. Oh, dear, I lost myself. One moment,
5 please. Did this in my hotel room last night. Had
6 no printer.

7 Another consideration that you will be
8 required to make in your decision is whether there
9 is more than a minimal impact to humans and the
10 environment in responding to the waiver
11 application.

12 And now I'm going to speak as a member of
13 a grass roots organization called the Badlands
14 Conservation Alliance. We refer to ourselves as
15 BCA for short. I am currently serving as the
16 president of the board of directors of BCA. You
17 heard from our executive director, Jan Swenson,
18 last week at the first hearing on this matter in
19 Killdeer. I'm sorry that I was unable to attend
20 that hearing to listen to Basin's full
21 presentation. I think I got the gist of it today,
22 but if I say something that implies I don't know
23 what's going on, I'm sure someone will tell me.

24 I believe that Ms. Swenson provided you
25 last week with BCA's mission statement as part of

1 her testimony, but to refresh your memory, we take
2 it as our mission to monitor and comment on
3 proposed activities related to public lands, both
4 state and federal, or on lands which would impact
5 the public lands or the public interest in some
6 way. We are pretty clear that we consider those to
7 be our public lands as well as everyone else's, and
8 we're interested in seeing that they are maintained
9 in a way that will allow for the benefit of the --
10 of future generations.

11 For this project, BCA's involvement has
12 been -- we have focused our attention primarily on
13 this direction of the project that passes very near
14 to the North Unit of the Theodore Roosevelt
15 National Park and to the Long X Divide suitable for
16 wilderness area and the Lone Butte inventoried
17 roadless area. And you saw those pictures this
18 morning as Basin was presenting it and they have
19 referred to it as threading the eye of the needle.

20 All of those areas are along line 298 of
21 the proposed path. All of them are already
22 seriously impacted by -- by the increased traffic
23 along Highway 85. Those areas are at further risk
24 from the suggestion that Highway 85 should become a
25 dedicated corridor to carry more and more of the

1 infrastructure associated with moving oil to
2 market.

3 And just slipping into legislative mode
4 for a moment, you may or may not know that the
5 legislature is actually holding hearings in one of
6 its interim committees this -- during this interim
7 about whether to officially designate Highway 85 as
8 an official corridor for piling on of
9 infrastructure.

10 BCA's primary objection to a transmission
11 line in the area of the national park is the visual
12 disturbance that has been discussed already here
13 today. We know that the WAPA line is already
14 there, but the Basin line is proposed to be
15 considerably higher and therefore visible over a
16 much larger area of the park.

17 People go to national parks for a wide
18 variety of reasons; one of the main reasons is to
19 seek a natural experience that they cannot access
20 in the towns and cities in which most people live
21 these days. Peace, solitude, a chance to commune
22 with nature, to observe wildlife in something
23 approaching a natural habitat, to see and
24 photograph beautiful landscapes, to try to imagine
25 what it was like before there was so much

1 development. Every time a well is sited within
2 view or hearing of the park, that experience is
3 diminished. Every time there is new construction
4 along the park's boundary, that experience is
5 diminished. Every time the night sky is lit up
6 with flares, that experience is diminished. A
7 gigantic power line is just one more thing in a
8 long line. At some point the cumulative effect
9 adds up to a greatly diminished experience.

10 I will also say -- it's not here in my
11 written testimony, but we also share the concerns
12 presented by Dr. Coyle just before me about
13 wildlife and the integrity of the landscape of the
14 park and the areas across the road and -- and
15 slightly away from the park in terms of wildlife.

16 And I -- I do hope that I'm not repeating
17 too much of what Ms. Swenson said last week. I
18 know that she covered some of these areas in more
19 detail and left some of them for me, so not having
20 heard her testimony, we may be overlapping to some
21 degree, but I hope we're not contradicting each
22 other.

23 BCA's objection to the Killdeer Mountains
24 comes from a different source. It has to do with
25 the public interest in the integrity of the

1 Killdeer Mountain Battlefield. Even though most of
2 that land area is privately owned, we believe that
3 there is a public interest in seeing it remain
4 undeveloped. The private landowners deserve a
5 great deal of respect for the fact that they have
6 preserved the area of the battlefield for nearly
7 150 years in a nearly pristine state.

8 I understand that they have allowed tribal
9 members to use the land for ceremonies and for
10 meditation and that the tribes consider that area
11 to be sacred land because there are burials there
12 and they're really not willing to tell non-Natives
13 where those burials are for fear that they will be
14 disturbed. So that's an issue. It's a little
15 easier to avoid a cemetery when there are markers
16 on the top that say where the cemetery is, but I
17 doubt that you would want a transmission site to go
18 through your grandparents' grave stones and they
19 don't want a transmission site through their
20 ancestors' death place.

21 I understand that you received a fair
22 amount of testimony about the Battlefield at
23 Killdeer Mountain at the first portion of this
24 hearing process, but I want to add some background,
25 perhaps mostly for the benefit of Basin Electric,

1 because as I read in the paper and was alluded to
2 here this morning, they apparently were thinking of
3 the -- the Killdeer Mountain Battle site as the
4 little quarter-acre or one-acre plot, whatever it
5 is, that the State of North Dakota owns on which
6 they put a memorial, but the area, I'm sure they
7 have learned in the last couple of weeks, is really
8 much larger than that.

9 And I trust you will stop me if I'm
10 completely repeating things that you heard at
11 Killdeer. But many historians consider that tragic
12 event to be of great historical significance, in
13 some ways more significant than Wounded Knee or the
14 Battle of the Little Big Horn for the policy
15 implications for Native American tribes. It was
16 the first time that the military used what you
17 could call massacre -- I don't know what word in
18 the English language that describes it better --
19 just indiscriminate killing of everyone in front of
20 them as a way of intimidating and driving Indians
21 away. They completely gave up the centuries-long
22 tradition that this country had engaged in of
23 negotiating and signing treaties with Indians and
24 kind of politically, forcibly buying them off and
25 pushing them away, maybe not happily, but at least

1 not with wholesale slaughter.

2 This battle was supposedly a punitive
3 expedition following from the 1862 Dakota Sioux
4 uprising in southern Minnesota, where Indians
5 starving and frustrated with the reservation system
6 down there rather indiscriminately and wantonly
7 killed local residents in southern Minnesota. The
8 Army was sent out to search down and kill the ones
9 who had done it, but when they found a group of
10 Indians at Killdeer, the very large majority of the
11 Indians who were there had nothing to do with the
12 Dakota Sioux Uprising. They were from different
13 tribes. They had no idea why they were being
14 attacked. They had done nothing, nothing to white
15 settlers or to the military to deserve being
16 slaughtered the way they were.

17 This is a piece of American history that
18 is not much understood, maybe partly because the
19 battlefield is all on private land and the people
20 who own the land, while they have done as I said a
21 magnificent job of keeping the area pristine and
22 allowing the Indians to come there for their own
23 purposes, they have never allowed a full-scale
24 cultural artifact survey to be done.

25 The American Battlefields Protection Act,

1 which is a part of the National Park Service, has
2 done sort of boundary surveys and kind of loosely
3 defined the area as best they can. They have
4 defined a core battlefield area where they think
5 most of the military action happened, and then they
6 have a much larger area which incorporates much of
7 the Killdeer Mountain area where they believe
8 people retreated to or were tracked down and killed
9 or whatever. There's much that is known from the
10 military's perspective. There is much that is not
11 known from the Native perspective.

12 And I had the experience this past session
13 of being a cosponsor on a bill that tried to put
14 some state money into a more thorough survey. The
15 bill died and so that more thorough survey is not
16 happening. I am pleased that Dr. Isern from NDSU
17 has gotten a separate grant from the American
18 Battlefields Protection Act and is going forward
19 with a small study.

20 But as part of that bill in which I tried
21 to get a quarter of a million dollars for a
22 cultural resources study of the area, I had put the
23 word out to the tribes who were involved that the
24 hearing was going to go on, and tribes -- several
25 different tribes turned up with their -- their

1 tribal historic preservation officers. And their
2 testimony was as riveting and as poignant as any
3 testimony that I have heard during my time in the
4 legislature.

5 They talked about being fearful of even
6 speaking about that battle all these generations
7 later, fearing for their families' safety if they
8 would speak out, and they -- they were so
9 appreciative of the fact that we were trying to
10 study their history and this particular tragic
11 moment in their history, and they were really quite
12 devastated when the bill died.

13 But there is a lot to be learned there,
14 but I don't think that they are just going to be
15 willing to sort of write their emotions and their
16 feelings about this place in a comment letter. You
17 know, I think someone has to seek them out. I do
18 understand that because they were made aware of
19 this hearing that they have put in a brief
20 resolution and have now e-mailed it to you and so
21 it will be part of your public input at least, but
22 it doesn't -- it doesn't give you the sense of what
23 I heard that day.

24 And I'm going to take the liberty of
25 telling you that I intend to go back and find that

1 testimony, which is recorded and archived, and I'm
2 going to e-mail it to you. And if you have a
3 couple of hours, I would encourage you to listen.
4 It may not be part of the formal record because of
5 how you have to do things, but I think that you
6 will develop an understanding for why they consider
7 the Killdeer Mountains to be a sacred place to
8 them, both before and after the Battle of Killdeer
9 Mountain.

10 If we value our Native American citizens
11 as citizens of North Dakota, we must not desecrate
12 the site where their ancestors were massacred by
13 our military. For the State of North Dakota to
14 allow a power line to cross that area would be just
15 like running power lines through all of our own
16 cemeteries, which I don't think we allow generally.

17 You've asked a couple of the previous
18 witnesses kind of what it is you want, you know,
19 what -- what would -- what would satisfy you. My
20 suggestion -- and I'm going to say that this may
21 not be a formal representation of the Badlands
22 Conservation Alliance because we don't meet all
23 that often and things have kind of changed here as
24 a result of what we've heard and what we've
25 learned, too, as part of this hearing process. So

1 I'm just going to say that this is my proposal
2 right now. My proposal to you, and I would really
3 hope that you would consider this, is that line
4 298, the stretch from Charlie Creek to Judson
5 simply be eliminated from consideration for all of
6 the reasons you've heard and that Basin be
7 seriously encouraged to do a major reroute of its
8 route. Route this transmission line to the east,
9 then north toward Minot, then west to Williston.
10 And if they need to double-circuit the entire route
11 to make it work, that's what they should do.

12 Going around to the east and then north
13 would allow them to service all of northwestern
14 North Dakota from Minot to the state line to the
15 Canadian border, with the exception of the area
16 between the Missouri River and the Little Missouri
17 River. That would take away the issue of crossing
18 the Missouri. It would take away the issue of
19 crossing the Little Missouri. It would take away
20 the issue of threading the needle. It would leave
21 Watford City, which is the major population center,
22 islanded -- I like that word -- and they would have
23 to rely on the WAPA line that goes through there
24 now and maybe they'd have to reinforce it with some
25 natural gas to pick up the additional need for

1 electric generation.

2 But I think that you should seriously
3 consider that as an alternative. And I know
4 that -- that it's really not your job to tell Basin
5 what to do, that they have to bring these things
6 forward. But I think that's an example of the fact
7 that there are other alternatives out there that
8 they have not adequately considered. And I will
9 say that I also agree with the previous speaker,
10 Dr. Coyle, when she said, you know, ramping up the
11 area from AVS to -- to the Charlie Creek Station
12 is -- would not be an issue if it came down out of
13 the mountains and followed along Highway 200,
14 probably not such an issue.

15 So then the real, real problem is just
16 through the breaks of the Little Missouri and up
17 toward the Missouri River, the line 298. I have no
18 expertise in the relative costs of these systems,
19 but the fact that virtually the entire rest of the
20 country has embraced natural gas for electric
21 generation within the past few years tells me that
22 it's a competitive process generally.

23 And given the uncertainty of federal
24 regulations and what new regulations might do to
25 the cost of electric generation from coal, which

1 has to be a concern for all of us, it may make
2 natural gas more competitive in the future.

3 You are all likely aware of the fact that
4 the legislature in its 2013 session increased the
5 Oil and Gas Research Council funding from
6 \$4 million per biennium to \$10 million for the
7 current biennium with a specific directive to put
8 special emphasis on research which will identify
9 value-added uses for oil and gas products, and
10 that's especially meaning the natural gas
11 by-products.

12 The idea actually came originally from the
13 Empower Commission, which as you know is a
14 legislatively defined group with representatives
15 from every part of the energy sector. It was also
16 supported by the governor. The purpose of the
17 newly proposed research is both to encourage a
18 reduction in the flaring of natural gas and also to
19 diversify the economy of western North Dakota,
20 rather than just continuing to export all of the
21 product being produced.

22 My understanding is that Basin's six
23 peaking plants will use only about 1 percent of the
24 natural gas currently being produced in western
25 North Dakota, so there's plenty left.

1 Approximately 30 percent of all natural gas being
2 produced in North Dakota continues to be flared,
3 which is not your problem but it is an issue for
4 North Dakota government in general.

5 Diversification of electric generation
6 sources is recommended in a report from
7 November 2012 issued by the Joint Institute for
8 Strategic Energy Analysis, and I'm just going to
9 give you the website because this is the report,
10 and unlike Margi, I have a slow printer and I
11 wasn't going to print more than one copy of it.

12 The website is www.osti.gov/bridge. The
13 report is entitled Natural Gas and the
14 Transformation of the U.S. Energy Sector:
15 Electricity, and I would just encourage you to look
16 through parts of it. It's not all relevant, but
17 there are some chapters and some sections and some
18 graphs that model various levels of natural gas
19 usage in the energy sector nationally.
20 Unfortunately, they don't use the Bakken as one of
21 their examples. They have selected several
22 different shale plays around the country and kind
23 of used specific areas as examples. But it gives
24 you an idea of -- of the transformation of the U.S.
25 energy sector in the electricity area over the --

1 over the last few years.

2 And certainly no one can really criticize
3 Basin for not having suggested this as an
4 alternative when they first started because all of
5 this is happening very, very fast, as you well
6 know. I mean these unconventional shale plays
7 really have transformed the world energy market. I
8 mean what is going on in North Dakota is huge, as
9 you know and as all of us know, and it's changing
10 faster than most of us can -- can comprehend.

11 But, you know, when a group like this puts
12 a report together, I think we should pay some
13 attention to it. It was -- this comes from the
14 Department of Energy's National Renewable Energy
15 Laboratory in -- jointly with the University of
16 Colorado, Boulder, Colorado School of Mines, the
17 Colorado State University, Massachusetts Institute
18 of Technology and Stanford University. So pretty
19 good thinking in there probably, and their bottom
20 line really is to sort of encourage people,
21 governments, communities, areas, states, not to
22 become overly dependent on any one source; that if
23 they do make a switch to natural gas, certainly not
24 to overdo it at the expense of coal, for example,
25 that there needs -- that the best path forward is

1 probably some balance of -- of source fuels.

2 I'd like to turn now to the legal
3 perspective and my concerns about NEPA. You've
4 heard it from a couple of different folks that
5 there are concerns out there.

6 The National Environmental Policy Act
7 requires environmental impact statements. You all
8 know that. There's one in progress for this
9 project because Basin plans to finance the project
10 with a loan from the Rural Utilities Service of the
11 USDA. That makes it a so-called major federal
12 action, which brings NEPA into play.

13 The EIS process is not finished. There is
14 no record of decision, as you heard today, none
15 expected for many months. The practical effect of
16 that state of affairs is that there will be no
17 federal permits and there will be no federal loan
18 money with which to build this project until the
19 EIS process is complete.

20 And so given that that is an absolute
21 fact, there is simply no reason for the Public
22 Service Commission to be pushed into rushing its
23 approval of this project.

24 But more than that, more troubling to me,
25 is what appears to be a complete lack of respect on

1 the part of Basin Electric toward this
2 long-standing federal law. The entity that
3 completes an environmental impact statement is
4 required, as you've heard repeatedly today, to
5 examine all reasonable alternatives. And to
6 examine them you have to at least imagine them.
7 You have to imagine what the alternatives are, and
8 that most basic process did not happen here. They
9 did not work at imagining alternatives, apparently.

10 They only listed two lines, A, B, and then
11 they come to you and say, Oh, wait, we need both of
12 them. You know, they -- they may end up being the
13 right choice, they may not be. Certainly what I've
14 suggested of going around the lake to the north
15 would be more expensive, I know that, but, oh, the
16 issues and the problems that you would save
17 yourselves if you -- if you go around to the east
18 and don't go through the Little Missouri Breaks.

19 So, you know, it's not for me to say what
20 the right choice is, but I think that I can say as
21 a lawyer who has read the case law that this is not
22 how NEPA is supposed to work. There -- there needs
23 to be enough imagination in this process that you
24 at least can -- can identify and brainstorm a range
25 of alternatives.

1 So, you know, I think, really, you have to
2 send them back to the drawing board. And I'm
3 pleased that there's a supplemental EIS going on
4 now. I still think it's not enough in terms of the
5 imagination needed to do this right.

6 The idea, of course, is for the EIS to
7 analyze a full range of reasonable alternatives, to
8 take public comment, to engage in interagency
9 consultation and then to choose among the
10 alternatives after all the information has been
11 analyzed.

12 It just feels to me that how we're doing
13 this, the state process piled right on top of the
14 federal process, reflects a profound
15 misunderstanding of the environmental impact
16 process. Basin continues to be involved in that
17 process -- I lost myself again. Excuse me -- yet,
18 they're going ahead with a very specific route
19 request before it's been finished. Apparently they
20 believe, or at least they hope, that the federal
21 agency official from USDA who will be tasked with
22 signing off on the document will simply
23 rubber-stamp their internal decision-making so that
24 everything will look proper after the fact, and
25 that makes a mockery of the federal law. That may

1 not have been Basin's intention, but it is
2 certainly the experience -- excuse me, the
3 appearance of what they are doing.

4 As state public officials, we are all
5 obliged to uphold federal law in a way that does
6 not make a mockery of the process.

7 The fact that the EIS is not complete, not
8 even close, should be enough all by itself for you
9 to deny the request that is before you, but
10 certainly given that I think there is not the
11 urgency that they have suggested, combined with
12 this process, means that you must deny the request.

13 This may be a good place to respond to
14 Mr. Miller's statement from this morning or early
15 afternoon about the roadless areas. I just want to
16 correct a misstatement, and I -- and I know he was
17 just answering a question from you and wasn't maybe
18 prepared for the question. He said in response to
19 a question from one of you that the roadless areas
20 came from an executive order signed by President
21 Clinton without any public input. And that is not
22 correct.

23 The inventory of roadless areas that has
24 been done on all of the federal lands across this
25 country was contemplated by the Wilderness Act,

1 which was passed by Congress in 1964. And, of
2 course, any act that is passed by Congress has
3 public input. Federal agencies charged with the
4 management of public lands were directed in that
5 act by Congress to identify existing roadless areas
6 within their respective jurisdictions. That task
7 was first accomplished in the early 1970s. It was
8 later updated in the late 1970s.

9 There has certainly been a lot of
10 litigation, there's been a lot of ink spilled about
11 roadless areas in this country, and it is quite
12 possible that Mr. Miller was recalling some of
13 that -- those issues that went on in the Clinton
14 administration, but certainly it was not something
15 that was done in the absence of public
16 conversation.

17 This last piece may be the hardest part to
18 say out loud and I -- I sat up until two o'clock
19 this morning trying to decide if I was going to say
20 this in public, but I'm going to because this --
21 this issue is really important to me and I want you
22 all to understand some things that are going on in
23 state government.

24 Commissioner Christmann and I served
25 together in the state legislature. He may be

1 familiar with some of these. The rest of you may
2 or may not. Commissioner Fedorchak, it was your
3 comment in the media last week that got me thinking
4 about this. I want to thank you for a comment
5 attributed to you where you expressed concern about
6 how a project could have gotten this far without
7 communication between the project proponent and the
8 state historic preservation officer relative to the
9 presence of a nationally significant battlefield
10 site in the path of the project.

11 And so I'm going to tell you what I know
12 about how this stuff happens. And I -- I -- I'll
13 just say I don't mean this in any way to be
14 partisan. You all know that I am a member of the
15 minority party in this state and that I have been
16 in the minority the whole time I've been in the
17 legislature and that the majority part has had
18 control of the governor's office for the whole
19 time, so it may sound partisan, but it is
20 absolutely not meant to be. It is just my
21 observations of some dysfunction in the executive
22 office, which I know neither you nor I have any
23 control over. But as a separate constitutional
24 commission answerable directly to the voters, the
25 three of you are kind of off to the side of that

1 and you just may not be aware of some of this.

2 I just wanted to reference briefly three
3 situations that have occurred over the past few
4 years in various executive branch agencies which
5 suggest that not all agencies in this state have
6 equal rights to speak regarding the rapid pace of
7 oil development in our state. And, again, I think
8 we can all agree that it is the rapid pace of oil
9 development that is driving this project. I'm
10 going to offer these three examples and then I'm
11 going to tell you what I think you could do about
12 it if you wanted to.

13 One is -- one example is stifling
14 communication by a direct gag order. A couple of
15 years ago the state Game and Fish Department
16 produced a document which was really nothing more
17 than a literature survey from other jurisdictions
18 because the department had almost no money of its
19 own with which to do actual research on the ground
20 in North Dakota, so they did a literature survey
21 which suggested that in other places oil
22 development had had negative impacts on wildlife.
23 And that was considered in our state under the
24 previous administration to be too controversial to
25 see the light of day. The department was ordered

1 by someone in the governor's office not to publish
2 the document. And it only came to light more than
3 a year later after another legislative session had
4 passed when it was leaked to the press. That's not
5 a good way to run government.

6 Stifling by budget limitation is another
7 thing that has happened fairly repeatedly. I'm
8 going to give you one example. The State Health
9 Department has very important legislatively
10 mandated duties to protect the environmental health
11 of our state's land, water and air. The workload
12 of the environmental division of the health
13 department has increased dramatically with the
14 increase in oil and gas law and, yet, that
15 department has been afforded almost no additional
16 workforce during the past several legislative
17 sessions while the Department of Mineral Resources,
18 oil and gas division, has received nearly 40
19 additional employees and has been released from the
20 state classification system so that their employees
21 can be paid more competitively. So if you don't
22 hear from --

23 MR. ARMSTRONG: Your Honor, at this point
24 I think -- you know, Ms. Triplett, I think there's
25 a relevance issue there. These seem to be

1 legislative and political issues for a different
2 branch of government, not relevant to the siting
3 act which we're here today to discuss.

4 THE WITNESS: May I respond?

5 JUDGE FETCH: Yes.

6 THE WITNESS: My response is that they are
7 relevant to the communication and -- the level of
8 communication and the completeness of the
9 communication that the PSC can expect or cannot
10 expect from different agencies, and so I think it's
11 very relevant.

12 And the next one -- and I have one more
13 and I think it's the most relevant, if I may
14 continue.

15 JUDGE FETCH: Mr. Armstrong, I note your
16 objection. I think that the preamble to this
17 testimony was in response to something that
18 Commissioner Fedorchak raised, and so I'm going to
19 allow the testimony and the Commission may give it
20 whatever weight it wishes to. Thank you.

21 Continue.

22 THE WITNESS: Just one more example.
23 Stifling by time limitation. The state historic
24 preservation officer has both state and federal
25 responsibilities for protecting the cultural

1 resources located within our state. Yet, when
2 state-owned lands are nominated for oil and gas
3 leasing, the SHPO has traditionally been given
4 exactly a two-week window of time in which to
5 respond to hundreds of new lease proposals with no
6 budget to send anyone out in the field.

7 And I learned that when the situation was
8 in the media with the Jepson family on the Killdeer
9 Mountains, when they had a parcel of land directly
10 across the road from a state trust land. And so
11 they had objected to a permit being given on state
12 trust land right across the road from their -- from
13 their homestead.

14 And Mr. Helms from the oil and gas
15 division was quoted in the paper as saying that
16 he -- and they had alleged there were cultural
17 artifacts, I should say, on the property.
18 Mr. Helms was quoted in the newspaper as saying he
19 knew for a fact there were no cultural artifacts
20 because the state historical officer had said so.

21 So being the curious type, I went and
22 talked to the state historic preservation officer,
23 and I said, "Is that true that you said there was
24 nothing there for sure?" And he said, "No, all I
25 did is send him what I had in my database. It's

1 what I always do." I said, "Well, what did you
2 have in your database?" And he said, Just like he
3 said, I told him there were, you know, like a gas
4 line and a water line that had gone through on the
5 opposite side of the section and they had somehow
6 been federal -- you know, had had some federal
7 involvement in paying or something so that they had
8 to do cultural resource inventories.

9 And so when he was asked by oil and gas
10 what do you know about this state school section,
11 he sent back by e-mail what was in the database. I
12 said, "Did you" -- "did you make it clear to
13 Mr. Helms that you didn't actually check the actual
14 site where the oil well was going to go?" And he
15 said, "No. I guess I assumed he knew that."

16 So my take from that is that Mr. Helms was
17 not lying when he said what he said. He was just
18 misinformed about the very limited response that
19 one gets when one sends a request to the SHPO in
20 this state.

21 The requests that you get -- the response
22 that you get back is they check their database and
23 see what's there.

24 Now, for the Killdeer Mountain
25 Battlefield, there's nothing there because the

1 cultural work has never been done because it's on
2 private land. And so, you know, it would be nice
3 if he'd like write a special little paragraph and
4 maybe just say that, you know, I don't know of
5 anything, but gosh there might be something there
6 because there was a really significant battle there
7 and we haven't been allowed on the property. But
8 all he does is just send back what he knows, the
9 positive things that he knows.

10 And so that creates serious misinformation
11 and confusion and causes a lot of anger, frankly,
12 among the public, who knows better on some of these
13 individual issues.

14 So I just want you to be aware that when
15 you receive information back from state agencies,
16 that it will not be as thorough or as comprehensive
17 as the information that you will receive back from
18 federal agencies because they're not given a
19 budget, they're not given time and sometimes
20 they're told very specifically not to get involved.
21 So there. I said it.

22 My proposed solution, if you want useful
23 information from state employees, I think you're
24 going to have to subpoena them. Put them under
25 oath and ask them the specific questions you want

1 answered, because some of them are, quite frankly,
2 afraid that they would lose their jobs if they said
3 anything that might be interpreted by anyone as the
4 slightest effort to slow down the freight train
5 that is going through our state right now. I've
6 heard that from more than one person in more than
7 one agency and I -- it's an issue.

8 So moving on. My final point, a different
9 topic that came up in the last legislative session.
10 Basin Electric came to the natural resources
11 committee and asked for additional authority to
12 begin eminent domain proceedings prior to having
13 permits. The bill passed the legislature over my
14 very strong objections, but that's not the point.
15 The point is that I made -- one of the points I
16 made in arguing against that was my concern that as
17 commissioners you would not be able to resist a
18 project -- you would not be able to resist
19 approving a project that was so far advanced if
20 Basin comes in and says, We've done all this work,
21 we've laid it out, here are the maps, it's all
22 good, we've got 78 percent of the people who want
23 it, we've already done it and especially if they've
24 already gone out and done eminent domain. And I
25 want to say on the record that I'm very, very

1 pleased that Basin has not chosen -- or has chosen
2 not to exercise its newly acquired right of advance
3 beginning of eminent domain so far. I mean I'm
4 very pleased that they did not use that
5 legislation. I'm still disturbed that they asked
6 for it and I'm disturbed that the legislature gave
7 it to them, but that's a different issue.

8 I just want to tell you that your regular
9 attorney assured the legislature -- legislative
10 committee that the Commission is fully capable of
11 resisting any such perceived pressure and so I just
12 want to ask that you do that. I know it's going to
13 be difficult given all of -- what looks like really
14 good work that Basin has done to try to make the
15 best of the route that they initially selected.

16 I know it's going to be hard, but I think
17 you have to do it, at least with regard to that
18 piece that goes through the breaks. You have to
19 reject that. You have to send them back to the
20 drawing board and tell them to find a better route.

21 And, you know, my suggestion east around
22 the lake would take care of everything except the
23 inter-river section. There may be other ideas out
24 there. I'm not saying you should take my
25 suggestion. I'm just saying my suggestion proves

1 to you that there are other options out there that
2 have not been considered and that need to be
3 considered.

4 I will stand for questions -- or I will
5 sit for questions.

6 JUDGE FETCH: Thank you.

7 Ms. Jacobson, do you have any questions?

8 MS. JACOBSON: No, Your Honor.

9 JUDGE FETCH: Mr. Armstrong?

10 MR. ARMSTRONG: No, Your Honor.

11 JUDGE FETCH: Mr. Lein?

12 MR. LEIN: No questions, Your Honor.

13 JUDGE FETCH: Well, I'm pretty sure we
14 might have some over here. Commissioner Kalk.

15 COMMISSIONER KALK: Yes, Your Honor, a
16 couple questions.

17 **EXAMINATION**

18 **BY COMMISSIONER KALK:**

19 Q. Thank you, Senator, for taking the time to
20 prepare your very thorough testimony. And it's a
21 role reversal for us, for us to be asking you
22 questions, because usually we're in front of your
23 committee for whatever it might be.

24 The -- I was taking a lot of notes as
25 you've been going, so please excuse me if I jump

1 around --

2 A. Sure.

3 Q. -- quite a bit.

4 I'll start with the first one I can think
5 of. The -- you talked about cautioning the
6 Commission to waive procedures, and my
7 understanding of what the company is asking for is
8 they're asking us to waive the procedure, to have a
9 combined corridor hearing and route hearing instead
10 of having a corridor hearing and a route hearing.
11 Is that what you're talking about?

12 A. Certainly part of it. Excuse me. Yes. I
13 mean anything that they're wanting waived, I mean
14 whether it's that or anything else in the future,
15 I'm just saying that because the environmental
16 impact statement isn't even done yet, all of this
17 is premature. I don't think that we should even be
18 at this point having the hearing. I think you
19 should continue the hearing and reopen the hearing
20 to the public when the environmental impact
21 statement record of decision has been signed.
22 That's what I think.

23 Q. Okay. But I'm going on just their
24 application. And one thing that I read out of
25 their application that they're asking us to waive

1 is basically waiving instead of having two
2 hearings, to have one hearing. The rest -- I
3 appreciate your dialogue, but I don't see anything
4 else that they're asking us to waive in the
5 application other than combining the hearings. Am
6 I missing something in the application?

7 A. Well, I think there is -- you're missing
8 the main point here, which is the kind of implied
9 timeline, which is you should not have even called
10 this hearing until the EIS is done.

11 Q. Okay.

12 A. So it's a -- you know, put it on hold,
13 continue it until it's done, then call a hearing.
14 If you want to consider this to be a corridor
15 hearing, I suppose you could do that. But I think
16 if -- if anybody takes my advice, you'd have to
17 start over again because there would be more
18 alternatives to consider. So --

19 Q. I appreciate your feedback on that. And
20 you were probably in the room when I talked with
21 the doctor about my background and experience with
22 NEPA. And it's not in North Dakota, it's in
23 California, but it was always a dual track, where
24 I'd be working with California EPA the same time
25 we'd be doing the federal NEPA. There was always

1 consultation back and forth.

2 So I guess perhaps different jurisdictions
3 do it differently, but would you agree that it is
4 not uncommon to be doing dual paths as we're doing
5 now?

6 A. You know, if North Dakota had a mini EPA
7 to be doing it, I would think that would be okay,
8 but the fact is we don't. The process that we have
9 really kind of implies that the environmental
10 impact statement has already been done. You know,
11 I think because they're coming to you asking for
12 permits, you know, as opposed to if they were
13 coming here working on an environmental impact
14 assessment or environmental impact statement, if we
15 were one of the states that had a so-called mini
16 NEPA law, then I think it would be okay.

17 Q. Some states have a SEPA.

18 A. Right. Yes. State -- I mean it's the
19 same thing, I guess, mini NEPA, SEPA, it's the same
20 thing.

21 Q. Okay. On that line, you talked a lot
22 about finding remains from the Killdeer Battlefield
23 or perhaps anywhere along the route. My experience
24 in other venues has been that riverbanks are often
25 burial grounds that we don't know about so that

1 companies always need to put procedures in place so
2 that when you do find remains, that you properly
3 take care of them, whether it's a reroute, a
4 reburial procedure.

5 So you're saying that something like that
6 is not appropriate?

7 A. I think it's not appropriate in this case
8 because these are known grave sites. They may not
9 be known to you or to me or to the state historic
10 preservation officer, but they're known to the
11 tribes. It's more like a burial ground than it is
12 like a lost person. You know, if you -- if no one
13 in the contemporary world knows that there might be
14 someone buried along the Red River in Grand Forks,
15 of course you can't route around something that you
16 don't know, but this is a known site to those
17 people. They know that their ancestors are buried
18 there and they know where they are. They're just
19 not going to tell you.

20 Q. And the answer to -- I guess your answer
21 to why this didn't come out until right before the
22 first hearing, can you tell me again -- and I'm
23 not -- you gave us the long dialogue about the --
24 the concern of state agencies. And I would say
25 that I appreciate your comments, but as a state

1 senator have you addressed those comments with the
2 governor's office?

3 A. Yes, I have.

4 Q. Okay. So that's a separate venue. I
5 don't even want to get into that, but I appreciate
6 you coming and discussing your viewpoint on that.

7 A. Yes.

8 Q. But the thing that I'm looking at is that
9 because of our energy development, we've found a
10 lot more cultural sites than we ever would have.
11 So if this power line does end up going somewhere,
12 we'll actually get some work done on a cultural
13 assessment. If this power line doesn't go through
14 there, we may never do an assessment.

15 A. Well, that's a positive spin. I
16 congratulate you on finding a positive spin. But,
17 no, I don't see that as --

18 Q. I'm just --

19 A. Yeah. I think that what the American
20 Battlefield Protection Act or protection group --
21 I've lost their name right now -- has done with
22 their current grant to Dr. Isern from NDSU is the
23 more appropriate way of doing it, the wholistic --
24 I mean he will be interviewing members of the
25 tribes and getting what information they're willing

1 to tell him. He will be trying to better define
2 the outline of the battle. He'll be trying to
3 locate where and document where the movements of
4 the military versus the Indians were and where
5 things have been found. He will be interviewing
6 people, you know, in terms of where they've picked
7 up artifacts, because a lot of those things have
8 been picked up by the families who live there. And
9 hopefully if the landowners will allow him, he will
10 be doing on-the-ground surveys.

11 So -- so, you know, that's a more
12 appropriate way of doing it rather than, you know,
13 saying we're going to slice a line through here and
14 along the way we'll pick up the pieces that we
15 find. I mean do you get the difference?

16 Q. I do.

17 A. Okay.

18 Q. The -- you were not at the Killdeer
19 hearing, but one of the late-filed exhibits that I
20 asked for was give us a late-filed exhibit that
21 shows the study corridor all the way from the AVS
22 Station in Beulah basically to the substation.

23 With the -- not making any decision, but
24 the potential that the Commission would approve an
25 extremely wide corridor to let the company work

1 through with the NEPA process to then perhaps
2 adjust this route, so given that as a potential,
3 how would you view that potential scenario where we
4 widen the corridor, given the company flexibility
5 to work with agencies to make route adjustments?

6 A. You know, I am sorry, but I just don't see
7 why that parcel of land is so important that you
8 would have to allow them -- so important as a -- as
9 a place for transmission to run that you would have
10 to allow them to run through it. It seems to me
11 that you could find a route that is completely
12 outside of that study area.

13 Q. Okay. Thank you.

14 The -- you said your position with the
15 Badlands Conservation Alliance is what again?

16 A. This year I'm the president of the board
17 of directors.

18 Q. Okay. This is a question I asked the
19 previous witness from this group about -- we had a
20 lot of testimony about not liking the poles because
21 of their size and they're as tall as the Capitol
22 and not good for the view shed, and I asked the
23 question about so is the Badlands group against
24 wind farms. So I'd be curious to get your answer.
25 A wind farm is essentially a bigger object. So is

1 the group in general against wind development?

2 A. This is a -- a grassroots group of
3 citizens whose stated goal is to work for the
4 preservation of the Badlands area, Badlands
5 conservation. So it's really directed toward that
6 one landform in particular. I think we have
7 members from across the state, from both political
8 parties. I dare say we have people on both sides
9 of the wind energy issue. The distinction I would
10 say is most wind energy in this state, to my
11 knowledge, has been developed on private land, and
12 we generally restrict ourselves to public lands or
13 things that are happening close enough to public
14 lands that it would impact the public lands.

15 And so that's why like the corridor, the
16 85 corridor along the North Unit meets our criteria
17 for getting involved and sticking our nose in other
18 people's business that, you know, it's -- we see it
19 as an imposition.

20 The Killdeer Mountains is a bit of a
21 stretch because it is mostly private, and we spent
22 a lot of time thinking about and discussing whether
23 we should take a position on that and decided that
24 because of the significance of the battlefield,
25 that we could see a public interest in just saying

1 we'd like you to stay away from there.

2 But generally we do not comment on
3 decisions of private landowners. It's just not our
4 business. But certainly if a wind farm goes up
5 near a state historic site, I would object to that.
6 I personally don't like wind energy myself. I
7 think it's kind of inefficient, I think it's
8 unattractive. I don't think it adds very much. I
9 think until somebody comes up with really long-term
10 battery storage, it's just kind of a subsidized
11 economic development for farmers, but that's just
12 my personal opinion and --

13 Q. Thank you, Senator.

14 A. -- I am not speaking for anyone else in
15 BCA when I say that.

16 Q. Fair enough, Senator.

17 A. We're a really diverse group of people.
18 Did I say that?

19 Q. The -- the NEPA process, how do you intend
20 to weigh in on the NEPA process going forward,
21 understanding that's not part of what we do? How
22 can you do that? How are you planning on giving
23 the same thoughts today to the NEPA process?

24 A. Well, we will certainly comment on --
25 whenever there's a public comment period, and we

1 have in the past. We have commented on the draft
2 and we will compliment on -- comment on the
3 supplemental when it comes out.

4 Q. Okay. Perfect.

5 You talked quite a bit about natural gas
6 and distributed generation and I think there
7 certainly is potential in there, but what would
8 your thoughts be about the air quality concerns on
9 having a hundred different one-megawatt natural gas
10 plants -- I shouldn't say plants -- a hundred
11 one-megawatt natural gas electricity facilities
12 versus one gas plant because you have much more
13 combined emissions on the smaller plants?

14 A. Certainly. And like I said, I really am
15 not advocating for that as the best solution. What
16 I was saying is that I think it gives you the time
17 to deal with these issues. The fact that natural
18 gas is out there and is available and people have
19 figured out how to make use of it, either in a
20 peaking plant or in a full-scale commercial
21 generation plant or in the smaller distributed
22 generation, you know, on a given site, just the
23 fact that the technology is there and people know
24 how to do it means that we are not going to run out
25 of electricity in northwestern North Dakota in

1 2018. You know, there are options and therefore
2 you don't have to panic about this and you can do
3 two separate hearings and you can wait for the EIS
4 to be done.

5 So I understand that the state law gives
6 you the authority in an emergency to pretty well do
7 whatever is necessary, and when there's a certain
8 amount of urgency, to waive requirements. And I'm
9 mostly using that as a way of saying it's there as
10 a backup, as a fill-in, as a gap-filler so that you
11 don't have to have that sense of, Oh, my God, my
12 hair's on fire, I have to do something right now.

13 Q. Thank you, Senator. Two more questions.
14 You brought up the Highway 85 energy corridor, and
15 I don't know much about that. So could you please
16 explain it in a little bit more detail? Does that
17 mean that that's where the -- it's going to be
18 forced or how did that play out again?

19 A. You know, it hasn't played out yet. It
20 is, as I understand it, one of the studies proposed
21 by a legislator that got through the session and
22 has been selected by legislative management, and it
23 will be studied, and whatever that means during
24 this next -- during the interim that we're
25 currently in, people will, you know, put it on the

1 agenda and have a discussion about it, about
2 whether we should somehow impose some kind of
3 zoning, I guess, in that area or talk to the
4 companies and convince them to put, you know, major
5 gas lines in that area. I don't know exactly how
6 it's going to play out, but it's just an idea that
7 has been kind of vetted through the legislature for
8 a study.

9 Q. Okay. And the last question: The -- you
10 started with the line of discussion about your
11 desire, I think, to have two hearings, one for a
12 corridor hearing and one for a route hearing. One
13 of the things that I've struggled with is that the
14 law says that a corridor has to be a certain
15 percentage of the whole route. So basically a
16 one-mile to a six-mile corridor. But because of
17 the footprint law that was passed by the
18 legislature -- whether you voted for it or not, I
19 don't know, but this footprint law basically gives
20 companies the ability to -- once a corridor is
21 sited, to put anything else inside it. And so this
22 Commission has been forced to then really narrow up
23 these corridors to make sure you don't have other
24 energy development popping up, which in a sense now
25 the corridors have become the route because they're

1 so small.

2 So given that change of how the law has
3 played out, wouldn't you see it's appropriate to
4 combine the hearings?

5 A. No. Even if the two hearings are about
6 the same thing essentially, I guess I think that,
7 you know, it's so hard to engage the public, as you
8 well know, and so many of the public hearings that
9 are held by state agencies across this state bring
10 out, two, five, seven people. I mean we're just --
11 this is a state that kind of expects its elected
12 leaders or its county commissioners, city council
13 people just to kind of take care of things and
14 people aren't all that much of complainers.

15 And so I think sometimes it's just good to
16 have something like this and then a little
17 publicity gets out and then more people will say,
18 Oh, I wish I'd known that was happening or I wish
19 I'd known that I could have discussed that, and so
20 then the second time around you get a better
21 discussion or people who wouldn't otherwise have
22 come to the table.

23 So it's not so much about how wide it is
24 the first time or how wide it is the second time.
25 It's more about having at least a couple

1 opportunities. It's the transparency in government
2 that allows as much public participation as
3 possible.

4 COMMISSIONER KALK: Okay. Thank you,
5 Senator. I have no further questions.

6 JUDGE FETCH: Thank you.

7 Commissioner Christmann.

8 COMMISSIONER CHRISTMANN: Thank you, Your
9 Honor.

10 **EXAMINATION**

11 **BY COMMISSIONER CHRISTMANN:**

12 Q. Senator, first of all, let me just assure
13 you that Jan did a great job of filling in for you
14 in Killdeer, but your discussion here today,
15 especially your comment on the wind farms, was one
16 example of why for quite a few years already I've
17 always enjoyed working with you, both when we were
18 on the same side and when we differed. So thanks
19 for being here.

20 A. If I could just respond briefly to that.
21 I am not filling in for Jan today. Jan is our
22 major spokesperson and she is generally the one
23 coming to make comments for this. This one we saw
24 as important enough that we just kind of both
25 thought we should do it. And we had planned to do

1 it as a tag team in Killdeer, but it worked out
2 okay this way.

3 Q. And you both did a good job.

4 I want to -- this wasn't one of my
5 questions I was originally going to ask, but I was
6 intrigued, because you have a legal background, in
7 your discussion with Commissioner Kalk over the
8 burial sites that you say that the tribal people
9 know about but won't tell us where they're at.
10 With our evidentiary rules and things that we need
11 to take care of, if we recognize that and do things
12 differently because of what you say, does that
13 establish a precedent where anyone can really stop
14 anything just by saying I know there's something
15 there, but I'm not telling you where?

16 A. You know, I don't think so. I mean I
17 guess this seems like a really special setting
18 because of the very particular history. I mean it
19 is certainly -- well, I won't say unique in North
20 Dakota because there were a series of battles along
21 the way in that whole, you know, follow-on to the
22 Dakota Uprising. But the magnitude of that episode
23 and the fact that there -- that it's known that
24 there were quite a large number of Native Americans
25 who were killed, so there is some evidence that

1 there were bodies and they were in that area.

2 I mean I think there's enough -- there's
3 enough specifics there that I don't think you would
4 get yourself trapped into that kind of a thing.

5 Q. Okay. I want to talk a lot about what you
6 called the inter-river area. I kind of refer to it
7 as the McKenzie Electric area, but that area
8 between the two.

9 A. Okay.

10 Q. It was at the Killdeer meeting, as I look
11 back, where one the gentlemen from McKenzie
12 Electric was in and had a couple of concerns. He
13 actually talked about being close to having to
14 curtail loads. And he didn't go into this detail.
15 I'm, you know, using my own imagination of what you
16 have to do as a distribution cooperative, but I'm
17 guessing that he can't discriminate or pick and
18 choose who gets power. If he runs out, I suppose
19 everyone goes out. But it didn't sound like he's
20 real far off from that. And the way Basin is going
21 about planning this line indicates that, as well,
22 in that from the original application they have
23 gotten, you know, less of a hurry about going from
24 up here by Williston over to Tioga, but more -- not
25 more in a hurry, but maintaining their original

1 time frame for getting up there.

2 What do we do about getting power up to
3 those folks?

4 A. Well, that's why I was talking about
5 natural gas and additional peaking plants and
6 appropriately sited so that they're right now where
7 the energy need is identified. If Watford City is
8 the place where it's needed, build something in
9 Watford City and then that frees up the WAPA line
10 or the other smaller lines for the more rural zones
11 around.

12 I mean I'm serious, I don't know a lot
13 about how electricity moves around. I just know
14 that this country has embraced natural gas in the
15 last few years. North Dakota has not, but we have
16 the natural gas so we could.

17 Q. One of the things that was discussed was
18 the fact that the real small plants, if you hook
19 those into the grid and then there's a snowstorm or
20 something and the line goes down, before you can
21 fix it, you've got to run around with your
22 people -- you don't place an e-mail out and have
23 everybody shut their power inputs down. Your
24 people go out individually and make sure
25 everything's turned off before they start touching

1 the line. So that was one of the issues that was
2 raised. Does that make sense to you?

3 A. Sure. And maybe that's why you would want
4 it to be a Basin peaking plant and not a hundred
5 little tiny plants owned by individual people.
6 Again, I'm not telling anybody how to do it. I'm
7 just saying the power, the ability to make the
8 power is right there in people's hands, right in
9 front of their faces.

10 Q. And then kind of -- and continuing to
11 bring this around circle, you know, the peaking
12 plants generally are pretty expensive power.

13 A. Sure.

14 Q. So those -- I'd have a hard time -- over
15 the years we've both gone back to our constituents
16 and explained ourselves. I'd have a hard time
17 going to my constituents now in McKenzie County and
18 explaining why they have to pay a lot more because
19 they're going to have to get all their power from
20 peaking plants. To build a larger power plant,
21 purely natural gas, I don't know why that doesn't
22 happen more often than it does. I'm assuming that
23 it's more expensive or -- or --

24 A. It's because we have cheap coal.

25 Q. -- somehow less effective, but if it's

1 more expensive, then you get back to that same
2 discussion with them.

3 But here's what I really want you to -- to
4 respond to. We talked to a company yesterday that
5 is in the oil and gas drilling business. They do
6 not consider themselves gas processors, but they
7 have a processing plant because they wanted to do
8 the right thing. They take great pride in
9 considering how little flaring their wells do. And
10 they've expanded the size of their processing
11 plants numerous times and they're looking at doing
12 it again. However, they process it and pipe it
13 out. You know, one is -- is driving power there.
14 They take about 50 megawatts of power. That was a
15 number that was thrown around with some of the
16 other processing plants by Watford City.

17 If we don't get dependable and affordable
18 power up to McKenzie County, do you not have any
19 worry that rather than facing brownouts or
20 blackouts, that they are going to just discontinue
21 power to gas processing plants and we're going to
22 end up flaring more gas yet because they're going
23 to use it all to get it to their residential and
24 commercial customers?

25 A. You know, I have more faith than that in

1 the technicians who work for these companies. I
2 have to think that there's enough technical
3 ingenuity among the engineers who work for these
4 RECs and for Basin that they could manage that.
5 And then there's that \$10 million research pot that
6 we approved at this last session for value-added
7 natural gas products. So we have -- there was also
8 a \$300,000 appropriation to the Department of
9 Commerce just to kind of go out and beat the bushes
10 to kind of try to find the right companies who
11 might want to come in and do things in terms of
12 value-added natural gas. Maybe Basin can get a
13 \$300,000 grant from the Department of Commerce or
14 from the Oil and Gas Research Council, a few
15 million dollars, to figure out how to do this.

16 You know, I am not a scientist so I can't
17 answer that question, but I have a great belief in
18 the ingenuity of well-educated American engineers
19 and scientists.

20 COMMISSIONER CHRISTMANN: Okay. I have no
21 other questions, Your Honor. Thank you.

22 JUDGE FETCH: Thank you, Commissioner.
23 Commissioner Fedorchak.

24 COMMISSIONER FEDORCHAK: Thank you.

25

EXAMINATION

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BY COMMISSIONER FEDORCHAK:

Q. Thank you, Ms. Triplett, and appreciate all the thought and time you spent putting your testimony together.

A few questions for you. We're kind of in this situation where Basin has outlined and provided the charts of the need and the -- the local cooperatives have come in and talked about their growth and their -- their need for this project. And actually there are some economic considerations laid out in law that we can consider, but -- but we're mostly supposed to focus on the actual site and the route.

But we've talked -- you talked quite a bit about need, so I would say, you know, they've laid their case out. You're saying that need isn't urgent. I mean who do we believe?

A. Oh, no. No. I believe that the need for more electricity is urgent. I am not denying -- I am not arguing with their needs analysis that -- and I'm not arguing that they're giving you misinformation in terms of the increase -- the steady increase that they see. Obviously, you can't drive around this area and not see that there

1 is a serious increase in activity which obviously
2 is going to mean a need for more electricity.

3 When I said I didn't believe it was
4 urgent, I'm saying that because I think that you
5 can use natural gas as the gap-filler. You can
6 give yourselves time as a Commission to do this
7 routing correctly because there is that option.

8 And I understand it might be more
9 expensive in the short-term. I understand that
10 putting up a peaking plant, you know, might not be
11 something that the McKenzie County REC wants to do
12 or would think of as its first, second or even its
13 third option, but it is an option. Okay.

14 Natural gas gives them an option that, you
15 know, if this was any other kind of development
16 that didn't relate to oil and gas, I mean if we
17 were having this massive development just because
18 the price of wheat went through the roof or
19 something and all of a sudden everybody decided to
20 move here or we just got our irrigation systems in
21 place and we all decided to grow carrots or
22 something, I mean if there was a different reason
23 for the boom that didn't also produce its own
24 source of power, I would have a different attitude.

25 But I'm saying because the source of the

1 need for increased electricity also brings with it
2 abundant natural gas, so abundant that we don't
3 have any idea what to do with all of it, I'm
4 saying -- and it's cheap. It may not be as cheap
5 as North Dakota lignite, but it's inexpensive, in
6 the big world sufficiently inexpensive that many,
7 many, many companies across the country have
8 decided to build full-scale commercial natural
9 gas-fired electric power plants. And so I'm just
10 saying that fact alone, the fact that we have
11 abundant natural gas right in the area, takes away
12 the urgency, because it means they have options and
13 gives you, therefore, the time to do routing in a
14 way. But, no, I am not arguing about the need.

15 Q. Okay.

16 A. Okay.

17 Q. Then that leads me to my next question. I
18 would say that North Dakota is embracing natural
19 gas, perhaps as it's needed, because all the new
20 generation that we have in the state outside of
21 wind is natural gas. Basin is putting up six
22 natural gas-fired power plants and, outside of
23 wind, those are it. There's another one being
24 considered in the eastern side of the state. So as
25 we need additional generation facilities, that's

1 what we're looking at. I mean that's what the
2 companies are looking at in North Dakota. And I've
3 asked -- because it bugs me that we could be doing
4 this a different way too. And I've asked at every
5 single one of these hearings extensively, have you
6 looked at this, have you looked at that. And just
7 today we asked about gas and the company said that
8 if you build -- you could build more gas. You
9 could put another plant in near Watford or wherever
10 you choose, but every time you do that, you still
11 run into the problem of getting the power out to
12 the people, which requires transmission lines, all
13 of which have some -- some sort of magnitude
14 similar to what we're looking at today.

15 So I mean does -- do we really get ahead
16 by doing, you know, other smaller plants that
17 require more different transmission line sitings to
18 all the customers?

19 A. Well, first of all, I -- I guess I would
20 disagree with you just a little bit about whether
21 we've embraced natural gas. I think Basin has done
22 it, you know, a little tiny bit at a time so that
23 now they have in the works six separate little
24 peaking plants, instead of embracing it in a larger
25 way of one large peaking -- one large sort of more

1 commercial-scale plant of the sort they did in
2 South Dakota. So it's been kind of a tiptoeing
3 into it more than an embrace, I would say, but
4 that's maybe semantics.

5 Q. Well, as the generation is needed I think
6 they're looking at gas.

7 A. Yeah.

8 Q. I mean you don't want to just create it if
9 you don't need it. As we need it, that's what
10 they're looking at, is the gas.

11 A. Okay. And so -- but then the real -- the
12 answer to your larger question, I think, is that
13 really I'm -- when I ask you to -- to not -- not
14 grant them the 298 line and make them do whatever
15 to go around, obviously major transmission to get
16 to Tioga and Williston, I just want you to go a
17 different way. You know, go around the lake to the
18 east, go up, go over and just keep it out of the
19 breaks because that's such a fragile environment.
20 It is just such a fragile environment and is so
21 important for so many reasons. But so obviously
22 I'm agreeing that there needs to be a major
23 transmission line. And you can work with the area
24 on the bottom, you know, from the AVS to --
25 directly to the west. So that really just leaves

1 the area in the middle, the -- between the two
2 rivers.

3 And I think you really could put, you
4 know, a peaking plant right next to Watford City or
5 right next to a new natural gas gathering facility,
6 you know, that would take off some of that load and
7 then -- and then maybe what's -- you know, the load
8 that is left could be adequately taken care of by
9 existing -- you know, the existing transmission
10 lines that are already there.

11 And, again, I don't claim any expertise
12 here. I don't think it's my job to create the
13 exact right system. I just think that I am seeing
14 this from a different perspective that maybe has --
15 is slightly more creative. And I think that they
16 should be encouraged to look for more creative
17 options than this environmental degradation that
18 will occur. No matter how much you minimize and
19 mitigate, we're talking significant environmental
20 degradation from crossing the Missouri River south
21 of Williston all the way down. And so that line
22 just has to go.

23 Q. Okay. I also in Tioga asked about the
24 process and said that we've been hearing that this
25 process has been -- that some in the public feel

1 that this process has been shortchanged and that
2 they haven't gone through the adequate
3 environmental procedures. And the company's
4 response was without the supplemental EIS, I would
5 agree. But they feel that that is the full
6 process.

7 Do you -- do you agree with that, that
8 with the supplemental EIS and the alternatives that
9 will be explored through that, that the
10 environmental process is being adequately
11 addressed?

12 A. I will agree with that if you will
13 continue this hearing until after the record of
14 decision is filed and then give the public one more
15 chance. Then I would agree.

16 Q. All right. And I think we talked about
17 the islanding at Watford. Okay.

18 I think my last question: The whole issue
19 in the Killdeer Battlefield, we had folks at the
20 Killdeer hearing testify, the landowners, two of
21 them, who own a bunch of land right through that
22 area, in support of this project. And there were
23 others -- you know, in all fairness, obviously
24 there were others who came opposed to it and a
25 Killdeer Mountain group in general, a conservation

1 group in general came and strongly opposed it, et
2 cetera. But it's -- it's difficult when the folks
3 who own the land that the transmission line is
4 going through are supporting it. They can do
5 whatever they want with that land. I don't know,
6 how -- how do you feel about that? I mean they
7 could -- they could be putting up, as I said in
8 Watford, a water park right in that area right now
9 and nobody could do anything about it. So how do
10 we treat this differently?

11 A. That's true. And as I said in my
12 testimony, I think they deserve a great deal of
13 respect and I have a great deal of respect for them
14 for the fact that they have kept it really quite
15 pristine except for their own building site, you
16 know, where they put their own house and barn and
17 that sort of thing, but other than it's in
18 incredible shape.

19 And so, you're right, they could do
20 whatever they want. I don't think they will do
21 that because, I mean, they haven't for all these
22 years and they don't seem inclined to. And they
23 seem to have a sense of history. The Dvirnak
24 family has donated a fair amount of the artifacts
25 that they found on the surface to Dickinson State

1 University and they had a big press conference
2 about it a couple of years ago, and it's on display
3 in the library at Dickinson State if you ever want
4 to go look at it.

5 So, I mean, they have expressed in that
6 way their interest in the -- in the public story,
7 if you will.

8 But I think the difference here is the
9 state action. I mean you are proposing to say that
10 a public utility can go there and degrade the
11 surface, and that -- you know, that's what I'm
12 asking you not to do, and I can ask you not to do
13 that as a citizen. So that's the difference.

14 COMMISSIONER FEDORCHAK: Okay. All right.
15 I think that's it. Thank you very much.

16 JUDGE FETCH: Thank you.

17 Any other questions from commissioners?

18 COMMISSIONER CHRISTMANN: One.

19 JUDGE FETCH: Commissioner Christmann.

20 COMMISSIONER CHRISTMANN: Thank you, Your
21 Honor.

22 **FURTHER EXAMINATION**

23 **BY COMMISSIONER CHRISTMANN:**

24 Q. One of the things over the years as -- I
25 think everybody in North Dakota that talks to the

1 oil industry people, we all want to see and urge
2 them to capture more of the natural gas and make
3 some use of it. One of the responses often is
4 it's -- one of their problems they face is getting
5 all the easements they need. Landowners out in
6 this country are tired of dealing with all these
7 easements, and -- and as they develop another well
8 here and another well there, it's hard to get all
9 those easements.

10 In that McKenzie County area, if we tell
11 them that the rest of the state north and south of
12 the lake are going to have access to the more
13 affordable coal-fired power, but so that we don't
14 disturb the eagles and the view shed and the other
15 things involved here, they're just going to have to
16 pay a little bit more and use gas power, do you
17 think that's going to make them more or less
18 inclined to deal with the industry and give leases?

19 A. Maybe we should acknowledge that there is
20 a price to environmental protection and maybe we
21 should subsidize them for the difference. I'd be
22 willing to put that bill into the next session.

23 COMMISSIONER CHRISTMANN: Thank you.

24 JUDGE FETCH: Any further questions?

25 COMMISSIONER KALK: I have a follow-up to

1 that.

2 JUDGE FETCH: All right. Commissioner
3 Kalk.

4 **FURTHER EXAMINATION**

5 **BY COMMISSIONER KALK:**

6 Q. Would you be willing, Senator, to put a
7 bill in to clarify what can be done with the
8 footprint law as it relates to the challenges it's
9 creating with the corridor?

10 A. You write that bill up and I'll put it in
11 too. I will. I'd be happy to do that. Now, I
12 think seriously we have some issues in terms of our
13 processes, and taking advice from state agencies
14 such as yourself who know these things intimately,
15 you know, if a legislature has made a mistake, by
16 all means, put your thinking caps on and figure out
17 how to fix it and bring it in. And generally when
18 agency bills come in, they get a pretty good
19 hearing, I mean a pretty positive response because
20 there is a lot of thought behind them.

21 COMMISSIONER KALK: Thank you, Senator.
22 We would never say the legislature makes mistakes.
23 We would just say that there's opportunities to
24 improve things.

25 THE WITNESS: There you go.

1 COMMISSIONER KALK: Thank you.

2 JUDGE FETCH: Any further questions?

3 Ms. Jacobson?

4 MS. JACOBSON: No, Your Honor.

5 JUDGE FETCH: Mr. Armstrong?

6 MR. ARMSTRONG: No, Your Honor.

7 JUDGE FETCH: Mr. Lein?

8 MR. LEIN: No, Your Honor.

9 JUDGE FETCH: Thank you.

10 THE WITNESS: Thank you.

11 JUDGE FETCH: Is there any other member of
12 the public who wished to come forward?

13 All right. It's been a long several-day
14 hearing. Ms. Jacobson, are you wanting to re-call
15 any witnesses?

16 MS. JACOBSON: I do. I would like to
17 re-call Mr. Miller.

18 JUDGE FETCH: All right. Mr. Miller.

19 COMMISSIONER KALK: Your Honor, would it
20 be appropriate to take a five-minute break if we're
21 going to re-call Mr. Miller? He's never got off in
22 less than a half hour.

23 JUDGE FETCH: Well, I don't think we've
24 been on for an hour and a half since the last
25 break, Commissioner, but five minutes.

1 (Recessed at 5:25 p.m. to 5:41 p.m.)

2 JUDGE FETCH: Okay. We are back on the
3 record. It is 5:40 p.m., Central time.

4 Ms. Jacobson, you've re-called Cris
5 Miller. Mr. Miller, you're still under oath.

6 MR. MILLER: Yes.

7 MS. JACOBSON: Thank you, Your Honor.

8 **CRIS MILLER,**

9 having been previously duly sworn, was examined and
10 testified further as follows:

11 **FURTHER DIRECT EXAMINATION**

12 **BY MS. JACOBSON:**

13 Q. Mr. Miller, what has the project and Basin
14 Electric done to ensure that there will be minimal
15 adverse effects on any avian species?

16 A. There's a lot. One of the fundamental
17 things is the actual design characteristics of our
18 transmission line. What I'd like to also point out
19 is Basin Electric, along with a lot of other
20 agencies that oversee avian species, they belong to
21 an organization that's called the Avian Power Line
22 Interaction Committee and it's made up of
23 regulatory agencies, wildlife resource groups,
24 conservation groups and industry. And it started
25 back in the '70s and they started addressing to --

1 what kind of design characteristics, whether it's
2 siting, whether it's the actual design to minimize
3 impacts to avian species.

4 So it's through those -- it's a living
5 document that they produce. The latest guideline
6 was issued in 2012. So the project themselves look
7 at those guidelines that APLIC put out, and we
8 certainly meet or exceed the criteria to minimize
9 impacts to avian species.

10 One of the things that was mentioned was
11 electrocution. And as one of the commissioners
12 pointed out, for electrocution to occur you have to
13 have contact with the conductor and go to a ground.
14 I think the testimony today said that the wing span
15 is of a human, so it's around that five foot, I
16 believe it is, for a golden eagle.

17 To put it in perspective, a transmission
18 line of our type -- and if you refer to Figures
19 4.2-1 of the application, it's on page 4-5, and
20 what you'll see is the vertical separation between
21 the conductors is a minimum of 25 feet, and a
22 horizontal distance between the pole itself and the
23 nearest conductor for the main 345 kV structure is
24 approximately 14 feet. So it -- you know, the
25 opportunities for electrocution is -- I'll say is

1 extremely minimal for eagles.

2 I think there's a distinct separation that
3 should be identified between the distribution line
4 versus a transmission line, and I think where the
5 electrocution events occur are on that distribution
6 line system.

7 Some other things that we have done as --
8 you know, through the consultation with the U.S.
9 Fish and Wildlife Service on this, they strongly
10 recommended in our previous projects that Basin
11 Electric develop an avian and bat protection plan.
12 And Basin Electric has done that in the last year
13 and incorporated a lot of those, I guess,
14 philosophies and work practices into our
15 organization as well.

16 Q. Has Basin Electric or its consultants on
17 behalf of Basin performed any surveys to determine
18 if any birds or nests are located within a certain
19 area of the project?

20 A. Yes, we have. As we identified in our
21 draft EIS, which was published last December, we
22 said we're going to do surveys. We performed
23 helicopter surveys of the entire 197-mile route.
24 We looked at a mile in width on each side of the
25 centerline, so actually a two-mile-wide swath.

1 Certainly, we've been working with the --
2 not only the state and the federal agencies and --
3 to look at, you know, the historical record,
4 historical nesting, and within that two-mile swath
5 it was identified that we had nine historical nests
6 that were identified.

7 When we did our surveys, four of those
8 nests were -- were located. Those four nests were
9 unoccupied at the time of our survey, and the other
10 remaining nests were not found. One of the things
11 that we'll do -- you know, that was basically to
12 identify the nests. Prior to construction, these
13 aerial surveys will be performed again. Certainly,
14 new nests could be built, old nests could be
15 reoccupied, et cetera. So those nests would be
16 identified and any, I guess, buffer or, you know,
17 standoff -- setback, I should say, for the
18 construction period that the federal or state
19 agencies will identify, you know, that would be
20 incorporated as a part of our project.

21 The same can be said about the other
22 raptors, not just the bald and golden eagles, but
23 certainly hawks, owls, et cetera, will be surveyed
24 for prior to construction.

25 MS. JACOBSON: I have no further

1 questions, Your Honor.

2 JUDGE FETCH: Thank you.

3 Mr. Armstrong, any questions?

4 MR. ARMSTRONG: Nothing.

5 JUDGE FETCH: Mr. Lein?

6 **FURTHER EXAMINATION**

7 **BY MR. LEIN:**

8 Q. Was -- was there a -- did I read in the
9 application that this would be -- this line would
10 be constructed in accordance with -- I think it's
11 the American Bird Conservation's guidelines or
12 booklet for raptors, safe power line design?

13 A. Yeah. I think it referred to that APLIC
14 guidelines. That's what we referred to it as.
15 Yes.

16 MR. LEIN: That's all I had. Thank you.

17 JUDGE FETCH: Thank you.

18 Commissioner Kalk, do you have any
19 questions?

20 COMMISSIONER KALK: Thank you, Your Honor,
21 just one.

22 **FURTHER EXAMINATION**

23 **BY COMMISSIONER KALK:**

24 Q. Cris, the -- it's fitting we finish with
25 you, hopefully finish -- I shouldn't say hopefully.

1 We might finish with you.

2 A. I'm finished.

3 Q. The -- just one question. In a general
4 rule, how often will you be consulting with the
5 U.S. Fish and Wildlife Service between now and the
6 proposed potential record of decision?

7 A. That consultation process is actually
8 going down two separate paths. The species
9 identified on the threatened and endangered species
10 list are being addressed through the development of
11 the biological assessment, the BA. When Western --
12 it's being finalized by Western. We anticipate
13 that to be submitted to the U.S. Fish and Wildlife
14 Service shortly, I would say in the month of
15 September, for their consideration for -- of the
16 impacts of our project on the T and E species.

17 It's in the NEPA analysis by -- by the
18 biologists and the other resource specialists
19 inside Western Area Power, Rural Utilities Service,
20 U.S. Forest Service and the Fish and Wildlife
21 Service, as well, North Dakota Game and Fish, as a
22 consensus as the impacts to other species list,
23 whether it's the state's listed species or the
24 species of concern for the U.S. Forest Service. So
25 that's going to be identified and evaluated in the

1 NEPA process.

2 So when that supplemental draft EIS goes
3 out, that's another opportunity for all agencies to
4 weigh in.

5 Q. Okay. And then the last question is we
6 had a -- I would deem an expert today on the golden
7 eagle, and she presented this Commission with a
8 whole bunch of information. How is it best for her
9 or anyone else here today to get their information
10 so it's considered in this supplemental EIS?

11 A. Well, if I understand the information that
12 was presented, you know, the historical database,
13 perhaps we already have been using that same
14 database as far as the historical locations of the
15 eagle nests. As far as any individual or -- has
16 the opportunity to provide that comment through
17 this process and through the public comment period
18 of the -- through NEPA.

19 Q. Okay. That's the part, though -- this
20 process giving it to me does nothing to give it to
21 the NEPA process. Can you give me more specifics
22 about how citizen X can get something that they're
23 concerned about into the NEPA process? Is there a
24 website? Is there an e-mail address? Is there
25 a -- there's a time frame I'm aware of, but when

1 would that time frame close?

2 A. Certainly. Specifically, the Rural
3 Utilities Service for the project, I believe
4 Western Area Power as well, they do have a project
5 website. The project managers are identified, so
6 they can always be contacted by e-mail.

7 Specifically to the public comment period
8 that would be in the supplemental draft EIS, any
9 member of the public can submit comments.

10 Q. When does that period end?

11 A. The period ends after -- I want to say
12 30 days after it's published in the Federal
13 Register. There's also going to be another public
14 hearing to take comments as well, so it's not just
15 a written -- you know, submit it to an electronic
16 file, but there will be a hearing on the
17 supplemental draft EIS.

18 Q. And where would that hearing be held at?

19 A. Right now it's currently going to be held
20 in Watford City. But that date hasn't been
21 identified. The timeline of when it's published in
22 the Federal Register will set the timeline of the
23 comment period, and the hearing will occur during
24 that comment period.

25 Q. So there's no set time frame today that we

1 would offer up, but we would encourage everyone
2 listening today to follow through because there
3 will be a meeting at some point?

4 A. Yeah. Certainly, you know, the federal
5 agency has a -- maintains a contact list for the
6 project, so when there is an announcement or
7 publication in the Federal Register or notice that
8 gets sent out, that contact list can be contacted
9 whether in written or electronic form. So if there
10 are some individuals that want to have that federal
11 action to be notified directly, they should contact
12 the federal agency and get their name on that
13 contact list.

14 COMMISSIONER KALK: Okay. Thank you,
15 Cris.

16 JUDGE FETCH: Thank you.

17 Commissioner Christmann, any questions?

18 COMMISSIONER CHRISTMANN: Well, one, Your
19 Honor, but I'm not sure if it's a question for Cris
20 or not, so I'll just throw it out there.

21 **FURTHER EXAMINATION**

22 **BY COMMISSIONER CHRISTMANN:**

23 Q. An earlier witness indicated a belief that
24 Basin has overstated the need for additional power.
25 Does Basin Electric figure out on its own how much

1 additional power is needed in a region or is it an
2 accumulation of what the distribution co-ops figure
3 out that each of those need?

4 A. I probably could answer that, but I will
5 defer to the person of record. I believe it would
6 be answered by Becky Kern.

7 COMMISSIONER CHRISTMANN: Thank you.

8 JUDGE FETCH: Commissioner Fedorchak.

9 **FURTHER EXAMINATION**

10 **BY COMMISSIONER FEDORCHAK:**

11 Q. Cris, this -- anything that the PSC does
12 will be kind of contingent on the completion of the
13 NEPA process. So why do you want -- what value
14 does it offer you guys to pursue this track sooner?
15 Because we didn't pick this timing. You guys do
16 this and we respond to industry requests. These
17 hearings are at your expense. This whole process
18 is at your expense. We're not driving this. You
19 guys are driving this. You could have to go
20 through this all again, am I not right, if NEPA
21 comes back and says this is inappropriate, you need
22 to pick a different route?

23 A. There's always a risk of that to occur
24 along any of these processes. One thing about
25 NEPA -- you know, the requirements of NEPA is not

1 to perhaps select the least environmental impact.
2 I think the goal of NEPA is to, you know, consider
3 the range of alternatives and to basically -- it
4 lays out a public process for input, for, you know,
5 members of the public and for agencies. So as you
6 go through a project definition and to finalize a
7 project, that you take that public input. And if
8 it's significant enough or if it's relevant, that
9 you address that through your project.

10 One thing that NEPA does, though, is we
11 are -- Basin Electric has identified an owner's
12 preferred route. That -- that is at our risk,
13 knowing that things that were identified through
14 the studies and the performance of NEPA, there
15 could be something that comes up that's
16 insurmountable that we truly would have to back up.
17 So the Public Service Commission, your -- your
18 siting process is on something very specific, very
19 specifically located on this -- you know, the
20 definition of a route.

21 So our application was prepared on the
22 owner's preferred route. And we think -- you know,
23 the application was submitted after the draft EIS
24 was published and commented -- or, you know,
25 comments were received, and so that the

1 application, you know, incorporated those comments
2 from that initial public scoping and comment
3 period.

4 It's -- you know, through the events that
5 were described as this -- you know, the load
6 changed so, you know, the addition of that north
7 Killdeer loop has brought us here today through --
8 to describe that -- the need for the supplemental
9 draft EIS. Should not that -- the load change have
10 occurred and we're back to our original, you know,
11 draft EIS, perhaps we would say that both of these
12 processes are more on a parallel and more on a more
13 timely -- same timeline, I should say. But that's
14 something -- the draft EIS is certainly an extra
15 step that at the beginning of the project we did
16 not anticipate.

17 Q. And I can't remember if it was you or
18 somebody else that I asked about the east route
19 that Senator Triplett had talked about, but we did
20 discuss that and somebody laid out how that was
21 considered. Is there someplace where the public
22 can see the considerations of that route and is
23 that -- was that formally considered and in any
24 sort of a draft or was that considered more
25 separately and then not actually ever considered

1 fully in a draft -- in any of these environmental
2 reports?

3 A. Yeah. It certainly was a -- you know, a
4 potential alternative and I think there was some
5 discussion in the NEPA documents. One thing we've
6 got to -- I guess I look at it, if you start
7 looking at the east side of the Lake Sakakawea, is
8 that an environmental sensitive area or, you know,
9 have its own issues in itself? Certainly have the
10 federal refuge system on the east side, you know,
11 Lake Audubon, there's Lake Nettie. You're going up
12 that Missouri Coteau. So you have other agencies
13 or individuals that might say there's some critical
14 environmental issues over there as well, you know,
15 the whooping crane, migratory birds, et cetera.

16 So is it a clean slate over here and
17 somewhat more significant issues on this side, on
18 the west side? So there's a balance and we're
19 trying to identify both -- both sides.

20 COMMISSIONER FEDORCHAK: Thank you.

21 JUDGE FETCH: Thank you.

22 Any other questions from commissioners?

23 All right. Thank you.

24 Ms. Jacobson, any further questions?

25 MS. JACOBSON: No, Your Honor.

1 JUDGE FETCH: Mr. Armstrong?

2 MR. ARMSTRONG: No, Your Honor.

3 JUDGE FETCH: Mr. Lein?

4 MR. LEIN: No, Your Honor.

5 JUDGE FETCH: Thank you.

6 Did you want to re-call any further
7 witnesses?

8 MS. JACOBSON: Yes. Mr. Stoltz.

9 JUDGE FETCH: I'll remind you you are
10 still under oath as well.

11 **MATTHEW STOLTZ,**

12 having been previously duly sworn, was examined and
13 testified further as follows:

14 **FURTHER DIRECT EXAMINATION**

15 **BY MS. JACOBSON:**

16 Q. Mr. Stoltz, there's been a lot of
17 discussions at the three hearings about a
18 generation-only solution, and I believe you
19 previously testified that that would require
20 additional transmission as well, similar to this
21 project. But can you frame your answer in terms of
22 that additional generation being a larger
23 generation facility, like a combined-cycle project?

24 A. I can walk through the exercise we did
25 about two years ago that looked into this in quite

1 a bit of detail. Initially, we placed the Deer
2 Creek Station in service, and that's near
3 Brookings, South Dakota. It's a 300-megawatt
4 combined cycle. A combined cycle is simply -- at
5 Deer Creek it's two gas turbines that take the
6 waste heat and then inject that into a steam
7 turbine. So it's a very efficient way to burn
8 natural gas. And also that -- that unit is -- the
9 gas is fed off of Northern Border Pipeline, and
10 there's injections from the Bakken into the
11 Northern Border Pipeline. So you could make the
12 argument that flare gas that is collected and
13 processed and injected into the Northern Border
14 Pipeline is being used at -- at Deer Creek already.
15 So that's just an interesting side note.

16 But in any event, that's a 300-megawatt
17 unit, and that's a little bit too small for our
18 needs up in the Bakken area. So the next size up
19 was 500 megawatts. And there are other units that
20 have been constructed elsewhere in the country that
21 are that same size, so it's a known technology. So
22 our goal then was let's inject that power into the
23 Watford City area. And the reason we liked Watford
24 City was because the same Northern Border Pipeline
25 passes very near Watford City. You've got a lot of

1 load there obviously. You had the WAPA 230 kV line
2 there obviously. So you had three criteria that --
3 that intersected at Watford City that made it a
4 good spot for generation. And ultimately that's
5 why we picked that site for the Lonesome Creek
6 units.

7 But getting back to this 500-megawatt
8 combined-cycle unit, we realized right away that
9 the WAPA line would not be sufficient to
10 accommodate that. So our next idea was let's add
11 345 kV line from Charlie Creek up to Williston and
12 inject this power from this conceptual 500-megawatt
13 unit on this 345 line and see how that performed.

14 And what happened was that was not
15 sufficient for the 500-megawatt injection. And the
16 reason is is because of a phenomena called
17 transient stability. Now, it's pretty easy to
18 describe overloads to equipment and even voltage
19 problems for power delivery. Transient stability
20 is a little more tougher to get one's mind wrapped
21 around that phenomena, but it's actually
22 interesting.

23 What happens is if you have disturbance on
24 the system, say lightning strikes a power line and
25 causes an arc to ground, that causes a very violent

1 reaction in the area generators. So if you have
2 that event happen near this power plant, that will
3 cause the machine to accelerate. Now you need to
4 clear that fault as soon as possible. And, in
5 fact, we'll clear that disturbance normally within
6 just a few milliseconds. But even that time
7 period, that few-millisecond time period when that
8 fault is on the system, that machine will
9 accelerate. And we have to limit that phenomena,
10 because when we clear the fault, that takes a line
11 out of service.

12 So, for example, if we applied a fault
13 near this conceptual generator and removed the line
14 down to Charlie Creek, for example, the line up to
15 Williston would remain in service. And the key
16 then is is that line strong enough to accommodate
17 that change in acceleration for the power plant?
18 And in this case it was not. Our only mitigation
19 at that point would be to actually trip the unit
20 out of service to keep it going too far into
21 overspeed because of that acceleration caused by
22 the disturbance.

23 So our conclusion, then, was we needed to
24 have three lines out of the Watford City area to
25 accommodate this 500-megawatt injection, and that

1 gave us the conclusion that we dusted off that --
2 that recommendation later and we rejected the local
3 generation and went to a load-serving transmission
4 concept. And the topography of the transmission
5 system was almost identical to the scenario we were
6 considering to accommodate this 500-megawatt unit.

7 So that's where we arrived at the
8 conclusion that to add a 500-megawatt
9 combined-cycle unit at Watford City resulted in a
10 very similar transmission topography to just a
11 load-serving-only configuration in the same area.

12 Q. And how do maintenance and other outages
13 affect Basin Electric's decision on what -- on if a
14 generation solution would meet the need?

15 A. Well, typically transmission lines are
16 very, very reliable. I think a good guesstimate
17 would be 95 percent or above reliability.
18 Generation, not so much. You have a lot of -- lot
19 more things can go wrong in a generator than can go
20 wrong on a transmission line. So we were worried
21 that if we had built this single 500-megawatt
22 combined-cycle unit, that if it was out of service
23 and it didn't have backup transmission, what would
24 we do? We'd have to curtail load in a similar
25 fashion.

1 for normal maintenance, and they typically trip off
2 once a month or so for a day or two. But we can
3 fall back on the rest of the grid to provide
4 replacement power to ship into the area in that --
5 in that event.

6 COMMISSIONER CHRISTMANN: Okay. Thank
7 you.

8 JUDGE FETCH: Commissioner Fedorchak?

9 COMMISSIONER FEDORCHAK: No questions.

10 JUDGE FETCH: Thank you.

11 Any other questions for this witness?

12 MS. JACOBSON: No, Your Honor.

13 MR. ARMSTRONG: No, Your Honor.

14 JUDGE FETCH: All right. Thank you.

15 Do you wish to re-call any further
16 witnesses?

17 MS. JACOBSON: We do not.

18 JUDGE FETCH: Commissioner Christmann, you
19 had a question, I believe, that was deferred to
20 Ms. Kern. Did you have any -- did you want her
21 re-called?

22 COMMISSIONER CHRISTMANN: If she is still
23 here, I would like to know that.

24 MS. JACOBSON: She is. You know, I think
25 Mr. Stoltz can talk about it as well.

FURTHER DIRECT EXAMINATION

1
2 **BY MS. JACOBSON:**

3 Q. Mr. Stoltz, I believe the question was the
4 load-forecasting process, how is that done in
5 conjunction with our members?

6 A. Oh, I think Becky could answer that better
7 than I could.

8 MS. JACOBSON: Fair enough.

9 JUDGE FETCH: Let's get Ms. Kern up here.
10 And I'll remind you you're still under oath too.

11 **BECKY KERN,**

12 having been previously duly sworn, was examined and
13 testified further as follows:

14 **EXAMINATION**

15 **BY JUDGE FETCH:**

16 Q. You heard the question?

17 A. Yes, I did.

18 Q. All right.

19 A. We do work with our members. Basin
20 Electric provides a service where we have personnel
21 in our office that perform load forecasts, but we
22 work in conjunction with all of the distribution
23 cooperatives, the generation and transmission
24 cooperatives to develop those load forecasts. The
25 distribution cooperatives are the people that are

1 out in the field. They're talking to the local
2 developers on everything that's going on in their
3 system. So it's a joint effort between the parties
4 to develop that.

5 COMMISSIONER CHRISTMANN: Thank you.

6 JUDGE FETCH: Any questions?

7 MS. JACOBSON: No, Your Honor.

8 MR. ARMSTRONG: No, Your Honor.

9 MR. LEIN: No, Your Honor.

10 JUDGE FETCH: Commissioners, any questions
11 for Ms. Kern?

12 All right. Thank you.

13 Any other witnesses that you wish to
14 re-call or for rebuttal?

15 MS. JACOBSON: None, Your Honor.

16 JUDGE FETCH: I will permit final closing
17 comments from the commissioners in just a couple of
18 minutes or an hour, whatever.

19 Is there any other matter which anyone
20 wishes to bring to the attention of the Commission
21 at this time?

22 MS. JACOBSON: No, Your Honor.

23 MR. ARMSTRONG: No, Your Honor.

24 JUDGE FETCH: Mr. Armstrong, does the
25 Commission wish Basin to prepare written brief and

1 proposed findings?

2 MR. ARMSTRONG: Proposed findings, along
3 with once all the late-filed exhibits are in.

4 JUDGE FETCH: Just proposed findings?

5 MR. ARMSTRONG: Yeah. Yeah.

6 JUDGE FETCH: Thank you.

7 All right. Once -- this is going to
8 conclude the hearing on this matter today. Any --
9 the Commission obviously is not going to be making
10 a final decision on this matter today. There are
11 late-filed exhibits which need to come in and --
12 and Basin is directed to prepare proposed findings.

13 The record will remain open until receipt
14 of the proposed findings of fact and conclusions of
15 law.

16 Once the Commission has issued a final
17 order, any party not agreeing with the final
18 decision of the Commission has the right to request
19 a rehearing, reopening or to appeal the decision to
20 district court under North Dakota Century Code
21 Chapter 28-32. The expense of transcribing the
22 proceedings would be the expense of the party
23 appealing the decision.

24 At this time I'm going to ask the
25 commissioners if they wish to give any closing

1 comments, and we'll begin with Commissioner Kalk.

2 COMMISSIONER KALK: And limit them to very
3 small amount of remarks; right, Your Honor?

4 JUDGE FETCH: Yes. That's implied.

5 COMMISSIONER KALK: Just thank everyone
6 for taking the time to be here today, the company
7 for preparing the case, our witnesses who traveled
8 across the state from all the ranges. Please
9 travel safely when you get back.

10 The -- just a quick thought. Coming into
11 this hearing, you know, I anticipated a lot more
12 landowner versus landowner arguments. When we
13 sited a transmission line from Center, North
14 Dakota, up in Senator Triplett's area in Grand
15 Forks, we had a lot of landowners that were really
16 upset and it was a very challenging case. This one
17 we haven't heard nearly as much from individual
18 landowners, but we certainly have issues with other
19 things that we have to consider.

20 So I really would urge those that have
21 presented testimony to us, if appropriate present
22 it to the NEPA process. And then really we're
23 going to have a work session on this and we'll just
24 see how this all unfolds.

25 But when I look back at why I first ran

1 for this job in 2008, it was to be sitting here
2 making these kind of decisions, because I've been
3 in some 30-some countries around the world where
4 people don't have electricity and they don't have
5 clean water and they don't live very well. But
6 I've also been in places where people have run down
7 the environment to nothing.

8 So this is the kind of decisions that I
9 hope to be part of and this is why I look forward
10 to making these decisions over the next period of
11 time, because what we're going through right now is
12 unbelievable in North Dakota.

13 I was in Williston in the mid-'80s when a
14 buddy of mine was home on leave, he was from
15 Williston, and I dropped him off here on my way
16 back to Bottineau, and the town was -- there was
17 nothing here. And there's no way that I would have
18 ever imagined that we're building a new airport,
19 that all these jobs are here. There was also -- at
20 that point in time there was more wildlife perhaps
21 around than there is now.

22 So that's the balance that we're trying to
23 strike here. So thank you all for your work, and
24 once again, please travel safely.

25 JUDGE FETCH: Thank you, Commissioner.

1 Commissioner Christmann.

2 COMMISSIONER CHRISTMANN: Well, Your
3 Honor, it appears to me that what gives us now a
4 big burden and a big responsibility of trying to
5 reach conclusions is the fact that North Dakota is
6 just a great place to live and to be, and the good
7 decisions have been made for over a century in this
8 state.

9 We have come to a point where we have a
10 great system of agriculture in North Dakota. We
11 have great energy development. And we have great
12 scenic and wildlife opportunities for people, and
13 all those things didn't happen by accident.
14 There's a lot of natural resources here that are
15 just a gift from God, but we've also done a good
16 job of taking care of all of them and of not
17 exploiting them, but using the resources we've been
18 blessed with. And also, like I say, taking good
19 care of them.

20 I'm confident that -- that through
21 these -- this series of three hearings, a lot of
22 people have had the opportunity to come out and
23 weigh in with their opinions, and we've -- I know I
24 have gained a lot of insight that I did not get
25 just by reading the application. And I don't think

1 it -- even the most careful reader could have
2 gained all the insight that we gained by coming out
3 and hearing from the folks that are directly
4 impacted along a corridor like this.

5 And so I think we've got a lot of the
6 information we need. We still need the late-filed
7 exhibits and everything, but I'm confident at the
8 end of the day that we're going to come up with
9 good solutions.

10 JUDGE FETCH: Thank you.

11 Commissioner Fedorchak, you get the last
12 word.

13 COMMISSIONER FEDORCHAK: Geez, that's
14 unusual.

15 Thank you all -- I'm going to be brief.
16 Thank you all for your time and for your heartfelt
17 thoughts and really spending -- spending your time
18 to make this a better project.

19 I worked back in -- in -- 20 years ago
20 when Ed Schafer was governor. I worked on his
21 staff, and at that time we were talking a lot in
22 community meetings around the state about the
23 decline and those were emotional times too. There
24 wasn't a lot of opportunity, there wasn't a lot of
25 hope in the state and there weren't a lot of

1 answers, either.

2 Now we have challenges of growth, and
3 they're difficult as well. These are not easy
4 issues. And I don't think anybody thinks they are
5 and I don't think anyone wants to do this poorly.

6 What gives me hope in this matter is that
7 there are some potential answers, more so than
8 there were when we didn't have any growth. Those
9 were difficult. You couldn't force people to come
10 here. Now we have opportunity, now we have
11 challenges. We need to work through them, and I do
12 think that through this hearing process there have
13 been some good suggestions, good information has
14 come out. I think that we can all go back now and
15 take a breather and look through all this data and
16 really get to work at putting the solutions in --
17 in place and finding the best possible balance for
18 this project.

19 Everybody won't be getting their way, but
20 hopefully in the end we'll have a good project
21 that -- that addresses the needs, provides the
22 critical infrastructure that this region and the
23 people that live here deserve and also protects our
24 very precious natural resources and cultural
25 resources.

1 So thank you again. I look forward to
2 working with you throughout the end of this
3 process.

4 JUDGE FETCH: Thank you, Commissioners.

5 I guess I'm going to have the last word,
6 actually.

7 COMMISSIONER KALK: You're the judge.

8 JUDGE FETCH: Before I formally, I guess,
9 close the hearing, I, too, want to thank everyone
10 for their input. And having had the rare and proud
11 opportunity to serve as a member of this
12 Commission, even for a brief period, I can tell you
13 they have a lot to consider and it is a weighty
14 decision.

15 I also can sympathize with Senator
16 Triplett who said she was up till 2:30 this
17 morning. That's sort of my modus operandi anymore.
18 I'm always up till that time, it seems, working on
19 something or worrying about something.

20 I'd like the people who wrote Buffalo
21 Commons to come back to this state and eat their
22 words. That's really what I would like. I thought
23 they were wrong in the first place. This state has
24 always been deep in my blood. I was born a few
25 miles away in Zap. Have always loved this state,

1 love everything about this state. And it's always
2 been -- I've been in every state but one, and I --
3 there is no more beautiful state than North Dakota.

4 That having been said, you know, it is a
5 heritage to protect. It's a heritage to -- you
6 know, to progress and I -- I know we can all find a
7 balance to do that.

8 So at this time I'm going to close this
9 hearing, noting the correct time is 6:15 p.m.,
10 Central time.

11 The hearing is closed. Thank you.

12 (Concluded at 6:16 p.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Stephanie A. Smith, a Registered Professional Reporter,

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

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

Dated at Bismarck, North Dakota, this 11th day of October, 2013.

Stephanie A. Smith
Registered Professional Reporter

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