

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Brady Wind, LLC : Case No.
Brady Wind Energy Center - Stark County : PU-15-690
Siting Application :

TRANSCRIPT OF
PUBLIC HEARING

Taken At
99 Second Street East
Dickinson, North Dakota
March 30, 2016

BEFORE PATRICK J. WARD
-- ADMINISTRATIVE LAW JUDGE --

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COMMISSIONERS PRESENT:

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

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FOR THE PUBLIC SERVICE
COMMISSION.

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FOR THE INTERVENOR, THE
CONCERNED CITIZENS OF
STARK COUNTY.

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1 (The following proceedings were had and
2 made of record herein, commencing at 8:12 a.m., MT,
3 Wednesday, the 30th day of March, 2016:)

4 JUDGE WARD: Okay. Good morning,
5 everyone. My name is Pat Ward. I'm an
6 administrative law judge pursuant to temporary
7 appointment designated by the Office of
8 Administrative Hearings at the request of the
9 Public Service Commission to serve as the hearing
10 officer for this hearing.

11 This is the hearing on the application of
12 Brady Wind, LLC, for a certificate of site
13 compatibility in Case Number PU-15-690 to build the
14 Brady Wind Energy Center in Stark County, North
15 Dakota, consisting of 87 wind turbines delivering
16 150 megawatts of power. The project also includes
17 a 19-mile 230 kilovolt overhead transmission line
18 to connect to the Belfield to Rhame transmission
19 line 19 miles southwest of the city of Dickinson,
20 which is case number PU-15-797.

21 The record will show it is about
22 12 minutes after 8 a.m., Mountain daylight time, a
23 beautiful day, March 30, 2016, at the City Hall, 99
24 Second Street East, Dickinson, North Dakota, the
25 time, date and place set by the notice of filing

1 and notice of continued hearing issued by the North
2 Dakota Public Service Commission on February 25,
3 2016.

4 The Commission's notice of consolidated
5 hearing for this hearing specified the following
6 issues to be considered and determined upon the
7 hearing: One, will the location, construction and
8 operation of the proposed facilities produce
9 minimal adverse effects on the environment and upon
10 the welfare of the citizens of North Dakota?

11 Two, are the proposed facilities
12 compatible with environmental preservation and the
13 efficient use of resources?

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

19 I would ask the attorneys to state their
20 appearances for the record and anybody who might be
21 participating in the hearing.

22 Mr. Bjella.

23 MR. BJELLA: Yes, Your Honor. Thank you.
24 My name is Brian Bjella. I'm with Crowley Fleck, a
25 law firm in Bismarck, North Dakota, representing

1 Brady Wind, LLC, in this case. Along with me at
2 the table is Stephanie Dassinger, attorney with
3 Crowley Fleck, and Amie Jamieson, an attorney with
4 Brady Wind.

5 JUDGE WARD: Mr. Pelham.

6 MR. COLLINS: Thank you, Your Honor.
7 Matthew Collins for the intervenor, Concerned
8 Citizens of Stark County.

9 JUDGE WARD: Mr. Pelham.

10 MR. PELHAM: Thank you, Your Honor. Good
11 morning. Zachary Pelham, Special Assistant
12 Attorney General on behalf of Commission staff and
13 Commission. To my right is Commission staff member
14 Mr. Jerry Lein. Mr. Lein may have questions during
15 the proceedings, and we would request that he be
16 permitted to ask questions as well.

17 JUDGE WARD: Any objection?

18 MR. BJELLA: No, Your Honor.

19 JUDGE WARD: Mr. Collins?

20 MR. COLLINS: No, Your Honor.

21 JUDGE WARD: Mr. Lein will be permitted to
22 ask questions during the proceeding.

23 The order that we'll follow, we'll go in
24 the order of first Brady Wind since it's got the
25 burden of proof here to make its presentation, then

1 the Commission's response and then the intervenor.
2 We'll go in that order with questions and
3 presentations of evidence as well.

4 At this point before we get to any opening
5 statements or marking of any exhibits, I'd like to
6 just ask if the commissioners would like to make
7 some preliminary comments.

8 Chairman Fedorchak.

9 COMMISSIONER FEDORCHAK: Good morning. Am
10 I on? Okay. Great. This is going to take a
11 little getting used to. We're used to mikes. This
12 is kind of fancy for us when it comes to technology
13 at our hearings.

14 But welcome, everyone. It's great to see
15 so many citizens coming forward today to
16 participate in this hearing. I'm just kind of
17 curious for -- if I could see a show of hands for
18 those of you for whom this is your first Public
19 Service Commission hearing. Raise your hand.
20 Yeah. That's what I expected.

21 We are getting a lot more public
22 participation in our hearings on wind farms as well
23 as pipelines, et cetera, and I think it's a great
24 thing. We want to hear from the public. That's
25 why we come to locations like this near to you so

1 it's convenient for you all to -- to share your
2 thoughts and concerns and -- and ideas.

3 Our goal today is to provide as much
4 opportunity as we can for public input. We'll have
5 the company give its case first, and because
6 there's intervenors, there will be
7 cross-examination from both the Commission and our
8 attorneys as well as the intervenors, and so that
9 will take a little additional time as well.

10 So for those of you who expect to and are
11 here because you want to say your piece, I do want
12 you to be realistic in terms of how long that might
13 be. I would prepare for a minimum of three hours,
14 if not a little bit longer, before the public
15 testimony starts. And -- and Commissioner
16 Christmann can give a little bit more of the
17 history on that and the logic behind it.

18 So we'll try to be open as we go in terms
19 of what we're looking at in terms of schedule.
20 We'll probably break at some point for a half hour,
21 45 minutes for lunch and -- and try to be, you
22 know, clear with all of you in terms of how the
23 schedule is going to evolve as the day goes and
24 when we see the best opportunity for public input
25 and when that's likely going to be so you can plan

1 accordingly.

2 We do want to hear from you and we do want
3 to -- we did intentionally plan the day so that we
4 could allow for four, five hours of public
5 testimony if that's what's needed.

6 So we're here for the long haul. We've
7 had lots of long hearings. We don't get tired out
8 real easily, so -- so -- so we're glad that you're
9 here and we want to hear from you.

10 You heard the judge talk about the purpose
11 of the hearing and what -- what the issues are.
12 It's a balance. It's a balance of developing
13 energy resources like wind and -- and doing that in
14 a way that minimizes impact to the environment, to
15 our cultural resources and to the people living
16 next to this.

17 We can get creative, and we have in
18 previous projects, on ways to minimize this impact,
19 make it all better -- make it better or less
20 impactful for the citizens living near it. And --
21 and we look forward to good discussions with you
22 all on ways to -- to incorporate those kinds of
23 things into a project like this moving forward.

24 So thank you very much, and we'll --
25 without any delay, I'll turn it over to my

1 colleagues.

2 JUDGE WARD: Commissioner Kalk.

3 COMMISSIONER KALK: Thank you, Your Honor.

4 The -- Commissioner Fedorchak I think set
5 up a lot of the procedural things. I'm going to go
6 off on a little bit of a tangent here to start with
7 just to kind of set the stage. The -- you know,
8 Julie talked about -- just thank you all for coming
9 out here, and I think that's very important
10 because, you know, we make better decisions as a
11 Commission when we get better information. So I'm
12 sure we're going to get a lot of information today
13 about what you like or don't like about the
14 project.

15 You know, the company will set up the
16 purpose and need and what they plan on doing. The
17 intervenors will, no doubt, bring out the concerns
18 that they have, but the public -- I think you're
19 going to bring things that perhaps neither one of
20 these groups will offer.

21 And what I would say to you is this, is
22 that when you come up and take your time to say
23 your piece, offer solutions. I mean I've been on
24 the Commission now going on eight years and we've
25 had some really heated hearings over the years.

1 And I think of one in Cooperstown where we had the
2 hearing and neighbors were screaming at neighbors,
3 and at the end of the day they've still got to go
4 to church together and still buy at the same
5 grocery store and their kids still play on the same
6 basketball team.

7 So I know there's a lot of passion out
8 there, but just remember at the end of the day that
9 we're going to figure out a way forward on this
10 one. So when you come up -- I'll give you an
11 example. We had a wind farm hearing north of
12 Jamestown, a little place called Courtenay, and
13 there was -- one of the landowners, he just didn't
14 want to look at the towers. And that's his right
15 to not want to look at them, but I said, So it's
16 this fellow's property over here. He wants a
17 tower. You don't like looking at it, so how do we
18 find that balance? And he said, Well, you know,
19 I'm a crop duster, and if you put these wind farms
20 over here, I can't run my crop-dusting operation.
21 Well, that seemed like a reasonable concern. He
22 said, All you have to do is move those back a
23 little bit and we can work it out.

24 What I'm getting at is give us something
25 to work with other than we like it or we don't like

1 it. Offer up solutions, because as the judge laid
2 out, our goal here is to find that balance, and
3 Julie reinforced it, that -- that minimum impact
4 while keeping system reliability.

5 I mean Basin Electric is going to buy this
6 power. Basin Electric needs energy, so we've got
7 to figure out a way to keep the energy needs fit
8 for the -- the state as well as the country. So
9 that's kind of the setup on this.

10 And I also put some other notes here, too,
11 I want to make sure I cover. The -- I would like
12 to just give you, I think -- I think the background
13 of the commissioners. I don't usually go through
14 this, but I think it is important to understand the
15 lens that the three of us look through.

16 I mean I actually lived in New England
17 when I was a little boy for many years. My dad
18 worked for Slope Electric, so I know the country
19 down there and I know the opportunities that are
20 down there. I know what it used to be like. I
21 know what it's like now. I still like to hunt and
22 fish, but -- but I know this part of the state.
23 But I grew up in Bottineau, so I moved away and
24 then after that joined the Marine Corps for 20-some
25 years and traveled around the world.

1 And I can tell you that there's a lot of
2 countries where folks can't get together like they
3 are today to say their piece. They don't even have
4 the right to come out and say things. You have the
5 right to do that. There's a system of justice that
6 we're going to follow, and we are essentially a
7 court.

8 So the three of us will -- we won't make a
9 decision today. We'll go back and we'll -- we'll
10 make an orderly decision and that decision can be
11 appealed or it won't be, it might be, who knows,
12 but there's a process in place. And I keep going
13 back to we're here today to develop a very strong
14 record and make a good decision. There's three of
15 us. Sometimes all three of us agree, sometimes we
16 don't.

17 But that's one thing that we just can't
18 lose sight of in these kind of hearings because --
19 I'll go back to where I started. At the end of the
20 day, you know, we're going to be very in tune that
21 this is your community. We've got a job that we
22 have to do, but when it's all said and done,
23 remember your kids are playing basketball together,
24 your kids are going to school together, your kids
25 are doing all those things. So let's not lose

1 sight of that.

2 And just thank you for coming. I wanted
3 to set a tone right upfront. And I -- and I'll
4 also apologize right now to the court reporter
5 because sometime during the hearing I'm going to
6 talk too fast and she's not going to be able to
7 record it, and she'll tell me to slow down.

8 So it does take a while, but, really,
9 thank you for coming out because we do make better
10 decisions when we get better information. So thank
11 you.

12 JUDGE WARD: Commissioner Christmann.

13 COMMISSIONER CHRISTMANN: Julie mentioned
14 I was going to talk a little bit --

15 COMMISSIONER FEDORCHAK: You've got to
16 turn your mike on.

17 COMMISSIONER CHRISTMANN: How is this?
18 Okay.

19 Julie mentioned that I was going to talk
20 about the order of things, because to me a lot of
21 times what we do doesn't appear to make sense, but
22 it does. Believe me.

23 Being a rancher until I came to the
24 Commission three years ago, I can understand your
25 sense, that a lot of you are calving, some of you

1 might be trying to -- you're planting crops already
2 and so we scheduled this at nine, why don't we hear
3 from you, the company people are getting paid, you
4 know, take our testimony and let us get on our way.
5 But the fact of the matter is if we do that, we're
6 going to get a whole bunch of testimony on the
7 project as you heard about it at the coffee shop
8 and that may or may not be accurate as to what the
9 project really is.

10 So from an organizational standpoint, I
11 know it's an inconvenience to people who are here
12 on their own time to help get us information that
13 we need, whether that's for or against the project,
14 but it is appropriate that we let the company go
15 first and lay out the project -- there are probably
16 alterations to how it was originally proposed and
17 that sort of thing -- you hear what the proposal
18 that's on the table really is and then respond to
19 that.

20 So I understand the inconvenience it is,
21 but it is important that we go in the appropriate
22 order.

23 I'm going to probably challenge some
24 people because, I mean, we've all heard a lot about
25 this case, and if your -- and I don't want to be

1 rude to people so I'm just throwing this out to
2 people in advance. If your testimony is that this
3 is good for economic development, that it's going
4 to help the school district or it's going to help
5 the county or it's going to help me individually
6 get some money for turbine locations or for the
7 power line, that's fine. I appreciate hearing
8 that. But I'm going to challenge that argument to
9 some extent because if the purpose of building
10 energy infrastructure is solely economic
11 development, my question to you is should we just
12 have these companies build a big 5 or \$10 million
13 office building in every town? Then every town
14 gets some economic development?

15 But the fact of the matter is we all know
16 what that's going to do to rates. So it is
17 important that we keep it in perspective. While
18 local economic development is good -- I'm a small
19 town guy, it's great, but it's not the primary
20 purpose of building energy infrastructure. Energy
21 infrastructure needs to be built in order to keep
22 dependable and affordable power flowing. And so if
23 just economic development is your purpose, I want
24 to hear from you, but be prepared for that
25 question.

1 A little story from years ago. Some of
2 you have heard this. I don't repeat it every time,
3 but we have a lot of new people in the room.
4 Probably about 40 years ago when I was a young guy,
5 there was a big electric transmission line that was
6 proposed for across some of our property and my dad
7 was adamantly against it. He wasn't against the
8 power line. He just thought it should be over on
9 the neighbor's land and had all kinds of reasons,
10 I'm sure, why it was a better spot for it over
11 there, but primarily it was he just didn't want it
12 on ours.

13 And as a young guy in the family, I didn't
14 want it either and, frankly, if I had my druthers,
15 it still wouldn't be there. But it is important
16 that it be somewhere. It's serving certainly a
17 useful purpose.

18 And the point I want to make in this is
19 although my dad didn't prevail and -- and persuade
20 them to move it over on the neighbor's land, I
21 don't even remember exactly what it was, but there
22 were some slight accommodations. I don't remember
23 if it had to with the gates or just positioning
24 something over a little bit further on one hill or
25 something like that, but what he came home with and

1 I remember hearing about was, A, the disappointment
2 that of it was coming; but, B, that the Public
3 Service Commission at the time listened. And
4 although he didn't totally get his way, he -- he
5 clearly was heard because of those accommodations,
6 and he always appreciated that and it made me --
7 one of the things why I was interested in the PSC
8 and serving in government, because it was a good
9 example of government working appropriately and
10 really listening to people at these hearings.

11 So I hope that we continue to follow that
12 tradition from decades ago and really listen well
13 even though clearly not everybody is going to get
14 their way.

15 I want to point out -- Brian had talked
16 about our backgrounds a little bit. I was a
17 rancher till just a few years ago. Still do it on
18 the weekends. Just because we have a bunch of
19 books, don't be intimidated. Please don't be
20 intimidated. If you have something to say, come
21 and tell us. That's why we came out here. If we
22 didn't want to hear from you, it would have been
23 much easier for us to have this in Bismarck, be
24 more convenient. We came out here to hear from
25 you. So please do that.

1 My goal is certainly not coming out here
2 to make sure this gets built or to make sure it
3 doesn't get built. My goal is to make the best
4 decision possible based on the laws and our
5 policies, and I can make the best decision if I
6 have as much information as possible. So we want
7 to hear from you.

8 Thank you for being here.

9 JUDGE WARD: Thank you, Commissioners. At
10 this point I'll give the attorneys an opportunity
11 to make brief opening statements.

12 Mr. Bjella.

13 MR. BJELLA: Thank you, Your Honor. I'll
14 just be very brief.

15 We just thank the commissioners for the
16 hearing today. We want to -- we believe that the
17 case we will present to you today will demonstrate
18 that we are in compliance with the Siting Act, that
19 we -- we have a good case to present to you that
20 demonstrates compliance with the Siting Act and all
21 its requirements, and that -- thus this being a
22 good site for a wind farm.

23 I want to make one further comment. We
24 heard a few rumors. This case has nothing to do
25 with Dickinson Wind, the prior case. It doesn't

1 involve that at all, but we just heard a few rumors
2 that there were concerns that this was the prior
3 case, and I just want to dispel any rumors. This
4 is not Dickinson Wind. This is Brady Wind at its
5 location 15 miles south of Dickinson.

6 Thank you.

7 JUDGE WARD: Okay. Thank you, Mr. Bjella.

8 Mr. Pelham, any opening comments?

9 MR. PELHAM: Just very briefly. The
10 Commission and Commission staff look forward to
11 hearing the evidence from the company and from the
12 intervenors and certainly members of the public,
13 and we look forward to a good, informative hearing
14 so that we can make an informed decision.

15 Thank you.

16 JUDGE WARD: Mr. Collins.

17 MR. COLLINS: Thank you, Your Honor.

18 I would just like to say that on behalf of
19 the Concerned Citizens, we appreciate the
20 opportunity to intervene and the Commission
21 allowing us to do so. Also appreciate the
22 extension of time that you provided for us to
23 prepare for today and Brady Wind's acquiescence in
24 allowing that extension.

25 And then, finally we look forward to

1 sharing our concerns with you today.

2 Thank you.

3 JUDGE WARD: Thank you, Mr. Collins.

4 Mr. Bjella, are you ready to call your
5 first witness?

6 MR. BJELLA: Yes, Your Honor.

7 JUDGE WARD: Okay.

8 MR. BJELLA: We would call Jason Utton.

9 COMMISSIONER FEDORCHAK: Judge, could we
10 have the attorneys spell out how many witnesses
11 they expect to have just so we --

12 JUDGE WARD: Sure.

13 COMMISSIONER FEDORCHAK: -- kind of know
14 the agenda?

15 JUDGE WARD: Mr. Bjella.

16 MR. BJELLA: Yes, Your Honor. We have
17 four witnesses to present in our case in chief.

18 JUDGE WARD: Mr. Pelham, do you have
19 witnesses to call?

20 MR. PELHAM: No witnesses.

21 JUDGE WARD: Mr. Collins?

22 MR. COLLINS: Six.

23 JUDGE WARD: Okay.

24 Okay. Jason, would you spell your last
25 name for me, please.

1 THE WITNESS: Yes, sir. My last name is
2 Utton. It's spelled U-t-t-o-n.

3 JUDGE WARD: Mr. Utton -- and this goes
4 for anyone who might testify today, so if you could
5 just listen briefly to this. I'm required by law
6 to advise you of the penalty for perjury in this
7 state. Perjury is a false statement under oath of
8 a material fact made by a person who knows or does
9 not believe the statement to be true at the time it
10 is made. Perjury is a Class C felony. A Class C
11 felony is subject to a maximum penalty of five
12 years in prison, a fine of \$10,000 or in some cases
13 both can be imposed.

14 (Witness sworn.)

15 JUDGE WARD: Okay. Mr. Bjella, you may
16 proceed.

17 MR. BJELLA: Thank you.

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

21 EXAMINATION

22 BY MR. BJELLA:

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

25 A. My name is Jason Utton. My business

1 address is 700 Universe Boulevard, Juno Beach,
2 Florida.

3 Q. And what is your position with Brady Wind?

4 A. I am the executive director of development
5 for NextEra Energy Resources. Brady Wind is a
6 wholly owned subsidiary of NextEra Energy
7 Resources. NextEra affiliates currently own and
8 operate 851 megawatts of wind generation and
9 operate an additional 139 megawatts of wind
10 generation in North Dakota.

11 Q. Showing you what is marked as Brady Wind
12 Exhibit 1, would you please identify it.

13 A. This is the application for Brady Wind,
14 LLC, to the North Dakota Public Service Commission
15 for certification of site compatibility for the
16 Brady Wind Energy Center located in Stark County,
17 North Dakota.

18 MR. BJELLA: And, Your Honor, what we've
19 included in Exhibit 1 is the original application
20 and all the supplemental filings as required under
21 the Siting Act, and we've also included the
22 certification related to order provisions which was
23 executed and previously filed with the Public
24 Service Commission. So at this point we would
25 offer Exhibit 1.

1 JUDGE WARD: So I understand the
2 certification is -- certification is going to be
3 part of Exhibit 1?

4 MR. BJELLA: Correct, Your Honor.

5 JUDGE WARD: Okay. And that copy there
6 will ultimately be the official record that I'll
7 take with me?

8 MR. BJELLA: Correct, Your Honor.

9 JUDGE WARD: All right. Any objection to
10 Exhibit 1, Mr. Pelham?

11 MR. PELHAM: I just want to make sure that
12 all of the additional supplements, those were all
13 docketed with the Commission previously; is that
14 correct?

15 MR. BJELLA: That is correct.

16 MR. PELHAM: Okay. No objection.

17 JUDGE WARD: Mr. Collins?

18 MR. COLLINS: No.

19 JUDGE WARD: Okay. Exhibit 1 will be
20 received.

21 MR. BJELLA: Thank you.

22 Q. (MR. BJELLA CONTINUING) Please briefly
23 describe the location of the Brady Wind Energy
24 Center.

25 A. The project is located in southern Stark

1 County, North Dakota, about 15 miles south of
2 Dickinson and about 6 miles north of New England.
3 The project area encompasses approximately
4 29,000 acres. However, the total -- the total
5 permanent land disturbance will be less than
6 1 percent of this area or up to 110 acres.
7 Approximately an additional 921 acres will be
8 temporarily disturbed during construction.

9 Q. And why did Brady Wind choose this project
10 area to locate the facility?

11 A. Brady Wind began by evaluating the wind
12 resource in North Dakota for siting a 150 megawatt
13 wind-generating facility by placing meteorological
14 towers in the project area. We also evaluated the
15 location of existing transmission infrastructure.

16 Once Brady Wind identified the general
17 region where a strong wind resource and
18 transmission existed --

19 THE REPORTER: You're really going to need
20 to slow down. You're reading and you're going
21 really fast.

22 THE WITNESS: I'm sorry. Okay.

23 Once Brady Wind identified the general
24 region where a strong wind resource and
25 transmission existed, we undertook consultation and

1 coordination with a variety of community leaders
2 and government officials to discuss the project and
3 began to identify potential willing landowners.

4 Based on these discussions, Brady Wind
5 identified the project area for additional study
6 and preparation of an application for a certificate
7 to the PSC.

8 The proposed project area was identified
9 as optimal for wind resource, transmission
10 interconnection, environmental and economic
11 perspectives. The proposed project area was
12 selected considering the exclusion and avoidance
13 criteria outlined in North Dakota law.

14 Q. (MR. BJELLA CONTINUING) Please briefly
15 describe the Brady Wind Energy Center.

16 A. The project is currently designed to
17 include a total of 87 turbines: 80 GE
18 1.715 megawatt machines and 7 GE 1.79 megawatt
19 machines. However, as our application references,
20 Brady Wind is seeking flexibility to seek the most
21 appropriate wind turbine technology at the time of
22 construction. But to be clear, Brady Wind proposes
23 to install up to 87 turbines that are
24 representative of the GE 1.715 and 1.79 technology.

25 Additional facilities include access

1 roads, election -- electrical collection systems
2 and cabling, a collection substation, an operation
3 and maintenance building and a construction laydown
4 area.

5 Both turbine models will have a hub height
6 of 161 feet. 1.715 megawatt turbines will be
7 measured 431 feet from the base of the tower to the
8 tip of the upright blade, and the 1.79 megawatt
9 machines will measure 427 feet. Both turbine
10 models begin operating at wind speeds of 7.8 miles
11 per hour and reach a rated capacity at the wind
12 speed of 25.7 miles per hour.

13 The turbines are designed to operate in
14 wind speeds of up to 56 miles per hour. Each
15 turbine will be grounded and shielded to protect
16 against lightning.

17 Q. And what is the approximate project cost?

18 A. The cost is about \$250 million.

19 Q. And what roads will be constructed?

20 A. Private turbine access roads will be built
21 adjacent to the tower allowing access to the
22 turbines during and after construction. During
23 construction, some of the roads may be up to
24 38 feet wide. However, after construction is
25 complete, these access roads will be approximately

1 16 feet wide.

2 Any areas temporarily disturbed during
3 construction will be reclaimed after construction.
4 The specific turbine placement will determine the
5 amount of private roadway that will be constructed
6 for the project.

7 Q. Please describe the electrical collection
8 system.

9 A. The electricity generated by each turbine
10 is brought to a pad-mount transformer where the
11 voltage is stepped up to 34.5 kV. The electricity
12 is collected by a system of underground power
13 collection lines within the project boundary --
14 excuse me, within the project area. Both power
15 collection lines and communication cables will be
16 buried in accordance with private landowner
17 agreements.

18 The collection system connects power to
19 the project substation. The power is then
20 transformed to 230 kV at the collection substation
21 that will be located at 109th Avenue Southwest and
22 will be connected to the Belfield to Rhame
23 transmission line via an approximate 19-mile
24 overhead transmission line.

25 Brady Wind's application for approving of

1 this line is before the Commission today also, Case
2 PU-15-797.

3 Q. And please describe the control system on
4 the turbine.

5 A. The turbines have supervisory control and
6 data acquisitions communication technology, also
7 called SCADA, to allow control and monitoring of
8 the wind farm. The SCADA communication system
9 permits automatic, independent operation and remote
10 supervision, thus allowing the simultaneous control
11 of many wind turbines.

12 Operations, maintenance and service for
13 the project will be structured so as to provide for
14 timely and efficient operations. The computer data
15 network will provide detailed operating and
16 performance information for each wind turbine.

17 Brady Wind will maintain a computer
18 program and database for tracking each wind
19 turbine's operational history.

20 Q. And will meteorological towers be located
21 within the project?

22 A. Yes. The project will have one permanent
23 MET and already has nine temporary MET towers.

24 Q. Please describe the substation and the
25 operations and maintenance facilities.

1 A. The substation and the O&M facility will
2 be located within a 13-acre parcel located along
3 109th Avenue Southwest.

4 Q. Now, what outreach to the public and with
5 governmental officials has been completed by Brady
6 Wind?

7 A. Brady Wind has been in contact with the
8 public, landowners and agencies throughout the
9 planning stages of the project. Brady Wind held an
10 open house for the project in the current proposed
11 location in Scheffield, North Dakota, on November 4,
12 2015. The meeting was open to the general public,
13 and landowners in and around the project boundary
14 attended. An invitation to the meeting was also
15 advertised in the local newspaper.

16 During project development, Brady Wind
17 worked closely with Stark County officials and
18 other stakeholders to address feedback and concerns
19 and ensure the project was meeting local
20 requirements. Brady Wind has also met with
21 landowners in and around the project area and has
22 worked with participating landowners to avoid and
23 minimize impacts on their property to the extent
24 practicable.

25 Q. You previously mentioned that in selecting

1 the project area, Brady Wind consulted with a
2 variety of community leaders and government
3 officials to avoid or minimize any known concerns
4 during siting. Would you please explain.

5 A. Community outreach is always very
6 important to NextEra during project development,
7 but was especially important in this case because
8 last year Stark County denied our request for the
9 Dickinson Wind project. Based on the feedback we
10 received during that process, we went back to the
11 drawing board to develop a project that had a
12 strong wind resource, met this Commission's
13 requirements for exclusion and avoidance areas and
14 had willing landowners, but also addressed some of
15 the concerns we heard from Stark County in terms of
16 visual impacts.

17 We moved the project farther south and
18 away from a more populated area surrounding
19 Interstate 94 and Highway 10 and voluntarily
20 imposed a one-mile setback of wind turbines from
21 Highway 22.

22 Q. And what is the status of zoning approval
23 by Stark County?

24 A. Brady Wind obtained zoning approval for
25 the wind farm from the Stark County Commission on

1 December 22, 2015.

2 Q. And what is the status of acquisition of
3 easements and other property rights necessary for
4 construction of the Brady Wind Energy Center?

5 A. All land easement agreements necessary for
6 the wind-generation facility were completed in
7 November of 2015.

8 Q. And what setbacks would be in place for
9 this project?

10 A. In addition to complying with the siting
11 criteria of the North Dakota Public Service
12 Commission, Brady Wind will also comply with the
13 setbacks for wind turbines established by Stark
14 County. Brady Wind will utilize the most
15 restrictive setback of either the PSC or Stark
16 County in construction of this project.

17 And Table 10 on page 4-2 of our
18 application outlines the setbacks that we applied
19 to the project, the most significant of which being
20 the 2,000-foot setback from any occupied dwelling,
21 commercial building or publicly used structure or
22 facility required by Stark County, and 2.5 times
23 the rotor diameter from the wind energy facility
24 perimeter, which is -- for this project is
25 845 feet.

1 Q. And have these setbacks been sufficient to
2 address noise and shadow flicker concerns at
3 occupied residences?

4 A. Yes. Kim Wells will discuss noise and
5 shadow flicker modeling results today, and Chris
6 Ollson will testify regarding noise and shadow
7 flicker studies and explain that the project will
8 not have any adverse health effects.

9 Q. And are you aware of comments by members
10 of Concerned Citizens of Stark County suggesting a
11 2,000-foot setback from property lines is
12 appropriate?

13 A. Yes.

14 Q. And has Brady Wind conducted a study to
15 determine what the effect would be if it were to
16 apply a setback of 2,000 feet from property lines
17 to this proposed wind farm?

18 A. Yes, we have.

19 Q. Showing you what has been marked as
20 Exhibit 2, is this the exhibit -- is this the
21 exhibit which has been prepared by Brady Wind?

22 A. Yes, it is.

23 Q. And was this exhibit prepared at your
24 request in the ordinary course of business of Brady
25 Wind?

1 A. Yes, it was.

2 MR. BJELLA: We would offer Exhibit 2.

3 JUDGE WARD: Any objection?

4 MR. PELHAM: No objection.

5 JUDGE WARD: Mr. Collins?

6 MR. COLLINS: No objection.

7 JUDGE WARD: Okay. Exhibit 2 will be
8 received.

9 Q. (MR. BJELLA CONTINUING) In reviewing
10 Exhibit 2, would you please describe what it
11 depicts?

12 A. This exhibit shows the boundary of the
13 proposed Brady Wind farm, along with property lines
14 within the project boundary.

15 Q. And what is the area depicted in pink on
16 the exhibit?

17 A. The pink shading in this area, that if --
18 shows if you were to apply a 2,000-foot setback
19 from property lines to this project, that
20 requirement depicts the land where turbines cannot
21 be located.

22 Q. So what would be the result of applying
23 this setback?

24 A. The wind farm could not be built. And as
25 previously stated, the current PSC and Stark County

1 setback requirements are sufficient to protect
2 against health and safety concerns.

3 Q. Now, turning to economic benefit, has
4 Brady Wind analyzed potential economic benefits of
5 the project to the region?

6 A. Yes. Brady Wind represents an investment
7 of approximately \$250 million in Stark County. The
8 county tax revenue generated by the project is
9 estimated to be 22 million during the first
10 30 years of operations. This will help fund county
11 services, including road improvements and emergency
12 services, which will directly benefit all residents
13 of the project area.

14 In addition, approximately 8.5 million of
15 the tax revenue generated during the first 30 years
16 will go to the New England School District. This
17 is a huge benefit to the local schools and will
18 directly benefit children and families in and
19 around the project area.

20 Not only will county services be improved
21 because of the income generated by the project, the
22 landowners will receive approximately \$25 million
23 in landowner payments during the first 30 years of
24 the project. With many landowners living and
25 working in the area, this means investment of these

1 funds flows back into Stark County's economy.

2 There will be approximately nine full-time
3 staff positions employed at this project with many
4 of these folks living in the New England or
5 Dickinson area. During the six to eight months of
6 construction, the project will bring over 200
7 workers into the area to fill vacant hotel rooms
8 and boost the local economy.

9 Q. And while it's a long way out, with
10 respect to decommissioning, what is Brady Wind's
11 plans concerning decommissioning and land
12 restoration?

13 A. As I mentioned, NextEra affiliates
14 currently operate almost 1,000 megawatts of wind
15 generation in North Dakota. And NextEra's first
16 wind project in North Dakota was installed over a
17 decade ago, so we're familiar with the requirement
18 of this Commission in regards to decommissioning.

19 We developed a decommissioning plan that
20 complies with the Commission's requirement as well
21 as those of Stark County. Also as a condition of
22 the Stark County permit, Brady Wind is required to
23 post a decommissioning bond prior to the issuance
24 of building permits.

25 Finally, Brady Wind landowner agreements

1 also have a requirement of the decommissioning of
2 the wind farm and restoration of the project.

3 Q. Now, would you please briefly describe the
4 construction process should this project be
5 approved.

6 A. First, you have the completion of the
7 construction of the access roads that are used for
8 construction and maintenance. Then you move on to
9 construction of the underground feeder lines; then
10 the construction of the project substation and O&M
11 building; followed by installation of the tower
12 foundations; installation of the underground and
13 aboveground cables; tower placement and wind
14 turbine setting is next; followed by the acceptance
15 testing of the entire facility; and commencement of
16 the commercial production date.

17 Q. And what is the proposed schedule for
18 construction and operation of the Brady Wind Energy
19 Center?

20 A. The construction start date is dependent
21 upon permitting, equipment deliveries and other
22 development activities. Brady Wind is targeting
23 site construction to begin in May of 2016 provided
24 all pre-construction permits and approvals have
25 been obtained. Key schedule milestones include --

1 are in the items described following. The timeline
2 would require us to obtain our certification from
3 this Commission in May. Testing would occur in
4 July of 2016 with a COD of October 2016.

5 Q. So in conclusion, in recent wind projects
6 before the PSC, this Commission has allowed
7 flexibility in siting of project facilities if
8 within the approved project area. Does Brady Wind
9 request similar flexibility in siting of facilities
10 within the project area if this wind energy center
11 is approved by the Commission?

12 A. Yes.

13 Q. And is it the request of Brady Wind that
14 the proposed wind energy center be approved by the
15 Public Service Commission and that the Commission
16 issue a certificate of site compatibility for the
17 project?

18 A. Yes, it is.

19 MR. BJELLA: That would conclude my
20 questions of Mr. Utton.

21 JUDGE WARD: Mr. Pelham, questions for
22 Mr. Utton.

23 MR. PELHAM: Thank you, Your Honor.
24
25

EXAMINATION

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BY MR. PELHAM:

Q. Good morning, Mr. Utton.

A. Good morning.

Q. You were just talking about the flexibility with the siting facilities, and you had previously testified about the -- no more than 87 turbines being requested. Are there -- there are alternate locations that are proposed in the application; is that correct?

A. Yes, sir, there are.

Q. So if -- in my mind, just so I understand it, the -- no more than 87 turbines are being proposed. The company has proposed where it would like to put the 87, and then an alternative placement for turbines that it decides or the Commission decides shouldn't be placed where they are? Can you explain that a little bit more.

A. Yes, sir. Sure. It could be a combination of both. Whenever we're designing a wind facility, we'll have alternate turbines that we designate all the way up until kind of the last minute, and then it can be something that we work through with the landowner to decide to drop a turbine that's considered a primary turbine and

1 activate an alternate turbine, or it can be
2 something that we believe all of our primary
3 turbines are going to go forward and we're not
4 going to use any of our alternate turbines, but at
5 the last minute we could find something when we
6 start doing construction that would give us the
7 flexibility to move to an alternate turbine without
8 having to restart the permitting process.

9 Q. So would it be fair to say, sir, that at
10 this point in time the primary turbine locations
11 are what the company would plan to -- at this time
12 as we're sitting here, would plan to build assuming
13 permit approval?

14 A. Yes, sir.

15 Q. And I think I understand it, but the
16 reasons for potentially not placing a primary
17 turbine, would it be meteorological issues, would
18 it be issues that you've already looked at now or
19 would it be something new that would be discovered?

20 A. It would be something new that would be
21 discovered, because as we go through the
22 development process, we're constantly refining the
23 array and where the turbines are going to be
24 located.

25 But as Commissioner Christmann said

1 earlier in his opening remarks, there could be
2 something that we could work out, a concern of a
3 landowner, participating landowner,
4 nonparticipating landowner, that if we could reach
5 a compromise, then we could figure something out
6 and that's what those alternate turbines are for as
7 well.

8 Q. Okay. Sir, could you talk a little bit
9 about the reasons why this project is -- is needed?

10 A. Sure. We've been developing wind in North
11 Dakota for over a decade now, and when I joined the
12 company in 2008, I immediately went to work
13 developing in North Dakota. And most of our
14 development was primarily the east, east of
15 Bismarck.

16 We have a very good relationship with a
17 lot of the utilities, communities and co-ops in the
18 state of North Dakota. And several years ago in
19 our normal discussions with Basin and some of the
20 other utilities, they said that a lot of the need
21 for future power was west of Bismarck, primarily
22 power in the Bakken. And some of it was in
23 anticipation of them retiring some older assets or
24 maybe some less-efficient assets. And that's what
25 really kind of turned our head towards looking west

1 of Bismarck.

2 The next thing we look for, obviously, is
3 a healthy wind resource, and that's what we found
4 in Stark County.

5 And then the last major piece, before we
6 move into the environmental stuff, is access to
7 transmission lines that have the injection
8 capability, and that's what the Belfield to Rhame
9 transmission line does. It allows us to be able to
10 inject the power without making a substantial
11 amount of upgrades. Because ultimately at the end
12 of the day, if we have to make a substantial amount
13 of network upgrades, that raises the price of
14 power.

15 Q. So the proverbial chicken-or-the-egg
16 question. Did NextEra come in seeking development
17 of this project or was it Basin Electric saying, we
18 need additional wind power?

19 A. Originally when we were in Stark County,
20 we started developing the Dickinson site back in
21 2009-2010 time frame, and the market -- what I mean
22 when I say market is the customers, the Basins or
23 Minnesota Power, Otter Tail -- there just wasn't a
24 need for it at that time. And we focused our
25 attention on eastern North Dakota, but then as the

1 Bakken picked up, we were getting signals from our
2 customers that western North Dakota is where they
3 needed additional generation and that's what --
4 that was the big catalyst that drives us out to
5 this area.

6 Q. And you testified, sir, that there is kind
7 of a community outreach and it's important to
8 NextEra, to Brady Wind -- and maybe let's clarify
9 this. Brady Wind, just to be clear, is -- is a --
10 for lack of a better word, a subsidiary of NextEra
11 Energy; is that correct?

12 A. Yes, it is.

13 Q. And Brady Wind -- LLC; correct?

14 A. Mm-hmm.

15 Q. -- would be the operator of this project?

16 A. Yes. The owner and the operator.

17 Q. Owner and operator. Okay.

18 And as -- as the community outreach
19 occurred on this, I'm just wondering -- and you had
20 mentioned some issues and I know that your counsel
21 pointed out that this is not the Dickinson Wind
22 project, this is the Brady Wind project, but I'm
23 wondering -- you had testified as to -- I don't
24 know if maybe some concessions, for lack of a
25 better word, as to placement of the turbines to

1 avoid visibility sight issues that had been
2 expressed previously. I'm wondering, sir, aside
3 from that, were there other issues that were raised
4 during these community outreach meetings with local
5 folks?

6 A. There were. Frequently when we go into a
7 county for the first time -- and even though we had
8 been here years past, this was the first time we
9 were coming back -- we hear all types of concerns
10 about wind energy. You'll hear concerns about
11 shadow or sound or any type of things like that.
12 And that's -- that's why we don't hesitate to bring
13 our experts out in the field that have extensive
14 background work, have published in these topics to
15 dispel a lot of the rumors around kind of what the
16 reality is with these wind turbines. We feel --

17 Q. Have --

18 A. Oh, I'm sorry.

19 Q. No. I'm sorry. I thought you were done.
20 I'm sorry. Go ahead.

21 A. Well, I was just going to say we're --
22 we've been in the state for many years and we've
23 done a lot of investment here and we really enjoy
24 doing business in North Dakota. So we draw on a
25 lot of that existing operational assets that we

1 have, but also on all the new studies and things
2 that we do.

3 Q. And I'd ask specifics, sir. I mean
4 specifically what -- you know, you mentioned shadow
5 flicker. I assume noise issues came up.
6 Specifically, how is Brady Wind addressing these
7 comments by members of the public coming to NextEra
8 or, rather, to Brady Wind in the process and what
9 is Brady Wind telling them?

10 A. So initially what happens is we -- we
11 share with them the literature and we share with
12 them a lot of the research that's been done and
13 walk them through why the setbacks that are in
14 place at the county or the state level are adequate
15 to address their concerns. And then as we get more
16 and more advanced, we run our own studies with the
17 turbines that are in the application that
18 specifically talk about what the sound levels are
19 and what the shadow flicker results are and then we
20 share that with them as well.

21 Q. You mentioned a zoning conditional use
22 permit has been approved by Stark County; is that
23 correct?

24 A. Yes, sir.

25 Q. And any other permits from the county that

1 would be required?

2 A. There are some permits as we get closer to
3 construction. There's like several storm water
4 permits and a couple smaller permits, but --

5 Q. Sure. And perhaps other witnesses -- the
6 storm water would be with the health department, as
7 I understand?

8 A. Yes.

9 Q. As far as those specifically with the
10 county, you had mentioned building -- there are
11 building permits, I assume?

12 A. Yes. That's correct.

13 Q. And have those been applied for yet?

14 A. I believe -- I don't know, sir. I'm
15 sorry.

16 Q. Okay.

17 A. I don't think they have because we're
18 waiting for this -- this process.

19 Q. I understand. But obviously it would be
20 safe to assume that, assuming --

21 A. Mm-hmm.

22 Q. -- there would be applications and it
23 would need to be permitted with the county level?

24 A. Yes.

25 Q. Okay. You mentioned a little bit about

1 construction and reclamation. I'm wondering
2 perhaps if you can answer those questions that I
3 would have about that process or perhaps another
4 witness would be more appropriate.

5 A. I can try.

6 Q. Okay. I'm just wondering, sir, as far as
7 the plans for reclamation as far as topsoil
8 separation, seeding, reseeding areas, what is
9 NextEra going to be doing as to that?

10 A. What we'll do is we'll -- as it relates to
11 the turbine foundations, we remove all the way down
12 to three feet and then we will allow the topsoil to
13 come back and overfill that, and then it's up to
14 the landowners' discretion whether or not they want
15 us to take up the underground collection lines.
16 Sometimes they just prefer us just to leave it in.

17 Q. So you do work with the landowner as to
18 that?

19 A. Oh, absolutely.

20 Q. And as far as the placement of the
21 underground feeder lines you had mentioned, those
22 are going to be buried at a depth of 48 inches;
23 correct?

24 A. Correct.

25 Q. Is this going to be bored or open cut; do

1 you know?

2 A. It depends on the different areas that
3 we're going. It could be a combination of both.

4 Q. Okay. How about -- the decommissioning
5 you mentioned, and I just -- were you referring to
6 a decommissioning plan for another project that had
7 been already developed or are you talking about a
8 decommissioning plan that's been developed for this
9 project already?

10 A. Specifically with this, we have a
11 decommissioning plan that we've developed for this
12 project specifically that we're going to post
13 financial assurances before we start construction.

14 Q. And that's something the county is
15 requiring; is that right?

16 A. That's correct. Yes.

17 Q. You -- well, the application indicates,
18 sir, that approximately 150 megawatts are going to
19 be requested for this project. I'm wondering if
20 you could be more specific. I mean is it going to
21 be 151, is it going to be 150, is it going to be
22 148? Is it 150?

23 A. It's 150. What I would point to is the
24 interconnection agreement that we have executed,
25 it's what stipulates the rules around us injecting

1 power into the grid. But sometimes when you have
2 different nameplates, you can get slight
3 variations, 148.7, 148.9, 149, but at no time will
4 we inject more than 150 megawatts into the grid.

5 Q. I see. You'd mentioned the SCADA system.
6 Could you talk a little bit more about that as far
7 as monitoring. Who's monitoring? Is that all
8 automated or is there a human being that's also
9 monitoring that?

10 A. We have the operation and maintenance
11 center that's on site that monitors that data while
12 they're there during the normal business hours.
13 But that -- all of that data is obviously gathered
14 through fiberoptics and it's sent all the way back
15 to our corporate headquarters in Juno Beach where
16 we have a command center that actually monitors
17 every single one of our turbines across North
18 America. And that facility, the fleet performance
19 diagnostic center, has the capability to constantly
20 monitor 24/7.

21 If there's an outage, if a thunderstorm
22 rolls through the area, if we get a call from
23 Southwest Power Pool who is the overseer of the
24 electrons as they flow throughout this part of
25 North Dakota, we can turn the system off

1 immediately. There's a system emergency. The
2 turbines have a lot of automated capability
3 themselves, if they trip off and automatically come
4 back on, automatically turn themselves into the
5 wind. But 24 hours a day there is someone that is
6 supervising the wind farm to make sure that the
7 needs are addressed if something happens.

8 Q. So those folks that are monitoring 24/7 in
9 the operation center can, for lack of a better
10 word, push a button and turn off --

11 A. They can.

12 Q. -- all the turbines, one turbine?

13 A. Either. They can turn off all the
14 turbines, they can turn off one turbine. And then
15 they can figure out if it's something that is an
16 emergency, they need to call and immediately
17 dispatch maintenance workers to the site, or if
18 it's something that can wait till the morning, they
19 just bring the site offline.

20 Q. And I want to talk to you a little bit
21 about the maintenance workers and other employees.
22 What is -- what does Brady Wind anticipate as far
23 as numbers of personnel that it would need to work
24 on this proposed facility?

25 A. Sure. Right now we -- we're expecting to

1 bring on six -- six to nine full-time workers, and
2 that's -- that's folks that are at the O&M
3 building. There are also some other folks that
4 we'll hire that aren't specifically dedi -- they're
5 high-voltage technicians that travel around to our
6 different sites throughout North Dakota. They're
7 not going to be permanently based at Brady Wind,
8 but there are additional jobs.

9 Q. And these people would be -- these folks
10 would be trained to deal with emergency-type
11 situations; is that correct?

12 A. They're wind techs, yes, sir.

13 Q. I'm wondering, sir, in the application
14 there's a permit I believe -- well, an application,
15 perhaps, to the FAA. Are there any issues with the
16 FAA for this proposed project?

17 A. No, there are not. One of the things that
18 we have to do is we have to file -- every one of
19 our turbine locations we have to file with the FAA,
20 and they go through a very comprehensive search for
21 not only the Dickinson airport but also military
22 training routes that are classified and all
23 different types of aviation concerns. And if you
24 pass all the different hurdles, you get what's
25 called -- you get what's called a determination of

1 no hazard by each turbine. And Brady Wind has
2 received determinations of no hazard for all of our
3 turbine locations.

4 Q. What about this -- in the application
5 there's a mention of federal radar interference and
6 the results of that review. Have they been
7 submitted?

8 A. Yes.

9 Q. Okay. And what were the results of that?

10 A. That we are not in -- we are not
11 conflicting any of that radar space as well.

12 Q. There was a correspondence with the North
13 Dakota Department of Trust Lands, and it looks like
14 there's a supplemental letter that was placed in
15 the docket here with the Commission. I'm just
16 wondering if that -- if the application has been
17 reviewed by the Department of Trust Lands; do you
18 know?

19 A. If it's okay with you, sir, I'm going to
20 defer that to Kim Wells who will come behind me.

21 Q. Absolutely. That's fine. I assume those
22 gentlemen would be probably appropriate for the
23 environmental and cultural-type questions as well?

24 A. Yes. Correct.

25 MR. PELHAM: Thank you, Mr. Utton. I

1 don't have any other questions. Mr. Lein may have
2 some questions for you.

3 JUDGE WARD: Mr. Lein, do you have
4 questions for Mr. Utton.

5 MR. LEIN: Hello. Yeah. Yes, I have a
6 couple, but I'm wondering if you're the right
7 witness for them.

8 THE WITNESS: Okay.

9 **EXAMINATION**

10 **BY MR. LEIN:**

11 Q. The first one I had was in the
12 application, page 7-13, it talks about a 200-foot
13 setback from road right-of-ways. I think our rules
14 require a setback bigger than that. So I'm
15 wondering what you're observing in your layout.

16 A. Where did you say that was, Mr. Lein,
17 please?

18 Q. This was on page 7-13 of the original
19 application. I don't know if that was a typo or --

20 A. That's a --

21 MR. BJELLA: If you don't know, you can't
22 answer.

23 THE WITNESS: Yeah. I'll find out.

24 MR. LEIN: Okay. Sure.

25 JUDGE WARD: Just for the record,

1 Stephanie, the sentence there at the bottom of
2 page 7-13 says, "The towers will be placed at least
3 200 feet from road right-of-way and 2,000 feet from
4 occupied homes."

5 Q. (MR. LEIN CONTINUING) On reseeded there
6 was a spot where it talked about -- the company
7 stated it would use native materials if that was
8 approved by the landowner, and I'm assuming that
9 was a misstatement too. That you would use -- what
10 would you use for seed mixtures?

11 A. Well, I know that what we have done in the
12 past is we reach out to the landowner and we ask
13 them what their preference is. If they would
14 prefer to use it as cropland, we -- we allow for
15 that, obviously, because it's their land, but if --
16 whatever they would prefer, we -- we work very
17 closely with them because each one of the
18 landowners may have a different requirement.

19 Q. Well, I'm thinking that we needed an RCS
20 approval on the seed mixtures.

21 A. I don't know. I'll find out.

22 Q. Okay. I think we do.

23 On page 7-38 it states that you'll conduct
24 bird and bat post-construction fatality surveys for
25 one year. I thought I saw in the North Dakota Game

1 and Fish letter that they wanted it for the life of
2 the facilities. So what are you proposing to do?

3 A. Okay. Mr. Lein, if I could defer that to
4 Kim Wells. She's going to come and she can speak
5 to that.

6 Q. And I don't know if I missed it earlier,
7 but you were talking about the fleet performance
8 and diagnostic center?

9 A. Yes, sir.

10 Q. Is that in the O&M building?

11 A. No. No. That's actually at our corporate
12 headquarters in Juno Beach, Florida.

13 Q. Okay. So it's just telemetered all the
14 way there?

15 A. Right. It telemeters all the way there,
16 so at night, at midnight or 1 a.m. -- obviously
17 there won't be anyone in the on-site O&M building,
18 but they'll be looked at back in Florida.

19 MR. LEIN: I think that's good for me.
20 Thank you.

21 THE WITNESS: Okay. And, Mr. Lein, I'll
22 confirm. I believe that our -- our setbacks from
23 our roads are 1.1 times the turbine height, so
24 that's 550 feet, but I'll confirm that.

25 MR. LEIN: That's what I was expecting.

1 Thank you, sir.

2 THE WITNESS: Thank you.

3 JUDGE WARD: Mr. Collins, questions for
4 Mr. Utton?

5 MR. COLLINS: I can go. I was under the
6 impression that the commissioners were going to ask
7 questions first.

8 JUDGE WARD: Well, I would have the
9 commissioners normally go after you, but --

10 MR. COLLINS: Okay.

11 COMMISSIONER KALK: It would save us
12 questions.

13 MR. COLLINS: Okay.

14 **EXAMINATION**

15 **BY MR. COLLINS:**

16 Q. Mr. Utton, we haven't met. My name is
17 Matthew Collins.

18 A. Morning.

19 Q. Morning. I'm the attorney for the
20 Concerned Citizens of Stark County. I have some
21 questions for you. I just want to ask you a quick
22 follow-up on that controls question about being
23 monitored in Juno Beach, Florida. Do you have any
24 redundancy plans in place in case of a breakdown in
25 the -- the communications between Juno Beach,

1 Florida, and the Brady Wind turbines?

2 A. There are redundancies in place. I don't
3 know exactly how they are set up. I can't speak to
4 specifically exactly how that all works, but I know
5 there are redundancies in place, obviously because
6 south Florida, we have a lot of hurricanes that
7 come through and we make sure that even under the
8 worst situations all of our systems are still up
9 and operational in case of a storm.

10 Q. Who at -- who at your company would know
11 those redundancies?

12 A. I can find out from one of our operation
13 techs.

14 Q. Okay. But you can't testify to that
15 today?

16 A. No. That's correct. I don't know the
17 specific details.

18 Q. Okay. With regard to the -- my
19 understanding based -- you know, do you have an
20 understanding we sent you some interrogatories,
21 some written questions that we asked for some
22 responses to; correct?

23 A. Yes.

24 Q. Did you review those, in fact?

25 A. Yes, I did.

1 Q. Okay. Because I know Ms. Hochmuth
2 actually signed the responses, but you reviewed and
3 approved them?

4 A. Yes.

5 Q. Okay. And in those responses it indicated
6 that you were here to testify about the application
7 in general, and then some of the more specific
8 scientific aspects would be testified to by some of
9 the other folks who are here today; right?

10 A. Yes.

11 Q. Okay. In any event, because you're here
12 to testify about the application, I would assume
13 that you're familiar with the requirements of the
14 Energy Conversion and Transmission Facility Siting
15 Act of North Dakota.

16 A. Yes.

17 Q. Okay. And you're familiar with the North
18 Dakota Administrative Code 69-06-08 Energy
19 Conversion Siting Criteria?

20 A. I don't know that offhand, but --

21 Q. Okay. Because these are the provisions
22 that are kind of cited in the application and
23 what -- what makes up the application; right?

24 A. Correct.

25 Q. Okay. And then there's also the

1 requirements regarding a certificate --
2 Certification of Site Compatibility Application
3 Requirements, and that's under NDAC 69-06-04.

4 A. Mm-hmm.

5 Q. Were you involved in the previous wind
6 project in Stark County, the Dickinson Wind?

7 A. Yes, I was.

8 Q. Okay. And just so we're clear, Brady Wind
9 is a for-profit corporation, right, or company?

10 A. Yes. That's correct.

11 Q. Okay. And so Brady Wind has an interest
12 in making a profit when developing these projects;
13 correct?

14 A. Yes.

15 Q. Okay. And one way to increase profits is
16 to limit changes that may increase costs of
17 construction; fair?

18 A. Correct.

19 Q. Now, I wanted to touch on this request
20 about that -- the final turbine locations, and I
21 believe in the interrogatories we asked if you had
22 completed reevaluation of the preliminary turbine
23 locations.

24 A. Mm-hmm.

25 Q. And the answer stated that Brady Wind

1 filed the final turbine locations with the North
2 Dakota Public Service Commission on February 19,
3 2016.

4 And so I looked at that and it has some
5 GPS coordinates and all of that, but I'm a little
6 confused because is -- are the final -- absolute
7 final locations the ones identified in the filing
8 on February 19 or are they subject to change at
9 some future point?

10 A. We've asked the Commission to give us the
11 flexibility to -- to make small adjustments, but
12 those are the final turbine locations.

13 Q. Okay. So how -- if you're requesting
14 flexibility to move the turbines, how can they be
15 final locations?

16 A. They're final locations. If we -- if we
17 had our way, they'd be final locations. But if a
18 landowner or nonparticipating landowner has a
19 concern that we can maybe accommodate them by
20 making a slight adjustment, we would ask for that
21 flexibility.

22 Q. Or if during construction there's an
23 obstacle, you --

24 A. Yes, sir.

25 Q. -- you can move; right?

1 A. Well, that's when we would -- no, not
2 necessarily. We would activate an alternate
3 turbine.

4 Q. Okay. So that's what I want to try and
5 talk about, too, is that the movement of a
6 turbine -- I mean if you encounter some wetlands or
7 something that impacts the ability to put in the
8 foundation, you wouldn't move it ten feet. You
9 would just move it to the alternate location; is
10 that right?

11 A. It depends by the site. If we had the
12 flexibility to move it ten feet based on what we're
13 granted from the Commission, what the county grants
14 us, what the landowner would approve, the FAA
15 determination of no hazard allows for small
16 movements, but most likely we could just either
17 activate an alternate turbine and that would be
18 sufficient.

19 Q. Okay. But you're requesting the
20 flexibility to do either?

21 A. That's correct. Slight adjustments.

22 Q. Okay. Can you look at the page 1 of 1 of
23 the application. It's under section 1.1.

24 MR. BJELLA: What page was that again?

25 THE WITNESS: What page? I'm sorry.

1 Q. (MR. COLLINS CONTINUING) 1-1.

2 A. Okay.

3 Q. And there you cite to Section 49-22-02 of
4 the Century Code. Are you familiar with that
5 section?

6 A. Yes, I am.

7 Q. What's your understanding of that section?

8 A. It's a code that sets out requirements for
9 our land team, and when we sign up landowners
10 through our wind farm easements, our rules surround
11 that.

12 Q. I'm sorry. I'm referring to Section
13 49-22-02 of the North Dakota Century Code. Do you
14 see that in the first full paragraph under Section
15 1.1?

16 A. Yes.

17 Q. Okay. And you believe that is related to
18 how Brady Wind signs up landowners for the
19 easement?

20 A. No. It's obviously related to the
21 environmental preservation, effective use of
22 resources.

23 Q. Yeah. And what I wanted to ask you about
24 on that section is because that's actually the
25 statement of policy from the legislature, and it --

1 it talks more than just about efficient use of
2 resources and environmental preservation. It
3 actually talks about adverse effects on the welfare
4 of the citizens of the state and that those two are
5 factors that the PSC must take into account when
6 deciding whether to approve this type of
7 application. Do you agree with that?

8 A. Yes.

9 Q. That they should take in the -- the
10 considerations of the welfare of the citizens?

11 A. Yes.

12 Q. Okay. Because I didn't see that in your
13 application. In fact, really in any part of the
14 application I don't see a real discussion about how
15 Brady Wind takes into the considerations of the
16 nonparticipating landowners. Do you agree with
17 that or --

18 A. Well, we -- we take into account the
19 participation of everyone in the area, not just
20 nonparticipating or participating, and that's why
21 we do extensive studying and modeling and that's
22 why we adhere to all the setbacks, because it's our
23 belief that the setbacks address those. The
24 setbacks in this county are actually the most
25 stringent setbacks we've encountered in the entire

1 state, and we have many wind farms that have less
2 setbacks that we don't have issues with.

3 Q. Yeah. And setbacks are determined on a
4 local level; right?

5 A. Mm-hmm.

6 Q. And -- and sometimes, you would agree,
7 just because a particular setback is established,
8 it doesn't necessarily mean that it's compatible
9 with individual landowner's use of their property;
10 right?

11 A. Can you say that one more time? I'm
12 sorry.

13 Q. Sure. Well, my point is property is
14 unique and each landowner uses its property in a
15 unique way.

16 A. Yes.

17 Q. So one -- one size fits all doesn't always
18 work for individual landowners; right?

19 A. That's correct. That's why we have to
20 work with each landowner throughout the development
21 cycle and also throughout siting. And if in the
22 instance there isn't a setback requirement, we have
23 our own internal setback requirements in place.

24 Q. Have you worked with any nonparticipating
25 landowners in changing the footprint of this

1 facility?

2 A. Well, we've worked with a lot of the
3 nonparticipating landowners. We -- we want to work
4 with all the landowners because, you know, we
5 believe that we're guests here, and when we first
6 come out and -- and start signing up landowners,
7 several of them -- some of them may say yes, some
8 of them may say no, but if they say no, it still
9 doesn't mean we won't continue to work with them
10 and see if we can address their concerns.

11 Q. So have you made any changes to the
12 facility based on nonparticipating landowner input?

13 A. Yes.

14 Q. Okay.

15 A. I can't specifically tell you what they
16 are because the array is constantly changing, but
17 there -- for example, the voluntary one-mile
18 setback to the highway is something that we really
19 didn't need to do but we thought it was good to do
20 because we had several nonparticipating landowners
21 that wanted that.

22 Q. You -- nonparticipating landowners came to
23 you and asked you for that setback?

24 A. It was when we -- when we originally were
25 doing the Dickinson project, we heard from a lot of

1 nonparticipating landowners that addressed the
2 concerns around I-94 and the highway north near
3 Taylor and the highway -- the Enchanted Highway,
4 and that's all the stuff we took into account when
5 we were redesigning -- or when we were designing
6 this project.

7 Q. Okay. But other than that, do you recall
8 any specific changes --

9 A. I can't --

10 Q. -- for landowners in this -- who are
11 affected by this facility?

12 A. I can find out from the land team that's
13 here, but I can't recall exactly the specific
14 changes.

15 Q. Okay. Could you turn to section 1.2?
16 It's at page 1.4 and -- or 1-4 and 1-5.

17 A. Okay.

18 Q. And it indicates at the top of 1-5, the
19 second paragraph from the top, that Brady Wind
20 believes that the aforementioned siting process is
21 consistent with North Dakota siting rules and
22 provides Brady Wind with the flexibility necessary
23 to develop a timely, cost-effective project in an
24 environmentally responsible manner.

25 And that's in relationship, if you read,

1 to the flexibility in the siting; right?

2 A. Yes.

3 Q. And I looked at the North Dakota statutes
4 and Administrative Code, and I couldn't see any
5 provision that allows for flexibility in siting.
6 In fact, I believe the North Dakota Administrative
7 Code requires maps to be submitted with exact
8 locations of the turbines so that the public has an
9 opportunity to examine whether or not Brady Wind is
10 complying with the setback requirements and those
11 types of things.

12 A. Yes.

13 Q. So is there -- do you know of any
14 provision in the North Dakota Code or
15 Administrative Code that allows for this
16 flexibility you're requesting?

17 A. No.

18 MR. BJELLA: Your Honor, this calls for a
19 legal conclusion, so I'm going to object.

20 JUDGE WARD: Okay. I'm going to overrule.
21 Go ahead and answer.

22 THE WITNESS: No, I don't know the
23 specific code.

24 Q. (MR. COLLINS CONTINUING) So do you think
25 that deprives the public of the opportunity of

1 knowing the final locations of the turbines so that
2 they could come and comment on them?

3 A. No. These -- these are the final turbine
4 locations.

5 Q. Well, I think we previously established
6 that they aren't necessarily the final locations.
7 They could move.

8 A. We could activate alternate turbines.

9 Q. Right. And you could also move them
10 within ten feet of where they are?

11 A. Correct.

12 Q. So those -- so there may be movement in
13 the turbines that the public doesn't get a chance
14 or opportunity to talk about or raise their
15 concerns about; right?

16 A. If they -- yes. That's correct.

17 Q. A little farther down under 1.3, Project
18 Summary, it talks about what -- Brady Wind to
19 evaluate -- or describes the project in general.
20 And the second line from the bottom of that
21 paragraph it says, "The proposed project area was
22 identified as optimal from wind resource,
23 transmission interconnection, environmental, and
24 economic perspectives"; right?

25 A. Yes.

1 Q. Was there a consideration made to the
2 impact it would have on the local landowners, those
3 nonparticipating landowners?

4 A. Yes, there is.

5 Q. Because it wasn't mentioned here. And do
6 you know what consideration was made for them?

7 A. Well, we just take into consideration when
8 we're siting the turbines to make sure that we set
9 back from their property lines and roads, things
10 like that.

11 Q. And that's where you get this -- if people
12 have concerns, you've developed Exhibit No. 2;
13 right?

14 A. Yes. That's correct.

15 Q. And this purports to show that if you went
16 from a 2,000-foot setback from a property line as
17 opposed to the home, you wouldn't have any room to
18 build the wind -- the wind farm; right?

19 A. That's correct.

20 Q. Could this also be interpreted as showing
21 that maybe this area isn't appropriate for the wind
22 farm?

23 A. No. The --

24 Q. Because if the appropriate setback is
25 2,000 feet from the property line, this would show

1 that you can't build a wind turbine in this area;
2 right? Because you've testified the appropriate
3 setback is 2,000 feet from the home, and if the
4 appropriate setback is 2,000 feet from the property
5 line, perhaps this demonstrates that this area is
6 not appropriate.

7 A. Well, 2,000 feet setback from the property
8 line isn't needed because there isn't any research
9 that determines why that would be justified.
10 2,000 feet from home takes into account -- and we
11 normally do -- start with a 1400-foot setback from
12 homes, but that takes into account all the
13 different types of effects. So a 2,000-foot
14 setback from a home addresses the health and
15 concerns of nonparticipating landowners as well as
16 participating landowners.

17 Q. Well, health concerns, is that the only
18 consideration when establishing setbacks?

19 A. No.

20 Q. Okay. What are the other considerations?

21 A. We take into account their use of their
22 land because it's their private land, the health,
23 the concerns, the annoyance factors, all those type
24 of things.

25 Q. And -- but if the landowner thinks a

1 2,000-foot setback from their property line is more
2 appropriate, that would be in conflict with what
3 you believe?

4 A. It would be.

5 Q. Okay. If you go further down on page 1-5
6 under 1.3.1, Proposed Project Area, under the Table
7 2 there, it indicates that the project area
8 encompasses approximately 29,981 acres; correct?

9 A. Yes. That's correct.

10 Q. And that's about 47 square miles?

11 A. Yes.

12 Q. And then a little farther down it says,
13 "The permanent project structures will occupy up to
14 110 acres during operation"; right?

15 A. Correct.

16 Q. And what I'm confused about is that the
17 project structures take up to 110 acres, but then
18 you need a project area of 47 square miles; right?

19 A. Yes.

20 Q. So is it fair to characterize the
21 permanent structures' impact on the area is only
22 110 acres when you need 47 square miles to operate
23 the facility?

24 A. The permanent structures take up
25 110 acres, but it doesn't exclude the rest of the

1 area for landowner use.

2 Q. No, I know, but I mean just because it --
3 and let's go to -- let's go to the next page
4 because this will maybe be helpful. If you go to
5 table 3 --

6 A. Yes.

7 Q. -- it talks about the wind turbines. And
8 then the last column it says Permanent Disturbance
9 is .2 acres per turbine; right?

10 A. Mm-hmm.

11 Q. And that's just the turbine itself on a
12 foundation?

13 A. Correct.

14 Q. But that turbine has an impact greater
15 than just .2 acres other than just that physical
16 presence there; right?

17 A. We have to space them out because
18 they're -- you know, so they cannot wake each
19 other.

20 Q. And because there's shadow flicker,
21 there's noise impacts and the whole gamut of issues
22 with them. That's why you need the 47 miles?

23 A. Well, the setbacks that are established
24 are the criteria that allows us to site it.

25 Q. Right.

1 A. But even without the setbacks, you would
2 still have to space them adequately enough apart so
3 they didn't impact each other.

4 Q. Right. But is it -- is it fair to
5 characterize the individual impact for a wind
6 turbine at .2 acres per turbine, because there's
7 other factors at play that make that individual
8 turbine impact more things in the area; right?

9 A. I think the wind turbine impacts .2 acres
10 per turbine.

11 Q. All right.

12 A. And the landowners are able to do anything
13 all the way -- they can farm all the way right up
14 to the turbine.

15 Q. If you go to page 1-7 under section 1.3.2.

16 A. Yes.

17 Q. This section talks about the output of the
18 project; correct?

19 A. Yes, sir.

20 Q. Okay. And based on the total project area
21 of 29,981 acres, Brady Wind needs almost 200 acres
22 of land in Stark County to generate the
23 150 megawatts per turbine; right?

24 A. Yes.

25 Q. Okay. As part of the analysis done for

1 this project, did Brady Wind consider whether the
2 amount of land impacted outweighed the need for the
3 project?

4 A. Can you say that one more time? I'm
5 sorry.

6 Q. Sure. Given the fact that each turbine --
7 or each megawatt of power, excuse me, requires
8 almost 200 acres of land to produce each megawatt,
9 did Brady Wind do any analysis to determine whether
10 the amount of land impacted outweighed the need for
11 the project? In other words, it seems like a lot
12 of land, 200 acres per megawatt. Would there be a
13 better use of that land as to outweigh the need for
14 this project?

15 A. Well, because it's .2 acres per machine,
16 we don't see it as 200 acres per megawatt. But,
17 you know, the -- the need for the -- the wind
18 energy is going to require, you know, larger
19 acreage footprint than, say, a natural gas
20 facility.

21 Q. Can you say that again? I'm sorry.

22 A. I'm just trying to understand your
23 question. You asked if we looked at additional
24 ways to compress the site?

25 Q. No. But that for each megawatt of power,

1 the project area needs 200 acres; right?

2 A. Yes.

3 Q. And would there be a better use of that
4 land?

5 MR. BJELLA: Calls for speculation, Your
6 Honor. I'm going to object.

7 JUDGE WARD: Well, I -- I think it's sort
8 of argumentative, but --

9 MR. COLLINS: I'll move on, Your Honor.

10 Q. (MR. COLLINS CONTINUING) Can you go to
11 section 2 of the application. It's on page 2.1.

12 A. Okay.

13 Q. And this is the section on the need for
14 the facility; correct?

15 A. Mm-hmm. That's correct.

16 Q. And under North Dakota Administrative Code
17 69-06-04-01(2)(C), it states that an analysis of
18 the need for the proposed facility based on present
19 and projected demand for the product or products to
20 be produced by the proposed facility, including the
21 most recent system studies supporting the analysis
22 of the need.

23 That's the requirement for fulfilling this
24 aspect of the application. Do you agree?

25 A. Mm-hmm.

1 Q. Okay.

2 MR. BJELLA: Your Honor, he doesn't have
3 the statute in front of him, so I'm not -- I don't
4 know how he can agree.

5 JUDGE WARD: Well, I think he agreed to
6 what he just read. I think I'm okay with that. If
7 you want to ask him to place it in front of him,
8 you can do that.

9 MR. COLLINS: I have a copy if you'd like
10 to look at it.

11 THE WITNESS: I'll look at it.

12 Q. (MR. COLLINS CONTINUING) It's this one
13 right here.

14 JUDGE WARD: Take a moment to review it.

15 THE WITNESS: Thank you, Your Honor.

16 JUDGE WARD: Okay. Mr. Collins, do you
17 want to restate your question?

18 Q. (MR. COLLINS CONTINUING) That's the
19 analysis that you're providing here in section 2 of
20 the application to address the need issue?

21 A. Yes.

22 Q. Okay. The introductory paragraph to
23 section 2.1 discusses the high heating demand in
24 winter in North Dakota. Do you see that?

25 A. Yes.

1 Q. Is that a basis for Brady Wind to rely on
2 to establish the need for the facility?

3 A. I think it's one of the things that
4 establishes the need for the facility. Yes.

5 Q. Do you believe -- or is North Dakota a net
6 energy exporter?

7 A. I believe North Dakota is.

8 Q. Okay. The next paragraph cites to the
9 Energy Information Administration for the
10 percentage of net electricity from wind in 2010.
11 Do you see that?

12 A. Yes.

13 Q. And one of the requirements of the
14 Administrative Code section I showed you was that
15 the most recent studies should be cited as far as
16 what the current status of the energy needs are of
17 the state; right?

18 A. Okay.

19 Q. And do you know that the Energy
20 Information Administration has more recent data of
21 2014?

22 A. No, I didn't know that.

23 Q. Okay. And do you know if that information
24 is available online?

25 A. I don't know that.

1 Q. Okay. And do you know that in 2014 it
2 states that 17.5 percent of the energy in North
3 Dakota comes from wind, not -- so it's been an
4 increase? Did you know that?

5 A. No, I didn't know that.

6 Q. Okay. You cite next to the EmPower North
7 Dakota Commission. Do you see that? The second
8 paragraph.

9 A. Mm-hmm.

10 Q. And I believe that's the 2010 publication
11 it's referring to; right?

12 A. Yes. That's correct.

13 Q. Did you know that they have come out with
14 a 2014 Policy Updates and Recommendations?

15 A. No, I did not.

16 Q. Do you know if this was available online?

17 A. I do not.

18 Q. Okay.

19 A. I know that I established the need based
20 on these requirements and also based on the fact
21 that Basin has a need for the power.

22 Q. Citing to EmPower 2010 to a state goal of
23 5,000 megawatts from wind. Do you see that in your
24 application?

25 A. Mm-hmm.

1 Q. According to the October 14, 2015, press
2 release from the PSC on the clean power plan
3 regulations, North Dakota generates 6300 megawatts
4 of wind energy currently. Did you know that?

5 A. Can you say that again? 6300 megawatts?

6 Q. Yes.

7 A. I -- who stated that?

8 Q. Oh, no. No. I'm sorry. 6.3 million
9 megawatt hours of wind energy.

10 A. Okay. I don't know that, but that
11 sounds -- that could be accurate.

12 Q. Okay. Does that mean that North Dakota is
13 exceeding what EmPower established in 2010?

14 A. No. You're comparing megawatt hours to
15 nameplate megawatts.

16 Q. Oh, I'm sorry. Okay.

17 A. Yeah. They're -- they're different.

18 Q. All right. The application in the next
19 paragraph cites to the Midwest Independent System
20 Operator. Do you see that?

21 A. Mm-hmm.

22 Q. And that is a 2012 study. Has that been
23 updated; do you know?

24 A. I don't know if there's a revised version
25 of this. I believe it's the latest version.

1 Q. It goes on to state in that paragraph,
2 From 2015 onward, 9,912 MW of retirements of
3 fossil-fueled power plants are assumed to occur due
4 to the Environmental Protection regulations; right?

5 A. Yeah. We also hear that from our
6 customers.

7 Q. Okay. But those regulations have been put
8 on hold, to your knowledge?

9 A. Which regulations?

10 Q. The clean power plan regulations.

11 A. They have, yes. But the customers are
12 still planning that there will be some type of
13 carbon requirement in the future.

14 Q. Sure. But the application hasn't been
15 updated to reflect that -- the current state of the
16 clean power plan regulation?

17 A. Right. The stay of the clean power plan
18 doesn't impact this project.

19 Q. Okay. But I think you cite to those
20 regulations as a reason for creating the need;
21 right?

22 A. Yes. In and above the need based upon the
23 PPA with Basin.

24 Q. Okay. The next paragraph talks about the
25 Mid-Continent Area Power Pool. Are you familiar

1 with that organization?

2 A. Yes.

3 Q. Okay. And this application cites to a
4 report that was published in 2009?

5 A. Mm-hmm.

6 Q. Do you see that?

7 A. Yes.

8 Q. Okay. And is this seven-year-old report
9 the most reliable information on anticipated usage
10 for the region?

11 A. I believe it's the latest report.

12 Q. So if we go to the next page, we turn to
13 page 2-2 of the need analysis under table 5, and
14 this is taking the information from the MAPP report
15 and showing how there's an anticipated deficit in
16 2017 and '18 of the megawatts produced for their
17 region; right?

18 A. Yes.

19 Q. Because this isn't just North Dakota?

20 A. No, this is not.

21 Q. Okay. But do you think that the -- the
22 recent downturn in the Bakken oil production would
23 have an impact on these numbers here?

24 A. It could have. I'm speculating, but it
25 could have an impact.

1 Q. Okay. I'm just wondering if -- because
2 the date of this study is 2009 -- whether things
3 have changed and whether this is the most recent
4 information available to determine whether the
5 Brady Wind farm in 2016 is needed. And do you
6 have --

7 A. Yeah. I -- do I have an -- yeah, I
8 believe it's needed because we've been asked by
9 multiple utilities in the state of North Dakota.
10 That is part of their plan. They need to bring on
11 new generation for multiple reasons, one of which
12 is load, and we're servicing that with a PPA
13 through Basin Electric. Basin Electric needs power
14 above and beyond this. They've actually just
15 recently issued a request for proposal asking for
16 additional projects that could be potential to come
17 on line in future years.

18 Q. Okay. On the page 2-2, the next full
19 paragraph talks about the EPA's regulations that
20 are now stayed; is that right?

21 A. Correct.

22 Q. Okay. Does the need analysis that is in
23 the -- is described in this Administrative Code
24 indicate that the public utilities' needs should be
25 addressed?

1 MR. BJELLA: Objection. Calls for a legal
2 conclusion.

3 JUDGE WARD: Overruled.

4 THE WITNESS: Can you restate the
5 question, please?

6 Q. (MR. COLLINS CONTINUING) Does the need
7 analysis required in the Administrative Code that
8 we looked at require the public utilities' needs to
9 be addressed?

10 A. I -- I don't know. I can't make that
11 decision.

12 Q. Okay. If you go to the next page at 2-3,
13 there's section 2.2, Alternatives.

14 A. Yes.

15 Q. And it states that no alternatives were
16 considered because these technologies do not meet
17 the state's goal of adding new wind energy;
18 correct?

19 A. Yes, it does.

20 Q. Okay. Is it the goal to -- whose -- is it
21 Basin wind's goal to add -- or Basin Electric to
22 add wind energy or is it the state's goal to add
23 wind energy that Brady Wind is fulfilling or
24 looking at?

25 A. I think it's both.

1 MR. BJELLA: Objection. Calls for
2 speculation. Hearsay.

3 JUDGE WARD: Overruled. I'm going to let
4 him go ahead. I think the question is compound,
5 but --

6 Q. (MR. COLLINS CONTINUING) Well, I mean you
7 identify the goal of adding new wind energy. Whose
8 goal is that? Basin wind or the state?

9 A. Basin's goal is to add new wind energy.

10 Q. Okay. I'm going to have you just --
11 because this is about alternatives, and in section
12 2.2 you indicate that using coal, natural gas or
13 biomass aren't viable alternatives because we're
14 looking for wind energy; correct?

15 A. That's correct.

16 Q. And if you could just jump to page 5-1.

17 A. Okay.

18 Q. And under section 5.2 the last sentence
19 says, "Good-to-excellent wind resource areas are
20 located throughout North Dakota; winds within the
21 project vicinity generally consist of Class 4 and 5
22 winds."

23 So there are other areas in North Dakota
24 that offer equally good to excellent wind resources
25 than the specific Brady I location; is that right?

1 A. There are. The question is do they have
2 access to transmission lines and injection
3 capability?

4 Q. Okay. Can you turn to page 3.2? This is
5 under -- excuse me, 3.1, the Site Selection Area --
6 Criteria, excuse me.

7 A. Okay.

8 Q. And part of the application process is to
9 identify exclusion areas and avoidance areas; is
10 that right?

11 A. That's correct.

12 Q. Is this -- the discussion of exclusion
13 areas versus avoidance areas, is that Dr. Wells' --

14 A. That's correct.

15 Q. -- topics to discuss?

16 A. Yes, please.

17 Q. And that would be true for the
18 environmental?

19 A. Yes, sir.

20 Q. If you could turn to section -- or
21 page 7-1, it's the Environmental Analysis, please.

22 A. Okay.

23 Q. And to page 7-12. And this might be a
24 topic for your other witnesses, but --

25 A. 7-1 and 7-12?

1 Q. I'm sorry. 7-12. Just moving forward in
2 it.

3 A. Okay. Sorry. Okay.

4 Q. And there's a discussion about shadow
5 flicker in the studies there?

6 A. Yes, sir.

7 Q. Is that for the other witnesses?

8 A. Yes. That's correct. We have done -- or
9 we have some experts here that can speak to that.

10 Q. I believe you testified on -- during the
11 questions from Mr. Bjella that there was a need for
12 future power in the west and the Bakken and the
13 retiring -- and because of retiring older
14 facilities. Do you remember that testimony?

15 A. Mm-hmm.

16 Q. Does western North Dakota, will they
17 directly benefit from this power being generated?

18 A. I believe so.

19 Q. Basin will be using this electric service
20 directly for western North Dakota?

21 A. Throughout their service territory, but in
22 western North Dakota, yes.

23 Q. I guess I'm confused by your answer.
24 Throughout their service area which includes
25 western North Dakota; right?

1 A. That's correct.

2 Q. Okay. But we don't know for sure that
3 this particular power will be used to serve western
4 North Dakota. It just goes into the grid.

5 A. It goes into the grid and it's, you know,
6 kind of analogous to water. It will flow to
7 wherever the load is needed.

8 Q. Right. But one of the reasons was because
9 of this facility -- that you determined there was a
10 need for this facility was because the utilities
11 were coming to you concerned about the energy usage
12 in the Bakken area and the retiring of older
13 facilities; correct?

14 A. Mm-hmm.

15 Q. And both of those circumstances have now
16 changed today; right?

17 A. That would be a question for them, but I
18 don't think it changes their long-term outlook.
19 You know, obviously when they're thinking about
20 future generation, they're thinking for many, many
21 years in the future.

22 Q. No, I know. I understand.

23 A. And the Bakken could -- we could have an
24 event that could cause oil prices to go back up and
25 then the Bakken could surge again.

1 Q. Or it may not. We just don't know; right?
2 But currently there has been a slowdown in the
3 Bakken and currently the clean power plan
4 regulations have been put on hold?

5 A. That's correct. And also Basin has come
6 to us and asked for additional renewable
7 resources --

8 Q. Okay.

9 A. -- throughout their service territory,
10 including western North Dakota.

11 Q. Okay. You mentioned that Brady Wind is
12 obligated to post certain financial securities for
13 decommissioning by the county. What are those
14 financial securities?

15 A. We have to post either a corporate
16 guarantee or a letter of credit or cash deposit for
17 the decommissioning charges.

18 Q. Corporate guarantee from NextEra or from
19 Brady Wind?

20 A. From NextEra.

21 MR. COLLINS: Okay. That's all the
22 questions I have. Thank you, sir.

23 JUDGE WARD: Okay. Questions from the
24 commissioners? Who is going to go first?
25 Commissioner Kalk?

1 COMMISSIONER KALK: Thank you, Your Honor.

2 EXAMINATION

3 BY COMMISSIONER KALK:

4 Q. Well, first off, Jason, I'm glad to see
5 you got in trouble from the court reporter first
6 before I had the chance.

7 The -- well, you certainly have been up
8 there for a while. I just have a few more
9 follow-ups.

10 The -- okay. We talked about the land
11 reclamation. The -- what's the oldest wind farm
12 you folks have in operation in the country?

13 A. I will confirm, but I believe it's a
14 project that we acquired in the '90s that was
15 constructed in the late '80s to early '90s on the
16 West Coast in California.

17 Q. Is that wind farm still in operation?

18 A. Part of it is and part of it's we've
19 actually done what's called a re-power where we go
20 in and we take down older, obsolete wind generation
21 and put up newer towers.

22 Q. Where I was going is have you actually had
23 to reclaim a wind farm yet?

24 A. We have not yet. The oldest wind farms
25 that we have in the fleet right now, almost all of

1 those opportunities we look to re-power based on
2 customer output and based on the fact that the wind
3 resource is strong. And that with the time between
4 either the late '80s or the early '90s and now,
5 technology has improved so much that we can capture
6 so much more energy from the wind.

7 Q. Okay. And what would you -- you think the
8 life cycle of this project is?

9 A. We think the life cycle of this project is
10 30 to 35 years. It's a little bit analogous,
11 Commissioner, to like an airplane. There will be
12 significant changes that will go on throughout the
13 life of the project. We'll replace the gearbox,
14 we'll replace some of the bearings inside the
15 machine. A lot of times when you get on an
16 airplane, it may be from the '70s, but a lot of the
17 avionics are updated. We'll continue to make those
18 type of changes to make sure that the machines are
19 up to optimal performance.

20 Q. Okay. And if it's not proprietary, what
21 is the term of the purchase power agreement with
22 Basin --

23 A. It is --

24 Q. -- as far as years?

25 A. I believe it's 30 years.

1 Q. And then at the end of that time I guess
2 you'd put it back out for someone else to buy the
3 power or you'll cross that bridge when you come to
4 it?

5 A. Well, we have -- we have PPAs or power
6 purchase agreements that are rolling off, and we --
7 we can do several different options. We can either
8 re-approach the same customer and ask if they would
9 like to renegotiate or sign another contract. We
10 can do what's called a re-powering, and we're doing
11 that in several locations across the country. We
12 can do a re-power where we talked about in
13 California. We take the old equipment down, put
14 new equipment in, or as a last resort we can
15 completely decommission the site.

16 Q. Okay. You've talked about the
17 interconnection. The interconnection is with the
18 Southwest Power Pool system?

19 A. Yes.

20 Q. So as -- I guess you know this but a lot
21 of folks maybe are still following it, but Basin
22 Electric has now joined Southwest Power Pool, and
23 there was some discussion about MAPP. I think MAPP
24 has kind of been gotten rid of; now it's all SPP.
25 But that interconnection -- how is that transition,

1 the agreement -- and we'll get into this at the
2 next hearing too -- but between -- as SPP came on,
3 how did you get that interconnection approval from
4 them --

5 A. Sure.

6 Q. -- ahead of time because they just became
7 part of Basin -- other way around -- Basin became
8 part of SPP?

9 A. So originally the interconnection was
10 filed through Western Area Power Administration
11 because they were the regional transmission
12 operator in this particular facility. But as
13 Western and Basin joined SPP, things that were in
14 study were either concluded or were transitioned
15 into the SPP system.

16 This particular project was concluded and
17 wrapped up, and we have the LGIA, the large
18 generator interconnection agreement, right as Basin
19 was joining SPP.

20 Q. So that was all approved --

21 A. Yes, sir.

22 Q. -- in the SPP planning process?

23 A. Yes, sir, it is. So we've gone through
24 the whole process just before -- just before they
25 were getting ready to enter SPP and then it was

1 concluded.

2 Q. And that's capped at the 150 megawatts?

3 A. Yes. That's correct.

4 Q. So whatever discussion there might be
5 about what additional turbines you might put in
6 there, you're capped at exporting 150 megawatts
7 into the grids, so the discussion about how many
8 turbines, it can't be more than 150 megawatts?

9 A. That's correct. Yes, sir.

10 Q. Okay. And who is paying for the
11 interconnection costs?

12 A. We do. We have to pay all of the -- the
13 interconnection costs and the network upgrade
14 costs.

15 Q. Okay. And I can't remember if this came
16 out yet, but how many people will be utilized
17 during construction if it's approved?

18 A. It will be six to nine people, and that
19 includes people that will be working at the O&M
20 building, and there will be an additional three --

21 Q. During construction?

22 A. I'm sorry. I'm sorry. During
23 construction it will be over 200.

24 Q. Okay.

25 A. And then the permanent people will be six

1 to nine.

2 Q. Gotcha. The -- there was a lot of
3 discussion about flexibility and tower locations.
4 You know, it's interesting, I'm going to kind of
5 digress here a little bit, but there's many
6 different figures we could look at, but just the
7 one that Mr. Bjella handed out, Exhibit 2, you kind
8 of -- I'm just curious, the -- are there any
9 nonparticipating landowners inside the project
10 area?

11 A. There are. Yes, sir.

12 Q. So could you show me where those roughly
13 would be at or do you have -- because I looked
14 through the figures and I couldn't find a figure
15 that really showed -- and maybe I just couldn't
16 find it, but in previous hearings we've seen the
17 project layout and then it might be highlighted
18 what areas might be nonparticipating landowners,
19 because for the crowd, quite honestly, the -- my
20 decision process has been if you're inside the
21 project area and you're nonparticipating, I may
22 have more credence to what your concerns are than
23 if you are a nonparticipating landowner outside the
24 project area. That's been what I've been
25 consistent on.

1 So can you show me somewhere or provide
2 something that would show the nonparticipating
3 landowners inside the current project area?

4 A. I'll find out. Yes, sir.

5 Q. So you don't know that we have a figure
6 that shows that?

7 A. Can I -- can I ask them? Is that okay?

8 Q. Sure. I just --

9 JUDGE WARD: How about we -- we could get
10 that during a break and then could come back on?

11 COMMISSIONER KALK: Okay. That's fine.
12 Because that will probably --

13 JUDGE WARD: Because we're going to be
14 taking a break shortly, so --

15 COMMISSIONER KALK: Okay.

16 THE WITNESS: Okay.

17 Q. (COMMISSIONER KALK CONTINUING) All right.
18 Let's table that discussion then.

19 The -- okay. Kind of on -- now I'm
20 looking at -- and it could be any figure probably,
21 but I just happened to look at figure 3, and it
22 shows the -- we've got a bunch of turbines in the
23 eastern part of the project area and a bunch of
24 turbines to the western part of the project area.
25 You've got the setbacks on Highway 22, which you

1 agreed to.

2 But is there a way that that -- why does
3 the project area have to be so big in that area
4 around Highway 22? Why don't you just screech it
5 down just so it follows the transmission line and
6 open it back up? Why do you have that area
7 included if there's no turbines going to be there?

8 A. Normally we'll include all of the
9 landowners' land in our application and the
10 project. One primarily is because it's -- as we
11 sign up the land, they're considered part of the
12 project and they're going to be getting a
13 payment -- even if they don't have a specific
14 improvement in that particular area, they'll still
15 be getting a payment, but also we use a little bit
16 of land outside also as a buffer. We want to make
17 sure that, you know, another wind company doesn't
18 come in and try to put turbines in that area.

19 Q. Okay. So basically to keep landowner --
20 how to explain this -- to keep the landowner blocks
21 intact?

22 A. Yes.

23 Q. Okay. The -- let's see here. There was a
24 lot of discussion from the previous discussion you
25 just had with the intervenors, which was really

1 good discussion, quite honestly, about the purpose
2 and need. And I'm curious, you're building this;
3 right? So the purpose and need was set by Basin
4 Electric; right?

5 A. Yes.

6 Q. I mean you didn't --

7 A. We would not be building this if we didn't
8 have a PPA.

9 Q. So what do you have that's in the record
10 somewhere that shows that Basin has established the
11 purpose and need for this project that you are now
12 executing? And if it's not, I maybe would like to
13 see that. It's not that I don't believe you. I
14 mean I've seen the discussion from Basin. They're
15 buying the power. But I would like something in
16 there -- the record that shows that Basin asked you
17 to do this and you're building it for them to buy
18 the power.

19 A. Okay.

20 Q. So there's nothing in there that you're
21 aware of?

22 A. I think -- well, we point to the power
23 purchase agreement.

24 Q. Okay.

25 A. I don't know specifically where in here.

1 I can try to find out, and that --

2 COMMISSIONER KALK: I'll just ask our
3 attorney. Zach, does that add any more to what I'm
4 after?

5 MR. PELHAM: 2-2.

6 COMMISSIONER KALK: 2-2, does that suffice
7 what I'm asking for, because that's what my
8 question is?

9 MR. PELHAM: I think he's answered your
10 question.

11 COMMISSIONER KALK: Okay. I have enough
12 in the record on that?

13 MR. PELHAM: Well, I mean, it's --

14 Q. (COMMISSIONER KALK CONTINUING) All right.
15 Because it's a good line of discussion, but from my
16 viewpoint, the study is that you're building this
17 because they asked you. They've established a
18 purchase and need on it.

19 Okay. The -- I think I'll have some more
20 questions when we look at the map about the
21 nonparticipating landowners inside the project
22 area. But I guess just the last question I would
23 have is tell me the methodology that you used to
24 come up with this shape. I know you talked about
25 studying of wind and all that area, but every wind

1 farm has a unique shape. And I've heard previous
2 testimony, but how did you come up with this? Why
3 isn't it just one block? Why is it, you know, more
4 east and west than it is north than south? What
5 makes this shape the best?

6 A. Yes, sir. It's a combination of probably
7 four to five things. The first, as you mentioned,
8 obviously it's the wind resource. The wind
9 resource is --

10 Q. Well, how do you pick -- okay. How -- why
11 is it that the wind resource -- let's just use
12 Highway 22 as the reference. How is it that the
13 wind resource to the west of Highway 22 is not just
14 as good as all the wind resources to the east and
15 north? Why isn't there just a big block up?

16 A. A lot of it is elevation. A lot of it is
17 primarily still on the topography of the land, and
18 that's what we kind of constantly refine as we use
19 the MET towers. And some of the refinement is the
20 environmental, if there are environmental areas
21 that we want to avoid. Some of it could be a
22 landowner's requirements. If a landowner wants us
23 to sign up a parcel over here but not over here,
24 then that kind of changes the project boundary. It
25 kind of goes throughout the entire development

1 cycle and constantly kind of refines itself until
2 we get down to a site like this.

3 Q. How many MET towers -- you talked about
4 how many you'll have when it's all done, but in the
5 sampling of this area, would the MET towers have
6 been outside the project area, of course with
7 landowner approval --

8 A. Sites.

9 Q. -- that maybe would have negated some
10 sites or how did that -- how does -- how many areas
11 did you perhaps sample in this before you got to
12 this project site?

13 A. Well, originally when we looked at the
14 wind resource group, we looked at the entire
15 county, because when the Dickinson conditional use
16 permit was denied, we were looking for a place to
17 satisfy the requirement through our power purchase
18 agreement but also, one, to find a wind resource
19 that's comparable; two, answer the needs of the
20 citizens; but, three, also find a way that we could
21 inject it into the interconnection spot.

22 So we originally started with a scan of
23 the entire county. We use MET towers that are
24 located throughout the county. We use -- sometimes
25 we can get weather data from airports. Sometimes

1 we use National Weather Service satellite imagery
2 that -- we have a company called WindLogics, and
3 they do all the detailed analysis. There is a
4 good -- there is a spot that's good, but it was too
5 close for the airport that pushed us further south,
6 and there's all these different refinements that we
7 go through until we set on a location like this.

8 And even when we get to a location like
9 this, we first have to go out and see if we have
10 landowners that are willing to voluntarily sign up
11 their land.

12 Q. But there will be no landowner that has a
13 turbine on their property that they don't approve?

14 A. There will be no landowner that has a
15 turbine or an underground collection line or a
16 road.

17 Q. That's one thing just for the viewing
18 audience, if you will, the law is different for
19 wind farms than it is for power lines and
20 pipelines. There may be cases where the Commission
21 has a power line in front of it where it's --
22 there's going to be people that don't want the
23 power line, like Commissioner Christmann was
24 talking about. Well, there are cases there where
25 there's a procedure that the land can go and that

1 the company can take it.

2 In the case of a wind farm, if it's not a
3 willing landowner with the turbine, the turbine
4 doesn't go there. The question we continue to
5 debate is how far out does that go.

6 So -- but just to clarify, everybody that
7 has a turbine on their property is a willing
8 landowner. There will never be a turbine on
9 somebody's property that is not a willing
10 landowner?

11 A. Yes, sir. That's correct.

12 COMMISSIONER KALK: Thank you. No further
13 questions until we talk about the --

14 THE WITNESS: Thank you.

15 COMMISSIONER KALK: -- other ones.

16 JUDGE WARD: Okay. Chairman Fedorchak.

17 COMMISSIONER FEDORCHAK: Well, good
18 morning.

19 THE WITNESS: Good morning.

20 **EXAMINATION**

21 **BY COMMISSIONER FEDORCHAK:**

22 Q. I, too, am eager for the participating and
23 nonparticipating landowner map or whatever it is
24 you guys are able to come up with, hopefully today,
25 during the hearing so we can get a good view of

1 that.

2 To that point, though, this map, is this
3 developed with a 2,000-foot setback from
4 nonparticipating landowners' property within the
5 project area?

6 A. It's a combination of 2,000 feet setbacks
7 from all property lines, the nonparticipating.

8 Q. Of nonparticipating. Okay.

9 All right. So there must be quite a few
10 nonparticipating landowners within the project
11 area?

12 A. There are some nonparticipating landowners
13 in the area. Yes.

14 Q. Okay. And does that also -- is that based
15 on nonparticipating landowners outside of the
16 property boundary too? I noticed some property
17 pretty near to the boundary of the project that --
18 I wasn't clear if it's participating or
19 nonparticipating landowners outside. Do you have
20 some outside that are participating somehow or
21 you're -- or don't you do that? I know some
22 companies do have sort of a cooperative landowner
23 status where some people, they might not even be
24 within the project boundary, but they're
25 cooperative and so they share in some of the

1 benefits of the easement payments.

2 A. No. When we first started, we approached
3 everyone inside --

4 Q. Mm-hmm.

5 A. -- this area, but this is just -- this is
6 all the -- the -- drawing a line around the project
7 and our participating landowners and there are some
8 nonparticipating landowners inside.

9 Q. Inside.

10 So people outside are not included if
11 they're --

12 A. Correct.

13 Q. -- 2,000 feet from the turbine?

14 A. Right.

15 Q. But they're outside the project area,
16 they're not included on this either?

17 A. Right.

18 Q. Okay. Let's see. In terms of the
19 question of need, when this power is generated and
20 sold to Basin, if Basin doesn't need it, where does
21 it go?

22 A. I can't speak to that. I mean it would be
23 for Basin, but what we've done, our company,
24 Florida Power & Light, our sister company, if there
25 is an opportunity where we have more generation

1 than what we need, frequently what we'll do is
2 we'll sell that to someone else in the market that
3 needs the power and they can buy that power.

4 frequently what you'll see -- again, I'm
5 hesitant to speak for Basin, but for our sister
6 company, the utility, is the wind energy will allow
7 them to throttle down other types of generation
8 that may be more expensive.

9 Q. So they'll use the wind energy first is
10 what you're saying?

11 A. If they can, yes.

12 Q. And then -- but they're obligated to
13 purchase whatever you produce?

14 A. Yes. That's right.

15 Q. And so it's up to them to sell it on the
16 market through SPP if they have excess?

17 A. They've asked to be the market
18 participant. Yes.

19 Q. Okay. When there's an interconnection --
20 just to help educate me and others in the audience,
21 when you develop that interconnection agreement
22 with the grid operators, like SPP is in this
23 case --

24 A. Yes.

25 Q. -- are they looking at demand?

1 A. Yes.

2 Q. Is that part of their analysis before they
3 say, Yeah, you can connect? Do they look at that
4 or do they let however much energy get onto the
5 grid as can be produced?

6 A. They normally look at three criteria.
7 They look at injection capability. How much you
8 can physically put into the -- the wires; and then
9 they look at thermal capabilities, you know,
10 eventually you could reach a point where it
11 overheats the system; or stability requirements.
12 Is the grid going to be stable? And that's part of
13 their analysis when they're doing all the
14 pre-studies, and then they assign different types
15 of network upgrades required to make sure that you
16 can inject that power into the grid.

17 Q. And so the stability analysis, does that
18 have to include some factoring in of what the
19 demand is expected to be because you have to have a
20 balance of demand and generation?

21 A. What they do is they assume a hundred
22 percent injection at all time because they --
23 again, I can't speak for SPP, but what I would
24 imagine is they will allow the -- the generators
25 are ultimately the ones that are turning the dials

1 on the different types of generation units. But
2 they have to look at it from a very conservative
3 standpoint that all of your generation is
4 constantly injecting because at any one given time
5 you could be in a situation where you're injecting
6 all the output into the wires.

7 And their biggest -- their biggest concern
8 is the system reliability, that there isn't an
9 event that causes people to lose power.

10 Q. So then in the end, is need a part of the
11 calculation before you get the interconnect with
12 SPP?

13 A. No. SPP is not calculating the need.

14 Q. So who does calculate the need?

15 A. I believe it's a combination of the
16 different states through different requirements or
17 the different customers, utilities, munis, co-ops
18 as they figure out their long-term plans, their
19 integrated resource plans.

20 Q. So Basin has calculated the need --

21 A. Yes.

22 Q. -- and purchased this power accordingly?

23 A. Yes.

24 Q. Okay. This is a different line of
25 questioning. It might need to go to somebody else,

1 but you talked a little bit about reclamation. And
2 I am curious, where do you store the topsoil for
3 all these towers and the road, the end of the
4 collection -- or the access roads? Where do you
5 store that topsoil in the 30, 35, 40 years time
6 period before, you know, a project like this might
7 be reclaimed?

8 A. I'll verify it, if I can. I believe we
9 don't store it. We will just go out and get
10 topsoil.

11 Q. And bring in new topsoil?

12 A. We'll bring in. But I can -- if I can
13 confirm that.

14 Q. Sure. Or a later witness can address
15 that, if that's better.

16 A. Okay.

17 Q. I want to talk a bit about the setbacks.
18 In your application on 4-2 and 4-3, you've got the
19 setback tables and there was some discrepancy with
20 Jerry's question on the -- the Stark County setback
21 is 200 feet from the center of the road, PSC
22 setback is more. In this page you say, "The
23 setbacks used in designing the project are the most
24 restrictive of those required by Stark County, the
25 PSC, GE or NEER's internal standards."

1 So the biggest setback is what you've
2 included?

3 A. Yes. That's correct. I'm going to
4 confirm that based on Mr. Lein's question, but yes.

5 Q. Okay. The 2,000 feet from occupied
6 structures, that's a local ordinance?

7 A. Yes, ma'am.

8 Q. Okay. How was that arrived? Was that --
9 who picked that?

10 A. All right. They originally did that when
11 they were creating their ordinance.

12 Q. Okay.

13 A. We -- we did not -- there was an ordinance
14 here when we arrived, so it was up to us to
15 approve -- or abide by that setback.

16 Q. If you had a landowner that requested more
17 than that in order to sign an easement, would you
18 agree to that or what's your company's position on
19 additional requests or requirements from
20 landowners?

21 A. We want to work with all of our
22 landowners. We actually want to work with
23 landowners, participating and nonparticipating.
24 It's kind of a balancing act where the landowner
25 could say, Can you set back off of my house or my

1 property or -- you know, we're constantly trying to
2 evaluate the needs of the person that wants us to
3 have a greater or more stringent setback and the
4 landowner that's participating that wants as many
5 improvements on their land as possible. But we go
6 down that path, and if we can, we'll accommodate
7 it, and if we can't, we'll try to figure out if
8 there are other solutions.

9 Q. Have you already done all of that work as
10 much as you possibly can in terms of eliminating
11 the most objectionable towers to folks and using
12 alternate locations? Has all that -- you've
13 exhausted those possibilities? This is the best
14 possible --

15 A. Yes, ma'am.

16 Q. -- footprint based on landowner concerns?

17 A. Yes, ma'am.

18 Q. Okay. A couple other sort of questions,
19 random in nature. The results of the bird and bat
20 fatality surveys that Jerry also mentioned, the
21 Game and Fish has asked for them for the life of
22 the project. Do you have those for other projects
23 in North Dakota? This is something I've never
24 really seen in a wind farm hearing like those
25 results after the fact. What kind of bird and bat

1 fatalities do we see over the course of five or ten
2 years in a wind project?

3 A. I believe we do --

4 Q. Where do those go --

5 A. -- and -- and --

6 Q. -- those surveys go?

7 A. -- if it's okay, Commissioner, I'd like to
8 defer to our environmental expert who actually
9 oversees that work --

10 Q. Okay.

11 A. -- and she can answer in very specific
12 details.

13 Q. All right. Well, we see the studies ahead
14 of time, but I've never seen as part of a siting
15 hearing any past reference to here's what we're
16 seeing in actual bird and bat fatalities over the
17 life of a project, so that would be helpful to --
18 helpful to see.

19 We noticed that there was no letter from
20 the U.S. Fish & Wildlife. Have you consulted with
21 them? What's -- what has happened with U.S. Fish &
22 Wildlife Service?

23 A. We've consulted with them. We are in
24 constant consultation with them. We've had many
25 meetings with them. I have not been to all of the

1 meetings. If it's okay, could I defer that to Kim
2 Wells when she comes up, because she oversees that
3 as well.

4 Q. Okay. Very well.

5 How do you determine the location of the
6 access roads? Is that in consultation with the
7 landowners?

8 A. Yes, it is. We start out with -- our
9 engineering and consulting team looks at what's the
10 most efficient way to connect them and minimize
11 impacts to the land, and then we go out and we work
12 with each one of the landowners and get their
13 approval to make those improvements. Sometimes
14 they want to make adjustments and we accommodate
15 those requests. Sometimes they would like us to
16 relocate fencing or put in cattle guards, things
17 like that. We're always willing to do that type of
18 stuff for our landowners.

19 Q. Okay. And then I just -- every time I
20 have an opportunity to talk with somebody, a
21 wind-generation facility developer, I ask them
22 about the red lights and if there is any other
23 possible technology that exists to mark those
24 towers that it's visible from the air and not the
25 ground. Is that being developed? Why -- why must

1 we see those red lights blinking?

2 A. I think it is being developed. We're in
3 constant consultation with the FAA. Unfortunately
4 with the FAA lights, they make the rules and
5 obviously they're charged with safety of the skies,
6 so we have to abide by those rules. But, you know,
7 to the extent that we can use a less intrusive
8 light that the FAA will approve, we can do that.
9 But frequently they give us the lighting plan and
10 we have to stick to that lighting plan.

11 Q. Mm-hmm. And if some new light technology
12 is developed after this is built, would you change
13 them or is this something that we'd be stuck with
14 until, you know, the new projects are built?

15 A. We would definitely take a look at it and
16 see. I mean I don't -- I can't think of what could
17 be developed in the future, but to the extent that
18 it was beneficial for, you know, our neighbors and
19 it wasn't a huge economic impact where it would
20 impact the price of power, things like that, then
21 we could definitely look at that. I mean it's
22 similar a little bit with improving the turbine as
23 you go throughout the life cycle of the turbine.
24 If there are more efficient ways or better ways to
25 do things, we want to do that. It's kind of part

1 of being a good neighbor.

2 Q. And how would you feel about us including
3 that in an order, that you're required to replace
4 them if a new technology comes along that makes the
5 current red blinking lights visible from the ground
6 obsolete?

7 A. Maybe we could work with you on the
8 wording, but I'd want to make sure it was --
9 because I know there are things that are constantly
10 being developed. What I don't know is the FAA's
11 process and I don't know, you know, how it would
12 impact our different turbines and the fiberoptic
13 systems and things like that. You know, I can't
14 speculate the future, but it's something we'll
15 absolutely look at.

16 COMMISSIONER FEDORCHAK: Okay. We don't
17 want to become a big red light district in North
18 Dakota. With that, I think that's all my
19 questions. Thank you.

20 JUDGE WARD: Commissioner Christmann.

21 **EXAMINATION**

22 **BY COMMISSIONER CHRISTMANN:**

23 Q. Okay. I didn't get over and look at the
24 two maps that you have up on the easels, but I have
25 maps here. But are those the maps that show the

1 final turbine locations?

2 A. Yes, sir.

3 Q. Both of them?

4 A. Yes, sir.

5 Q. Okay. So just for sort of an
6 announcement, at some point we'll have a break and
7 people can look at those and see that.

8 But am I correct to say that what you're
9 asking for is that's your final turbine location,
10 but rather than as this Commission has done with
11 some wind farms and say that's where they have to
12 be and you have to come to us for an alteration,
13 you're asking us, like we have done in some other
14 instances, to approve the whole plat and allow you
15 to make alterations within there as long as those
16 alterations don't violate things like the
17 2,000-foot-occupied-residence setback?

18 A. Yes, sir. Yes, sir.

19 Q. So just so people know what they're
20 looking at, I wanted to make that point.

21 Tell me about the -- because I didn't
22 notice this in the application -- the one-mile
23 setback from Highway 22. I noticed there were --
24 there was kind of a block in there of not turbines.
25 I didn't realize that's how it came to be. Why did

1 you do that?

2 A. When we originally went through the
3 Dickinson development project, we met all of their
4 ordinance requirements, but they still subsequently
5 denied the permit. And the first step of that was
6 to talk to all of the different folks that were
7 involved as to why they denied it. And one of the
8 reasons that they cited was the various roads that
9 were important to the county, and this is one of
10 those roads that they specifically asked for a
11 one-mile setback. So when we scanned the county to
12 figure out where else could we have a wind farm
13 that could interconnect into the same spot, we
14 found this area, and we knew that one of their
15 major concerns was a one-mile setback, even though
16 it wasn't stipulated in the ordinance. So we
17 adhered to that and that's kind of how the
18 development went forward.

19 Q. So I can't remember how our normal rules
20 are, but it's a little more than the height of the
21 turbine to leave a little bit of leeway if one
22 falls over, it's not on the road or even on the
23 right-of-way.

24 A. Yes, sir. It's 1.1 times.

25 Q. It's far less than a mile?

1 A. Yes, sir.

2 Q. Why did -- did they say why they came up
3 with a mile? Was it just for the beauty of the
4 roadway?

5 A. Just said they wanted a mile.

6 Q. Does it seem like that rule is giving more
7 consideration to tourists and people just passing
8 by to not have to have a firsthand glimpse as they
9 pass by than it is giving consideration to
10 nonparticipating landowners who live out there and
11 see it every hour of every day?

12 A. It's possible, yes, sir.

13 Q. This pink map --

14 A. Yes, sir.

15 JUDGE WARD: Exhibit 2.

16 Q. (COMMISSIONER CHRISTMANN CONTINUING)
17 Exhibit 2.

18 If this or when -- I think it was
19 requested by someone else that we get a map that
20 shows which sections or parcels in the area are
21 participating and which are not?

22 A. Yes, sir.

23 Q. Am I correct in doing my math that about
24 60 percent of the land in the area is participating
25 landowners and about 40 percent is

1 nonparticipating?

2 A. That's fair. We have 30 residents within
3 the project boundary, and 20 of those are located
4 on participating land and 10 of those are located
5 on nonparticipating land.

6 Q. I did the math. It's just under
7 30,000 acres, and there's 17,000-and-some
8 participating, so about 60/40 is the split. Does
9 that seem kind of low to put -- you know, I know
10 that many times -- and there are big differences,
11 as Commissioner Kalk pointed out, between a wind
12 project as opposed to an electric or pipeline
13 transmission. There's -- there you need every
14 piece to fit together and there's eminent domain
15 possibilities. This is different.

16 But does it seem like doing a whole almost
17 30,000-acre area with only about 60 percent
18 participating, does that seem like a rather low
19 amount?

20 A. Well, the one --

21 Q. It seems like other -- let me just add to
22 the question. It seems like other projects we've
23 done, I don't recall one having almost 40 percent
24 nonparticipating.

25 A. The -- this project boundary is --

1 actually contains a lot less nonparticipating land
2 than the -- than the original Dickinson project.
3 That project was 39,000 acres and this one is
4 29,000 acres, so about 10,000 acres less. So if we
5 can, we obviously like to keep them as close
6 together as possible, but ultimately, you know,
7 that depends upon if the landowners want to sign up
8 with us or not.

9 Q. Do you think there should be some minimum
10 amount of participating acreage in a footprint like
11 this?

12 A. I think, Commissioner, as long as, you
13 know, you have all voluntary landowners and you're
14 adhering to all the setbacks, you should -- you
15 should be allowed to build your facility. You
16 know, I think it's kind of a slippery slope if we
17 walked down a road where you have to have a certain
18 percentage of this or that, as long as you adhere
19 by the setbacks and it's all on voluntary land.

20 Q. So if one person had just a few hundred
21 acres but they were strategically located areas
22 around this whole area, that one person could
23 impose this on a whole 30,000-acre area?

24 A. I'm sorry. Could you say that one more
25 time?

1 Q. If one person had just a few strategically
2 located acres within a big block like this --

3 A. Oh, okay.

4 Q. -- that one person could impose this on
5 all their neighbors? Do you think that would be
6 fine?

7 A. The person for nonparticipating?

8 Q. That one person was the participant --

9 A. Oh, no. I mean we obviously have --

10 Q. -- that just happened to own the correct
11 acres where the turbines could work.

12 A. Well, obviously we have to have all
13 participating landowners. To the extent that we
14 can carve out nonparticipating landowners in the
15 project boundary, we'll always do that.

16 Q. Okay. Under the need section, page 2.1,
17 if you can go there.

18 A. Yes, sir.

19 Q. You mentioned that one of the goals of the
20 EmPower Commission is to add additional wind;
21 correct?

22 A. They have a goal obviously, yes, of doing
23 that.

24 Q. And then jump a page over to -- it's
25 page 2.3, section 2.2, the Alternatives.

1 A. Yes, sir.

2 Q. You said that alternatives such as coal,
3 natural gas and biomass were not considered because
4 these technologies do not meet the state's goal of
5 adding new wind energy; correct?

6 A. Yes, sir.

7 Q. Do you have a copy of the EmPower
8 Commission report --

9 A. No, sir, not with me.

10 Q. -- 2010?

11 A. No, sir.

12 Q. Have you -- have you looked at it?

13 A. Yes, sir.

14 Q. Just tell me if this sounds familiar or if
15 you would disagree with this, then. I'm on the
16 fourth page, number 5 of the North -- EmPower North
17 Dakota goals is to build one, possibly more, clean
18 coal electric generation plants in North Dakota.

19 A. Yes, sir.

20 Q. Does that sound --

21 A. Yes, sir. That's something they've been
22 advocating for. Yes.

23 Q. So you give them credence on one page
24 saying that part of the reason we should like this
25 is that they're calling for more wind, and then we

1 flip a page and read that adding coal does not meet
2 the state's goal of new wind energy. Well, does
3 that -- aren't you kind of picking and choosing
4 phrases and paragraphs right out of the same
5 report? They have goals for both. You point out
6 one and you say the other isn't the goal. Does it
7 seem like you're really picking and choosing here?

8 A. I think that what we're trying to do is
9 we're trying to develop the cleanest, cheapest form
10 of generation. And while there's a lot of headway
11 being made on clean coal, at this time it's just
12 not economic. But for this particular project, it
13 was a specific renewable energy need and we think
14 there's an additional need in the state of North
15 Dakota. We see it from our customers and we also
16 see it through the legislature and the like.

17 Q. But to add that an alternative wasn't
18 considered because it doesn't meet the goal when
19 the same group that set the goal also has a goal
20 for that alternative, is that fair?

21 A. I think considering that we don't have any
22 clean coal technology right now that's viable, that
23 wind energy addresses their concerns right now.

24 Q. That's a 2010 report; correct?

25 A. I believe so, yes, sir.

1 Q. And in the questioning from intervenor's
2 counsel, you talked about some other reports that
3 you cited from 2009, I think there was something
4 from 2012 here. So some of these reports that
5 you're relying on are a few years old; correct?

6 A. Yes, they are.

7 Q. And I'm going to come back to that point,
8 but you have said that Basin has the need for this
9 power -- Basin Electric. And so you've kind of
10 spoken for them, but you answered some other
11 questions that you don't speak for them. So is
12 someone from Basin going to be one of the people
13 testifying on -- on this or do you -- or do you
14 speak for Basin or don't you speak for Basin?

15 A. I don't speak for Basin.

16 Q. Okay. So can -- since some of these
17 reports are pretty dated, I don't know what the
18 timeline was for signing this contract, but, you
19 know, there was discussion about the need for more
20 energy for Basin in western North Dakota,
21 specifically mentioning the oil fields. We know
22 what has changed in the last year in that regard.
23 Since you've cited some other pretty dated reports
24 and Basin's not going to be here to speak, how do I
25 know that Basin still needs this energy and that

1 you're not just holding them to a contract that
2 they signed when they did need the energy in this
3 area?

4 A. I think it's -- it's powerful that they've
5 just recently finished another request for
6 proposals for additional renewable generation. It
7 just concluded.

8 Q. In this same area?

9 A. Throughout North and South Dakota. Yes,
10 sir.

11 Q. Okay. And then I think my last area of
12 questioning is the Stark County financial
13 assurances. Tell me -- elaborate what you can tell
14 me about how that works and the --

15 A. Sure. So --

16 Q. -- amount of them and such.

17 A. Sure. So we'll do a calculation to figure
18 out how much it will cost us to decommission the
19 site, and then we work very closely with our
20 engineering and construction firms and we do all
21 the calculations. Then that final amount that
22 we -- determined that based off what we know today,
23 it will cost us this to decommission the site. We
24 post financial assurances or a corporate guarantee
25 or a letter of credit to make sure that we have

1 that money in reserve in the event that we need it.

2 Q. And you are familiar with the PSC's --
3 after ten years and what we've done with some wind
4 farms that have hit ten years old, then at that
5 point we require financial assurances; correct?

6 A. Yes, sir. That's correct.

7 Q. So are there -- are the Stark County
8 financial assurances for the reclamation
9 requirements pretty similar to the reclamation
10 requirements that the PSC has had up to this point?

11 A. Yes, sir. We apply the same calculations.

12 Q. Do you -- do you feel that the same
13 financial assurances that you are committing to
14 give to Stark County to take care of this if
15 something happens to NextEra and that you're unable
16 to -- and which we all hope isn't the case, but
17 that's the point of financial assurances; right?

18 A. Yes, sir.

19 Q. So do you feel that those financial
20 assurances that Stark County is requiring then take
21 the place of the financial assurances that we would
22 possibly be requiring after a certain number of
23 years?

24 A. I mean what we would like is, you know, to
25 present -- if it's the ten-year requirement, to

1 present that at the ten-year requirement what we
2 currently have in place and see if that is adequate
3 for the Commission.

4 Q. Do you understand that it may not be?

5 A. Yes, sir. And if it isn't, then we'll
6 adjust to make sure that we meet the Commission's
7 requirement.

8 Q. And the point I'm trying to get to, just
9 to make sure you understand, you have financial
10 assurances out there, a bond or whatever assurance
11 it is. If you're unable to do the reclamation and
12 Stark County in this case is holding that money, if
13 they choose not to do it, then we still haven't met
14 our goal of coming in and making sure it gets done.
15 So we need to make sure that this Commission, the
16 State of North Dakota, has the financial ability.

17 A. Yes, sir. And if that's your requirement,
18 then that's what we'll do.

19 Q. I don't know what our requirement will be,
20 but I just want to make clear that you are in
21 agreement with the fact that that may not take
22 place -- it may or may not take the place of ours.

23 A. Yes, sir.

24 COMMISSIONER CHRISTMANN: Okay. I have no
25 other questions, Your Honor.

1 JUDGE WARD: Okay. We're going to take a
2 little break right now. And, Mr. Utton, I think
3 you're going to be back up here, and if you
4 could -- during that break if you could try to
5 gather that information so that the commissioners
6 can ask their additional questions.

7 THE WITNESS: Yes, Your Honor.

8 JUDGE WARD: And we'll give counsel
9 another opportunity to ask you some questions and
10 start with redirect with Mr. Bjella, if we need to
11 go there.

12 MR. KUBAS: The sign-in sheets are at the
13 back for the people that haven't signed in.

14 JUDGE WARD: Okay. And the sign-in sheet
15 is at the back of the room. For those of you who
16 may have come late, please sign in.

17 And just one other comment before we take
18 a break, we'll come back at about a quarter to
19 because we've been going for two and a half hours.
20 The people up here wearing microphones, please
21 remember to shut your microphone off before you do
22 anything silly or say anything silly about the
23 judge.

24 (Recessed at 10:29 a.m., and reconvened at
25 10:46 a.m.)

1 JUDGE WARD: We're going to call it back
2 to order here.

3 COMMISSIONER FEDORCHAK: Before we get
4 started, I did want to take one second and point
5 out three people who are in the audience. First of
6 all, John -- both of our senators -- U.S. senators
7 have representatives here, Jon Cameron from Senator
8 John Hoeven's office and Shirley Meyer from Senator
9 Heitkamp's office.

10 And I wanted to point them out because we
11 sometimes get feedback from folks about the wind
12 production tax credit and we should be for or
13 against all those sorts of things. That's federal
14 policy. And if you have thoughts and ideas on that
15 particular issue, I know that those representatives
16 would be happy to talk to you and hear from you
17 on -- specifically on the production tax credit
18 issue, and if any of you have comments of that
19 nature for the public testimony later, you might
20 direct some of that to them.

21 And then in our office, Stacy Eberl is
22 here. Stacy, give a wave. She is our consumer
23 affairs person, and we often run things through her
24 because we're like judges and can't have a lot of
25 direct contact with citizens specifically until

1 decisions have been made. And so also, again,
2 Stacy can take questions and serve as a reference
3 point for us on this issue and many others. So
4 please feel free to talk to Stacy as well.

5 Thank you.

6 JUDGE WARD: Okay. We're going to go back
7 on the record here.

8 And, Mr. Utton, you're still under oath.
9 Before we get to that, I understand that you did
10 find the map and were able to make some copies of
11 the map that Commissioner Kalk requested. I do
12 want to say, though, to the public just to give you
13 some time parameters of how this is going, it looks
14 to me like we won't finish with the company's
15 witnesses until probably lunchtime, which probably
16 is going to be 12:30, 1 o'clock the way this is
17 going. We'll probably break about 45 minutes for
18 lunch, and then we'll come back and we'll put on
19 the intervenor's witnesses, and so public input --
20 it may be three o'clock or so before you get an
21 opportunity to testify if you're waiting to testify
22 as far as public input.

23 Also I think that some people have left
24 and I don't know if they're coming back, but there
25 have been some people standing in the back, and if

1 you want to stand that's more than -- you know,
2 that's fine, but if it's possible, like they say in
3 church sometimes, if you can scrunch over if
4 there's empty seats in the middle to make room for
5 people that maybe need to get a seat and they're
6 coming and going or arriving late or whatever.

7 That being said, Mr. Utton, again, you're
8 under oath. Mr. Bjella, do you have some redirect
9 in order to respond to some of the commissioners'
10 questions and anything that counsel may have asked?

11 MR. BJELLA: Yes, Your Honor.

12 JUDGE WARD: Now, Mr. Bjella, what you
13 just handed me consists of three documents -- three
14 pages?

15 MR. BJELLA: Yes, Your Honor.

16 JUDGE WARD: But are you going to mark
17 that as one exhibit?

18 MR. BJELLA: Yes, Your Honor.

19 JUDGE WARD: And it's marked as Exhibit 4.

20 MR. BJELLA: Yes. We had premarked some
21 of our exhibits, Your Honor, so with your
22 deference, we would call this No. 4.

23 JUDGE WARD: Okay. I haven't seen
24 Exhibit 3 yet.

25 MR. BJELLA: You have not. It will be

1 introduced with another witness.

2 JUDGE WARD: Okay. All right. So
3 Exhibit 4, what are we going to call this exhibit
4 then?

5 MR. BJELLA: Participating landowner
6 exhibit, I guess.

7 JUDGE WARD: Okay. You can go ahead and
8 lay a foundation.

9 **FURTHER EXAMINATION**

10 **BY MR. BJELLA:**

11 Q. Okay. Jason, showing you what is marked
12 Exhibit 4, are these documents that were prepared
13 by Brady Wind in the ordinary course of business?

14 A. Yes, they were.

15 Q. And are they a depiction of wind resource
16 landowner participation?

17 A. Yes, they are.

18 MR. BJELLA: We would offer Exhibit 4,
19 Your Honor.

20 JUDGE WARD: Any objection to Exhibit 4?

21 MR. PELHAM: No objection.

22 JUDGE WARD: Mr. Collins?

23 MR. COLLINS: No. Thank you.

24 JUDGE WARD: Okay. Exhibit 4 will be
25 admitted.

1 MR. BJELLA: Thank you, Your Honor.

2 Q. (MR. BJELLA CONTINUING) So, Jason, if
3 you'd just briefly describe what's depicted on each
4 page.

5 A. Sure. On -- the top page depicts the wind
6 resource. There was some discussion about why the
7 type of shape -- the project area took this type of
8 shape, and obviously it's the first in our criteria
9 of developing a wind farm. You can see there the
10 different colors indicate wind speeds at certain
11 hub heights. The darker the red, the better the
12 wind resource, so you can see how that kind of
13 closely aligns with our project boundary.

14 The second map, we've taken the wind
15 resource and we've overlaid on top of it -- the
16 green parcels there are participating landowners.
17 It's important to point out that we've got 78
18 landowners who own land in the project area and
19 that's the entire project area, and this depicts
20 the 60 of the 78 that are signed with NextEra
21 Energy. So, again, 60 of the 78 landowners who own
22 land in the project area are signed.

23 And then the last map, Your Honor, is --
24 or it's a site plan -- is the project site plan. A
25 few things. First, you'll notice the red lines

1 that kind of go through, that's the underground
2 collection. The -- the blue lines -- it's a little
3 bit hard to see, but the blue lines there indicate
4 the access roads. Each one of the dots that are
5 numbered are turbine locations. This does include
6 the alternate locations, and you can see there that
7 the gray highlighted boxes indicate
8 nonparticipating parcels. It is a point of
9 clarification that they're nonparticipating. That
10 doesn't necessarily mean that they're objectors to
11 the project. They just did not want to participate
12 in the project.

13 And then the small little dots you can see
14 there that are in the center of the circles are the
15 occupied houses that we've applied the 2,000-foot
16 setback.

17 And, Chairman Fedorchak, I apologize.
18 Earlier when I was speaking about Exhibit 2, how I
19 mentioned it was a 2,000-foot setback from
20 nonparticipating members, it's actually a 2,000
21 foot setback from all property lines inside the
22 project boundary.

23 But this -- the gray shadowing that you
24 see there are the nonparticipating acreage. And to
25 Commissioner Christmann's comment, out of that

1 it's -- about one-third of the acreage is not
2 participating and two-thirds is participating.

3 Q. So, Jason, I believe you stated that out
4 of the 78 landowners within the project area, 60
5 have signed up; is that correct?

6 A. Yes. That's correct.

7 MR. BJELLA: I have no further questions
8 of this witness. Your Honor, I would mention that
9 Basin Electric has a person here who cannot speak
10 for the company, but indicated that Basin Electric
11 would be more than happy to file a late-filed
12 exhibit demonstrating why they want to purchase
13 this power now.

14 JUDGE WARD: Okay.

15 MR. BJELLA: We'd like to file a
16 late-filed exhibit from Basin, if that would be
17 acceptable.

18 JUDGE WARD: Commissioners, is that okay?

19 COMMISSIONER KALK: Sounds good.

20 JUDGE WARD: All right. That will be
21 allowed.

22 All right. Mr. Pelham, I'll go to you
23 first, questions for Mr. Utton.

24 MR. PELHAM: Just briefly.

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FURTHER EXAMINATION

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BY MR. PELHAM:

Q. Mr. Utton, you had mentioned I think in response to a question from Mr. Collins about Basin asking for additional renewable resources, and I just wanted to get a specific. When you said renewable resources, did you specifically mean wind energy?

A. They didn't stipulate. They said wind or any other type of renewable, and that could possibly be solar or even biomass.

Q. I see.

A. They -- in their RSP they asked for a couple different things. They asked for energy and energy capacity that you would normally get off fossil generation, so it's not just a renewable energy RFP. It was a much larger energy RFP, and then they specifically had a renewable energy piece in there.

MR. PELHAM: Okay. I don't have any other questions. Thank you.

JUDGE WARD: Mr. Lein.

MR. LEIN: I have no questions, Your Honor.

JUDGE WARD: Okay. Mr. Collins.

FURTHER EXAMINATION

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BY MR. COLLINS:

Q. Just one question on this map, part of Exhibit 4.

A. Yes, sir.

Q. Is this the largest map that has been produced with the application showing the setbacks?

A. You mean as far as largest 8-by-10, 11-by-17 or --

Q. Yeah. Yeah.

A. I'll check. I'm not sure.

Q. I mean because this is pretty small for somebody who wants to verify the measurements here. I mean you have a scale of 0 to 3,000 feet.

A. Mm-hmm.

Q. And the general public trying to determine whether these measurements are accurate, I mean you yourself said the blue lines are hard to see.

A. When we file our building permits, we have to go in and specifically show a blown-up blueprint of each foundation and the surrounding area.

Q. So the building permits, that would come after approval by the PSC?

A. That's correct.

Q. Okay.

1 A. To verify that -- like you say, that we
2 are in compliance.

3 Q. Okay. And so the public wouldn't have
4 that opportunity. It would be the local building
5 officials who would then verify that?

6 A. Correct.

7 MR. COLLINS: Okay. That's all I have.
8 Thanks.

9 THE WITNESS: Your Honor, may I --

10 JUDGE WARD: Well, just a minute. I think
11 the commissioners might have additional questions.

12 Commissioner Kalk.

13 COMMISSIONER KALK: Yeah, I have a bunch,
14 but I just missed -- who wanted what -- to ask a
15 question?

16 THE WITNESS: No, sir.

17 **FURTHER EXAMINATION**

18 **BY COMMISSIONER KALK:**

19 Q. Okay. Jason, let's get to it here. All
20 right. So the -- Exhibit 4, the first one, is the
21 wind resources, so that shows pretty good why you
22 picked that area. That makes sense.

23 And then the next two -- the one with all
24 the green dots on it and then the one -- the last
25 one with the circles around the turbines, okay, so

1 to make sure I understand this, so you're saying --
2 and you don't have a good -- this map is not that
3 good. You've got a gazillion-dollar project and
4 you can't get me a better map, I mean, so take that
5 for what it's worth. Okay. I'm serious. Okay?

6 The -- the green map is -- the green ones
7 are participating. So all the little non-green
8 spots, those are nonparticipating; correct?

9 A. Yes, sir.

10 Q. Okay. So then if I correlate that over to
11 the map with the circles around it, so the gray --
12 what's filled in gray on the third map is also the
13 nonparticipating landowners?

14 A. That's correct. Yes, sir.

15 Q. Okay. All right. So then let's just
16 focus the discussion on the map with the gray,
17 nonparticipating, if that's okay.

18 So first off, why are you requesting
19 nonparticipating landowners be in the project area?

20 A. What we do is we've just drawn as tight of
21 a project boundary as we could that connects all of
22 the turbines and all of the improvements.

23 Q. Well, then I'm not understanding
24 something. Let's just take that map on the east
25 and west side of Highway 22. I see three dots

1 there with three circles. It makes me believe
2 that's some kind of turbine there or what am I --
3 that's the house?

4 A. Yes, sir. The house is at the center of
5 the circle.

6 Q. Okay. All right. So the way I understand
7 it when I correlate that with figure -- figure 3 --
8 okay. We talked about that collector line and I
9 asked you before about why the project area was so
10 big on the east and west side of Highway 22, and
11 you told me that that was participating landowners.
12 But when I look at this map with the gray, I'm
13 reading that that's nonparticipating landowners
14 north of the -- the collector line and it straddles
15 Highway 22.

16 A. Yes. We started out with a one-mile
17 setback, but then you're right, so we're applying a
18 one-mile setback to the piece that's south of the
19 collector for the participating landowners.

20 Q. Okay. But so you told me before -- when I
21 asked you why that was in there, you said that was
22 participating landowners. So the other map with
23 the gray says they're nonparticipating landowners.
24 Which one is correct?

25 A. No. This one is correct.

1 Q. So what you told me before about --

2 A. We applied a one-mile setback all the way
3 down the road and impacting our participating
4 landowners here, but it also -- you know, we have
5 nonparticipating landowners further north that we
6 would obviously still apply the one-mile setback
7 to.

8 Q. I'm failing to communicate.

9 A. Okay.

10 Q. Okay. When I look at figure 3, there's a
11 map with boundaries on it. Everything inside there
12 is what you're calling the project area; correct?

13 A. Yes.

14 Q. Okay. When I asked you earlier about why
15 you still have in the project area such a big space
16 east and west of Highway 22 and north and south of
17 the transmission line, you said those were included
18 because it's -- participating landowners were part
19 of the project. That's why that was such a big
20 space. That's what you told me before.

21 A. Okay.

22 Q. Okay. But you just told me when I look at
23 the new map that these are nonparticipating
24 landowners that are in the gray. So one of those
25 questions is -- one of those answers is not right.

1 A. We did the half-mile set -- or the
2 one-mile setback from the participating landowners,
3 but also because of the nonparticipating landowners
4 we had to obviously not put any improvements on
5 their land. The reason that it's in the project
6 boundary is because as we do our studies and our
7 environmental studies, we're looking at things
8 throughout the entire project boundary, but we're
9 not going to make any improvements on that land.

10 Q. Okay. So you -- do you want to rephrase
11 your answer to my question before then?

12 A. Yes, sir. Yeah. We -- when -- the
13 one-mile setback we originally took --

14 Q. I'm not even talking about the one-mile
15 setback.

16 A. Oh, okay.

17 Q. I'm just talking what's in the project
18 area for participating or nonparticipating. So in
19 the boundary you have drawn, all those to the north
20 of the transmission line that straddles Highway 22
21 are nonparticipating landowners?

22 A. Yes, sir. That's correct.

23 Q. Okay. So tell me then why you wouldn't
24 want to close the project boundary down so we
25 have -- all those nonparticipating landowners are

1 not in the project area? Why wouldn't you do that?

2 A. Can I circle back with you on that? I
3 have to follow up if we can do that.

4 Q. Well, I -- sure. I just -- I don't --
5 I've not made a practice of including huge tracts
6 of land that are not in the project area that are
7 nonparticipating unless they would happen to be
8 inside the project area that maybe one landowner
9 inside 20,000 acres that doesn't want to
10 participate and then they come to hearing, but this
11 is a big chunk of people that you're trying to put
12 in the project area that -- that aren't needed, it
13 looks like, to me.

14 A. We won't make any improvements on any of
15 this land.

16 Q. Right. Well, let's just get back to me
17 then. If we can do that today, that would be
18 helpful. And so --

19 A. We can reduce it. I've just received a
20 note that we can reduce this project boundary and
21 cut this land out.

22 Q. Okay. Well, then let's continue that
23 discussion. Let's start on the western edge of the
24 map, the gray map, if you will. So we've got --
25 have two nonparticipating landowners in the

1 northwest portion of the project area; correct?

2 A. Mm-hmm.

3 Q. So why are they included in the project
4 area? Same question there. Why don't we carve
5 them out?

6 A. If we -- we can look at where we can
7 reduce the project area where we don't have
8 improvements and try to reduce that.

9 Q. Okay. So let's keep tracking across.
10 There's a -- I wish we had better descriptors, but
11 the next two gray dots, if you will, the smaller
12 rectangle north and south and the one that runs
13 east and west, do you see those coming across?

14 A. Mm-hmm.

15 Q. Okay. Now, those are definitely in the
16 project area, they definitely are right in the
17 middle of the system. Do you know what those two
18 landowners -- why they don't sign and what their
19 concerns are?

20 A. I -- I can't speak to that specifically
21 why they didn't sign.

22 Q. Well, I'm sure that we'll hear later on,
23 so it would be nice if you'd tell me what their
24 concerns are now so I could at least hear your side
25 of the story.

1 A. I -- I don't know. I'm sorry. I don't
2 know. I don't know specifically why they didn't
3 sign with us.

4 Q. Okay. Well, we'll maybe hear from those
5 landowners later. Keep going across to the east.
6 Next there's a block there as well. Do you know
7 what the story is there?

8 A. No, I do not.

9 Q. Okay. Then keep coming across to the
10 east. It looks like there's one, two, three --
11 four sections there that are also -- that doesn't
12 correlate -- well, it's hard to tell with the other
13 map. So those people there, those landowners, it
14 appears to me that's the same kind of thing, that
15 they could be carved out of the project area
16 because there's no need for them to be in the
17 project area; correct?

18 A. Yes. We can -- we can look at trying to
19 reduce this. I know that originally when we do the
20 project area, we're looking at it from an
21 environmental impact standpoint, avian surveys,
22 things like that. So when we submit project
23 boundaries to like Fish & Wildlife Service and
24 things like that, we normally try to include other
25 area, but we can absolutely take a look at seeing

1 if -- where we can reduce and reducing the project
2 area.

3 Q. Okay. And I'll just make this point
4 because I'm one of three. My colleagues may
5 completely disagree with what I'm saying here, but
6 this is where I'm at right now.

7 So let's keep going across. The next two
8 blocks, any idea why those are nonparticipating?

9 A. No, sir. I don't know the details on each
10 of the nonparticipating residents.

11 Q. Well, does someone from NextEra know why
12 they're nonparticipating?

13 A. I can reach out to our land team -- we
14 have land folks in the audience -- and find out.

15 Q. Because what's going to happen is we'll
16 hear why those people aren't participating and
17 then -- then you'll come back up and say your
18 pieces, so I'd just as soon if you know why they're
19 not participating -- you should know that. Because
20 you've talked to these people, I would assume.

21 A. I have not talked to these -- to each one
22 of the nonparticipating landowners.

23 Q. But someone from NextEra has; correct?

24 A. Our land team has talked to -- I'll
25 confirm, but our land team has talked to most of

1 the folks in this project area.

2 Q. Okay. All right. Keep coming across. I
3 also -- the next big block I see is -- well, it's
4 one, two, three, four, five -- several, it also
5 looks, like nonparticipating landowners that are in
6 the project area. Is that the same case there?

7 A. Mm-hmm.

8 Q. Okay. That would be -- the same thing
9 would apply. And then as we keep going, I guess,
10 is there any value -- do you know any more why
11 these landowners are nonparticipating?

12 A. No, sir.

13 COMMISSIONER KALK: Okay. Well, I think
14 that was my point. I just -- I don't believe, my
15 viewpoint is, that we should -- unless you have to
16 put a nonparticipating landowner inside the project
17 area, I don't think they should be in there. And I
18 think that you should be able to address why the
19 nonparticipating landowners inside the project
20 area, what is their concern, because we're going to
21 probably hear from them. Okay. Thank you for
22 providing the map. I don't have any other
23 questions then.

24 JUDGE WARD: Chairman Fedorchak.

25 COMMISSIONER FEDORCHAK: Just a couple of

1 questions along Commissioner Kalk's line.

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FURTHER EXAMINATION

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BY COMMISSIONER FEDORCHAK:

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Q. I went through and drew a new project boundary and taking out all the folks who are nonparticipating within the boundary. That only leaves two parcels within the project that are not on the border. So you could basically exclude, in my rough calculations, which maybe doesn't include setbacks and all that, but if they're nonparticipating, I don't think that affects -- you've already placed the towers based on residences, et cetera, and those setbacks. So that might -- that would change the numbers that --

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A. Right.

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Q. -- Commissioner Christmann talked about significantly. It doesn't change any distances for people, but if there's objections to this being included in the project area, that might mitigate some of that.

What -- what -- one more thing on the nonparticipating/participating. Is there a table that shows the distances from the turbines to the occupied residences -- for every single occupied residence within the project area or near it?

1 Because, again, I'm not sure I saw that.

2 A. We can -- I saw some in the flicker
3 studies.

4 Q. I saw --

5 A. Right.

6 Q. -- some tables and, you know, towers and
7 occupied residences, but not so much in terms of
8 actual -- each residence and its distance to the
9 turbine.

10 A. We do conduct a farmstead report that
11 looks for that, and if you don't have a copy of it,
12 we can get that for you.

13 Q. Okay. Very good. I'd appreciate having
14 that. That's helpful.

15 And then on the -- this map, I'm not
16 understanding the value of the way this was done.

17 A. I think --

18 Q. 2,000 feet from every property, of course
19 it's going to be all blocked out. What's -- have
20 you done the analysis of the 2,000 feet from
21 nonparticipating landowners?

22 A. I have to confirm with my team. I haven't
23 seen that.

24 Q. Okay.

25 A. But originally the discussion was to

1 change the ordinance from a 2,000-foot setback from
2 all residences to a 2,000-foot setback --

3 Q. Right.

4 A. -- from property lines, so that's why --

5 Q. Well, if it's 2,000 feet from all
6 residences, unless there's no waiver provision, it
7 seems that those folks who are participating and
8 are already on board with this would waive that,
9 and so you'd be left with having to meet it for
10 those who don't want to participate and so it would
11 only be the nonparticipating landowners. So this
12 doesn't really have any value in terms of analysis
13 of how a 2,000-foot setback from nonparticipating
14 landowners would impact the project.

15 JUDGE WARD: By this, you mean Exhibit 2?

16 COMMISSIONER FEDORCHAK: Yes. I'm sorry,
17 Exhibit 2.

18 Okay. I think this is helpful to see and
19 I appreciate you guys pulling that out. Thanks.

20 JUDGE WARD: Commissioner Christmann.

21 **FURTHER EXAMINATION**

22 **BY COMMISSIONER CHRISTMANN:**

23 Q. In all your wind farms around the region
24 and country, do you ever land-use restrict anybody?
25 Have you ever had an occurrence where someone

1 wanted to do something that you couldn't allow
2 within your wind farm footprint?

3 A. Not to my knowledge, no, sir, we
4 haven't -- there hasn't been.

5 Q. Could you envision such an example?

6 A. I'm -- you mean for what they want to do
7 with their land if there are improvements on the
8 land?

9 Q. Correct. If one of these people that's
10 either a nonparticipant, or a participant for that
11 matter, sold and the person that bought it was a
12 pilot and wanted to land his or her plane in there
13 on their property, would you allow them to fly in
14 and out through your wind turbines --

15 A. Yes, sir.

16 Q. -- as long as --

17 A. Of course.

18 Q. Oil drilling?

19 A. No. That's -- that would be just fine.

20 Q. They can mine gravel and other aggregates?

21 A. Yeah. We have wind farms in Pennsylvania
22 and West Virginia, I don't know the specific ones,
23 but that have active coal underneath them.

24 Q. Okay. Then I want to do a couple of
25 these, and I'm going to emphasize two things: One

1 is complimentary and one is not. Frustratingly
2 small. I mean how are you supposed to work with
3 something like this? That's very frustrating. I
4 will say, though, from my ag background -- and I
5 can find exceptions to this, so if someone wants to
6 pick out an exception to it, then I acknowledge
7 that they're there. But compared to some other
8 applications I've seen, you do have your access
9 roads somewhat squared up primarily in the -- what
10 looks like tillable acres as I look at the map, and
11 I think that's pretty important for long-term
12 farming that I think it's better to have a little
13 bit of -- a few more feet of roadway and use right
14 angles and stuff so at least when you're farming,
15 if you have to farm across them, you can go
16 straight across them, not everything at angles. So
17 complimentary point and one not so.

18 But let's look at this, and I don't
19 have -- there's only two of these, but they're kind
20 of in the same area that I see at this point. So
21 start on that west end of your footprint area. At
22 that point the footprint is -- just so I make sure
23 we're talking about the same size blocks of
24 property, there the footprint is one and a half
25 miles north to south; correct?

1 A. Yes, sir.

2 Q. Okay. So starting at that northwest
3 corner of your footprint, then go east almost but
4 not quite a mile and a half, and right on the north
5 side of the -- of the boundary line do you see that
6 structure?

7 A. Mm-hmm.

8 Q. It looks like that would be very close to
9 the 2,000 feet. I'm just being clear. You're
10 saying that that is more than 2,000 feet?

11 A. Yes, sir.

12 Q. Okay. And then again starting at the
13 northwest corner, go in four and a half miles and,
14 again -- and this one is even closer, right on the
15 north side of your boundary. That one really looks
16 like it would be close to 2,000 feet. You're
17 testifying that it is more than 2,000?

18 A. Yes, sir.

19 Q. And do you know on either of those
20 situations the -- the property that's right to the
21 south of them and that I'm saying can't be much
22 more than 2,000 feet, it is participating property.
23 Do you know if that participating property within
24 your footprint belongs to either or both of those
25 that live quite close?

1 A. I don't know offhand, but I can find out.
2 I can ask.

3 COMMISSIONER CHRISTMANN: Okay. Thank
4 you. No other questions at this time.

5 JUDGE WARD: Okay. Mr. Bjella?

6 MR. BJELLA: No questions.

7 JUDGE WARD: Mr. Utton, you can step down,
8 I think.

9 THE WITNESS: Thank you, Your Honor.

10 MR. PELHAM: Just one thing I'd like to
11 point out. Commissioner Kalk had been talking with
12 the witness about providing -- or producing the
13 project area. I just wanted to ask Mr. Bjella if
14 that is something that -- I assume that can't be
15 prepared today. Is that something that the company
16 would anticipate filing as a late-filed exhibit?

17 MR. BJELLA: Are you referring to what
18 Commissioner Fedorchak requested, the distance from
19 residences to turbines?

20 MR. PELHAM: No. I'm referring to what
21 Commissioner Kalk and your witness were talking
22 about about reducing the project area.

23 MR. BJELLA: Okay.

24 JUDGE WARD: It would be -- I think what
25 you're referring to is redrawing more or less --

1 MR. PELHAM: Yes.

2 JUDGE WARD: -- the property lines in
3 Exhibit 4 to take out properties that are
4 nonparticipating that aren't necessarily needed
5 within the project area.

6 MR. PELHAM: That's correct. Thank you
7 for --

8 JUDGE WARD: Because I think that's --
9 there's a concern that that's causing a lot of
10 confusion.

11 MR. PELHAM: Is that something that the
12 company can provide as a late-filed exhibit?

13 MR. BJELLA: Yes, Your Honor.

14 MR. PELHAM: I'm not Your Honor.

15 MR. BJELLA: Oh, yes.

16 JUDGE WARD: Okay. Don't make that
17 mistake again.

18 MR. BJELLA: Okay. I won't, Your Honor.

19 JUDGE WARD: Okay. Mr. --

20 COMMISSIONER KALK: Your Honor, if I
21 could, just to clarify, though, the -- in my mind
22 it's more than a late-filed exhibit. They filed an
23 application to this is their project area, so it's
24 a redefining of what their project area is. So if
25 the late-filed exhibit does that -- I mean it's

1 your choice what you do. I'm just telling you what
2 I think is favorable to what I might or might not
3 do. So isn't a redefining of what your whole
4 application is more than just a late-filed exhibit
5 or is a late-filed exhibit going to do that, or I
6 guess I'll just wait and see.

7 MR. BJELLA: Well, it would just -- I
8 think the only thing it would do is -- pursuant to
9 the request is identify the nonparticipating lands
10 which could drop out.

11 COMMISSIONER KALK: Okay. That should
12 work. Thank you.

13 JUDGE WARD: Mr. Bjella, anything else for
14 Mr. Utton?

15 MR. BJELLA: No, Your Honor.

16 JUDGE WARD: Anybody else for Mr. Utton?
17 One more follow-up?

18 Okay. Let's call your next witness.

19 MR. BJELLA: Thank you. We would call Kim
20 Wells.

21 JUDGE WARD: Ms. Wells, you were here in
22 the room when I gave the perjury admonition earlier
23 today, what the penalties for perjury are in North
24 Dakota?

25 THE WITNESS: Yes, I was in the room, Your

1 Honor.

2 JUDGE WARD: Okay.

3 (Witness sworn.)

4 JUDGE WARD: Thank you. Mr. Bjella.

5 MR. BJELLA: Thank you, Your Honor.

6 **KIMBERLY WELLS,**

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

9 **EXAMINATION**

10 **BY MR. BJELLA:**

11 Q. Would you state your name and business
12 address.

13 A. My name is Kimberly Wells. I am employed
14 by NextEra Energy Resources, LLC, of Juno Beach,
15 Florida, and I'm based in Houston, Texas, at 601
16 Travis Street, Suite 1900, Houston, Texas 77002.

17 Q. And what is your position with NextEra?

18 A. I am the environmental permitting manager
19 responsible for the Mid Continent Region that
20 includes the state of North Dakota. It is my
21 responsibility to provide oversight of all
22 environmental permitting needed to construct a
23 project, including environmental consultant work
24 products.

25 Q. And what is your educational background?

1 A. I received my PhD in fisheries and
2 wildlife sciences from the University of Missouri
3 in 2005, a master's of science in fisheries and
4 wildlife sciences from Oklahoma State University in
5 2000, a B.S. in renewable natural resources with an
6 emphasis in wildlife ecology from the University of
7 Arizona. In addition, I am also a certified
8 wetland biologist and a certified wetland
9 delineator.

10 Q. And what is your professional experience?

11 A. I have 15 years of professional experience
12 with wildlife ecology and natural resource
13 management. I have worked in state government,
14 private consulting and private industry sectors. I
15 have been involved with wind farm permitting for
16 over nine years.

17 MR. BJELLA: We would offer the further
18 testimony of Dr. Wells as an expert in
19 environmental matters.

20 JUDGE WARD: Any objection?

21 MR. PELHAM: No objection.

22 JUDGE WARD: Mr. Collins?

23 MR. COLLINS: No.

24 JUDGE WARD: Okay.

25 Q. (MR. BJELLA CONTINUING) Were you involved

1 in preparation of the application of Public Service
2 Commission Exhibit 1?

3 A. Yes. Tetra Tech conducted the studies
4 described in the application and developed the
5 application at my direction.

6 Q. And is the purpose of your testimony today
7 to describe the environmental and cultural resource
8 matters pertaining to the Brady Wind Energy Center?

9 A. Yes.

10 Q. And regarding the Public Service
11 Commission exclusion areas, would you please
12 briefly describe any exclusion areas that were
13 found within the project area?

14 A. Yes. Exclusion areas that are located in
15 the project area are described in Table 6 on
16 pages 3-2 and 3-3 of our application. The
17 application included the results of the Class I
18 file search. I will also describe the results of
19 the Class III cultural resources inventory for both
20 archaeology and architectural history.

21 The results of the Class I file search
22 indicated there are two previously recorded sites
23 within the survey area of potential effects.
24 During the pedestrian survey, Brady Wind documented
25 29 archeological sites within the survey area of

1 potential effects. The results of the pedestrian
2 survey for architectural history indicated 21
3 properties were potentially eligible for the
4 National Register within two miles of the proposed
5 turbines.

6 Q. And will there be any impact the project
7 would have on these sites?

8 A. Brady Wind has designed the layout of the
9 wind facility to avoid all direct impacts on
10 cultural resources that are potentially eligible
11 for listing on the National Register of Historic
12 Places, sites that may be deemed culturally
13 sensitive or sites that have not been evaluated for
14 National Register eligibility.

15 Brady Wind will avoid impacts on any sites
16 within or adjacent to the construction easement
17 that may be disturbed by fencing them during
18 construction to assure they are not inadvertently
19 disturbed.

20 Q. Are there any other exclusion areas in the
21 project area?

22 A. Yes. 7 percent, or 2,026 acres, consist
23 of prime farmland soils.

24 Q. And what will the permanent impacts on
25 prime farmland soils be from the energy center?

1 A. Brady Wind has designed the project to
2 avoid prime farmland to the extent practicable.
3 Permanent impacts to prime farmland soils are
4 estimated at four acres or 0.01 percent of the
5 project area.

6 Q. Are there any other exclusion areas within
7 the project area?

8 A. No. There are no other exclusion areas,
9 and the project complies with the wind-energy
10 specific setbacks required by the Public Service
11 Commission and Stark County.

12 Q. Regarding cultural resources, what is the
13 status of cultural resources and archeological
14 resources and contacts with the North Dakota State
15 Historic Preservation Office?

16 A. A Class I literature review for
17 archeological and architectural history resources
18 for the survey area of potential effects and a
19 one-mile buffer around the survey area of potential
20 effects was conducted. The review located
21 previously recorded archeological sites identified
22 during surveys and historic structures, bridges and
23 cemeteries.

24 A Class III cultural resources inventory
25 for archaeology was completed in November of 2015.

1 Brady Wind has coordinated with the State
2 Historical Society on the appropriate scope and
3 level of surveys for the project. The
4 archeological survey report has been submitted to
5 the State Historical Society of North Dakota for
6 review and concurrence. The report was also
7 provided to you all, the Public Service Commission.

8 As stated previously, Brady Wind has
9 designed the layout of the wind facility to avoid
10 all impacts on archeological resources that are
11 potentially eligible for listing on the National
12 Register, sites that may be deemed culturally
13 sensitive or sites that have not been evaluated for
14 National Register eligibility.

15 In a letter dated February 19, 2016, the
16 State Historic Preservation Officer concurred with
17 the recommendation in the archeology survey report
18 and the no significant sites affected
19 determination.

20 An architectural historian conducted a
21 Class III cultural resources inventory for historic
22 architectural resources within two miles of the
23 proposed project area in November of 2015. The
24 project will not directly impact any architectural
25 resources.

1 The historic architectural resources
2 survey report has been submitted to the State
3 Historical Society of North Dakota for review and
4 concurrence and will also be submitted to the
5 Public Service Commission.

6 Q. Have any studies been completed with
7 respect to possible effects of the wind project on
8 telecommunication and radar facilities?

9 A. Yes. As Jason Utton previously testified
10 in brief, Brady Wind has completed three separate
11 studies related to radar interference, air traffic
12 and telecommunications. Brady Wind has completed a
13 preliminary screening tool to evaluate any radar
14 interference. The results indicate no impacts to
15 either weather surveillance radar, Department of
16 Defense or Homeland Security radars.

17 Brady Wind has received determinations of
18 no hazard from the FAA for each turbine location in
19 the array and the permanent meteorological tower.
20 The turbines and the meteorological tower will also
21 be lit according to FAA requirements.

22 In October 2015, Brady Wind completed a
23 preliminary telecommunications study to identify
24 microwave telecommunication systems within the
25 project area. No impacts to microwave beams are

1 anticipated from the project turbines.

2 Q. Would you please describe any Public
3 Service Commission avoidance areas that are
4 contained within the wind energy center?

5 A. Avoidance areas that are located within
6 the project site are described in Table 7 on
7 page 3-3 of our application. The three types of
8 avoidance areas identified are historic resources
9 not designated as exclusion areas, areas within
10 floodplains and wetlands and woodlands.

11 Q. And would you please point any impacts on
12 historical resources and how Brady Wind plans to
13 mitigate any impacts?

14 A. There are two types of historic resources
15 within the study area or two miles including
16 historic farmsteads and cemeteries. Brady Wind
17 will not directly impact any historic resources.
18 Brady Wind identified 19 properties with potential
19 visual impacts. Brady Wind is coordinating
20 mitigation for these impacts with the State
21 Historical Society. We submitted a report
22 evaluating these resources to the State Historical
23 Society of North Dakota.

24 Q. Please explain any impacts on floodplains
25 and how Brady Wind would mitigate those impacts.

1 A. Approximately 3 percent of the project
2 area is located within the FEMA 100-year
3 floodplain, primarily occurring along creek beds.
4 The turbine locations, substation, and operations
5 and maintenance facility are sited outside of
6 floodplains. Brady Wind is currently permitting
7 minor impacts to floodplains through the Stark
8 County floodplain administrator.

9 Q. Please explain any impacts on wetlands and
10 how Brady Wind would mitigate those impacts.

11 A. Brady Wind performed a desktop analysis to
12 identify probable locations of wetlands and water
13 bodies prior to our fieldwork. The initial desktop
14 analysis was followed by a site visit to microsite
15 turbine locations in September 2015. Wetland
16 delineations were conducted for the project in
17 October and November 2015. The wetland survey
18 report was submitted to the Public Service
19 Commission on February 17, 2016.

20 Brady Wind designed the project to
21 minimize impacts to wetlands and streams. Based on
22 the proposed placement of project infrastructure
23 and permanent impacts less than 0.1 acres at each
24 feature, the project covers -- qualifies for
25 coverage under Nationwide Permits 12 and 14 and no

1 preconstruction notification to the Army Corps of
2 Engineers is required.

3 Q. Please explain any impacts on woodlands
4 and how Brady Wind would mitigate those impacts.

5 A. Less than 1 percent of the project area is
6 woodlands. Impacts to trees will be avoided to the
7 extent practicable, and all trees that are removed
8 will be replaced at a 2-to-1 ratio as required by
9 the Public Service Commission.

10 Q. Regarding the Public Service Commission
11 selection criteria, would you please identify any
12 potential impact.

13 A. Selection criteria impacts are described
14 in Table 8 on pages 3-4 and 3-5 of our application.
15 In regards to the impacts on agriculture,
16 approximately 110 acres of land will be required
17 for 87 turbines, associated access roads and other
18 infrastructure during operation of the project. Up
19 to an additional 921 acres will be temporarily
20 required during construction for turbine
21 installation, road construction, cable trenching
22 and laydown areas.

23 Wind lease payments to farmers will
24 provide a supplemental source of income and
25 landowner agreements include compensation for any

1 crop damage.

2 Brady Wind will work with landowners to
3 alleviate compaction. No significant impacts to
4 agricultural production are anticipated.

5 With regards to the other selection
6 criteria, no adverse effects to other selection
7 criteria are anticipated either. The project is
8 anticipated to have a positive cumulative impact on
9 air quality and no impacts to law enforcement,
10 school systems, government services, recreational
11 programs and facilities or other local
12 institutions.

13 Minimal impacts are anticipated to surface
14 drainage patterns and groundwater flow patterns,
15 transportation facilities and plant life.
16 Socioeconomic impacts are anticipated to be
17 positive as the rural economy and energy production
18 is diversified.

19 Our consultant, Dr. Chris Ollson, will be
20 testifying to the project's potential impact on
21 human health and safety.

22 Q. Please briefly summarize how the project
23 may affect the policy criteria of the Commission.

24 A. Policy criteria are described in Table 9
25 on page 3-6 of our application. Project benefits

1 related to the policy criteria include energy
2 conservation, use of local labor, and use of an
3 existing primary energy source in the state.

4 With regard to energy conservation through
5 location, process and design, the site is developed
6 to maximize energy outputs while minimizing impacts
7 on the environment to the extent practicable.

8 With regard to labor in North Dakota,
9 Brady Wind will use experienced local contractors
10 to the extent practicable, and the project is not
11 expected to affect labor relations.

12 With regard to the use of a primary energy
13 source within the state, Brady Wind will utilize
14 existing wind resources within the state to create
15 electricity.

16 Q. And has Brady Wind completed an avian
17 survey?

18 A. Yes. The fall avian point-count survey
19 was completed and a spring avian survey is
20 underway. Eagle use surveys began in August 2015
21 and they will continue through April 2016. A
22 ground-based raptor nest survey was conducted in
23 June 2015, an aerial fall nest inventory was
24 conducted in November 2015, and aerial raptor nest
25 surveys were conducted in January and February 2016

1 based on recommendations of the U.S. Fish &
2 Wildlife Service.

3 The avian community detected within the
4 project area during fall avian surveys was
5 characterized by species typical of agricultural
6 lands and cattle pastures in North Dakota. No
7 federally threatened or endangered species were
8 observed during avian point-count surveys, raptor
9 nest surveys or as incidental observations.
10 Surveys and observations related to bald and golden
11 eagles will be discussed by our consultant,
12 Dr. Chris Farmer.

13 The prior avian survey served to confirm
14 that the project is not sited where there is
15 critical habitat or threatened or endangered
16 species and that the potential for adverse impacts
17 on avian species is low.

18 Q. And what did your assessment show with
19 respect to likelihood of whooping cranes occurring
20 in the project area?

21 A. Brady Wind conducted a desktop likelihood
22 assessment for whooping cranes. The
23 landscape-scale analysis concluded the likelihood
24 of whooping cranes occurring within the project
25 area is low because the project area is on the

1 outer edge of the migration area of potential
2 effects.

3 Q. And has Brady Wind completed other
4 wildlife studies?

5 A. Yes. A bat desktop habitat assessment was
6 conducted in July 2015 and revised in January 2016,
7 and bat acoustic monitoring was conducted from July
8 to November of 2015. The habitat assessment was
9 conducted via a desktop evaluation of land cover
10 and land uses within the project area in a 1.5-mile
11 buffer.

12 A total of 11 bat species are known to
13 occur in North Dakota. One of these species, the
14 northern long-eared bat, is federally listed.
15 However, the project site is outside of the
16 geographic range where incidental take is currently
17 prohibited.

18 The project area lacks forested habitat
19 and is located at the edge of the species range.
20 Therefore northern long-eared bats have a low
21 likelihood of occurring in the project area.

22 Acoustic monitoring conducted from July 22
23 through December 3, 2015, detected five common bat
24 species. No federally protected species, including
25 the northern long-eared bat, were detected.

1 Q. And what mitigation measures for wildlife
2 impacts has Brady Wind committed to for this
3 project?

4 A. Brady Wind describes its wildlife
5 mitigation measures on page 7-32 of our application
6 and 7-33. They include:

7 Implementing a wildlife response and
8 reporting system once turbine construction is
9 completed. This approach is the protocol for all
10 of our field technicians at all of our operating
11 facilities to report and document bird and bat
12 mortalities during maintenance operations for the
13 life of the project or specifically what the North
14 Dakota Game and Fish Department recommendation
15 requested.

16 We have also committed to conducting one
17 year of post-construction mortality monitoring
18 following construction of the project in all
19 seasons for systematic coverage; and to developing
20 a voluntary bird and bat conservation strategy
21 following the U.S. Fish & Wildlife Service's
22 voluntary wind energy guidelines, which also
23 include an adaptive management approach.

24 This also includes proposing in its
25 lighting plan to use a minimum number of aviation

1 hazard lights acceptable to the FAA to avoid
2 attracting migrating birds and bats to the
3 turbines.

4 During construction and operation, we will
5 also limit vehicle speeds to 25 miles per hour on
6 project roads to minimize potential wildlife
7 collisions.

8 Q. Has Brady Wind completed an acoustic
9 study?

10 A. Yes.

11 Q. Would you please discuss the main points
12 of the acoustic assessment?

13 A. The Commission's rules state that sound
14 levels from a wind facility may not exceed 50 dBA
15 within 100 feet of an inhabited residence or a
16 community building unless waived in writing by the
17 owner. Acoustic modeling results indicated that
18 received sound levels are all below 50 dBA within a
19 hundred feet for all inhabited residences.

20 Q. And has Brady Wind completed a shadow
21 flicker study?

22 A. Yes.

23 Q. And what did the study show?

24 A. The Commission's rules do not regulate
25 shadow flicker, but the Commission has in other

1 projects evaluated shadow flicker at 30 hours per
2 year or less at a currently occupied residence
3 unless waived by the landowner. This is the
4 standard that Brady Wind has used in evaluating
5 this project.

6 The analysis assumes that the receptors
7 all have a direct in-line view of the incoming
8 shadow flicker sunlight and does not account for
9 trees or other obstructions which may block that
10 sunlight. The predicted shadow flicker impacts of
11 Brady Wind are less than 30 hours per year at all
12 but two of the identified occupied receptors.
13 These two receptors are both owned by landowners
14 that are participating in the project. As a
15 result, no significant shadow flicker impacts are
16 anticipated to sensitive receptors.

17 Q. What are some of the other state, federal
18 or local permits that may be needed and what is the
19 status of those permits?

20 A. Other permits and approvals that may be
21 needed for the project are summarized in Table 19
22 on pages 9-1 and 9-2 of our application. Most
23 notably, as Jason Utton testified, Brady Wind
24 obtained our conditional use permit from Stark
25 County for the wind farm on December 22, 2015.

1 I would also note that in regards to the
2 U.S. Army Corps of Engineer approval, the project
3 qualifies for coverage under Nationwide Permits 12
4 and 14 and therefore no preconstruction
5 notification is required.

6 Q. And what is the status of discussions with
7 the North Dakota State Historic Preservation
8 Office?

9 A. Brady Wind initiated contact with the
10 State Historical Society of North Dakota in
11 August 2015 to introduce the project and request
12 input on resources in the area. The State
13 Historical Society responded in August 2015 and
14 recommended a Class I file search and a complete
15 Class III pedestrian survey for both archaeology
16 and architectural history resources.

17 Brady Wind discussed the results of a
18 Class I file search for architectural history with
19 the State Historical Society and confirmed
20 appropriate survey areas for historic structures in
21 September 2015. In November 2015, Brady Wind also
22 discussed delineating historic use areas for direct
23 impacts with the State Historical Society to inform
24 our avoidance strategy.

25 In January of 2016, Brady Wind provided

1 the preliminary results of our pedestrian survey to
2 the State Historical Society to determine which
3 properties warranted further evaluation. The
4 cultural resources inventory report for historic
5 architecture was also submitted. Discussions
6 regarding mitigation measures for indirect impacts
7 to historic resources are currently underway with
8 the State Historical Society.

9 Brady Wind discussed the process of
10 submitting an archaeology report with the state
11 archaeologist in January 2016. The cultural
12 resources inventory report for archaeology was
13 subsequently submitted on February 12, 2016, and
14 the concurrence letter was issued on February 19,
15 2016.

16 Q. And has Brady Wind been in coordination
17 with other state and federal agencies that may have
18 an interest in this project?

19 A. Yes. As demonstrated in Table 18 and
20 Appendix C of the application we submitted in
21 December of 2015, we have been in contact with
22 numerous state and federal agencies, primarily the
23 North Dakota Game and Fish Department and the U.S.
24 Fish & Wildlife Service. We also provided a
25 supplemental agency correspondence package on

1 February 17, 2016, to the Public Service
2 Commission.

3 Q. Please describe the contacts you have had
4 with the North Dakota Game and Fish Department and
5 U.S. Fish & Wildlife Service.

6 A. Brady Wind initiated contact with the
7 North Dakota Game and Fish Department in May of
8 2015 to request locations of any known eagle nests
9 within ten miles of the project. Electronic files
10 were provided to Brady Wind in June of 2015.

11 In August 2015, Brady Wind sent letters to
12 both agencies requesting information about
13 sensitive biological resources. North Dakota Game
14 and Fish provided a response in September of 2015.
15 No response from the Fish & Wildlife Service was
16 received.

17 In December of 2015, I met with both
18 agencies to discuss the project and shared
19 preliminary wildlife due diligence information.
20 Brady Wind supplied electronic files of the project
21 location and a ten-mile buffer and native prairie
22 resources to both agencies in January 2016 to
23 support queries of their internal databases for
24 species occurrence data.

25 North Dakota Game and Fish provided known

1 prairie dog colony locations in January of 2016.
2 Also in January 2016, the U.S. Fish & Wildlife
3 Service confirmed there were no fish and wildlife
4 land interests present within the project area.

5 Brady Wind provided an outline of our
6 proposed bird and bat conservation strategy to the
7 U.S. Fish & Wildlife Service for review in
8 January 2016 and received feedback in
9 February 2016.

10 In February 2016, North Dakota Game and
11 Fish indicated that no surveys for sharp-tailed
12 grouse had been done in the project area and
13 therefore they had no data to provide us on any
14 previously known sharp-tailed grouse leks.

15 In March of 2016, Brady Wind coordinated
16 with North Dakota Game and Fish Department on
17 developing our survey protocols for sharp-tailed
18 grouse leks. On February 18, 2016, Brady Wind
19 provided copies of all completed wildlife studies,
20 including a native prairie habitat assessment, to
21 both agencies.

22 Brady Wind conducted a conference call
23 with both agencies in February of 2016 to discuss
24 overall native prairie habitat. Brady Wind is
25 continuing to coordinate development of our bird

1 and bat conservation strategy for the project with
2 both agencies.

3 Q. And what is the status of any
4 recommendations for the project by these agencies?

5 A. Recommendations provided by the North
6 Dakota Game and Fish Department in a letter dated
7 September 2015 were used to inform project design
8 and the avoidance strategy. Per recommendations by
9 the U.S. Fish & Wildlife Service, Brady Wind
10 completed two additional raptor nest surveys
11 earlier than originally planned in January and
12 February 2016 to detect potential early breeding
13 activity.

14 We also initiated prey-based surveys and
15 focused nest monitoring at known or suspected eagle
16 nests at the nests closest to the project. In
17 March of 2016, Brady Wind modified our protocol for
18 sharp-tailed grouse lek surveys based on
19 recommendations from North Dakota Game and Fish
20 specifically. We have also substantially revised a
21 structure of our voluntary bird and bat
22 conservation strategy based on feedback from both
23 the U.S. Fish & Wildlife Service and North Dakota
24 Game and Fish Department.

25 Q. And to your knowledge, have any state or

1 federal agencies objected to this wind farm
2 project?

3 A. No.

4 Q. And in your opinion, if the wind farm is
5 constructed as set forth in the application and
6 discussed at the hearing, will there be any
7 significant long-term irreversible effects to the
8 environment or cultural resources?

9 A. No.

10 MR. BJELLA: This would conclude our
11 testimony of Dr. Wells.

12 JUDGE WARD: Okay. Questions for
13 Dr. Wells. Mr. Pelham.

14 MR. PELHAM: Thank you.

15 **EXAMINATION**

16 **BY MR. PELHAM:**

17 Q. And is it still morning? Yeah. Almost.
18 Just a few questions for you. Just to follow up on
19 the grouse leks, the survey that you had worked
20 with North Dakota Game and Fish, and I'm just
21 wondering, you testified that you developed a
22 protocol, the surveys of them. What -- what result
23 practically has that had?

24 A. The surveys are actually scheduled to
25 occur this month and next month, so we haven't

1 completed them yet, but we have modified the
2 protocols specifically with coordination with Aaron
3 Robinson, who is the lead grouse biologist with the
4 State of North Dakota.

5 Q. I see. And those survey results, are
6 those being specifically -- are you -- you're
7 coordinating with Game and Fish then specifically?

8 A. That is correct.

9 Q. And then a survey -- the result of the
10 survey will be shared with the Commission and with
11 Game and Fish?

12 A. Yes.

13 Q. And then Game and Fish will provide
14 comment presumably or --

15 A. I would presume so.

16 Q. Okay. And that comment will be shared
17 with the Public Service Commission?

18 A. Correct. So that the purpose of
19 developing a voluntary bird and bat conservation is
20 to provide a one-stop shop for all of your wildlife
21 due diligence. So you can think of it as the
22 story. The purpose is for the applicant to
23 memorialize all of the measures we've taken during
24 siting, all of the measures we've proposed during
25 construction and all of the measures we've proposed

1 during operations. So in addition to the
2 individual technical reports, that document
3 memorializes all of that in a one-stop shop.

4 Q. And when is it anticipated -- and I know
5 you probably -- you said this month, and did you
6 say next month, as well, the survey is going to be
7 done?

8 A. It's done over a couple of weeks period,
9 so it should be completed I believe in April.

10 Q. I see. As far as the SHPO, the State
11 Historical Preservation Office, concurrence letter
12 that you mentioned, February 19, 2016, has this
13 been provided to the Commission?

14 A. I believe it has.

15 MR. PELHAM: Do we have that?

16 MR. BJELLA: Which document?

17 MR. PELHAM: The SHPO concurrence letter
18 from February.

19 THE WITNESS: We --

20 MR. BJELLA: Yeah. We just sent one in.
21 The one we received has been sent in. Yes.

22 MR. PELHAM: Okay. All right.

23 Q. (MR. PELHAM CONTINUING) And you had
24 mentioned, Ms. Wells, the archaeology survey that
25 was submitted to SHPO. Did SHPO respond to that?

1 A. If you're asking about the archaeology
2 survey report that we submitted, the concurrence is
3 the response.

4 Q. Okay. So -- all right. I was confused.
5 I -- I apologize.

6 So that was submitted and then the SHPO
7 concurrence includes that. I guess I -- I --
8 Mr. Lein and I were consulting and we don't recall
9 seeing the SHPO concurrence, but we will check and
10 make sure that it's in there. But that's probably
11 the source of my confusion.

12 You mentioned that the avian survey would
13 be done and has been done in the fall -- fall of
14 2015; correct?

15 A. That's correct.

16 Q. And then this spring, is that going to be
17 done around -- in the coming weeks here? When is
18 that going to be done?

19 A. The spring survey is usually done between
20 March and April or early May.

21 Q. Okay. And, again, the same with the
22 grouse survey that's being conducted here, those
23 results -- survey results would be submitted to the
24 Commission; correct?

25 A. Yes.

1 Q. And will they be submitted to anyone else?
2 Fish & Wildlife Service presumably?

3 A. Yes. Brady Wind will continue to share
4 all results of our wildlife studies, as we have
5 done to date and as we go forward.

6 Q. You testified about the floodplain
7 administration. Is that -- in consulting with
8 Stark County floodplain administrator -- is that
9 who -- the governmental entity you're consulting
10 with?

11 A. Yes.

12 Q. And as far as you mentioned minor impacts,
13 and I'm just wondering what you mean by minor
14 impacts.

15 A. So I mean minor in the scope of the
16 acreage. So I will refer to my testimony. Less
17 than 3 percent of the project area is located in
18 the FEMA 100-year floodplains.

19 Q. And can you describe to me, Ms. Wells, the
20 coordination that took place with the local -- with
21 the county floodplain administrator?

22 A. I can. At my direction our consultant,
23 Tetra Tech, coordinated them with -- with the Stark
24 County floodplain administrator, both on the
25 content, nature, scope and process of submitting

1 applications for those floodplain impacts. I have
2 reviewed drafts of those and we anticipate
3 submitting those shortly.

4 Q. And has -- has the -- are there
5 recommendations then from the county administrator?

6 A. I'm not aware of any recommendations to
7 date.

8 Q. Okay.

9 A. One thing I would like to clarify is that
10 we have deliberately sited our permanent
11 infrastructure, like turbines, the substation, the
12 O&M buildings which have the largest footprint --
13 deliberately sited those outside of that
14 floodplain, and we use that same avoidance strategy
15 with floodplains and with wetlands.

16 Q. And when you say you -- you're going to
17 submit them, I assume you're talking submitting
18 them to the Commission?

19 A. They get submitted for regulatory approval
20 to the Stark County administrator. If the Public
21 Service Commission would also like copies, we'd be
22 happy to do that. It's public record.

23 Q. I think we would. We would like to see
24 those.

25 A. Sure.

1 Q. Can we talk a little bit about permits
2 that would be required from the Health Department,
3 Ms. Wells?

4 A. I'd like to flip to that section of our
5 application, please.

6 JUDGE WARD: Ms. Wells, when you get
7 there, maybe you can tell us what page you're
8 looking at.

9 THE WITNESS: Gladly. It's near the end,
10 I don't remember the exact section, but I should
11 have it shortly.

12 Q. (MR. PELHAM CONTINUING) I'm going to the
13 end too.

14 A. 8-1. So it's Table 18, summary of -- oh,
15 excuse me.

16 Q. 9-1.

17 A. 9-1. Thank you. Next -- next section.

18 JUDGE WARD: So Table 19?

19 THE WITNESS: So on page 9-1 of section 9
20 of Potential Permits and Approvals is a list of all
21 of the potential permits and approvals we
22 anticipate needing for the project. I'm sorry.
23 Could you repeat your question, please?

24 Q. (MR. PELHAM CONTINUING) Yeah. And it was
25 as to the Health Department. It looks like here on

1 Table 19 it was the storm water plan. Is that what
2 is anticipated to be filed and requested from the
3 Health Department?

4 A. Yes.

5 Q. I had asked Mr. Utton about the North
6 Dakota Department of Trust Lands, and there was an
7 e-mail that was submitted as part of the record
8 here and is contained in the docket regarding the
9 application for review of the trust land. Do you
10 have any information as to where the Trust Land
11 Department is at as far as this project?

12 A. I do. If you look at Figure 10 of our
13 application as submitted, it will show two parcels
14 or two areas, I believe, in a light blue that are
15 the location of trust lands within our project
16 area. The e-mail you're referencing from
17 mid-February references if we have infrastructure
18 placed there, we would need to submit a permit. We
19 currently show, as evidenced by our application, no
20 infrastructure in either one of those parcels, so
21 no further consultation or easements will be
22 required.

23 Q. Did you look at Dakota skipper butterflies
24 at all?

25 A. I'm sorry. I couldn't hear.

1 Q. Dakota skipper.

2 A. What's your question?

3 Q. The Dakota skipper, did you do any
4 analysis for the Dakota skipper?

5 A. We do. It's a butterfly, in case you're
6 wondering what a Dakota skipper is. It is one of
7 the federally listed species we include in all of
8 our wildlife due diligence. So the very first
9 thing we do in siting a project in North Dakota is
10 we do a native prairie habitat assessment. So we
11 take a look at where high-quality native prairie is
12 and we deliberately site infrastructure out of
13 those areas. So we take that into account.

14 Additional steps that we perform, we query
15 publicly available databases, both of the Service
16 and other sources, of known occurrences, and we
17 also ask the resource agencies for their internal,
18 non-publicly available databases for those
19 occurrences.

20 Q. So no impacts on Dakota skipper
21 anticipated for this proposed project; correct?

22 A. That's correct. I'm not aware of any
23 occurrences in or near the project. We've asked
24 the agency, and to date, I have not received any
25 indications that there's any known detections or

1 anything that would lead me to change that
2 conclusion.

3 MR. PELHAM: Thank you, Ms. Wells. I
4 don't have any other questions for you. Mr. Lein
5 may have some questions.

6 JUDGE WARD: Mr. Lein.

7 **EXAMINATION**

8 **BY MR. LEIN:**

9 Q. Ms. Wells, I had asked before about the
10 post-construction monitoring for bird mortalities,
11 and it said in the application that the company
12 would do that for a year, but it looked to me like
13 Game and Fish was recommending post-construction
14 mortality surveys for the life of the project. So
15 are you the person to ask about that?

16 A. I am. I can speak to that. So we have
17 two commitments related to post-construction
18 mortality monitoring in the application. One of
19 those relates to a more intensive survey the first
20 year that we do with consultant assistants.

21 Q. Okay.

22 A. The next measure is the WRRS or the
23 wildlife response and reporting system, which is a
24 fleet-wide procedure we use at every operating
25 facility of ours where during routine operation and

1 maintenance checks, our site staff actually perform
2 very similar surveys. So we do, in fact, already
3 have a commitment proposed that satisfies the
4 recommendation of North Dakota Game and Fish which
5 specifically was life-of-project monitoring. So
6 those commitments are already in place.

7 Q. Thanks. I have one other -- wondering
8 about something in here. There is not a letter
9 response from Fish & Wildlife. Did you get some
10 correspondence from them?

11 A. You're correct that there is not a letter.
12 We have never received a letter from the Fish &
13 Wildlife Service. And as evidenced by my testimony
14 as well as the agency correspondence in our
15 application and our supplemental agency
16 correspondence package, we have had a lot of
17 contact through phone and e-mail. My understanding
18 from talking to Mr. Shelley is that he is one of
19 four staffers. He is the supervisor in the
20 Bismarck office. They are very busy and
21 overwhelmed. So we try our best to communicate
22 with him and have had lots of informal contact that
23 we've documented for your purposes. But, no, to
24 date we have never received a letter from the U.S.
25 Fish & Wildlife Service.

1 MR. LEIN: Thanks. No further questions.

2 MR. PELHAM: I -- if I could --

3 JUDGE WARD: Mr. Pelham, go ahead.

4 MR. PELHAM: Just one real quick. I was
5 looking at my notes.

6 **FURTHER EXAMINATION**

7 **BY MR. PELHAM:**

8 Q. Ms. Wells, you talked about the shadow
9 flicker and the predicted impact is less than
10 30 hours per year or less at all but two and the
11 two are participating. Have those two signed a
12 waiver?

13 A. There is language contained within our
14 standard land easements that covers these two
15 issues along with others that may be experienced
16 within a wind farm.

17 Q. So the answer is yes?

18 A. I would -- yes, I would answer that as a
19 yes.

20 Q. Okay.

21 A. It's included as part of our land
22 easements that we sign with our landowners.

23 MR. PELHAM: All right. Thank you.

24 JUDGE WARD: Is that it?

25 MR. PELHAM: That's it.

1 JUDGE WARD: Okay. Mr. Collins.

2 MR. COLLINS: Thank you, Your Honor.

3 EXAMINATION

4 BY MR. COLLINS:

5 Q. Just to follow up on the last two
6 questions you had about Game and Fish, while I have
7 this thought in my head, you testified, Ms. Wells,
8 that the Game and Fish life of the project
9 monitoring had the same criteria for -- as
10 NextEra's policy for maintenance workers to report
11 fatalities as they see them when they're
12 maintaining the facility; is that correct?

13 A. Could you repeat your question? I'm not
14 clear on what the question was.

15 Q. Yeah. I think you testified that the Game
16 and Fish request -- Mr. Lein asked you about the
17 monitoring for the life of the project for
18 fatalities to birds and bats, and you demurred and
19 indicated that NextEra after the first year has its
20 own policy that it will follow and that's what it's
21 proposing as part of its application as opposed to
22 following the recommendation of the Game and Fish.

23 A. I would not agree with your
24 characterization of my testimony. Specifically,
25 what I testified to was that in response to

1 recommendations from the North Dakota Game and Fish
2 and the Fish & Wildlife Service, we have responded
3 to a commitment of post-construction mortality
4 monitoring for the life of the project. What I
5 described is those two components.

6 Q. But the monitoring that Game and Fish
7 would like to see is different from what NextEra is
8 proposing, or is it the same?

9 A. The letter recommending monitoring from
10 North Dakota Game and Fish asked for
11 post-construction mortality monitoring for the life
12 of the project. Those were the extent of the
13 details, and that letter is part of our application
14 that you have in the public record.

15 Q. I know. And my question to you is as an
16 expert, do you have an understanding whether the
17 post-construction monitoring requested by Game and
18 Fish is the same as the post-construction
19 monitoring that you're proposing?

20 A. My understanding to this point is yes, and
21 as I also mentioned, we are in active coordination
22 with both agencies under development of our
23 voluntary bird and bat conservation strategy, which
24 is a voluntary document.

25 Q. So we don't have anything in writing to

1 verify your testimony to determine whether it is
2 indeed the same type of monitoring between Game and
3 Fish and what NextEra is proposing; correct?

4 A. Could you repeat that? Do I have --

5 Q. Do we have anything to -- do you have
6 anything in writing to support your testimony that
7 the monitoring protocols requested by Game and Fish
8 are the same that NextEra is proposing?

9 A. That will be covered as part of the
10 development of the voluntary bird and bat
11 conservation agreement, as I previously testified.

12 Q. Which we don't have yet?

13 A. Correct, as I previously testified.

14 Q. Okay. So we can't evaluate it as part of
15 this application?

16 A. Actually, I wouldn't agree with that
17 characterization. If you're familiar with the
18 voluntary wind energy guidelines, which is the
19 voluntary regulatory document that the Fish &
20 Wildlife Service issues, they actually request that
21 you follow several tiers of procedure, and each of
22 those tiers of procedure build strategically on
23 what's gained in the prior tier. So as appropriate
24 for this tier, for tier III, we are actually
25 developing those procedures now and will be sharing

1 those with them. So I would not agree with your
2 characterization.

3 Q. All I'm asking is we don't have that
4 information before us today as part of your
5 application; correct?

6 A. Is that a question?

7 Q. Yes.

8 A. If that's the question, that answer is
9 yes.

10 Q. Okay. Now, you mentioned the U.S. Fish &
11 Wildlife and the struggles you're having to get
12 them to act on the information you submitted
13 because of the fact that their office is busy;
14 correct?

15 A. That's what I testified. Correct.

16 Q. Do you recall when NextEra furnished the
17 information to the U.S. Fish & Wildlife?

18 A. As I previously testified, we've provided
19 a number of submittals in my testimony. I'd be
20 happy to read that again.

21 Q. Sure.

22 MR. BJELLA: Your Honor, this has been
23 asked and answered. I'm going to object.

24 JUDGE WARD: I'm going to let her respond.

25 MR. COLLINS: I'm just looking for the

1 date when it was submitted, not her whole testimony
2 on the topic.

3 THE WITNESS: Could you clarify which
4 piece or which -- we have many communications, so
5 if I know what you're asking specifically.

6 Q. (MR. COLLINS CONTINUING) You submitted a
7 report to the U.S. Fish & Wildlife that you're
8 waiting a response on; correct?

9 A. Correct.

10 Q. When did that report get submitted to them
11 is all I'm wondering.

12 A. They confirmed receipt on February 22,
13 2016.

14 Q. Okay. Should the PSC wait to consider the
15 application until they've received a response from
16 U.S. Fish & Wildlife?

17 A. My understanding of the Public Service
18 Commission rules, as laid out in our application,
19 are that we are required to address avoidance,
20 exclusions, selection and policy criteria. We feel
21 we've adequately presented our case and all of our
22 technical studies and evidence to support that.
23 Development of the bird and bat conservation
24 strategy is a voluntary document that we are
25 voluntarily doing and coordinating with both

1 agencies on.

2 Q. So, no, they shouldn't wait?

3 A. No, they shouldn't wait. It's my opinion
4 that we've addressed the four criteria the PSC
5 requires.

6 Q. Okay. Could you turn to site selection
7 criteria of the application. It starts at
8 page 3-1, please.

9 A. Sure. I see page 3-1.

10 Q. Okay. And under 3.1 and 3.2 we're talking
11 about exclusion areas and avoidance areas.

12 A. Yes.

13 Q. And I want to draw your attention to
14 section 3.2 which cites to North Dakota
15 Administrative Code Section 69-06-08-01(3-4). Do
16 you see that?

17 A. Are you referring to the third line of
18 text in section 3.2?

19 Q. Yeah. Yep.

20 A. Yes. I see that in our application.

21 Q. Okay. And the text in the application
22 says, The geographical areas listed in Table 7
23 shall not be approved as a site for an energy
24 conservation facility unless the applicant shows
25 that, under the circumstances, there is no

1 reasonable alternative; right?

2 A. That's what our application says.

3 Q. Okay. And the rule also states that
4 economic considerations alone will not justify
5 approval of these areas; right?

6 A. Are you referring to text that I should
7 see in 3.2? Is that what you're asking me?

8 Q. No. I'm asking about the North Dakota
9 Administrative Code section cited in the
10 application.

11 MR. BJELLA: Well, Your Honor, she doesn't
12 have it, so I don't know how she can --

13 JUDGE WARD: Well, we put it in front of
14 the previous witness. I suppose we can --

15 MR. COLLINS: I have it right here. Let
16 me just make sure I have it for you. That starts
17 on the highlighted.

18 THE WITNESS: Yes. Thank you.

19 JUDGE WARD: Now that she's had an
20 opportunity to look at it, ask her the question
21 again.

22 Q. (MR. COLLINS CONTINUING) So the rule
23 we're acting under under the avoidance area is
24 that -- states that the economic considerations
25 alone will not justify approval of these areas --

1 running into these areas; right?

2 A. That's what I see in the yellow
3 highlighting of the material you provided to me.

4 Q. What's your understanding of that
5 provision under the rule?

6 A. I think it's pretty plain language, that
7 economics should not be the only factor.

8 Q. Okay. In other words, if it costs too
9 much to -- costs money to avoid a wetland and
10 that's the only reason preventing you from avoiding
11 a wetland, that shouldn't be a reason not to try to
12 avoid wetlands on the project; right?

13 A. I think your inference is slightly
14 different from the text I see in front of me that
15 you've provided here.

16 Q. Okay.

17 A. This appears to be referencing a
18 broader-scale policy from the Public Service
19 Commission. Where the criteria I see are in
20 Chapter 69-06-08 does not appear to be specifically
21 addressing particular features such as wetlands,
22 which is the example you just provided me.

23 Q. Well, it's talking about avoiding
24 avoidance areas; right? That's what the criteria
25 is laid out for?

1 A. Correct. You've asked me about wetlands
2 specifically. My response is that I'm responding
3 to the document here that you've put in front of
4 me, and this document does not describe what you're
5 asking me about with wetlands specifically. It
6 does address avoidance in general.

7 Q. Well, a wetland is an avoidance area;
8 right?

9 A. It is one of the areas we avoid, yes.

10 Q. Okay. Can you turn to the next page under
11 Table 6, Exclusion Areas, please.

12 A. Are you in Table 6 of our application?

13 Q. Yep. Page 3-2.

14 A. Okay.

15 Q. And there you identify in the first
16 column, four sections down, prime farmland, and
17 then you move over to the description and you
18 described the project area and the amount of prime
19 farmland. And then it says, Prime farmland has
20 been avoided to the extent practical [sic]. And I
21 see that phrase at other points in this
22 application. What does that mean, to the extent
23 practical?

24 A. The extent practicable means to the extent
25 that you can. So, for example, if we were in an

1 area where it's a hundred percent of a given
2 resource, then obviously avoiding that resource
3 would not be practicable.

4 Q. And who makes the decision on whether to
5 avoid an area is practical or not?

6 A. It's a multifactor decision where
7 environmental is one of those factors.

8 Q. Who makes the decision? Is it the PSC, is
9 it Brady Wind, is it the public? Who gets to input
10 on whether or not an avoidance area is -- if it's
11 practical to avoid it?

12 A. As an applicant, we put together an
13 application that we believe complies with all of
14 PSC's regulations. We bring our materials before
15 you and present our case that we feel we've made
16 appropriate trade-offs. We've followed the rules
17 and we're in compliance. After that it's up to you
18 all to decide.

19 Q. Okay. So have you identified specific
20 areas that you believe you've made -- you've
21 avoided to the extent practical?

22 A. Yes.

23 Q. Okay. Can you give me an example?

24 A. Could you clarify an example of --

25 Q. Where you're planning on avoiding prime

1 land -- prime farmland has been avoided to the
2 extent practical. I mean I guess I don't
3 understand what that means. How do we know you've
4 avoided it to the extent practical? What are the
5 factors that you consider when making these
6 decisions?

7 A. That the chief requirement I would point
8 you towards is landowner willingness. So if we
9 have a landowner that happens to have prime
10 farmland and they want our infrastructure on their
11 property, we can try to talk them about prime
12 farmland. But generally if the landowner wants
13 infrastructure on their property, we view that as
14 an appropriate trade-off. Whether you-all view
15 that as an appropriate trade-off is a decision for
16 you-all.

17 Q. I see. If you go to the next page in your
18 application, 3-3, and I just want to see if I can
19 get a clarification from you on this first sentence
20 that's under section 3.3, Selection Criteria. It
21 says, In accordance with NDAC section
22 69-06-08-01(5) a site shall be approved in an area
23 only when it is demonstrated to the PSC by the
24 applicant that any significant adverse effects
25 resulting from the location, construction and

1 operation of the facility in that area, as they
2 relate to the criteria listed in Table 8, will be
3 at an acceptable minimum, or that those effects
4 will be managed and maintained at an acceptable
5 minimum.

6 And it's a very long sentence, but in any
7 event, I want to focus on the first line of that
8 sentence. Because there's a citation to the North
9 Dakota Administrative Code and then it says, a
10 site -- in accordance with that Administrative
11 Code, a site shall be approved. And I don't think
12 that that language is accurate to reflect what the
13 Administrative Code states. The PSC still has
14 authority and discretion to deny an application
15 even if you comply with these requirements. And is
16 that your understanding as well?

17 A. Could you clarify what the question is?

18 Q. Well, it seems you're characterizing this
19 section of the North Dakota Administrative Code to
20 state that as long as Brady Wind checks the box on
21 these various concerns that are listed in Table 8,
22 the PSC has no discretion to still deny the
23 application; they must, they shall be approved.
24 And I went and looked at this section and it
25 says -- no, it says, may approve if you satisfy

1 these requirements. Is that your understanding
2 too?

3 A. I would not agree with your
4 characterization of our intent nor our presentation
5 in the application. We are here because we value
6 this process. We fully recognize the Public
7 Service Commission's jurisdiction, and at no time
8 would I characterize our view of their role as what
9 you have presented to me.

10 Q. Okay. So you don't believe it's a shall;
11 it's a may?

12 A. We are at the discretion here of the
13 Public Service Commission's permitting, so whatever
14 they require is what we will do.

15 Q. Okay. I don't -- I'll just leave it.

16 Could you turn to page 7-2. That's in
17 section 7 of the Environmental Analysis, please.

18 A. I'm on page 7-7 -- 7-2.

19 Q. And as part of the environmental analysis
20 under Impacts, 7.2.2, it's indicated that the
21 contribution by this project will include
22 \$8.5 million to support the New England School
23 District. Do you see that?

24 A. I do.

25 Q. Is that money being generated for the New

1 England School District solely coming from Brady
2 Wind I?

3 A. The scope of my expertise is
4 environmental. That is a commercial and economic
5 question that I would direct to Jason Utton.

6 Q. Because it's under the Environmental
7 Analysis.

8 A. This whole permit is couched as
9 environmental. However, there are many team areas
10 of expertise that contribute to this permit. So
11 that question is something that is out of my direct
12 expertise, but it is something that Jason Utton can
13 represent from our commercial team.

14 Q. Okay. Because I understand there's a
15 Brady Wind II, which is just south of this project
16 in Hettinger County, and I was just wondering is
17 this revenue coming from both projects or just from
18 Brady I. And you don't know the answer to that?

19 A. I would defer that to Jason Utton.

20 Q. Okay. Can you turn to 7.5, please.

21 A. I'm on page 7.5.

22 Q. Under 7.3.2, about halfway down, it
23 indicates that Brady Wind will work closely with
24 landowners in locating access roads to minimize use
25 disruptions to the extent possible. Do you have a

1 system in place to manage landowner complaints or
2 input?

3 A. We do have a process in place where we
4 establish for all of our operating wind farms to
5 handle any community concerns.

6 Q. I guess this is specific to construction.
7 Where does the public go if they have a concern or
8 complaint about locating roads to minimize land use
9 disruptions to the extent possible?

10 A. I would like to get feedback from our lead
11 construction personnel that are behind me here in
12 the audience as well as our lead operations team.
13 I'm not sure which of them will be handling that
14 phase, and I'd like to make sure I answer
15 correctly.

16 Q. Okay. Because I think the commissioner
17 raised a good point about right angles with roads
18 and how that may disrupt future farming activities,
19 and there should be, I would imagine, the need for
20 some mechanism for the landowners to communicate
21 with the developer so those needs can be expressed;
22 right?

23 A. I would characterize that as having sort
24 of two pieces, however. One is that we obviously
25 work with all of our landowners to place

1 infrastructure on their property with their input.
2 We don't place infrastructure on a landowner's
3 property without their input. That's just not the
4 way the process works.

5 The second part of this is we are required
6 through our permitting processes, which we've
7 detailed in the application, whether it's road use
8 or building permits or other setbacks, to comply
9 with those existing regulations. So that is a
10 two-part process as I have described.

11 Q. I noted in your application that Brady
12 Wind is seeking the flexibility from the PSC to
13 select the most appropriate technology for the
14 project at the time of construction to ensure
15 optimization of wind and land resources and cost
16 efficiency. And this was in relationship to the
17 selection of the particular wind turbines that will
18 be used on the project. Do you have an
19 understanding of that?

20 A. As I believe Jason Utton has previously
21 testified, that is our request from the
22 application. Yes.

23 Q. Yeah. And I think he was talking about
24 specific locations. I'm actually talking about the
25 specific brand of the -- presumably the specific

1 brand of turbine.

2 A. Again, the scope of my expertise is
3 environmental. That's a commercial question that I
4 would direct to Jason Utton.

5 Q. Well, and the reason I'm asking -- that's
6 a fair point -- is that -- because on page 7-12 you
7 talk about the shadow flicker analysis and what you
8 did to determine who would be impacted by shadow
9 flicker. And my question is is if the turbine is
10 going to change, will that have an impact on your
11 shadow flicker analysis? In other words, would one
12 type of turbine produce one type of shadow flicker
13 and another type of turbine produce a different
14 kind of shadow flicker?

15 A. It would depend on the dimensions of that
16 turbine. If the turbine was taller or had
17 different blade lengths, that could have a
18 potential impact. If that would be the case, we
19 would obviously provide updated reports to the
20 Public Service Commission as part of our
21 application process.

22 Q. Would that be before or after approval?

23 A. My assumption would be that it would be
24 required prior to approval.

25 Q. Okay. So there's no chance that the

1 turbines are going to be changed?

2 A. As I mentioned earlier, the scope of my
3 expertise is environmental and that's a commercial
4 question that I would defer to Jason Utton.

5 Q. Did you review the interrogatory answers
6 that were submitted?

7 A. I did.

8 Q. Okay. Do you recall there was an
9 interrogatory, specifically Number 20 -- and I can
10 show it to you if you'd like -- that asked about
11 the shadow flicker and whether it's minor?

12 A. I would like to see a copy of that.

13 Q. Sure.

14 A. Could you repeat the question, please?

15 Q. Yes. Well, did you have a chance to read
16 the question and answer there?

17 A. Which interrogatory number?

18 Q. I'm sorry. 20.

19 A. Yes.

20 MR. PELHAM: Matt, do you have additional
21 copies?

22 MR. COLLINS: I can certainly provide
23 copies.

24 MR. PELHAM: Because the commissioners
25 don't have copies, and they would like to see that,

1 please.

2 MR. COLLINS: Okay.

3 JUDGE WARD: Another thing you could do is
4 you could read the interrogatory and the answer
5 into the record, if you'd like.

6 MR. COLLINS: I was planning on doing
7 that --

8 JUDGE WARD: Okay.

9 MR. COLLINS: -- as well.

10 JUDGE WARD: Okay.

11 Q. (MR. COLLINS CONTINUING) The
12 Interrogatory Number 20 states -- or asks, How will
13 you be reevaluating shadow flicker effects for the
14 revised turbine locations and for nonparticipating
15 and participating landowners in the project? How
16 will you be minimizing shadow flicker effects if
17 landowners object based on significant flicker?

18 And in response, there was an objection to
19 reevaluation and significant flicker, the use of
20 those terms, but maybe you could read the response.

21 A. Is that a question for me?

22 JUDGE WARD: Yes.

23 Q. (MR. COLLINS CONTINUING) Yeah, if you
24 would.

25 JUDGE WARD: Please.

1 THE WITNESS: So the response that I'm
2 reading from is our response to Interrogatory
3 Number 20. This is from a document that says it
4 was Brady Wind, LLC's Responses to the Intervenor
5 Concerned Citizens of Stark County's
6 Interrogatories and Requests for Production of
7 Documents.

8 Brady Wind responded by saying, Brady Wind
9 objects to this interrogatory on the basis that the
10 interrogatory is -- oops, and I'm in the wrong --
11 you asked about 20.

12 Q. (MR. COLLINS CONTINUING) Yep.

13 A. I'm sorry. Wrong page. Brady Wind
14 objects to this interrogatory on the basis that it
15 is vague as to the meaning of reevaluating and
16 significant flicker. Subject to, without waiving
17 the foregoing objections, Brady Wind responds as
18 follows: There have been no changes to the turbine
19 locations since the shadow flicker study was
20 conducted in January 2016 and provided to PSC on
21 January 19, 2016. The shadow flicker impact
22 analysis report, which was filed with the PSC on
23 January 19 of 2016 concluded the shadow flicker
24 impacts are expected to be minor and well within
25 acceptable ratings for avoiding nuisance

1 conditions. In the event that Brady Wind receives
2 a complaint from a landowner about shadow flicker
3 after construction, it will work with the landowner
4 to attempt to mitigate shadow flicker by planting
5 trees and shrubs for shading or providing shades
6 for the house.

7 Q. Okay. Thank you. And so my question is
8 is that I believe Mr. Utton testified that the
9 final turbine locations identified by Brady Wind
10 were filed with the PSC in February of 2016. And
11 so based on the answer to the interrogatory, Brady
12 Wind hasn't reevaluated shadow flicker impact based
13 on the final locations of the turbines; correct?

14 A. So our response was that no reevaluation
15 is required because the analysis we've submitted is
16 the same as the final turbine locations. So,
17 therefore, we disagree with the characterization of
18 the need to reevaluate.

19 Q. Okay. So no new shadow flicker analysis
20 has been done on the February 2016 locations
21 submitted to the PSC; right?

22 A. There's no new analysis required because
23 the turbine positions as submitted as final were
24 what we analyzed. There's no difference in what we
25 analyzed and what we presented. Therefore, I don't

1 agree with the characterization that we need a
2 reevaluation. There's been no change in what we've
3 already submitted.

4 Q. Okay. The answer to the interrogatory
5 indicates that Brady Wind believes the shadow
6 flicker impacts are expected to be minor and well
7 within acceptable ratings for avoiding nuisance
8 conditions. That's Brady Wind's opinion; correct?

9 A. That's correct.

10 Q. Did you ask whether participating or
11 nonparticipating landowners would have a different
12 view on what would be minor and well within
13 acceptable ratings?

14 A. Our understanding of the Public Service
15 Commission's requirements here are that they don't
16 regulate the threshold or the 30 hours per year but
17 in prior cases have used a 30-hour-per-year
18 threshold. Therefore, we have adopted that
19 precedent and also modeled that. That is the
20 requirement that we are aware of by the Public
21 Service Commission to address here and it is
22 designed to protect all citizens. It does not
23 differentiate participating versus nonparticipating
24 landowners. It's a setback period of you can't
25 have more than 30 hours per year at a participating

1 landowner. That's exactly what we've disclosed and
2 presented to the Public Service Commission today.

3 Q. So the answer to my question was no?

4 A. Could you repeat the question?

5 Q. Did you get input from any
6 nonparticipating landowners?

7 A. The answer is no because it's not
8 required.

9 Q. Okay.

10 A. We met the requirement from the Public
11 Service Commission, as I stated.

12 Q. What if the planting of trees or
13 installing window shades is not sufficient in the
14 opinion of the affected resident of a home? What
15 happens next?

16 A. Well, I believe that's speculation for the
17 first response. And we're not aware of any
18 instances in our fleet where if there has been an
19 issue raised there's not been a satisfactory
20 resolution. So you're asking me to speculate about
21 an event that I've never -- I have no knowledge
22 it's ever occurred in our fleet.

23 Q. Well, I know, but I mean part of the
24 thing -- what we're doing here is trying to
25 anticipate problems, and if a nonparticipating

1 landowner had a complaint about shadow flicker,
2 would Brady Wind, for example, be willing to turn
3 down the operation of a particular turbine during
4 sunrise, sunset?

5 A. The commitments that we've already made
6 are that we will work with that landowner if there
7 is an issue raised with things like shading or
8 planting trees or other things that directly affect
9 how much, if any, of the shadow flicker could reach
10 a potentially affected homeowner's window or view.

11 Q. So you don't want to say you would turn
12 down a turbine to accommodate a landowner who was
13 complaining about the shadow flicker?

14 A. I think we've already provided the
15 measures we've committed to to address that.

16 Q. Can you turn to section 7.3 -- 7.6.3,
17 please?

18 A. Did you say section or page number?

19 Q. Section. I'll have it for you in a
20 second.

21 A. 7.3 point --

22 Q. 7.6.3. It's on page 7-15. I'm looking at
23 Mitigative Measures with regard to sound, and if
24 the sound is measured above the 50 dBA level, Brady
25 Wind can provide improved insulation, landscaping

1 or other appropriate candidate mitigation measures.
2 But the question is if it is above 50 dBA, would
3 that be a permanent damage to the landowner?

4 A. Our consultant, Dr. Chris Ollson, will be
5 testifying about any subsequent or potential health
6 impacts. That's outside of the scope of my
7 immediate expertise.

8 Q. Okay. I'm sorry. Fair enough.

9 JUDGE WARD: Mr. Collins, I'm not trying
10 to rush you, but I want to move this along because
11 I want to give our court reporter a little break.
12 If you're going to be a while, I just kind of need
13 to know how much longer you're going to take with
14 Ms. Wells.

15 MR. COLLINS: Five to ten minutes, if I
16 may.

17 JUDGE WARD: Okay. Okay.

18 Q. (MR. COLLINS CONTINUING) Can you pull out
19 your wetlands and other waters of the United States
20 delineation report, please.

21 A. Yes, I can.

22 Q. And would you turn to page 11, please,
23 specifically section 3.1. It indicates that of the
24 39 delineated wetlands, 30 would be impacted by
25 currently planned project infrastructure. Do you

1 see that?

2 A. That's what our report says.

3 Q. And the question I have is what -- what
4 description of the merits and demerits of any of
5 the locations identified and a comprehensive
6 analysis with supporting data showing the reasons
7 why the preferred location is the best suited for
8 the facility has Brady Wind provided with regard to
9 the impact of these wetlands?

10 A. Can you rephrase? I couldn't follow your
11 question. That was pretty long.

12 Q. Sure. Under the requirements of avoidance
13 area, you have to analyze why there's no reasonable
14 alternative to cross into 30 of the 39 wetlands in
15 the project area; right?

16 A. So avoiding wetlands is one of the many
17 things we do for our environmental siting process.
18 Yes.

19 Q. Right. But in this case we're hitting 30
20 of the 39 in the project area?

21 A. That's what our application describes,
22 yes.

23 Q. And what I don't -- I don't see in the
24 application is a description of why there aren't
25 other reasonable alternatives to avoid the

1 wetlands.

2 A. So the requirement that's set out by the
3 U.S. Army Corps of Engineers, which is the federal
4 regulatory body over wetlands and waters, states
5 the following: You are allowed to have temporary
6 impacts, which we've minimized in very specific
7 ways. In addition, you are allowed to have
8 permanent impacts as long as they do not exceed a
9 tenth of an acre per single and complete crossing
10 qualify under Nationwide Permit coverage for
11 Nationwide Permits 12 and 14 with no
12 preconstruction notification. So that is the Army
13 Corps of Engineers requirement that we've described
14 here.

15 Our application also describes how we very
16 aggressively avoided wetlands throughout the
17 project area. And from working in this part of
18 North Dakota, as everyone who lives here knows,
19 there are a lot of wetland features on the
20 landscape here. That is a very common feature in
21 North Dakota.

22 So we are both in compliance with the PSC
23 requirements to avoid those wetlands. We go above
24 and beyond with our avoidance strategy. And we are
25 also in compliance with the regulations from the

1 U.S. Army Corps of Engineers, who is the federal
2 regulatory agency for water and wetlands.

3 Q. But there's a provision in the
4 Administrative Code on siting of these types of
5 facilities that they -- that wetlands may not be
6 approved as a site for an energy conservation
7 facility unless the applicant shows that under the
8 circumstance there is no reasonable alternative,
9 and I'm just wondering where you've addressed that
10 requirement of the application process.

11 A. We addressed that actively through the
12 siting process. As I have previously testified, we
13 have a very detailed process of avoiding both
14 wetlands and cultural resources. That starts with
15 a desktop evaluation using data that's available
16 electronically in the area. We first begin to move
17 our infrastructure based on those locations.

18 The second step is called micrositing. We
19 go out in the field with our construction team and
20 our engineering team. We look at all possible
21 locations of infrastructure and then, again,
22 actively move infrastructure to get out of
23 wetlands.

24 Finally, we have full field surveys where
25 we do delineations to make sure there's no

1 additional resources that we can't already avoid.
2 So I would disagree with your characterization of
3 our siting approach and believe that we've showed
4 very aggressive avoidance of wetlands that, again,
5 we believe are in compliance with Public Service
6 regulations as well as U.S. Army Corps of Engineer
7 regulations.

8 Q. Okay. The last question I have, you
9 discussed the grouse survey and the spring bird
10 survey, and those results haven't come in yet;
11 correct?

12 A. The spring results have not come in yet.
13 The fall results have. And those were submitted to
14 the Public Service Commission as part of our
15 application materials.

16 Q. No. I understand. But the spring survey
17 hasn't come in yet and the grouse survey has not
18 come in yet?

19 A. Correct.

20 Q. And North Dakota Game and Fish are going
21 to comment on those?

22 A. They commented on the development of the
23 procedure, and as I've already testified, we've
24 committed to sharing those results, as well as all
25 of our wildlife study results, with the Public

1 Service Commission and both resource agencies.

2 Q. In your opinion, since we don't know the
3 results of those surveys and we haven't had the
4 benefit of North Dakota Game and Fish's input on
5 those surveys, would the PSC need to wait to
6 consider this information before deciding on the
7 application?

8 A. In my view of reading the Public Service
9 Commission requirements with regards to wildlife,
10 it asks about resources for federally listed
11 species or critical habitats. So the sharp-tailed
12 grouse is not a federally listed species, so it is
13 a species of concern in the state. So we have
14 worked to aggressively avoid siting in high-quality
15 native prairie habitat, which is one of the siting
16 measures I previously testified about. So that is
17 part of our avoidance strategy. So, no, I don't
18 agree with your characterization.

19 Q. I wasn't trying to characterize anything.
20 I was just asking whether you think that the PSC
21 should wait to decide the application till they
22 have all that information before --

23 A. No. I believe our application describes
24 all of the materials we've completed, addresses the
25 avoidance, exclusions, selection and policy

1 criteria adequately in what we've presented.

2 MR. COLLINS: Okay. Thank you.

3 JUDGE WARD: Okay. Commissioners.

4 Commissioner Kalk.

5 COMMISSIONER KALK: Thank you, Your Honor.

6 I don't have very many questions.

7

EXAMINATION

8 **BY COMMISSIONER KALK:**

9 Q. Thank you, Kim, for your testimony.

10 The -- just a couple things. The -- you
11 testified about 7 percent prime farmland. Would
12 that number be less once the company updates the
13 smaller footprint?

14 A. It may be. I'd have to look at the
15 specific prime farmland map to answer you, but we
16 could certainly look at that and get back to you.

17 Q. It's not a big factor. I just think it
18 seems reasonable that number is probably less than
19 what it would be if we reduced the size.

20 A. It may be, and I may be able to quickly
21 look at the prime farmland maps here in our
22 application as well and give you a gut reaction.

23 Q. Sure. And as you're looking for that,
24 the -- you talked about the bird and bat
25 conservation plan, the voluntary one you're working

1 on. I got that, but tell me about the -- I know
2 that Game and Fish has been working on the
3 Programmatic Whooping Crane Habitat Conservation
4 Plan for decades. How does that voluntary plan tie
5 in to the whooping crane HCP, if at all, or are
6 they separate animals -- or birds?

7 A. So there's a couple elements of how wind
8 companies can show wildlife due diligence to
9 satisfy regulatory requirements. The main guiding
10 document in the United States is the U.S. Fish &
11 Wildlife Service's voluntary wind energy
12 guidelines, and what that basically sets out is a
13 number of tiers, so it goes from one to five, that
14 basically advises these are the kinds of issues you
15 look at at each stage of a project.

16 So there's stage one where you're
17 basically starting to prospect. There's stage two
18 where you're looking at a specific site, and then
19 we're in what's called tier III right now of
20 preconstruction studies.

21 So what that document advises is for each
22 stage the specific kinds of questions that should
23 be addressed. Are there attractions for animals?
24 Is there a reason to believe there's significant
25 impacts on populations? So it provides a process

1 and a framework by which applicants can summarize
2 all of their wildlife due diligence to address the
3 issue of any impacts on federally listed or
4 protected wildlife.

5 So you asked separately, I believe, about
6 the whooping crane programmatic effort. That is a
7 multiyear effort that has been under way for a long
8 time, as you mentioned. Habitat conservation plans
9 are one instrument under the Endangered Species
10 Act.

11 Q. So is Brady Wind participating in the HCP
12 with Fish & Wildlife or not?

13 A. No, we are not participating in that.
14 However, I am aware of what a lot of the
15 commitments and the acts to minimize impacts to
16 whooping cranes have been from my work in the state
17 with other agencies.

18 Q. Okay.

19 A. So, for example, one of the commitments we
20 made was that we would include marking the overhead
21 transmission line with bird diverters if you're
22 within half a mile of potentially suitable stopover
23 habitat for whooping cranes. That's a
24 recommendation that came specifically out of the
25 document in the HC process that you're mentioning

1 in my work with the federal agency.

2 Q. But my understanding of all the things
3 you're talking about is that if a take does occur,
4 Fish & Wildlife Service will make their
5 determination, but typically if you've done stuff
6 like this, it reduces your chance of getting fined.
7 That's the way I understand that.

8 A. So the way that the document describes it
9 is that an applicant -- if you desire as an
10 applicant to have prosecutorial discretion, which
11 obviously you want as an applicant, then you need
12 to show due diligence following their voluntary
13 wind energy guidelines. So, yes, that's, in fact,
14 what we do.

15 Q. Okay. And then just I think the last
16 question. So if it happens, we hope it never does,
17 but if a take does occur of a whooping crane or
18 bald eagle or something that's on the T&E list, is
19 that NextEra's liability or is that Basin
20 Electric's liability?

21 A. I believe that would be our liability as
22 the holder of the permit and the owner and the
23 operator of the company.

24 COMMISSIONER KALK: I agree with that, but
25 I wanted you to say that in testimony. Thank you.

1 JUDGE WARD: Commissioner Fedorchak.

2 EXAMINATION

3 BY COMMISSIONER FEDORCHAK:

4 Q. Well, good afternoon.

5 A. Good afternoon.

6 Q. Thank you for your attention so far. I
7 always enjoy this witness because we get to use the
8 word practicable. This is not a word people
9 generally use.

10 A. It sounds funny.

11 Q. Anyway, a couple questions. The
12 communication to landowners about the shadow
13 flicker results, are you aware of how that
14 occurred, especially the landowners where the
15 results were higher than the 30 hours? There's two
16 of them. What kind of communication occurred to
17 those landowners to, you know, assure that they
18 really knew what they were -- what were the impacts
19 going to be and what they can expect?

20 A. So I wasn't personally involved in those
21 communications, but I do understand that other
22 members of our team have talked with those
23 landowners about those concerns specifically, and
24 that no additional concerns or requests for
25 assistance or evaluation were made of us.

1 Q. Okay. And then in your shadow flicker
2 analysis results there was a line here that says,
3 Both of these residences are owned by landowners
4 that are participating in the project and have
5 granted an easement for shadow flicker effects on
6 the property.

7 A. That's correct.

8 Q. So the easement isn't just an easement.
9 There was an additional easement provided to allow
10 that higher-than-our-threshold shadow flicker?

11 A. So what we're referencing there is our
12 standard landowner easement. So if we have
13 infrastructure on someone's property, we have an
14 agreement with them, and part of the terms and
15 conditions and language in that agreement describe
16 that there may be impacts associated with a wind
17 farm, the same as if you're signing -- if you're
18 signing a document and you're being sited near a
19 gas station or a transmission line or other things
20 that are very common in real estate law, it's a
21 disclosure issue. So it's mentioned specifically
22 in our language that we have signed with our
23 landowners.

24 Q. So every landowner signs that same thing,
25 not just the one -- this makes it sound like there

1 was a specific easement for shadow flicker effects.

2 A. There is not a specific agreement for
3 shadow flicker effects.

4 Q. Okay. All right.

5 A. It's mentioned in our base landowner
6 easement agreement, to my understanding.

7 Q. All right. Is there in your -- in your
8 tables on the shadow flicker a way to delineate an
9 extra column of participating/nonparticipating in
10 terms of the -- there's houses and trailers and
11 various infrastructure identified here, but no
12 comment as to whether these are located with
13 participating or nonparticipating landowners.

14 A. Yes. We have that information and would
15 be happy to provide that to you.

16 Q. Okay. That would be great.

17 And then I appreciated your discussion
18 with Mr. Collins about the potential changes for if
19 the turbine were to change, but it sounds -- is
20 there a lot of question which turbines are going to
21 be used at this point? It seems fairly specific
22 that there's, you know, two types that have been
23 identified, seven of one and -- and even the
24 locations of where they're going. What would cause
25 those to -- it almost sounds like they've been

1 purchased already. So is it likely that the
2 turbine models are going to change and result in a
3 change in the shadow flicker impacts?

4 A. So I can answer the part of that that's
5 environmental, but the part about the changing
6 technologies, that's a commercial question that I
7 would need to defer to Jason Utton.

8 Q. Okay.

9 A. But to answer the environmental question
10 that is within my scope of expertise, if the
11 turbine positions changed and if the turbines were
12 different in either height or blade length, then,
13 yes, we would need to update our shadow flicker and
14 noise studies and then provide that to you-all as
15 part of the permitting process.

16 Q. Okay. Back to the Fish & Wildlife
17 questions a little bit. You had your first -- was
18 the letter of August 2015 your first contact with
19 U.S. Fish & Wildlife?

20 A. Let me pull up my testimony here. So it
21 looks like based on my testimony, the first contact
22 was in May of 2015 when we requested locations of
23 any known eagle nests within ten miles.

24 Q. Okay. All right. And do they typically
25 give a sign-off on wind projects anyplace in the

1 country? Is it usually an approval or is it -- how
2 would you characterize the involvement with the
3 U.S. Fish & Wildlife Service?

4 A. I would say that in contrast to, say, the
5 procedure with the State Historical Society where
6 you get a very clear letter that says, yes, we
7 concur, no, we don't concur, there is no parallel
8 with the Fish & Wildlife Service.

9 Q. So is it more of an ongoing consultation
10 based on whatever experiences you have occurring?
11 Is it an ongoing relationship with U.S. Fish &
12 Wildlife; not a finite yes, this is good to go?

13 A. Correct. It is an ongoing relationship.
14 We have 11 other operating wind farms in the state,
15 so we have those facilities. The relationships
16 that I personally have with our regulatory agencies
17 of wildlife in North Dakota are very important. We
18 work with them all the time. So I would
19 characterize this as this is not an in-and-out
20 relationship. We are here, we are part of North
21 Dakota, we have been for a long time.

22 Q. And so if we were to wait for this study
23 or that comment or whatever, there's no end to that
24 because it's an ongoing collaborative relationship
25 you have with that agency over the course of the

1 project?

2 A. Correct. I think one of the challenges,
3 and the resource agencies will talk about this, is
4 that they're very understaffed. So all the things
5 like their own voluntary wind energy guidelines say
6 they will try to respond within a certain amount of
7 time. They often are not able to. They don't have
8 the staffing. So while I understand that
9 perspective, it also puts businesses that need to
10 make schedule projections and do things on a time
11 frame, it makes it very difficult to merge those --
12 those two realities and constraints. So what we do
13 is we follow the wind energy guidelines, do the due
14 diligence. Often with Mr. Shelley I call and
15 e-mail and call and e-mail, so I'm not afraid to
16 hound him. I have. That's how I got our meeting
17 in December. I think there were no fewer than four
18 calls and e-mails from me over a period of a week
19 and a half. So often it takes a very aggressive
20 approach on our behalf to get that contact, and we
21 do that.

22 Q. And is some of it just the nature of
23 wildlife versus historic resources? Those are set;
24 wildlife moves in and out and changes? We had --
25 we had a wind project near -- near Bismarck or near

1 New Salem where it was approved, there was no eagle
2 nest in it and then without receiving a permit, an
3 eagle flew in and got -- put a nest up.

4 A. Unfortunately, yes. One of the challenges
5 is that wildlife do move and birds do fly and
6 relocate nests. So any time you're dealing with a
7 resource that is not stationary or where you're not
8 sitting at that spot a hundred percent of the time,
9 which, you know, that's not practical for any kind
10 of project development anywhere in the country,
11 that is a possibility. So instead what we focus on
12 is an appropriate level of effort. So that's
13 driven by what's in the voluntary wind energy
14 guidelines as well as the early and frequent
15 contact we have with those wildlife agencies about
16 what we're doing, when, why, how often, what it
17 means, whatever any next steps we need to take.

18 Q. And your ongoing commitment through that
19 voluntary bird and bat conservation strategy and
20 your participation in the voluntary wind energy
21 guidelines is to continue collaborating through the
22 life of the project --

23 A. That's correct.

24 Q. -- to minimize impacts to those species?

25 A. That's correct.

1 Q. My last question is relating to weeds.
2 And would you be the weed expert?

3 A. It depends on what the weed question is.

4 Q. It's a thorny one. Sorry.

5 COMMISSIONER KALK: Time for a break.

6 JUDGE WARD: Getting close.

7 Q. (COMMISSIONER FEDORCHAK CONTINUING) All
8 right. What does the -- what is the company's
9 commitments? There's a lot of ground being torn
10 up, moved, piles of dirt. This tends to trigger
11 weed growth. And what is the company's commitment
12 to eliminating the noxious weeds and staying on top
13 of that weed control and making sure that the -- it
14 doesn't get out of hand for the landowners and the
15 neighbors?

16 A. So I can address that in two parts. I
17 don't personally know right this minute what the --
18 what, if any, requirements there are in Stark
19 County for noxious weeds. I can look that up and
20 we can get back to you later this afternoon on
21 that. But what we do do as part of our permitting
22 process, we are required to get a storm water
23 permit. Part of what that says is that after you
24 disturb the ground, you're required to re-stabilize
25 that ground, so re-seed that and make sure that

1 that ground is re-vegetated so you don't have
2 erosion and you don't have massive soil loss. So
3 we do that. We work with our landowners. If it's
4 a landowner and we disturbed an area that was in
5 agriculture, we leave the choice to them. Often
6 they prefer us to put it back in agriculture, so
7 that's part of the process if they want it to be in
8 native seeds and native prairie restoration, and we
9 can do that as well. But it largely depends on the
10 landowner preference because we are guests on their
11 land and need to work with them.

12 Q. Regardless of what's required in Stark
13 County, is the company committed to managing weeds,
14 taking care of them on the areas that you disturb?

15 A. I don't see why that would be an issue for
16 us. So yes, that's not a problem.

17 COMMISSIONER FEDORCHAK: All right. Thank
18 you. That's all my questions.

19 JUDGE WARD: Commissioner Christmann.

20 **EXAMINATION**

21 **BY COMMISSIONER CHRISTMANN:**

22 Q. Before work starts, does someone go out
23 and do a survey at an appropriate time of year to
24 identify noxious weeds so that when you're making
25 access roads or plowing in cable or something, your

1 equipment isn't dragging those weeds from where
2 they're at to where they haven't been previously?

3 A. I'm not aware of any noxious weed survey
4 that we have done to date, but if that's a
5 requirement, then we will address it.

6 Q. It would seem that we shouldn't have to
7 require it. I mean if you're trying to take care
8 of weeds, if you don't go check where they're at
9 first, you're not really trying, I would say, but
10 I'll leave it at that, that that has not been
11 intended to be done at this point.

12 A. We will address any landowner concerns
13 related to weeds. I'm not personally aware of any
14 landowner concerns that have been raised on that to
15 date. However, I acknowledge we're not in
16 construction yet and we're not in operation. So if
17 those were issues that were raised by landowners,
18 yes, we would work with them.

19 Q. Of course once they're raising the issues
20 that the weeds have been spread, it's too late.
21 You know, the time to address it is early on so
22 infested areas are segregated, and when you go
23 through with equipment, the equipment is cleaned
24 off before moving on to the next area.

25 COMMISSIONER CHRISTMANN: So other than

1 that, Your Honor, all my questions have been
2 answered, most of them numerous times.

3 JUDGE WARD: Okay. All right. We are
4 going to --

5 COMMISSIONER KALK: Your Honor, I have one
6 follow-up.

7 JUDGE WARD: Okay. Commissioner Kalk.

8 **FURTHER EXAMINATION**

9 **BY COMMISSIONER KALK:**

10 Q. Just a very quick follow-up. I just
11 wanted to get your reaction to a statement that
12 I'll make. Fedorchak brought it up about the U.S.
13 Fish & Wildlife Service. I've met with them
14 numerous times, and when I was talking to you about
15 their -- at some point the Fish & Wildlife Service
16 might fine you. Do you ever feel that sometimes
17 they'll never specifically grant something because
18 at the end of the day they actually have the
19 enforcement parameters on it so they tend to walk
20 this line of we guide, we advise, we do those
21 things, but they'll never actually say it's okay
22 because they have the enforcement potentially down
23 the road?

24 A. I would respond to that in a couple of
25 ways. So I won't speak for the service. I'll just

1 speak from an applicant's view of how we view any
2 process like that. So my understanding is if you
3 were to have an issue where there's a federally
4 listed species or a protected species where there
5 was an incident, that there would be an
6 investigation and that that would be the course of
7 action. There's an arm of the service called the
8 office of law enforcement that does that
9 investigation. So that would be the process that
10 that would go down.

11 Following the wind energy guidelines is
12 sort of an applicant's best hope at that
13 prosecutorial discretion, and as you highlighted,
14 unfortunately there's no clear line in this arena
15 for, yes, you're done, we're good. I've spoken
16 with Mr. Shelley about his testimony in front of
17 you-all last year, and I understand that perhaps
18 that that came up and that was an issue of
19 discussion, that unlike working with the State
20 Historical Society, getting a concurrence letter
21 that says you're done, that's the end, but that's
22 just not the current regulatory process and that's
23 not the way that the Fish & Wildlife Service is set
24 up.

25 COMMISSIONER KALK: Thank you.

1 JUDGE WARD: Okay. All right. We're
2 going to take a break. Try to limit it to ten
3 minutes. I wanted to be done with company's
4 testimony by now. I know the company has one more
5 witness. I'm anxious to hear from the intervenors
6 and the public.

7 COMMISSIONER KALK: The company has two
8 more witnesses.

9 JUDGE WARD: Two more witnesses. Okay.
10 But we're going to keep moving this along. At some
11 point we're going to have to take a break to get
12 something to eat, but for now we'll be back in
13 about ten minutes.

14 (Recessed at 12:50 p.m. and reconvened at
15 1:03 p.m.)

16 JUDGE WARD: Let's go back on the record.
17 And, folks, we've lost a few people, I'm afraid,
18 that were here, but I'm going to do something a
19 little bit out of the ordinary and I've checked
20 with the attorneys and they seem to be okay with
21 it. I know that a lot of you people have been
22 waiting here for five hours already. I'd just like
23 to get a show of hands of how many people are
24 interested in saying something today to the
25 Commission before you leave.

1 Okay. Now, how many of you people are
2 opposed to the project? And how many people are in
3 favor of the project? Okay. Now, the people that
4 are opposed to the project, you're represented
5 here, all of you, or just some of you? Do you
6 know, Mr. Collins?

7 MR. COLLINS: There's approximately 325
8 members of Concerned Citizens, and, unfortunately,
9 I don't know each and every one of them. Actually,
10 the people who are on the board would be able to
11 say that.

12 JUDGE WARD: Well, what we're going to do
13 is we're going to take some public input for the
14 next 45 minutes or so before we break for lunch, so
15 that if there's anybody who's been waiting here
16 that's got to get going, you can have a chance to
17 say your piece. I'm going to limit people to five
18 minutes and I'm going to ask you not to repeat what
19 other people are saying if you can avoid it by any
20 means. We don't want any filibusters or anything
21 like that, but we want to give everybody the right
22 to say, you know, if they have something to say.

23 So what I'll do is let's go back and
24 forth. Who's the brave one that wants to be first?
25 We'll take opposition from one person for up to

1 five minutes and then the next person, and --

2 COMMISSIONER FEDORCHAK: Judge, if I might
3 add, if they're going to be -- I don't know if this
4 is the case or not, but if they're going to be
5 witnesses in the future, I think it goes without
6 saying that they don't come up in the public phase.

7 JUDGE WARD: Yeah. If Mr. Collins is
8 going to call you as a witness, then you can wait
9 until later. Okay. All right. So who wants to be
10 first? Please come on up.

11 MR. LENHARDT: My name is Nick Lenhardt,
12 and I'm from New England.

13 JUDGE WARD: Okay. Nick, I'm going to
14 have to ask you to sit down in the chair here by
15 this other microphone. All right. Now, Nick,
16 spell your last name for me, please.

17 MR. LENHARDT: L-e-n-h-a-r-d-t.

18 JUDGE WARD: Okay. And tell me where you
19 live.

20 MR. LENHARDT: New England.

21 JUDGE WARD: So how far do you live from
22 the project area?

23 MR. LENHARDT: I'm in the project area.

24 JUDGE WARD: Okay. And are you a
25 supporter or are you opposed?

1 MR. LENHARDT: I'm a supporter.

2 JUDGE WARD: Okay. Go ahead and tell
3 us --

4 MR. LENHARDT: Okay. The --

5 JUDGE WARD: Oh, yes, sorry. I've got to
6 swear you in. Good thing she remembers.

7 MR. LENHARDT: Can I go?

8 (Witness sworn.)

9 JUDGE WARD: Okay. All right. Now you
10 can tell us.

11 **NICK LENHARDT,**

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

14 **STATEMENT**

15 **BY MR. LENHARDT:**

16 MR. LENHARDT: One of the questions I have
17 for the attorney for the people over here that are
18 against this project -- that man over there --
19 anyway, who is going to supply us with electricity
20 when 50 percent -- there's a 50 percent chance of
21 our coal companies shutting down? And I know this
22 because I have relation working in the coal
23 companies with the CEOs, and I'd like to know who
24 is going to supply us with electricity. Are these
25 people going to? I doubt it.

1 That's why I'm for this. I'm for -- I'm
2 for security and progress. And I think we can make
3 up our own minds. I know they can, so we should be
4 able to.

5 And I'm not going to go into it any
6 further because my wife threatened me if I do.

7 JUDGE WARD: Well, can your wife threaten
8 a few other people for us? All right. Thank you,
9 Mr. Lenhardt.

10 MR. LENHARDT: Thank you.

11 COMMISSIONER KALK: Oh, hang tight. Hang
12 tight. We get --

13 JUDGE WARD: Questions for Mr. Lenhardt?

14 MR. LENHARDT: Did you want to ask a
15 question or anything?

16 COMMISSIONER KALK: There's a protocol the
17 judge needs to go through here.

18 JUDGE WARD: Does anybody have any --
19 Mr. Bjella?

20 MR. BJELLA: No, Your Honor.

21 JUDGE WARD: Mr. Pelham?

22 MR. PELHAM: No questions.

23 JUDGE WARD: Mr. Collins?

24 MR. COLLINS: No, Your Honor.

25 JUDGE WARD: Commissioners.

1 MR. LENHARDT: I want to thank the people
2 for coming up here.

3 COMMISSIONER KALK: If you don't mind, I
4 have a couple questions.

5 MR. LENHARDT: Yes. Go ahead. Fine.

6 COMMISSIONER KALK: The first thing, I
7 want to make a comment. The judge talked about
8 public testimony to five minutes.

9 MR. LENHARDT: Right.

10 COMMISSIONER KALK: The commissioners are
11 the decision-makers here, okay, so I'm not going to
12 limit anybody's public testimony to five minutes,
13 but I would ask that when you get up here, you talk
14 about the relevance. I don't want to get a case
15 of -- get up here, say your piece and get back
16 down --

17 MR. LENHARDT: Right.

18 COMMISSIONER KALK: -- and don't keep
19 going around. But for me, if you have something to
20 say, take whatever time you need to say it.

21 MR. LENHARDT: Sure.

22 **EXAMINATION**

23 **BY COMMISSIONER KALK:**

24 Q. But, now, for you, Nick, so you're in
25 favor of it. Where is your property at in the wind

1 farm?

2 A. North of New England.

3 Q. But are you actually in the wind farm?

4 A. Yes, I am.

5 Q. Do you have a turbine on your property?

6 A. Yes, I am. And I have another thing to
7 add to that, if I may. I -- I understand there's a
8 lot of petitions been signed with the negative
9 people, with the people that are against it. Are
10 they registered? Do they have to be? Are they --
11 do they have their name and address? Are they
12 within the area of where the turbines are going to
13 be or are they from Beulah or someplace else?
14 That's just another question I have.

15 Q. Sure. Nick, I think the way it's sets up,
16 most of the time when folks come and testify, they
17 tell us what their experience is with the wind
18 farm, good or bad, and so it's not so much where
19 the witness asks questions -- or the -- you just
20 bring out your concerns.

21 A. Right.

22 Q. So if you don't mind, so your land is in
23 the project area?

24 A. Yes.

25 Q. You have a turbine on your property?

1 A. Yes.

2 Q. Did you have any concerns with the
3 company, how they treated you as far as where the
4 turbine location would be, where the roads would
5 be? What was your experience in that factor?

6 A. I tell you what, I couldn't have worked
7 with a bunch of nicer people, and I've worked with
8 shysters in my life too. But I'll tell you what,
9 these people are just unreal. They are so -- they
10 want to do anything they can for you and what they
11 can do. They asked me a hundred questions already.
12 I get tired of answering them already. But, no,
13 they're wonderful people.

14 Q. Do you have any concerns about someday
15 when the turbine comes down if they'll put the land
16 back the way it is? How do you feel about that?

17 A. No. One of the people that I talked to
18 here one day said to me, You know, only the rich
19 people are getting these turbines. And I said, Is
20 that a fact? I said, We have a lot of hills with
21 rocks on them. You guys have all the farmland. I
22 said, What's worth more? So that's what I have is
23 a lot of hills with rocks in it. So there's a
24 point right there.

25 COMMISSIONER KALK: Okay. Thank you,

1 Nick. I don't have any other questions. Just
2 thank you for your testimony. My colleagues might
3 down the way here.

4 MR. LENHARDT: Nobody else?

5 JUDGE WARD: Commissioner Fedorchak.

6 COMMISSIONER FEDORCHAK: I do not have any
7 questions. Thanks for being here and thanks for
8 being the first one to speak up.

9 MR. LENHARDT: Well, thank you, and thank
10 you.

11 JUDGE WARD: Commissioner Christmann.

12 COMMISSIONER CHRISTMANN: Sir, sir --
13 Nick.

14 JUDGE WARD: You've got to wait till we go
15 all the way around at least once.

16 COMMISSIONER CHRISTMANN: One more, and
17 other people can answer this, too, and save me the
18 time of asking.

19 MR. LENHARDT: Yes. Sure.

20 **EXAMINATION**

21 **BY COMMISSIONER CHRISTMANN:**

22 Q. If you're a witness as you are that has
23 land in the area --

24 A. Yes.

25 Q. -- I'd also be curious to know, do you

1 live in the area or do you live elsewhere?

2 A. I live in town.

3 Q. You live in New England --

4 A. But --

5 Q. -- or Dickinson?

6 A. But whenever the wife is not watching, I
7 sneak out to the farm.

8 Q. So you live in New England?

9 A. Right.

10 COMMISSIONER CHRISTMANN: Okay. Thank
11 you.

12 JUDGE WARD: Okay. Next person. And when
13 I say you're limited to five minutes, that means
14 for this portion or segment. If you do have to
15 talk longer, then you'll have to wait till later
16 today.

17 Who wants to be next? Come on up.

18 State your name, please, for the record.

19 MR. KAUFMAN: My name is Alvin Kaufman and
20 I live in the impacted area. I have lived there --
21 it's going to be nine days, pretty soon, short of
22 81 years. Born there and lived there.

23 JUDGE WARD: Kaufman?

24 MR. KAUFMAN: Kaufman, K-a-u-f-m-a-n.

25 JUDGE WARD: One N. Okay. So you're here

1 representing yourself?

2 MR. KAUFMAN: Yes. And I'm in favor of
3 this project.

4 (Witness sworn.)

5 JUDGE WARD: Okay.

6 ALVIN KAUFMAN,

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

9 STATEMENT

10 BY MR. KAUFMAN:

11 MR. KAUFMAN: I started out in life with
12 no power, with kerosene lamps. From there I went
13 to -- my folks went to a six-volt generator on top
14 of the roof, from there to a 32-volt light plant
15 and then to RAA. And we also all have to give up
16 something when -- RAA poles to work around. And we
17 went to indoor plumbing. We went to electric heat
18 and we met the progress.

19 I think of it as a safe, renewable source
20 of energy. You don't have to worry about spills,
21 leaks or fumes. There are some people that say we
22 don't need more electricity around here, but if we
23 can sell it to other states that need it, we
24 shouldn't forget we are the United States. We're
25 not one entity alone. We have to work together.

1 We sell them electricity, they sell us things we
2 need like fruits, vegetables and lumber, so on, for
3 other things we need.

4 We also produce more wheat and small
5 grains than we need. We're not alone. We sell it
6 to other states and other people that need it. We
7 also produce more beef than we need. We can't
8 consume all the beef we produce. Don't forget,
9 we're United States. We've got to sell it to
10 different people or different countries.

11 We are denying the states. Other states
12 supply us with our needs; we supply them. There
13 are people in this world that are jealous of us and
14 they want to destroy us, but if we stay united and
15 work together, we will survive. We have for
16 200 years.

17 I will strongly suggest whatever the
18 ruling is from here, we accept it and move on,
19 continue to work together and stay united.

20 And I still personally feel that we are in
21 the best country in the world, and I support the
22 United States of America.

23 And thank you for your time.

24 JUDGE WARD: Questions for Mr. Kaufman?
25 Mr. Bjella.

1 MR. BJELLA: No, Your Honor.

2 JUDGE WARD: Mr. Pelham.

3 MR. PELHAM: No, sir.

4 MR. COLLINS: No, Your Honor.

5 JUDGE WARD: Commissioners.

6 COMMISSIONER KALK: I don't have any
7 questions, but I just -- I think that after your
8 last statements we should have a band back there,
9 by God. Good for you for coming and saying your
10 piece and talking about what's right, so thank you.

11 MR. KAUFMAN: I thank you for hearing my
12 opinions. We still have the rights to speak our
13 opinion. A lot of places, they don't have those
14 rights. And I thank you for your time.

15 JUDGE WARD: That's what we're here for.
16 Thank you. Commissioner Fedorchak.

17 COMMISSIONER FEDORCHAK: Thank you. No
18 questions.

19 COMMISSIONER CHRISTMANN: No other
20 questions.

21 JUDGE WARD: Okay. Come on up. Sir,
22 state your name, please, for the record.

23 MR. WANNER: My name is John Wanner.

24 JUDGE WARD: John, would you raise your
25 right hand.

1 (Witness sworn.)

2 JUDGE WARD: Okay. John, can you spell
3 your last name for me.

4 MR. WANNER: W-a-n-n-e-r.

5 JUDGE WARD: Okay. And where do you live?

6 MR. WANNER: East of Dickinson, about six
7 miles.

8 JUDGE WARD: And you're here representing
9 yourself?

10 MR. WANNER: Yes, I am.

11 JUDGE WARD: Okay. Go ahead.

12 **JOHN WANNER,**

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

15 **STATEMENT**

16 **BY MR. WANNER:**

17 MR. WANNER: Well, I've been here pretty
18 much all my life -- well, I have been here all my
19 life, and back in the '60s they built Interstate 94
20 and it cut my dad's property in half. Well, my dad
21 had a choice. He could either whine about it or
22 move on. He chose to move on and he expanded his
23 operation. So over the years I've done the same
24 thing my dad had done. I've expanded my operation,
25 and I'm involved in several pieces of property in

1 several different counties.

2 So I have no problem when you need
3 something like Interstate 94. Where would we be if
4 we wouldn't have that? I mean it would be tough,
5 because we used to have to drive through all the
6 towns to go to Fargo: Taylor, Richardton, Hebron,
7 so on and so forth. But my problem is with this
8 Brady Wind farm, we don't need the power. We don't
9 need it. And one of my biggest concerns is we're
10 shipping most of this out of state. And I don't
11 have a problem with that, either, if it wouldn't be
12 for the fact you can't do nothing in Minnesota
13 because they're opposed to a pipeline. I mean we
14 can sacrifice here to ship power there, but they
15 won't sacrifice nothing, you know, to get our
16 power. They don't want the coal, but they still
17 want our electricity. So why don't we just let
18 them put the wind farms in Minnesota where they
19 need the power?

20 And a lot of this is -- I think there's a
21 huge monetary gain for Brady and for Basin Electric
22 to use the power. Basin Electric, I understand, is
23 getting a huge subsidy to take the power, which as
24 a farmer I realize there are subsidies because I
25 put my land in CRP about 20 years ago or so.

1 So I realize there's stuff -- there's an
2 encouragement to do things, but if we're going to
3 encourage something, why don't we encourage
4 something we have a huge surplus of. Natural gas.
5 If the environmentalists are worried about
6 endangering the environment because of the coal,
7 well, why don't we do something to harness this
8 natural gas which we have a lot of and we don't
9 need towers to harness it? And it's a clean,
10 efficient energy. Let's spend our money there.
11 Instead of flaring that natural gas, let's harness
12 that.

13 And, you know, if this wind energy is so
14 good and the government is supporting it by giving
15 companies money to do it, why can't we build them
16 on public lands? Why don't we build them in the
17 Badlands if it's such a positive thing? Why can't
18 we build it on public lands where there aren't very
19 many people, you know? If it's so positive, I
20 mean -- but you can't build it on public lands.
21 Well, if it's such a positive for the country, why
22 wouldn't the government be leading us and say, Hey,
23 we can build it where Teddy Roosevelt had his
24 ranch, he didn't do very good ranching, he went
25 broke, but now we could build a wind farm out there

1 and build on his legacy.

2 And that's all I have to say.

3 JUDGE WARD: John, I just have a question
4 for you. You said you live east of Dickinson?

5 MR. WANNER: Yes.

6 JUDGE WARD: How far do you live from the
7 project area?

8 MR. WANNER: Well, I suppose about
9 15 miles or so.

10 JUDGE WARD: Okay.

11 MR. WANNER: But I have land that's within
12 a couple miles of it. And over the years what I've
13 done, I've went around North Dakota and I've bought
14 land where I could go and make improvements on. Up
15 in Dunn Center we bought some land a few years ago
16 and there was huge rock piles all over, and the
17 farmer that was renting it farmed around and around
18 and around the rock piles. So when I bought it, we
19 cleaned up the rock piles. We got them off to the
20 side so a farmer could actually farm up and down
21 without having to circle these rock piles.

22 And if you build -- put a wind tower up
23 there with this equipment now that's 50, 60, 80, a
24 hundred feet wide, is somebody going to want to
25 farm that land as much as they would want to farm

1 it now where there are no obstacles? I don't think
2 so. You know, because farmers want -- when I
3 farm -- when I was farming, a lot of the stuff I
4 farmed was by the river. You know, we had an
5 18-acre pasture across the river, a 12-acre pasture
6 on the other side, and we had to go across the
7 highway to farm some more and then across 94 to
8 farm some more. I mean at that time I had -- I had
9 a 12-foot drill and that wasn't a problem, but now
10 I wouldn't farm that stuff. I would put it in
11 hayland or graze it, but I wouldn't move across the
12 river for a 12-acre patch. It wouldn't happen.

13 So with these wind towers located where
14 they are, you know, it would -- it's going to
15 devalue the land in the future because as your
16 farmers are getting bigger and bigger and bigger,
17 they're not going to farm around that stuff.
18 They're just not going to do it because they don't
19 have the time and they don't want to do it. So why
20 would I want a wind tower on my land? I wouldn't
21 because it's going to devalue my land.

22 Just a month or so ago I got a call from a
23 guy southeast of Dickinson. He wanted to sell me
24 his place because they was putting a wind tower up
25 not too far away, and I said, Nope, I wouldn't have

1 an interest in it.

2 JUDGE WARD: Okay. I'm going to kind of
3 cut you off there. Questions for Mr. Wanner.
4 Mr. Bjella.

5 MR. BJELLA: No, Your Honor.

6 JUDGE WARD: Mr. Pelham.

7 MR. PELHAM: No, Your Honor.

8 JUDGE WARD: Mr. Collins.

9 MR. COLLINS: No, Your Honor.

10 JUDGE WARD: Commissioners.

11 COMMISSIONER KALK: Thank you.

12 **EXAMINATION**

13 **BY COMMISSIONER KALK:**

14 Q. Thank you, John, for your testimony.
15 The -- I always appreciate folks coming up.

16 To make sure I understand your concerns,
17 so basically you don't feel that there's a need for
18 this project, is one of your major concerns?

19 A. No. There isn't a need because if we're
20 going to harness what we already have, let's do the
21 natural gas.

22 Q. Okay. So you'd like to see --

23 A. Let's stop flaring that.

24 Q. I have no disagreements on the flaring or
25 the other sources. But the big thing, you don't

1 feel there's a need for it. I wanted to clarify
2 that. And then the last comments you talked about
3 was the farmers farming around the turbines, and
4 were you here when I said that there won't be
5 anyone that's not a willing landowner to get a
6 turbine? So these turbines will only going on
7 landowners who want it. What do you think about
8 property rights? If you're the landowner that
9 wants the turbine, isn't that their choice to farm
10 around it, or do you think that you should be able
11 to limit what they do on their land?

12 A. If we would need the power, I say -- I
13 would say yes, but we don't need it because the
14 power, a lot of it that's going to be generated, is
15 going to be shipped out of state. And like I said,
16 if we needed the power, well, let's harness the
17 natural gas. That's here. Why flare it? It's
18 here. And to harness the natural gas, we don't
19 need something sticking up in the air 4, 500 feet.
20 We don't need that.

21 Q. Okay. So in the future if Basin Electric
22 feels they have a power need, you would like to see
23 a new coal plant or a new natural gas plant and you
24 would be in favor of those type of projects?

25 A. Well, I'm saying if we needed the power,

1 let's harness what we have here now, and we've got
2 the natural gas. Let's harness that. Once we
3 didn't have enough natural gas and once we didn't
4 have enough power with the coal plants we have,
5 then if we have to go beyond that, then fine. But
6 now let's take care of the stuff we have.

7 I -- I have a tough time with shutting
8 down a coal plant because of emissions and yet we
9 flare natural gas. Well, if we're worried about
10 the coal plants' emissions, why shouldn't we be
11 harnessing the natural gas to stop the emissions
12 for the environment?

13 Q. So then the last question I would have
14 then is the -- one of the challenges on the PSC I
15 think is to find that balance, where some folks,
16 natural gas is a great fuel for electricity, for
17 power, but there is -- as you've followed some of
18 the hearings, people don't like pipelines crossing
19 their property either. So you feel that a natural
20 gas plant and associated pipelines going through
21 property is a better alternative than wind, or --
22 I'm just curious because we'll have pipeline
23 hearings where folks will say, Well, we should have
24 wind farms because there's no pipelines needed.
25 What do you view about the pipelines that go with

1 all the associated -- would you be for pipelines on
2 your property?

3 A. Yes, I do, and I do -- and I wouldn't if I
4 didn't do it. I was one of the first people who
5 signed up 15 or 20 years ago for Southwest Water.
6 I give them an easement to go through my property
7 in two places for Southwest Water. I just signed
8 off another easement about five, six years ago on
9 another piece of property because it's something we
10 can use, you know, clean water, and you put it
11 underground and you can't see it.

12 COMMISSIONER KALK: Okay. Thank you,
13 John. Excellent testimony.

14 JUDGE WARD: Commissioner Fedorchak.

15 COMMISSIONER FEDORCHAK: Thanks, John.
16 Just one quick question for you.

17 **EXAMINATION**

18 **BY COMMISSIONER FEDORCHAK:**

19 Q. It sounds to me that your opposition is
20 related to the towers and the impact on the view.
21 Is that a pretty --

22 A. Well, that -- that, and a lot of this
23 thing -- there's money coming from the federal
24 government that goes to the power company who
25 utilizes it and goes to Brady Wind farm. You know,

1 so they talk about the tax dollars coming in to
2 Stark County, but the amount of dollars is really
3 mediocre. How many dollars are they getting from
4 the government and who pays that? We, the
5 taxpayers, pay it. So we're making them -- we're
6 filling their gravy can with our tax dollars so
7 they could give a few minimum dollars to Stark
8 County.

9 Q. So your objection is subsidized
10 development of wind?

11 A. Right.

12 COMMISSIONER FEDORCHAK: Okay. Very good.
13 Thank you.

14 MR. WANNER: And if we're going to do
15 that, let's do it with the natural gas that we're
16 flaring.

17 JUDGE WARD: Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: No questions.
19 Thank you for being here, Mr. Wanner, and
20 especially interesting point about the federal
21 government putting some wind towers on their own
22 property.

23 JUDGE WARD: Thank you, Mr. Wanner.

24 Okay. We'll take another -- we'll take
25 another. Why don't you come up. You were up here

1 first. Identify yourself for the record.

2 MS. BINSTOCK: Tammy Binstock.

3 JUDGE WARD: Tammy, how do you spell
4 Tammy?

5 MS. BINSTOCK: My real name is actually
6 Tamara, T-a-m-a-r-a.

7 JUDGE WARD: And are you here representing
8 yourself or a group?

9 MS. BINSTOCK: I am with the Concerned
10 Citizens group.

11 JUDGE WARD: And do you live in the
12 impacted area?

13 MS. BINSTOCK: As of now, no, but my
14 husband's family has land in the area that is going
15 to be affected.

16 JUDGE WARD: Where do you live?

17 MS. BINSTOCK: South of South Heart right
18 now, and to my knowledge is that --

19 JUDGE WARD: Before you go any further, I
20 need to swear you in.

21 (Witness sworn.)

22 JUDGE WARD: Okay. Go ahead.

23 **TAMARA BINSTOCK,**

24 being first duly sworn, was examined and testified
25 as follows:

STATEMENT

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BY MS. BINSTOCK:

MS. BINSTOCK: Okay. I was just going to add to that. To my knowledge is that they're in our area trying to get easements as of now, and so that's why I'm here today. But I just want to say that I'm against the wind farms for many reasons. First, I believe our commissioners didn't listen to us. We spoke to a lot of the commissioners and -- when this was first proposed here, with one actually getting kind of rude. We also talked with the Zoning Commission and --

JUDGE WARD: I just wanted to say, when you say your commissioners, what commissioners?

MS. BINSTOCK: Our Stark County commissioners.

JUDGE WARD: Okay.

MS. BINSTOCK: Okay. And, you know, we talked with our zoning commissioners also. As I look around the room today, you know, I see family members, neighbors, friends. You know, if something is so good for our community, why is it separating us? You know, it's a -- that's a real tough thing.

I have five kids ranging in age from 19 to

1 5 years old. I'm very concerned about their
2 livelihood. I'm concerned with Stark County
3 ordinances. Who's going to protect us and how am I
4 going to protect my children? In 2009 we lived in
5 Dickinson. We went through the -- sorry for the
6 jitterish voice, but we went through the tornado.
7 Our house was destroyed, but by the grace of God we
8 survived. That was a natural disaster that we were
9 put in.

10 Now looking at -- you know, helping my
11 brother-in-law on the farm, we're going to be put
12 into different things not knowing definitely where
13 I said -- I know they're out in our area trying to
14 get easements, not knowing if our neighbors are
15 going to sign up for this. You know, what are we
16 going to be put into again with a man-made deal?

17 Another thing that I am concerned about
18 is we love where we live, we love our country, we
19 love our view. We can't just pick up and move.
20 It's just -- it's just really not feasible at this
21 time. I don't know if it does come into our area
22 if we will move or not.

23 But another thing is the financial part of
24 it. If this comes in, right now we could -- you
25 could possibly say that we're financially strained.

1 If our electricity bills start going up, if our
2 food prices go up, it's a tough deal. I have my
3 daughter in college now and she wants to come back
4 and start a business in this area where she grew
5 up. Is she going to do that now? I don't know. I
6 hope so. But -- but I just -- I look at, you know,
7 the money, the more cost it's going to be, and it
8 does scare me because we've got four more at home
9 and four more to put through college and things
10 like that, and paying the higher electricity bills,
11 it's scary, because our home is totally electric.

12 I know -- or, Brian, you said earlier
13 about, you know, coming in with a solution. You
14 know, there's spots I think that people are for,
15 you know, this, you know, like up in the
16 Beulah-Hazen area, things like that. Is there a
17 possibility that, you know, they can look at
18 another spot where people would be more for it?
19 You know, to basically -- then they could produce
20 their energy that way. Put it where people are
21 okay with it and take it out of our backyard.

22 That's all I have to say.

23 JUDGE WARD: Okay. Thank you. Questions
24 for Ms. Binstock? Mr. Bjella.

25 MR. BJELLA: No, Your Honor.

1 JUDGE WARD: Mr. Pelham.

2 MR. PELHAM: No, Your Honor.

3 JUDGE WARD: Mr. Collins.

4 MR. COLLINS: No, Your Honor.

5 JUDGE WARD: Commissioners.

6 **EXAMINATION**

7 **BY COMMISSIONER KALK:**

8 Q. Well, thank you, Tamara, for your
9 heartfelt testimony, and that's why we come out
10 here, to hear your concerns. So tell me again
11 where exactly you live at now, and I'm trying to
12 get the relationship here how this would play out.

13 A. If you know where the, like, Clay Buttes
14 are by South heart.

15 Q. Sure.

16 A. That's where we're at right now. My
17 brother-in-law lives just south of Schefield and
18 also has land on the -- or by the Cannonball and
19 east.

20 Q. So you're concerned predominantly about
21 the view shed of this, that you may be able to see
22 this from your property at night or during the day?

23 A. Yeah. Yeah. You know, if this one goes
24 through and, you know, if they get another one or
25 this one where they're trying to get easements by

1 us, yeah, it's view. But it's mainly -- I need to
2 protect my kids, you know, and it states right in
3 their book where, you know, it could cause
4 childhood leukemia.

5 Q. The -- where do the kids go to school, if
6 you don't mind me asking.

7 A. South Heart.

8 Q. The -- okay. Because Commissioner
9 Christmann set it out, we don't consider economics
10 so much in what we decide. It's more purpose and
11 need and environmental stuff, but oftentimes you
12 hear about people will come in and say that they
13 like it for the kids because then there's more
14 money for the schools and buses and all that stuff.
15 But you view it completely the opposite way. It
16 doesn't -- you'd like the kids not to have to have
17 this stuff to --

18 A. You know what, I actually -- one of my
19 daughters skipped school today to come and testify.
20 It's -- we don't need a lot. You know, the --
21 it's -- I guess I've tried raising my family to
22 know that, you know what, there's good in a lot of
23 things and there's bad with things. Sometimes
24 having the most isn't the best.

25 Q. Sure. So the last question -- and thank

1 you, Tamara, for coming up. Like I said, it takes
2 a lot of courage to do that.

3 So your viewpoint on wind in Stark
4 County -- which the Stark County Commission, you
5 talked about them, but you would like to see no
6 wind development in Stark County or would you like
7 to see a larger setback?

8 A. Definitely a larger setback if we have to
9 have it in our area.

10 Q. So what would you think is appropriate?

11 A. I do agree with what we've talked about
12 with the 2,000 feet from our property lines. And
13 like I stated earlier, when we bought our -- I
14 didn't state earlier, I'm sorry -- but when we
15 bought our property, it's a very narrow tract of
16 land. So if one of our neighbors do sign up, what
17 are we going to do?

18 Q. And your tract of land you're talking
19 about is not for Brady I?

20 A. It's not in Brady I, but that would be,
21 you know --

22 Q. But it may be in Brady II for another
23 hearing for another day perhaps?

24 A. Correct.

25 Q. So you -- to reinforce, so 2,000 feet from

1 your property line is what you would like to see,
2 not from the occupied residence?

3 A. Correct.

4 Q. Okay. Now, but you don't have --

5 A. I don't have --

6 Q. -- anything for this wind farm, but that's
7 what you'd like to see --

8 A. No. That's -- my -- my brother-in-law has
9 that land, but --

10 COMMISSIONER KALK: Okay. All right.

11 Well, thank you, Tamara, you've offered up
12 something to consider. Thank you.

13 JUDGE WARD: Commissioner Fedorchak.

14 **EXAMINATION**

15 **BY COMMISSIONER FEDORCHAK:**

16 Q. Thank you, Tamara.

17 You started to talk about the dangers that
18 you view these posing to children, and I just
19 wanted to hear you out on that, what you've been
20 told or what you've heard and where you're seeing
21 this.

22 A. It actually -- we seen it in the NextEra
23 books that it doesn't -- and I could -- I don't
24 know if I'm stating it correctly, you know, I don't
25 have it right in front of us, but that it doesn't

1 cause cancer necessarily or all these certain types
2 of cancers, but childhood leukemia.

3 Q. The wind towers themselves?

4 A. Or actually that -- let me take that back.
5 That would be on the transmission lines of it.

6 Q. Okay. The transmission lines. So that's
7 one of the concerns in terms of --

8 A. Right.

9 Q. -- protecting your kids.

10 And your other main issue is the view?

11 A. The view. I mean it's -- the view is
12 something to treasure. You know, it's -- we got
13 out of Dickinson -- both my husband and I grew up
14 on farms. When we got married, we ended up living
15 in town until we could -- basically until the
16 tornado and we ended up with a place in the
17 country. That's where our heart is. I mean it's
18 in the country and seeing and the view is
19 important, but like I said earlier, I think that if
20 we have to have these, we need to look at our
21 setbacks that are to protect us.

22 COMMISSIONER FEDORCHAK: Okay. Very good.
23 Thank you.

24 JUDGE WARD: All right. Commissioner
25 Christmann.

EXAMINATION

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BY COMMISSIONER CHRISTMANN:

Q. I'm curious about the stickers, the Fix Our Ordinances. I assume that refers to county zoning ordinances?

A. Right.

Q. So just help me get a grasp of how you feel about this in general, and I'll lay out my concern. I've long been a local government believer, that most things should be done locally; although, there are things that require some seamlessness. I mean I recognize the need for state oversight of things too. But in something like zoning, if we as a state agency are to step in because someone feels their county commission or zoning board wasn't listening, then are we eliminating all local control, and if because we're always going to step in as soon as someone says they didn't listen, then what happens when the state government doesn't listen? Then we really have a mess on our hands. So help me get a handle on that.

A. Well, you know what, I guess I speak from the heart. I just -- just felt like they didn't listen to us, and I just wanted to put that out

1 there to you. I mean -- and I know where you're
2 coming from and I do trust -- I mean you have to
3 put faith in the people that we've elected and that
4 are standing there. In this case visiting with
5 them was a tough deal. You know, talking with you
6 right now, I feel there is a respect, and I didn't
7 get that feeling.

8 COMMISSIONER CHRISTMANN: I'm sorry that
9 that worked out that way. Thank you for being
10 here. I really appreciate your testimony.

11 JUDGE WARD: Okay. We'll take a couple
12 more now and then, of course, we'll come back to it
13 later today. This lady with the black shirt was
14 next in line. Could you just tell me your name
15 please.

16 MS. STEIER: Ruth Steier.

17 JUDGE WARD: And, Ruth, can you spell your
18 last name for me.

19 MS. STEIER: S-t-e-i-e-r.

20 JUDGE WARD: Okay. And do you live in the
21 project area?

22 MS. STEIER: I do.

23 JUDGE WARD: Okay. Do you support or
24 oppose the project?

25 MS. STEIER: Support.

1 JUDGE WARD: Let me swear you in before we
2 go any further.

3 (Witness sworn.)

4 JUDGE WARD: Okay. Go ahead.

5 RUTH STEIER,

6 being first duly sworn, was examined and testified
7 as follows:

8 STATEMENT

9 BY MS. STEIER:

10 MS. STEIER: I have some concerns about
11 the Concerned Citizens want to change our zoning
12 ordinances. In 2015 in August at the Stark County
13 Planning & Zoning and County Commissioners meeting,
14 the Concerned Citizens group were seeking
15 amendments calling for wind turbines to be placed
16 at lease three miles from scenic byways, putting a
17 300-foot cap on their height, wide distances to be
18 mandated between turbines and natural land features
19 such as lakes and rivers, and decommissioning and
20 property value guarantees.

21 On March 6 in an interview with *The*
22 *Bismarck Tribune*, Tom Reichert, spokesperson for
23 the Concerned Citizens group, stated that the group
24 was holding out for deeper setbacks, so turbines
25 would have to be located 2,000 feet from a property

1 line, not a residence. However, and this is where
2 I'm concerned, yesterday in an interview to *The*
3 *Dickinson Press*, he stated that they wanted a
4 one-mile setback from property lines as the
5 ordinance changes this group is requesting. My
6 concern is that this group is requesting ordinances
7 that are extremely restrictive -- sorry. I'm a
8 little nervous -- and if adopted, would be extreme
9 government overreach, but are also inconsistent.

10 Are they wishing for a 2,000-foot setback
11 or a one-mile setback? And I think this is
12 important for all the rest of the residents of
13 Stark County to have a clear answer to. And what
14 other ordinances would they like changed in regard
15 to the wind farms?

16 A clear answer, and not something that's
17 going to change if they get another chance or if
18 they get some people they feel would better
19 represent them and maybe not represent me as
20 another citizen of Stark County.

21 And I guess this is private property. At
22 what point do we say it's no longer your property
23 but ours? At what point does the public get to
24 determine what farmers and ranchers and other
25 property owners do with their property? As many of

1 you might know, there's a small but increasingly
2 getting bigger group of people who are against
3 conventional farming, which is what my family does
4 as a living. We farm and ranch.

5 Now, if this group was allowed to petition
6 for the same types of ordinances against spraying,
7 fertilizer application, stockyard placements, what
8 kind of implications could that have for us in the
9 agriculture industry? You know, also in the oil
10 industry they're allowed to place an oil well
11 500 feet from a lived-in residence. There has to
12 be risks there. And I don't know for sure if that
13 500-foot setback is absolutely correct. That's
14 what I've read. You know, please correct me if I'm
15 wrong.

16 Also, one of the commissioners had made a
17 comment that they were concerned about a percentage
18 of people that would be against versus a percentage
19 for. Now, these ordinance changes that they're
20 requesting, you would need entire sections of land
21 for placement of one turbine. So that means that
22 an entire section would be needed with a 2,000-foot
23 setback, which is 640 feet short of half a mile,
24 and a quarter is a half a mile, sections are
25 one-mile wide. You would need an entire section to

1 place one turbine. So how many landowners own
2 complete sections of land like that and how many
3 own multiple sections of land to where the
4 restrictions of nonparticipants wouldn't be
5 affected?

6 So if it didn't prevent a wind farm, which
7 as -- hang on. I've got to find my place. As
8 Autumn Richard stated in her letter to editor on
9 February 26, the intentions of the Concerned
10 Citizens of the Stark County group and their
11 ongoing fight to prevent NextEra Energy Resources
12 from placing wind turbines in our county -- well,
13 these ordinance changes would restrict NextEra from
14 ever placing turbines. It would also prevent all
15 other wind energy development in our county. And
16 if wind energy is somehow not prevented, those
17 benefited would be a very small percentage. You
18 would bring that percentage down to one to ten, and
19 those one to ten owners would own to the tens of
20 thousands of land leaving small farmers nothing.

21 Now, I also support this because I see it
22 as something that my children can come back to and
23 it doesn't have to be the oil field, because right
24 now it's either agriculture or oil. We don't have
25 a choice. If a wind farm is erected, my son can go

1 to college and come back and have supplemental
2 income on the farm and would only have to go two
3 miles down the road to get that income. This is
4 important to me.

5 I also have children in the New England
6 School District. From what I have read in recent
7 newspapers, that Governor Dalrymple has requested
8 4 percent budget cuts across the board. Now, does
9 that include education? I have a daughter in
10 speech, and to me our children should be given the
11 best chance as possible.

12 I want my children to have the best
13 chances possible. I think the New England School
14 District is a phenomenal school, but the revenue
15 they could be getting could help my daughter's
16 chances, could help many other developmentally
17 disabled children.

18 If those budget cuts impacted other
19 children like my daughter, that's what I want to
20 avoid. And if we have the revenue to do that by
21 this development, why not?

22 Now, the New England School District
23 hasn't had much benefit from the oil industry.
24 We're an agricultural community.

25 Now, you also made a comment about -- one

1 of the attorneys had said that
2 200-acres-per-megawatt generation seems like there
3 could be other uses, better uses than wind energy
4 production. I kind of want to address that. Now,
5 these are participating landowners. And shouldn't
6 they get to decide what that land is used for, not
7 other people? They get to decide if that minimum
8 impact is worth the loss of 2.2 acres per turbine,
9 approximately. Shouldn't that be their choice?

10 Also regarding -- and I am for clean coal.
11 I am for quitting flaring and keeping our natural
12 gases and utilizing those, but I also live in
13 reality where I know that this is going to be a
14 CO₂-limited reality in the future. I don't think
15 this is going to change. After all, in a Gallup
16 poll from March 27, 2013, there were two in three
17 Americans who want more emphasis on renewable
18 energy, 71 percent specifically for wind power,
19 with only 46 percent wanting an emphasis on oil
20 production. Shouldn't we take into account that
21 the population as a whole determines the EPA
22 guidelines and determines where our country goes
23 for CO₂ emissions?

24 Now, if an overwhelming majority of
25 Americans feel that renewables are favorable and

1 want to go that route, how are we to say absolutely
2 not, a small percentage of people, and just say
3 it's coal, only coal, or it's oil, oil, oil? We
4 need to take into account that -- what the future
5 may hold and from what I have seen, the future hold
6 is a CO₂-limited future where we're going to have to
7 have renewables.

8 And Basin Electric wouldn't have signed
9 this if they hadn't needed them. So I think the
10 use is there.

11 And I also want to address uses. We --
12 we -- and I know Kaufman addressed this as well,
13 but we create more -- grow more beef than we eat.
14 We grow more wheat than we use here in the United
15 States. We take care of each other.

16 And I also want to question do other
17 industries have to prove a need in this state that
18 they are providing it in, like has been questioned
19 for the wind industry? And I do think we need a
20 need, but why -- why doesn't the oil field have to
21 show a need for the oil they are producing? From
22 my understanding, the recent bust is due to a
23 flooding of the market. So shouldn't there be a
24 need for the oil drilled and creating more
25 infrastructure for that before we continue down

1 that route?

2 I guess that's all I have to say.

3 JUDGE WARD: Thank you, Ms. Steier.

4 Questions for Ms. Steier? Mr. Bjella.

5 MR. BJELLA: No.

6 JUDGE WARD: Mr. Pelham.

7 MR. PELHAM: No, Your Honor.

8 JUDGE WARD: Mr. Collins.

9 MR. COLLINS: No.

10 JUDGE WARD: Commissioners.

11 COMMISSIONER KALK: Thank you, Your Honor.

12 **EXAMINATION**

13 **BY COMMISSIONER KALK:**

14 Q. Thank you, Ruth, for your testimony.

15 You said you lived in the project area.

16 Can you give me either your mailing address or
17 legal address and then kind of give me a where at?

18 A. I do. 11076 --

19 Q. Hang on. 11076.

20 A. -- 52nd Street Southwest. I am about a
21 quarter mile east of Highway 22.

22 Q. Okay. Fair enough. And then you talked
23 about property rights. I got that. Any concerns
24 about reclamation, where the roads are at, anything
25 like that?

1 A. I am not. I was concerned about the dust
2 because we live very close to the county road, 52nd
3 Street, which will be used primarily, from my
4 understanding, and the substation would be down
5 that road. I was very concerned about dust because
6 we live so close and I have three small children,
7 five, three and one, and the amount of traffic, and
8 NextEra was more than happy to talk to me about
9 that issue. They even gave me the number for their
10 head contractor and said if there's any problems --
11 and he even spoke to me himself at one of their
12 informational meetings and said, Ruth, are you sure
13 you want to do this? You know, are you sure you're
14 okay with this? You're going to have lots of
15 traffic. You've got little kids. What can we do
16 to make this easier for you and are you sure?

17 And I was so impressed by that because I
18 have never had someone request easements on our
19 property come up to me and say, "Are you sure."

20 Q. So the dust would be in the construction
21 phase --

22 A. Yes.

23 Q. -- between the turbines down that main
24 haul road?

25 A. Yes.

1 Q. Okay. And then the -- it's not so much a
2 question, just more of a comment. You know, you
3 talked about renewables and base load power. It's
4 a question that -- you know, the purpose and need.
5 You know, electricity law grew up different than
6 oil and gas law, so part of it is that we have
7 companies, Xcel, Otter Tail and MDU that we
8 regulate price caps -- price regulation and
9 everything, and the co-ops we don't regulate so
10 much, but it goes back to we didn't want to
11 overbuild extra things, so there's a purpose and
12 need out there.

13 But one of the things that I'm spending a
14 lot of time with is trying to figure out the right
15 amount of renewables that you can put in the grid
16 without throwing the whole power scheme off. So
17 you talk about the future of a CO₂-constrained
18 world. I'm not buying that, but I believe what
19 you're saying because there's other folks that
20 don't understand. I'm trying to find that balance
21 of what we can do. So I think bringing renewables
22 in is a good idea, but I'm not quite ready just to
23 throw away our base load because we still have to
24 keep the power grid up. So I know your testimony
25 is for it, but --

1 A. Absolutely. Absolutely. And I want to
2 make clear I am not against oil, I am not against
3 coal, I am not against natural gas. Absolutely
4 not. I mean I think those things are important.
5 Absolutely important. I just want to know that we
6 have a voice and that we will get to choose.

7 Q. Well, and that's where Commissioner
8 Christmann talked about local control inside of
9 Stark County and not from the PSC. It even goes
10 one step higher because some of the battles that we
11 fight as the Commission are the federal government
12 telling us to do things that we don't like to do.

13 A. Absolutely.

14 COMMISSIONER KALK: So as we go through
15 these siting hearings, there's a lot of things at
16 play. But I just wanted to let you know that, you
17 know, we're looking at all these things.

18 Appreciate your testimony, and it really helps us
19 out when you give us the location and someone who
20 is going to live with this project and raise your
21 kids right there, so thank you.

22 JUDGE WARD: Commissioner Fedorchak.

23 COMMISSIONER FEDORCHAK: Thanks, Ruth, I
24 don't have any questions for you, but I appreciate
25 your time and all the thought you put into what you

1 wanted to say.

2 JUDGE WARD: Commissioner Christmann.

3 COMMISSIONER CHRISTMANN: And I also have
4 no questions. Thanks for being here, Ruth. And
5 usually the witnesses don't get to ask the
6 questions, but since I happened to have worked in
7 this area earlier, I'll answer your question about
8 the New England School District and what happens
9 with allotments. Years ago your very wise
10 legislators created a fund whereby -- I mean at
11 least there's enough money in it for this round --
12 whereby that fund will take care of the allotments
13 that would otherwise hit the school districts. So
14 the school districts are covered.

15 MS. STEIER: Good. Thank you. It's good
16 to know that.

17 JUDGE WARD: Commissioner Christmann used
18 to be one of those wise legislators.

19 Thank you, Ms. Steier. All right. I
20 think I'll take one more person before we break for
21 lunch. Sir.

22 Is this one of your witnesses, Matt?

23 MR. COLLINS: No.

24 JUDGE WARD: I'll take two more people
25 before we go back. You'll be next, sir.

1 Okay. Would you state your name, please,
2 for the record.

3 MS. GOETSCH: LaVonne Goetsch.

4 JUDGE WARD: LaVonne?

5 MS. GOETSCH: Yes.

6 JUDGE WARD: Can you spell that for me?

7 MS. GOETSCH: L-a-V-o-n-n-e.

8 JUDGE WARD: And how do you spell the last
9 name?

10 MS. GOETSCH: G-o-e-t-s-c-h. And my
11 address is on the copy of my testimony that I gave
12 to them.

13 JUDGE WARD: All right. You're here
14 opposing the project?

15 MS. GOETSCH: Yes, I am.

16 JUDGE WARD: And where do you live? Do
17 you live in the affected area directly?

18 MS. GOETSCH: My -- I -- my address is
19 1165 41st Street Southwest, Dickinson, North
20 Dakota.

21 JUDGE WARD: So how far is that from the
22 wind farm?

23 MS. GOETSCH: It's about four miles from
24 Highway 10 on the west side of Dickinson. It's a
25 couple miles south of the oil refinery.

1 I think Stark County is the best place in
2 the world to raise and get a good primary education
3 for your children. Since I raised eight children
4 in this community, I think I know what I'm talking
5 about.

6 The people are concerned about each other
7 and for the most part really want to maintain the
8 environment of their family and those that come in
9 the future. Since I have seven of my children
10 making southwest North Dakota their home, I believe
11 I know what is at stake.

12 North Dakota is proud of their western
13 heritage, especially Teddy Roosevelt, and has taken
14 pride in developing our area. Driving through
15 western North Dakota, you not only see waving
16 fields of grain and farmsteads that show their
17 owners' pride in their community, you see clear
18 skies that go forever and beautiful sunsets and
19 sunrises. When I lived in Ely, Nevada, every so
20 often my husband would take me to a mountain pass
21 to see a sunset. You didn't see them out there
22 where I lived. And when I lived in Georgia, you
23 couldn't see the stars at night like you do here.

24 North Dakota is unique and our state's
25 growing tourism industry attests to the hunger of

1 our society to feel what we take for granted.
2 Friends come and visit, my family from East Coast,
3 West Coast and all places in between. They are
4 awed by our pristine environment, hunting, fishing,
5 Theodore Roosevelt National Park.

6 My children want to raise their families
7 here and they are starting and I've got fifth
8 generation, but this morning when I was laying in
9 bed, I remembered that I've got five new rug rats
10 running around that can't walk yet. So we are the
11 sixth generation of families in Stark County.

12 I know that all of my children and the
13 people I care about in this community to stay here
14 have to make room for development and jobs for the
15 future. I was a young woman when I attended
16 several meetings led by Governor Bill Guy. We were
17 studying Garrison Diversion, bringing lake water to
18 western North Dakota. He wanted to make North
19 Dakota the energy capital of the United States and
20 I think he succeeded.

21 We lobbied in Washington for clean coal
22 development and environmental restoration and we
23 were heard. North Dakota does an exceptional job
24 of that. Our oil industry has been the same way.
25 In 1955, in the '70s and '80s we fought for cleanup

1 and responsibility of the oil industry. Today we
2 have five wells on one oil site and wells are being
3 placed in an orderly fashion. We have companies
4 that have developed flaring stacks that filter out
5 over 98 percent of the harmful emissions that once
6 went up into the environment, and the EPA certifies
7 that.

8 North Dakota wants to keep our environment
9 clean and as pristine as possible for the whole
10 world to enjoy.

11 Hillary Clinton wants to close down coal
12 mines. Barack Obama doesn't like the oil industry.
13 Mr. Obama wants wind industry. I do not know how
14 many windmills it takes to run a country like ours,
15 but one of the unique things about the United
16 States is our power and energy that is always
17 consistent, cheap and affordable.

18 I'm sure someone here could tell me how
19 much -- how many windmills we'd need. I can tell
20 that driving through California, the beauty of the
21 desert is gone. Windmills are everywhere. Last
22 week I drove through Iowa. They receive 30 percent
23 of their energy from wind. I am told it is not a
24 pretty landscape. Our wheat fields are often
25 grazed by cattle here in the fall. Can they do

1 that if there's a windmill on that piece of
2 property?

3 Then I have this question. Mrs. Steier
4 was talking about environment. Long-term studies
5 show that windmills warm the ground by two to three
6 degrees. What effect would that have on our
7 agriculture industry in North Dakota? We do not
8 have seaports or Hollywoods or timber industries to
9 subsidize our economy, and I would hate to see this
10 become a desert. And there hasn't been any
11 long-term study on that.

12 Independent systems operators bid the
13 money for units of energy to sell to electricity
14 from coal, water and wind that covers their cost
15 and their profit. My son-in-law runs a
16 hydroelectric power plant on the Mississippi River.

17 Wind energy is allowed to bid at a
18 negative price and still make money because of
19 federal subsidies. That is not fair to the coal
20 and hydropower industries that provide cheap
21 energy. In a country with plenty of energy, we
22 could be energy independent. We all know that. It
23 does not make sense to subsidize wind energy when
24 there are 19 -- when our country is \$19 million in
25 debt. Then in order to get the wind power on the

1 grid for use, we must shut down our hydropower
2 plants and we must shut down our coal power plants,
3 which are in existence, which are in operating,
4 they are cheap energy, so that wind power can get
5 on the grid. That don't make sense to me.

6 And then I have another couple of
7 questions. So we shut down our coal mines. How
8 many people will lose their jobs in North Dakota?
9 How much will wind energy cut our electric bills?

10 That's my testimony.

11 JUDGE WARD: Thank you, Ms. Goetsch.

12 Questions for Ms. Goetsch? Mr. Bjella.

13 MR. BJELLA: No, Your Honor.

14 MR. PELHAM: No, sir.

15 JUDGE WARD: Mr. Collins.

16 MR. COLLINS: No. Thank you.

17 JUDGE WARD: Commissioners.

18 COMMISSIONER KALK: LaVonne, do you have a
19 second more?

20 JUDGE WARD: Oh, yeah.

21 MS. GOETSCH: Yeah. I got all day.

22 COMMISSIONER KALK: We do too; right? No
23 problem.

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BY COMMISSIONER KALK:

Q. I always say thanks for coming up and sharing your piece. And I'll tell you that your testimony is very compelling on a lot of issues. I mean you talk about negative pricing, and I didn't realize many citizens knew what that all meant. You obviously have done your homework in how this all works in the large power world.

A. I have lots of kids. They love North Dakota.

Q. Well, and what I would say is Commissioner Fedorchak talked about both our senators have representatives here. Go give them an earful on some of this stuff, too, because I support renewables and I support coal and gas, but what you're talking about is a swing too quickly to some of these things that are put into place that we struggle with day to day here. So what I'm trying to do and others are trying to get policy parity for coal and gas, that they get the same treatment in these power grids that the wind does. So just so you know, there's things that we're working on that part of it.

And also I'd say go talk to Basin

1 Electric. If you don't like the mix, the -- are
2 you a co-op member or are you an investor owned?
3 Who gives you your power, MDU or one of the co-ops?

4 A. MDU.

5 Q. MDU. So the companies that we regulate,
6 we're trying to find that right balance of
7 renewable versus base load and it's an ongoing
8 discussion.

9 A. Oh, I've got another question that I'd
10 like to ask of you. They said that this energy is
11 going to be going to Basin Electric. Basin
12 Electric sells most of their energy to Minnesota.
13 Minnesota has declared that they have to have
14 30 percent green energy. Now, are we going and
15 pushing these windmills at this point in time so we
16 can take and fulfill what Minnesota wants in their
17 green energy?

18 Q. Well, and I would say that it's not good
19 for me to go too far down the road to answer a
20 question, but just a little bit for discussion,
21 Basin Electric doesn't actually have any power that
22 goes to Minnesota. It goes into Basin -- western
23 North Dakota, eastern Montana, South Dakota,
24 Wyoming. So the Basin system is not tied into
25 Montana.

1 A. I thought it went to Minnesota.

2 Q. Or into Minnesota. But to your point,
3 we're struggling with those issues with Xcel Energy
4 and Minnkota Power in eastern North Dakota. So
5 that's just one thing.

6 But I think the last thing is I was trying
7 to encapsulate what is it exactly that you would
8 like on this project? Is it that you don't want
9 wind development at all or is it --

10 A. I really do not feel that for all the
11 things that they have worked for in North Dakota
12 for the tourism industry, for the hunting industry
13 and for just having a place for people to come to
14 take and see our lifestyle, that we need wind
15 energy. When I drove through Iowa last week, those
16 windmills are everywhere. They're close together.
17 They're huge. We've got coal, we've got oil, we've
18 got gas here. And I know there are places that
19 have different criteria and stuff than we do. But
20 do we need it in Stark County?

21 Q. Sure. Well, that's what I wanted to
22 encapsulate, what your concerns were, because you
23 bring up other states, and I'll say that the state
24 of Texas has no equivalent to the PSC for siting.
25 They just let people build wind farms everywhere,

1 so they've taken and completely deregulated wind
2 farms. Iowa has wind farm setbacks that are much
3 closer than ours. So we've tried to look at other
4 states to find that model for a path forward.

5 A. And then what about these studies that
6 show that it heats the soil?

7 Q. I guess I wouldn't know much about that.
8 But the -- I think the thing that I wanted and I
9 think I've gained from you is you think there's
10 other things to do for energy development besides
11 wind, concerned about the view shed and concerned
12 that wind gets treated no better than other energy
13 sources on the grid?

14 A. That is correct. And besides like
15 everything else, technology is moving so fast, what
16 are we going to have ten years from now that will
17 be better than those windmills or even oil?

18 COMMISSIONER KALK: All right. Thank you,
19 LaVonne.

20 JUDGE WARD: Commissioner Fedorchak.

21 COMMISSIONER FEDORCHAK: Sorry.

22 JUDGE WARD: Oh, hold on. We're not quite
23 done with you.

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BY COMMISSIONER FEDORCHAK:

Q. You've got two more commissioners you have to put up with still.

A. You've got my notes. I've got to trade you.

Q. I'm sure you remember everything you said. Thank you for your testimony.

What you're talking about, there's so many factors here, some of which are at play in this hearing and many of which are not. We don't have anything to do with the federal policy, the PTC, how that works out, how those funds go back to the energy companies. There's really nothing that we can do about that. So I echo Commissioner Kalk, for everyone who has issues with that, please talk to the congressional folks here because they vote on those policies and that has been widely supported nationwide. That's why that policy exists.

A. Ask for Mike Schatz.

Q. No -- and then that's at local level --

A. Right. I --

Q. -- that you need to talk to.

And some of these issues that we're

1 talking about in terms of balance and need, you
2 know, we ship out a lot of coal-fired power that
3 isn't needed in North Dakota, too, and I have to
4 wonder if there was a new coal-fired plant being
5 built that was not needed here but needed
6 elsewhere, how would we view that?

7 You know, our role is not to pick winners
8 and losers. We make people comply by the law and
9 show that they -- you know, this is the criteria
10 that your legislators who we all elect -- everyone
11 in this room elects these people to represent us in
12 Bismarck, and this is the criteria they've set up
13 for providing permits for these kinds of projects.
14 So are they perfect? No, they aren't perfect, but
15 they're what exists today, and there's probably a
16 lot more work that needs to be done on these issues
17 at the legislative level as well.

18 So I encourage you to talk to your local
19 legislators, too, because I think there needs to be
20 a real discussion in our state coming up at the
21 next legislative session about wind development and
22 how much do we want and what kind of guidelines do
23 we want -- additional guidelines or parameters on
24 it, if any. Right now there isn't a cap and there
25 isn't -- you know, I don't see an ability to say

1 this isn't needed so it can't be produced -- it
2 can't be sited.

3 A. Okay. That is a -- you're bringing up a
4 good point, and so how much -- and you -- you
5 mentioned that earlier this morning when you were
6 talking. How much do we need? Back when nuclear
7 energy was the big thing, they built five nuclear
8 power plants out on the West Coast. They never
9 even opened them up, and the people are still
10 paying for those power plants. They never even
11 went online. I know --

12 Q. And that's --

13 A. -- because my husband worked there.

14 Q. That's why --

15 A. This --

16 Q. Ma'am, that's why --

17 A. We need to think this out.

18 Q. -- they do have --

19 JUDGE WARD: One at a time.

20 Q. (COMMISSIONER FEDORCHAK CONTINUING) --
21 they do have the requirement and Basin is going to
22 be filing the additional information about what
23 their numbers show in terms of the need to justify
24 this and that will be a part of this record as
25 well. So it isn't that it doesn't have any case.

1 It's just one of many factors laid out by the
2 legislature to consider.

3 So it's tough. I mean I am -- just in
4 full disclosure, my husband and I are
5 nonparticipating landowners on the border of one of
6 the largest wind farms in North Dakota. So I know
7 exactly what these issues are and what it's like
8 and -- and living with them myself. So it's --
9 they're big issues. There's a lot that play into
10 it, including property rights -- private property
11 rights that we need to be careful about infringing
12 on as well.

13 COMMISSIONER FEDORCHAK: So, again, thank
14 you for being here and sharing your piece and
15 offering suggestions. To the extent that we can
16 get meaningful suggestions for minimizing impact,
17 we will do everything we possibly can to consider
18 those in the overall project.

19 JUDGE WARD: Commissioner Christmann.

20 COMMISSIONER CHRISTMANN: Thank you,
21 LaVonne. Very good testimony. Especially thanks
22 for providing us some written notes. It makes it
23 very helpful later to reflect back and recall your
24 sentiments when people do that. So appreciate
25 that.

1 MS. GOETSCH: Thank you.

2 JUDGE WARD: Now you can go.

3 MS. GOETSCH: Okay.

4 JUDGE WARD: Okay. There was one more.
5 Come on up, and then we're going to take a break
6 after one more. And then anybody else who still
7 wants to get up and testify, I know that I've
8 gotten a good percentage of the people that signed
9 in if they wanted to, you will get a chance later
10 on today, but I wanted to get some public input
11 before we break for lunch. And so this will be the
12 last one, and then when we come back after lunch,
13 we will resume the company's presentation of its
14 case with its other witness or two and then we will
15 take evidence from the Concerned Citizens as well.

16 So, sir, if you'd like to state your name,
17 please, for the record.

18 MR. KOLLER: I'm Mark Koller, and I am a
19 supporter of the Brady Wind farm.

20 JUDGE WARD: And, Mark, how do you spell
21 your last name?

22 MR. KOLLER: K-o-l-l-e-r.

23 JUDGE WARD: Okay. Raise your right hand,
24 please.

25 (Witness sworn.)

1 JUDGE WARD: Do you live within the
2 affected area?

3 MR. KOLLER: I'm a resident of Hettinger
4 County. I live northeast of New England, but I own
5 land in Stark County -- farmland in Stark County.

6 JUDGE WARD: So do you have a wind farm
7 going to be located on your property?

8 MR. KOLLER: Yeah. I'm a participator in
9 the wind farm.

10 JUDGE WARD: Okay. You are.

11 MR. KOLLER: I am, yes.

12 JUDGE WARD: But your home is actually --

13 MR. KOLLER: My home is in Hettinger
14 County, two and a half miles north of the Stark
15 County line -- or south of the Stark County line.
16 I'm sorry.

17 JUDGE WARD: Okay. Go ahead.

18 **MARK KOLLER,**
19 having been first duly sworn, was examined and
20 testified as follows:

21 **STATEMENT**

22 **BY MR. KOLLER:**

23 MR. KOLLER: Okay. I'd like to tell you
24 what I know about Basin Electric Co-op. They've
25 been a provider for electricity for rural North

1 Dakota, southwestern North Dakota for many decades,
2 including our farm. And right now we're using more
3 and more electricity on our farms. We dry our
4 grain with aeration, and I can tell our electric
5 co-op, Slope Electric Co-op of New England, they're
6 challenged to get enough electricity out to our
7 farms right now because we're putting more and more
8 of these grain bins up, and they're doing a really
9 good job bringing us reliable electricity.

10 And as a landowner, I'm glad that I can
11 contribute the use of my land to help produce
12 energy with a wind farm. And the -- the
13 electricity that's going to be generated from the
14 wind farm in Stark County and Hettinger County, if
15 it happens, will go back to the same co-op that
16 produces electricity for us.

17 And with all of the talk in the newspaper
18 and on TV, you can't hardly turn the TV on or read
19 a newspaper without listening to what the EPA
20 possibly can do to coal -- coal energy. And I
21 think that this is a way for us to help solve the
22 problem. It's a new renewable energy source.

23 And listening to everybody here today, I
24 guess I believe, just listening to everybody, that
25 Basin Electric wants to buy wind energy and NextEra

1 is here to provide it for us. And I think it's an
2 opportunity of a lifetime that we have that sitting
3 right in front of us right now.

4 Also I think it's a way for us to save our
5 natural resources for our children, my
6 grandchildren and possibly my great-grandchildren.
7 So we can save our coal and fossil fuel energy and
8 have wind energy. I think we need all kinds of
9 energy, not just wind energy. I think we need
10 solar, we need coal, we need the natural gas that a
11 fellow was talking back here, but I think it's
12 going to take a balance of a little of everything.
13 Yeah.

14 And the other thing I'd like to say is the
15 more I learn about NextEra, Brady I and Brady II,
16 going to informational meetings, the better I feel
17 about participating in this wind farm.

18 That's what I have to say.

19 JUDGE WARD: Okay. Questions for
20 Mr. Koller? Mr. Bjella.

21 MR. BJELLA: No, Your Honor.

22 JUDGE WARD: Mr. Pelham.

23 MR. PELHAM: No, sir.

24 JUDGE WARD: Mr. Collins.

25 MR. COLLINS: No.

1 JUDGE WARD: Commissioners.

2 COMMISSIONER KALK: Thank you.

3 COMMISSIONER FEDORCHAK: I don't have any,
4 either.

5 JUDGE WARD: Commissioner Christmann.

6 **EXAMINATION**

7 **BY COMMISSIONER CHRISTMANN:**

8 Q. Let me throw out one example for you as
9 a -- you know, feeling good about the overall
10 participation and such. Did you hear about the
11 situation with the test hole they were going to
12 drill up in Pierce County up by Rugby --

13 A. No.

14 Q. -- that was turned down a couple weeks
15 ago?

16 A. Yeah, I heard about that. Yeah.

17 Q. So in that case whether the people were
18 correct in their assumption or not isn't the point
19 here, but they believed that this test hole was
20 going to be a potential site for radioactive
21 storage. And so even though the property owner was
22 fine with it, the rest of the county said, no,
23 we're not -- don't even do a test hole, we don't
24 want to take a chance on radioactive stuff coming
25 in, and so they shut it down.

1 How would you feel in your sentiments of
2 wanting to participate in the big picture and all
3 that if they were looking at a test hole for
4 possible nuclear -- or radioactive storage?

5 A. Well, first of all, I guess I didn't
6 realize it was a test hole for nuclear storage. I
7 thought it was -- I don't think -- did it ever come
8 out that that's exactly what it was going to be
9 used for?

10 Q. No, but that was their perception.

11 A. Okay. Well, I'd like to learn all the
12 facts I could. I'd like to also say that when I
13 started pursuing it, we all have to go through a
14 process of do I want a wind turbine on my land or
15 not? And I -- I drove up to -- by Wilton and I
16 found a farmer that farmed the land around a
17 NextEra wind farm, and we wanted to know about the
18 noise -- concerns about the noise. And we drove
19 different -- quarter mile away, half mile away,
20 right underneath it, and when we were about a half
21 a mile away, to me you had to really listen for it
22 to want to hear it. You'd have to want to hear the
23 noise that it made. So I wasn't -- that eased my
24 mind about the noise.

25 The footprint was small. Their roads were

1 better. The roads were actually better than what
2 they were before. And I'm sure you folks have
3 heard all of those sorts of things, but it did ease
4 my mind after I went up and saw it myself.

5 COMMISSIONER CHRISTMANN: Well, good.
6 Thanks. I appreciate people that do a little
7 research and appreciate you doing that. Thank you.

8 JUDGE WARD: Okay. All right. We are
9 going to take a break now until three o'clock. We
10 will back at that time. We'll resume the company's
11 case, and we're going to go as long as we need to
12 go to get this done. So thank you very much.

13 (Recessed at 2:20 p.m. and reconvened at
14 3:05 p.m.)

15 JUDGE WARD: Okay. I thought we had
16 some -- I thought we had some very useful public
17 input. And, again, there will be an additional
18 opportunity for public input from anybody who
19 hasn't had the chance later on.

20 Right now I'm going to return to the usual
21 order of things, which is, Mr. Bjella, if you'll
22 call your next witness and we'll finish your case
23 in chief here.

24 MR. BJELLA: Yes, Your Honor. We call
25 Chris Ollson.

1 JUDGE WARD: Okay. And if anybody new
2 comes into the room, would you please make sure
3 that they sign the sign-in sheet. I've had at
4 least one person testify who I couldn't find their
5 name on the sign-in sheet. So it's important that
6 everybody signs in because it helps us find the
7 address and get the information that we'd like to
8 have for those people.

9 Mr. Ollson, would you please spell your
10 last name. Well, is it Chris?

11 THE WITNESS: It's Chris and it's Ollson,
12 O-l-l-s-o-n.

13 JUDGE WARD: And do you spell Chris
14 C-h-r-i-s?

15 THE WITNESS: I do.

16 JUDGE WARD: Please raise your right hand.

17 (Witness sworn.)

18 JUDGE WARD: All right. Thank you.

19 Mr. Bjella.

20 MR. BJELLA: Thank you, Your Honor.

21 **CHRIS OLLSON,**

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

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BY MR. BJELLA:

Q. Please state your name and business address.

A. Good afternoon, Commissioners. My name is Dr. Christopher Ollson. My business address is 64 Ohara Lane in Ancaster, Ontario, Canada.

Q. And what is your current position?

A. I'm the owner and a senior environmental health scientist at Ollson Environmental Health Management.

Q. And what is your educational background?

A. I hold a bachelor's degree in biology from Queen's University. I hold a master's and a doctoral degree in environmental science from the Royal Military College of Canada specializing in environmental health.

Q. And what is your professional background?

A. My area of expertise is in the field of environmental health science. I am trained, schooled and practiced in the evaluation of potential risks and health effects to people and ecosystems associated with environmental issues.

Since 2008, I have been engaged by a number of private companies to review the potential

1 health effects that may be associated with living
2 in proximity to wind turbines as part of the
3 preparation of their environmental assessment
4 documentation.

5 In 2014, I provided expert advice on wind
6 turbines, health and proper siting requirements to
7 the Vermont Public Services Board. Approximately
8 one-third of my consulting practice on an annual
9 basis has been devoted to better understanding the
10 relationship between people, animals and wind
11 energy.

12 I have published six scientific articles
13 in peer-reviewed scientific journals on the topic
14 of wind energy and health.

15 I have been qualified to provide expert
16 opinion evidence on wind turbines and potential
17 health effects at a number of North American
18 hearings, tribunals and legal cases. I have
19 provided numerous presentations to county
20 commissions and planning and zoning boards across
21 the United States.

22 In addition to my consulting practice, I
23 hold an appointment of adjunct assistant professor
24 at the Royal Military College of Canada and I hold
25 an adjunct professorship in the School of

1 Environment at the University of Toronto. In 2013,
2 I was appointed to the governing council and am
3 vice chair of academic affairs committee of the
4 University of Toronto Scarborough.

5 Q. And is the purpose of your testimony today
6 to describe the human health and safety matters
7 pertaining to the Brady Wind Energy Center?

8 A. It is.

9 MR. BJELLA: Your Honor, we would offer
10 the further testimony of Dr. Ollson as an expert in
11 environmental health.

12 JUDGE WARD: Any objections? Mr. Pelham?

13 MR. PELHAM: No objection.

14 JUDGE WARD: Mr. Collins?

15 MR. COLLINS: No.

16 JUDGE WARD: Okay. He'll be accepted as
17 an expert witness in that field.

18 MR. BJELLA: Thank you.

19 Q. (MR. BJELLA CONTINUING) Can you describe
20 your involvement with the Brady Wind Energy Center?

21 A. Since the spring of 2015, I have been
22 engaged by NextEra Energy Resources on behalf of
23 Brady Wind to provide health expertise and advice
24 on the suitability of siting wind projects in Stark
25 County, North Dakota. I have had the opportunity

1 to visit Stark County on numerous occasions.
2 During this time I have appeared at -- a number of
3 times in front of the Stark County Planning &
4 Zoning Board meetings as well as the County
5 Commission. I've visited the lands that the
6 project is proposed to be on. I attended the
7 project public meeting, and I've also had the
8 opportunity to sit and meet with a number of
9 landowners that had concerns.

10 Q. And, Dr. Ollson, did you prepare a report
11 entitled Overview of Wind Turbine Siting and Health
12 for this hearing?

13 A. I did.

14 JUDGE WARD: So this is Exhibit 3,
15 Mr. Bjella?

16 MR. BJELLA: Yes, Your Honor.

17 JUDGE WARD: And has this been previously
18 filed with the Commission?

19 MR. BJELLA: No, Your Honor.

20 JUDGE WARD: Okay.

21 MR. BJELLA: It was disclosed through
22 discovery, but it has not been.

23 Q. (MR. BJELLA CONTINUING) I'm showing you
24 what is marked Exhibit 3. Is this the report to
25 which you just referred?

1 A. It is.

2 MR. BJELLA: I would offer Exhibit 3 into
3 evidence.

4 JUDGE WARD: Has counsel seen it before?

5 MR. BJELLA: Yes, they have seen it
6 through discovery.

7 JUDGE WARD: Okay. Mr. Pelham, any
8 objections?

9 MR. PELHAM: No objection.

10 JUDGE WARD: Mr. Ollson?

11 MR. COLLINS: Mr. Collins doesn't object.

12 JUDGE WARD: Or Mr. Collins. Sorry.
13 Getting a little tired. Sorry.

14 Okay. The document is admitted.

15 MR. BJELLA: Thank you.

16 JUDGE WARD: Exhibit 3.

17 Q. (MR. BJELLA CONTINUING) And what was the
18 purpose of this report?

19 A. It was provided to the Commission with an
20 over -- to provide the Commission with an overview
21 of the current published literature and science
22 surrounding health and safety concerns living in
23 proximity to wind power projects. It describes
24 conditions for a properly sited wind project and
25 how the Brady Wind Energy Center meets these

1 requirements.

2 Q. And could you just provide the Commission
3 with a summary of the findings of your report.

4 A. I can. I would ask the Commission to turn
5 to page 11 of the report. And on the bottom of
6 page 11 of the report are the conclusions, and that
7 is that over the past decade there has been
8 considerable research conducted around the world on
9 the potential for wind turbines to adversely impact
10 health. This independent research by university
11 professors and government medical agencies has
12 taken place in many different countries on a
13 variety of models of turbines that have been in the
14 community for a number of years. Based on
15 scientific principles and the collective findings
16 of over 60 scientific articles, I believe that, as
17 proposed, the Brady Wind Energy Center project is
18 properly sited and will not result in adverse
19 health effects in the surrounding communities.

20 Q. Now, Dr. Wells testified that Brady Wind
21 completed a sound study for the project. Have you
22 reviewed that study?

23 A. I have.

24 Q. And what standards are applicable to the
25 Brady Wind farm?

1 A. There are two standards that are
2 applicable to the Brady Wind farm. The first is
3 the Stark County zoning ordinance that states that
4 a sustained audible level of sound should not
5 exceed 80 decibels during the day and 70 decibels
6 at night.

7 In addition, the North Dakota Public
8 Service Commission has adopted a regulation stating
9 that sound levels within 100 feet of homes should
10 not exceed 50 decibels unless waived in writing by
11 the owner.

12 In addition to the sound requirements, the
13 Stark County ordinance also requires a minimum of
14 2,000-foot setback from occupied houses, industrial
15 and municipal buildings.

16 Q. And where is the noise measured from?

17 A. I think it's important for the Commission
18 to understand that from a health perspective it's
19 not the noise that's emitted from the turbines
20 themselves, the height of the turbine or the sound
21 power output at the turbine. It's that they have
22 to meet the requirements at the homes themselves,
23 and in your case the 50 decibels 100 feet from the
24 home.

25 Q. And have there been studies completed on

1 sound produced by wind farms?

2 A. Yes. Numerous studies have been
3 completed. Available data suggests that siting or
4 setback guidelines are an effective means to
5 evaluate, monitor and protect people from audible
6 noise as well as from infrasound and low-frequency
7 noise.

8 Q. And could you describe for the Commission
9 what the highest modeled sound level is within
10 100 feet of a residence as identified in the sound
11 report?

12 A. Yes. The sound report, which is a very
13 conservative sound modeling methodology, indicates
14 that it will be at most 48 decibels 100 feet from a
15 person's residence. This level is compliant with
16 both the county and state sound requirements.

17 Q. And if wind farm construction were to
18 occur based on the setbacks applicable to this
19 project, what would be your analysis?

20 A. Based on scientific principles, the Brady
21 Wind Energy Center with turbines 2,000 feet from
22 homes with a sound level not to exceed 50 decibels
23 100 feet from an inhabited residence or community
24 building meets the scientific test for a properly
25 sited wind project, and adverse health effects are

1 not expected in the surrounding community.

2 Q. In your opinion, would there be any
3 significant long-term health effects due to noise
4 from the wind farm as described in the application
5 and at this hearing?

6 A. No, there will not.

7 Q. Dr. Wells also testified that -- she
8 stated that a shadow flicker study had been
9 completed for the wind farm. Have you reviewed the
10 results of this study?

11 A. I have.

12 Q. And that references a
13 30-hours-per-year-or-less standard for shadow
14 flicker at a currently occupied residence. In your
15 experience, is this 30-hour benchmark common?

16 A. So I've worked extensively across the
17 United States as well as in Canada, and in my
18 experience most jurisdictions do not have a shadow
19 flicker guidance ordinance or regulation. However,
20 for those that do, it is common to apply the
21 30-hour-a-year-or-less setback at occupied
22 residences.

23 Q. And are you aware of any study that links
24 shadow flicker from wind turbines with any negative
25 health effects?

1 A. No. In fact, published research in the
2 area indicates that shadow flicker is not a health
3 concern. However, given that flicker with
4 frequencies greater than three hertz can
5 potentially trigger seizures in people with
6 photosensitive epilepsy, this led some to be
7 concerned early on that wind turbines could
8 potentially cause this impact. However, turbines
9 with three blades would have to rotate at about
10 60 revolutions per minute to reach this three-hertz
11 level. However, the Brady Wind turbines have a
12 rotational speed of 17 revolutions per minute.
13 This is well below the rate that would possibly
14 trigger seizures.

15 To the best of my knowledge, there have
16 been no other published shadow flicker health
17 concerns in the scientific literature.

18 Q. And if the studies indicate that shadow
19 flicker is not a health concern, then do you know
20 what the basis of the 30-hour yearly standard is?

21 A. Yes. The Brady Wind is using a generally
22 accepted industry guideline of no more than
23 30 hours of shadow flicker per year at an occupied
24 residence unless otherwise agreed to by the
25 landowner. In my experience this 30-hour guideline

1 is not a health requirement, but it's merely used
2 as an attempt to limit nuisance to neighboring
3 properties.

4 Q. And in your opinion, does the Brady Wind
5 Energy Center meet the test for a properly sited
6 wind farm to avoid health effects?

7 A. Yes, it does.

8 MR. BJELLA: This would conclude our
9 direct testimony of Dr. Ollson.

10 JUDGE WARD: Questions for Dr. Ollson?
11 Mr. Pelham.

12 MR. PELHAM: Good afternoon, Dr. Ollson.

13 **EXAMINATION**

14 **BY MR. PELHAM:**

15 Q. I don't know if you can speak to this, but
16 there is some public input testimony about other
17 health effects; children with leukemia, for
18 example, was mentioned. Do you have any opinion on
19 that?

20 A. Yes. The childhood leukemia I believe was
21 referred to in association with the transmission
22 line and concerns around living in proximity to
23 transmission lines. Those concerns revolve -- and
24 we certainly heard them within the community and
25 addressed them, I believe, as we were with the

1 Stark County Planning & Zoning Commission and the
2 County Commission, and that is that there is some
3 very weak evidence or association that if you're
4 living right close in proximity to a transmission
5 line, there's some limited evidence that suggests
6 that it could result in childhood leukemia
7 increases.

8 However, the important thing to know about
9 this project and projects in general sited in -- in
10 transmission lines across your state is we don't
11 have health-based siting guidelines for
12 transmission lines, and that's simply because the
13 electromagnetic frequencies or fields that come
14 from -- that's the EMF that comes off the
15 transmission lines -- very quickly gets to
16 background levels within close distances to these
17 transmission lines.

18 And if we put it into context, here in the
19 room today -- the way that we measure EMF is what
20 we refer to as milligauss, so that's a unit of
21 measurement, milligauss. And in the room today
22 we're experiencing somewhere between one and four
23 milligauss of EMF in this room. It's coming from
24 the lights, it's coming from everything plugged in,
25 your computers, the microphone and the like. And

1 that's a very common level that we find in U.S.
2 homes, between one and four.

3 The closest residence to the T line or the
4 transmission line for this project will be
5 500 feet, and by the time you're 500 feet back from
6 a 230 kilovolt transmission line, you're down in
7 around the 0.5 or less milligauss at that level,
8 500 feet, so you're well below background.

9 So we don't anticipate any concerns around
10 the transmission line in health impacts from this
11 project. And maybe to go one further, both the
12 National Institute of Health and National Cancer
13 Agency here in the U.S. and the World Health
14 Organization have recently stated that they don't
15 believe that living in proximity to a transmission
16 line will unduly affect children's health, cause
17 cancer and the like.

18 Q. And so you testified as to the sound --
19 the standards of being 50 decibels. I'm just
20 wondering the -- what would some of the adverse
21 health impacts be if, for example, it was over 50?
22 I know it's not. I'm just curious as to what some
23 of these health impacts could be.

24 A. Yeah. So sound is a very well-studied
25 environmental concern, and sound is regulated

1 across the world and sound limits are imposed
2 similar to what you have here in order to ensure
3 that we don't end up in a health impact situation.

4 We know from the research that if you're,
5 for example, above 55 decibels for a prolonged
6 period of time, over long periods or a course of a
7 year or more, that once you get beyond that
8 55 decibels, regardless of what the source, whether
9 it's road, traffic, whether it's airport noise or
10 the like, that's when we start getting into a
11 myriad of issues.

12 The first is sleep disturbance. So what
13 we're trying to do and what I believe what your
14 state guidelines do with the county setback of
15 2,000 feet does, is limit the sound level to a
16 level by which people will be able to get a good
17 night's sleep. As you can imagine, if you're not
18 getting a good night's sleep, prolonged -- over a
19 long period of time, not just for a couple days or
20 a week because you're stressed out, it leads to a
21 whole host of things, including cardiovascular
22 disease, mental health challenges and the like. So
23 that's why we have these ordinances and these sound
24 levels to protect against known health effects
25 beyond those levels.

1 MR. PELHAM: Thank you, Dr. Ollson. I
2 don't have any other questions for you.

3 JUDGE WARD: Mr. Lein.

4 MR. LEIN: I have no questions.

5 JUDGE WARD: Mr. Collins.

6 MR. COLLINS: I have no questions.

7 JUDGE WARD: Commissioners. Commissioner
8 Kalk.

9 COMMISSIONER KALK: Thank you, Your Honor.

10 **EXAMINATION**

11 **BY COMMISSIONER KALK:**

12 Q. The -- thank you, Dr. -- you spelled
13 Ollson wrong.

14 A. I get that quite a bit, sir.

15 Q. Is that some Canadian spelling?

16 A. No. I think it was actually -- it was out
17 of the Michigan area at one point, but --

18 Q. Bunch of Norwegians down here, just so you
19 know.

20 A. That's right.

21 Q. Don't you know.

22 Okay. The only question -- I always learn
23 something in these hearings. Now I know what
24 milligauss is.

25 The -- but on a serious note, the -- you

1 talked about the body of research. Is that U.S.
2 research or is that in other countries, Europe and
3 Australia that -- where is this body of research
4 at?

5 A. Yeah. So the -- for the milligauss side,
6 they're really two separate issues, the
7 transmission line and the wind --

8 Q. We'll get to the transmission stuff later.
9 I just --

10 A. Yeah. Okay. So -- so if I focus on the
11 wind turbines themselves, the research really
12 started around 15 years ago or so over in Europe.
13 So the early research that we had was out of
14 Europe, mainly because European countries adopted
15 wind power and the utility-scale wind operations
16 quite a bit earlier than we did here in North
17 America.

18 So we had a researcher named Dr. Eja
19 Pedersen who conducted a lot of that work. A lot
20 of it came out of the Netherlands, Sweden, Norway,
21 those areas of the world. And what they were
22 trying to do is, back in those early days, around
23 the early 2000s into sort of 2008, 2009, is look at
24 what the appropriate sound levels would be. How
25 close can these turbines -- as they were getting

1 bigger in size, how close should they be sited to
2 people's homes.

3 Subsequent to that, there have been
4 studies done in the United States. One of the
5 areas that often comes up is this notion of the
6 decibel noise level that you regulate at is
7 50 decibels. That's the audible side. There was
8 some question early -- a few years ago about
9 whether the sound that we don't necessarily hear,
10 this infrasound or low-frequency noise that's also
11 emitted from turbines like any other mechanical
12 structure, whether it could cause problems.

13 And so there was work done in Texas by
14 Robert O'Neal and his group out of Epsilon
15 measuring and studying those issues. There --
16 recently the most comprehensive study that's been
17 conducted around the world to date was just
18 completed by Health Canada actually in two
19 thousand -- late 2014 and they continue to publish
20 on the research and their findings.

21 Q. Okay. So it's not just --

22 A. So most -- it's all over, including in
23 Australia, as well, sir.

24 Q. And you brought up Texas. I talked
25 earlier about Texas, wind is unregulated, so they

1 have a lot more wind down there than we'll even
2 ever approach to.

3 Explain to me this a little bit. I've
4 never heard the three-hertz negative effect equals
5 to -- well, I never heard that before.

6 A. Right.

7 Q. And then you said something about
8 17 revolutions per minute. Now that's got to be at
9 some wind speed.

10 A. So if I -- maybe the best thing to do
11 would be to take --

12 Q. I'm just trying to clarify to say if --
13 because I know these things usually kick off at 45,
14 50 miles an hour, so --

15 A. Right.

16 Q. -- at a maximum speed, would the rpms
17 equal what we should be concerned about with the
18 three hertz?

19 A. So no. If I take you to page 7 of my
20 report, under section 3.3, the shadow flicker, and
21 as everybody is kind of getting there, what it is
22 is that, yes, you are correct that they have --
23 both the wind turbines have a cut-in and a cut-out
24 speed. So as the wind picks up, the wind turbines
25 start spinning and they're spinning at a lower

1 rotational speed as they're just getting up to
2 speed, but at the maximum wind speed before they
3 cut out, the fastest that they'll ever spin is
4 17 revolutions per minute.

5 Q. Okay. So that's the high end?

6 A. That is the high end. And so once they
7 get up to speed and then they'll stay at that 17 --
8 give or take, 17 revolutions per minute.

9 What the three hertz and the 60
10 revolutions per minute is, the three hertz is the
11 flash frequency. I'm sorry for the court reporter.
12 I'm shaking my hand right now and making a flash.
13 That flash frequency -- so where this comes in is
14 that there is a subset of epileptics known as
15 photosensitive epileptics, and you may have
16 heard -- the common one that most people know about
17 is that there were some Japanese cartoons that were
18 on TV and all of a sudden really flashing, really
19 quick back and forth between frames, and the
20 frequency of that flash actually was over the 60
21 hertz. It was high enough to actually trigger a
22 seizure in these photosensitive epileptics.

23 So when you look at what -- that flash
24 frequency with the shadow flicker itself and as the
25 flicker is on the ground and you get the spinning

1 of the blade and you get this flicker effect, what
2 the concern was by epileptic groups around the late
3 2000s was to make sure, you know, is that flash
4 frequency enough to also trigger seizures.

5 And what the research that was done -- it
6 was mostly out of the United Kingdom, there were
7 two lead epilepsy researchers investigated this,
8 and what they said was to get to that three hertz
9 or that flash frequency on the ground with the
10 shadow flicker, that equates to these modern, large
11 wind turbines -- they would have to be spinning at
12 greater than 60 revolutions per minute to make that
13 shadow flicker on the ground exceed that
14 occurrence.

15 COMMISSIONER KALK: That's good,
16 Dr. Ollson. Thanks.

17 JUDGE WARD: Commissioner Fedorchak.

18 **EXAMINATION**

19 **BY COMMISSIONER FEDORCHAK:**

20 Q. Good afternoon. Thank you for being here.

21 Two questions. First of all, your studies
22 relate to impacts to people. Have you got any
23 similar conclusions for animals? I've heard some
24 concern in previous hearings and sort of a vague
25 reference to concern with some cattle in this

1 hearing and the potential impacts that the
2 wind-generation facilities have on those -- on
3 animals.

4 A. Yeah. There has been only a very limited
5 amount of research done and published in that area.
6 However, what I would point you to is that there is
7 well over 150,000 turbines up around the world, the
8 vast majority of which are located on agricultural
9 land. I mean if we come back to Texas, a perfect
10 example of a ranching farmland, and even here in
11 North Dakota where you have grazing cattle,
12 livestock, dairy herds, all living surrounding wind
13 turbines and, quite simply, we don't see it as
14 being an issue.

15 Q. Okay. And then we've never had an expert
16 in one of our hearings to talk about ice throw. So
17 can you spend a little bit of time talking about
18 that. How does it -- what's the risk? How does it
19 happen? How are the blades designed to minimize it
20 and, you know, what's the worst-case scenario on
21 that?

22 JUDGE WARD: Being Canadian, we expect you
23 to know a lot about this.

24 THE WITNESS: Well, absolutely. I think,
25 in fact, my climate's almost exactly identical to

1 yours here in North Dakota.

2 Q. (COMMISSIONER FEDORCHAK CONTINUING)

3 Paradise then; right?

4 A. That's right. Absolutely. It looks an
5 awful lot the same when you get off the plane.

6 If I take you to page 10, Commissioner, of
7 the report, there is a section on ice throw there.
8 Not being the engineer, but I'll give you my
9 understanding of how it forms and then, you know,
10 what then the risks are, is that under those
11 cold-weather conditions as you get the rain
12 freezing to the blades, you can get ice formation
13 and buildup on the blades.

14 I think the first thing that's important
15 to understand and what I understand from the
16 process in talking to the operational folks at
17 NextEra and many other companies, the turbines
18 don't like to have ice on them. They tend to get
19 out of balance, the blades and the harmonics, so
20 they actually shut themselves down or the company
21 will bring the turbines down. But regardless --
22 and so often what you'll get is when the ice is
23 formed, it will then more or less slough off at the
24 base of the turbine itself.

25 That said, as you do get icing conditions,

1 you can have this phenomenon called ice throw or
2 ice shed. It's referred to typically as both. And
3 the question has always been do -- for example,
4 your setbacks from roadways of 1.1 times the height
5 of the turbine to blade tip, are the setbacks from
6 people's property lines, from residences, from
7 outbuildings and that, are they sufficient enough
8 to protect against any ice that may be shed off the
9 turbines?

10 So what you see here and what I've
11 presented to the Commission in section 4.1 is, in
12 fact, there was a study done by a company named
13 Garrad Hassan in Canada. This was an international
14 company specializing in wind turbines and wind
15 turbine operations. And what they did was they
16 looked at four different scenarios. They looked
17 at -- and you can see that in this Table 4 where
18 scenario A was looking at a house that would be a
19 thousand foot away from a turbine. And, you know,
20 of course in this case we're at 2,000 feet.

21 The other thing that's important, and
22 maybe I'll just back up one second, is that the
23 type of turbines that they were looking at did have
24 a hub height of 80 meters, so the exact same hub
25 height that we're dealing with here, the utility

1 scale wind turbines that are being proposed.

2 So the first scenario was this thousand
3 foot from a home. The second scenario was located
4 650 feet from a roadway, so even closer than -- or
5 about the same distance, sorry, that you're looking
6 at here. And then the third scenario would be an
7 ever-present individual in the farm field within a
8 thousand foot of the turbines in the middle of
9 winter. So obviously it's a very conservative
10 scenario that's not going to happen. I mean
11 farmers are not out tilling the fields in the
12 middle of winter, the cattle are all in -- you
13 know, they're not going to be grazing in pasture at
14 that time.

15 So what they did was they looked at the
16 different, you know, shedding or ice throw events
17 and the potential for these things to strike the
18 various three scenarios. You'll see that they
19 estimated or they predicted that you'd have one ice
20 strike in 62,500 years for hitting a house in that
21 area being a thousand foot away. A turbine that
22 would be located 650 feet from a road -- this would
23 be a county-type road where you've got vehicles
24 traveling at 40 miles per hour -- that you'd have
25 one vehicle strike per 100,000 years of vehicle

1 travel. And then if you had an ever-present farmer
2 in the field, that you'd be at one strike in
3 500 years.

4 So really what this is meant to say is
5 that although ice throw does happen, it can occur,
6 that the odds or the probability of anybody
7 actually getting struck or any damage or car --
8 vehicle being hit are well below anything that we
9 would commonly assume as a risk. So that's why
10 the -- I believe your setback distances from
11 roadways and the like are appropriate and
12 protective of public safety.

13 Q. Okay. And recognizing that you said
14 you're not an engineer, are you aware of any --
15 anything that's included in the design of the
16 blades to prohibit ice from forming? Are they
17 designed in a way to resist that?

18 A. It probably would be better having one of
19 the NextEra folks answer that. I'm not sure of
20 this model exactly, whether the GE 1.7s do specific
21 ice formation issues. There are turbines out there
22 that certainly do have those issues built in and
23 they're able to deal with a cold weather package.

24 COMMISSIONER FEDORCHAK: All right. Thank
25 you. That's all my questions.

1 JUDGE WARD: Commissioner Christmann.

2 EXAMINATION

3 BY COMMISSIONER CHRISTMANN:

4 Q. Well, I always lament that we spend too
5 much time worrying about bats and not enough time
6 worrying about cows and horses, so I appreciate you
7 twice mentioning cows. That was kind of nice.

8 Do I understand you correctly that at
9 55 decibels is about the line where you would start
10 to have concerns about health --

11 A. We certainly --

12 Q. -- for prolonged periods?

13 A. We certainly know that above 55 decibels,
14 regardless of the noise source, that's where we do
15 certainly see issues occurring in a small set of
16 the population. Knowing that most major urban
17 centers you're going to be at 55 decibels or above
18 routinely, and so -- you know, if you're living
19 underneath a flight path or the like, but that's
20 where we know you definitely don't want to cross
21 that line of 55 and above.

22 Q. And so the setback here in Stark County is
23 2,000 feet. What kind of distance would we be
24 talking about where you would think that there
25 would be a reasonable likelihood that a neighboring

1 homeowner might reach that level of 55 decibels for
2 a prolonged period?

3 A. Right. I think the -- when you look at
4 the Stark County ordinance for distance setback as
5 well as your PSC statewide 50-decibel sound limit,
6 the two of them marry up or match up quite nicely.
7 If you're -- without even having to look at the
8 sound report, knowing that there's a 2,000-foot
9 setback, it would be almost impossible to cross
10 that 50-decibel threshold from a noise-modeling
11 perspective.

12 And so we -- you know, putting those two
13 together, you know that you're going to be less
14 than 50 decibels, especially since the sound models
15 are very conservative. They assume scenarios that
16 are not even realistic where, for example, all
17 homes within the project area, whether
18 participating or nonparticipating, when they
19 modeled the sound level predicted at that house,
20 they modeled from every turbine as if the wind's
21 blowing in all directions towards the home.

22 And so the sound -- cumulative sound level
23 from all turbines pointing at the home, that's that
24 48 decibels that I had indicated, and that when
25 they go to measure it later on, that's why we've

1 got very good confidence that the predictions in
2 the sound models will actually be below.

3 To get to the 55 decibels, there are --
4 there are counties in the U.S. that do have a
5 55-decibel noise ordinance or sound level. You
6 typically would have to be within about a thousand
7 foot of a turbine before you would get anywhere
8 close to that 55 decibels. So you'd be in a much
9 shorter distance and it would be very rare to see
10 that.

11 Q. But at a thousand feet you would start to
12 have concerns about that?

13 A. Yeah. I mean once you get into --

14 Q. Depending on other variables?

15 A. Yeah. And to be honest, once you go --
16 50 decibels and less is a good number to ensure
17 protection. Once you go beyond that, whether --
18 you know, coming right up to that 55 decibels,
19 you're getting close to that threshold and so, you
20 know, you don't really want to go too close down
21 that pathway.

22 Q. Do you agree with me -- and my kind of
23 theory on this has been that it's imperative that
24 we make sure that we're not at the line because if
25 we are and someone feels they are being impacted or

1 that it's louder than what the models showed and
2 there's a dispute about it, it's practically
3 impossible to ever determine what's causing that,
4 you know, because you stand outside and, you know,
5 is the breeze causing some of it or -- so do you
6 agree it's pretty tough to assign exactly what's
7 causing the level --

8 A. There were --

9 Q. -- of noise?

10 A. -- two parts I think to that,
11 Commissioner. The first is that I do agree that
12 you need to make sure that you do have a protective
13 setback and/or sound level to ensure protection of
14 people's health. And I think that secondary to
15 that is that that should be enforceable. And it's
16 my understanding having read the administrative
17 order and the directive here that you have at the
18 PSC, is that that 50 decibels is binding, that the
19 company is not allowed to operate over 50 decibels
20 100 feet from the home.

21 And if there's a dispute, if there's a
22 complaint or if there's somebody concerned about
23 their health -- and it does happen where people are
24 worried that the sound level is higher than what
25 they think it should be -- there's a number of

1 things that could happen there. The first is is
2 that often in my experience the operators, the O&M
3 building, so your head operator who is there, the
4 call complaint comes in, they'll go out and
5 investigate and they'll go look and see what's
6 happening. Oftentimes it could be something
7 mechanical with the wind turbine itself. It could
8 be, you know, something -- a door ajar, the gear
9 box isn't functioning correctly, and those are all
10 things they need to fix anyway because they want to
11 make sure of the protection of the turbine. But
12 often, you know, routine checking of the turbine
13 can actually alleviate that problem.

14 That said, if the sound level is over
15 50 decibels as required by -- by your Commission
16 and by the state, then there are -- there are
17 monitoring events that can occur to ensure that the
18 sound is actually at 50 decibels or less. So you
19 actually can do post-construction monitoring
20 where -- on a complaint basis where -- to discern
21 between what is the turbine and what is, as you
22 say, the wind. I mean as you well know, being very
23 windy here in North Dakota in this area of the
24 state, if you're standing outside on a windy day,
25 that could be 55, 60 decibels outside your home.

1 So it is important to be able to
2 distinguish between them and there are methods by
3 which the acoustical people can do that.

4 Q. If I pull out my decibel meter, would you
5 say that right now the conversation would be
6 jumping probably from 40 to 70?

7 A. The -- yeah. Absolutely. I mean the --
8 if I was to stop talking, just the hum that you
9 heard there in the room with the HVAC system going
10 and the like, it wouldn't surprise me that the room
11 right now is somewhere around 45 decibels. My
12 speaking into the microphone, we're certainly at
13 70 decibels, I would imagine, in the room. But I
14 would advise not just pulling -- we all have the
15 monitor on our iPhones and, you know, pulling out
16 the sound level meter. It can give you an
17 indication, but you really do need those acoustical
18 engineers who specialize in doing these sound
19 measurements to be able to ascertain whether the
20 turbine is in compliance.

21 COMMISSIONER CHRISTMANN: No other
22 questions. Thank you.

23 JUDGE WARD: Okay. Commissioner Kalk, did
24 you have something else?

25 COMMISSIONER KALK: I did, Your Honor.

FURTHER EXAMINATION

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BY COMMISSIONER KALK:

Q. Commissioner Christmann brought up something I forgot to ask.

The -- talking about the effects -- cumulative effects -- let give me you the scenario. You were here, I'm sure, when I talked earlier about, you know, nonparticipating landowners inside the project area, I've traditionally had more deference to them with their concerns than somebody outside the project area. But if you've got somebody inside the project area that's nonparticipating -- or it doesn't matter if they're participating or not. Someone that's inside the project area that is surrounded by turbines versus someone who has it just in one direction, how would that change the calculations or the -- anything? Does it change it?

A. Yeah. So I think it's very important to understand that, you know, with your -- with these two requirements for Stark County, one, their 2,000-foot setback from the homes, and then your PSC requirement of 50 decibels 100 feet from the home, it doesn't actually change anything in that whether -- let's say you were a home that was

1 located right in the center of the project.

2 Q. You literally have turbines around your
3 house at 2,001 feet.

4 A. That's right. And I believe, you know,
5 that's not the case here. I mean you do have --
6 there are a couple of homes, a handful of homes
7 that are just over the 2,000-foot setback to the
8 turbines, but most of them are located quite a bit
9 further back than that even.

10 But if you -- let's say hypothetically if
11 you were that one home that was 2,001 foot and you
12 had 10 or 15 turbines all around and -- at that
13 home, you still regardless cumulatively -- and what
14 the noise model does is pretend like the wind is
15 blowing at all directions from each one of those
16 turbines and the noise trailing downwind of that
17 turbine is at the house -- cumulatively that has to
18 be less than 50 decibels.

19 So we know that that is what we're trying
20 to set these bases on. We want to make sure that
21 cumulatively the sound levels are low enough and
22 below that 50 decibels to make sure protection
23 of -- whether it's participating or
24 nonparticipating. One of things that's unique
25 actually --

1 Q. Let push you on that point.

2 A. Sure.

3 Q. So this has all just been modeled;
4 correct?

5 A. That's right.

6 Q. So I suspect we'll have landowners come up
7 here and point to their specific property that
8 they're going to be concerned about noise. So when
9 you model that, how accurate is that and what if
10 it's wrong?

11 A. Right. So the sound report was conducted
12 by the acoustical specialists at Tetra Tech, and
13 they used a commonly accepted and
14 widely-used-around-the-world sound model to do this
15 modeling. That -- that sound model -- and this is
16 a concern that is raised quite a bit, Commissioner.
17 That sound model has been used and tested time and
18 time again.

19 And, for example, probably the easiest
20 example I can give you from most recent studies,
21 Health Canada, when they did their very large
22 \$2 million study, took 4,000 hours of sound
23 measurements at distances from turbines and then
24 they -- they used the modeling and then they
25 used -- they graphed it with their on-the-ground

1 actual measured results. And what they saw was
2 really good agreement and concordance between the
3 two.

4 So when they go back out and the
5 modelers -- yes, it's a model, but it's based on
6 real world data and making sure that they actually
7 accurately predict. So we do have --

8 Q. How do you -- we've had cases, not so much
9 a wind farm, but pipeline cases where they
10 testified just like you're testifying now, but we
11 went back out and measured it after the fact and it
12 was more, but then we could never identify exactly
13 where because you've got trucks going down the
14 road, you've got this, that and everything. If you
15 get to that scenario, how do you decipher where
16 it's coming from?

17 A. There is an acoustical engineer that
18 NextEra has brought to the hearing that may be best
19 suited to answer that, but what I can say is that
20 I've worked with a number --

21 Q. So that's the next witness that was going
22 to talk to that detail?

23 A. Actually, I'm not sure that she's
24 scheduled to be called, but she can come up if you
25 want. But I can tell you that having worked with a

1 host of projects right across North America,
2 having, as you say --

3 Q. You feel there's somebody that could do
4 that?

5 A. After the fact, there are. There are
6 techniques and methodologies that the acoustics
7 folks have, and the way that they typically deal
8 with it -- there's a whole variety of ways, but one
9 of the easier ones is turbines on and turbines off
10 in the same wind conditions under the same events.

11 Q. Last question till I think of one more.
12 The -- you're an expert. I don't dispute that at
13 all. If the home is in the middle of the wind
14 farm, several turbines around, are there any health
15 effects that could be construed -- could be
16 developed or what would be the major concern that
17 someone might develop living literally surrounded
18 by wind turbines?

19 A. Yeah. There's certainly -- I mean it's
20 not without concern, and, you know, if I was to sit
21 here and say, you know, go ahead and build those
22 wind turbines as close as you want to the homes,
23 don't worry about it, walk away, that would not be
24 prudent and I wouldn't be scientifically justified.

25 I think the first thing, again, is knowing

1 that you've got this 50-decibel sound level that we
2 need to keep things below that in order to ensure
3 protection of public health. What the -- often the
4 concern can be raised is -- and what we see in
5 literature and what we see in communities at times
6 is that you get what's called a heightened level of
7 annoyance by some people, and that's not to
8 diminish things. It's that they -- they -- you've
9 heard a lot about -- you will, I'm sure, this
10 afternoon about the visual aspects, about the not
11 wanting.

12 And so we see with like any other
13 environmental change and projects where you have
14 environmental change, there may be some who don't
15 want that change to occur and it will cause them a
16 heightened level of annoyance. So what we need to
17 do is try to make sure that from a health
18 perspective we're not exposing them to anything
19 that would actually result in health impacts. But
20 it's no different than -- you know, we've talked
21 about maybe gas turbine plants, coal plants and
22 that. When you're siting those plants, it's very
23 similar where you'll have some people that will
24 have that heightened level of concern and fear.

25 And so it's trying through education,

1 discussion, meeting with folks, going to public
2 meetings to allow them to understand that there's
3 nothing physical coming from the turbines
4 themselves that should cause them harm.

5 COMMISSIONER KALK: Okay. Thank you.

6 JUDGE WARD: Commissioner Fedorchak.

7 COMMISSIONER FEDORCHAK: I don't have any
8 questions for this witness per se unless he's the
9 last company witness. Are you re-calling anybody?

10 JUDGE WARD: Mr. Bjella, I think she's
11 talking to you.

12 MR. BJELLA: We had not planned on
13 re-calling anybody at this point.

14 COMMISSIONER FEDORCHAK: Then I'll just
15 ask him and you guys can decide what to do with it.

16 **EXAMINATION**

17 **BY COMMISSIONER FEDORCHAK:**

18 Q. I mentioned this morning interest in the
19 lighting system that reduced the nighttime
20 disturbance from the red lights and have since
21 learned that there actually are some systems that
22 are starting to become available and have even been
23 tested by the FAA that -- and I'm not sure if
24 they're approved or not, but I've seen some
25 literature that suggests that the FAA has approved

1 at least one or that it passed their test that
2 turns off unless there's a plane that comes near
3 it. And this test was -- actually the lights were
4 off 94 percent of the time. So I'd like to explore
5 that more with the company in terms of the
6 company's willingness to incorporate that
7 technology to tell us if it's available, if it's
8 not available. And I just don't want to let that
9 pass and assume that it's not available. I'd like
10 to know how that could be incorporated, if
11 possible, into this project if it's approved by the
12 FAA already and available for commercial use.

13 A. The only thing I can say to that,
14 Commissioner, is from the annoyance side I
15 certainly understand the concern about the red
16 lights and it's one that comes up often. I think
17 I'd have to leave it back to NextEra to
18 specifically comment. I do know, however, that
19 there have been -- companies have been working on
20 things like -- I believe what you're referring to
21 is a radar detection system with wind turbines that
22 allows them to understand if planes are coming
23 close by or not, on and off. To the best of my
24 knowledge, they haven't been approved, but, again,
25 that's something I think is probably best for

1 NextEra to deal with your comment or question about
2 whether they would move forward if it does -- if
3 these systems come in place by the FAA.

4 COMMISSIONER FEDORCHAK: Okay. I'm not
5 sure where to go with this, Zach, but I've learned
6 from previous hearings that when we ask for
7 late-filed exhibits, it's usually sort of a cursory
8 like, yeah, we looked into it, it's not available
9 and then it's over. So I'm not sure where to go
10 with that exploration. If maybe you guys can talk
11 at a break and see if, A, how we can get that on
12 the record and learn more about whether that
13 technology is available or how we might incorporate
14 or make a pathway for incorporating that down the
15 road.

16 JUDGE WARD: Let's just take a couple
17 minutes. We'll stand at ease where we are. We
18 won't leave the room or anything so counsel can
19 work that out.

20 THE WITNESS: So, Your Honor, am I off
21 then now?

22 JUDGE WARD: Well, you're still there for
23 the moment.

24 THE WITNESS: All right.

25 (Off the record.)

1 JUDGE WARD: Back on the record. My
2 understanding of the arrangement or discussion
3 between counsel is that Mr. Ollson is done and you
4 can step down -- Dr. Ollson, excuse me.

5 And, Mr. Bjella, you plan to re-call
6 Mr. Jason --

7 MR. BJELLA: Mr. Utton --

8 JUDGE WARD: I forget how to say your
9 last --

10 MR. BJELLA: -- to respond to Commissioner
11 Fedorchak's question.

12 JUDGE WARD: Yes. Okay.

13 MR. BJELLA: We call Jason Utton to the
14 stand.

15 JUDGE WARD: Okay. Mr. Utton, I'm just
16 going to remind you that you're still under oath.
17 You're still under oath.

18 THE WITNESS: Yes, sir.

19 JUDGE WARD: Okay. Commissioner
20 Fedorchak, do you want to ask the question directly
21 or would you prefer to have Mr. Bjella ask it
22 again?

23 COMMISSIONER FEDORCHAK: Sure. I can
24 restate it for the record.

25

1 **JASON UTTON,**

2 having been previously duly sworn, was examined and
3 testified further as follows:

4 **FURTHER EXAMINATION**

5 **BY COMMISSIONER FEDORCHAK:**

6 Q. I'm interested in pursuing this latest
7 technology for lighting that minimizes the visual
8 impact of the nighttime red lights blinking and
9 interested in knowing from the company if you are
10 able to include the -- if the FAA has approved any
11 other sorts of lighting systems that would trigger
12 when there's an aircraft in the area or a flock of
13 birds or whatever it is that needs to be alerted by
14 the lights and incorporate that into the project if
15 it's available or how we can explore that kind of
16 technology incorporated into this project either
17 from the beginning or down the road when it becomes
18 available.

19 A. Okay. I know that there is technology
20 like that that exists, but what I can't speak to
21 you today, Commissioner, is to the level of FAA
22 approval and if it's in the test phase or if it's
23 geographically isolated or if there are
24 stipulations around distances from certain
25 airports.

1 But I have already reached out to a few
2 folks that have a little bit more closer knowledge
3 of this. A lot of the -- because we have so many
4 of these throughout the country, this is something
5 that we hear and, you know, we're trying to figure
6 out is there a better way to do this. And what I
7 can commit to you is that very quickly I can find
8 out what the latest technology is, what is approved
9 by the FAA, if we're using it anywhere and then
10 kind of report back to you. I don't think it will
11 take very long because I've actually already got a
12 few folks that have stepped out to make phone
13 calls.

14 Q. And so are you talking yet today or are
15 you thinking a late-filed exhibit?

16 A. I think a late-filed exhibit, but I should
17 know more today. If you'd like, I can come back up
18 later and tell you what I've learned in, you know,
19 the next hour or so.

20 COMMISSIONER FEDORCHAK: Sure. Why don't
21 we do that.

22 THE WITNESS: Okay.

23 COMMISSIONER FEDORCHAK: We'll just get
24 the latest information that you have --

25 THE WITNESS: Sure.

1 COMMISSIONER FEDORCHAK: -- available from
2 your experts today and we'll talk about it here and
3 then we can determine how to -- how to proceed.

4 THE WITNESS: Okay.

5 COMMISSIONER FEDORCHAK: Okay. Thank you.

6 JUDGE WARD: While Mr. Utton is here, is
7 there anything else the commissioners wanted to
8 follow up with him?

9 COMMISSIONER CHRISTMANN: Your Honor, I
10 will say that I'm impressed that Commissioner
11 Fedorchak brought this up and I hadn't really heard
12 of that before. It sounds so logical to me. I am
13 going to be emphasizing, not just as she mentioned
14 earlier, the casual thing, well, you know, we
15 checked into it, it doesn't work and that's it --

16 THE WITNESS: No. No. Absolutely.

17 COMMISSIONER CHRISTMANN: -- and it's
18 something that we get the night before our vote.

19 THE WITNESS: No.

20 COMMISSIONER CHRISTMANN: I'm going to
21 insist on --

22 THE WITNESS: Yes, sir.

23 COMMISSIONER CHRISTMANN: -- something a
24 little bit thorough here.

25 THE WITNESS: Yes, sir.

1 COMMISSIONER CHRISTMANN: Not a little bit
2 thorough. Something thorough.

3 THE WITNESS: Thorough, yes, sir.

4 COMMISSIONER CHRISTMANN: Yeah. Thank
5 you.

6 JUDGE WARD: Okay. Mr. Utton, you can
7 step down.

8 MR. BJELLA: Your Honor, there was a
9 discussion earlier --

10 JUDGE WARD: Oh, go ahead. Do you have
11 something else?

12 MR. BJELLA: -- earlier today in our
13 Exhibit 2 and the fact that it was 2,000 feet from
14 any property line. So we do have an exhibit that
15 would show the result of a 2,000-foot setback only
16 from nonparticipating persons within this wind
17 farm. So at this point I would like to show that
18 to Mr. Utton and get that in.

19 JUDGE WARD: Okay. Sure. This will be
20 Exhibit 5?

21 MR. BJELLA: 5.

22 **FURTHER EXAMINATION**

23 **BY MR. BJELLA:**

24 Q. Okay. Jason, showing you Exhibit 5, was
25 this exhibit prepared by Brady Wind?

1 A. Yes, it was.

2 Q. And was it under your direction?

3 A. Yes.

4 Q. And can you describe what this depicts?

5 A. Sure. It depicts the current project
6 boundary, Brady Wind. It also depicts in gray what
7 it would look like if you imposed a 2,000-foot
8 setback -- if you reverted from a 2,000-foot
9 setback from nonparticipating homes to a 2,000-foot
10 setback from nonparticipating property lines.

11 Q. And demonstrating what then?

12 A. That the vast majority of the project
13 would be -- would be ruled out, all the -- the vast
14 majority of the turbine locations would be
15 excluded.

16 MR. BJELLA: We would ask to admit
17 Exhibit 5.

18 JUDGE WARD: Any objection, Mr. Pelham?

19 MR. PELHAM: No objection.

20 JUDGE WARD: Mr. Collins?

21 MR. COLLINS: No.

22 JUDGE WARD: Exhibit 5 will be admitted.

23 MR. BJELLA: I have no further questions
24 of Mr. Utton.

25 JUDGE WARD: Okay. Mr. Utton, I think

1 you're --

2 COMMISSIONER CHRISTMANN: Oh, I have
3 questions.

4 JUDGE WARD: Oh, questions about the
5 exhibit?

6 COMMISSIONER CHRISTMANN: Yes.

7 JUDGE WARD: Who's first? Okay.
8 Commissioner Christmann.

9 COMMISSIONER CHRISTMANN: Just I won't
10 blame the company for not having -- I won't blame
11 you guys for not having what I'm going to ask for
12 available because this would be something new. But
13 based on this and what we've kind of heard from the
14 questioning and some of the commenters in the
15 interim and what I expect to hear probably from the
16 intervenors in their request for the 2,000-foot
17 setback that we're discussing, so you've created
18 this, but I also heard from your witness that at
19 around a thousand feet you might expect to start
20 having health issues. So would you recreate this
21 at 1,000 feet from nonparticipating landowners.
22 And I'll just tell you why -- what I'm thinking on
23 it. If at a thousand feet you have serious
24 potential for health effects, then if we allow that
25 closer than the thousand feet from that

1 nonparticipating landowner, we may be kind of
2 eliminating their ability to develop that as a
3 potential residential site even though no residence
4 exists there now. So based on your witness'
5 concern of a thousand feet, I'd like you to
6 recreate this.

7 THE WITNESS: Okay. Yes, sir.

8 MR. PELHAM: And just to be clear for the
9 record, we would want to file that as a late-filed
10 exhibit, I believe is what the commissioner is
11 requesting?

12 COMMISSIONER CHRISTMANN: Correct. Yes.

13 THE WITNESS: Yes, sir.

14 COMMISSIONER FEDORCHAK: And just a
15 further clarification, are you talking a thousand
16 feet from property lines or from residences?

17 COMMISSIONER CHRISTMANN: I'm talking
18 1,000 feet from nonparticipating property lines.

19 THE WITNESS: Yes, sir.

20 COMMISSIONER FEDORCHAK: Property lines.

21 MR. BJELLA: If I may, Your Honor.

22 JUDGE WARD: You may.

23 MR. BJELLA: The -- the health expert
24 testified as to health effects of a thousand feet
25 from a residence. Here we're talking -- what you

1 just indicated, a thousand feet from a property
2 line, that's a big difference.

3 COMMISSIONER CHRISTMANN: It is. But as I
4 said, what I'm expecting to hear based on the
5 testimony from some of the people who testified
6 individually was their desire for the 2,000, but
7 even at 1,000 if that causes a problem, then that
8 means that land is no longer available as a
9 potential residential site as it is before the wind
10 turbine is built. So it may, in fact, be lessening
11 the property value if it becomes no longer
12 available as a potential residence.

13 MR. BJELLA: Yeah. We'll get that
14 exhibit.

15 COMMISSIONER CHRISTMANN: Okay.

16 JUDGE WARD: Okay. Anything else for
17 Mr. Utton? Okay.

18 THE WITNESS: Thank you, Your Honor.

19 JUDGE WARD: Yep. Mr. Bjella, do you have
20 another witness?

21 THE WITNESS: We have one more witness,
22 Your Honor.

23 JUDGE WARD: One more. Okay.

24 MR. BJELLA: His name is Chris Farmer.

25 THE WITNESS: Yeah. F-a-r-m-e-r.

1 JUDGE WARD: Okay. First name is Chris,
2 C-h-r-i-s?

3 THE WITNESS: Yeah. My full name is
4 Christopher.

5 JUDGE WARD: Raise your right hand.
6 (Witness sworn.)

7 JUDGE WARD: Thank you. And before we go
8 on, I just -- I think I see a few new faces out
9 there. If you're new to the room and you haven't
10 signed the sign-in sheet, somewhere there's a
11 sign-in sheet at the back of the room, somebody is
12 holding it up. Please sign in so we know you're
13 here. And I guess I'll just kind of -- it's a
14 little early, but we scheduled for five o'clock the
15 transmission line hearing. Is there anybody that's
16 here just for the transmission line yet? Okay.
17 I'll call out for that again around five o'clock,
18 please.

19 All right. Mr. Bjella.

20 **CHRISTOPHER FARMER,**
21 having been first duly sworn, was examined and
22 testified as follows:

23 **EXAMINATION**

24 **BY MR. BJELLA:**

25 Q. Please state your name and business

1 address.

2 A. My name is Christopher Farmer. I'm
3 employed by DNV-GL of 4377 County Line Road in
4 Chalfont, Pennsylvania.

5 Q. What is your position with DNV-GL [sic]?

6 A. I'm the principal biologist for
7 environmental and permitting services. I provide
8 avian and bat services for energy projects.

9 Q. And what is your educational background?

10 A. I received a PhD in ecology in 2002
11 followed by a post-doctoral fellowship in ecology
12 in 2004. Prior to my PhD, I received an MS degree
13 in science education and a B.S. in biology.

14 Q. And what is your professional experience?

15 A. I have 18 years of experience in
16 ecological research and management of wildlife,
17 including large mammals, birds and bats. My
18 primary focus at DNV-GL is on avian and bat studies
19 and conservation planning, with an emphasis on bald
20 and golden eagles.

21 I have been a member of eagle and
22 endangered species teams for wind and solar energy
23 projects in 20 different states. I am a founding
24 member of the Eastern Golden Eagle Working Group
25 and an associate editor for the *Journal of Raptor*

1 *Research.*

2 MR. BJELLA: We would offer the further
3 testimony of Dr. Farmer as an expert in avian
4 matters.

5 JUDGE WARD: Okay. I'll accept it. I
6 guess -- see if there's any objections.

7 Mr. Pelham?

8 MR. PELHAM: No objection.

9 MR. COLLINS: No.

10 JUDGE WARD: Okay.

11 Q. (MR. BJELLA CONTINUING) And, Chris, were
12 you involved in preparation of the application of
13 Public Service Commission Exhibit 1?

14 A. Yes.

15 Q. And what's the purpose of your testimony
16 today?

17 A. I provide testimony regarding the due
18 diligence that Brady Wind conducted with respect to
19 the potential for bald and golden eagles to be in
20 or near the project area, explain the results of
21 that due diligence and describe the outreach and
22 engagement that Brady Wind did with the United
23 States Fish & Wildlife Service and other agencies
24 regarding eagle issues.

25 I am focusing on eagles because Brady Wind

1 is aware that eagles have been of particular
2 concern to the Commission on other recent wind
3 projects.

4 Q. And what studies did you perform to
5 evaluate the potential impact of the project on
6 bald and golden eagles?

7 A. Brady Wind first identified federally
8 protected species with the potential to occur in
9 Stark County, North Dakota, based on review of
10 available records. That review indicated that
11 there is potential for bald and golden eagles to
12 occur within the project area, which are both
13 protected under the Bald and Golden Eagle
14 Protection Act.

15 Additionally, Brady Wind sent letters of
16 inquiry to the U.S. Fish & Wildlife Service, the
17 North Dakota Department of Game and Fish and North
18 Dakota Parks and Recreation Department regarding
19 eagle nest locations and potential wildlife impacts
20 in May and in August 2015.

21 The North Dakota Game and Fish provided
22 locations of known eagle nests in the vicinity of
23 the project in June 2015. Response letters
24 describing potential resource impacts were received
25 from North Dakota Parks and Recreation Department

1 in August and North Dakota Game and Fish Department
2 in September 2015.

3 Potential resource impacts, including
4 those to eagles, were discussed with the U.S. Fish
5 & Wildlife Service and North Dakota Game and Fish
6 Department in a December 2015 meeting. We followed
7 up on that meeting by providing shapefiles, maps
8 and survey reports to the U.S. Fish & Wildlife
9 Service and North Dakota Game and Fish Department
10 in January and February 2016.

11 Q. And once you determined that there is a
12 potential for bald and golden eagles to occur in
13 the project area, what further analysis did Brady
14 Wind conduct?

15 A. In April and May 2015, we conducted aerial
16 and ground-based surveys for eagle nests within ten
17 miles of another proposed wind project in the
18 county, which has since been canceled. In
19 June 2015, we received the locations of known eagle
20 nests within ten miles of the project from the
21 North Dakota Game and Fish Department. We also
22 conducted a raptor nest inventory within the
23 project area plus two-mile buffer in June 2015 and
24 again in November 2015.

25 In January and February 2016, we conducted

1 raptor nest surveys for the project area plus
2 ten-mile buffer. In addition, a spring raptor nest
3 survey is currently under way. We have also been
4 conducting eagle use surveys in the project area
5 every two weeks since August 2015. These surveys
6 are ongoing.

7 Q. And what were the results of the 2015 nest
8 surveys?

9 A. The North Dakota Game and Fish Department
10 provided locations of six known golden eagle nests
11 within ten miles of the project area. The nests
12 are located on large sandstone bluffs and are
13 approximately eight to nine miles to the northwest
14 of the project area, possibly indicating one to two
15 territories based on the spacing of the nests.
16 Brady Wind identified two known bald eagle nests
17 within ten miles of the project area in spring
18 2015. The nearest bald eagle nest is located
19 approximately three miles to the east of the
20 project in an isolated stand of trees surrounded by
21 agricultural habitat. The other bald eagle nest is
22 located approximately eight miles to the northeast
23 of the project along the Heart River.

24 No bald or golden eagle nests were found
25 within the project area or two-mile buffer

1 surrounding the project area during a ground-based
2 inventory conducted in June 2015 or the aerial nest
3 survey in November 2015.

4 Two groups of unoccupied large stick nests
5 were located during the November 2015 aerial nest
6 survey: A cluster of five nests 2.1 to 3.2 miles
7 from the project area and a single nest 5.9 miles
8 from the project area. All six of these unoccupied
9 nests were located on sandstone buttes, and the
10 nest spacing indicates that there may be one or two
11 raptor territories. These large nests are most
12 likely to be used by large raptor species such as
13 golden eagles or ferruginous hawks, and a golden
14 eagle was subsequently viewed perching in proximity
15 to the cluster of five large unoccupied nests in
16 December 2015.

17 Q. And what were the results of the January
18 and February 2016 nest surveys?

19 A. During the January 2016 nest survey, all
20 known nests within ten miles of the project area
21 were visited. The two bald eagle nests located
22 three miles east and eight miles northeast of the
23 project area were occupied. All other nests were
24 unoccupied.

25 Additionally, the January 2016 survey

1 detected three large stick nests south of the
2 project area, 8.0 to 13.3 miles from the nearest
3 turbine, and one additional large stick nest
4 associated with the six-nest cluster 8 to 9 miles
5 from the project area. All were unoccupied in
6 January 2016.

7 The primary objective of the February 2016
8 survey was to check the status of known and
9 potential eagle nests within ten miles of the
10 project area. Additionally, the status of known
11 prairie dog towns within ten miles of the project
12 was also checked.

13 The two known bald eagle nests east and
14 northeast of the project that were occupied in
15 January were still occupied during the February
16 survey. All of the known golden eagle nests and
17 the large stick nests located on sandstone buttes
18 to the northwest of the project area were
19 unoccupied. Two of the three -- two of the three
20 of the large stick nests located in trees to the
21 south of the project area were occupied based on
22 the addition of the fresh greenery added since the
23 January surveys. However, no eagles were observed
24 in attendance at these nests.

25 Three additional large stick nests were

1 found in close proximity, approximately 25 meters,
2 to the documented nests. These are most likely
3 alternate nests for the raptors using the occupied
4 large stick nests.

5 Q. And what were the results of the eagle use
6 surveys within the project area?

7 A. During 205 hours of general avian point
8 counts and eagle use surveys conducted to date, no
9 bald or golden eagles were observed.

10 Q. Were any eagles observed near the project
11 area but not during the surveys?

12 A. Yes. Those observations provide less
13 information about use of the area by eagles because
14 they were not systematically collected. Outside of
15 the systematic surveys, 11 bald eagles and 25
16 golden eagles were observed, either while the
17 biologist was traveling among survey points or
18 during nest surveys. Of these sightings, one bald
19 eagle and five golden eagles were seen within the
20 project area.

21 Q. And what other surveys related to eagles
22 have been completed?

23 A. Activity at prairie dog towns within ten
24 miles of the project area was surveyed during the
25 February nest survey. Prairie dog activity was

1 confirmed at one of the nine known prairie dog
2 towns within ten miles of the project. That colony
3 is located approximately nine miles southwest of
4 the project area. However, all of the prairie dog
5 towns appeared to be occupied based on the presence
6 of freshly excavated burrows and trails of
7 worn-down vegetation between burrow entrances.

8 Twice monthly ground-based observations
9 were begun in January 2016 to determine whether the
10 large stick nests 2.1 to 5.9 miles from the project
11 area are used by golden eagles, and ground-based
12 observations of the bald eagle nests nearest the
13 project area, three miles from the project area,
14 were begun in February 2016.

15 Q. What is the purpose of the spring raptor
16 nest survey currently underway?

17 A. The spring raptor nest survey is timed to
18 coincide with the breeding season for eagles, and
19 it will provide information on occupancy and
20 breeding activity at the known eagle nests and the
21 large stick nests within ten miles of the project
22 area. If the large stick nests are occupied, it
23 will also allow Brady Wind to identify the species
24 occupying them.

25 We have already located all of the eagle

1 nests within ten miles of the project and
2 determined that the project will not cause material
3 adverse impact to eagle populations in the area.

4 The spring raptor nest survey is intended
5 to clarify the occupancy status of the nests within
6 ten miles of the project. It is unlikely that any
7 new nests will be found during the spring survey
8 because eagles typically build nests in December
9 through February.

10 Q. Based on the presence of bald and golden
11 eagles in the vicinity of the project area, what
12 does that indicate to you?

13 A. Although bald and golden eagles have a low
14 likelihood of breeding within the project area due
15 to a lack of suitable nesting habitat, bald and
16 golden eagles nesting in the vicinity of the
17 project could potentially be present in the project
18 area when foraging or migrating.

19 Q. Given the results of these analyses, what
20 impact would you expect the wind facility to have
21 on eagle populations in the area?

22 A. It is unlikely that the wind facility will
23 cause material adverse impacts to eagle populations
24 in the area.

25 Q. Did Brady Wind discuss its analyses and

1 results with federal and state agencies?

2 A. Yes. Brady Wind provided shapefiles of
3 eagle nest locations from aerial raptor nest
4 surveys to the North Dakota Game and Fish
5 Department. Brady Wind and Tetra Tech met with
6 Kevin Shelley of the U.S. Fish & Wildlife Service's
7 North Dakota field office and John Schumacher of
8 the North Dakota Game and Fish Department in
9 December 2015. Mr. Shelley identified that this is
10 an area with wintering golden eagles, recommended
11 that we perform an eagle nest survey in January,
12 which was since conducted, and provided an input on
13 the type of analysis that should be included in the
14 project's bird and bat conservation strategy.
15 Brady Wind has since coordinated with Mr. Shelley
16 on the contents of the bird and bat conservation
17 strategy.

18 Q. And is Brady Wind implementing any
19 measures to avoid or minimize potential impacts to
20 eagles?

21 A. Yes. Brady Wind has designed the project
22 layout to site turbines and access road away from
23 wetlands and water bodies to the extent
24 practicable. Brady Wind will bury collection lines
25 from the turbines to the project substation and

1 late-filed exhibit in this case. Okay. All right.
2 No further questions.

3 JUDGE WARD: Mr. Lein, questions?

4 MR. LEIN: No questions, Your Honor.

5 JUDGE WARD: Mr. Collins.

6 MR. COLLINS: Just a couple.

7 **EXAMINATION**

8 **BY MR. COLLINS:**

9 Q. You indicated that you've moved roads and
10 turbines from wetland areas as practical --
11 practicable, but --

12 A. I think my -- my testimony indicated that
13 they were sited away from those as practicable.

14 Q. Right. But 30 of the 39 wetlands
15 identified are impacted by the project. Did you
16 know that?

17 A. I am aware of that previous testimony.
18 Yes.

19 Q. Okay. What do you consider significant
20 mortality levels which, if experienced, would merit
21 mitigation with regard to the bat population?

22 A. My testimony here pertains only to eagles.

23 Q. Oh, just eagles. I'm sorry.

24 If -- if we -- if you're wrong and eagles
25 are impacted, do you have a specific plan to

1 address it, Brady Wind?

2 A. I don't think I'm in a position to answer
3 that question. That's more of an operations
4 question for Brady Wind.

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

7 JUDGE WARD: Okay. Commissioners.
8 Commissioner Kalk, I know you love to talk about
9 eagles.

10 **EXAMINATION**

11 **BY COMMISSIONER KALK:**

12 Q. I love to talk about eagles. When the
13 company talked about the Commission has expressed a
14 desire, my two colleagues looked at me because I
15 created a lot of headaches for Rolette Wind Farm
16 because they had some eagles in the area and they
17 didn't -- they did the due diligence, but the
18 Service did not step up to the plate, so I --
19 that's my opinion. But I appreciate the work that
20 you've done with the Service.

21 You've met with Mr. -- with Kevin Shelley,
22 you've talked about things. And for me the big
23 thing that I gleaned at the previous hearings,
24 which is not part of this record, you know,
25 every -- the closest one is three miles to the

1 east. That's outside the normal range these things
2 roam. The other one is eight miles to the
3 northeast, so I would agree with your conclusion
4 that everything should be okay.

5 And the part about mitigation, if -- if
6 something would happen where there was eagles that
7 showed up in the area that didn't request a permit,
8 like Commissioner Fedorchak talked about, you would
9 certainly work with the Service on what their
10 mitigation plan is, I presume?

11 A. I believe Brady Wind would and they may
12 involve me as a consultant on that or not.

13 COMMISSIONER KALK: Because the Service
14 has a list of mitigation methods that we've looked
15 at for other wind farms that go out in the morning
16 and pick out carcasses and all kinds of different
17 things, so -- all right. Thank you.

18 JUDGE WARD: Commissioner Fedorchak.

19 COMMISSIONER FEDORCHAK: I don't have any
20 questions.

21 JUDGE WARD: Commissioner Christmann.

22 COMMISSIONER CHRISTMANN: Nor do I. Thank
23 you.

24 JUDGE WARD: Okay. Just one thing for the
25 record, how do you spell the town in Pennsylvania

1 that --

2 THE WITNESS: It's C-h-a-l-f-o-n-t.

3 JUDGE WARD: I have to say I've never
4 heard of that one before. Okay.

5 MR. BJELLA: That concludes our case, Your
6 Honor.

7 JUDGE WARD: Okay. Mr. Pelham.

8 MR. PELHAM: I don't have anything.

9 JUDGE WARD: Okay. Mr. Collins, it's time
10 for us to start with your case, but I think we'll
11 take ten minutes for a bathroom break and give the
12 court reporter a little break, stretch our legs,
13 and we'll start at 4:30 on that clock.

14 (Recessed at 4:19 p.m. and reconvened at
15 4:31 p.m.)

16 JUDGE WARD: We'll go back on the record
17 here and get settled back in. Thank you, folks,
18 for all your patience today so far. It's been
19 great. Great presentations so far.

20 Mr. Collins, we'll go to you and the
21 Concerned Citizens presentation. You can call your
22 first witness.

23 MR. COLLINS: Thank you. Your Honor, the
24 Concerned Citizens of Stark County calls Tom
25 Reichert, please.

1 JUDGE WARD: All right.

2 THE WITNESS: Good afternoon.

3 JUDGE WARD: Mr. Reichert, can you spell
4 your last name for the record, please.

5 THE WITNESS: R-e-i-c-h-e-r-t.

6 JUDGE WARD: Even I can spell Tom.

7 THE WITNESS: Thank you.

8 JUDGE WARD: Raise your right hand,
9 please.

10 (Witness sworn.)

11 JUDGE WARD: Thank you. Mr. Collins.

12 MR. COLLINS: Thank you, Your Honor.

13 **TOM REICHERT,**

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

16 **EXAMINATION**

17 **BY MR. COLLINS:**

18 Q. Mr. Reichert, could you give the
19 Commission your current -- you have two current
20 addresses; correct?

21 A. Yes, I do. I'm a -- I'm -- I have a home
22 in Dickinson at 318 18th Avenue West. I also have
23 a home south of Dickinson, about 13 miles, at 4474
24 107 Avenue Southwest, and I live there part-time.

25 Q. Okay. How far -- your second home, how

1 far is that from the project area, for the Brady I
2 project?

3 A. It's approximately five miles from the
4 northernmost boundary.

5 Q. What is your occupation?

6 A. I'm retired.

7 Q. And how long have you lived in Stark
8 County?

9 A. All my life. 66 years.

10 Q. And you're familiar -- well, you're being
11 called by the Concerned Citizens of Stark County.
12 What is your role in the organization?

13 A. I'm an officer. I'm the
14 secretary-treasurer.

15 Q. Can you tell the Commission why the
16 Concerned Citizens of Stark County was formed?

17 A. The organization was formed to organize
18 and educate Stark County residents regarding wind
19 farms and to protect our existing landscape and
20 quality of life in Stark County.

21 Q. And do you have a different mission or a
22 goal for the organization or is that basically it?

23 A. That's pretty much it. We want to protect
24 the natural beauty of the county, provide
25 education, but not only to the public but also to

1 the policymakers about wind farm generation and
2 wind farms.

3 I learned very quickly being involved in
4 this organization and attending some county
5 meetings that we all need to learn a lot, including
6 our county commissioners and planning and zoning
7 commission. They don't know a lot about wind power
8 generation and wind farms. And so part of our
9 mission is to educate everybody we can.

10 Q. Mr. Reichert, I've handed you -- well, let
11 me back up. How do you become -- how does one
12 become a member of the Concerned Citizens of Stark
13 County?

14 A. Oh, basically just to speak up and say
15 they want to be a member. We -- we wanted to
16 document our membership, so we -- we asked
17 everybody who wanted to become a member to make a
18 minimal donation of five dollars, and we provided
19 them with a receipt and we took down their name and
20 address. And based on that we provided -- we
21 prepared this list of documented members. We
22 really feel there's more than that, but we don't
23 have them all documented because we didn't start
24 this right away.

25 MR. COLLINS: Your Honor, we'd offer to

1 admit Exhibit A as the list -- current list of
2 members of the Concerned Citizens of Stark County.

3 JUDGE WARD: Mr. Pelham, any objection?

4 MR. PELHAM: No, Your Honor.

5 JUDGE WARD: Mr. Bjella?

6 MR. BJELLA: No, Your Honor.

7 JUDGE WARD: Exhibit A will be received.

8 Q. (MR. COLLINS CONTINUING) Approximately
9 318 current members. Is that about the right
10 number?

11 A. That sounds right, yes.

12 Q. Okay. How are the operations of the
13 organization funded?

14 A. Through donations by members and we've had
15 donations from nonmembers.

16 Q. Are there any paid members?

17 A. Paid -- no. You mean --

18 Q. As in --

19 A. -- paid for their services?

20 Q. Correct.

21 A. No.

22 Q. It's an all-volunteer organization?

23 A. It's an all-volunteer organization.

24 Q. Is the Concerned Citizens of Stark County
25 against the development of wind energy?

1 A. No. No. No. No. Not at all. In fact,
2 I doubt that there's anybody in this room that
3 could really say they're not -- they're against
4 green energy. We're specifically against the
5 Brady I wind farm as it's proposed.

6 Q. And why is that?

7 A. Well, there's a whole host of reasons, but
8 I -- I believe that the most important reason is
9 that we feel that the population density of this
10 area of Stark County is too great and as a result
11 there's too much intrusion, there's too much of a
12 problem with nonparticipating landowners in
13 southern Stark County.

14 And we also feel that Stark County
15 significantly contributes to the energy resource of
16 the state. We have significant oil production. We
17 already have an ethanol plant in Stark County. We
18 have a diesel refinery as well as several oil
19 transload facilities. And unlike many other
20 counties in North Dakota that already have wind
21 farms, Stark County is already struggling to meet
22 all the infrastructure demands of the recent
23 development of the Bakken. We're still struggling
24 to -- you know, to catch up and to get organized
25 and get a handle on the growth we've had over the

1 last several years.

2 In fact, I'd like to point out to the
3 Commission that in Stark County between the years
4 2010 and 2014, our taxable sales and purchases have
5 gone from \$500 million to \$1.5 billion. In other
6 words, we've tripled our economic process -- or
7 activity in this county in just four years, and
8 that's -- that's after having a lot of growth in
9 the years before that, in 2009, '10 and '11. So
10 we've already got a lot to handle.

11 And we've got a great increase in
12 population, and as a result we think that the
13 Brady I wind farm as proposed is too intrusive for
14 the population base in that part of the county.

15 And as we -- as we go around and hold our
16 meetings and educate people, we're finding more and
17 more people, once they find out what the wind farm
18 is all about, what Brady I is all about, what wind
19 farms in general are all about, they're -- they --
20 they are -- they're against it. We -- we -- that's
21 why we have such a great membership all of a
22 sudden.

23 And in 2015 *The Dickinson Press* actually
24 did a poll, just an informal survey, and
25 overwhelmingly the number of responses said they

1 were against a wind farm in Stark County.

2 Q. Mr. Reichert, I've handed you an exhibit
3 marked Exhibit B. I'd like to now talk to you
4 about some of the activities that you've done to
5 organize the Concerned Citizens. First off, what
6 is this document?

7 A. This is a petition that we drafted, and we
8 asked people to review it when they attended our --
9 our informational meetings, and if they were so
10 inclined, we asked them to sign it and provide
11 their mailing address, physical address and their
12 phone number as well as e-mail, which some did.

13 Q. And this petition is approximately 35-plus
14 pages and contains approximately 315 signatures; is
15 that right?

16 A. That's correct.

17 MR. COLLINS: Your Honor, I'd now move to
18 admit Exhibit B.

19 JUDGE WARD: Any objection to Exhibit B,
20 Mr. Pelham?

21 MR. PELHAM: No objection.

22 JUDGE WARD: Mr. Bjella?

23 MR. BJELLA: Could I just ask a couple
24 questions, Your Honor?

25 JUDGE WARD: Sure.

1 MR. BJELLA: Mr. Reichert, I guess you
2 testified that you had 318 current members. I
3 don't know if they're all depicted on Exhibit B,
4 but how many of these 318 either live within the
5 Brady Wind project area or within two miles?

6 THE WITNESS: I don't know the answer to
7 that. I really didn't go through it. They were
8 just people that attended our -- our meetings or
9 were presented the petition and chose to sign it.
10 So I don't know exactly. You could go through that
11 because all the addresses are on here, but I
12 couldn't tell you exactly how many are in that site
13 of the --

14 MR. BJELLA: Yeah. We -- well, you did
15 provide us the petition through discovery and we
16 did go through it.

17 THE WITNESS: Okay.

18 MR. BJELLA: And we counted 11 in
19 Belfield, 175 in Dickinson, 34 in Gladstone, 1 in
20 Hebron, 10 in Lefor, 9 in New England, 5 in
21 Richardton, 24 in South Heart, 25 in Taylor. So we
22 came up giving Lefor and New England credence, even
23 though they're a little distance away, so that's 19
24 out of 318.

25 THE WITNESS: Well, they're all -- they're

1 all citizens of Stark County.

2 MR. BJELLA: No further questions and no
3 objection, Your Honor.

4 JUDGE WARD: Okay. The exhibit will be
5 received. And it does have the addresses so a
6 person could look at that. You're making my bag a
7 lot heavier.

8 MR. COLLINS: Now I don't have to bring
9 them home.

10 JUDGE WARD: Okay. Mr. Collins, what are
11 we looking at, Exhibit C?

12 Q. (MR. COLLINS CONTINUING) Mr. Reichert,
13 what is Exhibit C?

14 A. Exhibit C is letters that are drafted to
15 the Public Service Commission for submission to the
16 Public Service Commission expressing the views of
17 the signor relative to the Brady Wind farm.

18 Q. And in anticipation of questions from
19 Mr. Bjella perhaps, can you explain people who may
20 have signed up for Concerned Citizens to join that
21 group, people who may have just chosen to sign a
22 letter and people who may have just chosen to sign
23 the petition, how did that work?

24 A. Well, it's kind of interesting because
25 some people said, yes, I want to become a member of

1 Concerned Citizens. Other people said, no, I don't
2 want to be a member, but I want to sign your
3 petition. Some people say, no, I don't want to
4 sign that petition, I don't like the way it's
5 worded or whatever, but they said, yeah, I'm
6 willing to sign that letter and send it to the
7 Public Service Commission. So we gave them three
8 different options. Some chose to do all three,
9 some chose to do one or two, some chose just one,
10 some didn't do anything, so --

11 Q. And Exhibit B --

12 A. -- it's just what people preferred to do.

13 Q. Exhibit B is approximately -- or the
14 number of letters contained there are in excess of
15 525 separate letters?

16 A. Yeah. I counted 526, and I think we have
17 more now and we continue to have people provide us
18 with letters.

19 JUDGE WARD: That's Exhibit C. You said
20 Exhibit B.

21 MR. COLLINS: I'm sorry, Exhibit C. And,
22 Your Honor, we'd move to admit Exhibit C.

23 JUDGE WARD: Any objection, Mr. Pelham?

24 MR. PELHAM: I just have a brief question
25 for you, sir.

1 THE WITNESS: Sure.

2 MR. PELHAM: Do you know, sir, if all of
3 these letters are identical? Are they all written
4 the same -- or the same format?

5 THE WITNESS: No. No. Because we --
6 we -- we drafted up suggested letters or suggested
7 wording, and some were for people who were inside
8 of the Brady -- Brady Wind wind farm, some were in
9 close proximity, some were just people who lived in
10 Stark County. So it's a -- I think we had actually
11 four different drafts.

12 MR. PELHAM: Okay. So depending on where
13 the person --

14 THE WITNESS: Yeah.

15 MR. PELHAM: -- was as they signed their
16 particular --

17 THE WITNESS: Their letter. And I -- I
18 assume there's some people that wrote their own
19 letters. Some people sent e-mails. Some people
20 maybe called commissioners. I'm not sure, but --

21 JUDGE WARD: Just kind of paging through
22 it, it looks like the first several hundred are
23 identical and then the ones that are different are
24 toward the back. Is that a fair understanding?

25 THE WITNESS: Yeah. I didn't -- I didn't

1 actually put together this pile, so I'm not quite
2 sure how it's organized.

3 JUDGE WARD: All right.

4 MR. PELHAM: I don't have any objection.

5 JUDGE WARD: Okay. Mr. Bjella?

6 MR. BJELLA: Just a few questions, Your
7 Honor.

8 JUDGE WARD: Go ahead.

9 MR. BJELLA: Again, Mr. Reichert, with
10 regard to the letters, how many of the signatories
11 to those letters did the people either live within
12 the wind farm or within two miles?

13 THE WITNESS: I don't know what the
14 numbers are. I don't know the breakdown. I assume
15 you probably do.

16 MR. BJELLA: Yes, we do. Yeah. We went
17 through it because it was provided through
18 discovery. You had 1 in Beach, 58 in Belfield, 253
19 in Dickinson, 8 in Fairfield, 47 in Gladstone, 5 in
20 Hebron, 4 in Killdeer, 14 in Lefor, 2 in Mott, 18
21 in New England, 4 in Regent, 10 in Richardton, 2 in
22 Scranton, 28 in South Heart, 33 in Taylor and 1 in
23 Wahpeton. So --

24 THE WITNESS: Okay.

25 MR. BJELLA: -- other than the Lefor and

1 the New England, it seems like everyone lives quite
2 a distance away. Would that be correct?

3 THE WITNESS: It -- yeah. Sounds like
4 that could -- we'll point out later that many of
5 the landowners in the Brady Wind farm boundaries
6 don't live there. They might live in Dickinson or
7 Richardton or someplace else, so --

8 MR. BJELLA: With that, Your Honor, no
9 objection.

10 JUDGE WARD: Okay. Exhibit C will be
11 received.

12 MR. COLLINS: Thank you, Your Honor.

13 Q. (MR. COLLINS CONTINUING) Mr. Reichert,
14 you mentioned some meetings that -- I'm sorry. You
15 mentioned some meetings that you conducted in some
16 of the communities. Can you describe what you did
17 there?

18 A. Okay. Well, over the last year or so,
19 this organization has held several public forums,
20 that's part of our mission, where the public was
21 invited to attend and hear -- and to hear from both
22 national experts as well as local citizens who
23 would speak about wind farms. We also invited
24 residents from other counties to come and speak
25 about their experiences and observations regarding

1 living in or near a wind farm. This net result is
2 that we all learned a lot about wind farms, and
3 that was the intent.

4 Q. There's some other actions that Concerned
5 Citizens have taken with regard to the local
6 approval of the conditional use permit. Can you
7 briefly mention that?

8 A. Yeah. Yeah. There's one other thing I
9 wanted to say. In the last month we had
10 specifically a meeting -- one meeting in Dickinson,
11 a meeting in Scheffield and a meeting in South
12 Heart, and we talked more specifically about
13 Brady I wind farm that we're talking about today.
14 And a lot of the letters and the petitions and a
15 lot of the membership was generated from those
16 three meetings.

17 The other actions that have taken place
18 since December 22 when the Stark County Commission
19 approved the wind farm we're talking about today is
20 we initiated a lawsuit as a result of what we feel
21 were violations of the open meeting rules as well
22 as the flawed process of the Planning & Zoning
23 Commission.

24 And I want to commend this Commission
25 because you've taken an entire day and probably

1 will go into the evening to hear a public hearing,
2 it's in a large room, there's a lot of people that
3 have been in and out all day and they've all had a
4 chance to come in and sit down and hear the
5 testimony and what's being said, and I presume
6 they're all going to have a chance to -- to voice
7 their opinion if they want.

8 And when I say flawed process, that didn't
9 happen with the Planning & Zoning Commission on
10 December 22. The hearing was limited to two hours
11 and people were limited to two minutes per
12 speaking. It was abruptly ended and then the
13 county proceeded to make their decision. So this
14 is good and that was not good, and that's why we
15 initiated the lawsuit.

16 Q. I have two other topics to talk with you
17 today on.

18 A. Okay.

19 Q. And that is one regarding the environment
20 around the wind farms and then the population
21 impact you discussed.

22 A. Okay.

23 Q. Let's go over the environmental aspects
24 you wanted to talk about, and that is related to
25 hunting near -- in or near the proposed wind farm.

1 A. Sure. Sure.

2 Q. And I understand that you're a hunter?

3 A. I am a hunter, yes. I've hunted all my
4 life.

5 Q. Okay. And what are -- what kind of game
6 do you go after?

7 A. I hunt big game, deer and a little bit of
8 antelope. I also hunt upland game, pheasants,
9 grouse, partridge.

10 Q. What experience do you have hunting the
11 land at or near the proposed wind farm?

12 A. Well, Pam and I bought our farmstead south
13 of Dickinson in 2002, and about that time I began
14 hunting in south central Stark County because
15 that's close to our farm and hunted there a lot
16 since and gotten to know a lot of the landowners
17 and neighbors, people who live in that area.

18 COMMISSIONER FEDORCHAK: Mr. Collins, we'd
19 be happy to just pass them down this way if you
20 want to do that just to save you the steps --

21 MR. COLLINS: Yep.

22 COMMISSIONER FEDORCHAK: -- and speed
23 things up.

24 MR. COLLINS: Thank you.

25 Q. (MR. COLLINS CONTINUING) Mr. Reichert,

1 Exhibit D, what is this document?

2 A. This is a plat map of Stark County of
3 Township 138-95, and there is some writing on that
4 under Sections 23 and 24 and 13, and -- do you want
5 me to go and explain the whole thing?

6 Q. Yeah. If you'd turn in two pages, there's
7 a warranty deed.

8 A. Right. There's a warranty deed, and what
9 this is all about is that a neighbor of mine --
10 we're in Section 17 on the same -- in the same
11 township. That's where Pam and I have our land.
12 And so our neighbor, she passed away earlier this
13 year, and since then have discovered that back
14 in -- I believe it's on the warranty deed, in 2014
15 Mrs. Roth donated approximately 1100 acres to the
16 North Dakota -- the State of North Dakota, to the
17 Game and Fish Department to be used for a wildlife
18 management area. And there's a warranty deed
19 that -- that discloses what was done, and then you
20 can see it on the plat map. And it happens to be
21 about two miles directly north from the
22 northernmost wind turbine.

23 MR. COLLINS: Your Honor, we'd move to
24 admit Exhibit D.

25 JUDGE WARD: Any objection, Mr. Pelham?

1 MR. PELHAM: No.

2 JUDGE WARD: Mr. Bjella?

3 MR. BJELLA: No, Your Honor.

4 JUDGE WARD: Okay. Exhibit D is admitted.

5 Q. (MR. COLLINS CONTINUING) What type of
6 game is expected to be present in this property
7 being donated?

8 A. Well, part of that land is just beautiful
9 wildlife habitat and it has probably all of the
10 game that exists in southwestern North Dakota, all
11 those types. You know, so there's deer and there's
12 antelope and there's pheasants and grouse and
13 partridge and I'm sure some various types of
14 raptors and -- and lots of nongame birds and
15 animals. It's just a beautiful area. And she kept
16 it up very nicely and they planted a lot of trees.
17 It's absolutely beautiful habitat.

18 Q. And as a hunter, what do you believe will
19 happen to this area and the area around the project
20 area to the -- to the wildlife for purposes of
21 hunting?

22 A. Well, if I understand your question right,
23 the North Dakota Game and Fish Department will
24 manage it as a game management area, so I -- I
25 suspect in the future there will be -- they will

1 allow hunting. I don't think that Mrs. Roth ever
2 allowed hunting on her land.

3 Q. And I -- that was a poor question.
4 Skipping forward with the construction of the Brady
5 Wind wind farm, as a hunter what do you see to be
6 the impacts with the operation of that wind farm to
7 your ability to hunt the land in and around the
8 wind farm area?

9 A. Well, I personally have a concern when it
10 comes to wildlife. Anytime we have any kind of
11 major construction, any kind of industrial --
12 industrialization of our land, and certainly this
13 wind farm I believe is going to impact wildlife in
14 and nearby the Brady I wind farm.

15 I'll give you a real personal example of
16 that. I spend quite a bit of time deer hunting
17 with a bow and so I sit in a deer stand, and it's
18 very interesting because when you sit in a deer
19 stand, you're waiting for the wildlife or the deer
20 to come to you. And after you do it for a while,
21 you learn when the deer move freely and when they
22 don't. And one of the times when deer don't move
23 very freely and maybe won't come out at all is when
24 there's a lot of noise around. And when you have a
25 lot of wind, you have a lot of noise, and when

1 there's noise, the deer can't protect themselves
2 because they can't use their sense of hearing to
3 know when there's danger about and whether there's
4 predators.

5 And I believe the same thing is going to
6 happen particularly with deer in and around a wind
7 farm because the turbines are going to create noise
8 all the time. All the time that they're turning --
9 we already know that. They're going to create
10 quite a bit of noise. And that noise is not a
11 natural noise and the deer are not going to be able
12 to use their sense of hearing and so they're not
13 going to move around very freely. And after a
14 while the deer are going to relocate because
15 they're not going to be able to go out and feed and
16 forage and do what they do when they're in a
17 constant noise area.

18 And -- and at one of our meetings we had
19 some -- a gentleman from up by the Beulah-Hazen
20 area that lived around a wind farm. Didn't have
21 any turbines on his land, but he had, I believe,
22 five turbines within a mile of his place. And he
23 noticed a significant decrease in wildlife activity
24 after the turbines were put up.

25 MR. BJELLA: Your Honor, I'm going to

1 object. This is hearsay.

2 JUDGE WARD: Sustained.

3 THE WITNESS: It's not hearsay. He told
4 us.

5 JUDGE WARD: It -- okay. I make that
6 decision.

7 THE WITNESS: Oh, okay. Okay.

8 JUDGE WARD: It's hearsay.

9 THE WITNESS: I'm sorry.

10 Q. (MR. COLLINS CONTINUING) Mr. Reichert, do
11 you have any -- you mentioned deer. Do you have
12 any similar feelings for upland game that you
13 regularly hunt -- regularly hunt?

14 A. No, I don't. Other than when you have
15 noise and activity, you disturb the wildlife and
16 they're -- I doubt that they'll be as plentiful,
17 but I have -- I have less convictions about my
18 opinion when it comes to the upland game, but I
19 feel pretty strongly about the deer population.

20 Q. I want to turn to the next topic and then
21 we can finish up, and that's the -- what you've
22 looked at for the impact this wind farm could have
23 on the existing population. I understand you
24 believe that Stark County is not the same as some
25 of the other counties that the PSC has approved for

1 wind farms, and I want to have you explain to the
2 PSC why you believe that.

3 A. Well, Stark County, I believe, is probably
4 the sixth-most populated county in the state of
5 North Dakota. There's 53 counties. There's
6 somewhere over -- it's estimated over 32,000
7 residents in Stark County as of 2015, and that's
8 a -- that's a population density of 18 per square
9 mile. When you start to look around the state of
10 North Dakota, many of the other counties that have
11 wind farms have population densities that are down
12 in the range of -- well, there's one county
13 southwest of us has a population density of .6
14 residents per square mile, and I looked at some
15 others farther to the east and they're 3.8
16 residents per square mile. Adams County, which
17 is -- I know you struggled with that wind farm a
18 couple years, that has a population density of 2.4
19 residents per square mile.

20 So there's a big difference. Dickinson --
21 Stark County and the city of Dickinson and this
22 area has experienced a lot of growth and there's a
23 lot of people that have moved into the area and
24 many of these people have chosen to -- to live in
25 the rural setting, and so there's a lot of -- of

1 small tract landowners out in all parts of Stark
2 County, particularly in southern Stark County, and
3 we also looked at that with regard to the Dickinson
4 Wind farm east of Dickinson. And so there's a lot
5 of people -- a lot of people that are impacted by a
6 wind farm and they are not participants.

7 Q. What have you found as it relates to the
8 population of southern Stark County with regard to
9 small tract owners?

10 A. Okay. Well, I did two things. I took the
11 2012 plat book because that's what I had available.
12 I couldn't find anything that was any more recent,
13 and I -- and then I looked at an area south of
14 Dickinson and then I chose a boundary on the west,
15 which would be a line straight south of South
16 Heart, which is kind of on the west end of the
17 Brady I wind farm, and then for the east side or
18 boundary I chose the Enchanted Highway, which is
19 south of Gladstone, it goes through Lefor and it's
20 just on the east side of the Brady I wind farm, all
21 the way down to the Stark County southern border.
22 And I eliminated any homes that are in a city,
23 which would be -- in this case it would be Lefor or
24 Scheffield. Also eliminated the area directly south
25 of Dickinson that had some subdivisions that were

1 in close proximity to Dickinson, they're kind of
2 like a suburb of Dickinson. So I didn't count
3 those residents either.

4 But I found that there were 471 occupied
5 homes and 373 small tract landowners. And what I
6 mean by small tract landowners is that they're
7 shown in the plat book -- not in the -- in the
8 regular plat book, but they're designated down
9 below as being small tracts because they just don't
10 fit up in the regular part. So I just counted
11 them, and I counted up 371 tract -- small tract
12 landowners in southern -- southern central Stark
13 County.

14 Q. And did you look at those in relationship
15 to the landowners who have chosen to issue an
16 easement for the turbines themselves?

17 A. Yes, I did. Yeah. What I did is -- or we
18 did -- I got some help -- but we listed all of the
19 people who we believe have signed an easement, they
20 have a turbine and participate in the Brady I wind
21 farm, and we came up with 36 landowners. And this
22 is exclusive of the transmission line. This is
23 just wind turbines. We came up with 30 separate
24 different -- 36 separate landowners.

25 We then looked to see how many of those

1 landowners lived in the Brady I wind farm
2 boundaries or immediately adjacent to, and we found
3 out -- found that 50 percent of the participants in
4 the Brady I wind farm are what I call absentee
5 landowners. In other words, they don't live there.
6 They live in Dickinson or someplace else.

7 The other 18, or 50 percent, actually live
8 in or around the Brady I wind farm. And what I
9 thought that was significant about that is there is
10 471 residents in south central Stark County and
11 there's only 18 of those residents that are
12 participating in the wind farm. The rest of these
13 people, a lot of them are small tract landowners
14 and they don't want a wind farm. They've told us
15 that. They live out there because they want the
16 rural aesthetics associated with living in rural
17 Stark County.

18 MR. BJELLA: I'm going to have to object.
19 That's hearsay.

20 JUDGE WARD: Yeah. It's already out of
21 the barn.

22 MR. COLLINS: I'll move on, Your Honor.

23 Q. (MR. COLLINS CONTINUING) Mr. Reichert, of
24 the 18 landowners who are participating in allowing
25 the turbine to be on their property and that do not

1 live in the siting area, how many turbines account
2 for those 18 landowners?

3 A. I counted 53 turbines. 53 of the 87.

4 Q. So 61 percent of the turbines are on
5 property of landowners who actually don't live in
6 the project site; is that right?

7 A. That's correct.

8 Q. And what -- this information about small
9 tract owners and the number of folks there, what
10 year -- what plat book year were you using?

11 A. 2012.

12 Q. Being a landowner in this area, does the
13 year of that plat book make a difference in your
14 mind?

15 A. Absolutely. I think there's a lot of
16 activity that has occurred since 2012. I think
17 there's a significant more residents in rural Stark
18 County since that time, but I can't speak to
19 exactly how many. I --

20 Q. Well, you went back to the 2005 plat book;
21 right?

22 A. I did. I did. Just because I was curious
23 how many small tract landowners there were before
24 we had all the oil activity. And what I found was
25 that -- back in 2005 I counted 255 small tract

1 landowners in this same area that I was just
2 talking about. And then again in 2012 I found
3 there were 373 or 118 more small tract landowners
4 in the last seven years between 2005 and 2012.
5 That's about a 46 percent increase. It shows you a
6 trend. There's a significant increase in the
7 number of people that are buying small tracts of
8 land in rural Stark County and building homes.

9 Q. There could be some complaint about your
10 sample size, that it's too large. Did you do --
11 did you look at a smaller area to kind of examine
12 the small tract owners and not such a large area?

13 A. Well, I broke it down by townships, so I
14 do have that. And if you eliminate Township 139,
15 which is the northernmost part of this area, it's
16 still -- it -- Township 139 encompasses I-94 and
17 Dickinson, South Heart and Gladstone, and then it
18 runs down about five miles south of the interstate.
19 So if you eliminate that township and then you
20 counted residents and small tract landowners in
21 Townships 137, which is where the wind farm
22 actually exists, and 138, which is right on the
23 edge of part of the wind farm, then I found that
24 there were 247 occupied residents -- residences and
25 there were 140 small tract landowners. So still

1 what I felt was still a significant amount of
2 people who live in southern Stark County near or
3 around or in the wind farm.

4 Q. And why did you -- my last question would
5 be is why did you focus on the small tract
6 landowner?

7 A. Well, because I kind of relate to that. I
8 mean Pam and I are small tract landowners. I mean
9 we own -- we went out in southern Stark County and
10 bought 125 acres with an old dilapidated farmstead
11 and some pasture because we wanted to live in a
12 rural setting. And so we bought that small tract
13 of land, fixed up the farmhouse, fixed up the
14 farmstead, planted 6,000 trees, and we love it out
15 there because we have benefit of all the aesthetics
16 of living in the rural environment. We have great
17 landscape, peace and quiet, lots of wildlife, and
18 it gives me a chance to live outdoors or in the
19 outdoors.

20 MR. COLLINS: That's all the questions I
21 have.

22 JUDGE WARD: Okay. Mr. Bjella, any
23 questions for Mr. Reichert?

24 MR. BJELLA: Just a few, Your Honor.
25

EXAMINATION

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BY MR. BJELLA:

Q. Well, you did quite a bit of land work there. You indicated 50 percent live within. How many live within two miles then; do you know?

A. Explain that a little better to make sure I understand what you're asking.

Q. Okay. 50 percent live within the footprint. Okay. That's half. How many live within two miles? How many more live within two miles?

A. Participants?

Q. Yes.

A. I didn't find any more. Every -- the 18 that I said were participants that live in the wind farm boundaries, I said they live in or in close proximity to the wind farm. So I -- 18. The 18 -- the other 18 that have the 53 turbines, they don't live within three miles of the wind farm. They live farther away. Okay. Is that -- does that help you?

Q. Well, we anticipated your -- this line of questioning.

A. Okay.

Q. And we did our own independent study --

1 A. Okay.

2 Q. -- you know, and we found 50 of the 60
3 participants live within Stark County, and you've
4 done a lot of work here. We found 50 percent
5 within 10 -- 10 more within two miles, 6 within
6 rural Dickinson, 12 in Dickinson, 2 in New England,
7 3 in Richardton-Taylor.

8 MR. COLLINS: I'm going to object to the
9 mischaracterization of his testimony. Mr. Reichert
10 made clear he was talking about participants who
11 only had turbines. Mr. Bjella's question is
12 expanding that to be including people who are
13 participating with the transmission lines and the
14 collection lines and all the other; correct?

15 JUDGE WARD: Yeah. I'm not sure I
16 understand whether we're talking apples and oranges
17 here or what.

18 MR. BJELLA: Well, no, Your Honor, I don't
19 think we do. I guess I'm just -- he's trying to
20 make a point about how many live within the area or
21 nearby, and --

22 JUDGE WARD: How many what?

23 MR. BJELLA: Participating landowners.

24 JUDGE WARD: Okay.

25 MR. BJELLA: And we have numbers that

1 dispute what he says.

2 JUDGE WARD: Okay.

3 THE WITNESS: Well, I have a list of
4 every -- I have a list of every landowner and the
5 location of every one of their turbines, and I --
6 and you -- this was done back in December so, you
7 know, if you changed things, those changes aren't
8 there and I could be maybe off one or two. But I
9 came up with 36 separate landowners that have
10 turbines, and that includes individuals, a couple
11 farm partnerships. There was an estate or two and
12 there was at least one trust, and we counted each
13 landowner as one. And so if it was joint tenancy
14 of a husband and wife, we counted that as one. If
15 it was a partnership with five partners, we counted
16 that as one landowner, and we came up with 36
17 different landowners that have a turbine. And we
18 accounted for all 87 turbines. So I -- I just
19 can't reconcile between 36 and 60.

20 JUDGE WARD: Mr. Bjella, you can ask the
21 witness a question --

22 MR. BJELLA: Sure.

23 JUDGE WARD: -- or you can call a witness
24 later to refute it.

25 MR. BJELLA: Yep.

1 Q. (MR. BJELLA CONTINUING) How many of the
2 participating landowners live within Stark County?
3 Did you figure that out?

4 A. No.

5 Q. Aren't these landowners, whether they live
6 right within or adjacent or live in Dickinson,
7 aren't they entitled to sign a wind easement if
8 they want to for their property?

9 A. I don't have any problem with that. I
10 just wanted to point out that they -- they don't
11 have to experience the intrusion of the turbines
12 that they sign up for, 50 percent of them don't,
13 and I think that's important for the commissioners
14 to know. And I think there's a trend there. I
15 think people -- landowners are more apt to
16 participate in a wind farm when they don't have to
17 be in immediate proximity -- not live in immediate
18 proximity to that same wind farm.

19 MR. BJELLA: Nothing further.

20 JUDGE WARD: Okay. Mr. Pelham, questions
21 for Mr. Reichert?

22 **EXAMINATION**

23 **BY MR. PELHAM:**

24 Q. Mr. Reichert, you had testified earlier
25 that *The Dickinson Press* did an informal survey.

1 I'm just wondering, sir, if you know whether or not
2 that was a scientific poll that was done or if it
3 was just online that people voted or --

4 A. Well, I said in my testimony that I
5 thought it was informal because I suspect it wasn't
6 scientific. I don't think they have a pollster or
7 anybody go out and do it. I think that's exactly
8 what it was. I think they just said, Hey, if you
9 have -- if you are for or against, send us an
10 e-mail or --

11 Q. Sure.

12 JUDGE WARD: I was waiting for an
13 objection to that, but didn't have one, so --

14 MR. PELHAM: Well, I was wondering. I
15 have no further questions.

16 JUDGE WARD: Okay.

17 MR. LEIN: No questions.

18 JUDGE WARD: Any redirect, Mr. Collins?

19 MR. COLLINS: No, Your Honor.

20 JUDGE WARD: Commissioners, questions
21 for --

22 COMMISSIONER KALK: Oh, absolutely. Tom's
23 been waiting all day. You have --

24 THE WITNESS: Oh, geez.

25 COMMISSIONER KALK: -- to get your money's

1 worth, don't you, Tom?

2

EXAMINATION

3

BY COMMISSIONER KALK:

4

Q. All right. The -- okay. I'll kind of
5 jump around here a little bit. I don't mean to,
6 but it's just kind of the course of it. And this
7 first one is not a gotcha, but I just want to make
8 sure that I'm clear.

9

 On Exhibit A, on page 2 there's two Diane
10 Binstocks located -- listed and two Dustin Buckmans
11 located and then page 3 there's two Gary Kranks.
12 Are these just duplicates or are they actually two
13 people with the same name in several different
14 spots?

15

A. No. I'm sure they're just duplicates.

16

Q. Okay. It's --

17

A. Yeah. Yeah.

18

Q. -- not a big deal. I just want to --

19

A. I -- again, you know, this is all
20 volunteer work and it's not perfection.

21

Q. Yep. Yep. Just wanted to double-check.

22

A. Okay. Thanks.

23

Q. Then a couple -- down the road here we'll
24 go. Do you think that Basin Electric needs the
25 power?

1 A. I think they need -- think they need the
2 power for someplace, and I was hoping this morning
3 that somebody would ask if Basin Electric needs the
4 power, where do they need it? And this is a very
5 simplified idea of what Basin Electric is all
6 about, but I kind of compare them to a trucking
7 company. They're buying a commodity, generated
8 power, and they're reselling it, some of it in
9 North Dakota and a lot of it they truck out of the
10 state, export it out to other areas. And I believe
11 that Basin Electric makes more money when they buy
12 more power and resell more power. And, you know,
13 that's what they should do. But -- and I did my
14 research on Basin Electric. I looked on the
15 website. I talked to a gentleman at Basin Electric
16 and I tried to understand a little bit about, you
17 know, what their business is, what their business
18 model is and what they do and how much power they
19 generate, how much power they buy and what they do
20 with it, because every time we went to a NextEra
21 meeting and we talked to NextEra people, you could
22 never get a clear, I think, candid answer as to
23 where the power goes.

24 And it's obvious. As the one gentleman
25 said, it's like water. It -- you can't identify

1 it. And North Dakota only needs so much power. If
2 we generate more than that, it gets exported. And
3 North Dakota is the sixth largest exporter of power
4 in the nation. Basin Electric, I believe the last
5 year I looked, exported over a thousand megawatts
6 of power to other states, and that was during the
7 peak of the oil boom. And so they don't need it
8 for North Dakota, but they need it. They need it.
9 They feel they need it, I assume; otherwise, they
10 wouldn't buy it.

11 Q. I just wanted to get your opinion.

12 A. Okay. Well, you got it.

13 Q. Okay. The -- and let's suppose Basin does
14 need power in the future, which they will at some
15 point, and some would argue they do now. I'm not
16 going to go down that road.

17 A. Yeah, but where do they need it?

18 Q. Well, do you have a preference about coal
19 power versus wind power versus solar versus natural
20 gas? Would Concerned Citizens of Stark County be
21 back here again if -- let's just say this gets
22 rejected, thrown out and the next year we're back
23 here to site a 150 megawatt natural gas plant.
24 Would Concerned Citizens of Stark County not want
25 to look at that big thing too?

1 A. Well, I don't think we'd have as much
2 problem with that. I -- I -- I personally believe
3 that North Dakota should concentrate on what we've
4 already invested heavily in, and that is in our
5 carbon fuels. I mean we've spent a lot of time and
6 money and we have a big labor force that works in
7 the coal industry. I think we should support that.
8 I think we should support the oil industry. We
9 have water generation.

10 Q. Hydro.

11 A. I think we should utilize that. And I --
12 well, you didn't ask this, but I'm going to say it
13 anyhow. I firmly believe that wind-powered
14 generation should be done offshore like it's done
15 in Europe. The Europeans are well ahead of us in
16 terms of wind power generation, and all their new
17 wind farms are going offshore. There's no impact
18 to the population. They're more efficient. They
19 have the technology. And that's what we should be
20 doing in the United States. And I predict that
21 someday that's exactly what we're going to be doing
22 here. When we really need wind power in a big way,
23 we're going to go offshore and put in the wind
24 farms and generate them.

25 Q. I'm just trying to get a feel.

1 A. Yeah. But -- and -- and I like the idea
2 that there's a little bit of balance that we don't
3 put all our eggs in one basket.

4 Q. The -- let me go through -- you're the
5 secretary/treasurer of Concerned Citizens of Stark
6 County?

7 A. Yep.

8 Q. And I want to thank you for getting
9 involved. I used to teach at North Dakota State,
10 and I used to always tell the young students that,
11 you know, nobody pays attention to young people
12 because they don't get out and vote and do
13 anything. Well, you guys are doing something.
14 You're making your --

15 A. Thank you.

16 Q. -- voice heard --

17 A. Thank you.

18 Q. -- so I do appreciate that.

19 The -- tell me the update -- now, this is
20 a separate jurisdiction, I understand, but the
21 County Commission has approved this. Did you
22 testify in front of the County Commission?

23 A. I testified in front of the Planning &
24 Zoning Commission, which is appointed by the County
25 Commission. They held a public hearing and I

1 testified at that, at a couple of them.

2 Q. So they've heard this similar story or
3 is --

4 A. Yep, they have. Some of it, yeah. Yes,
5 they have.

6 Q. Okay. The -- you talked about there's a
7 lawsuit, and I understand this is not necessarily
8 tied to this hearing, but it's all kind of related.

9 A. Yep.

10 Q. The -- I actually just read this morning
11 that that lawsuit -- the judge basically had sided
12 with the Commission -- the County Commission. Is
13 that wrong or right?

14 A. Well, I hope I say all this right, but,
15 yeah, the judge dismissed the lawsuit that we
16 filed, and then the judge basically told us that we
17 should take a different track to resolve the issue
18 with regarding to our alleged violations. An
19 administrative appeal, I think that's the term.

20 Q. I just wanted to clarify that.

21 A. So it ain't over yet is what --

22 Q. Sure. And just for those listening and --
23 I mean they're separate decisions. Certainly, you
24 know, the company, if it's approved, they can't
25 build this thing unless the PSC would approve it

1 and the county would approve it and all these other
2 layers.

3 A. Yeah.

4 Q. So it's not like -- I just want to make
5 sure that's very clear.

6 A. Yep. That's correct.

7 Q. Okay. The property rights. You're a
8 landowner.

9 A. Yes.

10 Q. How can I tell someone who wants a wind
11 farm on their property, that the County Commission
12 has approved it, that they can't put a wind farm
13 there?

14 A. That's a really -- that's a very good
15 question and that's a tough question, and I firmly
16 believe that every property owner, including
17 myself, has property rights. And in the same time
18 we have property responsibilities, and we can't do
19 things on our land that intrude or infringe upon
20 our neighbor's property. And that's precisely why
21 we have planning and zoning. That's -- that's --
22 that's why we have those issues that come before
23 those kind of bodies, so they can decide is this
24 okay for this landowner to do, or this activity,
25 can he conduct this activity, and does it coincide

1 with what the neighbors are doing. And that's why
2 I can't go out on my hundred acres and build a
3 subdivision. I have to go to the county and say,
4 Is it okay, county, if I change the zoning of my
5 land from agricultural to -- to multi-housing or
6 whatever it is. And so that makes -- that's why
7 this whole issue is so tough.

8 Q. And then I'll expand a little bit. In my
9 opening comments I talked about a previous wind
10 farm hearing I was involved in where basically it
11 was a crop duster.

12 A. Yep.

13 Q. There was his -- his landing field was
14 adjacent to the wind farm, a little bit to the
15 west, and he made a very compelling case that by
16 putting those wind turbines on someone else's
17 property, it affected his business of crop
18 dusting --

19 A. Exactly.

20 Q. -- a safety concern, so we made a decision
21 there. But in this particular hearing, what I've
22 heard is that there's concerns about view shed, but
23 I'm missing that it's affecting someone's business,
24 it's affecting something -- I won't say tangible,
25 but maybe that -- I'm trying to find what is it

1 that they're taking away from you by having that
2 turbine -- view shed I'll give you, but what is it
3 they're taking away here?

4 A. Well, you said the visual pollution. You
5 know, it's not going to affect me personally, but
6 if you're closer, it's going to affect -- you know,
7 there's going to be some noise pollution. Property
8 values. I'm very concerned about property values
9 in my own investment.

10 Q. Okay.

11 A. I go out and buy a dilapidated farmstead
12 and I pay above-market value for a small piece of
13 land. I spent a lot of money to improve it, put
14 all those trees and fix up an old farmhouse and I'm
15 basically a hobby farmer. I'm not out there making
16 money, but the only way I'm going to get my money
17 or my heirs are going to get their money out of my
18 investment in rural Stark County is if some other
19 fool like me comes out and wants to buy a hobby
20 farm. And they'll do that unless all the rural
21 aesthetics have been taken away. If my farm --
22 little farmstead ends up near or in a wind farm, my
23 property value is going to go right through the
24 floor.

25 Q. Okay. So you're pointing to something

1 there that I can make a note of.

2 A. Yeah. And -- and when they do -- when
3 NextEra does an analysis of property values, they
4 never compare my kind of investment. They always
5 talk about agricultural land and how the value
6 hasn't changed. If they looked at my kind of
7 investment in and around wind farms, they'd find
8 out that the property values decline tremendously
9 because other people like me aren't going to invest
10 in my kind of property. They're going to go where
11 it's pristine and where there's beautiful landscape
12 and peace and quiet and all the things you just
13 can't have on a wind farm.

14 Q. The last question that I'll ask, I think
15 for now, is -- I'm not trying to start a fight here
16 okay, Tom?

17 A. Okay.

18 Q. But I have to ask the direct question.

19 A. Sure.

20 Q. The -- you said that your group, Concerned
21 Citizens of Stark County, is not against wind
22 farms. I heard you say that.

23 A. Yes.

24 Q. Okay. But then you're telling me that the
25 view shed's a concern. What is the distance that

1 you can't see these wind turbines? If there's a
2 policy decision to put wind farms in a state, these
3 buggers can be seen 30 miles away. So how do we
4 begin to rectify that and what is a distance --
5 what is the parameters that Concerned Citizens of
6 Stark County would support a wind farm?

7 A. Well, I think -- I think the view shed is
8 a concern and that's a tough one too. On the right
9 day you can see --

10 Q. See a long ways.

11 A. -- you can see one a long ways away and at
12 night you can see the devil's eyes flashing at you
13 from a long ways away. We see them on the
14 interstate all the time. And -- but more
15 importantly, I really think the biggest concern
16 about Stark -- Concerned Citizens of Stark County
17 is the setbacks, and there's been a lot said about
18 that, but there's two issues. One --

19 Q. Could you -- could you clarify what
20 exactly you would think the appropriate setbacks
21 would be?

22 A. Well, number one, it should be from the
23 property line.

24 Q. How far?

25 A. I believe a mile.

1 Q. Okay.

2 A. And I believe if -- if you have a one-mile
3 setback from the property line, you eliminate the
4 easement trespass that you have and you -- and I
5 think Mr. Christmann pointed it out, you know,
6 you -- you don't have the use of your land if the
7 setback is from the -- an existing dwelling,
8 because any future dwellings, like the house my son
9 wants to build next to mine, could be in that
10 protected zone.

11 But, secondly, if it's a mile setback,
12 then you eliminate all these other questions about
13 sound and -- or really diminish the concerns about
14 sound, noise and shadow flicker. And maybe it
15 gives you a little more relief in terms of the view
16 shed. And I believe there's areas in this country
17 where you can build wind farms like the Brady I
18 wind farm, have a one-mile setback from the
19 property line and still have a viable wind farm,
20 because you have to go to an area that is sparsely
21 populated, that has large landowners who are
22 willing to participate. And you can do it. But
23 you can't do it in Stark County. You can't even --
24 I don't believe you can even do it with our
25 setbacks, which we believe are inadequate.

1 COMMISSIONER KALK: Thank you, Tom.

2 THE WITNESS: Thank you.

3 JUDGE WARD: Thank you. Commissioner
4 Fedorchak.

5 If I may, I said I was going to make this
6 announcement at 5 o'clock. It's 5:30 already. Is
7 there anybody who is here just for the transmission
8 line hearing that was scheduled for 5 o'clock? If
9 you are, raise your hand so I can see.

10 COMMISSIONER FEDORCHAK: One, two, three.

11 JUDGE WARD: There are a few. Okay. Just
12 for the transmission line. Okay. We're going to
13 go on here for a little while and then we'll --

14 COMMISSIONER FEDORCHAK: Maybe finish this
15 witness and then --

16 JUDGE WARD: We'll finish this witness and
17 I guess maybe we'll go with the transmission line
18 hearing for a little while.

19 Okay. Commissioner Fedorchak.

20 **EXAMINATION**

21 **BY COMMISSIONER FEDORCHAK:**

22 Q. Thank you, Tom.

23 A. Thank you.

24 Q. Most of -- Commissioner Kalk covered a lot
25 of questions that I have.

1 A. Okay.

2 Q. But I'll just take another angle at some
3 of them. I appreciate that you appreciate the
4 struggle we have with superseding individual
5 property rights with the rights of others who are
6 impacted with what goes on there. It's a tough --
7 it's a really tough one. And you've talked a lot
8 about the fact that there are more and more people
9 moving out to these small tract lands -- areas,
10 hobby farms, et cetera. Where are they -- how are
11 they getting that land?

12 A. I think a lot of them get land just like I
13 did. You know, we -- we identified a family -- a
14 farm family who had retired and moved to Dickinson
15 and they rented out their land, but they -- they
16 were -- the couple was elderly and they could no
17 longer keep up the old family farmhouse and the
18 farmstead, you know, and the dead trees and all
19 that stuff.

20 Q. So you bought it from the existing?

21 A. Yeah. So we buy the -- the problem area
22 that they own, you know, the farmstead, and they
23 keep the rest of the farmland and they rent it out
24 and it's a nice situation for them, but they got
25 rid of the place -- the part that had the -- had

1 all the problems and the maintenance.

2 Q. So --

3 A. So I think that happens a lot. In fact,
4 that's part of the balance because a lot of the
5 farmers who -- who buy more and consolidate, a lot
6 of these farmsteads become abandoned and they end
7 up in the hands of people like Pam and I.

8 Q. So you were able to buy a smaller tract --

9 A. Yeah, a hundred --

10 Q. -- from the farmer who had --

11 A. -- acres, and it's not farmland. It's
12 just pasture and the farmstead.

13 Q. And others are maybe separating some of
14 their land into smaller tracts?

15 A. Sure. Yeah.

16 Q. What if their neighbors didn't want a
17 bunch of smaller tracts near them and increased
18 population density out in that area, then what?

19 A. Well, that's --

20 Q. Who decides that's allowed and isn't
21 allowed?

22 A. Yeah. Commissioner, that's why we have
23 zoning and that's why the Stark County ordinances
24 say Tom Reichert can't come out and buy a hundred
25 acres and turn it into five-acre tracts. That's --

1 that's -- that's to protect the rest of that area.

2 Q. And so the local zoning folks figure that
3 out and work through the process and come up with a
4 plan?

5 A. Yep.

6 Q. And in this case the local zoning and
7 approval process gave this a green light.

8 A. Yes.

9 Q. So are you suggesting that we should have
10 more authority than the people living right here
11 who are elected by the people living right here and
12 can be thrown out of office by the people living
13 right here; we should supersede that decision and
14 that whole process?

15 A. Yes. Because I also think that you have
16 to look at the bigger picture and that's the whole
17 state of North Dakota and that someday -- someday
18 you have to decide, okay, North Dakota, how many
19 wind farms are too many for North Dakota and is
20 there a balance between wind farms and need. And,
21 secondly, you -- you have to -- you have to oversee
22 the county's process and say, Did they do it right?
23 I mean -- and I'm not talking about the open
24 meeting rules, but is it appropriate to have the
25 Brady I wind farm in southern Stark County or are

1 there better places in North Dakota? Because you
2 look at the big picture and say are there better
3 places for wind farms to be.

4 Q. Well, actually I appreciate that you think
5 we can do that, but we don't have either of those
6 pieces of jurisdiction to look over what the county
7 did and say it was right or wrong. We don't have
8 that authority.

9 A. But --

10 Q. And we also don't have the power in our
11 Siting Act to make the balancing decisions of
12 this -- it's appropriate here, it isn't there. The
13 legislature has laid out what the criteria are for
14 these projects, and that is a policy decision that
15 probably needs to be made in North Dakota, but the
16 legislature has not done that yet, provided those
17 guidelines for how much wind is enough and where
18 should we have it and should we have some caps on
19 this. Those have not been determined.

20 A. But don't you -- don't you have to
21 generally look out for the well-being of the -- of
22 the citizens in the United States? That's right in
23 your --

24 Q. We have to look at minimal adverse effects
25 on the environment, which we've spent a lot of time

1 going through. Welfare of the citizens of North
2 Dakota.

3 A. Okay. That was my point. Welfare of the
4 citizens of North Dakota.

5 Q. Yep. Compatible with environmental
6 preservation, efficient use of resources, ensuring
7 continued system reliability and ensuring that
8 energy needs are met and fulfilled in an orderly
9 fashion. Those are six general criteria, but not
10 just one, I mean all of them in balance.

11 A. Yep. Okay.

12 Q. So this is -- this is a big issue that is
13 going to need some attention by policymakers, but
14 we do not. I just want to be clear that we
15 don't --

16 A. Okay.

17 Q. -- have that authority right now --

18 A. Okay.

19 Q. -- under law to make some of those
20 determinations that you outlined.

21 Did you pursue that one-mile setback with
22 the county? Did you pursue that?

23 A. Yes, we did. In fact -- and I think other
24 people will speak to it, too, but we actually went
25 to the county Planning & Zoning and asked them to

1 form a committee to look into the ordinances,
2 particularly the setback, and see if it's really
3 appropriate. And they agreed to do that. They
4 appointed a committee. They had two committee
5 meetings. Never heard from them again. Very
6 frustrating.

7 Q. Okay. But they didn't approve it.
8 They --

9 A. No.

10 Q. They kept it at the 2,000 feet --

11 A. Right.

12 Q. -- correct?

13 And do you have any specific research --
14 we've heard this before in wind hearings, but we
15 haven't ever gotten any data, like hard data on the
16 impact of wind development on property values.
17 There's been projects all over the country. I have
18 to believe that somebody has done that kind of
19 research, but you haven't seen any?

20 A. I can't present anything. I can just use
21 my own knowledge and common sense --

22 Q. Right.

23 A. -- own experience.

24 COMMISSIONER FEDORCHAK: Okay. Okay. I
25 think that concludes my questions. Thank you, Tom.

1 THE WITNESS: Thank you.

2 JUDGE WARD: Commissioner Christmann.

3 EXAMINATION

4 BY COMMISSIONER CHRISTMANN:

5 Q. Regarding the one mile -- regarding the
6 mile from property lines --

7 A. Yes, sir.

8 Q. -- I'm looking at your place on here, I
9 believe it's the southwest -- almost a quarter of
10 Section 17 in this Exhibit B?

11 A. Yeah. That's correct. Yep.

12 Q. So being involved in production
13 agriculture myself, I'm going to tell you it's not
14 a secret that I have a concern about oversaturation
15 of wind energy in North Dakota. I also have a
16 long-standing, like more than a decade, concern
17 about oversaturation of small tract landowners all
18 over the place impeding production agriculture. If
19 we were able to grant your wish, would that -- do
20 you think it should also apply to -- I see probably
21 10 or 12 different names on tracts of property
22 within a mile of your parcel. Should they have
23 been able to veto that and potentially keep you out
24 of there and keep it in production agriculture so
25 maybe a family farm could continue to grow and stay

1 in production agriculture?

2 A. You remember, you know, I -- I -- we
3 bought a farmstead and pastureland, and so we're --
4 we're not impeding on --

5 Q. But you're within a mile of some other
6 people that may --

7 A. Yeah. But I don't --

8 Q. -- not like small tracts.

9 A. I don't -- I don't impede on my neighbor
10 in terms of their cultivating their land or
11 anything.

12 Q. You talked about wildlife a lot. Some
13 people think that the oversaturation of people
14 causes wildlife problems. Some of these neighbors
15 might think if there were less population density,
16 they would have better hunting, just like you feel
17 if there's no wind farm, you'll have better
18 hunting.

19 A. Well, I would disagree with that because I
20 spent all my time and effort increasing the
21 habitat, so I do just the opposite. That --
22 that -- we can go on all day about that.

23 Q. These aren't my favorite terms but they're
24 commonly used. Are you familiar with the terms
25 greenfield and brownfield development?

1 A. No. Explain that to me.

2 Q. Generally, you know, it's an issue of
3 should you keep building kind of in the same areas,
4 essentially brown field, you know, tear something
5 down and put something new there, as opposed to
6 just always going out and --

7 A. Oh, yep. Yep.

8 Q. -- communities growing and --

9 A. Yep.

10 Q. So in that argument you talked about that
11 if there's going to be wind development, it should
12 be somewhere in less densely populated areas;
13 correct?

14 A. Correct.

15 Q. In various conversations I've had over the
16 years with my friends in more rural, less densely
17 populated areas, they tell me, Put this stuff over
18 closer to the towns where there's already lights
19 all over and everything, put it in the essentially
20 brownfield area and at least save some areas of
21 rural North Dakota to be truly rural. Is that a
22 fair argument for them to make, that perhaps this
23 is exactly where a wind farm ought to go?

24 A. Well, that's why we have a lot of national
25 parks and state parks too.

1 Q. But Mr. Wanner, that's where he wants the
2 wind farm.

3 A. No. He's just -- I'm sure he doesn't. He
4 just posed the question.

5 Q. I'm not sure which -- which public person
6 it was that testified to it, but talked about
7 their -- their farming operation and their children
8 and such. And do you think that some of the
9 participating landowners view this as a
10 diversification of their agriculture enterprise, a
11 way to bring in some extra cash flow and really
12 view what they're doing here as part of their
13 agricultural enterprise?

14 A. Absolutely. I -- and I understand that.
15 I think there's -- I have -- I have a neighbor
16 who's probably inclined to have a wind turbine if
17 he was offered that because he looks at his land as
18 a -- as an investment piece of property that
19 generates income. And if he can find another
20 source of income, that's okay with him. And -- and
21 so I understand that, you know. People have
22 monetary motivations for doing what they do and I
23 understand that, but it's also a balance, and --

24 Q. But --

25 A. -- just because I've got a hundred acres,

1 you know, if I really wanted to optimize my
2 investment, why wouldn't I have a nuclear waste
3 dump field on my hundred acres or an oilfield
4 graveyard on my -- on my hundred acres? Well, I
5 suspect if I went to Planning & Zoning and said I
6 wanted to have a -- some kind of a waste field out
7 there, I'd be turned down because it would be
8 assumed that that would impede on the -- on my
9 neighbors. It would --

10 Q. Okay. And you make a valid point. But
11 the point I was trying to get at is --

12 A. Yeah, and I acknowledge that.

13 Q. -- is it appropriate, though, for folks
14 such as yourself who essentially live in town but
15 you want a little piece of nature so you go out and
16 buy a spot to then impede in the agricultural
17 enterprises of people a mile away from you?

18 A. Yes, I do, because I -- I feel that what
19 they do on their land has to balance with how I use
20 and enjoy my land.

21 Q. But they should not get to intervene and
22 someone such as yourself buying a hundred acres
23 somewhere from a different neighbor within a mile
24 of --

25 A. No. Unless I do something on that land

1 that impedes the use of their land.

2 Q. Well, when you impede the use of their --

3 A. Well --

4 Q. -- you're kind of doing that, aren't you?

5 A. Yeah. But I have rights too. I have
6 rights as a property owner. I have rights not
7 to --

8 COMMISSIONER CHRISTMANN: Okay. Thank
9 you, Mr. Reichert.

10 THE WITNESS: And I understand.

11 JUDGE WARD: Okay.

12 THE WITNESS: That's why this is so darn
13 difficult.

14 JUDGE WARD: My job is difficult, too,
15 because I have to decide what the heck we're going
16 to do. And we've been going for almost 11 hours, I
17 think, and so we're going to take a little break
18 here. It's a quarter to. Let's take ten minutes,
19 and during that time I'm going to try to figure out
20 what we're going to do about whether we can
21 possibly finish this tonight, start the other
22 hearing, or what exactly we're going to do. So
23 we'll make that announcement when we come back in
24 about -- let's say five to, if we can get it done
25 that fast.

1 (Recessed at 5:46 p.m. and reconvened at
2 6:00 p.m.)

3 JUDGE WARD: We're going to go back on the
4 record here, and we -- I have checked. There's
5 about a handful of people here for the transmission
6 line hearing. We don't expect that to take too
7 long. They don't seem -- there doesn't seem to be
8 opposition to the transmission line and it
9 doesn't -- they don't seem to mind waiting. So for
10 the time being, we're going to forge ahead on the
11 wind farm with Mr. Collins' next witness.

12 The only thing I would say -- I -- I --
13 I'm assuming you're done with Mr. Reichert. Maybe
14 I'm wrong. Do you have redirect for Mr. Reichert?

15 MR. COLLINS: No.

16 JUDGE WARD: Okay. Okay. Mr. Reichert, I
17 think you can step down. I would just ask that,
18 again -- and I said this earlier as part of the
19 public input -- it's really getting late. I think
20 everybody's getting a little tired and everybody's
21 been wonderfully patient, but if you would at
22 least, you know, in the course of testifying or any
23 additional public input, try not to repeat, you
24 know, statements or arguments that have already
25 been suggested. That will help us expedite getting

1 this done because we're still committed to trying
2 to finish tonight, but we are going to have to take
3 somewhat more frequent breaks for our court
4 reporter because we've really put her through a
5 long day. It's hard enough to listen, but to
6 listen and get down verbatim what everybody is
7 saying is extremely difficult.

8 Okay. Mr. Collins.

9 MR. COLLINS: The Concerned Citizens call
10 Jon Wert, Your Honor.

11 JUDGE WARD: Sir, would you spell your
12 last name.

13 THE WITNESS: Wert is W-e-r-t. And for
14 the record, Jon is J-o-n.

15 JUDGE WARD: J-o-n.

16 THE WITNESS: Right.

17 JUDGE WARD: Would you raise your right
18 hand, please.

19 (Witness sworn.)

20 JUDGE WARD: All right. Mr. Collins.

21 **JON WERT,**

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

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EXAMINATION

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BY MR. COLLINS:

Q. Mr. Wert, could you give us your current address.

A. My address is 5860 112th Avenue Southwest and that's New England.

Q. Do you own property in Stark County?

A. I do.

Q. Where approximately in relationship to the wind farm project?

A. It's in the wind farm footprint. It would be one of those gray areas, I guess, that is on that earlier map.

Q. Okay. What is your occupation?

A. I'm a farmer.

Q. What do you farm?

A. We farm -- and I appreciate Commissioner Christmann's comment earlier about the cattle. We don't have any cattle on our farm. It's strictly grain.

Q. What type?

A. It's all small grains and canola. It's basically all cool season crops.

Q. And what does that mean, cool season crops?

1 A. So cool season crops are crops that are
2 predominantly grown in southwestern North Dakota.
3 The reason would be basically because of our
4 elevation. Our farm lies anywhere from 2600 feet
5 to 2900 feet in elevation, and what that does is it
6 shortens the growing season. And it limits our
7 ability to raise warm season crops, like corn or
8 soybeans. You just don't see much of that out in
9 this country. So it's mostly wheat, canola, flax,
10 anything that -- peas is another crop that does
11 well here.

12 Another thing, too, I guess I would like
13 to say is when I say that it's a cool season area,
14 we average about six degrees cooler at night than
15 Fargo does, Dickinson does -- in Fargo in the
16 months of May, June and July, and that's basically
17 because of our elevation. So it steers what crops
18 we're growing.

19 Q. Okay. And as cool season crops, what are
20 the primary things that impact your yield?

21 A. That would be heat, temperature, humidity,
22 evaporation, moisture, of course.

23 Q. How many acres do you farm?

24 A. We farm 13,000 acres about.

25 Q. Okay. And you obtained a degree from

1 NDSU?

2 A. Actually, I did not. I -- I'm one
3 semester from finishing.

4 Q. What was your major?

5 A. Ag economics. I had a farm that came up
6 close to my dad's place -- came up for sale and I
7 guess I jumped at the opportunity and never
8 finished that last semester.

9 Q. Okay. As a farmer by trade, what other
10 interests have you developed related to farming?

11 A. Lots of interests, but the biggest one
12 would be agronomy.

13 Q. And what is your understanding -- or how
14 would you define agronomy?

15 A. Agronomy, it's basically the biology of
16 the plant and the soil that goes along with plant
17 growth.

18 Q. And how -- how have you developed this
19 interest?

20 A. I guess farming full-time for 22 years,
21 basically knowing what the plant does and how it
22 grows is probably the biggest thing that we can do
23 to keep a sustainable farm. Anything I can do to
24 increase my yield increases my chance of staying on
25 the land, passing it on to the next generation.

1 And so studying the plant's biology or agronomy and
2 the soil that supports it is -- is very important.

3 Q. And how have you studied this field of
4 agronomy?

5 A. Basically getting as much information as I
6 can. I read lots of farm magazines. I subscribe
7 to several, probably half a dozen or so. Talking
8 to local agronomists, talking to NDSU researchers,
9 plant breeders, going to seminars, field days
10 across the state. Just taking in as much
11 information as I can.

12 Q. Are you a member of any trade associations
13 touching upon agronomy?

14 A. Yes. I'm a member of two organizations,
15 the County Crop Improvement Board and also the
16 Northern Canola Growers Association.

17 Q. What's your role in that latter
18 organization?

19 A. I am the -- serving my third term as
20 president of the Northern Canola Growers
21 Association.

22 Q. And how has your association with that
23 group improved your knowledge of this field of
24 agronomy?

25 A. I would say that primarily -- so our

1 mission in the Northern Canola Growers is to
2 promote production and marketing of canola, and to
3 that end we have a budget -- check-off dollars of
4 about \$270,000 that goes to research projects. And
5 so we collaborate with NDSU researchers, we have a
6 plant breeder at NDSU. We help fund the greenhouse
7 that's located there, and so we have a room there
8 that we get to study different aspects of canola,
9 frost tolerance, seed tolerance, stuff like that.
10 We also have research projects that go on across
11 the state with the extension service, and the staff
12 there -- basically we've got studies that go from
13 Hettinger to Dickinson to Minot, Langdon, Fargo.

14 So -- so with that organization -- and
15 then we have field days during the year. We have
16 one in Langdon and one in Minot where the canola
17 growers can come to the field day, see what the
18 researchers have been putting out in their plots
19 and hopefully taking information back to their own
20 farm where they can use that information and
21 improve their production.

22 Q. So I want to ask you how you believe the
23 wind farm will impact the -- your farming in the
24 area in which this wind farm will be constructed.

25 A. Right. So I did a lot of research on

1 this. It's something I didn't know much about, and
2 I wanted to know if it was -- there was going to be
3 any impact on my crop production. And I found out
4 from five separate university studies -- a couple
5 of them were land grant universities -- that
6 basically wind generators mix the atmosphere as
7 they're turning.

8 Q. And how is that -- when you say mix the
9 atmosphere, can you be a little bit more detailed
10 on how you --

11 A. Yeah. So basically, for example, at night
12 as the air cools off, the cool air settles to the
13 ground and the warm air -- that, of course, as the
14 soil warms during the day, that rises, so you get
15 that inversion going on. And all these studies had
16 proven that as the wind farm is turning that air,
17 it's effectively mixing that warmer air and cooler
18 air, so you're basically getting more of an average
19 temperature instead of cool air settling at the
20 ground at night.

21 It also showed that the wind farms lowered
22 the relative humidity that increased the
23 evaporation and they increased the nighttime
24 temperatures. I guess a good example of this would
25 be if your basement floods, what do you do? You go

1 to town and you get some big fans and you try to
2 dry out your basement. Well, that's basically
3 what's happening in and around the wind farm.
4 These big fans that are drying the air out and
5 warming the area.

6 Q. How do you believe this would impact your
7 crop -- crops?

8 A. Well, because we're cool season crops
9 here, our crops benefit from our cool nighttime
10 temperatures. And one of the plant's defense
11 mechanisms is there's openings on a plant's leaves
12 that are called stomata. And these stomata, when
13 the day gets warm, the air gets dry, and the
14 plant's under stress, it closes those openings, and
15 these openings regulate the amount of gas exchange
16 and water vapor. So as it takes in carbon dioxide
17 from the atmosphere, it gives off oxygen and
18 regulates the amount of moisture that goes through
19 the plant, it opens and closes the stomata.

20 So in the heat of the day when it's dry
21 the plant's under stress, it closes that and the
22 plant wilts. Canola is a very good example of
23 this. If you've ever seen canola in our area of
24 the state sometimes where it gets hot and dry,
25 plants will just wilt, leaves will be hanging. But

1 at night when the nighttime temperatures cool down,
2 the plant is happy, right, so it opens up the
3 stomata, the plant recovers, and by morning it
4 looks back to normal again.

5 Another crop that is something that you
6 can visually put your mind around would be flax.
7 On a nice, cool summer day when you've got plenty
8 of moisture, flax, I've seen it bloom all day long.
9 And when it's hot and dry, it will shut down
10 blooming nine, ten o'clock in the morning, and that
11 has a direct relation to the amount of production
12 you get off of that crop, is the duration of the
13 flowering.

14 And we do -- we test the stomata, too, and
15 it's not quite as evident. You will see the leaves
16 roll on it and it -- it's definitely affected by
17 those parameters.

18 Q. So I understand what you're saying about
19 the change in the plant throughout the day, but how
20 do you see the mixture of the atmosphere caused by
21 the turbines impacting that process?

22 A. Okay. So Purdue University, when they did
23 their study on this, they placed sensors around the
24 wind farm, and they had I think it was seven
25 locations -- I don't recall, it's been a while

1 since I looked at their study, but they measured
2 temperature, humidity and evaporation. And they
3 found up to a 4.9-degree increase in nighttime
4 temperatures, so it's pretty significant. They
5 found up to 52 percent --

6 MR. BJELLA: Your Honor, I'm going to
7 object. He's referencing exhibits and studies
8 which are not in the record nor is there anyone
9 here that I perceive that is an expert in this area
10 and could talk about these studies. So we would
11 object to these studies. First of all, they're not
12 in the record.

13 JUDGE WARD: Well, I'm going to overrule
14 the objection because I think that his testimony
15 has qualified him as an expert in farming, and I
16 think it's reliable or foreseeable for him to rely
17 on such studies. And you can certainly have an
18 opportunity to rebut the testimony, but at least
19 for now, I'm going to allow him to continue. I'm
20 not sure whether Mr. Collins has an intention of
21 offering those studies, but that certainly is
22 something that could be considered as well.

23 MR. BJELLA: Your Honor, if I might just
24 state that, yes, he certainly with his experience
25 is an expert in agronomy, but I don't believe he's

1 an expert in wind turbine studies and their effects
2 on crops. That's certainly not --

3 JUDGE WARD: Well, and -- go ahead,
4 Mr. Pelham.

5 MR. PELHAM: Sorry, you can finish. I was
6 just going to say for the purposes of the
7 Commission, it would be very helpful to have the
8 studies. And, you know, we're relying, I suppose,
9 on Mr. Wert's testimony, but to have the studies
10 and see them, it would seem to me to be important
11 to the Commission to have those studies.

12 JUDGE WARD: And, Mr. Wert, if there are
13 studies out there that you're relying on, I mean I
14 believe that's something a farmer of your level
15 could do in the ordinary course of the farming
16 business, but if those studies are -- if copies of
17 them are available here, I don't see why you
18 wouldn't want to at least offer those studies.

19 MR. COLLINS: We would offer them
20 potentially as a late-filed exhibit if that would
21 be acceptable.

22 JUDGE WARD: Okay. All right. And,
23 again, you can rebut this testimony later,
24 Mr. Bjella, but I'm going to allow it, at least for
25 now.

1 THE WITNESS: And I apologize for not
2 having those with me today. And when I did my
3 research on it, too, I wanted to make sure that --
4 there's so much information on both sides -- that I
5 used legitimate sources that had no bias one way or
6 another, and my experience with the universities, I
7 felt that that was a good source of information.

8 So going back to my Purdue University
9 study --

10 JUDGE WARD: So for the record, for what
11 it's worth, at this point what I'm accepting this
12 for is that he's testifying in his reliance on
13 these studies and his interpretation of what these
14 studies say. You can always bring the studies
15 forward later as a late-filed exhibit and argue
16 about whether or not that's what they say, but I'm
17 going to allow him to go ahead.

18 THE WITNESS: Thank you, Your Honor.

19 So I was saying they have up to a
20 4.9-degree increase in nighttime temperatures.
21 There was a 52 percent increase -- up to a
22 52 percent increase in evaporation and a lower
23 relative humidity.

24 So I guess what I'm saying is -- and this
25 was as the air exited the wind farm, they found

1 that the air had dried out. So I'm concerned with
2 my 13,000 acres, all but approximately 2,000 acres
3 of that lies within the footprint of the wind farm
4 or within a couple miles of the wind farm. So most
5 of my cropland falls within the Brady Wind project.

6 So it concerns me, I guess, as far as my
7 production. Is it going to lower it based on
8 knowing what cool season crops thrive on and the
9 studies that I quoted here and the effects that
10 they can have?

11 Q. (MR. COLLINS CONTINUING) As a
12 nonparticipating landowner, what would you request
13 for an appropriate setback?

14 A. You know, in the Concerned Citizens we
15 don't have a policy on that per se as a group. I
16 respect Tom's opinion. I think all of us have our
17 own. That's the nice thing about an organic group.
18 I would say the 2,000-foot setback from property
19 lines would be good. And the reason I say that is
20 because if you've got a 2,000-foot setback from a
21 home and I want to sell or my son wants to build a
22 house on the edge of my property, he should also
23 have that so my property wouldn't be limited to
24 what I can do with it.

25 Q. I want to talk briefly about the other

1 agricultural impacts that you see in the
2 agricultural industry that this project may have.
3 How are farmers going to be using drone technology
4 in farming?

5 A. Well, they say that drones have a huge
6 future in agriculture. I currently subscribe to a
7 satellite-based service. It's called Satshot out
8 of Fargo. They provide me with NDBI images that I
9 can use to look at my crops, my fields. Those
10 images -- the problems with them is I get about
11 three or four useful images every year. They're
12 not timely. As the satellite passes over, there
13 can be cloud cover, so there's a limitation to it,
14 and the information I get is always after the fact.
15 It's looking back on the season, you know, what --
16 what did this area of the field have, what was its
17 problems.

18 With the NDBI images it shows crop health,
19 so it can pinpoint areas of the field where you
20 might have a fertility problem. It can show a
21 weedy area. But drone technology -- the nice thing
22 about drones, and I don't have one yet, but it's
23 very intriguing. I've done quite a bit of reading
24 on it. Drone technology allows you to go out that
25 day, fly your drone, take your pictures and have

1 realtime information so if there is an issue out
2 there, you can address it before it affects your
3 yield.

4 I guess I have a concern with being able
5 to use drones around a wind farm because I did some
6 research on crop dusters, and there's many
7 magazines that talk about -- there's *Ag Aviation*
8 magazine and, in fact, I called a crop duster that
9 I've hired before that there's a concern with the
10 way -- the turbulence created by a wind turbine,
11 and it can be up to a half a mile away. So he
12 hasn't -- the guy that I've hired hasn't flown in a
13 wind farm before. He's well aware of the potential
14 hazards.

15 So my concern with drones would be is if
16 it's going to affect an airplane up to a half a
17 mile away, what about a drone that only weighs two
18 pounds? And with the ceiling height of drones at
19 400 feet, which is about the hub height or turbine
20 height of the turbines, how is that going to impact
21 my ability to fly a drone on my field and check it?

22 Q. You had -- also have some concerns that
23 you'd like to present to the PSC regarding the
24 impact that the proposed project may have on the
25 electrical rates and that subsequent impact on your

1 operations as a large farming operation.

2 A. That's correct. We spend about \$16,000 a
3 year on electricity on our farm. That's basically
4 day-to-day operations, heating, lighting our shop.
5 Most of it probably goes to drying our grain in the
6 fall of the year, hauling our grain out. So I
7 guess I'm concerned with bringing a source of
8 electricity in that we know we don't need and that
9 we export about 55 percent of our electricity. So
10 we know we don't need this source and it's a
11 higher-cost source.

12 But like other people have testified, this
13 is getting put out on the grid, basically like a
14 pipeline of water. So our electric suppliers are
15 faced with this increased cost even though we don't
16 need it here, but because it's on the grid, that
17 cost is going to get transferred down to us on the
18 farm.

19 So I worry about my costs of drying my
20 grain and running my farm going up. That would be
21 a direct cost. Indirectly, I am concerned about my
22 fertilizer retailer, my mechanical retailer, the
23 gas station, the hardware store. All these
24 businesses that are going to pay a higher cost of
25 electricity, they're going to pass it on to me, the

1 consumer. So I'm not only getting hit directly but
2 indirectly from higher electricity costs.

3 Q. And then the last topic is directed at the
4 concerns impacting your occupation as a farmer, the
5 concerns with this project.

6 A. Correct. Just jotting a few notes down
7 during the day as different people spoke, one thing
8 I know that the PSC is concerned with is lessening
9 the impact on prime farmland. Now, I have actually
10 one landowner in Brady I that has signed up for a
11 turbine, and that turbine -- the access road to
12 that turbine is going through some prime farmland.
13 Was there a different route to go to that turbine?
14 Yes, there is a different route. It's a little bit
15 longer. It would have been more preferable to me
16 because this is basically three-quarters of a
17 section, and we have one-mile-long passes that we
18 can make with our equipment. Because the wind
19 turbine is closest to the west side of this
20 section, it's the closest to have an access road
21 coming from the west section line. However, as I
22 make my passes, now I'm down to, say, a half a
23 mile, so I've got headlands to deal with -- you
24 know, it's inefficient because I'm doubling up with
25 my passes. It would be best if this road would

1 come from -- straight from the south, which would
2 eliminate it going through what's considered prime
3 farmland. That's one thing I noticed today.

4 The other thing I have to say is a little
5 bit about the view. I think if you ask most
6 farmers, they're going to tell you the reason they
7 love what they do is because every day we get to be
8 24/7 out in our fields taking in Mother Nature,
9 what God created. You get to walk your field and,
10 of course, as you're doing this, you're looking at
11 the landscape. You're in your tractor, whatever,
12 it's just a constant 360-degree view of the
13 landscape.

14 So being's most of my farm falls within
15 this wind farm, except for a couple thousand acres,
16 there's hardly any fields I can walk in that I
17 wouldn't be impacted by an 87-turbine wind farm in
18 my view.

19 My son also, he's 16 going on 17, he just
20 absolutely loves farming, and I just want to
21 preserve that for him.

22 So the last thing I'd like to talk about
23 is the eagles. So we have -- southwestern North
24 Dakota is a breeding ground for golden eagles.
25 It's a primary breeding ground and there is some

1 eagles in the area. I've seen them, the neighbors
2 have seen them. And I firmly believe that I have a
3 golden eagle nest on my property right now and
4 there's a bird in there nesting. I've seen it the
5 last three weeks. Every time I go there, the bird
6 is in the nest. I have for three weeks tried to
7 get the U.S. Fish & Wildlife Service out there to
8 verify this and the Game and Fish, but it's like it
9 takes an act of Congress to get them to do that.

10 I've talked to Kevin Shelley twice, Sandy
11 Johnson from Bismarck. I got ahold of the
12 gentleman called Dan Henke from Dickinson. He was
13 supposedly going to come out yesterday. He
14 couldn't make it. I called him this morning. He
15 says, I'm sorry I couldn't make it yesterday, I'll
16 try to make it there today, but he didn't make it
17 today either.

18 So, yeah, I can't -- I'm not an official.
19 I think it's important that somebody with either
20 the U.S. Fish & Wildlife or Game and Fish verifies
21 that it is a golden eagle nest. And this -- this
22 nest lies within the Brady II project. There's
23 wind generators on three sides of this section. It
24 is two and a half miles from the Brady I project,
25 so -- so it's really close.

1 A. Brady I. My house is about four and a
2 half miles south of the Stark County line, straight
3 south of the Brady I.

4 Q. Now, you mentioned -- do you rent some
5 land then within the Brady I project?

6 A. I own and rent land in the Brady I
7 project. Correct. About a third of our land is in
8 Stark County.

9 Q. Okay. Because you mentioned that you --
10 that an owner granted a right to a turbine on -- is
11 that land you rent?

12 A. Correct.

13 Q. So are you saying he doesn't have the
14 right to do that?

15 A. No. No. I'm saying that's absolutely
16 fine. When I was talking about that situation
17 about the prime farmland, I don't think that they
18 understand that there's prime land where that
19 access road is going through. That was what I was
20 talking about on that plot of land.

21 Q. But what you're asking for is to deny that
22 your -- the person who owns the land the right to
23 have a wind turbine?

24 A. I am saying that that access road
25 shouldn't be placed through the prime farmland,

1 whether they get to build -- that's their decision.
2 I think, of course, that they have property rights,
3 but those property rights, just like Tom had
4 mentioned earlier and it's an argument I've always
5 said, they have to be subject to regulations, and
6 that's what the Planning & Zoning board is for.

7 MR. BJELLA: No further questions.

8 JUDGE WARD: Okay. Mr. Pelham.

9

EXAMINATION

10 **BY MR. PELHAM:**

11 Q. Mr. Wert, you had testified about drone
12 technology and your anticipated use. You indicated
13 that you didn't have a drone yet. I'm just
14 wondering what your plans are for potentially
15 getting a drone for use on your farmland.

16 A. Yeah. I need to do some more research on
17 this subject. Prices vary from a thousand dollars
18 up to \$20,000, and then you've got the quadcopters
19 and the fixed-wing aircraft. So I need to get a
20 better handle on what would be better for my
21 operation.

22 Q. And just so I understand, your concern
23 appears to me, and you correct me if I'm wrong,
24 sir, is the draft potentially from the proposed
25 turbines. Do you have any information or -- and I

1 know you've said that talking to a crop duster that
2 there is within a half a mile potentially --

3 A. Correct.

4 Q. -- impact of draft.

5 Have you talked to anyone specifically,
6 though, about use of drones in and around a wind
7 farm?

8 A. No. The only thing I've -- I did some
9 research on the Internet on that, and the only
10 thing that ever popped up on a Google search was
11 the fact that wind companies will use them to
12 monitor their wind turbines. Now, I'm assuming --
13 or they'll check for cracks in the blades. Now,
14 I'm assuming that the blades aren't going around
15 and around at the time that they're taking their
16 pictures. So I couldn't find anything on using
17 them in farmland next to a wind turbine. No.

18 MR. PELHAM: All right. Thank you,
19 Mr. Wert. I don't have any other questions for
20 you.

21 JUDGE WARD: Okay. Commissioners,
22 questions for Mr. Wert? Commissioner Kalk.

23 COMMISSIONER KALK: Thank you, Your Honor.
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EXAMINATION

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BY COMMISSIONER KALK:

Q. Thank you, Jon, for your patience all day and now saying your piece.

Okay. The -- Mr. Bjella asked you where your property -- well, I need to better understand where your farm is at. So I don't know if --

A. When you say farm, my place of residence or the land that I farm?

Q. Okay. Good question. The 13,000 acres you talk about, is that rental property inside the wind farm?

A. So a third of our farm is in Stark County. Okay. The rest is in Hettinger and Slope County.

Q. Okay. To the south and to the west?

A. To the south and to the west, correct.

Q. Okay. So the part that you're concerned about the impacts of the turbines for production, that is the part you rent inside the wind farm or the --

A. Correct.

Q. -- whole shooting match?

A. Well, it would be both eventually possibly, if Brady II also, you know, gets passed by the County Commission, but -- because I farm

1 basically right along the county line.

2 Q. Right.

3 A. So we own and rent property in Stark
4 County in the footprint of the Brady Wind farm.

5 Q. Okay. And so can you better give me a
6 sense of -- there's a map I see to your left.

7 Which map is that?

8 MR. PELHAM: It's Exhibit 5.

9 THE WITNESS: This is the gray one with
10 the 2,000-foot nonparticipating setback.

11 Q. (MR. PELHAM CONTINUING) Can you give me
12 some kind of reference on this map of where -- you
13 know, Highway 22 is a pretty good reference
14 point -- of where the rental property you have and
15 then maybe if you could show me or explain where
16 your property is at.

17 A. Sure. So from Highway 22 the biggest
18 share of it is east -- I wish there were section
19 numbers on here. I can tell you what section and a
20 legal description.

21 Q. Well, actually, you know what, you can
22 give us that and we can sort that out, but I
23 just --

24 A. It would be four miles east of Highway 22.

25 Q. Okay. And that would be in Stark County?

1 A. That's correct.

2 Q. Okay. And then the part that -- the other
3 parts you have?

4 A. Sorry?

5 Q. The other property that you --

6 A. And that would be west of Highway 22.

7 Q. Okay. And how far west of 22?

8 A. That would be about eight miles, I
9 believe, nine miles west.

10 Q. Of 22. And how far south of the county
11 line?

12 A. That's north of the county line. It's --

13 Q. North of the county --

14 A. -- still in Stark County --

15 Q. Okay.

16 A. -- and that's actually right on the county
17 line. It's adjacent to the county line.

18 Q. All right. That gives me a better
19 understanding, and I can dig that back up when I
20 get back to the office.

21 A. And east of the highway it would go from
22 the county line north three miles.

23 Q. Okay. So now that we've kind of laid it
24 out, I've got a better picture of where your
25 farmland is at.

1 Without going through the whole testimony
2 again, you feel that the -- and I have enough
3 background in science and soils to be dangerous,
4 just so you know. So the studies you refer to --
5 and we'll see those -- it's because the turbines
6 affect the moisture content in the air which
7 affects the production? Overly simplified, but is
8 that your --

9 A. That's what I'm arguing, yes --

10 Q. Okay.

11 A. -- because we know it dries out the air,
12 increases the nighttime temperature and lowers the
13 relative humidity.

14 Q. By the turbine blades spinning?

15 A. Correct.

16 Q. And you feel that these reports that
17 you're going to show us will -- can be related back
18 to here in this area without any research?

19 A. Well, you know, that's a good question
20 because I thought, Well, let's see if I can find
21 some data on what kind of yield loss I can expect.
22 I couldn't find any studies that talked about
23 actual yield loss from a wind farm.

24 So you might ask, well, why is that.
25 These things are relatively new, wind farms are,

1 and the geographic distance is huge. So you
2 can't -- I don't think you could do a study in Iowa
3 where they get plenty of moisture, they raise warm
4 season crops that benefit from warmer nighttime
5 temperatures, you can't extrapolate that and say
6 that's going to be the same effect here. So I
7 think if you were to do a study like that and see
8 what kind of yield effect you're going to have,
9 it's going to have to be every location.

10 Q. Okay. And just on a broader subject --
11 and I spent a lot of time with NDSU about trying to
12 get studies from them to quantify the energy
13 development impact on the whole state. This is
14 something I'd never even thought of, so I think
15 it's good for us to investigate these kind of
16 things. But is it that you're looking for a
17 compensation if the wind farm is built or just an
18 outright no?

19 A. I would prefer -- I'm not against wind
20 energy. I would prefer, like Tom says, that it
21 gets built somewhere else where it doesn't have an
22 impact on us.

23 Q. Well, wouldn't it anywhere in southwest
24 North Dakota have an impact to farming and
25 ranching?

1 A. Well, you would think it would affect
2 pastureland if it's going to affect cropland. And,
3 in fact, the University of Minnesota did a study --
4 you'll see that too in the group -- that talks
5 about how it can affect the whole ecosystem in and
6 around a wind farm.

7 Q. Okay. And the -- and I presume that most
8 of the wind in this area is from the northwest.
9 That's why I asked where your property was at. Is
10 that a fair assumption?

11 A. That's right. Correct.

12 Q. So that's why if it was just the opposite,
13 it wouldn't affect your -- your -- so only north
14 winds would affect your production?

15 A. North or northwesterly winds, yeah, which
16 is the predominant wind. The University of
17 Minnesota study was a 2013 study, and it could
18 affect crop yields by reducing the heat and
19 moisture -- increasing heat and reducing --
20 increasing the moisture loss. It talks about
21 vegetation. "Even on nonagricultural land, the
22 changes in heat and moisture exchange could have
23 ecological effects perhaps changing the spacial
24 distribution of vegetation and hence ecosystem
25 structure and dynamics." That was the University

1 of Minnesota.

2 Q. And that's related to wind development
3 specifically?

4 A. That's correct.

5 Q. Do they offer any recommendations?

6 A. No. They were just studying the effects
7 of the wind farm.

8 Q. And then the last question I would have is
9 you talked a lot about electricity rates, which
10 we're heavily involved in electricity rates for the
11 company we regulate -- the companies we regulate.
12 But have you expressed your concerns with -- I
13 presume -- are you a Slope Electric customer?

14 A. That's correct.

15 Q. -- with Slope on the wind farm and Basin,
16 because ultimately it will be distributed through
17 Slope.

18 A. Right. And we're also customers of MDU,
19 also, and they've already had a rate increase after
20 they sent a letter out after they fired up the
21 Hettinger Wind Farm. And I do know that they
22 presented I think in front of the Montana PSC in
23 January, and one of the PSC members said, Didn't
24 you guys jump the gun, and he was referring to the
25 Clean Air Act being contested in court.

1 But I believe at that hearing they were
2 asking for a 21 percent increase, which they didn't
3 get, but it's a significant increase. So I hate to
4 see that come to us on the farm.

5 Q. All right, Jon, the last, I guess, line of
6 questions is just the fellow before you, Tom,
7 talked and I didn't ask him this question, but
8 short of outright us not approving this wind farm,
9 is there any micro adjustments to turbines that you
10 think would help or is it just kind of all or none?
11 Oftentimes we'll hear from landowners that say,
12 Well, these six turbines I don't like and here's
13 something different, or these two turbines, but are
14 you saying all or none or is there a micro
15 adjustment that --

16 A. Well, yeah, I am saying all or none in my
17 situation because my farm lies basically through
18 this whole thing, and so I'm worried about it
19 impacting my operation.

20 Q. Okay. Thanks.

21 A. I wish you could say move these three here
22 and that won't affect my land, but -- yeah.

23 COMMISSIONER KALK: Okay. Thank you.

24 THE WITNESS: You bet.

25 JUDGE WARD: Commissioner Fedorchak.

EXAMINATION

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BY COMMISSIONER FEDORCHAK:

Q. Thank you, Tom -- I mean Joe -- Jon. Jon. Sorry. I can't even read my notes. I'm getting confused. We have a mutual friend. Bob Striebel.

A. Oh, okay.

Q. He is a friend of mine from Bismarck, and he tells me, Oh, Jon will be good opposition because he's stubborn.

A. I don't know if that's the case. Stubborn.

Q. So there you go from Bob Striebel.

A. Okay.

Q. I have a couple questions to ask you about where your farm is located because I'm looking at the wind -- the imprint of the project. And you said you're eight miles west of Highway 2 -- 22?

A. Correct.

Q. And so that's clearly outside of the wind --

A. Well, that would be within the transmission line. The wind turbines from my land there are a couple miles away I believe, to the east.

MR. PELHAM: If I could interrupt, I'm

1 sorry, perhaps if you could give the legal
2 description. Do you have the legal description for
3 your property?

4 THE WITNESS: Yeah. I can give a township
5 and range, yeah --

6 MR. PELHAM: Yep.

7 THE WITNESS: -- and section.

8 MR. PELHAM: Yep.

9 THE WITNESS: Sections 33 and 34, 137-98,
10 would be the western edge of our Stark County land.

11 Q. (COMMISSIONER FEDORCHAK CONTINUING) Okay.

12 A. And going a little bit further east of
13 that, I have some land in Slope County that is
14 right up against the county line which gets really
15 close to the wind turbines.

16 Q. How much land do you actually have in the
17 footprint? Do you have a section or is there any
18 land you farm within the footprint of the wind
19 project?

20 A. Either west or east?

21 Q. Anyplace within that -- within this
22 boundary where the towers are.

23 A. Yes. We have -- how much land? We have
24 about -- like I said, about a third of our acreage
25 is in Stark County. All my --

1 Q. Well, when you said in Stark County, but
2 that's 4,000 acres in Stark County, and you've --

3 A. Right.

4 Q. -- talked about it being eight miles from
5 Highway 22, so that's quite a ways away from the
6 actual footprint. So I'm just trying to get a
7 sense of if you've got a couple miles -- or a
8 couple sections in there that you're farming or how
9 much you're farming within the actual footprint of
10 the --

11 A. So this footprint map, is this just
12 showing turbine locations or is this also including
13 the transmission line?

14 Q. This is for the turbine locations, but I
15 mean if -- your testimony is mostly about the
16 effects of the turbines, so the transmission line
17 doesn't really apply to what you're saying --

18 A. Correct. Correct.

19 Q. -- on the impacts to your farming. So I
20 guess I'm most interested in the impacts you're
21 talking about regarding the turbines.

22 A. So how many miles west are we here, five
23 miles west?

24 Q. Highway 22 goes almost right down the
25 middle and then it jags a little bit.

1 A. Right. But the westernmost turbine is how
2 many miles west, I guess? That would help me out.

3 Q. Well, I just count the sections, so --

4 A. We would have land seven miles west.

5 MR. PELHAM: Why don't we show --

6 Q. (COMMISSIONER FEDORCHAK CONTINUING) It's
7 about four miles from Highway 2 -- 22?

8 MR. PELHAM: Exhibit 4 perhaps may be a
9 better to look at it, if he has that there. The
10 third page of Exhibit 4.

11 THE WITNESS: Boy, that's so small, I
12 can't even read it with my glasses on.

13 JUDGE WARD: It is small.

14 Q. (COMMISSIONER FEDORCHAK CONTINUING) I
15 can't read that one.

16 A. I can't tell from that map.

17 Q. Are you eight miles from Highway 22?

18 A. The land in Stark County --

19 Q. Okay.

20 A. -- is eight miles from 22, and then there
21 is -- there is land just two miles east of that,
22 but it is in Slope County, but it's against the
23 county line. So it would be affected by possibly
24 those turbines there.

25 Q. Okay. But then you mentioned some that

1 was east of --

2 A. Yeah.

3 Q. -- 22.

4 A. Most of my land is east.

5 Q. And your other land that's east of 22 and
6 three miles north, that looks to me like that would
7 be within the footprint?

8 A. It is. It's right in the middle of it.
9 There would be, I don't know, probably 3,000 acres
10 there, and then I have --

11 Q. 3,000 acres right in the middle of the
12 footprint? That's -- how many sections is that? I
13 mean that's --

14 JUDGE WARD: A little more than three --

15 Q. (COMMISSIONER FEDORCHAK CONTINUING) --
16 five sections.

17 A. Five sections, yeah. I'm sorry. I'm
18 looking at the map here trying to verify that --
19 well, or within a couple miles, and they do talk
20 about in these studies how it not just stops at the
21 last turbine. It does affect the surrounding area
22 a little bit.

23 Q. All right. So that's enough on that. You
24 don't have to get more -- if you can get us the
25 legal description, that would be helpful, but we

1 don't have to do that right now.

2 Have you talked to the landowners about
3 the road and asked them to work with the company to
4 move it, on that access road that you said is going
5 through prime farmland?

6 A. No. I did suggest early on that it would
7 be best if they would come in from the south.

8 Q. Is that something you could pursue again?
9 It sounded to me like the company was in the
10 process of working with landowners on those types
11 of issues, so --

12 A. Right. And I think the landowner, if it
13 was explained to them that this is prime farmland,
14 which you would think the wind company would have
15 pointed that out -- because they want to mitigate
16 that, right -- that they would have pointed that
17 out that maybe we should come in from the south
18 instead of taking the shortest or cheapest route --

19 Q. Right.

20 A. -- by building the road from the west.

21 Q. Well, that would be a suggestion if it's
22 something --

23 A. Sure.

24 Q. -- you want to have changed is to see --

25 A. Sure.

1 Q. -- if you can't work with the landowner
2 and company to get that access road --

3 A. Sure.

4 Q. -- moved.

5 So you mentioned two other things, that
6 you know you don't need -- this electricity isn't
7 needed. What are you referring to to say that?

8 A. Just the fact that we export so much
9 electricity. It's not needed now.

10 Q. Okay. But Basin Electric has said they
11 need it.

12 A. They do. I guess they have said that.
13 Right. Are they basing that on what they project
14 in the future on a study that was older? I don't
15 know their -- their reasoning, I guess --

16 Q. Right.

17 A. -- and is it needed here in our area?
18 That I don't know either.

19 Q. Yeah. They're going to provide that, but
20 they've said they have a need and that they have a
21 need for more. So I guess I don't have anything to
22 go on to say that --

23 A. No, I just --

24 Q. -- there isn't a need.

25 A. I just find it hard to believe that they

1 need it when we know we export 55 percent of our
2 electricity.

3 Q. Right. And then in terms of the
4 higher-cost sources, we don't get into Basin's
5 decisions on what resources they're picking, but I
6 can tell you from MDU and some of the others that
7 we do get -- have conversations with, they
8 frequently bring forward information that suggests
9 that the wind is the cheapest, believe it or not.
10 Now your rates are going up because they need more
11 generation and all new generation is going to cost
12 something. But typically we've been pretty
13 consistently pushing for the lowest-cost solutions.

14 A. Sure.

15 Q. And like the example for MDU, that Thunder
16 Spirit was the lowest-cost solution by a good
17 margin. So, again, that's a result of the
18 production tax credits from the federal government.
19 So --

20 A. Right. Did they testify at that Montana
21 hearing that part of the rate increase was the
22 switch to renewable sources?

23 Q. Well, they -- they testified that it's not
24 the switch to renewables. It's just they -- that's
25 the source that they picked because it was the

1 lowest cost.

2 A. Okay. I thought it was --

3 Q. We haven't had a rate case with MDU for a
4 good while. They will be coming in front of us
5 later this fall.

6 A. Yeah. Before September or something
7 they're going to submit.

8 Q. Yep. Yeah. But they usually compare, you
9 know, coal, and coal is so expensive now because
10 they have to start factoring in potential carbon
11 dioxide costs or other -- the other EPA
12 requirements that are in place or other emittance.
13 So the coal hasn't been something that the
14 companies have been willing to pursue strongly
15 because of the risk. And the gas and the other
16 ones have been, you know, not cheaper than the
17 wind. So that's -- that's just what we've looked
18 at from the MDU standpoint.

19 A. Sure.

20 Q. And, again, going back to production tax
21 credit, that's really what has given wind the --
22 the competitive edge that it's getting in the
23 marketplace now, and --

24 A. So if that goes away, then all of a sudden
25 our rates -- once their contract with Basin

1 expires, does that mean our rates are going to go
2 up at that time? I'm just asking.

3 Q. Well, the production tax credit lasts for
4 20 -- 15, 20 years, and so those usually go through
5 the extent of the PPA. So this one is longer, so
6 it probably will expire before that contract is up,
7 and its impact -- the impact on rates then we'll
8 have to see.

9 A. So the only impact, then, would be my tax
10 dollars going to that?

11 Q. Exactly.

12 A. Okay.

13 COMMISSIONER FEDORCHAK: Again, go talk to
14 your senators. All right. That's all my questions
15 and comments. Thank you.

16 JUDGE WARD: Commissioner Christmann.

17 **EXAMINATION**

18 **BY COMMISSIONER CHRISTMANN:**

19 Q. Well, first of all, very impressive,
20 Mr. Wert. If I had half of your understanding of
21 agronomy, I probably wouldn't have had to rely on
22 those cows all the time.

23 JUDGE WARD: You might still be farming.

24 Q. (COMMISSIONER CHRISTMANN CONTINUING)

25 Yeah. I've learned a lot. One of the things,

1 though, that I'm curious about, you're going to
2 supply some studies that you referenced as a --

3 A. Sure.

4 Q. -- late-filed exhibit.

5 Since I don't have any of my in-laws in
6 the room to hear this, I can acknowledge that I've
7 got a drone but it's more of a toy, not so much of
8 a tool, for Christmas and I haven't opened the box
9 yet. But I did look at the side of it, and I think
10 you can't use it within like four, five miles of an
11 airport?

12 A. Right. Five miles.

13 Q. So there's a restriction.

14 A. Sure.

15 Q. It would be helpful if there was something
16 official that could be supplied on the record,
17 another late-filed exhibit, if there is some sort
18 of a restriction on using those things in --

19 A. And I could look. I just couldn't find
20 anything.

21 Q. -- on an industrial wind farm. So I'd
22 just throw that out as a thought.

23 A. And as the technology comes online, I'm
24 sure there's going to be more reports on it.

25 COMMISSIONER CHRISTMANN: Okay. That's my

1 only request, although I do have a personal --
2 couple comments to make.

3 First of all, I want to apologize to
4 everybody here. Two of the things that are most
5 dear to me and two of the reasons why I'm involved
6 in government are private property rights and a
7 desire to keep rural North Dakota and production
8 agriculture rural North Dakota. And in this -- in
9 these wind farm cases it seems like those two
10 things collide and they're tough decisions, and I
11 hope everybody will understand that I take it very,
12 very seriously to deal with these two things.

13 But also for those of you who have been
14 here from the beginning, this morning in opening
15 comments ironically I made some comments about a
16 guy, who although he didn't get to finish eighth
17 grade, is one of the wisest men that I've ever met,
18 and that's my dad, and when he dealt with the
19 transmission line. And he's on hospice and my wife
20 sent me a message that I need to get back.

21 We usually don't have a court reporter at
22 most of these meetings. I'm kind of blessed here
23 in that we do. I am committing to you all, I'm
24 going to go through this record thoroughly because
25 this is important to me, but I do need to leave.

1 JUDGE WARD: Okay.

2 MR. BJELLA: Your Honor.

3 JUDGE WARD: Mr. Bjella.

4 (Commissioner Christmann left the
5 hearing.)

6 MR. BJELLA: I just -- I would like to
7 make an objection for the record. We did discovery
8 requests upon Concerned Citizens, and while
9 Mr. Wert was identified as a witness, none of these
10 studies were provided to us through discovery. So
11 I'm going to state that objection just for the
12 record, Your Honor, that -- and we'll deal with it
13 later, but that because they were not provided
14 through discovery and were not provided here, that
15 they shouldn't be utilized in making a
16 determination in this case.

17 Thank you.

18 JUDGE WARD: Mr. Collins.

19 MR. COLLINS: I think -- I acknowledge the
20 objection, but I think we've seen throughout the
21 day in this hearing Brady Wind come in the door
22 with new exhibits that they've prepared as
23 demonstrative and to show all these things, and how
24 many late-filed exhibits is Brady Wind going to
25 submit from Basin Electric? Why don't we have that

1 information on their needs at this hearing, but
2 that's being submitted as a late-filed exhibit that
3 wasn't disclosed to us that we could ask Brady
4 Wind's representatives about these things. So I
5 think it's a little disingenuous for Mr. Bjella to
6 object to the submission of university studies that
7 haven't been prepared in particular to answer the
8 questions of the PSC after the fact.

9 JUDGE WARD: I'm going to overrule the
10 objection. I'm going to allow this to be provided.
11 You know, it's -- I guess we're always hearing
12 about new things in wind hearings, and it will
13 certainly be of interest and you will get it when
14 we get it and you'll certainly have an opportunity
15 to respond to it.

16 You do have, you know, a bevy of highly
17 qualified experts here with you today and access to
18 more if you need them. If you want to debunk those
19 studies, I mean you certainly have that
20 opportunity, so -- but I think that Mr. Wert
21 certainly was qualified to talk about them and, you
22 know, I'm going to stand by my original ruling.
23 But your objection is on the record.

24 Do you need a break?

25 THE WITNESS: Can I make one last comment,

1 Your Honor?

2 JUDGE WARD: Well, there's no question
3 pending right now.

4 We're going to take a little break. You
5 can talk with your counsel and see if it's worth
6 him bringing it up.

7 THE WITNESS: Okay. Thanks.

8 JUDGE WARD: Okay. All right. Ten
9 minutes -- five minutes.

10 (Recessed at 6:51 p.m. and reconvened at
11 6:59 p.m.)

12 JUDGE WARD: Okay. We're going to settle
13 down, get back on the record.

14 Mr. Collins, does Mr. Wert need to --

15 MR. COLLINS: No, Your Honor.

16 JUDGE WARD: Okay. Okay. Next witness.

17 MR. COLLINS: Autumn Richard.

18 MR. BJELLA: Your Honor.

19 JUDGE WARD: Mr. Bjella.

20 MR. BJELLA: We had one question we'd like
21 to ask Mr. Wert. Is that okay?

22 JUDGE WARD: He's gone. I mean it -- I --
23 can you re-call him? I suppose. I mean, Mr. Wert,
24 do you want to resume the stand for just a minute
25 here?

1 THE WITNESS: I'm not sure. Let me see if
2 I've got the date on here. 2011 study. Must be
3 the same one. If I could address the frost issue?

4 JUDGE WARD: You may.

5 THE WITNESS: So especially with canola,
6 and that's really the only crop that we have on our
7 farm that is affected by frost, there's about a
8 five-day window when the crop is in the cotyledon
9 stage that frost can kill canola. We have a
10 killing frost issue maybe once out of every ten
11 years. This last year was one of those years and
12 it was widespread frost. We were in the upper
13 teens for temperatures.

14 So canola can be killed by frost as high
15 as 25 degrees. It all depends on the condition
16 before -- the day before the killing frost
17 basically. If you have some nights that are 28
18 degrees, 30 degrees, it basically hardens off the
19 plant and it can tolerate a much colder
20 temperature. So this year we had -- I believe it
21 was down to 19, 20 degrees, killed some of the
22 canola. I know of two fields in our area -- and
23 when I say area, I'm talking a big area, Stark
24 County, Hettinger County, Slope County -- that got
25 reseeded because of frost.

1 I think it's a much more important thing
2 to have cooler temperatures during the 90 days of
3 the growing season than it is to worry about a
4 frost issue in the spring when we can replant or
5 address it other ways.

6 JUDGE WARD: All right. Any follow-up?

7 Q. (MR. BJELLA CONTINUING) I just want to
8 conclude, Mr. Wert, that you acknowledge that the
9 summary states that wind turbines did not
10 negatively affect local weather patterns. That's
11 what it states, doesn't it?

12 A. I guess I'm not aware of -- when they say
13 local weather patterns, they talked about how it
14 affects the temperature, humidity and evaporation.
15 So they must be talking about something else as far
16 as weather patterns. Storm fronts coming int -- I
17 guess I'm not sure what they're talking about.

18 MR. BJELLA: I have no further questions,
19 Your Honor.

20 JUDGE WARD: Okay. Any follow-up to that,
21 Mr. Collins?

22 MR. COLLINS: No, Your Honor.

23 JUDGE WARD: Mr. Pelham?

24 MR. PELHAM: No.

25 JUDGE WARD: Commissioners? Okay.

1 Mr. Wert --

2 COMMISSIONER KALK: Hang on, Judge, I've
3 got to turn my mike on. Mr. Bjella, the -- just in
4 the off chance that the documentation that Jon is
5 going to submit is different than what you just
6 referenced, can you get that to us, what you just
7 referenced?

8 MR. BJELLA: Yes, Your Honor.

9 COMMISSIONER KALK: So -- okay. Just to
10 make sure if they're two different documents and we
11 can have a document that says what you said and
12 then we'll look at his and we'll give it whatever
13 weight appropriate.

14 MR. BJELLA: Yes, Your Honor.

15 JUDGE WARD: Okay. I'm Your Honor.

16 Commissioner.

17 You can step down, Mr. Wert.

18 Would you state your name for the record,
19 please?

20 THE WITNESS: Autumn Richard.

21 JUDGE WARD: Raise your right hand.

22 (Witness sworn.)

23 JUDGE WARD: Mr. Collins.

24 MR. COLLINS: Thank you, Your Honor.

25

AUTUMN RICHARD,

1
2 being first duly sworn, was examined and testified
3 as follows:

EXAMINATION**BY MR. COLLINS:**

4
5
6 Q. Ms. Richard, could you give us your
7 current residential address.

8 A. Sure. It's 5125 104th Avenue Southwest,
9 Lefor, North Dakota.

10 Q. And where is your residence in -- in
11 relationship to the Brady Wind farm?

12 A. Okay. Well, it's in the footprint of the
13 proposed Brady Wind wind farm site. It's where
14 we've lived throughout our entire marriage and
15 farmed the land and raised our children. It's
16 down -- we go from Dickinson down on 22 to 50th and
17 south on 104th, about a mile and a quarter.

18 Q. And how long have you lived in Stark
19 County?

20 A. I've been a resident for 11 years.

21 Q. And your occupation?

22 A. I work part-time for a clothing boutique
23 actually here in Dickinson, Miss Willow's Nest. I
24 do their online programming for their website, and
25 I also provide photography to display their

1 garments and such, which is -- the only reason I
2 bring that up is because my employees favored me
3 for the job because we have a nice countryside
4 homestead, and they like the idea of having a
5 rustic backdrop to all of the photography that I do
6 for them.

7 Q. Why did you and your husband decide to
8 move into your current home?

9 A. Well, partly because my husband -- it's
10 his childhood home, and the other part is that we
11 enjoy the quiet countryside. That's what we wanted
12 to raise our kids.

13 Q. When we were talking before this hearing,
14 you used a term that I wasn't familiar with, and
15 that was the shelterbelt around your home.

16 A. Yes.

17 Q. Could you describe the -- how that is --
18 how that looks around your house.

19 COMMISSIONER FEDORCHAK: You're not from
20 North Dakota.

21 MR. COLLINS: I admit. I'm from bad
22 Minnesota.

23 THE WITNESS: Sure. Okay. So we have a
24 long drive to our house and our house is sitting
25 amongst our fields and such, but we have a mature

1 tree line that kind of wraps around the house and
2 protects our -- you know, the yard and the shop
3 area and the house and whatnot. So it just kind of
4 protects us from the wind and the elements that may
5 come through or such.

6 Q. (MR. COLLINS CONTINUING) Can you describe
7 for the Commission where the turbines -- the
8 proposed turbines will be in relationship to your
9 home?

10 A. Well, it's a little -- kind of difficult
11 in some ways to give that relationship because I
12 have yet to see a map that shows exactly where my
13 house is in reference to the wind turbines at this
14 time, but from what we've understood from speaking
15 with NextEra, we would have approximately nine
16 turbines within a mile or less surrounding our
17 home.

18 Q. Can you describe your concerns, how those
19 turbines will impact your quiet enjoyment of your
20 home?

21 A. Sure, I can. So if it continues standing
22 as it is, if the proposed wind farm is developed
23 and the county ordinances are not changed, like I
24 said, we would have approximately nine turbines
25 within a mile or less from our house. The effects

1 it could have -- you know, I have kids. They enjoy
2 the land there. They go ATVing on our land and
3 whatnot, so I have concerns for them being so close
4 to the turbines if they're within that 2,000-foot
5 setback. We also worry, you know, that they're in
6 this hazardous area on our own property.

7 And the other thing is I have older
8 children that have expressed interest in building
9 their homes at a later date close to our home on
10 our property. So we have a concern that if my --
11 if the kids do want to build on our property, that
12 their homes would probably end up being closer than
13 the 2,000-foot setback, and which really isn't good
14 because they've said themselves that it's a health
15 hazard to be close to these things. So it actually
16 affects our building -- future building
17 propositions on our own property.

18 Q. How has the prospect of the Brady Wind
19 farm impacted your current use of your home?

20 A. Okay. Well, we were -- we've been trying
21 to do some renovations of our home. It was built
22 by my husband's mother, so my mother-in-law, and
23 we've been -- and built in the '80s and we've been
24 doing renovations, and we were considering doing an
25 addition on to the house. Recently we've put

1 everything on pause just because we're not certain
2 that it would be in our best interests to do any
3 additions at this time.

4 Q. And if the wind farm is built?

5 A. I don't know. We've considered moving. I
6 mean it's a sad statement. We -- we always thought
7 that that would be where we would retire and live
8 out our lives, but, you know, it's -- we're just
9 not sure that we want to be within that many wind
10 turbines that close to our home, and we feel like
11 it's going to be if we -- even if we add on the
12 addition, it's going to be a -- the home's going to
13 lose its property value. So we're just not sure
14 what we're going to do.

15 Q. Do you have neighbors who are
16 participating in the project and have agreed to
17 accept turbines on their property?

18 A. We do.

19 Q. And where are they in relation to their
20 homes versus your home?

21 A. Well, once again, I haven't seen a map
22 that shows exactly where every home is in relation
23 to the wind turbines, but just from where we live
24 and looking at our home and theirs in relation,
25 the -- all the turbines that are signed up in our

1 area are closer to our home, our house, than those
2 who signed up.

3 Q. Were you approached to put turbines on
4 your property?

5 A. We were.

6 Q. And you chose not to?

7 A. Yes.

8 Q. Why?

9 A. We didn't want to -- we didn't want them.
10 We made the decision that we didn't want these
11 turbines in our area. We thought that -- we
12 thought that it would be too close to our homes, it
13 would disrupt the quiet countryside that we
14 originally purchased the house for. I didn't want
15 it to affect my property value of my home and my
16 land. And, honestly, I didn't want my kids living
17 under it. I didn't want -- I didn't think my
18 neighbors would want me -- you know, didn't want me
19 to plop one right by them, either, so we said no.

20 Q. And what would you like to see changed
21 with the plans for the Brady Wind farm primarily?

22 A. Well, I see a lot of stickers today and a
23 lot of them say "I Love Wind Energy," and if you
24 notice, mine doesn't say I hate wind energy. It
25 asks for me to fix the ordinance. That's what

1 we're asking. They're so close. They're so close
2 to my home that -- and there's so many so close to
3 my home, they infringe on my right to build later
4 on my homestead, and that's what we're asking.
5 Move it from our property lines, not our homes. I
6 mean when my kids walk out the door, they're, you
7 know -- with only 2,000 feet, you know, setbacks,
8 they're going to walk right up to these suckers and
9 it's just -- it's very frustrating.

10 And I'm not against other people's rights.
11 I believe those that signed up have a right to have
12 them if they want them, but don't set them in the
13 corner of your land so they can be in the backyard
14 of my home.

15 MR. COLLINS: Thank you, Ms. Richard.

16 JUDGE WARD: Mr. Bjella, questions for
17 Ms. Richard?

18 MR. BJELLA: No, Your Honor.

19 JUDGE WARD: Mr. Pelham.

20 MR. PELHAM: Good evening, Ms. Richard. I
21 just have a couple questions for you.

22 **EXAMINATION**

23 **BY MR. PELHAM:**

24 Q. Ma'am, do you know the legal description
25 of your property?

1 A. Not offhand.

2 Q. Okay.

3 A. I'm sure my husband may be able to help
4 you with that.

5 Q. I think Exhibit 4 is at your table. Maybe
6 Mr. Bjella can help you find it. We were looking
7 at the third page, and it's got a layout of all of
8 the turbines. And I'm wondering if this particular
9 map would assist you in telling us where your
10 property -- you and your husband's property is.

11 A. Okay. All right. So -- and you're going
12 to have to forgive me if I don't get this right.
13 So it says here 137N-R95W plat, and we are in the
14 Section 22 and we are in the northeast corner of
15 the land.

16 Q. Northeast quarter?

17 A. Yes.

18 Q. And do you have that -- thank you for
19 that. The -- the exhibit there in front of you,
20 are you able to determine from that map where your
21 property is and, if so, would you be able to circle
22 and initial where your property is at?

23 A. I believe so, yes. I just need a pen.
24 Thank you.

25 Q. Just use your name initials.

1 A. Sure. Oh, my. It's pretty tiny.

2 MR. RICHARD: Can we put it on this to
3 show you?

4 MR. PELHAM: Well, I mean the --

5 THE WITNESS: He wants to see it in
6 relation to --

7 MR. PELHAM: We want to see it on the
8 record so we have that. I mean is it --

9 JUDGE WARD: Yeah.

10 COMMISSIONER FEDORCHAK: How about these
11 maps? These are --

12 MR. RICHARD: These maps are very poor to
13 work of off.

14 COMMISSIONER FEDORCHAK: This map --

15 MR. COLLINS: Your Honor, for the record,
16 Ms. Richard's husband is at the witness table.

17 JUDGE WARD: Yeah. And you haven't been
18 sworn in yet, so --

19 MR. RICHARD: Okay.

20 COMMISSIONER FEDORCHAK: I think that this
21 map would be more helpful because they can actually
22 see the overviews.

23 MR. PELHAM: Which map is that?

24 COMMISSIONER FEDORCHAK: It's a collection
25 of maps that they filed with us on February 19.

1 THE WITNESS: I think I may have found it.
2 It's pretty tiny, but I'm sure our house is like
3 right here.

4 JUDGE WARD: Okay. I think she thinks she
5 found it.

6 THE WITNESS: You can have my husband
7 verify, but I'm --

8 Q. (MR. PELHAM CONTINUING) Well, we have the
9 property description -- the legal description and
10 we can compare it with that, and we'll trust the
11 property description over that. But could I see
12 that exhibit, ma'am?

13 A. Like I said, we're like a mile and a
14 quarter in on 104th Avenue, so --

15 Q. Okay. So this is the circle here right
16 here you're referring to?

17 A. Yes.

18 Q. Okay.

19 JUDGE WARD: Mr. Pelham, maybe you can
20 show the commissioners.

21 MR. PELHAM: Yep. That's what I was going
22 to do.

23 THE WITNESS: And I tried to just kind of
24 mark where the house would be. We own 120 acres
25 there, so --

1 Q. (MR. PELHAM CONTINUING) So the question
2 here as we're looking at it, this is listed as --
3 the gray area is a nonparticipating landowner. The
4 non-shaded areas are the participating areas --
5 participating landowners.

6 A. I think we're just having trouble reading
7 the marks.

8 Q. Yeah. And it's a bad map. Here, let's
9 take a look at this one. This I'm showing you
10 is --

11 A. Oh, that would probably be easier.

12 MS. DASSINGER: Do you want to use the big
13 map over there?

14 COMMISSIONER FEDORCHAK: That one shows
15 houses, so have her look at that and see if she can
16 identify it.

17 Q. (MR. PELHAM CONTINUING) Brady Wind Energy
18 Center. This is a map -- it's -- I'm looking for a
19 description on here. We'll mark it if we need to,
20 but I don't see a description, but it is a map in
21 large -- does this --

22 A. Much better. Yeah, I think so. So, yes,
23 this is easy enough. This is our long drive and
24 this is our house right here.

25 Q. (MR. PELHAM CONTINUING) Would you circle

1 that and initial, please.

2 A. Okay. Absolutely. (Witness complies.)

3 JUDGE WARD: We'll just mark that
4 Exhibit 6.

5 MR. PELHAM: Mark it Exhibit 6?

6 JUDGE WARD: Yeah. We've got 5 --

7 MR. PELHAM: We're going to take off
8 Commissioner Fedorchak's notes; is that okay?

9 JUDGE WARD: Can we do that?

10 THE WITNESS: And I just circled the home,
11 the house.

12 MR. PELHAM: Just for the record, there
13 are several pages. There's -- the pages aren't
14 numbered here.

15 JUDGE WARD: Take your time. We've got
16 all night.

17 MR. PELHAM: It's the ninth page of
18 Exhibit 6, and at the lower right it's -- in the
19 lower right there's looks like number nine and in a
20 red square that is marked. So I'm just saying that
21 for purposes of -- identification later for
22 purposes of the record.

23 JUDGE WARD: Okay. Any objection to
24 Exhibit 6, Mr. Collins?

25 MR. COLLINS: No, Your Honor.

1 MR. PELHAM: We would offer it, yes.

2 MR. BJELLA: No, Your Honor.

3 JUDGE WARD: Okay. We'll receive that
4 exhibit. And those maps may come in -- those maps
5 may come in handy with some of the future
6 testimony.

7 COMMISSIONER FEDORCHAK: Okay.

8 MR. PELHAM: No further questions. Thank
9 you, Ms. Richard.

10 JUDGE WARD: Mr. Bjella, did you --

11 MR. BJELLA: No, Your Honor.

12 JUDGE WARD: Commissioners, questions for
13 Ms. Richard?

14 **EXAMINATION**

15 **BY COMMISSIONER KALK:**

16 Q. Thank you, Autumn. Okay. I'm still --
17 and this is not you, Autumn; this is more the
18 company right now.

19 COMMISSIONER KALK: Where can we find the
20 map that shows the turbine numbers and a good view
21 that we can have Autumn look at, because the one
22 she just did shows it but it doesn't have turbine
23 locations.

24 COMMISSIONER FEDORCHAK: Yeah, it does.

25 COMMISSIONER KALK: I'm sorry. Turbine

1 numbers. So how can we correlate these -- what's
2 in this exhibit to some numbers? I think what we
3 maybe need to do is just take a little break here
4 because I want to ask her specific questions about
5 turbine numbers that she may like or dislike, and
6 there's really no way to correlate this without a
7 little break here. I know it's late, but this goes
8 to a whole line a questions.

9 JUDGE WARD: Okay. We'll take a little
10 break.

11 (Recessed at 8:18 p.m. and reconvened at
12 8:24 p.m.)

13 JUDGE WARD: We're going to go back on the
14 record, I hope. Okay. Back on the record. I'm
15 not sure where we were at, Ms. Richard. We were
16 trying to identify the location of your home on
17 these maps.

18 COMMISSIONER KALK: Your Honor, I think
19 that Autumn and I are on the same sheet of music
20 here. So we can ask some questions, if that's all
21 right.

22 JUDGE WARD: Okay. All right. Good.

23 COMMISSIONER KALK: And just for the folks
24 out there, I know you've been there a long day, but
25 like I said in my opening comments, people that are

1 inside the project area that have concerns, I've
2 always given them special status, and we're at that
3 point now and I want to make sure I ask all the
4 questions that need to be asked and so that's just
5 the way it is.

6 Q. (COMMISSIONER KALK CONTINUING) Okay.
7 Autumn, during the break I believe that we were
8 able to -- you have a map in front of you. Do you
9 know where your place is at as well as turbine
10 numbers?

11 A. I do, yes.

12 Q. And I have a map with your house on it
13 with turbine numbers. So understanding that
14 perhaps you don't want the wind farm at all, I get
15 that, but if there was turbines that could be
16 removed from the footprint, would there be any
17 preference that you would like to see not be
18 located in your area?

19 A. As to each turbine specifically?

20 Q. Numbers.

21 A. Okay.

22 JUDGE WARD: Commissioner, since we're
23 using a new map we haven't marked yet, I just want
24 to mark it so we know what we're talking about
25 later. Exhibit 7.

1 THE WITNESS: Okay. Yes. If I was
2 allowed to make a decision, I would say -- I look
3 at -- it's got a circle around where my occupied
4 home is that represents the 2,000-foot setback, and
5 I can see that eighty-one, -two and -three are
6 very, very close, as well as 84, 85. Honestly, I
7 would like to see 78 and 80 removed, if possible,
8 as well, just because they are so very close to the
9 homestead. I would like to see them moved --
10 further set back from my property line, not my
11 house.

12 Q. (COMMISSIONER KALK CONTINUING) Okay. And
13 I -- and this is, you know, not my first rodeo with
14 wind farms, and the -- so you're looking at this
15 and those are the turbines that if you were to
16 request something, you could see those going
17 somewhere else?

18 A. Yes. Very much so. And the way my house
19 is set up, when you were -- when I'd be coming home
20 in the afternoons and driving down my driveway,
21 those, 80, 81, 82, 83, 78, it would literally look
22 like I'm driving up to them because they're going
23 to be stuck behind my house. I mean it's --

24 Q. How about the turbine numbers 86 and 87?
25 I understand those are kind of outliers in the

1 project area.

2 A. Yeah, they are. Absolutely. We would --
3 we'll see them out of our -- we have a nice log
4 house and we have big picture windows and they
5 don't -- we don't put blinds on them, so we're
6 going to -- yeah, we will definitely see 86 and 87.

7 Q. Where are those shelterbelts -- the long
8 rows of trees, sir -- that you referred to on your
9 property? Where are they located at?

10 A. Well, if you look at the map that --

11 Q. I think Julie has it.

12 A. -- the commissioner -- you can actually
13 see, so the drive comes in and then the shelterbelt
14 is around the -- around the backside of the house
15 and everything, so that would be back towards the
16 west.

17 MR. PELHAM: Just so the record is clear,
18 we're referring to Exhibit 6.

19 COMMISSIONER KALK: Okay. I -- I believe
20 I don't have any further questions unless there's
21 something else you'd like to offer.

22 THE WITNESS: Like I said, the only thing
23 that I really ask is that the setbacks be set from
24 our property lines and not our house because I have
25 girls and they -- they're -- they love the -- they

1 love our homestead. They love the countryside, and
2 they've always said they want to build out there
3 and, you know, raise their children there. If we
4 have them this close to our house now, any future
5 plans of building the houses will be closer than
6 the 2,000-foot setback.

7 And I've heard myself today that there are
8 health concerns and health hazards from that point
9 closer at that thousand feet and such, and it just
10 seems unfortunate.

11 COMMISSIONER KALK: Okay. Thank you for
12 identifying those turbines of concern, and I
13 appreciate your time up here today.

14 THE WITNESS: Thank you.

15 JUDGE WARD: If I can tell you from
16 experience, ma'am, that sometimes your girls meet
17 somebody from Connecticut and move to Boston.

18 THE WITNESS: Well, and I'm actually a
19 Georgia girl that moved up here, so I understand.

20 JUDGE WARD: Commissioner Fedorchak.

21 COMMISSIONER FEDORCHAK: Just one quick
22 question.

23 **EXAMINATION**

24 **BY COMMISSIONER FEDORCHAK:**

25 Q. Do you have -- the house that's right

1 adjacent, is that a relative?

2 A. No. They're just a neighbor, a good
3 friend, though.

4 Q. Okay. And are they participating
5 landowners?

6 A. They are not.

7 Q. Okay. So the land that is -- the field
8 that that number 82 is in is a -- your property
9 line goes where, right behind your house? Is that
10 the end of your property line or where does your
11 property end?

12 MR. RICHARD: That's probably best asked
13 for me.

14 THE WITNESS: It is.

15 COMMISSIONER FEDORCHAK: Okay. All right.
16 I think that you guys have covered everything that
17 I was interested in. And thank you for pointing
18 out some of those that are, you know, the most
19 difficult for you. And the company has outlined a
20 number of alternate turbines that maybe there's
21 something that can be done to swap around some of
22 that. So we'll work on that. Thank you.

23 JUDGE WARD: One thing I need to tidy up
24 is I didn't ask if anybody had any objections to
25 Exhibit 7. Mr. Collins?

1 MR. COLLINS: No.

2 JUDGE WARD: Mr. Bjella?

3 MR. BJELLA: No, Your Honor.

4 MR. PELHAM: We'd be actually offering it,
5 so --

6 JUDGE WARD: Okay. It's in.

7 MR. PELHAM: 8 or 7?

8 JUDGE WARD: 7. Showing the turbines,
9 according to my notes.

10 MR. PELHAM: Yes.

11 JUDGE WARD: Okay. Thank you,
12 Ms. Richard.

13 Next witness.

14 MR. COLLINS: Mr. Craig Kubas.

15 JUDGE WARD: The man with the key to the
16 door. Would you spell your first and last name,
17 please.

18 THE WITNESS: Craig Kubas, C-r-a-i-g,
19 K-u-b, as in boy, a-s.

20 JUDGE WARD: Okay. Mr. Kubas, raise your
21 right hand.

22 (Witness sworn.)

23 JUDGE WARD: Thank you.

24

25

1 PSC about the alternative sources section of the
2 application.

3 A. Yeah. In reviewing it, it's -- I can't
4 say I've read it all. It's a couple-hundred-plus
5 pages, but the section on alternatives and needs
6 jumped out at me as being quite lacking. On the
7 alternatives section of the application, basically
8 they said North Dakota has a goal for more wind so
9 we didn't study any other alternatives. And then
10 it went on to say that there were alternate
11 sites -- alternate specific turbine sites within
12 this project.

13 I think the words are being used
14 interchangeably. An alternate is a substitute, an
15 equal substitute, where an alternative is something
16 different. And I don't think the application ever
17 really got there to say what alternatives were
18 studied. So that was a concern I had on the
19 alternatives discussion.

20 And then the need discussion as well. I
21 know it's been -- it's been talked about already,
22 but I think the three sources that were listed in
23 the -- in the report, it talked about the MAPP 2009
24 study, which I think everyone agrees has probably
25 been incorporated into something else already, it's

1 quite old. The MISO 2012 study in the report, a
2 very good report. I spent more time than I ever
3 thought I would spend on a transmission study, but
4 it's been updated again in 2015. So some of that
5 data, I believe, is a little bit outdated. That
6 study, the MISO 2015 study, did say that capacity
7 will be met until 2020. So it kind of contradicted
8 the MAPP 2009 study that said we'd run out of power
9 next summer.

10 And then the EPA 2015 Clean Power Plan, I
11 know it's been discussed, the supreme court has
12 pushed that back down to the lower court. So,
13 again, the need to me wasn't really demonstrated.
14 Those three studies didn't talk about need. There
15 was one study, the MISO 2015 study -- again, I
16 looked at the most recent one -- talked about
17 generation, planned generation, and that data came
18 from the EIA, the Government Energy Information
19 Association, but it's planned generation. It's not
20 load demand on the system; it's not, to me,
21 satisfying any proof of need.

22 So those two issues really jumped out at
23 me as lacking in the application as a basis for the
24 need of the project and then studying alternatives
25 if there was a need for the project.

1 Q. And you reviewed the state policy for
2 approving these types of projects that are
3 contained in the statute, and how do you see that
4 relating to the lack of alternates discussed in --
5 in the application to this Brady Wind farm?

6 A. Well, Ms. Fedorchak probably stated the
7 policy better than I'm going to, but as I looked at
8 it, it was, to simplify, protect the environment,
9 protect the welfare of the citizens of North Dakota
10 and maintain a reliable grid. There's more ways to
11 say that, but those three things were my
12 simplification of the policy.

13 And in looking at it, if you don't have
14 alternatives that you studied and compared against
15 each other, how can we say we minimized impacts to
16 the people or to the environment when no
17 alternatives were studied? They were ruled out
18 right off the bat.

19 So that -- I don't know how that can be
20 compared and contrasted against -- you know, in
21 this case against nothing.

22 The other piece that I'd like to talk
23 about there is, you know, I've done some of these
24 in my profession, environmental documents, which
25 this is a very comprehensive one. We typically --

1 in the transportation world that I came from, we
2 would always study a no-build alternative. And I
3 guess if I'm writing this document with a no-build
4 alternative and I can't prove that there's a need,
5 a no-build alternative would be the least impact to
6 the environment, the least impact to the society,
7 to the welfare of the citizens, and it would
8 maintain a reliable grid because if there is no
9 need for the project, we already have a reliable
10 system.

11 MR. COLLINS: That's all the questions I
12 have.

13 JUDGE WARD: Mr. Bjella, questions for
14 Mr. Kubas?

15 MR. BJELLA: Just a couple, Your Honor.
16 Oops, wrong one.

17 JUDGE WARD: We're all doing that.

18 **EXAMINATION**

19 **BY MR. BJELLA:**

20 Q. Mr. Kubas, now you appeared and testified
21 against the Dickinson Wind project; is that
22 correct?

23 A. I -- I did appear at the Planning & Zoning
24 and at the County Commission, I believe, yes.

25 Q. And that was due to the proximity of your

1 home to that project?

2 A. It was, yeah. That project was closer,
3 yes.

4 Q. But I take it even though -- in part
5 because of your opposition and your ability to
6 persuade the county to deny it, they've moved it
7 now 15 miles south of Dickinson into a rural area,
8 but yet you're saying you're still opposed; is that
9 what you're saying?

10 A. Well, I'm opposed to this application. I
11 think it's insignificant -- or it's lacking in
12 those two areas I had mentioned before. This
13 project, like I stated, was seven miles from our
14 home.

15 If -- if I could back up, my -- my
16 involvement in the process, I'll call it, starting
17 with Dickinson Wind and going through today,
18 probably my involvement to date -- I'm here today
19 because the county, if you don't mind, about
20 halfway between -- it was in August it was talked
21 about they asked -- the Concerned Citizens had
22 asked the county to revise the ordinance. That
23 request was denied. But the Planning & Zoning
24 Commission at the time had unanimously voted to
25 create this committee to review the ordinances.

1 Sorry, I'm not talking into the mike here.

2 And I was asked to be on that committee by
3 the chairman of the Planning & Zoning committee.

4 And so we did have those meetings, and my
5 involvement in the project -- I've tried as much as
6 I can not to be biased because I was opposed to the
7 Dickinson Wind project for a lot of reasons beyond
8 the proximity to my residence, but I went into that
9 committee with as open mind as I could and tried to
10 do what I felt was best for Stark County.

11 And that's why I'm really involved in this
12 project right now and sitting here today because
13 this isn't a NIMBI thing for me. This is a Stark
14 County thing. I've lived here my whole life.

15 I think it's important that we get the
16 ordinances right. Unfortunately, 13 days after
17 this project, the Brady project was approved on a
18 split vote, they dissolved that committee and put a
19 moratorium on wind. And so, yeah, that was
20 disappointing to me and I guess that's why I've
21 been involved in the process for the last year or
22 so.

23 MR. BJELLA: Okay. I have no further
24 questions.

25 JUDGE WARD: Mr. Pelham.

1 MR. PELHAM: I don't have any questions
2 for you. Thank you, sir.

3 JUDGE WARD: Commissioners? Commissioner
4 Kalk.

5 COMMISSIONER KALK: I do, but I'm
6 wondering if our batteries are going dead.

7 JUDGE WARD: Yeah, mine -- I already
8 killed mine.

9 MR. COLLINS: Here's a --

10 COMMISSIONER KALK: I think we're okay
11 here, but it's getting close.

12 **EXAMINATION**

13 **BY COMMISSIONER KALK:**

14 Q. All right. So, Craig, in full disclosure
15 we have to tell the audience that we know each
16 other. We've tailgated before at Bison games. You
17 know that; right?

18 A. Full disclosure.

19 Q. All right. So would the outcome of my
20 decision determine if we tailgate again?

21 A. Well, I'm not the owner of that tailgating
22 setup, so --

23 Q. All right. It's not uncommon for folks to
24 know each other that went to the same school.

25 The -- just a clarification. You talked a

1 lot about -- not a lot, but about the MISO studies.
2 Actually, this power would go into Southwest Power
3 Pool. That kind of came out before. So the MISO
4 study I don't think relates to this project really
5 at all because this goes in the Southwest Power
6 Pool, but I will give you concerns about where it
7 goes I think are similar in nature. I just wanted
8 to clarify that one more time.

9 A. Okay.

10 Q. The -- you talked about a moratorium on
11 wind. This is not our jurisdiction, but I'm
12 curious what you meant by that comment for the
13 County Commission, it sounded like.

14 A. I really can't elaborate on the comment.
15 The county voted. I wasn't at the meeting, but
16 from my understanding --

17 Q. But what does that mean exactly? I don't
18 know what that means.

19 A. That --

20 Q. You said they dissolved the planning
21 subcommittee --

22 A. The subcommittee to review ordinances was
23 dissolved and a moratorium was placed on future
24 wind projects. I guess I don't have the wording.
25 It would be in their meeting minutes.

1 Q. Okay. I'll sort through that again. I
2 had never heard that before. It just kind of
3 jumped out at me.

4 Okay. The only really question I really
5 wanted to flesh out was when you talked about you
6 feel that perhaps they didn't, they being the
7 company, did not look at other alternatives, were
8 you here when I was asking the questions earlier
9 with I think it was Jason about how they walk
10 through the selection process to get to this site?

11 A. Mm-hmm.

12 Q. So isn't that his explanation how they got
13 to this site, they looked at all the range of --
14 used MET towers, determined this ridgeline had good
15 wind. Isn't that how they did their process to get
16 to this?

17 A. Well, that was a process to get to one
18 project. Are there other projects, I guess, that
19 could meet the same goals? If the need was there,
20 is there another project? You know, there's been
21 lots of discussion on -- on -- well, coal is maybe
22 a bad example -- natural gas-fired turbines, a wind
23 farm in another area. It seems that there's a --
24 the application has a lot of -- of -- you know, we
25 sited this here and we'll minimize -- to minimize

1 impacts, but it never really says how. You know,
2 they stepped through the process, they have some
3 very nice graphics on that, but I don't see that
4 there's really an alternative to what they have --

5 Q. So what you're looking for is maybe a wind
6 farm site somewhere else that would be compared to
7 this site and this would be the better of the two?
8 What would have satisfied your question?

9 A. Yeah. I think that may have satisfied the
10 question. You know, if -- if wind was needed in
11 this general area -- I think we can agree it wasn't
12 needed right here. It was first applied for -- I
13 believe the same power purchase agreement was to be
14 satisfied with the Dickinson Wind project. So that
15 wasn't -- this area for Brady I isn't the area. It
16 already went through an iteration. Maybe that was
17 their alternative, but --

18 Q. That's exactly where I was going, Craig.

19 A. Okay.

20 Q. Exactly where I was going. It's like it
21 seems to me that they have done alternative
22 analysis and their first choice was the other wind
23 farm, but that didn't go so their second choice was
24 this one.

25 A. And, you know, that's a good point,

1 Commissioner Kalk. I guess when I was writing my
2 notes about alternatives, I guess I had different
3 generation sources in my head --

4 Q. Okay.

5 A. -- based on -- based on the comment that
6 they didn't study any alternatives other than wind
7 because the state had a goal for wind. State also
8 has a goal -- I'm preaching to the choir, but they
9 have a goal for enhanced value-added energy, which
10 I think natural gas would fit the bill; enhanced
11 capture of natural gas. And then the counterparts
12 of yours on the Industrial Commission have goals to
13 reduce flaring. And so it's like, well, we've got
14 three goals that we could meet with a natural
15 gas-fired power plant. Where is that alternative,
16 I guess? So on the wind side I guess that's a good
17 point. There was alternatives.

18 COMMISSIONER KALK: Well, and I'm not
19 trying to play gotcha here, Craig. I just want to
20 walk through it. And if you could help -- after
21 this hearing is long done, the Commission has gone
22 out numerous times to the Association of Counties
23 and worked with counties all over the state about
24 energy-development issues, whether it be pipeline
25 safety, pipeline remediation, wind farms, natural

1 gas, but, you know, you obviously understand Stark
2 County. But if you can help us shape some of these
3 policies and discussions going forward because it
4 is kind of interesting where there's a purpose and
5 need statement, but yet Basin makes a choice and
6 then now the company here is being asked to justify
7 Basin's choice. So here's something we could clean
8 up, I think, down the road. So I just appreciate
9 your time here, Craig, and keeping the building
10 open for us.

11 JUDGE WARD: Commissioner Fedorchak.

12 **EXAMINATION**

13 **BY COMMISSIONER FEDORCHAK:**

14 Q. Thank you, Craig. I don't have a lot of
15 questions. I do appreciate you being here and
16 helping us out today in the room and also your
17 testimony.

18 I would encourage you to -- there's some
19 distinguishing factors. There's criteria set up in
20 law and then there's rules that we've created. The
21 whole section on the analysis for the alternative
22 and the description of how the company is supposed
23 to analyze the need, that's in the rules, and then
24 the factors to be considered in evaluating the
25 applications, which are what the legislature, the

1 policymakers tell us to consider, are outlined in
2 the application. They're also outlined online.
3 You can see those.

4 And need is one factor or statement,
5 explaining the need, but there isn't a lot of
6 emphasis put on that in terms of, you know, the
7 primary criteria or like if they can't establish
8 that, the whole thing is -- is thrown out. And
9 same with alternatives. This is a wind generation.
10 You know, they develop wind so they're not going to
11 explore alternatives and nor are they obligated to
12 the wind. Now that's Basin. Basin explores those
13 alternatives and decides which kind of generation
14 they want to buy and then they go out into the
15 market and look for that.

16 So it's confusing when there's different,
17 you know, criteria laid out, like feasible
18 alternative methods of serving the need. I can see
19 where you were going with that and where the coming
20 was going too.

21 A. Sure. I suppose the LLC, Brady Wind,
22 develops wind, I think, and maybe I misunderstood
23 that NextEra Energy, though, the parent company,
24 also develops other sources of -- of generation as
25 well, but maybe I'm misunderstanding.

1 JUDGE WARD: Yeah, we're starting to kill
2 some batteries. There's one you can fix here.

3 COMMISSIONER KALK: Maybe I've talked too
4 much today.

5 JUDGE WARD: I don't know, I can't wait to
6 go home and tell my wife I outlasted an Energizer
7 battery. I'm mostly worried about Stephanie at
8 this point.

9 Mr. Richard, can you spell your first name
10 for me.

11 THE WITNESS: F-a-r-r-e-n.

12 JUDGE WARD: And your address is the same
13 as Autumn's?

14 THE WITNESS: Correct. 5125 104th Avenue
15 Southwest, Lefor.

16 JUDGE WARD: Okay. Raise your right hand.
17 (Witness sworn.)

18 JUDGE WARD: Okay. Mr. Collins.

19 MR. COLLINS: Thank you, Your Honor.

20 **FARREN RICHARD,**
21 being first duly sworn, was examined and testified
22 as follows:

23 **EXAMINATION**

24 **BY MR. COLLINS:**

25 Q. Mr. Richard, could you tell the Commission

1 your occupation?

2 A. I'm a farmer and I also operate a couple
3 different oilfield industry businesses.

4 Q. How long have you -- how long have you
5 lived in Stark County?

6 A. I have lived in Stark County my whole life
7 other than two years.

8 Q. Okay. And I think your wife described
9 your connection to the proposed Brady Wind farm --

10 A. Yeah.

11 Q. -- the fact that your home is located
12 close to several turbines.

13 How does the proposed wind farm impact the
14 use of your property?

15 A. I'm a farmer so, therefore, I take and
16 have some of the same variations that John Wert has
17 with what it does to the humidity and whatnot, and
18 if it's -- if it helps stop frost, it obviously
19 raises the temperature of the ground. That or if I
20 choose to have an aerial crop sprayer come in
21 there, as close as they are to my home, they would
22 be -- that would be affected as well as any -- any
23 additional -- as of right now any additional
24 improvements I want to do on my own home.

25 Q. And how do you feel that the close

1 proximity of the proposed wind turbines constitutes
2 an easement trespass onto your property?

3 A. Well, I didn't get the same option that
4 the people with the wind turbines had because I
5 just didn't at that particular -- where my home is,
6 I currently only own 120 acres there. I operate on
7 more land than that, but at that particular spot I
8 only own the 120 acres.

9 And the options I didn't have is every one
10 of them wind towers that are around my house,
11 within a mile of my house, the people that have
12 them wind towers, such as Don Reisenauer, Darrell
13 Kuhn, Clyde Dukart, Iggy Weigel, none of them
14 people live with -- I mean anywhere near. Clyde
15 Dukart lives down by Highway 22 where he has his
16 one-mile setback from the highway and he isn't even
17 in the footprint; as well as Darrell Kuhn is --
18 lives to the east -- southeast of me and he is also
19 not even in the footprint; as well as Don
20 Reisenauer lives approximately about ten miles
21 north of that property he owns there. Iggy Weigel
22 has never -- I don't -- he lives in town. He
23 bought that property on the north side of my
24 property line as an investment, which today I wish
25 I'd have known and bought it instead of letting him

1 get it.

2 Q. So what changes would you like to see to
3 the Brady Wind project, if any?

4 A. Well, I feel I should have the same rights
5 as all the people that chose to put them up around
6 my house. If they're not going to put them by
7 their house, why do they get to put them by mine?

8 Ruth Steier, who we have heard from
9 earlier, had also mentioned about she has her
10 property rights, but she is also -- their -- their
11 farmstead is also right along Highway 22 and the
12 closest one to them is -- the closest wind
13 generator to them is over a mile away, along with
14 Clyde Dukart, along with Darrell Kuhn, along with
15 Don Reisenauer. And if -- and they have property
16 that they could have allowed wind generation on,
17 and I'm just speculating, but I'm sure they didn't
18 want them by their home.

19 Q. Well, let's not speculate.

20 A. Okay. Well --

21 Q. Anything else you would like to share with
22 the Commission?

23 A. Well, in the contract that NextEra brought
24 to me or Brady I wind farm had brought to me that
25 if -- it mentioned the shadow flicker, the red

1 lights and the -- as well as the effects in the
2 contract that they had brought to me, it lists in
3 there if you are -- if you choose to sign on with
4 them, you have no rights to talk about or complain
5 about any of them problems if there is such a
6 problem.

7 Well, if they're going to put them up
8 2,000 feet from my -- from my -- my foundation,
9 where is my rights? I mean I didn't sign that. I
10 didn't sign up for red lights or flicker, so why am
11 I -- I guess if you're going to talk 2,000 feet
12 from a foundation, where is my rights?

13 So I -- I didn't buy that place to take
14 and have to deal with something that stands over
15 450 feet tall. As well as if you live in town, you
16 can't have a fence higher than six feet. It's the
17 ordinances. Okay. And we live in the country. We
18 can have structures as high as 450 feet right on
19 our property -- right next to our property. And in
20 town you're infringing on your neighbor's property
21 if you have a fence over six feet but in the
22 country you're not?

23 As well as with all them wind turbines,
24 that's spot zoning industrial property in
25 agriculturally -- in agricultural-based property.

1 That would be industrial, not -- not agriculture,
2 and our county is based on agriculture.

3 MR. COLLINS: Thank you, Mr. Richard.

4 JUDGE WARD: Questions for Mr. Richard?
5 Mr. Bjella.

6 **EXAMINATION**

7 **BY MR. BJELLA:**

8 Q. Mr. Richard, just one question. It's my
9 understanding the closest turbine is about a half a
10 mile. Would that be correct?

11 A. The closest turbine to my house, and the
12 only thing that buffers it is the fact that my
13 neighbor's is 300 feet closer to it, would be just
14 over 2300 feet. A half a mile is 2640, so let's
15 not get that mistaken.

16 MR. BJELLA: Okay. Thank you.

17 JUDGE WARD: Mr. Pelham.

18 MR. PELHAM: I don't have any questions
19 for you, sir.

20 JUDGE WARD: Commissioners. Commissioner
21 Kalk.

22 COMMISSIONER KALK: Thank you, Your Honor.

23 **EXAMINATION**

24 **BY COMMISSIONER KALK:**

25 Q. Thank you, Farren, for your testimony.

1 The -- you talked about aerial spraying.
2 Have you ever used aerial spraying on your
3 property?

4 A. I have not at the moment, but it is
5 something I was going to -- I was going to look
6 into due to -- for spraying for fungicide.

7 Q. Okay.

8 A. I have not used fungicide in the past, but
9 it was -- through my research I was going to start
10 to implement that into my farming.

11 Q. Gotcha. And just the last question, this
12 is dangerous for you to answer here, because I'm
13 going to ask you if you have any changes to what
14 your wife has already told me?

15 A. Any what?

16 Q. Any changes. When your spouse was up here
17 and talked about several turbines that she might
18 like to be removed, would you have any additions or
19 corrections that you would see? I mean, A, short
20 of no wind farms; but, B, if there are a few
21 turbines that you don't like, would you agree with
22 what your wife testified to or would you like to
23 see --

24 A. I'd like to actually see the map. I
25 didn't see exactly which ones my --

1 COMMISSIONER KALK: Zach, can you help us
2 out, please.

3 MR. PELHAM: Just so we're clear, this is
4 Exhibit 7.

5 Q. (COMMISSIONER KALK CONTINUING) Exhibit 7.
6 So basically starting to the north of your place,
7 turbines 85, 84, 83 -- well, actually, you know
8 what, let's have somebody read that back.

9 COMMISSIONER FEDORCHAK: I wrote down 81,
10 82, 83, 78 and 80.

11 COMMISSIONER KALK: Julie, would you say
12 that again, because I can't read my own writing.

13 COMMISSIONER FEDORCHAK: I wrote down 81,
14 82, 83, 78 and 80. And then you mentioned the ones
15 on the other side, which I believe was -- which
16 ones were those?

17 THE WITNESS: 86 and 87.

18 COMMISSIONER FEDORCHAK: 86 and 87, yeah,
19 because I don't have those on my map here.

20 THE WITNESS: Them are as well.

21 COMMISSIONER FEDORCHAK: The ones out the
22 front.

23 THE WITNESS: Yeah. They're in the --
24 they're less than a mile away from my property.

25 Q. (COMMISSIONER KALK CONTINUING) So would

1 you have any changes, additions, deletions to that?

2 A. I'd like to see 86 and 87 removed as well.

3 COMMISSIONER KALK: Okay.

4 COMMISSIONER FEDORCHAK: Are those --
5 sorry.

6 COMMISSIONER KALK: I'm done. I'll turn
7 it over to Julie.

8 **EXAMINATION**

9 **BY COMMISSIONER FEDORCHAK:**

10 Q. So recognizing that, you know, seven tower
11 eliminations is more than we've ever seen happen at
12 a hearing like this, so is it more important for
13 you to -- to advocate for the 86 and 87, which are
14 visible out the front, where in the back view from
15 your house looks to me like it's sheltered by some
16 trees?

17 A. No. That's correct. I would prefer the
18 ones behind my house rather than the ones in front
19 of us.

20 Q. The close -- 81, 82, 83?

21 A. Right.

22 Q. Those seem closer.

23 A. Right. 84 and 85 as well. I don't know
24 if that's listed or not.

25 COMMISSIONER FEDORCHAK: Okay. That's all

1 my questions, Judge.

2 JUDGE WARD: Okay. Mr. Richard, you can
3 step down. Steph, how are you doing? Need a
4 break?

5 THE REPORTER: Yes.

6 JUDGE WARD: Okay. Let's take about ten
7 minutes.

8 (Recessed at 7:59 p.m. and reconvened at
9 8:07 p.m.)

10 JUDGE WARD: Back on the record.

11 Mr. Collins, your next witness.

12 MR. COLLINS: Mr. Kurt Martin.

13 JUDGE WARD: And is this your last
14 witness?

15 MR. COLLINS: Yes, Your Honor.

16 JUDGE WARD: Mr. Martin, I know you've
17 been here all day so you heard the warning. Raise
18 your right hand.

19 (Witness sworn.)

20 JUDGE WARD: Kurt, do you spell it with a
21 K or a C?

22 THE WITNESS: K-u-r-t.

23 JUDGE WARD: And Martin, M-a-r-t-i-n?

24 THE WITNESS: Correct.
25

1 quite often I'm directly involved.

2 Q. And do you also hold public office?

3 A. Yeah. I've been the mayor of Gladstone
4 for -- I think I was on the board for two years and
5 now I'm going to be on the board for 16 years, but
6 I'm retiring in June, I guess.

7 Q. Congratulations.

8 And how long have you lived in Stark
9 County?

10 A. I've lived in Stark County my whole life.

11 Q. In relationship to the Brady Wind Energy
12 Center and your concerns about it, what have you
13 learned as a large employer in the area when it
14 comes to hiring needs?

15 A. Well, one thing as a large employer that
16 you watch is when employees come in, what's their
17 needs. I mean quality people, you know, you have
18 to provide them a quality of life. One thing that
19 frustrates me is I think southwestern North Dakota,
20 to be honest with you, is starving for a lot of
21 these people to be able to go out and enjoy what
22 they want to do when they come to North Dakota.
23 You'll be surprised if you have people from out of
24 state, how many times they come in at the end of
25 the interview, they'll be, Where can I take my

1 four-wheeler? Where does a guy take a dirt bike?
2 Where does a guy take one of those side-by-sides?
3 We really don't have a lot of answers for them at
4 that point.

5 A lot of people that come to work here, I
6 always look at it there's two different types when
7 they come as an employee. There's the people here
8 that -- the boot -- boot-camp-type people. You can
9 put them in a -- you can put them in an apartment
10 or a small spot, they're just here to make some
11 money, get as many hours as they can and they're
12 gone. But your quality people are really looking
13 for a life, and those are the people that I believe
14 North Dakota should be trying to retain. And you
15 can't retain them if you don't give them a good
16 quality of life. They're not going to come to
17 North Dakota to be cooped up. I mean they don't
18 come for -- I mean they didn't come to Dickinson
19 for the uppers or nothing like that.

20 So it's -- it's -- that's what I really
21 think I'm worried about with these wind farms
22 trying to -- you know, that's 17,000 acres. That's
23 a lot of -- that's a lot of ground that's getting
24 used up and I just think it's way too much. I
25 think those wind farms could really be condensed a

1 lot more than they are, so that's one of my
2 concerns.

3 Q. And I understand that you have another
4 concern with regard to the wind turbines in
5 relationship to the cycle of rural homestead
6 ownership?

7 A. Right. You know, I've lived here my whole
8 life, and when my -- as a young person I would go
9 around with my dad. My dad was involved in
10 business, in Minnesota Valley Breeders. They bred
11 cattle or sold semen. Well, we used to drive all
12 over the country and all -- I mean we covered a
13 pretty big area, but it was fun to go to all the
14 farms. I mean there was kids on all the farms, the
15 farms were just -- they were alive, I mean the
16 farms were alive and that was in the '60s.

17 It wasn't long after that, in the '70s and
18 '80 after the first boom, you could start seeing
19 the farms kind of fall off, and it was actually sad
20 to drive around the country and see a lot of these
21 homesteads that were starting to not be utilized
22 anymore.

23 Well, it seemed like in the mid-'90s or
24 so, even in the early '90s, you could start seeing
25 it pick up. More and more people wanted to go out

1 into the country. And as you see it now, it's just
2 a continual boom in the hobby farm. I mean there's
3 a lot of people that want to go out there, and I
4 think it's good for our economy. People bring --
5 you know, people is what drives economy. And I
6 don't think wind turbines drive economy if you're
7 taking away the places for people to live. Like I
8 said, wind turbines, I believe, or wind farms
9 should be condensed to the point that they take
10 up -- I mean why can't they take up a
11 four-by-four-mile grid. I mean why don't we go
12 into an area where they -- everybody participates?
13 And I'm sure there's all kinds of ways to make some
14 turbines taller, some are lower so they take
15 advantage of heights or terrain to make them work
16 more efficient. I just don't think we work at it
17 hard enough. I think we just say this is the
18 easiest, this is where the roads are, let's build
19 them. And it's kind of frustrating.

20 I hear a word sometimes in the wind
21 industry. They say, well, North Dakota it's -- how
22 do they say it? It's the low-hanging fruit. We've
23 got to do it here, it's the low-hanging fruit.
24 This is the best place. Well, you know why it's
25 the best place for them? They don't have to build

1 no roads. All the roads are built. That's where
2 the people are, though.

3 I mean if you take turbines to certain
4 areas of the county or anyplace else where there's
5 less roads and less -- yeah, there's less roads,
6 it's more of an expense for them, so it's no longer
7 a low-hanging fruit. It's got more expense.

8 So I think sometimes we just get caught up
9 in these wind farms where they want to go where the
10 best roads are and it's just like push the locals
11 out. I just don't think it's good for -- for Stark
12 County or southwestern North Dakota when they try
13 to go into those areas because roads, you know,
14 infrastructure, that's where the people want to be.

15 MR. COLLINS: That's all the questions I
16 have. Thank you.

17 JUDGE WARD: Mr. Bjella.

18 **EXAMINATION**

19 **BY MR. BJELLA:**

20 Q. Mr. Martin, you were an opponent of the
21 Dickinson Wind farm; is that correct?

22 A. Correct.

23 Q. And now you're opposing this wind farm?

24 A. I'm opposing the location and the size of
25 it. I think it -- I think it should be scaled down

1 tremendously, and I think there's the ability to do
2 it. I think we're more worried about how fast we
3 can put them up compared to how good we can put
4 them up. I mean is the wind going to blow there
5 next year? Is the wind going to blow there a year
6 and a half after? Is it that much of a rush that
7 we can't take our time and site them good?

8 Q. Isn't it the real goal of Concerned
9 Citizens of Stark County to stop any wind farm in
10 Stark County?

11 A. You're a hundred percent wrong. I've -- I
12 can remember when I went to school, you know, the
13 big thing my professor talked about then was -- I
14 went to school in Bottineau in '75. I was going to
15 go into wildlife management, and so now you
16 understand why I like the outdoors a lot. But one
17 of the things they talked about back then was
18 magnetic power. Well, magnetic power -- but I mean
19 you always look at -- I don't think anybody doesn't
20 want to find a good alternate energy, but you can
21 only bet on something so long and then you've got
22 to see the consequences. I mean if this wind farm
23 is just kicking butt, it's the best thing, well,
24 then we should all be in. But I kind of believe
25 where there's a lot of other energies around the

1 corner that are going to be a lot better, and I
2 think you've got to give things time to develop.

3 MR. BJELLA: I have no further questions.

4 JUDGE WARD: Mr. Pelham.

5 **EXAMINATION**

6 **BY MR. PELHAM:**

7 Q. Mr. Martin, I'm just wondering, sir, if
8 you own property in the project area.

9 A. I think I'm about a mile and a half away.

10 Q. Okay. Do you have the legal description
11 of your property, sir?

12 A. Yeah. It's Section 21, southwest quarter.
13 Let's see. It's 138 North, 95 West, and then it's
14 Section 28, northwest quarter.

15 MR. PELHAM: All right. Thank you, sir.

16 JUDGE WARD: Commissioner Kalk.

17 COMMISSIONER KALK: Thank you, Your Honor.

18 **EXAMINATION**

19 **BY COMMISSIONER KALK:**

20 Q. Thank you, Kurt, for your testimony. And
21 how long have you been married for?

22 A. 16 years.

23 Q. 16 years.

24 Has anybody ever run against you?

25 A. I think there were a couple times, yeah.

1 Q. You brought up Bottineau. That's where I
2 grew up at, so I know the college up there, but a
3 buddy of mine was mayor for 20 years because he
4 couldn't find anybody else for the job. So -- and
5 I'm serious. Thank you for doing that. We need
6 people to be mayors and county commissioners and
7 city commissioners. It's tough jobs.

8 A. Yeah. Yeah, it is. And I think it is
9 important for the young people to get involved.
10 One of the things, you know, when I -- I was
11 against the first wind farm. We're building out
12 there where the first wind farm was. I was another
13 one that would have been wiped out. There would
14 have been four or five turbines around my spot,
15 right by my house. Shadow flicker just all over it
16 and going a quarter mile beyond it, and guess what,
17 the guy that was putting them up didn't have any
18 within 3,000 miles of his place, but I had them all
19 by my place. That's what's frustrating about the
20 way this is going on, and I can see where it's
21 frustrating for some people. I mean when a
22 neighbor sets a turbine by his house and keeps it
23 away from their house, that's a little -- that's a
24 little tough for people to handle. But --

25 Q. Sure. You --

1 A. -- the one thing I -- you know, the young
2 people. When you look around, the one thing I
3 notice when I fought the first time around is the
4 young people are more aggressive against this than
5 anybody. And it's -- you know, you look at it, for
6 the next 30 or 40 years they're going to have to
7 deal with it. We're not going to have to deal with
8 it. You know, a lot of the other landowners,
9 they're moving to town, they're going to move on,
10 so it's not probably the -- you know, when Tom said
11 50 percent are there and 50 percent are gone,
12 there's going to be another 25 percent following
13 them pretty soon when those turbines go out there.

14 And I really -- really think it's critical
15 that we think things through a little bit longer,
16 and that's what was very frustrating at the county
17 level. You know, you guys talked to us today more
18 about policy, more about things than we heard in a
19 year from our county commissioners, our planning
20 and zoning. We couldn't talk to them. We were
21 kind of shut out, so to speak, and that's what's
22 frustrating. That's where the Concerned
23 Citizens -- we tried to get -- the biggest things
24 we were trying to do is get ordinances in place.
25 We didn't have any ordinances.

1 When the first MET tower went up by my
2 farm where I was moving out there, I went and met
3 with Jerry Lein. It was probably January of -- of
4 2015, I believe it was or something, and I went and
5 met with Jerry. And I took the Stark County
6 ordinances and I said -- and I never knew Jerry
7 before but he was helpful, and I said, Let's sit
8 down and look at what the PSC is doing and what
9 Stark County is doing. Well, if you looked at the
10 two sets, I mean it's terrible. I mean there's
11 nothing there to protect the landowners.

12 I mean we have things about noise. Okay.
13 Who's going to go out and enforce it? Nobody's
14 going to enforce it. If it happens to -- to
15 somebody where it's too loud, I can tell you what
16 our state's attorney is going to say. Well, that's
17 a civil matter. Now, how is that guy going to
18 fight a \$55 billion company?

19 Q. Well, Kurt, if I -- I just have a couple
20 more questions, but I will respond to what you just
21 said. Maybe you heard my questions earlier today
22 about what if your modeling is wrong. We've had --
23 Commissioner Fedorchak and I and Randy have had
24 numerous cases -- I shouldn't say numerous, but
25 several, where Project X was built and the pipeline

1 company said the noise will be at this level.
2 After it was built, the noise level was higher.

3 A. Yeah.

4 Q. So they came -- the folks that were
5 concerned came back in front of us, the permit
6 conditions were not met. We went back out there,
7 and in some cases we made them put in trees, some
8 cases they had to wrap the pump stations, some
9 cases perhaps turbines have to be shut down certain
10 times of year. So whatever the company testifies
11 to today if this is approved and if that's not
12 right in the ground, we will follow through in the
13 life of the permit. So that's our job. If they
14 testify it won't exceed 55 decibels and they
15 measure 80 decibels at their house, they've not met
16 the conditions of the permit. I will tell that to
17 everyone, so --

18 A. Right. No. And I appreciate it. And I
19 think Julie did a fantastic job of saying let's
20 work on that light flicker. I mean if there's
21 technologies out there, it should be implemented.

22 But I'd like to go one step further with
23 that because, you know, I was here today and I
24 listened to them talk about how one of the turbines
25 could be shut down at any time or whatever they can

1 do. I would also like to see it in the application
2 where that can be a request of the county or the
3 PSC and it's not fought. You know, if the county
4 sends a regulator out there or somebody at a
5 certain time and says, Listen, this guy is
6 complaining about the noise, and they're, Well, we
7 don't know if it's noise or not, like you said,
8 because it could be ambient noise. Well, if we
9 have a control to shut the turbine down and they're
10 standing there with their noise meters and then
11 they can start the meter up, you can at least find
12 out for sure what's going on, I mean, if that is a
13 problem or not.

14 So I think, you know, in our applications
15 I would sure like to see something like that put
16 down. Even -- you know, it's not that big in the
17 U.S. right now. I spent a lot of time on this on
18 the first time around because we were going to be
19 wiped out, and I really wanted to understand.
20 Anytime I seen something in the paper, I didn't
21 even read it -- I mean I didn't only read it, I
22 would call up some of the people that wrote it and
23 had some lengthy conversation with them.

24 And I don't know if you guys realized, we
25 brang Paul Schomer in, one of the biggest acoustic

1 experts internationally, and it was pretty
2 interesting talking to him and getting to
3 understand a lot more about turbines.

4 COMMISSIONER KALK: Well, Kurt, I don't
5 have any more questions. I would just close with
6 the comment, the same thing I told Craig, that in
7 North Dakota we're facing an interesting challenge
8 where our energy infrastructure -- there's folks
9 from the federal level that want to shut down our
10 coal and some of those things, so that's one
11 challenge. But also we've got an aging fleet of
12 generation, so we're going to have to build new
13 generation no matter what happens with the clean
14 power plant. So whether it's wind or coal or gas,
15 we really need folks like mayors and county
16 commissioners to be involved in this policy setting
17 because you are the ones that live in these areas
18 where this stuff is going to go. So, you know,
19 whatever happens here today, please stay involved
20 through the Association of Counties. You know,
21 just -- we're going to have a robust discussion on
22 wind farms in this next legislative session on
23 remediation and decommissioning, there's lots of
24 things that are coming up, so please don't quit
25 today. Stay in this discussion all the way

1 through.

2 And thank you.

3 THE WITNESS: You're welcome.

4 **EXAMINATION**

5 **BY COMMISSIONER FEDORCHAK:**

6 Q. Okay. Thanks, Kurt -- Mayor. Better take
7 advantage of the title and all its perks for the
8 last few months --

9 A. Yeah.

10 Q. -- that you have it.

11 As a local leader and somebody who has
12 been involved in a local level, do you have any
13 issues with the concept, just from a philosophical
14 standpoint, of a state agency coming in and
15 overriding a local agency and their rules on this?
16 Because a lot of issues that have been talked about
17 are zoning, local zoning matters that have been
18 addressed and approved by locally elected leaders
19 here. And by, you know, exerting our influence on,
20 you know, setbacks, that sort of thing, we're
21 basically overriding them. Do you have any issues
22 with that?

23 A. Well, I think, you know, we're all in this
24 together. I mean whatever -- we're good for all
25 the people. If the -- if the overriding comes from

1 above or from the county level, the one thing
2 you've got to understand is this is a \$55 billion
3 company. They've got some good salesmen. Some of
4 these commissioners before they even know what's
5 going on, they're making their minds up before
6 anybody gets a chance to talk to them. We didn't
7 even have a chance to voice our opinion the last
8 time around. We were cut off. Some of us were
9 asked not to even talk at the meeting.

10 So in answering your question, I'll answer
11 it this way: You know, there's an oil well by my
12 place and there was some rain and the water ran
13 off, and I called the oil and gas and they sent
14 somebody out there immediately and a contractor was
15 there shortly and fixed the problem. It could have
16 went into Beaver Creek and from there into the
17 Heart River. What's going to happen out here,
18 though, if we call up with a noise problem -- if
19 somebody calls up with a noise problem or anything
20 like that? Where do these people go? There's no
21 place for them to go.

22 Q. Well, that's what Commissioner Kalk was
23 just saying. From the permit that would be -- I
24 mean maybe the local folks have a noise ordinance
25 as well, but for sure anything that's included in

1 our permit, which would include the shadow flicker
2 and the noise and all those agreements, they're
3 enforceable by us. And you can talk to folks when
4 it comes to pipelines or whatever, we hold the
5 companies accountable for what they promise in
6 their -- in their testimony and what's included in
7 our orders without even hesitation. They're
8 required to. It's enforceable by law and we do
9 hold them accountable.

10 So that's -- there is recourse for folks
11 that aren't being -- you know, are being treated
12 differently than what the permit says. So
13 that's -- you know, everyone should feel confident
14 in that moving forward.

15 Have you talked to other communities --
16 there's a lot of different communities around North
17 Dakota now who have lived for a number of years
18 with -- with the wind development. Have you talked
19 to any of the folks in the other communities that
20 are living with them to see how they're feeling now
21 that they're up and running and have been around
22 for a while?

23 A. I drove pretty extensively through the one
24 over by New Salem over there, and I went out and
25 looked at the farms. And I'll tell you what, you

1 can see that people aren't too interested in
2 keeping up their farms anymore when you drive into
3 those yards. I mean you even see boarded up
4 windows. And you say to yourself, what are we
5 really building in the long run? I mean where
6 these farms are here today, when those people
7 leave, what quality people come in a second time
8 around and a third time around and the fourth time
9 around? I mean what are we really -- you know,
10 early on --

11 Q. Mayor, that's where my farm is.

12 A. But you're not -- I know which one is
13 yours -- you told me about it --

14 Q. It's all boarded up.

15 A. But you're on the edge. I was in the
16 middle.

17 Q. Okay.

18 A. But, anyway, I mean that's where I
19 think --

20 Q. But you haven't talked to the leaders?
21 You've looked at them and driven around, but you
22 haven't talked to any of the community -- your
23 fellow mayors in any of those locations?

24 A. No, we really haven't.

25 Q. Okay. One last question and this is just

1 a struggle that I have. We've talked a lot about
2 policy and Commissioner Kalk talked about, you
3 know, how valuable it is to have folks in this room
4 talking about some of these policies, working with
5 local leaders on the policies. We're a regulatory
6 agency and so I don't view us as policymakers.
7 We're policy -- we implement what the policymakers
8 decide. And just from a philosophical standpoint,
9 I have a hard time with regulatory agencies who do
10 take a policy approach, and I think we see that in
11 the Obama administration and some of the EPA stuff
12 that we harp about all the time that this is not
13 appropriate. We have the Senate, we've got the
14 House, we've got the president, they're supposed to
15 set the policy, and here you have a regulatory
16 agency deciding who the winners and losers are. So
17 that's why, you know, throughout the day I've been
18 referring back to the law, back to what it says,
19 back to what we're supposed to be guided by. What
20 I think about wind doesn't really matter. That's
21 not what's at issue here. I have to be following
22 what the guidance is of the state leaders, and they
23 haven't provided guidance like a lot of the folks
24 have suggested we should use, such as, you know, we
25 have enough wind, or, you know, there isn't a

1 strong enough case for the need. Well, the fact
2 that there's a buyer for the wind and they think
3 they have a need suggests to me that there's a need
4 and there's a market in the marketplace and there's
5 a buyer.

6 So, you know, whether the energy goes out
7 of state or not, again, that's a valid policy
8 consideration that legislators should think about.
9 Maybe we do want to have a policy that says no wind
10 except for local use, but that doesn't exist today.
11 So that's why I keep driving back to, you know,
12 what is our -- what is our role and sticking to
13 that from a philosophical standpoint, because I
14 don't like it when regulatory agencies do it on the
15 other side of things on issues that I feel -- you
16 know, they've run coal out of business. That's not
17 a federal policy, but they've done it.

18 So that's kind of where I'm coming from on
19 some of this regulatory -- our role as regulators
20 versus your local leaders and what their role is in
21 setting the policy in your county.

22 A. Right. Like I said, I think where some of
23 us are today that are fairly upset is you talk to
24 us more than we got talked to for over a year and
25 you try to figure out how you're going to dictate

1 policy. We went and put a board together -- a
2 committee together which was voted in unanimously
3 by Planning & Zoning to review the ordinances, and
4 they didn't even allow it to operate.

5 Q. Sounds to me you're going to resign as
6 mayor and run for County Commission.

7 A. I'm too old and getting too tired, but --

8 COMMISSIONER FEDORCHAK: Well, I'm sorry
9 that that's your experience, and I hope it doesn't
10 deter folks from getting involved. In fact,
11 hopefully it encourages them to become more
12 involved.

13 JUDGE WARD: Thank you, Mr. Martin. Thank
14 you, Commissioner.

15 Anything else for Mr. Martin?

16 MR. COLLINS: I have no further questions.
17 And the Concerned Citizens will rest.

18 JUDGE WARD: Okay. Mr. Pelham, anything?

19 MR. PELHAM: No, sir.

20 JUDGE WARD: Mr. Bjella, any rebuttal?

21 MR. BJELLA: No.

22 JUDGE WARD: Any additional public input?

23 Well, let me just say this: Before we

24 get -- we've already heard from six Concerned

25 Citizens that were identified. Yeah. There is a

1 sign-in sheet still floating around and there's
2 probably an additional page that's been signed. If
3 there's anybody new, please sign that.

4 As far as additional public input goes,
5 anybody that still wants to testify? There's one
6 lady that's over here. And if you're going to come
7 up, please don't repeat what we've already heard.
8 I see a couple hands back there. Any of those
9 people back there, are you in favor or opposed to
10 the project?

11 I think let's hear from someone on this
12 side of the room for just a little variety, just to
13 be fair.

14 THE WITNESS: I'm excused?

15 JUDGE WARD: Yep, you are.

16 COMMISSIONER KALK: Your Honor, if I
17 could, when this is all said with the public
18 testimony, I'm going to ask the company what their
19 thoughts are under removing those turbines that
20 came up in this testimony, so that will be a
21 question I'll ask you on what your thoughts on that
22 are.

23 JUDGE WARD: Okay. I thought I saw a guy
24 coming up, but now -- yep. Okay.

25 Okay. Sir, I have to ask you just a

1 couple questions. Can you tell me your name?

2 MR. BRUSSEAU: J-u-d-e-e-n

3 B-r-u-s-s-e-a-u.

4 JUDGE WARD: And where do you live?

5 MR. BRUSSEAU: 761 Eighth Avenue

6 Southwest, Dickinson.

7 JUDGE WARD: And do you have property in
8 the affected area?

9 MR. BRUSSEAU: In the Brady I, no. Brady
10 II, yes.

11 JUDGE WARD: All right. And you support
12 the project?

13 MR. BRUSSEAU: Yes.

14 JUDGE WARD: Okay. Would you raise your
15 right hand.

16 (Witness sworn.)

17 JUDGE WARD: Okay. Go ahead.

18 **JUDEEN BRUSSEAU,**

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

21 **STATEMENT**

22 **BY MR. BRUSSEAU:**

23 MR. BRUSSEAU: The reason -- I was first
24 involved with the wind farm for Gladstone in
25 Taylor. That's how I got to know NextEra Energy.

1 We were supposed to get a transmission line, so I
2 wanted to check on this company of what its
3 background was, what type of history it had and how
4 did they follow through with what they said.

5 I come from the Langdon community. I went
6 there and I talked to a farmer and told him what I
7 wanted to know and what we were confronted with,
8 and I wanted his opinion of how NextEra Energy
9 worked with him. NextEra Energy has been in
10 Langdon for about eight years with roughly 100
11 turbines in that area. This farmer that I talked
12 to said that he had nothing but good to say for
13 NextEra Energy. He said he had towers on his
14 place, he had roads through his land that any --
15 and the easement, they advised him to check into it
16 and get any changes that they could talk about. He
17 said everything they talked to NextEra Energy
18 about, they came to a compromise what could be
19 done.

20 I asked him -- being farmers and of a
21 farmer background, I asked him about the roads. Is
22 this a complication or is this a hazard for a
23 farmer who is seeding grain, combining, swathing,
24 spraying or so forth? He told me that the roads
25 are almost level with the ground so they are able

1 to go over those roads with any of the machinery
2 and doesn't cause a problem. As far as -- it isn't
3 quite as handy if you have a road that you've got
4 to go over it than if you go straight through, but
5 he said it was no problem. All the farmers that he
6 knew of had no complaints about -- with these
7 roads.

8 Then in -- two weeks ago I was up to that
9 area again, and we were going down -- if anyone
10 knows where Highway 1 and 66 is, which is about
11 nine miles south of Langdon, we stopped, we shut
12 the car off, we could not hear any turbines and we
13 were roughly probably a block, two blocks away from
14 this turbine. We opened the windows. We could not
15 hear the turbine. I got out of the car and
16 purposely tried to hear the turbine. Yes, I could
17 hear it, but it was no more -- it wasn't as noisy
18 as I am talking here.

19 I went from there and I talked to a
20 businessman in Langdon who is involved with
21 electricity. I asked him what he knew of NextEra
22 Energy. He said you should welcome them into your
23 community. They have added dollars to our schools.
24 They have kept their promises on the roads. They
25 have employed people in the wintertime to plow the

1 roads off to these terminals which brings in
2 additional money. And as far as -- I couldn't --
3 then in turn I talked to another person. I said,
4 What -- is there anything that you have heard about
5 this operation that's negative? The comment I got
6 was that if people could have signed up more, they
7 would have gladly done it. So in that area there's
8 a number of turbines -- and it's eight years that
9 NextEra Energy has been in that area. So I thought
10 by contacting an area where they have been in this
11 years that you could find some negative comments
12 about it. I did not find one.

13 JUDGE WARD: Thank you, Mr. Brusseau.

14 Questions for Mr. Brusseau? Mr. Bjella.

15 MR. BJELLA: No, Your Honor.

16 JUDGE WARD: Mr. Pelham.

17 MR. PELHAM: No, Your Honor.

18 JUDGE WARD: Mr. Collins.

19 MR. COLLINS: No, Your Honor.

20 JUDGE WARD: Commissioners?

21 COMMISSIONER KALK: No. Thank you.

22 JUDGE WARD: Commissioner Fedorchak.

23 COMMISSIONER FEDORCHAK: One second.

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BY COMMISSIONER FEDORCHAK:

Q. Mr. Brusseau, that was in Langdon, did you say --

A. Correct.

Q. -- the Langdon wind farm?

And did you check with any other locations?

A. No, I did not. Another thing about -- the Langdon area is a cool season crop area too. They raise a lot of canola up there. In the last eight, nine years canola has gone on the increase in acres besides wheat, beans and that, so -- and I did not get any negative comments about raising crops that it's reducing their yields whatsoever.

Q. And just to play devil's advocate, from your perspective as well, what do you think the solution is to these folks who don't want the wind farms and how can we mitigate that?

A. Well, it's like any project, you've got pros and you've got cons and you've got to have regulations. I don't think there's anything that can be done that you aren't going to find some people against it and some people are going to be for it and they may be neighbors. So that's why

1 they have regulations, that they have the zoning
2 board, that's why they have the county
3 commissioners and that's why they have you people
4 to interpret this and decide which use is the best
5 for the community.

6 I -- I can see some of these people that
7 have these turbines, especially Mrs. Richard with
8 that many turbines, I can see a problem. I can see
9 why she is saying this, but I don't think in North
10 Dakota, other than going into the Badlands, you're
11 not going to have some problems with adjacent
12 property and adjacent homes.

13 COMMISSIONER FEDORCHAK: Okay. All right.
14 Thank you.

15 JUDGE WARD: Thank you, Mr. Brusseau.

16 Okay. I'll take the lady from this side.
17 Ma'am, would you state your name, please.

18 MS. HOFLAND: My name is Coree Hofland.

19 JUDGE WARD: Okay. Can you spell your
20 first name.

21 MS. HOFLAND: C-o-r-e-e H-o-f-l-a-n-d.

22 JUDGE WARD: And, Coree, where do you
23 live?

24 MS. HOFLAND: I live in Dickinson.

25 JUDGE WARD: In town?

1 MS. HOFLAND: Yes.

2 JUDGE WARD: Do you have property out in
3 the affected area?

4 MS. HOFLAND: I don't. I was a
5 nonparticipating landowner in the Dickinson Wind
6 farm.

7 JUDGE WARD: Okay. And so you oppose this
8 project?

9 MS. HOFLAND: I don't oppose the project.
10 I oppose the Stark County setbacks.

11 JUDGE WARD: Okay. All right. Let me
12 have you raise your right hand.

13 (Witness sworn.)

14 JUDGE WARD: All right. Go ahead.

15 **COREE HOFLAND,**

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

18 **STATEMENT**

19 **BY MS. HOFLAND:**

20 MS. HOFLAND: We were a nonparticipating
21 landowner in the Dickinson Wind farm. We chose not
22 to participate when NextEra approached us. We are
23 not angry because we weren't getting a wind turbine
24 or an easement. That is -- I'm here because of the
25 setbacks.

1 I believe in the rights of the property
2 owners and the landowners. I believe that if you
3 want to do something on your property, that's where
4 it should be, on your property, not getting what
5 you want by using my property and my rights.
6 You're infringing on my rights. You can do with
7 your property as long as that's where you encompass
8 it. Keep it on your property. Don't use mine.

9 That's basically my whole argument in the
10 whole wind farm. You are almost using -- you're
11 trespassing on my property. I didn't give you
12 permission. In fact, I decided not to sign up. I
13 chose not to. It's not jealousy, it's not for
14 money like they tried to imply that we're fighting
15 it because we're not getting compensated. We chose
16 not to. I chose not to participate.

17 You're still using and taking my property.
18 It's almost eminent domain, almost, but they claim
19 they can't use that, but they do. Because that's
20 what they're doing.

21 We have one chance here, one chance to get
22 this right because we're going to live with this
23 for 40 to 60 years. I don't want to be wrong. I
24 don't know about you. I know our -- our Concerned
25 Citizens don't want to be wrong.

1 I guess that's basically what I have to
2 say. Don't use my property. Use it -- and you
3 said give us a solution. Go from my property line.
4 Then you're not infringing on the rights.
5 Everybody over on this side talks about their
6 property rights. I have them, too, but nobody
7 considers them. 2,000 feet from my residence,
8 you're using my property. I didn't give you
9 permission.

10 That's what I have to say.

11 JUDGE WARD: Okay. Questions for
12 Ms. Hofland? Mr. Bjella.

13 MR. BJELLA: No.

14 JUDGE WARD: Mr. Pelham.

15 MR. PELHAM: No, Your Honor.

16 JUDGE WARD: Mr. Collins.

17 MR. COLLINS: No.

18 JUDGE WARD: One advantage to when the
19 lawyers get tired.

20 MS. HOFLAND: That's why I waited till the
21 end.

22 JUDGE WARD: Commissioner Kalk.

23 COMMISSIONER KALK: You notice the
24 politicians never get tired; right? They keep
25 pounding away.

EXAMINATION

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BY COMMISSIONER KALK:

Q. The -- tell me, Coree -- first off, thank you for, you know, waiting today to say your piece. The -- so what do you feel is the appropriate setback from your property? If not 2,000 feet, what do you think it should be?

A. From my residence?

Q. From your property.

A. My property, I think 2,000 feet from my property line, at least 2,000 feet, maybe a half mile, which is what, 2600-some. But, you know, there -- you're impeding my right to use my property. I have kids that want to build out there, two of them. Where they proposed the wind turbines on that property, there was no way. They were 800 feet off of the property line.

Q. But you recommend for us to consider 2,000 feet from property owners -- nonparticipating property --

A. 2,000 to a half mile --

Q. Okay.

A. -- somewhere in that range, because otherwise they're not letting me use my own property.

1 Q. Were you here when I talked with --

2 A. I was.

3 Q. -- Autumn and her family?

4 A. Oh, yes.

5 Q. Did you think that that seems to be
6 reasonable that we -- short of not approving the
7 whole wind farm, that we highlight some of the
8 turbines that may be close and give that family
9 some breathing room?

10 A. Well, I think there's more
11 nonparticipating people out there and I think they
12 should be considered just as much as Autumn and
13 Richard -- Autumn and Farren. I think -- like I
14 think you suggested this earlier on, you said what
15 about moving it from nonparticipating people's
16 property line? The participating ones, if they
17 want it 1400 feet, if they want it a thousand feet
18 from their house, let them have it. There's a lot
19 of property in here that could be used for
20 participating landowners. They could move those
21 wind turbines. Move them away from the
22 nonparticipating. They chose not to participate
23 for a reason.

24 Q. Fair enough. The last thing I'll just
25 throw out there, it's interesting you say that if

1 the landowner wants to put it closer to their
2 house, let them. We had our first wind farm
3 hearings -- I wasn't involved in the very first, I
4 wasn't at Langdon, but I've been at the rest. We
5 had one wind farm hearing, and when people came in,
6 they said, We'll put them 300 feet from our house,
7 but the Commission said no. That's when we started
8 drawing that 1400-foot guideline that people -- we
9 have to protect them from themselves on occasion
10 because they wanted to put them right on top of
11 their houses. So we've been running that back and
12 forth, but just to let you know, that's why that
13 standard is it goes both ways. Because when we've
14 seen -- my opinion, we've seen data with shadow
15 flicker and noise, you get inside that area, I
16 don't think there's much debate, it does affect it.
17 So that's why we kind of have to pick that as the
18 closest. Now, going out, that's why I asked you a
19 question about 2,000 feet. So thank you.

20 A. I mean if they want them there, let them
21 put them there. They can deal with it then. I
22 shouldn't have to.

23 COMMISSIONER KALK: Thank you.

24 JUDGE WARD: Commissioner Fedorchak.

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BY COMMISSIONER FEDORCHAK:

Q. Thank you, Coree. Appreciate you sticking it out and giving us your thoughts.

So you -- have you seen this map? This is the map of 2,000 --

A. Well, I --

Q. So this is this 2,000-foot setback from the property borders of nonparticipating landowners. So you can see there -- in this particular footprint there isn't much land available to use. So in your scenario are you then with that setback infringing on the rights of the other property owners to do what they want on their land?

A. What do you mean?

Q. Well, you're getting what you want, but they aren't getting what they want, so your restriction is placing a restriction on them that is in opposition to what they want.

A. They're a participating landowner. I'm a nonparticipant. They should be able to use their property as long as they keep it on their property.

Q. But I'm assuming there's some people in there that wouldn't be able to at all because

1 they're blocked out.

2 A. Well, then I don't think they would have
3 signed them up.

4 Q. Only these parcels would be available for
5 use, only the ones --

6 A. Okay. If they said there was 60/40
7 participation; correct? This seems like a lot of
8 acres not being able to be used for 60/40
9 participation, does it not? That's not very much
10 land in there available to use for that type of
11 percentage.

12 Q. Well, maybe their -- maybe their mapping
13 is off and we can ask them that, but --

14 A. Maybe.

15 Q. -- this is 2,000 feet from
16 nonparticipating landowners' property edge --
17 property borders.

18 A. Well, I just think that people should have
19 the equal rights. If -- if -- if it can't be
20 2,000 feet, I still think the setback should be
21 from a property line because most people, their
22 setback is -- their house isn't directly on their
23 property line. So at least they'll have some
24 leeway. Even if it's 1600 feet, even if it's
25 1700 feet, whatever is decided, I still think the

1 setback needs to be put from the property line.

2 COMMISSIONER FEDORCHAK: Okay. Well,
3 thank you for that information. Appreciate it.

4 JUDGE WARD: Okay. Thank you,
5 Ms. Hofland.

6 Somebody's waving at me in the back.
7 Again, if you haven't got anything new to add, you
8 know, keep it brief, please.

9 MR. JOHN WANNER: Yep.

10 JUDGE WARD: I still have to drive home.

11 COMMISSIONER FEDORCHAK: And we still have
12 another hearing.

13 JUDGE WARD: I know.

14 Okay. State your name, please.

15 MR. JOHN WANNER: John Wanner.

16 JUDGE WARD: And, John, J-o-h-n?

17 THE WITNESS: J-o-h-n W-a-n-n-e-r.

18 JUDGE WARD: And what's your address,
19 John?

20 MR. JOHN WANNER: 3611 103rd Avenue
21 Southwest, Dickinson, North Dakota.

22 JUDGE WARD: How far are you from the wind
23 farm?

24 MR. JOHN WANNER: We would be -- land that
25 my family owns would be about a mile and a half

1 southeast of the -- one of the end -- side project.

2 JUDGE WARD: Okay. Raise your right hand.

3 (Witness sworn.)

4 JUDGE WARD: Okay. Go ahead.

5 **JOHN WANNER,**

6 being first duly sworn, was examined and testified

7 as follows:

8 **STATEMENT**

9 **BY MR. JOHN WANNER:**

10 MR. JOHN WANNER: Couple things. I don't
11 want to -- you guys don't have to raise your hands
12 or show of hands or anything. I would like to have
13 everybody think of having money not involved in
14 this project. Let's not have money be a deciding
15 factor on if you want the wind farms or if you
16 don't. You guys don't need to raise your hands,
17 but think about it. If there's no money -- if you
18 got offered no money for this project, would you
19 want a wind farm on your land? That's something
20 you guys can deal with yourselves. Everybody just
21 kind of think about it for a second.

22 I have -- we've had -- that land that's
23 about a mile and a half southeast of this project
24 we've had in the family for about 20 years.

25 There's an old farmstead on it. It's kind of --

1 it's a life estate. So once the guy who owned it
2 passes away, the farmstead is ours. Old house on
3 there. I know me and my old man have talked, you
4 know, years ago, even up to now, if the house --
5 once that happens, like to tear down the house,
6 potentially move out there.

7 With the wind farm there, that's probably
8 not the most appealing thing for me, myself, or if
9 I want to raise a family. You know, just kind
10 of -- that's kind of why I'm against it so to
11 speak.

12 Another thing I know that was stated
13 earlier and Farren said that in a contract that you
14 signed, if you signed up for it, you can't state
15 anything bad or you can't talk bad against NextEra.
16 If that's true, I mean, you can talk to anybody in
17 Langdon, New Salem or whatever, and if they have a
18 wind farm and that's true in the contract, they're
19 not going to say anything bad; right? I mean they
20 can't. Contractual, if that's what it says in the
21 contract and you ask them how things are going,
22 they've got to say great. Can't say, Well, I'm not
23 happy at all, I mean if that's what it is.

24 So I don't know, if you sign a contract
25 where you put a stipulation in where you can't talk

1 bad about it, doesn't that raise a red flag? Isn't
2 there a red flag about that? I mean just going
3 through contracts, anytime there's a red flag on
4 controlling what people can do or say, isn't there
5 something -- I mean I don't think that's right, is
6 it? I mean they're trying to hide something.
7 That's just, you know, me just thinking that.

8 But, like I said, throw money out and
9 decide for yourselves if you want it on your
10 property. I think that's a major -- that should be
11 a major decision in a lot of things and especially
12 something like this.

13 That's kind of where I stand with that. I
14 don't have a whole lot else to say about it, but
15 kind of keep those things in mind.

16 JUDGE WARD: Okay. Questions for
17 Mr. Wanner? Mr. Bjella.

18 MR. BJELLA: No, Your Honor.

19 JUDGE WARD: Mr. Pelham.

20 MR. PELHAM: No, Your Honor.

21 JUDGE WARD: Mr. Collins.

22 MR. COLLINS: No, Your Honor.

23 JUDGE WARD: Commissioner Kalk.
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BY COMMISSIONER KALK:

Q. Thank you, John, for your testimony. You've brought a couple of things up that I just wanted to comment on the -- and get your feedback.

You talked about ignoring the -- take away the money that people get from wind farms. People also get money for pipelines to go on their property and they get money for power lines. So why would you say that it's not an economic consideration? People should be compensated if they put something on their property.

A. Right. Pipelines can't be seen. That's kind of what -- I'd be an advocate for pipelines because it can't be seen. The other -- the power lines that are there, we need that. Do we need the power -- do we need the power from NextEra or Basin Electric? That's still up in the air here. We're still waiting to hear if they have to have it here. If it's applied here, great, we'll keep it; but if most of it's going to say out of state, I don't see a benefit to that. So that's just kind of how I look at it there. If a wind turbine wasn't visual, great.

Q. You know, it's a fair question. For power

1 line hearings we get a lot of similar concerns
2 because the people that have the power lines
3 directly on their project, they get some
4 compensation, not nearly what you do for a wind
5 farm because it's a different setup, but the people
6 that live away from the power line have to look at
7 it and they don't get compensated. So we do hear
8 that in other venues too.

9 The last comment you talked about is
10 these -- I didn't bring it up before because I just
11 didn't, but you talked about the allegation of
12 leases not being able to be disclosed. In 2009,
13 one of the bills that was passed in the legislative
14 session is that -- one of the laws that became law
15 was that wind leases have to be disclosed. So what
16 you're saying is -- it's in conflict with the law,
17 because what was happening in early wind
18 development was John was getting paid a thousand
19 bucks and Billy was getting paid 6,000 bucks and
20 this guy was getting paid 12,000 bucks. So the
21 legislature put that out there that they have to
22 disclose these leases so you don't have what you're
23 talking about.

24 So anyone out there that feels there's
25 been leases, then, I think you need to go back and

1 look at the appropriate part of the law, and if
2 you've got a different concern, then there's a
3 different venue. But there shouldn't be that
4 because it's a disclosure thing. The law says that
5 you have to lay that out, so -- they just put that
6 in, because if somebody's been treated that way,
7 that's something they should follow up on because
8 that was the intent of the 2009 -- and maybe it was
9 '11 -- law because we didn't want different leases
10 being disclosed -- or being protected because of
11 that. It's a day-lighting of wind farms, if you
12 will. So just a thought. Thank you.

13 A. And I guess, you know, another thing,
14 anybody who's getting money from something, if you
15 ask them how -- like what they think about it,
16 usually money can kind of influence an answer.
17 Like if they had a problem with the wind turbine or
18 a pipeline or something, anything for that matter,
19 if they weren't getting money for it, their
20 influence could be different. You throw money on
21 top of things, your influence on your decisions
22 could also be, you know, skewed one way or another.
23 So I'd like to ask the people where you go to these
24 wind farms, Langdon, you know, New Salem,
25 Hettinger, wherever, ask the ones that weren't

1 against it that aren't getting money. I mean those
2 are the ones I think we should talk to, really, and
3 the ones that are on the boards.

4 COMMISSIONER KALK: Well, John, that's
5 fair. Your comments are fair. I would also just
6 offer up for the group that the Rolette wind farm
7 that we recently had a hearing on, they basically
8 unitized the whole wind farm. They took an area
9 and drew around the wind farm and said, Anybody
10 involved inside here, anybody within X amount of
11 feet out, you all get compensated. So they didn't
12 do any kind of carve-outs. They just drew a big
13 dot, and everyone there got something. It's a
14 different way of doing it, the company's choice,
15 but it did seem that in that wind farm hearing --
16 we had everyone from the community was there
17 because they all got a bite of the apple. We even
18 had the priest come from the church to talk about
19 it, and we had to swear him in, which was awkward,
20 but everybody came. And so that's one thing that
21 wind developers really have to look at. If they
22 want to smooth some of the bumps, then they maybe
23 broaden the scope. So just thank you for your
24 testimony because you're honest.

25 JUDGE WARD: Commissioner Fedorchak.

1 COMMISSIONER FEDORCHAK: I don't have any
2 questions, but thanks for being here and spending
3 your time. Appreciate your opinion comments.

4 JUDGE WARD: Thank you, Mr. Wanner.

5 Okay. We've got another one. I think you
6 might be the last one. Well, maybe not.

7 MS. STAGL-RITTER: Thank heavens.

8 JUDGE WARD: Well, maybe not. Okay.
9 Would you state your name, please.

10 MS. STAGL-RITTER: My name is DonnaLee
11 Stagl-Ritter.

12 JUDGE WARD: Oh, boy.

13 MS. STAGL-RITTER: DonnaLee,
14 D-o-n-n-a-L-e-e, Stagl, S-t-a-g-l, hyphen,
15 R-i-t-t-e-r.

16 JUDGE WARD: Well, that's wasn't as hard
17 as I thought. Okay. And can you give me your
18 address, please.

19 MS. STAGL-RITTER: Well, my legal address
20 is 2130 12th Street South, Apartment 304, in
21 Bismarck. I came back from Washington about a year
22 ago to help my son with his grandchildren, so
23 that's where I am part of the time. The other part
24 of the time I'm here in Dickinson living with my
25 mother who lives at Park Avenue Villa.

1 JUDGE WARD: Do you have property in the
2 area of the wind farm?

3 MS. STAGL-RITTER: Our family has the
4 Eileen M. and Albert T. Stagl Land Trust, which all
5 of the land that my dad had was put into a trust
6 before he died.

7 JUDGE WARD: And there are --

8 MS. STAGL-RITTER: And we have three
9 windmills that will be on our land in Stark County.

10 JUDGE WARD: And so you support the
11 project?

12 MS. STAGL-RITTER: Yes, I do.

13 JUDGE WARD: Okay. And I better swear you
14 in. Raise your right hand, please.

15 (Witness sworn.)

16 JUDGE WARD: Steph, we're going to
17 hopefully wrap this up soon.

18 Okay. Go ahead.

19 **DONNALEE STAGL-RITTER,**
20 being first duly sworn, was examined and testified
21 as follows:

22 **STATEMENT**

23 **BY MS. STAGL-RITTER:**

24 MS. STAGL-RITTER: Okay. Our family has a
25 trust and we don't share equally in it. My mother

1 has most of the income. She's in an assisted
2 living right now, but she is having more and more
3 problems all along and so we will have to probably
4 in the next, I don't know how long, but it's
5 getting to the point where we're going to have to
6 have better care for her which will cost much more
7 money.

8 And the gentleman before me said forget
9 about the money, but that's hard when you have a
10 mother who is in need of care and needs money. And
11 so this -- this opportunity for us is good because
12 we will be able to help her meet some of the bills
13 that she has.

14 And that's my primary thing here. I think
15 as a landowner -- as landowners we should be able
16 to as long as it is not -- and we have heard from a
17 lot of people who have, I think, some legitimate
18 concerns that could be worked out and I really
19 appreciate the way that you have been asking people
20 for their input and how to smooth it out, how to
21 make it better.

22 I had a whole list of things, but, of
23 course, they've all been talked about. And I do
24 want to emphasis that I think landowner rights are
25 a large part of this and that -- that we need the

1 income to help with my mother.

2 I also think that the County Commission --
3 Stark County Commission and Zoning Board, it was a
4 terribly tough decision for them. They were
5 divided. They allowed people from both sides.
6 They had to go by the ordinances that they had in
7 place, which are the ordinances that NextEra met in
8 order to complete the plans for their Brady Wind I
9 farm, and I think that was all a very fair process.

10 And I thank all people who have to deal
11 with these issues and try to smooth things over and
12 make it good for everyone involved.

13 JUDGE WARD: Okay. Questions for
14 Ms. Stagl-Ritter? Mr. Bjella.

15 MR. BJELLA: No, Your Honor.

16 JUDGE WARD: Mr. Pelham?

17 MR. PELHAM: No, sir.

18 JUDGE WARD: Mr. Collins?

19 MR. COLLINS: No, sir.

20 JUDGE WARD: Okay. Commissioners?

21 **EXAMINATION**

22 **BY COMMISSIONER KALK:**

23 Q. Just a quick understanding. Do you have a
24 map somewhere in front of you of the actual project
25 wind site?

1 A. I don't.

2 Q. Could you just maybe look? There might be
3 one. There's just stuff laying everywhere.

4 A. I don't have my glasses with me.

5 JUDGE WARD: I think it's Exhibit 7.

6 Q. (COMMISSIONER KALK CONTINUING) You can
7 borrow mine. Actually, Randy and I usually take
8 turns.

9 This is just a really easy question.

10 A. Okay.

11 Q. You've probably seen the project layout?

12 A. I have.

13 Q. Could you just give me a general where
14 your turbines are located? Is it the western side
15 of the project, the eastern side?

16 A. It's the eastern side just to the very
17 north of the Stark County line.

18 Q. Okay. Because we're going to have some
19 more robust discussion about several turbines, and
20 I wanted to see if the ones that I'm going to be
21 talking about in the future are the ones that are
22 yours. So it looks like they're not. Yours are in
23 the south end of the project area.

24 A. They're right on the south end.

25 COMMISSIONER KALK: Okay. Thank you.

1 THE WITNESS: Sorry for not having --

2 JUDGE WARD: Are you still going?

3 COMMISSIONER KALK: No, I'm done. Thank
4 you, Your Honor.

5 JUDGE WARD: Okay. Commissioner
6 Fedorchak.

7 COMMISSIONER FEDORCHAK: Thank you,
8 DonnaLee. I do not have any questions. Thank you.

9 JUDGE WARD: I'm not rushing people, but
10 we still have another hearing to commence on the
11 transmission line, so --

12 Okay. Come on up, sir. State your name,
13 please.

14 MR. BUCKMAN: My name is Curt Buckman,
15 C-u-r-t B-u-c-k-m-a-n.

16 JUDGE WARD: And, Curt, have you been here
17 the whole day?

18 MR. BUCKMAN: What's that?

19 JUDGE WARD: Have you been here the whole
20 day?

21 MR. BUCKMAN: No. I got called to go to
22 work so I had to leave for about three hours and I
23 came back.

24 JUDGE WARD: But you were here this
25 morning when I gave the --

1 MR. BUCKMAN: (Nods head.)

2 JUDGE WARD: Okay. All right. I'll have
3 you raise your right hand.

4 (Witness sworn.)

5 JUDGE WARD: Okay. What's your address?

6 MR. BUCKMAN: It's 3690 128th Avenue
7 Southwest, Belfield.

8 JUDGE WARD: Now, do you have property in
9 the area of the wind farm?

10 MR. BUCKMAN: No, I don't.

11 JUDGE WARD: Do you oppose the project or
12 support?

13 MR. BUCKMAN: I do.

14 JUDGE WARD: Which? Are you opposed or do
15 you support?

16 MR. BUCKMAN: I oppose.

17 JUDGE WARD: Okay. All right. Go ahead.

18 **CURT BUCKMAN,**

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

21 **STATEMENT**

22 **BY MR. BUCKMAN:**

23 MR. BUCKMAN: I just learned about the --
24 you know, kind of started listening here and I came
25 to the meeting here and just been listening, and

1 I'll make it short and sweet.

2 I've got an electrician buddy of mine and
3 every -- you guys can relate. Every time you've
4 got someone coming out to do electrical work, you
5 need power to your bins or anything, what's the
6 first question they ask you? How far do you have
7 to go with this power? It determines how much
8 power you're going to lose getting to where you're
9 going.

10 So if they need all this power down in
11 South Dakota, Montana, how much power is actually
12 lost in the transmission lines? You know, I don't
13 understand that aspect, so I'll just leave it at
14 that.

15 But the other thing is the setback. I
16 mean this don't affect me yet, but I don't see how
17 anybody can grant somebody else permission to
18 basically put any restriction or limitation on
19 their land. That really bothers me. I -- you
20 know, you look at it in town. If you want to put
21 it in terms that I just kind of thought in my head.

22 Say you live in town, you want to build a
23 50-foot slide for your kids and you want it to
24 wheel over your neighbor's property and then bump
25 back into yours. I guess that's kind of how I

1 simply look at it. How can you extend your
2 boundary and have any effect on your neighbor's
3 property that has no part of what you're doing?

4 The other thing is I'm third generation on
5 my family farm, and I think one thing that's
6 bothered me all day is the fact of the landscape
7 around here. You know, a lot of times things are
8 overlooked, but when things are -- when it's over
9 and done with, there's no going back.

10 I tell you what, I go out every morning,
11 go to work and I look around, look down and look
12 out at the sunset and I don't see nothing except
13 for skyline and trees and everything. And once
14 this is done, I mean this is like cutting your
15 finger off with a saw. When it's done, it's done.
16 It -- there's no going back.

17 And the other thing is I know you guys --
18 I've heard the last little bit here you're worried
19 about overstepping your bounds and stepping in
20 because, you know, people already made a decision,
21 now you guys have got to come in, you're kind of
22 stuck in the middle of a rock and a hard place. I
23 tell you what, I've got nothing vested in this, but
24 I see a real problem here.

25 You know, it's like my parents, there's 11

1 kids in my family and that's kind of the spot
2 you're stuck in. Sometimes when your kids grow up,
3 your kids are going to bicker. Well, this time you
4 guys are the parents. Sometimes you've just got to
5 step in and do what's right. Tell the kids what's
6 going on and get it put in the past and let it go.

7 But this is one instance where I believe
8 this is -- this is not right for our area. Go
9 out -- you can drive 30, 40 miles and you can go
10 from Clay Buttes to Badlands to perfectly flat land
11 to rolling hills. You know, there's not many
12 places where things change that fast, and I
13 consider this area just beautiful.

14 I worked in the oil field, and the last
15 few years here I got the opportunity to work with
16 just hundreds of out-of-staters, and every single
17 one of them -- some of them moved their families up
18 here. Most of them, they had family ties back
19 home. But they always pretty much said this is
20 just unbelievable country, it's beautiful. I'd
21 like to see it stay that way.

22 I think going out of your house and
23 looking at this stuff, I think there's a lot more
24 substance to that than -- than what -- there should
25 be more emphasis on that. That's just my personal

1 thought.

2 Thanks for listening.

3 JUDGE WARD: Okay. Now, don't go yet.

4 Questions for Mr. Buckman? Mr. Bjella.

5 MR. BJELLA: No, Your Honor.

6 JUDGE WARD: Mr. Pelham.

7 MR. PELHAM: Nothing.

8 MR. COLLINS: No, sir.

9 JUDGE WARD: Okay. Commissioners.

10 **EXAMINATION**

11 **BY COMMISSIONER KALK:**

12 Q. Thank you, Curt. Just a quick
13 clarification. So what do you think is the
14 appropriate setback from property lines?

15 A. I'd have to be honest, if it was in my
16 neck of the woods, out of sight, out of mind.
17 That's just my thought. I'm -- I'm a hundred
18 percent honest. I ain't here to color-coat
19 nothing.

20 Q. So what you're really saying is to be --
21 and we talked before, the wind farms, you can see
22 them 20 miles at night. So you're against wind
23 development in your area?

24 A. You know, in this instance when I look out
25 at the countryside and see the beautiful crops

1 coming up, look out at my cattle, look at my crop,
2 and I tell you what, my heart goes out to these
3 people that are going to be stuck in the middle of
4 this, you know. I'm sure I'll be able to see the
5 lights out there in the distance. And what really
6 scares me is -- I've seen it in the development in
7 the last how many years with the oil field -- once
8 something gets rolling, what really scares me the
9 most is that it's going to keep rolling and come to
10 my neck of the woods.

11 COMMISSIONER KALK: Okay. I just wanted
12 to -- I appreciate your honesty. I just wanted to
13 ask the question, so thank you.

14 JUDGE WARD: Commissioner Fedorchak.

15 COMMISSIONER FEDORCHAK: Thanks, Curt. I
16 don't have any questions for you.

17 JUDGE WARD: Okay.

18 MR. BUCKMAN: Thank you.

19 JUDGE WARD: All right. One more? Two
20 more. Three more. They just keep coming. Okay.

21 I've got to start the next hearing soon,
22 so as quick as we can be -- I'm going to start the
23 hearing at 9:30 regardless, but as quick as you
24 can -- and I'm going to let the court reporter go
25 when we finish this one, so I want to finish it.

1 got the towers on their land now -- just a question
2 here, if it was on the section line to the north or
3 the south of them, would they still want the
4 towers, you know, if they weren't getting the money
5 or whatever, you know, and they had to look at them
6 or whatever? That's just something that
7 concerns -- or makes me wonder. I don't know.

8 That's pretty much it, I guess.

9 JUDGE WARD: Okay. All right. Any
10 questions for Mr. Praus?

11 MR. BJELLA: No, Your Honor.

12 MR. PELHAM: No.

13 MR. COLLINS: No, sir.

14 JUDGE WARD: Commissioners?

15 **EXAMINATION**

16 **BY COMMISSIONER KALK:**

17 Q. Just to clarify, so you're east of your
18 neighbor -- east of Autumn's farm?

19 A. I'm west.

20 Q. West.

21 A. Yeah.

22 Q. So you're actually a little bit closer to
23 them.

24 A. I'm closer to them towers.

25 Q. Okay. So you're okay with those turbines

1 that they talked about being --

2 A. Yeah, if those could be moved.

3 COMMISSIONER KALK: Okay. Thank you.

4 MR. PRAUS: And the other thing I just
5 thought of, anything on the west side of a person,
6 you know, like that -- like some of these people
7 that are in the same situation like us, the ones on
8 the west side of you are the ones that are going to
9 bother you the most, you know. It's just common
10 sense.

11 COMMISSIONER KALK: Okay. Thank you.

12 JUDGE WARD: Okay. Commissioner
13 Fedorchak?

14 COMMISSIONER FEDORCHAK: I don't have any
15 questions.

16 JUDGE WARD: Okay. Thanks, Mr. Praus.

17 Come on up. Man, oh, man, a whole
18 notepad.

19 MR. WEIGEL: This won't be long. Hi, I'm
20 Iggy Weigel in Dickinson.

21 JUDGE WARD: What was the first name?

22 MR. WEIGEL: Iggy Weigel.

23 JUDGE WARD: How do you spell Iggy?

24 MR. WEIGEL: The full name is Ignatz,
25 I-g-n-a-t-z, and everybody calls me, Iggy, I-g-g-y,

1 Weigel.

2 JUDGE WARD: Okay. Go ahead -- first
3 let's have you raise your right hand.

4 (Witness sworn.)

5 JUDGE WARD: Okay. Now, give me your
6 address.

7 MR. WEIGEL: 363 Kuchenski Drive in
8 Dickinson, North Dakota.

9 JUDGE WARD: Okay. Go ahead.

10 **IGGY WEIGEL,**

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

13 **STATEMENT**

14 **BY MR. WEIGEL:**

15 MR. WEIGEL: Okay. I know you guys have
16 had a long day, and I've got Iggy Weigel Insurance.
17 I've been in the business for 40 years. I am in
18 favor of this wind farm. And if you go north of
19 New Salem, they're there, they're up by Beulah,
20 they're in Minot, they're all over North Dakota,
21 they're all over the United States. Only here in
22 Stark County we've got problems. And it doesn't
23 make sense.

24 I am right in the middle of this wind
25 farm. I was for it before and I'm for it again. I

1 understand Farren Richard was here earlier today
2 saying that they shouldn't have them. How dare him
3 tell you guys or anybody what I should do for my
4 land. You know, it's -- I -- like I said, I'm a
5 hundred percent in favor of it. It's energy that
6 we need down the road.

7 It -- that's pretty much it.

8 JUDGE WARD: Okay.

9 MR. WEIGEL: Like I said, I got nothing
10 out of it before. I've been for it all along.

11 JUDGE WARD: Do you have land that is --

12 MR. WEIGEL: Yes, do I have three quarters
13 right down where Praus and Richards live.

14 JUDGE WARD: Do you know which turbines
15 are on your property?

16 MR. WEIGEL: There's like five of them. I
17 don't know which ones they are. Over three
18 different quarters. But like I said, I've been for
19 the project there all over.

20 JUDGE WARD: Okay. Questions for
21 Mr. Weigel?

22 MR. BJELLA: Yes.

23 JUDGE WARD: Mr. Bjella.

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EXAMINATION

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BY MR. BJELLA:

Q. Mr. Weigel, the Richards have requested a certain number of turbines to be moved or not allowed. Are any of those yours?

A. I don't know. I've been at meetings all day long and just got here, and I understand he said earlier -- it doesn't matter. It's -- he can do what he wants to do with his property and leave other people's property alone. So I don't have a clue what was all said. I've been gone.

Q. How would you feel if some of them were yours?

A. I'd be mad, extremely. You know, it doesn't matter. You know, it's passed -- it passed the City Commission -- or passed the County Commission. Like I said, they're all over North Dakota, they're all over the United States.

MR. BJELLA: I have no further questions.

JUDGE WARD: Mr. Pelham.

MR. PELHAM: Just briefly, Mr. Weigel.

EXAMINATION

BY MR. PELHAM:

Q. Do you know the property description -- the legal description of your property?

1 A. I'm not sure. Would John know or -- where
2 is the map at?

3 Q. There's a fold-out map that --

4 JUDGE WARD: Yeah, the big map would be
5 the best one. It's Exhibit 7. That's the one, the
6 one you've got in your hand. If you could look at
7 that and tell us the numbers.

8 Q. (MR. COLLINS CONTINUING) The numbers
9 correspond with the wind turbines.

10 MR. BJELLA: These are all the numbers on
11 there.

12 MR. WEIGEL: Okay. Is there a map that
13 shows the -- where the -- which -- where like
14 people live out here at all? Is it one of these
15 maps that show where the people live?

16 MR. PELHAM: Not the names.

17 COMMISSIONER FEDORCHAK: This would help
18 him, too, in the same area. Here's your property.

19 MR. WEIGEL: John would know -- would you
20 know? Okay. They are -- these are the three.

21 It's northeast -- northeast quarter of 21-137N-95W
22 and southwest quarter of 15-137N-95W -- oops, and
23 southeast quarter of 15-137N-95W. And there is --
24 I think there's two, two and one. There's five
25 total.

1 JUDGE WARD: We could match up the
2 numbers.

3 MR. PELHAM: It would be helpful to have
4 the numbers now, if we can do that, I think.

5 JUDGE WARD: You've got somebody there
6 helping you. Is that a relative or --

7 MR. WEIGEL: This is John from NextEra.

8 JUDGE WARD: Oh, okay.

9 MR. WEIGEL: Where are they at? Which
10 ones are where now? Does it show the numbers there
11 at all?

12 MR. BJELLA: The numbers are on there.
13 81, 82, 83.

14 (Discussion had off the record.)

15 MR. WEIGEL: Okay. 78, 83 and 84 and 81
16 and 80.

17 JUDGE WARD: All right. Okay.

18 MR. WEIGEL: Sorry about that.

19 JUDGE WARD: Okay. I lost track of where
20 we were. We were going around the room.

21 MR. PELHAM: I don't have any -- I just --
22 I don't have any other questions. We've determined
23 which turbines.

24 JUDGE WARD: Okay. Mr. Collins.

25 MR. COLLINS: I have no questions.

1 JUDGE WARD: Commissioners?

2 EXAMINATION

3 BY COMMISSIONER KALK:

4 Q. So, Iggy, so those five turbines that you
5 just listed off, 80, 81, 83, 84 and 78, that's all
6 the turbines that are on your property?

7 A. Yes.

8 Q. Okay. And you testified that you'd be
9 upset if those weren't allowed?

10 A. Very upset, yes.

11 COMMISSIONER KALK: Okay. Thank you.

12 MR. WEIGEL: Thank you. Have a good
13 night.

14 JUDGE WARD: Thank you.

15 All right. I've got a silver-haired
16 gentleman back there that's been waiting patiently
17 for a long time.

18 MR. ROLLER: Hello.

19 JUDGE WARD: Yes. Okay. First of all,
20 tell me your name.

21 MR. ROLLER: I am Eugene Roller.

22 JUDGE WARD: And, Eugene, where do you
23 live?

24 MR. ROLLER: I live right in the area. I
25 am at 11533 53rd Street Southwest.

1 JUDGE WARD: And that's Dickinson?
2 MR. ROLLER: It would be in New England.
3 JUDGE WARD: New England. All right.
4 MR. ROLLER: I am in Stark County, though.
5 JUDGE WARD: Okay.
6 MR. ROLLER: It's right on the line.
7 JUDGE WARD: All right. Now I'm going to
8 have you raise your right hand. I know you've been
9 here.

10 (Witness sworn.)

11 JUDGE WARD: All right. And do you
12 support or oppose the project?

13 MR. ROLLER: I support the project.

14 JUDGE WARD: All right. Go ahead.

15 **EUGENE ROLLER,**

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

18 **STATEMENT**

19 **BY MR. ROLLER:**

20 MR. ROLLER: I'm going to read a little
21 bit what I had written down here. I've lived here
22 all my life in North Dakota. Been in business here
23 for the past 30 years or so and have done very
24 well. I retired a few years ago and moved to the
25 farm, which happens to be right in the middle of

1 this turbine project. I'm going to have six of
2 them around me within a half a mile on -- from the
3 west to the south to the east.

4 I have done extensive research and stuff,
5 and I just really can't see nothing but good coming
6 out of this. I can remember back years ago when I
7 started raising kids, it was like -- or even when I
8 was young, to be able to stay in the area and have
9 a good job, our area is -- there is only a few good
10 jobs. Either you're going to work with electric or
11 water or something.

12 My dad, he retired from Slope Electric in
13 New England. Between me and him, we're probably
14 getting three turbines, I guess, and we -- we think
15 this is a good deal for the area and, I mean, to be
16 able to have more jobs in the area and have an
17 opportunity to keep our kids here.

18 When I -- like I said, when I went into
19 business, it was either move to Minneapolis to get
20 a good job or stick around and I started my own
21 business, did what I knew how to do.

22 This is something that's going to be good
23 for my children, my grandchildren, my parents. I
24 believe this is our land and we should be able to
25 do what we want to it.

1 The part about visibility, I kind of like
2 the looks of the wind turbines and the blinking
3 lights. I guess that's all a matter of opinion.
4 I've dealt with a few electric --

5 JUDGE WARD: Folks, we have to have
6 respect for other people here too.

7 MR. ROLLER: I was in the trucking
8 business and I worked with electric companies, some
9 of the best people to be working for, cleanest
10 outfit. The research I did on NextEra, I guess
11 they're in the top three as far as subsidies in the
12 country -- or for receiving government subsidies,
13 so that's got to tell you something about how this
14 company works to be efficient and that they -- they
15 are doing their job diligently and working.

16 You take some of the biggest farmers, I
17 mean they're -- you look at what their subsidies
18 are, the smartest farmers are getting some of the
19 biggest subsidies or -- it's probably the
20 government's fault, I don't know, for making --
21 getting the people to try to cut all these corners.
22 I mean it's gotten tough to make a living nowadays,
23 and you have to streamline your business, and in
24 order to make things work sometimes you have to
25 take subsidies and all that.

1 Like I said, I am for it. I was very
2 proud to be one of the first people they contacted
3 in our area. I'm very proud to have NextEra in our
4 area. I really welcome them. I don't see -- like
5 I said, I'm going to have them surrounding me. I
6 mean this is -- I'll have them within 2,000 feet of
7 my house on, like I said, three sides, and I really
8 don't foresee a problem. You know, it's --

9 JUDGE WARD: Okay. All right. Questions
10 for Mr. Roller? Mr. Bjella.

11 MR. BJELLA: No, Your Honor.

12 JUDGE WARD: Commissioners?

13 COMMISSIONER KALK: No.

14 JUDGE WARD: Okay. Thanks, Mr. Roller. I
15 thought I saw one more hand and that -- now I see
16 like three.

17 COMMISSIONER FEDORCHAK: One.

18 JUDGE WARD: We've got to -- okay. One
19 more and then we're going to break, the chairman is
20 telling me, and we are going to have to start the
21 other case.

22 COMMISSIONER FEDORCHAK: Then if they want
23 to stick around, we can take more time later if
24 they want to stick around for it.

25 JUDGE WARD: Okay. After the other.

1 Okay.

2 MS. ZAFKE: Hi. I'm Nichole Zafke.

3 JUDGE WARD: Nichole, can you spell your
4 first and last name for me.

5 MS. ZAFKE: Nichole is N-i-c-h-o-l-e,
6 Zafke is Z-a-f-k-e.

7 JUDGE WARD: Okay. Would you raise your
8 right hand, please.

9 (Witness sworn.)

10 JUDGE WARD: All right.

11 MS. ZAFKE: Okay. So --

12 JUDGE WARD: First tell us where you live.

13 MS. ZAFKE: I live about two and a half
14 miles from the north boundary of the wind farm.

15 JUDGE WARD: And would that be a Dickinson
16 address?

17 MS. ZAFKE: It is a Dickinson.

18 JUDGE WARD: Okay. And you support or
19 oppose?

20 MS. ZAFKE: Right now I oppose.

21 **NICHOLE ZAFKE,**

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

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STATEMENT

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BY MS. ZAFKE:

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MS. ZAFKE: What I'm asking for is more time. At the beginning of this I researched for and against it, and there is so much conflicting information, surveys out there that I don't know how the Brady Wind farm can come in, do a study and say yea or nay on it if it affects the ecosystem or not. Because what I've studied is that these -- these wind farms come in, a lot of farmers they say that the earth worms disappear, the bees disappear, it kills off tons of bats, but the problem is there's not any straight facts on this.

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I think we learned through the oil boom, the supply and demand -- you know, they tell us ten years and it drops in one year. I think that maybe we should watch the wind farms that we already have. Let's see what they do to the ecosystem, let's see what they do to the crops. Why go gung-ho like we did with the oil field? Why just keep drilling, drilling, drilling and all of a sudden one day it's gone? Why can't we see what we do with these wind farms first, let's see where the demand is going, because we all know they cannot project it 30 years out. They tried to do that

1 with the oil boom and we all learned the hard way.
2 Now we have all these skeletons from the oil boom
3 sitting around. Why would we want wind turbines?
4 So say ten years from now the demand drops or
5 something new comes up.

6 We're going to have these in our back
7 yards for the rest of our lives. I don't think
8 it's fair that we should let a couple of people
9 come up and say, Yeah, I'm making money off of
10 this, this is great, but when I'm sitting in my
11 yard right now all I see is stars and the horizon.
12 And if this goes through, I'll be seeing all these
13 wind turbines. Great if they work, but we don't
14 know that a hundred percent. We don't know exactly
15 how these are going to affect our ecosystem.

16 If they do kill off -- my studies that I
17 found, over 900,000 bats a year. So the bats die;
18 right? Then they're eating all the -- what do the
19 bats eat? They eat mosquitos. Well, we already
20 say that our North Dakota bird is the mosquito. It
21 might be a possibility.

22 So I just think that we need to study and
23 research more into these and get some hard facts,
24 not in other states. You know, a lot of the
25 studies are in California where there's wind farms.

1 We need to find out how this is affecting North
2 Dakota.

3 So that is all I have for you. Thank you.

4 JUDGE WARD: Okay. Questions for
5 Ms. Zafke? Mr. Bjella.

6 MR. BJELLA: No, Your Honor.

7 JUDGE WARD: Mr. Pelham.

8 MR. PELHAM: No.

9 JUDGE WARD: Mr. Collins.

10 MR. COLLINS: No.

11 JUDGE WARD: Commissioners.

12 COMMISSIONER KALK: Thank you, Nichole,
13 for your thoughts. The one thing I'd just let you
14 know and the rest of the group, you talked about
15 end of life for these turbines, you know, whenever
16 that does come. One of the things is that if there
17 is an end of life, they have to be decommissioned
18 and tore down, put back to normal, but also we have
19 things in the Commission guidelines/rules that
20 within one year of the wind farm not producing
21 power, it has to come down. So for some reason if
22 company A builds a wind farm and all of a sudden
23 there's no market for it, within a year they've got
24 to start taking them down.

25 MS. ZAFKE: I appreciate that. And they

1 also remove the concrete?

2 COMMISSIONER KALK: Yes. Now, we have a
3 fight that's ongoing about how far down the
4 concrete has to go, and we are struggling as a
5 Commission trying to figure out what is the
6 appropriate bond and protection to make sure that
7 if the company goes broke, that we can get these
8 things down. So that's part of that discussion.
9 So when that legislative discussion rolls on next
10 session, because it will, please show up for that
11 hearing and say your piece, too, because we're --
12 at some point in time these things will come down
13 and we want to make sure it's done the right way.

14 MS. ZAFKE: That's -- one of the major
15 concerns is after the -- the boneyard, because say
16 the company goes bankrupt, they can't afford to
17 take them down. Who is going to pay for that to go
18 down?

19 COMMISSIONER KALK: That's why we're
20 looking at the surety bonds and other financial
21 assurances, so if and when that happens, we don't
22 have this stuff laying all over the state.

23 MS. ZAFKE: Sounds great. Thank you.

24 JUDGE WARD: Okay. Commissioner
25 Fedorchak.

1 COMMISSIONER FEDORCHAK: I don't have
2 anything. Thank you, Nichole.

3 JUDGE WARD: Okay. At this point I'm
4 going to continue this hearing. I'm going to start
5 the hearing on the transmission line. Before we do
6 that, before we close the record on this for now, I
7 just want to ask counsel if there's any reason why
8 we need the court reporter to stay. Mr. Kubas, we
9 are making a record of this, a tape; is that right?

10 MR. KUBAS: Are we still recording; is
11 that what --

12 JUDGE WARD: Because we need to have a
13 recording of the power line hearing; otherwise,
14 we're going to need the court reporter to stay.

15 MR. BJELLA: Your Honor, as long as it's
16 being -- as long as it's being recorded, we're
17 okay, Your Honor.

18 JUDGE WARD: Okay. All right. I just
19 want to -- you're sure it's being recorded because
20 I need to be in charge of that recording. I might
21 have something that I can record it with.

22 Okay. We are still recording. We have a
23 recording, and I believe it was the company that
24 asked to have a court reporter here for the wind
25 farm hearing. I think we can do our concluding

1 remarks and stuff on the record without the court
2 reporter later, if that's okay with you,
3 Mr. Collins?

4 MR. COLLINS: Yes.

5 JUDGE WARD: Mr. Pelham?

6 MR. PELHAM: Yes.

7 JUDGE WARD: Because I want to let
8 Stephanie go home. This is crazy. We've all
9 worked a long day, but she's really had a
10 tremendously hard day.

11 MR. BJELLA: We're okay with that, as long
12 as we're recording.

13 JUDGE WARD: Okay. All right. Then we'll
14 close the court reporter record. I'll continue the
15 wind farm hearing until later this evening, and we
16 will now in five minutes commence the transmission
17 line case.

18 (Concluded at 9:32 p.m., MT, 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 23rd
day of April, 2016.

Stephanie A. Smith
Registered Professional Reporter

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