

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Keith and Deanna Kessler, :
 :
Complainants/Petitioners, :
 :
-vs- : Case No. PU-20-194
 :
Minnesota Power, a division :
of ALLETE, Inc., :
 :
Respondent. :

TRANSCRIPT OF
HEARING
VOLUME I - (Pages 1-399)

Taken At
State Capitol
Bismarck, North Dakota
March 25, 2021

BEFORE TIMOTHY J. DAWSON
-- ADMINISTRATIVE LAW JUDGE --

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COMMISSIONERS PRESENT:

COMMISSIONER JULIE FEDORCHAK, Chair
COMMISSIONER RANDY CHRISTMANN
COMMISSIONER BRIAN KROSHUS

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FOR THE PUBLIC SERVICE
COMMISSION.

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COMPLAINANT'S EXHIBITS

<u>Exhibit No.</u>	<u>Offered</u>	<u>Received</u>
6-1	198	199
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1 (The following proceedings were had and
2 made of record herein, commencing at 9:59 a.m.,
3 Thursday, the 25th day of March, 2021:)

4 JUDGE DAWSON: Good morning, everyone. I
5 am Timothy Dawson, and I am the administrative law
6 judge designated by the Office of Administrative
7 Hearings, upon the request of the Public Service
8 Commission, to serve as the hearing officer for
9 this hearing. This is North Dakota Public Service
10 Commission Case Number PU-20-194.

11 Let the record show that it is 10 a.m. on
12 the 25th of March, 2021, and this is the time and
13 place scheduled in the Public Service Commission
14 hearing room at the State Capitol in the matter of
15 the Kessler complaint against Minnesota Power.

16 If everybody would make sure their
17 telephones are off or silenced before we begin,
18 that would be wonderful.

19 A little history. On April 23, 2020, the
20 Kesslers filed a complaint against Minnesota Power.
21 The complaint was that one of Kesslers' residences,
22 referred to as the Section 15 home, was not
23 identified as an occupied residence during the
24 siting property for ALLETE, Inc.'s Bison 4 wind
25 project in Oliver County, North Dakota, causing

1 Turbine Number 441 to be constructed within
2 1400 feet of the Section 15 home.

3 On April 27, a revised complaint was
4 filed. On May 20, Minnesota Power responded. On
5 September 23, the Commission adopted an order on
6 motion for partial dismissal removing the claims of
7 relief of a survey -- survey of other landowners,
8 of prohibiting Minnesota Power from further
9 operations in this state, of the provision of
10 damages to the Kesslers, and attorneys' fees.

11 On January 20, the Commission adopted an
12 order on motion to dismiss and denied the motion by
13 Minnesota Power.

14 There were no genuine issues of material
15 fact as to whether the structure in question was an
16 occupied residence and the propriety of the sound
17 study.

18 On February 3, the Public Service
19 Commission issued its notice of hearing.

20 The issues contained in the notice of
21 hearing are: Whether the Section 15 structure was
22 an occupied residence at the time the Commission
23 issued its order granting a certificate of site
24 capability for the project.

25 If the Section 15 structure was an

1 occupied residence at the time the Commission's
2 order was issued, does placement of Turbine Number
3 441 violate the Commission's order; and if so, what
4 remedies are appropriate.

5 And at the public hearing, did Minnesota
6 Power withhold information relating to the Section
7 15 structure from the Commission that Minnesota
8 Power should have communicated to the Commission;
9 if so, what remedies are appropriate.

10 We'll begin with appearances. And for the
11 Kesslers.

12 MR. BOUGHEY: I'm Attorney Lynn Boughey.
13 I represent both the Kesslers.

14 JUDGE DAWSON: Minnesota Power.

15 MR. MAHLBERG: Patrick Mahlberg from
16 Fredrikson Byron on behalf of Minnesota Power.
17 With us on Go to Meeting is Mollie Smith from
18 Fredrikson Byron as well.

19 JUDGE DAWSON: Okay. And who will be
20 taking prime?

21 MR. MAHLBERG: I will be taking prime here
22 in the room.

23 JUDGE DAWSON: Okay.

24 MR. MAHLBERG: There will be some of the
25 remote witnesses, in particular, that Ms. Smith

1 will probably handle.

2 JUDGE DAWSON: Okay. I'll call your name
3 first and then you can direct us to the correct
4 person.

5 And PSC advisory staff.

6 MR. JOHNSON: Brian Johnson, PSC legal.

7 JUDGE DAWSON: And is there anyone with
8 you today that will be asking questions?

9 MR. JOHNSON: Possibly Patrick Fahn.

10 JUDGE DAWSON: Okay. It is now time for
11 comments from the commissioners. Commissioner
12 Fedorchak.

13 COMMISSIONER FEDORCHAK: Thank you, Judge.
14 Good morning, everybody. Good to start on time.
15 Way to go, Judge. We're off -- got that done
16 right. Let's hope the rest of the hearing goes as
17 smoothly.

18 So as the judge was giving the history, it
19 became obvious that it's been 11 months almost to
20 the day that the complaint was filed with our
21 office, and when we assigned the judge last June, I
22 had hoped that we would get to a hearing in the
23 fall, but that didn't happen. And so, at last,
24 here we are.

25 And I think in the ensuing months, we've

1 worked to focus the issues, and so today we have a
2 pretty clear list of what the issues are. And
3 there's really three of them, and I'm condensing,
4 but was the residence occupied? If so, is the
5 turbine too close to that residence and did ALLETE
6 withhold information at the hearing? Those are
7 kind of the three issues that I'll be zeroing in on
8 during the hearing because that's what we've
9 identified as the focus of today's hearing and the
10 issues at hand.

11 We've set aside the entire day for this,
12 and so there should be plenty of time for both
13 sides to bring forward their information, to -- to
14 cross-examine each other's witnesses, and to
15 conclude the work of this issue in one day.

16 So I'm -- I'm hoping that we can all stay
17 focused on that and get down to business and
18 looking forward to a very productive discussion of
19 the facts today.

20 Thank you.

21 JUDGE DAWSON: Commissioner Christmann.

22 COMMISSIONER CHRISTMANN: This morning I
23 was down testifying on some legislation that
24 impacts the Public Service Commission, but there
25 was another bill that I have a particular interest

1 in. And I was thinking about this case in relation
2 to that, that unlike when I was in the legislature,
3 I don't go and work on all those bills. I spend my
4 time focusing on the things that are jurisdictional
5 to us.

6 And I was going to repeat some of the same
7 things that the judge and Commissioner Fedorchak
8 have said, but you've laid out the issues here that
9 are jurisdictional for us.

10 When I have read a lot of the case
11 material leading up to this, there have been times
12 when I was kind of irritated, and I'm going to
13 point out an example. In the deposition, a person
14 was deposed with questions about whether the
15 commissioners attended the siting hearing or not,
16 and -- and the person wasn't even an employee of
17 the PSC at the time. Wouldn't have had a way to
18 know. But I do believe with all my heart that the
19 Kesslers and the company both know full well that
20 we were at the hearing. But time was used up on
21 that anyway.

22 And I suppose we can sit and go into all
23 kinds of things that are not jurisdictional today,
24 but it's not going to do anyone any good. So I
25 hope we can stick with the things that are

1 jurisdictional. And, like I said, I actually went
2 back and reviewed my comments at the beginning of
3 that hearing, and I had encouraged people to
4 testify because we were out there to hear from
5 people and get all the information on the issues of
6 that day to reach the best possible conclusion.
7 That's all I wanted.

8 And that's all I want today is let's --
9 let's get to these details -- these key points that
10 were laid out by the judge and the chairman and --
11 and we can reach the best possible conclusion.

12 And I'm sorry I just did all that without
13 my microphone on, so --

14 COMMISSIONER FEDORCHAK: Mine was still on
15 so it probably picked it up.

16 IT PERSON: I could still hear you.

17 COMMISSIONER CHRISTMANN: I hope everyone
18 heard me.

19 COMMISSIONER FEDORCHAK: Good thing I
20 forgot to turn mine off.

21 JUDGE DAWSON: Commissioner --

22 COMMISSIONER FEDORCHAK: Now I am turning
23 it off.

24 JUDGE DAWSON: Commissioner Kroshus.

25 COMMISSIONER KROSHUS: Thank you, Your

1 Honor. Good morning, everyone. I am ready to get
2 to the task at hand which is to get down to
3 business and hear from the parties, so I don't have
4 any other comments.

5 JUDGE DAWSON: Next I'm going to describe
6 the hearing procedure, but I'm going to cut to the
7 quick and say that the burden of proof is on the
8 Kesslers.

9 And this will run much like a bench trial
10 with the judges being here to my left. They will
11 make a decision later. They will not make a
12 decision today. And if you're aggrieved by the
13 decision, you may have a right to appeal to
14 district court under the Administrative Agencies
15 Practices Act. The cost of transcript is borne by
16 the party appealing.

17 Are there any questions as to the
18 procedure today? Are there any preliminary matters
19 or motions that we need to address right away?

20 Mr. Boughey.

21 MR. BOUGHEY: First of all, Your Honor, I
22 do need to give you --

23 COMMISSIONER KROSHUS: Mr. Boughey, your
24 mike, please.

25 MR. BOUGHEY: Thank you. Your Honor, I do

1 need to give you the exhibits. All three
2 commissioners and the staff have it, but you need
3 it as well.

4 JUDGE DAWSON: Please. Approach. Thank
5 you.

6 Any other matters or motions?

7 MR. BOUGHEY: Yes. Your Honor, I need to
8 indicate that we have a -- to my knowledge, a
9 pending motion on our two motions for
10 reconsideration, and I assume at some point that
11 will be resolved by the Commission at a later point
12 after hearing the -- the evidence.

13 I have talked to Mr. Mahlberg about this,
14 and the two issues are whether or not there can be
15 damages and attorney fees. And I believe we've
16 made an agreement that if the motion for
17 reconsideration is in any way granted, then we'll
18 be allowed to supplement the record in regard to
19 damages or have a separate hearing on damages,
20 whichever is the way the Commission wants to handle
21 it.

22 Same with attorney fees. If the
23 Commission ends up saying that -- reconsiders and
24 says yes, attorney fees can be allowed, then we
25 would just simply submit probably just in writing

1 my -- my billings and -- and affidavit and then
2 they'd have a chance to respond. And so I'd just
3 mention that.

4 Also, we were under the understanding that
5 this was going to be two days. It would be
6 inherently unfair for me to take up the whole day
7 and then Mr. Mahlberg and Minnesota Power doesn't
8 have time to get to theirs. We -- we scheduled
9 around that. I will be as efficient as possible
10 and cut to the chase on everything, and -- and so
11 I'd just mention that.

12 And then in regards to Mr. Christmann's
13 comment, I can tell you I've never attended a
14 Public Service Commission hearing, including the
15 one that applied here, and I had no idea that the
16 commissioners were there. I apologize. I've never
17 had to attend one of those. I'm mainly in court.
18 And if it was my questions that irritated you, I
19 apologize, but I can tell you I just thought it was
20 an ALJ handling it. Such as when I worked for a
21 federal judge, he would sometimes appoint a
22 magistrate to do something. And so I did not know
23 you guys were there, and I apologize for that.

24 And that's all I have.

25 JUDGE DAWSON: Mr. Mahlberg.

1 MR. MAHLBERG: Thank you. Your Honor,
2 I -- point of clarification, I guess, from
3 Mr. Boughey's comments this morning. I believe
4 that both of the motions for reconsideration were
5 addressed yesterday and that the motions for
6 reconsideration were denied. So just to make sure
7 that we're on the same page, I don't think that
8 those are pending anymore.

9 MR. BOUGHEY: Okay. And I don't --

10 JUDGE DAWSON: Mr. Johnson --

11 MR. BOUGHEY: -- think I've received that.
12 I apologize, counsel. I'll have to --

13 JUDGE DAWSON: -- I have not --

14 MR. BOUGHEY: -- check that out.

15 JUDGE DAWSON: -- received them either,
16 so --

17 Mr. Johnson.

18 MR. JOHNSON: That is correct. Those were
19 dealt with yesterday.

20 JUDGE DAWSON: Okay.

21 MR. BOUGHEY: Could they be sent by email
22 to us then?

23 MR. JOHNSON: My guess is they were
24 probably sent out this morning.

25 JUDGE DAWSON: Are they on the docket as

1 well?

2 MR. JOHNSON: The person who puts them in
3 the docket was out yesterday. I'm guessing that's
4 why they didn't get docketed yesterday and might be
5 a little bit delayed this morning getting out. I'm
6 sure that he's in the process of getting that done
7 now.

8 JUDGE DAWSON: Perfect. Well, get them to
9 the parties as soon as possible, please.

10 As to witnesses today, all the witnesses
11 that Minnesota Power has listed are exactly the
12 same -- well, are included within the witnesses
13 listed by Mr. Boughey except for Jay Haley or
14 Haley.

15 Mr. Boughey has stated that he will call
16 witnesses that are aligned with Minnesota Power,
17 which may not be something that's normal. I will
18 allow a broadened scope of questioning, though, on
19 cross-examination so we do not have to recall
20 witnesses. So it will be a broader scope in that
21 than you would normally have in a court hearing.

22 I have been provided a number of exhibits.
23 I would want to know if there is any stipulation to
24 exhibits, or are we going to enter them one at a
25 time?

1 MR. BOUGHEY: Your Honor, we did discuss
2 that beforehand, and we're going to try and -- and
3 submit them generically. However, there are some
4 things that have to be redacted yet, and with the
5 Commission's permission, the way we could do this
6 very quickly and easily is at the end of the day,
7 if you allow counsel just to go through -- there's
8 some that apparently have some settlement items in
9 there that will have to be pulled and there's
10 apparently -- well, there is some numbers that
11 normally we first -- we'd redact them at a later
12 point by crossing them out.

13 If the Commission would allow counsel to
14 deal with that at the end of the day so that -- and
15 we take care of your binders as well as -- as well
16 as ours, we would -- we would suggest that's a good
17 way to make this happen.

18 And so that being said, we would be
19 offering -- each of us will offer our binders with
20 the understanding that we have the right to object
21 to anything in it, if something comes up during the
22 hearing that we need to object to. And by the same
23 token, we'll each have an opportunity to discuss
24 what needs to be pulled, if anything, or redacted
25 at the end of the day. I think that's what we kind

1 of discussed.

2 Thank you.

3 JUDGE DAWSON: Mr. Mahlberg.

4 MR. MAHLBERG: I think that's generally
5 what we discussed. I do think that -- given the
6 number of witnesses, I -- I personally think -- and
7 in conversation with Mr. Boughey, I think that it
8 is unlikely that we will finish all of those
9 witnesses today. And as Mr. Boughey and I talked
10 about, that will give us time to go through and
11 make sure that things that shouldn't have been
12 included or need to be redacted can be done before
13 we reconvene or maybe submit a -- another binder of
14 those later.

15 I don't think, Mr. Boughey, that anything
16 in our exhibits will need to be further redacted or
17 taken out?

18 MR. BOUGHEY: I don't believe so. I
19 assume that -- my understanding is your Exhibit 8
20 you've already redacted and the version that has
21 been provided has already been redacted. The
22 Exhibit 8 that involved a number that had to be not
23 disclosed.

24 MR. MAHLBERG: There are nonpublic
25 versions of -- of certain easements as well as one

1 page of Exhibit 8. The Commission has the
2 nonpublic versions as well as the public versions.

3 MR. BOUGHEY: Counsel, I -- I agree with
4 your analysis in how we can proceed. Thank you.

5 JUDGE DAWSON: Well, there is a protective
6 order over Exhibits 4-5, 4-6, 4-7 and 8 from
7 Minnesota Power, and those are in place already. I
8 will not accept the -- any exhibits at this time.
9 We'll do them one at a time, and that way we can
10 address these and not get them entered into
11 evidence before they are properly redacted or dealt
12 with.

13 Opening statements, or are there any other
14 issues or matters that we need to discuss?

15 MR. JOHNSON: Your Honor, I -- I guess
16 since the exhibits have not been accepted yet -- I
17 know they did stipulate to them but they have to be
18 redacted. I know the binders have been given to
19 the commissioners. Minnesota Power's have not been
20 handed out. I guess if both parties are okay with
21 the Commission having the entire exhibits, even
22 though there's going to be information coming out
23 of there, I'm okay with that, but it's a little
24 unorthodox to -- to give them all the documents
25 ahead of time and then take some out later.

1 JUDGE DAWSON: Correct.

2 COMMISSIONER KROSHUS: So, I don't know, I
3 guess if -- if the parties are okay with that, but
4 I would assume that if they're going to enter
5 exhibits one at a time, we wouldn't have everything
6 handed out ahead of time.

7 JUDGE DAWSON: Mr. Mahlberg.

8 MR. MAHLBERG: Thanks. As to Minnesota
9 Power's exhibits, they are all connected to the
10 prefiled and there will be none that need to be
11 taken out. And so at least as to -- to the
12 exhibits in our binder, I think we could offer
13 those and have those received en masse.

14 MR. JOHNSON: And you don't have a problem
15 with them having all of Mr. Boughey's exhibits with
16 their information coming out later?

17 MR. MAHLBERG: No, I don't have a problem
18 with that, knowing that some of them are going to
19 need to come out. I just think that if we have to
20 go through Mr. Boughey's binder and offer every
21 single one of these as a separate exhibit, it's
22 going to be more inefficient than it -- than the
23 upside.

24 MR. JOHNSON: I -- I understand. I just
25 wanted to clarify that that was something that was

1 okay with you, so --

2 MR. MAHLBERG: Yeah. Thank you,
3 Mr. Johnson.

4 JUDGE DAWSON: So if I understand
5 correctly, there's a stipulation to the exhibits
6 and with the caveat that there will be redactions
7 made to some of yours for --

8 MR. BOUGHEY: Yes. That -- that is
9 correct, Your Honor. And I know normally in the
10 court hearings you have to provide the actual
11 original exhibit, then we redact at the hearing,
12 and so that's why I did it this way. And I
13 apologize if that's not how you normally do it, but
14 we'll -- we'll make it happen, and Mr. Mahlberg
15 and --

16 JUDGE DAWSON: We'll discuss --

17 MR. BOUGHEY: -- I will work together well
18 on this.

19 JUDGE DAWSON: -- it further at a break.
20 But with that caveat in mind, the exhibits are
21 admitted and will be marked as provided as we go
22 through them.

23 Opening statements. Mr. Boughey.

24 MR. BOUGHEY: Your Honor, given the
25 limited amount of time we have and the fact that we

1 filed a complaint that describes what our concerns
2 are, I think it would be better for me to not
3 bother with an opening statement at this time and
4 get right to the heart of the matter, assuming
5 counsel does the same. Otherwise, I'll -- I guess
6 I'll have to.

7 JUDGE DAWSON: Mr. Mahlberg, would you
8 like to give your opening statement now or later
9 or --

10 MR. MAHLBERG: I'll reserve the right to
11 give it later with the understanding that the
12 prehearing brief that we filed sets out what we --
13 what we're going to present.

14 JUDGE DAWSON: Excellent. Mr. Boughey,
15 you may call your first witness.

16 MR. BOUGHEY: Thank you, Your Honor. At
17 this time I call Keith Kessler.

18 JUDGE DAWSON: Mr. Kessler, please come up
19 to the bench.

20 Mr. Kessler, I'm required by law to tell
21 you the penalties for perjury in this state.
22 Perjury is a Class C felony, punishable by a fine
23 of up to \$10,000 or a term of imprisonment of up to
24 five years, or both.

25 Do you understand what perjury is and the

1 penalties for it?

2 THE WITNESS: Yes, I do.

3 (Witness sworn.)

4 JUDGE DAWSON: Mr. Boughey, you may begin.

5 MR. BOUGHEY: Thank you, Your Honor.

6 **KEITH KESSLER,**

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

9 **DIRECT EXAMINATION**

10 **BY MR. BOUGHEY:**

11 Q. Mr. Kessler, would you please state your
12 name for the record.

13 A. Keith Gustav Kessler.

14 Q. Okay. And where do you reside?

15 A. At 6001 26th Street Southwest, Glen Ullin,
16 North Dakota 58631.

17 Q. And what do you do? What is your
18 occupation?

19 A. Ranching.

20 Q. Okay. And in regards to where you reside,
21 would it be appropriate to call that a family
22 ranch?

23 A. Correct.

24 Q. Okay. And in regards to that, how long
25 has that ranch been in your family?

1 A. Several generations.

2 Q. Okay. Do you recall at any time visiting
3 with anyone from Minnesota Power in regards to the
4 possibility of having an easement on any of your
5 property?

6 A. I do.

7 Q. I want to first, before we go through the
8 maps, focus on the fact that it's my understanding
9 that the issue today relates to Turbine 441; is
10 that correct?

11 A. Correct.

12 Q. Do you have other turbines on your
13 property that do not have anything to do with this
14 particular complaint?

15 A. Yes.

16 Q. Okay. And are they -- just so we don't
17 have any confusion, are they in different section
18 numbers other than 15?

19 A. Yes.

20 Q. Okay. And so in regards to Section 15,
21 it's my understanding that Turbine 441 is not on
22 your property but is at a next-door neighbor's
23 property; is that correct?

24 A. Correct.

25 Q. Who owns the property next door that has

1 Turbine 441 on it?

2 A. Would be the Glen Lennick family.

3 Q. Okay. If you would, sir, I'd like you to
4 open up the binder in front of you so that we can
5 allow everybody and the commissioners to see the
6 photos and your property. For the record, P-1 is
7 merely a U.S. Department of Interior, Bureau of
8 Land Management, and since I am not a farmer and
9 rancher, I find that square in the center very
10 helpful to me when I'm trying to figure out all the
11 different quarters and those things. So that's
12 what P-1 is.

13 The next page, Mr. Kessler, I understand
14 is the plat map that includes the section at issue.
15 So if you'd turn to page P-2, and would you please
16 advise the Commission which -- which quarter is
17 involved and then just tell us, while using the
18 number 15, approximately where your -- the turbine
19 is and where the house is. So, first, which
20 section do we need to go to, sir?

21 A. Section 15.

22 Q. And then 15, there's a 1-5 in the center
23 of, of course, the section number. And if we were
24 to determine where the residence at issue is, where
25 would it be in reference to that number 1 or 5?

1 A. Just off the top of the 1, there's a
2 little dot there. That would be the -- the
3 farmyard.

4 Q. Okay. And then where in reference to the
5 number 5 would Turbine 441 be located?

6 A. Right to the edge of the top of the 5, the
7 right-hand part.

8 Q. Do you happen to know how close to the
9 property line, that north-south line, the turbine
10 is to your property? So, in other words, from your
11 property line to the -- to the closest point of
12 441, about what's the distance, if you know?

13 A. It was like 50-some-odd yards.

14 Q. Okay. All right. And then in reference
15 to the residence that is at the top of point 1 and
16 the turbine, do you have an estimate as to how many
17 feet the turbine is away from the residence at
18 issue?

19 A. It's just right under 1125.

20 Q. Okay. Were you provided any information
21 from Minnesota Power as to anything called a
22 setback that you were told would apply as to any
23 turbines that were going to be on or near your
24 property?

25 A. Yes, somewhere in the conversations.

1 Q. Okay. And what was the footage that you
2 were informed by Minnesota Power as to what the
3 setback was that applied to any residence or other
4 type of avoidance area?

5 A. 1400 feet.

6 Q. Okay. We're going to now go -- I'm going
7 to skip for now page P-3. We're going to come back
8 to that after we have a chance to look at the
9 Google maps. So in part two, if you turn to that
10 next section.

11 MR. BOUGHEY: And for the Commission and
12 judge, if you turn it 90 degrees clockwise, you're
13 going to be a lot easier and you'll see that
14 there's a page number on the bottom.

15 Q. (MR. BOUGHEY CONTINUING) Mr. Kessler, if
16 you would look at M-1, which is map 1, so that's
17 part 2, M-1. Tell me when you're there, please.

18 A. I'm there.

19 Q. Fantastic. That red dot that is located
20 on there is -- just out of curiosity, is that your
21 home or somebody else's?

22 A. That is ours.

23 Q. And that's your main residence; is that
24 correct?

25 A. Correct. That's the ranch headquarters.

1 Q. And that is not on Section 15. About how
2 far is that from Section 15?

3 A. About three miles the way the crow flies.

4 Q. All right. Very good. Now we'll flip to
5 the next page. I just want you on page 2 -- I need
6 you to look at the center of that page, and is that
7 part of your land where there's something green
8 just above one of the turbines in the very center
9 of page 2 map?

10 A. Can you repeat the question?

11 Q. Sure. I'm looking at the center of the
12 map and I'm trying to determine -- first of all,
13 can you -- can you indicate on page 2 where Turbine
14 441 is, which of these particular -- if it is one
15 of these? I know that these might be the ones on
16 your property in Section 21.

17 A. Yeah, if you're going from the center, you
18 can see there's a -- that's a gravel road, so if
19 you take the center of north and south and east and
20 west, you take a right, there's a -- there's a wind
21 tower. There's one, two -- it would be the third
22 one down that road going northeast.

23 Q. Okay. And we'll focus in. If you'll go
24 to page 3 now, please. On M-3, could you tell me
25 whether or not Section 15 wind Tower 441 is on this

1 photograph?

2 A. I believe so. It's in the top right
3 section of the map. It would be the third tower
4 off of that gravel road.

5 Q. Very good. On the one that's in the very
6 center, it looks like there's something green right
7 above that particular turbine. Do you know what
8 that is, that little green circle there?

9 A. It's a stock dam on Section 16.

10 Q. So it is not a residence; correct?

11 A. Correct.

12 Q. All right. Now we'll go to the next page,
13 please. On M-4, are any of these the one on
14 Section 15? And, again, we just did everything.
15 If it's not, that's fine.

16 A. Well, you turn the pages and everything
17 looks different and the maps get closer, so --

18 Q. You know what, let's just go --

19 A. Yes, it's the third one -- same deal. The
20 gravel road is actually on the left third of the
21 map, so it's the same road going northeast. It's
22 the third -- third tower.

23 Q. From left to right?

24 A. Correct. Well, you can't include the very
25 left tower. I'm talking where the gravel road is.

1 Q. Okay.

2 A. To the right of that, that is where I
3 count as one, two.

4 Q. Okay.

5 A. It's the third.

6 Q. All right. We're just going to start
7 going closer. Flip to page 5 and let's just go
8 right to page 6, please. I apologize. I think we
9 actually need to just go right to 12 and -- in
10 regards to all the pages we've gone through so far,
11 is it fair to state that there's no residences that
12 are close to or within 1400 feet of any of those
13 towers that we've looked at in these maps so far?

14 A. Yes.

15 Q. Now I'm looking at page 10, just to
16 acclimate the Commission. Page 10, that clearly is
17 that green spot, that pond you talked about, and
18 that's on your property; correct?

19 A. Correct.

20 Q. And then if we keep going to the right,
21 the next page is 11, and now I'd like to get you to
22 page 12 and tell me -- I guess flip to which page
23 is -- I apologize -- page 14. Let's just go right
24 to 14. I apologize.

25 Again, I wanted to be complete so the

1 Commission could see everything. On page 14, can
2 you tell me whether or not that is Tower 441?

3 A. The bottom left, yes.

4 Q. Bottom left. And then your property is
5 shown in part, some of the structures on the
6 left -- I'd call it the -- obviously the northwest
7 portion of this photo; is that correct?

8 A. Correct.

9 Q. All right. And, again, the -- the
10 markings were something that we did at a
11 deposition, and so we understand those markings
12 were added; correct?

13 A. (Nods head.)

14 Q. Okay. Now, I'd like you now to go --
15 we're going to do one of the close-ups where you
16 can see the property. Go to M-17, please. And I
17 want to double-check. M-17 shows 441 only and your
18 property with structures; is that correct, sir?

19 A. Correct.

20 Q. All right. Now, let's start with what
21 those structures are with the closest one to the
22 tower that looks the whitest and/or silvery. So do
23 you see the one that's, I guess, the closest to the
24 tower that's silver, looks like a square? What is
25 that, sir?

1 A. That is a pole barn.

2 Q. Okay. And then going northward and a
3 little bit to the right, what's the next three
4 buildings that we can see, or three items?

5 A. It's a single -- single garage-style
6 little shop. There's a -- to the north of that --
7 do you want me to keep going?

8 Q. Yes, please.

9 A. To the north of that is a little storage
10 building, feed -- feed storage. To the north of
11 that is an old seed storage building called a
12 granary.

13 Q. Okay. Now, back to the silver square, I
14 guess you call that a pole barn, there appears to
15 be two buildings to the north and west. As to the
16 first building that's the farthest south, what is
17 that building?

18 A. That would be the -- the house.

19 Q. Okay. And then what's immediately to the
20 north of that building?

21 A. A small garage.

22 Q. Very good. Next page, please. On M-18,
23 that's a little bit closer; correct?

24 A. Correct.

25 Q. And, again, the building -- the residence

1 is in the center, a little bit to the left; is that
2 correct?

3 A. Correct.

4 Q. All right. And then now M-19, we're
5 drawing back again, and that again is 441 on the --
6 to the southeast and your property, Section 15
7 residence, to the northwest; correct?

8 A. Correct.

9 Q. All right. Now I'd like you to take a
10 look at M-22, so you'll need to go whatever way you
11 have to go on that. M-22 is listed and was
12 received by Minnesota Power as Exhibit 1a. Do you
13 recognize this exhibit as something you've seen
14 before, either at the public hearing or some other
15 time?

16 A. Yes.

17 Q. Now, we've added in 441, the dot and the
18 number. Other than that, that was the -- is it
19 your recollection that's what you saw at the
20 hearing, the public hearing?

21 A. Yes.

22 Q. Okay. And then the next page, M-23,
23 Exhibit 2, which was also part of the hearing,
24 Exclusion and Avoidance Areas, other than the
25 marking of 441 so we see where that's at, is that

1 something that you recall seeing at the public
2 hearing?

3 A. Yes.

4 Q. Okay. And based on observing that
5 particular map at the public hearing, were you able
6 to determine at that time whether or not the
7 turbine that later became 441 was going to be too
8 close to your property?

9 A. No. It was too -- can't tell.

10 Q. All right. We will get to what happened
11 at the hearing later.

12 Next page, M-24, this is the exact same as
13 the prior exhibit, except we have added in as to
14 every listing of -- of a residence or structure
15 that was listed on the map presented to the PSC the
16 letters A through CC showing each of the -- and
17 referencing them as to the black dots that were
18 indicated at the public hearing; is that correct?

19 A. Correct.

20 Q. And, again, 441, we see where that's at,
21 and there's no dot indicating your -- any of your
22 structures, including the residence at issue; is
23 that correct?

24 A. Correct.

25 Q. Okay. Next page we'll get to M-25, and we

1 might as well go through that right now given our
2 time constraints. I would like you -- it's my
3 understanding that this was an exhibit we used at
4 the deposition and we wrote in the names of
5 different owners. Do these letters A through L,
6 are they commensurate to the A through L we had in
7 that other map, the page before, to your knowledge?

8 A. Yes.

9 Q. Okay. So now let's talk about each of
10 these very briefly as to these very structures that
11 were listed but yours wasn't. So let's just start
12 with A next to Keith Kessler. Is that your home,
13 by chance, where you reside?

14 A. Yes.

15 Q. Okay. Very good. And, again, I can see
16 that somewhere in Section -- the middle of Section
17 15, there's a reference that's hard to read, but
18 that's the number 441; correct?

19 A. Correct.

20 Q. All right. Now let's go through that. Do
21 you have any knowledge about Wayne -- and it looks
22 like Cline. I'll just go through letters.

23 B, was that a structure that was in any
24 way occupied at the time of either the hearing or
25 when they did the construction?

1 A. Yes.

2 MR. MAHLBERG: Well --

3 MR. BOUGHEY: I'll separate. Sorry,
4 counsel.

5 MR. MAHLBERG: No. Sorry.

6 Q. (MR. BOUGHEY CONTINUING) At the time of
7 the hearing --

8 MR. MAHLBERG: If -- if I can state the
9 objection --

10 MR. BOUGHEY: Sorry.

11 MR. MAHLBERG: -- Mr. Boughey. The
12 objection here would be that if -- if Mr. Kessler
13 is going to be asked a question about whether a
14 house was occupied or not, in the depositions the
15 Kesslers were prohibited by their counsel from
16 answering questions from me as to whether something
17 was occupied or not. And so I think as a matter of
18 fairness, the idea that the Kesslers can now take a
19 position as to other houses and their occupancy, I
20 don't know that there's foundation for it. And so
21 there's my objection on that.

22 JUDGE DAWSON: Mr. Boughey.

23 MR. BOUGHEY: Thank you. In response, the
24 reason they weren't -- the Kesslers weren't allowed
25 to define occupied or state whether the house was

1 occupied is because the definition has not yet been
2 determined, and so I considered it as a request for
3 a legal conclusion. And we at that point during
4 the depositions had no idea what this Commission's
5 going to decide.

6 Occupied could be ever occupied, presently
7 occupied with someone living in. Occupied could be
8 anything from somebody's there at night but -- or
9 it's not occupied when they're at work, or day when
10 they're at work. And so for that reason I did,
11 indeed, say to the clients that you were asking for
12 a legal question.

13 What I can do to take care of that now is
14 I can just say -- I will rephrase so that we can
15 get past again -- I didn't want him to try to
16 create a legal definition because that's the
17 Commission's decision as to what occupied means.
18 I'll rephrase, if I may, counsel and Your Honor.

19 Q. (MR. BOUGHEY CONTINUING) Would you tell
20 me as to B what was the status -- or what is your
21 knowledge as to that particular structure at B,
22 either the use of the structure or what you know
23 about that structure there.

24 A. It's a --

25 JUDGE DAWSON: Mr. Mahlberg.

1 MR. MAHLBERG: Do you want me to respond,
2 Your Honor?

3 JUDGE DAWSON: Yeah.

4 MR. MAHLBERG: I think that that line of
5 questioning will be far better than asking
6 Mr. Kessler if it was occupied as to each of these
7 structures, if that's --

8 MR. BOUGHEY: And, counsel, I understand.

9 JUDGE DAWSON: Continue.

10 MR. BOUGHEY: And, again, part of our
11 problem is we don't know what the Commission's
12 going to decide the term "occupied" means yet. So
13 I appreciate that we probably will try not to use
14 that word.

15 Q. (MR. BOUGHEY CONTINUING) Okay. What
16 is -- back to you, sir. B, are you familiar with
17 that structure?

18 A. Yes.

19 Q. What is it, sir?

20 A. It's a farmstead with a house and
21 outbuildings.

22 Q. Do people live in it regularly, to your
23 knowledge?

24 A. Yes.

25 Q. All right. Now let's go down to -- you

1 already discussed A. Let's talk about C. I --
2 that was B. C -- what is the structure noted at C,
3 which was listed on the map?

4 A. Repeat the question.

5 Q. Sure. At part -- at C, what is the
6 structure that is indicated at point C?

7 A. It's an older farmstead there and the
8 people moved to Center in 2005.

9 Q. And the public hearing was what year?

10 A. 2013.

11 Q. Okay. And you live very close to that
12 location; correct?

13 A. Correct.

14 Q. And from 2005 until the public hearing,
15 nobody, to your knowledge, was using that
16 structure; is that correct?

17 A. Depends on what you consider "using."

18 Q. Okay. All right. Fair enough. Was
19 anyone living there, to your knowledge, throughout
20 that time frame?

21 A. No.

22 Q. All right. Thank you. Now let's go -- I
23 don't know why D and E are -- are flipped the way
24 they are, but let's just go on to E. Do you
25 recognize the next one, E, and do you -- tell me

1 about that structure as of the time of the hearing
2 or before.

3 A. Yes. Clint Redmann. It's a farmstead
4 with a house and outbuildings.

5 Q. Okay. And was anyone living in that at
6 that time?

7 A. Yes.

8 Q. Okay. So C was empty. E had somebody in
9 it. Now let's go to D. What structure is that and
10 what was its status?

11 A. Another farmstead, lived at.

12 Q. I'm sorry?

13 A. A farmstead that was used, lived at.

14 Q. Okay. Very good. And then now we go over
15 to H to the right. What -- what structure is that
16 and what was its status at the time of the hearing?

17 A. That's another house with outbuildings
18 there. It was lived in.

19 Q. Okay. Now, I see there's a reference to
20 448, 451, and it's on your property in Section 21.
21 Are those two of the turbines that are on your
22 property?

23 A. Yes.

24 Q. Okay. Now let's go to J, and tell me what
25 is that structure and whether at the time of the

1 hearing any -- or before the hearing anyone was in
2 there, or what was the structure used for at that
3 time?

4 A. It's a farmstead with a house and
5 outbuildings. They moved to town in 2009, to Glen
6 Ullin.

7 Q. Okay. And then -- so from 2009 to 2013
8 when the hearing occurred, to your knowledge, was
9 anyone living in the place?

10 A. No.

11 Q. Meaning no one was living there?

12 A. No one was living there.

13 Q. Very good. So that one also empty. J.

14 Okay. K, describe what that structure is
15 and if anyone was living there at the time of the
16 hearing.

17 A. It's another farmyard with a house and
18 outbuildings. They moved to town in 2010. Nobody
19 was living there.

20 Q. Okay. Empty. K.

21 All right. How about L? What is that
22 structure and what was it being used for at the
23 time of the hearing?

24 A. Another farmyard with a house. Lived at.

25 Q. Okay. Very good. We'll now flip through

1 a few pages. The -- for date purposes, on page
2 M-26 we have reference to Curt Winckler passing.
3 What property or letter relates to Curt Winckler?

4 A. That would be J.

5 Q. Okay. All right. And so he passed away
6 in apparently 2010; is that correct?

7 A. Correct.

8 Q. All right. All right. But he moved out
9 before passing away is what I understand to be the
10 case?

11 A. In '09.

12 Q. Okay. And then the next obituary, just to
13 figure out dates, was, on page M-28, a Voegele.
14 What letter represents Voegele?

15 A. I believe it's K. No. Yeah, K.

16 Q. Very good. All right. And you've already
17 testified as to that, so we'll move on. M-29, that
18 was an exhibit, page 405, used in the deposition.
19 Do you see the part where they say, "Verify setback
20 from homestead," on the upper left?

21 A. Yes.

22 Q. Do you have -- in the process of this
23 litigation, have you seen anything like this that
24 would show Section 15 and have an indication
25 "verify setback from homestead"? Do you recall

1 seeing anything like that in this case?

2 A. No.

3 Q. All right. Next page, please. Now we're
4 going to photos, which is part 3. And I'm just
5 going to walk through these. We tried to put these
6 in chronological order as best we could. And so
7 there's -- these exhibits are already into
8 evidence, Mr. Kessler, so I'm just going to ask you
9 to -- photo 1, I take it, is the thing that looked
10 nice and square and silvery. Is that a correct
11 statement?

12 A. No. Because in the -- in the -- that
13 Google picture, whatever that is, that's a newer
14 structure. This --

15 Q. Oh, I see.

16 A. -- is the old one. The newer one replaced
17 this one.

18 Q. All right. When was the new one put in?

19 A. 2017.

20 Q. All right. So as of the time of the
21 hearing, this would have been the structure that
22 was there; correct?

23 A. Correct.

24 Q. All right. Very good. Next page, please.
25 And, again, I know you were asked to pull together

1 any photos of anybody in the house. I take it this
2 is one of your relatives after hunting?

3 A. That is our youngest son Hayden.

4 Q. All right. And, again, this photo was
5 taken in 2010 at the house at issue; correct?

6 A. Correct.

7 Q. And we'll go through what use -- other
8 uses you had for the house, but this is the
9 photographic evidence that the house was being
10 used; right?

11 A. Correct.

12 Q. Okay. Now, number 3, 2011, same thing,
13 this is a photo of the interior of the house at
14 question; is that correct?

15 A. Correct.

16 Q. If you would briefly, since we're going to
17 see some of these people, if you'd go left to
18 right, tell us who's who?

19 A. It would be Jim Erickson; Renee Erickson;
20 Rodney Miller; my wife, Deanna; and myself.

21 Q. Very good. And that, again, was 2011;
22 correct?

23 A. Correct.

24 Q. All right. And then now we have a
25 before-and-after photo on page 4, and so maybe it

1 would be best to say when did you reshingle the
2 house that -- that shows as it is on the right
3 versus what it looks like on the left? When did
4 that happen?

5 A. 2016.

6 Q. Okay. And so the photo on the left would
7 be what the residence appeared as of 2013 at the
8 time of the hearing; is that correct?

9 A. Correct.

10 Q. Okay. And then next photo, number 5, must
11 be the 2016 when you were doing the shingling; is
12 that correct?

13 A. Correct.

14 Q. All right. And then next, photo 6, and we
15 don't have a date on that, but obviously the
16 grating is there and the fencing is there, so would
17 it be fair to state that this is sometime after
18 either 2013 or 2014 once the project was either --
19 was completed? Would that be a fair statement?

20 A. Yes.

21 Q. So this fencing and this grating was put
22 in in conjunction with the project being completed;
23 is that correct?

24 A. No. The fence had been there for several
25 years --

1 Q. All right.

2 A. -- and as the cattle guard.

3 Q. All right. Very good. And then my next
4 question relates to does this fairly and accurately
5 show what it would look like from your -- your
6 fence to the residence on Section 15 and the
7 buildings on Section 15? Is that correct?

8 A. Correct.

9 Q. Acclimate me a little bit here. If I turn
10 to the right, would I see Turbine 441?

11 A. Yes. It'd be directly over -- if you look
12 at that railroad tie off of the cattle guard, it
13 would be directly above the trees there.

14 Q. So that's actually the -- the sharp little
15 pointy is one of the fan blades --

16 A. Correct.

17 Q. -- on the far -- on the upper right?

18 A. Yes.

19 Q. Just above the trees. Got it.

20 A. Not on the -- well, there's three towers
21 you can see actually.

22 Q. I apologize. So the one in the center is
23 441?

24 A. No. No. The one --

25 Q. Help me out.

1 dates and the use of that home on page Dates-1 is
2 correct to the best of your knowledge.

3 A. Yes, it is correct.

4 Q. Okay. Now I want to go to E. 2003-spring
5 of 2015, used regularly. And I don't want you just
6 to read it, but just -- I'd like you to tell the
7 Commission generally from 2003 until, again,
8 2015 -- strike that.

9 I'd like you to go from 2003 for the next
10 ten years, to 2013, before they built the project,
11 what did you use that house for?

12 A. We used it for several things. We used it
13 for a bathroom facility, cooking facilities,
14 hunting weekends, overnight stays. There was a
15 couple of Super Bowl football parties there because
16 we couldn't get ABC channel at home, so here it
17 would come in perfectly with rabbit ears, so we'd
18 go over there and host a little party.

19 Q. If you would, at the time of 2013, right
20 before they started the construction phase,
21 describe what's inside the house. Apparently a TV.

22 A. Yes. Kitchen table, sink, stove,
23 refrigerator, couch, bed. I mean, pretty much
24 standard. I mean, dishes, television, furnace,
25 running water.

1 Q. Okay.

2 A. Hot water heater.

3 Q. And so you used it -- how about in regards
4 to anytime you're working cattle, was the house
5 used for any purposes?

6 A. Yes. We used it regularly and we still
7 do. For meals, preparing meals. Like I said, it's
8 a nice facility for bathrooms. Eating lunches in
9 there, getting out of the elements.

10 Q. Okay. And then if you now turn through
11 to -- page Dates-1 and Dates-2 relate to the same
12 answers to either admissions or discovery. I'd
13 like to go to Dates-3 and 4.

14 As to 3, I asked you to pull together any
15 documentation to show that the house was used in
16 2013 for your ranching purposes. What does -- why
17 does this photo of these documents indicate to you
18 that the house was used in 2013 relating to your
19 ranching operation?

20 A. Well, this is paperwork that we use. It's
21 a cow/calf list, and in the fall we give what
22 they're called preconditioning shots. We have a
23 corral facility at that yard that is connected to
24 that barn, the old barn, and we process our cattle
25 there. That's when we use the house also.

1 Q. So no doubt in your mind in 2013 you were
2 working cattle at that location?

3 A. On September 14, yes, sir.

4 Q. Okay. All right. Now let's go to the
5 next page, and I understand that's the same thing,
6 but 2014 instead of '13; is that correct, sir?

7 A. Correct.

8 Q. Now, construction occurred as to 441, as I
9 understand it, sometime in 2014 once the -- the
10 weather got better. Is that your understanding?

11 A. Yes.

12 Q. Do you have any idea about when Turbine
13 441 went up? And, again, we can look at the
14 records, but --

15 A. I want to say it was mid -- midsummer,
16 late summer.

17 Q. All right. Very good. Thank you. All
18 right. That takes care of those exhibits. Thank
19 you, sir.

20 Now at the time that you first found
21 out -- I now want you to go to part 5, which is
22 the -- the binder that we used in your deposition,
23 but we took out a whole bunch of documents, and
24 apparently we're going to have to take out a few
25 more. But do you recognize page 1 and 2, and if

1 so, how did you come across this particular
2 handout?

3 A. It was mailed to us, I believe, with a
4 letter. This was a pamphlet that was enclosed in
5 it giving us some information on the -- the wind
6 towers.

7 MR. BOUGHEY: Okay. And I note only for
8 the record now that I know that a decision has been
9 made that we are -- the motion for reconsideration
10 as to damages has been denied, I simply note for
11 the record that this page 1 does show the amount of
12 output, the amount of energy that is created. And
13 obviously I -- I would have offered it for that
14 purpose for damages, but that's been decided. So I
15 just, I guess, make an offer of proof as to the --
16 that issue and I'll move on.

17 Q. (MR. BOUGHEY CONTINUING) All right. Now
18 let's go to -- and now these are all in
19 chronological order, Keith, and so what I've tried
20 to do is I've tried just to make it so we can very
21 briefly go through the history of your interactions
22 with Minnesota Power.

23 So it's my understanding that sometime
24 in -- in June of 2009, there was an easement that
25 was -- that was signed by you and your wife. Do

1 you recall that process at all?

2 A. Yes.

3 Q. Okay. Before signing the easement, did
4 Minnesota Power discuss anything in regard to the
5 placement of turbines generally to you?

6 MR. MAHLBERG: Objection. I'm going to --
7 assumes facts not in evidence, only because the
8 question is calling it an easement. For clarity's
9 sake, I think we should distinguish between options
10 and easements; otherwise, we're going to get
11 confused between the two.

12 MR. BOUGHEY: Good point, counsel.
13 I'll -- I'll redirect, and thank you. Of course,
14 the title says Wind Project Option Agreement. I
15 should have used that phrase. I'm sorry.

16 Q. (MR. BOUGHEY CONTINUING) In regards to
17 this option agreement, did you have any discussions
18 with Minnesota Power in regards generally as to any
19 input you might have as to the placement of the
20 turbines?

21 A. Yes.

22 Q. And what were those -- what did they tell
23 you?

24 A. Well, when we first visited, when I first
25 seen this piece of paper, my wife and I, we read

1 through it and discussed with the representative.
2 And we had asked him questions and we told him that
3 we weren't interested in having any -- any wind
4 towers erected around our home facility nor Section
5 15.

6 And at that time -- I don't see his name
7 on this, but I believe it was Brian. But anyway,
8 he -- he said if -- if -- because this is just a
9 lease. They want to lease your land. He said if
10 they get to a point where they're going to develop
11 a project, they will come to us, they'll give us a
12 plan where the roads, the towers and the
13 underground collection will be. And then he said,
14 "If you object and you want to move things, we
15 can" -- "there's" -- "there's wiggle room."

16 Q. Okay. All right. So then you eventually
17 on June 2 -- or sometime around June 2, 2009, you
18 signed the Wind Project Option Agreement. What
19 occurred next in regards to any other interaction
20 with Minnesota Power? About when was the next time
21 you dealt with them?

22 A. I don't have a date. It was pretty quiet
23 for quite a while.

24 Q. Well, tell me what next occurred, if you
25 recall. Why don't we go to page 31. And, again,

1 I'm trying to save us some time here.

2 So if you go to page 31. Now, you were
3 asked as part of Exhibit A -- they had a listing of
4 all the property you owned; is that your
5 recollection?

6 MR. MAHLBERG: I'm going to object to the
7 form of that one as vague as to "they" in asking
8 for a list of all the properties you own. It's --

9 MR. BOUGHEY: Point noted. I'll make it
10 more clear.

11 Q. (MR. BOUGHEY CONTINUING) In regards to
12 the possibility under the option, it included a
13 potential lease that you would have to -- or
14 easement you'd have to sign if they decided to
15 develop the project; is that your recollection,
16 sir?

17 A. Yes.

18 Q. And that's on pages 7 through 31; correct?
19 Or starting on page 7. That's good enough.

20 A. Yes.

21 Q. I'd like you to go to page 31 now, please.
22 Again, and the reason I'm concerned about this, I
23 want to make sure as to Section 15, did they at any
24 time contract with you to put any type of tower on
25 Section 15? If so, where?

1 A. No.

2 Q. All right. Now page 33.

3 MR. BOUGHEY: And for the Public Service
4 Commission's benefit, you'll see every now and
5 again we skip page numbers. The reason we kept the
6 old numbers is if you do go back to the depositions
7 and look at -- and they say something's on page 33,
8 you'll be able to find the same numbers as opposed
9 to renumbering everything. So don't be concerned
10 if there's -- in this situation 32 is missing
11 because it's not relevant to today's hearing. And
12 so don't -- don't be -- don't be worried. There's
13 no pages missing. It's just we -- we edited.

14 Q. (MR. BOUGHEY CONTINUING) Okay. Page 33.
15 Around January 2012, did you have any
16 communications with Minnesota Power, and, if so,
17 does this provide you some indication of that?

18 A. Yes.

19 Q. Okay. So now we're in the -- the winter
20 of 2012. And so, if you would, between that time
21 and the public hearing, just kind of give us a
22 general idea of your -- any contact you had with
23 Minnesota Power. Who did you talk to, first of
24 all, and then what were the discussions?

25 A. I believe this was just an informational

1 letter that was sent out.

2 Q. Okay. And then at some point -- who was
3 the person that initially you were dealing with
4 from Minnesota Power in regards to -- from 2012
5 onward relating to this project?

6 A. That would have been Scott Monroe.

7 Q. Okay. Let's talk about that. What
8 communications with Scott Monroe did you have once
9 it appeared the project was going to proceed? So,
10 if you would, just -- if you know, about when did
11 you talk with him and what was discussed?

12 A. Well, I don't have a date, but I remember
13 meeting Scott Monroe. I believe he came to our
14 place and we met him, and that's when we -- they
15 proposed or gave us a copy of the easement.

16 Q. Okay. And in regards to -- at that
17 discussion with Scott Monroe, from then up until
18 you went to the public hearing, what discussions
19 did you have with Minnesota Power in regards to the
20 placement generally of towers and, more
21 specifically, 441, if you got to that?

22 A. I don't believe we had discussions about
23 towers because they never showed us anything where
24 it was going to go.

25 Q. Okay. All right. So up to the date of

1 the hearing, which was, for the record,
2 September 13, 2013, did you just state that until
3 you got to the hearing, they didn't tell you at all
4 where they were planning on doing any of this?

5 MR. MAHLBERG: Objection. Objection.
6 Vague as to "any of this."

7 MR. BOUGHEY: All right. If I may
8 rephrase.

9 JUDGE DAWSON: Yes.

10 MR. BOUGHEY: I'll try to do better.

11 Q. (MR. BOUGHEY CONTINUING) From the time
12 Scott Monroe first contacted you and the project
13 appeared was going to be proceeding up to the date
14 immediately prior to the beginning of the hearing
15 and to the day before the hearing, did Minnesota
16 Power at any time provide you a map or design to
17 show you where they were planning on putting any of
18 the turbines or any aspect of the project?

19 A. No.

20 Q. Okay. Did they verbally provide you any
21 information up to the day before the hearing giving
22 you any indication as to where the turbines were
23 going to go or anything else about the project?

24 A. No.

25 Q. Okay. So when you walked into the

1 hearing -- strike that.

2 That was Scott Monroe. Is there anyone
3 else you talked to besides Scott Monroe from
4 Minnesota Power from 2012 to the day before the
5 hearing?

6 A. The only other person I had conversations
7 with was Dave Schmidt.

8 Q. Okay. Did that relate to anything we need
9 to go into today?

10 A. No.

11 Q. Very good. Now in regards to the hearing
12 itself, I see on page 52, we have the people
13 sign-in sheet, and it, of course, includes the two
14 of you about halfway down the piece of paper. Did
15 you go to the hearing a little early, and if so,
16 what did you observe?

17 A. Well, we got there prior to the meeting
18 starting.

19 Q. And what happened?

20 A. We walked in the courtroom. There was
21 people about. They were looking at -- there was a
22 map with an easel sitting there and people were
23 around it looking at it.

24 Q. Okay. Did you have an opportunity to go
25 look at that map?

1 A. Not right away. There was -- it was
2 almost like -- everybody was crowded around there.

3 Q. Okay. Fine. So let's just -- by
4 chronological order, you get there, there's people
5 crowded around the map. From when you get there
6 until the hearing begins, tell us if anything
7 occurred relating to discussions with Minnesota
8 Power or any information provided relating to where
9 the turbines were going to be placed.

10 A. No.

11 Q. Okay. Then when the meeting began, where
12 approximately were you seated, if you recall?

13 A. Well, from the back of the room, we were
14 seated on the left-hand side.

15 Q. All right. Very good. And then you had
16 an opportunity to review on page 52 the people who
17 signed in. Is there anybody that -- from Minnesota
18 Power that you had talked to prior to the hearing?
19 You already mentioned -- is it Todd Simmons? I
20 can't read it. So the people listed here, who had
21 you actually talked to about this project prior to
22 the hearing?

23 A. None. I had discussions with Todd prior
24 to this meeting, but not about the -- I think I had
25 met Todd once before this meeting. Yeah. Nothing

1 to do with tower placement or anything like that.

2 Q. All right. Based on your recollection,
3 was there anyone else from Minnesota Power there
4 who didn't sign in?

5 A. I think so, but --

6 Q. Okay. Well --

7 A. -- it's a long time ago.

8 Q. -- what's your -- a long time ago.

9 What's your best recollection? Who else
10 was there that isn't listed here?

11 A. Possibly Brian and Scott.

12 Q. Okay. What's Brian and Scott's names?

13 A. Brian Johnson, Scott Monroe.

14 Q. Okay. All right. So now, the meeting
15 begins, and you -- obviously we can go back and
16 listen to the recording of the meeting. Was there
17 either a morning break or a noon break, to your
18 recollection?

19 A. There was -- there were breaks.

20 Q. Okay. Now I'm going to cut to the chase.
21 During any of the breaks, did you have any
22 discussions regarding any concerns you might have
23 had as to the placement of any of the towers?

24 A. Yes.

25 Q. When did that discussion occur and then

1 where?

2 A. It was by the maps. My wife and I were
3 looking at the map and trying to -- trying to
4 figure out what is going where, because there is --
5 there is nothing marked on the map as far as
6 sections or -- so we were trying to figure out
7 where our property is, where these towers are
8 going.

9 Q. I'm going to walk over to this exhibit.

10 MR. BOUGHEY: And I note for the
11 Commission that I have the exact same thing as this
12 that I can give you to have right there, same size,
13 but it's light paper. And if you want that, I can
14 give that to you at any time.

15 Q. (MR. BOUGHEY CONTINUING) So this is
16 Exhibit 2, Exclusion and Avoidance Areas, and you
17 just mentioned --

18 JUDGE DAWSON: Is this map 55?

19 MR. BOUGHEY: Excuse me?

20 JUDGE DAWSON: Is this map 55?

21 MR. BOUGHEY: I'd have to go back and look
22 at my binder.

23 COMMISSIONER FEDORCHAK: Judge, if
24 Mr. Boughey has copies of that same map, which is
25 an exhibit for our hearing, I would appreciate a

1 hand -- a paper copy.

2 JUDGE DAWSON: Yeah, I think it's 55.

3 That's why I'm asking.

4 COMMISSIONER FEDORCHAK: Oh, you think
5 it's in here?

6 MR. BOUGHEY: Thank you. He's helping us.

7 JUDGE DAWSON: I'm just --

8 MR. BOUGHEY: Yes.

9 JUDGE DAWSON: It doesn't help to look at
10 an unrecognized map.

11 MR. BOUGHEY: Thank you, Your Honor. Yes.
12 If the commissioners would turn and my client would
13 turn to page 55, there we go. All right.

14 MR. MAHLBERG: Sorry.

15 JUDGE DAWSON: Mr. Mahlberg.

16 MR. MAHLBERG: Sorry. Your Honor, only
17 for clarity's sake, there have been, I think, two
18 versions of what was Exhibit 2 that have come --
19 that have been exchanged in discovery.
20 Appreciating that this looks like 55 --

21 JUDGE DAWSON: Mm-hmm.

22 MR. MAHLBERG: -- I'll note that there's
23 writing on 55 that doesn't appear up there, and so
24 I'm just not positive that 55 is the same page
25 that's been reproduced on the big sheet. I don't

1 know.

2 MR. BOUGHEY: Well --

3 JUDGE DAWSON: It says Exclusion --
4 Exhibit 2, Exclusion and Avoidance Areas, and this
5 one says Exhibit 2. So I -- I would guess that
6 they're -- the chances of them being the same are
7 quite high.

8 MR. MAHLBERG: They are materially the
9 same, but there have been changes that were -- I
10 would say that they are close enough. The writing
11 I'm referring to, I guess, on 55 was the
12 handwriting.

13 JUDGE DAWSON: Yeah, but not on the map.

14 MR. MAHLBERG: Not on the map, correct.

15 JUDGE DAWSON: Okay. Just the map
16 we're --

17 Q. (MR. BOUGHEY CONTINUING) So, in other
18 words, except for the pointing where 441 is, this
19 is apparently what you recall seeing there. Now,
20 my question is this: Do you recall -- and we've
21 had -- I think counsel has found some other
22 exhibits and he's going to bring those in relating
23 to what was actually at the hearing, which we just
24 received recently and that was fine. They -- they
25 just found them.

1 So do you recall on the map you saw any of
2 these circles showing the 14-foot [sic] occupied
3 dwelling setback, just based on your recollection?
4 Do you remember seeing those circles there? You
5 just testified you couldn't tell as to where --
6 whether it affected your property.

7 A. I remember seeing circles.

8 Q. Okay. Very good. Now I'd like you to
9 look at this. And if you would, just point to this
10 map, where is 4 -- I don't have it on this map
11 because it's a clean one. Where is 441?

12 A. Right here.

13 Q. Okay. All right. Thank you. I'll have
14 you go back so you --

15 JUDGE DAWSON: It's difficult to create a
16 record that is --

17 MR. BOUGHEY: May I circle this, Your
18 Honor?

19 JUDGE DAWSON: It's -- it's recorded not
20 by camera. It's only recorded by verbal
21 instruction --

22 MR. BOUGHEY: Okay. Very good.

23 JUDGE DAWSON: -- so I'm trying to find a
24 way that we can verbally describe what he pointed
25 to.

1 MR. BOUGHEY: I can handle that, Your
2 Honor.

3 Q. (MR. BOUGHEY CONTINUING) For the record,
4 the 441 that he pointed to -- and, again, we can
5 circle this and turn it into an exhibit, but it is
6 on -- where we have below "Oliver County" and
7 "Mercer County," approximately to the southwest of
8 where it says "Oliver County," beginning with the
9 point where there's a long stream of over three,
10 the one, two, three -- fourth one -- fourth yellow
11 dot going to the southwest, sir, is that the one
12 you pointed to?

13 A. Correct.

14 Q. Okay. Very good. And I see right next to
15 that dot, there is a white line that goes right
16 next to it, then to the north, then goes to the
17 west. What is that white line, if you know?

18 A. That is a driveway road coming into our
19 Section 15.

20 Q. Okay. All right. And based on this map,
21 did you at the hearing have any concerns in regards
22 to the placement of what later was number 441 in
23 regards to your residence or house on Section 15?

24 A. Yes.

25 Q. What steps, if any, did you take once you

1 saw that map? Who did you talk to? What did you
2 say?

3 A. I asked -- I talked to one of the
4 representatives of Minnesota Power. It was a
5 familiar representative.

6 Q. Was this during the break?

7 A. Yes.

8 Q. Okay. Where were you physically located
9 when you made that request and who did you make it
10 to?

11 A. We were right in the vicinity of the map.

12 Q. Okay. And do -- in regards to the person
13 from Minnesota Power, do you -- do you know who it
14 was?

15 A. There was only two people that I had dealt
16 with with Minnesota Power up to that point.

17 Q. Okay.

18 A. I was familiar with them. And -- and that
19 person grabbed Matt -- I can't say his last name.
20 It's not Fandrich, but --

21 Q. We'll use Matt.

22 A. Asked Matt because they said he's the
23 engineer or whatever, and they brought -- got Matt
24 involved in it. We asked him about that, and then
25 we -- that's when we brought up, my wife and I --

1 we said, "Well, this" -- "this is our property and
2 that looks real close to our property and to our
3 yard." And then he kind of blew up. And he said,
4 "We don't have time for this shit. We don't have
5 time to move it. We've got to get our credits in
6 place and we have to move forward," and he kind of
7 stomped off from there.

8 Q. Okay.

9 A. And the representative from Minnesota
10 Power said -- so we walked -- said, "Let's talk
11 about this." We walked out in the hallway. And
12 they said, "We will meet the following week at our
13 office and discuss this."

14 Q. Okay. All right. Now, before we go
15 forward with the hearing, I want to go back to
16 prior to this hearing, did you have any discussions
17 at any time with any representative of Minnesota
18 Power in regards to the Section 15 house and any
19 plans as to who would be living in it?

20 A. Yes. From -- from day one when -- before
21 we even signed the option, when we -- when they
22 came to us looking to lease property, we had
23 mentioned, like I did before, that we didn't want
24 anything built around our homestead nor the Section
25 15 homestead.

1 Q. And why was that? What did you say to
2 them?

3 A. Because our sons, when they got out of --
4 they were in high school at the time, one of them,
5 one was in college, and eventually one of them was
6 going to move into that facility.

7 Q. And that's what you told them?

8 A. Absolutely.

9 Q. Okay. So now back to the hearing. The
10 gentleman storms out. Somebody from Minnesota
11 Power says, "Let's talk about it." And then says,
12 "We're going to talk about this next week."
13 What -- what was "this"? What are we going to talk
14 about next week? Your understanding.

15 A. My understanding was we were going to talk
16 about the placement of this tower --

17 Q. Okay.

18 A. -- and how it's going to affect us.

19 Q. Okay. Did you subsequently testify at the
20 hearing as far as any other concerns?

21 A. Yes.

22 Q. Why didn't you raise the issue of the
23 location of the tower at that hearing when you
24 stood up to testify?

25 A. Because after speaking to the Minnesota

1 Power representatives and they wanted to meet and
2 discuss it the following week, told me that there
3 was time to deal with this. I didn't know that
4 that meeting was just a one-and-done. I thought it
5 was more of an informational meeting because that's
6 the first time we saw a map, first time we saw any
7 placement of any towers, anything that was going to
8 take place.

9 Q. Okay. Did you, at the time when you
10 testified, have any understanding as to the ability
11 or option of Minnesota Power to move the tower to a
12 different location if it was a place where you
13 didn't want it?

14 A. Can you repeat the first --

15 Q. I'm sorry.

16 A. -- part of that question.

17 Q. That was a terrible question. I'll try
18 again.

19 At the time you were at the hearing and
20 you testified, was it at that time your
21 understanding that if the turbine was someplace
22 that was a problem, there would be an option to
23 move it? Was that your understanding?

24 A. Yes. Because we were told that even when
25 they first come to lease our land, that we would

1 have an input in the project.

2 Q. Okay. All right. Is there anything else
3 that occurred in the -- at the hearing, at the
4 public hearing, relating to the placement of
5 turbine -- what later became numbered 441? If so,
6 tell us now.

7 A. I didn't follow that question.

8 Q. All right. I'll try again. Was there any
9 further discussion at the hearing relating to what
10 later became 441 or your concerns about it?

11 A. No. Because it was -- it was out in the
12 hallway and then the meeting was starting back up,
13 so we just kind of let it as we're going to discuss
14 this next week. We're going to have a meeting.
15 They said we'll come over to their facility and sit
16 down and talk about it. So we thought there was,
17 like I said, time.

18 Q. Okay. And then without going into great
19 detail, did any of those meetings happen? Did the
20 meeting happen as -- as scheduled? Let's start
21 there.

22 A. Yes.

23 Q. Okay. And very briefly, what information
24 were you provided at the meeting with Minnesota
25 Power after the public hearing?

1 A. There wasn't a whole lot of information.
2 We just looked at the map, some of the maps, and my
3 wife again pointed out at that time that that
4 tower, 441, looked really close to our property and
5 it's going to affect us. And they reassured us
6 that it wouldn't. She said, "Well, it looks like
7 the fence" -- "everything is" -- "it's going to be
8 right on the fence line. It's going to be," you
9 know, "moving that fence. And they said, "No,
10 everything will go right back in straight where" --
11 "where it was."

12 Q. Did they at that time make any reference
13 to the requirements of something called a setback?

14 A. Yes.

15 Q. What did they tell you?

16 A. Scott Monroe did. He said -- because
17 we -- we discussed this in -- quite a bit, and he
18 said that -- "Rest assured, that thing would be set
19 back 1400 feet," like that map says.

20 Q. And do you have any idea how many times
21 you were told by Minnesota Power that that setback
22 would apply so you don't have to worry about it?

23 A. It was that day for sure. I don't know
24 how many more times.

25 Q. Okay. All right. And then just -- do you

1 have any knowledge as to how close the turbine is
2 to the structure that you use as a home on
3 Section 15?

4 A. Do I have knowledge of it now?

5 Q. Yeah. Now.

6 A. Yes.

7 Q. What is the distance, approximately?

8 A. 1125 feet, more or less.

9 Q. Okay. Very good.

10 Okay. We're going to flip through a few
11 more things here. I guess the one thing I have to
12 put -- I have to ask you as to the public hearing,
13 in deciding not to raise the location of that
14 turbine at the public hearing, was that in any way
15 based on the discussion you had with Minnesota
16 Power during that day of the hearing?

17 A. Yes.

18 Q. Okay. And did you rely on what they told
19 you to make a decision not to discuss where
20 turbine -- where that turbine was going to go?

21 A. Yes.

22 Q. Following the hearing being completed, did
23 you have any further discussions with anybody from
24 Minnesota Power or any -- the ALJ or even the
25 commissioners, if you recall?

1 A. No, not after the meeting.

2 Q. Now, for the record, we have the -- the
3 decision, the findings of fact starting on page 58,
4 and then we later have -- if you go to page 123,
5 please. I apologize. It's going to be 120.

6 According to documents filed with the
7 Public Service Commission, it appears that
8 construction began sometime around November of
9 2013. Do you have any dispute as to that being --
10 some construction occurring around November 2013?
11 Any dispute as to that?

12 A. No.

13 Q. Okay. And then we're going to go to
14 page 123. In November of 2013, do you recall
15 signing any type of easement?

16 A. Yes.

17 Q. Now, prior to signing this, did you have
18 any discussions with Minnesota Power in regards to
19 Turbine 441?

20 A. Yes.

21 Q. Tell me what those -- first of all, who
22 were you talking with?

23 A. Scott Monroe.

24 Q. Okay.

25 A. And I believe Wade Isaacson was there.

1 Q. And where did this take place?

2 A. At their O&M office/shop facility.

3 Q. Is that -- what town is that? Is that
4 near Glen Ullin?

5 A. It's north of New Salem.

6 Q. Okay. Very good. And tell me what
7 discussions you had prior to signing this easement
8 with those two people about Turbine 441.

9 A. We had discussions about that infringing
10 on our property and our fence --

11 Q. Okay.

12 A. -- and just the placement of the tower,
13 and that's when we were told it'll be back
14 1400 feet.

15 Q. Okay. So you were told after the hearing
16 and you were also told on the date you signed this
17 easement; correct? I'll rephrase.

18 You already testified that the hearing --
19 the meeting with Minnesota Power right after the
20 hearing, you were told about the 1400 feet setback;
21 correct?

22 A. Correct.

23 Q. You also were told at the time you signed
24 this easement in November of 2013 about the setback
25 by Minnesota Power; correct?

1 A. Yes.

2 Q. Did you have any other discussions or --
3 that you had with Minnesota Power at that time
4 relating to your concerns that you haven't already
5 mentioned as to that meeting?

6 A. No. Well, temporary fencing, yes.

7 Q. All right.

8 A. That was a discussion.

9 Q. Very good. So in any event -- and we have
10 attached to your easement -- and I'm flipping
11 through this, so I'm going to page 127. There's
12 only a reference to Section 21. Is that because
13 that's where they were putting towers on your
14 property? Is that where they were?

15 A. There is --

16 MR. MAHLBERG: Objection to foundation.
17 And I'd like -- I guess I'd like clarification on
18 where this document that starts at 123 ends as part
19 of what you're asking him about.

20 MR. BOUGHEY: I'll tell you what.

21 Q. (MR. BOUGHEY CONTINUING) To make it so
22 there's less time, do you recall, did the easement
23 apply, that you signed, to towers that were on
24 Section 21?

25 A. Yes.

1 Q. Okay. And the easement you signed did not
2 have anything to do with Section 15; correct?

3 A. Not this particular one.

4 Q. All right. In any event, as to the
5 Section 15, which I guess would be the northwest
6 quarter of Section 15, is that where the residence
7 or the house is at?

8 A. Yes.

9 Q. And did you sign any -- I think you
10 already said this, but I want to make sure. You
11 didn't sign any easement as to the northwest
12 quarter of Section 15; correct?

13 A. Correct.

14 Q. All right. And that's because you didn't
15 need to because there was a tower -- the tower was
16 adjacent, not on your property; right?

17 A. Right.

18 Q. Okay. I'm now looking at page 134, and
19 maybe that's why counsel had to object.

20 I see another easement for December 5, and
21 I see maps and references again to Section 21.
22 Would that be your recollection that you signed
23 easements relating to Section 21, both in November
24 and December of 2013?

25 A. Yes.

1 MR. MAHLBERG: For -- sorry, for clarity's
2 sake, this is -- 134 is a memorandum of easements,
3 and I just want to make sure that when we're
4 talking about options or easements or memorandum of
5 easements, that we're calling them what they are so
6 that the record is going to track the titles of
7 these documents.

8 MR. BOUGHEY: Well, I think by the page
9 number and the document speaks for itself and has a
10 title at the beginning, that I think using the word
11 easement is sufficient since the documents are in
12 and we're referring to page numbers.

13 Q. (MR. BOUGHEY CONTINUING) 158, if you'd go
14 there, please. Again, your focus for what you
15 signed with Minnesota Power at this time period was
16 relating to Section 21; correct?

17 A. Correct.

18 Q. All right. Now, if you'll just flip
19 through 160, 161 and 162, there's documents that
20 state that sometime in December of 2013, basically
21 construction went off site until spring. Does that
22 match with your recollection, sir?

23 A. Yes.

24 Q. Okay. And, again, I'm trying to squeeze
25 in everything. If you'd turn to page 174, we now

1 have the -- the spring of 2014 and there's a
2 reference in the records that work began on
3 March 16, 2014, on-site. Do you have any reason to
4 object to that referenced date?

5 A. No.

6 Q. Okay. Now, we're trying to -- there's a
7 whole bunch of documents I've taken out obviously
8 relating to all the other work they did. But in
9 regards to Tower 441, does it appear that --
10 according to page 194, that backfilling foundations
11 were starting to occur in July of 2014 relating to
12 441 and other turbines?

13 A. What was the date?

14 Q. 194, sometime in July. It says July 6,
15 2014.

16 A. It could have, because they -- they
17 starred from east to west, so they -- they were
18 working a lot on the east part of the project --

19 Q. Okay.

20 A. -- and working their way west.

21 Q. All right. Very good. And then 199 shows
22 also work where there's a reference to foundation,
23 which includes 441. Do you recall any work being
24 done throughout July of 2014 on the area adjacent
25 to Section 15?

1 A. I don't have specific dates. They were --
2 there were cement trucks running everywhere.

3 Q. All right. Now, while they were doing the
4 construction and the cement trucks and the pads,
5 did you ever consider doing any measurements
6 between where the pad was located and where your
7 residence is located in July or August of 2014?

8 A. No.

9 Q. Why didn't you go check it out, pull out a
10 tape measure?

11 A. Because I took the man's word that they
12 were going to keep it back 1400 feet. That's how
13 we do business.

14 Q. And for the record, on page 204, it
15 appears that Turbine 441 is -- hard to say whether
16 they consider it area 2 or area 4, but do you see
17 the number 2 and 4 there?

18 A. Yes.

19 Q. Okay. All right. And then we have --

20 JUDGE DAWSON: Mr. Boughey?

21 MR. BOUGHEY: Yes.

22 JUDGE DAWSON: I usually make it a
23 practice not to go much past an hour and a half
24 into a hearing without a convenience break. So
25 is -- is there going to be a good time for a break

1 soon?

2 MR. BOUGHEY: I'm looking right now and I
3 think the -- you're very prescient. I think that
4 right now is probably a great time for a break,
5 especially since I've been up since four drinking
6 tea. Your Honor, this would be fine.

7 JUDGE DAWSON: Okay. Well, we're going to
8 take a ten-minute break and come back a little bit
9 before 11:40. Right, is it 11:40? Wow.

10 COMMISSIONER FEDORCHAK: That would be a
11 15-minute break.

12 JUDGE DAWSON: Yeah. Yeah. All the
13 clocks are different, so it poses a problem for me.
14 But now that I'm thinking about the break, you
15 know, are we going to work through lunch? What's
16 the -- lunch break late or -- I want to -- because
17 we started --

18 COMMISSIONER FEDORCHAK: My thought is a
19 later lunch break, but how do you feel?

20 COMMISSIONER CHRISTMANN: I'm indifferent.

21 COMMISSIONER FEDORCHAK: And --

22 JUDGE DAWSON: Okay.

23 COMMISSIONER FEDORCHAK: -- maybe a
24 relatively short break.

25 JUDGE DAWSON: Yeah. Okay. Maybe we'll

1 take a short break perhaps at one or something like
2 that --

3 COMMISSIONER FEDORCHAK: Sure.

4 JUDGE DAWSON: -- and take a short lunch
5 break.

6 COMMISSIONER FEDORCHAK: If that works
7 for --

8 JUDGE DAWSON: Because I don't want to
9 take a break --

10 COMMISSIONER FEDORCHAK: -- witnesses
11 and --

12 JUDGE DAWSON: -- and come back for
13 15 minutes and then go on --

14 COMMISSIONER CHRISTMANN: And also, Your
15 Honor, having a lunch break like around one would
16 also mean the legislators are done in the cafeteria
17 for people that need to go there.

18 And if -- if I could also say, because we
19 have some people I don't think have probably been
20 here before, out in the hallway by the elevators is
21 the ladies restroom and on the north side there's a
22 stairwell, and you can go up one floor or down one
23 floor and there's a men's restroom. They're every
24 other floor in this building.

25 JUDGE DAWSON: So as per the clock on the

1 back of the room there, we are going to take a
2 10-minute break and come back at 36 minutes after
3 the hour. We're at recess.

4 (Recessed at 11:27 a.m. and reconvened at
5 11:41 a.m.)

6 JUDGE DAWSON: We're back on the record
7 and it is approximately 11:40 a.m. Mr. Boughey.

8 MR. BOUGHEY: Thank you, Your Honor. I
9 actually just got back. I need to look at my notes
10 and decide where I'm at and where I am to go to
11 next, so I'll just take a few moments.

12 JUDGE DAWSON: We're in the portion of the
13 hearing for the direct examination --

14 MR. BOUGHEY: Yes.

15 JUDGE DAWSON: -- of Keith Kessler.

16 MR. BOUGHEY: Yes.

17 Q. (MR. BOUGHEY CONTINUING) All right. So
18 we've already discussed the hearing, your
19 discussions after the hearing, your --

20 JUDGE DAWSON: Mr. Boughey, can you turn
21 on your microphone, please.

22 MR. BOUGHEY: Oh, I'm sorry. There we go.
23 Thank you.

24 Q. (MR. BOUGHEY CONTINUING) And then we have
25 the construction of Turbine 441. When did you

1 determine, discover, figure out that Turbine 441
2 was too close to the -- the structure house on
3 Section 15?

4 A. Well, it always -- from -- once it was
5 erected, as big as they are, they always look too
6 close, but -- probably when my son started asking
7 me, "Dad, that thing isn't right. It's too close."
8 He works at a coal mine and he worked for a fencing
9 contractor during high school and out of high
10 school, and they had to use distance a lot. And he
11 kept telling me -- he said, "That thing is way too
12 close." And I said, "Well, they wouldn't do that."

13 Q. Now, I don't want to go into how your
14 relationship is with your neighbor who has it
15 there, but would you have felt comfortable to go on
16 to his land and do measurements and pace out and --
17 and, you know, if that was what you needed to do to
18 figure out the measurements?

19 A. I could have, but I would have called and
20 asked permission.

21 Q. All right. Okay. Sure. How, then, did
22 you finally figure out the distance relating to
23 that residence and that turbine?

24 A. I used a range finder, a laser.

25 Q. Okay. And is that what you're basing it

1 on today as well, that number?

2 A. That was the first one, and then there's a
3 hunting app that my son has, and it shows you
4 exactly from that house to that tower what the
5 distance is.

6 Q. Okay. Very good. So once you determined
7 that it was too close -- and again, it would be up
8 to the Public Service Commission to decide what do
9 with that situation, but did you have any further
10 discussions with Minnesota Power once you
11 determined it was too close? And if so, with whom
12 and what was discussed?

13 A. I'm not exactly sure of that. I know we
14 had discussions. I had complained about the noise
15 and --

16 Q. Okay. Before we go into discussions with
17 Minnesota Power, let's talk now about that.
18 Describe why you have a problem with it being that
19 close. What is it that is bothersome to you in
20 regards to being in that house?

21 A. Well, there's noise, not just exterior,
22 but it's noisy enough -- depending on wind
23 direction and speed, you can hear it in the house.
24 In the yard, we've had a decibel reader standing
25 right on the front porch. It's been up to

1 90 decibels.

2 Q. In the house?

3 A. Outside, on the porch.

4 Q. Okay. On the porch.

5 A. We've never done readings inside the
6 house.

7 Q. Okay.

8 A. And shadow flicker, you get that. We have
9 videos of that. It's -- it's noisy. When we --
10 when we work our cattle, at that facility if the
11 wind is strong and out of especially the southeast,
12 we can't work our cattle there because cattle
13 generally, when you start handling them, they get a
14 little on edge, not -- you know, they'll just get a
15 little nervous compared to being out grazing.

16 So you get them in those facilities, and
17 like there where the corrals are and the buildings
18 are, it gets that echo and it almost sounds like
19 a -- almost like a whip cracking sometimes. And
20 them cows are -- they just -- they're not
21 themselves. They're on edge big time.

22 Q. Okay.

23 A. So it affects us greatly.

24 Q. So this Tower 441 went up sometime in the
25 middle of 2014. When did somebody start -- I

1 understand -- strike that.

2 After the tower went up, did you continue
3 using that house in the same way you've already
4 described until somebody moved in?

5 A. Yes.

6 Q. Okay. When did somebody move into that
7 house, about?

8 A. My son was there in fall of '15.

9 Q. Okay.

10 A. And then they -- his girlfriend moved in
11 there in '16.

12 Q. Okay.

13 A. And they both lived there then.

14 Q. From the time they moved in there, from
15 the initial time your son moved in until his
16 girlfriend then moved in with him, had you been in
17 that house while visiting them at any time in 2016?

18 A. Yes.

19 Q. Describe inside the house what you
20 observed or your concerns relating to that Turbine
21 441.

22 A. Would be the noise and the shadow
23 flickering.

24 Q. Okay. Which son moved in in 2016?

25 A. Hayden.

1 Q. And just who was the -- first name of the
2 girlfriend?

3 A. Megan.

4 Q. And are they -- did they end up getting --
5 staying together and getting married, all that?

6 A. They married, and they -- they lived
7 there. They had their -- their first child was
8 born and lived there, and neither my
9 daughter-in-law nor my grandson could -- could
10 sleep. They had a lot of issues sleeping.

11 Q. Okay. Now, Hayden is going to be here to
12 testify and we'll get his direct information from
13 him as to what he observed and problems he had. I
14 can only ask you today what you observed while in
15 the house during that time frame. And same thing
16 you've already testified to, I assume?

17 A. Okay. Yes.

18 Q. Okay. Very good. I'll look at my notes
19 and see if that's the majority of what I have. One
20 moment, please.

21 You've already testified that you
22 repeatedly told the representatives of Minnesota
23 Power that your son was going to be moving in
24 there. Have you been present at any time where
25 Minnesota Power claimed you never said that to

1 them, either in their depositions or any written
2 statements of Minnesota Power?

3 A. Yes, they implied that.

4 Q. Okay. In regards to the statements that
5 you were provided by Minnesota Power that they
6 could -- that they'd follow the setbacks -- follow
7 the setback, they could move it if needed, meaning
8 the location, and you -- do you believe at any
9 point Minnesota Power provided you incorrect
10 information as to any of these issues?

11 A. Can you restate that, please?

12 Q. Sure. You have stated that you feel that
13 Minnesota Power has lied to you about some things.
14 What are the things you feel that Minnesota Power
15 provided you incorrect information?

16 A. Well, they told me --

17 MR. MAHLBERG: I --

18 THE WITNESS: -- they were going --

19 MR. MAHLBERG: I --

20 THE WITNESS: -- to keep it back

21 1400 feet --

22 JUDGE DAWSON: Hold on.

23 MR. MAHLBERG: Objection.

24 THE WITNESS: -- and they didn't.

25 JUDGE DAWSON: Hold on. There's an

1 objection.

2 THE WITNESS: Sorry.

3 MR. MAHLBERG: Objection to the extent
4 it's calling for information that's outside of the
5 notice of hearing issues. I know that there have
6 been other disputes, reclamation and otherwise, and
7 so I just want that objection --

8 MR. BOUGHEY: I understand.

9 MR. MAHLBERG: I don't want to go outside
10 the scope of this.

11 JUDGE DAWSON: I understand what you're
12 saying.

13 MR. BOUGHEY: I understand. I'll -- I'll
14 narrow this down.

15 JUDGE DAWSON: Please do.

16 Q. (MR. BOUGHEY CONTINUING) Mr. Kessler, for
17 the record, any issues relating to fencing and
18 reclamation and cattle being out, anything like
19 that, we're not addressing that today. You
20 understand that; correct?

21 A. Correct.

22 Q. So as to only the issue of the placement
23 of the turbine, the ability to move it, and the
24 compliance with North Dakota law as to where it
25 should be, in your opinion, has Minnesota Power

1 ever provided you incorrect information as to those
2 issues?

3 A. Yes, because they led me on at that public
4 meeting thinking that we're going to meet the week
5 after and be able to move some of these things and
6 resolve them.

7 Q. Do you recall -- and, again, I only want
8 to discuss Turbine 441. Do you recall a -- after
9 filing an initial complaint, before hiring a
10 lawyer, meeting with the representatives of
11 Minnesota Power and two representatives of the
12 Public Service Commission on a Good Friday at
13 your -- near -- near 441?

14 A. Yes.

15 Q. And in regards to the turbine issue at
16 all, does one of the things you raised that day
17 include the problem with the turbine being too
18 close?

19 A. Yes.

20 Q. Okay. And did you have any statements in
21 regards to Minnesota Power as regard to, I guess --
22 strike that.

23 Did Minnesota Power at that meeting -- did
24 any of their persons ask you if you had something
25 in writing?

1 A. Yes.

2 MR. MAHLBERG: I'm going to object on the
3 notice of hearing issues. Again, the notice of
4 hearing issues are whether it was occupied at the
5 time the Commission issued its order, and if it
6 was, what are the appropriate remedies. Those are
7 the first two issues. And the third issue is at
8 the Public Service Commission hearing, did
9 Minnesota Power withhold information. And we're
10 now years beyond that asking about conversations
11 that -- that don't fall within, as I see it, the
12 notice of hearing issues.

13 JUDGE DAWSON: Mr. Boughey.

14 MR. BOUGHEY: Thank you. I think that one
15 of the notice of hearings includes number 3 -- I'm
16 sorry. Well, I believe one of the issues was
17 whether or not they provided any incorrect
18 information, and that goes to motive and -- and it
19 goes to -- well, I'll make a record on this now
20 then -- whether information was withheld. I think
21 it goes a little bit to that. I will backtrack.

22 For the record, I believe that the three
23 narrow issues created in an attempt to solidify our
24 complaint into three major categories fails to
25 include everything that we have been attempting to

1 raise through the complaint process. And one of
2 the things that we have complained about is being
3 provided incorrect information or they're not
4 providing -- being truthful -- Minnesota Power
5 being truthful. And I think all that goes into the
6 remedies that this Public Service Commission can
7 decide in regards to this matter.

8 And I believe the remedies can -- can be
9 extreme. Now, of course, I guess all I would -- I
10 can tell you that all I want to get out right now
11 is what Mr. Kessler's response was when they said,
12 "Did you get it in writing?" I only have that one
13 question. And I think it's important to show his
14 viewpoint as to what happened and -- and one of the
15 reasons he's upset about all this. So that's the
16 only area I'm going into at this point was his
17 statement to Minnesota Power when they asked him if
18 he had it in writing as far as where the turbine --
19 or as to the -- any of these issues.

20 So I guess that's the only limited
21 question I'm asking him, is what was your response
22 when they asked him, "Do you have it in writing?"

23 JUDGE DAWSON: I understand. I'll allow
24 the one question, but I take his point seriously.

25 MR. BOUGHEY: I understand. Thank you.

1 Q. (MR. BOUGHEY CONTINUING) What was your
2 response when they asked you if you had any of this
3 in writing from them?

4 A. Well, I think we should back up a little
5 bit and have the conversation just briefly.

6 Q. Okay. Well, what was the conversation
7 about at that point? Again, don't go into any of
8 the reclamation or fence issues.

9 A. No. That's fine. John Schuh was present.
10 Jerry Lein was at the meeting, Scott Monroe, Wade
11 Isaacson, my wife and myself. We were standing
12 there. We discussed some of these other things.
13 And then we were standing there, talking about this
14 wind tower being too close to our house.

15 And my wife brought it up and she said,
16 "We had told you" -- "we've told you over and over
17 that our kids are going to live there when they get
18 out of college." And Scott Monroe, being the man
19 he is, he admitted. He says, "Yes, you did tell
20 us." And Wade Isaacson jumps in and he says, "Did
21 you have that in writing?" And I blew up. I did.
22 And I -- I said, "Goddammit." I said, "We
23 shouldn't have to have it in writing." I said,
24 "We're business partners. In my world, the way we
25 do business, we do it with a handshake and we -- we

1 honor our word. That's the way things are done."
2 That's what I told him. Excuse me.

3 MR. BOUGHEY: There's already been a
4 decision that the Public Service Commission has
5 decided that it does not have the power to prohibit
6 as a remedy the company from doing business further
7 in North Dakota. So I can't ask you that question
8 except to make an offer of proof that it is Mr. --
9 if Mr. Kessler were allowed to go in that
10 direction, he would request that the remedy include
11 not only damages, attorney fees, but also
12 prohibiting Minnesota Power from doing any further
13 business in North Dakota. I understand the ruling
14 the Commission has made on this, and I just note
15 for the record that had we been allowed to go into
16 that, that would have been what Mr. Kessler's
17 testimony would have been today.

18 If I may have just a moment, I'm going to
19 confer with my other client and see if I've missed
20 anything. If I can have just a moment.

21 JUDGE DAWSON: Go ahead.

22 MR. BOUGHEY: I have nothing further of
23 Mr. Kessler.

24 JUDGE DAWSON: Mr. Mahlberg, do you have
25 any questions for this witness?

1 MR. MAHLBERG: I do, Your Honor.

2 JUDGE DAWSON: You may begin.

3 MR. MAHLBERG: Thank you.

4 CROSS-EXAMINATION

5 BY MR. MAHLBERG:

6 Q. Good end of the morning, Mr. Kessler. I'm
7 Pat Mahlberg. I represent Minnesota Power.
8 We've -- we've met before under a less crowded
9 circumstance, I guess.

10 I'm going to have some -- some questions
11 for you today. If you don't understand them, if
12 they're confusing to you, please stop me. I'll
13 rephrase them. And if your lawyer objects, stop
14 and wait for him to finish the objection and let
15 the judge rule on it.

16 Mr. Kessler, I want to do a couple of just
17 preliminary questions I had on some of the
18 documents that you went through this morning. So
19 if you can grab the binder that has your exhibits
20 in it.

21 MR. BOUGHEY: It's in front of him, sir.

22 Q. (MR. MAHLBERG CONTINUING) There is a
23 series of documents -- I believe it's behind tab 2.
24 There are all these photographs, M-1 through M-20.

25 A. Okay.

1 Q. Do you -- do you see those?

2 A. I'm on M-1.

3 Q. Okay. And if you'd just quickly flip
4 through them, I have a question about the series of
5 M-1 to M-20. And the only question I have there is
6 are these Google photographs or Google aerial
7 images that you captured in 2019?

8 A. They're not dated. I guess I don't know
9 the date of them.

10 Q. And the reason, I guess, I ask for the
11 2019 was towards the end, some start to have an
12 imagery date of 2019. And, obviously, we can tell
13 they were taken sometime after the project was
14 constructed. I'm just trying to figure out when
15 these came from.

16 A. I can't answer that.

17 Q. Okay. Did you pull them or Mrs. Kessler?

18 A. Some of them.

19 Q. Okay. That's fine. Flip to M-25, please.
20 Let me know when you're there.

21 A. Go ahead.

22 Q. The only question I have is whether this
23 is your writing or someone else's?

24 A. It is not mine.

25 Q. Okay. Do you know whether it's

1 Mrs. Kessler's?

2 A. No. It's my attorney's.

3 Q. Okay. All right. Mr. Kessler, I'm going
4 to start out with you reside currently at -- I
5 think you said 6001 26th Street in Glen Ullin,
6 North Dakota?

7 A. That's the physical address.

8 Q. And that's where you and Mrs. Kessler
9 live?

10 A. Correct.

11 Q. And you've lived there since 1992 or 1993?

12 A. I've lived there all but two years of my
13 lifetime.

14 Q. Sure. But the current stint that you've
15 had there began in '92 or '93; right?

16 A. Correct.

17 Q. And prior to that, for a two-year stint,
18 you lived out at the Section 15 structure; right?

19 A. Correct.

20 Q. You've not lived there since then;
21 correct?

22 A. I've stayed there.

23 Q. My question, Mr. Kessler, is whether
24 you've lived at the Section 15 structure or whether
25 you've lived where you currently live?

1 A. No. I live where I currently live.

2 Q. After you and Mrs. Kessler moved to where
3 you currently live, for a period of years family
4 members of yours did live there; right?

5 A. Correct.

6 Q. They made it their primary residence;
7 right?

8 A. Correct.

9 Q. That lasted until 2003; right?

10 A. Correct.

11 Q. Since 2003, no one has made the Section 15
12 structure their primary residence; right?

13 A. Since then?

14 Q. Since 2003. I -- that's a great catch,
15 Mr. Kessler.

16 From 2003 until your son Hayden moved into
17 the house in, I think you said, the fall of 2016,
18 no --

19 A. '15.

20 Q. '15.

21 -- no one made the Section 15 structure
22 their primary residence; right?

23 A. Correct.

24 Q. You -- you testified that the house has
25 been used during that period, even though no one

1 has lived there; right?

2 A. Yes.

3 Q. In your -- in your binder that you have in
4 front of you there, if you would go to tab -- it's
5 tab 4 in mine. It's the Dates-1 and 2 labels at
6 the bottom.

7 A. Okay.

8 Q. And I just want to make sure I'm capturing
9 this correctly. From 2003 until Hayden moves in in
10 fall of '15, the home was stayed in overnight at
11 most by either Paul and Heather Kessler for a
12 couple of days in the summer of '07 and then Bruce
13 and Diane Kessler for a couple of days in the
14 summer of 2011; right?

15 A. My sister Karen and her husband stayed
16 there also, yes.

17 Q. For a similar amount of time?

18 A. Possibly, yes.

19 Q. And that was prior to 2011; right?

20 A. I don't recall that -- I mean, the date.

21 Q. You don't recall when they stayed there?

22 A. Correct.

23 Q. You and -- and your sons would stay there
24 a couple of times a year for a night or two in
25 connection with hunting as well; right?

1 A. Or longer, correct.

2 Q. So in terms of people staying at the
3 house, we had these temporary times where your
4 family members stayed, and the last time that that
5 happened was 2011 or before; right?

6 A. I don't think it was 2011 or before
7 because my boys were in high school up till 2014
8 and we would stay in there.

9 Q. I'm sorry, Mr. Kessler. My question there
10 is not about you and your immediate family. It's
11 these other family members. They stayed there for
12 a night or two, as you've listed here on page
13 Dates-2, up until sometime in 2011 was the last
14 time that that happened; right?

15 A. Yeah. And there were times they'd stay
16 there for a week. Depends on how long they were
17 back. When my folks had a 50th wedding
18 anniversary, my brother was here for almost two
19 weeks and that's where -- that's where he stayed.

20 Q. Sure. And what year was that?

21 JUDGE DAWSON: If you don't know, you
22 don't know.

23 THE WITNESS: I don't know. It's been a
24 while.

25 Q. (MR. MAHLBERG CONTINUING) Do you know

1 whether it was before or after 2011?

2 A. I don't recall.

3 Q. That's fine.

4 A. I --

5 Q. In addition to what you've talked about,
6 you said there were a couple of Super Bowl parties?

7 A. Correct.

8 Q. And those days of the Super Bowl, you
9 would go over to the house and you watched the
10 Super Bowl. And looking here at page Dates-2, the
11 last time that happened was in 2007; right?

12 A. Correct.

13 Q. You also used the house, as you -- as you
14 talked about, even though you weren't living in the
15 house, for -- when you were out there working
16 cattle; right?

17 A. Right.

18 Q. How many times a year are you out there
19 doing that?

20 A. Multiple times. Could be -- I don't know.
21 Depends on the year. Four times, five times.
22 Might be more.

23 Q. Okay. So four, five, maybe a few more
24 times per year, you're out at the site working
25 cattle?

1 A. Well, we use it for haying too. You know,
2 we're over there. There's -- all our hay ground
3 and our pasture, our summer grass is over there.
4 So we use it, like I said, for bathroom facility,
5 and -- and my son comes back in the summer and
6 stays there. It's just an overflow place so you
7 don't have all your relatives under your own roof.

8 Q. Okay. Mr. Kessler, I can't see it from
9 here. Do you have -- I placed up there earlier a
10 Minnesota Power evidentiary exhibit book. If you
11 could have that in front of you, please.

12 MR. BOUGHEY: May I?

13 JUDGE DAWSON: You may.

14 Q. (MR. MAHLBERG CONTINUING) Mr. Kessler, if
15 you would turn to tab MP Exhibit 4-4, please.

16 COMMISSIONER CHRISTMANN: What was the
17 exhibit?

18 JUDGE DAWSON: MP 4-4.

19 Q. (MR. MAHLBERG CONTINUING) Do you
20 recognize this document?

21 A. Yes.

22 Q. What is it?

23 A. It's a memorandum of easements.

24 Q. And it's a memorandum of easements that
25 was between you and Mrs. Kessler and Boulevard

1 Associates; right?

2 A. Appears to be, correct.

3 Q. And you understand that Boulevard
4 Associates was affiliated with Florida Power &
5 Light, NextEra; right?

6 A. I don't recall that, but I don't see it on
7 here.

8 Q. Okay. Now, Mr. Kessler, this is a
9 memorandum of easements reflecting the fact that
10 you entered into an agreement with Boulevard
11 Associates for wind development on certain of your
12 properties; right?

13 A. Yes.

14 Q. If you turn to page 3, that's your
15 signature and Mrs. Kessler's signature; right?

16 A. Yes.

17 Q. And if you turn to -- to the final page of
18 that exhibit, do you see it's Exhibit A, Legal
19 Description of Easement Property?

20 A. No, I do not. On page what? Six?

21 Q. The final page in that tab. At the very
22 top it says Exhibit A, Legal --

23 A. Yes.

24 Q. -- Description of Easement Property;
25 right?

1 A. Yes.

2 Q. And why don't you take a minute and make
3 sure you're familiar with the document. Is this
4 all of the property that you own in Oliver County?

5 A. I don't believe so.

6 Q. Okay. And that's fine. This is a number
7 of properties that you own in -- in Oliver County;
8 right?

9 A. Right.

10 Q. And it includes, specifically at the
11 top -- at the top few rows, property that you own
12 in Section 15; right?

13 MR. BOUGHEY: Your Honor, I apologize, but
14 I need to make an objection as to relevance.
15 Again, this is with a different company than
16 Minnesota Power, and I'm not sure why this line of
17 questioning has any relevance.

18 JUDGE DAWSON: Mr. Mahlberg.

19 MR. MAHLBERG: Sure. I can respond
20 directly on that. This line of questioning is
21 going to establish that the properties at issue in
22 2009 when the Kesslers entered into their first
23 agreement with RendField, the affiliate of
24 Minnesota Power, that all of the properties,
25 including those at issue, are under an exclusive

1 option to Boulevard Associates, not Minnesota
2 Power.

3 MR. BOUGHEY: And, again, as to relevance,
4 unless Boulevard wants to come in and argue
5 something about it, obviously it has a term of
6 length, and whether or not they entered an
7 agreement with them doesn't make any difference if
8 it either lapsed or wasn't renewed. And there's
9 nothing in the record or any indication --

10 JUDGE DAWSON: Mr. Mahlberg, can you
11 explain the relationship?

12 MR. MAHLBERG: Yeah, I can explain the
13 relationship. The -- the offer of proof on this,
14 and we'll get there, is that at the time in 2009
15 when Minnesota Power and the Kesslers enter into
16 their first agreement, which Mr. Kessler has
17 already talked about this morning, the properties
18 at issue are under an exclusive option to someone
19 else. And so it is going to the issue of whether
20 the Section 15 properties were the subject of any
21 discussions in 2009 or not. And we -- it's plainly
22 relevant.

23 JUDGE DAWSON: I'll allow it.

24 MR. BOUGHEY: And I'll respond briefly,
25 and that is I fail to see the relevance because if

1 they had another one, including 15, again, 15 was
2 never leased out to Minnesota Power. The point of
3 the matter is is that the issue isn't any easement
4 but whether or not they complied with North Dakota
5 law or with their agreement with the Kesslers to
6 have a setback of 1400 feet. The fact that there
7 was an easement as to Section 15 by another company
8 and could be used has nothing to do with this case.

9 MR. MAHLBERG: The idea, Your Honor, that
10 Mr. Boughey keeps interjecting, which is that there
11 was an agreement about the Section 15 property
12 specifically, is exactly why I'm asking this line
13 of questions.

14 JUDGE DAWSON: I'm going to allow the
15 questions just to see if we get to someplace
16 relevant. I think the Commission is capable after
17 hearing your argument to apply it if it is
18 irrelevant, and then I'll take an objection then as
19 well.

20 Q. (MR. MAHLBERG CONTINUING) Okay.
21 Mr. Keller -- Mr. Kessler, your agreement with
22 Boulevard Associates as of March of 2008 gave
23 Boulevard Associates an exclusive option to develop
24 wind projects on your properties in Oliver County,
25 including the Section 15 properties; right?

1 A. Yes.

2 Q. So from that point forward, March 2008
3 forward, until this terminates or expires, you and
4 Mrs. Kessler do not have the lawful ability to
5 grant any other wind developer rights in those
6 properties; right?

7 MR. BOUGHEY: Same objection. Now he
8 hasn't tied it up at all.

9 JUDGE DAWSON: Yeah. We'll keep going and
10 I'll -- I'll --

11 MR. BOUGHEY: Okay.

12 JUDGE DAWSON: -- take your objection at
13 the end.

14 Q. (MR. MAHLBERG CONTINUING) Correct,
15 Mr. Kessler? You can't grant to anybody else more
16 rights in your Oliver County properties; right?

17 A. Wrong. I can because this was terminated
18 by Florida Power & Light.

19 Q. And when was it terminated by Florida
20 Power & Light?

21 A. I don't have that in front of me. It was
22 before Minnesota Power come in and leased.

23 Q. Understood. So -- but I'm just asking
24 about -- it's a five-year exclusive option; right?

25 MR. BOUGHEY: Your Honor, I --

1 THE WITNESS: They terminated
2 the agreement.

3 MR. BOUGHEY: He has answered the
4 question. It occurred -- that this was gone by the
5 time Minnesota Power came in and therefore it's
6 totally irrelevant and we're wasting time.

7 MR. MAHLBERG: The argument --

8 JUDGE DAWSON: There's no reason to hammer
9 the point, but continue your questioning and --

10 MR. MAHLBERG: Thank you.

11 JUDGE DAWSON: -- get to your point very
12 quickly, please.

13 MR. MAHLBERG: Thank you.

14 Q. (MR. MAHLBERG CONTINUING) In 2009
15 RendField power company approached you; right?

16 A. I thought you said it was 2008.

17 Q. I'm asking now about RendField. The
18 Minnesota Power affiliate, RendField Land.

19 A. Oh, I believe that's what it was. There's
20 too many dates, too many companies, too many -- I
21 don't know. It's Minnesota Power and it's ALLETE,
22 then it's RendField, then it's --

23 Q. And that's fine, Mr. Kessler. If we want
24 to -- if we want to refer to it as Minnesota Power
25 or ALLETE instead of RendField, we can do that.

1 I'm just trying to be accurate with it.

2 A. Okay.

3 Q. In 2009, an affiliate of Minnesota Power
4 approaches you to obtain a wind option; right?

5 A. Correct.

6 Q. And you, in fact, do grant that wind
7 option; right?

8 A. Eventually.

9 Q. It does not cover the Section 15
10 properties; right?

11 A. Some of them.

12 Q. In 2009 it covered the Section 15
13 properties?

14 A. I believe so.

15 Q. Okay.

16 MR. BOUGHEY: Are we talking Minnesota
17 Power and their -- whoever's negotiating with them,
18 counsel?

19 Q. (MR. MAHLBERG CONTINUING) Yeah. If you
20 would turn to Exhibit -- MP Exhibit 6, please. Do
21 you recognize this document?

22 A. Yes.

23 Q. And this is a wind project option
24 agreement that is dated June 2, 2009, between you
25 and Mrs. Kessler and RendField Land Company, which

1 is the Minnesota Power affiliate; right?

2 MR. BOUGHEY: Your Honor, the next --
3 attachment one says Section 12. It has nothing to
4 do with Section 15. And, again, I just have to
5 state this is -- this is totally irrelevant as to
6 whether he had a lease, except perhaps in regards
7 to the fact that Minnesota Power, if they
8 couldn't -- if there was already as a matter of
9 public record a lease on the property, then they, I
10 guess, shouldn't have tried to -- to lease it. I
11 mean, again, this is Section 12. It has nothing to
12 do with Section 15.

13 JUDGE DAWSON: Mr. Mahlberg.

14 MR. MAHLBERG: That's -- that's partly the
15 point that I'm attempting to establish is that at
16 the time when Minnesota Power is first contracting
17 with the Kesslers, Mr. Kessler has testified that
18 there were specific conversations at that time
19 about a property that was under option to somebody
20 else, and if I'm allowed to finish the question on
21 Exhibit 6, was not actually part of the agreement
22 between the Kesslers and the company. That's --
23 that's --

24 MR. BOUGHEY: I fail to understand how any
25 of this has anything to do with Section 15. If

1 there -- 441 didn't end up on Section 15, and
2 whether he had some sort of lease with somebody
3 else, it doesn't matter, except maybe perhaps that
4 prohibited Minnesota Power from putting 441 onto
5 15. I -- I don't understand.

6 JUDGE DAWSON: Well, yeah. I'm going to
7 allow the question. I think I see where you're
8 going, but, again, get to the point. But I -- I
9 see your point.

10 COMMISSIONER KROSHUS: Your Honor.

11 JUDGE DAWSON: I'm going to allow the
12 question.

13 COMMISSIONER KROSHUS: If we are on
14 Section 6 in my binder, I do not have any
15 documents.

16 JUDGE DAWSON: You had a -- you should
17 have had a -- is that the supplemental one that --

18 MR. BOUGHEY: Oh, he switched to Minnesota
19 Power's book.

20 COMMISSIONER FEDORCHAK: Yeah, that's that
21 one.

22 MR. BOUGHEY: I don't know what --

23 THE WITNESS: The bigger one.

24 MR. BOUGHEY: Yeah.

25 MR. MAHLBERG: Do you have MP Exhibit 6?

1 COMMISSIONER FEDORCHAK: MP 4.

2 JUDGE DAWSON: I have MP -- I have two
3 tabs. Maybe it got --

4 MR. MAHLBERG: There were documents
5 delivered by hand yesterday afternoon that had --

6 COMMISSIONER FEDORCHAK: He doesn't have
7 any exhibits in his.

8 MR. MAHLBERG: Do you have exhibits --

9 COMMISSIONER CHRISTMANN: I actually have
10 the same thing as Brian does.

11 MR. BOUGHEY: There's no 6?

12 COMMISSIONER CHRISTMANN: From 6 on --

13 MR. MAHLBERG: Do you have Exhibits 6
14 through 12?

15 JUDGE DAWSON: I have them because they
16 were --

17 COMMISSIONER KROSHUS: No, sir.

18 JUDGE DAWSON: -- delivered.

19 COMMISSIONER FEDORCHAK: Oh, I don't
20 either.

21 MR. BOUGHEY: Okay.

22 COMMISSIONER FEDORCHAK: I was still on 4.

23 MR. MAHLBERG: So they -- they're here;
24 right?

25 COMMISSIONER FEDORCHAK: Do you have them?

1 JUDGE DAWSON: I have them. They were
2 delivered to my office and I put them in my binder.

3 COMMISSIONER FEDORCHAK: Oh.

4 MR. MAHLBERG: This is from yesterday?

5 JUDGE DAWSON: Yes.

6 MR. MAHLBERG: Okay.

7 MR. JOHNSON: This -- this should have
8 been both ones that came yesterday.

9 MR. MAHLBERG: Okay. I apologize. We had
10 these delivered yesterday afternoon, but I should
11 have made sure that they had been further --

12 MR. BOUGHEY: Can we go off the record to
13 save her hands?

14 JUDGE DAWSON: Yes. We can take a
15 five-minute break or however long it takes to get
16 these exhibits in the binders.

17 (Recessed at 12:18 p.m. and reconvened at
18 12:22 p.m.)

19 JUDGE DAWSON: I think we can go back on
20 the record, and it's about 20 minutes after, by the
21 clock on the back of the room. We have -- we're
22 looking at Exhibit 6. Mr. Mahlberg.

23 MR. MAHLBERG: Thank you, Your Honor.

24 Q. (MR. MAHLBERG CONTINUING) Exhibit 6 is
25 the wind project option agreement that you signed

1 with Minnesota Power's affiliate in 2009; right?

2 A. Correct.

3 Q. In 2009, the option agreement that you
4 signed with Minnesota Power did not cover any of
5 your properties in Oliver County; right?

6 A. I don't think that's true.

7 Q. If you turn to page 5 of Exhibit 6, do you
8 see that it's the Legal Description of Owner's
9 Property? Do you see that?

10 A. Yeah, I do.

11 Q. And that lists a single property in Mercer
12 County; right?

13 A. No, it's -- it's multiple properties.

14 Q. Apologize.

15 A. Section 1 and Section 2 [sic].

16 Q. It lists properties that you own in Mercer
17 County; right?

18 A. Correct.

19 Q. There are none of the properties in Oliver
20 County; right?

21 A. Not listed.

22 Q. And those properties in Oliver County were
23 already under contract to Boulevard Associates;
24 right?

25 A. That -- that was terminated.

1 Q. When was that agreement terminated?

2 A. I don't have it in front of me.

3 Q. Do you know whether it expired after the
4 end of its term?

5 A. No. They terminated the agreement, as
6 they did with all the neighbors. That's why you
7 guys come in and built wind towers because they
8 left.

9 Q. Fair enough, and we're going to move right
10 to there because Minnesota Power came back to you
11 several years later after you optioned the property
12 in Mercer County; right? In 2013 you signed an
13 amended and restated wind project option agreement
14 with the Minnesota Power affiliate, which in 2013
15 adds in those properties that were previously under
16 contract to Boulevard; right?

17 A. I'd have to look at it to see.

18 Q. Okay. So if you turn to Exhibit --
19 MP Exhibit 4-2. On the second page of that
20 exhibit, it identifies that this is an Amended &
21 Restated Wind Project Option Agreement between you
22 and Mrs. Kessler and the Minnesota Power affiliate;
23 right?

24 A. Yes.

25 Q. And this amends and restates the 2009

1 agreement; right? That's what it says in the first
2 paragraph?

3 A. Yes.

4 Q. And it -- for the first time in 2013, you
5 are taking those properties that you own in Oliver
6 County and now optioning them to Minnesota Power;
7 right?

8 A. Correct.

9 Q. Now, if we go back, you testified earlier
10 about conversations that you had with the Minnesota
11 Power affiliate in 2009; right?

12 A. Correct.

13 Q. And this morning, you -- you claimed those
14 communications about that option were with a Brian;
15 is that right?

16 A. Yeah, but that was a mistake. It wasn't
17 Brian. It was Paul.

18 Q. Paul who?

19 A. Paul Johnson.

20 Q. So in 2009, you were having conversations
21 with a Paul Johnson on behalf of Minnesota Power;
22 is that right?

23 A. I don't know exactly what year it was.
24 Whenever they came with the option and we signed
25 it.

1 MR. BOUGHEY: Your honor --

2 Q. (MR. MAHLBERG CONTINUING) And we --

3 A. You guys are trying to trip me up on year
4 to year to year. Well --

5 MR. BOUGHEY: Well, and first of all,
6 separate from that, Your Honor, I have asked
7 several times and objected to relevancy on how this
8 has to do with the three issues before the
9 Commission. I mean, he keeps saying he's going to
10 get there. It's been now 15 minutes and we -- I
11 still have no clue what his point is. Apparently,
12 the judge has figured it out, but I haven't, and
13 maybe that's my weakness. But I would like to know
14 why this is relevant before we waste any more time
15 on it.

16 JUDGE DAWSON: Mr. Mahlberg.

17 MR. MAHLBERG: I will state, again, the
18 relevance is that in 2009, Mr. Kessler -- and I'm
19 going there right now -- is alleging that he has
20 conversations with Minnesota Power specifically
21 about Section 15, and what we just established,
22 that is in 2009 Minnesota Power had no contractual
23 agreements with Mr. Kessler about the Section 15
24 property or any of the other properties in Oliver
25 County.

1 MR. BOUGHEY: Okay. Now --

2 MR. MAHLBERG: It's plainly relevant.

3 MR. BOUGHEY: And now I know why it's not
4 relevant and that is because I don't believe
5 Mr. Kessler said anything about Section 15 until he
6 got to the hearing. His contracts were with
7 Section 21. The easements were with 21. And he
8 said, generally speaking, if there -- he did
9 testify that as to generally speaking, if you put a
10 turbine up, it's got to be close and -- far away
11 from any of my residences and if we can move it, et
12 cetera, there's going to be a setback, et cetera.
13 But Section 15 came to the floor when he was at the
14 public hearing and saw where they were finally
15 going to put it, where they planned on putting it.

16 JUDGE DAWSON: Okay.

17 MR. BOUGHEY: And so I fail to see how any
18 of these other easements or discussions with other
19 companies make any difference except that he was
20 told generally there were going to be no turbines
21 that were going to interfere with any of his
22 residences.

23 JUDGE DAWSON: I think it's useful in
24 telling us who said what, when about what, and some
25 of the stuff is going to be about stuff that wasn't

1 relevant but has been talked about. And so,
2 therefore, it sets a timeline that is very useful.
3 And so I'm going to allow the questioning.

4 MR. MAHLBERG: Thank you.

5 Q. (MR. MAHLBERG CONTINUING) In 2009, you
6 were having conversations with Paul Johnson about
7 an option agreement for your Mercer County
8 property; is that correct?

9 A. I don't recall that.

10 Q. Were you having any discussions in 2009
11 specifically about the Section 15 property in
12 Oliver County?

13 A. Yes, I must have. It's -- there was an
14 ease -- or a lease.

15 Q. But that lease was not with Minnesota
16 Power; right?

17 A. That particular one was not.

18 Q. Right. So you didn't have a lease with
19 them, but you just testified that you must have
20 been talking with them about the Section 15
21 property?

22 A. Yeah, but when you started talking about
23 the lease, you brought up 2009. I didn't look
24 through these to see what year it was.

25 Q. And I --

1 A. I told them people the same thing I told
2 your people. We want nothing close to any of our
3 residences, period. I have advocated that from day
4 one for any company --

5 Q. Okay.

6 A. -- for any reason.

7 Q. And you specifically remember those
8 conversations with Paul --

9 A. Oh, absolutely.

10 Q. Sorry.

11 You specifically remember those
12 conversations with Paul Johnson in 2009 talking
13 about your Section 15 residence; is that right?

14 A. I don't know if it was 2009 or 2013. I
15 didn't --

16 Q. Okay. But --

17 A. -- think I was --

18 Q. But --

19 A. -- going to have to write every date down
20 of every conversation I had with any
21 representative --

22 Q. That --

23 A. -- of your company over the entirety --

24 JUDGE DAWSON: That's -- that's fine,
25 though. You don't -- your answers are your

1 answers, and just be honest and answer them.

2 THE WITNESS: I am.

3 JUDGE DAWSON: He's -- you have an
4 attorney to ask questions after this to redirect --

5 THE WITNESS: Okay.

6 JUDGE DAWSON: -- if there's some point
7 that needs to be brought out.

8 Q. (MR. MAHLBERG CONTINUING) Mr. Kessler,
9 your testimony about having conversations with a
10 Paul Johnson is new as of today, isn't it?

11 A. What do you mean it's new? His signature
12 is --

13 Q. You recall, Mr. Kessler, that repeatedly
14 up till today you've claimed that the only guy that
15 you talked with prior to the public hearing from
16 Minnesota Power at any point in the process was
17 Scott Monroe; right?

18 A. No. Because in our depositions that was
19 changed to Paul Johnson.

20 Q. Excuse me?

21 A. In our corrections to our depositions,
22 there was a correction to that that it was Paul
23 Johnson in there also, that he was the first person
24 to come with an option.

25 Q. In -- in your depositions, I asked you and

1 you gave the following answers; right?

2 "Question: Do you have, Mr. Kessler,
3 specific recollections of meeting with Mr. Monroe
4 back in 2008 or 2009?"

5 "Answer: Yes."

6 You gave that answer; right?

7 A. Correct.

8 Q. In addition, you were asked the following
9 question and gave the following answer: "In any
10 event, you have a specific recollection of Scott
11 Monroe being the person that you were talking to
12 until later on Wade Isaacson gets involved at some
13 point, we'll move there in a little bit. Is that
14 right?"

15 "Answer: That's correct."

16 You gave that testimony; right?

17 A. Right.

18 Q. To -- back when you were deposed, you gave
19 clear, committed answers that Scott Monroe was the
20 person that you were talking with from Minnesota
21 Power in 2009; right?

22 A. Yes, I did.

23 Q. And that he was the guy you were talking
24 to; right?

25 A. Right.

1 Q. You later came to learn that Scott Monroe
2 wasn't employed by Minnesota Power back at the time
3 when you claimed you were talking with him; right?

4 A. Right.

5 Q. Now, in the spring of 2013, after the
6 Boulevard Associates option expired, you were
7 approached -- or do you recall being approached by
8 Minnesota Power to sign an amended option to now
9 include the -- the Oliver County properties?

10 A. Yes.

11 Q. And at that time, was it Mr. Monroe or
12 Mr. Johnson that approached you?

13 A. I'm not sure. It was a Minnesota
14 representative.

15 Q. In between that period of time from when
16 you signed the first option and when you signed the
17 amended option, did you have further communications
18 with Mr. Johnson during that period?

19 A. I don't recall.

20 Q. Did you have further conversations with
21 anybody during that period?

22 A. No, probably not. It was pretty quiet.

23 Q. So no discussions about the Section 15
24 property, as far as you're aware, in 2010, 2011,
25 2012; right?

1 A. I don't know what year, but as soon as
2 they came in with that option, it was discussed
3 that we wanted nothing built by either residence
4 because our son was going to live there. We have
5 ours. We didn't want anything near. And, like I
6 said, we were told that there was going to be
7 adjustments that could be made once they come up
8 with a plan.

9 Q. And -- and you're saying that this
10 discussion took place now in 2013?

11 A. It took place -- yes, it -- when they come
12 to sign this or offer it to us, those discussions
13 took place. Absolutely.

14 Q. Okay. And in 2013, who did you talk to in
15 connection with the amended and restated option
16 agreement?

17 A. I can't say for sure. It was a Minnesota
18 representative. They keep changing. It's like a
19 juggling act.

20 Q. Well, but you recall in your deposition
21 testimony, you testified very clearly that from
22 2009 until the Public Service Commission hearing,
23 Scott Monroe was the only person that you worked
24 with. Right? You recall testifying to that?

25 A. He was the major -- the main person.

1 Yeah, once --

2 Q. And --

3 A. -- he started, he was -- he was my contact
4 person. Absolutely. He was a right-of-way agent.

5 Q. Okay. So when he started -- that's my
6 question. Was it Mr. Monroe that you talked with
7 in connection with the amended and restated option
8 agreement?

9 A. I don't know if it was Scott or Paul. I
10 think Paul's the one that ended up signing it,
11 so --

12 Q. In 2013. It was either Scott or Paul?

13 A. Yes. It was a Minnesota representative.

14 Q. I understand. And -- and you're saying
15 today that it was a Minnesota Power representative,
16 and in previous deposition testimony you were very
17 clearly identifying people.

18 MR. BOUGHEY: Objection.

19 Mischaracterization of his testimony. His
20 testimony was he also signed a --

21 JUDGE DAWSON: Just ask questions.

22 Q. (MR. MAHLBERG CONTINUING) Okay.

23 Mr. Kessler, to -- to close out the point on this,
24 in 2013 when you do the amended and restated option
25 agreement, you don't know who you talked to, but it

1 was either Scott Monroe or Paul Johnson; right?

2 A. Correct.

3 Q. Where did those conversations take place?

4 A. Well, the first time they brought the
5 option, it -- they were at our place because they
6 came and brought the option there and discussed it
7 and left it with us.

8 Q. And do you have a specific recollection of
9 Scott Monroe sitting at your house talking about
10 that option agreement?

11 A. I don't know if it was this one or the
12 other one, but he was at our house, yes.

13 Q. Scott Monroe was at your house?

14 A. Absolutely.

15 Q. In your deposition, Mr. Kessler, you were
16 asked the following question and gave the following
17 answer.

18 MR. BOUGHEY: Reference to page and --

19 MR. MAHLBERG: Page 35, line 9.

20 MR. BOUGHEY: One moment, please, counsel.
21 Page 33, line 9. Also improper impeachment. If
22 you want to show him the page and let him review
23 it, that's fine. Page 33, line 9, counsel?

24 MR. MAHLBERG: 35.

25 MR. BOUGHEY: 35. I believe he has the

1 right to look at it and then you can ask the
2 question is how it's done, sir.

3 MR. MAHLBERG: That's fine. And I --
4 we'll -- we'll do that later if I need to get to
5 these.

6 JUDGE DAWSON: Just ask -- just ask your
7 question. I'd like to keep it moving along and on
8 point.

9 MR. MAHLBERG: Understood. And I don't
10 want to go through the full process every single
11 time, so I'm going to skip it and save the full
12 process for later and I'll withdraw that question.

13 MR. BOUGHEY: Well, and I also don't want
14 him to continually try to trip him up and not
15 provide him dates or the information or what he's
16 previously testified to.

17 MR. MAHLBERG: If at any point I ask him a
18 question about the specific testimony and the
19 witness tells me he needs to see the testimony, we
20 can do that. So far, we have not had that happen.

21 MR. BOUGHEY: That's not how it works,
22 Your Honor. I have the right to require the rules
23 to be --

24 JUDGE DAWSON: Yes, you can ask for it as
25 well.

1 MR. MAHLBERG: Yes.

2 MR. BOUGHEY: You bet. Thank you, Your
3 Honor.

4 Q. (MR. MAHLBERG CONTINUING) Mr. Kessler,
5 did you ever visit the Public Service Commission's
6 website to obtain information about the project
7 before the September 13, 2013, hearing?

8 A. I don't believe so.

9 Q. So even if the company sent you a letter
10 saying or inviting you to go to the Public
11 Commission -- Public Service Commission's website
12 to learn more about the project or see a map, you
13 didn't do that; right?

14 A. I don't recall doing it.

15 Q. Earlier today you testified that when
16 Scott Monroe came to your house, he brought with
17 you a copy of -- he brought with a copy of the
18 easement for you; right?

19 A. It was either the easement or the option.
20 It was one or the other. I don't recall exactly
21 which one.

22 Q. Okay. And that's why I was asking was do
23 you -- do you recall whether that document -- if it
24 was the easement, it may have sketches with it. If
25 it was an option, it would just have legal

1 descriptions. You don't recall which one it was;
2 right?

3 A. No, I do not.

4 Q. Okay. And you testified that at that
5 conversation you had no discussion about towers at
6 all; right?

7 A. Right. If we did, they didn't tell us
8 anything anyway.

9 Q. The date of the -- we're now to the date
10 of the September 13, 2013, public hearing. Prior
11 to that date, if I understand the testimony
12 correctly, Mr. Kessler, you're saying that you had
13 not had a specific discussion about Turbine 441's
14 location; right?

15 A. Correct.

16 Q. You went to that public hearing. Before
17 the hearing began, you saw the maps up there, but
18 you couldn't get close enough to see it very well;
19 right?

20 A. Correct.

21 Q. And you sat down and watched -- watched
22 the hearing; right?

23 A. Correct.

24 Q. But on the break, your testimony is you
25 went back up to the maps again; right?

1 A. Right.

2 Q. And on that break, you could see that the
3 Section 15 structure had not been identified as an
4 occupied residence; right?

5 A. I don't know if we identified it as not an
6 occupied residence on there exactly. We just found
7 out where our property was and was trying to put
8 everything together where all these towers were
9 going to be.

10 Q. You can't recall whether you noticed that
11 there wasn't a circle around the Section 15
12 property or not?

13 A. Correct.

14 Q. Now, this -- this morning when you were
15 testifying, you said that you're in the hearing
16 room or the courtroom up by the maps and you talked
17 to one of the Minnesota Power representatives. Do
18 you recall that?

19 A. Yes, I do.

20 Q. You recall previously, Mr. Kessler, before
21 today in the series of complaints that you filed on
22 this, you identified Scott Monroe as being the
23 person with Matt Freudenrich that day; right?

24 A. Yes, I did.

25 Q. You did that in the first complaint, the

1 second complaint, the third complaint and the
2 fourth complaint; right?

3 A. Yes. He was my main contact.

4 Q. Yep. And then in written discovery you
5 identified Scott Monroe as the person that you
6 talked to the day of the hearing with Matt
7 Freudenrich; right?

8 A. Correct.

9 Q. You made sure in reviewing those
10 complaints that they were accurate; right?

11 A. As best as I could recall, yes. It's a
12 long time ago.

13 Q. And in the written discovery responses
14 that you -- you signed in front of a notary, you
15 were making sure those were complete and accurate
16 too; right?

17 A. To the best that I could recall, yes.

18 Q. So that it's clear, you no longer claim
19 that it was Scott Monroe who was at the hearing
20 that day; right?

21 A. It was a Minnesota representative. I had
22 no control who signed into that sheet and who
23 didn't. Not every -- there was tons of neighbors
24 that were there that didn't sign in. There was a
25 lot of Minnesota Power representatives there. It

1 was a familiar face, somebody I was used to dealing
2 with. It was one of your people. And they were
3 told not to put anything close to that structure.

4 Q. In your deposition, you testified that it
5 was Todd Simmons who was with Matt Freudenrich;
6 right?

7 A. Right. Because Minnesota Power said that
8 Scott wasn't there, so Todd was and I knew Todd a
9 little bit.

10 Q. Right.

11 A. I couldn't put "ghost" on there.

12 Q. Right. Mr. Freudenrich testified first
13 and he said Scott wasn't there, and after you heard
14 that, you changed it to say that it was Todd that
15 you talked to; right?

16 A. Correct.

17 Q. And now for the first time today, you're
18 not willing to say who it was, only that it was a
19 Minnesota Power representative; right?

20 A. It's not that I'm not willing to say.
21 It's a long time ago and there was other people
22 there. Like I said, it was a familiar face,
23 somebody I was used to dealing with. It wasn't
24 somebody I just met because Matt was the only
25 representative that I just met that day, and that

1 was pretty unforgettable.

2 Q. Yeah. Okay. So let -- let's go there.
3 You do remember talking to Matt?

4 A. Yes. There was two of them.

5 Q. And, as I understand it, you were looking
6 at the maps with Mrs. Kessler, talking to the
7 person with whom you were familiar, whether that
8 was Todd or Scott or somebody else, had the
9 question and Matt got called over; is that right?

10 A. Correct.

11 Q. And when Matt gets called over, my
12 understanding is he blows up and yells at you;
13 right?

14 A. Correct.

15 Q. And -- and swears at you; right?

16 A. Well, he just said, "We don't have time
17 for this shit. We've got to get going. We need
18 them tax credits."

19 Q. He didn't just say it; he yelled it?

20 A. Absolutely.

21 Q. And that was in the courtroom?

22 A. Yes. Right by the maps. And I'm not
23 saying he yelled. He raised his voice and -- yeah,
24 it was very unprofessional.

25 Q. And this was in the courtroom in the

1 presence of other Minnesota Power representatives
2 too?

3 A. There was other people amongst the room.
4 There was a lot of people coming and going. They
5 were taking restroom breaks. I mean, it's -- just
6 like today, it's at a meeting and if you've got to
7 go to the bathroom, you do it during your breaks.
8 So, yeah, it's kind of a busy time, I thought,
9 people coming and going.

10 Q. Right. Lots of people around and -- and
11 you asked Mr. Freudenrich a question about the
12 proximity of a turbine and his response was to yell
13 and swear at you; right?

14 A. I don't know if there was a lot of people
15 in that room. Like I said, there was a lot of them
16 out in -- coming and going.

17 Q. After you had the conversation -- I don't
18 want to mischaracterize it as a conversation.
19 After you say Mr. Freudenrich blew up and yelled at
20 you, another Minnesota Power representative said,
21 "We'll meet next week and talk about it"; right?

22 A. They wanted to go out in the hallway, and
23 we went out in the hallway and that's when they
24 brought that up, that we would meet the following
25 week and discuss this. Yes.

1 Q. Okay. So you went from the courtroom out
2 into the hallway at some point in the conversation?

3 A. Yes.

4 Q. And at that point it's you and
5 Mrs. Kessler and the unidentified Minnesota Power
6 representative; is that right?

7 A. Correct.

8 Q. And whoever that person was said, "We'll
9 meet next week and talk about this"; right?

10 A. Correct.

11 Q. After that break, total length of time of
12 that -- that conversation with -- from up at the
13 maps to the end of the hearing was what, a minute,
14 two minutes?

15 A. It was short. Yeah, the breaks were short
16 so we just -- yeah, had our discussion, and we were
17 under the understanding we were going to discuss it
18 the following week over at their shop. And that's
19 when we got over there and we met with Scott and
20 Wade was there. So if they weren't -- it wasn't
21 Scott at that meeting that said we'd meet over
22 there, I don't know why he'd have been there to
23 meet with us then.

24 Q. Sorry. You mean to say that Scott -- you
25 think Scott Monroe was at the Public Service

1 Commission hearing?

2 A. I'm just saying it's -- it was a familiar
3 face, somebody I was used to dealing with, and they
4 said to meet with them the following week. And we
5 go over there and meet with him and, yes, it's
6 Scott. And that's when we met Wade.

7 Q. Okay. And I'm going to go to there next.
8 Just finishing up the day of the hearing, after the
9 break where Matt Freudenrich yelled and swore at
10 you, you spoke on the record that day; right?

11 A. Yes.

12 Q. And you -- you talked about issues,
13 questions that you had about waterlines and
14 fencing; right?

15 A. Correct.

16 Q. And you didn't mention any concerns about
17 the location of Turbine 441 relative to the Section
18 15 structure; right?

19 A. No, I didn't think I needed to.

20 Q. You didn't mention concerns that it wasn't
21 identified as an occupied residence; right?

22 A. No, I did not.

23 Q. And even though you had just been yelled
24 at and swore at by a Minnesota Power
25 representative, you stated on the record that day

1 that the communication has been pretty good with
2 Minnesota Power so far, didn't you?

3 A. I stated that when?

4 Q. On the record at the Public Service
5 Commission hearing?

6 A. Oh, yeah, up to that point. Yes.

7 Q. Right. And this is after Mr. Freudenrich
8 had yelled at you; right?

9 A. Mm-hmm.

10 Q. Okay.

11 A. I'm pretty thick skinned.

12 Q. So the week -- you say the week after that
13 Public Service Commission hearing on September 13
14 of 2013, you did, in fact, meet over at a Minnesota
15 Power facility; right?

16 A. Yes. And I don't know if it was
17 immediately the following week. It was
18 posthearing.

19 Q. Well, was it a week, was it a month?

20 A. I don't know.

21 Q. Was it --

22 A. It was a week or so.

23 Q. Was it the same meeting where you went and
24 talked about the easements?

25 A. Well, we talked about easements, the wind

1 tower, fencing issues. Yeah, where it looked like
2 they was going to fence us off of our property
3 where that 441 is.

4 Q. Right. So the -- the meeting that you had
5 after the hearing was a meeting at which you had
6 sketches showing your properties relative to the
7 easements that were being acquired; right?

8 A. Right. Scott had the maps, brought the
9 maps out. We looked at them.

10 Q. And for clarity's sake, when we talk about
11 maps, it can mean a lot of different things, big
12 aerials like this or it can mean the sketches that
13 go with an easement. Do you recall which it was?

14 A. Well, I think it started out as a smaller
15 one, and I think we went and got or Scott got a
16 bigger -- bigger map of that.

17 Q. And aerials, black and white?

18 A. I don't recall that.

19 Q. And do you recall that those maps
20 identified the location of Turbine 441 on the
21 Lennick property; right?

22 A. Yes.

23 Q. Is that the meeting where you signed the
24 easement agreement or not?

25 A. We didn't sign it at the first one because

1 we left and didn't sign it.

2 Q. You -- you didn't --

3 A. We still had concerns.

4 Q. Later you went back and signed the
5 easements?

6 A. It was signed later, yes.

7 Q. And then later you went back again and
8 signed -- re-signed another set of easements;
9 right?

10 A. There were two sets of easements, I
11 believe, so yeah.

12 Q. And there was some contract for deeds
13 stuff that got worked through and re-signed under
14 you and Mrs. Kessler?

15 A. Yes, because I had a contract for deed
16 with my parents on some of the properties.

17 Q. Right. Not the Section 15 property but
18 other properties; right?

19 A. 21.

20 Q. Okay. Was -- was Mr. Freudenrich present
21 for that next meeting at -- that you're saying took
22 place at Minnesota Power's facilities?

23 A. He wasn't in on the meeting that we had.

24 Q. Was he in on any subsequent meetings that
25 you had?

1 A. No.

2 Q. You testified earlier, Mr. Kessler, you
3 were aware when construction was under way on -- on
4 the project near the Section 15 structure; right?

5 A. Correct.

6 Q. Up to that point, you'd had concerns about
7 your fences and making sure that the land was being
8 taken care of, so you were paying attention to what
9 they were doing with construction; right?

10 A. I don't know if I wasn't paying attention.
11 Like I said, there were cement trucks going
12 everywhere. They were coming and going. I'm doing
13 my thing. I've got hay to put up. Correct.

14 Q. So you -- sorry, you were or weren't
15 paying attention to things like the fences that you
16 had raised concerns about out by the turbine pad?

17 A. Well, at that time everything was
18 temporary fence, because they took down the
19 permanent fence and put temporary fence up for
20 construction. So there really wasn't a great
21 concern at that time because it was going to get
22 changed again.

23 Q. Right. And the pad for Turbine 441
24 actually extends on to one of your properties,
25 right, the southeast quarter of Section 15?

1 A. Somewhat, yes. Correct.

2 Q. Right. I mean, it goes through where the
3 fence line was?

4 A. Correct.

5 Q. At -- at no point during construction did
6 you raise an issue about the location of Turbine
7 441 relative to the Section 15 structure; right?

8 A. Correct, because there was a temporary
9 fence up there. We -- the way it was fenced, we
10 had no reason to go up there.

11 Q. So you didn't raise the issue with
12 Minnesota Power. You didn't raise any issues
13 with -- with the Public Service Commission or
14 consumer affairs; right?

15 A. Correct.

16 Q. Your -- your -- I believe your testimony
17 is that the first time that you specifically raised
18 an issue that Turbine 441 had been located too
19 close to the Section 15 structure was sometime --
20 was it sometime after Hayden moved in to the house?

21 A. I don't know if it was before or after.
22 It was after it was constructed.

23 Q. After the turbine was constructed.

24 A. Correct.

25 Q. You're not sure when the issue was brought

1 up?

2 A. No. We were told it's going to be back
3 1400 feet. Why would I?

4 Q. You were experiencing the noise problems
5 immediately; right?

6 A. Well, they didn't start operation until
7 like January of 2015. Yeah, we knew they were
8 noisy when they started. Yes.

9 Q. Right. As soon as they fire up, you had
10 issues -- when you were talking about them earlier,
11 it was too loud for the cattle?

12 A. Yep. When we were there certain days,
13 certain wind speed and direction, yes.

14 Q. As of January 2015 forward; right?

15 A. Well, I don't know if it started that day
16 when they started it up. I mean, I'm not in that
17 yard every day.

18 Q. Okay. Mr. Kessler, you didn't raise the
19 issue of -- of noise or the proximity to the Public
20 Service Commission until 2017; right?

21 A. I'm not sure. My concern was reclamation,
22 to get that taken care of first. That was a
23 priority. That's part of our production. We run
24 off of production. That is our income, our ranch.

25 Q. Right. So you were having those issues

1 and we're not going to go into them. But while you
2 were having those issues and working through those
3 issues, you don't know whether you said anything
4 about the Section 15 structure and -- and how far
5 away Turbine 441 was from it; right?

6 A. I know we said that, you know, it was
7 noisy. And I know when I first contacted the PSC
8 and talked with Jerry Lein, we went through the
9 reclamation stuff, and I believe the noise was
10 brought up, but it wasn't in-depth or anything like
11 that.

12 Q. Did you bring up with Mr. Lein, when you
13 were talking about reclamation issues, an issue
14 about the proximity of Turbine 441?

15 A. I believe we did at some point because
16 when they met with us out there, and I'm talking
17 Jerry and Jack when they came out with Minnesota
18 Power on the Good Friday meeting, that was part of
19 the discussion, so yes.

20 Q. Yep. And that discussion was in April of
21 2017; right?

22 A. That's when we met, yes.

23 Q. The Good Friday -- Good Friday --

24 A. But it had been brought up before that.

25 Q. Yep. You have the meeting on-site on Good

1 Friday 2017. You've seen where Mr. Lein has
2 written that he learned of the issue in February of
3 2017 from you; right?

4 A. Yes.

5 Q. And do you agree with him that that's when
6 you first raised the issue of Turbine 441's
7 location relative to Section 15 structure?

8 A. I can't recall if that was the very first
9 time we talked about it. I mean, when he put that
10 in his notes or documented it, I don't know if that
11 was the first time or if we had talked prior.
12 There's a lot of times that I talk to these guys,
13 they call or I call them and a person's out, you
14 know, feeding cattle or blowing snow or whatever.
15 I don't -- I don't write everything down. I don't
16 write anything down. Pretty tough. I will in the
17 future.

18 MR. MAHLBERG: Okay. Thank you,
19 Mr. Kessler. I don't have anything else for you
20 right now.

21 THE WITNESS: Thank you.

22 JUDGE DAWSON: Mr. Johnson, any questions?

23 MR. JOHNSON: Just one quick one, Your
24 Honor.

25

EXAMINATION

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BY MR. JOHNSON:

Q. You stated you measured the decibels at the door to the residence?

A. Correct.

Q. How did you do that?

A. We used a decibel reader from some of my friends in the coal industry.

Q. Okay. And you're saying it was reading 90 decibels?

A. It -- it would get up to 90 decibels.

Q. If I told you that 90 decibels is roughly like pushing a lawn mower around, it's -- it was that loud?

A. Correct.

MR. JOHNSON: Okay. That's all I have.

JUDGE DAWSON: Commissioner Fedorchak.

COMMISSIONER FEDORCHAK: Judge, I see it's one o'clock and I have a fair number of questions, so this might be --

JUDGE DAWSON: Oh, okay. Then we'll take our break at this time.

MR. BOUGHEY: And will I be also allowed redirect?

JUDGE DAWSON: Yes, you will.

1 MR. BOUGHEY: Okay. Very good. We're
2 good. Thanks.

3 JUDGE DAWSON: And so --

4 MR. BOUGHEY: I have to print out a few
5 things, so that's great.

6 JUDGE DAWSON: Okay. By official time
7 that's on my cell phone, I have that it's 1:01.
8 We'll be back here at 1:40 sharp on time.

9 MR. BOUGHEY: You said 1:40?

10 JUDGE DAWSON: 1:40 we'll be back.

11 (Recessed at 1:01 p.m. and reconvened at
12 1:43 p.m.)

13 JUDGE DAWSON: Okay. Well, it is almost
14 1:45 and we are back on the record.

15 And questions by Commissioner Fedorchak.

16 COMMISSIONER FEDORCHAK: Thank -- thank
17 you, Judge.

18 First of all, is there anything in any of
19 these binders that's off limits? I was a little
20 confused with some of the redacted, nonredacted
21 conversations at the beginning.

22 MR. BOUGHEY: I think that's a question
23 for me, if you want me to answer it.

24 JUDGE DAWSON: Yeah. Yeah. He had a
25 comment about that.

1 MR. BOUGHEY: That is again my fault.
2 There are some things that are in the sense off
3 limits. We are going to black out numbers relating
4 to the reclamation and what was paid in that
5 settlement -- that's in there --

6 COMMISSIONER FEDORCHAK: Okay.

7 MR. BOUGHEY: -- because that's irrelevant
8 to this.

9 COMMISSIONER FEDORCHAK: Mm-hmm.

10 MR. BOUGHEY: And then there are a couple
11 pages that were brought to my attention that
12 involve settlement discussions, and we're going to
13 take them out unless there's something in there we
14 have to have left in. And so I'm not sure how I
15 missed it, but there might be one or two pages that
16 are going to be taken out.

17 As far as the trade secrets and
18 proprietary information, that has already been
19 redacted by Minnesota Power because they received a
20 decision on that issue prior to their putting their
21 binders together.

22 COMMISSIONER FEDORCHAK: Okay. Well --

23 JUDGE DAWSON: So in short, most of
24 it's --

25 MR. MAHLBERG: I don't -- I don't think

1 anything that was talked about out of Mr. Boughey's
2 binder is off limits. I don't think any -- none of
3 it touched any of that. So I think if it's
4 following up on some pages that he was talking
5 about, they're all fine.

6 MR. BOUGHEY: Yeah. Everything we've
7 mentioned so far is fine. Again, it's just -- I'm
8 used to redacting it at the day of the hearing
9 where the judge first sees what's being redacted.

10 COMMISSIONER FEDORCHAK: It's fine. It's
11 fine. Okay. So I'll just proceed and hopefully I
12 won't -- you can just tell me if I'm getting into
13 areas that I shouldn't.

14 **EXAMINATION**

15 **BY COMMISSIONER FEDORCHAK:**

16 Q. Okay. Mr. Kessler, thank you for being
17 here. And I maybe overstated, I don't have like
18 tons and tons of questions, but I knew it would be
19 more than the five minutes that people wanted to
20 take to -- before they got to lunch, at least
21 before I got to lunch because I was getting pretty
22 hungry.

23 So, first of all, in regards to the home
24 in question here, the residence on Section 15, is
25 it on 15 or is it on 16? Yeah, it's on --

1 A. 15.

2 Q. It's on 15.

3 Do you have -- you -- it sounds like you
4 have electricity service at that house?

5 A. There's electricity, water, sewer,
6 everything.

7 Q. Okay. So do you have electric bills that
8 show that you've been providing electric service
9 there for this entire time?

10 A. Yes. There's -- there's a record of there
11 being electricity there from when I purchased the
12 property in 1988.

13 Q. Continuously?

14 A. Continuously.

15 Q. Okay.

16 A. No lapse in service.

17 COMMISSIONER FEDORCHAK: All right. Are
18 we allowed to ask for late-filed exhibits at all
19 or -- I mean, is that something we can still get
20 or --

21 JUDGE DAWSON: Yes, you can ask away.

22 COMMISSIONER FEDORCHAK: Okay. I guess I
23 think that would be valid to have proof of
24 electricity service at the residence, just old
25 bills or statements or you can just get a summary

1 from the --

2 THE WITNESS: I think I have the whole
3 thing with probably.

4 COMMISSIONER FEDORCHAK: Okay. And maybe
5 we can just get especially for the years in
6 question, maybe from 2009-'10 time frame to 20 --
7 to present or to 2015, '16. That time period might
8 be helpful.

9 THE WITNESS: Yep. I think Oliver Mercer
10 upgraded their -- well, it's Roughrider Electric
11 now. Excuse me. They upgraded their computer
12 system, so I believe it only goes back to 2009 --

13 Q. (COMMISSIONER FEDORCHAK CONTINUING) Okay.

14 A. -- when I talked to them.

15 Q. That's fair enough. All right.

16 On your -- let's see here -- what exhibit
17 was that, where you had the list, the pictures of
18 your cow-calf operations and how you were working
19 them in the spring and tracking them? I forget
20 where that was.

21 MR. BOUGHEY: I believe D --

22 THE WITNESS: I have the wrong book.

23 MR. BOUGHEY: -- under Dates.

24 COMMISSIONER FEDORCHAK: Dates, yeah.

25 MR. BOUGHEY: So it would be Dates-3 and

1 4.

2 COMMISSIONER FEDORCHAK: Is that in
3 section 4? Yeah.

4 MR. BOUGHEY: Yes. Yes. Dates page 3 and
5 4 of section 4.

6 COMMISSIONER FEDORCHAK: Okay. Mr. --

7 MR. BOUGHEY: Now we need to get rid of
8 the -- get him the right binder.

9 COMMISSIONER FEDORCHAK: Oh, there we go.

10 Q. (COMMISSIONER FEDORCHAK CONTINUING)

11 Mr. Kessler, do you -- can you tell me how -- how
12 does this tie your -- tie to that location? How
13 can I tie this to that location?

14 A. Well, if I had every single page, we can
15 go through, and the first cross baldy heifers get
16 vaccinated and weaned at this facility because that
17 way the cows aren't bellering at home, the calves
18 and all that. So they get vaccinated there,
19 amongst other cattle will get worked there and then
20 they get trailed back to another pasture. But
21 these replacement heifers get weaned there also,
22 so --

23 I don't see any right offhand on this
24 first page, but I could go through the rest of
25 them. It'll be marked by their sire is what it

1 will be. It'll be an RB or --

2 Q. And you're just saying that that's the
3 kind of work that happens at that facility?

4 A. Yes. Every year. Correct.

5 Q. Okay. All right. You don't need to do
6 that. That's fine.

7 Let's see here. On -- let's see. I want
8 get to the page so you can too. It's number 302 in
9 tab 5, like in the -- the page number in the black
10 Sharpie® says 302. Okay. So I'm looking at
11 Landowner Item, and it says kind of the -- the
12 second one down, and it says at the last
13 sentence -- and this was referenced, I think, in
14 some other emails or summaries of discussions or --
15 you know, I'm not -- I don't really care about the
16 dates or the times or any of that. I just --
17 substantively, this says, "They should have put the
18 tower one way or another to avoid this."

19 Help me understand what you mean by that.
20 And is it -- are you talking about the Tower 441 in
21 that -- in this instance?

22 A. Correct. That would be where they set
23 that tower so close to the property line, and then
24 when they were done with their construction and
25 erection, they fenced us off of our property around

1 that wind tower.

2 Q. Was there a fence there before?

3 A. Yes, and it was straight through.

4 Q. Straight through. What do you mean
5 "straight through"?

6 A. It went straight on the property line.

7 Q. Okay.

8 A. The half mile in length was completely
9 straight.

10 Q. And so instead of going straight along the
11 property line, it went straight up until the
12 corner, we'll say, even though it was probably
13 round, of the area by the tower and then it took an
14 angle, like a 90-degree angle around it?

15 A. Well, they kind of half-mooned all the way
16 around that --

17 Q. Okay.

18 A. -- and then it went straight again.

19 Q. And so on the other side of the fence
20 is -- is there another fence between you and
21 your -- because that's your neighbor's property
22 still?

23 A. Correct. There's a double fence.

24 Q. There's a double fence.

25 A. Yes.

1 Q. And you used to access your property
2 through that -- through your neighbor's property?

3 A. Nope. We didn't access that at all.
4 There used to be a double fence. They were both
5 solid. When they put the wind farm in, they put a
6 road through there and built that tower there and
7 they fenced us off of our property going around
8 that tower.

9 Q. Off of your property from what direction?

10 A. From east to west, north to south. From
11 east to west, it would be like if you took this and
12 this is a wind tower (indicating), they went -- the
13 fence come from here to the corner, it came down,
14 went around and then went straight again. So they
15 fenced this portion off and gave it to my
16 neighbors.

17 Q. Oh, so that was your property. It should
18 have --

19 A. The fence should have went back in
20 straight like they told us it was going to. And
21 this was all part of our reclamation and our
22 fencing --

23 Q. I see.

24 A. -- issues much that was solved last -- a
25 year ago December. Yeah.

1 Q. Right. So it says here, "They should have
2 put the tower one way or another to avoid this."
3 You mean further away? Is that what you're
4 meaning?

5 A. They should have put it either north
6 further or south further --

7 Q. I see.

8 A. -- you know, far enough on his property or
9 our property, whichever way, to keep it --
10 everything in line.

11 Q. Yep. Okay.

12 A. Yes.

13 Q. Let's see. So I do see in the record some
14 of -- and I think this might be some of the
15 information but -- that is going to be redacted,
16 but there's some evidence of negotiations between
17 you and the company that showed their proposal and
18 your counterproposal.

19 COMMISSIONER FEDORCHAK: Can we talk about
20 this?

21 MR. BOUGHEY: No, and that will be taken
22 out. The only thing we tried to leave in was -- I
23 almost said "Your Honor" and I could say that, I
24 suppose. The only thing we tried to leave in is
25 references to the fact that the tower was in the

1 wrong place and that was part of that. So
2 everything relating to reclamation, fence lines,
3 we're going to take out. But any -- like, for
4 example, 302, which you just looked at, we left
5 that page in there because that refers to the
6 problem with the placement of the tower.

7 COMMISSIONER FEDORCHAK: Right.

8 MR. BOUGHEY: Everything else relating
9 to -- everything else has been resolved by
10 mediation and --

11 COMMISSIONER FEDORCHAK: Got it.

12 MR. BOUGHEY: -- therefore, we'll take
13 that out, but that --

14 COMMISSIONER FEDORCHAK: So if I'm
15 guessing, the company is saying you don't care if
16 we talk about this, the negotiations?

17 MR. MAHLBERG: Without knowing --

18 COMMISSIONER FEDORCHAK: What I'm going to
19 say --

20 MR. MAHLBERG: -- just what you want to do
21 to -- typically, settlement negotiations can't be
22 entered into --

23 COMMISSIONER FEDORCHAK: Turn your mike
24 on.

25 MR. MAHLBERG: I am so sorry.

1 Typically, settlement negotiations and
2 evidence of settlement negotiations can't come in
3 for determining liability. Not knowing what you
4 want to ask, I would --

5 COMMISSIONER FEDORCHAK: Yeah.

6 MR. MAHLBERG: -- I mean, I would say if
7 you want to put it to the judge and not to --

8 COMMISSIONER FEDORCHAK: Yeah. Well,
9 here's the deal. I'm just going to go --

10 MR. BOUGHEY: Go ahead.

11 COMMISSIONER FEDORCHAK: I'm just going to
12 tell you what I'm thinking. I'm a practical person
13 and I like solutions. So I would -- I would like
14 to get to solutions rather than spending a ton of
15 time talking about all of this, that, the other and
16 who said what, when and how. And I said I
17 understand that the -- from a legal standpoint
18 there's -- you know, there -- there might be some
19 need to do that.

20 But this has been going on a long time and
21 there's been some negotiations back and forth, so
22 that suggests to me that the company and the -- and
23 the party might be eager or interested in getting
24 to a solution too.

25 Q. (COMMISSIONER FEDORCHAK CONTINUING) So

1 what I want to ask Mr. Kessler is, first of all,
2 the turbine is 375 feet, by your measurements, too
3 close?

4 A. Correct.

5 Q. Does moving it 300 -- or 275. Brian's
6 better with math. 275. Yes. Yeah.

7 Does moving it 275 feet resolve your
8 problems?

9 A. It helps. It doesn't resolve everything
10 because you're still going to have the noise. In
11 my personal opinion, the State should have never
12 allowed and the county should have never allowed
13 these things to be any closer -- my thing, and I've
14 went through a lot of legislative hearings on this
15 and testified, I pushed for a half a mile setback
16 from any residence. And I started at a mile and
17 everybody just kind of said, "Well, you'll never
18 get that."

19 They won't allow them within a mile of
20 recreation, Lake Sakakawea, the Knife River. They
21 don't want them a mile within any town. Why should
22 any farmer or rancher have them within any closer
23 distance either?

24 Q. Well, and that's for a different venue.

25 A. Yeah. Yeah, I'm sorry.

1 Q. So those debates will continue, I'm quite
2 certain.

3 What we have is the setback, and I'm not
4 sure if the setback was, you know, officially in
5 law at the time, but it sounds like there hasn't
6 been a disagreement about the setback amount of
7 1400 feet from your land. So if that's -- you
8 know, would that address your issues?

9 A. It would help.

10 Q. Okay. And then do you have in mind what
11 kind of remedy outside of that you're looking at?

12 A. We have talked about it. We made offers
13 to Minnesota Power and they've rejected them.
14 They've made them to us and we've rejected them,
15 because they wanted to buy us out and buy our land
16 and --

17 MR. BOUGHEY: Okay. Now I have to stop
18 you. Now that you're going into the actual
19 details, I think I have to stop you because there's
20 a rule, Rule 408, relating to that, and I think the
21 judge was going to jump in as well. But without
22 going into any details, the commissioner just asked
23 you other -- other than moving it 275 feet away
24 from your property line, is there any other things
25 that you would want the Commission to do as part of

1 the remedy without turning this into a
2 negotiations/settlement conference? They have the
3 right to --

4 MR. MAHLBERG: But --

5 JUDGE DAWSON: By "remedy," he means
6 remedy by that the Public Service --

7 MR. BOUGHEY: Yes.

8 JUDGE DAWSON: -- Commission that they can
9 do. Not just any remedy that the company can do.

10 MR. BOUGHEY: Yeah.

11 JUDGE DAWSON: Because the company
12 could -- could pay damages to you, but they can't
13 order damages to you, so you understand the
14 difference. So it's things within their
15 jurisdictional powers to provide.

16 MR. BOUGHEY: So, Your Honor, if I may
17 phrase the question to them thusly: If this
18 Commission decides to require Minnesota Power to
19 move the tower 275 feet, or more, so that there's a
20 setback that complies with the 1400 feet, is there
21 anything else that you would want the Commission to
22 do as part of what they would require Minnesota
23 Power to do, realizing we still have -- we've
24 requested damages and attorney fees and they've
25 ruled against you on that. Is there anything you

1 want besides 275 plus? Is that fair, Commissioner?

2 COMMISSIONER FEDORCHAK: Sure.

3 MR. BOUGHEY: Okay.

4 THE WITNESS: Well, taking the damages
5 away from it, it makes it pretty painful, but I
6 don't know what else is in your jurisdiction. I
7 don't -- I don't know that scope. So I -- I have a
8 hard time answering that question other than, yeah,
9 if you move it back the 275 feet and they're within
10 their right, then I guess that would have to be
11 what it'll be. Would I be happy about it? No.
12 I -- can they take it down and just leave it down?
13 Great. I don't -- I don't know if it's --

14 Q. (COMMISSIONER FEDORCHAK CONTINUING) Okay.
15 That's -- that's helpful. All right. So now I
16 want to look at -- talk a bit about your testimony
17 at the hearing of which there is a transcript in
18 Exhibit 2-6 of the company's book.

19 MR. BOUGHEY: I don't know of any
20 transcript. It might be what they proffer as their
21 testimony.

22 MR. MAHLBERG: Nope.

23 COMMISSIONER FEDORCHAK: It's a
24 transcript.

25 MR. BOUGHEY: I'm sorry.

1 MR. MAHLBERG: It's Exhibit 2-6.

2 MR. BOUGHEY: Thank you.

3 Q. (COMMISSIONER FEDORCHAK CONTINUING) And
4 I'm looking at -- so it's section 2-6, the tab.
5 Okay.

6 A. Mm-hmm.

7 Q. And then if you go back to page 118, MP
8 000118.

9 MR. BOUGHEY: Oh, may I state for the
10 record that's a transcript of the hearing, the
11 public hearing?

12 COMMISSIONER FEDORCHAK: Yes.

13 MR. BOUGHEY: Thank you.

14 THE WITNESS: Okay.

15 Q. (COMMISSIONER FEDORCHAK CONTINUING) So
16 I'm looking at the bottom quadrant of -- page 128
17 it's listed as. And so in that you say, "That's
18 why I wanted to say something, because -- and I
19 know things have probably gotten," dash, dash,
20 dash, "it's fall and everyone wants to get started,
21 but when we -- when they come around with these
22 options, we were told if and when it does happen,
23 they're going to come out and sit down with us, and
24 they'd have a lay of the land, how the roads are
25 going and so forth, where the towers are going to

1 go, and we'll have input on those things. Well,
2 that really didn't take place."

3 So when I see that in the transcript, it
4 feels to me like you were bringing up the towers at
5 that point and your concerns about the tower
6 placement.

7 A. Is that on page -- you said 118 or 128?

8 Q. Well, it's 118, but do you see on the --

9 A. Oh, now I see where your 118 is. I was
10 looking at the --

11 Q. And then down on that there's 128.

12 A. Okay.

13 Q. And you start kind of on the bottom and it
14 goes up to the next page and you talk about how,
15 you know, they said they were going to come out --
16 just what you said today. They assured you that
17 there was going to be conversations about where the
18 towers were going to go and that hasn't happened.

19 So in the other locations where you had --
20 where you do have towers, describe your
21 conversations with them about the locations of the
22 towers that you do have. What kind of a
23 give-and-take was there on those?

24 A. None. They put them where they wanted to.

25 Q. And you saw them for the first time at

1 that hearing --

2 A. Yes.

3 Q. -- where they were going?

4 A. Correct.

5 Q. Okay. And did you -- at the next meeting
6 with them, at the posthearing meeting, were there
7 maps provided with location -- tower locations on
8 those maps or any further discussion about tower
9 locations in that meeting?

10 A. It was and the fence issue, and I believe
11 it was -- it was either that map or a similar map.

12 Q. Okay. So it wasn't just a map of your --
13 it wasn't focused in on your locations?

14 A. No.

15 Q. Okay. And it's your testimony, both --
16 and I don't know if it's in the deposition, but it
17 feels like your testimony today is that multiple
18 times along your -- along the way in your
19 discussions with the company, they assured you that
20 there would be time to talk about tower locations.
21 And then when it came time to actually do that,
22 there wasn't time because construction had to get
23 started and they were going where they were going,
24 but you were assured that that one that's not on
25 your land, but on your neighbor's land close to

1 that -- that farmstead that you have out there,
2 that you were assured that they'd have it 1400 feet
3 away?

4 A. That is correct.

5 Q. Okay. Did you have an attorney involved
6 at all in any of your negotiations in reviewing
7 your easements and stuff?

8 A. We had an attorney review it before we
9 signed it, yes.

10 Q. Okay.

11 MR. BOUGHEY: Other than me, for the
12 record.

13 THE WITNESS: Yes.

14 Q. (COMMISSIONER FEDORCHAK CONTINUING) All
15 right. And they didn't see any issues with the --
16 the easements, the way they are -- they are
17 written?

18 A. I don't know if you'd call it issues. The
19 biggest comment was they said it -- you know,
20 they're very heavily one-sided, I mean, the
21 agreements, so --

22 Q. Mm-hmm. Were you -- did you feel like you
23 were -- how knowledgeable did you feel going into
24 all of this?

25 A. Wasn't knowledgeable at all. This was the

1 first-time experience we've ever leased any land
2 out --

3 Q. Okay.

4 A. -- you know, with the wind -- with the
5 wind companies. We've never dealt with anybody
6 else, no coal leases, nothing like that.

7 Q. And were you -- were you in conversation
8 with your neighbors and stuff during this time
9 about -- about, you know, issues or concerns or
10 how -- how did you, you know, get your information?
11 Was it from the company largely or others?

12 A. We talked to neighbors, and a lot of
13 the -- some of the landowners don't live here so
14 you don't get input from them. And some of the
15 neighbors we talked to, they just -- they just
16 wanted to make some extra money. Agriculture's a
17 tough deal.

18 Q. Right. Okay. Let's see here. Okay. One
19 other question, and this -- as you know, there
20 isn't a definition for an occupied residence
21 currently. So if you were to develop your own,
22 what would it say? And I am going to ask the
23 company the same thing, so --

24 A. Well, an occupied residence to me is
25 something that you use, and it -- even if it's not

1 occupied day-to-day, it's still a facility. Like
2 you asked with electricity, yeah, there's
3 electricity, there's running water, it's fully
4 furnished. I mean, it's -- it's fully capable of
5 being lived in. It's not like it was a rundown
6 facility.

7 Yeah, it's -- an occupied place would be
8 something that you can -- I mean, if I've got a
9 place in Arizona and I occupy it from February till
10 April, that's my place that's occupied, and --

11 Q. Were you ever asked to identify occupied
12 residences in any of the -- by the company? Given
13 maps to circle or show or verify occupied
14 residences?

15 A. No.

16 Q. Do you know if others were? How do -- how
17 do you think they came up with whose -- which were
18 occupied and which weren't?

19 A. From what I've learned, they've
20 accumulated that over different avenues like plat
21 books and different projects that they've done in
22 the area.

23 Q. Mm-hmm.

24 A. Did they ever come to us and ask us? No.

25 COMMISSIONER FEDORCHAK: Okay. All right.

1 I think that concludes my questions. Thank you.

2 JUDGE DAWSON: Commissioner Christmann.

3 COMMISSIONER CHRISTMANN: One of my
4 Post-it® notes disappeared, Your Honor.

5 COMMISSIONER FEDORCHAK: Do you want to
6 use -- they're right there.

7 COMMISSIONER CHRISTMANN: No, one with my
8 notes.

9 COMMISSIONER FEDORCHAK: Oh.

10 COMMISSIONER CHRISTMANN: I think I
11 remember, though, where I was going with it.

12 **EXAMINATION**

13 **BY COMMISSIONER CHRISTMANN:**

14 Q. So I'm going to skip around some, but
15 in -- in your exhibits, and it's section 3,
16 Exhibit 4, it has a picture of the house as it
17 appeared in 2013 and then the updated version in
18 2016. But way back early, early in this case in --
19 in I think the original complaint, on page 16 of
20 the complaint, it says, "In 2012, a new coat of
21 paint was administered on the outside."

22 And I look at this 2013 picture and it
23 looks like that paint is more than a year old. Was
24 that a mistake on the 2012 or did only one part of
25 the house get painted and not this part, or did you

1 get some not very good paint that just didn't last
2 like I think it should have?

3 A. I think, Randy, it's a combination. It
4 hadn't been painted, you know, probably as often as
5 it should have being's it's a second home. The --
6 it absorbed a lot of paint, and it was in -- it was
7 fall work because you try to beat the clock for
8 winter. So we got as much done as we possibly
9 could and then it got cold. And there are spots on
10 there that are higher up that my folks had helped,
11 and we didn't have a lift to -- you know, or
12 scaffolding on the side hill there. It wasn't
13 really an option. So there were parts that didn't
14 get painted, yeah, absolutely, so it's kind of
15 two-toned, and we did the best we could.

16 It hasn't been resided since I've owned
17 that property in '88, so it -- it's not like it was
18 rundown. The roof didn't leak, any of that. But,
19 yeah, the paint -- the paint -- it wasn't -- it
20 was -- we did what we could, I guess.

21 Q. Okay. Then in M-24 and 25, especially on
22 25 now, you pointed out -- and the actual ones I
23 don't think really matter for this, but I wrote
24 down -- oh, I'll give you a minute to get there.

25 A. I'm sorry. I thought you said M so I went

1 to the other book. Is it in this book?

2 MR. BOUGHEY: It's M -- your --

3 THE WITNESS: Our book.

4 MR. BOUGHEY: Our --

5 MRS. KESSLER: Section 2.

6 MR. BOUGHEY: Here, I'll get this --

7 THE WITNESS: I'm sorry.

8 MR. BOUGHEY: -- out of the way.

9 THE WITNESS: There's too many books, too
10 many trees.

11 MR. BOUGHEY: Yeah.

12 COMMISSIONER CHRISTMANN: Yeah, no
13 kidding.

14 THE WITNESS: 25, was it?

15 Q. (COMMISSIONER CHRISTMANN CONTINUING)

16 M-25, yeah. It's after tab 2.

17 A. Okay.

18 Q. Out of that township, you pointed out
19 three residences that have been vacant, you
20 believe, since '05, '09 and '10, out of however
21 many residences are there. But that plat page does
22 not include the entire wind farm footprint;
23 correct?

24 A. Correct.

25 Q. And in some of your earlier testimony, in

1 the earlier filings -- not today, but way, way
2 back -- there was a comment, something to the
3 effect that there were multiple occupied -- or
4 unoccupied structures that were on the map, and --
5 and they included those, why not this one. And I
6 thought it was a really good question. But do you
7 have any estimate out of that whole bunch, if -- if
8 you had the plat maps to refresh yourself on
9 exactly whose property is each one as you start
10 getting farther from your home, how many of the
11 residences that show up on that map are -- were
12 unoccupied in 2013 already?

13 A. That part I can't answer because we
14 concentrated on the -- the red outline of our area.
15 So I guess we didn't go out of them parameters, but
16 I can't answer that honestly.

17 Q. But so the three you know of just within
18 that one section of the -- or one township of the
19 whole footprint?

20 A. Correct. Just in this -- this -- call
21 this the west quadrant out of the three, yes, that
22 west third, there's --

23 Q. Okay.

24 A. -- those three right in the neighborhood.

25 Q. And those three -- just to make sure I

1 have it right in my mind what map we're looking at
2 that's on the board, those three were identified on
3 the residence map at the hearing back that day in
4 2013; correct?

5 A. Correct.

6 Q. And I was trying to understand all the
7 rationale for the questioning before the lunch
8 break about who you had an easement with compared
9 to who you didn't and why would you be talking
10 about someone about something if that's not who you
11 had your easement with and such. But regardless of
12 who had the easement on your neighbor's land, if it
13 was close to a residence that you were concerned
14 about, does it -- would that have caused you to
15 want to talk to them about where they're going to
16 place structures on that land as well?

17 A. Talk to Minnesota Power?

18 Q. To whoever had an easement with -- with a
19 neighbor, to emphasize to them that you have
20 concerns about it being too close to your residence
21 or property?

22 A. So I'm a little confused. Are you
23 referring to that 441, if I would have talked to
24 that neighbor?

25 Q. Well, to whoever had the -- whoever was

1 potentially building a wind farm, would -- would
2 you have probably wanted to emphasize to people,
3 even if you didn't have an easement with them, that
4 you don't want something close to your property?

5 A. Yes, and that's a good question, but the
6 first time we seen this map was at the public
7 hearing. We didn't -- we had no clue where these
8 towers were even -- even going to be --

9 Q. Okay.

10 A. -- until we got there.

11 Q. Leading up to today, I always thought the
12 meeting that occurred after our hearing happened
13 like that evening, but did I understand you right
14 earlier that it was a different day, some week or
15 month or something after that, but -- but it wasn't
16 that evening; correct?

17 A. No. Because that was on a Friday, I
18 believe, that public meeting in Center, and that's
19 why the meeting would have been the preceding
20 week -- or the following week, I mean.

21 MR. BOUGHEY: I'm sorry. I couldn't hear
22 that.

23 THE WITNESS: The following week --

24 MR. BOUGHEY: Thank you.

25 THE WITNESS: -- or thereafter.

1 Q. (COMMISSIONER CHRISTMANN CONTINUING) Is
2 the water at this residence a well or is it like --
3 at least in 2013 already, was it potentially
4 Southwest Water where you have water bills there
5 too?

6 A. No. It's a well, and at one time it was
7 signed up for Southwest Water, and we moved that --
8 what do they call them now -- that tap to another
9 location.

10 Q. Okay. So there's no water bills, but you
11 said that it -- there's a well there and it did
12 have running water --

13 A. Correct.

14 Q. -- in 2013?

15 A. Yes.

16 Q. And Commissioner Fedorchak asked about the
17 electricity. And throughout this whole thing, that
18 is something I've wondered, like, okay, if this was
19 occupied, why has no one shown us electric bills
20 throughout the months and years, especially in
21 2013?

22 COMMISSIONER CHRISTMANN: And so if that
23 wasn't nailed down as a request for a late-filed
24 exhibit, I would sure want to request it, Your
25 Honor.

1 THE WITNESS: Can I respond to that?

2 Q. (COMMISSIONER CHRISTMANN CONTINUING) Yes.
3 It's a question. Would you be able to make those
4 available?

5 A. Yes. We'll make those available. And as
6 long as everybody understands that it's an electric
7 bill, that there was never a disconnection or, you
8 know -- what do you call it -- break in service or
9 whatever. But there's not a lot of meter readings
10 a lot of times if we're not -- because the well
11 that supplies that house is on another meter a half
12 a mile away. So that's a separate meter there.

13 Q. Okay. And then the other one that I've
14 wondered about at my own place with my insurance
15 over the years, I have dropped my insurance on some
16 buildings where I just didn't feel like there was
17 enough value there to keep paying the premium. I
18 redid my barn and increased the insurance, and --
19 and I don't know what the insurance term for that
20 is. But on the sheet with each annual bill, it
21 lays them out and has the square footage of those
22 buildings and such and the value that I've insured
23 them for. Have you main -- during these times
24 under discussion, did you maintain insurance on the
25 house?

1 don't know if you'll need to go to it -- but that
2 were in a similar state from a condition standpoint
3 that, to your knowledge, were determined to be
4 residence -- a residence by the company?

5 A. So if I'm understanding you, you're asking
6 me if there was other residences that weren't
7 considered a residence?

8 Q. In the foot -- project footprint overall,
9 are you aware of another home that may have been
10 out there on a neighbor's property, in the general
11 area that, to your knowledge, was determined to be
12 a residence that would be in similar condition as
13 your home?

14 A. That somebody wasn't living there?

15 Q. (Nods head.)

16 A. Yeah, the three -- the three that we
17 mainly stated on there that -- that hadn't lived
18 there since some in 2005, '9 and '10. Those ones.
19 Like I told Randy, we didn't go outside the scope
20 of that first borderline on that third of the --
21 the project. To the east we did not. So these are
22 the ones -- or in the immediate area --

23 Q. Mm-hmm.

24 A. -- were the only ones. But as far as I
25 know, ours was the only one that wasn't listed on

1 there at all.

2 Q. Okay. Can you describe the terrain to the
3 south of Turbine 441? Is it rough country? Is it
4 similar to terrain that the turbine's actually
5 placed on?

6 A. It's a little bit more rolling hills,
7 probably a little bit more slope to it.

8 Q. But if you were to go 300 feet away from
9 your home, would -- is it just undevelopable?

10 A. No. If they'd have went 300 feet to the
11 east, they would have been on just about completely
12 flat land.

13 Q. Okay. So it wasn't a terrain issue at the
14 time?

15 A. No. They moved more dirt where they put
16 it now than where they would have if they would
17 have put it to the south.

18 Q. Now, do you -- you had talked numerous
19 conversations -- and I was trying to track this --
20 but three different right-of-way representatives or
21 three different company representatives? I think I
22 have Scott Monroe, Paul Johnson and then a
23 Mr. Isaacson, I think, were the three names that I
24 heard?

25 A. Those are three Minnesota Power

1 representatives that we have dealt with.

2 Q. All right-of-way agents or not
3 necessarily?

4 A. Scott and Wade are. I believe Paul
5 started out -- I don't even know if Paul is with
6 the company anymore, but I believe that was his --
7 I couldn't find his card, but I believe that was
8 his main job.

9 Q. But you had similar -- similar
10 conversations with all three of them in terms of
11 your concerns?

12 A. Correct.

13 Q. Did the company ever send you any written
14 indication that we've heard your concerns, we'll
15 continue to work with you? Did you ever get
16 anything in writing from the company or was it all
17 verbal?

18 A. It was just verbal communications.

19 Q. Now, going to the public hearing, looking
20 at the sign-up sheet that I believe the company's
21 attorney had referenced earlier in the proceeding,
22 I believe I only spotted two, three at the most,
23 but I want to say two landowners on the sheet.
24 Were there only two landowners present at the
25 hearing or were there far more?

1 A. There was quite a few more. They didn't
2 sign in.

3 Q. Okay. So the sign-up sheet, would you say
4 it's not an accurate representation of who attended
5 the hearing that day?

6 A. I would say that I would agree.

7 Q. Were there latitude and longitude
8 coordinates on the hearing map, on the map
9 immediately to your left? Or was there any
10 corresponding documentation that showed on those
11 different turbine locations, the yellow dots,
12 here's the latitude and longitude of each one?

13 A. No.

14 Q. So nothing specific in that?

15 A. No sections, no.

16 Q. Okay. During construction, it was asked
17 why didn't you raise an objection. Can you
18 describe how you treat property that you don't own?

19 A. Well, I treat it with respect, just like I
20 want mine treated, I guess. And, yeah, like I
21 said, I wouldn't just go up there without, you
22 know, asking the neighbor for permission.

23 And I had stated in the past that they're
24 up there working on a hill digging a giant hole.
25 It's -- it's pretty difficult to tell how far it is

1 in distance, I mean, for me, and I'm out doing my
2 own stuff, too, so I'm not really there to kind of
3 patrol them. I just took their word for it that
4 they were going to do the right thing.

5 Q. So it wasn't something you could just
6 freely on your own decide to go walk on someone
7 else's land and --

8 A. I could have, but it -- I wouldn't have
9 done it.

10 Q. Right.

11 A. I wouldn't interfere with their
12 construction because they would get pretty testy
13 because Matt -- when we were out there when they
14 were doing construction, I was out checking cattle
15 and my son and my cousin were with, and we were
16 treating a couple with foot rot and I had a dart
17 gun, and Matt comes down the road and he gets out
18 and he's kind of wondering what I'm doing with this
19 gun out there, and I said -- I'm just crawling
20 across the fence coming back. And I said, "Well,
21 I'm just treating some cattle." And he said, "You
22 can't have a gun out here." And I said, "Well,
23 you've got to go away. I can do what I want. It's
24 my own property." I mean, I'm -- I was a half a
25 mile away from them.

1 Q. Now, the -- would you agree that this is
2 about -- I mean, there's been a considerable amount
3 of conversation on the intent to occupy, and from
4 your testimony it seems very clear that you
5 repeatedly indicated to the company that there was
6 an intent to -- to occupy that residence on a
7 full-time basis at some point?

8 A. Correct.

9 Q. Okay. Now I'm just going to read a couple
10 of definitions on dwellings just to see if you
11 agree. A dwelling means any part -- any structure
12 or part of a structure that is occupied or designed
13 or intended for occupancy as a residence by one or
14 more families. And, of course, you can go online
15 and can find what you want to find, but would you
16 agree that's a pretty general definition of what a
17 dwelling would be?

18 A. I would agree.

19 Q. And here's another question tied in to
20 that. Because I had originally gone down the --
21 does it have electricity, what's -- what's the
22 status of that service to the house. But two keys
23 would be if it has running water and sanitation, in
24 other words, a toilet. Does the residence have
25 that?

1 A. It has two toilets, running water.

2 Q. All right. The home, I should say.

3 A. Yes.

4 Q. So it has -- has that.

5 Has it always had that?

6 A. Yes.

7 Q. Okay. And just, finally, how would you
8 describe the company's reputation in the area?

9 A. My opinion or others?

10 Q. Your opinion.

11 A. Well, I'd like to see them be a little bit
12 more honest about things and, you know, work with a
13 person. It reminds me of the public -- public
14 hearing when Brian -- the other commissioner, I
15 can't remember his name right now.

16 Q. Kalk?

17 A. Brian Kalk, he was there, and I had, you
18 know, brought up my points and this and that. And
19 at the end of the conversation, he said, "Keith,
20 it's still your land. You still own the land."
21 Well, it got to the point where they made me feel
22 like I didn't own my own land, that they -- they
23 just do what they want to do on my property because
24 they had a signature.

25 Q. Were you there for the entire hearing, or

1 did you leave before the hearing concluded or stay
2 till the end or close to the end?

3 A. We stayed till the end.

4 Q. The company was there until the end?

5 A. Yes.

6 Q. Whether you recall this or not,
7 Commissioner Kalk at the time said, "And I would
8 really urge you to work with Mr. Kessler" -- this
9 is at the very end, closing comments. "And I would
10 really urge you to work with Mr. Kessler as this
11 unfolds because, as we're finding in the
12 Commission, that North Dakota is going through a
13 great opportunity right now, but if we don't have
14 the support of the guy or gal in the Cenex station,
15 these projects are not going forward. We need to
16 continue to diversify our coal, our wind, our
17 natural gas, but if it isn't benefiting our local
18 residents, these projects shouldn't be done."

19 And he concludes with, "So I really urge
20 you to keep the good faith" -- I assuming he was
21 referring to the company -- "keep the good faith
22 with the local landowners because that's what this
23 is all about."

24 Do you remember that being said at the
25 end?

1 A. Vaguely, yes.

2 Q. But the point is you were present for that
3 and the company representatives were still present
4 for that encouragement and direction from
5 Commissioner Kalk?

6 A. Correct.

7 COMMISSIONER KROSHUS: Okay. I don't have
8 any other questions for you. Thank you.

9 JUDGE DAWSON: Well, hopefully we can keep
10 the questions brief from here on out, but redirect,
11 Mr. Boughey.

12 MR. BOUGHEY: Thank you.

13 **REDIRECT EXAMINATION**

14 **BY MR. BOUGHEY:**

15 Q. I'm not sure that the commissioner who
16 just asked you the question finished the last part
17 of the question, which would be do you believe --

18 IT PERSON: Mr. Boughey, your microphone.

19 Q. (MR. BOUGHEY CONTINUING) -- do you
20 believe that Minnesota Power complied with
21 Commissioner Kalk's directives in regards to
22 dealing with you?

23 A. I would have to disagree.

24 Q. Okay. In regards to the dart gun -- I
25 need to double-check -- I assume that is a type of

1 gun that is used to put darts into and medicine
2 into your animals and not some other type of gun.
3 Am I correct on that?

4 A. Correct.

5 Q. Thank you. In regards to the map right
6 beside you there to your left, there was reference
7 and questions from the commissioners relating to
8 which places were empty in this particular plat map
9 that's on M-25. Do you have M-25 open there?

10 A. Yes, I do.

11 Q. It's my understanding, I want to confirm,
12 that you stated that C, J and K were empty; is that
13 correct?

14 A. Yes.

15 Q. And I believe the question was, but I'm
16 not sure you answered it, were any of the res --
17 any of the structures that had been previously used
18 as homes, C, J or K, were any of those homes in a
19 condition that would be similar in appearance to
20 your place on Section 15?

21 A. Yes.

22 Q. Which ones, based on your recollection of
23 C, J or K, looked similar to the one you had?

24 A. All three.

25 Q. All right. In regards to the writing on

1 this exhibit, first of all, this exhibit was
2 something that was provided through discovery
3 throughout the discovery process; correct?

4 A. Correct.

5 Q. And that writing, you already mentioned,
6 was from your attorney. Isn't it correct that you
7 basically -- we went on your site to your property
8 and we went through these places and you've told me
9 what to write down as to who owned these places. I
10 didn't have any personal knowledge of this. So
11 these notes, even though I wrote them, are they
12 based on what you told me?

13 A. Yes.

14 Q. Very good. Now, in regards to -- there
15 was much to-do about adding Paul Johnson in
16 recently, and you made a reference to adding him in
17 when you did the corrections or additions on your
18 deposition. Do you remember that testimony?

19 A. Yes.

20 Q. Would you please review that document,
21 please. We can figure out -- we'll just add this
22 in at the end of our binder if the court allows
23 that.

24 But is this your correction sheet -- first
25 of all, is that your signature at the bottom?

1 A. Yes.

2 Q. Is this a correction sheet that you
3 provided after reviewing your deposition?

4 A. Yes.

5 Q. And the last line, do you make a reference
6 to Paul Johnson of Minnesota Power?

7 A. Yes.

8 Q. Now then, in regards to the hearing where
9 you had discussion -- you can set that down -- you
10 had discussions with Minnesota Power, isn't it true
11 that Minnesota Power in all their discovery and
12 answers and depositions denied having any
13 conversations with you at that hearing up until the
14 point where Jerry Lein from the PSC provided his
15 deposition -- deposition testimony? So I'll
16 rephrase.

17 Isn't it correct until Jerry Lein
18 testified, it was your word and your wife's word
19 against Minnesota Power whether you guys had any
20 discussion with Minnesota Power and they denied it;
21 correct?

22 A. Correct.

23 Q. Mr. Kessler, I'm showing you what is
24 Exhibit 11 to the brief we submitted on 12-31-20 to
25 the Public Service Commission, so this is already

1 part of the official record in this case. In
2 addition, I believe that the deposition of Mr. Lein
3 is already part of the record in this case as well
4 through various motions.

5 And I would like you to review that, just
6 briefly look it over, and then when you're done
7 reading it -- we're not going to read it into the
8 record -- I'm just going to ask you did Jerry Lein
9 of the PSC confirm that there was a discussion
10 between you and Minnesota Power that they had
11 previously denied. So please review that.

12 MR. MAHLBERG: I'm going to object on the
13 grounds that this is calling for hearsay. More
14 specifically or more to the point, Mr. Lein's going
15 to be here to testify and can offer his testimony
16 in his own words today.

17 MR. BOUGHEY: I will certainly tie it in
18 at that point, but I want it to be clear that --
19 that his -- his testimony has been confirmed by the
20 PSC staff itself.

21 JUDGE DAWSON: Well, I'm going to allow it
22 right now, but it --

23 MR. BOUGHEY: I'll tie it in.

24 JUDGE DAWSON: -- it can be -- you have to
25 listen to Mr. Lein when he testifies.

1 Q. (MR. BOUGHEY CONTINUING) Mr. Kessler,
2 just tell me when you're done reviewing it. Are
3 you done reviewing that document?

4 A. Yes.

5 Q. And please answer my question. Until we
6 received Mr. Lein's testimony, isn't it true that
7 it was just your word against Minnesota Power's
8 whether you had any discussion with Minnesota Power
9 at the hearing regarding anything; isn't that
10 correct?

11 A. Yes.

12 Q. I'm now showing you -- we have 478 and
13 479. For the record, I'm just going in to -- there
14 were questions about which maps you've seen, and
15 for the record I'll advise the Court that these two
16 maps -- nothing negative at all about Minnesota
17 Power here -- these two maps were recently provided
18 to us, I believe, on March 18. As part of getting
19 ready for this hearing they discovered these were
20 the two maps that were sitting -- and I don't know
21 if it's a trailer or the building where you
22 apparently met with them at after the hearing.

23 And so where did you meet with them after
24 the hearing?

25 A. North of New Salem at their operations and

1 maintenance facility.

2 Q. Okay. And I don't know, is that a
3 trailer? I thought I heard someone make a
4 reference to that.

5 A. Well, they have a steel building there.
6 You go upstairs, there are some offices, and there
7 was some -- there was a lot of construction
8 trailers there being's they were working on this or
9 getting ready to work on this project.

10 Q. Okay. And one of the questions from
11 Commissioner Fedorchak was while at that -- at that
12 location afterwards, do you recall looking at any
13 maps. So I'm now showing you what is 478 from
14 Minnesota Power and 479 which was recently provided
15 to us. Again, I'm not -- that's not a problem.
16 That happens.

17 By looking at these, do you recall either
18 seeing these maps or reviewing these maps while
19 visiting with Minnesota after the hearing, whether
20 it was a week or two after, whenever you met them?

21 A. Yes.

22 Q. I'm sorry?

23 A. Yes.

24 Q. Okay. And now I'd like you to look at
25 479. And as I look at it, I see where there's a

1 441 listed and, again, this meeting was way back
2 when, in two thousand -- I'm sorry, when was the
3 date?

4 A. '13.

5 Q. Okay. And if we look at that yellow point
6 where 441 is located, there appears to be a
7 substantial distance between the north-south
8 midline of Section 15. Would that be a fair
9 statement?

10 A. Yes.

11 Q. Is that where 441 ended up being, sir?

12 A. Yes.

13 Q. Okay. So it's that far away from the
14 property line, from that centerline?

15 A. The tower's actually on the north side.
16 It -- I'm not sure if there's circles -- if that's
17 made to be the whole circumference of where the
18 fence is or --

19 Q. Okay. Let me -- let me ask you more
20 clearly then. I understood from your testimony
21 that 441 is very close, almost right next to that
22 north-south line of Section 15. Isn't that
23 correct?

24 A. Yes. Well, east-west line, isn't it?

25 Q. Well, all right. All right. Let's start

1 over. Where the number 1 is on 441 --

2 A. Yes.

3 Q. Okay.

4 -- it's my understanding from your prior
5 testimony looking at the maps and the photos, that
6 the turbine is almost precisely on where that 1 is
7 right along that line; isn't that correct?

8 MR. MAHLBERG: I'm going to object to the
9 extent that that misstates the prior testimony
10 where we were talking about the number 1 that was
11 on a different map altogether.

12 MR. BOUGHEY: I don't think it misstates.
13 We all know it's a different map.

14 Q. (MR. BOUGHEY CONTINUING) I'm asking as to
15 Exhibit 479, this was the --

16 JUDGE DAWSON: Your objection?

17 MR. BOUGHEY: I'm sorry.

18 MR. MAHLBERG: My objection is it assumes
19 facts not in evidence and it misstates the prior --
20 it misstates the prior testimony. It's a clarity
21 issue. Maybe I'm the only one, but the question
22 was about a number that appears on this map
23 relative to a number that appeared on a different
24 map.

25 JUDGE DAWSON: Right. Right. Okay. Your

1 point's made, but it's clear that he's talking
2 about this map and it only applies to this map
3 right here, where the 1 is on it. And it may not
4 match up with the previous map, but I don't think
5 it's the exact same map that he's talking about.
6 He's talking about a different map; correct?

7 MR. MAHLBERG: Absolutely.

8 JUDGE DAWSON: And that's your point.

9 MR. MAHLBERG: I was confused whether
10 we're talking about where the 1 was on the old map
11 versus where the 1 is on this map, what the
12 question was, but --

13 JUDGE DAWSON: I'm not confused.

14 MR. MAHLBERG: -- if I'm the only one
15 that's confused, that's on me.

16 JUDGE DAWSON: Okay. We're talking about
17 this map. Proceed.

18 MR. BOUGHEY: I'll try and rephrase, I
19 guess.

20 Q. (MR. BOUGHEY CONTINUING) The bottom line
21 is on the 4 -- 479, which was in the building
22 before they did any construction, this map, it
23 appears to me, places 441 substantially to the east
24 of where it ended up being; isn't that correct?

25 A. Yes.

1 Q. Thank you. As a matter of fact, 441 is so
2 close to your property line, that there's something
3 called overhang. What's that?

4 A. They have an overhang section in their
5 easement where the blade --

6 Q. I'm okay. I'm just asking is -- does --
7 does the blade of 441 ever intersect above your
8 property?

9 A. Yes.

10 Q. Is that called an overhang? Is that what
11 we call that? I don't even know.

12 A. Yes.

13 Q. Okay. Thank you. And I apologize. I
14 just have to make sure I'm using the right term
15 here. All right. I apologize. I only had one
16 other question and I can't remember now what it
17 was. One moment, please. Oh.

18 Were you -- in regards to the possibility
19 of using a definition that uses the word
20 "dwelling," are you -- or were you present at any
21 hearings for Mercer County relating to where they
22 were trying to figure out how to fix this problem
23 and define "residence" versus "dwelling"? Were you
24 present at any hearings in regards to that, or
25 planning commission meetings, anything like that?

1 A. Yes.

2 Q. Okay. And is it your understanding that
3 at least that county and the one next to it,
4 Washburn -- I don't --

5 A. McLean.

6 Q. Thank you.

7 Is it your understanding that two state's
8 attorneys in those -- based on going to that
9 meeting, that the two states's attorneys are
10 attempting to use the word "dwelling" so that this
11 problem doesn't exist in their counties?

12 A. Yes.

13 MR. BOUGHEY: Nothing further. Thank you.

14 JUDGE DAWSON: Do we want to do anything
15 with these -- these documents right now? Do you
16 want to --

17 MR. BOUGHEY: Yes, at this point I think I
18 need to offer all of them, and so I will do that
19 now. I would -- as in regard to the corrections --
20 let me see -- why don't we start with part 6 maybe.
21 Let me look. Why don't we just add the number,
22 whatever our last number is.

23 JUDGE DAWSON: Oh, yeah, I'll -- I'll make
24 up the numbers. Yeah. I'm okay with that.

25 MR. BOUGHEY: Let me see what our last --

1 JUDGE DAWSON: I was going to make them
2 6-1 and 6-2 and 7-1 and 7-2.

3 MR. BOUGHEY: Perfect. That would be
4 fine. So correction sheet would be 6-1.

5 JUDGE DAWSON: Okay.

6 MR. BOUGHEY: Again, that was a correction
7 sheet that was supplied to both attorneys after it
8 was done. I offer 6-1.

9 JUDGE DAWSON: So they're offered. Is
10 there any objection?

11 MR. MAHLBERG: No.

12 MR. BOUGHEY: As to the next exhibit --

13 JUDGE DAWSON: They are marked and
14 admitted.

15 MR. BOUGHEY: Thank you. I'm sorry.

16 JUDGE DAWSON: They're all marked and
17 admitted.

18 MR. BOUGHEY: I jumped the gun.

19 JUDGE DAWSON: If that -- or did I
20 misunderstand you, Mr. Mahlberg? I was speaking to
21 them all.

22 MR. MAHLBERG: I would have no objections
23 to any of them.

24 JUDGE DAWSON: Okay.

25 MR. BOUGHEY: Thank you.

1 JUDGE DAWSON: You may continue,
2 Mr. Boughey -- oh, not Mr. Boughey.

3 MR. BOUGHEY: I'm done.

4 JUDGE DAWSON: Mr. Johnson.

5 MR. BOUGHEY: Thank you.

6 MR. JOHNSON: I don't have any objections
7 either, Your Honor.

8 JUDGE DAWSON: Commissioner Fedorchak.

9 COMMISSIONER FEDORCHAK: I don't have any
10 other questions. Thank you.

11 JUDGE DAWSON: Commissioner Christmann.

12 MR. MAHLBERG: Sorry. And I don't want to
13 step in front of the commissioners, but I didn't
14 get a chance to do any recross.

15 JUDGE DAWSON: Yeah. You'll get it after
16 them.

17 MR. MAHLBERG: After -- okay. That
18 sounds --

19 JUDGE DAWSON: I'm just --

20 MR. MAHLBERG: -- great.

21 JUDGE DAWSON: -- going to let you jump
22 in.

23 MR. MAHLBERG: That sounds great. I'm not
24 going to step on that one.

25 COMMISSIONER CHRISTMANN: Can I just get

1 clarification of the description that we have for
2 these two maps, 478 and 479. Are those -- I don't
3 know where those came from.

4 MR. BOUGHEY: I can explain. They were --

5 JUDGE DAWSON: Would you like him to
6 explain?

7 MR. BOUGHEY: If I may.

8 COMMISSIONER CHRISTMANN: Whoever can
9 explain it to me, Your Honor.

10 JUDGE DAWSON: Okay.

11 MR. BOUGHEY: I can explain that very
12 quickly. On March 18, Attorney Mollie Smith,
13 cocounsel, emailed me and provided these two
14 documents to us stating that they inadvertently --
15 we -- they provided the wrong maps in response to
16 one of our interrogatories, Number 31, and so
17 that's where we got them.

18 (Audio distortion.)

19 MR. BOUGHEY: Whoever -- I don't know --
20 somebody needs to mute, I guess.

21 COMMISSIONER CHRISTMANN: So, Your Honor,
22 are these, then, supposedly things that were
23 presented at the hearing --

24 JUDGE DAWSON: No, they weren't --

25 COMMISSIONER CHRISTMANN: -- or that were

1 discussed with Mr. Kessler separately?

2 JUDGE DAWSON: They were presented to
3 Mr. Kessler at the New Salem meeting a week or two
4 afterwards, is --

5 COMMISSIONER CHRISTMANN: Okay. Thank
6 you.

7 JUDGE DAWSON: -- my understanding.

8 MR. BOUGHEY: Yes. And -- and again, I do
9 not in any way cast aspersions on Minnesota Power.
10 These things happen. They -- they discovered them
11 and got them to me as soon as they found them, to
12 my knowledge, and that's fine.

13 Does that answer your question, sir?

14 COMMISSIONER CHRISTMANN: It does. Thank
15 you.

16 JUDGE DAWSON: Commissioner Kroshus.

17 COMMISSIONER KROSHUS: Nothing, Your
18 Honor.

19 JUDGE DAWSON: I did skip you, but
20 Mr. Mahlberg.

21 MR. MAHLBERG: Well, and I'm going to be
22 really brief on that.

23 But to follow up on Commissioner
24 Christmann's question and be very precise about it,
25 these are a copy of maps that were in the

1 construction trailer, right, is -- is what they
2 were provided to with the response in the written
3 discovery responses?

4 MR. BOUGHEY: That is the question asked,
5 but what I was provided -- and so we assumed the
6 trailer, but frankly, until we had -- I hope that
7 some of your -- I'll put it this way: I hope that
8 some of your witnesses are going to be able to tell
9 us where these actually came from.

10 MR. MAHLBERG: But -- but we have told you
11 where they actually came from. In written
12 discovery responses it says, "The maps," which were
13 replaced with these maps, "were the ones displayed
14 at the project construction trailer." I don't want
15 to cause more confusion, but this does not say they
16 were presented at a meeting here or at a meeting
17 there. This says these maps were on a wall in the
18 construction trailer.

19 MR. BOUGHEY: Since this is the first time
20 I've seen them and we haven't had any -- any
21 supplemental answers or any testimony from any
22 witnesses as to where they came from, my guess is
23 we will find that out from some of your witnesses.
24 I am not willing to -- to somehow agree that these
25 were definitely the only place they were at is a

1 construction trailer when I don't know that to be
2 the case. And so, I guess, I would hope that
3 Minnesota Power will explain that through their
4 witnesses at some point.

5 MR. MAHLBERG: That -- that --

6 MR. BOUGHEY: I can't admit --

7 MR. MAHLBERG: That's fine, but all --

8 MR. BOUGHEY: I mean, I --

9 MR. MAHLBERG: -- all I'm trying to
10 clarify is the representation about where they came
11 from and when they were used and how we described
12 them when we provided them. That's all I'm saying.
13 If we want to talk with Minnesota Power witnesses,
14 they will -- they will talk with you about them.

15 MR. BOUGHEY: Well, all right.

16 JUDGE DAWSON: Well, there will be --
17 there will be testimony about them further to
18 explain what's in them, I'm sure, and --

19 MR. MAHLBERG: Okay.

20 JUDGE DAWSON: -- so we'll take you at
21 your face right now. I'll just say they were maps
22 in the construction trailer on the exhibit list,
23 and whatever information has been presented to the
24 Commission they'll consider related to these maps.

25 MR. MAHLBERG: Fine. And so --

1 MR. BOUGHEY: I would prefer, since we --
2 I can't stipulate that they were those -- that's
3 where they were at. All I can stipulate that in
4 response to a question --

5 JUDGE DAWSON: It's merely nominal. I
6 have to put some sort of description.

7 MR. BOUGHEY: All right. How about --

8 JUDGE DAWSON: It isn't evidentiary in any
9 way.

10 MR. BOUGHEY: Okay. Fine.

11 JUDGE DAWSON: It's just a -- it's just a
12 way of describing them.

13 MR. BOUGHEY: Okay. Fine.

14 JUDGE DAWSON: Mr. Mahlberg, any
15 questions?

16 MR. MAHLBERG: Just a couple.

17 **RE-CROSS-EXAMINATION**

18 **BY MR. MAHLBERG:**

19 Q. Mr. Kessler, you recall in discovery you
20 were asked to produce all the utility bills; right?

21 MR. BOUGHEY: I don't know -- where, sir?

22 MR. MAHLBERG: In the document production
23 requests.

24 MR. BOUGHEY: What number?

25 MR. MAHLBERG: Which -- I'll read it

1 verbatim.

2 MR. BOUGHEY: No. What number, sir? I
3 want to look at it.

4 MR. MAHLBERG: Number 5.

5 Q. (MR. MAHLBERG CONTINUING) "All documents
6 supporting any claim that Section" -- "that the
7 Section 15 building was used as a residence from
8 2009 through 2014, including but not limited to
9 utility bills." Right? You were asked for those?

10 A. I know we discussed it. I don't know if
11 we were --

12 Q. You -- you did not produce them in this
13 case; right?

14 MR. BOUGHEY: It said documents in his
15 possession, counsel.

16 THE WITNESS: Yeah, I don't recall anybody
17 asking directly for it.

18 Q. (MR. MAHLBERG CONTINUING) I can submit a
19 copy of the request as a late-filed, if it matters.
20 I'm just saying we did ask for those in discovery.
21 Do you recall that?

22 MR. BOUGHEY: And I --

23 JUDGE DAWSON: Well, no. He's answering
24 the question. Just let him --

25 MR. BOUGHEY: I object as a

1 mischaracterization of the documents, since he
2 hasn't told me the date of the document or the
3 location. In addition, I object because the reason
4 it's a mischaracterization is requests for
5 admissions for documents relates to items that
6 are -- that you have or are in your possession.
7 And, again, I think he says I can -- I can get
8 those. Whether he had them in his possession, you
9 know, I'll have to find his answer, which hasn't
10 been provided to me as to the -- the date. But
11 I -- I object as a mischaracterization of what was
12 requested by the company as it relates to Rule 26.

13 JUDGE DAWSON: You can answer the
14 question, if you remember it. Were you -- were you
15 personally requested to provide them and did you
16 provide them?

17 THE WITNESS: I did not provide anything
18 and I don't recall anybody saying that we want this
19 on record. I know it was talked about electrical
20 bills and like bills, you know, like a water bill
21 and whatever else was the examples. I'm not --
22 there was a lot of days that were -- were covered.
23 I have no problem producing it.

24 MR. BOUGHEY: And for the record, we will
25 get the ones requested by the Commission and

1 we'll -- wherever we have to go get them, we'll get
2 them.

3 JUDGE DAWSON: Mr. Mahlberg, any further
4 questions?

5 Q. (MR. MAHLBERG CONTINUING) The -- the only
6 limited further question, when you were talking
7 about the maps that you were looking at in the
8 meeting at New Salem after the Public Service
9 Commission hearing in September, do you know
10 whether this -- these two documents, which have
11 been marked now as 7-1 and 7-2, were the maps that
12 you were looking at that day?

13 MR. BOUGHEY: I'm sorry. Are they 6-3 and
14 6-4? Did I misunderstand what they're --

15 JUDGE DAWSON: They're 7-1 and 7-2.

16 MR. BOUGHEY: Thank you. I misheard.

17 THE WITNESS: They're similar. I can't
18 say that's the exact map. I mean, that's quite a
19 while ago.

20 Q. (MR. MAHLBERG CONTINUING) Okay. That
21 first meeting where you were at New Salem, where
22 were you when you were looking at maps? Were you
23 in the operations and maintenance building or in
24 the construction trailer?

25 A. You know, we started out in the operations

1 building and, like I say, I don't remember exactly
2 if Scott went and got the maps or if we went down
3 to the construction trailer, but either way, we
4 looked at the maps and that's where we come to the
5 conclusion, and my wife will touch on that about
6 how that conversation started.

7 Q. Are you saying that first meeting you were
8 in both the O&M building and the construction
9 trailer?

10 A. I'm not going to say I was in both. I
11 don't -- I don't recall that. We might have walked
12 across the street because it was, I don't know,
13 75 feet away, a hundred feet away. It was very
14 close. We might have walked over there and looked
15 at maps.

16 Q. Okay. But you were for sure in the O&M
17 building; not sure if you went to the construction
18 trailer?

19 A. Correct.

20 MR. MAHLBERG: Thank you. That was it.

21 JUDGE DAWSON: Are there any further
22 questions?

23 COMMISSIONER CHRISTMANN: No.

24 COMMISSIONER FEDORCHAK: No.

25 JUDGE DAWSON: Seeing no further

1 questions, you may step down.

2 THE WITNESS: Do I leave this book here?

3 JUDGE DAWSON: This would be a good time
4 for a break.

5 MR. BOUGHEY: Yeah, leave the book there.

6 JUDGE DAWSON: It's been an hour and
7 20 minutes. So we'll take a very short break, and
8 then you can call your next witness. Does that
9 make --

10 COMMISSIONER FEDORCHAK: At three o'clock?
11 Do you want to take till --

12 JUDGE DAWSON: Yeah. Very short break.
13 Three o'clock by that clock in the back of the
14 meeting room.

15 (Recessed at 2:54 p.m. and reconvened at
16 3:02 p.m.)

17 JUDGE DAWSON: We're back on the record,
18 and it's a little past 3 p.m.

19 And, Mr. Boughey, you may call your next
20 witness.

21 MR. BOUGHEY: Thank you, Your Honor. If
22 you would give us just a moment, we have somebody
23 who might need to go out of turn. It's someone
24 with the PSC staff, and we want to be able to get
25 him done today no matter what.

1 Mr. Mahlberg is checking with his
2 cocounsel to see if she's okay with doing him now
3 and so it'll take us just a moment.

4 COMMISSIONER FEDORCHAK: Judge, can we get
5 a time check, too, like, on witnesses? What -- how
6 much time we think we're estimating for each and,
7 you know, just like --

8 JUDGE DAWSON: How much time do you
9 estimate for your upcoming witnesses?

10 MR. BOUGHEY: Yeah, I apologize. I
11 provided that to counsel, but not to you. I
12 apologize.

13 I anticipate Jerry Lein, who will probably
14 be next, I'll have less than 15 minutes, probably
15 only 10, because there's only one area I'm going
16 into.

17 And then Ms. Kessler, I assume, only 10
18 minutes to 15 at max. Probably only 10. I think
19 everybody else is 10 minutes or less. I'm going to
20 try. Sometimes that means it's 15, but --

21 MR. MAHLBERG: You mean your --

22 MR. BOUGHEY: My witnesses.

23 MR. MAHLBERG: Your Kessler witnesses, not
24 your MP witnesses.

25 MR. BOUGHEY: Both Kesslers and -- well,

1 not -- the MP's, yeah, I'll probably -- we won't
2 get to MP -- we won't get to Minnesota Power today,
3 those witnesses. So I'm going to try and take
4 care -- I'm going to try and get done with the PSC
5 people and the -- the Kesslers so that all we have
6 left is Minnesota Power when we come back. That's
7 where I'm headed.

8 COMMISSIONER FEDORCHAK: I just have a
9 procedural question.

10 JUDGE DAWSON: Yes.

11 COMMISSIONER FEDORCHAK: Are the MP
12 witnesses different from the company's witnesses?
13 Because why can't they be done on cross? Why are
14 we hearing from them twice?

15 JUDGE DAWSON: We aren't going to hear
16 from them --

17 MR. BOUGHEY: We have fixed that.

18 COMMISSIONER FEDORCHAK: Okay.

19 MR. BOUGHEY: We fixed that. I apologize.
20 I'm bringing them in as the part that I need them
21 for my case, and then instead of having them come
22 back later, then Mr. Mahlberg is going to have his
23 way with them in regards to whatever he wants to go
24 into.

25 COMMISSIONER FEDORCHAK: Okay.

1 MR. BOUGHEY: And I'll have a chance to
2 ask any additional questions I have. So we're
3 going to take them all and be done with them.
4 They're not going to be called back twice. Does
5 that make sense?

6 COMMISSIONER FEDORCHAK: Mm-hmm.

7 JUDGE DAWSON: The order will be just
8 slightly different than you're used to.

9 COMMISSIONER FEDORCHAK: Sure. Okay.

10 COMMISSIONER CHRISTMANN: And, Your Honor,
11 another procedural question.

12 JUDGE DAWSON: Yep.

13 COMMISSIONER CHRISTMANN: When we're
14 talking about at the end of today, this is only
15 scheduled for one day.

16 JUDGE DAWSON: Mm-hmm.

17 COMMISSIONER CHRISTMANN: So is the end of
18 today when we are done?

19 MR. BOUGHEY: No.

20 COMMISSIONER CHRISTMANN: How late do we
21 plan on going? I don't know what other day there
22 is.

23 MR. BOUGHEY: Excuse me. It was scheduled
24 for two days. We were just informed this morning
25 by Mr. Johnson that we were only going to get one

1 day today, but -- and if we don't finish, then
2 we'll go into a second day whenever that may be.
3 But this was always scheduled for two days, to my
4 knowledge, the 25th and 26th.

5 MR. JOHNSON: Notice of hearing says --

6 JUDGE DAWSON: And so what time does the
7 Commission --

8 COMMISSIONER FEDORCHAK: What does the
9 notice of hearing say?

10 MR. JOHNSON: The notice of hearing says
11 today at ten.

12 MR. BOUGHEY: Just starting today at ten,
13 but we've always scheduled it for two days, and
14 I've had it on my calendar for both the 25th and
15 26th.

16 MR. JOHNSON: We scheduled it at the
17 Commission meeting for one day.

18 MR. BOUGHEY: Well, we -- we have had
19 since --

20 JUDGE DAWSON: Well --

21 MR. BOUGHEY: Oh, well.

22 JUDGE DAWSON: Let's make every effort to
23 see if we can do it today. I think that it is a
24 possibility, perhaps. We'll stay later and see how
25 it goes.

1 MR. BOUGHEY: I will --

2 JUDGE DAWSON: And we'll deal with this
3 issue if we have to deal with it.

4 MR. BOUGHEY: -- severely abbreviate as
5 much as possible.

6 JUDGE DAWSON: Okay. Mr. Mahlberg.

7 MR. BOUGHEY: Actually, I'm -- I'm calling
8 the next witness.

9 JUDGE DAWSON: No. I'm asking -- he was
10 going to answer whether it's okay to have Mr. Lein
11 at this time. Is that okay?

12 MR. MAHLBERG: Yes. Thank you.

13 JUDGE DAWSON: Okay. Then you can call
14 Mr. Lein.

15 MR. BOUGHEY: We call Jerry Lein. Thank
16 you.

17 JUDGE DAWSON: Mr. Lein, I'm required by
18 law to tell you the penalties for perjury in this
19 state. Perjury is a Class C felony punishable by a
20 fine of up to \$10,000 or a term of imprisonment of
21 up to five years, or both.

22 Do you understand what perjury is and the
23 penalties for it?

24 THE WITNESS: Yes.

25 (Witness sworn.)

1 JUDGE DAWSON: Mr. Boughey, you may begin.

2 MR. BOUGHEY: Thank you, Your Honor.

3 JERRY LEIN,

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

6 DIRECT EXAMINATION

7 BY MR. BOUGHEY:

8 Q. Hi.

9 A. Hi.

10 Q. Would you please state your full name for
11 the record. Yeah, you'll have to bring that down a
12 little.

13 A. Jerry Lein.

14 Q. And where are you employed?

15 A. Public Service Commission.

16 Q. How long have you been employed with the
17 Public Service Commission?

18 A. 23 years.

19 Q. Mr. Lein, I only have one area of inquiry,
20 and we've already discussed this in your prior
21 deposition, but I can't put your deposition in, so
22 I have to ask you. Do you recall being at the
23 public hearing in regards to the -- this particular
24 project?

25 A. Yes.

1 Q. Okay. And do you recall at some point
2 during the hearing, either during a break or lunch,
3 I don't know which, but the Kesslers going up and
4 talking with anybody from Minnesota Power?

5 A. Kind of, I --

6 Q. Okay. Very good. And then do you also
7 recall the Minnesota Power person walking out and
8 then the Kesslers going out to an area you couldn't
9 see where it appeared they might be continuing the
10 discussion?

11 A. Again, kind of.

12 Q. All right. Very good. But you were not
13 part of that discussion; didn't hear what was said.
14 You're just able to confirm that the Kesslers did
15 talk to somebody from Minnesota Power during one of
16 the breaks or during the lunch hour; is that
17 correct?

18 A. Yes, I believe so.

19 MR. BOUGHEY: Okay. I have nothing
20 further. That's all I needed. Thank you. He
21 might have some questions for you.

22 JUDGE DAWSON: Mr. Mahlberg.

23 MR. MAHLBERG: Actually, Mrs. Smith --

24 JUDGE DAWSON: Oh.

25 MR. MAHLBERG: -- will chime in from above

1 for this.

2 JUDGE DAWSON: Ms. Smith.

3 MS. SMITH: Yes. Hang on just a second.

4 I'll make sure you can actually see me as well.

5 Can you hear me?

6 JUDGE DAWSON: Yes.

7 MS. SMITH: All right.

8 **CROSS-EXAMINATION**

9 **BY MS. SMITH:**

10 Q. So good afternoon, Mr. Lein.

11 A. Good afternoon, Ms. Smith.

12 Q. So I just want to talk a little bit about
13 the rules that were in place at the time that the
14 project was permitted. Your understanding is that
15 there was no setback from occupied residences at
16 that time; is that correct?

17 A. That's correct.

18 Q. And so the only regulation that would have
19 governed setbacks would have been the sound setback
20 for 50 dba and a 500-foot inhabited rural
21 residence; is that correct?

22 A. Yes. I'm not sure if the 500-foot
23 applies.

24 Q. Okay. As far as the -- so assuming that
25 doesn't apply, there were no setbacks in place at

1 that point?

2 A. Correct.

3 Q. And it was a voluntary commitment by
4 Minnesota Power to apply the 1400-foot setback?

5 A. Yes. It was mentioned in the order, so I
6 don't know if that makes it not voluntary anymore.

7 Q. As far as it wasn't a rule that was
8 required at that time?

9 A. Correct.

10 Q. And the same with the shadow flicker
11 requirements, there isn't a state or a PSC rule or
12 statute governing shadow flicker; correct?

13 A. Correct.

14 Q. And we were just talking about you
15 attending the public hearing on September 13 -- or
16 September 23, 2013; correct?

17 A. I don't remember the date for sure, but,
18 yes, I did attend.

19 Q. And you recall Mr. Kessler testifying
20 during that hearing?

21 A. He gave public testimony.

22 Q. And he did not, to your recollection,
23 testify regarding any concerns about specific
24 turbine placement, did he?

25 A. That's correct.

1 Q. And he didn't reference Section 15;
2 correct?

3 A. I don't believe so.

4 Q. When you were at the hearing that day, do
5 you recall anyone from Minnesota Power blowing up
6 at the Kesslers?

7 A. No.

8 Q. And do you think given the size of the
9 room, that's something that you would have noticed?

10 A. Yes.

11 Q. And after the project was constructed, you
12 had a number of exchanges with the Kesslers
13 regarding reclamation issues in the 2015-2016 time
14 frame; is that correct?

15 A. Yes. I don't remember the exact time
16 frames, but yes.

17 Q. Okay. And if you'll look, and hopefully
18 it's sitting there in front of you, but there
19 should be an Exhibit 7, MP Exhibit 7. So there
20 should be a binder and you should be able to flip
21 to MP Exhibit 7. And just let me know when you
22 have it.

23 A. Yes, we have it.

24 Q. All right. And this is dated March 1,
25 2017. Was this first half of this document written

1 by you and the second half, the addendum, written
2 by Mr. Schuh?

3 A. Yes.

4 Q. And in this memo, you were writing down
5 information about your interactions with the
6 Kesslers and Minnesota Power regarding reclamation
7 issues; correct?

8 A. Yes.

9 Q. And if you look at the third paragraph on
10 the first page, it starts with, "On January 5,
11 2016, I received an update from MN Power that it
12 had been working with Mr. Kessler since
13 construction of Bison 4 began and continues to work
14 to resolve the issues."

15 Do you see that?

16 A. Yes.

17 Q. And when you're talking about issues
18 there, were you talking about reclamation issues?

19 A. Yes.

20 Q. And if you look down, fourth paragraph, it
21 says, "On February 6, 2017, MN Power filed a copy
22 of a proposed mitigation agreement/plan dated
23 December 21, 2016, which Mr. Kessler refuses to
24 sign."

25 Do you see that?

1 A. Yes.

2 Q. Was that also about reclamation?

3 A. Yes.

4 Q. And so based on your -- what you've
5 written here, is it fair to say that you understood
6 that there had been multiple discussions between
7 Minnesota Power and Mr. Kessler since project
8 construction began?

9 A. Yes.

10 Q. And is it also fair to say that you had
11 had, by this point, multiple contacts with the
12 Kesslers and Minnesota Power up through the end of
13 2016?

14 A. Yes. Again, on the dates, you know, I'm a
15 little sketchy, but yes.

16 Q. Sure. It is a long time ago.

17 Based on your memorandum, through the end
18 of '16, the Kesslers had not raised a concern about
19 Turbine 441 or the Section 15 structure; is that
20 correct?

21 A. That's my memory.

22 Q. And if they had, it's likely you would
23 have put that into your memorandum; correct?

24 A. Yes.

25 Q. If you'll look at the first paragraph on

1 the second page, it says, "Also, in February 2017,
2 Commission Attorney John Schuh visited with
3 Mr. Kessler by telephone following up on issues
4 raised by Mr. Kessler. Mr. Kessler raises a new
5 issue with noise from a turbine that is too close
6 to his son's residence."

7 Do you see that?

8 A. Yes. And that's my memory.

9 Q. And so that --

10 I'm sorry. Go ahead, Jerry.

11 A. I said that is my memory here that --

12 Q. That that was the first time they had
13 raised that issue of the Section 15 structure and
14 the turbine?

15 A. Yes.

16 Q. And so based on your memorandum, despite
17 multiple contacts between the Kesslers,
18 February 2017 was the first time that a turbine
19 concern was raised by the Kesslers; is that
20 correct?

21 A. Yes.

22 Q. Later in 2017, in April, it's my
23 understanding you and Mr. Schuh met with the
24 Kesslers and Minnesota Power representatives at the
25 Kesslers' property within the project; is that

1 right?

2 A. Yes.

3 Q. And in your deposition testimony, my
4 understanding is you testified that you noticed a
5 lot of recent improvements to the Section 15
6 structure during that visit; is that accurate?

7 A. Yes. It looked recent.

8 Q. And during that visit, the Kesslers
9 asserted they had told Minnesota Power before the
10 turbine was sited they didn't want turbines near
11 the farmhouse on Section 15 because their son was
12 planning to live there; correct?

13 A. Yes.

14 Q. Minnesota Power's representatives did not
15 agree with the Kesslers assertion, did they?

16 A. No.

17 Q. In their view, they did not -- they were
18 not told those things in advance of construction;
19 is that your understanding?

20 MR. BOUGHEY: Your Honor -- excuse me.
21 Your Honor, the limited portion of what I inquired
22 would be subject to cross-examination. As soon
23 as --

24 MS. SMITH: No. Excuse me.

25 MR. BOUGHEY: If I may --

1 MS. SMITH: We're not re-calling Mr. Lein
2 either, so there's no sense in not just asking him
3 all my questions now.

4 JUDGE DAWSON: Mr. Boughey.

5 MR. BOUGHEY: Thank you. Your Honor, I
6 object to the leading method because they can have
7 cross-examination as to the limited area of which I
8 brought him in as my witness. As a courtesy to
9 Minnesota Power I've said, "Fine, call him now if
10 you'd like." But he is now their witness, and
11 they're getting everything in so far by leading
12 questions. And if they have direct questions and
13 would provide me page number and -- as to their
14 book or my book as to what they're asking him to
15 testify to, that would be nice, but I object to
16 leading questions.

17 This is their direct exam after they've
18 gone beyond the scope of what I asked questions on.
19 I allowed it as long as I could because I know
20 we're all trying to rush, but I feel I've been
21 taken advantage of, and I need to object at this
22 time and request that direct inquiry be made not by
23 leading questions and basically testifying for the
24 witness.

25 Thank you, Your Honor.

1 JUDGE DAWSON: Okay. Ms. Smith, anything
2 to say?

3 MS. SMITH: However you want to do it. I
4 will ask him the direct question if you would like,
5 Your Honor.

6 JUDGE DAWSON: Okay. You were running a
7 lot of leading questions in a row there, so please
8 ask nonleading questions.

9 MS. SMITH: Sure.

10 Q. (MS. SMITH CONTINUING) So at some point
11 in the conversation with -- between Minnesota Power
12 and the Kesslers, did Mr. Kessler get upset and
13 swear multiple times?

14 A. Yes.

15 Q. And did the Minnesota Power
16 representatives get upset in return?

17 A. No.

18 Q. And in your experience, is Minnesota Power
19 a responsive company to landowner concerns?

20 A. Yes.

21 Q. And throughout your years of involvement
22 in dealing with the Kessler complaints regarding
23 Bison 4, did you understand that Minnesota Power
24 was trying to resolve the issues with Mr. Kessler?

25 A. Yes.

1 Q. And did you testify in your deposition
2 that Mr. Kessler's not easy to please --

3 MR. BOUGHEY: Objection.

4 Q. (MS. SMITH CONTINUING) -- and you believe
5 that --

6 MR. BOUGHEY: Sorry. I thought she was
7 done. Don't answer.

8 MS. SMITH: Sorry. I didn't get the
9 question out.

10 MR. BOUGHEY: Go ahead and finish your
11 question and I'll object. Thank you.

12 JUDGE DAWSON: Your question, Ms. Smith.

13 MS. SMITH: Well, I'll save you some time
14 if you want to go to page 48 of the deposition
15 testimony --

16 MR. BOUGHEY: Well --

17 MS. SMITH: -- of Mr. Lein.

18 MR. BOUGHEY: We don't get testimony
19 through -- objection. Your Honor --

20 MS. SMITH: I'm just sending you to the
21 page so that I don't have to restate it.

22 MR. BOUGHEY: I don't believe -- Your
23 Honor, I object --

24 JUDGE DAWSON: Well, let's get the
25 question from Ms. Smith. What's your question? I

1 don't even know what your question is.

2 MS. SMITH: Sure.

3 Q. (MS. SMITH CONTINUING) Mr. Lein, during
4 your deposition, did you testify --

5 MR. BOUGHEY: Objection.

6 Q. (MS. SMITH CONTINUING) -- that
7 Mr. Kessler --

8 MR. BOUGHEY: Objection.

9 JUDGE DAWSON: Yeah. I under -- I --

10 MR. BOUGHEY: I'm ready to --

11 MS. SMITH: I haven't asked a question --

12 JUDGE DAWSON: I don't even know --

13 MS. SMITH: -- so I'm not sure --

14 JUDGE DAWSON: I want her to ask the
15 question so I know what the question is.

16 MR. BOUGHEY: All right. But my obje --

17 JUDGE DAWSON: Just let her finish. He's
18 not going to answer the question.

19 MR. BOUGHEY: Okay.

20 JUDGE DAWSON: Just want to hear it.

21 Q. (MS. SMITH CONTINUING) Mr. Lein, during
22 your deposition, did you testify that Mr. Kessler
23 is not easy to please and you didn't think that
24 Minnesota Power would ever be able to make him
25 happy no matter what they did?

1 JUDGE DAWSON: What's your objection?

2 MR. BOUGHEY: I have several. The first
3 is that you don't get testimony from a deposition.
4 If she wants to ask him what he thought, fine, and
5 if you want -- and if she wants to go into some
6 memorandum that he created that's part of the
7 record, fine. But we don't do testimony by
8 depositions or I would have already put in my
9 clients' depositions.

10 So number one is, objection, that is
11 improper testimony as to whether what he said in a
12 deposition, except as it relates to impeachment,
13 and she's not impeaching him. She's attempting to
14 get in the testimony through the deposition as
15 opposed to asking him a direct question. That's
16 number one.

17 Number two --

18 MS. SMITH: How about I just rephrase the
19 question and then we don't have to worry about the
20 objection.

21 MR. BOUGHEY: Well, there's more objection
22 coming, counsel. It's not just that.

23 JUDGE DAWSON: State your objections.

24 MR. BOUGHEY: Thank you, Your Honor.

25 The other is speculation, lack of

1 foundation. And in regards to -- and asking for
2 opinion testimony, which I don't think is relevant
3 or appropriate in this situation.

4 And so for all those reasons, I object to
5 the question that has been posed.

6 JUDGE DAWSON: Okay. Can you rephrase
7 your question so it doesn't run afoul of the
8 objections?

9 MS. SMITH: I will try, Your Honor.

10 Q. (MS. SMITH CONTINUING) Mr. Lein, was it
11 your -- is it your opinion that Mr. Kessler was
12 not -- is not an easy person to please?

13 MR. BOUGHEY: Again, objection. You know
14 what, forget it. I'll let it in and we can respond
15 in rebuttal.

16 JUDGE DAWSON: You can answer the
17 question.

18 THE WITNESS: Yes. He was very particular
19 about his land.

20 Q. (MS. SMITH CONTINUING) And did you think
21 that Minnesota Power could do anything that would
22 address the issues, including the Section 15
23 structure issues that have been raised?

24 MR. BOUGHEY: Objection. Leading.
25 Speculation. Argumentative.

1 JUDGE DAWSON: Ms. Smith.

2 MS. SMITH: I'm simply asking for
3 Mr. Lein's view. He was the one who worked with
4 both Minnesota Power and Mr. Kessler throughout
5 this time. I think his view is relevant and his
6 opinion is relevant.

7 JUDGE DAWSON: You can answer the
8 question, but limit it to your -- I don't want to
9 get into settlement. I don't want to get into what
10 you think should have been done. I want you to
11 answer it as to what legally could have been done
12 under the Commission rules and statutes. So I want
13 you to limit your answer.

14 THE WITNESS: So -- so with that, could
15 you say it again, Mollie?

16 MS. SMITH: I will try.

17 Q. (MS. SMITH CONTINUING) So did you -- did
18 you believe that Minnesota Power could do anything
19 that would appease Mr. Kessler, including -- as far
20 as the Section 15 property and these issues with
21 the turbine?

22 MR. BOUGHEY: Same objection.

23 JUDGE DAWSON: I'm overruling the
24 objection, but limit it to not your personal
25 opinion about whether the PSC had jurisdiction.

1 THE WITNESS: Well, the PSC has
2 jurisdiction to see that the property is returned
3 to whatever condition is -- the Commission is happy
4 with.

5 Q. (MS. SMITH CONTINUING) Okay. If you'll
6 look at what -- I believe it is 334. So this would
7 be in the -- I believe there's probably a Kessler
8 exhibit binder up at your desk. I'm hoping there
9 is.

10 MR. MAHLBERG: I'll get it.

11 THE WITNESS: There's one left from last
12 time here.

13 Q. (MS. SMITH CONTINUING) It's a ways into
14 it. I don't have a binder, so I know at the bottom
15 it says 334 on it, and it's your May 15, 2017,
16 memo. And you'll have to just tell me when you're
17 there. I can't see it.

18 A. I have it.

19 Q. Okay. So did you write this memorandum
20 following the site visit to the Kessler property in
21 2017?

22 A. Yes.

23 Q. And if you'll look at what's numbered
24 paragraph 4, the second sentence says, "The
25 residence was not occupied when Bison 4 was sited

1 and constructed."

2 Do you see that?

3 A. Yes.

4 Q. And you're referring to the section -- is
5 that referring to the Section 15 structure?

6 A. Yes.

7 Q. And what did you base that conclusion on
8 that it was not an occupied residence?

9 MR. BOUGHEY: Objection. Lack of
10 foundation. Speculation.

11 JUDGE DAWSON: I think the witness --

12 MS. SMITH: This is Mr. -- I'm sorry. Go
13 ahead, judge.

14 JUDGE DAWSON: No. You can answer,
15 Ms. Smith.

16 MS. SMITH: I was just going to say this
17 is a statement that was in the file that Mr. Lein
18 wrote and it goes to the heart of the issue.

19 JUDGE DAWSON: You may testify to your
20 personal knowledge.

21 MR. BOUGHEY: May I inquire for purposes
22 of laying the foundation for an objection?

23 JUDGE DAWSON: Okay.

24 MR. BOUGHEY: Mr. Lein, in regards to
25 whether or not the residence or home was occupied,

1 did you go into the home and check to see if anyone
2 was there?

3 THE WITNESS: No.

4 MR. BOUGHEY: Did you at any time go up to
5 the house itself and look in or do any --

6 THE WITNESS: No.

7 MR. BOUGHEY: -- investigation of your own
8 in reference to the conclusion you reached in
9 paragraph 4?

10 THE WITNESS: No.

11 MR. BOUGHEY: Okay. In regards to the
12 term "occupied" or "unoccupied" residence, is that
13 term in any way defined, to your knowledge, by
14 rule, regulation or statute?

15 THE WITNESS: No.

16 MR. BOUGHEY: In regards to your reference
17 in paragraph 4 as to the word "occupied," what
18 definition, then, are you using in regards to this
19 particular paragraph?

20 THE WITNESS: Just a common -- "occupied"
21 means --

22 MR. BOUGHEY: Okay. Well, then let's find
23 out what common occupied is. If somebody goes
24 south for the winter and they leave their house
25 un -- they're not there for four months, is that an

1 occupied home?

2 THE WITNESS: Not at that time, I guess.

3 MR. BOUGHEY: Is there anyone at your home
4 now, by chance, where you live?

5 THE WITNESS: Probably.

6 MR. BOUGHEY: Okay. If at any time you
7 and your family leave the home for the night, is
8 that house occupied?

9 THE WITNESS: Yes.

10 MR. BOUGHEY: Okay. If you decide to use
11 that house as a -- I'm doing this -- trying to
12 figure out common definitions so I can figure out
13 what you meant here. If somebody has a house that
14 has water, electricity, television and is used on
15 an occasional basis for Super Bowl parties and is
16 used as -- in conjunction with their occupation as
17 a rancher on a regular or even an occasional basis,
18 in your opinion, is that -- would that --

19 MS. SMITH: Your Honor --

20 MR. BOUGHEY: -- house be occupied?

21 MS. SMITH: -- I don't believe this is
22 laying the foundation anymore. I believe it is
23 seeking testimony.

24 JUDGE DAWSON: Yeah, I --

25 MR. BOUGHEY: Well, I can tell you I'm

1 going to go to the -- to the issue now. Since we
2 do not have any idea what he meant by "occupied"
3 other than common, then the conclusion is either --
4 is speculation and is not based on any definition
5 that the Public Service Commission has yet
6 determined and, therefore, his opinion --

7 JUDGE DAWSON: I'm going to sustain your
8 objection.

9 MR. BOUGHEY: Okay.

10 JUDGE DAWSON: Ask him a question that
11 doesn't use the word "occupied" or ask him what
12 he -- his personal observations were.

13 Q. (MS. SMITH CONTINUING) I -- when you made
14 a determination in your memorandum that is in front
15 of you from May 21, 2017, did you make that
16 determination based on information that was
17 provided by the Kesslers and Minnesota Power?

18 MR. BOUGHEY: Objection. She's not doing
19 what the court ordered. It was what was the basis
20 of your information. Not hearsay --

21 MS. SMITH: I did not --

22 JUDGE DAWSON: Well --

23 MR. BOUGHEY: -- but what was the basis of
24 his personal information.

25 JUDGE DAWSON: Ms. Smith.

1 Q. (MS. SMITH CONTINUING) Did you base --

2 MS. SMITH: I'm sorry. Go ahead. It's
3 hard for me because I can't see you.

4 JUDGE DAWSON: No. Ms. Smith, did you
5 have something you wanted to add?

6 MS. SMITH: I was simply asking him what
7 he made his statements based upon.

8 JUDGE DAWSON: I'll allow the question.

9 THE WITNESS: You know, I don't remember
10 exactly where I got that, but I was under the
11 impression that nobody lived there when the thing
12 was built.

13 Q. (MS. SMITH CONTINUING) And so because
14 nobody lived there when the -- when the turbine was
15 built, that is how you came to your conclusion?

16 A. That, and that it didn't look like it was
17 capable of having anybody live in it when I was
18 there.

19 Q. And when you were there, what was it that
20 you saw that made you think it didn't look capable
21 of being lived in?

22 MR. BOUGHEY: Objection. Lack of
23 foundation as to how close he was to it, whether he
24 had the opportunity to actually observe --

25 MS. SMITH: You can cross --

1 MR. BOUGHEY: Counsel, I get to make an
2 objection and then the judge will ask you if you
3 want to respond. I believe that's how it works.

4 JUDGE DAWSON: Mr. Boughey.

5 MR. BOUGHEY: Your Honor, I object. Lack
6 of foundation. There is insufficient information
7 to show whether he's in a position to reach any of
8 the conclusions that she's asking. She's asking
9 for conclusions instead of following the judge's
10 direction, which was what did you actually observe,
11 your five senses, as to this issue.

12 JUDGE DAWSON: Well, I think she got
13 there, so I'm going to overrule that because she
14 started with the conclusion as working backwards,
15 but answer the question on what you saw.

16 MS. SMITH: I'll be more precise, Your
17 Honor, in my questions.

18 JUDGE DAWSON: Thank you.

19 Q. (MS. SMITH CONTINUING) Mr. Lein, were you
20 on the Section 15 property in April 2017?

21 A. Yes.

22 Q. And when you were on the Section 15
23 property, were you -- did you go near the Section
24 15 structure that is at issue here?

25 A. Yes.

1 Q. How close were you to it?

2 A. Hundred feet, maybe, 200 feet, something
3 like that.

4 Q. Could you see the house from where you
5 were standing?

6 A. Yes.

7 Q. The farmhouse?

8 A. Yes.

9 Q. I'm sorry. I cut you off.

10 And I think you said yes. I apologize.

11 A. I did. I said yes.

12 Q. Okay. And what did you see from your
13 vantage point?

14 A. I noticed there were some improvements on
15 it. If I'm remembering this right, it looked like
16 the front door had been replaced and I think maybe
17 the roof had some work done. I didn't really
18 notice much other than that. It had been -- it had
19 been run down and it had been -- they were working
20 on it.

21 Q. And your testimony earlier was that it
22 didn't look like it could be lived in. Can you be
23 more explicit about what you mean? What was run
24 down? What made you think it couldn't be lived in?

25 A. Well, I didn't say it couldn't be lived

1 in, but --

2 Q. Or wasn't. Excuse me. I misstated it.

3 A. Yeah. I had the impression that it wasn't
4 being lived in, but I could have been wrong at the
5 time, because I think I remember a dog being out
6 there, and, like I said, the door had been done.
7 But whether or not it was -- my statement in the
8 book here says that it was not occupied at the time
9 when it was sited and constructed, and that was the
10 feeling that I had.

11 Q. As a staff analyst working on siting
12 applications, do you provide recommendations to the
13 Commission?

14 A. Yes.

15 Q. Do those recommendations include whether
16 an applicant's project meets applicable siting
17 requirements?

18 A. Yes.

19 Q. And when you are applying siting
20 requirements, are you applying them at the time of
21 rendering the determination on the application?

22 A. Yes.

23 MR. BOUGHEY: Objection. Asking for a
24 conclusion which is left to the Public Service
25 Commission. They have not yet decided --

1 MS. SMITH: No. I'm asking -- I'm sorry.
2 If I came that way, I'm asking for his
3 recommendation, what his recommendation is to the
4 Commission.

5 MR. BOUGHEY: Well, I think the Commission
6 is going to make its decision as to what time
7 applies and what an occupied residence is. Since
8 there's no regulation on it, I -- I guess I'd say
9 lack of foundation and asking for the -- for what
10 the Public Service Commission is going to do. I
11 don't know how else to explain that it doesn't make
12 sense to -- for that to --

13 JUDGE DAWSON: Do I understand your
14 question to be he's made a recommendation to the
15 Commission already?

16 MS. SMITH: No, Your Honor. I'm asking
17 him when he makes recommendations --

18 JUDGE DAWSON: Oh.

19 MS. SMITH: -- on a siting application,
20 is --

21 JUDGE DAWSON: You can ask the question.

22 MS. SMITH: -- he looking at -- okay.

23 Thank you.

24 Q. (MS. SMITH CONTINUING) Mr. Lein, when
25 you're making recommendations to the Commission

1 regarding compliance with siting requirements, are
2 you looking at the time that the decision needs to
3 be made?

4 A. Yes.

5 Q. And in your experience, would you
6 recommend -- you don't recommend based on
7 retroactively applying new standards?

8 A. That's correct.

9 MS. SMITH: I have no further questions.

10 JUDGE DAWSON: Mr. Johnson.

11 MR. JOHNSON: I don't have any questions
12 for this witness, Your Honor.

13 JUDGE DAWSON: Ms. Fedorchak --
14 Commissioner Fedorchak.

15 COMMISSIONER FEDORCHAK: Thank you, Judge.

16 **EXAMINATION**

17 **BY COMMISSIONER FEDORCHAK:**

18 Q. Thanks, Jerry. So when -- when a company
19 agrees to setbacks in an order, what does that
20 mean?

21 A. I guess if they violate the setback, it
22 could be interpreted that they violate the order.

23 Q. Okay. And in this order -- I don't have
24 it in front of me. I haven't dug it out of the
25 docket, but tell me what your understanding is in

1 terms of the -- what the order says about setbacks,
2 what the company agreed to.

3 A. From memory here, I think it said that the
4 applicant agreed to a setback of 1400 feet.

5 Q. From what?

6 A. From occupied residences.

7 Q. Occupied residences. Okay.

8 Okay. I want to talk a little bit about
9 the maps. I was at this hearing and I do remember
10 it being pretty full of people, and I listened
11 to -- I looked at my opening comments and I
12 commented about the full room, so I know there was
13 a lot of people there. Is it your recollection
14 that that's when the maps first became available,
15 that day at the hearing?

16 A. I'd say yes. I don't know if they were --
17 we didn't have them before then, I don't think.
18 I'd have to go back in the record and look, though.

19 Q. Mm-hmm. And is that a good practice?
20 Does that work very well for people to see the
21 turbine locations on a map the day of the hearing?

22 A. No.

23 Q. People who are impacted.

24 A. It would be better to have them out
25 sooner.

1 Q. Have we changed that?

2 A. Yes, I believe we're looking at ten days
3 now.

4 Q. Okay. So --

5 A. Or is it 30 days? Maybe it's 30. We've
6 changed it a couple times.

7 Q. Yeah. It's -- it's definitely been an
8 issue that we've been working on because it is
9 difficult for landowners to see anything about the
10 project for the first time at the public hearing.

11 The -- the turbine setback -- I mean, I
12 look at the record from the hearing and see that
13 Mr. Kessler made comments about locations of roads
14 and turbines. He did specifically say turbines in
15 a list of things at the -- in the transcript from
16 the hearing.

17 So what do you make of the gap in time
18 between your, you know, noting in the record of
19 your memos and discussions with the Kesslers,
20 recollecting your discussions with Kesslers, and
21 the fact that you didn't include the issue on the
22 turbine, which they feel like they talked about,
23 you know, well in advance of the hearing with the
24 company, at the hearing, and after the hearing?

25 A. I think there was some discussions going

1 on with the company and -- and the Kesslers. I
2 don't know any more than that.

3 Q. Okay. So is it -- I mean, is -- is it
4 reasonable for us to believe that the first time
5 the company heard about this turbine issue was in
6 2017 after you guys talked to them about it?

7 A. I can't say on that. Yeah, I guess I
8 can't really say --

9 Q. Okay.

10 A. -- if they brought it up further.

11 Q. That's fine. I mean, you can only say
12 what you've got, what you've been part of, so --
13 let's see here.

14 COMMISSIONER FEDORCHAK: Okay. I think
15 that's all for now, Jerry. Thank you.

16 THE WITNESS: Thanks.

17 JUDGE DAWSON: Commissioner Christmann.

18 **EXAMINATION**

19 **BY COMMISSIONER CHRISTMANN:**

20 Q. Jerry, would you be surprised if there
21 were people at the hearing that didn't sign the --
22 the sign-up sheet?

23 A. No.

24 Q. That's pretty common --

25 A. Yes.

1 Q. -- that people don't do that; is that
2 correct?

3 A. Yes.

4 Q. And you've done many -- well, I'll try and
5 put a number on it. In the last eight years since
6 I've been here, would you think that we've probably
7 done at least 15 to 20 wind farm hearings?

8 A. That sounds right.

9 Q. And you've been at most of them?

10 A. Yes.

11 Q. And it's not surprising to you that there
12 could have been people there that didn't sign in?

13 A. Yes.

14 Q. And when there's something in the order,
15 is it any less meaningful if it's not a part of the
16 Century Code or the Administrative Rules?

17 A. No.

18 COMMISSIONER CHRISTMANN: Okay. No other
19 questions. Thank you.

20 JUDGE DAWSON: Commissioner Kroshus.

21 **EXAMINATION**

22 **BY COMMISSIONER KROSHUS:**

23 Q. Good afternoon, Jerry. I'm going to ask
24 you the same question. It was, I believe,
25 repeated, but the same question I asked earlier to

1 Mr. Kessler. Was the sign-up sheet an accurate
2 representation of who was at the hearing?

3 A. Well, to the extent that there might have
4 been somebody there that didn't sign up, if you
5 assume that everybody signed it, then yes.

6 Q. Do you believe there were more than two
7 landowners present?

8 A. Yes.

9 Q. Significantly more than two or possibly
10 three?

11 A. There was a lot of people there, so I'd
12 say that there should have been a lot of them that
13 owned land.

14 Q. Okay. Now, I wasn't on the Commission at
15 the time so I wasn't at the hearing, so this is
16 just more for my own background. It seems when I
17 read your testimony, you were aware that there was
18 a discrepancy, a difference of opinion between the
19 Kesslers and Minnesota Power because, I think -- I
20 believe you had referenced that you knew that there
21 was going to be a meeting off the record occurring
22 in the hallway, something to that effect?

23 A. They were working out something that we
24 weren't aware of.

25 Q. Okay. So you -- you didn't have an

1 inkling on what that might be?

2 A. No.

3 Q. Okay. On the -- one of the main points,
4 of course, is whether or not it was an occupied
5 residence or not an occupied residence. What was
6 the criteria the Commission used to determine which
7 structures, dwellings were occupied at the time and
8 which weren't?

9 A. I don't know if we ever had a criteria.
10 In my mind, if somebody lived in it, it was
11 occupied.

12 Q. Okay. So when you were out in 2017, you
13 indicated your impression was it wasn't occupied?

14 A. At that time, it may have been occupied.
15 There had been some work done to it and, like I
16 say, I think I remember a dog that belonged there.

17 Q. How about prior to that time?

18 A. I don't know. That was the first time I
19 saw it.

20 Q. Was in 2017?

21 A. Yes.

22 Q. Was anyone else from the Commission out
23 prior to construction, to your knowledge?

24 A. No, I don't believe so.

25 COMMISSIONER KROSHUS: Okay. All right.

1 I don't have any other questions. Thanks, Jerry.

2 JUDGE DAWSON: Mr. Boughey.

3 MR. BOUGHEY: Thank you, Your Honor.

4 **REDIRECT EXAMINATION**

5 **BY MR. BOUGHEY:**

6 Q. In regards to the map over here, that's
7 the map where the black dots show every place that
8 there is a -- what's listed as a -- an occupied
9 residence, and you can see -- do you see where
10 number 441 is? Can you see that, sir? If not, I
11 can show you on the --

12 A. Yep, I see it.

13 Q. Okay. And there -- would it surprise you
14 to find out that there are -- at least in the left
15 half of that chart, there's at least three homes
16 that had been empty with the people either moved
17 away or living in town or doing something else,
18 empty for many years that ended up being listed on
19 this map? So I'm wondering, assuming that at least
20 three of those locations were empty for many, many
21 years, do you have any explanation as to why
22 Minnesota Power didn't put the house you saw and
23 that we're talking about on this map?

24 MR. JOHNSON: Your Honor, I'm going to
25 object.

1 MS. SMITH: Objection.

2 MR. JOHNSON: Speculation.

3 MS. SMITH: Calling for a -- sorry, Brian.

4 MR. JOHNSON: That's okay. It's
5 speculation. It's outside his knowledge.

6 JUDGE DAWSON: It is speculation.

7 MR. BOUGHEY: All right. Then let me try
8 another way.

9 Q. (MR. BOUGHEY CONTINUING) When Minnesota
10 Power submits an application and charts indicating
11 facts, do you rely on the information they supply
12 to you to be accurate?

13 A. Yes. Yes.

14 Q. Okay. And you said that there's no
15 criteria yet at that point as to what is an
16 occupied and unoccupied house; correct?

17 A. Just the common knowledge.

18 Q. All right. Would one way to find out
19 common knowledge about whether a house is used as a
20 residence or might be used as a residence be for
21 the company to actually ask the landowner?

22 A. Sure.

23 Q. Okay. Do your records in any way indicate
24 that Minnesota Power ever talked to the Kesslers or
25 asked the Kesslers or were told by the Kesslers the

1 purpose of that structure?

2 A. No, that's not something you'd find in an
3 application.

4 Q. All right. In hindsight, would you
5 consider it to be good policy for the Public
6 Service Commission to require that in regards to
7 structures anywhere that are going to be near a
8 turbine, that the company take proactive steps to
9 investigate and talk to the landowner?

10 MS. SMITH: Objection. Objection. This
11 is asking about speculation on a policy that is not
12 currently before the Commission in this matter.

13 JUDGE DAWSON: I'm going to sustain the
14 objection.

15 MR. BOUGHEY: I'll just respond that I
16 believe she asked about policy and now -- as well
17 as if they are doing something differently now, so
18 I thought we would find that out. But it's
19 sustained. I'll move on.

20 Q. (MR. BOUGHEY CONTINUING) In reference to
21 the tower -- and I know this is many years ago, but
22 Commissioner Fedorchak mentioned that the issue of
23 the tower was raised at the hearing. I would --
24 assuming that the issue of the turbine was
25 raised --

1 MS. SMITH: Objection. Misstates
2 testimony and misstates what was discussed. There
3 wasn't a reference to a tower. I believe the
4 testimony was towers, placement of towers.

5 JUDGE DAWSON: I can't -- it was the
6 transcript. I can't --

7 MR. BOUGHEY: I have --

8 JUDGE DAWSON: Unless somebody gives me a
9 number.

10 COMMISSIONER FEDORCHAK: It's true. It's
11 towers, not the tower.

12 MR. BOUGHEY: I will give you -- it is
13 part --

14 JUDGE DAWSON: It said towers, not the
15 tower.

16 MR. BOUGHEY: Yeah, it says towers.
17 Towers.

18 JUDGE DAWSON: Then I sustain the
19 objection.

20 MR. BOUGHEY: All right. Let's try again.

21 Q. (MR. BOUGHEY CONTINUING) In regards to
22 policy for the PSC, do you feel it would be
23 appropriate to require the companies --

24 MS. SMITH: Objection. I believe you're
25 asking the same question that was just sustained.

1 MR. BOUGHEY: Yeah, but now I'm going to
2 use the plural towers and so there shouldn't be a
3 problem with it.

4 MR. JOHNSON: Your Honor, I'd also object.
5 It's still asking a specula -- it's still
6 speculation.

7 JUDGE DAWSON: You're asking him to
8 speculate about policy of the Commission in the
9 future.

10 MR. BOUGHEY: Well, okay, I'm sorry, but I
11 thought they asked if policy had been changed. I
12 was trying to find some resolution as to -- so this
13 doesn't happen again, but that's all right.

14 Q. (MR. BOUGHEY CONTINUING) Last question.
15 If -- would it be appropriate -- I'm sorry.

16 In regards to the siting relating to this
17 particular structure, had you known it had been
18 used regularly and was intended to be used by one
19 of their children in the very near future, would
20 that have changed your conclusion?

21 MS. SMITH: Objection. That's assuming
22 facts not in evidence. I don't know where this is
23 going.

24 JUDGE DAWSON: Mr. Boughey.

25 MR. BOUGHEY: It's a hypothetical. Of

1 course it assumes facts not in evidence.

2 JUDGE DAWSON: I'm going to sustain the
3 objection.

4 MS. SMITH: Calls for speculation.

5 Q. (MR. BOUGHEY CONTINUING) All right. Had
6 you gone into the house, used the toilet, watched
7 the TV, grabbed a beer out of the fridge, stayed
8 there overnight, would you have then considered it
9 an occupied residence or at least one that's
10 capable of being occupied?

11 MR. JOHNSON: Your Honor, I'm going to
12 object again. It's --

13 MR. BOUGHEY: I think I've made my point.

14 MR. JOHNSON: This is again speculation.

15 JUDGE DAWSON: Objection sustained.

16 MR. BOUGHEY: I'm done, Your Honor. Thank
17 you. Thank you, Mr. Lein, by the way.

18 MR. MAHLBERG: Ms. Smith.

19 MS. SMITH: Thank you, Your Honor. I just
20 have a couple of questions. I just will turn my
21 camera on. I don't want to not be visible.

22 **RE-CROSS-EXAMINATION**

23 **BY MS. SMITH:**

24 Q. All right. Mr. Lein, when you were
25 talking about making a determination of whether the

1 residence was occupied, and I'm just referencing in
2 terms of what you put in your memo, was that what
3 you determined was the case at the time that the
4 project was permitted in 2013?

5 A. I never saw the property in 2013, so I --
6 I didn't know of it and I've got no opinion.

7 Q. If you'll look at what's Exhibit MP 2-3,
8 so this would be in Minnesota Power's exhibit
9 binder. And you can just let me know when you have
10 it.

11 A. I do have it.

12 Q. Okay. And I'll give you a second to look
13 over this document.

14 Is seeing this document now that's dated
15 August 7, 2013, with supplemental information
16 including maps --

17 A. Yes.

18 Q. -- does that change your testimony that
19 there were no maps provided to the Commission in
20 advance of the public hearing?

21 A. I think it does. When -- this came in
22 August and when was our hearing?

23 Q. September 23, I believe.

24 A. Okay.

25 Q. And somebody can jump in and correct me --

1 MR. MAHLBERG: September 13.

2 THE WITNESS: So, yes, it looks like we --

3 JUDGE DAWSON: September 13.

4 THE WITNESS: -- looks like we had them a
5 little over a month.

6 MS. SMITH: Thank you, Your Honor.

7 THE WITNESS: I don't know if they were
8 final or not, though.

9 Q. (MS. SMITH CONTINUING) Sure. And I can
10 address that elsewhere.

11 Do you know who Scott Monroe is?

12 A. I believe we met Scott, yes.

13 Q. Do you know when the first time you met
14 Scott was?

15 A. No. It might have been at that -- when we
16 were at the Kesslers'.

17 Q. Do you have any recollection that Scott
18 Monroe was at the public hearing?

19 A. He could have been, but I don't remember.
20 I think -- the more that I think about it now, I
21 think he was.

22 Q. And when the applicant makes a voluntary
23 setback, do you -- and you're making
24 recommendations on compliance, are you looking at
25 how that applicant has defined that voluntary

1 setback when determining compliance?

2 A. Yes.

3 MS. SMITH: I have no further questions.

4 JUDGE DAWSON: Mr. Johnson.

5 MR. JOHNSON: No questions, Your Honor.

6 JUDGE DAWSON: Commissioner Fedorchak.

7 COMMISSIONER FEDORCHAK: I don't have any
8 more questions.

9 JUDGE DAWSON: Commissioner Christmann.

10 COMMISSIONER CHRISTMANN: No, sir.

11 JUDGE DAWSON: Commissioner Kroshus.

12 COMMISSIONER KROSHUS: Thank you, Your
13 Honor. Just one quick question.

14 **FURTHER EXAMINATION**

15 **BY COMMISSIONER KROSHUS:**

16 Q. Jerry, did you work on the order that was
17 signed by the Commission on September 25, 2013?

18 A. That's in this case? Yes.

19 Q. Okay. And number 35 -- I know you don't
20 have it in front of you, but the 35th provision
21 was, "No turbines will be placed within 1400 feet
22 of an occupied residence."

23 A. Yes.

24 Q. So would you consider that a condition of
25 the order?

1 A. Yes.

2 Q. Okay. Then I just need to tie this up
3 because it's a lot of questions. So on your memo,
4 the memorandum from May 15, 2017, you indicated
5 that the residence was not occupied when Bison 4 --

6 A. Yes, that was --

7 Q. -- was sited and constructed.

8 Was that based on a list that it wasn't
9 on -- or based on -- and I can't assume this is a
10 fact, but based on information that the company
11 gave in terms of where the occupied residences were
12 at the time?

13 A. I think it was based on everything that I
14 had experienced in my investigation with the case.

15 Q. Okay. But was that -- did you have any
16 correspondence or information from anyone outside
17 of the company on what the list of occupied
18 residences in the project footprint were?

19 A. No. All we had was what the company
20 submitted us in their application, and it wasn't in
21 the application as an occupied residence.

22 COMMISSIONER KROSHUS: Okay. All right.
23 Thank you.

24 JUDGE DAWSON: Commissioner Fedorchak.

25 COMMISSIONER FEDORCHAK: One more question

1 kind of along that line, Jerry.

2

FURTHER EXAMINATION

3

BY COMMISSIONER FEDORCHAK:

4

5

6

7

Q. Did you know prior to today that some of those other residences, according to the Kesslers, were noted as occupied residences during the siting but were -- had been unoccupied?

8

A. No.

9

10

Q. Okay. And do we go out and verify the occupied and nonoccupied residences?

11

A. No, we don't.

12

Q. Okay.

13

A. We have third-party inspectors.

14

15

Q. That go out after -- during construction; correct?

16

17

18

A. Yeah. And they're looking to see that everything is as it was in the application. I don't know --

19

Q. Okay.

20

A. -- if they would catch that or not.

21

COMMISSIONER FEDORCHAK: Mm-hmm. Okay.

22

Thanks, Jerry.

23

24

25

JUDGE DAWSON: Well, if there are no more questions -- the map that's up there right now is -- is it -- is it an exhibit, the one that's

1 hanging up?

2 MR. BOUGHEY: The one that's up --

3 MS. SMITH: Your Honor --

4 MR. BOUGHEY: -- there is already an
5 exhibit.

6 MS. SMITH: -- I do have one more
7 question.

8 JUDGE DAWSON: Okay. I'll allow it in one
9 second.

10 MS. SMITH: Thank you.

11 JUDGE DAWSON: It's an exhibit, you said,
12 Mr. Boughey?

13 MR. BOUGHEY: It's already in the binder,
14 yes.

15 JUDGE DAWSON: Okay. Do you know what
16 exhibit number it is?

17 MR. BOUGHEY: I can find out in a few
18 seconds.

19 JUDGE DAWSON: Okay. Ms. Smith, you may
20 ask your questions.

21 MS. SMITH: Thank you.

22 **FURTHER RE-CROSS-EXAMINATION**

23 **BY MS. SMITH:**

24 Q. Mr. Lein, when you -- when you were making
25 your determination about whether that was an

1 occupied residence, did you also rely on
2 information from the Kesslers?

3 A. Well, I don't remember, but somewhere I
4 had the opinion that nobody was living there
5 before.

6 Q. And I -- I think the way that -- the
7 reason I'm asking this is because you have stated
8 that in the past -- and maybe I can direct you to
9 your deposition transcript on page 47. And I hope
10 there's --

11 MR. BOUGHEY: Your Honor --

12 Q. (MS. SMITH CONTINUING) -- a binder there
13 that has deposition transcripts in it.

14 MR. BOUGHEY: Objection. Improper
15 impeachment. Asked and answered. What she's
16 trying to get to has already been resolved or
17 already answered by this witness.

18 MS. SMITH: That's not true. He said I --
19 I think so, I have an impression. I guess if we
20 want to go with yes, he based it on what the
21 Kesslers told him as well, then that's fine.

22 JUDGE DAWSON: So what's your intent,
23 Ms. Smith? Do you want him to look at the --

24 MS. SMITH: I can ask the question again.
25 I wasn't given the impression it was answered, so

1 that's why I asked it.

2 JUDGE DAWSON: Oh, okay. Well, ask the
3 question again.

4 MS. SMITH: Certainly.

5 Q. (MS. SMITH CONTINUING) Mr. Lein, when you
6 made your determination that at the time of siting
7 and construction the Section 15 structure was not
8 occupied, did you also rely on information from the
9 Kesslers?

10 MR. BOUGHEY: Objection. Lack of
11 foundation. We need to first find out if he ever
12 talked to the Kesslers prior to this or received
13 any communications from the Kesslers prior to this
14 before he can answer whether he relied on anything.

15 JUDGE DAWSON: Ms. Smith.

16 MS. SMITH: That's already been
17 established by the testimony today that he had
18 spoken with the Kesslers.

19 MR. BOUGHEY: Only after the siting was
20 all done. Long before -- after there were problems
21 and a complaint was filed.

22 May I inquire just to get this put to bed
23 quickly in reference --

24 MS. SMITH: I would rather let the
25 judge --

1 MR. BOUGHEY: -- to my objection?

2 MS. SMITH: -- make a ruling on his
3 objection.

4 MR. BOUGHEY: May I inquire for purposes
5 of just --

6 JUDGE DAWSON: One or two questions.

7 MR. BOUGHEY: Thank you. That's all I
8 have.

9 Prior to the hearing, public hearing, did
10 you have any verbal communications or written
11 communications with the Kesslers?

12 THE WITNESS: I don't believe so.

13 MS. SMITH: Objection. This is not the
14 time frame I am talking about. So this is not
15 relevant.

16 MR. BOUGHEY: Well, at one point -- I'm
17 sorry, Your Honor, the reason it's relevant is
18 she's asking about what he thought as to whether it
19 was an occupied residence at the time he was there.
20 If that means the Good Friday years later, then
21 that doesn't count. The only thing that counts is
22 what he knew at the time that the decision was
23 made.

24 MS. SMITH: May I respond, Your Honor?

25 JUDGE DAWSON: You may. I'm a little

1 confused right now.

2 MS. SMITH: As am I. So at this point, we
3 are asking the Commission to make a determination,
4 after the fact, based on information that's
5 provided after the fact, as far as the use of this
6 structure. So Mr. Lein did the same thing in his
7 investigation. He gathered information. He
8 investigated whether it was an occupied or
9 unoccupied structure. And I'm simply trying to
10 determine what was used in his investigation that
11 led him to the conclusion it was not an occupied
12 residence in 2013.

13 JUDGE DAWSON: I'll overrule the objection
14 and you can answer the question.

15 THE WITNESS: And so I had conversations
16 with people that I don't remember very well, but
17 my, I'd say, feeling or conclusion on this property
18 is that it was not occupied when the turbines were
19 put up.

20 MR. BOUGHEY: Objection. Only that we
21 have to strike the answer because he didn't answer
22 the question which is what served as the basis.
23 His feelings or impressions don't count.

24 THE WITNESS: The --

25 MR. BOUGHEY: The question was what was

1 your basis for reaching that conclusion, and so now
2 I'm -- objection. Nonresponsive.

3 JUDGE DAWSON: Okay.

4 MR. BOUGHEY: Ask that the answer be
5 stricken.

6 JUDGE DAWSON: Well, we'll keep the --
7 keep the answer because --

8 MR. BOUGHEY: Okay.

9 JUDGE DAWSON: And did you want to ask
10 your question again because it wasn't answered?

11 Q. (MS. SMITH CONTINUING) At this point I
12 think the point has been made that -- so, Mr. Lein,
13 did you investigate whether that was an occupied
14 residence at the time of siting when the complaint
15 was filed or brought to your attention?

16 A. As best I could based on information that
17 was available there and stuff that I had heard. I
18 did not do a full investigation to determine if
19 somebody was living there or not. I do understand
20 that the power bills were -- there was no
21 electricity turned on, but I heard that.

22 MR. BOUGHEY: Objection. Obviously
23 hearsay. Speculation. I -- I'm not sure how to
24 respond to that other than to say that there's no
25 basis for the statement he just provided.

1 JUDGE DAWSON: I'll -- I'll allow the
2 answer for the basis of his decision-making.

3 Q. (MS. SMITH CONTINUING) And, Mr. Lein, the
4 standard that you were looking at was that it was
5 lived in. Am I understanding that correctly when
6 you made your determination?

7 A. Yes.

8 Q. And for all intents and purposes, it's not
9 the same to have the intent to live in it as to
10 live in it; is that correct?

11 A. Yes.

12 MS. SMITH: I have no further questions.

13 JUDGE DAWSON: Any further questions for
14 this witness?

15 **FURTHER REDIRECT EXAMINATION**

16 **BY MR. BOUGHEY:**

17 Q. Lived in isn't the standard. It's whether
18 it's an occupied residence; correct?

19 A. It depends on how you interpret occupied.

20 Q. Exactly. Which is what the PSC has to
21 figure out. Thank you.

22 MR. BOUGHEY: Your Honor, you asked me
23 what pages these maps are on.

24 JUDGE DAWSON: Mm-hmm.

25 MR. BOUGHEY: M-23 is the one without the

1 letters. M-24 is the one with the letters, Your
2 Honor. And so these are just -- what we have at
3 the hearing room are just blowups of those two
4 identical documents that are in the binders, Your
5 Honor.

6 JUDGE DAWSON: Well, if there's no further
7 questions, you may step down.

8 Your next witness.

9 MR. JOHNSON: I guess, Your Honor, could
10 we clarify that he's released from his subpoena?

11 JUDGE DAWSON: Oh, yes.

12 MR. BOUGHEY: Yes.

13 JUDGE DAWSON: I'm getting a nod from
14 Mr. Boughey, so, yes, you are released from your
15 subpoena.

16 MR. BOUGHEY: Thank you, sir.

17 JUDGE DAWSON: You may go on your way.

18 MR. BOUGHEY: Your Honor, I next -- so he
19 can hit the road and get back to calving, I need to
20 call Stephen Kessler.

21 JUDGE DAWSON: Okay.

22 MR. BOUGHEY: And a very short witness.

23 JUDGE DAWSON: Okay. Mr. Kessler, you
24 were here for my previous warnings as to perjury?

25 THE WITNESS: Correct.

1 JUDGE DAWSON: So you know what it is and
2 the penalties for it?

3 THE WITNESS: Correct.

4 (Witness sworn.)

5 JUDGE DAWSON: Mr. Boughey.

6 **STEPHEN KESSLER,**

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

9 **DIRECT EXAMINATION**

10 **BY MR. BOUGHEY:**

11 Q. Would you state your name for the record,
12 please.

13 A. Stephen Keith Kessler.

14 Q. Okay. Where do you reside?

15 A. Currently reside in Mandan.

16 Q. Okay. Did you ever reside in a house on
17 your parents' property close to what has been
18 designated Turbine 441?

19 A. In Section 15, yes.

20 Q. Yes. I'll just -- in regards to the
21 residence or the -- the home at Section 15, how
22 long did you live in the house where you were there
23 overnight, daily, those type of things?

24 A. This last summer I lived in it full-time
25 of 2020. Lived in it from -- I suppose it was

1 right around April I moved in and then moved out
2 right when school started down here in Mandan.

3 Prior to that, I spent numerous weekends
4 staying over there, having friends over, stuff of
5 that nature, especially in the summer of 2013 when
6 I was working construction. I was working at Red
7 Trail and then in Beulah at Coyote. So I've lived
8 there full-time in 2020 and then occasionally on
9 weekends throughout 2013, summer.

10 Q. Okay. And then in regards to the summer
11 of 2013, is that the summer when they were doing
12 construction in the area?

13 A. I believe so, yes.

14 Q. Okay. And while living there, did you --
15 I want to make sure I have this right. After the
16 Turbine 441 was operating, did you also live there
17 at any time during that?

18 A. With the turbine that was operating?

19 Q. With the turbine, yes.

20 A. Yes.

21 Q. Okay. And then so when you were there
22 during the summer of 2013, I want to know what you
23 were doing. In other words, you said you were
24 working or were you there just at nights? When
25 were you there?

1 A. Generally, yeah. I mean, in the
2 summertime anyone knows by now our family history
3 with the ranch that we don't get in till late. So
4 when I worked construction, whether it was at
5 Coyote or at Red Trail as a carpenter, we'd work
6 four tens generally, Monday through Thursday. So
7 by the time I got home, it was generally around
8 5:30 to 6 o'clock, and then generally ate at Mom
9 and Dad's, because that's what we do as a family in
10 the summertime, eat at the ranchstead and then
11 worked outside, hung out, stuff like that nature.

12 So when I would get home, just like the
13 same thing this last 2020 summer, it was very late.
14 And Dad and I have had many discussions when he
15 would even tell me, "Well, when are you going to
16 head home?" Well --

17 Q. All right. Now --

18 A. -- it was very late usually.

19 Q. Sticking with the summer of 2013, it's my
20 understanding that some of the work was begun, not
21 necessarily on 441, but in the general area by
22 Minnesota Power. Were you ever there during the
23 weekends or during any of the daytime -- strike
24 that.

25 During the weekdays throughout that

1 summer, Monday through Friday, were you ever there
2 during the -- when the sun was up?

3 A. Not during the day.

4 Q. All right. Did you -- would you during
5 the weekends be there at any time?

6 A. If it was, it would be very briefly.

7 Q. Okay.

8 A. Because especially over there, that's
9 where our hayland's at --

10 Q. Okay.

11 A. -- so, if anything, it was lunch.

12 Q. Did you ever observe any Minnesota
13 Power -- and it could be people they hired -- but
14 people working on -- on-site in regards to this
15 project while you were there that summer?

16 A. Not that I can recall.

17 Q. Okay.

18 A. But I didn't pay attention closely to
19 those projects.

20 Q. All right. Did anyone ever come up to
21 your door, rap on the door and say, "Hey, does
22 anyone live here?"

23 A. Not that I'm aware of.

24 Q. Okay. Now, that's 2013, the summer.

25 A. Mm-hmm.

1 Q. The fall of 2013 until the spring of 2014,
2 where were you at?

3 A. Fargo, NDSU.

4 Q. Okay. You were in school?

5 A. Correct.

6 Q. And what was your intention at that time,
7 very briefly, just -- were you intending to come
8 back to the -- your homeplace the next summer?

9 A. Correct.

10 Q. Were you planning on living there for any
11 length of time other than the summer at that point?

12 A. If -- the plan was to eventually be hired
13 in Beulah so, yes, that would have been the plan.

14 Q. All right. So that was going to be where
15 you moved back; correct?

16 A. Correct.

17 Q. All right. I got it. So then when you
18 came back for the summer of 2014, there was
19 construction going on around you; right?

20 A. Correct.

21 Q. Now, it's my understanding that it wasn't
22 until mid-July that they started working on the
23 site closest to this house; is that your
24 recollection?

25 A. I believe so.

1 Q. All right. Did you at any time see any of
2 the worker bees over there during that -- that
3 summer, from July 1 forward?

4 A. Over at the tower location?

5 Q. Yep.

6 A. I mean, there were vehicles in and out all
7 the time --

8 Q. Sure.

9 A. -- all over the project, so --

10 Q. And that means there were people in the
11 vehicles going in and out --

12 A. Yes.

13 Q. -- that had something to do with Minnesota
14 Power; correct?

15 A. Correct.

16 Q. Okay. Did at any time in July -- well,
17 I'll go back.

18 Anytime in the summer of 2014, did anyone
19 come over and say, "Hey, who are you? What are you
20 doing here? Do you live here?" Any -- any inquiry
21 at all to you?

22 A. No.

23 Q. Did they -- were they ever close enough to
24 actually physically see you? I mean, when you say
25 you saw them, could they see you?

1 A. I'm -- I don't -- I wouldn't say so.

2 Q. Well, did you -- what -- when you drove in
3 and out -- first of all, what type of vehicle did
4 you own at that time, summer of 2014?

5 A. It would have been a '99 F-150 teal, or
6 after July it would have been a 2014 F-150 gray.

7 Q. Where did you park when you were at that
8 location, at the home?

9 A. Generally when we parked, it would be
10 right outside the house.

11 Q. Okay. And then what would be the
12 direction you'd drive -- I know there's a driveway
13 going -- or road going to the west. Can you also
14 exit going south and any direction to the -- to the
15 south if you wanted to get out of the -- out of the
16 home? What did you use to drive in and out of the
17 house?

18 A. Well, then main access was the
19 east-and-west road.

20 Q. Very good.

21 A. A county road.

22 Q. All right.

23 MR. MAHLBERG: Your Honor, I'm going to, I
24 guess, object to the extent that we talked about
25 the summer of 2013. As I understand it, we're now

1 beyond that into future years and that's outside
2 the scope of the notice of hearing, which is what
3 was going on at the time the order was issued.

4 MR. BOUGHEY: Actually, if I may, Your
5 Honor.

6 MR. MAHLBERG: And maybe I misunderstood
7 the years.

8 JUDGE DAWSON: Mr. Boughey.

9 MR. BOUGHEY: No. The reason I've gone to
10 2014 is we have testimony from Minnesota Power that
11 had they been told in 2014 that there was a problem
12 and there was somebody at that residence, they
13 could have moved it to another location. So it
14 goes to both the remedy and whether or not
15 Minnesota Power, if they'd looked into this at all
16 in 2013 or 2014, could have simply re-sited and
17 gotten permission from the Public Service
18 Commission to move it farther away from the house.
19 And so that's the reason it's relevant, Your Honor.

20 MR. MAHLBERG: I'm just looking at the
21 issues on the notice of hearing.

22 JUDGE DAWSON: Yes, I understand. You're
23 getting to the edge of the notice on the issues --

24 MR. BOUGHEY: I understand.

25 JUDGE DAWSON: -- so kind of come back in,

1 but --

2 MR. BOUGHEY: I think --

3 JUDGE DAWSON: -- you can ask another
4 question and --

5 MR. BOUGHEY: Actually, that was the last
6 of my inquiry in that area. I think we got what we
7 needed. Thank you, Your Honor.

8 JUDGE DAWSON: Is it you or is it --

9 MR. BOUGHEY: I'm sorry. I'm not sure
10 whether I have any more questions.

11 JUDGE DAWSON: Okay. I'll give you a few
12 seconds.

13 Is it you or is it Ms. Smith?

14 MR. MAHLBERG: I'll do it.

15 JUDGE DAWSON: Okay.

16 MR. MAHLBERG: Thanks.

17 MR. BOUGHEY: My client has a good
18 question. Why does she get to go to 2017 and we
19 can't discuss anything in the future?

20 Q. (MR. BOUGHEY CONTINUING) And so in that
21 regard I will, since she opened the door to 2017.
22 Did you anytime after 2014 live in that location,
23 at the house?

24 MR. MAHLBERG: Your Honor, I'm going to --

25 THE WITNESS: No. Not until 2020, summer.

1 MR. MAHLBERG: I'm going to object as
2 outside the scope of the notice of hearing. There
3 have been questions, I believe, with -- with
4 Mr. Kessler about discussions that he was having
5 with Minnesota Power, at the time alleged
6 admissions by Minnesota Power. There's nothing
7 that establishes a connection between this witness
8 and Minnesota Power having any discussions at all.
9 So it's not a similar situation. I think we're
10 outside the scope of the notice of hearing.

11 JUDGE DAWSON: And -- and you're on the
12 edge --

13 MR. BOUGHEY: I'm on the edge, but I'll
14 also --

15 JUDGE DAWSON: -- but you're done now;
16 right?

17 MR. BOUGHEY: I will also mention for the
18 record that when questions were inquired by
19 Minnesota Power of Mr. Lein, they said, "Well, what
20 was your impression of the house when you were
21 there years later," and so I only have one other
22 question relating to the remedy.

23 Q. (MR. BOUGHEY CONTINUING) And that relates
24 to while living in the house, when the turbine was
25 operating, what was it like living there in regards

1 to anything you noticed regarding sound or
2 flickering or anything else?

3 A. Nothing like it used to be. I mean, that
4 summer of 2013 when I stayed there on weekends and
5 then when we had lunch during 2014 and every other
6 summer we've had lunch over there during haying and
7 working cattle, whatever it may be, it's not the
8 same.

9 Ever since those towers have gone up, it's
10 a constant noise, and anyone with a map location
11 would understand, especially if they have the
12 longitude and latitude of where the house and the
13 towers are located, the house sits below the
14 towers. Tremendous decibels. I'm a person that
15 likes spending time outside, especially in the
16 summertime when it's nice. And this last summer
17 not even a thought of wanting to have a bonfire or
18 any small gathering or just sitting outside to have
19 a peaceful evening just because of the decibel
20 noise of the wind turbines.

21 And that's why -- what I was going to say
22 before when my dad and I have had discussions when
23 he said, "Well, why don't you head on home
24 already," especially this last summer, that was a
25 lot more relevant, I stayed late at their residence

1 because of that, because I didn't want to just go
2 home and sit in a house and live over at the
3 residence this last summer. There's -- there's no
4 enjoyment being outside that house with the noise.

5 MR. BOUGHEY: No further questions.

6 THE WITNESS: And the flicker -- and the
7 flickering, I'll also make a point. When I was in
8 there, which has been rarely, even last summer of
9 2020, when I've had lunch in there, there is --
10 when it's just the right angle, and that depends on
11 what direction the wind is, you will get shadows
12 inside that kitchen from the turbines.

13 MR. BOUGHEY: No further questions.

14 JUDGE DAWSON: Mr. Mahlberg.

15 MR. MAHLBERG: Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. MAHLBERG:**

18 Q. Mr. Kessler, we've not met before. If any
19 question I ask you doesn't make sense or confuses
20 you, stop me, tell me, and I'll -- I will do my
21 best to do better. I may not do better.

22 But I just want to understand the
23 timeline. You -- you -- you lived there or stayed
24 there in the summer of 2020?

25 A. I lived there full-time in 2020, summer.

1 Q. Lived there full-time in the summer of
2 2020.

3 A. Correct.

4 Q. Prior to that, you didn't stay there in
5 20 -- didn't live there in 2019, 2018, 2017, 2016;
6 right?

7 A. Correct.

8 Q. 2015 you didn't live there?

9 A. No. I had taken a job in Watford City, so
10 I was living up there.

11 Q. So then back to the -- let's go to 2013.

12 A. Mm-hmm.

13 Q. You spent some weekend nights there, if I
14 understand it --

15 A. Correct.

16 Q. -- correctly? Sorry?

17 A. Correct.

18 Q. You did not live at the Section 15
19 property; right?

20 A. Not a hundred percent full-time.

21 Q. Right. And I'm just trying to make sure
22 that I'm understanding it. You had a job, you
23 spent time somewhere else, and then some weekends
24 you would go here; right?

25 A. Correct.

1 Q. And if your mother testified that it was
2 so you could have more fun there than at home, you
3 wouldn't disagree with that?

4 A. Correct.

5 MR. MAHLBERG: Okay. That's it. Thanks,
6 Stephen.

7 JUDGE DAWSON: Mr. Johnson.

8 MR. JOHNSON: I don't have any questions
9 for this witness.

10 JUDGE DAWSON: Commissioner Fedorchak.

11 **EXAMINATION**

12 **BY COMMISSIONER FEDORCHAK:**

13 Q. Thanks, Stephen. Appreciate you being
14 here. Do you understand --

15 JUDGE DAWSON: Turn your mike on, please.

16 COMMISSIONER FEDORCHAK: Oh, sorry.

17 Q. (COMMISSIONER FEDORCHAK CONTINUING) Can
18 you understand how prior to the updates of the
19 house -- do you -- do you think it would be
20 possible to think it wasn't occupied, to reach that
21 conclusion prior to the updates?

22 A. No.

23 Q. So what would you point to in terms of if
24 somebody's just looking at it, a land person
25 walking by or when they're doing their surveys or

1 mid-September time frame --

2 A. Mm-hmm.

3 Q. -- what do you think would maybe be the --
4 the long end of a time period that you would not
5 have been there, where you were there at least once
6 every two weeks, three weeks, four weeks?

7 A. Well, July for sure because that's where
8 primary -- or most of all of our hayland is. So
9 that was easy to stay there on the days off, that
10 Friday, Saturday and Sunday, and wake up and just
11 go and hay there. So July I was there -- I can't
12 say every weekend, but it would have been most of
13 the month simply because of that fact with haying.

14 Q. Okay. And I don't know if you've seen the
15 picture that was included in -- in your documents,
16 but -- and I don't know if you need it, if you have
17 a pretty good recollection of what the house looked
18 like. There's a door with a porch leading up to
19 it, and then right beside it is a door that's a
20 little lower level, not on a porch.

21 A. Right.

22 Q. Do you recall that?

23 A. Yep.

24 MR. BOUGHEY: May I show him the picture
25 you're referring to?

1 COMMISSIONER CHRISTMANN: That's fine with
2 me.

3 MR. BOUGHEY: If you look at the thin one,
4 the little one.

5 COMMISSIONER CHRISTMANN: It's Exhibit 4.

6 MR. BOUGHEY: Go to part 3 --

7 THE WITNESS: Okay. I'm in 3.

8 MR. BOUGHEY: -- photo 4. I believe -- is
9 that what you're looking at, sir?

10 COMMISSIONER CHRISTMANN: Yes.

11 MR. BOUGHEY: Part 3, photo 4, please.
12 Thank you.

13 THE WITNESS: Yep.

14 Q. (COMMISSIONER CHRISTMANN CONTINUING)
15 That's what it looked like in '13?

16 A. On the left side?

17 Q. Yes.

18 A. Yeah.

19 Q. Looks like there's a screen door on the
20 lower door and maybe not a screen door on the door
21 on the porch; correct?

22 A. Correct.

23 Q. And when I look at that picture, it's hard
24 for me to tell. I'm wondering if that porch is
25 really very usable.

1 A. That's why the two boards are there.

2 Q. If a stranger came there, would you -- to
3 leave you a note, would you think they would leave
4 it on the -- and wanted to leave it on the door
5 you're most likely to see it, would they leave it
6 on the one with the screen door or the one going
7 through the porch?

8 A. If they were concerned about the porch, I
9 would say they'd leave it on the screen door one.

10 Q. Do you think you'd have noticed if there
11 was a note or something left there from this
12 company inquiring whether this is an occupied
13 residence, regardless of which door they left it
14 on?

15 A. More than likely not, but then my concern
16 would be why would they leave a note on a door in
17 the middle of the country?

18 Q. Well, if they didn't know exactly who
19 lived there --

20 A. Right.

21 Q. -- and were trying to confirm whether it
22 was occupied, that might show some effort and --

23 A. Mm-hmm. And I guess I can use --

24 Q. You don't recall ever seeing a note --

25 A. Seeing a note, no.

1 Q. -- or some kind of an inquiry there?

2 A. No. And I could say, even living in
3 Mandan, I've had a package delivered to my front
4 door in Mandan and I haven't noticed it because I
5 go primarily through my garage, not always through
6 my front door.

7 Q. But during that summer you don't recall
8 ever seeing --

9 A. I don't.

10 Q. -- something left there or anything like
11 that to show any kind of an inquiry --

12 A. Correct.

13 Q. -- whether it was occupied?

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

16 THE WITNESS: Thank you.

17 JUDGE DAWSON: Commissioner Kroshus.

18 COMMISSIONER KROSHUS: All right. Good
19 afternoon, Stephen. Thank you, Your Honor.

20 **EXAMINATION**

21 **BY COMMISSIONER KROSHUS:**

22 Q. On the photo of the house, the page that
23 you have open -- it's the same page that was
24 referenced --

25 A. Mm-hmm.

1 Q. -- can you tell me what to the left of the
2 porch as we're looking at it -- looks like it might
3 be a 5-gallon -- I don't know if it's quite tall
4 enough to be a 5-gallon bucket, or maybe I just
5 need glasses, but -- okay. Looks like a bucket.
6 Is that on a concrete pad, a cement pad?

7 A. No. It looks like some type of building
8 material, but I can't exactly say what's laying on
9 the floor there -- or the ground there.

10 Q. Oh, okay. Did the house have windows in
11 2013 all the way around?

12 A. All the windows, yeah.

13 Q. 2012?

14 A. There was still windows in there, yep.

15 Q. Did you have to make any significant
16 improvements to the house prior to staying in it in
17 2013?

18 A. No.

19 Q. Is it possible people, for whatever
20 reason, have homes like this that they live in?

21 A. I believe so.

22 COMMISSIONER KROSHUS: Okay. No other
23 questions. Thank you.

24 JUDGE DAWSON: Any further questions?
25 Seeing none, you may step down.

1 THE WITNESS: Thank you.

2 JUDGE DAWSON: And who is your next
3 witness?

4 MR. BOUGHEY: Your Honor, my next witness
5 is John Kessler, my client's brother, but I think I
6 would like to try and save some time. And I'm --
7 we didn't have all the decisions yet that came out.
8 We just got some even today.

9 So I will note for the record as to what I
10 believe he's going to testify to, and if you tell
11 me that that's beyond the three issues, then we can
12 let him -- we can cut him loose.

13 JUDGE DAWSON: Okay.

14 MR. BOUGHEY: It is my understanding --

15 MS. SMITH: Excuse me, Your Honor.

16 JUDGE DAWSON: What, Ms. Smith?

17 MS. SMITH: I believe that you have
18 already said that Mr. John Kessler could not
19 testify in your motion in limine order, so I just
20 wanted to state that for the record.

21 MR. BOUGHEY: That's actually not what it
22 says.

23 JUDGE DAWSON: But -- but just tell me
24 what he's going to testify to --

25 MR. BOUGHEY: All right.

1 JUDGE DAWSON: -- and then I'll --

2 MR. BOUGHEY: And I'll real quickly find
3 the order because I have wrote -- I have written in
4 on my notes what it was he was going to testify to
5 that was different from what the order has. One
6 moment, please.

7 For the record, your order dated March 24,
8 2021, page 3, subpart 2, bullet 2 says, "John
9 Kessler is not allowed to testify about the crane
10 walk and damages to the Kesslers' property because
11 of the crane walk."

12 The testimony I intend to have him offer
13 is in regards to the issue of whether or not
14 Minnesota Power has acted inappropriately to not
15 only Mr. Kessler or others, and he would testify,
16 if allowed to do so, that Minnesota Power provided
17 him false information when he asked has there been
18 any problems with the crane walks.

19 MR. MAHLBERG: Hold -- hold --

20 MR. BOUGHEY: I'm going to get in --

21 MR. MAHLBERG: But this --

22 MR. BOUGHEY: Counsel, I have the right to
23 get this in as an offer of proof.

24 MR. MAHLBERG: But we -- we're using this
25 description of this to try and get all of the

1 testimony in to the fact finders directly, when
2 it's already been ruled on for the specific purpose
3 of not having this sort of testimony come in. And
4 so he's accomplishing through his testimony what
5 the order said you can't do.

6 JUDGE DAWSON: Yeah, I understand. Be
7 very brief.

8 MR. BOUGHEY: Very good. And I'll finish
9 up, Your Honor.

10 JUDGE DAWSON: The Commission is capable
11 of, if that's what you're trying to do, seeing
12 that.

13 MR. BOUGHEY: Well, again, I'm not going
14 into his testifying about the crane walk or the
15 damages to their property because of the crane
16 walk. That's relating to their property.

17 I'm going into whether or not he has
18 evidence, and he would testify that Minnesota Power
19 provided false information as to whether or not
20 they've had any instances where the crane walk has
21 caused problems when they were asking about his
22 property, in addition as to Minnesota Power's
23 discussions or statements that they've made
24 relating to the need to put towers farther away
25 from any residences and not having overhangs. That

1 is what his testimony was going to be today, Your
2 Honor.

3 JUDGE DAWSON: And that's outside the
4 scope.

5 MR. BOUGHEY: Very good. Then may I
6 request that they be released so they can get back
7 to their job on the ranch?

8 JUDGE DAWSON: Certainly. You gentlemen
9 are both released. The other man is John?

10 MR. BOUGHEY: Yes, John Kessler.

11 JUDGE DAWSON: Thank you. You both are
12 released.

13 MR. BOUGHEY: Okay. I think now we just
14 have -- John Schuh, I believe, is next. I haven't
15 done Deanna yet, but I'm trying to get everybody
16 done that would otherwise not have to be here next
17 time or whenever.

18 JUDGE DAWSON: Okay.

19 MR. BOUGHEY: So I would call John Schuh.
20 And his is very short.

21 JUDGE DAWSON: Mr. Schuh, I'm required by
22 law to tell you the penalties for perjury in this
23 state. Perjury is a Class C felony punishable by a
24 fine of up to \$10,000 or a term of imprisonment of
25 up to five years, or both. Do you understand what

1 perjury is and the penalties for it?

2 THE WITNESS: I do.

3 (Witness sworn.)

4 JUDGE DAWSON: Mr. Boughey.

5 MR. BOUGHEY: Thank you, Your Honor.

6 **JOHN SCHUH,**

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

9 **DIRECT EXAMINATION**

10 **BY MR. BOUGHEY:**

11 Q. Would you state your full name for the
12 record, please.

13 A. John Schuh.

14 Q. And what is your occupation?

15 A. I work for the Public Service Commission
16 as a legal counsel.

17 Q. Very good. And could you advise us -- we
18 just need to confirm this since you're -- you are
19 the lawyer for the Public Service Commission; is
20 that correct?

21 A. That is correct.

22 Q. And, actually, you're general counsel; is
23 that the right term?

24 A. At this point in time I am, yes.

25 Q. Very good. And in regards to the time at

1 issue for the siting and the approval of this
2 project relating to -- that Minnesota Power did,
3 was there any definition within the rules,
4 regulations or anything in regards to the
5 definition of "occupied" or "unoccupied" residence
6 that could be used in regards to this particular
7 project?

8 A. I can say that I haven't looked back and
9 done an evaluation, and I wasn't an employee at
10 that time.

11 Q. All right. Is there presently, then, to
12 your knowledge, any definition that is employed by
13 the Public Service Commission via statute, rule or
14 regulation or practice as -- that creates or
15 provides the Public Service Commission with a
16 definition as to "occupied" or "unoccupied"
17 residence as it applies to these wind projects?

18 A. I am unaware of any specific precedent
19 that the Commission has set.

20 Q. Very good. Now, in situations where a
21 company agrees to have setbacks of 1400 feet or
22 agrees to comply with whatever the setbacks or
23 regulations are for that county, is the company
24 therefore obligated to follow that order in regards
25 to a wind farm project such as this?

1 A. For the purpose of the setbacks, yes.

2 MR. BOUGHEY: Nothing further. Thank you.

3 JUDGE DAWSON: Mr. Mahlberg.

4 MR. MAHLBERG: It's Mrs. Smith.

5 MS. SMITH: It's actually mine, Your

6 Honor.

7 JUDGE DAWSON: Ms. Smith.

8 MS. SMITH: I'm going to just turn my

9 camera on again.

10 **CROSS-EXAMINATION**

11 **BY MS. SMITH:**

12 Q. Good afternoon, Mr. Schuh.

13 A. Good morning, Ms. Smith.

14 COMMISSIONER FEDORCHAK: Afternoon.

15 THE WITNESS: Afternoon. Sorry.

16 Q. (MS. SMITH CONTINUING) Good afternoon.

17 Did you attend a meeting with Minnesota
18 Power and the Kesslers at the Section 15 property?

19 A. I did.

20 Q. And -- and was that in 2017?

21 A. I'm unsure.

22 Q. Okay. It was -- I'll just leave it at
23 that.

24 Did you ask during your interactions with
25 the Kesslers to provide any documentation about

1 their use of the property?

2 A. I do believe that there was a request,
3 whether it be from Jerry Lein or I, for any
4 paperwork supporting use of property.

5 Q. And did you ever receive any documentation
6 supporting use of the property from the Kesslers?

7 A. I would not have received it. Mr. Lein
8 would have.

9 Q. To your knowledge, was there anything in
10 the documentation that came in regarding the use of
11 the property?

12 A. I'm unaware.

13 MS. SMITH: I have no further questions.

14 JUDGE DAWSON: Mr. Johnson.

15 MR. JOHNSON: I have no questions, Your
16 Honor.

17 JUDGE DAWSON: Commissioner Fedorchak.

18 COMMISSIONER FEDORCHAK: I don't have any
19 questions -- no questions.

20 JUDGE DAWSON: Commissioner Christmann.

21 **EXAMINATION**

22 **BY COMMISSIONER CHRISTMANN:**

23 Q. In this case, do you draw a distinction
24 between the term "inhabited" as opposed to
25 "occupied"?

1 wasn't necessarily -- I -- I do recall --

2 Q. I understand.

3 A. -- some request, whether it was I or
4 Mr. Lein, and Mr. Lein relayed that to me.

5 Q. And this was in reference to a
6 posthearing -- or post -- I'm sorry.

7 This is in reference to any investigation
8 as to whether or not the house was occupied at the
9 time that mattered; correct?

10 A. When you're saying the time that mattered,
11 when time are you referring to?

12 Q. I'm sorry. The time when this was -- when
13 there was a public hearing or when this was
14 approved.

15 A. Sure. I -- I think that probably would be
16 the case, yes.

17 Q. Okay. And I just have to try and figure
18 this out. You were present on what we're calling
19 the Good Friday, I guess, meeting at the Kesslers'
20 house; right? Or at their property?

21 A. I don't recall the date. I was there on a
22 date with Mr. Lein.

23 Q. All right. Very good. Very good. And
24 where were you guys when you guys were talking?
25 How far away from the property when you were

1 talking?

2 A. Well, we were in a number of areas --

3 Q. I apologize.

4 A. -- from the property.

5 MR. BOUGHEY: You know what, we've already
6 got this in through other people. I'm going to
7 object to my own question as cumulative. Thank you
8 very much, sir.

9 THE WITNESS: You're welcome.

10 JUDGE DAWSON: Any further questions?

11 COMMISSIONER FEDORCHAK: I have one.

12 JUDGE DAWSON: Commissioner Fedorchak.

13 **EXAMINATION**

14 **BY COMMISSIONER FEDORCHAK:**

15 Q. Sorry, Jack, I thought of this after I had
16 my turn.

17 What obligations are -- what obligation is
18 the company under to -- okay. Let me restate this.

19 When we get a map that shows residences
20 are occupied and unoccupied, how confident should
21 we be in those determinations made by the company?

22 A. I would say that we rely on the
23 information that's provided by the company. When a
24 company comes forward with an application, they
25 have the burden of -- and also are under oath when

1 they provide the testimony that that information is
2 accurate.

3 Q. Okay. So it's their -- they need to be
4 sure that what their conclusions are are accurate
5 and do whatever needs to be done to be -- whatever
6 needs to be done to make sure that what they're
7 showing us is -- is the truth?

8 A. Yes. I think that is something that the
9 Commission relies upon.

10 Q. Okay. Do we have enough staff to go and
11 verify all this information?

12 A. If it's a question of matter of resources,
13 I guess I -- I'm not sure if I necessarily can
14 answer that question. It would probably depend on
15 the circumstances --

16 Q. But is --

17 A. -- at that time.

18 Q. Okay. So I -- but I guess do we commonly
19 trust that the information that the company's
20 providing is accurate?

21 A. I would say that the staff does review the
22 information and they flag things of concerns, and
23 to the extent that they notice that there are any
24 concerns, they generally do follow up and either do
25 data requests or speak with the company regarding

1 those matters.

2 Q. Okay. Trust, but verify?

3 A. To the extent we are able to.

4 Q. Okay. And have reason to question
5 something?

6 A. Yes, Commissioner.

7 COMMISSIONER FEDORCHAK: Okay. I think
8 that's it. Thanks, Jack.

9 THE WITNESS: You're welcome.

10 JUDGE DAWSON: Any question to the
11 questions she asked? Seeing none --

12 MS. SMITH: I have -- I have one, Your
13 Honor.

14 JUDGE DAWSON: Yes. Ms. Smith.

15 MS. SMITH: Thank you.

16 **RE-CROSS-EXAMINATION**

17 **BY MS. SMITH:**

18 Q. Mr. Schuh, when you were talking about
19 information that's provided in an application, it's
20 not inaccurate to be overinclusive, is it?

21 A. Could you restate that question? I'm not
22 sure if I understand it.

23 Q. Sure. And maybe I can state it more
24 clearly as just in general. But if a company errs
25 on the side of caution and includes more residences

1 than are necessarily, you know, unoccupied
2 residences, that's not necessarily being
3 inaccurate; correct? That happens quite often?

4 A. That does happen. I would agree with you
5 on that.

6 Q. And so simply because there were more
7 residences potentially that were not lived in
8 doesn't mean that the company wasn't following what
9 it believed to be the regulations?

10 A. I would also agree with that statement.

11 Q. And as far as if a concern had been raised
12 about the status, the occupancy status of the
13 Section 15 structure at a public hearing, is that
14 something that is typically followed up on by
15 staff?

16 A. The status of the Section 15 -- I'm sorry.
17 Would you restate that question?

18 Q. And maybe I'll just ask it generically
19 because I'm not trying to ask you about something
20 that happened at a hearing you weren't at.

21 A. Sure.

22 Q. What I'm saying is if -- if someone
23 testified and said at a public hearing that a
24 structure marked as unoccupied was actually
25 occupied, is that the time when the Commission

1 staff starts looking into an issue, potential
2 issue?

3 A. You're asking if -- I'm sorry. Could you
4 say that one more time? I'm not sure if I'm quite
5 tracking here.

6 Q. Yeah. Let me try again. The public has
7 an opportunity to testify at public hearings?

8 A. That's right.

9 Q. Is that fair?

10 A. That's correct.

11 Q. And so that's -- the public hearing would
12 be an opportunity to raise concerns about
13 information that's been presented in an
14 application?

15 A. Yes, that -- that would be the time for
16 the public to provide that information, and it's
17 encouraged by the Commission.

18 Q. And if a concern is raised, is it
19 typically looked into by the Commission staff and
20 the Commission?

21 A. I would say that if there is a
22 jurisdictional concern that is provided to the
23 Commission or staff, there is follow-up, at least
24 to the extent -- at least that's my experience in
25 the past with siting hearings.

1 MS. SMITH: Thank you. I have no further
2 questions.

3 JUDGE DAWSON: Commissioner Christmann.

4 **FURTHER EXAMINATION**
5 **BY COMMISSIONER CHRISTMANN:**

6 Q. To Commissioner Fedorchak's question. You
7 said something to the effect that staff goes
8 through the applications, and if there's things
9 that they feel uncomfortable with, they follow up;
10 correct?

11 A. That's correct.

12 Q. But there -- if it's something that's not
13 in the application, that was excluded, they would
14 have no way to do that; correct?

15 A. That is correct. If it is something we
16 are unaware of, we'd be unaware of it.

17 Q. And so in -- in an area, like a broad
18 category of where the turbines are going to go or
19 where the occupied residences are or where there's
20 some other avoidance areas or something, you know,
21 to the extent that they err on the side of caution
22 and put some things on the map that may not qualify
23 for that, does the Commission have to rely on the
24 fact that at least all the ones that could be
25 are -- are on there so that we can at least ask

1 questions about them and would know to at least
2 consider whether they were or not?

3 A. I think that's a fair statement. I guess
4 I would come back to the fact that I think the
5 commissioners rely on the company to provide the
6 accurate information to the three of you to make a
7 determination.

8 COMMISSIONER CHRISTMANN: Thank you.

9 JUDGE DAWSON: Any further questions?

10 MR. BOUGHEY: Yes, Your Honor. I'm
11 already on green.

12 JUDGE DAWSON: Mr. Boughey.

13 MR. BOUGHEY: Yes.

14 **FURTHER REDIRECT EXAMINATION**

15 **BY MR. BOUGHEY:**

16 Q. So no matter what, in your view because of
17 what you said, you rely on the company to give you
18 complete information that -- you rely on them to
19 provide you accurate information, including
20 avoidance areas and residences that may or may not
21 be occupied but could be considered that; is that
22 correct?

23 A. Yes. If they're exclusion and avoidance
24 areas, that is part of something that is supplied
25 with the application.

1 Q. And would this particularly be true if
2 from the location of the turbine they can see a
3 house within 1400 feet or structures within
4 1400 feet, do you believe that the company has an
5 obligation to determine whether any of those
6 structures are either a residence or occupied?
7 I'll apologize. I'll try again.

8 A. Come back to the 1400 feet. I'm not sure,
9 sir.

10 Q. Yeah. If -- if -- if -- when Minnesota
11 Power is at the place where they intend to put a
12 tower and they see a structure nearby, within
13 1400 feet, do you feel the company has an
14 obligation to at least look into it and determine
15 if that structure is a residence or used as a
16 residence?

17 MR. JOHNSON: Your Honor, I'm going to
18 object. He's asking for his feelings. That's
19 speculation. He can ask if that's what the PSC
20 does.

21 MR. BOUGHEY: All right. I'll rephrase.

22 Q. (MR. BOUGHEY CONTINUING) I'm not asking
23 about feelings. I didn't think I said the word
24 "feelings," although, I heard that in previous
25 questions by others.

1 I'm asking you do you believe that in a
2 situation where a turbine has been -- a turbine
3 location has been selected by the company and
4 within 1400 feet are structures that are big enough
5 to be a home, in your view, does the company have
6 an obligation in preparing their map to give to the
7 PSC to take reasonable steps to determine if that
8 is indeed a residence and if it's occupied or
9 unoccupied?

10 MR. JOHNSON: Same objection, Your Honor.
11 He's asking for his beliefs.

12 JUDGE DAWSON: I -- I'm going to sustain
13 the objection. If you answer -- ask the question
14 differently, perhaps, but his beliefs don't matter.

15 MR. BOUGHEY: All right. I'll follow up
16 on Commissioner Christmann's statement then.

17 Q. (MR. BOUGHEY CONTINUING) You rely on the
18 information supplied, including that map right
19 there, and I can turn it around without the
20 letters, to be accurate; correct?

21 A. I'm unaware of what this map is exactly.

22 Q. All right. Very good.

23 A. But we rely on the application --

24 Q. Whatever this map --

25 A. -- and the testimony that's provided.

1 Q. All right. In regards to public hearings,
2 would you consider it inappropriate if the entity
3 takes steps, active steps, to request or prevent a
4 landowner from raising an issue?

5 MS. SMITH: Objection.

6 JUDGE DAWSON: Ms. Smith.

7 MS. SMITH: Speculation. Calls for
8 speculation.

9 MR. BOUGHEY: Actually, it's not
10 speculation because we have evidence that that is
11 exactly what occurred here.

12 MS. SMITH: And that evidence is disputed,
13 so he's asking him to weigh in on disputed
14 evidence.

15 MR. BOUGHEY: Doesn't matter if it's
16 disputed. Your Honor, I think --

17 JUDGE DAWSON: Yeah, he wasn't at the
18 hearing, so --

19 MR. BOUGHEY: I appreciate he wasn't. I'm
20 asking what the policy is. Is this --

21 JUDGE DAWSON: That's where the
22 speculation comes in. Unless there's a policy on
23 it, that's a different question. That's not what
24 you asked.

25 Q. (MR. BOUGHEY CONTINUING) Well, as to the

1 application procedure in regards to making sure
2 that at hearings the company provides accurate
3 information, would you consider it a problem for a
4 company to persuade any landowners not to complain
5 or raise an issue at these hearings?

6 MR. JOHNSON: Your Honor, I'm going to
7 object again. He's still --

8 MR. BOUGHEY: Your Honor, I don't want it
9 to be two at a time.

10 MR. JOHNSON: -- asking a speculative
11 question.

12 MR. BOUGHEY: Oh, I'm sorry. I thought it
13 was him. Sorry.

14 MR. JOHNSON: He's -- he's asking him his
15 opinion on something. He's not asking what the
16 policy is. He keeps asking him what his opinion
17 is, which is speculative, and we keep spinning our
18 wheels here.

19 MR. BOUGHEY: Okay. I apologize. I will
20 instead --

21 JUDGE DAWSON: I'm going to sustain the
22 objection again just because it could lead to an
23 answer that is misleading.

24 MR. BOUGHEY: I won't ask --

25 JUDGE DAWSON: It's speculation.

1 MR. BOUGHEY: I won't ask for the opinion.

2 Q. (MR. BOUGHEY CONTINUING) Does the Public
3 Service Commission have a policy against entities
4 who come before them -- I'll rephrase.

5 Does the Public Service Commission have a
6 policy that would object to any entity preventing
7 or dissuading landowners from testifying as to
8 issues that concern them?

9 A. I think the policies are set forth in
10 statute and regulation.

11 Q. Okay. Would that policy apply if an
12 entity said, "Don't testify. We'll take care of it
13 later"?

14 MS. SMITH: Objection. Calls for
15 speculation.

16 JUDGE DAWSON: Again, sustained.

17 MR. BOUGHEY: All right. I'll -- I'll
18 forget it. I guess I don't know how to ask it in a
19 way that we could get to the policy, and hopefully
20 the Public Service Commission will develop policies
21 in that regard.

22 Thank you, Your Honor.

23 JUDGE DAWSON: Any further questions?
24 Seeing none, you may step down.

25 THE WITNESS: Thank you.

1 MR. JOHNSON: And, Your Honor, I'd ask
2 that he be released from his -- I'd ask he be
3 released from his subpoena.

4 JUDGE DAWSON: Are you released from your
5 subpoena? Yes, you are.

6 THE WITNESS: Thank you, Judge.

7 JUDGE DAWSON: Well, do we need to take
8 like a five, ten-minute break here and then come
9 back with one more witness, see how that works? Is
10 that the plan, Commission, or --

11 COMMISSIONER KROSHUS: A break would be
12 good.

13 THE WITNESS: Okay.

14 MR. BOUGHEY: May -- Your Honor, before we
15 take a break, may I at least say that we have, I
16 think, four or five company witnesses, most of whom
17 are going to be doing it by Zoom. I think it would
18 be appropriate -- I don't see how we can get
19 through everybody without going way late.

20 I appreciate -- again, both attorneys
21 thought we had two days. I would respectfully
22 suggest that this is the appropriate time for a
23 break. All the other witnesses that are company
24 people that I'm bringing, they will be short, but
25 theirs is going to be long.

1 I would respectfully suggest that we
2 adjourn and pick the most convenient date soon
3 where we can get back to this testimony. This is a
4 good stopping point. I'm at the point where I've
5 rested with my witnesses and the PSC witnesses.

6 MR. MAHLBERG: Well, you haven't rested
7 with Mrs. Kessler.

8 MR. BOUGHEY: You're right. I'll get her
9 in. You're right.

10 MR. MAHLBERG: I don't, frankly, know
11 whether we'll finish Mrs. Kessler tonight or not
12 because I have no idea of the scope of the direct,
13 and my cross is not going to be, God willing, as
14 long as it was with Mr. Kessler, but sometimes it's
15 longer than I want to be.

16 MR. BOUGHEY: I will --

17 MR. MAHLBERG: I would agree -- just hold
18 on one second.

19 MR. BOUGHEY: I'm sorry.

20 MR. MAHLBERG: -- if we're going to allow
21 live testimony from the company's witnesses, there
22 is going to be a second day. I don't -- that -- I
23 don't -- it doesn't bother me one bit to adjourn
24 here and capture them all on that second day,
25 including Mrs. Kessler, or break it up.

1 MR. BOUGHEY: No. I'd like to get
2 Mrs. Kessler done now, and I only need five
3 minutes. We'd be done by -- depending on your
4 cross -- I would be done before five with her and
5 we could finish her and then --

6 MR. MAHLBERG: You'd be done with her
7 before five? You have less than five minutes of
8 direct?

9 MR. BOUGHEY: I see ten minutes on that
10 clock, but God knows which one is right.

11 COMMISSIONER KROSHUS: Your Honor, and
12 maybe this was answered, but just as a suggestion,
13 in the -- in the consideration of whether we
14 continue -- and we would do the same thing if this
15 was flipped or I would suggest, but does the
16 company have any witnesses that they would like to
17 have testify yet today that will be more difficult
18 for them to testify tomorrow?

19 COMMISSIONER FEDORCHAK: We don't have
20 time tomorrow.

21 MR. MAHLBERG: So it won't be tomorrow,
22 but no matter what the continued day is, I --
23 it's -- no. There's not any convenience issue.
24 Frankly, you may get one more live in person if
25 you --

1 COMMISSIONER KROSHUS: Okay.

2 MR. MAHLBERG: -- depending on when you
3 continue it to, if it's longer than 13 days from
4 today.

5 COMMISSIONER KROSHUS: Okay. Fair enough.

6 JUDGE DAWSON: Okay. Well, the --

7 COMMISSIONER CHRISTMANN: Your Honor, I'll
8 just say this Commission has worked till one
9 o'clock in the morning on cases, so I'm not in any
10 hurry to leave, and plus as a guy who prefers
11 Mountain time -- standard time, it's really only
12 like not even three to me.

13 MR. BOUGHEY: Again, I would suggest that
14 we just do Ms. Kessler and move on.

15 JUDGE DAWSON: Yeah. Well, what we're
16 going to do is take a little break here --

17 MR. BOUGHEY: Fantastic.

18 JUDGE DAWSON: -- from 4:51 till 5
19 o'clock --

20 MR. BOUGHEY: Okay.

21 JUDGE DAWSON: -- and so that we can all
22 come back refreshed, and then we'll take
23 Mrs. Kessler and then we will decide.

24 (Recessed at 4:51 p.m. and reconvened at
25 5:02 p.m.)

1 JUDGE DAWSON: We're back on the record.
2 And, Mr. Boughey, your next witness, please.

3 MR. BOUGHEY: Yes. At this time I call
4 Deanna Kessler.

5 JUDGE DAWSON: Ms. Kessler, you were here
6 for my previous admonitions as to perjury?

7 THE WITNESS: Yes.

8 JUDGE DAWSON: So you understand what
9 perjury is and the penalties for it?

10 THE WITNESS: Yes.

11 (Witness sworn.)

12 JUDGE DAWSON: And please speak up. I
13 can't hear you.

14 THE WITNESS: Sorry. Yes.

15 JUDGE DAWSON: I'm hard of hearing,
16 though, so --

17 Mr. Boughey.

18 MR. BOUGHEY: Thank you, Your Honor.

19 **DEANNA KESSLER,**

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

22 **DIRECT EXAMINATION**

23 **BY MR. BOUGHEY:**

24 Q. Would you state your name for the record,
25 please.

1 A. Deanna Angela Kessler.

2 Q. Where do you reside?

3 A. 6001 26th Street Southwest, Glen Ullin,
4 North Dakota 58631.

5 Q. You're the hus -- the -- I'm sorry.
6 Getting tired. You're the wife of Keith Kessler;
7 correct?

8 A. Yes.

9 Q. You reside on the property at issue;
10 correct?

11 A. Yes.

12 Q. And you're part owner?

13 A. Yes.

14 Q. And just to be clear, the northwest
15 quarter of Section 15, is there any easement that
16 Minnesota Power has in regards to the quarter in
17 Section 15 where the residence we've been talking
18 about is or the -- the home? Is there any -- do
19 they have any type of easement on that property?

20 A. No.

21 Q. Does that include they don't even have an
22 overhang easement; correct?

23 A. Correct.

24 Q. Very good. Thank you. I'm going to
25 say -- or try a question that --

1 MR. BOUGHEY: Well, by the way, who am
2 I -- who's pinch hitting now on the other side?
3 Patrick, is it you?

4 JUDGE DAWSON: Mr. Mahlberg, are --

5 MR. MAHLBERG: You've got to guess. No.
6 It'll be me.

7 MR. BOUGHEY: Okay. Thank you.

8 Q. (MR. BOUGHEY CONTINUING) With great
9 trepidation, I ask is there anything that your
10 husband said -- strike that.

11 Were you present when your husband
12 testified today?

13 A. Yes.

14 Q. Is there anything that he said that you
15 consider to be incorrect that you need to correct
16 at this time?

17 A. I don't think so.

18 Q. All right. In regards -- you've been here
19 a long day, you've seen everything. Is there
20 anything about the location of Turbine 441 that you
21 need to advise the Commission at this time that you
22 would like to do? Do you have any concerns about
23 441 being there?

24 A. Yes.

25 Q. What are those concerns?

1 A. Well, that it's noisy and it leaves a lot
2 of flicker and it ruined that yard.

3 Q. Okay.

4 A. I mean --

5 Q. In regards to the use of the property,
6 you've already -- you've answered interrogatories
7 that -- that are already in record, so I'm going to
8 have you just turn to that page to make sure so we
9 don't have to go through everything again. I
10 believe it is part 4. Could you turn to part 4,
11 Dates. Page 1 is all we need you to look at.

12 You're familiar with what you already
13 stated in your answers to admissions and the next
14 page as to your answer to Interrogatory Number 10.
15 You're familiar with the information you already
16 provided -- provided under oath?

17 A. Yes.

18 Q. Do you need to make any corrections or
19 additions to the statements that are contained
20 therein?

21 A. No.

22 Q. Okay. So up through 2013 and '14 when
23 this was constructed, the information contained
24 here is correct as to the use of the -- the home;
25 is that correct?

1 A. There just -- Stephen isn't in here for
2 staying that summer of 2013.

3 Q. Okay. And he's the one who just
4 testified, so --

5 A. Correct.

6 Q. -- that was something we need to add into
7 that portion; correct?

8 A. Correct.

9 Q. All right. So the part -- the footnote on
10 Dates-1 where it says, "Stephen was in college from
11 2011 to 2015," what you're stating is you need to
12 add a caveat, "Oh, by the way, he was back during
13 the summers." Is that what you're trying --

14 A. Yep.

15 Q. -- to tell us?

16 A. Yep.

17 Q. All right. Other than that, any other
18 corrections or additions?

19 A. No.

20 Q. In regards to the wintertime -- this is
21 something that Keith didn't go into so I'll just
22 ask you. Have you ever observed any ice buildup
23 on -- on the turbine itself during the wintertime?

24 A. I don't know if I've ever seen any.

25 Q. All right. Then my next question is have

1 you ever seen any evidence of pieces of ice or
2 material flying -- apparently coming off of the
3 turbine and landing anywhere near your property?

4 MR. MAHLBERG: I'll object --

5 THE WITNESS: You mean my prop --

6 JUDGE DAWSON: Hold on one second.

7 MR. MAHLBERG: I'm going to object on the
8 scope of the notice of hearing. I don't think
9 we've had anything about ice throw within the scope
10 on this one.

11 MR. BOUGHEY: Well, that's right, which is
12 why I'm raising it now so we can just say is this a
13 concern you have in reference to this being too
14 close to your house.

15 JUDGE DAWSON: It's very tangentially
16 related to the remedy. I'll allow the question.

17 THE WITNESS: Well, I haven't seen any ice
18 fly, but I know that is the reason why there is a
19 1400 feet setback because ice can be swung up to
20 1400 feet.

21 Q. (MR. BOUGHEY CONTINUING) Okay. Now, last
22 question. The Public Service Commission is going
23 to have to figure out a -- a remedy as to what to
24 do with this tower. Do you have any suggestions
25 for them?

1 A. Yeah. I want it gone. I don't want it
2 set back somewhere else. I want it gone. I mean,
3 if that's -- since they ruled out damages and
4 everything, then take it down. Get it away from my
5 house so we can enjoy -- me and Keith some day
6 eventually were going to -- we would have retired
7 over there and probably stayed in the winter -- or
8 sorry -- we would not have stayed in there in the
9 winter. We'd have stayed there in the summer and
10 then went away for the winter once -- but now
11 there's no way I would stay over there.

12 I get -- honestly with the wind tower and
13 the blades when we go over there, I get sick just
14 from the motion of it, and I don't know what it is.
15 It just happened about four years ago, and I
16 can't -- anything that spins, I can't handle, so --

17 Q. So you want it gone?

18 A. Mm-hmm.

19 Q. Is that a yes?

20 A. Yes, it is.

21 MR. BOUGHEY: Nothing further. Thank you.

22 JUDGE DAWSON: Mr. Mahlberg.

23 MR. MAHLBERG: Thank you.

24

25

CROSS-EXAMINATION

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BY MR. MAHLBERG:

Q. Mrs. Kessler, you were asked a question by Mr. Boughey, which was is there anything about what Mr. Kessler testified to that you have anything to add to, correct, change or otherwise; right?

A. Yes.

Q. And you said no; right?

A. Yes.

Q. As you sit here, you can't actually tell us everything that he testified about; right? It's an interesting way of doing a question or a full examination to just adopt in --

MR. BOUGHEY: Well --

Q. (MR. MAHLBERG CONTINUING) -- whole somebody else's testimony. So my question is: Do you remember everything that he said?

MR. BOUGHEY: Objection. Irrelevant. He had his opportunity to ask an objection. If he didn't like my question, he should have asked it then, and we could have spent another hour with me going through everything with her. He didn't object at that time. Therefore, he -- he's waived any objection as to that question and answer.

JUDGE DAWSON: And you have a question and

1 your question is?

2 MR. MAHLBERG: My question was whether you
3 remember everything that Mr. Kessler testified
4 about.

5 MR. BOUGHEY: And my objection is
6 irrelevant under the circumstances.

7 MR. MAHLBERG: I'm going to have to do a
8 cross-examination. All I'm trying to do --

9 JUDGE DAWSON: I'll allow the question,
10 but please move on.

11 MR. MAHLBERG: That's fine. Fine.

12 Q. (MR. MAHLBERG CONTINUING) Mrs. Kessler,
13 you do not currently reside at the Section 15
14 residence; right?

15 A. Not right now, no.

16 Q. And you haven't resided there in nearly
17 20 years; right?

18 A. Well, it would be 28 years because it was
19 in two thousand -- or 1992.

20 Q. Right. It's 2021.

21 A. Yep.

22 Q. Not 2011. Nearly --

23 A. Yep.

24 Q. -- 30 years.

25 A. Yep.

1 Q. I'm sorry. You have not resided at the
2 Section 15 property in nearly 30 years; right?

3 A. We moved out in December 1992 with --

4 Q. And --

5 A. We weren't supposed to be gone for
6 30 years. We were supposed to be gone for three
7 months because his parents went to Florida and they
8 never came back. So there -- yeah. And I -- and,
9 honestly, I did not want to leave that house
10 because I liked that house. It's nice and small.
11 Perfect. Cozy. But I was forced to move.

12 Q. Right. So you moved at the end of '92 --

13 A. Yep.

14 Q. And you've -- you've never made that your
15 residence again; right?

16 A. Correct.

17 Q. Mr. Kessler testified earlier that some of
18 your nonimmediate family members lived in the house
19 up until -- on and off up until 2003, but from 2003
20 until one of your sons moved in after the project
21 was constructed, no one made that their residence;
22 right?

23 A. They stayed there occasionally, but it
24 wasn't like a permanent residence. I mean, they --

25 Q. Right. Anybody who --

1 A. Yep.

2 Q. -- stayed there -- sorry, I don't mean to
3 talk over you.

4 A. That's fine.

5 Q. Anybody who stayed there lived somewhere
6 else; right?

7 A. Correct.

8 Q. In Mr. Kessler's testimony this morning,
9 we went through a lot of the 2008 and 2009 stuff,
10 and I am not going to rehash all of that right now,
11 but do you have a recollection of who affiliated
12 with Minnesota Power you dealt with in 2009 when
13 you optioned up the properties in Mercer County?

14 A. I'm not sure who it was. I mean, I know
15 it was a Minnesota Power representative, and the
16 person who signed the easement was Paul Johnson --
17 or option, I should say. I don't think it was an
18 easement. I think it was an option. I think that
19 would have been the one in June; right?

20 Q. Do you have the -- the book -- sorry.

21 If you look at MP Exhibit 6, this is the
22 wind option agreement from 2009 with the Minnesota
23 Power affiliate; right?

24 A. Yes.

25 Q. And you -- you just testified that you

1 think it was Paul Johnson because he signed the --
2 the option agreement; right?

3 A. Yeah, but there's a -- I think there was
4 something that had Paul Johnson on it somewhere.

5 Q. So you think that it was Paul Johnson
6 because his name is on something that you recall
7 from back at the time?

8 A. Yes.

9 Q. Even if it -- even if it -- and I'm just
10 trying to make clear. His name does not appear on
11 this exhibit; right?

12 A. Correct.

13 Q. Without belaboring the point,
14 Mrs. Kessler, in the complaints and in discovery
15 responses and in your deposition the first time
16 around, you identified Scott Monroe as the person
17 that you talked with from 2009 up to 2013; right?

18 A. Yes, I did, and then I made a correction.

19 Q. Yep. And there was a -- a correction
20 in -- in part of the deposition testimony; right?

21 A. Yes.

22 Q. In -- that correction, Mrs. Kessler, came
23 after you learned that Scott Monroe wasn't with the
24 company back in 2009; right?

25 A. Correct. But, I mean, whether it was

1 Scott or Paul, it was somebody from Minnesota
2 Power.

3 Q. At your deposition you were sure it was
4 Scott Monroe; right?

5 A. Yeah, I -- I thought it was. Yes.

6 Q. There was a request -- an allegation that
7 a request was made for a map prior to the public
8 hearing to Minnesota Power; right?

9 A. Not that I --

10 MR. BOUGHEY: I'm sorry, I couldn't
11 understand the question. There was a map?

12 Q. (MR. MAHLBERG CONTINUING) You and
13 Mr. Kessler requested a map from Minnesota Power
14 prior to the public hearing; is that correct?

15 A. I can't recall if we requested one or not.
16 I know we did not receive one.

17 Q. Did you go over the -- review the
18 complaints that were filed in this case?

19 A. Yes.

20 Q. Made sure they were accurate and complete,
21 each one of them; right?

22 A. We looked over -- yeah.

23 Q. And you're aware that there is allegations
24 in those complaints that specifically a map was
25 requested of Minnesota Power by the Kesslers and

1 that it wasn't provided. Do you recall that?

2 A. I can't recall. I've read so much stuff
3 in the past, I can't specifically recall that.

4 Q. Okay. So if you go to the -- the book of
5 your -- of the nonMinnesota Power documents, the
6 book that Mr. Boughey had there, towards the very
7 end is a copy of the revised formal complaint, and
8 of that I want to go to page 10. And let me know
9 when you're there.

10 A. I'm there.

11 Q. At the -- the number 3 there, it says,
12 "Prior to the public hearing, the Kesslers were
13 told that a preliminary siting map had been drafted
14 and they asked for a copy."

15 Do you see that?

16 A. Yes.

17 Q. As you sit here, do you have -- who did
18 you ask for a copy of the map?

19 A. I -- I don't -- I didn't ask for a map.
20 I'm assuming Keith maybe asked, talked to somebody.
21 I don't recall. I just don't ever recall seeing a
22 map till we got to the public hearing. We never
23 saw a map. And I just can't recall that or who
24 would have been asked.

25 Q. Okay. So -- and fair enough. That's why

1 I asked the question, trying to figure out who
2 that -- who that was.

3 To the extent that Minnesota Power sent a
4 letter that directed you anywhere to -- to see a
5 map or other information about the project, you --
6 you didn't ever see a map before the -- the
7 September 13, 2013, hearing; right?

8 A. Correct.

9 Q. So if a letter had information about it,
10 you didn't follow that; right?

11 MR. BOUGHEY: I'm sorry. You didn't
12 follow the question? You didn't follow the map?
13 Objection. Vague. I have no idea -- I don't
14 follow him.

15 JUDGE DAWSON: I'm a little lost at the
16 question. Do you understand the question?

17 THE WITNESS: Are you saying I didn't
18 follow the letter? Is that what you're asking me?

19 Q. (MR. MAHLBERG CONTINUING) I'm -- yes.
20 Yes. Thank you for clarifying for me.

21 A. Well, if there was a letter that said that
22 a map -- I don't recall seeing the letter that said
23 there was a site we could go on and see a map.

24 Q. Okay.

25 A. That was in 2013. I had a kid in college

1 and --

2 Q. In the -- in the complaint, you recall
3 that you allege that you were relaying concerns to
4 Scott Monroe and Wade Isaacson prior to the public
5 hearing; right?

6 A. Prior to the public hearing? I don't
7 know -- it wasn't Wade. We didn't -- I didn't meet
8 Wade till after the public hearing, but I know I
9 met Scott and I -- because he came over with, I
10 believe, the option that we signed in 2013, and I
11 don't know if that was prior to the meeting or
12 after the meeting, but Scott has been at my house
13 two times.

14 Q. Okay. So your -- your testimony today is
15 not that Scott Monroe was at your house in 2009?

16 A. No.

17 Q. That's changed, and it's now that he was
18 at your house twice in 2013?

19 A. I don't know what dates it was, but I know
20 he's been at my house. And I'm not sure what the
21 dates were.

22 Q. And the house that you're talking about is
23 not the Section 15 house. It's where you live.

24 A. Yep, the 6001.

25 Q. In your second revised complaint, page 19,

1 paragraph 18.2, you alleged, quote, The Kesslers
2 prior to the public hearing told both Scott and
3 Wade about their concerns that Turbine 441 would be
4 too close to the residence, close quote; right?

5 A. I know the complaint was made after the
6 public hearing.

7 Q. Right. And --

8 A. I mean, I shouldn't say -- it was told to
9 Scott and to that Paul that we didn't want a tower
10 close to the residence on Section 15 because our
11 children some day were going to live there, and
12 they were told. Whether -- and I can't
13 specifically say what year it was or when it was,
14 but they were told numerous times. And --

15 Q. So my question, Mrs. Kessler, is on
16 page 19, paragraph 18, subparagraph 2, where it --
17 it alleges that you told Scott and Wade about your
18 concerns that Turbine 441 would be too close to the
19 residence prior to the public hearing, that's not
20 correct; right?

21 A. Well, I would have -- we would have
22 told -- like I said, I can't specifically say we
23 told Scott, but I did not meet Wade till after the
24 public hearing.

25 Q. Okay. So as to you, this -- and I'm just

1 trying -- I mean, it's a document that's in part of
2 the exhibits that are coming in. I want to make
3 sure that when --

4 A. But --

5 Q. -- folks go back and read the exhibits,
6 they have the context for it. So that paragraph is
7 inaccurate as to you; right?

8 A. Well, I would --

9 MR. BOUGHEY: Objection. Vague as to what
10 is inaccurate. The only thing she's saying is
11 inaccurate, counsel, is who she's said it to.

12 MR. MAHLBERG: That's the point.

13 Q. (MR. MAHLBERG CONTINUING) It's
14 inaccurate; right?

15 MR. BOUGHEY: Well, no. Objection.
16 Vague.

17 JUDGE DAWSON: I'll allow the question. I
18 mean --

19 THE WITNESS: Like I said, prior to the
20 hearing, I know Scott came over and, like I said,
21 I -- I can't specifically put a date -- time on it
22 or when it was, but Wade I did not meet till after
23 the public hearing.

24 Q. (MR. MAHLBERG CONTINUING) Okay. So I'm
25 going to shortcut anything in the complaint, this

1 second revised complaint or the first revised
2 complaint or the second complaint or the original
3 memorandum where it says I -- the Kesslers told
4 Wade anything prior to the public hearing. That's
5 not accurate; right? It's just Scott?

6 A. I can't recall.

7 Q. But you --

8 A. Because I'm --

9 Q. -- recall not talking to Wade ever until
10 after the Public Service Commission September 13 --

11 A. But that doesn't necessarily mean Keith
12 didn't talk to him at one point on the phone or
13 something. But, I mean, if we ever met in person,
14 we were always together, but Keith could have
15 talked to Wade on the phone. I don't know that for
16 sure.

17 Q. But you were here when Mr. Kessler
18 testified this morning that his communications were
19 with Scott; right?

20 MR. BOUGHEY: Objection.

21 Mischaracterization. He said, "I talked to many
22 people from Minnesota Power. I don't remember
23 exactly which ones they were, but I know they were
24 Minnesota Power."

25 MR. MAHLBERG: If he's going to testify as

1 part of the objections --

2 MR. BOUGHEY: No, not going to -- well,
3 I'm obligated to state exactly -- if I argue
4 mischaracterization, I have to state in what way
5 it's a mischaracterization, counsel. I'm not
6 testifying. I'm laying an objection.

7 JUDGE DAWSON: I understand.

8 MR. MAHLBERG: Okay.

9 JUDGE DAWSON: I understand. I --

10 MR. MAHLBERG: I'll move --

11 JUDGE DAWSON: Please do.

12 MR. MAHLBERG: I'll move on.

13 Q. (MR. MAHLBERG CONTINUING) The date of the
14 Public Service Commission's hearing, that's
15 September 13, 2013, if I have it right, you looked
16 at the maps before the hearing. Couldn't really
17 identify anything. Sat down and on a break went
18 back up to the maps; right?

19 MR. BOUGHEY: Objection.

20 Mischaracterization again. They stated they
21 couldn't get to the maps before the hearing. There
22 were too many people. I would ask that the
23 question be rephrased accurately.

24 MR. MAHLBERG: Sorry. I'm trying to
25 shortcut.

1 JUDGE DAWSON: Yeah. No, that's fine.
2 Just ask your question. She can say no if it's not
3 what happened.

4 Q. (MR. MAHLBERG CONTINUING) All right. You
5 were not able to get a good look at the maps before
6 the hearing began; right?

7 A. Correct.

8 Q. And you sat down, went through the first
9 part of the meeting, and on a break went back up to
10 the maps; right?

11 A. Correct.

12 Q. And when you went back up to the maps, you
13 could see them; right?

14 A. Yes.

15 Q. And you could see that your house was not
16 identified -- sorry, that the Section 15 house had
17 not been identified as an occupied residence;
18 right?

19 A. Yes. It was -- yes.

20 Q. It didn't have the circle that all the
21 other houses had; right?

22 A. Yes.

23 Q. Okay. At that point, you began a
24 conversation with whom from Minnesota Power?

25 A. I didn't start a conversation. Keith did

1 with Matt.

2 Q. Who did -- okay. So Mr. Kessler began a
3 conversation with Matt Freudenrich up at the maps;
4 is that right?

5 A. Correct.

6 Q. Was there anyone else from Minnesota Power
7 right there?

8 A. There was somebody else and I'm not sure
9 who it was.

10 Q. And on -- fair to say that the previous
11 allegations or deposition testimony where you
12 specifically identified somebody --

13 A. Yes.

14 Q. -- you're no longer attempting to
15 specifically identify that person; right?

16 A. Well, it was in 2013. I remember
17 talking -- or Keith speaking with Scott -- or,
18 sorry, Todd. There was a lot of people around and
19 there was somebody else there. And it's not Todd.
20 It's Matt.

21 Q. Yep. And I want to correct that. Is it
22 your testimony, Mrs. Kessler, that Mr. Kessler
23 began the conversation with Matt Freudenrich up at
24 the maps?

25 A. Yes.

1 Q. That there was someone else there, and
2 although you previously were sure who that was, you
3 no longer know who it was; right?

4 A. I thought it was Scott because I had seen
5 him before and I had never seen really anybody else
6 from Minnesota Power, and the only reason why I
7 knew it was Matt is because he said his name was
8 Matt.

9 Q. Okay. And that's fine. You thought it
10 was Scott back then. You no longer think it was
11 Scott; right?

12 A. It was a Minnesota Power representative;
13 correct.

14 Q. But you no longer think it was Scott;
15 right?

16 MR. BOUGHEY: Well, wait a minute.
17 Counsel, again, mischaracterization. She says --

18 MR. MAHLBERG: It's a --

19 MR. BOUGHEY: -- I don't know who it was.
20 Even Jerry Lein testified that Scott was there.
21 Who knows --

22 MR. MAHLBERG: No.

23 MR. BOUGHEY: -- who was there?

24 MR. MAHLBERG: No. This is speaking
25 objections. Feeding the witness the testimony that

1 he would like to give next. It's inappropriate.

2 MR. BOUGHEY: No, it isn't.

3 JUDGE DAWSON: Just answer the question.

4 MR. BOUGHEY: It's a mischaracterization.

5 THE WITNESS: Like I said, I don't know.

6 It was a Minnesota Power represent -- Minnesota
7 Power representative. Whether it was Scott or not,
8 I -- at this time, no, I don't -- I don't know.
9 It -- it happened so fast, really, because Matt
10 said it and we kind of -- we followed him out into
11 the hallway because he was in a hurry, and things
12 kind of, you know, said, "We'll take care of it
13 later," and then we just kind of -- okay.

14 Q. (MR. MAHLBERG CONTINUING) Fine.

15 A. So then --

16 Q. In your complaints you say it was Scott.
17 In your deposition you say it was Todd. It's the
18 last time I'll ask it. You no longer are
19 attempting to identify an actual person that was
20 there with you and Mr. Kessler and Mr. Freudenrich;
21 is that right?

22 A. Yep. There was somebody else there. Who
23 it was, I do not know.

24 Q. Okay. As the four of you are -- are the
25 four of you near the map?

1 A. We start at the map, and we're not there
2 very long because we -- Keith asked the question
3 and kind of Matt just went out and we just followed
4 him out.

5 Q. So at some point, Mr. Freudenrich blows up
6 at you; right?

7 A. Yes.

8 Q. He yells, uses a curse word; right?

9 A. Yes.

10 Q. And that happens in the hallway; right?

11 A. Well, I'm trying to think. I don't know.
12 I can't recall where it was, if it was up by the
13 map or as -- as we were walking out because, like I
14 said, it was -- everything was happening so fast
15 and there were so many people around. It was --

16 Q. In your deposition, you testified that
17 when he blew up and yelled at you, it was in the
18 hallway; right?

19 A. Correct.

20 Q. And as you are testifying now, you no
21 longer are --

22 A. It was -- I don't know --

23 Q. -- saying where it took place?

24 A. -- I think it was happening as we went out
25 to the hallway. I mean, I just remember Keith

1 asking a question and we were walking, and it
2 probably happened in the hallway.

3 Q. Okay. But he did not blow up at the map;
4 is that right?

5 A. No, he said, "I don't have" -- he said --
6 well, he didn't say anything. He just kind of kept
7 walking as Keith was asking the question, so we
8 followed him out --

9 Q. Okay.

10 A. -- and then --

11 Q. Okay. And I'm just trying to establish
12 where -- where your recollection is of where this
13 happened.

14 After Mr. Freudenrich allegedly yelled and
15 swore at you and Mr. Kessler, there was another
16 person there who you can't identify who tried to
17 calm the situation; is that right?

18 A. Correct.

19 Q. And then the conversation ended. It was
20 over in a minute or two?

21 A. Yeah, it didn't take -- it just was,
22 "We'll talk about this next week. We'll set up a
23 meeting and we'll talk about it then." And we
24 wanted to get -- we wanted to get on our -- to the
25 bathroom and get back in the room before they

1 started the meeting.

2 Q. Fair to say that -- that if that event
3 happened the way that you said it did, that was not
4 a very positive experience; right?

5 A. Correct.

6 Q. You were asking a question about an issue
7 that mattered to you, an issue that you say you had
8 raised repeatedly to the company over the years,
9 and in response you got yelled at and swore at;
10 right?

11 A. Correct.

12 Q. Despite that, when it went back on the
13 record, there was no mention of having been blown
14 up at; right?

15 A. Correct.

16 Q. Instead, the description was that the
17 communication with the company was pretty good;
18 right?

19 A. I didn't say that.

20 Q. But you were here for this morning when
21 Mr. Kessler acknowledged that his statement on the
22 record was that the communication has been pretty
23 good with Minnesota Power so far, and you've
24 adopted all of his testimony; right?

25 A. Correct.

1 Q. So, again, the back onto the record when
2 Mr. Kessler talks, just after this has occurred,
3 the representation is that communication is pretty
4 good; right?

5 A. Correct.

6 MR. BOUGHEY: Counsel, do you have a
7 reference to where Mr. Kessler testified that
8 everything was pretty good? Because I don't quite
9 recall it that way.

10 MR. MAHLBERG: Your -- your witness has
11 testified to it. I can look --

12 MR. BOUGHEY: I appreciate that.

13 MR. MAHLBERG: I can look on a break,
14 Lynn, but I'd like to keep going on the
15 cross-examination.

16 JUDGE DAWSON: You can continue.

17 MR. BOUGHEY: Well --

18 MR. MAHLBERG: Thank you.

19 MR. BOUGHEY: I thought you might want to
20 correct your testimony and questions given they
21 were inaccurate.

22 JUDGE DAWSON: You can continue --

23 MR. MAHLBERG: Thank you.

24 JUDGE DAWSON: -- Mr. Mahlberg. If you
25 find it, Mr. Boughey --

1 Q. (MR. MAHLBERG CONTINUING) After that
2 hearing ended, you didn't talk with anybody from
3 Minnesota Power that day; right?

4 A. Correct.

5 Q. And you didn't talk with Minnesota Power
6 personally about setting up that next meeting;
7 right?

8 A. Correct.

9 Q. Someone talked with Mr. Kessler?

10 A. Correct.

11 Q. When did that next meeting take place?

12 A. Specific time, I'm not sure. I'm thinking
13 October sometime.

14 Q. Not in the week after the hearing, but
15 sometime --

16 A. No.

17 Q. -- over the ensuing weeks or month plus;
18 right?

19 A. Correct.

20 Q. And when you -- when you had that meeting
21 in October, did you review easements that day?

22 A. We talked about signing -- they talked to
23 us about signing an easement, getting an easement
24 signed, yes.

25 Q. And at that meeting, you're in the O&M

1 building; is that right?

2 A. Correct. That's the building where you go
3 upstairs to where the offices are. Yes.

4 Q. So you're in the second floor of the O&M
5 building.

6 A. Yes.

7 Q. You're meeting there that day with Scott
8 Monroe and Wade Isaacson --

9 A. And Wade.

10 Q. -- is that right?

11 A. Correct.

12 Q. And at some point Matt Freudenrich joins
13 the conversation?

14 A. No. He -- I think he -- I think he may
15 have been there, like walked through, but he never
16 stayed for a conversation. It was just with
17 Matt -- or not -- sorry -- Scott and Wade.

18 Q. Did you ever talk with Matt Freudenrich
19 again after the -- after the September 13, 2013,
20 Public Service Commission hearing?

21 A. Not that I can recall.

22 Q. At the end of your meeting in October of
23 2013, you -- you signed easements in connection
24 with the Bison 4 wind project; right?

25 A. I don't think we signed the easement till

1 November.

2 Q. If you would turn, Mrs. Kessler, to MP
3 Exhibit 4-5.

4 COMMISSIONER CHRISTMANN: What was the
5 number?

6 JUDGE DAWSON: 4-5.

7 Q. (MR. MAHLBERG CONTINUING) Let me know
8 when you're there.

9 A. I'm here.

10 Q. If you look at the first page, this is a
11 memorandum of easements. It reflects that you've
12 entered into an easement agreement with Minnesota
13 Power; right?

14 A. Correct.

15 Q. And if we go to page 3, you and
16 Mr. Kessler have your signatures notarized by Scott
17 Monroe on October 23; right?

18 A. Correct. But we had met with them prior
19 to this. We did not sign anything with them the
20 very first time we went over there and discussed
21 things.

22 Q. So your testimony is that there were --
23 there was a meeting after the September 13, 2013,
24 public hearing. Not sure when it happened?

25 A. Yep.

1 Q. But there was a meeting and then you went
2 back again on October 23 to sign the easements; is
3 that right?

4 A. Well, actually, we went back and we didn't
5 sign it again. And then Scott came to our house
6 and we signed it, because we wanted the lawyers to
7 look at everything and we really did not want to
8 sign an easement. We were on the fence.

9 Q. Who were your lawyers, Mrs. Kessler, that
10 looked at the easements?

11 A. Does it matter --

12 Q. It's a question.

13 A. -- I mean, who looked at it? It was --

14 MR. BOUGHEY: Well, I guess I'm -- I mean,
15 we're trying to get done at the end of the day.
16 I'd object as irrelevant, but --

17 MR. MAHLBERG: The objection takes longer
18 than an answer.

19 MR. BOUGHEY: Unless there's some basis
20 for relevancy, other than, you know -- I object.
21 Irrelevant. Who cares who the lawyer was?

22 MR. MAHLBERG: There's a dispute as to the
23 number of meetings that -- that took place, who was
24 there with them. This witness is testifying about
25 now three meetings taking place. It's a contested

1 issue. I'm asking this witness which lawyer they
2 recessed in order to have review all the documents.

3 MR. BOUGHEY: I don't know what's
4 contested, Your Honor. She initially testified and
5 stated it was an easement that was signed in
6 November. First page shows November 8. That's
7 when this company apparently finally signed it
8 after they got a signature on the 23rd. I fail to
9 see any discrepancy in dates by my clients, other
10 than those created by trying to confuse the rest of
11 the dates. It's irrelevant who the lawyer was.

12 JUDGE DAWSON: I'm going to allow the
13 question. I -- I think it goes to relevant points
14 as to remembering the facts.

15 MR. MAHLBERG: Thank you.

16 THE WITNESS: Who was the attorney?

17 Q. (MR. MAHLBERG CONTINUING) Yes.

18 A. Ann Mahoney.

19 Q. Thank you. How long did Mr. Mahoney have
20 with the documents?

21 A. Ann had the --

22 MR. BOUGHEY: Ms.

23 Q. (MR. MAHLBERG CONTINUING) Oh, I'm sorry.
24 You said Ann Mahoney.

25 A. Ann Mahoney, yes.

1 Q. I heard Dan Mahoney.

2 How long did Ms. Mahoney have with the
3 documents?

4 A. She -- maybe a week. We took them over
5 there and she looked at them, and we just wanted to
6 have her opinion of what she thought about it.

7 Q. Okay. So your testimony is two meetings
8 on-site at the -- the O&M facility, and then when
9 you actually signed this easement, Mr. Monroe was
10 at your home; right?

11 A. I believe so, yes.

12 Q. And whether those dates line up or not,
13 it -- your testimony is at least that Mr. Monroe
14 was at your house to notarize this; is that right?

15 A. Yes.

16 Q. And you later would sign some other
17 easement agreements in November as these contract
18 for deed issues got figured out; right?

19 A. Yes.

20 Q. Which meeting was it, Mrs. Kessler, that
21 you went through the easement in detail and looked
22 at the exhibits?

23 A. Well, our first meeting when we went over
24 there, we discussed -- we looked at the map and we
25 talked about it, because they wanted us to sign the

1 easement and we weren't ready to sign anything,
2 because, like I said, we didn't -- we really did
3 not want any wind towers on our land. We were
4 very -- didn't want them.

5 So, anyway, we looked at the map. We
6 discussed the easements before we looked at the
7 map, then we looked at the map, and I remember the
8 map. We had it -- and it was not hanging on a wall
9 or anything. It was down. And the only reason I
10 know it was down is because I'm one of them people
11 who has to flip the map around a few times to
12 figure out where I'm at. And then I was like,
13 "Okay. So this is our land here and so here's a
14 tower here and here's" -- "okay. We get these two
15 towers, and here's our land here and there," and I
16 raised the concern of there being two towers too
17 close to our property. I said, "This tower here
18 looks like it's too close and so does this tower."

19 Q. You testified, Mrs. Kessler, just now that
20 you never wanted these towers on your property;
21 right?

22 A. Correct.

23 Q. You signed wind option agreements in 2008,
24 2009, 2013; right?

25 A. But that's really not thinking that you're

1 ever going to get a wind tower because -- it's just
2 something that you just don't really think in the
3 future that you're really going to get a wind
4 tower. It's like, "Well, we'll sign it." When it
5 comes to it, you're probably not going to get one,
6 and if you do, you're not going to sign to have
7 one.

8 Q. You never wanted wind turbines even though
9 you signed and gave permission to multiple wind
10 developers to use your property --

11 A. To maybe --

12 Q. -- to develop wind projects?

13 A. A lot of -- a lot of people sign them and
14 never get a wind tower at all on their place, so --

15 Q. But my -- my question is you signed these
16 in 2008 and 2009 off -- covering lots of property,
17 covering two different counties, and your testimony
18 is you never, ever wanted a wind project to affect
19 your property; is that right?

20 A. We did sign them, and when it came down to
21 it, the more we looked into it, we did not want
22 them on our property.

23 Q. And do you have any turbines on any of
24 your property?

25 A. We have -- we have one, and my in-laws

1 have another -- have one.

2 Q. In 2013, after the other Bison projects
3 are being developed and are in development, when
4 you were approached to add more land for Minnesota
5 Power, you knew that these Bison projects were
6 proceeding; right?

7 A. When we did the option?

8 Q. Yes. In 2013.

9 A. Well, there was a -- the Bison project --
10 what is it, southeast of us, I believe, but never
11 really thinking that it was going to come that far
12 because there was talk and it wasn't going to come
13 up that way and it was going to go a different
14 direction. So --

15 Q. So even in May of 2013 when you are
16 signing up all of the Oliver County land that has
17 just been released from the Boulevard Associates
18 options, you're signing that giving permission for
19 wind project development, but at the same time
20 thinking I never want any of these things near me;
21 is that right?

22 A. No. Thinking that we were never going
23 to -- at that time probably it never was going to
24 happen.

25 Q. Even though an application was on file?

1 A. Well, I -- I didn't know there was an
2 application on file.

3 Q. Did you have conversations with Mr. Monroe
4 about the probability of a project going forward
5 when you were signing up the Oliver County
6 properties?

7 A. We did have conversations about it going
8 forward, but that -- he -- at that time there was
9 conversations of they didn't know where they were
10 going to be put.

11 Q. Where the turbines were going to be put?

12 A. Correct.

13 Q. Did those conversations involve that the
14 project area included the properties that you were
15 putting under option?

16 A. No.

17 Q. After construction was complete -- or,
18 sorry, while construction was ongoing or after
19 construction was complete, you didn't reach out to
20 Minnesota Power to -- to Mr. Monroe and say,
21 "You" -- "You told us these were going to be put
22 more than 1400 feet away; that does not look like
23 it's 1400 feet away;" right?

24 A. After construction was done or during
25 construction?

1 Q. Let's talk first during construction.

2 A. Well, during construction it's hard to
3 tell. I mean, there's stuff everywhere. You don't
4 know exactly where it's going to be set. And when
5 you're standing there, it's like, well, is that
6 1400 feet? Yeah, maybe it's 1400 feet. That's
7 what they said it was going to be, so you just
8 believe. You have trust.

9 Q. And so are you saying that during
10 construction, you stood out there and wondered
11 whether it was 1400 feet away or not and made an
12 active determination that I'm not going to look
13 into it?

14 A. Not during construction because during
15 construction, like I said, you would have never
16 known because it's -- everything is flat more, and
17 when they erected the towers, you didn't stand
18 there and look at it until they were up. And like
19 I said, I would have never questioned that they
20 were closer than 1400 feet because they said it
21 wasn't going to be closer than 1400 feet.

22 Q. After construction was complete, did you
23 personally reach out to Minnesota Power or were
24 those --

25 A. I didn't --

1 Q. -- communications all through Mr. Kessler?

2 A. Yeah, all through Keith. I didn't
3 personally.

4 MR. BOUGHEY: I'm sorry. I couldn't hear
5 the last three words.

6 THE WITNESS: I said I did not personally.

7 MR. BOUGHEY: I need to mention that you
8 have to continue speaking up, and then you have to
9 wait till he asks the question and then answer it
10 and don't speak over each other, or she's going to
11 throw something at you. Okay?

12 MR. MAHLBERG: I may be done. I'm going
13 to see --

14 JUDGE DAWSON: I'll give you a few
15 minutes.

16 MR. MAHLBERG: -- going to see if I can
17 find something here.

18 Q. (MR. MAHLBERG CONTINUING) Mrs. Kessler,
19 if you would, in the book that Mr. Boughey
20 prepared, turn to the -- the document that has a
21 handwritten 33 at the bottom. I believe it's going
22 to be behind tab 5. Let me know when you're there.

23 A. Yep.

24 Q. Do you recognize this document?

25 A. The table of contents is what you're --

1 MR. BOUGHEY: There should be a 33 on the
2 bottom left.

3 THE WITNESS: Oh, 33. I went to 35.
4 Sorry.

5 MR. BOUGHEY: That's okay.

6 Q. (MR. MAHLBERG CONTINUING) That's all
7 right.

8 Do you recognize this letter?

9 A. Yes.

10 Q. Do you recall receiving it and reading it?

11 A. Yes, but this wouldn't have been for
12 Oliver County land because it wasn't an option yet.

13 Q. Right. At that time Boulevard still had
14 it under option; right?

15 A. Yes.

16 Q. But this letter is Minnesota Power in 2012
17 telling you specific permitting actions are getting
18 kicked off; right?

19 A. Right.

20 Q. And -- and so when Mr. Monroe came in
21 2013, you understood there were specific permitting
22 actions getting kicked off, that the project was
23 moving ahead; right?

24 A. Correct.

25 Q. And you signed the option anyway; right?

1 A. We had to sign the option. Wade Isaacson
2 told us if we didn't sign the option, he'd have a
3 judge in 30 days and have us sign it.

4 Q. Okay. Mrs. Kessler --

5 A. Oh, sorry. That was the easement. I'm --

6 Q. Yep. I'm -- I'm --

7 A. We signed the option anyway, yes. But
8 that doesn't necessarily -- this does not
9 necessarily mean they're going to put a wind tower
10 on our land.

11 Q. Fine.

12 A. Because we have neighbors right next to us
13 that have no wind towers, no roads, no underground,
14 nothing, so --

15 Q. Just for clarification on it, when you
16 talked about Mr. Isaacson there, you're not talking
17 about your conversations that you had when you
18 voluntarily signed an option adding in the Oliver
19 County lands; right?

20 A. Correct.

21 MR. MAHLBERG: I don't have anything else,
22 Mrs. Kessler. Thank you.

23 THE WITNESS: Thank you.

24 JUDGE DAWSON: Mr. Johnson.

25 MR. JOHNSON: I do have a couple

1 questions, Your Honor.

2

EXAMINATION

3

BY MR. JOHNSON:

4

Q. Earlier when your husband testified, he
5 stated that there's no insurance on the Section 15
6 residence?

7

A. Not on the house, no. Not on the barn or
8 anything over there, no.

9

Q. So none of the buildings are?

10

A. No.

11

Q. And there never has been --

12

A. No.

13

Q. -- even when you guys lived there?

14

Do you currently have insurance on your
15 ranch farm now?

16

A. Yeah. We have liability on all of our
17 property, yes, and our house --

18

Q. But you -- you -- so they have --

19

A. -- and our buildings, yep.

20

Q. -- you have your buildings insured and --

21

(The reporter interrupted the proceedings
22 due to participants speaking simultaneously.)

23

MR. BOUGHEY: Or she'll throw things.

24

Q. (MR. JOHNSON CONTINUING) But you do have
25 your buildings insured there?

1 A. Yes.

2 Q. Can you explain to me what the difference
3 is in why you would insure one and not the other?

4 A. I don't know. I guess I never thought
5 about it. Never thought about putting insurance on
6 it.

7 Q. Okay. You stated that you think the
8 appropriate remedy is to have the tower taken down
9 and not reconstruct it or moved at all. Just
10 completely torn down and gone?

11 A. Correct.

12 Q. Do you think that's fair to your neighbors
13 that derive an income from that tower?

14 A. Do I think that's fair to them? Probably
15 not. But is it fair to me that I have to put up
16 with something that they're getting paid for?

17 Q. You're also getting paid for one?

18 A. That -- that affects nobody. It's in the
19 middle of nowhere.

20 Q. And if somebody did have an issue with it,
21 you would be okay with it being taken down and you
22 losing that income?

23 A. If it was close to somebody's house, yeah,
24 and it affected them, yes.

25 MR. JOHNSON: Okay. No further questions,

1 Your Honor.

2 JUDGE DAWSON: Commissioner Fedorchak.

3 COMMISSIONER FEDORCHAK: Sure.

4 **EXAMINATION**

5 **BY COMMISSIONER FEDORCHAK:**

6 Q. Thank you, Mrs. Kessler. I think I just
7 have two questions, but others can come to mind as
8 we talk, so --

9 Help me -- you seem to really love this
10 location where this house is, the -- the residence
11 in Section 15. Tell me about -- what is special
12 about that location.

13 A. It was our first home. We had our first
14 son there. I don't know. It's just private. It's
15 back in nowhere. I mean, you just go back. It's
16 just homey, it's just --

17 Q. So it's more remote -- it's more in a
18 remote location than your existing, like the main
19 farmhouse and buildings?

20 A. The main where we live, yeah, we're a mile
21 off the highway, so -- I mean, it's -- it's more
22 private back there because it's just a private
23 driveway. Ours we have cars that come back and
24 forth past our house, trucks there. It would just
25 be -- it's just your yard. Everything around it

1 you own.

2 Q. All right. What about the land? Is it --
3 is there anything in particular about that land --
4 because you guys have a lot of land. What's unique
5 about this particular corner and farm site, besides
6 the fact that the house is the house where your son
7 was born? I'm just trying to understand that
8 location more than the actual home.

9 A. I don't know.

10 Q. I mean, I'm not trying to lead you, but
11 the trees, is it hilly, is it -- because I haven't
12 seen --

13 A. Okay. Yeah, it's --

14 Q. -- it so I haven't --

15 A. When you come in --

16 Q. -- I don't know what it looks like.

17 A. -- it's flatter to the one side right away
18 when you get in, and then there's a hayfield, and
19 then it comes down -- you come down like in a
20 coulee a little bit. And then you'll come up and
21 then there's tree rows on -- running north and
22 south and one's running east and west when you
23 drive into the yard. So it's kind of rocky over
24 there, though. I mean --

25 Q. Mm-hmm. So is there pretty views there or

1 is it down in the valley?

2 A. It's down -- it's just -- I don't know.
3 It's peaceful. It's very --

4 Q. Mm-hmm.

5 A. -- peaceful there.

6 Q. Okay. And in your mind, you can't
7 recreate that anyplace else on your land?

8 A. No, on my land I have to -- I get to look
9 at a house now that's built a half a mile away from
10 me out where it used to be pra -- you know, but
11 it's just -- I don't know. It's just -- I've
12 always liked it. My son -- my youngest son likes
13 it.

14 Q. Mm-hmm. Well, my husband and I have some
15 land, and I'm always on the lookout for, well, that
16 would be a cool place or this location, you know,
17 overlooks that or these -- you know, so I always
18 kind of have in mind a few different options where
19 it would be a neat place for a house, whether --
20 we'll never build one, but I'm always thinking
21 about that. So I'm just curious if those -- if
22 you've looked around your land and if there's any
23 other locations that are appealing, and if not, why
24 is this one so appealing?

25 A. I've looked around our land. Yeah,

1 there's one other place that I really liked.

2 There's a tree, but now the tree fell over.

3 Q. Oh.

4 A. I just loved the tree. It reminded me of
5 the *Lion King*, so yes. And there would probably be
6 only one other place that I really like, and -- but
7 you could never build a house back there because in
8 the winter you would never get out because it's
9 pretty secluded back there too.

10 Q. Unaccessible.

11 A. Yeah.

12 Q. Okay. All right. And then in -- in your
13 discussion with the counsel, he asked you -- you
14 got to a point in your conversation about the
15 meeting when you were looking at the maps with
16 whoever was there. I don't frankly care who was
17 there. They were Minnesota Power representatives
18 or ALLETE. So you were looking at the maps. And
19 once you kind of got oriented, you said that you
20 pointed out two locations that you had concerns
21 about. They didn't object to you saying that, but
22 there was no more discussion after that about that
23 issue.

24 So what -- I'm curious. I want to go back
25 to that point. What happened after you pointed out

1 those two locations? What did the company say?

2 A. I said -- I said, "These look awfully
3 close to our land, almost like the one is going to
4 be on our land, and the other one looks right on
5 the fence line." And they said, "Don't worry about
6 it. It's set back. It's not on your property."
7 And I said, "But it looks like fences are going to
8 come around the way it's built," you know, I mean,
9 because they have a pad and then they have to get
10 their cranes in there and everything. I said, "It
11 looks like the fence is probably going to come
12 around."

13 "Nope. They'll be straight. It'll be
14 right back to the way it was."

15 And at the location by 15, the fence is
16 back. The location at the other place, the fence
17 is back, but now there's a big hill that was never
18 there before.

19 Q. So you -- why didn't you guys push them
20 more, I guess? What -- what gave you confidence at
21 that point that you could trust them that what
22 they're saying was accurate?

23 A. Well, going to be honest, Scott, I think,
24 is a very honest guy and I always trusted him when
25 he said something, so I just didn't think. And he

1 said, "Yeah. No, they're going to go straight."
2 Wade Isaac did too. I don't trust him, and I
3 should have maybe went with my gut then.

4 Q. Yeah. And it wasn't your land. Did that
5 have anything to do with it, that --

6 A. That it wasn't our land, and I just
7 thought, well, yeah, they're, you know, on somebody
8 else's land. Hopefully they don't interfere with
9 ours.

10 Q. Mm-hmm.

11 A. And then they did, and one still is and
12 the other one they put the fence back. I mean,
13 they put the fence back, but --

14 Q. Is the 1400 -- was the 1400 feet
15 referenced in that conversation that you remember?
16 I'm not -- I mean, I understand -- I wouldn't
17 remember everything either from --

18 A. I don't --

19 Q. -- that long ago.

20 A. -- know if it was referenced then, at that
21 point in time. I don't know.

22 Q. Yeah.

23 A. I just remember -- and I do remember
24 saying that our children were going to live there
25 because I knew my youngest son Hayden would never

1 leave. I was really surprised that he went to
2 college so -- and left us for what he did and is
3 married now. So I just figured he was going to
4 live there forever.

5 Q. Stay on that couch that he --

6 A. That's why I was like --

7 Q. -- was pictured on.

8 A. -- thank God we have another home because
9 that's where you're going to be.

10 Q. Okay. So they assured you that they --
11 that your concerns about them being too close
12 weren't to be worried about, that they would be --
13 that the towers would be far enough away?

14 A. Yeah, I -- like I said, we trusted them.

15 Q. Okay. Does your current -- the neighbor,
16 does he know about your concerns about this
17 tower -- he, she? Are they --

18 A. I don't --

19 Q. -- are they -- do they live there? And if
20 you don't know, you don't have to answer.

21 A. They live at their farm, yes.

22 Q. Okay. You -- have you communicated with
23 them about your concerns about this tower?

24 A. I haven't, no.

25 Q. Okay. All right. Are you on good terms

1 with them --

2 A. Yes.

3 Q. -- those neighbors?

4 COMMISSIONER FEDORCHAK: Okay. I think
5 that's all for now. Thank you.

6 JUDGE DAWSON: Commissioner Christmann.

7 **EXAMINATION**

8 **BY COMMISSIONER CHRISTMANN:**

9 Q. When you just said that the Lennicks live
10 on their farm, but their farm is not on this
11 section of land; correct?

12 A. Correct. It's to the northeast more.

13 Q. And about how far?

14 A. Is it -- what, two miles? I'm not even
15 sure. I just -- I know where you go down the road,
16 but I'm not sure. Yeah, it's quite a ways away
17 from these wind towers.

18 Q. That makes an interesting point. You've
19 lived there for several decades; right?

20 A. Yes.

21 Q. Do you think this makes a point when --
22 when a person that -- and I am the same way -- if
23 you -- you might live somewhere and yet you're not
24 sure is it 2 miles or 1 and a half miles or
25 2.75 miles.

1 A. Yeah.

2 Q. But then did you feel like some of the
3 questions were kind of unfair to you today being
4 asked why you didn't object to something being
5 1125 feet instead of 1400 feet? Did you think that
6 that's kind of a hard thing for you to gauge?

7 A. Yes.

8 Q. I'd like to get a better feel for how you
9 were originally contacted, the first time you
10 really heard about a wind farm coming out. And I
11 can't keep track of all the various companies that
12 have been talked about today.

13 But when you guys were first contacted
14 about wind development, did somebody just show up
15 at your door one day? Do you get a call to set up
16 an appointment to visit about it? Was there some
17 community meeting that you went to that maybe
18 reflected to them interest in the neighborhood?
19 How did the first conversation start?

20 A. I believe -- well, it was Florida Power &
21 Light first and they showed -- came around, knocked
22 on the door and said, "Hey, we're with" -- gave us
23 cards and sat down and visited with us, the
24 gentleman did.

25 Q. And you --

1 A. I think they -- they tried to do it to see
2 how many people may be interested before they go
3 through anything or forward with anything.

4 Q. So this morning Keith said that this was
5 kind of a new experience, that you never had coal
6 leases or anything like that. And have you had no
7 leases at all, or was he talking about more
8 something like this with bigger development? Have
9 you ever had leases with, like, the electric
10 cooperative or the telecommunications cooperative
11 or anything like that?

12 A. A lease?

13 Q. Or I mean an easement.

14 A. Well, an easement to put a -- yeah, maybe
15 to put a line in for West River.

16 Q. So when -- when a company like this, like
17 FPL or then your subsequent meetings when it became
18 with people from Minnesota Power, did you treat
19 them about the same way as you treated West River
20 easement acquisition people?

21 A. Yes.

22 Q. And I'm curious how that was. So someone
23 has made an appointment or just shows up at your
24 door? Do you check their identification?

25 A. No. I guess no. We just --

1 Q. Do you check even a badge or something
2 like that?

3 A. They have -- they have, you know, a
4 business card and they tell you where they're from
5 and you let -- you let them in and you talk to
6 them, I guess.

7 Q. In western North Dakota, we --

8 A. We trust.

9 Q. -- trust.

10 A. Yeah.

11 Q. And when -- at the end of that
12 conversation, regardless of whether it's with the
13 local phone co-op or a company from another state,
14 what do you recall running through your mind? Was
15 it the -- what they've talked about that they
16 really want to do, or is it about making sure to
17 have notes exactly who it was and what date and
18 time they were there and things like that? What do
19 you think about after you have meetings with people
20 like that?

21 A. Probably -- I mean, I was thinking more
22 like, okay, they're going to come and they want to
23 rent our land. We're never going to get wind
24 towers because that's like no way. And then you
25 kind of just try to process what they just told

1 you.

2 And I know after Florida Power & Light, we
3 did contact people in Center about -- because they
4 had had wind towers up, and asked them a bunch of
5 questions.

6 Q. Questions about the --

7 A. About the --

8 Q. -- impacts of the --

9 A. Yes. And --

10 Q. -- development?

11 A. -- what they thought and everything.

12 Q. So your mind probably wasn't so much on
13 was this Scott or Matt or Joe --

14 A. Right --

15 Q. -- or Bill --

16 A. -- who came there or --

17 Q. -- or Sally?

18 A. Yep.

19 Q. Okay.

20 A. And I'm not good with names. I see a face
21 and I might be like, hey, I know that guy, but what
22 his name is, I don't know.

23 Q. Okay. And I think my last question is the
24 span from where the turbine is -- is located to
25 this house in Section 15, can you see ground level

1 to ground level or is there a higher peak or
2 something in between?

3 A. So you want to know, like, if the yard
4 sits lower or -- I mean, is that what you're asking
5 or --

6 Q. Well, regardless whether it's higher or
7 lower, can you -- could you see ground level to
8 ground level from there? Let me try and maybe
9 phrase it better so that the question's more clear.

10 You can -- because it's 4, 5 hundred feet
11 tall, you can see the wind turbine from the house;
12 correct?

13 A. Correct.

14 Q. Have you ever been over to the wind
15 turbine?

16 A. Not all the way up to it. I've been up to
17 like our fence line.

18 Q. Okay. Do you think that from -- if you
19 were standing by the wind turbine, that you can see
20 the farm?

21 A. See our farm? Yes. You can see down into
22 the yard.

23 Q. Okay. So when they were doing
24 construction, they knew that there was a yard
25 there. There's not like --

1 A. Yes.

2 Q. -- there's a hill in between that they
3 even never thought of going over there to check
4 whether it was occupied?

5 A. Correct.

6 COMMISSIONER CHRISTMANN: Okay. Thank
7 you. No other questions.

8 JUDGE DAWSON: Commissioner Kroshus.

9 COMMISSIONER KROSHUS: All right. Thank
10 you, Your Honor.

11 **EXAMINATION**

12 **BY COMMISSIONER KROSHUS:**

13 Q. Since I've said good morning and good
14 afternoon, I'll say good evening, Deanna. Make the
15 circuit here.

16 The house was painted in 2012; is that
17 correct?

18 A. Yes.

19 Q. Why did you paint it?

20 A. Because it needed painting and the paint
21 was fading.

22 Q. Trying to preserve the building?

23 A. Trying to preserve it, yep.

24 Q. Okay. So how long did you have
25 conversations about moving back to that home at

1 some point in time? I mean, was that just recent?
2 I think you had talked about retiring there, not in
3 the winter, in the summer, and then going somewhere
4 warm.

5 A. We had talked about it -- I think it was
6 the past couple years we've kind of been discussing
7 it and because -- but then now there's a fight of
8 who gets to live in our house down the yard, which
9 boy would get that.

10 Q. So --

11 A. So then we were like, "Well, you might not
12 get it at all."

13 Q. So when you moved out of the house that is
14 in question, was it when you left at some point in
15 time, you were anticipating moving back or having a
16 family member move back or was that later in the
17 game?

18 A. I was figuring -- when we moved out in
19 December of '92, I figured we were going to move
20 back in March, because my in-laws said they were
21 only leaving for a couple months, and they decided
22 to never come home. So -- and then we left it. It
23 was fully furnished because we went to a fully
24 furnished home.

25 Q. Do you have a farm policy for -- an

1 insurance policy for the farm?

2 A. Yes.

3 Q. Is that a blanket-type coverage for
4 liability, et cetera, et cetera?

5 A. For all the land, yeah.

6 Q. And outbuildings or buildings in general
7 that would -- what I'm trying to figure out is
8 would this house be insured? Because insurance has
9 come up on several occasions. I don't know how
10 relevant it is, but would your farm policy provide
11 coverage for the house and the farmstead?

12 A. I don't know if it's in there. I mean, if
13 the blanket policy would cover it, I'm not sure.

14 Q. Okay. I have a blanket policy, and
15 something like that would be covered through that
16 policy.

17 A. Yeah, like I said, I'm not sure. I know
18 we have all the quarters of land and --

19 Q. Okay. Did the company ever dispute the
20 distance of where the turbine is currently placed
21 from the house? Did they ever dispute your
22 measurements?

23 A. No, not that I know of.

24 Q. You had mentioned earlier -- well, let me
25 ask this question first.

1 How confusing was the easement process --
2 or I shouldn't -- now I'm probably suggesting that
3 it was confusing.

4 How -- well, it's already out there. Was
5 it confusing, or was it pretty clear, the process,
6 when you went through the whole easement process
7 with the company?

8 A. It's confusing. I'm still confused about
9 certain things on what's the easement and what's
10 not the easement and where they can go and where
11 they can't go. I mean, now I know more, but at
12 first, I was all sorts of confused.

13 Q. Can you -- can you tell me more about --
14 you had mentioned that if you -- you had said that
15 if you didn't sign, there would be -- a judge would
16 be showing up in 30 days or something to that
17 effect. Can you tell me more about that?

18 A. Yeah. We decided we didn't want to sign.
19 We just thought it would be better for us not to
20 sign, and Wade Isaac said that, "I'll get a judge
21 in 30 days and you" -- "we will have it signed."

22 Q. Okay. So you were -- you were feeling
23 pressure; would that be fair to say?

24 A. Yes.

25 Q. Was that a bigger factor in why you signed

1 the easement than the belief that the Turbine 441
2 would be at least 1400 feet from the house?

3 A. That was a big factor in why we signed it
4 because we thought just, well, they're going to
5 eminent -- I think they used maybe eminent domain
6 our land, and nobody wants that.

7 Q. Did the company tell you that they
8 would -- could exercise eminent domain for the wind
9 turbine or to utilize -- not the wind turbine, but
10 to get an easement on your land?

11 A. For some reason I'm thinking the word
12 "eminent domain" did come in at some time, but I
13 just remember him saying it would be -- he would
14 have somebody within 30 days get it to be signed.

15 Q. Did the company ever -- well, you had
16 legal counsel; correct?

17 A. She just looked over the easement. That's
18 all. We just had her kind of look it over to make
19 sure everything looked correct.

20 Q. Did the company ever recommend you should
21 consult your attorney before signing?

22 A. No.

23 COMMISSIONER KROSHUS: I don't have any
24 other questions. Thank you.

25 JUDGE DAWSON: Commissioner Fedorchak.

FURTHER EXAMINATION

BY COMMISSIONER FEDORCHAK:

1
2
3 Q. I thought of two more, so -- in regards to
4 the 30-day issue, so I need to understand the
5 context of that because I think there's more
6 than -- you had already signed some sort of a deal
7 with them giving them, right, access to your land?

8 A. We had signed the option, yes.

9 Q. You had signed an option that -- that
10 basically said they can -- they can develop the
11 wind resources on your land, something to that
12 effect?

13 A. I believe that's what the --

14 Q. And then so the 30-day threat came after
15 that?

16 A. When we didn't want to sign the easement
17 part for them to go on and put the --

18 Q. Okay.

19 A. -- underground or collection lines and
20 the --

21 Q. Yeah.

22 A. -- roads and everything.

23 Q. Did the option basically already give them
24 the right to an easement? Is that why he felt that
25 he -- he -- he could get a judge to make you sign

1 it?

2 A. I -- maybe that's why he believed, but
3 they -- but they did let somebody else out of their
4 easement, and they did not sign prior to us.

5 Q. And they had an option -- they had
6 already --

7 A. (Nods head.)

8 Q. Okay. All right. Did he understand --
9 did you explain to him why you wanted -- why you
10 didn't want to sign?

11 A. I don't know if we explained to him.

12 Q. Okay.

13 A. We probably just said we didn't -- we
14 decided not to. I don't know if we explained.

15 Q. All right. And then in terms of this
16 location, so if -- I'm looking at the picture in
17 your guys' blue binder under tab 3. It's photo --
18 it's -- yeah, number 6. It shows the turbine
19 blades kind of poking up over the trees.

20 A. Yes.

21 Q. I see two for sure, one kind of in the
22 middle and one far right edge, and then is there
23 another one sort of splitting the distance? Is
24 there three turbines kind of visible there or is it
25 just two?

1 A. I think there's just two because this
2 one's on Lennicks' and this one's on Redmanns'.

3 Q. Okay. And it is kind of deceiving when --
4 you know, because they are very large, but if you
5 say this one, 441, goes away, how close is the next
6 closest turbine?

7 A. That's -- I'm not sure how close it is,
8 but it's set back further. I mean, it's further on
9 Clinton's land and --

10 Q. Okay. You don't think that would be
11 disturbing?

12 A. I don't think that's -- no.

13 Q. And is there one on a different -- because
14 you guys -- this -- looking at the map, it looks
15 like you're kind of in the middle of a big line of
16 turbines here where this property is. So I felt
17 like there was maybe three or four that would be
18 potential concerns. Is there one to the south
19 that --

20 MR. BOUGHEY: Deanna.

21 Q. (COMMISSIONER FEDORCHAK CONTINUING) --
22 you can see?

23 MR. BOUGHEY: I'm sorry. I was going to
24 say there's a big map there, if that helps.

25 Q. (COMMISSIONER FEDORCHAK CONTINUING) Yeah,

1 the big map might help you too.

2 A. I know, but this one is a little easier.

3 Q. Okay.

4 A. So I'm on M-20.

5 Q. Okay.

6 A. And then if you come, there's that dam
7 there, that very first wind turbine. That is on
8 our property. And then there's two of them right
9 after that that's on Clint Redmann's, and then that
10 little -- like it's a driveway kind of there.

11 Q. Mm-hmm.

12 A. That's just a driveway. And then the next
13 one is on Lennicks'. That's the one by our
14 farmyard.

15 Q. Okay.

16 A. And then the other ones are on Lennicks',
17 but this second one on Lennicks' kind of sits back
18 a little ways over the --

19 Q. Okay. So is there one south of your --
20 this farmstead that's yours?

21 A. The only one is that -- when you first
22 look on the very lower left corner by that little
23 dam, that's on our property there.

24 Q. Oh, okay. That's the only other one.

25 A. The only other one.

1 Q. All right.

2 A. And the rest of them, these are Clinton's,
3 and then the rest, these four, are Lennicks'.

4 Q. Mm-hmm. And so this one is the greatest
5 nuisance, and you think if that were not operating
6 there, it would return the peace to that area, or
7 you'd still be bothered by the turbines?

8 A. It wouldn't be the same, but it wouldn't
9 be as noisy and the flicker would not be.

10 COMMISSIONER FEDORCHAK: Okay. All right.
11 That's it for me. Thank you.

12 JUDGE DAWSON: Mr. Boughey.

13 MR. BOUGHEY: Thank you, Your Honor.

14 **REDIRECT EXAMINATION**

15 **BY MR. BOUGHEY:**

16 Q. I have to print something out. I'll try
17 and save time. I'm not going to print out your
18 correction sheet. Is it fair to state that when
19 you did your correction sheet, you specifically
20 listed a correction to page 64, line 16, with
21 Minnesota Power rep, not Scott Monroe? So you
22 corrected and took out Scott Monroe's name, and
23 then you also referred to Paul Johnson, Minnesota
24 Power rep. Do you remember making that correction?

25 A. Yes.

1 Q. Okay. Very good. Now I don't have to
2 print it.

3 Also, you were asked whether Minnesota
4 Power ever asked you -- or suggested that you see
5 or consult a lawyer. Because I've done nothing but
6 look at these documents for weeks, I'm going to
7 show you what used to be in the binder. We didn't
8 put it in the binder because we didn't think it was
9 relevant.

10 MR. BOUGHEY: But it was in, Counsel,
11 page 91 of my original binder, the deposition
12 binder.

13 Q. (MR. BOUGHEY CONTINUING) I'm just going
14 to show this to you and ask if it refreshes your
15 recollection of ever being told by Minnesota Power
16 you might want to talk to a lawyer. And I can get
17 copies for everybody if necessary.

18 MR. MAHLBERG: Lynn, I -- sorry, I think
19 they're in -- there are copies of what you're
20 talking about in the binders already, because
21 you're going to do the Special Message to Property
22 Owners; right?

23 MR. BOUGHEY: Yes. I'm just going to show
24 it to her and let her refresh her recollection, if
25 that's okay. And it's in your binder somewhere?

1 Perfect.

2 MR. MAHLBERG: Yeah, we can --

3 MR. BOUGHEY: Okay. Just read that over
4 and see if that makes it so you remember something
5 you didn't earlier.

6 JUDGE DAWSON: Is it in our exhibits
7 somewhere?

8 MR. BOUGHEY: It's --

9 MR. MAHLBERG: Yeah, if you look --

10 JUDGE DAWSON: Mr. Mahlberg.

11 MR. MAHLBERG: -- there is an example of
12 it, and I don't know where all of them are, but
13 there is an example at the front of the wind
14 project --

15 MR. BOUGHEY: 4-6.

16 MR. MAHLBERG: -- easement agreement --

17 MR. BOUGHEY: First page of 4-6.

18 MR. MAHLBERG: Well, of the 4-6 nonpublic
19 specifically is the one that I'm looking at.

20 MR. BOUGHEY: Thank you, counsel, for -- I
21 didn't realize you had that in there.

22 MR. MAHLBERG: I -- yes.

23 Q. (MR. BOUGHEY CONTINUING) Okay. Have you
24 had a chance to look that document --

25 A. I looked at it --

1 Q. -- over I just showed you?

2 A. -- yes.

3 MR. BOUGHEY: And I'm going to wait and
4 see -- for everybody to get to 4-6. How many pages
5 in is it? I'm at 4-6 now. Nonpublic?

6 MR. MAHLBERG: Nonpublic 4-6 is the --

7 MR. BOUGHEY: All right. 4-6 nonpublic.
8 All right. Second 4-6.

9 Q. (MR. BOUGHEY CONTINUING) Okay. Based --
10 Deanna, based on the document I just showed you,
11 which has already been part of the record, do you
12 now want to restate whether or not Minnesota Power
13 ever mentioned you might want to talk to a lawyer?
14 Do you have any additional information to provide
15 us at this time?

16 A. When reading that, yes.

17 Q. Yeah, once you've read this --

18 A. Once I read this, yes.

19 Q. Okay. And now does this refresh your
20 recollection that indeed they sent you one document
21 that said, "Go talk to a lawyer"; is that true?

22 A. I --

23 Q. Okay.

24 A. -- don't recall, but --

25 Q. All right. All right. Well, for what

1 it's worth --

2 A. -- by reading that, yes, they said to go
3 look at --

4 Q. For what it's worth, I took every document
5 you guys had, I put them in chronological order and
6 I put them in a binder. This was one of them.

7 Okay. But you don't recall reviewing
8 this?

9 A. I probably did, but I don't recall. Like
10 I said, there's --

11 Q. Okay.

12 A. -- so much.

13 Q. I got it. And I'm just trying to make
14 sure that we get out all of the information. If
15 you say anything that I think needs to be
16 corrected, it's my job to make sure we get that
17 out.

18 Okay. Now if you turn in my binder, real
19 quickly I'm just going to go over the things that
20 you were asked about. If you turn to the part two
21 M-17 and 18, those are Google shots. 17 and 18.

22 So right now as to 17, that's obviously
23 Turbine 441 and then that's your property looking
24 to the northwest; correct? Do you see that? Are
25 you on --

1 A. Our property's to the northwest.

2 Q. Yeah.

3 A. Yes.

4 Q. Okay. And so one of the questions was
5 were there hills, was it level. And so if you
6 would, from the tower -- if you were to walk from
7 the tower directly to the house, is -- do you go
8 downhill, uphill?

9 A. You go downhill.

10 Q. All right. You go downhill.

11 And then there seems to be almost a windy
12 road. It's a north-south, but it's got a turn in
13 it, a little wiggle in there. Is that actually a
14 road?

15 A. Where are you talking about?

16 Q. I'm sorry. I'm going the north-south road
17 that's on -- as you -- the first road you run into
18 or that first line you run into as you're walking
19 from the turbine to the house directly.

20 A. Okay. Yep. There's a road that comes
21 around.

22 Q. All right. And that one appears to be
23 more north-south and then it kind of wiggles a
24 little and then continues north, is that -- around
25 the barn area. Does that --

1 A. Yeah. It comes and then it --

2 Q. Okay.

3 A. -- it comes around the barn and then it
4 goes in the yard and then it'll head out west --

5 Q. All right.

6 A. -- out to the main --

7 Q. And then --

8 A. -- road.

9 Q. And then -- and there must -- it looks
10 like some greenery. Is that also -- would you be
11 walking through trees and is it up or down? Just
12 trying to answer Ms. Fedorchak's question.

13 A. Well, when I walk straight down, it's just
14 higher on one side, lower on the other side, you're
15 going to be going down to the yard. And then when
16 you came around the main road, there's trees on one
17 side and on the other. And then once you get past
18 the trees, you're going to go down to that -- like
19 a little valley or whatever, and there's a big hill
20 behind the trees that you go up and then it kind of
21 levels off --

22 Q. Okay.

23 A. -- once you go up.

24 Q. Turn to the next page, M-18, and I see you
25 have a barn and a corral. It looks like a corral.

1 A. Yep.

2 Q. All right. And so, again, as to this
3 location and you have a row -- row of trees on the
4 west side, and so what I'm trying to figure out is
5 clearly to the east is your neighbor. Do you own
6 the land to the north as well? I mean from this
7 farm -- from your farmstead there, do you own quite
8 a bit of land to the north? The rest of the
9 quarter; right?

10 A. We have the whole quarter, yes.

11 Q. Right. And this is actually at the very
12 southeast corner of that quarter; right?

13 A. Correct.

14 Q. So you're in control of everything to the
15 north, everything to the west. The only thing
16 you're not in control of is that turbine to the
17 east; right?

18 A. Correct.

19 Q. And nobody lives anywhere near on that
20 east side of you. It's just a turbine. There's no
21 people there; right?

22 A. Correct.

23 Q. Thank you. Okay. Let's see. Now I need
24 you to go to -- and, again, I'm just answering --
25 going into things that you were asked about.

1 I now would like you to turn on part 5,
2 page 3. Okay. So this is -- and I'll be
3 precise -- not an easement but an option agreement
4 signed in 2009; correct?

5 A. Correct.

6 Q. Okay. And then when they came back and
7 said, "You have to sign this easement," in
8 November, December of 2013, what was your
9 understanding of this option agreement in 2009?
10 Did it bind you to do anything?

11 MR. MAHLBERG: I'm going to object because
12 it assumes facts not in evidence. It's mostly to
13 just identify to not skip over the amended and
14 restated 2013 option.

15 MR. BOUGHEY: Whatever.

16 Q. (MR. BOUGHEY CONTINUING) What was your
17 understanding --

18 JUDGE DAWSON: Hold on, Mr. --

19 MR. MAHLBERG: I --

20 JUDGE DAWSON: I want to get your point.

21 MR. MAHLBERG: This document doesn't
22 relate to the Oliver County property. And so if
23 the question is saying what did this option do when
24 the easements that were signed for different
25 property came up, the record will be very difficult

1 to follow if we're not just making a simple
2 reference to the right option agreement.

3 MR. BOUGHEY: All right.

4 Q. (MR. BOUGHEY CONTINUING) At the time --
5 I'll rephrase.

6 At the time in 2013 that you were advised
7 that the project was going to go forward and you
8 must sign the easement, do you recall that event
9 where they said you have no choice, you have to
10 sign?

11 A. Yes.

12 Q. Okay. And is that -- regardless of which
13 option it was, you understood at that time there
14 was some sort of option that you had signed that
15 was a contract that they could apparently try and
16 enforce. Was that your understanding?

17 A. Yes.

18 Q. Okay. And you mentioned in answer to his
19 questions, you didn't want to continue, and you
20 said, and I'm quoting you, they let others --
21 they -- others were let out of it. What others?
22 Who were we talking about?

23 A. Gary Doll was let out of his -- he had an
24 option signed and he was let out of his -- he
25 didn't have to sign his easement because he didn't

1 want any.

2 Q. All right. So when you guys balked, you
3 were aware that they let somebody out, but they
4 didn't let you out; is that correct?

5 A. I don't think we were aware that they let
6 somebody out until afterwards.

7 Q. Ah. And you remember -- you may not know
8 the law, but you remember very clearly someone from
9 Minnesota Power saying, "If you don't sign it,
10 we'll have a judge sign something within 30 days
11 and you're done"; is that your recollection?

12 A. Yes.

13 Q. All right. I -- I didn't misstate that.
14 Some judge -- they were going to use a judge and
15 they were going to get a signature with or without
16 you, I guess?

17 A. Yes.

18 Q. Okay. Now let's go to page 33, please,
19 same thing. You were asked about this letter from
20 ALLETE Clean Energy, January 4, 2014, and whether
21 or not that letter indicated to you that there
22 might -- they might actually do a project. Do you
23 remember your testimony relating to this letter?

24 A. Yes.

25 Q. And I'd like you to read the very -- just

1 yourself -- well, go ahead. We'll put it in the
2 record. Read the last two lines starting with,
3 "ALLETE Clean Energy," so the last -- I'm sorry.
4 The last three lines starting with, "The people
5 representing." Just quickly read that out loud so
6 we have it in the record.

7 What's it say after the -- the third --
8 almost the very bottom. I'm sorry. I'm tired.

9 A. I don't want to read it out loud.

10 Q. The very bottom. Do you see the line that
11 starts with the word, "Companies are different"?
12 Or the sentence -- last sentence.

13 A. Clean Energy --

14 Q. How about this: Just read, if you would,
15 please, the last sentence of that letter. What's
16 it say? "You can," it starts with that.

17 A. I don't know -- oh. "You can assure that
18 although the companies are different, the people
19 representative Alltel [sic] Minnesota Power and
20 Alltel Clean Energy share the commitment to
21 integrity, honesty and responsibility and fair
22 business practice."

23 Q. Okay. And in regards to anything you did
24 from January 4, 2012, forward, did you rely on this
25 statement and -- that this company is committed to

1 having integrity, honesty, and responsible fair
2 business practices?

3 A. Yes.

4 Q. Okay. You trusted at least one of the
5 people, you said; right? Scott?

6 A. I did, yes.

7 Q. All right. Now I need you to go to
8 page 123, my last thing I have to go over. And all
9 I'm doing is I'm tying up, as Mr. Mahlberg
10 apparently wanted me to tie up to, and that is on
11 123 we have a November 8, 2013, document, Oliver
12 County. And is this the document you felt you were
13 forced to sign because otherwise they go to a
14 judge? I just want to make sure we're talking
15 about the same document.

16 MR. JOHNSON: Your Honor, can I get some
17 clarification here? We're talking about Turbine
18 441, and as far as the notice goes and everything,
19 does any part of that tower, its collection system
20 or anything, run through the Section 15 property?
21 It seems like the easements and everything we're
22 talking about have nothing to do with this tower.
23 And if somebody could clarify that it does in some
24 way, then I guess I'm okay with everything.

25 MR. MAHLBERG: I --

1 JUDGE DAWSON: Any response?

2 MR. MAHLBERG: I'm not going to try to
3 testify, but Mr. Boughey will stop me if I'm wrong.
4 Yes, as to the south --

5 JUDGE DAWSON: Turn on your microphone,
6 please.

7 MR. MAHLBERG: I apologize.

8 There are -- for the southeast quarter,
9 the north X number of feet, there are easement
10 agreements that cover where that fence bumps out --

11 MR. JOHNSON: Okay.

12 MR. MAHLBERG: -- and the roads that are
13 down there. So there is a connection to the
14 southeast quarter. There is not an easement on the
15 northwest quarter which is where the Section 15
16 property is.

17 MR. JOHNSON: Okay. Thank you. I
18 appreciate that.

19 MR. BOUGHEY: And I confirm that is
20 correct. Yes, so there is a connection.

21 MR. JOHNSON: Okay. Thank you.

22 MR. BOUGHEY: You bet. Sorry.

23 Q. (MR. BOUGHEY CONTINUING) So back to --
24 the question I asked is simply you -- although you
25 signed this one in October, you referred to it as

1 the November -- at one point you referred to the
2 November easement. Do you remember stating that,
3 the November 2013 easements during --

4 A. Yeah.

5 Q. -- your earlier testimony?

6 A. This one -- this one is Keith's
7 parents' --

8 Q. Mm-hmm.

9 A. -- quarter.

10 Q. I understand, but is the reason --

11 A. That easement -- and this easement on
12 December 5 on 134 --

13 Q. Got it.

14 A. -- is the one that --

15 Q. I understand. That's the December one.

16 A. Yeah.

17 Q. So the only -- the only reason I ask this
18 is it got a little confusing because the other side
19 made a big deal about, well, you actually signed it
20 in October, but you had referred to it as a
21 November easement.

22 A. I referred to it as November because
23 that's what it says on the front.

24 Q. Okay. And it has November at the first
25 line and that's when the other party, Minnesota

1 Power, signed it which turned it into an agreement
2 when you have two people sign. Is that -- so the
3 big to-do about, oh, wait a minute that's not
4 November, it's October, that's the one you were
5 referring to; right? And there's one in December
6 too; right?

7 A. There's one in December, correct.

8 MR. MAHLBERG: I'm going to object on the
9 grounds that we're leading on redirect a lot right
10 now, a lot.

11 JUDGE DAWSON: Okay.

12 MR. BOUGHEY: Well --

13 JUDGE DAWSON: That's fine. Just -- I'm
14 going to allow you -- I'm going to allow you to
15 continue because you --

16 MR. BOUGHEY: Actually --

17 JUDGE DAWSON: -- almost need to with
18 these documents and these dates.

19 MR. BOUGHEY: -- that was my last
20 question, Your Honor. Let me make sure.

21 Q. (MR. BOUGHEY CONTINUING) Oh, but there's
22 still -- just to make it clear, despite all these
23 easements, all these options, none of them relate
24 to Section -- northwest quarter of Section 15 where
25 your home is; correct?

1 A. Correct.

2 MR. BOUGHEY: Nothing further. Thank you.

3 JUDGE DAWSON: Any further questions?

4 Mr. Mahlberg.

5 MR. MAHLBERG: No.

6 JUDGE DAWSON: Mr. Johnson.

7 MR. JOHNSON: Nope.

8 JUDGE DAWSON: Commission members.

9 COMMISSIONER CHRISTMANN: I do not.

10 COMMISSIONER KROSHUS: I do not.

11 JUDGE DAWSON: I'm thinking we should stop
12 at this time right here. I'm losing mental acuity,
13 and if I am, I would suspect that other people are
14 too.

15 So with that, what we're going to do is
16 continue the hearing to a future, unnamed date, and
17 for now we're at recess until we come back in.

18 COMMISSIONER FEDORCHAK: Judge, one thing
19 on the future date.

20 JUDGE DAWSON: Mm-hmm.

21 COMMISSIONER FEDORCHAK: I don't want a
22 bunch of monkey business on setting that date. We
23 want it done at the nearest possible time that
24 everybody can agree.

25 JUDGE DAWSON: I will certainly make it --

1 COMMISSIONER FEDORCHAK: That will be best
2 for a good decision and a -- and a fair decision
3 and a rapid decision, so I --

4 JUDGE DAWSON: And I -- I agree.

5 COMMISSIONER FEDORCHAK: -- don't want
6 endless date setting.

7 MR. JOHNSON: If the -- if the parties --

8 JUDGE DAWSON: Will Mr. Johnson be
9 contacting us with asking for possible dates
10 probably in the next month?

11 MR. JOHNSON: Correct. If the parties can
12 just start getting me dates for the next month,
13 then I can get scheduled for scheduling and we can
14 pick the date.

15 JUDGE DAWSON: Mr. Mahlberg.

16 MR. MAHLBERG: Can we assume that the
17 order that allows the remote testimony continues in
18 place?

19 JUDGE DAWSON: Correct.

20 MR. MAHLBERG: Because that'll help
21 facilitate the -- however many that are --

22 JUDGE DAWSON: Correct.

23 MR. MAHLBERG: -- currently left to get
24 there on a date.

25 MR. BOUGHEY: And -- and same with --

1 Hayden is the only one I have left, and we can do
2 him remote. And other than my daughter's high
3 school graduation, I'm pretty open. I mean, I'll
4 make myself open, unless I'm in court.

5 JUDGE DAWSON: Well, with that being said,
6 you all have a good night and get some food in you,
7 and we'll recess to a later date.

8 (Recessed at 6:38 p.m., Thursday, the 25th
9 day of March, 2021.)

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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 7th day of April, 2021.

Stephanie A. Smith
Registered Professional Reporter

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