

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 II - (Pages 400 - 807)

Taken At
State Capitol
Bismarck, North Dakota
April 22, 2021

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

153 PU-20-194 Filed 06/02/2021 Pages: 151
Transcript of 22 April 2021 Formal Hearing
Emineth & Associates Court Reporters
Stephanie Smith, Reporter

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RESPONDENT'S EXHIBITS

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14	718	718
15	718	718
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1 (The following proceedings were had and
 2 made of record herein, commencing at 8:31 a.m.,
 3 Thursday, the 22nd day of April, 2021:)
 4 JUDGE DAWSON: We are on the record, and
 5 it is a little past 8:30 -- 8:31 a.m., and this is
 6 the matter of the Kessler complaint against
 7 Minnesota Power, PSC Case Number PU-20-194. It is
 8 April 21 -- 22, 2021. This hearing was continued
 9 from March 25, 2021.
 10 I think we'll just get going right away.
 11 Are there any preliminary matters that we
 12 should address? Mr. Boughey?
 13 MR. BOUGHEY: No, Your Honor, except to
 14 tell you that -- is it on --
 15 IT PERSON: No. When it's green, it's on.
 16 MR. BOUGHEY: Sorry. Just that it -- I
 17 discussed this with Mr. Mahlberg, and it appears
 18 that I hope to be done by about 10:30, 10:45 with
 19 all my witnesses. I hope by 10:30. And then I
 20 understand he'll probably do a few witnesses in
 21 rebuttal, just depends on the length of his
 22 cross-examination.
 23 So at least the best I can tell, we might
 24 be done today. I know that initially I thought
 25 we'd be going into the afternoon, and I reorganized

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1 things so that didn't have to happen, but
 2 Mr. Mahlberg maybe was not able to reorganize his
 3 witnesses from one o'clock to 10:30, so we'll have
 4 to figure that out.
 5 JUDGE DAWSON: Mr. Mahlberg.
 6 MR. MAHLBERG: Yeah, I think we'll --
 7 we'll figure that out as we -- as we go today.
 8 JUDGE DAWSON: Okay.
 9 MR. MAHLBERG: There was some late
 10 shuffling. The only other administrative issue,
 11 and I don't know that we need to take care of it
 12 now or later, is timing of posthearing briefs.
 13 Under the old scheduling order, those dates are
 14 fairly irrelevant, but Mr. Boughey and I have
 15 talked and we've got a proposal --
 16 JUDGE DAWSON: Okay.
 17 MR. MAHLBERG: -- if we want to do that
 18 now or later.
 19 JUDGE DAWSON: We'll do that at the end --
 20 MR. MAHLBERG: Sounds fine.
 21 JUDGE DAWSON: -- I think.
 22 And so how many witnesses are you calling
 23 this morning?
 24 MR. BOUGHEY: Five. There's also two
 25 others that we -- we may call. So it's -- there --

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1 five or seven, but I'm hoping with the initial five
 2 I won't need the other two. We'll just see what
 3 happens.
 4 JUDGE DAWSON: Okay. You may call your
 5 first witness.
 6 COMMISSIONER FEDORCHAK: Judge, I have one
 7 preliminary --
 8 JUDGE DAWSON: Yes.
 9 COMMISSIONER FEDORCHAK: -- comment to
 10 make, please.
 11 So because we're in the middle of a
 12 legislative session and our budget has still not
 13 been finalized, we anticipate that we may get
 14 called down for a meeting with the House
 15 Appropriations -- well, the conference committee at
 16 some point today. I just wanted to alert all the
 17 parties that that could happen and we would have to
 18 take a short recess, maybe hopefully not longer
 19 than a half an hour, but one never knows how much
 20 fun they can have with our little budget. So just
 21 a little bit of an alert.
 22 And then one more quick question. What
 23 was the agreement that was referenced here a minute
 24 ago?
 25 JUDGE DAWSON: Oh, as to posthearing

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1 briefs.
 2 COMMISSIONER FEDORCHAK: Okay. Very good.
 3 JUDGE DAWSON: So they have an agreement.
 4 We'll just talk about that at the end.
 5 COMMISSIONER FEDORCHAK: Awesome. Thank
 6 you.
 7 JUDGE DAWSON: Mr. Boughey.
 8 MR. BOUGHEY: Thank you. At this time I'd
 9 call Hayden Kessler, Your Honor.
 10 JUDGE DAWSON: Mr. Kessler, I'm required
 11 by law to tell you the penalties for perjury in
 12 this state. Perjury is a Class C felony punishable
 13 by a fine of up to \$10,000 or a term of
 14 imprisonment of up to five years, or both. Do you
 15 understand what perjury is and the penalties for
 16 it.
 17 THE WITNESS: Yes, I do.
 18 (Witness sworn.)
 19 JUDGE DAWSON: You may begin.
 20 MR. BOUGHEY: Thank you, Your Honor.
 21 **HAYDEN KESSLER,**
 22 being first duly sworn, was examined and testified
 23 as follows:
 24
 25

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1 **DIRECT EXAMINATION**

2 **BY MR. BOUGHEY:**

3 Q. Would you state your name for the record?

4 A. Hayden Kessler.

5 Q. Okay. Where do you reside?

6 A. South of Beulah.

7 Q. Okay. And have you ever had occasion to

8 reside on another residence that your family owns

9 on Section 15?

10 A. Have I -- you're asking if I've lived

11 there?

12 Q. Yes.

13 A. Yes, I have.

14 Q. What dates did you live there? What

15 years?

16 A. I started living there in '16. In '15 I

17 started going over and getting things set up and

18 ready and would stay over there on the weekends,

19 just working on the house and things like that.

20 Q. Okay. We had prior testimony from your --

21 your brother, Stephen, that he lived there during

22 the summer of 2013 and 2014. During those two --

23 or during 2013 and 2014, do you recall your brother

24 living at that home?

25 A. Yes.

413

1 MR. MAHLBERG: Objection. It

2 mischaracterizes the evidence.

3 MR. BOUGHEY: Okay. I'll just rephrase so

4 we get it.

5 Q. (MR. BOUGHEY CONTINUING) Prior to you

6 moving in and -- getting ready to move in in 2015

7 and then moving in in 2016, who, if anyone, lived

8 at that residence?

9 A. My brother.

10 Q. Okay. And do you know what years he was

11 living there?

12 A. I believe '13, '14 in the summers --

13 Q. Okay.

14 A. -- when he was home from college.

15 Q. Okay. And then in 2015 when you were

16 getting ready to move in, why were you planning to

17 move into a new house? Was anything happening with

18 your marital status, for example?

19 A. No, I was not married yet. I just --

20 Q. Okay.

21 A. -- wanted to get out of my parents' house

22 and had a job and a girlfriend, so --

23 Q. I understand.

24 A. -- wanted to live somewhere else.

25 Q. So when did you actually physically move

414

1 in? You said you were getting moved in in 2015.

2 Do you know when, approximately, you moved in?

3 A. It must have been around springtime, I'm

4 thinking, in '16.

5 Q. And then how long did you live there?

6 Either how many months or how many years?

7 A. It would have been two -- two and a half

8 years. Two years.

9 Q. Okay. And while living there, did you

10 ever have any occasion to notice a turbine nearby?

11 A. Yes.

12 Q. And who was living at the home while you

13 lived there? Yourself and who was the other

14 person?

15 A. She's my wife now. Megan.

16 Q. Okay. And did you and Megan have any

17 problems or concerns in regards to anything

18 relating to the turbine?

19 A. Yeah. Noise and the distance it was set

20 from the house.

21 Q. Okay. And did you at any time while

22 living there have a child?

23 A. Yes. In 2018 in the fall.

24 Q. Okay. So now before having the child,

25 what were your problems that you had or your

415

1 concerns you had relating to either the noise or

2 anything else with the turbine while you lived

3 there?

4 A. During the day, you'd get flicker from the

5 shadow and noise at night. The wife couldn't sleep

6 very well. And I -- I knew it was too close. I

7 worked for a fencing company, so I -- we built a

8 quarter mile at a time and so I kind of -- I knew

9 from there it was too close.

10 And it was just the shadow and the noise

11 that kept the wife up during the night. And there

12 was one day they were working on the wind tower and

13 I could hear -- I suppose when they work up there,

14 if they're up there a couples hours, they've got

15 radio, but I could hear a song word for word and

16 then I knew it was really close, I mean, if you can

17 hear the music from the house.

18 Q. Did you ever take any measurements or do

19 anything to try to determine the distance between

20 the house and the turbine?

21 A. Yes. I used a range finder.

22 Q. Okay. Now, is that something that's used

23 commonplace in North Dakota for hunting, those type

24 of things?

25 A. Yes.

416

1 Q. Okay. And what did the range finder state
2 when you used it, the feet?

3 A. It was -- I want to say it was a little
4 over 1100 feet.

5 Q. Okay. Now, once you had a child, and if
6 you would, what's -- I don't recall, what's the
7 name of your child?

8 A. Gustav.

9 Q. Once you had Gustav, what was the effect,
10 if any, on the -- the child while living there in
11 reference to any problems or concerns with the
12 turbine?

13 A. Yeah, at night and even during the day he
14 didn't sleep very well. Since then we've moved.
15 He sleeps a lot better now. But when we lived over
16 there, he didn't sleep very well, and we lived
17 there -- he was almost a year old while we were
18 living there still.

19 Q. And just the timeline, then, approximately
20 when did you move out and move to your other place?

21 A. We moved out -- it would have been
22 September of 2019.

23 MR. BOUGHEY: I have nothing further.

24 Thank you. He might have some questions for you.

25 THE WITNESS: Okay.

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1 JUDGE DAWSON: Mr. Mahlberg.

2 MR. MAHLBERG: Thank you.

3 **CROSS-EXAMINATION**

4 **BY MR. MAHLBERG:**

5 Q. Good morning, Mr. Kessler. My name is Pat
6 Mahlberg. We've not met before. I'm an attorney
7 with the company. Just have a few questions for
8 you this morning.

9 You talked about when you used a range
10 finder. When was that?

11 A. I don't remember a date for sure. It was
12 either in the fall of 2015 or 2016.

13 Q. Do you recall whether it was before you
14 moved into the house?

15 A. I do not.

16 Q. You moved in in the spring of 2016 --

17 A. Yes.

18 Q. -- is that right?

19 You indicated that you worked for a
20 fencing company and you built fencing a quarter
21 mile at a time; is that right?

22 A. Yep.

23 Q. And you had worked for the fencing company
24 before you moved into the Section 15 structure?

25 A. I did, and then I also worked for a

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1 company when I was living there also. I worked for
2 a fencing company right out of high school, which
3 would have been in 2014, and then I went back to
4 work for a fencing company in 2016.

5 Q. When you were, you say, getting the
6 house -- you said getting things set up and ready
7 in 2015, when you were out there at that time,
8 could you tell that the turbine was less than your
9 quarter mile?

10 A. Yes.

11 Q. What were you doing -- when you say
12 getting things set up and ready, can you just walk
13 us through what you mean by getting things set up
14 and ready to live there? What did you -- what did
15 you do?

16 A. Oh, just moved a bed in and a couch and
17 things so that -- just some more furniture to live
18 there. And we redid some flooring in there, so I
19 started ripping some flooring out of there and got
20 it ready so a company could come in and put
21 flooring in. And my wife painted in there and just
22 put in a new countertop and some things like that
23 that the wife -- well, we weren't married at the
24 time, but what she wanted to change and a few
25 things just to, you know, make it -- update a

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1 little bit and make it kind of our own, I guess,
2 colors we wanted and things like that, so --

3 Q. Mr. Kessler, in the black binder in front
4 of you, if you go to the tab that says MP
5 Exhibit 11.

6 A. Okay.

7 Q. I'm hoping that you're seeing one page
8 with a couple of pictures.

9 A. Yep.

10 Q. Okay. Generally the work that you're
11 talking about, Mr. Kessler, was it you and -- and
12 your now wife who took the house from sort of the
13 condition it was in on the left and through your
14 work turned it into the condition that it's in on
15 the right in that 2015 and 2016 time frame?

16 A. Yeah. We -- I don't remember if -- it's
17 certain dates when we shingled and painted. I know
18 we did have help with shingling and painting
19 because it is a lot just for two people. But in
20 2015 we did more of the inside work and then we
21 later on did the outside work.

22 Q. Okay. Inside you said you brought in a
23 bed and couches and redid the flooring. Was there
24 a bed in there before?

25 A. Yes.

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1 Q. And were there couches in there before?
 2 A. There was an older couch in there, yes.
 3 Q. What appliances did you move into the
 4 house?
 5 A. I moved a newer fridge in, and then I
 6 swapped the old stove out with a newer electric
 7 stove.
 8 Q. Was the old -- excuse me. Was the old
 9 stove an electric stove?
 10 A. It was electric and coal.
 11 Q. How is the house heated?
 12 A. With propane.
 13 Q. Before you -- you moved in there in the
 14 spring of 2016, you had never lived there before;
 15 right?
 16 A. Not lived there day-to-day, but I did stay
 17 there during hunting seasons and during working
 18 cattle and things like that. Yes.
 19 Q. And your brother, Stephen, was here and he
 20 testified that on some summer weekends, he would
 21 spend the nights out there when he was living with
 22 your parents still. Did you live out there --
 23 excuse me. Did you stay out there on those summer
 24 weekend nights sometimes as well?
 25 A. Sometimes, yeah, I would go over there and

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1 hang out with my brother over there.
 2 Q. Okay. So a similar use to -- to Stephen
 3 in that you had your house somewhere else, but
 4 there were nights where you'd go and stay out at
 5 the Section 15 structure?
 6 A. Yes.
 7 Q. The -- you said the house was heated with
 8 propane. Was it -- how big is the tank that's out
 9 there?
 10 A. I've got a 500-gallon tank out there.
 11 Q. And did you need to have that moved out
 12 there or was that already out there?
 13 A. We had moved it out there. It was coal --
 14 in 2015 it still had a coal furnace in it. And
 15 then we had moved because we didn't need a furnace
 16 in the summer, but in that -- later on during the
 17 summer we had moved the propane out there. Just
 18 easier to maintain if a person was gone for the
 19 weekend, a trip to Bismarck or something, and it
 20 was just easier to maintain. So, yeah, we did move
 21 the tank and put a furnace in there.
 22 Q. Got it. And prior to having the -- the
 23 propane in which, like you say, makes it easier to
 24 leave for longer periods, in the -- the winters
 25 prior to 2015, was the coal furnace kept on all the

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1 time or over the winter was it -- was it not
 2 heated?
 3 A. It was heated, not a high heat, just
 4 enough so stuff wouldn't freeze and things like
 5 that.
 6 MR. MAHLBERG: That's all the questions I
 7 have. Thank you, Mr. Kessler.
 8 THE WITNESS: Thank you.
 9 MR. MAHLBERG: Mr. Johnson.
 10 MR. JOHNSON: No questions.
 11 MR. MAHLBERG: Commissioner Fedorchak.
 12 COMMISSIONER FEDORCHAK: Thank you, Judge,
 13 I don't have any questions. Appreciate your time.
 14 JUDGE DAWSON: Commissioner Christmann.
 15 COMMISSIONER CHRISTMANN: I think -- I
 16 think what I wanted to ask was just covered, so I'm
 17 just going to clarify.
 18 **EXAMINATION**
 19 **BY COMMISSIONER CHRISTMANN:**
 20 Q. So over the years it was coal heat until,
 21 I think you said, '15 and that's when you
 22 transitioned it to propane; is that correct?
 23 A. Yeah, in the summer of '16 we trans --
 24 moved it into a propane.
 25 Q. But you said the heat had been maintained

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1 over the winters --
 2 A. Yes.
 3 Q. -- over the years?
 4 COMMISSIONER CHRISTMANN: Okay. Thank
 5 you. No other questions.
 6 JUDGE DAWSON: Commissioner Kroshus.
 7 **EXAMINATION**
 8 **BY COMMISSIONER KROSHUS:**
 9 Q. Good morning, Hayden.
 10 Did you do -- you talked about beginning
 11 to renovate the house in 2015. It sounds mostly
 12 cosmetic: flooring, countertops, appliances. The
 13 house was then painted at some point after that.
 14 Did you have to do any structural work to it,
 15 framing? Would you consider the house structurally
 16 sound in 2015?
 17 A. Yes, the house was. We never did no
 18 structural inside. I know we did -- I did do some
 19 new sheetrock in one room, but other than that, I
 20 mean, the walls and everything are in good shape.
 21 And it was just cosmetics. Flooring, put a new
 22 toilet in, just small little things like that.
 23 COMMISSIONER KROSHUS: Okay. No other
 24 questions. Thank you.
 25 THE WITNESS: Thank you.

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1 JUDGE DAWSON: Mr. Boughey.
2 MR. BOUGHEY: Thank you, Your Honor. Just
3 a few short ones.

REDIRECT EXAMINATION**BY MR. BOUGHEY:**

6 Q. So in the summer of 2013 and 2014, during
7 the two summers or during those two years when your
8 brother was occasionally there, I take it at that
9 point there was still some heat. It was
10 electrical. How did you bring it up in either the
11 summer or if you didn't need it during the winters,
12 how did you keep the heat up if you weren't using
13 coal?

14 A. We -- like you're saying during like
15 hunting season when we'd stay over there and
16 things?

17 Q. Sure.

18 A. We'd use electric.

19 Q. Okay. So there was electric in there?

20 A. Yes.

21 Q. Okay. I understand now. Thank you.
22 And there was a fridge and a stove because
23 you replaced it and put new ones in; correct?

24 A. Yep.

25 Q. And you put in new toilets so that clearly

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1 had that as well prior to -- during the time frame
2 2013-2014; correct?

3 A. Yes.

4 MR. BOUGHEY: I have nothing further.
5 Thank you.

6 JUDGE DAWSON: Mr. Mahlberg.

7 MR. MAHLBERG: No, I don't have anything.
8 Thank you, Judge.

9 JUDGE DAWSON: Any further questions?
10 Seeing none, you may step down.

11 THE WITNESS: Thank you.

12 JUDGE DAWSON: You may call your next
13 witness.

14 MR. BOUGHEY: Thank you, Your Honor. I
15 notice that the -- the next few witnesses for the
16 company are presently online. Barry Gartner will
17 be the first one I call. I apologize. I'm going
18 to get -- we had a question at the last hearing. I
19 have to put Keith on right now. I'll do that
20 first, but then I -- I don't know how we're going
21 to sequester witnesses or whether they'll just be
22 in a holding room after -- when we start with the
23 company.

24 But at this time I call Keith Kessler to
25 follow up on one of the issues raised at the last

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1 hearing that one of the commissioners asked me to
2 get the documents on.

3 JUDGE DAWSON: Okay. You were previously
4 sworn in and understand that you're still under
5 oath.

6 THE WITNESS: Yes, sir.

7 MR. BOUGHEY: And then I just need to
8 inquire. I believe my next exhibit will be -- we
9 last time had it in the 7s, so I believe this would
10 be 8-1, 8-2 and 8-3, if that is -- if I'm right on
11 that. And I have already supplied these to both
12 counsel for PSC and opposing counsel, but I have
13 copies for everyone.

KEITH KESSLER,

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

FURTHER REDIRECT EXAMINATION**BY MR. BOUGHEY:**

19 Q. All right. Keith, I'm showing you what's
20 been identified or marked as Exhibit 8-1, and this
21 is a -- you might recall at the last hearing,
22 several of the commissioners, including
23 specifically and initially Justice -- or -- almost
24 said Justice -- Commissioner Fedorchak mentioned
25 she wanted to get some information on the

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1 electrical for this residence. Is this the -- the
2 address shown there, the 2460 57th Avenue
3 Southwest, is that the address for the residence on
4 Section 15?

5 A. Yes.

6 Q. And then this particular exhibit, are
7 you -- I take it you got online in regards to your
8 electric company. Who is that electric company?

9 A. Roughrider Electric.

10 Q. Okay. And is this exhibit a fair and
11 accurate document of what you were able to obtain
12 online from the company itself?

13 A. Yes.

14 Q. And it relates to your residence, the one
15 that you and your family own; correct?

16 A. Correct.

17 IT PERSON: Mr. Kessler, your microphone.

18 Q. (MR. BOUGHEY CONTINUING) Should show
19 green.

20 A. Yes.

21 Q. Okay. Excellent.

22 And then in regards to this -- this
23 particular document, does it give a connect date?

24 A. Yes, it does.

25 Q. And what is that date?

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1 **A.** September 11, 1989.
 2 **Q.** Okay. And do you show any disconnect date
 3 on this document?
 4 **A.** No.
 5 **Q.** Has the electric always been -- since
 6 September 7, 1989, has that electrical service been
 7 at the residence at issue?
 8 **A.** Yes.
 9 MR. BOUGHEY: I offer Exhibit 8-1.
 10 JUDGE DAWSON: Mr. Mahlberg.
 11 MR. MAHLBERG: No objection.
 12 JUDGE DAWSON: It is so marked and
 13 admitted.
 14 MR. BOUGHEY: Thank you, Your Honor. I
 15 apologize, I wasn't positive the numbers, so I'm
 16 writing them in as quickly as I can. I'm now
 17 distributing Exhibit 8-2.
 18 **Q.** (MR. BOUGHEY CONTINUING) To save time, I
 19 assume that all the questions I just asked relating
 20 to how you got this exhibit is the same as you
 21 already testified to in getting it online and with
 22 the same electric company and same home?
 23 **A.** Yes.
 24 **Q.** Okay. And then I guess -- I know it's a
 25 little blurry because we had to take it off of a

1 that you earn.
 2 MR. BOUGHEY: Okay. Very good. I offer
 3 Exhibit 8-2, Your Honor.
 4 JUDGE DAWSON: Mr. Mahlberg.
 5 MR. MAHLBERG: No objection.
 6 JUDGE DAWSON: Seeing there's no
 7 objection, it's so marked and admitted.
 8 MR. BOUGHEY: Thank you.
 9 Your Honor, at this time I'm distributing
 10 Exhibit 8-3.
 11 **Q.** (MR. BOUGHEY CONTINUING) And as to this
 12 exhibit, I assume the same testimony would apply;
 13 that you got this offline with your company and it
 14 relates to something to the -- the residence on
 15 Section 15. Is that all correct?
 16 **A.** Yes.
 17 **Q.** All right. Let's walk through this, then.
 18 This is a separate electrical item. What does this
 19 relate to, sir?
 20 **A.** Well, as I mentioned last time, this is --
 21 the water supply to that yard is on a well that has
 22 a separate meter, so that's what this is.
 23 **Q.** Okay. And then the same issue, we have
 24 2009 to 2020, and then the second column, the
 25 Revenue is what you paid for that electric for the

429

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1 screenshot, but I'd like you to -- to start -- you
 2 said that it -- that the usage began on
 3 September 11, 1989, and this goes starting from
 4 2009 to 2019; is that correct?
 5 **A.** Correct.
 6 **Q.** And then, I guess, the number on the far
 7 left, Revenue, do you know whether that's like -- I
 8 mean, we have Revenue and we have Usage. What's
 9 your understanding of what those -- what the first
 10 column is after the years, the Allocated Revenue,
 11 if you have any understanding of what that column
 12 refers to?
 13 **A.** That is what come out of my bank account.
 14 **Q.** So, in other words, that is your actual
 15 payments?
 16 **A.** Yes.
 17 **Q.** Got it. And then the next column is, of
 18 course, the Usage. Did you know if that is listed
 19 in -- in kilowatts or what it's using?
 20 **A.** I believe it is.
 21 **Q.** Okay. And then I see another allocation
 22 amount on the -- in the middle column, and so do
 23 you have any idea what that relates to compared to
 24 the first one that had almost 5,261 for 2009-2019?
 25 **A.** I believe this amount is the patronage

1 well; is that correct?
 2 **A.** Yes.
 3 MR. BOUGHEY: I offer Exhibit 8-3, Your
 4 Honor.
 5 MR. MAHLBERG: No objection.
 6 JUDGE DAWSON: It is so marked and
 7 admitted.
 8 **Q.** (MR. BOUGHEY CONTINUING) Okay. And then
 9 in regards to any of these exhibits, is there
 10 anything in reference to the use of the land that
 11 if you look at 8-2 as far as the -- the years and
 12 any increases -- I guess I'll ask first, you've
 13 already testified the electrical was there that
 14 entire time from 2009 forward. Is it also true
 15 that there was no disconnect as to the well item or
 16 the electric for the well? That was always in
 17 place?
 18 **A.** Yes.
 19 **Q.** Okay. And then I notice that the -- you
 20 must have had electrical prior to switching from
 21 coal to propane. Was the electrical used to
 22 maintain the house at least at minimum temperatures
 23 and then to -- well, first of all, at minimum
 24 temperatures during the winter?
 25 **A.** Electric heat?

432

1 Q. Yeah.

2 A. No. Probably as a little temporary, but

3 that would be it.

4 Q. Okay. Then --

5 A. Or if somebody stayed there, like if the

6 boys were there, but no.

7 Q. But throughout the time period from when

8 you installed electrical from 2009 and, more

9 specifically, 2013 and 2014, was the electrical in

10 service and the residence using electrical

11 throughout that time period?

12 A. Yes.

13 Q. Okay. And I think you've already

14 testified as to the other uses of the house for

15 whenever you were doing hunting or you were doing

16 any type of calving or working the cattle as well

17 as different family events; correct?

18 A. Correct.

19 Q. Okay. And then since Stephen -- I'm

20 sorry, since Hayden didn't know the answer, do you

21 know when the shingling was done, what year that

22 was?

23 A. My recollection is '16.

24 Q. Okay. And then in regard to Stephen -- or

25 Hayden was asked about any structural changes. I

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1 take it you'd confirm that the house was -- was

2 used and capable of being used as a residence

3 throughout from 2009 all the way through 2016; is

4 that correct?

5 A. That is correct. It has a better

6 foundation than the house I live in.

7 MR. BOUGHEY: I have nothing further, Your

8 Honor.

9 JUDGE DAWSON: Mr. Mahlberg.

10 MR. MAHLBERG: Thanks.

11 MR. BOUGHEY: Oh, did I offer Exhibit 8-3?

12 I don't know.

13 JUDGE DAWSON: Yes.

14 MR. BOUGHEY: Okay. Thank you. Sorry. I

15 forgot to check it off as received.

16 **FURTHER RECROSS-EXAMINATION**

17 **BY MR. MAHLBERG:**

18 Q. Good morning again, Mr. Kessler.

19 A. Morning.

20 Q. I'm going to confess ignorance, and so if

21 this is a bad question, forgive it. When you heat

22 a house with coal through the winter, as -- as your

23 son was just testifying about, how often do you

24 have to reload the coal?

25 A. Depends on the temperature you have it

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1 set. Probably twice a week.

2 Q. And would the temperature that -- that you

3 had it set at -- or what temperature did you

4 attempt to maintain in the house throughout the

5 winters when -- when you weren't living there?

6 A. 45 degrees, no more.

7 Q. And does that mean that you were out there

8 a couple of times a week loading coal?

9 A. Or once a week or sometimes it runs out.

10 Q. And how often would it run out?

11 A. Very seldom because otherwise you have a

12 mess.

13 Q. And your pipes freeze and that sort of

14 thing?

15 A. Yes.

16 Q. On the -- as I look to Exhibit 8-point --

17 or 8-2 and 8-3, they're two of the exhibits that

18 Mr. Boughey just introduced with you, Mr. Kessler,

19 these are the documents we got last night; right?

20 A. Yes.

21 Q. If I look first at 8-2 and I look at 2009,

22 the usage there is zero; right?

23 A. Yes.

24 Q. And you still had to pay \$144, which means

25 a \$12 monthly connection charge; right?

435

1 A. I would say yes.

2 Q. And in 2010 the usage again is zero, but

3 they moved up your connection fees apparently;

4 right?

5 A. Looks like it.

6 Q. In 2012, 2013, 2014, 2015 the usage

7 appears to vary from 279, at its peak, to 113

8 kilowatt-hours at its low. Is that -- is that

9 accurate, Mr. Kessler?

10 A. Yes.

11 Q. This kilowatt-hour usage on an annual

12 basis, sir, electricity, as I understand it, was

13 only used at that house on those occasions where

14 you were out hunting or one of your sons was

15 staying at the house or when you were working

16 cattle; right?

17 A. Correct.

18 Q. Otherwise, no electricity usage,

19 everything was unplugged throughout the year?

20 A. Well, for the most part you try to keep it

21 as minimal as possible, yes.

22 Q. Do you know what it takes to run a

23 refrigerator for a year in terms of kilowatt-hours?

24 A. No, I do not.

25 Q. Would it be surprising if what it took to

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1 run a refrigerator for a year used more
 2 kilowatt-hours and sometimes multiples than the
 3 total usage at the Section 15 structure in 2012,
 4 2013, 2014, 2015?
 5 MR. BOUGHEY: Objection. Speculation, and
 6 he's attempting to put in evidence through the
 7 lawyer as to what that amount may be.
 8 JUDGE DAWSON: Mr. Mahlberg.
 9 MR. MAHLBERG: I'll withdraw it. That's
 10 fine. I don't have anything else -- other
 11 questions about these electrical exhibits. Thank
 12 you.
 13 JUDGE DAWSON: Mr. Johnson.
 14 MR. JOHNSON: No questions, Your Honor.
 15 JUDGE DAWSON: Commissioner Fedorchak.
 16 COMMISSIONER FEDORCHAK: Thank you, Judge.
 17 **FURTHER EXAMINATION**
 18 **BY COMMISSIONER FEDORCHAK:**
 19 Q. Mr. Kessler, I just have one question on
 20 these. First of all, I guess I have two. You had
 21 said in 2010 there was -- on 8-3 showed zero usage,
 22 but I show a hundred under Usage. What's -- why
 23 did you say you had zero usage?
 24 A. What was that -- H-3, what is that?
 25 Q. 8-3.

1 JUDGE DAWSON: Commissioner Christmann.
 2 **FURTHER EXAMINATION**
 3 **BY COMMISSIONER CHRISTMANN:**
 4 Q. The -- the well we're talking about here,
 5 that's a well on the place?
 6 A. It's on that same quarter, but it's right
 7 up by the road. It's piped to the yard.
 8 Q. And is that the -- is that the water
 9 that -- that is used in the house, though?
 10 A. Yes.
 11 COMMISSIONER CHRISTMANN: Okay. I don't
 12 have any other questions. Thanks.
 13 THE WITNESS: Thank you.
 14 JUDGE DAWSON: Any redirect? Mr. Boughey.
 15 **REDIRECT EXAMINATION**
 16 **BY MR. BOUGHEY:**
 17 Q. Out of curiosity, just trying to figure
 18 out that 2013, do you ever get dividends or any
 19 type of payment from this electric -- is it an
 20 electric co-op? Just out of curiosity, is it
 21 possible that they provide you any checks for any
 22 reason?
 23 A. It is a co-op and they -- yes, we do earn
 24 patronage.
 25 MR. BOUGHEY: Okay. I have nothing

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1 MR. BOUGHEY: 8.
 2 THE WITNESS: Oh, sorry. Well, I was --
 3 Q. (COMMISSIONER FEDORCHAK CONTINUING)
 4 Unless I was looking at the wrong one.
 5 A. I was looking at the wrong graph, I think.
 6 8-3 is the --
 7 Q. The water.
 8 A. The water. The well. Yeah, it says --
 9 Q. So in 2010 it says a hundred usage,
 10 doesn't it?
 11 A. Yes, it does.
 12 Q. Okay. Then on that -- on the same exhibit
 13 and 8-2, there's a column that says Previous
 14 Revenue, and on -- let's see -- both of those in
 15 2013, there's an amount in there and everything
 16 else is zero. So what is that; do you know?
 17 A. I do not have an answer, unless that is
 18 the -- no, that -- I don't know.
 19 Q. Just curious that it's all zeros, but in
 20 2013 there was a number on both of these.
 21 A. Unless it was an overpay. I'm not -- I
 22 don't have an answer.
 23 COMMISSIONER FEDORCHAK: Okay. All right.
 24 Thank you.
 25 THE WITNESS: You're welcome.

1 further. Thanks.
 2 JUDGE DAWSON: Any further questions?
 3 MR. MAHLBERG: Briefly to follow up with
 4 Commissioner Christmann's questions.
 5 **RECROSS-EXAMINATION**
 6 **BY MR. MAHLBERG:**
 7 Q. The well and the usage there from 8-3,
 8 that is the water that goes to the house. It's
 9 also the water that you use for the cattle; is that
 10 right?
 11 A. It serves both purposes.
 12 Q. Okay. So in 2009, if it -- if it shows
 13 it's a zero for the well, that tells us that at no
 14 point in that year did you turn the water on for
 15 the cattle or the house; is that right?
 16 A. No. No. Because with well meters, you
 17 pay your monthly and you get kilowatts with that.
 18 So it doesn't start billing until you go over that.
 19 Q. There's some sort of allowance?
 20 A. Yes.
 21 MR. MAHLBERG: Okay. That's what I was
 22 interested in. Thank you, Mr. Kessler.
 23 THE WITNESS: You're welcome.
 24 JUDGE DAWSON: Any further questions?
 25 Commissioners? Seeing none, you may step down.

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1 THE WITNESS: Thank you.

2 MR. BOUGHEY: Your Honor, at this time I'd

3 be calling Barry Gartner, and I would request that

4 all of the other Minnesota Power representatives

5 be -- I guess you'd put them in a separate room. I

6 don't know how that works.

7 JUDGE DAWSON: Mr. Mahlberg.

8 MR. MAHLBERG: I don't think that

9 sequestration is necessary or appropriate. We

10 didn't go through sequestration with any of the

11 witnesses as Mr. Boughey was -- was putting his

12 case on. I think that the witnesses we have here

13 are essential to the presentation of the claims and

14 defenses and should be allowed to remain.

15 JUDGE DAWSON: Is it difficult to

16 sequester people on the computer?

17 IT PERSON: They would have to leave the

18 meeting and I would have to lock it, and they would

19 somehow have to be notified when they can reenter.

20 MR. BOUGHEY: Your Honor, that seems like

21 too much hassle. We've done their depositions. I

22 have no problem given that it's a hassle. We'll

23 just let them stay. I already know what they're

24 testifying to. If they -- if they switch their

25 testimony in some way from what they've said in the

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1 depositions, then I'll deal with it through

2 impeachment.

3 JUDGE DAWSON: Thank you.

4 MR. BOUGHEY: At this time I call Barry

5 Gartner.

6 JUDGE DAWSON: Where is Mr. Gartner? Oh,

7 there he is. Mr. Gartner.

8 THE WITNESS: Yes.

9 JUDGE DAWSON: Were you here for my

10 previous warnings as to perjury?

11 THE WITNESS: Yes.

12 JUDGE DAWSON: So you understand what

13 perjury is and the penalties for it?

14 THE WITNESS: Yes, I do.

15 (Witness sworn.)

16 JUDGE DAWSON: Mr. Boughey. You may

17 begin.

18 MR. BOUGHEY: Thank you, Your Honor.

19 **BARRY GARTNER,**

20 being first duly sworn, was examined and testified

21 as follows:

22 **CROSS-EXAMINATION**

23 **BY MR. BOUGHEY:**

24 Q. Mr. Gartner, do you recall we already did

25 your deposition on October 14, 2020, and so I just

442

1 want to make sure -- you recall we've had a chance

2 to visit before; correct?

3 A. Yes. That's correct.

4 Q. And to save time, I'm -- and, again, I'm

5 going to go through some of the basic things that

6 we already know and get them in quickly, and then

7 I'll ask you the questions I'm most concerned

8 about.

9 It's my understanding for this Minnesota

10 Power project that you were the project developer;

11 correct?

12 A. Yes.

13 Q. What's a project developer do in regards

14 to this particular project, this wind farm?

15 A. Develop the turbine layout, coordinate

16 with the Minnesota Power internal team and

17 external -- external consultants to permit the

18 project -- design and permit the project.

19 Q. Okay. And I understand your

20 qualifications. You're a mechanical engineer;

21 correct?

22 A. That's correct.

23 Q. Okay. And was this the first major

24 project you worked on for the company?

25 A. Yes.

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1 Q. Okay. Now, in regards to -- as project

2 developer, would you have attended the public

3 hearing on September 13, 2013?

4 A. Yes, I did.

5 Q. And in regards to that, before I go back

6 in time, it's my understanding that there were some

7 maps presented and an application presented to the

8 Public Service Commission that included the

9 placement -- the general placement of where the

10 turbines were going. Do you recall that to be the

11 case?

12 A. Yes.

13 Q. Okay. And in regards to the map that was

14 provided at the public hearing, I can tell you that

15 for the record we were provided Minnesota Power

16 page 407 and in that particular document we have

17 the map here, but we've added letters to it. So if

18 you do need to at any point refer to that map, I

19 can tell you we have it here and it's available to

20 the commissioners. Okay?

21 A. Okay.

22 Q. Okay. Now, when you are the project

23 manager, I understand that your main function or

24 one of your primary functions when starting this

25 project is you're going to obtain or be provided

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1 design information. Was that one of the things you
 2 had to do in your role?
 3 **A.** I'm sorry. Could you repeat the question?
 4 **Q.** Sure. Well --
 5 **A.** I -- I couldn't --
 6 **Q.** -- you're designing the project which
 7 includes trying to figure out where to put the
 8 turbines; is that correct?
 9 **A.** That's correct.
 10 **Q.** Okay. And one of the things that you need
 11 to do in regards to deciding where to put the
 12 turbines is have knowledge of any avoidance areas,
 13 residences, those type of things; correct?
 14 **A.** Correct.
 15 **Q.** And it's my understanding that in order to
 16 determine the use of the various structures,
 17 particularly as to residences, you use three
 18 sources to do that. And so what are those sources
 19 that you use to determine if you have a residence
 20 you have to worry about?
 21 **A.** Well, we determine -- in order to
 22 determine -- identify occupied residences, we used
 23 information that was developed in siting and
 24 permitting the previous Bison 1, 2 and 3 projects.
 25 We used -- in addition, we used information from

445

1 the Oliver County plat book and directory and
 2 satellite imagery.
 3 **Q.** Okay. And it's --
 4 **A.** And any final information that we gleaned
 5 during site visits.
 6 **Q.** And we'll get to that.
 7 So initially when you're doing the design
 8 layout and you're planning it, I assume you're --
 9 when you did that in this project, you were
 10 probably working out of Duluth. Would that be a
 11 fair statement?
 12 **A.** Yes, I work out of Duluth. Yes.
 13 **Q.** Okay. And then it's my further
 14 understanding that that first source you mentioned,
 15 the previous Bison projects 1, 2 and 3, it's my
 16 understanding that those particular previous
 17 projects did not involve Section 15 or have
 18 anything to do with the residence at issue here; is
 19 that correct, sir?
 20 **A.** That is correct.
 21 **Q.** Okay. So as I understand your testimony
 22 then, you had -- you looked at the Oliver County
 23 plat book and satellite imagery before you went
 24 on-site; is that correct?
 25 **A.** That's correct.

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1 **Q.** Okay. Now, the Oliver County plat book
 2 actually shows at Section 15 the owner of that
 3 section immediately adjacent to where the turbine
 4 went up as Keith and Deanna Kessler; isn't that
 5 true?
 6 **A.** They own that parcel of land, yes.
 7 **Q.** Okay. And then satellite imagery, I have
 8 to assume that you were using a high enough
 9 resolution so you were able to see not only where
 10 you were looking at the possibility of putting the
 11 turbine, but you could see various structures on
 12 Section 15; is that correct?
 13 **A.** That's correct.
 14 **Q.** And then were you provided any additional
 15 information in regards to Section 15 from any of
 16 the people getting either the easements or getting
 17 permission to be on the property?
 18 **A.** Not that I recall.
 19 **Q.** Okay. And then I understand you and a
 20 team of people from the company went to actually
 21 visit all the sites, some 83 sites; is that
 22 correct?
 23 **A.** That is correct.
 24 **Q.** And when did that occur? Would that have
 25 been in the -- May of 2013?

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1 **A.** Yes. Correct.
 2 **Q.** Now, it's my understanding since you went
 3 to 83 sites, you don't have a specific memory of
 4 Section 15 and being on the site and looking over
 5 at the Kessler structures; is that a fair
 6 statement, sir?
 7 **A.** Yes.
 8 **Q.** But you're sure you went to every location
 9 where you had planned on putting a turbine;
 10 correct?
 11 **A.** That is correct.
 12 **Q.** And do you call that -- and maybe I've got
 13 the wrong term. Do you call that micrositing or
 14 that some other -- is that used in some other way?
 15 **A.** No, you have the correct term. We call it
 16 micrositing.
 17 **Q.** And is one of the purposes of going to the
 18 structure and looking around to try to make sure
 19 that you don't have any avoidance areas and there's
 20 no structures that are too close and that you're in
 21 compliance with all of the items in your
 22 application? Would that be fair?
 23 **A.** Yes.
 24 **Q.** Okay. It's my further understanding that
 25 none of you actually walked over or did distance

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1 checking as to that residence and that all that
 2 happened is you happened to drive by it. Is that
 3 correct, sir?
 4 **A.** I don't know that that's correct.
 5 **Q.** Okay. Did you --
 6 **A.** Again, I --
 7 **Q.** Okay. Let's backtrack then. Did you at
 8 any time while doing the site check for Section 15,
 9 the Kessler property, while on-site where Turbine
 10 441 eventually was placed, do you recall observing
 11 any structures to the northwest of where you were
 12 going to put that turbine?
 13 **A.** I'm not sure I understand the question.
 14 **Q.** I'm just trying to remember what --
 15 **A.** I was aware that there were structures --
 16 **Q.** Okay. Go ahead.
 17 **A.** I was aware that there were structures
 18 there.
 19 **Q.** Okay. And you were aware because of both
 20 the Google maps you looked at as well as physically
 21 being on-site; correct?
 22 **A.** The satellite imagery, Google Maps and the
 23 Oliver County plat book. Correct.
 24 **Q.** Okay. And your physically being there as
 25 well; correct?

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1 **A.** That's -- yes. That's correct.
 2 **Q.** Okay. While on-site, did you take any
 3 steps to gauge the distance between where you
 4 planned on putting the turbine and where the
 5 structures were on the Kesslers' property?
 6 **A.** No, but I -- I -- you could tell from the
 7 satellite imagery what that distance is.
 8 **Q.** And was that distance approximately
 9 1100 feet?
 10 **A.** Yeah, a little over 1100 feet.
 11 **Q.** And isn't it correct that you -- at the
 12 time you were designing this project, you knew that
 13 the setback that you were to apply was going to be
 14 1400 feet; correct?
 15 **A.** 1400 feet from an occupied residence.
 16 **Q.** Well, so did you go over to the house and
 17 knock on the door, look in the window and take any
 18 steps to determine whether that was an occupied
 19 residence?
 20 **A.** We determined -- made a determination that
 21 it was --
 22 **Q.** No, I'm asking --
 23 **A.** -- not an --
 24 **Q.** -- what you physically did.
 25 **A.** -- occupied residence.

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1 **Q.** Sir -- sir, the question was what did you
 2 physically do; not what you concluded. Did you
 3 physically walk over to that property, look in the
 4 window, knock on the door and see if anyone was
 5 living there? Did you do that?
 6 **MS. SMITH:** Actually, I object. That was
 7 not your question. You had asked if he had done
 8 anything to verify whether or not --
 9 **JUDGE DAWSON:** Hold on one second. You're
 10 echoing, Ms. Smith. So just give me a second to --
 11 **MS. SMITH:** I'm sorry.
 12 **JUDGE DAWSON:** -- see if we can get that
 13 stopped.
 14 **IT PERSON:** Okay.
 15 **JUDGE DAWSON:** Try to say a word again,
 16 Ms. Smith.
 17 **MR. BOUGHEY:** I'll save time and rephrase.
 18 **MS. SMITH:** I'm going to --
 19 **JUDGE DAWSON:** Let me just hear you speak.
 20 **MS. SMITH:** I think I'm still echoing.
 21 **JUDGE DAWSON:** It's still echoing.
 22 **IT PERSON:** Okay. She's in both on the
 23 phone and computer audio. That was the issue.
 24 **MS. SMITH:** Let me try hanging up.
 25 **JUDGE DAWSON:** I think you're fine now.

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1 You were saying, Ms. Smith? Ms. Smith, are you
 2 there?
 3 **MS. SMITH:** Can you hear me now?
 4 **JUDGE DAWSON:** Yes, I can.
 5 **MS. SMITH:** There we go. We'll just use
 6 my computer audio. Sorry for that.
 7 **JUDGE DAWSON:** You were saying, Ms. Smith?
 8 I didn't hear what you said.
 9 **MS. SMITH:** Yeah. Mr. Boughey had
 10 actually asked Mr. Gartner a question where he had
 11 said at the end did he do anything to verify the
 12 status of that structure. So I believe Mr. Gartner
 13 was attempting to answer that question when he was
 14 cut off by Mr. Boughey. So I'd ask that he be
 15 allowed to respond to the question.
 16 **MR. BOUGHEY:** And, Your Honor, if I may,
 17 very briefly.
 18 **JUDGE DAWSON:** Yes.
 19 **MR. BOUGHEY:** The -- there -- first of
 20 all, her only objection is apparently to let him
 21 finish, but he was not answering what I asked which
 22 was did you physically go over there. Instead he
 23 started testifying as to what his conclusion was as
 24 to whether it was occupied. I was first
 25 determining and very specifically asking him did

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1 you physically do anything? Did you go over there?
2 And that's a fair question and he wasn't answering
3 it.

4 JUDGE DAWSON: The question is did you
5 physically go over there and do anything,
6 Mr. Gartner.

7 THE WITNESS: Right. I don't recall if
8 I -- whether or not I did go into the yard or the
9 house. I do know I didn't knock on the door or
10 look in the windows. I know that a member of our
11 team, Matt Freudenrich, has been through the yard.

12 MR. BOUGHEY: Objection.

13 Q. (MR. BOUGHEY CONTINUING) Were you there
14 when he went through the yard or not? Were you
15 with him?

16 A. I may have been. I don't recall.

17 Q. All right.

18 A. He --

19 Q. I'll just proceed. So did you at that
20 time while physically there use any device, such as
21 a range finder, to determine the distance between
22 where you planned on putting the turbine and the
23 structures on the Kesslers' property?

24 A. No.

25 Q. Okay. Now, I understand you have what's

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1 called landmen who are the ones who meet with
2 the -- the landowners and get easements and
3 permissions and all those type of things. Isn't it
4 correct that you made absolutely no contact in
5 regards to the design with your landmen in regards
6 to Section 15?

7 A. That's not correct. We discussed land
8 issues in general. There may -- I don't recall
9 anything specific to Section 15.

10 Q. Okay. Do you recall testifying at your
11 deposition --

12 MR. BOUGHEY: Counsel, page 37, line 22.

13 Q. (MR. BOUGHEY CONTINUING) -- "Were the
14 land agents with you during the micrositing?"
15 Answer: "No."

16 Do you recall making that statement?

17 A. Yes, I did not understand your question
18 was regarding the -- during the micrositing visit.

19 Q. And then isn't it also correct that in
20 regards to this particular structure that the
21 Kesslers had, you did not pick up the phone or
22 contact the land agents and discuss with them what
23 this structure was and what the Kesslers use it
24 for? Isn't that correct?

25 A. That is correct.

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1 Q. And isn't it correct that the land agent
2 has a -- a document that they keep on hand that
3 lists all the landowners, their addresses, their
4 phone numbers, all of that information was readily
5 available to you had you just talked -- contacted
6 the land agent and asked for the Kesslers'
7 information? Isn't that true?

8 A. That is true, but I -- we -- all contacts
9 with the landowners were made through our land
10 agents.

11 Q. That's true, but you also stated -- isn't
12 it true you weren't prohibited, if you felt it was
13 necessary to do so, to contact either the land
14 agent or the landowner and say, "What is this
15 structure used for? What is it?" You could have
16 done that, couldn't you?

17 A. Could I have contacted -- could I have
18 contacted our land agent regarding the structure?
19 Yes.

20 Q. That's the question. And you could have
21 also had the opportunity, if you wanted -- you
22 stated there's no policy against contacting the
23 landowner directly and finding out information;
24 isn't that true?

25 A. There's no policy, but that was not our

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1 practice.

2 Q. Why not? Why not, if you have a question
3 about a structure, call your land agent who knows
4 this person or call the landowner and say, "Tell me
5 what this structure is and what do you plan on
6 using it for?" Why didn't that happen, sir?

7 A. We made the -- the standard was was it an
8 occupied residence. We assessed -- assessed it to
9 be an -- that it was not an occupied residence.

10 Q. Based on --

11 A. And I think the testimony from yesterday
12 supports that -- or from day one supports that.

13 Q. That's not what I asked you. You didn't
14 take any steps to look into it. All you did is you
15 looked at the plat map, you looked at some -- a
16 satellite photo, you looked at Google maps and
17 that's it; isn't that true?

18 A. Repeat the question, please.

19 Q. You reached a conclusion that the
20 residence -- the structure was not occupied, if I
21 understand your testimony, based on satellite
22 photos, Google maps, the plat map and a site
23 inspection where you didn't take any additional
24 steps other than perhaps look at that direction.

25 Isn't that true, sir?

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1 **A.** We did not in the course of those items
2 have any -- any information that suggested that was
3 an occupied residence.

4 **Q.** And you didn't go and get any additional
5 information, either, did you, sir?

6 **A.** We did not contact -- I did not pursue
7 contacting the landowner.

8 **MR. BOUGHEY:** Nothing further. Thank you,
9 Your Honor.

10 **JUDGE DAWSON:** Mr. Mahlberg.

11 **MS. SMITH:** Actually, it'll be me, Your
12 Honor.

13 **JUDGE DAWSON:** Okay. Ms. Smith.

14 **MS. SMITH:** And can you still hear me?

15 **JUDGE DAWSON:** I can hear you.

16 **MS. SMITH:** All right. Thank you.

17 **DIRECT EXAMINATION**

18 **BY MS. SMITH:**

19 **Q.** Mr. Gartner, can you explain again what
20 your position is currently with Minnesota Power?

21 **A.** I'm a project development leader.

22 **Q.** And did you -- and what again is your role
23 as a project development leader?

24 **A.** To develop energy projects, evaluate
25 potential projects.

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1 **Q.** And how long have you done that?

2 **A.** Since -- for over eight years now.

3 **Q.** Did you file prefiled direct testimony in
4 this matter?

5 **A.** Yes.

6 **Q.** And is that prefiled direct testimony in
7 Minnesota Power MP Exhibit 2 and Exhibits 2-1
8 through 2-6?

9 **A.** Yes.

10 **Q.** And if I were to ask you those same
11 questions today, would your answers be the same or
12 substantially the same?

13 **A.** Yes.

14 **Q.** And I won't -- I'll try not to go into
15 the -- repeat everything in your written testimony,
16 but there are a few items I would like to focus on
17 today.

18 **MR. BOUGHEY:** Excuse me, Ms. Smith.
19 Excuse me, Ms. Smith, I just have to put on the
20 record an objection. I know that the PSC uses
21 prefiled testimony and that they've already -- I've
22 objected to that and wanted that the individuals be
23 subject to cross-examination and not use the
24 pretrial testimony. That was overruled by the
25 judge in this case.

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1 And so I'd just note my objection for the
2 record that I think that if we have a formal
3 hearing, it should be done not by any pretrial
4 documents that are prepared and massaged by the
5 attorneys, and instead evidence should be brought
6 in where there's a hearing by direct evidence and
7 cross-examination.

8 That being said, I know I've already been
9 overruled on that, but I have to at least mention
10 that as a -- that that's a standing objection as to
11 use of these exhibits. And I would also ask that
12 the court allow me a standing objection as to all
13 the pretrial statements so I don't have to make
14 that objection again.

15 **JUDGE DAWSON:** All your objections are
16 noted.

17 **MR. BOUGHEY:** Thank you, Your Honor.

18 **JUDGE DAWSON:** Ms. Smith.

19 **Q.** (MS. SMITH CONTINUING) Can you state
20 again what your role was with respect specifically
21 to the Bison 4 project?

22 **A.** I was the project developer, developing --
23 working on the project design, negotiating key
24 contracts, project managing it through permitting
25 and construction.

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1 **Q.** Were you involved in the project layout
2 development?

3 **A.** Yes.

4 **Q.** And you said you visited each of the 83
5 turbines as part of that layout development
6 process?

7 **A.** Yes. Each of the potential turbine sites,
8 yes.

9 **Q.** And who was involved in your micrositing
10 team? Who were the members, generally?

11 **A.** We had -- we had an internal MP team,
12 including engineering and environmental. We also
13 had external consultants: EAPC; Westwood was doing
14 the engineering; Mergent was doing the
15 environmental or archeological cultural surveys;
16 and Ulteig -- and an Ulteig surveyor as well.

17 **Q.** And were you involved then in the PSC
18 application preparation?

19 **A.** Yes.

20 **Q.** And what was your involvement there?

21 **A.** I provided turbine technical information,
22 project design layout information and setback
23 avoidance area information.

24 **Q.** And you testified earlier about looking
25 into what occupied residences were within the

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1 project area; is that correct?

2 **A.** That's correct.

3 **Q.** And why was Minnesota Power identifying

4 occupied residences?

5 **A.** The PSC has a requirement that sound be

6 limited to 50 dba within 100 feet of an inhabited

7 residence.

8 **Q.** So other than the noise standard, were

9 there any other state or county setback

10 requirements that applied to the occupied

11 residences?

12 **A.** No, there were not.

13 **Q.** Did Minnesota Power apply a setback from

14 occupied residences beyond the 50 dba that you were

15 just referencing?

16 **A.** Yes. We applied a 1400 -- voluntarily

17 applied a 1400-foot setback from occupied

18 residences.

19 **Q.** And when you made that commitment and you

20 applied that 1400-foot setback, what did occupied

21 residence mean?

22 **A.** A place where somebody was living, you

23 know, as their home.

24 **Q.** And applying that definition, I think you

25 talked a little bit earlier about how you

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1 identified occupied residences. If I understand

2 your prior testimony, you referenced using

3 information you'd gathered from Bison 1 through 3;

4 is that correct?

5 **A.** Yes.

6 **Q.** You used the Oliver County plat book; is

7 that also right?

8 **A.** That's correct.

9 **Q.** Satellite imagery; correct?

10 **A.** Yes.

11 **Q.** And information that was gathered on site

12 visits; is that also correct?

13 **A.** That is correct.

14 **Q.** And was the occupied residence information

15 you gathered what you used to create the maps that

16 you submitted to the Public Service Commission?

17 And those -- I will just say those are provided as

18 MP Exhibits 2-2 and 2-3.

19 **A.** Yes.

20 **Q.** And were you -- Mr. Kessler's testified

21 that some of the occupied residences that were

22 depicted on those maps provided to the Commission

23 were not occupied as part of the public hearing on

24 Bison 4. Do you recall that testimony?

25 **A.** Yes.

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1 **Q.** Might some of those structures that were

2 identified as occupied residences have been

3 unoccupied at that time?

4 **MR. BOUGHEY:** Objection. Speculation.

5 Objection. Speculation and leading.

6 **MS. SMITH:** I'm just asking if that's a

7 possibility, that they were potentially unoccupied.

8 **MR. BOUGHEY:** Same objection. And lack of

9 foundation.

10 **JUDGE DAWSON:** I'll allow the question for

11 what it's worth.

12 **THE WITNESS:** Yes, it's possible. Yes.

13 **Q.** (MS. SMITH CONTINUING) And why might that

14 have been?

15 **MR. BOUGHEY:** Further speculation.

16 **JUDGE DAWSON:** Your objection's noted.

17 **MR. BOUGHEY:** Thank you, Your Honor.

18 **THE WITNESS:** I used the processes we had

19 described previously, and so to the extent that --

20 that an occupied residence or residence didn't

21 impact the design of the project, it wasn't --

22 there wasn't reason to evaluate it further. You

23 know, we would err on the side of being

24 overinclusive.

25 **Q.** (MS. SMITH CONTINUING) So just to make

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1 sure I'm understanding, is it fair to say that

2 since you were able to site the project, assuming

3 those particular structures were occupied

4 residences, you didn't need to analyze that issue

5 further?

6 **A.** That's correct.

7 **Q.** Do you believe it was appropriate to be

8 overinclusive in identifying occupied residences?

9 **A.** Yes, I do.

10 **Q.** And as far as the residences that were

11 referenced in Mr. Kessler's testimony as being

12 unoccupied, why were those particular residences

13 listed as occupied in your analysis?

14 **A.** Two of the -- two of the residences had

15 been identified as occupied residences in the

16 Bison 3 certificate of site compatibility

17 application, and the third residence was identified

18 as having a current resident in the Oliver County

19 plat book.

20 **Q.** Was the Section 15 structure identified as

21 an occupied structure?

22 **A.** It was not.

23 **Q.** And why did you determine the Section 15

24 structure was not occupied?

25 **A.** Again, the Oliver County plat book did not

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1 list a current residence. Satellite imagery
2 indicated that there was not -- suggested there was
3 not activity at the residence that you would
4 associate it with an occupied residence. And then,
5 again, during our site visits we didn't gather any
6 information that indicated it was being used as an
7 occupied residence.

8 Q. Did you listen to the hearing -- the first
9 day of evidentiary hearing or read the transcript
10 from the first day of the evidentiary hearing in
11 this matter?

12 A. Yes.

13 Q. Did the Kesslers' testimony -- and I'll
14 add the testimony from today. Did the testimony --
15 any of the testimony provided by the Kesslers or
16 their witnesses change your conclusion that the
17 Section 15 structure was not occupied when the
18 certificate of site compatibility was issued for
19 the project?

20 A. No. My conclusion, determination did not
21 change.

22 Q. And why is that?

23 A. Because there was nobody living there
24 as -- as their residence at the time that we sited
25 and permitted that project.

1 spoke on the record at the hearing in response to
2 comments by Mr. Kessler?

3 A. Yes.

4 Q. To your knowledge, other than that
5 exchange that we just talked about on the record,
6 did the Kesslers speak with any Minnesota Power
7 employees before, during or after the public
8 hearing?

9 A. Not that I'm aware of.

10 Q. Prior to the Commission issuing a
11 certificate of site compatibility for the project,
12 did you have any knowledge that the Kesslers' son
13 or sons planned to move into the Section 15
14 structure?

15 A. No.

16 Q. And prior to the Commission issuing a
17 certificate of site compatibility for the project,
18 were you aware of any concerns the Kesslers had
19 regarding the placement of Turbine 441 in relation
20 to the Section 15 structure?

21 A. No.

22 Q. When did you first learn the Kesslers had
23 a concern regarding the placement of Turbine 441 in
24 relation to the Section 15 structure?

25 A. In February of 2017.

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1 Q. In your view, is there a difference
2 between a livable structure and an occupied
3 residence?

4 A. Yes, a big difference.

5 Q. And when Minnesota Power sited the Bison 4
6 project and committed to the 1400-foot setback, did
7 it commit to setting back from livable structures?

8 A. No. We committed to occupied residences.

9 Q. In your opinion, did Minnesota Power
10 comply with that commitment?

11 A. Yes.

12 Q. And I think you talked about attending the
13 public hearing in September of 2013; is that
14 correct?

15 A. Yes.

16 Q. Did Scott Monroe attend that public
17 hearing?

18 A. He did not.

19 Q. Did you speak with the Kesslers before,
20 during or after the public hearing?

21 A. I did not.

22 Q. Are you aware that Mr. Kessler spoke on
23 the -- on the record at the hearing?

24 A. Yes.

25 Q. And are you aware that Mr. Freudenrich

1 Q. And how did you learn that?

2 A. Wade Isaacson from Minnesota Power relayed
3 that Mr. Kessler had mentioned concerns during one
4 of their meetings.

5 Q. Had you known the Kesslers had concerns
6 about the placement of Turbine 441 prior to the
7 issuance of the certificate of site compatibility,
8 could you have adjusted the layout to address the
9 concerns?

10 A. Yes. Yeah. That was possible. It would
11 just take a little engineering.

12 Q. And would it have been easier for
13 Minnesota Power to have changed the location of
14 Turbine 441 back in 2013 compared to now?

15 A. Oh, much easier. It's much harder to
16 rearrange the deck furniture after they're all
17 bolted down.

18 Q. And would it have significantly affected
19 the project schedule or increased costs to move
20 Turbine 441 back in 2013?

21 A. No. It would have been small -- smaller
22 then.

23 Q. In your experience, does Minnesota Power
24 try to address landowner concerns?

25 A. Yes.

1 Q. And -- and why do you try to address
 2 landowner concerns?
 3 A. Because we're neighbors. We have a
 4 project that we have employees there that they're
 5 going to be there for decades. So it's important
 6 to us that we're maintaining good relationships
 7 with landowners and all the stakeholders.
 8 Q. Are you aware, and there was just some
 9 testimony, that the Kesslers have raised a concern
 10 regarding noise and shadow flicker at Section 15 --
 11 at the Section 15 structure?
 12 A. Yes.
 13 Q. In response does Minnesota Power model the
 14 sound and shadow flicker levels at the Section 15
 15 structure?
 16 A. Yes. We engaged Westwood, formerly EAPC,
 17 to do that modeling.
 18 Q. And based on -- I'm just going to use
 19 Westwood. I know they used to be EAPC, but based
 20 on Westwood's analysis, if the Commission were to
 21 determine the avoidance area requirement of 50 dba
 22 within a hundred feet should apply to the Section
 23 15 structure, does the project currently comply
 24 with that requirement?
 25 MR. BOUGHEY: Objection.

1 Q. (MS. SMITH CONTINUING) So I'll
 2 rephrase [audio distortion] now that [audio
 3 distortion].
 4 If we assume that the 50 dba within a
 5 hundred feet of a structure should apply to the
 6 Section 15 structure, does the project currently
 7 comply with that requirement?
 8 A. Yes, it does.
 9 Q. And that -- is that based on your review
 10 of Mr. Haley's report that is an exhibit in this
 11 matter?
 12 A. Yes. That's correct.
 13 Q. Based on the analysis that was conducted
 14 by Westwood, if the 30-hour-per-year-or-less shadow
 15 flicker commitment applied, would the project
 16 currently comply with that commitment?
 17 A. No, it would not.
 18 Q. And if the Commission decided that
 19 commitment should apply to the Section 15
 20 structure, does Minnesota Power have options to
 21 reduce shadow flicker to comply with the
 22 30-hours-per-year-or-less shadow flicker
 23 commitment?
 24 A. Yes. We have inquired with the turbine
 25 manufacturer and they have a control system that

1 THE WITNESS: Yes, it does.
 2 MR. BOUGHEY: He has no foundation. He
 3 didn't do the study, and it's my understanding that
 4 the study was based entirely on modeling. Nobody
 5 actually went out there and did any decibel
 6 readings, is my understanding. But in any event,
 7 he has -- the fact that he has a report by some
 8 third person, he's not the appropriate person to
 9 testify in regards to that.
 10 JUDGE DAWSON: Ms. Smith.
 11 MS. SMITH: May I respond, Your Honor.
 12 JUDGE DAWSON: Yes, you may.
 13 MS. SMITH: Mr. Gartner is the one that
 14 requested that the study be done. He did review
 15 the contents of the study. And he would at least
 16 be able to use the contents of that study to make a
 17 conclusion of whether there is compliance with the
 18 potentially applicable standard. And in this case
 19 modeling is used in most -- let me take that
 20 back -- used in all PSC proceedings to determine
 21 compliance with siting requirements.
 22 JUDGE DAWSON: I'm going to allow the
 23 question. You'll be able to ask your questions on
 24 cross.
 25 MR. BOUGHEY: Thank you.

1 could be added on to our existing system that would
 2 reduce the shadow flicker to comply with the
 3 30-hour requirement.
 4 Q. And without disclosing any confidential
 5 information, can you give us an idea how much it
 6 would cost to install that shadow flicker control
 7 system that you were just referencing?
 8 A. Less than \$30,000.
 9 Q. And to confirm, with the turbine in its
 10 current -- Turbine 441 in its current location and
 11 the addition of that shadow flicker control system,
 12 the project would meet a 30-hour-per-year-or-less
 13 shadow flicker level at the Section 15 structure?
 14 A. That is correct.
 15 Q. There have been some questions -- or there
 16 were during the first day of hearing some questions
 17 about potentially moving Turbine 441. Are you
 18 aware of those questions that were raised?
 19 A. Yes.
 20 Q. Has Minnesota Power analyzed the potential
 21 cost of moving Turbine 441?
 22 A. We've de -- developed -- yes, we have.
 23 We've developed a preliminary estimate.
 24 Q. And I'm going to direct you and everyone
 25 to what's MP Exhibit 8. And it contains both

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1 public and nonpublic information. So I -- I'm
2 going to only show on the screen the public
3 document. We will talk in general terms about the
4 nonpublic document. So do you have that exhibit in
5 front of you -- or when you have it in front of
6 you, let me know.

7 **A.** Okay. Just give me a minute. Okay. I'm
8 ready.

9 **Q.** So I'll just start, first of all, and say
10 did you prepare Exhibit 8?

11 **A.** Yes.

12 **Q.** And I'm going to start with the nonpublic,
13 and as I said, we're not going to discuss anything
14 as far as numbers in the document. Those that have
15 it can follow along. And I won't publish it.

16 **Q.** But what is shown in the nonpublic portion
17 of Exhibit 8?

18 **A.** It shows an estimate of the lost energy
19 revenue associated with out-of-service time for
20 relocating Turbine 441.

21 **Q.** And without referencing specifics, can you
22 explain the inputs or the information that is in
23 this exhibit and went into your calculation to
24 determine a lost revenue amount for moving Turbine
25 441?

1 price forecasts.

2 **Q.** In your view, is this a conservative
3 assumption?

4 **A.** Yes, it is. Yes.

5 **Q.** And, you know, if -- for example, if the
6 number of days that the project was out of service
7 increased, would that affect the cost estimate?

8 **A.** Yes, that -- that would increase
9 proportionately, lost revenue.

10 **Q.** And now let's look at the public portion
11 of 8. I'm going to do my best to share this if I
12 am able to.

13 **MR. BOUGHEY:** Counsel, while you're doing
14 that, may I interrupt just briefly and ask the
15 judge can my witness, who has to get back to
16 calving, be released, and that's Mr. Hayden
17 Kessler? Is there any objection to releasing him?

18 **MR. MAHLBERG:** No.

19 **JUDGE DAWSON:** I have no objection.
20 You're released.

21 **MR. BOUGHEY:** Thank you. Thank you, Your
22 Honor. I should have caught that as soon as he
23 stepped down, and I missed it.

24 **MS. SMITH:** And I have to say I'm not
25 seeing the "share screen" button that I usually

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1 **A.** Yes. So we used historical energy
2 production and developed a daily average. We
3 created -- estimated the number of days the turbine
4 would be out of service for relocation and
5 multiplied those two to come up with the total lost
6 energy. We then valued that using the production
7 tax credits that would be lost by losing that
8 generation and the energy value by itself, the
9 market energy price for that energy. Multiplied
10 those items to come up with the total lost energy
11 revenue.

12 **Q.** And are -- are there some of these numbers
13 that are estimates as opposed to hard, firm
14 numbers?

15 **A.** Yes.

16 **Q.** And what would those be that are
17 estimates?

18 **A.** Those would be the days out of service for
19 the relocation. The production tax credit rate is
20 determined by the federal government and is
21 adjusted once each year. So we're making an
22 assumption of what it will be in 2022.

23 **Q.** And then the market energy price is -- is
24 an estimate based on -- we use independent
25 consultants to come up with -- that develop energy

1 see, so I'm just going to ask the meeting manager
2 if he can tell me where I should be finding that.

3 **JUDGE DAWSON:** Matthew.

4 **IT PERSON:** Okay. You're now the
5 presenter.

6 **MS. SMITH:** Ah, there we go. So there
7 was -- I wasn't just missing it. That makes me
8 feel better. Now I've got to find it. I still am
9 not seeing a "share" button.

10 **IT PERSON:** It should be right next to all
11 the "microphone," "camera" and "leave" buttons.

12 **MS. SMITH:** It is not. There's a
13 "microphone," "camera." There is "turn my screen
14 off" and there is "leave."

15 **IT PERSON:** Turn your screen off or
16 camera?

17 **MS. SMITH:** It just says -- ah, here we
18 go. I think it's not on. Here we go. Got it.
19 There. Hopefully you can see now my screen.

20 **Q.** (MS. SMITH CONTINUING) Mr. Gartner, can
21 you see that?

22 **A.** Yes, I can.

23 **Q.** And is this the public portion of MP
24 Exhibit 8?

25 **A.** Yes.

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1 Q. And what is in this document or what does
 2 this document provide?
 3 A. This provides an -- this provides a cost
 4 estimate for the engineering and construction to
 5 relocate Turbine 441.
 6 Q. And what information did you use as the
 7 basis for your cost estimate?
 8 A. Costs for constructing wind projects
 9 from -- from other projects we've worked on, as
 10 well as information from -- gathered during the
 11 turbine repairs.
 12 Q. And is there an assumption about the
 13 location of the turbine that you used when
 14 developing this cost estimate?
 15 A. Yes.
 16 Q. And where did you assume the location was
 17 for purposes of your estimate?
 18 A. We assumed we would relocate it a little
 19 over a thousand feet north of Turbine 442.
 20 Q. And if -- if that were the case and you --
 21 you moved it where it was located, at least for
 22 purposes of this estimate, what would be the
 23 closest turbine to the Section 15 structure at that
 24 point?
 25 A. Turbine 442, which would be a little over

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1 2,000 feet from the Section 15 structure.
 2 Q. If the -- and is your assumption then that
 3 the turbine is remaining on the Lennick parcel,
 4 Turbine 441?
 5 A. Yes. In this cost estimate, yes.
 6 Q. If the location were further away, would
 7 that increase the estimate?
 8 A. Yes, it would.
 9 Q. What other variables are there in the cost
 10 estimate?
 11 A. Location is important. Just the time it
 12 takes to construct -- the amount of time you have
 13 the crane, crews and equipment on-site. You know,
 14 it's important to note that most of the information
 15 we have available to us that we used in this
 16 estimate came from the cost to construct, you know,
 17 full wind projects where you've got 50, 60, 70
 18 turbines, and -- and so the first turbine always
 19 takes a lot longer than the last turbine because of
 20 the process. You also have opportunities to use
 21 your labor and equipment more efficiently. If you
 22 run into a snag, you can shift them over to another
 23 turbine site.
 24 For this case where you're relocating a
 25 single turbine, it's a one-turbine project and so

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1 there's a definite risk that the actual cost will
 2 be higher than what we've estimated. We simply
 3 don't have current estimates to relocate a single
 4 turbine.
 5 Q. And are you saying, then, that this is
 6 a -- in your view, a conservative estimate?
 7 A. Yes. That's correct.
 8 Q. So based on your testimony earlier, adding
 9 a shadow flicker control system that would allow
 10 the project to reduce shadow flicker at the Section
 11 15 structure to 30 hours per year or less, is
 12 approximately -- or less than \$30,000; is that
 13 correct?
 14 A. That's correct.
 15 Q. And if you had to move Turbine 441, even
 16 with a very conservative estimate, the cost would
 17 be in excess of 1.2 million?
 18 A. That's correct.
 19 MS. SMITH: I don't have any further
 20 questions.
 21 JUDGE DAWSON: Mr. Johnson.
 22 MR. JOHNSON: Thank you.
 23 **EXAMINATION**
 24 **BY MR. JOHNSON:**
 25 Q. You had stated that some of the residences

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1 on the map were determined to be either occupied or
 2 unoccupied in previous projects like Bison 3. Was
 3 this Section 15 residence -- was there a
 4 determination made in any of those prior projects
 5 as to the status of that -- that structure?
 6 A. Not -- no, not the Section 15 structure.
 7 Q. Okay. And you had stated that you were
 8 physically in the yard prior to construction of
 9 Turbine 441?
 10 A. I stated I don't recall if I was
 11 physically in the yard.
 12 Q. Okay. So other than you, who else would
 13 have been tasked with determining who -- which
 14 residences were occupied or not?
 15 A. That was primarily my responsibility, but
 16 all of the team members would -- to the extent that
 17 they gathered information relevant, they -- they
 18 would communicate that --
 19 Q. Okay. Are you aware --
 20 A. -- to me.
 21 Q. Sorry. Are you aware of any of the team
 22 members going to the Section 15 location, the yard,
 23 farmyard?
 24 A. Yes. I know that Matt Freudenrich has --
 25 has provided testimony that he was in the yard of

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1 the Section 15 structure.

2 Q. I guess in your opinion, was this Section

3 15 structure/farmyard treated differently than any

4 of the other farmyards or buildings in the project?

5 A. No, it was not.

6 Q. I guess in an effort to be, you know, safe

7 than sorry, was there some reason that this turbine

8 wasn't just placed 1400 feet away from it to begin

9 with? Is there something about that turbine

10 location exactly where it's at, closer than the

11 1400 feet, that made it the prime or choice

12 location for that turbine?

13 A. No. No. We -- we had options at --

14 MR. JOHNSON: No further questions, Your

15 Honor.

16 JUDGE DAWSON: Commissioners.

17 Commissioner Fedorchak.

18 COMMISSIONER FEDORCHAK: Thank you, Judge.

19 **EXAMINATION**

20 **BY COMMISSIONER FEDORCHAK:**

21 Q. Mr. Gartner, I do have a couple questions.

22 Picking up where -- where Brian just left off in

23 terms of the location of that 441, so there was

24 nothing preventing that structure from being

25 further back from the Kessler property, further

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1 away?

2 A. If -- if there was -- if it was

3 determined -- if -- if it was an occupied

4 residence, we would have adjusted the design of the

5 layout. It could be adjusting spacing, shifting

6 the line of turbines. It could be going to an

7 alternate turbine site. So at the time of

8 designing it and permitting, you know, we had --

9 had some options.

10 Q. Mm-hmm. Okay. How does the -- the plat

11 book -- who puts that together? The county? Looks

12 like it --

13 A. I don't know offhand.

14 Q. Some -- some resource in Jamestown, it

15 looks like.

16 How is -- how do they determine the

17 occupied residence; do you know?

18 A. I don't know. I -- it does not specify in

19 the directory that I'm aware of.

20 Q. It says in the -- in the beginning,

21 "Farmsteads with livable buildings are indicated

22 with an asterisk and the name of the current

23 resident is listed next to the asterisk." Then it

24 says, "Information for this Plat Book/Directory was

25 compiled from data procured in September 2011.

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1 While every effort has been made to assure its

2 accuracy and completeness" -- "completeness, no

3 representation is made as to complete accuracy and

4 we cannot accept responsibility for any errors or

5 omissions."

6 So you don't know who the authority is on

7 the plat book? Because I don't either. This is

8 not a rhetorical question.

9 A. Correct. I don't know.

10 Q. Is it a government entity or is it a

11 private endeavor or --

12 A. Again, I don't know.

13 Q. Would you say this is your primary source

14 for determining your occupied residence status?

15 A. It is just one of sources -- one of a few

16 sources. So, you know, it's -- it's an easy

17 starting point, but we used other data points to --

18 to make that determination.

19 Q. Sure. So would it -- would it be possible

20 for you to say what's the main source or what is --

21 what do you use as kind of the final source or

22 authority on whether something is occupied or not?

23 A. I -- I think we're looking at, you know,

24 trying to triangulate, trying to have, you know,

25 multiple pieces of information.

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1 Q. Okay.

2 A. And -- and -- and, again, we would, you

3 know, try to be -- try to be inclusive. So to the

4 extent we had pieces of information that would

5 indicate it was occupied, you know, that would

6 carry the most weight.

7 Q. All right. So -- and in your sources is

8 the plat book or the plat directory, satellite

9 imagery, the Bison 1, 2 and 3 information, which

10 really isn't helpful in this case, so that's kind

11 of irrelevant. I'm going to cross that out. And

12 site visits?

13 A. That's correct.

14 Q. How much -- when you're working with

15 landowners in a -- in an area where you're

16 developing a wind farm, how much contact do you and

17 your land agents have with those people?

18 A. All that contact is through our land

19 agents, so --

20 Q. So there's a complete distinction between

21 the land agents and the people who are developing

22 the proposal? If you have --

23 A. Yeah, our --

24 Q. Okay. Go ahead. Sorry.

25 A. I'm sorry. Our practice is for the land

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1 agents to be the point of contact with the
2 landowners.
3 Q. And I've gotten a little confused with the
4 names on this one, and it's been a couple weeks ago
5 since we talked like all day long about these
6 people. So remind me who the land agent or agents
7 are for this -- on -- on this case.
8 A. For the Bison 4 project the land agents
9 were Wade Isaacson and Scott Monroe.
10 Q. Okay. So if you have a question that you
11 need answered relating to micrositing and it -- it
12 should be answered by the -- the landowner, do you
13 direct that to the land agent?
14 A. Yes.
15 Q. And how often does that happen? Is that
16 common?
17 A. Not that common.
18 Q. And is the land agent part of the team
19 that goes out for micrositing?
20 A. They are not.
21 Q. Why -- why is that?
22 A. Because any -- most of the evaluations
23 that we're doing are for constructability,
24 permitting, and to the extent that questions would
25 arise during that micrositing, we would then just

1 Q. They reported to Todd. That's their boss?
2 A. Yes.
3 Q. Okay.
4 A. That was their --
5 Q. And then Todd and you and the land agents
6 were on -- or not -- I'm sorry. Were you involved
7 in those weekly conversations, did you say?
8 A. Yeah. So -- right. So we had weekly
9 project team meetings. Some of those Wade would be
10 at -- Wade or Scott would be at, but we would talk
11 by phone regularly --
12 Q. Okay.
13 A. -- if not --
14 Q. All right. Hold on here.
15 Oh, at the hearing, in your testimony --
16 your prefiled testimony, you say that -- and I
17 think in your conversation with Mollie, I think you
18 said that you attended the hearing and you
19 testified, but you don't recall the -- anything
20 about the Kesslers meeting with representatives
21 from the company?
22 A. That's correct. I only -- I recall an
23 exchange that was on the record where Mr. Kessler
24 had some questions and they were -- and then I
25 think Matt Freudenrich spoke to respond to one or

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1 contact the -- the land agents that are on-site
2 there -- or, you know, are -- were at the O&M
3 building there.
4 Q. So it would be too much of their time
5 for -- they wouldn't have that much input, to have
6 them along on this --
7 A. Right, well, the -- right. Exactly.
8 Yeah, to spend four days or however many days it
9 was -- yes. It would have been not an efficient
10 use of their time.
11 Q. All right. Is there a process for them to
12 get you information that they feel that you should
13 look into on the --
14 A. Yes.
15 Q. When does that happen?
16 A. Oh, I'm sorry.
17 Yeah. So we would talk -- or during the
18 development of the Bison 4 project, I would talk
19 with Wade and/or Scott, you know, regularly by
20 phone. We had weekly project meetings. They
21 didn't attend every one, but they would -- we would
22 contact -- touch base with each other, you know, in
23 preparation for those meetings, and -- and they
24 reported to Todd Simmons who attended those
25 meetings.

1 more of those questions.
2 Q. So do you dispute that that happened, that
3 the Kesslers talked to members of your company? Is
4 that the company's position, that that didn't
5 happen at the hearing, a private conversation?
6 A. I didn't -- I was not aware of any such
7 conversation.
8 Q. I know you weren't, but you were -- you're
9 the project manager. So do you dispute that that
10 happened?
11 A. Yes.
12 Q. Okay. None of the people -- none of your
13 employees believe that that happened or --
14 A. That's my understanding.
15 Q. Then what triggered the follow-up meeting
16 that -- I don't -- I haven't heard anybody dispute
17 that that follow-up meeting occurred that was
18 supposedly triggered by the conversations at the
19 hearing.
20 A. I -- that's something I'm -- I don't know.
21 Q. You don't know that that -- about that
22 meeting in the -- well, there was -- where they --
23 where Mrs. Kessler saw the -- the maps and there
24 was discussion about the maps at the shop and that
25 whole -- that whole meeting that happened after the

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1 hearing between the Kesslers and the company? That
 2 was --
 3 **A.** Yeah, I'm --
 4 **Q.** Go ahead.
 5 **A.** I'm aware -- again, I wasn't there, but
 6 I'm aware there was a meeting where Mr. Kessler was
 7 at the O&M building of the project and had a
 8 conversation with the land agents, and I believe
 9 they went out -- if I understand correctly, that
 10 there was also a discussion with Matt Freudenrich.
 11 **Q.** Okay. So you know that that meeting
 12 happened, but you -- you don't believe it was
 13 triggered by a discussion at the hearing that
 14 wasn't able to be resolved at the hearing and so
 15 they said let's talk about it at a separate
 16 meeting?
 17 **A.** I -- I don't know what the -- what
 18 triggered the meeting or what the purpose was. I
 19 wasn't part of that discussion, so I --
 20 **Q.** Okay. Is your involvement less at that
 21 point? Why wouldn't you know about --
 22 **A.** Pardon?
 23 **Q.** Is your involvement at that point less or
 24 why wouldn't you know about that?
 25 **A.** Well, I -- again, that would be a better

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1 question for -- for those who were involved, Wade
 2 and -- Wade Isaacson and Scott and Matt Freudenrich
 3 since they, you know, were there firsthand.
 4 Meetings with landowners, you know, that were part
 5 of the easement process, I'm aware that there were
 6 meetings. I wouldn't necessarily be aware of every
 7 meeting, wouldn't be aware of all the discussions.
 8 I was at that point, you know, working on other
 9 aspects of the project.
 10 **Q.** Okay. All right. And then in the
 11 testi -- let's see. This is in the transcript of
 12 the hearing, which is on -- it's in Exhibit MP --
 13 MP 2-6.
 14 **A.** Yes.
 15 **Q.** And then I'm looking at pages 118 and 119.
 16 MP000118 and 119.
 17 **A.** Okay.
 18 **Q.** So this is Mr. Kessler's testimony at the
 19 hearing. And, I mean, you -- you say in your -- in
 20 your testimony, your prefiled testimony, that he
 21 didn't talk about towers at the -- tower placement
 22 at the hearing, but the transcript suggests that he
 23 did. I will grant that he didn't reference Tower
 24 Number 441, but as I read this, I see that he's
 25 expressing concern about tower locations and

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1 follow-up from the company.
 2 **A.** In a general sense. I read it as in a
 3 general sense.
 4 **Q.** But that he's frustrated that that hasn't
 5 taken place, that there hasn't been any discussion.
 6 So I don't -- I can't -- it's hard for me to
 7 understand how the company could hear that
 8 testimony and think that this is a landowner that's
 9 comfortable with the tower locations. Like this --
 10 when I read this, I think a company that's worried
 11 about making proper investments should double-check
 12 with this person to make sure they're comfortable
 13 with the tower locations. Is -- is that an unfair
 14 conclusion based on this testimony?
 15 **A.** Well, let me read through it, if I may.
 16 **MS. SMITH:** Commissioner Fedorchak, would
 17 you mind telling me which small page and line
 18 you're on just so that I have the correct --
 19 **COMMISSIONER FEDORCHAK:** Oh, sure. Yeah,
 20 that would be easier. Pages -- so page 129 is on
 21 MP --
 22 **MS. SMITH:** Okay.
 23 **COMMISSIONER FEDORCHAK:** -- 119.
 24 **Q.** (COMMISSIONER FEDORCHAK CONTINUING) And
 25 it talks -- it starts on the page before where he

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1 says, "We were told that if and when it happens,
 2 they're going to come out, sit down with us and,
 3 you know, they'll have a lay of the land, how the
 4 roads are going to go and so forth, where the
 5 towers are going to be, and then we'll have input
 6 on those -- those roads and things that are going
 7 to go on. Well, that didn't take place."
 8 So --
 9 **A.** And that --
 10 **Q.** And then I think the judge goes on to say,
 11 like, you know, later on we need to work that out
 12 with the company and so forth, so --
 13 Anyway, my question was do you -- you
 14 know, do you see the concern about some of these
 15 issues baked into those general comments or not?
 16 **A.** Well, I -- I see that he then goes on to
 17 say that it is really a question of communication
 18 and -- and he's -- then is focusing on the roads.
 19 Yeah, I -- I guess I'm not seeing that as -- as
 20 a -- as a specific issue --
 21 **Q.** Okay.
 22 **A.** -- being raised.
 23 **Q.** All right. I mean, I can understand
 24 there's a couple more references to roads and more
 25 general references to the towers, but there's a lot

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1 of talk about sitting down and working things out
 2 and that that was promised and hasn't happened.
 3 And -- and, you know, then direction to the company
 4 to make sure that happens. But -- all right.
 5 We'll move on from that.
 6 One other quick question, and you may not
 7 have this answer, but how many more years of
 8 production tax credits does this project have?
 9 **A.** Yeah. So a wind project can have tax
 10 credits for ten years. So this project began
 11 service in early 2015, so through the end of 2024.
 12 COMMISSIONER FEDORCHAK: Okay. Very good.
 13 Thank you, Mr. Gartner. That concludes my
 14 questions.
 15 JUDGE DAWSON: Commissioner Christmann.
 16 **EXAMINATION**
 17 **BY COMMISSIONER CHRISTMANN:**
 18 **Q.** Do you have a project map in front of you?
 19 **A.** I do not.
 20 MR. BOUGHEY: If I'm given control, I can
 21 put it on the screen.
 22 MS. SMITH: Commissioner, would you like
 23 him to look, for instance, at the attachment to
 24 his -- I think it would be Exhibit 2-2 or 2-3 that
 25 has a map in it? Is that what you're thinking of?

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1 COMMISSIONER CHRISTMANN: To be honest
 2 with you, Ms. Smith, I've kind of lost track of --
 3 of the numbers. I've got such a mess in front of
 4 me right now, but I'm looking at a project map, and
 5 I don't think it's real fussy which one you'd be
 6 looking at.
 7 MS. SMITH: Okay. I think I can help --
 8 COMMISSIONER CHRISTMANN: Something that
 9 would show several miles around this and all the
 10 turbines. And, Matt, if you're able to put that on
 11 the screen, it would really be delightful.
 12 MR. BOUGHEY: I have it. I can put it on,
 13 if you'd like.
 14 MS. SMITH: Is this what you're looking
 15 for?
 16 COMMISSIONER CHRISTMANN: Yes. Now if
 17 someone would zoom in, please.
 18 MS. SMITH: Is that all right?
 19 COMMISSIONER CHRISTMANN: Okay. Now I'm,
 20 I think, getting my bearings on it.
 21 **Q.** (COMMISSIONER CHRISTMANN CONTINUING) Is
 22 this 441?
 23 MR. MONROE: 441 would be right here.
 24 **Q.** (COMMISSIONER CHRISTMANN CONTINUING)
 25 Okay. I'm on the wrong row. Okay.

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1 So as an engineer, you guys usually like
 2 nice --
 3 COMMISSIONER CHRISTMANN: Can you zoom in
 4 a little bit more, please, on that row of about ten
 5 turbines? Okay. There. So now -- this one?
 6 MR. MONROE: That's right.
 7 **Q.** (COMMISSIONER CHRISTMANN CONTINUING)
 8 Okay. So you engineers usually like nice straight
 9 lines; am I correct?
 10 **A.** Yes.
 11 **Q.** And when you start out, like your first
 12 day contemplating a new project, do I sort of
 13 understand this right, you are basically looking at
 14 elevation areas and weather maps and -- and then
 15 you start getting more and more refined from there?
 16 **A.** Yes.
 17 **Q.** Okay. So when -- when you knew that the
 18 wind blows quite often out there and there's
 19 clearly a hill ridge here, about ten or a dozen
 20 turbines that you sited going southwest to
 21 northeast; correct?
 22 **A.** Yes.
 23 **Q.** And I assume the numbers are just
 24 arbitrary numbers to keep track of them, but from
 25 where 441 is, 440 is to the southwest and 442 is to

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1 the northeast; correct?
 2 **A.** Yes.
 3 **Q.** And in between is 441, which is southeast
 4 of the residence we're discussing; correct?
 5 **A.** Correct.
 6 **Q.** Now, when you were starting out before you
 7 did the micro siting, if you had drawn a straight
 8 line from 440 to 442 and put 441 right in between
 9 them, you would have actually probably been
 10 1400 feet away from this residence; is that
 11 correct?
 12 **A.** Potentially, but that doesn't reflect the
 13 contour of the ridge.
 14 **Q.** I understand that that's a question I'm
 15 getting to, but for now a straight line would have
 16 put you at 1400 feet or more or at least very close
 17 to it; correct?
 18 **A.** I -- I'd have to measure it, but it's
 19 possible.
 20 **Q.** And so in your micro siting process, you
 21 actually went out of your way to make it closer --
 22 not for that reason, but in effect you did make it
 23 closer and you went out of your way -- you deviated
 24 from a straight line to do it; correct?
 25 **A.** I would not say we went out of our way.

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1 That -- we went --

2 Q. I changed that. I changed it from going

3 out of your way to you deviated from a straight

4 line.

5 A. We -- right, they are not in a straight

6 line.

7 Q. And to the extent they're not in a

8 straight line, you actually made it closer instead

9 of farther away?

10 A. Yes.

11 Q. And had you gone in a straight line or

12 even made it a little farther -- earlier you had

13 testified, when Ms. Smith was asking questions,

14 that if you had known of the concern, you could

15 have moved it, but just moving it to a straight

16 line would not really have worked because then, as

17 you started saying before, you'd have left the hill

18 ridge; correct?

19 A. That's correct.

20 Q. And so now when -- when you provided that

21 estimate of \$1.22 million to move it, you're not

22 talking about just moving it a little farther south

23 and east to get from 1100 to 1400 feet. You are

24 talking about moving it all the way up past 442 and

25 north of 442; am I correct?

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1 A. That's correct.

2 Q. So this was a -- a hit-or-miss situation.

3 You were either going to get this one in there and

4 have it be closer to this farmstead or this spot

5 between 440 and 442 was unachievable for you;

6 correct?

7 A. Well, I wouldn't characterize it that way.

8 So there are -- you know, we would have looked at

9 tightening up -- if we wanted to stay on that

10 ridgeline, we could have looked at tightening up

11 turbine spacing, so you might shift some of the

12 other turbine locations so that you might stay --

13 keep them all along that ridgeline. Or you

14 might -- you know, worst case, we would go to, you

15 know, some -- an alternate turbine site, you know,

16 actually in a different string of turbines.

17 Q. Couldn't have gone south. It would be a

18 different landowner; correct?

19 A. Yeah, but we could have gone, you know,

20 wherever we had wind options and, you know, met all

21 the other siting and constructability requirements.

22 Q. Okay. And then I want to talk about the

23 plat books that you rely on to at least some

24 extent. How often are they redone?

25 A. I don't know how often they're issued.

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1 The one I was using was -- was from late 2011.

2 Q. And this was in 2013?

3 A. Early 2013, yes.

4 Q. So if someone built a new house in 2012, a

5 million-dollar mansion, you would have considered

6 that an unoccupied residence or what?

7 A. No. We would have identified it as such.

8 Identified it either through satellite imagery or

9 through our site visits.

10 Q. So I'm not a real technical guy. I use

11 Google Maps a lot. How much different is that than

12 the satellite imagery that you use?

13 A. Pretty similar.

14 Q. How often is your satellite imagery

15 updated?

16 A. I guess that varies. I -- I don't know

17 how often they update it. But, again, you know,

18 doing our -- I mean, that's part of the purpose --

19 one of things we were looking at during our

20 micrositing and other site visits is to gather

21 intelligence that might not be showing up in

22 either, you know, the plat book or the satellite

23 imagery, such as a new house being constructed.

24 Q. Or an old one being revitalized or --

25 maybe not even being revitalized, but just moved

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1 into; correct?

2 A. Correct.

3 Q. And so I'm puzzled how you made this

4 determination to -- well, no, let me ask this

5 question first: So based on your knowledge of the

6 lay of the land at this approximately 1100 feet

7 that this is away from the yard, are there trees or

8 another hill ridge or anything in between there, or

9 from the turbine site, when you were out there

10 micrositing, is the yard visible and clear?

11 A. The yard is visible from the turbine site,

12 yes. There are not -- there are no trees between

13 the turbine and the -- and the yard.

14 Q. And let me go back to a previous question

15 just to be clear. The satellite imagery you use,

16 that's not something that is up to the moment --

17 like a moment-by-moment shot from the satellite.

18 Those can be outdated too; right?

19 A. Right, they're -- right, they're

20 periodically -- periodically updated.

21 Q. Because I know on my place when I look at

22 Google Maps, it's not always accurate, but so --

23 A. It's not up to the minute. Correct.

24 Q. Right. Okay. So, I mean, you're checking

25 off boxes of various things to collect the

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1 intelligence, so you've -- you checked a plat book
 2 that can be outdated and you've checked satellite
 3 imagery that can be outdated. Now you're out there
 4 micrositing a turbine that is not in -- in a
 5 straight line between the one before it and the one
 6 after it. You're actually going to move it closer
 7 to this farmstead that you see. What enters your
 8 mind or what caused you to be so sure that no one
 9 could be living there, to -- to -- you know, that
 10 would have caused you then to make sure that either
 11 you or your land agents went over there and knocked
 12 on the door or inquired of the owner that was
 13 showing on the plat book to see once for sure
 14 whether that was an occupied residence?
 15 **A.** Again, I triangulated the three pieces of
 16 data -- the Oliver plat book, satellite imagery and
 17 our site visit -- all of which provided no
 18 indication that that structure was occupied, that
 19 anybody was living there as their home. And I
 20 think that's been supported by the Kesslers' own
 21 testimony.
 22 **Q.** And the -- the third leg of that, the site
 23 visit, you feel you can -- can -- for the purposes
 24 of that leg of the trifecta, you can make a
 25 determination of occupancy from 1100 feet away?

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1 **A.** Again, I -- I know Matt Freudenrich had
 2 been through the yard. I may have been through the
 3 yard. I just don't recall. All of our data points
 4 aligned and we made that determination.
 5 **Q.** Okay. And then I hope I'm rephrasing this
 6 right or at least close, so tell me if I'm not. I
 7 think in response to Ms. Smith's questions, you
 8 said you view the terms "livable structures"
 9 differently than "occupied residences"; correct?
 10 **A.** Yes.
 11 **Q.** Would you give me the definition of each?
 12 **A.** A livable structure is a residence -- a
 13 structure where -- structure where somebody could
 14 potentially -- has the -- could potentially live at
 15 some point in time. The -- an occupied structure
 16 indicates that somebody is occupying that, that is
 17 somebody is living there as their -- as their home.
 18 **Q.** And how much do they have to stay there
 19 for that to be their home? If -- if someone is a
 20 snowbird from North Dakota and has a condo in -- in
 21 a state with more pleasant winter weather, is that
 22 an occupied residence down there if they're just
 23 down there for a month or so in the winter?
 24 **A.** Not -- I -- I'm -- that -- that's kind of
 25 a different set of facts and circumstances than

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1 what we're talking about here.
 2 **Q.** Well, if someone just stays at this place
 3 for a couple months in the summer, is it an
 4 occupied residence?
 5 **A.** I -- if somebody crashes there for a
 6 couple nights, I guess I don't -- that isn't
 7 their -- their home where they're living on a
 8 regular basis. I would not categorize that as an
 9 occupied residence.
 10 **Q.** Did -- are these just kind of how you
 11 assess these things, or is there some kind of a
 12 guidance that you use where someone has defined
 13 this distinction between occupied residences and
 14 livable structures?
 15 **A.** Well, the PSC -- neither the PSC nor
 16 Oliver County have a specific definition for
 17 occupied residences. So we used, you know, a
 18 commonsense approach, plain-language approach to --
 19 to the standard.
 20 **Q.** If someone is selling a home and moves to
 21 a different one that's been on the market a few
 22 months, would you consider that an occupied
 23 residence?
 24 **A.** Again, that wasn't the situation here. So
 25 you're asking me to speculate.

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1 **Q.** Well, did you check to see whether this
 2 was for sale when you were there?
 3 **A.** There were no "For Sale" signs when I was
 4 there.
 5 **Q.** At least not big enough that you could see
 6 from 1100 feet away?
 7 **A.** Again, I -- I may have been in the yard.
 8 I just don't recall.
 9 COMMISSIONER CHRISTMANN: Okay. I don't
 10 have any other questions.
 11 JUDGE DAWSON: Commissioner Kroshus.
 12 COMMISSIONER KROSHUS: Okay. Thank you,
 13 Your Honor.
 14 **EXAMINATION**
 15 **BY COMMISSIONER KROSHUS:**
 16 **Q.** I'm going to start with the placement of
 17 Turbine 441. You were at that turbine location;
 18 correct, Mr. Gartner?
 19 **A.** That's correct.
 20 **Q.** Is there a hayfield or cropland just to
 21 the southeast of that turbine that the same
 22 landowner would have?
 23 **A.** I don't know if it's cropland. I do
 24 believe that the Kesslers owned the southeast
 25 quarter of Section 15.

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1 Q. Okay. But I'm talking about where the
2 turbine itself, 441, is placed. Was it -- well, to
3 cut to the chase, was it placed to stay just off of
4 that landowner's hay or cropland?
5 A. I -- I -- they don't -- I guess I don't
6 know. I -- I don't know what you're referring to.
7 Q. Well, when I'm looking at the Google map,
8 this would be --
9 A. Is there a specific exhibit?
10 Q. -- from the -- yep. I'm getting there.
11 From the Kessler exhibits, it would be
12 under tab 2, and it's labeled -- it's handwritten,
13 but it's one of the Google Maps labeled M-19.
14 A. Okay. Let me pull that up.
15 Q. Sure.
16 A. Okay. I have it up.
17 Q. Okay. When I look at that, it appears
18 that there is a distinct outline just to the
19 southeast and then extending to the east from
20 Turbine 441 that would either be cropland or to me
21 it looks more like hayland, to be honest. Is that
22 a hayfield?
23 A. I don't know.
24 Q. Would that be a consideration for that
25 particular landowner that they would not want the

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1 turbine placed on their hayfield and/or cropland?
2 A. I -- you know, I don't know. I imagine
3 there may be some landowners who feel that way.
4 Q. Okay. Is that something you would work
5 with when you're placing turbines, that a landowner
6 might have a request that -- don't put it on my
7 more productive land, put it on my pastureland, or
8 would that be another individual -- another
9 individual with Minnesota Power?
10 A. Well, yeah, typically that would be a
11 conversation with other individuals with Minnesota
12 Power, but also typically they would specify
13 that -- they would -- if they didn't want project
14 infrastructure on that land, then typically they
15 would not sign the wind option for that parcel.
16 Q. Right. Yeah. I'm just wondering if that
17 turbine was -- was pushed to the northwest because
18 that landowner that has the turbine on their land
19 wanted it on a part of their pasture, if that's
20 pastureland. I can't tell. But there is a
21 distinct outline that at least one time it was
22 farmed. It could be in hay ground now. I don't
23 know. But there's a distinct outline. So that was
24 a question perhaps then for another witness that
25 will come -- come forward later, I would expect.

(701)255-3513

EMINETH & ASSOCIATES

STEPHANIE A. SMITH

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1 In other words, if you want, Mr. Gartner,
2 you're off the hook on that question, or I can keep
3 asking you.
4 A. Okay.
5 Q. Okay. I'll take that as a yes.
6 A. That's a yes. Yes.
7 Q. Okay. On the 83 sites that you visited,
8 these sites, were they just within the footprint of
9 the active landowners or also outside of the -- the
10 footprint?
11 A. They were only on -- on land that -- on
12 lands that we had wind options for.
13 Q. Okay. How do you treat the adjacent
14 property owners that may have a residence within a
15 setback -- the setback requirement, for example?
16 They're not in the 83 then? And if not -- I think
17 that's what you said. If not, how do you -- how do
18 you work with them?
19 A. Well, we still have to meet all of the --
20 all of the requirements, you know, that the PSC --
21 or, you know -- or the -- the 1400-foot, the
22 30 hours of shadow flicker standards that we
23 voluntarily committed to.
24 Q. Okay. So -- but the 83 sites were just
25 for the landowners who would have either options to

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1 put a wind turbine on their property or were, in
2 fact, getting a wind turbine on their property; is
3 that --
4 A. The 83 potential turbine sites were only
5 on -- were only on parcels where we had wind
6 options for placing project infrastructure.
7 Q. Okay. So the residence that the Kesslers
8 owned in question would not have been on that list
9 of 83; correct?
10 A. I'm sorry? What?
11 Q. The Kessler residence that is in question,
12 then, would not have been a part of the 83;
13 correct?
14 A. We're talking about two different things.
15 So the 83 is potential turbine sites, potential
16 turbine locations. The Kessler -- the Section 15
17 structure is a -- is a structure and not a turbine
18 site.
19 Q. Okay. Fair enough.
20 Okay. And then I could wrap up real quick
21 here. The -- so you used multiple sources for
22 determining where the occupied residence may be;
23 correct?
24 A. That's correct.
25 Q. Okay. And there was an asterisk on the --

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1 the plat -- the Oliver County plat map at the time,
 2 would you agree with that, the Kessler residence or
 3 the Kessler property, I will call it, in question?
 4 **A.** Yes.
 5 COMMISSIONER KROSHUS: Okay. Okay. No
 6 other questions. Thank you.
 7 JUDGE DAWSON: We're going to take a small
 8 convenience break and come back at five minutes to
 9 based on that clock up there. We're at recess.
 10 (Recessed at 10:45 a.m. and reconvened at
 11 10:57 a.m.)
 12 JUDGE DAWSON: We're back on the record,
 13 and it's approximately, oh, 10:55 a.m. And we are
 14 with Mr. Boughey; right?
 15 COMMISSIONER FEDORCHAK: I --
 16 JUDGE DAWSON: Or do we still have the
 17 commissioners?
 18 COMMISSIONER FEDORCHAK: -- actually have
 19 one quick --
 20 JUDGE DAWSON: Okay.
 21 COMMISSIONER FEDORCHAK: -- quick
 22 question --
 23 JUDGE DAWSON: Yes.
 24 COMMISSIONER FEDORCHAK: -- to follow up
 25 on Mr. Kroshus'.

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1 JUDGE DAWSON: Commissioner Fedorchak.
 2 **FURTHER EXAMINATION**
 3 **BY COMMISSIONER FEDORCHAK:**
 4 **Q.** The last thing that you exchanged between
 5 you and Commissioner Kroshus was regarding the plat
 6 book, and I think I understood Commissioner Kroshus
 7 to say that there was a star indicating the
 8 Kesslers' residence -- this residence in the plat
 9 book, and you said yes. So I saw that star in the
 10 plat book on the Kessler property and assumed it
 11 was their other farmstead and that this -- not this
 12 residence. So could you confirm what the star is
 13 in the plat book on the Kessler property?
 14 **A.** The star in the northwest quarter of --
 15 the asterisk in the northwest quarter of Section 15
 16 is the Section 15 structure that we're discussing.
 17 MR. BOUGHEY: I can help you, if you'd
 18 like, and tell you exactly where the residence is.
 19 COMMISSIONER FEDORCHAK: No. That's not
 20 what I'm asking.
 21 **Q.** (COMMISSIONER FEDORCHAK CONTINUING) So
 22 the plat book suggested there was an occupied
 23 residence?
 24 **A.** No. It -- the asterisk indicates a
 25 farmyard, and I think their terminology is a

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1 livable structure or something to that effect.
 2 **Q.** So -- okay. So the -- so you looked at
 3 that in the plat book and it -- and decided they
 4 were -- it wasn't an occupied residence even though
 5 they noted that it was -- it was a livable
 6 structure? I'm sorry. I missed all of that.
 7 **A.** Yeah, again -- oh, so there's a -- that
 8 gets back to the standard was an occupied
 9 residence. The standard was not a livable
 10 structure --
 11 **Q.** Okay.
 12 **A.** -- that we applied for siting.
 13 COMMISSIONER FEDORCHAK: Thank you for
 14 clarifying that and I'm glad I checked back. Thank
 15 you.
 16 JUDGE DAWSON: Mr. Boughey.
 17 MR. BOUGHEY: Thank you, Your Honor.
 18 **RECROSS-EXAMINATION**
 19 **BY MR. BOUGHEY:**
 20 **Q.** Sir, isn't it correct that the Public
 21 Service Commission has never adopted a definition
 22 of an occupied residence? Are you aware that's the
 23 case?
 24 **A.** That's my understanding, that the Public
 25 Service Commission does not have a specific

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1 definition for occupied residence.
 2 **Q.** That's correct. And as a matter of fact,
 3 there's also not a definition in any of the
 4 statutes or rule regulations that would be
 5 applicable and that you could apply; correct?
 6 **A.** For occupied residence?
 7 **Q.** Yes.
 8 **A.** Is that what you're asking?
 9 **Q.** Yes.
 10 **A.** Yes.
 11 **Q.** Okay. So you had to kind of come up with
 12 your own definition of what you thought an occupied
 13 residence was; correct?
 14 **A.** Yes.
 15 **Q.** And in your direct testimony, your
 16 provided testimony, you said you wanted to be
 17 overinclusive and make sure you included, when in
 18 doubt, everything, is that correct, that that's
 19 part of your testimony?
 20 **A.** I didn't say when in doubt everything, but
 21 I did say we try to err on the side of being
 22 overinclusive.
 23 **Q.** Sure. Now I'm trying to add on the map.
 24 All right. Do you see a map in front of you now,
 25 sir?

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1 **A.** Yes.

2 **Q.** Okay. Now, over in the area where I'm

3 circling is that row where we have 441 on, so I'm

4 going to, once I get that little hide thing out of

5 the way -- here we go.

6 **JUDGE DAWSON:** What map are you looking

7 at? Is it -- is it an exhibit?

8 **MR. BOUGHEY:** It is an exhibit, and it

9 is -- well, it's Exhibit 2, the one that was used

10 at the hearing that showed occupied. So you could

11 find it on M -- on mine, M-23. It's also the one

12 up here without the initials. So thank you for

13 making me clarify that for the record.

14 We're looking at M-23, and I'm zooming in

15 so that we have this section that applies.

16 Actually, I'm going to zoom out for just a second.

17 The technical person, are you able for a

18 moment to put on the one I asked you to screen?

19 And, for the record, I'm going to the M -- 432,

20 which is the map that has been discussed

21 throughout. So Exhibit 2-4, page 432, which is the

22 plat map that shows at Section 15 an asterisk. So

23 if everybody -- I'll give everyone a chance. On

24 this witness' exhibits on Exhibit 2-4, page 432 --

25 **JUDGE DAWSON:** It's on the screen.

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1 **MR. BOUGHEY:** Very good. Thank you.

2 **Q.** (MR. BOUGHEY CONTINUING) And if we take a

3 look at those dots and we see all those dots,

4 number 15 is the residence at issue within

5 1100 feet of 441; correct, sir?

6 **A.** That's correct.

7 **Q.** And the Kesslers' actual residence is

8 actually not on this document at all because it's

9 to the left of Section 7 in what I believe is 12

10 for the township next to it. Do you have any

11 reason to dispute that their regular residence is

12 not even on this map?

13 **A.** I agree with you that --

14 **Q.** Okay.

15 **A.** -- the Kessler residence is not on that

16 map.

17 **Q.** All right. Now, I'm looking at all these

18 asterisks on this exhibit, page 432, and now I'd

19 like to switch, if we could, to the map that I had

20 on the screen, which is the Exhibit 2 for the

21 hearing.

22 **MR. BOUGHEY:** So if we can go back to my

23 map, if that's possible. And I can take and do it

24 on mine, if you'd like, sir, because I can take

25 back over now.

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1 IT PERSON: Go ahead.

2 **MR. BOUGHEY:** Do you want me to do that?

3 IT PERSON: Yeah.

4 **MR. BOUGHEY:** Okay. Let me try to hit

5 "share." Did we get to "share"? Nope, I just have

6 to hit the word "share" now and I think we're okay.

7 **Q.** (MR. BOUGHEY CONTINUING) Okay. And what

8 I find amazing, sir -- strike that.

9 What I find interesting is that all those

10 major dots -- and I'll move over -- all those dots

11 that are listed throughout this area of that plat

12 map, it seems like everyone's there except pretty

13 much one, and that is the Kesslers' Section 15. Do

14 you have any --

15 **A.** I don't believe -- that's not correct.

16 **Q.** All right. Well, let's go back to Section

17 15. Why is it if we go down and we look at where

18 15 is and we see directly below at Section 22, we

19 have an asterisk where you do have a black dot.

20 Then we go over to the next one, if you can see my

21 arrow, asterisk, black dot, asterisk, asterisk,

22 asterisk, asterisk, asterisk. And then we go up to

23 the top, Paul Metz, asterisk.

24 **MS. SMITH:** I'm sorry. Is there a

25 question here?

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1 **MR. BOUGHEY:** There is.

2 **Q.** (MR. BOUGHEY CONTINUING) Do you see all

3 those asterisks that correlate with your plat map,

4 all of them, except Section 15 doesn't seem to have

5 one? Do you see that, sir?

6 **A.** I disagree with you. If you look at, say,

7 for example, Section 14 there's an asterisk on the

8 plat map that -- that does not -- is not identified

9 in this map. Section 10 there's an asterisk in the

10 Oliver plat map and it --

11 **Q.** Well, actually --

12 **A.** -- there is not a --

13 **Q.** All right.

14 **A.** So there are multiple locations where

15 there's an asterisk that is --

16 **Q.** All right. So --

17 **A.** -- not identified as an occupied --

18 **Q.** So --

19 **A.** -- residence on this map.

20 **Q.** So what you're telling me is that you took

21 out more than one, not only Section 15 but one in

22 12 and 10, and you took those three out. So you

23 must have gone up to each of those houses and

24 looked at them; right? Made sure no one lived in

25 them. Is that right, sir?

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1 **A.** Yeah, we made assessments --

2 **Q.** Yeah, I didn't ask you --

3 **A.** -- similar to what we did in Section 15.

4 **Q.** I understand you made assessments. I'm

5 thinking you made the wrong assessment. You

6 certainly did with Section 15.

7 Did you go up to any of those other houses

8 when you did those 83 site checks?

9 **A.** I don't recall specifically.

10 **Q.** Mm-hmm. And so you're using -- so you're

11 using this plat map. All right. Now I'm going to

12 share another screen, if I can -- there we are.

13 Now I'm going to try and hit "share." Is it on?

14 Nope. I'll have to go here, hit "share." There we

15 go.

16 Now I'm sharing -- do you see -- there we

17 are. And I'm going to try and make it a little

18 bigger. This is one -- 441, and there were

19 questions by one of the commissioners whether or

20 not there was a direct line of sight from this

21 turbine to the homestead or the buildings, and this

22 shows that you could definitely -- when you were at

23 that site, you should have been able to see those

24 structures. Would that be a fair statement, sir?

25 **A.** Yes.

1 specifically.

2 **Q.** All right. Well, you mentioned those were

3 the things you looked at. And so my question is is

4 when you looked at the Google map in reference to

5 where you were going to put 441 and the location of

6 the Kesslers' residence/structure on Section 15,

7 did you happen to notice on the Google map that it

8 makes it appear that you're within about 6 or 8

9 hundred feet if -- in the Google map you looked at

10 to make your determination of distance?

11 **A.** It -- I guess I disagree. It does not

12 look like 600 feet. You can -- Google Earth, for

13 example, has measurement tools and --

14 **Q.** Well, do you see the measurement

15 underneath that says 200 feet, sir?

16 **A.** I do.

17 **Q.** All right. And isn't it correct that the

18 plat book you used specifically said if we have an

19 asterisk, farmsteads -- quoting, Farmsteads with

20 livable buildings are indicated with an asterisk.

21 Isn't that what that book says?

22 **A.** It is, but that is not the standard that's

23 used for siting.

24 **Q.** So you must have some different standard?

25 **A.** The standard is occupied residence, not

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1 **Q.** And do you see that 200 feet thing that

2 Google has on the bottom? I'm just trying to guess

3 here. Looks to me, if that is accurate, 200,

4 400 -- it looks from at least a Google map

5 representation, that that's a lot closer than even

6 the 1100 feet. Would you agree that that's what

7 that map seems to indicate?

8 **A.** That what is closer than 1100 feet?

9 **Q.** And then now I'm going back to the plat

10 map.

11 **A.** I'm sorry, I --

12 **MS. SMITH:** Excuse me, Counsel, I believe

13 he asked for a clarification on your question and

14 didn't have a chance to respond.

15 **Q.** (MR. BOUGHEY CONTINUING) Okay. Do you

16 understand the question? If not, I'll ask again.

17 **A.** Please ask it again.

18 **Q.** Okay. You advised us that you looked at

19 satellite maps as one of the things you looked at.

20 Was that a satellite map different from a Google

21 map?

22 **A.** Similar.

23 **Q.** Similar, but not the same thing.

24 Did you also look at Google Maps?

25 **A.** Probably. I -- I just -- I don't recall

1 livable structure.

2 **Q.** So because of your standard of occupied

3 residence, you get to keep this place where it is

4 even though maybe you're using the wrong standard;

5 is that your position, sir?

6 **MS. SMITH:** Objection. Argumentative.

7 **JUDGE DAWSON:** Sustained.

8 **Q.** (MR. BOUGHEY CONTINUING) Okay. Sir,

9 isn't it true you guys just missed this, and then

10 if that's the case, why not -- like a good

11 neighbor, why didn't you say, "We missed it. We're

12 going to make it right. If we have to, we'll move

13 the turbine so it's in compliance." Isn't that

14 what really happened, sir?

15 **A.** No.

16 **Q.** And had you called the landman and if he

17 had told you that the Kesslers said, "Yes, we use

18 this and we're going to use it for our college

19 son," would you have moved it from where you put

20 it?

21 **A.** Yes, I believe so.

22 **Q.** And if you would have picked up the phone

23 and called the Kesslers and he told you the same

24 thing, would you have put it in a different

25 location so it wasn't so close to that homestead?

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1 **A.** Yes, I believe I've answered that
2 question.
3 **Q.** And -- I know you've answered it, and the
4 answer is still yes; correct?
5 **A.** Yes.
6 **Q.** And it's my understanding that not only --
7 you have the -- you would have had the -- at low
8 cost had the opportunity to move it to another
9 location other than where it is, correct, at the
10 time in 2013 or 2014; right?
11 **A.** Yes. We had options, certain options
12 for --
13 **Q.** Now, I want to make sure that as to 442,
14 that is the next one going up to the right or
15 towards the northeast. Is the next Turbine 442?
16 **A.** To the northeast, yes.
17 **Q.** Okay. And then you were planning on
18 placing it -- if you were to have to move it, you
19 would put it -- did I get this right -- a thousand
20 feet directly north of where 441 is now -- or, no,
21 north of 442; right?
22 **A.** Roughly to the north/northwest, and that's
23 a preliminary site. We would have to go through
24 all the typical siting steps to confirm that
25 that's -- that's viable.

1 JUDGE DAWSON: -- we understand her point.
2 MR. BOUGHEY: Very good.
3 **Q.** (MR. BOUGHEY CONTINUING) Sir, isn't it
4 your understanding through Minnesota Power's
5 personnel that the landowner who presently has 441
6 is willing to have it moved to another location,
7 assuming it works out with the company and it's not
8 in some inappropriate location due to avoidance?
9 Isn't that true, sir?
10 **A.** That is my understanding.
11 **Q.** Now, in regards --
12 **A.** Again, we're very early in the process.
13 **Q.** I understand. Thank you.
14 And in regards to the testimony at the
15 hearing where Minnesota Power claims and you assert
16 on behalf of Minnesota Power that the Kesslers,
17 other than their discussion on the record, had no
18 conversation with anyone from Minnesota Power, and
19 you've just a while ago confirmed that that's your
20 position; right?
21 **A.** Please restate the question.
22 **Q.** Sure. Earlier in your testimony, you
23 stated it was your understanding that there was no
24 discussion with Minnesota Power during any type of
25 break or anything like that during the hearing.

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1 **Q.** Sure. And isn't it correct that landowner
2 already has 441 on his land; right?
3 **A.** That's correct.
4 **Q.** And isn't it -- isn't it true he has no
5 objection for you moving it to somewhere else on
6 his land?
7 **A.** I -- I have -- I haven't -- let's see.
8 That's my understanding.
9 **Q.** Correct. Somebody from Minnesota Power
10 has told you that's the case; correct?
11 MS. SMITH: Objection. That's not the
12 testimony that was provided, so it's stating
13 testimony or facts not in evidence.
14 MR. BOUGHEY: Well, this is
15 cross-examination and now I'm going into it. He,
16 through your questioning, was asked whether it
17 could be moved and the cost, and certainly one of
18 the factors in that moving is whether or not he
19 already knows the landowner is fine with him moving
20 it somewhere north.
21 MS. SMITH: Being willing to allow a move
22 is not the same as being fine.
23 JUDGE DAWSON: Just restate your question.
24 I think --
25 MR. BOUGHEY: All right.

1 The only discussion occurred in regards to the
2 formal testimony of Minnesota Power and the
3 Kesslers. Do you remember testifying to that, sir?
4 **A.** Yes.
5 **Q.** But isn't it true that a member of the
6 staff of the Public Service Commission, Mr. Lein,
7 both in his deposition and at the hearing that
8 occurred just a little while ago, said he recalls
9 that exact thing happening even though he couldn't
10 overhear what was said. So do you have any
11 explanation as to why everyone in Minnesota Power
12 denies it occurred, but the Kesslers and a staff
13 member of the Public Service Commission says,
14 "Yeah, I saw it happen"? And the Kesslers say
15 exactly what was said. Any explanation, sir?
16 **A.** No.
17 MR. BOUGHEY: I have nothing further.
18 JUDGE DAWSON: Ms. Smith.
19 MS. SMITH: Thank you, Your Honor.
20 **REDIRECT EXAMINATION**
21 **BY MS. SMITH:**
22 **Q.** So I want to first go back to talking
23 about the plat book. There was the asterisk that
24 was noted in Section 15. Did -- what would have
25 been present had there been an identified current

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1 residence in Section 15?

2 **A.** The plat book provides a name adjacent to
3 the asterisk when there is a current resident.

4 **Q.** So is -- was your conclusion in part that
5 there was not an occupied residence because there
6 wasn't an occupied -- or there wasn't a resident
7 listed on the plat book?

8 **MR. BOUGHEY:** Objection. Both leading,
9 asked and answered previously, and speculation
10 because he's already testified he doesn't know
11 because he didn't go there. All he has done is
12 created a conclusion. So all those objections.
13 Lack of foundation as well.

14 **MS. SMITH:** I can't hear Mr. Boughey so
15 I'm not sure of what his objections were.

16 **MR. BOUGHEY:** I apologize, Counsel. I
17 didn't have my mike on.

18 My objection is, first, asked and
19 answered. Second, he -- lack of foundation and
20 speculation. He's already testified he didn't take
21 any steps to do anything to check out whether it
22 was really occupied. It's also asking for a legal
23 conclusion, which he has now admitted there is no
24 definition. That definition's going to be left to
25 the Public Service Commission. It's also a leading

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1 question.

2 **MS. SMITH:** May I respond?

3 **JUDGE DAWSON:** Yes, you may, Ms. Smith.

4 **MS. SMITH:** Thank you. This is not
5 calling for a legal conclusion and it's not
6 testifying that he didn't do anything. I'm simply
7 asking him to clarify what it states itself in the
8 plat book as far as what the asterisk means and
9 what the -- what the name next to an asterisk
10 means. I can restate the question, if you would
11 like to be clearer in that if that would help.

12 **JUDGE DAWSON:** Yeah. He's able to testify
13 to how he used the map and what he thought it meant
14 to him, so I'm going to allow the question.

15 **Q.** (MS. SMITH CONTINUING) Barry, I'm not
16 sure if you remember the question at this point,
17 but let's just take it a step back and say when you
18 looked at the plat book and you were trying to use
19 it as -- in assisting you in determining occupied
20 residence, what were you looking for specifically
21 as far as this asterisk versus no asterisk or
22 versus no name, those kinds of things?

23 **A.** Sure. A name adjacent to the asterisk --
24 well, let me rephrase that. The plat book places a
25 name adjacent to the asterisk of the current

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1 resident. So when I looked at the plat book and I
2 would see a name at that asterisk listing a current
3 resident, I would count that as an occupied
4 residence, use that as a starting point.

5 **Q.** And in -- are there instances -- and I
6 think you testified, but it was cut off a little
7 bit, but were there instances where you noted that
8 there were other asterisks without names next to
9 them and those are also not included on your maps?

10 **A.** That's correct.

11 **Q.** And talking about going back to the shadow
12 flicker and the 1400-foot setback, when you make
13 voluntary commitments and those are defined, are
14 those typically defined by you as the company
15 making the voluntary commitment?

16 **A.** Yes. That's correct.

17 **Q.** And so is it your obligation, in other
18 words, to determine what that means as far -- and
19 how to apply that commitment?

20 **A.** Yes, we do.

21 **Q.** And so that would be different than a
22 situation where you're given a setback to apply by
23 an agency and their defining it; is that true?

24 **A.** That is correct.

25 **Q.** I want to talk a little bit about the

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1 siting of the string. There were some questions
2 from Commissioner Christmann about the siting of
3 the string in which Turbine 441 was located. Do
4 you recall those questions?

5 **A.** Yes, I do.

6 **Q.** When you sited that string, was it ever
7 sited in a straight line as a starting point?

8 **A.** No, it was not.

9 **Q.** How did you site that string?

10 **A.** We -- it's partly based on wind source and
11 the setback requirements, but we in this case would
12 typically follow the ridgeline.

13 **Q.** And was the -- is the location that was
14 ultimately permitted of 441, is that the same
15 location that you had when you went out
16 micrositing?

17 **A.** Yes, the exact same.

18 **Q.** Was -- as a result of your micrositing,
19 did you move Turbine 441 closer to the Section 15
20 structure than you had originally placed it?

21 **A.** No, we did not.

22 **Q.** Did you -- did you move section 441 at all
23 during your analysis once you developed that
24 string?

25 **A.** No, we did not.

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1 Q. There were some questions in general about
2 how you gather information. Do you have any
3 examples that you can share where information was
4 gathered on-site that you took into consideration
5 when you were determining setback compliance for
6 siting the project?

7 A. Yes. During micrositing, Matt Freudenrich
8 raised a question about the distance from a turbine
9 to an occupied residence, and as a result we made
10 sure we went back and double-checked that.

11 Q. And based on your double-check, were you
12 in compliance?

13 A. Yes.

14 MS. SMITH: I have no further questions.

15 JUDGE DAWSON: Mr. Johnson.

16 MR. JOHNSON: No questions.

17 JUDGE DAWSON: Commissioner Fedorchak.

18 COMMISSIONER FEDORCHAK: I don't have --
19 sorry, Judge. No follow-up from me.

20 JUDGE DAWSON: Commissioner Christmann.

21 COMMISSIONER CHRISTMANN: I thought I had
22 one, but it's escaping me now, Your Honor. I'm
23 sorry, so I guess I don't. No.

24 JUDGE DAWSON: Commissioner Kroshus.

25 COMMISSIONER KROSHUS: No questions.

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1 JUDGE DAWSON: Are there any further
2 questions?

3 MR. BOUGHEY: Very briefly, Your Honor,
4 and directed to what was just testified.

5 **FURTHER RECROSS-EXAMINATION**
6 **BY MR. BOUGHEY:**

7 Q. Sir, I want to make sure I understand this
8 correctly. Because your opinion is that the 1400
9 setoff was voluntary, even though it became part of
10 the order, you considered it voluntary, and so any
11 voluntary commitment it's okay for you to ignore
12 the language of the PSC's order and apply your own
13 definition. Is that what I understood you to say,
14 sir?

15 MS. SMITH: Objection. That's not the
16 testimony that was said and it's argumentative.

17 MR. BOUGHEY: I would like him to answer
18 and I think it's an appropriate question. I wrote
19 down what he said almost word for word, and I can
20 repeat what he said or I can have it repeated.

21 JUDGE DAWSON: Yeah. I'm going to --
22 it -- it's argumentative -- argumentative, but I'm
23 going to allow the question. I think you
24 understand what is being asked.

25 Q. (MR. BOUGHEY CONTINUING) Would you like

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1 me to restate the question again, sir?

2 A. Please.

3 Q. Is it your view that if Minnesota Power
4 voluntarily decides to commit itself to a 1400-foot
5 setback and even though that's part of the order,
6 it -- because you're doing it voluntarily, you have
7 the option to apply your own definition in regards
8 to deciding the application of that setback? Is
9 that what your testimony was, sir?

10 A. Let me see if I -- we have an obligation
11 to -- to comply with the commitment that we
12 provided to the PSC and that was encoded in the
13 order. The commitment was based on our definition
14 of the phrase "occupied residence."

15 Q. Well, let me phrase it another way. Do
16 you feel you have the option of ignoring the
17 1400-foot setback that was part of the PSC's order
18 in regards to the structure at Section 15 if it
19 were indeed a residence?

20 A. The section -- we committed to siting --
21 maintaining a 1400-foot setback from occupied
22 residence. The Section 15 structure was not an
23 occupied residence at the time we sited and
24 permitted the project, and therefore we are in
25 compliance with our commitment and the order.

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1 Q. And if you're wrong that it was by
2 definition of the PSC an occupied residence, you're
3 not in compliance; isn't that true, sir?

4 MS. SMITH: Objection. That is calling
5 for a legal conclusion if he's speaking to
6 something that the Commission is determining as
7 opposed to his definition.

8 JUDGE DAWSON: I'll let the Commission
9 decide what they're going to decide.

10 Q. (MR. BOUGHEY CONTINUING) Do you, sir,
11 believe that you had any obligation to the PSC as
12 part of the public hearing to tell them about the
13 asterisks that you used that were in the plat map
14 that you decided not to consider as applicable to
15 their standards?

16 A. I don't believe that developers are
17 required to provide maps of every structure in the
18 project area. The intent of the setback map is to
19 identify structures that we are setting back from
20 or required to set back from.

21 Q. Sure. In hindsight, do you think maybe it
22 would have been better to include any structure
23 within 1400 feet and then explain why that is
24 unoccupied and why you reached that conclusion as
25 part of the hearing?

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1 MS. SMITH: Objection. Calls for
2 speculation. That's not what was being asked at
3 the time.
4 JUDGE DAWSON: Sustained.
5 Q. (MR. BOUGHEY CONTINUING) Last item is you
6 just mentioned a minute ago that Matt mentioned a
7 concern and so you double-checked to make sure you
8 were in compliance. Do you remember making that
9 statement just a few moments ago?
10 A. Yes.
11 Q. And when you said that you were in
12 compliance, are you referring that you were -- that
13 it was over 1400 feet back or were you referring to
14 something else?
15 A. It was in reference to the distance
16 between the turbine and making sure we were
17 complying with -- with all of the standards that we
18 were using.
19 Q. How do you explain that it's only
20 1153 feet and not 1400 feet then?
21 A. Because we're talking about a different
22 turbine and a different structure. The example was
23 not the Section 15 structure.
24 Q. Oh, I see. So nobody who went on the site
25 with you ever said to you then, "We need to

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1 double-check this building and structure on Section
2 15; we might have a problem." Is that your
3 testimony?
4 A. That -- I don't recall whether anybody
5 said that specifically. I do know that we -- that
6 we discussed the -- the Section 15 farmyard and
7 that we had made a determination that it was
8 unoccupied based on our -- the reasons we've
9 provided previously and including our site visit
10 observations.
11 Q. Okay. So the -- the fact that you
12 discussed it meant that you perhaps saw a potential
13 problem and that's why you had a discussion on
14 Section 15; correct?
15 A. No. That's not -- that's not correct.
16 Q. Why did you discuss it --
17 A. We discussed it like -- we discussed it
18 like we discussed many things during micrositing,
19 just making observations about what the area around
20 the turbine is like, whether it's constructability,
21 whether it's environmental issues, comments on
22 structures. We -- we talk about all those things
23 during micrositing. The whole point is to work
24 through all those issues and make sure we're --
25 we're -- that they've all been addressed and they

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1 were accounted for in the design.
2 Q. Isn't the whole point to check into
3 whether there's a problem and whether it's a
4 residence and then take any steps necessary to
5 actually find out if that's the case? Isn't that
6 the whole point, sir?
7 MS. SMITH: Objection. Vague. I'm not
8 sure what -- what point we're referencing. And I
9 believe we've already gone over this line of
10 questioning a few times.
11 JUDGE DAWSON: Mr. Boughey.
12 MR. BOUGHEY: Well, it's an appropriate
13 question and I'm asking it, and I haven't asked him
14 is the whole point of discussing on-site and
15 looking all these things up to make sure that the
16 information provided to the PSC is accurate and
17 that you are determining accurately whether or not
18 that is or is not a residence and not making a
19 guess 1100 feet away. I think it's a fair
20 question.
21 JUDGE DAWSON: Well, that's a different
22 question than what he asked. Do you have any
23 comment, Ms. Smith?
24 MS. SMITH: Yeah, I mean I'll let it go if
25 he -- if he -- he's provided more detail as to what

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1 he's asking, and I believe Mr. Gartner can respond.
2 JUDGE DAWSON: Okay. Mr. Gartner.
3 THE WITNESS: Okay. Please repeat the
4 question.
5 MR. BOUGHEY: Never mind. I think we've
6 made our point and I'm not going to waste any more
7 time. Thank you.
8 JUDGE DAWSON: Thank you. Any further
9 questions? I'm just seeing if there's any further
10 questions. Ms. Smith?
11 MS. SMITH: No, I think not. Thank you.
12 JUDGE DAWSON: Okay. Commissioner
13 Christmann has a question.
14 **FURTHER EXAMINATION**
15 **BY COMMISSIONER CHRISTMANN:**
16 Q. A couple. If you said this, I'm sorry,
17 but I don't recall. When was it that you were out
18 there micrositing about? Was that like early
19 in '13 or when?
20 A. It was -- it was May 14 through 17 of
21 2013.
22 Q. And when we had our siting hearing in
23 September, do I recall correctly -- because this
24 happened on quite a few of the years since I've
25 been here -- was there kind of a time constraint

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1 for Minnesota Power to get this approved by the PSC
 2 so you could begin construction to qualify for
 3 production tax credits?
 4 **A.** Not so much a time constraint because we
 5 could qualify for tax credits through either making
 6 a safe harbor investment or beginning physical
 7 construction. So Minnesota Power made investments
 8 to qualify through that path as well as, you know,
 9 we were in a position to beginning construction
 10 with approval of the -- the site permit.
 11 COMMISSIONER CHRISTMANN: Okay. Thank
 12 you.
 13 JUDGE DAWSON: Any further questions?
 14 Seeing none, you may step down. Your next witness,
 15 please.
 16 MR. BOUGHEY: Did you want to do the break
 17 now or just press on?
 18 JUDGE DAWSON: We're going to go till one,
 19 I think, right, because that's usually when we go
 20 to for a lunch break during legislative session,
 21 but I'll listen --
 22 COMMISSIONER CHRISTMANN: I will say one
 23 is fine with me, but I believe the legislators are
 24 going into floor session at 12:30 today, so --
 25 JUDGE DAWSON: Okay. Then we'll --

CROSS-EXAMINATION
 2 **BY MR. BOUGHEY:**
 3 **Q.** Would you state your name again for the
 4 record, please.
 5 **A.** Sure.
 6 IT PERSON: Microphone.
 7 JUDGE DAWSON: Microphone, Mr. Boughey.
 8 MR. BOUGHEY: Sorry.
 9 **Q.** (MR. BOUGHEY CONTINUING) Would you state
 10 your name for the record, please.
 11 **A.** Matthew Freudenrich.
 12 **Q.** Would you spell the last name.
 13 **A.** F-r-e-u-d-e-n-r-i-c-h.
 14 **Q.** Thank you. You're a senior engineer for
 15 Minnesota Power; correct?
 16 **A.** I was.
 17 **Q.** Was.
 18 And you worked on the Bison 4 wind
 19 project, this project; correct?
 20 **A.** Yes, sir.
 21 **Q.** Okay. It's my understanding at some point
 22 you were involved in going to the site where -- in
 23 Section 15 where Turbine 441 was placed; is that
 24 correct?
 25 **A.** Yes, that is.

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1 COMMISSIONER CHRISTMANN: -- that will
 2 clear out the cafeteria a little earlier --
 3 JUDGE DAWSON: 12:30 --
 4 COMMISSIONER CHRISTMANN: -- today.
 5 JUDGE DAWSON: -- then. We'll take a
 6 lunch break at 12:30, so we have an hour.
 7 MR. BOUGHEY: At this time I call Matt
 8 Freudenrich.
 9 JUDGE DAWSON: Can you say your last name
 10 for me again?
 11 THE WITNESS: Freudenrich.
 12 JUDGE DAWSON: Freudenrich.
 13 THE WITNESS: Freudenrich, yes, sir.
 14 JUDGE DAWSON: And you were here for my
 15 previous admonitions as to perjury?
 16 THE WITNESS: Yes, sir.
 17 JUDGE DAWSON: Do you understand what
 18 perjury is and the penalties for it?
 19 THE WITNESS: Absolutely.
 20 (Witness sworn.)
 21 JUDGE DAWSON: You may begin, Mr. Boughey.
 22 MR. BOUGHEY: Thank you.
 23 **MATTHEW FREUDENRICH,**
 24 being first duly sworn, was examined and testified
 25 as follows:

1 **Q.** It's my further understanding you were
 2 there with maybe 10 or 12 different people relating
 3 to the site visit; is that correct?
 4 **A.** I was at the site visit. The time I was
 5 at the house, I was by myself.
 6 **Q.** Okay. Now, there's reference that you've
 7 supposedly stated that you drove through or drove
 8 by the residence. So do you know when that
 9 supposedly occurred?
 10 **A.** Yeah. It was the day before micrositing
 11 started.
 12 **Q.** Okay. So apparently that would have been
 13 on or around May 13 and that would have been 2013
 14 as well?
 15 **A.** That is correct.
 16 **Q.** Okay. And -- and you said you were by
 17 yourself?
 18 **A.** Yes, sir.
 19 **Q.** And did you drive through the property at
 20 that time?
 21 **A.** I did. Yes, sir.
 22 **Q.** And did you have permission to have an
 23 easement or anything in which would allow you to go
 24 onto that site?
 25 **A.** Yes, sir.

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1 Q. How is that section of the Kesslers'

2 property -- we've been told there's no easement as

3 to that because no tower is placed there.

4 A. It was an option for sure.

5 Q. Okay. And tell me about -- did you

6 actually stop and look at the -- the home or did

7 you just drive through?

8 A. Yeah. So I drove through. The main thing

9 is I was trying to find access. So I was trying to

10 do some pre-scouting prior to the micrositing

11 visit. So I -- I had attempted from the east.

12 Couldn't get there. So then I attempted from the

13 west. I went through the Kesslers' property. I

14 went through, I slowed down through the yard to see

15 if anyone was around, obviously to let them know

16 what I was doing, but the main reason was to try

17 and figure out roads and fencing.

18 Q. Okay. And so did you stop at any time or

19 did you just drive straight through their property

20 when you came from the west?

21 A. I drove through.

22 Q. All right. So you didn't get out of the

23 car?

24 A. I did not. No, sir.

25 Q. Did you -- after doing the microsite

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1 visit, did you take any steps to contact the

2 Kesslers to determine how they were using that

3 structure?

4 A. I did not, no. In driving through their

5 property, there was nothing that indicated any kind

6 of activity.

7 Q. Well, what time of the day were you there?

8 A. I was there early/late morning.

9 Q. Okay. What time do you usually go to

10 work? Usually early/late morning? You're at work

11 then usually?

12 A. Sure.

13 Q. Mm-hmm. So you certainly had the option

14 of contacting the landowners. You knew their name

15 because you knew whose property you were on, didn't

16 you?

17 A. Yes.

18 Q. And they live, what, two miles away?

19 A. Yeah, I -- at the time I had no idea where

20 their residence was.

21 Q. What's that?

22 A. I said at the time I had no idea where

23 their residence was.

24 Q. All right. But you certainly could have,

25 through any of your landmen, found out their phone

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1 number and given them a call, couldn't you have?

2 A. Sure, I could have.

3 Q. While doing -- while actually on-site

4 where 441 was going to be -- planned to be placed,

5 did you at any time use any device to check the

6 distance between where the placement was going to

7 be and where the -- the structures were on Section

8 15?

9 A. Yeah, we did not. There was -- at the

10 time there was no concern for that property.

11 Q. Well, there was no concern because you

12 haven't looked in -- to determine if someone's

13 there?

14 A. Yeah, I -- like I say, I was there

15 previously. There was no sign of anything outside.

16 The house itself was in tough shape. I mean, there

17 was -- nothing stood out to me that it was an

18 occupied residence.

19 Q. But you didn't get out of the car;

20 correct?

21 A. I did not.

22 Q. You didn't leave a note; correct?

23 A. I did not.

24 Q. You didn't take any other steps than

25 reaching a conclusion as you drove by; isn't that

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1 the case?

2 A. I was within 50 feet of the house.

3 Q. Fine, but you don't know if anyone lived

4 there, do you.

5 A. I didn't, no.

6 MR. BOUGHEY: Nothing further.

7 JUDGE DAWSON: You or Ms. Smith?

8 Mr. Mahlberg.

9 MR. MAHLBERG: This will be me.

10 JUDGE DAWSON: Okay. Proceed.

11 MR. MAHLBERG: Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 **BY MR. MAHLBERG:**

14 Q. Mr. Freudenrich, do you currently work for

15 Minnesota Power?

16 A. I do not.

17 Q. Who are you currently employed by?

18 A. Hooper Corporation out of Madison,

19 Wisconsin.

20 Q. How long did you work for Minnesota Power?

21 A. Approximately ten years.

22 Q. And what was your position with respect to

23 the time period of the Bison 4 siting and

24 construction?

25 A. So I was a project implementation manager.

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1 Q. Were you also the construction manager?

2 A. Yeah. Basically it's a glorified

3 construction manager. Yes, sir.

4 Q. Mr. Freudenrich, did you file prefiled

5 direct testimony in this matter?

6 A. I did, yes, sir.

7 Q. Is that prefiled direct testimony what is

8 located in the binder as MP Exhibit 1 and 1-1 and

9 1-2?

10 A. Yes.

11 Q. If you were asked those same questions

12 today, would your answers be the same or

13 substantially the same?

14 A. Yes.

15 Q. You were asked questions by Mr. Boughey

16 about your travel through the farmyard. You were

17 asked whether you got out of the car and stopped.

18 A. That is correct.

19 Q. And you didn't get out of the car?

20 A. I did not get out.

21 Q. Were you traveling fast through the

22 farmyard?

23 A. Five miles an hour, maybe.

24 Q. Were you traveling at such a speed where

25 you could get a good sense as to the levels of

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1 activity that you could pick up around the

2 Section 15 structure?

3 A. I believe so, yes.

4 Q. What -- what did you see going up to the

5 Section 15 structure?

6 A. So I came into the yard. There were some

7 out -- some outbuildings. There was an old

8 farmhouse. Looked like the area was used for

9 cattle, watering operations. That's what I saw.

10 Q. Did the driveway go up to the house?

11 A. It didn't. So there was a two-track

12 coming in and then basically there was lawn all the

13 way up to the house.

14 Q. Was there anything in the yard that --

15 that you saw?

16 A. No, sir.

17 Q. If you would turn in the binder in front

18 of you there, Mr. Freudenrich, to what's been

19 marked as MP Exhibit 10, please.

20 A. Okay.

21 Q. Mr. Freudenrich, do you recognize the two

22 documents that are at MP Exhibit 10?

23 A. Yes.

24 Q. And what are they?

25 A. It's the Section 15 structures in

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1 question.

2 Q. And from what dates?

3 A. 2012 and the second one says 2014.

4 Q. Are these aerial photographs

5 representative of what you were testifying as to

6 the driveway and other features of the site as you

7 drove there?

8 A. Yeah, I believe it -- it -- 2014, I mean

9 it's just what I was saying with the -- with the

10 turf terminating before the house. I guess it just

11 indicated to me at the time -- and I wasn't there

12 to try to figure out if it was unoccupied or

13 occupied, but just showed there wasn't much

14 activity going up to the house.

15 Q. Turn to MP Exhibit 11, please.

16 A. Okay. I'm there.

17 Q. Do you understand these are photos of the

18 Section 15 structure provided by the Kesslers in

19 discovery in this case?

20 A. Yes.

21 Q. Is the photograph on the left

22 representative of what the Section 15 structure

23 looked like when you were on the property in 2013?

24 A. I believe yes, maybe less the paint bucket

25 or whatever that is, I guess.

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1 Q. But otherwise, the condition of the roof

2 and the porch are generally the same?

3 A. Yes.

4 Q. When you were traveling through the

5 property in May of 2013, did it look anything at

6 all like the property on the right?

7 A. It did not.

8 Q. How would you describe the property on the

9 right as being different from the property on the

10 left?

11 A. The property on the right actually

12 looks -- it looks nice. It has siding, windows,

13 new roof. Looks like a new furnace sticking -- new

14 furnace pipe sticking through the chimney. There's

15 landscaping. There's decorations. Stuff has been

16 repainted. There's a grill there. I mean, it

17 definitely shows that there was some care put into

18 the house.

19 Q. Based on what you saw when you were there

20 in May of 2013, did you believe that someone was

21 living at the Section 15 structure?

22 A. I did not.

23 Q. Based on what you saw, did you believe

24 that anyone had lived at the Section 15 structure

25 in recent years?

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1 MR. BOUGHEY: Objection. Speculation.
 2 Lack of foundation.
 3 MR. MAHLBERG: I'm asking this witness for
 4 what his perception was when he was there. He's --
 5 JUDGE DAWSON: Yeah. I'll allow the
 6 question. You can say what you observed.
 7 THE WITNESS: Yeah, it didn't look like
 8 anyone had lived there for quite a while, based on
 9 my opinion.
 10 Q. (MR. MAHLBERG CONTINUING)
 11 Mr. Freudenrich, if you had seen something that
 12 would have made you question whether the Section 15
 13 was occupied, what would you have done?
 14 A. We would have looked into it right away.
 15 I mean, something like this, it's a lot easier to
 16 take care of it on the front end than back end.
 17 Absolutely.
 18 Q. Do you have an example of an instance
 19 where you -- where you did come across information
 20 that you tracked down through the team?
 21 A. I mean, so 463 was an instance that it
 22 was -- it was the Aasmundstad property, and just
 23 basically the -- the setback looked really close.
 24 I didn't know if we were doing it from the house or
 25 if it was actually from the outbuildings. So it

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1 was just one -- one specific instance that we had
 2 that Barry double-checked the setback.
 3 Q. And did you ask Mr. Gartner to
 4 double-check the setback?
 5 A. Yes.
 6 Q. And why?
 7 A. Because I had a concern over it.
 8 Q. What -- what led you to have a concern?
 9 A. The -- the setback line actually went
 10 through the houses itself -- or the structures.
 11 Q. And what did you notice about the -- the
 12 structures?
 13 A. So the structures themselves -- well, the
 14 property itself I -- I could see people coming in
 15 and out. There was dogs. There was a camper
 16 there. There was cars coming and going. So I -- I
 17 knew someone -- I knew someone had occupied that
 18 residence.
 19 Q. Did that residence -- how would you
 20 compare that residence and what you saw there with
 21 what you saw at the Section 15 structure?
 22 A. Yeah, there were just -- there was
 23 activity coming and going every day that we saw.
 24 So, I mean, I was on-site. So there was activity
 25 coming and going every day. There was a dog

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1 running around. Like I say, there was a camper
 2 outside. You just -- and the house was up kept.
 3 It was in decent shape.
 4 Q. Mr. Freudenrich, did you attend the Public
 5 Service Commission's public hearing on September 13
 6 of 2013?
 7 A. Yes, sir.
 8 Q. Do you recall whether you testified at
 9 that public hearing?
 10 A. I did, yes.
 11 Q. Are you aware, Mr. Freudenrich, that the
 12 Kesslers have alleged and testified that you blew
 13 up at them during a break in the public hearing
 14 when they tried to ask you a question about the
 15 project?
 16 A. I'm aware they allege that, yes.
 17 Q. The Kesslers have alleged -- sorry. Are
 18 you aware the Kesslers have alleged and testified
 19 that you swore at them and told them, quote, We
 20 don't have time to move things around due to the
 21 tax credits, close quote?
 22 A. I'm aware they alleged that, yes.
 23 Q. And the Kesslers have said at different
 24 times that Scott Monroe or Todd Simmons was present
 25 for that interaction with you. Are you aware of

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1 that?
 2 A. I'm aware of that, yes.
 3 Q. Did you talk with either Scott Monroe or
 4 Todd Simmons at the September 13, 2013, public
 5 hearing?
 6 A. No. I mean, Scott wasn't there. No.
 7 Q. Mr. Monroe was not at the hearing?
 8 A. Was not.
 9 Q. Do you recall talking with Todd Simmons at
 10 all?
 11 A. I don't. I mean, other than just maybe
 12 "hi," chitchat.
 13 Q. Did you blow up and cuss at the Kesslers
 14 at any point before, during or after the public
 15 hearing that day?
 16 A. I did not.
 17 Q. Other than what is reflected in the
 18 record -- or the transcript, excuse me, of the
 19 hearing, did you talk to the Kesslers at all
 20 before, on a break or after the hearing that day?
 21 A. I did not.
 22 Q. Are you certain?
 23 A. Yes.
 24 Q. What makes you certain?
 25 A. One, it's not my personality to blow up at

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1 people. Two, I'm -- I'm a professional in the
2 industry. I've been doing it for a long time.
3 Three, it's not the way Minnesota Power deals with
4 landowners. From the beginning, like I say, this
5 was my umpteenth year out there, and it -- the
6 instruction from Minnesota Power is always to keep
7 landowners as a neighbor as we were going to own
8 and operate it. We were going to develop and
9 operate it.

10 So the plan -- the plan and -- and
11 everything was always to -- to stay on the right
12 side of the landowners.

13 And then, lastly, I think -- well, I think
14 someone would have noticed or there would have been
15 a memorable event that day. There's nothing --
16 nothing that I know of, nothing anyone else
17 recalls. I mean, it wasn't a big area.

18 And, lastly, I -- I probably wouldn't be
19 here if I would have blew up at them that day.

20 Q. What do you mean by that?

21 A. Minnesota Power wouldn't have tolerated
22 it.

23 Q. You think there would have been an adverse
24 action on your employment if you had blown up at a
25 landowner and cussed out a landowner?

1 the placement of Turbine 441, would you have tried
2 to address it?

3 A. Absolutely.

4 Q. How?

5 A. Would have got with the team. We would
6 have followed up. I mean, as far as movement on
7 the front end, it's just a matter of, like Barry
8 said, shuffling the -- shuffling the turbines
9 together or pulling them apart. I mean, there was
10 all kinds of options. I mean, the only real
11 difference you'd have to do is some minor -- minor
12 permitting tweaks and then a new soil boring.

13 Q. You're aware the Kesslers later signed
14 easements in connection with the project?

15 A. Yes.

16 Q. Were you present at any of the discussions
17 where the Kesslers were meeting with Minnesota
18 Power on those easements?

19 A. In October, yeah. October 2013, yes.

20 Q. Can you describe what you remember of that
21 conversation on October 23, 2013?

22 A. So Scott Monroe was with the Kesslers in
23 the O&M building. I was sitting in the
24 construction trailer. At the time there were some
25 questions on fencing and roads. So they called me

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1 A. Absolutely.

2 Q. I want to talk about tax credits a little
3 bit. Did the project have to construct Turbine 441
4 or any other turbines before the end of 2013 to
5 qualify for the production tax credit?

6 A. No.

7 Q. Were any turbines constructed during 2013?

8 A. No.

9 Q. And you heard Mr. Gartner testify about
10 making a safe harbor investment in order to qualify
11 for the production tax credit?

12 A. I did, yes.

13 Q. Were you aware of that in 2013?

14 A. Yes.

15 Q. So Minnesota Power could have made layout
16 changes, including changes to locations of
17 turbines, back at that time and still would have
18 qualified for the production tax credit?

19 A. Yes.

20 Q. As of September 13, 2013, if you'd been
21 aware of a concern about the placement of Turbine
22 441, could it have been moved without affecting the
23 project's in-service schedule or economics?

24 A. Yes.

25 Q. If you had known of the concern regarding

1 from the construction trailer, which is just
2 500 feet from the O&M building. So I walked over.
3 Went upstairs is where they were meeting. And
4 there was -- there were some questions on
5 specifically about why we were blocking off the pad
6 with the fencing. And I -- I thought I addressed
7 the concern. It was mainly to -- to support
8 construction, and then I think there were some --
9 just some general questions about road alignments
10 and routing, but those are the two things that came
11 up that day.

12 Q. When -- when you went there, had you
13 talked with or met with the Kesslers anytime
14 between September 13 and October 23?

15 A. No.

16 Q. When you appeared in -- in the room on
17 October 23, 2013, did the Kesslers talk to you
18 about the way that you had allegedly swore at them
19 previously?

20 A. No.

21 Q. And it's your testimony that that didn't
22 happen?

23 A. It's my testimony, yeah, that I did not
24 blow up at them at the PSC meeting. Correct.

25 Q. At any point in your discussion with the

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1 Kesslers on October 23 of 2013 when you're talking
2 about the fences and the turbine pads, did they
3 raise a concern about the proximity of Turbine 441
4 to the Section 15 structure?

5 **A.** Not to me they didn't, no.

6 **Q.** And at any point in your discussions with
7 the Kesslers that day, did they mention anything
8 about a son or one of their sons moving into the
9 Section 15 structure?

10 **A.** Did not.

11 **Q.** When did you first learn that the Kesslers
12 had a concern regarding the placement of Turbine
13 441 relative to the Section 15 structure?

14 **A.** So I was working on a different project,
15 but Wade Isaacson emailed me February 2017.

16 **Q.** Is it your testimony that before February
17 of 2017, you had no knowledge that the Kesslers'
18 son or sons had planned to move into the Section 15
19 structure?

20 **A.** That is correct. No knowledge.

21 **Q.** And it's your testimony that before
22 February of 2017, you had no knowledge that the
23 Kesslers had a concern regarding the proximity of
24 Turbine 441 relative to the Section 15 structure?

25 **A.** That is correct.

1 Thank you, Mr. Freudenrich.

2 JUDGE DAWSON: Mr. Johnson.

3 **EXAMINATION**

4 **BY MR. JOHNSON:**

5 **Q.** You stated that going in to the residence
6 it's a two-track. So is it gravel, dirt, some
7 grass in the middle?

8 **A.** So not completely gravel. So you could
9 see -- I guess what I can -- what I define a
10 two-track is just the -- there's enough traffic
11 going up and down the road. There's still --
12 there's a grass strip in the middle and there's a
13 grass strip on the outside, so maybe it was
14 graveled once upon a time but just earthen.

15 **Q.** And inside the yard you said it was grass
16 around the house, like whole yard? No driveway or
17 anything in the yard?

18 **A.** Yeah, there was no tracks of anything
19 leading up towards the house. No.

20 **Q.** So how long was the grass? Was it mowed,
21 was it kept, unkept?

22 **A.** No, I mean the property itself was decent
23 shape. Yes. It was picked up.

24 **Q.** How long do you think the grass was?

25 **A.** I don't know. 4, 5 inches, maybe. I

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1 **Q.** You listened in to testimony the other day
2 and you've read transcripts in this case; right?

3 **A.** To be honest, I didn't -- I listened in --
4 well, actually I didn't even listen to very much of
5 it. I was -- basically I was in conversations with
6 Wade just as to if I would actually talk that day,
7 but that was -- that was about it. I -- I read a
8 little bit of the testimony. Yes.

9 **Q.** Sure. And you've looked at the deposition
10 testimony and the prior pleadings in this case;
11 right?

12 **A.** Yes.

13 **Q.** And you're aware that the Kesslers'
14 allegations and testimony are that -- that you knew
15 of their concerns as of September 13, 2013, and
16 yelled at them and cursed them out on
17 September 2013 -- September 13, 2013, and that you
18 ignored their concerns and told them not to raise
19 their concerns at the public hearing. You're aware
20 of that?

21 **A.** Yes.

22 **Q.** Is that consistent with how you or
23 Minnesota Power treats landowners?

24 **A.** No.

25 **MR. MAHLBERG:** I don't have anything else.

1 guess I don't know. It was early -- early May.

2 **Q.** Okay. And no signs of recent vehicle
3 activity in the yard?

4 **A.** There wasn't.

5 **Q.** Okay. And you stated you never did get
6 out of your vehicle?

7 **A.** I did not. No, sir.

8 **Q.** Okay. And then it's your testimony that
9 you didn't blow up at the Kesslers at the meeting,
10 but did you have a conversation with them?

11 **A.** No. I mean, besides maybe saying "hi" or
12 some kind of informality, but there was no
13 discussion that day.

14 **MR. JOHNSON:** Okay. No further questions.

15 **JUDGE DAWSON:** Commissioner Fedorchak.

16 **EXAMINATION**

17 **BY COMMISSIONER FEDORCHAK:**

18 **Q.** All right. Thank you, Matt.

19 Remind me at what point it was when you
20 visited the site. What year and what point in the
21 project development was it?

22 **A.** So it was right immediately before
23 micrositing, so it would have been May of 2013.

24 **Q.** May of 2013. Okay.

25 And it wasn't part of the micrositing,

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1 though?

2 **A.** It wasn't, no.

3 **Q.** No.

4 **A.** Well, I guess it wasn't part of the

5 official. I was trying to come proactive in

6 getting ahead of the team, so I was trying to find

7 like routes through stuff so we could be efficient.

8 **Q.** Okay. Do you do the -- are you part of

9 the micrositing team?

10 **A.** Yes.

11 **Q.** Okay. But this was pre -- because

12 micrositing is a specific event.

13 **A.** It's a -- yeah. Correct. So you're out

14 there, you're looking at constructability, you're

15 looking at, you know, different things,

16 environmental. Does it make sense to shift this

17 thing east, west, south?

18 **Q.** So the purpose of your trip through there

19 was -- kind of outline that again.

20 **A.** It was just to figure out access to that

21 turbine string and then also I was trying to figure

22 out fencing.

23 **Q.** And when you say "figure out fencing,"

24 what do you mean?

25 **A.** Just -- one, just permanent or temporary

1 or maps or whatever do you have to help you? Or

2 are you just doing everything visually, kind of?

3 **A.** It would have been maps similar to

4 something like that.

5 **Q.** All right. So you --

6 **A.** -- because we had -- we would have had a

7 preliminary layout.

8 **Q.** Did you get out and look on the site where

9 the turbine would be? Did you go up there and look

10 at that site?

11 **A.** That day I did not, but micrositing I did.

12 Yes.

13 **Q.** Okay. So this day you were going through

14 the yard, trying to determine access to -- for the

15 company to that --

16 **A.** Just to try and get up that whole entire

17 turbine string, yes.

18 **Q.** Okay. So was it really even on your mind

19 at that point to be considering occupied

20 residences?

21 **A.** That day it wasn't my goal. No.

22 **Q.** Okay. So what you're sharing is just what

23 you saw --

24 **A.** Yes.

25 **Q.** -- basically.

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1 fencing down the road, and then the other thing is

2 just access through there.

3 **Q.** So fencing in terms of what sort of issues

4 you're going to have with gates, like you're going

5 to have to deal with with gates and stuff --

6 **A.** Correct.

7 **Q.** -- or fences that have to come out?

8 What --

9 **A.** So where we put a gate in, if we would

10 have to do any kind of temporary fencing. I mean,

11 we put in hundreds and thousands of dollars of temp

12 fencing on this project. Well, not just this one,

13 but all the phases.

14 **Q.** So is your -- is fencing your -- was that

15 your primary role in this? Do they assign, like,

16 one guy for fencing or one person for fencing?

17 **A.** No, but I -- I took on the lead on the

18 majority of it to try to figure out what went

19 where.

20 **Q.** Okay. What -- I'm trying to just

21 understand that -- you know, your mindset going in

22 there. So your focus is on fencing?

23 **A.** Fencing and access to those turbine -- to

24 that turbine string, yes.

25 **Q.** What do you have -- what kind of equipment

1 **A.** Yep.

2 **Q.** What you remember you saw.

3 **A.** Correct.

4 **Q.** And was there more vegetation -- the

5 pictures that we were looking at -- I don't know if

6 I've read it or heard reference to things being

7 grown over, but the house doesn't have -- none of

8 the pictures I've seen actually show it being grown

9 over.

10 **A.** No. The property itself, like I say, was

11 in -- in decent shape for an old farmyard.

12 **Q.** Okay. And so you just had some maps, and

13 did you have any equipment with you to do measuring

14 or anything like that?

15 **A.** I didn't, no. I mean, I -- I --

16 **Q.** Any surveying equipment?

17 **A.** -- I would have had like a wheel or

18 something, but nothing -- yeah, I didn't have a GPS

19 or I didn't have any kind of survey grade GPS that

20 day.

21 **Q.** Okay. All right. And then that

22 October 23 meeting, that was set up through

23 Scott -- Scott and the Kesslers?

24 **A.** Yes.

25 **Q.** And then you got brought in to talk about

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1 some of the fencing issues?
 2 **A.** And roads, yep.
 3 **Q.** And the roads.
 4 All right. And you -- you don't recall
 5 Mrs. Kessler looking at the maps and saying, "This
 6 turbine looks awfully close to this farm site"?
 7 Because that was her testimony at that meeting.
 8 **A.** Yeah, I don't recall that.
 9 **Q.** Who else was at that meeting?
 10 **A.** It was just myself and Scott that day --
 11 **Q.** Okay.
 12 **A.** -- from Minnesota Power.
 13 **Q.** And your recollection is -- is that that
 14 meeting was not the result of any discussions that
 15 were had during the hearing? Not during the
 16 hearing, but at the hearing.
 17 **A.** Yeah. No. It was -- it was an easement
 18 discussion that I was aware of.
 19 **COMMISSIONER FEDORCHAK:** Okay. I think
 20 that's it for me for now.
 21 **JUDGE DAWSON:** Commissioner Christmann.
 22 **EXAMINATION**
 23 **BY COMMISSIONER CHRISTMANN:**
 24 **Q.** So I understood you to say that your
 25 reason for driving through had to do with fences

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1 and access to the potential turbine string. Is
 2 there ever a time in the process when someone does
 3 a double-check of residences that would appear to
 4 be relatively close to -- not residences -- about
 5 farmsteads where conceivably someone could be
 6 living just to double-check to make sure that
 7 there's not going to be an issue, or --
 8 **A.** So I'm --
 9 **Q.** -- do you cross your fingers and if the
 10 plat book shows nothing, you're --
 11 **A.** No, but, I mean --
 12 **Q.** -- good to go?
 13 **A.** -- I was out there every day. I was out
 14 there every day. I saw traffic. I mean, if
 15 something popped up, obviously we -- you know, we
 16 were in communication. You know, I talked to Wade
 17 and Scott multiple times a day, if not -- per week
 18 for sure, if not per day. So, I mean, there was
 19 constant conversation between Barry and myself and
 20 then Scott and Wade. I mean, we --
 21 **Q.** But there's not a formal part of --
 22 **A.** There's not a formal.
 23 **Q.** -- the process to go and make sure that
 24 you're -- that the plat book and satellite view
 25 aren't missing a residence that just doesn't show a

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1 lot of activity?
 2 **A.** No. If we had a formality, hopefully we
 3 wouldn't be here today.
 4 **COMMISSIONER CHRISTMANN:** Okay. Thank
 5 you.
 6 **JUDGE DAWSON:** Commissioner Kroshus.
 7 **EXAMINATION**
 8 **BY COMMISSIONER KROSHUS:**
 9 **Q.** When did you leave Minnesota Power?
 10 **A.** I left in December of 2020.
 11 **Q.** December of 2020. So did you say ten
 12 years? Or how long were you employed?
 13 **A.** Roughly ten years.
 14 **Q.** Roughly ten years.
 15 **A.** Yes, sir.
 16 **Q.** Just to be clear, because there was a lot
 17 of -- you were questioned and you had answered that
 18 you -- you didn't blow up at the Kesslers, but can
 19 you just be specific again? Did you or did you not
 20 have a conversation with the Kesslers at the
 21 hearing?
 22 **A.** Yeah. There was no conversation. Other
 23 than some kind of informality, "hi," "bye." I
 24 mean, I didn't know who the Kesslers were until he
 25 testified.

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1 **Q.** Okay. And then on the -- going to the
 2 farmstead, you had said 4 to 5 inches,
 3 approximately, the grass?
 4 **A.** Yep.
 5 **Q.** Didn't think the house looked like --
 6 looked like it was lived in; correct?
 7 **A.** Correct.
 8 **Q.** And I think you described it as a
 9 two-track driveway going in?
 10 **A.** Correct.
 11 **Q.** So you were -- okay. So then on the
 12 micrositing on site 441, do you recall whether or
 13 not it was adjacent to farmland, cropland?
 14 **A.** So I -- no, I don't. But I -- just to
 15 answer your question before, I mean, that site -- I
 16 don't ever require -- or I don't ever remember it
 17 was shifted for any reason. So it was never
 18 shifted. It was put at the high point because that
 19 turbine site we actually had to level it so it's on
 20 a peak, so it was an optimum elevation resource, I
 21 guess. We actually ended up leveling that pad to
 22 put that turbine site there.
 23 **Q.** Okay. So you remember the details pretty
 24 closely?
 25 **A.** Yeah. I remember if you were standing at

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1 that turbine site and you tried looking towards the
 2 Kesslers, before we knocked the hill down, you
 3 couldn't see that -- you couldn't see the house
 4 until we knocked that -- that hill down.
 5 Q. So do you remember if the -- where 441
 6 is -- was -- is placed, is that adjacent to a
 7 hayfield or cropland?
 8 A. I guess I -- I don't know. I'm not sure.
 9 Q. How would you -- I'm just trying to get my
 10 arms around this. You remember the condition of
 11 the grass and the farmyard. You remember the trail
 12 going in. You remember the condition of the house.
 13 But you're responsible and involved with
 14 micrositing, and you don't remember what was right
 15 next to the pad?
 16 A. As far as what was right next to the pad?
 17 Q. Whether it was cropland or hayland?
 18 A. I just -- I know the house itself was in
 19 pasture. I don't know the property adjacent to it,
 20 yeah.
 21 Q. And, again, I'm talking Turbine 441.
 22 A. Correct.
 23 Q. Were you responsible for fencing around
 24 that turbine?
 25 A. Yeah. So it would have been to the --

1 perception no one was there.
 2 A. Yeah.
 3 Q. You don't know for sure.
 4 A. Yeah. Yes.
 5 COMMISSIONER KROSHUS: All right. No
 6 other questions. Thank you.
 7 JUDGE DAWSON: Where are you from?
 8 THE WITNESS: Where am I from?
 9 JUDGE DAWSON: Yeah. Where do you hail
 10 from?
 11 THE WITNESS: Little Falls, Minnesota.
 12 JUDGE DAWSON: Mr. Boughey.
 13 MR. BOUGHEY: Thank you, Your Honor.
 14 **RE-CROSS-EXAMINATION**
 15 **BY MR. BOUGHEY:**
 16 Q. Were you here when Barry Gartner testified
 17 that when he was doing micrositing and standing at
 18 the location 441 was planned to be at, that he
 19 could see the structures that the Kesslers own on
 20 Section 15? Were you here when he said that?
 21 A. Yeah.
 22 Q. Did I misunderstand your testimony? Did
 23 you just state there was a hill in the way and you
 24 couldn't see that?
 25 A. Yeah, if you walked to the north side of

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1 there was fence immediately to the south of it,
 2 yes, and west.
 3 Q. Okay. And do you remember -- but you
 4 don't remember to the south-southeast what type of
 5 land that was from an ag -- agricultural purposes,
 6 whether it was pasture, hay or cropland?
 7 A. I don't.
 8 Q. Okay. I could -- I could go further into
 9 the perceptions of an occupied or unoccupied
 10 residence, but, you know, we're talking about
 11 perception. Have you ever seen individuals, you
 12 know, in all the time you've been driving in the
 13 countryside that might live on a place, a farmstead
 14 that would be in worse condition?
 15 A. Oh, absolutely.
 16 Q. So it's possible?
 17 A. Yeah. But then there, there would have
 18 been vehicles, there would have been stuff outside,
 19 there would have been garbage. I mean, this
 20 property, it -- it was picked up. There wasn't
 21 stuff laying around. Just the house itself was in
 22 pretty tough shape and there was no sign of any
 23 activity.
 24 Q. But it was -- but it, you know, fair --
 25 fairly -- it sounds like it was just your

1 the hill, you would have been able to see it. I
 2 mean, it was on a peak. That's why the turbine was
 3 put there.
 4 Q. Okay. So your testimony still is while on
 5 that peak, you couldn't see it?
 6 A. No, on the peak you could absolutely see
 7 it. If you walked up there, yes.
 8 Q. Okay. All right. And then in regards
 9 to -- if you would turn to the book to the right of
 10 you, find page 52 -- or actually it might be
 11 quicker if I just -- I'll grab it for you.
 12 MR. MAHLBERG: Which book?
 13 MR. BOUGHEY: My book. The list of the --
 14 just want you to go to page 52, if you would.
 15 There's 40. So if you flip just a few more pages
 16 to 52.
 17 THE WITNESS: Okay.
 18 Q. (MR. BOUGHEY CONTINUING) And do you see a
 19 sign-in sheet in reference to the hearing you were
 20 at and your signature on there?
 21 A. Yes.
 22 Q. Now, you mentioned a while ago that
 23 somebody would have noticed -- are you aware that
 24 the Kesslers in describing whoever this person
 25 was -- they assumed it was you -- but there were a

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1 total of seven different Minnesota Power people
 2 there; correct?
 3 **A.** Yes.
 4 **Q.** And are you aware that the Kesslers'
 5 original discussions about this was all somebody
 6 from Minnesota Power, but they weren't positive who
 7 it was. Do you remember ever seeing any of their
 8 statements in that regard?
 9 **A.** I remember seeing it, yes.
 10 **Q.** All right. So --
 11 **A.** But they didn't --
 12 **Q.** -- when this -- when this occurred and you
 13 were advised of this allegation that somebody blew
 14 up at the Kesslers, you were still working for
 15 Minnesota Power at that time; correct?
 16 **A.** Yes.
 17 **Q.** Okay. And so let's walk through some of
 18 these people and find out if you've talked to them
 19 about whether they said anything to the Kesslers.
 20 We've already had Matt testify and Barry -- Barry
 21 testified. You're Matt. Who's the next person?
 22 Is it Dave McCourtney? I can't tell.
 23 **A.** It's Dan McCourtney.
 24 **Q.** And have you talked to him at any time
 25 while you were employed at Minnesota Power to find

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1 out if he talked to the Kesslers at that meeting?
 2 **A.** I haven't specifically, no.
 3 **Q.** Okay. Who's the next one? It looks like
 4 a Tom somebody.
 5 **A.** Tom Coughlin, who would have been my
 6 immediate boss.
 7 **Q.** And did you talk to Tom Coughlin after
 8 this allegation was made that somebody in Minnesota
 9 Power made those statements to find out if he was
 10 the one?
 11 **A.** Yes.
 12 **Q.** And did he say -- deny he was the one?
 13 **A.** Yeah, Tom -- Tom wasn't the one.
 14 **Q.** And how about Bill Sawyer? Did you talk
 15 to him about whether he had said anything or talked
 16 to the Kesslers?
 17 **A.** I did not talk to Bill.
 18 **Q.** I can't tell if that's Violet Struss. I
 19 can't read it.
 20 **A.** So Violet was Minnesota Power's attorney.
 21 **Q.** Okay. And have you talked to her about --
 22 obviously she's female, so it wouldn't have been
 23 her. Never mind. And then, of course, we already
 24 know about Todd Simmons. All right.
 25 Now, you made a statement a little while

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1 ago that someone would have noticed if any
 2 discussion occurred. Do you remember making that
 3 statement just a little while ago?
 4 **A.** Yes.
 5 **Q.** Okay. Well, first of all, the Kesslers
 6 noticed it occurred and they've testified to it, so
 7 they at least have made the allegation; correct?
 8 **A.** They made the allegation, yes.
 9 **Q.** Sure. And then were you -- have you
 10 reviewed Jerry Lein's testimony, either at his
 11 deposition or at this prior hearing, where he
 12 basically says he did observe a discussion between
 13 the Kesslers and somebody from Minnesota Power
 14 during one of the breaks?
 15 **MR. MAHLBERG:** Objection. That
 16 mischaracterizes the testimony. You specifically
 17 said he basically testifies.
 18 **MR. BOUGHEY:** Okay.
 19 **MR. MAHLBERG:** What Mr. Lein testifies
 20 speaks for itself.
 21 **MR. BOUGHEY:** Well, I'm asking him if he
 22 has an opinion on it, and I was reading right from
 23 his words, Counsel, at page 217 of the
 24 prehearing -- Volume I. May I proceed, Your Honor?
 25 **JUDGE DAWSON:** You're going to read it?

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1 **MR. BOUGHEY:** I don't have to. I was
 2 first going to ask him if he was aware of what
 3 Mr. Lein testified to, so first I'm asking if he --
 4 **JUDGE DAWSON:** I'll allow that question.
 5 **Q.** (MR. BOUGHEY CONTINUING) Okay. Are you
 6 aware of Mr. Lein's testimony in regards to
 7 observing some form of discussion between the
 8 Kesslers and Minnesota Power at the hearing?
 9 **A.** So specifically, no, I'm not.
 10 **Q.** Okay. Did you review Mr. Lein's
 11 deposition before coming here today?
 12 **A.** I did not.
 13 **Q.** And you mentioned that you were aware the
 14 Kesslers were there to sign some easements relating
 15 to the project as to when you had observed them.
 16 But isn't it true they didn't sign any easements or
 17 anything relating to Section 15 because the tower
 18 wasn't going on Section 15? Isn't that true?
 19 **A.** Yeah. You're saying the easements weren't
 20 related to Section 15? That's correct. Yep.
 21 **Q.** Okay. And then the other thing is you
 22 said you were on-site every day and that kind of
 23 got blurry. So let's go back into this. You were
 24 there the day before the micrositing, which was
 25 May 14 to, I think you said, the 17th, so that

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1 would mean you were there the 13th and then the
 2 14th through 17th while you were all doing the
 3 micrositing; correct?
 4 **A.** Yes.
 5 **Q.** Then when you say I was there every day
 6 following that micrositing, how long was it between
 7 the day of that micrositing, May 17, until a final
 8 determination was made as to where to put 441, if
 9 you know?
 10 **A.** And I guess I -- my -- my testimony is
 11 that I -- I was -- I was on the project nearly
 12 every day. I wasn't at this site every day.
 13 **Q.** Oh, I see.
 14 **A.** I'm just saying I saw -- I got a good
 15 feeling of who came and went, who did what in the
 16 project area.
 17 **Q.** And yet the only way you could get to this
 18 property on 15 is by coming in from the west
 19 because you already said you couldn't get in from
 20 the east; right?
 21 **A.** I couldn't get in -- correct. Yes.
 22 **Q.** All right. And so -- and coming from the
 23 west, that's the only property you would be going
 24 to; correct?
 25 **A.** Yes.

1 **A.** No.
 2 **Q.** Did you later determine that it was just
 3 something you use to provide medicine to cattle?
 4 Do you recall that incident at all?
 5 **A.** No.
 6 **MR. BOUGHEY:** Okay. Nothing further.
 7 **THE WITNESS:** So an incident with a gun?
 8 **Q.** (MR. BOUGHEY CONTINUING) Well, where you
 9 alleged that -- you came up to him and said
 10 something along the lines, "You better not have a
 11 gun out here. What are you doing with a gun," and
 12 he's looking at it and he shows you, and all it is
 13 is a device that is used to provide medicine to
 14 cattle.
 15 **A.** Mr. Boughey, that wasn't me.
 16 **MR. BOUGHEY:** Okay. Might be someone
 17 else. Thank you.
 18 **JUDGE DAWSON:** Mr. Mahlberg.
 19 **REDIRECT EXAMINATION**
 20 **BY MR. MAHLBERG:**
 21 **Q.** Mr. Freudenrich, probably just a couple of
 22 brief points. One is a point of clarity. Do you
 23 know whether the -- which portions of this Section
 24 15 property were under option?
 25 **A.** Yes.

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1 **Q.** Okay. And were you eventually, once they
 2 started building roads and things, able to come in
 3 from the east because they set up roads that went
 4 along the line of the turbines?
 5 **A.** No. I think that one you still had to
 6 come in from -- you had to come in from south and
 7 west of there.
 8 **Q.** All right. So, in other words, except for
 9 the day you drove through their property, you
 10 didn't have any reason to actually drive by this
 11 house any other time than that one time the day
 12 before the micrositing; correct?
 13 **A.** No. We actually took -- so as part of --
 14 between us and Oliver County, we went and looked at
 15 all of the roads to look at road conditions to try
 16 and figure out what roads could or could not accept
 17 like turbine deliveries, stuff like that.
 18 **Q.** How many times were you within 50 feet of
 19 the house?
 20 **A.** Just once.
 21 **Q.** Do you recall ever chewing out
 22 Mr. Kessler -- I'll use those words precisely --
 23 because he supposedly had a gun and you were
 24 concerned about a pistol or a gun? Do you remember
 25 anything like that?

1 **Q.** Did that include the northwest quarter?
 2 **A.** Yes.
 3 **Q.** And when you were speaking a bit ago,
 4 maybe it was just about easements, saying that the
 5 northwest quarter didn't get an easement on it; is
 6 that --
 7 **A.** That is correct.
 8 **Q.** Okay. In the questioning there,
 9 Mr. Freudenrich, you were asked a question that
 10 characterized that the Kesslers have alleged that
 11 maybe it wasn't you that yelled at them. Did you
 12 understand that question from Mr. Boughey?
 13 **A.** I mean, yeah, there was questions about
 14 going through who else was there from Minnesota
 15 Power. Yes.
 16 **Q.** And just to be clear on this, you're
 17 saying you didn't talk to the Kesslers
 18 substantively that day?
 19 **A.** The only time I -- I responded on the
 20 record over a waterline issue -- or potential -- if
 21 there was some kind of waterline or underground
 22 obstruction, I can't remember the specifics, but it
 23 was something along that nature.
 24 **Q.** Other than on the record, you had no
 25 substantive conversation?

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1 A. That's correct.
 2 Q. You didn't yell or cuss out the Kesslers?
 3 A. I did not, no.
 4 Q. You didn't observe anyone else have a
 5 substantive conversation with the Kesslers?
 6 A. I did not.
 7 Q. You didn't observe anyone else yell at or
 8 swear at the Kesslers?
 9 A. Correct.
 10 MR. MAHLBERG: Okay. I don't have
 11 anything else.
 12 JUDGE DAWSON: Mr. Johnson?
 13 MR. JOHNSON: Nothing further.
 14 JUDGE DAWSON: Commissioners?
 15 COMMISSIONER FEDORCHAK: Nothing for me.
 16 COMMISSIONER CHRISTMANN: No, sir.
 17 COMMISSIONER KROSHUS: I just have --
 18 JUDGE DAWSON: Commissioner Kroshus.
 19 COMMISSIONER KROSHUS: -- just so I don't
 20 miss my opportunity.
 21 **FURTHER EXAMINATION**
 22 **BY COMMISSIONER KROSHUS:**
 23 Q. I let Mr. Gartner off the hook on the --
 24 do you work with the landowners at all?
 25 A. So some. But like I say, we mostly

1 40 minutes. We'll be back here at one o'clock.
 2 (Recessed at 12:21 p.m. and reconvened at
 3 1:06 p.m.)
 4 JUDGE DAWSON: With that, we're going to
 5 go back on the record. And it is about four or
 6 five minutes after one o'clock, p.m.
 7 And, Mr. Mahlberg, there is an extraneous
 8 matter or --
 9 MR. BOUGHEY: Well, actually I can
 10 probably do it from here because I've got the
 11 controls.
 12 JUDGE DAWSON: Oh. What --
 13 MR. BOUGHEY: He's going to do it from
 14 there. He's there for a reason.
 15 Commissioners, we've noticed -- both
 16 attorneys have noticed that there was a couple
 17 times where there were questions about what was
 18 south of where the turbine is. So I am now showing
 19 the -- a clean, if you will, plat map with just
 20 Section 15, and there were some questions as --
 21 where you see the yellow there, that is, of course,
 22 where the house is, and then the turbine is --
 23 sorry. If I move it, the turbine is, of course,
 24 right on that corner on the number 5.
 25 So there was some questioning about, well,

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1 kept -- so how we worked out for Bison 4, Wade took
 2 a lot of the existing landowners because we still
 3 had a bunch to the -- to the east and then Scott
 4 took the majority of the new to the west.
 5 Q. Well, and maybe just to clarify, one of my
 6 questions was whether or not Turbine 441 was placed
 7 just off of, again, what I think looks like
 8 cropland because of the distinct outline at the
 9 request of the landowner. Would that be a question
 10 you would answer or a question --
 11 A. I mean --
 12 Q. -- another witness might answer?
 13 A. -- I believe that turbine was sited there
 14 and it never moved. It was sited there because of
 15 the elevation.
 16 Q. Okay. Not because of a request from the
 17 landowner, to your knowledge?
 18 A. To my knowledge, correct.
 19 COMMISSIONER KROSHUS: Okay. Thank you.
 20 JUDGE DAWSON: Any further questions?
 21 Seeing none, you may step down. And we can take
 22 our luncheon recess. I haven't been down there
 23 lately. Can we do it in 40 minutes, you think?
 24 COMMISSIONER FEDORCHAK: Sure.
 25 JUDGE DAWSON: Then we'll do it in

1 who owns the property south. Obviously that is
 2 Keith. And then the Turbine 441 is on Glen
 3 Lennick's property. And so now I will switch and
 4 I'll zoom in as requested by counsel.
 5 JUDGE DAWSON: Mr. Mahlberg wants to add
 6 something there.
 7 MR. MAHLBERG: So the only question --
 8 it's -- Commissioner Kroshus, when you're asking
 9 about the -- the character of the land to the
 10 southeast, I just want to make sure if we're
 11 tracking directly, if you're talking about
 12 southeast as in south of this property line that's
 13 right there or east. Because the ownership is
 14 different. And I just want to be clear on which
 15 one you're asking about.
 16 COMMISSIONER KROSHUS: To the east.
 17 MR. BOUGHEY: East or southeast?
 18 COMMISSIONER KROSHUS: On the -- is it the
 19 Lennicks'? Is that the --
 20 MR. MAHLBERG: Right. That's still
 21 Lennick. When you were saying southeast, I -- I
 22 thought maybe witnesses were looking south of the
 23 property line, which is right at the base of that
 24 turbine pad.
 25 COMMISSIONER KROSHUS: No. No. And I was

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1 asking the question -- if I may.
 2 JUDGE DAWSON: Yes, please.
 3 COMMISSIONER KROSHUS: I was asking the
 4 question because I was trying to -- I was wondering
 5 whether or not the turbine placement was influenced
 6 by a hayfield or cropland that Lennick had.
 7 MR. BOUGHEY: Oh, I see.
 8 COMMISSIONER KROSHUS: Because it just
 9 seemed, again from the Google Earth maps, that it
 10 was following a distinct -- just outside of a
 11 distinct outline of what appeared to be, I'm
 12 guessing, a hayfield or at one time cropland.
 13 MR. MAHLBERG: Got it. Got it. And
 14 hopefully the last witness' answer at the end
 15 covered your question, but we'll find out.
 16 JUDGE DAWSON: We might hear the question
 17 again.
 18 MR. MAHLBERG: We might -- we might get it
 19 again.
 20 MR. BOUGHEY: I'm attempting to stop
 21 sharing.
 22 JUDGE DAWSON: Well, we have one more
 23 witness.
 24 MR. BOUGHEY: That's correct.
 25 JUDGE DAWSON: And that witness is?

CROSS-EXAMINATION
 2 **BY MR. BOUGHEY:**
 3 Q. Mr. Isaacson, would you please state your
 4 name for the record.
 5 A. Wade Isaacson.
 6 Q. And would you spell your last name,
 7 because the court reporter will need that?
 8 A. I-s-a-a-c-s-o-n.
 9 Q. Fantastic. Thank you. I only have one
 10 line of inquiry, sir, and it's my understanding
 11 that in regards to this wind project, that your job
 12 was dealing with the out-of-state landowners and
 13 that Scott Monroe was the one primarily dealing
 14 with local landowners; is that correct?
 15 A. That is correct.
 16 Q. Okay. And then it's my further
 17 understanding that at some point while you were
 18 working on getting everybody signed up and
 19 contacting all the landowners that are going to be
 20 affected by this project, that at some point you
 21 created or Minnesota Power had a spreadsheet that
 22 would have all the landowners' names, address,
 23 legal description and phone numbers. Is that -- am
 24 I correct on that?
 25 A. Yes.

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1 MR. BOUGHEY: Wade Isaacson.
 2 THE WITNESS: Can everybody hear me okay?
 3 JUDGE DAWSON: Mr. Isaacson, can you hear
 4 me okay?
 5 THE WITNESS: Yes. Can you hear me okay?
 6 JUDGE DAWSON: I can hear you just fine.
 7 THE WITNESS: Okay. Very good.
 8 JUDGE DAWSON: Where are you located right
 9 now, Mr. Isaacson?
 10 THE WITNESS: About six miles west of
 11 Mandan, in the kitchen.
 12 JUDGE DAWSON: Have you been here for my
 13 previous warnings as to perjury? Have you heard
 14 that?
 15 THE WITNESS: I have.
 16 JUDGE DAWSON: So you know what perjury is
 17 and the penalties for it?
 18 THE WITNESS: I do.
 19 (Witness sworn.)
 20 JUDGE DAWSON: Mr. Boughey, you may begin.
 21 MR. BOUGHEY: Thank you, Your Honor.
 22 **WADE ISAACSON,**
 23 being first duly sworn, was examined and testified
 24 as follows:
 25

1 Q. Okay. And then it's my further
 2 understanding from your deposition that that was
 3 something you just simply had on your hard drive
 4 and it was in electronic format, maybe Excel or
 5 something like that?
 6 A. Correct.
 7 Q. Okay. And then my only other area of
 8 inquiry is is that something which you would be
 9 able to electronically send to anyone in Duluth
 10 with Minnesota Power, such as the person in charge
 11 of figuring all these things out for the maps such
 12 as Mr. Gartner? So is that a spreadsheet that you
 13 could have forwarded to anyone who might have
 14 wanted to know the name, address and phone number
 15 of any landowner?
 16 A. That is correct.
 17 Q. Now, I understand that normally that would
 18 be kept internally, maybe not, but so it's not
 19 something you hand out to -- you know, in public,
 20 but it's something you would be easily allowed to
 21 send to somebody who needs it within Minnesota
 22 Power; correct?
 23 A. That is correct.
 24 MR. BOUGHEY: I have nothing further.
 25 Thank you.

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1 JUDGE DAWSON: Ms. Smith, is it you?
 2 MS. SMITH: Thank you.
 3 **DIRECT EXAMINATION**
 4 **BY MS. SMITH:**
 5 Q. So, Mr. Isaacson, I think you said you're
 6 in Mandan. Are you at your house in Mandan?
 7 A. Yes.
 8 Q. And just so that everyone knows, are you
 9 joining us remotely because of a sore throat and
 10 wanting to make sure that you don't share any type
 11 of illness with your -- with anyone in the room?
 12 A. Yeah. When I started to not feel good, I
 13 just felt it best to take precautions and --
 14 Q. All right.
 15 A. -- not take any risks in that regard.
 16 Q. And what's your position with Minnesota
 17 Power?
 18 A. I'm the senior property and right-of-way
 19 agent.
 20 Q. And did you file prefiled direct testimony
 21 in this matter?
 22 A. I did.
 23 Q. And is that testimony provided as MP
 24 Exhibit 3 and 3-1 through 3-2?
 25 A. Yes.

1 A. Yes, I would have known had I went there.
 2 Q. What were you doing the day of the
 3 hearing?
 4 A. I was having -- getting easements signed
 5 for the project.
 6 Q. And do you recall who those easements were
 7 with?
 8 A. Yes. Ann Doll.
 9 MS. SMITH: And I'm going to -- and
 10 hopefully these have been distributed by
 11 Mr. Mahlberg or he's in the process of doing that.
 12 JUDGE DAWSON: He's in the process.
 13 MS. SMITH: Got it. I'm going to show one
 14 of those here. I just want to make sure I've got
 15 the correct -- correct number. Yep. All right.
 16 So bear with me a second. Looks like I might need
 17 to have presentation authority. Could I -- could I
 18 get control to share my screen?
 19 JUDGE DAWSON: Jason's working on it.
 20 MS. SMITH: Got it. I'm sorry, I can't
 21 see him so I can't tell if it's in process or -- or
 22 not. There we go.
 23 MR. BOUGHEY: Your Honor, before we begin,
 24 I just need to ask, the easement I was just handed
 25 relates to the Lennicks, the first one. The second

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1 Q. And if I asked you those same questions
 2 today, would your answers be the same or
 3 substantially the same?
 4 A. Yes.
 5 Q. And I'm going to try not to go in depth
 6 here, but I want to give the commissioners a little
 7 bit of background. So what was your role with
 8 respect to the Bison wind project specifically?
 9 A. I worked with the majority, if not all, of
 10 the out-of-state landowners on the project.
 11 There's some local landowners too, but the vast
 12 majority of my work dealt with people who lived out
 13 of state or ones out of the area or -- within a
 14 short drive.
 15 Q. And because of that was it then Scott
 16 Monroe that was primarily responsible for
 17 interactions with the Kesslers?
 18 A. Correct.
 19 Q. Did you talk with the Kesslers prior to
 20 the September 13, 2013, public hearing?
 21 A. I did not.
 22 Q. Did you attend the public hearing?
 23 A. No, I did not.
 24 Q. Had you, you would have known that you
 25 went there?

1 one to Maize. And neither of those easements, to
 2 my knowledge, relate to anything subject to Turbine
 3 441, at least --
 4 MS. SMITH: I think, Mr. Boughey, it
 5 should be MP Exhibits 17 and 18 that you have in
 6 front of you.
 7 MR. BOUGHEY: I have -- I'm sorry, I have
 8 13 and 14 is what was just handed out.
 9 MR. MAHLBERG: If Ms. Smith will afford me
 10 the opportunity to pass out the other ones.
 11 MS. SMITH: Sure. Yep. Absolutely.
 12 JUDGE DAWSON: As you might surmise, we
 13 have received Exhibits 13 and 14 and now are
 14 receiving other exhibits. We have Exhibits 16 and
 15 17 now.
 16 MS. SMITH: All right.
 17 MR. BOUGHEY: Patrick, will there be a 15?
 18 MR. MAHLBERG: Yes, there will.
 19 Q. (MS. SMITH CONTINUING) All right. I
 20 think I have 17 up first, and --
 21 MR. BOUGHEY: Your Honor, I was waiting to
 22 get all the exhibits, and if I could wait to get
 23 No. 15, I think I'm in the position to frankly lay
 24 the foundation for an objection. From what I can
 25 tell, none of these exhibits relate to Section 15

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1 and, therefore, I don't see why we're having -- I
 2 will object as to the exhibits so far handed to me
 3 as being irrelevant because they don't relate to
 4 Section 15 or the Kesslers' property.
 5 It's possible by the name that one of them
 6 relates to where Turbine 441 went. There's no
 7 dispute as to where 441 is, so I fail to understand
 8 how any of this has anything to do with our case
 9 today. So I object as irrelevant.
 10 JUDGE DAWSON: Okay. Ms. Smith.
 11 MS. SMITH: Thank you, Your Honor. So
 12 these are not -- I think the purpose of these are
 13 not specific to 441. There have been allegations
 14 of Minnesota Power personnel being at the hearing
 15 that were in Minnesota Power's testimony not
 16 present at the hearing. These particular exhibits
 17 are being shown to document a notarization by
 18 Mr. Isaacson on the day of the hearing. So these
 19 are to help substantiate where Mr. Isaacson was on
 20 that day of the hearing.
 21 MR. BOUGHEY: Your Honor -- Your Honor,
 22 again, if that's the only purpose of this, we're
 23 wasting a lot of time. The Kesslers testified
 24 that -- several times, and both changed one of
 25 their answers in discovery they weren't positive

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1 who it was. We could care less which one was
 2 there. All that matters is they know it was
 3 somebody from Minnesota Power.
 4 And if -- if that's the only purpose of
 5 going through four or five exhibits, to show that
 6 he signed something on that day somewhere else,
 7 I -- I still think it's irrelevant. He can testify
 8 that I wasn't there and that would take care of it.
 9 MS. SMITH: Your Honor, I believe that if
 10 we're going to have continued assertions from the
 11 Kesslers that certain people were in certain
 12 locations, it doesn't hurt to have the backup
 13 authority to provide to the Commission. And, quite
 14 honestly, I would have been done. I just have to
 15 ask Mr. Isaacson --
 16 JUDGE DAWSON: Proceed quickly.
 17 MS. SMITH: -- about these.
 18 Q. (MS. SMITH CONTINUING) All right.
 19 Mr. Isaacson, is MP Exhibit 17 one of the exhibits
 20 that was signed by Ann Doll on September 13, 2013?
 21 MR. BOUGHEY: Your Honor, I apologize.
 22 What exhibit are we at? I'm sorry, Counsel.
 23 You're not on 13 and 14?
 24 MS. SMITH: I'm on --
 25 MR. BOUGHEY: What?

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1 MS. SMITH: No. I'm on MP Exhibit 17.
 2 MR. BOUGHEY: Okay. Thank you.
 3 MS. SMITH: Okay.
 4 MR. BOUGHEY: And seven -- okay.
 5 JUDGE DAWSON: Are you there, Mr. Boughey?
 6 MR. BOUGHEY: I am. And I apologize.
 7 Some of them are signed by Scott Monroe. Some are
 8 signed by Wade Isaacson. That's why I was
 9 confused. Thank you.
 10 JUDGE DAWSON: Ms. Smith, proceed.
 11 MS. SMITH: Thank you.
 12 Q. (MS. SMITH CONTINUING) Mr. Isaacson, is
 13 this your signature -- your notary signature dated
 14 September 13, 2013, on this document?
 15 A. Yes.
 16 Q. And then if you'll look at MP Exhibit 16,
 17 and give me just a second. And I have that. Do
 18 you have it in front of you?
 19 A. Yes.
 20 Q. And, Mr. Isaacson, is that also your
 21 signature from September 13 as noted?
 22 A. It is.
 23 Q. When did you first meet the Kesslers?
 24 A. Could you repeat the question, please?
 25 Q. Sure. When did you first meet the

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1 Kesslers?
 2 A. October of 2013.
 3 Q. And so did you -- did you make any
 4 communications, any statements to the Kesslers or
 5 hear any statements from the Kesslers at the public
 6 hearing or before you met them in October of 2013?
 7 A. No.
 8 Q. And how many meetings did Minnesota Power
 9 have with the Kesslers regarding signing the
 10 easements for the Bison 4 project?
 11 MR. BOUGHEY: Objection.
 12 THE WITNESS: Two that I'm aware of.
 13 MR. BOUGHEY: Yeah, I was going to say
 14 objection. Lack of foundation, because he only
 15 knows the ones he knows about. He's already made
 16 the objection for me.
 17 JUDGE DAWSON: Ms. Smith.
 18 Q. (MS. SMITH CONTINUING) And you said -- so
 19 two meetings, and at each of those meetings were
 20 easements signed, to your knowledge?
 21 A. Yes.
 22 Q. During either of those two meetings, did
 23 the Kesslers tell you they didn't want to sign an
 24 easement for the project?
 25 A. No.

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1 Q. During either of those two meetings, did
2 you tell the Kesslers that Minnesota Power would go
3 to a judge and get the easements signed in 30 days
4 if the Kesslers didn't sign the easement?

5 A. No, I've never said that to anyone ever.

6 Q. During either of those two meetings did
7 you mention or otherwise refer to Minnesota Power
8 using eminent domain to obtain the easements if the
9 Kesslers didn't sign?

10 A. No.

11 Q. During any meeting with the Kesslers that
12 you had, did you tell the Kesslers that the
13 project's turbines would not bother their property?

14 A. No.

15 Q. When did you first learn the Kesslers had
16 a concern about Turbine 441?

17 A. February 2017.

18 Q. And how did you learn that?

19 A. Keith came to our office in New Salem to
20 discuss the Bison 4 cleanup issues with Scott
21 Monroe. Scott was not there so he just briefly
22 chatted with Todd Simmons and myself, and on the
23 way out the door, he mentioned a noise issue with
24 Turbine 441 that was affecting a house northwest of
25 the turbine where his son was living.

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1 Q. Now, the Kesslers have alleged that they
2 repeatedly told you that they had concerns about
3 the proximity of Turbine 441 to the Section 15
4 structure before the turbine was constructed. Is
5 that -- is that true?

6 A. No.

7 Q. The Kesslers have alleged that prior to
8 Turbine 441 being constructed, they repeatedly told
9 you that their son or their sons would be moving
10 into the Section 15 structure at some point in the
11 future. Before February of 2017, did the Kesslers
12 ever tell you their son or sons planned to move
13 into the Section 15 structure?

14 A. No.

15 Q. Beyond hearing, you know, such a thing
16 directly, were you otherwise made aware of those
17 alleged plans?

18 A. No. Nothing.

19 Q. When you learned in February 2017 that the
20 Kesslers had a concern about the proximity of
21 Turbine 441 to the Section 15 structure, what did
22 you do?

23 A. I immediately emailed Matt Freudenrich,
24 Barry Gartner and Scott Monroe, and I included Todd
25 on that email too, to see if they knew of any

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1 structure northwest of that particular turbine.

2 Q. And what was the conclusion or the
3 information that was shared with you?

4 A. Matt responded back and it seemed,
5 according to his response, that he wasn't aware of
6 the issue as far as the noise level of that
7 turbine, so --

8 Q. In that -- is that email correspondence
9 that you're referencing what was provided as MP
10 Exhibit 3-2 at your prefiled testimony?

11 A. Yes.

12 Q. And does that document both your email
13 that you were just referencing to your colleagues
14 and Matt's response?

15 A. Yes.

16 Q. After raising the concern about Turbine
17 441 in February of 2017, did the Kesslers then
18 raise that concern with PSC staff?

19 A. I believe they did, yes.

20 Q. And there's been some testimony about an
21 April 2017 meeting at the Kesslers' property that
22 involved the Kesslers, PSC staff and Minnesota
23 Power. Did you attend that meeting?

24 A. Yes.

25 Q. And during that meeting, did you or anyone

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1 else from Minnesota Power admit or otherwise state
2 that the Kesslers had told you before Turbine 441
3 was constructed that their son would be moving into
4 the Section 15 structure?

5 A. I did not.

6 Q. And during the meeting, did you or anyone
7 else from Minnesota Power admit or otherwise state
8 that Minnesota Power had told the Kesslers that
9 Turbine 441 would not be within 1400 feet of the
10 Section 15 property --

11 A. No.

12 Q. -- or structure? Excuse me. Thank you.
13 Did Mr. Kessler get upset during that
14 meeting?

15 A. He did.

16 Q. And what -- what led him to get upset?

17 A. Well, he had mentioned that he had told us
18 about this issue with the turbine prior to the
19 April meeting. And after the February 17 visit to
20 our office, we started looking into the matter, and
21 we could not find any evidence, emails, letters,
22 texts, voicemails, anything in that regard. So I
23 asked Keith if he had put anything in writing. And
24 then he kind of blew up and he said, "I thought a
25 handshake was good enough with you guys." He

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1 testified at the hearing about the issue with that
2 turbine and the house, and that was about the end
3 of the conversation.

4 MS. SMITH: I have no further questions.

5 JUDGE DAWSON: Mr. Johnson.

6 **EXAMINATION**

7 **BY MR. JOHNSON:**

8 Q. Mr. Isaacson, do you have any information
9 that goes to whether or not the Section 15
10 structure was occupied at the time the order was
11 granted?

12 A. No.

13 Q. And do you have any information or
14 knowledge of Minnesota Power withholding
15 information from the Commission that it knew or
16 should have known from the Kesslers or anybody else
17 about that being an occupied residence?

18 A. No.

19 MR. JOHNSON: I don't have any further
20 questions.

21 JUDGE DAWSON: Commissioner Fedorchak.

22 COMMISSIONER FEDORCHAK: Thank you, Judge.

23 **EXAMINATION**

24 **BY COMMISSIONER FEDORCHAK:**

25 Q. Mr. Isaacson, I think I just have one

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1 question, but -- let's see. MP 3-2 is the copy of
2 the email that you sent out on February 9?

3 A. Yes.

4 Q. And in it -- let's see -- Matt says,
5 "Didn't he sign something during the easement
6 acknowledging the surrounding turbines?"

7 Can you tell me about that? What is that
8 or what would it be and how would it relate to this
9 or not?

10 A. Yeah, I wasn't familiar with waivers of
11 any kind, so I didn't know exactly what he was
12 referring to.

13 Q. So -- but you guys never pursued that?

14 A. No.

15 Q. You don't know of any acknowledgment of
16 surrounding turbines that was signed?

17 A. No, I do not.

18 Q. Is that something that you guys do use?

19 A. I've never used the waiver during the
20 Bison project so, like I say, it's unfamiliar to
21 me.

22 Q. Well, I wouldn't call it a waiver. I
23 mean, a waiver is if you're signing it and saying
24 you can be within the distance of the 1440. This

25 is just an acknowledgment that these turbines -- it

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1 sounds to me this is just an acknowledgment that
2 there's turbines located near your land.

3 A. Yeah, I --

4 Q. Do you guys do that?

5 A. No.

6 Q. You've never used that type of a thing,
7 only a waiver --

8 A. No.

9 Q. -- like you're talking about?

10 A. Correct.

11 Q. And when would you use a waiver?

12 A. I guess I'd have to check with legal
13 because, like I say, it hasn't come up during the
14 Bison project, so --

15 Q. When would you use it, just generally?
16 When do you use waivers?

17 A. I suppose if the landowner had a house
18 that wasn't going to be occupied, they might want
19 to sign a waiver saying that we could place a
20 turbine near that house possibly. That's the only
21 thing I can think of offhand.

22 Q. Okay. Or would you use it -- do you use
23 them when you have a landowner that will agree to
24 putting a turbine closer than the setback, even --

25 A. I suppose theoretically that could happen,

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1 but --

2 Q. -- if they have a house within the setback
3 site?

4 A. Yeah. Like I say, theoretically that can
5 happen, but it didn't occur during Bison, so --

6 Q. Do you work on other projects, siting of
7 other projects?

8 A. I don't work in the siting part of it. I
9 specifically stick to signing them up with the
10 options and then the easements.

11 Q. Okay. Well, I guess I consider that all
12 part of the siting project -- process, so --

13 A. Okay. Well, Bison 1 through 4 I worked
14 on.

15 Q. Are you still in that role? Are you
16 working on any other projects now?

17 A. Yes. I'm helping our sister company,
18 ALLETE Clean Energy, with a project out west.

19 Q. Okay.

20 A. Along Highway 49.

21 Q. And do you guys have the -- have the -- do
22 you use waivers in -- with landowners in that -- in
23 your interactions with them now, if there's any
24 question?

25 A. Official -- official waiver, no.

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1 Q. What is an unofficial waiver?
 2 A. Well, when a landowner wanted to -- like I
 3 said earlier, he's got an old farmhouse and only
 4 used during cattle operations and let me know that
 5 we could place a turbine there within 1400 feet, if
 6 necessary. So he and his wife signed a letter to
 7 that effect and gave it to me, and I passed it
 8 along to the people with ALLETE Clean Energy.
 9 Q. All right. And so is the difference --
 10 did he initiate that or why are you calling that an
 11 unofficial waiver?
 12 A. Yeah, he initiated it and I asked ALLETE
 13 Clean Energy for a waiver form. They didn't have
 14 one available or didn't produce one. So I just
 15 mentioned that to the landowner, and he went ahead
 16 and signed a letter to that effect allowing the
 17 company to place a turbine within that old
 18 farmhouse, if necessary.
 19 Q. And why -- why do you suppose he initiated
 20 that?
 21 A. He's -- he already has some wind turbines
 22 over in the Bison project and he's hoping to get
 23 more for the other project.
 24 Q. Oh, okay. So he wanted to send a message
 25 that you could put more there?

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1 A. Correct.
 2 Q. I see.
 3 COMMISSIONER FEDORCHAK: Okay. I think
 4 that -- that's it for me for now. Thank you.
 5 JUDGE DAWSON: Commissioner Christmann.
 6 **EXAMINATION**
 7 **BY COMMISSIONER CHRISTMANN:**
 8 Q. On your MP Exhibit 17, should I assume
 9 that -- how do you pronounce this guy's name? Is
 10 it Oachs, O-a-c-h-s?
 11 A. Yes.
 12 Q. So why did Mr. Oachs get Larry and Fay's
 13 signature and -- and you got Ann's and on different
 14 days?
 15 A. So our process is to have a company
 16 executive sign off on the easements after we have
 17 the landowner sign, and so that's -- that's the
 18 final signature we need to make the easement whole
 19 and that we go ahead and record the document after
 20 that. So -- and he was, by the way, stationed --
 21 or working out of our home office in Duluth.
 22 Q. Bradley was?
 23 A. That's -- yes. Mr. Oachs was, yes.
 24 Q. So on the 13th of September you got all
 25 these signatures, Larry and Fay's on one page, and

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1 then Ann's on the next page; is that correct?
 2 A. I don't -- you're showing a document that
 3 Scott Monroe signed. I know I got Ann Doll's
 4 signature on that date. I can't remember if I got
 5 Larry and Fay's on the same date or not.
 6 Q. Well, I'm just trying to figure out how
 7 meaningful these dates are when -- I mean, the
 8 contract is dated October 14, the very first page
 9 of it. What's the meaningfulness of October 14 as
 10 opposed to the other three that were handed out
 11 that are September 30? Is that the effective day
 12 or what's that?
 13 A. Yes. So we -- typically at the end of a
 14 week we gather all of the easements that were
 15 signed by the land agents that week and then we
 16 mail over to Minnesota Power and that's when
 17 Mr. Oachs would sign them.
 18 Q. Well, what's the meaningfulness of the
 19 date on the first page?
 20 A. Oh, let's see. Without seeing the whole
 21 document, I'm not sure. Sometimes -- let's see if
 22 that date pops up again. Let me see. Can you
 23 scroll down to the -- that's the date that
 24 Mr. Oachs signed, so that's the date that the
 25 easement was completed.

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1 Q. Well, if that's the date that -- if
 2 Mr. Oachs signed on October 14, how did Mr. Monroe
 3 notarize it on September 20 already?
 4 A. Well, he notarized it first and then, like
 5 I said, and we mail it over to Mr. Oachs and a few
 6 weeks later Mr. Oachs signs it.
 7 Q. So you -- you stamp something as a
 8 notarized signature and then mail it to them to
 9 sign? That seems --
 10 A. Yes. That's our process. Like I say, our
 11 company executive signs off on the easement after
 12 we get -- or got all the necessary signatures on
 13 our end, so --
 14 Q. I feel like I'm failing to understand.
 15 MS. SMITH: Commissioner Christmann --
 16 JUDGE DAWSON: Ms. Smith.
 17 MS. SMITH: -- I was showing the wrong
 18 thing to Mr. Isaacson, so I just want to make sure
 19 that he's seeing -- I was showing the notary block
 20 for the landowners. Here's the notary block for
 21 Mr. Oachs. So I just wanted to make sure that he
 22 understood, so --
 23 COMMISSIONER CHRISTMANN: Well, I'm
 24 looking at the notary block in Exhibit 17, right
 25 below where Larry Doll, Fay Doll and Bradley Oachs

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1 signed, and it's notarized by Scott Miller the 20th
2 day of September.
3 MS. SMITH: Yeah. And if you look at
4 that, that's Mr. Doll and Ms. Doll's signature
5 that's being notarized, and then right below that
6 is the signature block for Mr. Oachs.
7 COMMISSIONER CHRISTMANN: Oh, okay. Okay.
8 Now I --
9 MS. SMITH: I just didn't want there to be
10 any confusion.
11 COMMISSIONER CHRISTMANN: There was, but
12 now I get it. Thank -- thank you for clarifying
13 that.
14 MS. SMITH: I thought maybe there was and
15 I thought maybe it was my fault, so --
16 COMMISSIONER CHRISTMANN: I have no other
17 questions, Your Honor.
18 JUDGE DAWSON: Commissioner Kroshus.
19 **EXAMINATION**
20 **BY COMMISSIONER KROSHUS:**
21 Q. Good afternoon, Mr. Isaacson. Just one
22 question. Did you -- it doesn't appear that you
23 worked with the Lennicks; is that correct?
24 A. That is correct.
25 COMMISSIONER KROSHUS: Okay. Then I have

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1 no other questions. Thank you.
2 JUDGE DAWSON: Mr. Boughey.
3 **RECROSS-EXAMINATION**
4 **BY MR. BOUGHEY:**
5 Q. I too am confused by the notarization
6 relating to Ann Doll, which is September 13, when
7 No. 17 -- oh, there I see it. We do have Ann on
8 there. Okay. So there were three. All right. It
9 is confusing. I now figured it out. All right.
10 Mr. Isaacson, I understand when you met on
11 that Good Friday, April 14, 2017, your direct
12 testimony -- and I'm at your exhibit -- actually,
13 it's your testimony, page 5, line 148, and you've
14 already testified to it. So I'm going to read what
15 you had in your testimony and what you testified to
16 and then I'm going to have a question about that.
17 Okay?
18 A. Sure.
19 Q. So at line 147, "I also remember
20 Mr. Kessler stating that Minnesota Power had told
21 him Turbine 441 would not be within 1400 feet of
22 the Section 15 Structure." Then the next sentence
23 says, "We had not found anything to support that
24 sort of allegation, so I asked Mr. Kessler if he
25 had something in writing."

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1 Was that your direct testimony and your
2 testimony today in regards to what occurred?
3 A. Yes.
4 Q. Okay. And I apologize, I'm trying to pull
5 something up on the screen. What happened to it?
6 Here we are. So I'll try and share screen. For
7 the record, I'm from 1850 Paris, France. All this
8 is new to me. All right. I think I -- I hope I
9 have it now. I'll hit "share" and see if I've got
10 it. Yes.
11 Sir, the application that Minnesota Power
12 submitted, the site application for this project
13 submitted in May of 2013, are you able to see the
14 document I just put on the screen and the part
15 highlighted --
16 A. Yes.
17 Q. -- in yellow?
18 A. Yep.
19 Q. And this is a document that's the actual
20 application that Minnesota Power submitted to the
21 PSC so that this project would be approved;
22 correct?
23 A. Yes.
24 Q. And it's dated May 2013; correct?
25 A. Yes.

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1 Q. And is that first sentence highlighted,
2 "No turbines will be placed within 1400 feet of
3 occupied residences." Do you see that language in
4 your own application, sir?
5 A. I do.
6 Q. Is it possible we have now found something
7 in writing that supports the allegation that you're
8 supposed to have the thing back 1400 feet?
9 MS. SMITH: Objection. That misstates the
10 testimony.
11 MR. BOUGHEY: I don't think so. I think
12 it's fair.
13 JUDGE DAWSON: I think the commissioners
14 can make a difference if there's a difference.
15 I'll allow the question.
16 Q. (MR. BOUGHEY CONTINUING) The question was
17 doesn't this -- isn't there something in writing
18 that Mr. Kessler -- you said you found nothing to
19 support that sort of allegation that 441 had to be
20 at least 1400 -- 1400 feet from the structure. My
21 question is a simple one. Doesn't your application
22 state in writing precisely that, sir?
23 A. It does, but I've never seen this document
24 until today.
25 Q. So you're the person who's the land person

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1 who's going out getting easements from the
 2 neighbors, right, the landowners?
 3 **A.** Yes.
 4 **Q.** And were you given no instructions by
 5 anybody in Minnesota Power or any information by
 6 anybody in Minnesota Power that Minnesota Power
 7 would place no turbines within 1400 feet of
 8 occupied residences? Are you telling me you didn't
 9 know that when you were getting these things
 10 signed?
 11 **A.** Well, I know that. I'm just saying I've
 12 never seen this document until today.
 13 **Q.** All right. Well, a minute ago -- all
 14 right. Fine. So when you said to him we have
 15 nothing to support -- you have nothing to support
 16 this in writing, did you get nothing in writing
 17 from Minnesota Power telling you that that
 18 1400-foot would be applicable?
 19 **A.** No. I was asking Mr. Kessler if he had
 20 anything that he corresponded with us about his
 21 concern about the turbine. There was --
 22 **Q.** So the fact it's in the application, the
 23 fact that you've agreed to do it and the fact that
 24 the PSC has ordered you to do it isn't
 25 sufficient --

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1 MS. SMITH: Objection.
 2 MR. BOUGHEY: I'm going to finish the
 3 question, Counsel, if I may.
 4 MS. SMITH: Go ahead.
 5 **Q.** (MR. BOUGHEY CONTINUING) All those things
 6 aren't sufficient for you and you want Mr. Kessler
 7 to hand you something in writing out in the field
 8 on Good Friday, April 14, 2017?
 9 **A.** Well --
 10 MS. SMITH: I'm going to object on the
 11 grounds that this is argumentative and that he is
 12 twisting the testimony to suit his own purposes.
 13 MR. BOUGHEY: I'm sorry, but
 14 cross-examination includes tough questions. It's
 15 not argumentative. I'm asking --
 16 MS. SMITH: It's not a tough question. It
 17 is a misstatement of the testimony.
 18 JUDGE DAWSON: It's a confusing question
 19 that's mixing up two ideas, and so it's a compound
 20 question. So I'm a little --
 21 MR. BOUGHEY: All right. I will rephrase.
 22 JUDGE DAWSON: -- I'm a little confused
 23 myself with the question, so I'd prefer a more
 24 direct question.
 25 MR. BOUGHEY: Very good. I will -- I will

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1 try to take care of the court's making the
 2 objection of the compound question. That I can
 3 handle.
 4 **Q.** (MR. BOUGHEY CONTINUING) We have not
 5 found anything to support that sort of allegation.
 6 Have you found anything to support the allegation
 7 that the homes are supposed to be at least -- the
 8 turbines are supposed to be 1400 feet from occupied
 9 residences?
 10 MS. SMITH: Objection. That's still --
 11 that's not what he testified to. He said he asked
 12 if Mr. Kessler had anything to support a
 13 communication with the company, not does he have
 14 something supporting the standard of 1400 feet that
 15 was agreed to by Minnesota Power.
 16 MR. BOUGHEY: Your Honor, I quoted his own
 17 testimony, his own words. Just asking if --
 18 MS. SMITH: And took them out of context.
 19 JUDGE DAWSON: I'm going to sustain the
 20 objection because I understand what Ms. Smith is
 21 saying and that it's mixing two ideas together.
 22 **Q.** (MR. BOUGHEY CONTINUING) All right. You
 23 claim that you were aware that there was a
 24 1400-foot setback requirement for the turbines;
 25 correct?

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1 **A.** It was common knowledge amongst everybody
 2 working on the project.
 3 **Q.** If it's common knowledge, why did you
 4 demand that Mr. Kessler show you something in
 5 writing?
 6 **A.** I didn't demand. I simply asked if he had
 7 anything because we were searching ourselves to
 8 find something.
 9 **Q.** So just being a good neighbor, you're
 10 demanding something in writing about something you
 11 know exists. Is that what being a good neighbor --
 12 MS. SMITH: Objection. Argumentative.
 13 MR. BOUGHEY: I have nothing further, Your
 14 Honor. Oh, I do have one other area.
 15 **Q.** (MR. BOUGHEY CONTINUING) Did you ever
 16 make any statement to Mr. Kessler -- and I think I
 17 already -- you said this -- about going to a judge
 18 and get something signed by a judge if he wouldn't
 19 sign the easement?
 20 **A.** No.
 21 **Q.** Are you aware of anyone who was allowed --
 22 who had already signed the option and then were let
 23 out of the easement because they said I don't want
 24 a turbine on my property?
 25 **A.** No.

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1 Q. Have you ever gone to a court to obtain
 2 any type of order to enforce the contract option
 3 that you had had?
 4 A. No.
 5 Q. And then one last time, did you deal with
 6 Gary Doll in regards to the option and then putting
 7 a turbine on his property?
 8 A. We dealt with Gary Doll, but it did not
 9 have to do with a turbine.
 10 Q. I'm sorry?
 11 A. I said we dealt with Gary Doll in that
 12 regard, but it was not concerning him not wanting a
 13 turbine.
 14 Q. Wasn't he allowed out of an option?
 15 A. We presented an easement to him for an
 16 underground collection system --
 17 Q. Mm-hmm.
 18 A. -- and he did not want the cables running
 19 across the property. So we approached the Oliver
 20 County board and asked if we could use the
 21 right-of-way to get around Mr. Doll's property and
 22 they agreed that we could.
 23 MR. BOUGHEY: Okay. I have nothing
 24 further. Thank you.
 25 JUDGE DAWSON: Ms. Smith.

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1 MS. SMITH: I don't have anything. Thank
 2 you.
 3 JUDGE DAWSON: Any further questions?
 4 COMMISSIONER CHRISTMANN: I don't.
 5 JUDGE DAWSON: Seeing no further
 6 questions, you may step down.
 7 THE WITNESS: Thank you.
 8 JUDGE DAWSON: Mr. Boughey.
 9 MR. BOUGHEY: If I may confer for a moment
 10 with my clients.
 11 JUDGE DAWSON: Okay.
 12 MR. BOUGHEY: Your Honor, we have no
 13 further witnesses, but I do have one other issue
 14 that we have discussed a few times and that is
 15 the -- as my case in chief, I, of course, made a
 16 request that we have both damages and also attorney
 17 fees that has been denied through our motion for
 18 reconsideration.
 19 Normally, the way attorney fees are
 20 handled in most court cases is after the case is
 21 done, the other side has a certain amount of time
 22 or the side that wants attorney fees has a certain
 23 amount of time to submit the request. Obviously,
 24 I'd be submitting that only as a matter of record
 25 as to what the fees would be and then that person

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1 would -- the other side would have an opportunity
 2 in the responsive brief to respond not only to the
 3 major brief but also as to the request for attorney
 4 fees.
 5 Again, I know it's been denied, but I
 6 think I have to keep a clean record and -- and
 7 present as part of my posttrial briefing had
 8 attorney fees been allowed, this is what we would
 9 have submitted, this is the amount that we would
 10 have been requesting.
 11 Again, I know it's been denied, but I
 12 think it's essential that we have -- that I file
 13 that with my posttrial brief so that we have it as
 14 a matter of record.
 15 JUDGE DAWSON: Any comment?
 16 MR. MAHLBERG: I have a -- I have a
 17 response.
 18 JUDGE DAWSON: Oh, you do.
 19 MR. MAHLBERG: Entitlement to attorney's
 20 fees is a separate issue from the reasonable amount
 21 of attorneys' fees to be awarded. And so while
 22 Mr. Boughey may have cases where attorney fees are
 23 in play and you then submit your bills and fight
 24 about the reasonableness of them, in this case the
 25 Commission's looked at the issue twice and denied

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1 it.
 2 There is no value, other than potential
 3 prejudice, of submitting in bills that show the
 4 amount of money the Kesslers have paid or are
 5 indebted to their lawyer. And so I don't think
 6 that there is any -- any basis to be submitting
 7 bills at this point in time until such time as --
 8 as the Commission, if it looked at the issue a
 9 third time, and changed its mind.
 10 JUDGE DAWSON: Mr. Johnson.
 11 MR. JOHNSON: I -- I just -- I'm kind of
 12 at a loss. We don't have the authority to grant
 13 damages or attorney's fees in this matter. It's
 14 been made clear twice. I don't know what value
 15 they would have. I understand Mr. Boughey's
 16 concerned about his appeal record, but, quite
 17 frankly, that doesn't affect the Commission.
 18 MR. BOUGHEY: If I may have rebuttal.
 19 JUDGE DAWSON: Yes.
 20 MR. BOUGHEY: It's true it's been made
 21 clear twice, but it's possible that -- that through
 22 any appeal process, if there is one, that the
 23 interpretation of the statute that I have
 24 previously alluded to might be interpreted by
 25 either district court or the supreme court as

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1 allowing damages and as allowing attorney fees.
 2 And, of course, I have asserted all along I would
 3 like to think that the PSC would want to have that
 4 as one of its tools or arrows in its quiver whether
 5 they give it to me or not.

6 And so as far as the potential prejudice,
 7 if anyone has been prejudiced, it has been the
 8 Kesslers by having to fund trying to fix North
 9 Dakota law and not being allowed attorney fees.

10 And then, lastly, as to whether we had the
 11 fees or reasonableness, I would be glad to
 12 stipulate that all my fee bills are reasonable.

13 MR. JOHNSON: Your Honor, one more thing.
 14 I don't have it on hand. I will find the case law
 15 that says we don't have the authority to it and
 16 forward it to Mr. Boughey at his earliest
 17 convenience.

18 JUDGE DAWSON: Well, the issues before us
 19 today do not relate to attorneys' fees, and it has
 20 been dealt with as to whether they're allowed or
 21 not. So the amount is not in question. If it did
 22 come into question, I'm sure it would be remanded
 23 back to this body to provide it or they would ask
 24 for the information themselves, the higher court.
 25 So we'll leave it to them.

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1 MR. BOUGHEY: And I assume that I have
 2 properly saved my objection to this so that I don't
 3 have to worry about anyone doing a waiver.

4 JUDGE DAWSON: Certainly.

5 MR. BOUGHEY: I forgot one other item,
 6 Your Honor, which -- and this is very minor, but a
 7 few moments ago Judge -- I almost said "Justice"
 8 again -- Public Service Commissioner Fedorchak
 9 mentioned one thing, and I wanted to just bring
 10 up -- if it will work -- and I'm not sharing right
 11 now -- to answer a question. Let's see how I get
 12 to "share" again. Here we go. Is it sharing?
 13 It's not coming up as a full window. I apologize.
 14 I hope it'll only take me a moment to figure this
 15 out. I'll stop sharing and try again. I am not
 16 succeeding in sharing. It comes up on the side
 17 window instead of the full one.

18 COMMISSIONER FEDORCHAK: It's there.

19 MR. BOUGHEY: There it is. Excellent.

20 In any event, there was reference to a
 21 waiver a while ago, so I just wanted to -- if I
 22 need to do this through cross-examination of Mr. --
 23 of Wade, that's fine, but Section 49-22-05.1 --

24 MS. SMITH: Excuse me, Your Honor.

25 JUDGE DAWSON: Yes.

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1 MS. SMITH: I can tell from reading this
 2 document that this is not relevant to the
 3 questioning that was being asked by Commissioner
 4 Fedorchak. As I understood Commissioner
 5 Fedorchak's comments, they were specific to some
 6 sort of waiver within Minnesota Power, not whether
 7 there is the opportunity now to have variances or
 8 waivers from a statute that was not in place at the
 9 time Minnesota Power permitted this project. The
 10 portion that's -- the any three times height or any
 11 of this was not in place at that time.

12 MR. BOUGHEY: And the reason it is
 13 relevant is the question that the commissioner
 14 asked was how about now, what are you doing now as
 15 far as this, and there was references to the word
 16 "waiver." If I would have just a moment to at
 17 least provide the Commission with the statute and
 18 what is now North Dakota law, which is why I think
 19 the use of the term "waiver" is -- versus a
 20 variance is causing confusion.

21 MS. SMITH: Yeah.

22 JUDGE DAWSON: Ms. Smith.

23 MS. SMITH: This is testimony from
 24 Mr. Boughey, and if he wants to make a legal
 25 argument about the law, then he is allowed to do

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1 that in his posthearing brief.

2 MR. BOUGHEY: And I --

3 JUDGE DAWSON: The Public Service
 4 Commission is aware of the law as it's in their
 5 title, and so you can bring it up in your brief
 6 or --

7 MR. BOUGHEY: I would like to then --

8 JUDGE DAWSON: -- trust that they
 9 understand the law.

10 MR. BOUGHEY: I'd like to finish my
 11 question to Mr. Wade Isaacson then to clear this
 12 up. It will take two seconds.

13 JUDGE DAWSON: You want to recall
 14 Mr. Isaacson?

15 MR. BOUGHEY: Yes, because there was
 16 testimony as to what do we do now with
 17 nonparticipating landowners and use of a waiver
 18 versus a variance. How about this: You're right.
 19 They know the law.

20 MS. SMITH: I would --

21 MR. BOUGHEY: If I may just finish. All
 22 I'll do then, Your Honor, I will raise it into --
 23 in my brief and I will, if you like, give the
 24 correct cite so that the reference to what was
 25 being discussed by Mr. Isaacson as to how he now

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1 handles nonparticipating landowners may be found at
 2 49-22-05.1, subdivision 3. It was amended in 2017
 3 and 2019.
 4 So although it doesn't apply to this case,
 5 it is what the law presently is and relates to the
 6 answers to the questions he was asked as to how he
 7 presently handles what was referred to as waivers
 8 which is also known as variances. Thank you.
 9 JUDGE DAWSON: Mr. Mahlberg, do you have
 10 any witnesses to call?
 11 MR. MAHLBERG: Oh, we're going there.
 12 JUDGE DAWSON: Yeah, unless you --
 13 MR. MAHLBERG: No. I thought I was being
 14 asked to respond to that.
 15 JUDGE DAWSON: Yeah, you can do either,
 16 really.
 17 MR. MAHLBERG: I -- I don't want to
 18 respond to that. I think we're done with that, and
 19 I think that Ms. Smith plans on calling Mr. Haley
 20 via the -- the internet.
 21 JUDGE DAWSON: Okay.
 22 MR. BOUGHEY: I'm sorry. Who is this
 23 again?
 24 MS. SMITH: That is correct.
 25 MR. MAHLBERG: Jay, J-a-y, Haley,

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1 H-a-l-e-y.
 2 MR. BOUGHEY: Got it. Haley.
 3 JUDGE DAWSON: Ms. Smith.
 4 MS. SMITH: Yes. I do call Mr. Haley, and
 5 I believe you hopefully can all see him now.
 6 JUDGE DAWSON: Hello, Mr. Haley.
 7 THE WITNESS: Hello.
 8 JUDGE DAWSON: Have you been watching the
 9 hearing?
 10 THE WITNESS: Yes, I have.
 11 JUDGE DAWSON: Okay. Where are you
 12 located?
 13 THE WITNESS: I'm in Grand Forks, North
 14 Dakota.
 15 JUDGE DAWSON: Okay. At home or work?
 16 THE WITNESS: Yes. Working from home.
 17 JUDGE DAWSON: And you've seen my --
 18 you've heard my previous warnings as to perjury?
 19 THE WITNESS: Yes, I have.
 20 JUDGE DAWSON: So you understand what
 21 perjury is and the penalties for it?
 22 THE WITNESS: I do.
 23 (Witness sworn.)
 24 JUDGE DAWSON: Ms. Smith.
 25 MS. SMITH: Thank you.

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1 **JAY HALEY,**
 2 being first duly sworn, was examined and testified
 3 as follows:
 4 **DIRECT EXAMINATION**
 5 **BY MS. SMITH:**
 6 **Q.** Mr. Haley, can you state your full name,
 7 who you're employed by and your business address
 8 for the commissioners.
 9 **A.** Sure. My name is Jay Haley. That's
 10 spelled H-a-l-e-y. And I'm a mechanical engineer
 11 with Westwood Professional Services. They're
 12 located at 12701 Whitewater Drive, Suite 300,
 13 Minnetonka, Minnesota 55343.
 14 **Q.** And can you briefly describe for us your
 15 work history and your education.
 16 **A.** Sure. I've got a bachelor's degree in
 17 mechanical engineering from the University of North
 18 Dakota. I spent 5 years as a director of
 19 engineering for a small aerospace firm. I then
 20 spent 10 years as a senior design engineer and a
 21 research engineer with an energy and environmental
 22 research center in Grand Forks. And I spent the
 23 last 23 years as a mechanical engineer and partner
 24 with EAPC Wind Energy where I recently retired back
 25 in October of last year.

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1 And subsequent to that I sold off the wind
 2 engineering portion of the company to Westwood
 3 Professional Services and I've agreed to stay on
 4 for one year with them to assist with the
 5 transition.
 6 I've been involved in the wind business
 7 for about 30 years. Done everything from wind
 8 prospecting, wind resource and energy assessments,
 9 wind farm design, noise and shadow flicker
 10 assessments, photo visualizations and also due
 11 diligence for financial institutions.
 12 **Q.** And what's your connection to Minnesota
 13 Power and the Bison 4 project?
 14 **A.** My firm -- when I was with EAPC, we
 15 performed the original noise and shadow flicker
 16 studies that were submitted to the PSC back in
 17 2013.
 18 **Q.** And what is the purpose of your testimony
 19 here today?
 20 **A.** To discuss an update to that study that I
 21 performed in July of this -- of July of 2020 which
 22 was submitted in September of 2020.
 23 **Q.** And are those -- are you referencing
 24 Exhibit 9-2 that's already been filed with the
 25 Commission?

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1 **A.** Yes.

2 **Q.** And then was there a further update that

3 was conducted that is provided as 9-3?

4 **A.** Yes. I -- I added some additional

5 receptors to model the sound levels at a distance

6 of 115 feet from that structure in Section 15, and

7 I also added a receptor at a sound measurement

8 location that was where a measurement -- a

9 measurement was performed by Barr Engineering at

10 the Aasmundstad property.

11 **Q.** Okay. We'll talk about that in a little

12 bit.

13 Let's start first with can you describe

14 the sound and shadow flicker modeling that you

15 originally conducted for the project in 2013, just

16 briefly?

17 **MR. BOUGHEY:** Your Honor, I apologize, but

18 this is at a point where I need to make a very

19 brief objection. I need to ask one question in

20 regards to foundation to lay the foundation for

21 that objection. I will be very brief.

22 **JUDGE DAWSON:** I'll let you ask the

23 question.

24 **MR. BOUGHEY:** Sir, as I understand it, all

25 this modeling that you did means that you did it on

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1 computers and you didn't actually go to the site to

2 do any type of decibel readings or flicker

3 readings; is that correct?

4 **THE WITNESS:** Yes, it is.

5 **MR. BOUGHEY:** Your Honor, I object to all

6 this line of testimony. It's nothing more than

7 modeling and computerizing, garbage in/garbage out.

8 If they want to know how much the flickering is,

9 they could go there and look at the videotape. If

10 they want to know what the decibels are, they ought

11 to go there and do the measurements. And although

12 this may be appropriate for some other cases, it

13 does not apply. In my view modeling is not --

14 shouldn't be used in regards to this type of

15 violation when we already know they're within too

16 close of a distance.

17 And for that reason, I object that all

18 this is irrelevant. If they want to know what it's

19 like there, they should have gone there and done

20 actual testing and not used modeling in regards to

21 this. And so I object to this witness and all the

22 testimony that he may be allowed to provide.

23 **JUDGE DAWSON:** Ms. Smith.

24 **MS. SMITH:** Thank you. As the Commission

25 and you're aware, modeling is used to determine

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1 compliance with siting requirements, in siting

2 processes, including in this project where it was

3 used in 2013.

4 In addition to providing the modeling,

5 which Mr. Haley will speak to its accuracy, he has

6 also compared it to post-construction actual

7 model -- or actual sound measurements that were

8 taken to confirm that he is -- his modeling is, in

9 fact, conservative, and so that will be part of the

10 testimony.

11 And Mr. Haley is most definitely

12 qualified, as one can see in his résumé at

13 Exhibit 9-1, to speak to his modeling and that this

14 is not, in fact, garbage in/garbage out, but a very

15 highly technical and sound approach to determining

16 sound at a project as well as shadow flicker.

17 **JUDGE DAWSON:** Because this was used as

18 part of the certificate of site compatibility for

19 the project and was the method used, I think it's a

20 valid area of questioning relating to that. And,

21 of course, the weight of the evidence, i.e., actual

22 measurements versus modeling, is left up to the

23 Commission to weigh. You may continue.

24 **MR. BOUGHEY:** Your Honor, may I have a

25 standing objection as to this witness and all this

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1 testimony so I don't have to interrupt it again?

2 **JUDGE DAWSON:** It's noted.

3 **MR. BOUGHEY:** Thank you.

4 **Q.** (MS. SMITH CONTINUING) I think the

5 question I had just asked was a little bit about

6 the sound and modeling that was conducted

7 originally and how that was conducted.

8 **A.** Well, the -- with regard to the sound

9 methodology, the inputs to the sound model would be

10 the turbine locations and the turbine

11 specifications, the local terrain elevation data,

12 ground attenuation assumptions, atmospheric

13 attenuation assumptions, and the locations of the

14 occupied structures.

15 **Q.** And as far as doing the update, why was it

16 that you conducted the update that is now part of

17 your report from September and then you updated

18 again this year?

19 **A.** I was asked to do an updated study by

20 adding one more structure to the model, which was

21 the -- the structure in question in Section 17.

22 **Q.** I believe you mean Section 15, just to

23 confirm?

24 **A.** Yeah, I'm sorry. Section 15.

25 **Q.** That's all right. Too many numbers.

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1 **A.** Yeah.

2 **Q.** So what was the modeling done that was

3 used for the updated sound study?

4 **A.** What were the results?

5 **Q.** What was the methodology or what was --

6 you said you used a difference, but how did you

7 model and what were the results of that modeling?

8 **A.** Okay. I basically took the original model

9 that was used back in 2013. I added the additional

10 sound receptor to the model. The only changes that

11 were made were that there was one turbine

12 adjustment due to the fact that I was given the

13 as-built surveyed coordinates for the turbines

14 after the project was constructed, and I also used

15 a newer version of the windPRO software. And

16 neither of those minor changes would have any

17 significant impact on the modeling results.

18 **Q.** And what was the model sound level at the

19 Section 15 structure?

20 **A.** At the structure itself, the predicted

21 level is 47.9 decibels.

22 **Q.** And I believe you said earlier that you

23 also modeled areas -- an area 115 feet away. Can

24 you explain why you conducted that modeling?

25 **A.** To answer the question, just to have a

633

1 direct result from the model to predict the sound

2 level conservatively and a distance of a hundred

3 feet from the structure.

4 **Q.** And what was the result when you did that

5 updated sound modeling?

6 **A.** That result was 48.8 decibels.

7 **Q.** Does the modeling that you used include

8 conservative inputs?

9 **A.** Yes, it does. The conservative inputs on

10 the sound study include the fact that we simulate

11 that the turbines are always operating at the

12 maximum -- maximum sound levels that they can

13 produce, and the receptors are all assumed to be

14 downwind of all of the wind turbines at all times,

15 which is a physical impossibility, but more

16 conservative. And then, finally, the atmospheric

17 conditions are modeled in a way that they would be

18 most favorable for sound transmission.

19 **Q.** And in your experience, how accurate is

20 the methodology you used in the initial and the

21 updated sound modeling in predicting

22 post-construction sound levels?

23 **A.** The -- the predicted results typically are

24 slightly more conservative and, therefore, louder

25 predictions than what will actually be measured in

634

1 the field when verified. As I mentioned earlier,

2 Barr Engineering was asked to predict levels

3 measurements at the Aasmundstad residence back in

4 2015, and their -- the report indicated that their

5 measurements ranged from 42.5 decibels to

6 46.7 decibels. The receptor that I modeled at that

7 same location where they took their measurements,

8 the -- the number came in at 47.3, so higher than

9 what was measured in the field.

10 **Q.** Do you have any other examples of where

11 your methodology in modeling has been substantiated

12 through post-construction sound studies?

13 **A.** Yes. I recently worked on the Crowned

14 Ridge I and II projects in South Dakota, large

15 project built by NextEra. It consists of two

16 300-megawatt size projects, phase 1 and 2,

17 300 megawatts each.

18 **Q.** In Crowned Ridge I there were some noise

19 complaints. They went out and did noise

20 measurements in the field on two different

21 occasions, once in the fall and once in the winter,

22 and in both cases the field measurements came in

23 slightly lower than what the models had predicted.

24 So they were all found to be within compliance.

25 **Q.** Let's talk a bit about the shadow flicker

635

1 methodology. What was the methodology that was

2 used for the original study and then we'll talk a

3 bit about the updated study as well.

4 **A.** So the shadow inputs are similar to the

5 noise input. You've got the turbine locations and

6 the specifications for the turbines, the terrain

7 elevation data. We also use wind data -- wind

8 speed and wind direct data in the shadow model. We

9 also add in monthly sunshine probabilities, the

10 occupied structure locations, and that's it for the

11 modeling inputs.

12 **Q.** And how, then -- when you did the updated

13 modeling, what were the differences in the modeling

14 that was conducted?

15 **A.** Well, again, I used the original model.

16 The only changes that were made were the additional

17 receptors that were added. The adjustment of the

18 curve and array using the surveyed as-built

19 positions and, again, a slightly newer version of

20 the software.

21 **Q.** And what was the modeled shadow flicker at

22 the Section 15 structure?

23 **A.** The predicted level at that Section 15

24 structure would be 66 hours and 2 minutes per year.

25 **Q.** And are there any state or local shadow

636

1 flicker requirements?

2 **A.** There are no requirements, but I'm aware

3 that the North Dakota Public Service Commission has

4 recommended that we keep it under 30 hours per

5 year.

6 **Q.** And that's at occupied residences?

7 **A.** At occupied residences, yep.

8 **Q.** Yeah. In your experience, would you

9 expect the model shadow flicker levels to compare

10 to actual post-construction shadow flicker levels?

11 **A.** I would expect them to compare very

12 closely for a couple of reasons. One is that

13 it's a -- shadow flicker is a very straightforward

14 thing because it's all about physics. You know,

15 you've got lines projected between the sun and the

16 turbine and the receptor, and these are all things

17 that you can calculate easily and they're not

18 guesses or, you know, probabilities.

19 The other thing is that the software

20 developer, EMD, which is a Danish company, as they

21 developed their shadow flicker calculation, they

22 also went out into the field and took field

23 observations on a day-by-day basis for a year to

24 validate that the predicted levels tracked very

25 closely with what they observed, and they found

637

1 that it was quite accurate.

2 **Q.** And what are options you're aware of for

3 reducing shadow flicker at a receptor?

4 **A.** Basically, you can find some way to block

5 the shadow flicker or you can operate the turbine

6 in such a way where you would shut it down at the

7 times of known shadow flicker. So blocking

8 techniques would be adding shades or awnings on the

9 windows and doorways, potentially. Blocking with

10 structures or trees or, say, like a row of

11 evergreen trees, something like that.

12 In terms of curtailment, stopping the

13 turbine, that's probably the more preferable

14 approach and quite easily done. It's done all the

15 time all over the world. You simply program in a

16 calendar into the controller which tells it what

17 specific, you know, times of the day and days of

18 the year that you want the turbine to shut off if

19 the sun is shining and flicker would be occurring.

20 **MS. SMITH:** I have no further questions.

21 **JUDGE DAWSON:** Mr. Boughey.

22 **MR. BOUGHEY:** Thank you. Thank you, Your

23 Honor.

24 **JUDGE DAWSON:** And can I ask just one

25 question. How many witnesses do you have

638

1 remaining?

2 **MR. MAHLBERG:** Four.

3 **MS. SMITH:** We have -- one, two, three,

4 four.

5 **JUDGE DAWSON:** Four remaining. And

6 they're -- one, two, three --

7 **MR. MAHLBERG:** Everyone is present.

8 **JUDGE DAWSON:** Okay.

9 **MS. SMITH:** Yes.

10 **COMMISSIONER FEDORCHAK:** I only see three.

11 **MR. MAHLBERG:** There's one hiding.

12 **COMMISSIONER FEDORCHAK:** Peekaboo.

13 **JUDGE DAWSON:** Okay. Gotcha. I just --

14 Mr. Boughey.

15 **MR. BOUGHEY:** Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MR. BOUGHEY:**

18 **Q.** Have you submitted the video to show --

19 any video to show the -- the flickering at the

20 Kessler residence? Is that part of any of your

21 evidence here?

22 **A.** No.

23 **Q.** And I notice on page 143, the second page,

24 I see -- I've circled one, two, three, four --

25 looks like five or six different words where you

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1 use the word "assumptions." You'd agree that to do

2 this modeling, you have to make a lot of

3 assumptions; correct?

4 **A.** That's correct.

5 **Q.** And I notice on the meteorological

6 conditions, your assumption is 10 degrees Celsius,

7 relative humidity 70 percent. Well, isn't it

8 correct that -- if the humidity's higher, is the --

9 is the noise less, for example, or -- or is it the

10 other way around?

11 **A.** Those -- those parameters are ones that

12 are universally used around the world for shadow --

13 I mean for noise modeling purposes. The reason

14 that it's -- the reason that those numbers are used

15 is because they are the type of climatic conditions

16 that would be present in a -- in a case of a

17 temperature inversion wherein the -- the inversion

18 layer acts like a reflection cover so that the

19 sound is reflected off of the atmospheric surface

20 above and reflected back downward and therefore the

21 sound would travel farther.

22 **Q.** So the only time that this -- what did you

23 call it, an inversion?

24 **A.** Yes.

25 **Q.** The only time an inversion happens in

640

1 North Dakota above Mr. Kessler's property is when
 2 it's 10 degrees Celsius and 70 percent humidity?
 3 **A.** You're -- I would say no.
 4 **Q.** As a matter of fact, at least in my
 5 experience, it isn't 10 degrees Celsius -- I'm
 6 sorry, 50 degrees Fahrenheit the entire year in
 7 North Dakota. Would you agree with that, sir?
 8 **A.** Sure. The reason -- as I stated, the
 9 reason that those parameters are used is because
 10 they --
 11 **Q.** Thank you. You've already answered that.
 12 I just had a simple yes-or-no question. Does the
 13 temperature vary in North Dakota and the answer was
 14 yes.
 15 **Q.** When the temperature goes up, is it more
 16 of a noise problem or is it less of a noise
 17 problem?
 18 **A.** It would depend on more than just
 19 temperature.
 20 **Q.** Well, that's one of your assumptions. If
 21 we just change that one assumption from 50 degrees
 22 Fahrenheit to 90 degrees Fahrenheit, would it be
 23 louder or less -- or be quieter?
 24 **A.** I don't know the answer to that question
 25 off the top of my head.

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1 **Q.** So you don't know what the temperature
 2 will do as to whether it raises or lowers the sound
 3 decibel readings; is that correct?
 4 **A.** Generally speaking, the sound level would
 5 attenuate faster in a more humid air than it would
 6 in colder, dryer air.
 7 **Q.** Okay. And now you're assuming 70 percent
 8 as humidity, and let me make sure I understand
 9 that. So the more humid it is, the less noise
 10 there would be. Did I understand you right?
 11 **A.** Yes.
 12 **Q.** Okay. Well, I just looked up for the
 13 closest town to their ranch, and for the months of
 14 January through December, the humidity in January
 15 is 89, 88 and 81, and then the rest -- the one,
 16 two, three, four, five, six, seven -- the next
 17 eight months it's below 70 in North Dakota. So
 18 that means it would be louder than what you would
 19 have, then, during those seven months, April
 20 through October?
 21 **A.** I don't think it's quite that simple.
 22 **Q.** Well, if you just --
 23 **A.** It's not that --
 24 **Q.** If you change that one variable. You told
 25 me when humidity goes down, the noise will be

642

1 higher; correct?
 2 **A.** I said that the noise would travel
 3 farther.
 4 **Q.** All right. Fine. And if the noise
 5 travels farther and you're within 1100 feet instead
 6 of 1400 feet, might be pretty loud. Is that what
 7 you're telling me?
 8 **A.** No.
 9 **Q.** Mm-hmm. And since April through October
 10 is all below 70 percent humidity, would you agree,
 11 sir, that it's usually between April and October
 12 that people in North Dakota are out and about and
 13 outside their homes?
 14 **A.** I really don't know what the typical North
 15 Dakotan's pattern is.
 16 **Q.** You didn't include that as an assumption?
 17 **A.** Include what as an assumption?
 18 **Q.** The typical North Dakotan.
 19 **A.** No.
 20 **Q.** Okay. Or the typical house or this
 21 particular house; correct?
 22 **A.** I really don't understand your question in
 23 this case.
 24 **Q.** Okay. As to the individual that you used
 25 as a comparable -- was that Aasmundstad,

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1 Aasmundstad?
 2 **A.** Aasmundstad.
 3 **Q.** Yes. And what was the distance from the
 4 turbine to the house at issue in that one that you
 5 used as a comparable?
 6 **A.** I would have to look that up. I don't
 7 have that in front of me. But what I did is I
 8 placed it at the same location that they had placed
 9 the microphone.
 10 **Q.** I'm sorry? The same -- so you pretended
 11 to assume a microphone at the same location. Does
 12 that mean you went 1135 feet or 1400 feet?
 13 **A.** I said I don't have that distance in front
 14 of me. I would have to look that up in the model.
 15 **Q.** Well, you're using that as a comparison to
 16 show that there's not enough noise at the
 17 Kesslers'. So if you would, sir, please show me in
 18 the report here where -- where you make the
 19 distinction as to the distance between the two that
 20 you're comparing.
 21 MS. SMITH: I'll object that --
 22 THE WITNESS: That was not my testimony.
 23 JUDGE DAWSON: Hold on.
 24 MS. SMITH: Yeah. Jay beat me to it.
 25 I'm objecting on the grounds that that

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1 wasn't that testimony. There wasn't a comparison
2 of distance between the Aasmundstad and the Section
3 15 structure.

4 JUDGE DAWSON: I'll sustain the objection.

5 Q. (MR. BOUGHEY CONTINUING) Did you use in
6 any way in your report the Aasmundstad property or
7 any data relating to the Aasmundstad property?

8 A. You're going to have to clarify that
9 question.

10 Q. Where in your report do you refer to the
11 Aasmundstad property? You testified to it, so how
12 is it in here?

13 A. I don't believe that's in the update memo.

14 Q. Is it in any of the two reports you
15 submitted? Any reference at all to this other
16 property that you referred to in your testimony?

17 A. No.

18 Q. Did I mishear you? Why did you then even
19 refer to the Aasmundstad property?

20 A. Just to validate that the model was -- we
21 had a data point that was measured in the field and
22 I wanted to answer the question what would the
23 model predict at that location to satisfy my
24 confidence that the model was performing correctly.

25 Q. So you went to the Aasmundstad house and

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1 you put up an actual decibel meter and determined
2 whether your model was correct; is that what you
3 did?

4 A. No. As I stated in the testimony, Barr
5 Engineering was asked by Minnesota Power to perform
6 that measurement in 2015. That information was
7 made available to me, so I used it to validate the
8 model.

9 Q. And are you aware that that particular
10 tower at that location, at Aasmundstad, is 250 feet
11 farther away from the home at issue?

12 A. I did not evaluate the turbine distance.
13 That was not my focus. I was only interested in
14 what the noise measurement was and how it would
15 compare to the predicted level from the model.

16 Q. So you compared one model to another model
17 without looking at any actual evidence; correct?

18 A. No.

19 MR. BOUGHEY: No further questions.

20 JUDGE DAWSON: Mr. Johnson.

21 MR. JOHNSON: Could probably ask about
22 title effects on sound, but I think we're good, so
23 no questions.

24 JUDGE DAWSON: Any further questions?
25 Commissioner Fedorchak.

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1 COMMISSIONER FEDORCHAK: Just two, I
2 think.

3 **EXAMINATION**

4 **BY COMMISSIONER FEDORCHAK:**

5 Q. Mr. Haley, can you just clarify what I
6 understood you were saying in terms of the modeling
7 inputs on -- on weather. Was -- the model
8 incorporates the weather conditions that create the
9 loudest noise potential?

10 A. No. It's not the loudest. It's the --
11 it's the condition -- it's the atmospheric
12 condition that would allow the sound wave to
13 propagate the farthest or, in other words, to be
14 attenuated the least.

15 Q. Okay.

16 A. And those -- those conditions are
17 published best practice in the noise community as
18 being the best modeling choices to use as has been
19 validated with field measurements.

20 Q. In order to err on the conservative side
21 so that you're showing the worst possible noise at
22 a point? Is that the goal --

23 A. Not --

24 Q. -- based on weather?

25 A. -- exactly. Not exactly. No. You

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1 don't -- I mean, you could -- if you wanted to
2 model some sort of worst case, you could come up
3 with much, much higher numbers, but that really
4 wouldn't be very helpful because what you're trying
5 to do is predict accurately what will happen, but
6 you would like to err a little bit on the side of
7 conservancy. And the validation efforts that have
8 been undertaken in the past by other -- others that
9 have published have shown that that -- those
10 climatic assumptions perform very well in
11 predicting what happens in real life.

12 Q. Okay. Did you -- why didn't you use any
13 real data from the turbine, like for the 2020
14 update? I mean, the turbine's up and operational
15 and we know the location in question. Why wasn't
16 there just some readings taken on the actual site?

17 A. Are you talking about noise data?

18 Q. Noise data. Yes. I'm sorry.

19 A. I -- I can't answer that question. I was
20 not asked to go out and perform field measurements.
21 I was asked to update the computer model that
22 originally was done.

23 Q. Okay. And then in the -- in the shadow
24 flicker studies, how -- it's been a while since
25 I've looked at that stuff. How do you incorporate

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1 weather into the model? Do you do that assuming
2 sun and no clouds?
3 **A.** Yeah, the only weather, if you want to
4 call it weather, that we use in the shadow flicker
5 model is just the sunshine probability, and that
6 comes from the National Climatic Data Center. They
7 typically have -- in the database they typically
8 have like 18 years' worth of observations. So they
9 publish the -- either the number of hours -- number
10 of hours per day -- the average number of hours per
11 day for each month of the year, or they'll record
12 it in a percentage of sunshine hours per day per
13 year.

14 And we then -- what we do is calculate the
15 worst case, which would be the astronomical
16 maximum, meaning that if -- from sunup to sundown
17 it's always 100 percent sunshine and the turbine is
18 always facing the sun, so you're having maximum
19 shadow conditions for the entire day for every
20 minute of the day.

21 So we calculate that number and then we
22 reduce it by these sunshine probabilities to get it
23 to be a more realistic level because the shadows
24 cannot be produced on a cloudy day.

25 **Q.** I see. All right. So -- and that data is

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1 on a county basis? How do you pinpoint the
2 location on that data?

3 **A.** It's -- it's in the National Climatic
4 database, so they publish by city. So I -- I
5 believe in this case -- I'd have to look it up, but
6 I believe in this case we used the city of
7 Bismarck.

8 **COMMISSIONER FEDORCHAK:** Okay. All right.
9 That's all for me. Thank you.

10 **JUDGE DAWSON:** Commissioner Christmann.

EXAMINATION

BY COMMISSIONER CHRISTMANN:

13 **Q.** Did I understand you right that you -- you
14 updated your modeling in 2020 but were only asked
15 to update the modeling as opposed to a field study?

16 **A.** That's correct.

17 **Q.** And when -- but you did do a field study
18 on Aasmundstads'; correct?

19 **A.** No. My -- my firm did not do that. That
20 was Barr Engineering.

21 **Q.** Do you know when that was?

22 **A.** 2015. I don't know the exact date.

23 **Q.** And do you know, are Aasmundstads
24 participants in this project or nearby residence?

25 **A.** I do not know the answer to that question

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1 off the top of my head.

2 **Q.** Do you know whether that was done because
3 they were complaining or whether it was just kind
4 of a random thing to test modeling?

5 **A.** Yes. No, they did complain that they
6 thought the noise level was too high, which was why
7 Barr Engineering was asked to go out and take
8 measurements.

9 **COMMISSIONER CHRISTMANN:** Okay. Thank
10 you. No other questions.

11 **MR. MAHLBERG:** Commissioner Kroshus.

12 **COMMISSIONER KROSHUS:** Just -- I think
13 it's just one.

EXAMINATION

BY COMMISSIONER KROSHUS:

16 **Q.** From a practical standpoint, modeling
17 versus field testing -- and I don't know that
18 you're going to be able to give a precise answer,
19 but how many times would you have to go out in the
20 field and do on-site testing just to be there with
21 the different type of weather variables versus you
22 model once -- or can you go out and do a field test
23 and use that as a baseline then to apply different
24 variables?

25 **A.** What -- what -- what is done is that the

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1 noise modeling has been used for like 30 years, at
2 least, and over that time different modeling
3 assumptions have been used and tried, and actual
4 before and after field studies have been performed
5 in the spirit of research and to confirm that these
6 models work.

7 And so various wind farms had
8 preconstruction modeling performed. They then went
9 out and systematically did post-construction noise
10 monitoring to see how well the predictions fared or
11 compared with the field measurements, and they have
12 found that with a particular set of parameters,
13 which I use, which all of us noise professionals
14 use, we get very good agreement with -- between the
15 predicted levels and the measured levels.

16 And I just earlier in my testimony relayed
17 to you two recent cases where that verification
18 work was done, and in both of those cases it just
19 reconfirmed what other field studies had confirmed,
20 that the predictions are accurate and slightly
21 conservative.

22 **Q.** Was there a percentage applied to level of
23 accuracy? 90 percent accurate, 80 percent, 95 or
24 something to that effect?

25 **A.** No. It's -- it's really just a matter of

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1 what -- what the noise demand or the noise
2 limitation is and are you above it or below it. In
3 terms of how closely it compares to a field
4 measurement, no, there hasn't -- there's no -- none
5 that I'm aware of is there a -- a margin of error
6 or, you know, a percentage of accuracy.

7 Q. Okay. So when you said "agreeable," what
8 was -- how did you determine whether or not it was
9 agreeable?

10 A. Well, first of all, the main purpose for a
11 noise study is to provide information to the
12 developer so that they can site their turbines in
13 such a way that it -- that the project is in
14 compliance with the noise regulations. So our main
15 measure of standard is to -- is to assure that the
16 turbines are placed in such a manner that they will
17 meet that noise limitation, whatever it is.

18 COMMISSIONER KROSHUS: Okay. Thank you.

19 JUDGE DAWSON: Ms. Smith.

20 MS. SMITH: I think I just have a couple.

21 **REDIRECT EXAMINATION**

22 **BY MS. SMITH:**

23 Q. Mr. Haley, there's been some questions
24 about sound measurement, and it reminded me of one
25 of the comments made by one of the Kesslers, and I

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1 am not going to pretend that I'm getting the
2 decibel right, but there was a comment about taking
3 a reading at the structure and getting a certain
4 level. Is sound measurement as simple as using
5 like an app on your phone to measure sound and that
6 gives you the specific number that's tied to a
7 turbine?

8 A. No. It's far from that. The -- first of
9 all, I do not do sound measurements. My firm does
10 not do that. But I have read reports from others
11 and I do know people that do these studies and I've
12 talked to them about them, so I have some degree of
13 knowledge in terms of what is done there. But they
14 do need to take measurements over a certain -- not
15 a certain -- but a length of time, more than just
16 one snapshot. You know, we're talking maybe two
17 weeks. And they do some averaging and they have to
18 throw out some of the high points that maybe was a
19 car driving by or, you know, but some errant noise
20 that would find its way in.

21 They also have to try to determine how
22 much of that noise is from the turbine and how much
23 of it is from the background noise of the rustling
24 of the leaves or whatever else might be happening
25 in that environment. So it's actually very

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1 complicated to establish what the noise levels are
2 coming from a turbine.

3 MS. SMITH: I have no further questions.

4 JUDGE DAWSON: Any further questions?

5 MR. BOUGHEY: Very few, Your Honor.

6 JUDGE DAWSON: Okay.

7 **RECROSS-EXAMINATION**

8 **BY MR. BOUGHEY:**

9 Q. You said that you were not asked to take
10 actual readings. Was that something you're
11 qualified to do?

12 A. No, my company does not do field
13 measurements.

14 Q. So -- but there is a company called Barr
15 Engineering that does that; is that correct?

16 A. Yes.

17 Q. Are you aware whether Barr Engineering was
18 hired by Minnesota Power to do the actual readings
19 that you mentioned?

20 A. That's my understanding from the report
21 that I read, yes.

22 Q. Okay. And then there's a reference to
23 66 hours at the end of your report of recorded
24 flickering, 66.3, something like that.

25 A. Yeah.

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1 Q. What are the amounts of flickering
2 allowed? How many hours by permit, if you know?

3 A. 30 hours per year.

4 Q. So it's double of what is allowed --

5 A. That's correct.

6 Q. -- based on your report?

7 A. That's correct.

8 Q. How much time in hours did it take you to
9 produce the first report and then the second? I'm
10 not asking you about how much you charged. I'm
11 just wondering how much time does something like
12 this take you?

13 A. The update to the report probably took me
14 two days. The original report -- which I did not
15 do the original report. I -- one of my employees
16 did that under my supervision, but I'm sure they
17 spent -- I'm sure they spent hundreds of hours
18 between the noise and the shadow studies and -- and
19 moving turbines around, and so forth, to get to the
20 final array and the final results.

21 Q. Your office is to the east -- I'm sorry.

22 Your office is to the west of Minneapolis; correct?

23 A. Yes.

24 Q. Okay.

25 A. My old office at EAPC, yes.

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1 Q. Okay. And when you did this report,
 2 that's where you were located; correct?
 3 A. That's correct.
 4 Q. And so that means you're about seven to
 5 eight hours away from the Kesslers' home, give or
 6 take?
 7 A. Yeah, probably six, I suppose.
 8 Q. So instead of a hundred hours for the
 9 first and two days for the second report, wouldn't
 10 you have saved a lot of time if you would have
 11 gotten in your car with somebody from Barr
 12 Engineering and gone to the Kesslers' property with
 13 a decibel meter and a videotape for flickering?
 14 MS. SMITH: Objection. Argumentative.
 15 JUDGE DAWSON: I'm going to allow the
 16 question.
 17 THE WITNESS: I've been doing noise and
 18 shadow studies for 30 years and that's not how it's
 19 done.
 20 Q. (MR. BOUGHEY CONTINUING) I understand
 21 that, but wasn't that an option? My question was
 22 it would have took you less time to drive from
 23 where you work to the Kesslers' and back and take a
 24 reading and done a video. You could have done
 25 that. That was an option, isn't it?

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1 A. No, it was not.
 2 Q. You can't drive from Minnetonka to Glen
 3 Ullin, North Dakota?
 4 A. I can drive, yes.
 5 Q. And you can't do it with somebody from
 6 Barr along with you?
 7 A. I could do -- I could drive with anyone.
 8 Q. Yeah.
 9 A. I would have -- I would have no reason to
 10 in this case.
 11 Q. Well, maybe the reason, sir, would be to
 12 find out what exactly the decibel readings actually
 13 were.
 14 MS. SMITH: Objection. He's testifying.
 15 JUDGE DAWSON: Sustained.
 16 Q. (MR. BOUGHEY CONTINUING) All right. I'll
 17 put it another way. You just told me earlier that
 18 one of the way modeling -- we check to see if
 19 modeling is accurate is sometimes they actually
 20 physically go to the location, hold up a decibel
 21 reading meter and see if they were right. Isn't
 22 that one way --
 23 MS. SMITH: Objection.
 24 Q. (MR. BOUGHEY CONTINUING) -- in which your
 25 models are looked at as to accuracy?

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1 MS. SMITH: Objection. Misstates
 2 testimony. He did not say you could hold up a
 3 decibel reader and verify measurements.
 4 Q. (MR. BOUGHEY CONTINUING) Do you
 5 understand the question when I'm referring to are
 6 any -- is any aspect of your modeling business,
 7 does -- at any time do they go out and do actual
 8 readings to determine if the modeling was accurate?
 9 MS. SMITH: This has been asked and
 10 answered.
 11 JUDGE DAWSON: It has.
 12 MR. BOUGHEY: No, it hasn't, because you
 13 won't let him answer.
 14 JUDGE DAWSON: No. It's been asked and
 15 answered.
 16 Q. (MR. BOUGHEY CONTINUING) All right.
 17 Then -- so the way to determine if your modeling
 18 was accurate, at least as it relates to the
 19 Kesslers, is for you to go and have somebody do
 20 actual readings; isn't that true?
 21 A. I would say no, it has been done. The
 22 reading -- readings were taken and compared to, and
 23 as I mentioned with that project that I did in
 24 South Dakota just recently --
 25 Q. Sir. Sir, I was only asking about the

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1 Kesslers's property, not readings where you
 2 actually went out and looked at real places and
 3 took real readings. My question was were you --
 4 would -- wouldn't there be a value in going and
 5 taking actual readings to determine if your model
 6 was accurate as it relates to the Kesslers'
 7 property and that turbine?
 8 A. It -- it could be done.
 9 MR. BOUGHEY: I have nothing further.
 10 THE WITNESS: I can't think of a reason
 11 why you couldn't do it.
 12 Q. (MR. BOUGHEY CONTINUING) Maybe because
 13 the modeling's wrong.
 14 MS. SMITH: Objection. Argumentative.
 15 JUDGE DAWSON: Sustained.
 16 Mr. Johnson.
 17 MR. JOHNSON: No, Your Honor.
 18 JUDGE DAWSON: Any questions?
 19 COMMISSIONER FEDORCHAK: Nothing.
 20 COMMISSIONER CHRISTMANN: No.
 21 JUDGE DAWSON: Commissioner Kroshus.
 22 **FURTHER EXAMINATION**
 23 **BY COMMISSIONER KROSHUS:**
 24 Q. Just a real quick question since we have
 25 you here. You had mentioned that this is on a per

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1 turbine basis, and I believe you said something if
 2 a -- there's another noise in the same vicinity,
 3 that would -- would that raise the noise level at
 4 the time?
 5 **A.** Yeah. When you take a sound measurement,
 6 you're measuring everything that's -- that's in
 7 that environment and they're all contributing their
 8 levels of sound and it's all additive to -- to one
 9 reading level.
 10 And when you are complying with a noise
 11 standard with a wind turbine in North Dakota, it's
 12 the wind turbine noise that has to be less than
 13 that standard, so in this case 50 decibels. If
 14 your background noise is 40 decibels and your
 15 turbine level is 40 decibels, they're going to add
 16 up to a level of 43 decibels, so just as an
 17 example.
 18 So you do have to subtract -- find a way
 19 to subtract out all of the other noise
 20 contributions from those readings in order to
 21 determine what is actually coming from the wind
 22 turbine.
 23 **Q.** What if it's two wind turbines in close
 24 proximity to each other and --
 25 **A.** Then that would be additive.

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1 **Q.** And that would be included in the sound
 2 study?
 3 **A.** Yes. The noise measurement would pick
 4 that up.
 5 **Q.** But in the -- this study, the methodology
 6 that applied, that was collective, if applicable?
 7 **A.** Yes, the noise calculation combines the
 8 noise contributions from all turbines and that is
 9 all embodied in that noise prediction for that
 10 location. So if there were three turbines
 11 surrounding that house, the noise level predicted
 12 there would be reflective of the contributions of
 13 all of those turbines at the same time.
 14 **COMMISSIONER KROSHUS:** Okay. Thank you.
 15 I just wanted to make sure I was clear on that. I
 16 appreciate it.
 17 **JUDGE DAWSON:** Any further questions?
 18 Seeing none, you may step down. And we're going to
 19 take a brief break here till approximately again
 20 five minutes to.
 21 (Recessed at 2:44 p.m. and reconvened at
 22 2:57 p.m.)
 23 **JUDGE DAWSON:** We are back on the
 24 record -- now we are -- and it is five to three,
 25 and --

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1 **MR. MAHLBERG:** We call Lance Gartner.
 2 **JUDGE DAWSON:** Mr. Mahlberg calls Lance
 3 Gartner.
 4 **MR. BOUGHEY:** And I'll need to be heard
 5 before he begins his testimony.
 6 **JUDGE DAWSON:** What did you say?
 7 **MR. BOUGHEY:** I will need to be heard
 8 before he begins his testimony.
 9 **JUDGE DAWSON:** Okay. Well, I'm going to
 10 first swear him in in case this involves him saying
 11 something.
 12 Mr. Gartner, I'm looking for your list
 13 here.
 14 **MR. BOUGHEY:** You're not going to find
 15 that in --
 16 **JUDGE DAWSON:** Were you here for my
 17 previous admonitions as to perjury?
 18 **THE WITNESS:** I never heard the whole
 19 thing, no, but --
 20 **JUDGE DAWSON:** Oh, okay. Perjury is a
 21 Class C felony, punishable by a fine up to \$10,000
 22 or a term of imprisonment of up to 5 years, or
 23 both. Do you understand what perjury is and the
 24 penalties for it?
 25 **THE WITNESS:** Yes.

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1 (Witness sworn.)
 2 **JUDGE DAWSON:** Okay. Mr. Boughey.
 3 **MR. BOUGHEY:** In the spirit both of
 4 efficiency and not dealing with anything that's
 5 irrelevant, first of all, Lance Gartner is
 6 apparently a neighbor to -- way to the south, by
 7 like five miles. He was not listed as a witness,
 8 and, therefore, I also have no reason to understand
 9 why he would in any way be a rebuttal witness.
 10 I note that when we tried to bring in John
 11 Kessler, who had information about the reputation
 12 as to the company at issue, Minnesota Power or
 13 ALLETE, and as to both either their reputation or
 14 things that they said that we believed were
 15 inaccurate, that was not allowed. It was -- the
 16 court ruled that that was irrelevant.
 17 And so I fail to see how any landowner who
 18 is five miles away would have anything relating to
 19 this particular case. And then I guess if we open
 20 that door, then I would want to be able to call my
 21 people who have a different opinion perhaps of
 22 Minnesota Power.
 23 So I -- again, I guess we'll have to wait
 24 and see what the purpose of this witness is, but he
 25 wasn't listed as a witness, and I -- I fail to

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1 understand why he would have any relevance
2 whatsoever in this matter.
3 JUDGE DAWSON: Mr. Mahlberg.
4 MR. MAHLBERG: Mr. Gartner is being called
5 as a rebuttal witness on our witness list. We
6 reserved the right to call rebuttal witnesses.
7 Mr. Gartner will offer testimony about his
8 experience with Minnesota Power and, in particular,
9 experience dealing with Mr. Isaacson, the character
10 of Mr. Isaacson, of Mr. Monroe and of every other
11 Minnesota Power witness that has been attacked at
12 this point.
13 And so the testimony is relevant and is
14 allowed. It's different than offering up someone
15 in your case in chief, like John Kessler, without
16 an attack like that. And so that's why this
17 witness is to be allowed to testify, and it will
18 take 12 minutes or less. Probably less than it
19 will take to do the objections.
20 MR. BOUGHEY: If I may respond.
21 JUDGE DAWSON: One more time.
22 MR. BOUGHEY: That's it. And that is that
23 if indeed we're going into the credibility of the
24 witnesses that the -- the court and the judges are
25 able to do that based on it, if we're going to open

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1 the door, if they're going to bring in somebody
2 that says, "Oh, these people are honest people,"
3 well, then I can bring in 20 that will say the
4 opposite. If we're going to go down that route,
5 then I should be allowed to do the same.
6 I tried to bring in John Kessler to
7 describe what you would call under criminal law or
8 under the rules other misconduct or other conduct,
9 and the rules are clear and should be applied
10 equally to both sides. And if -- if I'm not
11 allowed to bring in people to say, "These are the
12 problems we've had with Minnesota Power, this is
13 why they lied to us, this is information they
14 provided that turned out not to be true," then I
15 don't see why they can bring in somebody to say
16 everything -- or "People are wonderful and they're
17 great to deal with," and it's really a -- the
18 credibility witnesses can stand on their own
19 testimony. And if we open this door, I see a real
20 problem because then I should have been allowed the
21 same.
22 Thank you.
23 JUDGE DAWSON: Okay. At present I'm
24 hesitant to allow him to testify because of opening
25 this door, but on the other hand, the Commission

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1 allows for testimony by anyone at the end of the
2 hearing and so it's a public hearing of sorts. And
3 so anyone can come forward and testify. And that
4 being the case, I'm hesitant to not let him
5 testify, and I'm going to go with the latter and
6 allow him to testify, but keep it short, please.
7 MR. MAHLBERG: Thank you, Your Honor.
8 MR. BOUGHEY: Then, Your Honor, I note my
9 objection and request an additional day. If we're
10 going to open this door, then if anyone is allowed
11 to come in at the end of a hearing and I've already
12 been declined that option -- withdrawn, so I had no
13 way of knowing that you would allow any of this
14 type of testimony. If this is heading that way, I
15 can tell you right now I want an extra day or at
16 least a half a day so I can bring in all the people
17 that will provide a different opinion of Minnesota
18 Power.
19 MR. MAHLBERG: We were noticed up a second
20 day. It was clear this was going to be the last
21 day. The circumstances of Mr. Gartner's testimony
22 are in rebuttal to the way that the case was
23 presented. This is an appropriate way of
24 proceeding, and I don't think an additional day is
25 necessary or appropriate.

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1 JUDGE DAWSON: Okay.
2 MR. BOUGHEY: And we weren't told about
3 these two witnesses until, I think, yesterday or
4 just within the last few days, so we had no reason
5 to believe that any of this type of testimony would
6 be allowed.
7 JUDGE DAWSON: You know, I'm going to
8 allow it, but be brief and keep it on point.
9 MR. MAHLBERG: Thank you.
10 JUDGE DAWSON: I will entertain objections
11 if this gets into broad things about how nice
12 everybody is.
13 MR. MAHLBERG: Thank you.
14 JUDGE DAWSON: You may begin.
15 **LANCE GARTNER,**
16 having been first duly sworn, was examined and
17 testified as follows:
18 **DIRECT EXAMINATION**
19 **BY MR. MAHLBERG:**
20 **Q.** Mr. Gartner, please state your name for
21 the record.
22 **A.** Lance Gartner.
23 **Q.** Mr. Gartner, where do you live?
24 **A.** We currently live about six miles south of
25 Glen Ullin.

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1 Q. Mr. Gartner, what do you do for a living?
 2 A. We ranch.
 3 Q. Is your family involved in the business?
 4 A. Yes.
 5 Q. Who from your family?
 6 A. My wife and oldest daughter is on the
 7 ranch with me and also our three youngest sons that
 8 are still at home.
 9 Q. How long have you been ranching?
 10 A. Since about 1988.
 11 Q. Do you also serve as an ordained minister?
 12 A. An ordained minister in the Catholic
 13 church in Glen Ullin.
 14 Q. How much land do you operate?
 15 A. We operate -- own and operate about -- own
 16 and rent about 5,000 acres total.
 17 Q. Any of the land near the Bison 4 project?
 18 A. About a section of land up there.
 19 Q. And a section of land is how many acres?
 20 A. 640.
 21 Q. Did you enter into an easement with
 22 Minnesota Power with respect to the Bison 4
 23 project?
 24 A. We did.
 25 Q. Have you entered into other agreements

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1 with Minnesota Power for other projects?
 2 A. Yes.
 3 Q. Including the Glen Ullin project?
 4 A. Yes, the Glen Ullin project.
 5 Q. And have you entered into wind easement
 6 agreements as well as outright sales of property?
 7 A. Yes. Easements and sales of property,
 8 yes.
 9 Q. Who from Minnesota Power did you work with
 10 in connection with your agreements?
 11 A. Wade Isaacson.
 12 Q. Did you work with anyone else?
 13 A. For the Glen Ullin project, I worked with
 14 Scott Monroe.
 15 Q. Okay. On the Bison 4 project?
 16 A. Just Wade.
 17 Q. Okay. Did you have any concerns about the
 18 project? Who did you raise those with? And how
 19 were they addressed?
 20 A. Anytime I had questions, I always asked
 21 Wade. He was always good to -- if he didn't have
 22 the answer, he always found the answer from
 23 somebody else. He always got back to me, returned
 24 my calls.
 25 Q. Do you have a paddock system that you

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1 follow?
 2 A. We do. We have a rotational grazing
 3 system. In that particular unit near the project,
 4 we have five or six paddocks that we rotate
 5 through.
 6 Q. A fairly complex system or --
 7 A. It is.
 8 Q. -- involved?
 9 A. It is. Everything's rotated on -- monitor
 10 the grass growth and then we move accordingly with
 11 the cattle. It varies year to year, so we have to
 12 continually monitor, and which with a project the
 13 size of the wind farm, we were concerned that
 14 our -- our rotations were going to be thrown off,
 15 but they were always willing to work with us and
 16 help out.
 17 Q. How was it addressed?
 18 A. So they put up temporary fences. We would
 19 let them know this is our tentative move dates for
 20 the year, and they would say, "Okay. Well, we're
 21 going to work on this and this project," so we
 22 actually changed our rotation a little bit. Or
 23 they would redo the temporary fences, however it
 24 needed to be, so that we could make our system work
 25 and still maximize our grazing throughout that

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1 year.
 2 Q. Mr. Gartner, before you signed an
 3 agreement with Minnesota Power, did you know if you
 4 would have turbines placed on your property?
 5 A. Absolutely not.
 6 Q. Would Minnesota Power tell you?
 7 A. No. I tried.
 8 Q. Did they tell you why they didn't tell
 9 you?
 10 A. There was no guarantee because they had to
 11 wait for the engineering to come in.
 12 Q. Did you ultimately have turbines sited on
 13 your property?
 14 A. We did. We ended up with three.
 15 Q. Did you have any discussions with
 16 Minnesota Power about moving turbines or access
 17 roads?
 18 A. Yeah. Because we -- we were concerned
 19 that the access roads would chew up the rotation
 20 system of our paddocks and possibly the turbines
 21 chewing up the fences and stuff like that and
 22 having to reroute a bunch of fences for the
 23 paddocks. As it turned out, we did not have any
 24 issues with that.
 25 Q. The issues were all addressed?

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1 **A.** The issues were -- yeah, there was no
 2 issues so we were -- we were okay with whatever
 3 the -- with what the engineers came up with.
 4 **Q.** Did you know Mr. Isaacson before the
 5 project?
 6 **A.** No.
 7 **Q.** Can you describe your experience working
 8 with Mr. Isaacson.
 9 **A.** He made a phone call and set up an
 10 appointment to come out to the farm. He met us
 11 south of -- south of Glen Ullin at our house and
 12 sat down in the living room. Very open, friendly
 13 chat. There was no confrontation at all. He was
 14 always -- always willing to answer questions and he
 15 was always friendly, and actually over the years
 16 we've become very good friends with the two
 17 projects that we worked on now.
 18 **Q.** Do you have an opinion as to whether
 19 Mr. Isaacson is trustworthy?
 20 MR. BOUGHEY: Same objection.
 21 JUDGE DAWSON: Noted.
 22 THE WITNESS: I believe he is. I have no
 23 question.
 24 **Q.** (MR. MAHLBERG CONTINUING) Do you consider
 25 yourself a good judge of character?

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1 **A.** I do. Especially being an ordained
 2 minister, I have to rely on that judgment quite
 3 often.
 4 **Q.** Are you active in the community?
 5 **A.** Yes.
 6 **Q.** Are you aware of Minnesota Power's
 7 reputation in the community?
 8 **A.** I don't know of anything outside of -- I
 9 haven't heard anything bad, so --
 10 **Q.** Have you heard anything positive?
 11 **A.** Yeah. Especially now because south of
 12 Glen Ullin we're working with another wind farm and
 13 everyone's complaining that that wind company is
 14 nothing like Minnesota Power. Minnesota Power is
 15 much better to work with.
 16 **Q.** Minnesota Power set a high standard for
 17 these projects?
 18 **A.** They did. They set the industry standard
 19 in our area.
 20 MR. MAHLBERG: Nothing further. Thank
 21 you.
 22 THE WITNESS: Okay. Thank you.
 23 JUDGE DAWSON: Mr. Bury -- sorry, Boughey.
 24 I know a Mr. Bury.
 25 MR. BOUGHEY: Thank you, Your Honor.

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CROSS-EXAMINATION

1
 2 **BY MR. BOUGHEY:**
 3 **Q.** Do you know the Kesslers?
 4 **A.** I do not.
 5 **Q.** Are you aware of any -- strike that.
 6 You have three turbines on your property?
 7 **A.** Yes.
 8 **Q.** Is it in Oliver County?
 9 **A.** Yes.
 10 **Q.** I'm going to show you a plat map which
 11 we've had which is on page 432 which is the one
 12 that has the asterisk we've been talking about,
 13 which is found as an Exhibit 4-2 of Minnesota
 14 Power, page 432.
 15 MR. MAHLBERG: Mr. Boughey, did you mean
 16 2-4?
 17 MR. BOUGHEY: Maybe I meant 2-4. I
 18 apologize. I was looking at it sideways. Thank
 19 you, Counsel. Here we go. Sorry.
 20 **Q.** (MR. BOUGHEY CONTINUING) So there's 432
 21 and then there's -- got to move your finger. Thank
 22 you -- 433.
 23 So is your property on either of those two
 24 pages, sir?
 25 **A.** Section 30 and 31. Yep.

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1 **Q.** There, I see it. And then where are -- in
 2 reference to -- is your residence on this -- either
 3 of these two pages?
 4 **A.** No. We are five -- we are six miles south
 5 of Glen Ullin.
 6 **Q.** So you're south of Glen Ullin, and Section
 7 30 and 31 is where you have the towers?
 8 **A.** Yes.
 9 **Q.** And how far away are those towers from
 10 where you reside?
 11 **A.** 20 miles.
 12 **Q.** When asked about Minnesota Power's
 13 reputation, you started to say, "Nothing outside
 14 of," you stopped, and then you continued on saying,
 15 "Well, they have a good one from rumors, is what I
 16 hear," is I believe your testimony.
 17 When you started to say "nothing outside
 18 of," do you mean nothing outside of your own
 19 personal experience? Is that where you were
 20 headed?
 21 **A.** Nothing outside of what I hear. When I'm
 22 in the community doing community functions, I don't
 23 hear anything about it.
 24 **Q.** Did you ever talk to John Kessler?
 25 **A.** I have.

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1 Q. Has he ever referred as to anything about
2 Minnesota Power and about being provided incorrect
3 information from Minnesota Power?
4 A. When the Glen Ullin project was up and
5 working, in the process thereof, we visited
6 slightly because he knew we had towers and what our
7 experience was. I don't recall him ever saying
8 anything bad about his experiences. So it was more
9 in the early stages of the Glen Ullin project,
10 so --
11 Q. Okay. If -- do you know, then, John
12 Kessler very well?
13 A. I know him. I don't know him very well.
14 Q. Does he have a reputation of honesty?
15 A. For the little bit I know of him, yes.
16 Q. Okay. And if --
17 A. I don't have any issues with him.
18 Q. All right. And if he were to advise you
19 that he was provided false information from
20 Minnesota Power, is that something that might
21 change your opinion as to Minnesota Power?
22 MR. MAHLBERG: Objection. It calls for
23 speculation.
24 MR. BOUGHEY: It's cross. He opened the
25 door.

1 moment ago?
2 A. Well, my personal experience, yes.
3 Q. Right. And yet a minute ago, you didn't
4 base anything -- strike that.
5 A minute ago you also said that you were
6 basing this on the reputation and discussion and
7 rumors about Minnesota Power based on your speaking
8 with neighbors; right?
9 A. From what I hear in the community, yes.
10 That's part of my experience is what I hear in the
11 community. I haven't heard anything.
12 Q. And then my question was wouldn't your --
13 wouldn't your -- if you heard something different
14 in the community, would that -- would that -- would
15 you take that into account and potentially change
16 your opinion about Minnesota Power?
17 A. Not without researching it further.
18 Q. Right. I got it. So --
19 MR. MAHLBERG: My objection is it was --
20 calls for speculation still, but now it's been
21 asked and answered as well twice.
22 MR. BOUGHEY: Yes. So you -- forget it.
23 I'll leave it for argument in the brief. Nothing
24 further.
25 JUDGE DAWSON: Mr. Johnson.

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1 JUDGE DAWSON: I'm going to sustain the
2 objection.
3 Q. (MR. BOUGHEY CONTINUING) Okay. If you
4 found out that Minnesota Power had provided false
5 information to anybody in regards to this
6 particular wind project, would that change your
7 opinion as to Minnesota Power?
8 MR. MAHLBERG: It's the same objection.
9 MR. BOUGHEY: If his opinion is --
10 JUDGE DAWSON: I'll allow that question.
11 Q. (MR. BOUGHEY CONTINUING) Okay. Go ahead.
12 A. I can only go off my own personal opinion,
13 my own personal experience. If somebody come up to
14 me with objections or problems with Minnesota
15 Power, I would definitely ask a lot of questions.
16 I wouldn't just believe them outright, and
17 sometimes the -- with visiting with people, it
18 usually comes up with that they have a burr under
19 their saddle for something other and they're using
20 it for an excuse. I -- there again, that's only
21 speculation. I'd have to -- every situation is
22 different.
23 Q. Okay. So just a moment ago you said, "I
24 can only base my opinion on my personal
25 experience." Isn't that what you said just a

1 MR. JOHNSON: No questions.
2 JUDGE DAWSON: Commissioner Fedorchak.
3 COMMISSIONER FEDORCHAK: No questions.
4 JUDGE DAWSON: Commissioner Christmann.
5 **EXAMINATION**
6 **BY COMMISSIONER CHRISTMANN:**
7 Q. Do you ever run into situations in
8 ministering where you would assess them to be two
9 good and decent people that just had a breakdown in
10 communications and now were at loggerheads and odds
11 and -- but it doesn't mean that anybody's really
12 bad?
13 A. Every week. Yeah. I -- people see things
14 from a different point of view and miscommunication
15 and -- yeah.
16 Q. And so someone that you feel you know to
17 be good and decent could have had a breakdown in
18 communications and --
19 A. Oh, absolutely.
20 Q. -- ended up with a problem?
21 A. We're all human. Yeah.
22 COMMISSIONER CHRISTMANN: Thank you. No
23 other questions.
24 JUDGE DAWSON: Commissioner Kroshus.
25 COMMISSIONER KROSHUS: No questions.

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1 JUDGE DAWSON: Any further questions?

2 MR. BOUGHEY: One follow-up.

3 **RE-CROSS-EXAMINATION**

4 **BY MR. BOUGHEY:**

5 Q. Have you ever had anyone lie to you that

6 was -- that it was not a result of breakdown in

7 communications?

8 A. Well, sure.

9 Q. And then did you as a result of that

10 conclude that maybe that person shouldn't be

11 trusted and your opinion of that person went down?

12 MR. MAHLBERG: I'm going to object as

13 we're now far beyond the scope of relevance. We

14 can go down the questions of morality further. I

15 think the first one was close, but --

16 JUDGE DAWSON: Last question.

17 MR. BOUGHEY: What was that?

18 JUDGE DAWSON: You can ask the question,

19 but make it your last on this line.

20 MR. BOUGHEY: Yes. That's fine. Do you

21 want it repeated or --

22 THE WITNESS: Please.

23 Q. (MR. BOUGHEY CONTINUING) In situations

24 where it's not a breakdown of communication but

25 somebody actually, you determined, has lied, would

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1 that result in your changing of the -- your opinion

2 of that person when it was previously a positive

3 opinion?

4 A. There again, it all depends on the

5 situation. Why did that person lie?

6 Q. Good question. Apparently -- never mind.

7 MR. BOUGHEY: We're good.

8 JUDGE DAWSON: Any further questions?

9 MR. MAHLBERG: No.

10 JUDGE DAWSON: Seeing none, you may step

11 down.

12 THE WITNESS: Thank you.

13 MR. MAHLBERG: We call Glen Lennick.

14 JUDGE DAWSON: Mr. Lennick.

15 THE WITNESS: Yeah.

16 JUDGE DAWSON: Yes. You were here for my

17 previous warnings as to perjury?

18 THE WITNESS: Yeah.

19 JUDGE DAWSON: So you understand what it

20 is?

21 THE WITNESS: Mm-hmm.

22 (Witness sworn.)

23 MR. BOUGHEY: Your Honor, I again have to

24 make a very quick objection, which is if the

25 purpose of this testimony -- number one, it's a

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1 rebuttal witness, they say, but we just found out

2 about this person within the last day or so.

3 And, again, if any of the testimony is

4 going to any of his opinions as to Minnesota Power

5 or the people who work for Minnesota Power, I

6 believe that, again, that opens up the door and we

7 should be allowed to bring in people who have a

8 different opinion.

9 So if that's where this is headed in any

10 such direction, I would object to this witness both

11 as just now being disclosed, and I know they say

12 they can bring back rebuttal, but I don't think

13 this -- anyway, it appears --

14 JUDGE DAWSON: Your objection is noted.

15 MR. BOUGHEY: Yeah, you noted it. And

16 then I'll ask for a standing objection if you've

17 overruled me so that I won't have to interrupt.

18 JUDGE DAWSON: Correct. I've overruled

19 you.

20 **GLEN LENNICK,**

21 having been first duly sworn, was examined and

22 testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. MAHLBERG:**

25 Q. Good afternoon, Mr. Lennick. Please state

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1 and spell your name.

2 A. Glen Lennick. First name G-I-e-n. Last

3 name L-e-n-n-i-c-k.

4 Q. Mr. Lennick, where do you live?

5 A. Exact address is 5424 25th Street, New

6 Salem, North Dakota.

7 Q. Mr. Lennick, if I say the word -- or the

8 phrase Turbine 441, do you know what I mean?

9 A. I've learned that today. Scott's told me

10 a couple times, but it never soaked in until I

11 heard it repeated a few times today.

12 Q. How far away is your house from Turbine

13 441?

14 A. Cross country, a mile and a half to maybe

15 two miles at the most.

16 Q. Mr. Lennick, how much land do you own?

17 A. A little over 3,000 acres.

18 Q. Where is the land that you own generally

19 located?

20 A. Right around in that area.

21 Q. And when you say "that area," Section 15

22 and around that area?

23 A. Yep. Mostly to the east and to the north.

24 Q. Do you also rent land?

25 A. Yes.

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1 Q. How much land do you rent?
 2 A. Between me and my son, probably 3, 4
 3 thousand acres.
 4 Q. Is that land concentrated in this same
 5 area or is it spread out elsewhere?
 6 A. It's spread out.
 7 Q. How many cattle are you typically working?
 8 A. We run about 575 mom cows.
 9 Q. Mr. Lennick, did you enter into an
 10 easement with Minnesota Power for the Bison 4 wind
 11 project?
 12 A. Yes.
 13 Q. Have you entered into easements with
 14 Minnesota Power for any other projects?
 15 A. No.
 16 Q. Did you have a main contact at Minnesota
 17 Power who you worked with in connection with
 18 your -- with your options and easements in the
 19 project?
 20 A. Scott Monroe was the one I got to know the
 21 best or whatever at the time.
 22 Q. How was Mr. Monroe to work with?
 23 A. I got no complaints.
 24 Q. Did Mr. Monroe help to identify and
 25 resolve any issues you had with the project?

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1 A. Yeah, we never really had anything that I
 2 can remember.
 3 Q. Did you have any issues with any
 4 waterlines on your property?
 5 A. Yes, that we did. I forgot about that.
 6 Q. What was that issue and how was it
 7 resolved?
 8 A. I think me and Scott had a little bit of a
 9 misunderstanding of where the tank was located;
 10 where he pointed on the map and where I thought he
 11 meant. And then when they got there, it was in the
 12 way. But they offered to move it and they moved it
 13 where we asked them to and that was the end of it.
 14 Q. Did you have any issues with where the
 15 turbines were placed on your property?
 16 A. No.
 17 Q. Did you request that turbines be moved
 18 anywhere on your property?
 19 A. No. I had no idea where they were going
 20 to be until they told me where they were going to
 21 set.
 22 Q. And after they told you where they were
 23 going to set, Mr. Lennick, did you request that
 24 they be moved at all?
 25 A. No.

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1 Q. And how would you describe the -- the
 2 quality of the ground where Turbine 441 was
 3 placed --
 4 A. Probably --
 5 Q. -- relative to the rest of your property?
 6 A. Probably -- probably some of the poorest
 7 ground I own, to be honest with you.
 8 Q. Do you have cattle on that property?
 9 A. Yes.
 10 Q. Are your cattle bothered by the turbines?
 11 A. No. I think when it's hot, they lay
 12 underneath it for a nice fan.
 13 Q. In general, how would you describe working
 14 with Minnesota Power?
 15 A. Good. I -- I have no complaints. They've
 16 always been fair and honest and that's all I ask of
 17 anybody.
 18 Q. Did you work at all with Matt Freudenrich?
 19 A. Yeah, a little bit.
 20 Q. Can you describe that?
 21 A. He was part of moving the waterline and
 22 stuff that time and he -- swell guy to deal with.
 23 Q. Did you work at all with Wade Isaacson?
 24 A. No, I didn't get to know Wade till kind of
 25 after that project or whatever.

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1 Q. Do you consider Mr. Monroe and
 2 Mr. Freudenrich trustworthy?
 3 A. Yeah, I guess I would.
 4 Q. Are you aware of the current dispute
 5 with -- between the company and the Kesslers?
 6 A. Yeah.
 7 Q. Can you describe your own experience with
 8 the Kesslers?
 9 A. Say that again, please.
 10 Q. Can you describe your own experiences with
 11 the Kesslers?
 12 MR. BOUGHEY: Now I have to object if
 13 we're going this direction. I mean, now the door
 14 is really wide open. They said they were bringing
 15 him in as to contest the -- the Minnesota Power and
 16 their actions and conduct. Again, I think this is
 17 another door too far. I think it's -- I don't
 18 think they should have been allowed to go here, but
 19 anything further than that I don't think is
 20 appropriate.
 21 JUDGE DAWSON: Mr. Mahlberg.
 22 MR. MAHLBERG: I think Mr. Lennick as a
 23 decades-long neighbor, the same way that Minnesota
 24 Power is a neighbor, has relevant experiences that
 25 he can briefly testify about.

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1 JUDGE DAWSON: I think we're getting a
 2 little far afield here, though, as to -- you know,
 3 you said this was rebuttal for the -- them saying
 4 your people were untruthful and this is going down
 5 a different road completely. So I want you to move
 6 on from this.

7 MR. MAHLBERG: Okay.

8 Q. (MR. MAHLBERG CONTINUING) Mr. Lennick,
 9 are you familiar with the Kesslers's structure on
 10 Section 15?
 11 A. Yeah.

12 Q. And when I say "the structure," I mean the
 13 farmyard and particularly the old --
 14 A. Yeah. I was on the place once in my life,
 15 I'll be honest with you.

16 Q. Yeah.

17 A. That's when there was an auction sale
 18 there.

19 Q. Okay. Can -- have you been, when you were
 20 on your property, near enough to that house to
 21 understand what's down there?
 22 A. Yeah.

23 Q. Can you describe what you've observed
 24 about the Section 15 structure and the use of the
 25 Section 15 structure over the years as a neighbor

1 answering from his personal experience.

2 Q. (MR. MAHLBERG CONTINUING) Mr. Lennick,
 3 are you out on your property during the -- during
 4 the year fixing fences, working cattle?
 5 A. Yep.

6 Q. And you've been doing that for lots of
 7 years?
 8 A. My whole life.

9 Q. About the time that Minnesota Power was
 10 proposing this project to you and to others --
 11 A. Mm-hmm.

12 Q. -- did you ever see anyone present down at
 13 the Section 15 structure?
 14 A. I could not say one way or the other,
 15 honestly.

16 Q. Do you recall seeing anybody down there
 17 often?
 18 A. No, not at that time.

19 MR. BOUGHEY: Again, Your Honor --

20 Q. (MR. MAHLBERG CONTINUING) Did you view --
 21 MR. BOUGHEY: -- I have to object for lack
 22 of foundation, and if you want to give me a
 23 standing objection, but we have no idea what years
 24 he's talking about. We don't know what -- the time
 25 or season. I mean, we're talking about vague, lack

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1 out there?

2 A. Boy, you know, I -- to be honest with you,
 3 exactly when it was abandoned and stuff, I know --
 4 I'm pretty sure like when we signed up with
 5 Minnesota Power at the time, there was nobody
 6 living there or anything. What they used it for, I
 7 have no idea.

8 MR. BOUGHEY: Objection. He didn't answer
 9 the question that was asked. I ask that it be
 10 stricken. The question is what you've actually
 11 observed, not what his -- any conclusions he may
 12 have. Lack of foundation. If he's going to reach
 13 any such conclusion, then we better find out how
 14 often he's there and if he's -- what years and
 15 everything else.

16 MR. MAHLBERG: I think Mr. Boughey can
 17 explore that on cross-examination.

18 JUDGE DAWSON: Yes. You can explore that
 19 on cross-examination.

20 MR. BOUGHEY: And was his answer struck
 21 because he made --
 22 JUDGE DAWSON: No.

23 MR. BOUGHEY: -- a conclusion without any
 24 foundation?
 25 JUDGE DAWSON: That's fine. He's

1 of foundation and -- and resulting in conclusory
 2 statements without any basis.

3 JUDGE DAWSON: The Commission can give the
 4 weight to the evidence based upon if it's vague or
 5 if it's specific. So I'll allow the questions.

6 MR. BOUGHEY: And then so I don't have to
 7 interrupt again, can I have just a standing
 8 objection --
 9 JUDGE DAWSON: Yes, you may.

10 MR. BOUGHEY: -- to all this? Thank you.

11 Q. (MR. MAHLBERG CONTINUING) Mr. Kessler,
 12 you described that Section 15 structure as
 13 abandoned in your mind?
 14 A. I'm Mr. Lennick, by the way.

15 Q. I apologize --
 16 A. I figured I'd catch you.

17 Q. -- Mr. Lennick.
 18 Mr. Lennick, in your testimony you
 19 described that Section 15 structure as abandoned;
 20 right?
 21 A. Yeah. It was.

22 Q. It -- do you know, in your mind, how long
 23 had you considered that place abandoned?
 24 A. I can't put dates to it, to be honest with
 25 you.

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1 Q. Was it several years before the Minnesota
 2 Power project came along?
 3 A. Yeah, I would guess.
 4 Q. Are you -- are you guessing or do you have
 5 a recollection of that?
 6 A. That's what I have -- that's what I
 7 remember.
 8 Q. Okay. Are you aware that after the
 9 turbine was built and in operation, one of the
 10 Kessler children moved into the house?
 11 A. Yeah.
 12 Q. And how are you aware of that?
 13 A. We'd see them driving in and out of there,
 14 and when we were checking cows, we knew -- I mean,
 15 just knew that they were live -- his son and his
 16 new bride were living there.
 17 Q. Have you ever talked with the Kesslers
 18 about the wind project?
 19 A. Not really, no. Not that I can recall.
 20 If I did, I forgot.
 21 Q. Did you ever personally hear from
 22 Mr. Kessler at all about the location of Turbine
 23 441?
 24 A. I'm trying to recall. I know he made the
 25 remark to me one time when we were both fixing

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1 fence and across from each other that he thought
 2 the wind turbine ended up on the wrong side of the
 3 fence.
 4 Q. What did you understand him to mean by
 5 that?
 6 A. It should have been on his side instead of
 7 my side.
 8 Q. Why?
 9 A. Well, why do you think? Because of the
 10 wind tower check.
 11 Q. Did Mr. Kessler mention to you, when you
 12 were talking to him about that, any issue about the
 13 proximity of Turbine 441 to the structure on
 14 Section 15?
 15 A. No, that we never talked about.
 16 Q. Have you ever heard any negative comments
 17 about Minnesota Power?
 18 A. No, not that I can say.
 19 Q. Mr. Lennick, you've been made aware that
 20 the Kesslers have sought to have Turbine 441 be
 21 taken down entirely?
 22 A. Mm-hmm. I've heard that, yes.
 23 Q. Do you have a response to that?
 24 A. I think it's foolish.
 25 Q. Why is that?

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1 A. It was there before anybody lived back on
 2 that place again. That means that anybody -- okay.
 3 I'm going to go build a new house under a wind
 4 tower someplace and they're going to have to move
 5 the wind tower anyway. That's my personal opinion.
 6 Q. In your opinion, the Section 15 wasn't
 7 occupied back at that time?
 8 A. No.
 9 Q. How would losing Turbine 441 affect you?
 10 A. Financially.
 11 Q. Would it be significant?
 12 A. Say that --
 13 Q. Would it be significant for you?
 14 A. Yes, it would.
 15 Q. If it came down to it -- and I'm not
 16 asking you to commit to anything. There's lots of
 17 details and such -- would you be willing to work
 18 with Minnesota Power on a new location?
 19 A. Yeah, if it had to be.
 20 MR. MAHLBERG: I don't have anything else.
 21 Thank you, Mr. Lennick.
 22 THE WITNESS: Okay.
 23 JUDGE DAWSON: Mr. Boughey.
 24 MR. BOUGHEY: Thank you, Your Honor.
 25

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CROSS-EXAMINATION

2 **BY MR. BOUGHEY:**
 3 Q. As to the moving -- I appreciate you're
 4 presently making money off of Turbine 441; correct?
 5 A. Mm-hmm.
 6 Q. And if -- is that a yes?
 7 A. What's that?
 8 Q. Was that a yes? You said "mm-hmm" and she
 9 can't down take down "mm-hmm."
 10 A. Okay. Yes. Sorry.
 11 Q. That's okay. I'm sorry. She's typing --
 12 A. I tend to do that.
 13 Q. -- this in. Yeah, it's -- I know it's
 14 hard.
 15 And you just said you wouldn't have a
 16 problem if 441 ended up being moved, say, somewhere
 17 to the north a thousand, 2,000 feet and you still
 18 were getting the income --
 19 A. Right.
 20 Q. -- and, again, they had to pay for
 21 anything that resulted from that.
 22 You -- as I understand your testimony, you
 23 have no problem with that; correct?
 24 A. If that's what has to be, that's what has
 25 to be.

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1 Q. Okay. Now, in regards to Mr. Kessler's
2 comment that they put it on the wrong side of the
3 fence, is it possible he meant going to the south,
4 farther to the south on his property so it's
5 farther away from the house we've been talking
6 about?
7 A. No, that never come up in the
8 conversation.
9 Q. Well, no. Is it possible that's what he
10 meant? You said, "I don't know what he meant." He
11 said they put it on the wrong side of the fence,
12 and then you speculated because he wanted the
13 money.
14 A. I --
15 MR. MAHLBERG: Objection. We're calling
16 for speculation. It's been asked and answered.
17 Mr. Lennick testified earlier about how he
18 understood the comment.
19 MR. BOUGHEY: And I wanted to
20 cross-examine him on whether there's another
21 possible interpretation than the one he jumped to.
22 I have the right to ask that, I believe.
23 JUDGE DAWSON: Please keep your questions
24 directed at that, but, yes, you may continue with
25 those questions.

1 A. No.
2 Q. As a matter of fact, it was there many,
3 many years prior, wasn't it?
4 A. Yeah. Before Kesslers ever bought the
5 land it was a Moos farmstead.
6 Q. Mm-hmm. Now, if you would, I'd like you
7 to open up the binder on your right. I need you to
8 go to Section 4 and the very first page of Section
9 4, sir.
10 COMMISSIONER CHRISTMANN: Which binder?
11 MR. MAHLBERG: The -- the --
12 MR. BOUGHEY: Should say Dates.
13 MR. MAHLBERG: -- Kessler binder; right?
14 Your -- your binder.
15 MR. BOUGHEY: Kessler binder. Yep. Yep.
16 He's got the right one. The Kessler binder.
17 Q. (MR. BOUGHEY CONTINUING) Before you look
18 at that exhibit, I have a couple questions for you.
19 Okay?
20 A. Okay.
21 Q. So I'm just trying to figure out, you made
22 all sorts of statements about the idea that you
23 thought that house was abandoned. So prior to 2013
24 when they were looking at -- to where to put the
25 turbines, what is your knowledge of the use of that

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1 MR. BOUGHEY: Thank you, Your Honor.
2 JUDGE DAWSON: Objection's overruled.
3 Q. (MR. BOUGHEY CONTINUING) So when
4 Mr. Kessler said something to the effect, "They put
5 the turbine on the wrong side of the fence" --
6 A. Mm-hmm. Yes.
7 Q. That's a yes?
8 A. I caught myself.
9 Q. -- then is it -- is it possible that he
10 could have meant or did mean that had it been put
11 on the south side on his property, it would be
12 farther away from the residence at issue?
13 A. I honestly don't know what he meant --
14 Q. My point exactly.
15 A. -- exactly by that.
16 Q. Thank you. Now, you mentioned you
17 couldn't say as to -- put dates as to the house.
18 And I thought it was interesting. You specifically
19 said a minute ago, Well, they shouldn't have built
20 the house there after the turbine was up. Do you
21 remember saying the word "built"?
22 A. I said anybody could build a house under a
23 turbine now. Not Kesslers in particular or at all.
24 Q. All right. So you're not trying to assert
25 that house was built after the turbine went up?

1 house prior to that -- Minnesota Power getting
2 ready to build?
3 A. I believed it was empty.
4 Q. Okay. And you believed that --
5 A. You know, not occupied or however --
6 Q. Okay.
7 A. -- you should say that.
8 Q. All right. How often were you down by
9 that house?
10 A. A few times -- shoot, over the summer,
11 probably every week to two weeks.
12 Q. All right.
13 A. Depends on when we get around to checking
14 cows and checking fence and --
15 Q. Okay. And then during the winter, how
16 often were you down by that house?
17 A. Not very often.
18 Q. Sure. So did I get you correct that
19 during the summertime maybe -- how many times a
20 summer?
21 A. Let's just for an average say once a week.
22 Q. All right. And while there what are you
23 doing?
24 A. Checking cows, checking fence.
25 Q. Okay. So I have to assume your focus

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1 while there wasn't to determine if someone was
 2 living there at the time or the house was being
 3 used?
 4 **A.** No, but you kind of pay attention to
 5 what's --
 6 **Q.** Well --
 7 **A.** -- going on in the neighborhood.
 8 **Q.** Well, that's true, but if you're only
 9 there about once a week during in the summer --
 10 **A.** Yeah.
 11 **Q.** All right. Were you ever there in the
 12 evenings, say after five o'clock to ten o'clock
 13 when --
 14 **A.** Oh, yeah, it's possible, because a lot of
 15 times that's when we go check cows is towards the
 16 evening when there's not enough time to get
 17 anything else started anymore.
 18 **Q.** I understand it's possible. I want to
 19 know whether you remember being there during those
 20 times.
 21 **A.** Not exactly.
 22 **Q.** All right.
 23 **A.** I'd be lying if I gave you that answer.
 24 **Q.** All right. And then in regards to --
 25 after the 2013 is when I understand they started

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1 putting down some pads and then 2014 is when they
 2 built 441. Does that make sense for the years?
 3 **A.** Yeah, it could. I don't remember exactly
 4 what year it was when we signed up. I'd have to go
 5 look back on the paperwork.
 6 **Q.** All right. When they were actually
 7 building 441 --
 8 **A.** Yeah.
 9 **Q.** -- in that -- the summer of 2013 before
 10 they built it, they were building other ones, and
 11 the summer of 2014 when they were actually building
 12 441, do you remember going down and -- and being at
 13 441 at any time, and if so, how often during that
 14 building phase from, say, May to July?
 15 **A.** Maybe took my side-by-side and drove
 16 through there a couple times on a Sunday afternoon.
 17 **Q.** Okay. That's about it?
 18 **A.** Yeah. Prob -- yeah. Except for checking
 19 the cows because we had cows in there at the same
 20 time when it was getting -- everything was going
 21 in.
 22 **Q.** All right. I'd like you now to look at
 23 the document -- does the bottom of that document
 24 say in handwriting Dates-1?
 25 **A.** Yeah.

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1 **Q.** Okay. I'd like you to read that over, and
 2 after you've read it, I want to ask you if you're
 3 able to tell me if anything on this document, to
 4 your knowledge, is incorrect. So please read it,
 5 and I'll just tell you this is from a sworn
 6 statement by the Kesslers as to the use of that
 7 house.
 8 **A.** Only -- I can't argue with a lot of it
 9 because I don't know when they remodeled the house
 10 and stuff. I didn't do it myself and I wouldn't
 11 remember that far back.
 12 **Q.** I understand. So my question was is there
 13 anything on this page that you have personal
 14 knowledge that you could say that's not true?
 15 **A.** I don't believe some of it's true, but in
 16 absolute certainty, no, I can't.
 17 **Q.** All right. And, now, assuming that their
 18 son Stephen testified that the summer of 2013 and
 19 throughout the summer of 2014 he was living there
 20 while -- each night throughout the whole summer
 21 while he was working during the weeks --
 22 **MR. MAHLBERG:** Objection. That misstates
 23 the testimony of Stephen Kessler. Claiming that he
 24 lived there every day during the week in '13 and
 25 '14 is a blatant misrepresentation of the record.

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1 **MR. BOUGHEY:** Well, what you just said is
 2 a misstatement. I said the summers of 2013 and
 3 2014 and that I was getting into the number of
 4 days, but I said the weekdays and then I was going
 5 to move on to the weekends. May I be allowed the
 6 freedom to do the cross-examination of this
 7 witness, Your Honor?
 8 **MR. MAHLBERG:** Blatant misrepresentation
 9 of the record to this witness, but --
 10 **JUDGE DAWSON:** What's your question? I --
 11 without going back completely through this and
 12 figuring out exactly who said what --
 13 **MR. BOUGHEY:** I'll rephrase.
 14 **JUDGE DAWSON:** -- it seems not exactly
 15 right to me, but --
 16 **MR. BOUGHEY:** Okay. All right.
 17 **JUDGE DAWSON:** -- rephrase.
 18 **Q.** (MR. BOUGHEY CONTINUING) All right. Do
 19 you have any reason to dispute if Stephen Kessler
 20 testified that he lived on-site during the summer
 21 of 2013 and 2014? Do you have any reason to --
 22 **A.** In all honesty, no, I can't say.
 23 **MR. MAHLBERG:** Same objection.
 24 **JUDGE DAWSON:** I'll allow the question.
 25 **MR. BOUGHEY:** Thank you.

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1 Q. (MR. BOUGHEY CONTINUING) And I assume you
 2 didn't have any objection for Keith Kessler letting
 3 his kids use that place either when they were in
 4 college or when they come back from college?
 5 A. What would I have to say? It's not my
 6 land.
 7 MR. BOUGHEY: Thank you.
 8 JUDGE DAWSON: Any further questions?
 9 Mr. Johnson.
 10 **EXAMINATION**
 11 **BY MR. JOHNSON:**
 12 Q. Mr. Lennick, how did it come to be that
 13 you're here testifying today? Were you asked by
 14 someone?
 15 A. Scott Monroe contacted me to see -- see
 16 how I felt about everything and if I would testify
 17 sort of in their behalf, I think.
 18 Q. Okay. Were you promised anything or given
 19 anything or given any sort of compensation or
 20 consideration for your testimony today?
 21 A. No.
 22 MR. JOHNSON: Thank you.
 23 JUDGE DAWSON: Commissioner Fedorchak.
 24
 25

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1 **EXAMINATION**
 2 **BY COMMISSIONER FEDORCHAK:**
 3 Q. Mr. Lennick, when you said you think --
 4 you thought the house was abandoned, that was based
 5 on --
 6 A. That was my personal opinion.
 7 Q. Sure. Everyone gets to have that --
 8 A. Yeah, I guess so.
 9 Q. -- still.
 10 A. I think it's still a free country.
 11 Q. As long as I know -- last I checked
 12 anyway. It's up for question, but -- anyway,
 13 that's a different issue.
 14 Would it -- would it change your mind if
 15 you knew that they were paying utilities there
 16 during that time period? Would it feel less
 17 abandoned to you if they were paying heat and water
 18 and --
 19 A. I guess --
 20 Q. -- I think that's basically it?
 21 A. -- to me it would look like we've got a
 22 couple of our farmsteads where we pay a well
 23 service on. They used to have houses there, but
 24 we've torn them down and it's basically just a
 25 cattle outfit, and that's what I would have kind of

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1 considered their place, I guess.
 2 Q. Sure. But the house had heat in it.
 3 A. I don't know.
 4 Q. Well, we -- we saw the bills so we know
 5 that. That's part of the record.
 6 A. Okay. If you say so, fine.
 7 Q. Yeah. But I guess -- so does that change
 8 your opinion of it being abandoned?
 9 A. I guess my opinion of abandoned is if
 10 anybody was living there full-time.
 11 Q. Okay.
 12 A. And as far as I could tell, not.
 13 COMMISSIONER FEDORCHAK: All right.
 14 That's my only question. Thank you.
 15 JUDGE DAWSON: Commissioner Christmann.
 16 **EXAMINATION**
 17 **BY COMMISSIONER CHRISTMANN:**
 18 Q. When -- when Mr. Boughey had you read that
 19 page of information --
 20 A. Yeah.
 21 Q. -- remember the part about the claim that
 22 it was painted in 2012?
 23 A. Yeah.
 24 Q. Do you ever recall that, that, you know,
 25 after years of --

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1 A. I noticed it got painted, but --
 2 Q. -- you feeling it was kind of abandoned,
 3 that you noticed it was painted?
 4 A. Yeah, I noticed it got painted by driving
 5 by on the west -- the road west that goes past the
 6 place or whatever. But what year it was, I have no
 7 recollection. You could tell me it was 2017 or
 8 2010, I wouldn't -- I don't remember.
 9 Q. But even assuming that -- let's -- I'm
 10 basically assuming that this is accurate --
 11 A. Yes.
 12 Q. -- that it was 2012.
 13 A. Yeah.
 14 Q. But even if it was '11 or '13 --
 15 A. Right.
 16 Q. -- when you would see that, wouldn't --
 17 wouldn't that kind of make you think, oh, they must
 18 be living there or plan on coming down? Like --
 19 A. I thought maybe one of the kids and --
 20 well, that is what happened when his -- I think
 21 it's his youngest son got married, then him and his
 22 wife moved in there. But what year exactly that
 23 was, I know it was after the turbine was up.
 24 That's as much -- that's as close as I can get.
 25 Q. This says it was before the turbine was

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1 up.

2 **A.** I don't believe so, but if somebody can

3 show me dates, it is what it is.

4 COMMISSIONER CHRISTMANN: No other

5 questions. Thank you.

6 THE WITNESS: Okay.

7 JUDGE DAWSON: Commissioner Kroshus.

8 **EXAMINATION**

9 **BY COMMISSIONER KROSHUS:**

10 **Q.** Good afternoon, Mr. Lennick. I had asked

11 questions previously about the land that would

12 lie -- still within the quarter that you owned but

13 lies to the east/southeast of Turbine 441. And in

14 the Kessler exhibit, it would be tab 2, and I'll

15 just give you these. But they're exhibits --

16 they're labeled M-19 and M-20 under Section 2. And

17 I've circled Turbine 441.

18 **A.** Okay.

19 **Q.** Would you agree that what I have circled

20 is the --

21 **A.** Yeah, it's right --

22 **Q.** -- turbine in question?

23 **A.** Yeah, I'd say you're real close to it.

24 Yeah.

25 **Q.** Okay. So is that land cropland or

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1 hayfield, I should say?

2 **A.** Which way? South of it?

3 **Q.** To the -- well, it would be a little to

4 the south --

5 **A.** It's --

6 **Q.** -- but then stretches to the east.

7 **A.** Here, I can just point. All of this --

8 it's all pasture, I believe.

9 **Q.** Okay. So there's no --

10 **A.** Till we get to some of these fields

11 straight east, and that's ours.

12 **Q.** Okay. To make this a little easier since

13 people can't see what exhibit we're --

14 **A.** What I'm pointing at, yeah.

15 **Q.** Is there any hayfield in proximity to --

16 or cropland in proximity to 441?

17 **A.** To the south and to the west a little bit.

18 It used to be hayfields.

19 THE WITNESS: And I think, Keith, you

20 still make hay there, don't you?

21 MR. KESSLER: I hay --

22 JUDGE DAWSON: Don't answer.

23 THE WITNESS: Okay. I'm sorry. I

24 didn't --

25 **Q.** (COMMISSIONER KROSHUS CONTINUING) Okay.

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1 Was the turbine placed in the location it wound up

2 because of cropping or haying considerations?

3 **A.** No.

4 COMMISSIONER KROSHUS: Okay.

5 THE WITNESS: Not as far as I'm aware of.

6 COMMISSIONER KROSHUS: Okay. That answers

7 my question. Is there any confusion or does anyone

8 need clarification on what I was referring to? I

9 think we got to the question at the very end that I

10 was asking anyway, so --

11 THE WITNESS: Okay.

12 COMMISSIONER KROSHUS: I'll just -- I'll

13 just end with this, and it's more of a comment.

14 Your neighbors are still neighbors at the end of

15 all of this, and --

16 THE WITNESS: Yeah, we have to put up with

17 each other.

18 COMMISSIONER KROSHUS: -- and -- but just

19 keep in mind that, you know, you'll still be

20 neighbors, and this isn't -- these things happen.

21 And we're going to wade through it and make a

22 decision, but I would just keep it in perspective

23 that it's not -- in my view, it's not a personal

24 situation between either of you. And just keep

25 that in mind as we go through this because when

711

1 this ends, you'll still be checking your cattle and

2 your property and --

3 THE WITNESS: Yep.

4 COMMISSIONER KROSHUS: -- the Kesslers

5 will be checking --

6 THE WITNESS: And we'll have mix-ups with

7 cattle every once in a while. It happens.

8 COMMISSIONER KROSHUS: Really? No, I know

9 it happens, so -- but so just please keep that in

10 mind.

11 THE WITNESS: Yep.

12 COMMISSIONER KROSHUS: No other questions,

13 or comments, for that matter.

14 JUDGE DAWSON: Okay. Any further

15 questions? Mr. Mahlberg, no.

16 MR. BOUGHEY: I guess I have --

17 JUDGE DAWSON: Mr. Boughey.

18 MR. BOUGHEY: -- one very short one.

19 **RE-CROSS-EXAMINATION**

20 **BY MR. BOUGHEY:**

21 **Q.** If you had kids in school and you had a

22 place that they could move into, wouldn't you want

23 them to be able to move into one of your own places

24 on your property?

25 **A.** If possible, yeah.

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1 MR. MAHLBERG: I'll object as to the
 2 relevance of that one.
 3 JUDGE DAWSON: I'll note your objection.
 4 MR. MAHLBERG: Thanks.
 5 JUDGE DAWSON: Any further questions?
 6 MR. BOUGHEY: Nothing further.
 7 JUDGE DAWSON: Seeing none, you may step
 8 down.
 9 THE WITNESS: Thank you.
 10 JUDGE DAWSON: Mr. Mahlberg.
 11 MR. MAHLBERG: Scott Monroe.
 12 JUDGE DAWSON: Mr. Monroe. I know you
 13 were here for my previous -- yes.
 14 MR. MAHLBERG: I'm not used to releasing
 15 people like this, but can we release these guys?
 16 JUDGE DAWSON: Unless there's some very
 17 good objection.
 18 MR. BOUGHEY: No, we're fine with that.
 19 As a matter of fact, I was just suggesting we ought
 20 to let them know they can go if they want.
 21 JUDGE DAWSON: You may go. You're
 22 released.
 23 MR. MAHLBERG: I've not had the power of
 24 releasing before. That's new to me.
 25 JUDGE DAWSON: So you were here for my

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1 previous admonitions as to perjury, so do you know
 2 what perjury is and the penalties for it?
 3 THE WITNESS: I do.
 4 (Witness sworn.)
 5 JUDGE DAWSON: You may begin.
 6 **SCOTT MONROE,**
 7 being first duly sworn, was examined and testified
 8 as follows:
 9 **DIRECT EXAMINATION**
 10 **BY MR. MAHLBERG:**
 11 Q. Mr. Monroe, please state and spell your
 12 name for the record.
 13 A. Scott Monroe. S-c-o-t-t. Last name
 14 M-o-n-r-o-e.
 15 Q. Mr. Monroe, where do you live?
 16 A. Bismarck.
 17 Q. How long have you lived in Bismarck?
 18 A. I was born in Bismarck. I moved to my
 19 grandfather's farm shortly after I was born and
 20 then moved back to Bismarck once the school where
 21 the farm was had closed down to attend school.
 22 Q. Where was the farm?
 23 A. It's about 60 miles southeast of here. In
 24 between Braddock and Kintyre.
 25 Q. What's your position with the company?

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1 A. Currently I'm in a dual role. So I am
 2 spending most of my time currently as a
 3 construction manager for ALLETE Clean Energy, but I
 4 do also still hold my title as a property and
 5 right-of-way agent with ALLETE Renewable Resources.
 6 Q. Mr. Monroe, did you file prefiled direct
 7 testimony in this matter?
 8 A. Yes, I did.
 9 Q. Is that prefiled direct testimony
 10 Exhibit 4 and Exhibits 4-1 through 4-8?
 11 A. Yes.
 12 Q. If you were asked those same questions
 13 today, would your answers be the same or
 14 substantially the same?
 15 A. Yes.
 16 MR. BOUGHEY: Your Honor, when I made that
 17 standing objection, it applies to everybody. So as
 18 far as the -- I want to make sure that my objection
 19 to the direct testimony -- I think it applied to
 20 everybody.
 21 JUDGE DAWSON: Oh, yep. Yep.
 22 MR. BOUGHEY: Thank you.
 23 JUDGE DAWSON: It's for --
 24 MR. BOUGHEY: Then I don't have to say
 25 another word. Thank you.

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1 JUDGE DAWSON: Continue on.
 2 MR. MAHLBERG: For clarity's sake, we
 3 already dealt with that day one and it was all
 4 admitted; right?
 5 JUDGE DAWSON: Yep. Yep.
 6 Q. (MR. MAHLBERG CONTINUING) Okay.
 7 Mr. Monroe, what was your role with respect to the
 8 Bison 4 wind project?
 9 A. It was to sign up option and easement
 10 agreements.
 11 Q. Who was primarily responsible for working
 12 with the Kesslers on the Bison 4 wind project?
 13 A. I was.
 14 Q. Mr. Isaacson have anything to do with it?
 15 A. No.
 16 Q. Would correspondence potentially go out
 17 under one or the other's name?
 18 A. Yes.
 19 Q. In their testimony -- you were here for
 20 the Kesslers' testimony?
 21 A. I was.
 22 Q. Testified that there were multiple
 23 Minnesota Power representatives involved in
 24 obtaining options and easements from them. To your
 25 knowledge, how many Minnesota Power representatives

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1 were involved in negotiating obtaining options and
 2 easement agreements from the Kesslers?
 3 **A.** So it would have been myself and Mr. Wade
 4 Isaacson since I have been employed there. I know
 5 from looking over documents that there was another
 6 gentleman prior to my employment with the company.
 7 **Q.** And from looking over those documents, was
 8 that other gentleman Paul Johnson?
 9 **A.** That is correct.
 10 **Q.** Do you know when Mr. Johnson last worked
 11 for Minnesota Power?
 12 **A.** Personally I do not. I know from
 13 documentation, like I said before, I think he
 14 retired in 2009.
 15 **Q.** Did you talk with the Kesslers prior to
 16 the September 13, 2013, public hearing?
 17 **A.** No.
 18 **Q.** Did you attend the September 13, 2013,
 19 public hearing?
 20 **A.** I did not.
 21 **Q.** Okay. Mr. Monroe -- Mr. Monroe, I've
 22 passed around what is Exhibit 15. And you should
 23 also have up there Exhibits 13 and 14. This is one
 24 of the worst-introduced, out-of-order numbers I've
 25 done, and I apologize for that.

1 September 13 of 2013?
 2 **A.** Yes, they are.
 3 **Q.** So the day of the public hearing, you --
 4 you weren't at the public hearing. You were
 5 meeting with landowners?
 6 **A.** That is correct.
 7 **MR. MAHLBERG:** I'll offer 13, 14 and 15.
 8 **JUDGE DAWSON:** Any objection?
 9 **MR. BOUGHEY:** No, Your Honor.
 10 **JUDGE DAWSON:** And they are so marked and
 11 admitted.
 12 **MR. MAHLBERG:** Were 16 -- I apologize,
 13 were 16 and 17 -- I'll offer those in retrospect.
 14 **JUDGE DAWSON:** Any objection to 16 and 17?
 15 **MR. BOUGHEY:** So we're now doing en masse
 16 13 through 17. Do I have it right?
 17 **JUDGE DAWSON:** Correct.
 18 **MR. BOUGHEY:** Again, I think they're
 19 irrelevant, but I'm not going to bother to object.
 20 We'll just let them in.
 21 **JUDGE DAWSON:** They're marked and
 22 admitted.
 23 **Q.** (MR. MAHLBERG CONTINUING) Mr. Monroe,
 24 when did you first meet the Kesslers?
 25 **A.** I would have been at the October meeting

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1 But Exhibits 13, 14 and 15, are these
 2 memoranda of easements?
 3 **A.** Exhibit 15 is a memorandum. I am having
 4 trouble locating the other exhibits that were
 5 passed out earlier.
 6 **Q.** You now have Exhibits 13 and 14. I'm
 7 going to try and do those en masse, if that's okay.
 8 Do you recognize Exhibits 13, 14 and 15?
 9 **A.** I do.
 10 **Q.** What are they?
 11 **A.** They are the memorandum of easement.
 12 **Q.** And what do these -- what do these
 13 documents show, Mr. Monroe?
 14 **A.** So they would show where turbine
 15 improvement areas are on each landowner's property.
 16 **Q.** And short of that, Mr. Monroe, at a more
 17 general level, what was your role in having these
 18 documents executed?
 19 **A.** So once our attorneys had drafted these
 20 agreements, it was my responsibility to meet with
 21 landowners, discuss the layout and concerns that
 22 they may have after they had a chance to review the
 23 documents.
 24 **Q.** And are each of these documents documents
 25 that you notarized landowner signatures on on

1 to sign easement agreements.
 2 **Q.** What date in October?
 3 **A.** 23rd.
 4 **Q.** So it's your testimony that the Kesslers
 5 did not make any statements to you regarding the
 6 Section 15 structure otherwise prior to or at the
 7 public hearing?
 8 **A.** They did not.
 9 **Q.** How many meetings did you have with the
 10 Kesslers --
 11 **MR. BOUGHEY:** Wait. I'm sorry, Counsel.
 12 Did you just ask him if he made any statements at
 13 the public hearing? He said he wasn't at the
 14 public hearing. So I apologize, but I think you
 15 misspoke with your question.
 16 **MR. MAHLBERG:** This witness was confirming
 17 that he had no communications with the Kesslers
 18 prior to or at the public hearing.
 19 **MR. BOUGHEY:** All right. Well, since he
 20 wasn't at the public hearing, I think that's
 21 apparently an impossibility, but all right.
 22 **MR. MAHLBERG:** I think we'd agree,
 23 Mr. Boughey, but the allegations persisted that it
 24 was this witness and so that's why we're doing
 25 this.

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1 MR. BOUGHEY: Well --

2 Q. (MR. MAHLBERG CONTINUING) How many

3 meetings did you have with the Kesslers regarding

4 signing easements for the Bison 4 project?

5 A. Two.

6 Q. What dates were those meetings on?

7 A. The first one was October 23 and then the

8 second one was November -- I believe it was the

9 22nd.

10 Q. Were those both of 2013?

11 A. Yes.

12 Q. To your knowledge, Mr. Monroe, was the

13 first of those two meetings that you had with the

14 Kesslers set up in any way in connection with

15 whatever might have taken place at the public

16 hearing?

17 A. No.

18 Q. Where did those meetings take place?

19 A. At the Bison O&M building out in New

20 Salem.

21 Q. You were present when the Kesslers

22 testified that there were more than two meetings

23 about the easement agreements; right?

24 A. Yes, I am aware.

25 Q. Is your testimony that there were only two

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1 meetings total?

2 A. That is correct.

3 Q. You were present when the Kesslers alleged

4 that you came to their house to discuss easements

5 or options for the project several times. Were you

6 present for that?

7 A. I am aware, yes.

8 Q. Have you ever been to the Kesslers' house?

9 A. I have not.

10 Q. On October 23 of 2013, why don't you walk

11 us through -- why don't you walk us through that

12 meeting.

13 A. So it was made an arrangement to have the

14 Kesslers come into the O&M building to go over

15 their easement exhibits that were mailed out to

16 them prior. So after they had a chance to look

17 over them, we could discuss them, answer any

18 questions that they had, and then, you know,

19 obviously the end goal is to get a signature. And

20 so --

21 Q. Who was present?

22 A. I would have been, Mr. and Mrs. Kessler.

23 Q. Where were you in the building?

24 A. In the upstairs office area.

25 Q. With the Kesslers there, did you go over

722

1 the easement documents?

2 A. We did.

3 Q. Did you go over the sketches?

4 A. Yes.

5 Q. Did the sketches show the locations of

6 turbine pads, collection lines, access roads,

7 temporary work space, those sorts of things?

8 A. Yes.

9 Q. Did the Kesslers have any questions about

10 access roads or -- or fencing or turbine pads?

11 A. Yeah, that was the majority of their

12 questions was, you know, kind of wondering why

13 roads were laid out the way that they were, why

14 some of the -- I believe there was two turbine

15 locations that were close to their property line

16 and why they were overhanging onto their property.

17 And then fencing, you know, how were we going to go

18 around it and some temporary fencing for

19 construction.

20 Q. And were you able to answer all the

21 questions yourself that they had about access roads

22 and fencing and those sorts of things?

23 A. I was not.

24 Q. Were you able to find someone who could

25 answer those questions?

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1 A. I had called Mr. Freudenrich over from the

2 construction trailer, which is across the parking

3 lot.

4 Q. And did Mr. Freudenrich come over to the

5 O&M building?

6 A. Yes.

7 Q. When Mr. Freudenrich joined you and the

8 Kesslers, were the Kesslers upset at all that you

9 had called the person who had allegedly swore at

10 them at the public hearing?

11 A. No.

12 Q. Did they mention anything about it?

13 A. No.

14 Q. Were you present as Mr. Freudenrich

15 explained or responded to all the Kesslers' issues?

16 A. Yes.

17 Q. At any point during that communication,

18 did the Kesslers tell you that their son or one of

19 their sons was going to be moving into the Section

20 15 structure?

21 A. No.

22 Q. At any point during those -- during the

23 discussions, did the Kesslers suggest that the

24 Turbine 441 was being placed too close to the

25 Section 15 structure?

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1 **A.** No.

2 **Q.** Did Mr. Freudenrich stay for the rest of

3 the meeting?

4 **A.** Once he was done answering the questions

5 about road and turbine placement and locations, he

6 headed back over to his office in the construction

7 trailer.

8 **Q.** What happened with the rest of the meeting

9 with you and the Kesslers?

10 **A.** We finished up. They had ended up signing

11 two out of the three agreements that were provided

12 to them.

13 **Q.** Why didn't they sign the third?

14 **A.** The third one was a contract for deed that

15 Mr. Kessler had with his parents which they had

16 finalized, so they wanted the parents' names taken

17 off of that agreement.

18 **Q.** So they signed two easements, but the

19 third needed to be revised?

20 **A.** That is correct.

21 **Q.** Were you able to do the revisions yourself

22 that day?

23 **A.** No. I had to submit those over to the

24 attorneys to have them redraft the agreement.

25 **Q.** After the Kesslers signed the easement

725

1 agreements, what happened next?

2 **A.** That was when Mr. Isaacson had come out of

3 the cubicle that he was in, his work location, and

4 taken the Kesslers over to the construction

5 trailer.

6 **Q.** What happened at the second meeting with

7 the Kesslers on November 22, 2013?

8 **A.** It was a very short meeting. Like I said,

9 we had already discussed all of the placement of

10 turbines, collection line roads and that stuff in

11 the previous meeting. So it was just a formality

12 to get them to sign the agreement.

13 **Q.** And the Kesslers signed the agreement that

14 day?

15 **A.** Yes.

16 **Q.** Did they voice any concerns about signing

17 the easement?

18 **A.** No.

19 **Q.** Was anybody else from Minnesota Power

20 there involved in that meeting on November 22

21 besides you?

22 **A.** I was directly involved. I believe

23 Mr. Isaacson would have been in his cubicle.

24 **Q.** During either of the two meetings, did the

25 Kesslers state any concerns to you about the

726

1 Section 15 structure?

2 **A.** No.

3 **Q.** Based on your discussions with the

4 Kesslers, were they aware of where Turbine 441 was

5 located?

6 **A.** It's on the easement agreement exhibits.

7 You can clearly see where that turbine would be

8 located as well as the construction easement and

9 how it would affect their property.

10 **Q.** Anything else? The turbine pad or

11 anything?

12 **A.** The turbine pad, I know that was one of

13 the bigger concerns that the Kesslers had with the

14 pad being on their property and fencing around it

15 down the road.

16 **Q.** During either of those two meetings, did

17 Kesslers state any concerns other than what you've

18 talked about with fencing, access roads, about the

19 location of Turbine 441?

20 **A.** No.

21 **Q.** During either the October 23 or

22 November 22 meeting, did the Kesslers tell you that

23 they did not want to sign an easement for the

24 project?

25 **A.** No.

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1 **Q.** Were you present when the Kesslers

2 testified or previously alleged that Wade Isaacson

3 told them that Minnesota Power would go to a judge

4 to get the easements signed in 30 days if the

5 Kesslers didn't sign the easements?

6 **A.** I'm aware of that allegation.

7 **Q.** To your knowledge, did you, Wade or anyone

8 else from Minnesota Power tell the Kesslers that

9 Minnesota Power would go to a judge to get the

10 easements signed in 30 days if the Kesslers didn't

11 sign the easements?

12 **A.** No.

13 **Q.** To your knowledge, did you, Wade or anyone

14 else from Minnesota Power mention or otherwise

15 refer to Minnesota Power using eminent domain to

16 obtain the easements if the Kesslers didn't sign?

17 **A.** No.

18 **Q.** In your experience, Mr. Monroe, if a

19 landowner decides they don't want to participate in

20 a project, even if they've already signed an

21 option, does Minnesota Power force the issue?

22 **A.** Absolutely not.

23 **Q.** During any meeting that you had with the

24 Kesslers, did you tell the Kesslers that the

25 project's turbines would not bother their property

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1 at all?

2 **A.** No. As they were part of the project and
3 having turbines on their property, they were going
4 to be affected.

5 **Q.** Did you specifically discuss with
6 Mr. Freudenrich and the Kesslers a need for
7 removing fences in order to construct Turbine 441
8 and other turbines?

9 **A.** Yes.

10 **Q.** Mr. Monroe, when did you first learn that
11 the Kesslers had a concern regarding the placement
12 of -- of Turbine 441 relative to the Section 15
13 structure?

14 **A.** It would have been early 2017.

15 **Q.** And how did you learn about it?

16 **A.** From the email that Mr. Isaacson had sent
17 out.

18 **Q.** Now, between the time that the Kesslers
19 signed the easements in October and November of
20 2013 and February 2017 when -- when you say you
21 learned of the issue the first time, did you have
22 other interactions with the Kesslers?

23 **A.** A lot.

24 **Q.** What do you mean by "a lot"?

25 **A.** I was the primary contact for the Kesslers

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1 during the whole construction phase. So, you know,
2 anything that would come up -- I know there was a
3 few instances where, you know, cows had gotten out,
4 whether a gate was left open or, you know, broke,
5 and so cows would get out. So I would be notified
6 from the construction team and then I would relay
7 the message to Mr. Kessler.

8 **Q.** Did you address also reclamation concerns?

9 **A.** That is correct.

10 **Q.** How many times do you think you talked
11 with Mr. Kessler during that period?

12 **A.** In person and on the phone, I'd probably
13 say a combined of, I don't know, 25 or 30 times.

14 **Q.** Were you ever out at or near Turbine 441
15 with Mr. or Mrs. Kessler during that period of
16 time?

17 **A.** Yes.

18 **Q.** Would you tell me about that?

19 **A.** We were looking at some reclamation work,
20 some washouts, some final fencing, just trying to
21 get everything cleaned up after the project was
22 completed. Going over crop damage, things like
23 that.

24 **Q.** How many times were you out there with --
25 with Mr. Kessler?

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1 **A.** Not that I can recall every single one of
2 them, but, you know, a handful -- three, five times
3 maybe.

4 **Q.** I've been referring to Mr. Kessler. Was
5 Mrs. Kessler present at any of those conversations
6 that you recall?

7 **A.** She may have been present for a few, but
8 more than likely it was mostly just Mr. Kessler.

9 **Q.** During any of those interactions,
10 including where you're on-site and in person, did
11 Mr. Kessler or Mrs. Kessler mention a concern about
12 Turbine 441 and the location of the Section 15
13 structure?

14 **A.** No.

15 **Q.** Before February of 2017, Mr. Monroe, did
16 you have any knowledge about the Kesslers' son or
17 one of their sons moving into the Section 15
18 structure?

19 **A.** I did not.

20 **Q.** There's been testimony about an April 2017
21 meeting out at the site with you, Mr. Isaacson, PSC
22 staff and the Kesslers. You were here for that
23 testimony?

24 **A.** Yes, I was.

25 **Q.** Do you recall that meeting?

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1 **A.** Yes, I do.

2 **Q.** During that meeting, did you or anyone
3 else from Minnesota Power admit or otherwise state
4 that the Kesslers had told you before Turbine 441
5 was constructed that their son would be moving into
6 the Section 15 structure?

7 **A.** No.

8 **Q.** During that meeting, did you or anyone
9 else from Minnesota Power admit or otherwise state
10 that Minnesota Power had told the Kesslers that
11 Turbine 441 would not be within 1400 feet of the
12 Section 15 structure?

13 **A.** No.

14 **Q.** Mr. Monroe, you're aware that the -- the
15 Kesslers have alleged and testified that you lied
16 to them?

17 **A.** I am aware.

18 **Q.** Do you believe that you have at any point
19 in your interactions with the Kesslers lied to
20 them?

21 **A.** Absolutely not.

22 **Q.** To your knowledge, has anyone else from
23 Minnesota Power lied to the Kesslers?

24 **A.** No.

25 **Q.** In general, how would you describe your

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1 relationship with landowners on the Bison 4
2 project?
3 **A.** I would think that we have a very good
4 rapport with landowners throughout the project. I
5 think -- I don't have the exact number right
6 offhand, but, I mean, we deal with -- over the
7 course of all the projects, we've dealt with I'd
8 say over 500 landowners, you know. One thing with
9 Minnesota Power is, you know, we talk about it all
10 the time that, you know, these projects don't
11 happen, you know, without landowners. So that's
12 one of our main-focused things is to, you know,
13 address landowners. You know, we're there for a
14 partnership for 50 years with these landowners. We
15 really like to pride ourselves on the relationship
16 that we have with all landowners.

17 **MR. MAHLBERG:** I don't have anything else.
18 Thank you, Mr. Monroe.

19 **JUDGE DAWSON:** Mr. Boughey.

20 **MR. BOUGHEY:** Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 **BY MR. BOUGHEY:**

23 **Q.** You mentioned your good relationship with
24 all the other landowners. Did Minnesota Power in
25 regards to this project place any other turbines

1 **Q.** And isn't it correct that all of those
2 turbines that are on their property are very far
3 away from their -- their residence which isn't
4 even -- anyway, from their traditional normal
5 residence; isn't that correct?

6 **A.** I have -- I'm not sure where the Kesslers'
7 residence is.

8 **Q.** Okay. Well, you don't know where their
9 residence is?

10 **A.** No.

11 **Q.** If you look at the map above you there --

12 **MR. BOUGHEY:** Is it A, Keith? A.

13 **Q.** (MR. BOUGHEY CONTINUING) Do you see the
14 letter A on the map that has all the letters on it?

15 **A.** I do.

16 **Q.** Assuming that that is their residence,
17 does it appear that any of the turbines on their
18 property are far away from that A?

19 **A.** Yes.

20 **Q.** Yeah. Now, you mentioned that one of the
21 maps you had up in your office, that you could, I
22 thought you said, plainly see how close the turbine
23 was to any residence; is that what you said? Did I
24 mishear you?

25 **A.** I did not say anything about --

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1 within 1150 feet of a structure?

2 **A.** Not that I'm aware of.

3 **Q.** Okay. And you mentioned you never made
4 any statements as to the 1400 feet, but wasn't that
5 1400 feet setback one of the requirements that was
6 part of the application and the order of the PSC?

7 **A.** Yes, from an occupied residence.

8 **Q.** And you as the landman -- you must have --
9 you clearly had the Kesslers' phone number, and if
10 anyone from Minnesota Power had called from Duluth
11 saying -- and said, "We need to find out what these
12 structures are, who's the landowner and what's
13 their phone number," would you have been able to
14 provide that information?

15 **A.** Yes.

16 **Q.** Were you ever asked by anyone from
17 Minnesota Power who was designing where these
18 turbines were going for any details relating to the
19 structures on Section 15?

20 **A.** No.

21 **Q.** You mentioned all -- that Mr. Kessler and
22 the Kesslers had other turbines that were -- that
23 they had agreed to and had on their property. Do
24 you remember that testimony?

25 **A.** Yes.

1 **Q.** Okay. Did you have a map -- when the
2 Kesslers came at the -- did you call it the M&H
3 building, M&O building?

4 **A.** O&M building.

5 **Q.** O&M.

6 **A.** Operations and maintenance.

7 **Q.** I must be dyslexic. I'm dyslexic
8 apparently.

9 You mentioned -- I thought you said
10 something about a map you had at that location.
11 Did you mention that at all?

12 **A.** There was a map over in the construction
13 trailer.

14 **Q.** All right. And at that map in the
15 construction trailer -- I'm going to turn this map
16 around. I'm showing you, sir, Exhibit 2 without
17 any letters on it. And I need to find out from
18 you, sir, is this the map that you had up in the
19 construction trailer?

20 **A.** That, I am not sure on.

21 **Q.** Okay. Does it look --

22 **A.** I don't believe that it was.

23 **Q.** All right. Do you recognize this as the
24 map -- you weren't at the public hearing so you
25 wouldn't know about that. All right.

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1 In any event, I understand 441 is at this
 2 point right here in the middle of Section 15;
 3 correct?
 4 **A.** I can't tell which one you're pointing to.
 5 **Q.** Well, show me 441.
 6 **A.** 441 is this one (indicating).
 7 **Q.** Okay. That was the one I was pointing to.
 8 **A.** Okay.
 9 **Q.** Thank you, sir.
 10 **A.** Yep.
 11 **Q.** I notice that all these other dots have
 12 circles around them. Is that for the 1400 feet?
 13 **A.** I believe so.
 14 **Q.** Okay. As a matter of fact, it says
 15 1400-foot Occupied Dwelling Setback; correct?
 16 **A.** Correct.
 17 **Q.** But here on Section 15 there is no circle
 18 around that -- that particular dot that signifies
 19 441, is there?
 20 **A.** That is correct.
 21 **Q.** And would you please look at this map and
 22 tell me where the residence is on Section 15 that
 23 is the problem here. Show me where it's located.
 24 **A.** I mean, it's somewhere in the area to the
 25 northwest.

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1 **Q.** But it's not --
 2 **A.** I can't say for sure where it's at.
 3 **Q.** Sure. And you can't tell from this map,
 4 can you, where it's physically at?
 5 **A.** No.
 6 **Q.** And so at the time that this matter is
 7 being designed and before it was the -- 441 was
 8 actually -- a pad was put down and it was put up,
 9 it would be almost impossible to figure out from a
 10 map like this where exactly the turbine was in
 11 reference to that structure; isn't that true?
 12 **A.** Yes.
 13 **Q.** Thank you. It's my understanding that you
 14 didn't have an easement for the northwest quarter
 15 of Section 15. Is that because there was no
 16 tower -- an easement from the Kesslers. Is that
 17 because there was no tower on that property?
 18 **A.** There's no what we call wind project
 19 improvements which would have either been
 20 collection, road or tower.
 21 **Q.** So the answer is that you had no easement
 22 in regards to the northwest quarter of Section 15?
 23 **A.** That's correct.
 24 **Q.** Now, I understand that -- and help me out
 25 on this because I've never dealt in this area --

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1 that when you're dealing with adjacent properties,
 2 is there something called either a variance, some
 3 people have called it a waiver, in regards to
 4 having a tower on somebody else's property nearby?
 5 Are you familiar with any type of document like
 6 that?
 7 **A.** I am not.
 8 **Q.** Okay. But in any event, you didn't obtain
 9 anything like that from the Kesslers; correct?
 10 **A.** No.
 11 **Q.** Meaning that's correct? Sorry.
 12 **A.** I did not obtain a document from the
 13 Kesslers of that sort.
 14 **Q.** Now, obviously during the -- either before
 15 the construction phase, you must have had a real
 16 good idea through -- because you worked for
 17 Minnesota Power where 441 was going to go; is that
 18 correct?
 19 **A.** Can you state that again?
 20 **Q.** Sure. Let me try again. I was told you
 21 weren't part of the -- the microsittings or you
 22 weren't physically there with ten or so other
 23 Minnesota Power people when they stood where the
 24 441 was going to go. So at what point did you know
 25 where exactly 441 was going to end up? I know it's

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1 not numbered that yet.
 2 **A.** It would have been during documentation,
 3 like the easement agreement with the Kesslers where
 4 it would state the turbine location, turbine
 5 number.
 6 **Q.** So to put it in time frame, since you're
 7 looking at those exhibits that just came in, would
 8 that be around September of 2013?
 9 **A.** Yes.
 10 **Q.** Okay. And at that point, why didn't you,
 11 once you knew where that was at -- were you aware
 12 as of September 2013 of the structures on Section
 13 15 owned by the Kesslers?
 14 **A.** I was not.
 15 **Q.** You had never driven by there?
 16 **A.** No, sir.
 17 **Q.** Do you have any obligation as somebody
 18 from Minnesota Power to relay anything regarding
 19 avoidance areas or structures to the people
 20 designing it? As a landman, do you have any
 21 responsibility in that regard?
 22 **A.** If there's a comment or something brought
 23 up about something, I would relay that.
 24 **Q.** Okay. So your testimony is the reason you
 25 didn't relay any such comments or these concerns to

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1 the people designing it is because you're asserting
 2 the Kesslers never raised the issue with you?
 3 **A.** That is correct.
 4 **Q.** You mentioned that there were times the
 5 cattle were out and there were fence issues. Was
 6 that -- did that occur anytime in regards or near
 7 the area of where 441 ended up being?
 8 **A.** I can't say for sure the exact location
 9 of --
 10 **Q.** Okay. Let me be more precise.
 11 **A.** -- where cows were located.
 12 **Q.** Sorry.
 13 In regards to when there was issues
 14 relating to cattle being out or a fence being too
 15 weak or damaged, did you ever physically go out
 16 yourself and resolve the issue?
 17 **A.** I did not. I know I had offered that we
 18 could get the cows and stuff back in, but after
 19 notifying Mr. Kessler, he would rather him take
 20 care of it because he made the comment that his
 21 cows were trained to follow their food truck or
 22 whatever it is.
 23 **Q.** And I'll try this way: How many times
 24 have you been at the location where 441 was built
 25 or in and around the structures near there that the

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1 Kesslers own?
 2 **A.** Like I said before, probably a handful,
 3 three to five, somewhere in there.
 4 **Q.** And from what time frame? From prior to
 5 2013?
 6 **A.** No, it would be after 2013. It would have
 7 been during construction -- house construction time
 8 frame.
 9 **Q.** And during construction did it ever occur
 10 to you that, gee, there's a house there about a
 11 thousand feet away or there is a structure there
 12 about a thousand feet away? Did it ever occur to
 13 you to raise that as a possible issue?
 14 **A.** No.
 15 **MR. BOUGHEY:** Nothing further.
 16 **JUDGE DAWSON:** Mr. Johnson.
 17 **MR. JOHNSON:** I don't have any questions,
 18 Your Honor.
 19 **JUDGE DAWSON:** Commissioner Fedorchak.
 20 **COMMISSIONER FEDORCHAK:** All right. Thank
 21 you.
 22 **EXAMINATION**
 23 **BY COMMISSIONER FEDORCHAK:**
 24 **Q.** So, Scott, you talked about the meeting --
 25 that October meeting, I think it was October of

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1 2013, in which you signed the easements -- or the
 2 easements were signed with the Kesslers?
 3 **A.** Yes.
 4 **Q.** And it was you and it was then Matt;
 5 right? Was it Matt?
 6 **A.** Yes. Matt had been --
 7 **Q.** Yeah.
 8 **A.** -- called over to --
 9 **Q.** Yep.
 10 **A.** -- answer some more technical questions, I
 11 guess.
 12 **Q.** I thought I heard -- yeah, because there
 13 were some fencing questions. So if I understood
 14 you correct, you said you were -- you discussed
 15 mostly the pads, some fencing, and I thought you
 16 said some turbines that were kind of close to their
 17 land but not on their land.
 18 **A.** That is correct.
 19 **Q.** So can you point out what turbines those
 20 were and did that include 441?
 21 **A.** 441 was the main one, and if I look at the
 22 Kesslers' exhibits for their -- I can tell you the
 23 other one. It might take me a minute. There's a
 24 couple documents here. It doesn't have the turbine
 25 number on here, but it's the northeast quarter of

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1 Section 21.
 2 **MR. BOUGHEY:** Could you please tell me
 3 what you're looking at so we can all look at the
 4 same thing?
 5 **THE WITNESS:** Yep. So I am under MP
 6 Exhibit 4-6, nonpublic, and then it's the
 7 exhibits -- it would be exhibit labeled B4-45,
 8 which is the last page in that set.
 9 **Q.** (COMMISSIONER FEDORCHAK CONTINUING) Okay.
 10 So --
 11 **A.** So if you look on the left side of the
 12 page, you can kind of see a little bubble kind of
 13 about midway through that section, so that is part
 14 of a turbine pad that is just on the other side of
 15 the fence of the Kesslers'.
 16 **Q.** Okay. The hashed part is the turbine pad?
 17 **A.** Yes.
 18 **Q.** And what's the circles?
 19 **A.** So the circle is what -- we needed a
 20 700-foot construction -- temporary construction
 21 easement for erecting the turbines.
 22 **Q.** Okay. So -- and this is Section 21.
 23 **A.** Yes.
 24 **Q.** And that must be Terrance Leingang's land,
 25 maybe?

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1 **A.** I believe that's correct, but I can't say
 2 for certain.
 3 **Q.** No. Yeah. Yeah. It looks like that
 4 might be. I'm looking at the plat map too.
 5 **A.** Okay.
 6 **Q.** Okay. So you were discussing the overhang
 7 on that one?
 8 **A.** And then also with 441.
 9 **Q.** And then 441.
 10 **A.** Correct. Similar, probably a little less
 11 overhang, as you called it, onto the Kesslers'
 12 property.
 13 **Q.** And as you were talking about 441, what
 14 were you discussing? What were you figuring out?
 15 **A.** Just letting him know that the fence would
 16 have to come down. That we would put up temporary
 17 fencing in the meantime so that he could still
 18 utilize his pasture for grazing throughout the
 19 project.
 20 **Q.** So in that discussion about 441 and all of
 21 the issues like the fencing and the location of the
 22 pad and all of that, you never talked about the
 23 fact that they didn't want it there at all?
 24 **A.** It was never brought up.
 25 **Q.** Did you talk about the distance, how far

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1 it would be away from their property? Did you talk
 2 about a setback at all in terms of distance?
 3 **A.** No.
 4 **Q.** Did anyone talk about whether -- did you
 5 even know that there existed a property there?
 6 **A.** I knew that the property -- that the
 7 Kesslers owned the property northwest of there,
 8 but --
 9 **Q.** I mean, did you know that --
 10 **A.** -- I did not have any idea that there
 11 was --
 12 **Q.** -- there was a farmstead there?
 13 **A.** I did not.
 14 **Q.** Okay. So what was decided then? So, I
 15 guess, they signed the lease. So do you conclude
 16 from that that there was -- all the issues were
 17 resolved?
 18 **A.** That was my understanding.
 19 **Q.** And you signed the lease on turbines that
 20 were not related to the issues that you were
 21 discussing; correct? You were talking about pads
 22 and fencing on turbines that were not located on
 23 their property.
 24 **A.** Those -- those are two of the instances
 25 that, you know, stuck out in my mind just because

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1 there was an issue with where those were located
 2 and, you know, that they would be affecting the
 3 Kesslers.
 4 **Q.** Okay. And then what did you talk about in
 5 terms of the turbines -- the easements that were
 6 signed? Was there unresolved issues there on
 7 the --
 8 **A.** I guess I'm not understanding you.
 9 **Q.** Because these turbines aren't the ones
 10 that relate to the easements that they signed.
 11 These are turbines that are on somebody else's
 12 land.
 13 **A.** Right. And so this was just a fencing
 14 conversation that we had, you know, stating that in
 15 order to build the project, we would have to be
 16 removing some of their permanent fencing to put in
 17 temporary fencing for construction of the
 18 turbine --
 19 **Q.** Okay.
 20 **A.** -- that would have an effect on the
 21 Kesslers.
 22 **Q.** Okay. So those issues were resolved, in
 23 your mind, and --
 24 **A.** That is correct.
 25 **Q.** -- what did you discuss in terms of

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1 issues, if any, relating to the turbine locations
 2 of the ones on their property and anything related
 3 to the turbines on their property? Was there any
 4 issues to resolve in that regard at that meeting?
 5 **A.** Not that I can recall them bringing up.
 6 They were okay with the turbines on their property.
 7 **Q.** And how long did the meeting last? Any --
 8 I know it was a long time ago.
 9 **A.** Oh, man, yeah. I mean, it varies, and I
 10 can really only go off kind of, you know, my basic
 11 knowledge with landowners in general. I mean, some
 12 landowners like to visit quite a bit because they
 13 probably, you know, don't get a whole lot of
 14 visitors and stuff like that and just want to ask
 15 general questions and stuff like that. So, I mean,
 16 I've had meetings that lasted 4, 5 hours to some
 17 that only last, you know, 15 minutes.
 18 **Q.** Sure. You don't remember how long this
 19 one was?
 20 **A.** I do not, no.
 21 **Q.** Okay. Was this your final meeting with
 22 them, then, of -- not -- I know you met a lot
 23 during construction, but did you complete the
 24 easements and all those negotiations at this
 25 meeting?

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1 **A.** So there was the first meeting in October
 2 and then, like I said, there was that issue with
 3 the third agreement.
 4 **Q.** Okay. Right. And that --
 5 **A.** And so then they had come in again just to
 6 sign it, and no other issues or anything or
 7 concerns. Everything else was still the same.
 8 They signed the document and that was it.
 9 **Q.** Okay. And they didn't bring up anything
 10 at that second meeting either --
 11 **A.** No.
 12 **Q.** -- about that location of the turbine next
 13 to their property?
 14 **A.** They did not.
 15 **Q.** Okay. So if I look at the testimony, it's
 16 MP -- MP 2-6, page 118 -- well, page 118 and 119.
 17 This is Kessler's testimony at the hearing.
 18 **A.** Which page are you referring to?
 19 **Q.** MP -- well, MP000118 and 119.
 20 **A.** Okay.
 21 **Q.** So there's -- on the small square labeled
 22 128 and then on the next page the square labeled
 23 129, there's discussion there from the hearing
 24 where Mr. Kessler kind of talks about some ongoing
 25 issues he has with roads and in general the company

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1 doing what they say they're going to do. That's
 2 how I -- I'm just summarizing it.
 3 **A.** Mm-hmm.
 4 **Q.** He says, you know, that there was promises
 5 made that they were going to come sit down and that
 6 didn't happen. It didn't take place, on line 7.
 7 And then above that on line 3, he talks about, you
 8 know, the location where towers are going to go, et
 9 cetera. So he's expressing concerns there about
 10 some of these issues.
 11 Did the company address those, in your
 12 opinion, after the hearing, or how did the company
 13 address --
 14 **A.** Yeah, I believe --
 15 **Q.** -- those after the hearing?
 16 **A.** -- that we did. Like I said, you know, we
 17 had Mr. and Mrs. Kessler come to the office. We
 18 sat down with them, you know, listened to concerns
 19 and everything they had, listened to their input.
 20 And, like I said, at the end we got a signed
 21 contract. So I was under the impression that
 22 everything was good to proceed.
 23 **Q.** Okay. When you're -- this is just a
 24 little more just general because you're still doing
 25 some negotiations with landowners; right?

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1 **A.** I still have the title. Right now I'm
 2 focusing on being a construction manager with our
 3 sister company.
 4 **Q.** Okay.
 5 **A.** So I'm actually out of state for a
 6 majority of the time currently.
 7 **Q.** When you previously did this work and --
 8 you know, when did you start doing less of it and
 9 more construction?
 10 **A.** So that would have been -- I started as a
 11 construction manager the end of 2018, beginning of
 12 2019.
 13 **Q.** Okay. All right. So you did the land
 14 work -- or the landowner relation stuff for quite a
 15 while?
 16 **A.** Yes.
 17 **Q.** Would you -- when would you have project
 18 maps for customers? Would that be part of your
 19 initial conversations?
 20 **A.** As far as full project blown-up kind of
 21 things?
 22 **Q.** Yeah, just maps to show, like, here's the
 23 layout, here's where -- I mean, when would you get
 24 the initial arrays of towers and that sort of
 25 thing? Do you provide --

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1 **A.** It would have been --
 2 **Q.** -- those to landowners?
 3 **A.** -- probably around the same times where we
 4 had received our easement agreements, kind of as
 5 our final layout, you know, with, you know, changes
 6 that can be made and stuff --
 7 **Q.** So later --
 8 **A.** -- like preliminary.
 9 **Q.** Yeah, later in the project. You don't
 10 have them at the get-go?
 11 **A.** No. No.
 12 **Q.** And do you --
 13 **A.** A lot of things can change with, you know,
 14 their siting and stuff --
 15 **Q.** Sure.
 16 **A.** -- that whole stuff, so --
 17 **Q.** Do you discuss with landowners the -- and
 18 I know these have evolved and maybe didn't exist
 19 like they do today in law as they did then, but
 20 even then what would you discuss in terms of
 21 setbacks and sound and shadow flicker issues? Did
 22 you --
 23 **A.** It's --
 24 **Q.** -- typically talk about those?
 25 **A.** If the landowner has a question about it

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1 that they want to talk about it, it's, you know,
 2 all documented in the agreement that they're given
 3 and provided to them for them to review and --
 4 Q. Yeah. Okay. So you don't have a standard
 5 list of things you walk through. You just kind of
 6 let it -- you give them the document?
 7 A. I give them the -- you know, they have,
 8 you know, a minimum -- I think it's -- you know,
 9 with the State it's a requirement to give them at
 10 least ten days or something, I believe, to review a
 11 document. You know, if they want to take longer,
 12 they can definitely take longer. Doesn't mean it
 13 has to be signed right in the ten days. But give
 14 them the opportunity to review it, have an
 15 attorney, if they so choose, review it as well.
 16 COMMISSIONER FEDORCHAK: Okay. I think
 17 that's it for me. Thank you.
 18 JUDGE DAWSON: Commissioner Christmann.
 19 **EXAMINATION**
 20 **BY COMMISSIONER CHRISTMANN:**
 21 Q. Do land agents get compensated for
 22 acquiring an easement or just a salary in
 23 regards --
 24 A. I'm just on salary.
 25 Q. Okay. And we have these five exhibits

1 COMMISSIONER CHRISTMANN: So did you want
 2 to pause?
 3 JUDGE DAWSON: I think we can -- she can
 4 come back and listen to the tapes and we can
 5 proceed. Does anybody need a break at this time?
 6 MR. BOUGHEY: It seems to me all the
 7 commissioners should be here and --
 8 JUDGE DAWSON: Yeah. She can listen to
 9 the tapes, too, but -- anyhow, you're in the middle
 10 of a question; correct?
 11 COMMISSIONER CHRISTMANN: Well, a series
 12 of them.
 13 JUDGE DAWSON: A series of questions.
 14 COMMISSIONER CHRISTMANN: I don't have a
 15 strong feeling either way.
 16 JUDGE DAWSON: Let's all take a break till
 17 just a quarter to, so that's on that clock right
 18 there. We'll take a ten-minute break so we can use
 19 the restroom and come on back.
 20 (Recessed at 4:37 p.m. and reconvened at
 21 4:51 p.m.)
 22 JUDGE DAWSON: We are back on the record
 23 and it is now ten to five. The Commission is
 24 allowed to run on two members and will do so now.
 25 Ms. -- Commissioner Fedorchak will review this gap

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1 from this afternoon that seem pretty similar, and I
 2 think it was No. 15 that was handed out since you
 3 took the stand, MP Exhibit 15.
 4 A. Okay.
 5 Q. Do I have that right? The one that I'm
 6 referring to is the easement with Clint Redmann?
 7 A. Yes.
 8 Q. Do you recall getting this one or do you
 9 just know you did because you see the --
 10 A. I do recall this one pretty vividly, to be
 11 honest with you.
 12 Q. Did you acquire it over at the Redmanns'
 13 house or did you --
 14 A. In that instance I --
 15 Q. -- have them over at the office or --
 16 A. In this instance I did go to Clinton's
 17 house.
 18 Q. But you said the Kesslers signed their
 19 easement at your -- at the New Salem office;
 20 correct?
 21 A. That is correct.
 22 (Commissioner Fedorchak left the hearing
 23 room.)
 24 JUDGE DAWSON: She'll be back shortly.
 25 She's not leaving for good.

1 when she is through, but she'll be back shortly.
 2 That emergency took her away, but she should be
 3 back.
 4 We are with the questioning of
 5 Commissioner Christmann. You may continue.
 6 Q. (COMMISSIONER CHRISTMANN CONTINUING) So
 7 just to make sure I remember where we left off, am
 8 I correct that you recall in your mind the --
 9 acquiring the Redmann lease and that it was at
 10 their home?
 11 A. I do.
 12 Q. At his home.
 13 A. Yes.
 14 Q. And the Kesslers signed at the office in
 15 New Salem?
 16 A. That is correct. North of New Salem out
 17 by the -- yep, our O&M building.
 18 Q. Okay. In your experience, would it be
 19 rare when you're developing a new project to go to
 20 somebody's place and present what you have in mind
 21 and they just sign the easement right there or does
 22 it take subsequent --
 23 A. Usually we send out the -- you know, what
 24 we call an easement packet which has all the
 25 information ahead of time. That way they have --

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1 Q. In the mail?

2 A. -- a chance to -- yep, in the mail.

3 So they have a chance to review it, give

4 them time to look everything over, and then, you

5 know, whether they call us, we call them, you know,

6 and say, "Hey," you know, "you've had it now for a

7 little bit of time." You know, "Do you have any

8 questions? Do you want to get together, discuss?"

9 You know, during these conversations with

10 the landowners that's, you know, when you learn a

11 lot about, you know, like concerns or issues or

12 anything. It's a perfect time to address them.

13 Q. How many personal visits would you say is

14 an average to acquire an easement?

15 A. You know, a majority of the time it's --

16 we'll have just one.

17 Q. Okay. About how many easements were

18 needed from landowners for this project? Just an

19 estimate.

20 A. You know, that's a very good question. I

21 don't have the number right offhand. With there

22 being 64 turbines, you know, counting those other

23 ones, I'd probably say we -- you know, 80, 90

24 easement agreements. I'm not sure.

25 MR. BOUGHEY: I couldn't hear what you

757

1 said. 80 what?

2 THE WITNESS: 80 or 90 easement

3 agreements --

4 MR. BOUGHEY: Thank you.

5 THE WITNESS: -- is a guess, I guess.

6 Q. (COMMISSIONER CHRISTMANN CONTINUING) What

7 would be your estimate of when you acquired the

8 first one?

9 A. I would have to go back and look at

10 documentation. I believe we started doing some of

11 them the beginning of September.

12 Q. And were the Kesslers the last one in like

13 middle to late October?

14 A. I don't know right offhand. They were

15 toward the end. We kind of worked from east to

16 west, and with them being on the west side of the

17 project would have had them, you know, further down

18 the line in terms of order.

19 Q. So the 80 to 90 -- and I know that was a

20 very rough estimate --

21 A. Yeah, very, very rough.

22 Q. -- I'll acknowledge that -- were acquired

23 over about a two-month period?

24 A. Possibly. It sounds about right.

25 (Commissioner Fedorchak returned to the

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1 hearing room.)

2 JUDGE DAWSON: I'm just going to

3 interject. For the record, Commissioner Fedorchak

4 has returned.

5 COMMISSIONER FEDORCHAK: Thank you, Judge.

6 Q. (COMMISSIONER CHRISTMANN CONTINUING) And

7 so Mr. Redmann signed at home. The Kesslers signed

8 at the office.

9 A. That's correct.

10 Q. How do you -- so they've got the packet.

11 How do you normally get to that point of getting

12 the easement signed? Is it the landowner's

13 convenience or how do you arrange that?

14 A. So it'll come out with like a cover letter

15 basically just saying here's your -- you know, in

16 terms of this, it would have been like, "Here's

17 your Bison 4 packet. Here's what we're proposing

18 for wind project improvements on your property. If

19 you have any questions, feel free to call Mr. Wade

20 Isaacson or myself. And also if you need notary

21 assistance," you know, "we are available to do that

22 as well."

23 Some landowners would just prefer to go

24 take it to the bank and mail it back. Some want to

25 get together, ask questions or anything like that,

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1 so it varies.

2 Q. What would be the majority? That they

3 just mail it back to you, or do most of them you

4 end up acquiring it in person like you did with

5 Mr. Redmann --

6 A. You know, I think --

7 Q. -- and the Kesslers?

8 A. -- majority of it is done through myself

9 or Mr. Isaacson, just for the fact that, you know,

10 with farmers and stuff like that, a lot of times

11 it's hard for them to get away from their

12 day-to-day operation. So we can swing out and meet

13 with them.

14 Q. But you work around the landowners'

15 conveniences if you need to do it personally?

16 A. Oh, absolutely. Absolutely. We let them

17 pick the schedule and date and time that works for

18 them.

19 Q. I find it astounding, and I'd like you to

20 explain to me why I shouldn't, that -- or -- or

21 else what I'm misunderstanding. As I look through

22 all of these five, that seven people from four

23 households all chose the same day to have you

24 notarize their agreement.

25 A. It's just what's available. You know, a

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1 lot of times we get a phone call from a
 2 landowner -- like I said, the easement packets were
 3 probably sent out the beginning of September, so
 4 then whether they called me or whatnot and was
 5 just, "Hey, can you come do this?" And, "Sure.
 6 Here's what I've got," you know, "available, if
 7 that day works for you." You know, "I have to meet
 8 with a different landowner at nine, so I can" --
 9 Q. It leaves me -- not wanting to because
 10 it's not my instinct, but it leaves me feeling
 11 suspicious like you didn't want these people at the
 12 hearing and so you arranged all these easement
 13 signings on the --
 14 A. I did not --
 15 Q. -- very day of our hearing.
 16 A. Well, and I didn't -- you know, that's
 17 not -- like I said, I didn't arrange them. It was
 18 whatever the landowner was comfortable doing.
 19 Q. So this was the day that these seven
 20 people all chose?
 21 A. That is correct.
 22 Q. And forced you to miss the hearing?
 23 A. I usually don't attend Public Service
 24 Commission hearings before this process. This is
 25 the first time I've ever been in this situation.

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1 Q. Well, welcome.
 2 A. Yeah. Thanks.
 3 COMMISSIONER CHRISTMANN: Thanks. I have
 4 no --
 5 THE WITNESS: Glad to be here.
 6 COMMISSIONER CHRISTMANN: I have no other
 7 questions.
 8 JUDGE DAWSON: Commissioner Kroshus.
 9 COMMISSIONER KROSHUS: Okay. Thank you,
 10 Your Honor.
 11 **EXAMINATION**
 12 **BY COMMISSIONER KROSHUS:**
 13 Q. During the time Bison 4 from the time it
 14 was conceived until the time it was sited, through
 15 the easement process, et cetera, just to clarify,
 16 your role was to work with participating
 17 landowners; correct?
 18 A. That is correct.
 19 Q. Okay. Did your role include determining
 20 whether a residence was occupied or unoccupied?
 21 A. It was not.
 22 Q. Okay. What are -- what are the typical
 23 hours of -- of a Minnesota Power employee? What
 24 were they at the time? Was it an eight-to-five job
 25 or did it extend beyond that?

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1 A. You know, like we typically had the office
 2 hours of, yeah, I believe eight to five, but there
 3 was many a times where, you know, you kind of have
 4 to do what is convenient for the landowner. So I
 5 know there were some nights where I'd be out
 6 running around signing easements till nine, ten
 7 o'clock at night.
 8 Q. Okay. This probably should have been
 9 asked previously, but -- of another witness, but
 10 I'll ask anyway. Would it be -- when Minnesota
 11 Power employees were out and about in the field,
 12 was that typically -- you know, during the
 13 micrositing process, would you know if that would
 14 also be between the hours of generally eight and
 15 five?
 16 A. As far as like construction?
 17 Q. Yeah.
 18 A. I believe construction was seven to
 19 seven --
 20 Q. Okay.
 21 A. -- generally. That would be probably a
 22 Matt Freudenrich question, but to the best of my
 23 knowledge, I believe like seven to seven, give or
 24 take.
 25 COMMISSIONER KROSHUS: Okay. No other

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1 questions. Thank you.
 2 JUDGE DAWSON: Any further questions?
 3 Mr. Boughey. No --
 4 MR. BOUGHEY: Yes, Your Honor, a couple
 5 things.
 6 JUDGE DAWSON: Hold on a second. I think
 7 it's Mr. -- I'm getting a little mixed up because
 8 you had called all the witnesses before, but I
 9 think this is your witness, Mr. Mahlberg.
 10 MR. MAHLBERG: I'm not going to ask any
 11 questions, Judge. Thank you.
 12 JUDGE DAWSON: Okay. Mr. Boughey.
 13 MR. BOUGHEY: Thank you, Your Honor.
 14 **RE-CROSS-EXAMINATION**
 15 **BY MR. BOUGHEY:**
 16 Q. Couple little follow-ups. The book on
 17 your right, if you could flip that open to --
 18 A. Your book?
 19 Q. Yes. My book. And I need you to flip it
 20 open to -- wrong book. Here we are -- to Section 5
 21 where the page numbers are, and I want you to go to
 22 page 123.
 23 MR. MAHLBERG: Are you in your book?
 24 MR. BOUGHEY: Yes, my book. Section 5,
 25 page 123.

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1 Q. (MR. BOUGHEY CONTINUING) And we're going
2 to walk through there because we need to clarify
3 which deed relates to which -- who owns what, so --
4 A. Okay.
5 Q. All right. On 123 -- and my concern is --
6 I'll just tell you that I think you repeatedly
7 during your testimony referred to the Kesslers'
8 property as this first deed and then the second one
9 that's signed by the Kesslers, that you referred
10 to -- anyway, we'll walk through this, but I think
11 you had it wrong. The first deed on page 123, do
12 you see where we have four people having to sign,
13 Keith, Deanna and Calvin and Jeannette? Do you see
14 that?
15 A. I do.
16 Q. And isn't it correct, Calvin and Jeannette
17 are Keith's parents; right?
18 A. Correct.
19 Q. All right. And were you aware that the
20 reason that all four signed this was because the
21 parents wanted upon their passing that this
22 particular turbine and issue of this easement would
23 go to Keith and his wife? Were you aware of that?
24 A. Yes. It was in a life estate.
25 Q. All right. Very good. So this particular

1 signed on September 12, the day before the hearing,
2 page 126; right?
3 A. That is correct.
4 Q. And then on the one that apparently you're
5 waiting for a contract for deed, then Keith and
6 Deanna then later signed on October 23, correct,
7 for the parents' property?
8 A. The contract for deed that was needing to
9 be fixed?
10 Q. No. I'm looking only at this document.
11 A. Okay.
12 Q. On 125 you had them sign an easement.
13 This easement relates to where all four of them had
14 to sign.
15 A. Okay.
16 Q. So the parents signed on September 12.
17 Got it?
18 A. That is correct.
19 Q. Then Keith and his wife signed on
20 October 23; right?
21 A. Correct.
22 Q. Now turn to page 136. And then go ahead
23 and look at 134, 135, 136. 134, this is just Keith
24 and Deanna's property only, 134 to 136; right?
25 A. Yes. This is the one that needed to be

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1 page, 123 on, and we go to page 125, you're going
2 to see that we have both Keith and Deanna's
3 signature in October and the next page we have the
4 parents' signature in September on the 12th, the
5 day before the hearing.
6 A. That's correct.
7 Q. All right. So would it be fair to state
8 that now that you've reviewed this, that it's clear
9 that this first set of documents related to the
10 land owned by Keith's parents but that they would
11 get -- it would revert to them upon their passing?
12 Does that make sense to you?
13 A. Yeah. So if I can explain it, so there
14 was three separate agreements. The first one was
15 property that the Kesslers themselves owned. There
16 was the life estate, which is what we are doing
17 now. And then the third one was actually a
18 contract for deed that Keith had with his parents.
19 Q. Okay. So as a matter of fact, then, if we
20 did this in chronological order, so I want you
21 looking at 126, then I want you to look at 125, and
22 then we're going to go back and look at -- we're
23 going to get to 136. So it's just important to
24 understand.
25 So on page 126 you see that the parents

1 fixed. That's why it was signed --
2 Q. I didn't ask you that. I just -- fine. I
3 don't know what you mean by "fixed." But in any
4 event -- and they signed on November 22; correct?
5 A. Correct.
6 Q. So since you remember every conversation
7 you've ever had with the Kesslers, according to
8 your statements --
9 A. That's not true.
10 Q. All right. Well, we'll get to that in a
11 second.
12 So can you explain to me why they signed
13 one of them -- the first one on September 12,
14 then -- with the parents signing the 12th. They
15 didn't sign till the 23rd as to their parents'
16 property. And they for their property didn't sign
17 till November 22. Wouldn't that indicate to you
18 that there were some discussions and concerns?
19 A. No.
20 Q. Okay. Now let's go into all the things.
21 Do you happen, by chance -- I'll try to refresh
22 your recollection. Do you happen to remember being
23 in the Kesslers' house saying to Deanna -- giving
24 Keith a bad time about his baggy jeans. Do you
25 remember -- does that ring a bell anywhere?

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1 **A.** Absolutely not.
 2 **Q.** Okay. So, now, you mentioned that you did
 3 somewhere between 80 and 90 easements total;
 4 correct?
 5 **A.** Roughly. I can't say for sure.
 6 **Q.** And although you said most of them you
 7 only had to go once, but there were some you had to
 8 go more than once, I take it?
 9 **A.** Not that I can recall. Generally it was
 10 one time.
 11 **Q.** All right.
 12 **A.** You know, sometimes if the husband and
 13 wife weren't together, I would have to go two
 14 different places --
 15 **Q.** All right.
 16 **A.** -- two meetings, but --
 17 **Q.** So you might have had as many as, you
 18 said, 80 to 90. There could have been as many as
 19 100 meetings with landowners to get all the
 20 easements signed; is that a fair statement?
 21 **A.** Those are not all from in town. That was
 22 total easements for the entire project.
 23 **Q.** All right. Well, then how many people
 24 did -- how many appointments did you have to have
 25 total for this project?

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1 **A.** I have zero idea.
 2 **Q.** All right. But it would be substantial.
 3 45, 50, easy?
 4 **A.** Maybe.
 5 **Q.** All right. And do you remember every
 6 single one of those conversations?
 7 **A.** No.
 8 **Q.** Okay. But you happen to remember every
 9 single one of Keith and Deanna's, according --
 10 **A.** I didn't say that.
 11 **Q.** -- to your prior testimony?
 12 **A.** No.
 13 **Q.** All right. Is it possible that some of
 14 the things they referred to and discussed with you,
 15 such as, for example, the 1400 feet or concerns
 16 about where the tower was actually at, is it
 17 possible that in all those various meetings that
 18 you just don't happen to recollect that particular
 19 landowner's discussion?
 20 **A.** If there was a concern raised, that is
 21 definitely something that you would remember as you
 22 would, you know, have to notify other people, get
 23 involved, and there would be more discussions that
 24 would be led to if a concern was raised.
 25 **Q.** You remember that, but not baggy pants?

1 **A.** I have never been to the Kesslers'
 2 residence.
 3 **Q.** Okay. Now, I have to assume that you've
 4 had occasion where you might have purchased
 5 property through a realtor. Would that be a fair
 6 statement? Like a house or land.
 7 **A.** Personal?
 8 **Q.** Yes, you. Yeah.
 9 **A.** Yes.
 10 **Q.** All right. Any idea. One, two houses,
 11 three houses over your -- so far?
 12 **A.** So far two.
 13 **Q.** Two.
 14 And would it be a fair statement that you
 15 probably remember all the discussions with the
 16 realtor because that property that you were buying
 17 you needed answers as to all the issues that
 18 relates to that particular house so you could
 19 decide whether to buy it? Would that be a fair
 20 statement?
 21 **MR. MAHLBERG:** Object as to the relevance
 22 of Mr. Monroe's conversations about --
 23 **MR. BOUGHEY:** I'll tie it in.
 24 **MR. MAHLBERG:** -- realtors the two times
 25 he's purchased a home.

1 **JUDGE DAWSON:** Mr. Boughey.
 2 **MR. BOUGHEY:** I'll tie it in.
 3 **JUDGE DAWSON:** I see where you're going,
 4 but --
 5 **MR. BOUGHEY:** Okay. Well, and then --
 6 **JUDGE DAWSON:** -- it seems a little -- a
 7 little far afield.
 8 **MR. BOUGHEY:** Well, I don't think so, Your
 9 Honor. I think it's precisely on field.
 10 **Q.** (MR. BOUGHEY CONTINUING) Do you think the
 11 realtor would remember every conversation with all
 12 the people that she sold houses to compared to your
 13 memory as to those two houses you bought?
 14 **MR. MAHLBERG:** I have the same objection.
 15 **JUDGE DAWSON:** I'm going to sustain the
 16 objection.
 17 **Q.** (MR. BOUGHEY CONTINUING) Do you have any
 18 idea on the 13th what time you met with the
 19 Redmanns or Mr. Redmann, whichever it was?
 20 **A.** I do not.
 21 **Q.** Any idea at all? Night? Afternoon?
 22 **A.** It would have been during the day
 23 sometime. I know that it was light out.
 24 **Q.** Okay. It's my understanding that he
 25 didn't sign in, but he was at the hearing. Did he

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1 discuss the hearing or anything about it with you?
 2 **A.** He did not.
 3 MR. BOUGHEY: I have nothing further.
 4 JUDGE DAWSON: Mr. Johnson.
 5 MR. JOHNSON: No, Your Honor.
 6 JUDGE DAWSON: Any further questions?
 7 COMMISSIONER FEDORCHAK: None for me,
 8 Judge.
 9 JUDGE DAWSON: Okay. Any further
 10 questions? Seeing --
 11 MR. MAHLBERG: No.
 12 JUDGE DAWSON: Seeing none, you may step
 13 down. You may call --
 14 MR. MAHLBERG: Todd Simmons.
 15 JUDGE DAWSON: -- your final witness.
 16 MR. MAHLBERG: Thank you, Your Honor.
 17 Todd Simmons, please.
 18 JUDGE DAWSON: Since you were here for the
 19 full day, do you understand what perjury is and the
 20 penalties for it?
 21 THE WITNESS: I do, sir.
 22 (Witness sworn.)
 23 JUDGE DAWSON: Mr. Mahlberg, you may
 24 begin.
 25

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1 **TODD SIMMONS,**
 2 being first duly sworn, was examined and testified
 3 as follows:
 4 **DIRECT EXAMINATION**
 5 **BY MR. MAHLBERG:**
 6 Q. Mr. Simmons, state and spell your name.
 7 **A.** Todd Simmons, T-o-d-d S-i-m-m-o-n-s.
 8 Q. Mr. Simmons, how long have you been with
 9 ALLETE?
 10 **A.** I'm in my 27th year.
 11 Q. Since 1994?
 12 **A.** Yes.
 13 Q. What -- what do you do for ALLETE?
 14 **A.** I'm the general manager for our generation
 15 operations.
 16 Q. At a high level. Can you describe what
 17 that means, what you do for the company.
 18 **A.** Sure. So I've got -- under purview, I've
 19 got coal facilities, gas facilities and retained
 20 the Bison wind facility and some biomass. So it's
 21 operations and maintenance and operating, so --
 22 Q. Okay. What sorts of businesses does
 23 ALLETE have?
 24 **A.** So ALLETE has Minnesota Power, of course,
 25 that I've kind of -- I've worked in. And then

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1 we've got ALLETE Clean Energies. We have BNI
 2 Coal -- BNI Energies. We have ALLETE Renewable
 3 Resources and then we have Superior Water and
 4 Light.
 5 **Q.** And the generation plants are in -- if we
 6 include the coal and the wind, you've got those
 7 sorts of generation facilities in North Dakota and
 8 Minnesota?
 9 **A.** That is correct.
 10 **Q.** And can you give a brief history of the
 11 company's connections to North Dakota?
 12 **A.** Sure. As I know them, in 1977 Minnesota
 13 Power and Minnkota Power together built the DC
 14 line, and Minnesota Power began taking generation
 15 off of the Young 2 station. Later ALLETE Minnesota
 16 Power acquired BNI Coal at the time. Later ALLETE
 17 Renewable Resources, I think, came next. They were
 18 established in North Dakota first, and then ALLETE
 19 Clean Energies does business as well, so --
 20 **Q.** Okay. How many people does ALLETE employ
 21 in North Dakota?
 22 **A.** Give or take, around 200.
 23 **Q.** Does that include construction jobs?
 24 **A.** No. No. There's more with construction,
 25 I guess.

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1 **Q.** Mr. Simmons, did you file prefiled direct
 2 testimony in this case?
 3 **A.** Yes.
 4 **Q.** And is that prefiled direct testimony
 5 Exhibits 5, 5-1 and 5-2?
 6 **A.** Yes.
 7 **Q.** Do you have any corrections to your
 8 prefiled testimony?
 9 **A.** I do not.
 10 **Q.** If you were asked those same questions
 11 today, would your answers be the same or
 12 substantially the same?
 13 **A.** Yes.
 14 **Q.** Don't want to repeat everything that's in
 15 there, but I do have some areas to cover. What was
 16 your role, Mr. Simmons, with respect to the Bison 4
 17 wind project?
 18 **A.** At the time Bison 4 was being constructed,
 19 I was responsible for operations and maintenance
 20 for Bison 1, 2 and 3. So I didn't have a lot of
 21 day-to-day activity tied to Bison 4, though in
 22 mid-2013 Dave Schmitz -- or my supervisor retired,
 23 and I did, I guess, inherit Scott -- Scott Monroe
 24 and Wade Isaacson as employees, so --
 25 **Q.** When did you become more involved in

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1 day-to-day operational activities?

2 **A.** Well, typically it formally took place

3 when it went commercially available, which was

4 after it was commissioned, start-up, check-out, and

5 then handed over operations.

6 **Q.** With respect to the Bison 4 wind project,

7 letters also went out to landowners under your

8 name --

9 **A.** That is correct.

10 **Q.** -- back before the Public Service

11 Commission public hearing on September 13; is that

12 right?

13 **A.** That would be correct. Yes.

14 **Q.** Were you involved, Mr. Simmons, in

15 preparing the PSC application for the project?

16 **A.** I was not, no.

17 **Q.** Did you attend the September 13, 2013,

18 public hearing on the project?

19 **A.** I did. Yes.

20 **Q.** Why did you attend that hearing?

21 **A.** Dave Schmitz, my previous supervisor, he

22 would normally attend those. As he had retired, it

23 was passed to me to attend those. So I went

24 primarily as kind of getting the lay of the land

25 and understanding how things went.

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1 **Q.** Had you been to one before?

2 **A.** I had not.

3 **Q.** Before the day of the public hearing, had

4 you ever spoken with the Kesslers?

5 **A.** I had not, no.

6 **Q.** Before the day of the hearing, did you

7 know who the Kesslers were?

8 **A.** I recognized Keith's name. David told me

9 that Keith was a business agent, a representative

10 for the carpenters and the millwrights, and,

11 anyway, we hadn't connected yet, but I knew the

12 name, so yes.

13 **Q.** You knew the name. Did you know the face?

14 **A.** I -- no.

15 **Q.** Did you have any familiarity with

16 Mrs. Kessler?

17 **A.** No, I did not.

18 **Q.** The Kesslers previously testified that

19 they spoke with Matt and either you or Scott Monroe

20 at the public hearing. Are you aware of those

21 allegations?

22 **A.** I am.

23 **Q.** Did you talk with the Kesslers before,

24 during or after the public hearing on September 13,

25 2013?

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1 **A.** I did not.

2 **Q.** What basis do you have to say that?

3 **A.** Well, I didn't come with the rest of the

4 crowd. I came from a site. So I drove over and I

5 was running a little late. I got there. Signed

6 in. I went and -- I saw some familiar faces and

7 went and sat down, and during break I didn't leave

8 the area I was in. And then when it was over, I

9 went back to work, so --

10 **Q.** Did you have any interactions with any

11 other Minnesota Power employees beyond a hello or a

12 hi?

13 **A.** No, I did not.

14 **Q.** Did you have any interactions during the

15 break?

16 **A.** No, I did not.

17 **Q.** Did you have any interactions with any

18 landowners? You said you were -- arrived right as

19 it was getting going, but how about during a break

20 or afterwards? Anything else in excess of a hello?

21 **A.** Nothing more than pleasantries or just

22 saying hello, being cordial.

23 **Q.** Was Scott Monroe at the public hearing?

24 **A.** No.

25 **Q.** You've heard reference and testimony,

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1 Mr. Simmons, to a Paul Johnson from Minnesota

2 Power?

3 **A.** Yes, I have.

4 **Q.** Was Mr. Johnson at the hearing?

5 **A.** He was not, no.

6 **Q.** Was Mr. Isaacson at the hearing?

7 **A.** No, he was not.

8 **Q.** Do you recall whether Mr. Kessler spoke at

9 the hearing?

10 **A.** Yes, I do recall.

11 **Q.** Do you recall whether the company provided

12 a response on the record?

13 **A.** Yes, I recall that Matt Freudenrich did

14 reply.

15 **Q.** Other than that exchange on the record,

16 did you personally observe anyone from the company

17 talk with the Kesslers before, during or after the

18 public hearing that day?

19 **A.** I did not, no.

20 **Q.** Have you heard from anyone else at the

21 company that they had a conversation with the

22 Kesslers that day?

23 **A.** I have not, no.

24 **Q.** Have you confirmed with those in

25 attendance from Minnesota Power that they did not

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1 talk to the Kesslers that day?
 2 **A.** Of the -- those that attended the meeting,
 3 we kind of divided and conquered the list, and I
 4 can tell you that Tom and -- Coughlin and Bill
 5 Sawyer did not, so I can confirm that. Yes.
 6 **Q.** Are you aware -- I'm sure you are -- that
 7 the Kesslers have alleged that Matt Freudenrich
 8 blew up at them and swore at them during a break in
 9 the public hearing?
 10 **A.** Yes, I am.
 11 **Q.** Is that something that you could have
 12 missed hearing or seeing that day?
 13 **A.** I don't believe so.
 14 **Q.** Why not?
 15 **A.** It wasn't a large space. Yelling and -- I
 16 think -- I believe I would have heard yelling.
 17 **Q.** Others would have heard yelling --
 18 **A.** I would -- I think so, yes.
 19 **Q.** -- in a courtroom?
 20 **A.** Yes.
 21 **Q.** Any other reason to think -- I mean,
 22 what -- what would have happened?
 23 **A.** Well, for myself, it would have been
 24 memorable because had Matt yelled or blown up at
 25 somebody and cussed at somebody, there would have

1 **Q.** You recall that?
 2 **A.** Yep.
 3 **Q.** Does that make sense to you?
 4 **A.** No. And, I mean, I think -- I don't know
 5 how I phrase this. What we heard from Barry is
 6 that this didn't have the time constraint. This
 7 was well in advance of. And from a reconciliation
 8 standpoint, if we needed to move the turbine, it
 9 wasn't a question of timing or finances. I think
 10 we could have easily done that. So that would be
 11 surprising. I also think that -- yeah, I -- I
 12 don't know. I've thought of that one more than
 13 once and it doesn't make sense to me.
 14 **Q.** When did you first learn that the Kesslers
 15 had a concern about the proximity of Turbine 441 to
 16 the Section 15 structure?
 17 **A.** February of 2017.
 18 **Q.** And how did you come to learn about that
 19 concern at that time?
 20 **A.** Keith had came to the New Salem office,
 21 which is south of the tracks, and I know he had met
 22 with -- he was meeting with Wade and I could hear
 23 the conversation. So I got up to say hello, and as
 24 Keith was leaving, he mentioned that that tower was
 25 too close to the structure adjacent to 441 and that

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1 been corrective action and, you know, we would --
 2 from a -- from an organizational standpoint, it
 3 would have been addressed. Maybe not the way -- it
 4 would have been faced, but, yeah, Matt would have
 5 had corrective discipline to deal with.
 6 **Q.** Was there any corrective action taken
 7 after that hearing?
 8 **A.** No.
 9 **Q.** And what does that tell you?
 10 **A.** Well, it tells me nothing significant
 11 happened at that hearing.
 12 **Q.** You're aware that the Kesslers have
 13 claimed that Mr. Freudenrich specifically told them
 14 that there wasn't time -- and I'll leave out the
 15 cuss words, but that there wasn't time because of
 16 the production tax credits. Do you recall that?
 17 **A.** Can you restate that?
 18 **Q.** Do you recall that the Kesslers have
 19 testified that as part of Mr. Freudenrich blowing
 20 up --
 21 **A.** Yes.
 22 **Q.** -- that he told them that there wasn't
 23 time, we had to get going because of the production
 24 tax credits?
 25 **A.** Yes, I recall that.

1 we'd have to do something with that, so --
 2 **Q.** And did you start to investigate that
 3 issue?
 4 **A.** I asked Wade to initiate contact to other
 5 employees to try to figure out what was going on.
 6 **Q.** Okay. To your knowledge, Mr. Simmons, was
 7 there any reason Minnesota Power wouldn't or
 8 couldn't have addressed a concern about a turbine
 9 location prior to the issuance of a certificate of
 10 site compatibility for the project?
 11 **A.** No.
 12 **Q.** And even prior to construction if it had
 13 come up in subsequent meetings?
 14 **A.** No, I -- I -- I don't see any reason that
 15 we would want to end up where we're sitting today
 16 when it could have been avoided.
 17 **Q.** What do you mean? Minnesota Power doesn't
 18 want to be in situations like this?
 19 **A.** Well, I think Scott phrased it. We're new
 20 to building wind and we -- though we have landowner
 21 relationships in other businesses, this is an
 22 outlier. This isn't how we want to do business.
 23 This isn't how we want to have relationships for
 24 50 years with landowners. I know I'm in
 25 operations, I'm not in construction, but I can tell

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1 you that we want to be neighbors to our landowners.
 2 They are our partners in this endeavor out here.
 3 So it doesn't make sense to me.
 4 Q. So as I understand it, you want to be
 5 partners with them, and a move in this case
 6 wouldn't have had a material effect on the project?
 7 A. No, it would not have.
 8 Q. Do you expect that if the issue had been
 9 raised, it would have been considered?
 10 A. Yes, I do.
 11 Q. Mr. Simmons, you were present earlier
 12 today when Barry Gartner was discussing some shadow
 13 flicker mitigation and that sort of thing?
 14 A. Yes.
 15 Q. Short of removing Turbine 441, is the
 16 company willing to install and utilize increased
 17 measures that would reduce impacts or potential
 18 impacts?
 19 A. Yes.
 20 MR. MAHLBERG: I don't have anything else.
 21 Thanks, Mr. Simmons.
 22 JUDGE DAWSON: Mr. Boughey.
 23 **CROSS-EXAMINATION**
 24 **BY MR. BOUGHEY:**
 25 Q. By the same token, if the PSC concludes

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1 that you guys didn't follow the rules as to
 2 1400 feet and they order you to move it, you're
 3 able to move that to another more appropriate
 4 location, are you not?
 5 A. Yes, we are able.
 6 Q. Okay. Now, you mentioned -- your counsel
 7 when asking the questions referred to yelling and
 8 you would have heard yelling, but isn't it correct
 9 under your own testimony if there was a reference
 10 to somebody who had -- that one of your employees
 11 had blown up at someone else either in the room or
 12 in the hallway -- so isn't it correct what you had
 13 heard did not have the word yelling in it as to the
 14 allegation? Isn't that true?
 15 A. That could be true. I don't remember the
 16 exact words, but --
 17 Q. Well, and I'm quoting directly from your
 18 testimony that you supplied. "I believe I would
 19 have noticed if anyone had 'blown up' at someone
 20 else during a break, either in the room or in the
 21 hallway."
 22 Nowhere do you use the word "yelling"
 23 there, do you?
 24 A. I don't have it in front of me, but I can
 25 look it up.

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1 Q. Assuming --
 2 A. Yes. Assuming what you say, yes.
 3 Q. Okay. And in your experience, isn't it
 4 possible for someone to blow up without yelling at
 5 an individual?
 6 A. I guess I've never thought of it that way,
 7 so --
 8 Q. I'm 2 feet away from Mr. Kessler right
 9 now, and I could say in a very quiet, calm voice,
 10 or even not calm, but I could say, "Look, we don't
 11 have time for this crap; we're going to have to
 12 build this some other time," and walk away. If
 13 that had occurred in the hallway, would you have
 14 been able to hear it at that volume?
 15 A. No.
 16 Q. And at the time this apparently occurred,
 17 apparently during a break, according to Mr. Lein,
 18 you didn't know what Keith Kessler looked like
 19 until he stood up and testified later in that
 20 hearing; right?
 21 A. Correct.
 22 Q. So your testimony stating you're certain
 23 that Keith Kessler didn't talk to any Minnesota
 24 Power people before he stood up and talked, you'd
 25 have no way of knowing that because you didn't even

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1 know what he looked like at that point, did you?
 2 A. No, you're correct, I didn't know what he
 3 looked like.
 4 Q. And you mentioned in your testimony that
 5 if somebody blew up like that at a public hearing,
 6 it would be taken seriously. It could have
 7 long-term impacts on not just a single project but
 8 potentially on Minnesota Power's reputation
 9 generally. So does it appear to you that if one of
 10 your employees did blow up at somebody like that,
 11 they're probably not going to admit it?
 12 A. Well, I see your point, but I -- I guess
 13 hypothetically you could be right.
 14 Q. Well, if Matt had said these things that
 15 are alleged, what would have happened to him?
 16 A. If Matt had said the things that were
 17 alleged?
 18 Q. Yeah.
 19 A. Well, he would have been sat down and --
 20 well, our -- our approach would be HR is contacted.
 21 There's an investigation as to what was said and
 22 what was done, and then at that point, in a
 23 collaborative effort between HR and his supervisor,
 24 the appropriate course of action is taken and then
 25 delivered to that individual.

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1 Q. Do you think it was appropriate for one of
 2 your employees on that Good Friday incident in 2017
 3 when Mr. Kessler raised the issue about where the
 4 turbine was -- do you think it was appropriate for
 5 your employee to say, "Do you have it in writing?"
 6 MR. MAHLBERG: Objection. It calls for
 7 speculation and mischaracterizes the evidence.
 8 MR. BOUGHEY: Well, it does not, and it
 9 also -- he already said how important these
 10 relationships are and that there would be
 11 consequences, serious consequences, if somebody was
 12 not treating a landowner properly. So I'd like to
 13 know if he considers that an improper conduct by
 14 any of his employees.
 15 JUDGE DAWSON: The question you were just
 16 asked you can answer.
 17 THE WITNESS: Okay. I don't have the
 18 context. I wasn't there. So I do feel like I'm
 19 speculating. If he said it in a tone that was a
 20 smart aleck, my words, yeah, I think that would be
 21 inappropriate. If he said it trying to get
 22 information to kind of -- you know, is there
 23 anything in writing from a context standpoint, if
 24 he's just being inquisitive, I think that's
 25 appropriate.

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1 Q. (MR. BOUGHEY CONTINUING) Do you think a
 2 landlord -- I'm sorry, a landowner should be
 3 required to get in writing from Minnesota Power
 4 that they will keep a turbine at least 1400 feet
 5 away from any occupied residence?
 6 MR. MAHLBERG: Objection. It calls for
 7 speculation.
 8 JUDGE DAWSON: Mr. Boughey.
 9 MR. BOUGHEY: Your Honor, it's uncontested
 10 that he said, "Do you have it in writing." The
 11 discussion was about the 1400-foot distance from
 12 the tower to the structure at issue. I think it's
 13 very relevant to determine and not speculation.
 14 Everybody admits those words were said. His only
 15 question is how were they said. Was it said
 16 inappropriately or with an attitude, but the point
 17 of the matter is what I'm asking is very specific.
 18 Do you -- do you think it was appropriate to ask --
 19 for the landowner to be required to have in
 20 writing -- Minnesota Power -- something they
 21 already agreed to in their application and to which
 22 was part of the order of the PSC?
 23 MR. MAHLBERG: And we're now getting sort
 24 of testimony ad nauseam in response to the
 25 justification for the question. My objection still

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1 stands. We're mischaracterizing it continually.
 2 The -- the setback was in reference to an occupied
 3 residence. Mr. Boughey suggests that these things
 4 are undisputed and we all agree, and that's --
 5 we've had two full days of testimony that reflect
 6 that's not correct.
 7 JUDGE DAWSON: I'm going to sustain the
 8 objection because it does mischaracterize and
 9 combines two issues --
 10 MR. BOUGHEY: And, Your Honor --
 11 JUDGE DAWSON: -- that are not related.
 12 MR. BOUGHEY: -- it's not ad nauseam. I
 13 spent today 5 minutes on a witness; they spent
 14 about a half hour. Then I did 18 minutes --
 15 JUDGE DAWSON: Mr. Boughey.
 16 MR. BOUGHEY: -- and then they spent an
 17 hour and a half --
 18 JUDGE DAWSON: Just continue.
 19 MR. BOUGHEY: -- so I don't think it's ad
 20 nauseam.
 21 You sustained it as the way it was
 22 phrased, so I'll try another way then.
 23 Q. (MR. BOUGHEY CONTINUING) Isn't it
 24 correct, sir, that -- that according to the PSC's
 25 memorandum relating to the April 14, Good Friday,

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1 2017 meeting, that the question was asked of
 2 Mr. Kessler, "Do you have that in writing." Would
 3 you agree that that was what was described by the
 4 PSC and is part of this file?
 5 MR. MAHLBERG: I'm going to object.
 6 Whatever that document is speaks for itself, and I
 7 want this witness to read whatever document he's
 8 being asked to apparently confirm the contents of.
 9 JUDGE DAWSON: Do you know what exhibit
 10 you're referring to?
 11 MR. BOUGHEY: If he wants me to spend ten
 12 minutes and find everything, I will, but I think we
 13 all know exactly what the Good Friday meeting is.
 14 Q. (MR. BOUGHEY CONTINUING) Yes, would you
 15 please open up the book, mine on the right.
 16 A. Okay.
 17 JUDGE DAWSON: And what's your question
 18 about the Good Friday meeting in which we have
 19 testimony requesting something in writing?
 20 Q. (MR. BOUGHEY CONTINUING) Were you present
 21 at the April 17, Good Friday, meeting -- April 14,
 22 2017?
 23 A. No, sir.
 24 Q. Do you think as a good neighbor to the
 25 landowners you should require the landowners to

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1 print out the application, know all the aspects of
2 that application, including the 1400-foot setback,
3 in order for them to have the option of raising
4 concerns to Minnesota Power?

5 MR. MAHLBERG: Objection as to the form.

6 JUDGE DAWSON: I'll allow the question.

7 THE WITNESS: If I understand your
8 question right, in reference to what -- Wade asking
9 Keith if he had it in writing, all those things
10 that you're saying --

11 MR. BOUGHEY: No. I'd like you to listen
12 to the question. Would you repeat the question,
13 please.

14 (Record read as requested.)

15 THE WITNESS: No.

16 MR. BOUGHEY: Nothing further.

17 JUDGE DAWSON: Mr. Johnson.

18 MR. JOHNSON: No questions, Your Honor.

19 JUDGE DAWSON: Commissioner Fedorchak.

20 **EXAMINATION**

21 **BY COMMISSIONER FEDORCHAK:**

22 Q. Okay. Let's see. So obviously one of the
23 key issues is was this or was it not an occupied
24 residence. So as a wind developer -- or at the
25 time of the siting -- what do you think -- well,

1 have vacation properties.

2 A. Right.

3 Q. Some might have farm residences, lakes?

4 A. Right.

5 Q. I would assume somebody with a lake cabin
6 wouldn't want to really have a wind tower built up
7 right near them even if they only used that on
8 weekends in the summer.

9 A. I can't argue with you.

10 Q. Do you have a lake cabin?

11 A. I don't. No, I do not.

12 Q. Certainly -- you live in Minnesota,
13 though; right?

14 A. I lived out here for seven years, but I've
15 moved back. They called me home, so --

16 Q. Yeah. Well, so it strikes me that the
17 permanent residence isn't the only legitimate
18 criteria to use for occupied residence. Do you
19 think that -- are you comfortable with what was
20 done to identify or to determine whether this was
21 occupied or not by your company?

22 A. Well, I've thought of this over and over
23 as well. And I know that it's easy for me to sit
24 back after the fact and have a view on this --

25 Q. Mm-hmm.

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1 let me ask this first.

2 Do other states have definitions of
3 occupied residences in code, that you're familiar
4 with?

5 A. I have to claim ignorance. I don't know.

6 Q. Okay. You haven't been involved in
7 permitting in other states?

8 A. No, I have not.

9 Q. Okay. Well, you've been through this now.

10 A. Yes.

11 Q. What do you think as a developer the
12 definition should be of an occupied residence?

13 A. Well, it is very layman, but I'll go with,
14 I guess, what I have felt is it has to be lived in
15 and it -- you know, and I get "lived in" can have a
16 wide spectrum. So, I guess, to drill in on that
17 definition, it's kind of like my own home. I come
18 and I go from there. Yet I get it, I go on
19 vacation, I do things. But that's my base of
20 operation. That's where I live. And I think that
21 would certainly help clarify it. But I don't have
22 a textbook definition of it, I mean, from a book.
23 I just --

24 Q. Right. I mean, it's kind of a -- it's
25 kind of a tricky term to define because people do

1 A. -- though I know at the time they were
2 using what we had as a -- I mean, it got us through
3 1A, 1B, 2, 3 and 4 from a siting perspective. But
4 if I had to look at it from a retrospect or an
5 after-the-fact, yeah, I -- more could be done,
6 so --

7 COMMISSIONER FEDORCHAK: I don't think I
8 have any more questions right now. Thank you.

9 JUDGE DAWSON: Commissioner Christmann.

10 **EXAMINATION**

11 **BY COMMISSIONER CHRISTMANN:**

12 Q. There's been so much today, I don't
13 recall. Were you on the micrositing visit?

14 A. I was not, sir.

15 Q. Were you ever out to this site before --

16 A. No, sir.

17 Q. -- construction?

18 So starting fresh now, if you were
19 building something, building a different project,
20 and you stood out on a hill where a turbine was
21 proposed and 1100 feet away a house that had been
22 painted within the last year or two, would you
23 think that even though it probably doesn't show up
24 on the plat book, that it merits contact with that
25 landowner to see what's going on there, why they

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1 just painted this vacant house? And I use
2 "vacant" --
3 **A.** Yeah. No, I follow you. Yep. With the
4 benefit of hindsight, yes, I -- yeah, we would, you
5 know -- I believe we would ask that question. I
6 think -- but we didn't have the benefit of
7 hindsight at the time. I get that, so --

8 COMMISSIONER CHRISTMANN: No other
9 questions. Thank you.

10 JUDGE DAWSON: Commissioner Kroshus.

11 COMMISSIONER KROSHUS: All right. I'll
12 make this quick, hopefully.

13 **EXAMINATION**

14 **BY COMMISSIONER KROSHUS:**

15 **Q.** Has Minnesota Power changed how it goes
16 about identifying occupied versus unoccupied
17 households since this complaint was brought
18 forward?

19 **A.** So from my perspective, we haven't had any
20 more projects that I've been a part of or aware of.
21 So I can't speak directly to it from a process
22 change. But I -- I have to believe that informally
23 it's been talked about, Commissioner Kroshus.

24 **Q.** Okay. So --

25 **A.** I could follow up for you, if you'd like,

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1 so --

2 **Q.** Right. And I think that's fair that you
3 haven't had any projects since that time that
4 you're evaluating or are working on. But -- yeah,
5 I would -- I would like to know if you've changed
6 the list, if you will, in terms of how you go about
7 it. I think we heard you -- a previous witness
8 talking about plat books, other various mechanisms
9 to go through that evaluation process. So, yes, I
10 would appreciate knowing if --

11 **A.** Okay. Certainly.

12 **Q.** -- if that's occurred.

13 COMMISSIONER KROSHUS: And I don't have
14 any other questions. Thank you.

15 JUDGE DAWSON: Mr. Mahlberg.

16 MR. MAHLBERG: No, thank you.

17 JUDGE DAWSON: Mr. Boughey.

18 MR. BOUGHEY: Just one, Your Honor --
19 well, I guess it's one area, but it's --

20 **RE-CROSS-EXAMINATION**

21 **BY MR. BOUGHEY:**

22 **Q.** Obviously in North Dakota, there's a focus
23 on the idea of a family farm and maintaining family
24 farms. Would you agree with that?

25 **A.** Yes.

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1 **Q.** And in those situations where -- would you
2 consider it pretty much common in North Dakota that
3 if there's an extra house or two where one of your
4 kids could use and become part of the family farm,
5 that that's something not unheard of; would you
6 agree?

7 **A.** Though I haven't heard that exactly, I --
8 I -- I would characterize it this way: I don't
9 think that's unique to North Dakota, but it's
10 probably a, you know, fair statement.

11 **Q.** And -- and as a matter of fact, and I bet
12 we all know people who have -- their family ends up
13 being active in the farm and next to the original
14 house is maybe another house or two more houses,
15 depending on how many kids they have and how many
16 people want to stay on the ranch or the farm. Have
17 you ever experienced anything like that?

18 **A.** Not in that directly myself, no.

19 **Q.** Ever observed anything like that in
20 regards to your work in North Dakota?

21 MR. MAHLBERG: I'm going to object as to
22 relevance.

23 MR. BOUGHEY: That was the last question,
24 so thank you.

25 JUDGE DAWSON: Any further questions?

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1 MR. JOHNSON: No, Your Honor.

2 JUDGE DAWSON: I see no further questions.
3 That means you can step down.

4 THE WITNESS: Thank you, sir.

5 JUDGE DAWSON: Any further witnesses?

6 MR. MAHLBERG: No, Your Honor.

7 JUDGE DAWSON: Okay. Anything else that
8 needs to be brought before the Commission?

9 MR. MAHLBERG: Briefing.

10 MR. BOUGHEY: Only the briefing schedule,
11 and counsel and I discussed this and we were
12 thinking --

13 JUDGE DAWSON: Well, just hold on. I'm
14 going to say something about the briefing and then
15 maybe you'll have to rethink what you're saying.
16 Okay? So I'm going to say that first.

17 I think in this instance, because of the
18 mixture of legal and factual issues, that we need
19 to have briefs, but we also need to have proposed
20 findings of facts, conclusions of law and an order.

21 And I prefer this, that you both write
22 simultaneous briefs and reply briefs and give it
23 more time than to do the proposed findings of fact,
24 conclusions of law. So, you know, 14 days for the
25 first brief, 7 days for the reply, and at that date

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1 or another 7 days the proposed findings of fact and
 2 conclusions of law.
 3 But before we get there, I'm going to
 4 allow the Commission -- oh.
 5 MR. MAHLBERG: Just one other, I guess,
 6 procedural issue. There was a request for
 7 follow-up on an issue of the last witness.
 8 JUDGE DAWSON: I'm going to consider that
 9 to be just a general information request that will
 10 not be part of the evidentiary record for this, if
 11 that's okay with Commissioner Kroshus.
 12 COMMISSIONER KROSHUS: It is.
 13 JUDGE DAWSON: And not be used for his
 14 decision-making.
 15 MR. BOUGHEY: And is the request that you
 16 have some new policy or procedure that delves into
 17 looking into whether the structure is used by the
 18 landowner? Is that --
 19 JUDGE DAWSON: He was asking for
 20 subsequent remedial measures that --
 21 MR. BOUGHEY: Well, all right. Then I
 22 understand, and maybe -- perhaps then from our
 23 standpoint as the complainants, maybe in addition
 24 to finding out what the company has or has not
 25 done, we should also then present for informational

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1 purposes a proposal as to either a change in the
 2 regulation or a portion of the order entered from
 3 now on to make sure this doesn't happen again. If
 4 we're going to hear from the company, maybe we
 5 should hear from the complainant who had this
 6 happen to them.
 7 JUDGE DAWSON: And that's fine to put in
 8 your brief or your information in the end.
 9 MR. BOUGHEY: But, Your Honor, you said
 10 we're not going to have this in the brief. It's
 11 going to be informational separate from the brief
 12 because that would be subsequent remedial --
 13 JUDGE DAWSON: Do you have a solution,
 14 Mr. Mahlberg? Do you mind providing it as
 15 evidence?
 16 MR. MAHLBERG: Well, I --
 17 MR. BOUGHEY: No, I don't want it as
 18 evidence.
 19 MR. MAHLBERG: Fine. We don't need to
 20 have it as evidence. I don't care one way or the
 21 other. I will say that -- Mr. Boughey, I do
 22 think -- it's my observation -- that you've given,
 23 as part of the briefing that we already did in this
 24 case, four different proposals for how things ought
 25 to be handled. And so, I mean, I think what you're

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1 saying you would think about putting in you've
 2 already put in in large part, but I think the
 3 Commission's always open to getting letters saying,
 4 "Here's how to do stuff" --
 5 MR. BOUGHEY: Well, I think we're way --
 6 MR. MAHLBERG: -- outside this case too.
 7 MR. BOUGHEY: I think we're way off the
 8 field right now because right now our brief has to
 9 be focused on what needs to be done now, and so
 10 if --
 11 JUDGE DAWSON: But basically we're
 12 deciding whether this is a late-filed exhibit or
 13 whether this is going to be provided after this is
 14 all over as just informational purposes to
 15 Commissioner Kroshus that he will not use for
 16 determining this, but just to see what wind
 17 companies are doing out there.
 18 COMMISSIONER KROSHUS: Your Honor, that is
 19 correct. I was seeking it as informational
 20 information.
 21 MR. MAHLBERG: And that's fine.
 22 JUDGE DAWSON: So I trust his word that he
 23 won't use it for this decision-making and won't use
 24 it as evidence and it won't be part of the record.
 25 MR. MAHLBERG: That sounds just fine.

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1 JUDGE DAWSON: Okay. Final words --
 2 MR. BOUGHEY: Your Honor, we haven't
 3 finished the briefing issue.
 4 MR. MAHLBERG: Yeah, can we talk about the
 5 briefing --
 6 JUDGE DAWSON: Okay.
 7 MR. MAHLBERG: -- schedule a --
 8 MR. BOUGHEY: We --
 9 MR. MAHLBERG: -- little bit more?
 10 MR. BOUGHEY: We have discussed this. We
 11 would like -- we have a transcript --
 12 JUDGE DAWSON: Okay.
 13 MR. BOUGHEY: -- being provided.
 14 MR. MAHLBERG: So from where I sit, Lynn,
 15 the idea of separate proposed findings of fact is
 16 not something -- and conclusions of law is not
 17 something that we had discussed, but certainly
 18 let's oblige.
 19 From a timing perspective, because we have
 20 the transcript, what we had talked about was upon
 21 receipt of the transcript, we would put in briefs
 22 in 14 days, simultaneous briefing within 14 days;
 23 that simultaneous responses would be due within 10
 24 days after that.
 25 If that schedule is okay with you, Your

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1 Honor, and the Commission and you want to layer in
 2 how you want the conclusions of law -- sorry, the
 3 findings of fact and conclusions of law folded in
 4 there, or if you want them on -- you know, just due
 5 with the responses --
 6 JUDGE DAWSON: And that's where I'm asking
 7 you. Did you want them with the responses? Do you
 8 want another seven days or is there --
 9 MR. BOUGHEY: Your Honor, if I may.
 10 JUDGE DAWSON: Yes.
 11 MR. BOUGHEY: I think what we were trying
 12 to propose is 14 days after receipt of the
 13 transcript we submit our first brief.
 14 JUDGE DAWSON: Yep.
 15 MR. BOUGHEY: Ten days later we submit a
 16 reply brief.
 17 JUDGE DAWSON: Right.
 18 MR. BOUGHEY: At the time of the final
 19 briefing, if you want, that would be when we would
 20 as a separate document do a proposed findings of
 21 fact, conclusions of law and order for judgment
 22 because that really is a different document.
 23 JUDGE DAWSON: Correct. And so that would
 24 be at the -- at the time of the reply brief or
 25 response brief.

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1 MR. BOUGHEY: That's my understanding --
 2 JUDGE DAWSON: Okay.
 3 MR. BOUGHEY: -- based on what you
 4 requested.
 5 JUDGE DAWSON: That's fine with me.
 6 MR. MAHLBERG: Yeah, we were just trying
 7 to pick the date. I think we were all in agreement
 8 on what the three things would be.
 9 MR. BOUGHEY: So I just --
 10 MR. MAHLBERG: If you're okay with the
 11 response date being the date for findings,
 12 conclusions and order proposal, that's certainly
 13 fine with us as well.
 14 JUDGE DAWSON: Okay.
 15 MR. BOUGHEY: Sure.
 16 JUDGE DAWSON: Any other issues that we
 17 should discuss?
 18 MR. MAHLBERG: I hope not.
 19 JUDGE DAWSON: So with that, then, I'll
 20 allow closing remarks by the commissioners.
 21 Commissioner Fedorchak.
 22 COMMISSIONER FEDORCHAK: I'm just going to
 23 make mine super brief and say thank you. It's been
 24 a long couple of days, but we got through it, and
 25 we've got a lot of information to work through,

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1 which we will do in a methodical way as soon as we
 2 get your final documents and hopefully reach a
 3 decision soon.
 4 So thank you.
 5 JUDGE DAWSON: Commissioner Christmann.
 6 COMMISSIONER CHRISTMANN: Your Honor, I
 7 had a really, really long speech, but I'm going to
 8 skip it and just put on my former rancher hat and
 9 wish the Kesslers well with successful calving and
 10 abundant rain when you need it.
 11 JUDGE DAWSON: Commissioner Kroshus.
 12 COMMISSIONER KROSHUS: Not to disappoint,
 13 but thank you, everyone. That's it.
 14 JUDGE DAWSON: We do not have any
 15 late-filed exhibits. And it is approximately 5:45
 16 on April 22, and the hearing for PU-20-194 on the
 17 complaint of Kessler against Minnesota Power
 18 Company is -- the hearing is closed and the record
 19 is left open for the filing of briefs.
 20 This hearing is closed.
 21 (Concluded at 5:48 p.m., the same day.)
 22 -----
 23
 24
 25

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1 CERTIFICATE OF COURT REPORTER
 2
 3 I, Stephanie A. Smith, a Registered
 4 Professional Reporter,
 5 DO HEREBY CERTIFY that I recorded in
 6 shorthand the foregoing proceedings had and made of
 7 record at the time and place hereinbefore
 8 indicated.
 9 I DO HEREBY FURTHER CERTIFY that the
 10 foregoing typewritten pages contain an accurate
 11 transcript of my shorthand notes then and there
 12 taken.
 13 Dated at Bismarck, North Dakota, this 14th
 14 day of May, 2021.
 15
 16
 17 _____
 18 Stephanie A. Smith
 19 Registered Professional Reporter
 20
 21
 22
 23
 24
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