

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Badger Wind, LLC :
251.6 MW Badger Wind : Case No. PU-22-86
Project - Logan & McIntosh :
Siting Application :

TRANSCRIPT OF
HEARING

Taken At
715 First Avenue South
Wishek, North Dakota
June 28, 2022

BEFORE HOPE L. HOGAN
-- ADMINISTRATIVE LAW JUDGE --

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A P P E A R A N C E S

COMMISSIONERS PRESENT:

COMMISSIONER JULIE FEDORCHAK, Chair
COMMISSIONER RANDY CHRISTMANN
COMMISSIONER SHERI HAUGEN-HOFFART

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FOR LABORERS DISTRICT
COUNCIL MINNESOTA AND
NORTH DAKOTA.

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1 (The following proceedings were had and
 2 made of record herein, commencing at 9:36 a.m.,
 3 Tuesday, the 28th day of June, 2022:)
 4 JUDGE HOGAN: All right. I think we're
 5 going to get started. Good morning. It's about
 6 9:36 a.m. on June 28, 2022. My name is Hope Hogan,
 7 and I'm the administrative law judge that's been
 8 designated upon the request of the Public Service
 9 Commission to act as the hearing officer for
 10 today's hearing.
 11 This is the time and date and place set by
 12 the notice of filing and notice of hearing issued
 13 by the Public Service Commission on May 17, 2022,
 14 for Case Number PU-22-86. This hearing is being
 15 held this morning at the Wishek Civic Center in
 16 Wishek, North Dakota.
 17 As we begin our hearing this morning, I'd
 18 ask that everybody please check their telephones to
 19 make sure that they're either silenced or turned
 20 off so that we can avoid any cell phone
 21 interruptions this morning.
 22 There is an attendance sheet that's going
 23 around, and the Commission would ask that you
 24 please sign that sheet so they have a record of
 25 everybody that attended the hearing today. Also,

11

1 there is a box on there to indicate whether or not
 2 you would like to provide any testimony during the
 3 public testimony portion of our hearing, and that
 4 just helps us know who all intends to testify when
 5 we get to that part of our hearing.
 6 This is the hearing for a February 25,
 7 2022, application of Badger Wind, LLC, for a
 8 certificate of site compatibility to construct an
 9 up to 251.6 megawatt wind facility consisting of up
 10 to 74 wind turbine generators and associated
 11 facilities in Logan and McIntosh Counties, North
 12 Dakota.
 13 The notice of filing and notice of hearing
 14 issued -- or specified the following issues to be
 15 considered and determined in this case. First,
 16 will the location and operation of the proposed
 17 facility produce minimal adverse effects on the
 18 environment and upon the welfare of the citizens of
 19 North Dakota?
 20 Number 2, is the proposed facility
 21 compatible with the environmental preservation and
 22 the efficient use of resources?
 23 And number 3, will the proposed facility
 24 location minimize adverse human and environmental
 25 impact while ensuring continuing system reliability

12

1 and integrity and ensuring that energy needs are
 2 met and fulfilled in an orderly and timely fashion?
 3 We will now have the parties make their
 4 appearance for the record. Ms. Smith, do you want
 5 to state your appearance for the record and
 6 introduce the witnesses you intend to call to
 7 testify today?
 8 MS. SMITH: Yes. Thank you. My name is
 9 Mollie Smith. I'm with Fredrikson & Byron, and I'm
 10 here on behalf of Badger Wind, LLC. With me is my
 11 colleague Bridget Duffus, and we have two witnesses
 12 planned today. The first is Nick Gebauer who is
 13 with Onsted -- Ørsted -- excuse me -- Onshore North
 14 America, LLC.
 15 Nick will be testifying regarding project
 16 development history, including landowner and
 17 community outreach; interconnection; project
 18 facilities design and siting; compliance with
 19 setbacks and other applicable requirements; the
 20 results of the sound and shadow flicker analyses
 21 that have been conducted for the project; project
 22 construction, operation and decommissioning; local
 23 permitting, approvals, coordination; and the road
 24 use agreements for the project and project
 25 benefits.

13

1 Our second witness is Sarah Aftergood also
 2 with Ørsted Onshore North America, LLC. Sarah will
 3 testify regarding the details of environmental
 4 studies that were performed and the environmental
 5 analyses conducted on the site, agency
 6 coordination, and consultation and compliance with
 7 applicable siting requirements.
 8 JUDGE HOGAN: Thank you.
 9 Mr. Armstrong, do you want to state your
 10 appearance for the record and introduce Commission
 11 staff that you have with you today.
 12 MR. ARMSTRONG: Yes. Mitch Armstrong,
 13 special Assistant Attorney General on behalf of the
 14 Commission. With me is Victor Schock, the director
 15 of public utilities, and I ask that Mr. Schock be
 16 allowed to ask questions today.
 17 JUDGE HOGAN: All right. Thank you.
 18 Prior to today's hearing, a petition for
 19 intervention was filed by the Laborers District
 20 Council of Minnesota and North Dakota. There was
 21 no objection to the petition and the petition was
 22 granted.
 23 Mr. Pranis, as a representative of the
 24 intervenor, do you want to state your appearance
 25 for the record and introduce any witnesses you

14

1 intend to call today.

2 MR. PRANIS: Yes. Thank you, Your Honor.

3 Kevin Pranis on behalf of LIUNA Minnesota and North

4 Dakota.

5 For witnesses, I am sponsoring one of the

6 exhibits and will be briefly summarizing, if

7 allowed, and available for questions, and Mr. Steve

8 Cortina who has experience doing wind construction

9 work who's here today has prefiled testimony that

10 he will briefly summarize and answer questions on.

11 JUDGE HOGAN: All right. Thank you.

12 Testimony for the public will be taken

13 after the completion of the parties' testimony.

14 And as I indicated before, in case anybody wasn't

15 in the room, if you want to indicate on the

16 attendance sheet if you intend to testify, that

17 would be helpful.

18 I encourage you to take the opportunity to

19 testify today and tell the commissioners anything

20 you think that they should know about this matter.

21 I assure you that what you have to say is important

22 to the commissioners and will be considered by the

23 Commission.

24 If you have any questions about providing

25 information to the Commission or testifying, please

15

1 let me know and I'll do my best to answer those

2 questions.

3 We'll now take opening comments from the

4 commissioners, and we'll start with Commissioner

5 Fedorchak.

6 COMMISSIONER FEDORCHAK: Good morning,

7 everybody. It is great to be in Wishek today. I

8 haven't been in this room any other time except for

9 when it's filled with the smells of sauerkraut and

10 sausage on Sauerkraut Days. So it's kind of fun to

11 be here on a non-sauerkraut day, but we do love

12 coming here and enjoying some of your wonderful

13 German cuisine. My colleagues are going to out me

14 for not being one who likes -- I don't like kuchen,

15 but I'm a Norwegian so I like my treats with -- a

16 little more crisp and a lot more butter. But I --

17 I do love the sauerkraut and sausage on Sauerkraut

18 Days.

19 So thank you all for coming. We're here

20 for two reasons. Really to build a record on which

21 we will make a decision on this case. And

22 everything that we make our decision on will be

23 based on the record that is built at this hearing

24 today. So all these binders and everything that

25 we've looked at to this date will be included in

16

1 the record and then everything we hear from the

2 company, any other witnesses and the public. That

3 will be what we use to base our decision. Anything

4 outside of that does not -- is not stuff that we

5 can use to base our decision.

6 So it's really important that you're here.

7 And we really want to -- the second piece is we

8 want to hear from you, so that's why we have it in

9 the communities where the people are living in and

10 around this new potential infrastructure that will

11 impact your quality of life. So we want to hear

12 from you and what you think about it.

13 So when you testify, if you can focus --

14 the judge talked about what the issues are today,

15 and I'm just going to briefly repeat those because

16 those are really important. If you're testifying,

17 you should try to orient your testimony on these

18 issues that the judge outlined about which our

19 decision will be made, and that is will --

20 basically will this facility, if it's constructed,

21 produce minimal adverse effects on the environment

22 and the citizens here? Is -- that's the first

23 issue.

24 The second one is is this facility

25 compatible with environmental preservation and

17

1 efficient use of resources?

2 And then the third issue is will this

3 facility support continued system reliability and

4 integrity and ensure that energy needs are met and

5 fulfilled in an orderly and timely fashion?

6 So those are the issues around which we

7 will base our decision and the focus of the hearing

8 today.

9 Just to give you briefly an idea of how

10 the day -- the agenda will go, I'm just going to

11 sketch out what I hope this will look like. We

12 always adapt as needed, but I'm hoping that -- the

13 company has two witnesses -- we'll get through

14 those two witnesses between now and whenever we

15 break for lunch. That could be noon, it could be

16 12:30, it could be 1:00, but it does take a good

17 amount of time for the company typically to go

18 through its -- its case and get -- answer questions

19 from us. And so that will take through the

20 morning, I'm quite confident it will take that

21 long.

22 We'll break -- we plan to break a half an

23 hour for lunch. You're free to come and go as you

24 please, but we will try to confine our lunch break

25 to a half an hour so that we can keep things moving

18

1 along.

2 After that, the intervenor will do their

3 part. I'm hoping that that takes, you know,

4 anywhere from 30 to 45 minutes at the most. And

5 then after that, we will do public testimony and

6 public input. So hopefully by early afternoonish

7 we're getting to hear from you all.

8 So that's kind of a rough sketch of the

9 day, obviously subject to change as needed, but

10 that's what I'm hoping will happen.

11 So thank you again for being here. We

12 look forward to a really productive hearing.

13 JUDGE HOGAN: Thank you. Commissioner

14 Christmann.

15 COMMISSIONER CHRISTMANN: Kind of

16 reemphasizing some of those same points, but the --

17 the points that Commissioner Fedorchak and Judge

18 Hogan made about the issues that we address, we're

19 limited by law. Those are the things that we

20 address in a siting hearing.

21 And we have these hearings out here

22 because our job here is not to try and make sure a

23 project gets done. Our job here is not to try and

24 derail a project. Our job here is to make sure

25 that if a project is built, that it's sited in --

19

1 sited in accordance with those laws, and we can do

2 that best if we have all the information possible.

3 So while it would be more convenient for

4 us to have these in Bismarck, we come out here

5 because we want to hear from you. You know the

6 land, you know the area, you know a lot of things

7 that we may not be able to realize from these

8 binders and living out here.

9 And so please do not be reluctant to speak

10 up. Just because we have a bunch of books and

11 stuff in front of us, you have on-the-ground

12 knowledge that we don't. So please don't hesitate.

13 And the other thing I wanted to point out

14 as a guy who raised cattle all my life until the

15 last few years here at the Commission, I know that

16 a lot of you have other things you'd like to be

17 doing. Maybe you'd like to be getting out in the

18 field and making some hay or something, and I

19 understand the inclination to say, "Just let me

20 come up and say my peace so I can get about the

21 business of the day." Well, the fact of the matter

22 is, for our record your testimony is a lot more

23 valuable and more useful to us after we've heard

24 from the company so you can respond to what the

25 company actually proposes this morning, not what

20

1 you may have heard uptown in weeks leading up to

2 this.

3 So that's why the order of the day is to

4 have the company go first. And so sorry about the

5 delay in your day that is the result of that, but

6 it is what helps us to gather the best and most

7 useful information to make a proper decision.

8 JUDGE HOGAN: Thank you. Commission --

9 Commissioner Haugen-Hoffart.

10 COMMISSIONER HAUGEN-HOFFART: Good

11 morning, everyone. Commissioner Fedorchak and

12 Randy said it extremely well. I'm glad to see

13 there's so much interest here and I look forward to

14 hearing from you. And I want to acknowledge the

15 young gentleman in the back who is here. I hope

16 you have a learning experience today and thank you

17 for being here. That's it.

18 JUDGE HOGAN: All right. Thank you.

19 Let's talk about exhibits before we begin. I

20 received prefiled exhibits from the petitioner,

21 Badger Wind, labeled 1 through 31, and then I also

22 received prefiled testimony from the intervenor

23 which I have labeled I1 and I2, and I'll just ask,

24 Ms. Smith, did I get that correct and if you

25 have -- are you willing to stipulate to admission

21

1 of the exhibits.

2 MS. SMITH: I am, Commissioner. I do have

3 one additional exhibit. It was a map that was

4 requested, so I'm going to -- we've labeled that BW

5 Exhibit 32. And then there were a couple of

6 letters that came in very recently, so I brought

7 copies of those. They were filed yesterday, but we

8 said we would just bring hard copies, so I will

9 hand those out. But with that, we would stipulate

10 to intervenor's exhibits and we would ask that ours

11 be admitted as well.

12 JUDGE HOGAN: All right. Mr. Armstrong,

13 are you willing to stipulate to admission of the

14 exhibits.

15 MR. ARMSTRONG: Yes, Your Honor.

16 JUDGE HOGAN: And Mr. Pranis.

17 MR. PRANIS: Yes, Your Honor.

18 JUDGE HOGAN: All right. So Exhibits 1

19 through 32 and then I1 and I2 will be admitted into

20 the record for this case.

21 And I'll just note those are -- those

22 exhibits are available on the Commission's website

23 under the docket for this particular case if

24 anybody wishes to look at any particular exhibit.

25 Ms. Smith, do you have any other

22

1 preliminary matters to discuss before we get
2 started?

3 MS. SMITH: Before we start, I would
4 mention there is a copy of the application and the
5 exhibits sitting over there at the first table next
6 to the sound folks. So if anyone wants to take a
7 look at it from the public, that's what we brought
8 it for.

9 There are two maps that are next to you,
10 Judge, and there's also two maps over here.
11 They're identical. We just wanted to have a set
12 that's easier for the public to see, a set that the
13 commissioners and those involved can see.

14 So I think with those preliminary matters,
15 we don't have anything else.

16 JUDGE HOGAN: All right. Thank you.
17 Mr. Armstrong, any other preliminary
18 matters?

19 MR. ARMSTRONG: No, Your Honor.

20 JUDGE HOGAN: Mr. Pranis.

21 MR. PRANIS: No, Your Honor.

22 JUDGE HOGAN: All right. Then, Ms. Smith,
23 you can call your first witness.

24 MS. DUFFUS: Badger Wind, LLC, calls Nick
25 Gebauer.

23

1 Good morning, Mr. Gebauer. Can you please
2 introduce yourself to the Commission?

3 THE WITNESS: Sure. Good morning. My
4 name is Nick Gebauer. I'm director of development
5 with Ørsted Onshore North America.

6 MS. DUFFUS: Sorry. I jumped the gun.
7 You need to be sworn in.

8 THE WITNESS: Oh, yes. Good point.

9 JUDGE HOGAN: Can you spell your last name
10 for the record.

11 THE WITNESS: Sure. It's G-e-b-a-u-e-r.

12 JUDGE HOGAN: All right. And before you
13 testify this morning, Mr. Gebauer, I'm required by
14 law to advise you on the penalties for perjury in
15 the state of North Dakota. Perjury is a Class C
16 felony, punishable by a maximum fine of \$10,000, a
17 maximum five years' imprisonment, or both. Do you
18 understand what perjury is.

19 THE WITNESS: Yes, Your Honor.
20 (Witness sworn.)

21 JUDGE HOGAN: All right. Thank you. Go
22 ahead.

23 **NICK GEBAUER,**
24 being first duly sworn, was examined and testified
25 as follows:

24

EXAMINATION

2 **BY MS. DUFFUS:**

3 Q. Mr. Gebauer, can you please introduce
4 yourself to the Commission again?

5 A. I can. Yes. My name is still Nick
6 Gebauer. I'm a developer with Ørsted Onshore North
7 America.

8 Q. And can you please provide an overview of
9 your education and work history?

10 A. Yes. So I graduated with a bachelor's in
11 science in meteorology, GIS and earth science from
12 Michigan State University. I then have a master's
13 from Clark University in Worcester, Massachusetts,
14 in GIS for development and environment.

15 Since graduating from there in 2010, I've
16 been in the renewable energy field for the last
17 12 years working for a few different companies in
18 various stages of project life from development
19 through operations for wind and solar throughout
20 the U.S.

21 Q. And did you file prefiled testimony in
22 this matter on June 8, 2022?

23 A. Yes, I did.

24 Q. And is that prefiled testimony and your
25 résumé at BW Exhibits 30 and 30-A?

25

1 A. Yes, it is.

2 Q. Can you please provide a brief summary of
3 the topics covered in your testimony?

4 A. Sure. So my testimony is going to cover
5 project development history, including outreach
6 with landowners in the local community. I'll also
7 talk about project specifics such as
8 interconnection, project design and siting, also
9 compliance with setbacks and other regulatory
10 factors. I'll discuss the results of the noise and
11 the shadow flicker reports and also discuss project
12 construction, decommissioning and operations. And
13 then I'll also discuss the road use agreement and
14 other local approvals and permitting and project
15 benefits.

16 Q. And Badger Wind, LLC, will construct, own
17 and operate the project; correct?

18 A. Correct.

19 Q. And what is Ørsted's connection to Badger
20 Wind, LLC?

21 A. So Badger Wind, LLC, is a wholly owned
22 subsidiary of Ørsted Onshore North America and
23 Ørsted is assisting in developing the project.

24 Q. And can you please provide background on
25 Ørsted, including its experience in the renewable

26

1 energy industry?

2 **A.** Yeah. So Ørsted North America -- or

3 Ørsted Onshore North America is an independent

4 energy producer. We have offices throughout the

5 U.S. I work out of the Chicago office. Ørsted

6 develops, constructs, owns and operates

7 utility-scale wind, solar and storage facilities

8 throughout the U.S. We currently operate about 3

9 gigawatts of capacity, and we have about 1 and a

10 half gigawatts currently under construction. As it

11 stands right now, we currently operate just over

12 1,000 onshore wind turbines.

13 **Q.** And can you please give a brief overview

14 of the project's development history?

15 **A.** Yeah. So project development started in

16 2017. That's when the project area was first

17 identified as a good site potentially for renewable

18 energy development. At that time was when initial

19 outreach to local landowners, local government

20 officials and other stakeholders was initiated.

21 We also installed the first MET tower in

22 January of 2017. Leases with landowners were

23 signed primarily through 2017 and 2018. And then

24 in the years since then, we kicked off

25 environmental surveys and studies starting in 2018

27

1 and continued development.

2 Layout work was done throughout this time,

3 primarily focused in 2021, and then in the

4 beginning of 2022 was when the final layout -- or

5 final preliminary layout was presented to

6 landowners for feedback solicitation.

7 **Q.** And can you please discuss Badger Wind's

8 outreach within the local community and with

9 McIntosh and Logan Counties?

10 **A.** Yeah. So there's been a pretty proactive

11 and transparent communication process with the

12 local community and with the landowners. So that's

13 included a handful of large format meetings, so

14 landowner dinners or open houses. Also

15 presentations to the county commissioners for each

16 of the two counties. And then there's been a

17 number of one-on-one or small group outreach

18 through email, phone, person-to-person meetings.

19 We've sponsored some local events here in

20 Wishek and in the surrounding community, and

21 generally we've enjoyed pretty positive relations

22 with the local community and generally really

23 appreciated the support that they've been

24 providing.

25 **Q.** And can you please describe Badger Wind's

28

1 coordination with the Wishek Municipal Airport and

2 the North Dakota Aeronautics Commission?

3 **A.** Yeah. So Badger Wind took a pretty

4 proactive and preemptive approach to outreach to

5 both the Wishek Municipal Airport and the North

6 Dakota Aeronautics Commission. And so during

7 project development, we reached out to them with

8 kind of the outline of the project and presented a

9 preliminary turbine location map as well.

10 And through those discussions with them,

11 there were five turbines that were identified that

12 they might potentially have some concern with. And

13 so in the interest of safety and maintaining

14 positive relationships with those two entities, we

15 actually completely removed those five turbine

16 locations from the layout. And so the 79 turbines

17 that you see on the maps, those don't include any

18 of those five locations.

19 And then upon removing those five and

20 following back up with those two entities, they

21 indicated that they're happy with the layout as it

22 currently stands.

23 And then I guess maybe one other item I'd

24 add, too, is subsequent to that we did file for and

25 then obtain determinations of no hazard through the

29

1 FAA.

2 **Q.** And were any other concerns raised by the

3 community regarding the project?

4 **A.** So there have been some general concerns

5 raised, kind of common to any wind farm. There are

6 some members of the community that are less

7 enthusiastic about the wind farm than others.

8 I would say it was a minority opinion

9 received, but some of the concerns have been pretty

10 general about wind energy overall, just not being

11 in favor of electricity generation through means of

12 wind turbines.

13 There have been some project specific

14 concerns as well. For example, there are some

15 tenant farmers that are concerned about locations

16 primarily of project roads, and so in those

17 instances we've worked either with the tenant

18 farmers or with their landowners to site these

19 roads to the extent that we're able to in areas

20 that minimize the impact to their operations.

21 **Q.** And has Badger Wind determined what

22 turbine model it will use?

23 **A.** We have not made a final determination

24 yet.

25 **Q.** What turbine model is analyzed in the

30

1 application?

2 **A.** So the application contemplates a GE

3 3.4-megawatt machine, and so that's what was used

4 for a lot of the analysis throughout the

5 application.

6 **Q.** Is Badger Wind considering other turbine

7 models?

8 **A.** Yes, we are. There are other turbine

9 models under consideration. Final selection of the

10 turbine models will be made in consultation with

11 engineering staff and also with the turbine

12 manufacturers themselves to select a turbine that's

13 best suited for this particular project site.

14 **Q.** And because Badger Wind is now considering

15 smaller turbine models or a combination of models,

16 may Badger Wind construct up to 79 turbines instead

17 of up to only 74?

18 **A.** Yes.

19 **Q.** Are all 79 turbine locations and

20 associated infrastructure included in the final

21 layout and figures, studies and impact

22 calculations?

23 **A.** Yes, they are.

24 **Q.** And are the turbine sites dependent upon

25 which turbine model or models you select?

31

1 **A.** So the number of turbine -- turbines that

2 are eventually built is dependent on final

3 selection of the turbine model, but the project

4 will utilize either all 79 locations or a subset of

5 those, but those are the final locations.

6 **Q.** And regardless of the turbine model or

7 models selected, will the turbine locations

8 constructed comply with the applicable setback,

9 sound and shadow flicker requirements and

10 commitments?

11 **A.** Yes.

12 **Q.** And what is the project's planned

13 nameplate capacity?

14 **A.** So the project will have a nameplate

15 capacity up to 251.6 megawatts, but we are limited

16 to 250 megawatts at the point of interconnection,

17 or the POI, where we're actually injecting the

18 power onto the grid.

19 **Q.** And at the time your prefiled testimony

20 was submitted, one parcel was identified as a

21 pending participant; is that correct?

22 **A.** Yes.

23 **Q.** And has Badger Wind obtained an amendment

24 from the landowner adding that parcel to an

25 existing wind lease and easement agreement?

32

1 **A.** Yes, we have.

2 **Q.** Does Figure 1 in BW Exhibit 2 show the

3 current project area?

4 **A.** Yes, it does, but with the exception of

5 the orange parcel in the middle labeled as

6 "pending" is now participating.

7 **Q.** And does Figure 2 in BW Exhibit 2 show the

8 current project layout?

9 **A.** Yes, it does.

10 **Q.** And are the current project area and

11 current layout shown in BW Exhibit 3?

12 **A.** Yes, it is.

13 **Q.** Does the comparison figure marked as BW

14 Exhibit 3 show the minor adjustments made to the

15 project area and project layout after the

16 application was filed which are described in your

17 prefiled testimony?

18 **A.** Yes.

19 **Q.** Did Badger Wind take into consideration

20 input and comments from landowners when siting the

21 project facilities?

22 **A.** Yes, we did. So as mentioned, at the

23 beginning of 2022, we presented all of the

24 landowners with any infrastructure on their

25 property site plans that show where we're

33

1 anticipating putting turbine locations and other

2 related infrastructure. We solicited feedback from

3 the landowners as part of that process, and then

4 comments that we received back were considered and

5 generally implemented into the final project

6 design.

7 **Q.** And has a generator interconnection

8 agreement been executed for the project?

9 **A.** Yes. The generator interconnection

10 agreement, or GIA, was executed in May of 2022.

11 **Q.** And is the project designed to comply with

12 all the setback requirements in the siting act and

13 the Commission's rules?

14 **A.** Yes.

15 **Q.** And is the project designed to comply with

16 all applicable local setback requirements?

17 **A.** Yes. So Badger Wind designed the project

18 specifically to comply with all Logan County

19 requirements as part of their zoning regulations.

20 McIntosh County has not enacted zoning, so

21 therefore there's no local requirements for

22 setbacks from that county.

23 **Q.** And can you please discuss the review

24 conducted by Atwell, LLC, on behalf of Badger Wind

25 to identify occupied residences and community

34

1 buildings?

2 **A.** Yes. So we engaged Atwell to assist in

3 identifying all of the receptors in the project

4 area. The first step in that process was

5 identification of essentially any structure within

6 the project area as it was envisioned in that time,

7 plus an additional one and a half mile buffer, and

8 so imagery was used for that initial desktop review

9 to identify them.

10 **Q.** And let's look at what has been marked BW

11 Exhibit 26. Is that a figure showing the buildings

12 identified during Atwell's desktop review?

13 **A.** Yes, it is.

14 **Q.** And did Atwell then conduct field

15 reconnaissance of the buildings identified through

16 the desktop review to identify inhabited residences

17 and community buildings?

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

19 **Q.** And has Badger Wind made additional

20 efforts to identify and verify inhabited residences

21 and community buildings?

22 **A.** Yes. So in addition to the work performed

23 by Atwell, Badger Wind also conducted additional

24 field reconnaissance to both verify and to field

25 check the work that they had done. We also spoke

35

1 to landowners to identify potential residences and

2 community buildings, and then any -- any changes

3 were added to the receptor list.

4 So, for example, during discussions with a

5 nonparticipating landowner that we thought had two

6 residences on their property, we actually learned

7 that there was a third just across the driveway but

8 about 150 feet from an existing residence. So

9 you'll see that residence was added to the noise

10 and shadow flicker studies and the maps as

11 residence 696.

12 And then also during that work, there were

13 calls made to other landowners, and through that

14 effort there were two inhabited residences that

15 were conservatively identified as inhabited, but

16 during phone discussions it was realized that they

17 were permanently abandoned, so those two receptors

18 were removed and that was receptor 33 and 35.

19 **Q.** And have you conducted an additional

20 review of inhabited residences and community

21 buildings?

22 **A.** Yes, I have. So I also looked at aerial

23 imagery and compared that in relation to the

24 receptor list, and I found no other additional

25 receptors beyond those that were identified. And

36

1 so generally I'm quite confident with the results

2 as well.

3 **Q.** And are the receptor changes you've just

4 described reflected in the project figures provided

5 in BW Exhibit 2 and in the sound and shadow flicker

6 reports provided as BW Exhibits 7 and 8?

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

8 **Q.** Let's turn to BW Exhibit 12. Is BW

9 Exhibit 12 a chart summarizing the information

10 pertaining to the inhabited residences and

11 community buildings in and around the project area?

12 **A.** Yes.

13 **Q.** And does the chart in BW Exhibit 12 list

14 the participant status of the structure, the type

15 of the structure, the nearest turbine to each

16 structure, the distance in feet from the nearest

17 turbine to the structure, the modeled sound level,

18 the modeled shadow flicker and hours per year, and

19 whether a sound waiver was required or obtained?

20 **A.** Yes.

21 **Q.** And what is the shortest distance between

22 a project turbine and a participating landowner's

23 occupied residence?

24 **A.** So 1,558 feet, which is the distance from

25 receptor 263 to turbine 42.

37

1 **Q.** And what is the shortest distance between

2 a project turbine and a nonparticipating

3 landowner's occupied residence?

4 **A.** That's 2,101 feet, which is the distance

5 from receptor 676 to turbine 81.

6 **Q.** And in your prefiled testimony you

7 summarized the results of the sound modeling

8 analysis conducted for the project. Is the sound

9 modeling analysis report for the preliminary

10 project layout provided in Appendix E to the

11 application, which is BW Exhibit 1?

12 **A.** Yes.

13 **Q.** And was updated sound modeling conducted

14 for the current final project layout?

15 **A.** Yes.

16 **Q.** Is that updated sound modeling report

17 provided in BW Exhibit 8?

18 **A.** Yes, it is.

19 **Q.** And were all 79 proposed turbine locations

20 included in the modeling?

21 **A.** Yes, they were.

22 **Q.** What receptors were included in the

23 modeling?

24 **A.** So the receptors in the sound modeling

25 included all of the inhabited residences and

38

1 community buildings in accordance with Commission
 2 requirements within one mile of any turbine
 3 location or substation transformer.
 4 Q. And does the sound modeling include a
 5 sound barrier around the project substation
 6 transformers?
 7 A. Yes, it does. So Badger Wind plans to
 8 construct a 15' tall sound barrier on the south and
 9 east sides of the substation and the substation
 10 transformers. So the sound barrier is designed to
 11 minimize noise output from the substations.
 12 Q. And how tall would the sound barrier be?
 13 A. It would be 15 feet tall.
 14 Q. And for the benefit of those present and
 15 listening to the hearing, what is the Commission's
 16 sound requirement?
 17 A. So the requirement is that sound is
 18 limited to 45 dBA or below within 100 feet of an
 19 inhabited residence or community building in the
 20 absence of a specific waiver from either of the
 21 owners of those entities.
 22 Q. And does Logan County or McIntosh County
 23 have a sound requirement?
 24 A. No, they do not.
 25 Q. And what were the results of the modeling

39

1 conducted for the current project layout?
 2 A. So seven of the receptors, so six
 3 participant-inhabited residences and one
 4 nonparticipating-inhabited residence, were modeled
 5 above 45 dBA within 100 feet of the residence. All
 6 the other receptors studied, both participating and
 7 nonparticipating, were modeled below the 45 dBA
 8 limit.
 9 Q. And has Badger Wind obtained waivers of
 10 the sound level requirement from the owners of
 11 these seven residences with sound levels modeled
 12 above the 45 dBA limit within 100 feet of the
 13 residence?
 14 A. Yes, we have.
 15 Q. Are those waivers provided in Appendix J
 16 to the application which is BW Exhibit 1 and in BW
 17 Exhibit 6?
 18 A. Yes, they are.
 19 Q. And based on the sound modeling analysis,
 20 will the project comply with the Commission's sound
 21 requirement?
 22 A. Yes.
 23 Q. And in your prefiled testimony you also
 24 discuss the results of the shadow flicker
 25 assessment conducted for the project. Was the

40

1 shadow flicker analysis report for the preliminary
 2 project layout provided in Appendix F to the
 3 application?
 4 A. Yes.
 5 Q. And was an updated shadow flicker analysis
 6 conducted for the current project layout?
 7 A. Yes, it was.
 8 Q. Is the report for that updated shadow
 9 flicker analysis provided in BW Exhibit 7?
 10 A. Yes, it is.
 11 Q. And were all 79 proposed turbine locations
 12 included in this modeling?
 13 A. Yes. All 79 locations were included.
 14 Q. And what receptors were included?
 15 A. So for the shadow flicker analysis, any
 16 receptor was included if it was an inhabited
 17 residence within 5,512 feet of any turbine
 18 location, which is equal to ten times the tip
 19 height. So there were 39 inhabited residences that
 20 were included in the analysis. It includes the 38
 21 that were included in the sound report and then one
 22 additional residence that just happened to be
 23 within the like buffer between one mile and the
 24 5,512 feet.
 25 Q. And does the Commission have a shadow

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1 flicker requirement?
 2 A. No. Although, the Commission in the past
 3 has required that shadow flicker be limited to
 4 30 hours per year or less in the absence of a
 5 waiver, so Badger Wind is voluntarily complying
 6 with that requirement as well.
 7 Q. And does Logan County or McIntosh County
 8 have a shadow flicker requirement?
 9 A. No, they do not.
 10 Q. And what were the results of the updated
 11 shadow flicker analysis?
 12 A. So one inhabited residence was modeled
 13 above the 30 hours per year. It was a
 14 participating residence, and then all other
 15 residences were below 30 hours. So the maximum
 16 modeled annual shadow flicker was 38 for
 17 participating residences and 25 for
 18 nonparticipating residences.
 19 Q. And has Badger Wind obtained a shadow
 20 flicker waiver from the owner of the one inhabited
 21 residence?
 22 A. Yes.
 23 Q. And is that waiver provided in Appendix J
 24 to the application?
 25 A. Yes, it is.

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1 Q. What light mitigation technology will be
 2 used for the project?
 3 A. So Badger -- excuse me -- Badger Wind
 4 plans to coordinate with the FAA to implement
 5 aircraft detection lighting system, or ADLS, at the
 6 project.
 7 Q. And with respect to the light mitigation
 8 technology for the project, has FAA approval been
 9 obtained?
 10 A. Not yet. So Badger Wind will submit to
 11 the FAA an ADLS lighting proposal once the turbine
 12 model is finalized and the ADLS system has been
 13 fully designed.
 14 Q. And Badger Wind was granted a wind energy
 15 facility siting permit/conditional use permit by
 16 Logan County on May 11, 2022; correct?
 17 A. Correct.
 18 Q. And is a copy of that permit provided in
 19 BW Exhibit 18?
 20 A. Correct. That's a copy of the Logan
 21 County CUP.
 22 Q. And has Badger Wind developed a weed
 23 management plan?
 24 A. Yes.
 25 Q. Is that weed management plan included as

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1 Appendix I to the application?
 2 A. Yes, it is.
 3 Q. And has Badger Wind shared its weed
 4 management plan with Logan and McIntosh Counties?
 5 A. Yes. So the weed management plan was
 6 included with the Logan County CUP/WEF application.
 7 It was also provided separately to the McIntosh
 8 County Weed Board as well.
 9 Q. And it was provided to the Logan County
 10 Weed Board; correct?
 11 A. Correct. Yes, it was.
 12 Q. And does Logan County or McIntosh County
 13 require approval of a weed management plan?
 14 A. So our current understanding is that
 15 McIntosh County does not require approval of the
 16 plan, though it has been provided, but we are
 17 waiting on final confirmation of that. Logan
 18 County Weed Board actually met last night and
 19 approved the weed plan as presented.
 20 Q. And has Badger Wind entered into road use
 21 agreements with Logan County and McIntosh County?
 22 A. Yes. So the project has a fully executed
 23 agree -- road use agreement with McIntosh County,
 24 executed in March of 2022. And then the road use
 25 agreement with Logan County was just finalized this

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1 month.
 2 Q. What is the anticipated construction
 3 schedule for the project?
 4 A. So the project could begin construction as
 5 soon as September 2022 and could be completed as
 6 soon as Q4 of next year, of 2023.
 7 Q. And how will you coordinate with
 8 landowners and the local community during project
 9 construction?
 10 A. So we'll maintain and actually augment our
 11 active communication strategy that we've been
 12 implementing during development. So we'll maintain
 13 active communication with the landowners through
 14 meetings, like large format meetings, phone calls
 15 or emails. Prior to construction, we'll host an
 16 open house for landowners and other interested
 17 members of the community, and we'll also update the
 18 county commissions as requested or as appropriate.
 19 Q. And what dust control measures will be
 20 implemented during project construction?
 21 A. So water trucks will be used to minimize
 22 dust during construction.
 23 Q. When is the project anticipated to be
 24 operational?
 25 A. So we anticipate being fully operational

45

1 as soon as Q4 of 2023.
 2 Q. And with respect to project
 3 decommissioning, including financial assurance,
 4 will Badger Wind comply with the Commission's
 5 decommissioning rules?
 6 A. Yes, we will.
 7 Q. And have you selected a construction
 8 contractor for the project?
 9 A. So we're currently in the late phases of
 10 an RFP process to select the EPC contractor.
 11 Q. And can you please describe Ørsted's
 12 contractor selection process including the factors
 13 you consider in the selection process?
 14 A. Sure. So the selection of an EPC
 15 contractor is a multistep process. So as the first
 16 step, Badger Wind evaluated potential bidders
 17 primarily based on safety record, their commitment
 18 to quality and their quality program, and then also
 19 their experience in similar projects and in the
 20 Dakotas specifically.
 21 So through that screening process, we
 22 invited a pretty select list of EPC contractors to
 23 participate in the RFP process. The bids that we
 24 received from that process were then evaluated for
 25 various technical and commercial evaluations.

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1 So, again, safety is an important first
 2 evaluation. We review very closely their
 3 quantifiable metrics as well as other safety
 4 factors that we're able to ascertain. We look at
 5 their commitment to quality, and then we also look
 6 at commercial factors, such as price, and then
 7 project construction schedule that they're able to
 8 commit to.

9 We also emphasize local hiring through the
 10 process. The EPCs that we select will be required
 11 to host a job fair in the local community and make
 12 sure that folks here are aware of the employment
 13 opportunities created by the wind farm.

14 Q. And can you please describe some of the
 15 project's benefits?

16 A. Yes. So one of the most obvious benefits
 17 is the direct payment to landowners and other
 18 participants that are partnering with us on the
 19 project. But in addition to that, too, there's
 20 also tax revenue. So the electric generation tax
 21 in North Dakota stipulates the amount of taxation
 22 for the wind project, and we estimate it to be
 23 about 35.1 million over a 30-year life of the
 24 project.

25 As you know, about a third of that goes to

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1 the State of North Dakota, but the other two-thirds
 2 stays here in the local community. The
 3 calculations work out to be about 7 million over
 4 the life of the project to Logan County, about
 5 4.2 million to McIntosh County, and about
 6 9.1 million to the local school district, and then
 7 3.1 million to other local taxing authorities.

8 In addition to that, there's temporary
 9 construction employment during the construction of
 10 the wind farm as well as long-term jobs during the
 11 operations.

12 There's also the indirect economic
 13 benefits of increased economic activity here in the
 14 local community, things like lodging, food,
 15 services along those lines.

16 And then also the project, once it's up
 17 and running, it adds to the capacity of the North
 18 Dakota electric grid and is another source of
 19 renewable energy generation.

20 Q. And let's turn to BW Exhibit 4. This
 21 exhibit outlines the status of permits and
 22 approvals that may be required for the project;
 23 right? Do you have an update to this exhibit?

24 A. Yes. So the primary update is the
 25 acquisition of the determinations of no hazard from

48

1 the FAA which have been received for all 79 turbine
 2 locations.

3 Q. And has Badger Wind committed to obtaining
 4 all required permits for the project?

5 A. Yes, we are.

6 Q. And can you please look at what has been
 7 marked BW Exhibit 27. Is this the signed
 8 Certification Relating to Order Provisions for Wind
 9 Energy Conversion Facilities Siting with
 10 accompanying Tree and Shrub Mitigation
 11 Specifications?

12 A. Yes, it is.

13 Q. And who signed the certification on behalf
 14 of Badger Wind?

15 A. Philip C. Moore. He's the senior vice
 16 president of Badger Wind, LLC.

17 Q. Does Mr. Moore have authority to bind
 18 Badger Wind with respect to adhering to the
 19 certification?

20 A. Yes, he does.

21 MS. DUFFUS: And I'll just note, since
 22 it's more of a legal matter, that there's one
 23 provision in the certification that we've made a
 24 suggested revision to. It's provision 20 talking
 25 about imminent hazard, and our suggestion is the

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1 same as what we've proposed in other proceedings
 2 and this revised provision has been accepted by the
 3 Commission in the past and that's the only change
 4 we've proposed.

5 Q. (MS. DUFFUS CONTINUING) So with respect
 6 to tree and shrub clearing, is Badger Wind
 7 requesting the ability to clear an area wider than
 8 50 feet in some locations within the project area?

9 A. Yes, we are, in some limited locations.
 10 We're looking to clear potentially wider than
 11 50 feet primarily due to areas where we'll have
 12 usually colocated collection lines, access roads
 13 and/or crane paths. So for this reason we are
 14 requesting approval to clear an area wider than
 15 50 feet.

16 Q. And with the exceptions of any updates
 17 provided in your testimony today, if I asked you
 18 the same questions in your prefiled testimony
 19 today, would your answers be the same?

20 A. Yes, they would.

21 MS. DUFFUS: That's the end of my
 22 questions. This witness is available for
 23 additional questions.

24 JUDGE HOGAN: Thank you.

25 Mr. Armstrong, do you have any questions?

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1 MR. ARMSTRONG: Yes. Thank you, Your
 2 Honor.
 3 **EXAMINATION**
 4 **BY MR. ARMSTRONG:**
 5 Q. And I'll -- I'll start at the end there.
 6 Do you -- do you know which areas or how many areas
 7 you're requesting to clear more than -- wider than
 8 50 feet?
 9 A. I do not know the exact number right now.
 10 Q. And what's the reason for that again?
 11 A. So primarily it's colocation of collection
 12 lines and then either access roads or crane paths
 13 to minimize overall disturbance. We are trying to
 14 colocate these elements as much as possible.
 15 Q. You talked in your prefiled testimony
 16 about having 74 turbine locations and then today
 17 talked about having up to 79. Can you explain why
 18 the uncertainty?
 19 A. Yes. So the 74 was calculated based on
 20 the GE 3.4-megawatt unit, so that multiplied by 74
 21 is the 251.6 megawatts. With the realization that
 22 there are other turbine models that might be better
 23 suited for the project based on recommendation from
 24 Logan -- from the turbine manufacturers or from the
 25 engineering staff, it might be a smaller nameplate

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1 capacity, and so that's why the request to
 2 potentially utilize all 79 locations is requested.
 3 Q. When will a determination be made on what
 4 model of turbine and how many turbine locations?
 5 A. So it will be made quite soon, but the
 6 discussions with the OEMs, so the manufacturers of
 7 the wind turbines, are still ongoing.
 8 Q. And all the -- if I understand correctly,
 9 all the studies and the agency correspondence use
 10 the GE model with 79 turbine locations with that GE
 11 model for the testing or -- or for the studies; is
 12 that correct?
 13 A. That's correct.
 14 Q. And were those studies done with -- with
 15 the assumption that all 79 turbines would be
 16 operating, you know, at a given time?
 17 A. So the setback analysis, the noise, the
 18 shadow flicker, those all specifically include 79
 19 turbine locations. Also, counterparties that were
 20 provided, the layout work provided the 79 turbine
 21 layout.
 22 Q. Why was the GE model the one used for the
 23 studies?
 24 A. I would say that that's the most likely
 25 choice and so that's why it was used for the study.

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1 So, yeah, because it's most likely.
 2 Q. The reason I ask is we're talking about
 3 shadow flicker and sound and I'm wondering if GE is
 4 the biggest and the loudest or if maybe there will
 5 be a larger turbine and a louder turbine that might
 6 be selected?
 7 A. So I can't confirm exactly, you know,
 8 which model is going to be used, but I can say that
 9 any turbine model that is selected, if it's not the
 10 3.4, we will review all of the studies completed to
 11 date, make sure that, you know, the impacts still
 12 apply -- or comply with all of the requirements.
 13 Q. So if it's -- if it's different, would
 14 that -- would that include the sound, the shadow,
 15 all of the agency correspondence? I mean, would
 16 you really have to redo everything and --
 17 A. So we would definitely need to reevaluate
 18 and make sure that noise and shadow still complies.
 19 Regarding the agencies, we'll let them know and
 20 then I guess it will be at their discretion if
 21 there's any additional concern, but the turbine
 22 model that was selected is representative of what
 23 we would finally select.
 24 Q. When I was going through the application,
 25 I seem to recall reading somewhere that nine sound

53

1 waivers were required but the exhibit has seven
 2 sound waivers. Am I -- I might be mistaken on the
 3 nine, but I seem to recall seeing that somewhere.
 4 Did that change somewhere in the process?
 5 A. Yeah. You have a good memory. So
 6 originally we were envisioning nine sound waivers.
 7 In the end, after final noise modeling, there were
 8 seven receptors that were above the 45 dBA limit.
 9 Q. Was that a change from turbine locations
 10 or was it a change in the method of analysis?
 11 What -- what was the change from seven to nine?
 12 A. Yeah. So the main change that caused the
 13 decrease from nine to seven was the inclusion of
 14 the sound barrier around the substation wall which
 15 was used to mitigate noise output from that
 16 element.
 17 Q. And I know just looking at Figure 2,
 18 there's areas within the outer boundaries of the
 19 project that are not within what you're asking us
 20 to approve and they have occupied residences in
 21 there, like, within the project. For example, I'm
 22 just --
 23 A. Sorry. I need glasses.
 24 Q. Looking at those type of areas where
 25 you're not -- where they're outside the project but

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1 they're like in the middle of the project, if you
 2 will, how do you work with those landowners or why
 3 are those areas not included within the project
 4 area?
 5 **A.** And I'm really sorry to make you stand up
 6 again. Do you mind pointing one more time?
 7 **Q.** Sure. I'll point to them.
 8 **A.** Okay. Sorry. Okay.
 9 MS. SMITH: Mitch, are you basically just
 10 pointing out the areas that are carved out of the
 11 project area but within the outer boundary?
 12 **MR. ARMSTRONG:** Yes.
 13 **MS. SMITH:** Okay. Thank you.
 14 **THE WITNESS:** Yeah. So those are treated
 15 as nonparticipating residences, so all of the
 16 requirements for a nonparticipating residence are
 17 how those are handled.
 18 **Q.** (MR. ARMSTRONG CONTINUING) And -- but
 19 they're, like, within the outer boundaries. So I'm
 20 wondering what work you've done with those
 21 landowners or why they're cut out.
 22 **A.** Yeah. So, generally, those are landowners
 23 that chose not to participate in the project but
 24 they have been included in like multiple
 25 communications. Everyone that lives in houses

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1 there are very familiar with our project and know
 2 who we are.
 3 **Q.** And how far away is the project from the
 4 city of Wishek?
 5 **A.** I can't give you an exact number, but I
 6 can -- if I look at the map, I can kind of
 7 estimate, if you'd like.
 8 **Q.** Sure. Do you have a -- it's Figure 2 in
 9 front of you.
 10 **A.** Good point. Yeah. So the distance from
 11 Wishek, it does depend on the direction, but it
 12 looks like it's somewhere between one mile in the
 13 southwest and then maybe somewhere around --
 14 somewhere around two miles to the north. And then
 15 the project does not encircle the city in the east
 16 or the south.
 17 **Q.** And I know you went through it a bit, but
 18 could you just tell us like a summary of what
 19 you've done with outreach for the City of Wishek
 20 and the residents of Wishek about the wind farm?
 21 **A.** Yeah. So we've been a pretty active
 22 community member here in Wishek. We have
 23 participated in some of the local events, including
 24 the reference to Sauerkraut Days. We've hosted
 25 meetings here in this very building multiple times.

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1 We interact with local community members, including
 2 the Wishek Job Development Authority have been
 3 particularly supportive of the project.
 4 **Q.** Have you had any concerns expressed for
 5 the project on behalf of the City or -- or
 6 residents in particular?
 7 **A.** So I'm not aware of any on behalf of the
 8 City. There are residents that live in Wishek --
 9 or at least I'm sure there are folks that live in
 10 Wishek who have talked to me or other members of
 11 the team that have expressed concerns.
 12 **Q.** And what kind of concerns have been
 13 expressed?
 14 **A.** So the concerns are kind of split between
 15 just general concerns about not -- not liking wind
 16 energy for any multitude of reasons. The
 17 project-specific concerns are usually like the
 18 folks that might live in Wishek but work in the
 19 fields as tenant farmers and, you know, their
 20 concern that making sure that we place roads or
 21 other elements that minimize their impacts.
 22 **Q.** And as I understand it, the City of Wishek
 23 and McIntosh County, there's no approvals or
 24 permits that are needed to be obtained for this
 25 wind farm?

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1 **A.** There's the road use agreement, but beyond
 2 that, not that I'm aware of.
 3 **Q.** What is the status of the road use
 4 agreements for McIntosh County?
 5 **A.** So that was executed in March of 2022.
 6 **Q.** And then in Logan County you needed a CUP
 7 and a road use agreement and approval from the weed
 8 board?
 9 **A.** Correct.
 10 **Q.** And have those all been received?
 11 **A.** They have all been received, yep.
 12 **Q.** Any other approvals in Logan County?
 13 **A.** Not that I'm aware of.
 14 **Q.** And I might ask you some questions that
 15 are better for the next witness, but I want to make
 16 sure I --
 17 **A.** All right.
 18 **Q.** I don't want to ask her and then her tell
 19 me I should have asked you.
 20 **A.** Fine.
 21 **Q.** On page 59 of the application, it said
 22 that one cultural resource needed to be evaluated
 23 in the spring of 2022. Do you know if that has
 24 been completed?
 25 **A.** So that is a question better addressed to

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1 Sarah.

2 Q. Okay. So then I have questions about

3 Exhibit 31, which is the U.S. Fish and Wildlife

4 Service letter and the letter from the State

5 Historical Preservation Office. Would those be

6 better for Ms. Aftergood as well?

7 A. That's correct.

8 Q. And with respect to the bird and bat

9 conservation strategy, that would be better for her

10 as well?

11 A. Yes, it would.

12 Q. You received a determination of no hazard

13 from the FAA. How -- can you tell us about the

14 lighting plan and how that might differ depending

15 on which turbine you select and what efforts will

16 be made for -- to implement light mitigation

17 technologies?

18 A. Yeah. So the current determination uses

19 the, like, default FAA approval of the red lights

20 required on all turbines with standard technology.

21 So the implementation of an ADLS and approval with

22 FAA comes through a separate process. So selection

23 of the final turbine doesn't impact our commitment

24 to implementing ADLS. We just need that -- the

25 selection and then also the final studies that the

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1 ADLS vendor provides to actually submit it to the

2 FAA, but those will be submitted and implemented

3 prior to operations.

4 Q. And when do you expect that to occur?

5 Because the reason I ask is some things -- you

6 know, if you submit them just prior to operations,

7 the wind farm could be mostly built versus

8 submitting them before construction. So how do you

9 determine whether to get approvals before

10 construction or before operation?

11 A. Yeah. So the FAA lighting approval is not

12 a particularly onerous process. We are working

13 with a consultant called Capitol Airspace --

14 sorry -- Capitol Airspace Group who have a lot of

15 experience in obtaining these ADLS permits from the

16 FAA. So it's a pretty quick process from FAA and

17 we're pretty comfortable with the timeline. With

18 that said, we do anticipate filing that pretty

19 shortly here.

20 Q. And with respect to the turbines, you

21 know, it's June right now, end of June, and you

22 talked about a construction start date of -- I

23 think the hope or plan would be September, if I

24 understood your testimony correctly, but there's

25 not a turbine selected yet. Can you tell us how

60

1 that all -- the timeline for that and how it all

2 relates together?

3 A. Yes. So we are constantly in

4 communication with the turbine manufacturers to

5 make sure that they can support our construction

6 schedule. The work that would start as soon as

7 September would be more on the civil side. So it

8 would be access road construction, public road

9 improvements, and excavation and construction of

10 the turbine foundations.

11 So the latter is dependent on turbine

12 technology, but we have performed geotech --

13 geotech investigations at all of the turbine

14 locations and have all of the parameters that would

15 be required for calculation and design of the final

16 foundation. And so we're already pretty well lined

17 up to finalize that foundation design upon final

18 selection of turbines.

19 Q. And that leads me into my next question,

20 the towers, the pads, the power line, the

21 substation, does any of that change depending on

22 which turbine is selected?

23 A. So there are some elements, foundation

24 being one of them. The -- what's called the BOP

25 side of it, so everything from the -- from the

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1 turbines themselves through the collection line and

2 the substations, there's very minor, if any,

3 changes. The substation itself is designed to

4 support the project, a project that can inject up

5 to 250 megawatts onto the grid, with the exception

6 there being potentially collection lines might need

7 to be just resized based on the -- the turbine

8 capacity.

9 Q. You said the foundation as well. How

10 could that change depending on which turbine it is?

11 A. So the turbine manufacturers, they have

12 different parameters, like loading parameters

13 essentially for the turbine model. So those

14 loading parameters are part of the calculation to

15 design a final turbine foundation.

16 Q. And the loading parameters -- I'm not an

17 engineer so I probably won't use technical terms --

18 does that mean bigger foundations potentially or

19 smaller?

20 A. Yeah.

21 Q. Because that all affects areas of impact

22 potentially, so I'm wondering how that might impact

23 all the studies and analyses we have.

24 A. Yeah. So it could make generally mild

25 changes, though, in the size of the part of the

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1 concrete that's under the ground. Yeah.
 2 Q. How about surface area?
 3 A. So above the surface?
 4 Q. Yeah. I mean -- so I'm thinking there's
 5 two parts of the size; right? There's how much of
 6 the foundation you see and then how deep it goes
 7 and I'm sure other construction technical
 8 requirements involved. But, like, you know, I know
 9 the application said something to the effect of --
 10 I don't remember if it was 90 or some permanent
 11 acres of displacement. But are we talking it could
 12 be more, it could be less? That's what I'm getting
 13 at.
 14 A. So that final number, there might be some,
 15 like, very marginal changes. The primary driver of
 16 those impacts are not really the turbine
 17 foundation. It's going to be the other elements.
 18 And the turbine foundation changes based on final
 19 turbine selection are -- are quite minor.
 20 And then also those calculations do assume
 21 all 79 turbine locations. So if we do select a
 22 larger turbine, which presumably might have more
 23 loading and require a larger foundation, there
 24 would be less locations.
 25 Q. So if -- for instance, if it is the GE

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1 turbine selected, will it be 74 turbine locations?
 2 A. Yes. Because we're -- the capacity of the
 3 wind farm is the 251.6.
 4 MR. ARMSTRONG: I'll turn it over to
 5 Mr. Schock.
 6 JUDGE HOGAN: Okay.
 7 **EXAMINATION**
 8 **BY MR. SCHOCK:**
 9 Q. I'd like to talk a little bit about shadow
 10 flicker. So in the analysis, you come up with
 11 what's referred to as an astronomical worst-case
 12 scenario so that is essentially -- if there's no
 13 other factors other than the sun, the towers and
 14 then the receptors, that is the worst-case
 15 scenario. Is that kind of a correct way to --
 16 A. Yes. I think that's generally correct.
 17 Q. Okay. And then there are what's referred
 18 to as attenuations, which are essentially
 19 reductions to that astronomical worst-case
 20 scenario. The two that are described in here are
 21 the cloud cover percentage, so you come up with an
 22 average amount of cloud cover per month and then
 23 the months that have potential shadow flicker
 24 happening, you reduce the expectant shadow flicker
 25 by that percentage; correct?

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1 A. Correct.
 2 Q. Okay. That makes sense so far. And then
 3 the final one is site-specific directional
 4 frequencies. So I'm assuming what that means is
 5 how the tower itself is turned to the wind, whether
 6 or not it would cast a shadow flicker on a receptor
 7 site based on the direction that that wind is
 8 hitting it; is that correct?
 9 A. Yeah. That's correct. So the turbine
 10 yaws at the top of the tower, and so you can kind
 11 of imagine the geometry that a yawing turbine will
 12 create varies based on the direction of the wind.
 13 Q. Sure. And then when I look at this, so
 14 there are different -- it's referred to as sectors
 15 but it looks like it's degrees from north, I'm
 16 assuming, or degrees from some point on a compass?
 17 A. I can't necessarily confirm what the zero
 18 point is but, yes, it's --
 19 Q. Right.
 20 A. Yeah.
 21 Q. And I -- to a point I'm not terribly
 22 concerned where that is, but they all appear to be
 23 points upon a compass essentially?
 24 A. Correct.
 25 Q. And then there are numbers assigned to

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1 each of those points, a percentage, and I would
 2 assume they all total up to a hundred?
 3 A. That would be my assumption as well, yes.
 4 Q. And then each of those numbers would be
 5 the -- and that's the part where it gets a little
 6 fuzzy for me. Are those numbers the percentage of
 7 time that you would expect in -- the tower to be
 8 turned in that specific orientation where it
 9 wouldn't cast a shadow?
 10 A. Well, so those numbers are the first part
 11 of that. So it's the estimation of the yawing
 12 position of the rotor, what percentage of time it
 13 will be in each yawing position.
 14 Q. Okay. So those numbers are what
 15 percentage of time it makes -- it's in each of
 16 those, but we don't necessarily know which position
 17 is going to cause shadow flicker versus not for
 18 each of those sites?
 19 A. So the model determines that, yeah.
 20 Q. Okay. Because that's one piece that I'm
 21 kind of missing in this assessment that you have
 22 filed here is the individual details for the
 23 receptor site. So in other wind farm applications
 24 I've reviewed, we receive -- you know, you have
 25 kind of the summary data for each receptor site,

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1 you know, here's the astronomical worst case and
 2 here's the expected case, but there's further data
 3 that kind of breaks down, okay, for the
 4 astronomical worst case there's only a certain
 5 number of days per year that this happens in each
 6 receptor site. And the kind of more detailed
 7 information would break down here are the number of
 8 hours or here's when it would expect to start,
 9 here's when it would stop for each of those sites,
 10 and then here's how we're adjusting what our
 11 expected is from that. Would you have that data
 12 available for the sound flicker analysis --
 13 sorry -- shadow flicker analysis?
 14 **A.** Yeah. So those calculation steps are kind
 15 of intermediate steps. The ultimate result that
 16 the study aims to achieve is calculation of the
 17 total number of hours per year.
 18 **Q.** Agreed. Agreed. Would you be able to
 19 file as a late-filed those -- the detailed kind of
 20 day-by-day estimations for the individual receptor
 21 sites?
 22 **A.** So I can't confirm if those, like,
 23 intermediate steps were captured as the model was
 24 run so I can't confirm that. Sorry.
 25 **MS. SMITH:** So, Victor, I can take a look

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1 at that and see. Do you have an example that you
 2 can point us to, because --
 3 **MR. SCHOCK:** Yes.
 4 **MS. SMITH:** -- I think I know what you're
 5 talking about, but I also could not find what
 6 you're talking about with the sector. So I want to
 7 make sure that we're talking about the same thing.
 8 **MR. SCHOCK:** Sure. The sector thing was
 9 on page 4 of Exhibit 7 --
 10 **MS. SMITH:** Oh, okay. Just --
 11 **MR. SCHOCK:** -- at the bottom --
 12 **MS. SMITH:** I see what you're looking at
 13 then.
 14 **MR. SCHOCK:** But an example that I kind of
 15 referred to because I had some issues with this in
 16 other wind farms, Bison 4 in their flicker report,
 17 as it's referred to -- it's kind of a fun way to
 18 refer to it -- but, anyway, that has the detailed
 19 analysis. I can -- can I get you a copy of this?
 20 **MS. SMITH:** Yeah. That sounds good.
 21 Yeah. And I'll talk with our expert on that to see
 22 if that's something that we can provide. I will
 23 say what Nick said about -- you know, it's not
 24 intended to be a precise per day, this is exactly
 25 what's going to happen, but an annual average.

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1 **MR. SCHOCK:** Right.
 2 **MS. SMITH:** But, otherwise, we can
 3 certainly provide the data, I believe.
 4 **MR. SCHOCK:** Okay. Thank you.
 5 **Q.** (MR. SCHOCK CONTINUING) That's all I have
 6 on shadow flicker. Now we'll talk a little about
 7 TV reception.
 8 So the company I believe has done some
 9 studies for the current level of TV reception at
 10 various sites. I don't know that -- that you've
 11 done it for every receptor site or every occupied
 12 residence within the project area; is that correct?
 13 **A.** That's correct. So there were nine
 14 locations that were measured, and so this was the
 15 second-phase study taking baseline measurements.
 16 **Q.** (MR. SCHOCK CONTINUING) Second-phase
 17 study, so there was an earlier study for TV
 18 reception?
 19 **A.** Correct. So filed with the application
 20 there was a search performed by Comsearch that
 21 looked at a desktop level the TV potential impacts.
 22 **Q.** Okay. And then my only real other
 23 question is the company is willing to work with
 24 any -- so if the project is built and there -- to
 25 the extent there are folks that are experiencing

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1 issues with their TV reception, the company will
 2 work with them to find solutions to those problems
 3 if it doesn't match up with those baselines
 4 essentially if there was a documentable difference
 5 in their reception level because of the wind
 6 towers?
 7 **A.** Yes, we will. It's an important factor --
 8 you know, maintaining these relationships is an
 9 important part of kind of ongoing community
 10 relationships, and that's a pretty sensitive topic,
 11 so, yes. Yes, we will.
 12 **Q.** And then my last question is on the
 13 requested modification of the certification
 14 relating to order provisions. I'm just trying
 15 to -- I'm having a hard time wrapping my mind
 16 around the reason for the change. And I know this
 17 is a common one. We've done it on at least one or
 18 two other occasions. I'm trying to figure out what
 19 the change actually does.
 20 **MS. SMITH:** So I think that's one I would
 21 have to take because, quite honestly, this is the
 22 proposal that I've made in the past. The concern
 23 was that there isn't a lot of definition in the
 24 current provision, so this originated with a NuStar
 25 pipeline project and the thought -- you know, I

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1 worked with their counsel there to pull in this
 2 imminent hazard concept so that we had some
 3 definition and everyone would understand how this
 4 was to be applied. So we've proposed this in
 5 Aurora, Ruso and we've also proposed it in Bowman
 6 as well, and it was approved in the NuStar
 7 situation as well.
 8 MR. SCHOCK: Sure. It -- and I agree it
 9 has -- we have approved it in other situations.
 10 What's kind of making me pause a little bit is
 11 so -- instead of saying the Commission has
 12 authority to stop the project, we're saying --
 13 first of all, we're changing -- we're saying the
 14 Commission third-party construction inspector
 15 rather than the Commission. That's a change.
 16 MS. SMITH: Yeah. And that is actually
 17 for the benefit of the Commission because the
 18 amount of time it would take for the Commission to
 19 gather information, meet and then stop a project if
 20 there was an imminent hazard, it probably would
 21 have already occurred. So we're recognizing that
 22 we understand the Commission relies on their
 23 third-party inspector to make those calls, and we
 24 agreed in this situation that the third-party
 25 construction inspector should have the authority to

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1 stop the activity under this provision, then can go
 2 to the Commission if there's a dispute that can
 3 then be resolved by the Commission. But it
 4 protects from these things that we think are
 5 important such as severe personal injury, you know,
 6 substantial impairment. We want -- we wanted them
 7 to have that authority. So we viewed that as a
 8 positive change for the Commission.
 9 MR. SCHOCK: Sure. And I don't disagree
 10 with the first part of what you said there. The
 11 next one is the -- where you were using the word
 12 "authority." So we used to say "has authority."
 13 Now we're saying "will be allowed." That kind of
 14 sounds like mom is telling the kid, "Yeah, you can
 15 do this, but if I don't like it, I'm going to stop
 16 you from doing that."
 17 MS. SMITH: And that's -- you're
 18 absolutely right, in this instance because we
 19 changed it to the third-party construction
 20 inspector, we would say that, at least in my
 21 experience before the Commission, there's been a
 22 shift of wanting to -- so it used to be staff made
 23 a lot of calls. Now I've seen a shift to where the
 24 Commission has the authority to make those calls.
 25 So this person gets to do this because the

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1 Commission allows it, but the Commission ultimately
 2 is the one that determines if that should continue.
 3 So I think that's why we've created that
 4 separation. The authority lies with the
 5 Commission, not with the inspector ultimately, so
 6 that's -- it may be parsing words, but I was trying
 7 to be sensitive to how the Commission has viewed
 8 that issue in the past.
 9 MR. SCHOCK: Sure. And that's where, you
 10 know, for me it gets fuzzy because this is a
 11 document the company is signing on and agreeing to.
 12 I mean, I agree that the Commission, you know,
 13 allows their third-party inspectors and empowers
 14 their third-party inspectors to do things, and I'm
 15 just trying to figure out if this is the Commission
 16 saying we're allowing the third-party inspector to
 17 do something or if the company is saying, okay,
 18 we'll allow you to do that.
 19 MS. SMITH: Either way -- I mean, if it's
 20 allowed, it's allowed, and I don't really see a
 21 difference. If there's a concern about that
 22 particular word, I certainly think that we could
 23 work on that word, but the intent is the same.
 24 MR. SCHOCK: Okay. And that's it. The
 25 rest of it, I think, makes some reasonable sense,

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1 but just kind of had some questions around that.
 2 So that's all I have for this witness.
 3 JUDGE HOGAN: All right. Thank you.
 4 Mr. Pranis, did you have any questions for this
 5 witness?
 6 MR. PRANIS: Just a few, yes.
 7 JUDGE HOGAN: Go ahead.
 8 **EXAMINATION**
 9 **BY MR. PRANIS:**
 10 Q. Thank you, Mr. Gebauer. I just wanted to
 11 start with it's correct that Badger Wind has an
 12 interconnection agreement in hand for this project?
 13 A. Yes. That's correct.
 14 Q. Well, congratulations. I think I can
 15 count on one hand the number of projects in the
 16 region I cover that have interconnection agreements
 17 from MISO in hand.
 18 Would you consider that interconnection
 19 agreement a valuable resource?
 20 A. I would say it's an important piece of
 21 project development, and definitely a lot of effort
 22 was made from multiple members of the Ørsted team
 23 and other consultants to get that in place. Yeah.
 24 Q. And if for some reason Ørsted were unable
 25 to complete this project, would Ørsted just get to

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1 sit on that interconnection or would it revert back
2 to the MISO process?

3 **A.** So there are requirements within the GIA
4 to utilize the capacity within a certain amount of
5 time.

6 **Q.** Right. And so if this project were unable
7 to be completed, there's no assurance that the
8 benefit of that interconnection would necessarily
9 go to North Dakota; in other words, because it's a
10 regional system that interconnection could end up
11 with some other project elsewhere; is that correct?

12 **A.** I'm sorry, Mr. Pranis, I'm not sure I
13 understand the question.

14 **Q.** If -- if the project is unable to be built
15 and the interconnection has to be -- the agreement
16 is terminated because you're unable to comply, it's
17 correct that that reverts back to MISO -- those
18 resources go back to the MISO process to be
19 distributed elsewhere; right? That another
20 project -- potentially another project -- in other
21 words, if it can't be used here, then that resource
22 remains available but not necessarily to a project
23 in this area. Is that your understanding? Or if
24 you're not aware, that's fine. We can move on.

25 **A.** No. I think the way that I would think of

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1 interconnection agreements is that it's specific to
2 the studies that were performed at that particular
3 point of interconnection and the particular
4 specifics of the project. So if Badger Wind is not
5 constructed, that GIA is terminated. The best way
6 to think of it actually is future models for future
7 interconnection studies won't include that point in
8 that injection.

9 **Q.** Right. And can I ask about the delivery
10 of energy? You're currently seeking a power
11 purchase agreement, is that correct, marketing the
12 project to potential customers?

13 **A.** That's correct.

14 **Q.** And those would include either a utility
15 that's serving customers in this area, adjacent,
16 could be Minnesota, North Dakota, et cetera, that
17 might receive that power, or it could be what you
18 call a virtual PPA with a corporate customer, for
19 example?

20 **A.** Those are two options, yes.

21 **Q.** Correct. And in a virtual PPA, is it
22 correct that the project would really just be
23 supplying power to the market and it's a financial
24 transaction with the -- you're not -- you wouldn't
25 be supplying power directly to the purchaser in

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1 that case because they would get it through a
2 utility. You'd be providing to the market
3 generally; is that correct?
4 **A.** So by definition, yeah, a virtual PPA, the
5 actual electrons that are being created by the wind
6 farm are not being what's called scheduled, so not
7 being like virtually physically transported to the
8 purchaser of the power. You're correct that we're
9 injecting the power on the grid, typically
10 realizing the spot price there, and then have a
11 separate agreement with the off-taker with the PPA.

12 **Q.** And in that case the -- the impact on the
13 grid would be similar to any other project. It
14 could even be in South Dakota or Minnesota that
15 simply sells power into the grid and it's drawn out
16 as needed by different customers and different
17 utilities; is that correct?

18 **A.** Well, so the project is, being constructed
19 here, contributing to the local economy here. So
20 even if the agreement for off-take is with an
21 entity somewhere else, the local benefits still
22 stay here of the project.

23 **Q.** Right. And you would argue that it's
24 better to have this project here than a project
25 somewhere else that does the same thing, delivers

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1 the same power into the grid but doesn't provide
2 the local jobs, land leases, tax revenues; is that
3 correct?

4 **A.** Correct. In the sense that, yes, we're
5 very happy to be working with the community here
6 and bringing this project here.

7 **Q.** Great. Just want to turn to construction
8 for a minute. So is it fair to say that the -- the
9 actual execution of the project, including hiring
10 of a workforce and subcontractors and management of
11 workforce and subcontractors, will be conducted by
12 your EPC contractor, not directly by Ørsted?

13 **A.** That's correct. The vast majority of the
14 staff on site will be -- during construction will
15 be hired by the EPC.

16 **Q.** And so the selection of an EPC contractor,
17 would you agree that's a pretty important piece in
18 terms of compliance with all of the permit
19 conditions and other requirements that the project
20 has for construction?

21 **A.** The selection and the contracting with the
22 EPC, yes, is an important factor in ensuring
23 compliance.

24 **Q.** And by contracting, that would mean what
25 agreements Ørsted has come to with that contractor

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1 regarding how they will specifically perform this
 2 project?
 3 **A.** Correct.
 4 **Q.** All right. And so I'd ask if you -- have
 5 you had a chance to review the prefiled testimony
 6 of myself and Mr. Cortina?
 7 **A.** Yes, I have.
 8 **Q.** Great. And would you agree that
 9 employment of local residents during construction
 10 of the project is an important benefit of the
 11 project or potential benefit?
 12 **A.** That factor is an important benefit.
 13 **Q.** Great. And would you also agree that --
 14 that employment of a larger percentage of local
 15 workforce will increase the benefit compared to a
 16 smaller percentage of local workforce?
 17 **A.** I would say -- so in terms of direct wage
 18 payment to the local community, yes, there will be
 19 more direct wages paid to the local community if it
 20 has a larger share of local workers.
 21 **Q.** Great. And in terms of the factors that
 22 you consider when you're selecting the EPC
 23 contractor, do you consider the local hiring
 24 performance on past similar projects; in other
 25 words, not only whether a contractor will promise

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1 to do a job fair but how they have performed in
 2 terms of, you know, if they built projects with the
 3 majority of local workforce or not in the area?
 4 **A.** Yeah. So making sure that the objectives
 5 and the goals of Ørsted and then the EPC contractor
 6 are aligned, that's an important selection
 7 criteria.
 8 **Q.** Including looking at -- do you look at
 9 past performance so that -- how the contractor has
 10 done it on other similar projects in this area?
 11 **A.** I can't confirm if like the metrics are
 12 provided as part of that section.
 13 **Q.** And then another question and -- whether
 14 Ørsted considers or is willing to consider pay
 15 equity, specifically looking at for construction
 16 workers, whether workers are being paid relatively
 17 equitable wages, you know, without reference to
 18 race, national origin, et cetera?
 19 **A.** So generally that's an important concept,
 20 but I can't confirm whether that's included.
 21 **Q.** Okay. And the last question on safety,
 22 does Ørsted look at the use of temporary staffing
 23 agencies or plans to use temporary staffing
 24 agencies for workforce by contractors when
 25 evaluating safety?

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1 **A.** So Ørsted's on-site presence will
 2 primarily be confined to construction managers and
 3 other staff from Ørsted. So my expectation is most
 4 of those people that will be representing Ørsted
 5 are on staff already, but I can't confirm for sure
 6 who will be hired for this particular project.
 7 **Q.** Yeah. I actually had in mind the --
 8 sorry, EPC contractor's use, whether -- do you look
 9 at whether the EPC contractor relies on temporary
 10 staffing agencies in your evaluation of their --
 11 their proposals and their safety?
 12 **A.** My understanding is typically not. So we
 13 will ensure that they have a very strong quality
 14 assurance and safety program and then the actual
 15 staffing. They might kind of come up with that
 16 strategy to make sure that it adheres to those
 17 requirements and also our, like, stated
 18 preferences.
 19 **MR. PRANIS:** Great. Thank you very much.
 20 No further questions.
 21 **JUDGE HOGAN:** All right. Thank you.
 22 Commissioner Fedorchak.
 23 **COMMISSIONER FEDORCHAK:** All righty.
 24
 25

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EXAMINATION

2 **BY COMMISSIONER FEDORCHAK:**
 3 **Q.** Thank you, Nick. We will get through this
 4 and then we'll have a break. I'm sure you're
 5 getting ready.
 6 **Okay.** So just for starters, do you -- I
 7 want to talk just briefly about the FAA process and
 8 the light mitigating technology. Have you had any
 9 indication whether there will be any issues with
 10 the light mitigating technology because of the
 11 proximity to the Wishek airport for this site?
 12 **A.** No. I haven't -- I'm not aware of any
 13 reason that would create a conflict.
 14 **Q.** Okay. And in -- so you're pretty
 15 confident that it will be available here as an
 16 option?
 17 **A.** That is my understanding. And I realize,
 18 too, if you're talking about that there will be
 19 more low-flying aircraft potentially because of the
 20 airport, that could potentially be true. But the
 21 actual implementation of an ADLS system, I'm not
 22 aware of why that would be impacted by the presence
 23 of the airport.
 24 **Q.** Okay. And then how -- how much have you
 25 emphasized that or how big of a deal was that

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1 technology or the lights in general to the
 2 communities in your discussion with folks here,
 3 Wishek, the neighboring -- the surrounding areas?
 4 Are they aware of that? Have you made promises
 5 that you'll be using it or is it not really on
 6 their radar?
 7 **A.** Good pun. My -- the communications that
 8 I've had generally have been that they're aware of
 9 the North Dakota requirement. So it hasn't
 10 necessarily been a big deal in the discussions that
 11 I've had because they're aware of the requirement
 12 and know that it will be implemented.
 13 **Q.** So is there an expectation that it will be
 14 used, I guess, is what my question is?
 15 **A.** I think people, yeah, are expecting that
 16 it is used.
 17 **Q.** Okay. Okay. Please keep us apprised if
 18 this moves forward on that particular issue. There
 19 have been some hiccups in siting that and using it,
 20 and I'm always conscious of promises made to the
 21 community and things that can change like that.
 22 So -- and I would urge you to get your vendors
 23 secured and your FAA permit going because we've
 24 also seen hiccups there.
 25 Okay. So separately, do you -- when

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1 you're working with the landowners, does your
 2 company provide any payment to nonparticipating
 3 landowners? Or do you have to have a posted
 4 turbine to be considered a participating landowner?
 5 **A.** Well, so our definition of participating
 6 landowner doesn't necessarily require that a
 7 turbine is on their property but they have acreage
 8 within the project area or host other
 9 infrastructure elements. So folks with which we
 10 have an agreement with, there's financial terms
 11 there that we will compensate them. Folks that are
 12 outside the project area and that don't have any
 13 contractual relationship with us, there's no direct
 14 payment.
 15 **Q.** Okay. All right. And then I just want to
 16 talk a little bit about the -- your work on a
 17 customer and the interconnection. So the
 18 process -- how was the affected system study -- how
 19 did that impact you guys, the affected system study
 20 in your interconnection process?
 21 **A.** Are you referring to the SPP affected
 22 system study?
 23 **Q.** Mm-hmm.
 24 **A.** So there are costs associated from that
 25 study. That process is actually still ongoing as

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1 finalizing that study based on updates from SPP.
 2 **Q.** So you don't have a final dollar figure
 3 yet for those costs?
 4 **A.** The affected system study costs, that
 5 dollar amount is not finalized.
 6 **Q.** Okay. Are you pretty confident it's going
 7 to be okay and not going to make this out of the
 8 realm of reasonable, because they have been in the
 9 past?
 10 **A.** Yes. And that's a good point. But we
 11 actually -- we've contracted with the actual
 12 consultant that runs the studies for SPP to
 13 essentially get a look ahead on what the results
 14 will be. The results from that are incorporated
 15 into all of our financial modeling and planning.
 16 **Q.** I see. Okay. Let's see. Tell me about a
 17 virtual PPA and how likely is that the route that
 18 your company's going to go for selling the output
 19 of this project?
 20 **A.** Yeah. So a virtual PPA is where we
 21 essentially inject the power that we're creating on
 22 the grid at our point of interconnection and then
 23 realizing the spot price or realizing the market
 24 price for the power at that location, and then
 25 generally the -- a virtual PPA is settled at a hub

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1 location or a load center for the entity that's
 2 purchasing the power. And so there it's a
 3 financial settlement essentially comparing the
 4 power price -- the power price at the time, so the
 5 power price that we would realize if we sold at
 6 that settlement location, and then the price that's
 7 agreed to in the PPA.
 8 **Q.** Okay. And is the virtual part really kind
 9 of describing that it's a company that is buying
 10 the credits for the power, but the actual power
 11 you're selling onto the grid and it's -- they're
 12 disconnected, the use of the power and the
 13 purchaser?
 14 **A.** Yeah. So the V part of it, the virtual
 15 part, just means that we're not, like, scheduling
 16 it, so we're not actually tracking the -- the --
 17 like the electron or, you know, a replacement
 18 electron to the purchaser. So instead it's more of
 19 a financial settlement. But economically it works
 20 out pretty similarly.
 21 **Q.** So are you kind of like a merchant, then,
 22 producer where the power goes to MISO, and however
 23 much you generate, the person that is actually
 24 buying it is getting credits for it that they can
 25 say offsets their use of power?

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1 **A.** So it depends a little bit on states. So
 2 in some states you can select your electricity
 3 generator, but, yeah, generally we would be
 4 operating sort of as a merchant but with a fixed
 5 price.
 6 **Q.** Okay. All right. When you integrate to
 7 the grid as a renewable technology, this
 8 inverter-based technology, what else do you have
 9 to -- are there any other ancillary services or
 10 different types of technology you need to
 11 incorporate as well to help the wind technology
 12 mimic more of the -- the attributes of a
 13 traditional thermal generator?
 14 **A.** Yeah. So there are what are called
 15 reactive power requirements and those are
 16 stipulated as part of the GIA.
 17 **Q.** Okay. And is that part of your price
 18 then? Does whoever's purchasing the power from you
 19 have to basically cover those costs as well or is
 20 that borne by everyone else in the market?
 21 **A.** So the price of that essentially really
 22 impacts our cost build because there's space -- the
 23 best way to think about it is there's space that
 24 has to be reserved within the electrical equipment
 25 for this reactive power or we have to install

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1 specific equipment that can provide the services
 2 that are required.
 3 **Q.** What is this reactive power? What is --
 4 how do you create it?
 5 **A.** Sorry. I can't get into like too deep of
 6 details, but generally so there's real power and
 7 there's reactive power. So real power is the
 8 electrons that you use to turn on a light and power
 9 things. And reactive power is power that's used to
 10 kind of create stability on the grid. And so it's
 11 measured by a unit called mvars, and it can be
 12 positive or negative based on if you need to inject
 13 or absorb mvars. And the most common use of that
 14 is actually to maintain voltage across the system.
 15 **Q.** How do you provide those? Like what is
 16 the source of it in a wind -- wind generation
 17 facility? Where do you get the mvars?
 18 **A.** Yeah. So it's -- well, it's through the
 19 power electronics within the equipment. So wind
 20 turbines have reactive power capabilities within
 21 it. The wind farm, so the -- like the
 22 transformers, both the high-voltage and the
 23 medium-voltage transformers, as well as the
 24 collection system, does tend to absorb mvars as
 25 well. So some wind farms will also include what

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1 are called capacitor banks to kind of augment that
 2 reactive power support.
 3 **Q.** Okay. And who sets the requirement for
 4 how much you need to provide?
 5 **A.** So that's a term within the GIA, so it's
 6 set by MISO and FERC.
 7 **Q.** Okay. And then one final question. On
 8 the -- in your application you talked about
 9 potentially selling to commercial and industrial
 10 clients or utilities or the merchant -- being a
 11 merchant. Where -- can you talk through where
 12 you're leaning, where you likely see your company
 13 going in that regard for a purchaser of this power?
 14 **A.** So I unfortunately can't get into too many
 15 details just with ongoing discussions, but there
 16 are utility and C&I options that are being
 17 considered.
 18 **Q.** Okay. And what is the likelihood of this
 19 being used by North Dakota customers? Are there
 20 any North Dakota-serving utilities included in the
 21 mix?
 22 **A.** So the counterparty for the PPA, there are
 23 some North Dakota-affiliated entities. The actual
 24 power that's being created is actually going to be
 25 injected onto the substation that's just west of

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1 town here and serves the local Wishek area here.
 2 **Q.** Sure. Yeah. Okay. But to meet the needs
 3 of the utilities in this area, some of those are
 4 included?
 5 **A.** There are, yeah, North Dakota-affiliated
 6 entities.
 7 COMMISSIONER FEDORCHAK: Okay. All right.
 8 I think that's it for me. Thank you.
 9 THE WITNESS: All right. Thank you.
 10 JUDGE HOGAN: Commissioner Christmann.
 11 **EXAMINATION**
 12 **BY COMMISSIONER CHRISTMANN:**
 13 **Q.** I want to come back to interconnection
 14 things and the grid as a whole, but I just want to
 15 go through my checklist, the ones that I -- either
 16 weren't answered or I didn't catch and take a note
 17 on.
 18 In Exhibit 12, you have the list of people
 19 with the shadow flicker hours and their dBAs and
 20 such and those that have done waivers. There are a
 21 number of them that were very close to that over
 22 45-decibel line. There's one right on 45, 44 and a
 23 half or 44.6, et cetera. And then also with the
 24 shadow flicker, actually there was a 25-hour that's
 25 at 44.6 dBA, so they fall just short on both

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1 accounts.

2 If -- since they're so close, if it turns

3 out that later they have complaints and they feel

4 that you are exceeding 45 decibels or exceeding

5 30 hours and complain to us, are they just out of

6 luck because we accepted your model, or are they

7 entitled some protection at that point?

8 **A.** So my understanding of the regulation is

9 that we're required to stay below those limits.

10 And to kind of make sure that Ørsted as a company

11 is very comfortable that we will stay below those

12 limits, there's a number of conservative factors

13 that are built into both reports. So we actually

14 feel that the numbers that you see there are an

15 overestimation of what will actually be realized

16 but provides us the level of comfort that we'll

17 stay below the requirement.

18 **Q.** In the worst-case scenario, if problems

19 develop, can turbines be controlled to minimize

20 their either noise or the shadow flicker?

21 **A.** There are options to both, yes.

22 **Q.** Okay. And you said in your prefiled

23 testimony regarding TV, "If residents who rely on

24 antennas experience signal disruption as a result

25 of the Project, Badger Wind will coordinate with

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1 the resident to mitigate the disruption."

2 That doesn't really give us much to work

3 with. I'm familiar with one wind farm where that

4 process has dragged on for years and they're always

5 working with them, but it's -- you know, that's

6 different than solving it. Are you agreeable to

7 some timeline for solving that or -- or to

8 submitting something that says what the solution

9 will be?

10 **A.** Well, so specifying the exact solution is

11 tricky just because the best solution might be

12 dependent on the particular issue and the location.

13 I can say like this is an issue that we're

14 extremely sensitive to. You know, there's a

15 certain -- there's a limited number of issues that

16 local communities care a lot about and that's one

17 that we found. So Ørsted as a company, we have

18 been very -- very proactive on that particular

19 issue.

20 So in terms of making a commitment in

21 terms of time, I think that's difficult just

22 because defining what solves the issue might be

23 difficult to -- to specify, but I can kind of

24 reiterate the commitment both that we're making in

25 our application and then also with our experience

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1 on other projects that we make to that issue.

2 **Q.** So it could take years and years?

3 **A.** In our experience, it hasn't, but there

4 also are issues where maybe a new issue pops up,

5 like later on down the line.

6 **Q.** The -- the waivers listed in Exhibit 12,

7 are those for both noise and shadow flicker and

8 TV -- all three, including TV reception, or are

9 those specific to whatever thing that might have

10 been an exceedance on your modeling?

11 **A.** Yeah. So it is for specific exceedance

12 of, you know, either shadow or sound. We don't

13 have waivers particularly for TV reception.

14 **Q.** And did I take notes correctly, you said

15 regarding approval of your weed management plan,

16 Logan County approved it last night?

17 **A.** So that is what we had confirmed by email

18 this morning, yes.

19 **Q.** And with respect to McIntosh County,

20 you're still unclear -- you've submitted it, you're

21 unclear whether they need to approve it or not?

22 **A.** That's correct.

23 **Q.** And will you submit something after the

24 hearing that clarifies when you know whether or not

25 it requires approval from McIntosh County, and if

93

1 it does, will we receive it?

2 **A.** Yes. I'm okay with that. Yes.

3 **Q.** Regarding the grid connection, so your

4 interconnection agreement is with MISO; right?

5 **A.** So there's three parties. It's Badger

6 Wind, LLC; MISO; and MDU, Montana-Dakota Utilities.

7 **Q.** And -- but it's to the MISO grid is, I

8 guess, what I was referring to.

9 **A.** Yes, sir.

10 **Q.** And is the transmission system in our area

11 near capacity without additional build-out?

12 **A.** Well, so the GIA kind of studies and

13 confirms that we have, like, the capability to

14 inject our power. So there are a lot of resources

15 in North Dakota, but there is also an agreement

16 that proves that there's space for us as well.

17 **Q.** As a merchant generator when wind is

18 blowing, markets are right and demand's low, do you

19 potentially displace electrons from other

20 generators, existing generators?

21 **A.** Yeah. So the way that electric resources

22 are dispatched, it's based on an economically

23 constrained analysis that's performed. So if our

24 wind farm is able to deliver the power that's below

25 the -- the dispatch price, then, yeah, we'll be

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1 dispatched to deliver.

2 Q. And displace someone else?

3 A. So any resource that's above that price,

4 so if -- you know, if the wholesale market sets the

5 price per power here in the free market and we're

6 below that, then we're able to inject. Things that

7 are above that, they might be curtailed.

8 Q. So does Ørsted have any coal gener -- I

9 think you said you have 3 gigawatts operating and 1

10 and a half gigawatts under construction; correct?

11 A. Correct.

12 Q. Is any of that coal generation?

13 A. No, sir.

14 Q. Nuclear?

15 A. No.

16 Q. Natural gas?

17 A. No.

18 Q. So it's strictly intermittent renewables?

19 A. So in the U.S. we have wind, solar and

20 storage.

21 Q. How much storage?

22 A. It's a pretty minor piece of our

23 portfolio. I can't tell you the exact megawatts,

24 though, right now.

25 COMMISSIONER CHRISTMANN: I have no other

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1 questions.

2 JUDGE HOGAN: Thank you. Commissioner

3 Haugen-Hoffart.

4 COMMISSIONER HAUGEN-HOFFART: Thank you.

5 **EXAMINATION**

6 **BY COMMISSIONER HAUGEN-HOFFART:**

7 Q. I have a question regarding the

8 third-party contractor inspector will be allowed to

9 stop the project construction activities to prevent

10 an intermediate hazard from occurring. My question

11 to you is that third-party constructor will be

12 hiring the employees. Will any and all employees

13 be allowed to stop construction if they recognize a

14 hazard and as a safety for their counterpart's

15 employees?

16 MS. SMITH: If I may, Commissioner, the

17 intent is that that's the Commission's third-party

18 inspector, so not the company's. It would be the

19 Commission hiring the third-party inspector, so

20 that inspector would be the one with the authority

21 to stop.

22 Q. (COMMISSIONER HAUGEN-HOFFART CONTINUING)

23 Okay. So then let's go to on site.

24 A. Okay.

25 Q. Okay. Regarding your safety measures,

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1 talk a little bit about your safety measures and

2 the authorities the employees have in stopping

3 production.

4 A. Yeah. So Ørsted has a pretty rigorous

5 safety program. We include that as part of any EPC

6 contract, and then the EPC contractor is actually

7 required to develop their own safety program that

8 incorporates our corporate program as well and

9 takes into account their best practices.

10 So I can't confirm whether this ability

11 for any employee to stop work is included, but

12 that's typically a pretty common element. If

13 someone sees something unsafe, they need to speak

14 up and stop what's happening.

15 Q. And that has been your best practice in

16 the past?

17 A. That's typically industry best practice.

18 I can't confirm for sure if that's going to be

19 included in the, like, Badger EPC safety program,

20 but I would expect it to be.

21 Q. Okay. Then I want to go back to the sites

22 just for clarification. Maybe it's me. That there

23 was initially 79 wind turbines, then 74, and then

24 based on the model if it's lower, then we can go

25 back up to 79; correct?

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1 A. Correct.

2 Q. Where in that are the -- if you go with

3 the lower model, the additional five, can you point

4 out on that map where the five will be for me?

5 A. So we don't know for sure. So the -- the

6 point of submitting 79 locations is so that if

7 there's any issues that arise in the field, you

8 know, there's flexibility to, you know, make sure

9 that we're selecting turbine locations that are

10 most buildable or best suited. And so that's why

11 we specifically include all 79 locations in all of

12 the studies to make sure that all 79 are buildable.

13 Q. So will that be like a late exhibit for

14 us, or once we know, how will we get that

15 information that those five additional have met all

16 the requirements?

17 A. Yeah. So we will file -- my understanding

18 is -- nope. Never mind. I'm going to defer to

19 Mollie.

20 MS. SMITH: I'm just going to stop you.

21 THE WITNESS: Thank you.

22 MS. SMITH: So just to clarify, we know

23 all 79 meet all requirements as it is. What we

24 have done in the past -- and the only reason I'm

25 speaking to this is this is a legal issue and I

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1 don't want Nick to have to try to stumble through
 2 it. So we typically file prior to construction a
 3 final layout that identifies the turbine locations
 4 that have been selected. It doesn't eliminate the
 5 alternates. It just simply identifies those that
 6 will be constructed. If there's a turbine model
 7 change, we provide an updated sound/shadow flicker
 8 report to demonstrate compliance. So that's how
 9 we've handled it on -- in the past on other
 10 projects.
 11 COMMISSIONER HAUGEN-HOFFART: Okay. Thank
 12 you. No further questions.
 13 JUDGE HOGAN: All right. Thank you.
 14 Ms. Smith or Ms. Duffus, any redirect.
 15 MS. DUFFUS: No, Your Honor.
 16 JUDGE HOGAN: All right. Mr. Armstrong,
 17 any further questions?
 18 MR. ARMSTRONG: Just one, I believe, Your
 19 Honor.
 20 **FURTHER EXAMINATION**
 21 **BY MR. ARMSTRONG:**
 22 Q. I just want to confirm, if I understand,
 23 with respect to the TV reception issues that
 24 Mr. Schock and Commissioner Christmann asked you
 25 about, if I understand your testimony right, the

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1 company commits to work with and hopefully timely
 2 solve any TV reception issues with -- associated
 3 with the project, and that would include
 4 participating or nonparticipating residents or
 5 landowners as well?
 6 A. That's correct.
 7 MR. ARMSTRONG: Thank you. That's all the
 8 questions I have.
 9 JUDGE HOGAN: Mr. Schock, any further
 10 questions?
 11 MR. SCHOCK: No questions, Your Honor.
 12 JUDGE HOGAN: Mr. Pranis, any further
 13 questions?
 14 MR. PRANIS: No, Your Honor.
 15 JUDGE HOGAN: Commissioner Fedorchak?
 16 Commissioner Christmann? Commissioner
 17 Haugen-Hoffart? All right. Thank you. That's all
 18 the question for you.
 19 THE WITNESS: All right. Thank you,
 20 everyone.
 21 JUDGE HOGAN: We will take a 15-minute
 22 break and reconvene at 11:40, and hopefully in the
 23 meantime we can switch out witnesses and get the
 24 next witness ready to go.
 25 (Recessed at 11:26 a.m. and reconvened at

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1 11:41 a.m.)
 2 JUDGE HOGAN: All right. Ms. Smith, do
 3 you want to call your next witness.
 4 MS. SMITH: Yes. We have Sarah Aftergood.
 5 JUDGE HOGAN: Good morning, Ms. Aftergood.
 6 Do you want to state your full name for the record.
 7 THE WITNESS: Yes. My name is Sarah
 8 Aftergood.
 9 JUDGE HOGAN: And Can you spell your last
 10 name.
 11 THE WITNESS: A-f-t-e-r-g-o-o-d.
 12 JUDGE HOGAN: And were you in the room
 13 this morning when I went through the penalties for
 14 perjury?
 15 THE WITNESS: I was.
 16 JUDGE HOGAN: And do you understand what
 17 perjury is?
 18 THE WITNESS: I do.
 19 (Witness sworn.)
 20 JUDGE HOGAN: All right. Thank you. Go
 21 ahead, Ms. Smith.
 22 MS. SMITH: Thank you.
 23 **SARAH AFTERGOOD,**
 24 being first duly sworn, was examined and testified
 25 as follows:

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1 **EXAMINATION**
 2 **BY MS. SMITH:**
 3 Q. So you've stated your name. Can you
 4 introduce your position with Ørsted?
 5 A. Yes. I'm the director of environmental
 6 permitting for Ørsted Onshore North America.
 7 Q. And can you provide a brief overview of
 8 your education and your work history?
 9 A. I have a master's of science in
 10 international marine environment consultancy from
 11 Newcastle University from Newcastle upon Tyne,
 12 United Kingdom, and I have a bachelor's of science
 13 in biology from Trent University from Ontario,
 14 Canada.
 15 I have over ten years of experience
 16 assisting with the development and permitting of
 17 renewable energy, transmission and other
 18 infrastructure capital projection. I've worked at
 19 Ørsted since July of 2021, and I lead Ørsted's
 20 environmental and permitting team in implementing
 21 applicable agency guidance and complying with
 22 federal, state and local environmental and
 23 permitting requirements.
 24 Q. And did you file prefiled testimony in
 25 this matter on June 8, 2022?

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1 **A.** Yes.

2 **Q.** And is that prefiled testimony and your

3 résumé identified as BW Exhibit 29 and 29-A?

4 **A.** Yes.

5 **Q.** And can you provide a brief summary of the

6 topics that are covered in your testimony?

7 **A.** In my testimony, I discuss the

8 environmental analysis conducted for the Badger

9 Wind project, including the various site-specific

10 surveys. I also discuss Badger Wind's coordination

11 with federal and state agencies, such as the U.S.

12 Army Corps of Engineers, U.S. Fish and Wildlife

13 Services, North Dakota Game and Fish and State

14 Historical Society of North Dakota, amongst others.

15 Finally, I discuss how the information

16 obtained through environmental studies and agency

17 coordination was used in selecting the project site

18 and refining the layout to minimize the project's

19 potential adverse effects.

20 **Q.** And with the exception of the updates that

21 we discuss here today, if I asked you the questions

22 in your prefiled testimony, would your answers be

23 the same?

24 **A.** Yes.

25 **Q.** Both you and Mr. Gebauer discussed in your

103

1 prefiled testimony some minor adjustments to the

2 project area and project layout. Those were

3 included in the final layout, but these were

4 changes from the application filing to the final

5 layout. Are those changes summarized in BW

6 Exhibit 5?

7 **A.** Yes.

8 **Q.** How, if at all, did the project layout

9 changes affect the resource impact calculations

10 that you had in the application?

11 **A.** Overall, the adjustments resulted in a

12 smaller project footprint. As shown in Exhibit 5,

13 temporary wetland impacts were reduced by

14 1.89 acres, and only one perennial watercourse will

15 be crossed by collection lines rather than two.

16 The collection line will be bored to avoid impacts.

17 **Q.** And do you have an update regarding

18 estimated turbine impacts to unbroken grasslands?

19 **A.** Yes.

20 **Q.** What is that update?

21 **A.** At the time we submitted prefiled

22 testimony, two turbines had combined impacts of

23 approximately 0.08 acres to unbroken grassland.

24 Since submitting prefiled testimony, we analyzed

25 options for further reducing impacts to unbroken

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1 grassland from those two turbines.

2 Based on the further analysis, we

3 determined that the impacts were from the gravel

4 pads around the turbines and that the gravel pads

5 could be reduced to avoid impacts to unbroken

6 grassland.

7 **Q.** And so with those adjustments you just

8 discussed, none of the proposed turbine locations

9 are within unbroken grasslands; is that correct?

10 **A.** Yes.

11 **Q.** And there was a question that

12 Mr. Armstrong asked about the estimates for impacts

13 and whether they would be impacted by the turbine

14 that's ultimately selected. In your analysis, have

15 you overestimated the potential impacts of, for

16 instance, turbine locations and other

17 infrastructure?

18 **A.** Yes, we have.

19 **Q.** And so any turbine model that's selected

20 would, in fact, have a smaller impact calculation

21 than what you've estimated?

22 **A.** That's correct.

23 **Q.** Mr. Gebauer noted that Badger Wind may

24 construct all 79 proposed turbine locations. Does

25 that affect your impact calculations?

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1 **A.** No. Impact calculations were based on all

2 79 proposed turbine locations.

3 **Q.** And just for clarification, Commissioner

4 Haugen-Hoffart noted that the turbines on the

5 figures go up to number 85. However, that's just a

6 result of renumbering through iterations; is that

7 correct?

8 **A.** Correct.

9 **Q.** And there are, in fact, only 79 turbine

10 locations proposed?

11 **A.** That's correct.

12 **Q.** What was the overall approach to

13 environmental analysis of the project area?

14 **A.** Badger Wind followed the U.S. Fish and

15 Wildlife Service's wind energy guidelines, or WEGs

16 as they're commonly called, and Eagle Conservation

17 Plan Guidance known as the ECPG. The WEGs are a

18 tiered-based approach that starts at Tier 1 and

19 goes to 5, if necessary. The ECPG employs a staged

20 approach to siting new wind energy projects.

21 Badger Wind has completed WEGs Tiers 1

22 through 3 which includes the site evaluation, site

23 characterization, field studies and evaluating

24 impacts. Badger Wind has also completed ECPG

25 Stages 1 and 2 which includes site assessment and

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1 avian and wildlife studies.

2 The information gathered has informed our

3 site selection, layout design and development of

4 avoidance and minimization measures incorporated

5 into the project's Bird and Bat Conservation

6 Strategy, or our BBCS.

7 Q. And we won't go through the list, but are

8 the environmental surveys that were conducted for

9 the project identified on pages 5 and 6 of your

10 prefiled testimony which is Exhibit BW 29?

11 A. Yes.

12 Q. Did you identify the surveys to conduct

13 for the project in coordination with relevant

14 agencies?

15 A. Yes.

16 Q. Let's talk first about cultural resources.

17 What were the recommendations made by the State

18 Historical Society of North Dakota for the project?

19 A. The State Historical Society of North

20 Dakota recommended that Badger Wind conduct a Class

21 I architectural literature search, a Class III

22 pedestrian archeological survey of any ground

23 service area that has the potential to be disturbed

24 by any project construction or infrastructure, and

25 a Class II architectural windshield survey within a

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1 2-mile visual area of potential effect of the

2 proposed turbine locations.

3 Q. And did you conduct the requested

4 literature review and the surveys?

5 A. Yes.

6 Q. We'll start with the Class II

7 architectural survey. What were the results of

8 that survey?

9 A. Five architectural resources and one

10 contributing resource were identified as

11 potentially eligible for listing in the National

12 Register of Historic Places. The project is not

13 anticipated to have an adverse direct or indirect

14 impact on those resources.

15 Q. And did the State Historical Society of

16 North Dakota concur with the determination of no

17 adverse direct or indirect impact?

18 A. Yes, they did.

19 Q. And is that concurrence provided in BW

20 Exhibit 14?

21 A. Yes, it is.

22 Q. And just to confirm, it's at the end of

23 the exhibit; is that right?

24 A. Yes.

25 Q. Okay. Can you talk about the Class III

108

1 archeological survey work that has been completed

2 for the project?

3 A. Yes. Class III field surveys were

4 initially completed in 2020 and 2021. One site

5 lead unevaluated for NRHP listing was identified

6 during these surveys. This site is avoided by the

7 project.

8 And then in spring of 2022 additional

9 Class III field survey work was completed for

10 project modifications not covered by the prior

11 survey effort. All sites evaluated were

12 recommended not eligible for NRHP listing.

13 Q. And this work that was done this spring,

14 was that to accommodate the two adjustments to

15 turbines requested by the FAA and some

16 landowner-requested modifications?

17 A. That is correct.

18 Q. And has the report for the supplemental,

19 so the second one done this spring -- has the

20 report for the supplemental Class III survey work

21 been submitted to the State Historical Society of

22 North Dakota?

23 A. Yes. It was submitted this morning.

24 Q. And in your direct testimony, you

25 stated -- and I should say your prefiled direct

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1 testimony, you stated that the State Historical

2 Society of North Dakota requested shovel testing of

3 seven locations. Do you have an update regarding

4 your plans to address that request?

5 A. Yes. Shovel testing would be needed for

6 the State Historical Society of North Dakota to

7 make an NRHP eligibility determination. We've

8 decided to completely avoid all seven sites. As a

9 result, an NRHP determination is not needed so the

10 shovel testing is also not needed.

11 Q. And it's your understanding that the State

12 Historical Society agrees with that approach?

13 A. Correct.

14 Q. And I think we have a correction to your

15 prefiled direct testimony regarding the number of

16 sites and how they would be avoided. Do you have a

17 correction to the statement made?

18 A. I do. My testimony should have stated

19 that five of the seven sites were avoided.

20 However, we made minor adjustments to avoid the

21 other two sites.

22 Q. And what changes did you make to avoid

23 those two sites?

24 A. For the one site, we reduced the

25 construction work space to avoid the site. And for

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1 the other site, we rerouted a collection line
 2 around it.
 3 Q. And will you conduct cultural resource and
 4 wetland surveys to confirm that that collection
 5 line reroute does not impact those resources?
 6 A. Yes. We will survey that collection line
 7 reroute within the next two weeks.
 8 Q. And will you provide the results of those
 9 studies, both the updates to the Class III, the
 10 original Class III, and the supplemental and these
 11 surveys to the State Historical Society?
 12 A. Yes.
 13 Q. And will you provide the Commission with
 14 those reports and concurrences?
 15 A. Yes.
 16 Q. And as far as the original Class III
 17 report, what's the next step to getting that
 18 concurrence from the State Historical Society?
 19 A. Yes. The report has been updated to state
 20 that the seven sites recommended for shovel testing
 21 will be avoided and was resubmitted to the State
 22 Historical Society of North Dakota for final review
 23 and concurrence.
 24 Q. And the State Historical Society sent the
 25 Commission a letter yesterday regarding comments to

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1 the Class III report that have not been addressed,
 2 and that letter is in BW Exhibit 31. Are you
 3 familiar with that letter?
 4 A. Yes.
 5 Q. And does the updated Class III report that
 6 was submitted today address all of the State
 7 Historical Society of North Dakota's comments?
 8 A. Yes.
 9 Q. Will Badger Wind file a copy of that
 10 updated report and a supplement with the Commission
 11 as a late-filed exhibit?
 12 A. Yes.
 13 MS. SMITH: And we can address the
 14 numbering of those, but my plan is to just include
 15 both late-filed -- or both Class III, the
 16 supplement, and the updated report and the
 17 concurrences as one exhibit, if that's okay with
 18 you.
 19 MR. ARMSTRONG: That's fine.
 20 MS. SMITH: And we could make it
 21 late-filed Exhibit 33.
 22 Q. (MS. SMITH CONTINUING) And with the
 23 exception of the rerouted collection line, has all
 24 cultural resource survey work been completed for
 25 the project?

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1 A. Yes.
 2 Q. Will Badger Wind have procedures in place
 3 to address previously unidentified cultural
 4 resources encountered during construction?
 5 A. Yes. Badger Wind has developed an
 6 unanticipated discoveries plan.
 7 Q. And was a copy of the unanticipated
 8 discoveries plan filed with the Class III cultural
 9 resources report that's provided as BW Exhibit 13?
 10 A. Yes.
 11 Q. And so that has gone to the State
 12 Historical Society?
 13 A. Yes.
 14 Q. And let's talk about wetlands and water
 15 bodies. Are wetlands and water bodies identified
 16 in Figures 4 and 11 in BW Exhibit 2?
 17 A. Yes. Wetlands are an avoidance area shown
 18 on Figure 4. Both wetlands and water bodies are
 19 shown on Figure 11.
 20 Q. How has Badger Wind considered wetlands in
 21 the project layout design?
 22 A. The layout avoids permanent wetlands
 23 impacts with the exception of one drainage wetland
 24 that is crossed by an access road. The project has
 25 also minimized temporary wetland impacts to the

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1 extent possible. Wetland impacts will be
 2 authorized via self-certification under the Section
 3 404 Clean Water Act nationwide permit program.
 4 Q. And regarding the one permanent wetland
 5 impact, is there a reasonable alternative to
 6 impacting that wetland?
 7 A. No. The wetland extends across the
 8 property so it would be difficult to avoid. The
 9 wetland is currently crossed by a farm road, and we
 10 are placing an access road on that farm road. This
 11 is the best option to minimize permanent impact to
 12 the wetland which will only be 0.01 acres.
 13 Additionally, a culvert will be installed
 14 where the road crosses the drainage to facilitate
 15 continued wetland function and local hydrology.
 16 Q. The project has conducted a number of
 17 wildlife-related analyses and site-specific
 18 studies; is that correct?
 19 A. Yes.
 20 Q. To begin with, could you discuss the
 21 specific-site bat analyses that have been
 22 conducted?
 23 A. Yes. Badger Wind conducted two years of
 24 acoustic bat monitoring and a bat habitat desktop
 25 assessment to identify potentially suitable

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1 northern long-eared bat habitat within the project
 2 area.
 3 Q. What did the results of those studies
 4 indicate regarding bat usage of the project area?
 5 A. Overall, the acoustic bat monitoring
 6 indicated that bat activity within the project area
 7 was relatively low. Additionally, no northern
 8 long-eared bat calls were confirmed, although there
 9 were two unconfirmed calls from the Myotis species
 10 group, which includes the northern long-eared bat.
 11 Q. With respect to the northern long-eared
 12 bat, what is the likelihood of that species
 13 occurring in the project area?
 14 A. Given the results of the acoustic bat
 15 monitoring, the U.S. Fish and Wildlife Service
 16 recommended conducting the bat habitat assessment
 17 to determine the amount of potential northern
 18 long-eared bat within the project area. We
 19 conducted that assessment which found less than
 20 0.1 percent of the project area contains woodlands
 21 or shelterbelts that may provide roosting and
 22 foraging habitat for the northern long-eared bat.
 23 The assessment also noted that the wooded areas
 24 present are highly fragmented. The results of the
 25 acoustic monitoring and habitat assessment indicate

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1 the potential for northern long-eared bats to occur
 2 in the project area is low.
 3 Q. Badger Wind conducted two years of avian
 4 use surveys for the project; is that correct?
 5 A. Yes.
 6 Q. Collectively, what did the results of
 7 those two years of avian use surveys tell us about
 8 avian use of the project area?
 9 A. Overall, the species composition, seasonal
 10 abundance and spatial use documented during avian
 11 surveys are considered typical for birds in the
 12 region. The majority of species observed are
 13 common and abundant within the region.
 14 Q. What raptor and eagle nest surveys were
 15 conducted for the project?
 16 A. Badger Wind conducted two years of eagle
 17 and non-eagle raptor nest surveys within the
 18 project area and a ten-mile buffer.
 19 Q. And -- and just to confirm, the ten-mile
 20 buffer was specific to the eagle nest survey
 21 portion?
 22 A. Correct.
 23 Q. Can you discuss the results of those
 24 surveys?
 25 A. A total of 12 non-eagle raptor nests were

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1 recorded within the project area, including
 2 incidental observation during micrositing. No
 3 golden eagle nests were identified within the
 4 project area or the ten-mile buffer.
 5 Given the low observed rate, it is -- it
 6 is expected that golden eagle use of the project
 7 area will be minimal.
 8 With respect to bald eagles, one active
 9 nest was identified within the project area during
 10 the 2019 and 2020 surveys. In 2021, a new bald
 11 eagle nest was identified within the project area,
 12 but the previously active nest can no longer be
 13 found.
 14 Based on U.S. Fish and Wildlife Service
 15 guidance, the 2019 and 2020 nest was classified as
 16 an alternate nest as it is believed both nests are
 17 within the same nesting territory so were or are
 18 being used by the same eagles.
 19 Q. What steps has or will the project take to
 20 minimize or avoid potential impacts to raptors and
 21 eagles?
 22 A. Badger Wind has voluntarily sited turbines
 23 at least 0.25 miles from non-eagle raptor nests to
 24 the extent practicable and coordinated with U.S.
 25 Fish and Wildlife Service on minimization measures

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1 where this voluntary setback cannot be applied.
 2 Badger Wind has sited turbines at least
 3 two miles from the bald eagle nest identified in
 4 the project area. Wildlife carrion and roadkill
 5 will be removed from the project area to avoid
 6 attracting bald eagles to the site.
 7 Badger Wind has incorporated these
 8 measures into the BBCS and will continue to
 9 coordinate with U.S. Fish and Wildlife throughout
 10 the project development and operations.
 11 Q. Please discuss for us the analysis that
 12 Badger Wind has conducted for whooping cranes.
 13 A. The project area is at the edge of the
 14 portion of the whooping crane migration corridor in
 15 which 75 percent of whooping crane sightings have
 16 occurred. Additionally, during the spring 2020
 17 avian surveys, three whooping cranes were sighted
 18 foraging within the project area.
 19 We understand that poor harvesting
 20 conditions in 2019 resulted in unharvested corn
 21 into seasonally saturated wetlands. This may have
 22 led to the whooping cranes to disperse further from
 23 the centerline of the migration corridor than
 24 expected.
 25 Based on the potential use of the project

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1 area by whooping cranes, we conducted a whooping
 2 crane habitat assessment to understand what
 3 potential stopover habitat exists within the
 4 project area and how that habitat compares to the
 5 habitat present in the surrounding areas.
 6 Q. And with respect to the whooping crane
 7 habitat assessment, did you -- was that conducted
 8 in compliance with and in accordance with the
 9 recommendations of the U.S. Fish and Wildlife
 10 Service?
 11 A. Yes.
 12 Q. And what were the results of the whooping
 13 crane habitat assessment?
 14 A. The assessment indicated that potential
 15 whooping crane stopover habitat is present in the
 16 project area but that the habitat is of relatively
 17 lower quality and quantity compared to nearby
 18 reference areas analyzed.
 19 Q. What measures will Badger Wind implement
 20 to avoid impacting whooping cranes?
 21 A. While unlikely, if a whooping crane is
 22 sighted within the project area during
 23 construction, construction will stop within one
 24 mile of the sighting until the whooping crane has
 25 left the area. Badger Wind will coordinate with

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1 landowners within the project area to remove
 2 unharvested crops that might attract whooping
 3 cranes to the extent practicable.
 4 Badger Wind has buried collection and all
 5 communication lines and will construct only a
 6 short, estimated about 0.75 mile transmission line,
 7 which further minimizes the risk of collision.
 8 Q. Did Badger Wind analyze the potential for
 9 piping plover to be present in the project area?
 10 A. Yes. In -- in the two years of avian
 11 point count surveys conducted, no piping plover
 12 were detected. Additionally, no piping-plover
 13 designated critical habitat is located within the
 14 project area, and the closest designated critical
 15 habitat is approximately three miles from the
 16 project area.
 17 We asked one of our third-party
 18 consultants WEST -- WEST's input on the potential
 19 for suitable piping plover habitat to be present
 20 within the project area. Based on reviewing
 21 information provided in our wetland delineation
 22 reports, there does not appear to be suitable
 23 nesting habitat present. WEST noted that two water
 24 bodies may provide limited feeding habitat, but the
 25 features are small and the availability of

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1 shoreline would be seasonally dependent.
 2 Based on this information, there is low
 3 likelihood of piping plover using the site.
 4 Q. Please discuss for us the sharp-tailed
 5 grouse surveys that were conducted for the project.
 6 A. Individual sharp-tailed grouse sightings
 7 were recorded during the avian use surveys.
 8 Additionally, Badger Wind conducted aerial and
 9 ground-based sharp-tailed grouse lek surveys in
 10 2019 and 2020.
 11 Q. What were the results of those surveys?
 12 A. During the avian surveys, 38 sharp-tailed
 13 grouse were detected during year one and 18 during
 14 year two. During the lek surveys, two confirmed
 15 lek locations were observed within the current
 16 project area boundary, and four confirmed and one
 17 possible lek locations were observed within one
 18 mile of the project area boundary.
 19 Seven confirmed and one possible lek
 20 locations were observed more than one mile from the
 21 project area boundary.
 22 Q. Did Badger Wind retain WEST to develop a
 23 plains sharp-tailed grouse conservation strategy to
 24 minimize potential impacts to sharp-tailed grouse?
 25 A. Yes.

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1 Q. Is that strategy provided as Exhibit
 2 BW 10?
 3 A. Yes.
 4 Q. Could you discuss for us the analysis
 5 conducted to develop the strategy?
 6 A. The strategy involved a multistep analysis
 7 that included determining sharp-tailed grouse
 8 habitat requirements and potential impacts from
 9 wind energy development using existing research;
 10 considering how the project would impact
 11 sharp-tailed grouse populations at a landscape
 12 level by summarizing existing data; identifying
 13 potential suitable sharp-tailed grouse habitat
 14 within the project area based on existing lek
 15 locations; research-based suitable habitat factors
 16 and a site-specific unbroken grassland assessment;
 17 and considering -- and to also consider turbine
 18 spacing to allow movement of grouse species between
 19 the turbines.
 20 Q. What minimization measures were developed
 21 as a result of the analysis?
 22 A. Once we got the analysis, Badger Wind
 23 sited the majority of turbines in areas that are
 24 not suitable for sharp-tailed grouse, and all
 25 turbines are sited in previously fragmented areas

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1 which helps minimize impacts to the local
 2 sharp-tailed grouse population.
 3 Badger Wind also spaced turbines a minimum
 4 of 0.6 miles apart, which may facilitate movement
 5 between these key habitats.
 6 Q. Did Badger Wind contact all agencies and
 7 entities identified in North Dakota Administrative
 8 Code Section 69-06-01-05?
 9 A. Yes. We either sent project notification
 10 letters or separately contacted all the agencies
 11 and entities identified in this rule.
 12 Q. With respect to correspondence received
 13 from agencies and entities prior to filing the
 14 application, is that correspondence summarized in
 15 Section 9 and included in Appendix D to the
 16 application?
 17 A. Yes.
 18 Q. Was correspondence received regarding the
 19 project between the filing of the application and
 20 the filing of prefiled testimony?
 21 A. Yes.
 22 Q. And are copies of the additional
 23 correspondence that was received before you filed
 24 your prefiled testimony included in Exhibits -- BW
 25 Exhibits 19 through 25?

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1 A. Yes.
 2 Q. And we'll talk about the U.S. Fish and
 3 Wildlife Service and Game and Fish coordination
 4 separately, but with respect to the other agencies
 5 and entities, were any concerns raised regarding
 6 the project?
 7 A. As my colleague, Nick, testified, the
 8 North Dakota Aeronautics Commission and the Wishek
 9 Municipal Airport raised concerns regarding five
 10 turbine locations. Those turbine locations were
 11 removed which addressed their concerns.
 12 Also as Nick testified, the Federal
 13 Aviation Administration had concerns regarding two
 14 turbine locations which were addressed to address
 15 those concerns.
 16 Additionally, as I discussed in my
 17 testimony, the State Historical Society of North
 18 Dakota provided comments on the reports which have
 19 been addressed. Otherwise, general comments were
 20 received but no project-specific concerns were
 21 raised.
 22 Q. So let's turn to Badger Wind's
 23 coordination with the U.S. Fish and Wildlife
 24 Service and the North Dakota Game and Fish. Could
 25 you provide an overview of Badger Wind's

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1 coordination with those agencies?
 2 A. Yes. Badger Wind initiated coordination
 3 with U.S. Fish and Wildlife Service and North
 4 Dakota Game and Fish in January of 2020. We have
 5 continued to coordinate with the agencies
 6 throughout the project development and the plan is
 7 to continue coordination throughout the life of the
 8 project.
 9 Q. Could you provide examples of Badger
 10 Wind's coordination with Fish and Wildlife Service
 11 and Game and Fish?
 12 A. Yes. Badger Wind's coordination with the
 13 Service and North Dakota Game and Fish have
 14 included identifying appropriate resource surveys
 15 and protocols, reviewing surveys results and
 16 reports, identifying publicly owned or managed
 17 lands, coordinating with the Service regarding
 18 activities on Service easements, and identifying
 19 avoidance minimization monitoring adaptive
 20 management and mitigation measures which are
 21 documented on the BBCS.
 22 Q. Have you initiated any additional
 23 correspondence with the U.S. Fish and Wildlife
 24 Service and Game and Fish since you prefiled your
 25 testimony?

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1 A. Yes. At the agency's request, Badger Wind
 2 updated the BBCS to specifically reference a
 3 voluntary offset commitment, and that update was
 4 committed to U.S. Fish and Wildlife Service and
 5 North Dakota Game and Fish.
 6 Additionally, Badger Wind did inform the
 7 U.S. Fish and Wildlife Service and North Dakota
 8 Game and Fish that all 79 turbine locations may be
 9 constructed depending on the turbine models
 10 selected. In that communication we reiterated that
 11 impact and offset calculations were completed using
 12 all 79 turbine locations, so those analyses will
 13 remain unchanged.
 14 Q. And the updated bird and bat conservation
 15 strategy that includes that voluntary offset
 16 commitment is provided at BW Exhibit 28; is that
 17 correct?
 18 A. Yes.
 19 Q. Did the Commission receive a letter from
 20 the North Dakota Game and Fish on May 27, 2022?
 21 A. Yes.
 22 Q. And did you receive a letter from the U.S.
 23 Fish and Wildlife Service yesterday as well?
 24 A. Yes.
 25 Q. Are copies of those -- your email

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1 exchanges that you were just describing updating
 2 the agencies on your updates to the BBCS, the
 3 turbine number and these two letters we just
 4 described, are they all four provided in BW
 5 Exhibit 31?
 6 **A.** Yes.
 7 **Q.** Can you discuss the recommendations Fish
 8 and Wildlife Service and Game and Fish provided
 9 regarding the project?
 10 **A.** Yes. They recommended survey selection
 11 and protocols; avoiding or coordinating regarding
 12 impacts to publicly managed lands; assessing,
 13 avoiding, minimizing and mitigating potentially to
 14 wildlife such as grassland nesting birds,
 15 waterfowl, bats, whooping cranes and eagles;
 16 avoiding wildlife habitat such as wetlands and
 17 unbroken grassland; project avoidance; minimization
 18 and mitigation measures; and the preparation of the
 19 BBCS.
 20 **Q.** How has Badger Wind considered the
 21 recommendations from the U.S. Fish and Wildlife
 22 Service and the North Dakota Game and Fish with
 23 respect to the project?
 24 **A.** Their recommendations played a significant
 25 role in site selection and layout design. Badger

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1 Wind completed all recommended surveys in
 2 accordance with agreed-upon protocols. The project
 3 site and layout were adjusted to avoid large areas
 4 of intact, unbroken grassland in the northeast of
 5 the current area.
 6 Through multiple discussions and
 7 iterations, the project layout was refined so no
 8 turbines are located in unbroken grassland.
 9 As previously discussed, a plains
 10 sharp-tailed grouse conservation strategy was
 11 developed and implemented to further refine the
 12 project layout and minimize potential impacts to
 13 sharp-tailed grouse. Turbines were sited to avoid
 14 wetlands, and less than 0.01 acres of permanent
 15 wetland impact will occur. Linear infrastructure
 16 was sited to minimize habitat fragmentation.
 17 In coordination with the agencies, Badger
 18 Wind prepared a draft BBCS that incorporates --
 19 THE REPORTER: I've got to ask you to slow
 20 down.
 21 MS. SMITH: Yep.
 22 THE WITNESS: Sorry.
 23 In coordination with the agencies, Badger
 24 Wind prepared a draft BBCS that incorporates
 25 avoidance, minimization, adaptive management and

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1 mitigation measures for the project.
 2 Badger Wind discussed voluntary offsets
 3 for direct grassland impacts and potential indirect
 4 impacts to waterfowl and grassland birds with both
 5 agencies.
 6 This coordination included obtaining input
 7 from the North Dakota Game and Fish on a local
 8 group to partner with on habitat preservation and
 9 restoration efforts.
 10 Badger Wind will conduct post-construction
 11 fatality monitoring for at least a one-year period
 12 which will be developed in coordination with U.S.
 13 Fish and Wildlife and North Dakota Game and Fish.
 14 **Q.** And in its May 27, 2022, letter, the North
 15 Dakota Game and Fish acknowledges that the, quote,
 16 New turbine layout is a great improvement from the
 17 original layout with many turbines moved away from
 18 areas of important habitat, end quote, but goes on
 19 to say, quote, Even with the changes made, there
 20 are likely to be significant impacts to wildlife
 21 and the habitats they depend on, end quote.
 22 Do you agree with this statement?
 23 **A.** I agree that Badger Wind has coordinated
 24 closely with U.S. Fish and Wildlife and North
 25 Dakota Game and Fish to revise the project location

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1 and layout to avoid important habitats. However,
 2 for all the reasons just discussed, I do not agree
 3 that the project is likely to result in significant
 4 impacts to wildlife and wildlife habitat.
 5 **Q.** Did the North Dakota Game and Fish make
 6 any project-specific requests in its May 27, 2022,
 7 letter?
 8 **A.** The only project-specific request made was
 9 to include an offset commitment in the BBCS, which
 10 has been done.
 11 **Q.** You received a letter yesterday from U.S.
 12 Fish and Wildlife Service; right?
 13 **A.** Correct.
 14 **Q.** And did the U.S. Fish and Wildlife Service
 15 make any project-specific requests in the letter
 16 you received yesterday?
 17 **A.** The main request was for Badger Wind to
 18 update the BBCS with the agreed-upon offset
 19 acreages and potential impacts and the planned
 20 mitigation proposal once details are confirmed.
 21 The U.S. Fish and Wildlife Service also requested
 22 that we continue to monitor the site for any
 23 potential habitat and use changes and to continue
 24 to coordinate with Service and North Dakota Game
 25 and Fish with respect to implementing the BBCS.

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1 Q. Will Badger Wind comply with these
 2 requests from the U.S. Fish and Wildlife Service?
 3 A. Yes.
 4 Q. In your opinion, has Badger Wind
 5 incorporated the input received from the U.S. Fish
 6 and Wildlife Service and the North Dakota Game and
 7 Fish and designed the project to have minimal
 8 adverse effects to wildlife and wildlife habitat?
 9 A. Yes.
 10 Q. In your prefiled testimony, you discuss
 11 the project's compliance with the Commission siting
 12 criteria. Are any of the general exclusion areas
 13 identified in North Dakota Administrative Code
 14 Section 69-06-08-01.1 present in the project area?
 15 A. No.
 16 Q. Are any of the wind-specific exclusion
 17 areas in North Dakota Administrative Code Section
 18 69-06-08-1.2 present in the project area?
 19 A. Yes. State and local roads, railroads and
 20 transmission lines are present in the project area.
 21 Additionally, nonparticipating residences and
 22 property lines are located adjacent to the project
 23 area.
 24 Q. Has Badger Wind sited turbines to avoid
 25 these areas?

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1 A. Yes.
 2 Q. Are any of the general avoidance areas
 3 identified in North Dakota Administrative Code
 4 Section 69-06-08-01.3 present in the project area?
 5 A. Yes. Two general avoidance areas are
 6 present. First is the historical resources, which
 7 are not designated as exclusion areas, are present
 8 in the project area. However, we have sited to
 9 avoid impacts to those cultural resources.
 10 Second, wetlands and small woodlands and
 11 shelterbelts are located within the project area.
 12 However, only 0.01 acres of permanent wetland
 13 impacts will occur. The wetland functionality will
 14 continue and access road placement minimizes
 15 overall environmental impacts. Temporary impacts
 16 to wetlands have been minimized, and wetland
 17 impacts will be covered by one or more U.S. Army
 18 Corps of Engineers nationwide permits. Permanent
 19 woodland impacts have been minimized, and any
 20 impacts will be mitigated in accordance with the
 21 Commission's tree and shrub mitigation
 22 specifications.
 23 Q. And as your colleague testified, will the
 24 project comply with the Commission's wind-specific
 25 sound avoidance area requirement?

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1 A. Yes.
 2 Q. Will any significant adverse effects
 3 resulting from the location, construction and
 4 operation of the project as they relate to the
 5 Commission's selection criteria be at an acceptable
 6 minimum or managed and maintained at an acceptable
 7 minimum?
 8 A. Yes.
 9 Q. Were the policy criteria set forth in the
 10 Commission's rules considered and utilized to the
 11 extent possible by Badger Wind when designing the
 12 proposed project?
 13 A. Yes.
 14 Q. Were the factors set forth in North Dakota
 15 Century Code Section 49-22-09 considered by Badger
 16 Wind when designing the proposed project?
 17 A. Yes.
 18 Q. And if you look at what has been marked as
 19 BW Exhibit 11, can you explain what information is
 20 provided in that exhibit?
 21 A. Yes. It provides a summary of measures
 22 Badger Wind has taken to avoid or minimize
 23 potential project impacts to various resources.
 24 Q. And are those the same avoidance and
 25 minimization measures that you just discussed in

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1 your testimony and are elaborated on in your
 2 prefiled testimony?
 3 A. Yes.
 4 Q. And as an update to that exhibit, would
 5 one change be that there are now no turbines placed
 6 in unbroken grasslands?
 7 A. That's correct.
 8 Q. And based on the analysis conducted by
 9 Badger Wind, has the project been sited to produce
 10 minimal adverse human and environmental effects?
 11 A. Yes.
 12 MS. SMITH: I have no further questions.
 13 JUDGE HOGAN: All right. Thank you.
 14 Mr. Armstrong, do you have any questions?
 15 MR. ARMSTRONG: Yes. Thank you.
 16 **EXAMINATION**
 17 **BY MR. ARMSTRONG:**
 18 Q. Ms. Aftergood, if I understand correctly
 19 now, all Class III cultural resource studies have
 20 been completed?
 21 A. The studies have been completed.
 22 Q. And they have been updated recently and
 23 submitted to the state historical office?
 24 A. Yes.
 25 Q. And you're still awaiting comments or

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1 approvals or concurrences from that office?
 2 **A.** Correct.
 3 **Q.** And if I understand correctly, any sites
 4 that are eligible or have not been evaluated for
 5 placement in the NHRP --
 6 **A.** NRHP.
 7 **Q.** -- NRHP, are going to be completely
 8 avoided?
 9 **A.** Correct.
 10 **Q.** And so there won't be any shovel testing
 11 or anything. They're just going to be avoided?
 12 **A.** Correct.
 13 **Q.** And if -- if that collector line with the
 14 additional study reveals any potentially eligible
 15 or nonevaluated sites, then that'll just have to be
 16 addressed at that point in time?
 17 **A.** Correct.
 18 **Q.** With that being said, we do have in
 19 Exhibit 31 the letter from the -- the last page
 20 from the State Historical Society which expresses
 21 concerns with the studies that were performed, and
 22 you testified about that a little bit. I'll let
 23 you get there.
 24 **MS. SMITH:** I think they're at the very
 25 end, Sarah.

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1 **MR. ARMSTRONG:** Exhibit 31.
 2 **MS. SMITH:** The end of that exhibit.
 3 **Q.** (MR. ARMSTRONG CONTINUING) It should be
 4 the last page. The last --
 5 **A.** Yes.
 6 **Q.** And you're familiar with this letter?
 7 **A.** Yes.
 8 **Q.** So this letter says that the State
 9 Historical Society has sent detailed comments to
 10 the archeological consultants for this project.
 11 Are you familiar with what they -- what they're
 12 referencing there?
 13 **A.** Yes.
 14 **Q.** And is that what we have in Exhibit 24,
 15 the letter dated May 17, 2022?
 16 **A.** Yes.
 17 **Q.** So we -- we should have any -- all
 18 correspondence with the State Historical Society
 19 within our exhibits?
 20 **A.** Correct.
 21 **Q.** Okay. What -- they mention that as of
 22 today's date, the issues have not been resolved to
 23 our satisfaction. Could you summarize for us what
 24 you understand the issues are that have not been
 25 resolved to their understanding?

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1 **A.** We had the -- we had the Class III report
 2 come back to us that we needed to do shovel
 3 testing. We then coordinated with members of the
 4 North Dakota SHPO office on those sites because we
 5 had submitted site forms and no recommendations had
 6 been provided. So we were coordinating with them
 7 to better understand these seven sites, and they
 8 also provided other report recommendations that our
 9 consultants needed to address in the reports, which
 10 is detailed in that May 17 correspondence.
 11 So we had been looking at these sites.
 12 And then we had decided -- then we had met with
 13 SHPO again in June, which is detailed in email
 14 correspondence. They had indicated if we had -- if
 15 we moved infrastructure and labeled them as
 16 unevaluated, we wouldn't need to do the shovel
 17 testing and that they would process our -- once
 18 they got a report, they would look at it firsthand
 19 and have a concurrence for us quickly.
 20 So that's exactly what we -- we went back
 21 to the layout design, looked at it and said, okay,
 22 we can shift things, move the construction buffers.
 23 We'll have to reroute this collection line, but
 24 it -- it seems worth it given that we won't have to
 25 do the shovel testing and disturb the site, and we

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1 can sort of just move things forward without any
 2 more issues or concerns about those sites with
 3 SHPO.
 4 So they presented this letter, but we have
 5 been coordinating with them regularly about these
 6 sites and came to a conclusion of what we were
 7 going to do. And so the site forms were sent to
 8 them digitally yesterday over email for their
 9 review that we are -- these sites are unevaluated
 10 and the report went to them this morning. So it
 11 has -- we are coordinating with them.
 12 **Q.** So do I understand correctly that your
 13 next anticipated correspondence from SHPO would be,
 14 okay, we've reviewed your changes, we concur that
 15 there will be no significant impacts? That's what
 16 you're hopeful for?
 17 **A.** Correct.
 18 **Q.** And that's part of what has been agreed to
 19 be submitted in late-filed Exhibit 33?
 20 **A.** Correct.
 21 **Q.** And does the company agree that if
 22 everything else is approved, that it would not
 23 start construction of the project until it has that
 24 concurrence?
 25 **A.** Correct.

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1 Q. Moving on to the Fish and Wildlife Service
 2 and the North Dakota Game and Fish. If I
 3 understand the correspondence correctly, it's
 4 mainly been involved with discussion of offsets and
 5 the bird and bat conservation strategy. Is that,
 6 broadly speaking, what generally their concerns
 7 have entailed?
 8 A. Yes. We've addressed their concerns.
 9 We've been developing the bird and bat conservation
 10 strategy, sharing it with them, receiving their
 11 comment. And then the recommendations that came
 12 out of their letter, North Dakota Game and Fish's
 13 letter, was the commitment to an offset program.
 14 So Badger Wind updated the BBCS, which we filed on
 15 June 8, to lay out that -- the commitment that we
 16 would do that.
 17 Q. And so the last correspondence I believe
 18 we have is Exhibit 31 -- or excuse me -- from the
 19 Game and Fish is Exhibit 21 which is May 27, 2022.
 20 Has there been any additional correspondence since
 21 that time?
 22 A. In Exhibit 31 --
 23 Q. 21. Excuse me. 31 was the U.S. Fish and
 24 Wildlife Service.
 25 MS. SMITH: I think she was directing you

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1 to 31 because that's where the additional is.
 2 MR. ARMSTRONG: Oh.
 3 THE WITNESS: Yes.
 4 Q. (MR. ARMSTRONG CONTINUING) There's
 5 additional from Game and Fish in Exhibit 31?
 6 A. Yes.
 7 Q. Okay. Let me make sure I have that one.
 8 COMMISSIONER FEDORCHAK: Judge, none of us
 9 have that exhibit.
 10 MR. ARMSTRONG: That's the one Ms. Smith
 11 handed out at the beginning of the hearing.
 12 COMMISSIONER FEDORCHAK: Oh, just that?
 13 But that doesn't have any Game and Fish stuff.
 14 THE WITNESS: There's just one email.
 15 COMMISSIONER CHRISTMANN: In 31 I have
 16 Fish and Wildlife Service and historical society,
 17 but --
 18 MR. ARMSTRONG: That's what I have too.
 19 MS. SMITH: So we brought -- we filed and
 20 provided the seven copies of email correspondence.
 21 We have extras. We can hand them out. But we did
 22 submit those last week sometime. Because we
 23 submitted hard copies of those, we did not -- we
 24 did not intend to hand them out. We just -- we
 25 didn't want to create more confusion, so we just

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1 brought the ones that came in yesterday. But
 2 Bridget is now handing out the other emails just
 3 so -- to make sure you all have what we're
 4 referencing and then that's what Sarah is
 5 referencing as far as the additional correspondence
 6 with Game and Fish since the May 27 letter -- or
 7 17th, excuse me.
 8 Q. (MR. ARMSTRONG CONTINUING) And I can take
 9 a look at this more on a break or after the
 10 hearing, but could you maybe summarize for us what
 11 the correspondence after May 27, 2022, has been
 12 with the North Dakota Game and Fish Department?
 13 A. Sure. I updated them -- one
 14 correspondence was me updating them on the
 15 potential for 79 turbines to be built but that the
 16 impact calculations that Badger Wind has done and
 17 that North Dakota Game and Fish provided did
 18 consider all 79, so just no concern from our end on
 19 that.
 20 And then I had asked North Dakota Game and
 21 Fish if there was a local partner within the state
 22 of North Dakota that they preferred for offset
 23 mitigation. I had heard of a few and I wanted
 24 their opinion, and they had gone back and came back
 25 and confirmed some of them. And so Badger Wind is

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1 engaging with those to move forward with off --
 2 what we've calculated as our offsets for the
 3 project.
 4 Q. And are you expecting some further
 5 correspondence from Game and Fish or U.S. Fish and
 6 Wildlife Service saying you've now addressed our
 7 concerns satisfactorily or where does it stand?
 8 A. With North Dakota Game and Fish, it's been
 9 sort of just updating them on where we are on the
 10 project and where I was going to update them on
 11 maybe perhaps what local partner we chose and just
 12 kind of keeping them in the loop.
 13 With U.S. Fish and Wildlife, we are having
 14 additional conversations with their Region 6
 15 migratory birds office to just share the data that
 16 we've collected just to get everyone looped in on
 17 the project and on the same page. Other than that,
 18 they requested any updates -- the BBCS has to be
 19 shared with them, which I said I would be happy to
 20 do, and that's pretty much been it.
 21 Q. And you talked with Ms. Smith a bit about
 22 Game and Fish's comment that there would be
 23 significant impacts to wildlife, and I think you
 24 said there were no specifics. Did you have
 25 discussions with them to determine what their

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1 concerns were?

2 **A.** Their concerns with the project had been

3 at one point we had 20 turbines located in unbroken

4 grassland in the northeastern part of the area.

5 They had expressed to us in various communications

6 and letters their concern for the environment with

7 the turbines being located there. We have moved

8 all of those turbines out of that area.

9 **Q.** Before you go on, when was that? I'm

10 asking because the letter from Game and Fish was

11 May 27 and I'm wondering when those turbines were

12 moved. Was that after or before that letter?

13 **A.** May 27, 2022? Those turbine shifts were

14 made over a year ago.

15 **Q.** Okay. So in their letter that we have in

16 Exhibit 21, they still had that concern. Do you --

17 do you -- have you had discussions with them of

18 what the significant concerns they mentioned are?

19 You said the only thing you're aware of was the

20 offsets, but it would seem you'd say what are your

21 concerns, even if it -- whether written or actual

22 discussions.

23 **A.** I know that some of the language in that

24 letter has been used in other letters as well, and

25 in conveying to them the movement of the turbines,

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1 the additional studies that we've done, the

2 sharp-tailed grouse conservation strategy and all

3 of the minimization and measures we've proposed in

4 the BBCS, they have not conveyed any other

5 concerns, just that they were pleased at the

6 improvement we made to the project out of all of

7 the unbroken grassland.

8 **Q.** And so I haven't had a chance to look

9 through all those emails yet, but I mean is there

10 something in there that says, "Look, we're happy

11 with the changes you've made, we no longer have

12 these concerns," or are they still expressing

13 concerns?

14 **A.** I mean, the letter itself dictates that

15 they are quite happy with the changes, that they

16 see it as a great improvement. And then out of

17 that the only recommendation is the request for

18 voluntary offsets -- for a commitment to voluntary

19 offsets.

20 **Q.** And if I understand your testimony, you've

21 made that commitment, Badger Wind?

22 **A.** Correct.

23 **Q.** Does the project require a take permit

24 from the U.S. Fish and Wildlife Service?

25 **A.** Not at this time.

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1 **Q.** Is there an expectation that it might or

2 is there a plan to apply for one?

3 **A.** Currently right now, we've done Tiers 1

4 and 2 under the Eagle Conservation Plan Guidance.

5 We've collected the data. We know that there is

6 one active bald eagle nest site. Overall, eagle

7 use of the area is low. However, it's important

8 for us to apprise all of the agencies of our

9 project and currently the data that we've

10 collected, so we are -- we are going to share that

11 data with U.S. Fish and Wildlife's Region 6 office

12 who are responsible for understanding eagle use for

13 projects, and we'll coordinate with them on -- on

14 our project. But, overall, we're just sharing and

15 coordinating.

16 **Q.** And I don't know if maybe the practice has

17 changed or if something's different here and I

18 can't say I saw it, but a lot of times you'll see

19 in the letters from them that say, "Based on what

20 you've provided, we recommend you get a permit,"

21 and give you a big warning that if you don't,

22 there's going to be consequences. Has -- has that

23 been relayed to Badger Wind for this project?

24 **A.** U.S. Fish and Wildlife in their letter --

25 **Q.** The most recent one is Exhibit 31, if

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1 that's the one you're referring to.

2 **A.** Within our agency correspondence with U.S.

3 Fish and Wildlife throughout this project, they had

4 not conveyed anything like that to us in regards to

5 the eagle use of our site, which we've shared the

6 reports and the data and all of our information.

7 And in the letter written to us that we received

8 yesterday, it just indicates that we've reached

9 out, which is true, and that we will explore that

10 need. Essentially it's we will coordinate with

11 them and see if there is a need. We don't think

12 there is, but it's -- it's best to coordinate and

13 have everyone on the same page.

14 **Q.** So kind of a to-be-determined?

15 **A.** Yes.

16 **Q.** Okay. I think the last question I had for

17 you is -- I might have missed it, but you talked

18 about the whooping cranes and that sometimes there

19 was leftover crop that couldn't be harvested that

20 attracted some whooping cranes into this area of

21 the project. And you mentioned that you would

22 contract with the landowners to remove unharvested

23 crop, and I wasn't sure if that was overall or if

24 that was only if there was a whooping crane sight?

25 **A.** It will be part of our operation due

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1 diligence. So, for example, to reduce the
 2 potential for eagles to come to site, we will have
 3 any wildlife or roadkill removed. The same will be
 4 if -- if landowners have left unharvested crops and
 5 it's another year with some saturated wetlands, our
 6 operations team will work with those landowners to
 7 remove them. It will just lessen the probability
 8 or possibility of the whooping cranes wanting to
 9 come a bit further away from their corridor to the
 10 area.
 11 Q. And I guess I was just wondering how
 12 that's done. It's not my experience that
 13 landowners or farmers leave unharvested crops, or
 14 many, unless they can't harvest them. So I'm
 15 curious of how you intend to remove unharvested
 16 crops with the landowners if they haven't been able
 17 to remove them up to that point in time? Does that
 18 make any sense?
 19 A. Yes. That will be something for our
 20 operations staff to coordinate with the landowners
 21 on. I don't know the specifics, but we have been
 22 updating the team internally that this is something
 23 we'll need to do and consider for the project. So
 24 we have really experienced operational staff who
 25 operate wind farms throughout the country, so it

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1 will be -- it will be something that we develop
 2 internally and make sure it's operational at site.
 3 Q. And I think you said you contracted with
 4 them. So there's some agreement of how that will
 5 be handled between the company and the landowner?
 6 A. Correct.
 7 MR. ARMSTRONG: Thank you. I'll turn it
 8 over to Mr. Schock at this time.
 9 **EXAMINATION**
 10 **BY MR. SCHOCK:**
 11 Q. So Badger and North Dakota Game and Fish
 12 are pretty happy with the movement of the turbines
 13 off of the unbroken grassland sites. When I look
 14 at -- it's Exhibit 9, page 4, where there's a map
 15 of the broken versus unbroken grasslands in the
 16 project area, while -- so when we look at -- in one
 17 particular turbine location -- there's none on this
 18 map to look at. I'm just kind of referring to
 19 turbine locations in general -- there are -- it's
 20 not just the turbine site itself. There is access
 21 roads. There are collector lines that run to them,
 22 and then there's also temporary work space around
 23 that site while it's being constructed. And all of
 24 those could have an impact to that unbroken
 25 grassland even if you move the turbine itself off

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1 of them; correct?
 2 A. Yes.
 3 Q. So in this situation you're saying no
 4 acres -- so no turbine locations are covering any
 5 acreage that was unbroken grasslands; correct?
 6 A. Correct.
 7 Q. How many acres are covered -- how many
 8 acres of unbroken grasslands are impacted by
 9 permanent access roads?
 10 A. I believe the number is 70 -- around
 11 70 acres.
 12 Q. Seven --
 13 A. 70.
 14 Q. 70.
 15 A. Yes, 7-0.
 16 Q. Okay. How about by collector lines?
 17 A. So collection lines will be temporary
 18 impacts so -- because they'll be buried, so that
 19 area will all be restored.
 20 Q. Will be restored, but once an unbroken
 21 grassland is broken, it's no longer unbroken;
 22 correct?
 23 A. Correct.
 24 Q. So do you know how many acres that would
 25 be?

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1 A. I believe the calculation in our
 2 application states around 1,300 acres of temporary
 3 impacts.
 4 MS. SMITH: Because this is going to go
 5 down a path that it shouldn't, I don't think Sarah
 6 is correctly understanding your question. The
 7 question is about the acreage of unbroken, not the
 8 total acres of impact. Are you understanding,
 9 Sarah? Because I -- am I right, you're asking
 10 specifically about unbroken --
 11 MR. SCHOCK: Correct.
 12 MS. SMITH: -- grassland? Okay.
 13 THE WITNESS: Oh, yes. I'm giving you
 14 total. Sorry.
 15 Q. (MR. SCHOCK CONTINUING) It seemed like a
 16 really high number, but --
 17 A. Yes. Sorry. Yes. I'm providing you
 18 those total numbers from the application.
 19 Q. Okay. So the roads, the number of 70,
 20 that's total acres?
 21 A. Correct.
 22 Q. Okay. You don't know what the number of
 23 unbroken for the roads and access -- or roads and
 24 collector lines would be?
 25 A. For access roads, in our recent

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1 calculation of unbroken it is much less. I could
 2 provide those numbers to you. I don't have them on
 3 me right now.
 4 Q. Okay. How about for even just temporary
 5 work space around the turbine locations? I mean,
 6 that's generally -- how many acres generally of
 7 temporary disruption around the site for each
 8 turbine?
 9 A. It --
 10 Q. Not of unbroken. Just in general, how
 11 many acres are generally disturbed on a temporary
 12 basis for construction of a single turbine?
 13 MS. SMITH: Sarah, if you look at BW
 14 Exhibit 5.
 15 THE WITNESS: Yes. So for the turbines
 16 for the temporary acres that are used, so currently
 17 we have a total of 277 acres for temporary
 18 disturbance. And those turbines use a 50-foot
 19 radius for the pad and 250-foot radius of a
 20 temporary construction work space.
 21 Q. (MR. SCHOCK CONTINUING) Okay. And that's
 22 total acreage. That's not unbroken or is that
 23 unbroken acreage?
 24 A. This is for total.
 25 Q. Okay. Do we have somewhere in there

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1 broken down -- well, I suppose what you're saying
 2 is the turbines would be -- there is zero permanent
 3 but there would still be a temporary?
 4 A. Correct.
 5 MR. SCHOCK: Okay. Okay. I have no
 6 further questions. Thank you.
 7 JUDGE HOGAN: Mr. Pranis, any questions.
 8 MR. PRANIS: No, Your Honor. No
 9 questions.
 10 JUDGE HOGAN: All right. Commissioner
 11 Fedorchak.
 12 **EXAMINATION**
 13 **BY COMMISSIONER FEDORCHAK:**
 14 Q. Okay. Just to follow up a little bit on
 15 some of the Game and Fish stuff. Thank you, Sarah.
 16 So on the May 27 letter -- I'm just going
 17 to read some of the general stuff that Game and
 18 Fish says about unbroken prairie. So unbroken
 19 native prairie is essential for many rare and
 20 declining species, such as grassland-dependent
 21 birds. These birds, our canaries in the coal
 22 mine -- this is the first of their letter -- have
 23 shown steeper, more consistent and more
 24 geographically widespread declines than any other
 25 behavioral or ecological guide.

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1 So this is why they're so concerned about
 2 the native prairies. And then they quote that the
 3 western meadowlark, once abundant through the
 4 state, has lost over half its population in North
 5 Dakota and is now considered rare in eastern
 6 counties. And then they highlight another bird
 7 that's shown significant decline.
 8 So Game and Fish has been really specific
 9 in wanting to protect the native prairies, and
 10 you've worked very closely with them and moved a
 11 huge chunk of the turbines away from all the native
 12 prairies, and now today you say there's no native
 13 prairies impacted by the turbines and you're going
 14 to get us a number that's impacted by the roads; is
 15 that correct?
 16 A. Correct.
 17 Q. Okay. So then Game and Fish goes through
 18 and at this point says that because you guys hadn't
 19 worked out a commitment for some of the voluntary
 20 offsets, they still had these concerns -- a few
 21 concerns about habitat loss, collisions and
 22 displacement and avoidance. And then in their
 23 conclusion they say that the department does --
 24 Game and Fish does not believe the developers have
 25 fully addressed what is potentially at stake

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1 regarding the concerns we've brought forward.
 2 Further, the developer has been in agreement on
 3 potential impacts and the need to address them. As
 4 a result, the department suggests that Ørsted
 5 provide an updated bird and bat conservation
 6 strategy that addresses impacts prior to receiving
 7 a permit.
 8 So they're saying we have these concerns,
 9 you have these concerns, we know the solution to
 10 these concerns, update that bird and bat strategy
 11 and let's address those concerns. And now you're
 12 saying you've done that?
 13 A. Correct.
 14 Q. So as I read this letter from them, you've
 15 addressed their concerns?
 16 A. Yes.
 17 Q. And we probably won't get a letter back
 18 from Game and Fish saying that because that's not
 19 what they do.
 20 And then, similarly, on the U.S. Fish and
 21 Wildlife, they had the same solution and you've
 22 addressed those.
 23 What do you do for -- when you're
 24 offsetting with other habitat, what do you do? How
 25 do you do that? Because I'm heartbroken about some

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1 of this. Like I have to just admit I love the
 2 meadowlark, and it breaks my heart that we've lost
 3 50 percent of the population in the last -- and I
 4 think most North Dakotans would agree, but we also
 5 understand pragmatically that, you know, we want to
 6 develop our state, we want to -- so we have to try
 7 to find this balance of protecting both. And I
 8 think that's what Game and Fish has been trying to
 9 do, and also avoid future problems of getting
 10 species listed that then further complicate
 11 farming, ranching, development.
 12 So we want to try to listen to these
 13 canaries in the coal mine so we avoid that, so what
 14 do you do for the habitat offsets? Like how can
 15 you recreate this stuff?
 16 **A.** There are groups in North Dakota who focus
 17 on native prairie restoration efforts, various
 18 research programs with landowners, possible
 19 conservation easements, and these are people who
 20 specialize in these fields and dedicate their time
 21 to areas in the state of North Dakota. So it is
 22 those groups that we are talking to to work out
 23 this voluntary offset program that we will be doing
 24 and, you know, provide them the means they need to
 25 go out and fund these various programs.

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1 In regards to the letter, you're right,
 2 you know, we've been meeting with North Dakota Game
 3 and Fish and definitely been listening to the
 4 concerns and understanding the impacts that our
 5 project potentially has. I think moving those 20
 6 turbines from the north away from all of that
 7 unbroken native prairie grassland where our avian
 8 point count use survey was finding western
 9 meadowlark and the longspur addresses those
 10 concerns, and so we will continue working with Game
 11 and Fish. And we've also taken on -- or listened
 12 to the recommendations they have for voluntary
 13 offsets and mitigation.
 14 So creating that balance, creating a
 15 project that has used their information and their
 16 grassland mapping and doing field verification
 17 efforts and creating different conservation
 18 strategies to create the lowest amount of impact
 19 possible to respect the existence of these species
 20 in the state of North Dakota. So we are moving to
 21 next steps with the State and these groups. It's
 22 important to Badger Wind and it's important to
 23 Ørsted Onshore as a company that we do this.
 24 **Q.** Okay. What about the whooping crane?
 25 Like can you get a take permit for the whooping

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1 crane? Is that even possible?
 2 **A.** No.
 3 **Q.** No.
 4 What's at stake if you kill one?
 5 **A.** Yeah. It's -- it's unclear. Sort of --
 6 operational wind farms -- the research is showing
 7 that whooping cranes tend to avoid the operational
 8 wind farms. You know, we had these three come to
 9 site in 2020. We reported it to U.S. Fish and
 10 Wildlife immediately. They were the ones that then
 11 advised us to do a whooping crane assessment -- a
 12 further whooping crane stopover assessment, which
 13 we did. Under further review of the site since
 14 2020 where we haven't had any more whooping cranes
 15 come to site, you know, in negotiations -- or in
 16 discussions with the Service, it's been concluded
 17 that, you know, this area is of low habitat
 18 quality.
 19 In that particular year, there was a lot
 20 of saturated wetlands, some unharvested crops.
 21 They diverted away further than what they normally
 22 would. Understanding, though, that potential is
 23 still potential, we have employed minimization and
 24 conservation measures in the BBCS to best deal with
 25 this potential. And if a whooping crane does come

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1 to site during construction within a mile,
 2 construction will cease. We will report it. So we
 3 are certainly doing everything possible to be
 4 responsible stewards of the environment.
 5 **Q.** So you have to hope that the whooping
 6 cranes that come through are more of like the
 7 Ritz-Carlton type, not Super 8; they want to go to
 8 the fancy habitat and not over to your more
 9 lower-grade stuff?
 10 **A.** Yeah.
 11 **Q.** But there's no way to do that.
 12 Do you -- is it just certain times of the
 13 year that they are coming through that you really
 14 have to focus on observing -- watching for them?
 15 **A.** Yes. They'll usually migrate through the
 16 springtime up from the south through the corridor
 17 from, you know, Texas and Arkansas, up north, so
 18 they're usually hitting North Dakota heading up
 19 north to Canada around the springtime, spring
 20 migration. So we would have environmental
 21 biological monitors on site during construction
 22 specifically looking, watching.
 23 **Q.** All right. Let's see here. And then how
 24 did you select some of your buffer distances? It
 25 seems to be smaller than what's recommended by the

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1 Fish and Wildlife Service. Like the raptor nest
 2 buffers, you don't seem to be following what
 3 they've suggested, or the lek, the distance off of
 4 the active leks. I mean, did you follow their
 5 guidance or did you just do as much as you could?
 6 **A.** So with the raptor nests, there -- those
 7 are recommendations. We took the Service's
 8 recommendations and reviewed them against sort of
 9 where we had those nests, where we had land
 10 availability and -- against the other constraints.
 11 So we were able to dedicate to 0.25 miles from
 12 those known nests as a minimum, and then we are
 13 further -- we are further away from some of those
 14 nests. It just depends which ones in particular.
 15 So I would say it's 0.25 as a minimum, but
 16 some turbines, they're certainly further away than
 17 that. And we showed those nests and those maps to
 18 U.S. Fish and Wildlife and we also, you know,
 19 looked at the habitat. We also went back out this
 20 past year to look more for those raptor nests. So
 21 we are certainly keeping track of them as we move
 22 closer and closer to construction.
 23 Once we sort of laid out that this was our
 24 plan, given the recommendations, there was no
 25 further comment from the Service with regards to

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1 raptor nests.
 2 In regards to the leks, it was similar.
 3 We employed our third-party consultant, WEST, who
 4 has a lot of expertise on sharp grouse leks, in
 5 particularly their -- Chad LeBeau who's done a lot
 6 of research about sharp-tailed grouse. We did a
 7 grassland habitat assessment. We really wanted to
 8 understand where these leks were, what was the
 9 habitat, where are we placing turbines and sort of,
 10 you know, what we're looking at on the ground.
 11 We communicated those results and the plan
 12 with North Dakota Game and Fish with them. We had
 13 quite a few meetings. They agreed that leks -- or
 14 turbines in cropland near leks where it's highly
 15 fragmented is not as much a concern as turbines in
 16 unbroken grassland where there are leks. So we
 17 sort of prioritized the layout in that fashion,
 18 that we could keep a half-mile buffer from the leks
 19 that are known at sites but that those turbines are
 20 in highly fragmented areas and we can space them
 21 apart so that the sharp-tailed grouse can move
 22 between the turbines just fine and sort of that --
 23 that buffer area just kind of through the research
 24 and the coordination is kind of what came to be out
 25 of that.

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1 We shared that with them. We had a
 2 meeting with them, a presentation. WEST was there,
 3 and they expressed no concern -- further concern to
 4 the matter.
 5 COMMISSIONER FEDORCHAK: Okay. I think
 6 that's all for me. Thank you.
 7 JUDGE HOGAN: Commissioner Christmann.
 8 **EXAMINATION**
 9 **BY COMMISSIONER CHRISTMANN:**
 10 **Q.** So whether a turbine is placed on unbroken
 11 grasslands, am I correct that there's a direct
 12 impact, which is the square footage of the turbine
 13 and maybe the road leading in to it that's no
 14 longer in grass, and then there's an indirect
 15 impact in the fragmenting of the grasslands by the
 16 roads and maybe some -- some species of animals
 17 will be unable or unwilling to live too close to
 18 the noise and activity?
 19 **A.** Yes. There is the direct impact, you
 20 know, the turbine and the road being on the direct
 21 native prairie grassland, and then the potential
 22 for displacement of species that could occur. And
 23 then -- yes.
 24 **Q.** And so when -- if you move a turbine that
 25 was planned for -- in the middle of unbroken

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1 grassland and you move it just right to the edge of
 2 the field where it is broken, is it accurate to
 3 conclude that you've eliminated the direct impact
 4 and you've cut the indirect impact by about half?
 5 **A.** I would say by moving it into broken
 6 grassland, then, yes, you've mitigated that direct
 7 impact. In terms of the indirect -- in terms of
 8 cutting it by half, I can't speak to that, but
 9 where we've moved things is highly fragmented
 10 already, so these are definitely parcels where
 11 there's a lot already broken. So it's -- it's gone
 12 from the sort of pristine, untouched areas into
 13 areas where it's -- it's been tilled.
 14 **Q.** So they're not moved over just right on
 15 the edge of the unbroken is what you're saying?
 16 **A.** In the cases of the 20 turbines that were
 17 moved from the unbroken area, they were drastically
 18 moved down more into the south.
 19 **Q.** Okay. Then can you find Figure 6 of --
 20 now I've forgotten what exhibit it is.
 21 **A.** Yes.
 22 **Q.** With the land use maps. I want to --
 23 there's 17 land covers that are listed in the
 24 legend. Are those scientific descriptions that all
 25 environmental scientists would agree and know the

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1 difference between one and the other and explain
 2 them the same or are they not such clear
 3 definitions?
 4 **A.** I would say that some of them are pretty
 5 self-explanatory, like cropland, roads, but then
 6 when you get to these ones where it's mixed grass,
 7 mixed -- some biologists would say to you that this
 8 is where you need to go out and do field
 9 verification, so --
 10 **Q.** I want to look at a couple turbines here
 11 just to make sure I'm understanding the legend. So
 12 would you look at turbine number 59 which is about
 13 three miles north of the county line and a little
 14 more to the east.
 15 **A.** Yes.
 16 **Q.** So is that developed or pasture/hayland or
 17 am I reading it completely wrong?
 18 **A.** In this map it looks to me as if it's
 19 pasture/hayland.
 20 **Q.** Okay. And then go about three miles west
 21 and look at number 39.
 22 **A.** Yes.
 23 **Q.** Same thing?
 24 **A.** Yes.
 25 **Q.** Pasture/hayland. Okay. Now, I want to

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1 look at those turbines on the auxiliary exhibit
 2 that was just done yesterday. Do you have that?
 3 **A.** Yes.
 4 **Q.** Okay. Looking at number 59 --
 5 **A.** Yes.
 6 **Q.** Right now I'm actually having trouble
 7 finding it. Okay. Do you -- does that color code
 8 match up with pasture/hayland?
 9 **A.** It does not.
 10 **Q.** So here it looks more like it's cultivated
 11 crops; right?
 12 **A.** Correct.
 13 **Q.** And then what about 39?
 14 **A.** The same.
 15 **Q.** In the interest of time, I'm not going to
 16 go on and on, but the land cover legends, I get
 17 nothing out of them. They conflict. I don't know
 18 what's what here. You can answer -- I guess can
 19 you tell me why they conflict, I guess would be the
 20 question?
 21 **A.** In terms of what goes into these datasets,
 22 I'm not able to talk to that today why some are
 23 different, some are not. What I can talk to is
 24 that we field verified all of these turbine sites
 25 and all of these locations, and so we have current

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1 data as of last year depicting that these areas
 2 are, in fact, on cultivated cropland areas, and
 3 it's that field verification data that we rely on
 4 because it's going to be the most current.
 5 **Q.** And we can take that data to the bank
 6 despite your maps not really matching?
 7 **A.** I would say in the interest of just that
 8 these are two different datasets from two different
 9 sources and why they've come out differently, I'm
 10 not the expert with how -- how this data was
 11 derived. But we have done all of the field
 12 verification. It's the same with wetlands. You'll
 13 get datasets that show wetlands. You get it from
 14 the agencies, you review it, but then you always go
 15 out and field verify it to know whether the
 16 wetlands are still there, how large they are, to
 17 make sure that the data you're looking at on a map
 18 is, in fact, accurate. So I would say with the --
 19 that is what we've also done for our field -- our
 20 turbine placements.
 21 **Q.** Well, I'm going to move on from this part
 22 because I have a whole list of these, but the fact
 23 of the matter is I could see a wetland might look
 24 like a wetland this year and last year it didn't
 25 look like a wetland, but the difference between

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1 pasture/hayland and cultivated crops when the
 2 one -- the map -- the auxiliary map that has them
 3 listed as cultivated crops also has a color for
 4 hayland and pasture, and so I -- I find that very
 5 concerning.
 6 **Q.** The -- when you define what is unbroken,
 7 if someone took the time and effort to seed broken
 8 ground into native species of grasses and forbs,
 9 would that continue to be counted as unbroken, or
 10 would now that it has the plant materials that the
 11 wildlife desires, would that be considered
 12 unbroken?
 13 **A.** We had correspondence with North Dakota
 14 Game and Fish sort of about this matter. The
 15 correspondence is included. And they advised us to
 16 not go into those details of looking at low-quality
 17 classifications of unbroken grassland. That it's
 18 either broken or unbroken, and that's what we did.
 19 **Q.** Okay. The bottom line is I think I heard
 20 you clear but I want to verify it, that you will be
 21 doing a voluntary offset program; correct?
 22 **A.** Correct.
 23 **Q.** And is the request of the company for a
 24 site certificate based on the fact that you have
 25 said you're going to do one but we don't know what

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1 it is and we don't know whether Game and Fish and
 2 U.S. Wildlife Services agree that it's adequate, or
 3 does it hinge on them agreeing with it?
 4 **A.** We would be doing it anyways. So Ørsted
 5 Onshore, we have big biodiversity mandates on a
 6 corporate level. We are doing offset mitigation in
 7 other states that we work in. It would be done for
 8 this project as part of our conservation measures
 9 that we're deploying here in the U.S.
 10 **Q.** But we have no idea how extensive of a
 11 mitigation plan it is?
 12 **A.** We don't.
 13 **Q.** And we don't, and -- and does this hinge
 14 on at least the wildlife agencies that are our
 15 experts agreeing that it's sufficient?
 16 **A.** There's been no communication from them as
 17 to what -- what would classify as sufficient.
 18 **Q.** So if you decided that planting a tree was
 19 your mitigation plan, you could say that you met
 20 the fact that you did a mitigation plan?
 21 **A.** In theory, yes, but we have done offset
 22 calculations that we've shared with North Dakota
 23 Game and Fish. They've provided ours, so we are in
 24 agreement as to what -- and they have provided us
 25 some guidance as to what they like -- what they

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1 consider as appropriate offset measures, and so we
 2 are considering those and working -- or discuss --
 3 talking to the groups in North Dakota that they
 4 have said are good groups to work with. And so my
 5 hope is that we'll all be on the same page in
 6 regards to mitigation -- or offsets.
 7 **Q.** Did you mention something about working
 8 with third-party groups to do the actual mitigation
 9 work or is it something I -- that was a
 10 recommendation from Game and Fish or U.S. Wildlife?
 11 **A.** We'll be working with a group that exists
 12 here in North Dakota on measures or research that
 13 they use for the -- for offset programs. To me it
 14 seems like local expertise in this area is probably
 15 best.
 16 **Q.** Have you identified someone to do that
 17 work?
 18 **A.** A few have been recommended to us from
 19 Game and Fish, and so I'm -- Badger Wind is
 20 currently talking to them just to understand the
 21 program, what kind of initiatives they deploy, what
 22 kind of agreements, and so we're in the process of
 23 doing that now.
 24 **Q.** A few years ago we had some pretty
 25 outraged people about the choice that a developer

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1 made on their voluntary mitigation plan, and it was
 2 presumed that we had forced them to do that
 3 particular voluntary mitigation plan. Are you
 4 familiar with the response to that which was the
 5 creation of the Environmental Impact Mitigation
 6 Fund by House Bill 1383 in 2019?
 7 **A.** I am not familiar with that.
 8 **Q.** So that's probably not one of the avenues
 9 you're exploring?
 10 **A.** That was not one of the avenues I was
 11 considering at this time.
 12 **Q.** Okay. Lastly, I think, in Appendix I it
 13 says, "Topsoil will be salvaged, segregated, stored
 14 and replaced." Is that for the construction or
 15 will topsoil be stored for the ultimate reclamation
 16 when someday the turbines are removed?
 17 **A.** So this Badger Wind reclamation and weed
 18 management plan was made using the NRC -- NRCS
 19 guidelines. Information regarding this appendix
 20 was developed within our development team and
 21 questions would be better suited towards my
 22 colleague, Nick.
 23 **COMMISSIONER CHRISTMANN:** Okay. Thank
 24 you. No other questions.
 25 **JUDGE HOGAN:** Commissioner Haugen-Hoffart.

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1 **COMMISSIONER HAUGEN-HOFFART:** Sarah, I
 2 have no questions at this time.
 3 **JUDGE HOGAN:** All right. Thank you.
 4 Ms. Smith, any redirect?
 5 **MS. SMITH:** Just a couple.
 6 **FURTHER EXAMINATION**
 7 **BY MS. SMITH:**
 8 **Q.** I believe it's in -- on page 44 of the
 9 BBCS which is BW Exhibit 28, it talks about
 10 whooping cranes. I'll let you turn there. And so
 11 if you look at the third paragraph, the second
 12 sentence of the third paragraph, where it starts,
 13 "To date." Do you see that on page 44? Oh, I
 14 think you're on the wrong spot. Are you in the
 15 BBCS?
 16 **A.** Yes.
 17 **Q.** Okay. On page 44. The third paragraph,
 18 second sentence where it starts, "To date."
 19 **A.** Correct.
 20 **Q.** Does that -- there was a question that
 21 Commissioner Fedorchak had of -- you know, about a
 22 concern with whooping cranes and wind projects.
 23 Does that help address the question that was asked?
 24 **A.** It does.
 25 **Q.** And can you read that?

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1 **A.** "To date, no known whooping crane
2 mortality events have occurred at an operational
3 wind turbine."
4 **Q.** And that's from a U.S. Fish and Wildlife
5 Service site and then an NGPC. I'm not sure what
6 that one is, but --
7 **A.** Correct.
8 **Q.** And so is the concern for whooping cranes
9 more transmission line driven?
10 **A.** It is.
11 **Q.** And a concern of collision with those
12 transmission lines?
13 **A.** That's correct.
14 **Q.** And you have a very small transmission
15 line?
16 **A.** Correct.
17 **Q.** Are you going to follow the -- I'm going
18 to say -- I won't say Aflac, I said that
19 yesterday -- APLIC guidelines for marking and
20 constructing that line?
21 **A.** We will.
22 **Q.** And there was a discussion about your
23 offset calculations. You have exchanged -- have
24 you exchanged offset calculations with Game and
25 Fish and U.S. Fish and Wildlife Service?

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1 **A.** We have.
2 **Q.** And so they're aware of what your
3 calculations are; you're aware of their
4 calculations?
5 **A.** Correct.
6 **Q.** And are they aligning?
7 **A.** They are.
8 **Q.** And are you aware of 49-22-09.2 that
9 states the Commission may not condition the
10 issuance of a certificate or permit on the
11 applicant providing a mitigation payment assessed
12 or requested by another state agency or entity to
13 offset a negative impact on wildlife habitat?
14 **A.** I am.
15 **Q.** And so when you were designing the
16 project, was your goal to minimize adverse impacts
17 without relying on an offset?
18 **A.** Correct.
19 **MS. SMITH:** And I think we'll probably
20 have to -- I know the answer to the question that
21 was asked, but we will take a -- at a break we will
22 share that answer so that it can come from you
23 directly about the impacts from access roads. So,
24 otherwise, I don't have any questions.
25 **JUDGE HOGAN:** Mr. Armstrong, any

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1 additional questions.
2 **MR. ARMSTRONG:** No additional questions.
3 **JUDGE HOGAN:** Mr. Schock?
4 **MR. SCHOCK:** No.
5 **JUDGE HOGAN:** Are there any other
6 commissioner questions? All right. Well, I think
7 you're done for now, Ms. Aftergood.
8 **THE WITNESS:** Thank you.
9 **JUDGE HOGAN:** We are going to take a lunch
10 break now. We will shoot for a half an hour and
11 try to reconvene at 1:45.
12 (Recessed at 1:12 p.m. and reconvened at
13 1:47 p.m.)
14 **JUDGE HOGAN:** All right. Ms. Smith, were
15 you going to recall Ms. Aftergood.
16 **MS. SMITH:** Yes. Thank you.
17 **JUDGE HOGAN:** Go ahead.
18 **CONTINUED FURTHER**
19 **EXAMINATION BY MS. SMITH:**
20 **Q.** So, Ms. Aftergood, I'm going to direct you
21 to BW Exhibit 21, about halfway through the
22 exhibit. And it's a technical memorandum from
23 WEST. Do you have that in front of you?
24 **A.** I do.
25 **Q.** And we're referring to this to address

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1 Mr. Schock's questions about impacts, temporary and
2 permanent, to unbroken grasslands. So can you
3 start by looking at the temporary impacts paragraph
4 on that first page of the memo. Are you there?
5 **A.** Yes.
6 **Q.** And can you tell us what the projected
7 identified temporary impacts are for unbroken
8 grasslands?
9 **A.** 149.2 acres.
10 **Q.** And does that include all temporary
11 portions, portions that would be reclaimed of the
12 access roads, the turbine construction work space
13 and switchyards, everything temporary?
14 **A.** Yes.
15 **Q.** And then if you look down at the next
16 paragraph under Permanent Impacts, can you tell us
17 the permanent impacts for unbroken grasslands?
18 **A.** It's 7.2 acres.
19 **Q.** And that actually, given the timing of
20 this memo, would have included the turbine --
21 direct impacts from the two turbines; is that
22 correct?
23 **A.** Correct.
24 **Q.** And those have been removed; correct?
25 **A.** Correct.

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1 Q. So approximately seven acres for access
2 roads?

3 A. Yes.

4 MS. SMITH: I don't have any further
5 questions.

6 JUDGE HOGAN: Mr. Armstrong, any
7 questions.

8 MR. ARMSTRONG: No questions.

9 JUDGE HOGAN: Mr. Schock.

10 MR. SCHOCK: What page are we on on
11 Exhibit 21?

12 MS. SMITH: I wish it had page numbers. I
13 don't disagree. It's about halfway through BW
14 Exhibit 21, and the first page looks like this. It
15 has the WEST logo on it.

16 MR. SCHOCK: Okay.

17 MS. SMITH: I think it might be very close
18 to where you are.

19 MR. SCHOCK: I think so.

20 MS. SMITH: Third-to-last page, I'm being
21 told.

22 MR. SCHOCK: Okay. Thank you.

23 MS. SMITH: Yep.

24 JUDGE HOGAN: Are there any other
25 questions from the commissioners?

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1 COMMISSIONER FEDORCHAK: No.

2 JUDGE HOGAN: No. All right. Thank you.

3 THE WITNESS: Thank you.

4 JUDGE HOGAN: Anything further on behalf
5 of Badger, Ms. Smith.

6 MS. SMITH: Not at this time. We would
7 just reserve the ability to have rebuttal witnesses
8 at the very end of the hearing.

9 JUDGE HOGAN: All right. Thank you.

10 Then I'll turn to you, Mr. Pranis. I know
11 you were going to testify and you were going to
12 call a witness, so which were we doing first?

13 MR. PRANIS: I'd like to call Mr. Cortina,
14 Your Honor.

15 JUDGE HOGAN: All right. Thank you. Do
16 you want to come up, Mr. Cortina.

17 THE WITNESS: Yes, I do.

18 JUDGE HOGAN: Can you state your full name
19 for the record and spell your last name.

20 THE WITNESS: Steve Cortina,
21 C-o-r-t-i-n-a.

22 JUDGE HOGAN: And were you in the room
23 this morning when I went through the penalties for
24 perjury?

25 THE WITNESS: Yes, ma'am.

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1 JUDGE HOGAN: Do you understand what
2 perjury is?

3 THE WITNESS: Yes, ma'am.
4 (Witness sworn.)

5 JUDGE HOGAN: All right. Thank you. Go
6 ahead, Mr. Pranis.

7 MR. PRANIS: Thank you.

8 **STEVE CORTINA,**
9 being first duly sworn, was examined and testified
10 as follows:

11 **EXAMINATION**

12 **BY MR. PRANIS:**

13 Q. Mr. Cortina, can you just briefly describe
14 your job with LIUNA?

15 A. Well, my job with LIUNA is a market
16 representative for LIUNA, Laborers International
17 Union of North America. I talk to union employees,
18 members, nonunion members. I talk to contractors,
19 union and nonunion. I visit construction sites.

20 Q. Okay. And so I want to go to your
21 experience in the wind energy industry. Could you
22 just briefly summarize what work and experience you
23 have.

24 A. Several years ago, 2007, I was on the --
25 the Tatanka project. That would be between Ashley

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1 and Forbes here, which is wind towers on the North
2 Dakota and South Dakota side, and we did 120 towers
3 down there. So I was involved in basic labor work,
4 dirt work, grout, tower cleaning and mechanical
5 completion.

6 Q. And before you began, you continued your
7 work after Tatanka in wind energy?

8 A. I did. I became -- I traveled with M A
9 Mortenson. I went to -- my next project was in
10 Montana. Became a foreman with them, and from then
11 just started working around the country helping
12 build wind towers.

13 Q. Okay. And what kind of work did you do
14 before wind construction?

15 A. Before I was in the union, I was a kitchen
16 manager at Applebee's in Bismarck. I did that for
17 five years. Loved it, but it couldn't support me
18 and my family, my wife, my kid. It was just hard
19 to get it going. So I joined the union, and now I
20 got great benefits and a great pension that's
21 coming towards the end of my career.

22 Q. Okay. And can you just describe what the
23 Tatanka wind project was like, whether it was --
24 you would consider it a successful project and what
25 it looked like in terms of employment on that

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1 project?

2 **A.** Well, we had a lot of -- a lot of people,

3 a lot of workers out there. Operators, ironworkers

4 millwrights, laborers. Built it from the ground

5 up, of course. There was -- it was very

6 successful, in my eyes. Of course, that was my

7 first project. I thought it was very successful.

8 So when the project was over, the people who didn't

9 have skills became -- had more skills. We had

10 on-the-job training right there, and I went from --

11 I was just a basic laborer with no experience in

12 construction to a lead person in that project.

13 **Q.** And were there other local workers from

14 this area who got employment opportunities and

15 career opportunities on that project?

16 **A.** Absolutely. So I had to get dispatched

17 through my union and with that other laborers got

18 dispatched also. So we're from Bismarck,

19 Jamestown, Ellendale, Ashley. What they did do is

20 people who wasn't part of the union, they of course

21 came to the jobsite and just -- just the company by

22 itself just took them in. They wanted the local

23 workers in there, so what could be any closer to

24 local workers than Ashley, Ellendale and Forbes.

25 Forbes is just so small, so --

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1 **Q.** Okay. Part of your purpose in providing

2 testimony is to talk about safety; is that correct?

3 **A.** Yeah. Safety is a must. Without getting

4 the correct training for safety, injuries can

5 happen.

6 **Q.** And would you consider wind energy

7 construction to be relatively higher risk compared

8 to, say, you know, a couple-story building, a strip

9 mall?

10 **A.** It's very risky. It's -- I believe it's

11 one of the top five construction projects that's

12 very -- very risky, very hazardous in safety. So

13 you've got to have the correct training. With me

14 coming through the union, the basics, of course,

15 that these contractors want is OSHA 10. One thing

16 the union does is we take a step above that. We

17 take the OSHA 30, which includes 30 hours of safety

18 through OSHA, we've got a CPR training, first aid

19 training, blood and pathogen training.

20 **Q.** And in your prefiled testimony, you

21 indicate use of temporary staffing agencies labor

22 as one of the risk factors that you have seen based

23 on your observations and interviews with workers.

24 Can you explain why that's of concern?

25 **A.** Well, the temporary agencies don't have

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1 the correct training for wind projects. Almost any

2 project out there that we do, it covers some type

3 of training, if it's OSHA training, if it's falls,

4 slips and falls, if it's putting on a harness.

5 You've just got to make sure, you know, everyone on

6 that project has some type of safety tool to do the

7 job safe.

8 **Q.** And you indicated in your prefiled

9 testimony here that the local workers made up a

10 large majority of the construction workforce on

11 Tatanka; is that correct?

12 **A.** That is correct. We had a lot of local

13 workers. Usually we have about five to six crews

14 of five to six people. That's about 30 or 36

15 laborers. We took care of about 25 -- between 20,

16 25 laborers on that project.

17 **Q.** And do you believe based on what you know

18 of the industry and what you've heard here today,

19 that Badger Wind could also be built with a

20 majority of local construction workforce?

21 **A.** Absolutely. I mean, this is closer to

22 Bismarck than Ashley, than the one we did down on

23 Tatanka. So we feel that if we did fill the job --

24 we did fill the job at Tatanka, we could fill this

25 job also if it does go union.

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1 **Q.** Great. And then are members -- the LIUNA

2 members who have historically worked in coal plants

3 and pipelines, how do they feel about wind energy?

4 **A.** Well, you know, I mean if -- if it's local

5 workers on it, they're okay with it. They're kind

6 of frustrated right now because Sunflower -- the

7 last union project that was a wind energy project

8 in North Dakota, it was -- it was union. And we

9 had quite a bit of craftsmen -- union craftsmen on

10 there. Our members are looking like when are we

11 going to get a next one because the laborers that

12 was on that project did an excellent job. They

13 love the wind industry, but they didn't want to

14 travel out. So they want more and more wind

15 projects in this state.

16 **Q.** All right. And I want to ask you a couple

17 questions about stop work authority. Commissioner

18 Haugen-Hoffart had raised this question of who can

19 do what on a worksite to prevent injuries or

20 accidents. And so I'd just ask you what stop work

21 authority means in a construction context.

22 **A.** That's really funny right there because as

23 soon as she mentioned that, I got a déjà vu kind of

24 back in the day when I worked on one. So we had

25 like a near miss program where everybody went to,

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1 and if you find something that could be hazardous,
 2 you can just say, "Okay, stop. Let's fix the
 3 problem. And if everybody feels safe, let's go
 4 ahead and continue the project."
 5 Me personally I've witnessed one -- I was
 6 out there in Montana and they were putting -- if
 7 anyone knows how the wind tower goes, it's like a
 8 base, a mid and a top. Well, between the base and
 9 the mid, there was a space and they was already
 10 about to put on the top. And there was a space.
 11 You could actually see light through it. And I
 12 kind of said, "Hold on. Something's going on here.
 13 Let's stop." The whole project stopped right
 14 there. Fixed the problem -- told them the problem,
 15 fixed the problem, everybody was okay, and we
 16 continued with the project.
 17 Q. And so in your career, you've more than
 18 once -- you personally exercised the stop work.
 19 You made a stop-work call?
 20 A. I think that's the best call because
 21 anybody could do. Not me as a foreman, me as the
 22 lead guy, but me just as a general laborer out
 23 there, see the risk of injury that can happen or,
 24 you know, towers coming down that's not done
 25 properly because everybody makes mistakes. So we

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1 want to make sure that all eyes is looking at
 2 safety and anyone can stop it, from -- from a
 3 regular civilian who's just passing by to all the
 4 workers on the project.
 5 Q. And how did you know to make a stop-work
 6 call in those cases? How did you know to recognize
 7 what the problem was?
 8 A. Well, I mean when there's a crane going up
 9 with a tube, it's going up, so everybody's eyes is
 10 up in the air. Everybody says, "Okay. Let's not
 11 get under it." That's part of the safety, you
 12 can't be under that crane, can't be under that
 13 piece that's flying. So everybody's up there. So
 14 when people are -- you know, they're looking up,
 15 they're looking at, you know, the other duties on
 16 it. You've got to make sure the tag line is tight,
 17 et cetera. I was just like, "There's a problem
 18 right here." I mean anybody could -- but I said,
 19 "There's a problem. There's a problem. Let's
 20 stop." If it wasn't a problem, yes, it's a little
 21 lack of time, but at the same time, better be safe
 22 than sorry.
 23 Q. And what's the role of training and
 24 experience doing the work in terms of making a
 25 stop-work program effective?

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1 A. Stop. Just kind of get over the radio and
 2 just say, you know, I think there's a problem.
 3 Let's stop it for a minute or so to fix the problem
 4 or see if there is a problem.
 5 Q. Okay. And were you ever concerned about
 6 facing negative consequences as a result of calling
 7 a stop?
 8 A. I think everybody does. Everybody don't
 9 want to -- everybody don't want to just go ahead
 10 and stop the project and then say, you know, why
 11 did you stop and kind of be blackballed and next
 12 thing you know you're off of the project.
 13 Truthfully, if a person -- if a group of people
 14 want a person off a project, they'll find a way to
 15 get them off the project, so -- but that right
 16 there when it comes to safety, that's a good catch
 17 right there.
 18 But everybody's kind of scared to say,
 19 "You know what, this is a good-paying job where I'm
 20 getting great benefits," and this job could last a
 21 year, nine months or so, so of course they feel
 22 like they could get fired or laid off.
 23 Q. Did you feel like you had protection when
 24 you worked at Mortenson in terms of them -- that
 25 you weren't going to be subject to retaliation for

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1 stopping the work and potentially costing the
 2 contractor money?
 3 A. With Mortenson, that was my second project
 4 anyway, so when I did stop it, of course I ran over
 5 there to the lead superintendent and kind of said,
 6 "You know what, I think we should stop. Look at it
 7 right there." And then he actually made the final
 8 call and said, "Okay. Let's go stop it. Steve saw
 9 something."
 10 MR. PRANIS: Okay. Great. And that's all
 11 the questions I have.
 12 JUDGE HOGAN: Ms. Smith, do you have any
 13 questions?
 14 MS. SMITH: No, I don't have any. Thank
 15 you.
 16 MR. ARMSTRONG: No questions.
 17 JUDGE HOGAN: Mr. Schock?
 18 MR. SCHOCK: No, Your Honor.
 19 JUDGE HOGAN: Commissioner Fedorchak.
 20 COMMISSIONER FEDORCHAK: Thank you, Steve.
 21 Appreciate your insight and sharing your
 22 experiences with us. I don't have any questions
 23 for you. Thanks.
 24 JUDGE HOGAN: Commissioner Christmann.
 25 COMMISSIONER CHRISTMANN: I do not, but I

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1 appreciate you being here, Steve. Thank you.
 2 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 3 COMMISSIONER HAUGEN-HOFFART: Thanks,
 4 Steve. I have no questions for you at this time.
 5 JUDGE HOGAN: All right. Thank you,
 6 Mr. Cortina.
 7 All right. And, Mr. Pranis, you're going
 8 to testify as well; correct?
 9 MR. PRANIS: Yes. I'll just give a brief
 10 overview, if that's all right.
 11 JUDGE HOGAN: Okay. I do have to swear
 12 you in, though.
 13 MR. PRANIS: Of course. Would you like me
 14 to move or stay right -- I can stay here?
 15 JUDGE HOGAN: I'm okay if you testify from
 16 there. You were in the room this morning when I
 17 went through the penalties for perjury.
 18 MR. PRANIS: Yes, Your Honor.
 19 JUDGE HOGAN: And you know what perjury
 20 is?
 21 MR. PRANIS: Yes, Your Honor.
 22 (Witness sworn.)
 23 JUDGE HOGAN: All right. Thank you. Go
 24 ahead.
 25

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1 **KEVIN PRANIS,**
 2 being first duly sworn, was examined and testified
 3 as follows:
 4 **STATEMENT**
 5 **BY MR. PRANIS:**
 6 MR. PRANIS: So our direct testimony is
 7 available in the record and for anyone in the
 8 audience who wants to read it. It's a very nice
 9 website that the Commission offers that provides
 10 access to all the files, and so I'm not going to
 11 rehearse all that information. I think the
 12 commissioners are aware.
 13 I just wanted to share that I think it's
 14 important that my colleague, Lucas Franco, and I
 15 have done an analysis that we've done for a number
 16 of projects looking at the impact of local work --
 17 use of local versus nonlocal workforce, and we find
 18 an estimate of over \$10 million in difference in
 19 terms of the socioeconomic impact of this project
 20 if it's built with a largely local versus a largely
 21 nonlocal workforce, taking into account -- focused
 22 on construction, payrolls and benefits that are
 23 received.
 24 And so this is an important factor for the
 25 Commission. I think it shows that this project can

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1 be enormously beneficial in terms of direct
 2 payrolls and induced spending that comes from those
 3 payrolls, the health care and retirement benefits
 4 that are provided, as well as the career impacts
 5 that it can have. As you heard from Mr. Cortina,
 6 the one opportunity to work on the Tatanka Wind
 7 Farm was the beginning of a career that allowed him
 8 to support a family in North Dakota and bring a lot
 9 of other folks in.
 10 And so we consider this an important
 11 aspect of siting. We always urge the developers to
 12 take those steps to prioritize local workforce
 13 which can really go beyond job fairs to -- you
 14 know, we're very focused on results and asking for
 15 transparency and for the companies that are
 16 building wind farms to make sure that we're -- that
 17 those local benefits stay here, just like the tax
 18 revenues. I think there's an equal weight to, if
 19 you look at potential payroll impacts, tax revenue
 20 impacts, and, you know, the lease impacts are not
 21 disclosed but we consider those the three big
 22 baskets.
 23 And on the employment side, the
 24 information that we submitted shows that use of
 25 local workforce is key in terms of how beneficial

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1 the project is.
 2 And the last point I would make is that
 3 our organization supports an all-of-the-above
 4 approach to energy. We really do mean all of the
 5 above. Not -- in Minnesota they think -- you know,
 6 they think that means coal. In North Dakota
 7 sometimes people think that that's just a code for
 8 wind. We support all of those resources, and our
 9 experience in recent years has been that if you
 10 look at Coal Creek, for example, it's very
 11 important as an energy exporter for North Dakota to
 12 offer a balanced menu of options that other states,
 13 other customers elsewhere want to use. And that
 14 has to include a combination of baseload power and
 15 renewable power, which is in high demand. And we
 16 think this project in particular in possession of
 17 an interconnection agreement, which is exceedingly
 18 rare these days, is an important resource that
 19 could provide significant benefits, and we
 20 certainly hope it's built in a manner that delivers
 21 those benefits.
 22 And that's all I have.
 23 JUDGE HOGAN: All right. Thank you.
 24 Ms. Smith, any questions.
 25 MS. SMITH: No -- excuse me. No, no

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1 questions. Thank you.

2 JUDGE HOGAN: Mr. Armstrong?

3 MR. ARMSTRONG: No questions.

4 JUDGE HOGAN: Mr. Schock?

5 MR. SCHOCK: No questions.

6 JUDGE HOGAN: Commissioner Fedorchak?

7 COMMISSIONER FEDORCHAK: Thank you, Kevin.

8 Appreciate you being here as well and pulling

9 together all the materials and just generally being

10 engaged in the energy development process. It's

11 really, really important to keep hearing from

12 workers and to have you guys keep talking about the

13 benefits and the impacts of these energy-related

14 projects. So very much appreciate your investment

15 in these things. Thank you.

16 MR. PRANIS: Thank you, Commissioner.

17 JUDGE HOGAN: Commissioner Christmann?

18 COMMISSIONER CHRISTMANN: No questions,

19 but thanks, Kevin, for being here. Thanks also for

20 filing in advance. It really helps to be able to

21 review these things in advance when possible.

22 JUDGE HOGAN: Commissioner Haugen-Hoffart?

23 COMMISSIONER HAUGEN-HOFFART: Thank you

24 for your time. I have no further questions.

25 JUDGE HOGAN: All right. Thank you,

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1 Mr. Pranis. Anything further on behalf of the

2 intervenor.

3 MR. PRANIS: No, Your Honor.

4 JUDGE HOGAN: All right. Well, now we're

5 going to move to the public testimony portion of

6 our hearing. And we talked about signing in on the

7 attendance sheet and indicating whether or not you

8 intended or wanted to provide public testimony.

9 Even if you didn't indicate on there and you've

10 just decided you want to provide public testimony,

11 you certainly can.

12 I'm just going to run through a few

13 instructions before we start public testimony. If

14 you'd like to testify, we'll have you come up one

15 by one and sit at the witness stand here. And if

16 you provide testimony, I need to swear you in like

17 I've done with all the other witnesses today.

18 I'd ask that you please state your name

19 for the record and spell it, if necessary. And if

20 you represent a group, if you can identify the

21 group and your relationship with the group for our

22 record, that would be helpful. Also, if you're a

23 landowner, it would be helpful for the Commission

24 to know where your property is located.

25 Public testimony is an opportunity to make

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1 a statement for the commissioners to consider.

2 It's not the -- it's not allowable to ask questions

3 to the parties or the commissioners.

4 We'd also ask that only people seated at

5 the witness table speak and that we don't have

6 statements or comments coming from the audience

7 because we are recording and making a transcript of

8 this proceeding, so it's difficult to catch those

9 types of things.

10 Likewise, you may not read something you

11 did not write, so you cannot read a statement

12 written by somebody else. However, you can offer

13 that into evidence and to the record for the

14 commissioners to read at a later time and date.

15 And, finally, we would ask that you don't

16 repeat previous testimony in the interest of time.

17 It's -- it's more helpful if you come up and just

18 indicate whether or not you agree or disagree with

19 prior testimony that's already been given.

20 So with that, Ms. Bell, I see you want to

21 go first.

22 MS. BELL: Yes, please. Thank you. Would

23 you like me to hand out my written testimony before

24 I begin?

25 JUDGE HOGAN: Sure. Absolutely.

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1 Do you want to state your full name for

2 the record?

3 MS. BELL: Yes. Thank you. My name is

4 Jessica Bell, spelled J-e-s-s-i-c-a B-e-l-l. I am

5 here on behalf of the North American Coal

6 Corporation today. I am the northern operations

7 environmental manager for that company.

8 JUDGE HOGAN: Before you go on, I have to

9 swear you in.

10 MS. BELL: Oh, yeah. Okay.

11 JUDGE HOGAN: And I know that we had some

12 people that have come in since I went through the

13 penalty -- or perjury penalties early in the

14 morning, so I'm going to just state them once more

15 so that everybody that plans to testify hopefully

16 will hear them and can acknowledge them so I don't

17 have to repeat them for everybody.

18 Perjury is a Class C felony punishable by

19 a maximum fine of \$10,000, a maximum fine of five

20 years' imprisonment, or both. Do you understand

21 what perjury is?

22 MS. BELL: Yes.

23 (Witness sworn.)

24 JUDGE HOGAN: All right. Thank you. Go

25 ahead.

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1 **JESSICA BELL,**
 2 being first duly sworn, was examined and testified
 3 as follows:
 4 **STATEMENT**
 5 **BY MS. BELL:**
 6 MS. BELL: Thank you. As I said, I'm the
 7 northern operations environmental manager for the
 8 North American Coal Corporation. I'm here today to
 9 represent the company, but I know it is safe to say
 10 I also stand here carrying a message of thousands
 11 of coal miners, power plant workers and small
 12 businesses that support the coal industry in North
 13 Dakota.
 14 Since 1957, the North American Coal
 15 Corporation has been mining coal right here in
 16 North Dakota at four different locations. North
 17 American Coal employs nearly 1,000 workers in the
 18 state at its three mining operations in Mercer and
 19 McLean Counties. The Freedom Mine, the Falkirk
 20 Mine and the Coyote Creek Mine sever nearly 25
 21 million tons of coal annually, and that coal is
 22 utilized by our customers to produce electricity
 23 for the region with a total capacity factor of over
 24 3,000 megawatts, employing approximately another
 25 thousand people in the state to generate that

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1 electricity.
 2 The average job in coal mining is
 3 estimated at about \$151,000 and in electricity
 4 generation at \$165,000. Please note the average
 5 wage for a private job in North Dakota is estimated
 6 around \$74,000 per year.
 7 These types of wages make not just jobs
 8 but careers in communities where people can live
 9 safely and grow their families. Annually, the
 10 lignite industry as a whole contributes
 11 \$5.4 billion to the state's economy with
 12 \$1.1 billion in direct annual expenditures and
 13 approximately \$125 million in tax revenue to the
 14 State of North Dakota and local political
 15 subdivisions on an annual basis.
 16 I have printed off both of the reports
 17 where that information came from and submitted them
 18 today.
 19 National security starts with energy
 20 security, and America has come upon a grand
 21 experiment attempting to balance its energy and
 22 electric power sectors. Energy has an intrinsic
 23 national security value that is not accounted for
 24 in U.S. policy.
 25 As America's competitors continue to

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1 engage in a true all-of-the-above energy technology
 2 strategy including fossil fuels, America continues
 3 to move away from fossil fuels.
 4 The Ronald Reagan Institute released a
 5 report in 2019 that stated, "The United States has
 6 entered an era of long-term competition with
 7 revisionist powers. A key aspect of this
 8 competition will revolve around a contest for
 9 technological superiority waged between the
 10 national innovation bases of the respective
 11 competitors. The outcome of this competition will
 12 determine not just American national security but
 13 also how the nations of the world interact - and
 14 whether a free and open political and economic
 15 system will remain the foundation of those
 16 interactions."
 17 And this is why I'm here today. The
 18 Badger Wind project is a culmination of poorly
 19 thought-out policies working towards an energy
 20 transition but with no end goal that protects our
 21 citizens. We have a responsibility to consider
 22 this and to adhere to the law.
 23 Some key questions I will present to you
 24 today to consider are: How does this project
 25 affect the welfare of the citizens of this state?

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1 Does this project contribute to the
 2 requirement in the Century Code to continue system
 3 reliability and integrity to ensure energy needs
 4 are met?
 5 Does this project meet the burden of proof
 6 for the need of the facility?
 7 Does this project minimize adverse
 8 effects?
 9 What are the direct and indirect economic
 10 impacts of the proposed facility?
 11 As we look to the future, what tools do we
 12 need to protect our citizens?
 13 What role do future projects like this
 14 play in decarbonization strategies and maintaining
 15 grid reliability?
 16 Just because MISO has indicated this power
 17 is capable of being injected into the grid, does
 18 that mean it's in the best interest of the welfare
 19 of the citizens of this state?
 20 Given the production tax credit has been
 21 around for four decades, is it a policy proven to
 22 be a detriment to the ratepayers and the taxpayers?
 23 It is proven that using it to generate electricity
 24 does not help reliability of the electrical grid.
 25 It is proven that using it has not made electricity

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1 cheaper. And it is proven that using it displaces
 2 and replaces existing electricity sources, a point
 3 that was made earlier in the day by the Ørsted
 4 representative.

5 It is a redundant approach to building
 6 power because we've already met current demand with
 7 the power produced now. So that begs the question:
 8 Is the market demanding this project or are the
 9 PTCs, the production tax credits, and other
 10 subsidies driving it?

11 Even Warren Buffet said it outright almost
 12 a decade ago, "For example, on wind energy, we get
 13 a tax credit if we build a lot of wind farms. And
 14 that's the only reason to build them. They don't
 15 make sense without the tax credit."

16 The Wall Street Journal Editorial Board
 17 has been warning for years that climate policies
 18 would make the grid more vulnerable to vacillations
 19 in supply and demand. And here we are. Some still
 20 don't grasp the real problem: The forced
 21 transition to green energy is distorting energy
 22 markets and destabilizing the grid.

23 Some may ask why North American Coal would
 24 stand up here today to express our concerns. Why
 25 now? We are here to oppose being displaced.

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1 Ensuring long-term success to allow all of us to
 2 grow successfully is our goal. No longer can we
 3 stay silent and watch power producers send wind
 4 electrons down transmission lines built with
 5 revenue from our products to replace coal electrons
 6 in a distorted and unfair marketplace. New
 7 transmission, new load growth and plus-one models
 8 like we've seen from other producers are all
 9 business models we can support for local labor and
 10 continued economic development for all areas in
 11 this country, across the state and throughout the
 12 nation.

13 All of us want affordable and reliable
 14 power, and dispatchability of that power when it's
 15 needed most is key. Capital flows to where it is
 16 welcomed, and it stays where it is treated fairly.
 17 We are asking for fairness to be returned to the
 18 market that has been skewed against electricity
 19 produced with fossil fuels, not a free market as
 20 indicated earlier today.

21 Companies with plans to allow different
 22 energy sources with different attributes like
 23 baseload and intermittent power to complement each
 24 other instead of compete with each other in a
 25 distorted market have a business plan we can

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1 support. Not allowing one resource to displace the
 2 other and instead allowing both sources of
 3 electricity to work hand in hand with one another
 4 to maximize both is the direction we all need to be
 5 looking.

6 When power-producing projects complement
 7 one another, true flexibility is achieved to ensure
 8 the success of every type of power and allows all
 9 facilities to run at a higher capacity that meets
 10 the demands of consumers at all times, not
 11 intermittently.

12 Allowing the injection of a new source of
 13 electricity -- of electricity into an already full
 14 existing transmission system only causes
 15 electricity that's existing to be curtailed or
 16 displaced. New generation sources should invest
 17 their money in a new transmission line to the
 18 market.

19 According to *The Wall Street Journal*,
 20 "Electricity supplier Vistra has announced it will
 21 retire 6,800 megawatts of coal power by 2027,
 22 blaming an irreparably dysfunctional market and
 23 state renewable subsidies. The former is partly a
 24 result of the latter."

25 The electrical grid in North Dakota and

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1 the regional transmission operators coordinating
 2 the delivery of service to residents in our states
 3 needs assurance it will be able to take advantage
 4 of the power they produce at all times. The game
 5 of finger-pointing about who is responsible for
 6 that needs to end and policies needs to be put in
 7 place. There has to be a balance and it hasn't
 8 been balanced for quite a long time.

9 Today is the -- is the day to say no more
 10 intermittency, at least not without a firming
 11 requirement to help rebalance the grid toward
 12 reliable, affordable energy, and to assert
 13 America's need for energy independence. If the
 14 federal government won't help us, it's time we help
 15 ourselves.

16 Even just this past week, SPP issued a
 17 conservation operations advisory. MISO was also in
 18 a conservative operations warning for their south
 19 region. Increasing grid reliance on intermittent
 20 power is obviously not a wise path for us to
 21 continue to barrel down. Not without a plan in
 22 place to ensure high demand times can be met if the
 23 wind isn't blowing and the sun isn't shining. Grid
 24 reliability is not for sale.

25 Unlike transmission lines, the PSC does

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1 not have to approve an application for an energy
 2 conversion facility such as a wind farm. See the
 3 Century Code 49-22-08(5). It says, "The
 4 commissions may designate," and, "The Commission
 5 shall indicate the reason for any refusal of
 6 designation."
 7 The statement of policy in NDCC 49-22-02
 8 provides in part the Commission must consider how
 9 such a facility would affect the welfare of the
 10 citizens of this state and produce minimal adverse
 11 effects upon such welfare. It goes to provide that
 12 sites must be chosen which ensure continuing system
 13 reliability and integrity and ensuring that energy
 14 needs are met and fulfilled in an orderly and
 15 timely fashion. The question of system reliability
 16 should be considered.
 17 NDCC 49-22-08 lists the items that can be
 18 included -- or that must be included in an
 19 application. Note that one is a statement
 20 explaining the need for the facility. While the
 21 Commission cannot determine the need for the
 22 facility, the applicant must provide a statement of
 23 it. The Badger Wind application does not do so as
 24 it notes it has no off-taker and no purchase
 25 agreement for the power.

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1 NDCC 49-22-09 lists the factors the
 2 Commission is to consider in evaluating a wind farm
 3 application. Among the items to consider are
 4 alternatives to the proposed site which minimize
 5 adverse effects. Using existing coal facilities
 6 instead of building this particular wind farm
 7 certainly minimizes adverse effects.
 8 Also to be considered are the direct and
 9 indirect economic impacts of the proposed facility.
 10 Operation of this new facility potentially puts the
 11 coal plants and coal mines operating in this state
 12 in further economic jeopardy. The wind farm would
 13 replace electrons coming from coal facilities given
 14 the preference for renewable power as directed by
 15 federal policies. I outlined the economic impact
 16 of lignite in North Dakota, including the number of
 17 jobs in the industry.
 18 Another item that can be considered is
 19 available research and investigations relating to
 20 the effects of operation of the proposed facility
 21 on public health and welfare. What could be more
 22 detrimental to the public welfare than energy
 23 blackouts in the winter or even the summer?
 24 The reduction in the reliability of
 25 deliveries of electric power may be the best

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1 argument why additional wind farms in either SPP or
 2 MISO systems just increases the problems. MISO
 3 recently published the MISO's Response to the
 4 Reliability Imperative, which I have printed and
 5 handed out.
 6 On page 10 it states in part that the
 7 output of wind resources can fluctuate
 8 significantly which complicates MISO's efforts to
 9 maintain system reliability.
 10 On page 12 it states that increased
 11 reliance on renewable resources has altered the
 12 region's risk profile and that such risks occur in
 13 seasons of the year that did not pose challenges in
 14 the past.
 15 On page 13 MISO expects reliability risks
 16 to increase going forward as the region's resource
 17 mix continues to evolve. Further, the direction
 18 and magnitude of the continuing fuel mix changes
 19 that are forecast would likely exacerbate the
 20 reliability challenges described above.
 21 MISO knows renewables are the cause of
 22 reliability issues being experienced and that those
 23 reliability risks will increase as more renewables
 24 are added to the system. MISO acknowledges that
 25 given current state and federal policies, there is

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1 really little, if anything, that can be done about
 2 this pressing issue and that the public will have
 3 to live with blackouts on an increasing scale as
 4 more renewables are brought online. Approval and
 5 construction of this proposed project would only
 6 make all of this worse.
 7 We have an opportunity here to demonstrate
 8 we will not allow North Dakota to be a part of this
 9 calamity. Wind farms such as Badger Wind with no
 10 demonstration of need can be denied. The
 11 Commission must do what it can to protect the
 12 citizens of North Dakota. It must under power
 13 provided to it by the Siting Act protect the
 14 welfare of the public and do what it can to protect
 15 North Dakota from increased blackouts and system
 16 unreliability.
 17 If other states want to mandate renewable
 18 energy standards, so be it, but they accept the
 19 consequences. North Dakota will do what it can to
 20 protect the public and the economy of the state.
 21 But even with all of that said,
 22 Commissioners, we are not asking you necessarily to
 23 deny this wind farm. We are not asking you to deny
 24 the injection of capital into the local community
 25 and landowners. And we are not asking you to stop

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1 development.

2 We are asking you to not approve a plan

3 that isn't fully developed. This plan takes away

4 from an existing energy generation that is

5 supported by hardworking coal miners and power

6 plant workers. We are asking you to not take away

7 from one and give to another, as has happened so

8 often over the past decades.

9 We are asking you to not approve a plan

10 that will reduce the reliability of the electrical

11 grid all North Dakotans rely on for health, safety

12 and quality of life. Given the extreme temperature

13 ranges that exist within North Dakota seasons, it

14 is that same reliability that allows us to sustain

15 our way of life at winter's coldest moments.

16 We are asking you to ensure the coal

17 miners and power plant workers get a chance to

18 allow their efforts to continue and to allow the

19 grid to continue to accept those electrons. These

20 same workers have helped the North Dakota economy

21 become what it is today. What's ironic, and to

22 many insulting, is that the federal tax dollars

23 used to fund these projects are partially coming

24 out of these same workers' pockets.

25 Difficult decisions are in front of you

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1 today, Commissioners. One of the leaders in our

2 great state once said to me, "Commissioners are

3 tasked with choosing projects that divide neighbors

4 with relationships that have stood the test of time

5 for decades." It is not lost on me that many of

6 those landowners sit behind me today. "Until a

7 project comes into" -- "until a project like this

8 comes into the picture." We have seen the divides

9 that it can create.

10 The county planning and zoning group, the

11 county commissioners and you, the Public Service

12 Commission, have all been tasked to ensure as

13 projects move forward all voices are heard. And

14 that's why we stand here today. Our voice has been

15 silent, but we won't be any longer.

16 That completes my testimony.

17 JUDGE HOGAN: Thank you. Ms. Smith, do

18 you have any questions?

19 MS. SMITH: Thank you. Just a couple.

20 **EXAMINATION**

21 **BY MS. SMITH:**

22 Q. So, Ms. Bell, as I understand, the concern

23 particularly is with policy with respect to energy

24 and the grid; is that correct?

25 A. That's correct.

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1 Q. And a concern that market is demanding

2 renewables over some of the baseload resources; is

3 that correct?

4 A. That the market is more favorable to

5 renewables because of the pricing because of the

6 production tax credit, yes.

7 Q. So that would be the federal production

8 tax credit that you're talking about --

9 A. Correct.

10 Q. -- particularly?

11 So we're talking about a policy issue at

12 the federal or the state level to deal with this

13 issue?

14 A. Yes. That is correct.

15 Q. And you acknowledge in your statement on

16 page 5 in the second paragraph that the Commission

17 cannot determine a need for a facility; correct?

18 A. Correct.

19 Q. And so while I understand your statement,

20 you're more speaking towards a policy -- hopefully

21 a policy change within the federal or state

22 government; is that correct?

23 A. That is also correct. But also that the

24 burden of proof to show the need for the facility

25 should have been outlined in the application.

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1 MS. SMITH: Okay. That's fine. I have no

2 further questions.

3 JUDGE HOGAN: All right. Mr. Armstrong,

4 any questions.

5 MR. ARMSTRONG: No questions.

6 JUDGE HOGAN: Mr. Schock?

7 MR. SCHOCK: No questions.

8 JUDGE HOGAN: Commissioner Fedorchak?

9 COMMISSIONER FEDORCHAK: Thank you, Judge.

10 **EXAMINATION**

11 **BY COMMISSIONER FEDORCHAK:**

12 Q. Thank you, Jessica. So at the very end

13 you said, "Our voice has been silent but we won't

14 be any longer." And that's true. You guys haven't

15 spoken at a wind farm hearing before. Help me

16 understand the change. Why -- why have you chosen

17 to speak up now and what -- what concerns are you

18 specifically -- drove you guys to take that step?

19 A. I'm -- I'm sure everybody here has heard

20 of the challenges that the coal industry has faced

21 in North Dakota over the past, say, two and a half

22 years specifically and the near potential closure

23 of Coal Creek Station. So I think the erosion of

24 the market really hit home for a lot of us within

25 our company. And coupled on top of that, a project

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1 like this specifically with no off-taker, with no
2 customer, allows us the opportunity to talk about
3 that displacement that happens with a project with
4 no off-taker as compared to projects that work
5 directly with the customers that we sell our coal
6 to, typically a utility or a cooperative.
7 They can develop a plan to -- like I
8 referred to in my testimony, we like to call it a
9 plus-one plan where you can develop other resources
10 on site to ensure that there isn't a degradation of
11 electrons from intermittent power so you don't have
12 to cycle -- and I didn't read the cycling part of
13 my testimony but it's included -- so you don't have
14 to cycle a power plant. They weren't built for
15 that.

16 And so rather than -- a project like this
17 would require more cycling of our facilities, but
18 the plus-one projects allow for everything to run
19 all the time to meet the demands of the electric
20 market. So that's why this project is different.

21 Q. Okay. So help me understand what you mean
22 by plus-one. That's a new term to me.

23 A. Okay. So a plus-one project, which I
24 think you'll hear a little bit more about later
25 today as well, is when you can pair a renewable

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1 facility with a traditional facility and ensure
2 that on site at that traditional coal-fired
3 facility you have ways to utilize excess power or
4 an additional room on a transmission line to ensure
5 that that power can get to market with having to
6 reduce your coal-fired units.

7 So you could, for example, use a data
8 center on site to make sure that if you've got too
9 much power from both your renewable and your
10 intermittent source and your conventional source,
11 that that data farm can use up that extra
12 electricity on site and you can still run the
13 coal-fired power plant and the intermittent wind
14 resource at the same time.

15 Q. And are you speaking about facilities that
16 could be -- do they have to be in the same
17 location, or could you team up a Badger Wind with a
18 coal facility in North Dakota and another data
19 center, something like that, and have a three-way
20 power use and production that isn't colocated?

21 A. I think as long as there are investments
22 made in transmission lines to ensure that something
23 like that is actually physically capable of
24 happening, absolutely, and that would be the
25 direction we would love to steer companies who are

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1 looking to make investments.
2 Q. Okay. So is that when you -- in your
3 testimony you say, "We're asking you to not approve
4 a plan that isn't fully developed," is that what
5 you're referring to, or what would make this plan
6 fully developed in your mind?

7 A. Well, specifically, Commissioner, a
8 complete application to prove the need for the
9 project, which I think would tie back in to that
10 plus-one concept.

11 Q. Okay. So if they find an off-taker for
12 the power, does that prove the need?

13 A. As long as electrons are not displacing
14 the electrons that are being produced from our
15 fossil fuel industry in North Dakota.

16 Q. And how does somebody like me measure
17 that, or anybody for that matter? I'm not even
18 sure MISO can measure that.

19 A. That is the challenge that is in front of
20 us right now as we watch our national policies try
21 and adjust to this environment.

22 Q. Yeah. I mean, they just -- they market
23 them based on price which is why, you know, when
24 you have a negative price with the production tax
25 credit you can underbid everybody else and -- so

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1 you'd have to fundamentally change the structure of
2 the market in order to favor one over the other, it
3 feels like.

4 Okay. One last little area of question.
5 You're a lawmaker currently and have been for a
6 number of years, so you know that everything we do
7 is grounded in the law and what we can and cannot
8 consider. I was looking for my little summary of
9 the issues before us today. Basically a lot of it
10 has traditionally been focused -- a lot of our
11 hearings have traditionally been focused on the --
12 pretty strictly the environment -- yeah, thank you,
13 Sheri -- the environmental impact and minimizing
14 the impact to the environment and to the citizens.

15 It feels like you're emphasizing more the
16 third bullet, which is ensuring continuing system
17 reliability and integrity and that energy needs are
18 met and fulfilled in an orderly and timely fashion.

19 How do we -- so you're referring to --
20 you're questioning this project as it relates to
21 those criteria in your testimony. How do we
22 measure that, how this project affects system
23 reliability and integrity and ensures energy needs
24 are met and fulfilled in an orderly and timely
25 fashion? If we were to say that it fails in doing

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1 that, what would we point to?

2 **A.** Well, I wanted to revisit the previous

3 comment that you made about how would you evaluate

4 whether a project is plus-one or not. I think

5 that's something that could very well be

6 demonstrated in a hearing like this, especially in

7 the first half of the hearing. I think if projects

8 that I can see in the future come to fruition, that

9 would be part of the data that would be presented

10 to you on the front end of the application.

11 As far as the confines that you have

12 regarding the Century Code and what you can

13 consider for a project like this and what you

14 can't, yes, I focused on system reliability. Yes,

15 that's incredibly difficult for us to measure.

16 As I mentioned in my testimony, the game

17 of finger-pointing on who is responsible for

18 reliability has been going on for a very long time

19 and something that I have been challenged with in

20 my time of public service.

21 But the things that I would specifically

22 point out to you that I did not read aloud are the

23 burden of proof that Badger Wind has and the

24 different ways that that was not met. It would be

25 on the third-to-last page of my testimony, items A

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1 through I are listed there. Hopefully that's

2 helpful as you -- as you go through your

3 decision-making process here.

4 COMMISSIONER FEDORCHAK: Okay. Thank you

5 very much. Appreciate it.

6 MS. BELL: Thank you, Commissioner.

7 JUDGE HOGAN: Commissioner Christmann.

8 **EXAMINATION**

9 **BY COMMISSIONER CHRISTMANN:**

10 **Q.** I want to clarify North American Coal's

11 activity in North Dakota before we get into the

12 rest of my questions. So is it North American's

13 strategy to serve the coal needs of electric

14 generation facilities operated by Basin Electric

15 Power, kind of a partnership between Otter Tail and

16 MDU at the Coyote plant and Rainbow Energy over

17 at -- near Underwood?

18 **A.** Yes, Commissioner.

19 **Q.** And how do you describe that business

20 relationship where large, huge investments of money

21 go up and kind of serve one another? Is it fair to

22 call that an exclusive business arrangement that

23 you provide the coal, they use it to make their

24 product?

25 **A.** Yes.

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1 **Q.** Are you aware of a similar model that has

2 operated for decades between BNI Coal and Minnkota

3 Power?

4 **A.** Yes.

5 **Q.** Does your customer, Basin Electric

6 specifically, also generate electricity from

7 natural gas from separate sites?

8 **A.** Yes.

9 **Q.** Does Basin Electric also generate

10 electricity from wind farms?

11 **A.** Yes.

12 **Q.** And there was a term thrown out by you and

13 by Mr. Pranis that I usually don't like because

14 it's been used a lot to mislead people and that's

15 "all of the above," but when it's used in its

16 literal term, it's important and I think that's the

17 way you meant it. So based on how you just

18 described Basin Electric, could that be called an

19 all-of-the-above strategy?

20 **A.** I believe so, Commissioner.

21 **Q.** Is it fair to say they're balancing their

22 needs in the best interests of their members?

23 **A.** I think that is up to the membership.

24 **Q.** Does Otter Tail Power also create energy

25 from natural gas at separate facilities?

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1 **A.** I believe so.

2 **Q.** Do they also have electric generation for

3 wind farms?

4 **A.** Yes.

5 **Q.** So that's also an all-of-the-above

6 strategy?

7 **A.** Yes.

8 **Q.** Does MDU have natural gas generation?

9 **A.** Yes.

10 **Q.** Do they have wind farm generation?

11 **A.** Yes.

12 **Q.** So all --

13 MS. SMITH: Excuse me, I have to say I

14 don't know how this witness has the ability to

15 answer these questions because they're questions

16 about utilities' operations and -- and no offense,

17 Ms. Bell, but I know that you're not representing

18 them in this -- in this particular exchange. So I

19 would just question that she can answer the

20 questions or has the underlying ability to answer

21 them.

22 COMMISSIONER CHRISTMANN: Your Honor, I

23 think we established that North American Coal, who

24 she represents, has a business -- or exclusive

25 business arrangement with each of these companies.

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1 JUDGE HOGAN: Can you maybe just elaborate
 2 on the basis of the answers for those questions.
 3 THE WITNESS: Yes, I can. North American
 4 Coal Corporation exclusively sells their coal to
 5 designated customers at designated facilities as
 6 the commissioner had outlined, both to Basin
 7 Electric Power Cooperative, Otter Tail Power and
 8 MDU cooperative and Rainbow Energy.
 9 MS. SMITH: And perhaps I should clarify,
 10 I have no -- absolutely no concern at all about
 11 speaking to the relationship between North American
 12 Coal and their service provider. I think it's more
 13 going into the natural gas and wind which are not
 14 within the contracts that they're dealing with.
 15 JUDGE HOGAN: As a supplier to those
 16 companies, are you aware of their -- I don't
 17 know -- overview of their -- the business and the
 18 type of energy sources they're taking in? Maybe
 19 you can talk about that angle.
 20 THE WITNESS: Yes, I am. Our
 21 relationships with our customers are extensive.
 22 Obviously if we're going to engage in long-term
 23 contracts with our customers, we need to ensure
 24 that we understand their business model as a whole.
 25 And I think it's important to note that we work

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1 very closely with them on many different issues,
 2 including our specific contracts, but also the
 3 challenges that we've talked about here today in
 4 the electrical markets.
 5 JUDGE HOGAN: And I don't know if that
 6 covers your concern, Ms. Smith, or if you want to
 7 place a formal objection on the record.
 8 MS. SMITH: No. I think as long as it's
 9 limited to the expertise of the witness, I think
 10 that's fine.
 11 JUDGE HOGAN: Okay. Go ahead,
 12 Commissioner.
 13 Q. (COMMISSIONER CHRISTMANN CONTINUING) So
 14 one last one. Does North American just work hand
 15 in hand with Rainbow Energy to build a business
 16 plan to take over that Coal Creek Station?
 17 A. (Nods head.)
 18 Q. Is Rainbow Energy also in the natural gas
 19 business?
 20 A. Yes.
 21 Q. And have they publicly talked about adding
 22 wind generation to their mix?
 23 A. Yes.
 24 Q. Okay. Are you familiar from your work in
 25 the energy industry with U.S. Energy Information

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1 Administration data showing the U.S. lost over a
 2 third of the U.S. coal-fueled generation from 2011
 3 to 2020?
 4 A. Yes.
 5 Q. You mentioned that MISO expects that
 6 reliability risks will increase as the resource mix
 7 continues to evolve in your testimony. Were you
 8 referring to the evolution toward more wind
 9 generation?
 10 A. Yes, I was, Commissioner. And as well as
 11 other intermittent sources of electricity. MISO
 12 held a capacity auction earlier this year and
 13 reliability was valued about 250 percent higher
 14 than it typically is.
 15 Q. Are you familiar with projections of
 16 massive coal fleet retirements in both MISO and SPP
 17 in the next six to eight years?
 18 A. Yes, I am.
 19 Q. From your work in the industry, do you
 20 believe that -- that the build-out of wind
 21 generation that we've seen since 2010 and the
 22 additional build-out that we anticipate during this
 23 decade is causing many of those coal retirements?
 24 A. I believe it is an across-the-board set of
 25 problems, Commissioner. Not only is the market a

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1 problem for traditional fossil fuel facilities as I
 2 outlined, but other EPA programs as well, such as
 3 regional haze, can cause issues when coupled with
 4 the eroded marketplace.
 5 Q. And will a project like this operating as
 6 has been discussed by the company earlier, will
 7 that displace existing electric generation in North
 8 Dakota?
 9 A. Typically, for a project like this, yes,
 10 that is how it works, and I believe that was
 11 testified to earlier as well.
 12 Q. And you mentioned cycling costs from the
 13 MISO report. Would you -- my understanding of that
 14 is that traditional coal generation plants as well
 15 as combined cycle gas plants are made to run
 16 consistently and the cycling up and down adds a lot
 17 to their maintenance costs. Is that what you mean
 18 by cycling costs?
 19 A. I do, Commissioner, and if you'd like, I
 20 could read just a little bit more from my testimony
 21 like that. Operating a coal-fired power plant at
 22 full capacity is not only built into the business
 23 model, it's engineered into the facility.
 24 Coal-fired power plants are not designed to cycle,
 25 a phenomenon the industry has been challenged with

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1 since the federal production tax credit for wind
 2 came into existence. Cycling not only reduces the
 3 amount of electricity available for the plant to
 4 sell, it increases the maintenance costs, and then
 5 those costs -- those increase in costs are passed
 6 directly on to the consumers and businesses that
 7 are part of the electrical grid system.
 8 Q. Would -- so those cycling costs that --
 9 ends up raising the cost of the electricity when it
 10 is used; correct?
 11 A. Correct.
 12 Q. Would you consider that an adverse impact
 13 on the citizens?
 14 A. Absolutely.
 15 Q. And do you believe this project will
 16 reduce the reliability of the electric grid?
 17 A. Yes.
 18 Q. And would you consider that an adverse
 19 impact on the citizens?
 20 A. Yes.
 21 COMMISSIONER CHRISTMANN: Thank you. I
 22 have no other questions.
 23 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 24
 25

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1 **EXAMINATION**
 2 **BY COMMISSIONER HAUGEN-HOFFART:**
 3 Q. You indicated that this would reduce the
 4 reliability of the grid. Can you further explain
 5 that to support your statement?
 6 A. Yes, Commissioner. If you would take a
 7 look -- I didn't keep a copy for myself -- but at
 8 the MISO reliability report that I handed out to
 9 all of you, you'll find multiple references in
 10 there about how intermittent wind projects erode
 11 the reliability of the system.
 12 COMMISSIONER HAUGEN-HOFFART: Thank you.
 13 I have no further questions.
 14 JUDGE HOGAN: I think I forgot you,
 15 Mr. Pranis. I apologize. Do you have any
 16 questions?
 17 MR. PRANIS: Thank you. Yes. Just one
 18 question.
 19 **EXAMINATION**
 20 **BY MR. PRANIS:**
 21 Q. And I first want to say I appreciate your
 22 lifting up the importance of coal to the local
 23 economy. Our members work at Leland Olds, Coyote,
 24 et cetera, and so this has been huge for us and a
 25 challenge.

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1 The question I have for you is I
 2 understand the concern about sort of merchant power
 3 or wind power and what impact it has on the market.
 4 The part that I don't -- to what degree are you
 5 concerned, however, if the Commission were, for
 6 example, to not approve this project, if it doesn't
 7 happen, given the way the MISO process works, that
 8 interconnection capacity doesn't just get filled by
 9 another very similar project. As I'm sure you're
 10 aware, there are hundreds of very similar projects
 11 in the queue, and so it's not clear to me that this
 12 project not happening would make any difference at
 13 all in terms of what power gets injected into the
 14 grid, because as you point out, there are policy
 15 drivers and market drivers that -- you know, and I
 16 think literally hundreds of projects in queues
 17 waiting in case one falls.
 18 A. Thank you. And you are correct. There
 19 are a lot of different projects in the queue and I
 20 know costs have been increasing. What -- what we
 21 are saying here today is that -- well, and what
 22 you -- what you actually just outlined is the game
 23 of finger-pointing that I referred to in my
 24 testimony.
 25 We frequently hear, well, FERC is

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1 responsible. No, the RTO is responsible. No, the
 2 utility is responsible. No, the state policymakers
 3 are responsible; the local county commissions; the
 4 Public Service Commission. It's time for somebody
 5 to take responsibility, and we felt like now is the
 6 time for us to step up and start to try and figure
 7 out exactly how that works.
 8 MR. PRANIS: Thank you.
 9 JUDGE HOGAN: All right. Are there any
 10 other questions? All right. Seeing none, do you
 11 have an extra copy of your testimony and materials?
 12 I didn't get a copy and I need a copy for the
 13 record.
 14 MS. BELL: I --
 15 JUDGE HOGAN: If you can just get that to
 16 me, that's fine.
 17 MS. BELL: Yes. Yes, I do. Thank you.
 18 JUDGE HOGAN: Thank you.
 19 All right. Who would like to go next?
 20 COMMISSIONER FEDORCHAK: Judge, just a --
 21 just a comment on public testimony. As we move
 22 forward through this, I looked through the list and
 23 there seems to be like maybe 14 or 15 people. And
 24 speaking from experience, as things get going, a
 25 lot of people tend to come up, and I just -- the

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1 judge went through some of this. We are here to
 2 hear from you, so this is not meant to curtail you,
 3 but I do want to also just say we don't have like a
 4 measurement if there was ten for and ten against or
 5 nine against so the fors win. Like we don't have
 6 that kind of measurement. So don't feel pressured,
 7 like, if you're on one side or another, that you
 8 have to have more people saying on your side than
 9 the other side to get your way. It doesn't work
 10 like that.
 11 We're taking -- you know, we have to base
 12 this decision on the factors and the law. So as
 13 much as you can tie it to those, that would be very
 14 helpful. And then also, you know, maybe one
 15 representative per family is good. You can kind of
 16 summarize what your family thinks. That is also
 17 perfectly acceptable. And it allows everybody from
 18 each family who wants -- every family to get up
 19 there in a timely manner and not have multiple
 20 people from each family speaking.
 21 So not that you can't. I'm just saying
 22 there's no, like, score card here that we are
 23 keeping track of, like the fors have it or the nays
 24 have it. So just tell us what you -- tell us what
 25 your thoughts are, and don't feel pressured by

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1 those types of things. So thank you.
 2 JUDGE HOGAN: Thank you, Commissioner.
 3 Can I get your name?
 4 MR. NEHRING: Yes, Your Honor. My name is
 5 Dave Nehring. N-e-h --
 6 JUDGE HOGAN: Do you want to spell your
 7 last name?
 8 MR. NEHRING: N-e-h-r-i-n-g.
 9 JUDGE HOGAN: And were you in the room
 10 earlier when I went through the penalties for
 11 perjury?
 12 MR. NEHRING: I was.
 13 JUDGE HOGAN: Do you understand what
 14 perjury is?
 15 MR. NEHRING: I do.
 16 (Witness sworn.)
 17 JUDGE HOGAN: All right. Thank you. Go
 18 ahead.
 19 **DAVE NEHRING,**
 20 being first duly sworn, was examined and testified
 21 as follows:
 22 **STATEMENT**
 23 **BY MR. NEHRING:**
 24 MR. NEHRING: Thank you. Good afternoon
 25 Commissioners and Staff. For the record, my name

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1 is Dave Nehring. I'm here as a ratepayer and a
 2 taxpayer.
 3 Over the last few years in North Dakota,
 4 we have heard the term "all of the above" when it
 5 comes to energy generation, and all of the above
 6 has been an accepted practice. Well, with the fact
 7 that the market penetration of intermittent energy
 8 has reached or exceeded 30 percent of the total
 9 generation in our state and that the negative
 10 impacts on our reliability, our rates and our
 11 state's economy, all of the above is becoming some
 12 of the above displacing some of the other above.
 13 Based on the direct quotes taken from
 14 Ørsted's website and the white paper included on
 15 it, their plan is not to consider -- is to not
 16 consider their wind and solar portfolios as a
 17 percentage of a balanced portfolio, but rather to
 18 completely displace all fossil fuel generation by
 19 2025.
 20 Let's consider some of the impacts of
 21 this. I'd like to offer some direct comparisons in
 22 North Dakota of jobs, income and state revenues
 23 broken down per 1,000 megawatts of generation.
 24 Direct jobs for coal per 1,000 megawatts,
 25 975. Jobs for wind per thousand, 45.3, a factor of

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1 21.3.
 2 Indirect jobs, 2,525 per thousand
 3 megawatts. Indirect for wind per thousand, 121, a
 4 factor of 20.3. It can't be overstated how
 5 important these coal jobs are to North Dakota's
 6 economy.
 7 The labor income for coal per thousand
 8 megawatts, 255 and a half million dollars. The
 9 same number for wind, \$14 million, a factor of 18
 10 and a quarter.
 11 State and local revenues, Jessica provided
 12 that earlier.
 13 The gross business volume again per
 14 1,000 megawatts is 1.425 billion for coal, 58
 15 million for wind. That's a factor of 24 and a
 16 quarter.
 17 We heard earlier about the benefits to the
 18 counties, townships and schools. As a baseline
 19 figure, the NDSU research provided some numbers
 20 that coal provides roughly \$1,500 annually per K-12
 21 student to our state schools. Using the formula to
 22 determine this project's economic resources to the
 23 local schools, the end result after state
 24 foundation aid reductions show that the actual
 25 annual revenues from this project will be just over

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1 \$64,000 to the schools within the footprint.
 2 Considering the possibility of loss of
 3 coal revenues, that works out to only 43 students
 4 at \$1,500 per student. Again, we cannot overstate
 5 the importance of the lignite industry to North
 6 Dakota.
 7 Now let's consider the increase in
 8 electrical rates to our consumers. In a recent
 9 article titled "Electricity Prices Soaring in Wind
 10 Power States" -- "Top Wind Power States," the top
 11 ten wind power states had increases in electricity
 12 prices that rose at least five times faster than
 13 the national average. And in an Xcel Energy
 14 presentation to the Midwest Governors Association,
 15 they stated that costs for electricity increased
 16 steeply over 60 percent penetration of intermittent
 17 sources and that the transmission build-out would
 18 necessarily be up to eight times the current
 19 transmission.
 20 Finally, we've seen firsthand the impact
 21 of too much intermittent generation. We
 22 experienced it in February 2021 with the Texas
 23 event causing supply shortages and triggering
 24 blackouts all the way to North Dakota.
 25 Mark P. Mills in his testimony before the

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1 North Dakota house finance and taxation hearing on
 2 House Bill 1458 offered the following facts. He
 3 quoted Arthur C. Clarke stating, "On the first year
 4 of the 21st century, the National Academy of
 5 Sciences published a list of the most important
 6 inventions of the previous 100 years. Number one
 7 was the electric grid." In the afterword, Clarke
 8 wrote about how easy it is for us to take
 9 historical accomplishments so completely for
 10 granted and that the harnessing and taming of
 11 electricity, first for communication and then for
 12 power, is the event that divides our age from all
 13 those that have gone before us.
 14 Unlike the modern era, economic and social
 15 progress had been hobbled by the episodic nature of
 16 energy availability. In our data-centric,
 17 increasingly electrified society, always available
 18 power is more vital than ever. That's why more
 19 than 90 percent of America's electricity comes from
 20 sources that can operate whenever needed.
 21 For hydrocarbon-based systems in
 22 particular, availability is achieved by storing
 23 fuel. On average, energy and electricity supply
 24 chains store about one to two months' worth of
 25 demand at any given time, and it costs less than \$1

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1 per barrel to store oil or natural gas for a couple
 2 of months. Storing coal is even cheaper. To store
 3 an equivalent amount of energy in today's batteries
 4 costs roughly \$200. Even that understates the real
 5 costs of storing wind energy because one also needs
 6 to build excess capacity to meet both peak demand
 7 and have enough extra to have a surplus to store.
 8 In closing, the consequences of having a
 9 small share percentage of America's electricity
 10 supplied by intermittent power has been compensated
 11 for by the availability of conventional generation.
 12 That cover evaporates as the share of intermittent
 13 power rises and the free backup from power plants
 14 in neighboring states disappear as they too pursue
 15 the same path.
 16 That concludes my testimony.
 17 JUDGE HOGAN: All right. Thank you.
 18 Ms. Smith, any questions?
 19 **EXAMINATION**
 20 **BY MS. SMITH:**
 21 Q. I just had a question of -- where do you
 22 live? We usually ask where -- for that
 23 information.
 24 A. I live east of Bismarck.
 25 Q. Okay. So you do not live here in Logan or

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1 McIntosh?
 2 A. That's correct.
 3 MS. SMITH: Okay. I don't have any other
 4 questions. Thank you.
 5 JUDGE HOGAN: Mr. Armstrong, any
 6 questions?
 7 MR. ARMSTRONG: No questions.
 8 JUDGE HOGAN: Mr. Schock?
 9 MR. SCHOCK: No questions.
 10 JUDGE HOGAN: Mr. Pranis?
 11 MR. PRANIS: No, Your Honor.
 12 JUDGE HOGAN: Commissioner Fedorchak.
 13 COMMISSIONER FEDORCHAK: Thank you, Judge.
 14 Thank you, Dave. Appreciate your testimony today.
 15 And this is an issue that we all spend a lot of
 16 time working on, the reliability issues, and both
 17 Randy and I are deeply involved in both MISO and
 18 SPP, so we're very familiar with the challenges of
 19 this transition.
 20 It hasn't sort of intersected with siting
 21 this directly in the past, so, you know, there -- I
 22 have to think about it, you know, in a different
 23 way as it relates to this specific project. And,
 24 you know, while I don't disagree that wind -- you
 25 know, the siting and permitting and constructing

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1 more and more wind without increasing the
2 availability of the dispatchable resources does
3 cause reliability concerns. We're seeing it. It's
4 happening.

5 How to tie -- you know, how to judge the
6 impact of this project on that issue is challenging
7 and has to be done fairly, you know. So I'll think
8 a lot about what you've offered, what Jessica
9 offered as it relates to this case, and I guess
10 we'll see where it goes. But appreciate you guys
11 bringing these issues forward and we'll take them
12 under consideration.

13 MR. NEHRING: Thank you, Commissioner.

14 JUDGE HOGAN: Commissioner Christmann.

EXAMINATION

15 **BY COMMISSIONER CHRISTMANN:**

16 **Q.** You listed a lot of statistics and I
17 didn't get them all down, but one of them was 975
18 jobs per thousand megawatts of generation from coal
19 and then you had the same category, but what was
20 the job total with wind?

21 **A.** I do have copies of my testimony for you,
22 Commissioner.

23 **Q.** Those will be handed out?

24 **A.** Yep.

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1 COMMISSIONER CHRISTMANN: Excellent.
2 Thank you.

3 JUDGE HOGAN: Did you have other
4 questions, Commissioner?

5 COMMISSIONER CHRISTMANN: I do not.

6 JUDGE HOGAN: All right. Commissioner
7 Haugen-Hoffart.

8 COMMISSIONER HAUGEN-HOFFART: Dave, thank
9 you for your testimony. I have no further
10 questions.

11 MR. NEHRING: Thank you.

12 JUDGE HOGAN: All right. Thank you,
13 Mr. Nehring.

14 Good afternoon. Can I get your name and
15 do you want to spell your last name for the record?

16 MR. PIERCE: My name is Mark Pierce. Last
17 name is P-i-e-r-c-e.

18 JUDGE HOGAN: Mr. Pierce, were you in the
19 room earlier when I went through the penalties for
20 perjury.

21 MR. PIERCE: Yes, Your Honor.

22 JUDGE HOGAN: And do you understand what
23 perjury is?

24 MR. PIERCE: Yes, Your Honor.

25 (Witness sworn.)

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1 JUDGE HOGAN: All right. Thank you. And
2 can you just state for the record where you live or
3 what your address is.

4 **MARK PIERCE,**
5 being first duly sworn, was examined and testified
6 as follows:

7 **STATEMENT**

8 **BY MR. PIERCE:**

9 MR. PIERCE: You bet. Again, my name is
10 Mark Pierce. I'm a coal miner from Beulah, North
11 Dakota. I'm here on behalf of Faces of North
12 Dakota Coal. It's a grassroots advocacy group that
13 I had started by accident in 2019.

14 Starting off, I'd like to thank you all
15 for the opportunity to testify today on behalf of
16 thousands of coal miners and power plant workers in
17 North Dakota coal country.

18 We are currently living in history. These
19 are truly very interesting and challenging times.
20 We owe much of this to the uncertainty of federal
21 policy coming out of Washington, D.C. Inflation,
22 interest rates, commodity prices, et cetera, are
23 hurting good people more and more as each day
24 passes. Sadly, this is the exact environment that
25 my livelihood has been dealing with for over a

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1 decade. Yet we are still here today doing the same
2 work to provide energy our society needs.

3 How long will we be able to continue to
4 provide the critical baseload electricity?

5 Honestly, I don't know, but a lot of that depends
6 on decisions made regarding issues like we are
7 testifying on here today.

8 Today is the most important day for my
9 livelihood and tomorrow may be yours. Access to
10 affordable, reliable electric power is the single
11 greatest eradicator of poverty in human history.
12 This project and many others proposed like it
13 threaten the very electric grid stability that we
14 have grown to take for granted.

15 We as a society can no longer be able to
16 ignore the reality of what we have allowed to
17 happen to our electric grid. We are sacrificing
18 our one last global competitive advantage, which is
19 reliable, affordable electricity. Very few places
20 in the globe have what we have.

21 I have devoted a lot of my personal time
22 over the last several years to advocating for my
23 industry. I have found our coal industry is one of
24 the most misunderstood industries. People do not
25 understand what they don't know. Unfortunately,

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1 our story of prosperity in coal country and the
 2 vast benefit we provide to society is rarely told.
 3 If told, it is seldom told accurately in today's
 4 hyperpolarized world.
 5 This led me to start in 2019 Faces of
 6 North Dakota Coal. Follow me on Facebook. We are
 7 a grassroots organization dedicated to telling the
 8 great story of coal country from the perspective of
 9 those of us who live and breathe it each and every
 10 day.
 11 Humanizing our industry and putting a face
 12 to the black rock and the electron we produce is an
 13 aspect that most never even consider. Our motto is
 14 People, Families, Communities, and it is far
 15 reaching from ours to yours.
 16 Over a decade ago, our industry began to
 17 question the direction federal policy was taking
 18 our electric grids with the never-ending
 19 subsidization of intermittent energy. Many spoke
 20 about the potential consequences replacing baseload
 21 energy with intermittent energy would likely bring
 22 to your electric grids. It fell on deaf ears for
 23 years because nothing happened. Our electric grid
 24 infrastructure had excess capacity that was able to
 25 absorb the redundant build-out of generation.

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1 Today that is no longer the case. We are
 2 now at a point of displacing baseload electrons
 3 with intermittent electrons. This displacement by
 4 subsidized energy has been undermining the
 5 economics of traditional energy, putting our
 6 baseload plants at risk of closure. Many plants
 7 throughout the Midwest have succumbed to this
 8 economic pressure.
 9 There is no doubt in my mind that this
 10 project if built as proposed would do irreparable
 11 harm to some of our critical baseload
 12 infrastructure in North Dakota. Fortunately for
 13 me, you don't have to rely on my words to see this
 14 quite clearly. It is plainly clear from the
 15 information the two grid operators serving North
 16 Dakota have on their respective websites.
 17 In here I have some detail of MISO's grid
 18 level notifications since May 13. So far, MISO's
 19 2022 has been quite interesting in their efforts to
 20 maintaining the juggling act of grid stability that
 21 used to be an afterthought. Air traffic
 22 controllers have nothing over on MISO's grid
 23 operators.
 24 And I -- I do have the actual
 25 notifications copied and pasted in my testimony.

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1 May 13, max gen alert for the entire footprint.
 2 May 18, oh, a max gen alert. What that means is
 3 every available plant that is scheduled to be on
 4 needs to be on and operating to its fullest
 5 potential.
 6 May 31, MISO declares conservative
 7 operations for reliability coordinator footprint.
 8 June 15, max gen alert again. Two days later on
 9 June 17, MISO declares conservative operations for
 10 the reliability coordinator's footprint. Then six
 11 hours later, they up it to a capacity advisory. So
 12 there are different levels to this. It happened on
 13 the same day.
 14 Then on June 21, MISO issued three
 15 declarations all at once for the entire region. A
 16 hot weather alert, a conservative operations and a
 17 capacity advisory. Now mind you, all of these
 18 alerts are just since May 13.
 19 In addition, the proposed location for
 20 this wind farm would be an area of -- would be in
 21 an area of MISO's footprint that is already known
 22 to be an area of high congestion and binding
 23 constraints. Without a significant investment in
 24 transmission infrastructure that is not disclosed
 25 currently, it is hard to fathom why anyone would

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1 propose this project in this location. Why would
 2 you develop and sell a product in a marketplace
 3 that frequently has negative pricing without a
 4 commitment of a power purchase agreement from a
 5 utility? The answer can only be to harvest the
 6 lucrative tax credits our federal policy provides,
 7 in my opinion.
 8 And then in here I have an example of
 9 negative pricing taken right off MISO's website
 10 from yesterday, June 27, and I -- I circled the
 11 area that is negative pricing, and today I am
 12 sitting in the middle of that area. And I've got
 13 all the data -- current grid data at the time of
 14 that occurrence.
 15 To a lesser extent, North Dakota's other
 16 grid operator struggles with much of the same
 17 dynamics. Below is a capacity advisory issued for
 18 the SPP on June 22, 2022. The Southwest Power Pool
 19 is a much smaller grid in terms of electric load
 20 and frequently experiences negative pricing
 21 throughout its footprint.
 22 I understand there are many factors
 23 involved in a permit evaluation. In my opinion, my
 24 testimony and the information I provided is as
 25 critical of a factor as any, if not more so.

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1 Someone has to draw the line in the sand at some
 2 point and say that we can't continue to serve the
 3 greater good of society if we continue down this
 4 path.

5 With all I have presented, too often our
 6 detractors paint our grassroots group as anti wind
 7 and anti business. Nothing can be farther from the
 8 truth. Yes, it is true we dislike the unlevel
 9 playing field that federal policy has created
 10 giving wind developers an unfair advantage in the
 11 marketplace. Yes, it is true that we have
 12 supported county level policy that has restricted
 13 wind development in coal country to avoid the
 14 transmission congestion that has plagued many
 15 baseload plants throughout the Great Plains.
 16 Neither of those facts will change.

17 The honest truth, though, is that we
 18 support value-added wind development. And earlier
 19 Jessica had talked about a plus-one -- a plus-one
 20 value added. I'll go into some detail on what a
 21 plus-one value added is from my perspective. I
 22 have actually spent a lot of time advocating for
 23 this and actually have spent time with the Governor
 24 and the Lieutenant Governor also explaining what
 25 the plus-one scenario is and how wind can help coal

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1 and how coal can help wind in North Dakota.
 2 So the honest truth, though, is we support
 3 value-added wind development that is a true
 4 comprehensive energy solution for North Dakota. We
 5 always have and we always will. Wind has an
 6 opportunity to be a plus-one for North Dakota, but
 7 most people don't understand the complexities
 8 required to make that happen.

9 There is currently a McLean County project
 10 that appears at face value to be the prototype for
 11 the plus-one model that will not displace
 12 coal-fired baseload electrons to accommodate the
 13 windblown intermittent electrons. It is a project
 14 that would feed and maximize the capacity of an
 15 HVDC line to Minnesota. It avoids the North Dakota
 16 AC grid in its entirety. Minnesota would get the
 17 intermittent renewables they want and, more
 18 importantly, the baseload they need. All of this
 19 will take place without negatively impacting the
 20 people, families and communities in coal country or
 21 North Dakota.

22 You may hear "coexist," "grow the pie" and
 23 "all of the above" tag lines from elected
 24 officials. They sound great and make for good
 25 campaign slogans, but most don't understand the

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1 physics behind the rhetoric.
 2 In the last legislative session, sound
 3 energy bills that were designed to facilitate that
 4 rhetoric into becoming reality were killed before
 5 they were introduced in committee or watered down
 6 in committee. The plus-one opportunity slipped
 7 through North Dakota's fingers in large part
 8 because of the powerful lobbyists representing the
 9 wind interests.

10 In summary, this project does not appear
 11 to fit the plus-one economic model we advocate for
 12 benefiting North Dakota. Respectfully submitted,
 13 Mark Pierce, Founder, Faces of North Dakota Coal.

14 And for the record, I'd also like to add
 15 that I've been watching the MISO grid and the SPP
 16 grid on my phone all day today. Since about ten
 17 o'clock this morning, this area has been a negative
 18 LMP pricing area in MISO all day today. So, again,
 19 binding constraints. And it's listed as the
 20 Tatanka over by Ellendale is where the binding
 21 constraint is. That's why -- why put more
 22 electricity into a congested area?

23 JUDGE HOGAN: Thank you, Mr. Pierce. And
 24 just so the record's clear, are you testifying on
 25 your own behalf or on behalf of a representative of

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1 your organization today.
 2 MR. PIERCE: I'm the founder of Faces of
 3 North Dakota Coal.
 4 JUDGE HOGAN: Okay. And then were you
 5 going to submit comments -- or your written
 6 comments for the record.
 7 MR. PIERCE: Yes, I plan to. I also will
 8 submit another individual's comments that couldn't
 9 be here today. They do have them signed and I will
 10 submit those as well.
 11 JUDGE HOGAN: Okay. All right. Thank
 12 you.
 13 Ms. Smith, did you have any questions?
 14 MS. SMITH: No, I don't have any
 15 questions. Thank you.
 16 JUDGE HOGAN: All right. Mr. Armstrong.
 17 MR. ARMSTRONG: No questions.
 18 JUDGE HOGAN: Mr. Schock?
 19 MR. SCHOCK: No questions.
 20 JUDGE HOGAN: Mr. Pranis?
 21 MR. PRANIS: No. Thanks for sharing many
 22 of your concerns and values.
 23 JUDGE HOGAN: Commissioner Fedorchak?
 24
 25

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1 EXAMINATION

2 BY COMMISSIONER FEDORCHAK:

3 Q. Thank you, Mark. Appreciate having you

4 here today.

5 When you talk about the binding

6 constraint, have looked at that many times, can

7 you -- what mine do you work for, if you don't mind

8 sharing?

9 A. I work for the Freedom Mine. North

10 American Coal Freedom Mine, north of Beulah.

11 Q. Have you ever -- do you have any knowledge

12 of the Antelope Valley Station that that mine feeds

13 and its operations?

14 A. Yes. Some.

15 Q. Okay. So when there's a binding

16 constraint, it's largely due to wind being high

17 because we've got a lot of wind generation in this

18 area and so it runs and they use as much as they

19 can, but there's not enough transmission capacity

20 to get across that constraint. So --

21 A. It's like a traffic jam on I-25 just north

22 of Denver is what it is.

23 Q. That's a good comparison.

24 Do you have any information about the

25 impact those days have on AVS? Like I'm just

247

1 trying to understand the incremental impact on the

2 facilities that you're talking about when there is

3 a binding constraint like that.

4 A. We just get daily reports that tell us

5 what percentage of the load is being -- is being on

6 the market.

7 Q. Is AVS running on a day like today? Is

8 the plant running at all?

9 A. To be honest with you, I didn't go past

10 the plant this morning so I couldn't speak to it.

11 Q. Okay. In the past -- does it must-run at

12 a certain level all the time?

13 A. Yes. Typically a baseload plant has to

14 maintain a minimum -- minimum load to just keep the

15 facility ready to go to ramp up.

16 Q. Okay.

17 A. But I can't speak --

18 Q. And actually --

19 A. I can't speak to the specific levels or

20 whatever, but --

21 Q. And that plant serves in the SPP so it

22 wouldn't be impacted by this facility necessarily.

23 But if it was a facility that was running for

24 MISO --

25 A. Which every other facility in the state,

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1 other than Basin's facilities, do serve MISO.

2 Q. Sure. It would just be getting the price

3 that is -- the local marginal price which is

4 probably lower than its costs on days like that if

5 it's must-run; right? That's how that works?

6 A. Correct. As I understand.

7 Q. And so that's the part where the impact

8 hits those facilities because it's lower than their

9 costs to operate so they're losing money by

10 running?

11 A. (Nods head.)

12 Q. Okay. Have you seen ever any impacts

13 incremental -- would you be able to speak to any

14 incremental impacts that a facility of this size,

15 250 megawatts here, would have specifically on the

16 issues you're talking about, on -- on the viability

17 of the coal facilities -- coal-fired facilities?

18 A. I -- I am not a person that can speak

19 directly to the direct impacts. All I know is that

20 this facility would go into the North Dakota AC

21 grid on an MDU line, which Coyote Station is --

22 is -- is a part of.

23 COMMISSIONER FEDORCHAK: Okay. I don't

24 have anything else. Thank you, Mark.

25 JUDGE HOGAN: Commissioner Christmann.

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1 EXAMINATION

2 BY COMMISSIONER CHRISTMANN:

3 Q. I'm trying to tie two things together that

4 you were talking about, negative pricing and in

5 some of the max gen alerts and things like that

6 that you were talking about. Quite opposites.

7 So the -- the fact that we have negative

8 pricing, is that the result of low demand, usually

9 sunshine's going so solar's producing, good wind

10 production, and so there's just not enough demand

11 and thus the market price drops and drops until

12 finally people who don't have to pay fuel costs are

13 bidding negative and they -- and they make a

14 smaller amount of PTCs than they would have had

15 they not paid to -- to enter the market; is that a

16 fair explanation?

17 A. Yeah, roughly, as I understand it.

18 Q. And then when we get into the max gen

19 alerts and capacity advisories and such, those are

20 often days when there's not much intermittent

21 generation, maybe demand is higher because it's

22 real hot or real cold or something like that, and

23 suddenly we're paying hundreds of dollars a

24 megawatt to get additional generation sources to

25 crank up; correct?

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1 **A.** Correct. And that -- that information is
 2 all available at your fingertips on the MISO or any
 3 other grid operator's app on your smartphone at any
 4 given time.
 5 **Q.** And so we've got these two completely
 6 opposite phenomena going on. And you seem to
 7 indicate they're relatively common. And so is your
 8 point that they occur within days apart, one time
 9 everybody's ramping up, we have capacity alerts and
 10 everything else, and then a short time later we
 11 have negative prices for the energy; is that
 12 correct?
 13 **A.** Correct.
 14 **Q.** And thus is the cycling that Jessica Bell
 15 talked about with ramping way up and then dropping
 16 way back down; right?
 17 **A.** Exactly. That's the definition of the
 18 cycling that happens.
 19 **Q.** And these kinds of generation facilities
 20 that are fueled by coal that we rely on when it's
 21 not windy, they're -- they're not like something
 22 that you just turn on and off; am I correct? You
 23 have to keep that boiler going at some amount?
 24 **A.** Yes. That's the way I understand it, at a
 25 minimum load.

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1 **Q.** And so whatever that minimum is when it's
 2 negative prices, they're actually paying that
 3 amount per megawatt to stay operational?
 4 **A.** Correct. Plus also covering the costs of
 5 running them.
 6 **Q.** And will you have a printed copy of your
 7 testimony that you can share with us?
 8 **A.** Yes. Unfortunately, this is my first time
 9 coming to one of these and I've never ventured
 10 outside of my own county before, so I only have one
 11 copy, but I will submit it for the record.
 12 **COMMISSIONER CHRISTMANN:** I'd appreciate
 13 that. Thank you.
 14 **JUDGE HOGAN:** All right. Commissioner
 15 Haugen-Hoffart.
 16 **COMMISSIONER HAUGEN-HOFFART:** Thanks,
 17 Mark, for your testimony. I was trying to find a
 18 creative question on how to ask how you start a
 19 Facebook page by accident, but I can't -- I can't
 20 come up with a question. So thank you for your
 21 testimony.
 22 **JUDGE HOGAN:** All right. Thank you,
 23 Mr. Pierce, and I'll take that copy of your
 24 comments and I'll make sure it's part of the record
 25 and it goes to the commissioners as well. Thank

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1 you.
 2 All right. Who would like to go next?
 3 Please come up. Good afternoon.
 4 **MR. SEIBEL:** Thank you. Good afternoon.
 5 Thank you for taking --
 6 **JUDGE HOGAN:** Can I get your name for the
 7 record?
 8 **MR. SEIBEL:** My name is Steven, spelled
 9 with a V, S-t-e-v-e-n, Seibel, S-e-i-b-e-l. I live
 10 here in Wishek, 1409 Beaver Avenue.
 11 **JUDGE HOGAN:** And, Mr. Seibel, were you in
 12 the room when I went through the penalties for
 13 perjury?
 14 **MR. SEIBEL:** Yes, ma'am. I understand.
 15 **JUDGE HOGAN:** Do you -- do you know what
 16 perjury is.
 17 **MR. SEIBEL:** Yes. I'm very aware of the
 18 danger. Thank you.
 19 (Witness sworn.)
 20 **JUDGE HOGAN:** Thank you. Okay. Go ahead.
 21 **STEVEN SEIBEL,**
 22 being first duly sworn, was examined and testified
 23 as follows:
 24
 25

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STATEMENT

2 **BY MR. SEIBEL:**
 3 **MR. SEIBEL:** My wife and I retired here to
 4 Wishek in November of 19 -- excuse me -- 2021. We
 5 enjoy Wishek. We've done a lot of volunteer work.
 6 We've retired from Kansas. Some of us retire from
 7 the south to the north. You can question the
 8 wisdom of that.
 9 I'm here not to politicize and I want to
 10 make clear that I'm not in opposition nor am I in
 11 support of the Badger Wind farm. My only -- I only
 12 want to raise a couple of concerns about the
 13 sustainability of our local airport, Wishek
 14 Municipal Airport here. That's the airport
 15 identified as 6L5, 6 lima 5.
 16 I am retired from Cessna Aircraft in
 17 Wichita where I served as editor of the marketing
 18 publications there for Cessna Aircraft and I was
 19 also an approved flight instructor there in
 20 Wichita.
 21 I maintain my commercial pilot's
 22 certificate and my certified flight instructor
 23 certificate with the FAA. Both of those are under
 24 the number 2694467. I also hangar and maintain an
 25 aircraft here at Wishek Municipal Airport, a Cessna

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1 150, that's basically a trainer aircraft. I would
 2 like to provide some affordable flight instruction
 3 during my retirement, but that hasn't materialized
 4 under COVID. Actually, the tail number of that
 5 aircraft is seven niner three niner zulu, 7393Z.
 6 I'm here really to raise a couple of
 7 concerns. I didn't intend to testify here, and I
 8 don't have -- I apologize I don't have a copy of --
 9 a written copy of my statement. I just have a
 10 couple of -- I want to raise a couple of concerns
 11 and get some assurances, if you will, from the
 12 North Dakota Aeronautical Administration on the
 13 future sustainability of our airport here.
 14 And then, secondarily, about -- I have
 15 some secondary concerns about the virgin prairie or
 16 the unplowed prairie here that we enjoy. I very
 17 much enjoy the outdoors here in Wishek, by the way,
 18 and my wife and I do a lot of volunteer work in our
 19 retirement.
 20 The airport -- I appreciate the fact that
 21 Badger took out of their plan five towers -- five
 22 generator turbines that would have been on the
 23 approach path to our runway from the northwest, but
 24 I also want to point out that our airport here is
 25 completely governed by visual flight rules. I

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1 don't know if any of you commissioners -- if I can
 2 take the time to explain that for a minute, what
 3 VFR means.
 4 VFR means that a pilot cannot fly unless
 5 they have 2,000 feet of ceiling, that is cloud
 6 height aboveground, 2,000 feet aboveground, and
 7 three miles visibility. So our airport here is
 8 basically useless. Although, I should point out
 9 wind towers can be very lethal when pilots try to
 10 do what we call scud running in marginal weather
 11 conditions and run into a wind tower.
 12 I want to point out that the North Dakota
 13 Aeronautical Administrations' review of our airport
 14 and the possible impacts on -- on these turbines on
 15 our airport didn't take into consideration -- at
 16 least from my understanding didn't take into their
 17 consideration our plans to eventually get an
 18 instrument approach procedure here at our airport
 19 which we -- is questionably a question of whether
 20 this airport can survive.
 21 We don't receive any federal funding. The
 22 City has invested heavily in this airport, and I
 23 don't know how long that can be sustained.
 24 But we see as a viable part of our future
 25 to have a GPS approach in inclement weather

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1 conditions in IMC, instrument meteorological
 2 conditions, through the airport. So -- excuse me
 3 for a minute.
 4 But, anyway, that's -- if you understand
 5 what I'm saying under VFR. So I -- we are working
 6 on a plan to somehow -- granted, we don't receive
 7 federal funding -- of generating a GPS, global
 8 positioning system, approach to the airport, and
 9 that takes into account obstructions anywhere from
 10 a 15-mile radius of the airport. Typically you're
 11 on a T approach and they start out either north or
 12 south with the runways.
 13 So, specifically, I'm wanting to ask
 14 Badger to get some assurances from the North Dakota
 15 Aeronautical Administration that this plan does not
 16 compromise our intentions of obtaining a GPS
 17 approach that would -- that I personally consider
 18 a -- a vital -- a vital piece of keeping our
 19 airport here, otherwise it'll just become 2500 feet
 20 of broken-up asphalt.
 21 By the way, we're facing having to
 22 resurface that airfield at a cost of a million
 23 dollars. So I don't know whether that'll happen or
 24 not. But I'm very concerned.
 25 As you can tell from my background, I'm

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1 pro general aviation and I want to maintain all of
 2 our airports here in North Dakota, primarily Wishek
 3 because that's right down the road from me.
 4 Anyway, specifically I want to ask that
 5 Badger -- or you, Commissioners, ask the North
 6 Dakota Aeronautical Administration that there would
 7 be no obstacles to us from these turbines in their
 8 identified locations.
 9 Also, I thank you for taking five of them
 10 out of the plan, but we want assurances that this
 11 will not compromise any plan to formulate
 12 FAA-approved instrument approach to our airport.
 13 Also, with all due respects to the
 14 northern long-eared bat, my low-level flying, which
 15 I do a lot of in retirement, this past winter I've
 16 identified about 40 head of mule deer in this area.
 17 Now, the fish -- Game and Fish -- North Dakota Game
 18 and Fish does not count mule deer east of the
 19 Missouri River, just out in the Badlands area,
 20 which by the way are down 20 percent this year.
 21 Now, I'm an outdoorsman and I'm a hunter
 22 and I really appreciate seeing mule deer. So
 23 they're out there, and I wish Game and Fish would
 24 take into account that -- to make sure to
 25 provide -- again, assurances is all I'm after. I'm

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1 not opposed, I'm not for. I just want some
 2 assurances this will not displace this mule deer
 3 herd.
 4 So thank you very much.
 5 JUDGE HOGAN: All right. Thank you,
 6 Mr. Seibel. Ms. Smith, did you have any questions.
 7 **EXAMINATION**
 8 **BY MS. SMITH:**
 9 Q. I was just going to say if we provided
 10 assurances that the IFR was the consideration for
 11 removal of the five turbines, would that address
 12 your concern on that part?
 13 A. Yes. Specifically, I want assurances that
 14 will not compromise our ability to obtain an
 15 instrument approach procedure, primarily GPS,
 16 global positioning system, approach procedure to
 17 the Wishek Municipal Airport.
 18 MS. SMITH: Okay. And we'll have somebody
 19 address that. Okay.
 20 MR. SEIBEL: Under threat of perjury, I'm
 21 not aware that that was addressed. It may have
 22 been, but I just want to make sure it has.
 23 MS. SMITH: We're not going to threaten
 24 you with perjury. I swear. We'll make -- we will
 25 make sure that we clarify that on the record that

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1 that will --
 2 MR. SEIBEL: Like I say, I did not intend
 3 to testify here. I'm not opposed. I made my peace
 4 over the years flying with these wind generators.
 5 In fact, I've learned that I can fly through these
 6 wind farms, but I don't want to advertise that.
 7 JUDGE HOGAN: Mr. Armstrong, any
 8 questions.
 9 MR. ARMSTRONG: No questions.
 10 JUDGE HOGAN: Mr. Schock?
 11 MR. SCHOCK: No questions.
 12 JUDGE HOGAN: Mr. Pranis.
 13 MR. PRANIS: No, Your Honor.
 14 JUDGE HOGAN: Commissioner Fedorchak?
 15 COMMISSIONER FEDORCHAK: Thank you,
 16 Steven. I appreciate it. I don't think you should
 17 have your wisdom challenged for moving from the
 18 south to the north. Like I think that indicates
 19 your brilliance.
 20 MR. SEIBEL: Thank you. Thank you.
 21 COMMISSIONER FEDORCHAK: You landed in
 22 God's country, so -- I don't have any questions,
 23 but I really appreciate you coming forward and
 24 we'll get that issue clarified for you.
 25 MR. SEIBEL: Just assurances is all I'm

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1 after. Thank you.
 2 JUDGE HOGAN: Commissioner Christmann?
 3 Oh, hang on, Mr. Seibel.
 4 COMMISSIONER CHRISTMANN: Mr. Seibel.
 5 MR. SEIBEL: Here I thought I was off the
 6 hook.
 7 COMMISSIONER CHRISTMANN: You probably
 8 pretty much are. I just wanted to also thank you
 9 for your testimony today and also for coming back
 10 to North Dakota and joining us here in God's
 11 country.
 12 MR. SEIBEL: Well, thank you. I'd like to
 13 do some flight instruction here, so please retain
 14 our airport here.
 15 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 16 COMMISSIONER HAUGEN-HOFFART: Thank you.
 17 I just want to say for the record they save --
 18 always save the best till last. So, Steve, welcome
 19 to North Dakota. We're glad you're here. And
 20 maybe the Game and Fish need to hire you to do some
 21 flying and count mule deer for them.
 22 MR. SEIBEL: Well, I can document that.
 23 Like I said, they don't count the mule deer here,
 24 and I don't know if you appreciate what a mule deer
 25 is, but they're very rare in the east river area.

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1 COMMISSIONER HAUGEN-HOFFART: I do. Okay.
 2 Thank you so much. I have no further questions or
 3 comments.
 4 JUDGE HOGAN: And that's -- now you're
 5 done, Mr. Seibel.
 6 MR. SEIBEL: Thank you.
 7 JUDGE HOGAN: All right. Who would like
 8 to go next? Good afternoon.
 9 MR. TURNER: Good afternoon, Judge.
 10 JUDGE HOGAN: Can I get your name for the
 11 record?
 12 MR. TURNER: My name is Perry Turner. I
 13 reside at 416 South Centennial Street, Wishek,
 14 North Dakota.
 15 JUDGE HOGAN: And Mr. Turner, did you hear
 16 me go through the penalties for perjury.
 17 MR. TURNER: I did, ma'am, and I do
 18 understand them.
 19 JUDGE HOGAN: All right.
 20 (Witness sworn.)
 21 JUDGE HOGAN: All right. Thank you. Go
 22 ahead.
 23 **PERRY TURNER,**
 24 being first duly sworn, was examined and testified
 25 as follows:

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1 **STATEMENT**

2 **BY MR. TURNER:**

3 MR. TURNER: I'm currently on the McIntosh

4 County Commission, and I'm here speaking on behalf

5 of the responsibilities that that Commission has.

6 Any development of this nature that this

7 comes to be, emergency services are going to be

8 stressed, as they usually are, and I want to

9 encourage Ørsted and the subcontractors to work on

10 this in advance.

11 Logan and McIntosh Counties are in this

12 together. They're good neighbors. We can work

13 with para personnel, ambulance drivers, paramedics,

14 people that provide those services and run a

15 training session for both counties at the same

16 time. We're close enough to do that.

17 And I want to make sure that you know that

18 that is something we should take care of now,

19 before this project gets up and running. There are

20 medical facilities in Ashley, a clinic, a hospital.

21 There's a hospital and clinic in Wishek. There's

22 also a clinic in Napoleon. So we do have ambulance

23 services available.

24 But specialized training and specialized

25 production of something like this, I think

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1 training's appropriate for those people that will

2 be the first ones there if something goes on.

3 Last thing I'd like to mention to Ørsted

4 in particular, I've enjoyed working with those

5 representatives. They've been upright, cordial,

6 willing to communicate, and I appreciate that.

7 They're coming to our great county and doing what

8 they need to do to make things work for this

9 project.

10 Thank you very much.

11 JUDGE HOGAN: All right. Thank you.

12 Ms. Smith, do you have any questions?

13 MS. SMITH: I don't. Thank you.

14 MR. TURNER: You're welcome.

15 JUDGE HOGAN: Mr. Armstrong?

16 MR. ARMSTRONG: No questions.

17 JUDGE HOGAN: Mr. Schock?

18 MR. SCHOCK: No questions.

19 JUDGE HOGAN: Mr. Pranis.

20 MR. PRANIS: No.

21 JUDGE HOGAN: Commissioner Fedorchak.

22 COMMISSIONER FEDORCHAK: Thank you,

23 Mr. Turner. Appreciate you being here. I don't

24 have any questions, but thanks for your work on

25 those important community services.

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1 MR. TURNER: Thank you.

2 JUDGE HOGAN: Commissioner Christmann.

3 COMMISSIONER CHRISTMANN: I'm just

4 finishing a note on the emergency services here.

5 **EXAMINATION**

6 **BY COMMISSIONER CHRISTMANN:**

7 Q. Mr. Turner, you were here all day;

8 correct?

9 A. That's correct.

10 Q. There was testimony and discussion back

11 and forth very early on, if I can -- I hope I

12 summarize it accurately -- that the company's weed

13 management plan has been provided to McIntosh

14 County but there was, as I understood it,

15 uncertainty about whether they need the approval of

16 McIntosh County on a weed management plan or

17 whether they just needed to provide it. Do you

18 know about that?

19 A. I can't say that I can speak exactly to

20 that document. I have not seen that document.

21 Q. Okay.

22 A. I'd be -- look forward to reading it and

23 bringing it to the Commission. There's three

24 commissioners. We'll take a look at it.

25 COMMISSIONER CHRISTMANN: Well, the

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1 company committed to getting back to us with

2 clarity on whether approval is needed or not, and

3 if it is needed, that's when it happens. Thank

4 you. Appreciate you being here all day.

5 MR. TURNER: Thank you.

6 JUDGE HOGAN: Commissioner Haugen-Hoffart.

7 COMMISSIONER HAUGEN-HOFFART: Yeah. Thank

8 you so much for your testimony, Mr. Turner.

9 **EXAMINATION**

10 **BY COMMISSIONER HAUGEN-HOFFART:**

11 Q. I just want to clarify. You say you're on

12 the McIntosh -- are you a county commissioner?

13 A. Yes, I am. I'm currently the chairman of

14 the Commission.

15 Q. Okay. And you indicated that the

16 emergency services would be stressed. Based on

17 your role as a county commissioner, are there other

18 services that you feel would be stressed with this

19 type of project?

20 A. Well, there are other -- the other

21 important services that we provide are road

22 maintenance. Let's face it, that's what

23 counties -- big part of what counties do is to

24 maintain roads. But we do have a road agreement

25 with Ørsted. That's been accepted and approved by

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1 the Commission. Everything's in writing. We just
 2 have to follow through, and I don't see any reason
 3 why that won't happen.
 4 COMMISSIONER HAUGEN-HOFFART: Okay. I
 5 have no further questions. Thank you so much.
 6 MR. TURNER: Thank you.
 7 JUDGE HOGAN: All right. Thank you,
 8 Mr. Turner.
 9 MR. TURNER: Thank you.
 10 JUDGE HOGAN: All right. Do we have other
 11 individuals that would like to testify.
 12 Good afternoon.
 13 MS. SCHUMACHER: Good afternoon.
 14 JUDGE HOGAN: Can I get your name for the
 15 record?
 16 MS. SCHUMACHER: Blanche Schumacher,
 17 S-c-h-u-m-a-c-h-e-r.
 18 JUDGE HOGAN: And, Ms. Schumacher, did you
 19 hear me go through the penalties for perjury
 20 earlier.
 21 MS. SCHUMACHER: I did.
 22 JUDGE HOGAN: And do you understand what
 23 perjury is?
 24 MS. SCHUMACHER: I do.
 25 (Witness sworn.)

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1 JUDGE HOGAN: All right. Thank you. Go
 2 ahead.
 3 **BLANCHE SCHUMACHER,**
 4 being first duly sworn, was examined and testified
 5 as follows:
 6 **STATEMENT**
 7 **BY MS. SCHUMACHER:**
 8 MS. SCHUMACHER: Thank you. Members of
 9 the Public Service Commission, county and city
 10 officials, landowners and guests, my name is
 11 Blanche Schumacher. I serve as the chairperson of
 12 the Board of Logan County Commissioners, and I'm
 13 here to briefly discuss the outcome of the
 14 conditional use permit hearing that was held in
 15 Logan County on May 11, 2022.
 16 When the public hearing for the
 17 conditional use permit was held before the Board of
 18 Logan County Commissioners, there were a total of
 19 39 individuals present. The Ørsted representatives
 20 were allowed to explain the proposed Badger Wind
 21 project, followed with a brief -- brief
 22 question-and-answer period for those present to
 23 make inquiries about the project.
 24 Persons in favor of the project were then
 25 allowed to present their testimony, followed by

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1 those who were opposed to the project. An
 2 additional rebuttal period was allowed for both
 3 those in favor of and those opposed to the project.
 4 The county commission asked for a closing
 5 statement by the Badger Wind representatives,
 6 followed with a request for a show of hands of
 7 those either in favor of or opposed to the project.
 8 We found there were 17 persons in favor and 7
 9 opposed. There were approximately 16 who chose not
 10 to vote, some of whom were employees of Ørsted,
 11 some were county employees and/or friends and
 12 neighbors of those within the project area.
 13 At the conclusion of the hearing, the
 14 board of county commissioners individually
 15 considered the purpose and intent of our county
 16 zoning regulations. The project appeared to pose
 17 no threat to public health. It appeared to promote
 18 the orderly development of the county's resources.
 19 There appeared to be no conflict among land uses
 20 and structures. The majority of the testimony
 21 offered was in favor of the project, and since the
 22 landowners were the persons who would be most
 23 directly affected by having to work around the
 24 turbines and those same landowners were willing to
 25 allow their lands to be utilized for this purpose,

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1 and the schools, county, fire and ambulance service
 2 districts would benefit as well, it was for these
 3 reasons that we as a board decided that we too
 4 should support our landowners and a majority of the
 5 persons who were in favor of the project.
 6 In our experience, we have found that
 7 Ørsted and their representatives have been honest,
 8 trustworthy, diligent and cooperative in working
 9 with the county and that they have honored all
 10 their commitments to us.
 11 I would like to thank the Public Service
 12 Commission for giving us the opportunity to be
 13 present here today to be heard at this public
 14 hearing. And I respectfully request that the North
 15 Dakota Public Service Commission on behalf of our
 16 landowners and taxpayers consider casting a
 17 favorable vote in support of the application of
 18 Ørsted for the Badger Wind project.
 19 Thank you.
 20 JUDGE HOGAN: All right. Thank you.
 21 Ms. Smith, do you have any questions?
 22 MS. SMITH: I don't. Thank you.
 23 JUDGE HOGAN: Mr. Armstrong?
 24 MR. ARMSTRONG: No, Your Honor.
 25 JUDGE HOGAN: Mr. Schock?

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1 MR. SCHOCK: No, Your Honor.
 2 JUDGE HOGAN: Mr. Pranis?
 3 MR. PRANIS: No.
 4 JUDGE HOGAN: Commissioner Fedorchak?
 5 **EXAMINATION**
 6 **BY COMMISSIONER FEDORCHAK:**
 7 Q. Thank you, Ms. Schumacher. Appreciate
 8 your leadership on your county commission. Must
 9 have been a fun hearing.
 10 A. Thank you.
 11 Q. I can only imagine, actually. No. I
 12 appreciate also the really thorough summary of it
 13 because I kind of was curious and I meant to ask
 14 the company's first witness to describe their
 15 zoning permit hearing and I didn't, and so now I'm
 16 getting that good description from you and the
 17 explanation of the outcome. Really appreciate
 18 that.
 19 For those who -- could you kind of
 20 generally summarize the reasons people are in favor
 21 and those who are opposed, why?
 22 A. The reason I explained it is because
 23 that's what we base our decision.
 24 Q. No. No. But what did they say? Those
 25 who were in favor, why were they in favor of it,

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1 and those who were opposed, why were they opposed,
 2 just generally?
 3 A. The persons in favor were mostly in favor
 4 because of the economic benefit to the county, the
 5 schools, the fire districts, ambulance service
 6 district. Those opposed were -- were opposed to it
 7 because of the fact that the -- because of the
 8 condition of the roads, section lines being torn
 9 up, and I believe there were a couple reasons that
 10 they were not -- the representatives were not very
 11 friendly to them while they were in their project
 12 area working.
 13 Q. Okay. Was there any concerns about any of
 14 the impacts to orderly development or reliability
 15 of the grid, those types of issues?
 16 A. No.
 17 Q. Did that come up at all?
 18 A. None that I can recall.
 19 COMMISSIONER FEDORCHAK: Okay. Thank you
 20 very much.
 21 JUDGE HOGAN: Commissioner Christmann.
 22 COMMISSIONER CHRISTMANN: I just also want
 23 to thank you, Ms. Schumacher, for -- out of all the
 24 hearings we've done, that's one of the best
 25 summaries of a zoning or conditional use permit

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1 hearing that I think we've heard from a county, so
 2 appreciate that. That's very helpful.
 3 MS. SCHUMACHER: Thank you. Thank you. I
 4 have a copy to offer to all of you.
 5 JUDGE HOGAN: Perfect.
 6 COMMISSIONER FEDORCHAK: One more.
 7 JUDGE HOGAN: Hang on. Commissioner
 8 Haugen-Hoffart.
 9 COMMISSIONER HAUGEN-HOFFART: Blanche,
 10 again, thank you so much for your time and your
 11 testimony and also for your leadership on the
 12 county commission board. I have no questions for
 13 you.
 14 MS. SCHUMACHER: Thank you.
 15 JUDGE HOGAN: All right. Thank you. And,
 16 Ms. Schumacher, I'll take those comments.
 17 MS. SCHUMACHER: Okay.
 18 JUDGE HOGAN: Are there other individuals
 19 that want to offer testimony this afternoon? Just
 20 so I know, can I -- just by show of hands, can I
 21 ask who else is -- would like to testify this
 22 afternoon.
 23 All right. Good afternoon. Can I get
 24 your name?
 25 MR. VANGORKOM: Mike VanGorkom,

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1 V-a-n-G-o-r-k-o-m.
 2 JUDGE HOGAN: And were you in the room
 3 earlier when I went through the penalties for
 4 perjury?
 5 MR. VANGORKOM: Yes.
 6 JUDGE HOGAN: Do you understand what
 7 perjury is.
 8 MR. VANGORKOM: Yes.
 9 (Witness sworn.)
 10 JUDGE HOGAN: All right. Thank you. Go
 11 ahead.
 12 **MIKE VANGORKOM,**
 13 being first duly sworn, was examined and testified
 14 as follows:
 15 **STATEMENT**
 16 **BY MR. VANGORKOM:**
 17 MR. VANGORKOM: I -- I came here today
 18 just to -- I wasn't going to come up and speak,
 19 just to get information, seeing what's going up
 20 around the area and stuff. But, you know, I'm an
 21 equipment sales consultant here at Titan Machinery.
 22 I've been here about 16 years now. Before that I
 23 worked for Wanzek Construction and I was part of
 24 the first commercial wind farm in the state, the
 25 one in Kulm-Edgeley area.

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1 And I know a lot of farmers over there
 2 that have had these towers put on their land that
 3 would say never again. It's the noise that they
 4 cause if they sleep with the windows open at night,
 5 and they're extremely upset about it.
 6 And like I said, I wasn't going to speak,
 7 but when I looked at this map today, tower number
 8 68 is a half a mile behind my house. I live out
 9 here by the fairgrounds. I was never notified by
 10 anybody that they were putting the tower out there.
 11 No email, no phone call, no letter or anything. So
 12 if they -- if they're going to come in and do this,
 13 what else are they going to try to sneak by with?
 14 I mean, this is extremely upsetting to me.
 15 That's all I have.
 16 JUDGE HOGAN: All right. Thank you.
 17 Ms. Smith, any questions?
 18 **EXAMINATION**
 19 **BY MS. SMITH:**
 20 Q. I just want to make sure I understand
 21 where your house is. I should have --
 22 A. If you look at Highway 13 --
 23 Q. Yeah.
 24 A. -- one mile west of Wishek.
 25 Q. Okay. Oh, yep. I got you.

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1 A. One mile west and just south. There's
 2 two -- there's two of us here. There's a lady on
 3 the corner and then I'm the next house.
 4 MS. SMITH: Do you mind if I go up and
 5 approach the witness so I can see where he's
 6 pointing and maybe I can explain it into the
 7 record?
 8 JUDGE HOGAN: Sure. Yep. That's fine.
 9 MS. SMITH: Thank you.
 10 So I think I can put this on the record,
 11 if that's okay.
 12 JUDGE HOGAN: Sure. Go ahead.
 13 Q. (MS. SMITH CONTINUING) As I understand
 14 it, so if you're going from the west of Wishek, you
 15 see Highway 3, and then there's the boundary -- you
 16 approach the boundary of the project, there's a
 17 little jog that indents in, and you're in that
 18 little jog just outside the project boundary; is
 19 that correct?
 20 A. Yes.
 21 MS. SMITH: Okay. Thank you. I don't
 22 have any other questions.
 23 JUDGE HOGAN: All right. Mr. Armstrong,
 24 any questions?
 25 MR. ARMSTRONG: Sorry. But I'm still not

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1 sure which house it is based on the description.
 2 Is it one of the Figure 2 -- and I don't know if
 3 Ms. Smith can answer or not, but is it one of the
 4 identified nonparticipating occupied residence or
 5 is it something else?
 6 MR. VANGORKOM: It's a nonparticipating,
 7 yes.
 8 MS. SMITH: Yes, it is one of the -- so
 9 there should be -- I'm looking at Figure 2.
 10 There's some green dots and the boundary kind of
 11 juts into the west and then comes back out. It's
 12 one of the green dots in that little jut-out, so
 13 it's just outside of the project boundary. Is that
 14 making sense?
 15 MR. ARMSTRONG: I'm just going to have --
 16 MR. VANGORKOM: I can show you.
 17 MR. ARMSTRONG: I'm just going to have him
 18 circle it for me.
 19 MS. SMITH: Yeah. That sounds good.
 20 **EXAMINATION**
 21 **BY MR. ARMSTRONG:**
 22 Q. So just for the record, using Figure 4,
 23 Mr. VanGorkom has identified the resident -- or
 24 receptor on this case number 265. Is that correct,
 25 Mr. VanGorkom?

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1 A. Yes.
 2 MR. ARMSTRONG: Thank you. That's all the
 3 questions I have.
 4 JUDGE HOGAN: Mr. Schock, any questions.
 5 MR. SCHOCK: No, not at this time.
 6 JUDGE HOGAN: Mr. Pranis.
 7 MR. PRANIS: No, Your Honor.
 8 JUDGE HOGAN: Commissioner Fedorchak.
 9 **EXAMINATION**
 10 **BY COMMISSIONER FEDORCHAK:**
 11 Q. Did you -- thank you, Mike. Did you
 12 happen to hear about any public meetings or were
 13 you notified of any of those?
 14 A. No.
 15 Q. Okay. Or have you heard talk about it in
 16 the community?
 17 A. I've heard talk. I knew about some
 18 meetings prior to this one, but this one -- I
 19 didn't find out about this until a few days ago. I
 20 happened to run across the ad somewhere, but I
 21 talked to -- when I got here this morning, I texted
 22 the superintendent of the school and I texted three
 23 school board members, and I said, "Why aren't
 24 you" -- "anybody from the school here," you know,
 25 "to see" -- "to listen to everything and maybe give

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1 your input too," and all four of those said they
 2 had no idea.
 3 Q. Okay.
 4 A. They didn't know anything about it.
 5 Q. All right. Well, we do notice it in the
 6 newspaper --
 7 A. Oh.
 8 Q. -- routinely, so -- and that happened and
 9 do news releases. So that's unfortunate. It is
 10 hard to get ahold of people nowadays and get their
 11 attention.
 12 And when did you -- did you look at a map
 13 or how did you find out that you --
 14 A. I looked at the map up here, yeah.
 15 COMMISSIONER FEDORCHAK: Okay. All right.
 16 Thank you. Appreciate you stepping forward.
 17 JUDGE HOGAN: Commissioner Christmann.
18 EXAMINATION
19 BY COMMISSIONER CHRISTMANN:
 20 Q. So you're -- you're disappointed in the
 21 communication and what ultimate impact? Is it
 22 specifically the noise --
 23 A. Yes.
 24 Q. -- is it the visual?
 25 A. I -- I travel all over the state selling

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1 farm machinery and I'm in numerous farmyards that
 2 have towers close to them and they're, I mean,
 3 extremely noisy. And I mean I -- like I said, I
 4 built the ones in Kulm. I worked for Wanzek
 5 Construction when we built them so I've been around
 6 them a lot.
 7 We raise dogs out there, too, and just the
 8 impact of the noise, I'm worried about what's going
 9 to happen there. We have chickens, we have pigs.
 10 You know, what's the -- what -- and from where the
 11 animals are, it's directly -- we don't have any
 12 trees in between there and the tower, so that's
 13 going to be direct sight to the tower. And I'm
 14 just -- I'm worried about the impact of it.
 15 And in the summertime we sleep with the
 16 windows open a lot at night, and talking to other
 17 farmers that I know, too, that have said just that
 18 noise sleeping at night is very annoying.
 19 COMMISSIONER CHRISTMANN: Thank you for
 20 being here.
 21 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 22 COMMISSIONER HAUGEN-HOFFART: Mike, thank
 23 you for your testimony. I have no further
 24 questions.
 25 JUDGE HOGAN: All right. Thank you so

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1 much.
 2 Yep. Come on up.
 3 MR. SCHULER: My name is Dan Schuler,
 4 spelled S-c-h-u-l-e-r.
 5 JUDGE HOGAN: And, Mr. Schuler, were you
 6 in the room earlier when I went through the
 7 penalties for perjury?
 8 MR. SCHULER: I've been here since 9:30.
 9 JUDGE HOGAN: And do you understand what
 10 perjury is.
 11 MR. SCHULER: Yes.
 12 (Witness sworn.)
 13 JUDGE HOGAN: All right. Thank you. Go
 14 ahead.
15 DAN SCHULER,
 16 being first duly sworn, was examined and testified
 17 as follows:
18 STATEMENT
19 BY MR. SCHULER:
 20 MR. SCHULER: We live three and a half
 21 miles south of Wishek on Highway 3. Our -- the
 22 closest tower will be about a mile away. But come
 23 the first week of September, we have this spectacle
 24 of monarch butterflies that cover the trees, and we
 25 don't want to see that end. And we watch the

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1 birds. We watch bluebirds come in and warblers,
 2 and we think it's probably going to affect the
 3 migratory highway. They'll just go around us. We
 4 see snow geese come in out our picture window. I'm
 5 not happy about the wind farm in that respect.
 6 And we love the North Dakota vista. At
 7 night we -- we currently like to sit out and listen
 8 to the morning doves hoot. And I'm afraid that
 9 what we're going to hear here is the whirring of
 10 wind towers.
 11 And we can hear the car races three and a
 12 half miles away. I think we're probably going to
 13 hear the wind towers at night, and they may even
 14 drown out the morning dove hoots.
 15 That's about all I have to say.
 16 JUDGE HOGAN: All right. Thank you.
 17 Ms. Smith, any questions?
18 EXAMINATION
19 BY MS. SMITH:
 20 Q. I just want to confirm. You said you live
 21 about three and a half miles from the project; is
 22 that what you --
 23 A. We live three and a half miles south of
 24 Wishek.
 25 Q. Oh, okay.

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1 **A.** One mile from a tower.
 2 MS. SMITH: Okay. Thank you.
 3 JUDGE HOGAN: Mr. Armstrong, any
 4 questions.
 5 MR. ARMSTRONG: No. Thank you.
 6 JUDGE HOGAN: Mr. Schock?
 7 MR. SCHOCK: No questions.
 8 JUDGE HOGAN: Mr. Pranis?
 9 MR. PRANIS: No, Your Honor.
 10 JUDGE HOGAN: Commissioner Fedorchak?
 11 COMMISSIONER FEDORCHAK: Thank you,
 12 Mr. Schuler. I don't have any questions for you,
 13 but I do appreciate you sitting here all day and
 14 stepping forward and sharing your thoughts with us.
 15 MR. SCHULER: Thank you.
 16 JUDGE HOGAN: Commissioner Christmann?
 17 COMMISSIONER CHRISTMANN: Yeah. Also
 18 thank you for the --
 19 JUDGE HOGAN: Your microphone.
 20 COMMISSIONER CHRISTMANN: Thank you for
 21 your patience today and for your appreciation of
 22 nature.
 23 JUDGE HOGAN: And Commissioner
 24 Haugen-Hoffart.
 25 COMMISSIONER HAUGEN-HOFFART: Good

1 JUDGE HOGAN: Thank you. Go ahead.
 2 **SCOTT WANNER,**
 3 being first duly sworn, was examined and testified
 4 as follows:
 5 **STATEMENT**
 6 **BY MR. SCOTT WANNER:**
 7 MR. SCOTT WANNER: Again, as I said, I
 8 farm and ranch north of Wishek here four miles, and
 9 I also -- or I should say we, my son and I, also
 10 have a crop consulting business. I've worked for
 11 farmers in central North Dakota for 38 years,
 12 starting up in the Rugby area and moving down here
 13 to the family farm in 1997.
 14 Very, very privileged and honored to be a
 15 part of Logan County and the Wishek community. I
 16 want to thank everyone for attending and showing
 17 concern for our community. Pardon me. I just
 18 wrote this this morning -- or today.
 19 Ørsted is very good at painting a rosy
 20 picture to all of us. I have many concerns. I'll
 21 explain a few or share a few. I'm concerned about
 22 crop loss and damage to the crops that has occurred
 23 in the past and will no doubt continue to occur in
 24 the future. It has occurred many times in the past
 25 here. We've wit -- we've -- we've witnessed --

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1 afternoon, Dan. Thank you for your testimony. I
 2 have no further questions.
 3 MR. SCHULER: Okay. Thank you.
 4 JUDGE HOGAN: Thank you, Mr. Schuler.
 5 Who would like to go next? Yep. Come on
 6 up. Good afternoon.
 7 MR. SCOTT WANNER: Good afternoon.
 8 JUDGE HOGAN: Can I get your name for the
 9 record?
 10 MR. SCOTT WANNER: My name is Scott
 11 Wanner, W-a-n-n-e-r. I farm four miles north of
 12 Wishek.
 13 JUDGE HOGAN: And, Mr. Wanner, did you
 14 hear me go through the penalties for perjury
 15 earlier.
 16 MR. SCOTT WANNER: I can't lie. I wasn't
 17 here.
 18 JUDGE HOGAN: All right. Then I've got
 19 to -- the state law requires me to go through them
 20 with you before you testify. So perjury is a Class
 21 C felony, punishable by a maximum fine of \$10,000,
 22 a maximum five years' imprisonment, or both. Do
 23 you understand what perjury is.
 24 MR. SCOTT WANNER: I understand.
 25 (Witness sworn.)

1 excuse me -- we've witnessed rutting of fields,
 2 driving on unhayed and unharvested crops. My
 3 question is who's responsible for documenting the
 4 crop loss to the land operators by Ørsted? Is it
 5 the landowner, the land operator or is it Ørsted
 6 themselves?
 7 Another concern I have regarding crop loss
 8 and crop damage is the dust that's going to be
 9 created by the heavy, heavy traffic that we're
 10 going to have in this community. I visited with
 11 some people in other parts of the state in the oil
 12 patch, and they said that dust is probably one of
 13 the biggest concerns of area farmers. So, again,
 14 what level of crop damage is acceptable in Ørsted's
 15 eyes?
 16 We have many, many trespassing concerns
 17 also by people that have been contracted by Ørsted
 18 or Ørsted employees themselves.
 19 I also am very concerned about our
 20 wildlife, as many others are. We have many
 21 meadowlarks. They are a joy. We live in the
 22 central flyway with our migratory birds, as other
 23 people have shared. The tower proximity of some
 24 towers is just within a hundred yards of this major
 25 creek, Beaver Creek, that runs out on the west side

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1 of Wishek up to Red Lake. There's no doubt that
2 our flyway is going to be affected.
3 This is a major flyway for eagles. I've
4 had eagles within hundreds of yards of my house.
5 Major flyway for geese. As Dan Schuler said, I
6 have geese that fly right through my yard annually.
7 Ducks, pelicans, other -- other birds that are
8 going to be negatively affected.

9 Wishek is known for its quality hunting
10 and fishing. I think it's safe to say, as North
11 Dakota Game and Fish has said earlier, that the
12 wildlife will be significantly impacted by this
13 project, and I think negatively.
14 Roadkill is going to be assessed by
15 Ørsted? What about the birds that hit the towers?
16 What about the cleanup of the dead birds? Are they
17 going to take care of that too? I've got a friend
18 of mine that was up on the Tioga wind farm here
19 recently, and he said he saw numerous hawks laying
20 dead on the ground. This is no significant impact
21 in Ørsted's eyes.

22 Our family has farmed here for over a
23 hundred years. I'm concerned about the future.
24 Excuse me. Most of the people signed up for this
25 project are in it for the money. It might be for

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1 the fire department, it might be for the school
2 district, it might be for this and that and the
3 next thing, but I tell you what, I've seen it --
4 it's for me. Not for me, but for the people that
5 are signed up. And I say that respectfully. Do
6 what you want to do with your own land.
7 This project will put a permanent scar on
8 our area. I consider our family to be good
9 stewards of our land and our resources, including
10 the water and the air. When seeding our crops, I
11 farm around bird nests all the time. I actually
12 flagged one the other day a couple of weeks back,
13 and I went back here recently, three or four days
14 ago, and I went to that bird nest, I have a flag
15 there, and it was a killdeer. And when I farmed
16 around it, she had one egg and she was very
17 aggressive to keep me away, and when I went back
18 and checked it here recently, she has five eggs in
19 that nest, and we're farming around it.
20 I care about Wishek, Logan County. It's
21 our home. I appreciate Ms. Bell's comments earlier
22 today. We've talked about the
23 cart-before-the-horse project that this is, and
24 that's what it is. It's the cart-before-the-horse
25 project.

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1 Pardon me for sharing this, but I've seen
2 pictures and I think we all have seen pictures of
3 strip mining in Wyoming and wind tower blades
4 laying beside the strip-mined landscape. I guess
5 there is a use for coal mining, huh? Bury the
6 garbage from wind towers.

7 Is this our future? Many of my farmer
8 friends say no.

9 Thank you.

10 JUDGE HOGAN: Thank you.

11 Ms. Smith, do you have any questions?

12 MS. SMITH: I do.

13 EXAMINATION

14 BY MS. SMITH:

15 Q. Do you live within the project area?

16 A. I'm going to have three towers within one
17 mile of my house.

18 Q. Do you -- so you live in the project area?

19 A. We are not enrolled in the project.

20 Q. So can you tell us where your house is in
21 relation to the project?

22 A. I live four miles north of Wishek.

23 Q. Four miles north of Wishek?

24 A. Yep. Just up Centennial Street. If you
25 look at the map, I'm the gap. We're the gap in the

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1 map.

2 MS. SMITH: Can you -- can I find out
3 where it is?

4 JUDGE HOGAN: Yes.

5 MS. SMITH: Thank you. So I'm just going
6 to show this and try and describe this. Right here
7 is -- you'll see 41st Street and this is the area
8 north of the project area where there's kind of a
9 cutout. There is a green dot right there where the
10 41st numbers are. And I'm looking at Figure 5 just
11 because this is the one that I happened to have.
12 So it's outside of the project area in this, as was
13 described, kind of the cutout area.

14 Q. (MS. SMITH CONTINUING) When you're
15 talking about farming around turbines, do you rent
16 land that will be part of this project?

17 A. Yes, I do.

18 Q. And so your concern is with the land that
19 your landlord has also leased for the wind project?

20 A. Yes.

21 Q. And so I think you said you respected
22 their right to do what they wanted to with the
23 land. You understood that --

24 A. Yes.

25 Q. -- is that true?

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1 We did have a chance to visit with them on several
2 occasions. They had stopped in, even into our farm
3 location, and visited on some items. Had questions
4 about our farm, wanted to know what the structure
5 was and what we did for our farming operation.

6 I was here when they were talking about
7 the environmental later in the morning, and the
8 question is about the birds. Yes, there is
9 probably death loss of birds. I know one they were
10 talking is the meadowlark, that there is
11 approximately a 50 percent decrease in meadowlarks
12 in the community. And I'm not sure if they were
13 all referring that to the wind farm causing that,
14 but we also have to remember a year ago we went
15 through a severe drought and I'm sure that impacted
16 our wildlife and also our meadowlarks.

17 And then this spring if you could consider
18 the snowstorm we had in April, the amount of
19 wildlife that was lost due to weather-related
20 items, not just wind farm items. If the livestock
21 people were losing cow/calf pairs and cows, I think
22 it had to be quite a storm to the livestock in the
23 middle of April -- or April to -- and also would
24 take out birds and other wildlife. It's not just
25 devastating to large animals as livestock.

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1 And just getting -- hearing what the coal
2 industry -- they were here today. They're
3 protecting their industry. Knowing that and -- and
4 listening to them, they are approximately a hundred
5 miles from here, maybe more. I'm not exactly sure
6 where they're referring to, but their community is
7 receiving revenue and our community is not
8 receiving any revenue, and I feel that this wind
9 energy would be a good fit for our revenue in our
10 community.

11 We've seen the tax benefits that they're
12 projecting. They seem to be very -- very
13 encouraging to see that type of revenue come into
14 our community and also what it will do for the
15 community if this project gets going.

16 So with the coal being up in that corner
17 and the wind down in this corner, it would be
18 really nice to see some of that revenue generated
19 through the wind farm that we can serve and pass
20 around our community just like the coal industry is
21 doing up in their community.

22 We are a -- what should I say -- fourth
23 generation farm, maybe five, depending how far back
24 you want to go. But our son is farming with us,
25 and for us to sign up as -- when we went through

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1 this decision if we wanted to participate in the
2 wind energy, it was not just a discussion amongst
3 family members. We included our son. So he was
4 game on that. And with that I guess I am for the
5 project and I hope that everyone else can support
6 that too.

7 JUDGE HOGAN: All right. Thank you.
8 Ms. Smith, do you have any questions?

9 MS. SMITH: I do not. Thank you.

10 JUDGE HOGAN: Mr. Armstrong?

11 MR. ARMSTRONG: No, Your Honor.

12 JUDGE HOGAN: Mr. Schock?

13 MR. SCHOCK: No questions.

14 JUDGE HOGAN: Mr. Pranis.

15 MR. PRANIS: No. Thank you.

16 JUDGE HOGAN: Commissioner Fedorchak.

17 EXAMINATION

18 BY COMMISSIONER FEDORCHAK:

19 Q. Thank you, Blair. Really appreciate you
20 being here today. So your -- I didn't quite
21 understand -- your son was part of the discussion
22 and he also is supportive of the --

23 A. Yes, he is.

24 Q. -- wind farm?

25 A. We figured he's the next generation, so he

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1 had to make that decision too.

2 Q. Awesome. And how old is he?

3 A. 35, I think.

4 Q. Okay. All right.

5 A. No, he is.

6 Q. So he's pretty active. He's not just a
7 little --

8 A. You've got to go by years. 1986. Yes.

9 COMMISSIONER FEDORCHAK: All right.

10 Appreciate your comments and the perspective that
11 you offer from this community and the agricultural
12 community here. So thank you.

13 JUDGE HOGAN: Commissioner Christmann.

14 EXAMINATION

15 BY COMMISSIONER CHRISTMANN:

16 Q. If you said it, I didn't catch it, but
17 about where in the site are you located with your
18 farm?

19 A. We are northeast of the project. We
20 are -- we live on the road 13 miles northeast of
21 Wishek or across country about 9 miles northeast of
22 Wishek. So we are approximately three miles from
23 the project, across country that would be.

24 Q. And did you say how many turbines are on
25 your property?

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1 **A.** No, I didn't.
 2 **Q.** And then -- that doesn't matter. My
 3 question has to do with are they on tilled soil --
 4 **A.** Yes. They're all on --
 5 **Q.** -- hayland or what?
 6 **A.** They're all on tillable soil, cropland
 7 right now, so --
 8 COMMISSIONER CHRISTMANN: All right.
 9 Thank you for being here.
 10 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 11 COMMISSIONER HAUGEN-HOFFART: Thank you
 12 for your testimony. I have no questions.
 13 JUDGE HOGAN: All right. Thank you so
 14 much.
 15 Do we have others that want to provide
 16 testimony?
 17 Good afternoon. Can I get your name for
 18 the record?
 19 MR. WOLFF: My name is George Wolff.
 20 JUDGE HOGAN: Do you want to spell your
 21 last name.
 22 MR. WOLFF: W-o-l-f-f.
 23 JUDGE HOGAN: And, Mr. Wolff, were you in
 24 the room earlier when I went through the penalties
 25 for perjury.

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1 MR. WOLFF: Yes, I was.
 2 JUDGE HOGAN: And do you understand what
 3 perjury is.
 4 MR. WOLFF: Yes, I do.
 5 (Witness sworn.)
 6 JUDGE HOGAN: Thank you. Go ahead.
 7 **GEORGE WOLFF,**
 8 being first duly sworn, was examined and testified
 9 as follows:
 10 **STATEMENT**
 11 **BY MR. WOLFF:**
 12 MR. WOLFF: I just had a few comments with
 13 the wind farm and with the Game and Fish
 14 Department. I actually had some land that was
 15 enrolled in the wind farm already, and I got this
 16 offer from the Game and Fish to sell them wetland
 17 easements, and I -- I kind of had a dilemma. Me
 18 and my wife talked it over and we kind of -- what
 19 do we do here now? Now, it's like, we've got a
 20 chance to get some revenue from the wetlands
 21 easements but we may probably -- we had already
 22 went and signed to the wind farm already, the
 23 lease.
 24 So we started calling and talked to
 25 actually John Baker once himself, and they did a

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1 pretty good job. They worked it out, you know,
 2 between them. And I kind of thought that they're
 3 not going to want to put no wind towers in the low
 4 spots or in the lakes. So they worked it out and
 5 we got along pretty good, and I got my wetland
 6 easement and I'm still in the lease with the wind
 7 farm. So that worked out well. I mean, I credit
 8 the Badger people for that too.
 9 And a few other comments about the coal --
 10 I know the people from the coal over here, and like
 11 Blair said -- I agree with what he said, they were
 12 protecting their interests up there. And I also
 13 feel that with their climate in Washington, I'm
 14 afraid as much as I like coal too, I like the
 15 steady flow of electricity, years ago I even -- we
 16 heated our house with coal so I shoveled it into
 17 the furnace.
 18 But I'm afraid with what's happening in
 19 Washington, we may not have any choice anymore.
 20 They may make it so tough for some of these coal
 21 plants to keep going that we better be prepared
 22 with some other alternative types of energy to --
 23 to keep -- to keep -- to help keep us powered.
 24 And other than that, the big thing I think
 25 is the economic benefits to our area as far as the

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1 school, the fire department and anything else that
 2 municipalities draw money from -- from tax dollars.
 3 I know there was a gentleman up here
 4 before that commented on it, too, but I kind of
 5 feel this is one of the big things in our community
 6 that's going to help our community go and keep it
 7 going for the next 30 or 40 years as long as these
 8 wind towers are here.
 9 And I guess that's -- those are my
 10 comments and that's about what I had to say.
 11 JUDGE HOGAN: All right. Thank you.
 12 Ms. Smith, any questions?
 13 MS. SMITH: No. Thank you.
 14 MR. ARMSTRONG: No questions.
 15 JUDGE HOGAN: Mr. Schock?
 16 MR. SCHOCK: No questions.
 17 JUDGE HOGAN: Mr. Pranis?
 18 MR. PRANIS: No.
 19 JUDGE HOGAN: Commissioner Fedorchak.
 20 COMMISSIONER FEDORCHAK: Thank you,
 21 Mr. Wolff. I don't have any questions, but I
 22 appreciate your perspectives. Thank you so much.
 23
 24
 25

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1 JUDGE HOGAN: Commissioner Christmann?

2 **EXAMINATION**

3 **BY COMMISSIONER CHRISTMANN:**

4 Q. Sorry, I was writing down something else,

5 I didn't catch your first name.

6 A. George.

7 Q. And I didn't recall that North Dakota Game

8 and Fish does wetlands easements. Did you say your

9 easement was with them or a different group?

10 A. Yeah, I believe it was North Dakota

11 Game -- no, it was federal Game and Fish, but --

12 Q. U.S. Fish and Wildlife Service?

13 A. U.S. Fish and Wildlife. There you go. It

14 was a gentleman, though, up at Bismarck by the name

15 of Jim Weston that I dealt with --

16 Q. Okay.

17 A. -- from the U.S. Fish and Wildlife

18 Service. Yeah.

19 COMMISSIONER CHRISTMANN: Thank you for

20 your time and attention today.

21 JUDGE HOGAN: Commissioner Haugen-Hoffart?

22 COMMISSIONER HAUGEN-HOFFART: Mr. Wolff,

23 thank you for your testimony. I have no questions.

24 JUDGE HOGAN: All right. Thank you,

25 Mr. Wolff.

303

1 Are there others that would like to

2 provide testimony?

3 Good afternoon, can I get your name for

4 the record?

5 MR. WALD: John Wald, Napoleon, North

6 Dakota.

7 JUDGE HOGAN: I'm sorry. Can you repeat

8 where you're from?

9 MR. WALD: Napoleon.

10 JUDGE HOGAN: Napoleon. Thank you. And

11 do you want to spell your last name for the record?

12 MR. WALD: W-a-l-d.

13 JUDGE HOGAN: And, Mr. Wald, were you in

14 the room when I went through the penalties for

15 perjury?

16 MR. WALD: Yes, I was.

17 JUDGE HOGAN: And do you understand what

18 perjury is?

19 MR. WALD: Yes.

20 (Witness sworn.)

21 JUDGE HOGAN: All right. Thank you. Go

22 ahead.

23 **JOHN WALD,**

24 being first duly sworn, was examined and testified

25 as follows:

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1 **STATEMENT**

2 **BY MR. WALD:**

3 MR. WALD: I wasn't here all morning. I

4 came after lunch. I'm a Logan County commissioner

5 also. And I listened to the coal people. You go

6 back three or four legislations ago that -- they're

7 a powerful group, the coal, gas. Wind had to give

8 up 33 percent of the taxation to go back to the

9 locals, so they're powerful groups. So the moneys

10 that we could receive is going to the state

11 basically, if I'm correct -- if I'm saying it

12 correctly.

13 Anyway, I was in the other -- I was in the

14 Emmons/Logan County wind farm, involved in that,

15 with the haul use agreements. And if Badger can

16 work with me and our Commission the way the last

17 wind farm did, I'll be very happy. I'm not one to

18 be pushed around as far as contractors and stuff.

19 I stand my ground. I've always been that way.

20 And I look at the economics, and I am

21 enrolled in the -- in this -- this system here. I

22 am -- according to the map, we would be getting

23 underground electrical lines. And my son farms

24 property also and he's okay with that.

25 I'm looking at the economics for the

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1 county because I've been commissioner for 16 years,

2 and the way George explained Washington, D.C., the

3 climate is very different. I've been out there

4 promoting different things through Farmers Union

5 and stuff. We're -- it's going to be down the road

6 not that many years, the rural people will be

7 outvoted as far as -- or pushed out as far as

8 power.

9 So we've got to stick with alternatives.

10 I don't agree with all of it, but sometimes you've

11 just got to go with the flow a little bit, whether

12 it's Game and Fish, affiliations on the parties.

13 You've just got to give and take, but I am for the

14 wind, and I'm looking for the revenues for our

15 county because we struggle just about every year

16 financially.

17 So that's all I've got to say.

18 JUDGE HOGAN: All right. Thank you.

19 Ms. Smith, any questions?

20 MS. SMITH: I just have one.

21 **EXAMINATION**

22 **BY MS. SMITH:**

23 Q. Because I was present and just to make

24 sure it's clear in the record, Mr. Wald, you

25 abstained from the vote on the conditional use

306

1 permit for Badger Wind; is that correct?

2 **A.** That is correct.

3 MS. SMITH: I have no other questions.

4 Thank you.

5 JUDGE HOGAN: Mr. Armstrong, any

6 questions?

7 MR. ARMSTRONG: No questions.

8 JUDGE HOGAN: Mr. Schock?

9 MR. SCHOCK: No questions.

10 JUDGE HOGAN: Mr. Pranis.

11 MR. PRANIS: No.

12 JUDGE HOGAN: Commissioner Fedorchak.

13 COMMISSIONER FEDORCHAK: Thank you,

14 Mr. Wald. Appreciate your being here and sharing

15 another perspective from the Commission. I don't

16 have any questions for you.

17 JUDGE HOGAN: Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: I do not either,

19 but thanks for -- for your time and for bringing

20 the perspective on how that project worked out

21 dealing with the Emmons/Logan project.

22 JUDGE HOGAN: Commissioner Haugen-Hoffart.

23 COMMISSIONER HAUGEN-HOFFART: Mr. Wald,

24 thank you for your service to the county commission

25 and also for your presentation. I have no further

307

1 questions.

2 JUDGE HOGAN: All right. Thank you,

3 Mr. Wald.

4 MR. WALD: Can I explain why I abstained?

5 JUDGE HOGAN: Oh, sure, if you want to.

6 MR. WALD: Because we were enrolled in it.

7 That's why I abstained from it. I am for it, but I

8 abstained because of principle.

9 MS. SMITH: Correct. And I didn't -- I

10 just thought, hey, while we're here, let's just put

11 that on the record so everyone knows that as well.

12 MR. WALD: Yep.

13 MS. SMITH: Thanks.

14 MR. WALD: Thank you.

15 JUDGE HOGAN: Thank you. I think I saw

16 somebody over here stand up before.

17 Good afternoon. Can I get your name for

18 the record.

19 MR. HORNER: Yep. Jack Horner,

20 H-o-r-n-e-r, Logan County.

21 JUDGE HOGAN: And were you in the room

22 earlier when I went through the penalties for

23 perjury?

24 MR. HORNER: Yes, ma'am. I was here all

25 day.

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1 JUDGE HOGAN: And do you understand what

2 perjury is.

3 THE WITNESS: Yep. Yes.

4 (Witness sworn.)

5 JUDGE HOGAN: All right. Thank you. Go

6 ahead.

7 **JACK HORNER,**

8 being first duly sworn, was examined and testified

9 as follows:

10 **STATEMENT**

11 **BY MR. HORNER:**

12 MR. HORNER: I'm up in the northwest

13 corner of the Badger Wind tower. I'm up in the

14 northwest county. I'm for it. I've lived there

15 all my life. I farmed for some time. Then I got

16 sold out and now I work in town at the Wishek

17 hospital. I drive to work every day on a gravel

18 road. And I know people are against it, but a

19 landowner has the right to say what they want. If

20 they want a tower on their land, they can have one.

21 I'm -- I'm not against the coal or natural

22 gas or electricity. Logan County and McIntosh

23 County has no fossil fuel power generations, and

24 that's all I've got to say.

25 JUDGE HOGAN: All right. Thank you.

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1 Ms. Smith, any questions?

2 MS. SMITH: I have no questions. Thank

3 you.

4 JUDGE HOGAN: Mr. Armstrong.

5 MR. ARMSTRONG: No questions.

6 JUDGE HOGAN: Mr. Schock?

7 MR. SCHOCK: No questions.

8 JUDGE HOGAN: Mr. Pranis?

9 MR. PRANIS: No.

10 JUDGE HOGAN: Commissioner Fedorchak.

11 COMMISSIONER FEDORCHAK: Thank you,

12 Mr. Horner. I appreciate your comments this

13 afternoon. I don't have any questions for you.

14 JUDGE HOGAN: Commissioner Christmann.

15 COMMISSIONER CHRISTMANN: I don't think I

16 do either, but thank you.

17 JUDGE HOGAN: Commissioner Haugen-Hoffart?

18 COMMISSIONER HAUGEN-HOFFART: Mr. Horner,

19 thank you for your testimony and being here all

20 day. No questions.

21 JUDGE HOGAN: All right. Thank you,

22 Mr. Horner.

23 MR. HORNER: I've got one comment for

24 Ms. Haugen. You said about antelope/deer. Last

25 night I came to town for a meeting in here, and I

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1 literally had to stop on the road and watch three
 2 of them bounce across the road. And I think I've
 3 probably had three deer on my pickup already.
 4 Thank you.
 5 COMMISSIONER HAUGEN-HOFFART: Well, be
 6 safe on the road.
 7 JUDGE HOGAN: All right. Are there others
 8 that want to provide testimony this afternoon?
 9 Yep. Come forward, please. Can I get
 10 your name for the record.
 11 MR. PHILLIP WANNER: My name is Phillip
 12 Wanner.
 13 JUDGE HOGAN: Do you want to spell your
 14 last name.
 15 MR. PHILLIP WANNER: W-a-n-n-e-r.
 16 JUDGE HOGAN: Mr. Wanner, were you in the
 17 room earlier when I went through the penalties for
 18 perjury.
 19 MR. PHILLIP WANNER: Yes, ma'am.
 20 JUDGE HOGAN: Do you understand what
 21 perjury is.
 22 MR. PHILLIP WANNER: Yes, ma'am.
 23 (Witness sworn.)
 24 JUDGE HOGAN: All right. Thank you. Go
 25 ahead.

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1 just out of curiosity than anything, this concern,
 2 but I'm just not knowing if it's a slam dunk for
 3 the amounts that they're -- that they're saying
 4 that they can give to the locals.
 5 Another concern I have is -- I had
 6 wildlife written down, but a lot of people have
 7 hammered on that. And I guess my point on that is
 8 that they said earlier minimal impact will be done
 9 to a lot of wildlife in the area, but minimal
 10 doesn't necessarily mean none. And there's been a
 11 handful of people up here talking about how much
 12 they love the wildlife in the area.
 13 So the bigger concerns for me that I'm
 14 going to get into now are the long-term effects on
 15 the land. I just can't see how dragging all this
 16 equipment across the land and just hammering it,
 17 putting up these big structures -- I can't see how
 18 that's not going to be detrimental. I know the
 19 question was asked earlier about, you know, do we
 20 think the damage is going to be in the construction
 21 phase or is it going to continue afterwards. And
 22 not that there's going to be physical damage you're
 23 going to see every day, but I feel like there's
 24 going to be a lot of damage to the land
 25 structurally for decades and decades after this is

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1 **PHILLIP WANNER,**
 2 being first duly sworn, was examined and testified
 3 as follows:
 4 **STATEMENT**
 5 **BY MR. PHILLIP WANNER:**
 6 MR. PHILLIP WANNER: Okay. I know a
 7 request was made earlier -- well, maybe not really
 8 a request, but to keep it to one member per family
 9 and my father already spoke, but I had some other
 10 thoughts and concerns that I had written down so I
 11 thought I would share.
 12 My first concern would be that Ørsted
 13 still doesn't have a buyer for the power. I know
 14 that was talked about a lot in detail this
 15 morning -- this morning. And I'm not overly
 16 familiar with MISO and those kinds of things, but
 17 how it sounded to me this morning is that if they
 18 put it on the open market, anybody and everybody
 19 could -- you know, that's involved in energy
 20 trading could buy the power, and I'm not -- I'm not
 21 sure how that would benefit us here. You know, I'm
 22 not sure if that means they, you know, run their
 23 wind turbines any more or less. Does that affect
 24 the amounts given to -- to, you know, the school or
 25 the landlords? Just -- and, you know, this is more

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1 done with with the tearing up of it as well as
 2 where these towers are going to be placed and the
 3 roads. So I feel like that's going to be a big
 4 deal.
 5 I also -- if these things were to be
 6 decommissioned, Ørsted had said at the county
 7 commission meeting back in May that about half of
 8 the cement that they put in the ground for the
 9 foundation is going to stay there, and they said
 10 they don't see any ill effects of that generally,
 11 which I guess if the data says it -- but I have a
 12 hard time believing that a 50-foot-by-4-foot chunk
 13 of cement or whatever it is in the ground is not
 14 going to be detrimental to something.
 15 And then, of course, the end game with the
 16 towers if they were to get decommissioned, what do
 17 we do with them in 30 years? You know, there's a
 18 lot of landlords that are involved in this that,
 19 you know, 30 years from now, 40 years from now they
 20 may not be here. I'm hoping to be. I'm 28 years
 21 old, and I'm just really, you know, kind of afraid
 22 of what could happen down the road in a few
 23 decades.
 24 And then back to the county commission
 25 meeting that happened a couple months ago. I know

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1 one concern that kept popping up from the group of
2 us that were there that weren't for the project was
3 that we don't necessarily feel that Ørsted's been
4 totally honest in some cases. You know, Mike had
5 the story here -- or had the issue brought up
6 earlier about the tower a little ways away from his
7 house.

8 I had a case this year where I was called
9 by a landlord that we have that's enrolled in the
10 project -- or that I rent from that's enrolled in
11 the project, and they said that Ørsted was going to
12 be out drilling on a field that was enrolled,
13 which, you know, they have the lease to do it and
14 that's fine. So I go out there to see what's going
15 on, and they were drilling a ways away from where
16 the tower was going to be. The landlord had
17 already shared with me the map of where the wind
18 turbine was going to be, and they have these MET
19 towers, I think the meteorological towers.

20 And so the person who was there managing
21 the drilling that day, I had talked to him when I
22 went out to the field and asked what they were
23 doing because the tower was, you know, a few
24 hundred yards away from where they were drilling,
25 and he told me about this other structure that was

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1 going to go up on this land. And I asked the
2 landlord if they knew anything about it and they
3 said no, and this was in the beginning of April.
4 And then about a month later, three, four weeks
5 later, the landlord called me and said, "Hey,
6 they're going to be putting a meteorological tower
7 on this land."

8 So back to -- Mike had said it earlier
9 about were these guys trying to sneak past you?
10 Well, maybe somebody knew and it was a loss in
11 communication, but it's a little sneaky to me, and
12 I guess I just feel like that's what we could be
13 bringing into the community. I'm not really
14 trusting of them.

15 You know, they say they're going to bring
16 in local workers. I guess I have suspicions about
17 that, too, because the workers that we've seen
18 driving around, they're not necessarily from here.
19 And I don't know what defines local. Is it just in
20 state, you know, a couple hundred miles? What's
21 local? You know, what benefits are we actually
22 going to see in that regard?

23 And then the biggest concern I have and
24 it's a little bit -- a little bit just, you know --
25 it's thinking, it's theoretical in a lot of ways,

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1 but what about the overtaking of rural America by
2 big corporations? That -- that has me nervous a
3 lot more than anything.

4 I was told that the question was asked at
5 the Ørsted meeting last night, you know, who are
6 the investors of the project actually and the
7 information wasn't divulged and, you know,
8 confidential is confidential, but we as locals
9 don't know who's going to be around here. I mean
10 yeah, it's -- Ørsted's doing the work, but who
11 actually owns it?

12 You hear about all the time -- I've got a
13 friend that lives in northeast Montana. They have
14 private interest groups trying to buy rangeland out
15 there, and it's affecting ranchers and their
16 ability to operate. And then there was this story
17 on the news here just a week or two ago about Bill
18 Gates buying land up in northeast North Dakota and
19 he's got plenty of money to burn and I guess
20 whatever.

21 But who's going to be here? You know,
22 that's the point I'm trying to make. Is it even in
23 this nation? Is it someone who's international? I
24 don't know. That's a -- that's a concern that a
25 lot of us have too.

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1 So I guess those are my concerns. And I
2 guess just in closing, I know that there's a lot of
3 wind farms in the state. They've been popping up
4 like crazy the last decade. And I understand this
5 is more of an emotional and opinionated testimony
6 than factual. I know you guys wanted factual, but
7 I just can't get behind what's going on with this
8 one after what I've seen.

9 A lot of the local farmers felt that when
10 they were coming to sign up leases, you know, years
11 ago, that they were getting lied to at that point
12 and, granted, it was -- I think it was Lincoln
13 Clean Energy at the time, not Ørsted, but still a
14 company is going to do what's right for them for
15 the money. And I guess that's where I'm going to
16 leave it is do they care? You know, maybe they
17 care about the area, but I think they care a lot
18 more about what's going in their pockets. And I
19 just don't -- I'm just -- you know, please say no
20 is my attitude, I guess.

21 So thank you.

22 JUDGE HOGAN: All right. Thank you.

23 Ms. Smith, any questions?

24 MS. SMITH: Just a couple.

25

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1 **EXAMINATION**

2 **BY MS. SMITH:**

3 Q. Do you live within the wind project?

4 A. I -- I live in Wishek here, but our farm

5 is four miles north right in the middle of the

6 project. There's going to be towers just

7 surrounding it, so --

8 Q. So in the cutout -- if I'm remembering --

9 I think I talked to your father about that -- in

10 the cutout outside of the project area to the

11 north --

12 A. Yes.

13 Q. -- is that correct?

14 And do you -- you lease land within that

15 is signed up for the project?

16 A. Correct.

17 Q. And you farm that land within the leased

18 area?

19 A. Correct. Yes.

20 Q. And I believe did you and your father both

21 come to the conditional use permit hearing and

22 speak?

23 A. Correct. Yes.

24 MS. SMITH: I have no further questions.

25 JUDGE HOGAN: Mr. Armstrong, any

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1 questions.

2 MR. ARMSTRONG: No questions.

3 JUDGE HOGAN: Mr. Schock?

4 MR. SCHOCK: No questions.

5 JUDGE HOGAN: Mr. Pranis?

6 MR. PRANIS: I only wanted to say that I

7 can't speak for the company on what local workers

8 mean. I think it's a good question, and for our

9 purpose, it's really about North Dakota workers and

10 people who sleep in their own beds at night instead

11 of traveling and so because that way the money

12 stays in the local economy and that's kind of what

13 the whole study was based on is, you know, spend

14 local, recirculate local. So -- but, again, that's

15 just for us, not for the company.

16 MR. PHILLIP WANNER: Okay. Thank you.

17 JUDGE HOGAN: Commissioner Fedorchak.

18 **EXAMINATION**

19 **BY COMMISSIONER FEDORCHAK:**

20 Q. Thank you, Phillip. I'm glad you did come

21 forward because you had a lot of additional

22 information that we hadn't heard before, so I

23 appreciate that.

24 Regarding the local workers, you're

25 probably of the age group that they'd like to hire.

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1 Do you think there's a pool of folks in this area

2 who would be available for hire?

3 A. Anybody who doesn't have a job, I suppose.

4 Yeah. I guess I don't know.

5 Q. You -- you don't know offhand of people

6 who are kind of open to that kind of work or maybe

7 seasonal work or whatever?

8 A. Well, most -- I guess most of the people

9 that I know that are of my age are -- you know,

10 they have a job in some capacity. If they have the

11 time to take on additional work with the wind farm

12 if it goes through is -- yeah, I can't speak to

13 that, so --

14 COMMISSIONER FEDORCHAK: Sure. All right.

15 Otherwise, I don't have any other questions. Thank

16 you.

17 JUDGE HOGAN: Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: Thank you,

19 Phillip, for being here, and I just want to thank

20 you for being part of that new generation to take

21 over feeding the country and the world. Appreciate

22 you guys.

23 MR. PHILLIP WANNER: Thank you.

24 JUDGE HOGAN: Commissioner Haugen-Hoffart.

25 COMMISSIONER HAUGEN-HOFFART: Phillip,

321

1 thank you for your testimony. I have no further

2 questions.

3 MR. PHILLIP WANNER: Okay. Thank you. I

4 hope I'm still here in 30 years.

5 JUDGE HOGAN: Thank you, Mr. Wanner.

6 All right. Are there others that want to

7 provide testimony this afternoon?

8 Good afternoon.

9 MS. RAILE: Hello.

10 JUDGE HOGAN: Can I get your name for the

11 record.

12 MS. RAILE: My name is Robin Raile,

13 R-a-i-l-e.

14 JUDGE HOGAN: And, Ms. Raile, were you in

15 the room when I went through the penalties for

16 perjury?

17 MS. RAILE: Yep, every time. I've been

18 here all day.

19 JUDGE HOGAN: All right. And do you

20 understand what perjury is?

21 MS. RAILE: Yes.

22 (Witness sworn.)

23 JUDGE HOGAN: All right. Thank you. Go

24 ahead.

25

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1 **ROBIN RAILE,**
 2 being first duly sworn, was examined and testified
 3 as follows:
 4 **STATEMENT**
 5 **BY MS. RAILE:**
 6 MS. RAILE: Okay. So I'm not typically
 7 used to this audience. I'm a local kindergarten
 8 teacher, so usually my audience is a little bit
 9 younger and I can do funny faces to keep them busy.
 10 But I kind of just have, like, some
 11 different, I guess, topics that, like, since being
 12 here all day, just questions that kind of came up,
 13 so I don't have anything in writing to pass out to
 14 you guys.
 15 We did not sign up for the wind towers. I
 16 am located about four and a half miles west of town
 17 and about a mile south on gravel road off of 34th
 18 Avenue. There will be some wind towers close to
 19 us. I think they're about, like, a mile or so
 20 away, but I do -- my in-laws will have towers
 21 around their farm.
 22 So some things that I thought were brought
 23 up today that weren't really clarified that I kind
 24 of still have some concerns on are like some things
 25 where we talk about like the TV reception,

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1 different things like. I feel like we already live
 2 in a small town that kind of has like the bad
 3 service area. Like, will that affect just the TV,
 4 will it affect our radios, will it affect our
 5 emergency calls, like our cell phones going to
 6 towers? Will it affect our CB radios in our
 7 different equipment when talking to each other when
 8 we don't have cell phone reception, different stuff
 9 like?
 10 I know it's been brought up about the
 11 different, like, planes and stuff coming over with
 12 our airport. I just want to make sure like our air
 13 lift services, like our emergency helicopters that
 14 come in, like will that be affected, because those
 15 don't land out at the airport. It actually, like,
 16 lands here in town by the hospitals. And I feel
 17 like we're over an hour -- about an hour and a half
 18 away from any of these major hospitals, so I do
 19 feel like if there is an emergency, that is how we
 20 get most of our critical patients out.
 21 And I know -- I think Perry Turner had
 22 already brought it up that we need more, you know,
 23 different emergency services. Like are people
 24 going to be trained? As of now, we already can't
 25 fill positions at the hospital. Like we're turning

324

1 people away because we just don't have the staff
 2 members to really take care of them.
 3 And I know it was brought up -- they
 4 asked, you know, if people aren't satisfied with,
 5 like, if it's too loud, if it's -- if people -- you
 6 know, are there going to be side effects to, like,
 7 the physical body, to the animals, what will the
 8 company do? Do they move those towers? Will they
 9 keep them? Will they just say like, "Here's a
 10 thousand dollars, we're sorry," you know, "that
 11 this had a big impact on your life"?
 12 For example, I know like where I live, I
 13 had just opened up a dog boarding center and I have
 14 done a lot of research saying that like sometimes
 15 the vibration can bother the animals. Like will it
 16 be to the point where I need to quit that service,
 17 like quit the business? And I opened up in
 18 December, and since December I've only had three
 19 weekends that people haven't in the community used
 20 it. Like will that be affected?
 21 And then I know we talked about once this
 22 done, there will be full-time jobs. I think a lot
 23 of people in the community are expecting like 10 to
 24 15 people will be getting jobs, and I think
 25 realistically will it be that many? Will there

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1 just be two to three full-time jobs in here? If it
 2 stays local, are these people already, like, buying
 3 stuff in town, you know, when talking about they'll
 4 bring in revenue?
 5 And then I know one other thing that I
 6 didn't know either until Mike VanGorkom brought it
 7 up was he's having one, you know, put close to his.
 8 That's also where our golf course is. Wishek
 9 doesn't have a lot to offer to bring people in in
 10 the beginning. So will it affect people coming in?
 11 Will people want to go there if it's loud? And,
 12 personally, I've never been super close to them so
 13 I can't say how loud they are, but I'm just going
 14 off of people that I know that lived in the area.
 15 I have family in Linton that live close to the area
 16 and they complain about noise and stuff all the
 17 time. So will that deter people from coming in
 18 when we do tournaments or just leisurely the ones
 19 that go around town to do that?
 20 And I know that there's like a road
 21 agreement, that they'll fix those, and I'm not one
 22 about statistics and I don't know a lot of the
 23 facts and I honestly can say I didn't look at the,
 24 like, road agreement, but just things that we
 25 already had issues with because we rent land where

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1 some towers are going on, we had an issue earlier
 2 where they drove in through a field that we had.
 3 It didn't get fixed for months, and when we tried
 4 calling somebody, I feel like they were kind of
 5 rude, like saying it's not a big deal, like going
 6 around it. And then finally when we got the mayor
 7 involved, it's like they tell the people, you know,
 8 in charge what they want to hear, but they don't
 9 exactly tell -- or they're not that nice to, like,
 10 the people down below. It's kind of like when
 11 you're at a school, you might treat the
 12 superintendent better because they're in charge,
 13 where it's not everybody treats like the cooks or
 14 the janitors like the same. And I kind of feel
 15 like that's how a lot of the farmers in the area
 16 feel like they're being treated, like we're not
 17 being heard.
 18 And I get it, it's easy to say when you're
 19 not by these wind towers, but it's like when
 20 they're in their backyard, I feel maybe some of
 21 these guidelines of how many feet they are away
 22 from the house could be pushed back.
 23 I think that's all of my concerns.
 24 JUDGE HOGAN: All right. Thank you.
 25 Ms. Smith, any questions?

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1 MS. SMITH: I don't have any questions.
 2 Thanks.
 3 JUDGE HOGAN: Mr. Armstrong.
 4 MR. ARMSTRONG: No questions.
 5 JUDGE HOGAN: Mr. Schock?
 6 MR. SCHOCK: No questions.
 7 JUDGE HOGAN: Mr. Pranis?
 8 MR. PRANIS: No, Your Honor.
 9 JUDGE HOGAN: Commissioner Fedorchak.
 10 COMMISSIONER FEDORCHAK: Thank you,
 11 Ms. Raile. I would have loved to have seen some of
 12 your faces. At this time in the hearing those
 13 would have been welcomed. No. But I appreciate
 14 all the points that you made and the serious
 15 thought you've put behind, you know, the impacts
 16 that this will have on your community and your
 17 area. So thank you for taking time to be here
 18 today and listening and sharing with us your
 19 thoughts. Appreciate it a lot.
 20 JUDGE HOGAN: Commissioner Christmann.
 21 **EXAMINATION**
 22 **BY COMMISSIONER CHRISTMANN:**
 23 Q. You brought some interesting concerns I
 24 hadn't thought of. When we've -- on others of
 25 these, we've thought about airport traffic but not

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1 really the helicopter access to the hospitals.
 2 Your dog boarding. I want to talk specifically
 3 about the golf course thing because that was never
 4 brought up. I'm not sure if that is considered a
 5 public building that was in the measurements, if it
 6 would be in the right setbacks. So can you explain
 7 for us directions where the golf course is?
 8 A. I don't know if the audience can help,
 9 but, I mean, Mike VanGorkom lives right beside it.
 10 So I think it would just be a little -- just -- is
 11 he right on it? His house is barely just north of
 12 it, but it's also the area of our local county
 13 fairgrounds. So it's like we have races there in
 14 the summer every Thursday that go on and people
 15 that have cars from all over the state come. And
 16 in July, that's when we have our fair for three
 17 days, so like the carnival's in town, the 4-H gets
 18 judging, there's dirt bike races, different car
 19 kind of races, there's a rodeo that goes on. So I
 20 don't know if that building was taken into
 21 consideration or not.
 22 But like I said, Wishek doesn't have a lot
 23 to bring us in, so I'd hate that people don't want
 24 to come if there's an annoyance with the towers.
 25 Q. Yeah. I know your one guy from Wishek

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1 always comes to Mandan and wins those races all the
 2 time in the Pioneer class or whatever they call it.
 3 So to find the golf course, it's the same
 4 directions as we got earlier for Mr. VanGorkom's
 5 place --
 6 A. Yep, you could probably stand in his --
 7 Q. -- and that's where the fairgrounds is
 8 too?
 9 A. Yes. You could stand in his yard and you
 10 could see it from his house.
 11 COMMISSIONER CHRISTMANN: Okay. Thank you
 12 for clarifying that.
 13 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 14 COMMISSIONER HAUGEN-HOFFART: Ms. Raile, I
 15 have to agree with Commissioner Christmann, you
 16 brought up some concerns especially with the
 17 airlift emergency services, and if something like
 18 this goes through, safety and the impact on the
 19 emergency service would greatly -- could
 20 potentially be greatly impacted. So, again, I want
 21 to thank you for bringing up your concerns, but I
 22 have no questions for you. Thank you.
 23 JUDGE HOGAN: All right. Thank you,
 24 Ms. Raile.
 25 MS. RAILE: Thank you.

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1 JUDGE HOGAN: Is there anyone else that
 2 wants to provide testimony?
 3 Can I get your name for the record?
 4 MR. BROOKS BECHTLE: My name is Brooks
 5 Bechtle.
 6 JUDGE HOGAN: Do you want to spell your
 7 last name?
 8 MR. BROOKS BECHTLE: B-e-c-h-t-l-e.
 9 JUDGE HOGAN: All right. And were you in
 10 the room earlier when I went through the penalties
 11 for perjury.
 12 MR. BROOKS BECHTLE: Yes, I was.
 13 JUDGE HOGAN: And do you understand what
 14 perjury is.
 15 MR. BROOKS BECHTLE: Yes, I do.
 16 (Witness sworn.)
 17 JUDGE HOGAN: All right. Thank you. Go
 18 ahead.
 19 **BROOKS BECHTLE,**
 20 being first duly sworn, was examined and testified
 21 as follows:
 22 **STATEMENT**
 23 **BY MR. BECHTLE:**
 24 MR. BROOKS BECHTLE: I'm just here to give
 25 support for this wind project and the reason I'm

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1 saying that is because this country seems to be
 2 moving towards green energy and that's been in the
 3 news media. They keep talking, they keep pushing
 4 we want to have a cleaner environment, and one of
 5 the ways that this is probably going to happen is
 6 with wind-powered generation.
 7 Now, there are a number of farms that are
 8 already up and running with wind power and there
 9 seems to be a number of others that are proposed.
 10 And if we reject a wind power farm, every now and
 11 then that means that's less generation of
 12 electricity coming down the road. And if we don't
 13 keep up with the demand, we will fall behind.
 14 There's no doubt.
 15 And that's why I guess we have to get
 16 started somewhere, which we have already with all
 17 the different sources of power being conducted in
 18 the state and other parts of the country. But this
 19 is why I believe we should support this wind
 20 project because it's a way of helping this country
 21 out with their wind power -- or wind generation of
 22 electricity because the need is great. There's no
 23 doubt about that.
 24 And that's why I'm here to offer my
 25 support for this project, and I just thought I

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1 would express my viewpoint on this. That's about
 2 all I have to say.
 3 JUDGE HOGAN: All right. Thank you.
 4 Ms. Smith, did you have any questions?
 5 MS. SMITH: I don't have any questions.
 6 Thank you.
 7 JUDGE HOGAN: Mr. Armstrong.
 8 MR. ARMSTRONG: No questions.
 9 JUDGE HOGAN: Mr. Schock?
 10 MR. SCHOCK: No questions.
 11 JUDGE HOGAN: Mr. Pranis?
 12 MR. PRANIS: No questions.
 13 JUDGE HOGAN: Commissioner Fedorchak?
 14 COMMISSIONER FEDORCHAK: Thank you,
 15 Mr. Bechtle. I don't have any questions either.
 16 Appreciate you taking time to be here today.
 17 MR. BROOKS BECHTLE: Thank you.
 18 JUDGE HOGAN: Commissioner Christmann.
 19 **EXAMINATION**
 20 **BY COMMISSIONER CHRISTMANN:**
 21 Q. Appreciate your focus on the electric grid
 22 and the need for electricity. Do you have any
 23 concerns about overreliance potentially on a
 24 generation source that produces in great abundance
 25 for a while and then is way short for a while and

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1 then abundance and then short?
 2 A. Well, there is some concern to that point,
 3 yes. But we need to keep in mind is we have to
 4 continue to expand the ability to produce
 5 electricity. I mean, if we fall behind by
 6 rejecting some of these wind farms or other ways of
 7 producing electricity, we have so much ground that
 8 we have to make up and we're just going to fall
 9 behind.
 10 It's about like the infrastructure of this
 11 country being depleted. If we don't continuously
 12 update it, all of a sudden everything falls apart.
 13 I mean, we just -- we're going to fall so far
 14 behind, we won't be able to make up all this lost
 15 time. So this is just something to keep in mind.
 16 COMMISSIONER CHRISTMANN: Thank you for
 17 being here.
 18 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 19 COMMISSIONER HAUGEN-HOFFART: I have no
 20 questions for you, but I want to thank you for
 21 coming up and presenting.
 22 MR. BROOKS BECHTLE: Thank you.
 23 JUDGE HOGAN: All right. Thank you.
 24 Is there anyone else that wants to provide
 25 testimony?

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1 Can I get your name for the record?

2 MR. DEILE: David Deile.

3 JUDGE HOGAN: Do you want to spell your

4 last name?

5 MR. DEILE: D-e-i-l-e.

6 JUDGE HOGAN: All right. And, Mr. Deile,

7 were you in the room earlier when I went through

8 the penalties for perjury?

9 MR. DEILE: I was.

10 JUDGE HOGAN: And do you understand what

11 perjury is.

12 MR. DEILE: I do.

13 (Witness sworn.)

14 JUDGE HOGAN: All right. Thank you. Go

15 ahead.

DAVID DEILE,

17 being first duly sworn, was examined and testified

18 as follows:

STATEMENT

20 **BY MR. DEILE:**

21 MR. DEILE: Well, the first thing I want

22 to do is thank you all for being here and then just

23 express that I was raised here. I'm no longer a

24 native -- or I should say I'm no longer a resident

25 of the area. I'm actually here -- I'm power of

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1 attorney for a landowner that is involved in the

2 project. That would be my mother.

3 And there has been an enrollment. I

4 know -- I'm aware that the parcel of land that she

5 has is not going to be actively used for any sort

6 of construction. They found different avenues for

7 what their needs are, and that's fine.

8 So I indicated that I was wondering what

9 would the consequence be then. If they're not

10 going to use her land, would they consider

11 terminating the lease? And the reply was that no,

12 you're -- basically my understanding is once

13 you're -- once you're engaged in the lease, you're

14 pretty much along for the ride for the duration,

15 which seems to be quite lengthy. So that seemed to

16 be a little bit of a concern to me.

17 And I reviewed the lease and there's a

18 couple pages of termination language, and I don't

19 know how many total pages there are to the lease,

20 but, you know, really only one small section is in

21 relationship to terminating the lease for the

22 landowner and the rest are all favoring the grantee

23 of the lease to terminate the lease. And the only

24 purpose that an owner has a right to terminate is

25 for monetary default on behalf of the leaser.

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1 It's presented a number of concerns to me

2 beyond that, and I'll share them with you here as

3 well. I have an anonymous letter that I'm going to

4 read and I'll allow you to enter that into the

5 record.

6 JUDGE HOGAN: Actually, I won't have you

7 read it, but you can enter it into the record if

8 you want.

9 MR. DEILE: Okay.

10 MS. SMITH: Your Honor, I would just

11 ask -- I don't think we could accept an anonymous

12 letter because I have no idea who then it is from.

13 It would be helpful to at least know who the letter

14 is from. And if -- because if they're not willing,

15 then I have no way to tie it back to anything.

16 JUDGE HOGAN: Is there a reason why it's

17 anonymous.

18 MR. DEILE: Protective reasons, I would

19 say.

20 JUDGE HOGAN: Can you be more specific? I

21 mean, it --

22 MR. DEILE: Not really, no.

23 JUDGE HOGAN: Mr. Armstrong, did you want

24 to weigh in at all.

25 MR. ARMSTRONG: I've never seen an

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1 anonymous letter entered. It would help to see it

2 first maybe at a break or something and then think

3 about it.

4 JUDGE HOGAN: Okay. Maybe if you want --

5 MR. DEILE: I couldn't hear him.

6 JUDGE HOGAN: Go ahead.

7 MR. DEILE: I didn't hear you, sir.

8 MR. ARMSTRONG: Maybe if we took a break

9 and Ms. Smith and I could take a look at it and

10 that would give us more of a basis to see how to

11 address it.

12 JUDGE HOGAN: Okay. Maybe --

13 MR. DEILE: That'd be fine.

14 JUDGE HOGAN: -- can we take a few minutes

15 and have the parties review it and then we'll see

16 where we're at on the letter.

17 MR. DEILE: Sure. I think the comments

18 are somewhat hypothetical but thought-provoking.

19 JUDGE HOGAN: Okay.

20 MR. DEILE: And that's what prompted me to

21 come up here is one of the things that it prompted

22 me to consider is the binding nature of the lease

23 and discussions that were brought up last night at

24 the meeting that Ørsted held were in relationship

25 to who controls the land.

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1 I had asked a question where is the money
 2 coming from? \$390 million project, who's funding
 3 it? And the response was that Ørsted would fund
 4 the majority of it, and I don't know what
 5 "majority" means. It's pretty vague. Does that
 6 mean 51 percent? Does that mean 91 percent? And
 7 the rest would be private investors.
 8 So I asked the question as to whether or
 9 not this audience would be able to either
 10 individually or as a pool act as a private
 11 investor? If it's really that great of a deal, why
 12 are the landowners not necessarily allowed to be
 13 private investors? The answer was that, no,
 14 landowners are not allowed to be private investors.
 15 And I questioned -- in listening to other
 16 testimony today, I listened, I came to learn, and
 17 one of the things that I wonder is is it because of
 18 the tax credits that were referenced earlier today?
 19 Is it the private investor that's able to receive
 20 and capitalize on those while the landowner is
 21 essentially locked into a lease and limited to what
 22 they're able to receive, not able to take advantage
 23 of those tax credits? I don't know those
 24 questions, but those are the unknowns and there's
 25 more unknowns, it seems, than there are knowns.

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1 And the one thing that it has prompted me
 2 to take pause and give consideration to is if -- if
 3 there are these types of -- if it's -- if it's that
 4 great of a deal, why not let the landowners also be
 5 investing in this opportunity as private investors?
 6 Why not give them some ownership; right?
 7 I want to review some of my notes, some of
 8 the things I had written down to -- to make sure
 9 I'm addressing some of the things that -- you had
 10 as judge this morning referenced you wanted to
 11 stick close to comments related to adverse impact.
 12 So I guess this is what I think is perhaps an
 13 adverse impact is preventing the landowners from
 14 having ownership access into a major project like
 15 this. If it's going to be in their back door,
 16 front door, if they've got to look out their window
 17 and see nine towers in their neighborhood, why are
 18 they not necessarily allowed to invest in the
 19 project?
 20 The one thing that I found to be
 21 troubling, too, is that the first step of the
 22 process is that land under contract is the first
 23 step, and at that point the landowner -- and I was
 24 present for some of the very earliest meetings and
 25 haven't been to one since probably, but the

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1 landowner doesn't know what they don't know at that
 2 point. And, yes, you can have an attorney review a
 3 lease and the language in the lease is acceptable,
 4 but they don't know to ask some of the questions
 5 that I've just posed here now as to who are some of
 6 these private investors.
 7 Why do we not get to know who those people
 8 are? Where is that transparency? How do we know
 9 where they're from? Are they domestic, are they
 10 international? Are they on a board of directors
 11 somewhere in Denmark who are influenced by people
 12 in foreign nations that -- that don't even like the
 13 United States? Why do they have any business or
 14 desire to be investing in rural North Dakota? What
 15 are their motivations?
 16 We don't know any of those things. We
 17 don't know who these people are. We don't know who
 18 gets to vet those individuals. Is it just who has
 19 the biggest checkbook? Is it the -- the rich and
 20 powerful, and the small investing landowner is --
 21 is essentially blocked from access to the same kind
 22 of an opportunity?
 23 MR. ARMSTRONG: Judge, if I can interrupt
 24 for a second, these are -- these are issues -- I'm
 25 just going to object to relevance at this point.

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1 These are issues really beyond what the siting laws
 2 even allow the Commission to address.
 3 JUDGE HOGAN: Yeah, if you recall,
 4 Mr. Deile, at the beginning I read the issues to be
 5 considered. I mean, the Public Service Commission
 6 really has limited jurisdiction of the types of
 7 things that they can address in these types of
 8 applications. And I agree, I think the -- what
 9 you're testifying about is outside the purview of
 10 the Commission.
 11 MR. DEILE: Well, I believe it's a matter
 12 of adverse impact on the community and the people
 13 who are contracting their land that in essence may
 14 not have control over it at some point, especially
 15 if they sell.
 16 MR. ARMSTRONG: Your Honor, with respect
 17 to those contracts, the Commission doesn't have
 18 jurisdiction over the contracts between the private
 19 landowners and the applicant. So Mr. Deile is
 20 certainly entitled to his opinion on it, but it
 21 really doesn't impact the Commission's decision
 22 here, when they get to the decision.
 23 JUDGE HOGAN: And I agree, but I'm not
 24 going to strike your testimony. So what you've
 25 said is going to be part of the record. I guess I

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1 would ask that you just not belabor that point.
 2 MR. DEILE: Okay. So I guess I'd be
 3 looking for transparency. Is it possible that the
 4 landowners are going to be able to find out who
 5 these private investors are? Where are they from?
 6 Where is the money coming from and what are their
 7 influences and their -- their motivations for
 8 wanting to invest here? And why or are the
 9 landowners themselves going to be given the same
 10 opportunity? That's my remark on that.
 11 Resale of the lease. I asked the question
 12 on that last night as well. The response is
 13 somewhat vague. They don't know. They can't
 14 predict the future.
 15 MS. SMITH: Your Honor, I -- I would have
 16 to say that this is -- I know the Commission cannot
 17 speak or address lease terms, so at this point I
 18 feel like maybe we should not go into it in the
 19 public record.
 20 JUDGE HOGAN: That's correct. The
 21 Commission doesn't have any jurisdiction over the
 22 lease between the landowners and the company, and I
 23 think what you're getting at are disputes or issues
 24 with those lease terms. And, again, that's
 25 something that's outside of what the Commission can

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1 do anything about, and just kind of in the interest
 2 of time, I think we need to avoid getting into
 3 those type of issues today.
 4 MR. DEILE: Well, concerns about resale.
 5 JUDGE HOGAN: It's a lease term or the
 6 ability to deal with your lease rights.
 7 MR. DEILE: Right. But what I'm getting
 8 at is -- I'll use a parallel example. A cell tower
 9 lease. On a property that's I'm familiar with, a
 10 cell tower lease that started out I think in 2007.
 11 The company was called Alltel and it was later
 12 purchased by AT&T. It's now Crown Castle AT&T and
 13 it is currently being negotiated to be sold again
 14 to a company called American Tower, Incorporated.
 15 What happens to these wind tower leases if
 16 Ørsted chooses in five years to sell or a different
 17 company comes in to buy up the existing lease and
 18 they draft their own contracts irrespective of what
 19 the landowner has signed? You know, what
 20 guarantees and assurances other than --
 21 MR. ARMSTRONG: Your Honor, I'm going
 22 to -- it seems like we've talked a few times about
 23 lease terms being irrelevant and now we're talking
 24 about a resalable lease, which is not part of the
 25 siting criteria at the beginning. There's other

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1 procedures if the property is -- or the project is
 2 approved and transferred later, but those are
 3 irrelevant to this. And it seems like you've
 4 directed the witness that several times and it
 5 keeps getting longer to go into explaining it, and
 6 I think we should move on from the lease at this
 7 point would be my request.
 8 JUDGE HOGAN: Yep. I'm going to ask you
 9 to move on from the issues with the lease,
 10 Mr. Deile. I don't know if you have other comments
 11 you want to make that are more relevant --
 12 MR. DEILE: That's pretty much it.
 13 JUDGE HOGAN: -- to siting.
 14 MR. DEILE: That's pretty much it.
 15 JUDGE HOGAN: Okay. And I want to talk
 16 about your letter again, and we've talked several
 17 times about what types of things the Commission
 18 actually has jurisdiction over, and I think you
 19 mentioned that it's more theoretical. So I'm
 20 just -- and I haven't looked at it, so -- but if
 21 you think it's those type of things, maybe we don't
 22 even need to address it because it's probably not
 23 within the scope of what we're here to talk about
 24 today or things that the Commission has
 25 jurisdiction over.

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1 MR. DEILE: The one thing that I think is
 2 relevant to what this addresses is that back to the
 3 landowner -- the land is the first thing --
 4 landowner contract is the first step. They're
 5 locked in, as it's been stated numerous times.
 6 They don't even have a buyer for the energy.
 7 There's discussion of virtual buyers and all kinds
 8 of stuff.
 9 But the landowner is already locked in for
 10 the duration of the ride, and I think that if
 11 they -- if that wasn't the first step and
 12 landowners started discovering some of these other
 13 questionable things year two, three and four into
 14 the ramp-up for a complete project, I think many of
 15 them would weed themselves out because they'd be
 16 uncomfortable with a lot of the unknowns that I've
 17 expressed here now that you guys can't even address
 18 because it's -- the ship has sailed and the project
 19 is long beyond that already at this point.
 20 So whoever's committed is committed. You
 21 don't get to choose later that, you know what, I
 22 think this was a bad idea based on these new pieces
 23 of information or questions that nobody's able or
 24 willing to answer.
 25 That's all I have to say.

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1 JUDGE HOGAN: All right. And with that, I
2 will not accept that letter into the record given
3 the issues we talked about before, but I will
4 ask -- go around and ask if there's any questions
5 for you.
6 Ms. Smith, did you have any questions?
7 MS. SMITH: I do not. Thank you.
8 JUDGE HOGAN: Mr. Armstrong?
9 MR. ARMSTRONG: No, Your Honor.
10 JUDGE HOGAN: Mr. Schock?
11 MR. SCHOCK: No questions.
12 JUDGE HOGAN: Mr. Pranis?
13 MR. PRANIS: No.
14 JUDGE HOGAN: Commissioner Fedorchak?
15 COMMISSIONER FEDORCHAK: I don't have any
16 questions. Thank you.
17 JUDGE HOGAN: Commissioner Christmann?
18 COMMISSIONER CHRISTMANN: No questions,
19 but thanks, David, for being here. It's
20 thought-provoking.
21 JUDGE HOGAN: Commissioner Haugen-Hoffart?
22 COMMISSIONER HAUGEN-HOFFART: Thank you
23 for your presentation, but I don't have any
24 questions.
25 JUDGE HOGAN: All right. Thank you for

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1 your time today.
2 Is there anyone else that wishes to
3 provide testimony today? All right. Seeing none,
4 I will just ask the parties if they are agreeable
5 if I take all the public comments we received and
6 mark them as, I think, Exhibit 33. Is that what
7 we're on?
8 MS. SMITH: I think should we do something
9 like PC1? That'd be Public Comment 1. I think
10 that's consistent with how you'd been numbering the
11 others.
12 JUDGE HOGAN: Okay. So we will -- are you
13 okay with that, Mr. Armstrong, if we mark those
14 comments as Exhibit PC1?
15 MR. ARMSTRONG: Yes.
16 JUDGE HOGAN: Okay. So we will do that.
17 Ms. Smith, do you have any rebuttal
18 testimony you want to provide today?
19 MS. SMITH: Just briefly.
20 JUDGE HOGAN: Okay.
21 MS. SMITH: We would call Nick Gebauer
22 back to the stand. Did you want to do that now or
23 did you want to take a short break or move forward?
24 JUDGE HOGAN: Move forward. Yep.
25 MS. SMITH: Okay.

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1 JUDGE HOGAN: Mr. Gebauer, I'll just
2 remind you that you are still under oath. Okay.
3 THE WITNESS: Yes, ma'am.
4 JUDGE HOGAN: All right. Go ahead,
5 Ms. Smith.
6 MS. SMITH: Thank you.
7 **NICK GEBAUER,**
8 having been previously duly sworn, was examined and
9 testified further as follows:
10 **FURTHER EXAMINATION**
11 **BY MS. SMITH:**
12 **Q.** So did you hear the questions that were
13 presented during the public comment period about
14 IFR? And I will be honest, I am not going to try
15 to do the acronym, but I know it has to do with
16 instrument -- instrument flight -- maybe I am doing
17 it -- instrument flight --
18 **A.** Rules? There we go.
19 **Q.** -- rules -- thank you -- and the Wishek
20 airport. In your conversations with the North
21 Dakota Aeronautics Commission and the Wishek
22 airport, were you considering IFR in analyzing the
23 project?
24 **A.** Yes. So that topic was specifically
25 brought up in the communications with the Wishek

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1 airport and North Dakota Aeronautics Commission.
2 And so it's a plan to file for an instrument
3 approach procedure for runway 1438.
4 **Q.** And so was that part of the consideration
5 in removing the five turbines that were identified
6 by Wishek airport and the aeronautics commission?
7 **A.** Yes. That was the primary reason for the
8 concern from those entities.
9 **Q.** And there were some discussions about
10 emergency response plans. Did you file an
11 emergency response plan in the docket in this
12 matter?
13 **A.** Yes, we did. I believe it's Exhibit 16.
14 **Q.** And as far as coordinating with Logan
15 County and McIntosh County, you talked a lot about
16 safety in your testimony and you have the plan.
17 Are you planning to conduct trainings and work with
18 those counties, their local emergency response,
19 prior to initiating construction on the project?
20 **A.** Yes, we will. We'll -- we'll commit to
21 trainings with the local entities that are
22 responsible for emergency responses.
23 **Q.** And we talked a little bit about the golf
24 course and it's next to the fairgrounds. Is the
25 fairgrounds receptor 265 in all of the reports that

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1 have been provided that have the receptors? Is
 2 that the community building? And I think if you
 3 look at the sound report, that's probably where you
 4 would identify it, or Exhibit 12.

5 **A.** All right. So I'm only looking because my
 6 understanding was that might be 266. Actually,
 7 sorry, you are correct. That's -- 265 is the
 8 fairgrounds.

9 **Q.** Okay. So you did consider the fairgrounds
 10 as far as a community building in the sound study;
 11 is that correct?

12 **A.** That's correct.

13 **Q.** And if you look at Exhibit 12 on the
 14 second page with 265, what is the sound level that
 15 was identified at that community building?

16 **A.** So the modeled sound level is 39.4 dBA.

17 **Q.** And based on your review of the discussion
 18 or hearing the discussion about receptor 2 -- you
 19 said 265 but I believe it's 266 and there's some
 20 receptors in that general area, what is the sound
 21 level that was anticipated conservatively for
 22 receptor 266?

23 **A.** Yeah. So the model suggested a sound
 24 limit up to 39.4 dBA.

25 **MS. SMITH:** I don't think I have any

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1 further questions.

2 **THE WITNESS:** Thank you.

3 **JUDGE HOGAN:** Mr. Armstrong, any
 4 questions?

5 **MR. ARMSTRONG:** I have no questions.

6 **JUDGE HOGAN:** Mr. Schock?

7 **MR. SCHOCK:** No questions.

8 **JUDGE HOGAN:** Mr. Pranis?

9 **MR. PRANIS:** No questions.

10 **JUDGE HOGAN:** Commissioner Fedorchak?

11 **COMMISSIONER FEDORCHAK:** I don't have any
 12 questions. Thank you.

13 **JUDGE HOGAN:** Commissioner Christmann?

14 **FURTHER EXAMINATION**

15 **BY COMMISSIONER CHRISTMANN:**

16 **Q.** So to just rephrase, your testimony is
 17 that the aeronautics commission has confirmed that
 18 with the five turbines removed and the plan that's
 19 proposed to us today will not adversely impact the
 20 ability to adopt an IFR plan for the airport;
 21 correct?

22 **A.** So that's my understanding. And my reason
 23 for that belief is both a voicemail from the Wishek
 24 airport confirming this fact. Also an email that
 25 was sent to the airport outlining our response in

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1 removing those five turbines and requesting any
 2 comments if they have any. And then also the --
 3 obtaining the FAA permits, which they would also be
 4 involved in that process.

5 **COMMISSIONER CHRISTMANN:** Okay. Thank
 6 you.

7 **JUDGE HOGAN:** Commissioner Haugen-Hoffart.

8 **COMMISSIONER HAUGEN-HOFFART:** I have no
 9 further questions. Thank you.

10 **JUDGE HOGAN:** All right. Thank you,
 11 Mr. Gebauer.

12 **THE WITNESS:** Thank you.

13 **JUDGE HOGAN:** All right. Ms. Smith, do
 14 you have anything else for the record or any
 15 closing remarks?

16 **MS. SMITH:** So I guess the one item that I
 17 would like some direction on is the topic of
 18 reliability came up. There were quite a few
 19 comments that came in today from -- particularly
 20 from the coal constituents on this topic. I feel
 21 like it's a mix of policy and legal analysis, and
 22 to the extent that that's going to be a
 23 consideration of the Commission, I'd ask for the
 24 opportunity to provide a late-filed exhibit
 25 addressing some of the comments made.

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1 We have -- we have discussed it internally
 2 and have some concerns or response to the comments,
 3 but it's not something that we were prepared to
 4 speak to today. It came up today so we didn't have
 5 a chance to pull everything together. So I would
 6 ask to provide that as a late-filed exhibit, so it
 7 would be late-filed Exhibit 34, I believe -- 35, I
 8 believe.

9 **JUDGE HOGAN:** Any objection to that,
 10 Mr. Armstrong.

11 **MR. ARMSTRONG:** I have no objection to
 12 that including, I think, the Commission would be at
 13 least willing to consider the company's position on
 14 how much we can consider that under the siting laws
 15 as well, which I assume is part of what you're
 16 proposing.

17 **MS. SMITH:** It is. I think the only
 18 hesitation I have is whether you want it handled as
 19 a brief, if you want it handled as a -- you know, a
 20 late-filed exhibit directly responding to the
 21 comments about the injection of -- onto the grid
 22 and how that affects the grid as a late-filed and
 23 do you want the legal policy pieces addressed as a
 24 brief? I'm open to whatever suggestion you have on
 25 this to make it easy.

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1 MR. ARMSTRONG: Well, I think we'd be
 2 interested in getting that information, whether
 3 it's all included within that exhibit with some
 4 legal bases, plus the company's factual response to
 5 that would be fine.
 6 MS. SMITH: Okay.
 7 MR. ARMSTRONG: It really doesn't matter
 8 to me the format because you could enter the policy
 9 part as the exhibit and then submit a brief anyway.
 10 So I guess we could leave that up to the company,
 11 if you wanted to submit a brief along with the
 12 proposed findings or if you just want to include it
 13 all in the exhibit. It really doesn't matter to us
 14 as long as we get it.
 15 MS. SMITH: So at this point we'll just
 16 plan to do it as a late-filed exhibit. If through
 17 the course of this we think we need to adjust,
 18 we'll coordinate with you and Mr. Pranis on that
 19 piece of it.
 20 MR. ARMSTRONG: That works for me. And
 21 the only other clarification I have is, unless I
 22 missed it, I don't have anything written for
 23 late-filed Exhibit 34. I have 33 as the SHPO
 24 and --
 25 MS. SMITH: You're -- yeah, so 34 is the

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1 confirmation regarding how McIntosh County wants to
 2 handle the weed plan because we have the -- we
 3 have -- we have exchanged emails with the auditor
 4 who did not believe that they needed to approve it,
 5 but we want to get confirmation from the weed board
 6 itself, so that's what 34 will be.
 7 MR. ARMSTRONG: And, Your Honor --
 8 MS. SMITH: Then we would propose to
 9 submit proposed findings, conclusions and an order
 10 as well.
 11 MR. ARMSTRONG: And the only -- Your
 12 Honor, is this the time -- should we just keep
 13 addressing late-filed exhibits?
 14 JUDGE HOGAN: Sure. May as well.
 15 MR. ARMSTRONG: The other one we have a
 16 note on is the flicker report Mr. Schock asked
 17 about and --
 18 MS. SMITH: I think 33.
 19 MR. ARMSTRONG: -- so would that be -- I
 20 have 33 as the SHPO.
 21 MS. SMITH: Oh, we haven't numbered it
 22 yet. So can we just make it 36? And we'll
 23 coordinate with you to make sure we understand what
 24 you're -- what you're asking or the extent of what
 25 you're asking for, and we'll include that in the

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1 exhibit.
 2 MR. SCHOCK: Perfect.
 3 MR. ARMSTRONG: That was all the notes I
 4 had on late-filed exhibits subject to if the
 5 Commission is looking for anything else.
 6 JUDGE HOGAN: Do you want to set a
 7 deadline for filing late-filed exhibits and
 8 proposed findings.
 9 MS. SMITH: I think we would plan to
 10 submit them once we have the concurrence letters
 11 from SHPO on the reports, which we hope we would
 12 have in the next couple of weeks, but since they
 13 just were submitted, I don't want to commit the
 14 SHPO to that.
 15 JUDGE HOGAN: So we'll just leave that
 16 open-ended for now.
 17 MR. ARMSTRONG: That's fine with us. If
 18 you could -- if it's going to be longer than, you
 19 know, 30 days, if you could just advise us on the
 20 status so we can keep this moving along.
 21 MS. SMITH: Absolutely. And I'm fine,
 22 too, if you want to set a -- you know, 30 days or
 23 whenever the SHPO stuff is ready, we would plan to
 24 file these exhibits even if those weren't ready.
 25 MR. ARMSTRONG: Okay.

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1 JUDGE HOGAN: So I'm just going to label
 2 it as 30 days to file or update on the status of
 3 those filings.
 4 MS. SMITH: That sounds great. Thank you.
 5 JUDGE HOGAN: And then do you want to set
 6 a deadline for filing the proposed findings or do
 7 you want to do that after that deadline or --
 8 MS. SMITH: I would plan to submit it all
 9 at the same time, if that's okay.
 10 MR. ARMSTRONG: That's okay with the
 11 Commission.
 12 JUDGE HOGAN: Okay. All right. And I'll
 13 just ask, Mr. Pranis, anything to add as far as
 14 that discussion? I don't want to exclude you on
 15 that.
 16 MR. PRANIS: Late-filed exhibits?
 17 JUDGE HOGAN: Right. Late-filed or the
 18 deadlines, are you okay with what's been discussed.
 19 MR. PRANIS: Yes.
 20 JUDGE HOGAN: Okay. All right.
 21 Mr. Armstrong, did you have any closing remarks or
 22 anything else to put on the record.
 23 MR. ARMSTRONG: No, Your Honor.
 24 JUDGE HOGAN: Mr. Pranis?
 25 MR. PRANIS: Only that we appreciate the

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1 opportunity to be here. We came into this
 2 proceeding supporting the project and, you know,
 3 there's sort of some weighing considerations around
 4 impacts on coal. Those are very important to our
 5 members and we share those concerns. I will say
 6 that we leave the hearing continuing to support the
 7 project, and I think that as tempting as it might
 8 be to say, look, we can -- by denying a permit for
 9 a project like this, we could sort of rebalance the
 10 electric system, I don't think that that's how it
 11 works. We'd be very concerned about the impacts
 12 for coal as well. I think it's a complicated,
 13 political and sort of energy system that we have to
 14 work through, and I don't think this project is
 15 where we can work it through. I think this
 16 project, you know, sort of has good arguments on
 17 its own merits.
 18 Thank you.
 19 JUDGE HOGAN: All right. Thank you.
 20 Well, then I'll take closing remarks from the
 21 commissioners. Commissioner Fedorchak.
 22 COMMISSIONER FEDORCHAK: Real simply,
 23 thank you, everybody, for being here. For all
 24 those who left, please pass along our appreciation
 25 for everybody's hospitality in Wishek and your

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1 participation here today. Thank you very much.
 2 JUDGE HOGAN: Commissioner Christmann.
 3 COMMISSIONER CHRISTMANN: Yeah. Also I
 4 thank those of you who are left. Everyone's
 5 patience and information is very helpful to us in
 6 reaching the right conclusions.
 7 JUDGE HOGAN: Commissioner Haugen-Hoffart.
 8 COMMISSIONER HAUGEN-HOFFART: Thank you,
 9 everyone. Your comments were very useful and I
 10 appreciate your time. So take care.
 11 JUDGE HOGAN: All right. Well, I will
 12 note for the record that it is 5:38 p.m. on
 13 June 28, 2022, and that will conclude the hearing
 14 today for Case PU-22-86 on the application of
 15 Badger Wind, LLC, for certificate of site
 16 compatibility. Thank you.
 17 (Concluded at 5:38 p.m., the same day.)
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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 11th
 14 day of July, 2022.
 15
 16
 17 _____
 18 Stephanie A. Smith
 19 Registered Professional Reporter
 20
 21
 22
 23
 24
 25

\$	<p>122 [1] - 2:13 12:30 [1] - 17:16 13 [7] - 112:9, 204:15, 239:18, 240:1, 240:18, 274:22, 297:20 133 [1] - 4:5 1383 [1] - 168:6 14 [2] - 107:20, 225:23 1409 [1] - 252:10 1438 [1] - 349:3 1458 [1] - 231:2 147 [1] - 4:6 149.2 [1] - 173:9 15 [6] - 3:5, 38:8, 38:13, 225:23, 240:8, 324:24 15-mile [1] - 256:10 15-minute [2] - 99:21, 292:7 150 [2] - 35:8, 254:1 151 [1] - 4:7 16 [4] - 268:9, 273:22, 305:1, 349:13 160 [1] - 4:8 169 [1] - 4:9 17 [6] - 10:13, 135:15, 136:10, 161:23, 240:9, 268:8 172 [1] - 4:10 176 [1] - 4:20 17th [1] - 140:7 18 [5] - 3:6, 42:19, 120:13, 229:9, 240:2 187 [1] - 4:23 19 [2] - 122:25, 253:4 194 [1] - 5:5 1957 [1] - 194:14 1986 [1] - 297:8 1997 [1] - 284:13 1:00 [1] - 17:16 1:12 [1] - 172:12 1:45 [1] - 172:11 1:47 [1] - 172:13</p>	<p>2011 [1] - 220:2 2017 [3] - 26:16, 26:22, 26:23 2018 [2] - 26:23, 26:25 2019 [8] - 116:10, 116:15, 117:20, 120:10, 168:6, 196:5, 236:13, 238:5 2020 [9] - 108:4, 116:10, 116:15, 117:16, 120:10, 124:4, 156:9, 156:14, 220:3 2021 [6] - 27:3, 101:19, 108:4, 116:10, 230:22, 253:4 2022 [28] - 1:19, 10:3, 10:6, 10:13, 11:7, 24:22, 27:4, 32:23, 33:10, 42:16, 43:24, 44:5, 57:5, 57:23, 101:25, 108:8, 125:20, 128:14, 129:6, 135:15, 138:19, 140:11, 142:13, 239:19, 241:18, 267:15, 359:13, 360:14 2023 [2] - 44:6, 45:1 2025 [1] - 228:19 2027 [1] - 200:21 207 [1] - 5:6 209 [1] - 5:7 21 [13] - 8:21, 9:5, 9:5, 138:19, 138:23, 142:16, 172:21, 174:11, 174:14, 240:14 21.3 [1] - 229:1 215 [1] - 5:8 21st [1] - 231:4 22 [1] - 241:18 223 [2] - 5:10, 5:11 227 [1] - 5:14 232 [1] - 5:15 234 [1] - 5:16 236 [1] - 5:19 24 [3] - 3:17, 135:14, 229:15 246 [1] - 5:20 249 [1] - 5:21 25 [6] - 11:6, 41:17, 122:25, 180:15, 180:16, 194:20 25-hour [1] - 89:24 250 [4] - 31:16, 61:5, 220:13, 248:15 250-foot [1] - 150:19 2500 [1] - 256:19 251.6 [5] - 1:5, 11:9, 31:15, 50:21, 63:3 253 [1] - 5:24 255 [1] - 229:8 258 [1] - 5:25 26 [1] - 34:11 262 [1] - 6:4 263 [1] - 36:25 264 [1] - 6:5 265 [6] - 6:6, 276:24, 349:25,</p>	<p>350:7, 350:14, 350:19 266 [3] - 350:6, 350:19, 350:22 267 [1] - 6:9 2694467 [1] - 253:24 27 [11] - 48:7, 125:20, 128:14, 129:6, 138:19, 140:6, 140:11, 142:11, 142:13, 151:16, 241:10 270 [1] - 6:10 273 [1] - 6:13 274 [1] - 6:14 276 [1] - 6:15 277 [2] - 6:16, 150:17 278 [1] - 6:17 28 [6] - 1:19, 10:6, 125:16, 169:9, 313:20, 359:13 280 [1] - 6:20 281 [1] - 6:21 284 [1] - 7:4 288 [1] - 7:5 28th [1] - 10:3 29 [2] - 102:3, 106:10 29-A [1] - 102:3 290 [1] - 7:6 291 [1] - 7:7 293 [1] - 7:10 296 [1] - 7:11 297 [1] - 7:12 299 [1] - 7:15</p>
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