

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Buckeye :
Wind, LLC for a :
Certificate to Install :
Numerous Electricity :
Generating Wind Turbines : Case No. 08-666-EL-BGN
in Champaign County to be :
Collected at an Electric :
Substation in Union :
Township, Champaign :
County. :

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Katie Stenman,
Administrative Law Judges, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Friday,
November 13, 2009.

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VOLUME IV

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9 On behalf of Buckeye Wind, LLC.

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15 On behalf of the Champaign County Board
16 of Commissioners and the townships of
17 Goshen, Rush, Salem, Union, Urbana, and
18 Wayne.

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INDEX

- - -

WITNESS PAGE

David M. Hessler

Cross-examination by Ms. Napier 865

Cross-examination by Mr. Brown 887

Cross-examination by Mr. Margard 900

Redirect examination by Mr. Settineri 913

Recross-examination by Mr. Van Kley 915

P.B. Dye

Direct examination by Mr. Brown 924

Cross-examination by Ms. Napier 925

Cross-examination by Mr. Settineri 932

Redirect examination by Mr. Brown 957

Recross-examination by Mr. Settineri 978

Hugh F. Crowell

Direct examination by Mr. Petricoff 984

Cross-examination by Ms. Malone 986

Dale R. Arnold

Direct examination by Mr. Petricoff 991

Cross-examination by Ms. Napier 993

Cross-examination by Mr. Van Kley 1003

Cross-examination by Ms. Malone 1008

Don Bauer

Direct examination by Mr. Petricoff 1011

Cross-examination by Mr. Weithman 1012

Cross-examination by Mr. Selvaggio 1020

Cross-examination by Mr. Van Kley 1036

Cross-examination by Mr. Margard 1057

- - -

BUCKEYE EXHIBITS ID'D REC'D

8 - Direct Testimony of D. Hessler 718 920

9 - Direct Testimony of H. Crowell 984 991

10 - Direct Testimony of D. Arnold 990 1011

11 - Direct Testimony of D. Bauer 1011 1061

12 - CONFIDENTIAL 1066 --

	UNION NEIGHBORS UNITED	ID'D	REC'D
1			
2	53 - "Indiana Bat Draft Recovery	621	--
3	Plan: First Revision		
4	55 - ANSI Standard S12.9	737	923
5	56 - "Wind-induced pseudo-noise	742	923
6	and leaf-rattle noise" Article		
7	57 - ISO Standard 9613-2	757	923
8	58 - Nordex N100/2500 Noise	771	--
9	Measurements		
10	59 - IEC Standard 61400-11	775	923
11	60 - NASA Technical Paper 3057	781	923
12	61 - ANSI Standard S12.18	809	923
13	62 - "Measuring ambient sound	824	923
14	levels in quiet environments"		
15	Document		
16	63 - "Measuring background noise	830	W/D
17	with an attended, mobile survey		
18	during nights with stable		
19	atmospheric conditions" Document		
20	64 - 9/08 Letter from E-Coustic	852	923
21	Solutions		
22			
23	URBANA COUNTRY CLUB EXHIBITS	ID'D	REC'D
24	1 - Direct testimony of P.B. Dye	924	983
25	2 - Supplement to Direct Testimony	924	983
	of Witnesses for Intervenor		
	The Urbana Country Club		
	- - -		

1 Friday Morning Session,
2 November 13, 2009.

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4 ALJ SEE: Let's go on the record. Before
5 we get started with Mr. Hessler, counsel for the
6 company was supposed to review UNU Exhibit 53.

7 Can you hear me?

8 MR. SETTINERI: That's correct, your
9 Honor, I can hear you. We have not had a chance to
10 review that exhibit and, if possible, we'd like to
11 address that at the end of the day.

12 ALJ SEE: Okay.

13 MR. SETTINERI: Thank you.

14 ALJ SEE: Mr. Settineri, did you say you
15 could not hear me this morning?

16 MR. SETTINERI: I can hear you, your
17 Honor.

18 ALJ SEE: Let's begin with Mr. Hessler.

19 While Mr. Hessler is coming to the stand
20 let's briefly enter appearances for counsel that's
21 here today. Start with the company.

22 MR. PETRICOFF: Thank you, your Honor.
23 On behalf of the applicant, Buckeye Wind, Howard
24 Petricoff, Michael Settineri, and Gina Russo from the
25 law firm of Vorys, Sater, Seymour & Pease.

1 ALJ SEE: On behalf of the staff.

2 MS. GRASSESCHI: Vern Margard and John
3 Jones for the Public Utilities Commission, and
4 Christina Grasseschi and Margaret Malone from the
5 Environmental Enforcement Section of the attorney
6 general's office.

7 MR. VAN KLEY: Jack Van Kley and Chris
8 walker will also be here from Van Kley & Walker
9 representing UNU, the McConnells, and Julia Johnson.

10 MR. BROWN: Daniel Brown from the law
11 firm of Brown Law Office in Dayton for the Urbana
12 Country Club.

13 MS. NAPIER: Jane Napier, Assistant
14 Prosecuting Attorney for Champaign County and the
15 townships of Goshen, Rush, Salem, Union, Urbana, and
16 Wayne, along with Nick Selvaggio, Prosecuting
17 Attorney of Champaign County.

18 ALJ SEE: Okay. Mr. Hessler, I'll remind
19 you that you continue to be under oath. With that,
20 let's proceed.

21 Ms. Napier.

22 MS. NAPIER: Is it my turn?

23 ALJ SEE: Yeah. We're going to let you
24 go first this morning.

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DAVID M. HESSLER

being first duly sworn, as prescribed by law, was
examined and testified as follows:

CROSS-EXAMINATION

By Ms. Napier:

Q. Mr. Hessler, can you hear me?

A. Just fine, thank you.

Q. Okay. There has been a bit of a break
but I'm going to try to have you recall some of your
answers from yesterday. Can you remind me how many
noise assessments you have done for wind turbine
projects.

A. At last count it was I think about 53
large projects.

Q. And how many noise assessments have you
done for wind turbines in Ohio?

A. This is the first one.

Q. Okay. And those turbines have not been
erected to date, correct?

A. Which ones?

Q. The Champaign County wind turbines.

A. No. That's correct.

Q. So your calculations of noise from those
wind turbines are not from wind turbine farms in
Ohio, correct?

1 A. Yeah, that's correct. The calculations
2 are based on the manufacturers noise data for the
3 turbines.

4 Q. And for the Buckeye Wind farm you had
5 placed some monitors within the -- within and outside
6 of the current project area; is that correct?

7 A. Yeah. The monitors were put in what was
8 then the project area.

9 Q. And you had indicated that some of those
10 monitors were around the town of Mutual; do you
11 recall that?

12 A. Yes, there was one position specifically
13 put there.

14 Q. And in graphic A of I believe Exhibit
15 K --

16 A. Let me get that.

17 Okay.

18 Q. Do you know from looking at this graphic
19 how many monitors are now within the current project
20 area?

21 A. I believe the three in the north part of
22 this graphic are now north of where the project is.

23 Q. Okay. And do you know about any of those
24 to the south of that, how many are still within the
25 project area?

1 A. I think all the other six are.

2 Q. And as there -- how did you come up with
3 nine, I believe -- I'm sorry -- yes, nine monitors to
4 put in that area?

5 A. It's partly a function of having
6 sufficient instrumentation. I think at the time we
7 had, we may have had 9 monitors, we have 18 now, but
8 we felt like 9 was sufficient to adequately
9 characterize the whole site area and it's typical for
10 surveys like this.

11 Q. And your calculations in Exhibit K that
12 you referred to in your direct testimony, were you
13 using the nine at that time?

14 A. Yes.

15 Q. Okay. So why did you go to 18, then?

16 A. No; I just mentioned that now we have an
17 inventory of about 18 monitors because we never have
18 enough. But I think at the time of this survey we
19 may have had just nine. Maybe that was the reason
20 for nine.

21 Q. Okay. Do you believe that where these
22 monitors were placed with the change in that project
23 area somewhat that that's an accurate -- that would
24 accurately record noise levels for the project area?

25 A. Yeah. Yeah. The reason is that when all

1 the results from all the monitors are plotted
2 together, they all have similar values as a function
3 of time, they all follow each other and kind of
4 intermingle, meaning that the sound level over this
5 whole area, the current site area plus the northern
6 part, was essentially uniform. So theoretically we
7 could have got the same answer with one monitor in
8 the middle of the site.

9 Q. So you kind of make assumptions as to the
10 site or the wind turbine sites that maybe aren't as
11 close to those monitors because you feel as though
12 you've got a good picture?

13 A. Yeah. Well, like I talked about
14 yesterday, when we establish the monitoring
15 positions, we seek, number one, to get a kind of
16 uniform distribution over the project area. We want
17 to evaluate various settings such as, you know, near
18 the town of Mutual, out in the country, along Route
19 36, different settings. We want to try to capture
20 every potential environment.

21 So if one of the positions, for example
22 the one by Route 36, was consistently higher than the
23 other positions, then we would have used a different
24 design basis for the houses that are represented by
25 that position that are right along the highway. They

1 may have had a higher background level.

2 But it turned out that all the positions
3 had just about the same levels. There was no
4 substantial or meaningful difference between any of
5 the positions, so what we've done is to take the
6 average of all of them to represent -- to reasonably
7 represent I think the sitewide background level as a
8 function of time over the survey.

9 Q. And would you characterize the results of
10 that as being a quiet rural area noise level?

11 A. Yeah. Yeah, this site was probably on
12 the low end of the range that we get for sites like
13 this. The background levels were relatively low
14 compared to other very similar, ostensibly similar
15 sites.

16 Q. And that is not unusual, you would
17 characterize Champaign County as a very quiet, rural
18 area; is that correct?

19 A. Yeah. Yeah, this is typical. You know,
20 we've done, as I said, over 50 projects and many of
21 them are in rural environments very similar to this.

22 Q. Let me turn your attention to UNU Exhibit
23 62, and that would be, just for your help finding it,
24 it says "Inter-noise 2009" and it says "Measuring
25 ambient sound levels in quiet environments." Have

1 you found it?

2 A. Yeah. It's coming back to haunt me
3 again.

4 Q. As they usually do.

5 And this, again, is a paper written by
6 your father, not you, correct?

7 A. That's correct, yes.

8 Q. And it was for your company that you are
9 currently employed with.

10 A. That's correct, yes.

11 Q. Okay. What I thought was kind of odd is
12 when I looked at your direct testimony and some of
13 the responses to questions from yesterday, this table
14 1 on the first page shows a daytime residual level,
15 LA90, for a very quiet, rural, or remote area that
16 the typical range was between 26 and 30 inclusive
17 with an average of 28. Do you see where I'm reading
18 from?

19 A. Yes.

20 Q. And isn't it true your daytime residual
21 level average was 34?

22 A. Well, let me look at it here. Yeah, at a
23 5-meter per second wind speed we measured an L90 of
24 34 at this site, and that's why you measure, all
25 sites are different, so you do a survey that's

1 specific to each project.

2 Q. Did that concern you that it was such a
3 high level compared to perhaps this table?

4 A. No, it's not really a high level. It's
5 actually a fairly low level; 34.

6 Q. Okay. Because yesterday you had said
7 that, I believe, and I don't want to speak for you,
8 that there is kind of an uncertainty factor or just a
9 variable of 5 plus or minus decibels; is that
10 correct?

11 A. That is with respect to the noise
12 emissions of the project at a particular point.

13 Q. Okay. So not for that --

14 A. Rather than the background, correct.

15 Q. Okay. So even taking that out, this is 6
16 decibels difference on average with a quiet, rural
17 area. And in fact, it is even higher than the
18 average on the next level, a very quiet suburban or
19 rural area.

20 A. Well, I think what he's talking about
21 here are levels under calm and still conditions. The
22 34 we're talking about is during a 5 meter per second
23 wind regime.

24 Q. But didn't you say that you had put your
25 sound monitors out in the wintertime trying to get a

1 calm measurement?

2 A. No, not at all. What we're seeking here
3 in this survey is to find out what is the background
4 level as a function of wind speed. We're not
5 particularly interested in the extreme quiet that
6 happens when everything's calm because the project
7 wouldn't be operating then, in all likelihood. So
8 what we're looking for here is what happens as the
9 wind speed picks up.

10 Q. Okay. So then are you saying that in a
11 quiet, rural area it could go down, on a typical
12 range, the bottom number being 26 decibels; is that
13 correct?

14 A. Yeah. If you look on page 15 of --

15 Q. Of?

16 A. -- of Exhibit, it's Exhibit K, on the top
17 figure there, figure 2.5.5, this is all the daytime
18 data from this survey.

19 Q. Okay.

20 A. And the bottom axis is wind speed. So
21 under calm conditions we measured levels as low as
22 about 24 during the survey.

23 Q. What was the high, then, that you had?

24 A. Forty-seven.

25 Q. Okay.

1 A. Levels, they vary up and down. It's not
2 a constant level, the background that is.

3 Q. Okay. But an average should be an
4 average of those highs and lows; is that --

5 A. Well, we've plotted it here as a function
6 of wind speed and then drawn a mean trend through the
7 data and we're taking the mean value as a design
8 value.

9 Q. You had also stated that, on page 6 I
10 believe of your testimony, that you can't assert that
11 the project will be inaudible or have no adverse
12 impacts whatsoever, correct?

13 A. Yeah, that's correct.

14 Q. Can you elaborate on that?

15 A. Yeah. Essentially in our experience
16 whenever a wind project is sited in an area that is
17 populated where the turbines are put in amongst the
18 houses as opposed to being out in a remote location,
19 it's rarely, if ever, possible to have enough buffer
20 distance between the houses and the turbines so that
21 ahead of time you can confidently predict that
22 there's going to be no complaints whatsoever.

23 In fact, some level of or some degree of
24 complaints is essentially inevitable with projects of
25 this nature.

1 Q. Well, you lead me to my next question,
2 then. Do you have an idea about how -- what
3 percentage of the time that there's going to be some
4 audible noise to the residents?

5 A. Yeah. The audibility would be largely
6 defined by when the project level exceeds the L90 by
7 5 or more. When that situation happens, that means
8 that the turbines are clearly audible. And when that
9 happens, complaints can and do often result.

10 Q. Have you estimated a percentage of time
11 where those will be audible to the persons that were
12 plotted in 2C and 2D?

13 A. Right. That's based on the L90 level
14 which theoretically happens 10 percent of the time,
15 so that's representing periods when the background is
16 momentarily at a lull like between gusts of wind when
17 the wind is not blowing the trees where you are, when
18 there's' no cars going by and no planes flying over,
19 that sort of thing. So the time period is
20 theoretically somewhere around 10 percent.

21 Q. And so 10 percent of the time we can
22 estimate that people will hear some noise from the
23 turbines?

24 A. Yeah, I would say at least 10 percent,
25 it's probably higher than that.

1 Q. Well, can you tell me, you know, what, in
2 your opinion, in your experience, is an acceptable
3 percentage for audible noise to occur to the citizens
4 of Champaign County?

5 A. Well, I'm not in a position to declare
6 what an acceptable level is. All I've done is report
7 what I think is likely to happen or what the
8 magnitude of the impact's likely to be, in my
9 opinion. I don't know how much is acceptable.

10 Q. I'm sorry. In your studies you don't
11 have a threshold or a range where the project would
12 be too noisy on the surrounding areas so you'd have
13 to make a buffer zone or at least to, you know,
14 recommend a buffer zone for that?

15 A. Yeah. When we model a project and we
16 find that the expected sound level at houses is of a
17 certain magnitude, that magnitude being in the
18 neighborhood of 45 to 50 dB(A), we know that those
19 levels are undesirable and they should be avoided if
20 possible by -- and the only way of doing that is by
21 expanding the setbacks.

22 Now, in this project the original concept
23 for the site layout showed some rather high levels at
24 houses, so we recommended that turbines be resited or
25 eliminated to -- in an effort to bring down the --

1 reduce the impact. So we went through a number of
2 site plans and iterations where the turbines were
3 essentially spread out and thinned out and eliminated
4 where necessary to bring down the levels to a point
5 where we felt that the likely percentage of
6 complaints would be fairly low, and the design goal
7 that we were using was to try to get the level to 40
8 dB(A) or less at all houses.

9 That's not the way it started. There
10 were much higher levels predicted. But after a
11 number of iterations we were able to work out the
12 current site plan where the vast majority of houses
13 are beyond 40; only a handful still in there.

14 So what we seek to do is to get the
15 project level down to a point where we feel it's
16 reasonable and the likely number of complaints is
17 expected to be fairly small.

18 Q. I'm sorry, you may have answered this,
19 but you said you wanted to get it down to a certain
20 percentage which I assume is kind of the
21 acceptability number. Can you tell me what that is?

22 A. Yeah. It's not yet been defined clearly
23 by anybody, but I think a reasonable design level is
24 40. That corresponds to the World Health
25 Organization threshold for sleep disturbance, that

1 sort of thing. It's 40 outside of a house.

2 Just in absolute terms, 40 is a very
3 quiet level. I think that's a reasonable design goal
4 in terms of an absolute level.

5 Q. And you're indicating that somewhere
6 around or above 10 percent here would exceed that; is
7 that a fair statement?

8 A. No. There's really two ways of looking
9 at it. You can look at it in terms of an absolute
10 design level, this is the 40 we're talking about, or
11 a relative design level, and that's the background
12 plus 5 rubric. They're different approaches.

13 Q. Okay. And so 40 dB(A) would be a plus
14 decibel level, plus-5-decibel level to 35 dB(A)
15 background noise, correct?

16 A. No. No. Forty would be an absolute
17 level that's independent of whatever the background
18 is doing.

19 Q. Okay. Well, but at 40 if you have a
20 background noise of 34, you should be able to hear it
21 some.

22 A. Yeah, that's correct. Yeah, 40 doesn't
23 mean that the project becomes inaudible at that
24 point. Very low levels have to be reached before
25 that happens.

1 Q. And so audible, it may get a higher than
2 40, at least what I've read, at times I believe you
3 said where wind condition and atmospheric conditions
4 may make them significantly higher; is that correct?

5 A. Right. Yeah.

6 Q. Okay. And so there are going to be times
7 that you're above that. Is that the 10 percent that
8 you're talking about where you're saying --

9 A. No.

10 Q. Okay.

11 A. No. No. What really happens at these
12 projects is that the sound level is highly variable
13 with time and wind conditions and atmospheric
14 conditions, so we'll measure at a number of locations
15 over a site and, you know, the levels occasionally do
16 go up to very high levels, but usually for a very
17 short duration, on the order of 10 minutes or 20
18 minutes, something like that, and then they come back
19 down again. That's usually associated with a storm
20 front coming through or, you know, a period of
21 turbulent winds.

22 But under most normal conditions, just
23 normal winds and nothing unusual happening, the sound
24 level will vary by, what we found is plus or minus 5,
25 about the mean predicted level.

1 Q. Okay. Can you tell me a little bit about
2 the mean predicted level. How did you reach that?

3 A. Yeah, that's what you would calculate in
4 a model using the ISO procedures and so on.

5 Q. And in other wind projects have you done
6 follow-up studies to see that the actual percentage
7 exceeding the noise level was in line with your
8 calculation prior to the construction?

9 A. Yeah. Yeah, we talked about that briefly
10 yesterday. We've done at this point five major
11 studies on that to compare the actual project level
12 to what was predicted by the model, and we find that
13 they agree extremely well.

14 Q. And do they -- have any of those studies,
15 did you calculate the percentage to be in excess of
16 10 percent?

17 A. I'm not sure I understand the question.

18 Q. Well, you had said here that there would
19 be approximately 10 percent of the time it would
20 exceed the audible noise levels.

21 A. Well, what I was saying was, I was
22 talking about the background.

23 Q. All right.

24 A. And the background using the L90
25 background as a design basis, that essentially

1 represents the background that exists somewhere
2 around 10 percent of the time. Well, theoretically
3 10 percent of the time.

4 Q. The L90 is --

5 A. Yeah, that's the background noise.
6 Nothing to do with the project.

7 Q. Okay. Well, let me then get you there.

8 A. Okay.

9 Q. You had said that at some points in time
10 there would be audible noise to the residents of
11 Champaign County. I wanted to know what percentage
12 of time you have estimated that the citizens of
13 Champaign County will hear an audible noise from the
14 turbine.

15 A. Yeah, that would be at least -- well, in
16 the area in plots, I think it's 2C and 2D, everyone,
17 all the houses that are within the 34 dB(A) contour,
18 theoretically the project would be very clearly
19 audible when the background sound level is at a
20 minimum during that -- near minimum 10 percent of the
21 time.

22 Q. So in essence 10 percent of the time
23 there will be audible noise to --

24 A. Yeah.

25 Q. -- the people who are encompassed within

1 kind of an orangish-yellow line on plot 2C and D; is
2 that correct?

3 A. Exactly. Yeah, in that area. Not
4 everyone on site, but in that area.

5 Q. And you're recommending to EverPower that
6 that is an acceptable percentage of time for people
7 to hear noise from wind turbines; is that correct?

8 A. No. All we did was to prepare the
9 assessment based on the best layout that we could
10 develop, and what we've concluded is well, you know,
11 there's going to be -- noise is going to be very
12 clearly audible in that area and we certain -- and I
13 think we said complaints are possible if not probable
14 in there.

15 Q. And I have to ask this because I
16 represent the local level and in essence the citizens
17 of Champaign County. Is that a fair, in your
18 opinion, percentage for them to hear the turbines
19 approximately 10 percent of the time and in a day I
20 guess that's 2.4 hours a day?

21 A. I'm not in a position to pass judgment on
22 what's acceptable or not.

23 Q. Well, I hate to put you in a tough
24 position, but you are an expert talking about noise
25 levels and you have stated that you have concluded

1 acceptability and previously had had turbines moved
2 when they didn't meet those acceptabilities. So in
3 your expert opinion do you believe that it is
4 acceptable for 10 percent of the time for citizens,
5 and I believe that Mr. Van Kley had spoken about 475
6 residences, to be affected 10 percent of the time by
7 noise?

8 A. All I can say is that is what our
9 analysis shows. I'm not -- what we tried to do to
10 prevent complaints and problems about noise was to
11 try to arrange the project so that this absolute
12 level of 40 was reached, and that's pretty much been
13 accomplished, not a hundred percent, but as I say the
14 vast majority are less than 40.

15 Now, let me just try to put it in
16 perspective. We've done some other, well, we talked
17 about those five projects where we had evaluated the
18 operational sound levels. On three of those projects
19 the setting, scope of the project, everything was
20 almost identical to this project. The turbines were
21 mixed in with the houses. It was a rural landscape.
22 Very similar to this.

23 The predicted levels, the modeled levels,
24 at these sites all showed that there was going to be
25 quite a few houses that were well over 40 in the 45

1 up to 50 dB(A) range predicted. Now, we went and
2 actually measured at a number of homes on these
3 sites, usually the nearest homes to turbines, the
4 most critical locations, and what we found was that
5 the actual levels matched the model predicted almost
6 exactly, but the point is that the -- and these
7 levels are 5 to 10 higher than this 40 goal that we
8 were using as a working design goal here.

9 At those sites the actual number of
10 serious complaints was about a number less than 10
11 individuals and households out of an area that
12 encompassed at least 200, maybe up to 400 houses.
13 And these are much higher levels than we're expecting
14 here at Buckeye.

15 It was essentially with the experience of
16 these other projects that we sought to get the
17 absolute levels down as low as possible here, so
18 that's why we tried to get them to 40 or less. And,
19 as I say, essentially succeeded at that.

20 So, you know, that says that the actual
21 number of complaints quite possibly could be very low
22 here but we can't rule out complaints. It's very
23 hard to predict exactly.

24 Q. And in your example, the 10 complaints
25 from our range that was near 400 --

1 A. Yeah.

2 Q. -- are the 10 complaints, were those
3 households or were they actual people that were
4 making, an individual person making that complaint?

5 A. I think it was an individual person in
6 the house. I don't know --

7 Q. Okay. So that may affect more people in
8 that house.

9 A. Yeah. There were certain residences
10 where the project had received complaints and
11 normally we're directed to establish a monitoring
12 position at those houses where the complaints have
13 come from to see what the actual levels are.

14 Q. And you said those were serious
15 complaints?

16 A. Yeah. Those people were pretty upset.

17 Q. Okay. And so in all likelihood here in
18 Champaign County there will be some people who have
19 serious complaints, correct?

20 A. Well, with the modifying factor that the
21 predicted levels here are significantly lower than
22 they were at those sites. As I said, most of the
23 houses are beyond 40 and are expected to see levels
24 in the 30s, and that's a significant difference from
25 these other sites where levels as high as 50 were

1 predicted. And the reason for that was that all of
2 these sites were designed to a regulatory limit of 50
3 at houses.

4 Q. But isn't it true, though, that, like set
5 forth on page 28 of Exhibit K, that your conservative
6 assumptions and the worst-case scenarios are both set
7 forth in the application, and I guess in your direct
8 testimony today, because there are such variance in
9 noise levels, correct?

10 A. What do you mean by "variance"?

11 Q. Well, you set forth a worst-case scenario
12 in your conservative assessment; is that correct?

13 A. Yeah. We're trying to look at where the
14 project's going to be audible so we can attempt to
15 gauge the magnitude of the impact of the project, and
16 that's the rationale for using the L90 plus 5, that
17 is just to identify where the project's likely to be
18 audible and where complaints may emerge from and, of
19 course, try to get that area as small as possible.

20 Q. And you used both of those because there
21 may be some varying levels of noise at different
22 times, correct?

23 A. Yes. We want to use the near minimum
24 background as a basis for that 5 increase
25 calculation.

1 Q. You also stated in your direct testimony
2 on page 7, the last paragraph of your answer to
3 question 7 --

4 A. Okay.

5 Q. -- it starts with "Consequently." You
6 had said that if Mr. James's siting guidelines were
7 adopted, that it would largely preclude the
8 development of wind energy in much of the country.

9 A. Yes, that's correct. Because he's
10 recommending a, essentially a setback of 1-1/4 miles
11 from every house. Well, that's a circular area over
12 the diameter of 2-1/2 miles and I think that's over
13 3,000 acres for one turbine.

14 Q. And that buffer zone, in your testimony,
15 would preclude any risk of noise impact, correct?

16 A. Yeah, I think at that kind of distance
17 the probability of complaint would be less than
18 1 percent, yeah.

19 Q. I found this statement about precluding
20 the development of wind energy interesting. Is that
21 the priority of your assessment?

22 A. No. No.

23 Q. Because I assume the impact on the
24 citizens in this case, of Champaign County, some of
25 who are sitting here today, would be the first

1 priority; is that correct?

2 A. We were just hired to assess this -- make
3 an assessment of the situation and our conclusion is,
4 with the site layout as it is now, that there is a
5 possibility of complaints and we're not denying that.

6 MS. NAPIER: I have no further questions.

7 ALJ SEE: Mr. Brown.

8 MR. BROWN: Yes, thank you.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Brown:

12 Q. I'm Dan Brown for the Urbana Country
13 Club.

14 A. Yes.

15 Q. I've just got a couple of questions
16 following up on the county. She asked you a couple
17 questions about the complaint rate and I just wanted
18 to clarify that, on the other project you were
19 talking about where you experienced about a
20 10 percent complaint rate.

21 A. It wasn't 10 percent. It was 10
22 households out of a community that must have
23 consisted of at least 200, probably more homes that
24 were immediately adjacent to the project.

25 Q. All right. So 10 serious complaints out

1 of 200 homes that were affected by the project?

2 A. Correct.

3 Q. All right. And my question, just to zero
4 in a little bit on that, is of those ten complainants
5 were any of them leaseholders or were they
6 nonleaseholders related to the project?

7 A. In some cases they were leaseholders that
8 had turbines on their own land, but they were sited
9 so close to the back of the house that they weren't
10 happy at all with the noise.

11 Q. Now, I want to ask a couple questions
12 about the L90 measurement just so I understand it for
13 me. And I'm paraphrasing and just let me -- tell me
14 if this is right. Is the L90 level the background
15 noise during the quietest 10 percent of the time
16 that's measured?

17 A. Exactly. I think everybody's a noise
18 expert in this room now at this point.

19 Q. Okay. So I just want to make sure
20 because I've heard it said so many different ways,
21 but that's the way it works for me.

22 A. Yeah.

23 Q. All right. And the other assumption is
24 that you model the correlation between the airspeed
25 at a high level and you predict what the airspeed

1 will be at a low level based on your model; is that
2 right?

3 A. We use the wind speed measured at -- by
4 the 40-meter MET masts and correlate that to the L90
5 sound pressure level we measure down on the ground to
6 find out what the relationship is as the wind speed
7 goes up. The wind speed that's going to be seen by
8 the turbines goes up, we want to know what's
9 happening down on the ground where people are.

10 Q. All right. And you measure that so you
11 know what the actual wind speed at a high level was,
12 what the actual sound was at the ground at that time
13 and so there's a correlation there, and then you use
14 that correlation to predict what the sound will be at
15 a low level across the project area.

16 A. Yeah, we use the wind speed and the
17 background level to determine a datum or a baseline
18 to then compare the model predictions to. The model
19 predictions just calculate what the project only
20 sound levels are going to be overlaid on this
21 background.

22 Q. All right. And the critical wind speed
23 that you're looking at at the high level is the 5 to
24 6 meters per second, right?

25 A. Yes, and that's because at that point the

1 turbine sound level is highest relative to the amount
2 of background sound, at higher wind speeds there's
3 more background available to potentially cover up the
4 project, so the impact and audibility actually goes
5 down as the wind speed goes up.

6 Q. All right. And what your study has
7 predicted is that 29 is kind of the baseline L90
8 quietest 10 percent of the time, 29 across the
9 project area?

10 A. Yeah, 29 was the value at the critical
11 wind speed at night.

12 Q. All right, at night. Twenty-nine. So
13 that's all basically just laying the groundwork for
14 my question. So it's 29. That's what you would
15 predict across the project area.

16 A. Correct.

17 Q. Now, if you had a particular property
18 within the project area, could your L90 on your
19 property be lower than 29?

20 A. Twenty-nine is the, can be thought of as
21 the average over the whole site area, and there's no
22 reason to believe that the level would be any
23 different between the monitoring positions than at
24 them, if you follow me.

25 We measured at the nine positions and all

1 those levels were about the same at any given moment,
2 so we would expect the level at a particular property
3 to be substantially different at any particular
4 moment. The 29 is just the average that was
5 happening under those particular wind conditions.

6 Q. All right.

7 A. Over the whole site.

8 Q. Well, it seems to me that if 29's the
9 average, there have got to be some places where it
10 would be less than 29, some places higher, but, you
11 know, the average is 29.

12 A. Well, spatially I don't think there will
13 be that much variation, but it's -- the variation
14 occurs with time. There will be other times when the
15 level is lower than the 29.

16 Q. So on your figure 2.5.10, when it has
17 various data points right there on 5 and then it goes
18 anywhere 2009, well, actually if you look at it, you
19 know, it spans anywhere between 22 up to 40
20 something. So some places you have a lower ground
21 predicted sound than others even though it's the same
22 wind speed, right?

23 A. No. I think the level is consistent over
24 the site at any given time. It's not a spatial
25 thing, it's just all of these data points are

1 different times, different samples were taken. You
2 know, one could have been taken at 1 o'clock in the
3 afternoon, another one at 5 o'clock.

4 Q. Let me go a different direction, then. I
5 saw all the pictures of the sampling points that were
6 across the project area and a lot of them, like was
7 pointed out, they were on a pole or on a fence post
8 or whatever. I'm not going to make an issue of that.
9 That's a whole nother issue.

10 My question is aren't they kind of out in
11 the open subjected to environmental sounds that other
12 locations may not be subjected to?

13 A. Well, that goes back to what we talked
14 about in the beginning about how we wanted to get
15 different settings, we put the monitors specifically
16 in different environments to see if there was any
17 substantial difference, for example along the road or
18 just way out in a field somewhere.

19 Q. All right.

20 A. And what we found was there wasn't really
21 any appreciable difference.

22 Q. What I didn't find in the sample
23 locations was a particular location that might be
24 tucked away and kind of sheltered from the wind
25 completely because it seems to me that there might be

1 locations that are sheltered from the wind that could
2 be very quiet even when the wind is blowing. Is that
3 true?

4 A. We have found that at other sites, but
5 they're typically much more -- the terrain is much
6 more dramatic than it is here. If there's a valley
7 or a secluded area, we will put monitors down in the
8 bottom of that valley and then also up on top of the
9 hills.

10 Now, in that instance we often but not
11 always find that it is quieter down in those
12 protected areas. At this site it's pretty -- the
13 terrain's not that dramatic, really.

14 Q. All right. Well, let me give you a
15 hypothetical, and I hate to keep using the golf
16 analogy but it works for me. Do you play golf?

17 A. I used to be obsessed with it till I got
18 frustrated and threw my clubs down and walked off.

19 Q. Have you ever been playing a hole that's
20 guarded on both sides by trees?

21 A. Sure.

22 Q. And have you ever hit a shot that you
23 thought should be a perfect shot but once it got up
24 over the trees the wind took it across and into the
25 pond?

1 A. That happens all the time, yeah.

2 Q. So is it true that the woods are actually
3 sheltering you from the wind that is up above?

4 A. Yeah. Yeah, the trees do provide local
5 shelter from the wind, sure.

6 Q. And isn't it true also that if you're in
7 that setting, it may seem very quiet and you don't
8 really notice the wind, but when you get up to the
9 edge of the trees, that's when you -- to the edge of
10 the woods, that's when you hear the leaves rustling
11 and so forth?

12 A. What we find actually is that the sound
13 is generated up in the canopy of trees and even
14 though it might be perfectly calm if you're standing
15 in a sheltered area where it's not windy at all where
16 you are, you're still getting the noise from things
17 going on up higher in the trees and all.

18 Q. Well let me ask you this question, if you
19 have an isolated tree in the middle of your backyard
20 and the wind is blowing through that tree, isn't it
21 true you'd hear more leaves rustling off of that tree
22 than you would if you were in between two woods?

23 A. I don't know. I suppose it's possible.

24 Q. All right. So, for example, let's say
25 you had a clubhouse that was nestled down nicely

1 within this woods and it was very quiet there, all
2 right. And let's just assume that even during times
3 when the wind is blowing at a pretty substantial rate
4 high, there's no wind on that patio. Let's just
5 assume that, all right?

6 Is it possible that the monitoring or the
7 projected wind -- or the projected sound level in
8 that setting would be lower than the 29 that you
9 expect even though the wind is blowing at 5 to
10 6 meters per second at --

11 A. I see what you've been trying to get at.
12 Okay. Yeah. Oh, yeah, it could be momentarily or
13 temporarily quieter than an average there at that
14 place making it more likely that maybe the project
15 noise could be more prominent, sure.

16 Q. All right. I mean, because that seems
17 normal that it's not a homogeneous layout, it's not a
18 homogeneous terrain, there are going to be certain
19 areas that are quieter even in the same wind speed
20 than other areas in the project; is that right?

21 A. Yeah, I think that's fair to say.

22 Q. All right. So instead of taking this
23 average across this entire project area, wouldn't it
24 be more accurate to try to have more monitors and try
25 to figure out what the background is in this part of

1 the project and then that part of the project and
2 then be more specific as to your modeling of the
3 effect on residences or other propertyholders within
4 certain parts of the project?

5 A. Well, that's exactly what we did. We
6 tried to put the monitors in the different settings
7 to look for differences but didn't find any.

8 Q. Well, I'll leave that to everyone else,
9 but it seemed like they were in different locations
10 within the project area, but they seemed to be the
11 same setting, somebody's backyard on a post where the
12 wind was moving past it. I didn't see anything that
13 was sheltered.

14 A. Well, it's a fairly open site and what we
15 often find is if we -- if there are a lot of woods
16 around, we'll establish one or more sites in the
17 woods, then what you find is all the trees blowing
18 around cause that level to be higher than elsewhere,
19 than the ones out in the open fields. Or the same.
20 Actually, the most common result is that no matter
21 where you put the monitor, the level's about the
22 same.

23 Q. All right. Wouldn't it be true, though,
24 if you saw wind blowing from let's say the southwest,
25 which typically it blows in this part of Ohio, and

1 it's blowing from the southwest through a woods,
2 would you expect the sound on one side of the woods
3 to be anything different than the sound on the other
4 side?

5 For example, when it hits the woods isn't
6 it going to be louder than on the other side of the
7 woods?

8 A. Not necessarily. No. It blows over the
9 top of the trees and excites them maybe about the
10 same.

11 Q. So the fact that you're on the back side
12 of this wind, the back side of this group of let's
13 say a woods, the fact that you're on the back side of
14 the woods and you don't feel the wind and it's a
15 quiet location, you're saying that that's the same
16 level of sound as when the wind hits the front of the
17 woods as it's first approaching the woods? That's
18 the same sound?

19 A. Yeah, I think that's perfectly possible.
20 I mean, I live near the crest of a ridge on the
21 leeward side of a mountain just below the summit and
22 the wind blows -- hits the other side of the mountain
23 and comes over the top. At our house it's almost
24 always perfectly calm, but the wind blowing over the
25 trees on the ridgeline creates quite a bit of noise

1 and there's no wind at all at our house. So it's'
2 the noise coming from elsewhere that you're hearing
3 basically.

4 Q. Let's go back to what -- just assume the
5 situation that I have presented and that is you've
6 got an area that's sheltered from the wind and is
7 quiet.

8 A. Okay.

9 Q. If you have a turbine in the distance
10 that is close to your 34 dB(A) line, isn't it
11 possible that because of the height of that turbine
12 that that sound could go over the top of the trees
13 and drop down into that quiet area?

14 A. Because the 34 line is already assuming
15 the turbine's up high and the noise is coming down
16 from up above, you know, I don't think that would
17 change anything really.

18 Q. But it is possible that the background
19 noise level in that setting, you haven't measured it,
20 but it is possible it could be less than 29. It
21 could be 25, right?

22 A. Yes. And the 29 is at night, too, bear
23 in mind.

24 Q. Sure. And the Country Club's used at
25 night. People like to sit out on the patio when it's

1 at night, right?

2 A. Okay.

3 Q. All right. Okay, my last question is I
4 understand that you model the background noise,
5 establish it, and then add 5 dB(A), make a line and
6 say that's what's appropriate. I understand that's
7 what the methodology is, okay. What I don't
8 understand is it seems like it would be more
9 justifiable to the general public as if you modeled
10 it, even though it wouldn't be perfect, 29's the
11 number, put the line at 29, nothing can be -- no
12 homes can be inside the 29 line. That way at least
13 you can say we are on average not emitting sound
14 higher than the background. Why not do that?

15 A. Well, first of all, there's a point where
16 the sound from any project, including a wind project,
17 dies down to such a low level that it's no longer
18 significant. For a wind turbine project that's
19 around 35 down to 30, no question at 30, then it's
20 completely silent; 35, very few people object to that
21 magnitude of sound.

22 So you don't really need to keep going
23 down and down and down indefinitely. There's a point
24 where it just becomes insignificant irrespective of
25 any background masking or anything else.

1 MR. BROWN: That's all the questions I
2 have. Thank you.

3 ALJ SEE: Mr. Margard.

4 MR. MARGARD: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Margard:

8 Q. Mr. Hessler, my name is Vern Margard, and
9 I'm an assistant attorney general representing the
10 Power Siting Board staff, and I do have a few
11 questions for you.

12 I want to start with where Mr. Brown was
13 ending up in terms of these levels we've been talking
14 about, the 29 and 34 and so forth. These are
15 essentially ambient sound levels?

16 A. Yeah. Yeah, it's just the natural
17 environmental sound level that's out there now.

18 Q. How about conversational speech?

19 A. That's much higher, 50 to 60.

20 Q. So just -- to use an example, if we're
21 talking about somebody sitting on the Country Club
22 patio, we're talking about somebody who's sitting
23 there in complete silence versus somebody who's
24 sitting there with conversation.

25 A. Well, that's a good point, yeah. The

1 levels down in the 30s are, even below 40 are
2 essentially insignificant relative to somebody
3 talking. The background level in this room is
4 probably less than 40, something like that -- less
5 than that.

6 Q. And that's probably another good example,
7 if you're saying less than 40 but about -- if you
8 were to approximate the sound level in this room,
9 what would you peg it at?

10 A. Yeah, well, I'm always surprised when I
11 pull my meter out, I can never guess it, but I would
12 say it's somewhere around 40, with a lot of low
13 frequency content by the way.

14 Q. And I wanted to ask you about low
15 frequency in a bit, but I want to start back at the
16 very beginning of your cross-examination in the
17 definitions. We spent a fair amount of time on what
18 those definitions are, and I just want to go back and
19 make sure I'm clear on the difference between dB(A)
20 and dB(C), if you could just once again for us
21 distinguish those.

22 A. Okay. I really need a blackboard and
23 about 20 minutes, but in a nutshell when you measure
24 a sound, if I measured the sound level in this room
25 with a meter right now, we would get a frequency,

1 levels across the frequency spectrum. And almost
2 every sound starts with high values in the low end of
3 the frequency spectrum and tapers down, it's just the
4 way all sounds naturally are. In this room it would
5 be rather steep.

6 The overall level, whether it's the
7 A-weighted level or the C-weighted level, is the
8 logarithmic sum of the spectrum, and when you add up
9 numbers logarithmically, the high values dominate the
10 result and the low values don't contribute anything,
11 essentially.

12 So if you have a spectrum that's got a
13 shape like this --

14 Q. And you're indicating a downward sloping
15 line.

16 A. Yeah, I'm indicating a downward slope.
17 The high magnitude values which normally fall in the
18 low end of the frequency spectrum dominate the
19 overall level. C weighting, a C-weighted sound level
20 essentially gives a single number value for the
21 spectrum as measured by an instrument with very
22 little adjustments, it's got a couple dB weighting
23 factor there, but it's just very close to what the
24 sound level is as measured with the instrument.

25 Q. Across all the spectrum.

1 A. Yeah, you sum up the spectrum, the
2 sloping spectrum, and the magnitude of the overall
3 C-weighted level is driven by the lowest frequencies
4 because they have the highest magnitude.

5 A weighting adjusts the actual frequency
6 spectrum to make it conform with the way the sound
7 really sounds to people because your ear's very
8 insensitive to low frequency noise. So it adjusts it
9 and corrects it so that it resembles the way you
10 subjectively perceive it.

11 Q. The sound is measured the same, it's just
12 adjustments to help us understand the impact of the
13 sound differently.

14 A. Yeah. The sound is the same. As I
15 mentioned yesterday, C weighting, its only real
16 purpose is in the evaluation of sources that are rich
17 in low frequency noise, most commonly simple cycle
18 combustion turbines.

19 Q. Speaking of environment rich in low
20 frequency, you indicate in your testimony, and
21 specifically drawing your attention to page 7 of your
22 testimony at the bottom of the page, and I see that
23 you're digging, I don't know that you specifically
24 need to refer to it, but what you state is that the
25 levels of low frequency sound energy radiated by wind

1 turbines are inconsequential and often difficult to
2 differentiate from the natural background.

3 A. That's correct.

4 Q. So in your opinion the dB(C)
5 considerations are not particularly relevant for us
6 in this case?

7 A. No, there's no real need to worry about
8 it. Let me give you an example. The turbine sound
9 power level that we used for the calculation, let me
10 see if I can find that quickly here. On page 25 of
11 Exhibit K. In the bottom table there is the
12 frequency spectrum for the REpower machine and at the
13 low end of the frequency spectrum in the 31-1/2 hertz
14 octave band the sound power level is 118. Well, that
15 sounds awfully high to any layperson, but a sound
16 power level is an intangible analytical quantity.
17 It's not -- it doesn't mean that the sound level up
18 at the nacelle or right at the base of the turbine is
19 118, nothing like that whatsoever.

20 Sound power level is made up of the
21 pressure level measured at a certain point plus an
22 area factor that is ten times the log of the
23 wavefront area. Long and short of it is at a
24 thousand feet the correction from a power level to a
25 pressure level would be a subtraction of about 58 dB.

1 So what this 118 means is that there
2 would be a sound pressure level of about 60 at a
3 thousand feet at this frequency. This frequency
4 band. That happens to correspond exactly to the
5 threshold hearing, that is the level that if we could
6 make a level of 60 dB at 31 hertz and produce it in a
7 lab, half the people would be able to hear something,
8 the other half would say there's nothing there.
9 That's the magnitude of this.

10 Q. Thank you.

11 Now, realizing that you didn't have a
12 chance to find your testimony, on page 4 of your
13 testimony you're talking about the design goals of
14 what you were studying and the purpose of your
15 involvement in this case was, if I'm reading this
16 correctly, to minimize potential noise impact. Is
17 that correct?

18 A. Well, we were primarily just setting out
19 to produce a unbiased assessment of what we thought
20 was going to result from the project. Now, in this
21 particular case we did have some involvement in
22 the -- in trying to ameliorate the situation by going
23 through these model iterations to try to improve the
24 site plan. That's somewhat unusual. Most site plans
25 are just given to us and then we do the analysis and

1 then come up with an opinion on the impact. In this
2 case we worked with Buckeye to greatly improve the
3 impact over what it started out as.

4 Q. And just so that I and we're all clear on
5 this, when we're talking about impact, we're talking
6 about the impact in terms of noise levels, not
7 necessarily the consequential effects of those noise
8 levels.

9 A. Exactly. It's just, when I say "impact"
10 or "adverse impact," I'm talking about complaints or
11 people being annoyed.

12 Q. And the purpose, as you just indicated,
13 was primarily assessment, but also some involvement
14 in the iterative design process.

15 A. Yeah, that's right.

16 Q. And consequently, what you're proposing
17 here, what you are recommending, is not -- if I
18 understand this correctly -- a criteria for project
19 approval as much as it is a specific design for
20 project planning.

21 A. Yeah. Yeah. We had adopted a working
22 design goal of an absolute level of 40 and then we
23 also looked at the L90 plus 5 from the perspective of
24 what is the actual impact likely to be, and that's a
25 function of audibility. So we looked at both of

1 those at the same time or used 40 in the many
2 iterations of the site plan to try to achieve that
3 level.

4 Q. Okay. Again, just so that I'm clear, 40
5 is kind of your maximum threshold and then the design
6 is to minimize below that.

7 A. Yeah. Well, ideally we wanted to
8 maintain a level of 40 or less at all houses because
9 we felt that was -- that would result in a somewhat
10 acceptable impact.

11 Q. And I guess that's, in your opinion, in
12 your professional opinion, 40 dB(A)'s an acceptable
13 impact.

14 A. I think it's a reasonable impact. I
15 think levels higher than that are much more likely to
16 result in complaints. That seems to be an ideal
17 balance, really. It's a balance between having an
18 impact, having a reasonable and small impact or --
19 and not being able to build the project at all.

20 Like I said before, there's some degree
21 of annoyance or complaints that's essentially
22 inevitable whenever the turbines and houses are just
23 shuffled together like a deck of cards. That kind of
24 a site plan, there's just never enough buffer zone to
25 ensure that there won't be any impact. The project

1 really has to be out in a remote area to feel
2 comfortable with that.

3 Q. And you're not aware, are you, of any
4 legal standard or any standard in the community or in
5 the state of Ohio that specifies the noise level, are
6 you?

7 A. I'm not aware of any specific limitation,
8 no.

9 Q. This 40 dB(A), this is irrespective as to
10 whether it's daytime or nighttime?

11 A. That's correct.

12 Q. Now, you indicated in response to a
13 question from Ms. Napier that you felt that you had
14 pretty much accomplished that 40 dB(A) level and that
15 the vast majority of homes were under 40 dB(A); is
16 that correct?

17 A. Yeah. I think we've got it down, there
18 might be a dozen or so that are closer, that have a
19 level of maybe 41, something like that.

20 Q. That's what I was looking for, to see if
21 you would quantify the number of homes that might be
22 impacted at the level of 40 dB(A).

23 A. Yeah, it's relatively small.

24 Q. Thank you.

25 Finally, let me ask you a couple of

1 questions about the complaints that you talked about
2 with respect to the other project. You were aware
3 that there had been some complaints. Were you at all
4 involved in that complaint resolution process there?

5 A. We were just tasked with quantifying what
6 the levels were at the houses where these complaints
7 had been received from. On most of these projects we
8 had no involvement in the design of the project, we
9 were just asked after it was completed to come in and
10 see what the levels were.

11 Q. You were measuring to determine if the
12 complaints were valid?

13 A. We were measuring to determine what the
14 project sound level was at the houses mainly for
15 comparison to the permit limits which were on most of
16 these projects 50 dB(A) at houses, we were looking
17 for -- to verify compliance or noncompliance with
18 that.

19 Q. Did you have any role in recommending any
20 efforts to ameliorate any impacts if they were found?

21 A. In one case we found that the sound level
22 from the turbine that was disturbing this one person
23 was fairly low at all wind speeds below about 12
24 meters per second I think at the hub, but then once
25 the wind speed went over that, the sound levels went

1 up dramatically. I think it was a function of this
2 particular turbine model. So the recommendation
3 there was to shut this turbine off when it went above
4 12-1/2 just to limit the problem there. There was a
5 solution in that particular case.

6 Q. Have you otherwise been involved in
7 either developing complaint or complaint resolution
8 processes with respect to wind turbines?

9 A. Not really, no.

10 Q. And do you have, from your professional
11 perspective, any recommendations as to how such a
12 process should be developed?

13 A. That's a tough one because it's hard to
14 do much about it once it's there. No. Fortunately,
15 our work stops at just saying what we think is going
16 to happen and then . . .

17 Q. I want to make sure, finally, that I'm
18 clear with respect to your recommendation. You're
19 aware that the Board staff has recommended a
20 condition that the applicant operate the facility
21 within the noise parameters as set forth in the
22 study.

23 A. Right.

24 Q. And I believe your opinion in your
25 testimony is that you believe that the applicant can,

1 in fact, do that.

2 A. Yeah. Well, what I believe is that the
3 actual sound emissions from the project will closely
4 match the predicted levels.

5 Q. And do you believe that operating it
6 within those predicted levels is a reasonable
7 condition for the operation of this facility?

8 A. Yes, because we don't expect the level to
9 go over 40 at more than a handful of houses.

10 MR. MARGARD: That's all the questions I
11 have, your Honor. Thank you.

12 ALJ SEE: Thank you.

13 Any redirect?

14 MR. SETTINERI: Your Honor, as an initial
15 matter we had discussed yesterday there were I
16 believe four wind turbine projects that we were
17 concerned, we were going to do an in camera session.
18 Counsel for UNU and I spoke earlier and they are
19 interested in the names of those projects, so what we
20 would propose is that we would submit those names as
21 an exhibit under seal and that, hopefully, the rest
22 of the parties would stipulate that that information
23 would be attorneys eyes only.

24 As proposed by UNU counsel the only
25 exception to that would be Mr. Rick James who would

1 have access to that exhibit. He is their noise
2 consultant. In the event he testifies and discloses
3 those names or any specifics about those facilities,
4 we would like to do that in camera session. And that
5 is something that both UNU counsel and I discussed
6 this morning, but I would submit that to the parties
7 at this time.

8 ALJ SEE: Okay. And each of the rest of
9 the parties can agree to that arrangement?

10 MS. NAPIER: We have no objection.

11 ALJ SEE: And will abide by it. Agree to
12 it and will abide by it.

13 MS. NAPIER: Yeah.

14 MR. BROWN: Yes.

15 MR. VAN KLEY: Yes and yes.

16 MR. MARGARD: Yes, your Honor.

17 ALJ SEE: Okay. Then is there any need
18 to go into an in camera for Mr. Hessler? Mr. Van
19 Kley?

20 MR. VAN KLEY: No, your Honor.

21 ALJ SEE: Okay.

22 MR. SETTINERI: Your Honor, if I may.

23 ALJ SEE: Yes.

24 MR. SETTINERI: We will prepare that
25 exhibit on break today and we can submit that later

1 today. And the only thing we'd like to ask is that
2 for the parties, I know there are a few parties not
3 present here today, we would be able to get that
4 agreement from those parties at another time.

5 ALJ SEE: That's fine, and I ask that it
6 be put on the record like it has been done for the
7 parties that are present, and if it's docketed under
8 seal during the course of the proceedings, that you
9 provide the Bench with two copies.

10 MR. SETTINERI: Certainly. Thank you.

11 ALJ SEE: Now, was there any redirect for
12 Mr. Hessler?

13 MR. SETTINERI: If we may have a moment,
14 your Honor, please.

15 ALJ SEE: Okay. Let's go off the record
16 for a second.

17 (Discussion off the record.)

18 ALJ SEE: Let's go back on the record.
19 Mr. Settineri.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Settineri:

23 Q. Morning, Mr. Hessler.

24 A. Good morning.

25 Q. Yesterday you testified that wind

1 turbines should be modeled as point sources and not
2 as line sources, correct?

3 A. That's correct.

4 Q. Have you done any field studies to
5 support your conclusion that wind turbines should be
6 modeled as point sources and not line sources?

7 A. Yes, I have. We did a study on a project
8 in Minnesota out in flat farm country, in soybean
9 fields, and out in that open country the turbines are
10 lined up in geometric lines with the spacing of a
11 thousand feet in between, exactly like the group of
12 turbines being considered on this project.

13 And at this site we put monitors at a
14 thousand feet, 1,300 feet, 1,500 feet, 2,000 feet,
15 upwind and downwind of a row of turbines and measured
16 for 19 days continuously and then predicted or
17 modeled the noise from this facility which was a
18 row -- a line of turbines in the normal way assuming
19 that they're point sources, and then we compared that
20 to the measured results for the monitors and got
21 essentially perfect agreement.

22 We found no hint whatsoever of this 3 dB
23 per doubling propagation that's talked about in the
24 NASA study, which in fact is not a field measurement
25 study at all, but is a desktop mathematical

1 evaluation that uses simplifying assumptions. And
2 the rows of turbines they're talking about are very
3 small. This is a 20-year-old study. They're very
4 small turbines with 15-meter rotors that are for the
5 analysis purposes lined up with a 30-meter spacing so
6 that the blade tips are touching each other and then
7 they've just assumed that this line -- this infinite
8 line acts as a line source.

9 But our firsthand experience is that when
10 they're lined up in rows, they act as point sources.

11 MR. SETTINERI: Thank you, your Honors.
12 No further questions.

13 ALJ SEE: Ms. Napier, any recross?

14 MS. NAPIER: No questions.

15 ALJ SEE: Mr. Brown.

16 MR. BROWN: No questions.

17 ALJ SEE: Mr. Van Kley.

18 MR. VAN KLEY: Yes, your Honor.

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Van Kley:

22 Q. At the time that NASA performed this
23 study, or wrote this paper that was introduced into
24 evidence, isn't it true that NASA was the federal
25 agency that was in charge of grants for wind turbine

1 development?

2 A. I don't know.

3 Q. Well, do you know enough about what was
4 occurring in the federal government at that time with
5 regard to wind turbine projects to know that at that
6 time NASA was the federal agency deemed to have the
7 expertise with regard to wind projects?

8 A. I don't know that, no.

9 Q. Okay. The findings that you have
10 indicated or your opinion that wind turbines should
11 not be regarded as line sources is an opinion that is
12 contrary to the NASA paper; is it not?

13 A. That is correct, because they made a
14 simplifying assumption that's alluded to in an
15 earlier 1986 paper.

16 Q. Did you measure any of the noises from
17 this Minnesota project at a distance further than
18 2,000 feet away?

19 A. No. And at 2,000 feet the sound levels
20 were almost lost in the background.

21 Q. What were the conditions under which you
22 measured the noise in that study?

23 A. Typical springtime, I think it was,
24 conditions over the 19-day period. We had a wide
25 variety of wind speeds and atmospheric conditions,

1 wind directions.

2 Q. What was the name of the wind farm in
3 which these wind turbines were contained?

4 A. It's one of the ones that we -- one of
5 those five we've been talking of.

6 Q. Could we add that to the stipulated
7 document, identify that wind farm?

8 MR. SETTINERI: Since it is one of the
9 five, it will be included. I think the witness --

10 MR. VAN KLEY: Make sure you specify
11 which one.

12 MR. SETTINERI: Yes. I think it may --
13 yes.

14 Q. Isn't it true that as sound travels from
15 a row of turbines, if you measure the sound too close
16 to those turbines, you're not going to detect the
17 increase of volume or the decrease in the decay of
18 volume when you're right up close to those turbines
19 because at that point the sound emanating out from
20 each turbine has essentially collided with each
21 other? Do you understand the question?

22 A. Yes, I do.

23 Q. Okay.

24 A. But at a measurement point of 2,000 feet
25 any such effects would start to be discernible and it

1 modeled -- modeled at a point source it agreed
2 perfectly with the actual levels.

3 Q. You have --

4 A. I believe it's because the spacing of a
5 thousand feet just is too much of a separation for
6 the various sources to coalesce into a line, so to
7 speak.

8 Q. Are you familiar with the distances that
9 are recommended by the turbine manufacturers for
10 space between turbines to avoid turbulence caused by
11 one turbine against another turbine?

12 A. Yes, I know that there are minimum
13 spacing requirements. A thousand feet seems to pop
14 up frequently. That's the extent of my knowledge on
15 that.

16 Q. All right. And why is it that at least
17 in your understanding the manufacturers recommend
18 that the turbines maintain that -- or that there be
19 at least that amount of space between the turbines to
20 avoid turbulence?

21 A. To avoid turbulence.

22 Q. That's the reason for doing it, right?

23 A. Yeah.

24 Q. You want to avoid one turbine from
25 causing turbulence to another turbine.

1 A. Exactly.

2 Q. Okay. Have you published the results of
3 your Minnesota study?

4 A. No. That was performed for a client and
5 submitted.

6 Q. Has it been submitted only to the client?

7 A. Has it what, I'm sorry?

8 Q. Has it been submitted to any other person
9 besides the client?

10 A. No. No.

11 MR. VAN KLEY: I have no further
12 questions.

13 ALJ SEE: Ms. Grasseschi.

14 MS. GRASSESCHI: None on behalf of staff,
15 thank you.

16 ALJ SEE: Before we go to the next
17 witness let's take a brief -- let's take a ten-minute
18 recess.

19 Hold it.

20 MR. SETTINERI: I apologize, but before
21 we take a break maybe we could go ahead and move the
22 exhibit into evidence.

23 ALJ SEE: Okay. Go ahead.

24 MR. SETTINERI: At this time, your Honor,
25 we would like to move into evidence the direct

1 testimony of David M. Hessler previously marked as
2 Buckeye Exhibit 8.

3 ALJ SEE: Are there any objections to the
4 admission of Buckeye Exhibit 8?

5 MR. VAN KLEY: No.

6 ALJ SEE: Hearing none, Company Exhibit 8
7 is admitted into the record.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 ALJ SEE: Union Neighbors United, you
10 have several exhibits.

11 MR. VAN KLEY: Yes, your Honor, we would
12 like to move into admission Exhibit 55 through 64.

13 ALJ SEE: Are there any objections to the
14 admission of Union Neighbors United Exhibit 55
15 through 64?

16 MR. SETTINERI: Yes, your Honor. We
17 discussed this with UNU counsel previously, they did
18 submit the NORDEX -- UNU 58 is a NORDEX noise
19 measurement. Counsel had indicated at cross it was
20 produced by the applicant. As we've done previously
21 with other documents given the volume of production,
22 we'd ask that we just simply be allowed to verify
23 this was produced in production at which point we'll
24 have no objection.

25 ALJ SEE: Okay.

1 MR. SETTINERI: The second objection is
2 to the introduction into evidence of UNU Exhibit 56
3 titled "Wind-induced pseudo-noise and leaf-rattle
4 noise," an article in part by Paul Schomer. At the
5 time of cross-examination the witness was not
6 familiar with this document, had not seen that
7 document, and only testified as to a picture of some
8 measuring equipment on one page.

9 We would object to the inclusion of the
10 entire document into evidence but would not oppose
11 simply the addition of that picture that was
12 discussed with him.

13 The last objection is UNU Exhibit 64.
14 Again, the witness had never seen this document. He
15 was crossed as to what was written in the document.
16 Since there was no foundation, lack of
17 identification, we would object to the admission of
18 UNU Exhibit 64, an article by Clifford Schneider.

19 ALJ SEE: I'm sorry, you said UNU Exhibit
20 64?

21 MR. SETTINERI: Yes, I have it as
22 "Measuring background noise with an attended, mobile
23 survey," an article by Clifford Schneider.

24 ALJ SEE: I'm sorry, that's Exhibit UNU
25 63.

1 MR. SETTINERI: I apologize. You are
2 correct. Thank you.

3 ALJ SEE: Mr. Van Kley, did you wish to
4 respond?

5 MR. VAN KLEY: Yes, your Honor. With
6 regard to Exhibit 58, it is acceptable to us for
7 counsel to go back and check their records to
8 determine whether they produced that document. So it
9 is acceptable to us to defer admission at this point
10 for that document.

11 With regard to the Schomer article which
12 is Exhibit 56, our recollection is that the witness,
13 once he saw the document, did recognize it and he
14 certainly recognized Paul Schomer as an authority in
15 acoustical engineering which is enough to make it
16 admissible.

17 With regard to Exhibit 63, I think we
18 will withdraw that at this point in time.

19 ALJ SEE: So you're withdrawing UNU
20 Exhibit 63.

21 MR. VAN KLEY: Yes.

22 ALJ SEE: We'll rule on those objections
23 after the break.

24 Let's take a ten-minute break.

25 (Recess taken.)

1 ALJ SEE: Let's go back on the record.
2 After reviewing the transcript for Union Neighbors
3 United Exhibit 56, the witness was not familiar with
4 the exhibit, did not recall ever being familiar with
5 the exhibit, and the only thing that was discussed
6 was figure 6 of Union Neighbors United Exhibit 56.
7 So if UNU wishes to put figure 6 into the record,
8 that will be all that is included in the record.

9 MR. VAN KLEY: Okay, your Honor. We'll
10 agree to that.

11 ALJ SEE: And counsel for Buckeye and
12 counsel for UNU can advise the Bench further on the
13 other two exhibits that are being compared, okay.

14 With that, Union Neighbors United Exhibit
15 55, the revised 56, 57, 59, 60, 61, 62, and 64 are
16 admitted into the record.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 ALJ SEE: I would also note that since
19 appearances were taken in morning that counsel for
20 the city of Urbana has joined us; Mr. Weithman.

21 I believe we're going to change the order
22 of things and move from Buckeye's witnesses to
23 Mr. Brown's witness at this time.

24 MR. BROWN: Yes, your Honor. We'd like
25 to call P.B. Dye.

1 ALJ SEE: Okay.

2 MR. BROWN: Mr. Dye has a copy of his
3 direct testimony and the exhibits, and I think the
4 Bench already does, but I tried to make another copy
5 anyway.

6 ALJ SEE: Mr. Dye, if you'd please raise
7 your right hand.

8 (Witness sworn.)

9 ALJ SEE: Thank you.

10 Mr. Brown, go ahead when you're ready.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 - - -

13 P.B. DYE

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Brown:

18 Q. I'm going to give a paper copy of the
19 direct testimony and the supplement to the direct
20 testimony to all counsel. Mr. Dye, you understand
21 that your direct testimony has already been
22 presubmitted to the Board in this hearing.

23 A. Yes, sir.

24 Q. Have you reviewed your direct testimony
25 and the exhibits to your direct testimony?

1 A. Yes, sir.

2 Q. Are there any changes to your direct
3 testimony or the exhibits?

4 A. No, sir.

5 Q. So if you were to testify today as to
6 what's in your direct testimony, would you change
7 anything?

8 A. No, sir.

9 MR. BROWN: All right. The witness is
10 available for cross-examination.

11 ALJ STENMAN: Can I get you to use the
12 microphone right there. I think it should still be
13 on.

14 THE WITNESS: Yes.

15 ALJ SEE: Let's start at this corner of
16 the table. Mr. Weithman, do you have any questions
17 for the witness?

18 MR. WEITHMAN: I have no questions.

19 ALJ SEE: Ms. Napier.

20 MS. NAPIER: I just have a couple
21 questions for Mr. Dye.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Napier:

25 Q. Mr. Dye, you've stated that you are a

1 golf course architect and did you -- were you
2 involved in the design of the Urbana Country Club?

3 A. Yes.

4 Q. And as a golf course architect can you
5 tell me kind of the differences between an urban
6 setting golf course and a rural setting golf course?
7 Are there differences in design of that?

8 A. Not so much in design as in the
9 surroundings. You always try and design a golf
10 course to the best of your ability with the property
11 provided.

12 Q. And you had stated that you own a home
13 near the golf course; is that correct?

14 A. We have a home adjacent to the second tee
15 at the Urbana Country Club, yes.

16 Q. And I'm not really that familiar with the
17 golf course. Do you know how close you will be to
18 the turbine 48? Do you have any knowledge of that?
19 That would be I believe the turbine closest to the
20 golf course.

21 A. My house is situated on the north side of
22 the property and turbine 48 is on the south side, so
23 I would be the distance plus an additional, I'm going
24 to say give or take 2,000 -- an additional 2,000
25 feet.

1 Q. And you had indicated that some of the
2 effects that you were made aware of the turbine will
3 be adverse to the Country Club; is that correct?

4 A. Yes.

5 Q. And can you tell me what, in your mind,
6 are the adverse impacts on the country club?

7 A. The turbine I believe No. 48, which will
8 be directly aligned behind the fourth and fifth
9 greens and elevated above them, will stand out, will
10 be -- anytime there's any wind present be constant
11 movement or in the background of the property.

12 MR. SETTINERI: Your Honor, we would move
13 to strike the witness's response. We consider this
14 friendly cross. The witness is simply testifying on
15 direct at this point.

16 ALJ SEE: Did you want to respond,
17 Ms. Napier?

18 MS. NAPIER: Yes. At this point in time
19 I'm just trying to lay some preliminary foundation as
20 to some of the items in his direct testimony.

21 ALJ SEE: The objection is overruled.

22 Q. Are there any other --

23 ALJ SEE: Ms. Napier, hold on just a
24 second.

25 Mr. Brown, I don't believe that the

1 witness's testimony was marked.

2 MR. BROWN: The witness's testimony will
3 be marked UNU 1 and the supplement will be UNU 2.

4 ALJ SEE: I'm sorry, you mean UCC?

5 MR. BROWN: I'm sorry. UCC 1, UCC 2, and
6 then we'll leave the exhibits as A, B as they are
7 marked already. UCC 1 and 2.

8 ALJ SEE: Well, indicate what -- UCC 1 is
9 direct testimony. UCC 2 is?

10 MR. BROWN: The supplement.

11 ALJ STENMAN: This?

12 MR. BROWN: No. Remember, we filed a
13 motion to file the supplement.

14 ALJ SEE: B-1, B-2, supplements filed --

15 MR. BROWN: Yeah, B-1, B-2, and B-3, but
16 there was actual -- one question in the supplement
17 that was in that.

18 ALJ SEE: Okay.

19 Q. (By Ms. Napier) I'm sorry, Mr. Dye, for
20 the delay.

21 A. Go ahead.

22 Q. You had given me an adverse impact on the
23 golf course and I asked you for any others.

24 A. As adverse to what?

25 Q. The impact of the wind turbines on the

1 golf course.

2 A. The turbine I believe No. 48 will be
3 directly behind the fifth -- fourth and fifth greens
4 as played, and also partially behind the seventh
5 green, so it will become part of the backdrop and,
6 depending on the movement of the turbine, it will
7 affect playability of the golf course.

8 Q. You had specifically mentioned possible
9 cutting of trees which would be a safety issue; is
10 that correct?

11 A. The possibility of power lines being
12 installed along the 11th hole which is the hole
13 built back in the '20s along what is now Highway 36
14 has approximately 75 to 80 trees that have become a
15 substantial buffer, if those were to be removed, it
16 would impact not only the golf course but the safety
17 of Highway 36.

18 Q. And you had talked about shadow flicker
19 and noise on game play or golf course play.

20 MR. SETTINERI: Your Honor, objection.
21 Again, this is friendly cross. It's simply
22 reiterating what's in his direct testimony.

23 MS. NAPIER: Your Honor, I'm trying to
24 lay the basis for a question that is actually set
25 forth in this direct examination, so I'm trying to

1 kind of figure out what issues he is bringing here
2 today.

3 ALJ SEE: Okay. Your objection is noted.
4 I'll give you some leeway, but let's get there.

5 MS. NAPIER: And I guess, I know you
6 won't believe me, but I'm almost finished.

7 ALJ SEE: Not until you prove it.

8 Q. (By Ms. Napier) And so can you tell me
9 about shadow flicker and noise on golf course play?
10 Can you explain that?

11 A. Shadow flicker, what I would perceive it
12 to be would be like driving home at sunset and
13 watching the sun come between the trees as you're
14 driving, it distracts you as you're trying to
15 concentrate on the road. While a person is putting
16 on the green, if a shadow movement moves across the
17 green, it would distract them and essentially break
18 their concentration and they would have to start over
19 again.

20 You see this several times on tour where
21 a player will back off if there's any type of
22 background noise or if he sees a butterfly fly down
23 around your ball or anything that distracts you; if
24 somebody else's shadow moves across your line of
25 sight between where you are and where you're trying

1 to play to.

2 Q. So in your expert opinion as a designer
3 for the golf course are those issues going to
4 negatively impact the financial status of the golf
5 course?

6 MR. SETTINERI: We would just note our
7 objection, your Honor. This is in his testimony.
8 This is just continued friendly cross. If there's a
9 question that needs a foundation for it, these
10 answers are all in the direct testimony and the
11 question can be asked.

12 ALJ SEE: Your objection is noted.

13 MR. SETTINERI: Thank you.

14 A. I can't say about the financial aspects,
15 but it will affect the golf playability of the holes
16 where the shadow flicker affects the golf course. If
17 that negatively impacts the golf course, that's to be
18 seen.

19 MS. NAPIER: Thank you. I have no
20 further questions.

21 ALJ SEE: Mr. Van Kley.

22 MR. VAN KLEY: We have no questions.

23 ALJ SEE: Mr. Settineri.

24 MR. SETTINERI: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Settineri:

Q. Good morning, Mr. Dye. My name is Mike Settineri.

A. Good morning.

Q. I represent the applicant, Buckeye Wind. You just mentioned that shadows can be distracting I believe putting, correct?

A. Yes, sir.

Q. Do birds fly across golf courses?

A. Yes, they do.

Q. Is it possible that a bird could fly over a green while someone's putting and have a shadow?

A. Yes, they could.

Q. Okay. Would that be distracting to someone putting?

A. It could very well be.

Q. Has the country club taken any measures, to your knowledge, to keep birds off the course?

A. No, sir.

Q. Mr. Dye, your résumé attached to your testimony does not mention any experience with utility scale wind turbines, correct?

A. Correct.

Q. Isn't it true that you never developed a

1 utility scale wind turbine project?

2 A. No, sir, I have not.

3 Q. Have you ever conducted any modeling to
4 estimate shadow flicker from wind turbines?

5 A. I have not had to.

6 Q. Okay. Have you ever conducted any
7 studies to estimate shadow flicker from wind
8 turbines?

9 A. No, I have not.

10 Q. So you did not conduct any modeling or
11 formal study to calculate the amount of shadow
12 flicker anticipated at various points on the Urbana
13 Country Club's golf course, correct?

14 A. I have not, no.

15 Q. Mr. Dye, if you could turn to page 5 of
16 your direct testimony, please.

17 A. Yes, sir.

18 Q. In your answer to question 5 you state
19 that you reviewed the Buckeye Wind application
20 including the maps attached as Exhibits F, G, and
21 G-1, correct?

22 A. Yes, sir.

23 Q. What parts of the application did you
24 review to prepare for your testimony?

25 A. I have the exhibits in my folder here.

1 Q. When you said exhibits in your folder,
2 are those the exhibits that are in the application
3 notebooks? And if so, I'm sure your counsel can give
4 you a copy of the application notebooks.

5 MR. BROWN: Your Honor, the application
6 notebooks, if they want to show them to him, go
7 ahead. I don't have the whole thing printed, I just
8 kept it on an electronic.

9 A. I don't have the application notebook. I
10 don't know exactly everything that's in it, no, sir.

11 MR. SETTINERI: Your Honor, I know we
12 have copies of the application notebook that we made
13 available for witnesses. May we give the witness a
14 copy of that?

15 ALJ SEE: Yes.

16 A. Okay, same one.

17 Q. Maybe to save us some time, when you said
18 the exhibits in your folder, are you referring to the
19 exhibits that are attached to your direct testimony?

20 A. Yes, sir.

21 Q. And do you know if these exhibits were
22 included in the application?

23 A. No, I do not.

24 Q. So is it fair to say that you did not
25 review the application in this proceeding prior to

1 your testimony today?

2 A. No; I have reviewed parts of the
3 application, yes, sir.

4 Q. You just testified that you only reviewed
5 the exhibits attached to your direct testimony.

6 A. Correct.

7 Q. And can you point to me where these exact
8 pages are in the application?

9 A. No, I cannot.

10 Q. Would you like to take the time to find
11 those?

12 A. Personally, no. But if I have to, I
13 will.

14 Q. I'll ask you the question again, then.
15 Isn't it true, then, that you didn't review the
16 application, but rather you reviewed exhibits that
17 have been prepared using information from the
18 application?

19 A. I reviewed parts of the application that
20 pertain to the golf course, yes, sir.

21 Q. Why don't you please take the time to
22 point out those components of the application,
23 please.

24 MR. BROWN: Objection, your Honor. The
25 application is several binders. If he wants to talk

1 about something in particular, have him point it out
2 to the witness.

3 MR. SETTINERI: If counsel is willing to
4 simply stipulate that these pages, the exhibits
5 attached to his direct testimony are not included in
6 the application, that would be fine.

7 MR. BROWN: I'll stipulate that these
8 particular exhibits are not exactly like this in the
9 application, but the exhibits in the application are
10 in the exhibits that Mr. Dye is talking about. So
11 excerpts of the application were placed into this
12 exhibit list for Mr. Dye to review.

13 ALJ SEE: Okay.

14 Q. Mr. Dye, again, beyond these exhibits you
15 did not review anything else prior -- to prepare for
16 your direct testimony.

17 A. Correct.

18 Q. Thank you.

19 Now, in your answer to question 5 you
20 state that "I understand that shadow flicker will
21 regularly occur from Turbines 48 & 49 on holes 2 thru
22 8 of the UCC course at various times of the day,
23 depending on the angle of the sun." Is that correct?

24 A. Yes, sir.

25 Q. If you could please turn to Exhibit F of

1 your testimony.

2 A. Yes, sir.

3 Q. Exhibit F shows the location of turbine
4 48 and 49, correct?

5 A. Correct.

6 Q. And as we look at this exhibit, is the
7 golf course located to the, I'd say northeast of
8 turbine 48?

9 A. Yes, sir.

10 Q. And is turbine 49 located due south of
11 the eastern side of the golf course?

12 A. I'll correct that. Forty-eight would be
13 to the southwest and 49 to the south. Correct.

14 Q. Thank you.

15 Now, in your testimony you stated that
16 shadow flicker will occur at various times of the
17 day, correct?

18 A. Various times of the day being the
19 afternoon, yes, sir.

20 Q. Okay. Thank you.

21 If you could please turn to Exhibit G in
22 your direct written testimony.

23 A. Yes, sir.

24 Q. Now, on Exhibit G, it states that it's
25 shadow flicker from turbines south of UCC property.

1 Do you see the turbine 48 as marked on that diagram?

2 A. Yes, sir.

3 Q. And do you see turbine 49?

4 A. Yes, sir.

5 Q. And isn't -- per your counsel's
6 stipulation, this map was taken out of the
7 application with additional information added to it
8 to prepare this exhibit; would that be correct?

9 A. Yes, sir.

10 Q. Okay. Let's turn to the application,
11 please. You will be turning to Exhibit L of the
12 application, and that's to the back of the first
13 volume, I.

14 A. Yes, sir.

15 Q. In that exhibit if you could turn to,
16 there's a map, shadow flicker map No. 4. Those
17 designations are on the right-hand side of the
18 legend, top corner.

19 A. Got it.

20 Q. This map, was it the basis for what has
21 been marked as Exhibit G of your direct written
22 testimony?

23 A. I believe so.

24 Q. Let's look at the legend at the bottom
25 right-hand corner of the page. Striking that,

1 let's -- would you agree with me that this map
2 indicates contour lines for shadow flicker?

3 A. As according to the map, yes.

4 Q. Let's go to the legend. Starting at the
5 bottom, on my copy, and every printer's different,
6 but it appears the blue line represents .015 hours
7 per year of shadow flicker. Do you agree with me?

8 A. That's what it indicates, yes, sir.

9 Q. And then the next legend item up
10 indicates I believe, at least on my copy it is a
11 purple line and that represents 10 hours of shadow
12 flicker per year. Would you agree with me?

13 A. Yes, sir.

14 Q. Let's look at turbine 48. You see the
15 contour lines radiating out from the turbine?

16 A. Yes, sir.

17 Q. Let's go to the purple line which is the
18 secondmost furthest out contour line --

19 A. Correct.

20 Q. And that is 10 hours of shadow flicker
21 per year, correct?

22 A. That's what the map indicates.

23 Q. Would you agree with me that that contour
24 line intersects the golf course at one point?

25 A. Yes, sir.

1 Q. In fact, you'd agree with me that the
2 majority of almost all of the golf course is outside
3 the 10 hours of shadow flicker per year contour line.

4 A. That's what this map would indicate, yes,
5 sir.

6 Q. And this is the map you reviewed for your
7 testimony, correct?

8 A. Yes, sir.

9 Q. Can you identify, what hole does the 10
10 hour shadow flicker per year line intersect?

11 A. Hole No. 6.

12 Q. Thank you.

13 Let's look at the blue contour line.
14 Would you agree with me the blue contour line
15 intersects, I guess I'll say on this diagram the
16 eastern portion of the course?

17 A. Correct.

18 Q. Would you be able to identify for me the
19 holes that are between the 10 hours of shadow flicker
20 contour line and the 0.015 hours of shadow flicker
21 per year contour line?

22 A. Holes No. 2 green, 3 tee, hole No. 4
23 green, the complete 5th hole, the complete 7th
24 hole, about 80 percent of the 6th hole.

25 MR. SETTINERI: May I have that answer

1 read back, please.

2 (Record read.)

3 Q. According to this map, Mr. Dye, this
4 would indicate that the remainder of the course is
5 outside of the .015 hours of shadow flicker per year
6 contour line, correct?

7 A. According to this map, yes, sir.

8 Q. Subject to check, would you agree with me
9 that .015 hours per year correlates to 54 seconds of
10 shadow flicker per year?

11 A. I wouldn't have that calculation.

12 Q. If we turn to turbine 48 -- or 49, excuse
13 me, would you agree with me that the contour lines
14 that we've just discussed, the 10 hour per year of
15 shadow flicker line and the .015 hours of shadow
16 flicker per year line, both of those lines are
17 applicable to turbine 48 and 49 as based on the map?

18 A. That's what the map indicates.

19 Q. Thank you, sir.

20 So for the holes that you've listed as
21 being intersected by contour line or within contour
22 lines, the shadow flicker predicted based on this map
23 is between 10 hours of shadow flicker per year to
24 .015 hours of shadow flicker per year, correct?

25 A. That's what the map indicates, yes, sir.

1 Q. Mr. Dye, are you an acoustical engineer?

2 A. No, sir, I am not.

3 Q. Have you ever recorded sound measurements
4 from a wind turbine?

5 A. No, sir, I have not.

6 Q. Okay. Please turn to page 5 of your
7 testimony. At the bottom of the page there's a
8 sentence that just starts "In a rural" and then
9 carries over to the top of page 6. That sentence
10 states "In a rural environment, the quiet . . .
11 sounds of nature are a part of the ambience and
12 character of the course." Do you see that sentence?

13 A. Yes, sir.

14 Q. Let's look at Exhibit C-3 referenced in
15 your testimony, please.

16 A. Yes, sir.

17 Q. This is a picture taken on the golf
18 course, correct?

19 A. Yes, sir.

20 Q. Is that an automobile to the left of the
21 picture?

22 A. Yes, sir, it is.

23 Q. How far away do you think that automobile
24 is from the course, sir?

25 A. Twenty-five feet.

1 Q. Do you view that, consider that a
2 tranquil environment?

3 A. It is an interruption to the tranquil
4 environment.

5 Q. Has the golf course made any requests to
6 close Route 36?

7 A. No, it has not.

8 Q. Please look at Exhibit C-4 which is
9 attached to your direct written testimony. Is that
10 also a picture of the 11th hole looking back up
11 from the side of the green?

12 A. Yes, sir.

13 Q. And is that U.S. Route 36 to the right of
14 the picture?

15 A. Yes, sir.

16 Q. And is that a sand trap to the immediate
17 left of the picture?

18 A. Yes, sir, it is.

19 Q. How far would you estimate the trap is to
20 the actual road?

21 A. Ten, 12 yards.

22 Q. And isn't the green just immediately
23 adjacent to that sand trap?

24 A. Yes, sir, it is.

25 Q. And would you consider cars driving up

1 and down Route 36 to be a distraction to golfers at
2 that green?

3 A. When they're present, yes, they are.

4 Q. Please turn to Exhibit G-2.

5 A. Yes, sir.

6 Q. The notation on the picture states that
7 it is a view south across No. 4 green to No. 5 tee;
8 is that correct?

9 A. Yes, sir.

10 Q. In the background, is that a plowed field
11 in the background of this picture?

12 A. Yes, sir, it is.

13 Q. Since the field in the background is
14 plowed would you agree with me that members of the
15 golf course have puttred on the No. 4 green and have
16 used the No. 5 tee when farm equipment was operating
17 in that field?

18 A. Yes, sir, they have.

19 Q. Can that be a distraction?

20 A. It can be.

21 Q. All right. Has the Country Club made any
22 requests to force farmers to stop using farm
23 equipment in the surrounding fields?

24 A. No, sir, they have not.

25 Q. In fact, aren't there a number of fields

1 around this golf course?

2 A. Yes, sir.

3 Q. And those fields are all actively being
4 farmed, correct?

5 A. In the most part, yes, sir.

6 Q. If you could please turn to Exhibit H of
7 your testimony, please.

8 A. Yes, sir.

9 Q. This exhibit as well was created using
10 the map from the application; is that correct?

11 A. Yes, sir.

12 Q. If you could turn to Exhibit K in that
13 application, that exhibit just prior to the one you
14 were looking.

15 A. In the application?

16 Q. Yes, sir. I'd like you to look at plot
17 2D in that exhibit.

18 A. Yes, sir.

19 Q. Plot 2D in that exhibit --

20 A. 2D or 2B.

21 Q. I'm sorry. Plot 2D.

22 A. Yes, sir.

23 Q. Would you agree with me that this map
24 from the application was the basis for your Exhibit
25 H?

1 A. The best of my knowledge, yes, sir.

2 Q. And as well on this map do you see sound
3 contour profiles?

4 A. Yes, sir, I do.

5 Q. Were these profiles the basis for your
6 testimony on noise as it affects the course?

7 A. Yes, sir.

8 Q. Can you identify the course's location on
9 this map from the application?

10 A. On the map it's difficult, but I know
11 where -- I know where it is on this map. It's not
12 labeled, but I know where it is.

13 Q. Could you try to describe it for us based
14 on the numbers that run across the top of the page.

15 MR. BROWN: Your Honor, the maps are
16 difficult enough. If there's a particular question
17 about the location, we can identify where it is and
18 ask him a question, because --

19 MR. SETTINERI: I understand, the
20 witness --

21 MR. BROWN: Because of the way the maps
22 are broken it's very difficult. If this map were
23 made in a different way, it would be very easy to
24 find the golf course.

25 MR. SETTINERI: I understand that. The

1 witness has testified he has reviewed the maps and
2 that according to the maps, Exhibits H and I, sound
3 from turbine 48 and other nearby turbines can
4 definitely be heard on the UCC golf course, and
5 that's on page 6 of the direct written testimony,
6 your Honor. Therefore, his knowledge as to the
7 location of the Country Club in relation to the
8 actual map he reviewed is relevant.

9 MR. BROWN: All right then, let's get out
10 the big map because the big map clearly shows where
11 turbine 48 is, this map and some of these other maps,
12 when you print them out, you cannot read.

13 MR. SETTINERI: Your Honor, can --

14 ALJ SEE: Just a minute. What were you
15 going to say, Mr. Settineri?

16 MR. SETTINERI: I was going to point out,
17 your Honor, that the witness has testified that he
18 only reviewed these exhibits to prepare for his
19 testimony, he didn't have an opportunity to review
20 any full-scale maps, and I believe that the
21 full-scale maps in this application only were as to
22 locations. The sound maps were specific to
23 Mr. Hessler's study and were never submitted in a
24 full-scale size.

25 MR. BROWN: That's true, but I've got

1 them in an electronic version and it's a lot easier
2 to see on my laptop than it is that picture.

3 THE WITNESS: If you're looking at the
4 approximate areas --

5 ALJ SEE: Just a minute.

6 THE WITNESS: I'm sorry.

7 ALJ SEE: Mr. Dye, if you know and can
8 locate the area where the golf course is located on
9 the maps presented in the application, go ahead.

10 THE WITNESS: On this map right here I
11 believe it's --

12 ALJ SEE: And you're referring to which
13 map? The one from the application or --

14 THE WITNESS: Plot 2D, it's in the
15 application. The copy I have in here is not as clear
16 as plot 2B, but that's okay.

17 Referring to, you said the numbers on the
18 top?

19 Q. Yes, sir.

20 A. It's in the area of, between 273000 and
21 27400. I couldn't read it on the one map, I'm sorry,
22 it's kind of blurred on this copy.

23 Q. And what I'm trying to get at here,
24 Mr. Dye, is simply trying to identify where the golf
25 course -- what contour line intersects the golf

1 course. You'll see a contour line 34 dB(A) in yellow
2 or orange on my copy, and then blue is 35 dB(A).

3 A. On the plot 2D it's the blue line and the
4 yellow line intersect the golf course, yes, sir.

5 Q. And then do you have a feel, does the
6 golf course go between the contour lines of 35 dB(A)
7 and 40 dB(A)?

8 A. As indicated on this map, yes, sir.

9 Q. Okay. So you'd agree with me, then, that
10 the golf course would be located outside of contour
11 lines 40 dB(A) and 34 dB(A).

12 A. Yes, sir.

13 Q. And what's your understanding of what
14 these contour lines represent?

15 A. The decibel readings that the wind
16 turbine generates during a certain amount of wind.

17 Q. Do you believe that those contour lines
18 would be representative of what the actual audible
19 noise would be to someone out on the golf course?

20 A. I am not an expert in that, no, sir.

21 Q. Mr. Dye, you believe -- you stated in
22 your testimony that you believe that noise will
23 definitely be heard on the golf course.

24 A. No. You indicated that this -- according
25 to this map. I did not generate this map. I am not

1 a sound engineer. I'm just from judging, looking at
2 the map.

3 Q. Well, you've reviewed the map.

4 A. Yes, sir.

5 Q. And I asked you whether you thought, for
6 instance, the 34 dB(A) contour line, what your
7 understanding is, and I'm asking you do you believe
8 that a person standing on that contour line, that the
9 turbine noise would be audible to a person standing
10 on that contour line?

11 A. According to this map, yes, sir.

12 Q. At the bottom of the map, Mr. Dye, will
13 you agree with me that this plot represents, as
14 stated at the bottom, worst case nighttime
15 conditions, 5 meters per second of wind?

16 A. That's what the map indicates, yes, sir.

17 Q. In fact, that's what your Exhibit H
18 indicates as well, correct?

19 A. Yes, sir.

20 Q. Have you performed any background noise
21 studies at locations on the golf course?

22 A. No, sir, I have not.

23 Q. Would you agree with me that during the
24 day background noise on the golf course would be
25 higher than background noises at night?

1 A. I may not agree with that, no, sir.

2 Q. Well, would you agree with me that during
3 the day members are using the course?

4 A. Yes, sir.

5 Q. You have members playing on adjacent
6 fairways.

7 A. Yes, sir.

8 Q. Would that be happening in the evening?

9 A. Yes, sir, it would.

10 Q. In the dark?

11 A. Not in the dark, no, sir. Twilight, yes.

12 Q. Do you know if Dayton Power & Light has
13 any requirements for clearance between trees and
14 overhead utility lines?

15 A. I'm not familiar with their rules and
16 regulations, no, sir.

17 Q. That would also apply to the tree
18 trimming regulations?

19 A. I've seen pictures of the tree trimming
20 regulations, but I have not physically read them, no,
21 sir.

22 Q. Were those Dayton Power & Light's?

23 A. That I've seen?

24 Q. Yes.

25 A. I believe so, yes, sir.

1 Q. Are these the pictures that you attached
2 to your testimony in exhibits?

3 A. Yes, sir.

4 Q. And in your direct testimony you indicate
5 that the pictures are downloaded using the internet
6 search engine Google Images, correct?

7 A. Yes, sir.

8 Q. Did you download these images?

9 A. No, sir, I personally did not.

10 Q. Do you know what exact websites they were
11 downloaded from?

12 A. No, sir, I personally do not.

13 Q. So you don't know whether these relate to
14 Dayton Power & Light, correct?

15 A. No, sir.

16 Q. Mr. Dye, if you could turn back to
17 Exhibit L.

18 A. Yes, sir.

19 Q. This is part of the application, correct?

20 A. Yes, sir.

21 Q. Could you please turn to page 2, please.

22 A. Yes, sir.

23 Q. Do you see the statement, part 2, last
24 sentence that states "This flickering effect can also
25 be experienced outdoors, but the effect is typically

1 less intense, and becomes less intense when farther
2 from the wind turbine causing the flicker"?

3 A. Second paragraph?

4 Q. Yes.

5 A. Of No. 2.

6 Q. Page 2, titled -- subtitled Background,
7 first paragraph, last sentence.

8 A. Okay.

9 Q. That sentence states "This flickering
10 effect can also be experienced outdoors, but the
11 effect is typically less intense and becomes less
12 intense when farther from the wind turbine causing
13 the flicker." Do you see that statement?

14 A. Yes, sir, I do.

15 Q. Do you agree with that statement?

16 A. I don't know if I have the experience or
17 expertise to agree or disagree with that statement.

18 Q. Next statement, very next sentence, "This
19 flickering effect is most noticeable within
20 approximately a thousand meters of the turbine, and
21 becomes more and more diffused as the distance
22 increases." Do you see that statement?

23 A. Yes, sir, I do.

24 Q. Do you agree with that statement?

25 A. I did not create this statement, but that

1 sounds pretty good to me.

2 Q. Okay, sir. If you could turn to the
3 exhibits that were supplements to your testimony,
4 please.

5 MR. SETTINERI: If I may, Counsel, were
6 these the supplement exhibits that were included in
7 the packet you handed out?

8 MR. BROWN: B-1 through B-3.

9 Q. If you would turn to Exhibit B-2, please.

10 A. B as in boy?

11 Q. Yes, sir.

12 A. Yes, sir.

13 Q. Can you tell me what the yellow line
14 represents on this exhibit from the golf course going
15 to the turbine?

16 A. A distance in feet.

17 Q. And specifically where is that distance
18 being measured from on the golf course?

19 A. The center of No. 5 green.

20 Q. That distance is 2,000 feet, correct?

21 A. Yes, sir.

22 Q. And going from the turbine to the golf
23 course am I correct that there is initially an
24 agricultural field and then the dark section going to
25 the border of the golf course appears to be a wooded

1 area? Is that correct?

2 A. Yes, sir.

3 Q. If you could turn to page 3 of Exhibit L,
4 which we just reviewed a few minutes ago. I'd like
5 to draw your attention to the fourth paragraph,
6 middle of the paragraph there's a sentence that
7 starts "Obstacles such as terrain, trees or buildings
8 between the wind turbine and the receptor can
9 significantly reduce or eliminate shadow flicker
10 effects." Do you see that statement?

11 A. Yes, sir, I do.

12 Q. Would you agree with that statement?

13 A. On a flat piece of ground I would.

14 Q. Would you believe that the area between
15 turbine 48 to the border of the golf course is a flat
16 piece of ground?

17 A. No, sir, it is not.

18 Q. Do you believe that elevations,
19 significant elevations in topography would reduce
20 shadow flicker?

21 A. I would believe it would extend it.

22 Q. What do you base that belief on?

23 A. The higher the object, the longer the
24 shadow. I'm five foot five. You're over six foot.
25 My shadow's not as long as yours.

1 Q. Let's go to that next statement in the
2 paragraph, sir, do you see "Deciduous trees may block
3 the shadow flickering effect to some degree,
4 depending on the tree density, species present and
5 time of year"?

6 A. Yes, sir.

7 Q. Would you agree with that statement?

8 A. Yes, sir, I would.

9 Q. There are a number of trees bordering the
10 golf course.

11 A. Yes, there are.

12 Q. In fact, there are probably -- are there
13 a number -- isn't it true that there are a number of
14 trees within the golf course?

15 A. Yes, sir, there are.

16 Q. Would it surprise you if I told you that
17 over the last 53 years the annual percent average
18 possible sunshine for any day is 53 percent in
19 Champaign County?

20 A. I would not be aware of that study, no,
21 sir.

22 Q. Would it surprise you, though, if that
23 was the answer?

24 A. Probably not, no, sir.

25 MR. SETTINERI: Thank you, Mr. Dye. No

1 further questions.

2 THE WITNESS: You're welcome.

3 ALJ SEE: Mr. Jones?

4 MR. JONES: No questions, your Honor.

5 ALJ SEE: Redirect, Mr. Brown?

6 MR. BROWN: Yes.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Brown:

10 Q. Mr. Dye, I'm just going to try to go from
11 beginning to end, that's how my notes are. The first
12 question was about birds flying across the golf
13 course, and counsel was adept at getting you to admit
14 that that might cause a temporary distraction to you
15 playing golf. Is that right?

16 A. Yes, sir.

17 Q. In your mind is there some correlation
18 between a temporary distraction of a bird flying
19 across your golf course and a rotating turbine that's
20 500 feet in the -- 500 feet tall in the distance?

21 A. There would be a difference in my mind,
22 yes, sir.

23 Q. Explain why you would think that would be
24 different from a golfer's perspective.

25 A. Well, from my perspective as a golfer,

1 the shadow or the movement of a bird is a
2 disturbance, it's far and few between when they
3 happen. The constant shadow flicker caused in the
4 evening hours on that section of the golf course, not
5 only is the shadow moving across the ground, but it
6 moves across the whole golf course.

7 Q. And the second question was noting that
8 there was a car driving by the golf course on U.S.
9 36. Do you remember that question?

10 A. Yes, sir.

11 Q. And whether or not that would cause some
12 kind of distraction.

13 A. Uh-huh.

14 Q. What does a golfer do when a car is
15 approaching and you're ready to hit the ball?

16 A. Normally he waits till the car goes by.

17 Q. And readjusts his concentration and then
18 hits after the car goes by, correct?

19 A. Correct.

20 Q. All right. If the turbine is moving and
21 continues to move as the wind goes past the course,
22 how long do you think would be reasonable for the
23 golfer to wait until that turbine stopped moving?

24 A. Well, it would be kind of like trying to
25 hit a shot in between a sprinkler moving, you'd have

1 to get in and get out before the sprinkler gets you
2 wet.

3 Q. All right. So it's not the same as a car
4 driving by because a car moves past and the highway
5 clears, you can hit your shot after the car goes by,
6 right?

7 A. That would be assumable, yes, sir.

8 Q. And with regard to the farmer, you've got
9 a farm field near No. 4, No. 5, a couple of holes
10 there's farm fields. How often are the farmers out
11 in the field plowing?

12 A. Very infrequently.

13 Q. Once they get the crops in, are they out
14 there a lot?

15 A. No, sir.

16 Q. And even if they are, could you wait for
17 the tractor to go by and then hit your shot?

18 A. During harvest time they're harvesting
19 from dawn to dark according to the weather so it
20 would be very difficult for -- to let the tractor
21 disappear than a car.

22 Q. So sometimes you would have a farmer in
23 the field, most of the time not.

24 A. Correct.

25 Q. All right. I think you testified about

1 the terrain. Obviously, since you designed what is
2 the front nine of the golf course you understand the
3 terrain of the area pretty well, right?

4 A. Yes, sir.

5 Q. So on Exhibit B-2 which shows the No. 5
6 fairway and the No. 5 green --

7 A. Yes, sir.

8 Q. -- all right, what is the terrain behind
9 the No. 5 green like?

10 A. Five green's at the base of a slight rise
11 or the beginning of a ridge that goes behind the
12 green.

13 Q. You understand where that farm field
14 where turbine 48 is going to be located, right?

15 A. It's on a, almost in the center of a
16 ridge, yes, sir.

17 Q. So it's elevated from where No. 5 green
18 is, right?

19 A. Yes, sir.

20 Q. So a 500-foot turbine sitting there is
21 going to appear even larger than if it was on grade
22 with No. 5 green, right?

23 A. I would estimate that the elevation
24 change from 5 green to where the turbine sits would
25 be in that 40- to 60-foot range.

1 Q. All right. Counsel for applicant made a
2 big deal about locating the Country Club on the sound
3 map so I'd like you to go to that, and that's Exhibit
4 H of your -- attached to your testimony. Exhibit H.

5 A. Yes, sir.

6 Q. I just want to be clear for the record.
7 Would you testify that the part that's in yellow
8 between 273000 and 274000, the part there that's in
9 yellow, that's where the golf course is?

10 A. Yes, sir.

11 Q. All right. And counsel asked you if the
12 34 contour line cuts through the golf course.

13 A. Yes, sir.

14 Q. So was your testimony that you were
15 concerned that on the golf course that turbine would
16 at least put off a 34-decibel noise that golfers
17 would have to contend with?

18 A. As the map indicates, yes, sir.

19 Q. All right. I think they asked you if you
20 were a noise expert, which you said no, but do you
21 have any reason to believe that 34 will be the
22 maximum sound that golfers will have to hear from
23 that turbine?

24 A. No, sir.

25 Q. There was a question about shadow flicker

1 and whether or not the golf course has trees.

2 A. Yes, sir.

3 Q. All right. So if you have shadow flicker
4 on a piece of property and you're separated from the
5 shadow flicker source by some trees, do you believe
6 that will block out the entire shadow flicker?

7 A. I personally would not think so, no, sir.

8 Q. All right. I want to go to Exhibit G and
9 G-1.

10 A. Yes, sir.

11 MR. BROWN: Your Honors, I'd like to ask
12 if the applicant would stipulate that the picture on
13 G and G-1 are the same exact picture, it's just that
14 G-1 is blown up a little bit -- blown up a little bit
15 so that you can actually see it a little better.
16 Some of the applicant's maps are very difficult to
17 identify particular properties on, but I'd just like
18 to, you know, if I need an affidavit to that extent,
19 that the image on G is the same image as on G-1, it's
20 just blown up a little bit.

21 MR. SETTINERI: We would stipulate so
22 subject to check.

23 MR. BROWN: All right.

24 ALJ SEE: Okay.

25 Q. Because G-1 just makes it a little bit

1 easier to follow the contour lines because they're a
2 little darker and they're just a little bit larger,
3 so let's look at G-1. I know counsel asked you
4 regarding G, but it's G-1 we want to look at here
5 because it's just a little bit easier to look at, all
6 right?

7 A. Yes, sir.

8 Q. All right. So G-1, the blue line from
9 this report is supposed to be the line at which
10 0.1 -- 0.015 hours per year of shadow flicker will
11 occur. And I think counsel asked you and you
12 confirmed that the purple line is 10 hours per year,
13 all right?

14 A. Yes, sir.

15 Q. Okay. So between purple and blue
16 supposedly, based on this study, there's supposed to
17 be anywhere between zero and 10 hours of shadow
18 flicker at any particular receptor point in that
19 area, right?

20 A. Yes, sir.

21 Q. Okay. So it sounded like counsel wanted
22 you to admit that 0.15 [sic] hours per year is only
23 54 seconds, which you said I guess that must be true.
24 Even if that is true, is it just 54 seconds that the
25 golf course is going to be subjected to shadow

1 flicker?

2 A. I don't believe so.

3 Q. Yeah, because right outside of the purple
4 line, the closer to the 10, it's going to be closer
5 to 10 than zero, right?

6 A. That's what the map indicates, yes, sir.

7 Q. All right. Now I want to ask you, have
8 you reviewed Buckeye Exhibit 4A before today? And
9 I'll -- everybody's got it because it went into the
10 record the other day. I'd like to show it to the
11 witness.

12 ALJ SEE: This is exhibit what again?

13 MR. BROWN: Buckeye Exhibit 4A.

14 MR. SETTINERI: Your Honor, we'll object
15 because this is outside the scope of redirect. We
16 did not cross the witness on this exhibit.

17 MR. BROWN: Sure, he did. He talked
18 about shadow flicker.

19 MR. SETTINERI: We did not cross the
20 witness on Buckeye Exhibit 4A.

21 MR. BROWN: No, but this is illustrative
22 of the point that they tried to make him say, and
23 this exhibit is directly contrary to what they tried
24 to make him say. It's absolutely a necessity on the
25 shadow flicker issue.

1 ALJ SEE: Just a minute, Mr. Brown.

2 Mr. Settineri.

3 MR. SETTINERI: Yes, your Honors. Again,
4 the witness testified he only reviewed the exhibits
5 in his material. He stated he's not an expert on
6 shadow flicker. This document was not attached to
7 his direct testimony. He didn't review it in his
8 testimony. This is simply expanding the bounds of
9 redirect to submit more direct testimony on an issue.

10 This document was reviewed by I believe
11 Company Witness Shears. Counsel for Urbana Country
12 Club had more than ample opportunity to cross the
13 witness on that document. That information will be
14 in the record.

15 I don't believe Mr. Dye is capable -- I
16 shouldn't say "capable"; strike that. Since he's not
17 reviewed this, he's not a shadow flicker expert, it
18 would be highly prejudicial for him to try to
19 interpret this report.

20 MR. BROWN: Can I be heard?

21 ALJ SEE: Yes.

22 MR. BROWN: They asked him if the EAC
23 report showed a particular number of hours of shadow
24 flicker on the course. They asked that question.
25 And -- but they're not being forthcoming because this

1 report which they put into evidence directly
2 contradicts the report they asked the witness about.
3 So it is definitely relevant. And this witness has
4 reviewed this report, and this report was not
5 produced until after the direct testimony of this
6 witness was prepared and filed with the Board.

7 MR. SETTINERI: Your Honor, I'll object
8 emphatically to that characterization of production.
9 This document was produced in settlement discussions,
10 it was not produced -- discovery was due November
11 9th; it was produced with that discovery. This
12 document was prepared October 30th. It was
13 provided to you I believe November 2nd before
14 discovery was due. The witness reviewed the map. I
15 did not point him to any excerpts in this study that
16 related to measurements.

17 MR. BROWN: He did ask him to look at
18 this particular --

19 ALJ SEE: Okay, arguments are over.
20 Arguments are over. As we discussed previously on
21 the record, that this particular exhibit did come in
22 after intervenor testimony was due. We've already
23 previously recognized that in the transcript. And I
24 do understand that Buckeye cross-examined the witness
25 on shadow flicker. I will allow you to go ahead and

1 ask a question in regards to shadow flicker using 4A
2 as an exhibit.

3 MR. BROWN: Thank you, your Honor.

4 ALJ SEE: As a reference.

5 MR. BROWN: Thank you, your Honor.

6 Q. (By Mr. Brown) Mr. Dye, could you look at
7 Buckeye Exhibit 4A.

8 A. I have it in my hand, yes, sir.

9 Q. Right on the bottom -- before that,
10 remember that when you looked at the original Exhibit
11 G-1, which had the blue and the purple contour lines
12 on it --

13 A. Yes, sir.

14 Q. -- and counsel for the applicant got you
15 to admit that everything between the purple and the
16 blue line was somewhere between 10 and zero? Okay.
17 If you look at the bottom of Buckeye Exhibit 4A, at
18 the total bottom, do you see where it says "Golf
19 Course Receptor 1, 2, 3, and 4"?

20 A. Yes, sir, I do.

21 Q. All right. Do you see that it predicts
22 the worst case shadow flicker for those four
23 particular receptors?

24 A. Yes, sir, that's what it indicates.

25 Q. Okay. Does say that -- does it say that

1 golf course receptor 1 worst case could have 23 hours
2 and 45 minutes?

3 A. That's what this indicates, yes, sir.

4 Q. And does it say for 2 it would be 27
5 hours and 22 minutes?

6 A. Yes, sir.

7 Q. And for receptor 3 it would be 23 hours
8 and 56 minutes?

9 A. Yes, sir.

10 Q. And for receptor 4, 42 hours and 7
11 minutes?

12 A. Yes, sir.

13 Q. All right. Now, I think what they were
14 talking about before was worst case shadow flicker,
15 the contour line was for worst case shadow flicker,
16 all right? So if you look up to the right of that
17 part of the report, do you see where it says for
18 receptor 1 worst case -- I'm sorry, expected
19 values -- let me back off. I misstated.

20 The first time was worst case. The next
21 column on the far right is what Buckeye Wind expects
22 the golf course to be subjected to with regard to
23 shadow flicker, all right? And that is the
24 expected --

25 ALJ SEE: Is there a question?

1 MR. BROWN: Yes. I'm setting the
2 baseline for that, all right?

3 ALJ SEE: Get to it.

4 MR. SETTINERI: Your Honor --

5 Q. Do you see golf course receptor No. 4?

6 A. Yes, sir.

7 Q. And do you see what the expected value
8 for shadow flicker is?

9 A. Here it indicates 10 hours 16 minutes.

10 Q. That's more than 10 hours, isn't it?

11 A. Yes, sir.

12 Q. All right. But I don't see any part on
13 their exhibit that shows the purple line going onto
14 the golf course, the purple line being the 10 hours
15 per year limit.

16 MR. SETTINERI: Your Honor, I again
17 object. There was a question to be asked, it hasn't
18 been asked. This is simply counsel testifying as to
19 what's in the document that's already been submitted
20 into evidence.

21 MR. BROWN: All right, is --

22 ALJ SEE: I'm sorry. Wait just a minute.
23 There was an objection outstanding, you need to wait
24 for the Bench to rule.

25 Mr. Dye, have you ever seen what's been

1 marked as Exhibit 4A?

2 THE WITNESS: Not before today.

3 ALJ SEE: Do you understand what any of
4 the references made to calculation results at the
5 bottom of 4A mean?

6 THE WITNESS: Do I understand them?

7 ALJ SEE: Yes.

8 THE WITNESS: I believe I do.

9 ALJ SEE: Okay. And on what basis do you
10 understand them? Have you had an opportunity to read
11 to know what this is all about?

12 THE WITNESS: This is a study that was
13 handed to me today and reviewed, and I can see on the
14 map that in this exhibit where it says 1, 4, 3,
15 and of course you can't see 2, it's underneath it,
16 would be on the southeastern boundary of the golf
17 course and it's a correlation for wind turbine
18 No. 48, and it says "Calculation Results," so this is
19 what it's talking about.

20 ALJ SEE: So you reviewed this while
21 you've been sitting on the stand today.

22 THE WITNESS: No. No. This morning.

23 ALJ SEE: Exhibit 4A was provided to you
24 this morning before you began to offer testimony?

25 THE WITNESS: Yes.

1 ALJ SEE: Were you responding to the
2 objection, Mr. Brown?

3 MR. BROWN: Can we hear the objection?
4 There was a lot of discussion about what Mr. Dye
5 knew. I don't know what the objection was.

6 ALJ SEE: What was your objection,
7 please?

8 MR. SETTINERI: Could we simply read that
9 back for the record, please?

10 (Record read.)

11 ALJ SEE: Did you want to respond?

12 MR. BROWN: I will. I don't want to
13 testify. I want to ask this witness who understands
14 the golf course what he thinks about what this study
15 which was just recently provided to him -- believes
16 about this study. And I think we're entitled to
17 that. There are several factors I think you ought to
18 consider. Mr. Dye's been outside of the country and
19 it's very difficult to get these kind of things to
20 him. He got it this morning --

21 ALJ SEE: Thank you, Mr. Brown.

22 Counsel is permitted to ask questions.
23 Counsel does not need to testify, that's the purpose
24 of the witness. The Bench is well aware of what
25 factors it needs to consider in making a decision.

1 Okay?

2 MR. BROWN: Thank you.

3 Q. (By Mr. Brown) Mr. Dye, what day is it
4 today? What date?

5 A. Friday the 13th.

6 Q. Friday the 13th of what month?

7 A. November 2009, I hope.

8 Q. All right. Is this the kind of a day
9 that you would expect to see golfers on the golf
10 course at the Urbana Country Club?

11 A. Yes, sir, there will be play out there
12 today.

13 Q. All right. Can you turn to Buckeye
14 Exhibit 4A, there are no page numbers, but it is the
15 ninth page. The ninth page of the exhibit, if you go
16 down on the left-hand side and find the 13th day
17 and go across the exhibit to November 13th --

18 A. Yes, sir.

19 Q. -- all right. Do you see that it shows
20 in one column where the sunrise and sunset is on this
21 particular day?

22 A. Yes, sir.

23 Q. What is the sunrise and sunset for today?

24 A. 7:17 a.m. and, well, it's 1721, so
25 5:21 p.m.

1 Q. All right, that's the sunrise and sunset
2 for today. Do you see in the column next to it how
3 many minutes of shadow flicker would be expected
4 today if turbine No. 48 was there? It's in the
5 column just to the right.

6 MR. SETTINERI: Your Honor, I'll object.
7 He's completely directing the witness to the answers
8 here; this is the whole purpose of the objection.
9 The witness is not an expert, he didn't prepare the
10 report, he's not familiar with the report, it's
11 highly prejudicial for him to lead the witness to
12 answers that this witness is not qualified to give,
13 that is why the witness delayed in answering.
14 Counsel simply is trying to lead him to the answers.
15 We strongly object.

16 ALJ SEE: Mr. Brown.

17 MR. BROWN: I'm just asking him if, based
18 on the report that is in evidence, what he could
19 expect the number of shadow flicker minutes to be
20 today based on the information that Buckeye Wind has
21 already put into the record.

22 ALJ SEE: The objection is sustained.
23 This information is in the record, you can use what
24 you believe is necessary.

25 MR. BROWN: All right.

1 ALJ SEE: Move on.

2 Q. (By Mr. Brown) Based on any information
3 that you've ever been -- come into possession of, do
4 you have any reason, do you know how many minutes of
5 shadow flicker the Urbana Country Club would be
6 subjected to today, November the 13th, if turbine
7 48 was constructed?

8 MR. SETTINERI: Same objection, your
9 Honor. The witness is still reviewing the document.

10 ALJ SEE: Sustained.

11 MR. BROWN: So just so I have a
12 clarification, he's not allowed to use this document
13 to --

14 ALJ SEE: You asked did he know. You
15 asked Mr. Dye if he knew. Correct?

16 MR. BROWN: Based on any information he's
17 ever come into contact with does he know how many
18 minutes of shadow flicker would affect the golf
19 course.

20 ALJ SEE: Sustained.

21 Q. With regard to Exhibit E in your
22 documents attached to your direct testimony --

23 A. Yes, sir.

24 Q. -- all right, there's a picture on the
25 left-hand side of that exhibit, there's a picture on

1 the right-hand side. Do you have Exhibit E?

2 A. Yes, sir.

3 Q. All right. Are you making any statements
4 with regard to the numbers on that particular
5 picture, or is it just illustrative of the fact that
6 a pole needs to have some clear distance?

7 A. Just showing the pruning requirements
8 from the pole down.

9 Q. You don't know anything particular about
10 pruning requirements of the Dayton Power & Light
11 company, I think you testified to that, right?

12 A. Correct. No, I do not.

13 Q. All right. But as a general person
14 that's been around residences, golf courses, have you
15 ever seen pruning by a utility company?

16 A. Yes, sir, I have.

17 Q. All right. Have you ever seen the type
18 of pruning that is shown in Exhibit E?

19 A. Yes, sir, I have.

20 Q. So that's within your personal knowledge
21 that that's the kind of pruning that sometimes occurs
22 to trees that are around power poles.

23 A. Yes, sir, I've seen that done.

24 Q. All right. When you testified before
25 about the visual distraction from a wind turbine,

1 counsel asked you if you had ever been near a wind
2 turbine or designed a course near a wind turbine,
3 right?

4 A. Correct.

5 Q. All right. And I think they wanted to
6 know why you would think that this would be a
7 distraction. What is the basis of your belief that a
8 500-foot tall wind turbine spinning would be a
9 distraction on this particular golf course?

10 MR. SETTINERI: Objection, your Honor.
11 Outside the scope of redirect. We asked questions
12 regarding his qualifications relating to wind
13 turbines. We didn't ask him as to his opinions on
14 distractions, what would constitute distractions;
15 that was done by counsel for the county and
16 townships.

17 ALJ SEE: Did you want to respond,
18 Mr. Brown?

19 MR. BROWN: I don't remember that being
20 the case. I thought he talked about it.

21 ALJ SEE: The objection is overruled.

22 Q. It's the last question.

23 A. Can you restate that question again? I'm
24 just --

25 ALJ SEE: Let's have it read back.

1 (Record read.)

2 A. Professional opinion or personal opinion?

3 Q. You're on the stand as an expert with
4 regard to golf course architecture and golf in
5 general.

6 A. Well, when the original golf course was
7 designed and built in 1922, Highway 36 did not exist
8 as Highway 36. It was designed outside of town for a
9 rural setting. In 1992 when I became involved in the
10 design and construction of the golf course, there was
11 an absolutely gorgeous rural farm setting which added
12 to the ambience of the golf course. My own personal
13 opinion is I have not built too many golf courses
14 next to a 500-foot highrise or any other obstruction
15 like that. I've not had the opportunity.

16 It is normal for me to try to build them
17 in a pristine area, but the concern I would have
18 would be the moving of the wind turbine itself and
19 the shadow flicker in the evening when most people
20 that do enjoy golf in the twilight hours after they
21 get off work, doubles golf, that would affect that
22 part of the golf course more than other parts.

23 But personally for myself it would just
24 be the movement of it and the shadow flicker causing
25 it in the evening hours.

1 MR. BROWN: That's all the questions I
2 have. Thank you.

3 ALJ SEE: Thank you.

4 Recross.

5 MR. SETTINERI: Just a few questions,
6 your Honors.

7 ALJ SEE: Okay.

8 - - -

9 RE CROSS-EXAMINATION

10 By Mr. Settineri:

11 Q. Mr. Dye, would you agree with me since
12 1922 the traffic on Route 36 has increased
13 substantially?

14 A. Yes, sir.

15 Q. In fact, that would be considered a major
16 state route through that area, correct?

17 A. It is now, yes, sir.

18 Q. You testified on redirect that players
19 play around sprinklers when they're running on the
20 course; is that correct?

21 A. I indicated it's like trying to hit a
22 golf ball between the sprinkler getting you wet and
23 keeping dry, yes, sir.

24 Q. Do players play on the course when
25 sprinklers are running?

1 A. At times, yes, sir.

2 Q. Okay. When do sprinklers typically run?

3 A. Normally at night.

4 Q. But you said at times some players are
5 playing on the course when sprinklers were running.
6 When would that be?

7 A. Either in the very early morning or very
8 late at night depending on each golf course's
9 watering cycle.

10 Q. When you say "late at night," you mean
11 twilight?

12 A. Twilight, yes, sir.

13 Q. And you indicated that during harvest
14 farmers are actively running equipment in the fields
15 sometimes all -- for days; is that correct?

16 A. In certain fields only one or two days at
17 a time.

18 Q. That would be, if you looked at those
19 fields, that would be more than ten hours a year on
20 the fields with equipment running correct?

21 A. I would believe so, yes, sir.

22 MR. SETTINERI: No further questions.

23 ALJ SEE: Mr. Weithman?

24 MR. WEITHMAN: No, nothing.

25 ALJ SEE: Ms. Napier.

1 MS. NAPIER: Nothing.

2 ALJ SEE: Mr. Van Kley.

3 MR. VAN KLEY: No questions.

4 ALJ SEE: Mr. Jones.

5 MR. JONES: No questions, your Honor.

6 ALJ SEE: Would you like to move exhibits
7 in?

8 MR. BROWN: Yes, your Honors. The Urbana
9 Country Club would like to move Exhibit 1, which is
10 the direct testimony of Mr. Dye, Exhibit 2 which is
11 the supplement to the direct testimony of Mr. Dye and
12 Mr. Delaney. We'll do that later.

13 ALJ SEE: We'll do Mr. Delaney at the end
14 of his testimony.

15 MR. BROWN: And then all of the Exhibits
16 A through I that were attached to the direct
17 testimony.

18 ALJ STENMAN: And these are included as
19 part of Exhibit 1?

20 MR. BROWN: I guess if that makes sense.
21 Because they would be the same exact exhibits that
22 will be associated with 2.

23 ALJ STENMAN: Okay.

24 ALJ SEE: Are there any objections to the
25 admission of UCC Exhibit 1 and 2?

1 MR. SETTINERI: The applicant objects to
2 the admission of Exhibit E, E-1, E-2, and E-3. No
3 foundation. The witness did not prepare these. The
4 witness did not know a source other than an internet
5 search engine and, moreover, they're highly
6 prejudicial as you go through the pictures so the
7 probative value would be much less than the
8 prejudicial nature of the documents.

9 MR. BROWN: I'm sorry, I didn't hear the
10 reason for those objections.

11 ALJ SEE: I need you to restate them
12 because I had a hard time hearing your last portion
13 too.

14 MR. SETTINERI: I'm sorry. The applicant
15 objects to the admission of Exhibits E, E-1, E-2,
16 E-3. The witness testified that he did not know the
17 source of these documents, he did not know where they
18 were downloaded from. Moreover, they are highly
19 prejudicial, as you can see from the pictures, and so
20 given the probative value these documents should be
21 excluded as they are highly prejudicial as well.

22 MR. BROWN: My response to that is I did
23 ask Mr. Dye whether or not Exhibit E was being
24 offered for the numbers that were included, he said
25 no, it's just illustrative of the types of pruning

1 that he's seen in his own life. So it really doesn't
2 matter where those came from, they're just
3 illustrative of what he understands.

4 And Exhibits E-1, E-2, and E-3 were
5 identified in the direct testimony as examples of
6 what Mr. Dye has seen in his own lifetime on the
7 types of pruning that is done around electric lines.
8 It's just for illustration. It's not prejudicial in
9 any way. These are actual photos of trees that have
10 been butchered by utility companies --

11 MR. SETTINERI: Object.

12 ALJ SEE: Were those the only objections
13 to the exhibits attached to Mr. Dye's testimony?

14 MR. SETTINERI: Yes, your Honors.

15 ALJ SEE: We'll take the objections as to
16 Exhibits E, E-1, -2, and -3 under advisement and rule
17 on them after lunch. It's now 12:35. Let's
18 reconvene at 1:45.

19 (At 12:35 p.m. a lunch recess was taken
20 until 1:45 p.m.)

21 - - -
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23
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25

1 Friday Afternoon Session,
2 November 13, 2009.

3 - - -

4 ALJ SEE: Let's go back on the record.
5 Mr. Gearhardt.

6 MR. GEARHARDT: Your Honor, my name is
7 Larry Gearhardt. I'm here on behalf of intervenor
8 Ohio Farm Bureau.

9 ALJ SEE: Thank you.

10 Before the break the Bench was
11 considering the admission of Exhibit E, Exhibit E-1
12 through E-3, which is attached to Mr. Dye's
13 testimony. Upon review of the record and
14 consideration of the questions asked we are going to
15 strike from the exhibits attached to Mr. Dye's
16 testimony E, E-1, E-2, and E-3.

17 There were no other objections to UCC
18 Exhibit 1 or Exhibit 2 other than those I just
19 outlined, and those are admitted into the record.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 ALJ SEE: Now we're back to Buckeye's
22 witnesses. Your next witness, Mr. Petricoff.

23 MR. PETRICOFF: Thank you, your Honor.
24 At this time I would like to have marked as Buckeye
25 Exhibit No. 9 the direct prepared testimony of Hugh

1 F. Crowell.

2 ALJ SEE: The exhibit is so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. PETRICOFF: At this time, your Honor,
5 we'd like to call Mr. Crowell to the stand.

6 ALJ SEE: Mr. Crowell, would you raise
7 your right hand, please.

8 (Witness sworn.)

9 ALJ SEE: Thank you.

10 Proceed.

11 - - -

12 HUGH F. CROWELL

13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Petricoff:

17 Q. Good afternoon, Mr. Crowell. Would you
18 please state your name and business address for the
19 record.

20 A. My name is Hugh Crowell spelled
21 C-r-o-w-e-l-l, Hull & Associates, H-u-l-l &
22 Associates, 6397 Emerald Parkway, Suite 200, Dublin,
23 Ohio 43016.

24 Q. Mr. Crowell, do you have with you a copy
25 of the document that has just been marked as Buckeye

1 Exhibit No. 9?

2 A. Yes.

3 Q. Are there any changes or updates to that
4 testimony?

5 A. Yes, I'd like to make one word
6 elimination. It's at the bottom of page 5 under the
7 heading Desktop Geotechnical Study, last full
8 sentence of the page, I'd like to strike the word
9 "below" from that sentence. That's all.

10 Q. There are no other changes?

11 A. No.

12 Q. And if I were to ask you the same
13 questions that appear on that document today, would
14 your answers be the same?

15 A. Yes.

16 MR. PETRICOFF: Your Honor, at this time
17 the witness is available for cross-examination.

18 ALJ SEE: Mr. Van Kley.

19 MR. VAN KLEY: We have no questions.

20 ALJ SEE: Mr. Brown.

21 MR. BROWN: No questions.

22 ALJ SEE: Ms. Napier.

23 MS. NAPIER: No questions.

24 ALJ SEE: Mr. Weithman.

25 MR. WEITHMAN: No questions.

1 ALJ SEE: Ms. Malone?

2 MS. MALONE: Yes, we have a few
3 questions.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Malone:

7 Q. Mr. Crowell, am I correct in
8 understanding that based on your statements on page 6
9 of your testimony that a specific contractor did
10 actually conduct a literature review in terms of the
11 cultural resources study?

12 A. Yes. This was a Hull subcontractor.

13 Q. And am I also correct in understanding
14 your response to question 15 on page 14 of your
15 prefiled testimony to be that, to your knowledge, the
16 applicant is prepared to go forward and conduct the
17 additional archeological work and archeological
18 survey work that's recommended by conditions 20 and
19 21 in the Staff Report?

20 A. My answer to question 15 pertains to
21 whether these additional surveys are feasible or not,
22 and I answered in the affirmative.

23 Q. So your testimony is limited to saying
24 they're feasible. You don't know whether the
25 applicant is willing to go forward with conducting

1 those surveys.

2 A. It's my understanding that some surveys
3 will be conducted, yes.

4 Q. But you don't know whether these surveys
5 recommended by the conditions will be conducted.

6 A. I don't know in what form the surveys
7 would be conducted, but I know that cultural surveys
8 will be conducted in order to satisfy the
9 requirements of the staff recommendations.

10 Q. And just backing up ever so slightly to
11 your response to question 13, also on page 14 of the
12 prefiled testimony, and your response to question 14.
13 Am I correctly understanding that, at least to your
14 knowledge, you anticipate that the applicant, it's
15 not only feasible for the applicant to implement the
16 conditions that you're discussing that were
17 recommended by the staff, but you anticipate that
18 that will be done as part of the permitting process
19 that the applicant will be required to go through in
20 any event?

21 A. I'd like to review those portions of the
22 Staff Report if I might before I answer.

23 Q. Certainly. Let me hand you a copy of the
24 Staff Report which has not yet been --

25 A. I have it.

1 Q. You have it with you?

2 A. Yes, I do.

3 Q. Thank you. If you would look at your own
4 copy. I'm sorry. I didn't realize you had one with
5 you.

6 A. I think, again, I would answer that my
7 testimony only speaks to whether implementation of
8 these conditions is feasible or not. I don't know
9 whether all of these conditions will be implemented
10 exactly as stated because I haven't had that
11 discussion directly with Buckeye Wind.

12 Q. Okay. Well, now I really am confused.
13 Let's look at your answer to question 13 on page 14.
14 Wasn't your specific observation with regard to the
15 conditions that you're discussing which appear at
16 page 58 through 60 of the Staff Report that you
17 expect that these will be developed as part of other
18 permit applications? Isn't that your statement?

19 A. Yes.

20 Q. So you do expect the applicant to
21 actually perform these analyses, develop the
22 information, and provide them as part of other
23 permitting processes which I thought was the question
24 I asked you.

25 A. Well, what I stated was, is that I

1 noticed that some of the requirements listed in the
2 staff conditions are actually tasks or information
3 gathering or surveys or studies that would be done as
4 part of other permitting, yes, and I noted
5 specifically which conditions I had noted some
6 overlap with required permitting.

7 As far as the other conditions, I did not
8 notice such overlap and so I did not note them.

9 Q. With regard to your response to question
10 14, generally, you're indicating that all the
11 recommended conditions 8 through 14 are conditions
12 that the applicant can implement.

13 A. Yes.

14 MS. MALONE: I have nothing further. Oh,
15 wait. Wait. My bad.

16 Q. Are you aware that there have been
17 concerns raised about the potential for the proposed
18 project impact on Indian mounds in the project area?

19 A. I'm aware of that concern.

20 Q. And we talked earlier about the
21 additional archeological work that will be done
22 pursuant to conditions 20 and 21 recommended by the
23 staff which you talk about in your response to
24 question 15. Would the additional archeological work
25 recommended by the staff combined with the literature

1 review be an adequate basis to accurately identify
2 recognized mounds?

3 A. Yes.

4 Q. To your knowledge, does the applicant
5 intend to directly impact any known mounds during the
6 course of constructing or operating the proposed
7 project?

8 A. To my knowledge, no such impacts will
9 occur or are planned.

10 MS. MALONE: Nothing further.

11 ALJ SEE: Mr. Petricoff.

12 MR. PETRICOFF: No redirect, your Honor.

13 ALJ SEE: Thank you, Mr. Crowell.

14 Mr. Petricoff.

15 MR. PETRICOFF: Yes, your Honor. At
16 this time I'd like to have marked as Buckeye Exhibit
17 No. 10 the direct prepared testimony of Dale R.
18 Arnold.

19 ALJ SEE: We're marking Mr. Arnold's
20 testimony as Exhibit 10, Company Exhibit 10.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 ALJ SEE: Mr. Petricoff, do you want to
23 move for the admission of Mr. Crowell's Company
24 Exhibit 9?

25 MR. PETRICOFF: Yes, your Honor. Thank

1 you. Yes, at this point I'd like to move for the
2 admission of Company Exhibit No. 9, the direct
3 prepared testimony of Mr. Crowell.

4 ALJ SEE: Are there any objections to the
5 admission of Company Exhibit 9?

6 Hearing none, Company Exhibit 9, the
7 direct testimony of Hugh Crowell, is admitted into
8 the record.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 ALJ SEE: I would also note that direct
11 testimony of Dale Arnold is marked as Company Exhibit
12 10, and I'm going to ask Mr. Arnold to take the stand
13 and raise his right hand.

14 (Witness sworn.)

15 ALJ SEE: Thank you.

16 Go ahead, Mr. Petricoff.

17 MR. PETRICOFF: Thank you, your Honor.

18 - - -

19 DALE R. ARNOLD

20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Petricoff:

24 Q. Good afternoon, Mr. Arnold.

25 A. Good afternoon.

1 Q. Would you please state your name and
2 business address for the record.

3 A. My name is Dale Arnold. I'm Director of
4 Energy Policy for the Ohio Farm Bureau, and we're
5 located at 280 North High Street here in Columbus,
6 Ohio.

7 Q. Mr. Arnold, do you have with you a copy
8 of what has just been marked as Buckeye Exhibit
9 No. 10?

10 A. Yes, I do.

11 Q. Is that your direct prepared testimony?

12 A. Yes, it is.

13 Q. Are there any changes or updates you'd
14 like to make to that testimony?

15 A. Yes, I do. There are two minor updates.
16 The first one is on page 2 in answer No. 3,
17 next-to-the-last line. I did not serve as the
18 advisor to the Ohio Land Improvement Contractors
19 Association. I served as their executive director.

20 Q. You indicated there was a second update?

21 A. Yes. On page No. 5 in question No. 10,
22 the top line, there's the figure of \$79,300 per year;
23 that was for 2007. Since this was taken the data for
24 2008 have been made available to me and that's
25 116,000. Those are the only corrections I have.

1 Q. If I were to ask you today the questions
2 that appear in Exhibit 9 [sic], would your answers be
3 the same given those two amendments?

4 A. Yes, they would.

5 MR. PETRICOFF: Your Honor, the witness
6 is available for cross-examination.

7 ALJ SEE: Okay. Mr. Weithman.

8 MR. WEITHMAN: Nothing.

9 ALJ SEE: Ms. Napier.

10 MS. NAPIER: Yes, I have a few questions.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Napier:

14 Q. Mr. Arnold, my name is Jane Napier, and
15 I'm an assistant prosecuting attorney in Champaign
16 County. I'll be asking you a few questions today.

17 Isn't it true that the Ohio Farm Bureau
18 Federation is concerned with the quality of life for
19 those engaged in agriculture? Is that correct?

20 A. That is correct.

21 Q. And would you also agree that at times a
22 farmer needs or wants to supplement their farming
23 revenue?

24 A. That's correct.

25 Q. And do you believe there's a need for

1 that in Ohio?

2 A. I believe so.

3 Q. And one of those ways would be for the
4 reason we are here today, for applicant to lease some
5 of that land for wind turbines; is that correct?

6 A. That's correct.

7 Q. This is a fairly new revenue source; is
8 it not?

9 A. For farmers in Ohio, yes.

10 Q. What has been more commonly a revenue
11 source other than farming for farmers? Do you know
12 of any?

13 A. Other revenue sources they have,
14 depending on the size and the structure of the farm,
15 the number of families that they have, you could have
16 basically a spouse have an off-farm job either as a
17 teacher or a nurse or somewhere in town; that's
18 supplemental with regard to the income.

19 In the area of energy, maybe not
20 necessarily in Champaign County, but in eastern Ohio
21 you have farmers for a number of years, since the
22 turn of the last century, who do oil and gas leasing
23 with regard to oil wells and gas wells on their
24 property.

25 Q. And isn't another way is for farmers to

1 sell off along the roadway lots along the roadway,
2 what I guess I would call frontage?

3 A. Yes, there's been some farmers who have
4 exercised that option.

5 Q. And isn't that a pretty common way for
6 farmers to raise some revenue?

7 A. I don't know how common that basically
8 is. I know farmers exercise that particular option
9 to sell off road frontage and there are several areas
10 of the state where they've done so.

11 Q. Do you know if that's been done in
12 Champaign County?

13 A. I believe so.

14 Q. And would you say that having a wind
15 turbine on farm property would be a possible
16 deterrent to the selling of residential or commercial
17 lots being frontage?

18 A. I would not know with regard to that. I
19 know there are people there that have that particular
20 concern. There have been, you know, talking with
21 farmers in other areas of the country with regard to
22 that, have been able to sell road frontage. I know
23 some people have concerns with regard to that in the
24 viewscape, but also what's interesting is this, when
25 you talk about selling those lots in the country,

1 yes, people will buy those for basically speculative
2 purposes, they will buy them for homes or businesses,
3 between 1 and 5 acres or more depending on the zone
4 authority.

5 Also what's interesting in this is that
6 in the bills of sale that I have seen and the deeds I
7 have seen there is no guarantee basically about what
8 can be limited that can be done with regard to
9 development in the back lots adjoining that.

10 It's interesting to note also that when
11 we talk about people in rural areas, the vast
12 majority of the ground is still open and rural and is
13 still open to different types of development, be it
14 agriculture, other things that regard the wind
15 turbine technology, and people need to take that in
16 consideration when they basically take a look at
17 those types of investments.

18 Q. Okay. So let me see if I understand you,
19 that when somebody goes out in the country and buys a
20 lot, that there may be adjacent property that might
21 be used for whatever type of development; is that
22 correct?

23 A. That is correct.

24 Q. Is this what you were trying to state?

25 A. Yes, it is.

1 Q. Okay. And would it be fair to say that
2 farmers should be able to do what they wish on their
3 land?

4 A. That is correct. That's part of land
5 rights and basic rights with regard to that.

6 Q. Okay. We had previously talked about
7 setbacks to wind turbines. Are you familiar with the
8 setbacks?

9 A. Yes, I am familiar with the setbacks that
10 are stated in House Bill 562.

11 Q. Great. So can you tell me the Ohio Farm
12 Bureau Federation's position, if they have any, about
13 what would happen if the setbacks would go onto
14 somebody else's property so that they cannot develop
15 their own wind rights or develop their own property
16 as they wish?

17 A. It's an interesting dilemma with regard
18 to that. We are still discussing it, basically, with
19 folks. It's still part, basically, of policy. It's
20 interesting when you take a look at setbacks for
21 House Bill 562, they give guidelines with regard to
22 that. There's not a specific or set formula with set
23 numbers.

24 One thing you need to take a look at is
25 that discussion is continuing and ongoing. Another

1 thing too is this technology changes and the type of
2 wind turbines being placed on farms in rural areas
3 ten years ago as compared to now or five years from
4 now basically are different.

5 My work with folks when they were taking
6 a look at House Bill 562 and putting together the
7 setback formulas was to take a look at putting a
8 formula together that could be workable, could be
9 utilized by wind developers and other community
10 planners, and also to guard against probably the
11 worst-case scenario which means this: If a tornado
12 came and that turbine fell flat, it would stay
13 basically on the property where basically it's
14 located.

15 Q. Okay. And what about adjoining
16 landowners' wind rights to put a turbine up that
17 might cross a setback to a turbine owned by
18 EverPower?

19 A. When you're talking about wind rights,
20 what it -- can you explain that, please?

21 Q. The right to put a turbine up on an
22 adjacent property.

23 A. If I understand correctly, if you're
24 talking about on-site turbine use for a farm or a
25 rural resident who wanted to put their own turbine on

1 at the kilowatt level, based on the size of those and
2 wanting to put up their own wind technology and
3 taking a look at the setbacks with House Bill 562
4 there should be no interference between that large
5 turbine and that small turbine because of the
6 particular sizes.

7 It's also interesting in this, and yes,
8 right now here in Ohio when you take a look at wind
9 turbine leasing and farmers working with wind turbine
10 developers, there are several areas of the state,
11 yours is one of those particular areas where two or
12 three developers were looking for land in that
13 particular area.

14 We worked with a number of farmers, we
15 helped and did a number of briefings, helped them
16 take a look and talked to them about how to analyze
17 and take a look at questions on lease agreements, how
18 to group together with regard to collective
19 bargaining and negotiations, and a number of farmers
20 made a decision.

21 And what's interesting is that probably
22 one of the reasons that you're seeing developers now
23 in Ohio in certain areas going forward in projects is
24 because comparing different leases with different
25 companies at that particular time and negotiating

1 leases with farmers and other rural residents in that
2 area, that was probably the best lease, that was
3 probably the most economically feasible, probably the
4 one that basically generated the most income and
5 investment opportunity, and that's why you've seen
6 basically certain developers establish themselves in
7 certain areas.

8 Q. Do you find that there are leases that
9 are entered into that tie up land that do not get
10 turbines placed on there and, therefore, they don't
11 accrue the revenue to the landowner?

12 A. Yes, I see that, and in meetings that
13 we've had over the last eight years we've talked to
14 farmers with regard to that and asking those
15 particular questions as they've picked a certain
16 developer basically to work with.

17 They also understand, just as I explained
18 a little bit ago with regard to leases and deeds,
19 that if you're taking a look and you're establishing
20 a relationship with a developer, you literally have
21 no real guarantees from start to finish if this
22 project will come to fruition. There are no
23 guarantees at that point. However, in the work that
24 you do in picking a developer with regard to that,
25 you'll see some of these projects basically manifest

1 themselves and work and become developments.

2 Q. I'd like to go back just for a second.
3 We talked about residential lots there along the
4 frontage.

5 A. Yes.

6 Q. Is that a way of revenue -- of raising
7 revenue that is endorsed by the Ohio Farm Bureau?

8 A. We have no policy with regard to that
9 because our members have not established policy with
10 regard to that. However, there are a number of
11 farmers who exercise that option to sell leased
12 frontage for other speculative purposes, be it
13 businesses or for homes.

14 Q. And in Champaign County is there any
15 policy regarding the selling of frontage?

16 A. We've just got done with our policy
17 development process here this year for presentation
18 at our annual meeting. In reviewing policy and that
19 with economic development we did not see any of that
20 material coming from Champaign County. So as far as
21 I know, there is no policy with regard to road
22 frontage or selling road frontage with the Champaign
23 County Farm Bureau.

24 Q. And are you aware that there are some
25 residential lots sold that actually have residences

1 on there? I know you talked about investment or
2 speculating.

3 A. Yes, I understand that.

4 Q. Okay. And would you agree that that's
5 kind of a mixed use type of, I guess it would be kind
6 of a zoning designation out where the project area
7 is?

8 A. I understand it's a mixed use, and over
9 the last probably half of the 20th century you've
10 had a mixture of different folks and different
11 usages, different homes there. Probably at the
12 beginning of the last century the vast majority of
13 folks basically out there were farmers. Going into
14 this century you still have a large number of
15 farmers, but you have other rural residents who live
16 in that area.

17 Q. And that is from pretty much farmers
18 selling off some road frontage.

19 A. Personally, I would say yes. Part of
20 that probably is, yes.

21 Q. Okay. And most likely that is going to,
22 if nothing else changes, that's going to grow over
23 the next few years; is that correct?

24 A. I believe so. It's interesting, if we're
25 talking about options for farmers to take a look at

1 different and other types of income that it can use
2 with regard to their farm, there will probably be
3 some areas of the state, I don't know about Champaign
4 County, but there will be other areas of the state
5 where you will still see farmers selling road
6 frontage and different lots for homes, businesses,
7 and other purposes.

8 MS. NAPIER: Thank you. I have no
9 further questions.

10 ALJ SEE: Mr. Brown.

11 MR. BROWN: No questions.

12 ALJ SEE: Mr. Van Kley.

13 MR. VAN KLEY: A few.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Van Kley:

17 Q. Good afternoon, Mr. Arnold.

18 A. Hello.

19 Q. Tell me about your educational
20 background.

21 A. My educational background. I graduated
22 from Danville High School in 1978, and I have a
23 bachelor's degree in communications from the Ohio
24 Dominican University.

25 Q. So you're not an acoustical engineer?

1 A. No, I am not.

2 Q. And you're not a mechanical or civil
3 engineer with expertise on wind turbine design?

4 A. No, I am not.

5 Q. Okay. You're not a wildlife biologist.

6 A. No, I am not.

7 Q. So you would have to depend on the
8 experts and the Board to determine whether a wind
9 farm's design effectively protects the public and the
10 environment.

11 A. If you're talking about the Ohio Power
12 Siting Board and their House Bill 562, you are
13 correct.

14 Q. Okay. You mentioned that you've had some
15 sort of involvement or at least were aware of leases
16 that the farmers are signing with the wind farm
17 companies; is that right?

18 A. That is correct.

19 Q. Are you generally familiar with the terms
20 of those leases?

21 A. General terms, yes. I also say this to
22 folks, because there's been a number of folks
23 basically who have come to me personally and wanted
24 me to basically give a judgment on their lease, I'm
25 not a Juris Doctor or an attorney and I don't plan to

1 be with regard to that. Wind farmers basically are
2 interested and want to talk together as a group or an
3 individual and wanted to talk to legal counsel, the
4 first thing we have said at a number of our meetings
5 is, number one, Who is your local legal counsel?

6 Q. Okay.

7 A. Many of them basically rely on the legal
8 counsel in their county seat. I also tell them this,
9 when you start taking a look at these leases and you
10 start taking a look at some of the complexities with
11 regard to power purchase agreements and others,
12 please have that attorney call me in your name, and
13 we have a listing of four other attorneys who are
14 well-versed in that type of law that they can talk
15 to, they can choose, and they can pay for with regard
16 to those decisions.

17 Q. Okay. I'll talk to you later about
18 getting my name on that list.

19 Let me ask you this about the leases,
20 generally speaking, these leases have confidentiality
21 clauses in them?

22 A. That is correct.

23 Q. Okay. What's the content of those
24 confidentiality clauses, generally speaking?

25 A. Well, I can tell you this from my

1 knowledge in working with farmers, it's still
2 confidential and much of that has to do basically
3 with the rental terms for the occupation of the
4 footprint as well as royalty provisions with regard
5 to the sale of generation from that individual
6 turbine on their property.

7 Q. Are you aware of whether those leases
8 generally prohibit the farmers from publicly
9 complaining about noise that they've experienced from
10 the turbines?

11 A. No, they do not.

12 Q. Okay.

13 A. From my knowledge, no, they do not.

14 Q. All right. Do you know whether these
15 leases generally contain provisions that require the
16 farmer to help the wind farm promote itself?

17 A. No, they do not. From the ones that I
18 have seen and from my knowledge, no.

19 Q. Are you aware of whether these leases
20 have provisions in them that prevent the farmer from
21 suing the wind farm company if there is noise or
22 damage of some sort?

23 A. From what I have seen and from who I've
24 talked to I have not seen those provisions.

25 Q. Have you seen any leases that have been

1 proposed or signed by EverPower or Buckeye Wind for
2 this particular wind farm?

3 A. I have seen leases from a number of
4 different wind energy development companies across
5 the state, EverPower included; none of them have been
6 signed.

7 Q. Okay. Do the EverPower leases that
8 you've seen contain any of the clauses that I've just
9 mentioned?

10 A. From the ones that I have seen, no.

11 Q. Let me just ask you a few more questions
12 that I think we can all agree to. You would agree,
13 wouldn't you, that this farm should be designed in a
14 way that does not harm its neighbors?

15 A. That is correct.

16 Q. Okay. And that helps the farmers too,
17 doesn't it?

18 A. That is correct.

19 Q. Yeah. If this wind farm is approved with
20 a design that causes problems in the community, then
21 those problems may discourage other communities from
22 inviting wind turbines into their neighborhoods;
23 don't you think?

24 A. That's a possibility.

25 Q. So certainly you would want the wind

1 turbines to be located -- not to be located so close
2 to the neighbors that they damage the neighbors'
3 lifestyles.

4 A. That is true.

5 Q. And in fact, it's better for all
6 concerned, including the landowner who leases land
7 for a turbine, if the wind turbine does not harm the
8 neighbors or the environment.

9 A. I'm feeling basically they'd take a look
10 at that consideration before they sign a lease, yes.

11 Q. And it's in everybody's best interest to
12 make sure that the turbines are sited in such a way
13 that no one's harmed.

14 A. That is correct.

15 MR. VAN KLEY: Thank you, sir.

16 ALJ SEE: Ms. Malone.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Malone:

20 Q. Just one question. I notice in your
21 testimony at question 9 you are specifically focusing
22 and pointing to certain of the conditions in the
23 Staff Report as being important for ensuring proper
24 construction of the facility. You're pointing to
25 those specific conditions numbers 10, 11, and 19

1 because they're directly related to soil and water
2 issues, correct?

3 A. That's true, and those are very good
4 examples. If you allow me to explain, part of my job
5 with the Ohio Farm Bureau over the 25 years of
6 service I've been with them, by contract I was
7 Executive Director of the Ohio Land Implement
8 Contractors Association, that's an organization of
9 conservation contractors that do subsurface drainage,
10 tiling, erosion control, different conservation
11 practices having to do with soil and water
12 conservation.

13 Also many of the farmers who are taking a
14 look at this particular opportunity are also
15 concerned about soil and water conservation and the
16 construction on their farms.

17 Over ten years ago we worked closely with
18 the Ohio Federation of Soil and Water Conservation
19 districts and others to start putting together
20 standards and procedures that can be utilized for
21 projects such as this. They started out with
22 interstate pipelines and it's interesting, as we've
23 talked about other types of structures, wind turbines
24 and subsurface wiring and different things in regard
25 to that they've also incorporated there.

1 What I tried to express in my testimony
2 is that in the Staff Report in many of the conditions
3 that you have for the approval of this particular
4 project, many of the things that we've talked about
5 over the last five to six to ten years with regard to
6 soil and water conservation are already in those
7 recommendations and I'm pleased and the farmers I've
8 worked with and the OLICA members I've worked with
9 are pleased also.

10 Q. Just to clarify, you're not in any way
11 testifying here today that any of the other
12 conditions recommended by the staff are --

13 A. That's correct.

14 Q. -- are unimportant.

15 A. That's correct.

16 MS. MALONE: No further questions.

17 MR. PETRICOFF: No redirect, your Honor.

18 ALJ SEE: Okay. Thank you, Mr. Arnold.

19 THE WITNESS: Thank you.

20 MR. PETRICOFF: Your Honor, at this time
21 I move for admission into evidence of Buckeye Exhibit
22 No. 10.

23 ALJ SEE: Are there any objections to the
24 admission of Company Exhibit 10, the direct testimony
25 of Mr. Arnold?

1 Hearing none, Company Exhibit 10 is
2 admitted into the record.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. PETRICOFF: Your Honor, at this time
5 I would like to have marked as Buckeye Exhibit No. 11
6 the direct prepared testimony of Don Bauer.

7 ALJ SEE: The exhibit is so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 ALJ SEE: Mr. Bauer, if you would raise
10 your right hand.

11 (Witness sworn.)

12 ALJ SEE: Thank you. Have a seat.

13 - - -

14 DON BAUER

15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Petricoff:

19 Q. Good afternoon, Mr. Bauer.

20 A. Good afternoon.

21 Q. Do you have before you a copy of what has
22 just been marked as Buckeye Exhibit No. 11?

23 A. I do.

24 Q. And this is your direct prepared
25 testimony?

1 A. Correct.

2 Q. Would you state your name and business
3 address for the record.

4 A. Yes. My name is Don Bauer, B-a-u-e-r.
5 Address, 3548 State Route 54, Urbana, Ohio 43078.

6 Q. And, Mr. Bauer, do you have any changes
7 or amendments to your direct prepared testimony?

8 A. I do not.

9 Q. If I were to ask you the questions that
10 are written in that document today, would your
11 answers be the same?

12 A. They would be.

13 MR. PETRICOFF: Your Honor, the witness
14 is available for cross-examination.

15 ALJ SEE: Mr. Weithman.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Weithman:

19 Q. Mr. Bauer, I'm Gil Weithman. I represent
20 the city of Urbana. I see in your answers to
21 question No. 2 that you give quite a good résumé of
22 your involvement in Champaign County. You've been
23 involved in Champaign County for a number of years,
24 correct?

25 A. That is correct. That's right.

1 Q. Champaign County consists of, the county
2 itself, could you give me an approximate number of
3 people?

4 A. I believe there's around 40,000 in the
5 county.

6 Q. Give or take a little --

7 A. Give or take a thousand.

8 Q. And in that county there is actually one
9 place that's big enough to be a city, that would be
10 the city of Urbana; is that correct?

11 A. Correct.

12 Q. Okay. Do you have an idea of the number
13 of residents in the city of Urbana?

14 A. I would say 10- to 11,000 maybe. In that
15 range.

16 Q. Would you agree with me if I said it was
17 maybe a little bit less than 12 but almost 12?

18 A. Yes.

19 Q. Okay. And there are some other clusters
20 of villages in that county; are there not?

21 A. Correct.

22 Q. One would be Saint Paris.

23 A. Correct.

24 Q. How many people would you say live in
25 Saint Paris, if you have an idea?

1 A. I don't really have an idea. Maybe
2 2,500.

3 Q. Okay. And there's another little village
4 called Mechanicsburg; you're familiar with that.

5 A. Correct.

6 Q. How many would you say live there?

7 A. I don't know.

8 Q. Would you say approximately about the
9 same number as you said for Saint Paris?

10 A. I would think Mechanicsburg is smaller.

11 Q. Okay. And there's another village that's
12 known as North Lewisburg, correct?

13 A. Correct.

14 Q. How many would you say it has?

15 A. I would say it's more like the size of
16 Saint Paris.

17 Q. Okay. And there's some little clusters
18 of other places around also, correct?

19 A. Correct.

20 Q. Cable, Mingo, some other places, correct?

21 A. Correct.

22 Q. Okay. Now, looking down in your answer
23 to No. 4, you said that you have an agreement with
24 Buckeye Wind, and that's correct, right?

25 A. That is correct.

1 Q. You also say you have -- you schedule --
2 you say you're scheduled for one turbine on your
3 farm, correct?

4 A. Correct.

5 Q. Okay. You have 325 acres; is that also
6 correct?

7 A. Yes.

8 Q. Is there -- have you had any talks with
9 Buckeye about other potential turbines on your land?

10 A. No.

11 Q. No, none. Okay.

12 Now, you also say that you were very
13 prudent in doing this and you went up and looked at
14 Bowling Green before you signed this lease; is that
15 correct?

16 A. Before we signed a preagreement.

17 Q. Before you signed the preagreement.

18 A. There's no lease been signed.

19 Q. Excuse me?

20 A. Only a prelease.

21 Q. And that's all you have at this point is
22 a prelease.

23 A. Correct.

24 Q. Before that prelease was signed you went
25 up to Bowling Green.

1 A. Absolutely.

2 Q. And do you believe now that you've went
3 up to Bowling Green and now that you've been over to
4 Indiana that the wind turbine up in Bowling Green is
5 representative of what is going to be put on your
6 land?

7 A. I would say the one in Bowling Green is a
8 little older technology than hopefully the ones --
9 the new ones that will be put up in Champaign County.

10 Q. Sizewise would you say it's roughly the
11 same?

12 A. No. I think the one in Bowling Green is
13 around 400 feet and, as I understand, they haven't
14 come up with the exact size for Champaign County but
15 it could be up to 490.

16 Q. So it could be a little bit bigger than
17 Bowling Green.

18 A. It could be.

19 Q. How many do they have in Bowling Green?

20 A. Well, actually in Bowling Green there are
21 four, there are only really two that you can get
22 close to because the other ones are north of the
23 municipal trash plant.

24 Q. Okay. So you in your prudence went down
25 to Bowling Green before you signed this prelease; is

1 that true?

2 A. That's correct.

3 Q. And then did you sign your prelease with
4 them?

5 A. After we visited -- after my wife and I
6 visited the Bowling Green site, correct.

7 Q. Correct. Okay. So after that, then, you
8 went to Benton County; is that correct?

9 A. Yes.

10 Q. You didn't go to Benton County before.

11 A. No.

12 Q. Were the turbines operating up in Bowling
13 Green when you went there?

14 A. Yes.

15 Q. Okay. And in your answer to No. 6 you
16 give some concluding remarks and you're talking about
17 the future of Champaign County. When you're
18 considering the future of Champaign County, you're
19 considering the future as it relates to all residents
20 of Champaign County; is that correct?

21 A. Correct.

22 Q. Okay. And can you tell me how you
23 believe the residents of the city of Urbana, the
24 residents of the village of Saint Paris, the village
25 of Mechanicsburg, and the village of North Lewisburg

1 will benefit by turbines being placed in Champaign
2 County?

3 A. Well, I would say during construction
4 there may be trucking companies that are based out of
5 Saint Paris that may haul gravel. One of the largest
6 concrete plants is in Saint Paris with Bryce Hill
7 Ready Mix.

8 Q. Sure.

9 A. Also located in Urbana on that.

10 Q. Sure.

11 A. There's a large contractor that does a
12 lot of rebar wiring for turbine companies around the
13 country that's located in Urbana Township.

14 Q. Okay.

15 A. So I think there will be direct benefit
16 from that.

17 Q. Okay. Now, that's during the phase of
18 construction, correct?

19 A. I would say so, yes.

20 Q. Do you have any idea how long that phase
21 of construction will go?

22 A. I don't.

23 Q. Five years? Ten years?

24 A. I think they would hope, I hear, to have
25 the project done in two years.

1 Q. So in two years that would be a boon to
2 the county, after that what would be the same boon to
3 that same city and villages there that we're talking
4 about?

5 A. After that there would still be some
6 pertinent jobs for people to --

7 Q. How many, do you know?

8 A. What I've read in the paper is between 8
9 and 12.

10 Q. Eight and 12 jobs would be a benefit to
11 all those villages and to that city.

12 ALJ SEE: Mr. Weithman.

13 THE WITNESS: Well, the county --

14 ALJ SEE: Hold on for just a minute,
15 please.

16 THE WITNESS: Yes, ma'am.

17 ALJ SEE: Mr. Weithman, let the witness
18 finish his answer before you start your next
19 question, please.

20 MR. WEITHMAN: Certainly, I will.

21 Q. (By Mr. Weithman) Did you hear my
22 question?

23 A. No, I did not. Can you repeat it,
24 please?

25 Q. Other than the two years for the

1 construction what would be the boon, I'm sorry, you
2 already answered that.

3 To the 8 or 12 people, other than that is
4 there any other benefit there for the villages that I
5 mentioned and the city I mentioned?

6 A. Yes.

7 Q. What would that be?

8 A. Well, real estate tax for our school
9 system, and I believe that's still in the city of
10 Urbana.

11 Q. Has that been determined? Do we know
12 that figure?

13 A. No. But I am sure --

14 Q. So that's speculative, you don't know.

15 A. Okay.

16 MR. WEITHMAN: Thank you. I don't have
17 any further questions.

18 ALJ SEE: Ms. Napier.

19 MS. NAPIER: I'm going to defer to
20 Mr. Selvaggio.

21 ALJ SEE: Mr. Selvaggio.

22 THE WITNESS: I knew he would.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Selvaggio:

1 Q. Good afternoon.

2 A. Good afternoon, Mr. Selvaggio.

3 Q. You and your wife, Mr. Bauer, own a wood
4 stove and fireplace business, correct?

5 A. That is correct.

6 Q. And you have for over 30 years?

7 A. Correct.

8 Q. And as part of that wood stove and
9 fireplace business you sell certain products like gas
10 inserts and other matters that have instructions from
11 the manufacturer for the installation, operation, and
12 maintenance of the insert; is that correct?

13 A. That would be correct.

14 Q. And as a seller of those items do you
15 consider those manufacturing instructions to be
16 guidelines or requirements for safe operation of your
17 product that you sell?

18 A. I'm sorry, can you repeat the last part
19 of the question?

20 Q. Sure. For the product that you sell, do
21 you consider those instructions as -- manufacturer
22 instructions as guidelines or as requirements?

23 A. Guidelines.

24 Q. And when would you -- how do you
25 distinguish a guideline from an instruction?

1 A. I don't have a good answer for that.

2 Q. Okay. I mean, let me use an example, if
3 somebody was smoking a cigarette while manipulating
4 the gas insert machinery in some fashion and the
5 instruction manual said "No smoking," would your
6 answer change as to whether you would interpret that
7 as a guideline or instruction?

8 MR. PETRICOFF: Your Honor, I want to
9 object. This is really irrelevant and outside the
10 scope of his testimony.

11 MR. SELVAGGIO: Judge, in his direct
12 testimony he talked about his wood stove and
13 fireplace business.

14 ALJ SEE: The objection is sustained.

15 MR. SELVAGGIO: Okay.

16 Q. Mr. Bauer, when you signed your lease
17 agreement, did you have an ability to control where
18 it would go on your property?

19 A. Partially.

20 Q. In what respect?

21 A. We were told that we would have some
22 input as to where it would go based on the setbacks.

23 Q. And so if the guidelines -- if the
24 installer, that being Buckeye Wind, wanted to put it
25 at 900 feet and the manufacturer wanted -- suggested

1 in its maintenance documents that it should be at
2 1,600 feet, which one would you want as the consumer
3 of that product?

4 A. I don't think I have an answer to that,
5 Nick, at this point. I want it where it's installed
6 by the investor at that point.

7 Q. Right. And some considerations would be
8 safety, right?

9 A. Absolutely.

10 Q. As well as the efficiency of the
11 product --

12 A. Correct.

13 Q. -- right? I mean, you don't want to
14 install something that's not going to work.

15 A. Right.

16 Q. I don't mean you specifically, but I mean
17 those responsible for its placement.

18 A. Right. Correct.

19 Q. Okay. Mr. Bauer, you and your family
20 have been recognized as community leaders for over 40
21 years; isn't that correct?

22 A. Gosh, I didn't know I was that old today,
23 but I guess so.

24 Q. Your father was a former elected county
25 commissioner.

1 A. Correct.

2 Q. And your family has been recognized, in
3 fact, I think earlier this year by the Urbana Rotary
4 Club as Farmer of the Year; is that right?

5 A. That is correct.

6 Q. You've been past president of the Chamber
7 of Commerce; is that right?

8 A. Correct.

9 Q. And you, although you may not take full
10 credit for it, but you were instrumental in inspiring
11 the Freedom Grove project by the Urbana Rotary Club
12 to honor the veterans in Champaign County; is that
13 right?

14 A. That's correct.

15 Q. And you founded the Barn Quilt Tour to
16 attract residents to the community; is that right?

17 A. To attract visitors.

18 Q. Yeah; tourism.

19 A. Tourism, correct.

20 Q. And you've also sponsored festivals at
21 your farm that were designed to educate the public on
22 equine activities and wood carving and other kinds of
23 events; is that correct?

24 A. Correct.

25 Q. And so you're fairly familiar and

1 uniquely situated to understand kind of the things
2 that drive our community and the perspectives that
3 our citizens have; isn't that correct?

4 A. Yes.

5 Q. Okay. Now, you indicated in your
6 testimony that you traveled to operating wind farms
7 to see the new technology in action; is that right?

8 A. A week after you did.

9 Q. What?

10 A. I said a week after you did.

11 Q. That's right. And in fact, we were
12 almost going to go together at one point.

13 A. You didn't call.

14 Q. How are the projects in Bowling Green and
15 Benton County different than the Champaign County
16 landscape? And as an aside, the reason I'm asking is
17 because you indicated that you support the wind
18 turbine project in your direct testimony and that you
19 supported it after taking a look at -- visiting the
20 wind farms as opposed to receiving information from
21 the internet or newspapers. So I'm wondering, what
22 was it that assisted you in that process?

23 A. Well, do you want me to answer the first
24 part of your question?

25 Q. Yes.

1 A. The difference between --

2 Q. Yes. Okay.

3 A. The difference between, in my way of
4 looking at it, between Bowling Green, which has four
5 turbines, municipal owned at that point, and the
6 turbines around Fowler, Indiana, which there are, as
7 I understand when we were there, approximately 330
8 working turbines in a county the size of Champaign,
9 the density between Bowling Green and Fowler is not
10 like -- is like oranges and peanuts, really. The
11 density within Champaign County will be much more
12 down the scale toward Bowling Green as opposed to
13 Fowler on that.

14 Q. And so as you accepted the spirit of wind
15 energy development you would recognize that the
16 project in Bowling Green is located next to a
17 landfill.

18 A. Yes.

19 Q. And you would recognize that the project
20 located in Benton County is in a community that has
21 only 9,000 residents.

22 A. Yes.

23 Q. And those are different than the
24 integrated project footprint that is proposed in
25 Champaign County; is it not?

1 A. Well, the number of people, certainly,
2 yes.

3 Q. Okay. Now, this project will have some
4 certain recognized benefits to the community, and
5 I'll ask you, do you agree that it will not affect
6 agricultural practices?

7 A. I would agree.

8 Q. Do you agree that it will increase the
9 productivity of the land by providing an additional
10 source of revenue to supplement traditional
11 agricultural sources of income?

12 A. Can you restate that question, please?

13 Q. Sure. Do you agree that it will -- well,
14 yes, I can. Do you agree that it will increase the
15 productivity of the land?

16 A. No, I don't think it will. It does not
17 increase the productivity. You have to -- to
18 increase productivity, as you well know, that's
19 inputs, fertilizer, seed, weather, so there's no
20 correlation between wind and productivity of the
21 land.

22 Q. Well, it provides an additional source of
23 revenue source; does it not?

24 A. What does that have -- yep, it could for
25 the farmer, but that would have nothing to do with

1 the productivity. Productivity of the land is so
2 many bushels of grain produced off of one acre and
3 I --

4 Q. Maybe that's inartfully phrased.

5 A. Okay.

6 Q. What I mean, and it's not meant to be a
7 trick question, what I mean to say is that you're
8 getting more -- you would presumably get more money
9 from a piece of your land that you wouldn't normally
10 get from the regular product that's being placed on
11 it.

12 A. So if I understand, your question is for
13 the 3/4 of an acre or 1 acre for a wind turbine would
14 have more income from that --

15 Q. Yes.

16 A. -- than if it was corn or soybeans.

17 Q. Yes.

18 A. Certainly.

19 Q. That's what I meant. You're getting more
20 bang for your buck.

21 A. For that 1 acre.

22 Q. For that 1 acre.

23 A. Yes, sir.

24 Q. And so I -- and of course that income
25 that you receive will be taxed.

1 A. Yes.

2 Q. And that money presumably, at least some
3 of that money will go to the county general fund,
4 right?

5 A. The county general fund?

6 Q. I'm sorry, to the --

7 A. I don't think so.

8 Q. To the --

9 A. It goes to the state of Ohio or IRS.

10 Q. Of which the county will -- could benefit
11 in other indirect funds of grants and that kind of
12 stuff. In other words, that farmers will contribute
13 to the revenue source in the community, right?

14 A. Through their own spending, correct.

15 Q. Yeah.

16 A. Yes.

17 Q. And in EverPower's application they also
18 indicate that there will be, as a benefit, long-term
19 opportunities for increased income through the lease
20 of land. Do you agree with that?

21 A. Yes.

22 Q. Now, I want to spend just a couple of
23 minutes asking you to help me explain a little bit
24 about the county's heritage as it pertains to Grimes
25 Aerospace or Grimes Field. Warren Grimes was

1 recognized as the father of the aircraft lighting
2 industry; was he not?

3 A. Yes.

4 Q. In the fact that the planes in World War
5 II had his lighting systems on them; did they not?

6 A. I believe some of them did, yes.

7 Q. And Grimes Field also hosts the Flying
8 Lab museum.

9 A. Correct.

10 Q. It hosts the Champaign Aviation Museum
11 that restores World War II era aircraft.

12 A. Yes.

13 Q. And it also hosts the Mid East Regional
14 Fly-in which is the second largest fly-in in the
15 country.

16 A. I'm not sure of the size of it, but it
17 does host that project.

18 Q. And it hosts the hot air balloon festival
19 and the Airport Cafe.

20 A. Correct.

21 Q. Which brings, again, tourism to Champaign
22 County; is that right?

23 A. Yes.

24 Q. All right. You're aware that the FAA has
25 restricted at one point or another a certain number

1 of turbines because of their impact to the local
2 aviation industry in Champaign County; are you not?

3 A. Well, I don't really understand what the
4 restrictions are.

5 Q. Well, I'm not asking you what the
6 restrictions are. I'm just saying are you aware that
7 there are certain restrictions that the FAA is
8 concerned about?

9 A. I have read about that in the paper.

10 Q. Okay. With your background as a local
11 businessman and a community leader as well as a
12 leaseholder, let's assume that the FAA did not
13 restrict the wind turbines, okay?

14 A. Okay.

15 Q. That there's no scientific issue there.
16 Would you as a community leader still want wind
17 turbines placed in an area that would affect its use?

18 A. Define "it."

19 Q. I'm sorry, Grimes Field. That if the FAA
20 said it's okay, but pilots still had reservations
21 about that use, would you as a community leader be in
22 favor of the wind turbines being placed in that area?

23 A. I don't have enough information to answer
24 that really at this time.

25 Q. Okay. You're aware of the heritage of

1 the Urbana Country Club, the golf course out there.

2 A. Yes.

3 Q. Designed by Pete Dye and then later by
4 P.B. Dye.

5 A. Yes.

6 Q. And then you recognize that the viability
7 of the Country Club is predicated on its having
8 members.

9 A. Yes.

10 Q. Okay. If, in fact, members are
11 distracted by the placement of the turbine or
12 turbines in the area and then they don't wish to join
13 the club anymore, would you as a community leader
14 still want a wind turbine placed in an area even
15 though scientifically it may not have any adverse
16 effect?

17 A. Well, since it's a private club I would
18 have no problems with them putting the turbines
19 there.

20 Q. And then the last question is through
21 this questioning, Don, I've tried to point out that
22 certainly the project has a lot of benefits to our
23 community and a lot of perceived concerns about the
24 project, and you are uniquely situated as a community
25 leader to understand both sides of the issue; are you

1 not?

2 A. Yes.

3 Q. Okay. What would you want the Power
4 Siting Board on behalf of the community to consider
5 when siting the turbines as it affects the unique
6 character of our community?

7 A. Can you repeat that question, please?

8 Q. I'll try.

9 A. Okay.

10 Q. As a community leader and businessman,
11 you understand that --

12 A. Get closer to the mic, I can't hear you,
13 please.

14 Q. You understand that the project has a lot
15 of benefits and a lot of perceived concerns. What
16 factors would you want as a member of our community,
17 the Power Siting Board, and this is separate and
18 apart from the scientific technical data that we've
19 been talking about for the last two or three days,
20 what would you want them to consider when they're
21 siting the turbines as it affects the character and
22 uniqueness of our community? And again, it's not
23 meant to be a trick question, I'm . . .

24 A. Well, I think the -- I would hope that
25 the Power Siting Board will look at, as my wife and I

1 have tried to look at, what is good not only for my
2 generation, but what's good for my children, their
3 children, and their children. You know, it's really
4 an important decision that needs to be made.

5 I also would hope that more Champaign
6 Countians would take the time to visit some of these
7 wind farms and see some of the new technology
8 firsthand on them. I think that was a very important
9 part of our decision was visiting farms and trying to
10 get the education ourselves firsthand.

11 I find the turbines not to be offensive
12 in any way. I think they're, if anything, beautiful.
13 I think it will be a positive impact to our county.
14 I know that we need clean, green energy; this is a
15 baby step in that for our country.

16 One of the things that I find with the
17 people coming through our -- you have the unique
18 situation is that we probably have, oh, I don't know,
19 a thousand to 2,000 people come through our shop
20 every year, and people are -- energy awareness is
21 very high at this point, and clean energy is really
22 important.

23 So we need to take steps as a county, as
24 a state, and as a country to rid ourselves of the oil
25 that we burn from overseas right now. I think this

1 is important. I think the Ohio Siting Board should
2 approve it, I think they should look at the benefits
3 for six, seven, and eight generations from now.

4 Q. With regard to that, does that include
5 preserving the heritage of our community?

6 A. Well, I'm not sure what you mean by
7 "heritage," Counselor.

8 Q. Well, the things that make us unique and
9 separate and apart from the other counties.

10 A. Well, I would think that if you have the
11 first wind farm in Ohio, you have new heritage. I
12 think it could be a great thing for visitors
13 traveling to Champaign County to see these beautiful
14 structures on that. So I don't think it will affect
15 our past heritage. I think it may add, maybe we will
16 have a new logo instead of "Bubbling over in
17 Champaign County," maybe we'll have "Come to
18 Champaign County and see the turbines"; I don't know.

19 Q. All right. Thank you, Don. Thank you,
20 Mr. Bauer.

21 ALJ SEE: Mr. Brown.

22 MR. BROWN: No questions.

23 ALJ SEE: Mr. Van Kley.

24 MR. VAN KLEY: Thank you, your Honor.

25 - - -

CROSS-EXAMINATION

By Mr. Van Kley:

Q. Good afternoon, Mr. Bauer.

A. Good afternoon.

Q. I think you mentioned that you had a, what's called a prelease with the wind company; is that right?

A. That's the way I understand it, yes.

Q. How long is that prelease? How many pages?

A. I don't have an idea. I haven't seen it for a while. It's in a file at home.

Q. All right.

A. It was probably four or five.

Q. Do you recall, generally speaking, what the provisions of that lease are?

A. The provisions?

Q. Yeah.

A. That we would offer Buckeye Wind an opportunity to put up a wind turbine, basically, on our farm.

Q. Does it require you to do anything else?

A. No.

Q. Does it require you to promote the wind farm?

1 A. No.

2 Q. Does it require you to testify today?

3 A. No.

4 Q. Does it contain any prohibitions from
5 making public statements that are adverse to the wind
6 farm company?

7 A. No.

8 Q. When did Buckeye Wind first approach you
9 about obtaining a prelease on your property?

10 A. I can't really -- it's been a couple
11 years. I'm not really sure of the exact date.

12 Q. Did they make you any promises if you
13 would sign this prelease?

14 A. No.

15 Q. Did Buckeye Wind provide you any
16 information with respect to the noise that was
17 anticipated to come from the turbines on your
18 property if you were to sign a lease?

19 A. No.

20 Q. Did they provide you with any warnings or
21 advisories concerning the dangers that could occur if
22 the blades fell off the turbines on your property?

23 A. No.

24 Q. Are you aware of the fact that in Europe
25 there have been instances where blades have fallen

1 off of turbines?

2 A. Only -- no, I'm not. Not -- I've not
3 personally seen that.

4 Q. So Buckeye Wind has not disclosed that
5 this is happening?

6 A. No.

7 Q. Did Buckeye Wind provide you with any
8 warnings or advisories about the risk from ice
9 falling off the turbines?

10 A. No.

11 Q. Have you had any discussions with Buckeye
12 Wind about whether the noise from these turbines is
13 going to disturb or annoy any of your neighbors?

14 A. No.

15 Q. So they never provided you with any
16 advisories concerning that issue?

17 A. No.

18 Q. Does your prelease contain any provisions
19 in it that would prohibit you from suing Buckeye Wind
20 if it caused any damage to your property?

21 A. As I remember, no. I haven't read the
22 prelease for a while.

23 Q. Okay. Do you have any information about
24 the form or the contents of the lease that you would
25 sign if Buckeye Wind would exercise its option for

1 the lease on your property?

2 A. Can you repeat that, please?

3 Q. Sure. Do you have any information about
4 the provisions that will be included in your lease if
5 Buckeye Wind exercises its option for its lease on
6 your property?

7 A. Yes, I do.

8 Q. What information do you have?

9 A. The information is a confidential matter
10 between myself and Buckeye.

11 Q. Well, I understand that you may not want
12 to reveal that information, but it's pertinent to
13 this case and you're required to answer the
14 questions. Let's just start with a general
15 description. I'm not going to ask you about prices
16 or anything that's proprietary. Let me just ask you,
17 generally speaking, what kind of information is in
18 there. Not revealing any pricing or anything of that
19 nature.

20 A. Terms of the lease, the amount of years
21 on that. The amount of acreage that would be
22 required on that. You know, the terms of the lease.
23 I mean as far as dollars, I mean, that's -- I think
24 that's proprietary information.

25 Q. I'm not interested in that information.

1 A. Okay.

2 Q. Does the lease contain any prohibitions
3 against making statements adverse to the wind
4 company?

5 A. I never read that, no.

6 Q. Okay. Does the lease have any
7 confidentiality provisions in it?

8 A. Yes.

9 Q. What kind of information is required to
10 be kept confidential?

11 A. I haven't read it for a while, so I
12 can't, you know, I'm sure that prices are
13 confidential.

14 Q. Okay. Does this lease contain any
15 provisions that would prohibit you from discussing
16 the noise from the turbines with anybody else?

17 A. No.

18 Q. Does the lease require Buckeye Wind to
19 reimburse you if its turbine harms you, your family,
20 or your property?

21 A. No.

22 Q. Does your lease require you to waive your
23 rights to require a setback between the turbine and
24 your home?

25 A. No.

1 Q. Do you know how close the turbine would
2 be to your home if it were to be sited?

3 A. Over 1,200 feet today.

4 Q. Is that a provision that you negotiated
5 with the company, how far it would be from your home?

6 A. No.

7 Q. Do you know what the basis of this
8 location is? Why was it sited in that particular
9 spot?

10 A. I think it's sited for the minimum
11 requirements, more than the minimum requirements of
12 the Ohio Power Siting Board draft.

13 Q. Okay. Are you aware that some of the
14 turbines are proposed to be sited as close as
15 914 feet away from their neighbors?

16 A. I'm not familiar.

17 Q. Based on your visits to some other wind
18 farms you are aware of how large the turbines are.

19 A. Correct.

20 Q. In fact, if you go from blade tip to
21 blade tip they would be at least the length of a
22 football field.

23 A. Yes.

24 Q. Do you know whether or not Buckeye Wind
25 will restrict your access to any of your land under

1 those turbine blades?

2 A. No, I don't know.

3 Q. Is the turbine that's going to be on your
4 land sited in a field?

5 A. I hope so. Yes, sir.

6 Q. All right. And this is a field that you
7 actively farm?

8 A. That we actively rent to be farmed.

9 Q. I see. Okay. Are you aware of any
10 prohibitions in the lease that you anticipate signing
11 that would prevent somebody from farming land under
12 those turbine blades?

13 A. Well, I would like to have you define
14 how -- what you mean, under the turbine blades. Do
15 you mean, I mean if it's right here and I'm standing
16 right next to the tower?

17 Q. No. I was referring to the blade itself
18 which from blade tip to blade tip on the other side
19 would extend about the length of a football field.
20 Are you restricted from farming anywhere --

21 A. No.

22 Q. -- under that?

23 A. No.

24 Q. Okay. Do you have any concerns or would
25 you have any concerns if you learned that there have

1 been instances where blades have fallen off about
2 farming under those blades?

3 A. No.

4 MR. PETRICOFF: Objection, your Honor,
5 there's nothing in this record that would set the
6 predicate that a blade could fall off while you're
7 farming.

8 MR. VAN KLEY: Your Honor, I think it's
9 right in the specs for the company where they warn
10 about exactly that happening.

11 MR. PETRICOFF: I'll have to have an
12 exhibit number. There's no exhibit number.

13 ALJ SEE: I'm going to overrule the
14 objection and let the witness answer the question to
15 the extent he knows.

16 THE WITNESS: Well, can I hear the
17 question again?

18 ALJ SEE: You certainly can.

19 Can you read back Mr. Van Kley's last
20 question.

21 (Record read.)

22 A. No.

23 Q. Let's talk about some of your visits to
24 some of these other wind farms. When you visited the
25 turbines in Bowling Green, did you do so as a

1 participant in a tour?

2 A. No.

3 Q. So you went there on your own.

4 A. Yes.

5 Q. Okay. Did you ask the wind farm company
6 for permission to come onto its site to visit the
7 turbines?

8 A. We didn't go onto the site. We went to
9 the public parking area.

10 Q. And how far is the public parking area
11 from the turbines?

12 A. From the two turbines that are next to
13 the parking lot I would say 6- to 800 feet. It's
14 where the kiosk is for public viewing.

15 Q. And is this a kiosk that has been set up
16 by the wind company?

17 A. No; by Bowling Green, the city. I don't
18 know, maybe it's their energy department, but it's by
19 Bowling Green, not the wind company.

20 Q. Okay. Are you aware of a recording by
21 Charles Gibson of "ABC News" of the noise from the
22 Bowling Green turbines that you can access on the
23 "ABC News" website?

24 A. No.

25 Q. How close to Route 6 were you when you

1 were observing the Bowling Green turbines?

2 A. Oh, probably 2,000 to 2,500 feet.

3 Q. Was there a fair amount of traffic on
4 Route 6 while you were there?

5 A. There was traffic on Route 6.

6 Q. And you could hear that traffic pretty
7 well?

8 A. Absolutely.

9 Q. Do you think that if somebody set up a
10 microphone and recorded the sound along Route 6,
11 that that recording would contain a lot of noise?

12 A. Do you mean right next to Route 6?

13 Q. Yes.

14 A. Yes.

15 Q. And you did hear quite a bit of noise
16 where you were standing from Route 6, right?

17 A. Yes. We heard noise.

18 Q. So the noise on Route 6 is not really a
19 realistic standard for comparing the noise from a
20 turbine, was it?

21 A. Well, we couldn't hear the turbine.

22 Q. Think that might have had something to do
23 with all the noise coming from Route 6?

24 A. No. The noise from Route 6, it was
25 intermittent. It was a Sunday morning, sir. There

1 was not that much traffic at 11 o'clock on Sunday
2 morning. A few trucks and a few cars.

3 Q. Are you aware that if you stand close to
4 the turbines, you will hear less noise than if you
5 stand further away from the turbines?

6 A. Yes. I experienced that.

7 Q. All right. Now, in your visit to Benton
8 County, Indiana, how did you go about listening for
9 the turbines?

10 A. Well, we went to a -- we were taken by
11 the Purdue extension agent to one turbine which we
12 walked up to so we did have a baseline of what the
13 noise or lack of noise was under the turbine itself.
14 We did hear a hum from the generation -- the actual
15 transmitters outside because there's a transformer --
16 I'm sorry, transformer next to the tower.

17 At approximately -- we walked back to our
18 car which was parked at about a hundred, 150 feet, we
19 heard some swish from the blade which you could not
20 hear it right underneath the turbine on that, then we
21 backed the car up approximately 600 feet away and we
22 could not hear the turbine; we could only hear the
23 wind through the corn leaves because the corn was
24 right next to the road on that. So that was from one
25 turbine.

1 Q. Before you go on --

2 A. Go ahead.

3 Q. -- let me follow up with a few more
4 questions about that part of it.

5 MR. PETRICOFF: Your Honor, shouldn't he
6 be permitted to finish his answer?

7 MR. VAN KLEY: I'll let him finish his
8 answer.

9 ALJ SEE: Let's let him do it now.
10 Go ahead, Mr. Bauer.

11 THE WITNESS: I'll finish it. I'm done.

12 Q. Okay. At the location about 600 feet
13 away when you stopped your car, did you listen to the
14 turbines through your windows?

15 A. No. We got out.

16 Q. Okay. Did you shut the car off?

17 A. Yes.

18 Q. All right. And then later you did a
19 little bit more listening, right?

20 A. Correct.

21 Q. What did you do then?

22 A. We spent approximately two hours driving
23 the roads in Benton County. We would stop along the
24 roadside, turn off the car, roll down the windows,
25 listen. We would be within, oh, a half a mile of up

1 to 26 turbines. We would be sometimes on the
2 downwind side, sometimes on the upwind side on that,
3 and we could not hear anything other than the wind
4 blowing.

5 Q. Was the wind blowing pretty hard that
6 day?

7 A. Twenty to 22 -- I would guess 20 to 22
8 miles an hour. And I'm taking that from the flags,
9 there was an American flag at one residence that was
10 approximately straight out.

11 Q. Okay. When you were in Benton County,
12 did you notice windows of homes that were blackened
13 out to keep out the shadow flicker?

14 A. No, sir.

15 Q. Did you visit any of the neighbors to
16 learn whether the turbines were annoying them?

17 A. Yes, we did.

18 Q. Okay. How many neighbors did you visit?

19 A. We visited with three different people
20 that day.

21 Q. How did you identify the persons to visit
22 with?

23 A. They were at their residence when we
24 stopped and asked if we could talk to them.

25 Q. How far were these people located from

1 the nearest turbine?

2 A. One guy was probably, he had like 26
3 turbines within 3/4 of a mile, and the closest one
4 was probably a thousand feet.

5 Q. In your visit to Fowler were you in a
6 tour group?

7 A. No.

8 Q. Where were you located when you observed
9 the turbines there?

10 A. Where?

11 Q. Uh-huh.

12 A. We were on the county roads.

13 Q. Did you make any of your observations
14 about wind turbine noise during the nighttime?

15 A. No.

16 Q. Have you ever tried to sleep in a home
17 located near a wind turbine?

18 A. No. I hope to in the future.

19 Q. Do you have a binder in front of you that
20 has a tab with a K on it?

21 A. I'm not sure.

22 Q. It should be a big white binder that
23 looks a little bit like these.

24 A. Well, there's some black ones here.

25 Q. Maybe it's a black one. Is there a K on

1 any of those?

2 A. No, not in that one.

3 Sorry, your Honor. F. Oh, yeah, here's
4 K. Yes, sir.

5 Q. All right. I'd like you to go almost to
6 L --

7 A. Okay.

8 Q. -- which would be towards the end of K.

9 A. Yep.

10 Q. Go to a document that is labeled "Plot
11 2C."

12 A. Okay.

13 Q. Now, you're familiar with the
14 neighborhood, right?

15 A. Yes.

16 Q. And would you recognize different parts
17 of the neighborhood such as towns and other
18 structures that may be depicted on a map like this?

19 A. Can we take it out of the binder?

20 Q. Sure.

21 A. Because I'm not sure which is north or
22 south.

23 Q. Okay. Let me give you a moment to review
24 that document and I'll ask you some questions about
25 it.

1 A. This is Route 36, okay. Okay.

2 Q. All right. Let's start off by directing
3 your attention to the numbers at the bottom of the
4 document. Do you see where the numbers say, from
5 left to right, 268000 then work its way to the right?

6 A. Yes.

7 Q. Go to the number 273000.

8 A. Well, it doesn't show a 3 on this one,
9 but I assume it's the third one in.

10 Q. Okay.

11 A. From the left.

12 Q. Well, it's the sixth one in from the
13 left.

14 A. Oh, 27, okay, 273000.

15 Q. Yeah.

16 A. Yes, sir. I'm sorry. I see that.

17 Q. Do you see North Ludlow Road?

18 A. Yes.

19 Q. All right. Work your way north on Ludlow
20 Road and do you see that cluster of red dots that --

21 A. On the right-hand side?

22 Q. Yeah, the right side of that road and
23 there's a word "Church" in that cluster of dots.

24 A. Yes.

25 Q. Okay. Do you recognize that as a

1 subdivision of homes?

2 A. I'm not sure if it's a subdivision, but I
3 do know that it's a group of homes.

4 Q. If you look at the legend in the upper
5 left-hand corner, towards the bottom of that legend
6 do you see a blue line for 35 dB(A)?

7 A. Yes.

8 Q. Okay. And you will notice that that
9 cluster of homes is entirely inside of that 35 dB(A)
10 line.

11 A. Well, I'm not really familiar because I
12 guess that dB(A) line is huge and goes way out. Is
13 that correct?

14 Q. Sure.

15 A. Okay. Yeah, that's true.

16 Q. Okay. Now, directing your attention to
17 another location on this map, let's go to the right
18 side of the map, directing your attention again to
19 the numbers at the bottom, the second number from the
20 right side, 2809 --

21 A. Yes, sir.

22 Q. -- 00 I guess it is.

23 A. Yes, sir.

24 Q. Work your way north on that road and
25 you'll see kind of a golden colored line.

1 A. Yes.

2 Q. And then a blue line.

3 A. Correct.

4 Q. That's the 35 dB(A) line.

5 A. Okay.

6 Q. Okay. Then working your way a little bit
7 north of that you see the homes along that road or
8 the structures along that road?

9 A. Well, if you're saying the little red
10 dots are those homes.

11 Q. Yes, sir.

12 A. I don't know if they're homes or
13 structures or what they are.

14 Q. It says they're structures.

15 A. Or unknown structures.

16 Q. Yeah, it says in the legend that they're
17 nonparticipating residences or --

18 A. Okay, what road is that, sir, because I
19 don't really recognize it?

20 Q. I was hoping you could tell me.

21 A. I don't know.

22 Q. Okay.

23 A. Is that Ault Road?

24 Q. I wouldn't know, sir.

25 A. Okay. I'm not sure. No, it's out

1 farther than that. Maybe it's -- I don't know.

2 Q. Okay.

3 A. I do see the dots.

4 Q. Do you know where South Parkview Road is?

5 A. Okay. Yeah.

6 Q. Does that appear to be South Parkview
7 Road?

8 A. That could be.

9 Q. All right. Directing your attention to a
10 document entitled Staff Report of Investigation, is
11 that on the desk in front of you?

12 MR. VAN KLEY: For the record, I'm going
13 to hand him what has been entitled Staff Report of
14 Investigation, I understand this document has not yet
15 been introduced into evidence.

16 ALJ SEE: It has not. It was docketed
17 October 13th.

18 MR. VAN KLEY: It is docketed, yes, your
19 Honor. I would like to show him this document if
20 it's okay.

21 ALJ SEE: You can approach.

22 MR. VAN KLEY: Thank you, your Honor.

23 Q. (By Mr. Van Kley) Sir, I'm going to show
24 you this document. You'll see a map, that map is
25 page 5 of appendix 2. Do you see that? Do you see

1 the yellow dots along South Parkview Road?

2 A. Yes.

3 Q. Okay. Are you familiar with those
4 structures?

5 A. Well, I know they're there.

6 Q. Okay. Are those homes?

7 A. I don't know.

8 Q. All right. I'll take it back. Thank
9 you.

10 Would you please turn to the next page of
11 the binder that you have in front of you which, for
12 the record, is Exhibit K of the application, and this
13 is another similar document. I'd like to direct your
14 attention to the upper part of that document. Do you
15 see a rather large golden circle towards the top of
16 that document?

17 A. Are we looking at plot 2D?

18 Q. Yes, sir. And go to the top of the
19 document, find the number 273000.

20 A. Yes, sir.

21 Q. Okay. And working your way down from
22 there you will see a golden line.

23 A. Yes.

24 Q. Inside of that you'll see a blue line for
25 the 35 dB(A).

1 A. Correct.

2 Q. All right. Now, right in the middle of
3 the area that is encircled by that 35 dB(A) line, do
4 you see all those red dots towards the middle?

5 A. Yes.

6 Q. Are you familiar with that area?

7 A. Yes.

8 Q. What are all those red dots in there. Is
9 that a subdivision?

10 A. Yes.

11 Q. So that entire subdivision is contained
12 within that 35 dB(A) line?

13 A. Correct.

14 Q. Okay. Go to the right side of that same
15 35 dB(A) blue contour line in the upper right-hand
16 corner of that. Do you see all those red dots in
17 there?

18 A. Yes, sir.

19 Q. Okay. Is that another subdivision?

20 A. Well, I'm not sure that's a subdivision
21 there, sir. I'm not sure what that is.

22 Q. It's a cluster of homes.

23 A. Could be. It says "Unknown structures."

24 Q. Okay. Now, if you go further down, still
25 on the right side of that contour line, you will see

1 the town of Mutual.

2 A. Correct.

3 Q. And part of that town of Mutual is inside
4 of the gold line; is that right?

5 A. Well, Mutual is not -- I don't even think
6 it's a village. It may be a village. It's not a
7 town.

8 Q. Okay. It's a collection of homes --

9 A. And I'm not really sure where the village
10 limits are.

11 Q. All right. It's a collection of homes,
12 though, is it not?

13 A. It is, and it looks like there's maybe
14 two or three inside the gold line.

15 MR. VAN KLEY: Okay. I have no further
16 questions.

17 ALJ SEE: Mr. Margard.

18 MR. MARGARD: Thank your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Margard:

22 Q. And may I say first it's good to see you
23 again, Mr. Bauer. It's been a long time.

24 A. Where do I know you from?

25 Q. We can actually discuss that --

1 A. Later.

2 Q. -- off the record, please. It is good to
3 see you again.

4 A. Good.

5 Q. And I just, I thought I'd ask if you
6 would, please, since we've been identifying points on
7 these plots, if you would identify the location of
8 your home and store for us.

9 A. Well, is there a --

10 Q. I think you're on plot 2D which is where
11 we were just looking.

12 A. Yes, sir.

13 Q. And State Route 54 is, if I'm not
14 mistaken, if you were going up --

15 A. Okay. Yes.

16 Q. -- along the bottom there at 269000.

17 A. Yes, sir.

18 Q. And can you tell us where your home is
19 relative to those reference points.

20 A. Well, if that's the number 40, I'm going
21 to need a magnifying glass, my 65-year-old eyes can't
22 see too well, but I believe there's a number at the
23 right-hand side of the first circle. Is that a 40?

24 Q. That first circle up from the bottom of
25 the page there, that's the turbine --

1 A. Well, that's the turbine and the circle
2 around the turbine and then the second circle around
3 the turbine seems to be a number there like a, I
4 don't know, a white, a black number on a white
5 background.

6 Q. Right.

7 A. That's about where our home is.

8 Q. So right there about at the 54 on the
9 map. Do you see the 54?

10 A. No, that's not ours.

11 Q. That's not yours. You're the property
12 north of that?

13 A. Well, no. You're going to have to show
14 me where we're talking about 'cause I know where we
15 live on that and I'll be glad to show you.

16 MR. MARGARD: Your Honor, if he can point
17 it out to me, perhaps I can then clarify it for the
18 record.

19 ALJ SEE: You can approach. Go ahead.

20 MR. MARGARD: Thank you.

21 Q. That's what I thought, okay.

22 A. Is that the one we were talking about?

23 Q. It's the one I was talking about.

24 A. A little farther south and to the right,
25 huh?

1 Q. On the left-hand side of the page where
2 the number says 4437000?

3 A. Correct.

4 Q. Just immediately to the right of that.

5 A. And north of that.

6 Q. Yes.

7 MR. MARGARD: Okay. I just wanted to do
8 that for clarifying the record, your Honor. That's
9 all. Thank you. I have nothing further.

10 ALJ SEE: Okay. Any redirect for
11 Mr. Bauer?

12 MR. PETRICOFF: No, your Honor, no
13 redirect. Thank you.

14 ALJ SEE: Thank you, Mr. Bauer.

15 Mr. Petricoff.

16 MR. PETRICOFF: Yes, your Honor. I'd
17 like to move for admission into evidence Buckeye
18 Exhibit No. 11, the direct prepared testimony of
19 Mr. Bauer. I'm sorry, it's 10.

20 ALJ SEE: No, it's 11.

21 MR. PETRICOFF: It was 11, okay.

22 ALJ SEE: Are there any objections to the
23 admission of Company Exhibit 11, the direct testimony
24 of Mr. Bauer?

25 MR. PETRICOFF: No.

1 ALJ SEE: Hearing none, Company Exhibit
2 11 is admitted into the record.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 ALJ SEE: Mr. Petricoff.

5 MR. PETRICOFF: Yes, your Honor, I'll
6 just go ahead and indicate now for the record that
7 that completes our direct case.

8 ALJ SEE: Let's go off the record for a
9 minute.

10 (Discussion off the record.)

11 ALJ SEE: Let's go back on the record.
12 Mr. Walker, if you want to discuss the situation with
13 your witness Ms. McKew.

14 MR. WALKER: Thank you, your Honor. On
15 Sunday I was advised by one of our witnesses, Sandra
16 McKew, that she will require immediate surgery for a
17 serious medical condition, and for that reason she
18 will be unavailable to testify in these proceedings.

19 I have discussed this with all counsel
20 except for counsel for Urbana, and we would propose,
21 first of all, to place Ms. McKew's deposition
22 transcript into the record. Both Buckeye Wind and
23 Champaign County participated in that deposition and
24 due to the fact that Ms. McKew is now available, we
25 will believe it appropriate to place that transcript

1 into the record as evidence.

2 ALJ SEE: Did you mean to say that
3 Ms. McKew is unavailable?

4 MR. WALKER: Yes, your Honor.

5 ALJ SEE: Okay.

6 MR. WALKER: In addition, your Honor, we
7 would propose to sponsor Ms. McKew's direct written
8 testimony through the testimony of Julia Johnson,
9 another witness in our case. Ms. Johnson is a
10 trustee of Union Neighbors United. Ms. Johnson was
11 instrumental in obtaining Ms. McKew's testimony
12 in this case and, in fact, assisted Ms. McKew in the
13 development of portions of her testimony.

14 I acknowledge that Ms. Johnson is not an
15 expert in land use as Ms. McKew is; however, nor was
16 Mr. Shears an expert in several of the exhibits of
17 the application which he sponsored in his testimony
18 and he was allowed to sponsor those exhibits
19 notwithstanding the demonstration of his personal
20 expertise in those areas.

21 So we would propose that Ms. Johnson
22 sponsor the testimony of Ms. McKew in a similar
23 manner.

24 ALJ SEE: Let me ask you a couple
25 questions, Mr. Walker. Were the other parties

1 notified about the deposition of Ms. McKew?

2 MR. WALKER: Yes, your Honor.

3 ALJ SEE: And Miss Johnson's background
4 is in what?

5 MR. WALKER: Ms. Johnson's background is
6 in banking, more recently she has managed her
7 family's farming interest in Champaign County. But,
8 as she will demonstrate in her testimony, for the
9 last two years she has been heavily involved in
10 discussions concerning the siting and effects of
11 industrial wind turbines and she has I believe a
12 strong back ground in the issue of wind turbines and
13 their effects.

14 ALJ SEE: Mr. Petricoff, did you want to
15 respond?

16 MR. PETRICOFF: Thank you, your Honor.
17 First, I think that, again, it's not an apt analogy
18 to talk about Mr. Shears, who is a corporate officer,
19 sponsoring studies that were done by the corporation
20 under his direction with a witness who is not a land
21 use expert, never has been a land use expert, and is
22 just outside the commonality of positions that they
23 may hold as to the wind turbines as a like example of
24 avoiding the hearsay exemption that we have for these
25 proceedings. And I would disagree and object to

1 having Mrs. Johnson sponsor and answer
2 cross-examination questions for Ms. McKew.

3 On the other hand, we did have a
4 deposition, it was a deposition that the applicant
5 had requested, a telephone deposition of Ms. McKew.
6 I would ask the Bench to give us some time to take a
7 look at that deposition to see if that would be
8 adequate to allow both the deposition and the
9 testimony of Ms. McKew to come into the record and
10 meet the high standards that the Board requires in
11 order to have the record be accurate. Thank you.

12 ALJ SEE: Go ahead, Mr. Walker.

13 MR. WALKER: Your Honor, we're certainly
14 willing to give counsel the time to review that
15 transcript and to determine whether some arrangement
16 can be made by agreement here.

17 Let me respond, however, to counsel's
18 distinction between Mr. Shears sponsoring and
19 Ms. Johnson. It was abundantly clear in Mr. Shears'
20 testimony that he was not a bat expert, that he was
21 not an economist, that he was not a hydrogeologist,
22 and I believe that there is no reason to distinguish
23 between his sponsorship and Ms. Johnson's and, in
24 fact, to make such a distinction would create a
25 double standard in this case.

1 ALJ SEE: Thank you. We'll wait until
2 Monday morning to allow Buckeye to review the
3 deposition transcript, and we will rule on the
4 request Monday morning.

5 MR. WALKER: Thank you.

6 MR. PETRICOFF: Your Honor, before we
7 leave for the day we have one other administrative
8 matter and Mr. Settineri will present that.

9 MR. SETTINERI: Previously, your Honors,
10 we had indicated that the parties present had
11 stipulated to the submittal of a confidential exhibit
12 to wind farms that Mr. Hessler testified to. At that
13 time the Bench had, I believe, in essence issued a
14 protective order based on the parties' agreement that
15 this information would be handed out to counsel, will
16 be attorneys eyes only, and with the exception of
17 Mr. Rick James, an expert for UNU, would be allowed
18 to review this information. Any testimony he gives
19 regarding the contents would be then done in camera.

20 I know at that time counsel for the city
21 of Urbana was not present as well as counsel for the
22 Farm Bureau.

23 ALJ SEE: Did you inform Mr. Weithman
24 or -- is counsel for the Farm Bureau still here?

25 MR. ARNOLD: He had to leave.

1 MR. SETTINERI: I would just like to
2 assure that the city of Urbana also would be subject
3 to that order.

4 MR. WEITHMAN: I understand. I was here
5 when you first talked about it.

6 ALJ SEE: And you do agree to abide --

7 MR. WEITHMAN: Yes.

8 MR. SETTINERI: Essentially, your Honor,
9 at this time we would propose marking the
10 confidential exhibit Buckeye Wind Confidential
11 Exhibit 12.

12 ALJ SEE: Okay.

13 MR. SETTINERI: We will distribute
14 copies, a confidential copy to the court reporter, to
15 the Bench as well, and then obviously copies to the
16 counsel will be unredacted copies.

17 Last, but not least, there was a question
18 regarding, I believe Mr. Hessler had indicated a
19 Minnesota wind farm, that will be apparent from the
20 document itself.

21 ALJ SEE: Okay.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 ALJ SEE: If that's all, the hearing is
24 adjourned until 10 a.m. Monday morning.

25 (The hearing adjourned at 3:51 p.m.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, November 13, 2009, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3469)

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Case No(s). 08-0666-EL-BGN

Summary: Transcript Transcript for hearing held on 11/13/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.