

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Republic :
Wind, LLC for a Certificate :
of Environmental :
Compatibility and Public : Case No. 17-2295-EL-BGN
Need for a Wind-Powered :
Electric Generating :
Facility in Seneca and :
Sandusky Counties, Ohio. :

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PROCEEDINGS

before Mr. Jay S. Agranoff and Ms. Anna Sanyal,
Administrative Law Judges, at the Ohio Power Siting
Board, 180 East Broad Street, Room 11-B, Columbus,
Ohio, called at 9:00 a.m. on Friday, November 15,
2019.

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VOLUME VI

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14 Intervenors.

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Friday Morning Session,
November 15, 2019.

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ALJ AGRANOFF: Why don't we go back on
the record.

Good morning. Before we actually begin
with the testimony this morning, I did want to just
tie up one pending matter that was in need of a
ruling and that was with respect to LR Exhibit 13,
and I believe that there had been a motion made for
the admission of the first two pages of LR Exhibit 13
as well as page 166 of that exhibit, and counsel
already presented their arguments on the record with
respect to that particular issue, and at this time
we're going to admit pages 1 and 2 as well as the
chart that is on page 166 of that document for which
there were questions that had been asked of the
Company witness and, for that purposes, we'll admit,
again, the chart on 166 as well as pages 1 and 2 of
LR Exhibit 13.

(EXHIBIT ADMITTED INTO EVIDENCE.)

ALJ AGRANOFF: And, at this time, are we
ready to proceed with the calling of Mr. Sasowsky?

MR. VAN KLEY: Yes.

ALJ AGRANOFF: Please do so.

1 MR. VAN KLEY: Local Residents call
2 Dr. Ira Sasowsky.

3 ALJ AGRANOFF: Please come forward, sir.
4 Right over there. Please raise your right hand.

5 (Witness sworn.)

6 ALJ AGRANOFF: Please be seated.

7 - - -

8 IRA SASOWSKY

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

11 DIRECT EXAMINATION

12 By Mr. Van Kley:

13 Q. Would you state your name for the record,
14 please.

15 A. Ira Daniel Sasowsky.

16 MR. VAN KLEY: Your Honors, at this time,
17 I would like to mark the Direct Testimony of
18 Dr. Sasowsky as our next exhibit. I want to make
19 sure I have the right number, so if I could ask the
20 Bench what my next number would be?

21 ALJ SANYAL: One moment. I think it's
22 24.

23 MR. VAN KLEY: All right.

24 ALJ AGRANOFF: It shall be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Van Kley) Dr. Sasowsky, you have
2 in front of you what's been marked as LR Exhibit 24.
3 Is that a copy of your Direct Testimony in this case?

4 A. Yes, it is.

5 Q. And was this testimony prepared by you or
6 under your supervision?

7 A. Yes, it was.

8 Q. Do you have any corrections to this
9 testimony?

10 A. No, I don't.

11 Q. If you were asked the same questions that
12 are in this testimony today, would your answers be
13 the same as what you see in the Direct Testimony in
14 front of you?

15 A. Yes.

16 MR. VAN KLEY: At this time, Your Honors,
17 Dr. Sasowsky is available for cross-examination.

18 ALJ AGRANOFF: Thank you.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Herrnstein:

22 Q. Good morning, Dr. Sasowsky.

23 Dr. Sasowsky, looking at the prefiled
24 testimony that was just marked as Exhibit LR 24, am I
25 correct that your main concern with the Republic Wind

1 project is that you believe additional investigations
2 must be undertaken to understand and account for the
3 karst features in the project area?

4 A. That sounds fair.

5 Q. Okay. And this is the first wind farm
6 project where you've offered expert testimony,
7 correct?

8 A. That's correct.

9 Q. And again, looking at the prefiled
10 testimony, in preparing that testimony did you review
11 the Ohio Revised Code or the Ohio Administrative Code
12 setting forth a wind farm's obligations with respect
13 to geological investigations?

14 A. No, I did not.

15 Q. Let's turn to the testimony itself,
16 starting with Answer 25 on page 18. In this portion
17 of your testimony you are responding to the question
18 "What additional investigation is necessary to
19 determine whether wind turbines can be constructed in
20 the Project Area without harming the public or the
21 environment," correct?

22 A. Yes.

23 Q. And in Answer 25, beginning on line 3,
24 you go on to describe investigations that you believe
25 should be conducted prior to construction, correct?

1 A. Actually, I don't exactly do that. I
2 propose questions that should be answered so that an
3 understanding could be developed.

4 Q. So questions you believe an investigation
5 should be designed to answer, correct?

6 A. Yes.

7 Q. At this time, you are not aware of
8 whether Republic intends to conduct those types of
9 investigations and answer those questions prior to
10 construction of any wind turbines, are you?

11 A. I didn't see any indication of that in
12 the materials I reviewed.

13 Q. Did you see -- you didn't see a final
14 investigatory plan, did you?

15 A. I don't believe anything like that was
16 included in the Application.

17 Q. Okay. Let's turn to Answer 27 on
18 page 19.

19 MR. VAN KLEY: Could we ask if the
20 witness's microphone is on?

21 ALJ SANYAL: It's on. You may just need
22 to move it closer to you.

23 And then, Ms. Herrnstein, can you speak
24 up as well?

25 MS. HERRNSTEIN: Absolutely.

1 THE WITNESS: Is this better?

2 MR. VAN KLEY: Yes. Thank you.

3 Q. (By Ms. Herrnstein) All right. So we're
4 at Answer 27 on page 19.

5 A. Yes.

6 Q. In this answer you were responding to the
7 question "What additional information must be
8 collected before deciding whether a turbine should be
9 constructed at a site," correct?

10 A. Yes.

11 Q. Okay. And then in Answer 27, you go on
12 to describe information that you believe should be
13 collected prior to construction, correct?

14 A. Yes.

15 Q. Okay. At this time, you are not aware of
16 whether Republic intends to collect that type of
17 information prior to construction, correct?

18 A. They gave no indication in the
19 Application that they would.

20 Q. And again, you have not seen a final
21 investigatory protocol, correct?

22 A. None has been presented to me, no.

23 Q. All right. Let's move on to Answer 32 on
24 page 21 of your prefiled testimony.

25 ALJ SANYAL: May I have the reference

1 again?

2 MS. HERRNSTEIN: Yes. Answer 32 on
3 page 21.

4 ALJ SANYAL: Thank you.

5 Q. In this portion of your testimony, you
6 are responding to the question "Is there any research
7 that describes steps that should be taken to study
8 the risks for siting a wind power project in a
9 particular area," correct?

10 A. Yes.

11 Q. And you go on to describe information
12 that you believe should be collected prior to
13 construction. If you look specifically at line 11,
14 you list "search for relevant literature, survey of
15 local experts, performing site reconnaissance,
16 drilling multiple borings per turbine, use of the
17 downhole camera, and geophysical studies," correct?

18 A. Yes.

19 Q. In your knowledge which of these tasks is
20 Republic Wind not going to do prior to construction
21 of any wind turbines?

22 A. I'm not sure how to answer that question.
23 In my knowledge which are they not going to do?

24 Q. Yup, that is the question.

25 A. Well, since I can't predict what Republic

1 Wind might do in the future, I can only go from what
2 they presented in the Application and, in the
3 Application, I didn't see anything that was
4 investigating the karst except for foundation
5 stability.

6 Q. Now, do you know whether your Answer 32,
7 on page 21, aligns with the course of investigation
8 required under the Ohio Administrative Code?

9 MR. VAN KLEY: Objection. That calls for
10 a legal conclusion.

11 MS. HERRNSTEIN: If he is aware. I mean
12 I can -- the Administrative Code sets out specific
13 things. I think it's a fair question of whether he's
14 intending to just reference those specific things or
15 if he's citing another source.

16 MR. VAN KLEY: Well, if he intended to
17 reference them, they'd be in his testimony. She's
18 asking him for a legal conclusion as to what, first
19 of all, what the Administrative Code even requires
20 which is not the witness's role to play here, it's
21 the court's role to play and to decide so, you know,
22 and, secondly, the question is so general to ask is
23 there anything in the entire Administrative Code that
24 you think is being violated by the Application,
25 essentially is the question, and it's an extremely

1 unfair question to ask him.

2 MS. HERRNSTEIN: I can ask --

3 ALJ AGRANOFF: Ms. Herrnstein, why don't
4 you just walk through a specific delineation of --

5 MS. HERRNSTEIN: Well, I think I can ask
6 a different -- a different question if that's all
7 right, and I think I just heard the answer.

8 Q. (By Ms. Herrnstein) Was it your intention
9 for your testimony to correspond to requirements in
10 the Ohio Administrative Code?

11 A. No.

12 Q. Okay. Let's go to Answer 24 on page 17
13 of your prefiled testimony. At line -- beginning at
14 line 3, you testify that -- I'm just going to read
15 it. "The information in the Application does not
16 disclose the full possible impact of the Project, nor
17 is the Project designed to minimize adverse
18 environmental impact," correct?

19 A. Correct.

20 Q. And you testified, earlier on, that you
21 did not review the Ohio Revised Code or the
22 Administrative Code in reaching this conclusion,
23 correct?

24 A. Correct.

25 Q. Okay. Are you aware that, prior to

1 instruction of any wind facilities, Republic Wind
2 would be required to attend a preconstruction
3 conference?

4 A. I believe that was mentioned in part of
5 the Application.

6 Q. Okay. And are you aware that 60 days
7 prior to that preconstruction conference, Republic
8 Wind would be required to submit a fully-detailed
9 geotechnical exploration and evaluation to confirm
10 there are no issues to preclude development of the
11 facility?

12 A. I am, in general, aware of that. I don't
13 recall that exact wording.

14 Q. Okay. I apologize if this is rehashing.
15 I'm not quite sure we've gotten the answer just yet;
16 I think probably based on my own questions. You
17 haven't seen a final design for the project yet, have
18 you?

19 A. One hasn't been put forth as far as I
20 know.

21 Q. So you haven't seen a final design for
22 any proposed turbine yet, correct?

23 A. I don't recall seeing anything like that
24 in the Application.

25 Q. So, at this point, you don't know how

1 wide each turbine foundation will be, correct?

2 A. I do not know that. I think there were
3 some examples, specifications given in the
4 Application, but I don't think there was any
5 commitment as to the size of them.

6 Q. Okay. And you don't know how deep each
7 turbine foundation will be, correct?

8 A. Correct.

9 Q. Okay. And you've never observed
10 construction of a wind facility, correct?

11 A. Correct.

12 Q. And you don't know, here, what
13 construction methods will be used by Republic Wind,
14 correct?

15 A. Well, when I reviewed the Application
16 there were several construction methods discussed
17 including the use of spread footings and so forth,
18 but I don't know exactly what they will use at each
19 site, no.

20 Q. And at this point you don't know which,
21 if any, proposed turbine locations will involve the
22 use of grouting, do you?

23 A. No, I don't.

24 Q. Do you know how long it will take to
25 construct each turbine location?

1 A. I don't recall if that was given in the
2 Application, so no.

3 Q. And you are not aware if a final design
4 for each turbine site has been created, correct?

5 A. My understanding, from the Application,
6 is that they would be designed based on site-specific
7 conditions.

8 MS. HERRNSTEIN: I have no further
9 questions. Thank you.

10 ALJ AGRANOFF: Thank you.

11 Are there clarifying questions for this
12 witness from any of the Intervenors or Staff?

13 I'll take that as a no.

14 Redirect?

15 MR. VAN KLEY: Yes. Could I have about
16 five minutes with the witness?

17 ALJ AGRANOFF: Sure.

18 (Recess taken.)

19 ALJ SANYAL: Let's get back on the record
20 and whenever you're ready to proceed.

21 MR. VAN KLEY: All right. Thank you,
22 Your Honor.

23 - - -

REDIRECT EXAMINATION

By Mr. Van Kley:

Q. Dr. Sasowsky, did you review the Application in this case?

A. Yes, I did.

Q. What portions did you personally review?

A. Any portion that addressed karst issues, surface water, groundwater, or geology.

Q. Now, with respect to your opinions in this case, does it make any difference as to the outcome of your opinions that you previously have not worked on a wind turbine case?

A. I can't think of any reason why it would.

Q. Okay. And you were asked about whether you were aware of the final turbine foundation design, and my question is, why are you not aware of that?

A. Because, to my knowledge, the final design wasn't presented in the Application.

MR. VAN KLEY: Okay. I have no further questions.

ALJ AGRANOFF: Recross?

MS. HERRNSTEIN: No, Your Honor.

ALJ AGRANOFF: Anything from the other parties?

- - -

EXAMINATION

By ALJ Agranoff:

Q. Good morning, Dr. Sasowsky. I do have a couple of questions for you. If you could please turn to page 4 of your testimony.

A. Yes.

Q. And my questions are really just for the purposes of clarifying the record and making sure that terms that are utilized in your testimony are clear as to what your intended definition of those terms are.

A. Okay.

Q. Specifically if you look on page 4, line 1, and you make reference to sinkholes, caves, and underground drainage. If you could please give me some context for those three terms?

A. Sure. So I'm going to flip back to the beginning of the page. That's actually a quote from the Glossary definition, but sinkholes are closed depressions on the land surface meaning that they point downward towards the center. They can be conceived of sort of if rainfall fell into them, it wouldn't generally flow out of them because they were drained internally down to the bottom of the

1 sinkhole.

2 Caves are generally considered to be
3 humanly-enterable openings within the rock; so those
4 openings that would be big enough for humans to get
5 into.

6 And underground drainage refers to the
7 movement of water in the subsurface. In this case
8 particularly through larger openings that wouldn't be
9 present in other types of rocks. In general,
10 groundwater moves through tiny little openings in the
11 rocks in materials such as sandstone and so forth,
12 but in these carbonate rocks you can have what would
13 might colloquially be called underground streams or
14 underground rivers.

15 Q. Then on line 6 of your testimony, you
16 indicate that "The primary features of karst regions
17 are sinkholes and caves, along with disappearing
18 streams." Can you give me some context as to what a
19 disappearing stream is?

20 A. Yes. Most surface streams, in non-karst
21 areas, flow and then join up with streams and become
22 bigger streams and then join with larger streams and
23 then eventually drain to regional water bodies.

24 But in karst areas, disappearing or
25 sinking streams are quite common where the stream

1 flows into a crack in the rock or a sinkhole and just
2 goes into the groundwater system that way. It
3 doesn't directly join any other surface streams.

4 Q. And if you could please turn to page 6 of
5 your testimony.

6 A. Yes.

7 Q. And Question 11, you were asked "Have you
8 conducted any karst studies on behalf of any
9 governmental agencies" and then you have a discussion
10 as to those studies.

11 A. Yes.

12 Q. The two projects you discuss, where are
13 they in relationship to the project area in this
14 case?

15 A. The first project mentioned, which was
16 supported by the U.S. EPA through the Ohio EPA,
17 directly overlaps the study area and goes beyond the
18 bounds of the Republic Wind project, both to the
19 north and to the south.

20 The second project, which was the USDA
21 project, was of a more general nature and did not
22 have specific overlap with the Republic Wind project
23 area, except maybe we refer to some literature that
24 we had seen for that area, but it was designed to be
25 a national- or even an international-scope study.

1 Q. And then on page 7 of your testimony,
2 specifically the last paragraph in your answer to
3 Question 12, I'm trying to understand when you
4 indicate that the study results resulted in something
5 not appearing to be karst but it had karst behavior,
6 could you try to explain that for me a little bit
7 better how it could be karst behavior but not karst
8 itself?

9 A. Yes. I'm sorry that wasn't so clear in
10 my original testimony.

11 I guess what I'm trying to convey here is
12 that if we walk across a landscape and we see
13 sinkholes on it and we see caves and that sort of
14 thing, we can easily say this is a karst area because
15 the features are very apparent to us.

16 But in areas like where the Republic Wind
17 project is, those features, you know, in many
18 instances have been buried by later activity,
19 particularly glacial activity which sort of laid a
20 blanket of material on top of the karst features; so
21 the karst remains below the land surface but it's not
22 immediately apparent when we just look at it from the
23 top. The only way it may be apparent is if we
24 conduct borings or do regional studies, conduct dye
25 traces and things like that.

1 So what I mean by karst behavior that's
2 in particular is fast groundwater flow through open
3 channels that are underneath the surface. If we have
4 a typical karst we can see water is flowing into
5 these sinkholes and it's rushing into the ground and
6 it's disappearing. But in areas like this part of
7 the Bellevue-Castalia Karst Plain, we don't typically
8 have those surface indicators and so we have to look
9 very carefully to understand what's going on in the
10 subsurface.

11 Q. So is there a distinction between saying
12 something could have karst features and could be
13 karst but it's just not visible, versus saying that
14 it's a pre-karst state of being?

15 A. I think that could apply in some
16 instances but I don't think that applies in this
17 case. In this instance it's more that the karst
18 already existed and then it was obscured by later
19 geological processes.

20 Sorry, I don't feel like I'm explaining
21 very well in this case.

22 I guess maybe just as an illustration if
23 you could imagine if we looked at a landscape, maybe
24 we're up in a plane and we're looking down and we see
25 there are a lot of low spots that may be sinkholes

1 or, you know, depressions of some sort, and then if
2 we came in and we laid over a layer of sediment all
3 over, that sort of blanketed over, we would no longer
4 see those underlying sinkholes but they're still
5 there and they can still have a hydrologic function
6 of bringing water down into the ground, it's just
7 that they've been obscured.

8 Q. And then on page 8 of your testimony,
9 line 2 --

10 A. Yes.

11 Q. -- you make reference to "many identified
12 karst features." What are those features?

13 A. In that case I was referring to the
14 published map by the Geological Survey, and I don't
15 know the precise answer to that but my intuition is
16 most of those are sinkholes.

17 Q. In order to be a karst condition, are
18 sinkholes always required to be present?

19 A. No.

20 Q. If you could turn to page 15 of your
21 testimony.

22 A. Yes.

23 Q. And specifically on line 8 -- I'm sorry,
24 line 9.

25 A. Yes.

1 Q. You make reference to "source water
2 protection areas." Could you define for me what a
3 source water protection area is?

4 A. So whenever we extract water from the
5 ground it comes from a certain source, an underlying
6 aquifer typically, and the source water protection
7 area is an area that has been delineated as requiring
8 extra concern or protection.

9 In other words, you know, if we had a
10 piece of land that was the recharge area, in other
11 words the source of water that would go into an
12 aquifer, we might limit activities that could
13 potentially pollute that groundwater because the
14 water resource would need to be protected.

15 - - -

16 EXAMINATION

17 By ALJ Sanyal:

18 Q. Mr. Sasowsky, I'm focusing on pages 6 and
19 7 of your testimony, but in general you appear to
20 have significant experience with karst research in
21 this area, correct?

22 A. Yes.

23 Q. Okay. And I think in several areas of
24 your testimony you say that there is karst or karst
25 behavior present in a substantial portion of the

1 project area.

2 A. Yes.

3 Q. So could you give us an approximation,
4 what do you mean by "substantial"? Like, is it more
5 than 50 percent, is it 75 percent?

6 A. Can I look at my exhibit --

7 Q. Yeah.

8 A. -- to --

9 Q. Sure.

10 A. I would say --

11 Q. Let me know which exhibit you're looking
12 at.

13 A. Pardon me?

14 Q. Is it D?

15 A. Exhibit D, yes.

16 Q. Okay.

17 A. By area and just sort of estimating, you
18 know, what I see here in this exhibit, I would say at
19 least 70 percent and possibly 100 percent.

20 Q. And that would include, just to clarify,
21 either karst or potential karst behavior?

22 A. Yes.

23 ALJ AGRANOFF: Based on the questions
24 that the Bench had, are there any follow-up from
25 counsel?

1 MR. VAN KLEY: I have one or two.

2 ALJ AGRANOFF: Mr. Van Kley.

3 - - -

4 FURTHER REDIRECT EXAMINATION

5 By Mr. Van Kley:

6 Q. Dr. Sasowsky, following up on the
7 question about whether the presence of karst always
8 depends on the presence of sinkholes, can you
9 elaborate on your answer to that question that it
10 does not?

11 A. Sure. There are at least two ways that
12 we can have that situation.

13 In this area, the main issue seems to be
14 that the existing sinkholes were covered up; they
15 were obscured by a blanket of glacial material.

16 You can also have substantial karst
17 developed in certain settings that are not linked to
18 surface water, they're linked solely to groundwater,
19 and in those cases we can develop very massive cave
20 systems and underground drainage with virtually no
21 surface expression of the karst. Probably the best
22 known examples of that are in New Mexico with
23 Carlsbad Caverns National Park in the Guadalupe
24 Mountains, but there are other examples, all over the
25 world, where we have significant karst and basically

1 zero sinkholes.

2 MR. VAN KLEY: Okay. I have nothing
3 further.

4 ALJ AGRANOFF: Counsel for any of the
5 other parties?

6 MS. HERRNSTEIN: Just one question if I
7 may?

8 ALJ AGRANOFF: Sure.

9 - - -

10 RECROSS-EXAMINATION

11 By Ms. Herrnstein:

12 Q. Dr. Sasowsky, is there anything you've
13 seen in Republic Wind's Application indicating that
14 its investigation into karst features would be
15 limited to looking for surface expressions?

16 A. I didn't -- don't recall seeing anything
17 that indicated they would really investigate karst
18 features except with respect to foundation stability;
19 so no, I didn't see anything that said it would be
20 limited.

21 MS. HERRNSTEIN: That's all I have.

22 ALJ AGRANOFF: Thank you.

23 Thank you very much, Dr. Sasowsky.

24 THE WITNESS: Thank you.

25 ALJ AGRANOFF: At this time,

1 Mr. Van Kley, do you seek the admission of
2 LR Exhibit 24?

3 MR. VAN KLEY: Yes, Your Honor.

4 ALJ AGRANOFF: Any objections?

5 There being none, LR Exhibit 24 shall be
6 admitted as part of the record at this time.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 ALJ AGRANOFF: Is our next witness going
9 to be Mr. Newman?

10 MR. DeVINE: It's going to my next
11 witness, Your Honor.

12 ALJ AGRANOFF: Oh, I'm sorry.

13 ALJ SANYAL: Mr. Newman.

14 MR. DeVINE: Mr. Newman is here, yes.

15 (Witness sworn.)

16 ALJ SANYAL: And then I think you still
17 have someone else's testimony on the --

18 MR. SASOWSKY: Sorry, I left it up there.

19 MS. HERRNSTEIN: What do you want me to
20 do with it?

21 ALJ SANYAL: I'll take it or someone can
22 give it to Mr. Van Kley.

23 MS. HERRNSTEIN: I can do that.

24 ALJ SANYAL: Thank you. I appreciate it.
25 What are we marking this as?

1212

1 MR. DeVINE: Seneca County Exhibit 2.

2 ALJ SANYAL: Not "Park District," okay.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 - - -

5 BRADLEY NEWMAN

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

8 DIRECT EXAMINATION

9 By Mr. DeVine:

10 Q. Can you please state your name for the
11 record.

12 A. Bradley Newman.

13 Q. Okay. And I'm going to hand you what's
14 been marked Seneca County Exhibit 2. Are you
15 familiar with Seneca County Exhibit 2?

16 A. Yes, I am.

17 Q. And what is Seneca County Exhibit 2?

18 A. It's my testimony. Direct Testimony from
19 Brad Newman as the airport manager.

20 Q. Okay.

21 A. And it has who I am.

22 ALJ SANYAL: Mr. Newman, you're going to
23 have to speak into the microphone because I don't
24 think our court reporter can hear you very well.

25 THE WITNESS: I'm sorry.

1 ALJ SANYAL: Thank you.

2 Q. Was Seneca County Exhibit 2 prepared by
3 you or at your direction?

4 A. Yes, by me.

5 Q. And as you sit here now, are you aware of
6 any corrections that need to be made to your
7 testimony?

8 A. No corrections.

9 MR. DeVINE: At this point, we would
10 tender Mr. Newman for cross-examination.

11 ALJ SANYAL: Thank you.

12 Ms. Sheely.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Sheely:

16 Q. Good morning. My name is Sommer Sheely.
17 I represent Republic Wind. We met by telephone at
18 your deposition. You are the manager of the Seneca
19 County Airport, yes?

20 A. That is correct.

21 Q. And you are also the owner of Tiffin Aire
22 which is a privately-held company that operates the
23 airport, correct?

24 A. That is correct.

25 Q. And Tiffin Aire is the only service

1 company that operates the Seneca County Airport,
2 correct?

3 A. Operates it, but other people use it.

4 Q. Operates, yes.

5 A. Yes.

6 Q. How is Tiffin Aire compensated by the
7 airport for providing that service?

8 A. We just have a contract with -- I pay
9 them a dollar a year for the right to -- to operate
10 on the airport and we provide a service at our own
11 expense.

12 Q. Mr. Newman, you are not being presented
13 here as an expert in aviation, correct?

14 A. As not an expert?

15 Q. You are not being presented as an expert
16 witness in aviation, correct?

17 A. I thought that was why I was here. I'm
18 very knowledgeable about aviation.

19 MS. SHEELY: Well, I guess I would like
20 to clarify on the record that this witness has not
21 been identified as an expert witness in aviation and
22 therefore he's here to testify, although he has
23 knowledge in aviation, as a fact witness; is that
24 correct?

25 MR. DeVINE: He's being called as a fact

1 witness but, as indicated in his testimony, he is a
2 licensed pilot and has various qualifications in the
3 aeronautics industry.

4 MS. SHEELY: So is he being called as an
5 expert witness or not called as an expert witness?

6 ALJ SANYAL: I think Mr. DeVine's
7 indicated he's a fact witness, correct?

8 MR. DeVINE: The testimony that's
9 presented, I would suggest, speaks for itself as to
10 whether -- as to his testimony. And whether you want
11 to call him an expert or a fact witness, I think
12 depends more on the cross-examination of what you're
13 going to ask him. Clearly he's qualified to answer
14 questions related to aeronautics.

15 MS. SHEELY: Respectfully, Your Honors,
16 there's a key difference in how a witness can testify
17 if he's an expert witness and disclosed as such
18 versus a fact witness.

19 For example, he, as an expert, would be
20 permitted to render opinions, whereas he would not as
21 a fact witness, and that's where I'm looking to
22 clarify, especially given I thought this would be an
23 easy answer because he's not been previously
24 disclosed as an expert witness.

25 ALJ SANYAL: Do you have a response?

1 MR. DeVINE: I think --

2 ALJ SANYAL: I also think -- I mean is he
3 a fact or an expert witness?

4 MR. DeVINE: He is a fact witness and
5 that's the testimony that's been presented, and if
6 she doesn't ask him expert questions then -- then I
7 don't think it's an issue.

8 MR. VAN KLEY: I guess I would also even
9 question the premise of counsel's question which is
10 premised on the assumption that there was something
11 that we had to file with the Board, stating whether
12 or not a witness is a fact witness or an expert
13 witness and that's just not the case. The testimony
14 speaks for itself as to whether he's rendering an
15 expert opinion or just factual opinion.

16 MS. SHEELY: At this point, I guess he
17 was indicated to be a fact witness on numerous
18 occasions before the hearing started. To the extent
19 he attempts to render what would be expert opinions,
20 I'll move to strike those as we go, but hopefully
21 that won't occur.

22 ALJ SANYAL: I think that works for the
23 Bench.

24 MS. SHEELY: Okay.

25 Q. (By Ms. Sheely) The Sandusky -- excuse

1 me. The Seneca County Airport is uncontrolled
2 airspace, meaning anyone can use it, right?

3 A. From the surface to 700 feet above the
4 ground, that's correct.

5 Q. And are you aware, one way or the other,
6 of whether that is the same with the Fostoria and
7 Sandusky airports that are in the area?

8 A. They're all the same.

9 Q. Do you know the distance, as the crow
10 flies, between the Seneca County Airport and the
11 nearest proposed turbine location for the Republic
12 Wind project?

13 A. The exact location, no, but it's inside
14 our 10 -- 12-mile circle.

15 Q. But it's more than 10 miles, correct?

16 A. It could very well be.

17 Q. So you believe it's more than 10 miles?

18 A. If I could see the map, I could verify
19 that.

20 Q. I'm asking if you know, one way or the
21 other, whether it's 10 miles or more.

22 A. No.

23 Q. You do not know.

24 Do you know the flight distances between
25 the Seneca County Airport and either Fostoria or

1 Sandusky?

2 A. Sure.

3 Q. What are those flight distances?

4 A. Sandusky County is probably approximately
5 12-mile and Fostoria is about 8-mile.

6 ALJ AGRANOFF: Those are the distances
7 between what points?

8 Q. I was asking -- I think this is what you
9 answered but correct me if I'm wrong, between the
10 Seneca County Airport and those two other airports by
11 flight.

12 A. Straight-line flight, yes.

13 Q. The controller for Seneca County Airport
14 is Toledo and, to some degree, Cleveland, correct?

15 A. That's correct.

16 Q. Do you know whether that's the same for
17 Fostoria and Sandusky?

18 A. Fostoria would be all Toledo, the
19 borderline airspace where we're at, and Sandusky
20 County would be all Toledo.

21 Q. Seneca County Airport doesn't have a
22 record of the types of approaches used for the
23 flights coming into it, correct?

24 A. That is correct.

25 Q. And that would be because that's a

1 pilot's decision that's based upon the weather at the
2 time?

3 A. Pilot's decision and what's operating,
4 that's correct.

5 Q. And that would be done in coordination
6 with Toledo Approach and, to some degree, as we
7 mentioned for Seneca County, Cleveland? Yes?

8 A. It would be coordinated between the pilot
9 and Toledo Approach, that's correct.

10 Q. Do you agree the FAA has oversight for
11 safety considerations as they relate to air traffic?

12 A. For air traffic, yes.

13 Q. You, on behalf of the Seneca County
14 Airport, submitted a written comment before the FAA
15 issued its Determination of No Hazard for the
16 Republic Wind project; is that correct?

17 A. That's correct.

18 Q. I'd like us to take a look at Staff
19 Exhibit 4, and we're actually looking at, if you
20 would, it doesn't have internal page numbers but it's
21 an April 11 letter on Tiffin Aire Inc. letterhead.
22 It's toward the back of the exhibit.

23 MR. DEVINE: I don't know if the witness
24 has the exhibit.

25 MS. SHEELY: Oh, I'm sorry.

1 MR. DeVINE: He's looking at his
2 transcript.

3 MS. SHEELY: That's his transcript.
4 Actually, it's in there too, but I would be happy to
5 give him the correct copy of the exhibit if that's
6 what you prefer.

7 MR. VAN KLEY: Can we have an
8 identification of what Exhibit 4 is?

9 MS. SHEELY: Yes. It's the September 27,
10 2019 ODOT letter.

11 May I approach?

12 ALJ SANYAL: Yes.

13 ALJ AGRANOFF: It's the letter that was
14 written to Mr. Conway of the Board Staff.

15 Q. (By Ms. Sheely) Looking at that page, do
16 you recognize this letter dated April 11, 2018?

17 A. Yes, I do.

18 Q. Did you author it and submit it to
19 Mr. Paul Holmquist at the FAA as indicated on the
20 letter?

21 A. That is correct.

22 Q. And in this letter you were outlining
23 some concerns that you had in your role as the
24 president of Tiffin Aire Inc. and the manager of the
25 Seneca County Airport?

1 A. That is correct.

2 Q. Are you familiar with the FAA's
3 Determination of No Hazard that was issued for the
4 Republic Wind project on June 26, 2019?

5 A. Yes, I am.

6 Q. And if you would, if you turn earlier, a
7 couple of pages there, and I can help if you need it.
8 It's within the same exhibit but it's the beginning
9 of the Determination of No Hazard letter. Do you see
10 where I am? It's actually earlier in the packet than
11 that.

12 A. Earlier?

13 Q. Yes.

14 MS. BAIR: Are you looking at the letter
15 to Dalton Carr?

16 MS. SHEELY: No, I'm looking at the --
17 yes, actually it is to Dalton Carr.

18 MS. BAIR: On 6/26/19?

19 MS. SHEELY: That's correct.

20 MS. BAIR: Okay.

21 Q. (By Ms. Sheely) Have you found that
22 letter?

23 A. Yes, I did.

24 Q. I see the seal on the top there. Are you
25 familiar with this letter?

1 A. Yes, I am.

2 Q. Okay. You agree this is the FAA's
3 Determination of No Hazard for the Republic Wind
4 project, dated June 26, 2019?

5 A. Yes.

6 Q. Do you have any reason to believe that
7 the FAA didn't take the concerns into consideration,
8 that you included in your April 11, 2018 letter, when
9 issuing this Determination of No Hazard?

10 A. I think they did but they decided to move
11 our initial approach altitude up and our missed
12 approach altitude approach up and that would solve
13 the problem.

14 Q. And to what did they raise the altitude?

15 A. From where we're at right now at
16 2,400 feet MSL to 3,000 feet MSL.

17 ALJ AGRANOFF: What is MSL?

18 THE WITNESS: Mean sea level. Above sea
19 level.

20 Q. Can you take a moment and show me where
21 in this letter would indicate the FAA was raising
22 those minimum altitudes from 2,400 to 3,000?

23 A. It wasn't in this letter.

24 Q. Okay. So it appears in a different
25 letter?

1 A. Yes, it did.

2 Q. Do you know the date of that letter?

3 A. I do not know the date.

4 Q. Do you know whether it was before or
5 after this letter?

6 A. It was after this letter. The effects
7 of -- of -- it said they would have no substantial
8 adverse effects on the safe and efficient utilization
9 of the airspace by aircraft.

10 Q. Can you turn to page 6 of 15 within that
11 Determination of No Hazard letter.

12 A. Sure.

13 Q. As you look down page 6 and it continues
14 through page 10, you agree with me that that is a
15 listing of specific determinations with respect to
16 the minimum descent altitude for Seneca County
17 Airport, correct?

18 A. That is correct.

19 Q. And would you agree with me that here the
20 FAA is indicating that the minimum descent altitude
21 be increased from 2,400 feet to only 2,500 feet, not
22 3,000 feet, correct?

23 A. On -- I don't believe that's on every
24 instance.

25 Q. If you need to take a moment and look,

1 that's fine.

2 A. Okay, that's what they're showing.

3 Q. Do you have any reason to think that this
4 letter, which was attached to the September 27, 2019
5 determination letter from Mr. Stains at ODOT, is not
6 the correct FAA Determination of No Hazard letter for
7 the Republic Wind project?

8 A. No, it should be correct.

9 Q. And would you agree with me that this
10 Determination of No Hazard letter also references the
11 Fostoria Airport and the Sandusky Airport?

12 A. Yes.

13 Q. Of the three airports that I just
14 mentioned, including Seneca County, you would agree
15 that Seneca County is the only one that has the NDB
16 approach in use?

17 A. That is correct.

18 Q. Do you know, one way or the other,
19 whether Fostoria phased it out more than two years
20 ago?

21 A. They have decommissioned theirs. I can't
22 tell you the date.

23 Q. And do you know, one way or the other,
24 whether the Sandusky Airport, which was built in
25 1998, never had NDB because it was considered, by the

1 FAA, outdated technology at that time?

2 A. They've never had an NDB approach.

3 Q. So you agree that the FAA did not permit
4 Sandusky to build NDB when it was built in 1998?

5 A. That's really not an FAA determination.

6 Q. Okay. But you know that Sandusky did not
7 build an NDB approach.

8 A. They did not have an NDB approach, that's
9 correct.

10 Q. So you would agree then that any concern
11 that was conveyed to ODOT or taken into consideration
12 by ODOT about an NDB approach would be limited to the
13 Seneca County Airport, correct?

14 A. That is correct.

15 Q. Do you also agree the NDB is not the only
16 ground-based approach into the Seneca County Airport?

17 A. That is the only ground-based approach.

18 Q. Is VOR a ground-based approach?

19 A. That is.

20 Q. Is VOR available into runway 6 at the
21 Seneca County Airport?

22 A. Off of Findlay.

23 Q. So NDB is --

24 ALJ AGRANOFF: What is VOR?

25 Q. Sir, can you define VOR?

1 A. It's a station on the ground that we use
2 for navigation. We have cockpit indications when we
3 go to it and go from it and it's a ground-based
4 station. They're located all over the country for
5 certain areas for navigation. It was before GPS came
6 about.

7 ALJ AGRANOFF: What does "VOR" stand for?

8 THE WITNESS: Basically it's a
9 ground-based --

10 ALJ AGRANOFF: The acronym.

11 THE WITNESS: I can't answer that. I
12 can't answer that.

13 MS. SHEELY: Have you -- have you had NDB
14 defined? If not, I would ask the witness --

15 THE WITNESS: Non-directional beacon.

16 Q. (By Ms. Sheely) And that is an item that
17 is available for the pilot to look at on the ground
18 to assist in landing the aircraft?

19 A. He has indications to it, yes.

20 Q. You do not have data available for the
21 number of NDB approaches that are used at the Seneca
22 County Airport, correct?

23 A. That is correct.

24 Q. Because that information is not tracked.

25 A. Under IFR it is, but under visual flight

1 rules it's not.

2 Q. Okay. When you say "IFR," what do you
3 mean by that?

4 A. Instrument flight rules when they're in
5 radar with Toledo Approach.

6 Q. So if a flight is coming in, using
7 instruments in coordination with Toledo Approach,
8 Toledo Approach may have some information about that.

9 A. That is correct.

10 Q. Did you gather that information from
11 Toledo Approach for purposes of providing it to ODOT?

12 A. No. I just did it from the training
13 side.

14 Q. Okay. By "training," you mean that
15 training other pilots is something that your airport
16 is used for, correct?

17 A. That is correct.

18 Q. And so you would agree that training
19 represents about 15 percent of the total usage of the
20 airport?

21 A. That is correct.

22 Q. Of the training operations that represent
23 15 percent of the usage of the airport, what
24 percentage involve flying an NDB approach if you
25 know?

1 A. Say that question again.

2 Q. Of the training operations, which you
3 just said represent about 15 percent of the total
4 usage of the airport, about what percent of those
5 involve flying an NDB approach if you know?

6 A. Yeah, I didn't -- I can't tell you the
7 percentage but it's -- I'm a pilot examiner for the
8 FAA and we have to do two non-precision approaches.

9 Q. When you say a "non-precision approach,"
10 an NDB is an example of a non-precision approach?

11 A. That is correct, along with VOR.

12 Q. And so, VOR is also available as a
13 non-precision approach.

14 A. That's correct.

15 Q. Are you familiar with whether or not the
16 FAA proposed that there be any increase in the
17 minimum descent altitude for Sandusky Airport?

18 A. I'm not familiar. I know Fostoria was
19 going to have a little increase but I'm not familiar
20 with Sandusky County.

21 Q. Are you familiar with the fact that the
22 Fostoria increase was proposed to be 100 feet by the
23 FAA?

24 A. Yes.

25 Q. Do you agree now, having looked at the

1 FAA Determination of No Hazard, that the proposed
2 increase for Seneca County was also 100 feet?

3 A. It was somewhere on one of the records
4 that we had from ODOT or somebody, it said they're
5 going to increase ours to 3,000 and that's where I
6 came from that decision.

7 Q. Do you have any reason, sitting here
8 today, to believe that the increase for Seneca County
9 is going to be to 3,000 as opposed to 2,500, as
10 indicated in this FAA Determination of No Hazard?

11 MR. VAN KLEY: Objection. It's just been
12 answered in response to the previous question.

13 ALJ SANYAL: Overruled.

14 A. I know we've discussed it, and I do not
15 see it here in the FAA's report.

16 Q. The increase in a minimum descent
17 altitude, as set forth in the Determination of No
18 Hazard, is to address any potential safety
19 consideration with the presence of the turbines,
20 correct?

21 A. That is correct.

22 Q. You don't have any data, sitting here
23 today, on the number of flights that would be
24 affected by an increase in the minimum descent
25 altitude, correct?

1 A. That is correct.

2 Q. Is it also correct to say that you had
3 raised a concern about the change in the descent
4 angle if the minimum descent altitude is increased,
5 correct?

6 A. That is correct.

7 Q. You agree with me that the change in the
8 descent angle would be smaller if the minimum descent
9 altitude is only raised by 100 feet as opposed to
10 raised by 600 feet to 3,000 as you'd originally
11 stated?

12 A. That's correct.

13 Q. Do you know, one way or the other, what
14 the percent change in the descent angle would be if
15 the increase in the minimum descent altitude is from
16 2,400 to 2,500 feet?

17 A. We're under 3 degrees now so it would --
18 it would be bumping up a tad.

19 Q. Maybe .1 percent?

20 A. Probably .1.

21 Q. Something like that? Yes?

22 A. Yes.

23 Q. You communicated with Mr. Stains on a
24 number of occasions about your concerns about the
25 project, correct?

1 A. That is correct.

2 Q. And that's Mr. Stains with the Ohio
3 Department of Transportation?

4 A. That's correct.

5 Q. In the course of your communications with
6 either the FAA or ODOT, you did not provide any
7 analysis from any technical manuals to either of
8 them, correct?

9 A. I don't believe so, no.

10 Q. You are familiar with ODOT's July 18,
11 2019 letter, and we can turn to that, that would be
12 Applicant Exhibit 37. Actually, if you give me a
13 second, I'll assist to get to the correct page here.

14 Okay. You're looking at Applicant
15 Exhibit 37 now?

16 A. That is correct.

17 Q. Are you familiar with that letter?

18 A. Yes.

19 Q. You would agree that your comment on
20 April 11, 2018, to the FAA, was submitted before this
21 letter was issued by ODOT?

22 A. By the dates, yes.

23 Q. Do you have any reason to believe that
24 ODOT did not take the comments in your April 11, 2018
25 letter into consideration before publishing this on

1 July 18, 2019?

2 A. All's I know is we had to reapply because
3 they had the town wrong in the beginning.

4 Q. And what do you mean "they had the town
5 wrong"?

6 A. In the first public record from the FAA,
7 it was Bloomfield, Ohio, instead of Bloomville, Ohio.

8 Q. Are you familiar with the fact that that
9 publication error with respect to Bloomfield and
10 Bloomville did not appear in the Republic Wind
11 application but, in fact, appeared in the application
12 for another completely separate project being applied
13 for by a company called sPower?

14 A. All's we were notified by ODOT that this
15 was in our -- in the airport territory, so.

16 Q. I guess my question was whether you're
17 aware that there was no publication error with
18 respect to Republic Wind's application pertaining to
19 Bloomfield and Bloomville. Are you aware of that?

20 A. I can't answer that question.

21 Q. So when you just said there was a
22 publication error with respect to Bloomfield and
23 Bloomville, you do not know that to be with respect
24 to the Republic Wind project, correct?

25 A. That's correct.

1 ALJ AGRANOFF: And if I could just get a
2 clarification. Mr. Newman, when you were referencing
3 a need to reapply, what were you speaking
4 specifically about?

5 THE WITNESS: ODOT told us they're going
6 to reapply because of the wrong name, they had
7 Bloomfield instead of Bloomville, Ohio, and
8 Bloomville would affect our operation and so the
9 comments had to be resubmitted. We had to reapply
10 because -- it was reapplied for. The right town was
11 entered into the study.

12 ALJ AGRANOFF: So you're indicating that
13 you to had reapply your comments in what docket?
14 What were you reapplying in? What was the --

15 THE WITNESS: The ohioprotect.gov, our
16 local agency, and to the FAA.

17 ALJ AGRANOFF: Okay.

18 Q. (By Ms. Sheely) You are not saying here
19 today that Republic Wind had a publication error that
20 caused Republic Wind to need to refile its
21 application, correct?

22 A. I can't say that. All's I went by was
23 what the FAA had asked for comments on.

24 Q. Were you ever told, by either the FAA or
25 ODOT, that Republic Wind, as opposed to some other

1 company, needed to reapply because it had a
2 publication error pertaining to Bloomfield and
3 Bloomville?

4 A. It probably didn't matter to us who it
5 was. All's I knew is when we looked at the
6 coordinates compared to the towns that it affected
7 us.

8 Q. So when you answered me a moment ago and
9 I was asking questions about whether or not ODOT took
10 into consideration the comments in your April 11,
11 2018 letter when it issued its July 18, 2018 letter,
12 I believe you answered me stating that there was a
13 need to reapply because of this publication error,
14 correct?

15 A. That's correct.

16 Q. Do you agree with me now that that does
17 not apply to this project and this company?

18 MR. DeVINE: I'm going to object, Your
19 Honor. It's been asked and answered. He said he
20 doesn't know.

21 A. I don't know what company. It doesn't
22 matter to us what company. It matters with the State
23 and the -- and the FAA.

24 Q. Okay. What I'm trying to get at is
25 whether you were advised by ODOT that there was an

1 opportunity or a need to resubmit your comments
2 because of this publication error in this case.

3 MR. DeVINE: I'm going to object, Your
4 Honor. It's been asked and answered now at least
5 three times.

6 MS. SHEELY: That one hasn't been to my
7 knowledge, but I apologize if so.

8 ALJ SANYAL: Ms. Sheely, I think we can
9 just move on.

10 MS. SHEELY: Okay.

11 Q. (By Ms. Sheely) So if you can, I would
12 like you to finish your answer as to whether you have
13 any reason to believe that ODOT didn't take into
14 consideration the concerns you raised in April 2018
15 when it issued its July 2018 letter.

16 A. Was the letter 19?

17 Q. 18?

18 A. The first one was 18.

19 Q. The one that is Applicant's Exhibit 37 in
20 front of you.

21 A. Yeah, they did, they took it into
22 consideration.

23 Q. And you agree this letter does not take
24 the position that 33 of the proposed turbines should
25 not be constructed, correct?

1 MR. DeVINE: I'm going to ask for
2 clarification on what document we're looking at.

3 MS. SHEELY: Applicant's Exhibit 37 which
4 is the July 18, 2019 --

5 MR. DeVINE: Okay.

6 MS. SHEELY: -- letter. And I apologize
7 if I misspoke on the year.

8 A. I think -- I think all the comments that
9 we had, no matter what date, were taken into
10 consideration by ODOT.

11 Q. After this July 18, 2019 letter, you
12 continued to communicate with ODOT and Mr. Stains?

13 A. That is correct.

14 Q. And you spoke with him a minimum of five
15 times you would say?

16 A. I would say, I believe.

17 Q. You did not, though, provide any
18 additional data to ODOT or Mr. Stains on the number
19 of NDB approaches that you believe would be impacted
20 by an increase in the minimum descent altitude,
21 correct?

22 A. We didn't have an increase in the -- none
23 of them were an increase in the minimum descent
24 altitude. It was the initial approach altitude.

25 Q. Okay. Did you express to Mr. Stains that

1 you wanted to protect the full extent of the
2 approaches into Seneca County Airport and not just
3 the final approach?

4 A. That is correct.

5 Q. How did you communicate that to
6 Mr. Stains?

7 A. I -- verbally.

8 Q. Okay. And looking at -- based upon the
9 September 27, 2019 letter issued by ODOT, did
10 Mr. Stains take into consideration and follow those
11 instructions to protect the utility of the NDB
12 approach at Seneca County?

13 A. Yes, he did.

14 Q. I'm going to change gears a little bit
15 with you into agricultural uses of aircraft. You
16 believe it is unsafe for a pilot, doing agricultural
17 seeding and spraying, to fly behind a wind turbine,
18 period, correct?

19 A. I -- it's not a belief. It is a definite
20 concern. It's -- we know it.

21 Q. You don't have any set of procedures or
22 regulations for agricultural seeding and spraying to
23 cite for that position though, correct?

24 A. Only a pilot's decision, no.

25 Q. Are you aware that some local farmers,

1 such as Gary Baldosser, are actually in favor of the
2 project?

3 A. Sure. We have people, yeah, yes.

4 Q. You are not -- with respect to
5 helicopters, you are not a helicopter pilot, correct?

6 A. That is correct.

7 Q. You have never flown a helicopter near a
8 wind farm, correct?

9 A. That is correct.

10 Q. You don't know how close a helicopter
11 pilot can safely land next to a wind turbine,
12 correct?

13 A. That's correct.

14 Q. And you did not gather data on helicopter
15 usage at the airport for purposes of providing it to
16 FAA or ODOT, correct?

17 A. Helicopter usage, we do provide it to
18 ODOT.

19 Q. Did you provide data -- you did not
20 provide data to ODOT, for purposes of analyzing the
21 Republic Wind project, of the number of helicopter
22 flights and that type of data, correct?

23 A. That is correct.

24 Q. You do not know whether Life Flight can
25 safely navigate between the turbines that are

1 proposed as part of the Republic Wind project,
2 correct?

3 A. You're asking me if they can navigate
4 safely?

5 Q. I'm saying you don't know, one way or the
6 other, whether they can navigate safely between the
7 turbines.

8 A. I can say I do know that. I sat on Life
9 Star -- Life Flight board's up in Toledo for the
10 Mercy system.

11 Q. And so you have analyzed whether or not
12 Life Flight can safely navigate between the turbines
13 that are proposed as part of the Republic Wind
14 project?

15 A. The flight operation has rules that they
16 have to go by.

17 Q. Okay. You don't have any reason to think
18 that Life Flight helicopter pilots, in this area,
19 would not continue to follow those rules, correct?

20 A. That is correct, they'll follow the
21 rules.

22 ALJ AGRANOFF: When you indicated there
23 are flight operation rules, what rules are they?

24 THE WITNESS: Ground clearance, how high
25 they can go over it, and how far away they have to be

1 to land behind it or in front of it.

2 ALJ AGRANOFF: Whose rules are those?

3 THE WITNESS: Those are the FAA's rules.
4 Federal Aviation Administration.

5 Q. (By Alj Sanyal) Do you know, one way or
6 the other, what the minimum distance between the
7 proposed turbine locations is?

8 A. The minimum, I do not know, no.

9 Q. So you don't know, one way or the other,
10 what area, between turbines, a helicopter pilot would
11 have to navigate, correct?

12 A. He probably wouldn't go between them,
13 he'd go above them, but I can't tell you what his
14 minimum is, what he wants to land behind it or in
15 front of it.

16 Q. But you don't know that one way or the
17 other, correct?

18 A. No.

19 Q. In your testimony, your prefiled
20 testimony, which I believe we marked as -- actually I
21 lost the exhibit number for the testimony.

22 ALJ AGRANOFF: LR Exhibit 24.

23 MS. SHEELY: Seneca County Exhibit 2?

24 ALJ AGRANOFF: I'm sorry. Seneca County.
25 My mistake.

1 MS. SHEELY: I thought the same thing,
2 actually, that's why I realized I didn't have the
3 correct number.

4 Q. (By Ms. Sheely) You indicate that you
5 believe the turbines should be eliminated or that the
6 height should be lowered, correct?

7 A. That is correct.

8 Q. You don't actually think that lowering
9 turbine height would alleviate the concerns that you
10 have though, correct?

11 A. That is correct; that's why it was my
12 second option.

13 Q. It's a distant second, isn't it?

14 A. Distant second.

15 Q. You would rather this project actually
16 not be built in Seneca County; is that right?

17 A. That is correct.

18 Q. And you are a local resident of Seneca
19 County?

20 A. Yes.

21 Q. And you are absolutely opposed to the
22 Republic Wind project?

23 A. Yes, I am.

24 MS. SHEELY: I don't have any further
25 questions.

1 ALJ SANYAL: Any questions?

2 Go ahead.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Bair:

6 Q. Mr. Newman, my name is Jodi Bair, and I
7 represent the Staff of the Ohio Power Siting Board.
8 I have just a few questions for you.

9 Have you reviewed the proposed turbine
10 locations?

11 A. For Seneca County?

12 Q. Yes, for Seneca County.

13 A. Definitely the ones to the northeast that
14 affect the airport.

15 Q. If Republic constructs the turbines as
16 planned, would Seneca County Airport be able to
17 continue to use the non-directional beacon navigation
18 system?

19 A. Yes.

20 Q. With construction of the turbines as
21 proposed, they can continue to use the NDB system?

22 A. Yeah. They'll move us up; so they'll
23 move us to a higher altitude.

24 Q. Okay. Do you know, does Seneca County
25 Airport spend funds to operate and maintain the NDB

1 system, the non-directional beacon navigation system?

2 A. That is correct. It's owned by the
3 County Commissioners.

4 Q. Do you know if they've spent a
5 significant amount of money, say, over the last five
6 years, to repair the non-directional beacon
7 navigation system?

8 A. Yearly inspections and quarterly
9 inspections as long as it's working right. We have
10 some criteria that we have to meet for the FAA;
11 signal strength.

12 Q. Do you know how much is spent on that
13 system annually?

14 A. I think we budget close to \$2,000 a year.

15 Q. Thank you.

16 And if you could, please, refer to --
17 what have we marked this as -- Staff Exhibit 4, and
18 I'm going back to where you've been asked a lot of
19 questions.

20 MR. DeVINE: I think he has the wrong
21 document.

22 MS. BAIR: I've got one.

23 MR. DeVINE: I think he's got his
24 transcript in his hand.

25 MS. SHEELY: It's an exhibit to it, but

1 it's --

2 MS. BAIR: It's the Dalton Carr letter,
3 dated 6/26/19. Would you like me to give that to
4 you?

5 THE WITNESS: Please.

6 MS. BAIR: Your Honor, may I approach the
7 witness?

8 ALJ SANYAL: Yes, you may.

9 MS. BAIR: Thank you.

10 Q. (By Ms. Bair) Could you please turn to
11 page 9 of that document, and again that document is
12 the 6/26 letter from the FAA to Dalton Carr. Are you
13 on page 9, sir?

14 A. Yes, I am.

15 Q. And let me see if I can locate the ones
16 I'd like to ask questions about. I'm going to count
17 let's just call them full paragraphs going down on
18 page 9. One, two, three, four, five, six. It would
19 read "2018-WTE-1171-OE." Do you see what I'm
20 referring to?

21 A. Yes.

22 Q. Are you familiar with, in the second line
23 of that paragraph that we're discussing, "NEH"? The
24 meaning of NEH? It's defined on page 4 of that
25 document.

1 A. Yes.

2 Q. The "no effect height"?

3 A. Yeah.

4 Q. If wind turbines were constructed above
5 that noted no effect height, would that affect the
6 utility of the Seneca County Airport?

7 A. I truly believe so, yes.

8 Q. Thank you. And could you please move on
9 down to the next I'll call it paragraph which reads
10 "2018-WTE-11712-OE."

11 A. I have it, yes.

12 Q. Okay. And again there's a reference
13 there to "NEH" in the second line.

14 A. Yes.

15 Q. And is it your -- do you believe that if
16 wind turbines were constructed above that NEH, would
17 that affect the utility of the Seneca County Airport?

18 A. Yes.

19 MS. BAIR: Thank you, your Honor. I have
20 no more questions.

21 ALJ SANYAL: Any other questions?

22 Do you need some time for redirect?

23 MR. DeVINE: Actually, I just have a
24 couple questions.

25 - - -

REDIRECT EXAMINATION

By Mr. DeVine:

Q. Mr. Newman, we heard about, during your cross, about non-precision approaches. What do you mean by non-precision approach?

A. A non-precision approach will be that we're allowed to be off a mile one way or the other on our flight path and not -- we can -- we're still where we need to be, left or right of course.

Q. You indicated that VOR is available at the Seneca County Airport?

A. Yes.

Q. Is it available to all runways at the Seneca County Airport?

A. Just landing to the northeast.

Q. And how many runways can use that?

A. Just -- just runway 6.

Q. Okay. You have other runways at the Seneca County Airport?

A. The other end of the runway would be 180 degrees which would be runway 24, landing to the southwest.

Q. Is VOR available to pilots landing on runway 24?

A. No.

1 Q. Is NDB available for pilots landing on
2 runway 24?

3 A. That is correct. That's why we have a
4 non-precision approach which all we had for years on
5 both ends with different systems.

6 ALJ AGRANOFF: I think you were asked a
7 yes or no question, so I just want to make sure was
8 the answer to that question yes or no?

9 THE WITNESS: Yes.

10 Q. NDB is a -- did I understand your
11 testimony, NDB is a system that is being emphasized
12 or used less by airports; is that correct?

13 A. Yes. People are taking them out as
14 time -- as we go through time. It's the low band of
15 the radio.

16 Q. Do you have plans at this point to remove
17 or discontinue use of NDB at Seneca County airport?

18 A. No.

19 Q. When's the last time somebody used it to
20 your knowledge?

21 A. Last Sunday. I was giving a flight test.

22 MR. DeVINE: No further questions.

23 ALJ SANYAL: Recross?

24 MS. SHEELY: I don't have any.

25 ALJ SANYAL: I have a couple questions.

- - -

EXAMINATION

By ALJ Sanyal:

Q. How many runways are there at the Seneca County Airport?

A. One runway.

Q. Okay. And then, just so the record is clear, does "VOR" stand for very high frequency omnidirectional range?

A. That is correct.

ALJ SANYAL: Any questions based on my two questions?

- - -

FURTHER REDIRECT EXAMINATION

By Mr. DeVine:

Q. You indicate there's one runway at Seneca County Airport, but depending on which end you're at it has a different number?

A. That is correct. We shoot the approach to land into the wind so we pick the runway that is into the wind to shoot the approach and land on; so if we have a northeast wind or a southwest wind, same runway, different ends.

Q. If somebody was trying to use VOR using runway 24, they couldn't use VOR for runway 24.

1 A. That's correct.

2 MR. DeVINE: Nothing further.

3 ALJ SANYAL: What is runway 24? Is that
4 one end of the runway?

5 THE WITNESS: It's the direction that end
6 of the runway is pointing. 240 degrees. So on a
7 360-degree azimuth. Zero being north. Does that
8 give you some orientation? 180 being south.

9 ALJ AGRANOFF: Are there 23 other
10 potential directions?

11 THE WITNESS: There's actually 360-degree
12 directions. You can have a runway 25, the other end
13 would be 7. Port Columbus has runway 2-8 and 1-0
14 down here because of the prevailing winds.

15 ALJ SANYAL: Okay. I have no more
16 questions. Thank you, Mr. Newman, for coming out.

17 MR. DeVINE: We would move for the
18 admission of Seneca County Exhibit 2.

19 ALJ SANYAL: Any objection?

20 Hearing none, Seneca County Exhibit 2 is
21 admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 THE WITNESS: Am I excused?

24 ALJ SANYAL: Yes, you are. Thank you
25 very much, sir.

1 Let's go off the record for a moment.

2 (Discussion off the record.)

3 ALJ SANYAL: Let's get back on the record
4 and, Mr. Conway, I'm going to swear you in.

5 (Witness sworn.)

6 ALJ SANYAL: You may be seated.

7 Ms. Bair, you may proceed.

8 MS. BAIR: Thank you, Your Honor.

9 - - -

10 ANDREW CONWAY

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

13 DIRECT EXAMINATION

14 By Ms. Bair:

15 Q. Could you please state your name and
16 spell it for the record.

17 A. Andrew Conway. A-n-d-r-e-w C-o-n-w-a-y.

18 Q. And by whom are you employed and what are
19 your responsibilities?

20 A. I'm employed by the Public Utilities
21 Commission of Ohio. I'm employed as an Engineering
22 Specialist in the Siting, Efficiency, and Renewable
23 Energy Division of the Rates and Analysis Department.
24 In this position, I review technical issues
25 associated with energy efficiency applications,

1 renewable energy applications, assigned areas in
2 Applications for a Certificate of Environmental
3 Compatibility and Public Need to construct major
4 utility facilities and economically significant wind
5 farms, and other duties as assigned.

6 MS. BAIR: Your Honor, I'd like to mark
7 as Staff Exhibit 5, the direct Prefiled Testimony of
8 Andrew Conway, filed on October 28, 2019, and also at
9 this time mark as Staff Exhibit 5a, the confidential
10 version of that testimony.

11 ALJ SANYAL: Those are so marked.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 MS. BAIR: Thank you.

14 ALJ SANYAL: And then would you also like
15 to mark the supplement to the Staff Report at this
16 point?

17 MS. BAIR: Yeah, if I could do that too.

18 ALJ SANYAL: Yeah.

19 MS. BAIR: I would also like to mark the
20 Supplemental Staff Report, that was docketed on
21 October 18, 2019, as Staff Exhibit 6.

22 ALJ SANYAL: And that one is so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. (By Ms. Bair) Let's go one at a time. Do
25 you recognize Staff Exhibit 5 and 5a?

1 A. Yes, I do.

2 Q. What is that document?

3 A. That's my -- my Prefiled Testimony and
4 the confidential version.

5 Q. Was this testimony prepared by you or
6 under your direction?

7 A. Yes, it was.

8 Q. Do you have any changes, corrections, or
9 additions that you would like to make to Staff
10 Exhibit 5 or 5a?

11 A. Yes, I do.

12 Q. Could you please go through those with
13 us.

14 A. On page 10 --

15 ALJ AGRANOFF: Which one are we looking
16 at? Are we looking at 5 or 5a?

17 THE WITNESS: 5, the nonconfidential
18 version.

19 Q. The change will be made in --

20 A. In both.

21 Q. -- both. Okay. Page 10, what line?

22 A. Line 12. "Staff notes that he
23 turbine...." Delete the word "he" and replace it
24 with "the."

25 Q. Any more changes?

1 A. Again on page 11 in both versions, I'd
2 like to make an addition at the end of line 4 or on
3 line 5 of the phrase "Condition 43 removes those
4 risks."

5 Q. Any other changes?

6 A. On line 13, same page, where it says
7 "Condition 42," that "42" should be changed to "43."

8 MR. PARRAM: I'm sorry, what line were
9 you?

10 ALJ SANYAL: 13.

11 THE WITNESS: Line 13.

12 MS. BAIR: It should be "Condition 43."

13 MR. PARRAM: Okay.

14 Q. (By Ms. Bair) Any others?

15 A. On page 23.

16 ALJ SANYAL: 23?

17 THE WITNESS: Correct, on page 23.

18 MS. BAIR: Let's go back to the last
19 correction. Page 11, line 13.

20 MR. PARRAM: That's 43?

21 MS. BAIR: Condition 43. I think the
22 confusion was with turbine 42. It's not a
23 different --

24 MR. PARRAM: Okay. I got you. Go ahead.
25 I'm sorry.

1 MS. BAIR: It was just a juxtaposition or
2 whatever you want to call it.

3 Q. (By Ms. Bair) I'm sorry, what's your next
4 change? 23, page 23?

5 A. On page 23, at line 3, after the word
6 "assure," delete the word "that."

7 Q. And those are all the changes you have?

8 A. That's correct.

9 ALJ SANYAL: I have a quick -- I think
10 there's one other typo on page 27, line 19. That
11 should be a "the" instead of a "he"?

12 THE WITNESS: That's correct, it should
13 be a "the."

14 MS. BAIR: Page 27, line 19, "the."
15 Okay. "...with the...."

16 ALJ AGRANOFF: Mr. Conway, could you go
17 back to page 23, line 3, and read what that line
18 should say now?

19 THE WITNESS: Yes. That line should now
20 read: "This is a usually recommended condition to
21 assure the Board that the Applicant has all of the
22 FAA Determination of No Hazard letters or proper
23 authorization for the cranes."

24 ALJ AGRANOFF: Okay. Thank you.

25 Q. (By Ms. Bair) And noting the changes

1 you've indicated, if I were to ask you the questions
2 contained in your testimony, would your answers be
3 the same today?

4 A. Yes, they would, yes.

5 Q. Can you please look at Staff Exhibit 6,
6 the Supplement to the Staff Report of Investigation.
7 Were you responsible in helping create this document?

8 A. Yes, I was.

9 MS. BAIR: Thank you.

10 Your Honor, I would move 5, 5a, and 6
11 into the record, subject to cross-examination.

12 ALJ SANYAL: Thank you.

13 Who would like to go first for
14 cross-examination?

15 MR. PARRAM: I can go first, Your Honor.

16 ALJ SANYAL: Okay.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Parram:

20 Q. Good morning, Mr. Conway.

21 A. Good morning.

22 Q. How many Ohio Power Siting Board wind
23 farm cases have you worked on?

24 A. I've provided analysis on at least 17
25 wind farm cases.

1 Q. And how many of those cases were you
2 responsible for investigating the potential impacts
3 on aviation?

4 A. At least four, but I think it's more
5 relevant to say since about 2015 I've been
6 coordinating with the ODOT Office of Aviation.

7 Q. So about how many cases, since 2015,
8 would you say you've worked on?

9 A. Now that I think about it, I think it's
10 maybe -- now it's six. It would be the Seneca Wind
11 farm; Emerson Creek; Timber Road, the fourth phase;
12 Hog Creek, I believe; one of the Hardin cases; and
13 then Republic. So at least -- those are the ones I
14 recall offhand.

15 Q. And in those cases were you the primary
16 person responsible for Board Staff in coordinating
17 with ODOT Office of Aviation?

18 A. That's correct. Since about 2015, I've
19 been coordinating with ODOT Office of Aviation. I'm
20 the primary Staff member.

21 Q. If you go to page 21 of your testimony,
22 lines 2 through 4, you discuss "According to the ODOT
23 Office of Aviation, its duty is to protect Federal
24 Aviation Regulations Part 77 surfaces (14 CFR 77)
25 which is slightly different than the FAA analysis."

1 Do you see that there?

2 A. Yes, I do.

3 Q. What is -- what do you mean that their
4 analysis is -- that the ODOT Office of Aviation
5 analysis is slightly different than the FAA analysis?

6 A. I meant that they have a different
7 standard, a slightly different standard than the FAA.
8 The FAA looks for a significant -- when it makes its
9 determination it -- it -- it goes to the standard of
10 a no significant adverse impact. Whereas, the FAA --
11 or the ODOT Office of Aviation, their analysis is
12 slightly different and they look for safety concerns.

13 Q. Do you know what standard ODOT uses to
14 analyze potential safety concerns?

15 A. I'm aware of their process that they use.
16 They coordinate with local, the most directed -- most
17 directly-affected airport, and they also look at the
18 Part 77 standards.

19 Q. When you say "Part 77 standards," those
20 are the FAA's regulations, correct?

21 A. That's correct.

22 Q. So outside of looking at the FAA's
23 regulations, as far as you're aware, ODOT
24 communicates directly with potentially impacted
25 airports?

1 A. Yes. They analyze their rules. 4561 in
2 the Revised Code and 5501 in the Administrative Code
3 are what guides them.

4 Q. That guides them in Ohio Power Siting
5 Board cases, correct?

6 A. That's my understanding.

7 Q. And in your testimony at page -- still on
8 page 21, line 6 through 7, you indicate that the
9 Power Siting Board process replaces the permitting
10 process. What are you referring to there?

11 A. Revised Code -- it's my understanding
12 that Revised Code 4561.31(E) does not require Power
13 Siting Board facilities to get a permit through the
14 ODOT Office of Aviation. That permit is for other
15 obstructions such as, for example, cell towers.
16 These -- the rules 4561.31 and 4906.10(A)(5), the
17 Board, OPSB Board, can issue -- consult with ODOT
18 Office of Aviation and issues a certificate in lieu
19 of an ODOT permit for Power Siting Board facilities.

20 Q. Okay. So although for Power Siting
21 Board -- for non-Power Siting Board projects there's
22 a permitting process, but for Power Siting Board
23 projects they don't actually issue a permit, they
24 just issue a determination to the OPSB Staff; is that
25 correct?

1 A. Yes, that's correct.

2 ALJ AGRANOFF: Just so we're clear, when
3 you reference "they," Mr. Parram --

4 MR. PARRAM: ODOT Office of Aviation.
5 Thank you, Your Honor.

6 Q. (By Mr. Parram) I'm still on page 21,
7 line 15. When you use the term "obstruction
8 standard," what's an obstruction standard?

9 A. Obstruction standards are outlined in, I
10 believe, Revised Code 4561 and Part 77 of the CFR.
11 And so, Part 77 is the standard; an obstruction is
12 the object that penetrates that.

13 Q. Does ODOT have different obstruction
14 standards than the FAA?

15 A. It's my understanding, no. They follow
16 the FAA. They just have additional duty and slightly
17 different analysis.

18 Q. So the obstruction standards are the same
19 for ODOT and FAA, correct?

20 A. I believe that's -- that's my
21 understanding, yes.

22 Q. What are some -- for these obstruction
23 standards, are they spelled out in Part 77?

24 A. Yes, they are.

25 Q. Are you familiar with Part 77.17(a)(1),

1 (a) (2), and (a) (3)?

2 A. Yes, I'm generally familiar with those.

3 Q. So those are three examples of
4 obstruction standards?

5 A. That's correct.

6 Q. And so, in line 14, you indicate that
7 obstruction standards can be waived; is that correct?

8 A. That's correct.

9 Q. Who waives obstruction standards?

10 A. In the permitting process, the ODOT would
11 waive it.

12 Q. And how about for the OPSB process?

13 A. The OPSB process replaces that permit
14 process, so it's up to the Board what to permit
15 energy infrastructure.

16 Q. So the waiver in OPSB cases is by the
17 Ohio Power Siting Board?

18 A. No. The Ohio Power Siting Board can
19 consider the ODOT consultation letter, and the Ohio
20 Power Siting Board authorizes either the building --
21 the construction of the project after consulting with
22 ODOT.

23 Q. So when you say in your testimony,
24 line 14 to 15, that an obstruction standard can be
25 waived, in Ohio Power Siting Board cases who would be

1 waiving the obstruction standard?

2 A. Ohio Power Siting Board can either choose
3 to adhere -- may I have -- is there an exhibit, the
4 9/27 letter from ODOT to me?

5 MR. PARRAM: I think it's Staff Exhibit
6 4.

7 MS. BAIR: Staff Exhibit 4. I have it.

8 THE WITNESS: Could I have the question
9 reread, please.

10 (Record read.)

11 A. The Ohio Power Siting Board would be
12 waiving the obstruction standard.

13 Q. You indicated earlier that part of ODOT's
14 analysis addresses safety concerns, correct?

15 A. Yes.

16 Q. So when ODOT makes a -- when ODOT
17 determines that a structure is an obstruction, does
18 that obstruction constitute a safety concern?

19 THE WITNESS: Can I have that reread for
20 me?

21 (Record read.)

22 A. I think their analysis is that it
23 constitutes an obstruction and, yes, it does
24 constitute a safety concern then.

25 Q. Do you have Staff Exhibit 4 in front of

1 you?

2 MS. BAIR: Is Staff Exhibit 4 the
3 September 27 letter?

4 MR. PARRAM: Yes, I believe.

5 A. Yes, I do.

6 Q. Are you familiar with this document?

7 A. Yes, I am.

8 Q. This is the September 27, 2019
9 determination that was sent from ODOT Office of
10 Aviation to you, correct?

11 A. Yes, it was.

12 Q. Regarding the Republic Wind project?

13 A. Yes.

14 Q. If you go to the section on the first
15 page, under the heading "ODOT Analysis of Impact of
16 the Fifty Wind Turbine Generators," it talks about
17 the location and height of all 50 turbine structures
18 would exceed 499 feet above ground level and would
19 constitute an obstruction under Part 77.17(a)(1). Do
20 you see where I'm at there?

21 A. Yes, I do.

22 Q. So this means that all of the turbines in
23 the Republic Wind project are an obstruction under
24 77.17(a)(1), correct?

25 A. That's correct.

1 Q. So all of the turbines in the project
2 would present a safety concern; is that correct?

3 A. Yes, but there are instances when those
4 obstruction standards can be waived.

5 Q. So certain turbines, although they are an
6 obstruction under 17(a)(1), Staff is recommending the
7 obstruction be waived for some of those turbines?

8 A. Yes. In the -- in the Staff Report, the
9 conditions related to aviation, and in the
10 Supplemental Staff Report there's a condition related
11 to aviation, those are the recommended conditions
12 that Republic Wind Farm would need to comply with in
13 order to waive those obstruction standards.

14 Q. In your opinion if Republic Wind complies
15 with those conditions within the Determination of No
16 Hazard, the safety concerns would be addressed with
17 respect to (a)(1)?

18 ALJ AGRANOFF: The reference to (a)(1)?

19 MR. PARRAM: Is Part 77.17(a)(1).

20 MS. BAIR: Your Honor, could we hear the
21 question again?

22 ALJ AGRANOFF: I was just asking for
23 clarification.

24 MS. BAIR: I don't understand the
25 question.

1 MR. PARRAM: Can we have the question
2 reread.

3 (Record read.)

4 A. No, not just (a)(1). Republic Wind would
5 need to comply with all Conditions 52 through 57, and
6 Supplemental Report Condition 59, in order to
7 minimize the adverse impact from the project in
8 regards to aviation.

9 Q. So, Mr. Conway, for the portion of Staff
10 Exhibit 4, the paragraph that I was talking about,
11 with respect to those turbines that are exceeding
12 499 feet, for -- there's certain turbines on the
13 project that the only reason they are considered an
14 obstruction is because they are an obstruction under
15 Part 77.17(a)(1); is that correct?

16 A. Yes, that's correct.

17 Q. Okay. So for those turbines, what
18 conditions need to be met for the OPSB to determine
19 that a waiver of the obstruction standard should be
20 allowed?

21 A. For those turbines that are not called
22 out in Condition 55, 56, 57, and Supplemental Report
23 Condition 59, if they -- they -- if they comply with
24 Condition 52, then that would meet that -- then that
25 Part 77(a)(1) can be complied with.

1 Q. And with respect to Condition 52, it
2 indicates at the last -- the very last portion of the
3 last sentence talks about "the non-penetration of any
4 FAA Part 77 surfaces." What does that language mean
5 in that condition?

6 A. That's addressed in my written testimony
7 on page 22 at lines 8 through 10. "The prohibition
8 against nonpenetration of FAA Part 77 surfaces
9 specifically applies to those turbines identified in
10 Conditions 56, 57, and Supplemental Report Condition
11 59."

12 Q. So that language, "the non-penetration of
13 any FAA Part 77 surfaces," does not mean those
14 particular turbines cannot exceed 499 feet.

15 A. I believe that's correct.

16 Q. Okay. So for -- and again going back to
17 the turbines that we're talking about that are only
18 Part 77.17(a)(1) obstructions, not (a)(2) or (a)(3),
19 so long as we comply with Condition 52 and the
20 Determination of No Hazard, then the OPSB -- OPSB
21 Staff does not see those turbines as a safety
22 concern.

23 A. You're using the word "safety concern"
24 incorrectly. It's an obstruction to air navigation
25 is -- if -- if you comply with 52, then it would not

1 be an obstruction to air navigation for those.

2 Q. I thought you indicated earlier that an
3 obstruction, if you determine that a structure is an
4 obstruction, that it presents a safety concern,
5 correct?

6 A. Yes, I did.

7 Q. Okay. So my question is, if Republic
8 Wind, for the Part 77.17(a)(1) obstructions, complies
9 with Condition 52 and complies with the terms of the
10 Determination of No Hazard, Staff's position is that
11 those structures no longer present a safety
12 concern; is that correct?

13 A. In regards to aviation, yes.

14 Q. So it's fair to say with respect to
15 aviation, Staff agreed with the FAA's Determination
16 of No Hazard -- Determination of No Hazard for the
17 Part 77.17(a)(1) obstructions.

18 A. Yes, but only for those turbines that are
19 not identified in Conditions 56, 57, and Supplemental
20 Report Condition 59.

21 Q. So if we can go back to Staff Exhibit 4
22 and now I want to talk about the turbines that were
23 determined to be obstructions under Part 77.17(a)(2),
24 and that discussion starts at the very last paragraph
25 on page 1 and goes on to page 2. Do you see where

1 I'm at?

2 A. Yes, I do.

3 Q. So for these turbines which, in this
4 document, are named T1, T8, T48, and T49, these are
5 all obstructions under a separate obstruction
6 standard than we were previously talking about,
7 correct?

8 A. That's correct.

9 Q. And are you aware that the Sandusky
10 County Regional Airport communicated with Mr. Stains
11 that they did not have a concern regarding the
12 turbines in the project?

13 A. Yes, I understand that Sandusky relayed
14 that verbally to the ODOT Office of Aviation.

15 ALJ AGRANOFF: Mr. Parram, is your
16 question regarding Sandusky or Seneca?

17 MR. PARRAM: Sandusky County Regional
18 Airport.

19 ALJ AGRANOFF: Okay.

20 MR. PARRAM: Was that what you said,
21 Mr. Conway?

22 THE WITNESS: Yes, I said Sandusky.

23 Q. (By Mr. Parram) And, Mr. Conway, what was
24 the -- what's the specific reason why the four
25 turbines are considered obstructions under Part

1 77.17(a) (2)?

2 A. The reason these four are obstructions to
3 77.17(a) (2) is that their height is above -- is 250
4 or more above ground level or above the established
5 airport elevation and they're within 3 nautical miles
6 of that established reference point of the Sandusky
7 airport.

8 Q. And you haven't communicated with the
9 Sandusky County Regional Airport about any concerns
10 they have regarding turbines, have you?

11 A. No, I have not.

12 Q. Okay. So it's Staff's position that
13 because those four turbines are considered
14 obstructions under 77.17(a) (2), that they represent a
15 safety concern, correct?

16 A. Yes, they represent an obstruction that
17 needs to be -- that there's a potential safety
18 concern, yes.

19 Q. Okay. And that safety concern, from
20 Staff's perspective, can impact the public or impact
21 individuals flying into the airport, Sandusky County
22 Regional Airport, correct?

23 A. It specifically impacts the Sandusky
24 County Regional Airport, so the users of that
25 airport.

1 Q. So there's no limitation on who can use
2 the Sandusky County Regional Airport that you're
3 aware of?

4 A. The only limitation is that you have a
5 plane.

6 Q. Yeah, or you can fly. As long as you
7 have a plane and you can fly into the Sandusky County
8 Regional Airport, right?

9 A. That's correct.

10 Q. So to the extent that Staff believes that
11 these turbines are a safety concern -- well, let me
12 back up.

13 So in Condition 57 of the Staff Report --
14 do you see that Condition 57?

15 A. Yes, I do.

16 Q. So it's Staff's recommendation that the
17 safety concern regarding the Sandusky County Regional
18 Airport can be waived so long as the airport
19 indicates that it is agreeable to the obstruction.

20 A. No. Condition 57 states "Provide in this
21 docket, prior to construction, proof of a resolution/
22 letter from the Sandusky County Regional Airport
23 authority indicating that it concurs with the
24 construction of turbines 1, 2, 3, and 10 as these
25 turbines would otherwise exceed the 14 CFR Part

1 77.17(a)(2) surface of the Sandusky County Regional
2 Airport."

3 Q. So if the Sandusky County Regional
4 Airport indicates it concurs with the construction of
5 the turbines at the heights that would -- exceeding
6 the height set forth in 17(a)(2), Staff would be --
7 Staff recommends that the Board waive those potential
8 safety concerns.

9 A. Yes; as long as they indicate it by proof
10 of a resolution or letter.

11 Q. And the fact that an airport agrees to
12 the construction of the turbines at a certain height,
13 doesn't necessarily resolve the safety concern that
14 Staff initially identified, does it?

15 A. That Condition -- that obstruction
16 instruction can be waived --

17 Q. But -- I'm sorry. Go ahead?

18 A. So it -- their resolution would indicate
19 their acceptance of that obstruction standard.

20 Q. So the obstruction is occurring because
21 of the height of the turbine.

22 A. Yes, that's the impact.

23 Q. And if the airport agrees that it's not
24 concerned about the height of the turbine -- or I
25 mean the -- let me restate that.

1 The safety concern is the height of the
2 turbine, correct?

3 A. Among others. There's the use of the
4 crane, that's an impact. Yes, those are the --
5 that's the safety concerns. Effectively the height.

6 Q. Right. And the fact that an airport may
7 agree to a turbine being constructed at that height,
8 that doesn't remove the safety concern.

9 A. I see this condition as similar to a
10 setback waiver because it's an impact -- the
11 construction of these four wind turbines are an
12 impact to this -- a direct impact to the Sandusky
13 County Regional Airport. So this proof of a
14 resolution is similar to waiving the setback.
15 Waiving the impacts from that.

16 Q. A setback waiver with respect to a
17 particular property owner is addressing that
18 particular property owner, correct?

19 A. Yes.

20 Q. But this condition addresses usage of an
21 airport where other pilots, any individual with an
22 airplane, can fly in and out of Sandusky County
23 Regional Airport, correct?

24 A. Yes, this resolution would -- the
25 Sandusky County Regional Airport is most affected by

1 these four turbines, and the flying users of that
2 airport are the most affected by that.

3 Q. And going onto the next paragraph for
4 Part 77.17(a)(3).

5 ALJ SANYAL: I'm sorry, one more time,
6 may I have the reference?

7 MR. PARRAM: I'm sorry. On the second
8 page of Staff Exhibit 4. The first full paragraph.
9 It says "Finally, the location and height of
10 thirty-three of the structures would constitute an
11 obstruction...."

12 Q. (By Mr. Parram) Do you see where I'm at,
13 Mr. Conway?

14 A. Yes, I do.

15 Q. And so in this section we're now talking
16 about turbines that are obstructions under Part
17 77.17(a)(3).

18 A. That's correct.

19 Q. And part of the concern here is potential
20 impacts on instrument flight rule procedures at the
21 Seneca County Airport and the Fostoria Metropolitan
22 Airport; is that correct?

23 A. That's correct.

24 Q. What's instrument flight rule procedures?

25 A. Those are the rules that govern the

1 flight when you fly by using instrument instead of a
2 visual.

3 Q. And for Fostoria Metropolitan Airport,
4 what was Staff's particular concern with respect to
5 impacts on instrument flight rule procedures?

6 A. There were two concerns. In regards to
7 Seneca County Airport, they objected to the loss of
8 their utility of their airport. And in regards to
9 Fostoria Airport, and generally their concerns were
10 outlined in their August 1 letter to us, they
11 objected to at least 12 turbines that would affect
12 their -- that would impact directly their airport and
13 users to their airport in regards to -- they were
14 outlined in that letter.

15 Q. I'm sorry, was this letter attached to
16 Staff Exhibit 4?

17 A. Yes. It seems to be the last page of
18 that exhibit.

19 Q. And this is a letter from Mr. Dave
20 Sniffen?

21 A. Correct.

22 ALJ AGRANOFF: Do you know who this
23 letter was intended to be the recipient of?

24 THE WITNESS: The letter was sent -- it's
25 my understanding it was sent to the FAA, it was

1 sent to ODOT Office of Aviation, and it was sent to
2 Republic Wind, and it was sent -- it was docketed and
3 it was intended for the Board as well.

4 Q. (By Mr. Parram) Okay. When you say "loss
5 of utility," what do you mean?

6 A. I'm meant the concerns raised by
7 Mr. Shuff and Mr. Newman as outlined in their letters
8 included in that Staff Exhibit 4.

9 Q. Is loss of utility different from a
10 safety concern?

11 A. It can be.

12 Q. So for the concern in Mr. Sniffen's
13 letter, he indicates he had concerns regarding
14 icing; is that correct?

15 A. Yes, he does.

16 Q. Are you familiar with the icing concerns
17 he is raising in his letter?

18 A. Yes, I am.

19 Q. How are you familiar with those?

20 A. In my consultation with ODOT of Aviation,
21 icing can occur at different elevations, icing
22 conditions, and it's my understanding that altering
23 the instrument flight procedures to accommodate the
24 Republic Wind Farm may let pilots using that
25 airport -- may put them in icing conditions for a

1 longer period of time than currently without the
2 Republic Wind Farm.

3 Q. The concern is the increase of 100 feet?

4 A. That's correct.

5 Q. Do you know the magnitude of the increase
6 in icing due to an elevation increase of 100 feet?

7 A. No, I do not.

8 Q. Do you know the conditions that are
9 required to cause icing conditions for pilots? The
10 weather conditions that may be required, to clarify.

11 A. Generally it would be below freezing or
12 precipitation. There's many factors, but I'm not
13 aware of the specifics.

14 Q. Do you know if icing can occur at
15 2,200 feet?

16 A. It can, yes.

17 Q. Can it occur at 1,800 feet?

18 A. Yes.

19 Q. So with respect to -- well, first, Seneca
20 County Airport raised concerns regarding the
21 non-directional beacon usage at their runway; is that
22 correct?

23 A. Yes, it did.

24 Q. And did you do any analysis to determine
25 how often NDB approaches are used at Seneca County

1 Airport?

2 A. No, I did not.

3 Q. And is the magnitude of the amount a
4 particular approach is used considered in your
5 determination?

6 A. Yes. I recommended that Condition 56 be
7 implemented so that the Seneca County Airport would
8 not lose the use of its non-directional beacon.

9 Q. Let me ask it another way. So you had a
10 concern about the impact on Seneca County Airport's
11 usage of their non-directional beacon approach,
12 correct?

13 A. Yes.

14 Q. And you recommended Condition 56 as a way
15 to address that concern, correct?

16 A. Yes, to minimize and address that
17 concern.

18 Q. So when you were deciding -- before you
19 decided to recommend Condition 56, you didn't know
20 how -- you didn't know how frequent Seneca County
21 Airport uses the NDB approach.

22 A. I didn't know the number of flights that
23 used it, but I was aware and am aware that they use
24 the -- use that approach, have plans to continue to
25 use that approach, and they use it for -- it's part

1 of a training procedure, training certification, and
2 its continued use is still desired by Seneca County
3 Airport.

4 Q. Do you know how many flights come into
5 Seneca County Airport a year? That may be in your
6 testimony.

7 MS. BAIR: That is in his testimony.
8 It's in Staff Exhibit 3.

9 MR. PARRAM: Yeah, there's no need to
10 guess. May I approach the witness with Staff
11 Exhibit 3 to just point him to it?

12 MS. BAIR: Sure, or I can give him this
13 copy.

14 MR. PARRAM: Sure, either way, that's
15 fine.

16 Q. (By Mr. Parram) Do you have Staff
17 Exhibit 3 in front of you?

18 A. Yes, I do.

19 Q. On page 2, line 21, it indicates there
20 were 60,165 operations recorded at the airport for a
21 12-month period. Do you see that?

22 A. Yes, I do.

23 Q. So if -- and you've already indicated
24 that you don't know how many -- how often or how many
25 times a year the NDB approach is used at Seneca

1 County Airport.

2 A. No, I don't know the number of times, but
3 I do know it's continued to be used. Also I want to
4 add it is a backup system in case the GPS system out.
5 It's used as a backup.

6 Q. If you were to -- if you knew,
7 theoretically, that the NDB approach was used once a
8 year, would you still recommend Condition 56?

9 MS. BAIR: Objection, Your Honor. Calls
10 for speculation.

11 ALJ SANYAL: Overruled.

12 A. I recommended Condition 56 based on the
13 facts that we have in front of us. In the proposal,
14 Condition 56 allows the non-directional beacon to
15 continue to be used. It minimizes the impact from
16 the Republic Wind Farm in regards to aviation.

17 MR. PARRAM: Can I have my question
18 reread.

19 (Record read.).

20 MR. PARRAM: Can you answer that
21 question, please?

22 MS. BAIR: Objection. He did answer the
23 question.

24 ALJ SANYAL: Overruled.

25 A. Your question is difficult to answer

1 because there are other factors that I considered not
2 just the number of flights.

3 Q. Putting aside the other factors that you
4 considered, would you be able to answer that
5 question, please?

6 A. I would also have to consult the ODOT
7 Office of Aviation on that. It's a difficult
8 question to ask -- answer.

9 Q. And what would you consult ODOT Office of
10 Aviation about?

11 A. Whether that obstruction standard can be
12 waived and -- and we can consult them for their input
13 on aviation matters.

14 Q. The OPSB -- I think went over, for
15 non-permitting cases, the OSB is the one that decides
16 whether or not there will be a waiver; is that
17 correct?

18 A. That's correct.

19 Q. So the determination or your
20 recommendation is OPSB Staff's recommendation.
21 You're the one that makes a determination whether or
22 not a waiver should be issued for an obstruction,
23 correct?

24 A. Yeah. I recommend to the Board, yes.

25 Q. To the Board. So in your recommendation

1 to the Board, assuming that the NDB approach was used
2 one time over a 12-month period, would you still
3 recommend Condition 56?

4 A. Yes, I would.

5 Q. Okay. And I think you indicated one of
6 your concerns was that Seneca County Airport wanted
7 to maintain or keep the NDB as a backup.

8 A. That's correct.

9 Q. So if, over a 12-month period, Seneca
10 County Airport didn't use the NDB approach at all,
11 you would still recommend Condition 56, correct?

12 A. Yes, because the -- because the NDB is a
13 backup so yes, it's needed.

14 Q. So before you recommended Condition 56
15 with respect to using the Vestas V136, did you do any
16 independent analysis to determine what would be the
17 impact on the project if it were to use the Vestas
18 V136 at those locations?

19 A. Yes. Republic proposed the V136 as an
20 option at any of the locations, so I thought that was
21 a viable option at that location and they did -- they
22 proposed it so, therefore, they accepted the
23 economics of it.

24 I also called Dalton Carr, after the
25 receipt of the concerns from Fostoria. He indicated

1 that the 10 locations on the western edge of the
2 project would alter their economics but they never
3 withdraw -- Republic never withdrew that Vestas V136
4 as an option.

5 Q. So Republic proposed the V136 for up to
6 10 locations, correct?

7 A. Yes, that's correct.

8 Q. Your Condition 56 would mean it would
9 probably be required to install more than 10, right?

10 A. It's Republic's option on where they
11 place those 10, if they want to place it at this
12 particular location or there are other locations
13 where it will be viable or to alleviate concerns from
14 Fostoria. It's up to Republic where they want to
15 place them. But as -- as -- this is the only model
16 that was proposed that can fit and minimize the
17 impact to the NDB approach to Seneca County.

18 Q. And the number of turbines that we're
19 talking about that may impact this NDB approach for
20 Seneca County is 18?

21 A. My understanding it's only Turbine 3.

22 Q. So for those turbines where Republic Wind
23 would be required to install the Vestas V136 to
24 address the obstruction, it would be more than 10
25 locations would have the V136; is that correct?

1 MS. BAIR: Your Honor, I'm going to
2 object because, as I recall, he answered that
3 question exactly before.

4 ALJ SANYAL: I agree. He answered that
5 question. We can have it read back if you wish.

6 MR. PARRAM: No, that's fine, Your Honor.

7 Q. (By Mr. Parram) But you didn't do any
8 type of analysis about what the overall economic
9 impact would be on the project for installing those
10 additional turbines, additional V136 turbines.

11 A. The economics was done by another Staff
12 member. I considered the V136 insofar as it was
13 proposed as a viable option at up to 10 locations
14 for -- by the Applicant; therefore, the Applicant
15 accepted the economics of it.

16 Q. What did the other Staff member conclude
17 with respect to their analysis of the economics?

18 A. You'll have to ask him.

19 Q. Which witness is that?

20 A. Tyler Conklin.

21 Q. Just to be clear, when you were crafting
22 these conditions, by "these conditions" I mean the
23 aviation conditions that specifically address
24 potential installation of the Vestas V136 to address
25 obstructions, Mr. Conklin analyzed what would be the

1 economic impact on the project by using these
2 additional turbines or using V136 above 10 proposed
3 locations.

4 A. The economics is kind of outside the
5 scope of my testimony. I think you would have to ask
6 Mr. Conklin what he analyzed.

7 What I said is that the Applicant
8 proposed these as viable options at up to 10
9 locations. And it's kind of specifically addressed
10 in the Supplemental Staff Report, there's a paragraph
11 heading "Turbine Models Below the No Effect Height,"
12 and I indicate in that paragraph that the V136 can
13 satisfy the no effect height at all turbine locations
14 and that the 591 turbine model -- foot model could
15 be -- would satisfy at turbine locations 6, 12, and
16 38.

17 Q. Okay. So although another Staff member
18 may have looked at the actual economics, that
19 didn't -- whatever he concluded didn't impact your
20 recommendation for these conditions.

21 A. No. The Applicant accepts the risk of
22 building a wind farm, so.

23 MR. PARRAM: Your Honor, I move to strike
24 everything after "no."

25 ALJ SANYAL: Overruled.

1 Q. So for Sandusky County, although they've
2 indicated they don't have any concerns with the
3 project, why is Staff still recommending a condition
4 where they have to provide either a resolution or a
5 letter indicating that they don't -- I'm sorry.

6 Although you're aware that Sandusky
7 County has indicated that they're not opposed to the
8 construction of the turbines, why is Staff requiring
9 a written letter or a resolution regarding their
10 position?

11 A. That indication is verbal and it's my
12 understanding that is just from an airport manager.
13 A resolution in writing would -- would be official
14 from the airport authority which is the owner of the
15 most affected utility -- most affected by the
16 Republic Wind farm.

17 Q. So in your experience in all the other
18 OPSB wind farm cases that you've worked on where you
19 were responsible for the aviation investigation, have
20 you ever previously required a writing from an
21 airport before the obstruction would be waived?

22 A. Yes.

23 Q. In which case?

24 A. It was the Hardin Wind Farm.

25 ALJ SANYAL: And this is Condition 57

1 just for the record?

2 MR. PARRAM: Yes.

3 ALJ SANYAL: Okay.

4 Q. Did you require written confirmation in
5 the Timber Road IV case?

6 MS. BAIR: Objection. Relevance to this
7 case.

8 ALJ SANYAL: Overruled. The witness has
9 already answered --

10 MS. BAIR: For his --

11 ALJ SANYAL: Overruled.

12 MS. BAIR: -- experience.

13 A. No, we did not, because that was a
14 different impact to an airport that was outside of
15 Ohio.

16 Q. So the Timber Road IV case didn't involve
17 any obstructions that would impact any Ohio airports?

18 A. To my recollection, yes.

19 Q. You would have reviewed the
20 Determinations of No Hazard in the Timber Road IV
21 case?

22 A. Yes.

23 Q. And you would have also reviewed the
24 determination that was issued by ODOT Office of
25 Aviation regarding that?

1 A. Yes, I have.

2 ALJ SANYAL: Let's go off the record a
3 second.

4 (Discussion off the record.)

5 ALJ SANYAL: Let's get back on the
6 record.

7 MR. PARRAM: What exhibit am I at?

8 ALJ SANYAL: You're at 39.

9 MR. PARRAM: Your Honor, I'd like to have
10 marked for purposes of identification, Applicant
11 Exhibit 39, which is a Determination of No Hazard
12 from the Timber Road IV case.

13 ALJ SANYAL: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 ALJ SANYAL: Do you have another copy?

16 MR. PARRAM: Yeah.

17 Q. (By Mr. Parram) Mr. Conway, do you have
18 Applicant Exhibit 39 in front of you?

19 A. Yes, I do.

20 Q. This is the Determination of No Hazard
21 that involved the Timber Road IV case. Did you
22 review these or review this document or documents
23 like these in the Timber Road IV case?

24 A. Yes, I reviewed the DNHs for Timber Road.

25 Q. And so the Determination of No Hazard in

1 the Timber Road IV case, in Applicant Exhibit 39,
2 addresses on page 5 of 12, it says "Obstruction
3 Standards Exceeded" and specifically under letter
4 (b), "Section 77.17(a)(3) obstruction." Do you see
5 that?

6 A. Yes, I do.

7 Q. And in the Determination of No Hazard, it
8 indicates there would be certain impacts on the
9 minimum obstruction clearance altitude for certain
10 airports; is that correct?

11 A. That's correct.

12 Q. And did ODOT Office of Aviation consider
13 the (a)(3) obstructions when they issued you the
14 determination in this case?

15 A. To the best of my recollection, yes, they
16 did identify (a)(3) impacts.

17 Q. Did they indicate that 16 airports would
18 have (a)(3) impacts due to the project?

19 A. I don't remember the number but yes, I do
20 see now in this Determination of No Hazard that there
21 are more than just Fort Wayne, Indiana airport that I
22 was recalling.

23 Q. What are some of the other airports that
24 would be impacted?

25 A. They're listed in this document. The

1 Detroit Metropolitan Wayne County, Akron-Canton
2 Regional, Akron Fulton International, Kent State, and
3 Goshen.

4 Q. Are those airports in Ohio?

5 A. Some are in Ohio; some are outside of
6 Ohio.

7 Q. So some Ohio airports were impacted?

8 A. Yes, I recall now.

9 Q. What is -- so Kent State University, is
10 that in Ohio?

11 A. Yes, it is.

12 Q. What's the impact to Kent State
13 University?

14 A. Essentially it would increase the arrival
15 and the minimum obstacle clearance altitude on a
16 particular path. Increase it by 100-foot to avoid
17 that substantial adverse impact.

18 Q. Where is Akron Fulton International?

19 A. I would believe it's in Akron, Ohio.

20 Q. Okay. What was the impact to Akron
21 Fulton?

22 MS. BAIR: Your Honor, I object. The
23 document speaks for itself. He's simply requesting
24 that he read the document.

25 MR. PARRAM: All right. Withdrawn.

1 Q. Did you receive written correspondence
2 from the Ohio airports in this case with respect to
3 their waiver of the obstruction?

4 A. Not that I recall.

5 Q. And these (a) (3) obstructions were a
6 safety concern in Timber Road IV, weren't they?

7 A. They're obstructions to air navigation;
8 yes, a potential safety concern.

9 Q. Okay.

10 A. It's my understanding they are different
11 than the (a) (3) obstructions identified in --

12 MR. PARRAM: There wasn't a question
13 pending, Your Honor.

14 ALJ SANYAL: Is there a motion to strike?

15 MR. PARRAM: Motion to strike.

16 MS. BAIR: He was simply finishing his
17 answer.

18 ALJ SANYAL: Your motion is denied.

19 A. The impact identified in the Timber Road
20 case, even though it's a 77 point -- (a) (3)
21 obstruction, it affects different -- it affects the
22 airport procedures differently than the (a) (3)
23 impacts in this case. The (a) (3) impacts in this
24 case more directly affect the Seneca, Sandusky, and
25 Fostoria airports.

1 Q. So there had to be an increase in the
2 MOCA from 2,300 feet to 2,400 feet; is that correct?
3 MOCA being the minimum obstruction clearance
4 altitude.

5 A. Yeah. Yeah, it says this one increased
6 by 100-foot.

7 Q. So the pilots will have to fly 100 feet
8 higher.

9 A. Yes. En route to the Fort Wayne Airport,
10 yes.

11 Q. And based on your earlier testimony that
12 may result in additional icing conditions.

13 A. Potentially, yes.

14 Q. Okay. So for -- let's switch subjects
15 completely.

16 MR. PARRAM: I'll try to wrap up here,
17 Your Honor.

18 Q. So with respect to the Republic Wind
19 project, you were -- were you involved in reviewing
20 the Application prior to the completeness letter
21 being filed?

22 A. Yes.

23 Q. And what is the -- what is the purpose of
24 Staff's review prior to the completeness letter
25 being -- prior to a determination of completeness?

1 A. Generally it's to see if we have enough
2 information to analyze if all the -- one second.

3 Generally to see if the -- if all the
4 sections outlined in 4906.10, Ohio Administrative
5 Code 4906-4-08 and either 4906-4-09, all those
6 factors relevant to the proper siting of wind farms,
7 all of those have been addressed in some fashion.

8 Q. So is it fair to say that you review it
9 to make sure that the Applicant has provided
10 significant amount of information or the information
11 required by the Board's rules?

12 A. I didn't hear that last part.

13 Q. Sure. You review the Application to make
14 sure there is enough -- that there is sufficient
15 information in accordance with the Board's rules.

16 A. That's correct.

17 Q. And then once the Board -- once it's
18 determined that the Application is complete, Staff
19 then begins its investigation.

20 A. That's correct.

21 Q. So on page 10 of your testimony on
22 lines 12 through 14, you talk about "Staff notes that
23 the turbine models and locations proposed for
24 turbines 10, 38, and 42 were not proposed until
25 December 26, 2018 or later, which is well after the

1 effective date of Ohio Adm. Code 4906-4-08(C) (2) (b) ."

2 Do you see that?

3 A. That's correct.

4 Q. Okay. So what was the effective date of
5 that rule?

6 A. I believe it was April 2018.

7 Q. Republic Wind filed their initial
8 Application prior to April 2018; is that correct?

9 A. Yes. They proposed a different layout in
10 February of 2018.

11 Q. When you were doing your completeness
12 review, were you applying the rules that were
13 effective prior to April 2018?

14 THE WITNESS: Could I have the question
15 reread, please.

16 (Record read.)

17 A. I believe we looked at the Application
18 for both rules; the one prior to April and the one
19 post.

20 Q. So you reviewed it under -- in your
21 completeness review you were looking at two sets of
22 rules.

23 A. I think so, yes.

24 Q. Are you aware that when Republic Wind
25 filed its Application, the only rules that were in

1 effect were the prior rules?

2 A. Yes, I'm aware.

3 Q. And that Republic Wind structured and
4 submitted that Application based on the prior rules?

5 A. Yes, and I believe that there was also a
6 filing saying you would comply with the new rules as
7 well, except for certain parts.

8 Q. So for line 12 through 14, you talk
9 about --

10 ALJ AGRANOFF: On what page and in which
11 document?

12 MR. PARRAM: Sorry. Page 10 of his
13 testimony, Your Honor.

14 Q. Turbines 10, 38, and 42, you indicate
15 that these locations were not proposed until
16 December 26, 2018, which December 26, 2018 was when
17 the Amendment was filed, correct?

18 A. That's correct.

19 Q. And 10, 38, and 42, those weren't the
20 only new turbine locations in the Amended
21 Application, correct?

22 A. No. The layout was different; a lot of
23 turbines changed.

24 MR. PARRAM: No further questions, Your
25 Honor.

1294

1 ALJ SANYAL: Let's go off the record.

2 (At 12:47 p.m. a lunch recess was taken
3 until 1:45 p.m.)

4 - - -

1 Friday Afternoon Session,
2 November 15, 2019.

3 - - -

4 ALJ SANYAL: Let's get back on the
5 record.

6 Mr. Conway, you are still under oath.

7 Mr. Van Kley, go ahead

8 MR. VAN KLEY: Thank you, Your Honor.

9 - - -

10 ANDREW CONWAY

11 being previously duly sworn, as prescribed by law,
12 was examined and further testified as follows:

13 CROSS-EXAMINATION

14 By Mr. Van Kley:

15 Q. Mr. Conway, would you turn to the Staff
16 Report, please.

17 A. Okay.

18 Q. And go to page 40. I would like to
19 direct your attention to the second-to-the-last
20 paragraph on that page which starts with the words
21 "The second concern."

22 A. I see that.

23 Q. All right. Great. And there you will
24 see a few sentences that I'd like to read to you.

25 "The second concern is that there will be

1 limited/reduced landing zones within the wind farm
2 project area. Patients requiring this air ambulance
3 service would need to be re-routed to predesignated
4 landing zones outside the wind farm project area.
5 Staff's research on the subject has found that a
6 predesignated landing zone can be a cleared field
7 marked by safety cones or a concrete pad." Do you
8 see that language?

9 A. Yes, I do.

10 Q. And is this language in part of the
11 report that you wrote?

12 A. Yes, that's a section that I wrote.

13 Q. My question concerns the research that
14 the Staff did. Can you summarize that for me,
15 please?

16 A. Yes. One second.

17 Basically on Question 20 and in my --
18 Question and Answer 20 in my prefiled Written
19 Testimony, I researched the predesignated landing
20 zones. I read the October 4, 2018 letter from Life
21 Flight. I discussed the subject through phone calls
22 with Mike Conrad and Brian Conroy of Life Flight and
23 I found that Life Flight would prefer a maintained
24 concrete or asphalt area that has been approved for
25 helicopter landings by FAA, with recommended

1 lighting, markings, and an obstacle clearance zone.

2 I also reviewed the Med Flight's website
3 and the address is in that Question and Answer, and I
4 found a landing zone can be as simple as a cleared
5 field marked by concrete cones or concrete pad.

6 And I also, in discussion with another
7 wind developer, it indicated it had installed
8 predesignated landing zones for use during its
9 construction phase. So that's basically the research
10 that I did.

11 Q. Okay. And with respect to the other wind
12 turbine company that you talked to, do you know how
13 many predesignated landing zones were planned for
14 that facility?

15 A. That -- that project was withdrawn so --
16 but I think they were looking at at least one
17 predesignated landing zone.

18 MR. VAN KLEY: Your Honor, could I
19 approach the witness with an exhibit? It's a
20 premarked exhibit, LR Exhibit 19, which is the Direct
21 Testimony of Dawn Hoepf.

22 ALJ SANYAL: Yes, you may.

23 Q. Mr. Conway, I handed you a copy of
24 LR Exhibit 19 which is the Direct Testimony of Dawn
25 Hoepf, and I would like to direct your attention to

1 Exhibit C in that testimony. Now, if you look at the
2 lower right-hand corner of that document, do you see
3 this is a figure from the Transportation Study filed
4 by Republic Wind in this case?

5 A. The yellow page?

6 Q. Yes, uh-huh. And exclusive of the hand
7 markings on it, I'm asking you about the underlying
8 document which is the yellow map.

9 A. Yes, I see this document.

10 Q. Okay. I'd like to direct your attention
11 to four Xs in the document that were hand marked in
12 blue ink and you'll find them in about the center of
13 the map from top to bottom and about one-third of the
14 way from the left side and they're located just to
15 the west of North Township Road 180, it looks like.

16 ALJ SANYAL: I think it's 190.

17 MR. VAN KLEY: 190? Okay.

18 A. Yes, I see that group of four turbines.

19 Q. Okay, great. Can you tell me whether you
20 are aware of any natural gas, pressurized pump
21 station in that area?

22 A. No, I'm not aware of that.

23 Q. Okay. Are you aware of a building that
24 has a sign for Sunoco in front of it, around that
25 area?

1 A. No, I'm not aware.

2 Q. Are you aware of any natural gas
3 facilities inside the project area?

4 A. Yes.

5 Q. Okay. Other than pipelines, are you
6 aware of any natural gas facilities in the project
7 area?

8 A. No, I'm not.

9 Q. Okay. You can put that document aside.
10 Let's go to page 36 of the Staff Report.
11 When you get to that page, go to the discussion of
12 blade shear.

13 A. Okay, I'm there.

14 Q. Now, according to the first sentence of
15 that section, "Blade shear occurs when a wind turbine
16 blade, or segment, separates from the rotor and is
17 thrown or dropped from the tower."

18 A. That's what the sentence reads.

19 Q. Is that your understanding of what is
20 meant by blade shear?

21 A. Yes.

22 Q. Okay. In the second sentence of that
23 same paragraph it is stated as follows: "The
24 Applicant asserts that past incidences have generally
25 been the result of design defects during

1 manufacturing, poor maintenance, control system
2 malfunction, or lightning strikes." Do you see that
3 sentence?

4 A. Yes, I do.

5 Q. Okay. Do you know what was meant by the
6 Applicant when it referred to "past incidents"?

7 A. This is outside the scope of my area --
8 my testimony. This section was written by another
9 Staff member.

10 Q. Who is that?

11 A. Mark Bellamy.

12 Q. Okay. Now, you've had past experience in
13 evaluating blade shear issues in other wind turbine
14 cases brought before this Board, correct?

15 A. Yes.

16 Q. Okay. Including the Buckeye Wind Farm
17 case?

18 A. Yes.

19 Q. And that's given you some knowledge
20 concerning blade shear that -- blade shear incidences
21 that have occurred in the past?

22 A. Yes, I'm aware of blade shear, and yes.

23 Q. Okay. Can you tell me whether there have
24 been any incidences of blade shear involving turbines
25 in Ohio?

1 A. Yes, I can.

2 Q. How many such incidences are you aware
3 of?

4 A. This is kind of bordering on outside the
5 scope of my testimony. Mark Bellamy analyzed this a
6 little further.

7 Q. I know. I'm asking about your knowledge
8 concerning blade shear which is relevant.

9 A. There's been at least three.

10 Q. And where have those blade shear
11 incidents occurred?

12 A. Timber Road. Blue Creek, it was a
13 lightning strike. And I believe Timber Road, again,
14 had a lightning strike.

15 Q. So with regard to the blade shear that
16 occurred on these three occasions, can you tell me
17 what the distance that any blade or segment of blade
18 traveled from the base of the turbine at the Blue
19 Creek incident?

20 A. At the Blue Creek, no, I don't.

21 Q. You don't know? Does any other member of
22 the Power Siting Board Staff know the answer to that
23 question to your knowledge?

24 A. I want to correct my answer. I don't
25 recall.

1 And as far as another Staff member, I
2 can't -- Mark Bellamy analyzed the blade shear so it
3 likely would be him.

4 Q. In the instances involving Timber Road,
5 that was the Timber Road II facility, right?

6 A. Correct. One of the incidents, yes.

7 Q. One of the incidents was. Where was the
8 other one?

9 A. I don't recall which phase but it was the
10 Timber Road project as a whole.

11 Q. Okay. Do you know how far the distances
12 were that either blades or blade segments traveled in
13 those two instances?

14 A. Yes. In April of 2012, a blade broke and
15 traveled. A 3-kilogram piece traveled at least
16 764 feet from the base of the turbine.

17 Q. What about the other incident?

18 A. I don't recall the distance.

19 Q. Now, the one that you do recall where you
20 said the blade went at least 764 feet, that was the
21 distance that was reported by the wind facility
22 operator, right?

23 MS. BAIR: Objection. Relevance to this
24 case.

25 MR. VAN KLEY: It's relevant to how far

1 pieces of blades can be thrown which is a setback
2 issue in this case.

3 MS. BAIR: And he's provided that answer
4 and now we're going far afield.

5 MR. VAN KLEY: No, I'm just testing the
6 accuracy of what he said about 764. He said at least
7 764 feet. I'm trying to determine the source of that
8 information so we can determine whether it was
9 accurate or not.

10 ALJ SANYAL: I'm going to give you some
11 brief leeway, Mr. Van Kley, since the witness has
12 identified, several times, he has not done research
13 on blade shear for this case, so I'll give you some
14 brief leeway because the witness has admitted he does
15 have some information about blade shear in general,
16 but let's move on from this topic soon.

17 MR. VAN KLEY: Okay.

18 Q. (By Mr. Van Kley) After this incident
19 occurred, did you actually go out to that site to
20 take a look?

21 A. Yes, I did.

22 Q. Okay. And what did you find when you
23 looked?

24 A. I found several pieces of blade around
25 the base of the turbine, of the two blades that were

1 broken, and that the site was secured and some light
2 pieces had blown around as well.

3 Q. Did you find any beyond 764 feet away
4 from the turbine?

5 A. I didn't measure those but yeah, I did
6 notice some light pieces that had blown a fair
7 distance from what I recall.

8 Q. Further than 764 feet in your estimation?

9 A. Possibly, yes.

10 MR. VAN KLEY: Okay. Other than the
11 confidential topic that I want to do some
12 cross-examination on, I'm finished with my questions
13 at this point in time.

14 ALJ SANYAL: Okay. We'll go into
15 confidential session now, so I am going to need
16 everyone who is not counsel here -- Staff witnesses
17 are okay -- so if you could wait, maybe come back
18 in --

19 MR. VAN KLEY: I'd say let's just give it
20 15 minutes, that should do it.

21 ALJ SANYAL: 15 minutes. Actually what
22 we'll do, we'll close the door and when I open the
23 door you'll know to come back in.

24 (Off the record.)

25 ALJ SANYAL: Just so I'm on the same

1 page, the only areas where there is confidential
2 testimony, are those pages 7 and 10?

3 MS. BAIR: Yes.

4 ALJ SANYAL: You may proceed,
5 Mr. Van Kley.

6 MR. VAN KLEY: All right. Thank you,
7 Your Honor.

8 Q. (By Mr. Van Kley) Mr. Conway, would you
9 take out the confidential version of your testimony
10 which is Staff Exhibit 5a.

11 A. I have that.

12 Q. All right. Let's start on page 7,
13 Answer 11, and your answer states "According to
14 Exhibit W of the Application, the safety area should
15 be at least 1,640 feet (500 meters) from the wind
16 turbine." What information, in Exhibit W, provides
17 the basis for this sentence?

18 A. The Nordex safety manual. There's a
19 section in there about fire.

20 Q. Okay. And that manual provides that, in
21 the event of a fire, there must be a safety distance
22 of 500 meters around the wind turbine?

23 A. Correct.

24 Q. Okay. Now, what's your understanding
25 with respect to why the safety area should be at

1 least 1,640 feet from the wind turbine?

2 A. I've seen this in several wind farms that
3 have a temporary clearance area. As far as this,
4 it's a temporary area that's cleared while there's a
5 malfunction or a fire with the turbine so that the
6 risk to the public is minimized and that pieces or
7 parts that are on fire don't -- are contained within
8 a specific safety area.

9 Q. Okay. So the reason for that safety area
10 is to make sure that members of the public don't get
11 hit by pieces of wind turbine blades?

12 A. That's one -- if there's a specific
13 malfunction, yes.

14 Q. Okay. And then the second sentence of
15 Answer 11 states as follows: "My analysis of the
16 Google Earth file indicates that at that distance,
17 the Applicant would need to evacuate approximately 11
18 residences, 2 wind turbines, and 7 commercial
19 buildings around turbine location 46." Do you see
20 that?

21 A. Yes.

22 Q. Okay. My question -- my first question
23 in that regard is are there other turbines that are
24 within 1,640 feet away from a residence?

25 A. Yes.

1 Q. Okay. Do you know how many?

2 A. At least two. We analyzed the Google
3 Earth file and found turbine 46 had the most number
4 of residences or buildings that needed to be
5 evacuated as outlined here in this answer. Turbine
6 29 had the next number which is less than these
7 number of buildings.

8 Q. Okay. And were there other turbines also
9 proposed to be located closer than 1,640 feet from a
10 residence?

11 A. I assume, yes, but I don't recall.

12 Q. Do you know how many residences of
13 nonparticipating landowners are located closer than
14 1,640 feet from a turbine?

15 A. I don't know the exact number, but within
16 that 11 for this turbine No. 46, I believe some of
17 those are nonparticipating, yes.

18 Q. Okay. So maybe I should ask a slightly
19 different question then.

20 Other than -- well, let me just ask you
21 this: Do you know how many residences, whether
22 participating or nonparticipating landowners reside
23 there, are located within 1,640 feet of a turbine
24 site?

25 THE WITNESS: That question is a little

1 complex. Could I have it reread, please?

2 (Record read.)

3 A. I don't recall the number but yes, we did
4 receive that as a data reply of how many setback
5 waivers were needed. And also, as mentioned, turbine
6 46 and turbine 42 have the most number of residences
7 or buildings that needed to be evacuated.

8 Q. So you don't recall how many total
9 residences are within 1,640 feet from a turbine site?

10 A. Correct.

11 Q. Do you recall how many residences are
12 closer than 1,640 feet to turbine 29?

13 A. I don't recall the exact number, but it
14 was less than 11.

15 Q. Do you recall the approximate number?

16 A. As mentioned, under 11.

17 Q. That's as close as you can get?

18 ALJ SANYAL: I feel an objection coming
19 on soon.

20 MS. BAIR: Objection. Asked and
21 answered.

22 MR. VAN KLEY: All right. I'll move on.

23 (Laughter.)

24 Q. (By Mr. Van Kley) Go to page 10 of your
25 testimony, Exhibit-- Staff Exhibit 5a.

1 A. Okay.

2 Q. And here we're dealing with Answer 13
3 which should be the first full paragraph on page 10.
4 The first sentence talks about, again, a safety area
5 of 1,640 feet around the turbine, right?

6 A. That's correct.

7 Q. And this statement also is based on the
8 information you obtained from the Nordex safety
9 manual that we've been discussing?

10 A. Yes, that's correct, and other
11 manufacturers have temporary clearance areas as well.

12 Q. Okay. And are their clearance areas also
13 1,640 feet from the turbine?

14 A. Correct, yes.

15 Q. The last sentence of that paragraph of
16 Answer 13 states -- actually the second and -- the
17 second-to-last and last sentences state "This would
18 require that the Applicant halt traffic on State
19 Route 18 or State Route 19. According to the
20 preliminary Emergency Action Plan provided in
21 Exhibit Y of the Application, this has not been
22 addressed." And my question is, what exactly has not
23 been addressed?

24 A. The required -- how that road would be
25 evacuated during a fire or malfunction of the turbine

1 and who would do it, how that would be handled.

2 MR. VAN KLEY: Okay. I have no further
3 questions.

4 ALJ SANYAL: Okay.

5 Any other cross related to the
6 confidential session, those two questions in
7 particular?

8 MR. PARRAM: No, Your Honor.

9 ALJ SANYAL: Okay. So let's go off the
10 confidential record.

11 I assume you need some time before you do
12 redirect?

13 MS. BAIR: Yeah, maybe a minute.

14 ALJ SANYAL: Okay. Let's go off the
15 record for about five minutes.

16 MS. BAIR: Thank you.

17 ALJ SANYAL: Okay.

18 (Recess taken.)

19 ALJ SANYAL: We're back on the public
20 record and, Ms. Bair, whenever you're ready, you may
21 proceed.

22 MS. BAIR: I have no redirect.

23 ALJ SANYAL: Okay. Mr. Conway, I have a
24 few questions.

25 - - -

EXAMINATION

By ALJ Sanyal:

Q. If you will -- hang on. Let me find my pages. If you will turn to pages 8 and 9, I'm looking at page 8, starting line 21 and then 22, and then on the next page I'm looking at lines 1 through 4. I'm a little confused as to how these sentences go together. You say "Staff notes that there is Karst topography in the project area, which requires avoidance and special consideration during foundation design and installation. The Applicant was not aware that Vestas 150, Seimens Gamesa SG145, or Nordex N149 models have previously been installed in North America." Are those sentences related and, if so, what were you trying to say about that?

A. I think there should have been a paragraph break after the two -- before "The Applicant."

The first, from line 21 to 22, that's related to the foundation design and that karst topography needs special consideration and needs to be accounted for in the geotechnical -- in the design and installation. We want the foundation designer to review the geotechnical report and design a foundation system that is -- and install a foundation

1 system that's adequate to -- for any karst concerns
2 at each location.

3 The second paragraph where it begins "The
4 Applicant was not aware," that's basically their
5 response to a data request asking if the -- if these
6 models have been installed anywhere in North America
7 and they weren't aware of any.

8 But with the timing, the Timber Road --
9 Paulding Wind Farm IV had just installed or was in
10 the process of installing the Vestas V150 which is
11 one of the models under consideration here.

12 Q. Okay. And then looking at page 16, on
13 lines 14 through 16, you say "Another wind developer
14 indicated that it has installed predesignated landing
15 zones for use during its construction phase," and I
16 think this section of your testimony came up during
17 Mr. Van Kley's cross. I just wanted to know which
18 wind developer and which project this was.

19 A. It was sPower and Seneca Wind was the
20 project.

21 Q. And then I think you mentioned that this
22 project was withdrawn?

23 A. Correct.

24 - - -

25

EXAMINATION

By ALJ Agranoff:

Q. Mr. Conway, if you could please turn to page 21 of your testimony and I'm looking at the second-to-last paragraph to your response, and I note there was some discussion that you had relative to this paragraph with Mr. Parram. I just want to make sure that I understand what this particular sentence was intended to represent. It says "Also, in the letter the ODOT-OA advised that in order to waive the obstruction standard, that conditions of the FAA are complied with." Was that meant to say that conditions of the FAA need to be complied with?

A. I think what should probably be inserted is "the FAA Determination of No Hazard letter." That's what I was referring to. The Determination of No Hazard letter has specific requirements and conditions such as notification, marking and lighting and other conditions. So that's what we -- we would expect them to comply with that Determination of No Hazard letter.

Q. Okay. But you're not saying that there was a determination made that those conditions have been complied with.

A. It's my understanding ODOT gives us a

1 recommendation in order for obstruction standards to
 2 be waived and in that letter they recommend
 3 conditions that the Board should adopt for those
 4 obstruction standards to be waived, and one of those
 5 conditions is compliance with the FAA Determination
 6 of No Hazard. The other conditions that they
 7 recommended are outlined in the aviation section of
 8 the Staff Report and Supplemental Report Condition
 9 59.

10 Q. Okay. So you're simply stating that the
 11 conditions of the FAA need to be complied with.

12 A. Yes, if the Board wants to waive that
 13 obstruction standard and is agreeable to that
 14 obstruction standard.

15 Q. Okay. I just wanted to make sure I
 16 understood the intent of what was behind this
 17 particular sentence in your testimony.

18 ALJ SANYAL: Okay. Any questions based
 19 on those questions?

20 MR. PARRAM: No, Your Honor.

21 MS. BAIR: No.

22 ALJ SANYAL: Okay. Thank you,
 23 Mr. Conway. You may step down.

24 MS. BAIR: Your Honor, I'd like to renew
 25 my motion for Staff Exhibit 5, Staff Exhibit 5a, and

1 Staff Exhibit 6 to be admitted.

2 ALJ SANYAL: Any objections?

3 Hearing none, Staff Exhibit 5, 5a, and 6
4 will admitted with the note that 5a is the
5 confidential version of Mr. Conway's testimony.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 ALJ SANYAL: And then I have Republic
8 Exhibit 39.

9 MR. PARRAM: Yes, we move for the
10 admission of Applicant Exhibit 39.

11 MS. BAIR: And I object because I think
12 it's irrelevant.

13 ALJ SANYAL: I'm going to overrule your
14 objection and 39 will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 ALJ SANYAL: Ms. Bair, whenever you're
17 ready to present your next witness.

18 MR. EUBANKS: Your Honor, I would like to
19 call to the stand, Eric Morrison.

20 ALJ SANYAL: Sure. Mr. Morrison, if you
21 will step on up.

22 (Witness sworn.)

23 ALJ SANYAL: You may be seated.

24 MR. EUBANKS: Your Honor, may I approach?

25 ALJ SANYAL: Yes, you may.

1 Will this be Staff Exhibit 7?

2 MR. EUBANKS: Yes. I'd like to have the
3 Prefiled Testimony of Eric Morrison marked as Staff's
4 Exhibit 7.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 - - -

7 ERIC R. MORRISON

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

10 DIRECT EXAMINATION

11 By Mr. Eubanks:

12 Q. Good morning -- or good evening. Could
13 you state your name and spell it for the record.

14 A. Eric R. Morrison. E-r-i-c R.
15 M-o-r-r-i-s-o-n.

16 Q. And do you have before you what has been
17 marked Staff's Exhibit 7?

18 A. Yes, I do.

19 Q. Could you identify it?

20 A. Staff Exhibit 7, Prefiled Testimony of
21 Eric M. Morrison.

22 Q. Was it prepared by you or at your
23 direction?

24 A. Yes.

25 Q. Are there any changes you would like to

1 make to your testimony?

2 A. No.

3 Q. If I were to ask you the same questions
4 that are in your testimony here today, would you
5 provide the same answers?

6 A. Yes.

7 Q. And as far as you know, is this a true
8 and accurate representation of your testimony?

9 A. Yes.

10 MR. EUBANKS: With that, I have no
11 further questions. I move to have Staff's Exhibit 7
12 placed into the record, subject to cross-examination.

13 ALJ SANYAL: Okay. Thank you.

14 Who would like to cross first?

15 MR. VAN KLEY: I'll go.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Van Kley:

19 Q. Mr. Morrison, would you take out the
20 Staff Report.

21 ALJ SANYAL: Is that -- actually, hang on
22 one moment. Is that okay if Mr. --

23 MR. STINSON: The Applicant will exercise
24 its prerogative to go last, Your Honor.

25 ALJ SANYAL: Okay. Mr. Van Kley, go

1 ahead.

2 Q. (By Mr. Parram) Go to the Staff Report,
3 page 6, please. Do you have that in front of you?

4 A. Yes.

5 Q. I'd like to direct your attention to the
6 section entitled "Project Description." Do you see
7 that?

8 A. Yes.

9 Q. And this is a section you authored in the
10 Staff Report, correct?

11 A. Yes.

12 Q. Okay. Directing your attention to the
13 third paragraph under "Project Description" which is
14 headed by the words "Wind Turbines."

15 A. Okay.

16 Q. All right. I see that if you start
17 reading four lines down in that paragraph it states
18 "At the time of the submittal of the application, the
19 Applicant had proposed 50 turbine locations." Do you
20 see that?

21 A. Yes.

22 Q. And then in the next sentence it states
23 "The number of turbines constructed would depend on
24 the output of chosen model but would not exceed 47
25 turbines." Do you see that?

1 A. Yes.

2 Q. Now, keep your finger there, please, and
3 go to page 26 of the Staff Report and go to the
4 second paragraph under the heading "Geology."

5 A. Okay.

6 Q. All right. And you will see there that
7 in the -- starting in the third line it says "The
8 Applicant has noted that 27 of the proposed 64 wind
9 turbines are situated in areas exhibiting karst
10 features." Do you see that?

11 A. Yes.

12 Q. Okay. I was wondering if you could
13 explain to me why we have a reference to 64 turbines
14 on page 26 and only 50 locations for turbines
15 proposed on page 6.

16 A. Derek Collins, our resident geologist
17 which is now retired, authored that section, and I
18 believe the information of 64 wind turbines is
19 outdated.

20 Q. Okay. Now go to page 36 of the Staff
21 Report and under the heading for "Operational Noise"
22 you see a sentence at the end of the first paragraph
23 under that heading that says "The Applicant modeled
24 50 potential turbine locations." Do you see that?

25 A. Yes.

1 Q. Do you happen to know whether those are
2 the same 50 potential turbine locations that are
3 referred to on page 6 of the Staff Report?

4 A. Yes, I believe they are.

5 Q. Okay. Now, go to page 38 of the Staff
6 Report and under the heading for "Shadow Flicker" in
7 the first paragraph you see a reference, in the third
8 line, to 50 turbine locations.

9 A. Yes.

10 Q. Okay. Do you happen to know whether
11 those are the same 50 turbine locations as referred
12 to on page 6 of the Application?

13 A. I would say they are.

14 MR. VAN KLEY: Okay. I have no further
15 questions.

16 ALJ SANYAL: Mr. DeVine.

17 MR. DeVINE: No questions.

18 ALJ SANYAL: Mr. Stinson.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Stinson:

22 Q. Good afternoon, Mr. Morrison. I just
23 have a few questions to begin with concerning your
24 educational background. I see that on page 1 of your
25 Direct Testimony that you graduated from Ohio

1 University?

2 A. That's correct.

3 Q. And in what year did you graduate?

4 A. 2007.

5 Q. And I see that you have a Bachelor of
6 Specialized Studies degree with an emphasis on Civil
7 Engineering and Business. Is that a dual-major where
8 you have a Bachelor's in both of those disciplines?

9 A. No. It's a Specialized Studies degree
10 with an emphasis on both of those subjects. It's
11 just one single degree.

12 Q. Did you have an emphasis on any other
13 subjects other than those two?

14 A. No.

15 Q. Now, I see also you became employed with
16 the PUCO on -- in March of 2017?

17 A. That's correct.

18 Q. But you work primarily with the Ohio
19 Power Siting Board.

20 A. Yes, as an employee of the Public
21 Utilities Commission of Ohio.

22 Q. Can you explain that relationship for me
23 between the Public Utilities Commission and the
24 Board?

25 A. The Board is a multiple-agency

1 organization, and the primary staff that organizes
2 the Staff Reports for the Power Siting Board are
3 employed by the Public Utilities Commission.

4 Q. So there's an overlap.

5 A. Yes.

6 Q. So if I refer to "the Commission" in this
7 proceeding, you'll know that I'm actually referring
8 to the Board then.

9 A. Okay.

10 Q. I get confused with that.

11 A. Sure.

12 Q. You say you graduated in 2007 and you
13 started with the PUCO/Board in 2017. What did you do
14 in the interim period of time?

15 A. I was a pipeline distribution engineer, a
16 construction superintendent, a life insurance
17 salesman and -- those were my major occupations for
18 any significant length of time.

19 Q. And what did you do as a pipeline
20 distribution engineer?

21 A. I would do a gamut of operations,
22 operations tasks. Budgeting projects, designing --
23 designing projects, winter call-outs, winter
24 operations call-outs, scheduling.

25 Q. Would that be for a natural gas company?

1 A. Yes.

2 Q. And you're currently a Utility Analyst
3 2; is that correct?

4 A. That's correct.

5 Q. And were you hired in that position or
6 another position?

7 A. In that position.

8 Q. And you state here that you've testified
9 in prior Board proceedings?

10 A. Yes.

11 Q. In what proceedings would those be?

12 A. It would have been for a stipulation
13 hearing; one case for a transmission line -- electric
14 transmission line.

15 Q. Did your testimony support the
16 stipulation?

17 A. Yes.

18 Q. And did you take the stand to support
19 that stipulation or did you file Direct Testimony
20 prior to the stipulation being entered?

21 A. I don't recall.

22 Q. And in what capacity did you testify in
23 that proceeding; for what subject matter or subject
24 matters?

25 A. As the project lead; same as today.

1 Q. How many times have you served as project
2 lead for the Power Siting Board?

3 A. A few dozen times.

4 Q. Who is your immediate supervisor?

5 A. Edward Steele.

6 Q. Now, as the Administrative Project Lead,
7 one of your duties is to make sure that the
8 Application satisfies the standards in the Revised
9 Code and the Ohio Administrative Code; is that
10 correct?

11 A. I would say that in a broad sense with
12 the aid of all Staff assigned to the project, yes.

13 Q. Is it your ultimate responsibility that
14 those provisions are covered and satisfied?

15 A. I would say I have to rely on several
16 other people.

17 Q. Are you familiar with the applicable
18 Revised Code provisions and Ohio Administrative Code
19 provisions that govern Ohio Power Siting Board
20 Applications and Staff Reports?

21 A. Generally, yes.

22 Q. Do you have a working knowledge of those
23 provisions?

24 A. I would say yes.

25 Q. Now, you say you've been involved in

1 Power Siting Board cases for the past two years,
2 correct?

3 A. I've been involved in Power Siting cases
4 since I was hired in March 2017.

5 Q. Two and a half, correct?

6 A. Correct.

7 Q. Just if you could speak so the reporter
8 can take down your verbal response.

9 During that time have you been involved
10 in any rulemaking proceedings?

11 A. No, not directly.

12 Q. Have you been involved indirectly?

13 A. Nothing more than maybe an informal
14 suggestion.

15 Q. So you're aware of how a rulemaking
16 proceeding processes through the Board?

17 A. Not entirely.

18 Q. Are you aware then, if the Board or a
19 State agency wants to change its rules, it has to
20 institute a rulemaking proceeding?

21 A. I'm not sure.

22 Q. Let's get back a bit to your duties in
23 this case. Can you generally describe what you do as
24 a project lead?

25 A. Could you point me to the line you're

1 referring to?

2 Q. I'm not referring to any line. I just
3 want your testimony as to what you've done in this
4 proceeding as the project lead.

5 A. Mainly function as a communication hub
6 and compile the sections of the Staff Report authored
7 by other members of the Power Siting Board Staff.

8 Q. Were you the person who assigned
9 different topics for Staff members to investigate?

10 A. Not entirely.

11 Q. Did you assist?

12 A. It was a collaborative effort.

13 Q. And collaborative by who?

14 A. Andrew Conway.

15 Q. Was he a coleader of this project?

16 A. Interim lead on the project as I had
17 paternity leave earlier this year.

18 Q. And how long was that?

19 A. Eight weeks.

20 Q. So during that eight-week period,
21 Mr. Conway took over as project lead, correct?

22 A. I believe so.

23 Q. Can you tell me briefly what that
24 two-month period was?

25 A. Early March to late April.

1 Q. So you indicated that you assisted in
2 assigning topics to project members -- to Staff
3 members. Are those Staff members then to do their
4 own investigation and draft a report on that topic?

5 A. Yes. Generally functioning as the point
6 of communication with the Applicant, their data
7 requests will be forwarded to the project lead who
8 then contacts the Company and that flow of
9 information is channeled through the project lead.

10 Q. So you're the conduit between Staff
11 members and the Applicant?

12 A. Generally.

13 Q. Back and forth each way?

14 A. It depends on how in depth the subject
15 matter is.

16 Q. And what do you mean by that?

17 A. If it is more efficient to have the
18 specialists on Staff speak directly with whoever is
19 outside of Staff, not just the Applicant, there's not
20 an overstepping of boundaries to allow that to
21 happen.

22 Q. So let me see if I understand what you're
23 saying that if there's a complex issue, the
24 specialist on that topic will communicate directly
25 with the Applicant?

1 A. Yes; generally providing a courtesy to
2 the project lead.

3 Q. I believe you said that you compiled the
4 various reports submitted by the Staff members,
5 correct?

6 A. Yes.

7 Q. And did you do any editing to those
8 reports?

9 A. No.

10 Q. Did any of your supervisors edit any of
11 those reports?

12 A. Supervisors offer suggestions to
13 revisions to the report, not actual revisions.

14 Q. Now, as project lead, do you direct the
15 other Staff members in their investigations, how to
16 investigate, what to investigate?

17 A. Generally, no.

18 Q. Getting back to your testimony, I think
19 on page 2, line 12, you indicate the sections of the
20 Staff Report that you worked on, correct?

21 A. Correct.

22 Q. And what do you mean by "work on"?

23 A. Those were the sections that I authored.

24 Q. Now, as project lead, are you sponsoring
25 the entire Staff Report or just those sections you

1 authored in your testimony?

2 A. I would only be able to testify to the
3 sections that I wrote in the Staff Report.

4 Q. And you did write the Minimum Adverse
5 Impact Summary, correct?

6 A. Correct.

7 Q. Now, am I correct that the purpose of
8 this section is to identify adverse impacts from the
9 project?

10 A. It's a compilation of the determinations
11 of what the specialists on Staff had determined in
12 their investigations.

13 MR. STINSON: Can I have the question
14 reread, please?

15 ALJ SANYAL: You may.

16 (Record read.)

17 A. No. It's a summary of the adverse
18 impacts of the project.

19 Q. And you're stating that the person who
20 completed the subject-matter investigation report is
21 responsible for identifying the impact?

22 THE WITNESS: May I have the question
23 read back, please.

24 (Record read.)

25 A. Yes.

1 Q. And in authoring the Minimum Adverse
2 Impact Summary, do you determine how that impact or
3 whether that impact is minimized?

4 A. No.

5 Q. Who makes that determination?

6 A. That would be the subject-matter expert.

7 Q. So in your position as project lead, you
8 accepted the subject-matter Staff person's report,
9 correct?

10 A. Correct.

11 Q. And you accepted the adverse impacts
12 identified by that subject-matter person, correct?

13 A. Correct.

14 Q. And you accepted that person's
15 recommendations as to how to minimize that impact,
16 correct?

17 A. Yes.

18 Q. And you did no independent analysis of
19 how to minimize that impact.

20 A. No.

21 Q. Let me rephrase that. I don't know if
22 our answer -- my question and your answer jived.

23 MR. STINSON: Could you read back my last
24 question, please.

25 (Record read.)

1 A. I did an analysis, on the sections that I
2 authored, as to how to minimize impacts.

3 Q. But you made no analysis of how to
4 minimize impacts on other persons' reports they were
5 responsible for.

6 A. No.

7 Q. That means no, you did not do an
8 independent analysis?

9 A. No, I did not do an independent analysis.

10 Q. Why don't we go to the section you
11 authored, Minimum Adverse Environmental Impact, on
12 page 44 of the Staff Report. Are you there?

13 A. Yes.

14 Q. Now, would it be fair to state that in
15 this proceeding the Applicant itself minimized some
16 of the impacts of this project?

17 A. We take into consideration, during review
18 of the project, the methods of impact mitigation that
19 the Applicant puts forward in their Application.

20 Q. Well, just to make it simple here. At
21 the bottom of the page, the last paragraph, not a
22 full paragraph but it states that "the Applicant has
23 committed to using HDD to install the underground
24 electric collection cable under all streams and
25 wetlands" and HDD is horizontal directional drilling,

1 correct?

2 A. Correct.

3 Q. And that is a mitigation that the
4 Applicant itself took, right?

5 A. It's a mitigation they promise to take.

6 Q. And in other places in the report you've
7 given, Staff has recommended conditions, correct?

8 A. Yes.

9 Q. And those conditions generally are a way
10 to minimize impact of the facility, correct?

11 A. That's the goal.

12 Q. And an example of that would be, for
13 example, requiring the Applicant to obtain a
14 Technical Assistance Letter, correct, on page 45,
15 first full paragraph?

16 A. Based on the information provided by our
17 environmental specialist, I would have to say that is
18 correct.

19 Q. And now in reference to your section here
20 about minimum adverse environmental impacts, the
21 purpose of determining a minimum adverse impact is
22 not to eliminate that impact entirely, correct?

23 MR. VAN KLEY: Objection. That's calling
24 for a legal conclusion.

25 MR. STINSON: No, Your Honor. He's the

1 project leader. He can apply the Ohio Administrative
2 Code to what these provisions are.

3 MR. VAN KLEY: It still requires a legal
4 conclusion.

5 ALJ SANYAL: Overruled. Go ahead.

6 THE WITNESS: May I have the question
7 read back, please?

8 (Record read.)

9 A. Correct.

10 Q. And just to be clear, on page 45 of your
11 section, page 45 of the Staff Report, you've
12 identified potential adverse impacts with, in the
13 first paragraph, incidentally taking bats, correct?

14 A. Yes.

15 Q. And in the third full paragraph you've
16 identified potential adverse impacts related to blade
17 shear and ice throw, correct?

18 A. Yes.

19 Q. And in the next paragraph you identify
20 potential adverse impacts with shadow flicker and
21 noise, correct?

22 A. Yes.

23 Q. And finally, the next paragraph, you
24 identify potential adverse impacts with truck
25 traffic.

1 A. Correct.

2 Q. And Staff has recommended conditions in
3 all of these areas, correct?

4 A. I can't say that for sure but I know
5 there are a lot of conditions written to these
6 issues.

7 Q. At least some of those topics that I
8 raised, the Staff proposed or recommended conditions
9 to, correct?

10 A. Yes.

11 Q. And in those cases those conditions won't
12 completely eliminate those impacts, correct?

13 A. They may or may not. I can't say for
14 sure.

15 Q. Well, let's go through them each again
16 then. With respect to incidentally taking bats,
17 there still may be bats incidentally taken with this
18 project, correct?

19 A. Yes.

20 Q. And there's still going to be some degree
21 of shadow flicker, correct?

22 A. There may be.

23 Q. Are you saying there could be no shadow
24 flicker at all?

25 A. I wasn't the Staff member that analyzed

1 that data.

2 Q. Did you read the conditions?

3 A. Yes.

4 Q. And there's still going to be truck
5 traffic, correct?

6 A. Yes.

7 Q. And there's still going to be noise,
8 correct?

9 A. Yes.

10 Q. Now, again, as I said, those conditions
11 from Staff's recommendations won't completely
12 eliminate those adverse impacts, correct?

13 A. They may not.

14 Q. Now, what was your responsibility with
15 respect to the aviation portion of the Staff Report?

16 A. A general awareness of that
17 investigation.

18 Q. And on page 44, under "Minimizing
19 Impacts," you've written the second sentence,
20 "However, as of the date of publication of this Staff
21 Report, measures needed to assure minimization of
22 potential adverse impacts to air navigation are
23 uncertain." Did I read that correctly?

24 MR. EUBANKS: I object. I don't believe
25 this is the section that the witness is testifying

1 to.

2 MR. STINSON: Page 2, Your Honor, he
3 indicated he wrote this section on minimum adverse
4 environmental impacts.

5 ALJ SANYAL: Your objection is overruled.
6 Go ahead.

7 A. Will you please point me to exactly where
8 this is?

9 Q. In the middle of the page, you'll see a
10 heading that's captioned "Minimizing Impacts."

11 A. Okay.

12 Q. Then the first paragraph, the second
13 sentence.

14 A. As advised by our resident aviation
15 expert that authored the aviation section of the
16 Staff Report, that is a correct statement.

17 Q. Just another question on the aviation
18 issue, Mr. Morrison.

19 I'll move on to the conditions to the
20 Staff Report. There are now, including the
21 Supplemental Staff Report, there's 59 conditions to
22 this project, is that correct, Mr. Morrison?

23 A. Yes.

24 Q. And did you review those conditions
25 yourself?

1 A. At some point I have read all of the
2 conditions.

3 Q. Did you have any input or comments with
4 respect to those conditions in formulating the Staff
5 Report?

6 A. In my written testimony I outline the
7 numbers of the conditions that I was responsible for.

8 Q. Did you have the opportunity to have any
9 input with respect to the ecological conditions?

10 A. No. I'm not a subject-matter expert in
11 that field.

12 Q. Did you have a chance to review the
13 testimony of Mr. Dalton Carr with respect to his
14 modifications to those proposed conditions?

15 MR. EUBANKS: Objection. This is outside
16 the scope of the testimony of the witness.

17 MR. STINSON: Your Honor, I think I have
18 pretty broad leeway with the project lead.

19 ALJ SANYAL: May I have the question read
20 back again, please?

21 (Record read.)

22 ALJ SANYAL: Overruled. He can answer if
23 he did review or not.

24 A. I recall generally reading through it.

25 Q. And as project lead, would you agree with

1 me that the purpose of those conditions are to inform
2 the Applicant of the standards under which the
3 facility is to be constructed and operated?

4 MR. EUBANKS: Objection. The witness
5 states in his testimony, and I read verbatim, "Yes, I
6 am responsible for conditions 1, 2, 3, 4, 5, 6, 7, 8,
7 9, 17, and 19."

8 And furthermore, he's already testified
9 even though he is lead, nonetheless, people were
10 separately responsible for their own areas. He did
11 not change any of their -- any of their -- any of
12 those sections nor contributed to what they wrote in
13 those sections. He is here for a stated purpose as
14 stated in his testimony. Anything outside of that is
15 not proper.

16 MR. STINSON: I would draw Your Honor's
17 attention to page 2, line 8. "I was a Staff subject
18 analyst for portions of the Staff Report of
19 Investigation (Staff Report) by contributing to the
20 overall staff investigation as well the
21 Administrative Project Lead."

22 MR. EUBANKS: And he's already explained
23 what he --

24 MR. STINSON: It's fairly broad, Your
25 Honor.

1 ALJ SANYAL: I'm sorry?

2 MR. EUBANKS: And he's explained that
3 broad statement.

4 ALJ SANYAL: Okay. I have forgotten the
5 question at this point, so I need to have that read
6 back again.

7 (Record read.)

8 ALJ SANYAL: And what conditions were you
9 referring to? All 59?

10 MR. STINSON: The conditions referenced
11 in Mr. Carr's Direct Testimony.

12 ALJ SANYAL: Will you remind me what
13 those are, which conditions specifically?

14 MR. STINSON: The conditions -- actually
15 that's a general question, Your Honor, just what the
16 general purpose of conditions are in the Staff
17 Report.

18 ALJ SANYAL: Okay. I think --

19 MR. EUBANKS: Your Honor, if I could just
20 answer your question. It's not general. It's
21 Conditions 20 through 40. And 20 through 40, by
22 definition, are not Conditions 1, 2, 3, 4, 5, 6, 7,
23 8, 9, 17, and 19.

24 ALJ SANYAL: Okay. Let's rephrase your
25 question. Ask him the general question.

1 MR. STINSON: I don't think I can ask it
2 any more generally because I asked would you agree
3 with me that the purpose of conditions are to inform
4 an applicant of the standards under which a facility
5 is to be constructed and operated.

6 ALJ SANYAL: Okay. We're going to allow
7 that specific question and then we'll see where
8 Mr. Stinson goes from there, okay?

9 You can answer that general question,
10 Mr. Morrison.

11 THE WITNESS: The purpose of adding
12 conditions is to minimize potential impacts of the
13 project by sometimes restricting the Applicant.

14 Q. (By Mr. Stinson) And another purpose
15 would be that the Applicant knows how to operate and
16 construct a facility?

17 THE WITNESS: Please repeat that.

18 (Record read.)

19 A. Well, we would hope they do.

20 Q. And then is it important that the
21 conditions be as clear as possible so the Applicant
22 can comply with the Board's Order?

23 A. Us, in Staff, work as diligently as
24 possible to make things as clear as we can.

25 Q. So your answer is yes, it's important

1 that those conditions be clear?

2 A. I'm not sure.

3 Q. And why aren't you sure?

4 A. Being clear may be a good thing or it may
5 be a bad thing. I'm not sure.

6 Q. Why is being unclear in a condition a
7 good thing for the Board or the Applicant?

8 THE WITNESS: Please reread the question.

9 (Record read.)

10 A. I don't have a specific example.

11 MR. STINSON: No further questions, Your
12 Honor.

13 ALJ SANYAL: Redirect?

14 MR. EUBANKS: Can we have five minutes,
15 Your Honor?

16 ALJ SANYAL: Sure. Let's go off the
17 record and come back at 3:25.

18 (Recess taken.)

19 ALJ SANYAL: Let's get back on the
20 record.

21 Ms. Bair.

22 MS. BAIR: Mr. Eubanks.

23 ALJ SANYAL: Mr. Eubanks, I'm sorry, you
24 are invisible today. So sorry.

25 (Laughter all around.)

1 MR. EUBANKS: We have no rebuttal
2 questions and also we would like to -- well, I would
3 like to renew my motion to have Staff's Exhibit 7
4 placed into evidence.

5 ALJ SANYAL: Okay. I don't have any
6 questions, Mr. Agranoff does not, and are there any
7 objections to Staff Exhibit 7 being admitted?

8 Hearing none, it is admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 ALJ SANYAL: Thank you, Mr. Morrison.
11 You may step down.

12 And then are we ready for Staff's next
13 witness? Mr. Eubanks, it's you again.

14 MR. EUBANKS: We are, Your Honor. I
15 would like to call Grant Zeto to the stand.

16 ALJ SANYAL: Good afternoon, Mr. Zeto.
17 Will you raise your right hand.

18 (Witness sworn.)

19 MR. EUBANKS: Your Honor, may I approach?

20 ALJ SANYAL: Yes, you may.

21 MR. EUBANKS: I would like to have the
22 Prefiled Testimony of Grant Zeto marked as Staff's
23 Exhibit 8.

24 ALJ SANYAL: It is so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

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GRANT T. ZETO

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

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Good evening. Could you state your name
and spell it for the record.

A. Grant Zeto. G-r-a-n-t Z-e-t-o.

Q. You have what has been marked as Staff's
Exhibit 8 in front of you?

A. Correct, yes.

Q. Can you identify it?

A. My Prefiled Testimony.

Q. Was it prepared by you or at your
direction?

A. Yes, it was.

Q. Are there any changes you would like to
make to your testimony?

A. No.

Q. If I were to ask you the same questions
here today that are in your Prefiled Testimony, would
you give the same answers?

A. Yes, I would.

Q. Is this a true and accurate copy of your

1 testimony?

2 A. Yes, it is.

3 MR. EUBANKS: I have no further questions
4 for the witness, and I would like to move to have
5 Staff's Exhibit 8 placed into evidence, subject to
6 cross-examination.

7 ALJ SANYAL: Thank you, Mr. Eubanks.

8 Mr. Van Kley.

9 MR. VAN KLEY: All right.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Van Kley:

13 Q. Mr. Zeto, would you turn to the Staff
14 Report, page 44.

15 A. Okay. I'm there.

16 ALJ AGRANOFF: Did you say page 24?

17 MR. VAN KLEY: Page 44.

18 Q. There's a section here that's entitled
19 "Minimum Adverse Environmental Impact" and you
20 authored that section, correct?

21 A. No, I did not.

22 Q. No? Okay. Do you know who did?

23 A. I believe this was Eric Morrison's
24 section.

25 Q. Oh, okay.

1 ALJ SANYAL: Did you mean Mr. Eric
2 Morrison?

3 THE WITNESS: Yes.

4 ALJ SANYAL: Okay.

5 Q. All right. Let's go to the Staff Report,
6 page 28, please.

7 A. Okay.

8 Q. All right. And this is a section that
9 deals with threatened and endangered species,
10 correct?

11 A. Correct.

12 Q. And you authored this section, right?

13 A. Yes, I did.

14 Q. And I see that there is a table that
15 provides the identification of a number of mammals,
16 reptiles and amphibians, mussels, fish, and on the
17 next page, plants and birds, right?

18 A. Correct.

19 Q. What was the purpose of this table?

20 A. The purpose of this table is to kind of
21 outline the threatened and endangered species and the
22 ranges in the area that were identified through
23 consultation with wildlife agencies and other
24 information requests.

25 Q. Do you see the references to a number of

1 animals that are referred to as "species of concern"?

2 A. I'm sorry, could you repeat that, please?

3 Q. Yes. Do you see references to a number
4 of species on this table that are referred to as
5 "species of concern"?

6 A. Yes.

7 Q. And what is a species of concern?

8 A. I see them under the state listing and
9 the state uses that designation. There's kind of a
10 hierarchy of endangered, threatened, and then species
11 of concern. So species of concern, I don't remember
12 the exact definition, but there are certain threats
13 to them or their habitat.

14 ALJ SANYAL: Mr. Zeto, you may need to
15 move the microphone a little closer to you.

16 THE WITNESS: Okay.

17 ALJ SANYAL: Thank you.

18 Q. If you go to page 29, under "Birds"
19 you'll see the loggerhead shrike is identified as a
20 species of interest. Do you know what a species of
21 interest is?

22 A. Yes. Species of interest would be the
23 next category below a species of concern, but I think
24 that is actually a typo. It's actually a
25 state-endangered bird species as is identified later

1 in this section of the Staff Report.

2 Q. Okay. So loggerhead shrike should be
3 identified as an endangered species?

4 A. Yeah, let me doublecheck that real quick.
5 Yes, it is a state-endangered bird.

6 Q. And with respect to the listing of the
7 bald eagle under "Birds" in this table on page 29, it
8 is stated that the nearest nest is 1.9 miles from the
9 project. Do you see that?

10 A. Yes.

11 Q. Have you received any information, since
12 you wrote this section, that would provide
13 information that the nearest nest is actually closer
14 now?

15 A. I don't have any specific locations, no.

16 Q. Are you aware of testimony in this case
17 about an eagle nest that's located inside the project
18 area?

19 A. I can't remember if I read that testimony
20 directly, but I've heard of that, yes.

21 Q. So I take it from your answer that you
22 have not done any investigation as to the presence of
23 such a nest since reading that testimony; is that
24 correct?

25 A. That's correct.

1 Q. Have you had any conversations with other
2 members of the Staff about this testimony concerning
3 the eagle nest inside the project area?

4 A. None that I specifically remember, no.

5 Q. Have you had any conversations with the
6 Applicant about this topic?

7 A. No.

8 Q. On page 29 of your Staff Report, I'd like
9 to direct your attention to the last paragraph. Go
10 to the fourth line and then to the last word of that
11 line and the following sentence which reads: "The
12 Applicant would follow a curtailment regime to
13 minimize impacts to bats and other avian species in
14 the project area." Do you see that?

15 A. Yes.

16 Q. Okay. First of all, a bat is not an
17 avian species, correct?

18 A. I believe -- I guess I'm not sure of the
19 specific definition of "avian" and how those -- if
20 the bats would overlap with that. I would have
21 thought that they were.

22 Q. Okay. Do you regard "avian" as meaning
23 birds or something?

24 A. Flying species.

25 Q. Any flying species? Okay. All right.

1 What's a curtailment regime as referred
2 to in this sentence?

3 A. A curtailment regime would be feathering
4 the turbine blades below certain wind speeds.

5 Q. Okay. Since you stated in the sentence
6 that "The Applicant would follow a curtailment regime
7 to minimize impacts to bats and other avian species
8 in the project area," besides the bats, what other
9 species would be subject to or protected by such a
10 curtailment regime?

11 A. Birds as well.

12 Q. Okay. Is there anything in the
13 recommended conditions in the Staff Report that would
14 require any curtailment regime for birds?

15 A. I think that they were written with bats
16 in mind, but they would also benefit -- birds would
17 also benefit from the regime.

18 Q. Go to page 31 of the Staff Report, second
19 paragraph, second sentence which reads: "Although no
20 eagle nests have been documented within the project
21 area, the Applicant has not completed a bald eagle
22 survey since 2012." Do you see that?

23 A. Yes.

24 Q. Why did you write this sentence?

25 A. The eagle use survey that was provided

1 along with the Application was dated from 2012 and
2 there was not another survey other than that one.

3 Q. Okay. All right. And why -- why is that
4 a notable fact that led you to write this sentence?

5 A. It's a -- it's seven years ago and I
6 wasn't -- I wasn't sure whether that was up-to-date
7 enough.

8 Q. Let's go to some of the -- before I do
9 that, is it true that bird populations can change
10 over time?

11 A. Yes.

12 Q. Okay. Now let's go to the conditions
13 that are recommended by the Staff Report.

14 A. Okay.

15 Q. I'd like to direct you to page 65 of the
16 Staff Report, Condition 30.

17 A. Okay.

18 Q. All right. Now, Condition 30 talks about
19 a post-construction avian and bat monitoring plan,
20 correct?

21 A. Correct.

22 Q. And the purpose of that plan would be to
23 count the number of dead bats and birds around the
24 turbines after they start operating, correct?

25 A. Yeah, around certain turbines at certain

1 intervals, yes.

2 Q. And the purpose of the implementation of
3 that plan would be to determine what numbers of those
4 species are being killed by the turbines?

5 A. Yeah, I believe that's correct.

6 Q. Okay. Now, do you know whether -- well,
7 let me ask you this: It says here the plan will be
8 submitted to ODNR's Division of Wildlife and Staff
9 for review, right?

10 A. Right, yes.

11 Q. Okay. Now, to whom will the
12 post-construction monitoring results be submitted?
13 Will it be to the Division of Wildlife or the Staff
14 or neither one?

15 A. To both.

16 Q. And will that data, as submitted to the
17 Staff, be available to the public as a public record
18 to your knowledge?

19 A. The condition doesn't specify that it
20 would be, no.

21 Q. Well, are you familiar with whether other
22 wind turbine projects, operating in Ohio, also have
23 monitored bird and bat kill data?

24 A. Yes.

25 Q. Okay. And in those instances have those

1 projects submitted that data to the Power Siting
2 Board?

3 A. Yes.

4 Q. Okay. And in those instances have those
5 documents been treated as public records?

6 A. I do not believe they've been made
7 public, no.

8 Q. Do you know why not?

9 A. No.

10 ALJ AGRANOFF: Point of clarification,
11 Mr. Van Kley. When you were asking about whether
12 they were public records, were you meaning formally
13 docketed?

14 MR. VAN KLEY: I'm sorry, repeat, please.

15 ALJ AGRANOFF: When you were asking
16 whether or not they were public records, were you
17 asking in the context of whether or not they are
18 formally docketed in a specific case pertaining to
19 that particular company?

20 MR. VAN KLEY: No. What I was asking is
21 whether, if the public requested those records, they
22 would be provided to the public as public records,
23 not whether they'd be docketed.

24 ALJ AGRANOFF: Okay.

25 MR. VAN KLEY: Let me make sure that you

1 understand the question.

2 Q. (By Mr. Van Kley) Do you know whether
3 those post-construction monitoring records have been
4 treated by the Ohio Power Siting Board as public
5 records that can be requested and produced to the
6 public?

7 MR. EUBANKS: Objection.

8 MR. PARRAM: Objection. Calls for --

9 MR. EUBANKS: Outside the scope of his
10 testimony. Calls for a legal conclusion.

11 MR. VAN KLEY: Neither one is -- well,
12 first of all, it's not a valid objection as beyond
13 the scope of his testimony. That's a -- that is not
14 a proper objection under the Ohio Rules of Evidence.

15 Secondly, he can tell us whether, if he
16 knows, whether the Board has been producing those as
17 public records or not. And I thought he had already
18 answered saying no, they're not treated as public
19 records but I want to make sure, in light of the
20 Bench's questions, that he was saying they're not
21 treated as public records versus they're not being
22 docketed.

23 MR. PARRAM: I would just indicate
24 whether or not something is a public record is an
25 actual legal definition, so to the extent he's asking

1 the witness whether or not something has been treated
2 as a public record by the Ohio Power Siting Board or
3 the PUCO, that calls for a legal conclusion.

4 ALJ SANYAL: Thank you.

5 Your objections are overruled.

6 Mr. Zeto, do you know, were the records
7 that Mr. Van Kley was referring to, do you know if
8 they were produced pursuant to a public records
9 request?

10 THE WITNESS: I'm not aware of any public
11 records requests for those -- for that data in the
12 past.

13 MR. VAN KLEY: All right. I have no
14 further questions.

15 ALJ SANYAL: Mr. Parram.

16 MR. PARRAM: Is it my turn, Your Honor?

17 ALJ SANYAL: I'm sorry?

18 MR. PARRAM: My turn?

19 ALJ SANYAL: It's your turn.

20 MR. PARRAM: Okay.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Parram:

24 Q. Mr. Zeto, will you turn to page 27 of the
25 Staff Report which should be Staff Exhibit No. 1.

1 A. Okay, I'm there.

2 Q. And the last paragraph states "Staff
3 recommends that the Applicant have a Staff-approved
4 environmental specialist on-site during construction
5 activities that may affect sensitive areas." How do
6 you define "sensitive areas"?

7 A. The next sentence, I believe, outlines
8 what we meant by that. Areas include, but are not
9 limited to, areas of vegetative clearing, herbicide
10 application, designated wetlands and streams, and
11 locations of threatened and endangered species and
12 their identified habitat.

13 Q. When you say "but are not limited to," do
14 you have examples of other areas that might be
15 sensitive areas that aren't delineated here?

16 A. I don't have anything in mind but if
17 anything else is brought to light.

18 Q. So, in your experience, have there been
19 sensitive areas that have come up in other OPSB cases
20 that you've concluded are sensitive but are not
21 specifically delineated in this list here?

22 A. No, I don't have any examples.

23 Q. Does ODNR have a definition of sensitive
24 areas?

25 A. I don't believe so.

1 Q. Does -- the Power Siting Board doesn't
2 have a specific definition?

3 A. No.

4 Q. On page 27 again, I guess the second full
5 paragraph starts with the words "In order to minimize
6 impacts...." Do you see that? It's right in the
7 middle of the page there. "In order to minimize
8 impacts to surface waters...."

9 A. The second paragraph, you said?

10 Q. The second full paragraph or third
11 paragraph.

12 A. Yes.

13 Q. And in the second sentence you have a
14 reference to a term "sensitive plant species" as
15 identified by ODNR. Does ODNR have a specific
16 definition for "sensitive plant species"?

17 A. No.

18 Q. Does the Ohio Power Siting Board have a
19 definition of "sensitive plant species"?

20 A. No.

21 Q. Is there a -- when you have this
22 reference in your portion of the Staff Report, how
23 are you defining "sensitive plant species"?

24 A. The only species that I had in my mind,
25 which is also listed in the table, was the Engleman's

1 Spike Rush. I guess it was kept broad in case any
2 other species were identified through the course of
3 the work.

4 Q. So in this section, when you're talking
5 about protecting certain plant species, you indicate
6 specifically the Engleman's Spike Rush as one you had
7 in mind.

8 A. Yes.

9 Q. And the Engleman's Spike Rush is a listed
10 threatened species --

11 A. Yes.

12 Q. -- state species, correct?

13 A. Yes.

14 Q. And on page 28 to 29, the -- well, on
15 page 28, it's specifically titled "Threatened and
16 Endangered Species." You were responsible for
17 drafting this, correct?

18 A. Yes.

19 Q. And the intent of this was to identify
20 those threatened and endangered species that should
21 be identified and protected during the project,
22 correct?

23 A. Yes.

24 Q. And is it fair to say when you were
25 referring to sensitive plant species your concern is

1 threatened and endangered species, correct?

2 A. I would say listed species.

3 Q. Okay. So what are listed species?

4 A. For the state that would be endangered,
5 threatened, species of concern, and special interest.

6 Q. Are there any other listed species
7 besides those you just discussed?

8 A. Federal would be endangered, threatened,
9 species of concern, and candidate species.

10 Q. What was the last one?

11 A. Candidate species.

12 Q. And for state, what would be all of the
13 listed species?

14 A. Endangered, threatened, species of
15 concern, and special interest.

16 Q. And do you have an understanding of the
17 amount or the number of species of concern or special
18 interest species within the project area?

19 A. Not that have been identified that I'm
20 aware of.

21 Q. When you were preparing your portion of
22 the Staff Report and recommended conditions, did you
23 look into how many different species of concern or
24 special interest species there are in the project
25 area?

1 A. Could you please repeat that?

2 Q. Sure. So just so I'm clear, besides
3 endangered and threatened species for state-listed
4 species, you have species of concern and then you
5 would say species of interest, correct?

6 A. I believe special interest is the other
7 classification.

8 Q. Special interest. Did you do any type of
9 analysis to determine how many species of concern or
10 special interest species are within the project area?

11 A. I consulted with other agencies but I did
12 not perform any studies.

13 Q. Okay. What did they -- what did the
14 other agencies tell you?

15 A. They did not identify any.

16 Q. If you go to Condition No. 25.

17 A. Okay.

18 Q. Condition 25 indicates that the Applicant
19 shall contact Staff, ODNR, and U.S. Fish and Wildlife
20 Service within 24 hours if a state- or federal-listed
21 species is encountered during construction,
22 operation, or monitoring activities. Did I read that
23 correctly?

24 A. Yes.

25 Q. So what was Staff's definition of the

1 term "encountered"?

2 A. Come across, identify, see. I don't know
3 if we have a specific definition.

4 Q. So I'm trying to understand the
5 obligations of the Applicant according to this
6 condition. So any time that a state- or
7 federal-listed species is seen during construction,
8 they're required to contact Staff, ODNR, and U.S.
9 Fish and Wildlife within 24 hours?

10 A. Yes.

11 Q. Would this include any plant species?

12 A. Yes.

13 Q. Will they be required to halt
14 construction at that stage?

15 A. No.

16 Q. And when Staff indicates in Condition 25,
17 it says "Activities that could adversely impact the
18 identified plants or animals," what's your definition
19 of "adversely impact"?

20 A. I don't know that I have a specific
21 definition. "Negatively impact" would be another way
22 of saying it.

23 Q. Would this have to actually physically
24 harm the species?

25 A. Not necessarily.

1 Q. Can you give me an example of an adverse
2 impact that does not physically harm the species?

3 A. Scaring a nesting bird off of its nest.

4 Q. So would this mean that any time the
5 Applicant is performing any type of construction
6 activities that could cause a bird to fly away from
7 its nest, it would have to immediately halt
8 construction and then coordinate with all the
9 appropriate agencies?

10 A. If it's a listed species, yes.

11 Q. What is the negative impact on the listed
12 species if it is scared away from its nest?

13 A. I believe the definition of "take" also
14 includes the term "harass." I'm not 100-percent sure
15 what they mean by that but that seems to fall into
16 that category for me within the Endangered Species
17 Act.

18 Q. So you interpret "harass" to mean if any
19 species or any nesting species is frightened away
20 from its nest, that's harassment?

21 A. Potentially.

22 Q. So when would it be, since you say
23 "potentially," can you give me an example of when it
24 would be?

25 A. I don't know if I have a specific example

1 for you.

2 Q. And again, in Condition 25, is it Staff's
3 intent to require these activities for all state- and
4 federal-listed species even if those species are not
5 threatened or endangered?

6 A. Yes.

7 Q. And again, before you drafted this
8 condition, would you take into consideration all of
9 the species that are beyond just threatened and
10 endangered species that would be encompassed by this
11 condition?

12 A. Yes. There are several species of
13 concern listed in the table.

14 Q. Would you go to Condition 26, please.

15 A. Okay.

16 Q. So Condition 26 contains a recommendation
17 that the Applicant obtain a Technical Assistance
18 Letter; is that correct?

19 A. Yes.

20 Q. And you're aware that the Applicant has
21 obtained a Technical Assistance Letter, correct?

22 A. I believe I have heard that, yes.

23 Q. Have you seen the testimony of -- Direct
24 Testimony of Dalton Carr in this case?

25 A. Yes.

1 Q. Did you see the Technical Assistance
2 Letter attached to his testimony?

3 A. I have not reviewed that, no.

4 MR. PARRAM: Your Honor, may I approach
5 the witness?

6 ALJ SANYAL: Yes, you may.

7 MR. PARRAM: This is a copy of Applicant
8 Exhibit 13 which is the Direct Testimony of Dalton
9 Carr.

10 MR. EUBANKS: Could you remind us of the
11 exhibit number?

12 MR. PARRAM: It should be Applicant
13 Exhibit 13, the Direct Testimony of Dalton Carr.

14 Q. (By Mr. Parram) So you have Applicant
15 Exhibit 13 in front of you, right?

16 A. Yes.

17 Q. And attached to Mr. Carr's testimony was
18 the Technical Assistance Letter, the TAL.

19 A. Yes.

20 Q. And in the TAL -- before I go on, in the
21 last sentence of Condition 26, it indicates that "The
22 Applicant shall comply with the operational measures
23 detailed within the technical assistance letter until
24 an incidental take permit has been obtained for the
25 project." Do you see that?

1 A. Yes.

2 ALJ SANYAL: Mr. Parram, I just have a
3 quick clarification question. Was the TAL attached
4 to Exhibit 13 or 14? The Supplemental Testimony or
5 the --

6 MR. PARRAM: 13, the Direct, Your Honor.

7 Q. (By Mr. Parram) So in the last sentence,
8 Staff is recommending the Applicant comply with the
9 operational measures detailed within the Technical
10 Assistance Letter, correct?

11 A. Correct.

12 Q. And was it Staff's intent that if the
13 Applicant obtains a Technical Assistance Letter that
14 they can satisfy this condition by just continuing to
15 operate under the terms of that Technical Assistance
16 Letter?

17 A. Yes.

18 Q. So it wasn't Staff's intent to require
19 the Applicant to eventually obtain an Incidental Take
20 Permit for the project; is that correct?

21 A. Staff is okay with the terms of the
22 Technical Assistance Letter for operation.

23 Q. So if the Applicant complies with the
24 operational measures detailed within the Technical
25 Assistance Letter and does not obtain an Incidental

1 Take Permit, the Applicant has satisfied Staff's
2 concern?

3 A. I believe that's right, yeah.

4 Q. And not required to obtain an Incidental
5 Take Permit at some point, correct?

6 A. Yeah.

7 Q. So in the Technical Assistance Letter
8 there is a term sheet attached to the Technical
9 Assistance Letter which is the, I guess the fourth
10 page, the attachment to the three-page TAL letter.
11 Do you see that there? At the top it should say
12 "Republic Wind Project - February 15, 2019, Term
13 Sheet for a Technical Assistance Letter" at the top.

14 A. I see that, yes.

15 Q. So the Technical Assistance Letter has
16 specific, I guess, terms or commitments with respect
17 to operations and the feathering of the turbines for
18 the spring, the summer, and the fall. Do you see
19 that?

20 A. You're referring to the section
21 underneath "Operations"?

22 Q. Yes.

23 A. Yes, I see that.

24 Q. And the Technical Assistance Letter, in
25 the portion that talks about operations, doesn't have

1 a specific recommendation with respect to the
2 northern long-eared bat; is that correct?

3 A. That's correct.

4 Q. Yet, U.S. Fish and Wildlife has agreed to
5 and indicated that Republic Wind should conform to
6 the operations spelled out in the Technical
7 Assistance Letter term sheet; is that correct?

8 A. I'm sorry, what are you referring to?

9 Q. I'm just referring to the Technical
10 Assistance Letter in general. U.S. Fish and Wildlife
11 has indicated that Republic Wind should comply with
12 the terms of this term sheet which doesn't have the
13 specific feathering required for the northern
14 long-eared bat; is that correct?

15 A. Correct. Looking at "Operations," it
16 only mentions Indiana bat.

17 Q. So if Republic Wind conforms to the terms
18 of the Technical Assistance Letter, it would be
19 inconsistent with the proposed condition set forth in
20 Condition 26, correct?

21 A. Condition 26 is saying that these terms,
22 which the Fish and Wildlife has applied to Indiana
23 bat, shall also be applied to the northern long-eared
24 bat.

25 Q. So you're recommending a condition that

1 is inconsistent with the Technical Assistance Letter?

2 A. No. It's something in addition to the
3 Technical Assistance Letter.

4 Q. Was this a request of U.S. Fish and
5 Wildlife?

6 A. This was a request of ODNR.

7 Q. When did ODNR make this request?

8 A. During the investigation process in
9 coordination with Staff.

10 Q. Did they provide correspondence directly
11 to Staff regarding that?

12 A. Staff wrote this condition in
13 consultation with ODNR.

14 Q. So there wasn't written correspondence?

15 A. What do you mean by "written
16 correspondence"?

17 Q. An e-mail or a letter.

18 A. There were e-mails exchanged to write the
19 condition.

20 Q. Okay. So in those e-mails, ODNR
21 specifically requested that the feathering -- the
22 feathering for the Indiana bat be applied to the
23 northern long-eared bat as well.

24 A. Yes.

25 Q. Did ODNR explain why they wanted that

1 provision included in 26?

2 A. Because the northern long-eared bat is a
3 state-threatened species.

4 Q. So if we can go back to Condition 25
5 really quick. We were talking about, you had some
6 concerns with respect to what is either harass --
7 harassing one of these listed species; is that
8 correct? Or taking?

9 A. Can you repeat that, please?

10 Q. Sure. For Condition 25, you indicated
11 that you had concerns about the purpose behind this
12 specific condition or whether or not an activity
13 would adversely impact a plant or animal was with
14 respect to potential take or harassment of a species.

15 A. Yes.

16 Q. Can you point me to the specific
17 regulation or code you were relying upon, from either
18 ODNR, U.S. Fish and Wildlife, or the OPSB, that
19 supports your -- the specific provision regarding the
20 adverse impacts?

21 A. The definition of "take" in the
22 Endangered Species Act.

23 Q. So just the definition of "take" is where
24 you were deriving -- the definition of "take" is what
25 is the impetus for you to say that any time that a

1 species may be harassed, that all construction
2 activities must stop and the Applicant is required to
3 coordinate with OPSB and ODNR and U.S. Fish and
4 Wildlife?

5 A. I think that's part of it, yes.

6 Q. But there isn't -- there isn't any
7 specific regulation that you are aware of that
8 indicates any time -- any time a listed species --
9 or, yeah, any time there is a federal- or
10 state-listed species that may be harassed, the
11 Applicant is required to stop all construction
12 activity.

13 A. I guess I'm not -- I can't name a
14 specific law or anything but I have seen
15 recommendations, in past cases from ODNR, about
16 maintaining certain distances from nesting bird
17 species to avoid adversely impacting during that
18 time.

19 Q. So you're referring to actual
20 recommendations from ODNR that say stay a certain
21 distance away from nests?

22 A. I've seen those kind of recommendations
23 before.

24 Q. Are those in Power Siting Board cases
25 where you've seen those recommendations --

1 A. Yes.

2 Q. -- or where are you referring to?

3 And so this particular language, was
4 this -- was this language recommended by ODNR?

5 ALJ AGRANOFF: Which language are you
6 referring to, Mr. Parram?

7 MR. PARRAM: The second full sentence.

8 Q. "Activities that could adversely impact
9 the identified plants or animals shall be immediately
10 halted until an appropriate course of action has been
11 agreed upon by the Applicant, Staff and the
12 appropriate agencies." Was that language recommended
13 by ODNR?

14 A. It was not specifically recommended by
15 them, but they were given opportunity to review that.

16 Q. So can you go to Condition 29.

17 A. Okay.

18 Q. In the first sentence you have a phrase
19 that talks about "determine the project results in
20 significant adverse impact to wild animals." Do you
21 see that?

22 A. Yes.

23 Q. What is a significant adverse impact in
24 this sentence?

25 A. I don't have any quantification of it.

1 It would be something to be determined and it would
2 depend on species and the impact.

3 Q. Does ODNR have a definition of
4 "significant adverse impact"?

5 A. Not that I'm aware of.

6 Q. What about U.S. Fish and Wildlife?

7 A. Not that I'm aware.

8 Q. What about a definition of "wild
9 animals"?

10 A. There's a definition of "wild animals" in
11 the Ohio Revised Code.

12 Q. What code provision are you referring to?

13 A. I don't remember the specific code. I
14 believe it's 1501, somewhere within that.

15 Q. So is it fair to say when you say "wild
16 animals" here, that's the code you were referencing?

17 A. Yes.

18 Q. So would it be fair to say, to the extent
19 this condition was revised to indicate a specific
20 definition of "wild animals," that would provide more
21 clarity, correct?

22 A. Can you please repeat that?

23 Q. Sure. To the extent this proposed
24 condition was revised to include a citation to the
25 definition of "wild animals" you're referring to,

1 that would provide additional clarity, correct?

2 A. I wouldn't object to that. I don't think
3 it would make it less clear.

4 Q. Have you heard the term "significant
5 mortality event"?

6 ALJ SANYAL: Which condition are you now
7 at?

8 MR. PARRAM: It's just a general
9 question, Your Honor.

10 Q. Have you ever heard the term "significant
11 mortality event"?

12 A. Yes, I have.

13 Q. What is that?

14 A. I believe that's defined in one of the
15 ODNR protocols. I believe that's within the On-Shore
16 Bird and Bat Pre- and Post-Construction Monitoring
17 Protocol for Commercial Wind Energy Facilities in
18 Ohio.

19 Q. If the term "significant mortality event"
20 were used instead of "significant adverse impact,"
21 would that provide additional clarity to Condition
22 29?

23 A. No, I think this was -- this was written
24 in correspondence with ODNR and I think they wanted
25 to use a more general term.

1 Q. So in the first sentence, if Staff and
2 ODNR, in consultation with U.S. Fish and Wildlife,
3 determine the project results in significant adverse
4 impacts, when would you -- when would this
5 consultation with U.S. Fish and Wildlife occur?
6 Before the project starts or during the project?

7 A. I believe this would be during the
8 project.

9 Q. Help me understand. So during a project,
10 who would initiate this analysis of whether or not
11 something is a significant adverse impact?

12 A. I think there's a number of ways this
13 could be initiated. One of them would be through the
14 results of the post-construction monitoring.

15 Q. All right. Condition 31.

16 A. Okay.

17 Q. I'm sorry, I think I'm reading the wrong
18 condition.

19 Condition 32. "No in-water work in
20 perennial streams." Do you see that condition?

21 A. Yes.

22 Q. Do you -- and you still have Applicant
23 Exhibit 13 in front of you, Dalton Carr's testimony?

24 A. Yes, I do.

25 Q. All right. Mr. Carr proposes a

1 modification to Condition 32 on pages 20 over to 21
2 of his testimony. It should be Question 42 and
3 Answer 42.

4 ALJ SANYAL: So I think his testimony
5 refers to 31, but I think he means 32, correct?

6 MR. PARRAM: I think that was addressed
7 in the errata.

8 ALJ SANYAL: Probably.

9 MR. PARRAM: I believe.

10 ALJ SANYAL: Yes.

11 Q. (By Mr. Parram) So just to be clear,
12 we're talking about Condition 32.

13 A. Okay.

14 Q. You may be looking at the testimony that
15 says Condition 31, but it's Condition 32 in the Staff
16 Report and that's the condition talking about "no
17 in-water work in perennial streams." Are you there
18 with me?

19 A. Yes.

20 Q. Okay. So Republic Wind proposes, at the
21 end of Condition 32, that a provision be added to say
22 "unless coordination with the ODNR allows a different
23 course of action." Do you see that proposed language
24 in Mr. Carr's testimony?

25 A. Yes, I do.

1 Q. Would Staff object to that revision to
2 Condition 32?

3 A. No. I believe that's the way it was
4 actually intending on Staff Report page 31, we
5 actually have that language in there.

6 Q. Okay. And then for Conditions 33, 34,
7 and 35, which are --

8 ALJ SANYAL: I'm sorry, can we --

9 MR. PARRAM: I'm sorry.

10 ALJ SANYAL: So, Mr. Zeto, so you're
11 saying that this addition would not be acceptable to
12 Staff?

13 THE WITNESS: I have no objection to that
14 addition.

15 ALJ SANYAL: Oh, okay. Thank you. I was
16 just trying to clarify.

17 Q. (By Mr. Parram) So for 33, 34, and 35,
18 which is referenced in Mr. Carr's testimony on
19 page 21 in his Answer 44, he proposes revisions to
20 33, 34, and 35. Do you see that?

21 A. Yes.

22 Q. And he proposes to include language "as
23 defined by ODNR" in each one of those conditions.
24 Would Staff be opposed to those revisions to those
25 conditions?

1 A. I believe Staff intends to use
2 definitions that were provided in the ODNR letter in
3 this process.

4 Q. So Staff would not be opposed to
5 Mr. Carr's proposed revisions to Condition 33, 34,
6 and 35, correct?

7 A. I'm not sure. I probably -- it's kind of
8 a collaborative effort on this. I don't think I'd
9 want to commit to anything without consulting with
10 the rest of Staff.

11 Q. When you say "the ODNR letter," what are
12 you referring to?

13 A. There was a letter, I can't remember the
14 date, I believe it was in the Application, that
15 provided some -- it was provided during the
16 investigation for -- along with completeness review,
17 and it was provided to the Applicant too, from ODNR
18 to Staff, just kind of reiterating some of their
19 recommendations.

20 Q. So in your provision you intended the
21 definition to mean ODNR's definition in that letter,
22 correct?

23 A. I don't really have anything else in
24 mind, I suppose.

25 ALJ SANYAL: And the definition we're

1 speaking about is the "nesting habitat type"?

2 THE WITNESS: Yes.

3 ALJ SANYAL: Okay.

4 ALJ AGRANOFF: Just so the record was
5 clear, when we're discussing the recommendations of
6 the ODNR letter, can we just again, in case it isn't
7 clear on the record, as to which letter that was?

8 THE WITNESS: I'm sorry, what are you
9 asking?

10 ALJ SANYAL: The ODNR letter that you're
11 referring to, what is it?

12 THE WITNESS: I think there's a couple of
13 ODNR letters that we -- there's one that was provided
14 along with the Application and one that was provided
15 from ODNR to Staff as a result of the completeness
16 review. Both of them are basically the same thing,
17 detailing species that they expect to be within the
18 range of the project that could be impacted and/or
19 saying they would not be impacted; and if they
20 thought there could be impacts, making
21 recommendations to avoid or minimize those impacts.

22 ALJ AGRANOFF: And are those letters all
23 currently included in the record in this case?

24 THE WITNESS: I'm not sure.

25 MR. PARRAM: Your Honors, I don't have a

1 copy of this letter with me, but I think we have a
2 document that he may be referring to. May I approach
3 the witness to describe a letter?

4 ALJ SANYAL: Sure. May we look at it
5 also?

6 MR. PARRAM: Yes.

7 ALJ SANYAL: Just so we know.

8 MR. PARRAM: And if we can hone in on it,
9 if we can identify it --

10 ALJ SANYAL: Sure.

11 MR. PARRAM: -- I'll subsequently
12 indicate that on the record.

13 Q. (By Mr. Parram) Mr. Zeto, I'm going to
14 show you a letter from ODNR, dated April 27, 2018, to
15 Ray Strom of the Ohio Power Siting Board. Are you
16 familiar with this letter?

17 A. Yes.

18 Q. And is this the letter you were referring
19 to with respect to definitions by ODNR?

20 A. Yes.

21 Q. On the first page of the document, where
22 are the specific definitions you're referring to?

23 A. Later in the document.

24 Q. There we go. Right?

25 A. Yes.

1 Q. So on page -- so on page 4 of this
2 document, there's a definition for the upland
3 sandpiper, northern harrier, and the loggerhead
4 shrike. Do you see that?

5 A. Yes.

6 Q. So when you were drafting Conditions 33,
7 34, and 35, these are the definitions, the ODNR
8 definitions that you had in mind when you were
9 drafting those conditions; is that correct?

10 A. That's correct.

11 Q. And to the extent that these conditions
12 incorporate those -- the definitions from this
13 April 27, 2018 ODNR letter to Ray Strom, Staff would
14 be agreeable to including that definition to those
15 conditions?

16 A. Yes.

17 ALJ SANYAL: Mr. Parram, based on that,
18 will you be introducing that as an exhibit at some
19 point --

20 MR. PARRAM: At some point.

21 ALJ SANYAL: -- during this --

22 MR. PARRAM: At some point I will.

23 ALJ SANYAL: Maybe next week?

24 MR. PARRAM: Definitely, Your Honor.

25 ALJ SANYAL: Okay.

1 Q. (By Mr. Parram) And then for Condition
2 36, the Applicant proposed a modification to
3 provision (c) to clarify that the Applicant will
4 coordinate with ODNR, with an ODNR-approved
5 herpetologist --

6 ALJ SANYAL: I'm sorry, will you let me
7 know where you are?

8 MR. PARRAM: I'm sorry.

9 ALJ SANYAL: I've lost my place.

10 MR. PARRAM: I'm in Staff -- I'm at
11 Condition 36 of the Staff Report and there's
12 paragraph (a), (b), and (c).

13 ALJ SANYAL: Uh-huh.

14 Q. (By Mr. Parram) And in Mr. Carr's
15 testimony at page 21 and 22, he proposes
16 modifications to Condition (c), specifically to
17 clarify that the Applicant is willing to coordinate
18 with an ODNR-approved herpetologist and, in that
19 coordination, the plan will actually be developed by
20 the Applicant. Would Staff be agreeable to those
21 revisions?

22 A. I believe the intent of this is to -- for
23 the Applicant to develop the -- develop and implement
24 the plan in coordination with the herpetologist, with
25 the herpetologist's signoff.

1 Q. So you would be agreeable to the proposed
2 revisions in Mr. Carr's testimony for Condition 36?

3 A. No. I think this limits the role of the
4 herpetologist too much.

5 Q. Even though the Applicant is still
6 specifically required to coordinate with the
7 ODNR-approved herpetologist?

8 A. Yes, that would be an important part of
9 it, but the plan should not be developed by --
10 without the signoff of the herpetologist.

11 MR. PARRAM: No further questions, Your
12 Honor. Thank you.

13 ALJ AGRANOFF: Before we do anything
14 else, I noticed, while we were referring to the
15 attachment to Mr. Carr's testimony and specifically
16 the U.S. Fish and Wildlife Technical Assistance
17 Letter, on the term sheet up at the very top it
18 reflects --

19 ALJ SANYAL: I knew you were going to ask
20 that.

21 ALJ AGRANOFF: -- it reflects
22 "Confidential Business Information."

23 MR. PARRAM: It's not confidential.

24 ALJ AGRANOFF: I just wanted to make sure
25 we didn't have an issue.

1 MR. PARRAM: Thank you.

2 ALJ SANYAL: Redirect?

3 MR. EUBANKS: Your Honor, if we could
4 have five minutes?

5 ALJ SANYAL: Yes, you may. I still
6 intend on leaving at five.

7 (Recess taken.)

8 ALJ SANYAL: Go ahead, Mr. Eubanks.

9 MR. EUBANKS: Your Honors, we have no
10 further questions for the witness. We would like to
11 renew our motion to have Staff's Exhibit 8 placed
12 into evidence.

13 ALJ SANYAL: Thank you.

14 I do have one question.

15 - - -

16 EXAMINATION

17 By ALJ Sanyal:

18 Q. Mr. Zeto, if you'll turn to Condition 40.
19 Were you responsible for drafting that condition?

20 A. Yes.

21 Q. Okay. So in that condition there is a
22 reference to an Eagle Conservation Plan. So if
23 there's a recommendation by the U.S. Fish and
24 Wildlife Service to develop a -- to develop an Eagle
25 Conservation Plan, is that a voluntary recommendation

1 or does that have to be done?

2 A. The Fish and Wildlife Service cannot
3 require someone to develop an Eagle Conservation
4 Plan.

5 Q. So it's purely a recommendation --

6 A. Yes.

7 Q. -- and it can be followed or not.

8 A. Yes.

9 ALJ SANYAL: Okay.

10 - - -

11 EXAMINATION

12 By ALJ Agranoff:

13 Q. Mr. Zeto, if you could take a look at
14 Condition 25 of the Staff Report.

15 A. Okay.

16 Q. And I honestly don't recall whether or
17 not this was clarified so I'm going to ask it. The
18 reference to the state- or federal-listed species,
19 where would those be listed?

20 A. The U.S. Fish and Wildlife Service and
21 the ODNR maintain lists of the species that they
22 categorize as endangered, threatened, species of
23 concern, special interest, and candidate species.

24 Q. Is there a citation that would go with
25 that particular provision or reference point that --

1 A. I don't have a specific citation. I know
2 it's maintained on their websites.

3 ALJ SANYAL: Okay. Any questions based
4 on our questions?

5 MR. EUBANKS: I do.

6 ALJ SANYAL: Okay. All right.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Eubanks:

10 Q. Just to be clear, so if we're looking at
11 Condition 40, second sentence, "If recommended by the
12 USFWS, the Applicant shall develop and implement an
13 Eagle Conservation Plan." Are you requesting that
14 the Board require the Applicant to follow the plan if
15 one is recommended?

16 A. Yes.

17 Q. Okay. So normally if the Applicant were
18 to, on its own, apply for an Eagle Conservation Plan,
19 they wouldn't have to follow it; is that correct?

20 A. I believe that's correct.

21 Q. But what you're recommending here is that
22 they be required to follow it per Board order.

23 A. Yes.

24 MR. EUBANKS: Okay. I have no further
25 questions.

1 ALJ SANYAL: Thank you for the
2 clarification.

3 Any other questions?

4 Okay. Thank you, Mr. Zeto. You may step
5 down.

6 And I believe you have a pending motion
7 to admit Staff Exhibit 8. Any objections to that?

8 Hearing none, Staff Exhibit 8 is admitted
9 to the record.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 ALJ SANYAL: Let's go off the record and
12 discuss Monday.

13 (Discussion off the record.)

14 (Thereupon, the proceedings concluded at
15 5:04 p.m.)

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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 15, 2019, and carefully compared with my original stenographic notes.

Carolyn M. Burke
Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2023.

- - -



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Summary: Transcript Volume VI - In the Matter of the Application of Republic Wind, LLC for a Certificate of Environmental Compatibility and Public Need for a Wind-Powered Electric Generating Facility in Seneca and Sandusky Counties, Ohio, hearing held on November 15th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn