

BEFORE THE OHIO POWER SITING BOARD

- - -

In the Matter of the :  
Application of Firelands :  
Wind, LLC, for a :  
Certificate of :  
Environmental :  
Compatibility and Public : Case No. 18-1607-EL-BGN  
Need to Construct a :  
Wind-Powered Electric :  
Generation Facility in :  
Huron and Erie Counties, :  
Ohio. :

- - -

PROCEEDINGS

before Mr. Jay S. Agranoff and Mr. Michael Williams,  
Administrative Law Judges, Ohio Power Siting Board,  
conducted via Webex, called at 9:00 a.m. on Friday,  
October 9, 2020.

- - -

VOLUME V

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481

- - -

621

## 1 APPEARANCES:

2 Dickinson Wright PLLC  
3 By Ms. Christine M.T. Pirik  
4 Mr. Jonathan R. Secrest  
5 Mr. Terrence O'Donnell  
6 Mr. William Vorys  
7 and Ms. Madeline Fleisher  
8 150 East Gay Street, Suite 2400  
9 Columbus, Ohio 43215

10 and

11 K&L Gates LLP  
12 By Mr. James M. Lynch  
13 Mr. Adam N. Tabor  
14 and Mr. Brian Knox  
15 925 Fourth Avenue, Suite 2900  
16 Seattle, Washington 98104  
17 On behalf of the Applicant.  
18 Van Kley & Walker, LLC  
19 By Mr. Jack A. Van Kley  
20 132 Northwoods Boulevard, Suite C-1  
21 Columbus, Ohio 43235

22 On behalf of the Intervenor Alvin and  
23 Patricia Didion, Jane Fox, Marvin and  
24 Theresa Hay, Patricia Olsen, Sheila and  
25 Walt Poffenbaugh, Christina and John  
Popa, Lori Riedy, Charles Rogers, Kenn  
Rospert, Dennis and Sharon Schreiner,  
Donna and William Seaman, Deborah and  
Kenneth Weisenauer, Gerard Wensink,  
and Black Swamp Bird Observatory.

26 Sabin Center for Climate Change Law  
27 By Ms. Hillary W. Aidun  
28 Columbia Law School  
29 435 West 116th Street  
30 New York, New York 10027

31 On behalf of the Intervenor Tom Yingling  
32 and Kevin Erf.

33 - - -

## 1 APPEARANCES: (Continued)

2 James Joel Sitterly,  
3 Huron County Prosecutor  
4 By Mr. Jacob S. Stephens,  
5 Assistant Prosecuting Attorney  
6 Civil Division  
7 12 East Main Street, 4th Floor  
8 Norwalk, Ohio 44857

9 On behalf of Board of Trustees of Norwich  
10 Township, Huron County, Ohio, and Board  
11 of Trustees of Richmond Township, Huron  
12 County, Ohio.

13 James Joel Sitterly,  
14 Huron County Prosecutor  
15 By Mr. Randal L. Strickler,  
16 Chief Assistant Prosecuting Attorney  
17 Civil Division  
18 12 East Main Street, 4th Floor  
19 Norwalk, Ohio 44857

20 On behalf of the Board of Commissioners  
21 of Huron County, Ohio.

22 City of Willard  
23 By Ms. Heather Niedermeier Heyman,  
24 Law Director  
25 111 South Myrtle Avenue  
Willard, Ohio 44890

On behalf of the City of Willard.

Dave Yost, Ohio Attorney General  
By Mr. Werner L. Margard, III  
and Mr. Robert Eubanks,  
Assistant Attorneys General  
30 East Broad Street  
16th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the OPSB.

- - -

623

APPEARANCES: (Continued)

Dave Yost, Ohio Attorney General  
By Mr. Brett A. Kravitz  
and Ms. Katherine A. Walker,  
Assistant Attorneys General  
2045 Morse Road, Building A-3  
Columbus, Ohio 43229

On behalf of the Staff of the ODNR.

- - -

## INDEX TO WITNESSES

- - -

WITNESSES	PAGE
Erica Tauzer	
Direct Examination by Mr. Secrest	627
Cross-Examination by Mr. Van Kley	630
Redirect Examination by Mr. Secrest	647
Recross-Examination by Mr. Van Kley	648
Francis T. Marcotte	
Direct Examination by Mr. Secrest	651
Cross-Examination by Mr. Van Kley	653
Examination by ALJ Agranoff	657
Recross-Examination by Mr. Van Kley	660
Matthew Robinson	
Direct Examination by Mr. Secrest	664
Cross-Examination by Mr. Van Kley	665
Examination by ALJ Agranoff	676
Kenneth A. Mundt, PhD.	
Direct Examination by Mr. Secrest	678
Cross-Examination by Mr. Van Kley	679
Andrew Conway	
Direct Examination by Mr. Margard	693
Cross-Examination by Mr. Van Kley	696
Eric Morrison	
Direct Examination by Mr. Margard	714
Cross-Examination by Mr. Van Kley	717
Jon C. Pawley	
Direct Examination by Mr. Margard	724
Cross-Examination by Mr. Van Kley	727
Redirect Examination by Mr. Margard	729

- - -

625

## INDEX TO EXHIBITS

- - -

APPLICANT EXHIBITS	IDENTIFIED	ADMITTED
36 Erica Tauzer - Prefiled Direct Testimony	629	650
42 Dr. Kenneth A. Mundt - Prefiled Direct Testimony	679	690
45 Francis T. Marcotte - Prefiled Direct Testimony	652	663
46 Matthew Robinson - Prefiled Direct Testimony	665	677

- - -

STAFF EXHIBITS	IDENTIFIED	ADMITTED
5 Prefiled Testimony of Andrew Conway	694	712
8 Prefiled Testimony of Eric Morrison	714	722
9 Prefiled Testimony of Jon C. Pawley	724	731

- - -

1 Friday Morning Session,  
2 October 9, 2020.

3 - - -

4 ALJ AGRANOFF: It's 9 o'clock. I think  
5 it would be a good time to get started. Monday seems  
6 like a long time ago. I guess we could stipulate to  
7 that, right? So for today, based on the notes that I  
8 have, we are going to begin with Mr. Marcotte. Then  
9 we'll have Ms. Tauzer, Mr. Robinson, Dr. Mundt, and  
10 based on the e-mail conversations between counsel, I  
11 believe the intent would be to finish up with the  
12 three remaining staff witnesses, Mr. Conway,  
13 Mr. Morrison, and Mr. Pawley.

14 ALJ WILLIAMS: Attorney Agranoff, I just  
15 got a note from Ms. Fischer that apparently there is  
16 some connection issues with Mr. Marcotte. So we are  
17 apparently going to bump him at least past the first  
18 witness. Does that sound right to you, Mr. Secrest?

19 MR. SECREST: It does, your Honor.  
20 Ms. Pirik is on the phone with Mr. Marcotte right now  
21 walking him through a few things but I think it would  
22 be prudent to start with Ms. Tauzer if everyone is  
23 amenable.

24 ALJ WILLIAMS: Okay. We will let you  
25 call Ms. Tauzer first and then we will try to slot

627

1 Mr. Marcotte in the first witness gap when he is  
2 available in recognition of his limitations and  
3 technology issues, fair enough?

4 MR. SECREST: Fair enough, your Honor.  
5 Thank you.

6 ALJ WILLIAMS: All right. We will invite  
7 you to call your first witness then.

8 MR. SECREST: Thank you. May the  
9 Applicant call Ms. Erica Tauzer.

10 THE WITNESS: Good morning, everyone.

11 ALJ WILLIAMS: Good morning, Ms. Tauzer.  
12 There you are. Good morning. Would you raise your  
13 right hand, please.

14 (Witness sworn.)

15 ALJ WILLIAMS: Good morning and welcome  
16 and, with that, I will let Mr. Secrest do your  
17 questioning. Thank you.

18 MR. SECREST: Thank you, your Honor.

19 - - -

20 ERICA TAUZER

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

23 DIRECT EXAMINATION

24 By Mr. Secrest:

25 Q. Good morning, Ms. Tauzer.



1           A.    Good morning.

2           Q.    Thank you for being available.  We  
3    appreciate that.  Will you please state and spell  
4    your full name for the record.

5           A.    My name is Erica Karina Tauzer.

6           Q.    And would you spell your last name,  
7    please.

8           A.    T-a-u-z-e-r.

9           ALJ WILLIAMS:  Ms. Gibson, I'm sure, had  
10   the same bunch of echo now.

11          THE WITNESS:  I'm getting some echo  
12   feedback.

13          ALJ WILLIAMS:  We are as well.

14          MR. SECREST:  So I did hear the response.  
15   It was T-a-u-z-e-r.

16          Q.    (By Mr. Secrest) Ms. Tauzer, do you have  
17   in front of you your prefiled direct testimony?

18          Ms. Tauzer, is your microphone working?  
19   Would you mind testing it?  Unfortunately, we cannot  
20   hear you, Ms. Tauzer.

21          A.    Now?

22          Q.    Yes.  We got that.

23          A.    Okay.  If you would please turn down the  
24   volume on your device as well.  Can you hear me okay  
25   now?

629

1 ALJ WILLIAMS: Much better.

2 Q. Thank you. Hopefully that's the hardest  
3 part of your testimony.

4 A. Yeah. Hopefully.

5 Q. So do you have in front of you, you do,  
6 as you just gestured and showed us, was that a copy  
7 of your direct prefiled testimony?

8 A. I do, yes, here it is.

9 Q. Great. And is that a true and accurate  
10 copy?

11 A. Yes. This is a copy.

12 Q. Excellent.

13 MR. SECREST: Your Honor, may we move to  
14 have Ms. Tauzer's direct prefiled testimony marked as  
15 Applicant's Exhibit 6 -- 36, excuse me.

16 ALJ WILLIAMS: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. SECREST: Thank you.

19 Q. Ms. Tauzer, do you have any changes or  
20 revisions to that testimony?

21 A. No, I do not.

22 MR. SECREST: Okay. Thank you.

23 Unfortunately the echo.

24 ALJ WILLIAMS: We got the echo back  
25 unfortunately.

1                   MR. SECREST: Yes. But with that, I will  
2 tender Ms. Tauzer for cross-examination, your Honor.  
3 Thank you.

4                   ALJ WILLIAMS: Thank you.

5                   Attorney Van Kley, at the outset, let's  
6 have Ms. Tauzer speak a bit. Let's go off the record  
7 for a minute, Ms. Gibson.

8                   (Discussion off the record.)

9                   ALJ WILLIAMS: Ms. Gibson, put us back on  
10 the record.

11                  Please, Attorney Van Kley, you were about  
12 to begin your cross.

13                  MR. VAN KLEY: All right. Thank you,  
14 your Honor, and good morning.

15   - - -

16   CROSS-EXAMINATION

17 By Mr. Van Kley:

18                  Q. Ms. Tauzer, if you could turn to your  
19 Socioeconomic Report which is identified as  
20 Exhibit F to the Application. And let me know when  
21 you have that in front of you.

22                  A. Okay. I have it right here.

23                  Q. All right. Great. Would you go to  
24 page 2. That's not the second PDF page but the  
25 actual page 2 of the report.

631

1           A.    Got it.  Yep.

2           Q.    Okay.  And the heading at the top of that  
3   page is "Introduction."  I would like to look at the  
4   last sentence prior to your list of entities,  
5   government entities at the bottom of the page.  In  
6   that sentence it is stated that "the Study Area for  
7   this report includes the following 30 municipalities  
8   in Crawford, Erie, Huron, Sandusky, and Seneca  
9   Counties; all of which are found wholly or partially  
10  within a 5-mile radius of the Facility."

11                Are you aware that at one time the  
12  project area for the wind project included some land  
13  in Seneca County?

14           A.    I -- according -- this report was written  
15  in January and finalized January 2019.  And at that  
16  time we had the study area maps in Figure 1 as well  
17  as the facility area.  And in that facility area  
18  there is a small parcel in Seneca County mapped.

19           Q.    All right.  What page of the report would  
20  I find Figure 1?

21           A.    That is an attachment to the report.  And  
22  it is in -- it is after page 30 of the report.

23           Q.    Are you aware that the project area no  
24  longer includes land in Seneca County?

25           A.    I am not aware of that.

1           Q.    Did your report evaluate benefits for the  
2 project that would be realized in Seneca County?

3           A.    In Part IV (sic), section 2, on page 26,  
4 we list taxing jurisdictions that are anticipated to  
5 receive PILOT and in those taxing jurisdictions there  
6 is -- let me see. Let me read carefully so I don't  
7 make a mistake here. Of those taxing jurisdictions  
8 listed, Seneca County was not listed. This is  
9 information we received from the developer. And  
10 again, it was in 20 -- January 2019, November 2018,  
11 between those two months.

12           Q.    Can you tell me how many full-time  
13 employees are expected to be working for the wind  
14 project during its operation?

15           A.    So that information would be in our  
16 results table. That table is on page 23, Table  
17 No. 7. And our analysis showed nine full-time  
18 employees estimated annually for a year of operation.

19           Q.    Can you tell me whether those are  
20 expected to be full-time jobs or part-time jobs?

21           A.    Those are full-time equivalent positions.

22           Q.    Can you tell me what is expected to be  
23 the annual salary for those employees?

24           A.    Collectively the full-time positions are  
25 expected to make \$.8 million in earnings.

633

1           Q.    That's how much those employees are  
2           expected to make collectively as a total for their  
3           salaries?

4           A.    Correct.

5           Q.    So you would take that figure and divide  
6           it by 9 in order to obtain an average salary for each  
7           of those employees?

8           A.    Yes, to obtain an estimated average,  
9           uh-huh. And that is earnings which also includes  
10          overhead such as insurance, retirement, et cetera.

11          Q.    Where did you obtain the figure  
12          concerning how many full-time employees are expected  
13          to be working at this wind project?

14          A.    That estimate is derived from cost inputs  
15          that we incorporate into the JEDI model. In the  
16          indication of operational jobs, that would include  
17          total earning -- or total cost estimated for waiver  
18          per year of operation. And then it would also factor  
19          in the average hourly rate and the percent of  
20          overhead for each employee.

21          Q.    Firelands did not provide you with the  
22          number of employees it expects to employ at this wind  
23          project; is that correct?

24          A.    Not directly, correct.

25          Q.    What do you mean by saying not directly

1       versus directly?

2               A.     So the full-time equivalent positions is  
3       based on a calculation that includes the cost and the  
4       hourly wages and overhead for each employee. And  
5       from that you get the nine full-time equivalent jobs.

6               Q.     Uh-huh.

7               A.     And those are reviewed by the developer,  
8       in this case Fire -- Firelands Wind and, you know,  
9       and that way they can verify whether nine full-time  
10      equivalent jobs is a realistic number.

11              Q.     And what's the source of the inputs that  
12      you utilized in order to come up with the number of  
13      employee equivalents?

14              A.     They include costs that are provided by  
15      the developer, in this case Apex. As well, you know,  
16      they are initiated using the JEDI model. The JEDI  
17      model presents a list of default costs and then the  
18      developer reviews the costs to make sure they are in  
19      line with what they expect.

20              Q.     When you did your study, did you assume  
21      for purposes of this study that any of the economic  
22      benefit from the project would be the result of the  
23      developer buying turbine parts that are manufactured  
24      in Ohio?

25              A.     That is a metric that is reviewed. It's

635

1 an input into the model. So for each cost there's an  
2 estimated percentage expected to be spent within the  
3 State of Ohio and, yes, in answer to your question.

4 Q. Did the developer in this case provide  
5 you with any information that indicated with  
6 certainty that it would purchase any turbine parts in  
7 Ohio?

8 MR. SECREST: Objection as to vague --  
9 objection, vague as to "with certainty."

10 ALJ WILLIAMS: We will let her answer and  
11 explain what the developer provided her with regard  
12 to the information.

13 A. That information is part of the JEDI  
14 model input and that's confidential information for  
15 this report.

16 Q. So the developer in this case did not  
17 inform you that it was certain that it would buy any  
18 turbine parts in Ohio; is that correct?

19 A. No, that's not correct.

20 Q. So did the -- conversely then, did the  
21 developer inform you that it would be purchasing  
22 turbine parts in Ohio -- or I'm sorry. Let me reword  
23 that.

24 Did the developer in this case inform you  
25 that it would be purchasing turbine parts



1 manufactured in Ohio?

2 A. So because that information is  
3 confidential in the report, I am hesitant to answer  
4 that question. I can't answer that question because  
5 it's confidential.

6 Q. Without revealing the information that's  
7 confidential, can you tell me what your understanding  
8 is as to why it is confidential?

9 A. So these inputs are part of the project  
10 costs that go into the model and those project costs  
11 are typically confidential for reasons of business  
12 competitiveness as I understand.

13 MR. SECREST: Your Honor, and  
14 Mr. Van Kley, may I interject for a moment?

15 MR. VAN KLEY: Yes, you sure can.

16 MR. SECREST: Ms. Tauzer, we certainly do  
17 appreciate you raising the confidentiality of certain  
18 figures. You may answer generally without providing  
19 specifics as to percentages, dollar figures, things  
20 of that nature.

21 ALJ WILLIAMS: Attorney Secrest, keep  
22 your microphone on, Attorney Secrest, and if you  
23 start to hear a confidential answer you think is  
24 objectionable, let us know. Otherwise, I appreciate  
25 you're helping. Attorney Van Kley, please continue.

637

1           A.    Okay.  Thank you.  One thing I could say  
2    is that so because there are impacts in the "Turbine  
3    & Supply Chain Impacts," so I am looking at Table 7,  
4    they have results from the JEDI model, that's telling  
5    us that there are supply chain parts -- turbine and  
6    supply chain parts that are expected to be  
7    manufactured in -- or provided by Ohio businesses.

8           Q.    Okay.  When you were evaluating the  
9    economic impacts of this project, did you take into  
10   account whether or not the projects would receive any  
11   tax abatements?

12          A.    We examined the potential PILOT revenues  
13   based on the Ohio legal requirements that are out  
14   there for qualified energy projects.  And that  
15   information is in Table 9 of the report.

16          Q.    Do you know how much tax would be paid by  
17   this wind project if PILOT is not enacted?

18          A.    I do not know.

19          Q.    Do you know whether the amount of tax  
20   paid by the project would be more than what is  
21   paid -- what would be paid under PILOT if PILOT was  
22   not enacted?

23          A.    I do not.

24          Q.    Do you know whether the wind project will  
25   receive any subsidies from any unit of government?

1           A.    I do not.

2           Q.    So your study does not determine whether  
3 taxpayers would be paying for subsidies to this  
4 project?

5           A.    It does not examine that.

6           Q.    Did your study take into account whether  
7 or not the wind project might result in lower  
8 property values of the land and homes in the area?

9           A.    It does not examine that.  It examines  
10 the land leases that are going to be paid to existing  
11 property owners and the PILOTs that are going to  
12 be -- estimated PILOT amounts for taxing  
13 jurisdictions that are hosting the facility.  And  
14 those are anticipated to be overwhelmingly-positive  
15 impacts and the dollar values are shown in the  
16 report.

17          Q.    You're talking about the payments that  
18 would be made by the wind project to participating  
19 landowners who are leasing their land to the  
20 developer?

21          A.    Yes, yes, sir.

22          Q.    But you did not take into account any  
23 potential negative impact on property values for land  
24 or homes owned by nonparticipating landowners?

25               MR. SECREST:  Object to the extent it

639

1 assumes facts not in evidence.

2 ALJ WILLIAMS: Attorney Van Kley, can you  
3 break that down for us?

4 MR. VAN KLEY: Yeah.

5 Q. (By Mr. Van Kley) Your -- your study did  
6 not determine whether the wind project would have any  
7 negative impacts on nonparticipating landowners with  
8 regard to the value of their homes and land; is that  
9 correct?

10 A. Our analysis focused on what values we  
11 were certain about and speculative values such as  
12 negative property value impacts were not included in  
13 this report.

14 Q. Okay. Are you aware that the wind  
15 turbines in this wind project have the potential for  
16 killing bats?

17 MR. SECREST: Objection. Way outside the  
18 scope of this witness's knowledge and testimony.

19 MR. VAN KLEY: It's not, your Honor.  
20 Because we are going to talk about the economic value  
21 of bats here in a moment and I want to find out  
22 whether she took that into account in evaluating the  
23 economic impact of this facility.

24 ALJ WILLIAMS: Objection overruled. I  
25 agree, Attorney Van Kley. Do you want to repeat the

1 question.

2 MR. VAN KLEY: Yeah.

3 Q. Are you aware that the wind project has  
4 the potential to kill bats?

5 A. Not what's outside of the focus of this  
6 report.

7 Q. Okay.

8 A. And it pertains more to a different part  
9 of the report as I understand it.

10 Q. All right.

11 A. Different part of the Application.

12 Q. So I take it then that your study did not  
13 evaluate the -- any potential costs that could result  
14 from bat mortalities.

15 A. This report was more focused on the  
16 manufacturing, construction, and operation elements  
17 of the project.

18 Q. So the answer to my question then is no,  
19 you did not consider those potential impacts?

20 A. No, we did not, and for the reasons I  
21 stated.

22 Q. Did your study evaluate the potential  
23 economic impacts from the wind project on  
24 bird-watching areas?

25 MR. SECREST: Objection, assumes facts

641

1 not in evidence.

2 ALJ WILLIAMS: You better lay a greater  
3 foundation.

4 MR. VAN KLEY: Yeah.

5 Q. In your study did you determine whether  
6 or not the wind project would have a potential  
7 negative economic effect on income to the community  
8 that otherwise would result from bird-watching  
9 activities?

10 MR. SECREST: Same objection, your Honor.  
11 Also lack of foundation.

12 ALJ WILLIAMS: I think he's phrased it in  
13 a manner that --

14 MR. VAN KLEY: I'm sorry, your Honor, you  
15 faded out there.

16 ALJ WILLIAMS: I'm going to overrule the  
17 objection. I am going to let her answer and explain  
18 her response.

19 A. We did not look specifically for economic  
20 impacts to bird-watching activities.

21 Q. Okay. Did you determine whether or not  
22 the electricity produced by this wind project would  
23 replace electricity produced by other types of power  
24 sources?

25 MR. SECREST: Objection, vague and lack

1 of foundation.

2 ALJ WILLIAMS: Attorney Van Kley, can you  
3 lay a better foundation for us?

4 MR. VAN KLEY: Yeah.

5 Q. (By Mr. Van Kley) Are you aware that the  
6 Applicant in this case claims that it will be  
7 producing electricity from the wind project that will  
8 displace other types of energy production such as  
9 production from natural gas or coal-burning that it  
10 claims would provide a cleaner source of power?

11 A. I'm aware that generally wind energy  
12 produces a cleaner source of power. But I'm not  
13 aware of the specific claims by the Applicant.

14 Q. Yeah. Do you know whether the production  
15 of electricity by this wind project would result in  
16 loss of jobs at other types of energy-production  
17 facilities such as natural gas or nuclear power?

18 MR. SECREST: Objection, vague and  
19 assumes facts not in evidence that those jobs are in  
20 the project area.

21 ALJ WILLIAMS: Let her answer to the  
22 extent she is aware.

23 Q. Yeah.

24 A. I'm not aware of how a wind project in  
25 one area would impact a fossil fuel or natural gas

643

1 facility in another area or a nuclear facility in  
2 another area.

3 Q. Yeah. Do you know where the closest  
4 nuclear facility is located?

5 A. As I was saying, that's not part of this  
6 analysis. And I'm not aware of that.

7 Q. Yeah. So you're not aware of the  
8 existence of the Davis-Besse nuclear power plant?

9 A. That was not the focus of this analysis.

10 Q. Okay. So you don't know -- you don't  
11 know about it then.

12 A. I'm not aware of that.

13 Q. Uh-huh. Are you aware of any  
14 electricity-producing facilities in northwest Ohio,  
15 other than nuclear, that produces electricity that  
16 may be utilized in that area?

17 MR. SECREST: Objection, vague as to  
18 "northwest." Can we stick to the project area?

19 ALJ WILLIAMS: Attorney Van Kley, I am  
20 going to let you have a little more latitude if you  
21 could define where northwest Ohio is in relation to  
22 your question.

23 Q. Yeah. Let's just take the northwest  
24 corridor of Ohio since obviously there aren't any  
25 power plants inside of the project area. Are you



1       aware of any power plants, other than nuclear, in  
2       that northwest quadrant of Ohio?

3               MR. SECREST:  Objection as to relevance.

4               ALJ WILLIAMS:  To the extent she is  
5       aware, she can answer.

6               A.    The scope that we take for this analysis  
7       focuses on that 5-mile study area and the project  
8       impacts that we are certain about.  I would have to  
9       speculate on anything to do with these nuclear or  
10      other power plants.

11              Q.    So your study then did not determine  
12      whether the production of electricity by this wind  
13      project would result in a loss of jobs at other  
14      electricity-production facilities in any location.

15              MR. SECREST:  Object, relevance and  
16      vague.  "Any location"?

17              MR. VAN KLEY:  Well, yeah, the  
18      electricity has to come from somewhere.  It all goes  
19      to the grid.

20              ALJ WILLIAMS:  Ms. Tauzer, maybe I can  
21      help expedite this.  Did your study consider any  
22      ancillary job impacts, negative job impacts, or was  
23      your study focused on job creation relative to the  
24      project?

25              THE WITNESS:  We look at job creation

645

1 relative to the project. Part of that job creation  
2 is economic output and that economic output includes  
3 skills and revenue impacts on a variety of industries  
4 throughout the project. You know, there's special  
5 industry sectors. It is based on project-specific  
6 inputs so we try to keep it focused on the project's  
7 surrounding area and the project's known elements.

8 ALJ WILLIAMS: Attorney Van Kley, I think  
9 that clarifies -- I didn't mean to talk over you,  
10 Ms. Tauzer. Do you want to finish? I kind of talked  
11 over you, I apologize.

12 Attorney Van Kley, I think that clarifies  
13 that her study considered the project area, and if  
14 there is anything more you think we're missing,  
15 please ask; otherwise, I think we're there.

16 Q. (By Mr. Van Kley) Yeah. Did your study  
17 evaluate any potential negative economic impacts that  
18 could result from the project?

19 A. Economic output metrics associated with  
20 this model considered some changes in inventory to  
21 manufacturing and other sectors. That is part of the  
22 multiplier effects of the model. So to answer your  
23 question with a yes or no, it's a little difficult,  
24 it's not quite that clear.

25 Q. Okay. I don't think I understood the

1       answer that you gave me. Can you explain that again  
2       in lay language that us non-economists can  
3       understand?

4               A.     So the JEDI model multiplier effects  
5       consider different impacts to different industry  
6       sectors from this project. Some of those multiplier  
7       effects impact different sectors in different ways.  
8       And, overall, the model shows us an overall positive  
9       economic output, but it doesn't break it down for the  
10      exact sectors.

11             Q.     So does the model take into effect only  
12      benefits to those industry sectors or does it take  
13      into effect the potential negative impacts to  
14      industry factors or industry sectors as well?

15             A.     My understanding is that it takes into  
16      account a small degree of negative impacts to the  
17      sectors as well and overall shows a positive output.

18             MR. VAN KLEY: All right. I have no  
19      further questions at this time.

20             ALJ WILLIAMS: Attorney Secrest,  
21      redirect?

22             MR. SECREST: May I have just a couple  
23      minutes, your Honor, to confer?

24             ALJ WILLIAMS: Yeah. My clock is not  
25      where it was yesterday. 9:50?

647

1 MR. SECREST: That will work just fine.  
2 Thank you, your Honor.

3 ALJ WILLIAMS: Thank you.

4 (Recess taken.)

5 ALJ WILLIAMS: We can go back on the  
6 record.

7 I'm looking for our witness.

8 Mary, do you still have Ms. Tauzer?

9 MS. FISCHER: Ms. Tauzer is a panelist  
10 and she can unmute and use her camera now.

11 THE WITNESS: Hello.

12 ALJ WILLIAMS: Good morning again,  
13 Ms. Tauzer. There you are.

14 Attorney Secrest, redirect?

15 MR. SECREST: Please, your Honor, thank  
16 you.

17 - - -

18 REDIRECT EXAMINATION

19 By Mr. Secrest:

20 Q. Ms. Tauzer, because I missed it, what  
21 does JEDI stand for?

22 A. Yes. JEDI stands for Jobs and Economic  
23 Development.

24 Q. Thank you. Is the JEDI model designed by  
25 the National Renewable Energy Laboratory?

1           A.    And also, pardon me, I forgot the last  
2   letter of it, the I, "Impacts."  Jobs and Economic  
3   Development Impacts.

4           Q.    Thank you.

5           A.    And can you repeat your question?  Sorry.

6           Q.    Certainly.  Is the JEDI model designed by  
7   the National Renewable Energy Laboratory?

8           A.    Yes, it is.

9           Q.    And is that part of the United States  
10  Department of Energy?

11          A.    Yes, it is.

12          MR. SECREST:  I have no further  
13  questions, your Honor.  Thank you.

14          ALJ WILLIAMS:  Thank you, Attorney  
15  Secrest.

16          Attorney Van Kley, any recross based on  
17  that question?

18          ALJ AGRANOFF:  He's on the phone.

19          MR. VAN KLEY:  Yes, just briefly.

20                               - - -

21                               RE CROSS-EXAMINATION

22   By Mr. Van Kley:

23           Q.    Are you aware that the U.S. Department of  
24  Energy is in the business of promoting sources of  
25  renewable energy?

649

1           A.    I'm aware that it regulates many factors  
2   of energy including renewable energy.

3           Q.    Are you aware -- I'm sorry.  Are you also  
4   aware that the U.S. Department of Energy promotes  
5   renewable energy sources such as wind power?

6           A.    The word "promotes" seems, for a Federal  
7   Government agency, a bit overexaggerated.

8           Q.    Well, what term would you use to describe  
9   the role that the U.S. Department of Energy has with  
10  respect to wind energy other than regulating it?

11          A.    I would think that it's in the business  
12  of providing research and guidance for the  
13  development of renewable energy --

14          Q.    And --

15          A.    -- in addition to other energy sources.

16          Q.    And is the purpose for those activities  
17  to increase the use of those power sources?

18          A.    I'm not aware of the specific mission or,  
19  you know, guidance goals of the -- of NREL or the  
20  U.S. Department of Energy.

21               MR. VAN KLEY:  Okay.  Thank you.  No  
22  further questions.

23               ALJ WILLIAMS:  Thank you, Attorney Van  
24  Kley.  Attorney Secrest?

25               MR. SECREST:  No, thank you, your Honor.

1           ALJ WILLIAMS: Okay. Ms. Tauzer -- I'm  
2       sorry, Judge Agranoff, are you fine? Okay. No  
3       questions from the Bench. Ms. Tauzer, you are  
4       excused. Thank you so much.

5           THE WITNESS: Thank you.

6           ALJ WILLIAMS: Have a good day.

7           We'll take up exhibits.

8           MR. SECREST: Yes, your Honor. May I  
9       move for the admission of Applicant's Exhibit 36.

10          ALJ WILLIAMS: Attorney Van Kley?

11          MR. VAN KLEY: No objection.

12          ALJ WILLIAMS: I think that was the only  
13       one we discussed.

14          (EXHIBIT ADMITTED INTO EVIDENCE.)

15          ALJ WILLIAMS: Anything else from the  
16       parties? Seeing none, we'll turn the Bench over to  
17       attorney -- to Judge Agranoff, and I believe Witness  
18       Marcotte is teed up, so Judge.

19          ALJ AGRANOFF: Thank you.

20          At this time, Mr. Secrest, are you ready  
21       to call Mr. Marcotte?

22          MR. SECREST: Indeed I am. The Applicant  
23       calls Francis Marcotte.

24          ALJ AGRANOFF: Mary, if you could please  
25       promote him to a panelist.

651

1 MS. FISCHER: Yes. Mr. Marcotte has been  
2 promoted to a panelist. I have unmuted you,  
3 Mr. Marcotte, if you would just turn on your camera.

4 THE WITNESS: How's that?

5 MS. FISCHER: There we go. Your camera  
6 is now working.

7 ALJ AGRANOFF: Hello, Mr. Marcotte. Can  
8 you hear me?

9 THE WITNESS: Good morning, sir.

10 ALJ AGRANOFF: If you could please raise  
11 your right hand.

12 (Witness sworn.)

13 ALJ AGRANOFF: Thank you.

14 Mr. Secrest.

15 MR. SECREST: Thank you, your Honor.

16 - - -

17 FRANCIS T. MARCOTTE  
18 being first duly sworn, as prescribed by law, was  
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Secrest:

22 Q. Good morning, Mr. Marcotte.

23 A. Good morning, sir.

24 Q. Will you please spell your first and last  
25 name for the record.



1           A.    Francis, F-r-a-n-c-i-s, Marcotte,  
2   M-a-r-c-o-t-t-e.

3           Q.    And are you currently employed,  
4   Mr. Marcotte?

5           A.    No.  I'm retired.

6           Q.    Okay.  Thank you.  Do you have in front  
7   of you your prefiled direct testimony?

8           A.    I do.

9           Q.    Thank you.  Is that a true and accurate  
10  copy of the testimony that was filed in this case?

11          A.    Yes, sir.

12               MR. SECREST:  Your Honor, may I move to  
13  have Mr. Marcotte's prefiled direct testimony marked  
14  as Applicant's Exhibit 45?

15               ALJ AGRANOFF:  So marked.

16               (EXHIBIT MARKED FOR IDENTIFICATION.)

17               MR. SECREST:  Thank you, your Honor.  And  
18  I would also like to tender Mr. Marcotte for  
19  cross-examination.

20               ALJ AGRANOFF:  Thank you.

21               Mr. Van Kley.

22               MR. VAN KLEY:  Yes, thank you, your  
23  Honor.

24                               - - -

25

653

CROSS-EXAMINATION

By Mr. Van Kley:

Q. Good morning, Mr. Marcotte.

A. Good morning.

Q. Good morning. Have you ever visited the project area for the Emerson Creek wind project?

A. No, sir.

Q. Now, looking at your testimony, it appears that you are, or at least have in the past, been a pilot; is that correct?

A. Yes, sir.

Q. And you've been a helicopter pilot, correct?

A. Yes, sir.

Q. Have you ever landed a helicopter in the project area for any wind project?

A. No, sir, not in a wind project. I have operated in the vicinity of wind farms on the west coast, near Hayward, California.

Q. When you say that, are you saying that you have flown near them or over them or have you landed near them or what exactly has that entailed?

A. All of those things, flown over them, near them, and landed near them.

Q. Okay. In the process of putting together

1 your testimony, did you consult with any services  
2 that provide air ambulances to the area, in or around  
3 the project area for the Emerson Creek wind project?

4 A. No, sir.

5 Q. Besides preparing your testimony for this  
6 case, have you prepared any reports for this case?

7 A. Just the testimony submitted.

8 Q. So you have not prepared any exhibits for  
9 the Application in this case?

10 A. No, sir.

11 Q. Can you tell me whether there are any  
12 companies that provide air ambulance services to the  
13 area in or nearby the project area for the Emerson  
14 Creek wind project?

15 A. I'm under the impression there are air  
16 ambulance services in that area. There were, a few  
17 years ago, during a similar project. I haven't  
18 contacted or been in touch with any of them.

19 Q. Do you know whether a helicopter can be  
20 flown over the wind project area after turbines are  
21 constructed there during periods of low cloud cover?

22 A. Yes.

23 Q. Okay. And would you tell me whether or  
24 not they can be?

25 A. Yes, they can.

655

1           Q.    Okay.  If the cloud cover is lower than  
2   the top of the turbines, can an air ambulance, that  
3   is a helicopter providing ambulance services, fly  
4   over the project area?

5           A.    Yes.

6           Q.    Are there any weather conditions in which  
7   the presence of the wind turbines in this project  
8   would prevent a helicopter from flying over the  
9   project area?

10          A.    Can you repeat the question for me?  I'm  
11   sorry.

12          Q.    Sure.  Are there any types of weather  
13   conditions in which the helicopter would not be able  
14   to fly over the project area once the turbines are  
15   there?

16          A.    There are two aspects of that.  First  
17   off, you've already got vertical obstructions in  
18   the -- in the form of existing towers in the area so  
19   that the turbines are not going to present new  
20   restrictions to flight.

21                Secondly, the -- the flight paths --  
22   secondly, the -- the air operators, Part 135 air  
23   operators that commercial helicopter pilots are with,  
24   have weather restrictions that prevent them from  
25   flying at all in some instances.  They determine

1 whether they can fly at night or whether they have  
2 ceiling and visibility limitations placed on them  
3 that would prevent them from flying at all during the  
4 worst of weather conditions.

5 Thirdly, the setbacks on the turbines  
6 from the roadways to -- is so great that there are  
7 alleyways, avenues of passage for the helicopters in  
8 low-visibility conditions or low-ceiling conditions  
9 that they are going to use.

10 Pilots simply aren't going to wander off  
11 into dark areas with known obstructions of any kind,  
12 like your antennas with the guide wires, and so they  
13 are going to tend to follow the lighted existing  
14 routes that are there which would be the roadways  
15 that are both lighted and have vehicles on them.

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

18 ALJ AGRANOFF: Any clarifying questions  
19 from other counsel?

20 Mr. Secrest?

21 MR. SECREST: No redirect, your Honor.  
22 Mr. Marcotte, thank you. Mr. Marcotte, thank you.  
23 The Bench may have some questions for you.

24 ALJ AGRANOFF: I do have two questions  
25 for you, Mr. Marcotte.

657

- - -

## EXAMINATION

By ALJ Agranoff:

Q. First one, if you could take a look at Question 13 of your testimony on page 5.

A. Yes, sir. I have that.

Q. Okay. And in your response you indicate that there should be no significant time delay because of the alternate flight paths that exist within the wind farm. Can you give me some context as to what your intent of the terminology "no significant" signifies?

A. Yes, sir. The -- when helicopters respond to emergency scenes, the scene calls, they get -- they are getting location information and situation information from whoever is the on-scene specialist, whether it's a fire department, an ambulance crew, or -- or whoever it is that is the initial responder. The situation is, in general, already stabilized to some extent and what the helicopter is going to do is provide a decrease in the time between that location and the facility of choice.

The -- the narrowness and size of this wind farm area is such that it's -- there's not a

1 great length or breadth for a helicopter to have to  
2 fly around so that if they -- if a crew has to get to  
3 even right to the middle of it, they're -- they're  
4 talking a few miles and the helicopters are capable  
5 of such great speed, they go between -- they cover  
6 the ground between 2 and 3 miles each minute. So if  
7 you've only got 5 -- 5 miles to go to get into the  
8 wind farm to -- on the occasion that that's where the  
9 occurrence happens, the -- it's a matter of moments  
10 in a situation that's already stabilized so I don't  
11 believe it to be significant in the interest of  
12 safety.

13           You have to understand the operation of  
14 any vehicle -- any aircraft is -- it assumes some  
15 level of risk and all of our efforts are to mitigate  
16 and identify those risks and -- so, as I said, it's  
17 not necessarily a significant delay.

18           Q.    In other words, are you indicating that  
19 it would not have an impact on the care or treatment  
20 of a patient?

21           A.    I'm not a specialist in that area. I'm  
22 the -- I'm to provide a pilot's input to you and a  
23 pilot's reference point. I know that the response  
24 time to all of these crews are essential. There's a  
25 24-hour critical period but the ambulance crews will

659

1 already be there. They will already be in a  
2 stabilized condition so that the question that you  
3 are asking points to the specific whether moments are  
4 significant and I can't respond to that one.

5 Q. Okay. And my other question is with  
6 respect to whether or not your testimony addresses  
7 any of the conditions set forth in the Stipulation in  
8 this case?

9 A. I'm not sure what that refers to.

10 Q. Okay. There's a Joint Stipulation that  
11 had been entered into in this case which set forth a  
12 number of conditions. I'm assuming you are saying  
13 you are unaware of those conditions.

14 A. Yes, sir.

15 ALJ AGRANOFF: Okay. Based on my limited  
16 questions, is there any follow-up from Mr. Secrest or  
17 Mr. Van Kley?

18 MR. VAN KLEY: Yes, your Honor, just a  
19 little bit.

20 ALJ AGRANOFF: Why don't we wait and see  
21 whether Mr. Secrest has any questions first.

22 MR. SECREST: Your Honor, I wanted  
23 Mr. Van Kley to go first. I do not, your Honor.

24 ALJ AGRANOFF: Okay.

25 MR. VAN KLEY: I volunteered, Jon.



1 ALJ AGRANOFF: Go ahead.

2 MR. VAN KLEY: I wanted to see what you  
3 could do with what I found out.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Van Kley:

7 Q. I wasn't quite sure, Mr. Marcotte, about  
8 in your answer what would be the cause of the delay  
9 that you characterized as -- as just a few minutes.  
10 Is there a -- is there such a delay that would be  
11 caused by altering -- by the turbines altering the  
12 flight path that otherwise would be followed by the  
13 air ambulance?

14 A. Just the very nature of the wind farm is  
15 going to increase the number of -- of things that the  
16 pilots have to be aware of. The -- they are going to  
17 have to avoid some of those directly. That may mean  
18 changing their route a half mile to the -- or even a  
19 football field to the one side or the other in order  
20 to get to a specific place that was directly  
21 accessible at this point so that the -- what I am  
22 trying to convey is that if there are delays because  
23 of the mechanics of the construction, they will be  
24 minimal. They can be overcome by the speed and  
25 professional approach of the pilots. And these --

661

1 these will not present any new areas of concern to  
2 the pilots that are -- that operate around  
3 obstructions all of the time.

4 And you -- you folks in Ohio have the  
5 benefit of flat land. The rest of us on the coasts  
6 have every time we go somewhere, there's a mountain  
7 in the way or there's a bridge or wires and  
8 everything. So, comparatively, operating helicopters  
9 in those areas is very -- it's more simple and the  
10 delays because of the specific location of the -- of  
11 the device will be insignificant.

12 They just -- there are going to be  
13 avenues between them, both on the roads and in the  
14 separation of the -- of the turbines themselves so  
15 that only on the darkest of nights, only on the worst  
16 visibilities will they -- will -- will they present  
17 any deviation from the direct flight and the -- and  
18 that deviation is going to be limited, and the pilots  
19 may not have done anything differently because of the  
20 existing obstructions that are already there in the  
21 way of towers.

22 Some of these towers, as I look at the  
23 charts, go up 1,200 feet in that area. Those towers  
24 have guide lines that come down at a 30-or-so degree  
25 angle that are sometimes unlit, unmarked, so that the

1 pilots are already not going into that in the dark;  
2 they are going to follow the roads. So the  
3 difference from what is now and what will be is going  
4 to be minimal and -- and -- and not as significant as  
5 one might think.

6 MR. VAN KLEY: All right. I have no  
7 further questions.

8 ALJ AGRANOFF: Thank you.

9 Mr. Marcotte, I did have one follow-up.  
10 When you -- when you were discussing existing towers,  
11 what type of towers were you referencing?

12 THE WITNESS: As I look -- as I look at  
13 the local VFR area charts, I can see that there  
14 are -- there are like T.V. antennas or -- in the  
15 old -- it's just a large vertical tower with guide  
16 lines on it that show up on those charts.

17 ALJ AGRANOFF: Okay. Thank you.

18 THE WITNESS: Yes, sir.

19 ALJ AGRANOFF: Appreciate your time.

20 Mr. Secrest.

21 MR. SECREST: Your Honor, may the  
22 Applicant move for the admission of Applicant's  
23 Exhibit 45.

24 ALJ AGRANOFF: Any objection?

25 MR. VAN KLEY: No, your Honor.

663

1           ALJ AGRANOFF: There being none,  
2   Applicant Exhibit 45 shall be admitted as part of the  
3   record at this time.

4           (EXHIBIT ADMITTED INTO EVIDENCE.)

5           ALJ AGRANOFF: And at this point,  
6   Mr. Secrest, are you prepared to call your next  
7   witness?

8           MR. SECREST: Sorry. I was on mute. I  
9   am, your Honor. However, perhaps we could have a  
10   brief break at this point in time?

11          ALJ AGRANOFF: Sure. Why don't -- we can  
12   take a 15-minute break and come back at 10:30.

13          MR. SECREST: That's great. Thank you,  
14   your Honor.

15          ALJ AGRANOFF: Let's go off the record.  
16   Thank you.

17          (Recess taken.)

18          ALJ AGRANOFF: Okay. Mr. Secrest, are  
19   you ready to call Mr. Robinson?

20          MR. SECREST: I am, your Honor. May the  
21   Applicant call Matthew Robinson to the stand.

22          ALJ AGRANOFF: Mary, if you could please  
23   promote Mr. Robinson.

24          MS. FISCHER: Yes. Mr. Robinson has been  
25   promoted to a panelist's position. You can now

1 unmute your mic and turn on your camera.

2 ALJ AGRANOFF: Thank you.

3 Hello, Mr. Robinson. Good morning.

4 THE WITNESS: Good morning.

5 ALJ AGRANOFF: If you could please raise  
6 your right hand, sir.

7 (Witness sworn.)

8 ALJ AGRANOFF: Thank you.

9 Mr. Secrest.

10 MR. SECREST: Thank you, your Honor.

11 - - -

12 MATTHEW ROBINSON

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

15 DIRECT EXAMINATION

16 By Mr. Secrest:

17 Q. Will you please state your full name for  
18 the record and let us know by whom you are employed.

19 A. My name is Matthew Michael Robinson, and  
20 I am employed by Environmental Design & Research.

21 Q. Thank you, Mr. Robinson. And what is  
22 your business address?

23 A. 217 Montgomery Street, Syracuse, New  
24 York.

25 Q. Thank you. Do you have in front of you

665

1 your prefiled direct testimony?

2 A. I do.

3 Q. Great. And is the version you have in  
4 front of you a true and accurate copy of that  
5 testimony?

6 A. Yes, it is.

7 MR. SECREST: Great. Your Honor, may I  
8 move to have Mr. Robinson's prefiled direct testimony  
9 marked as Applicant's Exhibit 46?

10 ALJ AGRANOFF: It shall be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. SECREST: Thank you, your Honor. May  
13 I also tender Mr. Robinson for cross-examination.

14 ALJ AGRANOFF: Thank you.

15 Mr. Van Kley.

16 I think you are on mute, Jack.

17 MR. VAN KLEY: All right. Now I'm here.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Van Kley:

21 Q. Good morning, Mr. Robinson.

22 A. Good morning.

23 Q. When you did your study of the Emerson  
24 Creek wind project, did you speak with any local  
25 residents who live in or near the project area to

1 obtain any information for your report?

2 A. I attended the open house that was  
3 provided on, I believe, April 3 in 2019. I did not  
4 ask people the location of where they were from, but  
5 anybody who wanted to come up and talk to me about  
6 the simulations and about the VIA in general was able  
7 to do that, and I did speak to a group of people,  
8 yes.

9 ALJ AGRANOFF: Mr. Robinson, you used the  
10 acronym VIA. If you could, just for the record,  
11 indicate what that is.

12 THE WITNESS: The VIA is the visual  
13 impact analysis.

14 ALJ AGRANOFF: Thank you.

15 Q. (By Mr. Van Kley) All right. So by that  
16 time you had already finished that analysis, correct?

17 A. We had finished a majority of it, yes. I  
18 do not recall if the conclusions were drawn at that  
19 point in time. But we were still producing  
20 simulations past that time.

21 Q. During your visit to that open house, did  
22 you ask people questions in order to obtain  
23 information for your analysis or did you just answer  
24 their questions?

25 A. My role at these types of open houses is

667

1 really to provide information for questions that are  
2 answered -- asked of me. I do not ask provoking  
3 questions of people. Whether that is provoking in a  
4 good or bad way, just I really am there to absorb  
5 what questions they have and provide answers for  
6 them. That does not mean that I don't get into  
7 conversations with people and we talk about their  
8 property. I may ask certain questions. I can't  
9 recall anything that I would have purposefully asked  
10 each person that came up to me as part of the open  
11 house.

12 Q. Have you personally been to the project  
13 area?

14 A. Yes, many times.

15 Q. And during your visits to the project  
16 area, did you speak with any local residents to  
17 solicit their views about the potential visual impact  
18 of the turbines?

19 A. I did not.

20 Q. Is there any proposal in your analysis  
21 for implementing any measures to conceal any local  
22 residents or properties from views of the turbines?  
23 Such as screening, for example?

24 A. We discuss certain types of mitigation  
25 that can be used for wind turbine projects. Specific



1 measures of vegetative mitigation for such a project  
2 is very limited. I have not been in immediate  
3 discussions with any landowners on that.

4 Q. There's nothing in your report that --  
5 that indicates that Firelands will plant any  
6 vegetation in order to screen people from views of  
7 the turbines, is there?

8 A. No.

9 Q. And there are no -- there are no  
10 proposals in your report to -- pursuant to which the  
11 wind company would utilize any other measures to  
12 block the view of turbines from any local residents;  
13 is that correct?

14 A. We discussed different mitigation  
15 measures that are used commonly in wind power  
16 projects. At this point in time that does not  
17 include vegetative measures at local residences.

18 Q. And it doesn't include any other measures  
19 that would block people's views of the turbines  
20 either; is that correct?

21 A. Using the term "block" or "conceal" is  
22 not something that I would -- I would necessarily  
23 use. At this point in time we have not discussed  
24 with anybody the use of vegetation to screen views so  
25 it is not brought up in our -- in my report.

669

1           Q.    Let's go to the portion of your report  
2           that identifies the mitigation measures that you've  
3           indicated are included in it.  If you could go to  
4           Applicant's Exhibit No. 2.  And let me know if you  
5           have that in front of you.

6           A.    I do.

7           Q.    Okay.  Can you point me to a list of the  
8           mitigation measures that you have indicated may be  
9           adopted for this project?

10          A.    I believe you're talking about Section  
11          7.0, Mitigation, which can be found on page 71.

12          Q.    All right.  Let's go to that page.  All  
13          right.  So page 71 identifies the mitigation options  
14          that were considered, correct?

15          A.    This identifies mitigation options that  
16          were considered for this project, yes.

17          Q.    And those mitigation options continue on  
18          page 72 of the report?

19          A.    Correct.

20          Q.    And your discussion of these mitigation  
21          options on pages 71 and 72 also state whether any of  
22          those mitigation options are being recommended here,  
23          correct?

24          A.    The analysis discusses how these  
25          mitigation measures relate to the project at hand,

1       yes.

2               Q.    All right.  Let's go to page 67 of your  
3       report which is identified as Applicant Exhibit 2.

4               A.    I am there.

5               Q.    All right.  If I recall what your report  
6       states is that you divided the 10 -- let me just set  
7       this up a little bit for some context.

8                       Your report evaluates the visibility of  
9       the turbines within a 10-mile distance of the project  
10      area, correct?

11              A.    Correct.

12              Q.    Right.  And your report divides that area  
13      into three views, correct?

14              A.    I believe you are talking about distance  
15      zones, I think?

16              Q.    Probably.  I'm looking at page 67 of your  
17      report in the paragraph that is numbered 2 where you  
18      refer to the foreground and middle ground views.

19              A.    Yep.

20              Q.    Those are two of the distance zones that  
21      you've utilized to discuss the 10-mile -- 10-mile  
22      study area?

23              A.    Yes.

24              Q.    Okay.  And what's the third one?

25              A.    The -- we can quickly -- they are stated

671

1 on page 8 of the report. I can read it quickly. The  
2 foreground is 0 to approximately .5 miles. The  
3 middle ground is approximately .5 to 4.0 miles. And  
4 the background is over 4 miles.

5 Q. Is the study area a 10-mile zone all the  
6 way around the project area or is the entire study  
7 area 10 miles across?

8 A. It is an offset from the project area.  
9 It is not a centroid.

10 Q. Okay. So the actual study area would be  
11 20 miles or more from one side to the other?

12 A. Yes.

13 Q. Now, you have estimated the percentage of  
14 the area in the study zone from which turbines will  
15 be visible, correct?

16 A. We have analyzed potential visibility,  
17 yes.

18 Q. And with respect to the entire study area  
19 of 10 miles around the project area, what percentage  
20 of the study area are -- is a turbine or turbines  
21 visible?

22 A. I just want to find my table to make sure  
23 I have everything right. As we may not have  
24 discussed it, we have two different types of future  
25 analyses that are done, topographic-only and

1       LiDAR-derived topography which includes topography  
2       structures and vegetation. Are you referring to  
3       either one of these or both of them?

4               Q.     I'm referring to the methodology that you  
5       utilized that does take into account potential  
6       screening by vegetation and structures.

7               A.     So for that, we have a total of  
8       57.5 percent of the study area has potential  
9       visibility.

10              Q.     Okay. And how much of the middle ground  
11       of 0.5 to 3.5 miles has potential visibility of  
12       turbines?

13              A.     I do not believe we broke it down into  
14       that analysis. I have percentage of -- what  
15       percentage those areas make up, but I do not have  
16       that answer of how much visibility is from each  
17       distance zone.

18              Q.     Do you have an answer to that question  
19       with regard to the foreground view of 0 to a half  
20       mile?

21              A.     I do not.

22              Q.     How high are the tallest trees in the  
23       project area generally speaking?

24              A.     We take ranges of hedgerows from around  
25       the project area of the mature, healthy style that we

673

1 would be talking about, and from our understanding,  
2 what we are looking at is they range in the 40 to 60  
3 mainly, with some pine trees going above that in  
4 certain areas.

5 ALJ AGRANOFF: What's the unit when you  
6 say "40 to 60"?

7 THE WITNESS: Feet, sorry.

8 ALJ AGRANOFF: That's okay.

9 Q. (By Mr. Van Kley) So the turbines that  
10 are planned for this project are higher than the  
11 mature trees in the project area?

12 A. If they were right next to each other,  
13 yes, they would be taller.

14 Q. Go to page 10 of your testimony, please,  
15 which has been marked as Exhibit 46.

16 A. I'm there.

17 Q. Go to the second-to-the-last paragraph I  
18 guess you could call it that. I am looking at lines  
19 27 and 28 on that page where it's stated that  
20 "Potential nighttime turbine visibility is indicated  
21 within 48.1 percent of the visible study area." And  
22 here we're talking about the view of turbines at  
23 night, correct?

24 A. We are talking about the view of the  
25 light that is on the turbine, correct.

1           Q.    And in the sentence that I just read to  
2   you, this is the estimate of visibility in the entire  
3   study area 10 miles around the project area, correct?

4           A.    That is correct.

5           Q.    Go to page 18 of your testimony, please.

6           A.    I'm there.

7           Q.    I would like to go to line 14 through 17  
8   on that page.  And there you state that many people  
9   find wind turbines to be attractive.

10          A.    Yes.  We are making a statement from the  
11   Stanton book.

12          Q.    And it's also true that many people find  
13   the views of wind turbines to be objectionable,  
14   correct?

15               MR. SECREST:  Objection, speculation.

16               MR. VAN KLEY:  Well, it's the converse of  
17   what he stated in his testimony.

18               MR. SECREST:  But his testimony is based  
19   on authority, not his personal knowledge.

20               ALJ AGRANOFF:  If the witness is aware of  
21   either documented cases in which wind turbines have  
22   been found objectionable or from your personal  
23   knowledge, if you would just indicate which of the  
24   two you are relying on when you give your response.

25          A.    For research or things that have been

675

1     done that would have been written down, there --  
2     there are a few studies that do say that, I believe.  
3     It's not something that I have paid much attention  
4     to. They tend to come from not very good sources  
5     these days -- these days offline, and they are not  
6     really reputable. In my own opinion I have -- when I  
7     had an open house, I had people tell me they think  
8     they are beautiful, and I have people tell me they  
9     think they are ugly.

10           Q.     Does the Stantec report cited in your  
11     testimony on page 18 take note that some people find  
12     views of turbines to be objectionable?

13           MR. SECREST: Just for the record it's  
14     Stanton. There are some Stantec reports that may be  
15     introduced later. I didn't want to confuse the two.

16           MR. VAN KLEY: Yeah, it's Stanton. I  
17     will ask the question again.

18           Q.     (By Mr. Van Kley) Does the Stanton report  
19     cited in your testimony on page 18 note that some  
20     people find views of turbines to be objectionable?

21           A.     I would have to review it again for that  
22     exact information.

23           MR. VAN KLEY: I have no further  
24     questions.

25           ALJ AGRANOFF: Any clarifying questions



1 from other counsel?

2 Redirect.

3 MR. SECREST: None, your Honor. Thank  
4 you.

5 - - -

6 EXAMINATION

7 By ALJ Agranoff:

8 Q. I just have one clarifying question. I  
9 want to make sure I understand. The study that you  
10 performed, Mr. Robinson, you indicated was a 10-mile  
11 radius around the project. Can you just give me a  
12 better understanding of what that signifies.

13 A. The project area includes a shape that  
14 goes around all of the turbines. So you're not  
15 taking a point in the middle of them like a centroid  
16 and drawing 10 miles out. Where you might  
17 potentially have a turbine that's in that -- that  
18 strip of 10 miles, that's only really 3 miles to the  
19 border. You take the furthest out of all of the  
20 turbines. That's what we call the project area and  
21 then that is offset 10 miles. So -- sorry.

22 Q. In all directions?

23 A. In all directions, exactly. So in this  
24 instance, you know, we have more of a north-south  
25 type layout. So driving from the north to the south

677

1 is actually much further than driving from the east  
2 to the west in this study area.

3 ALJ AGRANOFF: Based on my one limited  
4 question, any follow-up from counsel?

5 MR. VAN KLEY: No.

6 ALJ AGRANOFF: Thank you, Mr. Robinson.

7 THE WITNESS: Thank you.

8 ALJ AGRANOFF: Mr. Secrest.

9 MR. SECREST: Your Honor, may the  
10 Applicant move to admit Applicant's Exhibit 46 into  
11 the record.

12 ALJ AGRANOFF: Any objection?

13 MR. VAN KLEY: No objection.

14 ALJ AGRANOFF: There being none,  
15 Applicant Exhibit 46 shall be admitted as part of the  
16 record at this time.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 ALJ AGRANOFF: And, Mr. Secrest, or  
19 Ms. Pirik, if you can call your next witness.

20 MR. SECREST: Certainly. Thank you, your  
21 Honor. May the Applicant call Dr. Kenneth Mundt.

22 MS. FISCHER: Mr. Mundt, you've been  
23 promoted to a panelist. You can now unmute your mic  
24 and turn on your camera.

25 THE WITNESS: Thank you, Ms. Fischer.

1 Good morning, all.

2 ALJ AGRANOFF: Good morning, Dr. Mundt.

3 If you could please raise your right hand.

4 (Witness sworn.)

5 ALJ AGRANOFF: Thank you.

6 Mr. Secrest.

7 MR. SECREST: Thank you, your Honor.

8 - - -

9 KENNETH A. MUNDT, Ph.D.

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

12 DIRECT EXAMINATION

13 By Mr. Secrest:

14 Q. Good morning, Dr. Mundt.

15 A. Good morning, Mr. Secrest.

16 Q. Will you please state and spell your full  
17 name for the record.

18 A. Kenneth A. Mundt, M-u-n-d-t.

19 Q. Thank you, Dr. Mundt. By whom are you  
20 employed and what is your business address?

21 A. I'm employed by Cardno ChemRisk. My  
22 business address is Copley Plaza in Boston,  
23 Massachusetts.

24 Q. Thank you. Do you have in front of you  
25 your prefiled direct testimony?

679

1           A.    Yes.  I have it.

2           Q.    Is that a true and accurate copy of your  
3 direct testimony?

4           A.    Yes, it is.

5           MR. SECREST:  Your Honor, may I move to  
6 have Dr. Mundt's prefiled direct testimony marked as  
7 Applicant Exhibit 42.

8           ALJ AGRANOFF:  It shall be so marked.

9           (EXHIBIT MARKED FOR IDENTIFICATION.)

10          MR. SECREST:  Thank you, your Honor.

11          Q.    Dr. Mundt, do you have any changes or  
12 revisions to your direct testimony?

13          A.    I do not.

14          MR. SECREST:  Great.  May I tender  
15 Dr. Mundt for cross-examination, your Honor.

16          ALJ AGRANOFF:  Thank you.

17          Mr. Van Kley.

18          MR. VAN KLEY:  Thank you, your Honor.

19                   - - -

20                   CROSS-EXAMINATION

21          By Mr. Van Kley:

22          Q.    You -- you have no degree in acoustics,  
23 correct?

24          A.    Correct.

25          Q.    You have no formal training in acoustics?

1           A.     That is correct.

2           Q.     You're not an expert in the measurement  
3 of sound?

4           A.     Correct. I am an epidemiologist.

5           Q.     And go to page -- or go to Question 7 of  
6 your testimony, please. And that is on page 4 of  
7 Applicant Exhibit 42.

8           A.     Yes, I'm there.

9           Q.     And there you have defined epidemiology,  
10 correct?

11          A.     Yes, sir.

12          Q.     "Epidemiology is the field of public  
13 health that studies incidence, prevalence, and  
14 distribution of disease -- as well as risk factors  
15 that are associated with disease -- in human  
16 populations," correct?

17          A.     Yes.

18          Q.     In how many cases have you testified  
19 about the potential impacts of wind turbines?

20          A.     This will be my fourth time in this  
21 venue. Outside of Ohio I've testified probably two  
22 dozen times in various venues, primarily in Canada  
23 and within Canada primarily in Ontario.

24          Q.     In each of those cases, did you testify  
25 on behalf of the developer?

681

1           A.    I believe -- I'm not certain that it was  
2 exclusively the developer. I know that in most of  
3 the cases in Ontario, the defendants included the  
4 developer as well as the province and the crown.

5           Q.    And in those cases were you defending the  
6 wind project?

7           A.    No, sir. My role as an epidemiologist is  
8 to assist the court or the hearing and the  
9 participants in understanding the epidemiological  
10 science with respect to wind turbines and human  
11 health.

12          Q.    But each of those cases you testified  
13 that the wind project was not causing human health  
14 problems, correct?

15          A.    That would be a logical extension of my  
16 work evaluating the epidemiological literature.

17          Q.    Isn't it true that in more than 90  
18 percent of the cases in which you've testified as an  
19 epidemiologist, you have testified on behalf of a  
20 company that has contended that it has not caused  
21 health effects that were being alleged against it?

22          A.    Not quite. I'm close -- I think the  
23 question might have been a bit convoluted, but I'm  
24 retained frequently by defendants. Many of them are  
25 corporations that are alleged to have caused or

1 contributed to somebody's disease. I have been  
2 retained in most of those cases to evaluate the  
3 scientific, specifically epidemiological literature,  
4 to assist them in understanding whether that is a  
5 substantiated allegation or whether it is one that  
6 they should defend and that is their choice.

7 And those that I go on to testify in are  
8 cases or examples where my client, the defendant,  
9 decided that the science was -- would not support the  
10 allegations, and they chose to defend themselves.

11 Q. And in approximately what percentage of  
12 those cases did you testify that the client did not  
13 cause the health effects being alleged against it?

14 A. Well, certainly if I thought or the  
15 scientific evidence suggested to the contrary, it  
16 would not proceed to a testimony either in deposition  
17 or trial. So that in almost all -- I would suggest  
18 all of these cases it was the case or situation that  
19 the scientific evaluation did not allow a conclusion  
20 of causation and, therefore, enabled the client to  
21 defend themselves using the scientific literature as  
22 a basis.

23 Q. Have you ever testified in a case that a  
24 company did cause health effects?

25 A. That's a bit vague.

683

1                   MR. SECREST: Objection, vague. Did or  
2                   that he concluded caused health effects?

3                   ALJ AGRANOFF: Mr. Van Kley, if you could  
4                   narrow the scope of your at least initial question  
5                   before you expand upon it.

6                   MR. VAN KLEY: Yeah. I think it's the  
7                   same but let me reword it.

8                   Q. Has there ever been a case in which you  
9                   have testified that a company -- let me start over.

10                  Has there ever been a case in which you  
11                  testified that you concluded that a company caused  
12                  health impacts?

13                  A. No. Such a case would not proceed to  
14                  trial. It would be resolved long before that process  
15                  began.

16                  Q. Well, let me make sure that you  
17                  understand the question here. I guess what I'm  
18                  looking for is -- is information from you as to  
19                  whether you ever represent plaintiffs who are arguing  
20                  that a defendant has caused health problems.

21                  A. Oh, that's a very different question.  
22                  Yes, I have, and it consists of only a very few  
23                  examples. The largest and most relevant to this  
24                  matter is when I served on behalf of an entire  
25                  community alleging that the way that Chicago O'Hare



1 Airport expansion project was proceeding in their  
2 community was posing threats to their human health.

3 Q. In approximately how many cases have you  
4 testified on behalf of a plaintiff?

5 A. Apart from the community of Bensenville,  
6 I think there's only been one or two that I've  
7 testified in on behalf of plaintiff.

8 Q. Okay. And in approximately how many  
9 cases have you testified on epidemiology issues?

10 A. It's probably exceeding 100 different  
11 matters over many years.

12 Q. In cases in which you've testified about  
13 your epidemiology -- your epidemiological opinion,  
14 has there been an opposing epidemiology expert who  
15 has expressed an opposing opinion?

16 A. May I clarify? You are talking about in  
17 any testimony or are you talking about in  
18 wind-related matters?

19 Q. In any testimony.

20 A. Yes, in fact, in many, if not most, I  
21 believe the burden is on plaintiffs to present  
22 evidence that at least supports or suggests that  
23 their allegations may be scientifically grounded. So  
24 there are occasionally scientists and maybe more  
25 often than I know because I don't typically see their

685

1 expert reports or their testimony, but I presume  
2 there are those that provide what they believe is  
3 supportive scientific evidence for their clients.

4 Q. Have you ever personally performed an  
5 epidemiological study on wind turbines?

6 A. No. I've performed many epidemiological  
7 studies but not on wind turbines.

8 Q. Have you ever performed your own  
9 epidemiological study on sources of noise?

10 A. No. I would say that a study on sources  
11 of noise would not be an epidemiological study unless  
12 you coupled that exposure to noise with some health  
13 endpoint.

14 Q. Well, have you ever performed an  
15 epidemiology study on the potential health impacts of  
16 noise?

17 A. No, I have not.

18 Q. Go to page 11 of your testimony marked as  
19 Exhibit 42. I would like to direct your attention to  
20 the sentence starting on line 30 of that page. And  
21 you state there that "Sounds generated by industrial  
22 wind turbines are similar to sounds generated by any  
23 number of devices, human activities or environmental  
24 settings - including natural (for example, surf,  
25 wind, rain, insects, et cetera) and anthropogenic

1 (traffic, air handling systems, lawn equipment, video  
2 games, radio and television broadcasts, et cetera)  
3 sources." Now, you are not meaning to express an  
4 opinion about acoustics in that sentence, are you?

5 A. That's correct.

6 Q. You have no expertise in acoustics that  
7 would be able -- that would enable you to express the  
8 statement in this sentence from the perspective of an  
9 acoustical engineer, correct?

10 A. That's correct. Whatever the sounds  
11 resemble from wind turbines seems not to be different  
12 from other sounds we encounter, but in the end of the  
13 day, epidemiologically, whatever sound they generate  
14 is what I am looking at in terms of the potential  
15 health impacts of those sounds. So I'm not making a  
16 statement about their technical similarities or  
17 dissimilarities to other sounds.

18 Q. Let's go to page 19 of your testimony. I  
19 would like to direct your attention to Table 1 on  
20 pages 19 and 20. With regard to the information in  
21 Table 1, you are not providing this information as an  
22 expert in acoustics, correct?

23 A. That's correct. That's just background  
24 information, contextual.

25 Q. So, for example, you don't have any

687

1 expertise in acoustics that would enable you to state  
2 that the sound pressure level of a vacuum cleaner is  
3 84 to 89 dBA, correct?

4 A. That's correct. And this is represented  
5 as an example from another source that is a  
6 noise-pollution clearinghouse and the website is  
7 listed there. I might note that I did add an insert  
8 in italics, information from the Application, to put  
9 that into the context of this wind advocacy or -- not  
10 wind advocacy, noise -- anti-noise advocacy group.

11 Q. Go to page table -- or page 20, Table 2.  
12 And again, with this table you're not providing this  
13 evidence as an expert in acoustics, correct?

14 A. That's right. And again, as an  
15 epidemiologist, it's background or contextual. In  
16 this case the example is from a U.S. Government  
17 source rather than an advocacy group.

18 Q. And the information in Table 2 is  
19 designed to demonstrate whether specific sound levels  
20 will damage human ears, correct?

21 A. Presumably. I mean, it talks about  
22 specifically your -- something is -- sound is fine  
23 for your ears or is damaging to your hearing. So,  
24 yes, it seems this addresses hearing or ear damage.

25 Q. Okay. Let's go to page 21 in your

1 testimony. Question and Answer 32 -- or 33 asks  
2 "What is the sound pressure level of wind turbines?"  
3 Do you see that?

4 A. Yes.

5 Q. And here again, you are not expressing  
6 any of the information in Answer 33 from the  
7 perspective of any expertise in acoustics, correct?

8 A. That's right. This is dependent on the  
9 National Research Council but that information is  
10 background so that I, as an epidemiologist, have a  
11 sense of what the exposure that we are evaluating in  
12 terms of human health impact.

13 Q. And on the same page, 21 of Applicant's  
14 Exhibit 42, we have Question and Answer 34. And  
15 again, the information in Answer 34 is not expressed  
16 by you as an expert in acoustics, correct?

17 A. That's correct. This provides background  
18 for epidemiological evaluation.

19 Q. So with respect to Answers 33 and 34, you  
20 simply obtained the information from sources of  
21 literature, correct?

22 A. Yes, including National Research Council  
23 which is not a single investigator or entity.  
24 Maybe -- as represented in the paragraph 34, those  
25 are single studies.

689

1 ALJ AGRANOFF: What is the National  
2 Research Council?

3 THE WITNESS: National Research Council  
4 is an independent organization that advises -- I  
5 believe advises U.S. Government.

6 ALJ AGRANOFF: On a variety of topics?

7 THE WITNESS: Yes.

8 MR. VAN KLEY: All right. I have no  
9 further questions.

10 ALJ AGRANOFF: Any clarifying questions  
11 from other counsel?

12 If not, Mr. Secrest, any redirect?

13 MR. SECREST: Your Honor, may I just have  
14 2 minutes to confer with co-counsel?

15 ALJ AGRANOFF: Sure. Why don't you take  
16 5 minutes.

17 MR. SECREST: I will do so. Thank you.

18 ALJ AGRANOFF: Okay.

19 (Recess taken.)

20 ALJ AGRANOFF: Let's go back on the  
21 record.

22 And, Mr. Secrest, have you determined if  
23 you'll have any redirect?

24 MR. SECREST: We have, your Honor, and we  
25 do not have any redirect for Dr. Mundt. Thank you.

1 ALJ AGRANOFF: Thank you.

2 Dr. Mundt, we appreciate your testimony.

3 THE WITNESS: Thank you. It's been my  
4 pleasure.

5 ALJ AGRANOFF: And with that,  
6 Mr. Secrest.

7 MR. SECREST: Please, your Honor, may the  
8 Applicant move for the admission of Applicant's  
9 Exhibit 42.

10 ALJ AGRANOFF: Any objection?

11 MR. VAN KLEY: No objection.

12 ALJ AGRANOFF: There being no objection,  
13 Applicant Exhibit 42 shall be admitted as part of the  
14 record at this time.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 ALJ AGRANOFF: And I believe at this  
17 point in time, Mr. Margard, it is your turn.

18 MR. VAN KLEY: Your Honor, could we take  
19 our lunch break at this time? I have -- I have a  
20 dislocated bone in my neck that is causing me some  
21 problems right now, and my chiropractor closes at  
22 noon. And I would like to get that taken care of  
23 before the weekend. And I can make it there in 10  
24 minutes if we take a break now.

25 ALJ WILLIAMS: What time do you think you

691

will be back, Jack?

MR. VAN KLEY: I will be back at 12:30.

MR. SECREST: I don't want to be a pain  
in the neck.

ALJ WILLIAMS: All right. We will go  
ahead and take our lunch. We will reconvene at  
12:30.

MR. VAN KLEY: Okay. Thank you so much.

ALJ AGRANOFF: Thank you.

(Thereupon, at 11:24 a.m., a lunch recess  
was taken.)

- - -



1 Friday Afternoon Session,  
2 October 9, 2020.

3 - - -

4 ALJ WILLIAMS: Welcome back everybody.  
5 Attorney Van Kley, some relief?

6 MR. VAN KLEY: Yes, your Honor, some.  
7 Thank you for the accommodation. Appreciate it.

8 ALJ WILLIAMS: Of course.

9 MR. VAN KLEY: I didn't want to go into a  
10 three-day weekend without getting that taken care of.

11 ALJ WILLIAMS: I can imagine. I'm glad  
12 you're feeling a little better under the  
13 circumstances. If you need to take additional  
14 breaks, let us know, we'll work around you obviously.

15 MR. VAN KLEY: No problem. I'll be fine.

16 ALJ WILLIAMS: Okay. All right. I think  
17 we're -- who is coming?

18 MR. MARGARD: Mr. Conway should be ready.

19 ALJ WILLIAMS: Mr. Margard, would you  
20 call your next witness.

21 MR. MARGARD: Thank you, your Honor. The  
22 Staff would call Andrew Conway.

23 ALJ WILLIAMS: Mary, are you there?  
24 There you go.

25 MS. FISCHER: Mr. Conway has been

693

1 promoted to a panelist position and now can control  
2 his mic and camera.

3 ALJ WILLIAMS: Thank you, Mary.

4 Good afternoon, Mr. Conway, how are you?

5 THE WITNESS: Good. Can you see me and  
6 hear me?

7 ALJ WILLIAMS: You're loud and clear and  
8 the visual is great as well. Excellent. Well,  
9 welcome to this afternoon's hearing. I am going to  
10 begin by swearing you in. Would you raise your right  
11 hand.

12 (Witness sworn.)

13 ALJ WILLIAMS: Thank you.

14 Mr. Margard.

15 MR. MARGARD: Thank you, your Honor.

16 - - -

17 ANDREW CONWAY

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

20 DIRECT EXAMINATION

21 By Mr. Margard:

22 Q. Sir, please state your name and business  
23 address.

24 A. Andrew Conway, 180 East Broad Street,  
25 Columbus, Ohio 43215.

1           Q.    And by whom are you employed and in what  
2           capacity, please?

3           A.    I'm employed by the Public Utilities  
4           Commission of Ohio as an Engineering Specialist.

5           MR. MARGARD:   Thank you, your Honor.  
6           Before I proceed any further, I would like to have  
7           marked for purposes of identification the prefiled  
8           testimony of Andrew Conway filed in the docket in  
9           this case on September 21, 2020, as Staff Exhibit  
10          No. 5.

11          ALJ WILLIAMS:   So marked.

12          (EXHIBIT MARKED FOR IDENTIFICATION.)

13          MR. MARGARD:   Thank you, your Honor.

14          Q.    (By Mr. Margard) Mr. Conway, do you have  
15          before you what has been marked as Staff Exhibit 5?

16          A.    Yes, I do.

17          Q.    And can you identify that for us, please?

18          A.    That's my prefiled written testimony.

19          Q.    And was that prepared by you or under  
20          your direction?

21          A.    Yes, it was.

22          Q.    And have you reviewed that exhibit prior  
23          to taking the stand today?

24          A.    Yes.

25          Q.    And do you have any corrections or

695

1 changes to make to your testimony as filed?

2 A. No.

3 Q. And if I were to ask you the questions  
4 contained in that document, would your responses be  
5 the same?

6 A. Yes, they would.

7 Q. Okay. And in your opinion and to the  
8 best of your knowledge, would those answers be true  
9 and reasonable?

10 A. Yes, they would.

11 Q. Thank you.

12 Do you also have the Staff Report in  
13 front of you?

14 A. Yes, I do.

15 Q. Okay. It's been previously marked and  
16 admitted as Staff Exhibit 1. Did you contribute to  
17 the drafting of this document?

18 A. Yes, I did.

19 Q. And can you identify the sections for  
20 which you were responsible, please.

21 A. Yes. I was the primary analyst for  
22 portions of the Staff Report pertaining to the  
23 project description; setbacks; turbine foundations;  
24 wind velocity; safety; communications; the air,  
25 water, solid waste, and aviation section; the water

1 conservation section; and then also condition 7, 35,  
2 36, 37, 38, 40, 41, 42, and condition 39.

3 Q. Thank you. Have you reviewed those  
4 sections prior to testifying today?

5 A. Yes.

6 Q. And do you have any corrections or  
7 changes to those sections of the Staff Report?

8 A. No, I don't.

9 MR. MARGARD: Okay. Thank you, sir.

10 Your Honor, I would respectfully move for  
11 the admission of Staff Exhibit 5, subject to  
12 cross-examination, and I tender Mr. Conway for that  
13 purpose.

14 ALJ WILLIAMS: Thank you.

15 Attorney Van Kley.

16 MR. VAN KLEY: Yeah, thank you, your  
17 Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Van Kley:

21 Q. And good afternoon, Mr. Conway. Did you  
22 author the part of the Staff Report that has the  
23 heading "Blade Shear" on it as part of your safety  
24 section?

25 A. No, I did not.

697

1 Q. Okay. Is that Mr. Bellamy that did that?

2 A. Yes.

3 Q. Okay. Would you go to Question and  
4 Answer 7 of your testimony.

5 A. I'm there.

6 Q. And I would like to ask you about the  
7 testimony you wrote on lines 12 through 15 on page 3  
8 of that testimony.

9 A. Okay.

10 Q. And there you state that condition 39 is  
11 no longer necessary because it's -- because  
12 additional discussions between the FAA, and the Ohio  
13 Department of Transportation Office of Aviation, and  
14 the Applicant are no longer needed, correct?

15 A. That's correct.

16 Q. What, if anything, happened between the  
17 time of the finalization of the Staff Report and your  
18 preparation of your testimony that led you to the  
19 conclusion that these discussions are no longer  
20 needed?

21 A. There was a court case, One Energy versus  
22 ODOT Office of Aviation, which then led the ODOT  
23 Office of Aviation to issue a -- reissue its previous  
24 modification -- its consultation letter to the Board.  
25 And then I had discussions with FAA personnel shortly

1 after that in the March and April time frame where I  
2 learned a little more about the FAA process and  
3 then -- and then Staff entered into a Stipulation  
4 with the -- all the parties. Those are the  
5 highlights.

6 Q. Between the time of the Staff Report and  
7 your testimony, did you receive any new information  
8 about the potential or lack of potential for issues  
9 that could be caused by the project to the Willard  
10 Airport?

11 MR. SECREST: Objection, vague.

12 ALJ WILLIAMS: Could you break that down  
13 for us, Attorney Van Kley?

14 MR. VAN KLEY: Yeah.

15 Q. (By Mr. Van Kley) At any point did you  
16 consider any impact that the turbines in this project  
17 could have on Willard Airport?

18 A. Yes.

19 Q. Okay. And what, if any, information did  
20 you receive concerning that potential issue?

21 A. We received a consultation letter,  
22 March 10th, from the ODOT Office of Aviation. In  
23 that letter they restricted their analysis to six  
24 surfaces of the Willard Airport, and they stated in  
25 that letter that none of the proposed wind turbine

699

1 structures impact these surfaces.

2 So that information and in conjunction  
3 with the FAA Determination of No Hazard which said  
4 there is no substantial adverse effect from the wind  
5 turbine structures, and then also the Applicant and  
6 City of Willard and other parties entered into the  
7 Stipulation so that -- that was one of the -- prior  
8 recommendations of ODOT Office of Aviation that they  
9 received input from the City of Willard so their --  
10 their -- they -- they entered into that Stipulation  
11 as well. So those three pieces of information were  
12 what led us to remove condition 39 and replace it  
13 with condition 39 of the Stipulation.

14 Q. Did any such consultation with the  
15 village of Willard occur prior to your testimony? Or  
16 prior to the time you wrote your testimony?

17 A. Conversations between who?

18 Q. Well, I am just referring back to your  
19 answer to my prior question where you -- you  
20 mentioned that at one time it was the Staff's intent  
21 that there be consultation with the village of  
22 Willard; and my question is, has that ever occurred?

23 MR. MARGARD: Can I clarify, are you -- I  
24 don't want him to disclose conversations over the  
25 course of negotiation, I presume.



1 MR. VAN KLEY: That's true, yes.

2 MR. MARGARD: So other than during  
3 negotiations.

4 ALJ WILLIAMS: You can answer,  
5 Mr. Conway.

6 A. I'm not aware of discussions outside of  
7 our Stipulation between Willard and other folks.

8 Q. Have you ever personally had any  
9 discussions with the village of Willard about  
10 potential impacts from this turbine project on the  
11 Willard Airport other than potentially any  
12 discussions that may have occurred during  
13 negotiations of the Stipulation?

14 A. No, I have not personally had discussions  
15 with them. They have provided their concern, I  
16 believe it was attached to that March 10th ODOT  
17 Office of Aviation letter which is filed on the  
18 docket. So it was a written communication.

19 Q. Did the Staff send any communication back  
20 to the Willard Airport in response to that letter  
21 from the village of Willard?

22 A. No, not that I am aware of.

23 Q. Let's go to page 46 of the Staff Report.

24 A. Okay.

25 Q. All right. And on page 46 of the Staff

701

1 Report do you see a section that has the heading  
2 "Turbine Foundations" on that page?

3 A. Yes, I do.

4 Q. Let's go to the next page of the Staff  
5 Report, page 47, where you'll see a continuation of  
6 that section. I have some questions about that text.

7 A. Okay. I'm on page 47.

8 Q. I would like to ask you to take a look at  
9 the fourth paragraph on page 47 which I'll just read  
10 to you, have it in the record. This paragraph  
11 states: "Due to the noted possible complications and  
12 potential challenges of karst geology, Staff  
13 recommends that when the Applicant submits detailed  
14 engineering drawings of the foundation, the designs  
15 account for karst topography and include the identity  
16 of the registered professional engineer, structural  
17 engineer, or engineering firm, that approved the  
18 designs, and that the entity be licensed to practice  
19 engineering in the state of Ohio." Do you see that  
20 language?

21 A. Yes, I do.

22 Q. Okay. Now, you authored the section that  
23 is labeled as "Turbine Foundations" from which I read  
24 this paragraph, correct?

25 A. Yes.

1           Q.    So the first question I have for you  
2    about this paragraph is in this report -- I guess  
3    it's drawings. The drawings that will be submitted  
4    as stated in this paragraph, and any information that  
5    accompanies them, whether there's anything in the  
6    Staff Report or in the Stipulation that requires any  
7    information to be submitted as part of the submittal  
8    by a hydrogeologist.

9           A.    No. This requires that the -- that  
10   the -- it would be a professional engineer or  
11   structural engineer or an engineering firm so that's  
12   the minimum qualifications -- that's the minimum  
13   qualifications, not -- it doesn't require a  
14   hydrogeologist.

15          Q.    Uh-huh. Is there anything in the  
16   Stipulation that requires the Applicant to submit any  
17   report or other information on hydrogeology resulting  
18   from the planning process for installing the turbine  
19   foundations?

20          A.    One moment. I am going to look at the  
21   Application and -- sorry. One minute. I am looking  
22   at Exhibit E of the Application, the hydro --  
23   hydrogeological and geotechnical report.

24                    Could I have the question reread as well.  
25   Repeated back.

703

(Record read.)

A. Yes, there's -- condition 7 requires the -- the geo -- that the structural engineer or the professional engineer or firm design it and account for karst topography and account for geological issues.

And on page 9 of the Exhibit E, site-specific geotechnical information should -- should be obtained by the client, which would be the Applicant, prior to design of the turbine foundations and prior to preparation of construction specifications and design plans.

So in my opinion that -- that -- there would be more geotechnical work or analysis at each location prior to the design. And that would be incorporated or reflected into those foundational plans, those engineering plans.

Q. With respect to condition 7 of the Joint Stipulation, is there anything in that condition that requires any submittal by a hydrogeologist?

A. No, it doesn't specifically require a hydrogeologist.

Q. Can you tell me what your understanding of the term "karst topography" is as referenced in condition 7 of the Joint Stipulation?

1           A.    Yes.  Karst is a topography formed by  
2 limestone, gypsum, or other rocks, through  
3 dissolution, characterized by sinkholes, caves, or  
4 underground drainage concerns.

5           Q.    Based on that understanding of the  
6 meaning of the term "karst topography," is it your  
7 belief that condition 7 requires any investigation by  
8 the Applicant of the hydrogeology of a turbine site  
9 before it installs the wind turbine foundations?

10          A.    Yes, in the sense that subsurface  
11 conditions need to be accounted for.  There are  
12 elevated groundwater levels in the area.  And once  
13 these sites are excavated, there may -- they may  
14 encounter elevated waters that need to be dewatered.  
15 And then the -- there is a lot of technical  
16 calculations that go into the foundation design as  
17 envisioned in this condition that needs to be  
18 accounted for.

19               And we expect the Applicant and I think  
20 the Applicant has committed that, where reasonable  
21 and appropriate, they may implement proper mitigation  
22 measures, such as grouting, to provide adequate  
23 foundation support.  So it's -- that would need to be  
24 -- hydrogeology and geology would need to be  
25 accounted for in the design.

705

1           Q.    With respect to your observations  
2           concerning what is stated on page 9 of Applicant  
3           Exhibit E to the Application, what's your  
4           understanding of the meaning for a --

5           A.    The meaning for what?

6           Q.    I am sorry.  I'm searching for the term  
7           here in the text to make sure I get it right.  I will  
8           start over in just a second.  All right.  Here we go.

9                     All right.  With respect to page 9 in  
10          Exhibit E of Applicant's Exhibit 1, what's your  
11          understanding of the meaning of the term  
12          "geotechnical information" as referenced on that  
13          page?

14                 MR. MARGARD:  Paragraph 3 on that page;  
15          is that correct?

16                 MR. VAN KLEY:  Say again, Vern.

17                 MR. MARGARD:  I see that in paragraph 3?

18                 MR. VAN KLEY:  Yes.  That's correct.

19           A.    Geotechnical -- my understanding of  
20           geotechnical information that would be some of --  
21           that would be submitted, examples would be borings,  
22           site-specific borings, depth to bedrock, soil  
23           conditions, soil strength.  It would be -- and then  
24           subsurface conditions, so whatever is below grade,  
25           below ground surface, that would be.  And then

1 whether there are any karst areas or other geological  
2 issues that -- that need to be addressed if -- if  
3 that particular turbine location is to be a viable,  
4 feasible site. So that's my understanding.

5 Q. Are you aware of the existence of a  
6 nuclear power plant known as the Davis-Besse nuclear  
7 power plant?

8 A. Yes. I was an intern there.

9 Q. Okay. Do you know how far the distance  
10 is between the Davis-Besse nuclear power plant and  
11 the nearest boundary of the project area  
12 approximately?

13 A. I don't recall.

14 Q. Do you know how long it would take to  
15 drive between those two points?

16 A. Between Davis-Besse and where?

17 Q. And the project area.

18 A. No, I don't know.

19 Q. Which municipality is the location of the  
20 Davis-Besse nuclear power plant?

21 A. I believe it's in Oak -- Oak Harbor.

22 Q. Let's go back to the Joint Stipulation.  
23 And I would like you to take a look at recommended  
24 condition 38.

25 A. Yes, I see that in front of me.

707

1           Q.    The topic of communications was one of  
2   the issues that you were responsible for evaluating  
3   as part of this project; is that correct?

4           A.    Yes.

5           Q.    And were you present during discussions  
6   about condition 38 during the negotiations of the  
7   Joint Stipulation?

8           A.    Yes. I participated in the condition in  
9   the Stipulation.

10          Q.    Looking at recommended condition 38,  
11   you'll see the statement that avoidance and  
12   mitigation for licensed communication systems shall  
13   consist of measures acceptable to Staff, the  
14   Applicant, and the affected path owner, operator, or  
15   licensee. Do you see that?

16          A.    Yes.

17          Q.    Uh-huh. And then in the first sentence  
18   of that condition, it states that all existing  
19   licensed microwave paths, and licensed communication  
20   systems shall be subject to avoidance or mitigation.  
21   Do you see that?

22          A.    Yes.

23          Q.    Okay. Is it your understanding that  
24   condition 38 requires the Applicant to provide  
25   avoidance and mitigation in the event of an



1 interference with T.V. reception that is being  
2 experienced by neighbors of the wind facility?

3 A. Yes.

4 Q. And would you point out what language in  
5 condition 38 you believe provides that requirement?

6 A. The first -- mainly the first sentence.  
7 "All existing licensed microwave paths, and licensed  
8 communication systems shall be subject to avoidance  
9 or mitigation," and a T.V. is a licensed  
10 communication system.

11 Q. In the event that the wind turbines  
12 interfere with a neighbor's T.V. reception so that --  
13 and in the event that cable T.V. services are the  
14 only feasible mechanism for addressing that  
15 interference, is it your understanding that the  
16 Applicant will be required to pay for the cost of  
17 installing the cable T.V. service? Under this  
18 recommended condition?

19 A. Yeah, I am going to point you to page 54  
20 of the Staff Report and that first paragraph. The  
21 reason -- it says midway -- midway through that first  
22 paragraph: "If facility operation results in impacts  
23 to existing off-air television coverage, Staff  
24 concurs with the Applicant's proposal to investigate  
25 methods of improving the television reception system,

709

1 specifically a high-gain directional antenna oriented  
2 towards the signal origin, installation of a better  
3 antenna, or installation of cable/satellite  
4 television service. If improvements cannot be made,  
5 then the Applicant would resolve the issue through  
6 its complaint resolution process, which includes a  
7 hotline."

8 So that -- it's my understanding that's  
9 the Applicant's proposal to investigate these methods  
10 and that those three -- one of those three methods  
11 should resolve the -- any neighboring -- any  
12 interference with T.V. coverage to a neighbor.

13 Q. Is it your understanding that there is  
14 any requirement, as stated in the Application or in  
15 the Stipulation, that the Applicant pay for the  
16 monthly subscription fees for cable T.V. service if  
17 the only way to avoid T.V. interference is to install  
18 cable T.V. service?

19 THE WITNESS: Could I have that question  
20 reread, please.

21 (Record read.)

22 A. This goes back to condition 38 that all  
23 licensed microwave paths and licensed communications  
24 shall be subject to avoidance or mitigation, so that  
25 is a -- mitigation measure. It's my understanding

1 condition 38 addresses that issue.

2 Q. Is it your understanding that condition  
3 38 requires the Applicant to pay for the monthly  
4 subscription fees for cable T.V. in that event?

5 MR. SECREST: Asked and answered.

6 MR. VAN KLEY: He didn't quite answer  
7 that question.

8 ALJ WILLIAMS: I will let him clarify.

9 A. If, after the Applicant's exhausted all  
10 of the methods for improving television reception, I  
11 believe that could be a function of those. That  
12 seems fair.

13 Q. I'm sorry. The last part of your answer  
14 faded out. Could you repeat that, please?

15 A. That seems fair.

16 Q. Okay. But would it be required by the  
17 condition?

18 ALJ WILLIAMS: Mr. Conway, I am going to  
19 maybe help this along. You've read the first  
20 sentence in Stip 38 a couple times. It says that --  
21 you maintain that T.V. reception would be included in  
22 the "all existing licensed communication systems" and  
23 would, therefore, be subject to avoidance or  
24 mitigation. I think the question is, would avoidance  
25 or mitigation include requiring Applicant to pay for

711

1 ongoing subscription services?

2 THE WITNESS: I think, yes, if it's  
3 determined that it's an appropriate and reasonable  
4 avoidance or mitigation measure, yes.

5 ALJ WILLIAMS: Okay. Thank you.

6 Attorney Van Kley.

7 Q. (By Mr. Van Kley) You mean if -- if cable  
8 T.V. service is the mitigation measure chosen, then  
9 it would be required; is that what you're saying?

10 A. Yes.

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

13 ALJ WILLIAMS: Thank you, Mr. Van Kley.

14 Any clarifying questions from anyone else  
15 in the hearing?

16 Attorney Margard, redirect?

17 MR. MARGARD: If I could have just a  
18 moment with my client, please.

19 ALJ WILLIAMS: Sure. You want 5 minutes?

20 MR. MARGARD: That will be terrific.

21 Thank you.

22 ALJ WILLIAMS: We will come back at 1:20.

23 (Recess taken.)

24 ALJ WILLIAMS: Okay. It looks like we  
25 are almost all back together. Judge Agranoff is

1 going back to his chair. Attorney Margard, I will  
2 turn to you and ask if you have any redirect.

3 MR. MARGARD: Thank you, your Honor. I  
4 have no redirect.

5 ALJ WILLIAMS: Okay. If there are no  
6 other issues from any of the other parties,  
7 Mr. Conway, you are excused. Thank you for your time  
8 today.

9 MR. MARGARD: Your Honor, I respectfully  
10 renew my request for admission of Staff Exhibit 5.

11 ALJ WILLIAMS: Attorney Van Kley, any  
12 opposition? You're muted, sir. Still muted.

13 MR. VAN KLEY: It's still none.

14 ALJ WILLIAMS: Okay. All right. Staff 5  
15 is admitted as well.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 MR. MARGARD: Thank you, your Honor.

18 ALJ WILLIAMS: Attorney Margard, your  
19 next witness.

20 MR. MARGARD: Thank you, your Honor. The  
21 Staff would call Mr. Eric Morrison, please.

22 ALJ WILLIAMS: Mary, I am sure you are  
23 working feverishly to elevate Mr. Morrison.

24 MR. MARGARD: Feverishly.

25 MS. FISCHER: Mr. Morrison is now a

713

1 panelist and can turn on his mic.

2 THE WITNESS: Thank you.

3 ALJ WILLIAMS: Good afternoon,  
4 Mr. Morrison.

5 THE WITNESS: Good afternoon, everyone.

6 ALJ WILLIAMS: I missed the first part of  
7 that and there's a spinning wheel and now a death  
8 triangle.

9 THE WITNESS: Can you hear me?

10 ALJ WILLIAMS: Not yet. If you keep  
11 talking, we'll see if the signal will improve.

12 THE WITNESS: Okay. Can you hear me now?

13 ALJ WILLIAMS: That's better. Yes. You  
14 can hear us okay?

15 THE WITNESS: Yeah, absolutely.

16 ALJ WILLIAMS: Okay. You are a little  
17 fuzzy visually but you're certainly discernible so  
18 we'll proceed here, and if anybody has any problems,  
19 wave their hand or all of the other criteria we have  
20 gone over ad nauseam.

21 Mr. Morrison, I am going to begin by  
22 swearing you in. Would you raise your right hand.

23 (Witness sworn.)

24 ALJ WILLIAMS: Thank you.

25 Attorney Margard.

1 MR. MARGARD: Thank you, sir.

2 - - -

3 ERIC MORRISON

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

6 DIRECT EXAMINATION

7 By Mr. Margard:

8 Q. Please state your name and business  
9 address.

10 A. Eric Morrison, 180 East Broad Street,  
11 Room 671, Columbus, Ohio 43215.

12 Q. And by whom are you employed and in what  
13 capacity, please?

14 A. The Public Utilities Commission of Ohio  
15 as an analyst -- a Utility Analyst II.

16 MR. MARGARD: Thank you.

17 Your Honor, before I proceed any further,  
18 I would like to request that the prefiled testimony  
19 of Eric Morrison filed in the docket in this case on  
20 September 21, 2020, be marked for purposes of  
21 identification as Staff Exhibit 8.

22 ALJ WILLIAMS: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. MARGARD: Thank you.

25 Q. (By Mr. Margard) Mr. Morrison, do you

715

1 have before you what's been marked as Staff Exhibit  
2 8?

3 A. Yes, I do.

4 Q. And will you identify that for us,  
5 please.

6 A. Prefiled Testimony of Eric Morrison on  
7 Behalf of the State -- on Behalf of the Staff of the  
8 Public Utilities Commission of Ohio, Power Siting  
9 Department.

10 Q. And was this document prepared by you or  
11 under your direction?

12 A. Yes.

13 Q. And have you reviewed it prior to taking  
14 the stand today?

15 A. Yes, I have.

16 Q. And I understand that you have a  
17 correction to it; is that correct?

18 A. Yes, I do.

19 Q. And what is that correction, please?

20 A. On line 11, it says that I have a  
21 Master's of Science which I do not. My education --  
22 my degree is a Bachelor of Specialized Studies degree  
23 with an emphasis on Civil Engineering and Business  
24 from Ohio University.

25 Q. Very good. Thank you. Any other



1 corrections or changes to your testimony?

2 A. No.

3 Q. If I were to ask you the questions that  
4 are contained in that document with the modifications  
5 as you've indicated, would your responses be the  
6 same?

7 A. Yes.

8 Q. And in your opinion would those answers  
9 be true and reasonable?

10 A. Yes.

11 Q. Okay. Mr. Morrison, do you also have a  
12 copy of the Staff Report available?

13 A. Yes, I do.

14 Q. Can you tell us whether you contributed  
15 to the drafting of this document.

16 A. I drafted the agricultural district  
17 section, the public and private water supply section,  
18 and the section on roads and bridges.

19 Q. Thank you. Did you review those sections  
20 prior to taking the stand today?

21 A. Yes.

22 Q. And do you have any corrections or  
23 changes of any kind to those sections of the Staff  
24 Report?

25 A. No.

717

MR. MARGARD: Thank you.

Your Honor, I respectfully move for admission of Staff Exhibit 8, subject to cross-examination, and tender Mr. Morrison for that purpose.

ALJ WILLIAMS: Thank you, Mr. Margard.  
Mr. Van Kley.

MR. VAN KLEY: Yes, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Van Kley:

Q. Mr. Morrison, referring you back to the second page of your prefiled testimony marked as Staff Exhibit 8, can I ask you to -- to clarify the wording changes you're making in lines 10 to 12.

A. Yes, sir.

Q. Yeah. Run me through those. I would appreciate it.

A. Okay. This is how it should read starting on line 10: "I hold a Bachelor of Specialized Studies degree with an emphasis on Civil Engineering and Business from Ohio University."

Q. Great. Thank you.

If you go to page 35 of the Staff Report, please.

1           A.    Okay.

2           Q.    There's a section under "Ecological  
3   Impacts" on that page which is entitled "Public and  
4   Private Water Supply."  Do you see that?

5           A.    Yes, sir.

6           Q.    Is that one of the sections that you  
7   authored?

8           A.    Yes, it is.

9           Q.    Let's take a look at the second paragraph  
10   of that section and I'll just read it to you so that  
11   the record smoothly flows through my questions.  It  
12   states:  "According to the Applicant, the required  
13   setback distance between residences and construction  
14   activities at the project sites would protect the  
15   private water wells from any significant negative  
16   impacts.  This is based on the assumption that wells  
17   are generally located in close proximity to the  
18   structures that use them.  Based on the gathered  
19   information as to the exact location of wells, the  
20   Applicant does not anticipate any adverse impacts to  
21   public or private water supplies during the  
22   construction and operation of the proposed wind  
23   farm."  Did I read that correctly?

24          A.    I believe so.

25          Q.    You're not a hydrogeologist, are you?

719

1 A. No, sir.

2 Q. Does the Ohio Power Siting Board have any  
3 hydrogeologists on staff?

4 A. No.

5 Q. Did the Ohio Siting Board -- did the Ohio  
6 Power Siting Board submit Firelands's Application to  
7 any hydrogeologist to review?

8 A. Not specific -- not specifically but the  
9 Application was sent to the Ohio EPA for review.

10 Q. Did -- do you know whether a  
11 hydrogeologist at Ohio EPA looked at the Application?

12 A. No, I do not.

13 Q. So the only hydrogeologic information  
14 that the Staff considered for the purpose of writing  
15 the -- this paragraph, that I read to you, came from  
16 the Applicant itself; is that correct?

17 MR. MARGARD: Objection, mischaracterizes  
18 the testimony.

19 ALJ WILLIAMS: I'll let him indicate his  
20 understanding of what the Applicant's experts  
21 reviewed or how they opined.

22 A. Between Ohio EPA's response and the  
23 information put forth by the Applicant, Staff  
24 concurred that these findings were acceptable.

25 Q. But you don't even know whether a

1 hydrogeologist at Ohio EPA even reviewed the  
2 Application, do you? Isn't that what you just said?

3 A. Correct. I don't know who reviewed the  
4 Application at the Ohio EPA.

5 Q. Do you have any understanding as to  
6 whether Ohio EPA has any regulatory authority over an  
7 interference with the supply of groundwater that  
8 could cut off the water supply to a drinking water  
9 well?

10 MR. MARGARD: With the understanding that  
11 Mr. Morrison is not an attorney, to the extent he  
12 knows.

13 MR. VAN KLEY: I'm just asking him what  
14 his understanding is as to the regulatory authority.

15 ALJ WILLIAMS: Do you understand the  
16 question, Mr. Morrison?

17 A. I am not versed in those legal aspects.

18 Q. So you're saying you don't know the  
19 answer to my question?

20 A. Correct.

21 Q. Did Ohio EPA provide any communication to  
22 the Staff of the Ohio Power Siting Board about the  
23 Application?

24 MR. MARGARD: Mr. Van Kley, are you  
25 speaking specifically with regard to these sections

721

1 or are you speaking with respect to any communication  
2 from the EPA?

3 MR. VAN KLEY: Any communication from  
4 Ohio EPA.

5 MR. MARGARD: To the extent you know,  
6 Mr. Morrison.

7 A. I was checking the -- I was checking the  
8 documents. I was not the project lead on the case  
9 which those communications are normally sent to, but  
10 generally the EPA will send a letter back, indicating  
11 if they have any issues or not with -- with the  
12 Application that they reviewed.

13 Q. Okay. And do you -- do you know whether  
14 any such letter was sent by EPA for this application?

15 A. Repeat that, sir, please.

16 Q. Yeah. Do you know whether Ohio EPA sent  
17 any such letter to the Staff about Emerson -- about  
18 the Emerson Creek wind application?

19 A. Off the top of my head, I do not. That  
20 would be a -- a question the project lead could  
21 probably answer.

22 Q. In the event that Ohio EPA did send such  
23 a letter, would it have been the usual practice of  
24 the Staff to include a copy of that letter on the  
25 public docket for the case?

1           A.    I'm not sure, sir.

2           Q.    And I take it from your -- your more  
3 general answers then that you are not aware of any  
4 communication from Ohio EPA concerning hydrogeology  
5 issues for the Application.

6           A.    Correct.

7           MR. VAN KLEY:  I have no more questions.

8           ALJ WILLIAMS:  Thank you, Attorney Van  
9 Kley.

10                  Any other clarification questions from  
11 any of the parties?

12                  Seeing none, Attorney Margard, redirect?

13           MR. MARGARD:  Thank you, your Honor.  I  
14 have no redirect.

15           ALJ WILLIAMS:  Thank you.  Mr. Morrison,  
16 you are excused.  Thank you for your testimony.

17           THE WITNESS:  Thank you.

18           ALJ WILLIAMS:  Exhibits?

19           MR. MARGARD:  Thank you, your Honor.  I  
20 would renew my request for admission of Staff Exhibit  
21 8.

22           ALJ WILLIAMS:  Attorney Van Kley?

23           MR. VAN KLEY:  No objection.

24           ALJ WILLIAMS:  Staff 8 is admitted.

25                  (EXHIBIT ADMITTED INTO EVIDENCE.)

723

1           ALJ WILLIAMS: It is 1:30. We only have  
2 one witness left. Do you guys want to take a little  
3 break and take our last witness after that?

4           MR. VAN KLEY: Your Honor, my questions  
5 are going to be really short. We could plow right  
6 through so far as I'm concerned.

7           ALJ WILLIAMS: I am not going to turn  
8 away that offer so let's go ahead and stay on track.

9           MR. MARGARD: I'm presuming he's online,  
10 your Honor. Staff would call Jonathan Pawley to the  
11 stand, please.

12          ALJ WILLIAMS: I am going to turn the  
13 reins over to Judge Agranoff. Thank you all.

14          MS. FISCHER: Mr. Pawley has been  
15 promoted to a panelist and can turn on his mic and  
16 camera.

17          THE WITNESS: How's that?

18          MR. MARGARD: Mr. Agranoff, you are on  
19 mute.

20          ALJ AGRANOFF: Can you hear me now, Jon?

21          THE WITNESS: I can.

22          ALJ AGRANOFF: Perfect. Okay.

23 Mr. Pawley, raise your right hand.

24 (Witness sworn.)

25          ALJ AGRANOFF: Thank you.



1 Mr. Margard.

2 MR. MARGARD: Thank you, your Honor.

3 - - -

4 JON C. PAWLEY

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

7 DIRECT EXAMINATION

8 By Mr. Margard:

9 Q. Please state your name and business  
10 address.

11 A. Jon Pawley, J-o-n P-a-w-l-e-y, and my  
12 business address is 180 East Broad Street, Columbus,  
13 Ohio 43215.

14 Q. And by whom are you employed and in what  
15 capacity, please?

16 A. I'm employed by the Public Utilities  
17 Commission of Ohio as a Public Utilities  
18 Administrator 2 in the Power Siting Department.

19 MR. MARGARD: Thank you. Your Honor,  
20 before I proceed further, I would request that the  
21 prefiled testimony of Jon C. Pawley filed in this  
22 matter on September 21, 2020, be marked for purposes  
23 of identification as Staff Exhibit 9.

24 ALJ AGRANOFF: It shall be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

725

1 MR. MARGARD: Thank you.

2 Q. (By Mr. Margard) Mr. Pawley, do you have  
3 before you what's been marked as Staff Exhibit 9?

4 A. I do.

5 Q. And would you identify that for us,  
6 please.

7 A. That's my prefiled testimony filed on  
8 this docket September 21, 2020.

9 Q. And was this prepared by you or at your  
10 direction?

11 A. It was.

12 Q. And have you reviewed that document prior  
13 to taking the stand today?

14 A. Yes, I have.

15 Q. And do you have any corrections or  
16 changes of any kind to your testimony as filed?

17 A. No, I do not.

18 Q. If I were to ask you the questions  
19 contained in that document, would your answers today  
20 be the same?

21 A. Yes.

22 Q. And in your opinion would those responses  
23 be truthful and reasonable?

24 A. Yes, they would.

25 Q. Thank you. Do you also have before you

1 the Staff Report of Investigation?

2 A. Yes, I do.

3 Q. And did you contribute to the drafting of  
4 this report?

5 A. I did.

6 Q. And what were your responsibilities with  
7 respect both to this report and to the investigation  
8 of this application?

9 A. I was Staff project lead for this  
10 project, and I also covered a few topics in the Staff  
11 Report. So in terms of responsibilities, basically a  
12 Staff project lead manages production of this  
13 document by assembling a team, being a point of  
14 contact for Staff, making sure that deadlines are  
15 met, and typically being the source of contact for  
16 data requests, inquiries, and field visits.

17 In terms of my role in providing  
18 information to -- to the investigation, I was  
19 responsible for the cultural resources section, and  
20 land use and parks and recreation. And then there  
21 was a few conditions that went along with those which  
22 is in my testimony.

23 Q. Did you review those sections of the  
24 Staff Report prior to taking the stand today?

25 A. Yes.

727

1 Q. And do you have any changes or  
2 corrections to those sections of the Staff Report?

3 A. No, I do not.

4 MR. MARGARD: Thank you. Your Honor, I  
5 respectfully move for admission of Staff Exhibit 9,  
6 subject to cross-examination, and tender Mr. Pawley  
7 for that purpose.

8 ALJ AGRANOFF: Thank you.

9 Mr. Van Kley?

10 MR. VAN KLEY: Yeah.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Van Kley:

14 Q. Let's talk about your work on cultural  
15 resources as related to the Application by Emerson  
16 Creek wind project. At the time that the Application  
17 was submitted, had there been a field study performed  
18 by the Applicant to identify cultural resources in  
19 the project area and surrounding areas?

20 A. There was a partial field study done and  
21 there was a literature review which was included in  
22 the Application which preceded the fieldwork.

23 Q. Okay. Since the time that the  
24 Application was submitted to the Board, have you had  
25 any communications with Firelands or its consultants

1 about fieldwork for adding cultural resources?

2 A. Yes.

3 Q. And what has been the nature of those  
4 communications?

5 A. Status of fieldwork and if they had  
6 communication -- if the Applicant had communication  
7 with the Ohio Historic Preservation Office.

8 Q. Are you aware of fieldwork that has been  
9 performed to identify cultural resources since the  
10 time of the submission of the Application?

11 A. No, I am not.

12 Q. So you're not aware of any work that's  
13 currently being done by the Applicant to look for  
14 cultural resources?

15 A. Physically looking for cultural  
16 resources, no, I am not aware of any new work that  
17 was done. However, I am aware of coordination that  
18 took place to basically provide details of the  
19 parameters of those fieldwork with the Ohio Historic  
20 Preservation Office through their programmatic  
21 agreement that is part of the record.

22 MR. VAN KLEY: Okay. I have nothing  
23 further.

24 ALJ AGRANOFF: Thank you.

25 THE WITNESS: Thank you.

729

1                   ALJ AGRANOFF: Before we get to redirect,  
2                   any clarifying questions from other counsel?

3                   If not, Mr. Margard, any redirect?

4                   MR. MARGARD: Just very briefly, your  
5                   Honor.

6                   - - -

7                   REDIRECT EXAMINATION

8                   By Mr. Margard:

9                   Q. Mr. Pawley, if you could briefly explain  
10                  what a programmatic agreement is, what this agreement  
11                  is, for us, please.

12                  A. Yeah. You'll see the programmatic  
13                  agreement a lot in the Section 106 world which  
14                  details or includes federal permits for projects.  
15                  This particular -- OPSB, so if there is a federal  
16                  jurisdiction to a project, there is a Section 106  
17                  triggered, and the programmatic agreement is often a  
18                  tool used with that a lot of times with ODOT  
19                  projects. It is -- it's a tool to focus historic  
20                  preservation efforts, as I said, by providing details  
21                  of the parameters of study and mitigation.

22                  And in this case, this particular  
23                  programmatic agreement contained provisions and  
24                  commitments for an MOU, a Memorandum of  
25                  Understanding, so the programmatic agreement details

1     what -- what work is going to be done and why, and it  
2     includes -- it includes comments and recommendations  
3     from the Ohio Historic Preservation Office based on  
4     what their knowledge is of the area and what the  
5     Applicant's literature review found in the area and  
6     their initial fieldwork found in the area.

7             So -- so Phase I and possibly Phase II  
8     archeological and architectural fieldwork will  
9     continue based on the parameters of that programmatic  
10    agreement. The reason Staff supported the  
11    programmatic agreement, we were not a signatory to it  
12    but we support it is because there is a commitment to  
13    mitigate whatever -- whatever results or finds come  
14    out of the programmatic agreement, the fieldwork.

15            MR. MARGARD: Thank you. I have nothing  
16    further, your Honor.

17            ALJ AGRANOFF: Thank you.

18            Mr. Van Kley, any recross?

19            MR. VAN KLEY: No, sir.

20            ALJ AGRANOFF: Thank you, Mr. Pawley.

21            THE WITNESS: Thank you.

22            MR. MARGARD: Your Honor, I respectfully  
23    renew my request for the admission of Staff Exhibit  
24    9.

25            ALJ AGRANOFF: Any objection?

731

1 MR. VAN KLEY: Nope.

2 ALJ AGRANOFF: There being none, Staff  
3 Exhibit 9 shall be admitted as part of the record at  
4 this time.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 ALJ AGRANOFF: I believe that we have  
7 gotten through all the witnesses that we had  
8 allocated for today. Before we discuss next week, is  
9 there any matters that need to be brought before  
10 either Judge Williams or myself?

11 Okay. Silence is good. For next week we  
12 will not be convening on Monday but will reconvene on  
13 Tuesday, the 13th. We will begin with Company  
14 Witness Williams, and then we'll have Intervenor  
15 Witnesses Yingling and Erf, and then we will have, I  
16 believe, the last two Company witnesses who are  
17 Corzatt and Johnson.

18 MR. SECREST: That's correct, your Honor.

19 ALJ AGRANOFF: Perfect.

20 MR. VAN KLEY: Is that the order we are  
21 going to have witnesses appear then on Tuesday?

22 ALJ AGRANOFF: I believe so.

23 ALJ WILLIAMS: Is that okay, Attorney Van  
24 Kley?

25 MR. VAN KLEY: Yes.



1           ALJ WILLIAMS: I guess it kind of begs  
2     the question, it looks like we've ran ahead of  
3     schedule for much of the week. Is there any interest  
4     by the parties in trying to condense next week from  
5     three hearing days to two, or are we comfortable with  
6     what might be a couple of abbreviated days on  
7     Wednesday and Thursday? The Bench is fine either  
8     way.

9           MR. VAN KLEY: Mr. Smallwood can testify  
10    only on Thursday anyway.

11          ALJ WILLIAMS: I think that answers the  
12    question. We will go ahead and proceed as scheduled  
13    then. There is no reason to try to be juggling a  
14    bunch of different witnesses if it's not going to  
15    work anyway so.

16          MR. MARGARD: And what hour do we convene  
17    on Tuesday?

18          ALJ WILLIAMS: We are going to go ahead  
19    and start at 9 o'clock next week as well.

20          MR. MARGARD: I just wanted to make sure.

21          MS. AIDUN: We won't be able to present  
22    our witnesses until around 11:00 on Tuesday which I  
23    think should work in with the current schedule.

24          ALJ AGRANOFF: Okay. And if I remember  
25    correctly, Ms. Aidun, you said Mr. Gerard will be

733

1 participating, and he'll make his appearance at that  
2 point in time.

3 MS. AIDUN: Okay.

4 MR. VAN KLEY: Yeah. I think that  
5 Mr. Williams probably will take no more than two  
6 hours so, you know, and there is a possibility it  
7 could be less. So if there's any way that we could  
8 go to Mr. Corzatt or Mr. Johnson if we finish  
9 Mr. Williams before 11:00, then I would certainly  
10 entertain that.

11 MR. SECREST: We will inquire as to their  
12 availability to move up in the order.

13 ALJ WILLIAMS: Fantastic. Well, it's  
14 certainly easier to talk about throttling back and  
15 maintaining schedule as opposed to catching up, so we  
16 appreciate everyone's organization and approach.  
17 Really good full week of hearing.

18 Does anybody have anything we need to  
19 wrap up before we adjourn for the weekend?

20 Everybody enjoy their long weekend.  
21 Mr. Van Kley, take care of that neck.

22 MR. VAN KLEY: Yeah, yeah.

23 ALJ WILLIAMS: We're off the record.

24 Thank you.

25 (Thereupon, at 1:50 p.m., the hearing was

1 adjourned.)

2 - - -

3 CERTIFICATE

4 I do hereby certify that the foregoing is a  
5 true and correct transcript of the proceedings taken  
6 by me in this matter on Friday, October 9, 2020, and  
7 carefully compared with my original stenographic  
8 notes.

9  
10 \_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

11  
12 \_\_\_\_\_  
Carolyn M. Burke, Registered  
Professional Reporter.

13  
14 (KSG-6972)

15 - - -



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/23/2020 12:10:15 PM**

**in**

**Case No(s). 18-1607-EL-BGN**

Summary: Transcript in the matter of the Firelands Wind, LLC hearing held on 10/09/20 - Volume V electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.