

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Hecate :
Energy Highland 4 LLC for :
a Certificate of : Case No. 20-1288-EL-BGN
Environmental :
Compatibility and Public :
Need. :

- - -

PROCEEDINGS

before Mr. Nicholas Walstra and Mr. Jesse Davis,
Administrative Law Judges, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-D,
Columbus, Ohio, called at 10:05 a.m. on Tuesday,
November 14, 2023.

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On behalf of the Ohio Farm Bureau
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On behalf of the Staff of the PUCO.

- - -

1	INDEX		
2	- - -		
3	WITNESS	PAGE	
4	Robert Holderbaum		
	Direct Examination by Mr. Lindgren	10	
5	Cross-Examination by Mr. Stoner	11	
	Cross-Examination by Mr. Settineri	116	
6	Redirect Examination by Mr. Lindgren	187	
	Recross-Examination by Mr. Settineri	192	
7	Christopher Douglass		
8	Direct Examination by Mr. Lindgren	197	
	Cross-Examination by Mr. Stoner	201	
9	Cross-Examination by Mr. Settineri	213	
10	Dan Bowar		
	Direct Examination by Mr. Coleman	218	
11	Cross-Examination by Mr. Lindgren	222	
	Cross-Examination by Mr. Settineri	224	
12	Yuri Otarov		
13	Direct Examination by Mr. Settineri	231	
	Cross-Examination by Mr. Lindgren	242	
14	Cross-Examination by Mr. Coleman	245	
	Redirect Examination by Mr. Settineri	254	
15	- - -		
16	NMS EXHIBITS	IDENTIFIED	ADMITTED
17	1 Joint Stipulation and Recommendation	232	257
18	2 Supplemental Joint Stipulation and Recommendation	232	257
19	3 3-19-2021 Letter to Docketing and Information to Satisfy Conditions 6, 8, 9, 11, and 18	232	257
20	4 3-19-2021 E-mail from Ms. Gagliardi and Information to Satisfy Conditions 6, 8, 9, 11, and 18	232	257
21			
22			
23			
24	- - -		
25			

INDEX (Continued)

- - -

NMS EXHIBITS	IDENTIFIED	ADMITTED
5 3-23-2021 Letter to Docketing Providing Detailed Engineering Design and Drawings/Mapping for the Phase 2 Construction of New Market Solar I	232	257
6 E-mail Chain from Ms. Gagliardi	232	257
7 6-25-2021 Letter to Docketing Providing Information on Condition Compliance	232	257
8 6-28-2021 E-mail from Ms. Sanyal New Filing	232	257
9 4-13-2021 Letter to Docketing Providing Maps	232	257
10 11-18-2021 E-mail from Mr. Tschirhart with Weekly Report with Pictures	232	257
11 Figure 5: Constraints Map	232	257
12 E-mail Chain between Mr. Holderbaum and Ms. Shorr	232	257
13 E-mail Chain between Mr. Holderbaum, Mr. Otarov, and Mr. Griffin	232	257
14 9-12-2022 E-mail from Mr. Otarov with Maps	232	257
15 E-mail and KMZ Files	232	257
16 Fencing Map	232	257
17 ShapeFiles	235	257
18 Testimony and Exhibits of Yuri Otarov	232	257

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX (Continued)

- - -

NMS EXHIBITS	IDENTIFIED	ADMITTED
19 Site and Grading Plan C-201 3-18-2021	237	257
20 Site and Grading Plan C-203 3-18-2021	237	257
21 (Not Marked)		
22 Staff Report of Investigation	126	196
23 Rule 4906-3-13 Construction and Operation	129	--
24 Rule 4906-3-14 Preconstruction Requirements	135	--
25 E-mail Chain from Ms. Gagliardi	147	196
26 New Market Solar Measurement Table 9-30-2022	173	196
27 Order on Rehearing	185	--
28 E-mail Chain Between Ms. Ramkissoon and Mr. Otarov	239	257

- - -

EVS EXHIBITS	IDENTIFIED	ADMITTED
1 Direct Testimony of Dan Bowar with Attachments	218	231
2 Prefiled Testimony of Robert Holderman Filed November 7, 2023	19	195
3 "Changes in Robert Holderbaum's Written Testimony"	20	195

- - -

INDEX (Continued)

- - -

EVS EXHIBITS IDENTIFIED ADMITTED

4	9-2-2020 Letter and Application	37	195
5	Opinion, Order, and Certificate	46	--
6	Joint Stipulation and Recommendation	53	196
7	Supplemental Joint Stipulation and Recommendation	53	196
8	Site and Grading Plan C-201 2-5-2021	80	195
9	Site and Grading Plan C-201 5-26-2021	90	195
10	6-25-2021 Letter to Docketing Providing Information on Condition Compliance	97	195
11	5-20-2022 Letter to Docketing Providing Information on Condition Compliance	99	195

- - -

STAFF EXHIBITS IDENTIFIED ADMITTED

1	Prefiled Testimony of Robert Holderbaum Filed November 9, 2023	10	194
2	Prefiled Testimony of Christopher Douglass Filed November 7, 2023	199	217
3	Compliance Inquiry Report October 18, 2022	169	217

- - -

Tuesday Morning Session,
November 14, 2023.

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ALJ WALSTRA: The Ohio Power Siting Board
has called for hearing at this time and place Case
No. 20-1288-EL-BGN, being in the Matter of the Hecate
Energy Highland 4, LLC, for a Certificate of
Environmental Compatibility and Public Need.

My name is Nick Walstra and with me is
Jesse Davis. We are the Administrative Law Judges
assigned by the Board to hear this case.

I'll begin by taking appearances. And we
will start with Staff and go around.

MR. LINDGREN: Thank you, your Honor. On
behalf of the Power Siting Staff, Ohio Attorney
General Dave Yost by Thomas Lindgren and Connor
Semple, Assistant Attorneys General, at 30 East Broad
Street, 26th Floor, Columbus, Ohio 43215.

ALJ WALSTRA: Thank you.

MR. SETTINERI: Good morning, your
Honors. On behalf of New Market Solar ProjectCo 1,
LLC, and New Market Solar ProjectCo 2, LLC, law firm
of Vorys, Sater, Seymour and Pease, Mike Settineri,
Amrita Sanyal, and Chris LaRocco with address 52 East
Gay Street, Columbus, Ohio 43215.

I will note for the record that there was a name change with the Company, so we are giving the proper current name.

ALJ WALSTRA: Appreciate it. Thank you.

MR. DOVE: Thank you, your Honor. On behalf of EVS, Inc., the law firm of Kegler Brown, Robert Dove, 65 East State Street, Suite 1800 Columbus, Ohio 43215. And then my co-counsel will each make their own appearance.

MR. STONER: Good morning, your Honor. Scott Stoner on behalf of EVS, or subject to the approval of the pro hac vice, 20700 Civic Center Drive, Southfield, Michigan.

MR. COLEMAN: And I am Jeff Coleman on behalf of the Intervenor EVS, pro hac vice admission pending. And I am supposed to give my address. 10400 Viking Drive, Suite 110, Eden Prairie, Minnesota 55244, Coleman & Erickson. Thank you.

MS. HETRICK: Good morning, Leah Hetrick on behalf of the Ohio Farm Bureau Federation and at 280 North High Street, Columbus, Ohio 43215.

ALJ WALSTRA: Thank you.

We do have two pending motions for pro hac vice. They appear to be in compliance with all Supreme Court rules and our rules, so both of those

1 will be granted.

2 We also have a motion for leave from
3 Staff to file late-filed testimony. That will be
4 granted.

5 And before we get started, any
6 preliminary matters to discuss on the record?

7 MR. DOVE: Your Honor, there was an
8 outstanding motion to quash some subpoenas that EVS
9 had issued for New Market representatives. We have
10 worked with New Market's counsel, and at this time
11 because New Market is willing to put forth Yuri
12 Otarov as a witness, we will be withdrawing the
13 subpoenas for New Market.

14 ALJ WALSTRA: Thank you. Okay. Anything
15 else?

16 All right. We'll start with Staff.

17 MR. LINDGREN: Thank you, your Honor.
18 Your Honors, Staff calls Robert Holderbaum to the
19 stand.

20 ALJ WALSTRA: Raise your right hand.

21 (Witness sworn.)

22 ALJ WALSTRA: Thank you. Please take a
23 seat.

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ROBERT HOLDERBAUM

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

DIRECT EXAMINATION

By Mr. Lindgren:

Q. Good morning, Mr. Holderbaum.

A. Good morning.

Q. Would you please state your full name and
business address for the record?

A. Yes. Robert Holderbaum, my address is
180 East Broad Street, Columbus, Ohio 43215.

Q. Thank you. Did you cause testimony to be
filed in this case?

A. I did.

Q. Thank you.

MR. LINDGREN: May I approach the
witness?

ALJ WALSTRA: You may.

MR. LINDGREN: Let the record reflect I
am handing the witness what I have marked as Staff
Exhibit 1.

ALJ WALSTRA: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Lindgren) Mr. Holderbaum, is this
your testimony that I have marked as Staff Exhibit 1?

1 A. It is, yes.

2 Q. Thank you. Do you have any corrections
3 or additions to this testimony?

4 A. I do not.

5 Q. Thank you. If I were to ask you all of
6 these same questions today, would your answers be the
7 same?

8 A. They would.

9 MR. LINDGREN: Thank you.

10 I have no further questions, and the
11 witness is available for cross-examination.

12 ALJ WALSTRA: Thank you.

13 With our order discussed before, I will
14 go with EVS, then back to the Farm Bureau if you have
15 any questions, and then the developer.

16 All right. Go ahead.

17 MR. STONER: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Stoner:

21 Q. Good morning, Mr. Holderbaum. How are
22 you?

23 A. I'm good. How are you doing?

24 Q. Good, thank you. My name is Scott
25 Stoner. And this is my first time in Ohio so I want

1 to be really respectful of everybody's time so I want
2 to get through this quickly and painlessly. And I do
3 do this in every arbitration, every hearing, every
4 trial. I want to make sure you understand the
5 question. And there's lots of ground rules for
6 testifying but my big one and the only one I am going
7 to tell you today if you don't understand something I
8 have asked, I would just ask that you not guess and
9 just do me the favor and ask me to rephrase it in a
10 way you can understand it, fair enough?

11 A. Sure. Yeah.

12 Q. All right. And I'm guessing if you don't
13 tell me that, it's because you probably understood
14 the question.

15 A. Okay.

16 Q. Fair enough?

17 A. Fair enough.

18 Q. All right. I didn't see -- I didn't get
19 a copy of that. Would you please tell me what was
20 your Exhibit 1? What date is that?

21 A. It is my prefiled testimony from
22 November 9.

23 Q. Okay. So not the November 7 one.

24 A. Correct.

25 Q. All right. And we know you've made some

1 changes, and we are going -- you have made some
2 changes from the November 7 to November 9 testimony,
3 right?

4 A. Sure, yes. The November 7 testimony was
5 filed in error. It was a draft. So the corrected
6 November 9 testimony was what should have been filed
7 on November 7.

8 Q. When you say it was done in error, did
9 you -- were you not done with your writing your
10 testimony?

11 A. So like everything we do here, it's a
12 collaborative effort, my testimony, so just working
13 with Staff and our team, I personally accidentally
14 filed the wrong testimony, so I filed the original
15 instead of, you know, the finished product.

16 Q. All right. So that was your instruction
17 to file the 20 -- I'm sorry, the November 7 testimony
18 then.

19 A. Yes.

20 Q. Okay. And when did you discover that
21 error?

22 A. I believe it was after the workday on the
23 8th so.

24 Q. So over a day later, you thought it was
25 an error.

1 A. Yes.

2 Q. Okay. All right. Mr. Holderbaum, I read
3 through your testimony, and we'll go through some of
4 your background a little bit, but you've obviously
5 got a fair amount of experience at these hearings, do
6 you not?

7 A. I believe I do, yes.

8 Q. I'm being somewhat facetious. Over 150
9 cases or something like that, right?

10 A. Something like that, yes.

11 Q. So certainly something you are familiar
12 with and you are certainly -- you understand
13 certainly that everybody here is under oath and what
14 that means, and I suggest -- I would suggest that you
15 probably wouldn't need to swear an oath to tell the
16 truth, right?

17 A. I wouldn't need to, but I already did.

18 Q. Understood. Understood. Let me ask you
19 something, do you know what a setback is?

20 A. I do, yes.

21 Q. Okay. Can you tell us what a setback is?

22 A. My understanding of a setback is distance
23 between whatever you are being setback from.

24 Q. And what are the consequences of a
25 setback?

1 A. Could you elaborate on that more?

2 Q. Sure. If I told you a setback was an
3 area that was not allowed to be built, would that --
4 does that make sense to you?

5 A. I would need to know more information
6 than that, I guess.

7 Q. Okay. Well, you've had over 150 cases.
8 How many of these -- how many times have you seen a
9 setback on a piece of paper or drawing in any of
10 these 150 cases?

11 A. I really don't know. I couldn't tell
12 you.

13 Q. Certainly you have seen it before, right?

14 A. I have seen it before, yes.

15 Q. You know what it is in general, right?

16 A. Yes.

17 Q. Okay. And you understand there are
18 certain implications for a setback, right?

19 A. Would you elaborate what you mean by
20 implications?

21 Q. Sure. You know a setback isn't put on --
22 isn't thrown on a drawing for no reason, right? You
23 know it's got some reason.

24 A. I would assume there is a reason, yes.

25 Q. All right. And in this particular case,

1 you know -- you knew that there was a setback
2 identified in some documents, right?

3 A. In -- I mean, I was aware that -- what
4 the Applicant committed to and what we put in our
5 Staff Report for setbacks for this case.

6 Q. Right.

7 A. What the Board ruled on that. In terms
8 of if you are asking if I knew that the maps for this
9 project showed the change in setbacks, I was not
10 aware.

11 Q. I guess I would -- I would -- I would
12 just object as not being responsive, and I would like
13 to give you a little leeway, but my question was
14 simply you knew there were setbacks identified in
15 this project, right? Just a general question.

16 A. Yes.

17 Q. Okay. And you would have learned that
18 from your review of the file.

19 A. Well, I would have learned that from
20 reviewing the Application and from our work --

21 Q. Sure. We'll call it the Application,
22 right?

23 A. Sure.

24 Q. So you certainly would have read the
25 Application. You certainly would have understood

1 that the Application provided something about
2 setbacks, and we will go through the gory detail in a
3 little bit, but I want to establish some
4 generalities, right?

5 A. I mean, I was aware of the 100-foot
6 setback the Applicant committed to.

7 Q. Does OPSB have a rule regarding setbacks,
8 a set rule for all projects?

9 A. No. I think today, you know, the Board
10 has put out rules that have setback numbers for solar
11 projects.

12 Q. Proposed rule changes, right?

13 A. Proposed rules changes, yes.

14 Q. Sure.

15 A. Back then there was no standard.

16 Q. All right. Did you even have any
17 protocol for setbacks?

18 A. Well, we review what the Applicant gives
19 us, and in this case the Applicant stated they were
20 going to build a 100-foot setback, so we review the
21 entire project based off of that number that the
22 Applicant committed to.

23 Q. Are you familiar with the project nearby
24 that had a 50-foot setback for a solar farm?

25 A. I am aware that other projects have

1 different setbacks, yes.

2 Q. Okay. In cases you have worked on,
3 right?

4 A. Some of them.

5 Q. And those related to solar farms, fair
6 enough?

7 A. Yeah.

8 Q. All right. So are you familiar with both
9 sets of testimony then at this point?

10 A. Both sets of my testimony?

11 Q. Yeah.

12 A. I am, but I am only sponsoring the one
13 from Friday, November 9.

14 Q. Understood. But we received two; and,
15 you know, if I -- if I showed you a comparison chart
16 of your testimony, would you be able to say whether
17 or not it was right or not, which is to say, if it's
18 an accurate comparison between testimony?

19 A. I would.

20 Q. Okay. So you did not -- no, only the
21 November 9 was admitted as an exhibit. Do you have a
22 copy of that, the November 9 in front of you?

23 A. I do.

24 Q. Excuse me.

25 MR. STONER: If I could approach, your

1 Honor?

2 ALJ WALSTRA: You may.

3 MR. STONER: This we would mark, your
4 Honor, this is the November 7, 2023, written
5 testimony of Mr. Holderbaum. We would -- we are
6 reserving EVS Exhibit 1 for Mr. Bowar's testimony so
7 this would be marked as Exhibit EVS Exhibit 2.

8 ALJ WALSTRA: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. (By Mr. Stoner) I am going -- excuse me.
11 Mr. Holderbaum, I am showing you what's been marked
12 as EVS Exhibit 2.

13 MR. STONER: Like one for your Honors,
14 although I don't know if I have enough for everybody.
15 I will see if there are leftovers.

16 ALJ DAVIS: Thank you.

17 MR. STONER: Your Honor, I would also
18 like to approach and hand the witness what I am
19 marking as EVS Exhibit 3. If I can approach, your
20 Honor?

21 ALJ WALSTRA: You may.

22 MR. STONER: And this is a summary, a
23 compilation of the changes from the 20 -- November 9,
24 2023, written testimony and November 7, 2023, written
25 testimony, of Mr. Holderbaum.

1 ALJ WALSTRA: So marked as Exhibit 3.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. STONER: Mr. Holderbaum, your Honors.

4 Q. (By Mr. Stoner) What I have done,
5 Mr. Holderbaum -- Mr. Holderbaum, what I have tried
6 to do is compare the two documents and show the
7 differencing between your November 7 and November 9
8 testimony. And your earlier testimony to me was you
9 thought you would be able to tell the difference in
10 the changes from one document to the next, fair
11 enough?

12 A. Fair enough.

13 Q. Okay. If you have a chance to look
14 through Exhibit 3, are you able to tell me whether
15 that's an accurate depiction of the changes made on
16 September 9, 2023?

17 A. I mean, I'm assuming it's correct if you
18 are giving it to me. I have not done an exact
19 comparison side by side so.

20 Q. All right. I guess my point in all this
21 and to save some time, Mr. Holderbaum, would it be
22 fair to say it looks okay, but you haven't fully
23 compared the two -- the two sets of testimony.

24 A. I have definitely not compared them, no.

25 Q. All right. You can put that down if you

1 don't mind. When did -- Mr. Holderbaum, when did you
2 get involved in this project, this New Market solar?

3 A. Pretty much in the start of them filing
4 with the State.

5 Q. So that would have been the start of the
6 filing of the Application sometime in September of
7 2020?

8 A. Yeah. I'm -- it's been a while, so I
9 can't recall exact dates, but I am sure they held a
10 preapplication meeting as well and gave us --
11 generally with every large project there is a
12 preapplication meeting where they kind of discuss
13 what they are going to be filing.

14 Q. All right. And how is it that you were
15 assigned to this case, if you know?

16 A. Back then management assigned me to the
17 case.

18 Q. It wasn't luck of the draw or somebody
19 selected you, right?

20 A. Unluck of the draw.

21 Q. There you go. Now as you are sitting
22 here today to testify, I get it. Mr. Holderbaum,
23 when you get a case like this -- and let's assume you
24 had your preapplication hearings, right? And -- or
25 meetings or discussions or whatever we call them.

1 And you get to the point where an Application is
2 filed. Do you have a title?

3 A. Utility Specialist.

4 Q. Okay. And that would cover all types of
5 utilities, right?

6 A. All types of utilities that we review.

7 Q. Sure. Sure. Under the gamut of your --
8 of the municipalities' specialties, right?

9 A. Sure.

10 Q. Okay. So when you get this case, I
11 assume the first thing you probably try to do is take
12 a look at the Application, right?

13 A. Well, every project is a little
14 different; but, yes, I mean, we review the
15 Application.

16 Q. Well, you are on this case beforehand,
17 before -- let's say -- we can take a look at the
18 record, and I think the record will probably show us
19 that the Application was filed sometime in September
20 of 2020.

21 A. Okay.

22 Q. Fair enough? I am not holding you to a
23 specific date.

24 A. No. I can't recall exactly when but that
25 sounds right.

1 Q. We can look at the online filing docket
2 to find out when it was filed.

3 A. Definitely.

4 Q. And one thing, is that typical? Like you
5 mentioned filing. Mr. Douglass mentioned filing his
6 testimony. The filing in this particular case, that
7 comes through the OPSB website for the exchange of
8 data, does it not?

9 A. That's just our docketing system so the
10 Applicant would just file that with our docketing
11 system.

12 Q. And I think that's my point is there's
13 nothing -- if someone is filing something, it has to
14 be through the filing system as a general matter of
15 course, right?

16 A. I believe that's correct, yes.

17 Q. And the filer in this case at least in
18 most of the instances is going to be the owner, the
19 Applicant.

20 A. In terms of filing the Application?

21 Q. Any filing throughout the course of the
22 project.

23 A. No. I mean, that's not necessarily
24 correct. It's a public docket, so you can file.

25 Q. Let me clarify. If the Applicant is

1 submitting supplements to its Application, that's
2 considered filing, right?

3 A. That would be considered filing, correct.

4 Q. If the Applicant is providing and
5 submitting through the website the condition -- the
6 compliance condition letters, those are filings,
7 right?

8 A. Correct.

9 Q. So those are the types of things I am
10 talking about. Make sense now?

11 A. Makes sense.

12 Q. Okay. So when you get this case -- and
13 this particular case, prior to the Application, you
14 knew it was a solar farm, right?

15 A. Correct.

16 Q. Okay. Is the Application the next most
17 important piece of information you are going to
18 review as part of your duties?

19 A. The -- can you rephrase that?

20 Q. Yeah, sure. Thank you for following my
21 instructions and asking me to rephrase it because it
22 was a terrible question. Mr. Holderbaum, in order to
23 get a sense of what this project is about, in terms
24 of pen to paper, the only thing you can read next is
25 the Application, right?

1 A. Well, whatever they file in the docket --

2 Q. Sure, whatever they file in the docket.

3 A. Sure.

4 Q. But this process doesn't get kicked off
5 until they file in earnest until they file -- until
6 an Applicant files the Application, right?

7 A. I would say that's correct.

8 Q. And there's a statute, is there not, that
9 governs what goes in -- contents that go into an
10 Application, right?

11 A. Broadly, yeah. Every Application of
12 every project is a little different.

13 Q. Sure. But just as a matter of general
14 sense, that would be -- you are looking to see if
15 certain things are addressed in the Application, are
16 you not?

17 A. That's part of the job, yes.

18 Q. Sure. And so you are looking for -- I
19 assume shortly after the Application is filed, you
20 are reviewing that Application to take a look at
21 what's in it, right?

22 A. We review the Application to see what's
23 in it, yes.

24 Q. Okay. And that would have been you as
25 well, right?

1 A. Yes. It's a collaborative effort, but
2 yes.

3 Q. Do you have a Staff that works under you,
4 for you, with you?

5 A. With me.

6 Q. Okay. And what are their -- what kind of
7 titles do these folks have? We don't -- I don't know
8 enough so that's why I am asking you.

9 A. Similar titles.

10 Q. Okay.

11 A. Different backgrounds.

12 Q. Is there a specific division of labor
13 that happens on any specific -- let's just say on
14 this New Market solar project, is there -- was there
15 a specific division of labor as to who does what
16 internally at OPSB?

17 A. Broadly certain Staff members look at
18 certain subject areas, but in general I'm responsible
19 for all of it.

20 Q. Okay. So -- and I think that goes to
21 your testimony that you filed on -- on both the 7th
22 and 9th. I believe you had represented and confirmed
23 today that you coordinated the Staff.

24 A. As part of our review, yes.

25 Q. Right. But you personally coordinated

1 the Staff is what your testimony was. Do you recall
2 that?

3 A. I do that, yeah. It's -- it's a team, so
4 we work together.

5 Q. I understand. And but when I say -- when
6 I think of coordination is you were the fulcrum
7 making the process happen, so to speak, by giving
8 assignments out.

9 A. Again, it's a collaborative effort who
10 does what.

11 Q. What did you do?

12 A. Well, I was the overall Staff lead, so I
13 basically organized the entire review for the
14 project.

15 Q. Okay. And so that's why you -- earlier
16 you just testified that you were the overseer of it
17 all, that wasn't your exact words, but that's a fair
18 assessment, is it not?

19 A. That's fair.

20 Q. Okay. So in order to have that role,
21 Mr. Holderbaum, would you agree with me that you
22 probably need a broader and more detailed knowledge
23 of any specific project?

24 A. Can you rephrase that?

25 Q. Yeah. That was a really bad question.

1 So let me say it this way, as that overseer and
2 supervisor of the project, the one who coordinates
3 all the Staff, you would be the one -- would you be
4 having to have more of a responsibility to know more
5 than anyone else what's happening on any specific
6 project in terms of how it's going to be designed,
7 how it's going to be built?

8 A. As a Staff lead, I am nobody's
9 supervisor, and as I said, we coordinate together. I
10 would be responsible for this project --

11 Q. Okay.

12 A. -- more than others.

13 Q. And more than others. So that -- would
14 that be fair to say then you are going to require
15 more knowledge about this project in terms of how
16 it's designed and how it's constructed than others?

17 A. I don't -- I don't know if that's
18 necessarily true. It would just be my responsibility
19 to handle the investigation.

20 Q. Okay. That's fair enough. Thank you.
21 Over the course of what, 12 years at OPSB, something
22 along those lines?

23 A. Getting near that.

24 Q. Close enough. I am not going to hold you
25 to a specific date, 12 years overseeing. How many

1 drawings have you reviewed that have been submitted
2 over that time period?

3 A. Well, I am not an engineer, so I have
4 never given an engineering review of any drawings.

5 Q. Well, I didn't ask you that.

6 A. In terms of accepting drawings for
7 condition compliance, I think I've accepted many
8 drawings.

9 Q. Well, you've accepted many drawings. Are
10 you saying you don't review the drawings?

11 A. If it's in the Application, I will review
12 the drawings. Post-certificate final engineering
13 drawings, that's not something I would give a
14 technical review on.

15 Q. In fact, you told us -- and we are going
16 to go into a little later, you told us in your
17 testimony that no one is reviewing the drawings from
18 OPSB, right?

19 A. Well, correct, unless -- you know, we
20 keep all the drawings in our record. If something
21 would happen down the line, we would review the
22 drawings to see what's going on.

23 Q. We'll talk about that in a little while
24 and what I want to ask you is -- is as filings come
25 into the OPSB website that we talked about, these

1 filings for Application, these filings for
2 supplements to the Application. These files, notices
3 of compliance of conditions X, Y and Z, those are
4 coming through the website. Are you getting -- are
5 you getting notice of them, you personally?

6 A. It depends. You have to sign up for
7 that.

8 Q. Okay. Do you sign up with the cases that
9 you are acting as the supervisor for?

10 A. Usually.

11 Q. So you would have signed up as receiving
12 notices on this particular project, would you not?

13 A. I can't recall if I did for that one but
14 usually that's our normal practice. It just gives
15 you a notice something was filed.

16 Q. Well, and not only were you getting
17 notice from the website as to each filing that comes
18 across, but you are getting direct e-mails from the
19 owner and the owner's attorney at the time then and
20 now as to certain project fulfillment information,
21 were you not?

22 A. On some things, not everything.

23 Q. Sure. But certainly you received
24 drawings through e-mail, did you not?

25 A. In this case, I did, yes.

1 Q. You received ShapeFiles, did you?

2 A. I did.

3 Q. KMZ files, right?

4 A. I believe the KMZ files were sent to me.
5 I can't remember if it was just that or our online
6 shared folder or both.

7 Q. You just know you have them.

8 A. Sure.

9 Q. You can't recall how you got them, right?

10 A. Correct.

11 Q. All right. But it's fair to say that --
12 that you certainly had several bits of communication
13 with the owner or the owner's attorney in which you
14 received purported compliance documents through
15 e-mail, right?

16 A. There's definitely communications that
17 I -- that the Applicant sent those to me. There is
18 no communication back that I reviewed them and did a
19 technical review and accepted everything in the
20 drawings.

21 Q. Well, that wasn't my question. I know
22 you are here to say something but what I am asking
23 you, sir, is just the information you received from
24 the owner was transmitted to you electronically at
25 times through e-mails, right?

1 A. Again, they sent it to me, correct.

2 Q. Okay. What you do with it we haven't
3 gotten there yet. We are going to, but I will ask
4 you this, what do you do with the information that is
5 conveyed to you by the owner through e-mail?

6 A. Well, it really depends on what they are
7 sending me. I keep a record of it. That's all I can
8 say generally for everything they send me. It just
9 depends on what they are sending me.

10 Q. If they were to send you -- well, let me
11 back up. You keep a record of it. What does that
12 mean?

13 A. Basically means I save the e-mail.

14 Q. Okay. But you don't necessarily look at
15 it.

16 A. Not always, no.

17 Q. Is there a protocol at OPSB for you to
18 not review certain documents sent by the owner for
19 review?

20 A. When I say I might not have looked at it,
21 I will look at it to know what is in the e-mail. I
22 am reading every e-mail. If they attached documents
23 like saying this is condition compliance, it depends
24 on what the project, you know, what I am required to
25 do. But, no, I don't give technical review of

1 every -- of everything the owner sends me.

2 Q. You don't -- if they send you drawings,
3 my understanding from your testimony is you don't
4 even look at them.

5 A. No, that's not true. We look at them.
6 We make sure --

7 Q. You personally, not the Staff.

8 A. Well, it's a collaborative effort, so I
9 can't tell you exactly what was done on every
10 project.

11 Q. Let's start with you first.

12 A. Sure. I would have most likely looked at
13 them to make sure they were done professionally by an
14 engineer. I would have made sure that they were
15 formatted correctly. We can keep a record of them.
16 We can keep it for public access, that kind of stuff.
17 If needed in the future, if something arises with the
18 project, we have a record of it, we can review it,
19 that sort of thing. But in terms of like diving into
20 every detail on a map, no, I did not do that.

21 Q. You are not diving in any detail other
22 than formatting and to see if there is an engineer
23 who is involved in a drawing, fair enough? Because
24 that's what your sworn testimony says.

25 A. Yeah, fair enough.

1 Q. So the reality is is whether it's filed
2 on the system or filed and submitted on an e-mail,
3 you are not reviewing it substantively.

4 A. It depends on what it is. Again, if it's
5 engineer drawings, that's correct.

6 Q. I am talking about say any drawings.

7 A. Well, it depends on what the project
8 requires me to do.

9 Q. Okay. Well, did you review the site
10 plan?

11 A. If -- it's been a while. If it was part
12 of the Application, I would have.

13 Q. Okay. What if it wasn't?

14 A. Well, generally that's -- that's part of
15 every Application.

16 Q. The site plan showing the layout of the
17 building is or facility is in the Application?

18 A. That's usually in the Application, yes.

19 Q. Showing the layout in this case, for
20 example, the specific panels, you believe that was in
21 the Application.

22 A. No, that's not what I said. Usually it's
23 a broader design of where, you know, the footprint of
24 the project is.

25 Q. Well, that's -- that's different. I

1 asked you about specific how the thing is going to
2 get built basically, the layout of the materials
3 on-site.

4 A. You would have to be more specific.

5 Q. Sure. Are you reviewing any drawings
6 that were submitted after the Application?

7 A. I -- I purely administratively, so keep
8 them in our records as I said, make sure we can keep
9 them forward facing to the public. If something
10 arises in the future, we have them for our review.
11 They are done by a professional.

12 Q. So any drawing that was received after
13 the Application by you or your office is not being
14 reviewed substantively, fair enough?

15 A. I would say generally that's fair. It
16 depends on what exactly the drawing is, I guess.

17 Q. Can you think of an instance where you
18 received a drawing in this case between January 1,
19 2021, and January 1, 2022, when you reviewed
20 substantively any drawing with no -- let me see if I
21 can help you. Is that -- noting that the Application
22 was filed on or about September 2, 2020.

23 A. Yeah. I'm not -- without knowing the
24 exact dates, post-certificate I would say no until
25 the Applicant self-reported, and then we would review

1 the drawings.

2 Q. All right. So as a general matter, you
3 would agree with my statement then.

4 A. Yes, depending on how the dates line up.

5 Q. All right. The --

6 MR. STONER: I don't know, your Honor, 2
7 seconds. I think a lot of us have identified the
8 certification and opinion as an exhibit. I know it
9 wasn't attached to counsel's -- I am going to
10 reference it, if no one objects, the introduction of
11 the certificate as DB -- what's the certificate
12 exhibit?

13 ALJ WALSTRA: The Opinion and Order?

14 MR. STONER: Yeah, the Opinion and Order,
15 excuse me.

16 ALJ WALSTRA: We won't mark that. We
17 will just refer to that. It's in the docket already.

18 MR. STONER: It's in the docket, so I
19 didn't want to get too far down the -- so if I could,
20 your Honor, I would like to do one thing. I do want
21 to introduce the Application. Are we going to take
22 the same approach that we don't have to reintroduce
23 it because it's already part of the record or? I am
24 going to do this shortly after the certificate --
25 certification and opinion.

1 MR. SETTINERI: Your Honor, if I may, I
2 think to have everything at the top of the case file,
3 I would recommend --

4 MR. STONER: I would agree with you. So
5 I would like to do it this way, your Honor, I would
6 like to start with the Application to redo this to
7 make sure we are all on the same page and this will
8 be EVS Exhibit 4.

9 MR. SETTINERI: Counselor, is this the
10 narrative of the Application?

11 MR. STONER: Yeah. That was my next
12 statement so everybody could get a sense. I'm
13 getting there. I am a little slower.

14 MR. COLEMAN: DB-10, Dan Bowar 10.

15 MR. STONER: This is DB-10 so we can
16 reserve that or we can call it EVS Exhibit 4, but I
17 have copies for folks here.

18 ALJ WALSTRA: Mark it as Exhibit 4 for
19 the record.

20 MR. STONER: We will mark it as
21 Exhibit 4.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. STONER: If I could approach the
24 witness, your Honor.

25 ALJ WALSTRA: You may.

1 MR. STONER: Thank you.

2 Q. (By Mr. Stoner) Mr. Holderbaum, this is
3 just the narrative format. I do have an extra one.

4 So EVS Exhibit 4 is the Application.
5 Just give you a good sense of when this was probably
6 filed, Mr. Holderbaum.

7 A. It says September 2, 2020, on the cover.

8 Q. Yeah. We will say plus or minus a few
9 days but somewhere -- what -- the date we have been
10 talking about, right?

11 A. Sure.

12 Q. All right. Do you see in here a site
13 plan, or at least reference to a site plan?

14 A. Do you have a specific page you would
15 like me to turn to?

16 Q. Not yet. Well, I mean, you are familiar
17 with the Application, I assume. Is there a specific
18 area where you are looking for where there is a --
19 there is certainly a project map but do you see a
20 site plan included on here at all? You can look at
21 the figures in the exhibit's table of contents which
22 is right out in front. There is no -- it's Roman
23 numeral -- little romanette i, ii, and going to iii.

24 A. It's been several years. I do not see
25 one in this copy of this document.

1 Q. Okay. Certainly not in the narrative and
2 it's not referenced in the table of contents, right?

3 A. I did not review the table of contents,
4 but I will take your word for it.

5 Q. I mean, the document ultimately will
6 speak for itself, right?

7 A. Sure.

8 Q. All right. So let's go to -- if you
9 don't mind, if you turn to -- my old man eyes do not
10 see as well. It's page 22, sir. If you go to page
11 22.

12 A. I'm there.

13 Q. Okay. Can you guess where I am going
14 under the property lines?

15 A. I do, yes.

16 Q. Okay. And let me see if I read this --
17 read this -- if I read this accordingly. "Setback
18 locations will be adjusted following detailed site
19 surveys" in consultation period. "In consultation
20 with Highland County the established setbacks from
21 property boundaries is 100 feet." Do you see that
22 there?

23 A. I see that, yes.

24 Q. So would you have seen that setback area
25 reference shortly after receiving the Application?

1 A. I would have read that, yes.

2 Q. All right. So do you have a project
3 spreadsheet that you use to identify certain
4 information on any given project, for example, a
5 matrix of maybe setback or, you know, stormwater,
6 anything like that? Do you keep those sorts of
7 things?

8 A. I don't keep a matrix, no.

9 Q. Okay. Nothing to keep track of what's in
10 a specific project then, right?

11 A. I -- I mean, I have my own process, I
12 guess, yeah.

13 Q. Is your own process just saving e-mails?

14 A. No.

15 Q. What is your process?

16 A. Every project is different. We review
17 everything in the Application that's given us --
18 given to us, and then we work collaboratively. We
19 work with other state agencies, federal agencies. We
20 work with the public. If we have further questions,
21 we ask data requests. We make site visits, that sort
22 of thing.

23 Q. But that's not what we are talking about
24 here. I asked you a question what do you do to
25 identify the features of any specific project so you

1 can go back and recollect it or recall it or use it
2 at a later date?

3 A. Every project is different. Again, my
4 process changes all the time. This is three plus
5 years ago so at the time I can't tell you exactly
6 what I was doing to record everything about the
7 Application.

8 Q. So if we were to look at anything in
9 OPSB's file relating to this particular project, is
10 it stored in a special manner, electronically or
11 otherwise or hard copy?

12 A. Are you asking if my personal notes and
13 things like that are saved electronically?

14 Q. Well, can I give you an example?

15 A. Sure.

16 Q. Sure. Lawyers, sometimes we keep a file,
17 a hard copy file not so much any more, but sometimes
18 it's an online one, and we store it with specific
19 folders and subject matter. Did you do anything like
20 that?

21 A. I can't recall back then we had that
22 going because that was pandemic time and that's when
23 we were just starting to work from home and stuff
24 like that. So we -- we have shared folders that
25 Staff works in and saves documents in for every case.

1 I save my own on my own computer and my e-mails. I
2 do a lot of handwritten notes.

3 Q. Okay. What have you done with your
4 handwritten notes?

5 A. I'm -- I'm -- I could not tell you. It's
6 been three years.

7 Q. You don't keep them?

8 A. I don't believe I have those left, no.

9 Q. So any handwritten notes on this
10 particular project, the New -- New Market Solar, any
11 handwritten notes you had have since gone the way of
12 the Dodo then.

13 A. I guess so. I really don't know.

14 Q. So do you understand the reference, what
15 this means where it says in consultation -- where it
16 says "Setback locations will be adjusted following
17 detailed site surveys." In consultation is the part
18 I am looking at. "In consultation with Highland
19 County the established setbacks from property
20 boundaries is 100 feet." Do you know where that came
21 from?

22 A. Do I know?

23 Q. The "in consultation with Highland
24 County."

25 A. No. We were not privy to that.

1 Q. Okay. So that's not something you would
2 have disclosed ahead of time, right?

3 A. I am not sure what you are asking,
4 disclosed. If I was aware they met with Highland
5 County?

6 Q. No. Let me ask it a different way. You
7 already testified before this Application was filed
8 and up until the proposed rule change -- or proposed
9 rule change, excuse me, OPSB did not have a setback
10 requirement minimum, right?

11 A. Sure. We review every project. We
12 review what the Applicant is committing to.

13 Q. Sure. But no minimum, right?

14 A. I mean, I can't say no minimum. I mean,
15 we've never reviewed a project that had zero setback.

16 Q. I understand that you can require them,
17 and they probably would have to comply with county
18 rules regarding setback, right?

19 A. No, that's not correct. We would not
20 require them to deal with the county. There's a lot
21 that goes into our review so it just depends project
22 specifically, what the project would be impacting
23 with the setbacks.

24 Q. And we are -- we are going to get into
25 this a little bit more shortly but do the conditions

1 of the certificate of opinion -- certificate and
2 opinion, do they not require compliance with local
3 rules and ordinances?

4 A. They do.

5 Q. Would that not be a setback requirement
6 compliance?

7 A. I mean, it would. In this case the
8 Applicant committed to go to 100 feet instead of the
9 Highland County number, so we would hold them to what
10 they committed to.

11 Q. So you're familiar with the Highland
12 County setback requirements.

13 A. Mostly just because the Applicant told us
14 that's why they went with that setback instead of the
15 100-foot setback because it wasn't something we
16 reviewed during our investigation.

17 Q. And you understood because you read the
18 Highland County conveyance standards, did you not,
19 which has a 45-foot setback requirement?

20 A. Just because the Applicant sent those to
21 me.

22 Q. I just asked you if you reviewed it,
23 right? You did review it.

24 A. Sure.

25 Q. The Highland County conveyance standards.

1 A. I mean, I don't know how long it is. I
2 didn't review everything. I reviewed the part they
3 sent me is what I am saying.

4 Q. Sure. I understand. I would appreciate
5 just going forward just follow the answer. I know
6 you will have a chance to be redirected by your
7 attorney, or by the Attorney General, but I just want
8 to get things very nice and tight and pick up the
9 pace a little bit, fair enough?

10 A. Sure.

11 Q. All right. So this here is -- I'll
12 represent to you that this is the only reference to
13 the setbacks in the Application. Any reason to doubt
14 that?

15 A. No reason to doubt that.

16 Q. Okay. And, in fact, your opinion refers
17 to it, your written testimony refers to the setback
18 in the Application, does it not?

19 A. Again, it does. It refers to more than
20 that as well.

21 Q. Absolutely it does, and we are going to
22 get through some of that. So we are going to --
23 we've already --

24 MR. STONER: Are we still wanting to keep
25 the certificate -- excuse me, counsel. Are we still

1 wanting to keep the certificate as referenced in the
2 record, or did you want to move it to the top like
3 with the other?

4 MR. SETTINERI: I think you can leave
5 that right where it is.

6 MR. STONER: I think that makes the most
7 since. Your Honor, if you don't mind, I would like
8 to approach the witness again.

9 ALJ WALSTRA: You may.

10 MR. STONER: This will be EVS Exhibit 5.
11 It's also referenced in Mr. Bowar's testimony as
12 DB -- what is it, Jeff?

13 MR. COLEMAN: Which one? Certificate?

14 MR. STONER: Certificate and opinion.

15 MR. COLEMAN: It is DB-13.

16 MR. STONER: Okay. Thank you.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. Stoner) Mr. Holderbaum, which is
19 EVS Exhibit 5. This is the Opinion and Order and
20 Certificate.

21 MR. STONER: I do have two copies for
22 everybody up here.

23 Q. (By Mr. Stoner) Okay. Mr. Holderbaum,
24 I've showed you what is the Opinion and Order and the
25 Certificate, and I am guessing you have more than a

1 passing familiarity with this document, do you not?

2 A. I have seen this document before.

3 Q. Okay. When was the last time you
4 reviewed it?

5 A. Thoroughly reviewed every aspect of it, I
6 couldn't tell you.

7 Q. I said looked at it.

8 A. You said reviewed.

9 Q. Did I say review? All right. We'll just
10 say review then. Apologies.

11 A. I looked at it and reviewed some of this
12 this past week.

13 Q. Okay. All right. So there is a -- if
14 you turn to page -- excuse me. If you go to page 24
15 of the opinion, it's got what's called "Stipulation
16 and Conditions."

17 A. Yes.

18 Q. Okay?

19 A. Uh-huh.

20 Q. And I'm sure you'll notice there are 23
21 conditions that are included in the opinion, are
22 there not?

23 A. I believe that is correct, yes.

24 Q. Okay. These conditions, they are pretty
25 important, aren't they?

1 A. I would agree with that, yes.

2 Q. And you can't get full approval for the
3 work until you've complied -- any Applicant has
4 complied with all the conditions, right?

5 A. That's not necessarily true. I mean,
6 different aspects of construction, different things
7 are required, different condition compliance.

8 Q. Okay. But as a general sense, you as a
9 representative of OPSB are certainly wanting the
10 Applicant to comply with all 23 conditions.

11 A. Correct.

12 Q. Okay. It may or may not put a halt to
13 the work, right?

14 A. Sure.

15 Q. It depends on the condition, right?

16 A. Correct.

17 Q. But we can all agree that these 23
18 conditions are -- are pretty important for both OPSB
19 and the Applicant, right?

20 A. Correct, yes.

21 Q. And you and I can probably agree,
22 Mr. Holderbaum, at this point that everybody who is a
23 part of this Application process, whether it's the
24 owner, whether -- or the Applicant, or whether it's
25 OPSB, we ought to be able to rely on the conditions

1 and the fulfillment is the same, correct?

2 MR. SETTINERI: I would just object, your
3 Honor. Just to clarify for the record, it's
4 important to know the conditions in the
5 certificate --

6 MR. STONER: I am getting there. I know
7 where you are getting there.

8 MR. SETTINERI: I have a copy of that if
9 you need those.

10 MR. STONER: I am doing that, but I think
11 the certificate -- well --

12 MR. SETTINERI: Let me finish just for
13 the record.

14 MR. STONER: I'm sorry to interrupt.

15 MR. SETTINERI: The certificate
16 incorporates the actual conditions in the
17 stipulations. And the Board, as it states in its
18 orders, is a summary as you probably know from
19 writing those decisions.

20 ALJ WALSTRA: Understood.

21 MR. SETTINERI: With that objection I
22 will continue -- please continue.

23 MR. STONER: I agree with you, and I was
24 getting there.

25 Q. (By Mr. Stoner) Let me see if I can take

1 it up because we are going to do Joint Stipulations
2 as an exhibit. But when you factor in the Joint
3 Stipulations as contained in Joint Stipulation, one,
4 and the supplemental joint condition factored in with
5 the Opinion and Order, we -- you and I can agree, can
6 we not, that every party to that Opinion and Order
7 ought to be able to rely on all that information,
8 correct?

9 A. I agree. I mean, I don't agree that it's
10 the only thing they should rely on.

11 Q. Well, I didn't say that either. I just
12 said all the parties in this case, New Market Solar
13 and OPSB, ought to be able to rely on the terms and
14 conditions as outlined in the -- in the conditions in
15 both the Opinion and Order and the Joint Stipulation,
16 right?

17 A. Sure. Rely on for? What exactly are you
18 asking?

19 Q. Well, you have to. You are able to rely
20 on the terms and the conditions of the -- of the
21 condition -- of the conditions, don't you?

22 A. Well, you need to abide by the
23 conditions, yes. I am just not sure what you are
24 asking to rely on them for.

25 Q. Well, No. 1, you need to rely on them for

1 compliance and so does the owner.

2 A. Sure. That's part of it.

3 Q. The Applicant. OPSB needs to make sure
4 things are done right on the project, so to speak, in
5 a general sense, right?

6 A. Correct. But that's also a burden of --
7 that is also on the Applicant.

8 Q. Understood. But there are certain
9 obligations for OPSB to review certain items
10 contained in the Joint Stipulations and the
11 conditions, are there not?

12 A. That's correct.

13 Q. So the owner ought to be able to -- the
14 Applicant, excuse me. The Applicant ought to be able
15 to rely on that, right?

16 A. They should be able to rely on it but
17 that doesn't mean that's the only thing --

18 Q. I didn't ask you the next part. I just
19 asked if we can agree --

20 COURT REPORTER: He's got to be able to
21 finish.

22 MR. STONER: Understood. And I would
23 just object as being nonresponsive to the question.

24 Q. (By Mr. Stoner) So go ahead and finish
25 your answer, sir.

1 A. Again, they can rely on it, but I don't
2 think that's the only thing they should rely on.

3 Q. Understood. But as a general principle
4 and specifically as to this -- these general
5 conditions and outlined in the Order -- 1 through 23
6 in the Opinion and the Joint Stipulations, the
7 Applicant ought to be able to rely on OPSB for its
8 obligations to review and approve, fair enough?

9 MR. LINDGREN: Objection, asked and
10 answered.

11 ALJ WALSTRA: He can answer.

12 A. I would -- I would agree. Again, I am
13 not exactly sure the extent of what you are saying as
14 in rely. It's not the only thing they should rely
15 on.

16 Q. Okay.

17 MR. STONER: Your Honor, if we could take
18 2 minutes so I can use the restroom, if you don't
19 mind.

20 ALJ WALSTRA: Sure.

21 MR. STONER: Sorry. I didn't make a fast
22 enough trip before the hearing.

23 ALJ WALSTRA: We will recess for 5
24 minutes.

25 MR. STONER: Thank you, your Honor.

1 (Recess taken.)

2 ALJ WALSTRA: We'll go back on the
3 record.

4 MR. STONER: Thank you, your Honor. If I
5 could approach again? I have two separate exhibits I
6 would like to mark and introduce, the Joint
7 Stipulation of 1-22-2021 and then the Supplemental
8 Joint Stipulation which we marked separately as --
9 respectively as EVS Exhibits 6 and 7.

10 ALJ WALSTRA: So marked.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 ALJ WALSTRA: You may approach.

13 MR. STONER: Thank you, your Honor.

14 Q. (By Mr. Stoner) I want you to keep the
15 certificate out. We are going to refer to different
16 things. This Joint Stipulation and Recommendation is
17 Exhibit 6. I am going to mark it for you. EVS 6,
18 there you go. And the Supplemental Joint Stipulation
19 is EVS 7. I marked it for you there.

20 MR. STONER: And one for the court
21 reporter. Exhibit 6 and 7, respectively.

22 Q. (By Mr. Stoner) Okay. Mr. Holderbaum,
23 did you have a quick chance to review Exhibit 6 and
24 7, which are the Joint Stipulations and Supplemental
25 Stipulation, Supplemental Joint Stipulation?

1 A. I've seen them before. I didn't have
2 time to review them last minute.

3 Q. You've seen them before?

4 A. Yes.

5 Q. And do you know what these stipulations
6 purport to do as a practical matter?

7 A. Could you be more specific?

8 Q. Sure. What's the point of the Joint
9 Stipulations, if you know?

10 A. I mean, broadly, I -- again, I would say
11 it's -- it's what the Applicant would need to do to
12 construct the facility.

13 Q. Sure. And it is incorporated as part of
14 the opinion, is it not?

15 A. I believe so, yes.

16 Q. Or modifies some language of the opinion,
17 right?

18 A. Yes, correct.

19 Q. Did you have a hand in reviewing any of
20 these Joint Stipulations as they were passed back and
21 forth between counsel?

22 A. I don't believe so.

23 Q. When were you made aware of the Joint
24 Stipulations?

25 A. Honestly it's been -- it's been a long

1 time, so I can't recall exactly.

2 Q. And so if you go back to the -- the
3 Opinion which is Exhibit 5, the certificate. Did I
4 give you a copy?

5 A. Yes.

6 Q. Okay. If you turn back to the conditions
7 page on page 24.

8 A. Okay.

9 Q. Let me know when you get there.

10 A. I'm there.

11 Q. Okay. And I would like you to look at
12 two conditions for me, okay? I would like you to
13 look at -- and review one first. We will get to the
14 next one later. If you would look at Condition 1 of
15 the Stipulation and Conditions with the notice that
16 it would -- ultimately going to be modified by the
17 Joint Stipulations, okay? So if you looked at this
18 language in Condition 1 where it says "The facility
19 shall be installed at Hecate's proposed site as
20 presented in the application and modified by
21 supplemental filings," right?

22 A. I see that, yes.

23 Q. Okay. Do you understand what that means?

24 A. I believe so, yes.

25 Q. Okay. Would that mean that the project

1 basically has to be installed as presented in the
2 Application as -- and as modified by supplemental
3 filings through the OPSB website?

4 MR. SETTINERI: Your Honor, I have to
5 object at this time for the record because we are
6 creating a record. For reading conditions and asking
7 questions, it should be the conditions from the
8 Stipulations because those are the real conditions.
9 These are just summaries by the Board if you are
10 reading from the Certificate.

11 MR. STONER: I'm happy to go straight to
12 the Joint Stipulation. I was going somewhere with
13 this, but I don't have any problem saving time and
14 going right to the Joint Stipulation.

15 ALJ WALSTRA: We can do that.

16 MR. STONER: Why don't we do that then
17 and I don't think I need to do what I needed to do.

18 Q. (By Mr. Stoner) However, just for
19 purposes of moving this thing along a little bit, go
20 to the Joint Stipulation and Order -- Joint
21 Stipulation, excuse me, and specifically the -- let's
22 go to the first one.

23 A. Is this Exhibit 6?

24 Q. Yes. Okay. Now, we are going to
25 encounter some of the same things. But if you look

1 at Condition 1 which is on page 2, and I will read
2 it, it says "The Applicant shall -- Applicant shall
3 install the facility, utilize equipment and
4 construction practices, and implement mitigation
5 members -- measures," excuse me, "as described in the
6 application and as modified and/or clarified in
7 supplemental filings, replies to data requests, and
8 recommendations in the Staff Report of Investigation,
9 as modified by this Joint Stipulation and
10 Recommendation."

11 And then it's further modified by the
12 Supplemental Joint Stipulation which on page 2, which
13 is Exhibit 7, and all it does is at the end of Joint
14 Stipulation and Recommendation -- I'm sorry, that's
15 not right. I am going -- if you go back and look at
16 the Certificate, Exhibit 6 -- or 5, excuse me, you
17 will see that the Staff opinion issued a -- gave my
18 only copy of the thing away. Excuse me a minute
19 here. So let's just start -- we will come back to
20 that in a minute. So let's look in the Joint
21 Stipulation on page 2 --

22 A. This is Exhibit 6 again?

23 Q. Yeah, this would be Exhibit 6. So let's
24 take a look at the language. It talks about how the
25 Applicant shall install the facility, utilize

1 equipment and construction practices, and
2 implicate -- mitigation members [SIC] as described in
3 the Application, right?

4 A. I see that.

5 Q. "And as modified and/or clarified in
6 supplemental filings," right? Which would be filings
7 through the OPSB website submitted after the date of
8 the Joint Stipulation or the Opinion, right?

9 A. I see that as well, yes.

10 Q. Okay. "Replies to data requests," right?

11 A. Yes.

12 Q. I read that correctly.

13 A. Yes.

14 Q. "And recommendations in the Staff Report
15 of Investigation, as modified by this Joint
16 Stipulation" Order. And if you look back at the
17 Certificate on page 5 -- I'm sorry. I'm sorry,
18 Exhibit 5, excuse me, there is language regarding the
19 Certificate and look on page 34 of that. And all
20 that does after the language of -- in page 2 of the
21 Joint Stipulation, it simply adds "as modified by the
22 Opinion, Order, and Certificate" at the very end of
23 that sentence there, fair enough? Let me know if you
24 don't find it.

25 A. I see what you are saying. Yeah, I see

1 it.

2 Q. Okay. So I read that correctly, right?

3 A. Yeah. I mean, it says "after Joint
4 Stipulation and Recommendation" on that one as well.

5 Q. Sure.

6 A. It's in there.

7 Q. I don't disagree. But nonetheless, as a
8 general sense, you and I can agree that there are
9 opportunities for product mod -- project modification
10 that are through supplemental filings, data requests,
11 or other stipulations, fair enough?

12 A. Yeah, that's pretty broad, but yes.

13 Q. Okay. All right. So let's look at -- if
14 you go back to Joint Stipulation 1 -- actually I want
15 to go to your testimony real quick. Do you have that
16 in front of you, sir?

17 A. Yeah.

18 Q. Your September -- November 9, sir.

19 A. Oh, yeah, sorry.

20 Q. Excuse me. And I want you to turn to a
21 specific page which is page 2 and go to question and
22 answer 6.

23 A. Okay.

24 Q. So this is one of those questions -- and
25 you can look at the chart I left for you up there.

1 This is one of those questions and answers that was
2 completely different and not even existing in the
3 first iteration of your written testimony, right?

4 A. I would have to go back and look, but
5 sure.

6 Q. Okay. So this is you saying as part of
7 the approval -- and you go through on lines 20 to 22
8 through page 3 of line 6, there is a whole paragraph
9 there where you were asked what kind of case this is,
10 and you talk about how the Board required the
11 facility -- that the facility be installed with
12 property setbacks of at least 100 feet from all
13 property lines, including roads. This setback
14 limitation described throughout the course of the
15 Board's record, including as part of the Application,
16 as part of the Applicant's supplemental filings, see,
17 Data Request, which is attached to my testimony, and
18 then as adopted by the Board through its Opinion,
19 Order, and Certificate. So we've talked about the
20 Application. We haven't yet talked about the e-mail
21 of December 23, 2020. Do you have that attached to
22 your testimony, sir?

23 A. Is that the Data Request reference?

24 Q. Yes.

25 A. Yes.

1 Q. All right. Is that the only reference --
2 is that the only evidence in the record of a data
3 request being made on this project or were there
4 others?

5 A. I'm not sure if in the record there is
6 other Data Requests. I mean, we -- I am sure we --
7 this isn't the only Data Request we sent out.

8 Q. That was going to be my point. You know,
9 you can define Data Request pretty broadly, couldn't
10 you, as to any request for information, fair enough?

11 A. My opinion would be Data Request to the
12 Applicant would be us asking them a question about
13 the project.

14 Q. That's my -- that's my point, right, is
15 that you could -- any information that's being
16 requested would be considered a Data Request, right?

17 A. Our general practice is to send the
18 Applicant a request that states this is a Data
19 Request.

20 Q. Okay. But you've seen it without a Data
21 Request title -- title on it?

22 A. I can't recall exactly, but I would say
23 probably.

24 Q. Do you recall asking the -- the owner to
25 provide a review of the drawings in February of 2021?

1 A. I do not.

2 Q. Do you recall sitting down with the owner
3 in February of '21 reviewing the drawings?

4 A. I do not.

5 Q. Do you recall anyone from your office
6 meeting with the owner to discuss the drawings in
7 February 2021?

8 A. I do not.

9 Q. Do you know why you have a copy of -- and
10 we are going to get to this. This is a copy of what
11 was produced via FOIA which was February 2021
12 drawings issued by my client EVS that were titled
13 "OPSB Review." Do you know why you would have those?

14 A. I don't know those exact drawings off the
15 top of my head. I mean, if it was something we
16 requested, then I would assume that's why. If that's
17 post-Certificate, then maybe they were trying to
18 comply with the condition. I'm not sure.

19 Q. All right. But is that another example
20 of a potential Data Request? I didn't say was. I
21 said potential.

22 A. I can't speculate on that. I mean, if we
23 sent them some type of correspondence asking for it
24 in a Data Request, then yes.

25 Q. Well, as one who is coordinating the work

1 on your staff, are those meetings you like to sit in
2 on?

3 A. Usually, yes.

4 Q. Okay. And if it's a drawing review by
5 the owner, you would have sat and reviewed the
6 drawings if you were there?

7 A. Well, it depends, if it's a meeting with
8 us. We're not -- we're not part of private meetings
9 between an owner and a contractor or anything like
10 that discussing drawings.

11 Q. Didn't you do that at the pre -- 30-day
12 preconstruction site meeting?

13 A. Well, that's -- that's required for the
14 project and our conditions.

15 Q. Sure.

16 A. Yeah. But that's -- that's not the same
17 thing as, you know, reviewing the project as you guys
18 are developing it.

19 Q. Do you have a prohibition about meeting
20 with Applicants to go over the work that they propose
21 to -- to doing? Is there a legal prohibition that
22 you are aware of?

23 A. Not that I am aware of, no.

24 Q. This is just a practical issue, right?

25 A. Yeah. I guess I am not really sure what

1 you are asking.

2 Q. Sure. Why wouldn't it be beneficial for
3 you to meet with the owner? You said we won't meet
4 with private citizens.

5 A. I did not say that.

6 Q. Okay.

7 A. I said the owners are developing the
8 project with a contractor. General practice we would
9 not be involved with that. Usually you guys come to
10 us with the Application after the project has been
11 developed.

12 Q. All right. So let's go back to your
13 testimony here. And I am reading this testimony on
14 page 3. You cite the Opinion and Order and
15 Certificate, but you don't cite the Joint
16 Stipulations. Is there a reason for that? Was it by
17 design? Was it an error?

18 A. I -- I would say not by design, no. I
19 guess -- I guess you could call it an error. You
20 know, it's adopted by the Board in all of those so.

21 Q. Sure. So you're talking about so that
22 same language that we went through with the -- with
23 the Joint -- or the Joint and Supplemental Joint
24 Stipulation, we are talking about you would have
25 factored that in in your opinion here in 6 -- answer

1 6 on pages 2 and 3?

2 A. If you are asking if we would have taken
3 into account modified conditions and the Stipulation,
4 then, yes, we would have.

5 Q. Okay. All right. So let's go to the
6 next page where it talks about -- I'm sorry, on page
7 3 next question, which is 7Q and A, and it summarized
8 the Staff's investigations that were conducted in
9 this case. You stated that you conducted site visits
10 to the property, or the Staff conducted site visits
11 to the proposed facility location.

12 A. Correct.

13 Q. Okay. When did that happen?

14 A. I couldn't tell you exactly off -- off
15 the top of my head. I mean, it says, you know, we
16 conducted one on September 30, 2022, after the
17 self-reported violations, but other than that, all I
18 know is we -- general practice we make at least one
19 site visit, but I would say in this case we probably
20 made a few.

21 Q. And so I guess my question was is there a
22 record someplace of that meeting or that visit
23 for your ob -- somebody's observations?

24 A. I'm sure it's on my work calendar.

25 Q. It's on your work calendar. You would

1 have gone?

2 A. Most likely.

3 Q. But you don't know whether you kept --
4 kept notes or not, and if you did kept notes -- kept
5 written notes, handwritten notes, they are gone now,
6 right?

7 A. Maybe. This is -- this would have been
8 going to make a site visit before construction so it
9 would have just been fields.

10 Q. What's the -- what's the point of making
11 a site visit before construction? Are you just
12 trying to make sure everything is all -- all the bows
13 are tied and all that sort of stuff?

14 A. It's very project specific, so it just
15 depends. Try to look at everything we can that's
16 involved in the project, you know, any potential
17 impacts, that kind of stuff.

18 Q. Well, you know that if it's a meeting
19 before -- let's just take the 30-day before
20 construction. You have got a proposed construction
21 date that you are being -- already been provided,
22 right, by the contractor?

23 A. Correct.

24 Q. Fair enough? And so when you show up for
25 the preconstruction hearing, whether it's telephonic

1 or on-site or however it's done, you know, this is
2 the -- you know, this is kind of the last chance to
3 have a conversation about where the project is going,
4 are we in compliance, that sort of thing before
5 construction starts, right?

6 A. I would disagree with that. It's
7 definitely not the last communication or chance for
8 Staff to give our opinion. And usually on large
9 projects like this, there are several preconstruction
10 meetings for the different phases of construction so.

11 Q. You only had one.

12 A. I'm not sure. I can't recall on this,
13 but generally we have multiple.

14 Q. Well, certainly you wouldn't want
15 construction to begin if you felt the project was not
16 in compliant, right? Not in compliance, excuse me.

17 A. Sure. It would be pretty difficult to be
18 out of compliance if you haven't started
19 construction.

20 Q. Well, there are conditions that are
21 described in the Joint Stipulation and in the Opinion
22 and Order that have nothing to do with the actual
23 work itself, right?

24 A. Sure.

25 Q. All right. So let's -- let's go down to

1 8Q, 8A, okay? And you are asked in this -- and
 2 that's on page 4, Mr. Holderbaum. And you are asked
 3 about this by Staff -- by counsel and you are asked
 4 to describe the review of the final engineering
 5 drawings submitted to Staff as required by Condition
 6 8 in the Opinion and Order issued for the project on
 7 March 18, 2021. And you provide an answer, and we
 8 will get to that in a minute. What is it about
 9 Condition 8 as you sit here today that you can tell
 10 me is a meaningful condition, at least as applied to
 11 this question?

12 A. I believe Condition 8 refers to the
 13 submitting the engineering drawings for the project.

14 Q. Okay. And what document are you looking
 15 at right now?

16 A. I am looking at Exhibit 6.

17 Q. And that's the Certificate?

18 A. No. This is the Joint Stipulation.

19 Q. I'm sorry. That's the first Joint
 20 Stipulation, right?

21 A. Correct.

22 Q. All right. So in reviewing this, you
 23 would have looked at the Joint Stipulation regarding
 24 Condition 8, fair enough?

25 A. I most likely would have looked at the

1 most up-to-date Stipulation so, yes. Also Exhibit 7
2 if it was changed in there, which you -- which it
3 looks like it wasn't.

4 Q. Let's look at the language you got. You
5 write in here, or type or whatever you did, you said
6 "Staff reviewed the final engineering drawings to
7 verify that the drawings were created by a
8 professional engineering firm and in a format that
9 the public could access on the case docket." Okay?
10 That's fairly consistent with what you testified to
11 earlier, right?

12 A. I believe so.

13 Q. And that's telling us that there isn't a
14 substantive review of the drawings.

15 A. Correct.

16 Q. Okay. And then you go on to say that the
17 way you've done this, verification -- you say
18 quote-unquote the treatment of this -- excuse me.
19 "Staff's treatment of this filing (verification of
20 formatting consistent with filing on the case docket)
21 is consistent with its treatment of the numerous
22 other condition compliance filings that occurred in
23 this case between March 19 and April 14, 2021." True
24 statement, right? We covered a lot of this before,
25 did we not?

1 A. We did.

2 Q. And that's no different than what you
3 testified to under oath today which is you didn't do
4 any substantive review on any other filings in the
5 docket between this time period of March 19 and
6 April 14, 2021.

7 A. I would have to look back at all the
8 filings. It says, you know, consistent with our
9 treatment of numerous other condition compliance
10 filings, so it doesn't say every single one.

11 Q. Well, you are implying it, aren't you?

12 A. No. I don't think so.

13 Q. Okay. When you wrote this, you would
14 have said -- you would have looked at what's been
15 filed, right?

16 A. I would have, yes.

17 Q. And you would have seen whether or not
18 you reviewed it or not.

19 A. Whether I reviewed my testimony?

20 Q. Whether you reviewed the filings.

21 A. Yes.

22 Q. Okay. So at that point in time, you knew
23 that, exactly how much review you did when you wrote
24 this testimony, right?

25 A. Sure. It all depends on what the

1 condition requires us, Staff, to do.

2 Q. Okay. And then you said "Further,
3 Staff's treatment of this filing is consistent with
4 its protocol as to all engineering drawings that are
5 filed in satisfaction of a certificate holder's
6 condition compliance." What protocol exists in
7 writing that you do not review the substance of an
8 engineering drawing?

9 MR. LINDGREN: Objection. He is
10 mischaracterizing the testimony.

11 ALJ WALSTRA: Overruled.

12 Q. (By Mr. Stoner) You can go ahead, sir.

13 A. Well, No. 1, it doesn't say protocol is
14 written so.

15 Q. I didn't -- I asked you if -- I asked you
16 first is it written. Is there a written -- what
17 written protocol exists? You can tell me it doesn't
18 exist.

19 A. Well, I don't know if there is a written
20 protocol, no.

21 Q. Okay. What verbal protocol do you have
22 or were you provided that would say you do not
23 substantively review engineering drawings?

24 A. Again, I wouldn't say we were given
25 verbal protocol to not do specific things. I think

1 our protocol is to review the drawings to make sure
2 they are formatted correctly for the docket so the
3 public has access to them, so we have a record of
4 them in case something happens down the line, and
5 that they were done by a professional.

6 Q. So no substantive review.

7 A. Correct.

8 Q. Okay. Do you ever raise this as a
9 concern saying, look, we ought to have an engineer
10 take a look at this?

11 A. No. I have never done that. I don't
12 think it's valuable to Staff to have that obligation.

13 Q. You don't think an engineer should review
14 any of the drawings submitted to OPSB?

15 A. Well, we would have expected as a
16 professional engineering firm, when they are
17 submitted to us, they would be in full compliance
18 considering they are coming from a professional
19 engineering firm already.

20 Q. You have permitting agencies throughout
21 the State that review drawings for every bit of
22 construction, right? You are familiar with that.

23 A. I mean, broadly I am familiar with that.

24 Q. And in this -- your Staff does not have
25 one engineer on-site to review substantively any of

1 the drawings that are submitted to your office.

2 A. Well, I wouldn't say we don't have an
3 engineer on Staff. I would say we don't have any
4 engineers reviewing any drawings.

5 Q. You are talking about Mr. Conley, Andrew
6 Conley?

7 A. Mr. Conway is an engineer.

8 Q. Conway, excuse me. Sorry. And does he
9 sometimes review things?

10 A. He broadly sometimes reviews things.

11 Q. Did he review anything on this project
12 that you are aware of?

13 A. I can't remember exactly. I am sure he
14 probably was part of the team on this, but I can say
15 definitively he did not review the engineering
16 drawings.

17 Q. So you had an engineer on the -- working
18 on this project who did not review engineering
19 drawings.

20 A. Correct, because that's not something we
21 do.

22 Q. Okay. Do you have an obligation -- I
23 mean, you would have to agree that as part of OPSB's
24 obligations under the terms and conditions as
25 outlined in the Opinion and the Joint Stipulations,

1 that there is an obligation on behalf of OPSB to
2 review submittals, filings to make sure that there is
3 some level of -- there is a level of compliance in
4 what is going to be built on-site.

5 A. I wouldn't say for all conditions. I
6 would say if the condition explicitly tells us to do
7 that, then yes.

8 Q. So if you had a condition that said you
9 had to ensure compliance with the Joint Stipulation
10 or the Certificate and Order and Opinion, that's
11 something that would tell you you would have to
12 review, right?

13 A. Can you repeat that?

14 Q. Sure. If you had -- if you had a
15 condition or requirement spelled out in a condition
16 that stated you -- OPSB Staff have an obligation to
17 review a specific document or otherwise for
18 compliance with any of the conditions outlined in the
19 Certificate and Order and Joint Stipulations, you
20 would have to do that, right?

21 A. I would say if it was more specific like
22 review and look at every detail of the drawings and
23 confirm back to the owner that they are in
24 compliance, then we would do that.

25 Q. Okay. So you need more specifics if

1 it's -- other than something that said Staff must
2 ensure compliance.

3 A. Well, it's speculative. We don't have
4 that so.

5 Q. Okay. So the bottom line is according to
6 your testimony, you don't do substantive reviews of
7 drawings, No. 1. And retaining an expert consultant,
8 although you have one on Staff, is too cost
9 prohibitive, or it's not cost justified as outlined
10 in question -- questions 8 and 9 on page 4 of your
11 testimony.

12 A. I would say broadly that's correct. I
13 mean, all -- all Staff is busy and has a lot of case
14 work. Our -- Mr. Conway isn't just reviewing
15 engineer drawings as his only job. He is not just
16 doing engineering tasks, so to put the burden on
17 Mr. Conway to review every engineering drawing of
18 every project in the State, that's pretty ridiculous.

19 Q. Well, I just object to your answer as not
20 being responsive. And I am trying to be lenient,
21 Mr. Holderbaum, but I just simply asked if you could
22 agree with the statement that I read in paragraph 8
23 and 9 -- I'm sorry, questions 8 and 9 on page 4 of
24 your testimony that the reason you don't do
25 substantive reviews of drawings is because you don't

1 have to and it's cost prohibitive to get an expert
2 involved.

3 A. I think --

4 Q. Is that fair?

5 A. What we state it would be duplicative
6 review and to retain an expert consultant services
7 that are not cost justified.

8 Q. All right. So basically we've said the
9 same thing. I agree with your statement by the way,
10 but we've said the same thing.

11 A. Okay.

12 Q. Fair enough?

13 A. Sure.

14 Q. Okay. All right. So when you say
15 engineering drawings, what do you mean by an
16 engineering drawing?

17 A. That's -- it's a broad term for a very
18 descriptive map that shows exactly what's going to be
19 happening at the project.

20 Q. So I am going to use it the way you used
21 it in your testimony, if that makes sense.

22 A. Sure.

23 Q. Okay. Would your -- would your answer be
24 the same?

25 A. I don't know. Can you tell me where you

1 are referring to in my testimony?

2 Q. Sure. Did you not refer to engineering
3 drawings on pages -- let me refer back to it again.
4 Did you not refer to engineering drawings on pages 3
5 and 4? You call the final engineering drawings the
6 drawings. That's what I am referring to.

7 A. What line on page 3?

8 Q. Yeah. If you look at -- let's start with
9 3 and work our way backwards. If you look at --
10 forward, excuse me. If you look at question 8, Q and
11 A8, Staff -- where you say Staff reviews the final
12 engineering drawings, okay? Let's talk about that.

13 A. Yeah. Are you talking about -- I thought
14 you were referencing somewhere where I described what
15 final engineering drawings were is all.

16 Q. No. I asked you -- all I wanted to know
17 is what your definition of it was. So when you say
18 you don't review the final engineering drawings, I
19 want to know what that definition of engineering
20 drawings is.

21 A. I would keep it what I said before.

22 Q. You would keep it the same.

23 A. Sure.

24 Q. So if a drawing isn't final but they are
25 engineering drawings, you are still not reviewing it,

1 fair enough?

2 A. Unless it's part of the original
3 application.

4 Q. Okay. And when -- and it doesn't -- does
5 it matter -- well, let me strike this.

6 If you get a grading plan or site plan,
7 are you not reviewing that as well?

8 A. It depends on when we would receive it, I
9 guess.

10 Q. Tell me when it matters to you, that you
11 would review it.

12 A. Well, we would review it -- we would do a
13 technical review prior to issuing our Staff Report.

14 Q. Okay.

15 A. Post-Staff Report, post-Certificate, you
16 know, our review -- unless the condition explicitly
17 states we need to do a technical review, we would do,
18 as I stated before, we review to make sure it was
19 done on a format we wanted and keep it in our
20 records. But, no, we wouldn't do a large technical
21 review unless we were required.

22 Q. Would you even glance at it and say, hey,
23 this looks good? This doesn't look good?

24 A. I would have to open a document to make
25 sure it's formatted correctly, so we would open it.

1 Would I reply back to say it looks good or not?

2 Usually no, unless the condition, you know, required
3 me to confirm it.

4 Q. Okay. Have you reviewed any of the other
5 party's testimony thus far?

6 A. I've -- I haven't reviewed every aspect
7 of them, no, but I have read some of them.

8 Q. Tell me whose testimonies you've read.

9 A. I haven't reviewed all of anybody's
10 testimony.

11 Q. Have you reviewed anybody's testimony?

12 A. I read briefly through EVS and Mr. --

13 Q. Mr. Bowar?

14 A. Mr. Bowar, yes.

15 Q. Okay. How about the Applicant's?

16 A. Yes.

17 Q. Yuri?

18 A. Yes.

19 Q. So you did review those two.

20 A. I didn't review every aspect of them, but
21 I briefly read through them, yes.

22 Q. All right. So let me go to -- I want to
23 show you -- I want to go through a couple of drawings
24 if you don't mind. I have copies for folks. I am
25 going to show the -- whatever Dan Bowar's exhibit is

1 for the two February drawings, February 5.

2 MR. COLEMAN: February 5 DB-6 and DB7.

3 MR. STONER: Okay. Your Honor, I am
4 going to be marking as EVS Exhibit 8 also DB-6. And
5 if I could approach the witness.

6 ALJ WALSTRA: So marked and you may.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. STONER: What I have done, your
9 Honor, just for the record, this all attached is -- I
10 have made blowups because nobody wants to read an 11
11 by 8 drawing, least of all people staring at stuff
12 all day. That is Exhibit 8. And I do have copies.
13 I should have copies for everybody here.

14 MR. COLEMAN: Scott, just for the record
15 is the cover on that C-201?

16 MR. STONER: Yes. C-201.

17 MR. COLEMAN: That's actually DB-7.

18 MR. STONER: DB-7.

19 Q. (By Mr. Stoner) Okay. Mr. Holderbaum, I
20 showed you what is EVS Exhibit 8 which is a
21 February 5, 2021, and it's called "Ohio Power Siting
22 Board Plan Review." Do you see that there?

23 A. I do.

24 Q. Have you seen that before?

25 A. I have.

1 Q. Okay. And that came from your file, did
2 it not?

3 A. I'm not sure exactly where it came from,
4 but we have this in our files, yes.

5 Q. All right. So I walked through your --
6 we responded -- or we received a response regarding a
7 FOIA request, I don't know what it's exactly called
8 in Ohio, the equivalent of FOIA, and they produced
9 that February drawing. And do you recall the
10 circumstances in which you would have reviewed it?

11 A. I would assume this was submitted to
12 Staff for Commission compliance, but again, our
13 review of this would have been purely administrative.

14 Q. So when you received this, your position
15 is that you would not have substantively reviewed
16 this.

17 A. Correct.

18 Q. Is it because it has an engineer's name
19 on it?

20 A. Is that why I wouldn't review? Is that
21 what you are asking?

22 Q. Yeah.

23 A. I wouldn't review it because it's not --
24 it's not part of our protocol.

25 Q. It's not part of your program you said?

1 A. Protocol.

2 Q. Protocol. And that's that unwritten
3 protocol that we don't really know where it came
4 from, right?

5 A. Just general practice.

6 Q. All right. But when we look at this
7 drawing, if you were to look at it and you've looked
8 at setbacks before, you already told us that, can you
9 identify on page C-201 where is the setback?

10 A. I can, yes. I mean, Staff reviewed this
11 after the self-reported setback violation by the
12 Applicant, so I've reviewed it since then.

13 Q. Okay.

14 A. So I know where the setback violations
15 are.

16 Q. Certainly we can agree, Mr. Holderbaum,
17 that nobody was trying to hide the 45-foot setback on
18 you based on this document, right?

19 A. I mean, when you look at a map blown up
20 like this, I guess you could have that opinion. When
21 I am looking at it on my computer, it took me a long
22 time to find it after they self-reported.

23 Q. You mean where you have the PDF where you
24 have the ability to blow up a screen.

25 A. Correct.

1 Q. So point being is that you had the
2 ability to certainly locate a 45-foot setback if it
3 crossed -- if it crossed your e-mail, right?

4 A. Correct. I mean, general practice is if
5 there is ever, you know, a material change this
6 large, we would get a lot more information about
7 something like this than just small -- small
8 numbers -- small notations on a map.

9 Q. Okay. Well, I think my question was
10 nobody is trying to hide a 45-foot setback from you,
11 are they?

12 A. I wouldn't say they were trying to hide
13 it on this map. I would say they didn't bring it to
14 Staff's attention.

15 Q. Do you know whether they brought it to
16 your -- anybody's attention?

17 A. I have no record of them bringing this to
18 our attention -- attention until they self-reported.

19 Q. Okay. If you don't mind, I think we
20 could all probably see this a little better.

21 MR. STONER: Your Honor, if it would be
22 all right if I grabbed the easel, I didn't bring one
23 in the car with me, if I could grab that and show the
24 witness.

25 ALJ WALSTRA: Yeah, absolutely.

1 MR. STONER: Let's take it over there and
2 put it at an angle so everybody can see it. Just put
3 it over there so the witness can see it first and
4 foremost. What you've done -- this is not being
5 introduced as a formal exhibit. It's a demonstrative
6 exhibit. We know it's not going in the record.

7 Q. (By Mr. Stoner) But I will represent and
8 Mr. Holderbaum can testify that C-201 looks the same
9 as what's in front of you, does it not,
10 Mr. Holderbaum?

11 A. It looks the same, yes.

12 Q. All right. So I just show this because I
13 knew we were going to be crowded, and sometimes it
14 helps.

15 MR. STONER: If you don't mind, your
16 Honor, I would like to stand here for a few minutes
17 and ask the witness a few questions.

18 ALJ WALSTRA: That's fine.

19 Q. (By Mr. Stoner) Is it okay with you,
20 Mr. Holderbaum?

21 A. Sure.

22 Q. All right. All right. So knowing that
23 this is the same as Exhibit 8, we see -- at least on
24 the first sheet here, we see several references to
25 10-foot equipment setback and 45-foot equipment

1 setback, right?

2 A. I can see that, yes.

3 Q. Right? And whether it's blown up or not,
4 certainly nobody told -- well, let me ask you this,
5 nobody told the Applicant that you weren't reviewing
6 drawings, were you?

7 A. I guess I never explicitly said I wasn't
8 reviewing drawings, no.

9 Q. And nobody you know would have -- you
10 didn't receive any feedback from anyone in your Staff
11 that said, hey, Mr. Applicant, or Ms. Applicant,
12 nobody is reviewing your drawings.

13 A. No. They -- that's a good point. The
14 Applicant never requested confirmation of a change in
15 setbacks.

16 Q. Well, why would they have to?

17 A. Well, it goes against the Opinion and
18 Order. It goes against the Stipulation. It goes
19 against the Staff Report. It goes against the
20 Application.

21 Q. We are going to get into that in a little
22 bit, and certainly you and I can agree that a 45-foot
23 setback, had anybody in the Staff looked at this
24 document in February would see that this was a
25 change, right?

1 A. If you are doing a technical review.

2 Q. If you are doing any kind of review, you
3 would see there is a 45-foot setback.

4 A. No. I disagree.

5 Q. So you don't think you would notice the
6 45-foot setback, huh?

7 A. Well, I think Staff's general practice is
8 the Applicant and the professional engineering firm
9 are going to design the project like they said they
10 would, so review every aspect to make sure they are
11 doing as they said they would is not something we do.
12 So, no, I don't think I would have seen that.

13 Q. So at no point the conditions in the
14 Order as you review this apply to you trying to
15 confirm compliance. I mean, you don't have to
16 confirm any compliance with regard to the drawings,
17 right? That's what you are telling us; isn't that a
18 fair statement?

19 A. It's kind of overbroad, but I would
20 say -- I would say, yeah, we're not -- we are not
21 required to review these drawings to make sure they
22 are in compliance.

23 Q. So the only one who has to show
24 compliance is the Applicant. They don't have to vet
25 anything by you is what you are saying, right?

1 A. No. There's -- there's something they
2 have to do that for. In terms of the engineering
3 drawings, again, you know, what we do with them and
4 in terms of our review, we assume that the Applicant
5 and engineering firm are sticking to their word and
6 designing the project as they said they would as
7 required.

8 Q. Is there any condition that allows you
9 to -- whether it's the Opinion and Order, the Joint
10 Stipulation that allows you to assume and not do the
11 work of review and assume that the Applicant has got
12 it right?

13 A. Oh, I think you are mischaracterizing
14 what I am saying.

15 Q. Oh, I know what you said.

16 A. We did the work that the conditions
17 required us to do.

18 Q. Find me a condition in the Joint
19 Stipulation or the Certificate and Order that allows
20 you to make the assumption that the Applicant got
21 everything right and that you do not have to conduct
22 a review of any sort of drawing.

23 A. I would say condition 1 states that the
24 Applicant has to build the project as they state they
25 would. I would say when -- Condition 8 submitting

1 the drawings for Staff's review and acceptance, we do
2 do that.

3 Q. Condition 1 does a lot more than say they
4 have to build the -- build the project according to
5 the Application and the Certificate, right?

6 A. Sure.

7 Q. I mean, we talked about this before about
8 the ability of the parties to modify what's happening
9 in the project based upon supplemental filings, did
10 we not?

11 A. We did, but again, a supplemental filing
12 that only makes reference to such a large material
13 change as this, we would need more information on
14 that to explain exactly why they are doing it, the
15 additional impact it could cause, and that sort of
16 thing. And almost always that would require an
17 Amendment Application. That's not something that
18 myself can even approve.

19 Q. What's the difference between a 45-foot
20 setback and 100-foot setback other than the obvious?

21 A. It's --

22 Q. Project specific, wouldn't it be?

23 A. It's project specific, and it's really
24 hard to say. I mean, we review a lot of aspects of
25 these projects, so we only reviewed this project with

1 100-foot setbacks, and a lot goes into that. Other
 2 agencies only reviewed with that. The Board only
 3 reviews with that. The public that has a say in this
 4 as well, you know, may -- they could have been
 5 against the project if it had 45-foot setbacks. We
 6 don't know.

7 Q. And we know that nobody took a glance at
 8 this to look at anything relating to anything setback
 9 related, right?

10 A. Or anything else to make sure any other
 11 aspects are --

12 Q. Okay. Thank you. I am going to sit down
 13 for the time being. There will be another drawing.

14 All right. I want to show you what I am
 15 going to mark -- I'm sorry.

16 MR. STONER: What exhibit was I on?

17 MR. SETTINERI: 9.

18 MR. STONER: Ms. Court Reporter, 9,
 19 right?

20 MR. SETTINERI: 9.

21 MR. STONER: Exhibit 9. Jeff, what is
 22 the March 26?

23 MR. COLEMAN: Bowar?

24 MR. STONER: I'm sorry, May. The DB --

25 MR. COLEMAN: May 26 there is -- which

1 sheet is it? What sheet number?

2 MR. STONER: C-201.

3 MR. COLEMAN: DB-9.

4 MR. STONER: Exhibit 9, if I could
5 approach, your Honor, is a May 26, 2021, drawing that
6 was received by your office because you produced it
7 to me through a FOIA request. If you want to
8 staple -- or I have a -- that's for you. Do you want
9 a stapler or a -- Exhibit 9.

10 ALJ WALSTRA: So marked as Exhibit 9.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. STONER: If I could approach the
13 witness, again, your Honor, with a demonstrative
14 exhibit?

15 ALJ WALSTRA: You may.

16 Q. (By Mr. Stoner) You are probably tired of
17 me coming up here, Mr. Holderbaum, but I have got one
18 more demonstrative exhibit which I'll represent to
19 you which is the same as what's in 40 in Exhibit 9
20 which is the 5-26-21 drawings. So this is after the
21 Application, correct, submitted after the
22 Application?

23 A. I believe that's correct, yes.

24 Q. Submitted after the certification -- or
25 the Opinion, right?

1 A. Correct.

2 Q. After the Joint Stipulation and Order.

3 A. Correct.

4 Q. And based upon that and based upon your
5 testimony, Mr. Holderbaum, would it be fair to say
6 that nobody from your office reviewed Exhibit 9?

7 A. Again, I would say we did as we are
8 required to do which is review and accept this. So
9 we made sure it was done by a professional
10 engineering firm, we made sure it was formatted
11 correctly, it was available for the public, that we
12 have a record of it in case something happens down
13 the line.

14 Q. And was -- you said you reviewed and
15 accepted it?

16 A. Yes.

17 Q. Okay. But as far as substantive review,
18 your answer is going to be the same going forward as
19 to any drawing; nothing was done.

20 A. Well, everything was done I just said but
21 in terms --

22 Q. I am talking about substance.

23 A. Technical review, no.

24 Q. Yeah. I am just talking about substance.
25 Even looking at the drawings and seeing what's on

1 there from a substantive level, i.e., what's on --
2 what's -- what's the pen that's been put to the
3 paper, right?

4 A. Well, other than confirming the
5 engineering firm and scrolling through and making
6 sure the format is correct to be put in our public
7 docket.

8 Q. And when you say format, are you talking
9 about is it PDF?

10 A. Pretty much, yes.

11 Q. Okay. You can kind of see that when it
12 comes across your screen, right?

13 A. Yeah, but we have a history of getting,
14 you know, documents that, you know, may -- it's a
15 PDF, but maybe it's not a good version or something
16 like that.

17 Q. All right. So when engineering drawings
18 are coming across your desk through filing or e-mail
19 or anything like that, your office is doing one of
20 two things, is it PDF and is there a logo of an
21 engineer on the drawings?

22 A. And we save it in our records in case
23 something happens like a self-reported violation, for
24 example, and we make sure that the public has access
25 to it.

1 Q. So but -- but on a substantive level, if
2 I asked you questions about every single drawing that
3 you had in your possession or that you were provided,
4 your answer is going to be the same, we looked to see
5 that it's in PDF format, and we looked to see if
6 there is an engineer logo on there, right?

7 A. Pretty much, yeah. We don't -- we don't
8 review every aspect of these drawings to make sure
9 they are building like they said they were.

10 Q. I am trying to cut your testimony a
11 little shorter, so I appreciate you helping, but I
12 just want to make sure we are on the same page. I
13 could point to five more drawings that was in your
14 possession, Mr. Holderbaum, and I don't want to, but
15 I think if we just get an agreement between you and I
16 that based upon your testimony today, nobody reviewed
17 any drawing for any substance or anything other than
18 is there a logo of an engineer on the drawing, and
19 was it in PDF format?

20 A. That -- that's pretty broad in terms of
21 any drawing. I mean, as I said, prior to a
22 certificate being issued, we do.

23 Q. I am talking about after the certificate.

24 A. Nope. Correct.

25 Q. So that would be -- we have that

1 agreement then, right?

2 A. We have that agreement.

3 Q. Okay. So why would OPSB have in its
4 file -- why would you have in your file -- why would
5 you be requesting the functional equivalent of a CAD
6 file, a programmable drawing program? So if you were
7 to get -- for example, if you were provided let's say
8 in March ShapeFiles, March 19, 2021, or March 20,
9 2021, if you were provided ShapeFiles -- you know
10 what a shapefile is, right?

11 A. I do.

12 Q. And what's -- what is the -- what is a
13 shapefile?

14 A. They are the mapping files to make an
15 interacting map.

16 Q. Sure. Why would OPSB need a shapefile if
17 not to verify the drawings?

18 A. The answer is the same. So, you know,
19 keep it for our records. You know, we have -- OPSB
20 has online on our website we have online maps for the
21 public to go in and look at, you know, in this case
22 solar projects across the state and that would be
23 where we would get that data. So they can see, you
24 know, where the project is near them. If they have
25 any questions about it, they can find it, that sort

1 of thing.

2 Q. But in order to review that shapefile,
3 don't you need a specific program?

4 A. We have -- we have a GIS mapping
5 department, but they are not reviewing any projects
6 for, you know, condition compliance or anything.

7 Q. Okay. Well, who's pulling up those files
8 for you then? Or are you not really pulling it up
9 and looking at it?

10 A. Well, we -- we -- you know, our GIS
11 department will verify the ShapeFiles are -- you
12 know, they can be opened and they are -- just like we
13 make sure that the PDFs can be opened, but they are
14 not verifying anything in them.

15 Q. Okay. So we can agree that if we look at
16 the 5-26 drawing, right, we've got that 5-26, if you
17 want to look at it, or whatever is best for you, sir,
18 we can agree that that certainly is a modification
19 that existed post-Certificate, right, at least with
20 regards to the setback?

21 A. It's an unapproved modification.

22 Q. It's a what?

23 A. It's an unapproved modification.

24 Q. You just told me you approved the
25 drawing.

1 A. It's -- maybe I misspoke in terms of my
2 phrasing. An approval such as this could not come
3 from me. A modification this large would have to be
4 filed and some sort of filing with a narrative
5 showing all the potential impacts, or lack thereof,
6 that would come from a modification like this; and
7 then it would most likely have to go in front of the
8 Board for approval. When I say approved, I'm
9 referring again that the document, we can open the
10 document, and it was done by an engineering firm.

11 Q. Is there something in the conditions or
12 the Joint Stipulation that approves a modification by
13 the Staff?

14 A. Not that I'm aware of.

15 Q. Okay. And, in fact, isn't the Staff
16 specifically mentioned in both the conditions and the
17 Joint Stipulations as being part and parcel of a
18 modification or review process?

19 A. I'm not sure. Can you point me to where
20 you are?

21 Q. Sure. We're going to get to that in a
22 couple of seconds. I do want to go through one more
23 submission. And so did you look at -- and I want to
24 show you there is a submission that was made, and we
25 went through some of this, but I want to show you the

1 June 25 submittal of 2021.

2 MR. STONER: Excuse me. This is going to
3 be 10, if I can find it. There we go. This will be
4 EVS Exhibit 10. This is a compliance letter that was
5 sent by counsel, Mr. Settineri. Here is Exhibit 10.
6 Sorry. These are getting heavy.

7 ALJ WALSTRA: So marked as Exhibit 10.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 ALJ DAVIS: Thank you.

10 MR. STONER: You're welcome.

11 Q. (By Mr. Stoner) Okay. May 25, 2021,
12 letter, it's a condition compliance letter that was
13 written by the Applicant and their counsel on June
14 25, 2021. Have you ever seen this before?

15 A. I'm not sure if I have seen this actual
16 document, but it's just confirming that these
17 conditions were met, so I believe I've seen these
18 submissions.

19 Q. Sure. And we've seen some of them and he
20 tells you on the first page, said "Condition 8 (final
21 project design): Detailed engineering drawings and
22 mapping for the final project design for the New
23 Market Solar II phase were submitted to the Board
24 Staff on March 19, 2021, and March 23, 2021. Copies
25 of the detailed engineering drawings and mapping

1 previously submitted are attached hereto." GIS -- he
2 says "Finally, GIS data was submitted to Staff on
3 March 19, 2021, and March 23." Basically what
4 counsel is saying here is I am giving this
5 information again, right? Make sure you have it,
6 right?

7 A. I believe so, yes.

8 Q. Okay. Is there a reason why he had to
9 submit it again? Were you missing the information?

10 A. I'm not exactly sure why.

11 Q. All right. Would you have received this
12 letter? I know it's not directed to you.

13 A. I wouldn't have received it, but I assume
14 it was in the case docket.

15 Q. Okay. And so we know that if it included
16 any lick of drawings, you weren't going to review it,
17 right?

18 A. Again, just to do the review I have
19 explained.

20 Q. PDF, check; EVS logo, check; done, right?

21 A. Make sure the public can access it.

22 Q. All righty. I do want to get more in the
23 record before we finish up.

24 MR. STONER: This will be EVS Exhibit 11.
25 Do you guys first since you are closer. Pass that

1 down.

2 MR. SETTINERI: Sure.

3 MR. STONER: Give you the numbered 11
4 which is May 20, 2022, letter. There are copies for
5 each of you, your Honors.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Mr. Stoner) Let me know when you have
8 had a chance to look at that, Mr. Holderbaum.

9 A. I have it in front of me.

10 Q. All right. I am not asking you to go
11 crazy with it, but we can see that this is again from
12 counsel, and he's talking about compliance with
13 Conditions 9, 6, and 5, right?

14 A. It appears that way, yes.

15 Q. He is also including additional drawings
16 and that agreement that you and I had as to the
17 additional drawings remains true, does it not, which
18 is to say except for formatting and logo and making
19 sure it's uploaded for the general public, nothing
20 else was done with these.

21 A. I would have to -- in terms of the
22 mapping, I would say that's correct.

23 Q. So you're basically relying on the
24 Applicant to review their own work, right?

25 A. We are -- we are assuming that the

1 Applicant will submit correct drawings to us.

2 Q. So you're assuming, your protocol is
3 assume that the people doing the Application are
4 doing it right. We don't have to review it other
5 than for logo and formatting, PDF or not, and is it
6 available to the site -- on the website; is that
7 fair?

8 A. That's fair unless something comes up in
9 the future.

10 Q. Okay. You mean something else that comes
11 up in the future that, for example, could have been
12 raised earlier if someone had reviewed the drawings,
13 that type of thing?

14 A. That's one way of putting it. You could
15 also say if they would have built the project as is
16 stated they would.

17 Q. Well, I mean, we can -- we can -- well,
18 let's pursue that a little bit, Mr. Holderbaum. You
19 and I can agree that had somebody done any review of
20 any drawing that was submitted to you from February
21 of 2021 until this last little bit in May of 2022, if
22 someone from your office had reviewed for 5 minutes
23 the drawing and seen a 45-foot setback, you would
24 agree that that thing would have never been -- never
25 even started work, right?

1 A. That's hard to speculate on. That's not
2 something we are required to do. The Applicant could
3 have easily done a 5-minute review and committed to
4 the 100-foot setback in their drawings like they told
5 us and that they were required to do as well.

6 Q. Well, the Applicant, as we talked about,
7 is entitled to rely on the certain conditions, right?

8 A. Again, as stated earlier, they can rely
9 on them. It's not the only thing they should rely
10 on.

11 Q. I didn't say that, but they are entitled
12 to rely on the terms of the conditions, right?

13 A. It depends on what you mean by rely
14 exactly.

15 Q. Well, I mean, I don't -- I don't want to
16 play games, Mr. Holderbaum, but I think it's pretty
17 clear that when you said this earlier is that both
18 parties get to rely on the wordage of the terms
19 that's outlined in the conditions in the Opinion and
20 the Joint Stipulation, right?

21 A. Yes. But my opinion is the conditions
22 require them to do as they said they were going to
23 do. They submitted so. If they would have been
24 abiding by those and relying on those like you said,
25 they would have built the setbacks as they said they

1 would.

2 Q. Subject to supplemental filings, right?

3 A. That is one thing in there, yes.

4 Q. Yes. And they did make -- I mean, I
5 think you and I can agree without any sort of back
6 and forth that the supplemental filings on this
7 project February, March, April, May, August of 2021
8 and again on May 20, 2022, those supplemental filings
9 all show a setback of 45 feet, right?

10 A. On the maps they show that but there
11 wasn't one instance where it was brought to our
12 attention explicitly detailing why they were making
13 that modification.

14 Q. Well, you lost your notes, right? So
15 maybe they did; maybe they didn't. But you don't
16 know because you lost your notes. You don't have a
17 single correspondence one way or the next because
18 nothing was produced to us regarding any
19 communications about -- about any setbacks except one
20 from December of 2020, right?

21 A. Yes, but I would say that actually shows
22 the Applicant got no confirmation they were allowed
23 to make the change.

24 Q. Well, see, that's -- that's a --
25 that's -- let me -- let me approach it this way,

1 after a year of submittals showing -- over a year and
2 a half of submittals showing a 45-foot setback, are
3 you -- you appear to be taking the position,
4 Mr. Holderbaum, basically this is your fault,
5 Mr. Applicant, right? You received all those
6 drawings and said nothing, fair enough?

7 A. I would say I received all those drawings
8 and I never was made aware explicitly of the change
9 and I definitely never confirmed to the Applicant
10 that they were allowed to make those changes, let
11 alone I don't have the authority to approve that.

12 Q. Okay. You should have looked --
13 shouldn't you have looked at the drawings? I mean,
14 isn't that -- wouldn't that be a good practice is to
15 at least look at the drawings, your staff, not
16 necessarily you, but just in general would you agree
17 that just taking a general review of a -- of a site
18 plan and soil erosion plan that shows the setback,
19 wouldn't that be a pretty easy thing to do?

20 MR. LINDGREN: Objection. This has
21 already been asked and answered. He has already
22 covered the reasons why the Staff doesn't do this
23 review.

24 MR. STONER: I haven't asked him this
25 question. He told me why they didn't. I asked him

1 if they could now.

2 ALJ WALSTRA: He can answer.

3 A. Well, the answer is the same. I did as I
4 was required to do, so if you are asking me if I
5 should have, that's speculative. I don't know.

6 Q. There is no written understanding that
7 you have that says we don't review drawings meaning
8 your office and you and your staff and Staff you
9 coordinate do not review drawings.

10 A. There's no written protocol that says
11 don't do that. There's -- the way that the condition
12 is we did as we were supposed to do.

13 Q. Based upon what? There has to be a
14 rubric to show us what you are being held against,
15 right?

16 A. I believe Condition 8 says review and
17 accept, and as I have stated, we reviewed and
18 accepted. I never confirmed anything or modification
19 change confirmed. Acceptance to Staff is, again,
20 making sure it's done by a professional engineer,
21 making sure it's formatted correctly, it's public
22 facing, all that kind of stuff.

23 Q. So I don't think -- I think we can agree,
24 Mr. Holderbaum, at this point back in February,
25 March, April, May, you did indeed and your office did

1 accept final engineering drawings with a 45-foot
2 setback.

3 A. Staff never accepted the change.

4 Q. You approved and accepted those drawings
5 and allowed the project to continue.

6 A. I don't agree with that.

7 Q. You don't agree with that?

8 A. No.

9 Q. You got all those drawings. You had
10 the -- and you just told us you had to review and
11 accept the drawings, which you did, right?

12 A. Maybe we're not agreeing on what that
13 term means because, again, to Staff, that means we
14 reviewed the drawings to make sure they were done by
15 a professional, the public has access to them, they
16 are formatted correctly, we have them in our record.
17 I can't say it enough. That's going to be the same
18 answer.

19 Q. Well, I think you are being a little coy
20 up there because I asked this very specific question
21 is you accepted these drawings, the final engineering
22 drawings, however many iterations there were, you and
23 I can agree now that each one of those drawings had a
24 45-foot -- 45-foot setback, correct?

25 A. I agree that the drawings showed that,

1 yes. I do not agree that Staff was aware of that and
2 approved that.

3 Q. Well, we know you did approve the
4 drawings.

5 A. We accepted the drawings.

6 Q. Yeah. That doesn't mean -- you didn't
7 reject them.

8 A. To not provide Staff with any narrative
9 of such a large material change and make it explicit
10 to staff, which is common practice for all projects,
11 and just putting small anecdotes on a map showing the
12 new setback, that goes against the Board ruling.
13 It's not something that Staff approved ever. It is
14 not something I have the ability to approve on my
15 own.

16 Q. Who says you cannot approve -- is there
17 something that says you cannot approve a change to
18 setbacks?

19 A. I'm not sure where it's written in the
20 rules for that.

21 Q. Okay.

22 A. General practice any material change like
23 that would require an Amendment Application.

24 Q. Okay. Where does it say that?

25 A. I don't know.

1 Q. You don't know? That's just your belief
2 at this point?

3 A. No. That's just my experience and common
4 practice with pretty much every large project we see.

5 Q. That a material change requires --

6 A. A large material change like this, yes,
7 requires --

8 Q. Did you ever have a setback that was
9 changed that was considered material?

10 A. That -- not that I can recall.

11 Q. All right. If you wouldn't mind turning
12 back to the Supplemental -- I'm sorry, the Joint
13 Stipulation, the first one. Excuse me.

14 A. Which exhibit is that?

15 Q. 6, sorry.

16 A. I'm there.

17 Q. All right. If you turn to page 3 and
18 Condition 8. So let me see if we can get a little
19 agreement on this. "At least 30 days prior to
20 preconstruction -- to the preconstruction conference,
21 the Applicant shall submit to Staff, for review and
22 acceptance, one set of detailed engineering drawings
23 of the final project design and mapping in the form
24 of PDF, which the Applicant shall also file on the
25 docket of this case, and geographically referenced

1 data (such as ShapeFiles or KMZ files) based on final
2 engineering drawings to confirm that the file design
3 is in conformance with the certificate." Okay? I
4 want to see if we can get some agreement here. I
5 think we can agree that at least 30 days before the
6 final -- the preconstruction conference you received
7 final engineering drawings.

8 A. I believe that's correct.

9 Q. All right. So that's an easy one. We
10 can check that box. And in that 30 days prior to the
11 final -- or preconstruction conference, I think we
12 can agree that the Applicant in this case submitted
13 to Staff for review and acceptance one detailed --
14 one set of detailed engineering drawings of the final
15 project design. You got that --

16 A. Correct.

17 Q. -- right? So we can agree on that. All
18 that was done.

19 A. Yes.

20 Q. And we can -- we can agree that any
21 drawing your office received in 2021 -- thank you
22 very much. Any drawing your office received would --
23 showed a 45-foot setback, right?

24 A. Agreed but again --

25 Q. You've answered the question, sir.

1 A. We did not review it for substantive
2 changes.

3 Q. I know what you are going to say, you
4 didn't -- you didn't review a thing, but I just asked
5 you to -- as we discussed before, I would just
6 appreciate a response of yes or no where appropriate,
7 fair enough?

8 A. Sure.

9 Q. All right. So we also can agree that the
10 review and acceptance couldn't be done by the
11 Applicant. It had to be done by some other party
12 because you are submitting it for review and
13 acceptance; would that be fair?

14 A. Yes. As I have stated before, our -- the
15 way we view reviewing and acceptance is a couple of
16 things that I don't think the Applicant would do and
17 that's to keep it in our public docket and have it
18 forward facing for the public to have access to.

19 Q. Is there anything in Condition 8 that
20 says, hey, the Staff isn't going to do one bit of
21 substantive review of this?

22 A. I don't think so.

23 Q. In fact, it says that the Applicant --
24 Applicant has to submit for review and acceptance
25 which would tell me that someone's got to do a review

1 and acceptance, and it would have to be by OPSB
2 assuming it met whatever standards exist, right?

3 A. Yeah. I have already gone over what
4 review and acceptance means to Staff.

5 Q. Okay. Is there a definition of
6 acceptance in a statute, in a rule, in the Opinion,
7 in the Joint Stipulation that you've been using?

8 A. I'm not sure.

9 Q. Okay. How were you defining acceptance?

10 A. Again, we -- we view review and
11 acceptance as one thing. Submit them to us, we make
12 sure we have a record of them for the future, forward
13 facing for the public, you know, they are done in the
14 correct format by a professional engineering firm.
15 That's review and acceptance to Staff.

16 Q. Okay. And isn't acceptance the go ahead
17 for the contractor to begin work or the owner to
18 begin work or the Applicant to begin work?

19 A. That's -- that's just -- I mean, there is
20 no other way to phrase it. That's what we did with
21 those drawings as Condition 8 requires.

22 Q. You reviewed and accepted -- accepted the
23 drawings based on your definition that you just gave.

24 A. Correct.

25 Q. Okay. And that -- is there protocol for

1 that? Do you have a definition somewhere hanging on
2 the office this is what acceptance means?

3 A. That's general practice how we have
4 always done it.

5 Q. So for 12 years acceptance of a
6 project -- in your case you've been here 12 years,
7 acceptance of a project it's basically rubber stamp
8 PDF, rubber stamp engineer seal or engineer logo, and
9 make it available to the public.

10 MR. LINDGREN: Objection. That
11 mischaracterizes his testimony.

12 ALJ WALSTRA: He can clarify.

13 A. I would disagree. I would say by that
14 point we've gone over our whole investigation and
15 process with the Applicant, and they have committed
16 to everything we wanted them to commit to in order to
17 build the project. So at that point we accept those
18 drawings for the reasons I said, because we are
19 anticipating that the drawings are done as they
20 stated they would do.

21 Q. Okay. So you are taking conversations
22 that you had in 2020 without seeing any drawings to
23 conversations in March or April of 2021 where you
24 have drawings, but you just don't review them.

25 A. I am not sure about the dates; but, no, I

1 am taking into account this is what the Applicant
2 committed to and this is what the Board is holding
3 them to.

4 Q. All right. Let's go down to -- oh, I'm
5 sorry.

6 MR. STONER: If we can go off the record.

7 ALJ WALSTRA: Yeah, we can go off the
8 record real quick.

9 (Discussion off the record.)

10 ALJ WALSTRA: Back on the record.

11 Q. (By Mr. Stoner) All right. We were
12 working through -- Mr. Holderbaum, we were working
13 through Condition 8, and we agreed on a number of
14 different things that were done. And one of the
15 things that Condition 8 says, and he says the Staff
16 shall submit -- I'm sorry. "The Applicant shall
17 submit to Staff, for review and acceptance, one set
18 of detailed engineering drawings of the final project
19 design and mapping in the form of PDF, which the
20 Applicant shall also file on the docket of this case,
21 and geographically referenced data (such as
22 ShapeFiles or KMZ files) based on final engineering
23 drawings to confirm that the final design is in
24 conformance with the certificate." Do you see that
25 there? Did I read that correctly?

1 A. I see that, yes.

2 Q. So it's a long sentence, but it's pretty
3 clear this sentence says the Staff is supposed to
4 confirm that the final design is in conformance with
5 the certificate, does it not?

6 A. It states that, yes.

7 Q. And so based upon your testimony of no
8 review of the substance of the design and what you
9 just told me your point -- your protocol is, this
10 would be an instance in where OPSB did not do its
11 job.

12 A. No. I would disagree.

13 Q. You know you didn't review the drawings,
14 right?

15 A. Well, again --

16 Q. Let's start with yes or no. We know you
17 didn't review it other than our agreement which we
18 talked about before, check the box for PDF, check the
19 box for engineered logo, right?

20 MR. LINDGREN: Objection.

21 Q. And is it publicly available?

22 MR. LINDGREN: Objection. This has been
23 asked and answered many, many times.

24 MR. STONER: I just want to make sure he
25 understands the agreement because -- that's all.

1 Q. (By Mr. Stoner) We have that agreement,
2 do we not, Mr. Holderbaum?

3 A. I don't know if we have any agreement. I
4 would say what I have stated several times is Staff
5 views review and acceptance as what I have stated
6 several times. It was done by a professional
7 engineer, in the right format, we have a record of
8 it, and it's available to the public.

9 Q. What did you do to confirm that the final
10 design was in conformance with their Certificate?

11 A. I would say that's the point is we never
12 confirmed that the change in this project was okay.

13 Q. You didn't confirm one way or the next.
14 I mean, that's pretty fair, isn't it?

15 A. Confirmed one way or the next with the
16 modification?

17 Q. You didn't confirm whether the design of
18 the project or the work that was going to be
19 happening was either going to be in conformance with
20 the Certificate or not going to be in conformance
21 with the Certificate.

22 A. I would say we never confirmed that,
23 correct.

24 Q. Right. And so that part at least into 8,
25 you know, that's -- that's -- you know, your office

1 possibly should had have done more, fair enough?

2 A. I disagree.

3 MR. STONER: Okay. I don't have anything
4 further, your Honor.

5 Thank you for your time, Mr. Holderbaum.

6 THE WITNESS: Thank you.

7 ALJ WALSTRA: Thank you. We can go off
8 the record and break for lunch then until 1:45.

9 (Thereupon, at 12:42 p.m., a lunch recess
10 was taken.)

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1 Tuesday Afternoon Session,
2 November 14, 2023.

3 - - -

4 ALJ WALSTRA: Mr. Settineri.

5 MR. SETTINERI: Thank you, your Honor.

6 - - -

7 ROBERT HOLDERBAUM

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

10 CROSS-EXAMINATION

11 By Mr. Settineri:

12 Q. Good afternoon, Mr. Holderbaum.

13 A. Good afternoon.

14 Q. I want to just continue some questions
15 that you were being asked before the break about
16 Condition 8. And so, first of all, you agree that
17 the Board speaks through its Orders?

18 A. I would agree with that, yes.

19 Q. And in this case, you would agree that
20 the Board issued a Certificate for starters for the
21 65-megawatt phase of the project, right?

22 A. It's been a while. I -- my understanding
23 is that they always issued a Certificate for both at
24 the same time.

25 Q. Okay.

1 A. Is that right?

2 Q. Well, let's just take the time to make
3 sure the record is correct. I think the Certificate
4 has been marked. If you have a copy of the EVS
5 Exhibit 5, right? If you could just look at that.
6 Let's just make sure the record is clear. And if you
7 can go to page 39 of the Order. Are you there?

8 A. I am there.

9 Q. Okay. And you see at paragraph 110?

10 A. I see what you are talking about.

11 Q. Does that refresh your memory that's --

12 A. Yes.

13 Q. -- 65 megawatts? And do you recall then
14 there was a Rehearing Application submitted?

15 A. I do.

16 Q. And do you recall that the Board on
17 rehearing then issued a Certificate for the entire
18 100 megawatt facility?

19 A. Yes.

20 Q. And subsequent to that, do you recall
21 then there was a Transfer Application that
22 transferred the 35-megawatt phase to another entity?

23 A. I -- I don't recall exactly, but I'm with
24 you.

25 Q. All right. Now, looking at Condition 8,

1 in the language that was -- so to back up and
2 refresh, your position is Staff did review and accept
3 the engineering drawings for the project, correct?

4 A. Correct.

5 Q. When I say project, we can agree I am
6 referring to the entire 100 megawatts.

7 A. Correct.

8 Q. Okay. Now, would you agree also then
9 though, however, that Staff did not confirm that the
10 final design is in conformance with the Certificate,
11 correct?

12 A. I would agree with that, yes.

13 Q. And Condition 8 would have been a
14 directive from the Board through its adoption of the
15 Stipulation, correct?

16 A. Correct.

17 Q. Okay. So Staff did not comply with the
18 directive from the Board here.

19 A. Well, I would say that we did review and
20 accept the map, the engineering drawings. In terms
21 of confirming through the Applicant that the
22 engineering drawings were in compliance with the
23 Certificate, we did not do, but I do not see anywhere
24 in here where we have to do that prior to the project
25 being completed. As you know, it's a long process.

1 Q. Are you saying that Staff doesn't have to
2 confirm that the final design is in compliance with
3 the Certificate prior to the preconstruction
4 conference? Maybe let me help you here. Is it fair
5 to say that Staff made a mistake here by not
6 confirming that the final design was in conformance
7 with the Certificate before the preconstruction
8 conference; is that a fair assessment?

9 A. No. I don't think so. I would say, you
10 know, we confirmed that we reviewed and accepted it.
11 And at the same time I would also say we did not
12 confirm that, you know, that the changes in the
13 setbacks were in conformance with the Certificate as
14 well.

15 Q. Just to be clear for the record, Staff
16 did not confirm that the final design is in
17 conformance with the Certificate, right?

18 A. I would say that's correct.

19 Q. And that was a directive from the Board
20 to complete, correct?

21 A. Except we did confirm that we reviewed
22 and accepted it.

23 Q. Okay. Now, you were involved in
24 negotiation of the Stipulation; is that correct?

25 A. I can't recall exactly, but I am sure I

1 was privy to it.

2 Q. Isn't it standard for -- now, you were
3 the project manager from Staff of this project,
4 right?

5 A. Correct.

6 Q. Isn't it every time that a Stipulation is
7 negotiated, the Staff management is involved in that,
8 correct?

9 A. I would -- I would say that's mostly
10 correct, that level of involvement, you know, varies,
11 depends on the Stipulation, can be extensive.

12 Q. Does that refresh your recollection you
13 were involved in the negotiation of the Stipulation?

14 A. Does it refresh my memory of it? I would
15 say no. I mean, I can't recall exactly what I did
16 for the negotiations of the stip.

17 Q. You were involved in some aspect of it,
18 right?

19 A. I am sure I was involved in some aspect.

20 Q. Okay. Now, the change, the use of the 45
21 setback changed the layout of the project, correct?

22 A. I would say that, yeah. That's a layout
23 change.

24 Q. Okay. And so let's continue to look at
25 this condition. We have -- after we -- we talked

1 about the sentence -- the first sentence and
 2 talked -- asked -- required staff to confirm that the
 3 final design is in conformance with the Certificate.
 4 Then it says "Mapping shall include the limits of
 5 disturbance, permanent and temporary infrastructure
 6 locations, areas of vegetation removal and vegetative
 7 restoration as applicable, and specifically denote
 8 any adjustments made from the siting detailed in the
 9 application." Do you see that?

10 A. I see that.

11 Q. Okay. Now, I know counsel for EVS went
 12 through a series of drawings with you. You would
 13 agree that the changes to the setback were in all the
 14 drawings submitted to Staff, correct?

15 A. I -- I would agree that the 45-foot
 16 setbacks were labeled in the drawings, but they were
 17 not made explicit to Staff.

18 MR. SETTINERI: May I approach, your
 19 Honor?

20 ALJ WALSTRA: You may.

21 MR. SETTINERI: If I may use that
 22 demonstrative exhibit.

23 MR. STONER: Absolutely. I don't know
 24 which one you want. They are all going to be
 25 relatively the same. Just let us know.

1 MR. SETTINERI: I want to use...

2 Q. (By Mr. Settineri) So, Mr. Holderbaum, I
3 am going to look at a prior exhibit that was marked
4 by EVS, and it's a sheet labeled C-201.

5 ALJ WALSTRA: I think we might need the
6 date on there too.

7 MR. SETTINERI: This is the February 5,
8 2021, document.

9 MR. STONER: The other ones are below
10 that under the table there. If you want the later
11 ones, they are underneath.

12 MR. GRADY: Exhibit 8?

13 ALJ WALSTRA: Exhibit 8.

14 MR. STONER: Yes.

15 Q. (By Mr. Settineri) And, well, these -- I
16 am going to go and use another drawing that was
17 provided here. This is sheet C-201 dated May 26,
18 2021. But the point of me coming up here to this
19 drawing, you would agree that a 45 equipment setback
20 is called out on these drawings.

21 A. I wouldn't agree with that phrasing. I
22 would say that is on the drawings. I wouldn't say
23 it's explicitly called out to Staff.

24 Q. You would agree the wording is 45
25 equipment setback.

1 A. I would agree it says that.

2 Q. Okay. And if you can, tell me on this
3 drawing, how many times is the 45 equipment setback
4 shown, please?

5 A. Several times.

6 Q. Subject to check?

7 A. I see two from here.

8 Q. Okay. We're about 4 feet away, right?
9 4 feet away?

10 A. Sure.

11 Q. One of the panel variances is about
12 3 feet, right?

13 A. I'm not sure exactly.

14 Q. Okay. I'll bring this to you.

15 A. Do you want me to count?

16 Q. Yes, please, just for the record.

17 A. I see four times it says 45-foot setback.

18 Q. Approximately how long did it take for
19 you to do that?

20 A. 20 seconds.

21 Q. Okay. So that siting adjustment was
22 called out on the drawings submitted to Staff,
23 correct?

24 A. I disagree.

25 Q. And you disagree because you think it

1 should have been more explicit.

2 A. I think common practice in almost every
3 case we ever see with a substantive material change
4 like that, there would be a lot more than just
5 small -- small phrasing on maps.

6 Q. Okay. In -- for this proceeding, would
7 you agree that whether the project is in compliance
8 depends on the facts in the field as -- also as to
9 what the applicable documents require such as the
10 Stipulations, correct?

11 A. Can you rephrase that?

12 Q. Sure. Let me try it a different way.
13 You would agree that whether the procurement -- that
14 the Board in determining whether the project is in
15 compliance would consider the conditions in the Joint
16 Stipulation and the Supplemental Joint Stipulation,
17 correct?

18 A. I believe that's correct.

19 Q. Okay. So let's go back to the sentence
20 that I just read. It says "mapping," right? Would
21 you agree that -- a drawing similar to what we just
22 looked at is a map?

23 A. I would agree that's a map, yes.

24 Q. Okay. "Shall include the limits of
25 disturbance, permanent and temporary infrastructure

1 locations, areas of vegetation removal and vegetative
2 restoration as applicable, and specifically denote
3 any adjustments made from the siting detailed in the
4 application." Do you see that?

5 A. I do.

6 Q. And would the map that I showed you, you
7 agree that does not only show but especially calls
8 out a 45 setback from the equipment?

9 A. I would agree that it says that. I would
10 disagree that it denotes the change.

11 Q. Okay. And it's on the map.

12 A. It's on the map, but it doesn't reveal to
13 Staff there is a change there.

14 Q. And when you say reveal a change, you
15 would -- you would want to see 100 versus 45?

16 A. I would want the Applicant however they
17 deem fit to explicitly make sure Staff is aware of
18 the change and does its due diligence and everything
19 that needs to be done to evaluate that change.

20 Q. All right. And the Board is going to
21 have to interpret that sentence here as to how it
22 applies, correct?

23 A. The sentence I just said?

24 Q. No, the sentence I just read, "Mapping
25 shall include."

1 A. I guess so, yes.

2 Q. Okay.

3 MR. SETTINERI: Your Honor, if I may, I
4 would like to approach. I know the Staff Report is
5 part of the record, but I was thinking I might as
6 well mark it again.

7 ALJ WALSTRA: We can mark it.

8 MR. SETTINERI: So I am going -- my
9 number is going to be a little odd, your Honor, I
10 think, here. I am going to go ahead and number this
11 NMS Exhibit 22.

12 ALJ WALSTRA: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Settineri) While I am marking
15 these exhibits, Mr. Holderbaum, you agree the Joint
16 Stipulation and Supplemental Stipulation modified the
17 recommendations in the Staff Report, right?

18 A. I believe that's correct.

19 Q. And by signing the Stipulations -- both
20 stipulations, Staff agreed to the terms of that
21 Stipulation; is that a fair assessment?

22 A. I believe that's correct.

23 Q. Now, do you recall Condition 8 from the
24 Staff Report differed from what ended up in the Joint
25 Stipulation?

1 A. I don't recall exactly how it changed.

2 Q. And that's why I am marking the Staff
3 Report. Mr. Holderbaum, if you could also turn to
4 the Joint Stipulation which was marked as EVS
5 Exhibit 6 and let's just compare Condition 8s so for
6 the record we can show the difference.

7 A. I'm there.

8 Q. Okay. Now, if you compare those two, the
9 primary point I wanted to make here, Mr. Holderbaum,
10 you look at the Joint Stipulation, all right, look at
11 the last two sentences. Are you there?

12 A. I see them.

13 Q. And tell me if those last two sentences
14 were in Staff's Condition -- original Condition 8.

15 A. They were not.

16 Q. So that was a negotiated change to the
17 Staff's recommended conditions, correct?

18 A. It appears that way, yes.

19 Q. And if you read that two sentences, "If
20 any changes to the project layout are made after the
21 submission of final engineering drawings, the
22 Applicant shall provide all such changes to Staff in
23 hard copy and as geographically referenced electronic
24 data. All changes are subject to Staff review to
25 ensure its compliance with all conditions of the

1 Certificate prior to construction in those areas."

2 Do you see that?

3 A. I see that.

4 Q. So Condition 8 contemplates changes to
5 the project layout after submission of final
6 engineering drawings, correct?

7 A. It says that, yes.

8 Q. All right. And Condition 8 also
9 contemplates changes to the siting detailed in the
10 Application and that can be done when final
11 engineering drawings are provided but does require
12 them to be -- does require the mapping to
13 specifically denote any adjustments, correct?

14 A. It appears to say that, yes.

15 Q. Okay. Are you familiar with the Board's
16 rules for applications?

17 A. Broadly, yes. I couldn't tell you --

18 Q. Generally -- I'm sorry.

19 A. Generally.

20 Q. Okay.

21 MR. SETTINERI: Your Honor, if I may
22 approach?

23 ALJ WALSTRA: You may.

24 MR. SETTINERI: I want to mark as NMS 23
25 the copy of Board Rule 4906-3-13.

1 ALJ WALSTRA: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Settineri) While I am doing this,
4 Mr. Holderbaum, are you aware that the Board's rules
5 include conditions that would apply to a certificate
6 holder post certificate issuance?

7 A. I am.

8 Q. Okay. And are you aware that there is a
9 rule that addresses changes to project layout?

10 A. I'm aware there is. I couldn't reference
11 it to you, but I am sure you are about to give it to
12 me.

13 Q. I will -- and I am marking that now so we
14 can talk about it.

15 Mr. Holderbaum, I provided you a rule
16 from the Board. Would you agree this is a copy of a
17 Board rule titled "Construction and Operation" and
18 it's Rule 4906-3-13?

19 A. It appears that way, yes.

20 Q. Okay. Now, if you look at part (D) of
21 the rule, you'll see here that it says "If any
22 changes are made to the project layout after the
23 certificate is issued, all changes shall be provided
24 to staff in hard copy and as
25 geographically-referenced electronic data." So let's

1 stop there. That happened in regards to the New
2 Market solar project, correct?

3 A. We can agree or disagree on that. Again,
4 there -- 45-foot setback is shown in the maps. The
5 changes to the project facility are not explicitly
6 called out to make Staff aware of it.

7 Q. Okay. You agree -- well, we'll stop
8 there. The next sentence "All changes outside the
9 environmental survey areas and any changes within
10 environmentally-sensitive areas are subject to staff
11 review and acceptance prior to construction in those
12 areas." Do you see that?

13 A. I do.

14 Q. Now, you will agree with me here that the
15 alleged -- the exceedances we are addressing today,
16 those are all inside the project fence line, correct?

17 A. Right. That's correct.

18 Q. And that none of them would be outside
19 the environmental survey areas, correct?

20 A. I believe that's true, yes.

21 Q. And that's because typically
22 environmental surveys are done for the entire project
23 boundary.

24 A. Yeah, typically.

25 Q. And sometimes beyond the boundary

1 depending, correct?

2 A. Correct.

3 Q. Yeah. And then here we don't have any
4 changes within environmentally-sensitive areas
5 either, do we?

6 A. Well, I mean, off the top of my head, I
7 don't know of any, but Staff didn't review -- it's
8 too hard for Staff to know that without reviewing the
9 project in its entirety with the 45-foot setback.

10 Q. Let me ask a better question. In terms
11 of the set -- where the setback, alleged setback
12 exceedances, none of those are in
13 environmentally-sensitive areas, correct?

14 A. I can't speak to that. I'm not sure.

15 Q. Okay. All right. So -- but you agree
16 under this rule that's promulgated by the Board a
17 certificate holder can make changes to the project
18 layout after the certificate is issued so long as all
19 changes are provided to Staff in hard copy and as
20 geographically-referenced electronic data, correct?

21 A. That's what this states, yes.

22 Q. Okay. That would be a yes to my
23 question, right, beyond what it just states?

24 A. I believe so, but I believe Staff would
25 have been -- would have had to have been made aware

1 and reviewed those changes.

2 Q. Now, if Staff would have confirmed, taken
3 the time to confirm the final design in relation to
4 what Staff's viewpoint was as to setbacks, Staff
5 would have discovered this issue, wouldn't they?

6 A. Can you repeat that?

7 Q. Yes. If Staff would have taken the time
8 to confirm that the design drawings sent to it were
9 in conformance with the Certificate conditions, you
10 would have expected Staff to discover the issue.

11 A. Well, again, Staff did what I believe
12 they were supposed to do and reviewed and acceptance
13 of that -- of those drawings. It's not our job to do
14 a substantive technical review of those maps.

15 Q. I am going to push back on that. Go back
16 to Condition 8 though. I know we've covered this,
17 but I am going to push back on that answer because
18 doesn't Condition 8 require staff to do more than
19 just review and accept, right? We talked about that.
20 Doesn't it require Staff to confirm that the final
21 design is in conformance with the Certificate?

22 A. It does state that, yes.

23 Q. Okay. So going back to my question, if
24 Staff would have taken the time to confirm that the
25 final design's in conformance with the Certificate,

1 if Staff had an issue with the change in the siting
2 and the setback, it would have -- it would have
3 discovered it --

4 A. Again --

5 Q. -- or should have?

6 A. If Staff would have done a technical
7 review of the mapping, we could have caught it.
8 Staff did not do that. We did in my opinion review
9 and accept the mapping as we are required to do.

10 Q. And in regards to review and accept of
11 mapping, it's Staff's practice not to provide
12 anything in writing back to Applicants in regards to
13 engineering drawings; is that correct?

14 A. I can't speak for all Staff but that's
15 the general practice that I do.

16 Q. And a lot of communications are done
17 verbally often at preconstruction conferences; is
18 that fair?

19 A. Sure, that's fair.

20 Q. Do you believe -- well, do you know if
21 there were -- were there two preconstruction
22 conferences for this project? Do you recall?

23 A. I cannot recall. Typically we have at
24 least two. One is for, you know, early stages, tree
25 clearing, that sort of thing.

1 Q. Okay. And then there would be a second
2 preconstruction conference.

3 A. Yeah. Typically today there is a lot
4 more, but I can't recall exactly what happened with
5 this one.

6 Q. And as a project manager, would -- you've
7 participated in numerous reconstruction conferences,
8 right?

9 A. Sure.

10 Q. And so do you typically then provide a
11 green light to the project to go forward with
12 construction?

13 A. As long as they provided everything we
14 need, yes.

15 Q. And that's usually done verbally?

16 A. No. I mean, the preconstruction
17 conferences there is no like signoff at the end that
18 says, yes, go ahead or, no, you can't go ahead.

19 Q. Okay. Let me ask the question then, when
20 would you tell a project to go ahead with
21 construction then?

22 A. Typically I would never tell a project
23 they could or couldn't go ahead. I mean, there's --
24 there's steps each project has to do before they can
25 start certain phases of construction put out by the

1 Board so.

2 MR. SETTINERI: Your Honor, if I may
3 approach? I am just going to mark one more exhibit.

4 ALJ WALSTRA: You may.

5 MR. SETTINERI: This is Rule 4906-3-14
6 Preconstruction Requirements.

7 ALJ WALSTRA: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. Settineri) Again, Mr. Holderbaum,
10 you would agree this Board rule would address
11 post-certificate activities by a certificate holder?

12 A. Yeah, I believe so. I am sure it doesn't
13 cover all of them.

14 Q. And you see it's actually a double-sided
15 document. You see the back as well. First of all,
16 you will see part (B) of the rule does address the
17 Applicant has to conduct a preconstruction
18 conference, right?

19 A. I see that, yes.

20 Q. Okay. Part (C) has "At least 30 days
21 prior to the preconstruction conference, the
22 applicant shall submit to staff one set of detailed
23 engineering drawings of the final project design,
24 including associated facilities and construction
25 access plans." I'll continue reading for the record.

1 "The engineering drawings shall be at least as
2 detailed and complete, so that staff can determine
3 that the final project design is in compliance with
4 the certificate. The final project layout shall be
5 provided in hard copy and as
6 geographically-referenced electronic data. The
7 drawings shall include references at the locations
8 where the applicant and/or its contractors must
9 adhere to a specific avoidance or mitigation measure
10 in order to comply with the certificate." Do you see
11 that?

12 A. I see that, yes.

13 Q. Now, do you -- do you believe it's
14 appropriate to have this detailed engineering
15 drawings at least 30 days prior to the
16 preconstruction conference?

17 A. I mean, I really don't have an opinion on
18 that so.

19 Q. Would you agree with me that that 30-day
20 requirement likely is meant to provide Staff with
21 time to conduct its review of the engineering
22 drawings?

23 A. Conduct the review and acceptance as I
24 have described that we do, yes. Staff has, as you
25 know, multiple projects going on at all times, so we

1 are not just working on one project where we can put
2 a whole month together to review everything they
3 submit every day.

4 Q. In future negotiations, you personally,
5 would you be okay to have engineer drawings submitted
6 to you one day before the preconstruction conference
7 so you can make sure there's a professional
8 engineering stamp as well as they are in a PDF
9 format?

10 A. That's not something that's up to me.

11 Q. Okay. So you don't have an opinion on
12 the 30-day requirement here that the Board imposed.

13 A. I mean, my opinion is the Applicants have
14 to conform to that.

15 Q. All right.

16 MR. COLEMAN: Excuse me, counsel. Was
17 there an exhibit number on that one?

18 MR. GRADY: 24.

19 MR. SETTINERI: Did I mark that one, your
20 Honor?

21 ALJ WALSTRA: I said so marked.

22 MR. SETTINERI: NMS Exhibit 24.

23 MR. COLEMAN: Just so I am awake down
24 here.

25 MR. SETTINERI: No, no. Kept me awake.

1 Kept me awake.

2 Q. (By Mr. Settineri) Going back to the --
3 we were doing a comparison between the Stipulation
4 and the Staff Report, okay?

5 A. You need me to get the Staff Report?

6 Q. Yeah. Let's get those out again and
7 finish that line of questioning. On Condition 8 we
8 talked about, you agree that the last two sentences
9 of Section 8 were not in the original Staff Condition
10 8 in the Staff Report, right?

11 A. Yes.

12 Q. And just for the record then if you look
13 at the Staff Report in the middle of Condition 8,
14 there is a sentence that says "All final geotechnical
15 study results shall be included in this submission."
16 Do you see that sentence?

17 A. I do.

18 Q. Okay. And in the Stipulation, that
19 appears to have been moved down. Do you see that
20 still there but just in a different location? Do you
21 agree?

22 A. I believe so, yes.

23 Q. Subject to check, I believe those are all
24 the differences on that condition. But again, the
25 Board approved Condition 8, correct?

1 A. Correct.

2 Q. And so if the Board interprets Condition
3 8 -- the Board has ultimate decision on interpreting
4 Condition 8, correct?

5 A. Correct.

6 Q. And the Board interpretation could differ
7 from your interpretation, correct, or Staff's
8 interpretation?

9 A. Correct.

10 Q. Okay. Now, you're the project manager
11 for this project.

12 A. Correct.

13 Q. And you are the project manager for
14 another utility-scale solar project that is let's say
15 next door to this project; is that right?

16 A. Correct.

17 Q. And that's the one that you were
18 referencing earlier had 50-foot setbacks; is that
19 right?

20 A. I didn't reference it, but I think it was
21 brought up.

22 Q. Okay. You are aware of that?

23 A. I'm aware.

24 Q. Okay. So and as -- so you were the
25 project manager from the time the application was

1 filed all the way until today; is that fair to say?

2 A. That's fair.

3 Q. Okay. And you would agree that Staff --
4 other than the issue in this proceeding that Staff --
5 that we are addressing, Staff has not had to address
6 any material issues related to the New Market solar
7 project, correct?

8 A. Can you repeat that?

9 Q. Yeah. Staff has not had to address any
10 significant issues with the New Market solar project,
11 is that a fair assessment, other than the
12 noncompliance inquiry report that we are dealing with
13 today?

14 A. Yeah. I mean, like most projects we've
15 received plenty of complaints.

16 Q. Okay. Fair enough. Now, you agree --
17 you agree that the Board did not expressly impose a
18 setback requirement on this project, correct?

19 A. No. I would disagree. I think -- I
20 think Condition 1 states the Applicant has to abide
21 by everything they commit to in the Application. And
22 we subsequently checked on them with the Data Request
23 to verify they -- they told us again that they were
24 going to abide by the 100-foot setback. So I would
25 say the Board is imposing that.

1 Q. Let me just put it this way, in the
2 Opinion and Order from the Board, there is no
3 language from the Board that says we are imposing a
4 100-foot setback of the project, right?

5 A. Not explicitly but I do believe Condition
6 1 would impose that.

7 Q. I know your interpretation, but I just
8 want -- for the record there is nothing -- the Board
9 did not expressly set forth in its Opinion and Order
10 any setback for the project that is -- it is required
11 to adhere to.

12 A. I mean, in my opinion that is expressly.

13 Q. And that's because you are saying it's
14 through Condition 1.

15 A. Correct.

16 Q. Okay. Let's look at the Joint --
17 Supplemental Joint Stipulation EVS Exhibit 7.

18 A. Do you want me to go to Condition 1?

19 Q. Yeah. Let's just look at the page 2 of
20 EVS Exhibit 7 which is the supplemental Joint
21 Stipulation and Recommendation. You'll see having "1
22 replace Condition 1 with the following," and you'll
23 see "The Applicant shall install the facility,
24 utilize equipment and construction practices, and
25 implement mitigation measures as described in the

1 application and as modified and/or clarified in
2 supplemental filings, replies to data requests, and
3 recommendations in the Staff Report of Investigation,
4 as modified by the Joint Stipulation and
5 Recommendation or as further modified by the
6 Supplemental Joint Stipulation and recommended --
7 Recommendation." Do you see that?

8 A. I do.

9 Q. And the Joint Stipulation Condition 8 did
10 modify the Staff Report of Investigation, correct?

11 A. It changed that condition from what was
12 in the original, yes.

13 Q. At page 2 to 3 of your testimony you say
14 that the setback limitation of 100 feet was described
15 throughout the course of the Board's record. And it
16 may be paraphrasing there.

17 A. Okay. Sorry. I just got it.

18 Q. Bottom of page 2, line 22, the sentence
19 starts on page 2, "This setback limitation was
20 described throughout the course of the Board's record
21 including," and then you list three components. Do
22 see that?

23 A. I do.

24 Q. All right. Now, and to close out the
25 questioning on this to -- for the record again, are

1 there any other parts of the record that you believe
2 describe the setback limitation other than what's in
3 your testimony?

4 A. I cannot recall any others.

5 Q. Okay. Would the Staff Report be one part
6 of the record?

7 A. Yes.

8 Q. Okay. Does -- and the Staff Report has
9 language on the setback.

10 A. The Staff Report does have language.

11 Q. Okay. Anything else beyond that?

12 A. Not that I am aware of.

13 Q. Now, it's Staff's position that the
14 equipment for the facility is subject to a 100-foot
15 setback public road centerlines; is that correct?

16 A. That is correct, yes.

17 Q. Okay. And that setback would not be from
18 the edge of the public right-of-ways, correct?

19 A. I don't -- I don't believe so. I know
20 today we do it by the edge. I am not sure if it was
21 the same back then.

22 Q. Do you recall confirming to the project
23 that in an e-mail, that the setbacks are 100 feet to
24 the middle of the road?

25 A. I -- I recall the -- us asking a Data

1 Request for that and Applicant confirming that to us.

2 Q. Okay. I'll come back to that. Now,
3 let's see, if you can go to NMS 22. Let's go back to
4 the Staff Report real quick. Look at that so
5 everyone can see it. Subject to check, I believe the
6 only setback reference is on page 6, but if you look
7 at page 6 under "Project Description," you see that
8 paragraph? Can you see the last sentence?

9 A. I see it.

10 Q. And that sentence reads "The Applicant
11 would ensure that solar modules are setback a minimum
12 of 100 feet from adjacent references and public road
13 centerlines," correct?

14 A. I see that.

15 Q. So the setback that you believe should
16 apply here would be -- from the middle of the road to
17 the solar panels it should be 100 feet.

18 A. Correct.

19 Q. Okay. Earlier you were asked some
20 questions about the February 2021 drawings that were,
21 I believe, provided through a public records request
22 to EVS. Do you recall questions about that?

23 A. I do.

24 Q. So to clarify, are you aware -- are you
25 aware of whether any drawings with those February

1 dates were submitted to Staff on or around February
2 of 2021?

3 A. I'm aware they were, yes.

4 Q. Okay. How are you aware?

5 A. Well, recently I was -- I was part of a
6 public records request. I went back and I found them
7 and they are also in the docket of the case.

8 Q. And where are they in the docket of the
9 case?

10 A. I figured they would be in the case
11 docket.

12 Q. I'm sorry?

13 A. Somewhere in the case docket.

14 Q. You don't recall?

15 A. I don't recall.

16 Q. Okay. When you did help for the public
17 records request, was there any correspondence with
18 those documents, the drawings?

19 A. As far as my records show, they were just
20 sent to me and there was no correspondence past that.

21 Q. Was there an e-mail provided to you with
22 them?

23 A. Provided to me? Yes.

24 Q. And who was the e-mail from?

25 A. Oh, I'm not sure exactly. Probably I

1 would say at the time -- well, I don't know. It was
2 either maybe someone from Hecate -- I am not sure if
3 it's changed hands yet.

4 Q. You are aware March, middle of March,
5 around March 19, there was a very large upload to the
6 share -- the Staff ShareFile site; is that right?

7 A. Yes.

8 Q. And just so I know, what is a file site
9 for people like me?

10 A. What's a file site?

11 Q. Yeah.

12 A. It's a secure site for us. It's a secure
13 site where Applicants can upload files.

14 Q. And when those files are loaded to the
15 file site, is that what you call it? Share site?

16 A. I am not sure what it's actually titled.

17 Q. Are those files still there today on that
18 site for all projects?

19 A. I believe so.

20 Q. Okay. And so Staff uses that I call it a
21 share site to upload documents because KMZ files are
22 very large; and so for large submissions, Staff uses
23 that share site.

24 A. That's one of the uses, yes.

25 Q. You recall on or around March 19, 2021,

1 that a large upload was done for both phases of the
2 New Market solar project that included several
3 drawings?

4 A. Correct.

5 Q. Okay. And you recall receiving e-mails
6 from at the time the New Market solar project's
7 counsel notifying you of the filings and the uploads?

8 A. I don't recall exactly, but it wouldn't
9 surprise me if they did.

10 Q. All right.

11 MR. SETTINERI: Your Honor, if I may, we
12 will mark as New Market -- sorry, NMS Exhibit 25,
13 it's an e-mail top dated March 23, 2021, from Danelle
14 Gagliardi to Mr. Holderbaum.

15 ALJ WALSTRA: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. SETTINERI: Thank you.

18 Q. (By Mr. Settineri) Mr. Holderbaum, can
19 you identify what I have handed to you that's been
20 marked as -- marked NMS Exhibit 25?

21 A. It looks like an e-mail from
22 Ms. Gagliardi to me.

23 Q. Okay. And if we go -- it's an e-mail
24 chain with two e-mails, right?

25 A. Yes.

1 Q. Okay. If we go to the first e-mail in
2 the chain meaning at the bottom, March 19 at
3 4:48 p.m., it's an e-mail from her, Danelle
4 Gagliardi, G-A-G -- G-A-G-L-I-A-R-D-I, again dated
5 March 19, 4:48 p.m., and you see that -- I'll
6 paraphrase, attaching a preconstruction notice letter
7 and noting that they have uploaded the relevant
8 ShapeFiles and other documentation to the OPSB
9 ShareFile site. Do you see that?

10 A. I see that, yes.

11 Q. And so that -- that would have been --
12 that would have included engineering drawings for the
13 project, correct, KMZ files?

14 A. I am not sure exactly, but I assume so
15 because it was the same date.

16 Q. And then the first e-mail in the chain or
17 going back up further in time March 23 at 8:48 p.m.,
18 she e-mails you again noting they made several
19 filings in the docket today regarding compliance with
20 Conditions 8 -- we have uploaded -- I'll para -- I'll
21 skip ahead to the last sentence. "We have uploaded
22 the relevant ShapeFiles and other associated
23 documentation to the OPSB ShareFile site, as well as
24 courtesy copies of the corresponding documents for
25 New Market Solar II." Do you see that?

1 A. I do.

2 Q. Okay. So now at the time that this was
3 done, you agree, this is March 23, the 65-megawatt
4 phase was being treated as jurisdictional. The
5 Board --

6 A. I'm not sure on the dates, but if it was
7 before the rehearing, then yes.

8 Q. But it also indicates at that same time
9 courtesy copies of the corresponding documents for
10 the 35-megawatt phase were provided, correct?

11 A. The New Market 1 and New Market 2.

12 MR. SETTINERI: For your Honors, in
13 Mr. Otarov's testimony, just for the record, there
14 was a name change internally as to which one was 1
15 and 2 later on, so you will see a certain point the
16 names flip, but at this time New Market Solar 2 was
17 the 35-megawatt phase I will represent to the Bench
18 on that. Okay?

19 Q. (By Mr. Settineri) All right. You can
20 put that to the side. Thank you. You would have
21 attended all the preconstruction conferences for the
22 project, correct?

23 A. Most likely, unless I had something come
24 up and I couldn't attend.

25 Q. Okay. There was -- we talked earlier

1 today there were questions about I guess I'll say
2 Staff's practice of how it reviews and accepts final
3 engineering drawings, right?

4 A. Correct.

5 Q. Okay. Now, is that a practice consistent
6 with all project managers within the Staff to your
7 knowledge?

8 A. To my knowledge, yes.

9 Q. Okay. How did you -- how did you become
10 aware of that practice?

11 A. Well, I don't recall exactly how I became
12 aware of it. It's just been how I was taught to do
13 the job when I started.

14 Q. Who taught you to do the job?

15 A. Several people.

16 Q. So for this proceeding, who at Staff
17 would have reviewed the engineering drawings for the
18 project?

19 A. Again, speaking about reviewing them,
20 same way, I am. In terms of purely administratively
21 reviewing them, I did that.

22 Q. Okay. So we know that you did that, and
23 you checked for the professional engineering firm
24 stamp, correct?

25 A. Yes.

1 Q. And then you looked at the format to make
2 sure they were PDF, that you would be able to use if
3 you needed to put them on the docket or something
4 like that.

5 A. Yeah. Make sure they open in the docket
6 and, yeah, exactly.

7 Q. Okay. Now going back to Condition 8 real
8 quick in that Stipulation, please, on Condition 8,
9 you agree that Condition 8 only required -- it
10 requires the Applicant to submit to Staff for review
11 and acceptance. Do you see that in Condition 8?

12 A. I see that, yes.

13 Q. And submission is typically done either
14 via e-mail or the share site, right?

15 A. Or to the case docket.

16 Q. Or three things, case docket.

17 A. Sure.

18 Q. And the condition though also says
19 further on "which the Applicant shall also file in
20 the docket in this case," right?

21 A. Yes, it does.

22 Q. You would agree with me, probably more so
23 the older certificates, that there are -- some often
24 may not be a requirement to file drawings in the
25 docket.

1 A. Yeah. I mean, I am not aware off the top
2 of my head. I am sure there were older cases that
3 may not have required that.

4 Q. Are you familiar with Nestlewood solar
5 project?

6 A. Not -- I don't believe I worked on that
7 so generally.

8 Q. Let me ask you this question, is it your
9 testimony today that Staff only reviews the
10 engineering drawings for projects that are submitted
11 post-certificate and prior to preconstruction
12 conference only to ensure the drawings are signed and
13 sealed by a professional engineer and that the
14 drawings are in a format that could be filed in the
15 docket?

16 A. Correct. And, I mean, we use them to
17 have our record in case something comes up in the
18 future.

19 Q. And that's for all projects today.

20 A. That's my understanding, yes.

21 Q. Are you aware of any discussions
22 internally at Staff to change that practice?

23 A. I am not.

24 Q. Now, I know you reviewed the drawings for
25 administrative compliance as you called it. Who else

1 are you aware at Staff that would have reviewed the
2 New Market solar project engineering drawings?

3 A. I'm not -- I am not aware that anybody
4 else did. I mean, unless you're talking
5 post-self-reporting.

6 Q. Right. No, I am not. Before
7 self-reporting. You mentioned the GIS department.
8 Who is in the GIS department?

9 A. Oh, man, bad with last names. Justin, I
10 can't remember his last name. Guy named Sam
11 Richards, Adam. Gosh, and Meilan.

12 Q. Anyone else you can think of?

13 A. That's all I can think of right now.

14 Q. And in that GIS department, do they have
15 CAD software?

16 A. Honestly I'm not sure.

17 Q. They have the ability though to take KMZ
18 files and the electronic data for the mapping and put
19 the maps up on a screen, right?

20 A. Yes.

21 Q. When you put the maps up on the screen,
22 they are able to take measurements and things of that
23 nature, right?

24 A. They are.

25 Q. And did -- post the self-report -- the --

1 the New Market solar self-reported this issue to
2 Staff, right?

3 A. Correct.

4 Q. Are you glad they did?

5 A. Yes.

6 Q. And did you work -- did you -- did Staff
7 do any review of the electronic mapping
8 post-self-reporting by the project?

9 A. I did not do any, but it wouldn't
10 surprise me if some Staff did, yes.

11 Q. Okay. So Staff today has the capability
12 to take electronic mapping data and can check
13 setback -- or distances from middle of roads to where
14 the panels are, many different features of the
15 project, correct?

16 A. Correct.

17 Q. Now, page -- if you could turn to page 4
18 of your testimony, please. At page 4, line 5, you
19 say that -- actually I am going to -- well, I will
20 read the sentence. "Consistent with its practices,
21 Staff reviewed the final engineering drawings to
22 verify that the drawings were created by a
23 professional engineering firm and in a format that
24 the public could access on the case docket. Staff's
25 treatment of this filing (verification of formatting

1 consistent with filing on case docket) is consistent
2 with its treatment with the numerous other condition
3 compliance filings that occurred in this case between
4 March 19 and April 14, 2021." Do you see that?

5 A. I do.

6 Q. How did you come up with the dates of
7 March 19 through April 14?

8 A. I would have to go back and look at the
9 docket, but I believe that was when the Applicant was
10 submitting documents for condition compliance.

11 Q. And can you identify for me any
12 compliance filing that would be consistent with the
13 treatment of the engineering drawings?

14 A. In terms of Staff just reviewing it and
15 accepting the documents, is that what you stated?

16 Q. Well, let me go back. When you say
17 consistent with its treatment, what do you mean by
18 treatment?

19 A. I would say exactly what I just said. We
20 received what the conditions require us to receive,
21 and we -- and we keep them for a case record and make
22 sure they are formatted correctly. And again, they
23 are very helpful for Staff for future use if
24 something would come up.

25 Q. If you could go to EVS Exhibit 6 which is

1 the Joint Stipulation. Let's look at a couple
2 conditions.

3 A. Okay.

4 MR. SETTINERI: Your Honor, can you hear
5 me okay?

6 ALJ WALSTRA: Yep.

7 Q. (By Mr. Settineri) So if you look at
8 Condition 12 on page 4 of the Joint Stipulation and
9 Recommendation, now I will give you a second to
10 review that condition. It is quite long.

11 A. Okay. I'm there.

12 Q. If you could take a moment just to review
13 that, please. And I will tell you I am going to
14 focus on the last sentence.

15 A. Yeah. I'm there.

16 Q. Okay. So obviously the last sentence
17 here says "The Applicant shall provide the plan to
18 Staff for review and confirmation that it complies
19 with this condition." So as to the landscape plan,
20 what does Staff do?

21 A. I would say Staff views, review and
22 confirmation that it is a more thorough review, more
23 thorough review.

24 Q. And what does that review consist of by
25 Staff?

1 A. I would say we review the plan to make
2 sure it abides by all the conditions and everything
3 the Applicant committed to.

4 Q. And who -- so for this New Market solar
5 project, who did that for -- who worked on Condition
6 12 compliance?

7 A. I'm not sure off the top of my head. I
8 probably would have been involved. We have a -- you
9 know, a new compliance division too that helps out
10 with things like that so.

11 Q. Would Mr. O'Dell have been involved in
12 reviewing it for compliance?

13 A. I'm not sure.

14 Q. Okay. I have to ask the question, why
15 would Staff do a thorough review for Condition 12 but
16 not for Condition 8?

17 A. I don't really have an opinion on that.

18 Q. You don't have an answer for it.

19 A. No.

20 Q. Let's go to Condition 22. Tell me when
21 you're there.

22 A. I'm there.

23 Q. And again, if you look at the -- you take
24 your time, if you would like, to review the
25 condition, but I am going to focus on the last

1 sentence that states "The Applicant shall detail this
2 coordination as part of a final transportation
3 management plan submitted to Staff prior to the
4 preconstruction conference for review and
5 confirmation by Staff that it complies with this
6 condition." Do you see that?

7 A. I do.

8 Q. All right. And was that -- how does
9 Staff conduct that review and confirmation under this
10 type of condition?

11 A. I would say it's on par with the last
12 condition we discussed.

13 Q. Which was the landscape plan so it's more
14 detailed and thorough.

15 A. Yeah. Just to verify they are meeting
16 the condition.

17 MR. STONER: I apologize for
18 interrupting. Did he say it's on par with the last
19 condition?

20 MR. SETTINERI: Can you reread that
21 answer, please?

22 (Record read.)

23 MR. STONER: I appreciate it. Sorry for
24 the interruption.

25 Q. (By Mr. Settineri) Just for the record,

1 that last condition related to the landscape plan.

2 A. Correct.

3 Q. Okay. And look -- while we're there,
4 look at Condition 23. It says "At least 30 days
5 prior to the preconstruction conference, the
6 Applicant shall provide the status," and I will
7 paraphrase after this, "of each water well in the
8 project area." Why 30 days prior to the
9 preconstruction conference would that -- why that
10 timing to provide that information to Staff? Any
11 idea?

12 A. I'm not sure exactly. It's just
13 consistent with our other conditions.

14 Q. In fact, if you go through the
15 Certificate itself, and I'm just going to scan, you
16 will see Condition 8 has a 30-day requirement, you'll
17 see Condition 14 has a 30-day requirement prior to
18 construction for the noise study. 15 is a 30-day
19 prior to the preconstruction conference for
20 decommissioning plan. And then we also talked about
21 the 23, 30-day prior to preconstruction conditions
22 for water wells. You agree that the reason why those
23 30 days is there is to give Staff enough time to
24 review the submission, right?

25 A. Well, again, it's -- I am not sure

1 exactly why it's 30 days. We have large caseloads,
2 so I don't have 30 days to review one case.

3 Q. Staff is very busy; is that a fair
4 statement?

5 A. In my opinion, yes.

6 Q. All right. The page 4 of your testimony
7 then -- I want to go back though. Page 4, line 7,
8 you say "Staff's treatment of this filing
9 (verification of formatting consistent with filing on
10 the case docket) is consistent with its treatment of
11 the numerous other condition compliance filings that
12 occurred in this case between March 19 and April 14,
13 2021." We know that at least to the landscaping and
14 to the transportation plan, that that is not true,
15 correct?

16 A. That would be correct, yeah.

17 Q. Okay. Then going forward you say, line
18 17 to 19, "As the Applicant is limited by the
19 conditions set forth in the certificate, there is no
20 added benefit to Staff performing an independent
21 technical review of the final engineering drawings";
22 do you see that?

23 A. I do.

24 Q. Okay. Now, Staff -- is it fair to say
25 that the added benefit to Staff performing

1 independent technical review of the final engineering
2 drawings is that it would ensure compliance with all
3 conditions of the Certificate prior to construction
4 in those areas?

5 A. No, I don't think so.

6 Q. All right. Let me -- and ask this, would
7 an added benefit be that Staff would be able to
8 confirm that the final design is in conformance with
9 the Certificate if Staff performed an independent
10 technical review?

11 A. I would say when you weigh it against
12 Staff -- Staff's time and costs and not having tons
13 of engineers on the Staff, you would say no.

14 Q. And let me back up. I should have
15 started here. When you say independent technical
16 review, what do you mean by that in your testimony?

17 A. I think it's just referring to having --
18 we don't have many engineers on Staff, so I think to
19 have that expertise, we would need to go outside of
20 Staff.

21 Q. Specifically what would that review
22 encompass? So I will -- let me clarify my question
23 which might help. So, for example, an independent
24 technical review could be redoing the entire design,
25 right? Double-checking the design? Double-checking

1 calculations? It could go all the way to simply
2 looking at the layout and setbacks, right? I want to
3 see where do you land -- where does this phrase --
4 when you say perform independent technical review,
5 where does that land in that range?

6 A. I think when I refer to independent
7 technical review, it's more of having a group of
8 qualified engineers to look at the aspects of the
9 case that the Applicant committed to and making sure
10 that the way they are going to build the project
11 would comply with everything they committed to and
12 the Board is holding them to.

13 Q. When you say qualified engineers, what
14 type of engineers?

15 A. I don't know exactly, civil engineers.

16 Q. You know Andrew Conway.

17 A. I do.

18 Q. Very good. Perfect. He is a
19 professional engineer?

20 A. He is.

21 Q. And he is a professional chemical
22 engineer --

23 A. I'm not sure.

24 Q. -- is that right? Is he -- would you
25 view him as being qualified to conduct an independent

1 technical review as you use the phrase here?

2 A. I think if Mr. Conway didn't have any
3 other case load and could work on that solely, but
4 it's just the idea Mr. Conway, who is also a case
5 lead and busy himself doing other things, not just
6 engineer tasks, the idea of him working those is just
7 not --

8 Q. You believe --

9 A. -- realistic.

10 Q. Based on his training and experience, you
11 think he would be capable of performing an
12 independent technical review?

13 A. Well, I'm not sure of Andrew's
14 background.

15 Q. Okay. Why do you call it a duplicative
16 review in your testimony at line 19, page 4?

17 A. Well, again, Staff -- Staff puts faith in
18 the Applicant submitting engineering drawings that
19 abide by all the conditions and meet with the Board's
20 requirement to do so, that review should have already
21 happened. So when it comes to us, if we would have
22 to do that again for every project, it would be
23 duplicative review.

24 Q. Now, let's go back to Condition 8. Now,
25 the language in that first sentence we were talking

1 about to confirm that the final design in conformance
2 with the Certificate, that's a directive to Staff,
3 correct?

4 A. It's a directive telling the Applicant to
5 submit those to Staff to confirm.

6 Q. Who -- who is supposed to do the
7 confirming in that sentence?

8 A. Again, to me we are confirming that we
9 reviewed and accepted those.

10 Q. But who -- who's the confirm relate to in
11 that sentence? That's what I want to know.

12 A. I would say probably refers to Staff.

13 Q. To Staff. So that would be -- so there
14 is no way to have a duplicative review of that if
15 Staff is the one that's supposed to do that, right?

16 A. I think we disagree on what this
17 condition is asking though.

18 Q. That's fine. The Board will decide that,
19 right?

20 A. Yeah. I am not an attorney.

21 Q. Okay. Fair enough. And let me ask you
22 this, you say also that a duplicative review, I am
23 paraphrasing, would require staff to retain expert
24 consultant services that are not cost justified. Do
25 you see that?

1 A. I do.

2 Q. All right. Why do you say that's not
3 cost justified?

4 A. Well, I think we have a large caseload
5 throughout the state and to do that on every project
6 would be very expensive. So to me that's what that
7 refers to.

8 Q. Have you ever yourself reviewed
9 engineering drawings as to a layout to determine
10 whether it's in conformance with the Certificate?

11 A. Only if there is a compliance issue.

12 Q. And when you say only as to if there is a
13 compliance issue, what projects would you have done
14 that on?

15 A. I can't -- I mean, this project.

16 Q. Okay.

17 A. I can't -- I can't recall any explicitly.
18 I know -- I know I have had other projects though.

19 Q. All right. Now, you were involved in the
20 preparing of the noncompliance inquiry report; is
21 that correct?

22 A. I wasn't involved in the report, no.

23 Q. You weren't involved.

24 A. I was part of the investigation to go
25 down there and check.

1 Q. Okay. So you were on-site.

2 A. Correct.

3 Q. All right. Did you go around the entire
4 project site?

5 A. We -- we tried to get to all the sites
6 that we could access from the public roads.

7 Q. Right. And so the Staff Report provided
8 measurements from the public records, right?

9 A. Correct.

10 Q. So you were only going on the public
11 records.

12 A. Yes, but there were other self-reported
13 violations that we looked into.

14 Q. That related to the non-participating
15 property boundaries.

16 A. Correct.

17 Q. You couldn't go to those.

18 A. I mean, there's ways to get there but not
19 without asking for --

20 Q. And -- I'm sorry for talking over you.

21 A. It's okay. You have to ask to go on
22 private land or on the Company's land, that kind of
23 thing.

24 Q. And so you've been on-site, and when you
25 were on-site, there was screening planted, correct?

1 Vegetation, trees, things of that nature?

2 A. My recollection is sparsely.

3 Q. Okay. And Staff approved the landscape
4 plan for this project, right?

5 A. I believe so.

6 Q. Okay. And so to create a visual here, we
7 have a road, right? We have a right-of-way that we
8 go into the property and then there is vegetation,
9 whether it's sparsely or thick, it doesn't matter,
10 but there's new plantings there, right? Yeah.

11 A. I mean, just because we approved the
12 landscaping doesn't mean they are doing a good job of
13 the landscaping plan. It's not like we went down
14 there and the landscaping is neat and everything is
15 grown, and I can't see the solar panels.

16 Q. And I'm not going there. I am just
17 trying to set a visual for everyone. We have a road,
18 right? We have a right-of-way. We have the property
19 owners' properties. We have some, you know, screen
20 of some sort. We have a fence, and then we have the
21 panels, right?

22 A. Generally I would say that's correct. I
23 mean, we didn't check on every residence.

24 Q. That's what should be there, right?

25 A. I'm assuming that's what the landscape

1 plan was.

2 Q. So if the Board requires strict
3 compliance, the panels inside the fence would move
4 further back inwards, right?

5 A. Correct.

6 Q. Okay. Now, did you review the
7 noncompliance inquiry report before it was put on the
8 docket?

9 A. I don't believe so. I might have read
10 it.

11 Q. You read it.

12 A. I think so, yes.

13 MR. SETTINERI: Your Honor, if I may, I
14 am just going to go ahead and mark that compliance
15 report NMS 26, if I may, your Honor, which would be
16 the Staff Compliant Inquiry Report dated October 18,
17 2022, which is in the docket in this case.

18 ALJ WALSTRA: So marked. I assume this
19 is going to be part of -- Staff will be sponsoring
20 this, right? Staff will be presenting this?

21 MR. LINDGREN: Yes, your Honor.

22 ALJ WALSTRA: Do you have an exhibit
23 number for it?

24 MR. LINDGREN: I was going to label it
25 Staff Exhibit 3.

1 ALJ WALSTRA: Can we do Staff Exhibit 3?

2 MR. SETTINERI: That's completely fine.

3 ALJ WALSTRA: So this will be --
4 compliance report will be marked Staff Exhibit 3.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. Settineri) Mr. Holderbaum, while
7 I am doing this, what was your role in the compliance
8 inquiry -- what was your role in investigating the
9 issue here in this proceeding in terms of the
10 setbacks?

11 A. Well, the Applicant -- I believe the
12 Applicant sent me their self-reporting documentation;
13 so, you know, as the case lead, I was the one who
14 accepted that. I brought it to our team that would
15 review compliance issues, and then I assisted in the
16 field visit to verify.

17 Q. Did you help take any measurements?

18 A. No. I believe I was the driver that day.

19 MR. SETTINERI: If I may?

20 ALJ WALSTRA: You may.

21 MR. SETTINERI: Mr. Lindgren, I have gone
22 ahead and marked these as Staff Exhibit 3. Just
23 excuse my handwriting here.

24 MR. LINDGREN: Thank you.

25 Q. (By Mr. Settineri) Mr. Holderbaum, on the

1 docket itself often when drawings are docketed on the
2 PDF format, they are actually like larger doc --
3 larger drawings than what sometimes will print out
4 when you print off the docket; is that right?

5 A. That's correct.

6 Q. And you agree with the --

7 MR. SETTINERI: So going back, your
8 Honor, if I may.

9 Q. (By Mr. Settineri) Since we have marked
10 this as Staff Exhibit 3, you are familiar with this
11 document, Mr. Holderbaum?

12 A. I am.

13 Q. Okay. And going back to my question
14 earlier about document sizes, you would agree that if
15 I went on the case docket, I would see full-size
16 drawings versus some of these submissions, right?

17 A. I would assume so.

18 Q. Okay.

19 A. I can't verify that though.

20 Q. That's fine. Now I would like you to
21 turn to there is a measurement table in here. If you
22 could turn to that, please.

23 A. What page?

24 Q. It is on page -- there is no page
25 numbers. It's, I would say, a little more than

1 halfway. It's titled "New Market Solar Measurement
2 Table" dated September 30. That is correct. Now,
3 while we are at it, if you could turn the page to the
4 picture, measurement 1 picture. Do you see that?

5 A. I do.

6 Q. So we were talking earlier about panels
7 moving if the Board requires strict compliance. In
8 that picture, let's just assume those panels were
9 within 100-foot of a road, they would have to move
10 back away from the fence, correct?

11 A. Correct.

12 Q. But the fence would stay right where it
13 is, correct?

14 A. Correct.

15 Q. Okay. And if there was screening here,
16 the screening would stay right where it was too.

17 A. That's correct.

18 Q. Okay. And now you see -- the fence by
19 the way is a chain link with barbed wire, right?

20 A. It was at the time.

21 Q. Yeah. Are you aware that's been changed
22 now?

23 A. Yeah. I'm aware most of it has been
24 changed. I am not sure if all of it has.

25 Q. It's been changed to egg fencing?

1 A. Uh-huh.

2 Q. And that's -- fair to say Staff prefers
3 to have egg fencing on projects now.

4 A. Yeah. Staff refers to agricultural
5 fencing but.

6 Q. Okay. And early projects tended to have
7 chain link fencing with barbed wire when they were
8 approved by the Board.

9 A. Correct.

10 Q. All right. Let's go back to that table.
11 And those are the measurements that Staff did that
12 day, right?

13 A. Correct.

14 Q. And obviously there are 38 measurements
15 taken to the nearest points of the panels; is that
16 right?

17 A. 39, yes.

18 Q. Now -- well, 39 and 1 of them was 100
19 foot and 1 inch, right?

20 A. Correct.

21 Q. Okay. Now, you agree that on-site there
22 are some trackers without panels, is that right?

23 A. Uh-huh.

24 Q. That's because construction stopped in
25 that area when the issue was discovered, right?

1 A. That's my understanding, yes.

2 Q. Okay. All right.

3 MR. SETTINERI: Your Honor, if I can -- I
4 would like to mark another exhibit. Let's see, we
5 are on exhibit number?

6 ALJ WALSTRA: 26.

7 MR. GRADY: We are going to be on 26.

8 MR. SETTINERI: Thank you. I would like
9 to mark NMS Exhibit 26. I will represent to the
10 Bench this is a replica of this table with the data
11 sorted.

12 ALJ WALSTRA: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 ALJ WALSTRA: The measurement table?

15 MR. SETTINERI: Yes, sir.

16 Q. (By Mr. Settineri) Mr. Holderbaum, I will
17 represent to you this document shows the measurements
18 from the table on -- in the compliance report, but
19 it's been sorted from -- to be close -- closest to
20 the road versus furthest from the road for these
21 measurement points. But if you can, just take a
22 moment to spot check me on a few of those. Make sure
23 you are comfortable that -- you don't have to check
24 every one. You may.

25 A. Yes. It seems accurate.

1 Q. I'll represent to you it has been sorted.
2 Then if you look at the line -- the columns to the
3 far right, there were two columns there. One starts
4 with 100, and one starts with zero. Do you see that?

5 A. I do.

6 Q. Okay. And if you go through the 100
7 column and work your way down, do you see how the --
8 the numbers have been rounded down or up accordingly,
9 subject to check with my math?

10 A. I do.

11 Q. All right. And then you see if I took,
12 for instance, 97 minus 100, that gives me 3, so would
13 you agree the last column appears to represent the
14 difference between 100 and the number in the column
15 just before it, the column that starts with 100?

16 A. I do.

17 Q. All right. So this -- you know, subject
18 to check, I have sorted these in a way that shows the
19 distances of the exceedances ranging from -- really
20 ranges from 3 up to 32 feet. Do you see that?

21 A. I see that, yes.

22 Q. Okay. Now, if you could do me a favor
23 and just draw if you have a pen up there.

24 A. I don't.

25 Q. All right. Let's get you one. All

1 right. We will go with blue. I'll give you this,
2 sir. All right. So I would like you to draw a line
3 between 10 and 11 in the far right corner, right?
4 And that's all in foot, right? So we are going to
5 draw a line below 10-foot and then everything above
6 it, right? And you agree with me then that based on
7 these measurements you have one, two, three, four,
8 five, five exceedances that are less than 10 feet,
9 right?

10 A. 10 feet or less.

11 Q. 10 feet or less. Thank you. And then if
12 we go -- let's go to 20. There's no 20 but between
13 19 and 21, let's draw a line and so there you would
14 agree there there's 23 that are exceeded that are
15 less than 20 feet.

16 A. Right.

17 Q. Right? Okay. And if I go to 25 feet,
18 draw a line between 25 and 27, I have 1, 2, 3, 4, 5,
19 6, 7, 8, 9, 10. And if I add to 23, that's 33
20 exceedances less than 25 feet, right?

21 A. I agree, yep.

22 Q. All right.

23 MR. SETTINERI: Your Honors, if I may, I
24 want to do a demonstrative exhibit or a display
25 because I think it's worthwhile for the Bench to get

1 a feel for the distance of what we are dealing with,
2 if I may?

3 ALJ WALSTRA: You may.

4 MR. SETTINERI: I brought my 35-foot tape
5 measure which I really like.

6 Q. (By Mr. Settineri) So, Mr. Holderbaum, I
7 am going to give you this tape. I am going to try
8 not to trip over people but let's start on that
9 table. Tell me when I get to 3 feet.

10 A. 3 feet is here.

11 Q. All right. So 3 feet I am standing
12 relatively right in front of you, right?

13 A. Correct.

14 Q. All right. Tell me when I get to 10 feet
15 so I don't trip.

16 A. That's 10 feet.

17 Q. 10 feet right to here. How many did we
18 say were less than or equal to 10 feet?

19 A. Five.

20 Q. Five? Okay. Let's go 20 feet. Ready?
21 So how far do you think it is to that corner over
22 there?

23 A. I don't know, 20 feet.

24 Q. You could be right. Let's find out.
25 Watch your head. Tell me when I hit 20 feet.

1 A. You are at almost 20 feet.

2 Q. 20 feet there?

3 A. 23.

4 Q. 23. All right. Pull me back a little
5 bit. Pull me to 20.

6 A. That's 20.

7 Q. That's 20. About here, okay? 20 feet,
8 how many are 20 feet or less?

9 MR. GRADY: 23.

10 MR. SETTINERI: How many?

11 MR. GRADY: 23.

12 MR. SETTINERI: Where is the witness?

13 A. 23.

14 Q. All right. There you go. And that goes
15 all the way down to the 3 foot one, right, for the
16 record? So let's pull that back up. And how far do
17 you think it is to the other corner, Mr. Holderbaum?

18 A. Oh, I don't know, 40 feet.

19 Q. 40 feet. Let's check that out.

20 A. 30 feet.

21 Q. Here we go. Now I've got to be careful I
22 don't hit Karen.

23 MR. SETTINERI: But if I may, your Honor,
24 just I am going in front of the court reporter. I am
25 going to hand this to Mr. Dove.

1 Q. (By Mr. Settineri) And tell me when we
2 get to 32 feet.

3 A. You are at 30.

4 Q. 30. So I have another 2 foot to go
5 beyond this, right? Okay. So the maximum is 32
6 foot. And then what's the next one below 32 feet?

7 A. 31.

8 Q. And then after that?

9 A. 29.

10 Q. And then what?

11 A. 29.

12 Q. And then -- get me down -- what's the
13 next one?

14 A. 27.

15 Q. 27. Then what?

16 A. 25.

17 Q. Pull me back to 25, please, and tell me
18 when you are there.

19 A. There.

20 Q. And how many are less than 25, equal to
21 or less than 25?

22 A. 33 I thought is what you said.

23 Q. 33 out of the 38.

24 A. I believe so.

25 MR. SETTINERI: So, your Honors, I wanted

1 you to see the visual of what we are looking at here,
2 okay? I don't want to break my tape measure. All
3 right. Thank you very much.

4 Your Honor, we have been going for a
5 little bit. Can we take just a short break?

6 ALJ WALSTRA: Sure.

7 MR. SETTINERI: That would be helpful.

8 ALJ WALSTRA: Go off the record.

9 (Recess taken.)

10 ALJ WALSTRA: We will go back on the
11 record.

12 Q. (By Mr. Settineri) All right.
13 Mr. Holderbaum, a couple of questions here. Earlier
14 I -- you were asked a question about Mr. Conway and
15 saying Mr. Conway did not review the engineering
16 drawings for the New Market solar project. And in
17 your answer I heard you say he definitively did not
18 or definitely did not review the drawings, and I
19 wondered why you said that.

20 A. Well, sorry. I guess I said that because
21 to my knowledge he definitely didn't review the
22 drawings.

23 Q. All right. Now, I want to go back to
24 it's EVS Exhibit 9 which you should have in front of
25 you and that was one of the demonstrative boards that

1 were put up. Now, do you recall receiving project
2 updates from New Market Solar after construction
3 started?

4 A. Yes.

5 Q. Okay. And do you recall how often -- who
6 did you get those project updates from? Do you
7 remember?

8 A. Early on I believe they were Hecate,
9 Patti Shorr and Jared Bren.

10 Q. Okay. And then after that would have
11 been Chris Tschirhart?

12 A. Yeah, and Yuri and Riley. I'm sorry. I
13 am bad with last name.

14 Q. As part of those project updates, you
15 would get drawings with comments added to those to
16 show you the progress of construction, right?

17 A. I believe so. I can't recall exactly.

18 Q. Could this have been one of those update
19 drawings provided to you by the company, by the New
20 Market Solar?

21 A. They could have. In terms of like
22 comments attached to them, I'm not sure.

23 Q. In looking at EVS Exhibit 9, there are
24 some my copy I would call it maybe purple or pink
25 comment boxes throughout. For instance, there is a

1 comment in the middle called "Tree chipping is
2 complete." Do you see that?

3 A. Yeah. Are you on C-201?

4 Q. I am on C-201. Thank you. For the
5 record this is -- EVS Exhibit 9 is a three-drawing
6 document.

7 A. Yeah. I see that, yes.

8 Q. And let's see here, you'll also see "DCP
9 testing complete (Terracon CBR test)." Do you see
10 that?

11 A. I do.

12 Q. This wouldn't be a comment Staff added,
13 right?

14 A. No.

15 Q. This would have come from the New Market
16 Solar.

17 A. Yes. Staff didn't put this map together.

18 Q. This would have come from New Market
19 Solar, correct?

20 A. That would -- yes. I mean, the
21 Applicant, whoever was in charge would have sent it
22 to me, yes.

23 Q. Would you review these -- the comments
24 when you received these updates from the Company?

25 A. Again, we review them as we are required

1 to review them which I have stated many times as in
2 make sure they are in the right format, done by a
3 professional, and save for our records.

4 Q. Let me ask this, there is no requirement
5 in the Stipulation to submit construction updates; am
6 I right?

7 A. I'm not sure. It's common practice for a
8 lot of companies to send us updates though.

9 Q. Do you review those updates when
10 companies send them to you?

11 A. Just as I stated, the review I stated we
12 do.

13 Q. What -- you are saying you would review
14 what?

15 A. It depends. If it's a map, we are not
16 going to do a large technical review of every map
17 they send us.

18 Q. But if it's a construction update,
19 wouldn't you look at the notes to see what's going on
20 with construction?

21 A. I would look at the e-mail correspondence
22 that they sent me, and if they didn't call out any
23 explicit change, then I -- there would be no reason
24 to.

25 Q. And I'm not talking about changes. What

1 I am talking about if I give you a map and say here
2 is the update of my construction with comments, would
3 you look at the comments?

4 A. Well, if you explicitly ask for me to
5 look at the comments, possibly, yeah. Usually --
6 usually maps are attached to e-mail correspondence
7 that tell you what's in there.

8 Q. And obviously -- next to the comment box
9 for DCP, you do see the 45 equipment setback that is
10 referenced there too, right?

11 A. I see it on this map. I'm not sure which
12 one you are pointing to.

13 Q. Did you provide any of the updates that
14 you were provided regarding construction of the New
15 Market solar project to anyone else at Staff?

16 A. I don't believe so, unless it was
17 something explicit that -- about the landscaping
18 plan. Whoever helped me with that, I might have sent
19 it to them if it wasn't me reviewing it.

20 Q. I think you misunderstood my question. I
21 am talking about, again, the Company provided
22 construction updates to you, right?

23 A. Correct.

24 Q. I am not talking about compliance
25 filings. This is just construction updates. And

1 that's common for certificate holders to provide the
2 project manager with updates on construction, right?

3 A. It's common, yes.

4 Q. In fact, Staff project managers like to
5 have that information.

6 A. Yeah. I mean, we get -- it's useful for
7 many reasons. We get complaints, and we need to
8 reference stuff. Any future issues we have it's very
9 helpful.

10 Q. Yeah. And so all right. And again --
11 well, so this -- this document EVS Exhibit 9 could
12 very well be a document that was submitted to you as
13 part of a construction update.

14 A. I guess it could have been. I thought
15 this was referenced as a condition compliance though.

16 Q. Okay. I want to --

17 MR. SETTINERI: Your Honor, I have the
18 Order on Rehearing from the Board dated June 24,
19 2021. I can mark this or just hand it out and rely
20 on the record transcript. It's up to you.

21 ALJ WALSTRA: We've marked a previous
22 order.

23 MR. SETTINERI: All right. We will mark
24 as NMS Exhibit 27, your Honor, we would like to mark
25 the Order on Rehearing in this proceeding dated

1 June 24, 2021.

2 ALJ WALSTRA: So marked.

3 MR. GRADY: 27.

4 MR. SETTINERI: 27.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. SETTINERI: If I may?

7 ALJ WALSTRA: You may.

8 Q. (By Mr. Settineri) Again, this has been
9 marked as NMS Exhibit 27, Mr. Holderbaum. Can you
10 identify this for the record for us?

11 A. This is the Order on Rehearing issued
12 June 24, 2021.

13 Q. Now, we have a Joint Stipulation in this
14 proceeding and a Supplemental Joint Stipulation,
15 correct?

16 A. That's correct.

17 Q. And you are aware when the Board issued a
18 Certificate for the 65-megawatt project, it made
19 modifications to the Supplemental Joint Stipulation,
20 I believe, subject to check, right?

21 A. I believe that's correct, yes.

22 Q. And then on rehearing the Board approved
23 the project as a 100-megawatt facility, right?

24 A. That's my understanding, yes.

25 Q. Okay. And then as to the Stipulations, I

1 would like to turn your attention to paragraph 19.

2 A. In the order?

3 Q. Yes. Paragraph 19 at page 4 of the
4 Order. I'll just read the whole paragraph for the
5 record. "The Board has reviewed and considered the
6 arguments raised by Hecate in its application for
7 rehearing. Upon review, the Board finds that
8 Hecate's application for rehearing should be granted,
9 in part. In doing so, the Board determines that,
10 initially, a certificate for construction, operation,
11 and maintenance should be issued to Hecate for the
12 full 100 megawatt facility, as proposed in the
13 application and the stipulations."

14 Would you agree with me based on -- the
15 Board speaks through its orders, right? Would you
16 agree with me that what the Board did on rehearing
17 then was approved the facility as proposed in the
18 Application and in the Stipulation, right?

19 A. That's how it reads to me.

20 Q. In other words, it approved the
21 Stipulations, both the Supplement and the Joint as
22 initially presented, not as modified at the -- in the
23 Opinion and Order that was initially issued.

24 A. I believe that's the case, yes.

25 MR. SETTINERI: Okay. I have no further

1 questions at this time, your Honors.

2 Thank you, Mr. Holderbaum.

3 ALJ WALSTRA: Thank you.

4 THE WITNESS: Thank you.

5 ALJ WALSTRA: Ms. Curtis?

6 MS. HETRICK: Hetrick, and no, your
7 Honor, no questions.

8 ALJ WALSTRA: Any redirect?

9 MR. LINDGREN: Could we have a few
10 minutes, your Honor?

11 ALJ WALSTRA: Yeah. We'll take 5
12 minutes.

13 MR. LINDGREN: Thank you.

14 ALJ WALSTRA: Off the record.

15 (Recess taken.)

16 ALJ WALSTRA: Go ahead.

17 MR. LINDGREN: Thank you, your Honor.

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. Lindgren:

21 Q. Good afternoon, Mr. Holderbaum. Could
22 you turn to EVS Exhibit 6 which was the Joint
23 Stipulation and Recommendation?

24 A. Yeah. Hold on. I know I have it here
25 somewhere. Yes. I had it open all the time.

1 Q. Thank you. And let's look at Condition 8
2 on page 3. And this is much discussed. I am not
3 going to read the entire thing, but I'll begin by
4 reading the first sentence. "At least 30 days prior
5 to the preconstruction conference, the Applicant
6 shall submit to staff, for review and acceptance, one
7 set of detailed engineering drawings of the final
8 project design and mapping in the form of PDF, which
9 the Applicant shall also file on the docket of this
10 case, and geographically-referenced data (such as
11 ShapeFiles sheet Phis or KMZ files) based on final
12 engineering drawings to confirm that the final design
13 is in conformance with the certificate." Did I read
14 that correctly?

15 A. Yes.

16 Q. Thank you. And so that sentence is a
17 requirement for the Applicant to submit drawings to
18 confirm that the final design is in conformance with
19 their Certificate; is that right?

20 A. That's correct.

21 Q. Thank you. And then going on to the next
22 sentence, it states "Mapping shall include the limits
23 of disturbance, permanent and temporary
24 infrastructure locations, areas of vegetation removal
25 and vegetative restoration as applicable, and

1 specifically denote any adjustments made from the
2 siting detailed in the Application." Did I read that
3 sentence correctly?

4 A. That's correct.

5 Q. Thank you. Now, did the final
6 engineering drawings submitted by the Applicant
7 specifically denote any adjustments made from the
8 siting detailed in the Application?

9 A. Well, as I stated earlier, they -- on
10 the -- on the maps the Applicant put 45-foot setbacks
11 on the map, but they did not specifically denote or
12 call out or make aware to Staff that this was a
13 change there, so Staff was not aware throughout the
14 whole process there was a change in the setbacks of
15 the drawings.

16 Q. Thank you. Did Applicant include any
17 correspondence with the maps indicating that they had
18 made this change?

19 A. They did not.

20 Q. Thank you. Let's go then to the second
21 last sentence of Condition 8, that states "If any
22 changes to the project layout are made after the
23 submission of final engineering drawings, the
24 Applicant shall provide all such changes to Staff in
25 hard copy and as geographically-referenced electronic

1 data. And then in that case, all changes are subject
2 to Staff review to ensure compliance with all
3 conditions of the certificate prior to construction
4 in those areas." Did I read those sentences
5 correctly?

6 A. You did, yes.

7 Q. Thank you. Now, were any changes to the
8 project layout made after the submission of final
9 engineering drawings?

10 A. So the drawings that were provided from
11 Staff were the same from start to finish. The
12 Applicant never specifically called out the setbacks,
13 so we never were aware of the change in setbacks. So
14 for Staff's review and acceptance of this condition,
15 we were never made aware of the change, so we would
16 never have known to review this for compliance of
17 that condition.

18 Q. Thank you. And since those changes had
19 been made prior or along with the submission of final
20 engineering drawings, those sentences wouldn't even
21 apply, would they?

22 A. That's my understanding, yes.

23 Q. Thank you. Now, Mr. Holderbaum, I
24 believe there has been some discussion of the
25 amendment process. Do you know what's involved in --

1 in the amendment process?

2 A. Sure, yeah. The amendment process is
3 similar to most of our process. If there is a
4 substantial change in a project, they will file an
5 amendment application with us. And basically they
6 thoroughly explain all the changes, why they are
7 making the changes, and address all the additional
8 impacts or lack thereof, and their plans to mitigate
9 all those so for Staff to review.

10 Q. Thank you. And is that required by
11 statute from your understanding?

12 A. From my understanding, yes.

13 Q. Thank you. Did the Applicant file an
14 Application for an amendment in this case?

15 A. They did not.

16 Q. Thank you. In your understanding is just
17 a notation on a map, does that constitute an
18 Amendment Application?

19 A. No, that does not. We would -- we would
20 require a lot more information detailing the changes.

21 MR. LINDGREN: Thank you.

22 Thank you. No further questions.

23 ALJ WALSTRA: Thank you.

24 Any additional cross?

25 MR. STONER: No. I'm finished, your

1 Honor. Thank you.

2 MR. SETTINERI: Just one question.

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Settineri:

6 Q. In regards to the condition -- if the
7 Applicant would have -- if the Applicant made changes
8 to the project layout after submitting the final
9 engineering drawings, all changes are subject to
10 Staff review to ensure compliance with all conditions
11 of the Certificate. That's paraphrasing what's in
12 condition 8, right?

13 A. That sounds like paraphrase, yes.

14 Q. And the condition that you are looking at
15 is condition 1, right?

16 A. Can you repeat that?

17 Q. Yeah. So if the Applicant changed --
18 gave you a layout let's just say -- let's make it a
19 hypothetical, right? There is a change to the layout
20 that's been made here to this project. And let's say
21 it originally was a -- drawings were given to you
22 with 100-foot setback, and then subsequently new
23 drawings were provided to you after the first
24 drawings were sent -- provided to you that showed a
25 45-foot setback, okay? Follow me?

1 A. Following, yes.

2 Q. Okay. And in that instance then that
3 change would be subject to Staff review to ensure
4 compliance with all conditions of the Certificate
5 prior to construction in those areas, right?

6 A. I would disagree.

7 Q. You would.

8 A. Yes.

9 Q. And why would you disagree?

10 A. Well, just noting that on a map is not
11 the same thing as providing Staff with a narrative
12 that explicitly calls for our review of a material
13 change in a project that large.

14 MR. SETTINERI: I think we are crossing
15 in the night, but I will just stop there.

16 No more questions, your Honor.

17 ALJ WALSTRA: Thank you.

18 MS. HETRICK: No questions, your Honor.

19 ALJ WALSTRA: Thank you.

20 You are excused.

21 THE WITNESS: Thanks. These documents?

22 ALJ WALSTRA: You can leave them there.

23 Staff, your exhibits.

24 MR. LINDGREN: Yes, your Honor. I would
25 move for the admission of Staff Exhibit 1.

1 ALJ WALSTRA: Any objections to the
2 admission of Staff Exhibit 1?

3 Hearing none, it will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 ALJ WALSTRA: EVS.

6 MR. STONER: No. Oh, yes. Sorry. Yes.
7 We would move to admit 1 through 11, EVS Exhibits 1
8 through 11. I'm sorry, 2 through 11.

9 MR. GRADY: Yep.

10 ALJ WALSTRA: Any objections?

11 I think just in terms for the record, the
12 Exhibits 5, 6, and 7, those are all on the record
13 under this case number. I am not going to formally
14 admit them as part of the -- into the record, but
15 they are in there. You can reference them in briefs,
16 et cetera.

17 MR. STONER: That's fine, your Honor, as
18 long as we can use.

19 ALJ WALSTRA: Just for references
20 throughout today and tomorrow, we can reference those
21 as exhibits, but they won't be a formal part of the
22 record.

23 MR. STONER: That's fine. The clutter
24 you want to avoid.

25 ALJ WALSTRA: In terms of citing in the

1 brief and stuff like that. So Exhibits 2, 3, 4, 8,
2 9, 10, 11 will be admitted into the record.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 MR. STONER: Thank you.

5 MR. SETTINERI: Your Honor, following
6 that approach, then we would move for the admission
7 of NMS Exhibits -- might as well -- I just will do
8 22, 23, 24, 25, 26, and then stop there because 27 is
9 the Order on Rehearing.

10 ALJ WALSTRA: Along those lines, the
11 Staff Report is already part of the record as well,
12 Exhibit 22. And I think Exhibits 23 and 24, those
13 are rules.

14 MR. SETTINERI: That is fine, your Honor.
15 And I think, if I may, if we could include the Staff
16 Report as an exhibit because this is a separate
17 proceeding. I know it's one big case docket. If you
18 will humor me, if we could put the Staff Report as
19 NMS 22, that is one that it's automatically part of
20 the Application record, but I want to just make sure
21 it has been moved into this record for this
22 proceeding.

23 ALJ WALSTRA: That's fine. As to 23 and
24 24, those are obviously just OAC rules. Obviously
25 you can reference those. I don't think we need to

1 formally admit those into the record. But 25, 26,
2 and 27 -- or 25 and 26 -- 22, 25, and 26 will be
3 admitted into the record.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 MR. SETTINERI: Thank you, your Honor.

6 ALJ WALSTRA: Staff, if you want to call
7 your next witness.

8 MR. DOVE: Your Honor, are we admitting
9 Staff Exhibit 3 at this time?

10 ALJ WALSTRA: We are not. I believe the
11 sponsoring witness is up next.

12 MR. DOVE: Can we go off the record for a
13 second?

14 ALJ WALSTRA: Sure.

15 (Discussion off the record.)

16 ALJ WALSTRA: We'll go back on the
17 record.

18 After discussion off the record, EVS
19 Exhibit 4, which is the Application narrative;
20 Exhibit 6, which is the Stipulation, and Exhibit 7,
21 which is the Supplement to the Stipulation, will be
22 admitted into the record.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 ALJ WALSTRA: Staff, you may call your
25 next witness.

1 MR. LINDGREN: Thank you, your Honor.
2 The Staff calls Christopher Douglass to the stand.

3 (Witness sworn.)

4 ALJ DAVIS: Please be seated. Thank you.

5 - - -

6 CHRISTOPHER DOUGLASS

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

9 DIRECT EXAMINATION

10 By Mr. Lindgren:

11 Q. Good afternoon, Mr. Douglass.

12 A. Good afternoon.

13 Q. Could you please state your full name and
14 business address for the record?

15 A. Christopher Douglass, 180 East Broad,
16 Columbus, Ohio 43215.

17 Q. Thank you. And what was your involvement
18 in this proceeding?

19 A. I'm the Supervisor of the Field
20 Compliance Division in the Ohio Power Siting
21 Department, and I oversaw the field investigation
22 involving the setback case.

23 Q. Thank you. Did you file testimony in
24 this proceeding?

25 A. Yes, I did.

1 Q. Thank you.

2 MR. LINDGREN: May I approach the
3 witness?

4 ALJ DAVIS: You may.

5 MR. LINDGREN: Thank you. Let the record
6 reflect I am handing the witness what I have marked
7 as Staff Exhibit 2.

8 Q. Mr. Douglass, do you recognize this
9 document marked as Staff Exhibit 2?

10 A. I do.

11 Q. Is this your testimony?

12 A. Yes, sir.

13 Q. Thank you. Did you prepare this
14 testimony yourself?

15 A. I did.

16 Q. And can you -- do you have any changes or
17 corrections to this testimony?

18 A. Not at this time.

19 Q. Thank you. If I were to ask all the
20 questions contained in it today, would your answers
21 be the same?

22 A. They would.

23 Q. Thank you. Mr. Douglass, were you
24 involved in the preparation of a Compliance Inquiry
25 Report that reflects your investigation?

1 A. Yes, I was.

2 Q. Thank you.

3 MR. LINDGREN: May I approach the witness
4 again?

5 ALJ DAVIS: You may. I will note for the
6 record that Mr. Douglass's prefiled testimony shall
7 be marked as Staff Exhibit 2.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. LINDGREN: Thank you. Let the record
10 reflect I am handing the witness what I have marked
11 as Staff Exhibit 3.

12 MR. STONER: I'll take one comparing
13 apples to apples. Thank you.

14 A. This also includes the Highland County
15 Conveyance Standards.

16 Q. Should that not be part of this?

17 A. No.

18 Q. Okay.

19 A. Well -- let me see if that was --

20 Q. It was an attachment.

21 A. Yeah, it might have been. Let's see.

22 ALJ WALSTRA: This was on -- this is
23 attached to the previously marked Staff Exhibit 3 as
24 well.

25 THE WITNESS: Okay. Yeah. I don't show

1 the supplement but.

2 MR. SETTINERI: Go off the record a
3 minute?

4 ALJ WALSTRA: Yeah. We will go off the
5 record.

6 (Discussion off the record.)

7 ALJ WALSTRA: Back on the record.

8 Q. (By Mr. Lindgren) Thank you.
9 Mr. Douglass, do you recognize this document?

10 A. I do.

11 Q. And can you explain what it is?

12 A. It is the report that I completed, filed
13 on the docket on October 18, 2022.

14 Q. Thank you. Does this report accurately
15 reflect the results of Staff's investigation?

16 A. Yes, it does.

17 Q. Thank you. Do you have any changes or
18 corrections you need to make to this document?

19 A. No.

20 MR. LINDGREN: Thank you. I have no
21 further questions, and the witness is available for
22 cross-examination.

23 ALJ DAVIS: Thank you, Mr. Lindgren.

24 Mr. Stoner.

25 MR. STONER: Yes. I am going to try to

1 be brief honestly. I am sure I have already -- you
2 folks have already had enough of me.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Stoner:

6 Q. I just have some limited things, and I am
7 a little confused. When -- you testified that you
8 first became employed by OPSB in 2002; is that
9 accurate? 2022, excuse me.

10 A. With the Power Siting Department.

11 Q. Yeah. Right. Sorry. So what was the
12 date? You don't give a date.

13 A. September 12.

14 Q. Okay. So September 12 is when you
15 were -- and you were working for the Transportation
16 Motor Carrier Enforcement beforehand?

17 A. Uh-huh.

18 Q. Is that --

19 A. Yes, sir.

20 Q. Just for the record, the court reporter
21 has got to get that down. I know you've been through
22 this before in your previous life, so I'm not being
23 rude or anything. It's just as a reminder. So in
24 2022, September 12, you come aboard as the first
25 supervisor in the Power Siting Department's newly

1 formed Field Compliance Section; is that fair enough?

2 A. Yes.

3 Q. That's in your testimony on page 1 here.
4 How is it that you came to be at the Siting Board on
5 September 12? I mean, basically I am asking you how
6 did you get the gig?

7 A. They posted the position, I applied,
8 interviewed for it, and was chosen as the candidate.

9 Q. So basically they -- I mean, it looks
10 like -- and I am not being facetious. It looks like
11 they basically threw you into the frying pan and said
12 here is the New Market solar project. Go do a report
13 on this.

14 A. I mean, that's one way to look at it. I
15 have no -- you know, no knowledge of how that, you
16 know, timing worked out that way. It's just the
17 way -- to me it was just how -- you know, how it
18 typically goes, you know. You don't know what you
19 are going to have waiting on you when you start a new
20 position. And just so happened this was one of the
21 first cases among several others that I was assigned.

22 Q. Sure. So you started on September 12.
23 And by September -- or if you look at page -- if you
24 look at question 5 and answer 5 on the second -- the
25 second page, it says you "supervised the Staff who

1 participated in the field compliance investigation
2 related to the setback violations, which resulted in
3 the Compliance Inquiry Report that was filled --
4 filed in the case docket on October 18, 2022."
5 Basically it sounds like -- I mean, you hit the
6 ground running, right?

7 A. Yes.

8 Q. Okay. And who are the Staff members that
9 you supervised as part of your field compliance
10 investigation?

11 A. So one of the employees is Eric Morrison
12 who is a -- was an Application Staff member, and he
13 was the person who we had selected to become the
14 first Field Compliance Investigator, but he had not
15 been officially moved over into that capacity at that
16 point. But he was one of the ones that assisted me.
17 Ashton Holderbaum, who just testified, was one of the
18 Staff members that assisted me. And Justin
19 McCulloch, who is the Supervisor of the GIS section,
20 also assisted with that case.

21 Q. Okay. And prior to September 12, 2022,
22 had you ever been involved with a solar farm before?

23 A. No, but I -- you know, I worked for the
24 Public Utilities Commission. I'm previously employed
25 with the Motor Carrier Enforcement Division, as you

1 mentioned, which is also a department within the
2 PUCO, so I have some familiarity with, you know,
3 utility enforcement so that's kind of how I was able
4 to hit the ground running as you said.

5 Q. Okay. Had you ever reviewed -- ever seen
6 drawings before for a solar farm?

7 A. I mean, not for a solar farm but I have
8 seen -- you know, in other positions I've seen
9 drawings, blueprints, construction plans, things of
10 that nature. I mean, it's something that you kind of
11 have to just, you know, learn as you go; but most
12 jobs, I mean, it's kind of on-the-job training, I
13 guess.

14 Q. All right. Would that be a fair
15 description of your duties at OPSB at that particular
16 time? I mean, it's on-the-job training, right?
17 September, October of 2022?

18 A. I mean, I don't know if I would have
19 classified, you know, how long I would say that
20 statement pertains or is applicable. I mean, I have
21 a lot of prior experience in enforcement compliance,
22 so I feel like a large amount of my background
23 equipped me to complete this investigation in a
24 professional and a, you know, thorough manner; and I
25 wouldn't -- I wouldn't, you know, say it was a

1 training lesson. I would say it was an experience
2 that was new to me but yet not foreign.

3 Q. Growth opportunity, right?

4 A. However you want to describe it.

5 Q. I wasn't fussing with your answer. I
6 just -- I just was trying to get a sense of things,
7 that's all.

8 A. Yep. No problem.

9 Q. So if you go to the next page -- actually
10 if you go to question 6, and you write that the
11 question is "What kind of case is this?" And you
12 give an answer, and the part that I am interested in
13 is you said "As part of that approval, the Board
14 required that the Facility be installed with property
15 setbacks of at least 100 feet from all property
16 lines, including public roads. This setback
17 limitation was described throughout the course of the
18 Board's record, including (1) as part of the
19 application (page 22), (2) as part of the Applicant's
20 supplemental filings, and (3) as adopted by the Board
21 (see, Opinion, Order and Certificate (March 18,
22 2021)). This case results from the Applicant's
23 failure to construct the Facility recognition of the
24 100-foot setback requirement." That's -- I have read
25 that correctly, haven't I?

1 A. Yes, you did.

2 Q. All right. You earlier said you prepared
3 this testimony yourself?

4 A. I did.

5 Q. Okay. It's the same answer that
6 Mr. Holderbaum gave us, identical even to the
7 punctuation levels. Did you guys chat about it, or
8 is this something that was provided to you and you
9 adopted?

10 A. No. I -- actually Ashton prepared his
11 testimony, prefiled testimony, prior to me doing
12 mine. And I was part of the team that, you know, was
13 involved with reviewing Ashton's draft testimony.
14 And so when it came time to do mine, you know, it was
15 basically the same foundation, if you will, of, you
16 know, case or question is what kind of case is this,
17 I am not going to reinvent the wheel so I just
18 applied.

19 Q. Sure. I understand. You liked his --
20 you liked his testimony, and you adopted it.

21 A. On this particular question.

22 Q. Sure. And so one of the things is when
23 you wrote this affidavit, did you actually read
24 through the Application? Or when you signed this
25 written testimony, excuse me, did you actually read

1 through the Application?

2 A. At the time of the investigation, I read
3 through all these documents.

4 Q. So let's start with the Application, if
5 you don't mind. And I apologize for interrupting,
6 but it helps make things flow better. When did you
7 first read the Application?

8 A. I don't know the exact date, but it would
9 have been sometime after September 12, 2022.

10 Q. Okay. Can you identify -- identify for
11 me all the Applicant's supplemental filings that you
12 identified here?

13 A. Can I -- can I identify them for you?

14 Q. Sure.

15 A. What do you mean?

16 Q. Well, what are they?

17 A. As far as what their usage or purpose is,
18 is that what you mean?

19 Q. No. I mean you have got it in your
20 testimony that as -- and you describe that alleged
21 violation or nonconformance is as outlined by part of
22 the Applicant's supplemental filings. And that's --
23 those are your words, right?

24 A. Uh-huh.

25 Q. Also Mr. Holcomb -- excuse me.

1 A. Holderbaum.

2 Q. Thank you. And I'm asking you when you
3 used that phrase as part of the Applicant's
4 supplemental filings, what specific supplemental
5 filings are you referring to?

6 A. Everything on the docket that pertains to
7 setbacks.

8 Q. Okay. So which specific ones are you
9 referring to that you are classifying as
10 supplemental?

11 A. That would take me more time than we have
12 right now to go back and list out each supplemental
13 document that I looked at that mentions the setback
14 requirement but I would be more than happy to do that
15 if that's --

16 Q. Yeah. How about we do this, and would
17 you have looked -- and is it your -- are you
18 suggesting that you not having been involved in the
19 original review process that went on before
20 construction started, are you -- I'm trying to get a
21 sense of what you know, and I want to know what
22 supplemental filings you believe constituted a
23 description or a set -- a setback requirement,
24 basically what you put in there. So I assume that
25 because you wrote the testimony, that as part of that

1 approval, the Board required that all -- that the
2 facility be installed with property setbacks of at
3 least 100 feet from all property lines including
4 public roads, this setback limitation was described
5 throughout the course of the Board's record including
6 as part of the Application page 22 as part of -- to
7 part of the Applicant's supplemental filings. I want
8 to see if I can help you.

9 A. Well, one of them was Supplemental
10 Stipulations.

11 Q. Okay.

12 A. So that's --

13 Q. So you believe the Supplemental
14 Stipulations identify a 100-foot setback?

15 A. I believe that some of these stipulations
16 which have already been discussed today do lend
17 support to the requirement for the setback.

18 Q. Okay. Do you know which provisions as we
19 sit here and testify today?

20 A. Condition 1 and Condition 8.

21 Q. Okay. And prior to today, had you
22 reviewed Condition 1 and Condition 8?

23 A. As I said, I reviewed all these documents
24 at the time we began the investigation.

25 Q. Okay. Have you ever interpreted a

1 Certificate or an Opinion or Joint Stipulations
2 regarding the governance of an -- for the
3 construction of a solar farm before?

4 A. Before this one?

5 Q. Yeah.

6 A. No, sir.

7 Q. First time.

8 A. First time.

9 Q. Okay. Have you ever done it since?

10 A. Oh, yeah, many times.

11 Q. Okay. Now, you weren't involved in the
12 underlying document exchange with OPSB regarding the
13 supplemental filings such as the drawings that you
14 sat here and watched the parties go through today,
15 right?

16 A. No, sir, I was not.

17 Q. Had you seen any of those exhibits
18 before?

19 A. Yes.

20 Q. Okay. For example, do you see the
21 drawing in front of you now?

22 A. Uh-huh.

23 Q. That's a yes for the record?

24 A. Yes, yes. I see it.

25 Q. When was the first time you saw that?

1 A. Again, I don't recall the exact date, but
2 it was shortly after September 12. I was assigned
3 this investigation and began doing the, you know,
4 case review and familiarizing myself with the filings
5 in the case docket.

6 Q. Did you notice the setback identified in
7 that drawing?

8 A. Of course, I did because that's how I got
9 assigned this case. It was a conflict over the
10 setback so that's where my focus was at.

11 Q. So when you reviewed -- when you said
12 there was a conflict, did you pull up all the
13 drawings that were in OPSB's possession?

14 A. All the ones that were on the docket,
15 yes.

16 Q. Do you know how many that was -- there
17 were?

18 A. No, I don't have a number assigned to it.
19 Sorry.

20 Q. So you pulled up all the docket, and you
21 saw all the documents, all the drawings on the docket
22 showed a 45-foot setback, right?

23 A. I mean, I don't know if every drawing had
24 that noted on it but.

25 Q. I think maybe you misheard. I said all

1 the drawings that showed a setback showed a 45-degree
2 set -- 45-foot setback; is that better?

3 A. Yes. All the final engineering drawings
4 and beyond that, yes.

5 Q. Okay. And did you not see the February
6 drawings that were in OPSB's possession?

7 A. February's drawings.

8 Q. February 5 --

9 MR. STONER: Let me see if I can
10 approach, your Honor, real quickly. I am going to
11 wrap this up.

12 Q. (By Mr. Stoner) These are the February
13 drawings.

14 A. Okay.

15 Q. If you don't mind me --

16 MR. STONER: I'm sorry. Am I in your
17 way?

18 MS. HETRICK: No.

19 Q. (By Mr. Stoner) These were not shown on
20 the docket but were in OPSB's possession. You
21 indicated you had seen these before?

22 A. No. I said I only saw the ones that were
23 on the docket.

24 Q. So this is not -- this is the first time
25 you saw this was today then?

1 A. Yes.

2 Q. Okay. Did you notice the setback?

3 A. Yeah, I can see it.

4 Q. 45 feet way back in February, right?

5 A. Yes, sir.

6 MR. STONER: I don't have anything
7 further. Thank you for your time, sir.

8 THE WITNESS: Thank you.

9 ALJ DAVIS: Mr. Settineri.

10 MR. SETTINERI: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Settineri:

14 Q. Good afternoon, Mr. Douglass.

15 A. Good afternoon.

16 Q. I have some questions for you. You may
17 have already said this, but what month in 2022 did
18 you come into your new position?

19 A. September.

20 Q. September 2022. And do you have any
21 involvement in the permitting of utility-scale solar
22 projects?

23 A. I do not.

24 Q. Okay. So you are not involved in the
25 Application process at all.

1 A. Not at all.

2 Q. And when did you become aware of the New
3 Market solar project?

4 A. The setback?

5 Q. Just in general New Market solar project.

6 A. September 12.

7 Q. Okay. Of what year?

8 A. 2022.

9 Q. Is that when the Applicant -- not the
10 Applicant but the project self-reported the issue to
11 Staff?

12 A. I believe it was September 8 when they
13 first reported it, but it was the 12th when they
14 shared -- when Mr. Otarov shared the supplemental
15 attachments and that's when I became aware of it.

16 Q. Okay. And have you had any involvement
17 in the project other than work on the setback issue?

18 A. We had a complaint I believe about
19 vegetative management right about the same time that
20 was being addressed but that's not, you know,
21 anything related to this setback.

22 Q. And anything other than that?

23 A. Not that I recall.

24 Q. Okay. When -- if you -- are you familiar
25 with the Board's rules generally?

1 A. Yes, I am.

2 Q. Were you here earlier when I asked some
3 questions of Mr. Holderbaum about some of the Board's
4 rules that relate to post-Certificate requirements?

5 A. Yes.

6 Q. Okay. And did you take -- specifically
7 you remember I cited Rule 4906 -- let's do it right
8 for the record. In fact, why don't we just be fair
9 to you. Let's just -- if you have it up there, if I
10 could draw your attention to NMS Exhibit 23. It
11 should be in the pile.

12 MR. SETTINERI: We can go off the record,
13 your Honor, briefly?

14 ALJ WALSTRA: Sure.

15 (Discussion off the record.)

16 ALJ WALSTRA: Back on the record.

17 MR. SETTINERI: Thank you, your Honor.

18 Q. (By Mr. Settineri) So if you look at part
19 (D) of the rule, you see the language "If any changes
20 are made to the project layout," that paragraph, and
21 I won't read that into the record, but when you wrote
22 your testimony, did you take into consideration Rule
23 4906-3-13(D)?

24 A. When I wrote my testimony?

25 Q. Correct.

1 A. I would say I did, so my answer would be
2 yes.

3 Q. Were you aware of that rule when you
4 wrote your testimony?

5 A. Yes.

6 Q. And that rule specifically states "If any
7 changes are made to the project layout after the
8 certificate is issued, all changes shall be provided
9 to Staff in hard copy and geographically-referenced
10 electronic data," and I won't read the last sentence
11 but that's what the rule states, correct?

12 A. Yeah. "All changes shall be provided to
13 Staff in hard copy."

14 Q. Okay. And you agree it's up to the Board
15 to interpret its rules and the Stipulation conditions
16 and any other applicable documents in this
17 proceeding, right?

18 A. Yes, sir.

19 MR. SETTINERI: No further questions.

20 ALJ DAVIS: Thank you.

21 MR. SETTINERI: Thank you.

22 MS. HETRICK: No questions, your Honor.

23 ALJ DAVIS: Mr. Lindgren?

24 MR. LINDGREN: Could we have a minute,
25 your Honor?

1 ALJ DAVIS: Yes. Off the record.

2 (Discussion off the record.)

3 ALJ DAVIS: Let's go back on the record.

4 MR. LINDGREN: Your Honor, Staff has no
5 redirect. Thank you.

6 ALJ DAVIS: Thank you. You are excused.

7 THE WITNESS: Thank you.

8 MR. LINDGREN: Your Honor, I would move
9 for the admission of Staff Exhibits 2 and 3.

10 ALJ DAVIS: Any objections?

11 MR. STONER: No objections.

12 ALJ DAVIS: They shall be admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 ALJ WALSTRA: Let's go off the record.

15 (Discussion off the record.)

16 ALJ WALSTRA: We'll go back on the
17 record.

18 And Staff is resting then?

19 MR. LINDGREN: Yes, your Honor.

20 ALJ WALSTRA: And, EVS, would you like to
21 call your next witness?

22 MR. COLEMAN: Yeah. EVS calls Dan Bowar.

23 (Witness sworn.)

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DAN BOWAR

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

DIRECT EXAMINATION

By Mr. Coleman:

Q. Mr. Bowar, could you state your name for
the record?

A. It is Dan Bowar, B-O-W-A-R.

Q. All right.

MR. COLEMAN: At this time I would move
that Mr. Bowar's testimony be marked as Exhibit EVS 1
which includes Exhibits DB-1 through DB-15 and who --
would anybody like a hard copy?

ALJ WALSTRA: I would, please, and so
marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. You have -- you need a copy.

A. I do.

MR. STONER: The witness most of all.

A. Thank you.

Q. All right. Mr. Bowar, you have in front
of you a booklet that contains Direct Testimony of
Dan Bowar, B-O-W-A-R, along with Exhibits DB-1
through DB-15. Is this a document that you had
prepared on your behalf?

1 A. Yes, it is.

2 Q. And have you reviewed it?

3 A. I have.

4 Q. Do you agree with the testimony contained
5 in this document?

6 A. I do.

7 Q. Do you have any revisions?

8 A. Yes, I do.

9 Q. Okay. Let's go through the revisions
10 that you have for the record.

11 A. On -- should I just go by page and line
12 number?

13 Q. Let's start with page 6.

14 A. Page 6, we are going to strike lines 24
15 through 36.

16 Q. Let's go to page 9.

17 A. Page 9, line 14, strike the first
18 sentence up to the -- up to where it says "EVS." And
19 we are going to add "authorized." So it now reads
20 "EVS was authorized to proceed to finalizing the
21 design, and construction drawings, which means that
22 the agency, in this case, OPSB must have approved the
23 drawings."

24 Q. All right. Let's go to page 13. And
25 there you -- there is a change to both the question

1 and two answers.

2 A. Yep. Page 13, line 1, the question we
3 are striking Joint -- "Supplemental Joint
4 Stipulation" and "EVS" and "Applicant," so it is --
5 the question reads "Subsequent to the Application and
6 the Certificate, did the Applicant make any
7 supplemental filings?" The answer has been revised
8 to "Yes, EVS understands the Applicant filed the
9 final drawings all showing a 45-foot setback and to
10 my knowledge all replies back from the OPSB were in
11 the affirmative meaning approval."

12 Q. And go ahead.

13 A. Yep. Line 17, we are inserting in the
14 last sentence, I'll start after the comma, which says
15 "and the construction was approved by OPSB to go
16 ahead based or not the 45-foot setback."

17 MR. COLEMAN: Your Honor, at this time I
18 would move for the admission of EVS Exhibit 1,
19 subject to cross-examination, and submit the
20 witness -- well, for cross-examination subject to one
21 question I have. Can I proceed?

22 ALJ WALSTRA: You may.

23 Q. (By Mr. Coleman) Okay. You saw earlier
24 the tape measure exercise by Mr. Settineri.

25 A. Uh-huh.

1 Q. Looking at the chart, it showed the
2 setbacks, would those setbacks as exist in your
3 opinion as a civil engineer working on solar
4 projects, is that going to change the experience for
5 anybody driving by the project keeping in mind there
6 is a fence and vegetation?

7 A. With the distances we are talking about,
8 no. The aesthetics are going to be imperceivable to
9 those on the roadway.

10 MR. COLEMAN: Okay. Thank you.

11 I submit the witness for
12 cross-examination.

13 ALJ WALSTRA: Thank you. Do you want to
14 go first?

15 MR. SETTINERI: No. Quick question
16 before we start though, I want to get that first
17 edit. I missed it. It was, I believe, page 6,
18 lines?

19 THE WITNESS: We were striking lines 24,
20 which is the question, that question and then
21 striking all the way through to line 36.

22 MR. SETTINERI: Thank you.

23 THE WITNESS: So it was three questions
24 and three answers.

25 MR. SETTINERI: Thank you.

1 I prefer to go last. Thank you.

2 ALJ WALSTRA: Yeah. Since Staff has the
3 burden, you guys go first.

4 MR. LINDGREN: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Lindgren:

8 Q. Good afternoon, Mr. Bowar. Could you
9 please turn to page 13 of your testimony.

10 A. Okay.

11 Q. Beginning on line 16 and continuing onto
12 line 17, you state "The owner submitted EVS'
13 drawings, all of which contained a 45-foot setback,
14 and the construction was approved," you added the
15 words "by OPSB to go ahead based upon the 45-foot
16 setback." What's your basis for making that
17 statement that the construction was approved by the
18 OPSB to go ahead based on the 45-foot setback?

19 A. Through discussions with -- we hold the
20 contract with McCarthy Building Companies, and
21 McCarthy Building Companies holds the contract with
22 the project owner. And we were -- had prepared the
23 exhibits and drawings that we've referred to in here
24 that have the 45-foot setback. And everything -- the
25 discussions with our contractor, our client McCarthy,

1 were that they -- everything had been submitted and
2 approved to move to construction.

3 Q. So this is just based on discussions with
4 the contractor, not -- not with Staff; is that right?

5 A. EVS was not in direct contact with Staff.
6 We were through our chain of contracts.

7 Q. Thank you. So you never received
8 anything in writing from the OPSB Staff telling you
9 to go ahead based on 45-foot setback?

10 A. I did not.

11 Q. And you did not receive any verbal
12 communications from OPSB telling you to go ahead with
13 the 45-foot setback?

14 A. As I said, we are not in direct contact
15 with OPSB, as through our -- through the Applicant --

16 Q. Thank you.

17 A. -- that takes care of that.

18 MR. LINDGREN: Thank you. No further
19 questions.

20 ALJ WALSTRA: Thank you.

21 Mr. Settineri.

22 MR. SETTINERI: Thank you. Your Honor.

23 - - -

24

25 CROSS-EXAMINATION

1 By Mr. Settineri:

2 Q. Good afternoon. Quick question just for
3 the record, I know you answered yes to some questions
4 here briefly about the fact that moving the panels --
5 if strict compliance was required moving the panels
6 back to satisfy the exceedances in the table that I
7 presented to Mr. Holderbaum wouldn't make a
8 difference; you said something like that earlier?

9 A. Yeah. I would concur that there is an
10 imperceivable aesthetic change to the project.

11 Q. And you are sitting in the same witness
12 box that Mr. Holderbaum was in, right?

13 A. Absolutely.

14 Q. So you can see the corner where the
15 30-foot measure was and the 20-foot measure was.

16 A. Yep.

17 Q. And your testimony remains that moving a
18 panel back 3 feet, 10 feet, 20 feet, and 32 in this
19 situation in an open field --

20 A. You're not going to notice it.

21 Q. Right. And how many solar projects have
22 you been around?

23 A. A lot, across the country from California
24 to New York to Florida.

25 Q. Well over 100?

1 A. 14 years so many projects across the
2 country.

3 Q. Well over 100, if not in the hundreds?

4 A. Visited? I don't know if I visited that
5 many; but, yes, I've been through a lot and part of
6 designing many, many solar projects. Our company
7 does gigawatts' worth of solar every year.

8 Q. And you have been on-site on utility
9 scale solar projects?

10 A. Yeah, absolutely.

11 Q. Great. Now in your testimony at page 5,
12 you have -- there is a question about and your
13 research into -- line 1, sorry. And I will just
14 direct your attention to page 5, line 1. Do you see
15 that?

16 A. I do.

17 Q. Now, here you would agree, you know, the
18 OPSB has oversight over this project; do you agree
19 with that?

20 A. Yes.

21 Q. All right. And so to the extent the OPSB
22 whatever rules in this proceeding, that would dictate
23 the layout of the project, right?

24 A. Correct.

25 Q. Okay. On DB-9 -- I had a quick question

1 for you. Line -- page 8 of your testimony, lines 13
2 to 15, you mentioned callouts on that drawing.

3 A. Uh-huh.

4 Q. Moniker DBrandt. Was that -- was that a
5 result of looking at the native PDF files? I didn't
6 see the moniker DBrandt on the drawings, so I assume
7 that was maybe something from the native PDF files?

8 A. Which question are you referring to?

9 Q. Yeah, sorry. It's page 8, "Question:
10 Are there callouts on Attachment DB-9?" You said
11 "Yes. Each callout is identified with a moniker
12 'DBrandt.'"

13 A. I am trying to recall that. It must be
14 the -- let me flip through DB-9.

15 Q. And again, I wondered if that was from
16 the native PDF file where you are able to see.

17 A. It is possible because you can -- in most
18 PDF readers like Acrobat or Bluebeam, you can hover
19 over them or select the tense and you can generally
20 see the author, and Word doc is kind of the same way.
21 You can see the author. I believe that is the case.

22 Q. That's what I wondered. Thanks. This is
23 something that would be helpful for the record. Can
24 you just provide a high level explanation about the
25 relationship between CAD systems, GIS mapping files,

1 KMZ files just for all of us in the room to
2 understand that? Because you hear the acronyms
3 thrown around but how does that all come together?

4 A. How does it all come together? So CAD
5 files we use a program called Civil 3D. It's
6 Autodesk is the company that owns that. They are a
7 huge company. It's a typical design software for
8 siting design. It's used in commercial construction,
9 roadways. Surveyors use it for producing their
10 documents, and so it is the -- it is the -- it is the
11 software used to produce these files that you see.

12 The end result of our work is PDFs.
13 Those are designed final documents but the software
14 used to produce that is -- is AutoCAD or DWG files.
15 CAD files is how we are doing that. And we receive
16 files from a surveyor in that format. And those
17 files are on the correct coordinate system and that
18 coordinate system is -- just helps surveyors measure
19 the world, right? They have to know where they are
20 in space. And so that's started with the CAD -- with
21 the survey and then we draw -- use that as a
22 reference and draw on that.

23 And so all those files are used to
24 produce this final PDF. Out of that you can produce
25 a KML file. You export. So you take your file and

1 say export KML to the KMZ file to read into something
2 like to Google Earth which I think most of us are
3 familiar with.

4 You can also export that to a shapefile
5 which is the GIS software, the GIS software. And all
6 of these things are located. They are geo located
7 which means they are on the same coordinates that the
8 surveyor starts with. And the surveyor's typically
9 starting with a county coordinate system or a state
10 plan system. I don't recall this specific one, but
11 it's a known accepted industry standard so that's how
12 you know it starts with that DWG file or CAD file and
13 goes to KMZ or shapefile.

14 What was the other one that you?

15 Q. GIS.

16 A. GIS is shapefile.

17 Q. Okay.

18 A. We talked about that earlier, that
19 ShapeFiles are just a file extension which refer to
20 the GIS-type file. Esri is the actual software
21 producer that you use for GIS files.

22 Q. And if you were able to take the KMZ
23 files and layer them into Google Earth, you could
24 easily do measurements then of various layers of the
25 mapping, right?

1 A. You can -- KMZ's GIS actually is very
2 good at doing that. That's a very typical software
3 used in the industry for confirmation of that -- of
4 the data.

5 Q. Okay.

6 MR. SETTINERI: May I have a moment, your
7 Honor?

8 Q. (By Mr. Settineri) To the extent you can,
9 do you have -- if the Board requires strict
10 compliance as to the public roads -- and you are
11 aware that some of the panels in relation to
12 non-participating property boundaries are within a
13 hundred feet --

14 A. I am.

15 Q. -- in some instances. Do you have at a
16 high level any estimate of the -- if strict
17 compliance was required, what that cost would be
18 approximately?

19 A. Approximately from McCarthy, I have heard
20 significant -- many millions of dollars.

21 Q. Okay.

22 A. Over 5, less than 20. I don't know the
23 exact. I think Yuri might know more detail on some
24 of those costs as well and can state that.

25 Q. Okay. Now, have you been out to the

1 project site?

2 A. Yes.

3 Q. Site looks pretty good, doesn't it?

4 A. Yeah. I have not been there in the past
5 couple weeks; but, yeah, I have been out there and
6 seen it, and the grass is growing which is wonderful
7 to see. And some of it is operational last I saw so.

8 MR. SETTINERI: No further questions.
9 Thank you, your Honor.

10 Thank you.

11 ALJ WALSTRA: Thank you.

12 Any redirect?

13 MR. COLEMAN: I have no redirect.

14 ALJ WALSTRA: Thank you.

15 THE WITNESS: Okay.

16 MR. COLEMAN: Is there a chance we could
17 finish today?

18 ALJ WALSTRA: Why don't we do exhibits
19 first.

20 MR. COLEMAN: All right. As I understand
21 it, I need to move for the admission of Exhibits DB-1
22 through DB-15.

23 ALJ WALSTRA: I think it's all Exhibit 1.

24 MR. COLEMAN: It's all Exhibit 1, yes.
25 It's all Exhibit 1, EVS Exhibit 1.

1 ALJ WALSTRA: Any objections?

2 Hearing none, it will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 ALJ WALSTRA: We can go off the record
5 here.

6 (Discussion off the record.)

7 ALJ WALSTRA: We can go back on the
8 record.

9 New Market, if you would like to call
10 your witness.

11 MR. SETTINERI: Yes. At this time we
12 would call Yuri Otarov to the stand, please.

13 (Witness sworn.)

14 ALJ DAVIS: Please be seated. Thank you.

15 - - -

16 YURI OTAROV

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

19 DIRECT EXAMINATION

20 By Mr. Settineri:

21 Q. Good afternoon, Mr. Otarov.

22 A. Good afternoon, Mr. Settineri.

23 MR. SETTINERI: I would like to start
24 first by marking some exhibits. And, your Honor,
25 first, we would mark as NMS Exhibit 18, the Direct

1 Testimony of Mr. Otarov.

2 ALJ DAVIS: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. SETTINERI: And I would note for the
5 record that includes a number of attachments. We
6 have identified those attachments as exhibits, but
7 when we move for the admission, we would be moving
8 the entire testimony which would include all of the
9 attachments.

10 Your Honor, at this time we also would
11 mark some items. One item that was referenced in his
12 testimony and I would like to mark at this time New
13 Market -- NMS Exhibit 15, that was -- that is a thumb
14 drive that was identified in his testimony.

15 ALJ DAVIS: It shall be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. SETTINERI: We would also like to
18 mark as NMS Exhibit 16, a fencing layout that also
19 was identified as being marked in his testimony.

20 ALJ DAVIS: It shall be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. SETTINERI: And the reason we are
23 marking these is because of the size which is why we
24 had to present the -- mark those separately and
25 present those separately today outside of his

1 testimony.

2 Q. (By Mr. Settineri) So with that,
3 Mr. Otarov, if you could first identify for the
4 record what's been marked as NMS Exhibit 18, please.

5 A. Yeah. It's my direct testimony

6 Q. And obviously you have a copy there with
7 you.

8 A. I do.

9 Q. And that includes a number of
10 attachments, correct?

11 A. Correct.

12 Q. Okay. And was that testimony prepared by
13 you or at your direction?

14 A. It was.

15 Q. Do you have any changes or revisions to
16 that testimony at this time?

17 A. I do. There are six changes in total and
18 I will just go through them one by one.

19 Q. If you could slowly and carefully for the
20 court reporter, please.

21 A. Okay. So the first change is on page 4,
22 line 15. After "Yes period Hecate Energy Highland 4,
23 LLC," I would like to cross out "Hecate Energy
24 Highland 2, LLC, comma."

25 The second change is on page 7, line 7,

1 after the sentence "corresponding GIS data, as shown
2 on NMS Exhibit 6 attached to my testimony period," I
3 would like to add the following text, "the
4 ShapeFiles, diagrams, and other file submissions made
5 on or around March 19, 2021, for the 65- and
6 35-megawatt bases are on the thumb drive marked as
7 NMS Exhibit 17 period."

8 On the same page, also page 7 for the
9 record, line 8, after "June 28, 2023," I would like
10 to strike out "2023" and revise it with "2021."

11 Moving to page 8, line 10, after "Yes
12 period my understanding is that, I would like to add
13 the following text, "comma subject to the Board's
14 findings in this proceeding comma."

15 The next change is on page 16, line 20,
16 after the text "discussed with Staff," I would like
17 to strike out "of using" and replace it with "the use
18 of."

19 The last change is on page 20, line 1,
20 after the text "to 3 feet," I would like to strike
21 out "from public road centerlines." Those are all my
22 changes.

23 Q. Well done. Thank you. If we can go back
24 to one of your revisions, I note -- on page 7, you
25 had added a sentence about the ShapeFiles submitted

1 on March 19, 2021, on the thumb drive marked as NMS
2 17.

3 MR. SETTINERI: Your Honor, at this time
4 I would mark as NMS 17 the thumb drive as referenced
5 in his testimony.

6 ALJ DAVIS: It shall be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. SETTINERI: Thank you, your Honor.

9 Q. (By Mr. Settineri) Mr. Otarov, if I asked
10 the questions in your direct testimony today, would
11 your answers be the same as written, subject to your
12 revisions?

13 A. They would.

14 Q. Now let's go and look at the exhibits
15 that have been marked separately which would be --
16 let's start with NMS Exhibit 15, the thumb drive.
17 All right? NMS Exhibit 15, the thumb drive, can you
18 identify that for the record, please?

19 A. Correct. So Exhibit 15 contains KMZ
20 files and an e-mail I sent to Mr. Holderbaum.

21 Q. And when -- and when did you send that
22 e-mail to him?

23 A. I believe it was October 8 --

24 Q. Okay.

25 A. -- 2022.

1 Q. This was after the self-reporting.

2 A. Correct.

3 Q. Okay. And can you identify for the
4 record what's been marked as NMS Exhibit 16, which
5 I'll also note for the record is a drawing?

6 A. So that includes the updated fencing
7 layout. It was sort of a voluntary change where we
8 had changed the chain link fence, the tall chain link
9 fence with barbed wire, into a 7-foot tall
10 agricultural fence to improve the viewshed.

11 Q. Okay. And while we are at it on this
12 drawing, then the lines in purple on the drawing
13 would represent where the fencing was changed out?

14 A. That's correct.

15 Q. And are the fencing changes complete at
16 this time?

17 A. They are substantially completed. There
18 are punch list items but they are substantially
19 completed.

20 Q. And then next we had -- if you could read
21 for the record what's been marked as NMS Exhibit 17,
22 a thumb drive.

23 A. So Exhibit 17 contains ShapeFiles,
24 diagrams that were submitted to the Ohio Power Siting
25 Board on or around March 19 for the 65- and

1 35-megawatt site.

2 MR. SETTINERI: Your Honor, if I may, I
3 would like to ask a few more direct questions, and I
4 will -- for, one, I would like to put into the record
5 some -- a couple drawings from one of the ShapeFiles.
6 And then I would also ask to follow up for the
7 record, ask Mr. Otarov a few questions about the
8 preconstruction conference discussions, if I may.

9 ALJ DAVIS: Sure.

10 MR. SETTINERI: Thank you. So at this
11 time, your Honor, I would like to approach and mark
12 as NMS Exhibit 19, it is a site and grading plan,
13 C-201, dated March 18, 2021, and NMS Exhibit 19.

14 ALJ DAVIS: It shall be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. SETTINERI: Then I would like to mark
17 as NMS Exhibit 20, a site and grading plan, C-203,
18 dated -- also dated March 18, 2021.

19 ALJ DAVIS: It shall be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. SETTINERI: And I will hand these
22 out.

23 Q. (By Mr. Settineri) Mr. Otarov, can you
24 identify NMS Exhibits 18 and 19 and also note which
25 phase they apply to?

1 A. Sorry. 18 and 19 or 19 and 20?

2 Q. NMS 19 and NMS 20.

3 A. Sure. So NMS Exhibit 19 includes the
4 site and grading plan for the 65-megawatt site, and
5 NMS 20 includes the site and grading plan for the
6 35-megawatt site. Both submitted March 18, 2021.

7 Q. And if you could wait just one minute,
8 I'll make sure copies are provided. And because I
9 was delinquent in handing out all my copies, could
10 you just repeat that answer for me?

11 A. Not a problem. NMS Exhibit 19 includes
12 the site and grading plan for the 65-megawatt site
13 dated March 18, 2021. And NMS Exhibit 20 is the site
14 and grading plan for the 35-megawatt site dated
15 March 18, 2021.

16 Q. Okay. And these are from the thumb drive
17 that's been marked submittal -- the thumb drive
18 marked NMS 17, right?

19 A. That's correct.

20 Q. All right. Mr. Otarov, did you attend
21 the preconstruction conferences for this project?

22 A. I did.

23 Q. Okay. And do you recall -- how many
24 conferences were there? Do you recall?

25 A. There were two conferences in total. The

1 first I remember the rough dates March of 2021, and
2 the second one was April 2021.

3 MR. SETTINERI: Your Honor, if I may, I
4 would like to mark two exhibits, NMS Exhibit 28 and
5 NMS Exhibit 29. And these are -- I'll just represent
6 these are notes, internal company notes relating to
7 the preconstruction conferences.

8 ALJ DAVIS: It shall be so marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. SETTINERI: Thank you.

11 Q. (By Mr. Settineri) Again, when did you
12 believe the preconstruction conferences were held?

13 A. I don't recall the exact date, but the
14 first conference was March 2021, and the second would
15 have been early April 2021.

16 MR. SETTINERI: Okay. At this time, your
17 Honor, I know we have marked two. I am going to hand
18 out NMS 28 which is an e-mail from Christy
19 Rankissoon, R-A-N-K-I-S-S-O-O-N, to Mr. Otarov.

20 Q. (By Mr. Settineri) Is it common --
21 Mr. Otarov, again, you attended the preconstruction
22 conferences, correct?

23 A. I did.

24 Q. All right. Is it common practice to keep
25 notes --

1 A. It is.

2 Q. -- of conferences in your company?

3 A. It is.

4 Q. And in regard to -- and this -- can you
5 identify what I have marked NMS Exhibit 28?

6 A. Yeah. These are internal company meeting
7 minutes that were submitted shortly after the
8 preconstruction conference.

9 Q. Okay. And which conference would this
10 have been?

11 A. This would have been the preconstruction
12 conference part of the conditions that's required by
13 OPSB.

14 Q. Was there a preconstruction held for tree
15 clearing?

16 A. There was. That was the March, correct.

17 Q. And this would have been a
18 preconstruction conference for the rest of the
19 project?

20 A. Correct.

21 Q. Now, do you recall in that conference
22 whether Staff gave any -- essentially gave the
23 Company approval to move forward with construction of
24 the project?

25 A. I do. We received verbal approval from

1 Mr. Holderbaum to proceed with construction.

2 Q. Okay. And that's generally reflected in
3 these meeting minutes or meeting notes?

4 A. It is bullet 2. OPSB Staff Ashton had no
5 concerns/objections to the start of construction,
6 this being the final preconstruction conference,
7 provided that we would comply with the Stipulation
8 and Conditions prior to the applicable construction
9 activity.

10 Q. And this would have been after the
11 submission of the final engineering drawings for the
12 project, right?

13 A. Correct, yeah.

14 MR. SETTINERI: Your Honor, I am not
15 going to proceed with NMS Exhibit 29. If I can just
16 reserve that for another.

17 ALJ DAVIS: Certainly.

18 MR. SETTINERI: All right.

19 MR. COLEMAN: Was that 28?

20 MR. SETTINERI: That was just 28.

21 MR. COLEMAN: It is not in yet.

22 MR. SETTINERI: We are not doing 29.

23 MR. COLEMAN: You are not doing 29 at
24 all.

25 MR. SETTINERI: No.

1 All right. At this time, your Honor, we
2 appreciate the leeway to clarify and get some more
3 information on the record in this proceeding, so I
4 think transparency is important for this proceeding.
5 I appreciate that.

6 With that, we would submit the witness
7 for cross-examination, subject to moving in our
8 exhibits.

9 ALJ DAVIS: Thank you.

10 EVS?

11 MR. COLEMAN: Who goes next?

12 MR. STONER: I think it was the Staff.

13 ALJ DAVIS: Staff.

14 MR. LINDGREN: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Lindgren:

18 Q. Mr. Otarov, on page 5 of your direct
19 testimony, you quote from Condition 8 from the Joint
20 Stipulation; is that right?

21 A. Correct.

22 Q. Yes. And as we read earlier, there is a
23 sentence in that condition that states that -- it
24 discusses mapping, and it says that "The mapping
25 shall specifically denote any adjustments made from

1 the siting detailed in the Application"; is that
2 correct?

3 A. Sorry. Would you mind pointing me to the
4 line?

5 Q. I'm sorry. Beginning on line 14
6 continuing onto line 15, it says "specifically denote
7 any adjustments made from the siting detailed in the
8 Application."

9 A. Yep. I would agree that's correct.

10 Q. Thank you. Now, the maps you have
11 introduced as exhibits, they don't specifically
12 denote the adjustments made from these sitings as
13 detailed in the Application, do they?

14 A. They do show a 45-foot setback. I don't
15 think anyone can dispute that. I would say I guess
16 the reason they don't denote any changes is because
17 the drawings were always like that.

18 Q. Other than the 45-foot marking, there's
19 no other verbiage that would state that it is a
20 change though, does it?

21 A. I would agree with your statement. I
22 believe it says 45-foot typical, but yeah.

23 Q. Thank you.

24 A. Fair characterization.

25 Q. Thank you. And then New Market Solar

1 never sent any correspondence to Staff explaining
2 that this change in setbacks had been made, did they?

3 A. That's correct.

4 Q. Thank you. And you stated that at the
5 preconstruction conference, Mr. Holderbaum gave you
6 the go ahead with the project; but prior to that, did
7 you specifically make him aware that you were going
8 with a lesser setback than the 100 feet?

9 A. Would you mind repeating that question?

10 Q. At the preconstruction conferences where
11 you say Mr. Holderbaum gave you a verbal go ahead for
12 the project, did you specifically call his attention
13 to the new setbacks that were being used?

14 A. So we relied very heavily on our EPC
15 contractor. We have an agreement with McCarthy
16 Building Companies. The E stands for engineering, P
17 is procurement, and C is construction. At the time
18 we were not aware that there was any sort of
19 discrepancy involved.

20 Q. Thank you. But you are not aware that
21 Mr. Holderbaum was aware of the discrepancy, are you?

22 A. I am not aware that he was not aware.

23 MR. LINDGREN: Thank you. No further
24 questions.

25 ALJ DAVIS: Thank you.

- - -

CROSS-EXAMINATION

By Mr. Coleman:

Q. Mr. Otarov, Jeff Coleman. I represent EVS.

A. Hi, Jeff.

Q. I just have a couple questions.

A. Sure.

Q. First of all, with respect to your Exhibit 14, the Exhibit 14 in the hard copy book is not the complete Exhibit 14 that was submitted electronically.

A. Would you mind clarifying that for me?

Q. Yeah. I think what -- I think the Exhibit 14 that's in the hard copy book is missing the conveyance standards from Highland County, Ohio. Would you agree with me on that?

A. That is correct.

Q. Okay. And -- and why -- why did you include the Highland County Ohio Standards in Exhibit 14?

A. When we had investigated this issue with the EPC contractor, they had advised us they used the Highland County Conveyance Standards, so we sought to give Staff as much clarification as possible as to

1 what had happened.

2 Q. Are you aware of ever submitting anything
3 to OSPB -- OSPB --

4 A. OPSB.

5 Q. OPSB. It's getting late. Anything to
6 OPSB at any time that showed anything other than a
7 45-foot setback?

8 A. I am not aware of that. But again, we
9 relied heavily on our EPC contractor McCarthy
10 Building Companies to provide us --

11 Q. If I told you the engineering firm
12 working for that EPC contractor never submitted
13 anything ever other than a 45-foot setback, would you
14 disagree with me on that?

15 A. I would --

16 Q. Or have a basis to disagree?

17 A. I would not. I would take your word for
18 it.

19 Q. Then from the perspective of your EPC
20 contractor and your engineer, would you agree that
21 there really was no change?

22 A. No change with respect to what? Would
23 you mind clarifying that?

24 Q. With respect to everything that was ever
25 submitted to OPSB.

1 A. I would agree with that statement.

2 Q. Okay. And looking at Exhibit 14, there's
3 an e-mail there. And you are writing back to
4 Mr. Holderbaum. You make some statements, and maybe
5 you can turn to that first page of your Exhibit 14.
6 Starting in the first paragraph, the first large
7 paragraph, you recite that the submitted construction
8 plans prepared by McCarthy utilized a 45-foot setback
9 consistent with Highland County Conveyance Standards.
10 And you would agree now with that statement, right?

11 A. That is the information I received from
12 McCarthy Building Companies so, yes, correct.

13 Q. But based on your verification, you would
14 agree with that today. You haven't found anything
15 inconsistent with that today.

16 A. I am not aware of anything inconsistent
17 with that. I would like to add we did not provide
18 the Highland County Conveyance Standards to McCarthy
19 Building Companies.

20 Q. Okay.

21 A. And they did have access to the
22 Application and Staff's Stipulation report.

23 Q. Okay. So a little further down, you say
24 "We are planning to address this through as-builts."
25 What did you mean by that?

1 A. So just to paraphrase, that would refer
2 to a section in Condition 8 of the Stipulation. That
3 allows for -- my understanding it allows for
4 as-builts to be utilized to make changes.

5 Q. So you felt that you had complied with
6 Condition 8, and any revisions would be submitted
7 through as-builts.

8 A. We felt that was an option. That was up
9 to either Staff or Board discretion.

10 Q. Okay. Then you go on to say "This issue
11 is unique in that all the drawings that were
12 submitted publicly to the OPSB utilized setbacks per
13 the Highland County Conveyance Standards and the
14 drawings specifically reference a 45-foot setback
15 from the right-of-way. As such, any as-builts
16 submitted would not show any deviation." Do you
17 agree with that statement today?

18 A. I do.

19 Q. And you point out that it's important
20 that the fence line of the project remains exactly
21 the same, right?

22 A. Uh-huh.

23 Q. Meaning the outer boundaries marked by
24 the fence don't change.

25 A. Correct. The extents would not change,

1 yeah.

2 Q. You point out "The project is designed to
3 NEC code and has no life safety concerns." You would
4 agree with that today?

5 A. I would.

6 Q. "And road intersection setbacks exceed
7 250 feet and do not impede sight distances for the
8 public." Do you agree with that statement today?

9 A. That information was provided to me by
10 McCarthy Building Companies but I have no reason to
11 disagree with it.

12 Q. Okay. Thank you. "All equipment is
13 entirely within the fence line and no deviations have
14 been observed relative to the approved fencing
15 setbacks." And you, I assume, agree with that
16 statement today as well.

17 A. If you don't mind, I am just going to
18 read it one more time.

19 Q. Go right ahead.

20 A. Okay. So I would agree with the first
21 part of that, "All equipment is entirely within the
22 fence line." The second part I was made aware by
23 McCarthy Building Companies that there are a handful
24 of locations where the fencing will need to be
25 modified, and they will adjust that fencing

1 accordingly.

2 Q. Okay. Thank you. Further down, there is
3 some bullet points. The fourth one we asked earlier
4 about the cost to fully move all panels, and in this
5 paragraph, at least as of September 2022, you say
6 it's 5 to 10 million, right?

7 A. Yeah.

8 Q. Any more updated information on that
9 number?

10 A. Yeah. The latest numbers that we
11 received from McCarthy Building Companies is that the
12 estimate is closer to 7 to 10 million dollars if the
13 Board orders, I guess, strict and full compliance
14 with the 100-foot setback. I would certainly urge
15 the Board to consider the concept of minimizing the
16 concept of economic waste. 7 to 10 million dollars
17 is a substantial undertaking. If there was some sort
18 of, I guess, middle ground, we certainly feel that --
19 we feel that the visual impact would be much
20 further -- much better mitigated by additional visual
21 screening being added rather than strict compliance.
22 It's really -- my opinion it's really in the public's
23 best interest to have the visual sort of cover screen
24 by trees and landscaping rather than, you know,
25 simply moving back panels anywhere between 5 to

1 30 feet.

2 I think Mike Settineri provided a very
3 good demonstration with his -- with his tape measure
4 that I am sure you all appreciated. I would
5 certainly also add that, you know, if you thought
6 that was an immaterial distance in this room, you can
7 imagine in a large scale array, we have solar panels
8 everywhere. It would be an even -- it would impede
9 the visual even less, right? It's all relative,
10 right? So in a large field, 30 feet is that much
11 less impactful.

12 Q. And would you agree with me that the
13 topography here is basically flatland? It is pretty
14 flatland?

15 A. I would generally agree with that, yes.

16 Q. So with fencing and/or vegetation, you
17 are not going to see past the vegetation and see the
18 solar arrays, right?

19 A. Sorry. Would you mind repeating that one
20 more time?

21 Q. With vegetation growing up and maybe a
22 change in fencing, you are not going to even see the
23 solar panels driving by on the road, right?

24 A. I would say once the screening reaches --
25 once the landscape screening reaches full maturity,

1 the impact would be much further mitigated than
2 simply setting back the panels to 100 foot.

3 Q. Okay. I want to ask you one question
4 about your Exhibit 11. Actually maybe more than one
5 question. If you look at your Exhibit 11, it is
6 titled "Constraints Map Figure 5," right?

7 A. Yeah.

8 Q. And it contains -- in your exhibit book
9 it contains some plans with a title block. Being an
10 engineer, you know what I mean by title block.

11 A. Uh-huh.

12 Q. Within that title block there is a couple
13 of setback charts. This is a setback chart on each
14 sheet, correct?

15 A. Correct.

16 Q. Are you aware that even as of today, if
17 you go to the OPSB website docket and you look at
18 these drawings, that that setback data chart does not
19 show up?

20 A. I am aware of that. My understanding is
21 it was an uploading error. The native file would
22 include this exact setback.

23 Q. All right. But you can't access -- as we
24 sit here today, even today you can't access that
25 information from the OPSB website.

1 A. I don't dispute that. I would state that
2 with respect to our, I guess, EPC contractor, they
3 did have availability of this very table.

4 Q. Are you sure of that?

5 A. I am.

6 Q. You are. And why?

7 A. There is a ShareFile site that was
8 developed internally between the two companies and
9 they did have access to the native file. Again,
10 there was no corruption in the native file. It was
11 just, as I understand, an uploading issue.

12 MR. COLEMAN: Okay. I think I am
13 wrapping up, if I can take a 3-minute break.

14 ALJ WALSTRA: Sounds good.

15 (Discussion off the record.)

16 ALJ DAVIS: Let's go back on the record.
17 Can you repeat that?

18 MR. COLEMAN: No further questions, your
19 Honor.

20 ALJ DAVIS: Thank you.

21 Mr. Settineri?

22 MR. SETTINERI: Yeah. If we can have --
23 we can go off for just a few minutes, your Honor, 5
24 minutes?

25 ALJ DAVIS: Let's go back off the record.

1 (Recess taken.)

2 ALJ DAVIS: Let's go back on the record.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Settineri:

6 Q. Mr. Otarov, do you have a copy of the
7 Joint Stipulation with you?

8 A. I do.

9 Q. Okay. You were asked a question about
10 your correspondence to Ashton October of 2022,
11 specifically about as-builts, correct?

12 A. Correct.

13 Q. You referenced a condition, Condition 8.
14 Can you tell me what condition of the Certificate
15 applies to as-builts?

16 A. Sorry. I should clarify it's actually
17 Condition 3, although I would add Condition 8 allows
18 you to make changes.

19 Q. Post -- let me finish my question.
20 Post-submission of final engineering drawings --

21 A. That's right.

22 Q. -- as well?

23 A. Correct.

24 MR. SETTINERI: That's it. No further
25 questions. Thank you.

1 ALJ DAVIS: Any recross?

2 MR. LINDGREN: No, thank you, your Honor.

3 MS. HETRICK: No questions.

4 ALJ DAVIS: Thank you very much,
5 Mr. Otarov.

6 THE WITNESS: Thank you very much.

7 ALJ DAVIS: Thank you for enunciating
8 everything so well.

9 MR. SETTINERI: He did a good job, didn't
10 he?

11 ALJ DAVIS: Scored a lot of points with
12 me.

13 MR. SETTINERI: Can we go off the record
14 briefly?

15 ALJ DAVIS: Let's go off the record.

16 (Discussion off the record.)

17 ALJ WALSTRA: Let's go back on the
18 record.

19 I believe you wanted to adjust your
20 motions to quash.

21 MR. SETTINERI: Let's see --

22 ALJ WALSTRA: Your subpoenas.

23 MR. SETTINERI: Those were resolved.

24 Yes, thank you, your Honor. New Market Solar had
25 subpoena -- motion for subpoenas outstanding for a

1 Staff witness. Based on Mr. Holderbaum's appearance
2 today, we would withdraw that subpoena request.

3 ALJ WALSTRA: Thank you. EVS, same
4 position?

5 MR. DOVE: Yes, your Honor. EVS, based
6 on the testimony from the two Staff witnesses today,
7 would withdraw our outstanding subpoenas for Staff.

8 ALJ WALSTRA: Thank you.

9 And after discussions off the record, we
10 agreed on a briefing schedule with initial briefs to
11 be filed December 15 and replies to be filed by
12 January 5.

13 MR. SETTINERI: Exhibits, we have some
14 exhibits to move in too --

15 ALJ WALSTRA: Yes.

16 MR. SETTINERI: -- if I may. We would
17 also like with the conclusion of Mr. Otarov's
18 testimony, your Honor, we would like to move into the
19 record Exhibits 15, which is a thumb drive;
20 Exhibit 16, which is a fencing layout; Exhibit 17,
21 which is a thumb drive; Exhibit 18, which is
22 Mr. Otarov's direct testimony with all of the
23 attachments that were filed with it. And then we
24 would also move for the admission of Exhibits 19 and
25 Exhibit 20. And I think I have one more. And

1 Exhibit 28, your Honor.

2 MR. STONER: No objection from EVS, your
3 Honor.

4 MR. LINDGREN: No objections.

5 ALJ DAVIS: They shall be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 MR. SETTINERI: Your Honor, for the
8 record I know there was a question on Attachment 14
9 to Mr. Otarov's testimony. We would note that it is
10 missing -- it is missing the conveyance standards
11 that was part of that. I don't see a need for us to
12 provide an updated exhibit on the docket. We would
13 be glad to if you would like us to but that whole
14 e-mail correspondence is attached to the Staff
15 Compliance Inquiry Report.

16 ALJ DAVIS: Okay.

17 MR. COLEMAN: Yeah. It's in the
18 electronic version that was filed.

19 MR. SETTINERI: We want to make sure --

20 MR. STONER: In the Staff Report as well.

21 ALJ WALSTRA: Anything further?

22 The Board will take this under
23 advisement, and we're adjourned.

24 (Thereupon, at 5:46 p.m., the hearing was
25 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, November 14,
2023, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7548)

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Case No(s). 20-1288-EL-BGN

Summary: Transcript Revised - Hecate Energy Highland 4 LLC hearing held on
11/14/23 - Correction page 224, line 15 electronically filed by Mr. Ken Spencer on
behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs..