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OHIO POWER SITING BOARD

- - -

In the Matter of: :
: Case No. 10-2865-EL-BGN
Black Fork Wind Energy, :
LLC, for a Certificate to :
Site a Wind-Powered :
Electric Generating :
Facility in Richland and :
Crawford Counties, Ohio. :

- - -

PROCEEDINGS

before Mr. Scott Farkas and Mr. Daniel Fullin,
Administrative Law Judges, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-D,
Columbus, Ohio, called on Tuesday, October 11, 2011,
at 10:00 a.m.

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VOLUME II

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- - -

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Tuesday Morning Session,

October 11, 2011.

- - -

EXAMINER FARKAS: This is a continuation of the hearing in Case No. 10-2865-EL-BGN, in the Matter of Black Fork Wind Energy, LLC, for a Certificate to Site a Wind-Powered Electric Generating Facility in Richland and Crawford Counties, Ohio.

At this time we will take appearances.

First on behalf of Company.

MR. PETRICOFF: Thank you, your Honor. On behalf of the Applicant, Black Fork Wind Energy, LLC, M. Howard Petricoff and Michael Settineri, from the law firm of Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, Ohio.

EXAMINER FARKAS: On behalf of Staff.

MR. JONES: Good morning. On behalf of the Staff of the Ohio Power Siting Board, Ohio Attorney General Mike DeWine, assistant attorneys general Steve Reilly, Devin Parram, and John Jones, 180 East Broad Street, Columbus, Ohio; and from the Environmental Enforcement Section of the Ohio Attorney General's Office, assistant attorney general Summer Koladin Plantz.

1 EXAMINER FARKAS: On behalf of the Farm
2 Bureau.

3 The Farm Bureau is not present in the
4 hearing room.

5 On behalf of the Board of Crawford
6 County, Richland County Commissioners, the Richland
7 County Engineer, the trustees of Sharon Township, the
8 Plymouth Township trustees, and the Sandusky Township
9 trustees.

10 MR. COLLIER: Orla Collier of the law
11 firm of Benesch, Friedlander, Coplan & Aronoff, 41
12 South High Street, Columbus, Ohio.

13 EXAMINER FARKAS: Am I correct in the
14 entities I listed?

15 MR. COLLIER: You're correct.

16 EXAMINER FARKAS: Okay. Next, John
17 Warrington.

18 Mr. Warrington, could you state your name
19 for the record.

20 MR. WARRINGTON: John Warrington.

21 EXAMINER FARKAS: Thank you.

22 Are Loren or Carol Gledhill here?

23 They are not present in the hearing room.

24 Mary Studer?

25 Mary Studer is not present.

1 Alan and Catherine Price?

2 MS. PRICE: Catherine A. Price.

3 MR. PRICE: Alan K. Price?

4 EXAMINER FARKAS: Thank you.

5 Mr. Thomas Karbula?

6 Mr. Karbula is not present.

7 Nick or Margaret Rietschlin?

8 MS. RIETSCHLIN: Margaret Rietschlin.

9 EXAMINER FARKAS: Bradley or Debra Bauer?

10 Debra and Bradley Bauer are not present.

11 Grover Reynolds?

12 Grover Reynolds is not present in the
13 hearing room.

14 EXAMINER FARKAS: Brett Heffner?

15 MR. HEFFNER: Present, Brett Heffner.

16 EXAMINER FARKAS: Gary Biglin?

17 MR. BIGLIN: Gary Biglin.

18 EXAMINER FARKAS: Karel Davis?

19 MS. DAVIS: Karel Davis.

20 EXAMINER FARKAS: Thank you. That is all
21 the individuals and all the parties that have made
22 appearances in the case.

23 Anything preliminary we can start with?

24 MR. PETRICOFF: Yes, Your Honor. At this
25 time I would like to secure a date certain for two of

1 my out-of-state witnesses. The first one is William
2 Schroeder. I would like to get a date certain for
3 tomorrow, October 12, in the a.m.

4 And the other witness I would like a
5 date certain for is Dr. Diane Mundt. She can be
6 here tomorrow, October 12, in the afternoon, and
7 I will schedule the rest of our witnesses around
8 them.

9 We will have our other witness -- I do
10 have one other out of state, Kenneth Kaliski. He
11 will also be here tomorrow, October 12. I think we
12 will be able to run the whole direct case together
13 today and tomorrow.

14 EXAMINER FARKAS: Before we establish a
15 time, maybe we can find out if the other parties have
16 questions for those two witnesses that they want to
17 ask.

18 MR. PETRICOFF: That would be
19 appreciated, your Honor.

20 I think in terms of time I think the only
21 one that has a time limitation is Dr. Mundt. On time
22 arrangements we don't get her till the afternoon.
23 The others are more flexible.

24 EXAMINER FARKAS: We will work around
25 that. It is not a problem.

1 MR. PETRICOFF: Your Honor, at this time
2 I would like to mark seven exhibits.

3 EXAMINER FARKAS: Okay.

4 MR. PETRICOFF: The first is the
5 Application of Black Fork Wind Energy, LLC, in the
6 matter. Basically what we have done, this long line
7 of documents you see on the table, those are
8 complimentary copies to other intervenors so
9 everybody can have their own set, and we have also
10 left a set with the court reporter and a set with the
11 Bench. So we would like marked as Company Exhibit
12 No. 1 the Application.

13 We look -- let me stop there.

14 EXAMINER FARKAS: So marked.

15 MR. PETRICOFF: Then we would like marked
16 Company Exhibit No. 2, the Certificate of Service
17 confirming submittal of the Application to the Staff
18 of the Power Siting Board on June 17, 2011.

19 EXAMINER FARKAS: So marked.

20 MR. PETRICOFF: We would like to have
21 marked as Company Exhibit No. 3 correspondence to the
22 Commission with sample letters sent to property --
23 I'm sorry -- to the Board, sample letters sent to
24 property owners and affected tenants on August 12,
25 2011.

1 EXAMINER FARKAS: So marked.

2 MR. PETRICOFF: We'd like marked as
3 Company Exhibit No. 4 the Notice of Public
4 Information Meeting that was published in the Bucyrus
5 Telegraph Forum and the Mansfield News Journal on
6 December 7, 2010.

7 EXAMINER FARKAS: So marked.

8 MR. PETRICOFF: We would like to have
9 marked as Exhibit No. 5, the Notice of Public
10 Information Meeting for Proposed Major Utility
11 Facility that was published in, once again, the
12 Bucyrus Telegraph Forum and the Mansfield News
13 Journal on June 30, 2011.

14 EXAMINER FARKAS: So marked.

15 MR. PETRICOFF: And finally, Company
16 Exhibit No. 6, the Notice of Public Information
17 Meeting for Proposed Major Utility Facility that was
18 published in the Bucyrus Telegraph Forum and the
19 Mansfield News Journal on December 7, 2010.

20 EXAMINER FARKAS: So marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 EXAMINER FULLIN: I thought you said you
23 had seven.

24 MR. PETRICOFF: No. 7 is the Direct
25 Testimony of Mr. Stoner. I am a bit ahead of myself.

1 When we call him, we will have that marked as well.

2 EXAMINER FARKAS: You may call your first
3 witness.

4 MR. PETRICOFF: Thank you, your Honor.
5 At this time we would like to call to the stand David
6 A. Stoner.

7 Off the record for a second.

8 (Discussion off record.)

9 EXAMINER FARKAS: Back on the record.

10 MR. PETRICOFF: Your Honor, at this time
11 I would like to have marked as Company Exhibit No. 7
12 the prepared Direct Testimony of David A. Stoner.

13 I would also like to have marked as
14 Company Exhibit No. 8 the Supplemental Testimony of
15 David A. Stoner.

16 EXAMINER FARKAS: So marked.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 MR. PETRICOFF: Before I begin the direct
19 examination, all parties have been served with the
20 testimony; however, if anyone forgot their copy and
21 would like one, we did bring some extras. If you
22 would like one, just raise your hand and
23 Mr. Settineri will give you a copy if you need one.

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DAVID A. STONER,
being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Petricoff:

Q. Please state your name and business
address for the record.

A. David A. Stoner. I'm a senior vice
president with Element Power. The address is 400
Preston Avenue, Suite 200, Charlottesville, Virginia,
22901.

Q. Mr. Stoner, on whose behalf do you appear
today?

A. I'm appearing on behalf of the Applicant,
Black Fork Wind Energy, LLC.

Q. And do you have with you the two
documents marked Company Exhibit 7 and Company
Exhibit 8 with you?

A. I do.

Q. Are those exhibits your direct prepared
testimony?

A. They are.

Q. Let's start with Exhibit 7. Are there
any corrections or changes you would like to make to
that testimony?

1 A. Not other than as amended by Exhibit A.

2 Q. Do you have changes you would like to
3 make to Company Exhibit No. 8, the supplemental
4 testimony?

5 A. No.

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

8 A. Yes.

9 MR. PETRICOFF: Your Honor, the witness
10 is available for cross-examination.

11 EXAMINER FARKAS: Thank you.

12 Does the Staff have any questions for
13 Mr. Stoner?

14 MR. JONES: I have no questions, your
15 Honor.

16 EXAMINER FARKAS: Mr. Collier, any
17 questions?

18 MR. COLLIER: I have no questions, your
19 Honor.

20 EXAMINER FARKAS: Mr. Warrington, any
21 questions?

22 MR. WARRINGTON: Yes, I have a few
23 questions.

24 EXAMINER FARKAS: Okay.

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CROSS-EXAMINATION

By Mr. Warrington:

Q. I was given mail to my home, a copy of the Hoen study from the Lawrenceburg Berkeley Laboratory. I just wondered if you could comment on the very first page, we have a disclaimer.

MR. PETRICOFF: Your Honor, I would like to object. That is discovery, there has been no foundation laid that would bring in discovery at this point.

MR. WARRINGTON: I have received this copy from Petricoff and Settineri themselves mailed to my home and it's cited in Mr. Stoner's testimony that's before me on the paper as his rationale for property values, and I would like to ask him a couple questions about this study.

EXAMINER FARKAS: Overruled.

You may proceed.

Q. There's an extensive disclaimer I would like to have your comment on.

EXAMINER FARKAS: Can you point to a page number?

MR. WARRINGTON: The very first page.

Q. The beginning of study says it was sponsored by the United States Government.

1 "While this document is believed to
2 contain correct information, neither the United
3 States Government nor any agency thereof, nor The
4 Regents of the University of California, nor any of
5 their employees, makes any warranty, express or
6 implied, or assumes any legal responsibility for the
7 accuracy, completeness, or usefulness of any
8 information, apparatus, product, or process
9 disclosed, or represents that its use would not
10 infringe privately owned rights. Reference herein to
11 any specific commercial product, process, or service
12 by its trade name, trademark, manufacturer, or
13 otherwise, does not necessarily constitute or imply
14 its endorsement, recommendation, or favoring by the
15 United States Government or any agency thereof."

16 EXAMINER FARKAS: Okay, what's the
17 question?

18 Q. Well, you're using this study as a basis
19 to say there is no negative impact upon property
20 rights. Is that correct, from your testimony?

21 A. My view that there will likely be no
22 negative impacts on property values is based on my
23 experience in the industry, the company's experience
24 in the industry, and my review of the literature
25 generally, including this study.

1 Q. Okay. And in my written testimony I have
2 provided the McCann study that shows considerable
3 detriment to property values, and it remarks upon
4 this disclaimer.

5 EXAMINER FARKAS: Do you have a question?
6 You need to ask the witness a question.

7 Q. From contradictory studies on property
8 values, my testimony asserts that there will be
9 realized an immediate 25 to 40 percent loss of
10 residential home value, and more likely that these
11 homes will become completely unmarketable.

12 Now, you have remarked there is no study
13 that correlates a wind turbine installation and
14 property value, so here we have studies that do make
15 this correlation. You're asserting that they don't
16 exist.

17 The point of the spear here, and as
18 you've read in my testimony, will the Black Fork Wind
19 Energy Project then support the introduction of a
20 property value guarantee as detailed in my document
21 that will guard against these nonexistent, in your
22 belief and your background in the industry, that will
23 protect the nonparticipating owners from losing their
24 life's work? Will the project Black Fork and Element
25 Power and their parent refinance company, Hudson

1 Clean Energy Partners, support the introduction of
2 property value guarantees?

3 MR. PETRICOFF: Your Honor, I realize
4 that these are citizens who are participating and
5 they deserve a little leeway, and I'm more than
6 willing to give them such.

7 I would like to object to the question
8 because of form and because it introduces items that
9 aren't in the testimony, all except for the part, we
10 would not object to portion of the question that asks
11 is there a guarantee, and I guess something to the
12 effect why not a guarantee. Anyway, that way I think
13 we can get the answers on the record we need to get
14 on.

15 EXAMINER FARKAS: I will sustain the
16 objection and direct the witness to answer the two
17 questions, and then you can supplement, if you want.
18 I think to the extent you want to ask the witness
19 questions, form them as questions rather than make
20 them -- well, we will just go from there.

21 Do you understand the two questions that
22 are directed to you?

23 THE WITNESS: I do.

24 EXAMINER FARKAS: Why don't you answer
25 them first and then allow him to go on.

1 A. The first question, we will not support
2 or offer a property value guarantee.

3 The answer to the second question of why
4 not, again, a twofold answer one. Again, as per my
5 testimony, both based on our experience in wind
6 energy and our review of the literature at large, we
7 see no overall significant measured impact to
8 property values that are shown from these types of
9 installations.

10 Secondly, we feel like that type of a
11 request or provision is wholly both unworkable and is
12 just not standard practice in business generally, let
13 alone the wind power business. We don't see other
14 developments being asked to offer property
15 guarantees, whether that's a big box store or other
16 proceedings before this Board.

17 Q. Do you then assert that the State of Ohio
18 and the PUCO are then responsible for these
19 properties' losses? Is that your position then, that
20 the responsibility of that then shifts to the State?

21 A. I can't opine on what the State of Ohio
22 should do or shouldn't do or whose responsibility
23 that would be. I can reiterate my prior response.
24 We don't believe -- both our experience and the
25 studies done on this issue do not support that there

1 will, in fact, be such an impact.

2 Q. Do you care to opine then if this is left
3 then to the neighbors of the project area to take
4 damages out upon one another?

5 A. Again, all I can do is reiterate my prior
6 answer, in that we don't believe that there will be
7 such damages or negative impacts.

8 MR. WARRINGTON: Those are all my
9 questions. The other would be editorial comment.

10 EXAMINER FARKAS: You will be allowed to
11 testify and put forth your testimony that you can
12 offer at the time it is your turn. You will have a
13 chance to do that.

14 MR. WARRINGTON: In my testimony paper,
15 based conservatively --

16 EXAMINER FARKAS: Are you asking the
17 witness a question at this point?

18 MR. WARRINGTON: I'll reserve for my
19 testimony.

20 EXAMINER FARKAS: Okay. Are you finished
21 with your questions for this witness?

22 Q. (By Mr. Warrington) Well, the testimony
23 that I had submitted shows a conservative loss of
24 value upon 1,000 homes. There may be 1,400-plus
25 homes within the project footprint. If they were to

1 see these losses in the range of 25 and 40 percent,
2 we're looking at an immediate \$40 million loss to the
3 community that's benefiting your wind development
4 project.

5 I have a question based upon when I was
6 originally offered a contract from Gary Energetics.
7 They boasted that we may see as much as a \$20,000
8 revenue check for each wind turbine placed on the
9 project. That's at a 4 percent --

10 EXAMINER FARKAS: Mr. Warrington, you
11 just have to ask the witness a question. That's how
12 the procedure works.

13 MR. WARRINGTON: They're complex
14 questions. They're difficult to put in a single
15 sentence.

16 Q. We're going to see -- it's possible, by
17 contradictory studies to the Hoen study, we are going
18 to see a \$40 million loss of property value in this
19 area, while your Company may, according to the
20 original Gary Energetics contract, see a \$50 million
21 profit per year.

22 I'd just like to ask this question. I
23 cannot understand how you can impose a \$40 million
24 loss upon this community without offering a
25 guarantee. I just guess the question is, how can

1 we be made to lose so much while you gain so
2 much?

3 MR. PETRICOFF: Your Honor, I will
4 object to the question on hearsay for the Gary
5 Energetics, on the commentary on what his testimony
6 and belief is.

7 I will not object to the last part of the
8 question, which is something akin to, is it fair to
9 have -- is it your opinion it is fair to have some
10 residents take a loss and some residents or the
11 Company have a gain?

12 EXAMINER FARKAS: Okay. Mr. Warrington,
13 do you have a response to that?

14 MR. WARRINGTON: Well, this returns back
15 to my testimony, that the project creates two classes
16 of people.

17 EXAMINER FARKAS: We're not dealing with
18 your testimony at this time. Do you have a response
19 to the objection raised?

20 MR. WARRINGTON: No.

21 EXAMINER FARKAS: Then I'm sustaining the
22 objection, and I'll allow the witness to answer the
23 portions of the question that were at the end of the
24 question.

25 THE WITNESS: I don't know that I

1 understand the question. Could somebody repeat the
2 question for me?

3 EXAMINER FARKAS: Can you read back the
4 portion of Mr. Petricoff's question.

5 (Record read.)

6 A. I guess I have to disagree with the
7 premise of the question, i.e., that some residents
8 will take the loss.

9 Once again, I'll restate all of our work
10 and experience doesn't show that there will be
11 negative impacts to property values. While, yes,
12 clearly there will be a gain for the Company and
13 residents who have signed leases, there's also
14 broader gains to the community in terms of tax
15 revenue, economic development, et cetera.

16 So I can't answer is it fair or not
17 because I disagree with the fact that there's
18 something unfair here related to a loss which is a
19 hypothetical loss.

20 MR. WARRINGTON: All right. That
21 concludes my questions at this time.

22 EXAMINER FARKAS: Mr. Price, do you have
23 any questions for this witness?

24 MR. PRICE: Yes, I do.

25 - - -

CROSS-EXAMINATION

By Mr. Price:

Q. When did you do your study? How old is that study?

A. We did not do the study that was referenced. It was a study done by Lawrence Berkeley National Lab, I believe published in 2009.

Q. 2009?

A. Yes.

Q. I thought we would have more updates as we have them in the state of Ohio. I thought we would do something in the state of Ohio now.

A. I'm not aware of any property value studies that have been done specifically by the State of Ohio related to wind projects.

MR. PRICE: That's all I have.

EXAMINER FARKAS: Catherine Price.

MS. PRICE: Yes.

- - -

CROSS-EXAMINATION

By Ms. Price:

Q. In your testimony on question No. 6, would you please provide a summary and overview of the proposed facility. You have 91 wind turbines with a nameplate capacity between 1.6 megawatts and

1 3 megawatts, and I believe the study was done on
2 three wind turbines but never a 3 megawatt. How was
3 this added if it wasn't done in the original
4 application?

5 A. Again, you're correct, the study was done
6 on three different turbine types. I think the 3
7 megawatt number is reflective of our view of
8 potential sizes of turbines that ultimately could be
9 used; for example, if one of these turbine models
10 with the same dimensions in the future was changed to
11 become a 3-megawatt machine, for example, without
12 changing the other characteristics.

13 Q. The generator in it would be 3 megawatts
14 but the blades and tower would still be the same
15 size?

16 A. Potentially.

17 Q. Potentially, but not for certain?

18 A. Again, I think we're -- the Staff in the
19 agreed Stipulation restricts us to three turbines,
20 and, you know, that's what the subject of this
21 application or certificate would be.

22 Q. But when you did your different
23 studies -- I'm going to stick mainly to the noise and
24 flicker studies.

25 A. Sure.

1 Q. When you had those studies done, you did
2 those studies with the Vestas B100, the GE 1.6-100,
3 and the SWT-2.3-101 models. None of these is a 3
4 megawatt. So if you change the size of the blades,
5 wouldn't that actually change the outcome of the
6 studies done for noise and light flicker?

7 A. Perhaps it might, and I think there are
8 conditions in the Stipulation that require us to
9 resubmit that information to Staff if we change from
10 these three machines.

11 Q. Before construction?

12 A. Yes.

13 Q. But after your application has been
14 approved, you can start construction?

15 A. Yes.

16 Q. So in your opinion, do you really have to
17 state what turbines you're going to use before you
18 have the ability to just change it afterwards? I
19 mean, why do they ask you specifically to state which
20 turbines you're using in your studies if you have the
21 approval to use any wind turbine as long as you tell
22 them as you're doing it.

23 I mean, I'm sorry, I know this question
24 is being rattled. I know what I want to say and the
25 words aren't there.

1 EXAMINER FARKAS: Take your time.

2 Q. If your studies -- why weren't your
3 studies just done on a generic wind turbine? Why did
4 you specifically use three wind turbines in your
5 studies?

6 A. Because we think it's much more realistic
7 to use specific turbine models that are under
8 consideration for use in the project to stipulate
9 whether there's shadow flicker, noise, et cetera.

10 Q. And you're using these specific turbines
11 according to size, capacity, right?

12 A. Correct.

13 Q. So you should be limited to those three
14 turbines and not come back after the application has
15 been okayed and not add a fourth turbine that has not
16 been studied.

17 MR. PETRICOFF: Object to the form of the
18 question.

19 MS. PRICE: Not a question.

20 MR. PETRICOFF: If we could just ask what
21 about a fourth turbine, we wouldn't object to that.

22 EXAMINER FARKAS: Okay.

23 Q. If you decide to use the 3 megawatt
24 turbine, before actually using that turbine would you
25 have to conduct a noise and light flicker study and

1 turn that into the Staff?

2 A. Yes, that's my understanding.

3 Q. That's your understanding, okay.

4 The next question would be on page 4 of
5 your testimony, question 9. You say in here 600,000
6 megawatt-hours of electric energy annually would be
7 generated by this facility. That would be -- how
8 often would these turbines actually have to be
9 running to produce that much?

10 A. They would run to produce power when
11 there was sufficient wind blowing to generate power.

12 Q. How often do you estimate the wind will
13 be sufficient in this area to generate that much
14 electricity annually?

15 A. How often? I'm just trying to answer
16 your question accurately.

17 EXAMINER FARKAS: Let me ask it this way.

18 THE WITNESS: Sure.

19 EXAMINER FARKAS: Do you have a general
20 estimate for hours per day that a wind turbine
21 generally will operate and how many days of the week?

22 THE WITNESS: Again, it is all subject to
23 whether the wind is blowing. I guess one measure
24 that I could provide is what's called a net capacity
25 factor, which is essentially what percentage of the

1 time, as compared to total possible generation if the
2 wind was blowing all the time at full output, what
3 percentage of the time, what percentage of energy
4 would be generated on an annual basis. And we
5 estimate these turbines at this project would have a
6 net annual capacity factor of between 35 and
7 40 percent.

8 EXAMINER FARKAS: So generally you can't
9 say. Just for purposes of clarification, I mean,
10 there will be days it doesn't operate at all because
11 there's no wind.

12 THE WITNESS: Correct.

13 EXAMINER FARKAS: There may be other days
14 it operates three hours or six hours or ten hours,
15 depending on the wind.

16 THE WITNESS: Correct.

17 Q. (By Ms. Price) Okay. So you're saying
18 that annually 35 to 40 percent of the time the wind
19 will be ideal to create this electricity?

20 A. No. Actually, the turbines will operate
21 much more than that. That's an annual average of,
22 again, amount of production versus maximum
23 theoretical amount. The turbines will actually
24 operate, maybe not at full load, much more often than
25 that 35 or 40 percent.

1 As I stated previously, I can't today
2 predict whether that's an hour a day, 24 hours a day,
3 16 hours a day. It literally will vary with the
4 wind.

5 Q. Okay. I think we are both dancing around
6 the 600,000 megawatt-hours of electric.

7 EXAMINER FARKAS: Could you sort of
8 explain how you came up with the 600,000 number?

9 THE WITNESS: Yes, it was based on that
10 estimate of 35 to 40 percent annual capacity factor.
11 We need to go do my math to figure out exactly which
12 of those numbers I used, but it is in that 35 to
13 40 percent range.

14 EXAMINER FARKAS: Is this based on other
15 wind turbines similarly operating?

16 THE WITNESS: Based on the output of
17 these turbines, the turbine characteristics, and our
18 estimate of the wind resources on the side.

19 EXAMINER FARKAS: Thank you.

20 Q. (By Ms. Price) Thank you. You estimated
21 that the 600,000 megawatt-hours would be sufficient
22 to power 64,000 residents, assuming they use 850
23 kilowatt-hours.

24 Can you tell me, a resident that uses an
25 average of 850 kilowatts per month, is this a home

1 that's heated with electric, or is it just a home
2 that uses electricity for the lights, the bare
3 essentials?

4 A. I don't know.

5 Q. You don't know?

6 A. It's just an average residential number
7 we used.

8 Q. Okay. When you came to this project
9 area -- well, obviously, you didn't. But when you
10 came and talked to Gary Energetics, or whoever you
11 bought the project from, and decided to buy the
12 project, was one of the decisions that you could make
13 electricity there because of the amount of wind that
14 the project would produce a lot of electricity, or
15 the fact that the area needed more power due to
16 blackouts?

17 A. We came to this area because we saw a
18 good wind resource which was capable of generating
19 the quantities of electricity that I mentioned and
20 the overall statewide requirements and policies
21 encouraging renewable energy development, which is
22 referenced in my testimony.

23 Q. On page 5, line 3, question 10, you talk
24 about the 25 percent renewable energy. If you take
25 this wind project, the 91 turbines, the 200

1 megawatts, how many of these wind farms, these
2 duplicate wind farms producing the exact same way,
3 how many of these wind farms would it take to produce
4 25 percent of Ohio's electric?

5 A. I don't know. I don't have those
6 calculations.

7 Q. Do you have any idea how much -- what
8 25 percent of Ohio's electricity is?

9 A. Again, I don't have that statistic at
10 hand.

11 Q. "Of the 25% renewable energy generation
12 such as wind can supply the whole 25% but must at
13 least make up 12.5% by 2025."

14 MR. PETRICOFF: Your Honor, I interpose
15 an objection for the record here. There is no
16 indication, in fact, in the statute it's fairly clear
17 that that percent does not have to come from wind.
18 It can come from a variety of alternative sources.

19 With that amendment to the question, I
20 would let the question go forward.

21 EXAMINER FARKAS: Thank you.

22 MS. PRICE: I was reading into his
23 testimony here that I thought they were stating that
24 they could produce the 25 percent that was needed.

25 EXAMINER FARKAS: Page 5?

1 MS. PRICE: This is page 5, question
2 10 started on page 4 and continues to page 5.

3 EXAMINER FARKAS: Okay. The portion you
4 are asking is about the 25 percent?

5 MS. PRICE: No. 3.

6 EXAMINER FARKAS: Do you want to clarify
7 that and answer?

8 THE WITNESS: Could you restate the
9 question? I don't know that I understand exactly
10 what the question is.

11 Q. (By Ms. Price) It says in No. 3 of your
12 testimony, "Of the 25% renewable energy generation
13 such as wind can supply the whole 25% but must at
14 least make up 12.5% by 2025."

15 The 25 percent you say could be made by
16 wind. How many wind projects would it take to
17 produce that 25 percent?

18 A. I don't know how many wind projects. It
19 would clearly depend upon the size of the projects,
20 and the statement "wind can supply," meaning
21 hypothetically according to the statute wind is
22 eligible to qualify to meet the standard up to
23 25 percent. So the statement was wind is eligible to
24 contribute to meeting that goal. It has to make --
25 renewable has to make up at least 12.5.

1 Q. Can I go outside your testimony a little
2 bit?

3 A. Sure.

4 Q. And ask, do you think there's enough
5 agricultural land in the state of Ohio to put enough
6 wind farms on to produce 25 percent of Ohio's
7 electric?

8 A. I don't know.

9 Q. You don't know, okay. Thank you.

10 The question No. 11 it says in your
11 testimony that "Utilities and/or competitive retail
12 electric suppliers can then purchase those renewable
13 energy credits to apply toward their renewable energy
14 portfolio obligations."

15 Okay, wind turbines do not pollute,
16 right?

17 A. They generate without any emissions, if
18 that's what you mean.

19 Q. Okay. So therefore your energy credits
20 you will be able to sell to someone else because
21 you're not using them with the running of the wind
22 turbines?

23 A. Those credits are produced along with the
24 electricity that's produced by the turbines.

25 Q. Okay. These are the same credits needed

1 by companies that are polluting so they don't have to
2 pay big fines for the pollution?

3 A. I don't know about that. What I do know
4 is these are credits that can be used to satisfy
5 utilities or energy suppliers' obligations under 221.

6 Q. Okay.

7 A. I believe they are different from what
8 you are referring to, air pollution credits.

9 Q. I will move on to page 6, question 12, "a
10 strong competitive wind resource" for the project
11 area, and you're saying that's 35 to 40 percent of
12 the time, right?

13 A. Net capacity factor of between 25 and
14 40 percent.

15 Q. Okay. On No. 2, "A robust electrical
16 transmission grid capable of accepting the power to
17 be generated without the need for major upgrades or
18 new transmission lines."

19 I'm asking for your expertise. When you
20 take the electricity from wind turbines to put into
21 the power grid, wind turbines are not a constant.
22 It's not like a power plant where you fire it up and
23 it starts and it goes evenly all day long, but it
24 will start and stop, maybe not so often, but more so
25 than a generating plant. Is this electricity hard on

1 our electric grid, this stopping and starting?

2 A. No. The intermittent nature of wind can
3 easily be accommodated within a utility's system,
4 such as AEP, to which this generator would be
5 connected.

6 Q. Okay. Okay. And then on No. 3, "A large
7 group of landowners willing to lease their land and
8 participate in such a project." You previously have
9 stated that there's roughly 150 landowners that have
10 signed on to this project.

11 A. That's correct.

12 Q. Okay. And the landowners -- can I ask
13 you a question? When they signed on, if they signed
14 on one portion of their land one day and it's just
15 the wife that owns it, and then a month later the
16 wife and the husband own another position of land
17 together, is that wife counted twice or just once as
18 a landowner once in that 150?

19 A. I don't know, and I would probably defer
20 that question to Mr. Hawken, who can answer more
21 specific questions.

22 Q. Okay. So as far as you know, there's 150
23 landowners but you don't know if people have been
24 counted twice, three times. How many is that
25 compared to the nonparticipating residents in the

1 project area?

2 A. I don't have a number. I don't have a
3 figure for nonparticipating residents in the project
4 area.

5 Q. Your company sent out 1,086 letters to
6 nonparticipating residents.

7 A. We sent out that many letters to
8 residents within the project area and also within I
9 believe a half mile outside the project area because
10 we were trying to be inclusive of this notification.
11 I don't know of that 1,080 how many of those
12 residents are within the project area versus include
13 a half-mile buffer.

14 Q. Out of the 150 landowners that signed on,
15 are any of those landowners within that extra area
16 you went out?

17 A. I think there are some landowners in the
18 project boundary who also own property outside the
19 project boundary.

20 Q. Okay. On page 7, question 14, on your
21 noise studies, when the noise studies were done on
22 the three turbines or turbine models that you used,
23 were these noise studies only done for when the
24 turbines are new? What I'm asking, was there a noise
25 study done on the exact same siting but when the

1 turbines are 5, 10, 15 years old and the mechanics of
2 the turbines are worn?

3 A. Again, I think that question is better
4 answered by Ken Kaliski who will be testifying
5 specifically on our noise studies and sound issues.

6 Q. Okay. You also state in this question
7 that the health and safety concerns, there are no
8 health and safety concerns. Was that medical or
9 mental?

10 A. Clearly medical. And, once again, I
11 believe Diane Mundt, who will be testifying on health
12 and safety, can better address that question.

13 Q. Okay. On page 8, the last question, 14,
14 "So some of these concerns are simply not valid while
15 others are avoided by properly siting turbines, as we
16 have done in this case."

17 Here you're stating you avoided as many
18 problems, health, noise, et cetera, by siting the
19 turbines where they are in your study. My question
20 is, when you get ready -- these are not the absolute
21 final sitings of these wind turbines, are they, in
22 these studies?

23 A. They are currently proposed locations.
24 There may be some micrositing adjustments that may be
25 conducted between now and prior to our

1 preconstruction conference. Any moves from the exact
2 locations proposed we would need to propose to Staff
3 as part of the micrositing issues for Staff approval.

4 Q. How far will you be able to move one of
5 those turbines before a noise or flicker study would
6 need to be redone on it?

7 A. I don't know that there's a specific
8 distance. I think our conclusion is if we are moving
9 turbines from the locations noted, we would be
10 redoing noise and flicker studies prior to
11 construction.

12 Q. Okay. But if -- once again, if you
13 change the actual site of any of these wind turbines,
14 you're going back to the Staff letting them know in
15 belief they will say okay and you will go ahead with
16 construction. There won't be any court hearing or
17 anything to discuss if this should be allowed or not.

18 A. Correct. My understanding is that we can
19 accommodate small micrositing changes with Staff
20 prior to the preconstruction conference.

21 Q. You say "micrositing." What size is
22 that, up to how far?

23 A. Again, I don't believe we specified a
24 specific distance limitation. That would basically
25 be, I think, Staff's discretion.

1 MS. PRICE: Thank you. I'm done with
2 this witness.

3 EXAMINER FARKAS: Thank you.
4 Ms. Rietschlin.

5 MS. RIETSCHLIN: I do have question.
6 First I need to find out -- there is a question for
7 you first. There were two public comment letters
8 written by people who are leaseholders, and I would
9 like to refer to them in the question. They are
10 posted on the website. I would like to use two
11 sentences to formulate a question for Mr. Stoner, if
12 that's permissible.

13 EXAMINER FARKAS: Why don't you formulate
14 the question and see if anybody objects.

15 MS. RIETSCHLIN: All right.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Rietschlin:

19 Q. There's a public letter that was sent in
20 by Roger Nease. I'm sure you're familiar with Roger
21 Nease.

22 A. Yes.

23 Q. He states in his letter, "Element Power
24 has been a very understanding company to work with.
25 When we met with them to discuss the project and our

1 concerns, they listened and made our concerns part of
2 their plan."

3 What kind of concerns were those?

4 A. I can't speak to Mr. Nease's concerns
5 specifically. I did not meet with him. I can speak
6 to general landowner concerns.

7 Q. You did not actually speak with him and
8 make his concerns part of the plan?

9 A. I personally did not. Representatives
10 from our company did.

11 Q. Likewise, Robert Lillian makes a similar
12 comment, "Element Power has been very proactive with
13 all the community stakeholders to address all the
14 many concerns shared."

15 I would like to get a fix on what these
16 concerns were that you dealt with and included in the
17 plan.

18 A. Again, I can't specifically answer to
19 that. I would defer that to Mr. Hawken, who is much
20 closer to the specific landowner discussions. Maybe
21 he will be able to answer that question.

22 MS. RIETSCHLIN: Okay. That's all.
23 Thank you.

24 EXAMINER FARKAS: Mr. Heffner.

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CROSS-EXAMINATION

By Mr. Heffner:

Q. Appendix F, page 6 of the Application, it says, "It is expected that BP Alternative Energy will adhere to this standard." This is related to transmission line improvement. And the question I have that relates to you, is will Element Power be the developer or will Black Fork Wind Energy, LLC be sold before development?

MR. PETRICOFF: Your Honor, I want to interpose an objection here that Mr. Hawken is the witness who is sponsoring the Application.

With that reservation, if the witness can answer the question, I will not object.

EXAMINER FARKAS: I'll allow him to answer.

A. Again, the question specifically?

Q. Will Element Power be the developer, or will Black Fork Wind Energy, LLC be sold before development?

A. Black Fork Wind Energy, LLC is the Applicant and therefore the developer of the project.

Q. Okay.

A. Black Fork Wind Energy is owned by Element Power. I can't state whether that entity

1 would or would not be sold. Did you say prior to
2 development or prior to construction?

3 Q. Development.

4 A. We are developing the project now.

5 Q. Well, construction. Development to me is
6 when you actually go out and do something.

7 A. So the question is prior to construction?

8 Q. I guess I should have put it that way,
9 yes.

10 A. I can't state specifically whether it
11 would or would not be sold prior to construction.

12 Q. So this Black Fork Wind Energy, LLC, are
13 you an employee of that Company?

14 A. No. I'm an employee of Element Power.

15 Q. Okay. My next question, I notice here
16 that you received your MS in civil engineering from
17 Lehigh University in Bethlehem, Pennsylvania.

18 There's a manufacturer of wind turbines, La Mesa,
19 that went into an abandoned steel mill. I just
20 wondered, was that one of the turbines you guys
21 looked at? Since you're the developers of many
22 projects, have you ever looked at that particular
23 product as a potential for one of your developments?

24 A. Yes.

25 Q. Have you looked at it in relation to this

1 particular project?

2 A. We have looked at it, but it's not a
3 turbine that's cited in this application.

4 Q. Okay. Concerning the 3 megawatt in
5 question 6, in the event -- I already understand you
6 have to go through the sound studies and everything,
7 but will there be a public hearing in the event that
8 you should choose a 3 megawatt, or will it be worked
9 out between the Staff and the Applicant?

10 A. I don't know if there will be a public
11 hearing, and I think the nature of what we will be
12 required to do is specified by Staff.

13 Q. On the same question 6, it lists
14 "14,800 acres being converted for use for turbine
15 bases." Well, let me back up. "Only 67 acres of a
16 project area of approximately 14,800 acres." Is,
17 14,800 acres the area of the project?

18 A. I believe that's a number reflecting our
19 leased acreage.

20 Q. Okay. The actual number if -- what acres
21 in the project area is approximately --

22 A. I think the entire area within the
23 project is stated to be slightly over 24,000 acres.

24 Q. So that statement would seem to be
25 incorrect, "out a project area of approximately

1 14,800 areas." In the general use of term, "project
2 area" has always been used to cover the entire
3 footprint of the actual area of the project, and the
4 14,800 is the leased land. So is this a correct
5 statement or this an incorrect statement?

6 A. I believe it's a correct statement where
7 you define project area as actual leased premises.

8 Q. Well, in certain places we define it as
9 the one way, and in this instance we define it in a
10 different way. So you are acknowledging that
11 sometimes we call the project area the leased land
12 and other times we consider it the entire area within
13 the boundary drawn on map that was given to us?

14 A. Yes.

15 Q. Okay. On the question 12, how many
16 persons signed the lease within the current project
17 area?

18 A. Again, as stated previously, we have
19 about 150 participating landowners.

20 Q. Is that within the boundary --

21 EXAMINER FARKAS: You have to let him
22 answer the question.

23 MR. HEFFNER: Okay.

24 A. We have 150 participating landowners, as
25 stated before. I would need to confirm if that's,

1 for example, a husband and wife, whether that is one
2 landowner or two participating landowners. I believe
3 that would be counted as one, and Mr. Hawken may be
4 able to provide detail on that.

5 Q. Does that include only the persons within
6 the outlying project area, or does that also include
7 leased signers in the broader general lease?

8 A. Those figures are reflective of folks who
9 signed leases within the project area. However, some
10 of those people also have signed leases outside the
11 project area.

12 Q. But there are 150 people, as you say
13 here, within the project boundaries, more or less.

14 A. Yes.

15 Q. Okay. How many similarly sized projects
16 have you developed that required notification of more
17 than 1,000 affected homeowners and tenants?

18 A. I don't recall because I don't recall my
19 numbers, you know, landowners that I needed to
20 notify.

21 Q. On question 13, page 7, item 4, your
22 statement, "The project will produce annual local
23 property tax revenue of approximately \$1.8 million,"
24 is this project subject to the tax rate of Senate
25 Bill 232?

1 A. Yes, we believe it will be.

2 Q. I'm sorry?

3 A. Yes, I believe it will be.

4 Q. Okay.

5 MR. HEFFNER: I want to go on to question
6 16. I'd like to make an objection because Mr. Stoner
7 is not an expert in the evaluation of these studies.

8 EXAMINER FARKAS: You're objecting to
9 what?

10 MR. HEFFNER: To the answer to question
11 16. He is making an assessment of a study he doesn't
12 show unique qualification to address.

13 EXAMINER FARKAS: Do you want to address
14 this?

15 MR. PETRICOFF: Your Honor, we will treat
16 this as a motion to strike, and we object to that,
17 noting Mr. Stoner is an expert. He has 25 years in
18 the industry. He has built numerous projects, and
19 the answer to question 3 basically lists all of his
20 experience and his engineering background. For those
21 reasons I think he qualifies as an expert witness,
22 and as an expert witness he may give opinion
23 testimony.

24 EXAMINER FARKAS: And is this -- do you
25 want to respond to that?

1 MR. HEFFNER: Yes, I do. He is making an
2 expert opinion from the point of view or perspective
3 of a project developer but not an expert in real
4 estate.

5 EXAMINER FARKAS: Are you objecting to
6 the study itself?

7 MR. HEFFNER: I'm not objecting to the
8 study. I'm objecting to his entrance and evaluation
9 of the study. If he was a party to that study, I
10 would feel that perhaps his background would be more
11 fitting. But, as you know, asking the developer to
12 make a decision -- I guess I don't have an adequate
13 comparison there.

14 I am a construction worker. I learn
15 certain things, too. Can I give my input? Does it
16 have weight when we discuss whether or not I'm going
17 to follow the building codes or not? If somebody
18 does a structural analysis of a building, do I, as a
19 construction worker, have the right to challenge or
20 discuss the studies that went into the engineering of
21 specific beams in that structure? I don't think so.

22 EXAMINER FARKAS: Well, I don't want to
23 answer your question since you seem to have answered
24 it yourself. Since you're not testifying with
25 respect to being a construction worker here, we don't

1 need to address that.

2 MR. HEFFNER: Okay.

3 EXAMINER FARKAS: With respect to your
4 objection, I'm going to overrule your objection.
5 That means I'm allowing his testimony with respect to
6 the study.

7 MR. HEFFNER: That's all my questions.
8 Thank you.

9 EXAMINER FARKAS: Mr. Biglin, any
10 questions?

11 MR. BIGLIN: Not in addition to what I've
12 heard.

13 EXAMINER FARKAS: Karel Davis, any
14 questions?

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Davis

18 Q. I have one question. If there was no
19 state mandates to use this stuff and there was no
20 government money coming from the state or federal
21 government, would you be here?

22 MR. PETRICOFF: Your Honor, we'll assume
23 with clarification "this stuff" refers to alternative
24 energy. With that, we do not object to the question.

25 Q. Green energy, alternative energy,

1 renewable energy.

2 A. Given that our customers are in large
3 part buying this energy because of those mandates and
4 we're here to sell to those customers, we may not be
5 here.

6 MS. DAVIS: Thank you.

7 EXAMINER FARKAS: That's your only
8 question?

9 MS. DAVIS: Yes.

10 EXAMINER FARKAS: Off the record for a
11 second.

12 (Discussion off record.)

13 - - --

14 EXAMINATION

15 By Examiner Fullin:

16 Q. Mr. Stoner, my questions generally have
17 to do with trying to understand the conditions listed
18 in the Stipulation. I think most of them I formed
19 before the Stipulation was amended so that might
20 eliminate some of the questions.

21 If you need to, you can point me to other
22 witnesses that will be testifying about these
23 conditions, but it generally has to do with
24 understanding what the words of the conditions mean.

25 MR. PETRICOFF: Your Honor, so we have a

1 clean record here, it may make sense if we are taking
2 on the questions of the Stipulation, let's mark the
3 Stipulations and then we can have a references back
4 in the record.

5 EXAMINER FULLIN: Okay.

6 MR. PETRICOFF: With that in mind, I
7 would like to have marked the Joint Stipulation and
8 Recommendation. I would like to have marked as Joint
9 Exhibit 1 the Joint Staff and Black Fork Joint
10 Stipulation, the Stipulation is dated September 28,
11 2011.

12 EXAMINER FARKAS: Okay.

13 MR. PETRICOFF: I'd also like marked the
14 Joint Stipulation, Crawford County and Black Fork,
15 and that would be I guess we will call it Joint
16 Stipulation No. 2, and that would be the October 5,
17 2011 Stipulation. That way we have Joint Exhibit
18 1 and Joint Exhibit 2 to make any questioning easier.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 Q. (By Examiner Fullin) My questions were
21 really formed before the October 5 Stipulation came
22 in. I'm not sure I did due diligence to get all the
23 questions revised. I am referring to Exhibit 1 and
24 the conditions listed there.

25 A. Sure.

1 Q. The first condition 1 makes reference to
2 "this" Staff Report of Investigation. I would guess
3 you are really trying to refer to "the" Staff Report?
4 Of Investigation?

5 A. Correct.

6 Q. Condition 4, the condition specified that
7 as regards to "any new transmission lines proposed
8 for construction in order to deliver electricity from
9 the wind farm shall be presented to the Board in a
10 filing submitted by the transmission line owner, and
11 must be approved by the Board prior to construction
12 of the wind farm."

13 Please state for the record whether
14 construction of any new transmission line is
15 necessary in order to deliver electricity from the
16 wind farm.

17 A. There is not construction of a new
18 transmission line as people think about a line being
19 towers and conductors. What is required is AEP, the
20 transmission line owner, will be hanging a new
21 conductor on existing towers that are in existence
22 out there. They have an empty space, and I believe
23 they may have one dead-end structure, so that's what
24 would be required to accomplish interconnection of
25 this wind farm, and that filing would be by the

1 transmission line owner, which is AEP.

2 Q. Which is AEP.

3 EXAMINER FARKAS: Do you know the size of
4 the line?

5 THE WITNESS: It's a 138 kV transmission
6 line existing. That would be our voltage as well as
7 the conductor.

8 Q. You said AEP. Do you know when we can
9 expect AEP would be submit a filing for such
10 approval?

11 A. I do not know.

12 Q. Okay. All right. Skipping ahead to
13 condition 5, a reference is made to "any wind turbine
14 proposed by the Applicant but not built as part of
15 this project shall be available for OPSB Staff review
16 in a future case."

17 Is this language intended to cover any
18 wind turbine that is already proposed in this case by
19 the Applicant but not built as part of the project?

20 A. Again, I would suggest maybe talk to
21 Staff about what they intended specifically by that
22 wording.

23 Q. Okay. Do you know what is meant by the
24 terms "a turbine not built shall be available for
25 Staff review in a future case"?

1 A. I believe it is implying future
2 expansions.

3 Q. Of this project?

4 A. Of this project, or my understanding, the
5 certificate has a life that's valid for five years of
6 issuance prior to starting construction. I think it
7 also refers to turbines that are proposed but not
8 built within that period of time, that those would
9 need to be subject to a subsequent application.

10 Q. Could be proposed today as we speak but
11 not built within the five years?

12 A. Not built, correct.

13 Q. Okay. Moving on to condition 6, if
14 construction begins at a turbine location and it is
15 determined the location is not a viable turbine site,
16 that site will be restored to its original condition
17 within 30 days.

18 Who will make the determination that the
19 location is not a viable turbine site and how will
20 they make it?

21 A. We would do that in conjunction with our
22 construction contractor and the turbine supplier.

23 Q. Will an alternative site be chosen if the
24 site you were initially looking at was determined not
25 to be viable?

1 A. If possible, yes. Again, I refer to the
2 micro-siting. If we move a project, you know, move a
3 turbine a small distance and if it's agreeable to
4 Staff, that's what we would attempt to do.

5 Q. Would it be subject to the terms, like
6 the micro-siting that you talked about earlier?

7 A. Yes.

8 Q. And how will a determination if the
9 location is not a viable turbine site affect
10 compensation to the landlord of that site?

11 A. Wherever the turbine ultimately is built,
12 the compensation would go there.

13 Q. The compensation would go with the
14 turbine once it's built?

15 A. Yes.

16 EXAMINER FARKAS: The 30-day time frame
17 listed is the end of that 30 days from the
18 determination?

19 THE WITNESS: The way I read this, yes.

20 EXAMINER FARKAS: So if the company would
21 make a determination let's say today, and then they
22 would report that to Staff, and then within 30 days,
23 is that how it would work from today?

24 THE WITNESS: I believe so, yes.

25 EXAMINER FARKAS: Okay. Thank you.

1 Q. (By Examiner Fullin) On condition 9 it
2 requires a letter identifying which of the three
3 turbine models has been selected 60 days prior to
4 construction. Can the selection vary from turbine
5 site to turbine site in the project, or is it all in
6 same model once you make the selection?

7 A. It could be different models.

8 Q. Okay. What is the purpose of the letter?
9 Can the Board challenge the selection at that point?

10 A. I don't believe so, if it's one of these
11 turbines that are listed here.

12 Q. Do you know why they chose a 60-day
13 period for this notification?

14 A. I do not know.

15 Q. How they came up with it.

16 Again, condition 11, a signed
17 interconnection Agreement with PJM must precede
18 construction. What is the process expected to
19 accomplish this?

20 A. PJM, the transmission operator
21 organization, has a well-established application and
22 study project for generator interconnections of this
23 type. We are well along in that application process.

24 Q. That was my next question.

25 A. We are awaiting the results. There are

1 three studies that are done sequentially. We are
2 awaiting the results and publishing of the final
3 facility study that dictates that facilities are
4 required to establish the interconnection. Once that
5 is issued, we then sign an interconnection service
6 agreement with PJM, as stated here, which allows our
7 interconnection.

8 Q. Okay. Condition 12 calls for redesign of
9 the collection line system connecting turbines 30 and
10 44 to turbine 57. I did notice this was a condition
11 that is addressed by Mr. Hawken's testimony, but I'll
12 ask you and you can refer me to him if necessary.

13 But it calls for a redesign considering
14 better utilization of disturbed area of this project
15 I want to know what that language means, "better
16 utilization of the disturbed areas of this project,"
17 and what is the factual basis that prompted this
18 condition?

19 A. I would probably defer to Staff on that
20 question in terms of specifically their intent. I
21 believe their intent -- but again, I would defer to
22 Staff for a fuller explanation -- that Staff was
23 concerned about some runs of collection lines and
24 whether they could be combined with other lines of
25 collection lines in areas that were already disturbed

1 between the turbines.

2 As noted as part of this condition, we
3 are agreeing to relook at that to reconsider whether
4 we can, as it's stated, redesign the facility to
5 better utilize some of those existing or planned
6 disturbed areas, you know, considering, you know, all
7 of the factors in the engineering and design of the
8 collection system.

9 Q. Okay. On condition 13, it states a
10 procedure must be in place in order to address
11 potential operational concerns experienced by the
12 public. It indicates that the applicants "shall
13 investigate and resolve any issues to the
14 satisfaction of the Staff with those who file a
15 complaint."

16 First question is how a Complainant
17 experiences a concern that is only a potential rather
18 than actual? I think the word "experience" would
19 point to something that actually has happened rather
20 than a potential.

21 A. I'm sorry, can you restate the question?

22 Q. Yes. I think that the condition itself
23 says a resolution procedure must be in place in order
24 to address potential operational concerns experienced
25 by the public.

1 So I'm wondering what that language
2 means, because to me potential doesn't really relate
3 to experience, you know, potential experience. But
4 when you have experience, then you probably have an
5 actual concern rather than a potential concern.

6 So I'm wondering if you would agree with
7 what I'm saying? Would you agree that the Board
8 remove the term "potential" and leave it to operating
9 concerns experienced by the public? If not, how
10 would you support the language that we have or maybe
11 have some other interpretation of the language?

12 MR. JONES: Your Honor, we would not have
13 any objections to removing the word "proposed" in
14 that condition.

15 EXAMINER FARKAS: The condition would be
16 the same with or without the word.

17 MR. JONES: That's right.

18 EXAMINER FULLIN: In case we wanted to do
19 some editing, I wanted to get your feedback on it.

20 Q. All right. What redress does the
21 Complainant have in the situation in which the Staff
22 is satisfied with the resolution of the issues but
23 the Complainant is not? How does this complaint
24 resolution procedure addressed in this condition
25 square with the statutory complaint procedure that

1 exists under 4906.97?

2 A. I can't speak specifically to that
3 complaint resolution procedure. All I can say we
4 will abide by all applicable statutes.

5 And, you know, to your question about how
6 does this -- what is the Complainant's redress?

7 Q. Yes.

8 A. Again, as written, we will do our best to
9 resolve those complaints and those issues, but
10 ultimately, I guess if there is a disagreement, the
11 way I read this, that essentially we need to satisfy
12 OPSB Staff with respect to the investigation and
13 resolution of those issues.

14 Q. Okay.

15 EXAMINER FULLIN: I may also eventually
16 be asking the Staff witnesses about the same type of
17 question, just to be forewarned.

18 MR. JONES: Thank you.

19 Q. Condition 17 creates a deadline for the
20 Applicant to remove or abate damage due to vandalism
21 to preserve the aesthetics of the project.

22 Should we also address the situation in
23 which vandalism affects more than the aesthetics, if
24 there are other types of the damage besides the
25 aesthetic value or condition? Do you have anything

1 to add to the record on that issue?

2 A. Nothing to add.

3 Q. Okay. Condition 18 says that damage to
4 the field drainage system shall be promptly repaired.
5 I'm asking for a further explanation what is intended
6 by the term "promptly," and I will let you know in
7 several other areas the term is used. I am hoping
8 the Company or Staff or both in the testimony would
9 clarify what is meant by the term "promptly" when it
10 shows up.

11 EXAMINER FARKAS: Just as a supplement to
12 his question, in some parts of this Stipulation it
13 says within 30 days, within 60 days. Is there a time
14 frame for this?

15 THE WITNESS: I think that we and Staff
16 did not specifically include a time frame because
17 "promptly" depends somewhat on field conditions. It
18 will be our intention as we build our collection line
19 that immediately, literally behind that construction
20 we would have a tile repair crew, so I believe
21 typically that repair will be done within hours or
22 days. But there is some flexibility I think designed
23 based on field conditions. That's why I think a
24 specific number wasn't specified here.

25 EXAMINER FARKAS: Thank you.

1 Q. Condition 19 uses the term "within seven
2 days of issuance or receipt by the Applicant,
3 whichever is sooner." Again, maybe I can get a
4 clarification from you or witnesses for Staff. Is
5 there ever an expectation that the receipt would
6 actually precede the issuance?

7 A. I think we can edit to say within seven
8 days of receipt.

9 Q. Okay. Conditions 20 and 21, can you
10 explain the terms NPDES, SWPPP, and SPCC?

11 A. Yes. NPDES is National Pollution
12 Discharge Elimination System Permit, and that permit
13 has to do with stormwater discharges from the
14 projects, primarily during construction.

15 SWPPP, I can get two of the three Ps.

16 Q. I see, it's in the appendix. I should
17 have checked the appendix before phrasing the
18 question. It is listed there.

19 A. It has to do with erosion.

20 EXAMINER FARKAS: Just for the record,
21 it's Stormwater Pollution Prevention Plan.

22 THE WITNESS: Plan, that's it.

23 Q. What about in 21, condition 21 in
24 paragraph (e) uses the term "these sensitive areas."
25 What does that refer to specifically?

1 A. I believe it is refers to watercourses
2 and wetlands.

3 Q. Okay.

4 EXAMINER FARKAS: Are you referring to
5 any location where an NPDES permits or SWPPP would be
6 required? Is that true, or could it be other areas?

7 THE WITNESS: I believe it's referring to
8 watercourses and wetland specifically. Again, I
9 would defer to Staff for their interpretation.

10 EXAMINER FARKAS: Okay.

11 Q. On condition 22 it states that the
12 materials shall be removed after completion of the
13 construction activity, as weather permits. I would
14 like for you to explain how soon after completion.

15 And my other question, does this refer to
16 only after completion of the entire project, or more
17 frequently on a construction site-specific basis?
18 Elaborate or explain.

19 A. I think clearly as read, we would
20 interpret this to mean at the conclusion of
21 construction that we would be required to remove
22 that.

23 EXAMINER FARKAS: So at the conclusion of
24 the construction of the entire project?

25 THE WITNESS: Correct. That said, in

1 practice for certain access roads we may remove some
2 of those temporary facilities prior to the end of
3 construction. But, again, I think that as read, I
4 think we are reading this to be at the conclusion of
5 construction.

6 EXAMINER FARKAS: Okay.

7 THE WITNESS: And as weather permits.
8 Again, there's not a stated specific time frame
9 there. Again, I think that's intended to be just
10 what it says. If it's an extremely wet period of
11 time that you're trying to scrape back gravel and
12 restore areas, in some cases you can't work in those
13 areas, for example, if it is extremely wet.

14 Q. Condition 23, I have the same question
15 because it says, "All construction debris and
16 contaminated soil shall be promptly removed and
17 properly disposed of." Would you care to elaborate,
18 "promptly"?

19 A. Again, I don't have a specific time frame
20 in mind. I think it would be, you know, practicable,
21 you know, as per good management and housekeeping
22 practices.

23 Q. And condition 24 you say, fugitive dust
24 rules or other appropriate dust prevention measures.
25 What is being referred to? Where are these

1 established, by whom, and where can we find them?

2 A. I would defer to Staff on that answer.

3 Q. Condition 25 states that the
4 "Staff-approved environmental specialist must be on
5 site during construction activities." I have a
6 question about that. Does that mean all times during
7 construction, or some lesser standard?

8 A. I don't think it means at all times
9 during construction. I think it means at all times
10 when there are construction activities that might be
11 affecting sensitive areas. Then as it goes on, "as
12 mutually agreed upon."

13 Q. And how will the specialist's
14 qualifications be demonstrated or established as
15 required for water quality issues or endangered
16 species expertise? Do the parties have in mind how
17 that would be established?

18 A. Again, I would defer to Staff. I think
19 we obviously would be offering someone experienced in
20 evaluating both sensitive -- these types of sensitive
21 areas, as well as construction practices for these
22 types.

23 Q. Okay. Condition 31 states that certain
24 entities shall be immediately contacted if state or
25 federal endangered species are encountered during

1 construction activities.

2 Does encountered include encountered by
3 others who report the encounter to the Applicant, or
4 is it construction personnel, or just the Applicant
5 and its people that are personally encountering the
6 species?

7 A. I believe this refers to the Applicant in
8 our contract.

9 Q. Okay. If the encounter occurs during
10 operational hours, do operational activities have to
11 be halted as required during the construction phase
12 until an appropriate course of action is agreed to
13 by the Applicant and the appropriate regulatory
14 agencies?

15 The conditions seem to cover the
16 construction phase. I wondered if there is a similar
17 standard in place once when it becomes operational
18 activities?

19 A. Again, I think the condition talks about
20 in the third sentence, "encountered during operation
21 activities," then the same notification is required
22 within 24 hours.

23 Q. Well, the notification is covered, but
24 during the construction phase you have to have
25 notification and also the activity has to halt until

1 an appropriate course of action is arrived at or
2 agreed to.

3 A. Correct. It specifically does not say
4 that, related to operations.

5 Q. So by leaving that out, when you are
6 talking operational, that was by design then?

7 A. Again, I would defer to Staff, but that's
8 our interpretation.

9 Q. Okay. Condition 32 states, "That the
10 Applicant shall conform to any drinking water source
11 protection plan, if it exists." Do such plans exist?

12 A. I'm not aware of any.

13 Q. And --

14 A. Again, I guess I would defer to Witness
15 Dohoney. She can expand on that answer, but I'm
16 personally not aware of any.

17 Q. Condition 33 requires the Applicant to
18 complete a full, detailed exploration and evaluation
19 at each turbine site; that shall include three
20 borings at each turbine location. The condition does
21 not say when this shall be done or require that any
22 results be shared with any regulatory agencies, other
23 than to indicate that all boring logs must be
24 provided to present to agencies prior to
25 construction.

1 Do the boring logs suffice as a full,
2 detailed exploration and evaluation? That's all
3 that's required. Should the Applicant be required to
4 submit by a date certain a written report of the
5 completed exploration and evaluation, including
6 findings, analysis, and conclusions drawn?

7 A. I think we're happy to provide that if
8 required.

9 Q. Okay. And, again, subject to asking the
10 Staff the same question, if the Board were to
11 redesign the condition to require it that way, you
12 wouldn't have a problem with it, you as a Company
13 wouldn't, as an Applicant you would not have a
14 problem with a more detailed description of what the
15 report would be, more so than just the log?

16 A. Yes, that's fine. I would also reference
17 condition 67, which requires us to provide
18 construction drawings, i.e., foundation,
19 construction, which is, you know, design based on all
20 the conditions referred to, not just logs. There is
21 other design information we have to provide based on
22 that log information.

23 Q. I'm glad you are pointing me to other
24 things I may not have seen.

25 Condition 37 requires written notice of

1 blastings to residents and owners of other structures
2 within 1,000 feet of the blasting site. How was the
3 1,000 feet threshold arrived at and how does it
4 relate to the proposed blasts in these instances?

5 A. I don't know. I would defer to Staff.
6 The only thing I would say is that based on our
7 understanding of the site and the geology, we expect
8 not to have to blast for this project. It is our
9 current anticipation that we would not be, obviously
10 confirmed by the geotechnical investigation.

11 Q. As you see it now, anticipating, you
12 don't expect you have to do any blasting throughout
13 the whole project construction as it stands now?

14 A. As we see the site now, again, subject to
15 further geotechnical investigation.

16 Q. The condition says the Applicant must
17 offer and conduct a preblast survey of each dwelling
18 within 1,000 feet of each blasting site, unless
19 waived by the resident or property owner.

20 Without doing the survey, how can one
21 determine which residents are within 1,000 feet and
22 thus eligible to waive the offer or conduct the
23 survey? It seems the standard would be to do a
24 survey and see who is within 1,000 feet to offer.
25 Without doing the survey and determining the

1 threshold, how do you know who they are without doing
2 the survey?

3 A. Again, I would defer to Staff.

4 Q. It would seem that reading through this,
5 if there is one eligible resident or property owner
6 who does not waive the offer, then even if there are
7 some that do, you would have to conduct the survey.
8 Would you agree with that?

9 A. I'm sorry, restate that question.

10 Q. Yes. The way I read the condition, it
11 would be that as long as there is one eligible
12 resident or property owner that does not waive the
13 offer of a survey, even if there were others that did
14 waive, that the Applicant would have to go ahead with
15 the survey because at least one of the residents did
16 request it.

17 A. I believe that's probably accurate.

18 Q. Condition 42, please describe further
19 what is meant by the terms "appropriately placed
20 warning signs or other necessary measures."

21 A. Our ability to restrict public access.
22 Of course, this is on private land, so it would be
23 worked in conjunction with our landowners. Those
24 could be simply "no trespassing" signs at entrances
25 to turbine roads off of public roads. Those could

1 also be measures such as fences or gates restricting
2 access off of public roads.

3 Q. So I'm hearing the specifics of what you
4 said, and that would also tend to be worked out
5 between you and the landowner?

6 A. The landowner, correct.

7 Q. All right. Condition 43 says that -- I'm
8 not sure, but it reads, "The Applicant shall instruct
9 workers on the potential hazards of ice conditions."

10 I would expect what you meant "shall
11 instruct its workers." You are not instructing
12 workers in general; you are instructing people that
13 are working for you.

14 A. Yes.

15 Q. I might revise that in the certificate.

16 Condition 44 states, the Applicant shall
17 install and utilize an ice warning system that may
18 include more than four system designs. It appears
19 there are no consequence for installing an ice
20 warning that includes none of the four designs.

21 Would it be appropriate to revise it to say that the
22 Board shall require an ice warning system that shall
23 include at least one of the four designs that are
24 included there?

25 A. Yes.

1 Q. Okay. Condition 47 states that the
2 Applicant must repair damage to public roads and
3 bridges caused by construction activity. Has there
4 been any discussion about who is responsible for
5 repair of damage caused by, for example, an extreme
6 weather event or other uncontrolled event during the
7 period when construction is ongoing and the Applicant
8 would otherwise be individually responsible for
9 repair?

10 A. I'm not aware of any specific discussions
11 regarding that specific instance. Again, I would
12 defer to Mr. Mawhorr on that.

13 MR. COLLIER: If I may interject, we have
14 an amendment with Crawford County that governs these
15 provisions as well.

16 EXAMINER FULLIN: Okay. Thank you.

17 Q. In that same condition the language would
18 indicate that any temporary improvements shall be
19 removed, but, again, it doesn't indicate when or how
20 soon this should happen.

21 A. Again, I think it was stated that way to
22 be flexible based on construction, weather
23 conditions, et cetera.

24 Q. Condition 47(d) refers to a construction
25 road and bridge bonding posted. Who holds and

1 controls the bond or the use of the bond?

2 A. We would have a bonding authority issue
3 that. I'm not sure of who the actual holder of the
4 bond would be, if would be the county.

5 EXAMINER FULLIN: Will there be testimony
6 from the county on that?

7 MR. COLLIER: Again, I think that is
8 addressed in more detail in the amendment of the
9 Stipulation.

10 THE WITNESS: I think Mr. Mawhorr from
11 our side could answer that more specifically.

12 EXAMINER FARKAS: I do have a question on
13 that, though. There was discussion with respect to
14 the counties. Was there any discussion with the
15 townships on road use and construction activities and
16 impact to roads on township roads? Are there
17 township roads?

18 THE WITNESS: There are township roads.
19 Again I would defer to representatives from the
20 county, but my understanding is that many of the
21 township roads are maintained by the counties, and so
22 for in large part activities regulated under this
23 road maintenance agreement, bonding, et cetera, would
24 be led by the counties.

25 EXAMINER FARKAS: Thank you.

1 Q. Condition 48, a reference is made to the
2 facility owner and/or operator rather than to the
3 Applicant. Please explain why this language is used.
4 Can we not use the language of the Applicant here
5 instead of those terms?

6 A. The short answer is I don't know. I am
7 guessing this is talking about decommissioning, and,
8 you know, since that's a date in the future, it could
9 be someone other than the Applicant.

10 Q. That leads to my next question, really,
11 because I was going to ask, couldn't we replace
12 throughout the entire list of all the conditions the
13 term "the Applicant." I'm thinking the Board would
14 be more comfortable with saying the holder of the
15 certificate so that in the event that the certificate
16 is ever transferred to someone who is not the
17 Applicant at this time, it is the holder of the
18 certificate, all the conditions would flow with the
19 transfer of the certificate?

20 A. I believe that would be acceptable, yes.

21 EXAMINER FULLIN: Probably asking all the
22 parties to stipulate to the same thing.

23 MR. PETRICOFF: Your Honor, on that one
24 we would like to reserve commenting on that because
25 there may be a series of road agreements and there

1 may be differences between, you know, construction
2 versus decommissioning. We understand the issue, and
3 it may be in a couple places we may have to have a
4 series of names as opposed to just one.

5 EXAMINER FULLIN: I think what I'm asking
6 for is a clarification, if there are different terms,
7 why would that be necessary and where would it be
8 appropriate to use as broad of a term as we can use,
9 especially in terms of a future holder of
10 certificate.

11 MR. PETRICOFF: We certainly understand
12 the utility of having a standardized term, so with
13 that in mind, we will go through it and if there
14 are -- I think there would probably only be a couple
15 of instances where that won't work, and then we could
16 explain why.

17 EXAMINER FULLIN: Okay, sounds good.
18 Thank you.

19 MR. PETRICOFF: In fact, Your Honor, what
20 may be the easiest way out, thinking about drafting,
21 we do have an appendix with names of acronyms. We
22 may be able to come up with a single name that goes
23 all the way through, and then to the degree that
24 there would be, you know, a difference, you could say
25 it's the certificate holder or, you know, the surety

1 in cases where a claim would be made. We might be
2 able to describe two or three instances where we
3 can't use the uniform term in the definition and then
4 have a standardized definition.

5 EXAMINER FARKAS: We want to be sure that
6 the record is clear that a condition that is
7 stipulated to, that the Board is -- assuming the
8 Board would approve the Stipulation in this case, but
9 whatever it does, if there's a term in the
10 Stipulation that refers to the Applicant, it also --
11 strike that. I understand.

12 MR. PETRICOFF: We understand the value
13 of having a uniform term, and we will do what we can
14 to get one.

15 EXAMINER FULLIN: To the extent there's a
16 different term to be used, have that specified it is
17 being used and the reason why it is necessary to have
18 a different term.

19 MR. PETRICOFF: Understand.

20 EXAMINER FULLIN: If that gets presented
21 before the close of the record, that will satisfy
22 what we are trying to get at.

23 MR. PETRICOFF: Okay. We will do so.

24 Q. (By Examiner Fullin) Condition 49, when
25 did the obligation to obtain all necessary permits

1 actually kick in or become enforceable?

2 A. It's obviously not specified, but I would
3 think that that requirement would be pursuant to
4 whatever rules or regulations that apply to that
5 permit.

6 MR. COLLIER: Again, your Honor, the
7 amended Stipulation addresses the existing permit
8 rules, and the permit rules are attached to the
9 direct testimony addressing those type of questions.

10 EXAMINER FULLIN: Thank you for that
11 clarification.

12 Q. Condition 51, what does the reference to
13 "preconstruction acoustic modeling" actually refer
14 to?

15 A. We, as part of the application, have
16 performed simulations of sound that may be generated
17 from a wind farm that was submitted as part of
18 application.

19 Q. So that has already been presented as
20 part of the application?

21 A. It has already been presented as part of
22 the application. I don't remember which condition
23 here, but specifically we talked about before, if
24 there are turbine moves, for example, that acoustic
25 modeling would need to be redone to ensure we meet

1 this condition.

2 Q. In the same condition 51, what is meant
3 by the term "nonparticipating resident"?

4 A. I think it means specifically that a
5 residence, an occupied residence, that is not
6 participating in the project via being a signed
7 leaseholder or having signed an agreement.

8 Q. So someone in the territory not leasing
9 land to the Applicant?

10 A. Correct; or otherwise has an agreement
11 with the Applicant.

12 Q. What is meant by the "facility boundary"
13 in condition 51?

14 A. Again, I would defer to Staff and/or Ken
15 Kaliski on that one.

16 Q. What is meant by the term "affected
17 receptors"?

18 A. Again, I would defer to Ken Kaliski.

19 Q. Condition No. 53, the general question,
20 when does dusk officially occur? What are nighttime
21 hours? What are daytime hours? What is meant
22 specifically by "or until dusk when sunset occurs
23 after 7:00 p.m."?

24 My way of thinking, wouldn't there be
25 some kind of objective authority that makes an

1 official declaration of when sunrise and sunset occur
2 each day and couldn't that be referenced rather than
3 the terms that are used here that may seem kind of
4 vague?

5 A. I suspect we could come up with that
6 objective standard. In part, I would defer to Staff
7 on that.

8 Q. If the Board itself decided to try to
9 find a way to accomplish something that more
10 objectively is stating when daytime and nighttime
11 hours occur, you wouldn't have a --

12 A. We could tie it to some time frame
13 related to sunset.

14 Q. I didn't finish. But I think the
15 National Weather Service has a statement when sunset
16 is and sunrise in a particular area. If we find that
17 is the case and we should adopt that language, but I
18 wanted to run the idea by the people that agreed to
19 the Stipulation first to find out if there is some
20 problem.

21 A. I think we could consider that, but I
22 would defer to Staff. We may have some discussion
23 with Staff on that.

24 Q. Again, getting a better understanding
25 what some of these terms mean, what is "rotor

1 erection activities"?

2 A. The rotor is the center part of the
3 blades where the three parts of the wind turbine come
4 together, and rotor erection activity is just that,
5 when you are using cranes to, you know, fly and
6 install that rotor, and as stated here, the reason
7 that's excluded is because oftentimes winds are
8 higher during the daytime hours, lower at times at
9 night, and so, therefore, for safety reasons it's
10 better to install those rotors during periods of low
11 wind.

12 Q. Okay.

13 A. Which might occur at nighttime.

14 Q. Who determines how and when for safety
15 reasons they may need to take care of that during low
16 wind or nighttime hours?

17 A. Our turbine vendors and construction
18 vendors have specific criteria in terms of wind
19 speeds which are not safe to perform that
20 construction.

21 Q. What is meant by the terms "construction
22 activities that do not involve noise increases above
23 ambient levels at sensitive receptors"?

24 A. Again, I would probably refer to Ken
25 Kaliski on our side to respond there.

1 Q. The last sentence of condition 53 talks
2 about providing notice. What method of notice shall
3 be used to comply with the notice requirements in the
4 last sentence of condition 53?

5 A. I do not know, but I'm guessing that a
6 code states a method, and we would obviously comply
7 with that.

8 Q. There's a code, you think, that probably
9 identifies a method?

10 A. I don't know, but I'm guessing it
11 specifies a notice method, and we would obviously
12 comply with that.

13 Q. Condition 54, again there's a lot of
14 technical language I'm not sure I understand. The
15 first in what comprises a "realistic shadow flicker
16 analysis for all inhabited nonparticipating receptors
17 already modeled to be in excess of 30 hours per year
18 of shadow flicker." Can you put that in layman's
19 terms?

20 A. Again, if I may, I'd like to defer to Jay
21 Haley, who is testifying on shadow.

22 Q. Okay. I have other ones that pertain to
23 defining some of the terms there. Maybe I will wait
24 and ask Mr. Haley those.

25 A. Sure.

1 Q. Condition 55, who will forecast and how
2 will turbines be forecast prior to construction to
3 create an in excess of 30 hours per year of shadow
4 flicker?

5 A. That would be forecasted based on our
6 revised shadow flicker analysis.

7 Q. On your revised what?

8 A. That would be forecasted based upon our
9 revised shadow flicker analysis that we would submit.

10 Q. And, again, this might be similar to what
11 I already asked, but what is a "nonparticipating
12 habitable receptor"?

13 A. Again, I'll defer to Mr. Haley. But as
14 before, nonparticipating means not having an
15 agreement with the Applicant. Habitable receptor
16 essentially means a residence.

17 Q. Condition 55 refers to "Mitigation shall
18 be completed before commercial operation commences."

19 A. I'm sorry, which condition?

20 Q. Condition 55, "mitigation" is defined as
21 reducing the turbine's forecasted impact prior to
22 commercial operation. Is there any further
23 opportunity for mitigation once the commercial
24 operation commences and when the turbine's actual
25 rather than potential impact can be measured?

1 A. Again, I think the condition as written
2 is to deal with forecasted impacts.

3 Q. Would the Company have a position about
4 the --

5 MS. PRICE: Excuse me, we can't hear.

6 EXAMINER FULLIN: I'm glad you made me
7 aware.

8 Q. Do you have an opinion about whether
9 mitigation would be appropriate once the operation
10 commences rather than only have a standard that
11 pertains to the construction phase?

12 A. I think clearly we separately here have
13 complaint resolution procedures to address issues
14 like this. I think clearly we see that as one avenue
15 to address this going forward. So I guess I would
16 leave my response at that.

17 Q. Condition 57 has to do with degradation
18 of cell service or TV service. What level of
19 degradation must be shown? Who decides whether the
20 TV or cell phone degradation is adequate to trigger a
21 remedy?

22 A. I believe condition 58 requires us to do
23 a baseline television reception signal strength
24 survey, which would set a baseline for TV reception.

25 Q. I do have questions on 58. Maybe I will

1 deal with both of these conditions and see how they
2 lead. The first question on condition 58, how will
3 the baseline TV and signal strength study be
4 conducted?

5 A. Again, we essentially would have a
6 contractor who would travel the area and measure
7 signal strength, and that's what would be done.

8 Q. Would it be from individual residences --

9 A. The baseline study would probably be done
10 on public road access, which would be in proximity to
11 residences.

12 EXAMINER FARKAS: Is the study directed
13 at signal strength or quality of reception? Let's
14 say my signal is very strong but you're not measuring
15 what the picture looks like. You're just
16 measuring --

17 THE WITNESS: I believe it's mostly
18 related to signal strength.

19 EXAMINER FARKAS: Okay.

20 THE WITNESS: Which is a measure of
21 reception.

22 EXAMINER FARKAS: Got it.

23 Q. The condition 58 says that Applicant will
24 complete a baseline television reception and signal
25 strength study. Condition 57 talks about cell phone

1 service. Will there be a baseline study of cell
2 phone service done?

3 A. I don't think that was required.

4 Q. So how will you make determinations that
5 condition 57, there's been a degradation of cell
6 phone service if there's never been a baseline study?

7 A. I think typically we've seen cell phone
8 interference not to be an issue with respect to these
9 types of facilities. So I think we would assess that
10 on a case-by-case basis, again being the complaint
11 resolution procedure in the absence of a baseline
12 study.

13 Q. What geographic areas and what specific
14 commercial or residential addresses will be included
15 in the baseline study, and will the results be
16 provided to affected landowners or just be something
17 between the Board, Staff and the Company?

18 A. I think our intention would be to do the
19 study within the project area, within the projected
20 boundaries as shown in the application, and again,
21 our intention was to supply that to Staff.

22 Q. What steps or procedures should be
23 followed by whom and where for the decision-maker to
24 arrive at the conclusion that any residence has been
25 shown to experience a degradation of TV or cell phone

1 reception due to the facility operation?

2 A. Again, I would defer to the condition
3 related to the complaint resolution procedure whereby
4 ultimately I think Staff is the arbiter of has the
5 Applicant done what is reasonably necessary to
6 mitigate that issue.

7 Q. In condition 57 there is a reference to
8 the degradation of TV and cell phone service due to
9 the facility operation. Should it be maybe either/or
10 rather than both TV and cell phone? It could be
11 either?

12 A. Yes. In the last sentence it says
13 "and/or."

14 Q. Revise that language.

15 A. And/or in the fourth line as well.

16 Q. What remedy would exist in the event
17 there is no viable cell phone service provider in the
18 area? Can you state for sure there is a viable cell
19 phone provider throughout the entire area of the
20 project?

21 A. I can't state that definitively, and I
22 don't know what the remedy would be. I think that
23 would be determined again as part of our complaint
24 resolution mitigation process.

25 Q. How long would the remedy be expected to

1 last? Would it be the duration of the project being
2 in existence?

3 A. It would for the duration of the problem
4 occurring. For example, if a cell tower provider in
5 the future adds a different cell tower, as is often
6 the case, and that improves coverage and that solves
7 the problem, our obligation would cease. It would be
8 for the duration of our causing that problem.

9 Q. What level of TV or cell service will be
10 provided? For example, would a family have a shared
11 cell phone provided, or would premium or HD channels
12 be provided?

13 A. Again, at this point in time I don't
14 know. I think that would be worked out as we work
15 through the complaint resolution to provide a similar
16 level of service as to what the Complainant had
17 before.

18 Q. Are there other examples of other
19 projects where this type of item has been established
20 and examples of how practically this type of remedy
21 is worked out?

22 A. I don't have any available to me today.

23 Q. I think you can see in general it seems
24 there's a lot more questions involved with this
25 provision and these conditions than I have answers

1 for. It seems like, my own opinion, it sounds like
2 the remedy and details should be worked out, if it
3 would be possible, to come up with more precise
4 language on this before we close the record. I would
5 welcome that; otherwise, we are stuck with the
6 answers provided by all the parties on the record.

7 A. Understood. Again, the last thing I
8 would just say is that two things, typically both
9 cell and TV interference, is very highly unlikely for
10 these types of projects, number one; and, number two,
11 I believe similar conditions have been in other
12 certificates that have been issued by the Board.

13 Q. Okay.

14 A. Related to these issues.

15 Q. Moving on to condition 59, what is meant
16 by the term "affected receptors"? I think I asked
17 that before, but this is technical language.

18 A. I'm sorry, where do you see this?

19 Q. Maybe I quoted wrong, but I think it's in
20 59.

21 EXAMINER FARKAS: It's the last two words
22 of condition 59.

23 A. I think the owner of the microwave over
24 transmission line that is shown to affect receptors.

25 Q. Condition 61, explain the term "NEXRAD

1 interference."

2 A. NEXRAD has to do with the National
3 Weather Service radar installations.

4 Q. Okay. It is something that's interfering
5 with that?

6 A. With that radar operation, correct.

7 Q. Condition 65, the language in there is
8 clear about submitting forms to the FAA, but please
9 clarify, if you can, what information must be
10 submitted and when to the Power Siting Board for
11 their approval? The first part describes submitting
12 forms for the FAA. That's pretty clear, but I'm not
13 clear on what information must be submitted to the
14 Power Siting Board and what they're reviewing and
15 approving.

16 A. I agree, that's ambiguous. I have to
17 defer to Staff, whether Staff wants to see the forms
18 that are filed or whether Staff wants to see them
19 pursuant to the filing. The Applicant is happy to
20 discuss either. We will talk to Staff about what is
21 appropriate there.

22 Q. And then condition 66, is there a dispute
23 resolution procedure contemplated for damaged field
24 tile systems that cannot be repaired to the
25 satisfaction of the property owner?

1 A. Again, I think the dispute resolution
2 procedure specified -- I don't know what -- No. 13 is
3 a general one that would apply to any complaints,
4 including that.

5 EXAMINER FULLIN: I think that's all the
6 questions I have.

7 - - -

8 EXAMINATION

9 By Examiner Farkas:

10 Q. I have a couple extra questions. On
11 page 14, 66(c), it says the Board may extend the
12 useful life period for the wind energy facility for
13 good cause as shown by the owner or the operator.

14 Would you anticipate an application be
15 filed by the owner of the certificate, or is that
16 something you would request of Staff and Staff would
17 make that decision?

18 A. We obviously would follow OPSB rules. My
19 assumption is the latter, that it is something we
20 would file with Staff --

21 Q. Okay.

22 A. -- necessarily rather than complete an
23 application, but, again, I would defer to Staff.

24 Q. Okay. And if at any point in time during
25 the useful life of the project one or more turbines

1 have to be decommissioned before the end of its
2 useful life, let's say in year 10, one of the
3 turbines malfunctions and has to be decommissioned,
4 do you anticipate replacing that turbine with a new
5 turbine, or would you leave the site decommissioned
6 at that point?

7 A. It really depend upon the circumstances
8 at the time, the nature of this damage.

9 Q. Let's say you have to completely
10 dismantle the turbine. The blades are broken or the
11 rotor within the cell is no longer functional. Would
12 you anticipate replacing those, or just
13 decommissioning that site?

14 A. Again, I'm sorry, but I can't
15 definitively say one way or the other. It would
16 depend upon our purchase agreement and our
17 obligations that we might have to supply power. It
18 could depend upon our insurance requirements, but I
19 think clearly we will do one or other. We will
20 either replace --

21 Q. There would be instances where you would
22 replace?

23 A. There would be instances where we would
24 replace. Again, in terms of the condition on
25 decommissioning, it would be in compliance with the

1 decommissioning requirements specified here.

2 Q. Would that be covered under the interim
3 decommission?

4 A. The interim decommission of one or more
5 machine.

6 Q. One or more?

7 A. We would have decommission requirements
8 in our leases with landowners.

9 Q. There is nothing in your lease
10 agreements, nothing prohibiting the Company from
11 replacing a turbine, a blade, a rotor?

12 A. No.

13 EXAMINER FARKAS: Thank you.

14 MR. PETRICOFF: Your Honor at this time I
15 move for admission into evidence of Company Exhibits
16 7 and 8.

17 EXAMINER FARKAS: Any objection?

18 MR. COLLIER: No objection.

19 EXAMINER FARKAS: Hearing none, then they
20 will be admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER FARKAS: We will stand in recess
23 until 1:15. Thank you.

24 (At 12:12 p.m.a lunch recess was taken
25 until 1:15 p.m.)

1 Tuesday Afternoon Session,
2 October 11, 2011.

3 - - -

4 EXAMINER FARKAS: Back on the record.
5 Do you want to call your next witness?

6 MR. PETRICOFF: Yes. Thank you, your
7 Honor. Before I do that, I would like to have marked
8 as Company Exhibit No. 9 the Direct Testimony of
9 Scott Hawken.

10 EXAMINER FARKAS: So marked.

11 MR. PETRICOFF: Then I would like to have
12 marked as Company Exhibit 10 the Supplemental
13 Testimony of Scott Hawken.

14 EXAMINER FULLIN: I think we were already
15 marking something Exhibit 9, which is the Joint
16 Stipulation.

17 MR. PETRICOFF: No; that should have been
18 a Joint exhibit. These are Company exhibits. Those
19 are Joint exhibits.

20 EXAMINER FARKAS: So marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MR. PETRICOFF: Thank you, your Honor.

23 With that, I would like to call
24 Mr. Hawken to the stand.

25 - - -

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

DIRECT EXAMINATION

By Mr. Petricoff:

Q. Please state your name and business
address for the record.

A. My name is Scott Hawken. My address is
400 Preston Avenue, Suite 200, Charlottesville,
Virginia.

Q. Mr. Hawken, on whose behalf do you appear
today?

A. Black Fork Wind Energy.

Q. Do you have with you what has been marked
as Company Exhibit 9 and Company Exhibit 10?

A. Yes, I do.

Q. Let's turn to Company Exhibit No. 9. Do
you have any changes or corrections to that
testimony?

A. No, I do not.

Q. This was prepared by you or under your
direction?

A. Yes.

Q. And if I were to ask you the questions
that appear in Company Exhibit 9, would your answers

1 be the same?

2 A. Yes, they would.

3 Q. As for Company Exhibit 10, do you have
4 any changes or amendments to make to that document?

5 A. No, I do not.

6 Q. Was that prepared by you or under your
7 direction?

8 A. Yes, it was.

9 Q. If I were to ask you the questions that
10 are contained in Company Exhibit 10, would your
11 answers be the same?

12 A. Yes, they would.

13 MR. PETRICOFF: Your Honor, the witness
14 is available for cross-examination.

15 EXAMINER FARKAS: Does the Staff have any
16 questions.

17 MR. REILLY: We do not, your Honor.

18 EXAMINER FARKAS: The representative for
19 the Farm Bureau is not here.

20 Mr. Collier.

21 MR. COLLIER: Yes, a few questions.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Collier:

25 Q. Mr. Hawken, my name is Orla Collier. I

1 represent the Richland County Commissioners and the
2 township trustees and the commissioners from Crawford
3 County. I think we previously met before.

4 A. Yes.

5 Q. I see part of your job duties include
6 outreach to local officials from your testimony; is
7 that correct?

8 A. Yes, that's correct.

9 Q. Did you have occasion to meet with
10 anybody from Crawford County concerning the project?

11 A. Yes, I have.

12 Q. Who did you meet with?

13 A. I met with all three County
14 Commissioners, the county engineer, the assistant
15 county engineer, and the townships that are affected
16 and impacted by the project.

17 MR. COLLIER: And, for the record, I'd
18 like to introduce Commissioner Doug Weisenauer from
19 Crawford County, who is in the audience attending
20 these proceedings.

21 EXAMINER FULLIN: Thank you.

22 Q. Do you recognize Commissioner Weisenauer?

23 A. Yes, I do.

24 Q. I want to start my brief examination on
25 behalf of Crawford County. You understand there has

1 been an amendment to the Stipulation on behalf of
2 Crawford County and the Applicant?

3 A. Yes, I do.

4 Q. And do you support that amended
5 Stipulation in your supplemental testimony; is that
6 correct?

7 A. That's correct.

8 Q. Were you involved in the negotiations of
9 the Stipulation from your side?

10 A. Yes, I was.

11 Q. And you're generally familiar with the
12 Stipulation?

13 A. Yes.

14 Q. All right. Would it be fair to say that
15 the Stipulation is a result of negotiations
16 concerning precise language that finally ended up in
17 the Stipulation?

18 A. Yes.

19 Q. All right. And do you find that the
20 Stipulation is conducive to the public interest and
21 is reasonable?

22 A. Yes, I do.

23 Q. All right. And just briefly, that
24 Stipulation addresses such topics as compliance with
25 the Crawford County rules regarding issuance of

1 permits, does it not?

2 A. Yes.

3 Q. And it talks about requirements for a
4 road use agreement, does it not?

5 A. Yes.

6 Q. All right. At this stage the Applicant
7 has not yet determined a final delivery route, has
8 it?

9 A. That is correct, we have not.

10 Q. Okay. And that's something yet to be
11 determined by the Company?

12 A. Correct.

13 Q. Now, what I understand, I think it's
14 Mr. James Mawhorr -- is that correct?

15 A. Yes.

16 Q. He would be your primary witness to
17 sponsor the actual transportation study?

18 A. Yes, that's correct.

19 Q. All right. And he would be the best
20 witness to address technical questions, detailed
21 questions, concerning the transportation study?

22 A. Yes.

23 Q. All right. And as of this point in time
24 there has actually been no road use agreement entered
25 into between either one of the counties and the

1 applicants?

2 A. Correct, there's no final agreement.
3 There is a draft that's been submitted back and
4 forth.

5 Q. And regarding some of the questions that
6 were directed by the hearing officer, would it be
7 fair to say that the Stipulation that was actually
8 entered provides flexibility to deal concrete and
9 distinct issues as they would arise once you
10 determine the final delivery plan?

11 A. This amended Stipulation?

12 Q. Yes.

13 A. Yes, it does.

14 Q. So we can't anticipate every nuance of
15 what public improvements there will be or timing
16 issues or anything like that at this point in time?

17 A. Correct.

18 Q. But the Stipulation does include
19 flexibility for both parties to work those issues
20 following the final delivery plan and in the context
21 of negotiating a road use agreement?

22 A. I believe so, yes.

23 Q. All right. And you also understand that
24 both Crawford County and Richland County, the
25 commissioners are elected public officials?

1 A. Yes, I do.

2 Q. And they operate under a statutory
3 framework?

4 A. Yes, I do.

5 Q. And the Stipulation does talk about
6 compliance with applicable statutory requirements for
7 road-use improvements?

8 A. That is correct.

9 Q. Okay. Besides these issues, the
10 Stipulation also addresses traffic issues, at least
11 generally? I can read it into the record and you can
12 agree or not.

13 A. I guess --

14 Q. "Applicant shall finalize, and provide to
15 the County Engineer, the final delivery route plan
16 and the required traffic and roadway improvement
17 structures at least 60 days prior to the
18 preconstruction conference."

19 A. Yes.

20 Q. So to that extent it talks about traffic
21 as well?

22 A. (Witness nods head.)

23 Q. Again, the nuances of traffic control
24 will depend upon the final delivery route and
25 ultimately the road use agreement?

1 A. Correct; as well as the final turbines.

2 Q. And the Stipulation also addresses repair
3 and improvements at the Applicant's cost?

4 A. Correct.

5 Q. And, finally, talks about financial
6 assurances, does it not?

7 A. Yes.

8 Q. And now, I did want to ask you a question
9 about collection systems. Your collection system
10 would include burying the conduit cable or lines for
11 the 35 kV, wouldn't it?

12 A. That is correct.

13 Q. Do you intend to use any portion of the
14 rights-of-way along the county or township roads?

15 A. At this time we do not anticipate using
16 long spans. In some cases we have to cross a county
17 or township road to get to the other side on private
18 property.

19 Q. But I thought predominantly the routing
20 of the collection lines would be based on private
21 easements; is that correct?

22 A. That is correct.

23 Q. And there may be some cross-over and some
24 short sections that involve the public right-of-way.

25 A. That is correct.

1 Q. Okay. And to finalize the questions
2 about the Stipulation, the Stipulation does address
3 collection lines and not being permitted in public
4 right-of-way without safety compliance and subject to
5 county rulings; is that correct?

6 A. Yes.

7 EXAMINER FARKAS: Along that line of
8 questions, is there any portion of the collection
9 system that's overhead, or is it all underground?

10 THE WITNESS: At this point it is all
11 proposed underground.

12 EXAMINER FARKAS: Thank you.

13 Q. Now, I want to direct these questions
14 from the perspective of Richland County, including
15 the townships within Richland County. At this point
16 in time there hasn't been a Stipulation issued
17 between the Applicant and Richland County; is that
18 correct?

19 A. That's correct.

20 Q. Have you had occasion to review the
21 supplemental testimony and the direct testimony, for
22 that matter, submitted by the commissioners and the
23 county engineer?

24 A. I have not thoroughly, no, sir.

25 Q. Okay. Do you know whether or not -- if

1 you don't that's fine -- as to whether the
2 recommended minimum conditions by the Commissioners
3 in Richland County and the county engineer are
4 substantially similar to what was entered into as a
5 Stipulation with Crawford County?

6 A. I think there are some similarities, yes.

7 Q. There are, to be fair, some distinct
8 differences but there is also common ground.

9 A. I would agree with that, yes.

10 Q. Okay. And if I could ask you some
11 general questions with regard to Richland County.
12 The Applicant would comply with Richland County's
13 amended rules on permit applications?

14 A. Yes, we would abide by any applicable
15 laws or statutes, correct.

16 Q. All right. And the Applicant would
17 intend to enter into a written road use agreement
18 with Richland County, correct?

19 A. Yes, we would.

20 Q. All right. And that the Applicant would
21 agree to split the final delivery route and address
22 the final delivery route in conjunction with traffic
23 issues prior to the construction?

24 A. Yes, we would.

25 Q. And the Applicant would repair at its

1 costs any damage to any public roads, bridges, or
2 other transportation improvements to restore the
3 improvement to its original condition at its cost?

4 A. Yes.

5 Q. All right. Same issues about the
6 collection systems being subject to final approval by
7 the local officials, correct?

8 A. Yes.

9 Q. And obtaining and working with local
10 authorities for temporary and permanent road
11 closures, road restoration, and road improvements
12 that may arise by construction?

13 A. Yes; any applicable procedures would
14 apply.

15 Q. And, finally, the Applicant would agree
16 to post a financial assurance bond that is acceptable
17 to the county sufficient to provide any new
18 improvements or damage to a particular right-of-way?

19 A. That is correct.

20 Q. Would it be fair, Mr. Hawken, to say the
21 principal difference between the Applicant and
22 Richland County relates to the application of the
23 competitive bidding and prevailing wage laws?

24 A. Yes; as well as the construction and the
25 actual work on the public roads.

1 Q. And by that it's the Applicant's position
2 that the Applicant or its direct contractors would
3 actually do the construction and design and
4 engineering work?

5 A. That is how we envision it. Again,
6 obviously, working with county engineers and specs
7 and guidelines and abiding by any applicable statutes
8 that are required.

9 Q. All right. Let me ask you this question.
10 What's your position concerning prevailing wage in
11 terms of this construction or repair work?

12 A. Again, I think we would abide by the
13 applicable laws for prevailing wage regarding
14 construction work.

15 Q. And is it the Applicant's position with
16 regard to those differences in position there would
17 be an opportunity to negotiate resolution of those
18 issues in conjunction with the road use agreement?

19 A. I believe so.

20 Q. Okay. You understand that whether it's
21 new construction or subsequent repair, what we are
22 talking about here are public roads, bridges,
23 culverts, and other transportation facilities?

24 A. I understand that.

25 Q. Okay. Do you have an estimate -- I know

1 some of these figures do not appear in the public
2 record, but can you give me a ballpark as to what the
3 Applicant anticipates in terms of total costs that
4 would relate to either new construction and/or repair
5 work, public improvement?

6 A. We estimate -- we have not done a final
7 estimate, preliminary routing is not complete yet.
8 We estimate several millions.

9 Q. Several millions. It's not an
10 insignificant number, and it would depend in large
11 part on selection of the final delivery route. Would
12 that be fair?

13 A. That is correct.

14 Q. Some of this involves preconstruction
15 work, that is, improvements to the existing roadway
16 in order to handle the construction traffic?

17 A. Yes. There has to be modifications to
18 roads where there are discrepancies in the roadway
19 that need to be improved before we proceed.

20 Q. Can you elaborate on that for the hearing
21 officers? What kind of preconstruction improvement
22 work would need to be done on the roadways and
23 bridges prior to commencement of the project?

24 A. I would defer that answer to Mr. Mawhorr,
25 just for the technical aspect of the roads.

1 Q. Okay. Fair enough.

2 MR. COLLIER: That's all questions I
3 have. Thank you.

4 EXAMINER FARKAS: Thank you.
5 Mr. Warrington.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Warrington:

9 Q. Hi Scott. I notice in question 3 you
10 cite NextEra Energy Resources as one of your previous
11 employers. I've come to be acquainted with the
12 Hullfen family in Dekalb County, Illinois, who cite
13 incredible detriment to their life and home due to
14 shadow flicker. Is that a NextEra project that you
15 were involved with?

16 A. It was not.

17 Q. I'm just jumping to question 6 about
18 serving the letters to the greater, larger public.
19 If you could explain or describe, why so late in the
20 process was there an actual content made for the over
21 1,000 nonparticipating receptors?

22 MR. PETRICOFF: Your Honor, I object to
23 the portion that says "so late." There's nothing in
24 the record that would identify that this was either
25 early or late. However, we do not object to the

1 question about as to why the letter were sent out and
2 when they were sent out.

3 EXAMINER FARKAS: I'll sustain the
4 objection. Do you want to rephrase your question?

5 Q. Was there a structure to the decision to
6 not reach out to the nonparticipating landowners
7 until early, to the extent could be counted, a number
8 of weeks ago? I'm just trying to understand why.

9 A. The letters were served in accordance
10 with the Ohio Power Siting Board regulation as
11 provided by counsel prior to the Application being
12 complete and served.

13 Q. That's helpful. Jump to question 7 about
14 notice in newspapers. The two main communities or
15 towns in the area are Shelby and Crestline, and
16 despite maybe the circulation of the News Journal, it
17 seemed that both the Crestline Advocate and Shelby
18 Globe were skipped largely in these notice procedures
19 in favor of newspapers that originate much further
20 away from the actual core of the project. I don't
21 know, maybe you can help me to understand why those
22 were neglected.

23 A. Again, the publications in the newspaper,
24 as I was advised by counsel, were to the regional
25 newspapers in the area at the dates prior to those

1 milestones and public hearings and public information
2 meetings.

3 Q. Just a point on question 13 where they
4 were talking about minimizing impacts, from the
5 Application document we find that there are 14 or
6 maybe 15 nonparticipating receptor homes that will
7 suffer over 30 hours of -- past the maximum standard
8 of shadow flicker.

9 What is being done for those 14 homes
10 that are nonparticipating homes in the mitigation
11 process that will suffer this excessive shadow
12 flicker? Is there a --

13 A. I would defer some of the technical
14 aspects to Mr. Jay Haley, who will testify and is
15 doing our consulting work. Those initial numbers
16 were based off of realistic shadow flicker. Step
17 2 is taking place where further refinement of those
18 properties is being evaluated, and we will work with
19 those individual landowners to mitigate.

20 Q. You will work with those individuals?

21 A. I think if you note, Mr. Warrington,
22 there is a requirement we must do that according to
23 the Stipulation by Staff.

24 Q. Thank you. Just kind of jumping also in
25 the middle of question 13, a phrase about "landowner

1 preference," and this may be too technical to answer
 2 accurately, but do you find that the participating
 3 landowners have located turbines away from their home
 4 in such a way that this shadow or the perceived noise
 5 might more negatively impact a nonparticipating
 6 neighbor? Is there any study or chart that might
 7 indicate that turbines are being placed away from the
 8 participate landowners' homes?

9 A. No, there is not.

10 Q. There's no study. Question 17, there in
 11 the second part of the first sentence talks about
 12 revisions to existing structures but not structures
 13 built after the turbines are constructed. And I
 14 guess from that my question, of course my focus is on
 15 property values.

16 Doesn't this indicate a loss of value,
 17 that a structure that might be built or a home that
 18 might be built on a nonparticipating property after
 19 the turbines are erected? In your opinion, does this
 20 argue this is a loss of private property value for a
 21 nonparticipating landowner that would seek to build a
 22 residence and would now find themselves in a shadow
 23 flicker zone?

24 A. No, in my opinion it would not.
 25 Actually, I believe this question is referring to

1 condition 59 of the Staff Report, the Stipulation,
2 which addresses microwave and communication systems,
3 so those existing structures in place now that
4 reference microwave antennas and towers that we've
5 studied prior to construction.

6 Q. So I won't be so specific to particular
7 questions then, but other concerns that are mentioned
8 within a different topic in question 18, you argue
9 that ambiguity is placed into this Stipulation and it
10 is speaking about "decommissioning of individual wind
11 turbines due to health, safety, wildlife impact, or
12 other concerns."

13 In your opinion, do you think those other
14 concerns might possibly add up to a property
15 devaluation for residences within the project
16 footprint?

17 A. No, I do not.

18 Q. All right. Concerning setbacks from gas
19 pipelines, are you aware of the current and
20 unprecedented expansion of gas pipelines being
21 installed throughout the project area and also their
22 future expansion?

23 We have not seen gas pipelines ran
24 through this property area until really within the
25 last few months. What is the Black Fork Wind's

1 stance on the quite extensive extension of gas
2 pipeline throughout project?

3 MR. PETRICOFF: Objection. Your Honor,
4 there is no evidence that additional pipeline, let
5 alone one pipeline, so I object to what is the policy
6 for Black Fork or gas pipelines.

7 EXAMINER FARKAS: I'll sustain the
8 objection. Do you want to rephrase your question?

9 MR. WARRINGTON: No, I don't want to
10 rephrase it.

11 Q. Then I had also asked Mr. Stoner, you
12 being a principal in the project, will you support or
13 oppose the introduction of a property value guarantee
14 to protect specifically the nonparticipating
15 landowners within the project from a loss of property
16 value due to wildlife, shadow flicker, strobe lights,
17 noise, and potential health injuries?

18 A. At this time Black Fork Wind Energy does
19 not support a property value guarantee. Based on
20 Mr. Stoner's testimony in the industry, we do not see
21 this as an issue.

22 Q. So then do you feel that those issues
23 would be better off just -- they would have to, in
24 fact, be accepted by the preexisting residents or
25 landowners themselves, or should that also just be

1 placed upon the responsibility of the State?

2 A. Again, Mr. Warrington, it is not my place
3 to comment on the role of the State. Again, as
4 someone in the industry, we do not see a correlation
5 between property values declining being an issue due
6 to wind farms.

7 Q. I'll close with this, but if you could
8 offer your opinion, how do you reconcile these
9 differences of opinions for those who are outside of
10 the wind injury and the wind industry itself that
11 says there are no issues whatsoever when so many
12 people, and this is even worldwide and in a great
13 body of evidence which exists, that wind farms that
14 are sited within residential rural areas have
15 incredible negative impact? How do you reconcile?

16 I can say that I disregard all of your
17 studies and say there are no impacts. How do you
18 reconcile these two opposing views?

19 MR. PETRICOFF: Objection, argumentative;
20 also there's no basis for the preface for the
21 question.

22 EXAMINER FARKAS: I'll sustain the
23 objection.

24 Do you want to rephrase your question?

25 MR. WARRINGTON: No, I don't want to

1 rephrase my question. That's all the questions I
2 have.

3 EXAMINER FARKAS: Okay. Mr. Price.

4 MR. PRICE: No questions.

5 EXAMINER FARKAS: Ms. Price.

6 MS. PRICE: Yes.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Price:

10 Q. My name is Catherine Price. In your
11 direct testimony in question No. 2 you have that
12 you're -- you're responsible for public relations of
13 the project and the landowners. Whether it be
14 contract signers and noncontract signers also?

15 A. Yes, ma'am.

16 Q. Okay. Are you responsible for making
17 sure all the studies, everything is in this
18 application as needed?

19 A. It was put together under my supervision
20 and direction, yes, ma'am.

21 Q. We refer to this as the Application,
22 right?

23 A. Yes.

24 Q. This Application was put together and
25 sent out to the county officials, township officials,

1 the libraries for public access?

2 A. That is correct.

3 Q. So that anyone living within or around
4 the project area could go to these and look up to see
5 if or how any of your studies might reflect on them,
6 noise, flicker?

7 A. That's correct. It was made available by
8 statute to the community.

9 Q. Out of all the studies done in here, all
10 the addresses of everybody that lives in the project
11 area, are those addresses or people's names listed in
12 these books?

13 A. No, they are not.

14 Q. Every resident is a receptor number?

15 A. I believe so, yes, ma'am.

16 Q. So anyone living in or around the project
17 area would have to know what their receptor number is
18 to actually open these books and find the information
19 about their property?

20 A. Know their receptor numbers or refer to
21 the colored maps that are throughout the appendices
22 of the Application, that's correct.

23 Q. Why was receptor numbers used and nowhere
24 in this Application is a chart of what receptor
25 number belonged to what address or the property

1 owner?

2 A. It was not a requirement as we filed the
3 Application and submitted it to the Ohio Power Siting
4 Board.

5 Q. Was it a requirement this was all written
6 in the English language, or could you have written it
7 in Chinese?

8 A. I believe it was a requirement to be
9 written in the English language.

10 Q. That's good for us. Without the receptor
11 number, you knew that the normal person could not
12 open these up and figure out where they were in your
13 studies? That's my question.

14 MR. PETRICOFF: Objection. The
15 testimony -- the prior testimony is there were
16 colored maps available, and there's no statement it's
17 impossible to identify the location of a person's
18 house.

19 EXAMINER FARKAS: I'll sustain the
20 objection.

21 Do you want to rephrase?

22 Q. Is there any studies in here that are not
23 colored maps that refer to receptor numbers?

24 A. I don't believe so.

25 Q. You don't believe so. But you're in

1 charge of putting this together. You don't believe
2 so?

3 A. Well, we can take a look and we can see.
4 You are specifically asking receptor numbers for?

5 Q. Everybody that lives in the project area.

6 A. For which study?

7 Q. For the studies you have in here. Let's
8 list the studies you have in here. The main ones are
9 light flicker. You have noise. You have a bird
10 study in it, right?

11 A. Yes, ma'am. I do not believe in the bird
12 study there are colored maps showing receptor
13 locations of houses.

14 Q. So how would a person living in this area
15 know where they were in the bird and bat study?

16 A. Again, I don't believe they would.

17 Q. Do you feel that's something that needs
18 to be corrected in the Application?

19 A. No, I do not.

20 Q. Why would that be?

21 A. Again, it wasn't a requirement for our
22 Application with the Ohio Power Siting Board. The
23 Ohio Power Siting Board has deemed our Application
24 complete.

25 Q. Okay. Can you tell me how many farmers

1 signed?

2 A. We have approximately 150 landowners that
3 signed leases for project.

4 Q. Have any of those landowners signed
5 multiple times for different areas, for different
6 farm ground?

7 A. We consider a landowner as a legal
8 entity. So to your question earlier, if you are the
9 legal owner of parcel A, you are one landowner. If
10 you and your husband are the legal owner of the
11 property B, you would be listed as a separate
12 landowner.

13 Q. So I would be counted twice?

14 A. Each legal entity would be counted.

15 EXAMINER FARKAS: Just for clarification,
16 I as a landowner own four parcels of property under
17 one legal entity.

18 THE WITNESS: If it's under the same
19 legal entity --

20 EXAMINER FARKAS: Same legal entity.

21 THE WITNESS: -- then you would include
22 all that in one agreement under that the one entity.

23 EXAMINER FARKAS: So I will have several
24 parcels but the same legal entity?

25 THE WITNESS: That is correct.

1 EXAMINER FULLIN: Same legal entity owns
2 four parcels, you include all the property in one?

3 THE WITNESS: That is correct.

4 Q. (By Ms. Price) This is where I'm getting
5 my questions from. If I own 6 acres here, 20 acres
6 there, 40 acres here and I sign a contract with you
7 for that, I'm counted once. If separately from that,
8 me and my husband both are on 80 acres over here and
9 100 acres over there, I'm counted again when I sign
10 that on?

11 A. That is correct.

12 Q. Because I signed two different contracts,
13 so if I'm on 30 parcels with 25 different people, so
14 we signed 30 different contracts, I'm counted 30
15 times plus whoever else is on that contract.

16 A. As I understand your example, that is
17 correct.

18 Q. Do you have any idea how many actual
19 individuals being only counted one time, how many
20 individuals have signed contracts with your Company,
21 no matter how much land they signed on?

22 A. I do not know.

23 Q. Okay. Do you have an idea of how many
24 farmers you spoke to that refused to sign contracts
25 with you?

1 A. I do not know.

2 Q. Can you give me your best guess estimate?

3 A. We have records of our contacts. Again,
4 I think I would be doing a disservice if I threw out
5 a number that's inaccurate.

6 Q. Okay. How many adults living in the
7 nonparticipating residences in the same area?

8 A. Can you repeat that question, please?

9 Q. How many adults are living in the
10 nonparticipating residences, adults that own property
11 in the nonparticipating residences in this project
12 area? Like me and my husband would be two adults on
13 our residence. So how many nonparticipating people
14 live in this area, would you say?

15 A. I don't know. I know we have some
16 population and some census numbers in the
17 Application, but as far as the demographics of
18 nonparticipating landowners in the property boundary,
19 I do not know.

20 Q. The 1,068 residents you sent out letters
21 to, would you say they were all nonparticipating
22 residents?

23 A. No, ma'am.

24 Q. What percentage of those people were
25 participating?

1 A. Again, I'd have to get back to you on
2 that. The requirement for us to serve the 1,000 plus
3 letters was based on the Ohio Power Siting Board's
4 requirement to contact everyone within the project
5 boundary. We extended that beyond to a half mile
6 outside the project boundary, therefore, folks in the
7 project boundary that signed and folks in the project
8 boundary that have not signed.

9 Q. Okay. But we can -- if you say you have
10 150 people signed and possibly multiple times and yet
11 you sent out 1,068 letters to residents, 1,068
12 households to invite them to the public meeting, the
13 people that were already signed knew about -- who had
14 previous meetings that told them when the meeting was
15 going to be, right? You shouldn't have had to wrote
16 and invited them.

17 A. That is correct. This notice was a
18 requirement from the Ohio Power Siting Board to
19 notify everyone.

20 And one point of clarification I'd like
21 to make on that 1,086 or 68, that was pulled from the
22 same tax records of legal entities. So if you owned
23 property by yourself, you would get a letter. If you
24 and your husband owned property, you would also get a
25 letter. So under the double-counting thinking, that

1 the 1,068 could have gotten multiple letters to the
2 same actual person.

3 Q. I didn't see that in your -- you actually
4 sent out a complete list of all the addresses and
5 names of the people, that didn't show on there that
6 it went out to the same person multiple times.

7 How many meetings did you have with the
8 contract signers without the rest of the general
9 public being invited?

10 A. I believe Element Power, Black Fork Wind
11 has hosted three landowner meetings.

12 Q. That the general public was not invited
13 to?

14 A. They were specifically for landowners
15 invite only, that's correct.

16 Q. One of these meetings was in Shelby the
17 night of the public hearing at the Shelby YMCA before
18 the public hearing?

19 A. Yes, ma'am, we did have a meeting there.

20 Q. And you fed the people that showed up
21 there?

22 A. Yes, ma'am.

23 Q. Is that common, to feed the contract
24 holders when you meet with them?

25 A. Typically when we have a meeting, we

1 offer refreshments.

2 Q. Was pizza offered as a refreshment that
3 night on the Wednesday?

4 A. Yes, ma'am.

5 Q. And the reason the public are not invited
6 to these meetings?

7 A. We talk about proprietary information
8 between legal contracts that we have with the
9 landowners.

10 Q. At the Shelby meeting was there a paper
11 handed out asking the farmers to please fill it out
12 as a letter to let the Ohio Siting Board know that
13 they liked the idea of having the wind farm in their
14 area?

15 A. We did ask for landowners' support during
16 the process, yes, ma'am.

17 Q. Did you ask the people at the public
18 meeting, any of your public meetings, the general
19 public, to write letters in support of the wind farm
20 and give them a form to fill out that was already
21 addressed to the Ohio Siting Board?

22 A. Yes, ma'am. I have asked for support at
23 our public meetings, and my other public outreach to
24 county officials I have asked for support.

25 Q. Okay. When you sent out this Application

1 to the counties, the libraries and stuff, can you
2 tell me why the Crestline library did not receive one
3 of these even though in your list of addresses of
4 people you contacted, over 350 of the 1,068 letters
5 went to Crestline addresses?

6 A. Again, I was advised by counsel to ship
7 these to the regional libraries, so Crestline was not
8 included in that initial mailing. We have since
9 provided Crestline with an Application.

10 EXAMINER FARKAS: Just for the record,
11 when did you provide a copy to the Crestline library?

12 THE WITNESS: It was probably two or
13 three weeks ago.

14 EXAMINER FARKAS: Thank you.

15 Q. Has that been since the settlement
16 hearing?

17 A. I believe it was mailed out during that
18 week.

19 Q. During the settlement hearing?

20 A. (Witness nods head.)

21 Q. On page 8, question 18, it says in the
22 last sentence that condition 66 should be deleted in
23 its entirety. Where it says "health" in the Staff
24 Report on section 66(c), that last sentence, "health"
25 is one of the words to be deleted.

1 In here, what would be the definition of
2 "health" in this sentence?

3 A. I'm not sure I'm qualified to answer the
4 definition of health. I guess I would defer to legal
5 counsel.

6 Q. Well, would you think that would be
7 mental, physical, or psychological, or all three?

8 A. Again, I'm not a medical expert.

9 Q. So I need to ask who of who's in here?

10 A. I would reserve the question for either
11 Staff, as their condition, or our medical expert,
12 Dr. Mundt, who will be here tomorrow.

13 Q. Okay. On page 9, question 20, if you
14 have -- the way this is wrote up, you had three
15 turbines in your study, three exact turbines in your
16 study, and all your studies have been done with these
17 turbines in a precise siting, right?

18 A. Yes, ma'am.

19 Q. But, if you go to construct these
20 turbines and for some reason need to move them, how
21 far can you move them before the studies that were
22 performed on them are no longer any good, your noise,
23 your flicker, whatever? How far can you move those
24 turbines before a study would actually have to be
25 done because you're outside the study area?

1 A. As I understand it, it is a decision made
2 by the Ohio Power Siting Board, what is a minor
3 change, what a significant change is.

4 Q. So the Ohio Siting Board would know more
5 about your studies than you, that if your study says
6 if this turbine is sitting here and the light flicker
7 and the noise is going to be this, and all of the
8 sudden you move it 10 feet or 10 meters, the Ohio
9 Siting Board would know better than your people doing
10 the studies if that study needs to be done again?

11 MR. PETRICOFF: Your Honor, could I have
12 the question read back.

13 (Record read.)

14 MR. PETRICOFF: No objection, your Honor.

15 A. My understanding is the Ohio Power Siting
16 Board will let us know if it is a significant move or
17 not. If it's a significant move by their conditions,
18 we will have to conduct additional or update our
19 shadow flicker and sound studies on those locations.

20 Q. When you paid for the studies to be done,
21 the people that did the studies did not say, never
22 said anything about this is only good here, it's not
23 good 10 feet, 10 meters away from here. It's
24 precisely for this spot.

25 A. Again, the studies were done on the GPS

1 locations of those turbine coordinates. If it is a
2 significant change and the move is significant to
3 warrant additional shadow flicker study, we will
4 complete that and provide that.

5 In some cases a minor move in terms of
6 the Ohio Power Siting Board or in practicality might
7 not change the impact of the shadow or sound on the
8 surrounding receptors.

9 Q. Have you ever had to deal with the Ohio
10 Siting Board on another wind project?

11 A. I have not.

12 Q. Any other state boards like the Ohio
13 Siting Board but in Indiana, Illinois?

14 A. Yes, ma'am.

15 Q. When you have had to vary -- when you had
16 to move these turbines, how far in the past have you
17 been allowed the move them before they said, un-uh, a
18 study needs to be done?

19 A. In my previous experience I have not had
20 to move turbines to be reevaluated. My understanding
21 from submitting FAA permits and locations, that the
22 FAA has a range of about 50 to 100 feet before they
23 consider it a significant change. That's my
24 understanding. Again, I would defer that
25 specifically to an aviation expert. That's my

1 understanding.

2 Q. That's through the FAA, so that doesn't
3 have anything to do with the light and the sound
4 flicker then?

5 A. No, ma'am.

6 Q. The study.

7 A. No, ma'am. But in an effort to give you
8 an example of another agency, some type of parameters
9 of the another study, that was my attempt.

10 Q. Okay. Back to when you had the meeting
11 at Shelby, was the Green Committee members asked to
12 join you at that meeting that was for the farmers?

13 A. Again, ma'am, I asked for support from
14 the community and various organizations. The Green
15 Committee was one of them.

16 Q. But the general public wasn't invited to
17 your meeting, your private meeting at the YMCA?

18 A. It was not publicized to the public,
19 that's correct.

20 Q. Because you said that things would be
21 discussed that wasn't open to the general public, but
22 the Green Committee had been asked to get as many
23 supporters there as possible to support you?

24 A. We had met with the Green Committee and
25 they supported the project. We asked them to please

1 come out for the public hearing on September 15, that
2 is correct.

3 Q. Did they come to your meeting and pass
4 out free tee shirts?

5 A. They did not.

6 Q. Did you know that the Green Committee
7 sent out invitations by e-mail to people stating that
8 you had asked the Green Committee to come support
9 them and they were asking the public that was in
10 support of you to show up there?

11 MR. PETRICOFF: Your Honor, at this
12 point, I'm fairly tolerant here, but I object on
13 relevance. What the Green Committee did has nothing
14 to do with the Application on the matter.

15 EXAMINER FARKAS: I'll allow him to
16 answer if he knows.

17 A. Again, I'm not sure of all the avenues of
18 the communication. I asked for their support for
19 them to come out to the public hearing on
20 September 15.

21 Q. So you didn't feel that the privacy of
22 the contracts and stuff needed to be hidden from that
23 part of the public?

24 A. Again, I asked them to come to the public
25 hearing portion, which is open to the community on

1 September 15 to support us there.

2 Q. But not to the YMCA meeting before the
3 public hearing?

4 A. I did not specifically invite the Green
5 Committee to our landowner reception beforehand.

6 Q. We know that the government is asking for
7 25 percent of the electric by the year 2025, right?

8 A. Yes, ma'am, that's a state standard.

9 Q. Yes. If you could take this wind project
10 and duplicate it, land size, how many turbines, the
11 turbine size, duplicate it as many times as needed
12 within the Ohio borders, how many of those wind
13 farms would you need to produce 25 percent of the
14 electric used here in Ohio?

15 A. For clarification, the 25 percent is
16 broken into two pieces, one being an energy
17 efficiency portion, and the other being new
18 generation of 12-1/2 percent. So, realistically, we
19 will be at 12-1/2 percent.

20 To say how many wind turbines or wind
21 farms is your question?

22 Q. Wind farms.

23 A. Within the state of Ohio? Again, I don't
24 have that information. That is based on many
25 variables, the wind speed, the size of turbines in

1 those wind farms, the demand of electricity by
2 consumers in the state of Ohio.

3 Q. I was saying if you took this exact
4 project that you say could produce 600,000. Do you
5 know how much electricity the state of Ohio uses a
6 year?

7 A. I don't know off the top of my head.

8 Q. Will you have a local office within the
9 project boundaries?

10 A. When we start construction, we will have
11 a project office on site, yes, ma'am.

12 Q. That's open to the public?

13 A. It will be open, yes.

14 Q. Is that where you hope to mitigate any
15 problems that may occur in the project area?

16 A. That will be a focal point for
17 communication for the community and for the project.

18 Q. And this won't open until the
19 construction starts?

20 A. Until we are closer to construction. A
21 definite date has not been determined yet.

22 Q. Okay. When the noise studies was done on
23 these wind turbines, did your studies go as far as to
24 figure out the wear and tear on these wind turbines
25 5, 10, 15 years down the line and how much noise

1 would come off them then?

2 A. Again, I would defer that to Ken Kaliski,
3 who did the study for us.

4 Q. You may have to temporarily or
5 permanently close roads for this project?

6 A. That is yet to be determined, yes, ma'am.

7 Q. When will that be determined?

8 A. When we finalize our haul route with the
9 county, county engineers.

10 Q. That's after you receive an Application
11 approval, then you will determine that and then go
12 back to the Staff for them to approve it?

13 A. No, ma'am. As it's outlined in the
14 Stipulation and the conditions, we must provide a
15 final delivery route to the Staff and to the
16 counties, county commissioners, for approval 30 days
17 prior to construction.

18 Q. But after approval of the Application?

19 A. That is correct.

20 Q. On your supplemental testimony, on
21 question 3 for the Timmons family, you had a
22 collection line going across the parents' and the
23 daughter's property, and neither one of them was a
24 contract signer.

25 A. Yes, ma'am.

1 Q. And now you have changed that line to go
2 down Kile Road. Can you tell us where on Kile Road
3 it will be?

4 A. Yes, ma'am. Initially the collection
5 line was, as I've tried to describe it in the
6 testimony, was crossing the corner of four parcels,
7 two of which were signed and two of which were not.

8 We have now rerouted that collection line
9 to cross over Kile Road and travel eastbound on the
10 north side of Kile Road back to the nearest
11 collection line.

12 Q. Okay. And then on question 4, Mr. and
13 Mrs. Cole's property, I know there was a lot of
14 questions about their runway for their plane that
15 them and their friends have landed on in the past.
16 If they told you they did not want to close that
17 down, does your contract go as far to say, "Well, you
18 signed the lease so you'll do what we say"?

19 MR. PETRICOFF: Objection, calls for a
20 legal conclusion.

21 EXAMINER FARKAS: I'm going to allow it.
22 Go ahead and answer the question.

23 A. Can you repeat that?

24 Q. Mr. and Mrs. Cole signed their property,
25 leased their property to you but didn't understand

1 that they would have to shut down their airport,
2 their landing strip, and that was brought up at the
3 public hearing.

4 Does your contract with Mr. and Mrs. Cole
5 go as far as telling them, "You leased this property
6 to us; you'll close it down because we say"? Do you
7 have the authority to close that down if that's
8 against their wishes?

9 A. No, ma'am.

10 MR. PETRICOFF: I'm sorry, I want to
11 impose a partial objection here that the Coles did
12 not attend the public hearing and therefore part of
13 predicate indicates they brought the issue up is
14 inaccurate.

15 With that, he may answer.

16 EXAMINER FARKAS: Can you repeat the
17 question? They are not present here, and we are
18 trying to get an interpretation of legal documents
19 they signed and this witness is not a lawyer.

20 MS. PRICE: Okay. They attended the
21 public hearing. They did not speak. An attorney
22 spoke for them, Pat Murphy.

23 MR. PETRICOFF: No.

24 EXAMINER FARKAS: I sustain the objection
25 at this point.

1 MS. PRICE: Well, can I ask one question?

2 EXAMINER FARKAS: You can ask anything
3 you want.

4 Q. (By Ms. Price) The contracts that were
5 signed by the landowners, once they sign their land,
6 can you override any of their decisions in the use of
7 their land?

8 A. There are conditions that they have
9 signed on those leases giving us rights to
10 investigate wind development on their property, to
11 come out and do surveys, to install equipment on
12 their property according to legal terms between Black
13 Fork Wind Energy and the landowners. Both parties
14 have to abide by our obligations.

15 MS. PRICE: Thank you.

16 EXAMINER FARKAS: Just for the record,
17 since there are people that have never participated,
18 you are allowed to ask any question. It is whether
19 another party may object to your question, and then
20 that eventually is ruled on. The Bench may decide
21 the question is improper, but feel free to ask
22 questions that you want to ask.

23 MS. PRICE: Okay, thank you.

24 EXAMINER FARKAS: All right.

25 EXAMINER FULLIN: I wanted to follow up

1 on one line of questioning that came up in the
2 questioning. The testimony about the office that
3 would open shortly before construction.

4 THE WITNESS: Yes, sir.

5 EXAMINER FULLIN: Could you give a
6 further description of the function of that office?

7 THE WITNESS: Sure. Typically as we
8 conclude development and move toward construction, we
9 open an on-site office that may have posted business
10 hours and manned by Black Fork Wind Energy, LLC
11 personnel that will be on site to answer questions
12 and help communicate any issues between the local
13 community and landowners to our offices and
14 headquarters.

15 EXAMINER FULLIN: Will the office close
16 after the construction is done?

17 THE WITNESS: There will always be an
18 on-site presence. More than likely if there was a
19 development office before construction, that will be
20 relocated to the operation facility.

21 EXAMINER FULLIN: There will be an office
22 on site throughout operation of the project?

23 THE WITNESS: Yes, sir.

24 EXAMINER FULLIN: Where the public during
25 business hours could come to the office and ask

1 questions on otherwise communicate with staff?

2 THE WITNESS: Yes, sir.

3 EXAMINER FULLIN: How would that
4 typically be manned, either during the construction
5 phase or operations phase?

6 THE WITNESS: Typically a project of this
7 size, as we stated in our Application, eight to ten
8 employees, there should be someone at the facility
9 during normal business hours, depending on the
10 business hours of folks going out to the plant.

11 EXAMINER FULLIN: During both
12 construction and the operation?

13 THE WITNESS: Yes, sir.

14 EXAMINER FULLIN: That you. That's I
15 have.

16 EXAMINER FARKAS: Margaret Rietschlin.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Rietschlin:

20 Q. My inquiry revolves around the Notice of
21 Filing by the Applicant August 5, August 11, Response
22 to Staff's Data Request.

23 The section on the water well question,
24 there was a map that's in this, and it's referred to
25 as the Bedrock Geology and Public Water System, Wells

1 in Richland County. This is an enlarged copy of the
2 map as it's in this particular document.

3 They've located little black squares to
4 indicate water wells. How did they arrive at the
5 location of those wells to put on the map?

6 A. I'm going to defer your question and ask
7 that you ask Courtney Dohoney who does the
8 environment work on that.

9 Q. My next question is in this same
10 document. You refer to this -- I'll get the term.
11 Hold on -- the project complaint resolution plan, and
12 in Mr. Stoner's testimony we heard about it
13 frequently.

14 Will that plan be prepared and written
15 and posted before the Application is approved?

16 A. No, ma'am. It's currently written as a
17 condition of our permit 30 days prior to
18 preconstruction, and we need to have the complaint
19 resolution plan approved and reviewed by Staff.

20 Q. How do you plan to let all of the
21 residences in the project area know about this
22 resolution plan?

23 A. I think we will abide by any requirements
24 by the Ohio Power Siting Board Staff as far as
25 dissemination. But, additionally, as far as the

1 development office and the construction office, we
2 will have a physical presence at the site, and as
3 part of our outreach, public meetings that we've had
4 throughout this project, we intend to have future
5 public meetings as we come closer to construction and
6 operation.

7 Q. How close to a nonparticipating property
8 can a collection line be located. Can it be right
9 on, within inches of the property line, or within so
10 many feet?

11 A. There is no standard requirement for
12 setback that I am aware of.

13 Q. For a collection line. And those will
14 all be underground?

15 A. Yes, ma'am.

16 Q. Cathy asked you a question regarding the
17 leases, and I wasn't -- maybe you can explain in a
18 little more detail. On the leases if there was some
19 sort of infrastructure to move into the area and it
20 needed to go across people's property, you would have
21 the opportunity to review that before it went
22 through, or would the property owner be allowed to --
23 I need to think how I want to phrase this.

24 If a third party wants to rent the
25 infrastructure, is the ultimate approval decision in

1 the hands of the landowner or in the hands of the
2 wind farm of whether or not it can run across the
3 their property, private property?

4 A. It's the landowners. It's still their
5 private property to use as they see fit. We ask they
6 consult with us where our power plant is constructed
7 to minimize any interference between facilities on
8 their property and future plant infrastructure that's
9 coming through.

10 Q. Are you able to predict the kinds of
11 infrastructure that could happen in society in the
12 next 50 years?

13 A. No, ma'am, I'm not.

14 Q. Isn't there a possibility then that any
15 improvements in people's lives with new
16 infrastructure could be stopped because it would
17 interfere with your wind farm?

18 A. I assume. Like I say, I can't predict
19 what is happening in 50 years.

20 Q. On the map I live on part of a quadrangle
21 or -- I don't know what it is, but there are several
22 turbines, and there is also what will be -- I don't
23 know what you call it -- a generating facility or a
24 collection facility, the permanent facility that all
25 these collection lines feed into. I don't know what

1 you call that.

2 A. It's our collection substation.

3 Q. Yes. Is there any chance that the
4 property that's located around this substation would
5 be reclassified and then people in the future
6 couldn't build a house there?

7 A. Not that I'm aware of. Again, I'm not
8 familiar with all of the zoning ordinances of
9 Crawford and Richland Counties.

10 Q. Or the lack thereof in Crawford County.

11 I asked Mr. Stoner a question regarding
12 two letters, one written by Roger Nease and one
13 written by Robert Lillian, and they both state that
14 "Element Power has been a very understanding Company
15 to work with. When we met with them to discuss the
16 project and our concerns, they listened to them and
17 considered them as part of their plans."

18 Do you have any idea what their concerns
19 were?

20 A. I don't specifically for the Neases. I
21 think when we try to meet with any landowner and they
22 express concerns, whether it's a high-level concern
23 about impacts from one of these projects, we try to
24 provide the information and answer their questions.

25 My guess with the Neases, as we've done

1 with other landowners specifically who have
2 facilities proposed on their property, is we have
3 shown them a map and say, "This is where our proposed
4 collection line is going to go. This is where our
5 proposed access road is going to be. Does this look
6 acceptable to you? Do you have any concerns?

7 We've gotten quite a bit of feedback
8 asking for access roads to go at different angles, to
9 go to along with crop rows that are planted, for
10 eclectic lines to cross the property boundary to
11 avoid or minimize impact on existing tile lines.
12 That's my assumption. I have no to further research
13 to see what they referred to in the their letters.

14 Q. So you spent a considerable amount of
15 type of easing their concerns?

16 A. We've tried to do with that our
17 landowners as well as public, with our public
18 meetings.

19 Q. The large map that has the location of
20 proposed collection lines and the turbine locations,
21 how old is that map and where did you get it from?

22 A. The map was produced by Element Power and
23 our consultants for submittal for the Application, so
24 I would say that map was produced the date of the
25 Application of March 17, I believe.

1 Q. Has anyone --

2 EXAMINER FARKAS: Of what year?

3 THE WITNESS: 2011.

4 Q. Has anyone gotten around and done a
5 windshield survey to make sure that the actual houses
6 on the map are exactly right?

7 A. We have done a field verification on
8 housing receptors. In some cases we have done with
9 the Ohio Power Siting Board several site visits to
10 look at various aspects of the project for accuracy.

11 Q. So if there's a house that's not on the
12 map but I know there is in fact a house, who would be
13 responsible for that inaccuracy?

14 MR. PETRICOFF: Objection. There's no
15 foundation of an inaccurate or unknown house or
16 unlocated house.

17 EXAMINER FARKAS: I'll sustain the
18 objection.

19 Do you want to rephrase?

20 MS. RIETSCHLIN: No, thank you.

21 Q. I have a question regarding the safety
22 forces in the area. Are you aware that the project
23 boundary has an all-volunteer fire department?

24 A. Yes, ma'am.

25 Q. Are you aware that their training, any

1 added or additional training, and even though they
2 get the training, it's based on how much time they're
3 willing to dedicate to training?

4 A. I'm not familiar with their training
5 plan.

6 Q. How does a person that's employed by your
7 Company maintain one of the turbines? Is it by
8 helicopter? Do they climb up the outside? Do they
9 climb up the inside? How do they reach the guts of
10 the turbine?

11 A. Sure. The generator is located in the
12 cell at the top of the turbine, and that is accessed
13 from the base of the turbine through a door and then
14 up a ladder, or in some models, they have what is
15 called a person lift or manlift.

16 Q. So they have a manlift in them?

17 A. In some cases they have a small one- or
18 two-person elevator that can take them up to the top.

19 Q. So then if a person was working on one of
20 those turbines and say, for instance, they had
21 something like a panic attack, you would count on
22 local fire department to be able to reach them and
23 administer care?

24 A. Again, as it's addressed in our
25 Application, it's a condition we need to work with

1 the local emergency responders to provide training.
2 I think it's specifically in there, as well as work
3 with them on a plan so they are prepared to respond
4 to any incidents at the facility.

5 MS. RIETSCHLIN: Thank you.

6 EXAMINER FARKAS: Brett Heffner.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Heffner:

10 Q. Appendix F, page 6, "It is expected that
11 BP Alternative Energy will adhere to this standard."
12 Could you explain that statement to me, please?

13 A. I guess I need to take it into context.

14 EXAMINER FARKAS: What's the reference
15 again?

16 MR. HEFFNER: Page 6, Appendix F, would
17 be the second book, I believe.

18 THE WITNESS: Is it regarding
19 interconnection?

20 Q. Yes.

21 A. What page was it?

22 Q. 6.

23 A. And then what was your question?

24 Q. The line "It is expected that BP
25 Alternative Energy will adhere to this standard," is

1 found on that page 6.

2 A. So what you're referring to from what I'm
3 looking at is a feasibility study from PJM, who is
4 the transmission provider that this project is
5 interconnecting into. They wrote the report and
6 authored it, so I'm not exactly sure what they're
7 intention or meaning was by that sentence.

8 Q. I'm asking the right person, though, am I
9 not, directing the question to you?

10 A. You are. Again, I wasn't the author of
11 the PJM report. PJM was. I can make --

12 Q. The question I guess I have is what is
13 the origin of this statement? From what text was it
14 drawn from originally?

15 A. Again, I do not know since I didn't write
16 the report, to be honest with you. I will make this
17 assumption, which is always dangerous, that PJM has
18 used this same format for previous projects and this
19 is a leftover sentence from one of their other
20 Applications.

21 Q. So there's not any current direct
22 connection between BP Alternative Energy and this
23 project?

24 A. Not that I'm aware of, no, sir.

25 Q. Were all meetings with city and township

1 officials held within the confines of regular meeting
2 times and dates and available as public record?

3 A. With the exception of a few working
4 meetings, yes.

5 Q. Was any reason given why the working
6 meetings would somehow fall outside of the public
7 information rules and guidelines?

8 A. None that I'm aware of. I know the
9 topics of those were legal discussions. One in
10 particular I'm thinking of was regarding road use
11 agreements.

12 Q. Executive session is a different thing,
13 of course, when there's litigation and there are
14 things to be discussed in that litigation. I
15 understand that. But were there -- were there other
16 meetings that weren't executive session that were
17 held outside of the boundaries of normal times and
18 dates and subject to public record requirements?

19 A. Not that I'm aware of.

20 Q. The collection line along Kile Road that
21 you discussed earlier, is it in a private
22 right-of-way leased from a private landowner?

23 A. Yes, it is.

24 Q. Okay. Who works for Black Fork Wind
25 Energy, LLC? What constitutes the Applicant? Who

1 are the principals in that Company?

2 A. I guess I would say the principals of the
3 Black Fork Wind Energy are the same principals of
4 Element Power US, the same.

5 Q. Okay, they are the same. Black Fork Wind
6 Energy Fork Wind Energy is a separate entity from
7 Element Power, but it is comprised of the same
8 principals?

9 A. But our -- the leadership of Element
10 Power is also the leadership of Black Fork Wind
11 Energy, LLC.

12 Q. When you formed the LLC, it's necessary
13 to have people who are, I don't know, the president,
14 the vice president, the secretary? Are those -- who
15 are those people?

16 A. Those are the same representatives for
17 Element Power.

18 Q. Could you please name them for me?

19 A. I would have to get back to you. I don't
20 know the exact structure of what the positions are.

21 Q. Could you give me their names and at a
22 later time tell me what their positions are? I'm
23 asking just for the principals. In a general
24 fashion, can you tell me this fictional entity that
25 was created to put forth the Application, what is it

1 comprised of? Of whom is it comprised?

2 MR. PETRICOFF: Your Honor, I would
3 object to the characterization as a fictional
4 company. Black Fork, Inc. is registered with the
5 Secretary of State. The officers are available at
6 the Secretary of State's Office, and, furthermore,
7 under Ohio law you don't have to have a series -- a
8 subsidiary doesn't have to have a series of officers.

9 EXAMINER FARKAS: Any response?

10 MR. HEFFNER: No, thank you.

11 EXAMINER FARKAS: I'll sustain the
12 objection.

13 MR. HEFFNER: You're sustaining the
14 objection, so I continue with my questions?

15 EXAMINER FARKAS: You can always continue
16 with questions. You can rephrase the question.

17 MR. HEFFNER: I'd like to. Maybe it will
18 come to me in a minute.

19 Q. Do the turbines have cameras?

20 A. Not that I'm aware of.

21 Q. Okay. If in the future there should be a
22 change and they in fact do have cameras, will they
23 view neighboring properties?

24 A. Again, I'm not aware of any cameras on
25 turbines now.

1 Q. Okay.

2 A. So I'm not familiar with it.

3 Q. You may be right. That's why I asked the
4 question.

5 When Element Power purchased Black Fork
6 Wind Energy, LLC it was changed to Black Fork Wind
7 Energy, LLC. It was changed from one LLC to another,
8 two separate entities.

9 At this time were there any other wind
10 leases entered into by other wind developers for the
11 same or adjacent parcels that were acquired by
12 Element Power within the project area land that was
13 leased by a competing company, or were all of the
14 leases purchased from Black Fork Wind, LLC?

15 A. All of the leases that were associated
16 with by the Black Fork project that were held by
17 Black Fork Wind, LLC were acquired by Black Fork Wind
18 Energy, LLC. I'm not aware of what the competition
19 is doing in the surrounding counties or townships.

20 Q. But Element Power did not purchase any
21 leases from -- or didn't reassign any leases from a
22 company other than Gary Energetics or Black Fork
23 Wind?

24 A. To my knowledge, no.

25 Q. Okay. The mailing of 1,069 letters

1 extends a half mile outside the project boundary. To
 2 your knowledge do any -- I'm not asking if -- I hate
 3 to bring this up again. I'm not asking if anybody
 4 who signed this one in here, signed that one out
 5 there. I'm just saying does 150 reflect the number
 6 of people within that black line called, for purposes
 7 of this Application, the project boundary? Are there
 8 150 people inside of there that signed leases?

9 A. Yes.

10 Q. Okay. It doesn't extend that half mile
 11 outside or into the surrounding areas?

12 A. Not to my knowledge. Some of those same
 13 property owners that own property inside also own a
 14 parcel outside.

15 Q. How many similar projects have you
 16 developed that required the notification of over
 17 1,000 affected property owners and tenants?

18 A. I can't remember the specifics of the
 19 other projects I've developed.

20 Q. Okay. Concerning question 13 on
 21 page 5 of your direct testimony, I believe I'm still
 22 in it, does a wetland in fact exist anywhere inside
 23 the project area?

24 A. I guess I'm not sure there are wetlands
 25 within our project boundary. But, again, I would

1 defer those technical questions for Ms. Dohoney.

2 Q. Are you not wanting to eventually have a
3 lot of bird or subsequent people who testify, are you
4 able to say what is the origin of a designation of an
5 Ohio wetland to be designated into the Ohio Wetland
6 Inventory, who gets to make that decision, whether
7 it's in and out? Is it DNR, DOW, the E&E, the
8 Applicant? Who gets to make the determination as
9 to -- is it a governmental agency or a private
10 entity?

11 A. Again, I do not consider myself an expert
12 in wetland or environment so I will defer that to
13 Ms. Dohoney.

14 MR. HEFFNER: Thank you. That's all my
15 questions.

16 EXAMINER FARKAS: Mr. Biglin.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Biglin:

20 Q. In regard to the Application and also the
21 Staff Report, it's in 18 where it mentions drainage
22 tile systems and minimal impacts, I take it mainly
23 with regard to collection lines but it could be
24 turbine bases also.

25 In the Application, I'm not sure on which

1 page, but I read that in putting underground
2 collection lines in, it could either possibly be used
3 cable trenchers or cable plows; is that correct?

4 A. That is correct.

5 Q. And do you know what determines whether
6 you use a trencher or cable plow?

7 A. There's several aspects that go into that
8 decision, the cost of installation to the actual
9 topography that you're installing the collection line
10 on, the location.

11 Q. Okay. But it's mainly to do with the
12 cost of putting it in?

13 A. As well as the location of the line. If,
14 for example, we are going to lay collection line very
15 near a road right-of-way or near a tile line, one
16 method or the other may be preferred.

17 Q. Okay. Does it have anything to do with
18 the size of the collection line? I know you proposed
19 bringing two lines down from the north section of the
20 project to the substation, and my understanding of
21 that, they'll be minimal 20 feet apart.

22 A. There has to be some separation between
23 the lines, correct.

24 Q. Okay. And around a depth of 4 feet?

25 A. That's correct.

1 Q. Okay. I guess, you know, I'm not a
2 participant in the project, but I would be very
3 concerned to know which of the items you're using,
4 either a trencher or cable plow, because if you're
5 talking plowing a line versus trenching, how do you
6 know you've actually disturbed field tile? Do you
7 have any idea on that?

8 A. I do.

9 Q. Okay.

10 A. Again, I'm not a construction expert, but
11 from my understanding when that is trenched in, there
12 is usually, depending on the tile that is laid and
13 the material it's made of, there's often remnants of
14 that tile that come up behind you. A piece of black
15 pipe could come out. Some bits come out typically
16 during construction. Someone is monitoring and
17 looking for that damage, as well as possibly moisture
18 and flagging.

19 As Mr. Stoner said, we typically promptly
20 repair those within -- you know, right behind as the
21 train moves along, so to speak, or as soon as we can.

22 Q. So I understand, with the trencher you
23 will see indication or pieces of tile, plus you'll
24 have an open ditch. With a plow you're still able to
25 detect every tile you might cut in a cable plow

1 situation you think?

2 A. I'm not sure we will able to detect every
3 one, but that is a requirement, to, obviously, repair
4 any tile on the land that we've used and to try to
5 minimize the effects where practicable.

6 Q. Okay. A question in regards to
7 decommissioning, I don't know particularly where in
8 the Application, but if a tower was taken down for
9 some reason, is the decommissioning height below
10 grade taken down to -- what is it, 3-foot, 5-foot?
11 How far below grade would you decommission a tower?

12 A. I believe it outlines it here as a
13 condition, and we must remove everything. Condition
14 66 states at least 36 inches below the soil.

15 EXAMINER FULLIN: It's condition 66. But
16 the measurement is 36 inches?

17 THE WITNESS: Correct.

18 Q. In conjunction with the Staff? How is
19 that determined? You submit it to the Staff and they
20 okay that's the proper depth?

21 A. This is the Stipulation as agreed upon by
22 Staff. It is in the Joint Stipulation, No. 66, the
23 paragraph number, and in there it says, "Equipment
24 shall be removed to a depth of at least
25 thirty-six inches."

1 Q. Okay. Well, I think some participating
2 landowners might have been under the impression it
3 was 5-foot initially, but this overrules that
4 impression then. What was in the contract that might
5 have said 5-foot, if the entities involved decide
6 it's 3, then it just goes 3-foot?

7 MR. PETRICOFF: Objection, your Honor.
8 There's nothing in the record about 5 feet for
9 contracts or something other than 36.

10 We would not object to the portion that
11 just asking the question, Will this set the standard?
12 That would be acceptable.

13 EXAMINER FARKAS: I'll sustain the
14 objection.

15 Are you asking if there's a lease that
16 says a different depth; is that what you're asking?

17 MR. BIGLIN: If there's a lease that says
18 5 feet.

19 EXAMINER FARKAS: If there's a lease
20 between the Company and the landowner that says a
21 different depth from the standard set forth in the
22 Stipulation, would you be bound by the lease
23 agreement or Stipulation agreement? That's what he's
24 asking.

25 THE WITNESS: My understanding, I have to

1 get legal counsel, but this Stipulation says we have
2 to remove it to a depth of at least 36 inches. If I
3 have a separate agreement, a legal obligation with
4 the landowner that specifies a different depth, I
5 still am obligated to abide by that agreement, from
6 my understanding.

7 EXAMINER FARKAS: So if the lease
8 agreement is greater than 36 inches, you would abide
9 by the lease agreement and go deeper than 36 inches,
10 as far as your understanding?

11 THE WITNESS: As far as my understanding
12 yes.

13 Q. (By Mr. Biglin) Still in regards, let me
14 ask, if a lease agreement says 5 feet, or states
15 something to the effect that, I don't know, and it
16 would be the Siting Board, or whatever entity is
17 involved, would okay it to be less, which would be
18 obligated, to go with like the Siting Staff proposal
19 or the actual lease? The actual lease, what it says,
20 that's what you understand?

21 MR. PETRICOFF: I believe that was his
22 answer.

23 THE WITNESS: That's my answer.

24 Q. Okay.

25 A. Again, I'm not a legal expert, but the

1 State is setting a standard of 36 inches, and just
2 like other standards the State has as far as setbacks
3 where they have standards, in some cases we may have
4 chosen to exceed those standards and move to a larger
5 depth. We would be obligated based on that legal
6 contract.

7 Q. In regards to some of the things in the
8 Staff Report here, one of them being 38, No. 38, the
9 Applicant will have a turbine manufacturer safety
10 manual copy available at the office and maintenance
11 building facility, it states.

12 Is that just for reference purposes of
13 the employees and workmen and who all would be
14 involved in the facility?

15 A. Yes. That's my understanding of the
16 intent.

17 Q. Okay, thank you. And then in regard to
18 43, condition 43 says, "Applicant shall instruct
19 workers on the potential hazards of ice conditions on
20 wind turbines."

21 Does that go along with the safety
22 measures that need to be in place, or is that some
23 kind of special training? I'm just trying to
24 understand if you set up a safety course of 40 hours
25 or eight hours, or is this just something written

1 down, or is that part of the safety manual protocol?

2 A. This condition 43 is for instructing, and
3 like we mentioned earlier, will probably be edited in
4 instructing workers on the potential hazards of ice
5 conditions. So it is an attempt to incorporate the
6 safety standards set by turbine manufacturers for
7 their equipment.

8 EXAMINER FARKAS: Okay. That condition
9 in the Staff Report is similar to the condition in
10 the Stipulation, is that correct, that he's referring
11 to?

12 EXAMINER FULLIN: He's been referencing
13 the Stipulation, haven't you?

14 MR. BIGLIN: I'm referencing the
15 Stipulation, condition 43, correct.

16 EXAMINER FARKAS: So the record is clear.

17 Q. So the Applicant would instruct these
18 workers in those potential hazards?

19 A. Yes, sir.

20 Q. Okay. So would that pertain to giving
21 them a safety procedure that follows safe operating
22 procedure or protocol on how to proceed in such
23 conditions?

24 A. Again, I'm not an expert on the
25 operations side. Again, it would depend on the

1 specific turbine technology chosen and utilized. I
2 assume there are several steps as far as training.
3 There's continuing education incorporated in that,
4 all those things.

5 Q. Okay. So once that's been done, once the
6 workers have been instructed and, I guess, the
7 liability of the hazard happening to this person, I
8 want to say, the obligation falls on the workers to
9 follow the proper procedures that he's been notified
10 of, these "how to proceed in hazardous conditions,"
11 and once he's been instructed, if there is a problem,
12 I guess it falls to the worker, not the Company or
13 the Applicant or whoever is instructing him?

14 MR. PETRICOFF: Objection, your Honor.
15 First this calls for a legal conclusion. To even
16 attempt such, we would have to know if this was a
17 contractor, what was the contract, was it an
18 independent contractor? There's no foundation for
19 this and nothing in the record that could support
20 one.

21 EXAMINER FARKAS: You have to rephrase
22 your question.

23 Q. Let's say the Applicant -- this says "the
24 Applicant will instruct." It doesn't say which, so I
25 take that to be you right now, would be instructing

1 these people on the proper procedure then.

2 A. The Applicant, Black Fork Wind Energy,
3 LLC, will be instructing our workers on the potential
4 hazards associated with the turbines and safe
5 operation.

6 Q. Okay. Well, in regards to some of the
7 other things here, in regards to ice throw and ice
8 conditions, there's several turbines placed within, I
9 guess it would be the height, one-tenth generally, or
10 I think the largest model that you propose you might
11 use is maybe like 563 feet from a roadway, correct?

12 A. That is the setbacks used in the
13 Application, correct.

14 Q. In a couple of these turbines, maybe no
15 more than four that I could see we picked up, the
16 lanes come in off a public roadway to the turbine.
17 The access roads to these turbines are off of a
18 public roadway straight to a turbine.

19 And my question is in regards to safety
20 protocol in the manuals that I've looked at, they say
21 that -- one of the manufacturers that you have
22 proposed tells a safety protocol instructing workers
23 to stop within a distance of 1,000 feet, or an
24 approximate distance, it says, equal to 1,000 feet in
25 regard to a safe operating procedure, to notice and

1 to look and see if there's ice and not to go any
2 closer if it's identified until you shut down the
3 turbine.

4 And my question, if these people are
5 instructed on that, how does he follow that procedure
6 on something that's 563 feet from the roadway?

7 MR. PETRICOFF: Your Honor, we would
8 object to the portion of the question that indicated
9 there was 1,000-foot throw. That's not in the
10 record.

11 But we do not object to a question that
12 asks how do you implement safety on a roadway with a
13 turbine.

14 EXAMINER FARKAS: I'll allow that
15 question.

16 Do you understand the question? He's
17 objecting to the portion of your question and he's
18 saying he doesn't object to a question that would say
19 How would a worker comply with a directive to stay
20 1,000 feet from a turbine ice throw when the public
21 roadway is 500 feet.

22 MR. BIGLIN: Yes, your Honor. Thank you.

23 A. Okay. I think we have designed the
24 project to mitigate any safety concerns the best we
25 can. I think one of the specific conditions

1 pertaining to ice is on 44, condition 44, page 9 of
2 the Joint Stipulation that again addresses that
3 specifically with an ice warning system, and the
4 Applicant has agreed to use those at the facility,
5 which is an additional step for safety of the
6 operation during icy conditions at the facility.

7 Q. Okay. I rephrased my question wrong. I
8 don't see how they follow the procedure under them
9 circumstances, I guess.

10 And also in regards to that, in your
11 testimony under question 16, and also in the Staff
12 Report it's mentioned, there's a couple turbines, I
13 guess it's 44 and 51, where it was recommended to use
14 the 150 percent the sum of the hub height and the
15 rotor diameter in regards to -- it says "occupied
16 structures, including businesses," to protect them
17 from ice throw.

18 Why would that not apply to public
19 roadways?

20 A. Specifically concerning that condition,
21 condition 45 on the Joint Stipulation on page 9, we
22 agree with the way that condition is written, but the
23 science behind it we don't necessarily agree with as
24 far as the probability and concern from an ice throw.

25 And I will say Mr. Haley, who is one of

1 our consultants who is testifying as well, is better
2 served to answer questions about ice throw and the
3 probability, along those lines.

4 Q. Okay. Why would it say "including
5 businesses?" Why would a business -- I guess I
6 presume by a business you mean a public business or
7 any business. I'm not sure what you mean by that.

8 Why wouldn't the public on a public
9 two-lane roadway or county highway be any less
10 relevant when it says "including businesses" here?

11 A. Again, you know, I think the term
12 "including businesses," this came from Ohio Power
13 Siting Board Staff. We've accepted it. We don't
14 necessarily agree with the reference that GE makes as
15 far as that.

16 Again, if you look at the GE
17 requirements, we believe this issue is mitigated
18 further by, again, condition 44 above with an ice
19 warning system.

20 Q. Okay. I guess another question,
21 "including businesses," what does that phrase
22 "including businesses" pertain to? I mean, do you
23 consider a neighboring farm that's not a participant
24 being a business?

25 A. In this interpretation I interpret

1 "including businesses" as an occupied structure, a
2 structure, whether be a farm operating facility that
3 is there, that's what I interpret as a business, in
4 this case with your farm reference.

5 Q. Well, if you're operating a farm, the
6 whole farm is your business. You could be anywhere
7 on that property. But you don't think that would
8 apply to such a definition?

9 A. Again, I think as it's written here it
10 talks about occupied structures that are immobile and
11 not moving, and, again, that relates to what
12 Mr. Haley addressed more appropriately as far as the
13 probability of an instance of ice throw.

14 In my experience I have not heard of
15 anyone being injured from an ice throw, so the
16 probability of this happening is minimal to nil,
17 especially on an occupied structure where it's
18 immobile. That's where that reference comes from.

19 Q. I understand that it includes -- it says
20 "occupied structure." If I'm anywhere on my place of
21 business, which is my farm, regardless if I'm in my
22 structure or not, it's my place of business.

23 I just -- you think that's not -- I don't
24 want to phrase it -- that's irrelevant to somebody in
25 that type of business, I guess, to put them in harm's

1 way, so to speak?

2 A. Again, I go back to the way it's written
3 in the Stipulation as far as occupied structures, and
4 we have accepted that condition as it's written.

5 Q. So you don't think it's necessary to go
6 any further outside those markers you put down for
7 what is important for ice throw?

8 MR. PETRICOFF: Your Honor, at this point
9 we'll object, asked and answered.

10 EXAMINER FARKAS: He has answered that
11 question.

12 MR. BIGLIN: Okay. Thank you.

13 Q. Let's see, in your report -- in the
14 Application, excuse me, I don't have the reference
15 right here offhand, the page number, you included a
16 paragraph about future development of 200-megawatt
17 for phase 2.

18 I realize that is not part of this
19 Application, but why did you think it was necessary
20 to add that?

21 A. Mr. Biglin, I would agree it's not part
22 of our Application. Our current Application only
23 states 91 turbines up to 2-megawatt. I believe that
24 one of questions from the Ohio Power Siting Board,
25 was future development, so we included that as a

1 potential, one of these projects. It can be done in
2 phases, and once you got the initial phase done, it
3 makes sense from the project perspective to build off
4 of that existing infrastructure.

5 Q. I'd like to ask you, is there any reason
6 you could tell me in regards to this project boundary
7 what direction there could be a possible future phase
8 as far as north, east, south or west? Could you
9 answer that?

10 A. That's not something I'm at liberty to
11 answer due to the competitive nature of this
12 business. There are many factors that go into that
13 as far as wind speed and wind resources in one
14 direction or another, as well as the land
15 availability to install these facilities on.

16 If I were to say, yes, phase 2 is going
17 to go to the east, then I would expect, this being a
18 public record, for fellow competitive wind developers
19 to be picking up on that information.

20 Q. So the mention of this was just part of
21 the requirement by the Staff or Siting Board?

22 A. I believe so. I believe it was in
23 response to a question, and I will have to find it
24 exactly to see if there was a mention of future
25 development in this area.

1 Do you have a reference where you pulled
2 it from?

3 Q. I may.

4 EXAMINER FARKAS: Off the record.

5 Q. It's on page 40.

6 A. So to answer your question again, I would
7 have to look back at the requirements as far as under
8 the Section 4906-17-05, Technical Data, there's
9 subparagraph 5 with the title of Future Development.
10 And so I believe that is a subparagraph in that
11 ruling and, therefore, that's why we addressed it.

12 MR. BIGLIN: I guess I didn't understand
13 why it was necessary to mention at this point in time
14 if it was irrelevant to this Application.

15 That's all I have. Thank you.

16 EXAMINER FARKAS: Karel Davis.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Davis:

20 Q. My couple questions refer to your direct
21 testimony. Question 18, you were very adamant about
22 getting any language removed that referred to health
23 effects or anything that used the word "health,"
24 because, in your own words, and I quote, "open ended
25 language of that sort in a certificate can have a

1 chilling effect on our ability to obtain financing
2 for the project."

3 My question to you --

4 MR. PETRICOFF: Your Honor, could I have
5 what's been asked thus far be read back?

6 (Record read.)

7 MR. PETRICOFF: That's fine, your Honor.

8 EXAMINER FARKAS: Okay.

9 Q. My question is, does this mean at this
10 point you do not have financing lined up for this
11 project?

12 A. That's correct, we do not have
13 nonresource financing for this frontage.

14 Q. Has somebody you have talked to indicated
15 to you that they would not finance your project if
16 there was any reference to health issues in your
17 application anywhere?

18 A. No one has talked to me directly. That
19 kind of falls outside my purview and expertise. I'm
20 more on the front-end development, design,
21 engineering, public outreach.

22 Q. If the 1603 grants were not renewed at
23 the end of this year, what other state or federal
24 public funds would you be pursuing and for what
25 percent of the project?

1 A. Again, I'm not -- we're not at that stage
2 as far as financing for this project, and my
3 responsibilities don't encroach into that financing.

4 Q. When we reach that portion, could you
5 estimate how many jobs will be available to the
6 people in Richland County, or even more specific,
7 within the project boundary?

8 A. Like we state in our Application, during
9 construction the estimated full-time equivalent is 70
10 to 95 workers. That may equate to at least 100 to
11 200 workers. That's a full-time equivalent number as
12 far as hours per week, and then eight to ten
13 full-time operational jobs once the site is going to
14 be operational.

15 Q. And these are all going for local people?

16 A. The majority of these, if we can, we will
17 source them locally, yes. In some cases there will
18 be specialized training that has to be brought in
19 from other parts of the state as well as the country.

20 MS. DAVIS: I guess that's all my
21 questions.

22 EXAMINER FARKAS: For the record, since
23 there were other intervenors, Loren or Carol Gledhill
24 present?

25 Mary Studer?

1 Thomas Karbula?

2 Nick Richland?

3 Bradley or Debra Bauer?

4 Grover Reynolds?

5 Okay.

6 EXAMINER FULLIN: Forgive us, but we
7 don't remember all your faces at this point.

8 EXAMINER FARKAS: Any redirect?

9 MR. PETRICOFF: Yes, I have a couple of
10 redirect questions.

11 EXAMINER FULLIN: Before we do that, I
12 have one area I wanted to ask about.

13 - - -

14 EXAMINATION

15 By Examiner Fullin:

16 Q. Condition 18, one thing I was wondering
17 about, in the middle of the condition it talks about
18 "Excavated topsoil, with the exception of soil
19 excavated during the laying of cables for the
20 collection system, shall be segregated and restored
21 in accordance with the Applicant's lease agreements
22 with the landowner."

23 Why would there be an exception made for
24 soil excavated during the laying of cables and not
25 covered by that sentence? What happens with the

1 topsoil excavated during the laying of the cable for
2 the collection system?

3 A. I'm sorry, the question is?

4 Q. The question -- I can break it into two
5 questions. Why was there an exception made for soil
6 excavated during the laying of cables for the
7 collection system as opposed to any other type of
8 construction? If you know, if you can answer.

9 A. Again, this is from my understanding,
10 this is a standard condition from the Staff. Also,
11 again, I'm not an expert in farming, but my
12 understanding that topsoil that is excavated off the
13 top is richer and reused. Once we get below 36
14 inches, below where the cable will be, may not be as
15 usable for farming, so that may be separated.

16 Q. The exception is made for a particular
17 part of the construction, which is the laying of
18 cables during the construction of your collection
19 system. Why do you separate that type of
20 construction from other type of construction?

21 A. I do not know.

22 Q. The other thing I was kind of curious
23 about on this topic, this condition covers the topic
24 of damage to field tile systems in agricultural
25 areas.

1 What about, was there any requirement on
2 the Applicant to restore original conditions where
3 the construction might not be in an agricultural area
4 or might not involve a field tile system?

5 A. If there's damage sustained in
6 construction?

7 Q. Yes. Maybe talked about some areas you
8 will be crossing, a public road. That is still in an
9 agricultural area, but I wondered isn't there
10 somewhere -- I may have missed, maybe it is in there.
11 Is there something to cover restoring that type of
12 area to its original condition also?

13 A. On private leased areas we have that
14 stipulation clause in our agreements.

15 Q. It's a standard clause in your
16 agreements?

17 A. In lease agreements, yes. In addition,
18 in the Joint Stipulation and the county road use
19 agreements will obviously address any damage
20 sustained crossing roads, and they actually mention
21 the collection system on that as well.

22 EXAMINER FULLIN: Thank you. That's all
23 I have.

24 MR. PETRICOFF: Your Honor, I would like
25 to draw your attention to the question on trenching

1 and separating soil, and suggest that you ask that of
2 Courtney Dohoney when she comes to the stand. That's
3 an area of expertise for her.

4 EXAMINER FULLIN: Thank you.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Petricoff:

8 Q. Good afternoon, Mr. Hawken.

9 A. Good afternoon.

10 Q. I have a couple of questions for you.

11 First, I want to take you back to the questions asked
12 to you by Ms. Davis concerning your testimony on
13 page 8, and she read you a portion of your answer in
14 A.18.

15 And I want you to look at the question
16 that spawned that answer, and let me know, was
17 that -- the language we see in 18, was that
18 restricted to only decommissioning and was there more
19 than health involved? This would be on your direct
20 testimony.

21 A. Okay. It says pertaining to
22 decommissioning of an individual turbine. And what
23 was the question?

24 Q. Is there more than health involved with
25 the concerns in your answer in 18?

1 A. Yes. My understanding is that there are
2 guidelines, and I think we referenced it here,
3 Chapter 4906. There is procedure of the Ohio Power
4 Siting Board to go through due process if there are
5 issues with a turbine that may lead to
6 decommissioning.

7 Q. Then you were asked a question by
8 Mr. Biglin concerning ice throw. Are there ice
9 sensors and how do they work?

10 A. Yes, there are ice detection systems, and
11 as agreed upon in our Joint Stipulation, we shall
12 install and utilize an ice warning system. There are
13 several different ones out there, such as a small
14 detector on top of the nacelle what would ice up in
15 an icing condition that would ice up before the
16 blades, as well as vibration sensors that would
17 indicate that ice is forming on the blades causing
18 the vibration.

19 Q. You were also asked a question by
20 Mr. Biglin concerning if you had a difference on
21 excavation between a requirement in a lease and a
22 requirement under the terms and conditions in the
23 Stipulation. And I think you indicated to us that if
24 the lease was deeper than the requirement in the
25 Stipulation, you go with the lease.

1 A. That's correct.

2 Q. What if it's the other way around? What
3 if the lease was only 24 inches and the requirement
4 in the Stipulation is 36 inches? Which controls?

5 A. Then we would go with the deeper of the
6 two.

7 Q. Now, you were asked a couple of questions
8 about drain tiles. Do farmers generally know where
9 their drain tiles are located?

10 A. Yes, they do.

11 Q. And would you be consulting the farmers
12 before you did excavation?

13 A. Yes, we would, and we have already.

14 Q. Then you were asked a question about
15 first responders and the training that first
16 responders would get. The concern was a volunteer
17 fire department. What is the current program for
18 instructing first responders?

19 A. It is a requirement that we work with the
20 local emergency training management folks to
21 establish a training plan so they can respond to any
22 incidents on our facility.

23 Q. And I think there was a hypothetical
24 given to you, a worker or contractor who at the top
25 had a panic attack. Is it likely that a worker in

1 this industry would have a panic attack because of
2 the height?

3 A. More than likely no. Before they're even
4 screened for this type of job, they are used to
5 heights and extreme conditions.

6 Q. I want to ask you, there were a number of
7 questions about the letter that went out to
8 landowners within half a mile of the project. First
9 of all, is that an Ohio Power Siting Board
10 requirement to send that letter?

11 A. From my understanding, yes that is.

12 Q. Are there similar provisions in other
13 states you have built projects?

14 A. Not that I've been involved with.

15 Q. And do you have to send the letter to
16 each owner or part owner of a property that's located
17 within the circumference of the half mile?

18 A. I do not know.

19 Q. So you wouldn't know, for example, if
20 there was a piece of property where it was left to
21 four children equally whether you have to send four
22 letters?

23 A. Correct, I do not know.

24 Q. You were asked questions about the
25 receptors list. Is there a privacy concerns about

1 putting names of property owners in the Application?

2 A. There is.

3 Q. Is there within the Application a list
4 that shows the GPS coordinates for all of the
5 receptor numbers?

6 A. Yes, there is.

7 Q. So you find it by using GPS?

8 A. Yes, you could.

9 Q. If you wanted to determine exactly where
10 the turbine was going to be?

11 A. Yes, you could.

12 MR. PETRICOFF: We have no further
13 redirect. Thank you.

14 EXAMINER FARKAS: At this point we allow
15 recross by all the other parties, but it is strictly
16 limited to questions raised on redirect.

17 Mr. Warrington, do you have any recross?

18 MR. WARRINGTON: No, I do not.

19 EXAMINER FARKAS: Mr. Alan Price.

20 - - -

21 RECROSS-EXAMINATION

22 By Mr. Price:

23 Q. On the first responders, do you do that
24 prior to construction, or after construction of your
25 first tower?

1 A. Mr. Price, we are required to do it 30
2 days before the preconstruction conference, so yes,
3 before construction commences.

4 Q. Where would the people practice then at?

5 A. We have to submit a plan to the Ohio
6 Power Siting Board for review that would outline the
7 safety and training plan that would be conducted.

8 Q. You said earlier that you screen your
9 workers for certain heights and stuff. Will you
10 screen the fire department, too?

11 A. Again, I think it will be addressed in
12 the safety plan, address any issues at the facility.

13 Q. And that's your guys' safety plan?

14 A. That is one developed jointly with the
15 local emergency responders.

16 MR. PRICE: That's all I have.

17 EXAMINER FARKAS: Catherine Price.

18 MS. PRICE: No, thank you.

19 EXAMINER FARKAS: Margaret Rietschlin.

20 MS. RIETSCHLIN: Yes.

21 - - -

22 RE CROSS-EXAMINATION

23 By Ms. Rietschlin:

24 Q. In order for an property owner to be able
25 to locate their receptor ID, they have to have the

1 GPS coordinates?

2 A. We provide the coordinates in the
3 appendices, as well as the use of maps.

4 Q. Okay. So for a person in the project
5 area to locate themselves, they would have to be
6 literate using a GPS device; is that correct?

7 A. If that was the only way they could
8 identify themselves, yes.

9 Q. And if a person is in one of the turbines
10 doing work, and let's assume it's not a panic attack,
11 maybe it's a heart attack or just any sort of a
12 health condition that the responder would have to get
13 to that person quickly, if the equipment isn't
14 available locally at this time, will you provide it?

15 A. Again, we would address that in this
16 condition. But our understanding is as far as the
17 safety plan that needs to be developed, if there is
18 needed equipment, the Applicant will provide it.

19 EXAMINER FARKAS: Mr. Heffner.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Heffner:

23 Q. Concerning the privacy issue, how did you
24 get the names for the mailing? If your concern was
25 about privacy, how did you did get the names for

1 that?

2 It is generally my understanding it is a
3 generally available database you can have access and
4 have name of all those. Perhaps you can go to the
5 County Recorder's office, go to the tax filings.

6 Addressing that issue, you may have a
7 privacy issue, talking about a hypothetical
8 situation. Would you give me the specific situation
9 you would, in fact, have a privacy issue having a
10 person's name within your Application?

11 A. Again, I just view it as it could be a
12 privacy issue or factor that it's in the public
13 domain that your house is out there with the
14 respective shadow flicker or sound levels publicized
15 to the community. Some could view that as the
16 privacy concern.

17 Q. Regarding the screening of applicants to
18 work within the wind industry, in your position are
19 you involved in any way with the setting up those
20 screening procedures?

21 A. I am not, no, sir.

22 Q. Wouldn't HIPAA and certain circumstances
23 and the privacy issues for your health care, wouldn't
24 that preclude the employer from asking questions
25 concerning health and mental health when they're

1 applying for a job?

2 A. I'm not familiar with all the HIPAA
3 regulations, but I assume so.

4 MR. HEFFNER: Thank you.

5 EXAMINER FARKAS: Okay. Gary Biglin.

6 - - -

7 RECROSS-EXAMINATION

8 By Mr. Biglin:

9 Q. Mentioning the vibration detection for
10 ice or software, or whatever, if it is one in the
11 same, is that to be used on all the turbines in the
12 project or just specific ones?

13 A. Again, according to the condition that
14 we've agreed to, it is addressing all turbines in the
15 project.

16 Q. So all turbines would have this safety
17 software or whatever, not just certain ones?

18 A. Correct; some ice warning system.

19 Q. On all of them?

20 A. Yes, sir.

21 MR. BIGLIN: That's all I got. Thank
22 you.

23 EXAMINER FARKAS: Karel Davis, do you
24 have any additional questions?

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RECROSS-EXAMINATION

By Ms. Davis:

Q. It's not really a question. It's about the receptor list thing, but with the old project, we were able to identify a receptor number off of a map.

EXAMINER FARKAS: You have to ask a question.

Q. Why did you change the way that was presented from the old project to the new project where they had a map with a receptor number and you could tell because, you know, where you live. You could tell which receptor number was yours, and then you could go to those charts and tell what information you were looking for.

I mean, they didn't actually have things listed out where you're giving anybody's information out, but you could find your own just by looking at the map. There was no map in there with the receptor number you could identify as yours.

MR. PETRICOFF: Your Honor, we would object. The old project is not part of this Application, nor was it this Company.

EXAMINER FARKAS: I'll sustain the objection.

MS. DAVIS: That's fine.

1 EXAMINER FARKAS: Any other questions?

2 MS. DAVIS: No.

3 EXAMINER FARKAS: Back to you.

4 MR. PETRICOFF: Nothing further, your
5 Honor.

6 EXAMINER FARKAS: Thank you.

7 EXAMINER FULLIN: Thank you for your
8 testimony.

9 MR. PETRICOFF: Your Honor at this time
10 we would move for admission into the record of
11 Company Exhibits 1, 2, 3, 4, 5, and 6 which is
12 basically the Application and notice, all sponsored
13 by Mr. Hawken, as well as his Direct Testimony,
14 Company Exhibit 7, and his Supplemental, Company
15 Exhibit 8.

16 And also we would like to move Joint
17 Exhibit No. 2 which he is sponsoring, and I will
18 leave it to the Bench as to whether we should move
19 now for Joint Exhibit 1 or wait for the Staff's
20 witness before that's moved.

21 EXAMINER FARKAS: Let's deal with the
22 Company exhibits, 1 through 6, 7 and 8.

23 MR. PETRICOFF: I'm sorry, 1 through 6
24 and 9 and 10. 7 and 8 are Mr. Stoner's.

25 EXAMINER FARKAS: Any objection to the

1 admission of Company Exhibits 1 through 6, 1, 2, 3,
2 4, 5, 6, and 9 and 10?

3 Hearing none, those will be admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER FARKAS: With respect to the
6 joint exhibit.

7 MR. PETRICOFF: On Joint Exhibit 2, your
8 Honor, there will not be a witness from Crawford
9 County, so Mr. Hawken is the only witness. We would
10 like to offer that into the record at this time.

11 EXAMINER FARKAS: Any objection to the
12 admission of Joint Exhibit 2?

13 Hearing none, it is admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 MR. PETRICOFF: Then we will leave it to
16 the Bench's discretion to move for Joint Exhibit 1,
17 which is being sponsored by Mr. Hawken, or if you
18 would like to wait until the Staff witness takes the
19 stand since that document is joint with the Staff.

20 EXAMINER FARKAS: I would say we should
21 wait for Staff's completion of their testimony, but
22 it is my ruling those exhibits are admitted.

23 MR. PETRICOFF: Thank you, your Honor.

24 EXAMINER FARKAS: But we will wait on the
25 Joint Exhibit 1.

1 MR. PETRICOFF: Thank you, your Honor.

2 (Recess taken.)

3 EXAMINER FARKAS: You may call your next
4 witness.

5 MR. PETRICOFF: At this time
6 Mr. Settineri will call the next witness.

7 MR. SETTINERI: Your Honor, as the
8 initial steps, we would like to go ahead at this time
9 and mark Company Exhibit 11, the Direct Testimony of
10 James Mawhorr.

11 EXAMINER FARKAS: So marked.

12 MR. SETTINERI: Next we would like to
13 mark Company Exhibit 12, which is the supplemental
14 testimony of James Mawhorr.

15 EXAMINER FARKAS: So marked.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 MR. SETTINERI: At this time we would
18 like to call Mr. Mawhorr to the stand.

19 - - -

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

23 DIRECT EXAMINATION

24 By Mr. Settineri:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Could you please state your name and
3 business address for the record, please?

4 A. James Mawhorr, K. E. McCartney &
5 Associates in Mansfield, Ohio, 52 North Diamond
6 Street 44902.

7 Q. Do you have a copy of what has been
8 marked as Company Exhibit 11 before you?

9 A. Yes, I do.

10 Q. And can you identify that for me, please?

11 A. The direct testimony that I provided.

12 Q. And do you have a copy of what has been
13 marked as Company Exhibit 12 in front of you?

14 A. Yes, I do.

15 Q. Can you please identify that for me?

16 A. The supplemental testimony I provided.

17 Q. Starting with your direct testimony,
18 Company Exhibit 11, do you have any changes or
19 revisions to that testimony?

20 A. No, I don't.

21 Q. If I asked you the questions contained in
22 that testimony today, would your answers be the same?

23 A. Yes.

24 Q. Turning to Company Exhibit 12, do you
25 have any changes or revisions to that testimony?

1 A. No.

2 Q. If I asked you the questions in that
3 testimony today, would your answers be the same?

4 A. Yes.

5 MR. SETTINERI: Your Honor, the witness
6 is available for cross-examination.

7 EXAMINER FARKAS: Thank you.

8 Does Staff have any questions for the
9 witness?

10 MR. PARRAM: We do not, your Honor.

11 EXAMINER FARKAS: Mr. Collier, any
12 questions?

13 MR. COLLIER: Yes, I do, your Honor, a
14 few.

15 EXAMINER FARKAS: Okay.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Collier:

19 Q. Mr. Mawhorr, my name is Orla Collier. I
20 represent the Richland County Commissioners and the
21 Richland County Engineer and the townships in
22 Richland County that are impacted by the project, and
23 I also represent the Crawford County Board of
24 Commissioners. I have relatively few questions for
25 you today.

1 Have you had occasion to do any work for
2 Crawford County or Richland County?

3 A. In Richland County, yes.

4 Q. Did that involve road projects?

5 A. Yes.

6 Q. Did you have occasion to work with the
7 Richland County Engineer?

8 A. Yes.

9 Q. And work for and report to the Richland
10 County Commissioners?

11 A. Yes.

12 Q. What was the nature of the work that you
13 did in the situation?

14 A. Various construction projects, either
15 road projects or other infrastructure improvements,
16 sewer work.

17 Q. During that work, did you become familiar
18 with the county road system within Richland County?

19 A. Yes.

20 Q. All right. Now, in your supplemental
21 testimony you've had occasion to review the amendment
22 to the Joint Stipulation that was entered into
23 between Crawford County and Black Fork; is that
24 correct?

25 A. Yes.

1 Q. And you concur with the recommendations
2 in that joint amendment?

3 A. Yes.

4 Q. All right. I think for purposes of the
5 remainder of the cross, I'll be asking questions from
6 the perspective of Richland County, who has not
7 entered into a Stipulation.

8 In your direct testimony, you indicate
9 that you would be providing testimony on what road
10 improvements the Applicant may have to undertake
11 prior to construction. Do you recall that?

12 A. Yes.

13 Q. All right. There will be some work
14 possibly that will have to be done before development
15 of the project itself?

16 A. Yes.

17 Q. And what will the nature of that work be
18 prior to development?

19 A. The work that would need to be done prior
20 to construction would be improvements of the roadway
21 system to accommodate the transport vehicles that
22 would be transporting the equipment to the wind
23 turbine sites.

24 Q. Okay. And in your testimony on page 4,
25 you indicate in your experience, "Typically roadway

1 improvements are performed during construction and
2 post construction for adverse impacts to the roadway
3 system." Do you recall that testimony?

4 A. Yes.

5 Q. And you conclude in that testimony, "With
6 that said, it is likely" -- in this situation --
7 "that general improvements to parts of the
8 Applicant's project transportation route that
9 currently restrict vehicle movements will need to be
10 completed prior to construction."

11 A. Yes.

12 Q. And do you have an estimate for us today
13 as to what the dollar cost of that work would be
14 prior to construction?

15 A. No. We have not determined a final cost
16 for that yet, the final routing. We have some
17 preliminary routing already determined, but the final
18 routing is kind of dynamic, and it would be
19 determined closer to the time of construction.

20 Q. All right. On that score, it's correct
21 you do not have a detailed final route designated at
22 this point in time?

23 A. We have a preliminary routing that was
24 identified and provided.

25 Q. Okay. And it was the preliminary route

1 that you addressed in your transportation study?

2 A. That's correct.

3 Q. Would it be fair to say that although the
4 final route has not actually yet been determined,
5 there will be an impact on the county roadway system?

6 A. Yes.

7 Q. Okay. And in preparation of the final
8 delivery route, what will you actually do over and
9 above what you have done in your assessment of the
10 preliminary route?

11 A. We will look at the structures, the
12 bridge crossings over the streams, do a detailed
13 structural analysis on them to determine if they are
14 capable of handling the anticipated loads to cross,
15 and if they can't, then make recommendations for
16 improvements that would support the vehicles.

17 Q. All right. Based on your familiarity
18 with the county road system in Richland County, would
19 you agree that these roads are largely either asphalt
20 or chip and seal?

21 A. That's correct.

22 Q. And what would the distinction be to
23 asphalt and chip and seal to other types of roadways?

24 A. The asphalt or chip and seal is the
25 surface on the roadway itself. A detailed pavement

1 analysis hasn't been done for the underlying
2 structure on the pavements, so the asphalt on most of
3 the roads we do not know at this time the depth of
4 that asphalt or the depth of the chip and seal.
5 Sometimes chip and seal is placed on top of asphalt.

6 Q. Or what the load-bearing restrictions
7 might be on those roads?

8 A. That's correct.

9 Q. My question is, if it is not asphalt or
10 chip and seal, what other type of roadway
11 construction would there be?

12 A. There might be some gravel roads.

13 Q. Could there also be a different
14 structure, such as a concrete base roadway?

15 A. Not that we're aware of.

16 Q. Okay. In the case of asphalt or chip and
17 seal, the base is stone, is it not?

18 A. Yes.

19 Q. Okay. Not concrete?

20 A. Correct.

21 Q. All right. And to make things shorter,
22 these county road systems are just that, they're
23 rural roads designed to handle rural traffic.

24 A. Yes.

25 Q. Okay. And you acknowledge, I think in

1 your report, that you have not had occasion to do a
2 detailed load-rating analysis of the structures, the
3 roadway?

4 A. That's correct.

5 Q. And what would a detailed load-rating
6 analysis be?

7 A. A structural analysis of the bridges and
8 the culverts to determine what they are capable of
9 handling for a load-bearing capacity.

10 Q. And I believe you've indicated a detailed
11 pavement analysis had not yet been performed. What
12 would that entail?

13 A. That would entail taking cores of the
14 pavement and the stone and some of the subgrade
15 material below that, and then geotechnical
16 recommendations of what those pavement buildups are
17 capable of handling and what improvements would have
18 to be made to handle the anticipated loads.

19 Q. Okay. You also acknowledge in your
20 direct testimony that the impact of construction
21 traffic for the project could vary considerably
22 according to the time of year and construction
23 activity.

24 A. That's correct.

25 Q. Why is that?

1 A. In this area of the project, in the
2 springtime in particular, the pavement conditions and
3 the ground are frost susceptible, and those roads
4 tend to not be as supportive of the loads going over
5 them.

6 Q. What about in the summer during very hot
7 conditions, would the asphalt or chip and seal be
8 adversely affected by that kind of weather.

9 A. It would depend on the conditions in the
10 pavement buildup.

11 Q. Could be?

12 A. Yes.

13 Q. All right. And you indicate in your
14 direct testimony the range of impact you would
15 anticipate would be severe for when roadways are
16 subject to frost and isolated at other times?

17 A. Yes.

18 Q. What's the current construction
19 timetable? When do you anticipate construction
20 actually starting on the project itself?

21 A. I'm not aware of that schedule at this
22 point.

23 Q. So we don't know at this point when in
24 time, whether it will be the winter, spring or
25 summer?

1 A. That's correct.

2 Q. In your direct testimony you also
3 acknowledge at each access point there will be
4 additional impact on the roadways; is that correct?

5 A. Yes.

6 Q. Why is that?

7 A. There will have to be radius improvements
8 for the access roads, widening for the wide-turning
9 vehicles. After the pavement analysis is done, a
10 determination will be made of what additional
11 structures those turning movements would require,
12 additional pavement build-up to accommodate that.

13 Q. In your testimony on page 6, you
14 indicate -- when you talk about the access points,
15 you are talking about the point of the specific wind
16 turbine construction to the public road?

17 A. That's correct.

18 Q. And there were, what, 60 access points
19 you've identified?

20 A. Yes.

21 Q. And it's those access points in your
22 testimony you indicate may require structural
23 improvements on the roads prior to construction
24 activity. Do you remember that?

25 A. Yes.

1 Q. And why is that?

2 A. Typically the largest stresses on
3 pavements are at turning movements, such as what will
4 be encountered for the access drives, but that will
5 all be dependent upon the analysis of the pavement
6 cores and soil borings being done.

7 Q. Again, this is preconstruction roadway
8 improvement we are talking about here?

9 A. Yes.

10 Q. Okay. Now, apart from the
11 preconstruction roadway improvement, there's also
12 potential for damage to the roadway or other
13 transportation structures. Would that be correct?

14 A. Yes.

15 Q. All right. Now, you've acknowledged that
16 those costs would be borne by the Applicant.

17 A. Yes.

18 Q. Of course, we don't know those costs
19 until construction gets at least underway, if not
20 complete.

21 A. Yes.

22 Q. By the same token, we won't know the cost
23 of preconstruction improvements until you do your
24 final delivery route.

25 A. Correct.

1 Q. Do you have an estimate as to what the
2 preconstruction costs would be, even based on the
3 preliminary analysis?

4 A. No; not until the final routing is
5 determined and we do the structural analysis. The
6 highest cost for this project is going to be the
7 bridges, and it will be dependent upon what the
8 results of the bridge analyses are, if they need to
9 be replaced or improvements made to a number of the
10 bridges.

11 Q. Earlier there was testimony, I don't know
12 if you were present in the hearing room, it might be
13 millions of dollars.

14 A. Yes.

15 Q. All right. You would agree with that?

16 A. Yes.

17 Q. The exact amount we don't know at this
18 point?

19 A. Correct.

20 Q. But not an insignificant amount?

21 A. Correct.

22 Q. And those costs would also be paid for by
23 the Applicant and not borne by the County?

24 A. That's my understanding.

25 Q. All right. Now, if we could turn to your

1 transportation study in a little more detail, do you
2 have that? I believe it's Appendix N to the
3 Application. Are you with me?

4 A. Uh-huh.

5 Q. All right. In the transportation study
6 you provide an analysis of minimum inside radius, do
7 you not?

8 A. Correct.

9 Q. And the finding of the minimum inside
10 radius is 148 feet?

11 A. That was provided to us from the Black
12 Fork Wind Energy based on the configuration of
13 transport vehicles.

14 Q. Given the transportation and the
15 vehicles, you're talking about over-dimension
16 equipment that needs to be brought in?

17 A. Yes.

18 Q. Largely the turbine blade itself --

19 A. Yes.

20 Q. -- would be a fairly long length?

21 A. Yes.

22 Q. Do you have an idea of the maximum length
23 of any particular component of the equipment that
24 needs to be brought in?

25 A. I believe the longest blade would be

1 150 feet.

2 Q. And when you talk about turning radius,
3 you're talking been an intersection or point of a
4 turn you would require that radius to make the turn?

5 A. Yes.

6 Q. And by and large the roadway system are T
7 intersections, are they not?

8 A. Yes.

9 Q. All right. So you're talking about
10 widening the roadway to accommodate that turning
11 radius?

12 A. Yes.

13 Q. And that may include construction or
14 reconstruction of a public roadway itself, could it
15 not?

16 A. Yes.

17 Q. It could also impinge on private land?

18 A. It could only be done through easements
19 or work agreements or we could not do it on private
20 properties.

21 Q. Okay. If it did require impingement on
22 private property, would you negotiate a separate
23 easement or right of access with the property owner?

24 A. Yes.

25 Q. But that may -- work may also involve

1 reconfiguration of the actual intersection.

2 A. Yes.

3 Q. You talk about a minimum roadway width of
4 23 feet. That again would be required to accommodate
5 the vehicles of a certain width?

6 A. Yes.

7 Q. And what would you think the maximum
8 width would be of any particular vehicle traveling?

9 A. That would be the 23 feet.

10 Q. 23 feet, okay. You state in your report
11 that the minimum radius of 148 feet is not met for
12 any of the intersecting roads.

13 A. That's correct.

14 Q. Can you identify how many intersecting
15 roads will require modification?

16 A. That will be determined by the final
17 routing.

18 Q. Okay. But based on the preliminary, the
19 minimum turning radius wasn't met for any of the
20 intersecting roads?

21 A. That's correct.

22 Q. You also state that improvements will be
23 required for any intersection that require turning
24 for transport vehicles. Do you recall that
25 statement?

1 A. Yes.

2 Q. Is that different from the turning radius
3 we just discussed?

4 A. No, that's the same thing.

5 Q. You talk also about roadway profile, and
6 you identify a maximum allowable gradient of
7 5 percent. Do you recall that?

8 A. Yes.

9 Q. You mean to haul on that roadway they
10 must meet that maximum gradient?

11 A. Yes.

12 Q. What do you mean by gradient?

13 A. That is the slope of the road driving
14 down the road.

15 Q. The slope?

16 A. Yes.

17 Q. The minimum vertical radius is
18 1,640 feet, correct?

19 A. Yes.

20 Q. And what is that?

21 A. That is the rise in a road in a short
22 span, because some of the transport vehicles, the
23 trailers have a low clearance to the ground, so the
24 vertical radius on the roadway has to be lower than
25 that to accommodate the low clearance of the

1 transport vehicles.

2 Q. You conclude in your analysis, your
3 preliminary analysis, that there were 14 locations
4 where the roadway profile did not meet minimum
5 requirements.

6 A. That was in the entire project area. We
7 initially did an initial inventory of all the
8 roadways in the project area, and we identified all
9 the areas that did not meet the profile requirements,
10 did not meet the turning radius requirements,
11 reidentified all structures, anything that would
12 prohibit or be problematic for the movement of the
13 vehicles.

14 Q. Okay. But ultimately you identified,
15 again based on the preliminary route, 14 locations
16 that did not meet that requirement?

17 A. Yes.

18 Q. And that would require improvement
19 construction or modification of the public roadway
20 prior to development of the project?

21 A. Yes.

22 Q. You also identify three railroad
23 crossings that need to be reconfigured or modified?

24 A. That was the inventory that was done on
25 the whole roadway system within the project area.

1 Q. Okay.

2 A. The supplemental report that was filed,
3 the preliminary routing that we have identified now
4 has greatly reduced the exposure to the public
5 roadway system, so those railroad crossings would not
6 be impacted with the preliminary routing that we have
7 right now.

8 Q. So as it stands, based on your current
9 road route, there will not be railroad crossings
10 affected?

11 A. Correct.

12 Q. All right. And in the context of
13 preparing the final report, you will attempt to
14 minimize adverse roadway impacts, will you not?

15 A. Yes.

16 Q. You also address roadway alignment, and
17 the project requires a curve of no less than
18 20 degrees; is that accurate?

19 A. Yes.

20 Q. And you identify eight locations where
21 the roadway did not meet that requirement?

22 A. Yes. Again, that is on the entire
23 roadway network within the project area. That has
24 been greatly reduced as we start to fine-tune the
25 final routing.

1 Q. Okay. But, again, this would be -- to
2 the extent it still exists as a minimum condition, it
3 will have to be addressed prior to the construction
4 of the actual project?

5 A. Yes.

6 Q. And, again, a roadway improvement or
7 modification that will need to be made before
8 construction is even initiated?

9 A. Yes.

10 Q. Existing utilities you also address in
11 your report, don't you?

12 A. Yes.

13 Q. And here you're talking about the
14 overhead utilities and poles and things like that,
15 right?

16 A. Yes.

17 Q. And are there any public improvements
18 that are affected as aerial facilities that you know
19 of as opposed to private utility lines or something
20 of that nature?

21 A. Rephrase the question.

22 Q. What you are really talking about is
23 private utilities, services to residents or
24 residences and things like that, the aerial
25 facilities?

1 A. Correct.

2 Q. That does not involve public
3 improvements?

4 A. Correct.

5 Q. Okay. Now, stream crossings you
6 identify -- in fact, it's figure 5 in your
7 preliminary analysis -- identify 10 structures within
8 Crawford County and 18 structures within Richland
9 County that will be impacted by the project.

10 A. And that again has greatly been reduced.
11 Now we are down to three and seven, I believe it is.

12 EXAMINER FARKAS: Three in which county
13 and seven in which county?

14 THE WITNESS: Three in Richland and seven
15 in Crawford County for ten total.

16 Q. When you talk stream crossing facilities,
17 what are we talking about?

18 A. Bridges.

19 Q. Let's take the three in Richland County.
20 You identified three bridges that will have to be
21 impacted or improved in Richland County.

22 A. You want to know the locations?

23 Q. If you can generally identify them. Do
24 you recall the specific locations?

25 A. Yes. There's one on London West, one on

1 Champion Road, and one on Hook Road.

2 Q. And you're talking about open bridges
3 over a stream or river crossing?

4 A. Yes. A bridge is classified as any
5 structure with a greater than 10-foot span over a
6 waterway.

7 Q. And on that tack, you are aware that the
8 Board of County Commissioners has jurisdiction over
9 the county roads in the county?

10 A. Yes.

11 Q. That includes not only the roads, but
12 bridges, culverts, other facilities that relate to
13 the transportation system?

14 A. Yes.

15 Q. Okay. Now, so here you indicate that
16 based on your preliminary report, six of these
17 bridges were in poor condition in Richland County?

18 A. Of all the structures within the entire
19 project area.

20 Q. Right.

21 A. Not the preliminary routing we have
22 identified currently.

23 Q. Well, again, let me rephrase the
24 question. As it currently exists in your analysis,
25 you say there are three bridges that will need --

1 that will be impacted by the project in Richland
2 County. Am I correct?

3 A. Yes.

4 Q. What will you need to do, as you
5 understand it today, to make improvements to
6 accommodate the project?

7 A. As I mentioned before, we have not done a
8 detailed structural analysis of those bridges to see
9 what they are capable of holding or what improvements
10 would need to be required at those locations.

11 Q. But potentially they may be impacted to
12 one degree or another?

13 A. Yes.

14 Q. And, again, with regard to all these
15 improvements, that will be the subject of the
16 final -- will be subject to the final delivery route,
17 right?

18 A. Yes.

19 Q. And, in turn, the final delivery route
20 can be addressed in a road use agreement between the
21 Applicant and the applicable county?

22 A. Yes.

23 Q. In this case the county commissioners. I
24 think you acknowledge the contract had to be executed
25 by the county commissioners; is that correct?

1 A. That would come through the road use
2 agreement.

3 Q. Right. Which you anticipate being
4 approved and accepted and executed by the Board of
5 County Commissioners?

6 A. I can't speculate on what the county
7 commissioners will do.

8 Q. Okay. Now, with regard to the
9 weight-bearing, you had indicated you still need to
10 do detailed pavement analysis. Do you recall that
11 testimony?

12 A. Yes.

13 Q. All right. Is it possible that portions
14 of the pavement on the road will have to be improved
15 prior to construction to accommodate overweight
16 vehicles?

17 A. That will be determined after the
18 pavement analysis.

19 Q. Again, it's, in fact, determined after
20 the pavement analysis is done.

21 A. Yes.

22 Q. But you are allowing for that
23 possibility.

24 A. Yes.

25 Q. Okay. And that relates to the

1 load-bearing issue, does it not?

2 A. Yes.

3 Q. And the pavement being either the asphalt
4 or the chip and seal?

5 A. Yes.

6 Q. And what load-bearing capacity that type
7 of construction would be able to maintain?

8 A. Yes.

9 Q. All right. In your section of your
10 report on Roadway Infrastructure Concerns, you
11 acknowledge that the county engineers in each of the
12 applicable counties has responsibility for roadways,
13 including bridges.

14 A. Yes.

15 Q. And that the townships may also have
16 jurisdictional authority.

17 A. Yes.

18 Q. All right. And that you identify an
19 important element being open communication with these
20 local public officials.

21 A. Yes.

22 Q. And it's not just in construction; it
23 relates to traffic and safety issues as well?

24 A. Yes.

25 Q. Because each of those entities have

1 responsibilities for traffic controls and roadway
2 safety as well?

3 A. Yes.

4 Q. And there are specific standards that
5 might be applicable to this type of construction; for
6 example, the Ohio Manual of Uniform Traffic Control
7 Devices might apply?

8 A. Yes.

9 Q. And you know that each of the county
10 engineers has employed specific specifications for
11 right-of-way improvements in its construction or
12 alteration of public roadways in the past?

13 A. Yes.

14 Q. All right. And you emphasize again in
15 your Roadway Infrastructure Concerns there will be no
16 local expenditure of funds anticipated by these
17 project improvements and new construction or repair?

18 A. Yes.

19 Q. Which leads to another question, and that
20 is the financial assurance to support that. You're
21 not addressing whether financial assurance be issued
22 in the terms of a bond, a performance bond or surety
23 or letter of credit or escrow arrangement. You are
24 not addressing those types of --

25 A. No.

1 Q. Okay. Those are yet to be determined,
2 presumably in the road use agreement?

3 A. Yes.

4 Q. All right. Now, in the section of your
5 report entitled Proposed Preliminary Routing for
6 Construction Access, you have estimated the number of
7 deliveries for each turbine that require use of
8 public roadways; is that correct?

9 A. Yes. That was provided by Black Fork
10 Wind Energy based on their experience in other
11 projects.

12 Q. All right. If I can summarize, I believe
13 for each delivery, that is, for each turbine
14 construction, there will be 30 deliveries of
15 concrete, 10 of road bed, 20 of collection cabling,
16 and 9 of turbine equipment; is that correct?

17 A. Yes; plus there's additional.

18 Q. May be additional above that, but I think
19 you conclude there will be a total of 84 estimated
20 truckload deliveries for each turbine location.

21 A. Yes.

22 Q. And if we have 91 turbines, that's
23 7,644 truckloads estimated.

24 A. Correct.

25 Q. And that's one way.

1 A. Yes.

2 Q. Okay. And you conclude or you report
3 that 67 of the 84 deliveries, that is, 80 percent of
4 the truckloads, would be legal weight of 80,000
5 pounds on less.

6 A. Yes.

7 Q. And the balance, 20 percent, would be
8 overweight in excess of 8,000 pounds.

9 A. Not all those would be overweight. Those
10 would be the ones that would require permits.
11 Permits could be required for an overwidth load or
12 for an overlength load. The blades themselves are
13 not heavy, but they would require a permit so they're
14 included in that.

15 Q. You may or may not be familiar with this,
16 but do you know whether both Crawford County and
17 Richland County at this point have adopted permit
18 rules and regulations?

19 A. It is my understanding they have.

20 Q. And these permit requirements are
21 designed to address both overweight and
22 over-dimension transports?

23 A. Yes.

24 Q. And there is a permitting system already
25 in place?

1 A. Yes.

2 Q. And you would anticipate the Applicant
3 complying with those permit rules?

4 A. Yes.

5 Q. In the section of the report entitled
6 Summary and Recommendations, you conclude, do you
7 not, the biggest challenge in transportation is to
8 provide the necessary pavement area for the required
9 turning radii?

10 A. Yes.

11 Q. And none of the existing intersections
12 meet that requirement?

13 A. Yes.

14 Q. So that would require, again,
15 preconstruction improvement, modification, or
16 reconstruction of those turning radiuses?

17 A. Yes.

18 Q. And I think you conclude that the next
19 phase of your transportation study after this
20 preliminary study is to identify the ODOT permit
21 routes. Those are the State of Ohio Department of
22 Transportation routes?

23 A. Correct.

24 Q. And then further identify designated
25 routes within the particular county and townships; is

1 that correct?

2 A. Yes.

3 Q. And you still have yet to do the detailed
4 load-rate analysis for local designated routes.

5 A. Yes.

6 Q. As well as the detailed analysis of the
7 pavement structures?

8 A. Yes.

9 Q. What we are talking about so far in the
10 transportation study is the actual construction
11 phase, preconstruction phase, correct?

12 A. Yes.

13 Q. There will be a period when the Company
14 needs to maintain these facilities as well, will
15 there not?

16 A. Yes.

17 Q. And that would largely relate to whatever
18 the useful life of the turbines are prior to
19 decommissioning?

20 A. Yes.

21 Q. There may be additional deliveries that
22 need to be done, either to replace equipment or
23 replace whole turbines, for that matter?

24 A. Could possibly be.

25 Q. Have you really -- you haven't at this

1 point focused on that maintenance phase, that long
2 period of time during the useful life of the project?

3 A. No.

4 Q. You also realize there will be a
5 decommissioning phase at some point in time?

6 A. Yes.

7 Q. Where the equipment needs to be
8 dismantled and hauled away?

9 A. Yes.

10 Q. And, again, there will be required
11 analysis in the future as to what designated routes
12 will exist for decommissioning deliveries?

13 A. Yes.

14 Q. As well as what the costs would be?

15 A. Yes.

16 Q. As well as whether there will be any
17 improvements or corrective remedy requirements?

18 A. Yes.

19 Q. And that's another phase of the project
20 itself. And you don't have an estimate of costs
21 during the maintenance phase or decommissioning
22 phase?

23 A. No, I do not.

24 MR. COLLIER: Those are all the questions
25 I have. Thank you.

1 EXAMINER FARKAS: Thank you.

2 Off the record.

3 EXAMINER FARKAS: Karel Davis.

4 MS. DAVIS: No questions.

5 EXAMINER FARKAS: Gary Biglin, do you
6 have any questions?

7 MR. BIGLIN: No.

8 EXAMINER FARKAS: Brett Heffner, any
9 questions?

10 MR. HEFFNER: Yes.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Heffner:

14 Q. Concerning question No. 13 in your direct
15 testimony, "Do you believe it is necessary to make
16 wholesale upgrades to transportation route roads
17 prior to construction," what meaning did you give to
18 the word "wholesale"? How would you describe that?

19 A. To completely reconstruct the entire
20 roadway section.

21 Q. If the question were asked without that
22 word "wholesale," do you believe it is necessary to
23 make upgrades to transportation route roads prior to
24 construction, would you have answered differently?

25 A. That was answered in the -- the last

1 sentence in that answer qualified it saying that
2 there would be some improvements that would need to
3 be made prior to construction.

4 Q. So the "no" at the beginning of that
5 would not -- your answer where you said no, wholesale
6 upgrades would not have to be made prior to
7 construction, if "wholesale" were removed, then the
8 answer would consist of the last line in the absence
9 of the stuff above it?

10 A. Correct.

11 Q. Okay. Does the presence or absence of
12 land control play a part in the timing of the final
13 routing plan, when it will be available?

14 A. No. The biggest factor in the final
15 routing is going to be determined by the Ohio
16 Department of Transportation on getting the equipment
17 and the routing. The first permits will be issued
18 through the Ohio Department of Transportation to get
19 the equipment to the project area. That is going to
20 be dependent on what location, what source the
21 materials are coming from and where the equipment is
22 coming from. ODOT will determine that routing to the
23 project area.

24 Once it gets to the project area, then we
25 can more define how to handle it inside those

1 boundaries. The biggest dynamic with ODOT's routing
2 system is going to be it's dependent on their -- at
3 the time of applying for the permit, the roads that
4 are available. If they would have a detour on a road
5 they would normally use, if they were putting in a
6 bridge replacement project and they have a detour on
7 the route that was primarily used before, they have
8 to reroute it, we might have to possibly come from a
9 different quadrant or different area in the project
10 boundaries. That's one of the big impacts to final
11 routing determination.

12 Q. Okay. When you mentioned that, we folks
13 from Shelby have direct evidence of that. We had
14 some turbines rerouted down Main Street, you might
15 recall.

16 Concerning this bridge which is -- I
17 don't see a number or letter for the attachment. The
18 Richland County Stein Road bridge, coincidentally, it
19 happens to be 400 feet from the end of my driveway,
20 and I watched with great interest as this was put up.
21 How many loads that were 150 feet long were required
22 in the construction of that bridge?

23 A. I forget the length of the beams. That
24 particular project had three cast concrete box beams,
25 and I believe they were at least 100 feet long that

1 were delivered to that site.

2 Q. Do you know approximately when they
3 bundled those, did they come one at the time?

4 A. Yes.

5 Q. Do you know about what the weight of one
6 of those is?

7 A. I don't have that information right here.

8 Q. Would you consider that to be the
9 heaviest component, perhaps single component, that
10 was delivered to the site?

11 A. No. It would probably have been the
12 cranes that were required to be assembled on site to
13 handle those beams.

14 Q. And those cranes, do you happen to know
15 as they come in in their component parts what the
16 weight of the heaviest part would be there?

17 A. I don't have that information.

18 Q. Okay. On the wind turbine site
19 comparison, what would be the heaviest item that
20 comes over on that truck, the undivided load?
21 There's a comparison being made here between numbers
22 of permitted loads. Are those permitted loads
23 somewhat equal in weight and size?

24 A. I don't know what the final breakup of
25 the components to the turbine parts will be for the

1 weights to be delivered to this project so I can't
2 answer that.

3 Q. But your judgment seems to be that it's
4 very similar or somewhat similar between the
5 construction of a bridge on a township road and the
6 building of a single wind turbine.

7 A. Yes.

8 Q. To your knowledge, has the County,
9 Township, and State built 91 or more bridges in the
10 24,000-acre area in an 8- to 12-time month period?
11 Have we ever had that volume of traffic in its
12 aggregate?

13 A. Not that I'm aware of. I can't answer
14 that.

15 MR. HEFFNER: Thank are. That's all I
16 have.

17 EXAMINER FARKAS: Margaret Rietschlin.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Rietschlin:

21 Q. Any projects that have to have
22 preconstruction or post construction, will those to
23 be competitively bid?

24 A. I'm not involved with that area of the
25 project.

1 MS. RIETSCHLIN: Thank you.

2 EXAMINER FARKAS: Catherine Price.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Price:

6 Q. On your map for your curve
7 deficiencies -- I live on Remlinger Road. The curve
8 deficiency at C3 is the end of my driveway. How do
9 you propose, if that ends up in your final route,
10 what would they do with that curve? How would they
11 fix that?

12 MR. SETTINERI: Could you identify what
13 figure you're pointing to?

14 MS. PRICE: In this book, Section N.

15 EXAMINER FARKAS: Of the Application?

16 MS. PRICE: Yes, about seven or eight
17 pages back, curve deficiencies.

18 MR. SETTINERI: Thank you.

19 MS. PRICE: It's in the large book,
20 Section N.

21 A. As I mentioned before, we have not done
22 any construction plans. We have just identified the
23 problem areas. We have not prepared any plans for
24 corrections.

25 Q. Made any suggestions on how they would

1 fix that?

2 A. No.

3 Q. Okay. Can I ask if that's because they
4 need to still have an easement assigned for that area
5 before you can -- before it would be worthwhile to --

6 A. We have not done any detailed design work
7 on it to know what the available right-of-way is in
8 that area or what would be required to correct that
9 curve deficiency.

10 Q. The two reports on page 3 of your
11 testimony, Mr. Collier asked you, "A detailed load
12 rating analysis of the structures was not performed"
13 and "a detailed pavement analysis was not performed."

14 You explained what those were, but you
15 didn't say why they were not performed.

16 A. We're waiting to get close to the final
17 routing. Instead of doing a detailed structural
18 analysis, it takes a large effort to do an analysis
19 of a bridge to see what it's capable of handling.
20 Instead of doing 40 structures, we might only be
21 crossing -- now that we're down to ten structures, we
22 want to wait until we get a final determination of
23 routing before that is done.

24 Q. Okay. Also in the maps, on the back page
25 of the map for the curve deficiencies, you mentioned

1 there were seven structures that might have to be
2 moved, three of them cemeteries.

3 A. No, we didn't recommend any movement. We
4 just identified any obstruction that would prohibit
5 or be problematic for the movement of the transport
6 vehicles.

7 Q. Okay. In this miscellaneous restrictions
8 of intersections, M1, your first one, is a cemetery.
9 That's on Settlement Road probably two miles outside
10 of the project area. Can you tell me why that was
11 identified?

12 A. No. That was within the original project
13 boundaries that we were given.

14 Q. The original, okay. And you talked about
15 fixing the roads as needed; instead of building them
16 up beforehand, fixing them as needed. How bad would
17 you say a road would be when it needed to be fixed?

18 I mean, once they start moving equipment
19 in and parts and material and stuff, how much damage
20 to a road before it would be suggested they need to
21 fix it?

22 A. Where it would be problematic for
23 vehicles' ordinary use on the road.

24 Q. So would you say that living in the
25 project area, as I do, and I travel these roads in

1 order to go anywhere, that any time I'm going to
2 drive over these roads during the construction phase
3 is going to do damage to my vehicle? I mean anything
4 as simple as rattles to major damage to my vehicle,
5 shocks, tires, whatever?

6 A. Now, that would have to be addressed in
7 the road use agreement to come up with a
8 determination of when repairs would have to be made
9 or what condition would require repair.

10 MS. PRICE: Thank you.

11 EXAMINER FARKAS: Alan Price.

12 MR. PRICE: No questions.

13 John Warrington.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Warrington:

17 Q. As was mentioned, the 148-foot inside
18 radius -- Cathy had brought up already about
19 cemeteries. We were concerned in the previous
20 applications they were marked as problematic, and
21 they include veterans of the War of 1812 are buried
22 in our area quite commonly.

23 I wondered if you could clarify for me
24 when you have to make this inside radius temporary
25 road, I have had described to me the area outside of

1 the preexisting intersection will still be large
2 enough to probably want to plant corn in that area.

3 So my question is, if there's a drainage
4 ditch and you have to bring this giant crane across
5 this temporary road, do they just flatten that out
6 with gravel? Do they put some kind of very strong
7 culvert in?

8 I guess my question is leading to we have
9 had two 50-year floods in the last four years in this
10 area.

11 EXAMINER FARKAS: You want him to answer
12 your question about culverts?

13 MR. WARRINGTON: Yes.

14 EXAMINER FARKAS: Why don't we start
15 there.

16 THE WITNESS: Restate the question.

17 Q. Will they put a temporary culvert in the
18 temporary road to avoid flood water backing up into
19 fields and destroying large plots of planted crops as
20 we see during floods?

21 MR. SETTINERI: Your Honor, I have to
22 object to lack of foundation in terms of talking
23 about flood waters. There's no basis laid for floods
24 and also in terms of temporary roads in the question,
25 I'll object.

1 EXAMINER FARKAS: I will sustain the
2 objection, but allow you to ask the question with
3 respect to culverts.

4 Your question was will there be a
5 requirement to build temporary culverts in some of
6 these routes.

7 A. An existing drainage system along the
8 roadways will have to be maintained, so if it
9 requires putting in additional pipe for a
10 continuation or extension of the existing pipe that
11 goes under the road, that would have to be done.

12 Q. Okay. Information that as we are doing
13 extensive background studying of wind energy for the
14 last three years, we came upon figures for Benton
15 County, Indiana.

16 EXAMINER FARKAS: Mr. Warrington, just
17 ask the question.

18 MR. WARRINGTON: I'll try. I just think
19 things are complicated.

20 Q. \$17 million worth of damage was done in
21 Indiana, which is a far less populated area with far
22 less road and infrastructure.

23 In a figure from one to 20 million, are
24 you thinking that we will see closer to 20 million,
25 closer to 10 million, closer to one? I think maybe

1 the question has already been asked about an
2 estimate, but just --

3 A. That would be pure speculation at this
4 point until we get all the detailed analyses done.

5 Q. Okay. I jumped ahead of my question.

6 I live right on Route 96, and there's a
7 little road called Lost Creek Road, and just to the
8 south of me will be turbine 67 and 66, and when you
9 go up Lost Creek Road, there's a preformed concrete
10 culvert bridge that's been put in probably in the
11 last oh, seven and eight years, and further down from
12 there is another old bridge I think built of large
13 sandstone, black.

14 Just in your professional opinion -- I'm
15 wanting to guess the nacelle on the truck is the
16 heaviest part of these shipments. Are these bridges
17 able to maintain that weight at all?

18 MR. SETTINERI: Your Honor, I'll object
19 to lack foundation to existing bridges.

20 But the question would bridges of that
21 type be able to handle those.

22 EXAMINER FARKAS: I'll sustain the
23 objection.

24 Will the bridges be able to handle the
25 weight of the nacelle?

1 THE WITNESS: Not until the structural
2 analysis has been completed.

3 Q. (By Mr. Warrington) Have you had
4 experience with the other Ohio wind farm
5 developments, Bucyrus Wind or Van Wert? Is this your
6 first wind energy project analysis?

7 A. This is my first one.

8 MR. WARRINGTON: That's all the questions
9 I have.

10 EXAMINER FARKAS: Any redirect?

11 MR. SETTINERI: No, your Honor.

12 EXAMINER FARKAS: You're excused. Thank
13 you for your testimony.

14 MR. SETTINERI: At this time I would like
15 to move into evidence Company Exhibit 11 and Company
16 Exhibit 12.

17 EXAMINER FARKAS: Any objection to the
18 admission of Company Exhibits 11 and 12?

19 Hearing none, they will admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER FARKAS: Off the record.

22 (Discussion off record.)

23 MR. SETTINERI: Your Honor, at this time
24 we would like to mark as Company Exhibit 19 the
25 direct testimony of Barry Yurtis.

1 EXAMINER FARKAS: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 - - -

4 BARRY YURTIS,

5 being first duly sworn, as prescribed by law, was

6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Settineri:

9 Q. Please state your name and business
10 addresses for the record.

11 A. Barry Yurtis, Williams Aviation
12 Consultants, 8490 South Power Road,
13 No. 105-181, Gilbert, Arizona 85297.

14 Q. And do you have in front of you what has
15 been marked as Company Exhibit 19?

16 A. Yes, I do.

17 Q. And would you please identify that for
18 me?

19 A. This is my direct testimony.

20 Q. Do you have any revisions or changes to
21 your direct testimony?

22 A. I do not.

23 Q. If I asked you the same questions today
24 that are in your direct testimony, would your answers
25 be the same?

1 A. They would be the same.

2 MR. SETTINERI: Your Honor, the witness
3 is available for cross-examination.

4 EXAMINER FARKAS: Does Staff have any
5 questions of the witness?

6 MR. REILLY: No, we have no questions.

7 EXAMINER FARKAS: Mr. Warrington, any
8 questions?

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Warrington:

12 Q. I have a question. We have been seeing a
13 lot of crop dusting in our area as a new phenomenon
14 in the last three years. In your professional
15 opinion is that going to be caused to be stopped?
16 That's one question.

17 A. No, I don't believe so. Crop dusting
18 should have no effect whatsoever.

19 MR. WARRINGTON: I can't really argue
20 with that.

21 Q. Now then, just to flush it out rather
22 than -- well, can a crop duster just manipulate in
23 between 500-, 600-foot wind turbines?

24 A. A crop duster is no different than any
25 other aircraft operating under visual flight rules.

1 When there is good weather and no clouds, they
2 operate under a see-and-avoid principle. That means
3 they're required to separate themselves from any
4 other aircraft or obstructions from terrain, from
5 weather, all sorts of things.

6 They are also expected to navigate
7 visually with a see-and-avoid concept. Crop dusters,
8 by the way, are very used to operating around
9 structures, low hanging wires when dropping their
10 chemicals.

11 Crop dusters are required to operate
12 under Rule FAA Part 91, just like any other aircraft,
13 with the see-and-avoid principle. Especially a crop
14 duster that is involved in low altitude flying,
15 operating around structures, wind turbines would have
16 no effect on crop dusters.

17 MR. WARRINGTON: I'll accept that as your
18 answer or expert opinion. Thank you.

19 EXAMINER FARKAS: Okay. Alan Price.

20 MR. PRICE: No questions.

21 EXAMINER FARKAS: Catherine Price.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Price:

25 Q. You said that a crop duster would fly on

1 visual. He's used to maneuvering around objects, but
2 most objects aren't moving at the top, are they? If
3 the blades are turning at all of these wind turbines,
4 is it really going to -- is it the same thing, going
5 past the turbines?

6 A. It would actually be the same thing, as
7 the blades are visible.

8 Q. But that wouldn't have any effect on the
9 plane going underneath there, the movement of blade
10 or the air movement of blade?

11 A. It should have no effect whatsoever.

12 Q. And it also wouldn't affect bringing the
13 Life Flight for an accident?

14 A. I'm sorry, bringing in what?

15 Q. Life Flight for a car accident or
16 anything.

17 A. You mean a helicopter; is that what
18 you're talking about?

19 Q. Yes.

20 A. It would have no effect.

21 MS. PRICE: Thank you.

22 EXAMINER FARKAS: Margaret Rietschlin.

23 MS. RIETSCHLIN: No questions.

24 EXAMINER FARKAS: Brett Heffner.

25 - - -

CROSS-EXAMINATION

By Mr. Heffner:

Q. On the Life Flight, there are no restrictions? There is no effect?

A. Would you define what kind of operation you're talking about for me, please?

Q. Well, I guess I'm asking you as an expert in that field, do you have experience with Life Flight, an area of your expertise?

A. Well, again, explain what you are talking about. Are you talking about take-off and landing? Are you talking about in flight?

Q. We have a service out of Akron, Ohio. We have a service out of Columbus, Ohio, and we have local pilots that come in in the event of -- I'll give you a direct example.

A friend of mine had a burst aorta. They were able to get him from his automobile to the specialist, the hospital with the specialty. They were able to save his life because they were able to land where he was and retrieve him and care for him as he went.

Can that be repeated when we are in the midst of, say, 91 turbines?

MR. SETTINERI: Your Honor, I object for

1 lack of foundation, and also the question has been
2 asked and answered already.

3 EXAMINER FARKAS: I'll allow him to
4 answer.

5 A. Well, I guess what you're talking about
6 is a helicopter coming, landing on a road or field.
7 Is that what you are talking about?

8 Q. Yes.

9 A. I'm trying to understand the question.

10 Q. Yes.

11 A. It would have no effect whatsoever.
12 Helicopters operate every day of the year around
13 obstructions, around wires. A turbine of this size
14 is obviously visible. Landing next to a turbine,
15 even if a person was on the ground next to it,
16 helicopters are well-versed in operating in a
17 situation like that.

18 In fact, they are so well-versed they are
19 exempt from any federal aviation regulations in terms
20 of operation in proximity to objects because they are
21 capable of conducting safe operations in that effect.

22 Q. There is no ceiling, there is no
23 requirement for flying a certain height above
24 obstacles?

25 A. Not for a helicopter.

1 Q. Thank you.

2 A. Not under the federal air regulations.

3 FAA, Part 91, no, they're not.

4 MR. HEFFNER: Thank you.

5 EXAMINER FARKAS: Gary Biglin.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Biglin:

9 Q. One thing in regard to the Life Flight,
10 the turbines have a light on top of the tower for
11 night, but the blades aren't lit. You don't think
12 that would be a problem with a night Life Flight
13 helicopter, the actual blade if they were moving
14 because they are not lit on the tip, as far as I
15 know?

16 A. No, they're not. The pilot would be
17 expected to see and avoid the blades. If that pilot
18 saw a turbine, he would expect or she would expect
19 there would be blades involved, and they certainly
20 can avoid the blades.

21 MR. BIGLIN: Thank you.

22 EXAMINER FARKAS: Karel Davis.

23 MS. DAVIS: No questions.

24 EXAMINER FARKAS: Any redirect?

25 MR. SETTINERI: No, your Honors.

1 EXAMINER FARKAS: Okay.

2 MR. SETTINERI: At this time we would
3 like to move into evidence Company Exhibit 19.

4 EXAMINER FARKAS: Any objection to the
5 admission of the exhibit?

6 Hearing none, it will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER FARKAS: Okay. Thank you for
9 your testimony.

10 That will conclude us for the day. We
11 will adjourn and reconvene tomorrow at 9:00 o'clock.

12 (The hearing adjourned at 4:51 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, October 11, 2011, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.
(RFA-8693)

- - -

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Summary: Transcript Transcript of Black Fork Wind Energy, LLC hearing held on 10/11/11 - Vol II electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.