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OHIO POWER SITING BOARD

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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 at 10:00 a.m. on Thursday,  
October 13, 2011, called at 9:00 a.m.

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VOLUME IV

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13 On behalf of the Richland and Crawford  
14 County Commissioners, the Richland County  
15 Engineer.

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25 Mike DeWine, Ohio Attorney General  
By Ms. Summer J. Koladin Plantz  
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On behalf of the Staff of the Power  
Siting Board.

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1 Thursday Morning Session,  
2 October 13, 2011.

3 - - -

4 EXAMINER FARKAS: Let's take appearances  
5 at this time. First, for the Company.

6 MR. PETRICOFF: Thank you, your Honor.  
7 On behalf of the Black Fork Wind Company, we have  
8 Howard Petricoff and Mike Settineri of the law firm  
9 of Vorys, Sater, Seymour and Pease.

10 EXAMINER FARKAS: Thank you.

11 On behalf of Staff.

12 MR. JONES: Good morning. On behalf of  
13 the Staff of the Ohio Power Siting Board, Ohio  
14 Attorney General Mike DeWine, assistant attorneys  
15 general Steve Reilly, Devin Parram, and John Jones,  
16 180 East Broad Street, Columbus, Ohio; and from the  
17 Environmental Enforcement Section of the Ohio  
18 Attorney General's Office, assistant attorney general  
19 Summer Koladin Plantz.

20 EXAMINER FARKAS: On behalf of the Farm  
21 Bureau.

22 Farm Bureau is not here.

23 Mr. Collier.

24 MR. COLLIER: On behalf of the Statutory  
25 Intervenors, Orla Collier, of the law firm of



1 Benesch, Friedlander, Coplan & Aronoff, 41 South High  
 2 Street, Columbus, Ohio.

3 EXAMINER FARKAS: Thank you.

4 Mr. Warrington.

5 MR. WARRINGTON: Yes.

6 Loren Gledhill and Carol Gledhill?

7 They are not here.

8 Mary Studer?

9 Mary Studer is not here.

10 Alan Price?

11 MR. PRICE: Yes.

12 EXAMINER FARKAS: Catherine Price?

13 MS. PRICE: Catherine Price.

14 EXAMINER FARKAS: Nick Rietschlin.

15 Margaret Rietschlin?

16 MS. RIETSCHLIN: Margaret Rietschlin.

17 EXAMINER FARKAS: Bradley or Debra Bauer?

18 Debra and Bradley Bauer are not present.

19 Grover Reynolds?

20 Grover Reynolds is not present.

21 Brett Heffner?

22 MR. HEFFNER: Here.

23 EXAMINER FARKAS: Gary Biglin.

24 MR. BIGLIN: Here.

25 EXAMINER FARKAS: Karel Davis?

1 MS. DAVIS: Karel Davis.

2 EXAMINER FARKAS: Off the record.

3 (Discussion off record.)

4 MR. COLLIER: Your Honors, at this time I  
5 have premarked as Richland County Exhibit 1, the  
6 direct testimony of Thomas E. Beck.

7 EXAMINER FARKAS: So marked.

8 MR. COLLIER: For the record, that  
9 includes Attachment A, which are the amended permits  
10 that are sponsored in the direct testimony. That is  
11 considered 1A. Then as Richland County Exhibit 2,  
12 the Supplemental Direct Testimony of Thomas E. Beck.

13 EXAMINER FARKAS: Just for the record,  
14 Exhibit A includes a Resolution dated February 8,  
15 2011 and then Amended County of Richland, Ohio Rules?

16 MR. COLLIER: That's correct, your Honor.

17 EXAMINER FARKAS: Thank you.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 - - -

20 THOMAS E. BECK,  
21 being first duly sworn, as prescribed by law, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Collier:

25 Q. Would you state your name, business

1 address, and title for the record, please?

2 A. Thomas E. Beck, 77 North Mulberry Street,  
3 Mansfield, Ohio, 44902. My title is Richland County  
4 engineer.

5 Q. Are you the same Thomas E. Beck who has  
6 previously submitted direct and supplemental  
7 testimony in this proceeding?

8 A. Yes, I am.

9 Q. And do you have before what we have now  
10 marked, your direct, as being Exhibit 1 with the  
11 Attachment, Exhibit A, and your supplemental  
12 testimony, Exhibit 2?

13 A. Yes.

14 Q. On whose behalf are you testifying in  
15 this proceeding?

16 A. Myself, Richland County Commissioners,  
17 three townships, Plymouth Township, Sharon  
18 Township -- it was originally for Springfield  
19 Township -- Sandusky Township.

20 Q. All right. Do you have any changes or  
21 corrections to your written direct testimony?

22 A. No, I don't.

23 Q. Do you adopt your written direct and  
24 supplemental testimony as your testimony here today  
25 on direct?

1           A.    Yes.

2           Q.    And if I were to ask you the questions  
3 appearing in your written direct and supplemental  
4 testimony, would your answers be the same as set  
5 forth therein?

6           A.    Yes.

7           Q.    And would they be true and correct to the  
8 best of your knowledge and belief?

9           A.    Yes.

10           MR. COLLIER: With that, your honor, I  
11 tender the witness for cross-examination.

12           EXAMINER FARKAS: Does the Company have  
13 any questions?

14           MR. PETRICOFF: Yes, your Honor. Thank  
15 you.

16                                   - - -

17                                   CROSS-EXAMINATION

18           By Mr. Petricoff:

19           Q.    Good morning.

20           A.    Good morning.

21           Q.    My name is Howard Petricoff, and I  
22 represent Black Fork Wind, who is the Applicant in  
23 this case. In preparation for your testimony today  
24 did, you have an opportunity to look through the  
25 Application?

1           A.    Yes.

2           Q.    So you're familiar, generally, with the  
3 scope and the method in which the project would be  
4 built should it be certificated?

5           A.    In general terms.

6           Q.    Richland County has been a center for  
7 heavy manufacturing for more than a century; is that  
8 correct?

9           A.    Yes.

10          Q.    So as county engineer, you have  
11 experience routinely working with heavy truckloads  
12 and heavy equipment on state and county roads?

13          A.    Yes.

14          Q.    Fair to say that the normal process is  
15 that if a builder or contractor is going to build a  
16 project that is going to have heavy equipment and  
17 heavy loads, they would first come to the County and  
18 present a route plan? Then there would be a survey  
19 made to see whether the streets and bridges could  
20 handle that load. There may be improvements made so  
21 they can handle the loads, and then there would be  
22 restoration efforts?

23          A.    Yes.

24          Q.    That's the normal plan?

25          A.    Yes.

1 Q. In your experience -- by the way, how  
2 long have you been the county engineer?

3 A. 22 years.

4 Q. This is a process you are very familiar  
5 with personally?

6 A. This is a process that is new to us in a  
7 project of this scope. We have never had one since I  
8 have been there of the size and magnitude of this  
9 project. So the answer is no, I've not had much  
10 experience with something similar to this. This will  
11 be the first one of this size.

12 Q. Thank you. With that in mind, is there  
13 any information or expertise that you, as county  
14 engineer for Richland County, in general, would like  
15 from the Power Siting Board to assist you because  
16 this is the first project of this size?

17 A. All I want is the assurance that the  
18 roads will be repaired ahead of time and built up or  
19 beefed up or reinforced to the extent necessary that  
20 the people of Richland County are not jeopardized  
21 getting to and from their homes, and whatever it  
22 takes to do the preparatory work ahead of time so  
23 there's a minimal inconvenience to our residents is  
24 my concern and objective.

25 Q. Are you aware there are other wind farms

1 that have been constructed in Ohio?

2 A. Yes, I am.

3 Q. Have you had an opportunity to talk to  
4 the county engineers in those counties concerning the  
5 steps that they took?

6 A. In a limited extent, yes.

7 Q. So, in general, county engineers trade  
8 best practices and information?

9 A. Yes.

10 Q. Is there any legal authority -- actually,  
11 let me go back because I want to make sure I got the  
12 answer on the record from you in terms of expertise  
13 from the Power Siting Board.

14 Is there anything that you know of at  
15 this time in terms of information or expertise that  
16 the County would like to have from the Power Siting  
17 Board.

18 A. Well, I think that we do want to have the  
19 authority to follow the Revised Code, and from the  
20 advice of our prosecutor, taking bids, advertising,  
21 having the design work done, construction,  
22 inspection, all of that work, we want it to be done  
23 according to the Ohio Revised Code as our prosecutor  
24 recommended.

25 Q. And do you think that the Power Siting

1 Board has the authority to alter or change the Ohio  
2 Revised Code as to those items of bidding and  
3 awarding the contracts?

4 A. I would hope not.

5 Q. Would you agree with me that's largely  
6 going to be a legal matter as to who has authority?

7 A. I think the lawyers will make those  
8 decisions, yes.

9 Q. And at this time -- and I understand that  
10 you're not a lawyer. But at this time do you know of  
11 any authority that the County lacks to make sure that  
12 both the pre-heavy load construction and the  
13 restoration couldn't be accomplished so that -- in a  
14 manner that would bring the roads back to the level  
15 that they are at now?

16 A. Run that by me a little bit easier.

17 Q. I'm glad you asked that question. It got  
18 a bit twisted. Let's see if we can make it easier.

19 Do you know of any authority that the  
20 County doesn't have now by virtue of the state  
21 statutes that it would need in order to do the work  
22 that you think is necessary to make sure that the  
23 roads and bridges are both prepared for the heavy  
24 loads, the construction loads, when they come and  
25 that will be restored after they leave?



1           A.    Well, I do know we do not have a road  
2 agreement in place, and that does need to be  
3 completed.

4           Q.    All right.

5           A.    That's not part of the Revised Code.  
6 Well, I guess it's following. I don't know. You're  
7 getting me into the law field that I'm not too  
8 familiar with.

9           Q.    Well, in that case, let's go back to the  
10 construction area where you are more at home, and  
11 maybe your testimony will be of assistance to the  
12 Board.

13                    At this time do you anticipate that as  
14 soon as you get a routing plan from the Company that  
15 you will go forward with a road use agreement?

16           A.    I think that a road use agreement  
17 definitely needs to be negotiated and put in place,  
18 yes.

19           Q.    Okay. Do you have any concern that won't  
20 take place?

21           A.    No.

22           Q.    Earlier you indicated you have talked to  
23 some of the county engineers where wind farms have  
24 been built. Can you tell me which county engineers  
25 you talked to or which counties?

1           A.    It's been very brief, but it's the Van  
2 Wert County engineer, Champaign County engineer --  
3 and I don't know what their status is. They have an  
4 Application I think approved -- and the Hardin County  
5 engineer. Those are the ones I can think of.  
6 Paulding County perhaps, I'm not sure if I talked to  
7 him or not.

8           Q.    Have you had an opportunity to look at  
9 the road use agreements in any of those counties?

10          A.    Several of my other people in our office  
11 have reviewed those. I briefly looked at them, but I  
12 have not personally studied them. I depend on my  
13 other people, the experts to review those.

14          Q.    Would you agree with me that it may make  
15 sense to look at those road agreements, especially  
16 the ones where a project has been built, find out  
17 what the field experience is before we enter into a  
18 road agreement for Richland County?

19          A.    I think we have already looked at some of  
20 those agreements.

21               MR. PETRICOFF: Your Honor I have no  
22 further questions at this time.

23               Thank you very much.

24               THE WITNESS: You're welcome.

25               EXAMINER FARKAS: Staff?

1 MR. JONES: No questions, your Honor.

2 EXAMINER FARKAS: Mr. Warrington?

3 MR. WARRINGTON: No questions.

4 EXAMINER FARKAS: Mr. Price?

5 MR. PRICE: No questions.

6 EXAMINER FARKAS: Ms. Price?

7 MS. PRICE: Yes.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Price:

11 Q. I am Cathy Price. I live on Remlinger  
 12 Road in Crawford County just two miles outside of  
 13 your county. Would it be easier to come to a road  
 14 agreement if you actually had the route that they  
 15 wanted to use?

16 A. Well, I don't think a road agreement can  
 17 be developed until that is established.

18 Q. Because then you would know what exact  
 19 roads you are talking about and what and needed to be  
 20 done?

21 A. (Witness nods head.)

22 Q. Okay. During the construction phase of  
 23 this project, what percent of traffic increase do you  
 24 think Richland County roads will see?

25 A. Well, the preliminary traffic study has

1 figures. Those figures are in sizable amounts. I  
2 think just going from memory, if I recall right, each  
3 site will have like around 80 to 90 truckloads.

4 Q. Semi trucks?

5 A. Yeah. And most of them will be within  
6 the load limits, but I think there's 17 projected per  
7 site that will be overload, oversize.

8 Q. But would you agree that the roads in  
9 Richland County that are to be used at the present  
10 time may see 10, 15 cars tops within an hour and that  
11 there will be a lot more actual traffic?

12 A. I don't know about residential or  
13 vehicle, car traffic increasing tremendously.

14 Q. Okay. I don't know much about the road  
15 agreement that they're actually offering you, but as  
16 a resident living in that area, but the roads that  
17 are not built up before construction, how much damage  
18 would be done to a road before they would have to  
19 repair it?

20 A. We're asking that a traffic study and  
21 engineering firm do a study and evaluate all the  
22 roads, and the results out of that study would answer  
23 some of those questions.

24 Q. Okay.

25 A. I can't sit here and say this road is

1 going to fall apart and that one is going to stay  
2 together. You need lot more information.

3 Q. Do you feel that part of your elected  
4 duties is to make sure that the residents in this  
5 area are not destroying their cars on bad roads that  
6 were otherwise fine roads but because of this project  
7 going on, damage, as in -- I mean the wear and tear  
8 on the struts, whatever, the vehicle I'll rephrase  
9 that question.

10 A. Let me answer what I think you're asking  
11 me.

12 Q. Okay.

13 A. Are we going to try to keep the roads  
14 together so the residents are inconvenienced the  
15 least possible? That is our goal, and I think that  
16 that's the goal of the Black Fork people as well.  
17 It's our intention to try to prevent and have as  
18 little disruption and as little damage to those roads  
19 that people have to drive over during the  
20 construction as possible.

21 Can it be 100 percent eliminated?  
22 Probably not, but we do want to hold it to the  
23 absolute minimum and keep them very passable.

24 Q. Can a road be damaged and it not show  
25 right at that time but later on?

1           A.    That's a possibility.

2           Q.    Damaged where the base, the original  
3 base, of the road is damaged and, therefore, no  
4 matter how much you blacktop it, it will still crack?

5           A.    A lot of our roads do not have a real  
6 good base to start with. Usually within a year's  
7 time, damage would show up through a freeze/thaw  
8 session, but sometimes not right away, but other  
9 times it does show up right away.

10           MS. PRICE: Okay. Thank you.

11           EXAMINER FARKAS: Ms. Rietschlin.

12   - - -

13   CROSS-EXAMINATION

14   By Ms. Rietschlin:

15           Q.    How are you?

16           A.    How are you?

17           Q.    I'm good, thank you.

18                                   Are you involved in the public bid  
19 process for roads and bridges in Richland County?

20           A.    Our office is engaged in the bid process,  
21 yes.

22           Q.    What specs do you use when designing a  
23 project or what specs does your staff use in  
24 designing a project?

25           A.    The majority of the time we follow the

1 ODOT specifications, ODOT criteria. Other times on  
2 specific jobs there will be changes or variations  
3 from that that will amend that or have additional  
4 specs that redevelop or our consulting engineering  
5 firms develop.

6 Q. In the bidding process do the specs and  
7 plans have a guarantee of the quality of work to be  
8 performed?

9 A. That's the purpose of the plans and  
10 specs, is to show the contractors what they're  
11 bidding on and what is to be built and the quality  
12 and type of materials used and do testing at times.

13 Q. When you bid a project, how is the  
14 funding to pay for the project secured?

15 A. Well, the funding has to be before we can  
16 take bids certified by the county auditor that the  
17 funds are on hand or will be on hand to be collected.

18 Q. And what do you require the contractor to  
19 ensure that the work he does meets your standards?

20 A. We usually -- we have a performance and  
21 payment bond requirement in our specifications that  
22 requires that they perform, and that bond is usually  
23 backed by an insurance company.

24 MS. RIETSCHLIN: Thank you very much.

25 EXAMINER FARKAS: Mr. Heffner?

1 MR. HEFFNER: Your Honor, may I present  
2 to Mr. Beck a copy of the Staff Report and an exhibit  
3 from Mr. Mawhorr's testimony?

4 EXAMINER FARKAS: Yes.

5 MR. HEFFNER: This is the Staff Report of  
6 Investigation, and you may have seen it before, and  
7 this is from Mr. Mawhorr's testimony.

8 THE WITNESS: Okay.

9 EXAMINER FARKAS: Before we get started,  
10 have you ever seen these documents before?

11 THE WITNESS: Yes. Here again, I have  
12 other people in the office that review in a lot more  
13 detail than I do, but I have seen them and looked  
14 over them.

15 EXAMINER FARKAS: You are familiar with  
16 the documents?

17 THE WITNESS: Yes.

18 EXAMINER FARKAS: Thank you.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Heffner:

22 Q. First, I'd like to go to page 26 of the  
23 Staff Report, item No. 37 concerning bond or  
24 financial security. Would you agree with the Staff  
25 that the schedule is inadequate as stated in that



1 item?

2 THE WITNESS: What's the question again?

3 EXAMINER FARKAS: Page 26, the Staff  
4 report item, No. 37.

5 Can you clarify what you are referring to  
6 as the schedule?

7 MR. HEFFNER: The words in there,  
8 "schedule inadequacy."

9 EXAMINER FARKAS: The last sentence?

10 MR. HEFFNER: Yes.

11 EXAMINER FARKAS: Okay, thank you.

12 Q. (By Mr. Heffner) "Staff believes this  
13 schedule is inadequate." Do you agree or disagree  
14 with that sentiment?

15 MR. PETRICOFF: Your Honor, we move to  
16 strike the question. This has been superseded by the  
17 Stipulation.

18 MR. HEFFNER: Your Honor, I have not  
19 signed the Stipulation, nor has Mr. Beck.

20 EXAMINER FARKAS: That condition is no  
21 longer in the -- wait a minute. Are you withdrawing  
22 your question?

23 MR. HEFFNER: I'm withdrawing that  
24 question, yes.

25 Q. Do you believe, Mr. Beck, that the

1 Company as of this date as agreed to sufficient  
2 financial security for both the initial construction  
3 phase and future decommissioning?

4 A. Well, the staff has concerns about the  
5 decommissioning portion. A lot of what is going to  
6 go into the road use agreement will be negotiated on  
7 that, and a lot of the money and establishment or  
8 payment of the money and when it will be done will be  
9 worked out in that road use agreement.

10 Q. As you have already said, there are some  
11 things that are causing that road use agreement to  
12 not be ready now, such as a route plan.

13 A. Yeah. The road use agreement has not  
14 been negotiated and put together. That's to come in  
15 the future.

16 Q. Okay. Do you believe that the Richland  
17 County engineer should be present at a  
18 preconstruction conference?

19 A. The county engineer or representatives of  
20 the county engineer.

21 Q. Have you had any conversations with the  
22 county auditor concerning taxing authority of the  
23 county?

24 A. Have I questioned the auditor about  
25 taxes?

1 Q. Yes.

2 A. No.

3 Q. Has your contact with the Applicant been  
4 with Element Power or Black Fork Wind Energy, LLC?

5 A. Well, my contact is with Scott. It's  
6 Element Power, and the title is Black Fork Wind  
7 Project.

8 Q. In your direct testimony on page 5, item  
9 5, I believe it says that -- it begins, "Applicant  
10 shall repair at its cost." This does not mean the  
11 Company itself but the contractors subject to  
12 statutory requirements?

13 A. Better simplify it. I'm not sure where  
14 you are and what you're saying.

15 EXAMINER FARKAS: You're on page 5 of his  
16 direct testimony?

17 MR. HEFFNER: Page 5.

18 EXAMINER FARKAS: Whereabouts on the  
19 page?

20 MR. HEFFNER: Page 5, item 5, first  
21 phrase.

22 THE WITNESS: Page 5 of my?

23 MR. HEFFNER: Supplemental direct  
24 testimony.

25 EXAMINER FARKAS: Okay.

1 THE WITNESS: Oh, the supplemental one.

2 MR. HEFFNER: Sorry about that?

3 EXAMINER FARKAS: Page 5, item 5 of the  
4 supplemental.

5 THE WITNESS: Okay.

6 EXAMINER FARKAS: What's your question  
7 again?

8 Q. (By Mr. Heffner) My question is, does  
9 this mean the Company itself, or contractors subject  
10 to statutory requirements?

11 A. I think you better ask that question to a  
12 lawyer.

13 Q. Okay. Can you estimate just from  
14 experience how much time is necessary to fulfill the  
15 statutory requirements, such as posting of bid  
16 notices, receiving of bids, everything required from  
17 the time that you know a repair needs to be done  
18 until you actually do the repair?

19 A. It varies all over the place, anywhere  
20 from months to years.

21 Q. Is it your expectation that these bid  
22 notices will be offered in an aggregate as an omnibus  
23 for repairs and reconstruction, or will it be on an  
24 item-by-item basis or a combination?

25 A. There again I think these are things that

1 will be negotiated out in the road use agreement, how  
2 it will be handled.

3 Q. Okay. Referring to that schedule in the  
4 original testimony, it wasn't numbered as an exhibit  
5 on page, that shows the similarity in number of  
6 permitted loads between building a bridge and  
7 building a wind turbine. Is it your experience that  
8 the loads are similar between the building of a  
9 bridge, such as the one on Stein Road, and the  
10 building of the turbine?

11 A. Well, there's some similarities but  
12 there's also with this project oversize and  
13 overweight loads that is more than what is  
14 encountered in a normal bridge project.

15 Q. Has the County been involved at any time,  
16 in your experience, working with the township and the  
17 state to build approximately 90 bridges in a  
18 24,000-acre area over the course of a one- to  
19 three-year time? Could I just say a one-year time,  
20 please.

21 A. Well, we built, I don't know, 180 bridges  
22 over the 22 years that I've been in office. Now, the  
23 average number of bridges that we build per year is  
24 usually eight to ten bridges.

25 Q. Countywide?

1           A.    Countywide, yes.

2           Q.    Are you aware of any board, body, or  
3 jurisdiction that may relieve the county engineer of  
4 the responsibilities set forth in the Ohio Revised  
5 Code?

6           A.    No.

7           MR. HEFFNER: Thank you very much,  
8 Mr. Beck.

9           EXAMINER FARKAS: Mr. Biglin?

10          MR. BIGLIN: No questions.

11          EXAMINER FARKAS: Ms. Davis?

12                                   - - -

13                                   CROSS-EXAMINATION

14   By Ms. Davis:

15          Q.    I have just one question, Mr. Beck. This  
16 competitive bid process that I keep hearing about, is  
17 this something unique to our area, Richland County,  
18 or is this a statewide thing?

19          A.    That's a statewide requirement.

20          Q.    It's statewide?

21          A.    It's covered in the Ohio Revised Code.

22          Q.    Not all states would have something like  
23 this then; this is in Ohio?

24          A.    Other states, I'm only familiar with  
25 Ohio. I don't know other states. I would assume

1 most places do, but I don't know that for sure  
2 because I'm not experienced in other states.

3 Q. Competitive bids is an Ohio statewide  
4 ordinance, code, right?

5 A. Uh-huh.

6 EXAMINER FARKAS: Is that a yes?

7 THE WITNESS: That's a yes.

8 MS. DAVIS: That's all my questions.

9 - - -

10 EXAMINATION

11 By Examiner Farkas:

12 Q. Mr. Beck, I have a couple questions. Is  
13 it routine in your experience when a project, a large  
14 project, is undertaken in the county that the County  
15 enters into a road agreement with the Company or  
16 entity that's going to undertake the project?

17 A. We've not encountered, like I said  
18 earlier, projects of this size.

19 Q. Okay.

20 A. And I don't think. I'm not aware of a  
21 specific road agreements. We have had some  
22 agreements some smaller projects where somebody has  
23 damaged a road; sometimes it's just a negotiated  
24 agreement that we're going to do such and such to  
25 repair a road; but to have a whole -- the complete

1 big road agreement like we're talking about here, we  
2 have not done one that extensive to date.

3 Q. But you have done them in the past?

4 A. We have had small ones or verbal ones  
5 where people have gone and done some work.

6 Q. And is the same also true of bonds,  
7 issuing -- having bonds in place for projects, is  
8 that something that is customary under your  
9 experience that the county would enter into a bond  
10 agreement or someone would hold bond to cover the  
11 cost of items that would be involved in the project?

12 A. Yes. As I said earlier, in almost all  
13 cases with our bidding requirements we require a bid  
14 and performance payment bond, and that's always a  
15 part of the contract documents, and that the  
16 furnished and backed by an insurance company usually.

17 Q. Okay.

18 A. But, yes, bonds are required for just  
19 about everything, all of our contracts.

20 Q. Okay. Are you aware that Crawford County  
21 has entered into a Stipulation in this case?

22 A. Yes, I am.

23 Q. Have you reviewed the Stipulation in this  
24 case?

25 A. The Stipulation.



1           Q.    In this case between the Company, the  
2 Staff, the Farm Bureau, and now Crawford County has  
3 signed on this Stipulation. Have you reviewed it at  
4 all?

5           A.    Not thoroughly, no.

6           Q.    Are you familiar with it?

7           A.    Some of the parts.

8           Q.    Other than the bond -- in your  
9 supplemental testimony you describe some of the  
10 issues that -- you call them on page 4 you recommend  
11 minimum conditions.

12          A.    Is this the supplemental?

13          Q.    Supplemental, page 4.

14          A.    Page 4.

15          Q.    And the last answer starting on that  
16 page, you recommend the following minimum conditions,  
17 and then you list on the next pages nine conditions.

18          A.    Okay. Starting there at -- in the middle  
19 of the page?

20          Q.    Yes.

21          A.    There's 1, 2 and then the following  
22 pages?

23          Q.    Right.

24          A.    What's the question?

25          Q.    That's what I was going to get to.

1           A.    Okay.

2           Q.    That's okay.  Other than the issues  
3 related to a road agreement and bond, is the only  
4 other issue that you're concerned about damage to  
5 field tile drainage systems and related to that?

6           A.    Well, that is a concern.  But I think  
7 that the concern is how the whole development of this  
8 process is handled.  And that meaning consulting  
9 engineering firms to design the whole project, draw  
10 up the plans, the specifications, writing the  
11 documents, doing the advertising for bidding, and  
12 then awarding the contract to the low bidder, going  
13 through that whole process.  Then once it's bid, then  
14 the construction starts and follow up on the  
15 inspection and doing everything until the project is  
16 finalled out; also having the money available in the  
17 beginning so that the auditor can certify the funds  
18 are available.  I think these are all areas that go  
19 into building the project and things that will be  
20 negotiated in the road use agreement.

21           EXAMINER FARKAS:  Okay, thank you.

22           Do you have -- if you have redirect.

23           MR. COLLIER:  No redirect, thank you very  
24 much.

25           EXAMINER FARKAS:  Thank you for your

1 testimony.

2 MR. COLLIER: Your Honor, may I move for  
3 the admission of Richland County Exhibit 1, 1A and 2.

4 EXAMINER FARKAS: Any objection?

5 Then they will be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 MR. COLLIER: And the witness may be  
8 excused from the courtroom?

9 EXAMINER FARKAS: Yes.

10 MR. COLLIER: I think he is going to get  
11 on the road if I understand correctly.

12 EXAMINER FARKAS: That's fine.

13 You can call your next witness.

14 MR. WARRINGTON: At this time we would  
15 like to call Commissioner Edward Olson to the stand.

16 MR. COLLIER: Your Honor, again, I've  
17 taken the liberty of premarking as Richland County  
18 Exhibit 3 the direct testimony of Edward Olson, and  
19 as Exhibit 4, the supplemental direct testimony,  
20 Exhibit A attached to Exhibit 3 is the amended rules,  
21 again, Exhibit 3A, which I will present to the  
22 witness.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 EXAMINER FARKAS: It will be so marked.

25 Also, just for the record, Exhibit A, also includes

1 the Resolution?

2 MR. COLLIER: That's correct, your Honor.

3 - - -

4 EDWARD W. OLSON,

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

7 DIRECT EXAMINATION

8 By Mr. Collier:

9 Q. Would you state your name, business  
10 address and title for the record, please?

11 A. My name is Edward W. Olson. Last name  
12 spelled O-L-S-O-N, 50 Park Avenue East, Mansfield,  
13 Ohio, 44902. My title is Richland County  
14 Commissioner.

15 Q. All right. And are you the same Edward  
16 W. Olson who has previously submitted and filed  
17 direct and supplemental written testimony in this  
18 case?

19 A. Yes.

20 Q. You have before you what has been marked  
21 now as Richland County Exhibit 4 and 3 your direct  
22 testimony with attachment A and Richland County  
23 Exhibit 4, your supplemental direct testimony?

24 A. Yes.

25 Q. On whose behalf are you testifying in

1 this proceeding?

2 A. On behalf of the intervenors Richland  
3 County Board of Commissioners.

4 Q. Do you have any changes or corrections to  
5 your direct testimony?

6 A. No.

7 Q. Do you adopt your written direct and  
8 supplemental testimony as your testimony here today  
9 under oath?

10 A. Yes.

11 Q. If I were to ask you the questions  
12 contained in your direct and supplemental testimony  
13 would you answer the same as set forth therein?

14 A. Yes.

15 Q. Would it be true -- would the answers be  
16 true and correct to the best of your knowledge?

17 A. Yes.

18 MR. COLLIER: I tender the witness for  
19 cross-examination.

20 EXAMINER FARKAS: Mr. Petricoff.

21 MR. PETRICOFF: Yes, thank you..

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Petricoff:

25 Q. Good morning.

1           A.    Good morning.

2           Q.    I am representing the Applicant of Black  
3 Fork.  If you can't hear me or don't understand a  
4 question, please ask me to repeat it.

5           A.    I have a hearing problem.  You may need  
6 to speak up.

7           Q.    We may need you to speak up as well, so I  
8 won't be shy about asking you to speak up.

9                    In preparation for your testimony today,  
10 did you have an opportunity to look through the  
11 Application or be briefed by your staff in terms of  
12 the Application?

13           A.    I have actually seen more brief sheets  
14 synopsis that had been prepared from Richland County  
15 prosecutor attorney's office, the Benesch,  
16 Friedlander firm and the county engineer.  I have not  
17 read the actual Application itself.

18           Q.    Is it your understanding then we are  
19 talking about building a \$300 million project in  
20 Crawford and Richland County?

21           A.    Yes.

22           Q.    And that under Senate Bill 232 the  
23 estimated personal property tax from that investment  
24 would be \$1.8 million roughly per year for the two  
25 counties?

1           A.    That's my understanding, yes.

2           Q.    And you would agree with me that if we  
3 enter into a project of this size that there would be  
4 construction jobs and some permanent jobs working on  
5 the wind farm?

6           A.    Yes.

7           Q.    Have you had an opportunity to look at  
8 the additional Stipulation, terms and conditions,  
9 that were added in this case by Crawford County?

10          A.    I did not read them in entirety. I have  
11 met with the prosecuting attorney and we went over  
12 the Stipulation and we were in disagreement with the  
13 conclusions.

14               MR. PETRICOFF: Your Honor, at this time  
15 I would like to have marked as Company Exhibit 21, a  
16 red line document that we have prepared for this  
17 cross-examination, and we have copies for everybody  
18 here as well. May I approach the witness?

19               EXAMINER FARKAS: Yes.

20               MR. PETRICOFF: Your Honor, also, it  
21 probably may make sense for me to present the  
22 witness --

23          Q.    Commissioner, do you have a copy or have  
24 you seen a copy of these additional road-related  
25 conditions from Crawford County?

1           A.     This appears to be what was submitted to  
2 us during the Stipulation phase, particularly  
3 starting with paragraph 72.

4           Q.     Right.  Okay, that makes it easy then.  
5 Thank you, Commissioner.

6           Q.     So, first of all, is it fair to say that  
7 looking at your testimony the chief interest that you  
8 focus on are the roads and bridges and to make sure  
9 that the roads and bridges are both ready for the  
10 heavy equipment and then are repaired afterwards?

11          A.     Yes.

12          Q.     And what I've done here in this red line,  
13 if you would take a few more minutes to look it over,  
14 that's just fine -- is point out the differences  
15 between what you have in your testimony as your  
16 suggestions on pages -- starts on page 4 and runs  
17 through page 6.

18                   EXAMINER FARKAS:  That is of his  
19 supplemental testimony?

20                   MR. WARRINGTON:  That's of the  
21 supplemental testimony, thank you.

22          Q.     What I'd like to do is just see if we can  
23 highlight where there are differences here and come  
24 to get an understanding of what those differences  
25 are.



1           We will start with 72, and obviously, the  
2 difference there is that we are talking about  
3 Richland County and not Crawford County. And I  
4 assume that -- because I say for record we are  
5 indifferent whether it is permit or permits and leave  
6 to the grammarians to decide which is the correct one  
7 that's used.

8           In 73 there was an addition that was put  
9 in here that would give the Board of County  
10 Commissioners the right to do things in the road use  
11 agreement that may not be in their rules as well. Is  
12 having that additional flexibility a good thing or  
13 bad thing from the county's perspective?

14           A. The question relates to having the Board  
15 of Commissioners retain authority. Is that the  
16 question?

17           Q. Right. If you read it, it says that it  
18 would be -- that road use agreement would be subject  
19 to approval of the Commissioners, but if you don't  
20 put that phrase in, it appears to state that the road  
21 use agreement couldn't differ from the rules. Here,  
22 you could differ from the rules if the Board approved  
23 it, you have to specifically approve it. My question  
24 is having that flexibility is that a beneficial item  
25 for the county or is that something that the

1 flexibility this county shouldn't have?

2 A. The flexibility, I believe, is there --  
3 we're dealing with something we've never dealt with  
4 before, and one of our primary concerns is language.  
5 For an example, if words are added such as  
6 "applicable statute" or "applicable state statute,"  
7 to us the language needs to be very precise and just  
8 say "state statute." Any language we have relative  
9 to "unless otherwise authorized," or the "board  
10 retains the authority," it's essentially that we want  
11 to be flexible to accommodate the project but we have  
12 never done this before and we have very limited  
13 knowledge of how this is really going to play out.  
14 So the idea that we would have amended road use rules  
15 and permitting processes is very important to us.

16 Q. Okay. And let's take that up because  
17 that comes up in paragraph 74 about the applicable  
18 statutes. Certainly it's not Richland County's view  
19 that inapplicable statutes should be followed. So I  
20 assume that your concern there or on the  
21 applicableness was just a language -- a precision of  
22 language term and you were maybe uncomfortable with  
23 the term "applicable."

24 A. Absolutely.

25 A. Lawsuits turn on language. I think if --

1 when language is precise, when you're using shall as  
2 opposed to may," it's precise language. When  
3 somebody says, "will apply the reasonable rule,"  
4 what's reasonable?

5 That's really what bothers us is the  
6 imprecision in language. We don't want words such as  
7 "applicable statutes." It's whatever the statute is  
8 that's what the statute is.

9 Q. But keeping that theme that we want it to  
10 be -- we want to be specific, there's a lot of  
11 statutes in the Revised Code.

12 A. Yes.

13 Q. And we want to make sure that the  
14 statutes that we're looking at are the statutes that  
15 deal with this issue.

16 A. Yes.

17 Q. So your only concern was that you were  
18 worried that the word "applicable" may not accomplish  
19 that task?

20 A. Yes.

21 Q. In paragraph 75 in your testimony you  
22 have indicated that the county engineer should have  
23 the final route plan 30 days before the  
24 preconstruction conference. I assume that there's no  
25 objection to doing it in 60 days, giving the county

1 engineer an additional month?

2 A. I would have no objection.

3 Q. And then on paragraph 78, in your  
4 testimony there was irrevocable letter of credit, and  
5 I would like to know if that is different than a  
6 financial assurance, and if so why financial  
7 assurance would not include an irrevocable letter of  
8 credit?

9 A. To us a bond, money placed in an escrow  
10 fund in an irrevocable letter of credit becomes a sum  
11 certain. But the other term, "other financial  
12 assurance," again becomes imprecise, I don't know  
13 what "other financial assurance" is.

14 Q. Let me make sure we are on the same  
15 plane. The key concern is that the bond, the  
16 financial instrument or the escrowed money or the  
17 bond can't be revoked. That's the key concept we  
18 want to get in?

19 A. It cannot be revocable. It has to be  
20 available with all due respect to the corporation and  
21 to those members who comprise the corporation. My  
22 understanding is that it's a limited liability  
23 corporation therefore we have to assume there's a  
24 limit to the assets. We have to be concerned that  
25 there is sufficient financial backing of the project

1 that would guarantee that the roadwork would be done  
2 as specified in the road agreement and in the  
3 permitting process. That's why having money in an  
4 escrow fund, having an irrevocable letter of credit,  
5 having a bond is important.

6 Q. So it's the term "irrevocable" as opposed  
7 to "precise instrument of letter of credit" that is  
8 the concern of the county?

9 A. Yes. I think that the project managers  
10 should have options on what financial security  
11 they're able to put up. Let's say for the sake of  
12 argument that we demand an irrevocable letter of  
13 credit and they can't get it but they could get a  
14 surety bond. That's why there's multiple sources of  
15 financial assurance that are listed.

16 MR. COLLIER: Your Honor, we have no  
17 further questions at this time.

18 Commissioner, thank you for your time.

19 EXAMINER FARKAS: Staff, any questions?

20 MR. JONES: No questions, your Honor.

21 EXAMINER FARKAS: Mr. Warrington.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Warrington:

25 Q. I just have a question. Does the county

1 commission or commissioners have the authority to  
2 just disallow the project from using the county roads  
3 if this agreement is not entered into to your  
4 satisfaction?

5 A. My understanding, from what I've read and  
6 in discussions with the prosecutor attorney, is that  
7 the legal limits for loads and speed on the roads of  
8 Ohio are governed by state law and under the  
9 direction of the Ohio Department of Transportation.  
10 If you were to exceed the limits as to size, weight,  
11 speed, yes, we have the right to deny you access to  
12 the road.

13 For instance, you can't plant a tree in  
14 the right-of-way. Anything that would obstruct the  
15 public right-of-way, anything that would become a  
16 safety issue to the traveling public, we have a right  
17 to regulate the traffic on the road.

18 Q. Okay. Do the county commissioners have  
19 concerns about having to pay staff to direct traffic  
20 in a project such as this when these large loads are  
21 going up and down these county roads and people are  
22 trying to leave and go to work. Do you believe there  
23 will have to be a flag man and considerable staffing  
24 to direct this? Is this a concern that it needs to  
25 be financed also by the developer?

1           A.    The concern would be that you do have  
2 proper supervision and you do have proper traffic  
3 control.  If takes staffing, it takes staffing, but  
4 any construction project becomes inherently dangerous  
5 because you're causing a blockage in traffic flow.  I  
6 mean, the concern would be that there would be enough  
7 staffing and flag men there to ensure public safety.

8           Q.    Is there any inclusive requirements --  
9 suppose that the overload truckloads create potholes  
10 in the roads that are 4, 6, 8 feet across that does  
11 damage to residential automobiles.  Is there any  
12 concern or inclusions in these agreements that will  
13 compensate maybe damages that just automotive  
14 travelers may suffer through this unprecedentedly huge  
15 local project?

16           A.    The language that I've seen that would go  
17 into the road use agreement and would govern the  
18 issuance of a permit for oversize and overweight  
19 loads is the condition of the road would have to be  
20 addressed prior to the construction of the wind farm.  
21 It there would have to be maintenance of the road  
22 during the project and, and there would have to be  
23 repair following.  So the answer to your question is  
24 yes, that's why we need language in the road use  
25 agreement to ensure that the roads are kept open even

1 while expected damage is occurring.

2 MR. WARRINGTON: All right. Thank you.

3 That's my only question.

4 EXAMINER FARKAS: Mr. Price.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Price:

8 Q. In Richland County we are used to having  
9 heavy loads in GM, right?

10 A. Yes.

11 Q. And when they built that plant, Ontario  
12 in Richland County put a new road in so they haul and  
13 GM didn't pay for the road, if I remember, right?

14 A. I think you're correct. I remember --  
15 you're talking about the new stamping machines that  
16 were excessively heavy. They were brought down 71 to  
17 30 and they were brought in on Lexington Spring Mill.  
18 Routing was chosen to best accommodate.

19 Q. But that wasn't county roads and I  
20 understand that.

21 A. Right; but our county roads will not take  
22 that.

23 A. Absolutely not.

24 Q. I understand that, but also when the  
25 plant shut down that we no longer have taxes on that



1 and our county is hurting from it now. You guys made  
2 the people that hauled them out get special permits  
3 to cover the bridges and stuff?

4 A. That I don't know.

5 Q. Pretty sure?

6 A. I refer to Tom, the county engineer. I  
7 don't have direct knowledge of that.

8 Q. Okay. And would you say working with  
9 Crawford County you kind of advise these people, you  
10 guys were working together on the road agreements?  
11 They say kind of following like a foot step?

12 A. Well, we tried. I think our county  
13 engineer was in close contact with Cecil Newcom, the  
14 Crawford County engineer, and we would like to have  
15 had the same language, but the two boards disagree.

16 Q. Okay. One more question. If you own  
17 like a gravel pit or something, could you sell gravel  
18 to the county to top the roads or anything with,  
19 being absent the commissioner?

20 A. Me?

21 Q. Yes. Is there a law against that?

22 A. That, under Ohio's ethics law, that  
23 becomes extremely problematical. Probably it would  
24 have to turn on two issues, one is, do I have an  
25 existing contract prior to entering office.

1 Secondly, do I sell something that's so unique that I  
2 am the only one that can provide it. But as a  
3 general rule of thumb, holding elected office you  
4 can't sell to yourself.

5 Q. To benefit?

6 A. Yes. If I were running a business and  
7 and I'm a county commissioner, my business wanted to  
8 bid on a county project, I would have to totally  
9 recuse myself and play no role in discussions of the  
10 contract or the worthiness of the product. I would  
11 have to be completely out of the process; otherwise,  
12 I would be violating ethics laws.

13 MR. PRICE: Okay. Thank you.

14 EXAMINER FARKAS: Ms. Price.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Price:

18 Q. In discussing road agreement with the  
19 Applicant, do you feel that you're being pushed to do  
20 things on their time line that you may be  
21 uncomfortable so that you can do your job well?

22 A. No. The time line -- really the time  
23 line for the project has nothing to do with the  
24 county's interest in having a road agreement that  
25 best protects the capital investment we have in the

1 road system.

2 Q. How many miles of roadway in Richland  
3 County are inside this project area?

4 A. My understanding is seven.

5 Q. Seven. The 1.8 million that  
6 Mr. Petricoff talked about, is that divided between  
7 the two counties according to the miles of road, or  
8 equally between the two counties?

9 A. I'm not certain, but I can tell you that  
10 \$1.8 million is not as much money as people might  
11 think it is with the cost of oil the way it is. If I  
12 may.

13 Q. Yes.

14 A. To put this in perspective and to show  
15 your Honors why we are so concerned about cost, money  
16 and control, one, the county road and bridge system  
17 is the single largest dollar investment in public  
18 infrastructure in the county. It far exceeds  
19 anything else in the way of water systems, wastewater  
20 systems.

21 Secondly, if you took the county road  
22 system and stretched it end to end, you would have a  
23 two-lane highway from Mansfield, Ohio to Chicago and  
24 every mile you would cross a bridge. That's what we  
25 are talking about.

1 Point No. 3, county engineer's income is  
2 derived from auto license, gasoline tax, and from  
3 vehicle registration. The county has zero population  
4 growth. In fact, it's losing population, therefore,  
5 registrations have not gone up, and the amount of oil  
6 and gasoline consumption is not going up. The county  
7 engineer's income from auto license and gas tax  
8 income is essentially the same as it was when I came  
9 into office in 1985. And the cost of goods and  
10 services today is not the same as it was in 1985.

11 We have studies that show it would take  
12 the county engineer a minimum of three million  
13 dollars a year just to maintain what he has, and his  
14 current income is about two and a half million. In  
15 order to make improvements on the system, we would  
16 have to an income in excess of \$4 million.

17 If anything, I don't care if this is one  
18 mile, seven miles or 12 miles, if these roads and  
19 bridges are destroyed, there is no current money for  
20 the county to come back and react and fix this. And  
21 whatever we would take out of our current budget for  
22 an extraordinarily high cost of repair means there's  
23 less money for the rest of the entire road system in  
24 the county. That's the essence of our concern.

25 Q. And on that concern, you deal closely

1 with the townships, also?

2 A. Yes.

3 Q. If they come with this project and they  
4 start having to reroute roads due to curves or  
5 whatever, how well will these new roads be marked so,  
6 say, after a couple inches of snow and a school bus  
7 comes down through there and have for years traveled  
8 the same road and all of the sudden it's different.  
9 How well are these roads going to be marked?

10 A. I can't answer that, I'm not an engineer,  
11 but I would refer to the county engineer that those  
12 are the issues that would have to be part of a road  
13 use agreement and be part of the permitting process.

14 Q. Okay. And the townships have the  
15 commissioners and engineers speaking for them. If  
16 they're widening these roads and there is more  
17 traffic on these roads during the bad weather days of  
18 icing and stuff, will they be using more salt, more  
19 plowing because of more traffic on the road?

20 A. Again, I'm not an engineer but as an  
21 individual I would think so. I would think that you  
22 would have to take whatever measures are necessary to  
23 keep the roads open and safe.

24 Q. Who is being expected to cover the cost  
25 of this extra plowing and salt?

1           A.    The county is requesting that the  
2 developer pay all costs related to the preparation of  
3 roads prior to construction, maintenance during  
4 construction, which would include such things as  
5 salt, and reconstruction in the post-construction  
6 phase.

7                   MS. PRICE:   Thank you.

8                                 - - -

9                                 CROSS-EXAMINATION

10          By Ms. Rietschlin:

11               Q.    Hi, Mr. Olson.   How are you?

12               A.    Good, good.

13               Q.    How many years have you been a county  
14 commissioner in Richland County?

15               A.    I'm in my 25th year.

16               Q.    Have you seen times when the local  
17 economy has been thriving?

18               A.    Say again?

19               Q.    Have you seen times when the local  
20 economy has been thriving?

21               A.    Thriving?

22               Q.    Yes.

23               A.    Probably in the mid -- early to mid-90s,  
24 the economy in the Richland County began weakening in  
25 2001.   We are now in an economy that we have not seen

1 since Franklin Roosevelt was president.

2 Q. Are you concerned with the quality of  
3 life of the citizens in your county?

4 A. Yes.

5 Q. Do the citizens or your constituents who  
6 elect you expect you to carry out the duty of fair  
7 and equitable government so that they may go about  
8 their normal lives?

9 A. Yes.

10 Q. Do you hear about many concerns of your  
11 constituents ranging from water, sewer, building new  
12 buildings, schools, do you hear about all those  
13 concerns?

14 A. Yes.

15 Q. Are you normally restricted in your  
16 duties to caring only about a road agreement?

17 A. No.

18 Q. Thank you.

19 EXAMINER FARKAS: Mr. Heffner.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Heffner:

23 Q. Good morning, Commissioner.

24 A. Good morning.

25 Q. I do have a couple of questions. Will

1 the Richland County Commissioners have representation  
2 at the preconstruction conference for this project?

3 A. Yes. The Board expects the county  
4 engineer to represent the interests of the board.  
5 The county engineer and several of his staff are  
6 licensed professional engineers, their opinion at  
7 these preconstruction meetings is much more important  
8 than mine. I do not hold a Civil Engineering degree.

9 Q. They're there as your agent though, am I  
10 correct?

11 A. Yes.

12 Q. And they'll be a cost involved. Is that  
13 also part of your negotiation with the Company?

14 A. Yes.

15 Q. Will it actually be staff of the county  
16 engineer's office or could it be an engineering  
17 company paid for by the Applicant or, at that time,  
18 the holder of the certificate?

19 A. The question relates to what technical  
20 information will we rely on?

21 Q. No. It relates to who physically will be  
22 there. Will it be the engineer himself or someone he  
23 has contracted to perform the engineering overview?

24 A. My understanding is the engineer and/or  
25 members of his staff will be there. The Applicant



1 will have a licensed Civil Engineering firm that will  
2 be able to provide the data that we need, and that  
3 this information would be used to form the road  
4 agreement and to follow the permitting process to get  
5 the permits.

6 It's the intention of the board of  
7 commissioners that if any work needs to be done prior  
8 to, during and following construction, the Board of  
9 Commissioners will not -- will not -- give up that  
10 authority, that the Revised Code and Section 55 gives  
11 authority to the Board of Commissioners to maintain  
12 that highway system. It's already fragile. It is  
13 already inadequately financed, and if that system is  
14 not adequately maintained, we're the ones that are  
15 going to be held responsible. Therefore, they may  
16 have an engineer to present data such as boring  
17 samples to determine what is the actual state of the  
18 road base because the state of the road base will  
19 drive what needs to be done to handle these loads.

20 But the actual public bidding and the  
21 statutory requirements for bidding the Board of  
22 commissioners retains that responsibility, we retain  
23 that legal right and we will not give it up.

24 Q. And there is a cost involved in that  
25 which will be accrued to the Company rather than to

1 the taxpayer?

2 A. Yes.

3 Q. Do you have an understanding of the  
4 authority to levy and collect taxes on the personal  
5 property of the proposed wind facilities?

6 A. Not directly. My understanding is that  
7 the legislature is essentially phasing out personal  
8 property tax in general, inventory on embedded  
9 infrastructure such as real estate, gas lines. I do  
10 not know what personal property tax would pertain to  
11 this.

12 I do know that there is a tax structure  
13 that generates tax revenue as legal counsel for the  
14 Company as pointed out. It is substantial, in  
15 Richland County about 70 percent of that taxation  
16 will go to the school districts. The county actually  
17 gets very, very little property tax, so the major  
18 benefactor of this project from the standpoint of a  
19 tax base, the benefits will accrue to the local  
20 school district not to the county government  
21 directly.

22 Q. Has the contact with the Applicant been  
23 with Element Power or Black Fork Wind Energy LLC?

24 A. My understanding is that we have mainly  
25 been dealing with representatives of Element Power.

1 I am not personally not really sure who Black Fork  
2 Energy is. I don't mean that in any way as  
3 derogatory statement, it's just when you're a meeting  
4 and someone gives you a business card you read the  
5 name of company and what I've seen is Element Power.

6 Q. Where does the authority to perform your  
7 duties come from in the Ohio Revised Code?

8 A. It comes from several sections but as a  
9 broad general statement, Title III of the Ohio  
10 Revised Code is the title that governs county  
11 government in general and the specific elected  
12 offices. Under Title 3 and Section 307 there are  
13 bidding laws. The bidding laws are extremely  
14 specific. The requirements are mandatory, and it's  
15 very, very little leeway under the statutes given to  
16 local officials on how they can amend the bidding  
17 process. It is a very detailed process. We are held  
18 accountable for how we do bidding, and if we do not  
19 conduct the bidding process properly, it can be  
20 challenged in a court of law.

21 The Board's authority over the roads  
22 comes from Title 55 of the Revised Code.

23 Q. Are you aware of any board, body or  
24 jurisdiction that may relieve the county commissioner  
25 of its responsibility for the roads --

1           A.    No.

2           Q.    -- set forth in the ORC?

3           A.    No.  We have to be in compliance with  
4 ODOT standards, is my understanding.  When I tell you  
5 that 307 governs bidding or that Title 55 outlines  
6 our authority and responsibility for the road system,  
7 those are all legal issues.

8                    But the technical issues are normally  
9 governed, if I'm answering your question correctly.  
10 The technical issues are really driven more by  
11 organizations such as the Ohio Department of  
12 Transportation, which sets the various standards for  
13 what a road system, how a road system needs to be  
14 constructed in order to be considered safe for the  
15 traveling public.

16           Q.    Are you familiar with the Air Quality  
17 Board?

18           A.    No.

19                   MR. HEFFNER:  That's all.  Thank you,  
20 Mr. Olson.

21                   THE WITNESS:  Thank you.

22                   EXAMINER FARKAS:  Mr. Biglin.

23                   MR. BIGLIN:  I have no questions.

24                   EXAMINER FARKAS:  Ms. Davis.

25                                   - - -

## CROSS-EXAMINATION

1  
2 By Ms. Davis:

3 Q. Mr. Olson, if we could go back to the  
4 beginning of the amount of tax money that the wind  
5 company keeps indicating that this project is going  
6 to bring in of \$1.8 million. You have indicated  
7 that's not as much as people think, and I believe  
8 that money is going to be distributed between the  
9 counties according to the number of turbines in the  
10 county. So if we have 25 or 26, I forget exactly  
11 what the number is, if they pay the 9,000 per  
12 megawatt, that would net Richland County something  
13 around \$450,000 per year. Is that your understanding  
14 of how much would come to the county?

15 A. I honestly am uncertain as to how the  
16 finances would be commuted relative to size of the  
17 dollar amount. And the form, the form, that the  
18 taxation takes drives who is the recipient of it.

19 So if this were in the form of a personal  
20 property tax, some that have would come to the county  
21 general fund. If it's in the form of real estate,  
22 real property taxation, then it's going to be driven  
23 by millage and I can tell you that Richland County  
24 about 70 percent of the real property tax goes to the  
25 school district.

1           Q.    Are you aware that in order to get \$9,000  
2 per megawatt, that the county commissioners might  
3 have to apply for that in order to get to that  
4 amount?

5           A.    There was a meeting about a year and a  
6 half ago where we met with staff from the County  
7 Commissioners Association because we were just  
8 getting into this. This was a brand-new topic.  
9 Nobody had any idea what these wind farms were and  
10 what they meant. And I do remember from attending  
11 one of those meetings that there was, as I recall,  
12 there was an application process.

13                   And I am not really -- I'm not really --  
14 I just went completely blank. I'm trying to think of  
15 the adjective, but I'm not competent to really answer  
16 how this taxation will work, the mechanics of it.

17                   We are an area -- like I say, I've been  
18 in office for 25 years and this is the first time  
19 I've ever been involved in something like this, so  
20 much of the procedures and policies we are learning  
21 as we go.

22           Q.    And the jobs numbers that continue to be  
23 thrown around, do you think they're verifiable in  
24 anyway?

25           A.    I'm sure they're verifiable. I would

1 absolutely no knowledge of whether they're accurate.  
2 They would clearly have to be verifiable.

3 Q. But they have to be verified at some  
4 point?

5 A. I'm sure they are verifiable.

6 MS. DAVIS: That's all.

7 EXAMINER FARKAS: Any redirect?

8 MR. COLLIER: No redirect, Your Honor.

9 EXAMINER FARKAS: You're excused. Thank  
10 you.

11 THE WITNESS: Thank you, sir.

12 MR. COLLIER: Your Honors, I move for the  
13 admission of the Richland County Exhibits 3, 3A and  
14 4.

15 EXAMINER FARKAS: Any objection to the  
16 admission of these exhibits?

17 They will admitted.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MR. SETTINERI: On behalf of the  
20 Applicant, we would like to move for the admission of  
21 Company Exhibit 21.

22 EXAMINER FARKAS: Any objection to the  
23 admission of Exhibit 21?

24 Hearing none, that will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER FARKAS: You may call your next  
2 witness.

3 MR. COLLIER: At this time we would call  
4 Commissioner Tim Wert to the stand.

5 Again, I have taken the liberty of  
6 premarking as Richland County Exhibit 5, the Direct  
7 Testimony of Tim Wert, Richland County Commissioner.  
8 That includes Exhibit 5A, the amended rules and  
9 regulations.

10 EXAMINER FARKAS: So marked.

11 MR. COLLIER: I have marked as Exhibit 6  
12 the Supplemental Testimony of Commissioner Tim Wert.

13 EXAMINER FARKAS: So marked.

14 (EXHIBITS MARKED FOR IDENTIFICATION.)

15 - - -

16 TIMOTHY A. WERT,  
17 being first duly sworn, as hereinafter certified,  
18 deposes and says as follows:

19 DIRECT EXAMINATION

20 By Mr. Collier:

21 Q. Would you state your name, business  
22 address, and title for the record?

23 A. Timothy A. Wert. My business address  
24 would be 50 Park Avenue East, Mansfield, Ohio, 44902.

25 Q. And your title?



1           A.    Richland County Commissioner.

2           Q.    All right.  Are you the same Tim Wert,  
3 Commissioner of Richland County, who has previously  
4 submitted direct and supplemental direct testimony in  
5 this case?

6           A.    Yes, I am.

7           Q.    And you have before you what has been  
8 marked as Exhibits 5 and 6 now, your direct and  
9 supplemental testimony?

10          A.    Yes, sir.

11          Q.    On whose behalf are you testifying in  
12 this case?

13          A.    For the Richland County Commissioners.

14          Q.    (Examiner Farkas) Could you speak up a  
15 little?

16                   THE WITNESS:  Richland County  
17 Commissioners, yes, sir.

18                   EXAMINER FARKAS:  There's a long table  
19 and a fan that goes on every once in a while.

20                   THE WITNESS:  I'll try to do better.

21          Q.    Do you have any changes or corrections to  
22 that written testimony?

23          A.    No, I don't, sir.  It's exactly as I so  
24 stated.

25          Q.    Do you adopt your written direct and

1 supplemental testimony as your testimony here today  
 2 under oath?

3 A. Yes, I would sir.

4 Q. And if I were to ask you the same  
 5 questions in the direct and supplemental testimony,  
 6 would your answers be the same as set forth therein?

7 A. I would say they would be exactly the  
 8 same.

9 Q. All right. And would the answers be true  
 10 and correct to the best of your knowledge and belief?

11 A. To the best of my knowledge and belief?

12 MR. COLLIER: Gentlemen, I tender the  
 13 witness for cross-examination.

14 EXAMINER FARKAS: Applicant?

15 MR. SETTINERI: No questions, your Honor.

16 EXAMINER FARKAS: Staff?

17 MR. JONES: No questions, your Honor.

18 EXAMINER FARKAS: Mr. Warrington.

19 MR. WARRINGTON: No questions.

20 EXAMINER FARKAS: Mr. Price?

21 MR. PRICE: Yes, I have couple.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Price:

25 Q. I asked Mr. Olson a couple questions

1 about GM and the road agreement they had. Do you  
2 remember any of them what they did on Lexington?

3 A. No, sir I don't. I was not a  
4 commissioner at the time. I was in the farming  
5 construction business, as a matter of fact, I was  
6 working at the Senate building back then, and I  
7 honestly have no recollection of that, sir.

8 Q. So you was in the farming business at one  
9 time?

10 A. Yes, sir. I've actively been engaged in  
11 farming all my life.

12 Q. So if you would be a contract holder, do  
13 you feel that you could comfortably do your job if  
14 you had a contract with the wind company?

15 MR. COLLIER: I object, what relevance is  
16 that question?

17 EXAMINER FARKAS: What's the relevance of  
18 that question?

19 MR. COLLIER: Talking about the  
20 Stipulation.

21 EXAMINER FARKAS: You want to explain why  
22 you're asking the question?

23 MR. PRICE: Because the Crawford County  
24 guy has signed this, he's already -- he signed on.  
25 So I'm asking, do you feel that could you do the

1 same. Well, it's Crawford County.

2 EXAMINER FARKAS: I'll allow the  
3 question.

4 MR. PRICE: I'm just asking his opinion.

5 A. You mean, if I were signed up with  
6 Element Power, a power company, do I believe that I  
7 could my job and make a decision for the county that  
8 was unbiased?

9 Q. Correct.

10 A. Is that what you're asking?

11 Q. Well, to the best of your knowledge.

12 A. To the best of my knowledge, I probably  
13 could.

14 MR. PRICE: That's all I have.

15 THE WITNESS: Okay.

16 EXAMINER FARKAS: Ms. Price?

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Price:

20 Q. Are there road inspectors in Richland  
21 County?

22 A. I can only speak for Richland County,  
23 Mr. Beck has a gentleman that's a full-time job,  
24 maybe two now, that are bridge inspectors. They  
25 continually inspect the bridges, rate them as to

1 their load carrying ability and their condition, yes,  
2 ma'am.

3 Q. Do the commissioners have anything to do  
4 with building inspectors of buildings?

5 A. Yes, ma'am, we operate the Richland  
6 County building inspection system.

7 Q. Okay. Do you know if the project was to  
8 go through, who would inspect the wind turbines, the  
9 foundations and everything as they were being built,  
10 the ones in Richland County?

11 A. It seems like two years ago we had a  
12 discussion about this, and I think it was going to  
13 be -- there is a speculative answer. I believe it  
14 was going to be the duty of the state of Ohio under  
15 the authority of the Power Siting Board to do these  
16 inspections because I was worried about our  
17 inspection crew having to man up to do this job done  
18 properly, possibly hire additional staff but I never  
19 heard anything back on this.

20 Q. Okay. With all of this being new to  
21 Richland County, a project of this size, what type of  
22 project it is, do you feel that as a commissioner and  
23 everything new being shown to you, sent to you, that  
24 you are being given ample time to read, have meetings  
25 and discuss it as needed, or are you being pushed?

1           A.    I would say from the commissioners'  
2 standpoint as far as reading the Siting Board book  
3 I've had ample time. I question some of the time in  
4 the decommissioning if the 60 days is long enough for  
5 the engineer to put together a plan to decommission.  
6 It seems like one would give a bit more lead time to  
7 any kind of project of this magnitude. That's my  
8 personal opinion, and I shouldn't speak for the  
9 engineer.

10           EXAMINER FARKAS: Just to follow up on  
11 that, are you saying that you would want more time to  
12 explore some details that have been elaborated in the  
13 Stipulations and conditions of the Staff Report, but  
14 you feel that you have had enough time to review the  
15 Application?

16           THE WITNESS: Oh, yes.

17           EXAMINER FARKAS: You have seen the Staff  
18 Report.

19           THE WITNESS: I read it every time it  
20 comes in on the computer, yes.

21           EXAMINER FARKAS: Thank you.

22           THE WITNESS: Was that the question?

23           Q.    Not really.

24           A.    The question is if we have time to react  
25 to what the wind farm may be asking in terms of

1 engineering and things like that?

2 Q. Let me.

3 A. I don't mean to put words in your mouth.

4 Q. Let me try again here. Before this  
5 project came to your desk, were you working full time  
6 as a commissioner then?

7 A. Not really, no.

8 Q. You had extra time on your hands to take  
9 on more projects?

10 A. Yes.

11 Q. And since this project has come to you,  
12 you have been able to go to -- there's been ample  
13 time for you to attend all meetings you feel you  
14 needed to attend?

15 A. Yes, ma'am.

16 Q. And that you have had time, like you  
17 stated, that two years ago it came up that the state,  
18 the Ohio Power Siting Board and the state said they  
19 would send an inspector. Do you feel that things  
20 like these people are giving or getting back to you  
21 with the information needed before you agree to sign  
22 any road use or anything else? I mean, are you still  
23 waiting for the state to call back and say, yes, we  
24 will provide an inspector for this project?

25 A. It's never really been clear. I think

1 that I've never been presented with what I felt was a  
2 complete road use agreement yet. If that answers  
3 that part of the question.

4 Q. Okay.

5 A. But I think that the Power Siting Board  
6 and Element Power has given us ample time to read and  
7 study all documents and work on them with a clear  
8 mind of understanding.

9 MS. PRICE: Okay. Thank you.

10 THE WITNESS: Yes, ma'am.

11 EXAMINER FARKAS: Ms. Rietschlin?

12 MS. RIETSCHLIN: No questions.

13 EXAMINER FARKAS: Mr. Heffner.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Heffner:

17 Q. Hello, Commissioner. If the citizen has  
18 any troubles with the roadways, is it your  
19 expectation that you will be hearing from them, or is  
20 it your expectation that the Power Siting Board and  
21 Staff will be hearing from them?

22 A. I would expect that the commissioners or  
23 the county engineer will be the first people to be  
24 called. In fact, I would be expect it to be a county  
25 commissioner being as people don't understand



1 government and believe that the commissioners direct  
2 the county engineer, which is not the case.

3 Q. Okay. In the event that there is an  
4 agreed upon road agreement, you wouldn't really  
5 expect there to be the lot of contacts concerning  
6 problems because the road agreement would address  
7 those things in advance?

8 A. I would like to think that would be so,  
9 but I have no allusions that that would be the case.

10 Q. And if it were not the case, for whatever  
11 reason, it's going to utilize county time to address  
12 those issues?

13 A. So true.

14 Q. Is that time also included, is that cost  
15 also accrued towards the Company rather than the  
16 citizen? To the taxpayer?

17 A. I would think it should be something that  
18 the Company that's bringing this wind farm into the  
19 county should defray that cost. I don't think it  
20 should be the taxpayer's cost to take care of these  
21 problems as related to situations caused by the wind  
22 farm.

23 Q. Has your contact with the Applicant been  
24 with Element Power or with Black Fork Wind Energy  
25 LLC?

1           A.    I have had contact with the beginning  
2 folks that ran the project.  I can't recall the  
3 fellow's name right now.

4           Q.    Would it be David Hettich?

5           A.    David Hettich.  Yes.

6           Q.    And Chris Colvin?

7           A.    Yes, I have contact with them early on  
8 and then Mr. Hawken has contacted our Board of  
9 Commissioners.

10          Q.    It is your understanding that Mr. Hawken  
11 works for which Company?

12          A.    I believe Element Power.  I think that's  
13 what it says on his card, pretty sure.

14          Q.    Do you know who the principals are in the  
15 Company Black Fork Wind Energy LLC?

16          A.    No, sir, I do not.

17          Q.    Do you believe that at the current time  
18 in the absence of the road agreement that the county  
19 has adequate assurance that if the limited liability  
20 corporation should go bankrupt, that those  
21 responsibilities would then be conferred upon the  
22 purchaser, subsequent purchaser of the project?  The  
23 cost of, say, decommissioning in the future?

24          A.    I certainly expect the owner of the  
25 Company to defray those costs, is that your question?

1 Q. Yes, it is.

2 A. Yes, sir, I would expect that and  
3 maintaining the roads on the way out also.

4 Q. Yes. And in your supplemental testimony  
5 on page 5, item 5, where it states "Applicant shall  
6 repair at its cost," is it your understanding that  
7 that means the Applicant shall repair it, or that he  
8 shall -- that the Applicant shall -- or, at this time  
9 I'm assuming it's going to be the person who holds  
10 the certificate.

11 A. I believe that is a fact.

12 Q. And they may be separate companies. We  
13 don't the answer to that. The Applicant?

14 A. That's speculative right now.

15 Q. That's not part of my question. The  
16 Applicant shall repair at its cost, and I'm going to  
17 say that we were searching for a word the other day  
18 that would denote both present and future. Today  
19 they're an Applicant. Later on they're going to be  
20 the holder of the certificate?

21 A. Uh-huh.

22 Q. But that entity will work with  
23 contractors that are subject to the statutory  
24 requirements that the engineer spoke of earlier.

25 A. Yes. I would certainly hope that the

1 developer, or the Applicant, would work with the  
2 engineer to submit engineering and construction costs  
3 or repair costs and allow the -- allow it to be bid  
4 by the Richland County Commissioners.

5 Q. One of the things in between, if I  
6 understand correctly, you're county commissioner now.  
7 You were a township trustee?

8 A. Yes, sir, I was for 13 years.

9 Q. And also local?

10 EXAMINER FARKAS: You have to let him  
11 finish his answer. Were you done with your answer?

12 THE WITNESS: Yes, sir, I was. I was a  
13 township trustee for 13 years, yes, sir.

14 Q. Sorry about that, I wasn't done with my  
15 question when you began to answer, so I tried to  
16 squeak it in there. But did you answer the question,  
17 before that you were a township trustee for 13 years  
18 and you also are a business owner.

19 A. Yes.

20 Q. And in that time have you ever observed  
21 90 bridges being built in the time frame of one year,  
22 90 public bridges built in the course of one year?

23 A. No, sir, I haven't.

24 Q. Are you familiar with the comparison  
25 between the Stein Road bridge permitted loads and the

1 wind turbine construction permitted loads comparison  
2 given by Jim Mawhorr?

3 A. Yes. That comparison was delivered to  
4 the county commissioners office in a meeting with  
5 Mr. Hawken.

6 Q. In his testimony he mentioned that they  
7 were substantially similar -- well, no, sorry. I  
8 mean, let me read exactly.

9 Question 10, about halfway through the  
10 paragraph, "I have worked on numerous ODOT projects  
11 and bridge replacement projects on local township and  
12 county roads that use heavy equipment similar to the  
13 equipment that will be required for construction of  
14 the applicant's project."

15 From your own experience with bridge  
16 construction and viewing wind farm construction, do  
17 you consider the equipment to be similar,  
18 substantially -- is it a fair comparison?

19 A. I would say that some of the equipment is  
20 the same. But when it comes to cranes and the sizes  
21 of the loads that they are lifting up, I don't think  
22 there's any comparison at all. There's a hell a lot  
23 of different between a 400-ton crane and a 100-ton  
24 crane or 600-ton crane. A huge difference.

25 Q. Are aware of any board, body, or

1 jurisdiction that may relieve the county  
 2 commissioners of your responsibilities set forth in  
 3 Ohio Revised Code?

4 A. I don't believe that they can.

5 MR. HEFFNER: Thank you, Mr. Wert.

6 THE WITNESS: Thank you.

7 EXAMINER FARKAS: Mr. Biglin?

8 MR. BIGLIN: No questions.

9 EXAMINER FARKAS: Ms. Davis?

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Davis:

13 Q. Mr. Wert, how are you today?

14 A. Good, thank you.

15 Q. You have already answered the question  
 16 that you are a farmer on your off hours?

17 A. Uh-huh.

18 Q. Are you a member of the Farm Board --  
 19 Farm Bureau?

20 A. I'm a member of the Farm Bureau but not  
 21 the Farm Board.

22 Q. The Farm Bureau. Why are you a member of  
 23 the Farm Bureau?

24 A. Political reasons.

25 Q. Do you feel that the Farm Bureau

1 represents your views?

2 A. Not totally.

3 MR. COLLIER: Object. I'm not sure it's  
4 relevant.

5 EXAMINER FARKAS: He answered.

6 MR. COLLIER: Then we withdraw it.

7 MS. DAVIS: Those are my only questions.

8 EXAMINER FARKAS: I don't have any  
9 questions.

10 Any redirect?

11 MR. COLLIER: No redirect, your Honor?

12 EXAMINER FARKAS: You are excused.

13 THE WITNESS: Thank you for allowing me  
14 to come and testify.

15 MR. COLLIER: Your Honors, I move for the  
16 admission of Exhibits 5, 5A, and 6.

17 EXAMINER FARKAS: Any objections?

18 Hearing none, they will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER FARKAS: At this time we will  
21 recess until 11:00. That will be about ten minutes.

22 (Recess taken.)

23 EXAMINER FARKAS: Back on the record.

24 Mr. Collier, does that complete your  
25 case?

1 MR. COLLIER: Yes, it does your Honor.

2 May we go off the record for a moment?

3 EXAMINER FARKAS: Yes.

4 (Discussion off record.)

5 EXAMINER FARKAS: Back on the record. I  
6 believe Staff is the next.

7 MR. JONES: Your Honor, can we have two  
8 minutes? I left copies of one of the testimonies I  
9 need to have here.

10 EXAMINER FARKAS: Yes.

11 Off the record.

12 (Discussion off record.)

13 EXAMINER FULLIN: Well, another thing  
14 that has occurred to me when I talked about the  
15 closing statements is I think yesterday that I said  
16 in doing the closing statements that we would follow  
17 the same order that we did in some of the  
18 presentations of each party's case, but I think would  
19 appropriate and fair to allow the Applicant to go  
20 last on the closing statement. So my intention would  
21 be to follow the same order except with the Company  
22 going first, the Company would go last on the closing  
23 statements.

24 MR. HEFFNER: And the reason for that is?

25 EXAMINER FULLIN: I think it's probably



1 protocol in cases, but I'm not sure. I haven't done  
2 the research but I think it's a fairness issue. I  
3 think the Company should be in a position to  
4 basically hear all the presentations of those  
5 opposing the Application and be in a position to  
6 respond them rather than the objections and arguments  
7 against the Company being heard after the Company --  
8 I think it is fair to have the Company have the last  
9 time to speak.

10 EXAMINER FARKAS: The Company has the  
11 burden of proof, that's why.

12 So, Mr. Jones, you may call your witness.

13 MR. JONES: Yes, Your Honor, call Jon  
14 Pawley to the stand.

15 Your Honor, at this time I would like to  
16 mark a couple of exhibits for the record, please.

17 EXAMINER FARKAS: Okay.

18 MR. JONES: I would like to mark the  
19 prefiled testimony of Jon C. Pawley that was filed in  
20 this docket on September 15, 2011 as Staff Exhibit 1.

21 EXAMINER FARKAS: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. JONES: Next, I would like to  
24 identify the supplemental testimony of Jon C. Pawley  
25 that was filed on October 5 in this docket as Staff

1 Exhibit 1A.

2 EXAMINER FARKAS: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. JONES: Next, I would like to  
5 identify the Staff Report of Investigation that was  
6 filed in this docket on August 31, 2011 as Staff  
7 Exhibit 2.

8 EXAMINER FARKAS: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. JONES: If I may approach to disperse  
11 copies to the Bench?

12 EXAMINER FARKAS: Yes.

13 MR. HEFFNER: Since the Staff signed the  
14 Stipulation, may I ask initially what is left for us  
15 to ask questions concerning? We have filed a list of  
16 issues that goes into great detail about each item  
17 that we would like to ask Staff. Most of mine relate  
18 to the Staff Report of Investigation as was required,  
19 and I find these to be inadequate. I don't know  
20 which of these are permissible and which are not.  
21 Shall I raise each issue and have it accepted or shot  
22 down?

23 MR. JONES: Your Honor, if I may respond  
24 to Mr. Heffner's question.

25 EXAMINER FARKAS: Yes.

1           MR. JONES: The list of issues that were  
2 filed here by all the intervenors in the case  
3 predated the Stipulation that was filed in this case,  
4 so now being that the Stipulation is now the focus of  
5 our proceeding, not the Application, that's what's  
6 been developed since the time of the issues being  
7 filed. And we're calling Jon Pawley to be available  
8 to support both the Staff Report of Investigation and  
9 the Joint Stipulation recommendation, and he's  
10 prepared to answer questions related to those  
11 exhibits.

12           EXAMINER FARKAS: Since I don't know what  
13 your questions are, what I would suggest is you ask a  
14 question, any question you want to ask, and see if  
15 there's an objection to it. Then we will rule on the  
16 objection.

17           MR. HEFFNER: My understanding of what  
18 Mr. Jones just said is that the Staff Report of  
19 Investigation and the Application are two exhibits  
20 that we may ask questions about.

21           EXAMINER FARKAS: As I said, what I would  
22 say, if you have a question you want to ask then this  
23 is your opportunity to do that, and then if there's  
24 an objection raised to your question, I will give you  
25 a chance to respond to the objection and then the

1 Bench will rule on that objection. Then you can move  
2 on to another question.

3 MR. HEFFNER: Thank you.

4 EXAMINER FARKAS: I can't predetermine  
5 what your questions are or whether or not they can  
6 ask them.

7 MR. HEFFNER: Certainly.

8 EXAMINER FARKAS: I don't know what the  
9 questions are.

10 MR. HEFFNER: Well, I would like a  
11 general sense, we had a prehearing teleconference  
12 which there was a question and answer session and I  
13 very specifically asked during that question and  
14 answer session whether my issues would be eliminated  
15 and some parties agreed to the Stipulation and some  
16 parties did not. My understanding from that day is  
17 that was my issues would not be eliminated. That I  
18 would be able to take up those issues myself. Today  
19 already I've been told those issues are exempt  
20 because they relate to a document that neither the  
21 witness testifying nor I have signed in Stipulation.  
22 So I'm just trying to get a general view, is there  
23 something that I may ask a question about?

24 EXAMINER FARKAS: I haven't told you you  
25 cannot ask a question. I have suggested that what

1 you should do is ask the questions you wish to ask  
2 and then if there's an objection, I have to give you  
3 a chance to respond to that objection and then the  
4 Bench will rule on that. But I don't want to  
5 prejudge what you may or may not ask questions on.

6 MR. HEFFNER: I understand more clearly  
7 now, thank you.

8 EXAMINER FARKAS: Okay.

9 You may proceed.

10 - - -

11 JON C. PAWLEY,

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

14 DIRECT EXAMINATION

15 By Mr. Jones:

16 Q. Would you please state your name for the  
17 record.

18 A. Jon Pawley, P-A-W-L-E-Y.

19 Q. Where are you employed?

20 A. I am employed by the Public Utilities  
21 Commission of Ohio.

22 Q. And what is your position?

23 A. I'm a utilities specialist 3 with the  
24 PUCO.

25 Q. I want to refer your attention to

1 documents before you marked as Staff Exhibit 1 and  
2 Staff Exhibit 1A. Were those documents either  
3 prepared by you or at your direction?

4 A. Yes.

5 Q. As your testimony in this proceeding?

6 A. Yes.

7 Q. Do you have any changes to be made to  
8 either Staff Exhibit 1 or Staff Exhibit 1A?

9 A. No.

10 Q. And if I were to ask you is same  
11 questions that are contained if Staff Exhibit 1 and  
12 Staff Exhibit 1A, would your answers be the same?

13 A. Yes.

14 Q. And as a witness sworn under oath in this  
15 proceeding, do you adopt Staff Exhibit 1 and Staff  
16 Exhibit 1A as your testimony in this proceeding?

17 A. Yes.

18 Q. I want to ask you also what is before as  
19 Staff Exhibit 2, would you please identify that  
20 document for the record, please?

21 A. Yes. This is the Staff Report of  
22 Investigation.

23 Q. And who prepared the Staff Report of  
24 Investigation?

25 A. There was a team of staff that prepared

1 this report under my management, if you will.

2 Q. So what was your role as far as the  
3 production of the Staff Report of Investigation  
4 marked as Staff Exhibit 2?

5 A. As I said, I managed a team of Staff that  
6 performed investigations in various areas, compiled  
7 the report and made sure this was timely filed. I  
8 was the contact, if you will, for interrogatories and  
9 for arranging field visits so that there was not too  
10 many Staff people involved at that level.

11 Q. Okay. And another document that was  
12 previously marked in this proceeding as, admitted as  
13 Joint Exhibit 1, which is the joint Stipulation and  
14 Recommendation in this case, are you familiar with  
15 that document?

16 A. Yes.

17 Q. Okay. And does Staff support the joint  
18 Stipulation and Recommendation ?

19 A. Yes.

20 Q. Do you any clarifications to make as to  
21 Mr. Heffner had reference to Staff Report of  
22 Investigation on page 26, No. 37 on that page, and I  
23 believe he referenced that as a condition. Is that a  
24 condition in this case?

25 A. It is not. Page 26 of the Staff Report

1 incorporates findings under 4906.10A2 which nature of  
2 probable environmental impact. That's important  
3 because the Staff Report flows together. The nature  
4 is the initial investigation of the Application by  
5 Staff, and from that, from the nature of probable  
6 impact we move to the minimum adverse section and I  
7 believe that the topic of this is discussed in more  
8 detail in the minimum adverse, so there's some  
9 rationale to the statement that Mr. Heffner raised in  
10 the minimum adverse piece, and then if Staff has a  
11 remedy or a condition that we would recommend to the  
12 board to address that, then it is found in the  
13 conditions. So no, it is not a condition.

14 Q. Further, Mr. Pawley, I wanted to take  
15 this opportunity to have you address and clarify  
16 certain conditions that the Bench has raised that  
17 either have not been answered by Mr. David Stoner who  
18 was asked these questions, or as raised by the Bench  
19 as wanting Staff to address those conditions. I'd  
20 like to start with condition 5, and the question  
21 being that what was the language intended to cover in  
22 respect to the wind turbines that were proposed in  
23 this case, condition 5?

24 A. Yes. I would ask, your Honors, if  
25 there's something that I'm not covering that you



1 originally asked let me know because I'm going from  
2 memory here.

3 Condition 5, that any wind turbine site  
4 proposed by the Applicant and not built as part of  
5 this project shall be available to Staff review in a  
6 future case. Staff was concerned that if a turbine  
7 or a number of turbines that studies were done for  
8 and Staff investigated in this case were not built,  
9 that they weren't preempted from study or  
10 investigation in some future case. So those would  
11 still be open, I guess, post-certificate, if the  
12 certificate were to expire, or if for some reason the  
13 Applicant would come in with another project that  
14 incorporated something that wasn't built, they would  
15 have to start over with that turbine location, and  
16 that's what that condition meant.

17 Q. All right, moving on to condition 12,  
18 there was a question from the Bench related to a  
19 redesign of the collection system. Would you please  
20 provide further clarification what the intent was for  
21 that condition?

22 A. Yes, as part of the minimum adverse  
23 finding and recommendation that Staff provided to the  
24 board, there was a substantial amount of concern  
25 about a collection line system that ran approximately

1 4 miles between turbines and the impact that would  
2 have on the agricultural land and basically going  
3 cross-country to get from turbine to turbine. What  
4 the Staff has suggested the Board consider is that  
5 there is infrastructure to the west of this project  
6 area that involves -- well, other designs of  
7 collection systems where there will be impacts, and  
8 our goal with this condition was to -- if you can  
9 picture the letter C and from the top of the C to the  
10 bottom of the C is a collection system. The C  
11 represents from Staff's opinion impacts to the area.  
12 So what we're trying to get at is there a way to  
13 redesign the collection system from the top of the C  
14 to the bottom of the C to incorporate disturbed areas  
15 as parts of this project.

16 Q. All right, next I'd like to refer you to  
17 condition 13 as concerns the complaint resolution  
18 process, and the language in that condition that  
19 relates to the procedure that addresses potential  
20 operational concerns, can you please address that  
21 further, please?

22 A. Yes, well, as this would be something  
23 that would happen in the future, I think Staff wanted  
24 some latitude and not -- I think in this case we  
25 wanted -- Staff wanted, to be somewhat vague because

1 we don't know what the operational issues or concerns  
2 may be in the future. That was all.

3 Q. And further, sticking with that  
4 condition, how would you characterize this condition  
5 in relation to the statutory provision 4906.97 as a  
6 complaints process provided by the statute?

7 A. I would characterize this condition as an  
8 informal complaint resolution process, and the  
9 statutory remedy would be a more formal process  
10 before the Board.

11 EXAMINER FULLIN: Can I ask a question  
12 about that now rather than later on?

13 MR. JONES: Yes.

14 EXAMINER FULLIN: So you would envision  
15 that the informal complaint resolution process, as  
16 you describe it, would be something that would likely  
17 occur first, and if there isn't a complete resolution  
18 by one of the parties, that maybe by the landowner or  
19 someone in that kind of position, that the statutory  
20 procedure would be a way to continue with the  
21 complaint beyond the procedural -- beyond the  
22 informal process you described.

23 THE WITNESS: I would agree with that,  
24 yes.

25 EXAMINER FULLIN: That would really be

1 available at any time but the hope would be informal  
2 process would occur first and hope something was  
3 resolved.

4 THE WITNESS: I would say yes,  
5 particularly since we don't know what the complaint  
6 would be at this point. We don't know the nature.

7 EXAMINER FULLIN: Thank you.

8 MR. JONES: Thank you, your Honor.

9 Q. (Mr. Jones) Mr. Pawley, I'd like to  
10 refer you to condition 18 where the word "promptly"  
11 is provided in the condition itself. I believe the  
12 word "promptly" also appears again in condition 23.  
13 Is there any further elaboration you can provide as  
14 to the word "promptly" in those two conditions?

15 A. Just that I think Staff envisioned the  
16 word "promptly" as more fact-based or case-by-case  
17 scenario. We don't know what crops might be on the  
18 field. We don't know the accessibility of the  
19 property owner to make a decision. So the word  
20 "promptly" allowed some flexibility. I would say as  
21 quickly as possible.

22 Q. Would that be the same as a reasonable  
23 amount of time as to Staff's description?

24 A. Yes.

25 Q. That also addresses condition 23 as that

1 word is used there as well?

2 A. I have to take a look here.

3 Q. Take a look at condition 23 as well?

4 A. Yes.

5 Q. Okay. All right. Moving on to condition  
6 19, and here the Bench had raised the question as to  
7 the floodplain development permits be provided to  
8 Staff within seven days of issuance of receipt. Can  
9 you elaborate or provide further clarification as to  
10 when that needs to be provided to Staff?

11 A. The clarification was whichever was  
12 sooner. I think that was -- we were just trying to  
13 define or not lock in whether it was issuance or  
14 receipt. It was just a clarification.

15 Q. Okay.

16 EXAMINER FULLIN: Let me ask, is there  
17 any expectation that the receipt would ever actually  
18 precede the issuance?

19 THE WITNESS: I don't think I can answer  
20 that.

21 EXAMINER FULLIN: Okay.

22 A. I mean there may be expectations, but I  
23 don't know what actually would happen, no.

24 THE WITNESS: I think that has more to do  
25 with the word issuance, whether it is filed

1 somewhere, how that gets handled.

2 EXAMINER FULLIN: To you think there  
3 might be a chance that the party would receive the  
4 special permit before the issuance is completed?

5 THE WITNESS: Not likely, but I didn't  
6 want to preclude any scenario.

7 EXAMINER FULLIN: Thank you.

8 MR. JONES: Thank you, your Honor.

9 Q. Mr. Pawley, I'd like to refer you to  
10 condition 21 next. And the question the Bench had as  
11 to providing more clarification on what was  
12 "environmentally sensitive" as it's used in that  
13 condition.

14 A. Well, actually, in this -- I think this  
15 would tie to the environmental specialist condition  
16 also. Staff uses the word "environment" to mean more  
17 than just ecological. So it could be the word  
18 environment could use areas of cultural resource, and  
19 there's a whole litany of ecological issues, such as  
20 groundwater or sediment erosion control, that type of  
21 thing, so it means more than just -- in this  
22 condition it deals with ecological concerns, but I  
23 wanted to be careful that the word "environment" to  
24 the Staff means more than just the ecological  
25 environment.

1 Q. So it would be more than watercourses and  
2 winds, correct?

3 A. Yes.

4 Q. Broader?

5 A. Yes, broader.

6 Q. Mr. Pawley, I'd like to refer you to  
7 condition 25. Here the Bench will ask a question how  
8 the qualification would be established for that  
9 condition. For the environmental specialist?

10 A. It would depend on what area of the  
11 project that specialist was working on, so I can't  
12 pinpoint the credentials per se, but an environmental  
13 specialist could be monitoring forest clearing, could  
14 be monitoring sediment erosion control; could be  
15 monitoring work around a cultural resource. So it  
16 would depend on the specific area that specialist was  
17 looking for, that would be Staff's first question.  
18 It would not be an all-encompassing environmental  
19 specialist per se.

20 EXAMINER FARKAS: I have a clarification  
21 question on that. Does that necessarily mean it  
22 could be more than one person.

23 THE WITNESS: It could be. It could be  
24 one.

25 A. Okay. When it says that specialist "will

1 be on site during construction activities," what  
2 Staff's expectation with respect to how many days a  
3 week, how many hours in a day that specialist would  
4 be there varies project to project. Staff, you know,  
5 has worked on projects before that have involved  
6 environmentally sensitive or scenic rivers, drilling  
7 underneath a river, it could take months. It can  
8 vary from days until anything beyond.

9 EXAMINER FARKAS: Oh, thank you.

10 MR. JONES: Thank you.

11 EXAMINER FULLIN: Is the expectation  
12 during any time when there is any construction  
13 activity going on that the specialist would be  
14 present?

15 THE WITNESS: Not necessarily any  
16 construction activity. If best management practices  
17 were involved and it had something to do with silt  
18 fencing and runoff, then yes, a specialist should be  
19 on site to make sure that silt fencing isn't loose or  
20 tipped over, that type of thing.

21 If it's a matter of putting -- I'm just  
22 using an example. If there's gravel on an access  
23 road and there's no runoff issues, then probably not,  
24 no.

25 EXAMINER FULLIN: Thank you.



1           Q.     (By Mr. Jones) Mr. Pawley, I'd like to  
2 refer you next to condition 31 and address to the  
3 Bench the question whether there are threatened and  
4 endangered species encountered during construction  
5 activities. Would that also apply to operational  
6 activities?

7           A.     Yes. This condition specifically  
8 mentions construction activities and operation  
9 activities, I believe the question from the Bench is  
10 if the remedy is different or time frame was  
11 different.

12           EXAMINER FULLIN: I think it had to do  
13 with the fact that, the way that I read it as worded  
14 was that once it became an operational rather than  
15 construction time frame, that a notice had to be  
16 given. I don't have it in front of me, but I think  
17 it was 24 hours, but during construction it was  
18 immediately. And also there was a specific -- that  
19 in the operational phase a notice was required but  
20 there wasn't the same condition as during  
21 construction in terms of halting the activity until  
22 an appropriate course of action has been agreed upon.  
23 That was only applied to the construction phase. I  
24 wondered if that was by design and why there would be  
25 a different way of going about the -- why you

1 wouldn't have the same sentence apply in both  
2 situations.

3           A.   Staff's -- I guess Staff's experience  
4 with fieldwork during construction and during  
5 operation is that during construction you're going to  
6 have a number of workers on site, and if those  
7 workers encounter an endangered species, then rather  
8 than continue to, let's say, clear through a wooded  
9 area where that was encountered they would stop  
10 immediately and then there's that contact procedure  
11 that goes from that.

12           Operation, I think, is different because  
13 Staff doesn't know necessarily what caused, let's  
14 say, an impact to an endangered species, was it the  
15 turbine blade or a car passing by? So if something  
16 were encountered during operation, I think there  
17 would be a different procedural recommendation, so  
18 thus the 24 hours. I think there would need to be an  
19 investigation, et cetera. That's why the difference,  
20 there's a little bit more lead time.

21           Q.   The answer I got from the Company's  
22 witness led me to conclude that in the operational  
23 phase that there's pretty much standards already in  
24 place about what happens when there's an encounter  
25 and that that standard that is already in place would

1 be followed, whereas in the construction situation --

2 A. Oh, no, I think that there are standards  
3 in place if you encounter an endangered species  
4 during construction and certainly if our conditions  
5 were to be adopted that that would be something we  
6 would be very concerned about. And there would be a  
7 procedure if place. Staff would immediately notify  
8 the appropriate entities whether that would be the  
9 U.S. Fish and Wildlife Service or ODNR. So I believe  
10 that there would be protocol in place.

11 EXAMINER FULLIN: One area that I'm still  
12 wondering about was the during construction the word  
13 "immediately" is used but during operational there's  
14 a 24-hour period. Can you explain about that?

15 A. Again, I think that gets back to the  
16 24-hour period would allow the Applicant or operator  
17 or contractor to at least start the process to  
18 ascertain what happened. You know what I mean? I  
19 don't think that it would be Staff's expectation that  
20 a wind turbine would be curtailed or shut down  
21 immediately if something was found necessarily, you  
22 know what I mean, in any area. I think there is a  
23 process could take place for that construction  
24 activity could cause more damage immediately. A  
25 bulldozer, a clearing in the woods. So that -- and

1 you would be -- the operator of the equipment would  
2 be right there. They would see that impact. So they  
3 would stop immediately.

4 EXAMINER FULLIN: Thank you.

5 Q. (Mr. Jones) Mr. Pawley I'd like to  
6 direct your attention next to condition 33, and that  
7 condition being that "the Applicant shall complete a  
8 full, detailed geotechnical exploration and  
9 evaluation at each turbine site." And the Bench had  
10 a question as to whether or not an actual written  
11 report would have to be submitted to Staff and would  
12 there be a time frame that that report would be  
13 submitted.

14 A. No. I believe in this condition Staff  
15 was requesting the boring logs, and I think that can  
16 be useful to know what is -- for Staff and ODNR to  
17 know what is happening, what folks are finding in the  
18 soils in certain parts of the state. In my opinion,  
19 Staff would have access to whatever material we  
20 needed, either at the job site or through the  
21 Applicant, we could get the full, detailed  
22 geotechnical exploration and evaluation if we needed  
23 to.

24 Q. When would Staff expect to receive those  
25 boring logs?

1           A.    Prior to construction.

2           Q.    Next I'd like to call your attention to  
3    condition 37.  And as this condition relates as the  
4    blasting operations and notification to the residents  
5    within 1,000 feet of any blasting activity to be done  
6    and whether a survey then would be required or not  
7    based on whether a resident would waive a survey  
8    being done.

9                    I believe the Bench had a question, well,  
10    if one resident waived and another resident did not  
11    waive having a survey done, that a survey would still  
12    have to be done.  Can you provide clarification on  
13    that condition?

14           A.    Yes.  The survey would still have to be  
15    done.  If a resident did not waive they would still  
16    have to do that survey.  And there was a question  
17    about the 1,000 feet.  Staff's thought on the  
18    1,000 feet was that we wanted to make sure that if  
19    there was a turbine located 600 feet from the project  
20    area, that folks that lived outside the project area  
21    were covered.  And so the 1,000 feet was a benchmark  
22    that was used that could extend beyond the project  
23    boundary because there could be impacts.  The impacts  
24    wouldn't stop at the project boundary, and it's my  
25    understanding that in industrial, like limestone

1 sites in Ohio, that 1,000 feet is moved. That's  
2 where Staff got the benchmark so there is some basis  
3 behind it.

4 EXAMINER FULLIN: Let me ask a question.  
5 It seems like it might require the survey to  
6 determine who is in the 1,000 feet. How would you  
7 decide who is within the 1,000 feet area without  
8 doing the survey?

9 A. I think through mapping. I mean, I think  
10 the formal survey I think we are getting at is  
11 knocking on the door, or however this is worked out  
12 and actually doing a survey of that property. Before  
13 that, I guess what we are saying is that through  
14 mapping, satellite, you can ascertain which  
15 structures are around that turbine location:

16 EXAMINER FULLIN: Thank you.

17 Q. (Mr. Jones) Mr. Pawley, I would next  
18 direct your attention to condition 44, which refers  
19 to the installation of an ice warning system. And  
20 the Bench had a question as to if one or more methods  
21 or models that are proposed in that condition would  
22 have to be chosen?

23 A. I believe yes, by utilizing the word  
24 "shall install." They're going to have to do  
25 something to detect ice from this condition we just

1 didn't want to limit the Company with what that was.  
2 But using the word "shall install," I guess Staff  
3 felt, yes, an ice warning system had to be installed.

4 EXAMINER FULLIN: Let me ask. If you  
5 wanted to enforce the "shall install the ice warning  
6 system," then why would you describe -- Company  
7 witness said there were numerous methods -- much more  
8 numerous systems than four included there. What is  
9 the point of saying that they may include four  
10 specific ones without requiring any of the four  
11 specific ones that are included. Why couldn't you  
12 just end it at shall install an ice warning system?  
13 Why did they put "may do something"? That's not like  
14 "shall."

15 THE WITNESS: I can't speak for the  
16 Company.

17 EXAMINER FULLIN: I'm only asking for  
18 Staff's position.

19 THE WITNESS: All I can say is Staff  
20 wasn't opposed to this because of the words "shall  
21 install." I'm not sure what the Company is looking  
22 for.

23 EXAMINER FULLIN: Thank you.

24 Q. (Mr. Jones) Mr. Pawley, the next  
25 question I have for our clarification to the Bench,

1 this doesn't pertain no any particular condition, but  
2 there's several different conditions throughout that  
3 have either referred to the Applicant or the operator  
4 or the owner of the facility, all those references  
5 are back to the Applicant, would you say the  
6 Applicant would be the correct wording for those  
7 conditions where he makes a reference to the party  
8 responsible for the facility?

9 A. Not necessarily. I mean, I think there  
10 are three different things potentially. So I think  
11 the Staff wants that differentiation to make sure  
12 that if there was a transfer logistically, if  
13 something happened that the Applicant was not the  
14 owner operator, that we were covered. So yes, I  
15 think Staff wants that differentiation.

16 Q. So if there was a succession of this  
17 facility to a new owner, all the conditions would  
18 apply to the new owner; is that correct?

19 A. By succession do you mean transfer?

20 Q. Yes, transfer title interest?

21 A. Yes. There's a formal process in place  
22 with the Power Siting Board and I believe as part of  
23 that formal process, the Board would either review  
24 the statement or confirm a statement that -- I don't  
25 think Staff would support a transfer unless all the



1 conditions certainly were transferred with it. And  
2 my experience has been that in transfer cases that's  
3 usually provided. That's always provided up front  
4 with the Application before the Board decides on it.  
5 That's my understanding. But, yes, the conditions  
6 would transfer through the life of the facility.

7 Q. And any new owner would be obligated to  
8 whatever is required in any certificate that may be  
9 issued in this case; is that correct?

10 A. I'm sorry, can you repeat it?

11 Q. Any certificate issued as a result of our  
12 proceeding here that any subsequent owner of this  
13 facility the interest would be subject to that  
14 certificate?

15 A. Yes.

16 EXAMINER FARKAS: Just to follow up on  
17 that, it's your understanding that if there was a  
18 transfer of the certificate, if the certificate is  
19 issued in this case, that an Application has to be  
20 filed with the Board?

21 THE WITNESS: Yes.

22 EXAMINER FARKAS: And the Application to  
23 transfer the certificate would have to be approved by  
24 the Board.

25 THE WITNESS: Correct.

1                   EXAMINER FARKAS: And is it Staff's  
2 expectation and understanding that all the conditions  
3 that are set forth in the Stipulation and the Amended  
4 Stipulation apply to the Applicant and any holder of  
5 the certificate?

6                   THE WITNESS: Yes.

7                   EXAMINER FARKAS: Thank you.

8                   EXAMINER FULLIN: I'm still not really  
9 clear. You say there is a distinction or could be a  
10 distinction in certain instances between the  
11 Applicant and the facility owner and/or operator.

12                   So in response to last question in the  
13 event of a transfer of the Applicant, would the  
14 conditions that as written apply to a facility owner  
15 also transfer to the transferee of the certificate?  
16 I'm still not sure why is there a distinction made  
17 between the Applicant, the facility owner, and the  
18 operator. I want to be sure I'm clear that if there  
19 is a requirement on a facility owner and we're saying  
20 it's not the same as the Applicant. What happens to  
21 the facility owner's requirements under the condition  
22 in the event of a transfer to the Applicant if it  
23 distinct from the facility owner?

24                   THE WITNESS: I would hate to get too far  
25 into that, your Honor, because there's different

1 conditions were written by the Staff. I don't want  
2 to speak to this condition that has something to do  
3 with the operation of the turbine if there was a  
4 specific reason for that. I can try to get back to  
5 you, but I don't -- I don't necessarily want to speak  
6 for other Staff on that instance.

7 EXAMINER FARKAS: Well, for instance  
8 condition 48 of the Stipulation, it says "That the  
9 facility owner and/or operator." Is it Staff's  
10 understanding that in agreeing to this condition that  
11 those conditions apply to the holder of the  
12 certificate, that the holder of the certificate will  
13 repair damage to public roads and bridges caused by  
14 decommissioning.

15 THE WITNESS: Yes, that's my  
16 understanding. I don't know that I'm suggesting that  
17 we change everything. My point is this. I think  
18 what you're saying is true. I agree with that.

19 EXAMINER FARKAS: Okay.

20 THE WITNESS: What I'm not suggesting nor  
21 do I want to suggest that we change conditions that  
22 may have been authored by other Staff to say the  
23 Applicant versus the operator or whatever.

24 EXAMINER FARKAS: Or owner.

25 THE WITNESS: Or owner. I'm not

1 suggesting that. I'm not suggesting that we change  
2 the condition with you, to clarify, yes. I agree  
3 with that.

4 EXAMINER FARKAS: You would say that's  
5 true of all the conditions here?

6 THE WITNESS: Yes.

7 EXAMINER FARKAS: Even though it says  
8 facility owner and/or operator, that all these  
9 conditions apply to whoever is the holder of the  
10 certificate?

11 THE WITNESS: Ultimately, yes.

12 EXAMINER FARKAS: Assuming there is a  
13 certificate issued in the case.

14 THE WITNESS: Ultimately, yes.

15 EXAMINER FARKAS: Okay.

16 EXAMINER FULLIN: Thank you.

17 MR. JONES: Thank you.

18 THE WITNESS: I may have misunderstood  
19 the question. I'm sorry.

20 Q. (Mr. Jones) Mr. Pawley, I'd like to  
21 direct your attention next to condition 51, and the  
22 reference there that the Board had -- the Bench had a  
23 question as to a description of the facility boundary  
24 being clarified or defined.

25 A. Well, I think the facility boundary is as

1 depicted in the Application. I think what I've heard  
2 there's been confusion about project area. Different  
3 components of study, of investigation, involve  
4 different radii, one mile, five miles of study. So I  
5 think that's -- if there's any confusion, I think  
6 that would be the difference.

7 In this instance we're talking about, for  
8 lack of a better term, the thick line on the map in  
9 the Application.

10 EXAMINER FULLIN: Would you cite as to  
11 which thick line in which map in the Application you  
12 might be referring to? And.

13 THE WITNESS: I'll rephrase that.

14 EXAMINER FARKAS: How about page 9 of the  
15 Staff Report.

16 THE WITNESS: How about page 9 of the  
17 Staff report. That's what I was going to do. It  
18 says project boundary.

19 EXAMINER FULLIN: Okay, thank you.

20 Q. (Mr. Jones) Mr. Pawley, I'd like to  
21 direct your attention next to condition 53. And here  
22 this condition which refers to limiting of  
23 construction activities during certain hours of the  
24 day, and also there's a reference to dusk, till dusk.  
25 I was wondering if you could provide any further

1 clarification as to how that's worded?

2 A. I've wrestled with this one a little bit.  
3 I would defer to Webster's Dictionary. I'm not being  
4 facetious. I would refer to a definition under  
5 Webster's Dictionary for dusk.

6 EXAMINER FULLIN: Have you looked up the  
7 definition in Webster's.

8 THE WITNESS: I have. I don't know if I  
9 can recite it.

10 EXAMINER FULLIN: To me, as defined, I  
11 would expect to find it's very vague when you look it  
12 up in terms of what time it occurs. I think, without  
13 looking at that time definition, it implies to a  
14 range of time between when the sun begins to go down  
15 and finally goes down. To me it's still a vague term  
16 that doesn't define the specific time period. Does  
17 Staff feel comfortable with leaving a range there?  
18 That's the idea. Would it be more helpful to have a  
19 more definitive time?

20 THE WITNESS: No, I don't think it's  
21 helpful to have a more definitive time because  
22 certain construction activities during certain times  
23 of the year may take on a longer life.

24 EXAMINER FULLIN: But you will never get  
25 to an objective decision when the property owner

1 says, "I would wish they would go away, it's  
2 nighttime," and construction is out there working  
3 when the other people are ready to go to bed  
4 because's nighttime.

5 THE WITNESS: Do you have a Webster's  
6 Dictionary?

7 EXAMINER FULLIN: No, I don't have.  
8 You're the one who brought it up.

9 THE WITNESS: I don't have it.

10 EXAMINER FULLIN: My suggestion was that  
11 maybe there would be some authority which, again, I  
12 haven't looked that up at this time -- I think it  
13 would be on this day in this area sunset occurs at  
14 this time.

15 THE WITNESS: Perhaps the Farmers'  
16 Almanac or something of that nature is a possibility.  
17 I don't know what the National Weather Service might  
18 offer or the Farmers' Almanac.

19 EXAMINER FULLIN: If the Bench on its own  
20 would find some kind of standard that describes  
21 sunset and sunrise in a definitive manner in the way  
22 I'm talking about, would Staff object or have a  
23 problem with using that kind of a reference rather  
24 than the language that's included here?

25 THE WITNESS: I think that I would say

1 yes, we would object because the Stipulation is a  
2 joint agreement. So would we open to changing  
3 something, yeah, possibly we would, but Staff is not  
4 the only signatory, so I would hesitate to say yes,  
5 go for it, change it.

6 EXAMINER FULLIN: If you did have a  
7 problem, the main problem would be you're still on  
8 board with what you've already agreed to with other  
9 parties?

10 THE WITNESS: Correct. Correct.

11 EXAMINER FULLIN: That's all on that one.

12 MR. BIGLIN: I don't mean to interrupt  
13 but just a suggestion. I'm a hunter. The ODNR  
14 Hunter Safety and Rulebook has chart in it with the  
15 times and it divides Ohio but through the months of  
16 the year, it gives sunset, exact sunset time and  
17 exact sunrise time because as a hunter, you're going  
18 or you can only hunt until sunset and half hour --  
19 sometime's you can be in the field for a half hour.  
20 The tables are there through the Ohio Department of  
21 Natural Resource. If that's a help, that would be a  
22 reference.

23 EXAMINER FARKAS: When it's your  
24 opportunity to -- I don't say examine -- I would  
25 suggest you ask the witness that and maybe he'll



1 agree with you. Thank you.

2 Go ahead.

3 Q. (Mr. Jones) I believe the Bench had  
4 another question regarding this condition as to how  
5 property owners or affected tenants would be notified  
6 in writing as to construction activities or nighttime  
7 construction required?

8 A. Again, I think in past siting cases  
9 there's been like a mailer or a door-to-door leaflet  
10 left with property owners, property or people on a  
11 road, or that type of thing where it's going to be  
12 affected by construction. My expectation is it would  
13 be door-to-door.

14 Q. Mr. Pawley, I'd like to next refer your  
15 attention to conditions 57 and 58. And as to these  
16 conditions addressing degradation of TV reception due  
17 to facility operation and whether as provided in the  
18 these two conditions as a remedy by the Company when  
19 there is shown a degradation of either TV reception  
20 or cell phone reception, does it provide for -- if  
21 the Bench had a question as to how will it be  
22 determined that there's degradation of cell phone  
23 service if there's been a baseline study. Is a  
24 baseline study required for these conditions for cell  
25 phone?

1           A.     My understanding is that it was  
2 case-by-case, so no broad-ranging baseline study but  
3 case-by-case.

4           EXAMINER FULLIN:   As pertaining to cell  
5 phone service specifically.

6           THE WITNESS:   Yeah, yeah, that was my  
7 understanding.

8           Q.     Mr. Pawley, I next refer your attention  
9 to condition 65, and that is to that condition  
10 referring to certain forms being provided to the FAA,  
11 the question that the Bench had related to what would  
12 be required to be given to the board Staff with  
13 regards to this condition?

14          A.     Can I read it?

15          Q.     Yes.

16          A.     I think what Staff is looking for here is  
17 forms and correspondence.  It's not necessarily --  
18 it's just not plain forms, it's whatever  
19 correspondence or whatever action was taken, in this  
20 case, but the FAA, we want to know that.

21          Q.     So that would mean anything submitted by  
22 the Applicant to the FAA or received back from the  
23 FAA, that would be shared with the Board Staff?

24          A.     That's a good way to put it, yeah.

25          EXAMINER FULLIN:   Let me ask you this

1 about that. It says it should be provided to the  
2 Staff for review and acceptance. I mean, it would  
3 seem to me the forms are being filed with the FAA for  
4 their acceptance, are you taking the place of the  
5 FAA? What will be the terms of your acceptance?  
6 Wouldn't it be enough to copy you with what has been  
7 provided and let the FAA determine if they accept it  
8 as a filing?

9 THE WITNESS: I can't answer that.

10 EXAMINER FULLIN: Thank you.

11 Q. Mr. Pawley, I'd next refer your attention  
12 to condition 66C. And here the question had to do  
13 from the Bench was related to the Board extending the  
14 useful life period for the wind energy facility for  
15 good cause being shown. Would this be something that  
16 would be provided to the Board Staff?

17 Q. Whether there would be an Application  
18 from the Applicant, an Application to extend the  
19 useful life period for any wind turbine or the wind  
20 facility, would that be made to the Board Staff or to  
21 the Board?

22 A. To the Board.

23 Q. So the Board would have to make that  
24 decision as to whether or not the useful life would  
25 be extended for the facility or for a turbine; is

1 that correct?

2 A. Correct.

3 EXAMINER FARKAS: Before we leave that  
4 condition, if there was a wind turbine, let's say we  
5 are in year 10 of the expected life of 20, 25 life of  
6 these turbines, and we're in year 10 and one of the  
7 wind turbines has to be fixed. Is it Staff's  
8 understanding under this Stipulation that a new wind  
9 turbine could be substituted for that wind turbine  
10 that was being fixed, or would there no longer be a  
11 turbine at that site, or would it depend on how many  
12 years it would be into the project, or would you  
13 always retain -- would the Company always retain the  
14 option of replacing the turbine? That's a poor  
15 question.

16 THE WITNESS: I don't know. I don't  
17 know.

18 MR. JONES: At this time, your Honors, I  
19 would offer Mr. Pawley for cross-examination.

20 EXAMINER FARKAS: Do you.

21 Mr. Settineri, questions.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Settineri:

25 Q. I have one question, Mr. Pawley, so I can

1 clarify the record. Mr. Pawley, I believe Mr. Jones  
2 asked you some questions about condition 53.

3 A. Yes.

4 Q. Did I hear you correctly say you believe  
5 that notification would be done door-to-door?

6 A. Yes.

7 Q. And the notification you referenced, "The  
8 Applicant shall notify property owners or affected  
9 tenants within the meaning of the Ohio Administrative  
10 Code, 4906-5-08(C)(3), of upcoming construction  
11 activities, including potential for nighttime  
12 construction activities --"

13 A. Uh-huh.

14 Q. -- is it your understanding that the  
15 property owners or affected tenants in the meaning of  
16 that section of Ohio Administrative Code incorporates  
17 property owners and affected tenants in the entire  
18 project boundary?

19 A. No. Affected would be affected by that  
20 part of the construction.

21 Q. Okay.

22 A. That's my interpretation of what the  
23 expectation would be.

24 Q. So to the extent that somebody would read  
25 this sentence as interpreting or applying the

1 definition of the Ohio Administrative Code to  
2 property owners or affected tenants, the Company  
3 wouldn't have to go out door-to-door in the entire  
4 project boundary area, correct?

5 A. No.

6 Q. And, in fact, it would be typical for a  
7 notification to the entire project boundary would be  
8 done as what was previously marked as Company Exhibit  
9 3, which is the property owner and tenant notice that  
10 was sent out by the Company to affected tenants and  
11 property owners within the project boundary?

12 A. Correct. Yes. I take this specific  
13 condition to go to the pile driving and blasting  
14 operation. So if there was some specific -- if there  
15 was a specific area of the construction project that  
16 warranted this type of work, then those folks should  
17 be notified.

18 MR. SETTINERI: Thank you for clarifying  
19 that.

20 No further questions, your Honor.

21 EXAMINER FARKAS: Mr. Collier is not  
22 here.

23 Mr. Warrington, any questions?

24 MR. WARRINGTON: Yes, I have a question.

25 - - -

## 1 CROSS-EXAMINATION

2 By Mr. Warrington:

3 Q. In my testimony I submitted 147 pages and  
4 much of that concerns property values of residents of  
5 the area, and I've also included a sample of property  
6 value guarantee. Will you or is your -- do you have  
7 an inclination in favor or opposed of imposing upon  
8 the developer a property value guarantee that will  
9 guard against -- my studies has shown contrary to the  
10 developer tax there will be significant and sizable  
11 loss of residential property value into the project.  
12 Would you oppose or support this being forced upon  
13 the developer to protect the residents of this  
14 project area.

15 A. May I ask who would do the forcing? Are  
16 you asking if Staff or the Board?

17 Q. Mawhorr Siting Board would introduce this  
18 as a mitigating process before the certificate would  
19 be approved. I have an individual, Mike McCann  
20 appraisals from Chicago, Illinois --

21 EXAMINER FARKAS: Mr. Wharton, I don't  
22 want you to testify.

23 EXAMINER FULLIN: I think we have a  
24 question out there. Are you ready to answer the  
25 question?

1           A.    I'll respond and you can -- I would not  
2 support recommending to the Board a property  
3 evaluation guarantee, however, I would not recommend  
4 to the Board any particular support or opposition to  
5 a property valuation guarantee between the Applicant  
6 and the residents.  If that's something done between  
7 the Applicant and residents, I wouldn't oppose that.  
8 But I wouldn't recommend the Board oppose it.  But I  
9 wouldn't recommend to the board they impose such a  
10 guarantee.  I'm not sure how they could.

11           Q.    Yesterday in the testimony of Ken  
12 Kaliski, in his testimony he sought to weaken the  
13 sound standards.  He accepted it as a movable issue.

14           MR. SETTINERI:  I'll object to  
15 mischaracterizing the testimony, your Honors.

16           EXAMINER FARKAS:  I'll sustain the  
17 objection, rephrase your question.

18           Q.    Would you be willing to share with us the  
19 noise standard for wind projects as prescribed by  
20 Senate Bill 562 written in 2008 and codified in the  
21 Ohio Revised Code?  Are you able to -- what is the  
22 sound standard for this wind project approval  
23 process?

24           A.    I am not able to answer that, no.

25           Q.    If you don't have the standard completed



1 and published as required in 4906.02 Section 2, how  
2 can the Ohio Power Siting Board do its job for  
3 appropriate siting and project guidance if you did  
4 not bother to take the time to construct the required  
5 noise standard?

6 MR. JONES: I object on a couple grounds,  
7 that the form of the question and the way  
8 Mr. Warrington is trying to have his questions,  
9 there's opinions in his questions, there's  
10 conclusions in his questions. He's also asking  
11 Mr. Pawley legal questions. I object for all those  
12 reasons.

13 As to citing the Revised Code and  
14 Mr. Pawley's interpretation of Senate Bill 221, he's  
15 not a lawyer. He's not presented as one.

16 MR. SETTINERI: Your Honor, the Company  
17 will join in that objection. There's no foundation  
18 made, nor am I aware of any of the standards in the  
19 Ohio Revised Code or of Ohio Administrative Code.

20 EXAMINER FARKAS: Do you want to respond  
21 to this, Mr. Warrington?

22 MR. WARRINGTON: I object to these  
23 objections because we waited for three years for an  
24 opportunity to ask anybody from the Ohio Power Siting  
25 a question about this entire project. Now with the

1 last person, after we have eliminated all the others  
2 and because we do not find the written standard, I am  
3 asking that this hearing be suspended until a noise  
4 standard is completed and reviewed by experts that we  
5 know but cannot afford to bring here to this hearing  
6 in person.

7 EXAMINER FARKAS: I'm denying that  
8 motion.

9 MR. WARRINGTON: Then we will appeal on  
10 that basis.

11 EXAMINER FARKAS: I'm sustaining the  
12 objection of Mr. Jones.

13 Do you have another question or rephrase  
14 the question.

15 MR. WARRINGTON: That's my last one.

16 Thank you.

17 Mr. Price?

18 MR. PRICE: No questions.

19 EXAMINER FARKAS: Ms. Price?

20 MS. PRICE: Yes.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Price:

24 Q. Is the Ohio Power Siting Board a  
25 government agency run on government funds or state

1 funds?

2 A. I can't speak for Ohio Power Siting  
3 Board. I don't know how the things are appropriated.

4 Q. You are not part of the Ohio Power Siting  
5 Board?

6 A. I'm part of the Public Utilities  
7 Commission of Ohio Staff that is appointed through  
8 the chairman to investigate projects as an  
9 individual -- as a party, just as you are a party,  
10 and make the recommendation on projects for Ohio  
11 Power Siting Board, but I am not the Board, no.

12 Q. Okay. So to clarify, when they talk  
13 about a Ohio Power Siting Board, they're the ones  
14 that will either approve or disapprove of this, but  
15 when they talk about the Staff, that is someone like  
16 yourself that works for another agency that is  
17 providing the Ohio Power Siting Board, SOAP,  
18 whatever, information?

19 A. That's correct. And there is Staff from  
20 multiple agencies, PUCO, which is what I'm from, the  
21 EPA, ODNR, et cetera.

22 Q. Okay. You're the only Staff in your  
23 testimony on page 3?

24 EXAMINER FARKAS: Of.

25 MR. JONES: Can we have clarification as

1 Exhibit 1 or 1A?

2 EXAMINER FARKAS: Prefiled or  
3 supplemental?

4 MS. PRICE: Prefiled.

5 Q. Page 3, in question 6 it states you  
6 didn't write the entire Staff Report but in your  
7 answer it says, "I am responsible for any issues not  
8 covered by other Staff witnesses in the testimony."  
9 So right now, you're responsible for the whole  
10 report, right, because you're the only one  
11 testifying?

12 A. I can't answer to how this is organized.  
13 I'm the Staff witness. During the prefiled  
14 testimony -- I will tell you my role in the Staff  
15 Report, specifically in terms of the writing, had to  
16 do with the transmission line, collection line, and  
17 clarification on the three models that were being  
18 proposed. Those things I did write, yes.

19 Q. Okay, but as of right now if you read  
20 that last line, does that not make you responsible  
21 for the whole report, seeing how they dismissed all  
22 the other people that were supposed to testify about  
23 the Staff Report?

24 MR. JONES: I object, your Honor. You  
25 have read the prefiled testimony in conjunction with

1 the supplemental testimony.

2 EXAMINER FARKAS: I'll sustain the  
3 objection. He filed supplemental testimony you  
4 should read in conjunction with his testimony.

5 MS. PRICE: Okay.

6 Q. Before this project come to your  
7 attention, I take it your work days were filled with  
8 plenty of other work. Was this added on top of the  
9 other work you were already doing?

10 A. Yes.

11 Q. Would you say that this project has  
12 somewhat overburdened your workload?

13 MR. JONES: I would object to the  
14 relevance of the question.

15 EXAMINER FARKAS: What is the relevance  
16 of the question?

17 MS. PRICE: If he is being overburdened  
18 by the workload, then he's not had sufficient time to  
19 do the job.

20 EXAMINER FARKAS: I'll overrule the  
21 objection and allow him to answer the question.

22 Have you had sufficient time to do your  
23 job?

24 THE WITNESS: Yes.

25 EXAMINER FARKAS: Thank you.

1           Q.    Okay.  Have you ever made a field visit  
2 to the project area yourself?

3           A.    Yes.

4           Q.    And what was that field visit for?

5           A.    There were numerous field visits, I want  
6 to say between May and July during the course of the  
7 formal investigation, and predominantly as the  
8 project lead, what I was trying to do was not have 50  
9 people out in the field walking around corn fields to  
10 try to focus on specific areas that Staff needed,  
11 either more information, clarification or a visual  
12 interpretation of what was going on.

13                   A good example of that, there's maps in  
14 the Application, I think there was discussion about  
15 the OWI polygons, if you will, where are they?  Where  
16 are those polygons and where are they in relation to  
17 the project?  That's an example of something we would  
18 have gone out into the field, not to verify a wetland  
19 or not, but to verify where an access road might have  
20 a collector line.  The scale of these maps is such  
21 you have to go out and take a look or else you're not  
22 going to know what is actually out there.

23                   So ecological things we might have looked  
24 at, take a look at the roads.  At some point or  
25 another, all of the turbine sites were at least

1 looked at, not standing on the site itself because of  
2 crop and whatnot, but the receptor sites, I think we  
3 went out and looked at receptor sites. We have spent  
4 several days in the Staff, with Staff of EPA  
5 verifying some of the ecological conditions.

6 Q. Okay.

7 A. That type of thing, those types of  
8 things, we staggered probably six to eight field  
9 visits for specific topics.

10 Q. The Applicant put together this booklet  
11 and gave it to you, and during these field visits you  
12 check to verify some of what has been given to you to  
13 make sure that it's true as reported?

14 A. The field visits are a part of that, and  
15 I believe that the electronics that were issued are  
16 also a part of that. We were trying to fill the gaps  
17 or the holes that we think might need more  
18 clarification.

19 Q. Okay. I'm not asking you if, but if it's  
20 happened, but if you would come across something in  
21 the book to be untrue?

22 EXAMINER FARKAS: By "this book" you mean  
23 the Application?

24 Q. The Application, what would be the  
25 process in getting that mistake corrected?

1           A.    We would ask for clarification for the  
2 record.  Everything would need to be open for that.  
3 I can't think of an example where something would  
4 necessarily be inaccurate off the top of my head  
5 because we're looking at this from a review agency  
6 perspective, and if there's dots on a map in terms of  
7 a turbine, we don't know.  That will come later, but  
8 standing in the middle of field and say no, this  
9 turbine location is inaccurate is not something we're  
10 going to do because we don't know where they're  
11 putting it yet.

12                 So I'm trying to think of an example to  
13 answer your question.  If we did, yes, I think we  
14 would need it to be clarified for the record, I would  
15 think.

16           Q.    Okay, thank you.  No. 13 on the  
17 Stipulation and Recommendation --

18                 MR. JONES:  I'm sorry, No. 13?

19                 MS. PRICE:  Yes.

20           Q.    Did I hear you correctly to say that if  
21 someone had a complaint and tried to mitigate that  
22 complaint with the project owner, operator,  
23 Applicant, and that was not working out, then the  
24 next step would be to contact the Ohio Power Siting  
25 Board?



1           A.    Yes, that is correct.

2           Q.    Okay.

3           A.    In terms of the informal, if you will,  
4 process, nothing has been established yet. I think  
5 that's part of the recommendations that Staff has  
6 prior to construction that they do have a formal  
7 protocol in place, so I can't really speak to what  
8 that might include at this point.

9           Q.    Okay. On issue No. 18, "damaged field  
10 tile systems shall promptly repaired to at least the  
11 original conditions" and this is talking about the  
12 agreement with the landowner, right? My question is  
13 I have a septic system, a septic tank that goes into  
14 a leech bed and then the leech bed tile goes on out  
15 to the farmer's field tile. What protection do I  
16 have here on my tile connecting to the farmer's field  
17 tile? I'm not a landowner signed on.

18          A.    But it would be your property, wouldn't  
19 it?

20          Q.    No, no. The line that my tile from -- it  
21 goes from the septic tank to the leech field and then  
22 would run off from that and go out to a main field  
23 tile to the creek, wherever, because it's connected  
24 out in the farmer's field.

25          A.    But it's not considered a drain tile; is

1 that your question?

2 Q. Not for him, it's not a drainage tile for  
3 his field.

4 A. Right. I think this condition deals with  
5 drainage tiles. I'm not sure if court claim, some  
6 sort of court claim would be your best option. But  
7 in terms of this condition, no, we are dealing with  
8 drainage tiles.

9 Q. Okay. On No. 57, by now you presume I  
10 probably live in front of my TV as much as I ask  
11 about this TV. When the applicant's noise study was  
12 done, they said that the man that testified said that  
13 they put eight monitors out, and then they averaged.  
14 This test that would be done for our TV towers, for  
15 the signal, I know that they probably won't go from  
16 house to house, so there again, they'll be taking an  
17 average. How could you prove if they tell me my  
18 signal is this much, I say my signal is that much, if  
19 they're averaging it?

20 A. My recommendation would be to start a  
21 complaint process in place to lay forth something,  
22 because I don't -- in terms of a disagreement through  
23 the Power Siting Board, I don't know whether there's  
24 any other remedy than the complaint resolution  
25 process.

1 Q. If after their study is done and it says  
2 that the signal isn't as strong or whatever, have  
3 they said what they're willing to do to fix that?

4 A. I'm not aware that they have.

5 Q. That they will check the signal and tell  
6 you if it's going to be as good or worse?

7 A. I don't know what the remedy would be  
8 from the Applicant.

9 Q. Okay.

10 A. They would be better able to speak to  
11 that.

12 Q. On 66(c), the original line, "individual  
13 wind turbines due to health" has been taken out. Can  
14 you tell me the meaning of "health" in this sentence  
15 and then why it was taken out?

16 A. I can't tell you the meaning of "health"  
17 because it was a generic term. Staff was trying to  
18 think of if there was any reason at all that it  
19 wasn't covered that something would shut a turbine  
20 down and the intent from Staff's perspective was to  
21 just use a generic term "health" and I think we  
22 didn't object to it being taken out because the words  
23 "or other issues" would cover it. "Require  
24 decommissioning of individual wind turbines due to  
25 health, safety, wildlife impact, or other concerns

1 that prevent the turbine from operating within the  
2 terms of the certificate."

3           Again "health" was a generic term, and  
4 Staff was okay with taking that out as long as "or  
5 other issues" was at the end of that. Because we  
6 thought that was general enough. We don't know what  
7 the issues may be.

8           Q. Did you could you feel this wording would  
9 cover other issues being medical, psychological?

10          A. I think "or other issues" is pretty  
11 vague.

12          Q. Okay.

13          A. That prevents the turbine from operating  
14 within the terms of the certificate. That's the end  
15 of the sentence.

16          Q. Yes.

17          A. I don't want to make a characterization  
18 on those words. But in context I think it makes  
19 sense, yes.

20          Q. When you were talking about the  
21 differences in everything, the wording Applicant,  
22 facility owner, and facility operator, could the  
23 Applicant be Black Fork, the facility owner be  
24 Element?

25          A. I don't know.

1           Q.    I mean, is that why we have different  
2 wording for the Applicant, the facility owner and the  
3 facility --

4           A.    As I said to the Bench I really can't  
5 speak on that because they were conditions modeled by  
6 various Staff for various reasons and I don't want to  
7 speak for what those reasons might be. I can try to  
8 find out and report back or do something. But this  
9 is one of those things where I don't want to speak  
10 for other people I can't.

11          Q.    You're not agreeing and you're not  
12 denying?

13          A.    I really can't speak for others on that  
14 issue.

15          Q.    In your profession, do you go out, do you  
16 the same work for like when they're putting in a  
17 major gas line?

18          A.    Yes.

19          Q.    When somebody applies for a major gas  
20 line, before the permit is granted, do they have to  
21 state specifically where it will be, what size it  
22 will be --

23          A.    Yes.

24          Q.    -- before the permit is granted?

25          A.    Correct.

1           Q.    They're not allowed to apply for a permit  
2 and then come back and say after the permit, "We will  
3 tell you what size and where"?

4           A.    No.  They would need to have the  
5 diameter -- well, they would have to have the  
6 diameter of the pipe and the pressure because based  
7 on those two facts, it could be a different filing.  
8 It might not be an application for a certificate.

9           Q.    Okay.

10          A.    Based on the size or, you know, the  
11 capacity of the line.

12          Q.    Okay.

13          A.    So yes, they would need to know that.

14                MS. PRICE:  Thank you.

15                EXAMINER FARKAS:  Ms. Rietschlin.

16                               - - -

17                               CROSS-EXAMINATION

18   By Ms. Rietschlin:

19           Q.    If the maps in the Staff Report don't  
20 indicate a proper property line, will that be  
21 reevaluated before a turbine is sited; in other  
22 words, will someone make sure that the setback is  
23 proper?

24           A.    Staff will not --

25                MR. JONES:  Frist, I object to the

1 question. There's no foundation showing that there's  
2 a map that shows an improper boundary line.

3 EXAMINER FARKAS: It was a hypothetical,  
4 and I'll overrule the objection and allow the  
5 question.

6 You want to state your question again?

7 Q. You have maps in the Staff Report, and a  
8 diagram of the property is outlined on the map and  
9 circumstances might changed. Will someone still  
10 verify the location of the property line before the  
11 turbine is constructed?

12 A. Staff will verify the location of the  
13 turbine, but we will not go out and do a survey,  
14 though. If there is an error that is known, my  
15 advice would be to present that error to the Board on  
16 the record so that we know because right now, we're  
17 using -- again, as a review agency, we're using the  
18 information that was submitted. If there's a known  
19 error, we may not know about it, that is correct.

20 MS. RIETSCHLIN: Thank you.

21 EXAMINER FARKAS: For the record, if a  
22 landowner presented information to the Staff  
23 regarding a property line issue that they believed  
24 was different than what is in the Application, Staff  
25 would be willing to look at that?

1 THE WITNESS: Yes. But we would not go  
2 out and set up surveying equipment. The landowner or  
3 the Applicant or somehow or another that would need  
4 to be taken care of in a fashion to present to Staff  
5 to make a determination.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Heffner:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. On page 9 of the Staff Report, the map  
12 that shows the project boundary --

13 A. Yes.

14 Q. You probably do not even have to look at  
15 it. -- has that map been amended?

16 A. I believe that the northeast corner has  
17 been amended, yes.

18 Q. Does the map exist of the current project  
19 boundary that you're aware of?

20 A. Is that not it?

21 Q. I believe not. I believe it was amended.

22 A. If that is an error in Staff Report, than  
23 that is an error. The northeast corner has been  
24 amended.

25 Q. Okay.



1           A.    I believe that that information is on the  
2 record.

3           Q.    Okay.  Thank you.  I would like to ask  
4 for purposes of the Stipulation, could you define the  
5 word "turbine" for me?  Tell me what it includes.

6                   EXAMINER FARKAS:  Turbine?

7           A.    Like turbine location?

8           Q.    No.  When you say turbine, is it the  
9 generator thingy up there, the nacelle?  Is it the  
10 rotor?

11          A.    It would be all-encompassing.

12          Q.    Is it the platform?

13          A.    Yes.

14          Q.    Is it the line that goes -- the  
15 collection line?

16          A.    No.

17          Q.    We stop there?

18          A.    Yes.

19          Q.    We stop there.  It would be --

20          A.    Staff would be looking at the turbine  
21 location so that would be from the ground up.

22          Q.    And that includes the foundation?

23          A.    Correct.

24          Q.    Okay.  When you visited, was it typically  
25 a day trip?

1 A. Yes.

2 Q. Will you continue to make visits after  
3 operation?

4 A. Yes. Yes.

5 Q. Will it be on a scheduled basis or on an  
6 as-needed basis?

7 A. Unless there was a specific reason to go  
8 on a schedule for a meeting, per se, it would be --  
9 Staff would set the schedule for that.

10 Q. Okay.

11 A. And that would be including construction  
12 and then operation because we would have jurisdiction  
13 post construction.

14 Q. Do you know who the Applicant is?

15 A. I would refer to the Applicant as Black  
16 Fork Wind, LLC. I believe that when Staff -- in the  
17 Staff Report when the reference is made to the  
18 Applicant, it's our understanding that's who filed  
19 the Application.

20 Q. Okay.

21 MR. SETTINERI: Your Honor, if I can ask  
22 for clarification for the record, I believe Black  
23 Fork Wind Energy, not Black Fork Wind, two different  
24 things.

25 THE WITNESS: Thank you.

1 EXAMINER FARKAS: With that  
2 clarification.

3 THE WITNESS: Yes.

4 Q. The Applicant is two companies?

5 A. I think I misspoke.

6 EXAMINER FARKAS: I think counsel was  
7 clarifying the actual name of the Applicant.

8 Why don't you state the name.

9 MR. SETTINERI: He referred to Black Fork  
10 Wind. The correct name in the Application is Black  
11 Fork Wind Energy.

12 MR. HEFFNER: Okay.

13 EXAMINER FULLIN: We agree on the record  
14 that's what it is.

15 THE WITNESS: Yes.

16 Q. In the course of site visits and  
17 discussion of the studies done by the Applicant, what  
18 employee of Black Fork Wind Energy did you generally  
19 meet with?

20 A. Predominantly the consultant that may  
21 have been responsible for that particular piece.

22 Q. Okay.

23 A. And then it varied. I think for the most  
24 part it was Mr. Hawken. I say that with an inference  
25 because I don't want to mispronounce his name. It

1 was the gentleman over there.

2 Q. Okay.

3 A. But the focus -- the reason that I wanted  
4 to break out our field visits was to make sure that  
5 the consultant that was responsible for that piece  
6 was there to answer questions.

7 Q. In your field visits did you have  
8 occasion to visit with any of the people who were  
9 nonparticipants?

10 A. I don't believe so. Typically what Staff  
11 does -- I've run into issues in the past in my line  
12 of work, whether they're participating or not  
13 participating, with being on people's property. So  
14 what Staff typically tries to do is make sure someone  
15 is there who may know or had contact with that  
16 property owner.

17 So I am -- unless Staff was steered  
18 wrong, it was my understanding we never went off on  
19 other nonparticipating properties, and I don't  
20 believe that I've spoken to -- I don't think I've  
21 spoken to anyone in the room, anyway.

22 Q. I guess I need to be a little more clear  
23 about that. I am interested in whether you were on  
24 other unleased land, but what I'm asking is the  
25 person, the resident, the landowner, did you have

1 occasion to speak to any of the landowners that were  
2 not participants?

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

4 Q. Okay. I will ask a question about the  
5 Staff Report on page 29.

6 A. Okay.

7 Q. Under Aesthetics, Staff points out that  
8 screening is not a practical mitigation measure. Is  
9 there somewhere that a mitigation measure strategy  
10 would be recommended?

11 A. I believe at the substation site batch  
12 plant, that conglomeration of equipment, I think,  
13 yes, screening could be a useful tool for both noise  
14 and visual screening. I don't believe that  
15 screening would be useful for these turbines, though.

16 Q. Because of that, does the issue just kind  
17 of get dropped because there isn't really a  
18 screening, a practical mitigation measure? I'm  
19 trying to understand this. Would you then say  
20 there's something other than screening that may be  
21 practical, or would you just say, well, since it's  
22 not practical, we don't recommend it at all?

23 A. I don't think that there's anything -- I  
24 point to that sentence. The conclusion is I don't  
25 think there's anything Staff can recommend. Whether

1 or not mitigation took place in other forms is  
2 typically between the Applicant and the landowner or  
3 other parties.

4 I say that, but that's not necessarily --  
5 in answer to your question, it's not necessarily just  
6 put aside, and I say that because aesthetics could  
7 become important as part of a cultural resource  
8 analysis or through other avenues. I don't believe  
9 that's necessarily done with as a topic.

10 Q. Now, this one, there's several of these  
11 questions, and I just almost have to say this in  
12 advance, I don't know who to address these questions  
13 to. It's an ongoing problem. There just isn't  
14 anybody to talk to about these.

15 MR. JONES: I object, your Honor. There  
16 isn't a question being presented.

17 EXAMINER FARKAS: Why don't you ask a  
18 question.

19 MR. HEFFNER: Can I ask a question to the  
20 judge?

21 EXAMINER FARKAS: Absolutely.

22 (Discussion off record.)

23 EXAMINER FARKAS: Back on the record.

24 Q. Have any rules that prescribe reasonable  
25 regulations regarding wind turbines, including sound

1 and noise levels, been adopted by the Board?

2 A. I'm sorry, I don't know the answer to  
3 that.

4 Q. In the Staff Report, which you put  
5 together largely, on page 47 it says, "An Application  
6 for a certificate must include a description of the  
7 Applicant's public interaction programs." Did the  
8 Application include that?

9 A. I don't know the answer to that. I don't  
10 know if that was followed up with -- you know, the  
11 Application may or may not contain certain things,  
12 and certain questions get asked during the course of  
13 the proceeding. There is information in the section  
14 so it came from somewhere. I don't know if it was  
15 the actual Application or not.

16 Q. Do you know where that phrase is taken  
17 from, "An Application for certificate must include a  
18 description" and so on. Do you know where that --

19 A. Where exactly are you in the report?

20 Q. Page 47 of the Staff Report. That would  
21 be under Public Interaction, the second bold  
22 subheading, and it would be the first line in the  
23 first paragraph.

24 A. I believe there is a footnote to that.

25 Q. Okay.

1           A.    I'm not well-versed with the OAC.

2           Q.    The footnote then shows me the authority  
3 for requesting that, and I guess what I'm asking you,  
4 has that description of the Applicant's public  
5 interaction program been included?

6           A.    That's what I'm saying. Based on the  
7 information that's provided in the Staff Report, that  
8 information to the Board came from somewhere. I  
9 don't know where. I don't know if it was the  
10 Application, subsequent information, telephone call.  
11 I don't know where it came from, to answer, to be  
12 direct to your question.

13          Q.    I don't know if I can ask you a process  
14 question so I'm going to anyway. On page 48 under  
15 Public Comment, it says the time it was published  
16 there was one letter of support filed in the  
17 proceeding. Now, have you read that letter in  
18 support?

19          A.    I know -- I am aware of what that letter  
20 is referring to, yes.

21          Q.    Okay.

22          A.    I don't know I have read the whole  
23 letter, but I know what that is referring to, yes.

24          Q.    Will this phrase remain in the report  
25 that is given to the Board to make an evaluation of



1 acceptability for certification?

2 A. I believe so.

3 Q. Is it an accurate statement?

4 A. I believe so.

5 Q. Okay.

6 A. Mr. Heffner, if I may, I did read your  
7 issue, to kind of maybe get to -- it is not your  
8 letter, if that helps.

9 Q. That does help. It helps quite a bit.  
10 Thank you.

11 Could you tell me -- I got to find the  
12 reference here. It would be on page 50 under the  
13 Federal Tax, that paragraph, third line up from the  
14 bottom --

15 MR. JONES: I'm sorry, where are you at,  
16 Mr. Heffner?

17 MR. HEFFNER: I'm in the Staff Report,  
18 page 50, the second subheading, Federal Tax.

19 Q. If you go to the bottom and go up three  
20 lines from the bottom of that paragraph, it states,  
21 "The Applicant is therefore not eligible for the  
22 1603 cash grant." Is that a conclusion or finding of  
23 law?

24 A. It would not be a finding of law. It is  
25 a status report to the Board if things stood where

1 they are now, that the Applicant wouldn't qualify.

2 Q. Can you tell me what the origin of that  
3 assessment was? Was it a Company assessment or Staff  
4 assessment?

5 A. I would imagine a Staff assessment.

6 Q. Is the Staff familiar enough with the  
7 1603 cash grant program to make an assessment of  
8 eligibility?

9 A. I don't know the answer to that. I think  
10 that the way that I read it that was a date trigger,  
11 and I think this was a conclusion based on a date  
12 trigger. If they didn't do something by that date,  
13 they were not eligible. I think that's what that  
14 sentence gets to.

15 Q. And that trigger word would be in their  
16 construction of the facility began during  
17 2009-2010-2011. Are you familiar with the federal  
18 definition of the word "construction"?

19 A. No.

20 Q. Would the federal definition of the word  
21 "construction begins" be significant in the  
22 determination of eligibility for 1603 grants?

23 MR. JONES: I object, your Honor. He  
24 answered he didn't know the federal definition of  
25 "construction."

1 EXAMINER FARKAS: I'll sustain the  
2 objection.

3 Ask your question another way or a  
4 different question. He said he was not familiar with  
5 it.

6 MR. HEFFNER: How can I ask the question  
7 a second time?

8 EXAMINER FARKAS: Do you want her to  
9 reread it?

10 MR. HEFFNER: Yes.

11 (Record read.)

12 Q. If that word was defined in a different  
13 manner, would it have a different outcome?

14 MR. JONES: Your Honor, I object because  
15 it has already been established that he did not know  
16 the definition.

17 EXAMINER FARKAS: I'll overrule the  
18 objection.

19 Can you answer the question, Mr. Pawley?

20 THE WITNESS: I cannot.

21 Q. Okay. On page 58 of the Staff Report  
22 concerning item 41 concerning the emergency and  
23 safety plan, I see no footnote there concerning --  
24 there is part of Ohio Revised Code that addresses  
25 this issue. No reference was made. Is there a

1 reason why no reference was made to that portion of  
2 the Ohio Revised Code that relates specifically to  
3 this topic?

4 A. I'm not aware of the reason that it was  
5 either in or not in.

6 Q. Are we in the portion of this process  
7 where we can't insert a footnote or something that  
8 designates the Ohio Revised Code?

9 A. Well, I'm not sure why I would want a  
10 designation in that condition. Do you know what I'm  
11 saying? In the write-up that led to the condition,  
12 if that's something that you want to present to the  
13 Board, I don't object to that for their  
14 consideration, but I'm not sure why a designation  
15 would be in the actual condition. I haven't seen the  
16 emergency or safety plan so I can't really comment on  
17 that.

18 Q. In the event, though, they were  
19 inconsistent, the Company, the Applicant, the  
20 Certificant was noncompliant with Ohio Revised Code,  
21 we would not take that up with you, the Staff or the  
22 Board, am I correct? We would take that up with the  
23 Company and the Attorney General or whatever local  
24 jurisdiction would apply?

25 A. I'm not sure I would be comfortable who

1 would take that up with you. It could be a court of  
2 law.

3 Q. It wouldn't be with you? It wouldn't be  
4 with Staff? Can I limit it to that?

5 A. I wouldn't limit it.

6 Q. Page 60, item 49, "The Applicant shall  
7 obtain all required county and township  
8 transportation permits and all necessary permits from  
9 ODOT."

10 We are there now, am I correct? That has  
11 nothing to do with subsequent road agreements.

12 MR. SETTINERI: Your Honor, can I confirm  
13 for the record, I think he referenced condition 49.  
14 Condition 49 to the Staff Report or condition 49 of  
15 the Stipulation?

16 MR. HEFFNER: I am on page 60 of the  
17 Staff Report of Investigation.

18 MR. SETTINERI: Thank you, Mr. Heffner.

19 MR. HEFFNER: Did I slip back into that  
20 forbidden territory again?

21 A. I don't know that that condition has been  
22 altered vis-a-vis the Stipulation, so it is as it was  
23 in the Staff Report.

24 MR. HEFFNER: Mr. Pawley, I appreciate  
25 your answers. Thank you.

1 THE WITNESS: Thank you.

2 EXAMINER FARKAS: Mr. Biglin.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Biglin:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Are you familiar with the three turbine  
9 models that you proposed as stated in the Staff  
10 Report?

11 A. Yes.

12 Q. Did you or the Staff receive  
13 manufacturers' safety manuals in relation to all  
14 three models of these three proposed turbines?

15 A. I don't know the answer to that.

16 Q. Don't know. That has no bearing in  
17 anything you reviewed?

18 A. I personally did not review them. I  
19 can't speak for other Staff, if they received those  
20 manuals or not. There may be reference in the Staff  
21 Report to that. Did you not see that?

22 Q. Pardon me, I thought I heard earlier  
23 where you were familiar with all three models.

24 A. No.

25 Q. In what aspect?

1           A.    I'm sorry, my role in the Staff Report in  
2 terms of the three models, I was concerned about the  
3 open-ended nature of the in Applicant's language of  
4 going to any model or up to 3 megawatts.

5                        So I handled that myself in the Staff  
6 Report to specify or limit the Applicant to exactly  
7 what it was that was being considered to go to the  
8 Board, and that was the three models. It was not a  
9 5-megawatt model. It was not some other  
10 manufacturer. It was those three, and that's the  
11 part that I handled in the Staff Report.

12                       I am not familiar with the technology and  
13 ins and outs of each turbine type, no.

14           Q.    Okay. I don't have the particular  
15 reference to 4906 with regards to this, but I believe  
16 that safety manuals are to be provided as part of the  
17 Applicant procedure to I guess the Staff for review.

18           A.    (Witness nods.)

19           Q.    Are you aware of that?

20           A.    Vaguely. I mean it sounds familiar.

21           Q.    But you don't know if they did receive it  
22 or not receive it?

23           A.    I do not know.

24           Q.    Who would know?

25           A.    The Staff member that worked on that

1 piece. Again, it's something I can certainly find  
2 out. I don't know how to proceed with that, but it's  
3 something I can certainly raise.

4 Q. So I guess from you, you have no  
5 knowledge of those documents whatsoever?

6 A. I do not. I haven't seen them myself,  
7 no.

8 Q. In the Staff Report in reference to  
9 pages 37 through 38 --

10 A. Yeah.

11 Q. -- under blade shear, did you have any  
12 prior expertise or involvement in that at all?

13 A. No.

14 Q. In the bottom of the paragraph on that  
15 where it states a 563 feet setback from property, do  
16 you know if that relates to adjacent property owners  
17 that are not participating or not?

18 A. I believe it's any property.

19 Q. Any property?

20 A. I believe.

21 Q. And do you know if that's prescribed by  
22 in reference to maybe the height and 1/10 of a  
23 turbine model? Do you have any knowledge on that?

24 A. My understanding was that based on the  
25 three models that were -- that we were limiting to,



1 based on the maximum of that and whatever formulas  
2 established by law, that that met that requirement.

3 Q. You don't know what the formula would be  
4 it states?

5 A. I don't know exact reference in here.

6 Q. These numbers would correlate to the  
7 height and 1/10 of a turbine; is that correct?

8 A. Yes.

9 Q. That's what I'm getting to, okay. It  
10 does mention the property?

11 A. Yeah. I think that's established through  
12 earlier in the report.

13 Q. Somewhere, okay. Do you know why it just  
14 says property and it doesn't say anything about  
15 roadways? Are they considered one in the same?

16 A. I think that the reference to the roads,  
17 it was the property line at the road.

18 Q. Do you know, is that the edge of the road  
19 right-of-way, the center of the road?

20 A. It's not the center of the road.

21 Q. If it's a state highway with a 60-foot  
22 right-of-way, it would be the edge of the  
23 right-of-way?

24 A. Correct.

25 Q. In regards to blade shear, it mentions

1 safety control mechanisms there to minimize  
2 potential. I guess that's a disclaimer. They do not  
3 100 percent eliminate it.

4 A. I don't know about the word "disclaimer."

5 Q. Excuse me, if you want to answer, go  
6 ahead.

7 A. Like I said, this is in the minimum  
8 adverse section, so I'm sure it was tied to analysis  
9 of that. I'm sure that's where the word "minimum"  
10 came from. I can't speak to --

11 Q. No, it says minimizes the potential for  
12 blade shear.

13 A. Right.

14 Q. Do you take that to believe that whatever  
15 mechanism is in place for that does not fully  
16 eliminate the possibility of that occurrence?

17 A. Yeah. The way I read that language, I  
18 would agree.

19 Q. Thank you. Next paragraph or several  
20 under Ice Throw, there's reference in here to a  
21 formula, that it came from -- I'm not clear by  
22 reading it. Some of it references GE. Some of it  
23 references the German Wind Energy Institute. Do you  
24 feel that section, as written, addresses the  
25 situation of ice throw?

1           A.    I don't have a comment one way or the  
2 other.

3           Q.    There's several references.  If you go  
4 down to the last paragraph and go up to the middle of  
5 the third line from the bottom, it references  
6 structure or roads.  Then if we go to the next page  
7 on 38, the end of the top paragraph, second line up  
8 in the right-hand column, it also mentions roads and  
9 structures.  Do you believe that applies to roads and  
10 structures as written there?

11          A.    Not necessarily all roads.

12          Q.    What would be the definition of roads  
13 that would apply?

14          A.    I don't know.  But you asked me my  
15 opinion.

16          Q.    I mean, does Staff make that  
17 determination?

18          A.    What determination?

19          Q.    What road would apply?

20          A.    Yeah, I believe they would.

21          Q.    So if a manufacturer makes a  
22 recommendation, is it Staff that determines whether  
23 the manufacturer's recommendation is to be followed,  
24 or does Staff have the authority to recommend their  
25 own recommendation?

1           A.    No.  I think we report on what the  
2 recommendation is.  I don't think we necessarily make  
3 an evaluation of that recommendation.

4           Q.    Well, somebody made an evaluation about  
5 44 and 51 turbines here and made this paragraph as an  
6 argument.  It has to do with structures, I  
7 understand, but it also mentions roads.  Could that  
8 be applied to roads?

9           A.    I don't know the answer to that.  In  
10 reference to my answer, I thought you were talking  
11 about interpreting the safety manual.  That's why I  
12 said I don't know that Staff would make a  
13 recommendation off it.

14          Q.    Excuse me, the reason I mentioned safety  
15 manual, they specifically mentioned GE as a  
16 manufacturer of a turbine here, and they mention  
17 their safety standard, and those were in the  
18 Application back in appendix E, I believe, under  
19 pages maybe 49 and 50.  That was supplied by GE in  
20 part of the Application.  I was just assuming that  
21 was the reference here to that.

22          A.    I'm trying to be helpful in answering  
23 your questions but I'm not responsible for this  
24 section.

25          Q.    Okay.  In the Staff Report on page 34 --

1 bear with me. It might not be on 34, but my  
2 question -- oh, yes, 34 the third paragraph, which  
3 deals with the noise impacts and some decibel levels  
4 in regard to the average daytime and nighttime data  
5 that was taken in regard to the project.

6 My question is, is there any standard  
7 that the Staff would use to determine the parameters  
8 for that from like a project boundary line?

9 A. When you say "parameters of that," what  
10 are you referring to?

11 Q. Let me rephrase it, please. I believe  
12 it's page 9 in here shows a map with the designated  
13 black boundary line. I take that to designate the  
14 91 turbines we are talking about are within those  
15 boundary lines.

16 A. Correct.

17 Q. Is there any standard on the procedure  
18 that puts forth a distance that these studies be done  
19 from the actual boundary line?

20 A. I'm not familiar with one.

21 Q. So the designated black boundary on the  
22 indicated map is what we call the project boundary,  
23 you would say so?

24 A. Yes.

25 Q. And other terms in the reports done in

1 the Application about this area of noise impact of  
2 day and nighttime refer to a project area. Do you  
3 have any definition of that as far as how far out the  
4 actual --

5 A. No.

6 Q. Well, if you have to review the report  
7 that an individual puts forth on that, I mean, should  
8 there not be some definition involved there?

9 A. Again, you're asking me, and I'm saying  
10 no, I'm not familiar. I'm not sure what else to do.

11 Q. So it could be a half a mile or miles at  
12 the discretion of the people doing this study?

13 A. I don't know.

14 Q. Earlier on I heard some discussion on a  
15 timetable for sunrise to sunset, maybe. I'm sorry, I  
16 don't remember what condition that was involved in.

17 A. I don't either.

18 Q. But I'm just saying I'd just like to ask  
19 you if you considered using the tables that ODNR uses  
20 in regard to -- in their hunter safety rules that  
21 show a timetable in regard to that?

22 A. Seeing as ODNR is a state agency, is it  
23 broken down by county? I think that would be needed,  
24 the counties throughout the state.

25 Q. In their map that I use, they provide --

1 they have the state quadrants from north to south.  
2 Then there's a daily -- every day of the month is  
3 listed, and they give their definite time for sunrise  
4 and sunset that you can look up.

5 A. Okay.

6 Q. And there's two zones.

7 A. Zones.

8 Q. Depending on what zone you would be  
9 working with, you use that zone.

10 A. I would consider it if we were looking  
11 into it. Again, there are other parties involved in  
12 the Stipulation.

13 Q. Okay.

14 A. One question I think I did have for you  
15 regarding --

16 EXAMINER FARKAS: You can't ask a  
17 question.

18 THE WITNESS: It was just a  
19 clarification, I'm sorry.

20 EXAMINER FULLIN: If he wants a  
21 clarification, he'll ask for it.

22 Q. On page 29 of the Staff Report, under  
23 Cultural and Archeological, under the second  
24 paragraph --

25 A. Yes.

1           Q.    You've been out in our area.  Are you  
2 aware there's a considerable landmark there, the  
3 Sacred Heart of Jesus church?

4           A.    Yes.

5           Q.    It's definitely a cultural landmark, that  
6 particular church, built around 1891.  Do you think  
7 any turbine locations would have any effect on that  
8 landmark?

9           A.    I think it would be premature for me to  
10 say at this point.  Staff has recommended that  
11 certain studies be ongoing that would -- I hope would  
12 include that church in their studies.

13          Q.    Do you think that the property rights of  
14 adjacent nonparticipating property owners are fully  
15 addressed by these setbacks as recommended in the  
16 Staff Report.

17          A.    I think the setbacks recommended in the  
18 Staff Report follow the law in Ohio.  That would be  
19 my only comment.  Whether or not that's adequate is  
20 beyond me.

21          Q.    Okay.  In reference to an earlier  
22 question by Ms. Rietschlin, if I may, if a property  
23 owner notices on one of the maps for this project  
24 there's a turbine, say -- I'm just going to throw out  
25 a number -- maybe 200 feet from a nonparticipating



1 property line and it's not really been noticed by the  
2 Staff, what is the proper procedure to follow there?

3 I mean --

4 A. You would notify the Board and the  
5 Applicant.

6 Q. Okay. So there's no time line for that,  
7 is there?

8 A. Oh, no.

9 Q. That would be something that would have  
10 to be rectified?

11 A. I agree.

12 Q. But you definitely would get ahold, you  
13 said, of the Board or Staff?

14 A. The Board Staff and the Applicant, both.

15 Q. If a letter was written or a call, it  
16 would be directed to Staff, not necessarily the  
17 Board, but Staff?

18 A. Yes. You could even submit something  
19 directly to docketing and be part of the public  
20 record and Staff would see it there if you weren't  
21 comfortable sending it to Staff, but somehow or  
22 another, otherwise Staff would have no idea.

23 Q. If you've seen kind of a blatant mistake,  
24 it happened to be too close to a property line, the  
25 proper protocol would be to identify to the Staff and

1 the Applicant; is that what you're saying, both? Or  
2 just one?

3 EXAMINER FARKAS: I think that was his  
4 answer, both.

5 MR. BIGLIN: Okay.

6 A. The Applicant would have to construct a  
7 facility -- if the Stipulation is adopted by the  
8 Board, they have to construct the facility as per the  
9 conditions in that Stipulation, and if there's a  
10 setback violation, I think it could be argued that  
11 they're not.

12 Q. If the Ohio Revised Code stipulates the  
13 height is 1/10, then that would have to be followed?

14 A. Correct.

15 MR. BIGLIN: Thank you.

16 EXAMINER FARKAS: Okay. Ms. Davis.

17 THE WITNESS: I'm sorry, can I take that  
18 back?

19 EXAMINER FARKAS: Yes.

20 THE WITNESS: It's not necessarily  
21 because of Ohio Revised Code, I believe sets a  
22 minimum, if I understand right. So you have to go by  
23 the terms of the certificate. So what's reported to  
24 the Board indicates a setback distance. If there's a  
25 violation of that, then yes, we want to know that.

1           Q.       (Mr. Biglin) If there seems to be a  
2 violation as noticed on an Application map, Staff  
3 will see that it's rectified?

4           A.       I guess my point if there's a minimum  
5 established -- I'm not saying that's applicable to  
6 this case. If there's a minimum established by law  
7 and an Applicant exceeds that minimum voluntarily,  
8 through Staff recommendation, whatever it might be,  
9 to a new minimum, then that new minimum would be what  
10 we want to look at. Does that make sense?

11          Q.       I'm not concerned with exceeding. I'm  
12 concerned with if it is less than.

13          A.       Right, I am, too. I think we are on the  
14 same page. I think they're just two ways of getting  
15 there.

16               MR. BIGLIN: Thank you. That's all I  
17 have.

18               EXAMINER FARKAS: Ms. Davis.

19                               - - -

20                               CROSS-EXAMINATION

21 By Ms. Davis:

22          Q.       Mr. Pawley, I understand the job of you  
23 and your Staff, you take this Application, you divide  
24 it up into sections, and then you all go through  
25 various sections piece by piece, and you whittle it

1 down to the Staff Report, is that right, how that  
2 works?

3 A. In this instance that's the process that  
4 happened.

5 Q. And we have been giving testimony and had  
6 witnesses and this court reporter probably has  
7 blisters on her fingers at this point, but I assume  
8 this is going to be printed out. And how does  
9 everything that's happened get whittled down to be  
10 presented to the Board, or does each member of the  
11 Board, do they all get a big box with the  
12 Application, the Staff Report, everything that is  
13 printed out? Do they get the whole enchilada to look  
14 at, or is it whittled down before it is presented to  
15 the specific Board members?

16 A. My understanding the transcript will be  
17 part of the docket. It will be filed for public  
18 record. How the actual Board members get that  
19 transcript, Staff has minimal contact with the actual  
20 Board members.

21 Q. Okay.

22 A. We may deliver an Application, we may  
23 deliver a Staff report to the Board members.

24 EXAMINER FARKAS: Are you asking about  
25 the transcript or the records in the case?

1 MS. DAVIS: Well, the whole record of all  
2 the --

3 EXAMINER FARKAS: How the Board makes its  
4 decision?

5 MS. DAVIS: What do they look at?

6 EXAMINER FARKAS: The Board will base its  
7 decision on the evidence of record. That includes  
8 anything admitted as an exhibit. The Board has the  
9 Application, Staff Report, the transcript, exhibits  
10 that have been admitted into the record. That all  
11 becomes evidence that the Board uses to make its  
12 decision in the case whether or not to approve the  
13 Application or deny the Application.

14 A transcript, that becomes the record of  
15 the case. They will use that record in making their  
16 determination on this case. That means everything  
17 that is available, they will have access to.

18 MS. DAVIS: So there is no other level  
19 that whittles things down and maybe presents  
20 something smaller to the Board?

21 EXAMINER FARKAS: You mean summaries of  
22 things?

23 MS. DAVIS: Yes.

24 EXAMINER FARKAS: No.

25 MS. DAVIS: They're available to look at

1 everything they want?

2 EXAMINER FARKAS: Yes. To the extent  
3 they have oral argument to them in the case, that  
4 will be available to them to look at because it will  
5 be in the transcript, but it is not evidence. That's  
6 an opportunity for all the parties to argue about --  
7 to make their statements about the case, whether they  
8 feel the case -- their points of view as to this  
9 Application.

10 MS. DAVIS: Okay. That was my only  
11 question.

12 - - -

13 EXAMINATION

14 By Examiner Fullin:

15 Q. I appreciate that at the beginning of  
16 your testimony we went through just about all the  
17 questions I asked of the earlier witnesses, but I  
18 left it at that time and felt I might come back to  
19 the ones that deal with the condition, the one that  
20 has to do with TV reception. I hope to be brief but  
21 I want to ask some additional questions on that  
22 condition. That's condition 57 of the Stipulation,  
23 which I believe it's Joint Exhibit 1.

24 Who decides whether there has been a  
25 showing of TV or cell phone service degradation

1 adequate to trigger the remedy that's called for in  
2 this condition? From the Staff's point of view I'm  
3 asking. I asked the questions to the Company, but  
4 I'm asking the Staff's perspective what the language  
5 means from the Staff's point of view.

6 A. Personally, I do not know.

7 Q. Can you tell me what steps or procedures  
8 should be followed and by whom, whoever that  
9 decision-maker is, to arrive at the conclusion that  
10 any residents have shown to experience a degradation  
11 of TV and cell phone reception due to facility  
12 operation?

13 A. I do not know.

14 Q. Can you tell me from the Staff's point of  
15 view must there be a degradation to both TV and cell  
16 phone service, or should the language perhaps be  
17 revised to say either TV or cell phone reception?

18 A. Again, I'm not -- I don't disagree with  
19 what you're saying, but I'm not advocating changing  
20 anything without the other parties.

21 Q. Your primary reason for that position  
22 you're taking personally, you know there's other  
23 parties involved and you're hesitant to revise  
24 language that's already been agreed to by other  
25 parties?

1           A.    Yes.

2           Q.    Can you tell me from the Staff's point of  
3 view how long this remedy was intended to extend once  
4 it's been granted?

5           A.    I cannot.

6           Q.    Can you tell me about what level of TV or  
7 cell service the Staff expects would be provided?

8           A.    I cannot.

9           Q.    And can you tell me what level of  
10 degradation the Staff expects must be shown in order  
11 for a remedy to be triggered?

12          A.    I cannot.

13                   EXAMINER FULLIN:  That's all.  Thank you.

14                   EXAMINER FARKAS:  Any redirect?

15                   MR. JONES:  If I could have a minute,  
16 your Honor.

17                   EXAMINER FARKAS:  Yes.

18                           (Discussion off record.)

19                   EXAMINER FARKAS:  Back on the record.

20                           Any redirect?

21                   MR. JONES:  No redirect, your Honor.

22                   EXAMINER FARKAS:  Thank you for your  
23 testimony.

24                   MR. JONES:  At this time, your Honor I  
25 would like to move for the admission of Staff



1 Exhibits 1, 1A, and Staff Exhibit 2.

2 EXAMINER FARKAS: Any objection?

3 Hearing none, they will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 MR. SETTINERI: Your Honor, if  
6 appropriate, we would like to move for admission of  
7 Joint Exhibit 1, which is the Stipulation.

8 MR. JONES: Staff joins and asks that be  
9 admitted.

10 EXAMINER FARKAS: Any objection?

11 MR. SETTINERI: To clarify for the  
12 record, we previously admitted Joint Exhibit 2, which  
13 was the Amended. This is Joint Exhibit 1.

14 EXAMINER FARKAS: Any objection to Joint  
15 Exhibit 1?

16 MR. HEFFNER: I don't know what I'm doing  
17 here. I'm not agreeing to the Stipulation; am I  
18 correct?

19 EXAMINER FARKAS: Yes, you're not a  
20 signatory to the Stipulation.

21 Do you object to the admission of the  
22 Stipulation?

23 MR. HEFFNER: It's clear now. No, I  
24 don't. I have nothing to say about it.

25 EXAMINER FARKAS: Hearing none, it will

1 be admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 (At 1:31 p.m. a lunch recess was taken  
4 until 2:30 p.m.)

5 - - -

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Thursday Afternoon Session,  
October 13, 2011.

- - -

EXAMINER FARKAS: Is Staff resting?

MR. JONES: Yes, your Honor.

MR. COLLIER: May I address the Bench?

EXAMINER FARKAS: Yes.

MR. COLLIER: The statutory intervenors are inclined to waive their closing statements. I just want to indicate that for the record and thank you and the Applicant and the Staff and the other parties for their accommodation of the public officials.

Thank you very much.

EXAMINER FARKAS: Thank you.

MR. SETTINERI: Your Honor, if we can go off the record.

(Discussion off record.)

EXAMINER FARKAS: The next witness would be Mr. Warrington.

MR. WARRINGTON: That's not the order I have, your Honor.

EXAMINER FARKAS: Okay, Mr. Warrington, we will do it in the order we had.

Ms. Rietschlin, you're first.

1 MS. RIETSCHLIN: If I would like to  
2 remove some of my testimony, when would I do it?

3 EXAMINER FARKAS: You can go ahead.

4 MS. RIETSCHLIN: On page 2 I would like  
5 to strike the second paragraph that starts with "Per"  
6 and ends with "effects."

7 EXAMINER FARKAS: Okay.

8 MS. RIETSCHLIN: On page 4, I would like  
9 to strike the paragraph that begins with, "On" and  
10 ends with "it."

11 EXAMINER FARKAS: That whole paragraph?

12 MS. RIETSCHLIN: Yes, please.

13 On page 5 I would like to strike the  
14 paragraph that begins with "Black" and ends with  
15 "farm."

16 EXAMINER FARKAS: That entire paragraph,  
17 okay. Is that it?

18 MS. RIETSCHLIN: Yes.

19 - - -

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

23 DIRECT TESTIMONY

24 EXAMINER FARKAS: Your testimony that was  
25 prepared on September 14, other than the deletions

1 you have made, are there any changes you have to that  
2 testimony?

3 THE WITNESS: I'm not aware of any.

4 EXAMINER FULLIN: Just for the record, if  
5 we were to ask you the same questions, would you give  
6 the answers provided in the testimony as it was  
7 filed?

8 MS. RIETSCHLIN: Yes, sir.

9 EXAMINER FULLIN: And you're now adopting  
10 that testimony as your testimony for purposes of this  
11 hearing today?

12 MS. RIETSCHLIN: Yes, sir.

13 EXAMINER FARKAS: With that you may stand  
14 for cross-examination.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Settineri:

18 Q. Good afternoon, Ms. Rietschlin.

19 A. Hello. How are you?

20 Q. Just a few questions for you. On  
21 page 1 of your testimony, you note that your family  
22 operates a construction business; is that correct?

23 A. Yes, sir, that's correct.

24 Q. What type of construction business is it?

25 A. Underground utility site work, concrete

1 work, grading, excavating.

2 Q. Would that involve work on roads?

3 A. Yes, sir, it does.

4 Q. Does it involve heavy equipment?

5 A. Yes, sir, it does.

6 Q. Is that business maintained out of your  
7 home?

8 A. Yes, it is.

9 Q. Do you maintain heavy equipment there?

10 A. Yes, sir, we do.

11 Q. Do you operate the heavy equipment at  
12 your residence?

13 A. Generally only in a maintenance capacity.

14 Q. Do you use any semi-trucks to move the  
15 equipment?

16 A. Yes, sir, we do.

17 Q. Do you operate those semi-trucks on your  
18 property?

19 A. Yes, sir, we do.

20 Q. Do you consult with property owners  
21 adjacent to the construction area with regard to  
22 noise that may come from your equipment?

23 A. No, we do not.

24 Q. And have you offered your neighbors a  
25 property value guarantee considering that you operate

1 a business on the property?

2 A. No, sir. We lived in our residence  
3 before the neighbors came.

4 Q. In your testimony on page 1, you state  
5 that "My farmer neighbors who are favor of the wind  
6 farm are huge users of brown energy to run grain  
7 dryers, tractors, combines, other farm operations and  
8 homes." Is that correct?

9 A. Yes, sir.

10 Q. Is it fair to say that in your county it  
11 is very common to have operating grain dryers,  
12 tractors and combines?

13 A. Grain dryers only run for a few weeks in  
14 the fall.

15 Q. Do they run at night?

16 A. Some do; some don't. It depends on their  
17 operation.

18 Q. Can you hear them at your residence?

19 A. Sometimes, yes; sometimes, no. It  
20 depends on which way the wind blows.

21 Q. And you have not had any formal training  
22 as a real estate appraiser; is that correct?

23 A. No, sir, I have not.

24 Q. You have no experience working with the  
25 wind industry, correct?

1 A. No, sir, I do not.

2 Q. Am I correct you have no degrees other  
3 than your degree in economics that is referenced on  
4 page 1 of your testimony?

5 A. Yes, sir, that's correct.

6 Q. Are you currently planning to sell the  
7 property where you reside?

8 A. I do not wish to do that.

9 Q. Do you have any plans to sell that  
10 currently?

11 A. It all depends on what happens in the  
12 area.

13 Q. Is it currently listed with a real estate  
14 agent?

15 A. No, sir, it is not.

16 Q. Any contact with a real estate agent?

17 A. No, sir, we have not.

18 Q. At page 2 of your testimony, you state  
19 that "Should I have to relocate both my residence and  
20 business, then the income stream that I generate in  
21 all form of taxes would follow me." Is that correct?

22 A. Yes, sir, I did state that.

23 Q. Do you believe that tax revenues are  
24 important to your county?

25 A. Yes.



1           Q.    Do you believe that tax revenues are  
2 important to your local schools?

3           A.    Well, they wouldn't function without  
4 them.

5           Q.    Would your business be interested in  
6 working on the road improvements that may be required  
7 for this project?

8           A.    It would depend on the nature of the  
9 work.

10          Q.    What type of work would your company be  
11 interested in?

12          A.    When we generally explore the possibility  
13 of bidding on a project, we take many things into  
14 factor. One is the source of the revenue that's  
15 going to pay the project. A second one is the other  
16 work that we have on hand. The third is the  
17 availability of equipment and people.

18          Q.    Would this project have construction  
19 activities that your business would be able to  
20 perform?

21          A.    It should, yes, sir.

22                MR. SETTINERI: Your Honor, we have no  
23 further questions at this time for the witness.

24                EXAMINER FARKAS: Mr. Jones.

25                MR. JONES: No questions, your Honor.

1 EXAMINER FARKAS: Mr. Warrington, any  
 2 questions?

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Warrington:

6 Q. Ms. Rietschlin, do you feel that the wind  
 7 project as designed with the shadow and the noise  
 8 will negatively impact the value of your residence?

9 MR. SETTINERI: Your Honor, I'll object  
 10 to the question. She admitted she is not qualified  
 11 to make real estate appraisals; therefore, that  
 12 question is out of her area of expertise.

13 EXAMINER FARKAS: I'll allow her to  
 14 answer the question based on she is not an expert.

15 A. It's a concern of mine.

16 MR. WARRINGTON: That's my only question.

17 EXAMINER FARKAS: Mr. Price?

18 MR. PRICE: No.

19 EXAMINER FARKAS: Ms. Price?

20 MS. PRICE: No.

21 EXAMINER FARKAS: Ms. Rietschlin -- you  
 22 can't ask yourself questions.

23 Mr. Heffner?

24 MR. HEFFNER: Yes, I do.

25 - - -

## 1 CROSS-EXAMINATION

2 By Mr. Heffner:

3 Q. Are you within the proposed project  
4 boundary?

5 A. Yes, sir, I am.

6 Q. Were you offered a lease or good neighbor  
7 agreement by the Company?

8 A. I was not offered any formal agreements.

9 Q. Okay. Are you familiar with a map that  
10 was contained in the response to the August 1 data  
11 request concerning bedrock geology and public water  
12 system wells?

13 A. Yes, I have looked at that.

14 Q. Does your well appear on that?

15 A. I'm not sure that it does. I've looked  
16 at a number of wells that I know are in my direct  
17 vicinity, and I don't think it is accurate.18 Q. To you personally is your home as  
19 valuable with the presence of an active wind farm as  
20 it is, say, right now?21 MR. SETTINERI: Your Honor, I'll object.  
22 I have been somewhat patient, but it is becoming  
23 friendly cross, just as if on direct testimony.

24 MR. JONES: I would join in the motion.

25 EXAMINER FARKAS: I'll allow it.

1 THE WITNESS: Would you repeat the  
2 question for me?

3 MR. HEFFNER: Could you read it back,  
4 please.

5 (Record read.)

6 A. I don't understand the question.

7 MR. HEFFNER: Can I try it again?

8 EXAMINER FARKAS: Yes.

9 Q. The house's value to you personally, is  
10 it greater or lesser with the addition of a wind  
11 development?

12 A. I'm not sure how to answer that.

13 EXAMINER FARKAS: Okay.

14 MR. HEFFNER: That's good enough.

15 EXAMINER FARKAS: Okay.

16 Q. Last one, are you in favor of this  
17 development going forward?

18 A. I am not.

19 MR. HEFFNER: Thank you. That's all I  
20 have.

21 EXAMINER FARKAS: Mr. Biglin?

22 MR. BIGLIN: No.

23 EXAMINER FARKAS: Ms. Davis?

24 MS. DAVIS: No questions, your Honor.

25 EXAMINER FARKAS: You're excused.

1           With respect to your testimony, which we  
2 will mark as Rietschlin Exhibit 1, do you want to  
3 move to admit it into evidence in the case?

4           MS. RIETSCHLIN: With the deletions?

5           EXAMINER FARKAS: With the deletions?

6           MS. RIETSCHLIN: Yes, sir.

7           (EXHIBIT MARKED FOR IDENTIFICATION.)

8           EXAMINER FARKAS: Any objection?

9           MR. SETTINERI: No, your Honor.

10          MR. JONES: No, your Honor.

11          EXAMINER FARKAS: Hearing none, then it  
12 will admitted.

13          (EXHIBIT ADMITTED INTO EVIDENCE.)

14          EXAMINER FARKAS: Thank you.

15          MS. RIETSCHLIN: Thank you.

16          EXAMINER FARKAS: Now Mr. Warrington.

17          MR. WARRINGTON: Okay.

18          MS. PRICE: Excuse me. If behind our  
19 testimony, if we have added exhibits, do we have to  
20 ask for those also to be entered in?

21          EXAMINER FARKAS: If her testimony  
22 included attachments, that was admitted.

23          MS. PRICE: Automatically?

24          EXAMINER FARKAS: Yes.

25          MS. PRICE: Thank you.

1 EXAMINER FARKAS: There was no motion to  
2 strike any part of it.

3 - - -

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

7 DIRECT TESTIMONY

8 EXAMINER FULLIN: Do you want to identify  
9 the prefiled testimony that you have provided in this  
10 case and have it be marked as an exhibit?

11 MR. WARRINGTON: Yes. The entire  
12 testimony and the appendices, including the three  
13 studies on property values and the sample property  
14 value guarantee. It was a 147-page document.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. SETTINERI: Your Honors, for the  
17 record, we have a motion to strike these exhibits.  
18 It may be helpful to go through them and clarify  
19 Exhibit A, B, C for purposes of the motion and also  
20 make sure we fully understand what are the  
21 attachments to the testimony, please.

22 EXAMINER FARKAS: Okay, thank you.

23 As you sit here today, Mr. Warrington, is  
24 the testimony that you prefiled, do you have any  
25 changes, deletions, subtractions from that?

1 MR. WARRINGTON: No.

2 EXAMINER FARKAS: And if we asked you the  
3 same questions to which this testimony pertains,  
4 would your answers be the same today as they were  
5 when you prepared this?

6 MR. WARRINGTON: Yes, they would.

7 EXAMINER FARKAS: Okay.

8 Mr. Settineri, any questions or motions?

9 MR. SETTINERI: Yes, your Honors. I will  
10 note I have a motion to strike so I will start with  
11 that first.

12 EXAMINER FARKAS: Okay.

13 MR. SETTINERI: It would be helpful prior  
14 to making that motion for Mr. Warrington to simply  
15 identify for the record the attachments to his  
16 testimony.

17 You have in front of you your testimony  
18 in opposition. Following your signature on the  
19 Certificate of Service, is that a copy of a land  
20 grant, Mr. Warrington?

21 MR. WARRINGTON: I believe I have the  
22 Albert Wilson study, Wind Farms, Property Values, and  
23 Rubber Rulers. That's the first in the order. It's  
24 been --

25 EXAMINER FARKAS: Off the record for a

1 second.

2 (Discussion off record.)

3 EXAMINER FARKAS: Back on the record.

4 Mr. Settineri.

5 MR. SETTINERI: Thank you, your Honors.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Settineri:

9 Q. Good afternoon, Mr. Warrington.

10 A. Good afternoon.

11 Q. A few questions for you to start with,  
12 Mr. Warrington. You're not a medical doctor,  
13 correct?

14 A. Oh, absolutely not.

15 Q. You do not have any formal training in  
16 real estate appraisal?

17 A. Certainly not.

18 Q. Let me finish my questions so we don't  
19 confuse the court reporter, please. So you're not a  
20 real estate appraiser?

21 A. No.

22 Q. Have you ever worked in the wind  
23 industry?

24 A. No, sir.

25 Q. Any formal training in epidemiology?



1 A. No.

2 Q. You're not an epidemiologist?

3 A. No.

4 Q. You're not an acoustics engineer,  
5 correct?

6 A. No, sir.

7 MR. SETTINERI: Your Honor, at this point  
8 I do have a number of motions to make to the Bench  
9 regarding some of the testimony as well as  
10 attachments.

11 EXAMINER FARKAS: Okay.

12 MR. SETTINERI: The first motion relates  
13 to portions of Mr. Warrington's testimony. That  
14 would start at page 2, and I will identify the  
15 testimony first and then provide the basis for the  
16 motion.

17 Starting at page 2 of his testimony, from  
18 the word "Included" under the heading Noise and  
19 Health Effects, continuing to the bottom of page 3,  
20 continuing to the bottoming of page 4, we would move  
21 to strike as hearsay.

22 Mr. Warrington has admitted he has no  
23 specialized knowledge, skill, or experience in the  
24 area of noise and health. Instead, what he has done  
25 is copy verbatim portions of an Executive Summary,

1 which is attached to the back of his testimony, and  
2 is presenting that as evidence.

3 That would be inadmissible hearsay, and  
4 move that the identified portions of the testimony be  
5 stricken from his testimony.

6 EXAMINER FARKAS: Okay.

7 Do you want to respond?

8 MR. WARRINGTON: Yes, I would like to  
9 object to that on my own behalf. This document,  
10 these reports, have been offered to assist the Board  
11 in working out this Application as they defend the  
12 residents of the project area and as they work it out  
13 with the developer. These are submitted as an  
14 assistance to the Board, and as with the burden of  
15 proof, let the developer disprove the validity of  
16 this content, not based upon my authorship.

17 EXAMINER FARKAS: And to the extent this  
18 is not your authorship, this is the authorship of  
19 Nina Pierpont; is that correct?

20 MR. WARRINGTON: The health remarks?

21 EXAMINER FARKAS: Portions of the  
22 testimony --

23 MR. WARRINGTON: Yes, the Executive  
24 Summary is instructive for the Board.

25 EXAMINER FARKAS: But they're not your

1 observations; they're Dr. Pierpont's observations.

2 MR. WARRINGTON: That is true. That's  
3 correct.

4 EXAMINER FARKAS: And you're not an  
5 expert in this field.

6 MR. WARRINGTON: Absolutely not.

7 EXAMINER FARKAS: Then this is what we  
8 consider hearsay and not admissible so I will grant  
9 the motion to strike.

10 MR. SETTINERI: Your Honors, in addition  
11 at this time we would move to strike what has been  
12 marked as Exhibit 5, which is titled An Executive  
13 Summary. Exhibit 5 is again material from Nina  
14 Pierpont that is just I believe verbatim,  
15 substantially verbatim, of what has just been  
16 stricken by the prior motion. We move to strike that  
17 as inadmissible hearsay.

18 EXAMINER FARKAS: Mr. Warrington, is this  
19 the information, same information, that was part of  
20 your testimony that I just granted the motion to  
21 strike?

22 MR. WARRINGTON: I think we have an  
23 avenue created --

24 EXAMINER FARKAS: Dr. Pierpont's  
25 observations?

1 MR. WARRINGTON: I think we created a  
2 duplication to submit that exhibit. That would be  
3 the same.

4 EXAMINER FARKAS: It's the same  
5 information?

6 MR. WARRINGTON: Yes. It's included in  
7 my testimony and must have been made a separate  
8 portion. I believe it's a duplicate.

9 EXAMINER FARKAS: Okay. That will be  
10 struck also. I will grant your motion to strike  
11 also.

12 MR. SETTINERI: Your Honors, the next  
13 motion will identify the testimony first. This will  
14 take me a second. Under the heading of Property  
15 Values, through the bottom of that page, which I  
16 believe is page 5, continuing through the phrase  
17 "compensated for hosting the wind turbines" at the  
18 bottom of page 6.

19 EXAMINER FARKAS: Where is that -- oh, I  
20 see it, okay. And you're moving to strike that why?

21 MR. SETTINERI: Your Honors,  
22 Mr. Warrington has admitted he's not a real estate  
23 appraiser, has no specialized skill in real estate  
24 appraisal, nor does he have experience in the wind  
25 industry. This testimony leads to Exhibit 2 of his

1 testimony, which is a paper by Albert Wilson, and the  
2 references in his testimony rely on that.

3 In addition, there is a reference to  
4 Exhibit 3, which is actually testimony from another  
5 proceeding in another state. Exhibit 3, pages 1  
6 through 83, is an entire set of testimony from  
7 another state. That is also referenced at the bottom  
8 of page 5.

9 On page 6 he relies on that to come up  
10 with calculations. That is No. 1 in the Albert  
11 Wilson exhibit, which would be considered hearsay.  
12 Again, Mr. Warrington is not an expert on property  
13 appraisals. Exhibit 3 is inadmissible hearsay. It  
14 is testimony from another person in another  
15 proceeding.

16 And, lastly, his testimony itself is just  
17 summarizing this material as I identified on  
18 pages 5 and 6.

19 EXAMINER FARKAS: Okay.

20 MR. SETTINERI: At this time we move to  
21 strike the identified testimony as well as two  
22 exhibits, Exhibit 2 and 3.

23 EXAMINER FARKAS: So you're moving to  
24 strike all of page 5; is that correct?

25 MR. SETTINERI: Yes, that's correct, your

1 Honor, as it is material outside his expertise.

2 EXAMINER FARKAS: And page 6 from the  
3 "conclusion" to the word "turbines" on page 6?

4 MR. SETTINERI: That is correct.

5 EXAMINER FARKAS: Do you want to respond?

6 MR. WARRINGTON: I object to that because  
7 the developer allowed their -- David Stoner, who has  
8 no real estate background whatsoever, to speak as  
9 expert testimony, so by that same standard, mine  
10 should be allowed.

11 Also the McCann document was used by  
12 permission in telephone conversations. It was freely  
13 used as it was offered on the Internet by his  
14 personal approval.

15 MR. SETTINERI: Your Honor, for  
16 efficiency purposes, I will combine this also with  
17 the next motion, which is additional testimony --

18 EXAMINER FARKAS: Let me stay with this.  
19 I'm going through it.

20 I will grant a portion of your motion to  
21 strike. I will strike the portion of the testimony  
22 on page 5 that begins about the middle of the page  
23 starting with the word "Please consider the  
24 critique," starting there to the word "turbines," and  
25 then his testimony begins, "This would be another

1 point," that will be allowed.

2 MR. SETTINERI: Your Honors, as part of  
3 that motion I would also like to move to strike the  
4 related exhibits, Exhibit 2, which is the paper by  
5 Albert Wilson; in addition, the McCann testimony in  
6 its entirety, which is Exhibit 3. Again, we move to  
7 strike these exhibits as hearsay in that  
8 Mr. Warrington is not an expert.

9 EXAMINER FARKAS: And Mr. Wilson and  
10 Mr. McCann are not present in the hearing.

11 MR. SETTINERI: That's correct.

12 EXAMINER FARKAS: Do you want to respond  
13 to that?

14 MR. WARRINGTON: Well, I object. As I've  
15 commented in my objection to the Application before  
16 it was accepted, that is also a highly flawed  
17 document filled with very sketchy remarks that trail  
18 off into, you know, into endless, meaningless,  
19 unfounded assertions.

20 I object to my presentation being  
21 dismissed while so much leeway was allowed to the  
22 developer in the report we see here.

23 EXAMINER FARKAS: Okay.

24 I will grant your motion to strike the  
25 two exhibits.

1 MR. SETTINERI: Your Honors, one more  
2 motion -- maybe a couple more. The next part of the  
3 testimony is page 7, starting with word  
4 "Mr. McCann's" continuing through page 8 and ending  
5 with the phrase "for the purpose of this agreement"  
6 in the middle of page 9 prior to the words "Also  
7 please see."

8 EXAMINER FARKAS: What was the last part  
9 you said?

10 MR. SETTINERI: Ends the middle of page 9  
11 "for the purpose of this agreement."

12 Your Honor, the basis of the motion is  
13 hearsay. Mr. Warrington is not an expert.

14 MR. WARRINGTON: This is information  
15 submitted for the Board's assistance, an opposing  
16 view to those given by their nonexpert witness, Dave  
17 Stoner, who say there are no impacts on property  
18 values whatsoever.

19 This is to add context to the Board's  
20 decision in contrast to the highly one-sided and what  
21 I find to be quite unscientific testimony of their  
22 nonexpert witness with no property value expertise.

23 EXAMINER FARKAS: I will grant your  
24 motion to strike in part. On page 7 beginning with  
25 the letter "A" and "then assume that no wind energy



1 center," that line, that sentence I would strike that  
2 to the end of that page, and then to all of page 8  
3 and then page 9 ending with "for the purpose of this  
4 agreement."

5 But the portion on page 7 that would  
6 remain would be from the top of the page to that  
7 portion that says "illustrated portion of contract as  
8 shown."

9 MR. SETTINERI: To be clear for the  
10 record, the reference to Mr. McCann in that paragraph  
11 would remain in?

12 EXAMINER FARKAS: Yes, the reference to  
13 the development I'm not considering hearsay.

14 MR. SETTINERI: So I understand, the  
15 motion was granted through page 9; is that correct?

16 EXAMINER FARKAS: Through the middle of  
17 the page on page 9 where it ends "for the purpose of  
18 this agreement, that would be struck, from the top of  
19 that page to those words.

20 MR. SETTINERI: The last motion we have,  
21 your Honors, with regard to Mr. Warrington's  
22 testimony, is his reference and reliance on  
23 Exhibit 4, which is a document entitled Values in the  
24 Wind. He summarizes this report in his testimony.

25 Mr. Warrington again is not an expert.

1 Experts may look to publications, but he is not an  
2 expert. Moreover, he has attached a copy of this  
3 document to his testimony. We would move that not  
4 only the summary in his testimony be stricken as  
5 hearsay, but also the attachment be stricken.

6 EXAMINER FARKAS: That on page 9?

7 MR. SETTINERI: I'm sorry, that is on  
8 page 9 starting with the phrase "Also please see"  
9 through the end of that paragraph ending with the  
10 word "facilities."

11 EXAMINER FARKAS: Mr. Warrington, do you  
12 want to respond?

13 MR. WARRINGTON: Well, I disagree with  
14 his assertion these words on these pages are  
15 valueless in the procedure insomuch as the expert  
16 testimony of Dr. Mundt was a far less professionally  
17 prepared document. If there's going to be a standard  
18 used against my every word, then that should apply,  
19 and doubly so to the witnesses from the developer.

20 EXAMINER FARKAS: Thank you.

21 Did you move to strike Exhibit 4 also?

22 MR. SETTINERI: Yes, your Honor.

23 EXAMINER FARKAS: I grant the motion to  
24 strike Exhibit 4 and the portion on page 9 of your  
25 motion to strike, I will strike the sentence that

1 begins "Page 37 of the report" and that entire  
 2 sentence that ends with "loss of real estate value."

3 MR. SETTINERI: Just to I make sure I  
 4 have it clear, the sentence "Page 37" starting with  
 5 the phrase "Page 37" through the end of that sentence  
 6 "loss of real estate value" is stricken?

7 EXAMINER FARKAS: Yes.

8 MR. SETTINERI: Thank you.

9 Q. (By Mr. Settineri) Mr. Warrington, is it  
 10 fair to say you don't want the wind turbines built in  
 11 your county?

12 A. That is absolutely true.

13 MR. SETTINERI: No further questions for  
 14 this witness.

15 EXAMINER FARKAS: Staff, any questions?

16 MR. JONES: No questions, your Honor.

17 EXAMINER FARKAS: Ms. Rietschlin?

18 MS. RIETSCHLIN: No, I do not.

19 EXAMINER FARKAS: Mr. Price?

20 MR. PRICE: No.

21 EXAMINER FARKAS: Ms. Price?

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Price:

25 Q. Just a couple. Mr. Warrington, how many

1 years have you lived in the home where you're at?

2 A. 48.

3 Q. You were born and raised in this home?

4 A. I lived in Sulfur Springs for two years.  
5 I'm 51 now.

6 Q. So this home was previously your  
7 parents'?

8 A. Yes.

9 Q. How many acres all together?

10 A. There's 96 acres right now.

11 Q. With a lake?

12 A. Yes. It was five acres larger prior to  
13 1980.

14 Q. What is your closest neighbor to your  
15 property?

16 A. Ben Campbell is probably 1,000 feet,  
17 1,200 feet. The other neighbors are considerably  
18 further away.

19 Q. Is that from the property line? How much  
20 from your home?

21 A. I don't know precisely. I think he's  
22 every bit of 1,000 feet, maybe 1,500 feet. I really  
23 don't know the distance precisely. It's a very  
24 remote property with a view in all directions. It's  
25 very difficult to see any neighbor.

1 MS. PRICE: Thank you.

2 EXAMINER FARKAS: Mr. Heffner?

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Heffner:

6 Q. Pardon me if I stand, John.

7 A. That's fine.

8 Q. My job I don't sit in a chair very often.

9 Mr. Warrington, were you offered a  
10 contract by a wind developer?

11 A. Yes, I was.

12 Q. What was the name of the wind farm  
13 developer?

14 A. That was the Gary Energetics Company that  
15 preceded.

16 Q. Were you offered a lease from any other  
17 wind developer?

18 A. No, I wasn't offered any in a separate  
19 offer or competitive offer on wind development.

20 Q. Do you own approximately 60 acres of  
21 tillable ground?

22 A. Yeah, that's correct.

23 Q. Do you also own approximately 30 acres of  
24 overgrown former pasture ground?

25 A. Yeah. We had in the '60s when I was a

1 boy, we raised cattle, and then we stopped doing  
2 that, and that's grown up. We planted a couple  
3 hundred trees there. Now, it's grown up in willows  
4 and locusts and walnut trees and a lot of multiflora  
5 rose.

6 So this has kind of become somewhat of a  
7 hunter's paradise where people virtually beg me to go  
8 and turkey hunt and deer hunt and so forth.

9 Q. Besides that, do you also own about five  
10 acres of woods?

11 A. Yes, I do. It sits in the back of the  
12 property.

13 Q. When was the last time it was  
14 commercially harvested?

15 A. We took out one tree in the late '70s.  
16 Before that, that's been not even really firewood  
17 taken out of this woods since the previous owners.

18 Q. How would you characterize the property  
19 generally, other than what you said, it's a hunter's  
20 paradise?

21 MR. SETTINERI: At this time I have to  
22 object to friendly cross as just direct testimony.

23 EXAMINER FARKAS: I'll allow it.

24 A. Well, part of my great concern with  
25 having the wind farm and the shadow and noise, while

1 maybe the house itself doesn't really represent the  
2 bulk of the value, it's the fact there's the two-acre  
3 lake there and a 20-acre undisturbed habitat, and  
4 there's a six-acre yard and a five-acre woods. If I  
5 would be forced from the residential structure based  
6 upon its value, it would be -- it's unique in that  
7 way that it's difficult to replace something like  
8 this, let alone the sentimental value.

9           Also what's unique about it, I don't know  
10 these things, also I'm not a certified acoustic  
11 analyst, but it does kind of sit down in a basin, and  
12 I've read research where if you are in a lowered  
13 area, that the noise from wind turbines has a way  
14 even at 3,500 feet of dropping into this basin and  
15 causing a greater issue. Whether that is true in my  
16 case, I have yet to see.

17           MR. SETTINERI: Your Honor, I would move  
18 to strike all testimony inadmissible. This witness  
19 admitted he's not an acoustic engineer, not an expert  
20 on noise, but yet he just testified as to noise and  
21 given his opinion. I move to strike everything from  
22 "sits in a basin" to the end of the answer.

23           EXAMINER FARKAS: I will deny the motion  
24 to strike, noting for the record that he's not an  
25 engineer.

1 MR. SETTINERI: Thank you.

2 Q. Have you observed owls on your property?

3 A. Yes, Great Horned Owls. I believe there  
4 are little Screech Owls I've actually caught with my  
5 bare hands twice.

6 Q. Have you observed bats?

7 A. We have an incredible number of bats.  
8 Last year I think we needed to patch some holes, but  
9 we observed 29 bats fly out of a hole in the eaves  
10 from the attic.

11 There's typically observed 14 bats flying  
12 over the pond every night, but I have noticed this  
13 year there seemed to be a marked decline. I don't  
14 know why that is, and I'm not a bat expert, but there  
15 has been a considerable decline in the population. I  
16 maybe see three or four now.

17 Q. Have you observed any raptors?

18 A. Raptors I believe on both sides of the  
19 property. Actually, up Lost Creek Road there's one  
20 of the oldest, largest Red-tailed Hawks, and also on  
21 the east property line, which I also own a portion  
22 of, there's a nest of a very large Red-tailed Hawks,  
23 and breeding pairs are observed in this area quite  
24 regularly. In fact, they eat ground hogs I shoot  
25 right off the edge of the yard.



1 Q. Do you observe any herons?

2 A. There's a Blue Heron on this pond  
3 constantly. I am not real happy with him because he  
4 wounds and kills a lot of the bats that are on the  
5 lake, but he's pretty much a constant presence.

6 Q. Was your property, to your knowledge, a  
7 part of any environmental surveys done by the  
8 Applicant or their contractors?

9 A. I have not been notified or made aware  
10 that anything has ever been investigated on this  
11 property, and part of what you've asked, is there are  
12 what I might consider wetlands, areas that are filled  
13 full of cattails in the pasture field in two separate  
14 areas.

15 Q. Have you held discussions with any  
16 contractors about the potential building of a house  
17 on any other portion of your property?

18 A. I have had just preliminary discussions  
19 about the possibility. There's several tracts of  
20 land that could, should I ever want that option.

21 Q. For yourself?

22 A. To put houses up, uh-huh.

23 Q. Are you in favor of this development?

24 A. No, I'm not in favor of the wind farm  
25 development in Crawford County and Richland County in

1 any fashion, economic, jobs, taxes, property value,  
2 health issues, or for the good of the nation's  
3 economy, whatever. I am adamantly opposed.

4 MR. HEFFNER: Thank you, Mr. Warrington.

5 THE WITNESS: Thank you.

6 EXAMINER FARKAS: Mr. Biglin, any  
7 questions?

8 MR. BIGLIN: No.

9 EXAMINER FARKAS: Ms. Davis?

10 MS. DAVIS: No.

11 - - -

12 REDIRECT TESTIMONY

13 EXAMINER FARKAS: Do you have anything to  
14 add to your testimony that was covered in the  
15 cross-examination?

16 THE WITNESS: Well, I'd like to add I  
17 have not approved of any shadow flicker that would  
18 come on my property, as much of my stricken testimony  
19 alluded to.

20 I think this is going to be a detriment  
21 to the salability and current value of the property  
22 to have a noise louder than the fans in this room  
23 pulsating constantly and a shadow flicker sweeping  
24 across the 20 areas of the property that I occupy  
25 mostly. These are the issues that I have.

1 EXAMINER FARKAS: Okay. Thank you for  
2 your testimony.

3 You are wishing now that your testimony,  
4 other than the portions of your testimony that were  
5 stricken, you want the other portions admitted into  
6 the record?

7 MR. WARRINGTON: Yes, I do.

8 EXAMINER FARKAS: Any objection?

9 Hearing none it will admitted.

10 Thank you.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER FARKAS: Mr. Price.

13 - - -

14 ALAN PRICE,

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

17 DIRECT TESTIMONY

18 EXAMINER FARKAS: We will mark your  
19 testimony as Price Exhibit 1.

20 EXAMINER FULLIN: The prefiled testimony  
21 filed on September 19.

22 EXAMINER FARKAS: That includes your  
23 numbered Exhibits A through F, I believe.

24 MR. PRICE: Yes.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER FARKAS: And if I asked you the  
 2 questions relating to the testimony that are provided  
 3 in this document that is your prefiled testimony,  
 4 would your answers be the same as this shows and as  
 5 was filed on September 19, 2001?

6 MR. PRICE: Yes, it would.

7 EXAMINER FARKAS: Do you have any changes  
 8 or deletions to your testimony?

9 MR. PRICE: No, I don't.

10 EXAMINER FARKAS: Okay.

11 Mr. Settineri, any questions?

12 MR. SETTINERI: Yes, I do, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Settineri:

16 Q. Good afternoon, Mr. Price.

17 A. How do you do?

18 Q. Do you know under Ohio law there are  
 19 statutes and rules regarding conflict of interest  
 20 regarding public officials?

21 A. Yes, I do. I think that's in the Ohio  
 22 Revised Code, volume 4, I think if I remember right.

23 Q. Would you expect the public officials  
 24 would comply with those rules?

25 A. I most certainly would.

1 Q. Exhibit A to your testimony is, I  
2 believe -- let's take a look at that. Do you have a  
3 copy?

4 A. Yes, I do.

5 Q. Let's turn to that, please. Now, this  
6 Exhibit A is entitled Wind Energy Lease Agreement and  
7 this is an unsigned lease. Am I correct?

8 A. Yes, it is.

9 Q. How did you obtain this document?

10 A. How did I attain it? Somebody let me  
11 look at it.

12 Q. Who was that?

13 A. I don't really remember the person.

14 Q. Do you believe that this document is a  
15 representative lease agreement for this project?

16 A. The best I could find.

17 Q. Let's take a look at section 5.4.2 of the  
18 document.

19 A. 5.2?

20 Q. 5.4.2.

21 EXAMINER FARKAS: Page 6?

22 MR. SETTINERI: Page 6 of Exhibit A.

23 A. Okay.

24 Q. What I'm trying to do here, Mr. Price,  
25 I'd like -- I want to try to calculate under the

1 agreement what the minimum payment would be for a  
2 2-megawatt turbine.

3 A. Okay.

4 Q. Let's start with this paragraph. "If,  
5 for any Commercial Operation Year (or portion  
6 thereof), the Operating Fees required pursuant to  
7 Section 5.4.1 are less than the Annual Alternative  
8 Rent, then Lessee shall pay Landowner the Annual  
9 Alternative Rent stated in Section 1.1 in lieu of any  
10 Operating Fees, notwithstanding anything to the  
11 contrary in this Agreement."

12 Now, you see that language there?

13 A. Uh-huh.

14 Q. Let's turn to section 1.

15 A. 1, what page is that?

16 Q. That page 1, the very beginning,  
17 definitions.

18 A. Okay.

19 Q. There it has the definition of Annual  
20 Alternative Rent; is that correct?

21 A. Uh-huh.

22 Q. The definition states, "The greater of  
23 (a) Eight Dollars (\$8.00) per acre of the Property  
24 per Commercial Operation Year, or (b) Two Thousand  
25 Five Hundred Dollars (\$2,500.00) for each MW of rated

1 nameplate capacity for each wind turbine installed on  
2 the Property per Commercial Operation Year."

3 Do you see that language?

4 A. Yes, I do.

5 Q. Assume for me a property owner, to make  
6 it easy, of one acre has one turbine on his property,  
7 and that turbine is a one megawatt turbine. Am I  
8 correct that his minimum annual payment for that one  
9 megawatt turbine would be \$2,500?

10 A. Well, after this week, I'm not too sure.  
11 You guys broke this stuff all down.

12 Q. I'm looking at the definition, Mr. Price.  
13 It says you get the greater of \$8 per acre. One  
14 acre, that would be \$8, or \$2,500 for each megawatt.

15 EXAMINER FARKAS: Before you answer the  
16 question, I think we have an objection.

17 MR. HEFFNER: I've an inquiry. Is  
18 anybody allowed to object?

19 EXAMINER FARKAS: You can object anytime  
20 you like.

21 MR. HEFFNER: I would like to object to  
22 this line of questioning. You can't put a turbine on  
23 one acre of ground. It's preposterous.

24 EXAMINER FARKAS: He's making a  
25 hypothetical.

1           MR. HEFFNER: A hypothetical generally  
2 fits within the realm of doability. Rarely does a  
3 hypothetical --

4           MR. SETTINERI: I was posing a  
5 hypothetical to make the math easy.

6           MR. HEFFNER: Is it his purpose to sit up  
7 here and do math and calculate it for him? Is he an  
8 expert on mathematics? Is he an accountant? What is  
9 the relevance? Could you get to the part where this  
10 is relevant and ask the question?

11           Q. (By Mr. Settineri) All I wanted to know,  
12 Mr. Price, would you agree that under this document,  
13 given the hypothetical I gave you, where you have  
14 very little acreage, you have a 2-megawatt turbine,  
15 do you draw \$5,000 in rent? That's all I'm asking.

16           A. I'd agree with you, but I don't think  
17 that's right.

18           Q. Okay.

19           A. After this week, I don't think it's  
20 right.

21           Q. In regard to Exhibit F of your testimony,  
22 that would be in the back, you have two documents  
23 that make up Exhibit F, and they're entitled Crawford  
24 County Sheriff's Office.

25           A. I got it.



1 Q. First of all, where did you obtain these  
2 documents?

3 A. From the Crawford County Sheriff's  
4 Office.

5 Q. And am I correct these documents  
6 represent calls from your residence by you and  
7 Ms. Price regarding a report of trespassers on your  
8 property?

9 A. Yes, I do.

10 Q. And am I right the calls were made in  
11 December of 2009?

12 A. Yes.

13 Q. Is that when Gary Energetics was  
14 developing the project?

15 A. Yes.

16 MR. SETTINERI: No further questions,  
17 your Honor.

18 EXAMINER FARKAS: Does Staff have any  
19 questions?

20 MR. JONES: No questions, your Honor.

21 EXAMINER FARKAS: Mr. Warrington, do you  
22 have any questions?

23 MR. WARRINGTON: Yes, I do have a  
24 question.

25 - - -

## 1 CROSS-EXAMINATION

2 By Mr. Warrington:

3 Q. Do you believe that a property guarantee,  
4 a property value guarantee, should be imposed into  
5 this mitigation/approval process to protect your home  
6 from negative impacts of a wind farm development?7 MR. SETTINERI: Your Honor, we move  
8 that's outside the scope of his direct testimony.  
9 Also he's not an expert on property values.

10 EXAMINER FARKAS: I'll allow it.

11 A. Yes, I do.

12 Q. Do you have concerns that the presence of  
13 the wind farm development is going to adversely  
14 impact the peaceable enjoyment of your private  
15 property?16 A. Yes, because it's awful quiet at my  
17 house.18 MR. WARRINGTON: That's all the questions  
19 I have.20 EXAMINER FARKAS: Ms. Price, this is the  
21 opportunity you have been waiting for. You can ask  
22 the witness any question you like.

23 MS. PRICE: Still love me?

24 THE WITNESS: Yes, I do.

25 MS. PRICE: That's it.

1                   EXAMINER FARKAS: Ms. Rietschlin, any  
2 questions?

3                   MS. RIETSCHLIN: No, I do not.

4                   EXAMINER FARKAS: Mr. Heffner, any  
5 questions?

6                   MR. HEFFNER: Yes, I do.

7   - - -

8   CROSS-EXAMINATION

9 By Mr. Heffner:

10                  Q. Hello, Mr. Price.

11                  A. Good afternoon.

12                  Q. Did you ask questions concerning the  
13 proposed project, did you ask those questions to any  
14 township officials?

15                  A. Yes. I attended a couple of meetings and  
16 never got the answers that I wanted.

17                  Q. That kind of answers the next question.  
18 I'll ask it anyway. Do you feel you have received  
19 adequate answers to your questions?

20                  A. No, I didn't.

21                  Q. You believe there may be a conflict of  
22 interest?

23                  A. Yes, I do.

24                  Q. Is there anything that you are aware in  
25 the Ohio Revised Code that would support your belief?

1 A. Yes, there is.

2 Q. Do you have a copy of that? Is it a part  
3 of your testimony?

4 A. No, it isn't, but I do have a copy of it  
5 if you want to see it.

6 Q. Are you in favor of this development?

7 A. No, I'm not, or I wouldn't be here.

8 MR. HEFFNER: Thank you, Mr. Price.

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

11 MR. BIGLIN: No questions.

12 EXAMINER FARKAS: Ms. Davis?

13 MS. DAVIS: No questions.

14 EXAMINER FARKAS: Do you have anything to  
15 add based on your cross-examination?

16 THE WITNESS: Can I add that Revised Code  
17 paper for you guys to my testimony?

18 EXAMINER FARKAS: You can cite it. I  
19 will take administrative notice. Do you know what  
20 section it is?

21 THE WITNESS: I have a copy of it. Can I  
22 just give you a copy of it?

23 EXAMINER FARKAS: You can give us a copy.  
24 I would rather just take administrative notice of  
25 that section. Do you know what section it is,

1 Ms. Price.

2 MS. PRICE: I think it is volume 14,  
3 page 340, 341.

4 MR. HEFFNER: 513?

5 MS. PRICE: 511, Interest in township  
6 contract prohibited. I don't know which one he's  
7 referring to.

8 EXAMINER FARKAS: Off the record for a  
9 second.

10 (Discussion off the record.)

11 EXAMINER FARKAS: I will take  
12 administrative notice of Ohio Revised Code  
13 section 511.13.

14 At this point do you want to move your  
15 testimony, Price Exhibit 1, be admitted into the  
16 record?

17 MR. PRICE: Yes, I do.

18 EXAMINER FARKAS: Is there any objection  
19 to Price Exhibit 1?

20 Hearing no objection, it will be  
21 admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER FARKAS: Thank you, for your  
24 testimony.

25 Ms. Davis.

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KAREL DAVIS,

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

DIRECT TESTIMONY

EXAMINER FARKAS: Ms. Davis, there is  
attached to your testimony you have three exhibits.

MS. DAVIS: Yes.

EXAMINER FARKAS: Do they purport to be  
photographs?

MS. DAVIS: Yes.

EXAMINER FARKAS: We will mark your  
testimony as Davis Exhibit 1.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER FARKAS: This is the prefiled  
testimony that was filed on September 14, 2011 with  
the photo attached.

THE WITNESS: Yes.

EXAMINER FARKAS: If I asked you the same  
questions that cover the information that you've  
provided, information with respect to your testimony  
today or when you filed it, would your answers be the  
same?

MS. DAVIS: Yes, they would.

EXAMINER FARKAS: Just for the record,

1 can you identify for the record the three exhibits,  
2 what they are?

3 MS. DAVIS: I've given the court reporter  
4 three good photographs in case those didn't come  
5 through.

6 EXAMINER FARKAS: Can you describe what  
7 those are?

8 MS. DAVIS: Exhibit A is two bald eagles.  
9 Exhibit B is a zoomed-in blowup of the same bald  
10 eagles. Exhibit C is a picture Macho Springs,  
11 another wind farm in New Mexico.

12 EXAMINER FARKAS: Did you take these  
13 pictures?

14 MS. DAVIS: I took the bald eagle  
15 pictures. The picture from Macho Springs came from  
16 the Internet.

17 EXAMINER FARKAS: Do you know who the  
18 individuals are in Exhibit C?

19 MS. DAVIS: Not specific.

20 EXAMINER FARKAS: What was the purpose of  
21 that picture?

22 MS. DAVIS: That is a picture of another  
23 wind farm that Element Power has constructed.

24 EXAMINER FARKAS: And you took the  
25 picture to the show scale --

1 MS. DAVIS: I did not take the picture.

2 EXAMINER FARKAS: The reason you have  
3 attached the picture is to show the scale or just to  
4 show other turbines?

5 MS. DAVIS: The picture is to show the  
6 relative population areas in other wind farms as  
7 compared to Richland/Crawford County.

8 EXAMINER FARKAS: And Exhibit A and B,  
9 where are -- where was it taken?

10 MS. DAVIS: This was taken on Champion  
11 Road about a mile from our house, and this particular  
12 spot will be in the center of an array of three  
13 proposed turbines.

14 EXAMINER FULLIN: Is Exhibit B actually  
15 the same photograph as Exhibit A, just a blowup, same  
16 photograph?

17 MS. DAVIS: Yes. Yes, correct.

18 EXAMINER FARKAS: Mr. Settineri, any  
19 questions?

20 MR. SETTINERI: Yes, your Honor. The  
21 copies of the picture is black and white, the witness  
22 mentioned the court reporter has better copies. May  
23 I approach?

24 EXAMINER FARKAS: Yes.

25 MR. SETTINERI: Your Honors, I would like



1 to make a brief motion to strike the picture which I  
2 believe has been marked as Exhibit C. Ms. Davis  
3 noted she did not take this picture. She printed it  
4 off the Internet and is using it as representative of  
5 a wind farm across the country compared to the  
6 project. Given the lack of authenticity, use of this  
7 exhibit, we believe it should be stricken from the  
8 record.

9 EXAMINER FARKAS: Do you have any  
10 response to that?

11 MS. DAVIS: My only response would be the  
12 picture came from the Governor of New Mexico's  
13 website, and he has that on his website showing this  
14 project.

15 EXAMINER FARKAS: I'm going to deny your  
16 motion to strike.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Settineri:

20 Q. Good afternoon Ms. Davis. Just a few  
21 short questions for you.

22 Your testimony you stated you received a  
23 BS in pharmacy from The Ohio State University in  
24 1969; is that correct?

25 A. Yes.

1 Q. Did you work as a pharmacist?

2 A. Yes.

3 Q. How long did you work as a pharmacist?

4 A. Up until six years ago.

5 Q. Okay. Am I correct your degree in  
6 pharmacy is the only post high school degree?

7 A. Yes.

8 Q. You're not a medical doctor?

9 A. I'm not an MD.

10 Q. You're not an epidemiologist?

11 A. No.

12 Q. You do not work in the wind industry?

13 A. Nope.

14 Q. Do you have any experience or training in  
15 acoustics?

16 A. No.

17 Q. Have you performed any calculations in  
18 regards to the risk of ice throw from turbines?

19 A. No.

20 Q. At page 5 of your testimony, third  
21 paragraph from the top, at the bottom of the  
22 paragraph you state, "Perhaps Ohio is just too  
23 densely populated for this kind of energy  
24 production." Is that correct? Do you see that  
25 statement?

1           A.    Yes.

2           Q.    When you say "this kind of energy  
3 production," are you referring to wind energy?

4           A.    Wind energy.

5           Q.    Is it your position that wind turbines  
6 should not be constructed in Ohio?

7           A.    I would say not a blanket statement such  
8 as you just gave, but in an area that's populated  
9 like Richland and Crawford County, I would say yes,  
10 it should not be there.

11           MR. SETTINERI:  No further questions for  
12 the witness.

13           EXAMINER FARKAS:  Staff, any questions?

14           MR. JONES:  No questions, your Honor.

15           EXAMINER FARKAS:  Mr. Warrington, any  
16 questions?

17           MR. WARRINGTON:  No questions.

18           EXAMINER FARKAS:  Mr. Price?

19           MR. PRICE:  No.

20           EXAMINER FARKAS:  Ms. Price?

21           MS. PRICE:  No.

22           EXAMINER FARKAS:  Ms. Rietschlin?

23           MS. RIETSCHLIN:  No, I do not.

24           EXAMINER FARKAS:  Mr. Heffner?

25           MR. HEFFNER:  Yes, I do.

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EXAMINER FARKAS: Okay.

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CROSS-EXAMINATION

By Mr. Heffner:

Q. Hello, Ms. Davis.

A. Hello, Mr. Heffner.

Q. And is your residence inside the project area?

A. Yes, we are within the boundary.

Q. Were you offered a lease?

A. No.

Q. How would you describe your property?

A. I have six acres of mostly wooded land with -- surrounded on two sides by farmland and also across the road, so on three sides I have farmland.

Q. Would you describe that woods as recent growth?

A. No. It's a mature woods with some swampy areas. To the south of our woods is another woods. We're up against another woods.

Q. Do you have any large trees?

A. We have a lot of very large trees.

Q. Did you observe anyone on your property from Applicant or from Energy and Environment doing studies?

1           A.     There were two young men who said they  
2 were doing bird studies. They did not identify  
3 themselves as being from E&E. There was no marking  
4 on their car, no marking on their shirts or anything.  
5 But when I asked them what they were doing, they  
6 merely said, "We're doing bird studies."

7           Q.     Have you visited an industrial wind  
8 generation facility?

9           A.     Yes. We've traveled around the country  
10 and have visited several wind farms.

11          Q.     Were they the modern kind of facilities  
12 or were they, you know, 20 years old?

13          A.     No. They were recent facilities within  
14 the last, I'd say, three or four years.

15          Q.     Were any of those under construction at  
16 the time?

17          A.     Yes. There were some up and running  
18 projects and projects being constructed next to them,  
19 and we were told that they were signing on more  
20 leases even further around the ones that were already  
21 there.

22          Q.     Are you in favor of this wind  
23 development?

24          A.     Not really.

25                 MR. HEFFNER: Thank you.

1 THE WITNESS: You're welcome.

2 EXAMINER FARKAS: Mr. Biglin?

3 MR. BIGLIN: No questions.

4 EXAMINER FARKAS: Okay. Do you have  
5 anything to add to your testimony based on what was  
6 asked of you on cross-examination?

7 MS. DAVIS: No, I do not.

8 EXAMINER FARKAS: And you're requesting  
9 that your Exhibit 1 be admitted into the record?

10 MS. DAVIS: Yes, please.

11 EXAMINER FARKAS: Any objection to Davis  
12 Exhibit 1?

13 MR. SETTINERI: No, your Honors.

14 EXAMINER FARKAS: It will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER FARKAS: Thank you.

17 Off the record for a second.

18 (Discussion off record.)

19 EXAMINER FARKAS: Back on the record.

20 - - -

21 BRETT A. HEFFNER,

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

24 DIRECT TESTIMONY

25 EXAMINER FARKAS: We have identified your

1 testimony as the testimony received on September 19,  
2 2011, as Heffner Exhibit 1, and what you filed on  
3 October 3, 2011 as Heffner Exhibit 2; is that  
4 correct?

5 MR. HEFFNER: Yes, sir.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 EXAMINER FARKAS: If I asked you  
8 questions involved in the information you provided  
9 here today on those dates, would your answers be the  
10 same today?

11 MR. HEFFNER: Yes, they would.

12 EXAMINER FARKAS: Do you have corrections  
13 or deletions to your testimony?

14 MR. HEFFNER: No.

15 EXAMINER FARKAS: Mr. Settineri, any  
16 questions?

17 MR. SETTINERI: Yes, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Settineri:

21 Q. Good afternoon, Mr. Heffner.

22 MR. SETTINERI: Your Honors, I would  
23 start with a motion to strike certain paragraphs of  
24 Exhibit 1. That was the testimony filed  
25 September 19, and the basis for this is the

1 paragraphs I cite to are irrelevant and inadmissible  
2 starting with paragraph 24, which is page 7.

3 This paragraph appears to be an objection  
4 to the Board granting an extension of the time ruling  
5 in the prehearing conference.

6 Paragraph 25 is a complaint regarding the  
7 time set for filing the list of issues, which time is  
8 past.

9 Paragraph 29 appears to be a request to  
10 exclude the Farm Bureau from participating in this  
11 proceeding.

12 Given the nature of these paragraphs, we  
13 request they be stricken from Mr. Heffner's direct  
14 testimony as inadmissible and irrelevant.

15 EXAMINER FARKAS: Let me look at them  
16 first and then I will give you a chance to respond.

17 MR. HEFFNER: Okay.

18 EXAMINER FARKAS: I will deny your motion  
19 to strike.

20 All right. Go ahead. Do you have  
21 questions?

22 MR. SETTINERI: Just a couple questions.

23 Q. (By Mr. Settineri) Mr. Heffner, do you  
24 have a copy of the Staff Report with you?

25 A. I do not. If you don't mind, I'd like to



1 get my copy, my markup.

2 I have a copy here.

3 Q. If you could turn to page 9, which is the  
4 map.

5 EXAMINER FARKAS: What page, page 9?

6 MR. SETTINERI: Page 9 of the Staff  
7 Report, your Honor.

8 A. Does page 9 have a number on it  
9 somewhere?

10 Q. It is the page immediately following  
11 page 8 titled Overview Map. Do you have that in  
12 front of you?

13 A. I do.

14 Q. Can you identify for the record where you  
15 reside with regards to the boundary on the eastern  
16 side?

17 MR. HEFFNER: I'm without my glasses. I  
18 mean, maybe even with my glasses I wouldn't be able  
19 to make heads or tails of this map.

20 Q. Do you have glasses with you?

21 A. I do not. I do not usually wear glasses  
22 except when doing very fine work.

23 Q. How far outside the boundary do you live?

24 A. You know, until today, I was very unclear  
25 about what that project boundary was so I guess I

1 couldn't answer that.

2 MR. SETTINERI: That's all my questions.

3 EXAMINER FARKAS: Staff, any questions?

4 MR. JONES: No questions.

5 EXAMINER FARKAS: Mr. Warrington,  
6 questions?

7 MR. WARRINGTON: I have no questions.

8 EXAMINER FARKAS: Mr. Price?

9 MR. PRICE: No.

10 EXAMINER FARKAS: Ms. Price?

11 MS. PRICE: No questions.

12 EXAMINER FARKAS: Ms. Rietschlin?

13 MS. RIETSCHLIN: No, I do not.

14 EXAMINER FARKAS: Mr. Biglin.

15 MR. BIGLIN: Yes, Your Honor, I have  
16 some.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Biglin:

20 Q. Mr. Heffner, are you familiar with the  
21 bridge project that was referred to in the attachment  
22 to Mr. Mawhorr's testimony previously?

23 A. Is that the one that I questioned the  
24 engineer and the commissioners about that had a  
25 comparison between the -- yes, I am. I'm quite

1 familiar with it. As a matter of fact, when I walk  
2 out to get the mail, I can look down and see that  
3 bridge in progress, and I watched it with great  
4 interest. Being a person who has built bridges  
5 myself, I watched it with great interest.

6 Q. Thank you. Do you consider the  
7 references to the loads for that project compared to  
8 the Applicant's project to be similar?

9 A. Well --

10 MR. SETTINERI: Your Honor, I object.  
11 This witness is not qualified as an expert in  
12 transportation. Mr. Mawhorr was. This is friendly  
13 cross.

14 EXAMINER FARKAS: I will sustain your  
15 objection. He's not an expert in this field.

16 MR. BIGLIN: Okay.

17 Q. Have you ever visit a wind farm under  
18 construction?

19 A. I have visited at least seven wind farms.  
20 They were in New York, Pennsylvania, Ohio, Indiana,  
21 Michigan.

22 EXAMINER FARKAS: Is that during the  
23 construction phase?

24 MR. HEFFNER: Pardon me?

25 EXAMINER FARKAS: Was that during the

1 construction phase?

2 MR. HEFFNER: I have seen them in all  
3 phases. I have seen the ones in Pennsylvania that  
4 have been in operation in excess of seven years. I  
5 have also been out and said "hello" inside of the big  
6 tower sections out in Van Wert. I actually made a  
7 mistake and got off of the marked road. I saw a  
8 concrete pylon at the end and I thought I was on a  
9 section road, and I ended up on somebody's property,  
10 and they were good enough to let me know that I made  
11 a mistake, and so I was up close, closer than I  
12 should have been.

13 Could I address that issue of --

14 EXAMINER FARKAS: You can answer the  
15 question.

16 MR. HEFFNER: The issue of expert,  
17 because I am an expert on that.

18 EXAMINER FARKAS: You're an expert on  
19 what?

20 MR. HEFFNER: What weights on roads. I  
21 have traveled three years looking at these things all  
22 over. I have watched these bridges being built.  
23 I've built bridges myself.

24 EXAMINER FARKAS: Hold on a second. I  
25 will let Mr. Settineri.

1 He claims to be an expert so if you want.

2 - - -

3 VOIR DIRE

4 By Mr. Settineri:

5 Q. Mr. Heffner, do you have any degrees post  
6 high school?

7 A. I do not.

8 Q. You're not an acoustics engineer?

9 MR. HEFFNER: Acoustics, that's related  
10 to this what we're discussing?

11 EXAMINER FARKAS: Yes.

12 A. No.

13 Q. Have you worked in the wind energy?

14 A. Could you define "wind energy" so I can  
15 help?

16 Q. Have you worked for a developer of a wind  
17 farm project?

18 A. Does a developer, does that constitute  
19 all of the wind energy -- yes, I believe I am. I  
20 have spent three years traveling from New York to the  
21 other side of Indiana watching these projects go up.

22 Q. Who was your employer during that time?  
23 What wind company did you work for?

24 A. I just -- friends, various friends.

25 Q. So you did not have an employer in the

1 wind industry at that time; is that correct?

2 A. Can a person be self-employed in the wind  
3 energy?

4 Q. Have you ever had responsibility for  
5 designing a commercial wind project?

6 A. How does that relate to loads. I have  
7 observed wind projects. I know what a foot is. I  
8 don't need to be an expert in Newtonian geometry -- I  
9 got the wrong guy. Anyway, I don't need to be an  
10 expert in geometry in order to know how long 150 feet  
11 is versus 100 feet.

12 EXAMINER FARKAS: I think the expert  
13 piece question related to weights and measures, was  
14 what the question related to, and you were objecting  
15 because he wasn't an expert in that area.

16 THE WITNESS: I have done extensive  
17 studies on weights and measures.

18 EXAMINER FARKAS: This was related to  
19 bridge weight.

20 MR. BIGLIN: That's what I thought I was  
21 on.

22 Q. (By Mr. Settineri) Are you a professional  
23 engineer?

24 A. I am not, but I have performed the  
25 function of a professional engineer, and I have been

1 a personal understudy of builders.

2 Q. What company did you work for when you  
3 did that work, if you recall?

4 A. Nudine, Incorporated.

5 Q. What industry is that company in?

6 A. I believe, if I can recall, it was such a  
7 long time ago, the primary part was pistons for  
8 telescopic hydraulic cylinders. We worked on an  
9 obsolete machine that spin-forces tubing. We put  
10 together loads to go on trucks all over the country.

11 Q. What did you do specifically?

12 A. I was what he called the factotum.

13 Q. What did you do specifically,  
14 Mr. Heffner?

15 A. Well, if you look up the word factotum,  
16 you see that that person is in charge of all aspects  
17 of the operation for the entire company.

18 Q. So you ran the company; is that what  
19 you're telling me?

20 A. I didn't own the company, but I did, yes.

21 MR. SETTINERI: Your Honor, we will  
22 simply object to his qualifications. He's been  
23 unresponsive; therefore, he cannot be deemed an  
24 expert in anything.

25 EXAMINER FARKAS: I'll sustain the

1 objection.

2 You can ask the next question

3 MR. BIGLIN: I don't have any more then.

4 Thank you.

5 EXAMINER FARKAS: Ms. Davis, any  
6 questions?

7 MS. DAVIS: No questions.

8 EXAMINER FARKAS: Do you have anything to  
9 add to your testimony based on what we have asked you  
10 on cross?

11 MR. HEFFNER: Just I know now long a foot  
12 is, and I'm very familiar with a ton. I know that  
13 doesn't rate expert status, but I've studied  
14 extensively under teachers, that although not  
15 recognized in the current bureaucratic model of a  
16 credentials and tenure, they were valuable  
17 nevertheless in my education.

18 EXAMINER FARKAS: Okay.

19 MR. HEFFNER: Thank you.

20 EXAMINER FARKAS: You're requesting that  
21 Heffner Exhibits 1 and 2 be admitted into the record?

22 MR. HEFFNER: Yes.

23 EXAMINER FARKAS: Any objection?

24 Hearing none they, will be admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)



1 EXAMINER FARKAS: You're excused. Thank  
2 you.

3 Next, Mr. Biglin.

4 MR. SETTINERI: Can we go off the record  
5 for a second?

6 (Discussion off record.)

7 (Recess taken.)

8 EXAMINER FARKAS: On the record.

9 Mr. Biglin, you're next.

10 - - -

11 GARY BIGLIN,

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

14 DIRECT TESTIMONY

15 EXAMINER FARKAS: Mr. Biglin, your  
16 testimony includes some exhibits, A through H; is  
17 that correct?

18 MR. BIGLIN: Yes, your Honor. My actual  
19 written testimony was four pages initially. Then I  
20 have --

21 EXAMINER FARKAS: There's a fifth page  
22 that's a Certificate of Service where copies were  
23 sent.

24 MR. BIGLIN: That's what it's referenced  
25 to.

1 EXAMINER FARKAS: Same with the sixth  
2 page.

3 MR. BIGLIN: I think so, your Honor.

4 EXAMINER FULLIN: I'm proposing to mark  
5 this whole thing as Exhibit No. 1, and let the  
6 exhibits be identified, they are clearly marked, and  
7 follow each other.

8 MR. BIGLIN: Yes, Your Honor. I have  
9 additional references marked as exhibits. I don't  
10 know if that is proper procedure. They are marked on  
11 the different pages. Is that adequate? Do you want  
12 me to read it?

13 EXAMINER FULLIN: I'm not sure what you  
14 are saying.

15 MR. BIGLIN: Well, additional pages or  
16 references I have A, B1, B2, C, D, E1, E2, F1, F2, G,  
17 and H. They are references that are with regard to  
18 my testimony.

19 EXAMINER FULLIN: Yes. I think they are  
20 all clearly marked. I am proposing the whole thing  
21 be Exhibit 1. To the extent the people need to refer  
22 to the exhibits, they are well marked, and we will  
23 identify those exhibits as they're marked.

24 MR. BIGLIN: Okay.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER FARKAS: This is the testimony  
2 you filed on September 19, 2011?

3 MR. BIGLIN: I mailed this out on  
4 September 14. The date on the copy is just regular  
5 mail.

6 EXAMINER FARKAS: It's file stamped  
7 September 19.

8 MR. BIGLIN: I know. Our first so-called  
9 hearing when it started on the 19th, there was some  
10 confusion. It wasn't received by some of the  
11 parties. Counsel over here said they received it.

12 EXAMINER FULLIN: We made a ruling that  
13 it would be ruled timely filed. The date of your  
14 handwriting is the 14th, but it is date stamped  
15 September 19, but it is considered timely filed.

16 MR. BIGLIN: Okay.

17 EXAMINER FARKAS: If I asked you the same  
18 questions today, would your testimony be exactly as  
19 it is written here as it was filed prior to the  
20 hearing?

21 MR. BIGLIN: Yes, your Honor.

22 EXAMINER FARKAS: Do you have any changes  
23 or deletions you want to make to the testimony?

24 MR. BIGLIN: No.

25 EXAMINER FARKAS: Okay. Mr. Settineri

1 any questions?

2 We do, your Honors. Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Settineri:

6 Q. Good afternoon, Mr. Biglin.

7 A. Good afternoon.

8 Q. You have never worked in the wind  
9 industry; is that correct?

10 A. No, I have not.

11 Q. Have you had any formal training in risk  
12 analysis for ice throw?

13 A. No; but I'm able to read.

14 Q. Okay. You're not an engineer, are you?

15 A. Excuse me?

16 Q. Are you a degreed engineer?

17 A. No. I've worked as an electrician in  
18 construction for a number of years and worked for  
19 General Motors for 24 years as an electrician and  
20 welder repair maintenance.

21 Q. Okay. Is there any risk in working as an  
22 electrician?

23 A. Is there any?

24 Q. Is there any risk involved as an  
25 electrician?

1           A.    Oh, yes, there are.  When I worked for  
2  General Motors especially, beings it was a big  
3  corporation with a union shop, we had to belong to  
4  the union, UAW, and in the maintenance department you  
5  had a serious safety protocol to file and if you  
6  didn't follow it and something happened, you were  
7  fired.

8           Q.    Okay.  Do you have any degrees post high  
9  school, Mr. Biglin?

10          A.    Have any?

11          Q.    Degrees post high school.

12          A.    No, I have not.  I graduated from high  
13  school, and I only had two quarters of mechanical  
14  engineering after that.

15          Q.    Okay.

16                MR. SETTINERI:  Your Honor, at this time  
17  we like to submit a motion to strike certain portions  
18  of Mr. Biglin's testimony.

19                EXAMINER FARKAS:  Okay.

20                MR. SETTINERI:  I will give you the  
21  references to the testimony first.  That would be  
22  page 2, the Summary of the Wind Energy Production,  
23  part C, the paragraph labeled part C, starting with  
24  the words "Wind Energy Production" through the rest  
25  of the paragraph.

1           We would also move to strike the  
2 accompanying exhibit marked Exhibit C. That is a  
3 partial, incomplete copy of an article titled Wind  
4 Energy Production, Cold Climate.

5           Mr. Biglin does not have specialized  
6 knowledge, skill, or experience with regards to ice  
7 throw risk analysis and, therefore, this testimony in  
8 addition to the exhibit is inadmissible hearsay.

9           EXAMINER FARKAS: Okay.

10          Do you have any response to that?

11          MR. BIGLIN: Yes, your Honor. I'd like  
12 to object to that.

13          EXAMINER FARKAS: Okay. What is your  
14 basis?

15          MR. BIGLIN: This document was publicly  
16 available through the Internet, and the title page  
17 refers to it, and if they are refuting this as not  
18 being a proper study, irregardless if I'm an expert  
19 or not, if an expert, so-called expert, sat up and  
20 used it, it still is an established recognized  
21 report, and the pages I reference, anybody that wants  
22 to read that that has any social understanding would  
23 come to the same conclusions I did.

24          EXAMINER FARKAS: In the rules of  
25 evidence, there are rules that deal with hearsay, and

1 as an expert you're permitted exceptions to the  
2 hearsay rule in order to form your opinion based on  
3 the opinions of others.

4 However, as a nonexpert, you cannot do  
5 that. It has to be based on your own observation.

6 I'm going to grant the motion to strike  
7 Exhibit C and grant the motion that Section C on  
8 page 2, paragraph C.

9 MR. BIGLIN: That whole paragraph?

10 EXAMINER FARKAS: Starts with "Wind  
11 Energy Production in Cold Climate" and ends with  
12 "operational Staff." It's one sentence.

13 MR. SETTINERI: Thank you, your Honor.

14 One more motion in regards to Exhibit  
15 F1 and F2, as well as paragraph F of page 3 of his  
16 testimony. The two letters are allegedly from  
17 Internet sites. There no signature, no  
18 authentication. These documents are not  
19 authenticated. Moreover, they are offered in  
20 addition to Paragraph F to support Mr. Biglin's  
21 testimony that setbacks in the Application are  
22 inadequate.

23 We ask that Exhibit F be stricken as  
24 hearsay, as well as the reference to Exhibit F in his  
25 testimony.

1 EXAMINER FARKAS: And the reference in  
2 his testimony to F on page 3?

3 MR. SETTINERI: Sorry, page 3, part F,  
4 starting with "Letters to OPSB" and ending with the  
5 date "May 30, 2008."

6 EXAMINER FARKAS: Do you have any  
7 response to his motion to strike?

8 MR. BIGLIN: I contest his objection. I  
9 object to the objection, yes.

10 EXAMINER FARKAS: What's your basis?

11 MR. BIGLIN: Well, my basis this is  
12 concerning this project. It does concern setbacks,  
13 and it is a memorandum between the Siting Board  
14 members or Staff in regard to setbacks.

15 EXAMINER FARKAS: Do you have any  
16 knowledge, other than what you have seen in Exhibit  
17 F1 and F2? You don't know Senator Seitz, do you?

18 MR. BIGLIN: No, I've never met him.

19 EXAMINER FARKAS: You weren't present  
20 when these were authored, were you?

21 MR. BIGLIN: No, I was not.

22 EXAMINER FARKAS: I will note for the  
23 record that Senator Seitz is not present in the  
24 hearing room. I grant the motion to strike Exhibits  
25 F1 and F2 and the reference on page 3, letter F,



1 starting with the word "Letters" and ends with  
2 "May 30, 2008."

3 EXAMINER FULLIN: I think that is  
4 granting the motion as requested.

5 EXAMINER FARKAS: Yes.

6 MR. SETTINERI: Thank, you, your Honors.

7 Q. (By Mr. Settineri) Mr. Biglin, if you  
8 could, turn to the Application appendix, please. Do  
9 you have a copy?

10 A. I have to get one.

11 Which appendix?

12 Q. That would be appendix E.

13 A. Uh-huh.

14 Q. Going to look at the GE Energy Safety  
15 Manual, page 50 to 68, those page numbers are on the  
16 bottom left-hand corner.

17 EXAMINER FARKAS: Can I get the reference  
18 again, Exhibit E?

19 MR. SETTINERI: Appendix E.

20 EXAMINER FARKAS: Appendix E.

21 MR. SETTINERI: GE Safety Manual,  
22 pages 50 to 68, and the page numbers are in the  
23 bottom left-hand corner of the document.

24 EXAMINER FARKAS: Okay.

25 A. As noted, I thought you tried to note

1 that in my testimony, but that's where these two  
2 exhibits come from, I realize.

3 Q. I'll get to my question Mr. Biglin.

4 A. Okay.

5 Q. Are you at the reference in the  
6 appendices please?

7 A. Yes, I'm at 49-68.

8 Q. Page 50.

9 A. Fifty, yes.

10 Q. Now, am I correct you included this page  
11 in your testimony? Is that correct?

12 A. It is in here.

13 Q. Let's look at some language just above  
14 section 8.42. Do you see the language that states,  
15 "If an ice detector is not used, its advisable to  
16 cordon off an area around a wind generator to a  
17 radius RS through freezing weather conditions in  
18 order to ensure that individuals are not endangered  
19 by pieces of ice during operation." Do you see  
20 language?

21 A. Yes.

22 Q. There's a formula preceding that; is that  
23 correct?

24 A. Yes.

25 Q. And that formula is 1.5 times the hub

1 height plus the rotor diameter.

2 A. Yes.

3 Q. Is that the same formula that was  
4 referenced in the Staff Report?

5 A. I believe it's similar. I believe it  
6 says 150 percent, but it's not that formula right  
7 there.

8 Q. Would you agree that 1.5 could be  
9 150 percent?

10 A. But that's not the precise formula listed  
11 in the Staff Report.

12 Q. Let's look at the Staff Report then,  
13 page 37, to make sure we get this for the record,  
14 because I think it is the same. Page 37 of the Staff  
15 Report.

16 A. I'm looking for it. Yes, I'm there.

17 Q. Let's do the math. You'll see towards  
18 the middle of that paragraph it mentions a distance  
19 of 150 percent of the sum of the hub height and rotor  
20 diameter.

21 A. Yes.

22 Q. Correlating that back to this manual, you  
23 see the hub height plus the rotor diameter, correct?

24 A. Yes.

25 Q. And you multiply that by 150 percent, and

1 that would correlate to 1.5 times that.

2 A. Yes.

3 Q. You agree with me it is the same formula?

4 A. I do now. I thought the question was did  
5 it read the same. It does not.

6 Q. I want to make sure it is the same.

7 A. Okay.

8 Q. All right. Going back to the language in  
9 the safety manual that I mentioned, look at the  
10 phrase "if an ice detector is not used." Do you see  
11 that?

12 A. Yes.

13 Q. Am I correct then that the GE manual  
14 applies this setback if an ice detector is not used?  
15 Am I correct on that?

16 A. Yes, they do reference if it is not used,  
17 that is recommended.

18 Q. You were here present during Mr. Pawley's  
19 cross-examination this morning?

20 A. Yes, I was.

21 Q. Do you recall him clarifying that  
22 condition 44 of the Stipulation requires the turbines  
23 to have ice warning systems on them?

24 A. I recall talking about various methods of  
25 ice detection systems, yes.

1 Q. And you were here for Mr. Jay Haley's  
2 testimony yesterday, correct?

3 A. Yes, I was.

4 Q. All right. And you recall his testimony  
5 whereby he stated that ice warning systems can  
6 further reduce the risk of ice throws?

7 A. Yes, I do. But I believe that "further"  
8 is not a guarantee.

9 Q. All right. Mr. Biglin, let's talk about  
10 the risk here. Again, you were here during  
11 Mr. Haley's testimony yesterday?

12 A. Yes, I was.

13 Q. And do you recall he testified the risk  
14 of being struck by an ice fragment from the Black  
15 Fork Wind project would be less than one in 100,000  
16 years?

17 A. I recall something to that effect in his  
18 testimony, but I don't know how someone derives that  
19 number in regard to the project at all.

20 Q. Do you recall Mr. Haley is a professional  
21 engineer?

22 A. Excuse me?

23 Q. You recall that Mr. Haley testified he is  
24 an engineer?

25 A. Yes, I believe he did.

1 Q. He's a practicing engineer?

2 A. To my knowledge, he's practicing. I'm  
3 not sure if he has a job right now or not.

4 Q. Now, I'm going to do a little math again  
5 I think is helpful for the record. So one event in  
6 100,000 years, am I correct that correlates to a  
7 factor of .00001?

8 A. I can't do that in my head. I'm sorry.

9 Q. All right. Assume that is the correct  
10 number. Would you agree in that .00001 is very close  
11 to zero?

12 MR. WARRINGTON: I just want to object to  
13 Mr. Settineri. He's the one that's editorializing  
14 now and just badgering Gary with meaningless numbers  
15 about hundreds of thousandths years.

16 MR. HEFFNER: Mr. Settineri was here for  
17 the theory of the Poisson Cluster, and there was a  
18 lot more. I mean, I can't be expected to do those  
19 numbers in my head, and I just got done with an  
20 eight-month study on the mathematics of the financial  
21 collapse.

22 MR. SETTINERI: Your Honor, I think it  
23 would be helpful for the record to realize the risk  
24 Mr. Haley testified to, to put it in a way we can  
25 understand it, and the easiest way is to take that

1 one, divide by 100,000, which gives the result of  
2 .00001, and I'm simply asking with regard .00001 is  
3 close to zero. It's a very simple question.

4 EXAMINER FARKAS: I'll allow the  
5 question.

6 If you can answer.

7 A. I guess I'm not clear. I don't recall  
8 the testimony enough on that where that was derived  
9 from. I know the numbers you've thrown at me, but as  
10 far as where he gathered information from, I don't  
11 recall.

12 Q. Mr. Biglin, I'm asking if zero compared  
13 to .00001, do you think .00001 is close to zero.  
14 That's all I'm asking you.

15 A. Well, I suppose it could be close to  
16 zero, depending on what other number you might  
17 declare is close to zero in reference to whatever  
18 formula.

19 MR. SETTINERI: Your Honors, we have no  
20 further questions for Mr. Biglin.

21 EXAMINER FARKAS: Staff, any questions?

22 MR. JONES: No questions.

23 EXAMINER FARKAS: Mr. Warrington, any  
24 questions?

25 - - -

## 1 CROSS-EXAMINATION

2 By Mr. Warrington:

3 Q. Just to simplify from that, Gary, did I  
4 understand that your basic concern, is it the safety  
5 of setbacks required by at least GE far exceed the  
6 setbacks from the turbine and your property line, and  
7 that that causes the Company to enter across into a  
8 nonparticipating property with a dangerous  
9 maintenance issue? Is that, in essence, what you're  
10 testifying, in part, to?

11 MR. SETTINERI: Your Honor, I object.  
12 This is friendly cross. This is simply direct,  
13 redirect by friendly.

14 EXAMINER FARKAS: I'll allow the answer.  
15 Go ahead.

16 A. Well, I have -- I'm a farmer. That is my  
17 place of business, and I'm a nonparticipant in this  
18 project. But I don't feel the setbacks are adequate  
19 from a nonparticipating standpoint, because I can use  
20 any part of my property or develop part of my  
21 property to do whatever needs done, whether it's  
22 putting another barn down on this end of the farm or  
23 maybe building a newer home on this end of the farm  
24 or doing some other activity, and regardless of an  
25 ice detector or not -- I mean, I believe they're



1 fine.

2 But I just -- if I'm not a participant, I  
3 would like to be respected in a way that I can  
4 develop my property to my satisfaction without  
5 relying on ice detectors, because I'm not a  
6 participant in the project.

7 I guess that's the reason for some of  
8 these arguments here. And also you heard me talk  
9 about the roadway, and there's four turbines in this  
10 project that come to my mind, maybe no more, that the  
11 height of 1/10 to the roadway, and I just think the  
12 consideration of people using the roadway, that they  
13 have no knowledge if an ice detector is used or not.  
14 They have no awareness of the dangers if it works or  
15 not.

16 They should have been afforded -- the  
17 State has jurisdiction through I think 4939 state  
18 policy to protect citizens under the public roadways  
19 and their safety. I can't recall that statute word  
20 for word, but I just think that the public citizens  
21 on the highway and nonparticipating residents should  
22 be afforded the respect of what the neighbor does on  
23 his property. If he signs, that's his business, but  
24 when it infringes on my property rights, I guess I  
25 have a little problem with that.

1 MR. WARRINGTON: That's my only  
2 questions.

3 EXAMINER FARKAS: Ms. Price?

4 MR. PRICE: No.

5 EXAMINER FARKAS: Ms. Rietschlin?

6 MS. RIETSCHLIN: No.

7 MR. WARRINGTON: Mr. Heffner?

8 MR. HEFFNER: Yes, please.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Heffner:

12 Q. Mr. Biglin --

13 A. Yes.

14 Q. -- you said you're a farmer. I also  
15 noticed you mentioned it was a business. What do you  
16 consider to be the boundaries of your business.

17 A. My property line.

18 Q. Do you accomplish most of your business  
19 tasks within the confines of your house?

20 A. No, I do not.

21 Q. Where do you do those things? How do you  
22 accomplish your tasks? Where are you when you  
23 accomplish those tasks?

24 A. I could be anywhere on the property. I  
25 could be cutting wood along the fence row at the

1 property line. I could be hunting out there,  
2 plowing, harvesting, doing any number of activities  
3 on possibly any part of it at any time.

4 Q. Were you offered a contract by a wind  
5 developer?

6 A. Yes, I have been.

7 Q. What was the name of the developer?

8 A. I was sent two contracts in early '08. I  
9 believe April was with the Gary Energetics, the first  
10 applicant, and I think later in May they sent me  
11 another one, and then after that, the application was  
12 withdrawn. I believe that was in August of last  
13 year.

14 Shortly thereafter I was called and  
15 approached by Dennis Rice, who was a representative I  
16 believe of Element Power at the time trying to  
17 acquire additional leases that weren't signed by the  
18 previous applicant or leaseholder. I was offered a  
19 copy of a lease at that time by them. I refused that  
20 also.

21 Q. Did you understand the lease offered by  
22 Element Power to be a competing lease offer with the  
23 earlier one?

24 A. At the particular time Mr. Rice was  
25 there, I had copies of the previous lease that I

1 didn't opt to sign. I just happened to have them  
2 there yet, and I referenced it, and at the time I was  
3 just looking at it quickly at the kitchen table. I  
4 saw no difference in them at the time.

5 Q. Did he mention to you that Element Power  
6 had purchased the assets of Gary Energetics or Black  
7 Fork Wind Energy?

8 A. I don't recall if he specifically  
9 mentioned that, but I was aware that they did.

10 Q. Were you offered a lease by any other  
11 wind developer?

12 A. None other than what I just mentioned.

13 Q. How would you characterize your property,  
14 other than farm and business acreage?

15 A. What do you mean?

16 Q. How much of it's tillable?

17 A. Oh, probably I'm talking about where I  
18 live on with regards to this area is 80 acres. It  
19 has a state highway running through it, but probably  
20 as much as -- take out the highway, it's probably a  
21 good 70 acres or so of tillable, maybe 73.

22 Q. Again, I'm sorry, I didn't hear. What  
23 did you do at General Motors?

24 A. I was hired in as an electrician, but my  
25 previous jobs I worked for construction as an

1 electrician, and I had my own business for about five  
2 years, and I had an opportunity to get in with  
3 General Motors as an electrician. Then I went into  
4 what they call the welder maintenance or repair  
5 department, which repaired resistance welders that  
6 are used for spot welding in the auto industry.

7 Q. So in your own experience, do mechanical  
8 things fail?

9 A. Something can always fail.

10 Q. Are you in favor of the proposed wind  
11 facility?

12 A. I am not really in favor in our area  
13 myself personally. What other people do in their  
14 areas throughout the state, I respect their -- what  
15 they perceive is best for their area. With regard to  
16 this project in our area, I'm not.

17 MR. HEFFNER: Nothing further.

18 Thank you, Mr. Biglin.

19 EXAMINER FARKAS: Ms. Davis any  
20 questions?

21 MS. DAVIS: No.

22 EXAMINER FARKAS: Do you have anything to  
23 add based on what was asked to you on  
24 cross-examination?

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REDIRECT TESTIMONY

MR. BIGLIN: Yes. In regards to the references to safety manuals in E1 and E2, if you have them, they refer to two Vestas manuals. You can see from the first page the dates of how they were made. They have a title page on them.

It is my understanding some document, whether it's this big or this big, would include this and would be, if I read in the Stipulation right, I'm not sure of the number that will be provided at the office and maintenance building of the project area, and that the workmen involved would be instructed in the same scope of work in regards to these documents.

And if you look in what I want to call E2, and the pages are not numbered, if you go to the fourth page where it says Snow and Ice Hazards at the top, and down where it says 5, it says General Requirements. I'd like to read.

"For those areas where the handbook differs from the Vestas requirements, this handbook shall prevail. In some cases Vestas America has implemented a requirement that may exceed a state or prevention requirement. The higher level of requirement in the safety manual will prevail. In the event that a state or prevention requirement

1 exceeds the safety handbook procedures, the higher  
2 level of requirement will prevail."

3           When I worked at General Motors, we had  
4 very strict safety protocols to follow in our line of  
5 work. We had safety meetings every week and safety  
6 training on every piece of equipment or situation we  
7 might run into.

8           Now, these workers I presume, as per the  
9 Stipulations, will be offered some kind of training  
10 in this if it falls under these hazardous conditions.  
11 As I read this, it will pertain to probably a manual  
12 like this. And Vestas seems to think if these  
13 requirements are greater in their handbook, I don't  
14 know if it's for a liability reason on the part of  
15 the manufacturer or whatever reason, but they say  
16 this is the greater standard to go by.

17           Well, if you turn about three or four  
18 more pages back, there's a pre-ice work checklist, it  
19 says at the top, and it gives a checklist that  
20 workers would go through. You know, if I was working  
21 for them, I would be required to do this, just like  
22 if I was at General Motors, you follow. It. You  
23 look over the job site first to see how you proceed.

24           Well, halfway down there it goes into  
25 some length on the steps. It says if you answer no

1 to these questions, by all means proceed. But if  
2 there's yes to some of the questions, start following  
3 the protocol on this list.

4 Well, it mentions the fact that if the  
5 turbine is running and you perceive it might have  
6 ice, to stop within a thousand feet of this turbine.  
7 If you do perceive ice, to shut it off before  
8 proceeding any farther. And under B it says to  
9 observe with binoculars, if necessary, to indicate or  
10 verify that.

11 Well, if these workmen -- if I was one of  
12 these workmen and I was asked to go out on the job  
13 and there may be ice that day, and I'm coming down  
14 the road and we have these four turbines in the  
15 project that are within height of 1/10 of a road,  
16 which equates to a little over 500 feet or 560 feet,  
17 whatever it indicates, the access road comes right  
18 off the public highway.

19 Well, if I was that workman, I could not  
20 perform this task. I'd have to deny to even go near  
21 that turbine because if I pull into that  
22 right-of-way, it's measured from the right-of-way  
23 edge of the road, not the center. I'm halfway in  
24 violation of this protocol distance. So if I proceed  
25 to perform this task and don't follow, if something



1 would happen, this workman is at fault and would be  
2 fired.

3 My argument is from the highway, you're  
4 asking these fellows, first of all, to do a task they  
5 are going to be in violation of.

6 Second of all, the people in their cars  
7 and schools buses or whatever might be going up and  
8 down these roads or public highways are not even  
9 aware of this.

10 Now, if the manufacturer makes these  
11 recommendations, I am sure from previous data or they  
12 have their experts on why they come up with this  
13 protocol, and I think turbines located close to  
14 highways, as they propose in this project, whether  
15 they have an ice detector or not, this fellow can  
16 violate his job by not following the rules correctly.

17 But the public is totally unaware of the  
18 situation. And I feel they're put in harm's way.  
19 You know, an ice detector is fine out in the middle  
20 if you got a landowner that is participating and they  
21 can agree to have it wherever they would like. I  
22 think they can waive the setbacks if they're  
23 considered a partner in this. That's fine to have  
24 ice detectors there because they're a partner in  
25 this.

1           The neighboring landowner that's not  
2 participating, he's not aware of this, and yet he  
3 could be 500 feet from this moving wind turbine with  
4 ice on it and not realize he could be in harm's way.

5           So it unduly puts the adjacent property  
6 owner that's probably basically not a participant --  
7 the participant can waive, have them discussed and  
8 put where they'd like, but somebody that's not a  
9 participant could be unduly put in harm's way and not  
10 realize that, for one, by following what is called  
11 for in the Application, we're just saying it's such a  
12 remote possibility, it's not going to happen.

13           But is that responsible to these parties  
14 that have not granted any permission to calculate any  
15 kind of a setback from any part of this property? I  
16 mean, I realize you call it a residential or  
17 inhabited setback, and the bare minimum calls for 750  
18 from the extended horizontal blade from the residence  
19 in the Ohio statute rules, and they have afforded the  
20 length of 1,250.

21           But as a nonparticipant, they want to  
22 measure from the corner of your residence. It has --  
23 I have granted no permission to measure and calculate  
24 any kind of setback from any part of my property, and  
25 I think it's disrespectful to the property rights and

1 the safety of the neighboring nonparticipants in  
2 those situations.

3           What the participants do in their  
4 contracts, that's their business, but I cannot do  
5 anything on my property where I feel safe, like build  
6 another home or barn or do something, put a  
7 structure, and then I have to sign a waiver, the law  
8 says, to do something I want to on my own property  
9 with my rights, all because now there's a wind  
10 turbine 500 feet over the property line.

11           Would I want to build a home there? No.  
12 Would I want to sign a waiver? No. I'm assuming the  
13 risk. I have no reason to assume the risk. They  
14 have infringed on my ability to develop my property  
15 the way I wish.

16           And I just think with regard to the  
17 safety manuals, I mean, whether you're an expert or  
18 not, they can read. These workers will have to read  
19 them, and they equate the necessary procedures that I  
20 think relate no less to adjacent property owners and  
21 the public using the roadways, and I guess that's my  
22 rationale of thinking for what I submitted in my  
23 testimony.

24           EXAMINER FARKAS: Thank you.

25           Any objection to the admission of

1 Mr. Biglin's Exhibit 1, subject to the motions to  
 2 strike that were granted?

3 MR. SETTINERI: No, your Honors.

4 EXAMINER FARKAS: Hearing none, it will  
 5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER FARKAS: Thank you.

8 I believe last is Ms. Price.

9 - - -

10 CATHERINE PRICE,

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

13 DIRECT TESTIMONY

14 EXAMINER FARKAS: You have several  
 15 exhibits attached to your testimony; is that correct?

16 MS. PRICE: Yes, I do. They're listed in  
 17 alphabetical order.

18 EXAMINER FARKAS: I believe the last is  
 19 letter is T, as in Tom.

20 MS. PRICE: T, as in Tom, and also there  
 21 is no I because when I make an I, it doesn't -- it's  
 22 not --

23 EXAMINER FARKAS: No I.

24 MS. PRICE: It's distinctive.

25 EXAMINER FARKAS: We will mark this Price

1 Exhibit 1.

2 MS. PRICE: It's Price Exhibit 2 because  
3 my husband's is 1.

4 EXAMINER FARKAS: Price Exhibit 2.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 EXAMINER FARKAS: If I asked you the same  
7 questions today that when you prepared your  
8 testimony, would your answers be the same?

9 MS. PRICE: Yes, they would.

10 EXAMINER FARKAS: Do you have any  
11 corrections or deletions to your testimony?

12 MS. PRICE: No, I don't.

13 EXAMINER FARKAS: Mr. Settineri.

14 MR. SETTINERI: Thank you, your Honors.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Settineri:

18 Q. Good afternoon, Ms. Price.

19 Ms. Price, you're not an acoustics  
20 engineer, correct?

21 A. No.

22 Q. You're not a medical doctor, correct?

23 A. No.

24 Q. You have not worked in the wind turbine  
25 industry, correct?

1 A. No.

2 Q. Let's look at your direct testimony at  
3 page 1, last full paragraph, last sentence, that  
4 sentence states, "Just in the construction phase  
5 alone, I will be impacted by the noise, flicker,  
6 dust, traffic, et cetera, while outside."

7 Do you see that sentence?

8 A. Yes, I do.

9 Q. Today you cannot tell me what noise  
10 levels you'll experience by being outside during  
11 construction, can you?

12 A. Not the exact noise level. It will add  
13 to the noise level.

14 Q. As well today you don't know how much  
15 traffic will impact you, if any, during the  
16 construction phase; is that correct?

17 A. Any added traffic will impact me.

18 Q. Isn't it true the final construction  
19 traffic route has not even been identified in the  
20 project?

21 A. No, it has not.

22 Q. There's a chance construction traffic  
23 will not be routed by your house; is that correct?

24 A. If that's what you're telling me, but  
25 right now it stands to be 50/50. There's just as

1 good a chance it will as it won't be.

2 Q. You can't tell me how much dust, if  
3 any, you will experience during the construction  
4 phase; is that correct?

5 A. Any added traffic or construction around  
6 will add dust.

7 Q. Let me ask you, do you own a tractor?

8 A. A smart yard mower, yes.

9 Q. Just a yard mower?

10 A. It's a 20-horsepower, yes. It's not a  
11 normal lawn mower, but 20-horsepower.

12 Q. Okay. Any other equipment that you have  
13 on the property, such as trucks?

14 A. As in work trucks? No, I sold the  
15 business.

16 Q. What business did you operate out of your  
17 property?

18 A. Off of the property? Out of the home for  
19 the office was -- we had a septic tank business and a  
20 tree service.

21 Q. Let's look at Exhibit K to your  
22 testimony.

23 A. The picture?

24 Q. Yes. Before I go to the picture, let me  
25 ask who mows the lawn generally at your property?

1 A. Me and my husband both.

2 Q. When your husband is mowing the lawn, do  
3 you close the windows in the house?

4 A. No, I'm outside mowing the lawn.

5 Q. I said when your husband is outside  
6 mowing the lawn.

7 A. I'm outside mowing the lawn also. We  
8 have two mowers.

9 Q. You have two mowers?

10 A. Yes. We get it done real quick so we  
11 don't bother the neighbors any more than we have to.

12 Q. Do you consult your neighbors before you  
13 mow?

14 A. No, I don't.

15 Q. Now, going back to Exhibit K, when was  
16 the picture taken?

17 A. May of 2006. It was the only picture I  
18 had that would show the full acreage.

19 Q. All right. Can you identify some of the  
20 equipment I see in the picture in the upper right  
21 hand?

22 A. Yes. The building that looks like a pole  
23 barn, the blue truck sitting dead smack in the middle  
24 of the driveway there in front of them pine trees,  
25 that was a chipper truck that we had brought home to



1 clean up for the sale of that business, and next to  
2 it is the lift truck we also had brought home to  
3 clean up to sell the business.

4           The white truck sitting further to the  
5 right, that is a helper's truck sitting there.  
6 There's the white S10 and a Blazer, which also at the  
7 time, if you can see at the very peak of my roof are  
8 people putting a roof on my house. Those vehicles  
9 all belong to those workers up there, including the  
10 ones, the truck down by the little garage in the far  
11 lower right corner, the vehicles sitting in my yard.  
12 Those were all the workers that put the roof on my  
13 house.

14           Q. All right. Looking at the pond, is that  
15 a natural pond?

16           A. No. I put that in to enjoy.

17           Q. How did you put it in?

18           A. We hired a contractor that came in two  
19 days and dug and put it in.

20           Q. What equipment did they use?

21           A. He used a small dozer.

22           Q. Did you check with your neighbors to make  
23 sure they were okay with that type of construction?

24           A. Yes; because they also had -- some were  
25 putting ponds in at the same time, and others were

1 thinking about putting ponds in. We all were  
2 discussing the same thing with the same person.

3 Q. All right. Page 4 of your testimony you  
4 list a number of activities you engage in on your  
5 property. Let's look at that.

6 A. Page 4.

7 Q. Page 4, second full paragraph.

8 A. It starts out "Exhibit N of the Staff  
9 Report"?

10 Q. Yes, it does. You also make a reference  
11 at the end of that paragraph to noise produced by the  
12 project will change your living habits. Let me ask  
13 you this question. Is it your position that you  
14 believe your neighbors should limit activities on  
15 their properties that affect your own habits, such as  
16 cooking out, things of that nature?

17 A. Depending on what you are talking about  
18 my neighbors doing.

19 Q. Certain activities your neighbors do may  
20 offend you or change your habits?

21 A. May offend me and upset me, yes.

22 Q. You believe you have right to tell them  
23 what to do on their property?

24 A. I think there's laws stating if my  
25 neighbors have a dog barking in the middle of the

1 night constantly, I can call and they will have it  
2 stopped, yes.

3 Q. You can file a complaint process?

4 A. Yes.

5 MR. SETTINERI: No further questions for  
6 this witness, your Honor.

7 EXAMINER FARKAS: Staff, any questions?

8 MR. JONES: No questions, your Honor.

9 EXAMINER FARKAS: Mr. Warrington, any  
10 questions.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Warrington:

14 Q. Just by studying the project map, can you  
15 help me to remember, are there three or four of the  
16 turbines just to the northwest of your home?

17 A. There are three due west of my house that  
18 will -- that are closest to us, there's one south of  
19 us also but probably equally as close.

20 Q. Are you concerned that the shadow and  
21 noise and the strobe lights are going to have a  
22 negative impact on your peaceable enjoyment of  
23 private property?

24 A. Yes, I am. My address is 7956 Remlinger  
25 Road, and I do not believe that address means my

1 residence. That is the same address I use for all  
2 five acres of my property, and by the picture that  
3 Mr. Settineri had us look at, you can see, even in a  
4 five-year old picture, the many flower beds, trees,  
5 things you can see, our sizable garden to the right.  
6 We spend most of our time working outside of this,  
7 outside of our residence on this property.

8 I mean, we have made this our life  
9 because we were able to retire four years ago when I  
10 was 45 years old and when my husband was 50 and made  
11 this our life's job, and no, we didn't retire on  
12 government funds either, but that's what we do with  
13 our time, is enjoy our property from one end to the  
14 other.

15 Q. Do you think there would be an advantage  
16 in the approval/mitigation process that a property  
17 value guarantee would be implemented into the project  
18 to protect you should you be unable to continue and  
19 retire and enjoy your home in the years ahead? Do  
20 you think that seems like --

21 A. I think that is one thing that Ohio Power  
22 Siting Board when approving these permits really  
23 needs to take this serious because people purchased  
24 their homes. They fixed the homes, or at least keep  
25 the maintenance is done on the homes knowing that

1     sometime in the future as they age and their health  
2     declines, that they will probably need to sell these  
3     homes to move to a place that is possibly less  
4     maintenance, cost less, you know, for the upkeep of  
5     the property altogether, and for people to lose a  
6     value will hurt them greatly.

7             MR. WARRINGTON: Thank you. That's all  
8     the questions I have.

9             EXAMINER FARKAS: Mr. Price, a golden  
10    opportunity.

11            MR. PRICE: My God, I'm going to use it.

12                             - - -

13                             CROSS-EXAMINATION

14    By Mr. Price:

15            Q.    You say you're very happy where you're  
16    at?

17            A.    I am.

18            MR. HEFFNER: That's sweet.

19            A.    I'm very happy with the property that we  
20    own and what we managed to do to it.

21            Q.    Could you please tell the people since we  
22    have been together the last 20 years how much work  
23    you have yourself put in and your kids put in the  
24    house?

25            A.    Oh, this house was built in 1836. The

1 walls are three brick deep meaning there's three  
2 separate walls of brick everywhere with mortar in  
3 between.

4           When we went in and had to do the work,  
5 we went in and the mortar hung out from between  
6 bricks. We had to take a hammer and lightly tap on  
7 it to knock the plastering off it so we could attach  
8 2 by 4s to hang new drywall on try to put this house  
9 to the way back it was originally built, with a few  
10 exceptions

11           This house has been an aggravation at  
12 times, but largely a joy that has kept our family  
13 together, kept the kids home not running the streets  
14 as they were growing up because they helped redo this  
15 house on the inside, helped save a lot of time doing  
16 the inside of this house; planting trees outside,  
17 watching the kids' trees grow. There's nothing on  
18 this property that does not represent my husband, me,  
19 our three kids, and now our grandchild, that has  
20 taken 23 years for us to accomplish, and at this time  
21 in life, we wouldn't be able to do part of what we've  
22 already done. There's no way we would have time to  
23 do all we've done anywhere else.

24           Q.    Have we talked maybe letting the grandson  
25 take over someday if things would work out right?

1           A.    Yes.  Yes, we would like to see that.

2           Q.    Do you think he would able to pay for all  
3 these windmills and keep the place?

4           A.    If you're referring to what I have  
5 wondered in the past about what the cost of building  
6 these windmill projects is going to do to the  
7 electricity bills, not just in the neighborhoods  
8 they're built in but everywhere, I do not believe we  
9 will be able to keep on using the amount of  
10 electricity we do at the price the electric will be.

11          Q.    I take it he wouldn't be able to afford  
12 it?

13          A.    No, he wouldn't.

14               MR. PRICE:  I'm done.

15               EXAMINER FARKAS:  Ms. Rietschlin?

16               MS. RIETSCHLIN:  I have no questions.

17               EXAMINER FARKAS:  Mr. Heffner?

18                               - - -

19                               CROSS-EXAMINATION

20   By Mr. Heffner:

21          Q.    Ms. Price, outside of this hearing and  
22 earlier in this building, have you any experience  
23 with the company employees or contractors?

24          A.    Yes, I have.  Me and my husband have  
25 owned two successful businesses that we have had

1 quite a few employees, and I've dealt with in the  
2 past when I worked for other companies in dealing  
3 with contractors and stuff. I've dealt with  
4 corporate people then too, yes.

5 Q. What kind of experience have you had with  
6 the Company or the Company contractors? I should say  
7 the Applicant or a future certificate -- or you know  
8 what I'm talking about.

9 A. No.

10 Q. Black Fork Wind Energy, LLC or Gary --  
11 strike Gary Energetics. It's taken me just a minute.  
12 Black Fork Wind Energy LLC, Element Power, LLC, what  
13 kind of experience have you had with the Company and  
14 their contractors?

15 MR. SETTINERI: Your Honor, at this time  
16 we have been patient. I would like to object as this  
17 is friendly cross at this time.

18 EXAMINER FARKAS: I'm going to allow it.

19 A. We, me and my husband, have had numerous  
20 occasions that starting with the previous applicant  
21 of the project and then when Element Power took over  
22 this project, we have had one of their associates the  
23 night of the -- let me look -- December 16, 2010,  
24 they had a public meeting in Shelby, and that day at  
25 roughly 2:00 o'clock while I was at my house



1 preparing to go to the meeting -- and at the end of  
2 our driveway, we have an alarm system to let us know  
3 someone's come into the driveway.

4 At the end of that driveway is a "Private  
5 drive. Do not trespass" sign, and on the other side  
6 there's a "no wind turbine" sign. I heard the alarm  
7 go off. I looked out and I didn't recognize the car.

8 When the car came in, I met them at the  
9 end of my sidewalk and asked them who they were,  
10 because, obviously, I didn't know them, and they just  
11 come past a "Private drive, no trespassing" sign.

12 The gentleman in the car says, "Oh, no  
13 English." And I was, "No English or not, you better  
14 get out of here. If you don't speak English, you  
15 didn't come up to speak to me anyhow if that's the  
16 only language you speak."

17 I left it go at that. I mean, we have  
18 had our share of other trespassers. We always give  
19 everybody a first chance.

20 That night when we walked into the public  
21 meeting for Element Power at Shelby High School,  
22 there stands this young man that had earlier  
23 trespassed on my property talking to this cute little  
24 girl trying to get her to go out on a date in perfect  
25 English. I was dumbstruck

1           So I walked around and asked who in the  
2 Company knew that young man, did he work for them?  
3 Yes, I was told he most definitely worked for them.  
4 I walked over to the police officer that was asked to  
5 be at this meeting to make sure there was no problems  
6 at the meeting. I asked him to come with me and  
7 walked back over to the employees at Element Power  
8 and asked to walk over to this young gentleman, and I  
9 proceeded to tell them in front of the gentleman and  
10 with the police officer as my witness, my husband as  
11 my witness, that, "Sir, was you on my property  
12 today?"

13           He dropped his head and said, "Yes,  
14 ma'am, I was."

15           And I said, "And earlier today you didn't  
16 speak English."

17           He goes, "I'm sorry."

18           I says, "Now, the Company's been put on  
19 notice before this that you do not use my property.  
20 I'm a nonparticipating resident. You do not use my  
21 property. Could you explain to this Company once  
22 again that they are not to use my property?"

23           And so it was explained again.

24           We have had a newspaper article in the  
25 front page of the News Journal came out, and they had

1 called me over the phone and interviewed me over the  
2 phone, and the only thing in the article it said --

3 EXAMINER FARKAS: Ms. Price, I want to  
4 say, is this related to the question about who you  
5 came in contact with?

6 THE WITNESS: Not that person.

7 EXAMINER FARKAS: Why don't you stick to  
8 that.

9 THE WITNESS: Okay.

10 Q. Were there others?

11 A. No.

12 Q. I didn't ask about that specific.

13 A. I'll just wind it up by saying I have had  
14 problems with "no wind turbine" signs being taken off  
15 my property, with Internet blogs of the local  
16 newspaper stating that -- referring to the newspaper  
17 articles I was interviewed for about the wind  
18 project, that my carbon footprints would be removed  
19 from the earth so nobody would have to worry about it  
20 and the newspaper shut those blogs down, so I've had  
21 multiple happenings since this all as started.

22 MR. HEFFNER: Thank you, Ms. Price.

23 EXAMINER FARKAS: Mr. Biglin?

24 MR. BIGLIN: No questions.

25 EXAMINER FARKAS: Ms. Davis?

1 MS. DAVIS: No questions.

2 EXAMINER FARKAS: Anything to add to your  
3 testimony?

4 - - -

5 REDIRECT TESTIMONY

6 MS. PRICE: I came down here not so much  
7 liking the fact of having huge windmills around me,  
8 but mainly I came down here to gain more answers to  
9 try to calm my own fears, and what has happened in  
10 the last two years has happened down here. I feel I  
11 have more to fear from this wind farm now than I did  
12 before through trying to ask questions.

13 The judges have worked with us, not being  
14 attorneys, but through the testimony of the  
15 specialists you had sit right here and try to gain  
16 answers, and they totally act like they didn't know  
17 what we was asking so they didn't want to answer.

18 You know, I have fears. I do have fears  
19 of this wind project and what may happen, and all I  
20 wanted was truthful, honest answers here in Columbus,  
21 and I can say probably one out of every 20 questions  
22 I had, I may have an answer for them, but they  
23 weren't the important questions.

24 And I can also say that since the wind  
25 project has started, our neighborhood has been

1 totally upset by people going what if, well, or,  
2 maybe, I don't know. So that's all I have to say.

3 EXAMINER FARKAS: Okay. Any objection to  
4 admission of Price Exhibit 2?

5 Hearing none, it will be admitted. Thank  
6 you.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 (Discussion off record.)

9 EXAMINER FARKAS: Back on the record. I  
10 believe that concludes all of the evidence that all  
11 of the parties want to enter into the record so the  
12 record will be closed. At this time no further  
13 evidence will be admitted into the record.

14 At this time we will take closing  
15 statements, and, for the record, the closing  
16 statements are not evidence. They are merely your  
17 opportunity to present a closing statement or  
18 argument with respect to the case and the evidence in  
19 the case.

20 We will try to limit everybody to  
21 approximately five minutes, give or take. I won't  
22 cut you off, but if everybody tries, it will be  
23 helpful to everybody's time.

24 EXAMINER FULLIN: It would be my  
25 intention if you're over five minutes and you don't

1 seem to be, in my opinion, getting to wrapping up, I  
2 will at least tell you you are past the time and I  
3 would like you to try to expedite the conclusion of  
4 your of statement.

5 EXAMINER FARKAS: First, Ms. Rietschlin.

6 MS. RIETSCHLIN: I take much pride in  
7 many facets of my life, my husband, and children.

8 EXAMINER FARKAS: Take your time.

9 MS. RIETSCHLIN: I take much pride in  
10 many facets of my life -- I think someone else has to  
11 go first.

12 EXAMINER FARKAS: That's fine.

13 Mr. Warrington.

14 MR. WARRINGTON: Well, in closing I'd  
15 just like to urge the law judges to urge the Board to  
16 listen to their hearts on this project. There's  
17 widespread opposition. There are 1,400 plus  
18 nonparticipating receptor residences in the sound  
19 study.

20 I just want you to weigh carefully, in my  
21 opinion, the developer is largely about rent seeking  
22 and subsidies. This is cap and trade entourage.  
23 This is a failed global warming abatement scheme.

24 We have listened to bought and paid for  
25 testimony that uses failed logic. They acknowledge

1 zero impacts of this wind production, which is beyond  
2 what a reasonable person can even possibly accept.  
3 We have never claimed on our opposition side claimed  
4 there's going to be all negatives that will apply to  
5 all people. They certainly will apply to an  
6 unacceptable ratio.

7           We're told that birds won't be harmed.  
8 Bats are not an issue. My testimony, that's been  
9 largely stricken, I believe provides objective  
10 studies that show there will be great property damage  
11 here in a conservative estimate from the range of 20  
12 to 40 percent of property loss and possibly  
13 100 percent loss of marketability built. Just  
14 multiplied across 1,000 homes, not 1,400 homes, this  
15 is a \$40 million loss to our community to benefit  
16 just so few.

17           Scott Hawken here has qualifications  
18 mostly in marketing. They won't identify who their  
19 principals are, who their financiers are. I question  
20 the sound study turned 4906.20, Section 2, Ohio  
21 Revised Code.

22           I believe that Mr. Kaliski's study  
23 flaunts the law with respect to land usage under  
24 4906.17.08. It doesn't regard what the residents,  
25 what our lifestyles are. I don't believe in their

1 averaging. I do not accept that sounds of nature,  
2 such as birds and wind rustling through the trees and  
3 crickets are the same thing as an electrical grinding  
4 electrical motor or a 150-foot blade cutting through  
5 the air creating an omnidirectional sound that  
6 pulsates every second.

7 The project is pushing against Senate  
8 Bill 216 that seeks to appeal the deplorable  
9 renewable energy standards in Ohio that I believe is  
10 the worse law in Ohio history.

11 I believe that the sound levels are  
12 greatly exaggerated by the Applicant. It is so quiet  
13 on my property even during the day that I think that  
14 20 decibels and even decibel levels in the teens are  
15 an acceptable average.

16 I just want you to weigh in your hearts,  
17 if you have any influence. When you look at the  
18 Great Seal of the State of Ohio, you see the sheaves  
19 of wheat and you see the sun in the background, and I  
20 want you to feel when you do this that you're just  
21 marring this state. You're casting a shadow across  
22 this entire region, across the entire 20,000-acre  
23 project area.

24 I call this damage to my property a  
25 reverse condemnation. Despite what their paid



1 experts say, it harms me. I consider this and  
2 continue to argue this is a regulatory taking of  
3 private property without compensation.

4 We deserve better than this in Ohio. We  
5 deserve better than this from our legislators and our  
6 regulatory bodies. And in my rationale, I charge  
7 this debt in the name of the Father, the Son and the  
8 Holy Ghost of the Old and New Testament Bible against  
9 the people who propagate this debt upon me and steal  
10 largely my entire life's work.

11 Just to renew, no coal plant will be  
12 closed by this. There is no wind energy without a  
13 gas plant immediately backing it up. You can't  
14 finish the washing of your car using a wind turbine.

15 So as we stand here or in this building  
16 that's 34 stories, the turbines they propose are  
17 higher than this building. It's counterfactual to  
18 say these have zero impact on the many residences,  
19 shadows that stare down line knives from the air over  
20 top of every tree, every large structure, every  
21 fence.

22 I just urge the Board to reject Element  
23 Power's project, the Black Fork Wind Project,  
24 10-2865-EL-BGN.

25 EXAMINER FARKAS: Okay. Thank you.

1 Mr. Price.

2 MR. PRICE: Mine won't be quite that  
3 long. I'd like to thank you, the Judges, and all the  
4 lawyers we worked with the last couple of weeks. I  
5 learned a little bit, and I need to know a lot more  
6 now.

7 But I sure don't approve of this. This  
8 Application book and the Staff's work has a lot of  
9 open questions. I don't think the Application should  
10 be approved. I also would like to think about the  
11 little church down the road a mile from me. I see  
12 the steeple, and I do not belong to it. That will  
13 have a big effect on the farmers and people that go  
14 to this church, and in my neighborhood that means a  
15 lot to a lot of people. And keep in mind, that's a  
16 Catholic church and I do not belong to it, but I do  
17 have great concerns about them people, old people  
18 that go to that church.

19 And I'd also like to close, as people  
20 telling me, I would just like to say one little  
21 thing: I would like to see this just go away.

22 That's all I have.

23 EXAMINER FARKAS: Thank you.

24 MS. RIETSCHLIN: I take much pride in  
25 many facet of my life, my husband, and children, my

1 work, my friends and community, the great state of  
2 Ohio, and my country.

3 My guiding principle is not to expect  
4 life to bestow gifts upon me, but rather give me a  
5 willingness to move when opportunity opens up.

6 I have spent many hours and much effort  
7 worrying about the Black Fork Wind Farm development  
8 as it is proposed. All of the parties in this case  
9 are receiving remuneration as a result of this  
10 Application, all except the intervenors.

11 Who are the intervenors? A group of  
12 citizens who reside in the area identified by black  
13 lines on a map. We are a group of people whose lives  
14 have been reduced to tiny black squares, minuscule  
15 circles, and thin lines on sheets of paper placed  
16 into a binder.

17 Our homes and buildings are referred to  
18 as receptors. The effect is trivialize the  
19 importance of our life's work. The wind farm  
20 developed by Black Fork Wind Energy or Element Power  
21 was a company that just appeared. The officers are  
22 not known. There is no long-established Ohio  
23 company. It has no proven record of creating  
24 employment, no record of commitment to our community,  
25 and no verifiable work.

1           Black Fork Wind Energy's pitch is the  
2           promise of money for a few, coupled with the  
3           sacrifice of many. My husband and I reside within  
4           the project. At this time we experience no flicker,  
5           no strobes, no red lights, no threats to our property  
6           value, no restrictions on our property's use, and no  
7           annoyance.

8           Much of the testimony presented during  
9           the hearing and a great deal of the appendices of the  
10          Application describe the level of intrusions with  
11          respect to the probable effect of the wind turbines.  
12          The Company has provided a stream of witnesses that  
13          deem these impositions to be acceptable. The only  
14          mitigation proffered is the promise of a complaint  
15          resolution protocol.

16          We have no contract with Black Fork Wind  
17          Energy. We are not buying a product from them or  
18          joining the club. There should be no expectation of  
19          cost to be incurred by us to protect our property,  
20          possessions, or health from any effects.

21          Throughout these months, one question  
22          remains for me. Who in my government is protecting  
23          my interest? I feel many of the issues raised by the  
24          intervenors could be resolved by increasing the  
25          setbacks.

1 I truly appreciate the professional  
2 kindness and patience shown to me during this hearing  
3 process.

4 Respectfully, Margaret Rietschlin.

5 EXAMINER FARKAS: Ms. Davis.

6 MS. DAVIS: I wish to begin my closing  
7 remarks by thanking the administrative law judges,  
8 Mr. Fullin and Mr. Farkas, for allowing me to  
9 participate in this process. I appreciate the  
10 tolerance that you have extended to us as we tried to  
11 understand how this system worked. For me it's been  
12 an educational and at some times, an eye-opening  
13 experience.

14 I feel we have done our best to get some  
15 balance of information presented to the Board but  
16 only with moderate success. The Applicant continues  
17 to express complete denial and irrelevance to the  
18 issues we express.

19 The Applicant was able to pay expert  
20 witnesses to testify to third-party studies that we  
21 never examined as evidence, and it's accepted as  
22 admissible. Yet if we try to present studies done by  
23 experts with good qualifications, it's considered  
24 hearsay and not admissible, but apparently those are  
25 the rules of evidence. We can't afford to get these

1 people to Columbus to present the evidence  
2 themselves.

3           However, it seems sad when a citizen who  
4 happens to live in the encroachment zone of a wind  
5 developer needs to take out a second mortgage to hire  
6 a lawyer and pay experts to defend their home with  
7 not much chance of success or recovery.

8           I followed the public meetings and  
9 hearings of Bucyrus Wind several years ago. In that  
10 case as each expert witness testified with a view  
11 opposing the Applicant, they were dismissed with  
12 little or no consideration and the Application was  
13 eventually approved.

14           It became obvious that the Siting Board's  
15 mission was not to promote sound energy, as they  
16 state, but more to help the Applicant run the  
17 gauntlet of rules and regulations in order to get a  
18 certificate of approval.

19           However, most of this happened after the  
20 public input phase. I still at this point today  
21 don't see how a certificate for the project can be  
22 justifiably issued with so many factors yet  
23 undecided.

24           The fact that wind energy companies  
25 continue to insist and even swear before the court

1 that no health issues exist or could be caused by  
2 living too close to the turbine destroys all trust in  
3 anything else they might say.

4 Are these problems going to affect  
5 everyone in the project? No, of course not.  
6 Mr. Kaliski and Mr. Haley, the sound and flicker  
7 experts, testified that the worst place to be is  
8 downwind from a prevailing wind or within 3,000 feet  
9 to the east or west of the turbine when the sun is  
10 rising or setting. There's mountains of evidence  
11 that exist to support that a one-half mile setback  
12 could avoid most of these problems.

13 But we couldn't site wind here if that  
14 were the case, you might say. Well, perhaps wind is  
15 not suitable for Ohio. Even the rural areas are  
16 still heavily populated on a relative basis compared  
17 to other wind sites we have seen. This is what  
18 happens when politicians take a leap of faith into  
19 the green abyss passing laws without considering the  
20 consequences.

21 Everyone in this room knows that without  
22 the monopoly money and a mandate to buy the product,  
23 none of us would even be here today. Mr. Stoner even  
24 had to agree to that.

25 It is time for wind to join the free

1 market. I was a greeny environmentalist, wildlife  
2 advocate long before it was in vogue and probably  
3 long before many you of in the room were born. I  
4 still am. I am all for clean air, protecting the  
5 environment, and looking for ways to serve or improve  
6 the electric sector, but wind energy is not a  
7 cost-effective way to meet energy and environmental  
8 goals.

9 It is my sincere hope that a new era of  
10 sensitivity towards sound energy policy for the good  
11 of all citizens will begin with this Board.

12 I thank you for your time.

13 EXAMINER FARKAS: Thank you.

14 Mr. Heffner.

15 MR. HEFFNER: If you don't mind my  
16 standing over here so I can face the people as a  
17 whole as I read it.

18 I appreciate everything that's been said  
19 up to this point from my new-found friends, and I  
20 even thank the Company, because we didn't know each  
21 other before, most of us. And I want to thank all of  
22 you for your kindness and patience. Some of you I've  
23 know for many years as we have worked through this.

24 I apologize if people have heard a little  
25 bit of this already. In 1971, a beautiful and



1 hard-working 31-year-old mother of three married a  
2 dark-haired, intelligent ruffian of Italian ancestry.  
3 They bought a house in Shelby, Ohio, where the man  
4 worked swing shift at the light plant.

5 At that time this plant generated power  
6 for almost 10,000 Shelbians. The Shelby Daily Globe  
7 and the Cairo World contained articles about the  
8 coming ice age being hurried along by human  
9 industrial activities.

10 This light plant provided good jobs for  
11 Shelbians, also education and advancement  
12 opportunities. Truck drivers brought coal from West  
13 Virginia miners. Since beginning operation in 1890,  
14 it had provided inexpensive power to small businesses  
15 that became big business, which in turn created  
16 employment, lifelong careers, community spirit, and  
17 tax revenue.

18 The city thrived. Schools were built.  
19 Parks were created. Police and firefighters were  
20 hired. Renters became homeowners. The earlier  
21 described light plant worker gave many tours to local  
22 groups. On one of these tours, an eight-year-old  
23 cub scout learned about Edison, Westinghouse, and  
24 Tesla.

25 The boy witnessed firsthand how we could

1 grab electrons out of the air, push them under high  
2 pressure through copper wires, and safely put them in  
3 people's homes pumping clean water, providing hot  
4 water, refrigeration, lights, warmth and music.

5 The light plant employee in later years  
6 traveled the world for a local company working on  
7 prime mover generation systems, steam, water, and  
8 wind.

9 The light plant joined the big grid and  
10 began buying some of its power from hydro plants on  
11 the Ohio River. It is currently working to invest in  
12 new hydro capacity being built on the same river. It  
13 has also converted turbine No. 4 to natural gas.

14 Then arrives big wind. When an  
15 out-of-state or out-of-country company uses federal  
16 funds and state incentives to buy Chinese turbines,  
17 which are erected by nonlocal contractors on our  
18 neighbors' land to generate electricity that I and my  
19 children are forced to buy at whatever price, is it  
20 really too much to ask: What's in it for me?

21 The majority of the money that the  
22 out-of-state speculators, the out-of-country  
23 manufacturers, and local wind farm lease signers will  
24 receive has been unwillingly donated by American  
25 taxpayers and electricity consumers.

1           If the money went instead to inner city  
2 mothers, Appalachian Americans, or work visa holding  
3 immigrants, the recipients of this money would be the  
4 first to complain. But because the money goes to  
5 people in dark suits or people with nice trucks and  
6 ball caps, it's just fine.

7           I have a suggestion for the recipients of  
8 this money: Get a job. This is a reverse Robin Hood  
9 scheme. Robin Hood robbed from a rich government to  
10 give to an oppressed peasantry. These folks rob from  
11 the middle class an poor and give to the already  
12 rich, who in turn contribute to their buddies in  
13 government.

14           Many of you have grandchildren. I don't  
15 yet, but when I do, they will each be born owing  
16 money to China, money that went into the pockets of  
17 already wealthy citizens, oil companies, foreign  
18 manufacturers, and politicians.

19           Industrial wind turbine complexes are not  
20 green energy. Taking energy from convection currents  
21 in the atmosphere has a direct impact on our climate.  
22 We're not speaking about some fussy computer model  
23 where if you tweak the inputs, we can arrive at the  
24 desired results. We are talking about each turbine  
25 blade removing 6/10 of a megawatt of energy from the

1 convection currents, which are the stabilizers of our  
2 planet's temperature.

3           This times three blades per turbine, as  
4 many as 100 turbines for the project, times how many  
5 projects. Also when the wind blows, coal fired  
6 plants must ramp down. When the wind stops, they  
7 have to ramp back up immediately. This has a net  
8 harmful effect on emissions. We will all pay the  
9 price for this massive industrial intrusion in our  
10 now quiet countryside.

11           But in the law when our property is  
12 wrongly taken by our neighbor, we can recover it.  
13 These fund managers, three tiers of limited liability  
14 corporations, boards, a questionable  
15 constitutionality, when lease-signers will take by  
16 force that which they cannot afford to buy. But the  
17 law will protect us. We will be made whole.

18           The beautiful and hard-working mother I  
19 mentioned at the beginning was my mother. She's  
20 71 now, still beautiful and hard-working. The  
21 ruffian was my stepfather, without the slightest  
22 exaggeration, the most intelligent, complex man I've  
23 ever known. A few of the wind turbines he worked on  
24 in foreign countries still spin.

25           When the subsidies go away, so do the

1 wind farms. The cub scout, I talked about the cub  
2 scout, he grew up, sort of, to become me. I've been  
3 an enthusiast of alternative energy sources since our  
4 last energy crisis. I have visited five industrial  
5 wind turbine projects. That tells you how long ago I  
6 wrote this. I have been to at least seven now in  
7 four states.

8 As much as I desperately want to believe  
9 in the fairy tale world presented by the wind  
10 industry, I cannot.

11 Thank you.

12 EXAMINER FARKAS: Thank you.

13 Mr. Biglin.

14 MR. BIGLIN: I'd like to thank  
15 Mr. Farkas, Mr. Fullin for the patience afforded us  
16 here.

17 The safe setback provisions set forth by  
18 the State of Ohio relative to nonparticipating owners  
19 involved in wind farm projects in Ohio, I believe,  
20 show a disregard for the nonparticipating landowners  
21 in these areas. These safe setback distances are  
22 based from inhabited residences, when I think this  
23 distance from inhabited residences should only apply  
24 to property lines and public roadways.

25 Ohio property owners use all of their

1 property for their activities. They do not always  
2 stay indoors. They should be able to enjoy every  
3 inch of their property without concern for their  
4 happiness and safety of themselves and/or their  
5 families.

6 People should be able to farm, hunt,  
7 fish, cut firewood, hike, play, do whatever activity  
8 they want to do on their property and feel safe.

9 They also need to be able to develop  
10 their property now or in the future, like building a  
11 new home or whatever, however they wish, without  
12 being too close to neighboring wind turbines. Safety  
13 concerns regarding ice throw, blade shear, shadow  
14 flicker, noise, et cetera, are real.

15 The happiness and safety rights of  
16 property owners should be foremost to that of wind  
17 farm developers. The wind turbine manufacturers'  
18 safety manuals used by wind company employees and  
19 workmen, the same safety protocols should relate no  
20 less to nonparticipating property owners. They have  
21 not given their consent for the state of Ohio to use  
22 any part of their property in calibrating wind  
23 turbine setbacks.

24 The Ohio Constitution and the Bill of  
25 Rights, Article I states, "Inalienable Rights.

1           All men are, by nature, free and  
2 independent, and have certain inalienable rights,  
3 among which are those of enjoying and defending life  
4 and liberty, acquiring, possessing, and protecting  
5 property, and seeking and obtaining happiness and  
6 safety."

7           I would implore the Ohio Power Siting  
8 Board in regards to this, that whether a proposed  
9 wind turbine facility will best serve the public  
10 interest and convenience and necessity, while part of  
11 this procedure would also take into consideration the  
12 public safety and public interest of the affected  
13 residents in these areas.

14           I believe the Ohio Power Siting Board,  
15 regardless of the so-called rules in the statutes, as  
16 a bare minimum standard does have the authority to go  
17 above those rules, if nothing else, to afford respect  
18 and justice to all the public citizens in the state  
19 of Ohio.

20           I would like to recommend the Ohio Power  
21 Siting Board consider the constitutionality of these  
22 setbacks and not happen at a future date that these  
23 issues would be raised.

24           Thank you.

25           EXAMINER FARKAS: Thank you.

1 Ms. Price.

2 MS. PRICE: I also would like to thank  
3 both of the Judges for taking the time to teach us,  
4 as if they were professors, in leading us through  
5 this whole thing.

6 I would also like to thank Jon Pawley.  
7 Give him a message for me. I don't think there was  
8 any of us ever caught in an elevator, hallway,  
9 anywhere where he couldn't have been nicer, treated  
10 us as if we were human beings and not intruders in  
11 this building.

12 I would also like to say that we had  
13 wished there had been a lot more intervenors here,  
14 but we have as much time in trying to find -- not  
15 negative information -- but any and all information  
16 that we could to answer questions about wind farms  
17 and everything, and then come down here, time, money,  
18 everything, and the last couple of weeks was the time  
19 we spent coming and going down there to Columbus. We  
20 have as much money into this as all of you.

21 Most of you either have a company paying  
22 for you to stay here so you are not traveling two  
23 hours each way. You have companies paying you for  
24 your gas and stuff. We have had to invest our own  
25 time, money, and everything into this. This is how



1 passionate we are about this.

2           And there were others that were willing  
3 to do it but could not afford either the time, the  
4 money, or felt their mind, because of age and such,  
5 would not be able to hold the information they may be  
6 questioned about, and they were scared to be caught  
7 off guard by someone questioning them.

8           I've been asked repeatedly if I'm an  
9 expert. No, I'm not an expert. But your experts  
10 aren't as expert as they think they are either. Your  
11 project manager and a couple of your other experts  
12 can say that wind is clean, renewable energy. The  
13 government calls for 25 percent by the year 2025, but  
14 they can't answer how much electricity is needed in  
15 Ohio, how much electricity Ohio uses in a year's  
16 time, so how do you know what 25 percent is that's  
17 even needed?

18           I have owned two businesses. They were  
19 very successful businesses, and we did not have  
20 successful businesses by treating our clients good  
21 and the neighborhood bad. Both businesses we had to  
22 treat the neighbors just as well as we did the  
23 clients or we didn't come back to the neighborhood,  
24 and those two businesses, like I said, we did very  
25 well. We both retired early.

1 I feel that Element Power and their  
2 associates have no limitations on how badly they  
3 treat people to get what they want. We have  
4 repeatedly been lied to about the Application being  
5 at the Crestline Library after I asked about it so  
6 many times. As of yesterday at 7:30, it is still not  
7 at the Crestline Library.

8 I have come to the hearing for the  
9 purpose to make sure that if this project does come  
10 to my neighborhood, I could obtain the facts about  
11 how this might affect my life, good or bad. The  
12 Company seems to have used their resources to mainly  
13 not -- N-O-T -- answer questions or address concerns,  
14 not even attempt to mitigate them in good faith with  
15 the intervenors here.

16 They seem to tell or bully everyone in  
17 what they want. I came here believing that Element  
18 Power was here for the last chance to make sure that  
19 all their Is were dotted and all the Ts crossed, to  
20 find out that they are being given guidelines on how  
21 to build this, not rules and regulations that have to  
22 be abided by, the same as building a home.

23 If I was to build a new home, I would  
24 have to tell them how many square feet, how many  
25 stories, if a garage is connected, if the garage

1 isn't before I even attempted to ask for the permit.  
2 You people are asking for the permit and saying,  
3 After you have give us the permit, then we'll come  
4 back and tell you how many stories and everything  
5 else.

6 This is just an open-ended permit for  
7 them to do as they want and tell you later how it  
8 turned out. It's being done on a lot of government  
9 money coming out of my tax money, which I highly do  
10 not appreciate, for electric to cost me more later  
11 because my money helped you build this to begin with.

12 So with all that, I have one thing I do  
13 ask. If this project does go through, I hope that  
14 the one question repeatedly asked is, Who are the  
15 inspectors for all phases of this project? Who is  
16 responsible to make sure that when they decide where  
17 they're going put them, that it's safe to have them  
18 there for whatever reason?

19 If you build a home, the inspector is  
20 there to tell you if the wiring is right, if the roof  
21 is right, if you're using the right 2 by 4s, if the  
22 foundation is right, everything. I do not see where  
23 this is being told for you people to do, and I really  
24 think if the common person is asked to do this on a  
25 small building, for what you want to build and for

1 the years it's going to be there operating, you  
2 should be answering the same questions every step of  
3 the way.

4 I hope this does not come into my  
5 neighborhood because technically I would never want  
6 to have to think I may need to deal with Element  
7 Power again in my life, anybody else that runs a  
8 business like you.

9 Thank you.

10 EXAMINER FARKAS: Thank you.

11 Mr. Jones.

12 MR. JONES: Yes. Thank you, your Honors.

13 I want to take this opportunity on behalf  
14 of the Staff of the Power Siting Board to thank  
15 everyone for their professionalism and courtesy  
16 extended to the Staff, counsel for the Company and  
17 for the Bench.

18 I just want to say that the Joint  
19 Stipulation and the Amended Joint Stipulation  
20 satisfies all the statutory criteria for granting a  
21 certificate as shown by the evidence in the  
22 proceeding.

23 This being a major utility facility  
24 project covering over 24,000 acres capable of  
25 producing over 600 megawatt-hours of energy on an

1 annual basis, it provides for a big footprint, and  
2 when we have big projects, by their very nature, you  
3 always have some opposition from landowners, but  
4 Staff still believes the project does serve the  
5 public interest, convenience, and necessity.

6 And the project, with all 71 conditions  
7 provided in the Joint Stipulation and Recommendation  
8 and the additional nine conditions provided in the  
9 Amended Stipulation and Recommendation believe with  
10 that all these conditions taken together, they  
11 represent a minimum adverse environmental impact in  
12 the operation of this facility.

13 Now, I wanted to say that the Stipulation  
14 is in the public interest. It provides for the  
15 construction and operation of an alternative energy  
16 generating facility. Accordingly, it furthers the  
17 policies of the state of Ohio under Revised Code  
18 4928.02(c) in that it ensures diversity of  
19 electricity supply and suppliers, so it furthers the  
20 policy goals of the state of Ohio.

21 And also it helps our electric  
22 distribution utilities for the state of Ohio. They  
23 have benchmarks they have to meet every year with  
24 alternative energy, and this would further provide  
25 that source of alternative energy for those utility

1 companies.

2 Also, the benefits are many to the local  
3 community as well, revenues for participating  
4 landowners. We have heard from the Farm Bureau --  
5 the Ohio Farm Bureau is a party supporting the  
6 Stipulation in this case -- it helps preserve  
7 agricultural land. The footprint for these turbines  
8 to those properties are very small. They're able to  
9 still farm their properties for all their land.

10 It also provides tax revenues to the  
11 communities and also provides revenues to merchants  
12 in the area as to the construction and operation of  
13 the facility itself.

14 And as it concerns the standards that  
15 have been set for this facility in the Joint  
16 Stipulation and Recommendation and the Amended  
17 Stipulation and Recommendation, you got to remember  
18 that the setbacks required by law to nonparticipating  
19 residential properties and the residences themselves,  
20 the setbacks here exceed those minimum requirements.

21 You know, based on the three models that  
22 were presented, that the Staff recommended here after  
23 their evaluation taking the largest turbine model and  
24 basing those setbacks here. You know, we're talking  
25 about from the nonparticipating owners' property it

1 would be 543 feet and to a residence within 914 feet.  
2 Well, in this case we have 563 feet to the nearest  
3 nonparticipating residence and also to roads fit in  
4 there as well.

5 And as to the residences, 1,250 feet, so  
6 it does exceed considerably what Ohio law requires,  
7 even for a minimum. It exceeds those minimum  
8 requirements by law, is what I'm trying to say.

9 Also the conditions provide for a  
10 complaint resolution procedure for anything that  
11 would come up for shadow flicker, noise. Whatever  
12 the problems would be, there is a way for redress of  
13 those issues by the community, any property owner in  
14 the area.

15 Pursuant to condition 13, they can  
16 utilize the informal complaint process and have those  
17 issues addressed with the Company and with Staff, and  
18 if there can't be a resolution to the satisfaction of  
19 the complainant, then, of course, there's a formal  
20 complaint process available to those landowners  
21 pursuant to 4906.97 that provides for them to pursue  
22 those complaints to the Board itself.

23 So, taken as whole, there are standards  
24 necessary for this project site. They have minimized  
25 the environmental impact for the project site, and

1 overall, with all the conditions being take into  
2 consideration, we ask the Board to approve this  
3 certificate in this case.

4 Thank you.

5 EXAMINER FARKAS: Thank you.

6 Mr. Petricoff.

7 MR. PETRICOFF: Thank you, Your Honor.

8 I guess I have the privilege of being the  
9 last of the five-minute speeches, and I will divide  
10 it sort of in half. First, I need to do the work of  
11 closing the case for the Applicant.

12 The Stipulation has been filed with the  
13 Power Siting Board. The stipulation should be viewed  
14 under the three-prong test. I think the evidence in  
15 this record amply shows that it is the product of  
16 negotiation by informed and knowledgeable people. It  
17 violated no regulatory principle nor statute, and it  
18 is in the best interest of the public.

19 In terms of the record itself, there have  
20 been many issues raised, primarily setbacks, noise,  
21 flicker, property values, and I think the record is  
22 fairly clear. In terms of setbacks, setbacks are set  
23 by rules. We more than complied with rules. In  
24 terms of noise, we have had all of the modeling  
25 that's been done, and the modeling has been done in



1 accordance with the highest industry standards, and  
2 it meets the standards both of the prior projects  
3 that have been permitted by the Board, as well as the  
4 regulatory standard.

5 In terms of property values, that's  
6 always a difficult, difficult question. Are there  
7 guarantees for property values? No one can give you  
8 a guarantee for property value. Even if there is no  
9 wind farm built, one just has to look at the current  
10 crisis in California or Florida or Las Vegas where  
11 property values have dropped 30 or 40 percent.  
12 Property values are always in flux. The economy is  
13 always in flux. Values are always in flux.

14 In terms of the impact, there have been  
15 studies that show what the impact is from a wind  
16 farm, and there I think the record in this case is  
17 fairly clear. Mr. Stoner talked about his experience  
18 in the fact he has seen none with the Lawrence  
19 Livermore study, which was a nationwide study,  
20 broad-based, shows there's none as well.

21 If you look at property values, the first  
22 thing a realty agent tells you, it's location,  
23 location, location. And the fact that a \$300 million  
24 project is going to come to Crawford and Richland  
25 Counties and basically pay the kind of royalties that

1 come with this kind of generation and pay the taxes  
2 is good chance it will lift property values.

3 That brings us to, I guess my, closing of  
4 the two halves, and I wanted to address some of what  
5 I heard here from intervenors.

6 Mr. Price, you're not only one who has  
7 had a great learning experience here. We learned  
8 from you as well. And I listened to your passionate  
9 closings here, and it's the kind of vision, I guess  
10 because I've been doing this for 30 years, that I see  
11 the two visions colliding.

12 The vision that's been presented in your  
13 closing is one of a bucolic area, and the pictures  
14 that we have an seen in the evidence show really a  
15 lovely neighborhood. Of course you would want to  
16 freeze that and hold on to it and leave it unchanged  
17 because it is gorgeous and a wonderful lifestyle, and  
18 I hope that you're able to do so.

19 But the world is always changing, and at  
20 the same time that you're asking that, there are also  
21 questions being asked in the testimony today, from  
22 the county commissioners is fine example, we have had  
23 no growth in tax revenue in ten years. The  
24 population in Richland County is actually shrinking.

25 I mean, basically we have to offer

1 something for our children as well. Do they have to  
2 leave Richland County because there are no jobs? We  
3 should have both. We need economic development, and  
4 here's an opportunity to invest, you know, hundreds  
5 of millions of dollars in an area and create jobs.  
6 Well, that's good.

7           Where is the balance? How do we strike  
8 the balance, and that's what this process is all  
9 about. Are all the details known of this project?  
10 No. Why is that? An excellent question from  
11 Ms. Price, and reason because we stagger the  
12 decisions.

13           First, you have to look at environmental  
14 impact, because if this is a dangerous project, you  
15 shouldn't be able to turn the first shovel full of  
16 dirt. That's why you have to get this permit first,  
17 the power siting permit first, because you can't do  
18 anything else until you have that in hand.

19           If because we have that type of system,  
20 that means when you get out in the field, you have to  
21 make adjustments. There has to be some type of  
22 system that allows for change. And so we have  
23 micro-siting, and that's in the rules and it has to  
24 be approved by the Board, and there are limits how  
25 far you can make changes in micro-siting. That is

1 the reason for the process.

2 Now, what is the future? Well, I wish I  
3 could tell you. I don't have a crystal ball. My  
4 hope, and the hope of my client, is that 15 years  
5 from now people will go, You know, those wind towers  
6 aren't as bad as I thought. I originally opposed  
7 them, but they weren't that noisy. It wasn't that  
8 intrusive, and I see that the farmers don't have to  
9 sell off their frontage because they're getting some  
10 revenue in that allows them to keep the family farm  
11 together.

12 I hope it works out that way. I can't  
13 guarantee it, but I hope that's the future. And this  
14 process is supposed to give us the best glimpse that  
15 we can have into that future.

16 I think the job has been done. I think  
17 the record that we present to the Administrative Law  
18 Judges and on to the Board gives them that balance.  
19 I think when you consider all of it and you look at  
20 the Stipulation, the Stipulation ought to be accepted  
21 as drafted.

22 Thank you very much.

23 EXAMINER FARKAS: Thank you.

24 That concludes our hearing. I thank  
25 everybody for their participation, and we are

1 adjourned.

2 EXAMINER FULLIN: I also wanted to just  
3 say thank you to everyone for all the civility that I  
4 saw demonstrated throughout the hearing, and I  
5 appreciate that and everyone's efforts in that  
6 regard.

7 Thank you.

8 (The hearing concluded at 6:26 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 Thursday, October 13, 2011, and carefully compared with my original stenographic notes.

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Rosemary Foster Anderson,  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My commission expires April 5, 2014.  
(RFA-8695)

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