

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Champaign :
Wind LLC for a :
Certificate to Construct : Case No. 12-0160-EL-BGN
a Wind-Powered Electric :
Generating Facility in :
Champaign County, Ohio. :

- - -

PROCEEDINGS

before Ms. Mandy Willey Chiles and Mr. Jonathan
Tauber, Administrative Law Judges, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on
Friday, November 16, 2012.

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VOLUME VI

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Friday Morning Session,
November 16, 2012.

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ALJ CHILES: Go on the record.

The Ohio Power Siting Board has set for
hearing at this time and place, Case No.
12-0160-EL-BGN, being In the Matter of the
Application of Champaign Wind LLC for a Certificate
to Construct a Wind-Powered Electric Generating
Facility in Champaign County, Ohio.

We will take appearances beginning with
the company.

MR. PETRICOFF: Your Honor, on behalf of
Champaign Wind, Howard Petricoff, Mike Settineri,
Stephen Howard, and Miranda Leppla from the law firm
of Vorys Sater.

MR. VAN KLEY: Good morning. My name is
Jack Van Kley. Chris Walker is my co-counsel. We
represent Union Neighbors United, Bob and Diane
McConnell, and Julia Johnson.

ALJ CHILES: Thank you.

MS. NAPIER: My name is Jane Napier. I
am assistant prosecutor representing Champaign County
and the townships of Goshen, Union, and Urbana, along
with Nick Selvaggio, the Champaign County Prosecuting

1 Attorney.

2 ALJ CHILES: Thank you.

3 MS. PARCELS: For the city of Urbana,
4 Breanne Parcels, with Law Director Gil Weithman of
5 Urbana.

6 ALJ CHILES: Mr. Margard.

7 MR. MARGARD: Good morning, your Honor.
8 On behalf of the Power Siting Board Staff, Mike
9 DeWine, Attorney General, by Stephen Reilly, Werner
10 Margard, Devin Parram, and Summer Plantz and Sarah
11 Anderson.

12 ALJ CHILES: Before we begin with
13 testimony this morning, I understand the county would
14 like to put something on the record.

15 MR. SELVAGGIO: Judge, let me first say
16 the Court has been very good to the county and, I
17 think, all the parties addressing earlier through
18 conference telephone calls scheduling issues, and we
19 very much appreciated that, and the Court indicated
20 they wanted to abide by the scheduling process.

21 And my comments are not intended to
22 critique the Board's decision yesterday with regard
23 to Witness Shokouhi, rather the county wants to put
24 on record more the lack of the position of the
25 Applicant in taking a position on the county's

1 request.

2 And by that I mean this. The record
3 should reflect that Engineer Shokouhi was scheduled
4 to come in either on the 14th or 15th, certain
5 through the course of discussion, the night before
6 the 15th, the county indicated that Engineer Shokouhi
7 would be here sometime after 10:45, and we believed
8 that his testimony would be relatively brief. He did
9 appear at the conclusion of Witness McCann yesterday
10 at about 1:15, 1:30.

11 The county had indicated off the record
12 that we wanted to place Mr. Shokouhi, who was in the
13 audience, we wanted to place him out of the witness
14 order, so we spent about seven to ten minutes off
15 record discussing the issue, and then the Court
16 granted the staff's request to have another attorney
17 present, so the Court took a 10- to 15-minute recess,
18 at which time it was my position, although I never
19 expressed it to the Court, that I felt we could have
20 put Engineer Shokouhi in.

21 The reason I want to make this a matter
22 of record is because in the Staff's Report of
23 Investigation, it indicates on page 47 that "The
24 Applicant further indicated its intention to work
25 with the Champaign County engineer to develop a road

1 use agreement or other similar document."

2 And so what that sentence does, it places
3 as a matter of record the Applicant's willingness to
4 accommodate the engineer, and it sets the tone, at
5 least publicly, that the Applicant will do what it
6 can do to assist this county official.

7 We had an incident occur yesterday where
8 the Applicant was silent on the county's position to
9 take a witness out of order. It was an agreement
10 that we believe that we had with Union Neighbors
11 United. Mr. Shokouhi, as an elected official, came
12 from out of town to testify.

13 I'm not critiquing the Court's position,
14 but I do believe it's relevant to the position of the
15 tone of the staff report that this indication of
16 willingness to work, when put to the test in a matter
17 of a procedural hearing, wasn't done. That's why the
18 county wanted to make that of record

19 ALJ TAUBER: Does anyone wish to respond?

20 MR. PETRICOFF: Yes, your Honor. On
21 behalf of the Applicant, first of all, Witness
22 Shokouhi was taken out of order when we did the
23 original schedule because this was the day he was
24 available. He was given a date certain, and
25 basically the Court was going to put him on that day.

1 That date was reserved for him.

2 When the company asked to basically not
3 only have a date certain but a time certain to put
4 him in a slot between 10:30 when he could get here
5 and 5:30 when he wanted to leave, I would note, for
6 the record, the Applicant did not object. It would
7 be fine to us. Last night we went to 7:30. We could
8 have gone longer, I assume, if he wanted to be on
9 that day.

10 ALJ TAUBER: Any other parties wish to
11 respond?

12 MR. SELVAGGIO: May I say one other thing
13 that I forgot?

14 ALJ TAUBER: Very briefly.

15 MR. SELVAGGIO: The reason I didn't raise
16 it yesterday at the conclusion of the recess, there
17 were a number of citizens here, and I didn't want to
18 bring attention to it at that point so that's why we
19 waited until today.

20 ALJ TAUBER: Thank you.

21 On Wednesday evening, November 14, we
22 determined the witness order for the 15th. We
23 established Julia Johnson, Mike McCann, and Rick
24 James as date-certain witnesses would go first, and
25 then we would get Witness Shokouhi following that.

1 That's what was emphasized to all the parties.

2 Yesterday afternoon we were informed at
3 1:00 o'clock, right before Mr. James was going to go
4 on, the parties decided to unilaterally change the
5 witness order. The Bench was not informed of this.

6 Let me go back and clarify that. The
7 parties -- I'm not accusing the parties of
8 unilaterally making any decision, but the Bench was
9 not aware of any change in the witness schedule. And
10 further, we kept in order, as has been consistent
11 throughout this entire proceeding, date-certain
12 witnesses.

13 Parties may not agree with what the Bench
14 does, but all parties were on notice of what witness
15 order we were going in, and all parties were informed
16 before the start of this proceeding that date-certain
17 witnesses would go first, and there was a possibility
18 that we would be going late into some evenings if we
19 needed to accommodate all the witnesses

20 With that, we will take your comments
21 into the record, but we will move on this morning

22 MR. SELVAGGIO: Thank you.

23 ALJ TAUBER: Thank you, Mr. Selvaggio.

24 ALJ CHILES: Thank you. Let's begin with
25 testimony. I believe we have Milo Schaffner first.

1 MR. VAN KLEY: Yes, your Honor. We call
2 Milo Schaffner to the stand.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 - - -

5 MILO SCHAFFNER

6 being first duly sworn, as hereinafter certified,
7 deposes and says as follows:

8 DIRECT EXAMINATION

9 By Mr. Van Kley:

10 Q. Would you state your name for the record,
11 please?

12 A. Milo Schaffner.

13 Q. All right. Mr. Schaffner, I have handed
14 you what has been marked as UNU Exhibit 21. Do you
15 recognize that as a copy of your direct testimony?

16 A. Yes, I do.

17 Q. Okay. Do you have any changes that you
18 would like to make to that testimony?

19 A. No, I do not.

20 Q. All right. If I were going to ask you
21 the same questions today as are contained in your
22 direct testimony, would your answers be the same?

23 A. Yes, they would.

24 Q. Okay. Thank you.

25 MR. VAN KLEY: At this time, your Honor,

1 Mr. Schaffner is available to answer questions.

2 ALJ CHILES: Thank you, Mr. Van Kley.

3 We do have two outstanding motions to
4 strike that we will handle at this time. The first
5 motion to strike is on page 1 of Mr. Schaffner's
6 testimony. It involves answer 4, and it involves
7 everything after the word "yes" in answer 4, so that
8 would extend onto page 2, the first two lines of
9 page 2. I will let the parties briefly summarize
10 their arguments on the motion to strike.

11 Ms. Leppla.

12 MS. LEPPLA: Champaign Wind believes this
13 is hearsay. We are only requesting that the Court
14 strike the parts of the testimony that are hearsay,
15 which discuss complaints of individuals who are
16 unnamed, and so we would ask the Court strike that
17 portion of his testimony.

18 ALJ CHILES: Thank you.

19 Mr. Van Kley.

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

21 Certainly the information in
22 Mr. Schaffner's testimony is more specific and is no
23 less hearsay than most of the stuff we're seeing in
24 the Applicant's application, as well as the testimony
25 of Michael Speerschneider and Jerry Poore, and

1 Mr. Shears, Chris Shears.

2 Much of the testimony is based on the
3 complaints they have heard, Mr. Hessler's too, for
4 that matter. They are all basing their testimony on
5 complaints they have heard or relative lack of
6 complaints they might not have heard, and this is the
7 same type of evidence, except this is more specific
8 because this witness has actually heard the
9 complaints himself as opposed to all those other
10 witnesses who may have heard or not heard of
11 complaints through the grapevine somehow. It's just
12 as valid and has just as much validity as all the
13 other testimony that's been admitted so far.

14 ALJ CHILES: Thank you, Mr. Van Kley.

15 The motion to strike will be granted in
16 the entirety of answer 4, which extends from
17 page 1 onto the first two lines of page 2.

18 The next motion we have to strike is on
19 page 3. It involves answer 10, and it is only the
20 last sentence of answer 10, so it's the sentence
21 beginning "A relative" and ending with "that house."

22 Ms. Leppla, would you like to summarize
23 any argument on that?

24 MS. LEPPLA: Yes, your Honor. We believe
25 this statement is further hearsay and is asserted for

1 the truth of the matter. There is no exception that
2 would allow it in, your Honor.

3 ALJ CHILES: Mr. Van Kley.

4 MR. VAN KLEY: Your Honor, the same
5 argument pretty much.

6 ALJ CHILES: Thank you. I appreciate
7 that.

8 The motion to strike is granted as to the
9 very last sentence of answer 10 that falls on
10 page 3 of Mr. Schaffner's testimony. It's the
11 sentence beginning with "A relative" and ends with
12 "that house." The remainder of the answer is
13 stricken.

14 We will begin with cross-examination.
15 Ms. Parcels.

16 MS. PARCELS: Thank you, your Honors. I
17 will pass out what is marked City Exhibit 7.

18 ALJ CHILES: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. VAN KLEY: While she's doing this,
21 your Honor, for clarification, did you also strike
22 the word "yes" in answer 4, or did you leave that in
23 there?

24 ALJ CHILES: Give me a moment here.

25 Just to clarify, I did not intend to

1 strike the word "yes" in answer 4 on page 1 of
2 Mr. Schaffner's testimony.

3 MR. VAN KLEY: Okay. Thank you, your
4 Honor.

5 ALJ CHILES: Ms. Parcels.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Parcels:

9 Q. Mr. Schaffner, have you ever had an
10 occasion to visit Champaign County, Ohio?

11 A. Yes, I have.

12 Q. How recently?

13 A. I believe that's probably been this
14 spring, so six months ago.

15 Q. Okay. How far apart would you estimate
16 Van Wert County from where you are a resident and
17 Champaign County where you are in terms of geographic
18 distance?

19 A. Say about 90 miles, 80-some to 90 mile.

20 Q. How long does it take to drive from Van
21 Wert to get to Champaign County?

22 A. There's no direct route that was good, so
23 I think it took about an hour and a half, an hour and
24 45 minutes, something like that.

25 Q. Would you describe Van Wert County as

1 northwest of Champaign County?

2 A. Yes.

3 Q. And you indicate that you are a township
4 trustee. I want to go into that briefly. As a
5 township trustee, are you responsible for any sort of
6 firefighting, for emergency medical service to the
7 town?

8 A. Yes, they are.

9 Q. How is that funded, through a levy or
10 income tax?

11 A. That's funded through a levy.

12 Q. Do you have a township fire department or
13 a contract with nearby municipality?

14 A. We contract with municipalities.

15 Q. And what municipalities are those?

16 A. We have Scott Village, we have Grover
17 Hill Village, and then Middle Point Village.

18 Q. Okay. And those villages, if you know,
19 are those volunteer departments, or are they paid
20 professional departments?

21 A. They're paid professionals -- no, well,
22 they're volunteer. And I left out we do have a
23 contract with Van Wert City where they are
24 professionals. They are a full-time firefighting
25 unit.

1 Q. Okay. Just wanted to clarify that. You
2 note that you have received complaints -- I'm not
3 going to go into the specifics of what was said
4 during those complaints, but I do have a question.
5 In your capacity as a township trustee, have people
6 made any complaints to you about interference with
7 cell phone communications since the turbines started
8 operating in October?

9 A. Yes.

10 MS. LEPPLA: Objection, your Honor. I
11 think details of the complaints have been stricken.

12 ALJ TAUBER: Ms. Parcels.

13 MS. PARCELS: The question actually
14 refers to those types of complaints.

15 ALJ CHILES: Please read the question
16 back to me, please.

17 (Record read.)

18 ALJ CHILES: The objection is overruled.
19 We did not strike the word "yes" about the answer
20 receiving complaints so we will allow limited
21 questions.

22 Q. (By Ms. Parcels) Again, I'm not going
23 into details of who said what. What I want to know,
24 was that a topic of complaint?

25 A. Yes.

1 Q. You indicated you had received complaints
2 about cell phone reception?

3 A. Yes.

4 Q. How about citizen band or CB
5 communications, any complaints?

6 A. No.

7 Q. What about any other sort of radio
8 communications, any sort of complaints since the
9 turbines started operating?

10 A. No radio, but TV.

11 Q. In your response to question 5, you talk
12 a little bit about some of the road damage you have
13 observed in Hoaglin Township in Van Wert County. You
14 indicate that potholes and soft shoulders and that
15 sort of thing create an unpleasant bumpy ride; is
16 that correct?

17 A. Yes, it does.

18 Q. As a township trustee, are you
19 responsible for maintenance of township roads?

20 A. Yes, we are.

21 Q. Can you explain to me from a safety
22 perspective, as a township trustee, why roads need to
23 be maintained, other than general discomfort when
24 driving? Is it a safety issue?

25 A. Definitely. I smile because even our

1 county engineer complained about the bumps on the
2 roads from the wind turbine. They had patched the
3 roads where they laid cables through the roads and
4 then put patches on them.

5 What happens is we have wagons that have
6 a lot of grain on them. Those axles can break, and
7 if you get those wagons to bouncing, once they start
8 bouncing, you've got to slow way down to stop the
9 bounce. It's just like a basketball, and as that
10 continues, that gets very dangerous. You could lose
11 control.

12 You know, combines, the rear wheels, they
13 steer in the rear. The rear wheels hit these types
14 of things, the front of the combine is heavy because
15 of the grain head or the corn head. When those
16 wheels hit something and bounce, they actually come
17 up in the air. That means you've lost control of
18 that vehicle. It's very dangerous, yes.

19 Q. Okay. So have you observed those types
20 of occasions before with the grain wagon?

21 A. Yes.

22 Q. Is it almost losing control, so to speak?

23 A. Yes.

24 Q. As it's being towed?

25 A. Yes. The worst is with my combine. I

1 almost hit the top of the cab with my head when I hit
2 one. So, you know, I have firsthand experience of
3 that.

4 Q. Now, what about you were speaking of
5 agricultural equipment, traffic on those roads. What
6 about, I guess, what I would term normal passenger
7 vehicular traffic, cars, trucks, that sort of thing?

8 A. Yes, it can be hazardous to them, too, if
9 they do not slow down for them. They wind up hitting
10 them. And my fear is the younger drivers. Us older
11 people, we drive slow anyways, but the younger ones
12 don't, or don't normally pay attention to that, and
13 that can happen.

14 If we do not maintain our roads, Hoaglin
15 Township has paid for repair of vehicles, front end,
16 things like that when they hit a pothole. We're
17 responsible, and we have to pay for it.

18 Q. So your experience as trustee has been
19 that the township -- is the township insured to pay
20 for things like that, for vehicular damage caused on
21 township roads?

22 A. Yeah. But so far I'm not sure we've
23 turned any of it in to insurance because 5, 6 hundred
24 dollars fixes it.

25 Q. You just pay it?

1 A. Yes.

2 Q. As a township board?

3 A. Yes.

4 Q. Are there three members on the township
5 board?

6 A. Yes, there are.

7 Q. The three of you agree to just pay it
8 when there is damage to a vehicle created by a
9 certain road condition?

10 A. Yes, if it is not too expensive. If it
11 causes an accident or something, we definitely use
12 our insurance.

13 Q. I think in your testimony you've
14 indicated you've been a township trustee. How long
15 have you been a township trustee?

16 A. Ten years. This will be starting --
17 finishing my 11th year.

18 Q. And you indicated if there was an
19 accident or something more serious than a couple
20 hundred dollars in damage, you would then submit that
21 to insurance if it was caused by a road condition?

22 A. Yes.

23 Q. Can you estimate in your ten years as a
24 trustee how many times that's happened?

25 A. With me, it hasn't happened any. The

1 vehicles that they had repaired were before I came on
2 the board.

3 Q. Okay. I want to direct your attention to
4 your direct testimony, questions 8 and 9, about your
5 observations there at the turbine that had a blade
6 failure in Paulding County which you traveled to and
7 observed.

8 Directing your attention to City Exhibit
9 7, what does that appear to be to you, the entire
10 exhibit?

11 A. It appears to be the turbine that I went
12 and observed up -- it's close to Payne.

13 Q. I'm not talking about that section of
14 that exhibit. I'm talking about the entire document
15 there. Is that the front page of the Urbana Daily
16 Citizen?

17 A. Oh, yes.

18 Q. Can you tell me the date on that?

19 A. June 2, 2012.

20 Q. Okay. Was that before or after you
21 traveled to Paulding County?

22 A. That was after.

23 Q. Okay. And what is the headline on an
24 article there related to the turbine in Paulding
25 County that you opened?

1 A. "Ohio wind turbine blade found to be
2 defective."

3 Q. Okay. Now, is that photo there with the
4 headline an accurate representation of what you
5 observed in Paulding County in April of this year?

6 A. Yes, it is.

7 Q. And down at the bottom there's another
8 photo. How would you describe that photo?

9 A. That photo is what I call the debris
10 field.

11 Q. Okay. In answer to question 11 of your
12 direct testimony, you indicate that you observed
13 debris out close to the public road at a distance of
14 1,561 feet.

15 A. Correct.

16 Q. Okay. Let me back up.

17 Did you say you went to the Paulding
18 County wind farm a couple days after the incident
19 happened?

20 A. Yes.

21 Q. Okay. So do you know if there was
22 actually any debris in the road when you went and
23 observed, or was it along the roadside?

24 A. It was along the roadside.

25 Q. You don't know if it had been moved since

1 the --

2 A. No, I do not.

3 Q. As a township trustee, are you
4 responsible for keeping the township roadways clear
5 of obstructions?

6 A. Yes, we are.

7 Q. How do you generally learn about
8 obstructions?

9 A. Normally after a storm, the three of us
10 trustees will divide the township up and drive the
11 roads, but if we haven't been there yet, normally
12 citizens will call us or the sheriff's department or
13 the highway patrol will contact us.

14 Q. Is that true with things like trees, or
15 do you also get calls about wildlife, broken
16 mailboxes, that sort of thing?

17 A. We haven't hit any mailboxes lately, so
18 no mailboxes, but trees, stop signs. We had quite a
19 few stop signs that the wind turbine people knocked
20 down and didn't tell us, so we had to put them back
21 up. Highway patrol will call us if a stop sign is
22 down.

23 Q. Okay. When you went to observe the
24 Paulding wind farm, again, I want to be clear, you
25 didn't observe any debris in the roadway, but you did

1 observe debris alongside the roadway?

2 A. Correct.

3 Q. And you calculated the distance from the
4 turbine, but could you tell me from what you observed
5 how close to the road the debris was?

6 A. Approximately 30 feet off the edge of the
7 roadway.

8 Q. Did it appear to you that it had been
9 moved off the roadway as you would do as a trustee if
10 you were clearing an obstruction?

11 A. Yes. It was all picked up off what I
12 would call the road right-of-way. It was all gone.

13 Q. So when you calculated that distance,
14 just based on your observation that it had been
15 moved, it could have landed in the roadway?

16 A. Pardon, would you state that again,
17 please?

18 Q. You observed that the debris had been
19 moved?

20 A. No, I do not know that it had been moved.

21 Q. Okay. But you said it was approximately
22 30 feet in from the roadway when you arrived?

23 A. Correct.

24 Q. In Paulding County?

25 A. Yes.

1 MS. PARCELS: Nothing further, your
2 Honors. Thank you.

3 ALJ CHILES: Thank you.
4 Ms. Napier.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Napier:

8 Q. Mr. Schaffner, my name is Jane Napier. I
9 met you just before the meeting. I represent
10 Champaign County and the townships of Goshen, Union,
11 and Urbana, which are in the footprint of this
12 proposed project.

13 Just a few questions that I have. You
14 are a resident of Hoaglin Township?

15 A. Correct.

16 Q. Do you know the population of Hoaglin
17 Township?

18 A. I believe we have something like 548,
19 550, families, so our population is probably, oh, 12,
20 14 hundred, somewhere in there.

21 Q. Is that a good guess?

22 A. That's a guess. I'm trying to remember
23 how much we were assessed from our health department.
24 We were assessed so much for each individual, and I
25 believe it was 13, 14 hundred individuals we were

1 assessed for.

2 Q. Great, thank you.

3 How far away are you from the city of Van
4 Wert?

5 A. 7-1/2 to 8 mile.

6 Q. So you're not, in essence, on the
7 outskirts of the city of Van Wert?

8 A. Correct.

9 Q. Would you characterize Hoaglin Township
10 as being rural?

11 A. Yes, I would.

12 Q. Did I hear in response to Ms. Parcels'
13 question that you are a farmer also?

14 A. Yes.

15 Q. How many acres do you farm?

16 A. 1,100.

17 Q. Are those your acreage, or do you rent
18 from somewhere else?

19 A. I have two landowners I farm for that own
20 480 acres of it. My wife and I own the rest.

21 Q. Do you live on a farm?

22 A. Yes.

23 Q. And do you have any wind turbines near
24 your home?

25 A. They're a mile away from my house.

1 Q. Do you have any issues with that turbine
2 in the closest proximity to you?

3 A. Yes.

4 Q. Okay. Can you tell the Board what some
5 of those issues are you have personally with the
6 turbine?

7 A. The noise, the shadow flicker, sometimes
8 you can feel them. I've had my -- when we sit out
9 front, my wife and I, on the front porch and drink
10 coffee, I felt just like when young people play loud
11 music and like a bass drum is beating on my chest.
12 My wife, her ears, that got to her ears. I felt like
13 my skin crawls sometimes.

14 So those are -- we even had shadow
15 flicker and we're a mile away. I was foolish and
16 believed what I was told, that after 1,000 meters,
17 3,200 feet, that the light dissipates so that you
18 don't see shadow flicker.

19 Well, I can tell you, my house is a mile
20 away, and thank God our garage is to that side, and
21 you can see the shadow flicker on our garage. When I
22 approached the developer about it, he said, "Well,
23 Milo, if you really want, we will sign a good
24 neighbor agreement for you and buy you some shades."
25 not an option for my wife and I. We just won't do

1 that.

2 Q. And you had talked about the township
3 roads in response to question 5. Are those actual
4 township roads, or are they county roads in your
5 township?

6 A. No; those are township roads.

7 Q. Okay. And you're going to think since I
8 represent townships I should know this, but I will
9 ask you a question. Who has the responsibility of
10 caring and maintaining township roads?

11 A. The township trustees.

12 Q. Okay. What responsibility does the
13 county engineer have for the care and maintenance of
14 township roads?

15 A. Under the Revised Code, as far as I know,
16 none on township roads.

17 Q. I don't want you to give me a legal
18 conclusion but at least what you know.

19 A. Correct. They have no say on our roads.

20 Q. So you had indicated that the owner of
21 the wind farm refused to resurface some roads, in
22 your opinion, that needed to be done, correct?

23 A. Correct.

24 Q. Now, was your township involved in the
25 bonding process of getting a road bond from the

1 developer?

2 A. No. That was handled by the engineer and
3 the commissioners.

4 Q. Did you have any say in how or whether
5 the bond was used?

6 A. The only say we had was we told them it
7 wasn't enough, but the county engineer, commissioners
8 said it was. We had asked that the bonding be
9 similar to an Iberdrola project.

10 Q. And Iberdrola is your developer?

11 A. Yes, Iberdrola is the developer. But
12 they refused to bond for that much.

13 Q. And so the township did not have a bond
14 from which to take if they were unhappy with the
15 condition of the roads?

16 A. No. The county engineer has a bond and
17 the commissioners.

18 Q. Okay. Just for the Board's knowledge,
19 does the township have any say over the county
20 engineer or the county commissioners in Van Wert
21 County?

22 A. No. I wish we did, but no, we don't.

23 Q. That is a common response.

24 Did you have any other issues with your
25 roads, other than what you stated in --

1 A. Yes. We have a drainage issue on Fife
2 Road where the interconnection site is. I might add
3 that our county engineer wrote a letter to Iberdrola
4 telling them they needed to resurface our roads. He
5 agreed with the township trustees, as well as take
6 care of the surface drainage where there's a
7 possibility they elevated the interconnection site so
8 that now water may flood onto our roads, and, of
9 course, as a trustee we cannot permit that.

10 The county engineer agreed with us, they
11 need to resurface the roads. They needed to take
12 care of that ditch. As a matter of fact, he sent a
13 letter to the Ohio Power Siting Board stating that.

14 But then, just recently, due to political
15 pressures, he sent a letter saying everything had
16 been taken care of, and nothing had been changed from
17 the time he wrote the first letter.

18 Q. Do you know if your board of township
19 trustees still feels as though there's an issue?

20 A. Yes, we still do. We even wrote a letter
21 to the Ohio Department of Development asking that
22 they stop the energy zone because the conditions
23 41 and 42, I believe, were not met. But since our
24 engineer caved in to not wanting to fight the system,
25 we're pretty much done.

1 Q. And I see that you have indicated in
2 Hoaglin Township there are 38 turbines.

3 A. Correct.

4 Q. How many are in the total project area;
5 do you know?

6 A. 152, I believe.

7 Q. So you only have a percentage. That
8 isn't the total project, 38?

9 A. Correct.

10 Q. And I know that some of your testimony
11 has been about complaints. I note Ms. Parcels had
12 also asked you about complaints. Do you know -- do
13 you have any personal knowledge as to the time frame
14 that your developer responded to the complaints that
15 you had heard of?

16 A. Some he responds within a few days;
17 others, to put it frankly, they give him the
18 runaround. So one lady that I was talking to just
19 last night, it took them a week and a half, two weeks
20 to get the response they wanted, although they had
21 been working on it since September.

22 Q. You have been asked some questions about
23 the blade, the blade throw. Do you have an opinion
24 being that you are in an area where there are
25 operational wind turbines, do you have an opinion

1 that you would recommend to the Board as a setback to
2 an occupied structure?

3 A. Yes. I'm two kilometer, one and a
4 quarter mile, because my house is just a hair over a
5 mile, and we still have the noise and the shadow
6 flicker. So I'm not sure that one and a quarter mile
7 is far enough, but a lot of the other countries are
8 going for the two kilometer.

9 Q. I know I have asked you on your personal
10 knowledge. Is that the basis you are going on,
11 because you have a wind turbine a mile from your
12 home?

13 A. Yes, it is.

14 MS. NAPIER: Thank you. I have no
15 further questions.

16 ALJ CHILES: Ms. Leppla.

17 MS. LEPPLA: Thank you.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Leppla:

21 Q. Hello. How are you?

22 A. Fine.

23 Q. So we already covered most of this, but
24 you live near the Blue Creek Wind Farm project?

25 A. Yes.

1 Q. You are about a mile from the turbine?

2 A. Correct.

3 Q. You farm 1,100 acres?

4 A. Yes.

5 Q. You own Schaffner Tool & Die?

6 A. Yes.

7 Q. And you intervened in the Blue Creek Wind
8 Farm case?

9 A. As township trustees, Hoaglin Township
10 tried to, but they would not let us.

11 Q. And you also wrote a letter to the Power
12 Siting Board in opposition to the project for that
13 Blue Creek Wind Farm case?

14 A. What are you referring to?

15 Q. I believe it was June 30, 2011.

16 A. Okay. That letter was written because of
17 the --

18 Q. Mr. Schaffner, did you write a letter?
19 That's all I asked. Did you write a letter?

20 A. The ambient noise level --

21 Q. But in opposition --

22 A. -- that's at the project, I was in
23 opposition to raising the ambient noise level, yes.

24 Q. And that was on your own behalf?

25 A. Yes.

1 Q. And you testified that the company
2 offered to remedy some of your issues. Iberdrola
3 offered to buy blinds for your house?

4 A. Yes.

5 Q. And you declined, you said.

6 A. Yes.

7 Q. Okay. Also in your testimony you
8 complained about road damage, correct?

9 A. Correct.

10 Q. And you know the county has a road use
11 agreement with the company?

12 A. Yes, the county does.

13 Q. And you're a farmer. You have a combine,
14 correct?

15 A. Yes.

16 Q. And those are pretty heavy, aren't they?

17 A. Yes.

18 Q. Do you know how much they weigh?

19 A. I would guess mine probably weighs
20 somewhere around 16 or 18 thousand pounds.

21 Q. And other farm equipment is similarly
22 pretty heavy?

23 A. Depends on the size of tractor, anywhere
24 from 8 to 20-some thousand, depending on the size.

25 Q. And how long have you lived in Hoaglin

1 Township?

2 A. 63 years out of 65.

3 Q. And let's say 60 years ago, 50 years ago,
4 let's say, do you remember if there were potholes in
5 the roads in Hoaglin Township?

6 A. No.

7 Q. You don't remember any?

8 A. No. Basically because you go back then,
9 most of them were stone roads.

10 Q. That's fair, okay. So those combines and
11 farmer equipment are pretty heavy?

12 A. But they're well within the load or load
13 limits.

14 Q. Oh, sure. They have a tendency to break
15 down roads, too, right?

16 A. No, combine or tractor wouldn't.

17 Q. 16,000 pounds?

18 A. No; not on an asphalt road.

19 Q. Okay. And you testified that the wind
20 company knocked down a sign.

21 A. Yes.

22 Q. Did you see that personally?

23 A. No.

24 Q. Okay.

25 A. I can tell you they used their own stakes

1 to prop it back up, and you could see the tire marks
2 from the truck where it turned.

3 Q. Did you see it personally, Mr. Schaffner?

4 A. No, I did not.

5 Q. And I know you have been asked some
6 questions already about the blade failure incident
7 that happened on April 24.

8 A. I'm not sure of that date.

9 Q. And you drove over to see it with some
10 other people?

11 A. Yes.

12 Q. And you said that was about four to five
13 days later?

14 A. When I drove over to see it, it was
15 probably two or three days. When I drove back and
16 took the measurements, it was four or five.

17 Q. On a property that the turbine is located
18 on was not secured when you were there?

19 A. There was no tape completely around that
20 probably 60-acre field, but there was tape across the
21 drive that goes back to the turbine.

22 Q. Okay. So just tape across the driveway?

23 A. Yes.

24 Q. So there was nothing stopping a person
25 from walking onto that farm property?

1 A. Except for trespassing.

2 Q. Fair enough. And you didn't go -- you
3 said you did some measurements, correct?

4 A. Correct.

5 Q. You didn't go onto the property?

6 A. No.

7 Q. You testified that you used a measuring
8 wheel; is that right?

9 A. Correct.

10 Q. You said you had that measuring wheel
11 about eight years?

12 A. Yes.

13 Q. And you haven't recently had that
14 calibrated?

15 A. Yes, I did. Since you asked me that
16 question in my testimony, I went and calibrated it,
17 and it's right on the money.

18 Q. When you measured that distance, had you
19 recently had it calibrated?

20 A. No.

21 Q. So when you went out four to five days
22 later after this incident, you had not recently had
23 that calibrated?

24 A. No.

25 Q. And you wind up your measurement to get a

1 straight line based off the crossroads from the
2 field?

3 A. The one measurement, yes.

4 Q. Mr. Schaffner, you're a farmer. Do you
5 use any GPS to ensure your crops are planted in a
6 straight row?

7 A. I do not.

8 Q. You're not a civil engineer?

9 A. No.

10 Q. You're not an expert on setbacks?

11 A. Well, depends on what you mean by
12 "expert." We have the Zoning --

13 Q. Mr. Schaffner, are you --

14 A. -- Board that we have to abide by. We
15 have zoning ordinances that we are --

16 Q. Let me be a little more specific.
17 Are you an expert on setbacks for wind
18 turbines?

19 A. No.

20 Q. You're not any type of engineer?

21 A. Well --

22 Q. Are you trained in engineering?

23 A. Pardon?

24 Q. Are you trained in engineering?

25 A. No.

1 MS. LEPPLA: I have no further questions,
2 your Honor.

3 ALJ CHILES: Thank you.
4 Mr. Margard.

5 MR. MARGARD: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Margard:

9 Q. Mr. Schaffner, I want to ask you a couple
10 questions about the Timber Road incident. You
11 indicated you traveled to the farm, the wind farm,
12 after the incident. Can you tell me how many days
13 after the incident it was before you first saw the
14 damage?

15 A. No, I can't tell you exactly.

16 Q. Was it more than a day?

17 A. It may have been -- the first time two or
18 three days is all.

19 Q. Two or three days?

20 A. We went up with some friends that wanted
21 to see it as well.

22 Q. And I believe you testified earlier that
23 you have no knowledge whether any of the pieces that
24 you observed were moved at any time?

25 A. No.

1 Q. By anyone or anything?

2 A. The knowledge of the moved pieces, if you
3 want that, came from the lady who her son and
4 daughter-in-law lived there, and she told me their
5 children were out picking up pieces in their yard, so
6 they had done that right after the turbine blades
7 failed.

8 Q. Do you have any knowledge of what the
9 weather conditions were on the day of the failure?

10 A. According to the TV, the wind was
11 35 miles per hour.

12 Q. You don't have any personal knowledge,
13 that's just what you remember hearing?

14 A. No.

15 MR. MARGARD: I think that's all I have.

16 Thank you, your Honor.

17 - - -

18 EXAMINATION

19 By ALJ Chiles:

20 Q. I have a couple questions before we go to
21 redirect. I want to follow up on a question and
22 answer in your testimony about blade pieces you
23 observed. I know you stated you observed the pieces,
24 and then you went back several days later to take
25 some measurements; is that correct?

1 A. Yes.

2 Q. Did the pieces look like they were in the
3 same spot that you first observed them, from what you
4 recall?

5 A. Yes.

6 Q. I want to ask you some more specific
7 questions about how those pieces appeared. In your
8 testimony you have stated some of the blade pieces
9 appeared to be about one foot by one foot?

10 A. Correct.

11 Q. Were many of the pieces that size, or
12 about how big were some of the other pieces?

13 A. That was the largest piece that far away
14 from the turbine. As I went farther, the pieces got
15 smaller, 3 by 6, and I assume because the wind blew
16 the smaller pieces farther.

17 ALJ CHILES: Okay. Thank you. I
18 appreciate that.

19 Mr. Van Kley.

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

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Van Kley:

24 Q. Why don't we take your questions and
25 answers in the same order as they were addressed to

1 you in your cross-examination.

2 So we'll start with the letter to the
3 Power Siting Board that Ms. Leppla asked you about.
4 And you weren't given the opportunity to finish your
5 answer with regard to what the nature of the letter
6 was, so I'm going to give you that opportunity now.

7 A. What appeared in the Van Wert Times
8 Bulletin, other newspapers, according to what
9 Iberdrola was required to do, they had printed that
10 they were going to ask to have the decibels raised at
11 a resident nonparticipant a mile away.

12 Most people did not know anything about
13 this or understand. A lot of people didn't take the
14 newspaper. But Sally Bloomfield of Icolt and
15 whatever, Bertram, or something, law firm, said in
16 the article that you could object to this and you
17 could ask for a public hearing.

18 So that letter was asking for that public
19 hearing so that the public could hear what they were
20 wanting to do, that the ambient noise level at your
21 house a mile away was going to be raised. I felt
22 that was very significant because if you only live
23 1,600 feet from it, they're going to raise it over
24 5 decibels at my house, what is it like at
25 1,600 feet, and I just thought it was the proper

1 thing to do.

2 The article in the paper that was a legal
3 document said all you had to do is write the Ohio
4 Power Siting Board and ask for a hearing, and that's
5 what that June 30, 2011, letter was about.

6 Q. Okay. At that time had the wind farm
7 already been constructed?

8 A. No. It had -- I don't believe it had.
9 June 30, they had already started. A lot of it
10 already up, but it wasn't turning over Union, I
11 believe.

12 Q. Okay. By this time the Board had already
13 issued a certificate authorizing the company to build
14 the wind farm?

15 A. Correct, yes.

16 Q. And the notice that you are referring to
17 came out after the certificate had been issued?

18 A. Correct, yes.

19 Q. And did that notice notify you that the
20 company was requesting permission to the noise levels
21 that had been authorized in the certificate?

22 A. Yes. As I read it, yes.

23 Q. Okay. Did you participate in the
24 original hearing for the certificate?

25 A. No, I did not.

1 Q. Okay. Did you intervene or ask for
2 permission to intervene?

3 A. Hoaglin asked for permission to
4 intervene, but we were stopped. They would not let
5 us because the public really doesn't know how this
6 process works, and we had no legal advice from our
7 prosecutor and so forth, and by the time -- I was the
8 only one that was working on it and investigating it.
9 It took a lot of time, and we just learned of the
10 intervention process, and so we tried to do that, and
11 they would not permit us to do that.

12 Q. Who is "they" that did not permit you?

13 A. The Ohio Power Siting Board did not
14 permit us to become an intervenor.

15 Q. Okay. You were asked about Iberdrola's
16 offer to pay for blinds. Let me elaborate on that a
17 little bit. Why did you turn down the offer to pay
18 for blinds?

19 A. When you accept their blinds, you're
20 going to have to sign a little paper that says
21 nonlitigation clause. It's called a good neighbor
22 policy, and in that you give up all your rights. You
23 cannot -- you have no legal recourse for anything
24 else that may happen, which includes dust damage,
25 whatever. And I'm not willing to sell out for a pair

1 of blinds.

2 Q. Then you were also asked some questions
3 about the farm machinery that use the roads. Before
4 the wind farm was constructed, were the roads in the
5 township paved?

6 A. Yes, the roads they used were, yes.

7 Q. How long had the roads been paved prior
8 to the time that the wind company started to install
9 the turbines?

10 A. Some. Roads had been paved for probably,
11 specifically, we're talking about eight or nine
12 years. We used Issue 2 money, and we had also put
13 chip and seal on them to preserve them. A couple of
14 the roads may have been -- well, part of Fife was
15 just within five or six years paved.

16 Q. What is chip and seal?

17 A. When you lay down asphalt, there's little
18 pores in the asphalt, and over time water will -- can
19 get into those. So what you do to preserve that road
20 is you come back in -- we normally like to come back
21 within two years after it's been paved and lay down
22 tar, and then you put in -- we put in No. 8 stone
23 into that tar that adheres to the top of the asphalt,
24 and then that preserves the asphalt underneath.

25 Q. Before the wind developer started to

1 construct the turbines, had the township had problems
2 with potholes or other damage to the roads?

3 A. No, we did not.

4 Q. And what happened when the wind company
5 started to and then continued to construct the
6 turbines? What happened to the roads?

7 A. What happened when they started, we did
8 not reach a road agreement with them. Hoaglin
9 Township did not sign the road agreement, so we told
10 them just go ahead and destroy them and then rebuild
11 them.

12 Well, they started to do that, and they
13 said we can't do that because we have destroyed them
14 too much already, they're getting too rough. So we
15 said if they done certain things, we would let them
16 use them, but then they would have to put them back
17 in the original condition.

18 But they've had answers to that question.
19 They did resurface one. They ground one up and
20 impregnated concrete. That did not hold. Their
21 resurfacing did not hold. They literally tore the
22 roads up even after they told us what they had done
23 would hold the loads.

24 Q. When you say that you told them to go
25 ahead and destroy the roads, what do you mean by

1 that?

2 A. Well, the issue was we told Iberdrola our
3 roads have no potholes, that roads they were using
4 were good asphalt roads that been chipped and sealed.
5 They had no patches on them. We said when you're
6 done, we don't want any patches.

7 They would not agree to that. They came
8 and said we can do patches this long and that long.
9 We said no. We would permit a small patch but not
10 what they were talking about.

11 Well, the county engineer went ahead and
12 signed an agreement with them, but Hoaglin Township
13 would not because we felt that Senate Bill 232 and
14 the Ohio Revised Code says as well as the compliance
15 strategy in a Stipulation agreement says they have to
16 put those roads back in as good or better than the
17 condition was preconstruction, and they did not do
18 that.

19 Q. Okay. When you say that they patched the
20 roads, what was the -- what is the resulting
21 condition to the roads when one just patches them?

22 A. Well, what happens is, number one, you
23 have to make sure you dig down deep enough to get rid
24 of the soft. You've actually ruined the base
25 underneath that asphalt. One of the roads they done

1 that with, we can already see a pothole developing
2 and there was never one there before. That's the
3 John Yoh Road. That happens to be one they ground
4 and impregnated with concrete.

5 What happens, you get a soft spot. The
6 soft spot just continues to sink, and then you have a
7 big patch. Once you start patching a road, up in
8 Northwest Ohio the freeze and thaw, the water gets
9 into those seals if they're not sealed properly, and
10 then sometimes, did they seal them good enough? So
11 even the patches can present problems, which is what
12 we're concerned with now.

13 Q. Earlier in your testimony you talked
14 about how bumpy the roads had been made by the wind
15 developer.

16 A. Yes.

17 Q. Is that as a result of the patches?

18 A. Yes.

19 Q. You also tried to explain how you knew
20 that the wind company had knocked down the mailbox.
21 Let me -- I'll give you the opportunity to finish
22 answering that question.

23 A. They hauled turbine components down.
24 This was Feasby Wisener Road -- sometime people
25 pronounce it Wisener -- but they had hauled component

1 parts down those roads. When they do, they make some
2 pretty wide turns, and the traffic, they try not to
3 have them meet, but sometimes they meet, trucks going
4 one way and trucks going the other.

5 And what they done was cut the corner
6 short, and the trailer behind tipped the stop signs
7 over, and we could tell it was them because of the
8 trailer marks, and they was out using a lot of
9 stakes, and it was their stakes that had the signs
10 propped back up.

11 The one that really upset me was on a
12 Sunday I happened to drive, and this was on Fife
13 Road. They had knocked over the stop sign, and it
14 was laying down. Fife Road comes up to a state
15 highway, and if you weren't familiar with that road,
16 it could have been awful.

17 I right away called the state highway
18 patrol and sheriff's department, and the state
19 highway garage came out immediately and reinstalled
20 that sign.

21 Q. You were asked some questions designed to
22 test your measurements that you made of the distance
23 between the blade debris and the turbine tower, so
24 let me follow up on those questions.

25 First of all, with regard to the rows of

1 crops in the field, that particular field where the
2 debris had been landing, can you tell me how straight
3 the rows were?

4 A. They were very straight. The farmer had
5 started, looked like, next to what was County Road
6 11, and so he started straight with that road.

7 Q. Okay. When you were looking at the blade
8 debris from the road, did you look down the row of --
9 the crop row to look at the blade debris?

10 A. Yes, you could.

11 Q. Okay. What did that tell you about how
12 straight the rows were?

13 A. They were very straight.

14 Q. Okay.

15 A. I don't know if he used GPS, but if he
16 didn't, he's a very good farmer. He can drive
17 straight.

18 Q. Okay. And just for clarifying purposes,
19 at the time you were there, was there a growing crop
20 in field, or were you looking at the rows from the
21 previous year field?

22 A. Looking at a cornfield that was
23 harvested.

24 Q. So corn was all down to the ground. It
25 wasn't standing up?

1 A. Right. All that was there was the
2 stubble.

3 Q. And could you look down the space between
4 the row and see the debris?

5 A. Yes, you could.

6 Q. There were no curves in the rows that
7 were obscuring the debris?

8 A. No, there were not.

9 Q. With regard to the measuring wheel that
10 you used, have you had quite a bit of experience
11 using that measuring wheel?

12 A. Yeah. I measured a few ponds and things
13 like that with it. So, yeah, it's very simple to
14 use. It's just a wheel with a handle on it and just
15 walk with it. As it rolls, it measures the footage.

16 Q. And you were asked some questions about
17 whether you had calibrated the wheel, and I believe
18 you indicated that you had not calibrated just before
19 making the measurements near the turbine, but that
20 you have since that time, since your deposition,
21 checked the calibration; is that right?

22 A. That's correct.

23 Q. Okay.

24 A. And it had not measured anything since I
25 measured that turbine.

1 Q. Okay.

2 A. So there would be nothing to change that
3 I know of.

4 Q. All right. Just to be sure, did you do
5 anything else after your deposition to confirm the
6 accuracy of your measurements?

7 A. Yes. What I done was I went to Google
8 Earth. Now, I don't have Google Pro or anything, but
9 I was able to call up a satellite photo of the area.
10 When I started to call it up, my son says, "You know,
11 dad, the photo may not be old enough to show the wind
12 turbine -- or new enough to show the wind turbine.

13 And lo and behold, there it was, the wind
14 turbine under construction. They had two towers, two
15 of the sections of the tower left, and the shaft and
16 all three blades were there, and so you can see the
17 three sections standing up. Of course, you can see
18 the house.

19 What I done was take an engineering
20 scale, if you are familiar with them, and I just
21 scaled the picture on my computer, and those --
22 excuse me a second. The distance as I come up with
23 using an engineer's scale was 1,580 feet. I
24 calculated 1,561. On the other with the wheel, I
25 calculated 1,158. The engineer scale said

1 approximately 1,200.

2 Then I also -- since I don't have Google
3 Pro, I could not get a current map, but I asked
4 Google to print out what it would for me so it
5 printed out the intersection. I had been questioned
6 using Pythagoras' theorem, how do I know it's a right
7 angle. Well, in our Northwest Ohio, most roads are
8 90 degrees.

9 So I took this Google map that they gave
10 me and taking the engineer's scale, done the old 3,
11 4, 5, if you're familiar with that, carpenter's 3
12 inches this way, 3 foot, and it came out to be a
13 90-degree angle.

14 MR. VAN KLEY: All right. I have no
15 further questions.

16 ALJ CHILES: Thank you.

17 Ms. Parcels.

18 MS. PARCELS: Nothing further.

19 ALJ TAUBER: Cross-examination.

20 - - -

21 RECROSS-EXAMINATION

22 By Ms. Napier:

23 Q. Just a couple of questions.

24 You had testified about the road
25 conditions in response to Mr. Van Kley's questions on

1 redirect. And I thought I hadn't asked you a
2 question previously. How familiar are the roads in
3 your township to you?

4 A. Well, I've been born and raised 63 years
5 out of 65 I've lived in Hoaglin Township, so they're
6 very familiar. I was riding those roads when they
7 were stone roads.

8 Q. And as a trustee -- and I'm not sure if
9 you know what I'll mean, are you what you would call
10 a working trustee?

11 A. Yes, we are.

12 Q. Do you know what means?

13 A. Yes.

14 Q. Can you explain that?

15 A. We go out and plow roads. We go out and
16 put stone on roads. We chip and seal our own roads.
17 We dig holes if we have to. I mean, any of the
18 things that we're responsible that we can do, we do.

19 Q. How many employees do you have in your
20 township?

21 A. Pardon?

22 Q. How many employees do you have in the
23 township?

24 A. No full-time employees. We have two,
25 three, part time. We have a person that takes care

1 of the cemetery lots. We have a person that mows our
2 cemeteries. Then we have a person that mows our
3 roads.

4 Q. So when you're testifying you have some
5 familiarity with the condition of your roads --

6 A. Correct.

7 Q. -- personally.

8 MS. NAPIER: Thank you. No further
9 questions.

10 ALJ TAUBER: Ms. Leppla.

11 MS. LEPPLA: Just a few, your Honor.

12 - - -

13 RECROSS-EXAMINATION

14 By Ms. Leppla:

15 Q. Mr. Schaffner, you discussed the good
16 neighbor that Iberdrola wanted you to sign if you got
17 blinds.

18 A. Would I discuss it?

19 Q. No. You did discuss it earlier in your
20 testimony.

21 A. Here today, yes.

22 Q. Yes. And did you retain a lawyer to look
23 over that good neighbor agreement?

24 A. I was never given one.

25 Q. You did not retain one on your own, did

1 you?

2 A. Pardon, say again?

3 Q. Did you retain a lawyer for that --

4 A. No.

5 Q. -- negotiation at all?

6 A. Are you talking about me personally?

7 Q. Yes.

8 A. No, I have not.

9 Q. And you're not a lawyer?

10 A. No. But I am smart enough to read when
11 it says that I give up all my rights. The company
12 has more rights to my farm than I do. I don't need
13 an attorney to tell me that's not a good deal.

14 Q. Did you see an agreement?

15 A. Yes, I have seen an agreement.

16 Q. Okay.

17 A. Not a good neighbor agreement but a lease
18 agreement to lease my farms to Iberdrola.

19 And I might add, I did make them an
20 offer. It was a very fair offer. I said, here's
21 what we'll do. You buy my farms, put your turbines
22 up for 50 years. I'll farm it, and at the end of the
23 50 years, I'll buy the farms back.

24 They said that's not a good deal for us.
25 I said, if it's not a good deal for you, what makes

1 you think it's a good deal for me?

2 MS. LEPPLA: Your Honor, I'd just like
3 the rest of that after he responded to the question
4 stricken from the record as unresponsive.

5 MR. VAN KLEY: I think it's responsive,
6 your Honor. When you ask a question and you get an
7 answer to that question, I think that's unfair to ask
8 to strike an answer just because you don't like it.

9 ALJ TAUBER: Would you read back the
10 first portion of his answer to me.

11 (Record read.)

12 ALJ CHILES: The motion to strike is
13 granted as to everything after "and I might add,"
14 including the section "and I might add."

15 Q. (By Ms. Leppla) Mr. Schaffner, you have
16 said you had this measuring wheel for eight years?

17 A. Yes.

18 Q. You measured about six to eight times?

19 A. Yes.

20 Q. And you're not an engineer?

21 A. No.

22 MS. LEPPLA: No further questions.

23 ALJ CHILES: Mr. Margard.

24 MR. MARGARD: No questions. Thank you,
25 your Honor.

1 ALJ CHILES: I have no further questions.
2 Thank you, Mr. Schaffner. You're
3 excused.

4 Mr. Van Kley.

5 MR. VAN KLEY: Yes, we would move into
6 admission UNU Exhibit No. 21, your Honor.

7 ALJ CHILES: Are there any objections to
8 the admission of UNU Exhibit 21, the direct testimony
9 of Milo Schaffner?

10 MS. LEPPLA: Your Honor, I want to note
11 for the record, as revised with the motions to
12 strike.

13 ALJ CHILES: Thank you.

14 MS. LEPPLA: Thank you.

15 ALJ CHILES: UNU Exhibit 21 will be
16 admitted, subject to the portions that were already
17 stricken by the Bench.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 ALJ CHILES: Ms. Parcels.

20 MS. PARCELS: Yes. The city would move
21 for the admission of City Exhibit 7.

22 ALJ CHILES: Any objections to the
23 admission of City Exhibit 7?

24 MS. LEPPLA: Yes, your Honor. Champaign
25 would object. It is not relevant to the proceeding

1 here. Also it's confusing. It's very small. The
2 pictures are very small. She asked some questions
3 about whether it was representative, and I think it's
4 a little bit too confusing to enter into evidence.

5 MS. PARCELS: I think it is absolutely
6 relevant because he testified that that is what he
7 observed, and the document is a newspaper and it's
8 self-authenticating under Rule 902.

9 MR. VAN KLEY: Your Honor, since this
10 also affects our testimony, I would like to weigh in
11 on this subject, if I could.

12 ALJ CHILES: Go ahead.

13 MR. VAN KLEY: Mr. Schaffner testified
14 that the two photographs in the articles accurately
15 reflected what he saw when he went to the site. And,
16 therefore, at least with respect to the two
17 photographs in the article, those have been
18 authenticated, identified, established as accurate,
19 and that is admissible information.

20 ALJ CHILES: Thank you, Mr. Van Kley.

21 Ms. Leppla, do you have any response?

22 MS. LEPPLA: Yes, your Honor. First of
23 all, the articles contain much more than just the
24 pictures that Mr. Schaffner referred to. And,
25 further, Mr. Schaffner testified he didn't go on the

1 property, and from the vantage point these were taken
2 from, I'm just not -- I don't see that he testified
3 to that.

4 ALJ CHILES: Thank you. We are going to
5 admit a portion of the exhibit, part of Exhibit 7.
6 That would be the two photographs that are on the far
7 right-hand side. All the other portions will not be
8 admitted; however, the two photographs will be
9 admitted into the record.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 ALJ CHILES: Mr. Van Kley, whenever you
12 are ready.

13 MR. VAN KLEY: Thank you. We would call
14 William Palmer to the stand.

15 (Witness sworn.)

16 MR. VAN KLEY: Your Honors, at this time
17 we would mark Mr. Palmer's direct testimony,
18 including the attached exhibits, and we will mark
19 this as Exhibit UNU 22.

20 ALJ CHILES: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 - - -

23 WILLIAM PALMER

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

DIRECT EXAMINATION

By Mr. Van Kley:

Q. All right. Would you state your name for the record, please?

A. My name is William Palmer.

Q. And, Mr. Palmer, I have placed before you UNU Exhibit No. 22. Is that a copy of your direct testimony and its exhibits?

A. I believe it is, sir.

Q. Okay. Do you have any corrections you would like to make to your testimony?

A. Yes, sir. Following the deposition that we made on April the 6th and 7th, I did go back and recheck the numbers on Exhibit M, which comes from Exhibit L in the exhibits, and I would like to correct an error there.

Q. Please just give everyone a moment to find Exhibit M. Then you will be allowed to make those corrections.

All right, why don't you proceed with the corrections. You have on Exhibit M to -- Exhibit M to UNU Exhibit 22.

A. Thank you, sir. Specifically on Exhibit M, about the middle of the page going down, you see it says "Failures Fire." When I went through

Exhibit L, what I did, I went through Exhibit L and counted out the failures to make sure that my number on Exhibit M was correct.

What I found was that the End 2011 column, so if you go across the top, it's the third last column -- actually, the second last column. You go down and see under Failures Fire, the number shows an 8. What I found was that when I had prepared this table, I actually had neglected that I had in Exhibit L highlighted two of the failures in blue because they were not really determined that they resulted in burning pieces on the ground, so that number instead of 8 should have read 6.

The same material that's on Exhibit M is also on page 14 of my amended direct testimony.

Q. Okay. Hold on. Give everybody a moment to get to page 14 of your testimony.

A. If you could keep your finger in both places.

Q. All right. Proceed with your change on page 14 of UNU Exhibit 22.

A. On page 14, if you look at the number of fires under 2011, I had shown the number as 6, which is the number I'm correcting Exhibit M to. So I had it correct on Exhibit 14 in the direct testimony --

1 sorry, page 14 of my direct testimony, but I did have
2 an error on Exhibit M.

3 Q. Okay.

4 A. Actually, in the course of looking
5 through it, I did see, you know, actually the number
6 of fires that I show in 2012, I show on page 14 as 7.
7 There in Exhibit M I only showed it as 6. One number
8 went down two, and the next year went up one in 2012.

9 Also in the course of looking at it, I
10 did look and see, if you look at the first or top row
11 on page 14, you see I discuss what is called "Numbers
12 of Failures of Blades dropping 1 blade to ground at a
13 distance from turbine," 9-8-9-6-11, which is the same
14 as the numbers on Exhibit M.

15 Q. Before you go there, Mr. Palmer, are you
16 making another change to fires on either page 14 of
17 your testimony of Exhibit M?

18 A. I'm making -- what I would do on Exhibit
19 M, the last number which says 6 should really say 7
20 to be consistent with what is on page 14.

21 Q. So you are looking at the column that is
22 labeled End June 2012 on Exhibit M; is that right?

23 A. Yes, sir, that's correct.

24 Q. And if you go down to Failures Fire, you
25 will see a number 6, right?

1 A. It should have said 7, sir.

2 Q. Okay.

3 A. As does the table on page 14.

4 Q. Okay. Does that change the number 36,
5 which is your total?

6 A. The number 36 would then change to 35.

7 MR. SETTINERI: I'm sorry, I'm lost at
8 this point. Are we still talking about the first
9 revision?

10 MR. VAN KLEY: No; we are talking about
11 the second revision.

12 MR. SETTINERI: Okay. Will you give me a
13 reference again?

14 MR. VAN KLEY: Yes. On Exhibit M, if you
15 look at the failures for fire and go across, you will
16 see under 2008 there's a number 8. Under 2009
17 there's 7. Under 2010 there's 7. Under 2011 there
18 was 8. He has changed that to 6, and under 2012, it
19 was 6, and he has changed it to 7. And under the
20 heading 4.75, your average, the number was 36, and he
21 has changed that to 35.

22 MR. SETTINERI: Thank you.

23 Q. (Mr. Van Kley) Now, do those changes on
24 Exhibit M that I just summarized result in any
25 changes for fires on page 14 of your direct

1 testimony?

2 A. No, sir, there's no change in page 14 of
3 my direct testimony. It was an error in the table in
4 Exhibit M.

5 Q. Okay. Would you proceed to your next
6 correction, please.

7 A. Okay. In the course of making this
8 review, I did notice where I had shown -- sorry. If
9 I look at page 14 where I say, "Numbers of Failures
10 of Blades dropping 1 blade at a distance to ground at
11 a distance from the turbine," where it goes across
12 9-8-9-6-11 -- follow where I am on page 14?

13 Q. Yes, sir.

14 A. What I did see as I went through checking
15 back from Exhibit 11, which was the table of the
16 failures, I noticed what I had not done, is I had not
17 counted failures which related from where the blades
18 had oversped, resulting in a tower collapse and
19 blades being thrown a distance.

20 So what I should have done -- if I were
21 to be perfectly accurate, I should say that the
22 number of failures of blades at a distance from the
23 turbine in 2008, instead of saying 9, I should have
24 added one more, which was actually blades on the
25 ground resulting from a turbine collapse. So that

1 first number 9 should become 10. The second column,
2 which is the End 2009, where I show Failures of
3 Blades a distance from the turbine as 8, I should
4 have actually included three more failures of blade
5 at a distance from the turbine which came from
6 collapse. That should have been 8 plus 3, so 11.
7 Those two numbers would have resulted if you went
8 across to the right hand the total being 43, that
9 total 43 would have become 47.

10 Q. Have you now switched to Exhibit M?

11 A. Yes.

12 Q. To be clear, staying on page 14 of your
13 written testimony for a moment --

14 A. Page 14 of my written testimony, the
15 first 9 properly should have said 10. The Year 2009
16 where it says 8 properly should have, would have,
17 said 11.

18 Q. Okay. Does that complete the changes on
19 page 14 of your direct testimony?

20 A. Those are the only changes of page 14 of
21 my direct testimony, sir.

22 Q. Now go back to Exhibit M.

23 A. On Exhibit M, failure blade a distance
24 from the turbine, where it says 9 for 2008, that
25 number should really say 10. Where it says 8 for

1 2009, it should really say 11. And on the right-hand
2 side where it says 43, the number really should say
3 47.

4 Q. Okay. Do you have any other changes on
5 Exhibit M?

6 A. The result of these changes, I don't --
7 the result of the changes, the numbers at the bottom
8 that give a failure rate per million years, if you
9 look at Exhibit M across, you read it says, 156, 125,
10 121, 99, 158, 129. There is a small adjustment in
11 those numbers so the 156 should have read 165 because
12 there's actually another failure that's counted.

13 The second column, the 125 should
14 actually have read 150. The third column doesn't
15 change. The fourth column where it says 99 would go
16 down to 85. The fifth column which says 158 would
17 have gown up to 167. And the last column, which is
18 the average, would have gone up from 129 to 134.

19 Q. Okay.

20 ALJ CHILES: Could you cover that last
21 row again? If you would repeat just that last
22 portion of changes on that last row, I missed some of
23 those.

24 THE WITNESS: If you look where it says,
25 "failure Rate per Million Years" on Exhibit M, your

1 Honor, the corrected numbers should say 165, 150,
2 121, which is unchanged, 85, 167, and lastly, 134.

3 ALJ CHILES: Thank you.

4 THE WITNESS: I would comment, sir,
5 that -- or, your Honors, that on page 14 where I said
6 I calculated a rough blade failure in Exhibit M, the
7 failure rate can be seen to be very similar over the
8 last five years. It really does not change that
9 statement.

10 MR. VAN KLEY: Okay.

11 THE WITNESS: It is a matter -- I wish to
12 be correct in what I presented. I don't wish to be
13 in error, sorry.

14 ALJ CHILES: We appreciate that. Thank
15 you.

16 Q. (By Mr. Van Kley) Do you have any other
17 corrections to your testimony or the exhibits to your
18 testimony?

19 A. No, sir, I have no other corrections.

20 Q. Okay, very good. Now, having made those
21 corrections, if I were going to ask you the same
22 questions today as you answered in writing in your
23 direct testimony, would your answers to those
24 questions be the same?

25 A. Yes, sir, there's no change.

1 MR. VAN KLEY: Your Honor, at this time
2 the witness is available to answer questions.

3 ALJ CHILES: Thank you, Mr. Van Kley.

4 We do have extensive motions to strike
5 this testimony, so we will go through those at this
6 time. You have to bear with me as we go through them
7 one at the time.

8 The first item we have is on page 9. It
9 begins with line 27 starting with "one of the best,"
10 and it extends through page 10, line 7, ending with
11 "Exhibit L."

12 I'm just going to -- we have this list
13 where the objections are grouped together. If I
14 could just have the parties summarize their
15 arguments. This is just the first group of motions
16 to strike within the motions to strike.

17 MS. NAPIER: Could you repeat those
18 lines? I'm sorry.

19 The first set on page 9, line 27
20 beginning with "one of the best" and ending on
21 page 10, line 7, with "Exhibit L.."

22 MS. NAPIER: Thank you.

23 ALJ CHILES: I will read through all
24 these. The next item is page 11, line 25 through
25 line 31.

1 We have page 12, line 5. It's only the
2 portion of the sentence that says, "Caithness Wind
3 Farm Information Forum," just that portion of the.
4 Line 5.

5 Page 12, line 18, starts at the "Thus"
6 and ends with "papers."

7 Page 13, line 25, beginning with "To
8 illustrate" and extending through page 14, line 7. I
9 believe that includes the graph; is that correct?

10 MR. SETTINERI: Yes, your Honors.

11 ALJ CHILES: Next item we have is on
12 page 14, lines 15 through lines 25.

13 Page 18, beginning with line 3 through
14 page 19, ending with line 4.

15 Page 20, line 6, beginning with "The
16 Caithness summary" extending through page 22,
17 line 16.

18 Page 22, line 25 beginning with
19 "Question" through line 31 ending with "gearbox."

20 Page 28, line 11, beginning with "The
21 Caithness" and ending with line 14, "Philippines."

22 Page 29, line 2, with "However" through
23 line 4.

24 And also on page 29, line 18, beginning
25 with "A number" and extending through line 22.

1 MS. NAPIER: What was the last one?

2 ALJ CHILES: Page 29 beginning with "A
3 number," written out phonetically, and ending with
4 "failed" on line 22.

5 Also in with this group in the motion to
6 strike are Palmer Exhibit G, Palmer Exhibit L, and
7 Palmer Exhibit M.

8 Mr. Settineri, do you want to summarize
9 the company's position?

10 MR. SETTINERI: Yes, very briefly, your
11 Honor. The genesis of what we just covered arises
12 from Exhibit G, that is a spreadsheet compilation
13 that is from the Caithness Wind Farm Information
14 Forum on the Internet.

15 That website, there's no identification
16 as to the individuals, the names of individuals who
17 are sponsoring that website, but it is obvious from
18 the website page that it is a website geared towards
19 stopping, as quoted, "onward march of turbines,"
20 clearly an anti-wind farm website.

21 As well, there are disclaimers on that
22 forum as to the accuracy of third-party material.
23 However, this exhibit is being used, the details in
24 this exhibit, particularly the details column, more
25 so all the information, is genesis for the bulk of

1 Mr. Palmer's testimony, what we just covered.

2 He uses the details to be able to
3 develop, to analyze what type of failure occurred,
4 and he put that into his formula to come up with
5 blade failure rates. The details, he did not create
6 these details. These are paraphrased by someone, we
7 don't know who paraphrased, it is clearly hearsay.

8 And there are many examples in here, and
9 we heard some examples the other day about being
10 narrowly missed and adjectives of that nature,
11 clearly hearsay. There's many details missing from
12 the information. Model numbers are missing, not a
13 reliable source of the information. There are no
14 distances. This is not a reliable source. It is
15 hearsay as well.

16 For that basis we move first, Exhibit G
17 should not be admitted. It should be stricken, and
18 all the use of that document throughout his entire
19 testimony, including cut and paste from the details
20 they are pasted into his testimony. That is clearly
21 hearsay.

22 So because this is the genesis that flows
23 through his testimony, he used it to create
24 Exhibit L, that clearly says the source is from the
25 Caithness database and that carries over to his

1 calculations on Exhibit M.

2 ALJ CHILES: Thank you, Mr. Settineri.

3 Mr. Van Kley.

4 MR. VAN KLEY: Yes, your Honor. I can't
5 blame Champaign Wind for wanting to conceal the
6 information or to prevent the information in the
7 database from being used in this proceeding because
8 it's the only accurate and reliable information that
9 so far has been sought to be introduced in this
10 proceeding with regard to wind turbine safety.

11 We have heard volumes of testimony now,
12 from Champaign Wind's experts that is based on no
13 more than what they have not heard in the industry
14 about blade accidents. If that's not hearsay, I
15 don't know what is.

16 Yet the Application, volumes in exhibits
17 of the Application, also relies purely on that type
18 of information to claim that the wind turbine
19 industry's record shows that blade throws rarely
20 occur and that blade failures are unlikely to occur
21 at this facility because the people who wrote the
22 Application, and now the people who have testified
23 for Champaign Wind in this proceeding, have not heard
24 about blade failures to any significant extent.

25 Well, we have a database that shows how

1 extensive those blade failures have been.

2 Mr. Palmer, in his direct testimony, testifies about
3 how reliable that database is. He testifies he has
4 throughout the years that he's been working on these
5 issues has checked information on a spot basis on the
6 database and found it reliable. Mr. Palmer, himself,
7 is a contributor, on occasion, to the database, and
8 he has found this database to be a reliable source of
9 information.

10 Notwithstanding the fact that this
11 information is obtained from other persons, an
12 expert, under the rules of evidence, has the option
13 and has the right to consider evidence such as this
14 in formulating an opinion.

15 And, in fact, if the Applicant's view of
16 the law, considering what experts can consider or
17 cannot consider, were accepted by the court system,
18 there would be few experts what could testify about
19 anything in the court system because an expert has to
20 rely on information from other people, rather than
21 having firsthand information by that expert's own
22 observations.

23 Then I would also add that in this
24 proceeding we have attempted to subpoena information
25 directly from wind companies, two manufacturers, and

1 two wind developers who have been operating
2 facilities in order to force them to provide us with
3 direct information in the possession of the industry
4 about public safety, about blade throw and other
5 instances, and those subpoenas have been revoked.

6 So I would observe that in the Champaign
7 Wind motion to quash those subpoenas, they said to
8 the Board that based on the information attached to
9 our opposition to the motion to quash, there's plenty
10 of public information that can be used in this
11 proceeding to evaluate the issues we're bringing up
12 on blade throw and other safety issues.

13 The information that we attached
14 primarily was the Caithness database we are now
15 using. So having defeated our motions, our
16 subpoenas, by arguing that we already have enough
17 information at our disposal in order to present our
18 case, now they are trying to prevent us from using
19 that very same information they said was available to
20 us and that which showed that we didn't need those
21 subpoenas.

22 So if at this point the Board is going to
23 strike that information, it would be a grossly -- it
24 would be grossly unfair to us since we made attempts
25 to get this information directly from the wind

1 industry and we were not allowed to do so.

2 ALJ CHILES: Thank you, Mr. Van Kley.

3 Mr. Settineri, do you want to respond?

4 MR. SETTINERI: Yes. I'll work my way
5 backwards.

6 The problems with the subpoenas, as we
7 all know, they were extremely overbroad. They were
8 not written tailored. And so the discovery is meant
9 to find evidence that is reasonably calculated to
10 lead to the admission of evidence, but in that case
11 those subpoenas were written overly broad, and that
12 was the main basis for many of the companies'
13 objections.

14 I will note that Champaign Wind did file
15 a motion to quash, but other companies did as well,
16 and I disagree with the contention that Champaign has
17 conceded the information in this document can be
18 used. If I do recall the motion for subpoenas, or at
19 least maybe it was a memorandum in opposition,
20 attached articles, I believe, or cites to other
21 journals -- not journals but other websites. I don't
22 recall seeing those in this database.

23 As to Champaign Wind's alleged use of
24 hearsay, Mr. Speerschneider sponsored the
25 Application. We have been through that. We provided

1 witnesses as to the studies in the Application.

2 As to Mr. Poore, he referenced two
3 presentations that he said were very authoritative.
4 I should say he knew who gave those presentations.
5 He was at those presentations, as well. That
6 certainly is not hearsay. In forming his opinion,
7 that is certainly permitted under the rules of
8 evidence.

9 This is much different. Mr. Palmer is
10 actually taking information here, cutting it and
11 pasting it into his document, which he has no
12 personal knowledge of these incidents, and he's using
13 that then to come up with these numbers.

14 This is clearly hearsay. It's not a
15 learned treatise. We don't know who the authors are.
16 We know it comes from a website that is an anti-wind
17 website, which actually says on the website there's
18 no guarantee as to the validity of this material.

19 So it's not an attempt to hide anything.
20 It's an attempt to have accurate information, and I
21 think to admit this into the record is not only
22 hearsay, but also should not be admitted on the basis
23 of being prejudicial and confusing.

24 ALJ CHILES: Thank you, Mr. Settineri.

25 Ms. Parcels.

1 MS. PARCELS: The city would like to
2 weigh in because the city has developed some
3 questions related to Mr. Palmer's direct testimony
4 that has been moved to strike.

5 I would direct your Honors to the Ohio
6 courts clearly rejecting the standard in Frye, which
7 requires scientific opinions from expert witnesses
8 only admissible if the theory is -- enjoys general
9 acceptance within the relevant scientific community,
10 and that's a reference to the Williams case and the
11 Pierce case. I can get the citations if your Honors
12 need them.

13 But the biggest thing is in federal
14 court. The Daubert standard allows a witness to
15 introduce just about anything they use as the basis
16 for developing their testimony or their opinion, and
17 that's frequently cited in patent matters.

18 ALJ CHILES: Thank you.

19 Mr. Van Kley, did you have something to
20 add?

21 MR. VAN KLEY: Yes, I sure do, your
22 Honor.

23 With regard to Mr. Settineri's remarks,
24 several things. First of all, with regard to the
25 other documents attached to our opposition to the

1 motions to quash that provided blade throw
2 information and other accident information, primarily
3 all of those were developed from the Caithness
4 database with some additions by Mr. Palmer himself.

5 When I submitted the opposition to the
6 motions to quash, I didn't even know Mr. Palmer, and
7 I accidentally came across some of these
8 compilations, which turned out to be Mr. Palmer's
9 that I found on the website, and that is what
10 eventually led me to him.

11 But that information is Mr. Palmer's
12 information which he developed from the Caithness
13 database, in addition to other blade throw incidents
14 that he has personally compiled from other sources of
15 information. So to throw out the Caithness database
16 is to essentially throw out all public information
17 about blade throw incidents and/or accidents at wind
18 farms.

19 The second thing is with regard to the
20 information upon which the Applicant is relying.
21 First of all, Mr. Settineri says that the Caithness
22 database is combined by a group that is opposed to
23 wind turbines. Well, I would point out that all of
24 the information they are relying on, including the
25 PowerPoints from the presentations that Mr. Poore

1 bases much of his opinions on, are based on
2 compilations by pro-wind industry sources.

3 Those were wind industry presentations.
4 So if the Caithness information is invalid because of
5 the opposition of that group to wind turbines, that
6 their information is invalid because it's provided by
7 pro-wind people.

8 Secondly, with regard to the hearsay
9 content of the data that's being relied on, the
10 Caithness database is no more hearsay than the
11 information that Mr. Poore relied on. Everything
12 Mr. Poore relied on, as he clearly said in his
13 testimony, he obtained from word of mouth either
14 within his own industry, that is, the wind industry,
15 or from presentations like this, which were all
16 hearsay, and he did not see those questionnaires that
17 provided the basis for those PowerPoints.

18 That information is just as much hearsay
19 as the information that Mr. Palmer is relying on, and
20 I would reiterate that if this is going to be the
21 standard, that is, Champaign Wind's proposed standard
22 for evidence in this case, is going to be the rule of
23 the case, then that Application is gone because it is
24 almost exclusively based on the same kind of hearsay.

25 ALJ CHILES: Thank you, Mr. Van Kley.

1 The Bench is granting the motion to
2 strike in part based on the basis that it is
3 inadmissible hearsay. That includes page 9, line 27,
4 beginning with "One of the best."

5 MR. VAN KLEY: If you could hold on a
6 minute, your Honor, while I get there.

7 ALJ CHILES: Page 9, line 27, beginning
8 with "One of the best" and ending on page 10, line 7.

9 Page 11, lines 25 through 31.

10 Page 12, a portion of line 5 that states
11 "by the Caithness Wind Farm International Forum."

12 Page 12, line 18, beginning with "Thus"
13 and extending to line 22, ending with the word
14 "papers."

15 Page 3, line 25, beginning with the
16 phrase "To illustrate" and extending through page 14,
17 line 7. Also on page 14, lines 15 through lines 25.

18 Moving to page 18, lines 3 through
19 page 19, line 4.

20 MR. VAN KLEY: What was the last line
21 again, please?

22 ALJ CHILES: Page 19, line 4.

23 The next portion is page 20, line 6
24 through page 22, line 16.

25 Also on page 22, lines 25 through lines

1 31.

2 MR. SETTINERI: Your Honor, if I may, on
3 page 20 is the footnote stricken as well, page 20?

4 ALJ CHILES: Yes, it is. As the footnote
5 is referencing a portion that was stricken, the
6 footnote will also be stricken.

7 Turning to page 28, line 11, beginning at
8 "The Caithness," through line 14 ending with
9 Philippines."

10 MR. VAN KLEY: I'm sorry, your Honor,
11 would you give that to us again, please?

12 ALJ CHILES: Sure. Page 28, line 11,
13 beginning with "The Caithness" extending to line 14
14 ending with the Philippines."

15 Page 29, line 2, beginning with "However"
16 to line 4.

17 Also on page 29, line 18, beginning with
18 "A number" to the end of the sentence, extending
19 through line 22 ending with "failed."

20 And also Palmer Exhibit G, Palmer Exhibit
21 L, and Palmer Exhibit M.

22 The next item we have in the motion to
23 strike is page 11, lines 5 through lines 11. For
24 this portion the motion to strike is denied on the
25 basis the Board finds it relevant.

Also on page 11, lines 14 through 23, the motion to strike is denied.

On page 12, line 22, there has been a motion to strike the line beginning with line -- 22, beginning with "One of my experiences" through line 28. We have struck line 27 beginning with "These events" through lines 28, beginning with -- ending with "public media." To that extent that portion remains stricken. But the other of line 22, beginning with "One of" ending with "Canada," the motion is denied.

Turning to page 19, line 15, beginning with "Have the utility" through line 19 ending with "demonstrates," the motion to strike is denied. The Board will attribute the appropriate weight to this testimony in light of Mr. Palmers' qualifications.

Palmer Exhibit K, there has been a motion to strike that exhibit. The Board is willing to accept this document as a learned treatise. It may not be received as an exhibit; however, Mr. Palmer may refer to it.

Turning to Palmer Exhibit P, I'm going to have the parties previously summarize their positions on the motion to strike Exhibit P, which is a photograph with some text.

1 MR. SETTINERI: Thank you, your Honor.

2 Number one, Exhibit P contains a picture
3 from a website, obviously is not from Mr. Palmer, as
4 well it quotes the caption from that website,
5 apparently appears to be a news website. Based on
6 lack of authentication, as well as hearsay, we would
7 move to have this exhibit stricken.

8 ALJ CHILES: Mr. Van Kley.

9 MR. VAN KLEY: Yes, your Honor. First of
10 all, the photograph was not taken by Mr. Palmer but
11 the text on that page was written by Mr. Palmer, and
12 it illustrates the relevance of that photograph.
13 That photograph is provided as evidence of what can
14 happen if an object of 3 kilograms in size hits
15 somebody's windshield.

16 Now, granted, the picture is not a
17 picture of a car that's been hit by a piece of wind
18 turbine blade, but it has been hit by an object of
19 3 kilograms in size, and that shows you what kind of
20 damage can occur to a car windshield if it's hit by
21 an object that is 3 kilograms in size, such as a
22 piece of wind turbine that is 3 kilograms in size.

23 This is directly relevant to this case
24 because one of the issues is what's going to happen
25 on the roadways if we have another incident such as

1 we had at Timber Road, and somebody is in the wrong
2 place at the wrong time driving the roadway when
3 debris the size of 3 kilograms comes flying through.

4 We've already shown through
5 Mr. Schaffner's testimony that blade pieces can fly
6 that far, can fly to a distance that will reach the
7 roads that are closer to the turbines. In some cases
8 under the Buckeye II Application the roads that we
9 had at Timber Road were at the location of this
10 incident.

11 So some of Ms. Palmer's testimony
12 pertains to the protection of motorists on the road,
13 and whether larger setbacks are necessary from the
14 turbines that are being proposed by Buckeye Wind to
15 protect those motorists from such an object as blade
16 pieces that may be 3 kilograms in size or larger and
17 which will create the sort of damage that we see here
18 shown in this photograph.

19 Mr. Palmer has the expertise to calculate
20 the amount of harm that will be caused by flying
21 debris from turbine blade. He has found this
22 photograph to be an accurate representation to a
23 car's windshield if you have a piece of debris that
24 is this size hit the windshield, and so it is
25 directly relevant to this proceeding.

1 ALJ CHILES: Mr. Settineri.

2 MR. SETTINERI: Your Honor, I would note
3 a picture of a car being hit by, apparently, per
4 Mr. Palmer's notation, a brick size piece of concrete
5 when there is no picture of anything in here, there
6 is no relevancy. A piece of concrete hitting a car
7 is not relevant to this proceeding, as well as in
8 terms of the corollary relevancy, it is also very
9 confusing. Exhibit P is entitled "The impact of an
10 object falling from a wind turbine." I see the
11 result of a car being hit by something in this
12 picture. There's no other information on it.

13 ALJ CHILES: Thank you. The Board is
14 going to strike Exhibit P; however, the Board is not
15 striking Mr. Palmer's testimony discussing his
16 assessment about the facts of falling turbines. This
17 is on page 15. The Board is only going to strike the
18 reference to this specific exhibit. That would be
19 line 15 beginning with "As illustrated," and ending
20 on line 17 with "about." That is the only portion we
21 are striking.

22 Next we will turn to Palmer Exhibit T.

23 ALJ CHILES: I have a question.

24 Mr. Palmer, did you take this photograph?

25 THE WITNESS: I did not take the

1 photograph.

2 ALJ CHILES: How did you obtain the
3 photograph?

4 THE WITNESS: The photograph came from
5 either of two Wind Power Notes from the United
6 States. I can't tell which one.

7 ALJ CHILES: It was from the publication?

8 THE WITNESS: It's from a web-based
9 listing related to -- that lists items related to
10 wind turbines.

11 ALJ CHILES: Okay.

12 THE WITNESS: They referred to a news
13 broadcast from Kansas which included with it that
14 picture. So that's the picture from the news
15 broadcast. The reporter said this is a piece of
16 turbine blade found here, which is one mile form the
17 turbines.

18 ALJ CHILES: Thank you for that
19 explanation. I will take brief argument on Exhibit
20 T, which is the photograph.

21 Mr. Settineri.

22 MR. SETTINERI: Thank you, your Honor.

23 Again, the witness did not take the
24 picture. I don't think he can identify where he got
25 the picture specifically as well; therefore it cannot

1 be authenticated. We don't know what this picture is
2 of, frankly. With that said, we would move to
3 strike.

4 ALJ CHILES: Thank you.

5 Mr. Van Kley.

6 MR. VAN KLEY: I think Mr. Palmer knows
7 what it is. He said what it is. It's a piece of
8 turbine blade, and he obtained the information from a
9 news service, and it has the same level or more
10 credibility that -- as much as any evidence that
11 Champaign has used, Champaign Wind used in this
12 Application. We believe that it's pertinent, and we
13 believe it is credible evidence.

14 ALJ CHILES: Thank you, Mr. Van Kley.

15 The Board is going to strike Palmer
16 Exhibit T; however, I don't believe there was a
17 corresponding reference to that exhibit within the
18 testimony so we are not striking anything further
19 within the testimony.

20 I believe that resolves all the
21 outstanding motions to strike. At this time we will
22 proceed with cross.

23 MS. NAPIER: Your Honor, may we take a
24 brief recess? You have stricken out a lot of the
25 testimony, so at least for me, to organize my

1 cross-examination.

2 ALJ CHILES: Mr. Parcels.

3 MS. PARCELS: That's my assessment as
4 well. I need some time to organize my cross. Maybe
5 we can go to lunch early.

6 ALJ CHILES: Anyone opposed to taking a
7 very early lunch break? Mr. Settineri?

8 MR. SETTINERI: No, your Honor, I'm not.
9 The reason I'm standing, I just want to when we are
10 done -- I'm not opposed to taking a lunch break, but
11 there was a reference to Exhibit T in the record. I
12 want to make sure to catch that.

13 ALJ CHILES: Let's handle that at this
14 time. Could you refer me to that reference?

15 MR. SETTINERI: Yes, your Honor, page 24,
16 line 9.

17 ALJ CHILES: As the Board has stricken
18 Exhibit T, we will strike the portion of line 9 that
19 says "See Exhibit T." We will not strike anything
20 else on page 9.

21 MR. SETTINERI: Your Honor, did we say we
22 are going to lunch?

23 ALJ CHILES: Let's go off the record.

24 (Discussion off record.)

25 ALJ TAUBER: Ms. Napier.

1 MS. NAPIER: Thank you. The county and
2 townships would call Mr. Jonathan P. Knauth.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 JONATHAN P. KNAUTH
5 being first duly sworn, as hereinafter certified,
6 deposes and says as follows:

7 DIRECT EXAMINATION

8 By Ms. Napier:

9 Q. Please state your name and address for
10 the record.

11 A. Certainly. It's Jonathan P. Knauth, and
12 my address is 10273 Roberts Road, Sauquoit, New York,
13 and the zip code is 13456.

14 Q. And you are here today to present
15 evidence for Champaign County and the townships of
16 Urbana, Union, and Goshen, correct?

17 A. Yes.

18 Q. Do you have before you what has been
19 marked as County and Townships Exhibit 3?

20 A. Yes, I do.

21 Q. Is this your direct testimony?

22 A. Yes, it is.

23 Q. Have you reviewed the testimony?

24 A. Yes, I have.

25 Q. Do you have any additions or corrections

1 to the written direct testimony?

2 A. You know, I think I can expand on some of
3 these items that will probably come up in the course
4 of questioning. Is that the best way to do it?

5 Q. There are no corrections?

6 A. There's one little misspelling in the
7 question on decommissioning cost per turbine. It
8 says "during one construction phrase." It should be
9 "phase."

10 ALJ TAUBER: Could you point out where
11 this is, please?

12 THE WITNESS: Certainly. Page 3 towards
13 the middle of the page, "phrase" should say "phase."

14 Q. Thank you. If I were to ask you these
15 same questions today and you were testifying as to
16 the questions set forth herein, would your answers to
17 these questions change, or would they be the same?

18 A. They would be the same.

19 MS. NAPIER: Thank you. I believe he's
20 ready for cross-examination.

21 ALJ TAUBER: Thank you.

22 Ms. Parcels.

23 - - -

24

25 CROSS-EXAMINATION

1 By Ms. Parcels:

2 Q. In your direct testimony you indicate
3 that you are currently a councilman for the town of
4 Litchfield, New York, and serving since last year?

5 A. That's correct.

6 Q. You are elected last year. When did you
7 take office?

8 A. June.

9 Q. Since the early part of this year then?

10 A. Yes.

11 Q. Can you describe to me, if you know, what
12 the difference between a town and a city is? In Ohio
13 we don't have a government known as a town. We have
14 townships.

15 A. I would say that's probably comparable.
16 We have counties and then we have towns. Some towns
17 also have villages, and there are some cities that
18 exist as separate entities to towns. There is no
19 city that is part of a town that I'm aware of.

20 Q. You wouldn't characterize a town as a
21 subdivision of a government as a city or a village,
22 but you would equate it more closely with a township?

23 A. Correct.

24 Q. Okay. In your role as a councilman for
25 the town of Litchfield, are you responsible for

1 providing emergency medical and firefighting service
2 to the residents of the town of Litchfield?

3 A. We have a -- we have a fire district
4 which serves two towns, our town and the adjoining
5 town and Columbia.

6 Q. And is that fire district funded with a
7 real property levy or through an income tax?

8 A. Real property levy.

9 Q. How would you characterize the nature of
10 your town? Would you consider it suburban or rural?

11 A. It is decidedly rural. It abuts suburban
12 towns. The town next to us has a population, I
13 think, of about 50,000. But our town is quite small,
14 it's about 1,500 people.

15 Q. In the entire town?

16 A. That's correct.

17 Q. If you know, you said the fire department
18 there is sort of a combined operation with the
19 adjacent town. Do you know how many employees that
20 fire department has to serve the town of Litchfield?

21 A. It's a volunteer department, and I
22 believe they have 21 volunteers.

23 Q. Okay. Does the town of Litchfield, in
24 your experience, have an air ambulance that services
25 the area there?

1 A. No, there is no air ambulance in our
2 area.

3 MS. PARCELS: Nothing further, your
4 Honors.

5 MR. PETRICOFF: Thank you.

6 Mr. Van Kley.

7 MR. VAN KLEY: Nothing from us, your
8 Honor.

9 ALJ TAUBER: Mr. Petricoff.

10 MR. PETRICOFF: Yes, your Honor. Thank
11 you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Petricoff:

15 Q. Mr. Knauth.

16 A. Knauth.

17 Q. My name is Howard Petricoff, so I am used
18 to having my name mispronounced, so I will do my best
19 to say yours correctly.

20 Now, Mr. Knauth, you're currently the
21 technical director for Critical Imaging?

22 A. That's correct.

23 Q. What kind of company is Critical Imaging?

24 A. It's a small development and
25 manufacturing company that develops principally

1 imaging systems for many applications, including
2 military, industrial applications, security.

3 Q. So you're no longer in large construction
4 then?

5 A. That is correct.

6 Q. But you were in large construction for a
7 period of time with Rome Iron Group?

8 A. That is correct.

9 Q. What years were you involved in large
10 construction?

11 A. Approximately 1990 through 1995.

12 Q. About five years then?

13 A. About four-and-a-half years.

14 Q. And during that time period, I see on
15 page 2 of your testimony you were involved with
16 distillation columns and other large steel
17 structures?

18 A. Yes, some very large projects. As an
19 example, there was a 4,000-ton power plant. There
20 were prisons, Pentagon heating and cooling facility,
21 the Holocaust Memorial Museum in Washington, D.C.,
22 distillation columns at the GE silicon plant, which
23 are quite tall. We provided erection services as
24 well as structural steel or miscellaneous metals for
25 those projects, for the distillation columns

1 specifically.

2 Q. So this work was all in construction as
3 opposed to decommission?

4 A. That was in construction. But I also was
5 involved in decommission for -- we would take on jobs
6 for the local industry and, in particular, there was
7 a steel mill that we would maintain all of their
8 annealing bells and some of their furnaces. They
9 were large, and when they were done with them, we
10 would decommission them. We would have to cut them
11 apart, you know, and scrap them and so forth and we
12 would charge for those services.

13 Q. On distillation columns that you put up,
14 did the industry have to post a decommissioning bond?

15 A. I was not involved in that portion of
16 product. It's a major GE facility, so I would
17 presume they would have the financial security to be
18 able to do that.

19 Q. You're not aware of any bond and you
20 think it's possible they were just self-insured?

21 A. I would think that's possible.

22 Q. Now, I take it you have no direct
23 experience in the wind industry?

24 A. I've been studying wind for the past
25 three years as part of our Wind Law Committee in our

1 local town, providing counsel to other towns in our
2 area. So I have had about three years experience
3 specifically with wind.

4 But I'd also like to say one of the first
5 wind farms, the Maple Ridge Wind Farm in Tug Hill,
6 New York, actually a portion of that went up on
7 property owned by my family. It's currently in my
8 uncle's name, but we were involved in that very
9 early.

10 Q. But you personally have never been
11 involved in either constructing wind turbines or wind
12 towers or decommissioning wind turbines or wind
13 towers?

14 A. That's correct. I've studied it, but I
15 haven't personally constructed or deconstructed.

16 Q. And as part of your studying, did you
17 look at what the market was for turbines, the
18 secondary market for turbines?

19 A. I could not find a secondary market for
20 turbines. It may exist, but I could not find one,
21 despite diligent search.

22 Q. But, once again, you're not in the
23 business.

24 A. No. But I did, you know, put significant
25 hours in trying to find such a secondary market and I

1 could not.

2 Q. If a secondary market exists, is it your
3 advice here not to include scrap in a decommissioning
4 calculation, cost calculation, would that extend to
5 turbines or turbine parts?

6 A. I guess my concern with including any
7 scrap value or salvage value is that it is too much
8 of an unknown. You are looking for -- you are
9 looking at a product if it is going to be reused that
10 will be probably 20 years old or 25 years old. It's
11 probably old technology, and I just don't know of a
12 comparable example that you could use to say there's
13 a viable market or that there will be one in 20
14 years.

15 So I would think that would certainly be
16 the first thing. I would try to sell the parts of
17 the turbine if I could, but looking ahead 20 years,
18 I'm finding it difficult to believe that I could rely
19 on it as a security vehicle.

20 Q. Now, you say in 20 years, and you'll
21 agree with me because that's the anticipated life for
22 a wind turbine?

23 A. It's typically given as 20 or 25 years.

24 Q. Won't the decommissioning bond have to be
25 in place year one?

1 A. Potentially.

2 Q. So in terms of looking at what is a
3 proper bond, shouldn't the decommissioning value year
4 one apply to the bond that would be posted year one?

5 A. I'm not sure what you mean by
6 "decommissioning value."

7 Q. Let's start again. Let's see if we can
8 go back a step.

9 Would you agree with me the purpose of a
10 decommissioning bond is to make sure if the owner of
11 the wind turbine is insolvent, there would still be
12 monies to bring the turbine down when it's time to
13 bring the turbine down?

14 A. I would agree with that.

15 Q. And you would agree with me the time to
16 bring the turbine down would be either the end of its
17 commercial life or if there was a catastrophic event
18 that required it to be taken down for safety?

19 MS. NAPIER: Objection. Objection. I
20 think he's testifying. I don't think he's laid a
21 foundation that is the only time in which a wind
22 facility would be taken down.

23 ALJ TAUBER: Mr. Petricoff.

24 MR. PETRICOFF: I'll rephrase the
25 question.

1 Q. When do you anticipate would be the
2 proper time to decommission a wind turbine?

3 A. When it can no longer be operated given
4 the legal climate, given the market climate, given
5 the state of the equipment, when it's no longer
6 viable to operate for any of those reasons, and there
7 are probably a few more.

8 Q. The decommissioning bond has to be in
9 place because those could occur at any time.

10 A. I would think so.

11 Q. And the goal in setting a decommissioning
12 bond is to make sure that there is a sufficient
13 amount of money that's available to bring the turbine
14 down using good industry or best industry practices.

15 A. Yeah. I'm not sure what a best industry
16 practice would be because I don't know of any
17 comparable examples of modern turbines being
18 decommissioned. I think one of the issues that we
19 have is I haven't seen what any best industry
20 practice would be specific to decommissioning.

21 Certainly there are so far as some of the
22 subcomponent aspects of that or the subtasks, like
23 erecting cranes and things like that. But so far as
24 your turbine itself, I'm not aware of a best
25 practice.

1 Q. Theoretically, we certainly might have
2 enough money to decommission a turbine and bring it
3 down at whatever is the best practice at that time.

4 A. Yeah, I would think so. And, of course,
5 it extends far beyond just bringing it down. There's
6 remediation of the site, bringing it back to its
7 previous use, typically would be agricultural,
8 monitoring the site afterwards and so forth.

9 Q. Have you had an opportunity in preparing
10 for this to review the testimony of
11 Mr. Speerschneider?

12 A. No, I have not.

13 Q. How about the Application in this case,
14 the portions on decommissioning?

15 A. I have.

16 Q. And have you see the Staff Report,
17 condition, I think it's, 55?

18 A. Yes.

19 Q. Let's go back and see what items we can
20 agree on. We agree we have to have a decommissioning
21 bond in place at the time that we have the wind
22 turbine constructed.

23 A. Yeah. You know, a bond is one form of
24 security. There are others, as I'm sure you're
25 aware, and, I guess, that would be -- you know, some

1 security vehicle, and a bond is one method of doing
2 it.

3 Q. Right. And you're not expressing any
4 opinion as to what the financial vehicle should be,
5 only that have funds available when needed for the
6 decommissioning?

7 A. Yeah. Typically it's a bond, but, you
8 know, there are other ways.

9 Q. I think you mentioned in GE, it may have
10 been a parent guarantee.

11 A. You know, I never got involved in that so
12 it would be pure speculation on my part.

13 Q. So we agree it's a financial instrument,
14 and at this point we are not opining on what that
15 should look like. And I think we have an agreement
16 that the amount of the decommissioning bond has to be
17 commensurate with what the expenses for the
18 decommissioning are.

19 A. Yes. Specifically, I think to have
20 the -- not just the expenses, but the cost of
21 contracting for that. I think that is critical,
22 rather than just, as an example, adding up the cost.
23 It's the cost, in my view, or should be, to hire a
24 general contractor to do that work, as well as the
25 engineering effort required to figure out what to do

1 to plan it, the safety planning, the training, all of
2 the things that are necessary before you start a
3 heavy industrial project like that.

4 Q. Now, in the Application it indicates
5 there's going to be -- studies are going to be done
6 at that time by an engineer that would lay out the
7 decommissioning plans, including restoration of the
8 site. Is that your understanding of the Application?

9 A. The Application had I think two
10 paragraphs on the subject, and, frankly, I can't
11 quite remember the detail on that.

12 Q. Do you have a copy -- you did indicate
13 you did review the Staff Report?

14 A. Yes.

15 Q. And, in particular, condition 55.

16 A. Yes, I do have that with me.

17 Q. Okay. And if you would take that out and
18 focus your attention on it.

19 A. Uh-huh.

20 Q. 55 sub (a) says, "The Applicant facility
21 owner and facility operator shall provide the final
22 decommissioning plan to the Staff and the County
23 Engineer for review and confirmation of compliance
24 with this condition at least 30 days prior to the
25 preconstruction conference."

1 And in your mind, is that a good time to
2 have it, before we start construction, 30 days before
3 to look at the plan?

4 A. Well, if I were planning -- if I were
5 planning the sequence of events, I guess I would
6 rather have it earlier because it would provide more
7 time to make any modifications to it, for it to be
8 analyzed. So I would think that 30 days, maybe it
9 needs to be more than that. It might be okay.

10 Q. Then if you look at A, we have a
11 description of A, the subparts, as a description of
12 the level of detail, and that will have to have the
13 engineering techniques, and that every major step of
14 the plan would have to be set out. Is that generally
15 the kind of structure you think would be necessary to
16 have a competent plan?

17 A. Well, I think that this is fairly
18 open-ended as to what sort of plan would be produced,
19 you know, as a result of these requirements.
20 Basically they're asking for a plan. So, you know, a
21 good plan would include many aspects of engineering
22 judgment, knowledge of the site, and so forth, and I
23 would expect to include a lot of detail, and I'm not
24 sure that this is -- was intended to lay out all of
25 the detail that would be in the plan, but it seems

1 like a good framework for a task description to
2 create a plan.

3 Q. Okay. Now, earlier you indicated your
4 concern was trying to set a plan that would have to
5 most likely go into effect or may go into effect 20
6 or 25 years from now. Is that fair assessment?

7 A. Yes. One of the risks, we simply don't
8 know what is going to happen in 20 or 25 years.
9 There's risks of what the market conditions are, what
10 the available labor pool is, what support contractors
11 are available at that time, as well as what the
12 regulatory climate is. As an example, you know, the
13 notion here, as I understand it, is to leave the
14 collection system in the ground, leave the cables in
15 the ground. That might be fine or it might be
16 considered a landfill. So there could be some issue
17 that increases costs in the future based on all of
18 these unknowns.

19 Q. Wouldn't you agree with me that under the
20 proposal and under 55 that these costs would be
21 revisited periodically to make sure that -- that the
22 plan would be revisited periodically to make sure
23 that it meets current standards?

24 A. Yeah. The first part of that where you
25 mentioned the Application, those two paragraphs that

1 I did read, but I don't have them in front of me, I
2 don't know if that called for it, but this calls for
3 a five-year review.

4 Q. And doesn't that take care of the problem
5 that the costs or the salvage values or the
6 regulations are not only -- may change between now
7 and 20 years when the plan goes into effect?

8 A. I am not sure a five-year resolution on
9 salvage value is an adequate resolution. The
10 market -- if we just went and completely scrapped
11 everything, the market for scrap varies, you know, on
12 a daily basis, so one day you might have a different
13 value for scrap than you do the next, based on what
14 the current demand is.

15 So I'm not sure that five years is an
16 adequate resolution to capture those differences. If
17 you look at the long-term scrap values, for example,
18 I looked at them for steel, they are extremely
19 volatile, and one year to the next it could be twice
20 or double -- half or double, I should say, than it
21 was the previous year. I'm not sure five years is an
22 adequate resolution to handle that aspect of it.

23 But so far as handling some of the other
24 things, labor costs, you know, oftentimes there is
25 significant inflation within a five-year period, so

1 that needs -- that risk, I think, needs to be weighed
2 against the risk of having too much regulatory --
3 need for regulatory oversight. So if I were to come
4 up with a number, I'd probably be closer to three
5 years or two years rather than five. Five seems to
6 be on the outside limit.

7 Q. You said there may be excessive
8 regulation. Would the requirement that posting a
9 bond greatly in excess of the costs of
10 decommissioning, would that be an example of
11 over-regulation?

12 A. I'm not saying over-regulation. What I'm
13 saying is that the review of that -- let's say it was
14 done monthly. It would be ridiculous. If it were
15 done monthly, let's say, we would have certainly a
16 greater accuracy of the numbers, but it would be a
17 regulatory burden, clearly, on whoever -- I presume
18 the state or the local board who is reviewing.

19 So, obviously, you want to avoid that.
20 So there is some happy medium there, and I would tend
21 towards the two- and three-year range versus the
22 five.

23 Q. Would you agree with me doing it every
24 two or three years as opposed to five would increase
25 the cost?

1 A. Increase the cost of what? I'm not sure.

2 Q. Maintaining the decommissioning plan.

3 A. Not necessarily. I wouldn't jump to that
4 conclusion.

5 Q. Won't those engineers have to be paid to
6 do the studies?

7 A. Yeah. But if you have a greater -- if
8 you reduce the uncertainty, then it's possible that
9 you can reduce the required security. So, I mean,
10 there's balancing.

11 Q. And as part of that balancing, would that
12 include maybe the salvage value for turbines and
13 turbine parts?

14 A. Well, I still don't think that even a
15 two-year time frame is adequate resolution to
16 determine what the scrap value is going to be. It's
17 too volatile. It's a commodity that's extremely
18 volatile.

19 Q. You indicated that scrap metal -- first
20 of all, do you have any idea of the volume of scrap
21 metal that would be created by taking a turbine down?

22 A. Yes.

23 Q. Okay. Could you share that with us?

24 A. Sure. Let me see if I have a piece of
25 paper here. I've looked at a number of

1 decommissioning plans and reviewed one of my own,
2 and, as an example -- let's see. There's one example
3 for a Vestas 3 megawatt turbine that was 190 metric
4 tons. This to get something in the ballpark.

5 Q. And at the current price of scrap steel,
6 what's the value of 190 metric tons?

7 A. I can't tell you what it is today. Last
8 year when I did this particular estimate that I'm
9 looking at, it was \$350 per metric turn as delivered
10 to the mill in a size sufficient to fit into the
11 furnace itself. So that was a size of 60 inches by
12 18 inches. That was a No. 2 scrap steel.

13 Q. I'm sorry. Would you mind repeating that
14 number? What was the price per metric ton?

15 A. At the time I looked at this, it was
16 \$350.

17 Q. And that was 190 million?

18 A. That was 190 metric tons.

19 Q. Oh, 190.

20 A. Now, that value, of course, is the value
21 cut into the size to fit into the furnace charge box
22 delivered to the mill for use. That's wherein the
23 problem lies. In addition to volatility of the price
24 of scrap steel or any other scrap metal, is that you
25 need to size reduce it and put it into a form that's

1 suitable to the mill in order to get that best price.
2 So it would be considerably less than if it were in
3 any other form.

4 But if you want to get the best price,
5 cutting it to that size in this particular case,
6 60 inches by 18 inches, would be necessary and
7 delivered to the mill.

8 Q. If a decommission plan called for both
9 estimates of decommissioning without salvage and with
10 salvage, and basically the details on the market
11 valuing of the salvage was supplied, along with some
12 adjustment for market volatility, would that be
13 sufficient?

14 A. The adjustment for market volatility I
15 think is the problem. There's a lot of volatility.
16 You know, I looked at -- as an example, I looked
17 at -- there are quite a number of turbines that are
18 standing that were erected in the 1980 time frame.
19 But if you go 20 years forward, it just so happened
20 that the price of steel dropped in half during that
21 period.

22 So you know, but there were other points
23 where it was even higher or lower than dropping in
24 half. So I'm not exactly certain how you would allow
25 for that volatility. I mean, I would think you would

1 probably take a low number, perhaps a ten-year
2 rolling average of a low value would probably be a
3 reasonable thing.

4 Q. Okay.

5 A. But I don't think there's a
6 straightforward way of doing that, and that's one of
7 problems.

8 Q. And one of the solutions for that problem
9 is to meet periodically and review both what the cost
10 is going to be as well as the amount that has to be
11 set aside in assurance.

12 A. Yeah, I think that is one approach. But
13 as I said, you know, a five-year or even a two-year
14 or three-year is inadequate -- it's an inadequate,
15 you know, kind of sample period because, you know,
16 the day after you met and came up with those values,
17 the price could go down 20 percent.

18 Q. As well as go up 20 percent?

19 A. It could. It could.

20 Q. Should there be a concentrated effort,
21 though, to make sure that the bond is not too large
22 so that excess capital will be wasted?

23 A. I think that you always want to estimate
24 as close to the mark as you can get, but these are
25 always estimates, and there are certainly -- there

1 are uncertainties, there are risks. And the question
2 becomes who bears those risks. Does the developer
3 bear the risk or the owner of the site at that time
4 bear that risk, or does the community bear the risk?

5 So, you know, that has to be weighed, I
6 don't see why the community should bear that risk.
7 If there's some uncertainty, I would tend towards --
8 I would tend towards having the, you know, owner of
9 the turbines and developer, whoever that would be at
10 the time, you know, bear that risk as opposed to the
11 community.

12 Q. Under this plan, who eventually has to
13 accept what these projections and bond amounts are?

14 MR. REILLY: Objection. I'm not clear on
15 what "this plan" means.

16 MR. PETRICOFF: The decommissioning plan.

17 MR. REILLY: Any decommissioning plan?

18 MR. PETRICOFF: The one in 55. Actually,
19 we are still talking about paragraph 55 of the Staff
20 Report.

21 MR. REILLY: Thank you.

22 A. You know, I'm not sure based on the
23 wording here. I mean it could be the staff. It
24 could be -- I'm not sure.

25 Q. Let's see if I can come to some summation

1 here. The idea, we want to set aside some type of
2 surety to make sure that money will be available to
3 decommission the turbines if the company is unable to
4 do so financially. Would you agree with that?

5 A. Yes.

6 Q. And I think we want to get as good
7 estimates as we can what the costs are and what the
8 money we set aside is.

9 A. Yeah. I'm not sure, you know, about the
10 money you set aside. I presume you would know that.
11 But you're saying what the value of the bond would be
12 to cover that?

13 Q. The value of bond or the value of
14 assurance. Let's talk about the value of the
15 assurance versus the cost of decommissioning.

16 A. Right.

17 Q. We want to get it as close as possible,
18 but we want to minimize the risks, that we may be a
19 bit on the conservative side?

20 A. You could potentially be a bit on the
21 conservative side. And the argument I made is that
22 the scrap value is a -- could be used as a hedge
23 against those uncertainties. You know, all the
24 uncertainties we talked about, the regulatory
25 climate, the labor availability and cost, all of

1 those different things.

2 You know, there you have -- it certainly
3 is worth something. Scrap is worth something. We
4 just don't know how much it is. I think oftentimes
5 decommissioning estimates are overvalued because
6 the -- because values of the, you know, price quotes
7 for material delivered to the mill are oftentimes
8 used, you know, as though -- as a representation
9 for -- you know, a turbine is standing up, so you
10 would say this standing turbine is 190 metric tones;
11 therefore, it is worth that much.

12 But the value you are comparing it to is
13 the value delivered to the mill in small pieces.
14 Obviously, there are labor costs involved and
15 transportation in getting from one point to the
16 other. So the scrap value, the salvage value, in my
17 view, could be used as a hedge against all of those
18 unknowns, and that would probably be the way of doing
19 it.

20 Q. One last question. In your experience
21 working on large decommissioning projects, the ones
22 we discussed earlier in your testimony, how good have
23 cost estimates been on the decommission?

24 A. Well, my experience is on
25 decommissioning, but it's also on the initial

1 construction, and so I don't want -- you know, most
2 of it is on the initial construction side.

3 Now, I've seen some examples that the
4 cost of decommissioning is analogous to the cost of
5 erection. One example I saw it was within
6 10 percent, decommissioning study I've seen from
7 another project.

8 So I think that an understanding of how
9 the costs of erecting, you know, a large territory
10 like this, the cost of, you know, field crews, and
11 those sorts of activities. I think it is relevant
12 if, you know, you look at the construction or if you
13 look at demolition portions of it.

14 Q. I was asking a much simpler question. I
15 asked in your experience in the decommissioning
16 you've done, have your estimates come out pretty
17 close to the costs at the end of day, just in your
18 experience?

19 A. No. Actually, it came out more costly,
20 and I had to go back and explain myself as to why I
21 didn't account for all of the costs.

22 MR. PETRICOFF: I have no further
23 questions. Thank you.

24 ALJ TAUBER: Thank you, Mr. Petricoff.

25 Mr. Reilly.

1 MR. REILLY: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Reilly:

5 Q. Good afternoon, Mr. Knauth.

6 A. Knauth.

7 Q. My name is Steve Reilly. I'm here on
8 behalf of the staff of the Ohio Power Siting Board.
9 I just have a couple of questions for you.

10 I'd like you to take a look at page 3 of
11 your testimony, and the last sentence of the
12 second -- the last sentence of the answer to the
13 second question on that page, it begins, "If a
14 turbine amount were set." Do you see that?

15 A. Right.

16 Q. Would you take a look at that for me. I
17 mean you don't have to repeat it. Just take a look
18 at it.

19 A. Right. Okay, I see it.

20 Q. Okay. And your concern is that there
21 might be differing amounts to decommission different
22 turbines, correct?

23 A. Yeah. And as I thought about this a
24 little bit further, I agree with that statement that
25 I made, but as I thought about this a little bit

1 further, I also came to the realization there's a
2 mobilization cost of getting the crane on the site,
3 erecting the crane.

4 And if you were to do this on a
5 per-turbine basis, you would have to include those
6 mobilization costs for every turbine. So that would
7 be -- that would increase the value, I would think,
8 or the cost.

9 Q. Well, my question really is, though, that
10 if the costs of decommissioning whatever they might
11 be -- and there may be disagreement here over what
12 they are -- but whatever they may be, if the costs of
13 decommissioning were spread evenly among the
14 turbines, that satisfies your concern in that last
15 sentence of the second full question, correct?

16 A. No, it doesn't. I'm sorry. I mean, I'll
17 just read the sentence.

18 Q. Fine, please read it into the record.

19 A. Sure. "If a per turbine amount were set
20 I would expect individual turbines would have
21 different decommissioning costs reflecting the
22 differing amounts of infrastructure involved, as well
23 as adjustments for distance to rows and other
24 factors."

25 So if you were to take the total project

1 and divide it by the number of turbines, I would
 2 think there would be some cases, I would believe, you
 3 wouldn't adequately -- for some turbines it would be
 4 too much, for some turbines it would be too much, and
 5 for others, not enough.

6 Q. And that's based on your understanding of
 7 what the decommissioning would involve, correct?

8 A. Right.

9 Q. Okay. Earlier in your testimony you
 10 stated that removal of cabling was not included in
 11 decommissioning, as described in the Staff Report; is
 12 that correct? I'm talking about your oral testimony,
 13 your discussion with Mr. Petricoff.

14 A. Right. If I -- my first read on that, it
 15 was included, but, frankly, I was a little confused
 16 when the question was asked.

17 Q. Am I correct you're not sure of what is
 18 included in the decommissioning -- what is required
 19 in decommissioning as it is described in the Staff
 20 Report? Am I correct on that?

21 A. Well, this is asking for a detailed
 22 estimate, and so this isn't, in and of itself, a
 23 detailed estimate or, necessarily, a detailed set of
 24 requirements. This is asking for that.

25 Q. Let me back up again. Are you aware of

1 what is involved with decommissioning as described in
2 the Staff Report?

3 A. Yes. I've read it several times.

4 Q. And you're aware the cabling is to be
5 removed as described in that -- in the Staff Report?
6 I direct your attention to paragraph 55 (d), second
7 sentence.

8 A. Yep, I agree with that.

9 Q. Okay. So when you were speaking earlier,
10 you are in error what would be included, correct?

11 A. In that regard, yes.

12 Q. Okay. Are you aware that the Staff
13 Report does not recommend using salvage values?

14 A. I am aware of that.

15 Q. And as I understand your testimony, you
16 agree with that approach?

17 A. Absolutely.

18 Q. Okay. And as I understand your
19 testimony, you also agree with a shorter planning
20 time frame than 20 to 25 years?

21 A. Yes.

22 Q. Okay. Am I correct you would agree with
23 using a single amount rather than variable amount for
24 determining the amount to decommission turbines?

25 A. Could you please just repeat that.

1 Q. I'm sure I didn't say it very well.

2 Would you agree it is better to have a
3 single amount for each turbine and that amount be the
4 same and include all, if you will, indirect costs,
5 not directly involved with the turbine but associated
6 with all turbines than to have a variable amount
7 between turbines?

8 A. Well, I'm not quite sure how to answer
9 your question so I'm going to do my best here. My
10 concern about a single value is that, one, I think
11 that it would -- that if properly estimated, would
12 end up being high. So I would be concerned about
13 that because you have to put mobilization costs in
14 each and every turbine, presuming it was going to be
15 done individually.

16 The next thing is there are varying
17 amounts of infrastructure. You know, you could just
18 average them out, and that is an approach, and maybe
19 it's an okay approach, but I think it just needs to
20 be recognized there's varying amounts of
21 infrastructure, that every individual turbine won't
22 be the same in cost.

23 Q. And then am I correct, did I understand
24 your testimony in responding to Mr. Petricoff's
25 questions, that you see the answer to all of this

1 decommissioning being biannual estimates?

2 A. I guess I think that five years is
3 probably too much. Biannual is probably okay. Three
4 years might be okay, too. I would think more
5 frequently than five, but I don't have a specific
6 recommendation as to two or three. That's it.

7 Q. Just so I understand your answer to the
8 concern that you express in the last sentence of the
9 second question on page 3, is an estimate every three
10 years?

11 A. I think that would be reasonable, but I
12 don't have a specific recommendation for three versus
13 two.

14 Q. And that solves the problem that you're
15 raising there.

16 MS. NAPIER: I'm sorry, which what is
17 raising?

18 MR. REILLY: Well, he is raising -- let
19 me back up.

20 Q. What is the problem you're raising in
21 that sentence?

22 A. Well, I guess I'm not sure that changing
23 the estimating, you know, interval addresses my
24 concern here. My concern is that every turbine will
25 have differing amounts of infrastructure associated

1 with it, and that if it's considered on a per-turbine
2 basis, it is logical to provide enough value, enough
3 security to decommission a turbine as a result.

4 Then you would -- in a situation whereby
5 you would overly burden an individual turbine with
6 mobilization costs that could better be spread over a
7 larger number of turbines. So I think in one sense
8 it would logically result in higher costs per turbine
9 than, you know, doing it on a project basis or some
10 other grouping of turbines.

11 Q. And what is your solution of that problem
12 that you're espousing?

13 A. My solution is do it on a whole-project
14 basis, or if it has to be done on a per-turbine
15 basis, calculate it separately based on that being a
16 specific project.

17 Q. So your preferred answer there would be
18 an estimate of the amount to decommission the entire
19 project?

20 A. That would be -- I would think that would
21 be preferable to doing each individual turbine as a
22 separate project, and I think if you added all of
23 those up, logically that would be a higher number
24 than the project as a whole.

25 Q. That is the method that you would -- that

1 you're advocating?

2 A. I would think the whole project would be
3 a better method.

4 MR. REILLY: We have nothing further.

5 ALJ CHILES: Thank you.

6 Ms. Napier, redirect?

7 MS. NAPIER: Yes.

8 - - -

9 REDIRECT EXAMINATION

10 By Ms. Napier:

11 Q. You had indicated you had reviewed the
12 Application regarding the protocol from Applicant for
13 decommissioning.

14 A. Yeah. I believe there were two programs,
15 but there may be three. I don't have that in front
16 of me.

17 Q. Can you look, there are a few binders in
18 front of you, and there is Volume I. Do you see it?
19 Do you see Volume I?

20 A. Volume I.

21 Q. On page 159, do you see it at the bottom
22 of the page?

23 A. Yes.

24 Q. Is that the section that you had reviewed
25 in response to Mr. Petricoff's question?

1 A. Yes.

2 Q. Do you see in the first sentence of that
3 paragraph titled "Financial Assurance, Champaign Wind
4 proposes to post a financial assurance in the amount
5 of \$5,000 per each turbine prior to construction
6 until the facility has been operational for a year."

7 In your opinion, is that an adequate
8 amount for financial assurance?

9 MR. PETRICOFF: Objection, your Honor.
10 Your Honor, that was not part of cross.

11 ALJ TAUBER: The objection is sustained.
12 It was not part of cross-examination.

13 MS. NAPIER: I believe he mentioned to
14 him if he reviewed it. He opened the door. Although
15 he didn't get far in, he opened the door.

16 ALJ TAUBER: I think we exceeded the
17 scope of cross-examination.

18 Q. (By Ms. Napier) You indicate that you
19 had reviewed the Staff Report and given testimony
20 here, correct?

21 A. Yes. And, you know, I just want to
22 emphasize I think that's pretty good.

23 Q. Okay. Did you believe in your review
24 that the decommissioning cost issue was an issue in
25 this project?

1 A. I'm sorry, I don't quite understand the
2 question.

3 Q. Did you believe that all the parties are
4 agreeing on this decommissioning cost, to your
5 knowledge?

6 A. You know, I don't know if they've agreed.

7 Q. Now, you had talked about knowing the
8 purpose of a decommissioning bond. Do you know who
9 basically, in essence, takes that decommissioning
10 bond, if necessary?

11 A. Who takes it to execute the
12 decommissioning?

13 Q. Uh-huh.

14 A. I'm not sure who has this responsibility
15 under this.

16 Q. Would it be the Applicant?

17 A. I'm just -- I'm sorry, I just don't know
18 how that's been structured here.

19 Q. Well, who would do the decommissioning?
20 Do you know that?

21 A. Well, the decommissioning, I would
22 presume that would be done by a general contractor
23 that had been hired out of the proceeds of the bond.

24 Q. And you had indicated in response to a
25 question that you thought there was missing kind of

1 the cost of hiring a general contractor. Can you
2 explain that?

3 A. Well, looking at the staff
4 recommendation, I'm not sure that I would go that
5 far. But I think that the way that it's worded, it
6 doesn't specifically say "general contractor," but it
7 does talk about RS Means. There are certainly
8 standard formulas for how one calculates, you know,
9 the cost of any project, and certainly there's
10 judgment calls involved. And you change, you know,
11 overheads and profits and these sorts of things.

12 But I would think that a logical way of
13 doing that, reading the Staff Report, would be to do
14 it on the basis of a general contractor performing
15 the work. I mean, that it is how construction
16 projects are done.

17 Q. And you had responded regarding salvage
18 value being a hedge or a cushion -- I'm not sure I'm
19 phrasing that correctly -- for any costs that may
20 arise from decommissioning.

21 A. Sure. You know, all of these things are
22 called estimates for a reason. The actual cost in
23 the end is something different. It's never exactly
24 the same as the estimate. They're all estimates.
25 There's risk involved. The scrap value I think could

1 serve as a -- I did use the word "hedge," but a
2 contingency, if you will, against those unforeseen
3 costs.

4 Q. In your experience have you dealt with a
5 project that has been financed or secured by a third
6 party?

7 A. Oh, yes.

8 Q. And how does salvage value come into play
9 if there's some financing involved?

10 A. I was thinking in terms of construction
11 to the deconstruction when I answered the question.
12 So, you know, in my personal experience in the
13 construction industry, we've never used a bond to
14 deconstruct. But we have used -- we have called on
15 surety to -- we've exercised performance bond on
16 subcontractors that default, and we had to go and use
17 surety to finance the remainder of the project.

18 MS. NAPIER: Thank you. I appreciate it.

19 ALJ TAUBER: Thank you, Ms. Napier.

20 Ms. Parcels.

21 MR. VAN KLEY: Nothing from the city.

22 ALJ TAUBER: Mr. Van Kley.

23 MR. VAN KLEY: Nothing from us.

24 ALJ TAUBER: Mr. Petricoff.

25 MR. PETRICOFF: No recross.

1 ALJ TAUBER: Mr. Reilly.

2 MR. REILLY: Nothing, your Honor, thank
3 you.

4 ALJ TAUBER: Thank you, Mr. Knauth.
5 You're excused.

6 MS. NAPIER: At this time the county and
7 townships would move into evidence their Exhibit 3.

8 ALJ TAUBER: Any objections to County and
9 Township Exhibit 3?

10 MR. PETRICOFF: No objection.

11 ALJ TAUBER: Hearing none, it will be
12 admitted into the record.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 ALJ TAUBER: Let's go off the record.

15 (A luncheon recess was taken.)

16 - - -

17 ALJ CHILES: Back on the record.

18 Mr. Van Kley.

19 MR. VAN KLEY: Your Honor, before we call
20 Mr. Palmer back to the stand, I wanted to make a
21 motion to the Bench with respect to the testimony and
22 the exhibits from Mr. Palmer that have been struck.

23 We have, of course, offered them for
24 purposes of providing factual information for
25 Mr. Palmer's testimony and have clearly offered them

1 for that purpose.

2 However, at this point, I believe that we
3 would supplement our request that they be considered
4 and would move that they be considered for this
5 purpose, which is for the purpose of showing that the
6 testimony and the Application of Champaign Wind in
7 this case are not credible because the witnesses for
8 Champaign Wind and the Application both contend that
9 based on things they have heard or things that have
10 not been heard in the wind industry about public
11 safety, this Application protects public safety; that
12 is, they have been arguing that the lack of
13 information that they have heard about public safety,
14 such as blade throws and blade failures, ice throws
15 and other accidents, shows that wind turbines are
16 going to be safe, and, therefore, you need not worry
17 about setbacks

18 So at this point, without waiving our
19 request that the information also be considered for
20 the truth of the matter therein, we would also offer
21 them for purposes of establishing that the evidence
22 being offered so far, and, in some cases, introduced
23 into evidence, is not credible.

24 So to that extent we would request this
25 information be considered not for the truth of the

1 matters therein, but for purposes of impeaching and
2 showing the lack of credibility of the evidence that
3 Champaign Wind has provided to support his
4 Application.

5 Just to be clear, we are offering this
6 information both for the truth of the matters
7 therein, which you already decided we can't, and we
8 will respect that.

9 ALJ CHILES: I understand.

10 MR. VAN KLEY: But at this point we are
11 also asking you to consider the information not for
12 the truth of the matters asserted therein, but for
13 purposes of impeaching prior testimony that has been
14 submitted to the Board.

15 ALJ CHILES: Thank you.

16 Mr. Settineri.

17 MR. SETTINERI: Your Honor, I don't know
18 if there is a motion there. To the extent this is a
19 motion to reconsider the various decisions you made
20 as to the Champaign Wind witnesses and the
21 evidentiary issues, our objection stands as of the
22 time we made those.

23 The witnesses are off the stand. The
24 time to impeach the witnesses was at that time.
25 Mr. Van Kley and others had every opportunity to do

1 so. I also note that Mr. Van Kley stated at the
2 beginning of his request that these are statements of
3 fact and that you have already decided it is hearsay,
4 should not submitted, should not be carried into the
5 record and, therefore, cannot be considered.

6 MR. VAN KLEY: Your Honor, to be clear, I
7 am making a motion to reconsider.

8 ALJ CHILES: Motion to reconsider.

9 MR. VAN KLEY: And Mr. Settineri is
10 correct, we had the opportunity to impeach the
11 witnesses that have been on the stand, and we have
12 rather vigorously done so. However, at this point we
13 are offering this evidence as further -- to further
14 indicate that those witnesses' testimony was not
15 credible.

16 And information that is in the
17 Application that relies on the lack, or the supposed
18 lack, of public record about the hazards of these
19 facilities, we are offering this information for
20 purposes of showing that that information in the
21 Application is not credible, as well as the testimony
22 from Champaign Wind's experts and lay witnesses is
23 not credible.

24 ALJ CHILES: Thank you, Mr. Van Kley.
25 Your motion to reconsider is duly noted for the

1 record, but the motion is denied at this time.

2 Thank you.

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

4 We are ready to call Mr. Palmer back to
5 the stand.

6 And, your Honor, I would like to ask
7 Mr. Palmer to make one more correction to his
8 testimony.

9 ALJ CHILES: Of course.

10 Mr. Palmer, I want to remind you, you are
11 still under oath.

12 Thank you.

13 - - -

14 WILLIAM PALMER

15 being previously sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION (Continued)

18 By Mr. Van Kley:

19 Q. Mr. Palmer, would you go to the exhibits
20 in your testimony, and I would like to specifically
21 direct you to Exhibit R, which constitutes three
22 pages, R-1, R-2 and R-3. And I see that under the
23 column that is labeled "Nearest Home" towards the
24 middle of the page has some references to some of the
25 roads using OV and then the number of road.

1 A. Yes, sir.

2 Q. Do you have a correction to make with
3 regard to the designation OV?

4 A. Yes, sir. I took those designations off
5 the map. The roads there -- do you all have Exhibit
6 R in front of you?

7 Q. Yes, we have the exhibits.

8 A. If you look at "Nearest Home," the top
9 one that shows SH36, that was my designation of the
10 highway number within the shield, which is US Highway
11 No. 36, so SH36 should refer to US Highway 36.

12 Now, the ones referring to TR157 and so
13 on or county roads, there's no change to those. The
14 ones that show as OV29, as an example, which is about
15 two inches down in a line there, it would be easier
16 understood if that was considered as State Road 29.
17 The maps shows them as 29 in an oval, and that was my
18 short script.

19 Q. Okay. Were you referring to how the
20 roads are marked on the map, with an oval?

21 A. I was referring to the designation --
22 where I said "nearest home," sir, what I was looking
23 at, I was looking at the road that -- if we go down
24 to what is called OV29 there, what I was referring to
25 there is to say turbine 78, the nearest home to it is

1 accessed from road, it should be called State Road
2 29. I called it OV29, but it should have said State
3 Road 29. The distance in the next column where it
4 says 29 feet, that's the distance to that nearest
5 home.

6 And the TWHY are the township roads, some
7 of which actually have names, commonly known names.
8 Actually, looking at the roadside, they have township
9 highway number in very small print at the bottom and
10 sometimes have a name on the top. But, again, I was
11 just using the nomenclature.

12 Wherever it says "OV," I ask you to
13 change that to "STRD," state road. Where it says
14 "SH" should be changed to "US highway number."

15 Does the court need me to go through it
16 individually?

17 ALJ CHILES: You mean R-1, R-2, and R-3,
18 all three of those pages?

19 THE WITNESS: Yes, ma'am. Sorry, that
20 was my short script.

21 ALJ CHILES: That's quite all right.

22 MR. VAN KLEY: At this point, your Honor,
23 the witness is available to answer questions.

24 ALJ TAUBER: Thank you, Mr. Van Kley.

25 Ms. Parcels.

1 MS. PARCELS: Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Parcels:

5 Q. Good afternoon, Mr. Palmer. I'm Breanne
6 Parcels representing the city of Urbana. I just have
7 a few questions.

8 In your answer to your educational
9 background, you said you completed courses in public
10 safety and risk assessment.

11 A. Yes, that's correct.

12 Q. Does that include any particular medical
13 emergency service training?

14 A. I have standard first aid, but that is
15 the limit of my education. Those two courses did not
16 refer to emergency medical training, no.

17 Q. Okay. In those courses did you ever
18 reference the concept known as the golden hour?

19 A. I'm not familiar with that term.

20 Q. I guess when it comes to the terminology,
21 public safety and risk assessment, does that mean you
22 look at all the possible things that can go wrong
23 with something?

24 A. Yes. Basically when I say public safety,
25 I'm looking at what is there in a system, you know,

1 in this case a wind or wind turbine system, which --
 2 can a failure of that system impact public safety.
 3 That's what I'm really trying to say.

4 Q. Okay. So once you identify what can go
 5 wrong, what you termed a failure of the system, then
 6 what would be your responsibility to, I guess,
 7 communicate with the local community about the public
 8 safety risks?

9 A. As a professional engineer, I am obliged,
 10 if I determine that the health and welfare of a
 11 member of the public is impacted --

12 THE WITNESS: My microphone, or just tell
 13 me if it's me.

14 ALJ CHILES: I think you're fine.

15 Q. I can hear you just fine.

16 A. I have an obligation to identify if there
 17 is a risk to the health and safety. I have a
 18 responsibility as an engineer to present that
 19 information to the responsible authorities.

20 Part of the reason why I am here today,
 21 the responsible authorities are the Court and Ohio
 22 Power Siting Board, so I am presenting that
 23 information. Does that answer your question?

24 Q. That does answer my question.

25 On page 2 of your testimony it indicates

1 your experience with occupational safety issues and
2 specifically you reference working for mines as an
3 electrical project engineer.

4 Did you, in your capacity working for the
5 mines, have occasion to report to anyone outside the
6 mine company, such as you noted, the local
7 authorities, when you identified a safety issue?

8 A. When working for the mine company, I
9 dealt only with the mining company.

10 Q. Okay.

11 A. Different when working with Ontario
12 Hydro, Ontario Power Generation, Bruce Power.

13 Q. Okay. What about working with nuclear,
14 did you have occasion to report to anyone outside of
15 your own company in terms of public officials?

16 A. Yes, certainly. Because one of the
17 major -- one of the major groups that I had to deal
18 with personally was I was charged with responsibility
19 of dealing with the Canadian regulator, currently
20 it's called the Canadian Nuclear Safety Commission.
21 In the days I was doing it, it was called the Atomic
22 Energy Cohort. I was the person who interacted with
23 the person who talked to them.

24 If there was an issue, I was the one that
25 went to them to tell them there was an issue. I was

involved because I was a member of the Municipal Control Group, where I was the one as part of the plant staff that would go to emergency simulations, exercises fortunately, never real things, with the group that would take control of that accident.

So there we are dealing with municipal authorities who would take control, including the medical officer of health, the county, including, you know, who the designated person might be, the reeve --

THE COURT REPORTER: Excuse me?

ALJ CHILES: Off the record.

(Discussion off record.)

THE WITNESS: The reeve, R-E-E-V-E. The reeve is the head of a township. We discussed earlier townships, towns, counties. The reeve is the head of a township. So the wind power -- nuclear power plant at that time was in the township, so the reeve of the township would be on the council.

There may be -- the reeve of the township would be there. It may be mayors of municipalities. It may be the warden of the county, which is the head person in the county, the different names of the officials.

So, yes, I did have occasion to deal with

1 people on those sort of cases, both the regulators
2 and the local municipalities.

3 Q. (By Ms. Parcels) I just wanted to
4 clarify you did work with the emergency responder
5 then on the local level in terms of communication?

6 A. Yes. I actually -- I'm sorry.

7 Q. Actually, let me back up. You're from
8 Ontario, Canada, correct?

9 A. That's correct.

10 Q. And would you characterize that as an
11 international neighbor of the State of Ohio to the
12 north with Lake Erie separating those two geographic
13 entities?

14 A. Yes. We are -- we are your -- we are
15 your northern neighbor, yes.

16 Q. Okay.

17 A. Ontario is the -- Ontario is the province
18 directly the other side of Lake Erie, so we are the
19 reciprocal.

20 Q. Okay. Did you drive down to Ohio or fly
21 down?

22 A. I drove to Ohio.

23 Q. How long did it take you approximately?

24 A. Driving, total driving time is about
25 eight hours.

1 Q. Eight hours, do you often have occasion
2 to travel to the United States, in particular Ohio?

3 A. The only other occasions I've been in
4 Ohio has been going through Ohio. I hate to say it,
5 but going south to Tennessee, going south, through
6 the south. So I have been through Ohio State before.
7 I have never had occasion to be spending time in Ohio
8 previously.

9 Q. I just wanted to establish this is not
10 your first visit, even if it's been, as you termed
11 it, driving through?

12 A. No. This not the first time I've been in
13 Ohio. I've been through Ohio a number of times
14 before.

15 Q. I want to direct you to I believe it's
16 page 14 of your testimony -- no, not page 14. Oh,
17 it's page 15 of your testimony. There at the top,
18 line 4, you make a reference to a Ford Crown
19 Victoria. Could you read that sentence for me?

20 A. "If the outer 10% of a wind turbine blade
21 falls to the ground, it hits with the same impact as
22 a Ford Crown Victoria falls over two and a half times
23 the height of Niagara Falls." Reading it again, it
24 should say "falling, hits with the same impact of a
25 Ford Crown Victoria falling."

1 Q. I was going to ask you to clarify that
2 sentence because falling makes more sense.

3 A. Sorry.

4 Q. I'm curious, why did you select that
5 particular model of vehicle for your analogy?

6 A. It was the biggest motor vehicle I could
7 conveniently think of doing an analogy with.

8 Q. Would you describe that? Is that a
9 full-sized four-door sedan --

10 A. Yes, it is -- it is a -- it was -- at the
11 time there are many police cars which are Ford Crown
12 Victorias because they are the largest -- they are
13 the largest, heaviest-built motor vehicle on the
14 road, other than getting into things like Hummers and
15 the like. They are certainly the largest automobile
16 motor vehicle.

17 Q. And you indicated you drove down here
18 from Ontario.

19 A. I did, yes.

20 Q. And you indicated in your answer to a
21 question just a moment ago that many police cruisers
22 are Ford Crown Victorias. Did you observe any Ford
23 Crown Victorias on your trip from Ontario south that
24 were marked as police cruisers?

25 A. I did notice there were police cruisers

1 that were unmarked.

2 Q. Just wanted to clear that up.

3 A. Yes.

4 Q. Your reference to the Ford Crown Victoria
5 now makes more sense.

6 A. Yes, I did.

7 Q. Do you personally know the height of
8 Niagara Falls?

9 A. I have visited Niagara Falls many times.
10 It is 166 feet, basically, 167 feet.

11 Q. Okay. Thanks for clearing that up.

12 Would you characterize -- you said it
13 took about eight hours to drive it. Would you
14 characterize the climate in Ontario and Ohio as being
15 geographically similar, just based on your personal
16 knowledge as a resident and driving through Ohio?

17 A. They're geographically similar in that
18 they are both in the central part of North America,
19 and for that reason, they're subject to very similar
20 conditions of atmospheric highs and lows that will --
21 that will move across the border. The same -- the
22 same weather patterns travel both side of the lakes,
23 so the weather is very similar.

24 Ontario, the further north you go in
25 Ontario, it will be a little cooler in the winter,

1 but fundamentally they're very similar. Ohio and
2 Ontario are very similar.

3 Q. Does Ontario have spring or summer season
4 where thunderstorms and possibly even tornadoes are
5 prevalent?

6 A. Certainly thunderstorms are prevalent in
7 the spring. Tornadoes do happen. We had a rather
8 significant tornado in the town of Gottridge, which is
9 the town second furthest south from me, which caused
10 severe damage to the town about a year and a half
11 ago.

12 Q. Did you observe any of that damage --

13 A. Yes.

14 Q. -- just being a resident of the area?

15 A. Yes, I -- yes, I did. I was in the area
16 and did see it. I also have friends who were
17 physically there at the time and, you know, came back
18 with -- came back with their evidence. I then went
19 down and saw the evidence with my own eyes.

20 Q. So you indicated in your direct testimony
21 that lightning strikes, from your perspective, are
22 one reason for blade failure.

23 A. Lightning strike is a very common cause
24 for blade failure, yes.

25 Q. Okay. And you indicated in your question

1 just a moment ago that Ontario is subject to
2 thunderstorm activity. Do you know if Ohio, being
3 subject to the same sorts of weather conditions, is
4 also prone to thunderstorm activity in the spring and
5 summer?

6 A. I have -- I have done some investigation
7 of the United States National Weather Services to be
8 able to convince myself that in -- you know, in a
9 very similar pattern. So, yes, it's a very
10 similar -- it's a very similar sort of climate type
11 thing. I don't -- I don't see Ohio, for example,
12 being in tornado alley, as some of the midwestern
13 states are in quite the same level.

14 Q. Would you -- you said midwestern states.
15 What states in particular are you thinking of that
16 may have a notorious reputation for tornado activity?

17 A. If one goes to Kansas or Montana, you get
18 more tornadoes.

19 Q. Also on page 15 of your direct testimony,
20 you answered a question with regard to falling pieces
21 from burning blades.

22 A. Yes.

23 Q. Now, what do you base your assessment on
24 with regard to the risk of burn blade fall? Why do
25 you exclude like transformer fires and arc fires from

1 your sorts of analyses?

2 A. What I was specifically looking at, I was
3 looking at hazards that can impact the ground. If
4 the -- when the nacelle of a turbine is on fire, the
5 nacelle contains lubricating oil. The nacelle,
6 depending a little bit on the manufacturer, some of
7 them have a great deal of fiber-type enclosure
8 material which can catch fire. It's not uncommon for
9 the fire to progress from the turbine to the blades.

10 And what you end up then, you end up with
11 burning pieces falling on the ground. Those can be
12 carried by the wind a distance from a turbine. A
13 transformer fire on an arc in the switchgear is
14 generally confined to the transformer at the base of
15 turbine. It's generally confined to the transformer
16 at the base or the electrical equipment at the top.
17 It is less likely to propagate, to be a hazard away
18 from the turbine.

19 I was really trying to sort of give
20 examples of something which causes a public hazard as
21 opposed to being a hazard to an employee. There have
22 been employees killed by arc and transformer issues,
23 but I was more concerned of the burning pieces
24 falling from the air and being carried a distance.

25 MS. PARCELS: It's the Altoona, New York

1 fire photo?

2 ALJ CHILES: Yes, that is correct.

3 Q. Mr. Palmer, directing your attention to
4 Exhibit Q, it's titled "And fires do occur."

5 A. Yes.

6 Q. It has a caption, "This is a photo of GE
7 1.5 megawatt wind turbine in Altoona, New York." The
8 fire date was January 29, 2012.

9 A. Yes.

10 Q. To your observation, does that fire
11 appear to be in a nacelle or the blade of that
12 turbine?

13 A. In that particular case, what you're
14 looking -- the ball of fire, if you're looking there,
15 is on the blade of the turbine. That is not in the
16 nacelle. That is a fire which propagated onto the
17 blade.

18 Q. Did you do any investigation of this fire
19 yourself?

20 A. When I learned of that fire, I did search
21 out what was actually a television news broadcast of
22 the fire from the -- from the local television
23 station. This is a picture from the local television
24 news broadcast of the fire.

25 Q. Would you characterize that as a screen

1 capture of a video, then?

2 A. This was -- this was the picture which
3 was posted by the TV station as basically the link to
4 the screen video.

5 Q. Okay.

6 A. This is not a capture from the video, as
7 such. It was -- it was a still picture.

8 Q. From the video?

9 A. If you watched for the video, yes, this
10 picture was in it. It would have been their screen
11 capture, which I suppose --

12 Q. I just wanted to make sure we knew where
13 it came, and you didn't observe the fire personally
14 on January 19; you saw a media report over --

15 A. I have not, nor have I personally
16 observed any nuclear accidents, but I am certainly
17 very interested in them. Was my career for 30 years.

18 Q. In that media report, did it indicate
19 what had caused that fire, the source of it?

20 A. It did not. It only said that there was
21 a fire that had occurred, and the source of fire was
22 not reported in that report.

23 Q. Did the media report indicate whether
24 fire crews had to fight the fire or just evacuate the
25 area and let it burn out?

1 A. I can't tell specifically for that fire.
2 In general -- may I answer your question in general?

3 Q. Sure.

4 A. In general, no fire crew will fight the
5 fire on a turbine. What they do is they -- I am
6 aware of no fire crew anywhere in the world that has
7 the capability of fighting a fire that is 120 meters
8 in the air. Even access to the fire, it is often one
9 of the worst things that can happen because if a fire
10 crew should for some reason open the hatch at the
11 bottom of the turbine and there is a fire at the top,
12 what they do is create a chimney effect and make the
13 fire worse.

14 There are instructions from the
15 manufacturers of those turbines to stand back,
16 evacuate to a safe area, and keep people away from
17 the turbine and let it burn itself out.

18 Q. You actually indicate in your direct
19 testimony that the preferred method for firefighters
20 is to let turbine fires burn themselves out?

21 A. Yes.

22 Q. And but you also indicate, I believe it's
23 on -- again, back on page 16, that they have to let
24 it burn itself out while evacuating the zone, and,
25 therefore, the firefighters are in that evacuation

1 zone or the exclusion zone, as you term it.

2 Can you describe to me more what you mean
3 in the event of what you term a blowing fire? What
4 does a blowing fire mean?

5 A. What I'm referring to there is a fire as
6 that picture in Altoona shows. The flame is being
7 propagated by wind. The fire is not straight up. It
8 is being propagated -- the burning -- the burning
9 material is being blown by the wind, so it is going
10 preferentially in the downstream wind direction.

11 In that case, the firefighters would try
12 to make an assessment how far the burning piece is
13 going. They would try and go and make sure that the
14 roadways are blocked to prevent people from getting
15 into that area. If they perceive there are homes in
16 that area, they would knock on the doors and say
17 please leave immediately until we can tell you it is
18 safe. They basically set up a cordoned-off area and
19 say don't go into the area until we let you back in.

20 Q. Okay. You indicate some of the acreage
21 that you have investigated, some of these fires with
22 the debris being spread by a blowing fire that has
23 burned a substantial amount of acreage, and that's
24 line 9 to line 15. And you talked briefly at opening
25 of your cross about your municipal unit of government

1 being akin to a township here in Ohio.

2 A. Yes.

3 Q. How many acres would you say your
4 geographic there in Canada, Ontario, Canada, covers
5 what I think you referred to --

6 A. In a township, you mean?

7 Q. In your township.

8 A. They're not all nice squares, but
9 typically a township will be -- I have to convert
10 metric to English -- about 12 kilometers by 12
11 kilometers, so we are getting down to being about
12 8 miles by 8 miles square which is -- sorry.

13 Q. Do you know how many acres that is
14 approximately?

15 A. Well, it's 64 square miles times 46, 60
16 times 4,000, 240,000 acres.

17 Q. Okay. So with your reference to, in
18 line 14, fires from turbines have burned up to
19 950 acres, would you say that's a pretty substantial
20 portion of, in your case, an estimated area for one
21 of your townships?

22 A. 950 acres is not totally dissimilar to
23 Ohio. We generally have our townships plotted out on
24 a mile and a quarter grid.

25 Q. Okay.

1 A. That mile and a quarter grid is
2 approximately 1,000 acres. So when we're talking
3 about a mile and a quarter by a mile and a quarter,
4 that's a fairly substantial chunk of land. It's not
5 all of the township, but --

6 Q. But would your local emergency department
7 in a township have to call for backup from adjacent
8 fire?

9 A. Yes. Yes. In a case like that, they
10 have a mutual aid program, so this is a fairly
11 extensive fire where they would be calling for backup
12 from outside people.

13 Mostly, for example, they would be
14 needing to block access from a number of different
15 routes, and that would probably involve more
16 vehicles, you know, a township fire department may
17 have access to three fire trucks plus a rescue
18 vehicle, so four vehicles.

19 They would be trying to block more roads
20 than that, so they would be looking for backup from
21 that. They would be looking for backup from more
22 water pumping trucks because they would be looking to
23 put out fires, grass fires in the ground that would
24 be propagating. They would be looking for pumper
25 trucks to be able to -- yes, they would call for

1 backup.

2 Q. Okay. Also on page 16, the question
3 starts on line 24 and your answer starts on line 27,
4 it talks about the impact of blades and blade pieces
5 that fall or are thrown. I guess I should back up.

6 Does Ontario have an issue with wildlife
7 roadkills in your personal experience? I mean, do
8 you observe like a dead deer or dead coyote on the
9 side of the road?

10 A. Yes.

11 Q. Have you ever personally hit an animal in
12 the roadway?

13 A. No, I have not.

14 Q. Okay. Do you know if Ohio has problems
15 with what we'll term roadkill?

16 A. I do not know, but certainly in driving
17 around Ohio yesterday afternoon and evening, we had
18 several occasions of deer crossing the road in front
19 us, so I suspect it is very similar in Ohio as to
20 what it is in our part of Ontario, so my guess is it
21 is an issue here.

22 Q. Would you, based on your driving
23 experience around Ohio and having to avoid animals
24 crossing the road, would you characterize that as
25 some sort of surprise occurrence that could pose a

1 threat to the safety of drivers?

2 A. Yes.

3 Q. Okay. Would you equate the risk of blade
4 debris being thrown from a turbine into a roadway as
5 being less dangerous, about the same risk, or more
6 dangerous than the risk of hitting wildlife that
7 abruptly enters the roadway?

8 MR. SETTINERI: Object to the form of the
9 question. Part of the question referred to comparing
10 risk. The same part of the question referred to
11 comparing the danger. Those are two different
12 things.

13 ALJ CHILES: Would you rephrase the
14 question, please.

15 MS. PARCELS: I will rephrase that to
16 comparing the risk then.

17 ALJ CHILES: Thank you.

18 A. I haven't done specific studies of, you
19 know, the number of road accidents. What I have to
20 give you here, I have to give you -- I have to give
21 you more a nonprofessional answer than a calculated.

22 It is more common to see cars that have
23 hit wildlife than cars that have been hit by wind
24 turbine pieces. But that doesn't say that we should
25 then put wind turbines in places where they can add

1 an additional source of hazard.

2 Q. When you say we shouldn't put them where
3 they can add an additional source of hazard, are you
4 referencing your recommended setback of 1,500 feet or
5 more --

6 A. What I'm doing there --

7 Q. -- from a roadway?

8 A. What I'm doing there is I'm using actual
9 experience of known pieces of blades that have been
10 thrown from turbines. An example this morning, the
11 first witness this morning spoke of measuring pieces
12 of blades a foot square at a distance from the
13 turbine. That's -- that's a stated example right
14 there.

15 You know, I have read newspaper reports
16 and media record of pieces going further. I am aware
17 of reports of turbines in Denmark that have had
18 pieces go 500 meters, which is 1,700 feet.

19 I have had occasion to be in Denmark and
20 talk to a man named Mr. Jesper Mortensen of the
21 Danish Environmental Ministry -- I don't know what
22 the exact title is -- I specifically talked to him
23 about that event which I had seen reported. He did
24 not say, "Oh, no, that is hearsay. That event did
25 not happen." He acknowledged, yes, that was an

1 event.

2 So I have discussed specific events with
3 the regulators in the countries where they have been,
4 and they agreed that, yes, this is a real event.

5 Q. On page 19 and 20 of your direct
6 testimony, starting on line 31 and carrying over into
7 the next page, you indicate that it's no doubt
8 likelier that somebody would be killed in an
9 automobile accident than from any sort of
10 turbine-related accident.

11 But you also say, "If we place wind
12 turbines close enough to roads and homes, that there
13 is a potential to kill or injure someone. Not only
14 will most people know someone killed by a car
15 accident, but they will know persons or families who
16 lost someone or had someone injured or killed by a
17 turbine accident.".

18 Have you personally known anyone who has
19 died in an automobile accident?

20 A. Yes.

21 Q. Can you tell me how many people you know
22 who died in an automobile accidents?

23 A. Close relatives, two; friends who I
24 personally knew, I can think of -- I can think of --
25 I can think of one off the top of my head. I can't.

1 Q. Okay.

2 A. I can't --

3 Q. Again, I just asked you for an estimate.

4 A. One tends to want to erase those things.
5 Sorry.

6 Q. Okay. Would you characterize automobile
7 and vehicular traffic as ubiquitous in both Ontario
8 and Ohio?

9 A. I should ask you to explain "ubiquitous"
10 to me.

11 Q. I mean pretty common; you see vehicles on
12 the roadways everywhere.

13 A. Yes.

14 Q. Okay. I know that your experience as a
15 risk assessor is in occupational safety, but do you
16 know approximately how many vehicles there are
17 registered in Ontario?

18 A. Yes. May I just sort of -- you did say
19 my risk was mostly in the order of --

20 Q. Occupational safety?

21 A. Occupational safety. It's really more --
22 occupational safety is part of my background and
23 training as safety superintendent at a nuclear power
24 station where I was responsible for the occupational
25 safety of workers, but more so public safety is where

1 you're dealing with the safety of the public from
2 what your plant can do, so they're two different
3 areas.

4 Am I aware of how many vehicles are
5 registered in Ontario? Ontario has a population of
6 about 12,000 people, and Ontario has about that many
7 vehicles registered actually. I think there's
8 actually more vehicles registered than people living
9 in the province.

10 Q. It's possible for one person to have more
11 than one vehicle, correct?

12 A. Yes.

13 Q. Do you know the population of Ohio off
14 the top of your head?

15 A. I'm going to say no.

16 Q. Do you know the population of the project
17 area in the six townships in Champaign County where
18 Buckeye Wind is proposed to be sited?

19 A. I have driven the area and sort of, you
20 know -- if I look -- am I looking specifically at
21 sort of the project profile or looking at Champaign
22 County in total?

23 Q. Six townships where the projects are
24 supposed to be sited, so the eastern half of the
25 county.

1 A. I have only -- I have only a rough
2 estimate of it.

3 Q. Again, based on your observation.

4 A. My observation would be that because that
5 includes a couple small, what I'm going to call,
6 hamlets, like Mutual, that the population, I would
7 consider looking at it. I would consider the
8 population as probably in the order of somewhere
9 between 15 and 25 thousand people.

10 Q. Okay.

11 A. That would be -- that would be my off the
12 top of my head guess.

13 Q. Again, that's based on your observation
14 driving through the project area?

15 A. Yes.

16 Q. Okay. Did you travel to Paulding County,
17 Ohio, in the spring this year?

18 A. I did not, no.

19 Q. You indicate you've conducted risk
20 assessments for turbine-related incidents, such as
21 ice throw, blade failure, fires, and that sort of
22 thing. Have you also done risk assessments for the
23 risk of falls?

24 MR. SELVAGGIO: I will object,
25 mischaracterizes his testimony. I don't believe he

1 went into detail of the types of risk assessments
2 he's done.

3 ALJ CHILES: Can you refer to a page
4 number, perhaps?

5 MS. PARCELS: Page 6, line 15, his answer
6 is on line 16, "I reviewed the Application and Staff
7 Report to determine whether they contain safety
8 precautions adequate to protect the public from the
9 dangers of blade shear and ice throw."

10 ALJ CHILES: Would you rephrase the
11 question based on the words in that testimony?

12 MS. PARCELS: Sure.

13 Q. Mr. Palmer, you indicated you reviewed
14 the Application and Staff Report to determine if it
15 contained safety precautions for two specific
16 dangers, blade shear and ice throw.

17 A. Yes.

18 Q. Given your occupational -- occupational
19 safety and public health risk assessment background,
20 why would you not conduct any sort of assessment for
21 the risk or dangers of falls from turbines or other
22 sorts of accidents at turbine sites during
23 construction or operational maintenance?

24 A. I was -- in the course of this
25 presentation, I was specifically looking at risk to

1 the public as opposed to risk to employees.

2 Q. Okay.

3 A. There are many employees of wind projects
4 that have been killed or injured. Specifically,
5 that's an occupational hazard that those workers have
6 accepted as part of this employment. It's different
7 than the public safety risk which is imposed on
8 members of the public outside.

9 So what I did, I basically did, is I did
10 what is basically called a deterministic assessment
11 where you say, I know that people can be injured by a
12 falling blade part or by a falling piece of ice at a
13 distance which -- which I'm aware of, and I've
14 documented elsewhere in the testimony.

15 So a deterministic statement says, I know
16 that this is the envelope of safety. Does the Staff
17 Report protect people within that envelope of safety?

18 Q. That brings up a good point. On page 8
19 of your testimony, go down to line 16, you talk about
20 risks accepted by firefighters. As part of this
21 occupational safety, is that what you are implying?

22 A. Yes.

23 Q. You say "within acceptable limits of
24 workplace safety."

25 A. Yes. Okay. What I mean, by example,

1 there is a firefighter as part of his occupation will
2 accept going into an building which has an
3 oxygen-deficient atmosphere to rescue someone.

4 The Occupational Health and Safety Act
5 will not let them do that without self-contained
6 breathing apparatus. So within the limits of
7 workplace safety, with the appropriate workplace
8 safety -- with the -- with the appropriate
9 self-contained breathing apparatus, the firefighters
10 will go in and do that rescue.

11 He will not run into the building to try
12 the save the person and hold his breath to pull the
13 person out. It would not be an expectation for a
14 firefighter, and they would not sign on then.

15 Q. Do you understand that firefighters have
16 to undergo a certain amount of training annually --

17 A. Yes.

18 Q. -- in order to remain certified as
19 firefighters?

20 A. Yes, very clear of that.

21 Q. Do you know if in that annual training
22 that they have to undergo -- it includes high-angle
23 rescues for fighting fires at wind turbines?

24 A. Specifically, I do not know in the Ohio
25 case. I can answer you for Ontario.

1 Q. That's fine.

2 A. In the Ontario case, what a municipality
3 is able to do, a municipality is able to say, we will
4 protect you against -- our fire -- our fire
5 department is controlled by the municipality. The
6 municipality will, where appropriate, designate and
7 say, it is our expectation that we will do fire
8 rescue from a building up to whatever the level that
9 they can get to. It may be a three-story ladder
10 truck that they have.

11 I can give you the example of local
12 municipalities where wind turbines are coming in,
13 they specifically make it clear, we do not have the
14 ability to do high-angle rescues, and municipalities
15 have actually as part of their signing on are going
16 back to the developer and saying, you must have a
17 high-angle rescue capability because we cannot
18 provide it.

19 Q. In that case, then, the developer's
20 employees would assume the occupational risk of a
21 high-angle rescue of fighting a fire in a nacelle or
22 a blade that is so far above ground?

23 A. That's what would have to happen in that
24 case, yes.

25 Q. As you said, you specifically looked at

1 the risk of blade shear and ice throw. With the
2 blade shear or blade failure, as you termed it, risk
3 and debris being either dropped or thrown from a
4 tower site, was there any reason that you
5 specifically did not include risks to aircraft flying
6 in proximity to turbines from any sort of debris
7 being spun off of the turbine?

8 MR. SETTINERI: I object to the form of
9 the question. To keep the record clear, the witness
10 did not say he was testifying as to the risk of blade
11 shear or blade throw and ice throw.

12 ALJ CHILES: Would you rephrase your
13 question?

14 MS. PARCELS: Sure.

15 ALJ CHILES: Thank you.

16 Q. (By Ms. Parcels) Mr. Palmer, when you
17 analyzed the danger of the risk of blade throw or ice
18 throw being thrown from turbine, is there any reason
19 you did not include the danger of aircraft flying
20 anywhere in proximity to a turbine that would drop or
21 throw ice or throw part of a blade?

22 A. The reason I do not consider aircraft, in
23 previous discussions with pilots, pilots have assured
24 me they are obliged to fly at an elevation at least
25 500 feet above the nearest -- the height of the top

1 obstruction of the ground. It has to be 500 feet. I
2 do not believe it is possible to throw ice vertically
3 upward 500 feet.

4 Q. Okay.

5 A. Ice is, you know -- I have no information
6 of ice going up that distance. I'm trying to give --
7 what I was trying to do, because I did not do a
8 calculation of how far blades or ice can throw, I did
9 not do a calculation of that.

10 What I did is I took evidence of blade or
11 ice throw which is known, and said, I know it can go
12 that far, and, therefore, perhaps it would go
13 further. I've seen calculations where people have
14 done calculations and shown in the optimum case
15 depending on where the object is spun off the blade.

16 For example, the blade is going around.
17 If a piece comes off as the blade is just coming
18 down, it will tend to be projected up. If it is
19 going up, it will tend to be projected, you know, the
20 maximum distance that way. So rather than trying --

21 Q. Let me stop you right there. You are
22 making a lot of hand motions that the court reporter
23 can't record.

24 A. I'm sorry.

25 Q. But I want to specify when you just made

1 that hand motion, you are describing what is a
2 geographic shape of a parabola if the blade is on a
3 an upswing?

4 A. Yes. If the blade is on an upswing, the
5 object will be projected up and will follow a
6 parabolic pattern to the ground.

7 I have not done a calculation in that
8 manner because someone can come back and question my
9 calculation and say, prove to me that that's true.
10 What I have done instead is used actual known blade
11 throws, actual known ice throws because they're not
12 debatable, in my impression.

13 Q. That's fair. Now, you indicated you have
14 spoken to pilots who indicated what their
15 requirements are?

16 A. Yes.

17 Q. Do those pilots in Canada follow the
18 jurisdiction of the Federal Aviation Administration
19 of the United States, or is it that Ontario, a
20 Commonwealth country, have its own guideline, or do
21 they follow the UK fly rules?

22 MR. SETTINERI: Your Honor, I object to
23 this line of questioning as to relevancy.

24 ALJ CHILES: I'll allow the question.

25 Q. If you know.

1 A. If a pilot is flying over the United
2 States, they would have to be adhering to FAA
3 regulations. If they're flying over Canada, then
4 they are flying under the Canada Department of
5 Transport air regulations.

6 MS. PARCELS: That's all I have.

7 ALJ CHILES: Thank you.

8 Ms. Napier.

9 MS. NAPIER: Thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Napier:

13 Q. Mr. Palmer, my name is Jane Napier. I
14 represent Champaign County and the townships of
15 Goshen, Urbana, and Union, along with our prosecuting
16 attorney, Nick Selvaggio.

17 I have just few questions. You indicated
18 on page 9 of your testimony you started creating your
19 own list of accidents. Do you know how long you have
20 been creating that list or maintaining that list?

21 A. It's at least six years.

22 Q. And in that, have you found safety, or, I
23 guess, accidents that have been due to blade throw?

24 A. Yes.

25 MR. SETTINERI: Your Honor, I object at

1 this time as to friendly cross. This list,
2 Exhibit L, is just an end run around the motion to
3 strike from earlier, to rehabilitate this witness
4 through friendly cross.

5 ALJ CHILES: I'm going to allow a limited
6 amount of cross on this topic.

7 Q. And as such, did you look at the Timber
8 Road II development in Ohio?

9 A. Yes. Yes, I did look at the Timber Road
10 II Development. I have looked at the documents on
11 the Ohio Power Siting Board website of those
12 failures.

13 Q. Okay. One of your statements on
14 page 10 at the bottom, you said, "It was incredible
15 to read of the casual restart of the machine after
16 failure, and I see how the control system failed to
17 take appropriate actions to protect the public." I'm
18 trying to -- I guess I'm not really understanding
19 what you're meaning in that section.

20 A. It's a rather long sentence, which is a
21 failing I have. But the sentence started out as one
22 who has been responsible for preparing and assessing
23 many reports of equipment malfunction over my career
24 in the nuclear power industry, it was incredible to
25 read of the casual restart of the machine after

1 failure and to see how the control system failed to
2 take appropriate action.

3 What I was trying to say, that from my
4 experience of dealing with accident procedures in
5 operating power plants, if something goes wrong, one
6 of the first things that you impress upon an
7 operator, if something bad happens while you're
8 following normal procedures, stop and do not continue
9 until you've gone back and fully ascertained what
10 caused the issue to happen. You don't just simply
11 say, "Oh, well," and restart.

12 So it was -- it was surprising to me to
13 read that the machine had been remotely restarted.
14 They had a vibration alarm. They remotely restarted
15 it to see what could happen. A vibration alarm is
16 brought in because something has gone wrong with that
17 machine. To do a casual restart with even a visual
18 inspection to me was very unusual.

19 Q. I guess my confusion was you had talked
20 about equipment malfunctions, so I wasn't sure if you
21 were of the opinion that Timber Road was an equipment
22 malfunction or an operator malfunction or something
23 else?

24 A. Timber Road is typical of the sort of the
25 accident that any accident is, where any accident is

1 a combination something happens to equipment and/or
2 process. Then there are more contributing factors.

3 In the Timber Road II case there was an
4 equipment malfunction. There was blade failure.
5 There was a process that is supposed to deal with a
6 blade failure, which was an alarm. The alarm came
7 in. There's then a procedure how you deal with that
8 that gets into the operator dealing with it.

9 The operator, if he has an alarm in that,
10 say you have a vibration alarm in, you know, which
11 has tripped the turbine. Then the procedures would
12 normally say find out what happened, because this is
13 not a trivial event. A vibration alarm is generally
14 brought in because your blades are out of balance.
15 You are dealing with something of ten-ton blades well
16 up in the air. If they're out of balance, there's
17 something wrong.

18 So what I was trying -- I hope I'm
19 explaining, but it's -- there's very few accidents
20 that are simple accidents. If you do -- when you
21 look at accidents as a professional, the time at MIT
22 I spent time sitting in the research library looking
23 through different accidents, not just nuclear
24 accidents, but looking at accidents where different
25 things have happened. The process failed, the

1 operator did something, you know, and then and so on.

2 And you find that every -- it's one thing
3 and then another thing and another thing causes the
4 problem. It's usually not a single event. I was
5 surprised to see that the industry didn't address
6 that, perhaps because they don't have, you know, the
7 sharing of experience to know that's happening.

8 Q. And you had indicated also that you had
9 reviewed manufacturers' safety manuals, correct?

10 A. Yes.

11 Q. Did you find in those manuals that there
12 were either setbacks or distances for cordoning off
13 for emergencies that are set forth in those manuals?

14 A. In some cases yes. An example.

15 Q. Go ahead.

16 A. I'm sorry, I run on at times. Vestas,
17 for example, Vestas has a manual where they-- you
18 know, the maintenance manual for a Vestas V90
19 turbine, which is one specific I'll refer to. They
20 tell the operator if there -- if there is ice on the
21 blade, the operator must not approach within
22 400 meters of the turbine, so that's about 400 times
23 3.2, so 1,350, 1,400 feet.

24 The operator must not approach within
25 1,400 feet of that turbine without remotely shutting

1 it off, even in a vehicle. That's what Vestas tells
2 their maintenance staff, do not come closer than
3 within 1,400 feet of turbine that has ice on the
4 blade without shutting it down.

5 Q. In your opinion, then, would
6 manufacturers' safety manuals have some weight in
7 setting setbacks for this type of process?

8 A. Certain manufacturers don't want to have
9 a reputation of having workers on their turbines
10 injured, so yes, they should bear some weight.

11 Q. And if you could look at Exhibit R, just
12 a couple of questions. Exhibit R-1, 2 and 4, just
13 generally you have some distances in the sixth column
14 on the distance.

15 A. Yes.

16 Q. Can you tell me how you calculated those
17 distances?

18 A. What I did to calculate those distances,
19 is I took the maps that are provided, and I referred
20 to it in the text of the document. I can't remember
21 off the top of my head. I believe it's Figure 5-04,
22 but I have to go back and look in the text.

23 Q. Is that of the Application?

24 A. Of the Application.

25 Q. From --

1 A. Sorry.

2 Q. Okay. Go ahead.

3 A. I need someone to kick me.

4 What I did, I took the maps, applying my
5 very best kindergarten/grade one skills, and I pasted
6 them together into one map. I then took a circle
7 template from the same scale of what the maps were,
8 where you can draw scales on the map.

9 I then put the circle template, in this
10 particular case, on the turbine. You can fairly
11 rapidly say -- I'm waving my hands again -- what was
12 the closest road. It's very easy to go around the
13 circle and say what is the first contact point I get
14 to a road, which is what the first column numbers
15 2 and 3 show.

16 The column nearest home, column 5 and 6,
17 again, what I'm doing there, I was looking on the
18 map, I was saying the map is showing a building, and
19 so the nearest building to the turbine was then that
20 distance.

21 And I then looked and said that
22 building -- because you can look at the map, because
23 basically it's Google maps, you could then look and
24 say that building is accessed from what road.

25 So column 5 and 6, what I did, I said, if

1 I take the very first example, turbine No. 71 there,
2 I said the nearest home is at 1,600 feet at a bearing
3 of 10 degrees from the turbine, and that is accessed
4 from what we are now going to call US highway No. 36.

5 The next thing I did for information, I
6 then said, now, within 3,000 feet of the turbine
7 there are seven homes. That's just an additional bit
8 of information.

9 Q. And I think you've answered my question
10 and maybe a couple I had after that. But you did not
11 calculate the distance to someone's property line,
12 correct?

13 A. No. That is -- that is -- because the
14 maps in Figure 5-4 don't actually show the property
15 lines. I was not able to do property lines for this
16 specific figure. There is -- there is an Exhibit S.
17 I did have some additional information for specific
18 people in the UNU group as to what their property
19 lines were.

20 I was able to look at distance to
21 property lines in Exhibit S, but only for those --
22 they were the only case where I knew where the
23 property lines were. The other I could only go the
24 distance to a building.

25 Q. Perhaps I missed it. You had indicated,

1 I believe -- I don't want to put words in your
2 mouth -- that your recommendation is at least
3 640 feet to a structure and 1,000 feet to a road; is
4 that correct?

5 A. 1,640 feet to a structure, not 640.

6 Q. I'm sorry. 1,600, but that's all right.

7 A. Yes. And I do want to make it clear,
8 that is only -- that is only a public safety setback.
9 That is not by any other criteria. It's not based on
10 noise. It's not based on anything else. That's
11 based on public safety, excluding noise and so on.

12 Q. Okay. What would you deem to be public
13 safety factors?

14 A. The issues that I've discussed here of
15 people being hit by blade pieces and ice pieces and
16 burning bits and pieces.

17 Q. So basically blade throw, ice throw?

18 A. And fireballs.

19 Q. Do you have an opinion as to a property
20 line setback?

21 A. My consideration is that under what
22 justification does anybody who is outside your
23 property have the right to restrict your freedom and
24 unencumbered access to your property? So my
25 1,640 feet should be to a property line because a

1 person, I believe, has every perfect right to be
2 anywhere on their property.

3 MS. NAPIER: Thank you. I have no
4 further questions.

5 ALJ CHILES: Thank you.

6 Mr. Settineri.

7 MR. SETTINERI: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Settineri:

11 Q. Good afternoon, Mr. Palmer.

12 A. Good afternoon, Mr. Settineri.

13 Q. Staying with Exhibit R briefly, I see
14 there the distance measured was 1,600 foot. Is that
15 correct?

16 A. That's correct, sir.

17 Q. And that was the standard you applied to
18 your Exhibit R work?

19 A. I'm sorry, standard?

20 Q. When I say "standard," that is the metric
21 you used in determining where properties were
22 located; is that correct? Let me try again. When
23 you did your circle template, that was a 1,600 feet
24 radius?

25 A. No, sir.

1 Q. What was it?

2 A. I did a circle template, which was a
3 500-foot circle, a 1,000-foot circle, 1500-foot
4 circle, you know, and with lighters in between,
5 looking so I could assess the distance. It's
6 basically a target.

7 Think of -- put my hand down. If you
8 look, if you consider a dartboard or a target, same
9 thing with a template where there's a scale on it, so
10 you match the scale on the figure so you can scale
11 off.

12 Q. Thank you. I'm just trying to understand
13 in your testimony, go to page 15, line 22, you
14 reference the number 1,640 feet. Do you see that,
15 line 22?

16 A. Yes, sir.

17 Q. That's your recommendation for public
18 safety?

19 A. Yes. I'm saying from purely from a
20 public safety point of view. It says they're
21 unprotected as mowing the lawn, whatever, working on
22 a fence line. I am aware of blade parts and pieces
23 having traveled that distance and, therefore, from a
24 deterministic point of view, that is my
25 recommendation.

1 Q. Okay. We will come back to that
2 question.

3 Well, then go to the bottom of Exhibit
4 R-3. What I am trying to reconcile, at least at the
5 bottom of R-3, it states buildings of concern at less
6 than 1,600 feet. That number -- it doesn't match
7 with 1,640; is that correct?

8 A. In part, sir, that's because, as I
9 explained, what I said on Exhibit R, the distances
10 that are measured there, I'm only able to by the
11 method I was doing, because I'm not doing a pure
12 calculated GPS, I'm only able to calculate plus or
13 minus 100 feet, so I rounded 1,640 to 1,600.

14 Q. So your measurements were plus or minus
15 100 feet?

16 A. Basically.

17 Q. All right. While we are on that --

18 A. I'm --

19 Q. Let me ask the questions.

20 THE WITNESS: May I just --

21 ALJ CHILES: Were you finished with your
22 answer?

23 THE WITNESS: I don't think I was. I
24 said, yes, they were plus or minus 100 feet. What I
25 said in the text was my degree of precision is

1 100 feet, so something which is 1,649 feet I would
2 call 1,600. Something which is 1,508 feet, I would
3 call 1,600. So it's not plus or minus 100 feet. It
4 is a total span of 100 feet, with the 1,600 in the
5 center.

6 Again, I'm using my finger so the court
7 reporter can't understand. What I'm trying to say is
8 the 100-foot spread is the total span that would be
9 encompassed by my estimate.

10 Q. So you used your circular template, I
11 will call it. It measures in increments of 100 feet;
12 is that correct?

13 A. Yes, sir.

14 Q. So when you laid that on the map, if the
15 structure or the road was closer to the higher
16 number, you would just round it up. If it appeared
17 to be less, you would just round down using the
18 standard rounding rules?

19 A. Yes, which is just eyeballing it.

20 Q. Meaning when you looked at it, you
21 eyeballed it?

22 A. No, sir. No, sir. I read it as a scale.
23 It's a scale. You know, you're reading a scale.
24 You're reading an engineer scale. That's not
25 eyeballing it, sort of saying, well, it's in this

1 area.

2 I read the scale as being, it is -- you
3 know, the closest value identified as a 100-foot
4 circle that I can match it to is 1,600, not 1,500,
5 not 1,700.

6 Q. It measures in increments of 100-foot?

7 A. The scale is in measurements of 100 feet,
8 but it doesn't mean that I can't look at the values
9 in between and say, oh, yes, that's a little over
10 1,600 but not as much as 17, so it's going to be
11 called 1,600.

12 Q. Thank you. You have a copy of the
13 Application up there. Could you, just for the
14 record, identify the figures you used in Exhibit R,
15 please?

16 A. There were two sets of figures I used.
17 One was identified as Buckeye II Wind Farm figures,
18 05-4 site layout, which goes from sheet 1 to sheet
19 11. That was the principal one that was used.

20 Q. Mr. Palmer, did you say figure 5-4 site
21 layout?

22 A. Figure 05-4 site layout.

23 Q. Thank you, sir. Was that the only figure
24 you used? I'm sorry, you made reference to --

25 A. I had to refer to another one of the

1 figures because I found on figure 05 -- I used
2 05-04 for the measurements. I found in some cases
3 some of the road designations were missing. There
4 was one road designation was missing on it, so I had
5 to use one of the other figures to get a road
6 designation. I have to look to see which one didn't
7 have a road designation.

8 Q. Thank you, Mr. Palmer. Going back then
9 to Exhibit R, so we understand for the record, you
10 have a legend at the bottom of R-3, and the legend
11 that says "25 more turbines" in pink, that relates to
12 a location that would raise, in your opinion, a
13 safety concern due to proximity to roadways or
14 buildings?

15 A. Yes.

16 Q. And that would correlate to, for
17 instance, if we look at 122 on the same page, the row
18 that starts with 122, I see that is in pink. The
19 second column there is red number 1,000, and that
20 would indicate then that that would fall under what
21 you call a roadway concern at less than 1,000 feet,
22 correct?

23 A. Yes, that is correct. And, similarly, I
24 show the nearest residence I see to that -- to that
25 specific turbine is at 2,500 feet accessed off County

1 Road No. 9.

2 Q. And that would be as to that residence,
3 and only to public safety you would not have a
4 concern with that. When I say "that," I'm speaking
5 of the 2,500 foot.

6 A. From a purely public safety point of
7 view, I would consider that would be acceptable.

8 Q. All right. Then just dropping right
9 below the 2,500, we see next to the name Dolly
10 Varden, 1,500 foot, that would fall -- strike that.
11 Let me back up.

12 Going back then to the legend, we have 10
13 turbines in red. That would indicate a location that
14 you believe would raise public safety issues as to
15 both the distance to the road and to the nearest
16 building, correct?

17 A. That's correct. It's meeting both
18 criteria of being too close to a road and too close
19 to people. Either one is sufficient to be a concern,
20 but this is actually a double hitter.

21 Q. And an example what you are saying there
22 is line 130, we have the 130 highlighted in red. We
23 have the number 850 in red. That would designate the
24 proximity to the road.

25 A. Yes.

1 Q. And 1,000 would be the proximity to the
2 nearest house, correct?

3 A. Which is accessed off the same State
4 Route 161, yes.

5 Q. Now, when you developed this spreadsheet
6 and reviewed the maps, did you know which houses were
7 participating in the project versus which houses were
8 not participating?

9 A. At the time I prepared this map, I did
10 not know, sir. At the time I prepared Exhibit S, I
11 did know, but I did not know when I prepared Exhibit
12 R.

13 Q. And when you did your review, were you
14 able to discern from the map -- we will call them
15 structures -- which structures were residences versus
16 barns, garages?

17 A. I was making this best judgment I could,
18 sir, from the aerial photography. What I'm primarily
19 trying to do here is to flag for the Ohio Power
20 Siting Board, really, please go back and look really
21 carefully because it is certainly an indication this
22 is an issue. At the point I did this, I did this
23 before I was able to field-check the information. I
24 later came and field-checked it. That was done
25 after.

1 Q. All right. When you field-checked this
2 information, did you go out and verify every house?

3 A. Not every house, sir. I did go out, and
4 I was able to be driven actually up and down the
5 roads by the local person who was able to help me,
6 you know, more easily.

7 I said, okay, I'd like to go look at this
8 particular area. So we specifically went out and
9 looked at, you know, all the double hitters, if you'd
10 like. I could certainly say that, yes, I'm very
11 aware of the situation for those, you know, and I was
12 able to in the course of doing that also see where
13 the other houses were. But I did not have time to go
14 to every house on every road. No, I did not have
15 that time.

16 Q. To be clear for the record, when we say
17 "nearest home," you're not certain if all of these
18 are actually residences?

19 A. I cannot swear that every one of those
20 are residences. It is my belief from the map they
21 are -- they do not appear to be barns. They do not
22 appear to be garages. One can generally tell a barn
23 because it's physically a bigger structure. One can
24 generally tell a garage because it's a smaller
25 structure with a roadway up to it. One can then see

1 a bigger building adjacent to it, which is the house.
2 It is a best judgment. They're very good
3 photographs.

4 Q. Going back looking at your direct
5 testimony, just a couple questions for you. On page
6 1 of your direct testimony ---

7 A. Sorry, sir, what number, sir?

8 Q. Page 1, line 29.

9 A. Yes.

10 Q. You reference that you performed thesis
11 work. That thesis work was done as part of your
12 undergraduate electrical and electronic engineering
13 degree, correct?

14 A. That's correct.

15 Q. In regard to the courses you took in
16 1995 and 2000 at MIT, that's referenced in
17 line 31 and 32, those are courses you go to MIT to
18 attend, correct?

19 A. That is correct.

20 Q. And the 1995 course at MIT consisted of a
21 nuclear power safety course; is that correct?

22 A. The course was titled Reactor Power
23 Safety Part 1 and Reactor Power Safety Part 2.

24 Q. And that was approximately a 12-day
25 course?

1 A. That's correct.

2 Q. And you also took a course in 2000 at MIT
3 in operations risk evaluation?

4 A. That's correct. The actual name of
5 course was Operational Decision Management, which
6 included risk management.

7 Q. And that was a two-week course, correct?

8 A. That's correct.

9 Q. And those are the courses you reference
10 in your testimony there?

11 A. That's correct, sir, on line 32. That
12 did complement the work I was doing, you know, in
13 that field.

14 Q. Just for the record, I believe you stated
15 earlier, you have 30 years approximately in the
16 nuclear industry, correct?

17 A. Yes, sir.

18 Q. Speaking of experience, do you have any
19 training in meteorology?

20 A. I have taken no formal course in
21 meteorology. I certainly have read a lot of material
22 on meteorology. I have -- I know people who are
23 climate specialists who I have spent time talking to,
24 but I have no formal training in meteorology.

25 Q. Are you a firefighter?

1 A. I have, actually, as part of being
2 training superintendent at the Bruce Nuclear Station,
3 I did take part in fire training. I was responsible
4 for the crew. I had some firefighter training, but I
5 suggest if your house is on fire, don't call me.

6 Q. Let me ask you questions. Have you ever
7 been employed by a company in the wind industry?

8 A. The only company in the wind industry
9 I've been employed by was Ontario Hydro who actually
10 put up a turbine, a demonstration turbine, which was
11 close to my workplace, so you know, my company put up
12 a turbine.

13 Q. Is that the turbine referenced in your
14 testimony?

15 A. That is the Tack AW 600 turbine which is
16 referenced in various places in my testimony, yes.
17 They subsequently, as part of Ontario Hydro
18 Generation, after a name change, put out five more
19 Vestas V80 turbines at the same site. I drove by
20 those turbines every day. I spoke to people who were
21 involved in commissioning them and operating them.

22 Q. Do you have any experience in
23 manufacturing wind turbine blades?

24 A. Specifically manufacturing, no.

25 Q. Okay. Have you ever operated a

1 commercial wind farm?

2 A. I have never operated a commercial wind
3 farm.

4 Q. Do you live by a wind farm?

5 A. I live within five kilometers/three miles
6 of the nearest wind turbine, which is part of the
7 Enbridge Ontario Wind Power development.

8 Q. How many turbines at that facility; do
9 you know?

10 A. There were two phases in the development.
11 It has 110 turbines in one phase and five turbines in
12 the second phase.

13 Q. And what type of turbines are used at the
14 facility, if you know?

15 A. Vestas V82 turbines.

16 Q. Are you aware of blade incidents at that
17 wind farm?

18 A. No, sir.

19 Q. Are you aware of anyone being hit by a
20 blade or ice throw from that wind farm?

21 A. No, sir; nor am I aware of anyone killed
22 at a nuclear power accident.

23 Q. And that facility has been operating
24 since 2009?

25 A. That's correct, sir.

1 Q. Approximately how close -- let's see
2 here. How close is a road to the nearest turbine for
3 that facility, if you know?

4 A. I believe the closest road to a turbine
5 in that facility is 110 meters. There's one case
6 where a road is at 110 meters. It's a gravel road,
7 which is closed in the wintertime.

8 Q. And you drive down that road
9 occasionally, don't you?

10 A. I have driven down other roads, you know,
11 that -- yes, I've driven down that road, yes. I have
12 been in one other case that the road is 110 feet from
13 the turbines -- meters. Did I say feet? It was
14 110 meters. If I said feet, I'm correcting myself.

15 THE WITNESS: I'm sorry, your Honor. My
16 translation is not always instantaneous from metrics
17 to English.

18 ALJ CHILES: I understand.

19 THE WITNESS: Once upon a time I learned
20 English, but I've been converted.

21 Q. Let me ask you, your testimony is based
22 on what you call a deterministic safety analysis.

23 A. Yes.

24 Q. And I believe you explained that earlier
25 as to what that is. But essentially is that --

1 approaching that in a very simplistic way, is that
 2 where you say, okay, if this event can happen, we
 3 need to put barriers in place to prevent it from
 4 happening again, and you work your way backwards to
 5 put those barriers in place; is that correct?

6 A. Specifically it is -- what I did here is
 7 more than that, sir, because rather than saying if
 8 this event, I said if known events which have
 9 happened, happen, so I was a bit more specific than
 10 if this event would happen. In a nuclear power plant
 11 business you have to do this event.

12 Q. Nuclear power plant, while we are on
 13 that, am I right when you look at risk for a nuclear
 14 power plant, it's in realm one times 10 to minus 7?

15 A. Your operating license is generally based
 16 on a criteria 1 times 10 to minus 6. As you are
 17 going through probabilistic risk assessment, if
 18 individual contributors come in as less than 1 times
 19 10 to the minus 7, you would say, I won't go further
 20 on this particular contributor.

21 Q. Going back again to deterministic
 22 assessment, to understand it, essentially the way you
 23 approach the Buckeye II project and, again,
 24 simplistic as a deterministic assignment is, do you
 25 assume a person would be injured by a falling blade

1 or throw; is that correct?

2 A. What I did, sir, is I said I know the
3 blades can go this far. I know the pieces of blade
4 can go this far of this size. I did in my assessment
5 show that if a piece of blade of that size falling
6 from a turbine hit someone, they could do sufficient
7 injury.

8 But by converting it into very simplistic
9 terms of concrete blocks from building heights, I
10 converted it and diverted and said, if I drop from
11 this building, from the eighth story or tenth story,
12 a standard concrete building block, when it hits
13 somebody on the street below, that was the same
14 impact as it would be getting from the turbine. So I
15 was trying to put it in a simplistic term people
16 would understand, sir.

17 Q. Before I forget, you mentioned you
18 reviewed a figure in the Application. What else did
19 you review from the Application prior to preparing
20 your testimony?

21 A. I did read through the Application in --
22 I was specifically looking at the area of public
23 safety, sir, so I was looking at that. I also, you
24 know, with interest looked at -- I looked at the
25 index.

1 ALJ CHILES: Mr. Palmer, I know it's
2 difficult to juggle the microphone. If you can keep
3 your voice up when you're doing that.

4 Q. Mr. Palmer, to rephrase the question, if
5 you could describe for me generally what you reviewed
6 in the Application.

7 A. I reviewed the entire section called
8 Health and Safety. I looked at -- I reviewed the
9 areas which is Section A of the beginning from
10 page 66 going through page 89, so I specifically
11 looked at the Health and Safety section.

12 I did read through the Project Summary
13 and General Overview, which is also Section A. I
14 guess I would say the first part is Health and
15 Safety, which is a subset of Section 4906-17-08,
16 Social and Ecological Data, Section A of that
17 subsection.

18 I also went through the Project Summary,
19 4906-1-02, and following from it the general Section
20 A and Section B, which is Project Summary, Facility
21 Recovery View, and General Recovery View.

22 I did go down and as more at a lesser
23 degree of precision, I looked at Section 4906-17-13,
24 Project Description and Schedule, where I looked at
25 the detailed project description, Part A of that.

1 Q. Thank you, Mr. Palmer.

2 A. I looked at some of the technical data in
3 4906-17-05 where I looked at the site geography and
4 topography and certain aerial photographs that I
5 referred to. I looked at the layout construction,
6 Section B. That was also part of it. I didn't look
7 at the financial data section. I didn't look at the
8 expenses.

9 I did look to some degree at the
10 environmental data, 4906-17-07, to be able to look at
11 the sort of, you know, make sure the weather issues
12 were -- I looked at 4906-17-077, environmental data,
13 to see that I had a general understanding of the
14 environmental data of the project to know that it was
15 applicable to the experience.

16 Q. Thank you.

17 A. I think I can probably stop there.

18 Q. Thank you, Mr. Palmer.

19 A. I need better pages.

20 Q. Did you review the Staff Report of
21 Investigation that was issued in this proceeding?

22 A. Yes, sir, I did.

23 Q. Did you review all of the conditions that
24 were in that Staff Report?

25 A. I did read those, yes, sir.

1 Q. A couple questions for you. Isn't it
2 true that with regard to blade throw, you have not
3 conducted any calculations for the proceeding as to
4 the risk that a person will be hit by a piece of
5 falling blade?

6 A. I have not specifically calculated a
7 risk, no, sir. I did a deterministic assessment,
8 which says if it can happen, is the person protected?

9 Q. Okay. It's also true then that you
10 didn't attempt to calculate the risk that person
11 would be hit by ice from the turbines, correct?

12 A. That is correct, sir, for this specific
13 Application. Again, I did a deterministic
14 assessment. If it can happen, are they protected?

15 Q. And as a result of that assessment, that
16 is how you came up with the 1,640 recommendation for
17 public safety, correct?

18 A. Because I am aware of blade pieces going
19 that distance of a sufficient size that can do injury
20 to someone, yes.

21 Q. And the 1,640 matches up with your
22 testimony, I believe, at page 24. In fact, if I ask
23 you to turn to page 24 of your testimony, I direct
24 your attention to lines 3 and 4. I note there that
25 your statement, "and in Denmark where parts traveled

1 up 1,640 feet." That is the basis then for your
2 recommendation of 1,640 feet for public safety
3 reasons?

4 A. Yes, sir. I gave three examples. I gave
5 pieces in Ohio at 1,561, pieces at Prince Edward
6 Island at 1,607, pieces in Denmark up to 1,640.

7 I do know, sir, the testimony this
8 morning was, you know, one of very carefully
9 calculated measurements. Often they're, you know,
10 slightly more general.

11 Q. The 1,561 came from the testimony you
12 heard this morning, correct?

13 A. Yes, sir -- no, no -- well, yes. Yes,
14 that is correct, sir, yes. I was going to say in the
15 Newport News.

16 Q. You also referenced line 9, severe
17 weather in Kansas.

18 A. Yes, sir.

19 Q. Was that a tornado, to the extent you're
20 aware?

21 A. I believe it was a tornado, sir. I'm
22 sorry, at this instant I can't remember exactly if it
23 was a tornado. I believe it was some form of
24 cyclonic windstorm.

25 Q. Now, for events that occur or may occur

1 over 1,640 feet, do you consider those to be unusual
2 circumstances or unusual events?

3 A. Yes, they are. They are unusual, but
4 they would -- it's -- yes. The answer is yes.

5 Q. Just to understand, the 1,640 that
6 applies to the -- you applied that to the residence
7 of the structure?

8 A. I would -- I have suggested elsewhere in
9 the text of my report, sir, that -- or my testimony
10 that I suggest that should be applying anywhere
11 within the property boundary of any nonparticipant.

12 I've specifically in the tabular data
13 referred to those distances for residences because,
14 as I said earlier, I did not have the property line
15 data for every person. But if you were to ask me how
16 far should they be, I say they should be that far
17 from the property line.

18 Q. I want to talk about your Denmark trip,
19 which is referenced in your testimony. I believe
20 that is at page 19, Mr. Palmer.

21 A. Yes, sir.

22 Q. Now, was that a vacation, that trip?

23 A. It's a chicken or egg question, sir. I
24 was going to Denmark specifically because I was
25 presenting a paper at the Wind Turbine Conference in

1 Aalborg, Denmark. There is a family rule if I am
2 going to do something like that, I dog-gone well
3 better take my wife along as vacation, so we both
4 went.

5 Q. You reference there on page 19 you
6 traveled the length of Denmark to Copenhagen to
7 Aalborg. That was on a train, correct?

8 A. Yes, sir. We arrived in Copenhagen. We
9 stayed there a number of days, we took the train to
10 Aalborg. We stayed there a number of days. We then
11 took the train back to Copenhagen and stayed again a
12 day and then left. So we went twice to Copenhagen
13 and Aalborg.

14 Q. And as you rode the train, isn't it true
15 you took pictures of turbines as you traveled on the
16 train?

17 A. That is correct, sir.

18 Q. You didn't take pictures of all the
19 turbines you saw, correct?

20 A. I probably did not take a picture of
21 every turbine I saw, sir, no.

22 Q. You didn't perform any measurements on
23 that trip, did you?

24 A. I have performed only first order
25 measurements, sir because I look at a turbine and

1 determine the size of the turbines I was seeing, and
 2 it's fairly quick from the picture to be able to say,
 3 okay, this is turbine to a 40 meter hub height, 21 --
 4 26-meter blades, so I know that total overall height
 5 is in the order of 65 meters.

6 It's fairly quick to sort of say, okay, I
 7 can across from there a distance and say that there's
 8 no houses. That's why I said I didn't see any houses
 9 within the vicinity of turbines, sir, certainly not
 10 within the distance that is being proposed here.

11 Q. If you can go to your direct testimony
 12 starting at page 32 and turn over to page 33 -- are
 13 you there?

14 A. Yes, sir.

15 Q. You reference on top of page 33, you list
 16 various roads, highways.

17 A. Yes, sir.

18 Q. You did not conduct a traffic flow
 19 analysis on any of the roads listed here, did you?

20 A. At the time I had prepared this, I did
 21 not, sir. I was only reading them as public travel
 22 roads on the map. Subsequent to that, I have a bit
 23 more information from having driven on all of those
 24 roads to have a rough idea what they are, but, no, I
 25 haven't done a measured traffic flow analysis.

1 Q. And you drove on those roads when you
2 were being driven around the project area, correct?

3 A. Well, in some cases because as I was
4 driving to the site and then being driven around the
5 area, I took out my map and said, "Let's go here,
6 please."

7 Q. How long did you drive around the area?

8 A. Two hours.

9 Q. Let's turn to Exhibit B, the back of your
10 testimony, please. Actually, I'm sorry, let's turn
11 to Exhibit Q. Are you there sir?

12 A. Yes, sir.

13 Q. Did I hear, am I correct earlier you
14 mentioned this was a screen shot you took off a
15 website?

16 A. No, sir. This is website of the
17 television station serving Altoona, New York, had
18 their news broadcast showing this event or with the
19 reporter's voice behind that. They had with that,
20 AEJE 8, this picture.

21 Q. And then turn to Exhibit F?

22 A. F as in Frank, sir?

23 Q. Yes, sir.

24 A. Yes, sir.

25 Q. Did you take that picture?

1 A. Yes, sir.

2 Q. When did you take that picture?

3 A. I took that picture in, I believe, March
4 of 2009, sir.

5 Q. Is this near your home?

6 A. This particular turbine is approximately
7 25 kilometers from my home, sir.

8 MR. SETTINERI: Thank you very much,
9 Mr. Palmer.

10 No further questions, your Honors.

11 ALJ CHILES: Thank you.

12 Mr. Margard.

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

15 ALJ CHILES: Thank you.

16 Mr. Van Kley.

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

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. Van Kley:

21 Q. With respect to the blade throw incidents
22 that you have mentioned on -- I forget what page --
23 page 24 of your direct testimony, would you take a
24 look at that, please?

25 A. Yes, sir, I'm on page 24.

1 Q. All right. You were asked about some of
2 the specific incidents of blade throw in which parts
3 of blade were known to have flown at least
4 500 meters.

5 A. Yes, sir.

6 Q. Is that right?

7 A. Yes, sir.

8 Q. Those incidents that you specifically
9 cited on this page consist of three incidents or more
10 than three incidents?

11 A. Cited on that page are three incidents.
12 I had referred to other incidents, sir, but they are
13 material which has been struck from the record. I
14 had -- I had seen -- they were struck even though I
15 had them in my own individually developed database.
16 I had seen them in other news broadcasts. I had gone
17 to the source of the media and documented them from
18 there, so there are other cases where I've, you know,
19 heard of blades traveling that sort of distance, sir.

20 Q. Okay. Are there yet additional blade
21 throws that you are aware of in which the blade
22 pieces have flown close to 500 meters?

23 MR. SETTINERI: I object, outside the
24 scope of cross. I didn't ask any questions on that.

25 MR. VAN KLEY: I think we're getting a

1 little picky there, your Honor. If there is
2 distinction between a blade throw that's gone
3 500 meters and one that is close to 500 meters and
4 thus still justifies a 500-meter setback, I think we
5 are on the same topic there.

6 ALJ CHILES: Mr. Settineri.

7 MR. SETTINERI: The only questions I
8 asked, I asked was, number one, was the 1,561 related
9 to Mr. Schaffner's testimony. And then I asked him
10 whether the 1,640 feet reference to Denmark, was that
11 the number he used down below. Those are the only
12 two questions I asked.

13 ALJ CHILES: I will allow limited
14 redirect on the topic.

15 Do you need the question reread?

16 THE WITNESS: No, that's okay. I'm
17 thinking through to where I can say this is something
18 specifically that I -- I'm going to have to say, sir,
19 the other incidents of blade throw at that distance,
20 I would have to go back to struck evidence.

21 I am aware of other blade throws in the
22 order of 500 meters, but I believe they are being
23 struck because -- I'm aware of them. I have gone
24 back and looked -- gone back where possible and
25 confirmed from the source documentation that the

1 information is true. But they're rather -- there's
2 not a lot of cases where the distances are given in
3 detail as being, you know, whether they are
4 500 meters or 400 meters. And many of those cases
5 are information that was documented in information
6 that had to be struck.

7 I am aware of other failures, for
8 example. At the Kent Breeze Tribunal, which I have
9 referred to in my work and which I attached as a
10 reference to my work, I referred there to two known
11 blade throw incidents where in one case I took
12 photographs from the news broadcast showing blade
13 pieces a distance from the turbine.

14 At the Tribunal, the chief engineer of
15 General Electric acknowledged those two blade throw
16 incidents and actually reported that there were two
17 additional blade throw incidents, but he didn't give
18 the distances specifically.

19 I don't know whether I'm answering your
20 question, sir.

21 MR. SETTINERI: Your Honors, at this time
22 I would like to move to strike the answer after the
23 first use of the word "Tribunal."

24 ALJ CHILES: Mr. Van Kley.

25 MR. VAN KLEY: Your Honor, I think part

1 of it did and part of it did not. Part of it was
2 based on his own personal knowledge, including his
3 reference to the admission by the GE Energy engineer
4 about two blade throws that were not on the Caithness
5 database.

6 So I think the witness actually has shown
7 restraint in not going beyond his own knowledge and
8 being frank about the fact he can't testify further
9 about the information responsive to my question
10 because of the motion to strike.

11 ALJ CHILES: What we will do is grant the
12 motion to strike the witness' answer. If you can
13 rephrase your question so you're very specifically
14 referring to information that has not been struck,
15 that would be appreciated so we don't have to worry
16 about that issue.

17 MR. VAN KLEY: Okay. I will do that,
18 your Honor.

19 ALJ CHILES: Thank you.

20 Q. (By Mr. Van Kley) Mr. Palmer, based on
21 personal knowledge, not from the Caithness database,
22 can you tell me if there are any other incidents that
23 you know where blade throws were known to go
24 500 meters or close to 500 meters?

25 MR. SETTINERI: I'm going to object. He

1 just referred to the Caithness database.

2 MR. VAN KLEY: I specifically asked him
3 to refrain from referencing the Caithness database.

4 MR. SETTINERI: I'm sorry.

5 ALJ CHILES: Overruled.

6 MR. SETTINERI: I apologize.

7 A. Specifically the incidents that I'm aware
8 of a blade going 500 meters that are not where my
9 information is -- was primarily not sourced -- the
10 unspoken reference are the testimony that was given
11 this morning; secondly, the testimony I referred to
12 earlier of having spoken in Denmark to Jesper
13 Mortensen from the Danish Environmental Review about
14 a specific Danish turbine where blade pieces are
15 reported to have traveled 500 meters. I discussed
16 that incident with him. He acknowledged that the
17 incident had occurred.

18 I can't say we specifically talked and
19 said, sir, do you concur these were 500 meters or not
20 500 meters? We talked about the event that was
21 reported, and he said, yes, that was accurate,
22 referring to the report.

23 I'm trying to find in my report -- the
24 incident at Prince Edward Island, I did look back at
25 the original source material for that and confirmed

1 that as an example.

2 I'm aware, sir -- I sort of identify
3 further down on page 24 of my testimony
4 correspondence I had with Ontario Hydro Networks
5 where Ontario Hydro Networks, which is basically the
6 company that's charged with operating the electric
7 power distribution system independently, did a review
8 of blade failures and came back and said that they
9 were putting in place a technical directive
10 preferring that wind turbines be separated 500 meters
11 from their 500 kV power porters, and that's included
12 in Exhibit No. U, where they independently determined
13 500 meters as a number to use.

14 Somewhere in here I talked of -- I'm
15 aware of other failures, but I'm not able to say they
16 were specifically 500 meters, sir.

17 Q. Okay. How prevalent is it to see
18 references to blade throws that don't give the
19 distances?

20 A. It's -- it is often the case, sir,
21 because the industry doesn't report the information
22 in detail, other than, for example, the report, you
23 know, that was filed with the Ohio Power Siting Board
24 for Timber II, for example. There the industry has
25 come back and given the distances which are smaller

1 distances than the distances testified to this
2 morning.

3 But because many of the others are things
4 that have been documented in the press, they don't
5 get out with measurement wheels, sir. They sort of
6 say, oh, a turbine blade went a long way across the
7 highway and landed over here, but it's hard to know
8 exactly where "here" is, sir.

9 Q. I have a question with regard to your
10 other reference on page 24 of your testimony where
11 you talked about the blade pieces found over a mile
12 from turbines damaged during severe weather in Kansas
13 in May 2012. You're not recommending a setback of a
14 mile, are you?

15 A. No, sir. I don't think I could, you
16 know -- I don't think I could reasonably suggest that
17 would be a prudent step.

18 Q. Okay. Let's move on to page 28 of your
19 testimony, please. I'd like to refer you to lines 15
20 through 20 of that testimony.

21 A. Yes, sir.

22 Q. And I believe that Mr. Settineri asked
23 you whether the nuclear industry accepts a risk of 1
24 times 10 to minus 7, and I provided him with an
25 answer that I believe had two elements to it.

1 Let me ask you this so that we are on the
2 same page with regard to the language you are using
3 for comparison purposes. Can you tell me in that
4 same kind of formula what a failure rate in the order
5 of 125 failures per million turbine years would be?

6 MR. SETTINERI: Object, outside the scope
7 of cross. The only question was nuclear industry's 1
8 times 10 to the minus 7. This language clearly is an
9 attempt to bring in Exhibit M, which was previously
10 struck, which related to failures per turbine years,
11 and, in fact at this time I would move that the
12 entire second-to-last sentence be struck as it
13 relates to Exhibit M.

14 ALJ CHILES: Mr. Van Kley.

15 MR. VAN KLEY: Well, with regard to the
16 first argument, your Honor, since it was
17 Mr. Settineri that opened up the topic as to how a
18 number of failures per million years translates into
19 the language of a times 10 to the minus -- whatever
20 number he chose, I believe in fairness, we also need
21 to relate that to turbine years so that everybody
22 understands the comparison that he's trying to make.

23 With regard to the motion to strike,
24 obviously, if there was any merit to that motion,
25 they would have raised it already in their written

1 motion. This information is based on the witness'
2 knowledge about the industry, and his evaluation of
3 the information before him, which as an expert he has
4 the right to consider, and it's admissible.

5 ALJ CHILES: Thank you, Mr. Van Kley.

6 As to the objection to the question, the
7 objection is sustained. I believe we have gone
8 beyond the scope of redirect.

9 However, the motion to strike any
10 additional testimony of Mr. Palmer is denied.

11 MR. VAN KLEY: All right. I believe I
12 have no further questions, your Honor.

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

14 Before we go into recross, do you need a
15 break, Mr. Palmer?

16 THE WITNESS: I know you have busy
17 schedule. Carry on.

18 ALJ CHILES: Thank you. I appreciate it.

19 Ms. Parcels.

20 - - -

21 RECROSS-EXAMINATION

22 By Ms. Parcels:

23 Q. Mr. Palmer, you did have a situation on
24 redirect that said that you are opining that a
25 setback of 1,640 feet or 500 meters is the best way

1 to protect against blade failure and ice throw.
2 You're not recommending a setback of a mile; is that
3 correct?

4 A. That is correct.

5 Q. You described yourself as a resident of
6 Ontario on my initial cross-examination, and I'm
7 sorry, I can't remember, did I ask you what county
8 you're a resident of?

9 A. I'm a resident of Bruce County.

10 Q. Bruce County. And that correlates to the
11 Bruce Nuclear Plant you worked at?

12 A. They actually are in the same, yes.

13 Q. Okay. Can you tell me what the
14 difference is between a mile and a nautical mile, if
15 you know?

16 MR. SETTINERI: I have to object this
17 time, outside the scope of the redirect.

18 ALJ CHILES: Ms. Parcels.

19 MS. PARCELS: Yes. This relates to his
20 redirect where he said, You're not recommending a
21 setback of a mile, are you? And he said, No. This
22 is foundation for the question I'm going to be
23 asking.

24 ALJ CHILES: I'll allow the question.

25 A. A nautical mile is somewhat bigger than a

1 statute mile, but I can't remember exactly.

2 Q. I wanted to know the difference, if you
3 knew.

4 A. It's bigger.

5 Q. A nautical mile is bigger than a mile?

6 A. Yes.

7 Q. And you're a resident of Bruce County?

8 A. Yes.

9 Q. Are you familiar with the Multi-Municipal
10 Wind Turbine Working Group?

11 A. Yes.

12 Q. Are you member of that group?

13 A. I am technical adviser of that group.

14 Q. Are you aware that that working group
15 that you are a technical advisor for recommended a
16 turbine-free corridor of five nautical miles for air
17 ambulances, such as air helicopters?

18 A. I am aware there was a letter sent, yes.
19 I have seen the letter.

20 MS. PARCELS: Nothing further, your
21 Honor.

22 ALJ TAUBER: Ms. Napier.

23 MS. NAPIER: The county and townships
24 have no recross. Thank you.

25 ALJ CHILES: Mr. Settineri.

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RECROSS-EXAMINATION

By Mr. Settineri:

Q. Mr. Palmer, one question. Page 20 of
your testimony --

A. Yes, sir.

Q. -- look at the second-to-last sentence,
line starting -- sentence starts at line 15 and runs
down to line 19.

A. That was struck, sir.

MR. VAN KLEY: What's the page number?

MR. SETTINERI: Page 28.

MR. VAN KLEY: 28.

Q. Page 28, line 15 through line 19?

A. Yes, sir.

Q. That sentence references 125 failures.
Is that information taken from Exhibit M that was
previously struck today?

MR. VAN KLEY: Objection, your Honor.
Outside the scope of redirect because I was not
allowed to ask that question so he has nothing to
follow up on.

ALJ CHILES: Sustained.

MR. SETTINERI: No further questions,
your Honors. Thank you.

1 ALJ CHILES: Thank you.

2 Mr. Margard.

3 MR. MARGARD: No, thank you, your Honor.

4 ALJ CHILES: I have no questions for you
5 Mr. Palmer. Thank you. You are excused.

6 Mr. Van Kley.

7 MR. VAN KLEY: Yes, your Honor. We would
8 move the admission of Exhibits 22 and 22A through 22Z
9 for those that are struck. We would proffer those.

10 ALJ CHILES: Thank you. Are there any
11 objections to the admission of UNU Exhibit 22,
12 including Exhibit A through Z?

13 MR. SETTINERI: Yes, your Honors. It may
14 be helpful to walk through some of the exhibits.

15 The first one, there are a number of
16 articles attached to Mr. Palmer's testimony, and
17 those should be stricken as hearsay.

18 Exhibit B-1, the Sandia Report referenced
19 in his testimony, but also attached as an exhibit.

20 Exhibit C-1, "Blade Failure and Load
21 Monitoring."

22 Exhibit D-1, "Evaluation of Wind Shear
23 Patterns."

24 Exhibit K-1, another Sandia Report on
25 reliability.

1 And I believe that captures all of the
2 articles that were attached to the back of his
3 testimony.

4 ALJ CHILES: Are those the only
5 attachments you are objecting to?

6 MR. SETTINERI: No. That's the first
7 set.

8 ALJ CHILES: Let's go through these in
9 sets to make it a little bit easier.

10 Any other objections to attachments B-1,
11 C-1, or K-1?

12 MR. VAN KLEY: Your Honor, for
13 clarification, the exhibit numbers are A, B, C, et
14 cetera. The dash and the number refers to the page
15 of that exhibit, to help you more easily find
16 different pages on the exhibit.

17 ALJ CHILES: I understand. So for
18 clarity, we're talking about Attachments B, C, D and
19 K.

20 MR. VAN KLEY: Correct.

21 ALJ CHILES: Mr. Van Kley, do you want to
22 respond?

23 MR. VAN KLEY: Yes, your Honor. As
24 before when we stated that learned treatises fall
25 within an exception of the hearsay rule, these

1 treatises are learned treatises and they fall within
2 exception of the hearsay rule.

3 The written direct testimony specifically
4 identifies, authenticates, and documents reliability
5 of these documents. The documents contain relevant
6 information that is related to the direct testimony,
7 and they should be admitted.

8 ALJ CHILES: Thank you, Mr. Van Kley.

9 The tradition we have been following
10 throughout this hearing, we are going to accept
11 Exhibits B, C, D, and K as learned treatises. It
12 will not be received as exhibits; however, no
13 references to these documents will be stricken from
14 the witness' testimony.

15 MR. SETTINERI: Thank you, your Honors.
16 The next set would be Exhibit A, Exhibit H,
17 Exhibit I, exhibit -- I want to back up. Let's just
18 start with Exhibit A first. I think that's cleaner,
19 if I may.

20 Exhibit A, this is a correspondence and a
21 report to the Board for a wind project that is not
22 this project. It is for the EDP renewables project
23 for turbines made by a different manufacturer and
24 provides significant detail.

25 As to relevancy, number one, simple

1 relevancy, you have already found that in the motion
2 to quash there was a relevancy issue, as well I think
3 it is both prejudicial and confusing, which is
4 another basis for not admitting it.

5 This turbine, the Vestas turbine, is not
6 being considered in the Application, and to include
7 this in the docket I believe -- in the record I
8 believe would be both prejudicial and confusing, not
9 relevant.

10 ALJ CHILES: Thank you.

11 Mr. Van Kley.

12 MR. VAN KLEY: Yes, your Honor. First of
13 all, with regard to the rules of evidence that apply
14 here, Mr. Palmer's direct testimony establishes that
15 he obtained this document from the Board's website,
16 that is, it is clearly a public record. It is
17 admissible on those grounds.

18 Secondly, even if it weren't admissible
19 on that ground, this report constitutes admissions
20 against interest by the company that's submitting the
21 report. It is very clearly and obviously admissions
22 against interest because they are reporting that
23 their blades broke and that their operator messed up
24 and that those blades went flying. So there are two
25 independent grounds, each one of which justifies its

1 admission under the rules of evidence.

2 With regard to the Applicant's relevancy
3 objection, I would again point out that is flatly
4 contradictory to what they have been arguing for the
5 last two days about their own evidence. And, in
6 fact, I have made the same objection to the
7 Application and to all the testimony of Mr. Poore and
8 to most of the testimony of Mr. Speerschneider and to
9 much of the testimony of Mr. Shears on exactly the
10 same grounds that he just raised, which it doesn't
11 involve the same turbine model listed in the
12 Application.

13 Well, now he's flipping that argument
14 over again. He's using my argument, which you have
15 overruled in all those instances, and admitted the
16 evidence. So for consistency's sake, you should
17 deny his motion. It's the same as mine.

18 I would also point out there has been
19 ample testimony from Champaign Wind's own experts
20 with regard to blade throw in which they have said
21 repeatedly in answers to my questions that as long as
22 you're dealing with turbines that are in the same
23 class, that is, the class of turbines manufactured
24 since 2000, and as long as they are essentially the
25 same in dimensions, then the evidence that they're

1 relying on with regard to --

2 ALJ CHILES: Thank you, Mr. Van Kley.

3 That is sufficient.

4 The Bench is in agreement with your
5 argument. This piece of evidence is relevant. To
6 that extent, the objection to the admission of
7 Exhibit A is denied and Exhibit A will be admitted.

8 MR. SETTINERI: Thank you, your Honors.
9 The next set will be Exhibit H and I. Exhibit H is a
10 file from another docket in another case. It
11 contains correspondence, as well as components of the
12 Application filed in that proceeding, as well as the
13 Staff Report of Investigation, that is Exhibit I,
14 components from that proceeding as well.

15 Again, this is a separate proceeding
16 from this proceeding. It does not relate to this
17 proceeding, and, again, we think it is confusing,
18 prejudicial, and not relevant.

19 MR. VAN KLEY: Again, your Honors --

20 ALJ CHILES: Just to clarify, that was H
21 and I?

22 MR. SETTINERI: Yes, your Honor, H and I.

23 ALJ CHILES: Thank you.

24 Mr. Van Kley.

25 MR. VAN KLEY: Yes. Thank you, your

Honor. Again, here we have information about the Timber Road wind farm that is relevant to the issue of blade throw at that wind farm.

Mr. Palmer has authenticated these records as public records that he obtained off of the Board's website so they're admissible. They contain information that is germane to the blade throw incident with regard to both of those exhibits.

Those exhibits provide information concerning what the safety precautions were in the certificate for Timber Road, which proved not to be effective, which are identical to those being proposed for Buckeye Wind II. That information is germane to show that this Board should recommend some different, more effective precautions to prevent blade throw in this instance.

ALJ CHILES: Thank you, Mr. Van Kley.

Mr. Settineri, did you have a response?

MR. SETTINERI: Briefly, your Honor. The difference here, especially with Exhibit H, that it is comparing what one company wrote in an application compared to this Application that has no bearing on the Timber Road incident. It is not relevant.

Also, again, it will be confusing in the record. The Staff Report of Investigation does not

1 list any conditions. Again, this is an analysis of
2 that project, and it's an analysis of what the
3 Applicant in that other proceeding wrote in their
4 Application. It has no relevance here.

5 I have not moved to strike Exhibit J-1,
6 which is the Opinion and Order and Certificate of the
7 Board in that case, which does contain the
8 conditions. I'm only moving to strike Exhibit I and
9 H.

10 MR. VAN KLEY: Your Honor, if I could.

11 ALJ CHILES: Briefly.

12 MR. VAN KLEY: First of all, it is from a
13 decision in the Board's certificates, and there's no
14 exception here with regard to Timber Road, that the
15 information in the Application is incorporated into
16 the certificate by reference, and Applicant is
17 required to follow it.

18 ALJ CHILES: Thank you, Mr. Van Kley.

19 The objection to admission of Exhibits H
20 and I is denied. The Board will attribute these
21 exhibits their appropriate relevance.

22 Mr. Settineri.

23 MR. SETTINERI: The last item, your
24 Honor, Exhibit Q.

25 ALJ CHILES: Do you want to make an

1 argument?

2 MR. SETTINERI: Yes, thank you, your
3 Honor. This picture of a turbine on fire, we simply
4 note that Mr. Palmer did not take the picture, was
5 not present, and this was taken off a website. We
6 would move to strike this.

7 ALJ CHILES: Mr. Van Kley.

8 MR. VAN KLEY: Yes, your Honor. I think
9 Mr. Palmer provided ample information concerning the
10 source of this photograph, and there have been no
11 doubts that have been thrown on its authenticity or
12 the fact that it is genuinely a picture of a fire in
13 a turbine which has been submitted for purposes of
14 illustrating his testimony as opposed to any other
15 purpose.

16 ALJ CHILES: Thank you, Mr. Van Kley.
17 The objection to exclude Exhibit Q is
18 overruled. The Board will attribute the exhibit the
19 appropriate weight in light of Mr. Palmer's
20 testimony.

21 Mr. Settineri, anything further?

22 MR. SETTINERI: No, your Honor. Thank
23 you.

24 ALJ CHILES: Thank you, I appreciate it.
25 Are there any objections to the

1 admission -- these are part of UNU Exhibit 22,
2 Exhibit E, Exhibit F, Exhibit J, Exhibit N, Exhibits
3 O, R, S, U, V, W, X, Y and Z.

4 Hearing none, UNU Exhibit 22, including
5 Exhibit A, E, F, H, I, J, N, O, Q, R, S, U, V, W, X,
6 Y, and Z will be admitted subject to the portions
7 that were previously stricken by the Bench.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 I believe we have Mr. Bauer next.

10 MR. SETTINERI: Yes, your Honor. I defer
11 to my colleague, Mr. Howard.

12 Could we have Mr. Westfall first, or do
13 you want to do Mr. Bauer?

14 ALJ TAUBER: If the parties are okay with
15 Mr. Westfall next.

16 MS. PARCELS: That's fine.

17 (Recess taken.)

18 ALJ TAUBER: Let's go back on the record.
19 Mr. Howard.

20 MR. HOWARD: Thank you, Your Honor. The
21 Applicant would call Mark Westfall to the stand,
22 please.

23 (Witness sworn.)

24 MR. HOWARD: Your Honor, before I proceed
25 I'd like the multipage document, Direct Testimony of

Mark R. Westfall, marked Company Exhibit 17 for identification purposes.

ALJ TAUBER: The exhibit is so marked.
(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

MARK. R. WESTFALL
being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Howard:

Q. Please give us your name and address.

A. Mark R. Westfall, 644 South State Route 559, Woodstock, Ohio.

Q. Mr. Westfall, you have in front of you a document marked the Direct Testimony of Mark R. Westfall.

A. Yes.

Q. Is that your direct testimony?

A. Yes, it is.

Q. Do you have any additions or corrections to make to that testimony?

A. No, I do not.

Q. Mr. Westfall, if I were to ask you the same questions contained in Company Exhibit 17, would your answers be the same as therein set forth?

1 A. Yes, they would.

2 MR. HOWARD: I would move the admission
3 of Company Exhibit 17, subject to cross-examination
4 and make the witness available for cross-examination.

5 ALJ TAUBER: Thank you, Mr. Howard.

6 Ms. Parcels.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Parcels:

10 Q. Good afternoon, Mr. Westfall. You
11 indicate in your direct testimony you have lived in
12 Rush Township your entire life in Champaign County
13 and I wanted to ask, you're a landowner, correct?

14 A. Yes I am.

15 Q. And you pay property taxes?

16 A. Yes, I do.

17 Q. Okay.

18 MS. PARCELS: At this time I would like
19 to approach the witness with what I have marked City
20 Exhibit 9 and pass that out.

21 ALJ TAUBER: You may approach.

22 The exhibit is so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Westfall, does the entirety of that
25 exhibit appear to be the tax bills on the parcels of

1 property that you either own or co-own?

2 A. I would assume so.

3 Q. Have you seen these documents before as a
4 taxpayer then?

5 A. Yes, I have.

6 Q. Okay. And I want to direct your
7 attention -- and I highlighted it on your copy,
8 there's a little yellow mark -- under the middle
9 section of the page it's marked "Tax Distribution."

10 A. Yes.

11 Q. Is that a breakdown what you pay for by
12 dollar figure for taxes on your properties?

13 MR. REILLY: Objection, lack of
14 foundation. There's no -- nothing in the record to
15 suggest he knows how the taxes are broken down.

16 ALJ TAUBER: Do you have a response,
17 Ms. Parcels?

18 MS. PARCELS: I can break it down. It
19 will take longer.

20 ALJ TAUBER: Go ahead, please.

21 Q. (By Ms. Parcels) Mr. Westfall, as a
22 taxpayer you know there are multiple levels that you
23 pay taxes for rather than going in one big pool?

24 A. Correct.

25 Q. Just off the top of your head, what sort

1 of services do your property taxes go to pay for?

2 A. Schools, fire and emergency, libraries,
3 county commission.

4 Q. Is 911 one of those services?

5 A. Yes.

6 Q. Funded by a levy on property taxes?

7 A. Yes.

8 Q. If you look there at your tax bill, does
9 that appear to be a breakdown of the individual
10 levies that are assessed on your properties?

11 A. Yes.

12 Q. And is the one that I have color-coded
13 for you marked 911?

14 A. You have 911 and fire.

15 Q. Okay. The top one, is that 911?

16 A. The top one is 911.

17 Q. I will not ask you to add it all up.

18 A. Okay.

19 Q. But if you can, a rough estimate do you
20 know how much you pay for 911 services based on your
21 property tax levies?

22 A. No, I do not.

23 Q. But does that exhibit there, which you
24 said is an accurate copy of your tax bills, if you
25 tallied all those up, would it provide the figure?

1 A. If this is all the tax bills, yes.

2 Q. I would ask the same questions where it
3 says "Fire." You noted you pay for fire and EMS
4 services. Do you know if the EMS is taxed separately
5 through the township, or if that is all taxed through
6 one fire levy?

7 A. There are two levies for fire and
8 emergency.

9 Q. Do they both go to that total; do you
10 know?

11 A. Both of that portions, yes, is fire and
12 emergency.

13 Q. Now, living there in Rush Township, what
14 fire district are you served by?

15 A. Northeast Champaign County Fire District.

16 Q. Do they provide both firefighting and
17 emergency service, emergency transport?

18 A. Yes, they do.

19 Q. Being a farmer in Rush Township, have you
20 ever had a occasion to have an ambulance respond to
21 your residence or one of your farms?

22 A. We have had an ambulance at our house
23 once.

24 Q. I don't need you to go into detail.

25 A. Yes.

1 Q. From the time you called -- I don't know
2 how long ago this was -- from the time you called for
3 an ambulance, approximately how long did it take for
4 that ambulance to get there, about?

5 A. 10 to 15 minutes, approximately.

6 Q. Okay. Have you, yourself, in driving
7 around Champaign County and Rush Township ever been
8 involved in a vehicular accident?

9 A. No.

10 Q. Okay. Have you or any member of your
11 family ever had to be transported by CareFlight after
12 an accident?

13 A. My immediate family?

14 Q. Sure.

15 A. No.

16 MS. PARCELS: I have nothing further,
17 your Honor. Thank you.

18 ALJ CHILES: Thank you.

19 Ms. Napier.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Napier:

23 Q. Mr. Westfall, I know you know me, but my
24 name is Jane Napier. I am assistant prosecutor in
25 Champaign County.

1 You indicated in your direct testimony
2 that you live in Rush Township?

3 A. That's correct.

4 Q. And is Rush Township or any part thereof
5 in the footprint of the Buckeye II wind project?

6 A. Yes.

7 Q. Has your property been leased for either
8 the Buckeye I or Buckeye II wind project?

9 A. No.

10 Q. In reviewing your direct testimony, would
11 it be a fair statement to say that you're, in
12 essence, in favor of the Power Siting Board approving
13 the certificate for this project?

14 A. Yes.

15 Q. And have you read the Application for
16 this project?

17 A. Not this one. I read most of the first
18 one.

19 Q. Have you read the Staff Report of
20 Investigation?

21 A. Not in its entirety, no.

22 Q. You're aware that the staff had filed a
23 report in this project?

24 A. Yes.

25 Q. Okay. And would it be a fair statement,

1 in your opinion, that that report lists recommended
2 conditions that would become a part of the
3 certificate if it's approved?

4 A. Yes.

5 Q. You are also a Rush Township trustee,
6 correct?

7 A. That's correct.

8 Q. And as a trustee, is it fair statement to
9 say the township is responsible for maintenance of
10 township roads in your township?

11 A. Correct.

12 Q. And would it be a fair statement to say
13 the cost of maintaining roads is a major issue for
14 the townships?

15 A. That's correct.

16 Q. And would it be a fair statement from
17 time to time townships need to put on the ballot road
18 levies to pay for roads?

19 A. Correct.

20 Q. So I'm not sure if you read this in
21 your -- in the Staff Report of Investigation, but are
22 you aware that one of the conditions has to do with a
23 requirement that the Applicant repair the roads in
24 the project if they're damaged?

25 A. Yes.

1 Q. As a trustee, do you believe that the
2 Applicant should be required to repair the roads if
3 they're damaged?

4 A. Yes.

5 Q. As a trustee, do you believe that the
6 Applicant should be required to decommission the
7 project or individual turbines at the end of their
8 useful life or if they become in some state of
9 disrepair?

10 A. Yes.

11 Q. So would it be a fair statement that
12 although you're in favor of the project, that some
13 conditions may be placed on that project?

14 A. Yes.

15 Q. Okay. Any other conditions that you
16 believe need to be set forth in the certificate?

17 A. You're asking for other conditions?

18 Q. Yes. Do you have any other
19 recommendation as to conditions?

20 A. Well, there are setbacks we are aware of
21 that needs to be entered.

22 Q. Any other things that you can recall?

23 A. No.

24 MS. NAPIER: Thank you. I have no
25 further questions.

1 ALJ CHILES: Thank you.

2 Mr. Van Kley.

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

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Van Kley:

7 Q. Good afternoon, Mr. Westfall. I know it
8 is implied in your testimony, but just to make sure
9 that it's on the record, you're a resident of
10 Champaign County, right?

11 A. Yes.

12 Q. Okay. And do you also do your farming in
13 Champaign County?

14 A. Yes.

15 Q. Okay. What kind of farming do you do?

16 A. Grain farming.

17 Q. Okay. What kind of grain do you grow?

18 A. Corn and soybeans, some wheat.

19 Q. How are you doing on your harvest this
20 year?

21 A. I'm done.

22 Q. When did you finish?

23 A. Three weeks ago today, I believe.

24 Q. Okay. So just before the end of October?

25 A. Yes.

1 Q. Okay. What's the latest that your
2 harvesting has gone in the year in the past?

3 A. December. I don't think we've ever
4 harvested in January.

5 Q. It varies year by year, depending on the
6 weather conditions?

7 A. Definitely.

8 Q. Some years you do well and get it
9 earlier, other years it takes a lot longer?

10 A. Correct.

11 Q. And it's not unusual to harvest your
12 crops during November?

13 A. Not unusual, no.

14 Q. Okay. Do you have a grain dryer or
15 dryers to dry your produce -- I mean dry your grain?

16 A. Yes.

17 Q. How many do you have?

18 A. How many acres?

19 Q. No. How many grain dryers do you have?

20 A. One.

21 Q. One, okay. During what time of the year
22 do you operate that grain dryer?

23 A. During harvest, from the end of October
24 until the end of harvest, which can be as late as
25 November/December.

1 Q. Okay. Does the temperature go below
2 freezing in Champaign County during the winter?

3 A. Yes.

4 Q. Obvious question, I know, but sometimes
5 lawyers have to ask obvious questions. During what
6 period of the year does it get below freezing?

7 A. Through the winter months.

8 Q. Can you tell me what months you
9 experience freezing conditions in Champaign County?

10 A. Probably October, November, December,
11 January, February, maybe March.

12 Q. Okay. All right. Is it unusual during
13 those months to have ice conditions on roads and
14 other things?

15 A. No.

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

18 ALJ TAUBER: Thank you.

19 Mr. Reilly.

20 MR. REILLY: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Reilly:

24 Q. Good afternoon, Mr. Westfall. I am here
25 on behalf of the Ohio Power Siting Board staff. I

1 just have really one question for you.

2 If you would turn to page 2 of your
3 testimony, in the next-to-the-last sentence of your
4 answer to question 8, you say, "Also, having wind
5 power in the area helps preserve the agricultural and
6 rural character of our community." Do you see that?

7 A. Yes.

8 Q. Can you elaborate on that? How does it
9 do that, in your opinion?

10 A. The next statement says, "In my view,
11 this is preferable" -- wind turbines would be
12 preferable to subdividing parcels of land into
13 smaller lots for houses.

14 Q. And how do the two relate to each other?

15 A. Well, you have setbacks on turbines.
16 Obviously, if you have a turbine built, you won't
17 have the houses built in close proximity to them.

18 MR. REILLY: Thank you, Mr. Westfall.

19 ALJ TAUBER: Mr. Howard, redirect.

20 MR. HOWARD: Just a couple.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Howard:

24 Q. Mr. Westfall, do your farm operations
25 take place year round?

1 A. Yes.

2 Q. Do you plow fields in the winter months?

3 A. We do not plow, no plowing. Primarily in
4 the fall.

5 MR. HOWARD: Nothing further.

6 Thank you, your Honors.

7 ALJ TAUBER: Ms. Parcels.

8 MS. PARCELS: None, your Honor.

9 ALJ TAUBER: Ms. Nappier.

10 MS. NAPIER: None, your Honors.

11 ALJ TAUBER: Mr. Van Kley.

12 MR. VAN KLEY: Not for us.

13 ALJ TAUBER: Mr. Reilly.

14 MR. REILLY: None for us.

15 MR. HOWARD: We renew our motion to move
16 into evidence Company Exhibit 17 at this time.

17 ALJ TAUBER: Any objection to Company 17?

18 Hearing none, it will be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 ALJ TAUBER: Ms. Parcels.

21 MS. PARCELS: We move for the admission
22 of Exhibit 9, copies of tax bills on his property.

23 ALJ TAUBER: Objection to City
24 Exhibit No. 9?

25 Hearing none, it shall be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 ALJ TAUBER: Mr. Howard.

3 MR. HOWARD: The Applicant will call
4 Mr. Don Bauer to the witness stand, please.

5 (Witness sworn.)

6 MR. HOWARD: Your Honor, I have
7 distributed to the Bench and to the reporter a
8 multipage document entitled Direct Testimony of Don
9 Bauer. I would ask that it be marked for
10 identification purposes as Company Exhibit 18,
11 please.

12 ALJ CHILES: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 - - -

15 DON BAUER

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

18 DIRECT EXAMINATION

19 By Mr. Howard:

20 Q. Mr. Bauer, please state your name and
21 address for the record, please?

22 A. Don Bauer, address 3548 State Route 54,
23 Urbana, Ohio.

24 Q. Mr. Bauer, did you cause to have
25 testimony prepared in this proceeding?

1 A. I did.

2 Q. I'm going to direct your attention to
3 what has been marked as Company Exhibit 18 and ask
4 you if you recognize that?

5 A. I do.

6 Q. Is that your direct testimony?

7 A. It is.

8 Q. Mr. Bauer, do you have any additions or
9 corrections to make to that document?

10 A. I do.

11 Q. Could you tell us the particular question
12 or answer you would like to modify?

13 A. It's on answer No. 4. I would like to
14 add that we actually have a meteorological tower on
15 the farm also.

16 Q. So in answer 4, in addition to the
17 schedule of one turbine for Buckeye Wind I and a
18 second turbine as part of Buckeye II, you would like
19 your testimony to reflect you have a meteorological
20 tower on your property currently?

21 A. Correct.

22 Q. Do you have any other additions or
23 corrections to make?

24 A. I do not.

25 Q. Mr. Bauer, if I were to ask you the same

1 questions today under oath, would your answers be the
2 same with the exception you have modified 4?

3 A. They would.

4 MR. HOWARD: Your Honor, I have nothing
5 further. I move the admission of Company Exhibit 18
6 and would make Mr. Bauer available for
7 cross-examination.

8 ALJ CHILES: Thank you. We will reserve
9 ruling on the motion until we finished the testimony.

10 Ms. Parcels.

11 MS. PARCELS: May I approach the witness
12 with City Exhibit 10?

13 ALJ CHILES: You may.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Parcels:

18 Q. Good afternoon, Mr. Bauer. Looking at
19 that document I just handed you, does that appear to
20 be a copy your tax bill as a property owner even
21 though it is marked Hearthstone Farm?

22 I guess I should back up. Mr. Bauer, you
23 are the owner of Hearthstone Farm?

24 A. I am one of the stockholders.

25 Q. Okay. In your answer to question 3 of

1 your direct testimony, you say your farm is located
2 south and east of Urbana Township and has been in the
3 family for 70 years and you have 325 acres.

4 A. Correct.

5 Q. Is that land titled in your name or in
6 the name of Hearthstone Farm?

7 A. Its title is in the name of Hearthstone
8 Farm, Incorporated.

9 Q. I just wanted to clarify that, so thank
10 you. Looking at that tax bill, there's a yellow mark
11 on there. Do you know if Hearthstone Farm, as one of
12 the shareholders in that corporation, whether it pays
13 real property taxes on the land that it owns?

14 A. I can attest we do.

15 Q. Do you know what sorts of things those
16 taxes pay for, what sorts of services?

17 A. Schools, hospitals -- not hospitals.
18 Senior citizens, Lawnview, library, 911.

19 Q. Okay. Does the center of that tax bill
20 have a general approximation of the dollar amounts
21 broken down for what you noted were the various
22 services that are taxed by the property tax levy?

23 A. Yes.

24 Q. Okay. And do you see where it's
25 highlighted, yellow marked 911?

1 A. Yes.

2 Q. Okay. Now, there are four pages to that
3 tax bill, and you only have two parcel numbers there.
4 Do you know approximately how much Hearthstone pays
5 for 911 services based on that tax levy annually,
6 adding up all those four pages, approximately?

7 A. \$200 plus.

8 Q. Mr. Bauer, have you had occasion as a
9 property owner and resident of the community to dial
10 911 for an emergency?

11 A. Personally?

12 Q. Yes.

13 A. No.

14 Q. What about family?

15 A. Yes.

16 Q. Your residence is on State Route 54,
17 Urbana. How far outside the city of Urbana would you
18 say you live?

19 A. From the city limits, about four and a
20 half miles.

21 Q. Do you know what department is your
22 emergency first responder in the event of an
23 emergency?

24 A. City of Urbana.

25 Q. Would it be the Urbana Fire Division?

1 A. Correct.

2 Q. Have you ever had occasion to have an
3 ambulance respond to either your residence or the
4 farm out there?

5 A. We have.

6 Q. Okay. And approximately how long did it
7 take to get out there from the city of Urbana?

8 A. Seven to eight minutes.

9 Q. Okay. Have you, yourself, or any member
10 of your family been involved in a vehicular accident
11 driving through Urbana Township or the six townships
12 in the project area?

13 A. No.

14 Q. Okay. Do you know anyone who has had to
15 be transported by air flight after an auto accident
16 in the project area?

17 A. No.

18 Q. Now, you indicate in your direct
19 testimony you visited Vinton County, Indiana, near
20 the town of Fowler. Do you know how close the town
21 of Fowler is to the project area out there is Benton
22 County?

23 A. Yes.

24 Q. How far would you say, from your
25 observation?

1 A. Well, from my observation, when you're in
2 the center of Fowler, there are probably turbines
3 within a half of mile.

4 Q. And how big of a town is Fowler from your
5 observation? How many residents would you say?

6 A. Less than 3,000.

7 Q. And how many residents would you say are
8 in the city of Urbana?

9 A. 12,000.

10 Q. Okay. So your observation is that Fowler
11 is a substantially smaller community than the city of
12 Urbana?

13 A. Correct.

14 Q. Okay. And you indicated you drove
15 through the project area and around the town of
16 Fowler. Do you know how close that project area out
17 in Indiana is to a city the approximate size of the
18 city of Urbana, 12,000 residents or more?

19 A. No, I don't.

20 Q. Okay. In your amendment to your direct
21 testimony, you indicated you have a meteorological
22 tower there on your property on Route 54. Is that
23 operated by the Applicant in this case, Champaign
24 Wind, or the earlier Applicant, Buckeye Wind?

25 A. Yes.

1 Q. I guess I should clarify. When did that
2 meteorological tower go in?

3 A. I think approximately two years ago,
4 maybe a year and a half, two years.

5 Q. So was it after the Buckeye Wind project
6 was approved by the Power Siting Board?

7 A. Yes.

8 Q. Okay. But before the leases started to
9 be signed for Champaign Wind, to your knowledge?

10 A. Probably.

11 Q. Okay. Now, how tall is that tower from
12 your observation, or do you know exactly?

13 A. As I understand, it is 196 feet.

14 Q. Okay. Do you know if the company had to
15 obtain Federal Aviation Administration approval to
16 put that tower in?

17 A. As I understand it, anything under 200
18 feet you do not.

19 Q. Okay. Is that tower lighted at night?

20 A. It is not.

21 MS. PARCELS: I have nothing further,
22 your Honor.

23 ALJ CHILES: Mr. Selvaggio.

24 THE WITNESS: Here we go again, Nick.

25 MR. SELVAGGIO: Almost three years to the

1 date.

2 THE WITNESS: Yes.

3 - - -

4 CROSS-EXAMINATION

5 THE WITNESS: By Mr. Selvaggio:

6 Q. Mr. Bauer, to begin, I notice in question
7 2 your testimony is that you were nominated for 2009
8 Champaign County Farmer of the Year. In actuality,
9 you were actually named. That was an award you
10 received; is that correct?

11 A. Correct.

12 Q. So nominated, would you agree that
13 nominated should be replaced by named or awarded or
14 something?

15 A. Yes, counselor.

16 Q. Okay. And your work on the Barn Quilt
17 Project was something that was initiated to highlight
18 this landscape of the community; is that right?

19 A. Correct.

20 Q. And the Freedom Grove Project is a
21 patriotism-driven project that has a number of visual
22 exhibitions that improved a piece of county property
23 in Urbana; is that correct?

24 A. Correct.

25 Q. And so through the Barn Quilt Project and

1 the Freedom Grove Project, would you agree with me
2 those are visual enhancements to our community?

3 A. Yes.

4 Q. And when you saw the turbines in Benton
5 County, Indiana, you indicated that you were blown
6 away by the beauty and number of wind turbines
7 alongside I-65 and State Route 18. Again,
8 highlighting your appreciation for visual beauty; is
9 that correct?

10 A. Correct.

11 Q. Okay. It's fair to say then one of your
12 supports for wind energy is what you would term the
13 visual enhancement to the community?

14 A. One of others.

15 Q. Yes, one of them.

16 A. Yes.

17 Q. Okay. Now, you've indicated in question
18 6 in the answer, "The Ohio Power Siting Board is
19 faced with a very important decision that will affect
20 our children, grandchildren, their children, and the
21 next several generations." Do you see that?

22 A. Yes.

23 Q. Would you share with me how you believe
24 that the next generation of Champaign County
25 residents will be able to visually discern the

1 difference between the Buckeye I project and the
2 Buckeye II project?

3 A. Well, visually they may look exactly the
4 same. I don't think you can discern them.

5 Q. The turbines, to your knowledge, are not
6 going to be hand stamped "Buckeye "I and "Buckeye
7 II," are they?

8 A. No.

9 Q. I, mean from what you understand.

10 A. As I understand.

11 Q. The hundreds of turbines that you saw
12 outside of Fowler, would you agree with me they are
13 lined up almost like dominoes, from a broad-based
14 perspective?

15 A. No. They're not in line to me. To me,
16 dominoes have to be in a line, and they're not in a
17 line.

18 Q. Do you believe that -- okay. You
19 indicated in your direct testimony, question 4,
20 you're scheduled for one turbine as part of Buckeye
21 Wind I project and the second turbine as part of the
22 Buckeye II project. When were you contacted about
23 Buckeye II?

24 A. I don't know exactly.

25 Q. Was it before July of 2009?

1 A. Honestly, I don't know today.

2 Q. Was it before the Power Siting Board
3 approved the certificate for Buckeye I?

4 MR. HOWARD: Objection. He testified he
5 didn't know.

6 MR. SELVAGGIO: So I am helping him with
7 further dates that might jog his memory.

8 ALJ TAUBER: I think you asked the same
9 question, so I ask that you at least ask a different
10 question.

11 MR. SELVAGGIO: Okay. Let me rephrase
12 this.

13 Q. (By Mr. Selvaggio) Can you share with me
14 what considerations you had in your mind when you and
15 your wife signed on as leaseholders for Buckeye Wind
16 I? By considerations, I mean what factors persuade
17 you to believe this was the right thing to do?

18 A. I would say that, you know, we are -- we
19 have been for 35 years in the renewable energy field
20 in that we are selling wood stoves and pellet stoves
21 and fireplaces. And a lot of people that we deal
22 with a lot are into renewables somehow. We look at
23 wind as a clean energy, renewable energy. I thought
24 it would be fantastic to be able to farm the wind
25 above our windy prairie.

1 You know, I mean that people that come to
2 our store and farm always remark about the amount of
3 wind that's on the prairie on that. So we thought it
4 would not solve all the energy problems of the United
5 States, but it was a baby step forward.

6 Q. Did you consider in making your decision
7 anything different when you signed on for Buckeye II?

8 A. No. I would say no.

9 Q. Were Buckeye I and Buckeye II signed at
10 the same time?

11 A. No.

12 Q. When you signed on for Buckeye II, were
13 you given any kind of indication what kind of turbine
14 would be used?

15 A. No.

16 Q. Were you given any information as to some
17 of the incidents that have been problematic for the
18 wind turbine industry?

19 A. No.

20 Q. And by incidents, I mean things like
21 blade throw and ice throw and that kind of stuff,
22 blade failure.

23 A. No.

24 Q. When you described wind energy as clean
25 energy, are you taking into account the aftereffects

1 or consequences that occur from lightning strikes
2 that set turbines on fire?

3 A. Can you repeat the question? I really
4 don't understand it.

5 Q. Actually, let me step back for a second.

6 Do you have lightning rods out on your
7 barns out on your farm?

8 A. No.

9 Q. Do you have any lightning strikes in that
10 area?

11 A. I think we all have lightning strikes in
12 an area. Depends on what you mean by an area.

13 Q. Okay. One of the safety manuals that the
14 company has offered in support of its Application has
15 a page in which it discusses what to do in case of a
16 fire. And the recommendation of the safety company
17 is that in order to address the fire that a radius of
18 100 feet be cordoned off.

19 Do you believe, as a leaseholder, that
20 the company should follow the safety manual?

21 A. I don't really have an opinion on it. I
22 didn't hear anything about fire until today.

23 Q. Now that you've heard something about
24 fire, does that cause you to want to learn more?

25 A. No.

1 Q. Why is it that you don't have an opinion
2 as to whether a safety manual should be followed?

3 MR. HOWARD: Object.

4 ALJ CHILES: Sustained. The witness
5 stated he doesn't have an opinion.

6 MR. SELVAGGIO: I'm asking the basis for
7 the opinion.

8 ALJ CHILES: Sustained.

9 MR. HOWARD: Thank you, your Honor.

10 Q. In working on the Freedom Grove Project,
11 did you utilize Internet sources?

12 A. Yes.

13 Q. And did you rely on those Internet
14 sources?

15 A. For downloading pictures.

16 Q. And did those Internet sources help to
17 form the basis for your decision-making as to how you
18 wanted to carry out your project?

19 A. It might have been a small part.

20 Q. But a part, nonetheless?

21 A. Or I wouldn't have downloaded the
22 pictures.

23 Q. Okay. So in your direct testimony when
24 in question 6 you remark about Champaign County
25 residents who have received their information from

1 the Internet, newspapers or gossip, it appears to me
2 that's a negative toned statement. Would you care to
3 modify that based on your other-than-personal
4 experience with the Internet?

5 A. And what question was this?

6 Q. Question 6.

7 A. Would I like to modify it?

8 Q. Yes.

9 A. No.

10 Q. You indicate at the end of question 6
11 that you support the project, in addition, for the
12 future and the growth of our county. Would you
13 describe for me what you mean by "the growth of our
14 county"?

15 A. Well, I would say at the time when I gave
16 this, would be the growth of more jobs during
17 construction, the amount of jobs in the area, the
18 amount of local participation from contractors, from
19 people needing food, housing, that are building the
20 project, hauling gravel, concrete, local entities
21 going in.

22 So I think it would be a big influx of
23 dollars into the county, economic dollars, and I
24 think there will be economic dollars generated by the
25 permanent jobs that are left after construction. And

1 I think there's a tremendous economic benefit to the
2 schools and to the county through the proposed PILOT
3 tax. Also I think there's a tremendous benefit to
4 the landowners that are receiving lease payments.

5 Q. With regard to what I'm going to group
6 together as construction jobs, would you agree with
7 me that is not a sustainable economic benefit, in
8 other words, it's rather short-lived compared to the
9 longevity that the turbines are expected to operate?

10 A. I guess it depends on what you mean by
11 short term. It's probably a two-year project.

12 Q. And going back to my question, do you
13 believe it's short term compared to the long-term
14 operability expected of turbines?

15 A. Sure, yes.

16 Q. You indicated you expected permanent jobs
17 to result. I noticed in the Staff Report of
18 Investigation that it says the Applicant -- this is
19 page 46, second full paragraph, last sentence. "The
20 Applicant also indicated that it maintains an
21 informational website for the project."

22 Does that appear to you that residents
23 are able to use the Internet to gain information
24 about the wind energy as it pertains to what is going
25 on in Champaign County?

1 A. You mean their website?

2 Q. Yes.

3 A. I don't know. I haven't looked at their
4 website so I can't make an observation.

5 Q. As a leaseholder, were you made aware
6 that there was Internet information presented?

7 A. Yes.

8 Q. Okay. The Staff Report also indicates in
9 that same sentence, "An office has been established
10 in Bellefontaine, Ohio." What county is that in?

11 A. Logan County.

12 Q. And so the people who are working in that
13 Logan County office would presumably pay Logan County
14 income tax?

15 MR. HOWARD: Object. There's no
16 foundation for that.

17 MR. SELVAGGIO: He testified that it has
18 economic benefit for the county.

19 MR. HOWARD: People can live in Champaign
20 County and work in Logan.

21 MR. SELVAGGIO: I appreciate the tax
22 lesson, but my question to him is, are people who
23 work in Logan County going to be paying local Logan
24 County income tax?

25 ALJ CHILES: Sustained. I think you need

1 to lay a better foundation.

2 Q. (By Mr. Selvaggio) You spoke of the
3 permanent jobs that will be created as a result of
4 this project. Where are those permanent jobs going
5 to be located?

6 A. I would assume in Champaign County doing
7 maintenance and upkeep, whatever they have to do for
8 the turbine project.

9 Q. As a leaseholder, who is your liaison
10 with the company?

11 A. I have most contact with Mike Pullins.

12 Q. Where is his office located?

13 A. I'm not sure where Mike's office is
14 located. I don't go to his office.

15 Q. Well, you see him probably at the Rotary
16 Club?

17 A. Right.

18 Q. You might see him in other parts of the
19 community?

20 A. Right.

21 Q. And you know him well enough you could
22 probably call him up on the phone?

23 A. Absolutely.

24 Q. For leaseholders who don't have that kind
25 of relationship, where would they contact Mike

1 Pullins?

2 A. I don't know.

3 Q. Did you know that the Applicant has an
4 office in Logan County?

5 A. Yes. I've already said they do.

6 Q. And would those individuals who work in
7 Logan County pay Logan County income tax?

8 A. I'm not sure there is a Logan County
9 income tax.

10 Q. How about the city of Bellefontaine
11 income tax?

12 A. I don't know if there's a Bellefontaine
13 income tax.

14 Q. Really?

15 A. I don't. I live in the country. We
16 don't have income tax locally. Now, that person that
17 works in Bellefontaine could live in Champaign
18 County, couldn't they?

19 Q. I'm sure some of them do.

20 A. Yeah.

21 Q. If you're a leaseholder and you have a
22 difficulty with the project of some sort, what do you
23 know about the complaint resolution process that has
24 been proposed?

25 A. Would you be speaking after it's built?

1 Q. Yes. Well, let's start off during the
2 construction period.

3 A. I don't have any idea, Nick. I haven't
4 looked at that. I'm not concerned.

5 Q. If you are a leaseholder and you had a
6 complaint, would you want a condition that the
7 company will work to mitigate/resolve the issue, or
8 would you want a condition to say they would make a
9 good-faith effort to mitigate the issue?

10 MR. HOWARD: I'm going to object.

11 ALJ CHILES: Basis?

12 MR. HOWARD: There's no foundation that
13 he's established about that condition, that the
14 witness is even aware of that condition if there is
15 such a condition.

16 ALJ CHILES: I'll allow the question.
17 The witness may answer.

18 THE WITNESS: Can you repeat the
19 question?

20 ALJ CHILES: Would you read that
21 question, please.

22 (Record read.)

23 THE WITNESS: A good-faith effort would
24 be fine for me.

25 Q. (By Mr. Selvaggio) As a Champaign County

1 taxpayer, do you want your county engineer or a
2 predetermined other appropriate public authority to
3 control the terms of road use agreements regarding
4 the roads and their repairs in our county?

5 A. I don't have an opinion on that.

6 Q. Have you had any discussions as a
7 leaseholder with regard to any -- I mean with anyone
8 with regard to what happens if there are not
9 sufficient funds to decommission a turbine on your
10 plot?

11 A. No.

12 Q. Was that something that you considered
13 when you entered into your contract for phase 2?

14 A. Decommissioning?

15 Q. Yes.

16 A. No.

17 Q. Do you know the number of the turbines on
18 your property are referred to in the Application?

19 A. No.

20 Q. Do you know, like, there are a number of
21 turbines, through 133, I think?

22 A. No, I don't.

23 Q. Do you know, are your turbines located
24 near Dolly Varden and State Route 54?

25 A. There's one that is, yes.

1 Q. Okay. And which one is that, the one
2 near Dolly Varden or near State Route 54?

3 A. Well, counselor, actually there's only
4 one turbine that would be located in those two
5 parameters, Dolly Varden on one side and State Route
6 54 on the other.

7 Q. Do you have a copy of the Staff Report up
8 there? It's a purple document.

9 A. I know there's a lot of stuff up here,
10 Nick. I'm not sure where it is. I'd be glad to look
11 at it if somebody would show me what it is.

12 MR. SELVAGGIO: May I show him my copy?

13 ALJ CHILES: You may.

14 Q. I am turning to the diagram, page 4 in
15 the Staff Report. It took me awhile to orient where
16 that is. I will give you time to look at it.

17 A. I know where it is, yeah.

18 Q. So as you look at that document then, do
19 you see turbine 123?

20 A. Correct.

21 Q. Is that one of your turbines --

22 A. Correct.

23 Q. -- that's proposed?

24 A. Yes.

25 Q. Okay. There was a witness who testified

1 earlier today that he thought that turbine had a
2 professional safety concern due to the proximity to
3 the roadway and buildings. As a leaseholder, does it
4 cause you any concern that the proximity to the
5 roadway and buildings is an issue?

6 A. I guess it would depend how far you're
7 talking about. Well, I mean, if it was 50 feet, it
8 would be probably more concern than if it was
9 1,000 feet.

10 Q. Okay. Let's assume a couple of facts for
11 my question. The state of Ohio has indicated that
12 there's a certain level of setback figure, the length
13 being 941 feet has been often cited as the standard.
14 If something is below 941 feet, would that cause you
15 a concern?

16 A. If it was below the standard the state
17 set, I guess it would be of some concern.

18 Q. Okay. If a safety manual indicates that
19 in fighting a fire you must observe a radius of
20 1,300 feet and if your turbine was located in a
21 location under that 1,300-feet figure to a nearest
22 house, would that cause you concern?

23 A. No.

24 Q. And so is it your testimony that you
25 don't believe the safety manual should be followed?

1 A. Well, I'm not sure whose safety manual we
2 are talking about.

3 Q. If you look at Volume III of the binder,
4 Exhibit R, page 42.

5 A. Volume III; is that correct?

6 Q. Yes, sir.

7 A. Now, what do we need to look at?

8 Q. Exhibit R, page 42, and you will see
9 page 42 marked up in the right-hand corner.

10 A. 42 we're looking for?

11 Q. Yes, sir.

12 A. Okay.

13 Q. At the very bottom it says, "Section 7.2,
14 Procedure in the Event of Fire." Do you see the last
15 sentence where it says, "The area must be cleared and
16 cordoned off in a radius of 400 meters, 1,300 feet,
17 from the turbine"?

18 A. Yes.

19 Q. So if your turbine was under that
20 1,300 feet figure, would you take the position that
21 the safety manual should not be followed?

22 A. No. I think the safety manual should be
23 followed. All I asked, whose manual is it?

24 Q. Gamesa Turbine.

25 A. What?

1 Q. This is a Gamesa, G-A-M-E-S-A.

2 A. I'm not sure who that is, but if that's
3 what they say in theirs, fine.

4 Q. You also spoke about the tax benefit that
5 would come to the county, and by that do you mean the
6 county general fund?

7 A. I'm sure there is some money that may go
8 to the general fund. I'm not sure of all the monies
9 involved, but I would think so.

10 Q. In the Staff Report, the staff has cited
11 a figure that if PILOT taxation was followed, that
12 annual payment would be approximately \$1,045,000.
13 Would it surprise you to learn of that \$1 million
14 collected that approximately \$47,000 would go to the
15 county commission -- well, go to the general fund?

16 MR. HOWARD: I'm going to object. He's
17 stating it as if it is a fact. He can ask if the
18 witness is aware of it, but the way the question is
19 developed, it's assuming that to be a fact.

20 MR. SELVAGGIO: I'll rephrase.

21 ALJ CHILES: Thank you.

22 Q. (By Mr. Selvaggio) Are you aware that
23 it's estimated that only \$47,000 of that \$1,045,000
24 figure would go to the county general fund in the
25 form of taxes?

1 A. Is that for Buckeye II only?

2 Q. Well, yes, it's for Buckeye II only
3 because we are only dealing with Buckeye II in the
4 question.

5 A. No, I was not familiar with that.

6 Q. Do you think there's a perception in our
7 county among county residents that there's an
8 expectation that there's more tax revenue that's
9 going to be produced than the figure I just cited?

10 A. You cited two figures. Are you talking
11 about the million or the 47,000?

12 Q. I'm talking about the \$47,000.

13 A. I really -- I'd say \$47,000 to the
14 general fund sounds a little bit low to me.

15 Q. Okay. Last, is it fair to say that your
16 business relies on people traveling the county and
17 township roads to get to it?

18 A. No.

19 Q. How else do they get to it?

20 A. State road. We don't live on a county
21 road.

22 Q. So someone who lives on a township road
23 would have to use a township road to get to the state
24 road to get to your place, wouldn't they?

25 A. Right. But your question was do they

1 rely on county and township roads. You can't get to
2 my business on a county or township road. You have
3 to go to a state road to get there.

4 Q. All right. You live off a state road and
5 that's where your business is located?

6 A. Correct.

7 Q. For your customers that may live off
8 township roads, do you believe that township roads
9 should be returned to the same state -- let me back
10 up.

11 Do you understand that as a result of the
12 construction process, county and township roads will
13 most likely be damaged in some part?

14 MR. HOWARD: Object.

15 ALJ CHILES: Basis?

16 MR. HOWARD: No foundation.

17 ALJ CHILES: Mr. Selvaggio, would you
18 like to try to --

19 MR. SELVAGGIO: I believe common sense --

20 ALJ CHILES: Mr. Selvaggio, don't speak
21 over me. Would you like to try and lay a foundation?

22 MR. SELVAGGIO: Sure.

23 Q. (By Mr. Selvaggio) Mr. Bauer, during the
24 construction phase there's been testimony that heavy
25 loads of equipment will be repetitively driven on

1 county and township roads. Given the nature of that
2 testimony, would you expect there to be damage to
3 county and township roads?

4 A. Well, if they stay within the legal
5 limits of the loading for the road, I would say there
6 would be minimal damage.

7 Q. And what do you base that on?

8 A. Legal loads, I would assume, means that
9 somebody in the county or the township -- the county,
10 has determined that this is a legal load for that
11 particular road, and you will not have damage to it
12 if you stay within the legal limits of that vehicle.
13 So there may be some damage on it. You know, I don't
14 know how much. I don't think you do either.

15 MR. SELVAGGIO: That's all the questions
16 I have.

17 ALJ CHILES: Mr. Van Kley.

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

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Van Kley:

22 Q. Good afternoon, Mr. Bauer.

23 A. Good afternoon.

24 Q. I see from your testimony that you lease
25 at least a part of your farmland to other people; is

1 that right?

2 A. Correct.

3 Q. Do you farm any of it yourself?

4 A. No.

5 Q. Do you have a tenant on your farmland
6 that grows potatoes?

7 A. Amongst other crops, correct.

8 Q. And how long has that tenant been growing
9 potatoes on your land?

10 A. Probably 12 to 15 years.

11 Q. Are these potatoes being grown in any of
12 the fields that will now have turbines in them?

13 A. A turbine, yes.

14 Q. So he's growing potatoes in a field that
15 will have a tenant in it?

16 A. Correct.

17 Q. Does this tenant use irrigation to
18 support his potato-growing operation?

19 A. Yes.

20 Q. Can you describe the irrigation system,
21 what it looks like?

22 A. Well, they're circular irrigation
23 systems. There are two in the front field, what they
24 call a pivot system. It goes round and a long arm
25 comes and sprinkles the crops with water.

1 Q. And how does that irrigation system
2 travel across the field to do its job?

3 A. On rubber tires.

4 Q. Okay. And it travels throughout the
5 field spreading water as it goes?

6 A. In a circle, correct.

7 Q. Okay. Will the turbine block this
8 irrigation system from making its rounds in that
9 field?

10 A. No. It will block it, but it will
11 reverse and go the other way and make up the
12 difference.

13 Q. Okay. Will it be able to cover the
14 entire field that way?

15 A. There probably will be two to three acres
16 that may not be able to cover that it's covering
17 today.

18 Q. Now, I see from your testimony that you
19 own a wood stove and fireplace retail business?

20 A. Correct.

21 Q. So you actually sell stoves?

22 A. Yes.

23 Q. Before you signed up for leasing your
24 land for these turbines, did the wind developer
25 inform you that blades can be thrown off the

1 turbines?

2 A. I don't remember.

3 Q. Well, if they had, do you think that
4 would be an important enough fact you would remember
5 it?

6 A. I would guess so, yeah.

7 Q. Do you recall whether the wind developer
8 informed you that ice can be thrown off of the
9 turbines during icing conditions?

10 A. I don't remember that.

11 Q. Do you recall whether the developer
12 informed you that turbines can create shadow flicker?

13 A. No, they did not say that.

14 Q. Before you signed the lease, did the wind
15 developer show you any safety manuals, such as the
16 one that you and Mr. Selvaggio were talking about?

17 A. No.

18 Q. Did they inform you that they had safety
19 manuals that provided safety precautions and
20 recommended setbacks before you signed your lease?

21 A. No.

22 Q. When you sell your stoves, do those
23 stoves come with safety recommendations from the
24 manufacturer?

25 A. Yes.

1 Q. Do you tell the buyers of those stoves to
2 disregard the manufacturer's recommendations?

3 A. No.

4 Q. Why not?

5 A. Why would I?

6 Q. Well, why wouldn't you?

7 A. To disregard?

8 Q. Pardon?

9 A. You know, I don't tell the customer to
10 disregard the safety manuals.

11 Q. Uh-huh.

12 A. I don't.

13 Q. Okay. Because the safety manuals have a
14 purpose, right?

15 A. Correct.

16 Q. To keep the consumer safe, right?

17 A. Uh-huh.

18 Q. Okay. That's just common sense, isn't
19 it?

20 A. Absolutely.

21 Q. Okay. How close is your home going to be
22 located to the turbines that are being leased for
23 your property or being put on your property?

24 A. My home?

25 Q. Yes. Maybe I better ask a different

1 question. Do you live on a farm that is leasing the
2 turbines?

3 A. Yes, right.

4 Q. How close is your home to the location
5 for those turbines?

6 A. Probably 2,000 feet, my house.

7 Q. Did the wind developer give you choice as
8 to how close the turbines would be placed to your
9 house?

10 A. No.

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

13 ALJ CHILES: Thank you.

14 Mr. Reilly.

15 MR. REILLY: Thank you, your Honor. We
16 have no questions.

17 ALJ TAUBER: Mr. Howard?

18 MR. HOWARD: No redirect. Thank you very
19 much.

20 ALJ CHILES: We have no questions for
21 you. Thank you. You are excused.

22 THE WITNESS: Good, thank you.

23 MR. HOWARD: Your Honor, we renew the
24 motion for admission of Company Exhibit 18.

25 ALJ CHILES: Any objection to Company 18?

1 Hearing none, Company Exhibit 18 will be
2 admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 ALJ CHILES: Ms. Parcels.

5 MS. PARCELS: The company would move for
6 the admission of City Exhibit 10, as Mr. Bauer
7 recognized those to be tax forms for his properties.

8 ALJ CHILES: Any objection to Exhibit 10?

9 MR. HOWARD: No, your Honor.

10 ALJ CHILES: Company Exhibit 10 is
11 admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 ALJ CHILES: Let's go off the record.

14 (Discussion off record.)

15 ALJ CHILES: On the record.

16 MR. ENDSLEY: Your Honors, the Ohio Farm
17 Bureau calls Dale Arnold.

18 ALJ CHILES: Mr. Selvaggio, do you have
19 something to say?

20 MR. SELVAGGIO: May I retrieve the Staff
21 Report and ask the Bench to take judicial notice of
22 it?

23 ALJ CHILES: There is no need to take
24 judicial notice. It is already in the docket, but
25 you can certainly retrieve it.

1 Off the record.

2 (Discussion off record.)

3 ALJ TAUBER: Back on the record.

4 (Witness sworn.)

5 MR. ENDSLEY: I have distributed a
6 document entitled Direct Testimony of Dale Arnold. I
7 ask it be marked as Farm Bureau 1, FB-1.

8 ALJ TAUBER: The exhibit is so marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 - - -

11 DALE ARNOLD

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

14 DIRECT EXAMINATION

15 By Mr. Endsley:

16 Q. Mr. Arnold, state your name and business
17 address.

18 A. My name is Dale Arnold. My address is
19 the Ohio Farm Bureau Federation, 280 North High
20 Street, PO Box 182383, Columbus, Ohio.

21 Q. Please identify the exhibit in front of
22 you marked FB-1.

23 A. Yes. This is my direct testimony filed
24 in this case with the Ohio Power Siting Board.

25 Q. Do you have any revisions or additions to

1 your testimony?

2 A. No, I do not.

3 Q. If I were to ask you these same questions
4 today, would your answers be the same?

5 A. Yes they would.

6 MR. ENDSLEY: Your Honor, at this time I
7 move for admission of FB-1, subject to
8 cross-examination, and make the witness available for
9 cross-examination.

10 ALJ TAUBER: Thank you.

11 Ms. Parcels.

12 - - -

14 CROSS-EXAMINATION

15 By Ms. Parcels:

16 Q. Good afternoon, Mr. Arnold. You indicate
17 in your answer to I believe it's question 3 that you
18 have a very long history with the Ohio Farm Bureau
19 Federation, and you became director of energy
20 services in 1995. Prior to that, did you do any work
21 with the Farm Bureau in the context of safety on the
22 farm?

23 A. As an organization director, we basically
24 have a safety committee to look at things, and I work
25 in coordinating with education outreach and those

1 programs as part of my work.

2 Q. Did you have any involvement with
3 coordination outreach as you termed it for prevention
4 of grain bin accidents?

5 A. Yes, we did.

6 Q. Can you describe to me when a grain bin
7 accident would happen, what kind of rescue, or what
8 the technical terminology is for that kind of rescue,
9 say, if the farmer has a heart attack while on the
10 top of a grain bin?

11 A. From my knowledge, from what I worked
12 with regard to that, we worked on a grain bin rescue,
13 how to rescue a farmer if he was stuck or sinking
14 into grain. If a farmer was on top of a grain bin,
15 on top of a silo, we worked with a number of
16 firehouses and different things with regard to
17 training and different things on how to retrieve that
18 particular person, put him basically in a stretcher
19 and brace and bring him down safely.

20 Q. And in your experience, how high are the
21 highest grain bins, from your observation, with your
22 many years of experience with the Farm Bureau?

23 A. Some of the cooperatives. Some of the
24 larger ones could go up to 150 to 200 feet and some
25 silos could go about that high.

1 Q. Okay. Did you have any involvement when
2 you were doing coordinating outreach, as you termed
3 it, with getting local farmers coordinated with air
4 ambulance services, such as CareFlight, to respond to
5 farms directly in the event of an ag accident?

6 A. No, I did not.

7 MS. PARCELS: No further questions, your
8 Honor. Thank you.

9 ALJ CHILES: Thank you.

10 Ms. Napier.

11 - - -

12

13

14 CROSS-EXAMINATION

15 By Ms. Napier:

16 Q. Thank you. I am Jane Napier. I
17 represent the county and townships within the project
18 area. I want to direct you to your testimony,
19 written testimony. I had a question about one of the
20 items in response to question 2.

21 You indicate that your task includes
22 helping farmers and rural residents work with local
23 government leaders and energy service providers as a
24 project is developed. Is this project that we're
25 here on that type of project?

1 A. Yes. I do that work not only with wind
2 initiative development, but in the eastern part of
3 the state with oil and gas pipelines, also with
4 transmission line capacity, solar, biomass, and a
5 number of others.

6 Q. And so have you helped farmers and rural
7 residents work with local government leaders for this
8 Buckeye II wind project?

9 A. Not with Buckeye II, no, but with
10 Buckeye I helped basically one of our employees at
11 the time.

12 Q. Who was that?

13 A. One of our employees, who was the
14 organization director for the Champaign County Farm
15 Bureau who was on your wind task force. I helped
16 basically get him information and material at his
17 request with regard to that.

18 Q. And who was that?

19 A. I think that he's now working for
20 EverPower. I think that -- I can't remember his
21 name.

22 Q. Would that be Mike Pullins?

23 A. No, that would not be Mike Pullins.

24 Q. Would it be Jason Dagger?

25 A. It would be Jason Dagger.

1 Q. In looking at your response to question
2 No. 6, the second sentence there states, "As
3 consumers energy is second only to labor as a cost
4 for production of crops and livestock." Energy is a
5 big word. What kind of energy is second only to
6 labor as a cost for production of crops and
7 livestock?

8 A. When you take a look at energy -- this is
9 something I have done after taking over this capacity
10 with our central energy programs -- when you take a
11 look at their costs for fuel, be it a liquid fuel as
12 well as electric generation, when you combine those
13 together, next to labor, it is the largest single
14 output or the largest expense on many farm
15 operations.

16 And it's been my responsibility to help
17 them find ways to control those energy costs as an
18 individual farm, as a neighborhood, community, groups
19 of counties, state, groups of states.

20 Q. Okay. I see also next you said
21 "Agriculture is being called upon to produce a
22 variety of feed stocks"?

23 A. That's correct.

24 Q. I'm not sure what that means.

25 A. In the area of biomass development, you

1 are taking a basic look with regard to biofuel. You
2 are being asked to grow a number of crops, switch
3 grass, it could be corn stock, it could be any one of
4 a number of feed stocks basically on the farm that
5 can be used and has a hydrocarbon chain that can be
6 created into a biofuel, solid to replace or augment
7 coal. Liquid to replace liquid fuels, such as diesel
8 fuel, gasoline or even natural gas.

9 In the area of electric generation, we
10 are helping a number of farmers take a look at
11 electric generation projects both on farm, wind,
12 solar, possibly biomass. And also taking a look at
13 on the megawatt level, the utility scale. Farmers
14 are being asked to work with a number of service
15 providers and units, take a look at an effective coal
16 and nuclear fire generation capacity, and also other
17 types of generation that will be working with them.

18 We have a policy basically called the
19 diversified energy portfolio, where a number of
20 technologies are going together.

21 Q. Okay. I think you are far outside that,
22 and if you can answer my question only, and just for
23 time's sake. I don't know we want to be here until
24 Saturday.

25 A. Sure.

1 Q. If you could maybe just respond to my
2 question.

3 A. Okay.

4 Q. So after your answer to the last
5 question, would it be a fair statement for the
6 foreseeable future on industrial wind turbines on a
7 farm would not reduce the cost of energy used in
8 farming? I'm only asking for the foreseeable future.

9 A. With the next year or so, probably not,
10 but when you take a look at in the distant future,
11 you take a look at general regulation capacity on a
12 utility scale. When you take a look at diversified
13 energy portfolio, which I described in my last
14 question, the answer is yes.

15 Q. I see in response to questioning, in the
16 first sentence you put in there twice, thought it
17 might be important. You kept talking about properly
18 constructed wind towers.

19 A. Yes.

20 Q. Is there an improperly constructed wind
21 tower?

22 A. Yes. That's the reason I couldn't have
23 the Ohio Power Siting Board here. In Ohio you need
24 to take a look at a number of rules, regulations.
25 You need to take a look at environmental, economic,

1 aesthetic and other factors to create basically a
2 process and the requirements and the environment to
3 create those types of farms to put them in rural
4 areas and on farm ground.

5 Q. So, I don't mean to speak for you, but in
6 the context you that said the Ohio Power Siting
7 Board, you're saying that you want the projects
8 approved that have reasonable conditions on them?

9 A. That is correct.

10 Q. Okay. So at least the Ohio Farm Bureau
11 is not basically pushing for approval of any
12 certificate, no matter what the conditions are?

13 A. That is correct.

14 Q. Now, you stated that urban sprawl and
15 industrial development is a major threat to farmland,
16 correct?

17 A. In many areas, yes.

18 Q. I believe that was in response to one of
19 your questions. I don't want to put words in your
20 mouth. I think later in response to question 8, you
21 said in Ohio a major threat to prime farmland is
22 urban sprawl and industrial development.

23 A. That's correct.

24 Q. Do you not consider an industrial wind
25 turbine as an industrial development?

1 A. No. Many farmers who talk about this and
2 our policy process take a look at this. If you are
3 going to take a look at other ways basically for
4 generating income, other ways for taxes, other ways
5 for generating power that we're talking about in our
6 diversified energy portfolio, being able to have,
7 yes, a utility scale wind turbine on a piece of
8 ground is an available option.

9 A number of people have discussed that
10 you are talking about a two-acre footprint on the
11 farm. An effectively developed one, with regard to
12 the Ohio Power Siting Board's rules, regulations, and
13 goals, and the ground is going to be reclaimed, the
14 farmer will still be able to farm that ground around
15 a particular turbine and still utilize it for
16 agricultural purposes.

17 Q. Are you saying it's reclaimed while it's
18 being used, while the wind turbine is being operated?

19 A. Yes. If you take a look, basically, at
20 the rules and some of the conditions, within nine
21 months, weather permitting, all the field tile, all
22 the underground infrastructure that makes that farm
23 operational with regard to separation of soils,
24 protection basically of the topsoil, remediation,
25 repair, those particular types of things, protection

1 of streambeds and stream crossings, across waterways
2 and gabions, if those basically are done, that ground
3 can be back to viable agricultural production.

4 Q. So are you saying that even though it's
5 industrial development, that it at least can be
6 reverted back to agricultural development?

7 A. That's right. You've created a balance
8 because you have done something there, basically, to
9 help with regard to industry and power generation,
10 but you have also left a large majority of the ground
11 around that in agriculture.

12 Q. Okay. And you indicate in question and
13 answer to question 12, and the very last statement,
14 start with "similarly," you said that the "project
15 has the potential to provide additional economic
16 resources to local schools, county and township
17 governments with payment in lieu of taxes, PILOT
18 payments, created under SB 232."

19 A. That's correct.

20 Q. Are you aware that 232 allows the county
21 commissioners to decide whether they want to, in
22 essence, take a PILOT, take a payment in lieu of
23 taxes or take taxes?

24 A. That's correct. Because the final
25 decision will be made at county level. They have

1 actually have two options. Number one, they can
2 proclaim the county as a renewable energy development
3 area, and any project which meets those goals,
4 basically with the director of the Ohio Department of
5 Development, can be placed there, or they can do each
6 one individually.

7 And consequently you now see the need for
8 tremendous amount of cooperation and work between a
9 number of entities in bringing in the project going
10 forward.

11 Q. And so you had said this is a plus to the
12 local community, local government, correct?

13 A. That's correct.

14 Q. Now, the payment in lieu of taxes is a
15 reduced payment; am I correct? Are you aware of
16 that?

17 A. If I understand, this is payment in --
18 their payment basically is going directly to
19 counties, townships, and local governments. The
20 other alternative takes a look at the taxing
21 principle with regard to utility size infrastructure.

22 Q. But, at least, are you aware whether or
23 not to the developer it is less money or more money
24 for a PILOT?

25 A. If I understand correctly, the PILOT

1 payment program is designed in reference to these
2 types of projects, especially renewable energy or
3 smaller scale energy, not necessarily a large
4 centralized coal or nuclear, fire-generated. We have
5 seen places, but, basically, with smaller systems.

6 Q. I'm not sure you're answering my
7 question.

8 A. Okay.

9 Q. Is it your understanding that the PILOT
10 program is going to be more or less than the taxes
11 that would be paid by the utility to the developer?

12 A. If I understand, the PILOT program is
13 those taxes will be paid by this utility.

14 Q. Do you believe it's less or more than if
15 it was not a payment in lieu structure?

16 A. Can you repeat that again?

17 Q. I will rephrase because I think I may
18 have confused myself.

19 Do you believe that payment in lieu of
20 tax payment under Senate Bill 232, the amount of that
21 would be more or less than the taxes paid through the
22 regular public utility tax?

23 A. From what I understand, it would be less.

24 Q. So if it would be more financially
25 advantageous to the county to receive the taxes as

1 opposed to a PILOT payment, and you said you believe
2 that one of the pluses is economic resources to the
3 county. Wouldn't it be better to not have a PILOT
4 and have the taxes paid instead?

5 A. Not necessarily. This an option that
6 will have to be discussed at the county level. If I
7 understand your question correctly, getting back to
8 the theme you have, with regard to the county
9 commissioners and others, basically making that
10 decision, yes, you have a number of groups working
11 together with regard to that.

12 I think one of decisions that county
13 government is going to have to take a look at is
14 this. You have a facility here that wants to locate
15 here. You have the ability basically to collect tax
16 revenues with a PILOT program, or you have no
17 facility and no opportunity for the additional
18 income.

19 Q. Okay. Is it your assumption if they pay
20 taxes, the project will not be built?

21 A. I do not know. That will have to be
22 discussed between the county government, utility
23 service provider, project developer, which community.

24 Q. So at least is it your testimony that you
25 don't have any knowledge that the project being built

1 is contingent upon PILOT versus tax; is that correct?

2 A. That's correct.

3 MS. NAPIER: Thank you. I have no
4 further questions.

5 ALJ CHILES: Mr. Van Kley.

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

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Van Kley:

10 Q. Good morning. It's not even afternoon,
11 probably evening, I guess. Good evening, Mr. Arnold.

12 A. Hello.

13 Q. Approximately how many Ohio Farm Bureau
14 households have leased their land for the Buckeye II
15 project?

16 A. I do not know.

17 Q. Do you know whether all of the Ohio Farm
18 Bureau members living near the area where the project
19 is going to be built are in favor of the project?

20 A. I do not know. We have a policy
21 development process that the county follows. You
22 vote for the policy at your annual meeting. The
23 members are invited there. Along with other
24 democratic rules and different things, the majority
25 vote and create the policy.

1 Q. Are you aware of a minority of Farm
2 Bureau members not in favor of the Buckeye Wind II
3 facility?

4 A. Yes. There are Farm Bureau members all
5 over the state that also question other types of
6 energy development.

7 Q. Okay. You were present at the public
8 hearing in the case?

9 A. That's correct.

10 Q. Okay. Did you hear Joan Statler testify?

11 A. Yes, I did.

12 Q. And she testified against the project?

13 A. She has the right to do so.

14 Q. Uh-huh. She did, right?

15 A. Yes.

16 Q. Okay. And her husband is the past
17 president of the Ohio Farm Bureau?

18 A. I don't know the Ohio Farm Bureau in my
19 tenure, but may be the Champaign County Farm Bureau.

20 Q. Okay. All right. Let me ask you some
21 technical questions that I think were raised by your
22 testimony on page 4. Would you go to your answer to
23 question 9, please.

24 A. Okay.

25 Q. In the first paragraph of that answer,

1 you discussed some deliberations that occurred with
2 the Ohio Farm Bureau and the Ohio Land Improvement
3 Contractors Association and the Ohio Federation Of
4 Soil and Water Conservation Districts to put together
5 a set of best management practices for utility-type
6 construction projects.

7 A. That's correct.

8 Q. How long ago did this occur?

9 A. That occurred probably about 10 to 12
10 years ago.

11 Q. Okay. And were wind turbines
12 specifically discussed during those deliberations?

13 A. Not during the early ones, no.

14 Q. What kind of best management practices
15 came out of these deliberations? Were they all
16 practices related to the protection of soil and
17 water?

18 A. That's correct. And that particular
19 guidebook has been updated about every two years. In
20 the area of wind energy development, they take a look
21 at -- basically you're looking at transmission lines
22 and number of things going through the soil.

23 It's consequently the principles with
24 regard to separation of the soils, protecting
25 basically on one side the topsoil, and the B-horizon

1 on other. Also repair and maintenance of tile, how
2 grass waterways and gabions and other conservation
3 practices are that you rebuild, and also how stream
4 crossings are to be done.

5 We've always shared that information
6 materials with those particular developers, and
7 they've looked at those, and they have become part
8 basically of the staff reports and the stipulations
9 you see going forward.

10 Q. Okay. Thank you. With regard to the
11 third paragraph of answer 9 --

12 MR. ENDSLEY: Your Honor, I only see two
13 paragraphs.

14 MR. VAN KLEY: Looked like three to me,
15 but I might be wrong. Starts the words "When the
16 Ohio General Assembly." I guess you're right, that
17 looks like thea second paragraph instead of the
18 third.

19 Q. See the paragraph I'm talking about?

20 A. Yes. I can see that, the last paragraph
21 in that answer, yes.

22 Q. Okay. Were you involved with any wind
23 industry representatives in the discussions that
24 surrounded House Bill 562?

25 A. No, I was not.

1 Q. Okay. Did you receive any information
2 that either came directly from the wind industry or
3 indirectly from the wind industry during these
4 deliberations that provided you with safety
5 information about wind turbines?

6 A. No, I did not receive any.

7 Q. Okay. So you didn't receive any copies
8 of any safety manuals for wind turbines during that
9 process?

10 A. No.

11 Q. The wind industry didn't provide you with
12 any information about blade throw or ice throw or
13 shadow flicker or noise concerning -- that was
14 related to a wind turbine?

15 A. They didn't, but I was aware of those
16 issues.

17 Q. Did anybody provide you with any
18 information concerning blade throw incidents that
19 have been reported around the country and around the
20 world?

21 A. We had heard and seen those, yes.

22 Q. Okay. Has the wind industry ever shared
23 any data with the Ohio Farm Bureau concerning how
24 many accidents that industry has had with regard to
25 blade throws or ice throws or fires?

1 A. They haven't, but we are aware of those
2 issues.

3 MR. VAN KLEY: I have no further
4 questions.

5 ALJ TAUBER: Thank you.
6 Mr. Howard.

7 MR. HOWARD: No questions, your Honor.
8 Thank you

9 ALJ CHILES: Mr. Reilly.

10 MR. REILLY: Thank you, your Honor.

11 - - -

12

13

14 CROSS-EXAMINATION

15 By Mr. Reilly:

16 Q. Good evening, Mr. Arnold.

17 A. Hello.

18 Q. Staying with your answer to question 9
19 that Mr. Van Kley was talking to you about, the
20 answer you mentioned that Ohio Farm Bureau supported
21 House Bill 562.

22 A. That's correct.

23 Q. Can you tell us why?

24 A. We took a look at the need for basically
25 a process to put together wind siting guidelines in

1 Ohio. Talked to number of folks, a number of
2 government officials, a number of Farm Bureau
3 members, a number of others, and the focus was here
4 in the state the need for collaboration and for
5 balance and for a number of folks basically to work
6 together.

7 Many folks wanted basically wanted if you
8 were going to put together a renewable energy
9 project, 5 megawatts or more wind project or even a
10 solar or biomass, that you had a one-stop place where
11 you can go in the state. You would have uniform
12 standards basically across all 88 counties. You
13 would have the ability to work with a number of key
14 state agencies to take a look at the environmental,
15 aesthetic, and economic considerations that have to
16 be taken a look at in creating basically an energy
17 project.

18 And we also saw the need and the balance
19 basically for a collaborative approach where county,
20 township, and state government could work together in
21 this particular process to create projects going
22 forward.

23 And consequently, taking a look at the
24 work of the Ohio Power Siting Board since 1973 for
25 coal and nuclear fire capacity, it was a logical and

1 just fit to take a look at doing that for renewable
2 energy development in this state.

3 Q. You mentioned that you saw House Bill
4 562 as a road to a balance. Could you elaborate on
5 that a little bit? What kind of criteria would go
6 into determining what is an appropriate balance?

7 A. You would see a number of key state
8 agencies to do a number of things. Again, as I said,
9 with environmental, economic, aesthetic and others,
10 with staff members to take a look at a number of
11 things that had to be evaluated for strategic
12 placement of turbines and other things on farm ground
13 and in rural areas.

14 You also had a number of concerns,
15 especially from township folks, saying, you know, I
16 wanted to be a part of this particular process. I
17 have a real concern, because if you take a look at
18 hearings and different things, and judgment and
19 different things, and zoning operations and also
20 taking a look at, you know, my responsibility with
21 regard to governance by statute, not necessarily by
22 charter, I need help with regard to this.

23 Yes, I want to work with a number of
24 folks, basically, and have access to those particular
25 agencies who can help us through this particular

1 process. I also understand it is my responsibility
2 at that level to get people involved in the local
3 public hearings and planning at the particular time,
4 to also get involved possibly with the judicial
5 process, to be at local public hearings. So working
6 those things basically together, that's why I talk
7 about a balance and logical fit.

8 Q. Thank you. If I can direct your
9 attention to your answer to question 8 in your direct
10 testimony.

11 A. Yes.

12 Q. And therein you will notice that you talk
13 about that wind farming can provide what you call a
14 significant source of revenue for hosting farms. Do
15 you see that?

16 A. I see that.

17 Q. Is a significant source of revenue for
18 farmers an important matter?

19 MS. NAPIER: Objection. I believe this
20 is really friendly cross. He's, in essence, trying
21 to supplement the direct testimony and not give
22 cross-examination. I mean, it's very strange that
23 staff would be doing that, but, I mean, in essence,
24 he's asking him to confirm basically something that's
25 already in the direct testimony.

1 MR. REILLY: Actually, what I'm doing is
2 setting up the next question.

3 ALJ TAUBER: I'll allow the question.

4 THE WITNESS: Could you repeat the
5 question, please?

6 (Record read.)

7 THE WITNESS: Yes, it is.

8 Q. (By Mr. Reilly) Let me direct your
9 attention to answer number 5 where you reference
10 quality of life of farmers.

11 A. Yes.

12 Q. Are you involved with the quality of life
13 of farmers?

14 A. Yes. When you talk about significant
15 amount of income or income opportunities, that also
16 impacts quality of life.

17 Q. Okay. Going back to your answer to
18 question 8, you reference urban sprawl?

19 A. Yes.

20 Q. Does urban sprawl include residential
21 development, in your opinion?

22 A. It does.

23 Q. Finally, do you believe that commercial
24 wind farming is compatible with preserving farmland
25 ,is compatible with the rural nature of the area in

1 this case?

2 MS. NAPIER: Objection, your Honor.

3 We're still back friend to friendly cross.

4 MR. REILLY: I think that's a legitimate
5 question. It's been raised in the case.

6 ALJ TAUBER: I'll allow the question.

7 A. Could you repeat the question?

8 Q. In your opinion, is commercial wind
9 farming compatible with preserving farmland and the
10 rural nature of this area of Champaign County?

11 A. Given my discussion of this testimony
12 with the questions being asked, the answer is yes.

13 MR. REILLY: Thank you. We have nothing
14 further.

15 ALJ TAUBER: Mr. Endsley, redirect?

16 MR. ENDSLEY: No redirect.

17 ALJ TAUBER: Mr. Arnold, you may be
18 excused. Thank you.

19 THE WITNESS: Thank you, sir.

20 ALJ TAUBER: Mr. Endsley.

21 MR. ENDSLEY: Yes, Thank you, your Honor.

22 At this time I'd like to renew our motion to move
23 into evidence Exhibit FB-1.

24 ALJ TAUBER: Andy objection to Farm
25 Bureau Exhibit 1?

1 MR. HOWARD: No, your Honor.

2 ALJ TAUBER: It shall be moved into the
3 record.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 ALJ CHILES: Ms. Leppla.

6 MS. LEPPLA: Champaign Wind would like to
7 call Hugh Crowell as the next witness.

8 - - -

9 HUGH F. CROWELL

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

12 DIRECT EXAMINATION

13 By Ms. Leppla:

14 Q. Good evening, Mr. Crowell.

15 A. Good evening.

16 Q. Could you please state your name, title,
17 and your business address for the court?

18 A. My name is Hugh Crowell. I am a senior
19 project manager and principal at Hull & Associates,
20 6397 Emerald Parkway, Suite 200, Dublin, Ohio 43016.

21 MS. LEPPLA: At this time we would like
22 to mark the direct testimony of Mr. Crowell as
23 Company Exhibit 19.

24 ALJ CHILES: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Ms. Leppla) Mr. Crowell, can you
2 identify Company Exhibit 19?

3 A. Yes.

4 Q. What is that?

5 A. It's my direct testimony.

6 Q. And at this time do you have changes to
7 your direct testimony?

8 A. I do. There's one minor change.

9 Q. What page is that?

10 A. Page 13, it's in response to question 11.

11 Q. What is the change you'd like to make?

12 A. In the first full paragraph on 13, middle
13 of the paragraph, there's a sentence that says, "It
14 is expected that field confirmation of the
15 delineation by the USACE will take place no later
16 than spring 2012." I'd would like to change that to
17 "will take place sometime in 2013."

18 Q. Do you have any other changes for your
19 testimony at this time?

20 A. No.

21 Q. If I would ask you the same questions in
22 your testimony today, would your answers be the same?

23 A. They would.

24 MS. LEPPLA: Your Honor, Mr. Crowell is
25 ready for cross-examination.

1 ALJ CHILES: Ms. Parcels.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Parcels:

5 Q. Good evening, Mr. Crowell. I'm Breanne
6 Parcels representing the city of Urbana, and I don't
7 have too many questions for you.

8 But in your response to question 2 in
9 your direct you say you are responsible for
10 procuring, managing, and performing consulting work,"
11 and it goes further and talks about "wetland and
12 stream delineation and assessment, surface water
13 quality standards and permitting."

14 I'm not clear, are you also in charge of
15 water hydrology studies for Hull & Associates, or is
16 that someone else within your company?

17 A. That would be someone else in my company.
18 I do sometimes assist in those types of studies.

19 Q. And what qualifications do you possess
20 then to do those types of, I guess, hydrology studies
21 for -- particularly, I'm asking about underground
22 aquifers?

23 A. I have no expertise in the area of
24 underground aquifers.

25 Q. This will make the questions short then.

1 You indicated that -- well, Hull
2 indicated in Exhibit F in the Application, which
3 should be in one of the binders in front of you, I
4 can't remember which volume it's in, that Hull
5 consultant, hydrogeologic from Federal Emergency
6 Management, the United States Department of
7 Agriculture, United States Geological Service
8 Champaign County Engineer, Champaign County Health
9 Department, Ohio Environmental Protection, Ohio
10 Department of Agriculture, Ohio Department of Natural
11 Resources, and Ohio State University Extension.

12 And on page 28 of Application, which is
13 Volume I, it says the area in the project is
14 characterized by springs and groundwater fed surface
15 waters.

16 Do you know, based on your study of the
17 area, what source the city of Urbana gets its drinking
18 water from?

19 A. I don't know the answer to that.

20 Q. Was it the streams that you were studying
21 or the aquifer that someone else in the company was
22 studying?

23 A. I don't know what the source of water is
24 for the city of Urbana.

25 Q. Okay. Also referencing the Application

1 on page 29, the Applicant indicates it probably would
2 not be necessary to blast into bedrock for excavation
3 of turbine foundations. In your experience, you said
4 that you don't feel qualified to comment or have
5 opinions so much on aquifers, but can blasting have
6 an effect on both the aquifers and the surface water
7 drainage?

8 A. It could under certain circumstances.

9 Q. And what sort of circumstances are those?

10 A. Well, if blasting occurred in or very,
11 very near a surface water.

12 Q. I'll direct your attention back to your
13 direct testimony. Your answer to the question on
14 page 7, it gets into a little bit of fiscal jargon.
15 Can you tell me what a Category I wetland is as
16 opposed to a Category II, just in layman terminology?

17 A. Yes. The state of Ohio places all
18 wetlands in the waters of the state into one of three
19 categories based on their assessed value, ecological
20 value, and habitat characteristics.

21 Category I is the lowest category of
22 wetlands in terms of quality. These are generally
23 low grade, low diversity, emergent, meaning dominated
24 by herbaceous vegetation, not woody vegetation,
25 wetlands that are quite common throughout the state.

1 Category II is a middle quality wetland
2 that may or may not have some woody plant components,
3 supports wildlife and many other wetland functions.

4 Category IIII wetlands are the highest
5 value, adequate land, and are highly protected by the
6 State of Ohio under the Wetland Water Quality
7 Standard. They generally have superior diversity
8 characteristics and many other superior functions.

9 Q. Are you familiar with the Cedar Bog?

10 A. I am.

11 Q. Would you characterize the Cedar Bog a
12 Category III wetlands?

13 A. Yes.

14 Q. And do you know how far Cedar Bog is
15 outside of the project area?

16 A. Without that map in front of me, just an
17 estimator, I'd say it's approximately four to five
18 miles, perhaps.

19 Q. Okay. And are you familiar with the
20 turbine locations indicated by the Applicant?

21 A. Yes.

22 Q. How far would you say Cedar Bog is to the
23 nearest turbine in the project area?

24 A. I would say about that distance, about
25 four to five miles.

1 Q. Okay. I'll direct your attention to
2 page 31 of the Application that talks about
3 floodplains -- well, whoever wrote the Application
4 mentioned that Hull studied Treecko Creek, Dugan Run,
5 Buck Creek, Little Darby Creek. Are those all in the
6 same watershed, to your knowledge?

7 A. You said page 31.

8 Q. Application, yes.

9 A. I don't believe all of those streams are
10 in the same eight-digit hydrologic unit code or hot
11 code or watershed.

12 Q. So you know what watershed each of those
13 would be assigned to?

14 A. I don't recall precisely.

15 Q. Okay. Now, is it your experience from
16 your study of the project area that there are
17 actually two main watersheds in that six-township
18 area?

19 A. Yes.

20 Q. And can you identify those two major
21 watersheds?

22 A. Yes. One is Mad River Watershed and one
23 is the Big Darby Watershed, which is really part of
24 the Scioto River Watershed.

25 Q. And you indicate on page 10 of your

1 direct testimony, looks like fourth paragraph down,
2 there is one general permit applicable to the Big
3 Darby Watershed as opposed to your general permit for
4 anywhere in Ohio. What is so special about the Big
5 Darby Watershed?

6 A. The Big Darby Stream called the Big
7 Darby, is unique nationwide, very high quality,
8 perennial stream, high biological diversity, a fair
9 number of rare and threatened and endangered aquatic
10 species are present. It's a beautiful stream, and
11 it's highly protected by the State of Ohio and
12 through the efforts of other organizations, nonprofit
13 organizations.

14 Q. Do you know whether the Big Darby has
15 been designated by the Ohio Department of Natural
16 Resources as a scenic river?

17 A. Yes, it is.

18 Q. Do you know whether Mad River, the other
19 watershed, has been designated by the Ohio Department
20 of Natural Resources as a scenic river?

21 A. I'm not certain about that.

22 Q. Okay. On page 4 of your testimony you
23 indicated Hull & Associates performed desktop and
24 field screening for potential presence of endangered
25 and threatened species, and you indicate that the

1 Darby Watershed is one of those areas adjacent to the
2 project area that may contain endangered species.

3 A. Correct.

4 Q. And there were no endangered species
5 found by Hull in the project areas. Is that what I'm
6 to understand that your direct testimony indicates?

7 A. That's correct.

8 Q. Okay. We went into the difference
9 between Category I, Category II, Category III
10 wetlands. Can you tell me again in layman's terms,
11 because I'm not a hydrologist or a stream biologist,
12 the difference an exceptional warm habitat stream and
13 an exceptional cold water habitat stream, again, in
14 layman's terms?

15 A. Yes. Again, the state of Ohio has an
16 established water quality standard in the Ohio
17 Administrative Code, which explain various categories
18 for levels of quality in habitat that exists
19 throughout the state in various stream types.

20 The vast majority of perennial streams in
21 Ohio are designated as warm water habitat. These are
22 average quality streams. They have generally good
23 biological diversity. They have good habitat
24 development, and they are relatively common in Ohio.

25 Cold water has been to the -- I should go

1 on to an exceptional warm water habitat. Exceptional
2 warm water habitats are warm water habitat streams
3 that exhibit an exceptional degree of quality based
4 on biological diversity, habitat quality, and, to
5 some extent, flood characteristics.

6 Cold water streams are those in which a
7 great deal of their basic volume of flow is
8 contributed by groundwater, cold groundwater, so
9 these tend to be very cold streams, and as a result
10 they develop a unique biological diversity of taxa
11 that specifically evolved and adapted for life in
12 cold water conditions.

13 Q. Would you characterize, based on your
14 knowledge, the Mad River as one such cold water
15 environment or habitat?

16 A. I haven't specifically looked up the Ohio
17 Administrative Code status of the Mad River. I may
18 have done it in past, but I've forgotten what the
19 status was.

20 Q. That's fine, just again if you knew.

21 Last but not least, you went into some
22 significant detail about the number of and types of
23 habitats for both wetlands and streams in your direct
24 testimony.

25 Do you believe that Condition 36 of the

1 Staff Report, if you look at the Staff Report, which
2 has some requirements for the company to do
3 substantial testing before an erection of a
4 turbine -- I should back up.

5 You talk in your direct testimony about
6 the requirements for certain permits from both the
7 Ohio EPA and National Pollutant Discharge Elimination
8 System, which I think, if I understand your testimony
9 correctly, is through the Army Corps of Engineers or
10 is that through EPA as well?

11 A. Well, the National Pollutant Discharge
12 Elimination System, or NPDES system, is administered
13 by the EPA at the national level. The state level is
14 administered by Ohio EPA. I'm not sure -- I don't
15 recall what the previous permitting program you
16 mentioned was?

17 Q. You mentioned some permits that you
18 might -- not you, but the company may have obtain
19 from the US Corps of Army Engineers.

20 A. Right.

21 Q. So could you describe briefly the
22 difference? Because, again, it's a lot of technical
23 jargon, and I don't want to be confused.

24 A. Okay. Anytime there is the potential for
25 the discharge of fill material into federal waterway,

1 something designated as a water of the United States,
2 which includes almost all streams and most wetlands
3 in Ohio, there is a permit required by -- under
4 Section 404 of the Clean Water Act, the Federal Clean
5 Water Act. That Section 404 permit is reviewed,
6 administered, and issued by the US Army Corps of
7 Engineers. That's their responsibility.

8 Associated with that permit and in order
9 to make a 404 permit valid, one must also have a
10 water quality certification that is issued under
11 Section 401 of the Federal Clean Water Act.
12 The 401 program is reviewed, administered, and issued
13 by the Ohio Environmental Protection Agency.

14 As I mentioned, the NPDES program is also
15 administered in Ohio by the Ohio EPA. Those are the
16 main permits that are required for anything related
17 to impacts or things that may impact surface waters
18 in the project area.

19 Q. All right. Thank you for clearing that
20 up.

21 And just to clarify, when you talk about
22 fill material, you mean dirt, gravel, and other
23 things that can be excavated when digging out a
24 turbine foundation site?

25 A. That's correct.

1 MS. PARCELS: I have nothing further,
2 your Honor. Thank you.

3 ALJ CHILES: Ms. Napier.

4 MS. NAPIER: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Napier:

8 Q. Mr. Crowell, my name is Jane Napier. I
9 represent the county and townships between the
10 footprint of the project.

11 I had reviewed your direct testimony and
12 you have an extensive ecological experience and
13 background, correct?

14 A. Correct.

15 Q. And can you tell me what an ecological
16 consultant does?

17 A. An ecological consultant is an individual
18 who works for a private business, a consulting
19 business, which helps entities, whether they be
20 municipalities, private industry, a variety of
21 different types of clients, investigate and
22 potentially permit or deal with in other ways
23 ecological issues on sites, whether those are
24 terrestrial, ecology, aquatic ecology.

25 Q. Thank you. In answer to question 3, is

1 that your full educational and professional
2 background, I guess, relevant professional
3 background?

4 A. Yes.

5 Q. I wanted to ask you first, have you
6 reviewed the Staff Report of Investigation?

7 A. Yes, I have.

8 Q. There's one up there somewhere.

9 A. I brought one with me.

10 Q. Great. If you could look at condition
11 number 19, I'll give you a chance to look at that.

12 A. Yes, I have it in front of me.

13 Q. Are you familiar with that section?

14 A. Yes.

15 Q. Okay. Do you endorse that condition?

16 A. In my direct testimony I indicated that
17 there were portions of Condition 19 as written in the
18 Staff Report that appeared to me to be redundant with
19 some of the requirements of Section 404 and
20 401 program of the Clean Water Act to which I
21 previously alluded.

22 I did not, however, object to the
23 condition as a whole. I do know from my
24 understanding that the OPSP staff agreed to
25 modifications by the Applicant to that condition.

1 Q. Are they your suggestions?

2 A. No. Those are suggestions of the
3 Applicant.

4 Q. Are you endorsing the suggestions of
5 Applicant?

6 A. Yes.

7 Q. Why?

8 A. Well, because I am deferring to them.
9 I'm deferring to their view of that condition.

10 Q. Aren't you the expert as opposed to the
11 Applicant on these issues?

12 A. I am an expert in the area of ecology and
13 wetlands, and to the extent that that condition
14 addressed ecology and wetlands, I commented
15 specifically on that. In all other aspects or
16 comments on that condition, I deferred to the
17 Applicant.

18 Q. And the portion that they would like to
19 strike is basically the third sentence of section 19
20 till the end; is that correct?

21 A. I don't know. I know that they had --
22 the Applicant had additional comments on section 19,
23 and that those were accepted or agreed to, but I
24 don't know exactly what the revision was.

25 Q. Okay. Have you discussed it with

1 EverPower?

2 MS. LEPPLA: Your Honor, I object. If
3 she could point to the changes that she is talking
4 about.

5 Q. If you look under Mr. Speerschneider's
6 testimony, which was admitted, page 16, Exhibit 2.

7 A. Can you tell me what page that is?

8 Q. 16.

9 A. Okay, I have it in front of me.

10 Q. Thank you.

11 THE WITNESS: Could you repeat the
12 question, please?

13 ALJ CHILES: Could you clarify, page 16
14 of what?

15 MS. NAPIER: I believe it is Exhibit 2,
16 the Direct Testimony of Michael Speerschneider.

17 MS. LEPPLA: Your Honor, it's actually
18 Company Exhibit 5.

19 MS. NAPIER: Thank you.

20 Q. (By Ms. Napier) Have you been able to
21 look at it?

22 A. Yes. And I did ask that you repeat the
23 question.

24 MS. NAPIER: Will the court reporter
25 repeat the question.

1 (Record read.)

2 Q. Can you tell me why you believe that this
3 should be removed from the portions that
4 Mr. Speerschneider has recommended should be removed
5 from Condition 19?

6 A. I don't -- I don't know
7 Mr. Speerschneider's mind on this, why he recommended
8 the removal of these lines.

9 Q. Would you agree with the removal then?

10 A. Only to the extent that they affect my
11 testimony, my direct testimony about Condition 19.

12 Q. Okay. So, I guess, what is your
13 testimony as to Condition 19?

14 A. My testimony on Condition 19 is very
15 clear. It's in my direct testimony.

16 Q. Okay.

17 A. And it says there appears to be portions
18 of Condition 19 referring specifically to wetland and
19 streams that are redundant, and that would be covered
20 under Section 404 and 401 permitting portions that
21 the Applicant is required to go through.

22 Q. So since portions don't give me
23 specifically what you would like removed or what you
24 are approving, are you agreeing with
25 Mr. Speerschneider's recommendation?

1 A. If you would like to go through this line
2 by line, I can tell you which portions are consistent
3 with my direct testimony.

4 Q. Okay. Let's start with the
5 Mr. Speerschneider's copy, which he has included
6 "unless addressed by final engineering drawings."

7 A. That's not part of my direct testimony.
8 I don't know his mind on why he added that line.

9 Q. I'm not asking you his mind. I'm asking
10 your opinion as to that change?

11 A. I don't have an opinion.

12 Q. Okay. Let's skip down to the line that
13 is marked off "the plan," starts with "the plan."

14 A. Yes.

15 Q. "Shall consider the location of streams,
16 wetlands, wooded areas, and sensitive plant species
17 as identified by the ODNR Division of Wildlife."

18 A. I'll continue reading. "And explain how
19 impacts to all sensitive resources will be avoided or
20 minimized by construction, operation, and
21 maintenance."

22 Q. You agree that that statement should stay
23 in?

24 A. No. I agree that it should be struck
25 because that's consistent with my testimony. That

1 information is provided -- will be provided in any
2 permit that's issued under Section 404 and 401 for
3 this project. Therefore, it's redundant that it
4 occurs in the condition.

5 Q. So the Applicant then doesn't have to
6 submit to the staff the plan; is that your testimony?

7 A. No. I think they're -- they don't have
8 to resubmit the location of streams, wetland, wooded
9 areas, and sensitive plant species, as that's going
10 to be part of the permitting process.

11 Q. Permitting process?

12 A. Section 404 and 401, which is a public
13 review process.

14 Q. So you don't believe that that should be
15 covered in that? Those are issued by a different
16 entity than the staff?

17 A. That's correct. And also I should point
18 out the location of streams, wetlands, wooded areas,
19 and sensitive plant species as identified by the
20 ODNR, and explaining how impacts to all sensitive
21 resources will be avoided or minimized during
22 construction, operation, and maintenance. Then
23 that's already addressed in that Application.

24 Q. Do you believe that's an appropriate plan
25 set forth in the Application?

1 A. The plan for the?

2 Q. Plan that is set forth in Section 19 or
3 Condition 19?

4 A. I assume you are referring to the
5 construction and maintenance access plan?

6 Q. I don't know. You said it was in the
7 Application.

8 A. This information, you mean?

9 Q. I'm just repeating what you just said.
10 You said this information is already in the
11 Application.

12 A. Yes.

13 Q. Where is it in there?

14 A. Oh, it's in the appendices to the
15 Application, specifically the one dealing with
16 streams, wetlands, threatened, and endangered
17 species.

18 Q. So do you believe that to be enough
19 detail to meet what the staff has recommended?

20 A. Yes.

21 Q. So at least there isn't any reason to
22 strike it if you can present it to the staff; is that
23 correct?

24 A. I don't understand the question.

25 Q. If it's already been drafted, why don't

1 you just submit it to staff for their review?

2 A. It has been submitted. It's in the
3 Application.

4 Q. Okay. So then, in essence, you're saying
5 that Applicant has fulfilled this condition already,
6 correct?

7 A. Yes.

8 Q. So there's no reason to strike it; is
9 that correct?

10 A. Well, the only reason to strike it is if
11 it was redundant at the time, my whole point.

12 Q. Why is it redundant if they already said
13 they submitted it?

14 A. Well, to submit it again and provide it
15 on a later plan when it's already included in the
16 Application and will also be included in 604 and
17 601 applications, I would say that's redundant. Why
18 include it again?

19 Q. All right. So the Application was filed
20 this year. Do you have any idea when the
21 construction will occur on the project?

22 A. I don't have a clear idea of when that
23 would be.

24 Q. Okay. Would there be any reason to
25 update that plan?

1 A. I don't think so.

2 Q. All right. Never any changes in
3 sensitive plant species, any changes in streams,
4 ditches that need to be crossed?

5 A. There can be.

6 Q. So would it make sense to have an update
7 on that, when construction is going to happen?

8 MS. LEPPLA: I object to what "that" she
9 is talking about for clarification?

10 ALJ CHILES: Can you rephrase the
11 question for clarification?

12 Q. Wouldn't it be appropriate to have it
13 updated when construction was going to be commenced,
14 if necessary?

15 A. In my opinion as an ecologist, these
16 conditions, wetlands, streams, endangered species,
17 don't change significantly over a period of a few
18 years. The typical accepted validity of a wetland
19 and stream delineation and of threatened and
20 endangered species generally is about five years.

21 Q. Do you know when you did the -- some of
22 the studies that were included in Exhibit E and F of
23 the Application?

24 A. When I did these?

25 Q. Yes.

1 A. Yes. Those studies were done last year,
2 2011.

3 Q. Okay. Some of them were also done in
4 2009; is that correct?

5 A. Surface water and wetland evaluation in
6 Section 2.2 in Appendix F --

7 Q. Okay.

8 A. -- states the delineation of surface
9 water evaluation was conducted in October and
10 December 2011.

11 Q. You had done some of the first project
12 also, the Buckeye I; is that correct?

13 A. Yes.

14 Q. You didn't do those in 2011, though,
15 correct?

16 A. Correct.

17 Q. Do you know if Buckeye I has been done,
18 been constructed as of yet?

19 A. It has not been constructed.

20 Q. So there may be some time between
21 Application and construction, correct?

22 A. Yes.

23 Q. I'll move on from there. You also
24 indicate that you supervise six biologists in your
25 current position, correct?

1 A. Yes.

2 Q. And you have undertaken four studies,
3 your firm has undertaken four studies, correct?

4 A. Correct.

5 Q. And three of the four involved kind of
6 what I would term to be ecological in nature. Would
7 that be a fair statement?

8 A. I don't know. Which ones are you
9 referring to?

10 Q. Well, I guess the fourth one would
11 probably have been the Transportation Route Survey.
12 That's a little bit not so ecologically involved. Is
13 that a fair statement?

14 A. I would agree with that.

15 Q. Okay. Now, did you conduct the
16 Transportation Route Study yourself?

17 A. No.

18 Q. Who did?

19 A. Hull Engineering Group.

20 Q. Okay.

21 A. Under my management.

22 Q. Are you an engineer?

23 A. No.

24 Q. Okay. Do you know why the study was
25 requested for this project?

1 A. It's a requirement, as I understand it,
2 of the Ohio Power Siting Board rules to have some
3 general understanding of the routes that are going to
4 be for used to transport equipment and materials to
5 the facility area for construction.

6 Q. And if I can turn your attention to
7 Exhibit E.

8 A. Okay.

9 Q. On page 3 under 1.3, the study states
10 that "The primary, secondary, and tertiary roads
11 identified in the SUS during the 2009 study will be
12 used for the construction of Buckeye II wind farm,"
13 correct?

14 A. Yes.

15 Q. Is that a final transportation route?

16 A. No.

17 Q. Okay. Do you know if the county engineer
18 has been consulted regarding that transportation
19 route?

20 A. I don't know for certain.

21 Q. Okay. So somebody in your firm has kind
22 of -- went out to Champaign County, it sounds like;
23 is that correct?

24 A. Yes.

25 Q. Okay. And they reviewed the roads they

1 felt as though would be the road used during
2 construction in the Buckeye II wind farm; is that
3 correct?

4 A. That's correct.

5 Q. Okay. Did you consult with them as to
6 which roads they were going to consider?

7 A. No.

8 Q. Okay. Do you know who did?

9 A. Yes.

10 Q. Who was that?

11 A. In our company it was Mark Boniface who
12 is our engineering division leader, and he was
13 assisted by Eric Schaffer, who is a professional
14 engineer under his supervision.

15 Q. Okay. Did those gentlemen map out the
16 proposed transportation route for construction of
17 Buckeye II wind farm?

18 A. They mapped out preliminary routes, and
19 these are not the final routes.

20 Q. Okay.

21 A. The final -- the final routes are
22 determined by the company that actually specializes
23 in delivering this equipment because of its size and
24 weight and requires specialized vehicles to transport
25 them.

1 Q. Okay. Now, you indicated somewhat that
2 you were somehow involved with this study in your
3 firm?

4 A. I was involved as a reviewer and as a
5 manager.

6 Q. Okay. What kind of review as a
7 nonengineer would you give the study?

8 A. I would give it a review for clarity,
9 consistency, and not so much on technical content in
10 which I'm not a subject area expert.

11 Q. Now, do you believe as you're testifying
12 today on that study you would be able to answer my
13 questions if I asked you about that study?

14 A. Depends on the level of detail. If I get
15 into detail about decisions that were made on the
16 base of an engineer's judgment and education and
17 experience, I would not be able to answer those.

18 Q. Do you believe that's important to
19 presenting this transportation route survey?

20 A. Could you --

21 Q. Do you think that discussing the details
22 as set forth in the Transportation Route Survey is
23 important to presenting that study here today?

24 A. Well, I think it is, to the extent -- I
25 would say that it is well discussed in the report

1 itself in the appendix.

2 Q. Okay. But you didn't write the appendix?

3 A. I did not review the appendix.

4 Q. Now, were you present when the on-site
5 visual assessments were done?

6 A. No.

7 Q. I thought you answered that, but I'm not
8 sure.

9 A. No.

10 Q. Okay. Do you know if someone from
11 EverPower went on the on-site visual assessment?

12 A. They did not.

13 Q. Okay. What I wanted to talk to you about
14 specifically is on page 9 of that study.

15 ALJ TAUBER: For clarity of the record,
16 can you explain what you mean by "that study"?

17 MS. NAPIER: I'm sorry, on Exhibit E, the
18 Transportation Route Study, page 9.

19 Q. Under 3.1, these are visual observation
20 results. You indicate that under number 1, that
21 "Stringtown Road from South Mutual Union Road to
22 access road leading to turbine 112, asphalt is in
23 good condition."

24 Can you tell me what the basis of that
25 assertion is?

1 A. Not as an engineer.

2 Q. Well, you didn't actually see the
3 asphalt, correct?

4 A. That's correct.

5 Q. Okay. And you would be relying on
6 someone else's assessment; is that correct?

7 A. Correct.

8 Q. Okay. And do you know what the term
9 "good condition" meant to that person?

10 A. I do not.

11 Q. Do you know what grade of asphalt was set
12 forth on Stringtown Road from South Mutual Union Road
13 to the access road leading to turbine 112?

14 A. I do not.

15 Q. Okay. Do you have any idea of the grade
16 of asphalt on any of those six roads identified under
17 visual observations?

18 A. I do not.

19 Q. Okay. You identify or someone identifies
20 in -- on page 8, the last full sentence, that says
21 "Only identifiable improvements or the widening of
22 intersections and sharp curves, which is a relatively
23 simple procedure that will require authorization for
24 the right-of-way owner, ODOT, county or, township,
25 and the property owner." Correct?

1 A. Correct.

2 Q. Do you know what that procedure is?

3 A. In general terms, I do. It would be to
4 require or to obtain the temporary easements at a
5 turn, and then prepare that corner within the
6 easements for the turn. These are very tight, very
7 small intersections, some of them, and very
8 restricted.

9 Q. And how do you know some of the
10 intersections are tight and small?

11 A. From the information presented in this
12 report.

13 Q. Okay.

14 A. Developed by Hull.

15 Q. So someone other than you?

16 A. Correct.

17 Q. You indicated that some improvements are
18 necessary, correct, on the intersections, I believe?

19 A. Are you referring to a section of this
20 particular report?

21 Q. I believe I'm just referring to what you
22 said about intersections were small and needing
23 increased in some way; is that correct?

24 A. That's correct.

25 Q. And do you know how those improvements

1 were calculated?

2 A. It's my understanding from review of the
3 report and from speaking with the engineers that
4 these were calculated based on the calculated turning
5 radius of vehicles that will be used to deliver, in
6 particular, the turbine blades, which are quite long
7 and require a specialized vehicle.

8 Q. Okay. Let's look at figure 1 at the back
9 of that.

10 MS. LEPPLA: What page are you referring
11 to, counsel?

12 MS. NAPIER: Figure 1, the first one at
13 the end of that.

14 Q. Can you tell me what increase -- how much
15 front footage is increased on this picture of the
16 intersection?

17 A. I don't know.

18 Q. Okay. How was this calculated, this
19 increase?

20 A. I assume it was calculated based upon the
21 length of the vehicle that needed to make this turn.

22 Q. You say you're assuming. Do you know?
23 Do you have any personal knowledge of that?

24 A. My personal knowledge comes from reading
25 the report.

1 Q. Okay. So I also have the personal
2 knowledge to testify on this study?

3 MS. LEPPLA: Objection. That's
4 badgering.

5 ALJ CHILES: Ms. Napier?

6 MS. NAPIER: I'll rephrase. I'll
7 withdraw that question.

8 Q. Let's go to figure 2. Do you know how
9 much acreage is needed to increase this intersection
10 in figure 2?

11 A. I don't know, unless it's included in the
12 report.

13 Q. You don't have any notes on it with you
14 today?

15 A. No.

16 Q. Let's go to figure 3. Do you know how
17 much acreage on front footage is needed to increase
18 the intersection in figure 3?

19 A. No.

20 MS. LEPPLA: Your Honor, I object to this
21 line of questioning. Mr. Crowell's purpose here is
22 to summarize the report, summarize the studies done
23 by his firm, under his supervision, and he's
24 testifying, you know, he understands the report and
25 he's testifying based on that.

1 ALJ CHILES: Ms. Napier.

2 MS. NAPIER: Actually, your Honor, his
3 answers illustrate, I think, an issue that has come
4 up throughout this. He is presenting a study which
5 he is not an engineer. He cannot answer any question
6 about the specifics in this study.

7 This study we would request should be
8 stricken as the person presenting it is not an
9 expert, cannot rely on hearsay in order to testify.
10 He has stated he is not an engineer. Basically he's
11 read it. So I apologize, I know the late date, and
12 I'm getting a little tired.

13 ALJ CHILES: You are moving to strike
14 Exhibit 2?

15 MS. NAPIER: Exhibit E, the whole thing.
16 He indicated he can't tell me any of the conclusions
17 that are set forth in Exhibit E.

18 MR. VAN KLEY: We join that objection,
19 your Honor.

20 MS. PARCELS: As would the city.

21 ALJ CHILES: We all need to be talking
22 one at time.

23 Ms. Parcels, do you have an argument to
24 set forth?

25 MS. PARCELS: In reference to my

1 testimony, I cut off the line of questioning because
2 he indicated he was not an expert in aquifers in
3 interest of time.

4 But along the same lines, Ms. Napier
5 questioned him extensively to show that he's not an
6 engineer for the route study and cannot answer any
7 questions about the route study.

8 ALJ CHILES: Ms. Napier, do you have
9 anything to add?

10 MS. NAPIER: We ask that the portion that
11 deals with the Transportation Route Study would also
12 be stricken in his testimony. I certainly understand
13 he's an ecologist. I'm not questioning that portion.
14 But he isn't an engineer, and the Transportation
15 Route Study is far outside of his purview as an
16 ecologist. He indicated his background. He has no
17 background in anything other than environmental
18 ecology.

19 ALJ CHILES: Thank you. Can you give us
20 some specifics, please, so we know exactly what you
21 are moving to strike, the stated portions of his
22 testimony?

23 MS. NAPIER: I will do so. I believe
24 that question 6 talks about the Transportation Route
25 Study.

1 I believe page 52, top of the page, put
2 those into sections, he discusses the Transportation
3 Route Study and makes conclusions as to the Exhibit
4 E, although he doesn't identify it. He does identify
5 it by name.

6 ALJ CHILES: I understand what your basis
7 is. I need to know exactly what you are moving to
8 strike.

9 MS. NAPIER: I believe the whole
10 paragraph on the Transportation Route Study.

11 I can keep questioning as to his
12 knowledge as set forth, vis a vis. I just don't
13 think we need to waste the Tribunal's time.

14 MS. LEPPLA: Your Honor, I would also
15 like to respond.

16 ALJ CHILES: Right. I understand. I'm
17 confused. Is it the Transportation Route Study,
18 that's all you're objecting to at this time?

19 MS. NAPIER: Yes, which is Exhibit E,
20 including all of the exhibit.

21 ALJ CHILES: Exhibit E, as well as the
22 paragraph offered on the Transportation Route Study.

23 MS. NAPIER: I believe Exhibit E, and the
24 Route Evaluation Study he addressed in his direct
25 testimony, along with the figures.

1 ALJ CHILES: The entirety of Exhibit E,
2 as well as the paragraph entitled Transportation
3 Route Study.

4 MS. NAPIER: Yes, thank you.

5 ALJ CHILES: Ms. Leppla.

6 MS. LEPPLA: First of all, Exhibit E that
7 we are referring to is Exhibit E of the Application.
8 That has already been admitted into evidence as
9 Company Exhibit 1. It is already admitted. The
10 motion to strike is a bit late as far as Exhibit E
11 goes.

12 As far as Mr. Crowell's testimony,
13 Mr. Crowell was brought here today, and I believe the
14 purpose of his testimony is stated in his testimony,
15 to describe the studies of his firm that were
16 undertaken at his direction. He was here to
17 summarize the results of those, and Champaign Wind
18 isn't required to bring in every single person that
19 worked on a study, as it would be a number of people.
20 And, obviously, we have already gone on quite long
21 with the number of witnesses we've had.

22 But Mr. Crowell has read the study, he
23 understands the study. He has spoken to the
24 engineers at his office, and it was done at his
25 direction.

1 ALJ CHILES: Thank you. The motion to
2 strike is denied. The Board will afford Mr. Crowell
3 the appropriate weight in light of his experience.

4 MS. NAPIER: Your Honor, we would
5 strongly note our objection to the record. He is
6 certainly not an expert. We have stricken lots of
7 hearsay that experts are reviewing. This person is
8 not even an expert.

9 ALJ CHILES: Your objection is noted for
10 the record.

11 MS. NAPIER: That's fine.

12 ALJ CHILES: You may continue.

13 Q. (By Ms. Napier) For sake of time,
14 Mr. Crowell, with respect to appendix 1 and figures
15 1 through 9, and the remaining photographs set forth
16 in figure 10 through 17 --

17 MS. LEPPLA: Ms. Napier, referring to
18 Exhibit E?

19 MS. NAPIER: Exhibit E.

20 Q. Your answer would be the same, that you
21 don't know how these photos or figures were obtained
22 and the changes made to them were set forth?

23 A. I know how the photographs were obtained.

24 Q. Okay. Did you take those photographs?

25 A. No.

1 Q. Were you present when the photographs
2 were taken?

3 A. No.

4 Q. Do you know whether those photographs
5 actually represent the text underneath each picture?

6 A. I have complete confidence in the people
7 that I work with.

8 Q. I guess my question is, do you have
9 personal knowledge that, for instance, like the photo
10 of the intersection of State Route 4 and State Route
11 36?

12 A. I must assume it is as depicted. I was
13 not there when it was taken.

14 Q. Okay. Would your answer to all the
15 photos be the same?

16 A. Yes.

17 Q. And figures 10 through 17 to identify --
18 do you see those there in Exhibit E?

19 A. Yes.

20 Q. And 10 through 17, did you calculate the
21 proposed --

22 MS. LEPPLA: I'm sorry, counsel, I'm not
23 following where you are at?

24 MS. NAPIER: 10 through 17 at the back of
25 Exhibit E after the photos.

1 MS. LEPPLA: Thank you.

2 Q. This is figure 10. Do you know how they
3 calculated the increase in that intersection?

4 A. No.

5 Q. Figure 11, do you know how someone
6 increased the intersection in that picture?

7 A. I did not do the work, no.

8 Q. Figure 12, same question?

9 A. Yes. No, I don't know how that was done.

10 Q. Figure 13, same question?

11 A. I have told you that I know in reading
12 the report how it was done.

13 Q. Okay. So tell me how it was done.

14 A. I already told you it was based on the
15 length of the vehicle that's needed to transport
16 particularly turbine blades, which are quite long,
17 using a specialized vehicle to make that turn.

18 Q. So in figure 13, tell me what the
19 calculation is?

20 MS. LEPPLA: Objection, your Honor.
21 Asked and answered this question.

22 MS. NAPIER: I don't think I answered any
23 question.

24 MS. LEPPLA: I'm sorry, not you, the
25 witness.

1 ALJ CHILES: The objection is overruled.
2 If we need to go through one by one, by all means.

3 Q. (By Ms. Napier) Mr. Crowell, we hope for
4 a clean record. So you didn't prepare figure 13?

5 A. No.

6 Q. You don't have any personal knowledge as
7 to how the calculations were made to increase this
8 intersection?

9 A. No.

10 Q. Figure 14, did you help prepare this
11 figure?

12 A. No.

13 Q. Do you have any personal knowledge how
14 the increase in the intersection was calculated?

15 A. No.

16 Q. Do you have any idea even how much land
17 would need to be taken to increase this intersection?

18 A. Not unless that's specifically stated in
19 the report, I wouldn't know.

20 Q. Do you need to look?

21 A. Yes. I don't believe those areas are
22 reported in the report.

23 Q. Okay. So we will go to figure 15. Did
24 you prepare this figure?

25 A. No.

1 Q. Do you know how the increase in the
2 intersection was calculated?

3 A. No.

4 Q. Figure 16, did you prepare the figure?

5 A. No.

6 Q. Do you know how this figure was
7 calculated for the increase?

8 A. No.

9 Q. Figure 17, did you prepare figure 17?

10 A. No.

11 Q. Do you know how the increase in the
12 intersection was calculated?

13 A. No.

14 MS. NAPIER: For the record, we renew our
15 motion to strike as set forth in Exhibit E.

16 ALJ CHILES: And I will renew my denial
17 of the motion to strike, but your motion is noted for
18 the record.

19 MS. NAPIER: Okay.

20 Q. I'd like to go back to the text of
21 Exhibit E. The study indicates in page 12 and 13
22 Proposed Mitigation, 4.2.1, Insufficient Roadway
23 Width.

24 Do you know which routes were indicated
25 to reroute overwidth vehicles to wider roadways,

1 which would be the second bullet point in that?

2 A. Are you asking me which specific roads
3 that would apply to?

4 Q. Yes.

5 A. I don't know which specific roads.

6 Q. Do you know which routes have
7 insufficient vertical clearance?

8 A. Not specifically, no.

9 Q. Do you know which routes have poor
10 pavement condition or insufficient pavement
11 durability?

12 A. No.

13 Q. Do you know what "insufficient pavement
14 durability" means for this project?

15 A. No.

16 Q. Do you know where there is insufficient
17 cover over drainage structures?

18 A. No.

19 Q. Do you have any idea which roads have
20 poor structure condition?

21 A. No. May I add to that?

22 Q. Go ahead.

23 A. I don't think that -- it does not appear
24 that this report is meant to report any of these
25 conditions for specific roads. This report is simply

1 saying where these are found to occur, this is the
2 mitigation that will occur.

3 Q. And on page 14, it says, Inadequate
4 Bridge Capacity. Do you know any bridge along the
5 proposed transportation route that is inadequate for
6 capacity?

7 A. Well, I would note that in section 3.1,
8 the visual observation results, there are series of
9 roads, six tertiary roads in particular, where there
10 are probably constraints identified.

11 Q. Okay. Do you know which one of those
12 have insufficient bridge capacity?

13 A. No.

14 Q. I guess at the bottom of 14, when your
15 study indicates, "upon completion of the project,
16 Champaign Wind LLC, will, at a minimum, return all
17 roadways to their preconstruction," are you speaking
18 for the Applicant in making that statement?

19 A. That is an agreement by the Applicant,
20 yes.

21 Q. Isn't it true that based on the fact that
22 you lack the technological expertise in this, that
23 you cannot make the conclusions sets forth in 5.0,
24 first sentence, that based upon research with
25 National wind turbine transportation companies and

1 information available from ODOT, including their
2 experience with wind projects recently constructed in
3 Ohio, sufficient infrastructure exists, via primary
4 and secondary roads, to transport the turbine
5 components.

6 So you do not have the technological
7 expertise or education in terms of whether there is
8 sufficient infrastructure; is that correct?

9 A. I do not, but my company does.

10 MS. NAPIER: Thank you.

11 I have no further questions.

12 ALJ CHILES: Thank you.

13 Mr. Van Kley.

14 MR. VAN KLEY: No questions, your Honor.

15 ALJ CHILES: Ms. Plantz.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Plantz:

19 Q. Mr. Crowell, I'd like to turn back to
20 some questions that were discussed previously with
21 respect to the 401 and 404 permitting process?

22 A. Okay.

23 Q. And for clarity of the record, your
24 testimony that a 404 permit would come from the US
25 Army Corps of Engineers?

1 A. That's correct.

2 Q. And the 401 permit would come from the
3 Ohio EPA?

4 A. That's correct.

5 Q. In your direct you indicate that certain
6 conditions in the Staff Report are redundant, and
7 it's because of these two permits. Is that an
8 accurate representation of your testimony today?

9 A. My direct testimony says that certain of
10 the materials required in Condition 19 to be included
11 on the plan that's described in Condition 19 are
12 redundant for that plan because they're being
13 presented in the context of a Section 404 and
14 401 permit Application.

15 Q. Have you had the opportunity to work on
16 behalf of that client to obtain a 404 permit?

17 A. Yes.

18 Q. And have you had the opportunity on
19 behalf of that client to obtain a 401 certification
20 for Ohio EPA?

21 A. Yes.

22 Q. In those two types of permits -- or I
23 guess, one is a permit and one is a certification,
24 would you agree?

25 A. Correct.

1 Q. Are there conditions that appear in those
2 permits and certifications?

3 A. Yes, there are.

4 Q. Are those the types of conditions you say
5 would be redundant with the Staff Report condition?

6 A. No, that's not what I would say.

7 Q. Okay.

8 A. I would say the materials that are
9 presented in the applications for those permits, not
10 the permit itself, all of the same information is
11 presented in the context of a 404 and 401 permit
12 application.

13 Q. But you would agree with me a 404 permit
14 and 401 certification typically do contain
15 conditions?

16 A. Yes.

17 Q. And the recipient of that permit and
18 certification must comply with those conditions; is
19 that correct?

20 A. Yes.

21 Q. In particular with the 401 certification,
22 issued by Ohio EPA, oftentimes those conditions
23 include revegetation requirements?

24 A. Yes, they do sometimes.

25 Q. Would that also include some sort of

1 buffer requirement?

2 A. They can require buffers, particularly
3 around avoided surface waters.

4 Q. Looking at your direct testimony, I want
5 to make sure I understand the purpose of your -- and
6 when I say "your," you and Hull & Associates, the
7 investigations that you undertook. My understanding
8 from your testimony is that those investigations
9 relate to potential impacts to surface water and
10 ecological resources that might occur during
11 construction of facilities; is that correct?

12 A. That's correct.

13 Q. And when talking about construction, the
14 potential impacts would be related to the
15 construction of an access route; is that correct?

16 A. That would be one source of impact, yes.

17 Q. And then the construction of the
18 collection lines?

19 A. Those can also result in impacts.

20 Q. And when we are talking about impacts, I
21 think you also mentioned that there's a potential
22 that a stormwater permit may also be required; is
23 that correct?

24 A. Stormwater permit will definitely be
25 required.

1 Q. Now, in your testimony I think you
2 reference a specific type of general stormwater
3 permit; is that correct?

4 A. Correct.

5 Q. That general stormwater permit for
6 construction activities is in the Big Darby Creek
7 Watershed?

8 A. That was one of the NPDES general permits
9 I referred to, yes.

10 Q. In order to obtain that type of permit,
11 the disturbance area would have to be less than one
12 acre; is that correct?

13 A. No.

14 Q. Okay. What is your understanding how
15 they would have to get coverage under the general
16 permit?

17 A. To the Big Darby?

18 Q. Yes.

19 A. The Big Darby NPDES general permits have
20 some specialized requirements, and basically it would
21 apply to any disturbance over an area, much as the
22 statewide general permit. That's the threshold.

23 The Buckeye permit differs from the
24 general permit for the state in that it requires that
25 these stormwater pollution prevention plans be

1 submitted in advance with the notice of intent, and
2 the Ohio EPA be given a certain amount of time to
3 review it and approve it. That is not the case in
4 the general permit statewide.

5 Q. Okay. Now back to the 401 and
6 404 permits. I believe in your testimony you
7 indicate that there are certain stream water bodies
8 and wetlands that, in your investigation, you found
9 to be, I'll use your term, jurisdictional; is that
10 correct?

11 A. That's correct.

12 Q. Could you describe what that means?

13 A. Jurisdictional waters are surface waters
14 of the United States as determined by the US Army
15 Corps of Engineers and their guidance.

16 Q. I'd like you to turn to page 8 of your
17 testimony, please, in particular, your response to
18 question No. 10. Your first sentence states that "At
19 this time, the Applicant does not plan to impact any
20 wetland areas." Is that an accurate reading of the
21 beginning of that sentence?

22 A. Yes.

23 Q. So is it there's no planned impact to
24 wetlands? Are you aware of any changes to this?

25 A. No, I am not.

1 Q. Then to go on, you indicate that several
2 streams will probably be impacted; is that correct?

3 A. Correct.

4 Q. Are those streams you are indicating
5 would require either a 404 permit or a
6 401 certification or potentially both?

7 A. Those impacts would require both a
8 404 and a 401 permit. The form of the permit may
9 vary.

10 MS. PLANTZ: Could I have one moment?

11 ALJ CHILES: Yes.

12 MS. PLANTZ: I have no further questions.
13 Thank you, Mr. Crowell.

14 ALJ CHILES: Ms. Leppla.

15 - - -

16 REDIRECT EXAMINATION

17 By Ms. Leppla:

18 Q. You were asked extensively about the
19 transportation study earlier. I have a couple
20 questions. Earlier you said in your testimony today
21 that was a preliminary study, right?

22 A. Correct.

23 Q. Can you tell me what you mean by
24 "preliminary"?

25 A. What I mean is that it's a general

1 assessment of the primary, secondary, and tertiary
2 roads that could be used for delivery of construction
3 materials and equipment to the facility construction
4 area.

5 MS. LEPPLA: No further questions, your
6 Honor.

7 Thank you, Mr. Crowell.

8 ALJ CHILES: Thank you.

9 Recross, Ms. Parcels.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Parcels:

13 Q. Relating to Ms. Leppla's question about
14 preliminary studies, would you also characterize
15 Exhibit F as a preliminary study?

16 A. Can you remind which study that is?

17 MS. LEPPLA: I object. It is outside the
18 stop of my redirect.

19 MS. PARCELS: Nothing further.

20 ALJ CHILES: Ms. Napier.

21 MS. NAPIER: Yes, your Honor.

22 - - -

23 RECROSS-EXAMINATION

24 By Ms. Napier:

25 Q. Mr. Crowell, Ms. Leppla just asked you

1 whether this was a preliminary report. Is it your
2 intention to be involved in the final transportation
3 survey?

4 A. No.

5 Q. In any way, shape, or form?

6 A. No.

7 Q. Why is that?

8 A. That's because the final design of the
9 transportation routes and planning is done by a
10 specialized carrier, the carriers who have the
11 equipment, the vehicles, and the expertise necessary
12 to deliver these large and heavy materials to the
13 building site.

14 Q. So, in essence, this preliminary plan
15 gives us no usable information as to a final
16 transportation route, correct?

17 A. I don't believe that's true. I think it
18 does give some information that's important.

19 Q. Okay. But your firm will not be doing
20 that?

21 A. That's correct.

22 Q. And, to your knowledge, will that final
23 plan actually address some of the questions that I
24 have asked you today and that you could not answer?

25 A. Correct, it will.

1 MS. NAPIER: Thank you.

2 ALJ CHILES: Thank you.

3 Mr. Van Kley.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Van Kley:

7 Q. If this is a preliminary plan, what is
8 your understanding as to when the final plan is going
9 to be done?

10 A. My understanding is that the final plans
11 will be developed by the specialized carrier sometime
12 prior to initiation of construction.

13 Q. Is it your understanding that the final
14 plans will be submitted to the Board only after the
15 certificate is issued?

16 A. I don't -- I don't know. I don't
17 understand that process.

18 Q. Okay. Is it your understanding that the
19 final plan could change everything or anything that's
20 in the preliminary plan?

21 A. It's my understanding from reading the
22 preliminary plan that there are really a fairly
23 limited number of roadways that can be accessed and
24 used for construction of this facility, and that I --
25 I assume, therefore, that any final plan is going to

1 utilize those same roads.

2 Q. Well, do you have an opinion as to
3 whether or not the people who do the final plan are
4 going to be bound by whatever safety precautions your
5 firm has put into the preliminary plan?

6 A. They will be bound by the regulations,
7 ODOT regulations in particular, that are required of
8 them for delivery of such large and heavy pieces of
9 equipment.

10 Q. But are they going to be bound by
11 whatever safety precautions your firm put into the
12 preliminary plan?

13 A. I don't -- I don't know.

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

16 ALJ TAUBER: Ms. Plantz?

17 MS. PLANTZ: No questions, your Honors.
18 Thank you.

19 ALJ CHILES: I have no questions. Thank
20 you. You are excused.

21 Ms. Leppla.

22 MS. LEPLA: We renew our motion to admit
23 Exhibit 19, which is Mr. Crowell's direct testimony.

24 ALJ CHILES: Any objection to the
25 admission of the exhibit?

1 MS. NAPIER: Yes, your Honor. We would
2 renew our motion to strike the portion of the
3 testimony on page 5 after the heading "Transportation
4 Route Study," and we also renew our motion to strike
5 Exhibit E that he references in his testimony in its
6 entirety.

7 ALJ CHILES: Are there any other
8 objections to the admission of Company Exhibit 19?

9 MR. VAN KLEY: Yes, your Honor. We would
10 join the county's objection and motions to strike for
11 all of the same reasons that Ms. Napier has expressed
12 during her cross-examination of the witness.

13 ALJ CHILES: Thank you.

14 MS. PARCELS: The city would also join
15 the county's objection with regard to the
16 transportation study. The city would also object to
17 the first paragraph on page 6, Desktop
18 Hydrogeological Study.

19 Mr. Crowell testified he was not a
20 hydrogeologist or competent to testify about aquifers
21 and did not do this study but someone else did.

22 ALJ CHILES: Can you clarify?

23 MS. PARCELS: Desktop Hydrogeological
24 Study, the two studies -- not the well study that is
25 referenced below.

1 ALJ CHILES: Page reference?

2 MS. PARCELS: Page 6 of his testimony,
3 subheading, Desktop Hydrogeological Study.

4 ALJ CHILES: Ms. Leppla, do you want to
5 respond to that motion?

6 MS. LEPPLA: Yes, thank you, Your Honor.

7 Again, like the transportation study, the
8 hydrological study was done under Mr. Crowell's
9 supervision. It was conducted by his firm;
10 therefore, his testimony summarizing that study is
11 relevant and appropriate.

12 ALJ CHILES: Thank you. The objections
13 and motions to strike are noted for the record. The
14 objections are overruled and the motions are denied.
15 The Board will attribute the appropriate weight to
16 this testimony in light of Mr. Crowell's
17 qualifications.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 ALJ CHILES: Off the record.

20 (Discussion off the record.)

21 ALJ CHILES: Any other matter to discuss
22 before we go off the record?

23 Hearing none, we will adjourn and
24 reconvene next Monday at 9:00 o'clock.

25 (The hearing adjourned at 7:14 p.m.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, November 16, 2012, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.

(RFA-8855)

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Summary: Transcript of Champaign Wind, LLC hearing - Volume VI held on 11/16/12 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.