

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
Tuesday, November 20, 2012.

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VOLUME VIII

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On behalf of the City of Urbana.

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On behalf of the Ohio Farm Bureau.

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On behalf of the Staff of the
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1 Tuesday Morning Session,
2 November 20, 2012.

3 - - -

4 ALJ TAUBER: Let's go on the record.
5 We'll do brief appearances this morning, starting
6 with the company.

7 MR. PETRICOFF: Thank you, your Honor.
8 On behalf of Champaign Wind, Howard Petricoff,
9 Michael Settineri, Stephen Howard, Miranda Leppla,
10 and Gretchen Petrucci from the Vorys law firm.

11 ALJ TAUBER: Mr. Van Kley.

12 MR. VAN KLEY: Thank you, your Honor.
13 Jack Van Kley and Chris Walker, Van Kley & Walker, on
14 behalf of Union Neighbors United, Bob and Diane
15 McConnell, and Julia Johnson.

16 ALJ TAUBER: Thank you.

17 MS. NAPIER: Good morning. Jane Napier,
18 assistant prosecutor with Champaign County for
19 Champaign County and the townships of Goshen, Union,
20 and Urbana, along with the Champaign County
21 Prosecuting Attorney Nick Selvaggio.

22 ALJ TAUBER: Thank you.

23 MS. PARCELS: Good morning. On behalf of
24 the City of Urbana, staff attorney Breanne Parcels
25 for the City Law Director Gil S. Weithman.

1 ALJ TAUBER: Thank you.

2 MR. REILLY: Thank you, your Honor. On
3 behalf of the staff of the Ohio Power Siting
4 Commission, Michael DeWine, Ohio Attorney General,
5 William Wright, Section Chief, Public Utilities
6 Section, Steve Reilly, Vern Margard, and Devin
7 Parram, Assistant Attorneys General in the Public
8 Utilities Section. Sarah Anderson and Summer Plantz,
9 Assistant Attorneys General in the Environmental
10 Enforcement Section.

11 The Public Utilities Section is housed at
12 180 East Broad Street, Columbus, Ohio 43215. And the
13 Environmental Enforcement Section is housed at 30
14 East Broad Street, Columbus, Ohio 43215.

15 ALJ TAUBER: Thank you.

16 Ms. Parcels.

17 MS. PARCELS: As soon as I can get the
18 mic to work. Yes. On the record, your Honors, I
19 just wanted to note for the record that the city had
20 marked exhibits in the order that witnesses were
21 going to be called yesterday, but we will circle back
22 around to the skipped exhibits, so to speak, when we
23 reach the testimony of Ms. North and Chief Keller.
24 So, with that, the city would like to call Carol
25 Hall.

1 ALJ TAUBER: Ms. Hall, please raise your
2 right hand.

3 (Witness sworn.)

4 ALJ TAUBER: Thank you.

5 - - -

6 CAROL HALL

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

9 DIRECT EXAMINATION

10 By Ms. Parcels:

11 Q. Ms. Hall, do you have a copy of the
12 testimony there?

13 A. Yes.

14 MS. PARCELS: I'm passing around what's
15 been marked as City Exhibit 13.

16 ALJ TAUBER: The exhibit is so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Ms. Hall, do you recognize what's been
19 marked there as City Exhibit 13?

20 A. Yes.

21 Q. Okay. And is that a copy of your
22 prefiled direct testimony?

23 A. Yes.

24 Q. Okay. And there is an attachment there
25 that's 13A; photos in the back of it?

1 A. Yes.

2 Q. Do you recognize those as photos that
3 depict some of the activities that were answered in
4 question 3?

5 A. Yes, they are.

6 Q. Okay. And did you take those photos?

7 A. Yes, I did.

8 Q. Okay. Can you turn on your microphone?
9 You have to press it twice.

10 ALJ TAUBER: One more time. The middle
11 button.

12 A. Again? Is it on?

13 Q. When the red button lights up, it's on.

14 ALJ TAUBER: There you go.

15 Q. There you go.

16 Okay. Carol -- Ms. Hall, if I was to ask
17 you the same questions today, would you change -- do
18 you have any updates or corrections to your
19 testimony?

20 A. No.

21 Q. Okay. So if I was to ask you the same
22 questions today, you would answer in the same
23 fashion?

24 A. Yes.

25 MS. PARCELS: Okay. I would present the

1 witness as available for cross-examination, your
2 Honors. Thank you.

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

5 MS. NAPIER: The county and townships
6 have no questions for this witness. Thank you.

7 ALJ TAUBER: Mr. Van Kley.

8 MR. VAN KLEY: We have no questions.

9 ALJ TAUBER: Ms. Petrucci.

10 MS. PETRUCCI: All right. I think I got
11 it now, sorry.

12 Your Honors, I don't believe what has
13 been marked as 13A was previously attached to
14 Ms. Hall's direct testimony previous before as it was
15 filed.

16 MS. PARCELS: That is correct.

17 ALJ TAUBER: Ms. Parcels, it was not
18 previously attached?

19 MS. PARCELS: No. Ms. Hall gave us the
20 exhibits this week.

21 ALJ TAUBER: Did you serve the exhibits
22 on the parties at all?

23 MS. PARCELS: No.

24 ALJ TAUBER: Or the Bench?

25 MS. PARCELS: Just now. Again, these are

1 just illustrative of her direct testimony. We do not
2 insist that they be included as exhibits, but if she
3 was to refer to them during her testimony today then,
4 again, they're just for purposes of illustration.

5 MS. PETRUCCI: Well, we don't believe
6 that they were timely submitted since we just
7 received them this morning, so we would move to
8 strike the two pages in 13A.

9 ALJ TAUBER: Do any parties wish to
10 comment?

11 MS. NAPIER: I guess in favor of that, I
12 mean, we have been getting exhibits that we haven't
13 seen all this hearing, so I'm not really sure what
14 the issue is at this point in time, especially
15 something that's fairly easy to read other than the
16 noise exhibits that we got yesterday of multiple
17 pages.

18 ALJ TAUBER: At this time the Bench is
19 going to strike Exhibit 13A and the distinction with
20 that is parties have presented the exhibits
21 throughout the hearing; however, this is
22 supplementing direct testimony and the fact that the
23 Bench and the parties did not have notice of it, we
24 are going to have to strike Exhibit 13A, the
25 pictures.

- - -

CROSS-EXAMINATION

By Ms. Petrucci:

Q. Good morning, Ms. Hall.

A. Good morning.

Q. If you could turn to the second page of your prefiled testimony and specifically to your answer to question 7.

A. Yes.

Q. In the first line you indicated that at Grimes Field there's an average of more than 60 regular flight operations per day, correct?

A. Correct.

Q. Does that mean that there's an average of 60 total landings and departures from the airfield?

A. Yes. Yes.

Q. With respect to the events that you've listed in your answer to question 9, you listed four events that take place at Grimes Field. Those are special events, correct?

A. Right.

Q. How frequently do each of those events occur?

A. They, all four, every year.

Q. Can you tell me how many times Grimes

1 Field has hosted the World War II veterans reunion
2 event?

3 A. This was the second time we hosted it.

4 Q. So would it first have taken place in
5 2010?

6 A. Yes. Yes.

7 Q. And for the Mid Eastern Regional Fly-In,
8 do you know how many times the airport has hosted
9 that event?

10 A. I believe this was the fifth year.

11 Q. And if I remember from other folks'
12 testimony, it had been sponsored or held at other
13 airports --

14 A. Yes.

15 Q. -- in the past?

16 A. Yes.

17 Q. And how about the Hot Air Balloon
18 Festival, how long has that been hosted at Grimes
19 Field?

20 A. I believe we've had that for seven years.

21 Q. Was the Hot Air Balloon Festival ever
22 cancelled due to whether or --

23 A. No. No.

24 Q. It was held every one of those years.

25 A. We've held it every year. Sometimes we

1 don't get to put on all of the balloons. Sometimes
2 the weather, the wind affects the balloons, but we do
3 have other events that go along with it so we always
4 have it.

5 Q. But a portion of the actual --

6 A. Right.

7 Q. -- festival may not occur because of --

8 A. Right.

9 Q. -- weather constraints.

10 A. The balloon flights are the ones that the
11 wind affects, so.

12 Q. In your answer to No. 6, you discuss the
13 plans for a runway expansion.

14 A. Yes.

15 Q. Can you explain to me which -- what
16 direction the runways run currently; is it north to
17 south --

18 A. They are --

19 ALJ TAUBER: Ms. Hall, I'm just going to
20 ask you to wait until Counsel finishes asking her
21 question before you answer. It just keeps things
22 easier for the court reporter.

23 THE WITNESS: Okay.

24 A. They run 200 degrees and 2 degrees -- or,
25 20 degrees, I'm sorry.

1 Q. Okay. And for a layman like me, would
2 that be north to south?

3 A. Yes.

4 Q. And can you tell me for the plans of the
5 runway expansion are there a group of different
6 entities that are involved in the process if that
7 were to take place?

8 A. We have a consultant firm that takes care
9 of all of that. They take care of the grants and all
10 of the government paperwork that we need to do, and
11 they have been planning this for 10, 12 years now,
12 trying to get everything together.

13 Q. Would the City of Urbana also be --

14 A. Yes.

15 Q. -- involved?

16 A. They're also involved.

17 Q. And the FAA?

18 A. Yes.

19 Q. And at this point the plans that exist
20 have not been approved by any of those various
21 entities; is that correct?

22 A. No, no.

23 Q. That isn't correct or it is correct?

24 A. That's correct.

25 Q. Okay.

1 A. We -- we are basically waiting for the
2 money; for the FAA to approve the money.

3 Q. Would land need to be acquired as well?

4 A. No; we have all the land now.

5 Q. Where is the planned runway expansion
6 anticipated to be located?

7 A. We will just extend the runway that we
8 have now, to the north.

9 Q. To the north?

10 A. Yes.

11 Q. And that's Runway 2-20?

12 A. Yes.

13 Q. Are you aware that the FAA and the Ohio
14 Department of Transportation Office of Aviation have
15 cleared the proposed turbine locations that have been
16 proposed at this point in time for the facility?

17 A. Yes.

18 Q. Are you aware that the turbines proposed
19 for this facility are geographically further away
20 from Grimes Field than those that have been
21 approved --

22 A. Yes.

23 Q. -- in --

24 A. Yes.

25 Q. So would you agree with me that the

1 turbines proposed in this project that are the
2 closest to Grimes Field are further away than the
3 turbines that were previously approved by the Ohio
4 Power Siting Board?

5 A. Yes.

6 Q. Then is your real concern actually with
7 the already-approved turbines?

8 A. That's my major concern, yes.

9 Q. If we could turn your attention to
10 question No. 10 and your answer thereto with respect
11 to the interference. You state in your answer that
12 the turbines could create interference to the
13 instrument flight rule pilots, correct?

14 A. Right.

15 Q. And then the fourth line you've indicated
16 that -- or, actually, you wrote "...they suggested a
17 localizer to solve that issue...." Who suggested the
18 localizer?

19 A. EverPower or Buckeye Wind, whichever it
20 is.

21 Q. Do you agree that a localizer could solve
22 the concern of interference for those instrument
23 flight rule pilots?

24 A. It could help the instrument pilots, but
25 three-fourths of the planes coming into Grimes Field

1 don't use instruments.

2 Q. Okay. And then with respect to those
3 that -- those are called the "visual flight rule
4 pilots" --

5 A. Right.

6 Q. -- they wouldn't have the interference
7 because they don't have the instruments; isn't that
8 correct?

9 A. They would have the interference because
10 they would also be coming in low, the same way --

11 Q. Do you mean they would have --

12 A. -- on the approach.

13 Q. -- the obstruction --

14 A. Yes.

15 Q. -- because of the turbines --

16 A. Yes.

17 Q. -- and not -- okay. I guess I want to
18 make sure I understand your distinction between
19 interference.

20 A. On an instrument approach your
21 instruments tell you where to go. Visual flight
22 rules, which are VFR, you just do a visual. Both of
23 them coming into the airport of course you have to
24 keep stepping down so you're lower and lower and
25 lower. The instrument flight rules, it's a set path,

1 and if the turbines are in those paths then that
2 interferes with the instrument approach.

3 Q. So if we just stick with the
4 instrument-based pilots, you indicated that a
5 localizer can help them, correct?

6 A. Right.

7 Q. Then is it also an option that they alter
8 the direction or the manner in which they actually
9 approach the airport in order to land?

10 A. You mean in regards to the localizer?

11 Q. No. You've indicated that for the
12 instrument-based pilots that they have the potential
13 for interference with the instruments, themselves,
14 because of the turbines, but then you've also
15 indicated that there's interference because of the
16 turbines' existence that they have to fly higher at a
17 higher altitude in order to clear the turbines.

18 A. Right.

19 Q. So because of those two different things,
20 what I'm trying to understand is, let me, with
21 respect to the second one, if they have to fly above
22 the turbines, can't they also go around the turbines
23 in order to land at the airport?

24 A. They could, but the way the
25 already-approved turbines are situated, there's a

1 group of them very close to the airport. I
2 personally would not want to fly near them.

3 Q. Couldn't they come from the north where
4 there aren't turbines that were approved in the first
5 case or proposed for this particular facility?

6 A. The turbines that were approved are to
7 the north of the airport and basically to the east, I
8 believe, the east and the north. A lot of the people
9 say coming from Columbus, Delaware, places like that,
10 come through that direction and they would come
11 through that field of turbines. To go around them,
12 I'm not sure they would go around them, I'm not sure
13 they would come to the airport.

14 Q. Okay. But my question was couldn't they
15 do it, not whether they would or wouldn't --

16 A. They could. They could.

17 Q. Okay. So that is the pilot's choice;
18 isn't that correct?

19 A. Yes.

20 Q. Now, for the visual flight pilots,
21 because we had spoken about the instrument-based, for
22 the visual flight pilots you agreed that there isn't
23 going to be interference related to any instruments
24 because they don't have instruments, but there is
25 interference because of the location of the turbines

1 and the height at which they'll be.

2 A. Correct.

3 Q. Those pilots also have the ability to
4 adjust their approaches to Grimes Field to avoid the
5 turbines entirely as well; isn't that correct?

6 A. That is correct.

7 Q. And do both sets of pirates -- pilots
8 already make adjustments to their approaches to
9 Grimes Field because of the existence of the City of
10 Urbana or antenna or some other items that currently
11 exist around Grimes Field?

12 A. Yes.

13 Q. And if you can look to your answer to
14 question 11, the second line where you say, quote, I
15 think we would still see pilots avoid flying anywhere
16 near turbines that are within 5 miles of Grimes
17 Field. Is that the point that you were trying to
18 make in that testimony that the pilots that would
19 still use Grimes Field would avoid the turbines?

20 A. Yes.

21 Q. Also will the sectional maps that are
22 developed for pilots have an indication about the
23 turbines on them?

24 A. Yes.

25 MS. PETRUCCI: I have no further

1 questions. Thank you.

2 ALJ TAUBER: Thank you.

3 Mr. Reilly.

4 MR. REILLY: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Reilly:

8 Q. Good morning, Ms. Hall.

9 A. Good morning.

10 Q. My name is Steve Reilly. I'm here on
11 behalf of the staff of the Public Utilities -- of the
12 Ohio Power Siting Board.

13 I really only have one question for you
14 at this point and I'd like to direct your attention
15 to your answer 10. I think it's answer 10. Yes.
16 About halfway down you talk about the concern you
17 hear from the pilots; do you see that?

18 A. Yes.

19 Q. Do you record your discussions with
20 pilots in any kind of systematic way?

21 A. No.

22 Q. So that's -- so that statement in that
23 sentence about your -- the concerns you hear from
24 pilots is just your recollection generally of what's
25 been said in passing?

1 A. Yes.

2 MR. REILLY: We have nothing further,
3 your Honor. Thank you.

4 ALJ TAUBER: Thank you.

5 Ms. Parcels, redirect?

6 MS. PARCELS: Can I have a moment, your
7 Honors?

8 ALJ TAUBER: You may.

9 - - -

10 REDIRECT EXAMINATION

11 By Ms. Parcels:

12 Q. Ms. Hall, I'm handing you what's been
13 marked as City 13B. You were asked by counsel for
14 the company --

15 ALJ TAUBER: Ms. Parcels, can we just
16 mark it as 14 just for clarity?

17 MS. PARCELS: Sure.

18 ALJ TAUBER: Thanks.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. So City Exhibit 14, do you recognize that
21 as a sectional map?

22 A. Yes.

23 Q. Okay. And is that a map that a pilot
24 would use to navigate?

25 A. Yes.

1 Q. Would that be under instrument flight
2 rules or visual flight rules?

3 A. Both. Both.

4 Q. Okay. Let me back up. Are you,
5 yourself, a pilot?

6 A. Yes.

7 Q. And how long have you been a pilot?

8 A. Twenty years.

9 Q. Okay. And do you fly under instrument
10 flight rules --

11 A. No.

12 Q. -- or visual flight rules or both?

13 A. Visual.

14 Q. Visual flight rules.

15 Okay. There in the middle of the map
16 which is marked "Van Wert sectional map" --

17 A. Yes.

18 Q. -- can you tell me how it's marked with a
19 caution for pilots approaching the area?

20 A. The caution is "numerous windmills";
21 that's what the caution is.

22 Q. Okay. Do you know how many windmills
23 there are in that Van Wert area?

24 A. I don't know specifically. I have flown
25 by them.

1 Q. You have flown yourself --

2 A. Yes.

3 Q. -- by them?

4 A. But not through them.

5 Q. But not through them.

6 A. No.

7 Q. So you mean above them or around them?

8 A. No. We were on the south side of them.

9 Q. South side of them. Okay.

10 Would you say from your personal
11 observation, flying there in the Van Wert area and
12 then looking at the sectional map, that every single
13 one of the wind turbines there in the Van Wert area
14 is marked?

15 A. I assume they're marked; they should be.

16 Q. I mean, I'm talking about there on the
17 map.

18 A. Yes.

19 Q. Okay. When you're talking about the
20 instrument flight rules approach to Grimes Field,
21 what is the designation for the, I guess the
22 instrument track that pilots use; does it have a
23 geographic designation?

24 A. Yes. It is -- they have a map, not like
25 this, but they have an instrument map that they

1 follow and it tells them what headings, what degrees,
2 what altitudes they need to fly for the approach.

3 Q. Okay. And is the heading marked
4 Rosewood?

5 A. Rosewood is a waypoint.

6 Q. Okay. And could you describe to me, if
7 you know, where exactly that Rosewood waypoint is in
8 Champaign County?

9 A. It is about 17 nautical miles. I believe
10 it is a little northwest of the field.

11 Q. Okay. So it's not in the project area
12 then.

13 A. No.

14 Q. Okay.

15 A. No.

16 Q. Counsel for the company asked if you
17 would agree that the turbines for this project are
18 farther away than the ones that were approved for
19 Buckeye I.

20 A. Yes.

21 Q. Do you know -- have you reviewed the
22 closest turbine for this project, do you know the
23 geographic distance or the nautical mile distance, if
24 you know?

25 A. I don't know exactly how far they are.

1 Q. Okay. Are you concerned about the groups
2 of new turbines being in the flight paths to Grimes
3 Field from locations, such as you mentioned, Delaware
4 and Columbus?

5 A. Yes, I am.

6 Q. Okay. Counsel for the company suggested
7 that changing the approaches or approaching the
8 Grimes Field airport from a higher altitude would
9 resolve that problem. Is it more dangerous to
10 approach the airport from a higher altitude?

11 A. I don't know that it's more dangerous; it
12 just takes you longer to take the plane down.

13 MS. PARCELS: Okay. I have nothing
14 further, your Honors. Thank you.

15 ALJ TAUBER: Thank you.

16 Ms. Napier?

17 MS. NAPIER: No questions. Thank you.

18 ALJ TAUBER: Mr. Van Kley?

19 MR. VAN KLEY: I have a few.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Van Kley:

23 Q. I'm trying to understand the layout of
24 Grimes Field compared to the turbines that are
25 proposed for Buckeye I and Buckeye II to perhaps

1 clarify my understanding of what you've been
2 testifying about. Where is Grimes Field relative to
3 the Buckeye II project area?

4 A. Grimes Field is directly south of the
5 closest Phase II turbines. I would say the closest
6 ones look like they're maybe 5 miles.

7 Q. Okay. And then where are the approved
8 turbines for Buckeye I in comparison to Grimes Field?

9 A. I'm sorry. They're directly east.

10 Phase I there are 12 turbines that I know
11 are about 3.4 or -5 nautical miles from the airport.

12 Q. Okay. In which direction?

13 A. East.

14 Q. Okay. So for Phase I, you have 12
15 turbines that are east of Grimes Field?

16 A. Uh-huh.

17 Q. Okay. And then what about Phase II,
18 Buckeye II?

19 A. Phase II there are some just a little
20 farther east from the closest ones in Phase I.

21 Q. Okay. Okay. Being a pilot yourself, if
22 you had a choice between flying your aircraft into
23 Grimes Field after these turbines are installed or
24 flying to another airport that was not close to
25 turbines, what would you pick as a pilot?

1 A. As a pilot, I would go to the ones
2 without the turbines.

3 Q. And why would you do that?

4 A. Just for me, personally, for safety.

5 Q. Okay. Why do you think there's a
6 difference in the degree of safety between those two
7 scenarios?

8 A. Just after flying by Van Wert and seeing
9 all the turbines, if the wind was strong it could
10 blow you, it can blow you off course. Just the
11 thought of having those big towers there and knowing
12 that you could be blown that way, it's just an
13 uncomfortable feeling.

14 MR. VAN KLEY: Okay. Thank you. I have
15 no further questions.

16 ALJ TAUBER: Thank you.

17 Ms. Petrucci.

18 MS. PETRUCCI: Yes. Thank you.

19 - - -

20 RECROSS-EXAMINATION

21 By Ms. Petrucci:

22 Q. If we look at this sectional map, first
23 of all, how often are sectional maps updated?

24 A. I believe once a year.

25 Q. And can you tell me the, what look like

1 M's with two little dots underneath, what does that
2 stand for?

3 A. Those are the towers. And the -- under
4 the towers you'll see two figures, one's "1136" and
5 one's "370." The "370" is above ground and the
6 "1136" is sea level, above sea level.

7 Q. Okay. And those two numbers that you
8 just referred to were, to help everybody maybe,
9 inside the purple circle --

10 A. Right.

11 Q. -- to the right and it's underneath what
12 essentially is shaped like a little carrot.

13 A. Right.

14 Q. Okay. And then the ones that are shaped
15 like an "M" also represent the turbines?

16 A. Yes.

17 Q. Just a couple moments ago you indicated
18 that you thought pilots may consider going to other
19 airports. Don't other airports also have a variety
20 of different obstructions as well?

21 A. They do, but they aren't 500 feet. The
22 FAA considers cell towers and other towers under
23 200 feet not to be an obstruction, and we do have
24 those in the area, they aren't a problem, but that's
25 300 feet shorter than these proposed wind turbines.

1 Q. And pilots can approach, if this proposed
2 facility is approved, the pilots can approach Grimes
3 Field without having to go and fly over top of the
4 turbines.

5 A. They could. They could go around.

6 Q. In which case if they went around, the
7 turbines would not be an obstruction if they're
8 coming and approaching the field from a different
9 direction; isn't that correct?

10 A. Right.

11 MS. PETRUCCI: I have no further
12 questions.

13 ALJ TAUBER: Thank you.

14 Mr. Reilly.

15 MR. REILLY: We have nothing further,
16 your Honor.

17 Thank you, ma'am.

18 ALJ TAUBER: Ms. Hall, I just have a
19 couple questions for you just to clarify the record.

20 - - -

21 EXAMINATION

22 By ALJ Tauber:

23 Q. You're the manager at Grimes Field, the
24 airport manager?

25 A. Yes.

1923

1 Q. Is Grimes Field, is it owned by the City
2 of Urbana?

3 A. Yes.

4 Q. So does the City of Urbana, the taxes pay
5 for Grimes Field? I guess I'm just trying to
6 determine the association between the City of Urbana
7 and Grimes Field just to clarify for the record.

8 A. Yes.

9 Q. So the City of Urbana owns it and it's
10 completely paid for by taxpayer revenue or is it --

11 A. We have fuel sales, we have hangar rents,
12 we have farmland that is rented; all of that goes
13 into that.

14 Q. And that contributes to the operational
15 cost of Grimes Field?

16 A. Yes.

17 ALJ TAUBER: Thank you. You may be
18 excused.

19 Ms. Parcels.

20 MS. PARCELS: Thank you, your Honors.
21 The City would move for admission of I believe it's
22 Exhibit 13 and Exhibit 14.

23 ALJ TAUBER: Are there any objections to
24 City Exhibits 13 and 14?

25 (No response.)

1 ALJ TAUBER: Hearing none, they shall be
2 admitted into the record.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 ALJ CHILES: All right. I believe we
5 have Mr. Rademacher next.

6 MS. PARCELS: Yes. The City would like
7 to call Mr. Rick Rademacher.

8 ALJ CHILES: Please raise your right
9 hand.

10 (Witness sworn.)

11 ALJ CHILES: Thank you. You may be
12 seated.

13 MS. PARCELS: I would ask for this to be
14 marked City Exhibit 15.

15 ALJ CHILES: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 - - -

18 RICK RADEMACHER

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

21 DIRECT EXAMINATION

22 By Ms. Parcels:

23 Q. Mr. Rademacher, you have a copy there in
24 front of you, right?

25 A. Yes, I do.

1 Q. Okay. Do you recognize that as your
2 prepared direct testimony?

3 A. Yes, I do.

4 Q. Okay. Do you have any updates or
5 corrections to that testimony?

6 MS. PETRUCCI: Excuse me. Did the
7 witness get sworn in?

8 ALJ CHILES: Yes, he was.

9 THE WITNESS: Yes. Yes.

10 MS. PETRUCCI: Thank you.

11 A. No.

12 Q. Okay. And if I was to ask you the same
13 questions today, would you answer in the same
14 fashion?

15 A. Correct, I would.

16 MS. PARCELS: Okay. I present the
17 witness then for cross-examination.

18 ALJ CHILES: Thank you.

19 The county and townships?

20 MR. SELVAGGIO: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Selvaggio:

24 Q. Mr. Rademacher, my first set of questions
25 revolve around your answer to question 6,

1 specifically the last sentence on page 3 in which you
 2 state, "And, as we pilots tend to avoid wind turbine
 3 areas, to have a large area marked around Grimes
 4 Field does not encourage pilots to visit Grimes
 5 during A MERFI flyin." Do you see that?

6 A. Yes.

7 Q. Okay. You're a member of the Urbana
 8 Rotary Club?

9 A. Correct, I am.

10 Q. And you're aware of the division amongst
 11 the membership as to the proposed application?

12 A. Yes, I am.

13 Q. With regard to the pilots that you have
 14 association with in the community, is that that same
 15 feeling of division?

16 A. I would say not, that there is not. I
 17 would say within pilots we are all on common grounds
 18 expressing the same concerns.

19 Q. Okay. So from a community perspective of
 20 pilots now, when you say it "does not encourage
 21 pilots to visit Grimes," would you share with me what
 22 that perspective is?

23 A. Again, it depends upon the kind of
 24 aircraft you're flying, and there, maybe I should
 25 specifically refer to fly-ins that we do where you're

1 having fun flights. If you're an IFR kind of
2 operations, I don't think that it would have that
3 impact. I'm talking about VFR kind of operations.

4 To give you an example, this year I was
5 involved in planning flights of Piper Cubs up to
6 Oshkosh, Wisconsin. I fly a Piper Cub. There was an
7 airport in Indiana that a man there was suggesting
8 that we stop there for overnight or for fuel or
9 whatever. I chose not to accept his invitation
10 because of wind turbines being around the area.

11 In flying a Piper Cub anyway, again as an
12 example, I flew with a group of three, and we left
13 Urbana, Ohio. Never got above 1,000 feet. Most of
14 the time we were flying between 500 and a thousand
15 feet all the way up to Wisconsin.

16 So if there were weather and that where
17 we would have to be down even lower or visibility is
18 reduced, it would -- I want to stay away from wind
19 turbine areas. So it would be prudent then for me to
20 plan a flight that avoids those areas and that's what
21 I did.

22 Q. So had you stayed in Indiana, would you
23 have had lodging expenses?

24 A. Well, it's -- if --

25 Q. I mean, if you had stayed overnight,

1 would you have lodging expenses?

2 A. Well, I would have had lodging expense if
3 I had to stay overnight, but --

4 Q. Would you have had -- just, if you would,
5 just answer my questions, please. Would you have had
6 food expenses?

7 A. Correct.

8 Q. Would you have had gas expenses?

9 A. Yes.

10 Q. And those are -- those are expenses that
11 would go to the local community that are offering
12 those services?

13 A. Correct.

14 Q. And you would pay tax on that?

15 A. Yes.

16 Q. And so does your decision not to stay in
17 Indiana affect the local tax structure --

18 A. Sure.

19 Q. -- for that airport?

20 A. Sure.

21 Q. Would you expect that pilots who share
22 the same perception as you do about not feeling
23 encouraged to visit a location that has turbines,
24 would that affect Grimes Field and the City of
25 Urbana's tax revenue structure?

1 A. It would in the case of pilots buying
2 services, spending money there, yes.

3 Q. I mean, the City of Urbana and Champaign
4 County has lodging accommodations?

5 A. Yes.

6 Q. They have places to eat?

7 A. Correct.

8 Q. They offer gas?

9 A. Yes.

10 Q. And then last, you have spoken in your
11 testimony in question 5 as to the FAA, Federal
12 Aviation Administration, and some of their
13 determinations. As a pilot, and if you would just
14 put this project aside and speak about your concerns
15 of any number of wind turbine projects in the state
16 of Ohio, would you share for me your perspective as
17 to concerns that pilots have with regard to
18 jurisdictional issues that come up in wind turbine
19 related incidents?

20 MR. REILLY: Objection. I don't think
21 there's been a foundation layed for all, for the
22 opinions of all pilots and all places regarding wind
23 turbines.

24 ALJ CHILES: Mr. Selvaggio?

25 MR. SELVAGGIO: I mean, I can narrow it

1 down to just this project, if you like. I didn't
2 want any bias that this witness may have for this
3 particular project to influence his answer. I'm
4 trying to get a broader perspective so that the Board
5 would have -- but I can narrow it down to this
6 project and this issue, if you like.

7 ALJ CHILES: The objection is sustained.
8 I think you need to focus on this particular project.

9 Q. (By Mr. Selvaggio) Mr. Rademacher, would
10 you answer the question with regard to this project?

11 MR. REILLY: Could I have the question
12 read back? I don't understand what the question is
13 at this point.

14 ALJ CHILES: Would you read back the
15 question, please. Thank you.

16 (Record read.)

17 ALJ CHILES: Mr. Selvaggio, in light of
18 your terminology in the question, I think you need to
19 actually re-ask the question.

20 MR. SELVAGGIO: Okay.

21 MR. REILLY: Thank you, your Honor.

22 Q. (By Mr. Selvaggio) Mr. Rademacher, based
23 on your experience in flying, how many
24 regulatory agencies do you, as a pilot, have to deal
25 with?

1 A. The master agency is the FAA, but of
2 course you're also dealing with the Division of
3 Aviation in Ohio, too. It's -- we have to register
4 and pay money to the State of Ohio to operate an
5 aircraft here.

6 Q. And do you have experience with a zoning
7 or planning board with regard to Grimes Field?

8 A. I'm not on a board there at Grimes Field.

9 Q. Do they have a board?

10 A. There is an airport board there; governed
11 by the city for --

12 Q. And --

13 A. -- Grimes Field.

14 ALJ CHILES: Please let the witness
15 finish answering the question.

16 Were you finished? Were you finished
17 answering the question? I want to make sure that
18 you're able to give full answers.

19 THE WITNESS: Yes. Yes.

20 ALJ CHILES: Okay. Thank you.

21 Q. And what is the purpose of that board?

22 A. Would be to operate the airport safely,
23 manage the operations of the airport, and making sure
24 the operations are safe for everyone involved.

25 Q. And is there a local jurisdictional board

1 that deals with zoning and zoning issues at the
2 airport?

3 A. Specifically I don't know.

4 Q. Okay. Are there -- whenever there's an
5 incident -- let me rephrase that.

6 Should there be an incident involving an
7 aircraft and a turbine at Grimes Field, do you know,
8 as a pilot, what agencies would be involved in the
9 investigation?

10 A. I assume first would be the -- usually
11 the state patrol will come out first, Ohio State
12 Patrol, and then they'll pass it on to the FAA, I'm
13 sure would be also then involved.

14 Q. As a pilot, based on your experience and
15 your understanding and dealing with different
16 governmental agencies regarding flying, do you have
17 any concerns about the interagency relationship as it
18 pertains to wind turbine activity and its effect on
19 aviation safety?

20 MR. REILLY: Objection, lack of
21 foundation. Nothing about interagency relationships
22 or his knowledge about that.

23 ALJ CHILES: Mr. Selvaggio?

24 MR. SELVAGGIO: I believe he's testified
25 to at least three agencies that deal with aviation as

1 it relates to Grimes Field.

2 ALJ CHILES: Mr. Reilly?

3 MR. REILLY: He hasn't talked about any
4 interaction between them, which is what the question
5 is about, as I understand it.

6 ALJ CHILES: Ms. Petrucci?

7 MS. PETRUCCI: And I'll join in the
8 objection. I think his last answer he said he
9 assumed that this group and that group are involved.
10 I'm not sure this witness has the knowledge to answer
11 that question.

12 ALJ CHILES: The objection is sustained.

13 Q. (By Mr. Selvaggio) Mr. Rademacher, when
14 you fly an aircraft and you see a map that has
15 turbines noted on it, do you take a look at -- do you
16 assess the mapping structure in -- let me rephrase
17 it.

18 Do you take a look at -- actually, I'll
19 withdraw the question.

20 MR. SELVAGGIO: I have no further
21 questions. Thank you.

22 ALJ CHILES: Thank you.

23 Mr. Van Kley.

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

25 - - -

CROSS-EXAMINATION

By Mr. Van Kley:

Q. Are you aware of the direction that the turbines are compared to Grimes Field? In other words, what side of Grimes Field are the turbines going to be installed?

A. Correct. Yes.

Q. What is that direction in your understanding?

A. Basically to the east of Grimes Field at the moment.

Q. Okay. Given that the turbines are to the east, do you still have concerns about the presence of the turbines if there are no turbines to the north or the south or the west of Grimes Field?

A. The turbines being -- certainly it's a better situation now that they're just to the east. It would make it -- as turbines are located in other areas of the county, it's going to make us -- it will make it more difficult, sure.

Q. Well, if we just have the Buckeye Wind turbines to the east and no other turbines are on the other three sides of Grimes Field, as a pilot would you still have concern about the turbines to the east of Grimes Field?

1 A. I -- my concern basically is the
2 proximity of the turbines to the airport.

3 Q. Okay. And why do you --

4 A. How close they are.

5 Q. Oh, okay. And why do you have that
6 concern?

7 A. The concerns there would be to, again,
8 fly safely around turbines, I want altitude above the
9 turbines on approach to Grimes Field, and altitude
10 for two reasons: In case, you know, I deviate a
11 little bit, I don't hit a turbine, but also that if I
12 have an emergency or something, I have some altitude
13 to glide and to miss a turbine area. And then, of
14 course the weather impacts too, that, gosh, if you
15 have weather then you of course have to deviate
16 around the whole area.

17 But the idea is that as we approach
18 Grimes, we have to come down to pattern altitude.
19 You try to come down to pattern altitude about
20 5 miles out. The reason for that being that visually
21 to see another aircraft in the air it's -- that's the
22 most difficult thing to do is see another aircraft.
23 One of my concerns is midair is one of the high
24 priorities of a pilot. So you're approaching Grimes,
25 you like to be at a particular altitude.

1 Because of the fact that the wind
2 turbines are close there, you have to stay up higher
3 as you're approaching Grimes. So I can't be down to
4 the altitude that I would like, the recommended
5 altitude at the particular distance of Grimes Field
6 in order to be at the same height so that I can
7 easily pick up another aircraft more easily if you're
8 close to the same height when you enter the traffic
9 pattern.

10 Again, no concern if you're flying IFR,
11 because IFR, only one aircraft is allowed to land
12 within a 5-, 10-minute time interval. You have these
13 times; only one aircraft.

14 VFR, you'll have, if during again our
15 MERFI fly-in, we'll have five, ten aircraft in the
16 pattern at the same time. So you have all these
17 aircraft approaching from all different areas and it
18 just makes it hard to pick them out if, in fact,
19 people are at different altitudes at different
20 distances from the airport.

21 Q. Okay. In a situation such as the one
22 you've just described where you have a number of
23 pilots approaching the field for an event such as the
24 fly-in that we've been hearing about, does the
25 presence of turbines on one side of the field make

1 the air traffic on the other sides of the field more
2 congested because you have pilots avoiding the east
3 side of the field?

4 A. What you try to do, of course, is avoid
5 Urbana. We don't -- for noise consideration and also
6 for safety in case we have a problem with the engine,
7 you don't want to land in the city, so you try to
8 avoid the city. So you have the east block with the
9 wind turbines, you have your south kind of block from
10 that.

11 So yes, the safest would be approach from
12 the west, but then, of course, you have the pattern
13 altitude and if you're going to land it on, it would
14 be two-zero, you are on the east side of the airport,
15 so if you approach from the west then you have to get
16 around and it's a further route around, more people
17 than being in the pattern doing that, but then it
18 just, it just makes it more difficult.

19 Q. Okay. So if you have turbines on the
20 east and you have the city to the south; is that
21 right?

22 A. Correct.

23 Q. Okay. That leaves you the west and the
24 north to approach the airport?

25 A. Correct.

1 Q. Okay. And does that create a more
2 congested situation for the pilots during an event
3 like the fly-in that you've talked about?

4 A. I would say so, yes.

5 Q. Okay. And for a pilot that is flying
6 using a visual mode of detecting other aircraft --

7 A. Correct.

8 Q. -- does that create more of a safety
9 hazard?

10 A. It would be harder to -- you like to have
11 planes enter the pattern from many different
12 directions. You'd like to be able to continue doing
13 that rather than as all -- any time you get a lot of
14 aircraft entering all from one direction, yes, it
15 makes it more difficult.

16 Q. Okay. Does it make it harder to avoid
17 the other airplanes because of the congestion?

18 A. You're then closer to the other aircraft,
19 so your time to detect and avoid is lessened.

20 Q. Okay. And why is that a problem?

21 A. Because we're, you know, again, at
22 Grimes, we're approaching at different speeds of
23 aircraft. I fly now the Piper Cub at 70. I used to
24 fly a 210 and it would approach at about 175. You
25 know, again, you try to slow up as you're getting

1 closer to the airport.

2 But you have the varying speeds of
3 aircraft, varying sizes of some aircraft. If you've
4 ever tried to spot a VariEze coming, gosh, they're
5 composite built, they're white in color, hard to pick
6 up. So you want to do whatever you can to try to
7 make it as easy as possible for aircraft to get in
8 the area and to land safely.

9 MR. VAN KLEY: Okay. I have no further
10 questions.

11 ALJ CHILES: Thank you.

12 Ms. Petrucci.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Petrucci:

16 Q. Good morning.

17 A. Good morning.

18 Q. You stated that your basic concern is
19 with respect to the turbines' proximity to Grimes
20 Field.

21 A. Correct.

22 Q. Okay. Do you agree with me that the
23 proposed turbines currently involving -- involved in
24 this matter are actually further away from Grimes
25 Field than the turbines that were approved by the

1 Power Siting Board in the prior case?

2 A. Correct.

3 Q. Now, with respect to the pattern
4 altitude -- well, let me back up.

5 You're a VFR pilot, correct?

6 A. Yes.

7 Q. And you indicated in your testimony in
8 answer 5 that the FAA rules require you to maintain
9 at least a 500-foot separation from structures.

10 A. That would be in sparsely -- areas that
11 are less dense; not populated areas. Like over the
12 City of Urbana, you want to maintain a distance of
13 1,000 feet from structures and people, correct.

14 Q. Okay. And that 1,000-foot standard
15 applies to a VFR pilot just as much --

16 A. Correct.

17 Q. -- as it would for the other pilots.

18 A. The IFR rules, they take that into
19 account, so IFR separation is totally different.

20 Q. In that same answer, in the first
21 paragraph toward the end, you've indicated that the
22 VFR procedures indicate that pattern altitude is to
23 be between 800 and 1,000 feet above ground level,
24 correct?

25 A. Correct.

1 Q. So as a VFR pilot you're having to
2 maintain a distance between structures and between
3 the ground.

4 A. Correct.

5 Q. So if both of those apply, isn't it
6 correct that you would have to, you would have more
7 than just 300 feet of clearance, which is what you've
8 indicated in the beginning of your third paragraph in
9 your answer to question 5?

10 A. As an example, and I believe on one of
11 the sheets that was submitted here to the Power
12 Siting Board, as an example I listed a turbine that's
13 out by the country club -- I mean, not there.
14 There's a cell tower there, okay, and then I took the
15 distance and that's on the FAA map.

16 If you add what that distance -- the
17 height was and added a turbine to that height, okay,
18 we would then be up there an altitude of, oh, gosh,
19 let me find my sheet here, altitude of 1,765 feet,
20 okay? And that was 4.8 miles out.

21 Well, if I want to be at a pattern
22 altitude at least 5 miles out, I want to be at a
23 pattern altitude for Grimes Field between 1,800 and
24 2,000 feet, that would then, if you, let's say I'm
25 taking the higher figure, 2,000 feet, you subtract

1 1,765 by 2,000 feet, I'm within 200-and-some feet of
2 the tips of that blade.

3 Q. Well, let me back up for a second.

4 A. Sure.

5 Q. If we accept that the VFR pilots need to
6 move to pattern altitude between 800 and 1,000 feet
7 and you're within 5 miles of Grimes Field and you're
8 planning on approaching the field in order to land,
9 and let's say you were in the field where a turbine
10 that had been approved has been constructed, you have
11 between 300 and 500 feet to maintain your altitude to
12 have that appropriate separation between the plane
13 and the turbine, isn't that correct, and to still be
14 within the pattern altitude of 800 to 1,000 feet.

15 A. Except the turbines are built on higher
16 land, higher ground than the elevation of Grimes
17 Field. So if you add that higher elevation that the
18 wind turbines are up higher than Grimes Field, in
19 fact the separation is less.

20 Q. Well, it depends on the specific details
21 of each particular turbine, correct?

22 A. My understanding, all of the turbines
23 that are being built are on higher ground except, I
24 think, for Don Bower's turbines, and those I don't
25 know about, but all of the turbines that are east

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1 would be on higher ground than the elevation of
2 Grimes Field. So they're all going to be higher than
3 500 feet above, you know, if you take -- they're
4 going to be 6- to 700 feet.

5 In other words, you can't start at a
6 500-foot altitude and say well, they're going to be
7 500 feet above elevation because they're going to be
8 on grounds that are 100 or more higher than the field
9 elevation. So let's say the wind turbine then, let's
10 say if it was on the 100-foot higher, it would be
11 then, like, at 600 feet starting out, and we would
12 then be at 1,000 feet, so that's 400 feet we would be
13 within that distance.

14 Q. Okay. Does that mean, then, that the
15 pattern altitude needs to adjust?

16 A. There's no -- unfortunately, there's no
17 way, I don't think the FAA has anything there that
18 they specify a particular airport change its pattern
19 altitude; they don't do that. There's no way to note
20 that. So it's a standard throughout the United
21 States those are pattern altitudes. So there would
22 be no way to note just a special approach for Grimes
23 Field for VFR for pattern altitude.

24 Q. Now, that is -- and that 800 to
25 1,000 feet is simply as you're coming closer and

1 closer to Grimes Field before you begin the official
2 descent; is that right?

3 A. Well, there's what we call "pattern."
4 You enter downwind and then there's crosswind and
5 then there's the final approach and you try to be at
6 pattern altitude. You have to be at pattern altitude
7 for those particular segments of the pattern. On
8 approach you like to be at pattern altitude 5 miles
9 out, again so you notice other traffic in the area,
10 who's entering the pattern from other directions and
11 that, so yes.

12 Q. Okay. The answer is "yes"? I want to
13 make sure that --

14 A. You're going to be at that altitude
15 between 800 and 1,000 feet, right.

16 Q. And then of course, as you're descending,
17 you're going to be below the pattern altitude level.

18 A. Usually on downwind you're going to stay
19 at pattern altitude, as you turn crosswind you begin
20 your descent, and then on final is when you make the
21 -- your greatest loss of altitude will be on final.

22 Q. Now, currently when planes take off from
23 Grimes Field and they head south, they have to climb
24 to the specified altitude of 1,000 feet because they
25 are flying over the City of Urbana; isn't that

1 correct?

2 A. On departure, we have it listed there at
3 Grimes, again to be safe, people are following what
4 we would like them to follow for noise abatement and
5 then also for safety, you take off and you veer a
6 little bit to the right to avoid the majority of the
7 City of Urbana. But you don't climb to 1,000 feet;
8 you climb to whatever altitude you want to. Usually
9 you go up to, you know, you start to climb to
10 cruising altitude then. It depends upon the aircraft
11 what your cruising altitude might be.

12 Q. Okay. But my question was different. My
13 question was if you're heading south, not that you're
14 turning off into a different direction, my question
15 was if you took off from Grimes and you headed south,
16 as a result you're heading over the city, you have to
17 climb to an altitude of 1,000 feet, right?

18 A. Correct. There is some leeway under the
19 FAA regulations that landing and taking off, they're
20 not as strict about flying your altitude over things.
21 As an example, when you come in to land at Grimes
22 Field, you're on final, you fly over a few houses and
23 parts of the city, you're less than 500 feet flying
24 over those particular houses, but you're on the final
25 approach to Grimes. So the FAA said hey, we

1 understand you have to land there, so you're going to
2 have to do that.

3 Q. I think a copy of City Exhibit No. 14,
4 the sectional map is still sitting up at the table
5 there.

6 A. Yes.

7 Q. In your testimony you had indicated that
8 a sectional map will include a caution box or at
9 least a caution zone, I think is how you worded it.

10 A. It's labeled as "caution," right.

11 Q. And is this depiction on City Exhibit 14
12 similar to what you were describing in your prefiled
13 testimony in answer No. 6?

14 A. Right. The turbines actually in that
15 caution area are not pinpointed exactly; they don't
16 do that. They just have a huge caution area to cover
17 all the turbines in general, so yes.

18 Q. Okay. And on this particular map, they
19 have the caution marked.

20 A. Correct.

21 Q. And then --

22 A. The little symbols.

23 Q. And the symbols reflect the turbines; am
24 I correct?

25 A. No. They represent an area of turbines.

1 They don't necessarily represent a particular turbine
2 or two turbines is right there where that symbol is;
3 they do not do that. Not necessarily it may not
4 have.

5 Q. Okay. And then as a VFR pilot, I think
6 you even described it in your prefiled testimony, the
7 "see and avoid" approach to flying.

8 A. If I'm at an altitude of 6,500, I'll fly
9 over the wind turbine area. If I'm approaching the
10 airport --

11 Q. Okay. My question is very specific.

12 MR. VAN KLEY: Objection, your Honor.
13 Will you ask counsel to allow the witness to complete
14 his answer.

15 ALJ CHILES: Have you completed your
16 answer? I want to make sure you're able to give a
17 full answer.

18 THE WITNESS: I was just saying that
19 flying over a wind turbine area at 6,500 is no
20 concern.

21 MS. PETRUCCI: Okay. And --

22 MR. VAN KLEY: Again, your Honor, could
23 we ask counsel to allow the witness to continue
24 answering the question.

25 MS. PETRUCCI: If I can respond to that,

1 please?

2 ALJ CHILES: Sure.

3 MS. PETRUCCI: I don't think he's
4 answering the question that I was asking, so I was
5 trying to go back to my question to have him answer
6 the specific question I was asking.

7 ALJ CHILES: Had you finished giving your
8 complete answer, Mr. Rademacher?

9 THE WITNESS: I'll defer, so that's fine.

10 ALJ CHILES: Okay. Thank you.

11 Q. (By Ms. Petrucci) Okay. What I want to
12 go back to, and it's located in your answer No. 5,
13 where you indicated that VFR pilots use the "see and
14 avoid" method.

15 A. Yes.

16 Q. And we just looked at the sectional map,
17 which this particular sectional map identified, with
18 a caution mark and other symbols, these turbines.
19 Isn't it correct that with that information a pilot,
20 such as a VFR pilot, would have information of the
21 existence of the turbines at the time they are flying
22 in this particular area?

23 A. Yes.

24 Q. And the turbines are visible, or will be
25 if they are constructed, they'll be visible to

1 pilots; am I correct?

2 A. They will be visible depending upon the
3 weather conditions, yes. Because if it's low
4 visibility in white conditions, they're going to be
5 hard to pick up. Depending upon what speed you're
6 flying, you then have some time to react or may not
7 have that much time to react, correct.

8 Q. And that's correct for other types of
9 obstructions, as well, that low visibility makes it
10 difficult --

11 A. Correct. Absolutely.

12 Q. And isn't it correct that pilots,
13 including yourself, have the ability to adjust the
14 location in which they fly to avoid any concerns with
15 respect to the wind turbines?

16 A. For the most part. Again, the caveat
17 there is weather. If I have a weather system moving
18 in from the west at Grimes, some lightning and storms
19 to the west, and I'm VFR, I'm going -- I'm not going
20 to head over there towards that, I'm going to try to
21 approach from the east to get down as quickly as
22 possible.

23 Q. And that would be the same thing for a
24 pilot who was perhaps on the west side of the city or
25 southwest side of the City of Urbana and trying to

1 avoid any obstructions that may exist because of the
2 City of Urbana and trying to land at Grimes Field;
3 isn't that correct?

4 A. Correct.

5 MS. PETRUCCI: Just a moment, please.

6 ALJ CHILES: Take your time.

7 MS. PETRUCCI: I don't have any further
8 questions. Thank you, Mr. Rademacher.

9 ALJ CHILES: Thank you.

10 Mr. Reilly.

11 MR. REILLY: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Reilly:

15 Q. Good morning, Mr. Rademacher.

16 A. Good morning.

17 Q. My name is Steve Reilly. I'm here on
18 behalf of the staff of the Ohio Power Siting Board.

19 Could you tell me have you ever heard the
20 term "notices to airmen"?

21 A. Yes. Sure.

22 Q. Could you tell me what that means to you?

23 A. It's usually, it can be very specific or
24 general, and it could be put out as a temporary
25 notice or a permanent notice. As an example, there's

1 a notice to airmen that's kind of permanent for the
2 runways there at Grimes, having deer occasionally on
3 the runways.

4 Q. Where do you get these notices?

5 A. They're not sent to us in the mail. We
6 have to be proactive and look them up in different
7 publications.

8 Q. All right. Is it helpful for you to know
9 -- well, strike that.

10 The notices to airmen -- strike that too.

11 Are you familiar with the acronym,
12 N-O-T-A-M, NOTAM? Have you ever seen that acronym?

13 A. No.

14 Q. Talking about notices to airmen, is it
15 helpful to know the longitude and latitude of
16 different things you might encounter such as
17 windmills?

18 A. I flying VFR, and as an example, flying
19 up to Oshkosh, Wisconsin, I used a sectional map and
20 not that, so I could -- I didn't have any reference.
21 I wasn't using GPS, so latitude and longitude didn't
22 help me. It helped depiction on the chart, yes.

23 Q. The latitude and longitude did help you?

24 A. Well, the depiction on the chart helped
25 me, but the latitude and longitude didn't mean oh,

1 God, I had no idea where I was.

2 Q. Okay. Can you think of a situation, any
3 situations in which it would help?

4 A. It would help, I suppose, to have those
5 published on a, if you're using GPS, because they
6 will give you exactly where that is if it's in the
7 GPS system, software system.

8 Q. Okay. Is GPS a, is that a type of flight
9 information system?

10 A. It would be almost identical to what a
11 person would have in their car if they have GPS to
12 help them follow the roads and know where they are.

13 Q. Okay. So some pilots have GPS systems on
14 their planes?

15 A. A lot of them have GPS. Do they use them
16 all time; sometimes. I would say quite a few do,
17 yes.

18 MR. REILLY: Can I have a moment, your
19 Honor?

20 ALJ CHILES: Sure. Take your time.

21 MR. REILLY: Thank you, Mr. Rademacher.

22 ALJ CHILES: Thank you.

23 Ms. Parcels, redirect?

24 MS. PARCELS: Sure.

25 - - -

1 REDIRECT EXAMINATION

2 By Ms. Parcels:

3 Q. Mr. Reilly just asked you about GPS.
4 Now, from your understanding, is that just a
5 navigational tool, that's not an instrument flight
6 rule component that would assist pilots. VFR pilots
7 can use GPS as well. Is that your understanding?

8 A. It's a navigational tool, correct.

9 Q. So pilots that fly under either IFR or
10 VFR can use a GPS?

11 A. If the GPS, if it's IFR-approved, then
12 sure, the IFR pilot can do that, and there are GPS
13 approaches to Grimes Field, correct.

14 Q. But a VFR pilot could use a GPS to check
15 their coordinates in flight?

16 A. Check their position, check their time to
17 a particular destination.

18 Q. But they couldn't use it to land or
19 depart?

20 A. No.

21 Q. Okay. I just wanted to clarify that.

22 Counsel for the county asked you about
23 flight planning. I'm going to hand you what's been
24 marked City Exhibit 16.

25 ALJ CHILES: It's so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Do you recognize that as a flight plan
3 document?

4 A. Yes.

5 Q. Did you create that using a software
6 system?

7 A. That was the Jeppesen FliteStar flight
8 map.

9 Q. But you, yourself, you know, used that
10 system to create that flight map?

11 A. It's produced by Jeppesen and they do
12 mapping there, correct.

13 Q. Okay. So you --

14 A. So I printed it out.

15 Q. So you, you know, take, you know, put
16 coordinates and that sort of thing into the system
17 for your flight plan and it's --

18 A. I use it for VFR planning.

19 Q. Okay. Now, on that document, can you
20 describe to me what the little blue marks are that
21 kind of look like M's or upside down V's?

22 A. Those are the present location of towers.

23 Q. Okay. Would you classify those as
24 obstructions in relation to Grimes Field?

25 A. They're things that we should be aware of

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1 depending on our altitude, absolutely.

2 Q. Okay. And then when you were answering
3 questions from counsel for the company, you noted
4 that the highest obstruction that's close to Grimes
5 Field is 4.8 miles away. Is that your handwriting
6 that says -- I can't read the actual writing, but it
7 says "4.8" and then it's got some writing after that;
8 is that your handwriting?

9 A. Correct. Yes.

10 Q. Okay. And does that indicate 4.8 miles?

11 A. That would be actually 4.8 nautical
12 miles.

13 Q. Nautical miles. Okay.

14 And then the blue mark below that that
15 was created by the program, what's the altitude on
16 that tower? I know it's tiny.

17 A. 320 feet.

18 Q. Okay. And it also has a "1590" notation.
19 What does that "1590" mean?

20 A. That would be talking about your mean sea
21 level height.

22 Q. And in your handwriting it says "1,765."
23 What does that indicate?

24 A. That would be your -- the height of mean
25 sea level of that particular one.

1 Q. Okay. So would you say then that tower
2 is the highest obstruction within 5 miles of Grimes
3 Field?

4 A. I don't know. I just printed it off on
5 that particular side of Grimes. So to the north,
6 south, west, I don't know.

7 Q. Okay.

8 A. I don't know.

9 Q. Where were you flying when you created
10 this flight plan? What direction? Do you recall?

11 A. I wasn't -- I just created this as an
12 example --

13 Q. Okay.

14 A. -- of the height of wind turbines on the
15 particular east side, so I wasn't flying any place.

16 Q. Okay. But there are no wind turbines
17 indicated on this map; is that correct?

18 A. Correct. No wind turbines.

19 Q. Okay. So these are communication towers,
20 then, in your experience from flying over them?

21 A. Who owns them, what they do, I don't
22 know. I assume communication towers of some type.

23 Q. Okay. I'm going to hand you what I would
24 ask to be marked as Exhibit 17.

25 ALJ CHILES: It's so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Do you recognize that document,
3 Mr. Rademacher?

4 A. Yes.

5 Q. Okay. And what is that document?

6 A. The document is on the MERFI website.
7 It's a suggestion or what we would like to -- the
8 route we would like to see aircraft enter the pattern
9 for the MERFI fly-in.

10 Q. Okay.

11 A. Heading, for that particular runway
12 direction, depending upon winds, if they have to land
13 in that direction.

14 Q. Counsel for the company asked you about
15 airplanes flying over the city. Is that document
16 there marked with an area that's got a cross, it
17 looks like a red or pink crossband over the center of
18 the City of Urbana?

19 A. Yes.

20 Q. And why is that marked?

21 A. Again, it's just the center of town to
22 highlight that area, noise sensitive area, to try to
23 avoid that area.

24 Q. Okay. And counsel for the company also
25 asked you, with relation to the Champaign Wind

1 turbines and the Buckeye Wind turbines, whether the
2 Buckeye Wind turbines were closer than the ones under
3 consideration for Champaign Wind, correct?

4 A. Yes.

5 Q. Okay. And looking at that document, does
6 the group of blue dots on that document approximate
7 the area of the closest turbines for the Buckeye Wind
8 project to the airport?

9 A. Yes.

10 Q. Okay. And can you see the airport on
11 that map with the runway that's kind of got a break
12 in that pink line that signifies the runway, there
13 off to the left side?

14 A. Yes, the runway.

15 Q. And that group of blue dots, if you know,
16 how far away from Grimes Field is that group of blue
17 dots that signify the Buckeye Wind turbines?

18 A. My understanding, if I recall, 3.5 to 3.7
19 nautical miles.

20 Q. Okay. And if you look above that group
21 of blue dots, there's a set of three red dots. Do
22 you know if that approximates the area of the closest
23 turbine sites for the Champaign Wind project?

24 A. I really don't know on that.

25 Q. Okay. If those were the approximate

1 locations for the closest turbines to the Champaign
2 Wind project, just based on your general knowledge of
3 driving in that area, do you know how close those,
4 that group of turbines would be to Grimes Field?

5 A. I would say 4.5, guesstimating from this,
6 but I don't know specifically. They would be on
7 the -- I'm sure they're noted how far away they are.

8 Q. Do you know if those would probably be
9 within five miles of the Grimes Field runway then?
10 Looking at this map.

11 A. I would say more than likely they are.

12 Q. Okay. Counsel for the county asked you
13 about your communications and I guess sort of
14 consensus within the local pilot community about wind
15 turbines.

16 MR. REILLY: Objection. I don't believe
17 he has testified to a consensus within the local
18 pilot community.

19 ALJ CHILES: Sustained. I think you need
20 to rephrase your question.

21 Q. Okay. Mr. Rademacher, did you circulate
22 a petition for the Buckeye Wind project?

23 A. A petition was circulated to have pilots
24 sign, correct.

25 MR. REILLY: Objection. If we're talking

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1 about the -- if the "Buckeye Wind project" is Buckeye
2 I, it's irrelevant. It's not clear to me which it
3 is.

4 MS. PARCELS: Well, it's a foundation
5 question for my next question.

6 Q. Did you --

7 ALJ CHILES: Hold on. The objection is
8 sustained. I think you need to clarify which of the
9 specific projects you're talking about.

10 MS. PARCELS: Okay.

11 Q. Mr. Rademacher, three years ago, did you
12 circulate a petition among local pilots for the
13 Buckeye Wind I project?

14 MS. PETRUCCI: Objection. I don't think
15 it's relevant to this proceeding.

16 ALJ CHILES: Ms. Parcels.

17 MS. PARCELS: Again, this would be
18 foundation if he did the same for Champaign Wind.

19 ALJ CHILES: I'm going to allow limited
20 redirect on that subject.

21 MS. PARCELS: Okay.

22 Q. (By Ms. Parcels) So, Mr. Rademacher, did
23 you circulate a petition, three years ago, among
24 local pilots?

25 A. It was a petition to all pilots who flew

1 into Grimes as well as local pilots, correct.

2 Q. Okay. And how many signatures were on
3 that petition if you recall?

4 A. Over 180.

5 Q. Did you circulate a petition for the
6 Champaign Wind Project or the second phase of Buckeye
7 Wind?

8 A. The second phase, I did not.

9 MS. PARCELS: Okay. I have nothing
10 further, your Honors. Thank you.

11 ALJ CHILES: Recross. The county and
12 townships?

13 MR. SELVAGGIO: No. Thank you.

14 ALJ CHILES: Mr. Van Kley?

15 MR. VAN KLEY: Yes, I have a few.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Van Kley:

19 Q. I think you were being asked by counsel
20 for the Applicant some questions about clearance over
21 the tops of the turbines if you were flying in from
22 the east. Do you recall those questions?

23 A. Yes.

24 Q. Okay. And maybe I just wasn't following
25 what you were saying very well, but I was wondering

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1 if you could clarify for me, if you're flying over
2 the top of the turbines into Grimes Field, at what
3 altitude would you have to approach Grimes Field over
4 the top of the turbines?

5 MS. PETRUCCI: Objection. I think it's
6 outside the scope of redirect.

7 ALJ CHILES: Mr. Van Kley.

8 MR. VAN KLEY: I think there was
9 considerable cross-examination on this issue. They
10 were talking about 800 to 1,000 feet above the ground
11 and whether they could fly in that space, et cetera,
12 et cetera. I think about half of her cross was on
13 that.

14 ALJ CHILES: Thank you. Could you read
15 back the question to me, please?

16 (Record read.)

17 ALJ CHILES: Overruled.

18 A. If, in the example that I gave, the wind
19 turbine being at the height of 1,765 feet, I would
20 want to be, if I follow the minimum FAA guidelines,
21 you would want to be 500 feet above that minimum. To
22 be on the safe side you might add another couple
23 hundred feet.

24 So if you would then do the math, you
25 would then, if you add a couple hundred feet, you

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1 would be 500-foot above the pattern altitude that you
2 would like to be at that particular point in time.

3 Q. Okay. And why would you want to be below
4 that pattern altitude under normal circumstances?

5 A. Why would I want to be below?

6 Q. Yeah. Why are you saying that this is
7 above the altitude that you would want to be at.

8 A. Right, it's above it because, again, I
9 was apparently trying to explain, for collision
10 avoidance with other aircraft, you all -- everyone
11 who is 5 miles out and approaching the pattern, you
12 would like to be at pattern altitude. It just helps
13 a VFR pilot see and avoid other aircraft. It's
14 easier to see and avoid, rather than being at all
15 different kind of altitudes that make it much more
16 difficult to avoid a midair.

17 Q. Okay. Is there some kind of a rule of
18 thumb concerning how low you want to be to safely
19 approach an airfield at the distance that the
20 turbines would be from the airfield? Do you
21 understand the question?

22 A. No.

23 Q. Okay. Let me re-ask it.

24 A. Sorry.

25 Q. Obviously, if you're going to land in an

1964

1 airfield, you're not going to go straight down on top
2 of the airfield, right?

3 A. Correct. You want to be at pattern
4 altitude.

5 Q. Right. You want to approach it from a
6 more gradual angle so that you can land safely.

7 A. You want to try to be at pattern altitude
8 5 miles out. In the case of Grimes, it would be
9 between 800 and 1,000 feet above the altitude of the
10 airport.

11 Q. Okay. So if I'm understanding you, and I
12 don't exactly understand what you mean by the term
13 "pattern altitude"; would you explain that?

14 A. It's just suggested, the altitude, for
15 that, for the pattern of, really, any airport if
16 you're under VFR operations.

17 Q. Okay. So normally you would want to be
18 between 800 feet and 1,000 feet above the ground as
19 you're approaching the field?

20 A. Above the field elevation of the airport,
21 correct.

22 Q. Okay. And given the location of the
23 turbines of the Buckeye II Wind project, do those
24 turbines interfere with your ability to approach at
25 that altitude if you're going to fly over them?

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1 A. If I have to fly over those turbines then
2 I have to be at a higher altitude. I cannot be at
3 the altitude I would like to be on approach to Grimes
4 Field.

5 Q. Okay. And how does that affect the
6 safety of your approach?

7 A. Again, everyone would like to be, at
8 5 miles, at pattern altitude, for the see and avoid
9 situation. It's easier, far easier to pick up
10 aircraft if they're the same altitude than if they're
11 down because then there's ground clutter, you can't
12 pick out the movement of the aircraft; if they're up
13 high, then again you're looking at every direction.
14 You like to look straight out to spot aircraft.

15 Q. Okay. You were talking about, if you
16 were flying at 6,700 feet, the situation would be
17 different. Am I understanding that correctly that
18 you were --

19 A. Obstacles at 500 feet or whatever are not
20 going to affect me if I'm flying at 6,500 feet. I
21 have plenty of time, plenty of clearance, also plenty
22 of time if in fact you have engine failure to glide
23 out of that particular area for a safe landing.

24 Q. Okay. All right. And then if you're in
25 conditions of poor visibility and you're trying to

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1 approach the airfield from the direction that takes
2 you over the turbines, how does the -- how do the low
3 visibility conditions affect your ability to safely
4 approach the airport?

5 A. Well, low visibility, it affects the
6 pilot's ability to see anything, whether it be
7 aircraft or obstacles. And usually low visibility,
8 not always, but sometimes the term we call "scud
9 running," which we shouldn't do, but a lot of us do
10 it, is you get low visibility, then usually sometimes
11 it's low ceilings which then forces us to fly a tad
12 lower than we like to fly in order to get into the
13 airport.

14 Q. And if I'm understanding your testimony
15 accurately, you would want to stay at least 500 feet
16 above the turbines as you're approaching.

17 A. According to FAA rules and regulations,
18 you want to stay 500 feet away from any manmade
19 object, houses, wind turbines, and that would be in
20 sparsely-populated areas, correct. Otherwise, it's
21 1,000 feet.

22 Q. Okay. And so given that requirement,
23 what would be the elevation of your approach to
24 Grimes Field if you are staying 500 feet above the
25 turbines compared to the 800 to 1,000 feet that you

1967

1 would prefer to approach?

2 A. Again, I guess I would refer back to my
3 example of the one that's 4.8 miles out, being at
4 1,765 altitude, if there were a 492-foot turbine
5 there, you add 500 feet to that and then maybe a
6 cushion of 100 feet because your altimeter may be off
7 or whatever, it shouldn't be, mine on the Cub was an
8 altimeter that was built in '46, so not that
9 accurate. So you could be up to an altitude of 24-
10 2,500 feet which would be 4- or 500-foot above,
11 anyway, above what I would like to be at at that
12 particular location.

13 Q. Okay. At the height that you would be
14 flying over the turbines, would you have concern
15 about the wake that's created by the turbines?

16 MS. PETRUCCI: Objection. That's beyond
17 the scope.

18 ALJ CHILES: Mr. Van Kley.

19 MR. VAN KLEY: No, I don't think it's
20 beyond the scope. Counsel for the Applicant asked
21 quite a number of questions about whether he still
22 had clearance, necessary clearance to go over the top
23 of turbines, and this is directly applicable to
24 whether that's feasible.

25 ALJ CHILES: Ms. Petrucci.

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1 MS. PETRUCCI: He -- that question was
2 not what he just asked. The scope of redirect had
3 nothing to do with wake turbulence.

4 ALJ CHILES: I'm finding, at this point,
5 you've gone beyond the scope of redirect. The
6 objection is sustained.

7 MR. VAN KLEY: Okay. I have no further
8 questions.

9 ALJ CHILES: Thank you.
10 Ms. Petrucci.

11 - - -

12 RECROSS-EXAMINATION

13 By Ms. Petrucci:

14 Q. Mr. Rademacher, turning to City
15 Exhibit 17, did you create this document?

16 A. No, I did not.

17 MS. PETRUCCI: Okay. I have nothing
18 further.

19 ALJ CHILES: Thank you.

20 Mr. Reilly.

21 MR. REILLY: Thank you, your Honor. And
22 I will say at the outset I'm just trying to
23 understand what pattern altitude is. If it's beyond
24 the scope, I will withdraw.

25 - - -

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RECROSS-EXAMINATION

By Mr. Reilly:

Q. Mr. Van Kley asked you about pattern altitude. Do you recall that?

A. Yes.

Q. Just for the sake of consistency, can you give us what pattern altitude is, again?

A. Okay. Pattern altitude would be the altitude that you would like to have your aircraft at when you're approaching an airport and then also to be in the pattern, and it's based upon an altitude of between 800 to 1,000 feet above the field elevation of that particular airport.

Q. Who determines what the pattern altitude is for your flight?

A. I suppose there are different ways you can do it. Again, it's suggested by the FAA that -- sometimes, as an example, at the MERFI fly-in we suggest 2,000 feet. Rather than 800 or 1,000, we suggest 2,000 feet MSL is the pattern altitude which then would be about 940 feet actually. Between 800 and 1,000 feet you come at 940 feet is what it would be.

Q. Okay. Is the pattern -- let me ask it this way: Is the pattern altitude determined by each

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1 individual pilot?

2 A. It's -- it's determined by the field
3 elevation of that particular airport.

4 Q. Oh, okay. And where does the pilot find
5 that field elevation?

6 A. On your chart, your sectional chart, or
7 look it up.

8 Q. Okay. And then correct me if I'm wrong
9 here, what you do to determine the pattern altitude
10 is take the field elevation of the airport, apply the
11 FAA-suggested minimum and maximum, and determine at
12 some place in between the minimum and the --

13 A. Correct. Absolutely. Yes.

14 MR. REILLY: Thank you, Mr. Rademacher.

15 ALJ CHILES: Thank you.

16 I just have a couple questions for you.

17 - - -

18 EXAMINATION

19 By ALJ Chiles:

20 Q. If you would turn to page 2 of your
21 testimony. I'm looking at your answer to question
22 No. 5, it's that third paragraph in answer 5, you
23 spoke about wake turbulence. The portion of your
24 testimony says "When the blades turn, we would have
25 to avoid the individual turbines by an even greater

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1 distance due to wake turbulence." And the next
2 sentence reads: "Groups of turbines would create a
3 cumulative turbulence effect...." Do you see that
4 sentence?

5 A. Yes.

6 Q. Can you just elaborate for me what wake
7 turbulence is in your opinion?

8 A. The -- and I'll update that, I guess.

9 Q. Okay.

10 A. AOPA just sent me some information
11 yesterday, and I went out to the suggested site and
12 it was a governmental transportation site, and they
13 felt that wake turbulence, and again this was just
14 one study, they felt that above the blades it's not
15 going to be that much. Wake turbulence is more going
16 to be behind the blades. And they felt that if you
17 got out too far, it would really be nonexistent, so
18 it's not going to be that great of a factor, wake
19 turbulence.

20 However, they said though that, as an
21 example, I, and it's in my thing, I used to fly
22 ultralights. And they say ultralights stay five
23 times further away because a little bit of wind will
24 really affect them.

25 I fly an aircraft, a Piper Cub, it weighs

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1 empty weight of 732 pounds, so it isn't that much
2 heavier than the ultralight, so I suppose it would
3 affect my aircraft. And, in fact, there are three
4 other Piper Cubs now based at Grimes Field, so it
5 would affect us more than heavier aircraft.

6 Q. Okay. Just to follow up on your answer.
7 You referred to "AOPA." Can you define what that is?

8 A. That's Aircraft Owners and Pilots
9 Association.

10 Q. You're a member of that organization?

11 A. Correct. Yes.

12 Q. You also referred to ultralight aircraft.
13 Can you explain to me what would define an ultralight
14 aircraft?

15 A. Ultralight aircraft would be defined,
16 it's something normally single place -- place,
17 normally flying at a speed of 55 miles per hour or
18 less, it being very light, kind of an aircraft
19 powered by an engine that would be anywhere from 15
20 horsepower to maybe 45 horsepower.

21 Q. Okay. Thank you. I just have one more
22 question for you. Have you ever experienced wake
23 turbulence yourself?

24 A. I will never forget one time at Oshkosh,
25 Wisconsin. I was attending the big EAA, Experimental

1973

1 Aircraft Association event, and this was 20-some
2 years ago. I was in position for takeoff and they
3 held me up because one of the FAA chiefs wanted to
4 get out and go some place, so he left in a Convair
5 turboprop aircraft.

6 And they motioned me to take off. Well,
7 they should have thought about separation and they
8 didn't, and son of a gun, boy, I took off and I was
9 maybe 20 feet in the air and, whoa, I had to throw my
10 controls over to one side because I had hit the wake
11 turbulence of this larger aircraft --

12 Q. Okay.

13 A. -- and was able to recover, thank
14 goodness.

15 Q. Okay. What about in regards to a wind
16 turbine; have you ever experienced wake turbulence
17 from a wind turbine?

18 A. I have not.

19 ALJ CHILES: Okay. Thank you.

20 - - -

21 EXAMINATION

22 By ALJ Tauber:

23 Q. You said the plane you fly is an
24 ultralight; is that how you characterized it?

25 A. No. It's a Piper Cub built in 1946,

1974

1 vintage Piper Cub, weighing about 725. It's a
2 regular, certified aircraft, built by Piper
3 Corporation.

4 Q. But you were talking about the size, 700
5 pounds, is that on the lighter end of aircraft
6 typically?

7 A. This is the lighter end of aircraft. It
8 used to be in the late '40s and '50s, people growing
9 up, kids growing up, thought every aircraft was a
10 Piper Cub because they were so numerous and so
11 popular. Now there are other aircraft that have come
12 into existence and been built, so that isn't the
13 case. In fact, most people don't know what a Piper
14 Cub is anymore.

15 Q. So at Grimes Field are most of the planes
16 similar to yours in style or are most of them
17 heavier? What's the demographic?

18 A. There are four Piper Cubs on the field
19 now. There are several twin-engine aircraft which
20 are much heavier twin-engines. There are 172s, 182s,
21 those would be metal aircraft -- mine's covered with
22 fabric -- but those would be metal aircraft with four
23 passengers. Mine is just a two-passenger aircraft.
24 Mine would be on the lighter side.

25 But there's the whole gamut of aviation

1975

1 there from, you know, ultralights to heavier
2 aircraft. We had and still have some turboprops
3 operating out of Grimes that they fly strictly IFR on
4 all their flights. But a lot of different aircraft.

5 ALJ TAUBER: Thank you.

6 ALJ CHILES: I have no further questions,
7 so thank you. You are excused.

8 Ms. Parcels.

9 MS. PARCELS: Yes. Just one moment, your
10 Honors.

11 Are we up to City Exhibit 18?

12 ALJ CHILES: I believe we marked 15 as
13 the direct testimony and then 16 and 17.

14 MS. PARCELS: Okay. The City would move
15 then for admission of Exhibits 16 and 17.

16 ALJ CHILES: City Exhibit 15 was the
17 direct testimony.

18 MS. PARCELS: Okay. Then 15 and 16 and
19 17.

20 ALJ CHILES: Thank you.

21 Are there any objections to the admission
22 of City Exhibits 15, 16, or 17?

23 MS. PETRUCCI: We have no objection to 15
24 and 16, but we object to City Exhibit 17.

25 ALJ CHILES: Your basis?

1976

1 MS. PETRUCCI: Mr. Rademacher indicated
2 that he did not create this document, and he was
3 asked several questions that he indicated he wasn't
4 sure about some of the information on it, and there's
5 no foundation to reflect that it is entirely
6 accurate.

7 ALJ CHILES: Thank you.

8 Are there any other objections to City
9 Exhibit 17?

10 Ms. Parcels.

11 MS. PARCELS: Yes. I believe the
12 language used for placement of -- directions to the
13 wind turbine groups was an approximation, not
14 entirely an accurate representation. He did testify
15 that it is available on the MERFI website and, in his
16 direct testimony, testified he's a MERFI board
17 member, therefore, he's involved in the creation of
18 the document and the flight plans for the event into
19 Grimes Field.

20 ALJ CHILES: Are there any additional --
21 I'm sorry. Are there any objections to the admission
22 of City Exhibits 15 and 16?

23 (No response.)

24 ALJ CHILES: City Exhibits 15 and 16 will
25 be admitted.

1977

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 ALJ CHILES: City Exhibit 17 will not be
3 admitted on the grounds that we're finding
4 appropriate foundation has not been laid.

5 ALJ TAUBER: Ms. Parcels, your next
6 witness.

7 MS. PARCELS: Yes. The City would call
8 Mayor Bill Bean.

9 ALJ TAUBER: Please raise your right
10 hand.

11 (Witness sworn.)

12 ALJ TAUBER: Thank you.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 - - -

15 ROBERT W. BEAN
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Parcels:

20 Q. Good morning, Mayor Bean. Do you
21 recognize what's been placed before you as City
22 Exhibit 18?

23 A. Yes, I do.

24 Q. Okay. And is that your prepared direct
25 testimony?

1978

1 A. Yes.

2 Q. Okay. And do you have any updates or
3 corrections to that?

4 A. No.

5 Q. Okay. If I were to ask you the same
6 questions today, would you answer in the same
7 fashion?

8 A. Yes, I would.

9 MS. PARCELS: Okay. Your Honors, then I
10 would note that the last page of the document is
11 marked, but it is merely a proffer to assist Mayor
12 Bean with his testimony; it does not need to be
13 admitted into evidence. I would then present the
14 witness for cross-examination.

15 ALJ TAUBER: Ms. Napier.

16 MS. NAPIER: Thank you.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Napier:

20 Q. Mayor Bean, good morning.

21 A. Good morning.

22 Q. I have just a few questions for you. It
23 appears from your direct testimony, and I think
24 specifically your answer to question No. 6, that what
25 I would characterize as significant development is

1979

1 anticipated with regard to Grimes Airport. I think
2 the figure that was quoted by you is \$2.22 million.
3 Can you tell me why the city believes that such
4 development is deemed necessary or beneficial?

5 A. The airport's been there for -- since the
6 '40s. And I guess I have to say that being Mayor, I
7 have a vision to grow the City of Urbana, and Grimes
8 Field is an integral cog in the overall development
9 of Urbana. And we sit on a railway spur right there
10 and we're looking to expand the runway so we can
11 bring bigger aircraft in.

12 I just -- I look at it as a vision.
13 We've been working with R.W. Armstrong, our
14 consultant with the FAA, in order to lengthen the
15 runway and do other things including working with
16 them and the FAA in doing a new terminal. That is
17 here in the real near further.

18 We still need land acquisition for the
19 extending of the runway, but the FAA has been real
20 good to Grimes Field and to Urbana and we're looking
21 forward to working with the FAA and getting all these
22 things done, so yes.

23 Q. In response to question 10, you talked
24 about that when -- since the city assumed full
25 operation of the airport in '87, that Grimes Field

1980

1 has evolved from a tax-supported subsidy to a
2 self-supporting operation, and you state "through
3 fuel sales revenue and hangar rents." I guess how
4 have those increased your revenue?

5 A. Management. And we've brought in, if you
6 would look, we did the, we were host to the B-25s,
7 the Doolittle Raiders, and they brought in 22 B-25s,
8 and the fuel sales were astronomical. They were
9 giving flights and charging \$425 a flight for a
10 20-minute flight at Grimes Field.

11 We had 10,000 people attending that.
12 Well, it's really five, six days that they came in
13 for the Doolittle Raiders reunion down at the Air
14 Force Museum in Dayton, and Urbana was the staging
15 area for these airplanes.

16 All the airports around Dayton for the
17 museum, Urbana stepped up, and we've done it now for
18 two years, and the pilots for the B-25s absolutely
19 love Urbana. And we're getting more war birds coming
20 in to Urbana. So it's becoming a destination for
21 flights, for aviation, with our aviation museum, more
22 and more planes are coming in and they're buying a
23 lot more gas.

24 Q. And Grimes is on the north side of
25 Urbana, correct?

1 A. That's correct.

2 Q. Now, you had indicated that on the west
3 side of Urbana there's a floodplain.

4 A. Correct.

5 Q. And why, in your opinion, is the east
6 side of the city where the growth is, I guess where
7 the city is planning to grow?

8 A. Well, it has been growing out east for --
9 that's the direction it's grown. Right now, if you
10 go north, it's pretty much farmland, we've got a fish
11 farm up there and it's also buffered by the airport,
12 and the land that we purchased for the -- part of the
13 extension of the runway. South is mainly
14 manufacturing.

15 So the growth, the residential growth in
16 Urbana has been moving east. Our new Walmart is out
17 east. That's the direction our growth is going and
18 it's going right east towards the wind turbines.

19 And we are -- does that answer your
20 question?

21 Q. Yeah.

22 A. We are in the process of, hopefully
23 working with the county, we have a manufacturer out
24 east of town, out in the township, and we are looking
25 to extend our sewer line out about 2 miles to this

1 manufacturer so they can hook in. They were having
2 some EPA problems, and we were willing to step up,
3 send our sewer line out there, and hopefully that
4 will help expand out east.

5 Q. Is that sewer extension down Route 46?

6 A. Correct.

7 MS. NAPIER: Thank you. I have no
8 further questions. Sorry.

9 Q. Do you know how many jobs would be at
10 stake with that new business?

11 A. Yeah. They're set -- right now they have
12 50 full-time jobs, 25 part-time jobs, and they're
13 looking to expand their business to another 20 to 25
14 jobs. They're looking to add another million dollars
15 to their equipment. So they're looking at a major
16 expansion, so we're looking forward to it.

17 MS. NAPIER: Thank you. I have no
18 further questions.

19 ALJ TAUBER: Thank you.

20 Mr. Van Kley.

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

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Van Kley:

25 Q. Mayor Bean, my name is Jack Van Kley. I

1983

1 represent Union Neighbors United, Bob and Diane
2 McConnell, and Julia Johnson.

3 I had a few questions about your
4 testimony that I thought you might be able to answer.
5 I'm looking at your answer to question 9, where you
6 mention the Hot Air Balloon Festival. Can you
7 describe that festival for me, please?

8 A. They normally come in on a Friday
9 evening. And there's just -- a lot of people come
10 out to see the balloons take off either in the
11 morning or in the evening or both on a Saturday.
12 Normally, they start on Saturday and they'll do it on
13 Sunday also. And it's just a great event for Urbana.
14 You know, it's been going on, gee, over a decade now,
15 I believe, so.

16 We're trying to get more and more events
17 like that to come to the airport. We're going to be
18 hosting, next August, the 401st Bomber Group is going
19 to be coming in for their reunion in August and
20 they're counting on bringing in about 1,000 people
21 themselves, and then they'll be touring the Dayton
22 Air Force Museum. So we're looking forward to that.
23 A lot of things are going on and we're just looking
24 forward to it.

25 Q. In your answer to question 11, you state

1984

1 that you're worried about the impact of wind turbine
2 placement on special events and regular traffic at
3 the airport for safety reasons. With respect to the
4 Hot Air Balloon Festival, do you have any concerns
5 about safety if the turbines are installed?

6 A. The prevailing winds are west to east and
7 as a balloon takes off they have a tendency to drift
8 that way. Well, it drifts right towards the wind
9 turbines.

10 And as anybody can recall, there was a
11 balloon hit here in Columbus, Ohio, about 12 years
12 ago, and four people were killed. They hit a tower.
13 I think it was WBNS tower. I would certainly hate to
14 see that happen. And I'm afraid it might, with the
15 wind turbines being there, I'm afraid it's going to
16 be the demise of our balloon fest.

17 Q. Do you have any idea what the economic
18 impact of the balloon festival is for Urbana?

19 A. I really can't answer that.

20 Q. With regard to Grimes Field and the
21 operations at Grimes Field that include the festivals
22 and the fly-ins and the reenactments of historic
23 aircraft and all the other things that Grimes Field
24 provides, do you have any idea as to the number of
25 jobs that depend on Grimes Field?

1985

1 A. Well, right now, I can't say.

2 Q. Okay.

3 A. I know it, as far as the community
4 itself, it makes a big impact on the different
5 retailers. But as far as employees of the -- we only
6 have one employee.

7 Q. Of the airport --

8 A. Of the airport.

9 Q. -- itself, you mean?

10 A. Yes.

11 Q. Yeah. I was thinking more in terms of
12 indirect jobs such as the retailers and the
13 restaurant owners and the persons who sell the fuel
14 for the airplanes and everything else that depends on
15 Grimes Field for its livelihood. Do you have any
16 idea what the economic impact of Grimes Field is for
17 Urbana?

18 A. Oh, it would -- it would decimate us. I
19 mean, this is part of Urbana, it's part of our
20 history; Grimes Field. Warren Grimes, he built it.
21 And if anybody knows anything about Warren Grimes, he
22 invented the airplane light and they're still
23 producing them.

24 It's just with the businesses, with what
25 the airport brings to town, you know, I can't tell

1986

1 you, I can't put a dollar figure on it, but I know it
2 would be high.

3 MR. VAN KLEY: Okay. Thank you, Mayor.
4 I have no further questions.

5 ALJ TAUBER: Thank you.

6 Mr. Petricoff.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Petricoff:

10 Q. Good morning, Mayor.

11 A. Good morning.

12 Q. I'm Howard Petricoff and I'm here for the
13 company.

14 Just as a follow-up on the last item on
15 Mr. Grimes. Do you know what his company -- is his
16 airplane light company still in existence today?

17 A. It is presently owned by Honeywell and
18 they employ approximately 600, 650 people right at
19 the present.

20 Q. And they make lights for aircraft,
21 correct?

22 A. That's correct.

23 Q. Do they also make lights for wind towers?

24 A. I can't answer that, but to -- we do have
25 a company in Urbana, a manufacturing company, that I

1987

1 believe just got a contract with, I believe with you
2 for a wind farm in Pennsylvania, I believe. I think.
3 I really can't swear to it, but it's -- I believe
4 that is. I think they got the contract.

5 Q. Well, you're way ahead of me. I now have
6 to skip to my next question.

7 Urbana is -- well, let me put it this
8 way: Last night I watched your YouTube video from
9 your election and one of the things that you said in
10 your -- on your YouTube video was that Urbana was
11 going to be, if you were elected, going to be run
12 like a business and was going to be business
13 supportive. Now that you've been in office for a
14 year, has that come true? Have you fulfilled that
15 promise?

16 A. Well, it's government. We're running it
17 like a business. I hired a gentleman, he came from
18 International Harvester, an MBA, and we are
19 approaching it as a business, not so much as a
20 government, although we are a government.

21 Q. With that in mind, if this facility is
22 built, when I say "this facility," the wind turbines
23 for this project, we're going to need thousands of
24 cubic feet of cement and concrete. Are there cement
25 and concrete suppliers in the City of Urbana?

1988

1 A. Yes, there is.

2 Q. And will they experience that cooperation
3 if they have to go to get permits for their trucks to
4 bring cement and concrete out to the facilities?

5 A. Well, I would hope so.

6 Q. And, certainly, the city would not do
7 anything to interfere with their participation in the
8 commerce necessary to build the wind farm facilities.

9 A. No.

10 Q. If we have -- well, let me ask this
11 question: We're talking about cement and concrete;
12 are you familiar with Urbana Materials?

13 A. Yes.

14 Q. And are they a large cement and concrete
15 facility? Or a large cement and concrete supplier, I
16 think would be more adequate.

17 A. Yes.

18 Q. And are they close to the proposed wind
19 turbine sites in this application?

20 A. They would -- they would probably be, I
21 would hope, be part of it.

22 Q. And if they were, do they pay property
23 taxes in the City of Urbana?

24 A. What's their address?

25 Q. Edgewood Avenue.

1 A. Are you thinking of Bryce Hill?

2 Q. Well, actually, you may add Bryce Hill to
3 my list; they're next door. They're two separate
4 ones.

5 A. Okay.

6 Q. So let's just make it concrete --

7 A. Sure.

8 Q. -- we'll take out the names, make this
9 "concrete and cement suppliers."

10 A. Yes, they pay property tax.

11 Q. Do you have an income tax as well?

12 A. Yes, we have an income tax.

13 Q. Okay. So if they had to expand or there
14 were additional employees because of this project,
15 they would be contributing income tax revenues to the
16 city as well.

17 A. That's correct.

18 MR. PETRICOFF: No further questions.
19 Thank you very much.

20 ALJ TAUBER: Thank you.

21 Mr. Reilly.

22 MR. REILLY: Thank you, your Honor. We
23 have no questions. Thank you, sir.

24 ALJ TAUBER: Ms. Parcels, redirect?

25 MS. PARCELS: Yes.

1990

- - -

REDIRECT EXAMINATION

By Ms. Parcels:

Q. Mr. Bean, counsel for the company asked you about the economic considerations of running the city like a business. From your perspective as Mayor, and running the city like a business, wouldn't you say a business is also concerned with safety of its citizens and employees?

A. Oh, definitely.

Q. Okay. Do you think safety concerns could, in some respects, outweigh economic concerns?

A. Yes.

Q. Okay. You also testified about the attendance at the B-25 Mitchell reunion. Would you say that 10,000 figure that you initially said, as far as in terms of attendance, was closer to the neighborhood of a one-day total and that attendance throughout the week was actually higher?

A. Oh, yes. Definitely.

Q. So what would you estimate, over the course of the week, attendance was at Grimes Field?

A. Oh, you might double that.

Q. Okay. Counsel for UNU asked you about hot air balloons and you described the crash that

1991

1 happened in the City of Columbus. Do you remember
2 what year that was?

3 A. Well, I think it was 1990.

4 Q. Okay. Do you remember whether that was
5 commonly referenced as the "Bogey Inn balloon crash."

6 A. I really don't recall that.

7 Q. Okay.

8 A. I recall it happening. It was a big
9 deal.

10 Q. Weighing, as Mayor, the safety concerns,
11 and you described, you know, your fears for hot air
12 balloons being carried with the prevailing winds, and
13 we've had other testimony about safety of pilots, do
14 you know if there have been any fatal crashes
15 involving pilots that have collided with wind
16 turbines?

17 A. Not that I know of.

18 MS. PARCELS: I'd like to pass around
19 what has been marked as City Exhibit 19.

20 ALJ TAUBER: The exhibit is so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Bean, just looking at the front page
23 of this lengthy pack of pages, looking up at the top
24 left corner there, what does this appear to be?

25 MR. PETRICOFF: Your Honor, I'm going to

1 object on two grounds. First, he said he wasn't
2 aware of any fatalities, and I think it's probably
3 inappropriate to impeach your own witness on
4 redirect. Secondly, speaking of redirect, there was
5 nothing about fatalities in the cross and we're on
6 redirect.

7 MS. PARCELS: Your Honor, I believe he
8 testified as to hot air balloon fatalities and his
9 concerns with safety.

10 MR. PETRICOFF: This is an aviation --
11 well, I'm sorry.

12 ALJ TAUBER: I'm going to sustain the
13 objection. I think we've veered beyond the scope of
14 the cross-examination, and the witness has also, as
15 Mr. Petricoff pointed out, testified he is not aware
16 of any fatalities so he has no familiarity with it.

17 Q. Mr. Bean, if you were aware of any
18 fatalities related to wind turbines, not for hot air
19 balloons, but with general airplanes so to speak, how
20 far would you want them away from the City of Urbana,
21 the turbines that is.

22 MR. PETRICOFF: Objection. The same
23 basis.

24 ALJ TAUBER: I'm going to sustain the
25 objection. The witness has stated he's not aware of

1993

1 any fatalities.

2 Q. Mr. Bean, from your perspective as Mayor
3 of Urbana, how far away would you suggest that
4 turbines be away from Grimes Field and the airport
5 there?

6 MR. REILLY: Objection. There's no
7 foundation that the witness has any expertise to make
8 that determination.

9 ALJ TAUBER: Ms. Parcels.

10 MS. PARCELS: Mr. Bean testified that he
11 was concerned about the safety of the hot air
12 balloons and the pilots at Grimes Field.

13 ALJ TAUBER: Could you rephrase your
14 question.

15 Q. (By Ms. Parcels) Mr. Bean, you've had an
16 opportunity to sit here today as both an employee of
17 the city and a local pilot testified as to their
18 concerns with aviation safety out of Grimes Field in
19 relation to this wind turbine project, correct?

20 A. That's correct.

21 Q. And you're the, so to speak, supervisor
22 for the airport manager, correct?

23 A. I'm Mayor of the city. I have a -- I
24 work with my city administrator who works directly
25 with Ms. Hall.

1994

1 Q. Okay. But you're, in essence, the top
2 guy for the city administration, and the director of
3 administration works directly for you?

4 A. Yes.

5 Q. Okay. So if the city airport manager
6 expresses a concern to you about the proximity of
7 turbines to Grimes Field, would you then take her
8 word for it?

9 MR. REILLY: Objection. She's asking the
10 witness to talk about the credibility of another
11 witness. I mean, I think that's a matter for the
12 Bench and the Board ultimately.

13 ALJ TAUBER: Ms. Parcels.

14 MS. PARCELS: Well, my next question
15 would be "Would you share her opinion?"

16 MR. REILLY: And I'd object to that if
17 it's based on somebody else -- on somebody else -- on
18 his opinion of somebody else. It's not relevant, I
19 don't think.

20 MS. PARCELS: Your Honor, I think this
21 goes to as a nonpilot and as the chief executive of
22 the city, what goes into his decision-making process
23 in forming an opinion.

24 ALJ TAUBER: I'll allow the question on
25 that narrow basis.

1995

1 Q. (By Ms. Parcels) So if the city airport
2 manager expressed concerns to you, would you share
3 the city airport manager's concerns in relation to
4 the proximity of the wind turbines to Grimes Field?

5 A. Yes, definitely. And, you know, I think
6 that is part of the reason that the city is here is
7 because of not only the concerns of economic
8 development of Urbana and Grimes Field, but also
9 because of the safety and the issue and the amount of
10 planes that are flying into Grimes Field is, to me,
11 if it's the safety that's going to keep pilots from
12 coming to Urbana, then I definitely have an issue
13 with it. And listening to my constituents, there is
14 a concern about what's happening at -- what's going
15 to happen at Grimes Field.

16 Q. Okay. I want to direct your attention to
17 the actual application itself. There should be a
18 binder up there marked Volume I of the application.
19 Counsel for the county asked you about the city's
20 development plans to the east. And I'll let you find
21 that binder up there.

22 A. Okay.

23 Q. If it might help, it's Exhibit 5.1 -- or,
24 5-1.

25 A. Volume I?

1996

1 Q. Volume I of the binders, yes.

2 A. Okay.

3 Q. Can you find Exhibit 5-1 -- or, figure
4 5-1, excuse me. It should be a series of maps. Let
5 me know when you've located it.

6 A. Yes.

7 Q. Okay. If you turn to page -- or, sheet 4
8 of those maps.

9 A. Okay.

10 Q. Does it indicate at the bottom of that
11 map that it was prepared by Hull & Associates?

12 A. Well, I can't find it. I can take your
13 word for it.

14 Q. I'm not asking you to do that.

15 MS. PARCELS: Your Honor, if I may
16 approach the witness so we can locate the figure?

17 A. I'm not sure I've got the right one
18 anyway. Okay. Got the right one.

19 Q. Okay. So that's sheet 4 of exhibit --
20 or, excuse me, Figure 5-1. Does that map have a
21 corporate boundary marked for the City of Urbana?

22 A. Yes, it does.

23 Q. Okay. And to the west of the city do you
24 see blue markings that indicate a delineated wetland?

25 A. Yes.

1997

1 Q. Does that correspond to what you
2 described in your direct testimony as the floodplain
3 that prevents development to the west of the city?

4 A. Yeah, that's the Mad River Valley is what
5 it is. And as you come out west of Urbana, you dip
6 down into the valley, and that's our aquifer and we
7 receive most of our water from that particular
8 aquifer.

9 Q. Okay. If you turn to the next sheet
10 which I believe is sheet 5. Does that also have a
11 depiction of some corporate boundaries for the City
12 of Urbana?

13 A. Yes.

14 Q. And a blue mark indicating delineated
15 wetland?

16 A. Yes.

17 Q. Okay. And how would you describe that
18 delineated wetland in location, direction-wise, in
19 comparison to the city limits there?

20 A. Well, it's northeast of the city, mainly
21 up in Salem Township.

22 Q. Okay. So that's a different area
23 depicted --

24 A. Yes.

25 Q. -- from the sheet 4.

1998

1 A. Right.

2 Q. Okay. And does that delineated wetland
3 also depict, as you noted in sheet 4, the Mad River
4 floodplain?

5 A. Well, it all drains to Mad River, that's
6 for sure.

7 Q. Does that prevent some development to the
8 north of the city then?

9 A. To a certain extent it does, but mainly I
10 really think the point of the farmland and the
11 barriers that we have going north really keep us
12 from, with the airport, keep us from really moving in
13 that direction. If I'm looking at this correctly,
14 mainly it's pretty much northeast out of Urbana, and
15 that, in itself, I think, is moving towards the wind
16 turbines.

17 Q. Okay. Mayor Bean, I'm going to ask you
18 to flip a few more pages, same Exhibit 5-1, and I
19 believe it's sheet 9. Let me look here. Okay. On
20 sheet 9, does that also depict the corporation limits
21 for the City of Urbana?

22 A. Yes, it does.

23 Q. Does that also have a blue delineated
24 wetland?

25 A. Yes, it does.

1999

1 Q. And how would you describe this blue
2 delineated wetland in relation to the corporate
3 limits?

4 A. Well, once again, it's southwest of town,
5 and, once again, it's following the Mad River Valley
6 and there's no particular way that we can grow in
7 that direction.

8 Q. For residential purposes.

9 A. No.

10 Q. Is that because it's prone to flooding?

11 A. Well, it hasn't flooded since 1914. I
12 think they won't allow you to build in a floodplain
13 anyway. And it just, there's just no way we can grow
14 that direction.

15 Q. Okay. I also want to look at that map,
16 do you see a green shaded sort of square area there
17 to the southwest of the city of Urbana?

18 A. Yes.

19 Q. Do you recognize that as Cedar Bog?

20 A. That's correct.

21 Q. Is Cedar Bog a protected wetland to your
22 knowledge?

23 A. Yes, it is.

24 Q. Would the city -- if the city attempted
25 to grow any closer to Cedar Bog, do you believe there

2000

1 would be some protest from residents who enjoy that
2 area as a nature preserve?

3 MR. REILLY: Objection. There's no
4 foundation for that. She's asking for guesswork.

5 ALJ TAUBER: Ms. Parcels.

6 MS. PARCELS: I'll rephrase the question.

7 ALJ TAUBER: Thank you.

8 Q. Mr. Bean, do you, yourself, go out to
9 Cedar Bog to enjoy the natural preserve of that
10 wetland?

11 A. Yes. I'm a Bog Buddy.

12 Q. Can you tell me what a Bog Buddy is?

13 A. Somebody who's donated money to the Cedar
14 Bog.

15 Q. Do you know approximately how many Bog
16 Buddies there are?

17 A. No, I couldn't tell you.

18 Q. Would you say it's a popular group in the
19 community?

20 A. Yes.

21 Q. Based on your experience, both as Mayor
22 and as a Bog Buddy, do you believe there would be
23 public outcry if the city attempted to grow any
24 closer to Cedar Bog?

25 MR. REILLY: Objection. No foundation

1 and that's still asking for guesswork.

2 MR. PETRICOFF: Your Honor, we would
3 join. And also this is fairly far afield from the
4 cross-examination. I don't recall the bog has been a
5 question in the cross.

6 MS. PARCELS: Your Honor, the Mayor did
7 testify that development to the south is not
8 feasible. I'm developing why those -- one of those
9 reasons why it's not feasible.

10 MR. PETRICOFF: And there was no cross
11 challenging that, so this is just additional direct.

12 ALJ TAUBER: Why don't you rephrase your
13 question, Ms. Parcels.

14 MS. PARCELS: I'm not sure if Mr. Reilly
15 had something to say.

16 MR. REILLY: This is a little bit off
17 point, but I don't believe he's identifying wetlands.
18 I think he's talking about a floodplain. I can't see
19 what he's looking at, but from what we're looking at
20 over here, he's pointing to a floodplain. I'd be
21 happy to do that on cross.

22 ALJ TAUBER: Let's allow Ms. Parcels to
23 rephrase her question, and if there's any objections
24 or we need to address it later on, we'll do so.

25 MS. PARCELS: The county did ask on cross

2002

1 about the direction for the city's growth.

2 ALJ TAUBER: Why don't you rephrase your
3 question.

4 MS. PARCELS: Okay.

5 Q. (By Ms. Parcels) The green shaded box, is
6 that, to your knowledge, Cedar Bog on exhibit -- or,
7 Figure 5-1, sheet 9 of 18?

8 A. That's correct.

9 Q. Okay. And that's within a wetland, but
10 it's marked separately in green.

11 A. That's correct.

12 Q. Do you know approximately how far Cedar
13 Bog is from the Urbana city limits?

14 A. It would be just a guess, but I would say
15 it's about 3 miles.

16 Q. As a Bog Buddy, do you know if Cedar Bog
17 has any endangered species living in the bog, either
18 plants or wildlife or animals?

19 A. Both. They've got rattlesnakes which are
20 endangered, a special rattlesnake, and then there's
21 some algae that live there. And the reason I know
22 that is because when I was at Urbana University, one
23 of my many majors was botany, and I learned that from
24 Urbana University.

25 Q. Would you agree with me that the location

2003

1 of Cedar Bog, as you termed it, approximately 3 miles
2 from the southern corporation limit of Urbana,
3 hinders the development of the city to the south due
4 to the presence of those endangered species?

5 A. Well, there's no doubt about it. But
6 right now, the growth I see is -- what is going to
7 hinder the growth mainly south is manufacturing. I
8 could see very little residential moving in that
9 direction. Once again, I go back to most of our
10 residential is moving east out of Urbana.

11 Q. Okay. I'll ask you to turn to sheet 10
12 of 18, the next page there. Does that depict the
13 corporation limits for the City of Urbana?

14 A. Yes, it does.

15 Q. Would you call those the eastern
16 corporation limits?

17 A. Yes.

18 Q. Based on a layman's view of that map and
19 as Mayor of Urbana, do you see anything there as far
20 as a blue delineated wetland that would restrict
21 further growth to the east?

22 A. No.

23 MS. PARCELS: Nothing further, your
24 Honors.

25 ALJ TAUBER: Thank you.

2004

1 Recross. Ms. Napier?

2 MS. NAPIER: Nothing from the townships
3 and the county. Thank you.

4 ALJ TAUBER: Thank you.

5 Mr. Van Kley?

6 MR. VAN KLEY: Yes, I have a little bit,
7 your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Van Kley:

11 Q. Mayor Bean, you were asked some questions
12 by the attorney for Champaign Wind about some
13 products that may be used in the construction of the
14 wind project, and I believe you talked about some
15 lights and some gravel and some concrete.

16 First of all, do you know or have any
17 idea how long the construction of the turbines in
18 Buckeye Wind II is anticipated to take?

19 MR. PETRICOFF: Your Honor, I'm going to
20 object. It's true what he was talking about had to
21 do with my cross, but now, with recross, it will be
22 limited only to those -- the testimony that was
23 elicited in the redirect.

24 ALJ TAUBER: And we've gone beyond
25 redirect, so I'm going to sustain the objection.

2005

1 MR. VAN KLEY: I have no more questions
2 then.

3 ALJ TAUBER: Thank you.

4 Mr. Petricoff.

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. Petricoff:

8 Q. Mayor, do you have Volume II or can you
9 locate Volume II?

10 A. Okay.

11 Q. Then I would like you to turn to the tab
12 that is Exhibit G. And then in Exhibit G, turn to
13 page 5. Are you with me?

14 A. Got it.

15 Q. Great. In the chart, Figure 3, there is
16 population projections and it shows historic
17 populations going back to 2000 for the City of Urbana
18 and then projected populations --

19 MS. PARCELS: Your Honor, I'm going to
20 object to this line of questioning. It is outside
21 the scope of redirect. I did not ask Mr. Bean about
22 population trends.

23 ALJ TAUBER: We'll allow Mr. Petricoff to
24 finish the question and then we'll see where he's
25 going with it.

2006

1 Q. Okay. You look at this. When you were
2 talking -- I'm sorry.

3 In your testimony in redirect, when you
4 were talking about the growth of the city, these are
5 the kinds of populations that were -- this is the
6 population -- well, let me retract. Let me do it
7 easier.

8 The population figures that you see for
9 2000, 2010, are those accurate to the best of your
10 knowledge?

11 A. Yes.

12 Q. And has the city made its own population
13 forecasts for the future?

14 MS. PARCELS: Again, your Honors, I'll
15 object it's outside the scope of redirect.

16 MR. PETRICOFF: I'm laying the
17 foundation, your Honor, for the question.

18 ALJ TAUBER: I'll allow you to lay your
19 foundation, and then if we need to recircle back,
20 we'll do so.

21 Q. Are they in the same order of magnitude
22 of what you see listed here on this chart?

23 A. Was that the question?

24 Q. I'm sorry. Let me go back again.

25 A. Okay.

2007

1 Q. We have estimates here for 2017 and 2022
2 and a percent-change column between 2012 and 2022.
3 Are these estimates in line with the city's
4 projection of population growth?

5 MS. PARCELS: Objection, your Honor. It
6 had not been established that the city has done its
7 own population estimates.

8 MS. NAPIER: I would also object. I
9 don't believe a correct foundation, an adequate
10 foundation has been laid where these population
11 projections have come from or whether Mr. Bean can
12 make a determination whether they're correct.

13 MR. PETRICOFF: First of all, I'm not
14 asking him if they're correct. These are in evidence
15 now as part of the application. They were done by
16 EDR and we have spent the last 20 minutes talking
17 about where the city is growing. I think it's very
18 germane to find out how big that growth is going to
19 be.

20 ALJ TAUBER: I'll allow the question.

21 Q. Let me ask the question again. If you're
22 as lost as I am --

23 A. Yeah.

24 Q. -- let's start again. I had asked you
25 about, previously about --

2008

1 A. Right.

2 Q. -- the historic figures. Now I'm looking
3 at the projections.

4 A. Okay.

5 Q. My first question to you is do you have
6 population projections?

7 A. No, we do not have a population
8 projection.

9 Q. Okay. Oh, I'm sorry. Please finish.

10 A. But Urbana has to grow. If it doesn't
11 grow, it's going to die on the vine. Our costs are
12 astronomical. Our fire and police protection is
13 55 percent of our budget. And we need to grow. And
14 the way we can pay for this is through income tax.
15 You know, it's not property tax, it's not sales tax,
16 it's income tax. And we need to grow.

17 There's people out there in Urbana and in
18 the townships that don't want Urbana to grow, they
19 want it to stay this nice little farming community,
20 but for us to survive and to compete in the world,
21 and bring people to Urbana to work in our factories,
22 we need to grow.

23 And we're landlocked. Our -- if you look
24 at our city, we're landlocked. We have no place to
25 grow and we've got to annex property so we can grow

2009

1 and build the houses and bring the people here to be
2 part of our workforce.

3 But yes, once again, I talked about a
4 vision. My vision is to grow Urbana. Whether it's
5 east, north, south -- west is totally out of the
6 question -- that's what I would like to do as Mayor
7 of Urbana. Now, whether we can get it done or not,
8 I'm going to give her the good old college try, so
9 that's pretty much my answer. But I can't tell you
10 definitively that we're going to increase our growth
11 by 10, 15, 20 percent.

12 MR. PETRICOFF: I have no further
13 questions. Thank you very much, Mayor.

14 ALJ TAUBER: Thank you.

15 Mr. Reilly.

16 MR. REILLY: Thank you, your Honor.

17 - - -

18 RECROSS-EXAMINATION

19 By Mr. Reilly:

20 Q. Mr. Mayor, I want to talk about wetlands.
21 If I can direct you to Volume I again, to your
22 discussion with Ms. Parcels about various sheets and
23 wetland delineation. Can you pull out Volume I
24 again?

25 A. Uh-huh.

2010

1 Q. And we're looking at Figure 5-1. Start
2 with sheet 4 of 18. Tell me when you're there.

3 A. Okay.

4 Q. Okay. I would like you to look at the
5 bottom of the page. There's a legend, isn't there?
6 Isn't they're a legend?

7 A. Yes.

8 Q. Okay. And do you see in the third column
9 of that legend, moving from left to right, the top
10 figure is "Delineated Wetland." Do you see that?

11 A. Correct.

12 Q. Okay. If I could point your attention
13 down to the seventh item below that delineated
14 wetland symbol, do you see the symbol for "100-Year
15 Floodplain"?

16 A. Yes.

17 Q. The difference between the delineated
18 wetland symbol and the 100-year symbol, besides from
19 slight shading in blue, is the existence of yellow
20 slanted lines in the delineated wetland symbol; is
21 that not correct?

22 A. That's correct.

23 Q. Okay. I'd like you to take a look at --
24 with that in mind, I'd like you to take a look at
25 sheet 4 -- at sheet 4 of 18, and tell me where the

2011

1 delineated wetland is.

2 MR. VAN KLEY: I'm going to object, your
3 Honor.

4 ALJ TAUBER: Mr. Van Kley.

5 MR. VAN KLEY: Yeah. The symbol that
6 Counsel has pointed out is for a delineated wetland
7 and the witness answered questions about whether it
8 was a wetland. The two are not synonymous. A
9 delineated wetland simply means that someone has gone
10 out and delineated it, that is they have identified
11 it as a wetland in a formal sort of process; whereas,
12 there are other wetlands that are not delineated, and
13 I don't think the witness distinguished between the
14 two.

15 MR. REILLY: I think my recollection of
16 the examination was the opposite. I understood the
17 witness to be talking about delineated wetlands and I
18 understood that to be the reason that we were looking
19 at these sheets. The witness could talk about
20 delineated wetlands without these sheets -- could be
21 talking about wetlands without these sheets if he was
22 talking about anything else but delineated wetlands.
23 I think they were trying to add to the credibility of
24 this discussion by referencing these sheets.

25 ALJ TAUBER: I'll allow the question,

2012

1 Mr. Reilly.

2 MR. REILLY: Thank you, your Honor.

3 Q. Could you identify for me, on sheet 4,
4 where the delineated wetlands are?

5 A. I don't see anything.

6 Q. Okay. And so your discussions --
7 well, let me -- let's go to sheet 5. The legend for
8 sheet 5 is the same as for sheet 4 with regard to
9 delineated wetlands and 100-year floodplains; is that
10 not correct?

11 A. That is correct.

12 Q. Okay. Can you show me on sheet 5 where
13 the delineated wetlands are?

14 MR. VAN KLEY: Again, your Honor, I'm
15 going to object. I think -- I don't think the
16 witness was using the delineated wetland characters
17 on these maps to show where the wetlands were. I
18 think he was using the maps as a frame of reference
19 to point out, based on his personal knowledge, where
20 those wetlands are, rather than relying on a
21 delineated wetland character.

22 ALJ TAUBER: The Bench is going to
23 overrule your objection consistent with our last
24 ruling, but we'll note your standing objection.

25 MR. VAN KLEY: Thank you.

2013

1 MS. PARCELS: Your Honors, I believe in
2 my questioning I distinguished between wetlands and
3 floodplain; blue marking is floodplain, green marking
4 is wetland.

5 ALJ TAUBER: We'll allow the question,
6 but we'll note the objection for the record.

7 Q. (By Mr. Reilly) I believe you can answer
8 the question. Can you show us on sheet No. 5 where
9 the delineated wetlands are?

10 A. I don't see any.

11 Q. Okay. If I can direct your attention to
12 sheet 9. Please tell me when you're there.

13 A. I'm there.

14 Q. The legend for sheet No. 9 is the same as
15 it was for sheets No. 4 and 5 regarding delineated
16 wetlands and floodplains, is it not?

17 A. It looks like it, yes.

18 Q. And could you show me where the
19 delineated wetlands are on sheet No. 9?

20 A. I don't see anything.

21 Q. If I could direct your attention to sheet
22 No. 10. And the legend for delineated wetlands and
23 the 100-year floodplain is the same on sheet number
24 10 as it is for sheets No. 4, 5, 9; is that not
25 correct?

2014

1 A. Yeah, that's correct.

2 Q. Okay. Could you describe for me where
3 the delineated wetlands are shown on sheet No. 10?

4 A. Well, it looks like there's one down by
5 Dolly Varden Road, Dolly Varden and Moorefield Pike.

6 Q. Okay. And that would be due south of the
7 City of Urbana?

8 A. Due south.

9 Q. Are there any others that you see?

10 A. Well, up in the northeast corner there's
11 a section.

12 Q. It would be up in the far northeast
13 corner --

14 A. Of this map.

15 Q. Yeah, right. Of this sheet.

16 A. Yeah.

17 Q. Okay. Were those the wetlands you were
18 referring to in your responses to Ms. Parcels'
19 questions with regard to sheet No. 10?

20 A. No, it wasn't.

21 Q. Okay. Let's go back to sheet No. 4.
22 First of all, am I to understand in responding to
23 Ms. Parcels' questions, you were using your own
24 knowledge of wetlands to answer those questions?

25 A. I believe so, yes.

2015

1 Q. Okay. And would you describe for us your
2 training in wetland designation?

3 A. I have absolutely no training in wetland
4 whatever.

5 MS. PARCELS: Objection, your Honors. He
6 did testify that he was a botany major at Urbana
7 University.

8 ALJ TAUBER: Are you objecting to
9 Mr. Bean's answer?

10 MS. PARCELS: No. I'm objecting to the
11 question as far as training in wetland delineation.
12 He did testify that he was a botany major.

13 ALJ TAUBER: The witness answered the
14 question, so we'll allow it to stay in the record,
15 but we'll note it.

16 Mr. Reilly.

17 MR. REILLY: Thank you, your Honor.

18 Q. (By Mr. Reilly) Just so I understand your
19 testimony, the wetlands you were discussing with
20 Ms. Parcels are not shown anywhere on sheet No. 4,
21 are they?

22 A. No, they're not.

23 Q. And they are not shown on sheets Nos. 5,
24 9, or 10, either, are they? Let me back up.

25 A. Ten, there is.

2016

1 Q. Let's go one at a time. I'm sorry.

2 The wetlands you were discussing with
3 Ms. Parcels in answer to her questions are not shown
4 on sheet No. 5, are they?

5 A. No.

6 Q. The wetlands you were discussing with
7 Ms. Parcels are not shown on sheet No. 9, are they?

8 A. No, I don't believe so.

9 Q. The wetlands you were discussing with
10 Ms. Parcels, in answer to Ms. Parcels' questions, are
11 not shown on sheet No. 10, are they?

12 A. Yes, they are.

13 Q. And those would be the two --

14 A. Those would be two, yes.

15 Q. Okay.

16 A. Could I clarify?

17 Q. Certainly.

18 A. To be honest with you, I just -- I'm
19 looking at the floodplain.

20 Q. Okay.

21 A. And that's -- and as far as wetlands,
22 that's not what I was thinking wetlands. I was
23 thinking floodplain.

24 Q. Floodplain.

25 A. Yeah, floodplain.

2017

1 Q. Okay. Okay.

2 A. Just to clarify that.

3 Q. So in response to Ms. Parcels' questions,
4 your responses were really describing floodplains --

5 A. That's correct.

6 Q. -- not wetlands.

7 A. That's correct.

8 MR. REILLY: Okay. Can I have a moment,
9 your Honor?

10 ALJ TAUBER: You may.

11 MR. REILLY: Thank you.

12 Q. Mr. Mayor, are you -- in your opinion, to
13 the extent of your knowledge, is it possible to
14 develop real estate in a floodplain?

15 MS. PARCELS: I would object, your
16 Honors. The question has been asked and answered
17 already. Mr. Bean did testify already that they
18 won't let -- they, I'm not sure exactly what his
19 terminology was, but that development in a floodplain
20 was not feasible.

21 ALJ TAUBER: I don't think I've heard an
22 answer, so I'll allow the witness to answer the
23 question.

24 Q. To repeat the question, your Honor, is it
25 your understanding that development is or is not

1 possible in a floodplain?

2 A. It is my understanding, yeah.

3 Q. That --

4 A. That building in a floodplain -- well, if
5 you have flood insurance, I guess. They just, for
6 the most part, I'm under the understanding that you
7 can't build in a floodplain.

8 Q. But you -- just to understand your
9 answer, if you had flood insurance, you could build
10 in a floodplain?

11 A. Well, you know, you have to have flood
12 insurance, but I don't know if you can build or not.
13 If you're already there in a floodplain, you can have
14 flood insurance, but I can't really answer the
15 question. It's my opinion that you can't build in a
16 floodplain.

17 Q. Okay. But you don't really know.

18 A. No, I don't really know.

19 MR. REILLY: Thank you, your Honor.

20 ALJ TAUBER: Thank you, Mayor Bean. You
21 may be excused.

22 THE WITNESS: Okay.

23 ALJ TAUBER: Ms. Parcels.

24 MS. PARCELS: Yes, your Honors, the city
25 would move for admission of Mr. Bean's prepared

2019

1 testimony with the subtraction of the zoning map
2 which, again, was just for Mr. Bean's reference.

3 ALJ TAUBER: Are there any objections to
4 City Exhibit 18 which was Mr. Bean's direct
5 testimony?

6 MR. PETRICOFF: We have no objection as
7 long as that map is detached.

8 ALJ TAUBER: Correct. So hearing none,
9 it shall be admitted into the record.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 ALJ TAUBER: I think we all could use a
12 lunch recess. So at this time why don't we take a
13 lunch break and we'll reconvene at 12:55. Let's go
14 off the record.

15 (At 11:55 a.m. a lunch recess was taken
16 until 1:00 p.m.)

17 - - -

18

19

20

21

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24

25

2020

1 Tuesday Afternoon Session,
2 November 20, 2012.

3 - - -

4 ALJ CHILES: Let's go ahead and go on the
5 record.

6 MS. ANDERSON: Your Honors, the staff
7 will call Ms. Jennifer Norris.

8 ALJ CHILES: Please raise your right
9 hand.

10 (Witness sworn.)

11 ALJ CHILES: Thank you. You may be
12 seated.

13 MS. ANDERSON: And I believe Staff
14 Exhibit 1 is -- has been delivered.

15 ALJ CHILES: That is the direct testimony
16 of Jennifer Norris?

17 MS. ANDERSON: Yes.

18 ALJ CHILES: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 - - -

21 JENNIFER L. NORRIS
22 being first duly sworn, as prescribed by law, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 By Ms. Anderson:

2021

1 Q. Ms. Norris, please state and spell your
2 name for the record.

3 A. Jennifer Norris. My last name is spelled
4 N-o-r-r-i-s.

5 Q. And before you is Staff Exhibit 1. Do
6 you recognize this document?

7 A. Yes.

8 Q. Is this your prefiled testimony filed in
9 this case?

10 A. It is.

11 Q. Is there anything you would like to
12 change?

13 A. No.

14 Q. If we asked you the same questions today,
15 would you answer in the same way?

16 A. Yes.

17 MS. ANDERSON: And we would like to move
18 Staff Exhibit 1 into evidence.

19 ALJ CHILES: We'll reserve ruling on that
20 until we are finished with examination.

21 MS. ANDERSON: Your Honors, the witness
22 is available for cross-examination.

23 ALJ CHILES: Thank you.

24 Ms. Parcels?

25 MS. PARCELS: We have no questions for

2022

1 this witness. Thank you.

2 ALJ CHILES: County and townships?

3 MS. NAPIER: County and townships have no
4 questions for this staff witness. Thank you.

5 ALJ CHILES: Mr. Van Kley.

6 MR. VAN KLEY: I'm sorry, your Honor, I
7 do have some. Sorry to interrupt the momentum, but I
8 will be brief.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Van Kley:

12 Q. Ms. Norris, will you turn to page 4 of
13 your testimony, please. And I'd like to direct you
14 to question and answer 9. Specifically, would you
15 take a look at the second sentence which says "It
16 also states that the post-construction monitoring
17 shall occur with a sample of turbines that will be
18 searched daily for the first two years of operation."
19 And here you're referring back to the
20 postconstruction monitoring plan for searching for
21 carcasses for bats and birds, right?

22 A. That's correct.

23 Q. Okay. Is your position that
24 postconstruction monitoring should have a sample of
25 turbines that will be searched daily for at least

2023

1 some of the years of operation consistent with the
2 conditions of certificates that have been issued for
3 other wind projects in Ohio?

4 A. Yes. I believe the ODNR has a
5 standardized protocol that has a sample that is
6 daily, so it is our recommendation that all wind
7 facilities have a sample that's daily.

8 Q. Okay. Are you aware that sampling
9 protocol for the Blue Creek Wind Project requires
10 daily searches at some of the turbines for a period
11 of time?

12 A. Yes.

13 MR. VAN KLEY: Okay. I have no further
14 questions.

15 ALJ CHILES: Thank you.

16 Mr. Settineri.

17 MR. SETTINERI: Yes.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Settineri:

21 Q. Good afternoon, Ms. Norris. My name is
22 Mike Settineri. I'm on behalf of the Applicant
23 today. Just a few questions.

24 On that same page that Mr. Van Kley
25 referenced, page 4 of your direct testimony, line 6.

2024

1 This answer is in regards to Condition 26 of the
2 Staff Report, correct?

3 A. Yes.

4 Q. Okay. There's a sentence that starts on
5 line 6: "This condition does contemplate and allow
6 for amendment and modification to the ABPP." And,
7 for the record, what does "ABPP" stand for?

8 A. Avian Bat -- sorry. Avian -- that's
9 actually incorrect. It should be Avian Bat and Bird
10 Protection Plan.

11 Q. Okay. And why do you believe the
12 condition contemplates for the amendment and
13 modification to the ABPP? And do you have a copy of
14 the Staff Report there?

15 A. I do.

16 Q. Okay. And if it helps you to refer to
17 Condition 26, please do. I'd just like to know why
18 do you believe the condition contemplates for the
19 amendment and modification?

20 A. It allows for some adaptation to, as
21 we're proceeding forward with the project, to the
22 plan as adaptive management, which I believe is in
23 the plan, as well as the HCP.

24 Q. And so if the -- and I'm going to call
25 it, I'm just going to refer to the acronym in your

2025

1 testimony --

2 A. Sure.

3 Q. -- ABPP is modified or amended at a later
4 date, you would expect the Applicant to follow that
5 plan?

6 A. Yes.

7 Q. Okay. And specifically in regards to
8 Condition 26, I'm going to read it for the record:
9 "Applicant shall implement all conservation measures
10 and conditions outlined in the final HCP and USFWS'
11 Incidental Take Permit, including the Avian and Bat
12 Protection Plan found in USFWS' draft EIS, which is
13 subject to inclusion as an environmental commitment
14 in the USFWS' Record of Decision (ROD)."

15 So the phrase in Condition 26 that states
16 "including the Avian and Bat Protection Plan found in
17 the USFWS' draft EIS," you don't believe that that
18 reference to the ABPP there, limits the Applicant to
19 what is in place as of today for that protocol,
20 correct? Meaning -- what I mean -- let me rephrase
21 that.

22 This condition states that the Applicant
23 shall implement conservation measures and conditions
24 outlined in the HCP and ITP, correct?

25 A. As well as the Avian and Bat Protection

1 Plan.

2 Q. And is the Avian and Bat Protection Plan,
3 is that within the HCP?

4 A. It's an appendix to the HCP. Both
5 documents are -- well, actually, the HCP is a federal
6 document -- well, let me clarify again.

7 It's the Applicant's document to apply
8 for the federal Incidental Take Permit which covers
9 one species, the Indiana bat, which is endangered
10 federally but it's also state endangered. The ABPP
11 protects nonfederal trust species which would include
12 state trust species.

13 Q. And the document that was attached as an
14 appendix to the HCP, is that issued as of a certain
15 date?

16 A. Issued as a certain date? I'm not sure
17 what you're --

18 Q. What I'm getting at is you said the ABPP
19 is attached as an appendix to the HCP.

20 A. Okay.

21 Q. If the ABPP subsequently is modified or
22 changed, would the modified document control versus
23 the one that was attached to the HCP?

24 A. Well, the HCP and the ABPP are in draft
25 format currently, so I believe the finalized version

1 would be what we would go with.

2 Q. And then after the finalized version is
3 issued, and if there was a change by the ODNR to the
4 ABPP, would the latter versions control?

5 A. There's adaptive processes set in the
6 ABPP, so essentially, yes.

7 Q. Okay. And that then ties back to your
8 statement on line 6 that this condition does
9 contemplate and allow for amendment and modification
10 to the ABPP.

11 A. Yes. Yeah. Thank you.

12 MR. SETTINERI: Thanks. No further
13 questions, your Honors.

14 ALJ CHILES: Thank you.

15 Redirect?

16 MS. ANDERSON: No redirect, your Honors.

17 ALJ CHILES: I don't have any questions,
18 so thank you, you are excused.

19 Staff has marked Staff Exhibit 1.

20 MS. ANDERSON: I'm sorry, your Honors.
21 The staff would like to move Exhibit 1 into evidence.

22 ALJ CHILES: Are there any objections to
23 the admission of Staff Exhibit 1 into evidence?

24 (No response.)

25 ALJ CHILES: Hearing none, Staff Exhibit

1 1 will be admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 ALJ TAUBER: Mr. Reilly.

4 MR. REILLY: Thank you, your Honors.

5 Staff would call Donald Rostofer.

6 ALJ TAUBER: Please raise your right
7 hand.

8 (Witness sworn.)

9 ALJ TAUBER: Thank you.

10 - - -

11 DONALD E. ROSTOFER

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

14 DIRECT EXAMINATION

15 By Mr. Reilly:

16 Q. Good afternoon, Mr. Rostofer. Would you
17 take a look up there on the witness stand and see if
18 you can find a document labeled Staff Exhibit 2.

19 A. Yes.

20 Q. Okay. Have you ever seen that document
21 before?

22 A. Yes.

23 Q. Can you tell me what it is?

24 A. The Staff Report of Investigation.

25 Q. I'm sorry. There ought to be a

2029

1 document -- is your prefiled testimony up there?

2 A. I have a copy of mine, but it doesn't
3 have any number on it.

4 MR. REILLY: Oh, excuse me. May I
5 approach the witness?

6 ALJ TAUBER: You may.

7 MR. REILLY: My mistake.

8 Q. Mr. Rostofer, I've handed you a copy of a
9 document marked Staff Exhibit No. 2, correct?

10 ALJ TAUBER: Mr. Reilly, the Bench
11 received copies that are marked Staff Exhibit 3.

12 MR. REILLY: For Mr. Rostofer?

13 ALJ TAUBER: They were left on the bench.
14 Mr. Siegfried is Staff Exhibit No. 2.

15 MR. REILLY: I apologize.

16 ALJ TAUBER: Would you like to mark this
17 as Staff Exhibit No. 2?

18 MR. REILLY: I have -- does the Bench
19 have a copy of Mr. Rostofer's prefiled testimony?

20 ALJ TAUBER: Yes, we do.

21 MR. REILLY: Okay. We would like
22 Mr. Rostofer's testimony marked as Staff Exhibit 2.

23 ALJ TAUBER: Okay. It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. REILLY: Mr. Siegfried should be

1 Staff Exhibit No. 3 and Ms. Norris is Staff Exhibit
2 No. 1. Sorry.

3 ALJ TAUBER: Thank you.

4 Q. (By Mr. Reilly) We'll try again. Do you
5 have a copy of a document identified -- marked as
6 Staff Exhibit No. 2?

7 A. Yes.

8 Q. Do you know what that document is?

9 A. It's my prefiled testimony.

10 Q. Could you tell me how that document came
11 into existence?

12 A. I created it.

13 Q. Okay. Do you have any additions or
14 corrections to make to your prefiled testimony?

15 A. Yes, I do.

16 Q. Could you tell us what those are, please?

17 A. On page 7, question 21. Actually, it
18 will be the answer to question 21, in line 13, after
19 the number "31," would add the number "32."

20 Q. And so how would the answer read then,
21 please?

22 A. "First of all, Staff has considered
23 Mr. Speerschneider's proposed modification and Staff
24 agrees with some of these. Staff believes the
25 modifications proposed by the Applicant for

1 Conditions 6, 10, 19, 20, 21, 22, 31, 32, 33, and 34
2 are reasonable and would support Board adoption."

3 Q. Do you have any other modifications or
4 corrections to your prefiled testimony?

5 A. Yes. During the time that this
6 proceeding has been going on, staff has been provided
7 with information that actually came out of the public
8 hearing from a Mr. Bolton. He no longer wants to
9 participate in putting together a lease with the
10 Applicant on his property which does not have a
11 residence on the property.

12 Therefore, turbine 95 would end up being
13 within the setback distances from the property line.
14 Therefore, there is an issue with that particular
15 turbine site and the Applicant is going to need to
16 figure out how to deal with what to do with that
17 particular site because it does not meet the setbacks
18 as proposed now.

19 ALJ TAUBER: That's turbine 95, you said,
20 Mr. Rostofer?

21 THE WITNESS: Yes, sir.

22 ALJ TAUBER: Thank you.

23 Q. Could you tell us is there some kind of
24 identification for the property?

25 A. Yes, I can. Information we were provided

1 with, I believe this is the parcel number, I could be
2 wrong, but the number we were given related to this
3 parcel is C060300500006100 and this would be for
4 James Van Bolton.

5 ALJ TAUBER: I'm going to ask that you
6 repeat the number one more time.

7 THE WITNESS: Yes, sir.
8 C060300500006100.

9 ALJ TAUBER: The landowner's name?

10 THE WITNESS: James Van Bolton.

11 ALJ TAUBER: Thank you.

12 A. We just wanted to make it clear that
13 because there's no certificate been issued by the
14 Board, and because staff just was made aware of this
15 information, along with the other site that the
16 Applicant is aware of that's near site 79, that these
17 two locations are within the statute setback
18 distances for property line and the other one is for
19 a residence, and these things should be cleared up
20 prior to moving forward with the certificate.

21 Q. I don't want to unduly delay things, but,
22 Mr. Rostofer, you'll find a copy of the Staff Report
23 up there on the witness stand; will you take a look?

24 A. Yes.

25 Q. Can you identify the approximate location

1 of this property for all of us?

2 A. Yes.

3 Q. If you could describe the location by one
4 of the maps in the Staff Report.

5 A. Yes. If you turn to page 7 of the Staff
6 Report, this will be the maps that depict what the
7 Applicant has determined to be the proposed locations
8 of turbines and associated facilities.

9 On page 7, if you look where the top
10 one-third of the map, toward the left side of the map
11 you'll find turbine 95. Between turbine 95 as it's
12 been numbered and the state route which is 161 where
13 the numbering for 161 occurs on the map, if you run a
14 line straight between those two points, the property
15 sits at an angle about halfway between those two
16 points and starts at 161 and traverses at a
17 southeastern direction toward turbine site 95.

18 Q. Mr. Rostofer, is there a picture of this
19 property there on the Staff Report on page 7? Is the
20 property actually shown?

21 A. Yeah. The property line is actually
22 marked fairly well by treeline and -- except for the
23 southeastern boundary which is up against the,
24 appears to be up against the purple and red dashed
25 line that sits between turbine site 95 and heads at a

1 southwestern direction in between the
2 interconnections between 94 and 128.

3 Q. Thank you, Mr. Rostofer.

4 Do you have any other modifications to
5 your prefiled testimony?

6 A. No, sir, not at this time.

7 MR. REILLY: With that, we would move the
8 introduction of Staff Exhibit No. 2, and offer
9 Mr. Rostofer for cross-examination.

10 ALJ TAUBER: Thank you.

11 Ms. Parcels.

12 MS. PARCELS: Yes.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Parcels:

16 Q. Good afternoon, Mr. Rostofer. You have
17 your direct testimony there in front of you, and I
18 just have a question in relation to your response to
19 question 3 with your experience with United States
20 Air Force. Were you ever a pilot or did you fly at
21 any time when you were with the Air Force?

22 A. I am not a pilot, but I have flown in
23 military aircraft.

24 Q. As a passenger?

25 A. Yes.

1 Q. Okay. I just wanted to clarify that.

2 And you indicate that you started with
3 the Power Siting Board in 2009, correct?

4 A. Yes, ma'am.

5 Q. If you know, was that date in 2009 before
6 or after the approval of the sister -- or, the Phase
7 I of the Buckeye Wind project, the sister project to
8 Champaign Wind?

9 A. I don't recall that the certificate was
10 actually issued in 2009 for Buckeye I, but to get
11 when I started with the Power Siting Board with the
12 PUCO, that would have been in October of 2009, during
13 the time that Buckeye I was actually going through
14 evidentiary hearings.

15 Q. Okay. And have you been the lead, I
16 guess we'll call you "the lead investigator" for the
17 staff during the entirety of the Champaign Wind
18 project?

19 A. Not the entirety.

20 Q. Do you know who was before yourself?

21 A. Yes.

22 Q. And is that person still with the Power
23 Siting Board?

24 A. No.

25 Q. Okay. So you managed the staff

1 investigation and preparation of the report, did you
2 then divide assignments for specific study, I guess
3 we'll call them "topics," among the staff that were
4 assigned to the Champaign Wind project?

5 A. I evaluated what had already been set up
6 by the previous manager and made some adjustments.

7 Q. Were any of those adjustments related to
8 the aviation assignment?

9 A. Yes.

10 Q. Okay. Did you personally we'll say
11 supervise the aviation assignment or did you handle
12 it yourself?

13 A. I actually managed the entire project
14 overall, so as far as specific assignments, I
15 overlooked all of them.

16 Q. So can you tell me then who is
17 responsible for assessing -- directly assessing
18 aviation impacts from Champaign Wind?

19 A. That was my responsibility.

20 Q. Okay. On page 4, your answer to question
21 10 of your direct testimony, you indicated that staff
22 has recommended 70 conditions. And then question 11,
23 you indicate that the conditions are intended to
24 reasonably minimize impacts and risks. Can you
25 elaborate what you mean by "reasonably minimize"?

1 A. We evaluated the information provided by
2 the Applicant. And based on the information that
3 staff reviewed, staff looked at eight criteria that
4 are already established that we use to evaluate these
5 types of projects.

6 In looking at those eight criteria with
7 the information provided, we again look to see how --
8 how much impact could be -- could occur on the area
9 in question. Based on what we perceive as the
10 impacts, we determine if those impacts are reasonable
11 on their own or if a condition would assist in
12 creating more reasonableness on what should be the
13 impacts.

14 Q. Okay. On page 8 of your direct
15 testimony, you indicate that staff disagrees with the
16 Applicant and will offer more in-depth explanation on
17 the stand regarding some of the conditions the staff
18 has not, I guess, looked at modifying in reference to
19 Mr. Speerschneider's suggestions.

20 This is your opportunity, then, to offer
21 a more in-depth explanation of those conditions and
22 I'll go through those.

23 But, before I do, I also want to clarify
24 your answers to question 22 and 23. You indicate
25 there's a condition concerning the Champaign

1 Telephone Company. Can you point that out to me, in
2 the Staff Report, what condition that is?

3 A. It's actually not in the Staff Report.
4 It was something that Mr. Speerschneider had put in
5 his prefiled testimony. And staff doesn't have an
6 opinion on the negotiations that they actually made
7 with the company. You're not going to see a
8 condition on that.

9 Q. Okay. Help me understand here. Is the
10 Champaign Telephone Company an intervenor in this
11 project?

12 A. I believe so.

13 Q. Personally, I don't recall any testimony
14 about a condition for Champaign Telephone Company.
15 Would it be more accurate to say that it was Pioneer
16 Rural Electric Cooperative?

17 A. I'm not sure on that.

18 Q. Getting to the conditions, if you can
19 turn to your Staff Report. I'd like to start on page
20 44 of the Staff Report. Do you see a subhead there
21 that says "Aviation"?

22 A. Yes.

23 Q. Okay. Were you responsible for writing
24 that section there on aviation?

25 A. Yes.

1 Q. Okay. And the second sentence under the
2 determination of no hazard it says "Given the
3 preliminary FAA determinations of no hazard...." In
4 your understanding does "preliminary" mean something
5 subject to change?

6 A. Yes.

7 Q. Okay. And if the FAA were to change
8 those "determinations of no hazard" to "potential
9 hazard," would the staff then, with you as the lead
10 investigator, then -- scratch that.

11 If the FAA were to change the
12 "determinations of no hazard," would that require the
13 Board to reassess the aviation impact and, yourself,
14 personally, as a staff member for the Board?

15 A. Can you clarify a little bit more of when
16 you're talking about when this would occur?

17 Q. If the FAA changed, before the issuance
18 of a certificate, any designation of "no hazard."

19 A. I guess the first thing to keep in mind
20 here is that these determinations were made based on
21 the Applicant's proposed turbine sites as they are
22 right now. If they change the location of any of
23 these turbines, they have to go back to the FAA and
24 ask for another determination. That's why we're
25 considering these as preliminary because if there is

1 a change, that would mean they have to go back. That
2 means by location when I say "change."

3 Q. Okay. I just wanted to make sure I
4 understood.

5 Also on page 44, down on the very last
6 full paragraph, it says "During an investigation of
7 this project, Staff confirmed the presence of
8 CareFlight...located at Grimes Field." How did staff
9 confirm the presence of CareFlight at Grimes Field in
10 Urbana?

11 A. During field investigations.

12 Q. Was that done by someone making an
13 in-person visit to Grimes Field or was there a phone
14 call to CareFlight or a phone call to Grimes Field?
15 How was that confirmation achieved?

16 A. During our field investigation. That
17 means when we were out there traversing through the
18 area, we took note of where Grimes Field is located
19 and the CareFlight facility that's located there.

20 Q. Okay. So someone made an in-person
21 visit, then, to Grimes Field?

22 A. I guess you have to define "in-person
23 visit."

24 Q. You said when we were out there
25 traversing the area. Does that mean that staff

1 actually visited the site?

2 A. We did go to Grimes Field. We did not
3 speak with any personnel there. We did not try to go
4 out on the runway. We simply went to the service
5 road, confirmed the location of Grimes Field being
6 where it was, and proximity to Urbana, and the
7 restaurant, where it was located, and a few other
8 buildings that were located there that were unmarked,
9 that being CareFlight.

10 Q. Okay. So someone visually observed the
11 CareFlight hangar there?

12 A. Yes, ma'am.

13 Q. Okay. I just wanted to clear that up.

14 Okay. Moving into the conditions on page
15 56 of the Staff Report. Very top of the page is
16 Condition 31. And you indicated in your direct that
17 staff believes the modification proposed for
18 Condition 31 is reasonable.

19 Do you know if the final traffic plan
20 that's submitted to staff would include any routes
21 used by, not just the transportation for the turbine
22 components, but any subcontractors that would be
23 supplying things such as concrete, aggregate, or
24 gravel?

25 A. Condition 31 doesn't speak to that type

1 of information. 31 is about maintenance of traffic.

2 Q. Okay. Down at the bottom third of the
3 page, Condition 33. And, again, you reference in
4 your direct testimony that you believe the
5 modification proposed for Condition 33 is reasonable.

6 The copy of the Staff Report I'm looking
7 at says "The Applicant shall repair damage to
8 government-maintained (public) roads and bridges
9 caused by construction activity." Does that
10 modification affect that sentence at all to your
11 understanding?

12 A. Would you repeat that question, please?

13 Q. In your direct testimony you indicate
14 that the Board believes that the company's proposed
15 modification to Condition 33 is reasonable. And then
16 the first sentence of Condition 33 in the Staff
17 Report, as I'm reading it, which does not have the
18 modification in it because it's dated October 10th,
19 the first sentence of that condition is: "The
20 Applicant shall repair damage to
21 government-maintained (public) roads and bridges
22 caused by construction activity." Do you know if the
23 modification that Mr. Speerschneider and EverPower
24 proposed affects that sentence?

25 A. No.

1 Q. Okay. In your understanding, is the
2 phrase "caused by construction activity" limited to
3 the company or would it also include subcontractors
4 hauling components, concrete, gravel, aggregate, and
5 any other materials for the project?

6 A. The term "construction activity" is
7 related to all construction activity related to this
8 case. So if the Applicant has contractors and
9 subcontractors, they all have to abide by that.

10 Q. Okay. Turning to page 58 of the Staff
11 Report. Condition 40, this is in reference to
12 blasting, and it requires some notification, written
13 notification of residents and owners of buildings
14 within a thousand feet of a blasting site. Can you
15 tell me, to the best of your knowledge, why that
16 condition would not include notification of nearby
17 fire departments?

18 A. Can I ask a question for clarification?

19 Q. Sure.

20 A. Are we going away from the modifications
21 to the conditions now?

22 Q. Yes.

23 A. You're just talking about separate
24 conditions away from that?

25 Q. Yes.

1 A. Okay.

2 Q. Yes, we're done with the proposed
3 modifications.

4 A. All right. Thank you.

5 Q. We're getting into the -- your answer to
6 question 24 as far as in-depth explanation of some of
7 the conditions.

8 A. Oh, those were -- those were actually
9 speaking to the differences from Mr. Speerschneider's
10 testimony. So the question you're asking right now
11 is not directly related to that, I don't believe.

12 Q. Okay. We'll get to those.

13 A. Okay.

14 Q. So right now focusing on Condition 40.
15 Again, it requires written notification of residents
16 and building owners within 1,000 feet of a proposed
17 blasting site. Why would the staff not include
18 notification to nearby first responders such as fire
19 departments in that notification requirement?

20 A. I don't believe I have an explanation for
21 that at this point.

22 Q. Is it your experience that blasting may
23 cause alarm -- strike that.

24 Have you personally been in areas where
25 blasting is being conducted?

1 A. Yes.

2 Q. Okay. Is it possible to hear blasting
3 activity farther away than 1,000 feet?

4 A. Yes, it can be possible.

5 Q. Okay. So in your experience with
6 blasting making such noise, would it be logical then
7 that the fire departments might be called about noise
8 for residents outside a thousand-foot radius who were
9 not notified?

10 A. I think if what you're trying to get at
11 is that if it's a loud-enough noise that it would
12 sound like something that would constitute an
13 emergency that it would cause them to want to
14 respond, that it would be reasonable to suggest that
15 they probably should be contacted just so they're
16 aware that when the event, if it does occur, is not
17 constituting an emergency necessarily.

18 Q. So then would it be feasible to suggest
19 the fire departments also be notified for Condition
20 40?

21 A. I think at this time I would like to go
22 back and speak with staff about that particular item
23 and see where we would stand on it.

24 Q. Okay. We're talking about fire
25 departments, so we're going to move on to Condition

1 42 and 43. Both of those conditions deal with
2 emergency and safety planning, and the Applicant's
3 instructed to develop plans in conjunction or
4 consultation with fire departments and emergency
5 first responders, correct?

6 A. Yeah. 42 is during construction and 43
7 is during operation.

8 Q. Okay.

9 A. But it still is to deal with emergency
10 responders.

11 Q. Okay. In your experience -- strike that.

12 Did the staff communicate with the heads
13 of fire departments and emergency first responder
14 units in the project area during its investigation
15 and analysis of the project?

16 A. I'm not aware of any staff member talking
17 to the fire chiefs or the volunteer fire departments.

18 Q. In your experience doing analysis for the
19 Ohio Power Siting Board, is it common for an
20 applicant to agree to provide some equipment and
21 training to fire departments and emergency first
22 responders as part of those plans, or would there
23 need to be a separate agreement?

24 A. Could you repeat that question, please?

25 Q. In your experience when evaluating

1 applications for the Power Siting Board, is it common
2 in your experience as part of operational or
3 construction -- emergency medical and fire protection
4 plans, for Applicants, in general, to agree, as part
5 of those plans, to provide equipment and training to
6 first responders and firefighters?

7 A. In my vast experience with construction
8 projects, I have not seen anything like that.

9 Q. Based on your evaluation of the project
10 area, do you believe that the local firefighters and
11 emergency first responders have the equipment and
12 training to deal with emergencies and fires at wind
13 turbine sites?

14 A. I would have to say yes.

15 Q. Based on your observation, can you tell
16 me why you would make that conclusion?

17 A. If you were reading in the application,
18 the Applicant has stated that if a turbine, itself,
19 is on fire, they're suggesting that you should just
20 let the turbine continue to be on fire till it puts
21 itself out, and that the surrounding area should be
22 secured, and to watch for sparks and try to prevent
23 those sparks from causing fires somewhere else. So
24 if you're talking about ground fires, I would say
25 that they are equipped for that.

1 Q. Okay. But are they equipped to fight a
2 fire up in the turbine or in the tower from your
3 observation?

4 A. I don't know.

5 Q. Okay. Are they equipped to respond to a
6 medical emergency up in the turbine or the tower?

7 A. I don't know.

8 Q. Would the reason you don't know be
9 because you have not communicated with the individual
10 departments in the project area?

11 A. I'd have to say no.

12 Q. Well then, what is the reason?

13 A. I think it's because only the fire
14 department knows what they can and can't do and what
15 equipment they need.

16 Q. Okay. If a fire department was to
17 communicate with the staff that they lack the
18 equipment and training to deal with turbine-related
19 fires or emergencies, would you then say it's
20 reasonable to suggest a condition, as the staff
21 member in charge of the investigation, for the
22 Applicant to provide such equipment and training to
23 the local fire department?

24 A. We never received any kind of
25 communication from any of the fire departments

1 suggesting such things, so I can't make a conclusion
2 if they're not telling me those kinds of things.

3 Q. But you had indicated that the staff did
4 not contact the fire departments.

5 A. No, we didn't, but your question was if
6 they contacted us, and they did not contact us.

7 Q. Let me ask you this: In the absence of
8 the fire departments contacting you, say the fire
9 departments don't contact you at all, would you agree
10 that as the person responsible for the Power Siting
11 Board investigation that you are responsible for
12 analyzing the safety of the residents in the project
13 area?

14 A. The investigation that we did, did
15 include investigation of safety issues.

16 Q. So then why would the fire departments
17 not be contacted if the staff is investigating safety
18 issues?

19 A. Staff didn't find it necessary to do such
20 things.

21 Q. Why? Why did staff not find it necessary
22 to communicate with the local firefighters and
23 emergency responders?

24 A. Based on the information that was
25 provided in the application, staff felt that there

1 was enough information to go on there, in order to
2 come to conclusions and to provide recommended
3 conditions for the Board to consider.

4 Q. Let's move on to Conditions 52 and 53 on
5 page 59 and 60 of the Staff Report. These conditions
6 are in reference to microwave path interference and
7 Fresnel zones and some other technical issues with
8 regard to communication. And I want to ask: Has --
9 okay.

10 On line 3 of Condition 52, it says "The
11 Applicant shall contact all electric service
12 providers that operate within the project area for a
13 description of specific microwave paths to be
14 included in the study." Is that the condition that
15 you were referencing in your direct testimony in
16 response to question 22, or do you know if -- well,
17 let me rephrase.

18 With respect to Condition 52, the second
19 line says "The Applicant shall contact all electric
20 service providers that operate within the project
21 area for a description of specific microwave paths to
22 be included in the study." Do you know if electric
23 service providers are the only operators of microwave
24 communication systems in the project area?

25 A. I don't know.

1 Q. If there were any other operators of
2 microwave communication systems, would you believe
3 that a modification to Condition 52 be that "The
4 Applicant shall contact all operators of microwave
5 communication systems within the project area"
6 substituting that for "electric service providers"?

7 A. Again, I'd have to go back and speak to
8 staff about that and see where we would land on that
9 kind of a decision.

10 Q. Okay. We're getting close to the end,
11 Mr. Rostofer. Please go to page 64 of the
12 application. Condition 62 says "The Applicant shall
13 comply with any drinking water source protection plan
14 for any part of the facility...located within
15 drinking water source protection areas of the local
16 villages and cities."

17 The application notes that the village in
18 Mechanicsburg is the closest drinking water source
19 protection area. Do you personally know where the
20 City of Urbana gets its drinking water; what the
21 source is?

22 A. What part of the application are you
23 referencing so I can go to that area?

24 Q. I believe it's in the -- it may actually
25 be in the Staff Report. Let me check.

1 MS. PARCELS: May I take a moment, your
2 Honors?

3 ALJ TAUBER: You may.

4 Q. Actually, on page 30 of the Staff Report,
5 the middle of the page has a subheading "Public and
6 Private Water Supplies." If you go down to the very
7 last graph in that section, second sentence from the
8 bottom, it says "The closest SWPA to the project area
9 is the public water supply wells located in
10 Mechanicsburg."

11 Okay. Again, my question is: Do you
12 know how close the project area -- or, well, I think
13 that wasn't my question. Do you know the source of
14 the drinking water for the City of Urbana?

15 A. I'd have to reference back to the
16 application to see if there's an answer that I can
17 provide to you on that. In looking at the way this
18 is written, all we're stating is that, as a fact, the
19 closest is near Mechanicsburg.

20 Q. Okay. Well, and again, I was just going
21 to ask if you knew the source, because I -- for the
22 City of Urbana drinking water supply, because I don't
23 believe that's in the application. So I was just
24 going to ask if you knew.

25 A. I don't know offhand, but I have a pretty

1 good guess of where it may be coming from.

2 Q. Okay. That's fine. We can move on.

3 Condition 64.

4 A. Excuse me, could you repeat that?

5 Q. We're moving on to Condition 64. This
6 requires written notification -- this condition
7 requires written notification to any owner of a
8 airport located within 20 miles of the project whose
9 operations, operating thresholds/minimums,
10 landing/approach procedures and/or vectors are
11 expected to be altered by the siting, operation,
12 maintenance, or decommissioning of the facility.

13 Why would the staff not require
14 notification, just as a matter of course, regardless
15 of whether those airports had to make changes to the
16 operating thresholds/minimums, landing/approach
17 procedures and/or vectors?

18 A. Could you repeat your question?

19 Q. Sure. Condition 64 requires written
20 notification of airports -- well, the owners of
21 airports located within 20 miles of the project
22 boundary whose operations, operating
23 thresholds/minimums, landing/approach procedures
24 and/or vectors are expected to be altered by the
25 siting, operation, maintenance, or decommissioning of

1 the facility.

2 Why would the staff, as a matter of
3 course, not just require -- simply require
4 notification of airports within 20 miles of the
5 project area, regardless of whether they had to
6 change operating thresholds/minimums,
7 landing/approach procedures and/or vectors?

8 A. Those that aren't going to have any
9 impacts to the items that are listed, we're
10 suggesting there shouldn't be any issues for those
11 folks. The ones that have the potential of having
12 issues, as is listed here, are the ones that they
13 need to understand what it means for their facility.

14 Q. Okay. But related to that notification,
15 let's move on to Condition 67. Can you tell me, to
16 your understanding, what is a flight service station?

17 A. In conversations with Mr. Bligh from the
18 FAA, he had suggested this kind of condition to us
19 when we interviewed him. This is a little bit beyond
20 what the FAA typically provides in their
21 determinations. And what we're talking about here,
22 based on information from this individual, is like
23 Grimes Airport, whoever the facility manager is
24 within that facility would be getting this
25 information.

1 Q. Okay. So you're saying someone from the
2 FAA, during staff's investigation, suggested this
3 condition even though it's more than what the FAA
4 requires?

5 A. Yeah. Because we were talking about
6 things that they may be working on internally to
7 improve their own process.

8 Q. Okay.

9 A. Because they are also new to wind
10 facilities, at least the folks we talked to, and
11 they're trying to look at ways to improve their
12 process.

13 Q. Okay. Were you here this morning for the
14 testimony of Airport Manager Hall and Mr. Rademacher?

15 A. Yes, ma'am.

16 Q. Okay. And do you recall Mr. Rademacher
17 saying that pilots have to go seek out NOTAMs, that
18 they're not mailed to the pilots individually?

19 A. Yes.

20 Q. Would you agree that if the company was
21 to provide this sort of NOTAM to the airport that it
22 would be more easily accessible for pilots flying
23 into the Grimes Field?

24 A. Yes. I wrote the condition based on
25 those conversations and that is what is implied.

1 Q. Okay. And last, but not least, let's get
2 to Condition 70. Did you write this Condition 70 in
3 reference to CareFlight?

4 A. Yeah. It's related to CareFlight, yes.

5 Q. Okay. Did you or any member of the staff
6 communicate directly with somebody from CareFlight?

7 A. No.

8 Q. Did anyone -- did you or anyone from the
9 staff communicate directly with anyone from a
10 corporate entity known as "AirMethods" in developing
11 this condition?

12 A. No, ma'am.

13 Q. So can you explain to me, then, the
14 guidance that staff had in developing this condition
15 and why staff would ask for a plan that would
16 "incorporate measures to assure immediate shut downs
17 of any portion of the facility necessary to allow
18 direct routes for emergency life flight services
19 within the vicinity of the facility"?

20 A. That was pretty long. Could you repeat
21 that for me, please?

22 Q. Sure. Can you explain to me the guidance
23 or, you know, how this condition came to be about, if
24 you had no contact with CareFlight or AirMethods, and
25 why the condition would recommend "measures that

1 assure immediate shut downs of any portion of the
2 facility necessary to allow direct routes for
3 emergency life flight services within the vicinity of
4 the facility" then?

5 A. During our investigation, we recognized
6 that CareFlight is located at Grimes Airport.
7 Knowing that, it is our opinion that they most likely
8 service this area, and it was also, I believe, don't
9 quote me on this, but I think it might also be listed
10 in the application that they service this area.

11 So knowing that, there's turbines that
12 are going to be out there potentially, and if they
13 need to respond to an emergency they're most likely
14 going to have to fly around, over, through the wind
15 farm field.

16 In order to ensure safety for these
17 folks, we felt it was necessary, as staff, during our
18 investigation, to conclude that some kind of plan
19 needs to be put together where the Applicant and
20 CareFlight works together to come up with a plan to
21 allow them both to operate within this area, where
22 this project is proposed, safely.

23 Q. Okay.

24 A. Let me finish.

25 Getting to the part about shutting down

1 parts or all of the facility, you have to look at the
2 word "necessary." What's being implied by the word
3 "necessary" is not to imply that it's always
4 necessary to shut down anything.

5 This is something that both the operator
6 of the wind facility and the CareFlight folks need to
7 work together to determine if in fact is there a need
8 to shut down a turbine at any given time, or
9 turbines, that they have worked out those issues in
10 this plan to ensure those things occur.

11 Q. Okay. Were you present for testimony by
12 some company personnel who indicated that turbine
13 shut down is a quick process that can be done
14 remotely via a smartphone?

15 A. I did hear that testimony.

16 Q. Okay. So from staff's perspective, if
17 turbines are able to be shut down remotely and
18 quickly, would it then be feasible for someone from
19 CareFlight to contact the company in the event that
20 they need to fly, but like [verbatim] a turbine shut
21 down for safety reasons in their flight path?

22 MR. REILLY: Could I have the question
23 repeated?

24 (Record read.)

25 Q. If they needed a turbine shut down in the

1 flight path.

2 A. Yes. That's something we're talking
3 about that needs to be talked about and put into
4 those plans that if they need to fly through those
5 areas and turbines need to be shut down for safety
6 reasons, that they are working together to determine
7 when and where that needs to occur.

8 Q. Okay. Were you present this morning for
9 Mr. Hall -- or, Ms. Hall, Mr. Rademacher, and
10 Mr. Bean's testimony?

11 A. Yeah. As I said earlier, yes.

12 Q. Okay. And do you recall they talked
13 briefly about some annual events at Grimes Field
14 Airport?

15 A. Yes.

16 Q. Okay. Based on your observation of their
17 testimony -- you've indicated several times that
18 you've got some more issues to discuss with staff,
19 correct?

20 A. I stated that on certain questions that
21 you have asked about certain conditions that I want
22 to speak to staff, yes.

23 Q. Okay. Based on some of the general
24 aviation concerns, apart from CareFlight, with regard
25 to some of the annual events held at Grimes Field,

1 would you say it's feasible for the city to suggest a
2 condition that the company pause operations during
3 the four annual events, MERFI, the Hot Air Balloon
4 Festival, the B-25 bomber reunion?

5 A. I think you need to provide a little bit
6 more because I'm not understanding what the question
7 is you're trying to get to.

8 Q. Okay. You indicated you heard the
9 testimony from the city's witnesses this morning
10 about annual events at the airport, correct?

11 A. Yes.

12 Q. And Mr. Rademacher testified about flying
13 in ultralights. Do you recall that?

14 A. Yes.

15 Q. Okay. And Mr. Bean indicated some
16 concern about hot air balloon safety.

17 A. Yeah, I heard he raised concerns.

18 Q. Okay. Based on those sorts of concerns,
19 would staff be amenable to a condition that would ask
20 for daytime -- daytime we'll say idling of the
21 facility so that the blades are not operational
22 during annual events such as the Hot Air Balloon
23 Festival and the Mid Eastern Regional Fly-In when we
24 have experimental and lightweight aircraft coming
25 into Grimes Field?

1 A. I guess this is where I ask the question
2 why.

3 Q. For safety purposes.

4 A. Okay. In your mind, what is creating the
5 safety issue?

6 Q. Well, let me see if I can phrase this as
7 a question. Would you agree that Ms. Hall,
8 Mr. Rademacher, and Mr. Bean testified as to their
9 concerns about safety issues with those annual
10 events?

11 A. They raised concerns, but they didn't
12 explain why they had the concerns.

13 Q. Okay. Are you aware of -- are you aware
14 of any aircraft collisions anywhere in the United
15 States?

16 MR. REILLY: Objection, relevance.

17 ALJ TAUBER: Ms. Parcels.

18 MS. PARCELS: I would say it's highly
19 relevant as it's going to a safety issue.

20 ALJ TAUBER: Mr. Reilly.

21 MR. REILLY: Catastrophes can happen at
22 any time at any place. What we're talking about is
23 the unknown and in the unknown there is risk. I
24 think something that happened in California or Oregon
25 or Washington State, one time in the past, isn't

1 relevant to this case.

2 ALJ TAUBER: I think we're veering a
3 little far out from the application before us,
4 Ms. Parcels.

5 MS. PARCELS: Okay.

6 ALJ TAUBER: If you can re-ask the
7 question or rephrase.

8 MS. PARCELS: I'll move on then.

9 ALJ TAUBER: Thank you.

10 Q. (By Ms. Parcels) Mr. Rostofer, you might
11 have to dig for it, but there should be an exhibit up
12 there marked UNU Exhibit 5.

13 A. You'll have to give me a moment. There's
14 a lot of stuff up here.

15 Q. That's fine.

16 ALJ TAUBER: Is that the direct testimony
17 of Mr. Speerschneider?

18 MS. PARCELS: UNU Exhibit 5.

19 ALJ TAUBER: Oh, UNU.

20 MS. PARCELS: This is the Applicant's
21 Responses to Staff's Data Requests.

22 A. UNU Exhibit 5.

23 Q. Yes.

24 A. I believe I have that.

25 Q. Okay. Can you turn to page 7 for me?

1 Are you there?

2 A. Yes.

3 Q. I want to focus then on questions 24, 25,
4 and 26. Did you write those questions as the lead
5 investigator on the project for the staff?

6 A. Sorry. I'm going back to the beginning
7 to look at something.

8 Q. Okay.

9 A. No. These questions were actually put
10 together prior to me being the lead on the project.

11 Q. So did your predecessor draft those
12 questions then?

13 A. Yes, ma'am.

14 Q. Okay. Now, this document is dated
15 September 18th as the response date. Were you, by
16 then, in charge of the investigation of the project
17 for the staff?

18 A. I'm not for certain when it was in
19 September, but it was in September.

20 Q. Okay. So would you say that it was
21 pretty close to the time frame being that it was the
22 same month as these responses were received that you
23 took over investigation as the lead?

24 A. Yeah, as they were received, that would
25 be true.

1 Q. Well, you did not draft the questions,
2 but I'll ask you then for your general understanding.
3 I won't ask you what went into the language of the
4 questions since you did not draft them, but I will
5 ask you for your general understanding of the
6 language of the questions.

7 In question 24, it says "Has Applicant
8 had any conversations with, or provided potential
9 Buckeye II turbine locations to the Med Flight
10 (helicopter) company whose local operations are based
11 out of Grimes Field, Urbana, Ohio? If so, please
12 provide the results. If not, please contact them,
13 provide coordinates and work with personnel in
14 drafting a summary of potential impacts to their
15 operations from facility placement/operation. If
16 they are not receptive to contact or cooperation,
17 please let Staff know."

18 The second sentence there, would you
19 understand the phrase "please contact them" to be an
20 instruction?

21 MR. SETTINERI: I'm going to object at
22 this time, your Honors. The witness stated he did
23 not draft these questions; it was another individual.

24 MS. PARCELS: Again, I'm asking for
25 him --

1 MR. SETTINERI: He can't testify as to
2 the understanding and the thought process that went
3 into these questions, your Honors.

4 MR. REILLY: We would join in the
5 objection, your Honor, and we would add that the
6 question speaks for itself.

7 ALJ TAUBER: Ms. Parcels.

8 MS. PARCELS: Again, I'm asking for his
9 general understanding of the phrase "please contact
10 them," not whether he drafted the question or what
11 went into drafting the question, but whether he
12 understands it to be an instruction.

13 MR. REILLY: We would add relevance then.

14 MS. PARCELS: If the objection's based on
15 relevance, then the question is foundational for my
16 next line of questioning.

17 ALJ TAUBER: I'm going to sustain the
18 objection because the witness has testified he's not
19 familiar with these questions and he did not draft
20 them.

21 MS. PARCELS: Well, I don't believe the
22 witness testified that he wasn't familiar, just that
23 he did not draft them, himself.

24 ALJ TAUBER: Well, I'm going to sustain
25 the objection.

1 MS. PARCELS: Okay.

2 Q. (By Ms. Parcels) Mr. Rostofer, are you
3 familiar with these questions as the lead for the
4 staff investigation?

5 A. I did not draft any of these questions.
6 I do not know the meaning behind the person that
7 actually drafted these questions, what his mind was
8 thinking, so I'm not sure that I'm going to be able
9 to answer questions related to these questions if I
10 don't know what that person was thinking.

11 Q. Okay. Did you review the company's
12 responses to these questions?

13 A. Yes, I did read the responses.

14 Q. If your predecessor instructed the
15 company to contact MedFlight, Grimes Field personnel,
16 the Grimes Field Aviation Museum and, for that
17 matter, Weller Airport, and the company indicated
18 that it did not do so, why would the staff then not
19 follow up?

20 MR. REILLY: Objection. It's speculative
21 as to whether there was a direction to even contact
22 them.

23 MS. PARCELS: Your Honors, I believe he
24 said the questions speak for themselves and it's my
25 understanding that "please contact" is an

1 instruction.

2 MR. REILLY: The questions do speak for
3 themselves and, therefore, there's no reason for the
4 witness to answer them.

5 ALJ TAUBER: Can I have the question read
6 back, please?

7 (Record read.)

8 ALJ TAUBER: The objection is sustained.

9 Q. (By Ms. Parcels) Mr. Rostofer, did the
10 company at any time indicate to you that it had
11 spoken with personnel at Grimes Field, CareFlight, or
12 the Grimes Aviation Museum?

13 A. Can you repeat that question, please?

14 Q. Sure. Did the company indicate to you,
15 after you assumed the lead role in the staff
16 investigation, that it had contacted city personnel,
17 any personnel at Grimes Field, CareFlight personnel,
18 or anyone at the museum?

19 A. During discussions that I had with the
20 company once I took the lead, one of the first things
21 I asked is "Have you been in contact with any of the
22 governmental officials within the project area within
23 the last couple weeks from that time." They replied
24 "Yes."

25 They also replied that in their attempts

1 to contact various governmental bodies, the county,
2 the City of Urbana, that there's been times that they
3 haven't been able to complete communications with
4 those bodies of government for whatever reason. That
5 leads me to believe that they're still trying to work
6 with the local officials on whatever issues they
7 think they may have. And I'm not aware of what those
8 issues are specifically.

9 Q. So if I understand your testimony, the
10 company is then telling you that they contacted the
11 city as early as September?

12 A. I'm sure they probably have talked to
13 them before that. I'm talking in context to when I
14 took over as lead. I asked them "What have you been
15 doing in the last couple weeks, working with the
16 local officials." That's a specific time that I was
17 requesting. Nothing more, nothing less. They said
18 they had been working and trying to work through
19 communication with various people within those
20 organizations.

21 Q. Okay. Did they --

22 A. I do not know what they were trying to
23 work on though.

24 Q. Did they give you specific dates when
25 they might -- may have contacted the city or anyone

1 at Grimes Field or anyone at CareFlight?

2 A. No.

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

5 ALJ TAUBER: Thank you.

6 Ms. Napier.

7 MS. NAPIER: Thank you.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Napier:

11 Q. Mr. Rostofer, my name is Jane Napier.
12 I'm an assistant prosecutor and I represent the
13 county and townships within the project footprint
14 along with the Champaign County Prosecuting Attorney.

15 I may jump around a little bit, so if you
16 do not understand a question, please let me know.
17 I'll try to rephrase it so that we get as much on the
18 record as we possibly can.

19 A. Yes, ma'am.

20 Q. You had responded to Ms. Parcels here
21 today that the staff may look into some modifications
22 of conditions. Am I correct in my statement?

23 A. Yes. We certainly, as has been said in
24 my testimony, in light of the hearing we're in today,
25 we're always open to listen to what's being said, but

1 we reserve the right to be able to go back and talk,
2 as a complete staff team, about, you know, what
3 should we do to modify something.

4 Q. Okay. And so, I did see the answer to
5 your question 12 and question 13 about modifying, and
6 I guess my next question to you is: Is the staff
7 intending to do additional modification of the
8 recommended conditions after this hearing, but before
9 the Board votes?

10 A. I can't be certain that we would make any
11 changes. I can only say that we will definitely
12 discuss some of the things that have come up and come
13 to a conclusion on what we would like to do. I can't
14 say for certain because you can't predict the future.
15 I can't say for certain what would get changed.

16 Q. But, in your opinion, it would be a
17 possibility?

18 A. Yes, it could be a possibility.

19 Q. Is that -- is that standard practice that
20 you may modify some of the recommended conditions in
21 the Staff Report prior to the Board taking a vote on
22 the certificate?

23 A. I'm not -- I don't know if it's common
24 practice that we just do it to be doing it.

25 Q. Have you done it previously, after a

1 hearing, changing your recommended conditions before
2 the Board votes on it?

3 A. I can say that there has been some things
4 that have been agreed to, while staff has been on the
5 stand, there has been modifications that have been
6 done in brief and reply brief.

7 Q. Okay. So that may be -- before they vote
8 there may be some additional modifications?

9 A. Yeah, those things typically happen prior
10 to a certificate being voted on for a project by the
11 Board.

12 Q. In looking at your recommended
13 conditions, I see that the first one is the facility
14 shall be installed as presented in the application
15 and modified or clarified by their supplemental
16 filings and, of course, the Staff Report. Did the
17 staff investigate the assertions made in the entire
18 application?

19 A. Can you be more specific about the
20 assertions?

21 Q. Well, I mean, did you investigate all of
22 the facts that are set forth in the application?

23 A. Staff, on the team that we have, have
24 taken different sections of the application and have
25 reviewed them through our process.

1 Q. Okay. And to your knowledge does the
2 staff, the ones that are parceled out of the
3 application, do they investigate the underlying
4 premise of the application and exhibits or do they
5 take them at face value?

6 A. I'm having trouble with the "underlying
7 premise" part of your question.

8 Q. Well, let me give you an example. Let's
9 look at Exhibit E which is a transportation route
10 study.

11 A. Okay.

12 Q. Did the staff investigate statements made
13 in that transportation route study or did they
14 basically find it to be a transportation route study
15 and then state that it fulfilled some requirement
16 that was -- that was due?

17 A. It was information that was provided to
18 staff in the application. Staff reviews that
19 information, you know, you read it, you take down
20 information that's factual, and based on those facts
21 you come to conclusions. So the conclusions that
22 staff came to when it comes to that piece is in the
23 conditions in the 30s, where we talk about yeah, you
24 put something in there that fulfills a requirement
25 that you've put this in the application, but the

1 condition is what staff is trying to push forward as
2 what needs to be done when it comes to transportation
3 issues within the project area.

4 Q. So if they didn't feel it met a certain
5 requirement, they would just put that in as a staff
6 recommendation in the conditions, or would they send
7 it back to the Applicant?

8 A. If we felt that the application overall
9 was lacking in information that we felt was needed to
10 start an investigation, which is the piece of the
11 process where we spend the majority of our time going
12 out in the field, getting down into the weeds and
13 reading about what's in the information that's
14 provided, if, during the completeness review,
15 something is just not there that's needed and they
16 didn't get a waiver for it, then we would deny
17 completeness, we would recommend a denial of
18 completeness to our chairman and, from there, a
19 letter would go out saying that this is incomplete
20 for this reason.

21 If it is complete, then we would move on
22 into the investigation phase of the process which
23 there's a time limit on that. So at that point we
24 review the information to ensure that it meets those
25 eight criteria that we're looking at. Once we

1 determine that we have sufficient information, we
2 will write about the facts of that piece.

3 Once we've done that, if, for whatever
4 reason, we believe that by itself it doesn't meet
5 minimum adverse impacts, then we are going to
6 typically condition, you know, recommend a condition
7 to the Board suggesting that these things need to be
8 done in order for this project to meet the eight
9 criteria and to meet minimum adverse.

10 Q. Just so -- and I'm sorry, I kind of let
11 you go on, but I'm not sure if you have stated to me
12 that in essence the Applicant -- please tell me if
13 I'm misstating this -- that the Applicant basically
14 meets a checklist, but you're not looking at the
15 credibility of the reports that are attached as
16 exhibits, those type of things, you're just looking
17 at have they stated what is necessary for your
18 requirements. Is that a fair statement?

19 A. When you speak to that particular
20 exhibit, it's more of you've provided information and
21 we already know that this information needs to be
22 approved by the county engineer along with working
23 with the township trustees in order for it to meet
24 the spirit of the issue at hand which is
25 transportation issues are being dealt with correctly

1 and that's where we point to the conditions.

2 If you like, we can go into the Staff
3 Report and go into the area where it talks about this
4 particular subject matter, and we can read about what
5 that particular staff member had to say about that
6 topic and then we can go to the conditions.

7 Q. Well, and before we do that, I just kind
8 of wanted to get a sense of do you -- do you look at
9 the credibility of that report in the application or
10 do you just look at it at face value and put your
11 recommendations in the Staff Report?

12 A. I would say that we are definitely taking
13 the information as if it's coming from someone that
14 knows what they're doing and making sure that
15 it's, you know, that it's coming from somebody that
16 knows what they're doing, that they are reputable,
17 that they do have the credentials they need do that
18 type of work. Same thing would be true with
19 ecological type of information as well.

20 Staff knows of most of the consultants
21 that work on these projects and what their
22 credentials are and what kind of work they do, so we
23 do take that into consideration when we're looking at
24 these projects.

25 Q. So you're -- in knowing the contractors,

1 you're assuming then the accuracy of the exhibits in
2 the application.

3 A. Yeah, the consulting firms that do this
4 type of work, if you do this stuff long enough, I'm
5 sure, like in your career field, you know certain
6 people that do certain type of work, and this is the
7 type of thing that they do all the time. So we have
8 the same thing, we know who does this type of work
9 and know that when they provide the information that
10 we know we have something that we can look at that
11 has facts that are accurate that we can rely on.

12 Q. Okay. And so then you don't need to, in
13 essence, then wait for this process to make sure that
14 those people have the expertise that you're making
15 the assumption on.

16 MR. REILLY: Objection. I don't
17 understand what "this process" means.

18 Q. I'm sorry. This hearing. You don't need
19 to wait until this hearing to make your
20 determination.

21 MR. REILLY: Your Honor, I'm going to
22 object at this point. I mean, I've been patient
23 here, but what Counsel has done is to inquire as to
24 how the staff judges the credibility of the
25 information it receives in the application, and I

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1 think Mr. Rostofer has provided an answer to that by
2 way of its experience and its knowledge with people
3 preparing various parts of the application, among
4 other things. So I think it's been asked and
5 answered and I think we're beginning to move into an
6 argumentative and a harassment stage here.

7 ALJ TAUBER: Counsel hasn't finished her
8 question, so I'll allow her to finish the question
9 first and then we can address it.

10 Ms. Napier.

11 MS. NAPIER: Thank you. I guess before I
12 would do that, I do want to say that I certainly take
13 offense at Mr. Reilly's suggestion that we are being
14 harassing to the witness. I certainly have not
15 intended that and certainly I don't think any of my
16 questions have risen to that level. He -- I assume
17 he is --

18 ALJ TAUBER: We'll note that for the
19 record. If you want to ask your next question or if
20 you want to rephrase it.

21 MS. NAPIER: Can you read it back for me?

22 ALJ TAUBER: Because it wasn't finished,
23 I don't know how much --

24 MS. NAPIER: I think it wasn't.

25 (Record read.)

1 MS. NAPIER: I guess I will rephrase
2 since it was kind of jumbled.

3 ALJ TAUBER: Thank you.

4 Q. (By Ms. Napier) So I guess my question to
5 you was: So the process is that you make a
6 determination really before this evidentiary hearing
7 to question the expertise in assuming that the
8 exhibits are accurate. Is that a fair statement?

9 A. I kind of got lost a little bit here with
10 all of the things going back and forth. So what
11 you're really trying to get at is when we're
12 reviewing the application for completeness --

13 Q. Uh-huh.

14 A. -- that when we're looking at the
15 companies that actually were hired by the Applicant
16 and the information they're providing, that we're
17 making conclusions as to if they're credible or not
18 as a company or if the information is credible?

19 Q. Let me ask another question because I
20 don't want to get into --

21 A. I'm sorry.

22 Q. -- the thing of you asking me a question
23 and me testifying.

24 I guess what I'm trying to figure out is
25 for the completeness portion of this certification

1 process where the staff says it's complete, I'm
2 trying to determine what level of investigation is
3 done up until that point on the entire application,
4 the three volumes that we have here today.

5 A. Oh, okay. Basically, we have the statute
6 and then we have the rules that we follow. So based
7 on the rules, they're required to provide information
8 based on those rules to us. So what we're doing is
9 making sure that the information that's provided is
10 meeting those rules. So they provided this, they
11 provided that, they provided that. So in essence
12 we're just trying to make sure that everything, per
13 the rule, has been provided to us so we can start an
14 investigation.

15 Q. So does the staff contact each person
16 that provides the exhibits? There's a number of
17 exhibits, there are probably many people that prepare
18 those exhibits. Does the staff contact them or do
19 they just assume that those are accurate based on the
20 assertions of the Applicant?

21 A. When we're doing the completeness review,
22 we're looking to make sure that the information
23 provided meets the rules. In other words, that the
24 information is there. We don't necessarily contact
25 anybody at that point because now all we're doing at

1 that point is just making sure that the application
2 is complete based on the rules that staff has to
3 follow in order to make sure that we have all of our
4 information to start an investigation.

5 Q. So --

6 A. So the investigation is where a lot of
7 things that you're talking about start.

8 Q. Okay. In the investigation, does the
9 staff look at the impact on the county as this is the
10 second project for Champaign County in approximately
11 the same footprint?

12 MR. REILLY: Can I just, for
13 clarification, are we talking about completeness
14 review or the investigation after completeness
15 review?

16 MS. NAPIER: I believe he talked about
17 investigation after the completeness review.

18 A. In the context of investigation, your
19 question was related to impacts to the county --

20 Q. As this is the second project proposed in
21 approximately the same footprint or near to the same
22 footprint.

23 A. Yeah, they are adjacent to one another,
24 there is a little bit of overlap. And the Applicant
25 has provided information on cumulative impacts as if

1 both projects were there.

2 Q. Okay. In your answer to question 17, you
3 indicate that no more than 56 turbines will actually
4 be constructed.

5 A. I'm sorry, I'm trying to get to --

6 Q. It's page 6.

7 A. Okay. Yeah, what I'm doing is I'm
8 providing everybody with the definition of the
9 facility as proposed in the application. And this
10 meets the, if you go to the question before that, it
11 would be question 16, there's a definition for the
12 facility as outlined in the Administrative Code.

13 Q. Okay.

14 A. So what it's saying here is that the
15 facility does consist of 56 wind turbine generators.

16 Q. Okay. Did the staff just look at the
17 impact on Champaign County with regard to the second
18 project only?

19 A. No. We -- there was overlap in areas
20 where certain things, based on cumulative impacts,
21 had to be looked at as if both projects were
22 occurring at the same time.

23 Q. Okay.

24 A. And the Applicant provided that
25 information for us to be able to review and come to

1 conclusions that cumulative impacts have been
2 addressed.

3 Q. Okay. So would the staff have looked at
4 this as an exacerbation of the impacts of the first
5 project approved, am I correct in that, are you
6 looking at it as an exacerbation of the first
7 project?

8 MR. REILLY: Object to the term
9 "exacerbate." He has testified that they looked at
10 the projects, the cumulative effects of the projects,
11 where that was appropriate. Asked and answered. I
12 think Counsel is trying to, with the use of the term
13 "exacerbate," trying to put an editorial spin on it,
14 which he did not -- which the witness did not put on.

15 ALJ TAUBER: I'm going to sustain the
16 objection. Mr. Rostofer has answered the question.

17 Q. So in what area do you believe there are
18 cumulative impacts due to the Project I and proposed
19 Project II?

20 A. Cumulative impact considerations were
21 mainly with shadow flicker and noise and then there
22 was also a discussion about transportation issues.

23 Q. Do you know what transportation issues?

24 A. It has to do with if they chose to build
25 both projects at the same time that they'd be using

1 the same roads.

2 Q. So do you know how many total are going
3 to be affecting the Champaign County residents, total
4 turbines proposed?

5 A. Right now it's 56 for this case.

6 Q. Okay. And do you know how many for Phase
7 I?

8 A. Offhand, I'm not sure. What I can say
9 though, if you look to the incidental take permit
10 application that Buckeye Wind put in that covers both
11 the Buckeye Wind I and the Buckeye Wind II project,
12 cumulatively, between those two projects, only 100
13 turbines can be constructed.

14 Q. Is that the number the staff is kind of
15 looking at for cumulative effects?

16 A. No. We looked at what the Applicant
17 provided for this case against the particular turbine
18 sites where cumulative impacts could be an issue from
19 the Buckeye I project.

20 Q. Okay. Did you look into decommissioning
21 or did someone else look into decommissioning?

22 A. There are individuals on the team that
23 did look into it. I was one of those individuals.

24 Q. Okay. Is there somebody that's going to
25 be testifying, to your knowledge, as to the

1 decommissioning issues?

2 A. That would probably be me.

3 Q. Okay. Good.

4 In your condition 55, I believe it's G.

5 A. Did you say "G"? I'm sorry.

6 Q. "G," yes. There is a condition regarding
7 the amount of decommissioning cost, correct?

8 A. It speaks to the total decommissioning --
9 sorry, my eyes are bad -- in current dollars.

10 Q. Okay. And on page 62, the top of the
11 page, about the fourth line down, it looks like staff
12 has identified "Decommissioning Costs." It's in
13 quotations. Do you see where I am?

14 A. Yes, ma'am.

15 Q. Okay. And do those decommissioning costs
16 include salvage value?

17 A. No.

18 Q. And is that decommissioning cost, is it
19 on a per turbine basis?

20 A. It's for the whole facility and then you
21 stretch it out across each turbine.

22 Q. Okay. Now, is this condition being
23 considered for modification by the staff after this
24 hearing?

25 A. No, not right now, we're not considering

1 anything, I don't believe.

2 Q. Okay. Because can you see that we might
3 have a concern if you were going to change this after
4 we've left? Do you understand that?

5 A. Yeah, I understand. I've listened to all
6 the testimony that's been given and I clearly
7 understand the county engineer's position. I
8 understand that -- I believe everybody is in
9 agreement, for the most part, except for the
10 Applicant, because we did see a difference with their
11 revisions they would like to make, but everybody else
12 seems to be in agreement with the way it is.

13 Q. Okay. And why are you wanting salvage
14 value out of it? What's the staff's basis for that?

15 A. Because it's a volatile market just like
16 what's been stated before. We've looked at several
17 ways of dealing with this as staff and believe that
18 salvage values just should not play into it.

19 Q. Now, I see that you're breaking down cost
20 for financial assurance on a per-turbine basis.

21 A. Yes, ma'am.

22 Q. Are you assuming that the project is not
23 going to be built all at one time?

24 A. There are pieces within this puzzle that
25 talks about how the funds need to be set aside.

1 We're trying to provide enough latitude that, you
2 know, having experienced the construction of these
3 sites within the state of Ohio already, me,
4 personally, I've been out there, I've seen these
5 things being built, they're not all put up exactly at
6 the same time.

7 They're done in -- they're done a little
8 bit at a time over a period of time, so they go
9 through different stages, starting from one piece of
10 the puzzle to the next. So some are going to be
11 lagging behind others getting to full erection of the
12 facility, that being each turbine.

13 So what we're trying to do is to say that
14 there's flexibility here to a point that will allow
15 you to cluster turbines when you put money up because
16 you're only going to work over in this part of the
17 county for right now and then next month you'll be,
18 you know, they could be 5 miles, you know, on the
19 other side of the project working on a cluster.

20 What we are saying is that they do need
21 to provide the monies and they can put all the money
22 up all at once in the beginning before anything is
23 constructed or they can do it as things are being
24 constructed, but it has to be put up for every
25 turbine.

1 Q. Okay. Do you believe that the per
2 turbine decommissioning schedule, I guess that you
3 set forth, is going to incur a lot more paperwork,
4 maybe 54 different bond increases?

5 A. You're talking about now when we're
6 taking the turbines down?

7 Q. Well, in taking them down.

8 A. Okay. Could you repeat the question
9 because I'm not sure I understood.

10 Q. Well, you divided it by the amount of
11 turbines.

12 A. Uh-huh.

13 Q. And so why are we not just doing that all
14 at one time?

15 A. Well, the money can be put up all at
16 once. What we're trying to say is that when you
17 actually are dividing it out by turbine, there's a
18 possibility that when we're talking about the actual
19 decommissioning of a turbine, it could be one turbine
20 that actually gets decommissioned versus the whole
21 farm.

22 So when you understand the calculation of
23 how much should be set aside per turbine, you're
24 trying to cover in the event that one turbine in the
25 beginning, middle, or end has to be decommissioned.

1 But in the beginning, the reason why
2 we're also stating that is because in the beginning,
3 like I said, they are clustering, doing cluster
4 building.

5 Q. Right.

6 A. So this month they're working on five
7 turbines say in the middle of the project, but then
8 they may not be ready to start construction on the
9 next five or ten for another couple months. We're
10 giving them the opportunity to not have to put those
11 particular monies for those turbines that are coming
12 later into the pot until they are actually starting
13 their construction of those particular sites.

14 Q. Do you --

15 A. But that does not preclude them from
16 putting it all up at once.

17 Q. Do you believe that plan looks out for
18 the minimum impact to the public? In having a per
19 turbine, we could have a plan that goes on for many,
20 many years in construction.

21 A. It's my understanding that construction's
22 not going to take that long with this project. And
23 from my experience with the other projects that have
24 been constructed, the time frame is less than a year.

25 Q. Okay. So why have --

1 A. So you're not talking about a long,
2 stretched-out time frame from my experience.

3 Q. So why have a per-turbine amount if we're
4 going to basically be increasing that bond in less
5 than a year's time?

6 A. It's just what staff came to the
7 understanding of trying to put together when we did
8 the decommissioning breakdown. That's why we have it
9 separated in little segments because each one of
10 these segments is a different thought dealing with a
11 specific topic.

12 Q. Okay. And you said this one was your
13 topic.

14 A. This one is my topic along with a few
15 other people that's worked on it.

16 Q. Okay. So do you believe it is in the
17 county residents' best interest to allow kind of a
18 project to drag on for a year?

19 A. It's going to regardless.

20 Q. Okay.

21 A. Construction is going to take a little
22 bit of time to occur.

23 Q. Okay.

24 A. Is it in the best interest? I don't have
25 an opinion on that.

1 Q. Now, have you been here when the
2 Applicant talked about decommissioning, their
3 decommissioning recommendations?

4 A. Who would you be speaking specifically?

5 Q. I believe it was Mr. Speerschneider.

6 A. Yes, I was here for his, yes.

7 Q. Okay. You listened to his testimony?

8 A. Yes, ma'am.

9 Q. Now, would you agree with him that there
10 was no evidentiary basis for the \$5,000 per turbine
11 recommendation that the Applicant made?

12 MR. SETTINERI: I'll object.

13 Mischaracterizing Mr. Speerschneider's testimony.

14 MS. NAPIER: I believe it was in response
15 to -- it's our understanding, in response to
16 Mr. Selvaggio's direct question, that there was no
17 basis other than the fact that it was the order from
18 the first project, so.

19 MR. SETTINERI: With the clarification
20 and removing the word "evidentiary," posing the
21 question that way, I withdraw the objection.

22 MR. REILLY: I don't mean to pile on
23 here, but I don't see the relevance of Mr. Rostofer's
24 or staff's opinion of that since that's not staff's
25 proposal.

1 MS. NAPIER: I believe staff discussed it
2 in their -- in the Staff Report, so we just want to
3 get some clarification from them.

4 ALJ TAUBER: I'll allow the question.

5 Q. (By Ms. Napier) Would you agree that
6 there's no basis for the \$5,000 per turbine
7 recommendation as indicated by Mr. Speerschneider in
8 his response to cross-examination?

9 A. I'll give you a response in a second.
10 I'm going back in the Staff Report to the section
11 where we talk about that just to get the record as
12 clean as we can here.

13 Q. I believe it's on page 36 to help you
14 out. Down towards the end of the page.

15 A. Yes, ma'am.

16 To answer your question, we do not
17 believe that \$5,000 is sufficient. And if you look
18 at the next paragraph, that is our explanation as to
19 where we're going with that. Basically, it is that
20 "it's unclear whether the \$5,000 per turbine would be
21 a sufficient financial assurance for the first year
22 of the project. As such, Staff has recommended
23 several conditions to ensure sufficient funds for
24 decommissioning would be available at the
25 commencement of construction."

1 Q. I just want to talk to you about one more
2 subject. Just a couple more questions. I'd like to
3 talk to you about setbacks. You indicated or at
4 least the staff indicated in the conditions that the
5 turbines, other than those that are listed, meet the
6 minimum setback.

7 A. Yes. The statutory requirement is that
8 they meet the minimum setback distances from a
9 habitable structure and also from a property line.

10 Q. And after many witnesses regarding
11 impacts based on setbacks, is the staff going to look
12 at modifying any of the setbacks based on the
13 testimony presented here?

14 A. As I said before, this is one of those
15 topics where I am not going to be able to give you a
16 definitive answer on the stand as to what our
17 conclusions will be, but I do note that there has
18 been a lot of discussion about the setbacks and what
19 the appropriate distance should be, and I will
20 discuss this matter with staff and we will come to a
21 conclusion, and I can't tell you what that conclusion
22 will be at this point.

23 Q. Okay. So I won't ask you about the
24 conclusion, but can those ever be adjusted?

25 A. We have other conditions that have

1 adjusted the setback to be greater based on certain
2 topic matters, so the answer is in the Staff Report
3 you will find that there are other setback distances
4 for certain topics.

5 Q. What sort of topics?

6 A. Blade shear, ice throw.

7 Q. Sorry. I didn't mean to make you --

8 A. It's all right.

9 Q. Please finish your question -- or, finish
10 your answer.

11 A. We can go to the conditions that speak to
12 those. It's basically 150 percent which takes us to
13 a greater distance than what the setback is for
14 habitable structures currently based on the statute.

15 Q. Any other -- any other circumstance that
16 would --

17 A. We have setback distances which are the
18 same as what the statutes are for gas lines
19 transmission and local gas lines. I believe that's
20 it.

21 Q. Okay. So I don't want to put words in
22 your mouth, so I apologize.

23 A. It's all right.

24 Q. Other than that, is there any evidence
25 that can be presented here to have the staff modify

1 their recommended setbacks?

2 A. I can't -- I can't come to a conclusion
3 as of right now on what modification, if any, we
4 would make to our recommendations to the Board. I
5 want to be clear on that, that, you know, staff is
6 only recommending to the Board these conditions. The
7 Board is the one body that has to make the final
8 decision on what conditions they will put into a
9 certificate.

10 Q. Do you believe the staff's recommendation
11 holds sway with the Board?

12 A. I can only say that there's, in the
13 several cases that we've had go before the Board,
14 many of the recommended conditions from several
15 projects have been adopted by the Board.

16 MS. NAPIER: Thank you. I have no
17 further questions.

18 ALJ TAUBER: Thank you.

19 Mr. Van Kley.

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

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Van Kley:

24 Q. Why don't we start by getting a snapshot
25 as to who does what in your organization with respect

1 to the Staff Reports and the investigations of
2 applications such as the Buckeye II application.

3 Let's start first with your role as the
4 person who is managing the investigation which you
5 assumed midstream in the Buckeye II application.
6 What duties did you have with respect to managing the
7 investigation?

8 A. Well, the first thing I had to do, and I
9 think I said this earlier, is we started with the
10 assignments of a pool of staff that are considered
11 experts in different areas. Looking at what had
12 already been put in place, there were a few
13 adjustments that had to be made and so that was done.

14 At that point we continued with the
15 investigation and at that point my responsibility was
16 to ensure that staff had everything that they need in
17 front of them in order to write their sections of the
18 Staff Report and provide those sections to me, per
19 dates that we set, in order to meet our deadline,
20 which is to have a report filed 15 days prior to a
21 public hearing.

22 Once those sections are provided by staff
23 to myself, we go through an editing process as most
24 folks do that write staff reports. Edits were made
25 and, from that point, we took the Staff Report and

1 docketed it by the time frame that was required by us
2 and that's my responsibility to ensure that occurs.

3 And at that point we start getting into
4 the legal aspects of the project, and for that my
5 responsibility is, as the lead staff, is to ensure
6 that we are represented at the public hearing, just
7 being there, that any information that comes out of
8 the public hearing that I'm made aware of it to
9 further our investigation as information is provided
10 to us, and then prepare for the hearing we're in
11 today.

12 Q. In this particular case, that is the
13 Buckeye II application, what did you do to ensure
14 that all people you were working with -- did you not
15 hear what I said?

16 A. I'm having a hard time hearing you. I've
17 got sinus issues. I'm sorry.

18 Q. Okay. Let me just put the microphone a
19 little closer. I think that will help you too, I
20 think. Is that better?

21 A. Yes, sir.

22 Q. Okay. Let me start the question over.

23 In the Buckeye II application, what did
24 you do to ensure that the people you were working
25 with had everything they needed to write their

1 portions of the Staff Report?

2 A. We sat down and had a meeting. I sat
3 down with everybody and discussed where we were at
4 from where I saw it and then asked them if they had
5 everything they needed. And if they had questions
6 that they still needed answers to, what the questions
7 were, so I could get with the Applicant to get the
8 information that they required in order to complete
9 their investigation.

10 Q. Was it your job to interact with the
11 Applicant to obtain all the information that was
12 necessary to complete the Staff Report or did the
13 individual staff members also have some of those
14 communications with the Applicant?

15 A. It was both. Some instances it was just
16 staff was given the opportunity to communicate
17 directly with the Applicant, and other instances I
18 did it myself, but I was always copied on whatever
19 communications that staff had on their own with the
20 company.

21 Q. Were there any particular subject areas
22 where you conducted all of the interactions with the
23 company?

24 A. Yes.

25 Q. Which ones were those?

1 A. Those would be all the ecologically-based
2 topics, permitting issues, aviation.

3 Q. How many investigations have you been the
4 manager of?

5 A. Can you be more specific to where you're
6 talking?

7 Q. Yeah. With respect to the investigations
8 of applications for certificates, how many of those
9 have you served as the manager?

10 A. That would be three.

11 Q. Okay.

12 A. With amendments included, it would
13 probably be another four.

14 Q. So the Buckeye Wind II application was
15 the third full investigation that you have
16 investigated?

17 A. Yes, sir.

18 Q. Okay.

19 A. As far as lead.

20 Q. Uh-huh, right.

21 Have any of your other projects that you
22 have served as the lead involved wind projects?

23 A. That's what I'm specifically speaking to
24 are just wind projects.

25 Q. Oh, you were just talking about wind

1 projects?

2 A. Yes, sir.

3 Q. Oh, okay. Which other wind projects have
4 you managed the investigation for?

5 A. That would be Hog Creek I and Hog Creek
6 II.

7 Q. And then how many total -- and how many
8 -- for how many projects have you served as the lead
9 of investigations of certificate applications
10 including wind farms and other types of projects?

11 A. Just the ones that I've just told you
12 about. That would be it.

13 Q. Okay. So all of the projects in which
14 you've served as the lead have been wind projects.

15 A. Yes, sir.

16 Q. I see. Okay.

17 A. Within the -- within PUCO.

18 Q. All right. When you were serving as the
19 lead on the Buckeye II Wind Project, who did you
20 report to inside the hierarchy at the Ohio Power
21 Siting Board?

22 A. That would be my immediate supervisor,
23 Klaus Lambeck.

24 Q. Okay. Who does Klaus Lambeck report to?

25 A. That would be our Executive Director, Kim

1 Wissman.

2 Q. And when you were serving as the lead on
3 the Buckeye II investigation, did you supervise the
4 people, the other staff people who were working on
5 the project, or did you just serve with them?

6 A. Well, as the lead, you're ultimately
7 responsible for making sure that the project moves
8 forward through the investigation, the process that
9 we have. I worked hand in hand with these
10 individuals you're talking about on a daily basis, so
11 we work together on the projects. I just happened to
12 be the one responsible for ensuring that the project
13 gets through the process.

14 Q. So were you acting as a coordinator or
15 could you actually give the other members of the team
16 orders as to what to do?

17 A. I don't give people orders. I -- that's
18 above my pay grade.

19 Q. Okay. So you were coordinating the
20 project then.

21 A. Pretty much.

22 Q. Okay. All right. Thank you. I think
23 that gives us a better idea as to how it worked.

24 You've indicated that somebody else was
25 serving as the lead on the Buckeye II Wind project

1 before you took over that role. Who was that that
2 you replaced?

3 A. Nick Doss.

4 Q. Okay. And is Nick Doss still employed by
5 the Board?

6 A. No.

7 Q. Do you know why he left the employment of
8 the Board?

9 MR. REILLY: Objection. This is getting
10 into a personnel matter with the Board. These are
11 personnel decisions. And I don't think we're trying
12 -- we're not trying to cover anything here or
13 withhold anything, but I think it might require a
14 private session just because it is a personnel
15 matter.

16 MR. SETTINERI: Your Honors, we would
17 join in the objection simply on the grounds of
18 relevancy.

19 MR. VAN KLEY: Your Honors, it's relevant
20 for two reasons: One is if he left for some reason
21 related to the Buckeye II application, such as the
22 dissatisfaction with his work, that would definitely
23 be relevant; secondly, if -- well, I think that's the
24 main grounds for it.

25 MR. REILLY: If -- and I don't mean to

1 affect the -- I'm trying to deal with the personnel
2 side of the fact that this is a personnel matter.

3 MR. VAN KLEY: Yeah, I understand.

4 MR. REILLY: If you could put that
5 question to him and see what his answer is.

6 ALJ TAUBER: If you could rephrase your
7 question to what --

8 MR. VAN KLEY: Yeah, I'll try to work
9 around the edges a little bit --

10 ALJ TAUBER: Thank you.

11 MR. VAN KLEY: -- to avoid anything
12 that's sensitive.

13 Q. (By Ms. Van Kley) Is Mr. Doss employed
14 now? Do you know?

15 A. I have no clue.

16 Q. Okay. At any point are you aware of any
17 dissatisfaction with Mr. Doss's work on the Buckeye
18 II Wind application that's been expressed by anybody
19 inside the Board?

20 A. No.

21 Q. Are you aware of any complaints that have
22 been made against how Mr. Doss conducted his duties
23 on the application that were made by third parties
24 such as the Applicant?

25 A. I am not aware of anything like that.

1 Q. Are you aware of any concerns that have
2 been expressed by the Applicant with respect to
3 Mr. Doss's work on the Buckeye II project?

4 A. I am not aware of anything like that.

5 Q. You're aware of staff requests for
6 information that have been sent to the Applicant. I
7 believe you already testified about one of them. If
8 you want to put this into context, you can pull out
9 UNU Exhibits 4 and 5. Let me know when you have
10 those in front of you.

11 A. Yes, I do.

12 Q. Okay. Are you aware of any concerns
13 expressed by the Applicant after having received
14 either of these staff requests concerning the nature
15 or content of the staff requests?

16 A. I am not.

17 Q. Mr. Doss is the one who drafted those
18 requests, right?

19 A. I don't know.

20 Q. Were you involved in any other role in
21 the investigation of the Buckeye II project prior to
22 becoming the lead on the investigation?

23 A. Yes. I was one of the staff members that
24 was reviewing certain sections of the applications --

25 Q. Okay.

1 A. -- or, application.

2 Q. All right. And you did have involvement
3 with Mr. Doss during that time period?

4 A. Not much. To clarify, I look at a lot of
5 projects. I -- based on the types of things that I
6 look at, I'm not in the office that often. I only
7 interact with a few people at a time for most cases;
8 project leads and other people that deal with similar
9 topics that I deal with.

10 During the time when Mr. Doss was the
11 lead on this project was a time when, based on the
12 type of things that I look at in projects, being in
13 the summertime, I'm not around all that much, so I
14 did not have that much interaction with Mr. Doss.

15 Q. Okay. Appreciate the clarification.

16 You're aware that Mr. Doss took some
17 noise measurements of the background sound for the
18 Buckeye II project area?

19 A. I'm aware that information was provided
20 on the docket about noise measurements that he took,
21 but I'm not aware of when he did that or how he did
22 it or anything of that sort.

23 Q. Are you aware that that information was
24 the subject of a later filing by the Board on the
25 docket in this case, expressing the view that

1 Mr. Doss's measurements did not express the view of
2 the Board?

3 A. Yes, sir.

4 Q. Okay. Do you know why that was filed?

5 A. It was filed because we typically do not,
6 as staff, put that type of information on the
7 docketing system, and I have no clue why Mr. Doss
8 felt inclined to do that.

9 Q. As the lead investigator, do you know
10 whether his information, that is his noise
11 measurements, were used in any manner to perform the
12 duties of the staff for this investigation?

13 A. I am not aware of why he collected that
14 information. I do not specifically deal with the
15 noise issues.

16 Q. Okay. So you don't know whether that
17 information that Mr. Doss collected has been used for
18 purposes of the staff's investigation?

19 A. You would need to speak to Mr. Strom
20 about that.

21 Q. Okay. Speaking of Mr. Strom, you just
22 kind of led me into another area that provides a good
23 segue here. Mr. Strom took the lead on the noise
24 aspects of the investigation; is that right?

25 A. Yes, sir.

1 Q. And he was assisted by somebody; is that
2 right?

3 A. Yes.

4 Q. Who was he assisted by?

5 A. Mr. Bellamy.

6 Q. Is his first name "Mark"?

7 A. Yes, sir.

8 Q. Mark Bellamy.

9 Okay. What were their respective roles
10 with regard to the noise evaluation?

11 A. Mr. Strom would be considered the expert
12 in the area. Mr. Bellamy is assisting him with
13 whatever information he would need in order to
14 complete his investigation.

15 Q. Okay. And do you know what kind of
16 background, if any, Mr. Bellamy has with respect to
17 noise?

18 A. I know that he has taken classes in
19 college because he does have a college degree dealing
20 with physics.

21 Q. Dealing with physics?

22 A. Physics.

23 Q. Does that include study of acoustics to
24 your knowledge?

25 A. I'm not aware of anything like that. I

1 don't know his full background.

2 Q. All right. You're aware that Mr. Doss
3 also took noise measurements at some other wind farms
4 in Ohio that were operating.

5 A. Can you repeat that question? I'm sorry.

6 Q. Yeah. Are you aware that Mr. Doss also
7 took some sound measurements at some other wind farms
8 in Ohio that are operating.

9 MR. REILLY: Objection, relevance. It's
10 not this facility; not this investigation.

11 MR. VAN KLEY: Maybe not, your Honor, but
12 the Applicant and the staff have made a big deal
13 about how they're -- how the same standards that
14 they've used in five other cases, including some
15 other wind farms, provide them with the basis, and I
16 would add the sole basis, for their noise standard in
17 this case.

18 So if -- it's pretty hard to understand
19 how anybody could argue that -- that the success or
20 lack of success in that same standard that they are
21 urging the Board to adopt here can't be relevant to
22 this proceeding.

23 ALJ TAUBER: I'm going to sustain the
24 objection. I think we've gone beyond the scope of
25 just this application. I don't think the question

1 indicated that it had any relevance to what we're
2 looking at here, so I don't know if you want to
3 rephrase your question, but I'm going to sustain the
4 objection to that question.

5 MR. VAN KLEY: I can try rephrasing.

6 Q. (By Mr. Van Kley) As the lead
7 investigator for this project, the Buckeye II
8 project, are you aware that the Applicant has
9 requested a noise limit that is 5 decibels A-weighted
10 above the background level measured in -- the average
11 background level measured in the Leq? Are you aware
12 of that?

13 A. I would have to refer to the application
14 to see exactly what they're saying.

15 Q. All right. Well, why don't we do that.
16 It actually might be easier to find in your Staff
17 Report. If you get to the noise part of the Staff
18 Report, let me know if you get there first. Go to
19 page 32 of your Staff Report, please.

20 A. We got there at the same time.

21 Q. All right. Excellent. All right.
22 Looking at page 32 of the Staff Report, would you
23 look under "Operational Noise."

24 A. Okay.

25 Q. All right. Look at the last sentence of

1 the first paragraph under "Operational Noise," where
 2 it reads: "A threshold of 5 dBA over average
 3 nighttime ambient noise levels (Leq) has been applied
 4 in recent wind farm certificates in Ohio." Do you
 5 see that?

6 A. Yes, sir.

7 Q. All right. Now looking further in the
 8 application on page 33.

9 A. The application or the report?

10 Q. I'm sorry. The Staff Report.

11 A. Okay.

12 Q. Okay. Look at the top of page 33 and
 13 specifically the first full sentence which reads "The
 14 average ambient nighttime noise level at this wind
 15 speed was found to be the same as the average
 16 nighttime Leq, 39 dBA." Do you see that?

17 A. Yes, sir.

18 Q. Okay. Now, work your way down on that
 19 page to the second-to-the-last paragraph on the page.

20 A. Uh-huh.

21 Q. And I'd like to refer you to the sentence
 22 in the middle of the paragraph starting with the word
 23 "Therefore." Do you see that?

24 A. Yes.

25 Q. Which reads: "Therefore, Staff recommends

1 that the certificate be conditioned upon the
2 requirement that the Applicant adhere to the 44 dBA
3 modeled noise impact limitation as presented in its
4 application except when, during daytime operation,
5 the Applicant can demonstrate that slightly higher
6 noise levels do not exceed validly measured Leq at
7 the receptor by more than 5 dBA." Do you see that?

8 A. Yes, sir.

9 Q. Okay. And I've read all those sentences
10 correctly?

11 A. Yes.

12 Q. Okay. Now, based on this information,
13 does it refresh your memory as to whether or not the
14 staff is recommending the same 5 dBA above-background
15 limit for Buckeye Wind II that, as stated on page 32,
16 it has applied to other wind farms in Ohio?

17 A. The part I'm having a tough time on here,
18 because I don't deal with the noise issues, is this
19 idea of the background noise that you're referring
20 to, because I don't see it in that sentence at the
21 end there.

22 The only thing I can find is a
23 relationship to area nighttime Leq.

24 Q. All right. Let's simplify it a little
25 bit by going to the application. Volume I, please,

1 page 72. Go to the last paragraph on that page.

2 A. Under (b)?

3 Q. Under (b)(i). Assessment Criteria for
4 Operational Noise Levels. And let me just read you a
5 part from that text where it says "In the absence of
6 any specific local or federal noise regulations, the
7 project's potential noise impact will be compared to
8 reactions observed at operational wind projects in
9 similar settings, and evaluated in accordance with
10 OPSB precedent on other approved wind projects in the
11 State, such as the noise conditions imposed under the
12 Timber Road I, Timber Road II, and Black Fork Wind
13 Projects." Do you see that?

14 A. Yes, sir.

15 Q. Did I read that correctly?

16 A. Yes, sir.

17 Q. Okay. Then it goes on to say "Those
18 projects include a Facility-related noise limitation
19 at non-participating residences of 5 dBA over the
20 nighttime average Leq background level unless the
21 validly measured ambient Leq at the location of the
22 complaint plus 5 dBA is greater."

23 It says "Since the measured average
24 nighttime Leq sound in the Project Area was 39 dBA, a
25 threshold of 44 dBA will be implemented for the

1 proposed Facility." Did I read all of that
2 correctly?

3 A. Yes.

4 Q. Now, does that refresh your memory as to
5 whether the staff is recommending that the Buckeye II
6 Wind project be required to follow the same noise
7 standard that it has required for other wind projects
8 in the state?

9 A. Let me go to the condition in the Staff
10 Report and see what it says first.

11 Q. All right. You may want to check page 59
12 of the Staff Report, Condition 49.

13 A. Yes. What it says there is that the
14 project area ambient nighttime Leq of 39, plus 5 dBA,
15 cannot be exceeded. I'm not seeing the background
16 noise part, that's why -- so all I can say is that
17 staff is recommending, as in Condition 49, that "The
18 facility shall be operated so that the facility noise
19 contribution does not result in noise levels at the
20 exterior of any current existing non-participating
21 sensitive receptor that exceed the project area
22 ambient nighttime Leq (39 dBA) plus five dBA." Then
23 it goes on to talk about some other things here.

24 Q. The "project area ambient" means the same
25 thing as "background," does it not?

1 A. I don't know. You need to ask Mr. Strom
2 that.

3 Q. Okay. So is it safe to say then that I
4 should direct the rest of my noise questions to him?

5 A. We can continue, but there's a
6 possibility that you're going to have to talk to him
7 about several of them.

8 Q. Mr. Strom will thank you for that.
9 Who on your staff was in -- who on your
10 staff investigated the setbacks?

11 A. Setbacks was part of Tim Burgener's
12 responsibilities specifically.

13 Q. Didn't Mr. Andrew Conway also deal with
14 setbacks?

15 A. Different types of setbacks. I'm
16 thinking of the statutory requirement for setbacks --

17 Q. I see.

18 A. -- when I talk about Tim.

19 Q. Do you know how he determined whether the
20 statutory setbacks were being followed in the Buckeye
21 II application?

22 A. You're talking about Tim again?

23 Q. Yes.

24 A. Okay. Tim and I have discussed what he
25 did look at, and yes, he was looking at the statutory

1 requirement for setbacks.

2 Q. As the person who took the lead in this
3 project, did you determine how he learned of whether
4 or not the turbines were in compliance with those
5 statutory setbacks?

6 A. We did discuss how he went through his
7 evaluation on that subject.

8 Q. Okay. And how did --

9 A. Specifically, when we were dealing with
10 the information that just came up, that came up here
11 recently with the two that I brought up in the
12 beginning of my testimony, we really specifically
13 talked about the situation surrounding those
14 particular situations and how that can be applied
15 across the project.

16 Q. How did Mr. Burgener determine whether
17 the setbacks were being observed?

18 MR. REILLY: Your Honor, I'm going to
19 object. Mr. Burgener is going to testify and he will
20 provide firsthand knowledge of all of this.

21 MR. VAN KLEY: Well, that's great, your
22 Honor, but I'd like to have a little bit of
23 preliminary information at least to help us hone down
24 on our discussion with Mr. Burgener, because I think
25 that will expedite and shorten his questioning if I

1 can take this information back tonight and write up
2 questions only -- that only those questions that I
3 know he can answer.

4 ALJ TAUBER: I'll allow the witness to
5 answer the question to the extent he can.

6 A. Just like other staff members, he looks
7 at the application. Specific to that particular
8 topic he, I know that he is looking at constraint
9 maps because he deals with GIS information.

10 Q. Okay.

11 A. So that's going to provide a lot of
12 detail about -- and I look at it too, so he's not the
13 only one that's looked at that -- showing where it's
14 viable to put turbines based on setbacks.

15 Q. Okay. Since you've also looked at that
16 information, tell me what information is either in
17 the application or has otherwise been provided to you
18 by the Applicant by which you can determine how far a
19 turbine is proposed to be from a property line of a
20 nonparticipating landowner?

21 A. There are shapefiles that have been
22 provided to staff and we have a GIS database that
23 holds that information where we can specifically look
24 at things very close. Also, in the application, I
25 don't know exactly where in the application, there

1 are maps that show legends and do give scale on them
2 to be able to measure various things.

3 Q. Please go to your direct testimony,
4 question and answer 13.

5 A. Hold on one moment, please. I need to
6 move some things. Could you repeat where you wanted
7 me to go, please?

8 Q. Yes. Question and answer 13.

9 A. Okay.

10 Q. The question asks: "After the Board
11 issues a certificate, is Staff simply free to change
12 conditions that the Board has adopted?"

13 And your answer is "No. Only the Board
14 has the authority to modify or change any part of the
15 certificate, including conditions."

16 Now, you're aware that the staff has
17 recommended a number of conditions that would require
18 the Applicant to provide plans of various sorts after
19 their certificate is issued?

20 A. Yes.

21 Q. And in those instances it would be the
22 staff -- the staff that would approve those plans?

23 A. You have to look at how the language will
24 be adopted by the Board as to what authorities they
25 are providing to staff. So without knowing exactly

1 how the conditions would be written, there is an
2 opportunity to understand that staff may not get
3 authority to review and enforce the condition as the
4 Board chooses. Could be, but there may not be.

5 Q. I'm not sure I understand your point.

6 A. The point is that the Board, the Board
7 ultimately has the final decision on the conditions
8 that are put into the certificate. We can't change
9 those conditions. It's not -- we don't have that
10 authority; only the Board does. Staff only advises
11 the Board and provides recommendations to the Board.

12 If the Board chooses to have a condition
13 written in such a way that it's asking the staff to
14 enforce the conditions specifically where it says
15 staff shall review and assure that it conforms to the
16 condition, then they're asking staff to do that for
17 them.

18 Q. Okay. Just to make sure that we're clear
19 on this, would you look at the Staff Report, page 59,
20 Condition 52. We'll just use this as an example to
21 make sure I'm understanding what you're saying. Now,
22 this condition requires the Applicant to "perform a
23 study of the potential impacts of the project to any
24 known microwave path or system," right?

25 A. Yes.

1 Q. And if the Board adopts this condition as
2 you have proposed it, the staff will be the entity
3 that approves this plan; is that correct?

4 A. It's not saying that. It's not using the
5 word "approve."

6 Q. Okay. Well, it uses the words "review
7 and confirmation that it complies with this
8 condition," right?

9 A. Yes.

10 Q. Okay. So if -- and would it be the staff
11 that makes that determination, rather than the Board,
12 right?

13 A. The staff would review and confirm that
14 it complies with the condition.

15 Q. All right. And based on your
16 understanding as to the intent of this condition, you
17 would not expect this plan to go to the Board for
18 review and approval, right?

19 MR. SETTINERI: Object to the form of the
20 question. I don't think it was a plan. I believe
21 it's a study.

22 MR. VAN KLEY: All right. I'll rephrase.

23 ALJ TAUBER: Thank you.

24 Q. All right. So isn't it true then that
25 when the Applicant submits the results of this study,

1 it will be just the staff that reviews it and
2 confirms that it complies with the condition, not the
3 Board?

4 A. I wouldn't say the word "only." What
5 it's stating here is that the Board is asking the
6 staff to review the study and make sure that it
7 conforms to what the condition's asking. It does not
8 prevent the Board from being able to review it
9 themselves.

10 Q. If the Board did that, would you expect
11 that the Board would -- would you envision that the
12 Board would issue an amendment to the certificate
13 reflecting the results of that study?

14 MR. REILLY: Objection. No foundation
15 that he would have any idea what the Board would do.

16 MR. VAN KLEY: No. I think he has just
17 stated he thinks that the Board could review it, so
18 apparently he at least believes he has some knowledge
19 about that.

20 MR. REILLY: He stated that the Board
21 would have the ability to review it and I almost
22 think that goes without saying. It doesn't mean that
23 he has any idea how the Board would vote or what
24 proposals they would look at or even the process
25 involved.

1 ALJ TAUBER: Why don't you rephrase,
2 Mr. Van Kley.

3 MR. VAN KLEY: Yeah. It wasn't what I
4 was asking at all, so I will rephrase.

5 Q. (By Mr. Van Kley) You've been involved
6 with a number of projects now that have gone through
7 the certificate process and received a certificate,
8 haven't you?

9 A. Yes, sir.

10 Q. Okay. And in those instances, the Board
11 has included conditions in those certificates that
12 have required studies and reports of various natures
13 from the Applicant that would be performed after the
14 certificate is issued, right?

15 A. You say the word "performed" and I don't
16 think that applies to everything that you said. The
17 word "performed" does not apply to everything you
18 just said.

19 Q. I don't understand what you're saying,
20 but I'll reword it.

21 Isn't it true that in the projects you've
22 been involved with, there have been conditions in
23 those certificates that have required the Applicant
24 to submit studies or reports of various natures to
25 the staff after the certificate's been issued?

1 A. Yes. There has been certificates that
2 require that the Applicant is obligated to submit
3 either permits that they had to go get from other
4 agencies to staff just to have and for the Board to
5 have, that plans and sometimes surveys would need to
6 be submitted.

7 Q. Okay. And those plans and surveys have
8 covered a variety of topics such as plans to minimize
9 vegetation damage, for example, right?

10 A. Yeah. Plans -- in that specific topic,
11 it would be a plan, if it's necessary, that would
12 incorporate Best Management Practices for reducing
13 impacts to vegetation or how vegetation would be
14 removed.

15 Q. And there have been plans of other
16 various natures also submitted postcertificate,
17 right?

18 A. Yeah. Engineering plans is one that
19 comes to mind.

20 Q. Sure. And in those other instances,
21 where certificates have required plans of that nature
22 or any other plans to be submitted, has the staff
23 usually reviewed and approved those plans or has the
24 Board approved them?

25 A. Staff has approved only those things that

1 the Board has asked them to review and approve.

2 Q. All right.

3 A. Staff has reviewed to confirm that the
4 condition, as outlined, has been met. Where those
5 things have not occurred appropriately, they've been
6 sent back to the Applicant for revision.

7 Q. Okay. And just for the sake of
8 convenience, taking the vegetation plans which you've
9 stated have been submitted postcertificate in other
10 projects you've been involved with, has the Board
11 ever approved any of those plans?

12 A. Through -- well, this is where it's going
13 to get a little difficult to understand unless you
14 understand the EPA and how they are set up. Some of
15 this information, like what you're talking about, can
16 be covered underneath other permits that come from
17 other agencies who are actually our Board member
18 agencies; one is the EPA.

19 So when we're looking at storm water
20 prevention plan, pollution prevention plan, that is
21 one area where that plan is actually not submitted
22 necessarily to us for some kind of approval, but it
23 is actually provided to the EPA staff for their
24 review and approval in order to allow them to have a
25 discharge permit. In those types of plans, they do

1 outline the types of things that you just brought up
2 about vegetation clearing, protection of streams and
3 wetlands.

4 Q. You're getting a bit off the point here.
5 Let's go back to the Power Siting Board process.

6 In those instances in which those plans
7 have been submitted after the certificate, has it
8 been your experience that the Board amends the
9 certificate in order to incorporate those plans?

10 MR. REILLY: Objection, asked and
11 answered.

12 MR. VAN KLEY: No, it's not. This is the
13 first time I've asked whether the Board has amended
14 the certificate in order to do that as opposed to the
15 Board approving them.

16 ALJ TAUBER: I'll allow Mr. Rostofer to
17 answer the question.

18 A. I am not aware of any amendments since
19 I've been here where, if we just take No. 52, that
20 type of plan would require the Board to do an
21 amendment.

22 Q. Okay.

23 A. Amendments, as I understand it, are --
24 have been done, which I've been involved in as a
25 lead, for other types of things such as change in

1 technology, put a different turbine type in that
2 wasn't part of the application.

3 Q. Would you go to Exhibit Q of the
4 application which you'll find in Volume III.
5 Specifically, I'd like to refer you to Figure 20
6 which you will find a couple of pages after page 69
7 of Exhibit Q. Let me know when you've gotten to that
8 figure.

9 A. What figure reference was that again,
10 Mr. Van Kley?

11 Q. Twenty which is titled "Visual Impact
12 Assessment, Combined Turbine Layouts for the Buckeye
13 I and II Projects."

14 A. Figure 20, you said?

15 Q. Yes, sir.

16 A. I am there.

17 Q. Okay. Now, do you see how this figure
18 provides the locations for Buckeye I turbines in gray
19 circles?

20 A. Yes.

21 Q. And do you see how this figure provides
22 the locations for Buckeye II turbines in orange
23 circles?

24 A. Yes.

25 Q. Okay. Now, earlier I think I heard you

1 say there's a little bit of overlap in the Buckeye
2 Wind I project area and the Buckeye Wind II project
3 area. In light of what you see on this Figure 20, do
4 you think it's just a little bit of overlap?

5 A. Yeah, I still see most of -- I see large
6 separations in some areas.

7 Q. Large separations by what?

8 A. Between locations of similar turbine type
9 as far as one versus the other.

10 Q. All right. Maybe we should find out what
11 you mean by the word "overlap" as you used it in your
12 testimony. Can you define that for me, please?

13 A. To me, overlap's going to say that you're
14 going to have turbines touching over one another in a
15 lot of areas, and I don't see turbines actually
16 overlapping each other.

17 I do see, you know, between I and II, I
18 see some in close proximity to others between the two
19 projects, but I still see some clear definition of
20 blocks that are not overlapping or even in close
21 proximity to each other from my viewpoint.

22 Q. By "overlap," are you meaning to say that
23 your -- by "overlap," do you mean that the turbines
24 would be on the same parcel of ground?

25 A. That, when you look at the circles, the

1 circles are actually touching one another or right
2 next to each other.

3 Q. I see. Okay. Are you aware that if the
4 turbines were that close they would not operate
5 correctly?

6 A. Well, I see -- I don't know if I agree
7 with you there because when I look at two turbines
8 from Buckeye I that are just north of Route 36,
9 pretty much in the center of this figure, those two
10 turbines are fairly close to each other and obviously
11 they're going to have -- I'm assuming they're going
12 to operate being that close to each other.

13 Q. But you don't see an overlap of the
14 circles there, do you?

15 A. No. But they are very close to each
16 other.

17 Q. I see.

18 A. And I don't see that same regard with
19 either project being that close to each other except
20 for maybe in a couple instances.

21 Q. So by "overlap," you mean they have to be
22 about that close to each other?

23 A. That close or touching.

24 Q. Oh, I see. Okay. All right. You can
25 set that aside.

1 Let's go to page 53 of the Staff Report.
2 I'd like to talk about Condition 19 for a little
3 while. And also turn to page 7 of your direct
4 testimony which is Staff Exhibit 2.

5 A. Did you say 20? Question 20?

6 Q. Question 21 on page 7 of your direct
7 testimony.

8 A. Yes, I'm there.

9 Q. Now, the reason I'm asking you these
10 questions about Condition 19 is because in your
11 answer to question 21 in your direct testimony you
12 stated that you believe the modifications proposed by
13 the Applicant for Condition 19 is reasonable and
14 would support Board adoption, so let me ask some
15 questions about Condition 19.

16 A. Okay.

17 Q. The Buckeye II project is not the first
18 project in which the Board has incorporated a
19 condition similar to Condition 19 in the certificate,
20 is it?

21 A. Yes, this has been adopted before.

22 Q. Is it safe to say that Condition 19 is a
23 standard condition that's included in many
24 certificates for all types of facilities?

25 A. I wouldn't call it "standard," but it has

1 been used in several projects.

2 Q. All right. And it's been used in
3 projects other than transmission line projects,
4 hasn't it?

5 A. Yes.

6 Q. Now, as this condition was originally
7 proposed by the staff, was it the staff's intent that
8 this Condition 19 apply only to electrical lines or
9 did it intend that this condition be applied to
10 access roads and other types of equipment as stated
11 in the first sentence of Condition 19?

12 A. It's intended for access roads,
13 transmission lines, and types of equipment to be
14 used.

15 Q. With regard to the words "transmission
16 line" about halfway down in Condition 19. Now,
17 you'll agree with me, won't you, that Buckeye Wind is
18 not proposing to build any transmission lines?

19 A. Yes.

20 Q. Okay. Instead they're proposing to
21 install some collector lines?

22 A. Yes. Below ground and above ground.

23 Q. So should these words -- so did you
24 intend to mean "collector lines" instead of
25 "transmission lines" when you proposed this

1 condition?

2 A. In the context of this project, yes, that
3 would be what it would apply to is the above-ground
4 lines.

5 Q. Will any of the collector lines proposed
6 by Buckeye Wind cross streams or wetlands?

7 MR. SETTINERI: I'll just object to the
8 form of the question. You referenced "Buckeye Wind,"
9 and the Applicant here is Champaign Wind, so you're
10 referring to the Buckeye I project or the Buckeye II
11 project?

12 MR. VAN KLEY: I'll rephrase. Thank you.

13 MR. SETTINERI: Thank you.

14 ALJ TAUBER: Thank you.

15 Q. Is Champaign Wind proposing to install
16 collector lines that will cross any streams or
17 wetlands?

18 A. The Applicant indicates that 38 streams
19 are within 100 feet of buried collection lines,
20 access roads, and/or crane paths. It is our
21 understanding that they will cross 31 streams with
22 parts of the facility.

23 Q. Okay. The "cross 31 streams with parts
24 of the facility," that would include collector lines
25 and maybe some other things?

1 A. Yes.

2 Q. I see. Okay.

3 And access roads, as we've already
4 established, will also be built by the Applicant,
5 correct?

6 A. Yes, sir.

7 Q. And will any of those access roads cross
8 streams or wetlands?

9 A. They have indicated that wetlands would
10 not be impacted by the project as proposed; only
11 streams. And access roads and crane paths would also
12 be included in some of those impacts to the streams.

13 Q. Okay. So some of the access roads will
14 cross streams, right?

15 A. That's a fair statement.

16 Q. And as you have proposed Condition 19 in
17 the Staff Report, you would require the Applicant to
18 submit a plan to the staff that "considers the
19 locations of streams, wetlands, wooded areas, and
20 sensitive plant species...and explain how impacts to
21 all sensitive resources will be avoided or minimized
22 during construction, operation, and maintenance,"
23 correct?

24 A. Yes. And to add to that, the reason that
25 we agree as staff to this condition not being used

1 here is because we recognize, based on
2 Mr. Speerschneider's testimony, that they recognize
3 that these types of things can be dealt with in other
4 documents that have to be provided, that being the
5 engineering plans, that also being within the SWP3,
6 the pollution prevention plan, for avoidance of these
7 resources.

8 Q. Well, the SWP3 will be submitted to Ohio
9 EPA, not the Board, correct?

10 A. As I stated earlier, the Board consists
11 of the director of the EPA who represents the staff
12 of the EPA. So, in essence, staff from the EPA that
13 works on Power Siting Board cases would be considered
14 staff; therefore, staff is reviewing this
15 information.

16 Q. The director of EPA serves as a member of
17 the Board, right?

18 A. Yes, sir.

19 Q. And when he serves as a member of the
20 Board, he is engaged in a different position than he
21 is as a director of the EPA, right?

22 A. He serves a specific role.

23 Q. Two different functions, right? On one
24 hand, he's the director of the EPA; on the other
25 hand, he's a member of the Board.

1 A. Yes. And he's also representing those
2 issues that his agency specifically deals with which,
3 in this case, would be water-quality issues. And the
4 staff that work on those issues at the EPA are
5 dealing with water-quality issues related to surface
6 waters.

7 Q. Are those EPA staffers employees of the
8 Board?

9 A. They are specifically employees of the
10 agency of which they work for. In the beginning of
11 our Staff Report, we do talk to a few of these types
12 of subject matters about how staff from different
13 agencies would be utilized.

14 Q. Looking back at Mr. Speerschneider's
15 testimony and, if you want to look at that, you can
16 find it in Company Exhibit No. 5 on page 16.

17 A. Yes, I'm there.

18 Q. Okay. And this is where
19 Mr. Speerschneider talks about Condition 19, right?

20 A. Yes.

21 Q. All right. Now if you look at his
22 testimony you will see that a sentence, starting
23 eight lines down from the top, reads as follows:
24 "The Applicant recommends deleting this condition to
25 avoid redundancy and unnecessary costs."

1 And then the next sentence reads: "In the
2 alternative, the condition should be written as
3 follows: 'Unless addressed by final engineering
4 drawings, the Applicant shall have a construction and
5 maintenance access plan based on final plans for the
6 access roads, collection lines, and types of
7 equipment to be used. Prior to commencement of
8 construction, the Applicant shall submit the plan to
9 Staff, for review and confirmation that it complies
10 with this condition." Did I read that correctly?

11 A. Yes, sir.

12 Q. Now, in your testimony you simply say
13 that you believe Condition 19 with the modifications
14 proposed by the Applicant is reasonable and would
15 support the Board's adoption.

16 A. Yes, I did.

17 Q. Which of those two alternatives proposed
18 by the Applicant do you believe the Board should
19 adopt?

20 A. I believe either one of them would work,
21 because they're both getting to the point that I made
22 earlier.

23 Q. Well, let's go back to the point you made
24 earlier about the use of engineering drawings. Is
25 there anything in the staff's recommendations for

1 conditions that would require the Applicant's
2 engineering drawings to contain all the information
3 that the Applicant wants to strike out of Condition
4 19?

5 A. I believe the way that they've explained
6 it leads staff to believe that they understand that
7 these types of things that we've pointed at would be
8 part of that engineering plan; and, if they're not,
9 when staff reviews those plans we're going to be
10 sending them back to them saying you need to include
11 this information.

12 If they don't want to do it in the
13 engineering drawings, as I stated earlier, they can
14 do it in another document. And they can do that in
15 the SWP3 where they can provide information, like
16 they would with engineering drawings, showing where
17 turbine locations would be, access roads, crane
18 paths, all that, including where the resources are
19 within the construction limits. That would show how
20 they are not impacting those resources that need to
21 be avoided.

22 Q. If that is the case, wouldn't it be more
23 appropriate to adopt the second alternative that's
24 been proposed by the Applicant where the condition
25 actually requires the information to be placed in the

1 final engineering drawings rather than just trusting
2 the Applicant to do it?

3 MR. REILLY: Objection, argumentative.

4 MR. VAN KLEY: It's not argumentative;
5 it's to the point.

6 MR. REILLY: The witness has answered the
7 -- the witness has expressed his answer to the
8 question. Mr. Van Kley now wants to argue about
9 which he should be choosing.

10 MR. VAN KLEY: No. I don't think he -- I
11 don't think he -- I mean, the witness has just stated
12 that they expect -- that he expects the information
13 to be provided in the final engineering drawings.
14 Yet, I haven't heard him say that there's anything in
15 the certificate that actually requires the
16 information to be placed in the drawings.

17 ALJ TAUBER: Can I have the question read
18 back, please?

19 (Record read.)

20 ALJ TAUBER: I'll allow the question.

21 A. Are you speaking to their second piece
22 where they're suggesting that if they don't otherwise
23 put this information in the engineering drawings that
24 they would do it in the access plan?

25 Q. Yes, sir.

1 A. Okay. So you said specifically about the
2 language that's been stricken should be included in
3 there?

4 Q. The sentence we're looking at says
5 "Unless addressed by final engineering drawings, the
6 Applicant shall have a construction and maintenance
7 access plan based on final plans for the access
8 roads, collection lines, and types of equipment to be
9 used." And that's what I'm referring to.

10 A. Based on what they provided in that
11 piece, I can say right now that that doesn't add any
12 substance to the subject matter, because if it's not
13 going to show up in the engineering plans and we ask
14 them to provide it on the engineering plans, why
15 would we need to do that in the access plan where you
16 still have to tell them what you want to see?

17 Q. Well, let's look, then, at the language
18 they want to strike. Are you saying that all the
19 information that otherwise would be required by the
20 language that the Applicant wants to strike will be
21 included in the engineering plans?

22 A. Based on what I have read from
23 Mr. Speerschneider's testimony, it is my
24 understanding that the information that's being
25 stricken would be included in the engineering plans.

1 Q. Okay.

2 A. That's my understanding and that's why
3 staff is saying that we are okay with that as long as
4 the plans come in with that information on it. If it
5 doesn't, then we're going to send it back saying you
6 need to add this information. If they don't want to
7 do it in the engineering drawings, they have another
8 opportunity to do it through the Storm Water
9 Pollution Prevention Plan to include that type of
10 information, so we will get it.

11 Q. Is there anything in your conditions that
12 you've recommended that instruct the Applicant to put
13 that information in the engineering plans?

14 A. There's nothing that's going to be
15 written as the way we're recommending it that
16 specifically states what has been stricken. I can
17 agree with you on that.

18 Q. Okay. Then wouldn't it be wise to add
19 something to your conditions in which the Applicant
20 is instructed to put that information in the
21 engineering plans, so that if the information is not
22 contained in the plans you have a legal basis to ask
23 them to do so?

24 A. I understand where you're trying to go
25 with that question, but I think in the spirit of what

1 those documents have to have in them, based on what
 2 Mr. Speerschneider is stating would be in them, they
 3 know that the information needs to be in there or
 4 else they're not going to get them approved and they
 5 won't be able to start construction; therefore,
 6 they'll be at an impasse regardless how specific of
 7 the information you want them to provide, they still
 8 have to pass muster in order to move forward.

9 Q. Let's move on to Condition 20 of the
 10 Staff Report. You know that Mr. Speerschneider is
 11 requesting that Condition 20 be deleted in its
 12 entirety?

13 A. Yes, sir.

14 Q. And you've agreed with that
 15 recommendation -- or, that request?

16 A. Yes, I have, based on the same things
 17 that we just talked about for Condition 19.

18 Q. I see.

19 Do you know what an exceptional warmwater
 20 habitat stream is?

21 A. Yes, sir, I do.

22 Q. Do you know what a coldwater habitat
 23 stream is?

24 A. Yes, I do.

25 Q. Do you know that some of the streams that

1 the Applicant is proposing to cross with its
2 collector lines are exceptional warmwater habitat
3 streams?

4 A. Yes, sir.

5 Q. Why don't you explain to the Board what
6 an exceptional warmwater habitat stream is.

7 A. I'm going to reference some information
8 because they wrote it very eloquently to explain it.

9 Q. And tell us where, please --

10 A. It's in the application.

11 Q. Can you give us a reference for the
12 application?

13 A. Yeah, I need to find it first, I'm sorry.
14 Hold on a minute.

15 Q. You may want to look at page 118 of the
16 application in Volume I.

17 A. I'm actually going to rely on Volume II.

18 Q. All right.

19 A. Exhibit H, page 10.

20 What the Applicant consulting firm has
21 done for us is something very nice which they have
22 basically went into an explanation of methodologies
23 for evaluating streams and wetlands that is per
24 federal and state regulations. And where you find
25 the definitions for water resources, that being

1 streams, comes from the EPA's water quality standards
2 which you may or may not be familiar with.

3 So in there they basically have taken a
4 synopsis, the Applicant's consulting firm has, of
5 what different types of resources are defined as.

6 And you asked specifically about
7 exceptional warmwater habitat?

8 Q. Yes, I did.

9 A. So what we're talking about there is a
10 stream resource or a segment of a stream that is
11 maintaining an exceptional or unusual community of
12 warmwater aquatic life form assemblages with general
13 characteristics of being highly intolerant of adverse
14 water quality conditions, basically pollution is what
15 we're talking about there, siltation, chemicals,
16 and/or being rare, threatened, or endangered, or a
17 species of status. So that, when you're looking at
18 those types of streams or segments of streams that
19 carry that designation, that is the general
20 definition.

21 Q. All right. So you would agree, in light
22 of that definition, that any collector lines or
23 access roads that are constructed across such a
24 stream for that process, it's important to protect
25 the exceptional communities of organisms in those

1 streams, would you not?

2 A. Yes. Let me clarify a little bit more
3 there for you because there is a little bit of
4 confusion in this subject matter.

5 Many of the streams that are located
6 within this project area carry these high-quality
7 characteristics -- or, not characteristics, but
8 designations because of the way that the water
9 quality standards are currently put together; that
10 is, a lot of these streams that are actually
11 designated as exceptional warmwater habitat or
12 coldwater habitat are actually being designated
13 because of their downstream segment; what they're
14 connected to.

15 So, in other words, the receiving streams
16 that these smaller streams are going to are the ones
17 that actually carry these designations, and the water
18 quality standards say that for receiving streams that
19 are considered headwater streams, intermittent,
20 ephemeral streams that go to these receiving streams
21 will carry that same designation because the
22 water-quality standards speak nothing to headwater
23 streams right now. They tried and they haven't got
24 those put into the water-quality standards yet.

25 So there's a -- so when you look at these

1 streams, you're actually going to see streams that
2 actually are of lower quality, but for the sake of
3 the way the standards are put together, they
4 carry the higher designation. Therefore, the
5 permitting on those resources will be such that they
6 carry the same designation as the higher-quality
7 streams when it comes to 401.

8 Q. What happens if --

9 A. So they're not -- so I guess to add to
10 that, they are not -- most of these streams are not
11 carrying assemblages of the types of aquatic
12 resources, that being the fish and
13 macroinvertebrates, that would show up in these
14 streams; the downstream receiving stream is where all
15 those are located.

16 Q. All right. Now, what happens when a road
17 is constructed across a stream such as these
18 headwater streams and it's not done correctly?

19 A. You have to define to me what you mean by
20 "not correctly."

21 Q. All right. Let me be specific. Isn't it
22 true that unless care is taken in the construction of
23 a road across a stream that silty conditions, for
24 example, will be created in the stream?

25 A. Did you say the word "siltation"?

1 Q. "Silty."

2 A. Okay. I'm sorry. I'm starting to lose
3 you. I apologize for that.

4 Q. Okay.

5 A. So you're talking about siltation.

6 Q. Let me re-ask the question to make sure
7 you have it.

8 A. Okay.

9 Q. Isn't it true that if construction of a
10 road across a stream is not done properly, it can
11 result in silty conditions being created in that
12 stream?

13 A. That is one condition that can occur, but
14 that can also occur when the road is put over the
15 stream correctly, too.

16 Q. Okay.

17 A. Things happen over time because they're
18 dynamic systems; streams are.

19 Q. Understand. But isn't it true that one
20 of the purposes for making sure that this
21 construction is done correctly is to prevent silt
22 from being mixed up into the water column, right?

23 A. (Witness nods.)

24 Q. You have to say "yes."

25 A. Well --

1 Q. You can't just nod; say "yes" or "no."

2 A. The idea is that you want to minimize
3 those types of impacts.

4 Q. All right.

5 A. You can't go underneath the assumption
6 that you're going to eliminate it.

7 Q. Understand. Now, when silty conditions
8 are created, the water in the stream at that location
9 usually just doesn't sit still, it goes -- it flows
10 downstream, doesn't it?

11 A. You got to have water in the stream for
12 siltation to get into the stream column and actually
13 to be carried as a suspended solid downstream. So if
14 it's a dry stream, which several of these streams
15 are, if there is any type of siltation that would
16 occur it would have to occur when a rain event occurs
17 or if they, whoever, when they're doing construction,
18 has some kind of de minimis fallback of dirt, soil
19 into the stream which in turn, when it gets wet,
20 turns into a suspended solid which will be that
21 siltation you're talking about.

22 Q. Right. And then those suspended solids
23 or silt, if you want to call them silt, may flow
24 downstream into those exceptional warmwater habitats,
25 correct?

1 A. There is a possibility they could travel
2 that far if siltation from construction caused the
3 siltation.

4 Q. So you just can't say that the streams
5 that have been classified as exceptional warmwater
6 habitat in the project area, you can't just write
7 those off and allow the Applicant to create
8 conditions that will pollute the downstream
9 exceptional habitat, right?

10 A. They have to go through proper permitting
11 to allow the activity to occur within the stream
12 segments. Therefore, you're looking at the Clean
13 Water Act in this situation. The Clean Water Act has
14 two parts that we're dealing with here on this
15 subject, 404 versus 401. 404 deals with dredge and
16 fill and that comes from the Corps of Engineers. The
17 Corps of Engineers will authorize the dredge or fill
18 within these resources below the high water mark that
19 they determine to be jurisdictional, probably through
20 the nationwide permitting program.

21 Within that program there are
22 certifications from the Ohio EPA that are added into
23 that program that deal with certificating the project
24 through 401 which is water quality issue. So if they
25 can't meet the specific requirements for the 401 in

1 the nationwide permitting program, general or
2 specific to the particular nationwide permit they're
3 trying to get, then they will be required to go after
4 an individual 401 permit.

5 In this situation, because these are
6 considered exceptional warmwater streams and
7 coldwater streams, they will have to get an
8 individual 401 permit to impact those particular
9 resources because they cannot be permitted underneath
10 the nationwide permitting program.

11 Q. Okay. Let's go back to the question I
12 actually asked, which is isn't it true that you have
13 to take precautions at these headwater streams to
14 make sure that pollution is not caused downstream in
15 those larger streams that have the exceptional
16 communities of warmwater fish and coldwater fish?

17 A. Through that Clean Water Act process,
18 those kinds of issues will be raised and addressed
19 for the individual permitting.

20 In general, for construction, there's
21 another process that will cover that and that's
22 through NPDES permit and specifically they have to
23 put together a Storm Water Pollution Prevention Plan
24 and in that plan it will outline erosion control
25 devices that need to be put in place to get to the

1 things that you're trying to talk about which is to
2 minimize, and possibly eliminate in some cases,
3 siltation from getting into the resources and
4 impacting and causing an impairment to those stream
5 segments.

6 MR. VAN KLEY: Your Honor, could we get a
7 directive asking this witness to actually answer the
8 question that I asked which was very simple: Isn't
9 it necessary to protect the headwater streams to
10 prevent pollution in the downstream. We're not
11 looking for a course in environmental law here as to
12 what other sorts of protections there might be in
13 place. The question is simple: Is it or isn't it
14 necessary to protect headwater streams in order to
15 prevent pollution downstream. That's the question
16 that's on the table.

17 MR. REILLY: Your Honor, I think the
18 witness is providing an answer to Mr. Van Kley's
19 question. He doesn't -- and I think Mr. Van Kley
20 knows this -- he doesn't get to specify what the
21 witness says for his answer. The witness is
22 answering the question as he deems it necessary to do
23 to fully answer the question; I think that's the
24 witness's duty and I think Mr. Rostofer's done that.
25 He can't be directed -- he should not be directed to

1 try to answer a question one way with a simple one-
2 or two-word answer when he believes it takes a
3 paragraph, and that's all he's done.

4 ALJ TAUBER: Mr. Rostofer answered the
5 question and provided context for it.

6 Q. (By Mr. Van Kley) Would you answer the
7 question, please.

8 ALJ TAUBER: He's already answered the
9 question.

10 MR. VAN KLEY: Oh, really?

11 ALJ TAUBER: Actually, at this time,
12 let's take a ten-minute recess. Let's go off the
13 record.

14 (Recess taken.)

15 ALJ TAUBER: Let's go back on the record.

16 MR. SELVAGGIO: Excuse me, your Honor.

17 ALJ TAUBER: Yes. Mr. Selvaggio.

18 MR. SELVAGGIO: Before UNU begins
19 resuming its questioning, I wanted to just ask the
20 Court, actually I waited until not only the press
21 left, but also so we didn't interrupt the rhythm of
22 the proceedings, the state -- or, the county would
23 ask that Mr. Reilly offer an apology to Ms. Napier
24 for his characterization of her harassment of the
25 staff's witness; or, in the alternative, that the

1 court issue a finding that neither the tone of
2 Mr. Napier's questions nor the questions themselves
3 were of a harassing nature.

4 ALJ TAUBER: We'll note that for the
5 record. The Bench isn't going to get involved with
6 that, though. We're just going to deal at this time
7 just with the hearing.

8 MR. SELVAGGIO: Okay.

9 ALJ TAUBER: If Mr. Reilly wishes to do
10 so, he can do so, but at this time --

11 MR. REILLY: I have to say I think I have
12 nothing to apologize for. I think we were
13 approaching, as I described it, we were approaching
14 the harassment phase.

15 ALJ TAUBER: I don't think this is
16 something we need to discuss on the record right now.
17 Let's move back into cross-examination.

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

19 Q. (By Mr. Van Kley) Let's go to Condition
20 22, recommended Condition 22 in the Staff Report.

21 A. Yes, sir.

22 Q. You'll find that on page 54 and it deals
23 with the use of herbicides, correct?

24 A. Yes, sir.

25 Q. And the Applicant doesn't like this

1 condition, either, right, they want it to be struck.

2 A. Yeah, they'd like to have it removed.

3 Q. And if you need to refer back to
4 Mr. Speerschneider's testimony, you can do so.
5 You'll find it in Company Exhibit 5, page 17, where
6 it states in answer 30: "Condition 22 again appears
7 to be taken from a transmission line application, and
8 is not applicable to the facility, its buried
9 collection lines and the general location of the
10 facility in open fields." Then it goes on to say
11 "For this reason and the reasons stated by Hugh
12 Crowell in his testimony, the Applicant recommends
13 deleting the condition."

14 Let me ask you this: Do you expect that
15 herbicides will be used not only for the collector
16 lines but also access roads and other things being
17 built by the Applicant?

18 A. I am not sure if they will or not because
19 there's nothing in the application that I could find
20 from my review that indicated that they were going to
21 use herbicidal spray to do maintenance activities.

22 Q. To do any kind of maintenance?

23 A. Yeah, I couldn't find it, but it doesn't
24 mean that they may not; they may.

25 Q. And for that reason you put the herbicide

1 condition in there to govern the herbicide
2 application if they did decide to use herbicides.

3 A. Typically that is why you would have that
4 kind of a condition. But when you read, when you
5 read through part of Mr. Crowell's explanation for
6 why it shouldn't be used or why it shouldn't be a
7 condition, I can agree with part of it, but part of
8 his reasoning doesn't make sense.

9 Q. And --

10 A. So what we're saying -- I'm sorry.

11 Q. Go ahead. I interrupted your answer.

12 A. What we're -- what staff is agreeable to
13 is to say that in another condition that deals with
14 other types of permits that the Applicant needs to
15 have, that there's an applicator's license that an
16 individual needs to carry in order to appropriately
17 apply herbicides, especially around sensitive
18 resources such as streams and wetlands.

19 So where they would use those types of
20 chemicals around those resources, they are required,
21 that applicator is, is required to report that kind
22 of information to the Ohio EPA so they're aware of
23 it, and they may get something back saying don't use
24 that particular type of herbicide.

25 Now, what we're talking about, we're

1 talking about herbicides that require a license in
2 order to apply. If you just go to Home Depot and buy
3 the Round-Up they have there, you don't need a
4 particular license for that mixture that they
5 carry there. We're talking about commercial-grade
6 types of herbicides that require the applicator's
7 license which you have to get from the Department of
8 Agriculture. I used to have one.

9 Q. So if the Applicant is using a product
10 like Round-Up which doesn't require an applicator's
11 license.

12 A. Well, certain grades of that do, the ones
13 that they get at Home Depot don't, but there are
14 other grades of that you do require because you have
15 to mix it.

16 Q. All right. So in the event that the
17 Applicant is using a herbicide that does not require
18 an applicator's license, and they're applying that
19 herbicide in an area where you have sensitive plant
20 species for example, in your view would you believe
21 that it would be necessary for that application to be
22 done carefully?

23 A. If they in fact want to spray any type of
24 herbicide, regardless if you need a license for it or
25 not, I would agree that just spraying it anywhere is

1 probably not the best practice.

2 Q. If you strike recommended Condition 22
3 from the certificate, is there anything in the
4 certificate that will be left by which you could have
5 the -- by which you would have the authority to make
6 sure that the herbicide was done in a responsible
7 manner?

8 A. You're talking about the ones that do not
9 require an applicator's license?

10 Q. Yes.

11 A. Okay. The Board is -- remember, the
12 Board is the one who holds the authority here, so if
13 they allow staff to go out and conduct that kind of
14 an investigation, they have to tell staff to do that
15 kind of thing.

16 So I think the complaint resolution
17 process could be a place where something like that
18 could come forward, you know, someone notices that
19 all of a sudden in this ditch line there's a bunch of
20 dead vegetation and they don't understand why that
21 occurred, you know, that could be the kind of thing
22 that would bring those types of issues to the
23 forefront.

24 Q. And if it does occur and somebody
25 complains about it, but there's no condition in your

1 certificate that prohibits the irresponsible
2 application of that type of herbicide, then how are
3 you going to stop the Applicant from engaging in such
4 a practice?

5 MR. SETTINERI: I'll just object to the
6 extent I don't think there's any foundation that's
7 been laid that the Applicant is going to use
8 herbicides. With that clarification.

9 ALJ TAUBER: Mr. Van Kley.

10 MR. VAN KLEY: I don't mind the
11 clarification.

12 MR. SETTINERI: Thank you.

13 A. That was going to be my point. I don't
14 know if they are going to be using herbicides to
15 begin with. And if they are going to use
16 commercial-level herbicides, then there's a license
17 that individual needs to carry. For things that they
18 can get from Home Depot that don't require that
19 license, I believe that those types of things would
20 be covered through other conditions that we have
21 provided the recommended conditions to the Board. We
22 do -- staff does believe that it is covered.

23 Q. What conditions would cover that
24 situation?

25 A. The complaint resolution.

1 Q. Have you read Richard James's direct
2 testimony?

3 A. I don't believe I'm familiar with that
4 person's testimony.

5 Q. Would you turn to Company Exhibit No. 2
6 which is a Notice of Filing Correspondence Submitted
7 to Staff Regarding Vestas V100 Turbine Model. It's
8 just a few pages long.

9 A. Exhibit 2.

10 Q. Yes, Company Exhibit 2.

11 A. Yes, I have Company Exhibit 2.

12 Q. Before this notice was filed with the
13 Board, had the Applicant informed you that it
14 intended to submit this notice?

15 A. Yes, there was a discussion about this
16 being put on the docket.

17 Q. Were you involved in that discussion?

18 A. Yes, I was.

19 Q. When did this discussion occur?

20 A. I'm not sure of the exact date, but it
21 was before this letter was actually docketed.

22 Q. Do you recall approximately how long
23 before this letter was docketed that you had that
24 conversation?

25 A. It might have been a week or so.

1 Q. And with whom did you have that
2 conversation?

3 A. Jason Dagger.

4 Q. And did Mr. Dagger -- what did Mr. Dagger
5 say to you with regard to their intent to submit this
6 notice?

7 A. That they were going, based on the
8 discussion we had, they were going to submit a letter
9 taking the Vestas V100 off the table.

10 Q. Did Mr. Dagger tell you why they wanted
11 to do that?

12 A. Yes.

13 Q. What did he say?

14 A. He said based on the discussion that we
15 had that they felt that that was a reasonable
16 approach for them to take this off the table.

17 Q. Okay. And what was the subject matter of
18 your conversation that led him to make that decision?

19 A. During our conversations staff had, you
20 know, over a course of time talked about this
21 particular model because of the ongoing investigation
22 with this model on a different project, we wanted to
23 advocate to Mr. Dagger that we were concerned with
24 this turbine model being included in this proceeding
25 based on the ongoing investigation.

1 Q. And why were you -- why did you have that
2 concern?

3 A. Because we didn't -- we don't, still
4 don't know what's going to come of that facility
5 based on this ongoing investigation. Therefore, if
6 you were to select this turbine and build it while
7 this investigation is still going on and then
8 something comes out of it that says, you know, the
9 turbines can't be used, then, obviously, that's going
10 to be problematic.

11 Q. Does the Board have an ongoing
12 investigation concerning that particular incident?

13 A. No, we do not -- or, the Board does not,
14 I should say.

15 Q. So what are you referring to by the
16 investigation that you've been talking about?

17 A. I was told that there was a blade that
18 broke on a turbine on that facility and, based on
19 that, I went to the docket because I was told that
20 Mr. Settineri had put information on there about it,
21 and I just glanced through it just to get an
22 understanding of what happened and that's the only
23 thing I know.

24 Q. So based on the docket information, what
25 ongoing investigation is occurring?

1 A. I don't know what more they're doing; I
2 honestly don't. The only thing I know is that
3 there's a report on the docket that talks to the
4 incident that occurred. Outside of that, I know
5 nothing more about that investigation, only that it's
6 ongoing and that Vestas is the one doing it.

7 Q. Okay. Would you turn to William Palmer's
8 testimony which you will find to be UNU Exhibit 22,
9 and you will find an Exhibit A which starts at A-1 of
10 that document and goes through A-49.

11 A. I haven't -- let me find it first,
12 please. I'm way behind you.

13 Q. All right. Sure. It's very thick. It
14 looks like this.

15 A. Okay. My copy has this on it, so
16 hopefully this is it.

17 Q. I don't think that's right.

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

20 ALJ TAUBER: You may. Mr. Van Kley, did
21 you say Exhibit A?

22 MR. VAN KLEY: Yeah, Exhibit A. It will
23 be Exhibit 22, I think.

24 It looks like somebody ran off with the
25 rest of the exhibit. Let me get the rest of the

1 copy.

2 THE WITNESS: Sorry about that.

3 MR. REILLY: Mr. Van Kley, which exhibit
4 is it?

5 MR. VAN KLEY: It's 22, Exhibit 22. Oh,
6 I'm sorry. Yeah, Exhibit 22.

7 MR. REILLY: Oh, I'm on Exhibit B, I'm
8 sorry.

9 MR. VAN KLEY: I'm going to give the
10 witness another copy of this to look at.

11 Q. (By Mr. Van Kley) I've handed you what
12 has been previously marked as UNU Exhibit 22 which is
13 the amended direct testimony of William Palmer and
14 attached to his direct testimony you will see an
15 Exhibit A which starts at page A-1 and goes through
16 page A-49.

17 A. Did you say A-49?

18 Q. Yes, sir.

19 A. Okay. I got that.

20 Q. We were talking about a report that you
21 read on the docket concerning that incident; is this
22 the report you were talking about?

23 A. Yeah, this is the one I briefly scanned
24 through.

25 Q. Okay. Have you had any involvement in

1 investigating that incident at the Timber Road II
2 Wind Farm?

3 A. No, I did not go up after this incident
4 occurred. I'm not sure if staff even did an
5 investigation. Based on what I read, it looked like
6 all staff did was confirm a few things about the
7 situation.

8 Q. As the lead in the Buckeye Wind II
9 application, are you aware of any information that
10 the staffers, who were working with you on that
11 investigation, obtained about the Timber Road II
12 blade throw for the purpose of informing you about
13 your decisions for the Buckeye Wind II application?

14 A. No, I never had any conversations with
15 staff concerning that particular question that you're
16 asking.

17 Q. When did you first learn about the blade
18 throw at Timber Road II?

19 A. A staff member came by and told me that
20 this occurred and that's all we knew at that time and
21 that was sometime, I think it was in the spring, it
22 was during a time when I get pretty busy because of
23 what I do, I'm out in the field more than I am in, so
24 it took me a while to catch up to whatever happened.

25 Q. Okay. So you would have learned -- you

1 would have heard about the event somewhere in the
2 time frame of spring 2012.

3 A. Yeah, I think it was late spring.

4 Q. Having heard about that incident, did it
5 occur to you that the information about that incident
6 could have a bearing on the processing of the Buckeye
7 Wind II application?

8 A. I never really made a connection like
9 that.

10 MR. VAN KLEY: Your Honor, I would like
11 to mark an exhibit as UNU Exhibit 24.

12 ALJ TAUBER: The exhibit is so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. All right. I have handed you what has
15 been marked as UNU Exhibit 24. And the reason I'm
16 showing it to you is because it has your name in the
17 heading there where it says from Christopher
18 Cunningham to Donald Rostofer, and that is you,
19 right?

20 A. Yes.

21 Q. You did receive this e-mail?

22 A. Yes, I did.

23 Q. Okay. Now, I see that the date of this
24 e-mail is September 20, 2012. Do you see that?

25 A. Yes.

1 Q. And that was only eight days prior to the
2 letter withdrawing the Vestas application that is
3 attached to the notice in Company Exhibit 2, right?

4 A. Are you talking about this letter, the
5 one that says June 1st on it?

6 Q. Look at Company Exhibit No. 2, we've just
7 been taking about it, it's the Notice of Filing
8 Correspondence Submitted to Staff Regarding Vestas
9 V100 Turbine Model. Do you have that?

10 A. Yes.

11 Q. Look at the last two pages of that
12 exhibit, please.

13 MR. SETTINERI: That was Company Exhibit
14 2?

15 MR. VAN KLEY: (Nods.)

16 A. All right. I got to find that one again.
17 I think I may have lost it.

18 Q. I'll just show you my copy if that's
19 okay.

20 A. When I was looking for this one, I lost
21 it somewhere.

22 Q. All right. Now, do you have Company
23 Exhibit No. 2?

24 A. Yes, sir.

25 Q. Okay. Look at the letter that is

1 attached to the notice. Do you see a letter dated
2 September 28 to you?

3 A. Yes.

4 Q. And that letter occurred eight days after
5 the e-mail that we have marked -- actually, both the
6 e-mails we have marked as UNU Exhibit 24, correct?

7 A. Yes.

8 Q. Okay. Now, let me just give you a moment
9 to look at the text of the e-mail that is on the
10 bottom half of the page for UNU Exhibit 24, and just
11 let me know when you've had a chance to read the
12 text, please.

13 A. Okay.

14 Q. All right. Now, you'll see that the text
15 of the e-mail that's on the bottom half of UNU
16 Exhibit 24 refers to the incident at the Timber Road
17 II Wind Farm, right?

18 A. In the second paragraph, yes.

19 Q. Okay. And the first and the third
20 paragraphs of that e-mail talk about doing some
21 research into wind turbine failures, right?

22 A. Yes.

23 Q. Okay. Now, is there any relationship,
24 given the closeness in time, between these two
25 e-mails and the notice that is attached to Company

1 Exhibit 2 withdrawing the Applicant's consideration
2 of the Vestas V100 turbine model?

3 A. The letter from the company is
4 specifically about one turbine model. The e-mail
5 here is just someone's trying to determine if they
6 want to have a few people do some research about
7 other instances that have occurred elsewhere besides
8 just the Timber Road project. I don't know that it
9 necessarily talks specifically to that model.

10 Q. Well, let me approach the question a
11 different way. Did you provide anybody with
12 direction -- with the direction to do the research
13 that's referenced in UNU Exhibit 24?

14 A. No, I did not. This e-mail was -- I was
15 copied on this e-mail through Chris from other folks
16 down below that were actually talking about it
17 amongst themselves, separate from me.

18 Q. Okay. Do you know what research was done
19 in response to this message that's on the bottom half
20 of UNU Exhibit 24?

21 A. No, sir, I am not.

22 Q. Do you know who did the research?

23 A. I don't know if any research was done.
24 All I know is I was copied on e-mail where they were
25 talking about doing something, but I never

1 really asked anybody any questions if they did or
2 not.

3 Q. Was Christopher Cunningham involved in
4 the staff's investigation of the Buckeye Wind II
5 project?

6 A. Yes, he was.

7 Q. What was his role with respect, if any,
8 with respect to wind turbine safety?

9 A. He did not look at those areas.

10 Q. Did Krystina Schaefer play a role in the
11 staff's investigation of the Buckeye Wind II
12 application?

13 A. No, sir, she did not.

14 Q. Did you personally draft any parts of the
15 Staff Report related to blade shear?

16 A. No, I did not.

17 Q. Do you know who drafted that part of the
18 staff report?

19 A. Yes, sir, I do.

20 Q. Who was that?

21 A. Andrew Conway.

22 MR. VAN KLEY: Okay. I have no further
23 questions at this time.

24 ALJ TAUBER: Thank you.

25 Mr. Settineri?

1 MR. SETTINERI: We don't have any
2 questions for this witness, your Honors.

3 ALJ TAUBER: Thank you.

4 Mr. Reilly, redirect?

5 MR. REILLY: May I have a moment, your
6 Honor?

7 ALJ TAUBER: Yeah, you may.

8 MR. REILLY: We have no redirect, your
9 Honor. Thank you, Mr. Rostofer.

10 ALJ TAUBER: Mr. Rostofer, you may be
11 excused. Thank you.

12 THE WITNESS: Thank you.

13 ALJ TAUBER: Mr. Reilly.

14 MR. REILLY: Your Honor, Mr. Siegfried
15 will be -- we would move the introduction of Staff
16 Exhibits 1 and 2.

17 ALJ TAUBER: One has been admitted, so
18 Staff Exhibit 2.

19 MR. REILLY: Exhibit 2. We would move
20 the introduction of Staff Exhibit 2.

21 ALJ TAUBER: Are there any objections to
22 Staff Exhibit 2 which is the direct testimony of
23 Mr. Rostofer?

24 (No response.)

25 ALJ TAUBER: Hearing none, it shall be

1 admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 ALJ TAUBER: Mr. Van Kley?

4 MR. VAN KLEY: Yeah. We'll move the
5 admission of UNU Exhibit 24.

6 ALJ TAUBER: Are there any objections to
7 UNU Exhibit 24?

8 (No response.)

9 ALJ TAUBER: Hearing none, it shall be
10 admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 ALJ TAUBER: Anything else to come before
13 us this evening before we adjourn for the next few
14 days? We'll address scheduling off the record.

15 (No response.)

16 ALJ TAUBER: All right. Hearing none, we
17 are adjourned for the evening. We'll reconvene next
18 Monday at 9:00 a.m. Let's go off the record.

19 (Off the record.)

20 ALJ TAUBER: Let's go back on the record.
21 We have one more matter this evening before we
22 adjourn for the night.

23 Ms. Napier.

24 MS. NAPIER: Yes, your Honor. We have
25 marked County and Township Exhibit No. 5 which is the

1 direct testimony of Joseph C. Pickard. It's our
2 understanding that the other parties in this matter
3 are agreeable to stipulating to the direct testimony
4 and that they have no cross-examination for
5 Mr. Pickard, so I would ask that this be moved into
6 evidence as stipulated.

7 ALJ TAUBER: Do you have a copy for the
8 court reporter?

9 MS. NAPIER: I do.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 ALJ TAUBER: And, Ms. Napier, you move
12 for admission of County and Township Exhibit 5?

13 MS. NAPIER: Yes, your Honor. Thank you.

14 ALJ TAUBER: It's the Bench's
15 understanding the parties have stipulated to the
16 testimony, so are there any objections to County and
17 Township Exhibit 5, the direct testimony of
18 Mr. Pickard?

19 MR. SETTINERI: For the record, we are
20 not stipulating to the -- agreeing to the contents of
21 the testimony; we are simply agreeing that this
22 testimony may be admitted into the record without
23 cross-examination without the witness being present.

24 ALJ TAUBER: And with that
25 clarification --

1 MR. SETTINERI: We are agreeable.

2 ALJ TAUBER: Are there any objections to
3 County and Township Exhibit 5?

4 (No response.)

5 ALJ TAUBER: Hearing none, it will be
6 admitted into the record.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 ALJ TAUBER: Thank you. We're adjourned.

9 (The hearing concluded at 5:23 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 20, 2012, and carefully compared with my original stenographic notes.

Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2013.

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Summary: Transcript of Champaign Wind, LLC hearing - Volume VIII held on 11/20/12 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn M. Mrs.