

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
Monday, November 26, 2012.

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VOLUME IX

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On behalf of the Staff of the
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26 - Opinion, Order, and Certificate, Case 11-1313-EL-BSB 2415 --

- - -

1 Monday Morning Session,
2 November 26, 2012.

3 - - -

4 ALJ CHILES: The Ohio Power Siting Board
5 has set for hearing at this time and place case
6 No. 12-160-EL-BGN being In the Matter of the
7 Application of Champaign Wind LLC for a Certificate
8 to Construct a Wind-Powered Electric Generating
9 Facility in Champaign County, Ohio.

10 At this time we'll take brief appearances
11 beginning with staff.

12 MR. PARRAM: Good morning, your Honor.
13 On behalf of the Power Siting Board staff, Ohio
14 Attorney General Mike DeWine, Public Utilities
15 Section Section Chief Bill Wright, by Assistant
16 Attorneys General Stephen Reilly, Werner Margard,
17 Devin Parram, and Ryan O'Rourke, from the
18 Environmental Enforcement Section Summer Koladin
19 Plantz and Sarah Anderson, 180 East Broad Street,
20 6th floor, Columbus, Ohio, 43215.

21 ALJ CHILES: Thank you.

22 MR. PETRICOFF: Thank you, your Honor.
23 On behalf of the company, Champaign Wind, Howard
24 Petricoff, Mike Settineri, Miranda Leppla, Gretchen
25 Petrucci, and Stephen Howard from the law firm of

1 Vorys Sater.

2 ALJ CHILES: Thank you.

3 MR. VAN KLEY: Good morning. Jack
4 Van Kley and Chris Walker, Van Kley & Walker,
5 representing intervenors Union Neighbors United, Bob
6 and Diane McConnell, and Julia Johnson.

7 MS. NAPIER: Good morning. Jane Napier,
8 Assistant Prosecutor in Champaign County, for
9 Champaign County and the townships of Goshen, Union
10 and Urbana, along with Nick Selvaggio, Champaign
11 County Prosecuting Attorney.

12 ALJ CHILES: Thank you.

13 MS. PARCELS: Good morning. On behalf of
14 the city of Urbana, Law Director Gil S. Weithman and
15 Staff Attorney Breanne Parcels.

16 ALJ CHILES: Thank you.

17 Is the city of Urbana ready to proceed?

18 MS. PARCELS: We are, your Honor. Thank
19 you. We will call Mindy North.

20 ALJ CHILES: Ms. North, please raise your
21 right hand.

22 (Witness sworn.)

23 ALJ CHILES: Thank you. You may have a
24 seat. I'd ask if you'd please turn your microphone
25 on before we get started here. You have to press it

1 twice. Thank you.

2 - - -

3 MINDY NORTH

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

6 DIRECT EXAMINATION

7 By Ms. Parcels:

8 Q. Ms. North, I'm passing out what's been
9 marked City Exhibit 11, why don't you take a look at
10 that.

11 ALJ CHILES: The exhibit is so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Do you recognize that exhibit as your
14 prefiled direct testimony?

15 A. Yes.

16 Q. Can you turn your microphone on. It
17 takes two clicks. There you go.

18 And I understand you have some updates
19 and corrections to that prefiled direct testimony?

20 A. Yes, I do.

21 Q. Do you want to go through those now.

22 A. On question 2, I also have an associate's
23 degree in public safety telecommunications, and I
24 actually began my dispatching career at Miami County
25 and came to the Urbana Police Department in 2005 and

1 went to the center in 2006 --

2 Q. Okay.

3 A. -- when they opened.

4 On No. 3, out of the 15 employees I
5 supervise I have 11 full-time, 3 part-time. We
6 dispatch for the Champaign County Sheriff's Office,
7 the Urbana Police Department, Urbana Fire Department,
8 Mechanicsburg Police and Fire, Saint Paris Police and
9 Fire, Macochee EMS, West Liberty Fire, Christiansburg
10 and Northeast Champaign County.

11 Q. Okay. Anything else?

12 A. On No. 5 when we talk about CareFlight,
13 CareFlight is actually not the only helicopter we
14 have in Champaign County. We also have access to
15 MedFlight that comes out of Allen Township.

16 Q. Is that in Union County?

17 A. Yes.

18 Q. Okay. Anything else on question 5?

19 A. Both CareFlight and MedFlight have their
20 own dispatchers. We don't actually dispatch the
21 helicopter, we contact their dispatch center and
22 their dispatch center actually takes care of sending
23 their helicopters. And we normally give them the
24 location of the incident, the extent of the injuries
25 if we know, and what frequency they'll be talking to

1 their emergency responders on. We don't normally
2 speak with CareFlight or MedFlight directly unless
3 there's communication problems on the scene.

4 Q. Okay.

5 A. Normally the fire departments take care
6 of the landing zones, we do not have those programmed
7 in any type of our AccuGlobe system, so the fire
8 departments actually set up the landing zones for
9 CareFlight or MedFlight.

10 Q. Any other updates?

11 A. On No. 6, we just did a update to a more
12 updated CAD, which is Authority CAD, still provided
13 by CMI, or Creative Microsoft Systems. And we have
14 three of the Motorola MC 500 dispatch consoles in the
15 center.

16 Q. Okay. You talk about a levy in question
17 7. Did the levy that was on the November 5th
18 ballot pass in Champaign County?

19 A. No, it did not. The levy failed.

20 Q. Okay. Any other updates?

21 A. Also on No. 7, the Ohio wireless tax is
22 collected by the state and distributed by PUCO to
23 public safety answering points throughout the state.

24 Q. Okay. So no other updates or
25 corrections?

1 A. No.

2 Q. Okay. If I were to ask you the same
3 questions, other than the updates you provided would
4 you answer the same way today?

5 A. Yes.

6 MS. PARCELS: Then, your Honors, I would
7 present the witness is available for
8 cross-examination.

9 ALJ CHILES: Thank you.

10 The county and townships.

11 MS. NAPIER: Yes, thank you. I just have
12 a couple of questions.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Napier:

16 Q. Ms. North, you indicate that the 911
17 dispatch center has been formed through a council of
18 governments, correct?

19 A. Correct.

20 Q. And that is not run by the Champaign
21 County Board of Commissioners.

22 A. No, it's not.

23 Q. Are local municipalities also on that
24 council?

25 A. Yes.

1 Q. You indicate in question 9 that the
2 application does not address potential interference
3 for wireless phone signals, correct?

4 A. Correct.

5 Q. Are you asking the Board to include the
6 911 phone signals in their conditions to the
7 certificate?

8 A. Yes.

9 Q. And in question 10 you indicate that
10 Champaign Wind has not provided any assurances on any
11 issue to the dispatch center. To your knowledge, has
12 the dispatch center been contacted by Champaign Wind
13 to discuss those things?

14 A. No, they have not.

15 Q. Do you not know that or --

16 A. We have not been contacted, no.

17 Q. Do you know whether or not that each
18 turbine has received a postal address as of yet or at
19 least are looking into that issue as of yet?

20 A. I do not know if they have or not. I
21 have not been provided with any addresses for the
22 turbines.

23 Q. How are you usually provided addresses?

24 A. Normally I would receive those from
25 either the city engineer or the county engineer.

1 Q. You haven't heard anything from them as
2 of yet.

3 A. No.

4 MS. NAPIER: Thank you. I have no
5 further questions.

6 ALJ CHILES: Thank you.

7 Mr. Van Kley.

8 MR. VAN KLEY: I have no questions.

9 ALJ CHILES: Ms. Petrucci.

10 MS. PETRUCCI: Yes, thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Petrucci:

14 Q. In your testimony you indicated that the
15 dispatch center has concerns that relate only to the
16 proposed facilities' impact on communications; is
17 that correct?

18 A. Correct.

19 Q. What part of the dispatch center's
20 communications are you believing that could possibly
21 be affected by the proposed wind turbines?

22 A. I think that we're looking more at any
23 cell phone service signal issues in the area of the
24 turbines and also any interference that it would
25 cause with our repeaters and radio communications in

1 those areas.

2 Q. Now, are you aware that Champaign Wind
3 and the staff both concluded that the turbines are
4 not expected to affect mobile telephone service
5 because of the overlapping coverage area and ability
6 for the signals to bounce from point to point?

7 A. I was not, no.

8 Q. Just a moment ago I believe you said that
9 you had not been contacted or the dispatch center had
10 not been contacted by Champaign Wind; is that
11 correct?

12 A. Correct. We have not been contacted.

13 Q. Has the dispatch center attempted to
14 contact either Buckeye Wind or Champaign Wind?

15 A. No.

16 Q. Can we turn to the lists that you have
17 attached to your testimony; I think they're marked
18 as Exhibit 11A. Are the addresses listed on the
19 attachment the location of the accident or the
20 location to which the emergency helicopter was sent?

21 A. Those would be locations of the
22 accidents.

23 Q. In looking at the list of addresses,
24 then, can you -- I guess my question is do the lists
25 contain only addresses that you believe are within

1 the proposed facility?

2 A. Correct, those addresses are just within
3 where the project is.

4 Q. Do you mean what has been already
5 approved or the proposed location of the facilities
6 that is under consideration currently?

7 A. The list contains the, let's say,
8 northeast corner of Champaign County which would
9 include all of the first phase and second phase.

10 Q. Can you look at the fourth entry on the
11 list for 2010. The address there says "East State
12 Route 29 at Rosedale Road." Are you sure that that
13 address is in the proposed project area?

14 A. That address may just be outside of
15 Champaign County. Mechanicsburg EMS still runs that
16 area. It's within a couple of miles probably into
17 Madison.

18 Q. Is it on the east side of Mechanicsburg?

19 A. Yes.

20 Q. Okay. And the proposed facility, is it
21 beyond -- is it east of the city of Mechanicsburg?

22 A. Yes.

23 Q. We have a couple big fat notebooks there
24 in front of you.

25 A. Okay.

1 Q. And I think I'm going to have you take a
2 look at --

3 MS. PETRUCCI: I need just a moment to
4 find out which volume it's in, your Honor.

5 Q. If you can open up Volume No. I, and if
6 you can go to the Figures tab, let me pull out the
7 map that's the first map there, it's the second page
8 behind that tab.

9 A. All right.

10 Q. I think you'll see toward the right-hand
11 corner is where the city of Mechanicsburg is
12 contained on the map.

13 A. Yes.

14 Q. And we have the circles there that
15 reflect the different wind turbines. Can you tell me
16 if any of those wind turbines are east of
17 Mechanicsburg?

18 A. No, they're not.

19 Q. So would you agree with me that the
20 address we just looked at is outside the proposed
21 facility?

22 A. Yes.

23 Q. Can you go ahead and turn back to that
24 2010 list and can you tell me if there are any other
25 addresses on that list that you believe, and you can

1 consult this map if it's helpful to you, that you
2 also believe might be outside the proposed project
3 area.

4 A. The fifth one down, the 10165 East State
5 Route 29, it could be east of Mechanicsburg, but
6 without knowing where the block numbers are, I'm not
7 real sure. Same with the 10700 East State Route 29,
8 the fourth one up from the bottom, and the last one
9 at 12192 East State Route 29.

10 Q. Okay. What about the tenth and eleventh
11 addresses listed there, the 3416 Martin Road and then
12 the East State Route 296 at Cox Road, do you think
13 those might be outside the project area as well?

14 A. They could be, yes. But without the
15 termination of where Cox Road is on the map, I'm not
16 real sure.

17 Q. And then if we look at the 2011 listing,
18 the twelfth one down is actually a repeat of the
19 address we talked about to begin with, the East State
20 Route 29 at Rosedale Road.

21 A. Okay.

22 Q. The one below that, do you believe that
23 might be also outside the project area?

24 A. The East State Route 29 and Three Mile?

25 Q. Yes.

1 A. It would be just to the east of Urbana
2 within that Sheet 2 box.

3 Q. Is it within the location of the proposed
4 turbines?

5 A. No.

6 Q. And then two more addresses down we have
7 1786 Eagle Road, would that also be outside the
8 location of the proposed turbines?

9 A. I am not sure where Eagle Road is on this
10 map.

11 Q. Is it northeast of Mechanicsburg?

12 A. I believe so. If it's northeast of
13 Mechanicsburg, I would say it would be outside the
14 area.

15 Q. And then if you can look at the last
16 listing that you have for 2012, that listing only
17 covers to the beginning of October, correct?

18 A. Correct.

19 Q. Okay. Are there any other addresses on
20 that listing that appear to be outside of the
21 location of the proposed turbines?

22 A. Not that I can tell, no.

23 Q. Okay. The fourth one down, the Childrens
24 Home Road address.

25 A. That would be just outside of Urbana.

1 Q. Okay. So you're saying it's just
2 slightly east of Urbana.

3 A. Correct. So it would be outside the
4 area.

5 Q. And two more that I will ask you about,
6 the Metz Road, the one that follows that, it's the
7 sixth one down.

8 A. Okay. That would probably be outside the
9 area.

10 Q. Okay. And, finally, the fifth one from
11 the bottom, which is East U.S. Highway 36 at North
12 Dugan Road, would that also --

13 A. That would be just east of Urbana as
14 well.

15 Q. And you would agree with me that because
16 it's just east of Urbana it's outside the --

17 A. Correct.

18 Q. -- location -- okay. Thank you.

19 For the incidents that are listed on the
20 attachments to your testimony, did the emergency
21 helicopter actually land and provide assistance or is
22 the list to reflect that the helicopter had been
23 called?

24 A. This list reflects that the helicopter
25 had been called. I can't tell by this list whether

1 the actual helicopter did land or not.

2 Q. And the list does not reflect the
3 location at which the helicopter landed if it landed.

4 A. Correct.

5 Q. Do you believe it would be beneficial for
6 your staff and other responding entities to undergo
7 training for possible emergencies within the proposed
8 facility area if it's approved?

9 A. Yes, I think that would be beneficial.

10 Q. Would it also be desirable to develop
11 preplanned landing zones in the event of an emergency
12 for the emergency helicopters?

13 A. Preplanned landing zones? That would be
14 something that would be up to the fire departments.

15 Q. And that's because, from what you stated
16 earlier, that the actual coordination for the
17 landings is made not by the dispatch center but with
18 the local responding fire department.

19 A. Correct.

20 MS. PETRUCCI: I don't have any further
21 questions. Thank you.

22 ALJ CHILES: Thank you.

23 Mr. Parram?

24 MR. PARRAM: Thank you.

25 - - -

CROSS-EXAMINATION

By Mr. Parram:

Q. Good morning, Ms. North.

A. Good morning.

Q. My first question is you were asked by Ms. Napier specifically about your response on page 3 of your testimony, I believe it's question No. 9, it says that the application does not address potential interference with wireless phone signals for individual units. Do you see where I'm at?

A. Yes.

Q. And you had stated that you proposed modifications to the conditions to address your concern; is that correct?

A. Yes.

Q. What exactly are the modifications that you're suggesting?

A. We just request, you know, that there's no interference with the wireless phone calls or mobile phones from those areas.

Q. Okay. And would you be requesting a modification to condition 53 specifically?

A. What is condition 53?

ALJ TAUBER: Ms. North, would you mind pulling the microphone closer to you, please.

1 Thanks.

2 Q. If you could turn to page 4 of your
3 testimony at question 14 -- are you there?

4 A. Yes.

5 Q. -- it says, "Do you believe Condition 53,
6 requiring Champaign Wind to mitigate interference
7 with microwave signal paths and communication
8 systems, is sufficient to address the concerns you
9 have raised?"

10 A. Okay.

11 Q. And I asked about your requested
12 modifications because here you're talking about
13 condition 53.

14 Before I ask you about condition 53, have
15 you had an opportunity to review the Staff Report of
16 Investigation that was filed in this case?

17 A. I have not, no.

18 Q. Okay. So you haven't had an opportunity
19 to review any of the conditions that are contained in
20 that Staff Report?

21 A. No.

22 Q. Do you have a copy of the Staff Report up
23 there? There's a lot of documents, I could probably
24 help you find it.

25 THE WITNESS: (Indicating.)

1 ALJ CHILES: Yes, that's it.

2 Q. Sorry about the delay there. Would you
3 go to page 60, condition 53. Do you see that there?

4 A. Yes.

5 Q. Have you seen this condition before?

6 A. No.

7 Q. On page 4 of your testimony you indicate
8 that you have concerns regarding the cellular phone
9 tracking and 911 system being keyed to postal or road
10 addresses, and I think you've already indicated in
11 your testimony that that is a concern that you have?

12 A. Yes.

13 Q. And are you proposing that condition 53
14 be modified in some fashion to address that concern?

15 A. For the cell phones?

16 Q. Yes.

17 A. Yes.

18 Q. Are there any other conditions within the
19 Staff Report that you have any concerns with or that
20 you're suggesting be modified?

21 A. No. I don't believe so.

22 MR. PARRAM: That's all I have, your
23 Honors. Thank you.

24 ALJ CHILES: Thank you.

25 Ms. Parcels, redirect?

1 MS. PARCELS: Yes. I'm going to ask that
2 this be marked City Exhibit 8.

3 ALJ CHILES: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 ALJ CHILES: Let's go off the record for
6 a moment.

7 (Discussion off the record.)

8 ALJ CHILES: Let's go ahead and go back
9 on the record.

10 - - -

11 REDIRECT EXAMINATION

12 By Ms. Parcels:

13 Q. Ms. North, you referenced in your
14 cross-examination with counsel for the company the
15 locations of crashes where helicopters were called
16 for and also the telecommunications towers used by
17 the 911 center for dispatching. Do you believe it
18 would be helpful for everyone here and for the
19 administrative law judges to see a visual depiction
20 or map showing where those towers are located, where
21 those calls for service were in the county, and also
22 overlaid with the turbine sites for both Phase I and
23 Phase II of Buckeye Wind or Buckeye Wind II also
24 known as Champaign Wind?

25 A. Yes.

1 Q. Now, was this map created under your
2 supervision with the data you provided from the
3 helicopter calls for service and the tower
4 locations --

5 A. Yes.

6 Q. -- that you provided in your direct
7 testimony?

8 A. Yes.

9 Q. Okay. And do you recognize this map,
10 then, City Exhibit 8, as the compilation data from
11 those calls for service and tower coordinates and the
12 turbine locations?

13 A. Yes.

14 Q. Okay. The map that's been passed out to
15 everyone in a smaller format of City Exhibit 8 has a
16 mark on it that is not located on this big blowup map
17 that's behind you. Can you mark that map with a
18 Sharpie and tell everyone what that missing purple
19 dot is supposed to represent.

20 A. This would be the communications tower
21 that's located at the 911 center right in here.

22 Q. Okay. And is that the base station where
23 the communication center is located?

24 A. Yes.

25 Q. Do you believe that map depicts some of

1 the issues that might arise with any sort of line of
2 sight interference with radio reception from the base
3 tower there on the south edge of the city to the
4 purple marked tower repeaters in the project area?

5 A. It could, yes.

6 Q. Does that map also denote the location of
7 Grimes Field?

8 A. Yes.

9 Q. And is Grimes Field the location of the
10 CareFlight helicopter base in Champaign County?

11 A. Yes.

12 Q. You noted in your direct testimony that
13 CareFlight is not the only air ambulance provider in
14 Champaign County, and that MedFlight is a competitor
15 based out of Union County.

16 A. Yes.

17 Q. Is the dispatch center more likely to
18 call CareFlight for any sort of emergency response in
19 Champaign County as compared to MedFlight?

20 A. Depending on the department and where
21 we're at in the county. A lot of them will request
22 CareFlight because they're stationed in Urbana,
23 however, sometimes Mechanicsburg and North Lewisburg,
24 being on the eastern side of the county, will ask for
25 MedFlight.

1 Q. Looking at the east side of that map
2 there, Ms. Petrucci asked you several questions about
3 crashes which she referred to as outside the project
4 area east of Mechanicsburg. Can you look at that map
5 and tell me where those locations are, I guess as an
6 outlier on that map, where they are in geographic
7 distance? Would those be the ones there at the
8 extreme far right bottom corner of the map?

9 A. The ones on East State Route 29 that we
10 spoke about would be on the bottom corner of the map
11 on 29. It's here.

12 Q. Okay.

13 ALJ TAUBER: Where are you pointing, for
14 the record? Could you explain where that is on the
15 map?

16 THE WITNESS: It's going to be on the
17 right bottom corner.

18 ALJ TAUBER: The furthest blue dot.

19 THE WITNESS: The furthest three blue
20 dots.

21 ALJ TAUBER: That's State Route 29?

22 THE WITNESS: Yes.

23 ALJ TAUBER: Thank you.

24 Q. (By Ms. Parcels) Ms. North, when you were
25 compiling this data for the map, you said you looked

1 at the northeast part of Champaign County which you
2 understood to be the project area. Is it more
3 accurate to say that you looked at crash data from
4 Route 4 north to the Champaign County line, looking
5 at this map?

6 A. Yes.

7 Q. Okay. And do you understand the project
8 area to be the townships of Urbana, Union, Goshen,
9 Wayne, Rush, and Salem?

10 A. Yes.

11 Q. Okay. And so looking at that map, even
12 though it looks like the turbines are concentrated
13 with green and orange dots depicting the turbine
14 sites in an area that is not completely spanning all
15 six townships, would you agree that the crash
16 locations that are denoted with blue dots do span all
17 six townships?

18 A. Yes, they do.

19 Q. Okay. And, again, looking at the map and
20 the location of Grimes Field where CareFlight is
21 based, if CareFlight specifically was called to one
22 of those crashes on the east side of Mechanicsburg,
23 isn't it true, then, looking at the map, if
24 CareFlight was to fly to that crash zone on the east
25 side of Mechanicsburg, that they would have to fly

1 through or above the project area?

2 A. Yes, they would.

3 Q. Okay. I'm going to ask you to turn back
4 to the Staff Report. On page 8 of the Staff Report
5 or just after page 8 there is an overview map of the
6 Buckeye II wind farm. Do you see that?

7 A. Yes.

8 Q. Okay. You yourself looking at that
9 overview map that's contained in the Staff Report
10 right after page 8, does that show the locations of
11 turbines for both Buckeye I and Buckeye II color
12 coded in red and gray?

13 A. I'm not sure I have the right one.

14 Q. It's right after page 8 of the Staff
15 Report.

16 A. After page 8?

17 Q. Yeah, page 8.

18 A. I go from page 7 to page 18.

19 Q. Okay. Go back to the very beginning of
20 the map section, then. It will say "Project Map.
21 This page intentionally left blank" and then the
22 overview map is on the next page.

23 A. Okay.

24 Q. Do you see that?

25 A. Yes.

1 Q. Okay. And is the project, the turbine
2 sites for that project marked for Buckeye I in gray
3 and Buckeye II in red?

4 A. Yes.

5 Q. And looking at that map and comparing it
6 to City Exhibit 8 would the sites that are marked in
7 red for Buckeye II correspond to sites that are
8 marked in orange on City Exhibit 8?

9 A. Yes, it appears so.

10 Q. And the sites that are marked in gray for
11 Buckeye I correspond to the sites that are marked in
12 green on City Exhibit 8?

13 A. Yes.

14 Q. Okay. I have just two more questions for
15 you. Counsel for the company asked if EverPower or
16 Champaign Wind had had any contact with the dispatch
17 center, and you responded that they had not, and then
18 she asked if the 911 center had contacted the
19 company. Would you consider it your duty as a 911
20 director to reach out to the company, or would you
21 consider it imperative on the company to inform the
22 911 center that this project might have an impact on
23 the 911 operations?

24 A. I would see it as a duty of the company
25 to contact us that it may have an impact on

1 communications.

2 Q. And last, but not least, 911 keeps a
3 record of all calls for service for a helicopter
4 response, but does 911 keep a list of whether a
5 helicopter actually lands and where it lands?

6 A. We could tell by our calls for service if
7 the helicopter landed, but we would not keep track of
8 the location where it landed; that would be up to the
9 fire department.

10 MS. PARCELS: Okay. Nothing further.
11 Thank you.

12 ALJ CHILES: Thank you.

13 Recross, Ms. Napier?

14 MS. NAPIER: No questions, thank you.

15 ALJ CHILES: Mr. Van Kley?

16 MR. VAN KLEY: Just a couple.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Van Kley:

20 Q. At the beginning of your redirect
21 testimony you marked the location of one of the
22 communications towers on the large blow-up behind
23 you.

24 A. Yes.

25 Q. And I just want to make sure that we've

1 clearly linked that in the record to the correct
2 marking on Exhibit 8. Is the location that you
3 marked the same purple dot that you see on Exhibit 8
4 located on South Main Street?

5 A. Yes.

6 Q. Okay. And just to make sure that I
7 understand what you were saying, is that the location
8 from which the dispatches occur, the dispatches are
9 sent out?

10 A. Yes.

11 Q. Okay. With regard to the helicopter
12 responses that are located outside of the turbines to
13 the east in those blue marks, how could the turbines
14 affect your service? I guess I'm trying to
15 understand how your concerns are related to the
16 responses to the east of the project area.

17 A. The response of CareFlight?

18 Q. Yeah.

19 A. I mean, if CareFlight's --

20 MS. PETRUCCI: Objection. I'm not
21 sure -- she doesn't work for CareFlight. I'm not
22 sure how she can respond on behalf of CareFlight.

23 ALJ CHILES: Mr. Van Kley.

24 MR. VAN KLEY: I'll start over.

25 ALJ CHILES: Thank you.

1 Q. Which responses occur out of the
2 communications tower on South Main Street?

3 A. All the responses start at the
4 communications tower on South Main Street.

5 Q. Okay. And then with respect to the
6 responses that you're familiar with what is your
7 concern about how the wind turbines may affect your
8 responses to emergencies to the east of the turbines?

9 A. My response as far as CareFlight? As far
10 as fire? EMS?

11 Q. Whatever you're familiar with.

12 A. I'm not the one -- I'm not actually
13 responding, I mean, we're only sending them out.
14 That would be something that a first responder would
15 have to -- I don't have anything as far as what their
16 concerns would be actually responding to the site.

17 Q. Okay. Looking at your response to
18 questions 9 and 10 of your direct testimony, you're
19 talking about problems that you anticipate with
20 interference from wind turbines.

21 A. Yes.

22 Q. Can you explain to me so that I can
23 understand it as to why you have concerns about the
24 emergencies that occur east of the wind turbines?

25 MS. PETRUCCI: Objection. That's beyond

1 the scope of redirect.

2 ALJ CHILES: Mr. Van Kley.

3 MR. VAN KLEY: I don't think it is
4 because we had redirect concerning these blue dots on
5 the map east of the wind turbine area and I'm trying
6 to understand how that affects her testimony.

7 ALJ CHILES: Overruled.

8 A. So you want to know how the blue dots on
9 the east side would be affected by the wind turbines?

10 Q. Yeah. How would the emergency response
11 to emergencies east of the turbines, as shown by
12 those blue dots to the east of the turbines, be
13 affected by the wind turbines?

14 A. As far as communications?

15 Q. Yes. As far as any problems that you can
16 anticipate.

17 A. It would depend on if there's any
18 interference from the turbines, I mean, you know, if
19 it's coming from our communication tower in Urbana
20 going through the wind turbines to the east side.

21 Q. Okay. That's what I was wondering about.

22 MR. VAN KLEY: Thank you.

23 ALJ CHILES: Are you finished?

24 MR. VAN KLEY: Yes.

25 ALJ CHILES: Thank you.

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Ms. Petrucci?

- - -

RECROSS-EXAMINATION

By Ms. Petrucci:

Q. In looking at City Exhibit 8, the blue dots that are listed on there or depicted on there, are they to match the addresses listed on your Attachment 11A to your testimony?

A. Yes.

Q. And with respect to the proposed facility, the dots depicted in gold or yellow here, you'll agree with me that City Exhibit 8 shows that the majority of the helicopter responses are outside the geographic location of the turbines that are depicted in gold?

MS. PARCELS: Objection. I think that question was a little vague as far as "outside" the area of the turbines.

ALJ CHILES: Ms. Petrucci.

MS. PETRUCCI: I can rephrase.

ALJ CHILES: Thank you.

Q. Would you agree with me that the majority of the blue dots that are depicted on City Exhibit 8 are not within, or inside, the location of the gold dots that depict the proposed turbines in this case?

1 A. I'm trying to answer. Most of the blue
2 dots are outside of the yellow dots, if that makes
3 sense.

4 Q. And, just to be clear, the blue dots
5 represent incidents that occurred in 2010, '11, and
6 in part of 2012 where an emergency helicopter was
7 requested.

8 A. Correct.

9 MS. PETRUCCI: I don't have any further
10 questions.

11 ALJ CHILES: Thank you.

12 Mr. Parram?

13 MR. PARRAM: Yes, your Honor, just one or
14 two follow-up questions to clarify for the record.

15 - - -

16 RE CROSS-EXAMINATION

17 By Mr. Parram:

18 Q. On City Exhibit No. 8 that I'm holding in
19 my hand, the communication tower on South Main Street
20 that you marked on the demonstrative exhibit, you
21 marked that with a purple marker on the demonstrative
22 exhibit; is that correct?

23 A. Yes.

24 Q. And on the actual exhibit there's a light
25 hand-marked purple dot on the exhibit to indicate the

1 tower on South Main Street; is that correct?

2 A. Yes.

3 Q. And that's a different type of purple dot
4 than the other purple dots on the actual exhibit; is
5 that correct? I'm just looking at the exhibit, at
6 the key in the top right-hand corner, there's green
7 dots for Buckeye I turbines, yellow or orange dots
8 for Champaign Wind turbines, blue dots for helicopter
9 response, and purple dots for communications towers.
10 Is the dot that you hand-marked for the tower on
11 South Main Street a light purple marker on this City
12 Exhibit No. 8?

13 A. It's the purple marker on South Main
14 Street.

15 MR. PARRAM: May I approach the witness,
16 your Honor?

17 ALJ CHILES: Sure.

18 (Discussion off the record.)

19 MS. PARCELS: It's possible the state has
20 an old copy.

21 ALJ CHILES: Ms. Parcels, do you have a
22 current copy for the state?

23 MS. PARCELS: I can get a current copy by
24 lunchtime for the state, yes.

25 MR. PARRAM: It's not a large issue, your

1 Honor, I was just trying to make it even clearer on
2 the record because my copy has sort of a handwritten
3 light purple marking.

4 MS. PARCELS: It's probably an older
5 version, then, that got shuffled in with the
6 exhibits, but I can get a copy for the state by
7 lunchtime.

8 MS. PETRUCCI: And my copy as well has
9 the hand-drawn light purple dot.

10 MS. PARCELS: Then there were some sold
11 ones shuffled into the mix. I'll locate the other
12 ones and provide them.

13 ALJ CHILES: Thank you.

14 Do you have any further questions,
15 Mr. Parram?

16 MR. PARRAM: That's all I have, your
17 Honor.

18 ALJ CHILES: I still feel like it may be
19 a little unclear so I just have a couple of follow-up
20 questions for you. You hand-marked on the large map
21 there that we're using for demonstration purposes a
22 hand-drawn circle on South Main Street in the west
23 kind of lower center portion of the map just below
24 the city of Urbana. That is to indicate a
25 communication tower; is that correct?

1 THE WITNESS: Correct.

2 ALJ CHILES: Okay. We have no further
3 questions, so thank you, you may step down.

4 (Witness excused.)

5 ALJ CHILES: Ms. Parcels.

6 MS. PARCELS: The city would call Mark
7 Keller.

8 ALJ CHILES: Ms. Parcels, you marked
9 several exhibits.

10 MS. PARCELS: Yes, we would move for the
11 admission of City Exhibit 8 and City Exhibit 11.

12 ALJ CHILES: Does that also include --

13 MS. PARCELS: Including the attachment to
14 City Exhibit 11, 11A.

15 ALJ CHILES: And 11A.

16 Are there any objections to the admission
17 of City Exhibit 11, City Exhibit 11A, or City Exhibit
18 8?

19 (No response.)

20 ALJ CHILES: Seeing none, City Exhibit
21 11, City Exhibit 11A, and City Exhibit 8 will be
22 admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 ALJ TAUBER: Now your next witness.

25 MS. PARCELS: The city would call Chief

1 Mark Keller.

2 ALJ TAUBER: Mr. Keller, please raise
3 your right hand.

4 (Witness sworn.)

5 ALJ TAUBER: Thank you.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 CHIEF MARK KELLER

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

11 DIRECT EXAMINATION

12 By Ms. Parcels:

13 Q. Chief, I'm passing out what has been
14 marked as City Exhibit 12. Do you recognize that as
15 your prefiled direct testimony?

16 A. Yes.

17 Q. Do you have any updates or corrections to
18 that direct testimony?

19 A. No. 10.

20 Q. Okay.

21 A. I did attend a safety training session in
22 Johnstown, Pennsylvania.

23 Q. Okay. What was the date of that
24 training?

25 A. November 7th.

1 Q. Okay. And any other additions or
2 corrections to your direct testimony?

3 A. No.

4 Q. If I were to ask you the same questions
5 again today, would you answer in the same fashion?

6 A. Yes.

7 MS. PARCELS: Your Honor, the city would
8 present the witness is available for
9 cross-examination.

10 ALJ TAUBER: Ms. Petrucci?

11 MS. PETRUCCI: Yes, I noticed that what
12 has just been distributed includes a City Exhibit
13 12A.

14 MS. PARCELS: That is merely for Chief
15 Keller's reference if he so desires, it does not need
16 to be moved into evidence, since he just became chief
17 recently. It's merely for his reference.

18 MS. PETRUCCI: Well, I guess I'm a little
19 uncomfortable with that. It's been distributed as if
20 it was part of the exhibit, it's even marked as a
21 city exhibit and stapled and attached to City Exhibit
22 12. I think that to the extent he has difficulty
23 answering a question, we can deal with that, but
24 providing him additional information attached to his
25 direct testimony at this point is not proper.

1 ALJ TAUBER: The Bench is going to --
2 Mr. Keller, the Bench is going to ask that you remove
3 City Exhibit 12A from your testimony. This is
4 supplemental testimony and it was not filed with the
5 Bench or with the parties.

6 If you need to use this on redirect, you
7 can use it on redirect, but for the time being we're
8 going to have you remove it.

9 THE WITNESS: Okay.

10 ALJ TAUBER: Thank you.

11 Cross-examination, Ms. Napier.

12 MS. NAPIER: Yes, thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Napier:

16 Q. Good morning, Chief.

17 A. Good morning.

18 Q. You had indicated in response to question
19 5 why Urbana Fire Division serves rural residents
20 outside the city limits. Can you tell me
21 approximately how much of the project area, if you
22 know, would Urbana Fire Division service through
23 contract?

24 A. We cover parts of Union Township as well
25 as Salem Township.

1 Q. Do you also cover Urbana Township?

2 A. Urbana Township, correct, yes.

3 Q. Do you know what other fire departments
4 would also encompass that project area?

5 A. Northeast Champaign County Fire
6 District --

7 Q. Okay.

8 A. -- which is in North Lewisburg, and
9 Mechanicsburg Fire Department.

10 Q. And, in your opinion, do you believe that
11 your concerns would also be relevant to those fire
12 departments also?

13 A. Yes, they are.

14 Q. Any differences in concerns between your
15 department and those other departments, to your
16 knowledge?

17 A. None that I know of.

18 Q. Okay. And would you agree with me that
19 there's been some discussion in the last few years
20 that the city has been involved with with fire and
21 EMS protection out in the townships that include this
22 project area?

23 A. Yes.

24 Q. Do you know why there have been those
25 discussions?

1 A. Contract negotiations, basically.

2 Q. Okay. And do you know why there's been
3 kind of those contract negotiations?

4 A. We increased our rates for fire and
5 ambulance protection in those townships and they are
6 looking into, the townships are looking into
7 potentially having a fire district.

8 Q. And do you know what type of, I guess
9 would there be full-time personnel in those fire
10 districts, to your knowledge?

11 A. I'm not sure.

12 Q. Okay. And can you tell me what type of
13 training that you have received from Champaign Wind
14 or have been proposed to receive from Champaign Wind
15 at this time?

16 A. I, like I said, I attended a training
17 session in Johnstown, Pennsylvania, where they have a
18 wind farm, and it was a county fire safety meeting
19 where the county fire chiefs as well as 911 director
20 and the EMA director attended. That really was the
21 only, other than I spent about four-and-a-half hours
22 with a technician the next day.

23 Q. And that was fairly recently?

24 A. November 7th.

25 Q. Okay.

1 A. Seventh and 8th.

2 Q. Any other proposed trainings that you've
3 discussed with Champaign Wind?

4 A. No.

5 Q. We had heard testimony from Ms. North
6 regarding the 911 dispatch center and you've included
7 that in your testimony also. Do you have the same
8 concerns as she does regarding interference of
9 wireless communication?

10 A. Yes.

11 Q. Are you requesting inclusion in the
12 condition --

13 A. Yes.

14 Q. -- for that certificate?

15 A. Yes.

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

18 ALJ TAUBER: Thank you.

19 Mr. Van Kley.

20 MR. VAN KLEY: I have no questions.

21 ALJ TAUBER: Ms. Petrucci.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Petrucci:

25 Q. Good morning, Chief.

1 A. Good morning.

2 Q. Going back to the training session, did
3 the training include a discussion of the components
4 and parts of the wind turbines and the generating
5 facilities in that farm in Pennsylvania?

6 A. Yeah. The actual training did not. I
7 spent four-and-a-half hours with them the next day,
8 that day we did, that was just me and one of the
9 technicians.

10 Q. And the technician that's employed with
11 the company that's operating that wind farm, correct?

12 A. Correct.

13 Q. Okay. And did part of this educational
14 seminar or, I'm not sure -- training session include
15 discussion of the safety equipment that are located
16 at the sites of the turbines?

17 A. Yes.

18 Q. And did it also include an explanation of
19 the training that the company's personnel have?

20 A. Yes.

21 Q. Did you have a chance to see emergency
22 and/or safety plans that existed at that particular
23 wind farm?

24 A. Yes. I had to actually read over those
25 to be able to go up to the wind farm.

1 Q. Do you recall how long that wind farm has
2 been operating?

3 A. I believe since 2009 from the information
4 they gave us.

5 Q. In your testimony you refer to high-angle
6 rescues, can you explain what that actually entails?

7 A. That would be from elevations, actually
8 doing rescue operations where we have to use rope
9 systems to either raise or lower someone to a safe
10 area.

11 Q. And in your testimony you stated that you
12 believe that your team would be able to respond to
13 medical emergencies that you believe are possibly to
14 occur in the future other than those that necessitate
15 the high-angle rescues, correct?

16 A. Correct.

17 Q. And that's based on your years of
18 experience as a firefighter and paramedic and your
19 time in Champaign County, correct?

20 A. Correct.

21 Q. You have indicated that, I think it's in
22 answer 9, that you would like to have a local
23 response team from the company to be available for
24 the high-angle rescues, correct?

25 A. Correct.

1 Q. What kind of local response team are you
2 envisioning that would be needed?

3 A. At this time we don't have enough
4 equipment to do a high-angle rescue and actually
5 lower somebody to the ground, so we would have to
6 either have that provided or that would have to be on
7 site for the technicians for the company to be able
8 to do that rescue.

9 Q. Okay. Do you have any other specifics
10 that you're envisioning for this local response team?

11 A. I was looking at the technicians actually
12 doing the rescue potentially.

13 Q. Going back to the training, if I
14 understood you correctly, that training was in
15 coordination with the local fire and county safety
16 personnel in Pennsylvania?

17 A. Yes.

18 Q. What did you think of the training that
19 you attended? What was your impression?

20 A. It was a good training. It was their
21 annual safety meeting. This was the first one, to my
22 knowledge, that -- that's what they told me, it was
23 the first one they had and they planned to do those
24 every year.

25 It was very informative as far as, you

1 know, sitting in a classroom setting, but it was not
2 really informative of the hands-on type of things
3 that would be required for the rescues to be able to
4 take place.

5 Q. And are you saying that because there was
6 no scenario that was actually carried out --

7 A. Correct.

8 Q. -- it was a different kind of training?

9 A. It was a brief discussion about how
10 things would work, but, you know, from my experience
11 as a firefighter we like to do things hands on to see
12 how they work and don't necessarily talk about it
13 type of thing.

14 Q. Do you know if in Pennsylvania the
15 scenario kind of training exercise had occurred at
16 that particular wind farm?

17 A. Yes. Johnstown Fire Department has a
18 rescue team, they were set up before the turbines
19 came in because they have mountainous areas or cliffs
20 and things like that that they would have to be able
21 to function around. They were there, I did speak to
22 the rescue coordinator of that meeting, and they
23 thought that -- they do one time a year a hands-on
24 training, they just did it in September I believe.

25 Q. In coordination with the wind farm.

1 A. Yes.

2 Q. All right. Chief Keller, have you
3 contacted other first responders who work in the area
4 of wind farms?

5 A. I have attempted to talk to Van Wert and
6 have not received any calls back. I've called them a
7 couple of times.

8 Q. So you're in the process of trying to --

9 A. Yes, I have been.

10 Q. -- look into that.

11 A. Yes.

12 Q. For those first responders that you spoke
13 with in Pennsylvania, did they express concerns with
14 the communications at that wind farm?

15 A. They told me that they had not -- they
16 had never had any issues with communication.

17 Q. If this proposed facility is approved, do
18 you believe it would be beneficial to attend further
19 trainings such as at the start of construction and at
20 the start of operations?

21 A. Yes.

22 Q. And isn't it correct that Champaign Wind
23 has stated that it intends to conduct trainings for
24 this proposed facility?

25 A. That's been stated. My concern, again,

1 would be that it be training that's not necessarily
2 just sitting in a classroom, it's hands-on.

3 Q. Okay. And you said in Pennsylvania that
4 they have done both --

5 A. Yes.

6 Q. -- versions of that kind of training.

7 A. Yes.

8 Q. Hands-on and --

9 A. Yes.

10 Q. -- more classroom style.

11 A. Right.

12 Q. And are you aware that Champaign Wind has
13 indicated that it will work closely with the local
14 emergency responders as well as the 911 dispatching
15 and the life flight companies in Champaign County?

16 A. I know that that's been stated. I do
17 have concern that we were not contacted, to my
18 knowledge, in the past when the first phase went
19 through, and none of the volunteer departments that
20 protect some of this area have been contacted that I
21 know of; I was instructed by them that they had not
22 been in contact.

23 Q. And at this time no construction for any
24 of the turbines has begun; isn't that correct?

25 A. Right.

1 Q. Going back to the training in
2 Pennsylvania, the technician that you referred to,
3 that was an employee of the company who owns the wind
4 farm, correct?

5 A. Correct.

6 MS. PETRUCCI: I have no further
7 questions.

8 ALJ TAUBER: Thank you.

9 Mr. Reilly?

10 MR. REILLY: We have nothing, your Honor.
11 Thank you.

12 ALJ CHILES: Redirect, Ms. Parcels?

13 MS. PARCELS: Yes.

14 - - -

15 REDIRECT EXAMINATION

16 By Ms. Parcels:

17 Q. Chief Keller, I want to clarify
18 something. You said when you went to the training in
19 Johnstown, that the training didn't actually include
20 everything that you did out in Pennsylvania; you did
21 some of that on your own initiative?

22 A. As far as?

23 Q. Going up with the technician and looking
24 at the turbine and reviewing turbine parts and
25 components.

1 A. I spoke to the manager of the wind farm
2 there.

3 Q. So that wasn't part of the training you
4 attended. You did that on your own initiative.

5 A. Correct.

6 Q. Okay. Would you like to see that sort of
7 annual training that you attended in Johnstown a
8 condition on the certification of this permit for
9 Champaign Wind?

10 A. Yes.

11 Q. Would you also like to see the condition
12 that the company provide training and equipment to
13 the first responders in the area as a condition?

14 A. Yes.

15 Q. Okay. And what about a condition for the
16 company to maintain a local response team of their
17 own technicians?

18 A. If we could work out the training, the
19 equipment, we would be able to assist the
20 technicians, primarily though, I would like to see
21 them have a major role in it.

22 Q. Okay. Is part of your concern that the
23 company have its own people, so to speak, driven by
24 overtime concerns?

25 A. Yes.

1 Q. I'd like to direct you to what's been
2 marked as City Exhibit 12A, it's the fire division
3 annual report from 2010.

4 A. Okay.

5 Q. Can you turn to page 7 there?

6 A. Okay.

7 Q. Middle of the page it's got some
8 information about some reimbursements. Does "LEPC"
9 stand for local emergency planning committee?

10 A. Yes.

11 Q. Okay. It looks like there were a lot of
12 reimbursements by LEPC for HazMat training, is that
13 correct --

14 A. That's right.

15 Q. -- in 2010? Would you like to see the
16 company reimburse the Urbana Fire Division for any
17 overtime expenses related to training and equipment
18 or drills?

19 A. Yes.

20 MS. PARCELS: Okay. Nothing further,
21 your Honors.

22 ALJ TAUBER: Thank you.

23 Ms. Napier?

24 MS. NAPIER: No, thank you, your Honor.

25 ALJ TAUBER: Mr. Van Kley.

1 MR. VAN KLEY: Nothing from us.

2 ALJ TAUBER: Ms. Petrucci.

3 - - -

4 RECROSS-EXAMINATION

5 By Ms. Petrucci:

6 Q. With respect to the question that you
7 just answered, I'm not sure I fully understood.
8 Overtime of training associated with what?

9 A. Training for the wind -- to be able to do
10 rescues at the wind farm, specific to that.

11 Q. Okay. Then what you just looked at in
12 the annual report marked City Exhibit 12A, that's not
13 associated with any wind farm, correct?

14 A. What is on here, no, it is not.

15 MS. PETRUCCI: I have no further
16 questions.

17 ALJ TAUBER: Thank you.

18 MR. PARRAM: No questions, your Honor.

19 ALJ TAUBER: Thank you.

20 - - -

21 EXAMINATION

22 By ALJ Chiles:

23 Q. We just have a couple questions for you.
24 If you could refer to, I believe it's page 3 of your
25 testimony, it's your answer to question 11, and you

1 were speaking about conditions 42 and conditions 43
 2 of the Staff Report. There should be a copy of the
 3 Staff Report on the stand there, if you would turn to
 4 page 58, and if you look down to conditions 42 and 43
 5 that are about in the center of the page on page
 6 58 -- let me know when you're there.

7 A. I'm there.

8 Q. -- have you reviewed these conditions
 9 before?

10 A. No.

11 Q. Can you tell me a little bit more
 12 specifically about what you would like to see added
 13 to these conditions, and take time to review them now
 14 if you'd like to do that.

15 A. Okay.

16 Q. Can you tell me a little bit more
 17 specifically about what you'd like to see added to
 18 these conditions, if anything, to address your
 19 concerns?

20 A. I would like to be able to go out there
 21 preconstruction or as they are constructing to be
 22 able to do site evaluations, to do training with
 23 people that may not necessarily go -- be able to go
 24 up into it but at least they'll have an idea of
 25 what's going on up there.

1 Q. Okay.

2 A. As well as the equipment would be an
3 issue.

4 Q. Okay. So you'd like to see training
5 opportunities and equipment added to those
6 conditions.

7 A. Yes.

8 ALJ CHILES: Okay. Thank you.

9 ALJ TAUBER: Thank you. You may be
10 excused.

11 THE WITNESS: Thanks.

12 (Witness excused.)

13 ALJ TAUBER: Ms. Parcels.

14 MS. PARCELS: City would move for
15 admission of City Exhibit 12.

16 ALJ TAUBER: Are there any objections to
17 City Exhibit 12?

18 MS. PETRUCCI: I have no objections to
19 City Exhibit 12.

20 ALJ TAUBER: Hearing none, City Exhibit
21 12 shall be admitted into the record.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 ALJ CHILES: Let's go off the record.
24 Let's take a five-minute break.

25 (Recess taken.)

1 ALJ CHILES: Let's go back on the record.

2 Ms. Napier.

3 MS. NAPIER: Thank you. The county and
4 townships would call Stanley Bialczak.

5 ALJ CHILES: Please raise your right
6 hand.

7 (Witness sworn.)

8 ALJ CHILES: Thank you. You may be
9 seated.

10 - - -

11 STANLEY T. BIALCZAK

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

14 DIRECT EXAMINATION

15 By Ms. Napier:

16 Q. Mr. Bialczak, can you state your name and
17 business address for the record.

18 A. Stanley T. Bialczak, 30 East Broad
19 Street, Ohio Department of Taxation, Excise & Energy
20 Tax Division, Columbus, Ohio.

21 Q. And what is your current position with
22 the Department of Taxation?

23 A. I'm the division counsel to the Excise &
24 Energy Tax Division.

25 Q. And I have given you what I have marked

1 as County and Township Exhibit 5. Do you see that?

2 A. Yes, I do.

3 MR. PETRICOFF: Your Honor, if I could,
4 isn't 5 Mr. Pickard.

5 MS. NAPIER: Oh, I'm sorry. I guess it
6 will need to be 6.

7 ALJ CHILES: Thank you.

8 MS. NAPIER: I apologize.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. And is Exhibit 6 now a true copy of your
11 direct testimony?

12 A. Yes, ma'am.

13 Q. Have you had the opportunity to review
14 that testimony prior to today?

15 A. Yes, ma'am.

16 Q. And if I were to ask you those same
17 questions today, would your answers remain the same
18 or are there any changes you wish to make for the
19 record?

20 A. They would be the same.

21 Q. Thank you.

22 MS. NAPIER: I believe the witness is
23 available for cross-examination.

24 ALJ CHILES: Thank you.

25 Ms. Parcels?

1 MS. PARCELS: Just a few questions.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Parcels:

5 Q. Good morning.

6 A. Good morning.

7 Q. It's Mr. Bialczak?

8 A. Yes. Or "Stan," that's fine.

9 Q. I think I'll go with "Stan" just so I
10 don't mispronounce anything.

11 I want to direct your attention to page 7
12 and page 8 of your direct testimony, and you're
13 talking about the requirements an owner or lessee of
14 a project has under RC 5727.75(F), and if you go
15 through three requirements, and then the fourth
16 requirement notes that owner or lessee must provide
17 and facilitate training for fire and emergency
18 responders for response to emergency situations
19 related to the energy project and, for energy
20 projects 5 megawatts or greater, provide the
21 necessary equipment for the responders.

22 Do you know how many megawatts this
23 particular project, Champaign Wind, is expected to
24 generate?

25 A. I can only assume it's greater than

1 5 megawatts because the Ohio Power Siting Board is
2 involved.

3 Q. Okay. And do you know if Champaign Wind
4 has taken any steps to meet those requirements of RC
5 5727.75(F)?

6 A. I'm not familiar with any of the
7 particulars of Champaign Wind's application.

8 Q. Okay. In your general experience with
9 the Ohio Department of Taxation do you review some of
10 the, I guess let's say paperwork for electricity
11 providers that are seeking such PILOT exemptions and
12 whether they comply with these eight requirements
13 that they have to meet before they can be granted one
14 of those exemptions?

15 A. No, ma'am. That's the function of the
16 Department of Development.

17 Q. Okay. Also looking at page 8 of your
18 testimony, it says that the intention of some of
19 these offsets, so to speak, was to get the energy
20 producers to partner with local government
21 authorities to maintain infrastructure, invest in
22 communities, and, further on down, provide necessary
23 specialized emergency responses.

24 In your understanding with the Department
25 of Taxation and the projects that you've reviewed for

1 tax compliance, I guess, has that been -- has that
2 intention been met? Have the companies that have
3 been seeking these sorts of exemptions complied with
4 the intent to maintain infrastructure, invest in
5 local communities, and provide necessary emergency
6 responses?

7 A. There may be a misperception of the
8 Department of Taxation's role in this.

9 Q. Okay.

10 A. The Department of Taxation does not get
11 involved in any of the processing of the application
12 paperwork.

13 Q. Okay.

14 A. When we drafted 5727.75 and the Ohio
15 Administrative Code rules that supplement it in
16 chapter 122, there were several state agencies
17 involved, I represented the Tax Department in those
18 discussions, and each of the things that I've set
19 forth in this written testimony were things that were
20 considered that were important to include in 5727.75.

21 So that the Tax Department through me as
22 its representative, but also through all the other
23 state agencies that were involved at the time, were
24 all focused on making certain that each of these
25 considerations were met.

1 We had a concern at the time to protect
2 counties' interests. The Strickland administration,
3 and this all was drafted under the Strickland
4 administration, was focused on bringing in
5 alternative energy sources into Ohio and encouraging
6 that development and investment, but it wanted to
7 make certain that not only were jobs created, but
8 also that local interests were protected.

9 And in the lead-up to this 5727.75
10 legislation, which is Senate Bill 232, I should refer
11 to it that way, the lead-up to Senate Bill 232, there
12 were numerous meetings over the course of probably at
13 least a year and a half involving the industry, the
14 local interests, and universities, and investor-owned
15 utilities, almost anyone who had any type of interest
16 involved in this alternative energy was represented
17 in the lead-up to this legislation.

18 So when we sat down to actually draft the
19 legislation and draft the statutes, which is what I
20 was directly involved in for the tax part of this,
21 all of this came into play.

22 So I was privy to what was discussed in
23 the meetings, and what's set forth in my written
24 testimony is a reflection of what we were considering
25 as important at the time, not only from the

1 Strickland administration itself, but also
2 considering what was discussed in the meetings that
3 led up to the actual drafting.

4 So we knew what the county commissioners
5 were concerned about, we knew what the wind and solar
6 industries in particular were concerned about, and we
7 knew what the Strickland administration's concerns
8 were, and that essentially, again, were jobs and
9 investment and protect the counties' interests.

10 So how do we do that? Well, these are
11 the considerations that we made from all those
12 meetings to ensure that the counties had some
13 protection and that the counties, because they'd be
14 giving up a lot of tax dollars if any of these energy
15 projects qualified as a qualified energy facility,
16 because they'd be giving up a lot of tax dollars,
17 they had to have something in return, and so that's
18 how these considerations also came into play.

19 So, I know that was a lawyer's answer to
20 a pretty simple question, but the point is, is that
21 we don't see this paperwork in the Tax Department.
22 We're familiar that it's supposed to be filed. And
23 if there is compliance or noncompliance, that's a
24 call from the Department of Development and not from
25 the Tax Department.

1 Q. Okay. Thanks for clarifying that for me.

2 I just want to make sure I understand,
3 though, you agree from your perspective, sitting on
4 the group of people that drafted the legislation,
5 that it is important to protect local interests, not
6 just the counties' interests, but first responders
7 and other facets of the community, entities that
8 might be outside the project area but adjacent to it.

9 A. Absolutely. That was one of the
10 considerations.

11 Q. Now, from your understanding, then, if --
12 under the current tax regime or if Champaign Wind
13 were to seek and obtain a PILOT payment, would the
14 city of Urbana receive any tax revenue under either
15 system of taxation?

16 A. Maybe.

17 Q. If the city is not inside the project
18 area, would it?

19 A. This is how it works: The tax revenues
20 go to the local taxing jurisdiction, so if this wind
21 project that's at issue today doesn't get approved,
22 it's going to be taxable. Excuse me, if it doesn't
23 get approved as being tax exempt under '27.75, it's
24 taxable, all right. And all the tax dollars that it
25 generated are all local tax dollars, so those tax

1 dollars would go to whatever taxing jurisdictions
2 this project is in.

3 If it gains exemption, the wind project
4 is subject to PILOT payments, or payments in lieu of
5 taxes, that's all set forth in 5727.75. The amount
6 of the payment hinges upon how many megawatts are
7 involved in the project and how many Ohio-domiciled
8 employees are employed in this project, okay?

9 That money is paid to the county
10 treasurer and that can go into the general revenue
11 fund of the county. So that money can be used any
12 way the county or the local government officials
13 want.

14 So when I say "maybe" Urbana can get
15 some, however Urbana approaches the county treasurer
16 for the disbursement of these funds they could end up
17 with some. Again, this is -- this is something the
18 Tax Department never wanted to get involved in and we
19 were explicit in that in these discussions. We don't
20 want to tell anybody how to spend their money.

21 Q. Okay.

22 A. Once these PILOTs come in, they go to the
23 locals, the locals can spend it any way they want.
24 We don't even care if the PILOT's paid as a Tax
25 Department, we don't even care if the PILOT's paid,

1 that's all on the county treasurer to notify the
2 Department of Development and notify the tax
3 commissioner that the PILOTs have been paid.

4 If PILOTs aren't paid, then the project
5 is subject to being disqualified and losing its
6 certification, so there's the incentive to make
7 certain the PILOTs are paid. So that's why, yeah,
8 maybe Urbana can get some; that's a local issue.

9 Q. Okay. So just to make sure I understand
10 you correctly, even though Urbana is not one of the
11 taxing jurisdictions in the project area, there is
12 some potential depending on how the county treasurer
13 and other local entities agree to split up the PILOT
14 payment.

15 A. That's true. And those entities where
16 the PILOT, excuse me, where the wind project was
17 located, they'll probably have a lot of say as to how
18 those moneys get distributed too.

19 Q. So the PILOT distribution is not, let's
20 say, equally proportionate with how the current tax
21 distribution would be for the taxing jurisdictions in
22 the project area.

23 A. I would say that's a fair statement.

24 MS. PARCELS: Okay. Thank you. I have
25 nothing further, your Honors.

1 ALJ CHILES: Thank you.

2 Mr. Van Kley.

3 MR. VAN KLEY: I have no questions.

4 ALJ CHILES: Mr. Petricoff.

5 MR. PETRICOFF: Yes, thank you.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Petricoff:

9 Q. Good morning, Mr. Bialczak.

10 A. Yes. "Stan" is fine.

11 Q. I'm Howard Petricoff, another name that
12 sometimes is hard to pronounce, and I'm counsel for
13 Champaign Wind.

14 I want to start with your testimony here
15 at the beginning. The first question says that --
16 you have your testimony in front of you?

17 A. Yes, sir.

18 Q. It says, "The testimony set forth in this
19 document discussing Ohio taxation" -- I'm reading the
20 answer -- "of wind turbines is Stanley T. Bialczak."
21 Obviously I think we're missing a word or two there.
22 Should it say "This testimony is being presented by
23 Stanley" --

24 A. It should be, sir. Yes, sir.

25 Q. And on whose behalf are you presenting?

1 Are you speaking today for the Ohio Department of
2 Taxation, or are you a witness being called by
3 Champaign County?

4 A. I am a witness being called by Champaign
5 County.

6 Q. So the opinions that we have here are not
7 the official opinions of the Ohio Department of
8 Taxation, these are your opinions.

9 A. Yes, sir.

10 Q. Okay. I notice that -- because these are
11 your opinions, did you write the questions or were
12 the questions presented to you?

13 A. All of the questions were presented to me
14 except for one which I felt we needed to, in order
15 for me to say what I said in a later question, that
16 you needed to establish a foundation for that, so all
17 these were submitted to me except for one.

18 Q. And now in terms of the answers, I note
19 that, just looking at the first two answers, that,
20 you know, you're referred to in the third person and
21 that's kind of unusual. Did you do the original
22 draft of the answers, or did you affirm the answers
23 and the original draft was done by someone else?

24 A. Well, I did the drafting of these. This
25 goes back to testimony I gave three years ago.

1 Q. Right.

2 A. We took that document, and it was sent to
3 me by Champaign County Prosecutor's office and said,
4 "This is your prior testimony." To be honest with
5 you, sir, I don't remember if I drafted those two
6 answers originally. I drafted -- and so I just
7 amended it as drafted originally which was three
8 years ago.

9 Everything subsequent to that beginning
10 with "Wind Turbine Classification" and this
11 discussion of the tax and 5727.75, I drafted all
12 that.

13 Q. Let's talk a bit about the tangible
14 property tax. I guess, if we go back 15 years, is it
15 true that all businesses paid the tangible property
16 tax?

17 A. If you want, I'll give you a little bit
18 of history on it.

19 Q. Oh, absolutely. It would save me a lot
20 of questions.

21 A. Okay. That would be good. I'm happy to
22 do that.

23 In 2008 the general personal property tax
24 was phased out. That was the last year that that tax
25 was imposed upon businesses conducting business in

Ohio. It subjected all the business's personal property to taxation. That tax was first implemented in about 1931.

Though the general personal property tax was phased out in 2008, the public utility personal property tax was unaffected; it is still in effect for any taxpayer qualifying as a public utility in Ohio. What that means is that any tangible personal property that's used and located in Ohio is subject to taxation.

So for the case that we have here with regard to wind turbines, wind turbines can be owned by anybody, but if they're owned and used in a business, they're taxable as tangible personal property.

Electric companies and energy companies are the two companies that would be considered owning wind turbines and using them in business to generate electricity to supply to others. By doing so that subjects them to the public utility tax code.

So an electric distribution company or an energy company would have to file a tax return and report their tangible personal property, that is their wind turbines, as taxable property.

Now, we tax that property based upon a

1 true value computation. Would you like me to go into
2 an explanation of that?

3 Q. I'm going to get there later, so let me
4 stop you there because I want to just fill in on just
5 the information you gave us up till now.

6 So, basically, outside of electric
7 generators no other business in Ohio pays a personal
8 property tax anymore?

9 A. No; that's not accurate. Any public
10 utility will pay a public utility personal property
11 tax. So what that means is that you have railroads,
12 pipelines, water transportation companies, electric
13 companies, natural gas distribution companies,
14 there's three or four others, energy companies, they
15 all pay a public utility personal property tax.

16 Q. So outside of public utilities no other
17 for-profit business has to pay a personal property
18 tax -- has to pay a personal tangible property tax.

19 A. For the most part that's an accurate
20 statement. I qualify it only in that if somebody is
21 using -- if a business is using property that
22 generates electricity for their own use, that is not
23 subject to taxation. But if that company uses that
24 electricity that they generate for their own use and
25 then they supply it to someone else, now that

1 electric production equipment becomes taxable. We
2 deem that to be a nonelectric company provider and on
3 a prorated basis we will subject that production
4 equipment to a tax.

5 Q. Now, in terms of revenue for the state,
6 what replaced the tangible personal property tax as a
7 means for revenue for the state?

8 A. Well, when the personal property tax was
9 phased out for general taxpayers, not public utility
10 taxpayers, the corporate franchise tax was phased out
11 at the same time for the majority of taxpayers other
12 than financial institutions which it is still in
13 effect. The commercial activities tax was enacted to
14 replace the franchise tax and the personal property
15 tax.

16 Q. So but basically the CAT tax -- and you
17 don't mind if I call it the "CAT" tax?

18 A. No, sir.

19 Q. The CAT tax is sort of the heir to the
20 personal property tax in terms of revenue for the
21 state.

22 A. Well, revenue for the local
23 jurisdictions.

24 Q. Okay. Now, is it possible, then, that an
25 energy provider would have to pay both the personal

1 property tax and the CAT tax? Could they get both?

2 A. Well, don't forget now, we've changed the
3 structure. We've gone from general taxpayers, and
4 that's what the CAT was designed to replace, okay,
5 was the taxation on general taxpayers, not public
6 utilities.

7 So a public utility, and specifically an
8 energy company in this case, would be subject to the
9 public utility personal property tax, their gross
10 receipts would be subject to the commercial
11 activities tax, or the CAT.

12 Not only do we have property taxes on
13 public utilities, but we also have gross receipts
14 taxes on many of the public utilities but not all the
15 public utilities. Those that don't pay the gross
16 receipts tax will pay either the franchise tax, which
17 is what the electric companies were paying starting
18 in the early-2000s, or they'll pay the CAT. And so
19 energy companies, their gross receipts could be
20 subject or would be subject to the CAT.

21 Q. Let's focus a moment on a wind generator
22 like Champaign Wind. Would they be subject to both
23 the personal property tax and the CAT tax?

24 A. If they don't qualify for exemption under
25 5727.75, that taxpayer would be subject to the public

1 utility personal property tax and the gross receipts
2 would be subject to the commercial activities tax.

3 Q. Okay. And, in fact, wasn't that one of
4 the reasons for Senate Bill 232 was because of the
5 tax burden on electric generators?

6 A. I can't address that question. I don't
7 know the answer to that.

8 Q. It's possible that when the General
9 Assembly passed 232, that was one of the -- one of
10 the reasons was to create an exemption because of
11 what would otherwise be a very high tax burden on
12 electric generators.

13 A. The idea behind Senate Bill 232, from my
14 interaction with the parties and in the meetings that
15 I was in, was the industry did not want to have -- to
16 pay too much in tax and they felt coming into Ohio
17 that they would be paying more in tax than they do in
18 other states.

19 I did a study of all of our surrounding
20 states to see where the tax burden fell, and some
21 states would be taxed higher, some states would tax
22 lower than Ohio for these wind companies because --
23 the Tax Department and the administration at the time
24 was getting information from various sources and a
25 lot of that wasn't consistent. So we wanted to see

1 exactly, well, what would be the tax burden, say, in
2 Indiana or Pennsylvania.

3 And what we learned through my research
4 is that it's really tough to tell because there are
5 various intangibles that come into play for these
6 different taxes. No state taxes the same way, okay.
7 So the best we could do is come up with estimates as
8 to what a taxpayer would be subject to in another
9 state. Ohio was probably on the higher end. We
10 weren't the highest taxed state for wind and solar
11 companies.

12 So the consideration of the tax burden,
13 yes, that was an issue. In exchange for lowering the
14 tax burden the state and the administration, the
15 Strickland administration at the time, wanted
16 consideration for that.

17 Q. And those were the -- well, never mind.

18 Earlier we were talking, you asked me
19 about the assessment, and I guess now maybe I would
20 like to ask you about how the, and we're still
21 focusing now on the tangible property tax, I'm sorry,
22 the taxable tangible property tax, how that is
23 calculated.

24 I guess we start with, when we're doing
25 the tax, we start with I guess the productive --

1 well, I guess we have to start with what the value of
2 the property is. How would these wind turbines be
3 valued?

4 A. Well, here's how the true value
5 computation works: Whether it's wind turbines or any
6 other public utility property, it's irrelevant.
7 First it's given a class life. Generation, electric
8 generation equipment, is all given a 30-year life
9 which means that the Tax Department has determined
10 that equipment used to generate electricity will have
11 a 30-year useful life whether it's a coal-fired plant
12 or a natural gas-fired plant or wind turbines. All
13 production equipment gets a 30-year life, that's our
14 starting point.

15 Now you take the costs associated --

16 Q. Excuse me, if you don't mind my
17 interrupting here just for a second, is that 30-year
18 life something that is challengeable? If you could
19 say, for example, the physical life may be 30 years,
20 but, given the level of technology, its useful life
21 is only 10 years, could we get the Tax Department to
22 make it 10 years?

23 A. Well, on a per-case basis a taxpayer can
24 submit information that shows that it has special or
25 unusual circumstances that indicate that the true

1 value computation which correlates with the tax
2 commissioner's determination of true value is
3 inaccurate. And based upon additional information
4 for the tax commissioner to consider the valuation
5 could be lowered -- or, the class life could be
6 lowered which would result in the valuation being
7 lowered. So, yes, it's possible.

8 Q. Along that line, did that happen for
9 utilities in the telecommunication industry where
10 they went in to show that while the physical life of
11 that Bakelite dial telephone may have been 30 years,
12 it was obsolete technologically and should have a
13 shorter life?

14 A. Well, telephone companies are no longer
15 public utilities, but in the '90s that was a big
16 issue that we dealt with was first- and
17 second-generation equipment, especially when there
18 was the I guess transfer of technology from analog to
19 digital.

20 So we didn't put anything out with regard
21 to a press release, or information release I should
22 say, but when taxpayers would come in to say that
23 their property is not lasting as long as our class
24 life at the time said it should, we did take that
25 into consideration. And my recollection is, is that

1 we did make adjustments to the class life of various
2 telephone companies that could establish that they
3 deserved a lower class life.

4 Q. I interrupted you, and you were taking us
5 through the formula. I'd like to go back to that.
6 So we start with the useful life. Right now the, if
7 you will, the refutable presumption is 30 years.

8 A. Yes.

9 Q. Now take us to the next step in the
10 formula.

11 A. Okay. So when property is placed into
12 service, that year is considered its vintage year,
13 and when I say the "true value computation," it's an
14 actual piece of paper where we do the computation.

15 So on the left column you'll have a list
16 of years starting with the most current year. So
17 take tax year 2012, for instance, the first year of
18 vintage year would be 2011, then it would be 2010,
19 2009, '8, et cetera. Now go down the left column of
20 the true value computation.

21 Next to that column is put in the cost.
22 So it's not when the property is purchased, it's when
23 the property is put into use in rendering a public
24 utility service. Any cost incurred in that
25 particular calendar year, or vintage year, goes on

1 the next line.

2 For older equipment you'll have
3 disposals, so any disposed equipment gets subtracted
4 from that cost figure as you go through the course of
5 the true value computation over many years.

6 The difference is multiplied by what's
7 called, several different names, it's called a
8 valuation percentage, it's also called an annual
9 allowance, it's also called a percent good, but what
10 it is is a percentage that reflects essentially the
11 depreciation in that property.

12 So for year one vintage year 2011, in the
13 2012 example, would have a cost figure, let's say it
14 was a million dollars, and of course no disposals,
15 the valuation percentage for the first year is 98.3
16 percent. So we take 1 million times 98.3 percent,
17 \$983,000 is what's deemed the true value for the 2011
18 vintage year property, and we would do the same thing
19 for the other vintage years.

20 Any property that was put into place in
21 vintage year 2010 would be multiplied by a valuation
22 percentage of 95, 2009 would be 93.1, and it would go
23 down as the property ages.

24 If the property should last longer than
25 30 years, it will eventually hit a floor at

1 15 percent. So as long as the property is used in
2 business in rendering a public utility service, it
3 would always have a valuation percentage of at least
4 15 percent even if it lasted 50 years.

5 So we add up all those true values that
6 are now on the right column of the true value
7 computation. We add them up, that's the total true
8 value. We multiply that times what's called an
9 assessment percentage. Each public utility has a
10 assessment percentage attributed to that particular
11 type of public utility, those are all listed in
12 5727.111 of the Revised Code.

13 For electric companies and energy
14 companies the assessment percentage is 24 percent for
15 production equipment. So you would add up all those
16 true values, multiply that times 24 percent, and that
17 gives you the assessed value.

18 The Department of Taxation breaks out
19 that assessed value by taxing district and that is
20 reflected in the tax return that the taxpayer files
21 where the property is located. So we break that out
22 by taxing district and that assessed value is what is
23 sent to the counties and to the taxpayer reflecting
24 the value for that taxing district. That's part of
25 the assessment certificate.

1 The counties take that assessment
2 certificate and they multiply the assessed value of
3 each of those taxing districts by the tax rate in
4 effect for that particular taxing district coming up
5 with a tax due.

6 Q. Okay. Let's see if we can funnel this
7 down, then, for the neophytes. So we would start
8 with the assessed value and -- or the taxable value,
9 and the taxable value would basically decrease every
10 year as the equipment is amortized.

11 A. Well, no, what I'll say is that the true
12 value decreases every year.

13 Q. Okay.

14 A. Not the taxable value. That's a
15 different value that we come up with later.

16 Q. Thank you. Because I want to get -- for
17 the record I want to get the right terminology.

18 A. Yes, sir.

19 Q. So the true value, then, we would expect,
20 let's say the true value was, for the first year was
21 a hundred dollars and we had a ten-year life so we
22 would expect it to go a hundred, 90, 80, 70, 60, as
23 we went down through time.

24 A. Well, now you're changing my valuation
25 percentages, okay. That's not how we would do it for

1 wind turbines. Again, when I said "98.3," I meant --
2 I wasn't pulling that figure out of the air.

3 Q. Right. That was one-thirtieth.

4 A. Right.

5 Q. We're on the same -- I apologize. I
6 immediately went to an easier example, but let's go
7 with the more realistic one.

8 So we would start with a value and every
9 year, basically, one-thirtieth would come off unless
10 there was a redetermination of that value, which
11 you'd have to petition the Department of Taxation.
12 And then you would multiply that times 24 percent
13 because this is electric generation and that is the
14 statutorily assigned percentage.

15 A. Yes, sir.

16 Q. Okay. And then the county would take
17 that and it would multiply that against its tax rate.

18 A. Yes, sir.

19 Q. Now, do you know for Champaign County
20 what that tax rate is?

21 A. No, sir.

22 Q. Are they generally in the 1 to 2 percent
23 range for personal property?

24 A. Well, we look at them as a function of
25 millage, and what I can tell you is that, and we just

1 computed this a few weeks ago for another matter, the
2 average millage rate for public utility personal
3 property in Ohio is 7 mils, so that's .007. That's
4 the average. So I have no idea what Champaign
5 County's is.

6 Q. Okay. And, basically, to do a percentage
7 we would have to -- first of all, let's make sure
8 we've got this record cleaned up, 7 mils is
9 seven-tenths of a cent?

10 A. Yes, sir.

11 Q. Basically, we would have to take that
12 assessment value to come up with what the percentage
13 is and that's not something that you know offhand.

14 A. That is correct.

15 Q. Okay. So, basically, what we would
16 expect is that over time every year these payments
17 would probably, these personal property tax payments
18 would probably decrease.

19 A. Yes, sir. Probably. Let me qualify that
20 because when a taxpayer has new property brought in,
21 that could increase its burden. Say a hypothetical
22 taxpayer did not bring in new property since 2009, so
23 in 2010 and 2011 and 2012 its property tax would be
24 decreasing, but if it brought in new property in
25 calendar year 2012, that would be subject to tax in

1 2013, now the taxable would increase.

2 Q. But if we're assuming that the life of
3 the turbine is 30 years and we're not going to
4 replace it or change it over for technological
5 reasons, then, basically, we expect it to go down by
6 one-thirtieth every year.

7 A. Yes, sir.

8 Q. Now let's do a little compare and
9 contrast with the personal property tax and Senate
10 Bill 232, okay. Now, on Senate Bill 232 how is the
11 tax determined?

12 A. There's been no change in how we
13 determine the tax under Senate Bill 232. The
14 taxpayer is taxable unless the taxpayer qualifies for
15 an exemption under 5727.75.

16 Q. Let's set that up. So to become exempt
17 the wind turbine would have to make an application to
18 the county commissioners, correct?

19 A. No. The way the procedure starts is the
20 wind turbine company would make an application to the
21 Department of Development. The Department of
22 Development takes the application and, my
23 recollection is that the wind company has to file it
24 in triplicate, and then Development takes copies of
25 the application and sends them to the counties that

1 are -- sends them to the county commissioners that
2 are impacted by the wind project.

3 The county commissioners have a burden,
4 then, of determining whether they want to grant
5 certification for that wind project or not. So the
6 county commissioners can vote as to whether they want
7 to have that particular wind project considered for
8 tax exemption.

9 If they decide no, they let the
10 Department of Development know that and that comes
11 into play into the director of Development's decision
12 whether to grant the exemption.

13 Q. So the ultimate decision is made by the
14 director of the Department of Development?

15 A. If the wind company meets all the
16 different statutory requirements, and there's more
17 than just sending it to the county commissioners,
18 there's numerous statutory requirements, if the wind
19 development company meets all those requirements,
20 then the director would make the final decision.

21 Q. Now let's assume that the director of the
22 Department of Development has made the decision and
23 it has granted Champaign Wind a Senate Bill 232
24 exemption, how would the turbines be taxed under that
25 scenario?

1 A. Well, then they're not taxed.

2 Q. Okay. Then there would be a PILOT,
3 correct?

4 A. Well, yes. That's a payment in lieu of
5 taxation.

6 Q. And how would the PILOT be determined?

7 A. The PILOT is a function of the size of
8 the wind project and the number of Ohio-domiciled
9 employees that are employed by the wind project. The
10 PILOT also can be subject to between a 2- and 3,000
11 dollar increase by the county commissioners if the
12 county commissioners vote to assess that additional
13 PILOT.

14 So, for instance, I'm going from memory
15 here though I think it's set forth in the testimony,
16 in the written testimony, if the project -- well, I
17 simply don't remember offhand, but it's in my written
18 testimony. If it's okay with you, I'll refer to
19 that.

20 Q. Sure. That's fine.

21 A. Okay.

22 Q. That's fine. But let's make sure we're
23 all on the same page, though, that Revised Code
24 section 5727.75 sets out the formula for the PILOT
25 and then the county commissioners have the ability to

1 add an additional 2- to 3,000 dollars per turbine as
2 an additional fee as part of the PILOT.

3 A. That is correct.

4 Q. Okay. We have some other taxes that are
5 discussed in your testimony as well and I'd like to
6 run through those with you at the moment. The first
7 is the real property tax on the turbines and the
8 towers and the collection lines, those are all
9 personal property?

10 A. No. That's part of the distribution
11 equipment. Power lines.

12 Q. Okay. So let's go back to my list, then.
13 The turbines and the tower, that's generation.

14 A. That's correct.

15 Q. Okay. And if there are collection lines,
16 those are taxed separately.

17 A. That is correct.

18 Q. Okay.

19 A. But it's all considered tangible personal
20 property. I mean, on the return it's considered
21 distribution lines, but it's all tangible personal
22 property.

23 Q. How about the base and the land upon
24 which the turbine tower sits, is that real property?

25 A. The land is real property.

1 Q. All right. And who would be taxed for
2 the value of the land?

3 A. Well, the landowner is normally taxed for
4 the value of the land, but that also could be subject
5 to whatever type of agreement the landowner has with
6 the wind company.

7 Q. Right. So it could either be the wind
8 company paying the real property tax or it could be
9 the landowner paying the real property tax for the
10 land on which the turbine sits.

11 A. Yeah. My understanding, and again, the
12 real property is not my area of expertise so I want
13 to qualify these statements with that statement, my
14 understanding is that the county auditor will assess
15 the landowner, there may be an agreement between the
16 wind company and the landowner that the landowner's
17 going to get reimbursed.

18 Q. Right.

19 A. How that land is valued can vary by
20 county. We've seen different scenarios where the
21 county auditors have asked us, Well, can we value it
22 this way or that way. It's like, You can value it
23 any way you want, it's property in your county.

24 What I set forth in my testimony was, in
25 the written testimony, is that some county auditors

1 are carving out a half-acre parcel and taking away
2 its CAUV value and valuing it at market value for
3 that half acre per wind turbine.

4 Q. And "CAUV" is an acronym for the reduced
5 agricultural taxation value?

6 A. Current agricultural use value is what
7 that acronym stands for, yes, sir.

8 Q. Okay. And so the revenue flow from the
9 real property, that's in addition to everything we've
10 discussed thus far on the personal property tax.

11 A. Could you repeat that?

12 Q. Sure. In looking at revenue flows to
13 government, tax revenue flows to government from a
14 wind project, we have the personal property tax,
15 which we have discussed, and we have the real
16 property tax, and the real property tax is separate
17 and apart from the personal property tax. These are
18 just, these are two different streams of tax revenue
19 going back to the county.

20 A. That is correct.

21 Q. Okay. And then there's also a kWh tax;
22 is that correct?

23 A. That's an acronym for the kilowatt-hour
24 tax.

25 Q. Right. And the kWh tax is levied either

1 by the electric utility or it's self-assessed by very
2 large electric users?

3 A. That's correct.

4 Q. And that, the kWh tax, is not affected by
5 whether there's a turbine or there isn't a turbine,
6 it's just on electric consumption?

7 A. Yes, sir.

8 Q. And the reason you put that in your
9 testimony was you were being -- you were giving a
10 complete overview of all of the taxes that flowed.

11 A. I was trying to be as thorough as
12 possible.

13 Q. And in that vein you will agree with me
14 that the kWh tax is a separate stream of tax revenue
15 that's going to go back to government.

16 A. Yes, sir.

17 Q. Okay. And where does the kWh tax go?
18 What level of government gets the kWh tax?

19 A. The general revenue fund gets a certain
20 percentage and that recently was increased to I think
21 around 88 percent, and then there are local funds
22 that receive the remainder. I set forth those
23 percentages in my written testimony.

24 Q. Okay. Now I want to take you to a
25 different type of exemption. In addition to the

1 Senate Bill 232 exemption there's also an Ohio Air
2 Quality District potential exemption for turbine
3 generation?

4 A. Potentially.

5 Q. And I think you addressed that on page 7
6 of your testimony. I'm sorry, it starts on page 6.
7 Do you see that section of your testimony?

8 A. Yes.

9 Q. Fair to say that it is possible to
10 finance all the generation through an OAQDA bond?
11 There's potential to do that?

12 A. Yes, sir.

13 Q. Okay. And anything that is financed
14 through an OAQDA bond is tax exempt?

15 A. That property is exempt from Ohio
16 taxation, that is correct, sir.

17 Q. So that would be the property tax and
18 would it be the real property tax as well?

19 A. My understanding is it would also exempt
20 the real property tax.

21 Q. So the only tax that wouldn't be affected
22 would be the kWh tax.

23 A. And the CAT.

24 Q. And the CAT tax, okay.

25 A. And any sales taxes that may come into

1 play for any particular taxpayer.

2 Q. Right. And if Champaign Wind sold its
3 power at the wholesale level to an electric utility,
4 would there be sales tax?

5 A. There would be a -- if they sold it to an
6 electric utility, there would be the CAT.

7 Q. The CAT tax, right.

8 A. Yes, sir. That would be the gross
9 receipt to, in your example, the Champaign Wind
10 company.

11 Q. Right. But there would be no -- there
12 would be no sales tax.

13 A. Not on that, no, sir.

14 Q. And the CAT tax would be paid by the
15 utility.

16 A. The CAT would be paid by Champaign Wind.

17 Q. By Champaign. Thank you. That's
18 correct.

19 Okay. So now let's go back to the OAQDA.
20 In your testimony you say that most wind companies
21 don't find the OAQDA financing attractive because
22 they have third-party partners who want to take
23 advantage of the federal income tax credit.

24 A. That's my understanding of the situation.

25 Q. Right. And the federal income tax credit

1 you're talking about is the production tax credit?

2 A. Yes, sir.

3 Q. Does the production tax credit have a
4 sunset date?

5 A. Yes, it does.

6 Q. And is that sunset date December 31st,
7 2012?

8 A. That's my understanding.

9 Q. So there may not be a production tax
10 credit starting the first of the year.

11 A. It's possible, but the caveat to that is
12 that Congress has had -- has extended that sunset
13 date many times.

14 Q. And Congress is looking at more than just
15 the sunset for the production tax credit this year
16 when it comes to renewing taxes.

17 A. They have many other issues, yes, sir.

18 Q. So there is a good chance that this year
19 it would not be renewed, particularly in light of
20 the, for lack of a better term, the financial cliff.

21 MR. VAN KLEY: Objection. It calls for
22 speculation.

23 MR. PETRICOFF: I'm just asking if he
24 knows.

25 ALJ CHILES: The witness may answer if he

1 holds an opinion on the matter.

2 A. I don't have an opinion on that.

3 Q. But would you agree with me that unless
4 Congress does something, the production tax credit
5 would sunset at the first of the year?

6 A. That's my understanding the way the law
7 is written now, yes, sir.

8 Q. And that being the case, if it does
9 sunset, then the OAQDA may become attractive to a
10 wind producer like Champaign Wind.

11 A. Well, it would still have to -- my
12 understanding of why that has not been an attractive
13 way of financing is because of the ownership
14 structure of these wind companies and that OAQDA, and
15 I don't want to go too far beyond my level of
16 knowledge on this because that is another area of
17 expertise with the OAQDA, my understanding is that
18 they're looking for debt financing, not equity
19 financing. And most of these wind companies, or, let
20 me rephrase that, at least some wind companies have
21 equity financing with third-party providers and that
22 was designed, again, from my research, to take
23 advantage of federal tax credits.

24 Q. Right. So if we no longer have the
25 federal tax credits, then the structure could be

1 different than having a third-party equity partner
2 involved in financing a wind farm.

3 A. Potentially.

4 MR. PETRICOFF: May I have a moment, your
5 Honor?

6 ALJ CHILES: Sure.

7 Q. One last question. How many years can
8 you get an exemption under the OAQDA financing? How
9 long can those bonds run?

10 A. By statute, the last time I looked at
11 those statutes, it was 40 years.

12 Q. I have no further questions.

13 A. If I could just clarify something. I
14 said earlier that I thought that my written testimony
15 contained the, how much of the PILOT is generated by
16 the size of the wind project and the number of
17 employees.

18 Apparently, my written testimony does not
19 contain that, but what I wanted to say to clarify
20 that answer was that if the wind project is between a
21 certain megawattage and the number of employees that
22 are Ohio domiciled exceeds certain statutory
23 percentages, that the PILOT is set at a certain
24 amount, and the lower the statutory -- or, the lower
25 the percentage of Ohio employees, the greater the

1 PILOT becomes.

2 Q. Assuming that you make, if you know,
3 assuming that the full ratio is filled, are we
4 talking about 6- to 9,000 dollars a turbine a year?

5 A. My understanding is that the most that a
6 PILOT could be per turbine would be \$9,000 times the
7 megawattage of that turbine.

8 MR. PETRICOFF: Thank you. And thank you
9 for putting that on the record for us.

10 I have no further questions.

11 ALJ CHILES: Thank you.

12 Staff.

13 MR. O'ROURKE: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. O'Rourke:

17 Q. Good morning, Mr. Bialczak. My name is
18 Ryan O'Rourke with the Ohio Attorney General's
19 office. Feel free to call me "Ryan."

20 A. Thank you, sir.

21 Q. You previously stated that you did not
22 review the application that was filed on this case
23 and that was filed by Champaign Wind; is that
24 correct?

25 A. That's correct.

1 Q. Did you review the Staff Report that was
2 filed on this case?

3 A. No, sir.

4 Q. Have you performed any sort of economic
5 modeling that would determine the types of tax
6 dollars that would flow into the state or local
7 governments?

8 A. No, sir.

9 Q. You may have answered some of these
10 questions and I beg your indulgence, but I just want
11 to run through the different types of taxes that
12 could be -- could be levied on a wind farm project
13 such as the one at issue here. The first one is the
14 commercial activities tax; is that correct?

15 A. Yes, sir.

16 Q. And who are the recipients of those tax
17 dollars?

18 A. You know, that percentage changes, and I
19 think the latest change is that it is primarily going
20 to the general revenue fund, but when the CAT was
21 originally enacted, some of it went to the GRF and
22 the majority of it went to property tax replacement
23 funds, again, to replace the property tax revenue,
24 the personal property tax revenue that the counties
25 and the local officials would be missing because of

1 the phase-out of the tax.

2 But those percentages have changed in
3 recent legislation. I think that the GRF gets the
4 majority of that, I don't remember the percentage,
5 but the locals still get a declining percentage of
6 the CAT.

7 Q. The public utility personal property tax
8 is also a tax that they could be subject to; is that
9 correct?

10 A. Yes, sir.

11 Q. And could you, again, who are the
12 beneficiaries of those tax dollars?

13 A. The public utility personal property tax
14 is a local tax so all of the money is given to the
15 local taxing district where the property is located.

16 Q. The kilowatt-hour tax is also a tax that
17 the company could be subject to?

18 A. Yeah. Possibly. Not necessarily, but
19 depending on who they sell the electricity to or who
20 they distribute the electricity to they could be
21 subject to the kWh.

22 Q. And those tax dollars could go to the
23 general revenue fund; is that correct?

24 A. Not all of them. A high percentage of
25 them goes to the GRF.

1 Q. And the balance would go to the locals;
2 is that correct?

3 A. I've set forth in my written testimony
4 those percentages and that's my recollection is that
5 it is to the local funds.

6 Q. There wasn't any discussion of this, but
7 would the Applicant be subject to a state or local
8 income tax?

9 A. You mean as a corporate tax?

10 Q. Yes.

11 A. Well, the franchise tax has been phased
12 out, which essentially was the income tax for
13 corporations, and it's been replaced with the CAT.

14 Q. How about the employees of the company,
15 would their wages be subject to the state or local
16 income tax? Could they be?

17 A. Certainly. The wages could be subject to
18 not only the state, but municipal income taxes,
19 school district income taxes. And to clarify what I
20 just said with regard to the company, the wind
21 company, they would be subject to employer
22 withholding taxes on their employees.

23 Q. Any real property owned by the company
24 could potentially be subject to the real property tax
25 that's levied?

1 A. Yes, sir.

2 Q. How about sales tax? Could a sales tax
3 arise in a particular transaction if the wind company
4 purchased property and sited it in Ohio?

5 A. Without a statutory exemption it would be
6 subject to sales tax.

7 Q. Are you familiar with the term
8 "clawback"?

9 A. Yes, sir.

10 Q. What's your understanding of that term?

11 A. To reach back and obtain taxes that were
12 originally exempted but for whatever reason the
13 taxpayer no longer is entitled to that exemption, and
14 perhaps never was, so the governmental entity can
15 clawback those taxes.

16 Q. Is there a clawback provision in the --
17 if the wind company received an exemption, is there a
18 potential for a clawback to occur? Is that in the
19 statute?

20 A. I don't believe there's a clawback
21 provision. What there's a provision for is for a
22 wind company to lose its exemption. I'd have to look
23 at the statute again, but I do not recall a provision
24 that would allow for the assessment of taxes that had
25 been exempted for earlier years.

1 Q. Could I direct your attention to page 10
2 of your prefiled testimony. Let me know when you're
3 there.

4 A. I'm there.

5 Q. And, actually, I'm going to start on page
6 9 and I'll just read the question. "To your
7 knowledge, why were the requirements set forth in RC
8 5727.75(F) made a part of the statute?" And you go
9 forth and give several reasons.

10 And if you could go to the one, two,
11 three, fourth line from the bottom, it says ". . . to
12 provide Ohio the ability to revoke certification and
13 subject to taxation any owner or lessee that might
14 fail to meet its statutory obligations," and you go
15 on to say some other words, but did I read those
16 provisions correctly?

17 A. Yes, sir.

18 Q. I guess that was my understanding of
19 maybe what the clawback in this statute would work,
20 how that would work. Could you explain what type of
21 procedures the company would have to abide by if it
22 was later determined that they weren't entitled to an
23 exemption? So, for instance, would they have to pay
24 back any money to the locals or to the state if
25 they --

1 A. My understanding of how this would work,
2 if someone -- if a taxpayer loses its
3 certification -- let's take a step back. Any energy
4 company that has a qualified energy project on an
5 annual basis has to file what's called a nameplate
6 capacity report with the Department of Development
7 and in that report they need to show how they either
8 increased or decreased their nameplate capacity.

9 In other words, they need to show what
10 properties they have added or subtracted from their
11 property in use in business in Ohio.

12 The Tax Department wanted that
13 information made available so that if a taxpayer ever
14 loses its exemption, we would have access to
15 independent records that would show the amount of
16 property that the taxpayer has in Ohio at that time
17 so that we can issue an assessment, hopefully an
18 accurate assessment, based upon their current
19 investment in Ohio.

20 So what I was referring to with the
21 statement that you just quoted was if a taxpayer
22 loses its certification, the Tax Department wants to
23 be able to go back in and issue an accurate
24 assessment on a going-forward basis, so we need to
25 know what properties they have in Ohio at that time.

1 So the taxpayer's exempt, they're not
2 filing a return with us each year, they're filing
3 with the Department -- they're not filing a return
4 with the Tax Department, they're filing with the
5 Department of Development a report. We want to be
6 able to take that information and put together an
7 assessment based upon an assessed value which is
8 based upon the amount of investment the taxpayer has
9 in Ohio. Again, we want to do that on an on-going
10 basis if they lose their certification.

11 Q. Now, if the Ohio Department did issue an
12 assessment against the wind company, would there be
13 an opportunity to challenge that assessment?

14 A. An opportunity to challenge it by the
15 taxpayer?

16 Q. Yes.

17 A. Certainly. Once we issue the assessment
18 the taxpayer could file an appeal, it's called a
19 petition for reassessment, with the Department of
20 Taxation and it would go through the administrative
21 appeal process.

22 Q. Perhaps up through the Ohio Board of Tax
23 Appeals?

24 A. The first level of appeal is with the
25 Ohio Department of Taxation, and then the tax

1 commissioners issue a final determination. If the
2 taxpayer or county does not agree with that final
3 determination, then either party can appeal to the
4 Ohio Board of Tax Appeals, that is correct.

5 Q. Just so we're clear, none of the
6 challenge would occur before the Public Utilities
7 Commission of Ohio.

8 A. That's correct.

9 Now, I will also point out that the
10 challenge to the exemption might have its own
11 procedural aspect to it with regard to the Department
12 of Development, but with respect to the taxation of
13 that property, the procedure is just as we set forth.

14 Q. And, just to further follow-up, that
15 challenge to the assessment would also not take place
16 in front of the Ohio Power Siting Board; is that
17 correct?

18 A. That is correct.

19 Q. Could I direct you to page 6 of your
20 prefilled testimony. And I'll be starting on the one,
21 two, three, four, five, sixth line down starting with
22 the word "If." Let me know when you get there.

23 A. Yes, sir, I'm there.

24 Q. So I'll read this. "If the wind farm is
25 in more than one taxing district, and if few jobs are

1 created by a wind farm project (as is usually the
2 case), the problem becomes how to apportion the jobs
3 between/among the taxing districts to meet statutory
4 requirements." I did read that correctly?

5 A. Yes, sir.

6 Q. Looking at that parenthetical, "as is
7 usually the case," what is your basis for making that
8 statement?

9 A. From all the discussions that we had
10 beginning in late-2008 through the drafting of Senate
11 Bill 232, the discussions we had with the wind energy
12 industry, and also based on my own research, what's
13 been clear is that once a wind project is put into
14 place any permanent jobs are few because there's not
15 that much to do other than to maintain the wind
16 turbines.

17 Q. That statement was not made based upon a
18 review of the actual wind farm project that is
19 currently operating in the state of Ohio; is that
20 correct?

21 A. That's correct.

22 MR. O'ROURKE: No further questions.

23 ALJ CHILES: Thank you.

24 Ms. Napier, redirect?

25 MS. NAPIER: Yes, your Honor, just a few

1 questions.

2 - - -

3 REDIRECT EXAMINATION

4 By Ms. Napier:

5 Q. Mr. Bialczak, do you know the effective
6 date of 5727.75, approximately? If you know.

7 A. June 2010? September 2010? I don't
8 remember exactly.

9 Q. Okay. And you testified before a hearing
10 before the Ohio Power Siting Board in 2009, correct?

11 A. Yes, ma'am.

12 Q. Okay. And so your testimony did not
13 include portions of 5727.75; is that correct?

14 A. That statute didn't exist in 2009.

15 Q. So with regard to 5727.75, just to
16 clarify your testimony in response to Mr. Petricoff,
17 the Ohio Department of Development would not approve
18 or deny the certification of the qualified energy
19 project until all the requirements of paragraph (F)
20 are met?

21 A. That's my understanding of how that's
22 supposed to work. Now, again, what the statute says
23 and in practice would be two different things.
24 That's how the Department of Development, you know,
25 things work out procedurally sometimes, this is what

1 the statute says, but in practice corners get cut
2 sometimes. But I have no way of knowing that that's
3 what the Department of Development's doing.

4 By the terms of the statute that's how
5 the exemption is supposed to be enacted is once all
6 those requirements are met.

7 When we drafted the Administrative Code
8 rules in chapter 122, we wanted to give the
9 Development director a little bit of leeway with
10 regard, and the taxpayer, with regard to meeting
11 those requirements. So the director can give, I
12 think the term of art is a "qualified exemption"
13 which allows the exemption while some of these
14 requirements are in the process of being met, and if
15 those requirements are ultimately not met, then the
16 qualified exemption is lost.

17 Q. Do you know, in those administrative
18 rules, do they set forth which requirements or is
19 that a broad-based discretion of the requirements
20 that are in the process of being met?

21 A. Again, because those aren't rules that
22 pertain to the Department of Taxation, my
23 recollection from having read them a few times is
24 that it's a broad-based application of, you know,
25 Well, we don't have the county engineer's sign-off

1 yet but we're going to get it. Okay, when are you
2 going to get it. A date might be given. Okay, well,
3 we're going to give you a qualified exemption pending
4 you getting the county engineer to sign off on what
5 the county engineer has to sign off on.

6 Or if you have -- or if the taxpayer has
7 an established relationship with a local educational
8 institution with regard to jobs training, but they're
9 in the process of doing that, so Development could
10 give a qualified exemption and then, of course, the
11 taxpayer would have to come forward with information
12 showing that they actually did do that.

13 Q. So, for instance, the county
14 commissioners may not have ruled on approving or
15 passing a resolution that's required, that could --
16 during that time before the resolution is passed
17 there could be a qualified approval by the Department
18 of Development; is that your testimony?

19 A. Well, don't forget that these wind
20 projects are so big that sometimes they go into more
21 than one county. So what Development is looking for
22 pursuant to the Administrative Code rules and 5727.75
23 is notification from the county commissioners that
24 they are approving the project for exemption.

25 If one county approves it and another

1 county doesn't, if you have a multicounty taxpayer,
2 the county that doesn't approve it, that doesn't
3 prevent the wind project from being installed in the
4 county, but it does prevent that wind project from
5 gaining tax exemption in that particular county.

6 So the wind company's tangible personal
7 property and real property would be subject to tax if
8 the county commissioners don't issue their approval.

9 Q. So, just to clarify, so if the county
10 board of commissioners, at least if it's within one
11 county, does not approve or pass a resolution
12 approving the qualified energy project, the director
13 may still be able to grant that under the Ohio
14 Administrative Code?

15 A. Well, the director can give it a
16 qualified -- can say that it qualifies, but it's not
17 going to gain any tax exemption because, and I forget
18 which rule it is, but it's specifically set forth in
19 the Ohio Administrative Code rules in chapter 122
20 that any county for which the county commissioners
21 don't grant an exemption, the taxpayer does not get
22 an exemption.

23 Q. And in order to receive the qualified
24 energy project certification does there need to be an
25 approval by the Ohio Power Siting Board of a siting

1 certificate?

2 A. Yes, ma'am.

3 Q. Other than that requirement is there any
4 bearing that the Ohio Power Siting Board has on the
5 Department of Development certifying it as a
6 qualified energy project?

7 A. No, ma'am.

8 Q. So they're basically two different
9 processes.

10 A. That is correct.

11 Q. So if the Ohio Power Siting Board sets
12 some requirements such as training and -- emergency
13 training or with regard to road maintenance which are
14 also included in 5727.75, in your opinion, could
15 there be some overlap or duplication?

16 A. Between what the Ohio Power Siting Board
17 requires and what the statute requires?

18 Q. Yes.

19 A. There potentially could be.

20 Q. Okay.

21 A. But just to clarify, for exemption
22 purposes, in order to get that exemption from the
23 Department of Development, the taxpayer is going to
24 have to comply with 5727.75 requirements with regard
25 to training and the particulars of how to do that are

1 set forth in the rules and that's, again, more a
2 Department of Development issue than a Taxation
3 issue, but unless the taxpayer meets those
4 requirements set forth in the statute and the rules,
5 Development has a basis not to grant the exemption.

6 Q. Just turning to personal property tax,
7 does wind turbine personal property, can they obtain
8 an accelerated depreciation schedule?

9 A. No.

10 Q. Okay.

11 A. I hesitated because I didn't know like if
12 you were referring to what you could get under
13 federal like for like a modified accelerated cost
14 recovery. We don't have that type of mechanism in
15 Ohio law, it's this is the true value computation
16 that's applied. If the taxpayer has information
17 showing that the true value computation does not
18 reflect the true value of his property, then we can
19 consider that information in making an adjustment to
20 the true value, but there's no accelerated
21 depreciation.

22 Q. And do you know if any wind projects have
23 gone through that process of trying to reduce their
24 depreciation schedule for useful life?

25 A. I am not aware of any.

1 Q. Do you know if the jobs that are set
2 forth in the requirements are permanent or temporary?
3 Is there some qualification as to what types of jobs
4 are Ohio-based for the 5727.75 qualified energy
5 project?

6 A. Well, certainly the installation of
7 the -- and the creation of the wind farm, they're
8 looking at a certain percentage of Ohio jobs for the
9 construction workers. It has to be at least
10 50 percent. Anything below 50 percent can cost the
11 wind turbine company an exemption.

12 With regard to ongoing jobs, that's more
13 of a Development issue. I think that is addressed in
14 chapter 122 of the Administrative Code. That's the
15 best I can answer to that question.

16 Q. Okay. And in being involved with the
17 drafting of this, you had indicated that the
18 requirement of the PILOT was to compensate the local
19 governments for loss of tax revenue due to the
20 exemption and the requirements that were set forth
21 for the alternative -- I'm sorry, for the qualified
22 energy project; can you tell me why that was
23 important at the time?

24 MR. PETRICOFF: Objection. That goes
25 beyond the scope of the cross. That's going back to

1 his original testimony.

2 ALJ CHILES: Ms. Napier.

3 MS. NAPIER: I believe that it was
4 addressed in response to Mr. Petricoff's questioning
5 the basis for 5727.75. I was just trying to get a
6 clarification.

7 ALJ CHILES: Can you read the question
8 back for me, please.

9 (Record read.)

10 ALJ CHILES: Did you have something to
11 add, Mr. Petricoff?

12 MR. PETRICOFF: Yes, I was just going to
13 say the cross was about, in addition, explored tax
14 burdens. It did not explore that aspect of it.

15 MS. PARCELS: Your Honors, I believe he
16 might have elaborated on that question in my initial
17 cross as well.

18 ALJ CHILES: The objection is overruled,
19 but I think you need to keep your scope of
20 questioning narrow in this area.

21 MS. NAPIER: And I believe this might be
22 my last question, or my second-to-last question.

23 ALJ CHILES: Thank you.

24 A. The PILOT was implemented in order to
25 compensate the locals for some of the lost tax

revenue.

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

ALJ CHILES: Thank you.

Recross, Ms. Parcels?

- - -

RECROSS-EXAMINATION

By Ms. Parcels:

Q. You indicated the PILOT was to compensate locals for lost tax revenue, and in my initial cross you said it's a possibility the city of Urbana or any other local entity might have, so to speak, a shot at those funds depending on how the county treasurer and others want to divvy that up.

Can I direct your attention to the Staff Report, should be a purple-copied exhibit up there. If you could turn to page 8, that page is intentionally blank, but on the facing page there's a map. If you're in the map section, you've gone too far. It's the very first page of the map section.

Is that the overview map? Are you looking at it?

A. (Indicating.)

Q. Do you see some gray shaded areas on that map?

1 A. Yes, ma'am.

2 Q. Would you agree those gray shaded areas
3 are municipalities marked Urbana, Mutual, and
4 Mechanicsburg?

5 A. Yes, ma'am.

6 Q. Does it appear any turbines are located
7 within the boundaries of those municipalities?

8 A. Well, they're outside the gray -- the
9 boundaries of the wind turbine farm are outside of
10 the gray areas.

11 Q. Okay. So if there are no turbines
12 actually within the municipalities, would you say,
13 then, that there is a lesser likelihood that those
14 municipalities would share in any PILOT or current --
15 under either tax system, whether it's the current tax
16 system or the PILOT, that any of the municipalities
17 shown on that map would share in any tax revenue?

18 A. Under the current tax system those
19 municipalities would not receive any public utility
20 personal property tax generated by a wind farm. I
21 can't say with regard to the PILOT system because,
22 again, that is a local matter that the state did not
23 want to have any say in. In other words, we wanted
24 to give the locals autonomy as to how they're going
25 to use any funds generated from the PILOT.

1 Q. Okay. And you also indicated that --
2 well, you also indicated that the PILOT would be
3 based on the number of Ohio-domiciled employees and
4 that there might be some potential for municipal
5 income tax revenue. Is that based on where the
6 employees have their domiciles or where the office
7 for the wind facility's located?

8 A. It gets complicated when you talk about
9 municipal income taxes because of jurisdictions, and
10 generally it is -- there is a reciprocity agreement
11 if someone lives in one municipality and works in
12 another municipality with regard to sharing of
13 municipal income taxes.

14 So if someone lived, let's say, in Urbana
15 but worked on the wind farm, well, again, I have to
16 conjecture here because I don't know if there's any
17 type of reciprocity agreement between Urbana and the
18 other districts that might be involved in this, okay?
19 Say there isn't. Then my understanding of municipal
20 income tax would be that you're going to be paying to
21 Urbana.

22 Q. If you're an Urbana resident or if the
23 corporate office is in Urbana, or both?

24 A. Well, the corporate office would be
25 irrelevant. It's going to be where the employee

1 lives or works.

2 Q. Okay. But would you agree that if
3 someone's working on a turbine in the wind farm, that
4 they are working outside of the municipality of this
5 overview map?

6 A. Based upon that map it looks as if they
7 would be working outside the municipality, that's
8 correct.

9 Q. Like in a township.

10 A. Yes, it could be possibly in a township.

11 MS. PARCELS: Okay. Nothing further,
12 your Honors. Thank you.

13 ALJ CHILES: Thank you.

14 Mr. Van Kley.

15 MR. VAN KLEY: Nothing for us.

16 ALJ CHILES: Mr. Petricoff?

17 MR. PETRICOFF: No further questions,
18 your Honor.

19 ALJ CHILES: Mr. O'Rourke?

20 MR. O'ROURKE: Just one, briefly.

21 - - -

22 RECROSS-EXAMINATION

23 By Mr. O'Rourke:

24 Q. In response to Ms. Napier's question, she
25 was asking you about the 302 computation and you said

1 that a wind company or perhaps any public utility
2 personal property taxpayer could not abide by the
3 schedule, the 302, if they could show you that the
4 302 computation does not accurately capture true
5 value. What would be some of the ways that they
6 could show you that the 302 computation does not
7 accurately capture true value?

8 A. If their usage of the equipment or
9 through their usage of the equipment the equipment
10 doesn't last as long, they have some type of special
11 circumstance that detracts from the industry norm,
12 that perhaps all the wind turbines they bought were
13 improperly manufactured and they all fizzled after
14 five years, but this is total conjecture. I don't
15 know what could go wrong with a wind turbine that
16 would generate that type of result where we could
17 reduce the valuation, that's just because I'm not
18 familiar enough with that industry with regard to
19 what could mechanically go wrong.

20 But, generally, I guess I'll talk in more
21 general terms, if there's mechanical reasons why
22 those or usage reasons why those wind turbines don't
23 last the 30 years, that would be a consideration we
24 could make in reducing the valuation of the property.
25 What those particular reasons might be, I couldn't

1 say.

2 Q. And to make out a claim they would need
3 to show some sort of appraisal or documentary
4 evidence, mathematical computation?

5 A. Probably, more than just an appraisal.
6 We'd probably be looking for tangible evidence that
7 shows that, you know, we had 1,000 wind turbines
8 installed and in the course of five years 80 percent
9 of them quit functioning. Oh, wow. Okay, well, now
10 you have some tangible evidence that we can look at,
11 something substantive that shows that your situation,
12 your peculiar situation is subject to review because
13 the standard true value computation doesn't reflect
14 the true value of the property versus just coming in
15 with an appraisal.

16 An appraisal is just an educated guess,
17 and we have a standard true value computation that's
18 set forth in statute and has been approved judicially
19 and it shows the prima facie correct true value of
20 the property.

21 So an appraisal is just someone else's
22 opinion. We would not go just off an appraisal. The
23 taxpayer would need to show something more
24 substantive is wrong with the property, that they
25 have special and unusual circumstances that the true

1 value computation doesn't reflect the true value.

2 MR. O'ROURKE: Thank you. Nothing
3 further.

4 ALJ CHILES: Thank you.

5 I have no questions so you are excused.

6 THE WITNESS: Thank you.

7 ALJ CHILES: Thank you.

8 (Witness excused.)

9 ALJ CHILES: Ms. Napier.

10 MS. NAPIER: Your Honor, the county and
11 townships would request that the direct testimony of
12 Stanley Bialczak which is marked as County and
13 Township Exhibit 6 be admitted into evidence.

14 ALJ CHILES: Are there any objections to
15 the admission of County and Townships Exhibit 6?

16 MR. PETRICOFF: No objection.

17 ALJ CHILES: Hearing none, County and
18 Townships Exhibit 6 shall be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 ALJ CHILES: At this point, since we're
21 very close to noon, we will take our lunch break. We
22 will reconvene at 1 o'clock. Thank you.

23 (At 11:57 a.m. a lunch recess was taken
24 until 1:00 p.m.)

25 - - -

1 Monday Afternoon Session,
2 November 26, 2012.

3 - - -

4 ALJ TAUBER: Let's go back on the record.
5 Ms. Napier.

6 MS. NAPIER: Yes, your Honor. County and
7 townships would call Kyle Wendel to the stand.

8 ALJ TAUBER: Mr. Wendel, please raise
9 your right hand.

10 (Witness sworn.)

11 ALJ TAUBER: Thank you.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 - - -

14 KYLE J. WENDEL

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

17 DIRECT EXAMINATION

18 By Ms. Napier:

19 Q. Mr. Wendel, can you state your full name
20 and business address for the record.

21 A. It's Kyle J. Wendel. The address is
22 Van Wert County Engineer, 220 South Market, Van Wert,
23 Ohio, 45891.

24 Q. And your current position?

25 A. County engineer.

1 Q. And you have in front of you what has
2 been marked as County and Township Exhibit 7; is that
3 correct?

4 A. Correct.

5 Q. Is Exhibit 6 a true copy of your direct
6 testimony? I'm sorry. Seven. Excuse me. Seven.

7 A. I did have actually a few changes.

8 Q. Okay. Let's go with your first change.

9 A. Do you want me to go --

10 Q. Yeah. You indicated to me that your last
11 question, the last question on --

12 A. Yeah, on page 1, "Were you consulted at
13 any time by the OPSB staff regarding your opinion,"
14 actually, the answer would be yes, and it was after
15 the project to check for completion.

16 Q. And on page 2.

17 A. Would you just like for me to just go
18 through each one of these changes?

19 Q. Yes.

20 A. Okay. The second question, "Did the
21 developer on the project in your county improve the
22 roads and bridges, if applicable, before beginning
23 construction?" And I think it said "Yes." Well, I
24 wanted to paraphrase, say make sure it was some of
25 the roads and bridges, not all. Just what was deemed

1 necessary.

2 Q. Okay.

3 A. The third one down, "Were the
4 improvements made upon your request?" And "Mainly,
5 yes." The developer had an outside firm perform
6 structural testing to determine which roads needed
7 improvement. After negotiation we developed an
8 improvement plan.

9 Q. Okay.

10 MR. SETTINERI: I'm sorry to interrupt.
11 I'm trying to write this down as we go.

12 ALJ TAUBER: Yeah, could you please
13 repeat that.

14 MR. PARRAM: Could we go back to the
15 prior question actually? I just want to make sure I
16 got it.

17 ALJ TAUBER: Absolutely.

18 Let's start with your first correction
19 you note.

20 THE WITNESS: The first correction was
21 the last remark on the first page, "Were you
22 consulted at any time by the OPSB staff regarding
23 your opinion as to transportation or road/bridge
24 issues in your county?" And the answer was: "Yes,
25 after the project, to check for completion."

1 MR. PARRAM: Okay.

2 ALJ TAUBER: The second correction.

3 THE WITNESS: Okay. This was the second
4 question down on page 2, "Did the developer of the
5 project in your county improve the roads and bridges,
6 if applicable, before beginning construction?" And I
7 added the words "some of the roads" so it didn't
8 imply that all roads and bridges were improved.

9 MR. SETTINERI: If I may interrupt
10 quickly. "Yes. It was necessary, in my opinion, for
11 some of the roads to be improved"?

12 THE WITNESS: That's correct.

13 MR. SETTINERI: Thank you, sir.

14 Third one down, "Were the improvements
15 made upon your request?" And it was "Mainly, yes.
16 The developer had an outside firm" -- and here's
17 where we added -- "perform structural testing to
18 determine which roads needed improvement. After
19 negotiation we developed an improvement plan."

20 ALJ CHILES: Could you repeat that one
21 more time, please.

22 THE WITNESS: Okay. "Mainly, yes. The
23 developer had an outside firm perform structural
24 testing to determine which roads needed improvement.
25 After negotiation we developed an improvement plan."

1 ALJ TAUBER: So that's the second
2 sentence?

3 THE WITNESS: This is actually the third
4 one down on page 2.

5 ALJ TAUBER: Okay. And then could you
6 repeat the last sentence of that?

7 THE WITNESS: "After negotiation we
8 developed an improvement plan."

9 ALJ TAUBER: Thank you.

10 THE WITNESS: And then the next one at
11 the bottom on page 2, "What issues were set forth in
12 the road use agreement in which your office was
13 involved?" It says, "Mainly it spelled out penalties
14 for signage, loads and use of unauthorized routes as
15 well as requiring payment by the developer of a road
16 inspector for the county." And then this was added:
17 "It also included a fee payable to our office to
18 recover our time spent on addressing -- drive pipe
19 sizing, addressing, et cetera."

20 ALJ TAUBER: I'm going to ask you again
21 to read it one more time. Just read it slow so we
22 can catch up to you.

23 THE WITNESS: This is the sentence that
24 was added at the end of the answer: "It also
25 included a fee payable to our office to cover our

1 time spent on addressing, drive pipe sizing,
2 et cetera."

3 ALJ TAUBER: Thank you.

4 THE WITNESS: And then the last question
5 on page 2, "Did you take issue with any of the terms
6 of the road use agreement or omissions from terms of
7 the road use agreement?" And then the third line
8 down, well, I'll just read it, "One important issue I
9 had was that the developer disputed that the road
10 agreement penalties included its responsibility for
11 the actions of the subcontractors supplying
12 materials" -- and now this part was added -- "from
13 outside the project area."

14 Everybody with me?

15 Next sentence, "Therefore, the county had
16 to enter into separate agreements with numerous
17 subcontractors" -- and then this portion was added --
18 "for road bonds for loads hauled to the project
19 area."

20 ALJ TAUBER: For road bonds for --

21 THE WITNESS: For road bonds for loads
22 hauled to the project area.

23 MR. SETTINERI: Sir, if I can just go
24 back to clarify for the record, on that same page
25 your answer, second question down, "Yes" -- strike

1 that, the third one down, you added "perform
2 structural testing," that phrase, did that replace
3 the language that was there previously, "propose some
4 of the improvements and we mostly agreed upon the
5 improvements"? Does that get deleted then?

6 THE WITNESS: Yes, this would be in place
7 of that.

8 MR. SETTINERI: Okay. Thank you.

9 THE WITNESS: Moving on here, this will
10 be page 3, one, two, three, four, the fifth question
11 down, the response to that question would be --

12 ALJ TAUBER: The question is "Anything
13 else you would like to say to the OPSB?"

14 MS. NAPIER: I think it's the one right
15 before it.

16 THE WITNESS: "In your opinion, do you
17 believe that there would be damage to your roads and
18 bridges, if applicable, in removing the turbines over
19 your roads and bridges?" And the response is:
20 "Damage would be likely."

21 ALJ TAUBER: Does that replace "Of
22 course"?

23 THE WITNESS: Yeah.

24 MR. SETTINERI: Is that damage "will" be
25 likely?

1 THE WITNESS: Would.

2 MR. SETTINERI: Would be likely. Thank
3 you.

4 Q. (By Ms. Napier) Mr. Wendel, other than
5 those changes that you've set forth, any other -- do
6 you believe this to be a true copy of your direct
7 testimony?

8 A. Actually, there is one other -- there's
9 one other question that you asked me that I was
10 reviewing this morning, and I'm trying to find it.
11 It's regarding the road bond.

12 Q. I think you had talked to me about --

13 A. Here we are. It's on page 3, and it's
14 the second question down, "Did the developer post a
15 bond or other financial assurance? If so, what point
16 in the process did they post the bond or other
17 financial assurance?" And I spoke here that they did
18 post a bond.

19 I went back -- you understand this has
20 just been far enough back that some of these things
21 were discussed when we were putting this agreement
22 together. We had other road agreements with other
23 entities for hauling components in for this project
24 which did have bonds. This one, in fact, did not
25 have a road bond prepared.

1 We did have an escrow account set up in
2 place of that to have cash available to do road
3 repairs. We did not have a road bond; I wanted to
4 clarify that.

5 Q. So the developer did post money in an
6 escrow account?

7 A. Correct. That's right.

8 ALJ TAUBER: So the sentence should be
9 changed to read "The developer did post money in an
10 escrow account"?

11 THE WITNESS: Yeah, that would suffice.

12 Q. Was it prior to construction?

13 A. Yes.

14 ALJ TAUBER: So the sentence then reads
15 "The developer did post money in an escrow account
16 prior to construction"?

17 THE WITNESS: Sure.

18 Q. Thank you. And so --

19 MR. PARRAM: Would that also change the
20 next question, "Did you, as the county engineer, set
21 the amount of the bond?"

22 THE WITNESS: Yeah. Again, in the
23 preliminary agreement I was looking at when we were
24 proposing and working on this road bond, we were
25 coming up with different amounts, we ended up

1 striking the amount from this road agreement.

2 MR. PARRAM: So what would your testimony
3 be as to the second question?

4 THE WITNESS: No. No. Did not set an
5 amount of bond. There was no bond.

6 Q. So other than the first sentence
7 everything else should be stricken, which would be
8 "The developer did post money in an escrow account"?

9 A. Right.

10 ALJ TAUBER: And then the second question
11 on that page should read "Do you, as the county
12 engineer, set the amount of the bond?" And the
13 answer is "No."

14 THE WITNESS: Would be "no" or "not
15 applicable," however you feel.

16 Q. Did you set the escrow account?

17 A. Yes. It was \$2 million.

18 Q. Okay. So should the question be "set the
19 amount of the escrow account"?

20 A. That's entirely however you guys want it
21 worded.

22 MS. NAPIER: Would you like me to revise
23 that question?

24 ALJ TAUBER: In light of the revisions to
25 Mr. Wendel's testimony, at this time do any of the

1 parties need to take time to review any of these
2 changes?

3 MR. SETTINERI: No.

4 ALJ TAUBER: Okay. Are there any other
5 changes you have to your testimony, Mr. Wendel?

6 THE WITNESS: No.

7 ALJ TAUBER: Is there anything you need
8 to add?

9 MS. NAPIER: I just want to make sure,
10 for the record, at least the question that's
11 following, it would be the third -- I'm sorry, the
12 second question on page 3, the question followed from
13 the previous question, it should say, "Did you, as
14 the county engineer, set the amount of the escrow
15 account?" which he has indicated --

16 ALJ TAUBER: Instead of "bond."

17 MS. NAPIER: Yes, instead of "bond."

18 ALJ TAUBER: Will the answer remain "No,"
19 then?

20 MS. NAPIER: I believe the answer is
21 "Yes."

22 THE WITNESS: The answer would be "Yes"
23 if we're going to call that the escrow account.

24 MS. NAPIER: I think, because in the
25 previous question I asked him if the developer posted

1 a bond or other financial assurance, and I think then
2 he had said that was a bond, but, in essence, it's
3 talking about another financial assurance.

4 ALJ TAUBER: I think we have that. Let
5 me just read it one more time just to make sure we're
6 all on the same page. So the question is: "Did you,
7 as the county engineer, set the amount of the escrow
8 bond?"

9 "Answer: Yes."

10 THE WITNESS: I don't know if I'd call it
11 an escrow bond. I would just call it escrow account.
12 And then the answer would be "Yes."

13 ALJ TAUBER: So we'll change it to
14 "escrow account"?

15 MR. PARRAM: I'm sorry, but I'm just
16 going to double-check. The first question on page 3,
17 the answer to that is now just "Did the developer
18 post money in an escrow account prior to
19 construction," then period, strike the rest of that,
20 correct? Strike the rest of that sentence?

21 ALJ TAUBER: That's what the Bench has.

22 MS. NAPIER: I think so.

23 MR. PARRAM: Okay. Then I'm good.

24 ALJ TAUBER: Is everybody on the same
25 page with the first question? Do you want to repeat

1 it one more time?

2 Sounds like we're ready to proceed.

3 Q. (By Ms. Napier) So with those changes
4 that you've made, if I asked you these questions
5 today, would your answers be the same with those
6 changes?

7 A. Yes.

8 MS. NAPIER: Thank you. I believe the
9 witness is now available for cross-examination.

10 ALJ TAUBER: Thank you.

11 Ms. Parcels?

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Parcels:

15 Q. Good afternoon, Mr. Wendel. In the
16 changes to your direct testimony I just wanted to
17 clarify something. You indicated on page 2, I think
18 this was your fourth revision, that there was also
19 the inclusion of a fee payable to the engineer's
20 office to cover time spent on addressing and drive
21 pipe sizing. Can you explain to me what drive pipe
22 sizing is?

23 A. Each turbine, or there sometimes were a
24 set of two or a set of three turbines that used one
25 access drive off of the public road system, and each

1 one of these drives was required to have its own
2 address for, you know, emergency vehicle purposes,
3 things of that nature, if there's an accident.

4 So we had to go out, issue addresses for
5 each access drive, and in most cases, we're flat up
6 in Van Wert, you know, each roadside ditch, if
7 somebody puts a drive in, you need to have a drive
8 pipe to allow for drainage through the ditch through
9 the driveway and they're always different sizes. So,
10 yeah, we had to have personnel go out and do that for
11 each point of access.

12 Q. Would drive pipes also be known as
13 "culverts"?

14 A. Sure.

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

16 And then you indicated that the addresses
17 were assigned by your office for emergency personnel
18 to reach those --

19 A. Yeah. Exactly. We do addressing for
20 anybody that, you know, builds a new construction or
21 anything, you know. That's just what we do.

22 Q. Did your engineer's office or, if you
23 know, was it your responsibility to notify your local
24 dispatch center of those new addresses or did the
25 company do it?

1 A. No. No, we did it.

2 Q. Okay. And how many new addresses?

3 A. I knew you were going to ask me that.

4 Q. Approximately.

5 A. Well, there were 152 turbines, I think
6 roughly 20 in Paulding County, so we had about 130,
7 and let's just say each drive had an average of two
8 turbines off of it, some of them were one, some of
9 them were three. Where was I at, 120? So let's say
10 60.

11 Q. Okay.

12 A. That's totally a rough estimate.

13 Q. So not every turbine got an address, but
14 every new driveway to access --

15 A. That's right.

16 Q. -- the turbines --

17 A. Some drives had multiple turbines with
18 the drive access.

19 Q. The then multiple turbine driveways would
20 then all be the same street address?

21 A. Right.

22 Q. In your experience as county engineer is
23 the condition of roads a factor in certain vehicular
24 accidents?

25 A. Yes, it could come into play.

1 Q. Can you describe for me certain
2 situations where there's damage to a road that can
3 create conditions that can cause a traffic crash?

4 A. I would say, you know, conditions of
5 rutting in a roadway where your car tends to, you
6 know, the wheels tend to pull towards a rut in the
7 road, what we call blowouts in the roadway where the
8 asphalt, stone, you know, chip seal, whatever, blows
9 out in a certain area creating potholes, loose stone,
10 those types of situations. Those could all be
11 potential causes for an accident.

12 Q. Okay. And you also spoke in your direct
13 testimony about some of the subcontractors on the
14 project and how the county had to enter separate
15 agreements with them. Do you know if any of the
16 loads that those subcontractors hauled came through
17 the city of Van Wert?

18 A. Yes, some of them did.

19 Q. Okay. So did the, if you know, did the
20 city engineer's office also seek those sorts of
21 agreements?

22 A. Yes. Yes.

23 Q. So were those agreements signed onto by
24 the county engineer and the city engineer and the
25 subcontractors, or were they two sets of separate

1 agreements?

2 A. No; they obtained both permission, if you
3 will, from the city and the county.

4 Q. So the county and the city worked
5 together on that process?

6 A. Right.

7 MS. PARCELS: Okay. Nothing further,
8 your Honors. Thank you.

9 ALJ TAUBER: Thank you.

10 Mr. Van Kley.

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

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Van Kley:

15 Q. Let me direct your attention to page 2 of
16 your testimony, please. And why don't we talk
17 briefly about the second question and answer on that
18 page where you talk about some of the roads having to
19 be improved before construction in order to prevent
20 road failure.

21 Can you describe to me the process by
22 which those roads were improved?

23 A. Yes. The developer contracted with an
24 outside consultant, Westwood I believe was their
25 name, they came in, they did core samples every half

1 mile of roadway to be affected. They also did
2 subsurface radar testing. And then they came in and
3 based on their haul plan sheet they determined
4 roughly how many loads of concrete and aggregate,
5 steel that were to go down each section of each road.

6 So once they had all this information in
7 place, we tried to all make a determination of which
8 roads we felt were adequate and which roads we felt
9 were inadequate that would need, you know, up-front
10 improvements prior to construction.

11 You know, we made it clear to them we're
12 not going to have roads get totally destroyed, we've
13 seen it happen on, you know, mega-dairy operations
14 construction. So, you know, we told them flat out
15 it's a fact some of these roads just aren't going to
16 handle this, and they agreed.

17 Q. Is there a particular name for the type
18 of improvement that occurred on those roads?

19 A. Well, the most extensive improvement they
20 did was concrete stabilization where they ground up
21 the existing road, they ground up up to 6 inches of
22 base and stabilized with concrete, got it all back in
23 place, then they came back with an inch and a quarter
24 of asphalt over top so it's basically, for all
25 intents and purposes, a new road.

1 And then a lot of these improvements were
2 simply asphalt overlays to add strength.

3 Q. Okay. With regard to your third question
4 and answer on page 2 of your testimony, you say
5 "Mainly, yes. The developer had an outside firm
6 propose some of the improvements and we mostly agreed
7 upon the improvements." I'm sorry, I read the old
8 testimony. Let me reread the new testimony.

9 "Mainly, yes. The developer had an
10 outside firm perform structural testing to determine
11 which roads needed improvement. After negotiation we
12 developed an improvement plan."

13 Does this answer pertain to improvements
14 made before the construction of --

15 A. Yes.

16 Q. -- the wind farm?

17 A. Yes. This plan was for preconstruction
18 improvements. But in that plan, you know, some of
19 the improvements that were suggested were going to
20 be, you know, no improvement prior to construction
21 and then an overlay postconstruction. It just
22 depended on the condition of each road as it was
23 determined prior to construction. You know, if they
24 felt it was going to handle the loads and need, you
25 know, overlaid afterward, that's what we did.

1 Q. Did damage occur to the roads during the
2 construction of the wind farm?

3 A. Yes.

4 Q. What was done to repair the damage to the
5 roads that occurred during construction?

6 A. We had an on-sight road inspector that
7 was looking out for our interests but was actually,
8 by agreement, paid by the developer, but he was there
9 for our interests.

10 This guy had retired from ODOT after 40
11 years, so I had total confidence in his capability,
12 and he basically followed these projects around,
13 anytime we had rutting, blowouts occur, he was right
14 on it and, you know, these areas were marked and then
15 they were milled out and repaired by Shelly Company,
16 who is a state certified contractor. They'd mill out
17 the damaged area and then fill it in with new asphalt
18 which did create a patch.

19 Q. Okay. So do the roads still have patches
20 in them?

21 A. Yes, some. Some do. Some were overlaid
22 after construction. Some, you know, have patches in
23 them.

24 Q. What do you mean by the term "overlaid"?

25 A. When I say "overlay," I mean the full

1 width of the road by a predetermined asphalt
2 thickness, whether it's an inch and a quarter or
3 2 inches depending on, you know, the amount that was
4 determined necessary, they would just do a complete
5 overlay of the entire road.

6 Q. When, approximately, was the construction
7 of the wind farm completed?

8 A. I think the final, call them punch-list
9 items were completed in the spring of this year.

10 Q. And when were the holes in the roads
11 either patched or overlaid?

12 A. Well, let's see, that paving started last
13 fall when the majority of the construction was
14 complete and I do think some of it was finished up
15 here in the spring.

16 Q. Has the wind farm done any more repairs
17 to the roads after the spring of 2012?

18 A. No. I think things were complete in the
19 spring.

20 MR. VAN KLEY: I have no further
21 questions at this time.

22 ALJ TAUBER: Thank you.

23 Mr. Settineri.

24 MR. SETTINERI: Thank you, your Honors.

25 - - -

CROSS-EXAMINATION

By Mr. Settineri:

Q. Good afternoon, Mr. Wendel. My name is Mike Settineri with the Applicant, Champaign Wind. I just want to ask you a question. You mentioned that the term, you used the phrase I think "milled out," what does that mean?

A. The road contractor would come in with an actual asphalt mill, grinder, whatever you want to call it, and they would actually grind out, and it would be a squared-off area, you know, that our road agent would paint the road at the limits of the damage, whether it was a crack or a blowout, whatever. Some of these were, you know, 20-feet long by 3-feet wide, some of them were 50 feet, it just varied.

And then the contractor would grind these damaged areas out down to the base and then return in with a patch crew, which is basically a small paver and asphalt, and fill them in and roll them down and now you've got a squared-off patch.

Q. And if that patch isn't level with the existing road, is there anything you can do about that?

A. Yes. As a matter of fact, I don't know

1 if you're familiar with our job, what happened, but
2 that exact situation occurred and we weren't happy
3 with these patches, and we got with the developer, we
4 got with Shelly Company, who is the asphalt
5 contractor, and said, "We're not happy at all with
6 these patches, they're rough."

7 And they came in with a, this is a
8 different type of milling machine, it's a surface
9 mill and, basically, you can set a portion of this
10 mill on the existing road and then the other portion
11 over the patch and it's just a really fine bit that
12 will go through and mill it flush with the existing
13 part of the road, and I'll tell you, it made a
14 tremendous difference in the quality of it.

15 Q. I assume it improved the quality.

16 A. Yes.

17 Q. Do you, as a normal course of business,
18 when roads, township and county roads, are repaired,
19 do you use that milling procedure?

20 A. Not as a normal course of business, no,
21 we don't.

22 Q. And what about patching, do you use
23 patching to repair county and township roads?

24 A. On a very limited basis. You know, this
25 was a different animal. Most cases we will do what

1 we call dura patching, which is more a chip seal type
2 patch approach, but in most cases we do an
3 improvement to a road, we're going to overlay it with
4 asphalt or chip seal the entire road.

5 Q. Okay. You also mentioned in your
6 testimony about the county had to enter into separate
7 agreements with numerous subcontractors for road
8 bonds for loads hauled to the project area. Would
9 those loads be what you would call an oversize load?

10 A. Yes.

11 Q. And is that -- are you familiar with the
12 statute that defines what an oversize load is?

13 A. Relatively.

14 Q. Okay. Is that what -- when you say the
15 word "oversize," would that fall into a statutory
16 definition of what --

17 A. Yes.

18 Q. Okay. And is it because they were
19 oversized loads, did that give the county the
20 authority to require them to enter into separate
21 agreements?

22 A. That's correct.

23 Q. You also mentioned on page 3 of your
24 testimony that the developer in this instance
25 provided money to put in an escrow account, correct?

1 A. That's right.

2 Q. And I believe you'd mentioned you thought
3 it was a \$2 million escrow account?

4 A. That's right.

5 Q. In fact, though, was it a \$200,000 escrow
6 amount that was required?

7 A. Yeah, \$200,000 increments that were --
8 200,000 was going to be in place at any given time,
9 and it would be capped at \$2 million.

10 Q. And what would trigger, so I understand
11 it then, assume I'm the developer, I put money into
12 an escrow account, \$200,000, what would require me to
13 put more money in above the 200,000?

14 A. If we approached you with, you know,
15 damage control or repairs that are needed and the
16 developer, for whatever reason we couldn't agree or
17 they refused to do the work, then by agreement that
18 money was available for us to use, and whatever time,
19 you know, we start to, you know, get into that cash
20 and we depleted it, we could have more added up to
21 \$2 million.

22 Q. Just so I understand, would the account
23 balance be no more than 2 million, or would it be the
24 total amount of money put into that account over the
25 course of time would be no more than 2 million?

1 A. The total amount would be no more than
2 2 million.

3 Q. Was the county or townships required to
4 draw on that escrow account?

5 A. No. No.

6 Q. And you mentioned in your testimony that
7 you as a county engineer set the amount of the escrow
8 account; is that correct?

9 A. That's right.

10 Q. How did you come up with that \$200,000
11 amount?

12 A. I think the \$200,000 was the developer's
13 idea to have at any given time. We were more
14 concerned about the total and, you know, I spoke with
15 Jane on this amount earlier, I mean, there's -- it's
16 not an exact science of what amount to put in there,
17 but, you know, we just tried to take a look at the
18 overall picture, we knew that, you know, at the same
19 time we're trying to come up with that we knew we had
20 this in place where they were going to check the
21 damages, potential damages to roads and do up-front
22 improvements.

23 So taking that into consideration you
24 just tried to ballpark, you know, so we need to go in
25 and put an inch and a quarter of asphalt over each

1 one of these roads, what's that going to cost; just
2 to get you a ballpark number where to start.

3 Q. So, in my own words then, essentially it
4 was looking at the haul plan, looking at the roads
5 that were used, and if the county or township had to
6 come in and redo all those roads, here's a rough
7 estimate of what that project would cost.

8 A. Well, and that's not even all roads.
9 That's taking into consideration the ones that they
10 had already agreed or we're agreeing to improve as
11 part of that agreement.

12 Q. Thank you.

13 Just so we're clear for the record, the
14 wind farm that we've been referencing, is that the
15 Blue Creek Wind Farm?

16 A. That's right.

17 Q. And the developer on that project was
18 Iberdrola Renewables?

19 A. Right.

20 Q. And are you familiar that Iberdrola used
21 a subsidiary for that project called Heartland Wind?

22 A. Yes.

23 Q. And Heartland Wind was the company that
24 actually signed the road use agreement, correct?

25 A. I think that's correct.

1 Q. In terms of the signatories for the road
2 use agreement am I correct, then, it was Van Wert,
3 Paulding County, and various townships that signed
4 it?

5 A. Yes.

6 Q. Do you view the county and the townships
7 as the proper parties to execute this agreement?

8 A. Yes.

9 Q. And the reason I ask that question, I'm
10 just trying to understand in terms of should it be
11 the county engineer that signs this agreement as
12 well, in your opinion?

13 A. If you're asking opinions, I would -- I
14 think it would be less of a burden on me but more of
15 a burden on the developer if they would enter into a
16 contract with each entity such -- just, we've had
17 conflicts with townships in our project, you know,
18 rather than they're trying to get me, you know, into
19 the fray, and I'd just as soon deal with the county
20 roads and let them deal with the townships roads. If
21 you're asking my opinion, I think that would work
22 out.

23 Q. Just for the record, how do you view the
24 role of a county engineer as to county and township
25 roads?

1 A. I can tell you in our county, you know,
2 we maintain the county road system and all bridges on
3 county and township roads, but when it comes to the
4 township roads, the trustees make their own
5 decisions, you know, as far as maintenance, when to
6 chip seal, when to overlay, those kind of things.
7 You know, we're not involved in any maintenance,
8 mowing, plowing, we don't do anything on the township
9 roads.

10 Q. How do you assist the townships in their
11 roads, if at all?

12 A. We really, unless they, you know, call
13 and ask us to come out and do specialty work such as
14 dura patching or, you know, other, you know, heavy
15 equipment-based projects that they would need our
16 assistance on, we do it, but other than that, it's
17 pretty limited.

18 Q. Do you know, if you know, how many miles
19 of county and township roads were involved in this
20 project specifically in Van Wert County?

21 A. You know, I knew this figure at one time
22 and now I couldn't give you a good guess on that
23 without looking.

24 Q. As of today do you feel that all the
25 county and township roads are in as good or better

1 condition as they were prior to construction of the
2 wind farm?

3 A. Yes, I do.

4 Q. Isn't it true, then, that you submitted a
5 correspondence to Ms. Kim Wissman, Executive Director
6 of the Ohio Power Siting Board, to that effect?

7 A. Correct.

8 Q. And fair to say that the issues that you
9 had with the construction related to more what we
10 call maybe drive quality versus safety?

11 A. I never really felt that there was, due
12 to road condition, I never felt that there was a
13 major safety risk involved during the life of the
14 project.

15 Q. And then would the issue have been more
16 so drive quality with patching and changing --

17 A. We did have some issues with that and,
18 again, they did come in there and do some major
19 corrections on most of those areas.

20 MR. SETTINERI: Thank you, Mr. Wendel.

21 No further questions, your Honors.

22 ALJ TAUBER: Thank you.

23 Mr. Parram?

24 MR. PARRAM: Yes.

25 - - -

CROSS-EXAMINATION

By Mr. Parram:

Q. Hi, Mr. Wendel.

A. Hello.

Q. My name is Devin Parram. I'm counsel on behalf of staff. I just have some follow-up questions for you today.

Mr. Settineri just asked you a question about a letter that you submitted to the Power Siting Board staff regarding the project in Van Wert; do you recall that?

A. Yes.

MR. PARRAM: Your Honors, may I approach the witness?

ALJ TAUBER: You may.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Wendel, I've handed you a document that's been marked for purposes of identification as Staff Exhibit 3. This is a letter dated September 27th, 2012, and it was addressed to Ms. Kim Wissman of the Ohio Power Siting Board staff and is signed by you. Are you familiar with this document?

A. Yes.

Q. And what exactly is this document?

A. It's basically, in my own words, this is

1 me signing off on the conditions of the road, that
2 they are adequate in my determination. I was letting
3 the Power Siting Board know for project completion
4 purposes.

5 Q. And this is the specific letter you were
6 just talking about with Mr. Settineri? Is this the
7 same letter that you were referring to just a second
8 ago?

9 A. I believe.

10 Q. And if you can take a look at the letter,
11 I believe it's the second sentence, it starts "After
12 extensive review."

13 A. Uh-huh.

14 Q. Do you see where I'm at there?

15 A. Uh-huh.

16 Q. ". . . it is my opinion that Blue Creek
17 Wind, LLC has met their obligations under condition
18 41(c) and the project's road use agreement concerning
19 roadway restoration." Did I read that accurately?

20 A. I think so.

21 Q. And just so we can clarify it, who is
22 Blue Creek Wind, LLC?

23 A. I got to tell you, I'm not an attorney
24 and, you know, between Heartland Wind, Blue Creek
25 Wind Farm, Blue Creek Wind, LLC, you know, I think

1 it's Iberdrola.

2 Q. Okay.

3 A. But I'm not going to swear to that.

4 Q. We don't need to go into details of that
5 case, but would it be fair to say that Blue Creek
6 Wind was the developer or the project -- or, the
7 certificate holder for that project?

8 A. I believe that's correct. It was
9 Iberdrola through the life of the project and then,
10 you know, changing the names, things like that for
11 certificates, I don't fully understand that I'll just
12 tell you right now. It was Iberdrola/Blue Creek
13 Wind.

14 Q. Things tended to be handed off a lot
15 between these areas, but I wanted to make sure we
16 were on the same page --

17 A. Yeah.

18 Q. -- it's the Blue Creek Wind Farm.

19 And also in that sentence you mentioned
20 condition 41(c). Is condition 41(c) one of the
21 conditions that was issued or contained in the
22 certificate in that case?

23 A. I believe that it's the one that
24 pertained to roads restored to as good or better
25 condition than prior to the project.

1 Q. And in drafting this letter did you have
2 an opportunity to review condition 41?

3 A. Yeah. In fact, I spoke with someone on
4 the Power Siting Board, you know, to kind of coach me
5 as to what the letter should say so, yeah, I used
6 some of their verbiage to create this letter.

7 Q. Coach, you're saying?

8 A. Yeah.

9 Q. And you also mentioned that they have
10 met their obligations under 41(c) and the project's
11 road use agreement. This specific road use
12 agreement, was that the road use agreement that
13 Van Wert County entered into with the applicant?

14 A. I think it was the Power Siting Board
15 agreement.

16 Q. When you say "the Power Siting Board
17 agreement," what are you talking about there?

18 A. I can't tell you the actual name of the
19 document, again, it's been just long enough that I
20 can't recall, but this is all -- this project
21 operated under these Power Siting Board guidelines,
22 but I can't tell you the name of the document.

23 Q. In your letter you in the line where it
24 says -- above "Dear Ms. Wissman," it says "In
25 Regards: Blue Creek Wind Farm; Case

1 #09-1066-EL-BGN," I'd like to know, is case 09-1066,
2 was that the case where an opinion and order was
3 issued in this?

4 A. That came directly from the Power Siting
5 Board.

6 Q. Okay.

7 A. I can't answer that.

8 MR. PARRAM: May I approach the witness,
9 your Honor?

10 ALJ TAUBER: You may.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Mr. Wendel, I've handed you a document
13 that's been marked for purposes of identification as
14 Staff Exhibit 4. It is titled "Joint Stipulation and
15 Recommendation" in case No. 09-1066-EL-BGN. Are you
16 familiar with this document?

17 A. Yeah. I guess this answers your previous
18 question.

19 Q. It's tied to it.

20 A. Yeah.

21 Q. And if you could specifically, after the
22 Introduction it states "Heartland Wind, LLC
23 ('Heartland' or 'Applicant'), the Staff of the Ohio
24 Power Siting Board . . . Ohio Farm Bureau." Does
25 this appear to be an opinion and order that was

1 related to the Heartland Wind case that you are
2 discussing in your letter to Ms. Kim Wissman?

3 A. Yes.

4 Q. If you could please turn to page 9 of
5 this document. Are you there, Mr. Wendel?

6 A. I'm right there.

7 Q. At the top of the page there is a
8 condition listed as condition 41. Is that the
9 condition that you refer to in your letter that has
10 been marked as Staff Exhibit 4 [verbatim].

11 A. That's right, 41(c).

12 Q. And so your letter was indicating that
13 the Applicant, or Blue Creek Wind, had complied with
14 this specific condition.

15 A. Right.

16 Q. If you'd go to page 2 of your testimony,
17 five questions down, the question reads: "Do you
18 know whether the developer was mandated by the OPSB
19 to improve the roads and bridges before construction
20 of the project in your county?" And you answer: "I
21 believe it was set forth in an order from the OPSB."

22 Did I read that correctly?

23 A. Yes.

24 Q. And if you will look at condition 41
25 contained in Staff Exhibit 4, at the, I believe it's

1 the third sentence -- well, four lines down it
2 states: "Any damage will be repaired promptly to its
3 pre-construction state by the Applicant, under the
4 guidance of the appropriate regulatory agency." Do
5 you see that sentence there?

6 A. Yes.

7 Q. Is that the specific language that you
8 were referring to in your question in your testimony?

9 A. Yes.

10 Q. And let's talk specifically about -- I'm
11 sorry. Let's talk specifically about condition 41(c)
12 since in your letter that is what you indicated that
13 they were in compliance with. Was it part of your
14 review to ultimately determine that they had complied
15 with 41(c)?

16 A. Well, you know, based in part on our, you
17 know, recommendations from our road inspector
18 throughout the course of the project and then our
19 own, you know, field review of these different
20 segments of road, you know, and there were various,
21 you know, levels of damage. Some roads had no
22 damage, you know, some were, you know, you had a fair
23 amount of patchwork on and anything in between. And
24 we went and checked, you know, pretty much every
25 roadway involved and made the determination that we

1 were satisfied with the, you know, the
2 postconstruction work.

3 Q. And you've mentioned on a couple of
4 occasions this independent inspector that the county
5 required or had out there inspecting the project.

6 A. Yeah.

7 Q. And you also indicated that this was a
8 specific provision that was included in the road use
9 agreement, correct?

10 A. That's correct.

11 Q. So this was a specific provision that the
12 county negotiated as part of the agreement.

13 A. Right.

14 Q. And this specific provision, if the
15 developer wasn't agreeable to that provision, the
16 county could have ultimately said they wouldn't enter
17 into the road use agreement; is that correct?

18 A. Sure.

19 Q. And along the same lines, if you could
20 turn to page 3 of your testimony, I'm sorry, I'm
21 going to be bouncing around just a little bit, the
22 last question, it says "Anything else you would like
23 to say to the OPSB?" Your answer is: "Two of the
24 terms of the road use agreement were critical to my
25 office," and then you go on to describe what these

1 two terms were.

2 These two terms were included in the same
3 road use agreement that we were just discussing,
4 correct?

5 A. Yes.

6 Q. And the county was able to include these
7 two agreements -- two terms in the road use agreement
8 and ultimately had them included as a result of
9 negotiations.

10 A. Right.

11 Q. But at the end of the day if the
12 developer wasn't willing to agree to those two terms
13 and include them in the road use agreement, the
14 county could have decided not to enter into the road
15 use agreement; is that correct?

16 A. That's exactly right.

17 Q. And the developer would not have had I
18 guess the authority to use the county roads if they
19 would not have been able to enter into the road use
20 agreement; is that right?

21 A. Not as things stood at that point, no.

22 Q. I'm sorry, like I said, I was going to be
23 jumping around little bit, but going back to Staff
24 Exhibit 3, which is your letter to Kim Wissman of the
25 Ohio Power Siting Board -- are you back at the

1 exhibit? Do you have that in front of you again?

2 A. (Indicating.)

3 Q. The very last sentence, "I feel that all
4 County and Township roads are in as good or better
5 condition than they were prior to construction." Did
6 I read that correctly?

7 A. Yes.

8 Q. So is it fair to say that after Blue
9 Creek Wind, LLC complied with condition 41, at the
10 end of the day the roads were in as good or better
11 condition as they were prior to construction?

12 A. That's correct.

13 Q. There should be a copy of the Staff
14 Report of Investigation in this case which is the
15 Buckeye II case up there. It's purple. Firstly,
16 have you had an opportunity to review the Staff
17 Report of Investigation in this current pending case?

18 A. No.

19 Q. Can you turn to page 56, please. Are you
20 there?

21 A. Yes.

22 Q. If you can go to condition 33 on that
23 page, the second sentence, "Any damaged public roads
24 and bridges shall be repaired promptly to their
25 preconstruction state by the Applicant under the

1 guidance of the appropriate regulatory agency." Did
2 I read that correctly?

3 A. Yes.

4 Q. Is that the same exact sentence that was
5 in condition 41 that we reviewed earlier?

6 A. I would say.

7 Q. Is that the same sentence?

8 A. Well, I guess it's not exactly the same,
9 but it's awful close if that's what you're after.

10 Q. That will work for me.

11 And if you can go down in that same block
12 paragraph, second-to-last full sentence which should
13 start off: "The Applicant shall also enter into a
14 Road Use Agreement." Do you see where I'm at there?

15 A. Yeah.

16 Q. I'm back in condition 33 again of the
17 Staff Report.

18 A. Yeah.

19 Q. "The Applicant shall also enter into a
20 Road Use Agreement with the County Engineer(s) prior
21 to construction subject to Staff review and
22 confirmation that it complies with this condition."

23 Would you agree that it was important as
24 the county engineer for Van Wert County to have the
25 ability to enter into or -- to have the ability to

1 enter into a road use agreement prior to construction
2 in the county, in Van Wert County?

3 A. Yes, that's an important step.

4 Q. Would you agree with me that the sentence
5 that I just read within condition 33 is an important
6 provision to have in the condition in this particular
7 case if a certificate is ever issued?

8 A. You're asking my opinion if I feel a road
9 use agreement is an important step?

10 Q. As the county engineer for Van Wert
11 County who had experience with a wind turbine
12 project, in your opinion, this specific provision
13 within condition 33, do you think that this would be
14 an important provision to include from the county
15 engineer's perspective?

16 A. Yes.

17 MR. PARRAM: That's all I have, your
18 Honor. Thank you.

19 ALJ TAUBER: Thank you.

20 Ms. Napier, redirect?

21 MS. NAPIER: Yes, your Honor.

22 - - -

23 REDIRECT EXAMINATION

24 By Ms. Napier:

25 Q. Before I get really into the questions I

1 had prepared, on the staff counsel's last question to
2 you, if we could look at the exhibit which he gave
3 you from your, it would be Exhibit 4, it was from --

4 A. Yeah.

5 Q. -- Heartland Wind --

6 A. Yeah.

7 Q. -- 41, and our Staff Report paragraph 33.
8 Can you look at the first sentence in each of those
9 paragraphs.

10 A. Okay.

11 Q. And in paragraph 41 in Heartland it talks
12 about the applicant complying with upgrading; is that
13 correct?

14 A. Yes. ". . . comply with all of the
15 requirements of the county engineer."

16 Q. Was that an important, I guess in
17 practice was that an important requirement?

18 A. Yes, that was.

19 Q. And if you look in paragraph 33 in the
20 first sentence, does it talk about upgrading in that
21 sentence?

22 A. Talking about the first sentence?

23 Q. Yes.

24 A. It just says "repair damage." I guess I
25 don't call that upgrading.

1 Q. Okay. Is upgrading important to any
2 project, in your opinion?

3 A. Yes. If it's required, it's definitely
4 important.

5 Q. Was there a great deal of upgrading in
6 your project?

7 A. Yes.

8 Q. Now, we had a lot of conversation and a
9 lot of testimony regarding road use agreements. Did
10 the staff, in your case, involve itself in the
11 negotiations for the road use agreements?

12 A. The OPSB staff?

13 Q. Yes.

14 A. No.

15 Q. Was it just you, between you and the
16 applicant?

17 A. Myself, the Paulding County engineer
18 Travis McGarvey, and then the associated township
19 trustees.

20 Q. Okay. Was that a long process in
21 negotiating those?

22 A. It was very long.

23 Q. About how long?

24 A. I want to say six to eight months.

25 Q. Was it a positive experience, in your

1 opinion?

2 A. No.

3 Q. Okay. Can you tell me why?

4 A. There were too many -- there were too
5 many entities trying to agree on, you know, fairly
6 tight details of this thing. It was just too many
7 people trying to get to agree.

8 Again, as I spoke to this gentleman here,
9 it would sure be nice for me to just do a county
10 agreement for the county roads and then, you know,
11 maybe some townships disagree, to me, I would think
12 they would want to be able to make their own
13 decisions rather than hoping that I will do what they
14 want done; you see what I'm saying?

15 So, yeah, it would be more of a headache
16 for the developer, but that just keeps each entity
17 separate that way and they can go after what they
18 want to go after.

19 Q. And you talk about the townships. So you
20 don't, as a county engineer, you don't have any
21 responsibility for township roads; is that correct?

22 A. That's correct. We do, you know, on
23 bridges on township roads, but not over the roads
24 themselves.

25 Q. So your opinion could differ from a

1 township.

2 A. Yes.

3 Q. And do you know, did it, in your
4 situation, did township trustees disagree with your
5 opinion?

6 A. Yes.

7 Q. In talking about these road use
8 agreements I believe you had responded to a question
9 or two from Mr. Settineri about entering in -- having
10 to enter into separate subcontractor road agreements.
11 Just to clarify, did you indicate that those were
12 just for oversize loads?

13 A. Yes.

14 Q. Okay.

15 A. Oversize and overweight.

16 Q. And so if they were a repetitive
17 subcontractor supplying materials, those would, in
18 your opinion, be covered under the developer's
19 agreement, like a concrete truck?

20 A. Yes, because the concrete was being
21 delivered from a specific area and it was within the
22 project area itself. The loads I am concerned about
23 are the ones that would be brought in from outside
24 the county, whether it's from the north, south, east,
25 or west, you didn't know where they were coming from

1 until they got into the designated project area, you
2 know, how are we going to cover these roads that they
3 travel upon as far as damages, so I had to deal with
4 each entity separately and that was -- it won't
5 happen again.

6 Q. So I guess so we kind of understand the
7 magnitude, how many additional subcontractor
8 agreements did you enter into?

9 A. I'm going to say it was around three or
10 four with different entities, but, you know, you
11 just -- trying to get all the routing worked out for
12 each one, it was just -- and, you know, the potential
13 damages for each, it was just, it didn't need to
14 happen.

15 Q. And did you know beforehand that these --

16 A. No.

17 Q. -- entities were coming?

18 A. No.

19 Q. So when did you enter into those
20 agreements?

21 A. Once they, you know, we were contacted by
22 these entities as they were ready to deliver their
23 materials, whatever they may be, and they were
24 oversize and overweight and needed to know what to do
25 for permitting and this and that, and I, you know,

1 was intending on them to be covered under the blanket
2 agreement, if you will, from Iberdrola, and that
3 wasn't the case.

4 So we had to enter individual agreements
5 with each of these and determine what routes they
6 were going to take and, you know, how many loads. It
7 was just a real headache.

8 Q. So, in your opinion, would you believe it
9 important to have those types of subcontractor
10 agreements addressed in the order from the Board like
11 developer agreements are?

12 A. When you say "the Board" you mean the
13 Power Siting Board.

14 Q. The Power Siting Board order.

15 A. I think that would be nice because I had
16 no idea, you know, something like this was going to
17 take place, it was just one of the learn-the-hard-way
18 situations, but it won't happen again.

19 Q. All right. Do you have a timeframe in
20 which your office would be -- need to review those
21 type of agreements?

22 A. The secondary agreements with --

23 Q. Yes.

24 A. -- other outside -- I wouldn't want to
25 enter into secondary agreements with them. It would

1 just be with the primary developer and then he could
2 negotiate with the secondary suppliers and, you know,
3 cover any potential damages under the existing
4 agreement. I don't want to have to go into
5 agreements with everybody else.

6 Q. Okay. So you'd like to see it all as
7 one.

8 A. All as one.

9 Q. Okay. I wanted to talk about this letter
10 that is Staff Exhibit 3. And I'm not sure you had
11 answered this in response to another question, but
12 what precipitated this letter, you writing this
13 letter?

14 A. I had discussions, I think the guy's name
15 was Mr. O'Dell from the Power Siting Board -- does
16 that sound right?

17 Q. I don't know.

18 A. Okay. Just he would call periodically
19 to, you know, find out the status of the project, you
20 know, and things were pretty well completed in the
21 spring and finally, you know, the day came I said,
22 "Hey, what do I need to do, you know, for final
23 approval or whatever?" And that's when, you know, I
24 was in contact with him.

25 I got the basic language of what the

1 letter needed to say, whether or not I agreed with
2 how everything was in, you know, met the stipulations
3 in 41(c), I said yes, it did. So that was the basis
4 for writing that letter.

5 Q. Were you speaking for everyone in the
6 township -- all the townships, or were you just
7 talking about in your opinion?

8 A. I was speaking for myself, but apparently
9 I have the final say in the whole thing, so, you
10 know, it was game over for the townships as well.

11 MS. NAPIER: Thank you.

12 I have no further questions.

13 ALJ TAUBER: Before we go into recross,
14 Mr. Wendel, I just want to clarify something real
15 quick on the road use agreements.

16 - - -

17 EXAMINATION

18 By ALJ Tauber:

19 Q. Are you suggesting you wish a few things
20 would be different with the road use agreements? I
21 just want to make sure for the record we're clear on
22 what happened with the road use agreements in your
23 case and what you're recommending for this case.

24 So you said the road use agreements that
25 you entered into were between yourself, the county

1 and township trustees, and the developer --

2 A. Right.

3 Q. -- is that correct?

4 A. Right.

5 Q. So you said that was not a positive
6 experience?

7 A. We had three townships in our county
8 involved, the county engineer that was involved, the
9 Paulding County engineer was involved, and I believe
10 it was three and then it turned out being two
11 townships in Paulding County, so we had five
12 townships and two counties plus the boards of
13 commissioners signed off as well.

14 Q. Between Paulding and Van Wert.

15 A. Yes.

16 Q. With the process, I guess what do you
17 think would have streamlined the process more or
18 would have made it --

19 A. I'm not saying it would streamline it
20 because it would actually probably be more cumbersome
21 for the developer to agree with each township, but
22 there's just a lot of people to get to agree on
23 something.

24 Q. So in negotiating with the townships or
25 in working with the townships was that your

1 responsibility, ultimately, and the Paulding County
2 engineer's responsibility?

3 A. Yes.

4 Q. And so you would suggest taking the
5 responsibility away from the county engineers and
6 placing it in the developer's responsibilities?

7 A. What responsibility is that? I'm sorry.

8 Q. You said the responsibility of developing
9 the road use agreements was your responsibility to
10 work and the Van Wert County engineer's
11 responsibility to work with local townships, correct?

12 A. Yeah.

13 Q. So I just want to make sure I'm clear on
14 your suggestion. You're suggesting that that
15 responsibility be given to the developer so the
16 developer deals with the townships and then deals
17 with you separately? "You" being the county
18 engineer.

19 A. I guess I'm saying I don't see a big
20 problem having a similar or same road agreement for
21 all entities involved, but it would be nice to give
22 the townships more of a voice in the final say: Is
23 this road complete, is it as good as it was before,
24 here's what we don't agree with. You know, they're
25 putting a lot of heat on me when I don't necessarily

1 agree with what they're wanting me to say.

2 ALJ TAUBER: I think I follow. Thank
3 you.

4 Let's move into recross. Ms. Parcels?

5 MS. PARCELS: Thank you.

6 - - -

7 RECROSS-EXAMINATION

8 By Ms. Parcels:

9 Q. I just wanted to clarify, you spoke about
10 the road use agreements but you also spoke about
11 subcontractor agreements, I wanted to clarify, those
12 are two separate sets of agreements, correct?

13 A. That's right. That's right.

14 Q. And you noted that the city engineer was
15 party to some of the subcontractor agreements. Did
16 the city come in at all with the road use agreements
17 as a party with the developer?

18 A. No.

19 Q. Okay.

20 A. These were separate agreements, you know,
21 for specific loads that had to go through the city
22 limits.

23 Q. And then on Staff Exhibit 4, which is a
24 stipulation and recommendation, it names all the
25 parties that were involved in the Heartland

1 proceeding and, I just want to clarify, Van Wert
2 County was not a party as an intervenor in that
3 proceeding, was it? There on the very first page of
4 the joint stipulation.

5 A. Can you ask the entire question again?

6 Q. Sure. When you're looking at the joint
7 stipulation and recommendation for the Heartland
8 proceeding, the very first line after the
9 Introduction names all of the parties that were
10 involved in that proceeding. Van Wert County is not
11 an intervenor -- was not an intervenor in that
12 proceeding, was it?

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

14 Q. So did you have any input in developing
15 this Staff Exhibit 4 or the joint stipulation?

16 A. No.

17 MS. PARCELS: Nothing further, your
18 Honors.

19 ALJ TAUBER: Thank you.

20 Mr. Van Kley?

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

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Van Kley:

25 Q. I believe you stated in response to one

1 of Ms. Napier's questions that in Staff Exhibit 3 you
2 were speaking for yourself and it was game over for
3 the townships as well, so let me follow up on that.

4 I take it from your answer that not all
5 of the townships agreed with your assessment in Staff
6 Exhibit No. 3 that all township roads are in as good
7 or better condition than they were prior to
8 construction?

9 A. That's right. They didn't agree. Not
10 all of them.

11 Q. How many townships disagreed with your
12 assessment?

13 A. One.

14 Q. And that was which township?

15 A. Hoaglin.

16 Q. Okay. With respect to Staff Exhibit 3,
17 how long after the construction of the wind farm was
18 completed did it take for, in your opinion, to place
19 the county and township roads in as good or better
20 condition than they were prior to construction?

21 A. I believe that the final step in their
22 postconstruction work was done in early-spring of
23 2012 when they came in and milled a lot of these
24 patches that we all agreed that were rough.

25 Q. Okay.

1 A. I think that was the final step.

2 Q. And can you specifically tell me during
3 what month of the spring that step was completed?

4 A. Boy, I think March. I think it was
5 March.

6 Q. Okay.

7 MR. VAN KLEY: Your Honor, can I approach
8 the witness?

9 ALJ TAUBER: You may.

10 MR. VAN KLEY: Your Honor, we'd like to
11 mark this as UNU Exhibit 25.

12 ALJ TAUBER: The exhibit is so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. All right. I've handed you what's been
15 marked as UNU Exhibit No. 25. Do you recognize this
16 as a letter that you signed?

17 A. Yes.

18 Q. Okay. And this letter is dated June
19 6th, 2012, correct?

20 A. Yes.

21 Q. So this letter was written after the last
22 step in the repairs of the county and township roads
23 that we've been discussing?

24 A. Yes.

25 Q. Okay. And if you would take a look at

1 the third paragraph of the letter, it says, "After
2 discussion, both the Township Trustees and the County
3 Engineer agree that the condition of the road
4 surfaces where patching occurred do not provide the
5 same quality of ride as before construction began.
6 Because of this, it was requested of Iberdrola to
7 provide an asphalt overlay covering Fife road from
8 US 127 to Rumble (1 mile), Feasby Wisener road from
9 US 127 to Rumble (1 mile), and Rumble road from
10 Feasby Wisener to Wetzel (1 mile). Asphalt was also
11 requested on Fife road east to T-E9 (approximately
12 1/4 mile) to cover patches in that section."

13 Did I read that paragraph correctly?

14 A. Yes.

15 Q. Okay. And then in the fourth paragraph
16 it states: "After the request for this work was made
17 to Iberdrola, they agreed to work with Shelly
18 Company, the paving contractor, to pave the Rumble
19 road section due to poor asphalt conditions at the
20 time of the pre-construction overlay. The sections
21 in question on Fife and Feasby Wisener roads were
22 denied for post-construction overlay as the developer
23 felt that the repairs made were adequate."

24 Did I read that correctly?

25 A. Yes.

1 Q. Okay. Now, let me ask you this: Were
2 any of the roads mentioned in these two paragraphs of
3 Exhibit 25 located in Hoaglin Township?

4 A. Yes.

5 Q. Which ones?

6 A. All of them.

7 Q. So at the time that you wrote this letter
8 it was your opinion that the roads identified in
9 these paragraphs should have an asphalt overlay; is
10 that correct?

11 A. No. It was my opinion that they did not
12 provide the same quality of ride as prior to
13 construction.

14 Q. Okay. And no work has been done on these
15 roads since June 6th, 2012, by the wind developer
16 or its contractors?

17 A. They did come in and, again, they ground
18 those patches down, but as far as the date, I can't
19 tell you that for sure without going back to look.

20 Q. Okay. But you've already stated, have
21 you not, that you believe that work occurred in March
22 of 2012?

23 A. I believe so, but I think that those
24 three roads in particular were done later, but as far
25 as the exact date, I can't tell you for sure.

1 Q. These roads did not have patches on them
2 before the wind farm started construction?

3 A. No.

4 Q. But they do now.

5 A. Yes. The Rumble Road section from Feasby
6 Wisener to Wetzell does not have patches. The others
7 do.

8 MR. VAN KLEY: All right. Thank you. I
9 have no further questions.

10 ALJ TAUBER: Thank you.

11 Mr. Settineri?

12 MR. SETTINERI: Thank you, your Honors.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Settineri:

16 Q. Mr. Wendel, you were just -- counsel just
17 asked you about the work that was subsequently done I
18 believe as to what was listed on UNU Exhibit 25. Do
19 you recall getting correspondence from Iberdrola on
20 July 30th regarding micromilling for the Hoaglin
21 Township roads?

22 A. Yes.

23 Q. And do you recall at that time that
24 Iberdrola intended to complete the work by August
25 10th, 2012?

1 A. I believe that's correct.

2 Q. So fair to say that the work that was
3 done in Hoaglin Township to improve ride quality was
4 done late-summer of 2012?

5 A. That could very well be now that you say
6 that, yes. Again, I wasn't clear on all the dates of
7 what happened when and before and after what letter,
8 but yes.

9 Q. Quick question. Hoaglin Township, Milo
10 Schaffner is the township trustee for Hoaglin
11 Township, correct?

12 A. That's right.

13 Q. What type of loads, if you know, did the
14 subcontractors carry?

15 Let me back up. You mentioned that
16 separate agreements had to be entered into with
17 certain subcontractors for oversize and overweight
18 loads. Do you know what kind of loads they were
19 carrying?

20 A. There were a lot of subs that were
21 carrying legal loads, but, again, the ones that we
22 were, you know, mainly going into agreement over were
23 the oversize/overweight.

24 I can give you one particular, it's -- we
25 had a 500,000-pound transformer delivered to,

1 actually, a Hoaglin Township facility, you know, and
2 the trailer itself is 200,000. So you've got a
3 700,000-pound, you know, load with one load. That's
4 an extreme example, but, you know, they were all over
5 the board, you know. The turbine components, it was
6 just all over the board.

7 Q. And when you say "subcontractors," were
8 these transportation companies?

9 A. Yes.

10 Q. You mentioned about having different
11 agreements for townships, the county. If that was
12 the case, let's say you have five townships, one
13 county, you could potentially have, then, six
14 separate agreements. Fair to say, then, that you
15 could have potentially different standards in each of
16 those agreements as to what is acceptable for a road
17 repair?

18 A. You know, maybe having that many separate
19 agreements is a little overboard, but I guess what
20 I'm implying is if the townships could have more of
21 their own say on their roads as far as are they
22 satisfied postconstruction, that's where I think, you
23 know, I think things would have been a little bit
24 smoother.

25 Q. But from the perspective of having a

1 consistent standard, potentially you wouldn't have a
2 consistent standard.

3 A. Potentially, correct.

4 Q. All right. And that same issue could
5 apply to what has to be improved versus what doesn't
6 have to be improved prior to construction.

7 A. That's correct.

8 MR. SETTINERI: No further questions.
9 Thank you, sir.

10 ALJ TAUBER: Thank you.

11 Mr. Parram?

12 MR. PARRAM: Just a couple questions,
13 your Honor.

14 - - -

15 RECROSS-EXAMINATION

16 By Mr. Parram:

17 Q. Mr. Wendel, Ms. Napier asked you a
18 question regarding Staff Exhibit 4, condition 41 as
19 it relates to the very first sentence for upgrading
20 and repairing damage to the roads, and you indicated
21 that you thought that was important on the project in
22 Van Wert County.

23 Was it possible to include in the road
24 use agreement any type of requirements as it relates
25 to upgrading that the county would require as a

1 condition of the road use agreement that you could
2 specifically indicate that these roads will be
3 upgraded?

4 A. Yeah, I believe that was part of the, you
5 know, what was considered before we signed the road
6 agreement was that, you know, preconstruction upgrade
7 plan.

8 Q. And do you still have Staff Exhibit 4 in
9 front of you?

10 A. Yes.

11 Q. Condition 41(a) provides for a
12 preconstruction survey of the condition of the roads.

13 A. Right.

14 Q. And (b), a postconstruction survey of the
15 condition of the roads. Would those two things help
16 indicate if a road needs to be upgraded?

17 A. Definitely.

18 Q. And then you also had discussion
19 regarding the difficulty of entering into contracts
20 with subcontractors. Well, before I go to that, who
21 would you think would be in a better position to
22 determine if roads should be upgraded? Would you say
23 that the Power Siting Board staff is in a better
24 position or the county engineer is in a better
25 position?

1 A. The county engineer.

2 Q. And as it relates to entering into
3 separate subcontracts, you indicated that there was
4 some difficulty entering into separate subcontracts
5 with different contractors; is that correct?

6 A. I wouldn't call it difficulty. I would
7 just call it a real pain.

8 Q. Could this pain be avoided by
9 specifically including a provision in the road use
10 agreement that states that the developer will be held
11 liable and make it clear that the contract is with
12 the developer?

13 A. That is pretty much exactly right.

14 Q. Okay. If you can look at UNU Exhibit 25
15 that Mr. Van Kley provided to you.

16 A. Yeah.

17 Q. And he asked you some questions regarding
18 Fife and Feasby Wisener Roads. Now, as of June
19 6th -- this letter is dated June 6th; is that
20 correct?

21 A. That's right.

22 Q. But after June 6th did the developer do
23 any work on Fife and Feasby Wisener Roads?

24 A. According to this gentleman's dates,
25 which again I told you I wasn't real clear on the

1 dates, it sounds like that's when Iberdrola came back
2 in and requested Shelly to do additional milling on
3 those patches.

4 Q. And then is it safe to assume that
5 because of the subsequent work subsequent to June
6 6th, 2012, work that was done by Iberdrola, you
7 concluded, as it states in Staff Exhibit 3, that the
8 Applicant had met their obligations under condition
9 41?

10 A. That's right.

11 Q. And that they were in compliance with the
12 road use agreement.

13 A. Correct.

14 Q. And that also the roads were in as good
15 or better condition than they were prior to
16 construction.

17 A. That's right.

18 Q. And I just wanted to clarify one more
19 thing. As it relates to the project in Van Wert
20 County, did the developer work on the roads as they
21 were constructed or did they start working on the
22 roads after the entire project was complete?

23 A. Both. They did preconstruction upgrades
24 on, you know, predetermined and agreed-upon road
25 segments, and then others were determined they could

1 wait till postconstruction.

2 Q. So it's safe to say that some of the
3 roads were being worked on while the project was
4 still going?

5 A. That's right.

6 MR. PARRAM: Thank you. That's all I
7 have.

8 ALJ TAUBER: Thank you.

9 Thank you, Mr. Wendel, you may be
10 excused.

11 (Witness excused.)

12 ALJ TAUBER: Ms. Napier.

13 MS. NAPIER: Yes, your Honor. County and
14 townships would move to admit County and Township
15 Exhibit No. 7.

16 ALJ TAUBER: Are there any objections to
17 County and Townships Exhibit No. 7?

18 (No response.)

19 ALJ TAUBER: Hearing none, it shall be
20 admitted.

21 MS. NAPIER: Thank you.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 ALJ TAUBER: Mr. Parram.

24 MR. PARRAM: Yes, your Honor, staff would
25 move for the admission of Staff Exhibit 3 and Staff

1 Exhibit 4 into evidence.

2 ALJ TAUBER: Are there any objections to
3 Staff Exhibits No. 3 and No. 4?

4 (No response.)

5 ALJ TAUBER: Hearing none, they shall be
6 admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 ALJ TAUBER: Mr. Van Kley.

9 MR. VAN KLEY: Yes, we would move for
10 admission UNU Exhibit No. 25.

11 ALJ TAUBER: Are there any objections to
12 UNU Exhibit 25?

13 (No response.)

14 ALJ TAUBER: Hearing none, it shall be
15 admitted into the record.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 ALJ TAUBER: At this point, before we
18 move on to our next witness, we'll take a short
19 recess and reconvene at 2:40. Let's go off the
20 record.

21 (Recess taken.)

22 ALJ CHILES: Let's go ahead and go back
23 on the record.

24 Mr. Reilly.

25 MR. REILLY: Thank you, your Honor. We

1 would call Stuart Siegfried to the stand.

2 ALJ CHILES: Please raise your right
3 hand.

4 (Witness sworn.)

5 ALJ CHILES: Thank you. You may be
6 seated.

7 MR. REILLY: Your Honor, I provided to
8 the court reporter and the Bench and all the parties
9 a document that's been marked for identification
10 purposes as Staff Exhibit No. 6.

11 ALJ CHILES: The exhibit is so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. REILLY: Thank you, your Honor.

14 - - -

15 STUART SIEGFRIED

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

18 DIRECT EXAMINATION

19 By Mr. Reilly:

20 Q. Mr. Siegfried, I've laid up there on the
21 witness stand a document marked for identification
22 purposes as Staff Exhibit No. 6. Can you find that
23 for me, please.

24 A. Yes, sir.

25 Q. Could you take a look at that document.

1 And could you tell me what it is.

2 A. It's a copy of my prefiled testimony in
3 this proceeding.

4 Q. Do you know how that testimony came into
5 existence, how that -- excuse me, do you -- strike
6 that.

7 Do you know how that document came into
8 existence?

9 A. Yes. I drafted this.

10 Q. Do you have any corrections or changes to
11 your prefiled testimony?

12 A. No, sir.

13 Q. Okay. If I were to ask you the questions
14 that are shown in Staff Exhibit No. 6, would your
15 answers be the same as those reflected in Staff
16 Exhibit No. 6?

17 A. Yes.

18 MR. REILLY: With that, your Honor, we
19 would move the introduction of Staff Exhibit No. 6
20 and offer Mr. Siegfried for cross-examination.

21 ALJ CHILES: Thank you. We'll reserve
22 ruling on your motion until we're finished with his
23 examination.

24 Ms. Parcels?

25 MS. PARCELS: Yes, thank you, your

Honors.

- - -

CROSS-EXAMINATION

By Ms. Parcels:

Q. Good afternoon, Mr. Siegfried. I want to direct your attention to page 2 of your direct testimony, line 9, question 6, it says your testimony supports the PICN section beginning at page 46 of the Staff Report. And as I'm reading that page 46 I'm particularly curious about the liability insurance that starts at the bottom of page 46 and carries over to page 47. So I'll let you pause and take a look at that in the Staff Report.

A. Okay.

Q. The sentence that has, it's actually the second sentence under that Liability Insurance section, it says, "According to the Applicant, it will maintain through the term of the facility . . . insure claims of 1 million per occurrence and 2 million in the aggregate."

And then over on the top of page 47 it says during the construction and operation phases the umbrella coverage will, at a minimum, insure against claims of 10 million per occurrence and 10 million in the aggregate. I'm curious, if you know, what would

1 be the cost of one individual turbine, if you know?

2 A. I'm sorry, the cost to insure one turbine
3 or --

4 Q. The cost of one turbine, because this is
5 foundation for my next question. If you know the
6 cost of a turbine, is it possible that the cost of
7 one turbine, if it's more than \$10 million, if
8 something goes wrong with that particular turbine,
9 that the policy can be exhausted in one fell swoop
10 then?

11 MR. REILLY: If we could, your Honor, if
12 we could have that put into two questions, maybe one
13 at a time. I heard two questions.

14 ALJ CHILES: Ms. Parcels.

15 MS. PARCELS: Again, I asked
16 Mr. Siegfried if he knew the cost of a single
17 turbine.

18 A. I know a cost generically, not for this
19 particular project.

20 Q. That's fine.

21 A. Approximately \$2 million per turbine is
22 the number I've heard used on a few occasions.

23 Q. Is that the cost of the equipment itself?

24 A. And installation.

25 Q. And installation, okay.

1 If a turbine were to catch fire, would it
2 be, then, destroyed and the cost of that equipment
3 completely -- what's the word I'm looking for? If a
4 turbine generically costs \$2 million and then it
5 catches fire either during construction or during
6 operation, then would you agree that the cost to
7 replace the turbine would be approximately the same,
8 \$2 million?

9 A. I would think it would depend on a number
10 of factors including the severity of the fire and the
11 severity of the damage.

12 Q. Okay.

13 A. I don't think you can assume full
14 replacement.

15 Q. Okay. So feasibly, looking at the
16 numbers that are cited here in the Staff Report of a
17 \$10 million per occurrence for the umbrella coverage,
18 it's feasible that if five turbines were completely
19 destroyed, that could exhaust the policy if you
20 understand the generic cost per turbine to be
21 \$2 million?

22 A. I'm sorry. Could you repeat that,
23 please?

24 Q. If you understand the generic cost to
25 install a turbine, a new turbine, to be \$2 million,

1 if -- say there were some occurrence that would
2 completely destroy five turbines, then would you
3 agree that the destruction of five turbines would
4 exhaust that \$10 million policy?

5 A. I don't know. I don't know the
6 particulars of the policy and how that would be
7 implemented.

8 Q. On page 48 of the Staff Report under the
9 heading titled "State and Local Tax" you had -- you
10 did write this section here?

11 A. Correct.

12 Q. Okay. Do you know if the payment in lieu
13 of taxes would allocate any funding to the city of
14 Urbana?

15 A. I do not know that.

16 MS. PARCELS: Nothing further, your
17 Honors. Thank you.

18 ALJ TAUBER: Thank you.

19 Mr. Selvaggio?

20 MR. SELVAGGIO: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Selvaggio:

24 Q. Mr. Siegfried, my name is Nick Selvaggio,
25 I am the Champaign County Prosecutor and I, along

1 with my colleague Jane Napier, represent the county
2 and the affected townships.

3 I'm going to ask you a number of
4 questions today and it's neither my intent nor my
5 desire to confuse you, so if at any time you're not
6 sure what I'm asking, just let me know and I'll
7 repeat it, okay?

8 A. Okay.

9 Q. Initially you, in addition to your
10 testimony, authored pages 46, 47, and 48 of the Staff
11 Report; is that correct?

12 A. Yes, sir.

13 Q. I presume that you read it before coming
14 here to testify today. Are there any corrections
15 that you would like to make to it?

16 A. No, sir.

17 Q. Okay. The reason that I ask is I just
18 have a few preliminary matters. On page 46 in the
19 first full paragraph under "Public Interaction," in
20 the last line of that paragraph it states: "The
21 Applicant also indicated that it maintains an
22 informational website for the project and has
23 established an office located in Bellefontaine,
24 Ohio."

25 Do you see that?

1 A. Yes, sir.

2 Q. And it makes reference to a footnote 36,
3 and if you look at the bottom of the page, that is
4 "Application, Volume I," it says "page 151."

5 A. Yes, sir.

6 Q. Would you please turn to Volume I, page
7 151.

8 A. Okay.

9 Q. In the last paragraph on page 151 it's
10 entitled "Public Interaction." Do you see that?

11 A. Yes, sir.

12 Q. Would you read that paragraph to yourself
13 and let me know if it's consistent with conveying
14 information about an informational website or an
15 office located in Bellefontaine.

16 A. I would note the very bottom of page 151
17 refers to the company website. And in the
18 application there does continue discussion of the
19 public interaction on page 152 of the application as
20 well.

21 Q. Okay. And specifically in the third
22 paragraph on page 152 it does talk about the
23 Bellefontaine, Ohio, office; does it not?

24 A. Yes, sir.

25 Q. And then on page 153 at the very top it

1 speaks of the informational website for the facility;
2 does it not?

3 A. Correct.

4 Q. So would you suggest that this portion of
5 the Staff Report be amended?

6 MR. SETTINERI: I'd just like to object,
7 just for the record, to clarify what portion -- to be
8 clear on what portion of the Staff Report you're
9 referring to.

10 MR. SELVAGGIO: Thank you, sir. I'm
11 speaking of footnote No. 36, the page number
12 reference.

13 A. No, actually. My footnote there is meant
14 to apply to more than just that final sentence, and
15 it's referring more to the discussion of the public
16 interaction which does begin on page 151.

17 Q. Oh, I see. So the entire paragraph after
18 footnote 35, that entire paragraph is applicable to
19 footnote 36?

20 A. I can go through and confirm, but, again,
21 the discussion of public interaction in the
22 application begins at page 151, so that's what the
23 footnote indicates. I can go back and confirm, if
24 you'd like, whether it shows up on 151 or 152.

25 Q. Well, I'm just trying to get a sense

1 of -- I'm trying to get a sense from you as to what
2 you believe, in your position, what you believe is
3 able to be amended in the Staff Report and what's not
4 able to be amended or what you would not amend.

5 A. I'm not proposing to amend anything in my
6 section.

7 Q. All right. And then if you would turn --
8 or, if you would take a look on page 47, footnote 45,
9 it makes reference to page 5, and footnote 45 is with
10 regard to the second full paragraph under "Landowner
11 Lease Agreements" on page 47 of the Staff Report. If
12 you would do the same exercise and turn to page 5 in
13 the application and tell me if the reference to the
14 68 acres is made on page 5 of the application or is
15 it actually made on page 4.

16 A. No, it's actually made on page 5 under
17 the paragraph beginning "Careful facility design."
18 About midway through that paragraph there's a
19 reference to the 68 acres.

20 Q. Would you agree with me, if you look on
21 page 4 under "Land Use Impacts," toward the -- the
22 third-to-last sentence starting off with the words
23 "The presence of the turbine bases, substation, and
24 other ancillary structures will result in a
25 cumulative conversion of approximately 68 acres of

1 land from its current use to built facilities
2 (.5 percent of the 13,500 acres of leased land)."

3 Would you agree with me that that
4 sentence I just read is more representative of the
5 sentence on page 47 that houses footnote 45 than the
6 sentence that you pointed out on page 5 of the
7 application?

8 A. I'm afraid I don't understand your
9 question.

10 Q. Okay. If you take a look at the sentence
11 on page 4 that I read of the application which
12 references 68 acres and, essentially, less than
13 1 percent of the leased land and compare that
14 sentence to the one on page 5 of the application that
15 you indicated made reference to 68 acres being
16 converted to built facilities -- do you see that?

17 A. Yes, sir.

18 Q. -- okay, which one of those two sentences
19 is more representative of your written sentence on
20 page 47 that says "The Applicant estimates
21 approximately 68 acres being permanently converted to
22 hosting facility components representing less than
23 1 percent of the total leased project land"?

24 MR. REILLY: Objection. Relevance. I
25 mean, the documents speak for themselves.

1 ALJ CHILES: Mr. Selvaggio.

2 MR. SELVAGGIO: The relevance is
3 two-fold. Number one, the state -- I mean, the
4 county and townships are looking for clarity in the
5 staff's report. Secondly, if the staff member
6 indicates that he does not believe that these are
7 subject to amendment, it speaks volumes -- on just
8 these technical references, the county believes it
9 speaks volumes on whether or not potential conditions
10 are ever modifiable. I mean, it really calls into
11 question why are we here in the first place.

12 ALJ CHILES: Mr. Reilly.

13 MR. REILLY: These sections are not the
14 conditions to start with. This is a discussion in
15 the Staff Report of the public interest heading.
16 These are not the conditions which -- the 70
17 conditions appear later.

18 Beyond that, the documents speak for
19 themselves. I don't know how else to put it. I
20 mean, he's asking, as I understand it, which of
21 individual statements on pages 4 and 5 of the
22 application is more representative in the witness's
23 opinion of the witness's statement on page 47 of the
24 Staff Report, the statement the witness wrote. They
25 both support it.

1 MR. SELVAGGIO: Judge, may I state that
2 in our first proceeding Mr. Margard in Buckeye Wind
3 said ". . . the Staff Report, in essence, compromises
4 [verbatim] the staff's direct testimony in this
5 case," and that's on, for reference, Volume VII,
6 transcript page 1726. So the staff report
7 specifically adds to the direct testimony.

8 ALJ CHILES: Thank you.

9 However, this is a separate proceeding
10 from the proceeding that occurred three years ago,
11 and the Bench is in agreement with Mr. Reilly so the
12 objection is sustained.

13 MR. REILLY: Your Honor, just so -- the
14 staff would still maintain that the Staff Report is
15 the staff's position in the case.

16 We would not back away from Mr. Margard's
17 statement that you just referenced.

18 ALJ CHILES: Thank you. But as to the
19 relevancy of this particular line of questions, the
20 objection is sustained.

21 MR. REILLY: Thank you, your Honor.

22 Q. (By Mr. Selvaggio) Mr. Siegfried, would
23 you agree with me, then, that on page 5 there is no
24 reference in the sentence that deals with 68 acres to
25 any mention of any figure that deals with less than

1 1 percent?

2 MR. REILLY: Objection. The statement on
3 page 5 speaks for itself.

4 ALJ CHILES: Mr. Selvaggio.

5 MR. SELVAGGIO: Well, your Honor, on page
6 2 of the witness's direct testimony he says on line
7 10: "My testimony supports the Public Interest,
8 Convenience, and Necessity (PICN) section beginning
9 at page 46 of the Staff Report of Investigation
10 (Staff Report) filed in this proceeding," so I'm
11 trying to cross-examine him on his testimony which is
12 supporting what he has proposed to have written on
13 46, 47, and 48.

14 ALJ CHILES: Mr. Selvaggio, can you
15 rephrase your question so you're asking the witness
16 that direct question, the information that you're
17 trying to get, rather than referring to this portion
18 of the -- I'm not really sure what you're referring
19 to.

20 Q. I'll try it this way: Mr. Siegfried,
21 does your language -- does the Applicant's language
22 on page 5 in the sentence that deals with 68 acres --
23 do you see that?

24 A. Yes, sir.

25 Q. -- does it make any reference to the

1 phrase "less than 1 percent"?

2 A. No.

3 Q. On page 4 of the application in the
4 sentence that deals with 68 acres of land does it
5 make reference to a numerical value that is less than
6 1 percent?

7 A. Yes.

8 Q. Given that page 5 does not and page 4
9 does, and given that your footnote on the bottom of
10 page 47 of the Staff Report which references page 5
11 for that sentence, is it not more accurate to modify
12 the Staff Report to making a reference from page 5 to
13 page 4?

14 MR. REILLY: Objection. It's relevance
15 and argumentative too.

16 ALJ CHILES: Mr. Selvaggio.

17 MR. SELVAGGIO: I'm just asking if it's
18 more accurate.

19 MR. REILLY: He asked the question
20 before, it's been objected to before, and the
21 objection was sustained.

22 ALJ CHILES: The Bench's ruling stands,
23 the objection is sustained.

24 MR. SELVAGGIO: I'm not seeking to
25 violate the court's order. Am I permitted to ask a

1 similar question on the same topic?

2 ALJ CHILES: It depends on what the
3 question is. You can go ahead and ask the question
4 if you want to and then if Mr. Reilly wants to object
5 to it, he can object to it.

6 MR. SELVAGGIO: Okay.

7 Q. (By Mr. Selvaggio) Mr. Siegfried, are you
8 unwilling to seek modification of footnote No. 45?

9 MR. REILLY: Objection. Relevance.

10 ALJ CHILES: Sustained.

11 Q. Mr. Siegfried, when did you first learn
12 of the Buckeye II project?

13 A. I don't recall exactly.

14 Q. Would it have been in calendar year 2012?

15 A. I believe it would be prior to that.

16 Q. Do you recall how much prior?

17 A. Not exactly.

18 Q. Okay. Somewhere in front of you is UNU
19 Exhibit No. 8. Would you pull that for me, please.

20 A. You said "UNU Exhibit 8"?

21 Q. Yes, sir.

22 A. The note from Megan Seymour?

23 Q. Yes, sir.

24 A. Okay, I have it.

25 MR. REILLY: May I have a moment, please?

1 MR. SELVAGGIO: I'll wait till your
2 counsel has his copy.

3 MR. REILLY: Thank you.

4 Q. Mr. Siegfried, you were employed --
5 you've been employed by the Public Utilities
6 Commission and the Power Siting Board for how long?

7 A. I've been with the Public Utilities
8 Commission since 1990.

9 Q. Okay. And then the Power Siting Board?

10 A. Approximately in the last ten years.

11 Q. Okay. UNU [verbatim] purports to be an
12 e-mail that was sent to Michael Speerschneider. Do
13 you know who Michael Speerschneider is?

14 A. Yes, I do.

15 Q. And who is he?

16 A. He was the -- well, excuse me. He's
17 involved with the Applicant, his exact title I don't
18 recall. It might be Director of Permits.

19 Q. Okay. And on this document you are
20 carbon -- well, an e-mail that purports to be carbon
21 copied to stuart.siegfried@puc.state.oh.us was named.
22 Do you recognize that e-mail address?

23 A. That is my work address; yes, sir.

24 Q. Okay. And it has a date at the upper
25 right-hand corner of July 16th, 2009. Do you see

1 that?

2 A. Yes, sir.

3 Q. Okay. On the second page of that
4 document there purports to be a draft agenda that is
5 scheduled to take place on July 17th, 2009, with
6 EverPower, ODNR, OPSB, and the U.S. Fish and Wildlife
7 Service regarding an Indiana bat. Do you see that?

8 A. Yes, sir.

9 Q. Did you attend that meeting?

10 A. I don't recall.

11 Q. Do you see the reference made to Buckeye
12 Wind I and II?

13 A. Yes, sir.

14 Q. Does that share the same title as this
15 project?

16 A. Yes.

17 Q. Is it fair, then, sir, to say that you
18 were at least sent correspondence as early as July
19 16th, 2009, with regard to a Buckeye Wind II
20 project?

21 A. It appears so.

22 Q. And in Buckeye I you wrote the Staff
23 Report, correct? Or, well, you wrote the -- let me
24 strike that.

25 You sponsored the Staff Report for

1 testimonial purposes; is that correct?

2 A. Yes.

3 MR. REILLY: Objection. Relevance.
4 Buckeye I isn't relevant here.

5 ALJ CHILES: Mr. Selvaggio.

6 MR. SELVAGGIO: Well, it's going to
7 foundation as to his general knowledge.

8 ALJ CHILES: His general knowledge about
9 this project?

10 MR. SELVAGGIO: Yes.

11 ALJ CHILES: All right, I'll allow it
12 within that limited scope.

13 Q. (By Mr. Selvaggio) So you sponsored the
14 testimony in Buckeye I?

15 A. I sponsored the Staff Report, yes, sir.

16 Q. Or, I'm sorry, the Staff Report.

17 With regard to Buckeye II you are just
18 testifying on the public interest, convenience, and
19 necessity; is that correct?

20 A. Yes.

21 Q. Can you share with me why, with regard to
22 the public interest, convenience, and necessity, you
23 did not author any recommended conditions?

24 MR. REILLY: Objection. Relevance.

25 ALJ CHILES: Mr. Selvaggio.

1 MR. SELVAGGIO: Well, Judge, on page 2 of
2 the defendant or, I mean, of the witness's testimony,
3 line 14, the question is: "Were you responsible for
4 authoring any of the recommended conditions in the
5 Staff Report?" And he said, "No." I believe it's
6 very relevant to ask why.

7 ALJ CHILES: I'll allow the question.

8 Q. Mr. Siegfried, why?

9 A. I did not think any were warranted given
10 the scope of the topics that I covered.

11 Q. On page 46 of the Staff Report you spent
12 a number of lines speaking of public interaction
13 programs and you concluded by writing about an office
14 located in Bellefontaine, Ohio. Would you share with
15 me why you felt that the office in Bellefontaine,
16 Ohio, was relevant?

17 A. I think that local office would simply be
18 part of their public interaction program.

19 Q. It would handle complaints?

20 A. It could be a point of contact.

21 Q. What county is Bellefontaine located in?

22 A. Champaign.

23 Q. If I told you it was located in Logan,
24 would that surprise you?

25 A. Yes.

1 Q. Okay. Assuming that Bellefontaine is
2 located in Logan County, then would it make more
3 sense to you to have public interaction in a
4 community in which the turbines were selected -- were
5 selected to be implemented than in a community out of
6 the county?

7 MR. REILLY: Objection. I don't
8 understand the hypothetical. The witness testified
9 that it would come as a surprise to him. I believe
10 the witness testified it would come as a surprise to
11 him to hear Bellefontaine was located in Logan
12 County, and now we're dealing with a hypothetical
13 that asked the witness to assume something that he
14 said he did not believe?

15 ALJ CHILES: Mr. Selvaggio, do you want
16 to rephrase your question?

17 MR. SELVAGGIO: Is the court willing to
18 take judicial notice that Bellefontaine is in Logan
19 County?

20 ALJ CHILES: It would really prefer if
21 you would just rephrase your question. I don't think
22 that the prior question and the witness's answer were
23 clear to Mr. Reilly, so if you could just ask the
24 question of the witness so that it's clear, that will
25 be preferable.

1 Q. Mr. Siegfried, if Bellefontaine is
2 located in Logan County and not Champaign, would you
3 be willing to recommend a condition for Champaign
4 County residents that the Applicant maintain an
5 office in Champaign County?

6 A. Not necessarily. I don't think it has to
7 be in the exact same county.

8 Q. You specifically cited on page 46 that
9 the Applicant has employed local residents as project
10 developers. Are those local residents Champaign
11 County residents or Logan County residents?

12 A. I don't know.

13 Q. You indicated in that same sentence on
14 page 46 that the Applicant -- referencing the local
15 residents have participated in local informational
16 meetings. Were those local informational meetings in
17 Champaign County or Logan County?

18 A. I'm sorry. Could you repeat that?

19 Q. Yes. In that same sentence you wrote
20 that "The Applicant has . . . employed local
21 residents as project developers, who have
22 participated in local informational meetings."

23 ALJ CHILES: Mr. Selvaggio, I'm sorry to
24 interrupt you, but could you give us a page reference
25 as well as a paragraph reference?

1 MR. SELVAGGIO: Yes, on page 46 of the
2 Staff Report in the first paragraph, right in the
3 middle.

4 ALJ CHILES: Thank you.

5 Do you need the question read back to
6 you?

7 THE WITNESS: Please.

8 ALJ CHILES: Would you read the question
9 back, please.

10 Q. (By Mr. Selvaggio) On page 46 of the
11 Staff Report, right in the middle where you state:
12 "The Applicant has also employed local residents as
13 project developers" -- and you said you didn't know
14 whether those local residents were Champaign or Logan
15 County residents -- "who have participated in local
16 informational meetings," and I was asking you did
17 those occur in Champaign County or in Logan County?

18 A. I do not know.

19 Q. To conclude in reading that sentence on
20 page 46, you also wrote: " . . . and hosted annual
21 displays at the Champaign County Fair." Would you
22 agree with me that we can presume that the Champaign
23 County fair takes place in Champaign County?

24 A. Seems reasonable.

25 Q. Okay. So then the next sentence: "The

1 Applicant hosted its public information meeting at
2 Triad High School in North Lewisburg," is North
3 Lewisburg in Champaign County or in Logan County?

4 A. I don't know.

5 Q. Do you know, is Buckeye II located all
6 within Champaign County, all within Logan County, or
7 in half and half, or some portion thereof in either
8 county?

9 A. It's entirely Champaign.

10 Q. If it's entirely in Champaign and
11 Bellefontaine is located entirely out of Champaign,
12 would it make more -- would it be in the convenience
13 of the local residents to have an office maintained
14 in the county in which the project is cited?

15 MR. REILLY: Objection similar to that as
16 before. He's asking him to assume something that the
17 witness does not believe is true.

18 ALJ CHILES: I'll allow the witness to
19 answer to the extent he holds an opinion on the
20 subject.

21 A. If you're asking if I'm opposed to them
22 having one in Champaign County, no, I'm not.

23 Q. Would you go so far as to recommend a
24 condition that they do so?

25 A. No, I did not recommend such a condition.

1 Q. I know you didn't. Would you go so far
2 as to recommend one now that you know or if you
3 accept the fact that their office is not located in
4 our county?

5 MR. SETTINERI: Object. Asked and
6 answered about five minutes ago.

7 MR. SELVAGGIO: I'm not sure I'm getting
8 an answer that's why I keep asking for it.

9 MR. REILLY: I will add if he's looking
10 for a particular answer, it's argumentative.

11 ALJ CHILES: Could you read back the
12 question to me, please.

13 (Record read.)

14 ALJ CHILES: Sustained.

15 Q. (By Mr. Selvaggio) Mr. Siegfried, what is
16 the purpose of public interaction programs?

17 A. I'm not sure I understand the question.

18 Q. Okay. Let's go back to the Staff Report
19 on page 46 and the first sentence under Public
20 Interaction. Do you see the heading "Public
21 Interaction" on page 46?

22 A. Yes, sir.

23 Q. You write: "An application for a
24 certificate of environmental compatibility and public
25 need must include a description of the Applicant's

1 public interaction programs." What is the purpose of
2 public interaction programs as that term or that
3 phrase is used to you?

4 A. What is the purpose of including it in
5 the rule?

6 Q. Well, if you want to answer that first,
7 sure, but what I want to know is what's the purpose
8 of a public interaction program?

9 A. Well, as my understanding of what the
10 intent of putting it in the rule is, is to include
11 discussion on some of the -- I'm trying not to use
12 the word "interaction" -- some of the dialogue
13 perhaps that might occur between the Applicant and
14 the community.

15 Q. And so if the community has questions
16 about any phase in the project, the Applicant can
17 demonstrate that, look, we've undergone -- we've
18 undertaken these activities to try to share
19 information. Is that a fair statement?

20 A. Sounds fair.

21 Q. And, presumably, as the process
22 progresses is it fair to say that people may have
23 more questions?

24 A. I don't know that that's necessarily a
25 fair assumption.

1 Q. Is it fair to assume that as construction
2 begins and the reality hits our local residents that,
3 hey, we've got something going on in our backyard,
4 that they are going to look for more communicative
5 avenues to pursue to answer their questions?

6 MR. REILLY: Objection to the foundation.
7 There's been no foundation laid as to what anybody's
8 going to think at any future date on any set of
9 circumstances.

10 ALJ CHILES: Mr. Selvaggio, could you
11 rephrase your question.

12 Q. When they start building these things,
13 Mr. Siegfried, are people going to get upset and want
14 someone to talk to?

15 A. I don't know.

16 Q. Well, I'm wondering why in Buckeye I
17 there was a condition 48 that "The Applicant shall
18 establish, maintain, and manage a toll-free . . .
19 number for public contacts regarding the facility's
20 operation," yet in Buckeye Wind II there's absolutely
21 no condition that gives residents any avenue to
22 communicate with anybody about any problem that they
23 have with construction. Can you tell me why that is?

24 MR. REILLY: Objection. It calls for an
25 interpretation of the conditions of the Buckeye II

1 Staff Report. If you look specifically at general
2 condition No. 5, it requires the Applicant to submit
3 a complaint resolution process.

4 ALJ CHILES: Mr. Selvaggio.

5 MR. REILLY: So it misstates the Staff
6 Report too.

7 MR. SELVAGGIO: Really?

8 MR. REILLY: Condition No. 5.

9 MR. SELVAGGIO: Condition No. 5 has
10 nothing to do with why there's no toll-free number.

11 MR. REILLY: Objection. Relevance.

12 MR. VAN KLEY: I would also object, your
13 Honor, to the coaching of the witness that just
14 occurred and ask that the Bench caution counsel
15 against coaching the witness in the future by
16 suggesting answers to that witness.

17 ALJ CHILES: I disagree that that's
18 occurred so I'm not going to instruct anything to
19 Mr. Reilly.

20 The objection is overruled. The witness
21 may answer to the extent he holds an opinion on the
22 subject.

23 THE WITNESS: Could I have it reread,
24 please?

25 ALJ CHILES: Can you reread the question

1 for me.

2 (Record read.)

3 A. I can tell you that I did not personally
4 draft the recommendation in Buckeye I so I don't know
5 the rationale that went in there. I can tell you I
6 did not think it was necessary to include it based on
7 the conclusions I reached in this section. I'm not
8 opposed to them having such a number, but I did not
9 think it needed a condition.

10 Q. Would you agree with me that a toll-free
11 number for public contacts furthers the Applicant's
12 public interaction program concept?

13 A. I think it's one avenue, yes.

14 Q. Are there -- what other avenues can you
15 think of?

16 A. Again, there could be local meetings, the
17 website.

18 Q. There could be a local office?

19 A. I believe there is a local office.

20 Q. You believe it's in Champaign County,
21 right?

22 A. I'm sorry?

23 Q. Do you believe that local office is
24 currently housed in Champaign County?

25 A. I believe it's in Bellefontaine.

1 Q. In the city of Bellefontaine, correct?

2 A. Yes, sir.

3 Q. Okay. So are you willing to recommend a
4 condition that proposes a toll-free telephone number
5 for local residents?

6 A. I think it's something staff could
7 consider.

8 Q. Did you read, in preparing for today's
9 testimony, did you read the entire Staff Report in
10 Buckeye II?

11 A. No, I did not.

12 Q. On page 48 you make reference to state
13 and local tax generation in those two paragraphs. Do
14 you see that?

15 A. Yes, sir.

16 Q. Okay. In making those conclusions are
17 you assuming that the production tax credit will be
18 extended at the end of this year?

19 A. No.

20 Q. Are you familiar with the American Wind
21 Energy Association?

22 A. Generally.

23 Q. Are you familiar with their announcement
24 made recently that they have warned that the loss of
25 the tax credit will lead to 37,000 layoffs as demand

1 for new wind turbines and wind farms drops sharply?

2 A. No, sir.

3 Q. And are you familiar with Siemens Wind
4 Energy?

5 A. I've heard of them.

6 Q. Okay. Are you aware that, with regard to
7 the extension of the production tax credit, that they
8 announced in September that they would cut 110
9 temporary contract workers at its Hutchinson turbine
10 immediately and lay off 146 regular employees in two
11 months, meaning employment would be down for more
12 than 400 jobs this summer to 150 jobs?

13 A. No, sir.

14 Q. Are you assuming, then, in making the
15 conclusion that the annual payment amount on page 48
16 in the second paragraph under State and Local Tax of
17 over \$1 million, are you assuming that there will be,
18 number one, enough turbines produced to be purchased
19 and, number two, that there will be a market for wind
20 energy?

21 MR. REILLY: I'm going to object. I
22 don't understand what are "enough turbines to be
23 purchased." Is there a number with that?

24 ALJ CHILES: I'm a little confused about
25 that, too. Mr. Selvaggio, could you clarify a little

1 bit what you mean on that specific point.

2 Q. Mr. Siegfried, on page 6 of the Staff
3 Report, the very first sentence says, "The Applicant
4 proposes to construct the Buckeye II Wind Farm with
5 up to 56 wind turbines." Do you see that?

6 A. Yes, sir.

7 Q. On page 48 -- well, before I move off
8 of page 6, that first sentence concludes by saying
9 ". . . and 140 megawatts of capacity." Do you see
10 that?

11 A. Yes, sir.

12 Q. On page 48, in the second paragraph under
13 State and Local Tax, you state: "If the Applicant
14 pays the maximum PILOT of \$9,000 per megawatt, the
15 annual payment amount would be approximately
16 \$1,045,800." Do you see that?

17 A. Yes, sir.

18 Q. In making that conclusion are you
19 assuming that there will be sufficient wind turbine
20 production and wind energy demand to meet that
21 figure?

22 MR. REILLY: If he knows. I mean, I'm
23 confused. Is the question are there going to be 56
24 turbines? I mean, I'm confused as to what he means
25 in the question.

1 ALJ CHILES: Are you referring to the
2 number of wind turbines?

3 MR. SELVAGGIO: Judge, I'm merely asking
4 is he assuming that there will be enough wind turbine
5 production with the elimination of the wind tax
6 credit, I mean the --

7 ALJ CHILES: Assuming that there will be
8 production of 56 wind turbines?

9 MR. SELVAGGIO: No. That there will be
10 sufficient wind turbine production to enable the
11 Applicant to purchase the 56 wind turbines.

12 MR. REILLY: Then I'm going to object for
13 improper foundation. I don't understand where any of
14 the numbers are coming from.

15 MR. SELVAGGIO: It's coming from the
16 Staff Report that you introduced.

17 MR. REILLY: Where any of your numbers
18 are coming from. I mean, I don't know what you're
19 after.

20 ALJ CHILES: I'm a little confused as
21 well. Can you read back the question to me, the last
22 full question.

23 (Record read.)

24 ALJ CHILES: Just to try and clarify one
25 more time, are you referring to 56 wind turbines will

1 be available on the market for purchase?

2 MR. SELVAGGIO: Yes.

3 ALJ CHILES: Thank you. With that
4 clarification.

5 A. The sentence was simply intended as a
6 calculation, simple math calculation. If there were
7 not, if they did not ultimately build 56 turbines,
8 excuse me, if they did not actually build 140
9 megawatts, then I think the number would differ.

10 Q. Is it fair to say that there's a lot of
11 assumptions in making the conclusion of that
12 calculation?

13 A. I would say that there are two primary
14 assumptions in that.

15 Q. On page 47 in the last paragraph under
16 the heading "Landowner Lease Agreements" you've
17 listed certain economic impacts that will result if
18 this project goes forward. Do you see that?

19 A. Yes, sir.

20 Q. I want to ask you about -- oh, as an
21 aside, you made reference to Exhibit G, as in George,
22 in setting forth some of those economic impacts, and
23 that reference to Exhibit G was made in footnote
24 No. 48. Do you see that?

25 A. Yes, sir.

1 Q. Okay. Do you have Exhibit G in front of
2 you by any chance?

3 A. Yes.

4 Q. Okay. Now, bear with me as I try to
5 reach some clarification here. In Exhibit G on page
6 1 I would ask you to take a look at the very first
7 paragraph, right in the middle it says, "For the
8 purposes of this study, the local economy includes
9 Champaign, Logan, Union, Madison, Clark, Miami, and
10 Shelby Counties." Do you see that?

11 A. I'm sorry. You said Champaign, Logan,
12 Union, Madison, Clark, Miami and Shelby Counties?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Okay. Do you know why the Applicant
16 chose to study a multiregion economy as opposed to
17 just Champaign County's local economy?

18 A. I could speculate, but I did not have
19 discussions with them on that topic.

20 Q. Okay. On page 47 you used the word
21 "local" on the last -- in the last sentence, I'm
22 sorry, the last paragraph under "Landowner Lease
23 Agreements," the last paragraph, in the first line
24 where it says, "Annual lease payments will be
25 provided to local landowners participating in the

1 project."

2 A. Yes.

3 Q. Is your version of "local" the same as
4 Exhibit G's version of "local"? In other words, are
5 we talking about the same meaning of the word
6 "local"?

7 MR. REILLY: If we could clarify, your
8 Honor, "local" there means -- "local" includes the
9 multicounty region identified in paragraph -- on the
10 first paragraph of page 1?

11 MR. SELVAGGIO: That's what I'm asking
12 the witness.

13 MR. REILLY: Okay. I'm just clarifying
14 that's what you mean by "local."

15 ALJ CHILES: Right. Could we clarify for
16 the record that you're referring to Exhibit G, page
17 1, paragraph 1 following the term "the local economy
18 includes" just for purposes of clarity on the record?

19 MR. SELVAGGIO: Yes, your Honor.

20 ALJ CHILES: Thank you.

21 Q. (By Mr. Selvaggio) So, in essence,
22 Mr. Siegfried, I just want to make sure, because this
23 issue's going to come up in some other questioning I
24 have, when you use the word "local," you yourself, do
25 you mean local as in Champaign County or local as is

1 referenced in Exhibit G which means a multiregion
2 territory, or multicounty territory?

3 MR. SETTINERI: I'm going to object
4 just -- it would be helpful, when you're doing a
5 comparison between the use of "local," if you could
6 use a specific phrase in the Staff Report compared to
7 the exhibit. Did we say -- are we referring to local
8 landowners?

9 ALJ CHILES: I believe we were.
10 Is that correct?

11 MR. SELVAGGIO: Yes, your Honor.

12 MR. SETTINERI: All right. Thank you
13 very much.

14 THE WITNESS: I'm trying to recall the
15 question, but --

16 ALJ CHILES: Do you need the question
17 reread?

18 THE WITNESS: Please.

19 ALJ CHILES: Could you please repeat the
20 question.

21 (Record read.)

22 A. As I used the word "local" there on page
23 47 of the Staff Report, that's pertaining to the
24 project area.

25 Q. Now I would like you to turn to page 141

1 of the application.

2 A. Okay.

3 Q. Do you see in the paragraph right above
4 the paragraph that has the notation "(3)," the
5 paragraph right above that one that says, "Annual
6 lease payments will be provided to local landowners
7 participating in the Facility"?

8 A. Yes.

9 Q. Do you see that?

10 That almost reads word for word with what
11 you wrote on page 47 of the Staff Report. Do you see
12 that?

13 A. Okay.

14 Q. This section of the application has to do
15 with the economic impact on the local commercial and
16 industrial activities. And in that paragraph I made
17 reference to on page 141 of the application it goes
18 on to state that: "Like other local expenditures,
19 the lease payments will also enhance the ability of
20 participating landowners to purchase additional goods
21 and services. To the extent that these purchases are
22 made locally, they will have a broader positive
23 effect on the local economy."

24 Do you see that?

25 A. Yes, sir.

1 Q. When you were doing the Staff Report and
2 reviewing these pages in Exhibit G and the word
3 "local" was used in that sense, in that broad sense,
4 were you taking the position in your mind that
5 "local" meant just Champaign County or "local" meant
6 the, what we're going to call the seven-county
7 region?

8 MR. REILLY: Objection. Relevance. I
9 think the important point is what "local" means in
10 the Staff Report, not at any particular time in the
11 past what anyone meant by "local" in their mind.

12 ALJ CHILES: Mr. Selvaggio.

13 MR. SELVAGGIO: Well, Judge, the staff
14 has relied on Exhibit G and has relied on the
15 application as noted in footnotes 36, 38, 39, 41, 43,
16 45, 47, 48, and 52 in coming to their conclusions.

17 ALJ CHILES: Could you read the question
18 back to me, please.

19 (Record read.)

20 ALJ CHILES: I'll allow the witness to
21 answer to the extent he holds an opinion on the
22 matter.

23 A. I did not interpret it one way or the
24 other. It's not directly addressed in my section of
25 the Staff Report.

1 Q. As you were determining the public
2 interest, convenience, and necessity conditions did
3 you concern yourself with the economic impact of the
4 project as it applies to the direct impact, the
5 indirect impact, and the induced impact of the
6 project?

7 A. I'm sorry. You said when considering the
8 conditions?

9 Q. I may have inartfully stated that so let
10 me try to use your lingo. As you were considering
11 the public interest, convenience, and necessity
12 section and analyzing it and assessing it, did you
13 consider the direct, indirect, and induced impact
14 that this project would have economically in the
15 footprint region?

16 A. Not to any significant extent.

17 Q. You indicated on page 1 of your direct
18 testimony on line 16 that, you state: ". . . my
19 duties pertain almost exclusively to the
20 implementation of the state's alternative energy
21 portfolio standard." Do you see that?

22 A. Yes, sir.

23 Q. What does "implementation" mean?

24 A. In that context it pertains to putting
25 the statute into place and being part of the team

1 that manages that on a going-forward basis.

2 Q. Can you tell me more, because I'm not
3 sure I understood what you said?

4 A. Okay. It involved initially drafting the
5 rule to put the statute, the portfolio standard
6 statute, into effect as well as really daily
7 operations with putting -- with implementing the
8 standard, from certifying renewable facilities to
9 reviewing compliance reports to reviewing potential
10 rate impacts.

11 Q. Do you have a hand in analyzing the
12 potential economic benefits of clean energy policies
13 and programs?

14 THE WITNESS: I'm sorry. Could I have
15 that read back or repeated?

16 ALJ CHILES: Please.

17 (Record read.)

18 A. Not directly.

19 Q. I'm just trying to understand the answer.
20 So do you participate in public policy discussions on
21 clean energy resources for the state of Ohio?

22 A. It might depend on the context.

23 Q. Well, let's talk about that a little bit,
24 then. You have a Bachelor of Science degree in
25 international business from Bowling Green; is that

1 correct?

2 A. Yes, sir.

3 Q. And was part of your coursework in the
4 study of economics?

5 A. Yes, sir.

6 Q. Macroeconomics?

7 A. It was part of it.

8 Q. Microeconomics?

9 A. Yes, sir.

10 Q. And so you have some knowledge as to what
11 happens when income that's generated from the direct
12 and the indirect effects is re-spent in the local
13 economy?

14 A. As a conceptual matter?

15 Q. Yes.

16 A. Okay, yes.

17 Q. And you would agree with me that the wind
18 project that we have before us today certainly has
19 some macro- and microeconomic effects as they apply
20 to the purchase of goods and services; fair
21 statement?

22 A. I guess I would want to know how you're
23 defining "macro" and "micro" here before I answer.

24 Q. Okay. That's fair. Before we get to
25 that, the application itself on page 138, and I can

1 pause if you'd like a minute to find it.

2 A. I'm there.

3 Q. Okay. It indicated that, in subparagraph
4 (2), that: "Information provided in this section was
5 obtained primarily from 'Assessing the Economic
6 Impacts of Buckeye II Wind Farm,'" and then the
7 second sentence: "In their evaluation of economic
8 impacts, Camiros used the Job and Economic
9 Development Impact Wind Model," also known as "JEDI."
10 Do you see that?

11 A. Yes, sir.

12 Q. Are you familiar with the JEDI concept?

13 A. Only in passing.

14 Q. Okay. As you reviewed these materials
15 did you question the use of the model, the JEDI
16 model?

17 A. As I was considering the lease payments?

18 Q. As you were considering discussing the
19 economic impact of this project in the public
20 interest, convenience, and necessity portion of the
21 Staff Report did you question the use of the JEDI
22 model in your analysis?

23 A. The economic topics covered in public
24 interest, convenience, and necessity are the
25 potential PILOT payments and the annual lease

1 payments, and neither of which incorporates the JEDI
2 model.

3 Q. So you did not consider the use of the
4 model in your analysis.

5 A. I did not.

6 Q. Did you question the accuracy of the
7 information that was provided in the application
8 pertaining to the creation of jobs through the use of
9 the JEDI model?

10 A. I did not. There may have been other
11 staff that did, but I did not.

12 Q. Do you happen to know if any of the staff
13 did?

14 A. I do not know. I know that there is
15 additional language in the Staff Report addressing
16 economics that I did not draft.

17 Q. Would you point me to that?

18 A. Give me a second here.

19 Q. Yes, please. Take your time.

20 A. There is some discussion on page 22 of
21 the Staff Report.

22 Q. Do you know who wrote that portion?

23 A. No, I don't.

24 MR. SELVAGGIO: Mr. Reilly, may we have
25 the name of the individual that wrote that portion?

1 MR. REILLY: What are we looking at? I'm
2 sorry.

3 MR. SELVAGGIO: The name of the person
4 that wrote the language under "Economics" on page 22.

5 MR. REILLY: Let us talk about that at
6 the break if we could.

7 MR. SELVAGGIO: Okay. And just so the
8 court knows, we would ask that that person be made
9 available for testimony.

10 MR. REILLY: I believe there was a
11 requirement for witness lists, I believe there's a
12 requirement for subpoenas, none of which have been
13 made here, but we can address that when we get to it.

14 ALJ CHILES: Your request is noted for
15 the record.

16 MR. VAN KLEY: I would also note that I
17 believe the Board's rules prohibit subpoenas of Board
18 members or staff members.

19 ALJ CHILES: I'm sorry. I didn't catch
20 what you said. Could you repeat that.

21 MR. VAN KLEY: Yes. I believe the
22 Board's rules prohibit us from obtaining subpoenas
23 for staff members.

24 ALJ CHILES: Thank you.

25 MR. REILLY: Just to clarify, we can

1 discuss this when it comes up, if it comes up, about
2 what the Board's rules allow and don't allow.

3 ALJ CHILES: We'll discuss that later.
4 Thank you.

5 Q. (By Mr. Selvaggio) Mr. Siegfried, subject
6 to the court's ruling I'm just about done here. On
7 page 3 of your testimony on lines 17 through 22 you
8 answered a question that seeks to evaluate the
9 staff's approach to evaluating the -- this section,
10 the PICN section, for this proposed project from the
11 other projects that have come before the Board. Do
12 you see that?

13 A. Yes, sir.

14 Q. And you state: "The approach used in
15 this proceeding is consistent with the approach used
16 in other wind applications that have been filed with
17 the OPSB since the effective date of Chapter 4906-17,
18 Ohio Administrative Code." Do you see that?

19 A. Yes, sir.

20 Q. What was the effective date?

21 A. I don't recall offhand.

22 Q. Was it before Buckeye Wind I or after?

23 A. After.

24 Q. It was after Buckeye Wind?

25 A. Yes, sir. Excuse me. After the filing

1 of the application in Buckeye Wind I.

2 Q. Okay. Yeah, I'm not -- again, I'm not
3 trying to trick you or confuse you, I'm just trying
4 to get a sense --

5 A. Well, I didn't -- it could be different
6 between when the certificate was issued, but the
7 effective date was after the filing of the
8 application.

9 Q. Do you know, was it after the granting of
10 the certificate in Buckeye Wind I?

11 A. I don't recall.

12 Q. The reason I ask is that I noticed in
13 Buckeye Wind I there were 9 pages of conditions and
14 in Buckeye Wind II there were 13 pages of conditions,
15 and in Buckeye Wind I there were 56 conditions and in
16 Buckeye Wind II I believe there were 70 conditions.
17 It just seems like the staff took a more aggressive
18 or a more -- took a different approach.

19 Am I incorrect to conclude that the
20 staff's approach was wrong, I'm sorry, to conclude
21 that the staff's approach was different this time
22 from the first time?

23 MR. SETTINERI: Object on relevancy
24 grounds.

25 ALJ CHILES: Mr. Selvaggio.

1 MR. SELVAGGIO: Judge, they opened up the
2 door when they said "evaluating other proposed wind
3 projects that have come before the OPSB."

4 MR. SETTINERI: That's actually wind
5 applications that have been filed with the OPSB since
6 the effective date. Buckeye Wind was filed before
7 the effective date.

8 MR. SELVAGGIO: That's not what the
9 question asked.

10 ALJ CHILES: Could you read the question
11 back to me, please.

12 MR. SELVAGGIO: I'm sorry, I meant the
13 question on line 17 through 19 on page 3 of his
14 testimony.

15 (Record read.)

16 ALJ CHILES: I believe the witness
17 testified that the effective date of chapter 4906-17
18 was after Buckeye Wind I, so to the extent you wanted
19 to ask about other wind projects that were subsequent
20 to the effective date of that chapter, that may be
21 relevant, but the objection is sustained.

22 MR. SELVAGGIO: Judge, the staff member
23 has given, then, testimony that he cannot support
24 with factual evidence and, therefore, the county
25 would move that his answer to question 11 be

1 stricken. I don't know how to ask him a question if
2 he doesn't know the factual basis to support his
3 answer.

4 MR. REILLY: Am I incorrect that the
5 examination has been specific to Buckeye Wind I? I
6 think the staff member has indicated a knowledge of
7 Ohio Administrative Code chapter 4906-17. The staff
8 witness was involved in Buckeye Wind I. I think he
9 is well-qualified to testify as to the approach taken
10 for evaluating public interest and necessity, and I
11 think he's testified to that.

12 The fact that he hasn't maybe perhaps
13 given the exact information that the prosecutor wants
14 is no basis for you to strike it.

15 ALJ CHILES: Mr. Selvaggio, do you have a
16 reply to that?

17 MR. SELVAGGIO: Yes, Judge. I simply
18 asked him for the effective date of the chapter.
19 Now, I'm willing to accept judicial notice of the
20 effective date of the chapter if Mr. Reilly will
21 accept judicial notice that Bellefontaine is in Logan
22 County.

23 ALJ CHILES: I think what we're
24 addressing right now is your motion to strike the
25 witness's answer. Do you want to reply to what

1 Mr. Reilly stated about the witness's answer to his
2 question 11?

3 MR. SELVAGGIO: Yes, Judge. The witness
4 has not answered -- has not given a factual basis for
5 his answer, has not shared with us the effective
6 date, and all I'm wanting to know is what was the
7 effective date. And he's indicated that he doesn't
8 know.

9 MR. REILLY: Your Honor, the effective
10 date of the rule is irrelevant to his general
11 knowledge necessary to provide an answer on public
12 interest, convenience, and necessity.

13 ALJ CHILES: The Bench is in agreement
14 with Mr. Reilly, so the motion to strike the
15 witness's answer is denied.

16 MR. SELVAGGIO: Thank you, your Honor.

17 Q. (By Mr. Selvaggio) Mr. Siegfried, let's
18 talk about your use of the word "approach" used in
19 this proceeding as you have set it forth on line 20
20 of your direct testimony. Would you define the word
21 "approach"?

22 A. "Approach" as used in my testimony
23 addresses the content of the PICN, the public
24 interest, convenience, and necessity section, as well
25 as the factors relied upon to reach the conclusion.

1 Q. Is it fair to say that the information
2 set forth in pages 46, 47, and 48 in large part track
3 the language of the application?

4 A. The application was the primary source
5 that we relied upon, yes.

6 Q. And so, again, my question is it's fair
7 to say that the majority of the language, it doesn't
8 mean all of it, but a majority of the language tracks
9 the Applicant's use.

10 A. Again, I'm not sure what you mean by
11 "tracks the use." The application was the primary
12 document that we reviewed during the course of our
13 investigation.

14 Q. So is it fair to say, then, that if the
15 document was the primary use, that you yourself did
16 not go on any of the wind farm bus tours sponsored by
17 the Champaign County Farm Bureau in '07 and '08?

18 MR. REILLY: If we could just be -- if we
19 could just clarify, the document you referred to is
20 the application?

21 ALJ CHILES: Is that correct? By "the
22 document" are you referring to the application, the
23 company's application?

24 MR. SELVAGGIO: Honestly, Judge, if I
25 could have the question read back because I --

1 ALJ CHILES: Sure.

2 Could you please reread it.

3 (Record read.)

4 MR. SELVAGGIO: Yes, your Honor, you're
5 correct, for purposes of my question I mean the
6 application.

7 A. I'm sorry. I mean, if the question is
8 did I go on that bus tour, the answer is no.

9 Q. Okay. Did you attend the Champaign
10 County fair or participate in any local informational
11 meetings?

12 A. I did not attend the fair. And I don't
13 recall any other local informational meetings other
14 than the public information meeting.

15 Q. The one in Triad?

16 A. Yes, sir.

17 Q. Did you yourself interact with any
18 Champaign County residents as to evaluating the
19 quality of the public interaction programs?

20 A. Not to my knowledge.

21 Q. Did you visit the local office in
22 Bellefontaine, Ohio?

23 A. No.

24 Q. Would you agree with me that in Buckeye
25 Wind I the certificate was issued after the effective

1 date of chapter 4906-17 of the Administrative Code?

2 A. As I indicated earlier, I don't recall.

3 Q. If it was issued after the effective
4 date, would Buckeye Wind I be mandated to follow the
5 requirements of chapter 4906-17?

6 MR. REILLY: Objection. Calls for a
7 legal conclusion.

8 ALJ CHILES: Mr. Selvaggio.

9 MR. SELVAGGIO: Judge, it doesn't, and I
10 recognize he's not a lawyer, and I'm not asking for a
11 legal opinion.

12 MR. REILLY: Yes, he is. The
13 applicability of a rule is a legal opinion.

14 MR. SELVAGGIO: Judge, I believe he's a
15 staff member who's required to determine in the
16 future whether the Applicant is complying with
17 Administrative Code --

18 ALJ CHILES: Thank you.

19 With the clarification that the witness
20 is not an attorney --

21 Mr. Siegfried, you're not an attorney; is
22 that correct?

23 THE WITNESS: Correct.

24 ALJ CHILES: -- the witness may answer
25 the question to the extent he holds an opinion on the

1 matter.

2 A. I believe your question was if the
3 certificate is issued after the effective date of
4 4906-17. Again, 4906-17 goes to the contents of the
5 application, so are you then asking if it
6 retroactively modifies a filing requirement?

7 Q. If you know the answer -- if you can
8 answer the question that I posed, if you would just
9 say "yes" or "no."

10 THE WITNESS: Could I have the question
11 repeated again?

12 ALJ CHILES: Could you reread the
13 question, please.

14 MR. SELVAGGIO: Or "I don't know."
15 (Record read.)

16 MR. SETTINERI: Object on the basis of
17 relevancy. Buckeye I is not at issue in this
18 proceeding, as well, the chapter relates to the
19 contents of the application and, again, relevancy as
20 to that point.

21 ALJ CHILES: Mr. Selvaggio.

22 MR. SELVAGGIO: Judge, this afternoon
23 there were a number of opportunities for the county
24 and townships to object to the questions posed by the
25 staff and by the Applicant, and we chose not to in

1 the interest of trying to get all the information
2 before the Board. I'm not really sure why this is
3 such a sticking point with the staff. If he knows
4 the answer, we believe that this instance deserves a
5 response. If he doesn't know the answer, I guess we
6 can move on.

7 ALJ CHILES: I believe the witness
8 indicated -- and correct me if I'm wrong -- that this
9 is not a simple "yes" or "no" answer. So I'll allow
10 the witness to answer the question, but I'm certainly
11 not going to direct him to answer a simple "yes,"
12 "no," or "I don't know" if he feels that he needs
13 more clarification than that.

14 Do you need the question reread?

15 THE WITNESS: I think I have it. And my
16 nonlegal answer is it would not affect the
17 application that was filed in Buckeye I.

18 Q. (By Mr. Selvaggio) One of the issues that
19 Champaign County residents and government officials
20 have in the evaluation of the proposed project is
21 this idea that the staff merely restates the
22 application in its findings.

23 In your portion of the Staff Report can
24 you point to me one conclusion that you've made that
25 does not reply -- does not rely on language from the

1 application?

2 A. I believe the general topics I relied on
3 in reaching my conclusion were addressed in the
4 application.

5 MR. SELVAGGIO: Thank you. That's all I
6 have.

7 ALJ CHILES: Thank you.

8 Mr. Van Kley?

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

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Van Kley:

13 Q. While we're still on question and answer
14 11 of your direct testimony let me ask you another
15 question about it. I see that the question asks
16 whether the staff's approach to evaluating the PICN
17 for the proposed project differed from that used when
18 evaluating other proposed wind projects that have
19 come before the Board. Do you see that?

20 A. Yes, sir.

21 Q. But then your answer refers only to the
22 other projects in which the wind applications were
23 filed after the effective date of chapter 4906-17.
24 Is there a particular reason why you limited your
25 answer to just those applications?

1 A. I think if you review the PICN sections
2 for all of the wind projects that have come before
3 the Board, you will see that a difference between the
4 one application that came before 17 was effective
5 compared to all of the others that have come since
6 and part of that has to do with just the, beginning
7 with the rule becoming effective and the required
8 contents that are conveyed by the rule.

9 Q. Did the staff's reports for Buckeye Wind
10 come before or after the effective date of chapter
11 4906-17?

12 A. I don't recall.

13 MR. VAN KLEY: Your Honor, I'd like to
14 mark the next UNU exhibit as UNU Exhibit 26.

15 ALJ CHILES: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. VAN KLEY: Permission to approach the
18 witness.

19 ALJ CHILES: You may.

20 Q. Mr. Siegfried, I've handed you what has
21 been marked as UNU Exhibit 26, and you will see that
22 the front of that document is captioned "In the
23 Matter of the Application of AEP Ohio Transmission
24 Company . . . for a Certificate . . . for the Vassell
25 Substation Project." Correct?

1 A. Yes, sir.

2 Q. And you recognize this document as an
3 opinion, order, and certificate that has been issued
4 by the Ohio Power Siting Board?

5 A. It appears to be.

6 Q. Okay. And I'd like to refer you to page
7 3 of this document, and if you would go to the second
8 paragraph on that page, you will see that the third
9 sentence and the fourth sentence read as follows:
10 "For the preferred site, a 765 kilovolt substation
11 yard would be located on the northeast portion of the
12 site with a 345/138 kilovolt substation yard to the
13 southwest. With respect to the alternate site, a
14 765/345 kilovolt substation yard would be located on
15 the western portion of the site with a 138 kilovolt
16 substation yard to the southeast."

17 Did I read that correctly?

18 A. Yes, sir.

19 MR. SETTINERI: At this time, your
20 Honors, I'm going to just object. I don't believe
21 there's been a foundation laid that this witness is
22 familiar with this opinion and order other than he
23 recognized it as an opinion and order, and now we're
24 delving into questions about a transmission system
25 that's not relevant to this application. Maybe

1 counsel's going somewhere, but I'd like to make that
2 objection now.

3 ALJ CHILES: Mr. Van Kley.

4 MR. VAN KLEY: I haven't even asked the
5 question yet.

6 ALJ CHILES: Go ahead and finish asking
7 the question, please.

8 MR. VAN KLEY: Okay.

9 Q. (By Mr. Van Kley) Now would you go to
10 page 15 of UNU Exhibit 26.

11 MR. SETTINERI: And, your Honors, again,
12 I'm just going to object, lack of foundation. This
13 witness is not familiar, we're reading into the
14 record and asking questions of the witness saying:
15 Do you see this sentence? Yes. Now we're going to
16 another page, so I assume there's going to be a
17 question after we go through these.

18 MR. VAN KLEY: There indeed will be.

19 ALJ CHILES: Overruled at this point.

20 MR. VAN KLEY: All right.

21 Q. Going to page 15 now of UNU Exhibit 26,
22 I'd like to refer you to the second paragraph under
23 the heading "Staff Response," and the second sentence
24 of that paragraph reads as follows: "Moreover, Staff
25 points out that nothing contained in Rule 4906-5-04,

1 OAC, required AEP Transco to propose two completely
2 different sites as part of its application."

3 Did I read that correctly?

4 A. Yes, sir.

5 Q. Okay. Now let me ask you some questions
6 about this. First of all, you were in attendance
7 during part of the hearing for the Vassell substation
8 project that is described in UNU Exhibit 26; were you
9 not?

10 A. I don't believe so.

11 Q. No?

12 A. No, sir.

13 Q. Did you participate in preparing the
14 Staff Report for the Vassell substation project that
15 is described in UNU Exhibit 26?

16 A. I don't -- not to my recollection, no. I
17 may have had a peripheral editing role, but I don't
18 think I authored any sections in that report.

19 Q. Okay. Well, let me just ask you this
20 question, then, from your independent knowledge.
21 Isn't it true that the Ohio Power Siting Board does
22 not require a preferred and an alternate site for a
23 facility to be on completely different sites but
24 allows them, instead, to overlap with each other?

25 MR. SETTINERI: Object as to ambiguous.

1 Are we talking wind facilities here, or are we
2 talking transmission facilities?

3 ALJ CHILES: Can you clarify,
4 Mr. Van Kley?

5 MR. VAN KLEY: Yes. I'm talking about --
6 let's just make sure we have the right definition.

7 ALJ CHILES: Thank you.

8 Q. I'm talking about any electrical
9 generation facility that is subject to Ohio Power
10 Siting Board certification.

11 A. It's my understanding that an alternate
12 site is not required for electric generating
13 facilities.

14 Q. For no electrical generating facilities?

15 A. For generating facilities, correct.

16 Q. Well, I guess I'm confused by your
17 answer. Let me just see if I can get some background
18 to understand it. In your -- based on your
19 understanding, under what circumstances is a facility
20 that is subject to Ohio Power Siting Board's
21 certificates required to propose both a preferred and
22 alternate facility?

23 A. I mean, when you say "facility" there,
24 just anything under the Board jurisdiction?

25 Q. Correct.

1 A. Again, I don't believe it's required for
2 generation. I do believe an alternate is required
3 for electric transmission lines, and I believe it is
4 also required for electric substations.

5 Q. Okay. Let's just move on to another
6 topic for a little bit here. Are you familiar with
7 the blade throw that occurred at Timber Road II wind
8 farm?

9 A. I'm familiar, yes, sir.

10 Q. Okay. What, if any, involvement have you
11 had with that incident?

12 MR. REILLY: Objection. Relevance. It's
13 a completely different project.

14 ALJ CHILES: Mr. Van Kley.

15 MR. VAN KLEY: I guess we've sat through
16 ten days now of testimony about how Timber Road II's
17 blade throw is relevant including Mr.
18 Speerschneider's testimony that all information
19 concerning blade throws or lack thereof that have
20 ever transpired at wind farms of the size that -- or,
21 wind turbines of the size of the class that we're
22 dealing with here, Mr. Poore's testimony of the same
23 thing where he testified that he could look at data
24 concerning blade throws at other facilities that have
25 turbine models in the same class even though they're

1 not of the six models that are listed in the
2 application and still considered, and that all that
3 information was relevant.

4 So I don't know how we can at this point
5 say that this information is not relevant at this
6 point; it certainly is.

7 ALJ CHILES: Thank you. The objection is
8 overruled.

9 Q. The question that was on the table is:
10 Can you describe what involvement, if any, you've had
11 with regard to the blade throw at Timber Road II?

12 A. I have had some discussions, internal
13 discussions with staff, just to learn a bit more
14 about the event. I have been involved in discussions
15 of what that event might mean in the context of
16 postconstruction mortality monitoring. That's
17 probably about the extent of it.

18 Q. Okay. With which staff members have you
19 had these discussions?

20 MR. REILLY: Objection. Relevance. The
21 identity of the staff members is not relevant to
22 anything.

23 ALJ CHILES: Mr. Van Kley.

24 MR. VAN KLEY: Well, I can move on and
25 ask what they talked about, I suppose. Seems to be

1 that we're simply establishing some foundation for
2 the next questions concerning the content of those
3 discussions.

4 ALJ CHILES: The objection is sustained,
5 I think we need to move on.

6 MR. VAN KLEY: Okay.

7 Q. (By Mr. Van Kley) So what have you
8 learned about that incident?

9 A. I learned that there was an incident. I
10 believe that a single turbine -- I believe it was in
11 April of this year, late-April perhaps. I believe
12 the company and the actual turbine manufacturer is
13 involved with an investigation as to the cause of the
14 incident. I believe that there has been something
15 filed in that particular case docket.

16 Q. Have you had any conversations with
17 Champaign Wind about that incident?

18 A. No, I have not.

19 Q. Going back to the question I asked about
20 siting facilities where -- in instances where you
21 acknowledge that a preferred and an alternate
22 facility must be submitted as part of a certification
23 process, can you tell me in those instances whether
24 it is the Board's position that the two sites, that
25 is the alternate and the preferred site, can overlap?

1 MR. SETTINERI: Object. Relevancy. The
2 witness testified that electric generating facilities
3 don't require alternative sites so, therefore, it's
4 not relevant. This is not a transmission proceeding.

5 ALJ CHILES: Mr. Van Kley.

6 MR. VAN KLEY: We heartily disagree with
7 the witness's legal conclusion, therefore, with
8 regard at least to the facts we'd like to elicit the
9 facts from him with regard to situations in which
10 preferred and alternative sites or alternate sites
11 are required, whether they may overlap, because it
12 would have a bearing on this case.

13 ALJ CHILES: Overruled.

14 Q. Do you need the question read back?

15 A. Please. I'm sorry.

16 ALJ CHILES: Please reread the question.

17 (Record read.)

18 A. I do believe that there's a certain
19 percentage of overlap that is permitted.

20 Q. Okay. All right. Thank you.

21 MR. VAN KLEY: No further questions.

22 ALJ CHILES: Thank you.

23 Mr. Settineri?

24 MR. SETTINERI: No questions, your

25 Honors.

1 ALJ CHILES: Mr. Reilly.

2 MR. REILLY: Could I have a moment, your
3 Honor?

4 ALJ CHILES: Of course.

5 MR. REILLY: We have no questions, your
6 Honor.

7 Thank you, Mr. Siegfried.

8 ALJ CHILES: Thank you, Mr. Reilly.

9 I just have a couple questions for you.
10 On page 46 of the Staff Report in the considerations
11 discussed as far as public interest, convenience, and
12 necessity, the last section there on that page 46
13 talks about liability insurance. What is the purpose
14 of liability insurance in your opinion or in your
15 understanding?

16 THE WITNESS: My understanding is that it
17 is to offer compensation in the event of damage, some
18 sort of event, an incident.

19 ALJ CHILES: Offer compensation to, would
20 that be to the public or would that be to the
21 company?

22 THE WITNESS: To the public.

23 ALJ CHILES: To the public.

24 THE WITNESS: Yes.

25 ALJ CHILES: Okay. I have no other

1 questions. Thank you very much. You're excused.

2 (Witness excused.)

3 ALJ CHILES: Mr. Reilly.

4 MR. REILLY: Thank you, your Honor. We
5 would move the introduction of Staff Exhibit No. 6.

6 ALJ CHILES: Are there any objections to
7 the admission of Staff Exhibit 6?

8 MR. SELVAGGIO: Yes, Judge. For purposes
9 of the record, the county would renew its objection
10 and move to strike lines 20 through 22.

11 ALJ CHILES: Thank you. Your renewal is
12 noted for the record, but your motion to strike is
13 denied.

14 Hearing no other objections, Staff
15 Exhibit 6 will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 ALJ CHILES: Mr. Van Kley.

18 MR. VAN KLEY: We're not moving UNU
19 Exhibit 26 at this time.

20 ALJ CHILES: Thank you.

21 All right. Is there anything further to
22 come before us today?

23 MR. SELVAGGIO: Yes, Judge. The county
24 and townships would again renew its request that the
25 staff member who authored the economics portion on

1 page 22 of the Staff Report be made available for
2 questioning.

3 MR. REILLY: Your Honor, the staff would
4 object to that. I mean, first of all, it's a
5 terrible precedent to surprise the staff like this,
6 beyond that, there has been a procedural order in
7 effect in this case for some time. The fact of the
8 matter is that while the Public Utilities Commission
9 staff is not subject to subpoena, Mr. Van Kley is
10 wrong, the Ohio Power Siting Board staff is, and the
11 county and anybody else could have subpoenaed them to
12 this hearing; they did not. If they're not here,
13 it's the county's fault.

14 Moreover, what I think the county is
15 asking for now is discovery, very belatedly,
16 discovery on the staff, and the staff is not subject
17 to discovery under the Board's rules.

18 ALJ CHILES: Thank you.

19 At this time the Bench is going to take
20 your request, Mr. Selvaggio, under advisement and we
21 will decide that issue tomorrow. So, with that, we
22 are adjourned until 9 o'clock tomorrow.

23 MR. SELVAGGIO: May I just ask the court
24 to, since counsel spoke of precedent, if the court
25 would direct its attention, respectfully, to Volume

1 VII, pages starting with pages 1716 through 1728 with
2 regard to precedent of calling additional staff
3 members to provide direct testimony.

4 ALJ CHILES: Sir, what document are you
5 referring to?

6 MR. SELVAGGIO: It's under the Buckeye
7 Wind, which now would be Buckeye Wind I, and it's the
8 direct examination and cross of Mr. Siegfried.

9 ALJ CHILES: All right. The Bench will
10 take that under advisement.

11 Mr. Reilly, do you have something to add?

12 MR. REILLY: I am not familiar with it, I
13 will confess that. I don't know why whatever
14 happened in the circumstances of the prior proceeding
15 would be -- of one prior proceeding would be
16 precedent in all future proceedings of the Board. I
17 would object, I do not think it is precedent in this
18 proceeding. Certainly not controlling.

19 ALJ CHILES: Thank you. Thank you. That
20 is noted, and we will address that tomorrow. With
21 that, we are adjourned until 9 o'clock tomorrow.
22 Thank you.

23 (The hearing adjourned at 4:40 p.m.)

24 - - -

25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, November 26, 2012, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2016.

(MDJ-4086)

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Summary: Transcript of Champaign Wind, LLC hearing held on 11/26/12 - Volume IX
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones,
Maria DiPaolo Mrs.