

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Republic :
Wind, LLC for a Certificate :
of Environmental :
Compatibility and Public : Case No. 17-2295-EL-BGN
Need for a Wind-Powered :
Electric Generating :
Facility in Seneca and :
Sandusky Counties, Ohio. :

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PROCEEDINGS

before Mr. Jay S. Agranoff and Ms. Anna Sanyal,
Administrative Law Judges, at the Ohio Power Siting
Board, 180 East Broad Street, Room 11-C, Columbus,
Ohio, called at 9:00 a.m. on Tuesday, November 12,
2019.

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VOLUME IV

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Tuesday Morning Session,
November 12, 2019.

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ALJ AGRANOFF: Why don't we go on the
record at this time.

Before we actually begin with the
testimony of Mr. McGee, I know that there was a
motion that was filed I think on Friday, the 7th,
with respect to the substitution of testimony on
behalf of Seneca Park District substituting a
Mr. McCallister for Ms. Betts. And I wanted to deal
with that particular motion now because we're going
to try to figure out the scheduling for this week and
the beginning of next and wanted to at least figure
out who and what testimonies were going to be
applicable relative to Ms. Betts and/or
Mr. McCallister.

So have the parties had an opportunity to
review the motion that had been filed?

MR. PARRAM: Yes, your Honor.

ALJ AGRANOFF: Would you like to speak to
it?

MR. PARRAM: The Company has no
opposition to substituting Mr. McCallister for
Mrs. Betts.

1 ALJ AGRANOFF: Any other parties care to?

2 MS. BAIR: Staff has no opposition to the
3 substitution.

4 ALJ AGRANOFF: Mr. Van Kley?

5 MR. VAN KLEY: No. We have no
6 opposition.

7 ALJ AGRANOFF: There being no objection,
8 we'll grant that motion to substitute the testimony.
9 And then based on that ruling, we then need to
10 discuss the schedule starting for today and then
11 moving onward. So my most recent amended schedule
12 would show that today we would have Mr. McGee,
13 Mr. MaRous, Witness Doyle, Baldosser, Rupprecht, and
14 then, Mr. Parram, were you still intending to call
15 Mr. Wadsworth on cross?

16 MR. PARRAM: No, your Honor.

17 ALJ AGRANOFF: So then that would be all
18 for today that I have on my schedule. Does everybody
19 concur with that representation?

20 MR. PARRAM: Yes.

21 MR. VAN KLEY: Yes.

22 ALJ AGRANOFF: Then for tomorrow we would
23 have Witness Kerschner, Chappell, Shieldcastle, Boes,
24 and then the two Hoepf witnesses, Zeman, Wright, and
25 Stains?

1 MS. BAIR: Your Honor, if we could
2 plug -- that's an awful lot to get done. Mr. Stains
3 really needs to go tomorrow.

4 ALJ AGRANOFF: Okay. Based on the
5 estimation of cross that had been previously
6 represented, it doesn't appear that any of those
7 witnesses -- although it does seem in terms of number
8 that there are quite a few, it appears that for all
9 of them there was no more than a half hour of cross
10 except for Mr. Shieldcastle. So arguably I would
11 think that we should be able to get to all those
12 witnesses. But just to assure that Mr. Stains was
13 able to testify, if we get to the lunch break and we
14 sense that we are off schedule, then would there be a
15 problem if we then had him go on right after the
16 lunch break?

17 MS. BAIR: That would be great for, you
18 know, speaking on behalf of ODOT. If no one opposes
19 that, I could let him know that too.

20 MR. DeVINE: That's fine with me.

21 MR. PARRAM: That's fine with me, your
22 Honor.

23 MR. VAN KLEY: And I think, your Honor,
24 we would -- we would put all of our witnesses on
25 ahead of Mr. Shieldcastle because he has more

1 flexibility than the rest of the witnesses with
2 shorter crosses, so we'll -- we'll put everybody else
3 on before Mr. Shieldcastle then on Wednesday.

4 ALJ AGRANOFF: Okay. And, again, you
5 know, once we get to a lunch break, we can make an
6 assessment as to where we are and how we need to
7 possibly adjust accordingly.

8 And then for Friday, we had Witness
9 Sasowsky, Betts, Newman, and Conway. Does everyone's
10 most recent schedule reflect that as well?

11 MR. VAN KLEY: Yes.

12 ALJ AGRANOFF: Okay. And then beginning
13 on Monday, we have Staff Witnesses Bellamy, Morrison,
14 Zeto, Collins, Pawley, Butler, O'Dell, and Conklin.
15 And everybody's schedules similarly reflect that?

16 MR. DeVINE: Your Honor, Betts won't be
17 testifying now on Friday, and McCallister is not
18 available on Friday.

19 ALJ AGRANOFF: Oh, that's right.

20 ALJ SANYAL: When is McCallister
21 available?

22 MR. DeVINE: He's available on Monday for
23 sure. I didn't check with him for tomorrow because
24 when I looked at the schedule, I didn't see much -- I
25 wasn't optimistic that tomorrow would be a good

1 choice. Obviously Thursday is not a good choice.

2 MR. VAN KLEY: Yeah. I don't think that
3 Mr. Conway is going to take four hours on Friday
4 looking at this. I'm guessing that we could probably
5 get to more of the Staff witnesses on Friday than are
6 currently designated for that day.

7 ALJ SANYAL: Staff?

8 MS. BAIR: That's fine. Our only
9 exception is Collins, and he needs to go on the 18th.

10 ALJ AGRANOFF: Okay. So we'll slot
11 McCallister for certain on the 18th, and then
12 depending on where we are relative to time on Friday,
13 then Staff will reconfigure in order to fill any
14 openings that we might have on Friday.

15 MS. BAIR: Yeah, that's fine, with the
16 exception of Collins.

17 ALJ SANYAL: Are we thinking we might
18 need the 19th?

19 MR. VAN KLEY: I don't think so.

20 MR. PARRAM: I don't think so, your
21 Honor, but I would -- I would just like to
22 double-check my cross estimates to make sure they are
23 still accurate, but I don't believe so at this time.

24 ALJ AGRANOFF: Okay. The next item I had
25 on my list, Mr. Parram, has the Applicant had a

1 chance to take a look at the safety manuals as of
2 yet?

3 MR. PARRAM: We're still currently
4 working on it and plan to meet the deadline hopefully
5 earlier than that.

6 ALJ AGRANOFF: Okay. Thank you.

7 Because ideally I would like to before we
8 close the record on a week from yesterday to be able
9 to then move whatever does need to be moved --

10 MR. PARRAM: Understood.

11 ALJ AGRANOFF: -- on the public record
12 versus the confidential record. So if you could
13 ideally at the -- by the end of this week, that would
14 be much appreciated.

15 MR. PARRAM: I will follow up as soon as
16 I leave here, your Honor.

17 ALJ AGRANOFF: Thank you. Are there any
18 other issues that we need to discuss before we begin
19 with Mr. McGee?

20 MR. PARRAM: Your Honor, before we start
21 with Mr. McGee, I actually want to make sure that we
22 had the testimony of Susan Lawson moved and admitted
23 into the record. I previously conferred with the
24 parties, and no one indicated that they had any
25 cross-examination for Mrs. Lawson on her updated

1 direct testimony. And I also -- my recollection was
2 that the ALJs did not have any questions for
3 Mrs. Lawson as well. So once we go onto the record,
4 I would like to just move for -- to have marked and
5 move for the admission of Exhibit 26 which would be
6 the updated testimony of Susan Lawson.

7 ALJ AGRANOFF: Okay. And we are on the
8 record right now.

9 MR. PARRAM: Okay. There we go.

10 ALJ AGRANOFF: The exhibit shall be
11 marked accordingly.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 ALJ AGRANOFF: Are there any objections
14 to the admission of Ms. Lawson's testimony? I'll
15 assume silence means there is none, and at this time
16 then -- you say, Mr. Parram, that was her amended
17 direct testimony?

18 MR. PARRAM: It's titled the "Updated
19 Direct Testimony," your Honor.

20 ALJ AGRANOFF: Ms. Lawson's updated
21 direct testimony shall be admitted as part of the
22 record at this time.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MR. PARRAM: And I have that as Exhibit
25 26.

1 ALJ AGRANOFF: And also, Mr. Parram, if
2 you could just confirm for me that last Wednesday
3 there had been an exhibit marked as Applicant Exhibit
4 23. And in the subject line of that particular
5 exhibit it was denoted as a confidential e-mail?

6 MR. PARRAM: That document is not
7 confidential, your Honor.

8 ALJ AGRANOFF: Okay. Whenever you are
9 ready to call Mr. McGee.

10 MR. PARRAM: Ms. Herrnstein will be
11 calling Mr. McGee.

12 MS. HERRNSTEIN: Kara Herrnstein on
13 behalf of the Applicant Republic Wind of the law firm
14 Bricker and Eckler, 100 South Third Street, Columbus,
15 Ohio 43215.

16 ALJ AGRANOFF: Thank you.

17 MS. HERRNSTEIN: Mr. McGee, could you --

18 ALJ AGRANOFF: I have to swear him in.

19 MS. HERRNSTEIN: I was going to say wait
20 a minute.

21 (Witness sworn.)

22 ALJ AGRANOFF: Please be seated.

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SHAWN MCGEE, P.E.

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

DIRECT EXAMINATION

By Ms. Herrnstein:

Q. All right. Now, Mr. McGee, could you
please state your full name for the record.

A. Shawn Dennis McGee.

Q. Okay. And by whom are you employed?

A. TRC.

Q. Do you have a document in front of you
marked Applicant's Exhibit 27?

A. Yes.

Q. And what is Exhibit 27?

A. My written testimony for the project.

Q. Was Exhibit 27 prepared by you or at your
direction?

A. Yes.

Q. If I were to ask you the same questions
contained in Exhibit 27 today, would your answers be
the same?

A. Yes.

Q. Do you have any modifications to Exhibit
27?

A. Not at this time.

1 MS. HERRNSTEIN: Okay. Your Honor, I
2 move for the admission of Exhibit 27, pending
3 cross-examination, and tender the witness for cross.

4 ALJ AGRANOFF: Mr. McGee's testimony
5 shall be marked as Exhibit 27.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 ALJ AGRANOFF: And Mr. Van Kley.

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

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10 CROSS-EXAMINATION

11 By Mr. Van Kley:

12 Q. Can you explain how a turbine foundation
13 is constructed?

14 A. Sure. So typically they're built on a
15 concrete foundation. You can kind of think of it as
16 a desktop lamp post where it's approximately 10 feet
17 deep, 60 foot in diameter, and it's usually just kind
18 of conical shaped just on the top between 10 to 15
19 feet.

20 So once it's excavated down to the
21 subsurface grade, the -- usually one mass plate just
22 to get it nice and flat and then any steel
23 reinforcement is added and then concrete is poured
24 into the excavation. On top of the excavation
25 there's bolts installed so that the turbine can be

1 installed.

2 Q. Did you say that the foundations are 10
3 feet, 10 to 15 feet deep?

4 A. Typically 10 feet deep.

5 Q. Then how wide is the foundation?

6 A. 60 foot in diameter so they are usually
7 circular.

8 Q. Have you visited the project area for
9 this wind project?

10 A. Yes.

11 Q. When did you visit the project area?

12 A. That would be -- it was during the
13 application preparation. I believe it was in 2016.

14 Q. Let's turn to Exhibit F of the amended
15 application of December 26, 2018. Do you have that
16 document in front of you?

17 A. Yes.

18 Q. Go to page 6 of Exhibit F and I would
19 like to direct your attention to the paragraph that
20 is labeled "Project Boundary Reconnaissance."

21 A. Okay.

22 Q. And do you see in that paragraph the
23 dates on which Hull did its field work in the project
24 area?

25 A. Yes.

1 Q. And what dates are those?

2 A. May 16, 2016, to March 13, 2017.

3 Q. Uh-huh. And in which -- which of those
4 two visits did you participate in?

5 A. The May 16, 2016.

6 Q. Now, what did you do when you went out
7 there to the project area on that date?

8 A. We performed a visual investigation of
9 the project area and just to get an idea of typical
10 conditions, so we look at areas where there's
11 existing geologic conditions so any slopes, any -- in
12 this area sinkholes, any landslides in the area, just
13 anything that would be needed in order to fill out
14 the application.

15 Q. And what -- what parts of the project
16 area did you look at?

17 A. We -- I can't think of -- right now, I
18 don't know of what exact locations we looked at, but
19 we didn't visit every single turbine location. It
20 was just -- because most of this area I am pretty
21 familiar with over the years, so I know it's -- most
22 areas are pretty consistent. It's very flat, and
23 it's pretty consistent across the project boundary.

24 Q. Did you say that you did or did not visit
25 every turbine site?

1 A. I did not visit every turbine site.

2 Q. How many of the turbine sites did you
3 visit?

4 A. I would say approximately 20.

5 Q. 20 out of how many?

6 A. I believe that at the time there were 49.
7 So either myself or my colleagues would have visited,
8 so I visited 20, but my colleagues visited more, so I
9 would say we probably looked at at least half of
10 them.

11 Q. And that would have included the ones
12 that were looked at on March 13, 2017?

13 A. Correct.

14 Q. When -- when you were out there, did you
15 see any sinkholes?

16 A. No.

17 Q. Did you look for sinkholes?

18 A. Yes.

19 Q. Did you see any other signs of karst?

20 A. No.

21 Q. Can you explain what karst is.

22 A. Karst is a geologic landscape where
23 bedrock, soluble bedrock is present, where bedrock
24 dissolves usually it's limestone, dolomite, or
25 gypsum, limestone where it's just a soluble limestone

1 that basically dissolutes.

2 Q. It what again?

3 A. It dissolutes.

4 Q. Okay.

5 A. It's a soluble limestone.

6 Q. So it contains holes?

7 A. It can.

8 Q. Uh-huh. Can it contain caverns?

9 A. Yes.

10 Q. How about pathways through the karst?

11 A. For pathways of groundwater?

12 Q. Well, are there -- whether they are
13 filled with groundwater or not, are there -- are
14 there typically pathways, open pathways through the
15 karst?

16 A. Yes. All bedrock has open pathways of
17 some degree.

18 Q. And sometimes those pathways contain
19 groundwater?

20 A. Yes.

21 Q. Would you go to page 2 of Exhibit F. I
22 would like to direct your attention to the heading
23 for "Geology and Seismology." And by the way did you
24 prepare Exhibit F?

25 A. Yes.

1 Q. All right. So going back to that
2 paragraph under "Geology and Seismology," it's stated
3 there in the third line that "The majority of the
4 project boundary lies within the Bellevue-Castalia
5 Karst Plain." Do you see that?

6 A. Yes.

7 Q. And what do you mean by the project
8 boundary? Are you talking about the project area?

9 A. No. They are similar but not the same.
10 So the project boundary was a limit that was provided
11 by Apex.

12 Q. Okay. So what is the project boundary as
13 referred to in the sentence?

14 A. Those are shown on the exhibits, of the
15 figures.

16 Q. Okay. Could you point out what figures
17 you are referring to?

18 A. For example, in the appendix on Figure 1,
19 it's shown as the yellow highlighted area.

20 Q. So when you refer to the "project
21 boundary," you are referring to the highlighted area
22 on Figure 1?

23 A. Correct.

24 Q. And when you state in the report that the
25 majority of the project boundary lies within this

1 karst plains, are you referring to the area that's
2 inside of the project boundary lines on Figure 1?

3 A. Yes. If you look on Figure 2, that shows
4 the tilled land that we are referring to in that
5 section.

6 ALJ AGRANOFF: And just so I am clear,
7 when you are discussing Figure 1 and Figure 2, is
8 that in the same binder?

9 THE WITNESS: Correct, yes.

10 ALJ AGRANOFF: As -- okay. Thank you.

11 Q. (By Mr. Van Kley) All right. And go to
12 Figure 4 now in Exhibit F. And there you see yellow
13 lines around the project area, correct?

14 A. Correct. That's the project boundary
15 that's shown.

16 Q. Does he have a microphone that's active?
17 I am having a hard time hearing him.

18 A. How about that? Better?

19 Q. Oh, yes, much better.

20 A. Sorry. I guess I had to push it on.

21 Q. Okay. I was asking the yellow lines on
22 Figure 4 show where the project area is located,
23 correct?

24 A. It's the project boundary that's in
25 yellow.

1 Q. Uh-huh.

2 A. Yes.

3 Q. And everything inside of the project
4 boundary consists of the project area, correct?

5 A. Correct.

6 Q. And then you will see that there are blue
7 diagonal lines on Figure 4, correct?

8 A. Correct.

9 Q. And those blue diagonal lines designate
10 the area where there is probable karst?

11 A. Correct.

12 Q. And then there are green dots on the
13 figure, correct?

14 A. Correct.

15 Q. And those show areas where there is known
16 karst, correct?

17 A. Correct.

18 Q. And do you know what the karst features
19 are that are depicted by the green dots?

20 A. Those are areas that were identified by
21 the Ohio Department of Natural Resources in their GIS
22 shapefiles so we obtained those in their GIS database
23 that provides areas where there is known karst.
24 Those could be sinkholes or areas where maybe a well
25 has been drilled that they know there is a known

1 karst feature.

2 Q. Uh-huh. And do you see that there are
3 green dots in the project area shown on Figure 4?

4 A. Correct.

5 Q. And you didn't see any of those karst
6 features when you were there on your site visit?

7 A. At the surface, no.

8 Q. Now, do you know how the green -- how the
9 karst features that are shown as green dots were
10 discovered?

11 A. I do not.

12 Q. So the -- the karst features shown on
13 Figure 4 are not necessarily noticeable on the
14 surface of the ground?

15 A. That's correct.

16 Q. Going back to Figure -- or back to page 2
17 of Exhibit F, in the paragraph under "Geology and
18 Seismology" where you state that "The majority of the
19 project boundary lies within the karst plains," can
20 you give me an approximate percentage of the project
21 area itself that lies within the Bellevue-Castalia
22 Karst Plains?

23 A. I would say approximately 50 percent.

24 Q. Now, what has to be done in order to
25 determine whether karst is present at a turbine site?

1 A. So as part of the final design process,
2 the designer would go out, hire a geotechnical firm,
3 and drill geotechnical borings at the exact turbine
4 locations and determine the subsurface conditions at
5 those locations.

6 Q. And how deep will those borings be
7 drilled?

8 A. It depends where bedrock is. Typically
9 they would go -- I would say for this area probably
10 20 to 30 -- at least 20 to 30 feet into bedrock.

11 Q. And how many borings will be drilled at
12 each turbine site location?

13 A. Minimum --

14 MS. HERRNSTEIN: Just an objection for
15 the record. I think this is beginning to call for
16 speculation.

17 MR. VAN KLEY: It sounds like he had an
18 answer.

19 ALJ AGRANOFF: If the witness knows, he
20 can respond.

21 A. At a minimum three to four borings per
22 turbine.

23 Q. Have any borings been done in the project
24 area at this point in time?

25 A. Not under my direction.

1 Q. To your knowledge, have borings been done
2 by anybody else in the project area?

3 A. Not that I am aware of.

4 Q. With regard to the probable karst areas
5 shown on Figure 4 of Exhibit F, is there a potential
6 that the karst may extend beyond the areas shown as
7 probable karst in Figure 4?

8 A. I can't answer that without doing
9 additional analysis outside those areas.

10 Q. Go to page 3 of Exhibit F, please. And I
11 would like to direct your attention to the first
12 paragraph on that page. Based on the information in
13 this paragraph or any other information that you
14 have, can you tell me what the depth to bedrock from
15 the surface is in the project area?

16 A. Based on the information we reviewed, it
17 varies from 4 feet to 60 feet below ground --
18 existing ground surface.

19 Q. So based on the fact that the turbine
20 foundations will be about 10 feet deep and the fact
21 that the bedrock can be as close to 4 feet from the
22 surface, does that mean that at some of the
23 projects -- or some of the turbine sites that it may
24 be necessary to dig into the bedrock to install the
25 foundation?

1 A. If bedrock is that shallow, yes, correct.

2 Q. And do you have a plan as to how that
3 bedrock would be excavated in that event?

4 A. That wasn't part of our scope. That
5 would be part of the final design specifications.

6 Q. Is there a potential that blasting would
7 be used for that purpose?

8 MS. HERRNSTEIN: Objection, calls for
9 speculation.

10 ALJ AGRANOFF: If the witness is aware as
11 to whether or not blasting would be utilized, you can
12 answer.

13 A. I am not aware of the prior final
14 designs.

15 Q. Are there other methods that can be used
16 to excavate into bedrock in order to install a
17 foundation for a turbine?

18 A. Again, depending on the part of the final
19 design where bedrock would be located, instead of
20 excavating into bedrock or, you know, if it's deep
21 enough, you can also extend extended-type foundation
22 systems into bedrock such as drill caissons or
23 micropiles.

24 Q. Looking down into paragraph 2 on page 3
25 of Exhibit F, I see that the second sentence of that

1 paragraph says that "21 of the 49 proposed turbine
2 locations are positioned in the probable karst area."

3 Do you see that?

4 A. No, I'm sorry. Where?

5 Q. Second paragraph on page 3 of Exhibit F.

6 A. Sorry. Okay. Which paragraph?

7 Q. Second paragraph.

8 A. Yes.

9 Q. Okay. Now, is that figure still correct
10 according to your understanding today?

11 A. Yes, that's correct.

12 Q. Do you know what the depth to groundwater
13 is in the project area?

14 A. Yes. It varies.

15 Q. And what's the range of depths in the
16 project area for the groundwater?

17 A. Based on some of the well survey data
18 that we have and some of the questionnaires from some
19 of the landowners, I believe it ranged from 60 feet
20 to over 100 feet deep.

21 Q. Do you know what a source water
22 protection area is?

23 A. Yes.

24 Q. What is it?

25 A. That's an area that's designated by the

1 Ohio EPA as -- go to that section. It's a -- it's an
2 area designated by the Ohio EPA for public water
3 supply systems for the purpose of protecting drinking
4 water resources. So it's a designation by the Ohio
5 EPA.

6 ALJ AGRANOFF: Mr. Van Kley, if I could
7 just interrupt for a minute. Let's go off the
8 record.

9 (Discussion off the record.)

10 ALJ AGRANOFF: Sorry, Mr. Van Kley.

11 Q. (By Mr. Van Kley) I would like to direct
12 your attention to page 4 of Exhibit F. Now, you are
13 aware that the property owners within the project
14 area utilize the groundwater for their water
15 supplies?

16 A. Yes.

17 Q. And, in fact, all of them do, correct?

18 A. I do not believe so.

19 Q. No? Who doesn't?

20 A. Some of them are on public water supply.

21 Q. Uh-huh. And which public water supplies
22 are they on?

23 A. I'm not aware -- I do not know which
24 township or municipality provides water supplies to
25 the area.

1 Q. Uh-huh. But even those water supplies
2 come from groundwater, correct?

3 A. I'm not aware. I don't know.

4 Q. Well, so, for example, if you look at
5 page 4, go down to the fifth paragraph, do you see
6 that the fifth paragraph discusses a groundwater
7 protection area for Capitol Aluminum and Glass?

8 A. Yes.

9 Q. And that protection area is at least
10 partially in the project area, correct?

11 A. Yes.

12 Q. And that -- that water supply uses
13 groundwater for its water source, correct?

14 A. Some of the homeowners, yes.

15 Q. Are you saying that some of the
16 homeowners in the project area utilize water from the
17 Capitol Aluminum and Glass supply?

18 A. Yes.

19 Q. And 21 turbine sites are located within
20 the source water protection area for that water
21 supply?

22 A. I count 15.

23 Q. Okay. I am looking at the fifth
24 paragraph on page 4 of Exhibit F. And would you look
25 at that paragraph and then count down six lines to

1 the sentence that starts with the word "Twenty-one."
 2 And do you see there a sentence that says "Twenty-one
 3 turbines are located inside the Capitol Aluminum and
 4 Glass SWPA"?

5 A. My copy says "Fifteen."

6 Q. Are you on a -- what's the date of
 7 Exhibit F that you are looking at?

8 A. November 27, 2017.

9 Q. Okay. You are on the wrong version.
 10 Find the amended application of December 26, 2018,
 11 Exhibit F.

12 ALJ SANYAL: We could also give you our
 13 copy to look at it.

14 MR. PARRAM: We have an extra copy.

15 A. I'm good. Sorry about that.

16 Q. Oh, that's okay. So directing you back
 17 to page 4 of Exhibit F, go down to the fifth
 18 paragraph, and tell me whether based on the
 19 information in that paragraph "Twenty-one of the
 20 turbine sites are located inside the Capitol Aluminum
 21 and Glass SWPA."

22 A. That is correct.

23 Q. Okay. And SWPA stands for source water
 24 protection area, correct?

25 A. Correct.

1 Q. Now, based on information that you have
2 obtained and/or that is in your report, do you know
3 whether the -- an SWPA has what's known as the one
4 year time of travel?

5 A. I'm not aware if they have that
6 restriction.

7 Q. Do you know what a one-year time of
8 travel for groundwater is?

9 A. Yes.

10 Q. Okay. What is it?

11 A. It's based on groundwater modeling and
12 geochemical modeling. It's the rate at which over
13 one year how far contaminants would -- would travel
14 from a point source.

15 Q. Uh-huh. Okay. And do you know that --
16 that when an SWPA is established, that the SWPA
17 identifies the area in which contaminants could reach
18 the water source within one year?

19 A. No, not aware of that.

20 Q. Now, go down to the next paragraph which
21 is the sixth paragraph of page 4. Now, this
22 paragraph discusses two other source water protection
23 areas in the project area, correct?

24 A. Correct.

25 Q. Okay. And one of those source water

1 protection areas is the Clyde City Inland Surface
2 Water Protection Area?

3 A. Yes.

4 Q. And there are 24 turbine sites located
5 within that source water protection area?

6 A. Correct.

7 Q. And go down to the last paragraph of page
8 4 and you'll see that the third SWPA in the project
9 area is the City of Fremont Inland Surface Water
10 Protection Area, correct?

11 A. Yes.

12 Q. And there are 13 turbines located in that
13 source water protection area?

14 A. That is correct.

15 Q. Now, are any of these turbine sites
16 located in more than one source water protection
17 area?

18 A. It does not appear any of them are in
19 both protection areas.

20 Q. All right. Let's go to page 5 of Exhibit
21 F. And I would like to direct you to the heading
22 "Wells Surveyed."

23 A. Okay.

24 Q. Now, Hull mailed a survey to the property
25 owners in the project area, correct?

1 A. Correct.

2 Q. And these are the property owners that
3 were under contract with Republic Wind at the time?

4 A. At the time, correct.

5 Q. And the survey asked for information
6 concerning the property owners' wells, correct?

7 A. Correct.

8 Q. And you received responses from 79 of 139
9 property owners that had been sent the surveys,
10 correct?

11 A. Correct.

12 Q. And I would like to direct your attention
13 to the fourth paragraph under the heading of "Wells
14 Survey" on page 5. And let's go to a sentence that's
15 on the fourth line of that paragraph. Do you see the
16 sentence that says "Reported well depths range
17 between 18 and 160 feet?

18 A. Yes.

19 Q. Okay. So earlier I think you had said
20 that the range of groundwater based on well
21 information was 60 to 100 feet? Do you want to
22 change that statement now based on this information?

23 A. Those were just reporting well depths,
24 not the water levels.

25 Q. Well, if -- if a well was 18 feet deep,

1 does that mean that's the bottom of the well or some
2 other part of the well?

3 A. That's -- that would be -- I guess I
4 can't answer that because that was information
5 provided by the owner. I can't speculate what they
6 meant by 18 feet.

7 Q. Well, if a well is only 18 feet deep,
8 then the water level in that well can't be 60 feet
9 deep, can it?

10 MS. HERRNSTEIN: Objection, foundation.

11 MR. VAN KLEY: It's kind of a commonsense
12 question really.

13 ALJ AGRANOFF: I will allow the question.

14 MS. HERRNSTEIN: I will further object to
15 counsel's testifying.

16 ALJ AGRANOFF: I will allow the question.

17 A. Okay. It looks like for the 18-foot deep
18 well, that home is connected to a municipal water
19 system.

20 Q. Okay. What about the rest of the wells
21 between 18 and 160 feet? What were the -- what were
22 the depths to water in those wells?

23 A. Oh, the depth -- so the depth of water in
24 the wells indicate they were between 8 to 100 feet
25 deep.

1 Q. Okay. And are you looking at some
2 information in the application that gives you that
3 data?

4 A. That's correct. It was provided in the
5 well surveys, the private well questionnaires.

6 Q. Okay. And are those questionnaires in
7 Exhibit F?

8 A. Yes.

9 Q. Would you go to page 6 of Exhibit F. I
10 would like to direct your attention to the title for
11 "Agency Interviews." In the first paragraph under
12 that title there's a discussion about Hull's
13 conversation with Bryan Sparrow, Transportation
14 Manager for Seneca County ODOT District 2, correct?

15 A. Correct.

16 Q. Did you conduct that interview?

17 A. I personally did not.

18 Q. Did someone else from Hull conduct that
19 interview?

20 A. Yes.

21 Q. All right. At the end of that paragraph,
22 there's a sentence that states "Finally, Mr. Sparrow
23 mentioned that an underground river associated with
24 the cave system in the area flows between Bloomville
25 and Bellevue, Ohio." Do you see that?

1 A. Yes.

2 Q. Do you -- do you know anything about this
3 underground river?

4 A. I do not.

5 Q. Do you know what typically is referred to
6 as an underground river in geologic terms?

7 A. I don't -- I don't -- I don't know what
8 he meant by that, that statement. That's not a
9 geologic term, underground river.

10 Q. And then on the bottom of page 6 and the
11 top of page 7, there's a summary of a discussion
12 between Hull and Rich Randolph, Design Engineer for
13 the Sandusky County Engineer's Office, correct?

14 A. Correct.

15 Q. Did you have that conversation?

16 A. I personally did not.

17 Q. All right. It's stated there that
18 "Mr. Randolph corroborated that sinkholes are the
19 primary geotechnical issue encountered within the
20 area." Do you see that?

21 A. Yes.

22 Q. Do you have any reason to dispute that
23 statement?

24 A. No.

25 Q. Directing your attention again to page 7

1 of Exhibit F, look at the heading for "Preliminary
2 Construction Considerations" and then count down five
3 paragraphs.

4 A. Okay.

5 Q. And the first two sentences of that
6 paragraph state as follows: "The contractors should
7 be prepared to deal with any seepage or surface water
8 that may accumulate in excavations. Site dewatering
9 may be required during construction if excavations
10 extend below the water table or significant
11 precipitation events occur when the foundation
12 excavations are exposed." Do you see those
13 sentences?

14 A. Yes.

15 Q. Now, why would site dewatering
16 potentially be required?

17 A. So this area has soils that are fine
18 grain, so it's going to hold any stormwater that may
19 accumulate in the bottom, and the water is not going
20 to drain freely. So there may be some ponding of
21 water in the bottom of excavations that a contractor
22 may need to deal with.

23 Q. Have you determined whether the
24 groundwater may be encountered during the excavation
25 of the turbine foundations?

1 A. It could, yes.

2 Q. Go back to page 4 of Exhibit F. I would
3 like to direct your attention to the fifth paragraph
4 on that page. And I would like to look at the
5 sentence that is on the seventh line, that starts on
6 the seventh line of that paragraph that starts with
7 the words "Due to." And just tell me when you have
8 found that.

9 A. Okay.

10 Q. All right. And that sentence says "Due
11 to the high groundwater flow rates, 3,500 to 8,600
12 feet per day, and a relatively high vulnerability
13 (shallow depth to bedrock, sinkholes, and rapid flow
14 of groundwater), the Ohio EPA delineated the entire
15 region contributing water via the karst system as an
16 SWPA." Do you see that?

17 A. Yes.

18 Q. And SPWA again stands for source water
19 protection area?

20 A. Correct.

21 Q. Okay. Directing your attention to the
22 reference to the rapid flow of groundwater as stated
23 in that sentence, do you know how rapidly groundwater
24 flows through the geologic structures in the project
25 area?

1 A. Yeah. The water supply system in that
2 area operates off of one well and pumps 2,600 gallons
3 per day from the aquifer.

4 Q. Okay. But how fast does the water flow
5 through the -- through the geologic formations in
6 that area?

7 A. So the -- I am not aware of the very -- I
8 can't answer what -- the velocity of what the water
9 is in that area.

10 Q. All right. You are not a hydrogeologist,
11 are you?

12 A. Hydrogeo -- no, geotechnical engineer.

13 Q. And you are not a geologist either?

14 A. No. We did have hydrogeologists and
15 geologists working on this project.

16 Q. So with respect to our discussion about
17 whether groundwater may be found in the excavation
18 for the turbine foundations, if that happens, what
19 has to be done with the groundwater that's
20 encountered?

21 A. Typically a sump is placed in the --
22 within the bottom of the excavation, and water is
23 pumped out. It's a temporary sump. It is usually
24 just a couple of feet deep below the bottom of the
25 excavation.

1 Q. Go to page 8 of Exhibit F. Directing
2 your attention to the second paragraph, please go to
3 the fifth line of that paragraph where you see a
4 sentence that starts with the words "These voids."

5 A. Yes.

6 Q. And this sentence says "These voids may
7 be -- may need to be grouted in order to provide
8 adequate foundation support." Do you see that?

9 A. Yes.

10 Q. And the -- and what are the voids that
11 are being described here?

12 A. Those voids are created by karst so karst
13 voids.

14 Q. So essentially they are holes in the
15 bedrock?

16 A. They are cavities, correct.

17 Q. What is grouting as referred to in this
18 sentence?

19 A. So grouting would be either a bentonite
20 or cement bentonite mixture with water and it's
21 pumped down into the ground and it would -- it is
22 going to set up like concrete. It's just a low
23 permeable material that's used to seal areas. Ohio
24 EPA, ODNR, and ODOT, they use it a lot to seal up
25 boreholes and even karst formations.

1 Q. So tell me how it would work then if you
2 had a -- had a turbine location where you found karst
3 under the ground. Would you first dig out a big hole
4 before you put any grout in, I assume?

5 A. I don't understand the question. Big
6 hole for what?

7 Q. For the foundation of the turbine.

8 A. Well, if it's -- again, so this -- a plan
9 of grout would be part of the final design which
10 we -- that would be the next phase of the project.
11 But if you are grouting, typically grouting --
12 grouting would be done before the excavation occurred
13 for the foundation system if grouting is to be
14 performed at a site.

15 Q. So it would be -- grouting would be done
16 before you poured the exca -- before you poured the
17 foundation; is that what you just said?

18 A. Grouting would be done before the
19 foundation is constructed.

20 Q. Yeah. But you would have to dig the hole
21 first, right?

22 A. No. Grouting is done with a pipe, so
23 usually you drill a 6-inch pipe down in the ground,
24 and you would pump into that -- through that pipe so
25 it's not -- grouting does not require a large

1 excavation.

2 Q. Okay. So you would be pumping grout down
3 into the cavities under the ground, right?

4 A. If grouting is an option but that would
5 be part of the design process.

6 Q. Uh-huh. And if -- so when you pump the
7 grouting -- the grout into the cavities, then how do
8 you know there aren't additional cavities deeper than
9 the ones that have received the grout?

10 A. So that would be your -- your subsurface
11 investigation as part of the final design would look
12 at those cavities, the extent of the cavities, and
13 those studies may also do geophysical work to look at
14 any in the area. You could look at the extent of the
15 voids, the depth, and, you know, the lateral extent
16 of it as well. And if the voids are too large, then
17 grouting wouldn't be a practical solution. Then you
18 would more than likely look at a deep foundation
19 system. Again, it depends on where the rock is and
20 per your design what type of foundation system would
21 be most suited for the area.

22 Q. So what's the maximum depth at which
23 grout would be effective?

24 A. Grout would be effective at any depth.

25 Q. So the grout can go down into cavities at

1 any depth below the ground surface?

2 A. It -- you're -- I think once you get down
3 below 30 feet, I think the effectiveness of the grout
4 for a shallow foundation system, there wouldn't be
5 much value into that. At that point you are probably
6 looking at a deep foundation system instead of
7 grouting.

8 ALJ AGRANOFF: When you said foundation
9 system, what was the name of that?

10 THE WITNESS: A deep foundation system.

11 ALJ AGRANOFF: D?

12 THE WITNESS: Deep.

13 ALJ AGRANOFF: Deep?

14 THE WITNESS: Yeah, sorry.

15 ALJ AGRANOFF: Thank you.

16 Q. (By Mr. Van Kley) Why don't you pull out
17 your testimony. Go to answer 15 of your testimony on
18 page 6. Looking at lines 17 and 18, your testimony
19 states "Within this discussion, the Staff notes as
20 follows: The Applicant has noted that 27 of the
21 proposed 64 wind turbines are situated in areas
22 exhibiting karst features." Do you see that in your
23 testimony?

24 A. Yes.

25 Q. Okay. And this refers to the Staff

1 Report, correct?

2 A. Yes.

3 Q. Okay. Now, earlier you stated that 21 of
4 the wind turbine sites were located in areas
5 exhibiting karst features. Do you recall that?

6 A. In a survey report there were 21 of the
7 49 turbine locations are in probable karst areas.

8 Q. Okay. And I guess I have a question
9 about the total number of turbine sites then because
10 it appears that in Exhibit F, that document
11 identifies 21 of the 49 turbine sites as being
12 located in areas exhibiting karst, but in the Staff
13 Report it stated that 27 of 64 sites are located in
14 areas exhibiting karst. So can you explain the
15 reason, if you know, for the differences in those two
16 statements?

17 MS. HERRNSTEIN: Objection, calls for
18 speculation. It's outside the scope of this
19 witness's knowledge.

20 MR. VAN KLEY: Your Honor, I asked him to
21 his knowledge whether he can explain it.

22 ALJ AGRANOFF: The witness certainly can,
23 if he knows, attempt to reconcile his testimony with
24 the other reference that Mr. Van Kley made.

25 A. I do not know.

1 Q. Do you know what the number of turbine
2 sites currently proposed for this project is?

3 A. So for my study we looked at a project
4 boundary, so all the geologic information found
5 within the project boundary based on the 49 locations
6 we looked at in the karst area -- I'm sorry, as shown
7 in the figures in Appendix F.

8 Q. So did you not look at all the turbine
9 sites being planned for this project?

10 A. Our scope of work was to look at the
11 study area, the project area, to look at the -- all
12 the geologic, geotechnical, and groundwater
13 information within those project boundaries, and all
14 those turbines obviously were within those areas.

15 Q. The 49 were included in the project area?

16 A. 49, yes, were.

17 Q. Well, what about -- what about the 64
18 turbine sites referred to in the Staff Report? Do
19 you know whether those are in the project area?

20 A. Yes, those are within the project area as
21 well.

22 Q. Okay. So why did you evaluate 49 sites
23 instead of 64 sites?

24 A. Well, we looked at the entire project
25 boundary regardless of the number of turbines. We

1 were looking at the study area, the project area.

2 Q. Go to answer 12 of your testimony on page
3 5. Starting --

4 ALJ SANYAL: Mr. Van Kley. Mr. Van Kley,
5 could you give me the reference again, please?

6 MR. VAN KLEY: Yes. It's in his
7 testimony page 5, answer 12.

8 ALJ SANYAL: Thank you.

9 Q. (By Mr. Van Kley) And directing your
10 attention to the sentence that's starting at line 22,
11 it's stated "Adequate surface water drainage should
12 be established at each Project Area access road and
13 substation location to minimize any increase in the
14 moisture content of the subgrade material. Surface
15 water drainage can be managed by implementing
16 techniques such as surface water swales, drainage
17 berms, etc." Do you see that?

18 A. Yes.

19 Q. Okay. Now, would that also be -- be --
20 would those statements also apply to the turbine
21 sites?

22 A. Yes.

23 Q. So would the drainage patterns for
24 surface water drainage be modified as the result of
25 the construction of the turbine sites?

1 A. No.

2 Q. Well, if you are implementing techniques
3 such as surface water swales and drainage berms,
4 wouldn't that alter the flow of the surface water?

5 A. No. So those could be -- that was
6 referring to if there is existing surface swales that
7 you maybe need to improve at the turbine locations.
8 Typically turbine locations I don't change any
9 surface water drainage patterns. You use existing
10 topos, so predevelopment topography is used for
11 post-construction. So surface water patterns are not
12 changed at the turbine locations.

13 MR. VAN KLEY: Okay. I have no further
14 questions.

15 ALJ AGRANOFF: Does counsel for any of
16 the other Intervenor have cross-examination? Staff?

17 MS. BAIR: No questions.

18 ALJ AGRANOFF: Redirect?

19 MS. HERRNSTEIN: May I have a moment with
20 the witness?

21 ALJ AGRANOFF: Sure. Why don't we take a
22 10-minute break.

23 (Recess taken.)

24 ALJ AGRANOFF: Why don't we go back on
25 the record at this time.

1 Any redirect?

2 MS. HERRNSTEIN: No redirect, your Honor.

3 ALJ AGRANOFF: I do have a couple
4 questions.

5 - - -

6 EXAMINATION

7 By Alj Agranoff:

8 Q. Mr. McGee, if you recall, earlier there
9 was a conversation about the use of grouting versus
10 deep foundation system.

11 A. Yes, sir; yes, sir.

12 Q. Is there a particular depth at which the
13 utilization of the grouting versus the deep
14 foundation system changes?

15 A. I would -- it's probably about that
16 20-foot depth range. If it's below -- if it's less
17 than 20 feet, grouting may be a better option, but
18 when you get deeper than 20 feet, grouting is --
19 may -- extended-type foundation where you are looking
20 at drill shafts down into bedrock may be more of a
21 viable option. And, then again, that's all something
22 that would be done per the final design.

23 Q. And if you could please give me a little
24 bit of a better explanation of the source water
25 protection area concept.

1 A. Yeah. So that's a designation by Ohio
2 EPA where certain activities are prohibited. For
3 example, it would be siting landfills, industrial --
4 industrial, municipal, or residual waste landfills,
5 or wastewater treatment plants cannot be in those
6 designated areas, but turbines are not -- turbine
7 construction is not a prohibited activity.

8 Q. And if you could please turn to your
9 testimony specifically on page 5, your response to
10 question 11.

11 A. Yes.

12 Q. And you use the phrase on line 14
13 regarding "it does not appear that the construction
14 of the proposed wind turbines will have a significant
15 impact on the local geology and/or hydrogeology of
16 the Project Boundary." How do you utilize the phrase
17 "significant impact"?

18 A. So significant impact would be negative
19 impacts to like changing the groundwater flow in that
20 area, so hydrogeology you would change any
21 groundwater flow patterns in an area or any impact to
22 groundwater. So a significant would be contaminating
23 groundwater such that drinking water wells could not
24 be used. That would be a significant impact.

25 Q. Okay. And then similarly the last line

1 of your response to question 11, you make reference
2 to any "significant negative impact."

3 A. Yeah. Again, that would be, you know, as
4 a result of the construction of the turbines, that
5 would contaminate the owners' groundwater wells such
6 that they couldn't be used.

7 Q. Okay. And then with respect to your
8 answer to question 12, in the second paragraph, you
9 discuss site-specific geotechnical information being
10 obtained prior to the design of each turbine
11 foundation. Do you see that?

12 A. Yes.

13 Q. Do you need that information prior to
14 making the conclusions that you discuss in your
15 answer to question 11?

16 A. No.

17 Q. And if you could please turn to your
18 direct testimony, your response to question 15. Let
19 me know when you are there.

20 A. Yes.

21 Q. And you indicate on the second to last
22 line of your response to question 15 that "mitigation
23 measures (such as grouting) would likely -- would
24 likely be the recommended course of action." Do you
25 see that?

1 A. Yes.

2 Q. Recommended by whom?

3 A. That would be recommended during the
4 final design. So that would be more than likely the
5 geotech engineer in corroboration with the designer
6 of the turbine.

7 Q. Did you have anything else to add?

8 A. No.

9 ALJ AGRANOFF: Thank you.

10 Based on my limited questions, do any of
11 the parties' counsel have follow-up?

12 MR. VAN KLEY: I have a few -- a few
13 questions.

14 ALJ AGRANOFF: Proceed.

15 - - -

16 FURTHER CROSS-EXAMINATION

17 By Mr. Van Kley:

18 Q. Has Hull conducted a hydrogeologic field
19 study for each of the turbine sites?

20 A. Interim study, not that I am aware of.

21 Q. So at this point in time without doing
22 some borings at each turbine site, you don't know
23 whether there are pathways through the bedrock under
24 any of those turbine sites that may act as a conduit
25 for groundwater, do you?

1 A. We know that they are present in the area
2 without having to do borings.

3 MR. VAN KLEY: Okay. No further
4 questions.

5 MS. HERRNSTEIN: No questions.

6 ALJ AGRANOFF: Thank you, Mr. McGee.

7 THE WITNESS: Thank you.

8 ALJ AGRANOFF: At this time does the
9 Applicant seek the admission of Applicant Exhibit 27?

10 MS. HERRNSTEIN: We do, your Honor.

11 ALJ AGRANOFF: Any objections?

12 There being none, Applicant Exhibit 27
13 shall be admitted as part of the record at this time.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 ALJ AGRANOFF: Is the Applicant ready to
16 call its next witness?

17 MR. PARRAM: Your Honor, could we have a
18 10-minute break? I think the next witness is on the
19 way over. We went faster than expected so. Which is
20 a good thing.

21 ALJ AGRANOFF: That's a good problem.
22 Let's reconvene at 11:00. Thank you.

23 (Recess taken.)

24 ALJ AGRANOFF: Okay. Let's go back on
25 the record.

1 Mr. Parram, ready to call your next
2 witness?

3 MR. PARRAM: Yes, your Honor. I would
4 like to call Mike MaRous to the stand, your Honor.

5 (Witness sworn.)

6 ALJ AGRANOFF: Please be seated.

7 - - -

8 MICHAEL MaROUS, MAI, CRE
9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Parram:

13 Q. Good morning, Mr. MaRous.

14 A. Good morning, counsel.

15 Q. Can you please state and spell your full
16 name for the record.

17 A. Michael S. MaRous, M-a-R-o-u-s.

18 Q. And your business address?

19 A. 300 South Northwest Highway, Suite 204,
20 Park Ridge, Illinois.

21 Q. In front of you I have a document marked
22 Applicant Exhibit 28. Do you see that document?

23 A. I do.

24 Q. What is this document?

25 A. This is my prefiled direct testimony that

1 I prepared with my attached market impact analysis
2 report that I also prepared.

3 Q. Okay. And if I were to ask you the same
4 questions contained in Applicant Exhibit 28 today,
5 would your answers be the same?

6 A. They would.

7 MR. PARRAM: And, your Honor, I would
8 like to move for the admission of Applicant Exhibit
9 28, pending cross-examination, and tender Mr. MaRous
10 for cross.

11 ALJ AGRANOFF: Thank you. Mr. Ma --
12 Mr. MaRous's testimony shall be marked as Applicant
13 Exhibit 28.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 ALJ AGRANOFF: And Mr. Van Kley.

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

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Van Kley:

20 Q. How many times have you testified on
21 behalf of a wind company?

22 A. Probably in the area of 20 times.

23 Q. Have you ever provided testimony adverse
24 to a wind power company?

25 A. I've provided opinions adverse to power

1 companies that deal in wind, yes.

2 Q. Have you provided any testimony that was
3 adverse to a wind power company concerning the
4 effects of wind turbine facilities on property
5 values?

6 A. No.

7 Q. How long have you been testifying on
8 behalf of wind power companies?

9 A. Approximately five years.

10 Q. Have these testimonies all been in court?

11 A. That's a very good question. They've
12 been in a variety of jurisdictions.

13 Q. What other types of jurisdictions have
14 you provided expert testimony concerning the effects
15 of wind turbines on property values?

16 A. Sure. And I am not an attorney, so I
17 don't propose to be an expert on what's a court and
18 what's not, but I have testified before county boards
19 in a county board zoning hearing. I've testified in
20 court. I've testified in essentially PUC, Public
21 Utilities Commission, hearings and in circuit court.

22 Q. Okay. On any of the occasions in which
23 you testified about the effects of wind turbines on
24 property values, has the court or the other
25 administrative tribunal decided that your opinions

1 were incorrect?

2 A. Not that I am aware of.

3 Q. You've cited a number of studies
4 conducted on the effects of wind turbines on property
5 values in your testimony, correct?

6 A. I did.

7 Q. Were all of these studies funded by wind
8 power companies?

9 A. I don't believe so. It appears that most
10 came out of major universities out of their
11 departments. Who funds the university, I'll be
12 honest with you, that's not something that I would be
13 aware of.

14 Q. Uh-huh. Well, the university had to get
15 their money from somewhere in order to conduct those
16 studies, right?

17 A. That's --

18 MR. PARRAM: Objection. That's calling
19 for speculation.

20 A. That's another good --

21 ALJ AGRANOFF: Hold on. I'll allow the
22 question.

23 A. And, again, I can't be precise. A lot of
24 the research that was done was done by graduate
25 students who are paying a tuition, so I guess they

1 are kind of funding their own studies. But, yes, to
2 do extensive research costs money in one way or
3 another. Somebody is paying for it.

4 Q. Uh-huh. And do you know whether wind
5 companies were paying for any of that -- that
6 research?

7 MR. PARRAM: Objection, asked and
8 answered.

9 ALJ AGRANOFF: If the witness knows, he
10 can answer.

11 THE WITNESS: I can't provide a specific
12 answer, your Honor.

13 Q. (By Mr. Van Kley) Are you aware of any
14 studies that have concluded that wind turbines did
15 reduce the property values of the people living
16 around the turbine sites?

17 A. I'm not that have been peer reviewed.
18 No, I am not aware of that. There's obviously
19 studies or blogs that are on the internet. There
20 have been reports that have been done by objectors
21 but not that I am aware that were peer reviewed.

22 Q. Do you know of any studies that were
23 conducted by appraisal experts that concluded wind
24 turbines reduce property values?

25 A. I'm aware of two of them. One is no

1 longer practicing. Both were not the MAI designation
2 which is basically the top end of the appraisal
3 field, kind of the difference between a paralegal and
4 an admitted lawyer into the state bar. Those are the
5 only two that I am aware of.

6 ALJ AGRANOFF: And what did the acronym
7 you utilized stand for?

8 THE WITNESS: MAI which is Member of
9 Appraisal Institute so that's the top appraisal
10 designation which I've had for over 35 years.

11 Q. Do you still have that certification?

12 A. Yes, I do.

13 Q. With respect to the two studies that were
14 conducted by appraisers that concluded that wind
15 turbines reduce property values, what was the
16 percentage of property reduction that they concluded
17 had occurred?

18 A. Appeared to be a relatively wide range,
19 from a low of about 5 percent again to their
20 conclusion of to a high of about 40 percent.

21 Q. You presented a number of paired analyses
22 in your testimony in this case, correct?

23 A. Matched pairs, yes.

24 Q. Yeah. And in those matched pairs, one
25 house closer to the project -- closer to the wind

1 project is compared as to its sale price to another
2 house that is located further away from the wind
3 turbine project, correct?

4 A. Yes.

5 Q. In those matched pair analyses, were
6 adjustments made to the sales prices of the homes in
7 those paired analyses to account for differences in
8 the nature of the properties being sold?

9 A. Yes.

10 Q. Is that -- that was true for every paired
11 analysis that you presented in your testimony?

12 A. Correct.

13 Q. How close to a turbine was -- or were the
14 homes that were deemed -- or the homes that were
15 being evaluated for the effects of the turbine or
16 turbines on property value?

17 A. Generally in the 12 to 18 hundred foot
18 range from basically the location of the turbine to
19 the outside dimension of the house. There's some,
20 just because of different comparisons that were even,
21 further than that.

22 Q. How far?

23 A. Some are 2,500 plus or minus feet. But
24 the attempt was generally to be in the 12 hundred to
25 18 hundred foot distance.

1 Q. And how far from turbines were the
2 properties located that you were comparing the
3 properties close to the wind turbines?

4 A. Generally over 5 miles. Some may be as
5 close as 3 miles.

6 Q. Now, when you -- were you the person that
7 selected the properties that would be compared in the
8 matched pairs analysis?

9 A. I participated in that. It's a
10 voluminous amount of research to do the initial cut,
11 but the final selections were my choice, yes.

12 Q. Did you or a -- or any person helping you
13 with this research do any field visits to look at the
14 properties that were being compared?

15 A. Virtually every one of these properties
16 had been inspected, maybe not 100 percent but, again,
17 it's just to understand the character of the area
18 when making the comparison.

19 Q. Were you inspecting those homes or
20 somebody else on your team?

21 A. I was.

22 Q. With respect to the homes that were close
23 to the turbines, did you determine whether each of
24 those homes had a view of a turbine?

25 A. That's another good question. They

1 either had a view from the back or let's say the
 2 living room/family room area or the front yards.
 3 Many of these rural what I would say farmettes or
 4 residential properties, just because they are out in
 5 the country, many times on gravel roads, generally
 6 surrounded by agricultural fields, essentially have
 7 view shields built in where they have mature trees
 8 and evergreens that kind of block their views. So
 9 there's kind of a natural blockage with most but, you
 10 know, there is really a view from and a view of and
 11 they all in one form or fashion, whether it be from
 12 the front yard or on the street, did have views of
 13 the turbines and some much more than others.

14 Q. Do you know how much of a view will be --
 15 of turbines will be experienced by people living near
 16 the Republic Wind project area?

17 A. It depends. Each house will be
 18 different. The reality in this situation with the
 19 24,000 plus or minus acre footprint and only 40 to 50
 20 turbines generally is not going to get the density
 21 that some of these older projects have. To get,
 22 again, 200 megawatts, they may need 100 plus turbines
 23 to get the same capacity. But each one is different.
 24 Some have one; some have multiple.

25 Q. What -- based on your knowledge, what is

1 the maximum number of turbines that can be seen from
2 the property of a nonparticipating landowner near the
3 Republic Wind project area?

4 A. The maximum number is a tough question to
5 answer because of the blockage of the mature trees
6 and the natural topography of the ground and the
7 distance away. Generally I'm going to estimate three
8 to six, but I can't give a specific answer to that,
9 and obviously a clearer day may be more prevalent.
10 There's a lot of factors that could influence that
11 impact. Obviously last night with the weather, you
12 can't see very far, then there would be a view. So I
13 assume you are assuming a relatively clear day.

14 Q. Have you personally visited the Republic
15 Wind project area?

16 A. I have.

17 MR. VAN KLEY: I have no further
18 questions.

19 ALJ AGRANOFF: Thank you.

20 Any other counsel have cross?

21 Mr. Divine.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. DeVine:

25 Q. Good morning, sir.

1 A. Good morning, counsel.

2 Q. How much time did you spend in Seneca
3 County?

4 A. Five to seven hours.

5 Q. And when was that?

6 A. Early March of 2019.

7 Q. While you were there, did you see any --
8 any signs opposing the wind turbine projects?

9 A. As I recall, I did.

10 Q. Would it -- did you take into account in
11 your professional opinion the level of local
12 opposition to the project and your opinion regarding
13 real estate evaluation?

14 MR. PARRAM: Objection to the extent the
15 level of opposition is unclear.

16 ALJ AGRANOFF: Would you --

17 MR. DeVINE: The opposition that he saw.
18 He said he saw signs.

19 ALJ AGRANOFF: Are you asking whether or
20 not he factored that into his analysis?

21 MR. DeVINE: Yes.

22 A. I did.

23 Q. Could you tell us which real estate
24 brokers or agents you spoke to when you were in
25 Seneca County?

1 A. You know, a potentially contested project
2 like this, we do extensive research on the
3 demographic and sale prices, but to contact a local
4 broker that their career may be impacted if I cite
5 them in a report as being in favor of it, it is just
6 a standard policy that I don't do it because they
7 are -- basically get put in a situation that's a
8 small county and, you know, there is differences of
9 opinion. So the answer is as standard protocol, I do
10 not.

11 Q. So you did not speak to any local real
12 estate professionals?

13 A. Maybe just verifying a couple of the
14 sales that I put in with knowledge but not with the
15 question or regard to the potential impact of the
16 proposed project.

17 Q. Did you speak to any -- any persons in
18 Seneca County who were in the market for homes?

19 A. You mean market participants or potential
20 buyers? No, I did not.

21 Q. Did you speak to any sellers or potential
22 sellers?

23 A. In regard to the question of the wind,
24 no.

25 MR. DeVINE: I have no further questions.

1 ALJ AGRANOFF: Thank you.

2 Staff?

3 MS. BAIR: No questions.

4 ALJ AGRANOFF: Redirect?

5 MR. PARRAM: No, your Honor.

6 - - -

7 EXAMINATION

8 By Alj Agranoff:

9 Q. If you could please turn to page 3 of
10 your testimony.

11 A. Yes, your Honor.

12 Q. And specifically your response to
13 question 9.

14 A. Yes.

15 Q. And you discuss the fact that your study
16 or your survey of the county auditors or deputy
17 auditors in three counties. Were those counties in
18 Ohio?

19 A. Yes.

20 Q. Which counties were they?

21 A. I need to go to my report. And page
22 87 -- but actually romanette XXIV in my addenda which
23 were -- was Hardin, Paulding, and Van Wert which is
24 actually romanette XXV. So romanette XXIV and XXV
25 explains what I did with the conclusions. And then

1 XXV there is a summary chart that shows the county,
2 the population, who the auditor is, the phone number,
3 the names of the wind farms, the turbine count, the
4 capacity, and the year that it came online.

5 Q. If you could please turn to page 16 of
6 your report.

7 A. Yes.

8 Q. And with respect to the property at 7658
9 State Route 111.

10 A. Yes.

11 Q. What is that property's proximity to a
12 turbine?

13 A. I would estimate over 4 miles. It's
14 quite a ways away.

15 ALJ AGRANOFF: Based on my limited
16 questions, does any counsel have follow-up?

17 MR. VAN KLEY: No.

18 MR. PARRAM: No, your Honor.

19 ALJ AGRANOFF: Thank you, Mr. MaRous.

20 THE WITNESS: Thank you, your Honor.

21 MR. PARRAM: Your Honor, I move for the
22 admission of Applicant Exhibit 28 into the record.

23 ALJ AGRANOFF: Any objection?

24 MR. DevINE: None.

25 ALJ AGRANOFF: Mr. Van Kley, are you

1 okay?

2 MR. VAN KLEY: Yeah. No objection.

3 ALJ AGRANOFF: There being no objection,
4 Applicant Exhibit 28 shall be admitted as part of the
5 record at this time.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 ALJ AGRANOFF: And, Mr. Parram, whenever
8 you are ready to call your next witness.

9 MR. PARRAM: The Applicant calls Mr. Ben
10 Doyle to the stand.

11 (Witness sworn.)

12 MR. STINSON: Your Honor, if we could go
13 off the record for a moment to get organized?

14 ALJ SANYAL: Of course. Yes.

15 (Discussion off the record.)

16 ALJ SANYAL: Let's get back on the
17 record.

18 - - -

19 BENJAMIN M. DOYLE

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

22 DIRECT EXAMINATION

23 By Mr. Stinson:

24 Q. Mr. Doyle, would you please state your
25 full name and business address for the record.

1 A. My name Benjamin Matthew Doyle. My
2 company is Capitol Airspace Group, 5400 Shawnee Road,
3 Suite 304, Alexandria, Virginia 22312.

4 Q. Now, I've placed before you what's been
5 marked as Applicant's Exhibit 29 and Applicant's
6 Exhibit 30. Can you identify those for me, please.

7 A. Applicant's 29 is my direct testimony
8 dated October 21 of this year. Applicant's Exhibit
9 30 is my supplemental testimony dated October 28.

10 Q. If you could be sure and speak up so the
11 court reporter can be sure to hear you, Mr. Doyle.

12 A. Certainly.

13 Q. Was your direct testimony and
14 supplemental testimony prepared by you or under your
15 direct supervision?

16 A. It was.

17 Q. Do you have any corrections to that
18 testimony today?

19 A. I do. On page 10, we have -- I have a
20 typo in the Ohio Revised Code.

21 ALJ SANYAL: Actually which of the --

22 THE WITNESS: I'm sorry. This is in the
23 Applicant's Exhibit 29.

24 ALJ SANYAL: Okay. Thank you.

25 THE WITNESS: Direct testimony. And it's

1 answer to No. 26. I would like to correct that
2 "4905.32" of the Revised Code, "4561.32."

3 ALJ AGRANOFF: 4905.61?

4 THE WITNESS: It should be "4561.32,"
5 your Honor.

6 Q. (By Mr. Stinson) Mr. Doyle, if I were to
7 ask you the same questions today in your direct and
8 supplemental testimonies, would your answers be the
9 same as corrected?

10 A. They would.

11 Q. Are those answers true and accurate to
12 the best of your knowledge?

13 A. They are.

14 MR. STINSON: Your Honor, I move for the
15 admission of Applicant's Exhibits 29 and 30, subject
16 to cross, and tender the witness for
17 cross-examination.

18 ALJ SANYAL: Thank you. We have marked
19 the exhibits as so.

20 (EXHIBITS MARKED FOR IDENTIFICATION.)

21 ALJ SANYAL: Mr. Van Kley.

22 MR. VAN KLEY: I think Mr. DeVine will
23 start, if it's okay.

24 ALJ SANYAL: Go ahead, Mr. DeVine.

25 - - -

CROSS-EXAMINATION

By Mr. DeVine:

Q. Good morning, sir.

A. Good morning, sir.

Q. If the project was built as set forth in the application, as you understand it, what would an ordinary pilot have to do differently the day after construction than he or she would have to do today to land a plane at the Seneca County Airport?

A. The turbines, as proposed, will have an effect on instrument approaches into Seneca County Airport, specifically to initial segments of that procedure -- of those procedures meaning that pilots have to fly at an altitude of roughly 100 feet higher tomorrow than they would today about 15 to 20 miles out from the runway.

Specific to one turbine, turbine 1, on the NDB -- I take that back. That's Fostoria. I apologize. Seneca there would be no change in the minimum set altitude which means the same exact number of aircraft would be landing tomorrow as they land today. It's just those initial segments 15 to 20 miles out that would be different in altitude.

Q. Would the -- would the approach height for an airplane approaching the Seneca County Airport

1 be the same after construction as pre-construction?

2 A. Would you more specific when you -- when
3 you speak to approach height? Because there are
4 different heights at different segments of the
5 procedures.

6 Q. Well, why don't you tell me for all the
7 approach heights.

8 A. So the instrument approach procedures
9 into airports in general and specific to these
10 airports in question have multiple segments. Each of
11 those segments have minimum altitude that that pilot
12 can descend to while stepping down and making that
13 approach to the runway. So the minimum altitude
14 associated with each individual segment of the
15 approach are assessed by the FDA as it relates to
16 obstacles in the environment.

17 So this case, in the case of Seneca
18 Airport, the turbines will impact or affect the
19 minimum altitude in what's called the initial or
20 hold-in-lieu segments of the approach, 10, 15 miles
21 out. The minimum altitude used by pilots that
22 differentiates whether or not they can land or not
23 occurs in the last 5 miles of the approach and that
24 would be unaffected at Seneca Airport.

25 Q. How much would the increase in height be

1 at that initial?

2 A. 100 feet.

3 Q. And how was that calculated?

4 A. There's a -- the FAA establishes required
5 obstacle clearance based on the type of segment of
6 the procedure. So in initial segments there's a
7 thousand feet of obstacle clearance, so today those
8 initial segments are -- have a minimum altitude of
9 2,400 feet, so the FAA requires a thousand foot of
10 clearance below that altitude meaning that any
11 turbines in excess of 1,400 feet above sea level
12 would impact that segment of the procedure requiring
13 that procedure to be increased from 2,400 to 2,500.

14 Q. Does an increase in altitude from 2,400
15 to 2,500 feet during bad weather, if you are in a
16 single engine plane, does that make things more
17 difficult for that pilot?

18 MR. STINSON: Could I have the question
19 reread, please, your Honor?

20 ALJ SANYAL: Yes, you may.

21 (Record read.)

22 MR. STINSON: I am just going to object
23 as to form, the broadness of the question, your
24 Honor, as to difficult.

25 ALJ SANYAL: I am going to overrule that.

1 If you understand the question, you may answer. If
2 not, ask counsel to clarify.

3 A. I would ask that you define more
4 difficult. There's a process that pilots follow when
5 utilizing these instrument approach procedures. They
6 are there specifically when the weather -- for to aid
7 pilots when the weather is poor. So I guess my
8 question is can you clarify what you mean is it more
9 difficult to fly?

10 Q. If weather is adverse and you are on a
11 single engine plane approaching Seneca County Airport
12 as a passenger, would you prefer to have the height
13 increased from 2,400 to 2,500 feet?

14 A. As a passenger, I wouldn't even be aware.
15 As a pilot, I think it would have no effect on my --
16 on my approach into that airport.

17 Q. Would it increase the potential for icing
18 for that single engine aircraft?

19 A. No.

20 Q. Would an increase in altitude for a
21 single engine aircraft, is there a point where it
22 would create a problem for -- in regards to icing?

23 MR. STINSON: Again, objection just to
24 clarify what it is. If you could reread the
25 question, please.

1 MR. DeVINE: I will rephrase if that will
2 help.

3 ALJ SANYAL: Thank you.

4 Q. (By Mr. DeVine) Actually I am going to
5 move on, if that's okay. Does the Fostoria Airport
6 use a nondirectional beacon approach system?

7 A. Yes, it does.

8 Q. And what is a nondirectional beacon
9 approach system?

10 A. It's a radio transmitter that pilots use
11 to navigate from point to point.

12 Q. And to your knowledge, are -- are pilots
13 required to -- are pilots required to be able to use
14 a -- an alternative to GPS for landings?

15 A. I don't know what the rating requirements
16 are for an instrument pilot, whether they are
17 required to be certified or rated to fly
18 nonterrestrial-based procedures versus GPS-based.

19 Q. Have you been to the Seneca County
20 Airport?

21 A. No, I have not.

22 Q. Have you spoken with anybody who is
23 associated with or has -- has a plane at the Seneca
24 County Airport?

25 A. I have not.

1 Q. Have you been to the Fostoria City
2 Airport?

3 A. I have not.

4 Q. Have you spoken with anybody from that
5 airport?

6 A. I spoke to Mr. Sniffen, Dave Sniffen.

7 Q. And when did you speak to him?

8 A. I don't know the date off the top of my
9 head. It has been within the last couple of weeks.

10 Q. Have you been to Sandusky Airport near
11 Fremont?

12 A. I have.

13 Q. Have you spoken to anybody from that
14 airport?

15 A. I have not.

16 Q. Why did you have reason to have
17 communication with Mr. Sniffen?

18 A. I was asked to have a call with
19 Mr. Sniffen in response to my client Apex in response
20 to the OPSB Director.

21 Q. In your written testimony on page 10, you
22 corrected the Revised Code Section in answer 26.

23 A. Yes.

24 Q. In that answer after the Code Section you
25 indicate "ODOT may waive the obstruction standards,"

1 correct?

2 A. Correct.

3 Q. Is there any requirement that you are
4 aware of that ODOT waive the obstruction standards?

5 A. Not that I am aware of.

6 Q. Did you talk to Mr. Sniffen about his
7 failure to file a timely objection with the FAA
8 regarding the application?

9 A. I don't recall that coming up in our
10 conversation.

11 Q. On page 11 of your testimony, question 30
12 asked about whether the FAA -- "Does the FAA consider
13 the findings and recommendations of other
14 governmental entities and interested persons." And
15 your answer was "Yes"?

16 A. Yes.

17 Q. Okay. Are you aware that the initial
18 question that came out from the FAA seeking comments
19 referenced a project near Bloomfield, Ohio, not
20 Bloomville?

21 MR. STINSON: Objection, your Honor. I
22 don't believe there is any facts in evidence to
23 support that. And I think that Mr. DeVine is
24 referring to a completely different case.

25 MR. DEVINE: This is cross-examination

1 first, so I should be allowed to cross-examine him of
2 whether facts have been introduced into evidence or
3 not. Otherwise, we are going to need the right to
4 recall the witness after other witnesses testify.

5 Second, it's my understanding that
6 Mr. Sniffen did not file any objection or comments
7 because the document said Bloomfield, not Bloomville,
8 and he didn't think it had any relevance to him
9 because Bloomfield isn't anywhere near Fostoria.

10 ALJ SANYAL: I am just -- Mr. DeVine, I
11 am just generally a little confused. Are you calling
12 Mr. Sniffen?

13 MR. DeVINE: No.

14 ALJ SANYAL: So but you intend to ask
15 these questions of this witness?

16 MR. DeVINE: Again, your Honor, I would
17 suggest this is cross-examination, and I should be
18 allowed to explore additional topics other than -- he
19 put in here that the FAA considered recommendations,
20 and I am trying to point out the reason there wasn't
21 a response was because the flyer from the FAA said
22 Bloomfield which is nowhere near this --

23 MR. STINSON: Again, your Honor, I think
24 we need some kind of foundation for at least
25 Mr. Doyle knows what Mr. DeVine is referring to.

1 ALJ SANYAL: I agree. Let's -- you know,
2 let's see if this witness is aware of what you are
3 trying to allude to so let's get some introductory
4 questions out of the way.

5 Q. (By Mr. DeVine) Do you know where
6 Bloomfield, West Virginia, is, sir?

7 A. I don't, sir.

8 Q. Do you know where Bloomville, Ohio, is?

9 A. I don't, sir.

10 Q. Did you take into consideration in your
11 report the impact that the installation of the
12 turbines would have on aerial agricultural
13 operations?

14 A. Which report are you referring to, sir?

15 Q. Did you take it into consideration in any
16 report?

17 A. For aerial agricultural operations?

18 Q. Yes.

19 A. When -- the answer is no. The FAA will
20 assess for impacts to visual flight operations, and
21 the validation that we conducted in assessing the
22 wind project we assessed using those same VFR
23 criteria used by the FAA. So it would be inclusive
24 but aerial agricultural operations are an operation
25 that falls outside the scope of Part 77. And let me

1 correct that. It falls outside the scope of Part 77
2 as it relates to the uniqueness of their operations.
3 However, the nature of the visual flight operations
4 of an agricultural operation is included in the Part
5 77 review.

6 Q. Does the increased approach height at
7 the Seneca County Airport require that the pilot
8 descend at a steeper angle?

9 A. Yes.

10 Q. Did you take into consideration in any of
11 your reports or testimony the impact that the
12 installation of the wind turbine project as set forth
13 in the application would impact pilot training at any
14 of the airports?

15 A. Not specific to pilot training. Pilot
16 training is conducted in accordance with federal
17 aviation regulations which -- which means that those
18 pilots are going to fly in the air space in the same
19 manner as regular flight operations or non-training
20 flight operations, so by extension the protections
21 afforded to any pilot would be also afforded to a
22 training operations.

23 Q. Do I understand from your testimony that
24 you are not a licensed pilot?

25 A. I am not a licensed pilot.

1 Q. Have you ever went through training to
2 become a pilot?

3 A. I have not.

4 Q. Mr. Doyle, have you testified previously
5 in support of industrial wind turbine projects?

6 A. I have.

7 Q. Approximately how many times?

8 A. Five.

9 Q. And what time period have those five --
10 or the approximately five times you have testified
11 occurred?

12 A. Over the last five years.

13 Q. Have you ever testified in opposition to
14 the construction of any wind turbine project?

15 A. No.

16 Q. Have any of those previous projects been
17 in the state of Ohio?

18 A. One has.

19 Q. And which one was that?

20 A. It was the Wind Energy case.

21 Q. And where is that located, if you know?

22 A. I don't recall the location.

23 Q. And in that case what is your -- do you
24 recall if ODOT had any type of involvement in that
25 case?

1 A. They did.

2 Q. And did ODOT disagree with your opinion
3 regarding the ultimate wind turbine project being
4 constructed?

5 A. ODOT disagreed with the FAA's position,
6 if that answers your question. My -- my assessment
7 confirmed the FAA's results.

8 Q. So in that project ODOT disagreed with
9 the FAA and your assessment?

10 A. Correct.

11 MR. DeVINE: I have no further questions.
12 Thank you.

13 MR. VAN KLEY: I have no questions.

14 MS. BAIR: I have questions.

15 ALJ SANYAL: Go ahead.

16 MS. BAIR: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Bair:

20 Q. Good morning, Mr. Doyle.

21 A. Good morning.

22 Q. I would like to ask you looking in your
23 direct testimony to look at page 6, lines 1 through
24 4.

25 A. I'm sorry. You said page 6, lines 1

1 through 4?

2 Q. Yeah, really just line 1, but for
3 context.

4 ALJ SANYAL: And you are in Exhibit 29?

5 Q. I am in Exhibit 29, your direct, your
6 direct testimony. The question is simple, how does
7 the FAA solicit input? You've referenced the FAA
8 soliciting input. How do they solicit that input?

9 A. That in -- the circularization is sent
10 out electronically and postcards in the mail.

11 Q. What's their mailing list? How do they
12 have a mailing list?

13 A. I believe the FAA maintains a database of
14 airport owners and aviation organizations that they
15 will send those out to. In addition, any member of
16 the public can go on the FAA's website and sign up to
17 receive those notices.

18 Q. But as you sit here today, you are not
19 aware of the specific list that is sent out?

20 A. I know the types of organizations they
21 would be sent to, but I don't know the specific
22 organizations that those notices were sent to, no,
23 ma'am.

24 Q. Could you please turn to page 7 of your
25 testimony. And I am focusing on question and answer

1 16 -- 16 beginning on line 22. I just want to make
 2 sure I am understanding. Your -- your testimony here
 3 is that you do not contest that 33 turbines are
 4 obstructions; is that correct?

5 A. Could you give me just a moment to reread
 6 it?

7 Q. Sure. Sorry.

8 A. So that's correct.

9 Q. And so obstruction per your definition is
 10 what?

11 A. So the FAA has obstruction standards that
 12 they have established under 14 CFR Part 77.17. Those
 13 obstruction standards are -- are further defined
 14 under Sections (a)(2) -- I'm sorry, (a)(1), (a)(2),
 15 and (a)(3), and I explain that in the direct
 16 testimony (a)(1) is for turbines that's in excess of
 17 499 feet anywhere in the country. (a)(2) is a
 18 turbine that would exceed 200 feet above the airport
 19 reference point's elevation, 3 miles of radius, and
 20 then additionally another 3 miles up to -- up to 500
 21 feet. Lastly, that 77(a) -- 17(a)(3) defines any
 22 structure that would have an impact on an instrument
 23 flight operation as being an obstruction.

24 So those are -- that's the definition
 25 that we follow to determine the difference between a

1 structure that is an obstacle and that is not.

2 Q. And just within the context of your
3 question and answer on 16, you have defined
4 obstruction as having an adverse effect, is that
5 correct, on line 24?

6 A. That's correct.

7 Q. And if you could, please, move over to
8 page 8 of your testimony with the -- at the bottom
9 looking at question and answer 19, specifically
10 talking about nondirectional beacons, NDBs. And you
11 are saying that it's going away, is that correct,
12 that that type of technology is going away, that type
13 of navigational test -- or the NDBs won't exist any
14 longer; is that correct?

15 A. The nondirectional beacon is an old
16 technology. The FAA has been -- over the last 15 to
17 20 years has been instituting a whole new set of
18 procedures that pilots would use to navigate from a
19 point in space to the end of a runway and,
20 furthermore, from one location to another in the en
21 route environment and that's all based on the global
22 positions system.

23 So the FAA has determined that the global
24 positions system, as a whole, will provide better
25 navigational assistance to pilots. As such, the FAA

1 has been phasing out older technologies, and one of
2 those is the nondirectional beacon.

3 Q. Am I correct that the Seneca Airport
4 still uses the NDBs?

5 A. Correct.

6 Q. And is it the FAA that pays for that
7 replacement?

8 A. I believe that the NDB equipment itself
9 is municipally owned. Whether they receive any FAA
10 funding to support that, I can't answer.

11 Q. Do you know the cost of replacing the NDB
12 equipment at Seneca Airport?

13 A. I do not.

14 Q. And is a NDB approach what's referred to
15 as a non-precision approach?

16 A. It is.

17 Q. And in order to get your rating to fly in
18 bad weather, are pilots required to do a
19 non-precision approach?

20 A. I am not an expert on pilot
21 certification.

22 Q. And you are not a pilot; is that correct?

23 A. I am not a pilot.

24 Q. I would ask you to please turn to page 11
25 of your testimony on line 7 through 11. I am looking

1 at question and answer 29.

2 A. Yes, ma'am.

3 Q. And just as background in this case, you
4 agree that there's a disagreement between ODOT and
5 the FAA as it relates to the Republic Wind project?

6 A. I do.

7 Q. Okay. And you are stating here that the
8 FAA's overriding concern is with aviation safety and
9 safety to the public, correct? Am I reading that
10 correctly?

11 A. That is correct.

12 Q. So you would not agree that ODOT's
13 aviations concern is also safety?

14 A. I don't think I would say that. I think
15 that ODOT's concern is safety.

16 Q. Thank you. And are you aware that
17 Bowling Green University has a flight school that
18 operates out of the Fostoria Airport?

19 A. I am aware based on the reference that
20 was made in Mr. Sniffen's letter.

21 Q. Now, I would ask you to turn to page 14
22 in your question and answer discussing the clear zone
23 up at the top, 1 through 12.

24 ALJ SANYAL: And, I'm sorry, what
25 question?

1 MS. BAIR: 39, page 14, lines 1 through
2 12.

3 ALJ SANYAL: Thank you.

4 A. Yes, ma'am.

5 Q. And it's your opinion that clear zone is
6 no longer a term in use by the FAA, correct?

7 A. It's not that I am aware of.

8 Q. Okay. And are you aware that Ohio still
9 uses that terminology?

10 A. I am.

11 Q. So on line 11 you're saying "excluding
12 the Clear Zone," so when you say this, you are
13 ignoring Ohio law, correct?

14 A. No, not at all. I am explaining -- I am
15 answering the question that asked based upon my
16 experience in the aviation industry, can you identify
17 the following terms used in this statute, so I am
18 speaking to what those terms are as I understand
19 them. And so as I understand them, the horizontal,
20 conical, primary, approach, and transitional surfaces
21 are those surfaces that are identified under 14 CFR
22 Part 77.19. The airport's clear zone surface is not
23 contained in Part 77. It's not referenced in Part 77
24 anywhere, but it is referenced in older documents and
25 airport design standards as a surface that extends

1 off the end of a runway, and it's used for protecting
2 folks on the ground from essentially aircraft-s
3 crashing. That clear zone as a term has been
4 replaced with what's called an RPZ protection zone,
5 so I am not ignoring Ohio law when I state that.

6 Q. Okay. So you recognize, and I believe
7 you earlier referenced in one of your corrections,
8 4561.32 of the Ohio Revised Code, correct?

9 A. Yes, ma'am.

10 Q. And you are aware that utilizes the term
11 "airport clear zone."

12 A. I do.

13 Q. Okay. And further on down on this page,
14 question and answer 41, it's your opinion, am I
15 correct, that you would prefer just to have federal
16 law for all aviation for the states, 49 states I
17 believe you say?

18 A. I believe that in order to maintain the
19 national airspace system in a manner that we would
20 expect so that it's safe and efficient, protect the
21 national investment, that it requires the federal
22 government to regulate that as opposed to the state
23 government. It's not to say state governments don't
24 have a role in aviation safety, but the establishment
25 of regulatory guidelines that govern how aircraft

1 operate and aviation safety, in my opinion, must be
2 done by the federal government.

3 Q. Okay. So following up on that, any state
4 law that conflicted with the federal government law
5 is not good in your opinion.

6 MR. STINSON: Objection, calling for a
7 legal conclusion.

8 MS. BAIR: I couldn't hear. What did you
9 say?

10 MR. STINSON: Calling for legal
11 conclusion.

12 Q. (By Ms. Bair) I am not asking for a legal
13 conclusion. I am asking for your answer according to
14 your testimony right here on this page.

15 MR. STINSON: She is asking for his legal
16 opinion as to the precedence of federal law over
17 state law, your Honor.

18 ALJ SANYAL: Overruled. You can answer
19 it based on your understanding.

20 A. Would you restate the question, please,
21 or repeat the question?

22 ALJ SANYAL: May we have -- okay.

23 (Record read.)

24 A. As you've asked the question, it's very
25 broad. Any state law that would alter the federal

1 regulations that govern aviation safety in a manner
2 that would make it different to fly in the state of
3 Ohio than in the other 49 states in the United
4 States, yes, I would find that to be a problem.

5 Q. My next questions have to do with
6 question and answer 43 that starts on page 14 and
7 spills over to the top of 15. And it's your
8 discussion regarding ODOT's conclusion regarding the
9 obstructions as identified by the FAA.

10 A. Okay.

11 Q. Did the FAA contact any employees at the
12 Seneca, Sandusky, or Fostoria airports?

13 A. I can't speak to that. I don't know.

14 Q. Okay. And at the bottom of that answer,
15 you say the only effect of restricting wind turbine
16 placement to the greater degree than the FAA would be
17 to limit wind energy development in Ohio. Do you
18 know if there are turbines that are below 499 feet?

19 A. As part of this project?

20 Q. No, that exist that create electricity.

21 A. Yes, ma'am, there are.

22 MS. BAIR: Your Honor, may I approach the
23 witness?

24 ALJ SANYAL: Yes, you may.

25 MS. BAIR: This should be marked as Staff

1 Exhibit 2.

2 ALJ SANYAL: It is so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. BAIR: This is -- well, hand it to
5 the witness.

6 Q. (By Ms. Bair) Do you recognize this
7 document?

8 A. Yes, ma'am.

9 Q. And could you please tell me what it is.

10 A. This is an Obstruction Evaluation &
11 Airspace Analysis conducted by my company on Republic
12 Wind project and published March 8 of this year.

13 Q. And were you part of developing this
14 report?

15 A. My staff developed it.

16 Q. Did you supervise the Staff that
17 developed this report?

18 A. Yes, ma'am.

19 Q. And rather than go through the document,
20 could we please skip to the back, page 21, where I
21 believe there is a conclusion.

22 MR. STINSON: Are you referring to page
23 21?

24 MS. BAIR: I am referring to page 21 of
25 Staff Exhibit 2.

1 Q. (By Ms. Bair) And also page 22, down at
2 the bottom there is a discussion of Figure 16 and 17.
3 And I believe -- is that the final sentence? The
4 next to last sentence reads that "In order to avoid
5 determinations of hazard, proposed wind turbine
6 heights should adhere to the height constraints
7 depicted in the Composite Map of Figure 16," correct?

8 A. Yes, ma'am.

9 Q. Thank you. And Figure 16 is the next
10 page.

11 A. Yes, ma'am.

12 Q. And is that the Republic project area
13 depicted?

14 A. It is, yes.

15 ALJ AGRANOFF: As of what date? As of
16 what date?

17 THE WITNESS: As of the publication of
18 this report, your Honor.

19 Q. March 19, is it?

20 A. March 8.

21 ALJ AGRANOFF: Of 2019?

22 THE WITNESS: Yes, yes, your Honor.

23 Q. (By Ms. Bair) Just to back up, so the
24 Figure 16 is the project area, correct?

25 A. As I understand it, yes.

1 Q. Okay. In -- what are the turbine heights
2 assumed for Project 16? What height are they assumed
3 for this figure?

4 A. When -- well, we assessed two turbines of
5 heights 591 feet and 660 feet above ground level.

6 Q. And at the top of Figure 16, does it say
7 that "A height of 499 feet AGL at the site of the --
8 of the object will be identified as obstructions
9 regardless of location"?

10 MR. STINSON: Could you be more specific
11 what you are -- where you are pointing?

12 MS. BAIR: I am on page 23, Figure 16,
13 the top bar above the map. It's kind of got a box
14 around it.

15 A. Could you restate the question, please?

16 Q. What is the meaning of that part that
17 says "Proposed structures that exceed 14 CFR Part
18 77.17(a) (1) - a height of 499 feet AGL at the site of
19 the object - will be identified as structure --
20 obstructions regardless of location."

21 A. We were restating the 14 CFR Part
22 77.17(a) (1) standard for the developer in this case,
23 Apex, so they understand that anything that they
24 propose in excess of 499 feet will be deemed an
25 obstruction and the follow along to that. So what

1 they need to know when they are developing is that
2 that's going to require them to go through public
3 comment, circularization with FAA, and further study
4 by the FAA which means it is going to take longer for
5 the FAA to conduct its aeronautical study and review
6 and issue a decision.

7 Q. So Figure 16 is not speaking to wind
8 turbine height whatsoever?

9 A. No, ma'am. It's a general statement.

10 Q. Thank you. Are you aware if Seneca
11 Airport has any helicopter traffic?

12 A. No, ma'am.

13 MS. BAIR: If I could have just a quick
14 minute, please.

15 Q. Would you agree with me that four
16 aviation operations would be impacted adversely from
17 Republic Wind, the military aviation training routes
18 from the Air National Guard, the Sandusky County
19 Airport, the Fostoria Airport, and the Seneca County
20 Airport?

21 MR. STINSON: Objection as to form, your
22 Honor, compound.

23 Q. I will go through them one by one. Would
24 you agree with me that the military aviation training
25 route from the Ohio Air National Guard 179th Airlift

1 will be negatively impacted by the construction of
2 the Republic Wind Farm as planned?

3 A. No.

4 Q. It will not be?

5 A. No.

6 Q. What are you assuming in your answer?

7 A. That the Department of Defense assessed
8 the wind project in relation to that military
9 training route and submitted no objection to the FAA
10 meaning that that route is either not being used, it
11 is being used seldomly, or is not being used in a
12 manner in which the wind turbines would affect it.

13 Q. So you are not aware whether they changed
14 their approach to the airport?

15 A. The approach to the airport, I don't
16 understand your question.

17 Q. Due to the wind turbines.

18 A. That doesn't have anything to do with it.

19 MR. STINSON: He should be allowed to
20 answer his question.

21 Q. Would you agree that the Sandusky County
22 Airport aviation operations will be neg -- will be
23 impacted adversely if Republic Wind Farm is
24 constructed as planned?

25 A. No, ma'am.

1 Q. And your rationale to no negative impact?

2 A. Sandusky Airport has -- the proposed wind
3 project has four turbines that will fall within the
4 77.17(a)(2) surface for Sandusky Airport. That
5 (a)(2) surface simply determines the difference
6 between an obstacle and non-obstacle, so if those
7 turbines are built today, the operations at Sandusky
8 will be unchanged. There is no difference.

9 Those procedures, those imaginary
10 surfaces under 77 dot (a)(2) will remain exactly the
11 same. The heights will remain the same. The
12 turbines will be out there, and the aircraft are
13 going to operate exactly the same way so there is
14 zero impact on the airport.

15 Q. Will the Fostoria Metropolitan Airport be
16 negatively impacted?

17 A. Fostoria Airport will have its instrument
18 procedures altered and with the exception of turbine
19 No. 1 there will be no change whatsoever in the
20 operations at the airport meaning -- and I qualify
21 that as being that the same number of aircraft are
22 going to be able to fly during the same types of
23 weather conditions, the same number of aircraft are
24 going to be able to land and take off, so they are
25 unaffected from that standpoint.

1 Turbine No. 1 is going to require a
2 40-foot increase, I believe, to the NDB final
3 segment. That would have an impact on those aircraft
4 that are operating using those pilots that are using
5 the nondirectional beacon approach meaning that they
6 are going to be able to descend down to a height
7 that's now 40 feet higher than what they could
8 descend down prior to the turbines being built.

9 That -- the number of aircraft operations
10 that we've independently assessed based on our
11 traffic flow study showed that it would impact I
12 believe three or four aircraft over the course of the
13 year.

14 MS. BAIR: Thank you. I have no more
15 questions.

16 THE WITNESS: Thank you, ma'am.

17 ALJ SANYAL: Redirect.

18 MR. STINSON: May we have a few minutes,
19 your Honor?

20 ALJ SANYAL: Yes, you may. Let's go off
21 the record for 5 minutes. Is that enough? 10?

22 MR. STINSON: 5.

23 ALJ SANYAL: Want 7?

24 MR. STINSON: Want 7? We'll try 5, your
25 Honor.

1 ALJ SANYAL: Okay.

2 (Recess taken.)

3 ALJ SANYAL: Okay. Let's get back on the
4 record.

5 MR. STINSON: Thank you, your Honor.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Stinson:

9 Q. Mr. Doyle, I just have a few questions
10 for clarification in response to some of counsel's
11 questions to you. Do you recall a question in which
12 counsel asked if the increase in altitude for an
13 approach to Seneca would have an effect on icing, and
14 your answer was no?

15 A. Correct, yes, I do recall.

16 Q. Can you explain why your answer is no?

17 A. Sure. I think that there's been some
18 comments made regarding icing as it applies to
19 increasing the altitude of these initial segments,
20 the segments that are 10 or 15 miles out. And I
21 think that the comments claim that by increasing that
22 initial segment by 100 feet, in the event that an
23 aircraft were to experience -- experience an icing
24 event, that that aircraft would then be held at
25 higher altitude for longer, so they would be 100 feet

1 higher, or they could be 100 feet lower.
 2 Ostensively, lower altitudes warmer air, less
 3 likely -- or more likely to shed that ice. Now, on
 4 the face, it kind of makes sense, but it really
 5 doesn't when you start to dig into it. And the
 6 reason for that icing can occur at any altitude,
 7 occur down to a few hundred feet above the ground.

8 Aircraft fly at all altitudes as we know.
 9 An aircraft shooting this -- this approach, making
 10 this approach is going to transition through a number
 11 of different altitudes that are higher than this
 12 2,400 feet prior to -- prior to entering this
 13 approach. So -- so to say this approach, that
 14 increasing this approach segment by 100 feet creates
 15 some sort of hazardous environment because of icing
 16 in my mind doesn't have much merit. It doesn't have
 17 any merit.

18 Keep in mind that an icing event for an
 19 aircraft that's not equipped to fly in icing
 20 environments results in a hazard -- or, I'm sorry,
 21 results in an emergency being declared by the pilot.
 22 So that pilot would contact air traffic control
 23 immediately and say I -- I'm declaring an emergency.
 24 My wings are icing up. I need to get down out of
 25 altitude as quickly as possible. So you combine that

1 icing event with lousy weather, which those two tend
2 to go together because you have to have precipitation
3 in order to have that icing, that pilot is going to
4 be vectored to final meaning that they are going to
5 be dropped down to that same 2,400 feet or lower as
6 they are descending on that approach, regardless of
7 that extra approach procedure. So there is no
8 impact. That minimum vectoring altitudes remain the
9 same. Icing is not an issue in this case.

10 Q. A -- another question, Mr. Doyle, when
11 counsel was discussing an increase to the Seneca
12 approach height, and you were asked whether the
13 descent angle would increase, and you indicated yes,
14 and could you explain that further, please.

15 A. Sure. So when instrument approach
16 procedures are designed, they are designed with
17 multiple phases of flight, multiple segments. There
18 is an initial -- there is a transition and then an
19 initial and then an intermediate and then a final
20 segment. And if that pilot can't see the runway when
21 they get down to their minimum altitude, there is a
22 missed approach segment where that pilot is going to
23 climb and enter into holding and wait for the weather
24 or divert to another airport.

25 Each of these segments for a

1 non-precision approach, whether it's a ground-based
2 approach or it's a GPS-based approach, has a minimum
3 altitude associated with it. So if you think about
4 it, it's like a step down. The aircraft is stepping
5 down from one altitude to the next on the way into
6 the -- into the approach. So -- I lost my train of
7 thought. Sorry. Restate the question, please, for
8 me.

9 MR. STINSON: If the reporter could just
10 reread the answer to refresh Mr. Doyle.

11 A. That's all right. I got it. So these
12 altitudes associated with these different segments,
13 the approach as the aircraft are stepping down,
14 create a glide path angle for that aircraft. A
15 nominal glide path angle is 3.0 degrees. However,
16 the FAA, depending on the type of procedure, will
17 allow for greater glide path angles.

18 So those glide path angles are adjusted
19 constantly to avoid terrain and obstacles, and so the
20 FAA -- so you will find procedures with different
21 glide path angles all over the United States at
22 different airports. The adjustment of 100 feet out
23 15 miles is going to have a negligible impact from
24 the glide path angle. So it's not going to be an
25 issue, and I think the FAA recognized that.

1 Q. In another question counsel asked
2 whether -- or asked you about non-precision
3 approaches and whether the NDB is a non-precision
4 approach. Are there other non-precision approaches
5 other than NDB or nondirectional beacon?

6 A. Yes. There are non-precision approaches
7 that are a result of -- or they are based on other
8 ground-based navigants, so you can have one based on
9 a localizer or you can have one based on a VHF
10 omnidirectional radio beacon. You can also have
11 non-precision -- non-precision approaches based on
12 GPS. And you will find that minimal line is now GPS
13 approaches which these airports also have.

14 ALJ SANYAL: Mr. Doyle, what is VHF?

15 THE WITNESS: Very high frequency.

16 Q. (By Mr. Stinson) And also counsel was
17 questioning you with respect to what has been marked
18 as Staff Exhibit 2, and in particular Figure 16. And
19 with reference to the required heights or restrictive
20 heights of the turbines --

21 A. Yes, sir.

22 Q. -- for Republic, can you clarify that.

23 A. Yes. So these reports are written for
24 wind developers to help aid them in understanding
25 what risks are associated with developing a wind

1 project. I mean risks to the development itself, are
2 they going to be able to ultimately build a turbine
3 in a certain location or not. So they commission our
4 company to conduct these airspace studies to show
5 them where those height limits are. This airspace
6 study tells this -- tells the wind developer -- well,
7 provides a lot of information but specific to that
8 one sentence called out on page 22.

9 ALJ AGRANOFF: Page 22 of what document?

10 THE WITNESS: Page 22 of Staff Exhibit 2.

11 ALJ AGRANOFF: Okay.

12 A. Regarding that sentence where we said "In
13 order to avoid determination of hazard, proposed wind
14 turbine heights should adhere to the height
15 constraints depicted in the Composite Map (Figure
16 16)." So that was our company's way of saying
17 essentially to our clients if you want to build a
18 turbine out here and you are not going to have any
19 risk of receiving a hazard from the FAA, comply with
20 these heights. However, and what's not stated in
21 that sentence, if you would like to pursue heights
22 above these altitudes, then you will have to go
23 through this public comment period with the FAA. You
24 are then going to have -- the FAA is then going to
25 have to determine whether or not raising those

1 altitudes would have a significant adverse effect.

2 Q. Again, to clarify I believe you may have
3 indicated to counsel that you had not spoken with a
4 person at the Sandusky Airport. Do you have any
5 clarification for that?

6 A. I was incorrect. I actually did speak
7 with them on a call a number weeks back. I had
8 forgotten.

9 Q. And, finally, counsel was asking you
10 about reconciling federal or FAA regulations or law
11 with state regulations and if a state regulation or
12 practice could not be good. Do you have an
13 explanation for that or an example for that?

14 A. Yeah. So I think this question speaks to
15 the issue at hand perfectly in the sense that you
16 have got the FAA who has issued a set of
17 determinations best -- based upon a set of regulatory
18 guidelines and standards that are too numerous to
19 cite. There are hundreds of people literally within
20 the FAA that have some direct or supporting role in
21 the assessment of tall structures to ensure they
22 remain safe.

23 So that process has been established for
24 a lot of years and revised. And it's resulted in
25 this extraordinarily safe national airspace system

1 that we have. The state of Ohio has in its Revised
2 Code a set of rules that says if a structure is an
3 obstacle, then you should identify it as an obstacle,
4 and you shouldn't permit it until you decide to issue
5 a waiver. And if you issue that -- issue that
6 waiver, that waiver should be based on best
7 aeronautical principles as defined by the FAA.

8 So essentially the State should be
9 looking at it the same way that the FAA should, based
10 on its own revised code. What's interesting here is
11 the State has said instead of relying upon those best
12 aeronautical principles, if there is an impact to
13 efficiency or to safety, in certain cases we will
14 allow that impact as long as the airport signs off on
15 it, as long as they say it's okay.

16 That doesn't make a lot of sense to me if
17 the air -- if -- in my mind the State is essentially
18 saying, well, we're giving you, the airport, the
19 right to decide whether to issue a waiver or not. An
20 airport manager that may be very experienced running
21 airports but doesn't have the experience in assessing
22 aviation safety in airspace and obstacles.

23 So my answer to that question, I think if
24 you would ask me again, is does the State have a
25 right -- I don't know about a right but should the

1 State in my mind be involved in ensuring aviation
2 safety? And my answer to that would be absolutely.
3 They should play a role in support of the FAA. They
4 should work side by side with the FAA to ensure that
5 this set of regulations that we have that govern
6 aviation safety are supported and maintained in every
7 case.

8 But to depart from that, to say, well,
9 instead of -- instead of using the FAA's rules, we
10 will use our own rules, and our own rules basically
11 say that we are going to look at an airport and say
12 do you think it's a problem, if the airport says yes,
13 we will say okay, we are not going to issue a waiver.
14 That's not the way you should be regulating aviation
15 safety in the United States so that's -- that's my
16 position.

17 MR. STINSON: I have no further
18 questions, your Honor.

19 ALJ SANYAL: Questions based on redirect?

20 MR. DeVINE: Yes.

21 ALJ SANYAL: Okay. Go ahead.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. DeVine:

25 Q. You talked about the 3 degree descent

1 angle that's utilized as the -- did I understand
2 correctly as the FAA standard?

3 A. When you are designing an instrument
4 approach procedure, the optimal glide path angle is 3
5 degrees.

6 Q. You said that's subject to obstacles that
7 are around the airport?

8 A. It can be influenced by obstacles, yes.

9 Q. And do you know what the current descent
10 angle is at the Seneca County Airport?

11 A. I would have to look it up.

12 Q. So the answer is no?

13 A. No.

14 Q. And will the descent angle increase if
15 the wind turbine project is constructed as submitted?

16 A. The published descent angle may increase,
17 it may not depending on the amount that that -- so
18 that 100 feet out 10 or 15 miles out may not register
19 in the actual published glide path angle meaning it
20 may be at 3 degrees today. Raised by 100 feet, yes,
21 the angle would be steeper; however, it might still
22 fall within that 3 degree -- 3 degrees of slope. I
23 would have to calculate it to give you an answer.

24 Q. Would it be fair to summarize your
25 testimony that ODOT should listen to the FAA as it

1 relates to obstructions regarding the construction of
2 this project?

3 A. Yes.

4 Q. Is this the same FAA which cleared Boeing
5 737 MAX 8 jets to fly?

6 MR. STINSON: Objection, your Honor.

7 MR. DeVINE: He is saying they are
8 infallible. I think we should be able --

9 MR. STINSON: Mischaracterizing his
10 testimony, your Honor. Move to strike.

11 ALJ SANYAL: I agree. Sustained.

12 Q. (By Mr. DeVine) Has the FAA ever made a
13 mistake?

14 A. Sure. But the FAA has also created the
15 U.S. National Airspace System which is the role model
16 for countries around the world. They have created
17 the safest flying environment in the world, and it is
18 the busiest flying environment in the world.

19 Q. But they have made mistakes.

20 A. Absolutely they have made mistakes.

21 Q. And they have made wrong judgments,
22 correct?

23 A. I don't know what -- could you clarify
24 what you mean by wrong judgments?

25 Q. I'll move on. Do I understand your

1 testimony that it's your belief that the Ohio
2 Department of Transportation totally delegated its
3 authority to local airport managers on whether to
4 issue an opinion adverse to this project?

5 A. In the case of -- in the case of it, I
6 believe it was Sandusky Airport where there were four
7 turbines that were identified to be within the
8 77(a)(2) surface, the screening surface that we use
9 to determine whether a structure is an obstacle or
10 not. ODOT said in that -- if I recall the testimony
11 correctly, ODOT said if Sandusky Airport says that
12 they are not -- they are willing to allow that, then
13 we are willing to allow that. Otherwise it's a
14 safety impact.

15 MR. DeVINE: I am going to object and
16 move to strike as nonresponsive.

17 MR. STINSON: It was precisely
18 responsive, your Honor.

19 ALJ SANYAL: May I have the question read
20 back again.

21 (Record read.)

22 ALJ SANYAL: Karen, may I have the answer
23 read back too.

24 (Record read.)

25 ALJ SANYAL: I believe, Mr. Doyle, you

1 are missing a "yes" or a "no." But I do agree that
2 you answered the question.

3 THE WITNESS: So, your Honor, would you
4 like --

5 ALJ SANYAL: Answer the question
6 specifically that counsel -- and we can have that
7 question read back again, if you need it.

8 THE WITNESS: Could you read that
9 question back, please.

10 MR. STINSON: Did you grant the motion to
11 strike, your Honor? I couldn't hear.

12 ALJ SANYAL: I did not grant it. I mean,
13 I am denying that motion to strike. Thank you.

14 And can we have that question read back
15 just so he can answer "yes" or "no."

16 (Record read.)

17 A. No.

18 MR. DeVINE: No further questions.

19 ALJ SANYAL: Staff?

20 MR. VAN KLEY: I have nothing further.

21 ALJ SANYAL: Staff?

22 MS. BAIR: Nothing.

23 - - -

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EXAMINATION

By Alj Sanyal:

Q. I have one follow-up question. Just so that the record is clear, Mr. Doyle, is Staff Exhibit 2 -- was it ever admitted -- was it ever part of the application?

A. I am not aware, your Honor. It was not part of my direct or supplemental testimony.

ALJ SANYAL: Okay. That helps. Does counsel know?

MR. STINSON: It is not a part of the existing record, your Honor.

ALJ SANYAL: Okay. I assume there is no questions based on my one question?

Thank you.

MS. BAIR: But, your Honor, I would like to move Staff Exhibit 2 into evidence.

ALJ SANYAL: Okay. Any objection?

You may step down. Thank you.

Any objections to Staff Exhibit 2 being admitted?

MR. STINSON: No objection, your Honor.

ALJ SANYAL: Okay. Hearing none, that is admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

1 ALJ SANYAL: And then --

2 MR. STINSON: The Applicant would move
3 the admission of Exhibits 29 and 30.

4 ALJ SANYAL: Any objections?

5 Hearing none, those are admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 ALJ SANYAL: Let's go off the record.

8 (Discussion off the record.)

9 (Thereupon, at 12:51 p.m., a lunch recess
10 was taken.)

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Tuesday Afternoon Session,
November 12, 2019.

- - -

ALJ SANYAL: Let's get on the record.

ALJ AGRANOFF: Please call your next
witness.

MS. AKHBARI: Yes, your Honor. The
Company calls Mr. Ryan Rupprecht to the stand.

(Witness sworn.)

ALJ AGRANOFF: Please be seated.

MS. AKHBARI: Thank you, your Honor.

- - -

RYAN RUPPRECHT

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

DIRECT EXAMINATION

By Ms. Akhbari:

Q. Mr. Rupprecht, could you please state
your full name for the record.

A. Ryan Rupprecht.

Q. And by whom are you employed?

A. Cardno.

Q. Is that the full name of your employer?

A. It is.

Q. Okay. Great. And do you have a document

1 in front of you marked Exhibit 31?

2 A. I do.

3 Q. And what is this exhibit? What is
4 Exhibit 31, I should say?

5 A. My direct testimony.

6 Q. Was Exhibit 31 prepared by you or at your
7 direction?

8 A. It was.

9 Q. And if I were to ask you the same
10 questions that are contained in Exhibit 31 today,
11 would your answers be the same?

12 A. They would.

13 Q. Do you have any modifications to Exhibit
14 31 at this time?

15 A. I do not.

16 MS. AKHBARI: Your Honor, at this time I
17 move for the admission of Exhibit -- Company's
18 Exhibit 31, pending cross-examination, and I tender
19 the witness for cross.

20 ALJ AGRANOFF: Thank you.

21 Mr. Rupprecht's direct testimony shall be marked as
22 Exhibit 31, Applicant Exhibit 31.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 ALJ AGRANOFF: And Mr. Van Kley.

25 MR. VAN KLEY: Thanks, your Honor.

CROSS-EXAMINATION

By Mr. Van Kley:

Q. Mr. Rupperecht, why don't you pull out a report from the Application, Exhibit J, Part 1 from the amended application of December 26, 2018.

A. I'm sorry. Can you repeat that reference again?

Q. Yes. It would be the very first part of Exhibit J, "Ecological Assessment" --

A. Uh-huh.

Q. -- in the amended application dated December 26, 2018.

A. Is there a particular page?

Q. Well, we will just let everybody get there first, and then we will talk about the specific pages.

ALJ AGRANOFF: What was that again, Mr. Van Kley?

Q. All right. Feel free to consult with this exhibit any time you need to in order to answer any of the questions that I have.

Let's start with some general questions first which is the first question being have you personally visited the project area for the Republic Wind wind project?

1 A. I have.

2 Q. How many times did you visit the project
3 area?

4 A. Simply for this project twice.

5 Q. And when did you visit the project area?

6 A. The first time was in fall of 2016. The
7 second time was in, I believe, winter of 2017.

8 Q. Now, were there -- did you have other
9 people working in the field for you on this project?

10 A. I did.

11 Q. Okay. Did they visit the project area on
12 any other occasions besides the two that you just
13 mentioned where you went to the project area?

14 A. They did.

15 Q. Okay. When did they visit?

16 A. Fall of 2016, fall of 2017, spring of
17 2018.

18 Q. What were their purposes for going to the
19 project area?

20 A. To conduct the wetland and water body
21 delineations and habitat assessments.

22 Q. And what was your purpose for visiting
23 the project area?

24 A. The first time was for kickoff of those
25 field studies. The second time was for a meeting.

1 Q. Who did you meet with?

2 A. What's that?

3 Q. Who did you meet with?

4 A. I met with internal staff. We were going
5 over some of the new parcel areas and such prior to
6 scoping and getting ready for the next round of
7 delineation work.

8 Q. And when you say you met with staff, is
9 that --

10 A. Internal Cardno staff.

11 Q. Okay. Did either you or the other
12 members of your team at Cardno keep any notes of the
13 wildlife that was seen on these visits, that is,
14 write any notes down in the field?

15 A. They did.

16 Q. Are the -- is the information recorded in
17 those notes provided in the application?

18 A. Their direct notes are not but some of
19 their observation information is.

20 Q. Were any of the members of your Cardno
21 team or you experts in bird identification?

22 A. Some of the Cardno members are, yes.

23 Q. Are -- are any of the Cardno experts in
24 bird identification members of the team that went to
25 the project area?

1 A. Yes.

2 Q. Go to page 4-8 of Exhibit J. I would
3 like to refer you to Section 4.6.1 labeled "Birds."

4 ALJ SANYAL: We're not entirely sure how
5 to locate this page.

6 MR. VAN KLEY: Okay.

7 ALJ AGRANOFF: Is it before the various
8 diagrams?

9 MR. VAN KLEY: Yeah, it should be. If
10 you are online, it would be in Part 1.

11 ALJ SANYAL: We actually now have a hard
12 copy.

13 MR. VAN KLEY: You have a hard copy now,
14 so the hard copy should be labeled in the front
15 "Exhibit J Ecological Assessment." It is dated
16 December 2018.

17 ALJ AGRANOFF: We are in a binder that
18 says "Exhibit J Continued." Is it in the first
19 binder?

20 MR. VAN KLEY: It sounds like you are
21 further back into Exhibit J.

22 ALJ SANYAL: Okay. 4-8?

23 MR. VAN KLEY: 4-8.

24 ALJ SANYAL: Okay.

25 ALJ AGRANOFF: We're there. Thanks.

1 Q. (By Mr. Van Kley) And we are looking at
2 the section labeled "Birds" which is numbered 4.6.1.
3 All right. Now, when was -- tell me again when was
4 the last visit that Cardno made to the project area?

5 A. Spring of 2018.

6 Q. Okay. Is there a reference to that visit
7 in Exhibit J?

8 A. There were multiple references but the
9 one closest to where we are now is Section 6.5 which
10 is on page 6-12, last section, "Surface Water
11 Delineations, On-site investigations were completed
12 between fall of 2016 and fall of 2018 to delineate
13 boundaries of wetlands and water body features within
14 the survey area."

15 Q. Okay. Now going back to page 4-8, I
16 don't see a reference to any visits after 2000 --
17 well, actually let's just start at the beginning of
18 this section of non-birds here. I see that in the
19 first paragraph you state -- or it is stated that
20 three bald eagle sightings were recorded, two in 2008
21 one in 2015. Do you see that?

22 A. I do.

23 Q. Okay. Is that 2008 meant to be 2018?

24 A. It is not. These studies were not
25 conducted by Cardno.

1 Q. Okay. Is there anything -- is there any
2 reference in Appendix J or any reports that Cardinal
3 has done for submittal in the application for this
4 project that provides a record of eagle sightings by
5 Cardno?

6 A. There is. In our wetland delineation
7 report during one of the surveys an eagle's nest was
8 observed during those studies.

9 Q. And were any eagles sighted during those
10 studies?

11 A. Yes, they were.

12 Q. Okay.

13 A. There was one noticed in the nest and one
14 flying above.

15 Q. Where is the location of this nest?

16 A. I can't find the direct location in the
17 application at this time.

18 Q. Do you know whether the nest was found
19 within the boundaries of the project area?

20 A. It was.

21 Q. And when was this eagle nest sighted?

22 A. I would like to correct that. It was
23 within the project area at the time of the
24 delineation work. It has since been removed from
25 that project area as the parcel is no longer in the

1 active section of the project, but it was under the
2 area that was evaluated by Cardno.

3 Q. And do you know which direction from the
4 project area this nest was located? Which direction
5 from the current project area was this nest located?

6 A. I believe to the northwest, but I'm not
7 100 percent sure.

8 Q. Do you know how far the nest is from the
9 current boundary of the project area?

10 A. I do not know the exact distance, no.

11 Q. Do you know approximately distance?

12 A. I do not.

13 Q. Did any members of the Cardno team that
14 visited the project area see any eagles other than
15 the two eagles you have already testified about in
16 the project area?

17 A. Not that I am aware of, no.

18 Q. To your knowledge, did any members of the
19 Cardno team that visited the project area see any
20 endangered species of birds in the project area?

21 A. No.

22 Q. How about threatened species?

23 A. No.

24 Q. Did any members of the Cardno team see
25 any Northern Harriers?

1 A. None that were recorded, no.

2 Q. How about raptor nests, did the Cardno
3 team see any raptor nests in the project area?

4 A. I believe red-tailed hawk nests were
5 noticed.

6 Q. Did Cardno inform Republic Wind of the
7 existence of those red-tailed hawk nests?

8 A. We did.

9 Q. Go to page 6-6 of Exhibit J. Now,
10 Exhibit J was prepared by Cardno; is that correct?

11 A. It was.

12 Q. Okay. So even where Exhibit J summarizes
13 the contents of bird or bat studies or reports that
14 were done by others, Cardno still summarized those in
15 its report?

16 A. It did.

17 Q. Okay. So going to page 6-6, I would like
18 to refer you to the third paragraph on that page
19 which discusses a female Indiana bat captured during
20 the 2011 summer nest netting survey in six roost
21 trees. Do you see that?

22 A. I do.

23 Q. Okay. And it says the report concluded
24 that a maternity colony of Indiana bats is present.
25 And towards the end of that paragraph, it's stated

1 that five of six roosts were located within a single
2 wood lot. Do you see that?

3 A. I do.

4 Q. Do you know from reviewing information by
5 the people that did that report what the total number
6 of Indiana bats in that colony was?

7 A. I do not know the total number.

8 Q. Do you know whether the maternity colony
9 that is referenced in this paragraph is found within
10 the present boundaries of the project area?

11 A. I believe that it is not.

12 Q. Do you know -- are you familiar with the
13 devices that are used to detect and record sounds of
14 bats?

15 A. I have a general understanding.

16 Q. Okay. And I see in the bottom of page
17 6-6 in the last paragraph there -- that there is a
18 discussion of these devices as used to survey for
19 bats in a project area, right?

20 A. Correct.

21 Q. Now, do you happen to know how far from
22 the recording device that bat sounds or bat calls can
23 be detected?

24 A. I do not. Again, these studies were not
25 conducted by Cardno.

1 Q. Go to 6-12 of Exhibit J. And I would
2 like to refer you to the third paragraph under the
3 heading "Wildlife Observations, Section 6.4.2."

4 A. Uh-huh.

5 Q. And there's a description of an eagle
6 nest and a pair of eagles in that paragraph, correct?

7 A. Correct.

8 Q. Is that the eagle nest and eagles that
9 you earlier discussed in your testimony today that
10 were found in the project area as it existed at the
11 time your survey was done?

12 A. Yes, it is.

13 MR. VAN KLEY: I have no more questions.

14 ALJ AGRANOFF: Any other counsel have
15 questions on cross?

16 MR. DeVINE: No. No, thank you.

17 MS. BAIR: No.

18 ALJ AGRANOFF: Redirect?

19 MS. AKHBARI: Could we just take a
20 2-minute break?

21 ALJ AGRANOFF: Sure. Let's go off the
22 record.

23 (Discussion off the record.)

24 ALJ AGRANOFF: Let's go back on the
25 record.

1 Redirect at this time?

2 MS. AKHBARI: We do not have any redirect
3 at this time.

4 ALJ AGRANOFF: Thank you.

5 MS. AKHBARI: Thank you.

6 - - -

7 EXAMINATION

8 By Alj Agranoff:

9 Q. I do have one question for you.

10 A. Sure.

11 Q. There is reference on page 6 of your
12 direct testimony in answer to question 14. Let me
13 know when you are there.

14 A. I'm there, sir.

15 Q. The -- on line 14 of that answer, WOTUS,
16 I didn't see that defined anywhere else.

17 A. That's Waters of the United States.

18 Q. Waters of the United States?

19 A. Waters of the United States.

20 Q. And what specifically is -- is that just
21 a general term?

22 A. No. It's a term used by the Army Corps
23 of Engineers to determine what is under federal
24 review versus what's under state review under Section
25 404 and 401 of the Clean Water Act. So Waters of the

1 U.S. fall under federal jurisdiction first, although
2 states also have jurisdiction over them, but things
3 that are not Waters of the U.S., the federal
4 government does not have jurisdiction over; the state
5 does.

6 Q. So would that mean any body of water that
7 goes across state lines would be WOTUS?

8 A. No. It's based on what's considered
9 nexus to traditional navigable waters which is what
10 the first round of federal waters were contained in
11 them that has been brought in to be all Waters of the
12 U.S. It's a term so if something doesn't have a
13 nexus or connection to a traditional water body, it
14 is not considered Waters of the U.S.

15 ALJ AGRANOFF: Based on my question, any
16 follow-up from counsel?

17 MS. AKHBARI: You asked like the question
18 of the century when it comes -- when it comes to
19 environmental law, what is WOTUS so.

20 THE WITNESS: It is still to be decided
21 in the Supreme Court.

22 ALJ AGRANOFF: Okay. Thank you.
23 Appreciate it.

24 ALJ SANYAL: And are we moving?

25 MS. AKHBARI: Yes. Sorry. We are moving

1 for the admission of Company's Exhibit 31.

2 ALJ AGRANOFF: Any objection?

3 There being none, Applicant Exhibit 31
4 shall be admitted as part of the record at this time.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 ALJ AGRANOFF: Mr. Parram.

7 MR. PARRAM: Can I have just one minute,
8 your Honor?

9 ALJ SANYAL: Let's go off the record
10 again.

11 (Discussion off the record.)

12 MR. PARRAM: Your Honor, I would like to
13 call Mr. Gary Baldosser to the stand.

14 ALJ SANYAL: And, Mr. Baldosser, if you
15 will raise your right hand.

16 (Witness sworn.)

17 ALJ SANYAL: Okay. You may be seated.
18 And is this Exhibit 32?

19 MR. PARRAM: Yes, your Honor. I would
20 like to have marked as Applicant Exhibit 32 the
21 direct testimony of Mr. Gary Baldosser.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 ALJ SANYAL: And you may proceed whenever
24 you are ready.

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GARY BALDOSSER

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

DIRECT EXAMINATION

By Mr. Parram:

Q. Mr. Baldosser, you have in front of you a
document that has been marked Applicant Exhibit 32?

A. I do.

Q. And before I do that, would you please
state and spell your name for the record.

A. My name is Gary Baldosser, G-A-R-Y
B-A-L-D-O-S-S-E-R.

Q. Okay. And could you please provide your
address for the record.

A. My address is 5120 North Township Road
78, Republic, Ohio.

Q. And do you have in front of you a
document that's been marked Applicant Exhibit 32?

A. I do.

Q. Okay. What is Applicant Exhibit 32?

A. Applicant 32 is my testimony,
presubmitted testimony to -- to this Board and this
Commission.

Q. And if I were to ask you the -- was
Applicant Exhibit 32 prepared by you or under your

1 direction?

2 A. Yes, it was.

3 Q. And if I were to ask you the same
4 questions that are contained in Applicant Exhibit 32
5 today, would your answers be the same?

6 A. Yes, they would.

7 MR. PARRAM: Your Honor, I would like to
8 move for the admission of Exhibit 32, pending
9 cross-examination, and tender Mr. Baldosser for
10 cross.

11 ALJ SANYAL: Thank you, Mr. Parram.
12 Mr. Van Kley.

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

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Van Kley:

17 Q. Are you familiar with the location of the
18 project area for the Republic Wind project?

19 A. I am somewhat familiar with it. I do not
20 know the exact boundaries of the project area.

21 Q. Okay. Do you know whether your residence
22 is inside of the boundaries of the Republic Wind
23 project area?

24 A. Yes, it is.

25 Q. Generally speaking, where is your home

1 located with regard to the project area? For
2 example, is it towards the east side or the north
3 side, et cetera, et cetera? In the middle?

4 A. I would suggest my home is located in the
5 middle of the project.

6 Q. Now, is your home located on a farm?

7 A. How would you define a farm?

8 Q. A place where you farm crops or livestock
9 or anything else that farmers do.

10 A. My home is located on a parcel surrounded
11 by a farm, by farmland.

12 Q. Okay. And is that land under your
13 ownership?

14 A. That land is not under my ownership.

15 Q. Okay. Who owns it?

16 A. That would be the Matts family.

17 Q. Do you own any land inside of the project
18 area to your knowledge?

19 A. I do.

20 Q. How many acres do you own inside the
21 project area?

22 A. Approximately 380.

23 Q. Now, do you also have an ownership in
24 companies that own farmland in the project area?

25 A. I do.

1 Q. Okay. And how many acres are owned by
2 those companies in the project area?

3 A. Approximately 650.

4 Q. Are you -- do you know what the term
5 participating landowner means as we commonly use it
6 in these cases?

7 A. You would need to define that for me.

8 Q. Participating landowner is a landowner
9 who is leasing land for the project to use.

10 A. Okay.

11 Q. Okay. So are you a participating
12 landowner for the Republic Wind project?

13 A. At this current time today, I do not have
14 a lease with Apex.

15 Q. Okay. How about with Republic Wind?

16 A. I do not have a lease with Republic Wind.

17 Q. Do any of the companies in which you have
18 an ownership interest have a lease with Apex or
19 Republic Wind?

20 A. They do not.

21 Q. At some time in the past, have you or one
22 of your companies had a lease with Republic Wind?

23 A. Yes, they have.

24 Q. And so what happened to that lease or
25 leases?

1 A. Those leases have expired, and we are in
2 the process of reviewing those to renew them.

3 Q. Is it your expectation that a wind
4 turbine site will be located on any land owned by you
5 or a company that you have an ownership interest in?

6 A. I have seen maps with possible turbine
7 locations, and they have indicated that there could
8 possibly be turbines located on some of that
9 property, yes.

10 Q. Do you have any idea how many turbines
11 may be located on property owned by you or one of
12 your companies?

13 A. I believe there could be seven potential
14 locations.

15 Q. Are you being paid by Republic Wind for
16 any services or anything else?

17 A. I am not.

18 Q. Have you entered into any good neighbor
19 agreements with Republic Wind?

20 A. I have not.

21 Q. Are you being paid by Apex?

22 A. I am not.

23 Q. How did you first come into contact with
24 representatives of Apex or Republic Wind?

25 A. My first contact with anyone from Apex

1 was at a landowners meeting. I can't give you the
2 exact date, but at that time at that meeting it was
3 announced that Apex was taking over the project from
4 a previous developer. The previous developer was
5 Nordex. That was my first introduction to Apex.

6 Q. Okay. And then what, if anything, did
7 you do as a result of attending that meeting related
8 to the Republic Wind project?

9 A. I'm not sure I understand that.

10 Q. Well, did you have any conversations with
11 Apex or Republic Wind representatives at that
12 meeting?

13 A. At that meeting, yes, I did talk to the
14 representatives as did most of the landowners and the
15 interested community that attended that meeting.

16 Q. Okay. How did it come to be that you
17 entered into leases at that time or around -- after
18 that time with Republic Wind?

19 A. Those leases were currently active, and
20 they were sold to -- I understand they were sold to
21 Apex when Nordex exited this project.

22 Q. Okay. All right. So initially the
23 leases on land owned by you or your companies were
24 entered into with Nordex.

25 A. Nordex held the leases prior to Apex,

1 yes.

2 Q. And those are the leases that have
3 expired?

4 A. Yes.

5 Q. Have you played any role in assisting
6 Republic Wind to engage other landowners in this
7 project?

8 A. I have not assisted Apex in encouraging
9 other landowners to participate. I have not.

10 Q. Okay. You haven't -- you haven't talked
11 to other landowners about participating?

12 A. Not on behalf of Apex.

13 Q. Okay. On behalf of anybody else?

14 A. The initial developer of our project,
15 yes, we had a -- we had a meeting in our shop with
16 landowners and producers that made an initial
17 introduction about what wind energy could do for our
18 community and that was the -- that was the first and
19 initial and only time I have ever encouraged anyone
20 to participate.

21 Q. Have you sent any letters or other
22 comments to the Ohio Power Siting Board encouraging
23 the Board to issue a certificate for this project?

24 A. I believe I did sign a letter at one of
25 the Apex landowner update meetings where they did

1 offer -- they did offer the ability to sign letters
2 or -- or facilitate making contact with the Power
3 Siting Board, and I have done that. I believe I did
4 that once.

5 Q. Was that a form letter?

6 A. Most likely, yes.

7 Q. You didn't write the letter.

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

9 Q. So there were -- there were letters
10 provided or there were letters provided that you
11 could sign at the event with the Company?

12 A. Yes.

13 Q. Have you encouraged any other people to
14 submit comments to the Power Siting Board encouraging
15 the Board to issue the certificate for this project?

16 A. I have encouraged people that have told
17 me they were going to submit comments or make
18 testimony. I have encouraged them to do that, but I
19 did not facilitate those conversations.

20 Q. What do you mean when you say you did not
21 facilitate those conversations?

22 A. I did not reach out to individuals and
23 ask them to submit comments or to testify or -- or
24 promote the project on behalf of myself or Apex.

25 Q. Okay.

1 A. They initiated the conversation and said
2 they were doing that, and I told them if it was
3 important to them, they should speak their voice.

4 Q. Do you know somebody by the name of
5 Barbara Baldosser?

6 A. I do. She's my mother.

7 Q. Okay. And does she live in the project
8 area?

9 A. She does.

10 Q. Is she a participating landowner?

11 A. Not at this time.

12 Q. Okay. At what -- at one time did she
13 have a lease with Nordex?

14 A. She did.

15 Q. And do you know whether -- whether there
16 are any discussions to -- with Republic Wind to renew
17 that lease?

18 MR. PARRAM: Your Honor, I am going to
19 object at this point with respect to the relevancy of
20 these questions in Mr. Baldosser's testimony.

21 MR. VAN KLEY: Your Honor, Mr. Carr
22 testified in his direct testimony that Barbara
23 Baldosser had submitted favorable comments as a
24 grounds for Mr. Carr's argument that there is public
25 support for this project. And so my questions are

1 designed to find out whether the people whose names
2 he actually listed in his testimony are participating
3 landowners who have a financial incentive to submit
4 those comments.

5 MR. PARRAM: Your Honors, to the extent
6 Mr. Baldosser can answer about his financial
7 interest, he's already answered those questions, but
8 to the extent we are going to expand to different
9 individuals that are not witnesses in this
10 proceeding, I think we are going well beyond the
11 scope of his testimony.

12 ALJ SANYAL: And do you intend on calling
13 Ms. Baldosser?

14 MR. VAN KLEY: Do I intend to call her to
15 testify?

16 ALJ SANYAL: Yeah.

17 MR. VAN KLEY: No, no. I just want to
18 know whether they have a financial interest in
19 promoting this project. And if Mr. Baldosser knows,
20 he can testify about it. If he doesn't, he can say
21 he doesn't know.

22 ALJ SANYAL: I am going to overrule your
23 objection. To the extent you know, you may answer
24 the question.

25 THE WITNESS: Could you repeat the

1 question or read the question again?

2 Q. Yeah. I'll repeat it. Do you know
3 whether -- whether your mother is engaged in
4 discussions with Republic Wind about renewing the
5 lease on her property?

6 A. I believe she is, yes.

7 Q. Do you know somebody by the name of Roger
8 Walters?

9 MR. PARRAM: Objection, your Honor. We
10 are going to go down a path where we are asking every
11 single person that may know Mr. Baldosser what their
12 discussions are with Apex.

13 MR. VAN KLEY: I am asking about three
14 people. I've already asked about one. Now, I am
15 starting with the second one. These are the three
16 people named in Mr. Carr's testimony as --

17 ALJ SANYAL: So, Mr. Van Kley, I gave you
18 some brief leeway since Ms. Baldosser is related to
19 Mr. Baldosser. I mean, does this witness have any
20 connection with the other two witnesses?

21 MR. VAN KLEY: I don't know until I
22 actually ask him.

23 ALJ SANYAL: And you are not intending to
24 call them separately.

25 MR. VAN KLEY: No, no. No, we are not,

1 no.

2 ALJ SANYAL: If the Company wants to --
3 your objection is sustained. If the Company wants to
4 stipulate as to whether these other two -- two names
5 that Mr. Van Kley has are landowners who have entered
6 into agreements with the Company, I will let you do
7 that, but with regard to asking this witness
8 questions of those witness -- about those witnesses,
9 we won't be doing that.

10 MR. VAN KLEY: Yeah. Well, could I at
11 least ask whether he knows whether they are
12 participating landowners? Because he has indicated
13 he had interactions with other participating
14 landowners including a get together at his place.
15 So, you know, given -- given his interaction with
16 those people, I would expect he would at least know
17 that information and if I could just ask him whether
18 he knows, there is certainly no harm in that.

19 MR. PARRAM: Sorry. Your Honor, one of
20 my concerns to the extent we are talking about
21 individuals who are not here and what their
22 contractual negotiations are with Apex, I'm not
23 comfortable stipulating to or venturing into where
24 exactly those negotiations are. I mean, to the
25 extent that Mr. Baldosser can talk about his

1 personal --

2 ALJ SANYAL: His what?

3 MR. PARRAM: His personal negotiations
4 over his status with the Company, I think we have
5 been able to go down that path, but to the extent we
6 are going outside of that, those individuals are not
7 in this case. They are not in the room, and I am
8 not -- we are not comfortable stipulating to what
9 those negotiations are.

10 MR. VAN KLEY: Yeah. I am not planning
11 to ask whether he knows whether Mr. Walters or the
12 other person mentioned in Mr. Carr's testimony,
13 Evelyn Snively are involved in current negotiations
14 because I don't think he would know that anyway.
15 What I do want to ask him is whether those two
16 individuals, first of all, live in the project area
17 to his knowledge and, secondly, whether they are
18 participating landowners. And I expect that he
19 probably knows the answer to that question.

20 ALJ SANYAL: And what was your question
21 again? Will you remind me?

22 MR. VAN KLEY: The question is whether he
23 knows whether Roger Walters is a participating
24 landowner.

25 ALJ SANYAL: To the extent you know, you

1 may answer.

2 A. I have no idea.

3 Q. Okay. Do you know somebody by the name
4 of Evelyn Snavely?

5 A. I do.

6 Q. Do you know whether she is a
7 participating landowner?

8 MR. PARRAM: Same objection, your Honor.

9 ALJ SANYAL: And your objection is
10 overruled. You may answer, if you know.

11 A. I have no idea.

12 Q. Okay. In your testimony you said
13 something about flooding in Seneca County. Do you
14 recall that testimony you gave?

15 MR. PARRAM: Can we have a page
16 reference, please?

17 MR. VAN KLEY: Answer 8, page 21, where
18 it starts in his testimony.

19 Q. (By Mr. Van Kley) Are you there?

20 A. Yes, I am.

21 Q. All right. Did you plant the land in --
22 that you and your companies own this year?

23 A. We were able to plant some of it.

24 Q. Okay. How many of the acres under
25 ownership of you and your companies did you plant?

1 A. It was roughly 60 percent.

2 Q. Now, was it -- was it possible to plant
3 the rest of it that you did not plant?

4 A. There was never a time that we could
5 plant the remaining 40 percent of our acreage under
6 production.

7 Q. Did you have crop insurance for the
8 acreage that you did not plant?

9 A. Yes.

10 Q. And did you receive payments pursuant to
11 that crop insurance?

12 A. I have not yet at this time.

13 Q. Have you applied for those payments?

14 A. That application is pending, yes.

15 Q. Okay. And did you receive any funds
16 through the disaster relief that is referenced in
17 answer 8 of your testimony?

18 A. I did not.

19 Q. How many years have you been farming in
20 the project area?

21 A. Approximately 30 years full time.

22 Q. And during that approximately 30 years,
23 during how many of those years were you unable to
24 plant a crop due to flooding?

25 A. There have been instances where we have

1 not been able to get all of our acreage planted I'll
2 estimate 12 years out of the 30.

3 Q. And in those 12 of 30 years, have you not
4 been able to plant any crops during those years or
5 just some of the fields were too flooded to plant?

6 A. Generally it was just some of the fields
7 were too wet to plant.

8 Q. Were there any other years in which you
9 were unable to plant 40 percent or more of your land?

10 A. Repeat that again.

11 Q. Yeah. Were there -- during any of those
12 12 years, were you unable to plant 40 percent or more
13 of your land due to flooding?

14 A. No.

15 Q. Other than the flooding this year, what
16 is the highest percentage of land that could not be
17 planted due to flooding?

18 A. I couldn't answer that. That's 30 years
19 of records I would have to go back through and look.
20 I can't answer that.

21 Q. Can you describe the flooding that you
22 experienced in your fields this year.

23 A. They were wet.

24 Q. It was standing water on them?

25 A. Some had standing water. Some had

1 saturated soils that would not allow farm equipment
2 to plant. Some of them did not have standing water,
3 but the field conditions were not conducive to
4 planting a crop and getting the seed to grow and
5 germinate.

6 Q. Did the water that was standing on your
7 fields all come from the sky, or did some of it come
8 from the ground?

9 MR. PARRAM: Can I have the question
10 reread.

11 (Record read.)

12 MR. PARRAM: I feel like I should object.
13 It calls for speculation.

14 MR. VAN KLEY: It doesn't call for
15 speculation.

16 THE WITNESS: He needs to be clear about
17 the question.

18 ALJ SANYAL: There is an objection
19 pending. When there is an objection pending --

20 MR. PARRAM: Calls for speculation, your
21 Honor.

22 ALJ SANYAL: I am going to overrule it
23 but if there is any way you can clarify that
24 question, let's go ahead and do that.

25 Q. (By Mr. Van Kley) During -- during the

1 time that your fields were being flooded, did you
2 notice any water coming out of holes in the ground?

3 A. Hole in the ground?

4 Q. Yeah.

5 A. No.

6 Q. Did you notice any water emerging from
7 the soils in your fields?

8 A. Again, boiling out of the ground, no.

9 Q. How about coming out of the ground
10 through some method other than boiling out of the
11 ground?

12 THE WITNESS: Your Honor, I am not sure I
13 understand.

14 MR. PARRAM: Objection, asked and
15 answered.

16 MR. VAN KLEY: It hasn't been asked and
17 answered. He said he didn't notice anything boiling
18 out of the ground.

19 ALJ SANYAL: I think he asked you to
20 clarify the question.

21 Q. (By Mr. Van Kley) What do you mean when
22 you say you didn't notice it boiling out of the
23 ground?

24 A. There was never any water bubbling and
25 boiling up out of the ground, out of holes. I guess

1 I'm terribly confused by your questioning as to the
2 understanding of farming practices and what -- what
3 we are trying to accomplish.

4 Q. Okay. Well, have you ever noticed any
5 water boiling out of the ground anywhere else in the
6 project area?

7 A. No.

8 Q. Have you ever seen any sinkholes anywhere
9 in the project area?

10 A. Yes.

11 Q. Okay. Where have you seen those?

12 A. There are -- there are sinkholes on one
13 parcel that I farm.

14 Q. Okay. Okay. And is that a parcel in
15 which you have been led to believe there may be a
16 turbine sited?

17 A. No.

18 Q. How big -- how many sinkholes are on that
19 parcel?

20 A. That parcel has one sinkhole.

21 Q. Okay. And what is its size?

22 A. That sinkhole actually was remediated
23 about 20 years ago. So the actual size of it
24 currently today is about 8 inches in diameter.

25 Q. How big was it --

1 ALJ SANYAL: Hang on. I actually have
2 one question. Sorry. What do you mean by
3 remediated?

4 THE WITNESS: So remediated is -- is
5 where we actually performed excavation work to stop
6 the sinkhole from continuing to grow, and we have put
7 drainage structures in place to control the vertical
8 movement of water in that sinkhole along with stone
9 structures to keep it from continuing to wash soil
10 into the subterranean streams. And then it is
11 surrounded by a grass filter strip so that surface
12 water will slow and also will be filtered before it
13 enters that sinkhole so that we don't contaminate the
14 groundwater.

15 Q. Okay.

16 ALJ SANYAL: Thank you.

17 Q. What was the size of the sinkhole prior
18 to remediation?

19 A. It was probably 36 inches in diameter.

20 Q. Have you seen any sinkholes on other
21 people's land inside the project area's boundaries?

22 A. Again, I am not exactly sure where the
23 edge of the boundaries are. There are sinkholes --
24 other sinkholes in the community, but I don't know if
25 those are exactly in the project area or not.

1 Q. All right. Have you seen any bald eagles
2 on land owned by you or your companies?

3 A. I have.

4 Q. When's the last time you saw a bald eagle
5 there?

6 A. I'm going to say probably 2018.

7 Q. Okay. Do you have any bald eagle nests
8 on land owned by you or your companies?

9 A. Not that I am aware of, no.

10 Q. Are you aware of eagle nests located
11 anywhere else in the project area to the degree that
12 you are aware of that the land is in the project
13 area?

14 MR. PARRAM: Objection. He already
15 indicated he didn't know the boundaries of the
16 project area.

17 MR. VAN KLEY: No. He said he was
18 generally aware of it, so I phrased my question to
19 ask him whether he is aware of any eagle nests on
20 land that he knows is in the project area.

21 MR. PARRAM: Objection, calls for
22 speculation.

23 ALJ SANYAL: Overruled. You may answer,
24 if you know.

25 A. According to the testimony by the

1 gentleman before me, he indicated there was a nest in
2 the project area. I don't know where that nest is
3 at.

4 Q. Okay. Do you know of any eagle nests
5 that are located within 10 miles of your property?

6 A. I know there used to be one, but it blew
7 down in the storm about 10 years ago.

8 Q. Okay.

9 A. I haven't seen it since.

10 Q. Do you know of any others?

11 A. No.

12 Q. Do you know of any locations where
13 Indiana bats have been found on property owned by you
14 or your companies?

15 MR. PARRAM: Objection. Your Honor, we
16 are well beyond the scope of his testimony.

17 MR. VAN KLEY: That's not a valid
18 objection. Cross-examination just about always goes
19 beyond the boundaries of a witness's direct
20 testimony. This is our first cross-examination.
21 It's our first opportunity to question the witness.

22 ALJ SANYAL: I am going to overrule the
23 objection because the witness has indicated he has
24 388 acres within the project area and an additional
25 650 acres through his companies. So to the extent he

1 knows of the existence of any Indiana bat nest, I am
2 okay with him answering it so.

3 A. Nobody has ever indicated to me that I
4 have the Indiana brown bat on any of my property.

5 Q. Okay. Are you aware of any locations
6 where there is Indiana bat roosts on your property or
7 property owned by your companies?

8 A. No.

9 Q. Go to your testimony. I would like to
10 direct you to page 2, answer 7 of your testimony.
11 And I would like to direct your attention to the
12 first two sentences. Read "There are numerous
13 benefits for landowners, farmers, and the community
14 overall. To provide a little background, the Village
15 of Republic has no manufacturing, no retail outlet
16 stores, and little, if any, industry and commerce."
17 Do you see those sentences?

18 A. Yes, I do.

19 Q. Okay. Now, you're familiar with the
20 town -- with the Village of Republic, I take it from
21 your testimony?

22 A. Yes.

23 Q. How far is it located from your home?

24 A. Approximately 7 miles.

25 Q. Does -- is there a lumberyard in the

1 Village of Republic?

2 A. Yes, there is.

3 Q. Do you regard that as being a retail
4 outlet?

5 A. I regard that as being a retail facility
6 but not an outlet.

7 Q. Okay. All right. So what's meant by
8 sentence two of your answer 7 where you refer to
9 no -- there being no retail outlet stores?

10 A. In my opinion a retail outlet store would
11 be something like a Tanger type of multi-store
12 location, a mall-type facility where multiple shops
13 would carry out retail sales.

14 Q. Okay. Does the Village of Republic have
15 a grain elevator?

16 A. They do.

17 Q. Would you regard that as being a facility
18 that's engaged in commerce?

19 A. It is. It supports the local ag
20 community.

21 Q. Uh-huh. Okay. Is there a gas station in
22 the village?

23 A. There is.

24 Q. How about a bank?

25 A. Yes, there is.

1 Q. Does the -- is the lumberyard engaged in
2 the business of building pole barns?

3 A. According to their advertisements, they
4 are, yes.

5 Q. Okay. You built a pole barn about three
6 years ago?

7 A. Three years ago? No, I don't believe I
8 did build a pole barn three years ago.

9 Q. Okay. Have you built a pole barn in the
10 last, say, 10 years?

11 A. In the last 10 years, I have.

12 Q. Did you engage the services of the
13 lumberyard in Republic for that purpose?

14 A. I did.

15 Q. Do you farm grain?

16 A. I do.

17 Q. Okay. Do you utilize the public elevator
18 to -- in relation to your grain farming?

19 A. I do not.

20 Q. Did the lumberyard in Republic supply all
21 of the building materials for your pole barn?

22 A. Some but not all.

23 MR. VAN KLEY: I have no further
24 questions.

25 ALJ SANYAL: Redirect?

1 MR. PARRAM: Could I have just --

2 ALJ SANYAL: Yes. I'm sorry?

3 MR. PARRAM: Can I have just a minute,
4 your Honor?

5 ALJ SANYAL: Yes.

6 Let's go off the record.

7 (Discussion off the record.)

8 MR. PARRAM: No questions, your Honor.

9 ALJ SANYAL: Okay. I have -- let's get
10 back on the record, if we haven't already.

11 - - -

12 EXAMINATION

13 By Alj Sanyal:

14 Q. I just have one question. So on page 2
15 of your testimony, lines 5 and 6, you mentioned that
16 you were a volunteer firefighter for 27 years.

17 A. Yes.

18 Q. So based on your experience as a
19 volunteer firefighter, do you think the project
20 presents any concerns with regard to emergency
21 medical services?

22 A. No. My 27 years' experience showed me
23 that when it comes to emergency medical services, the
24 people that provide those services are very skilled
25 and very capable and that this wind project will not

1 hamper those individuals from performing their duties
2 at all.

3 ALJ SANYAL: Any questions based on my
4 one question?

5 MR. VAN KLEY: No.

6 ALJ SANYAL: Okay. Thank you for coming
7 down.

8 THE WITNESS: Thanks.

9 ALJ SANYAL: You may step down.

10 MR. PARRAM: Your Honor, I move for the
11 admission of Applicant Exhibit 32.

12 ALJ SANYAL: Any objections?

13 Okay. Hearing none, it is admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 ALJ SANYAL: Let's go off the record.

16 (Discussion off the record.)

17 (Thereupon, at 3:15 p.m., the hearing was
18 adjourned.)

19 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, November 12,
2019, and carefully compared with my original
stenographic notes.

Karen Sue Gibson
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6841)



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Summary: Transcript Volume IV - In the Matter of the Application of Republic Wind, LLC for a Certificate of Environmental Compatibility and Public Need for a Wind-Powered Electric Generating Facility in Seneca and Sandusky Counties, Ohio, hearing held November 12th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.