

BEFORE THE OHIO POWER SITING BOARD

- - -

In the Matter of the :  
Application of Firelands :  
Wind, LLC, for a :  
Certificate of :  
Environmental :  
Compatibility and Public : Case No. 18-1607-EL-BGN  
Need to Construct a :  
Wind-Powered Electric :  
Generation Facility in :  
Huron and Erie Counties, :  
Ohio. :

- - -

PROCEEDINGS

before Mr. Jay S. Agranoff and Mr. Michael Williams,  
Attorney Examiners, Ohio Power Siting Board,  
conducted via Webex, called at 10:04 a.m. on Monday,  
October 5, 2020.

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VOLUME I

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5 Mr. Terrence O'Donnell  
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10 and

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and Black Swamp Bird Observatory.

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31 On behalf of the Intervenor Tom Yingling  
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## 1 APPEARANCES: (Continued)

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On behalf of the City of Willard.

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By Mr. Werner L. Margard, III  
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On behalf of the Staff of the OPSB.

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19 On behalf of the Board of Commissioners  
20 of Erie County, Ohio.

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Monday Morning Session,  
October 5, 2020.

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ALJ AGRANOFF: If we could please go on the record. The Ohio -- the Ohio Power Siting Board has set for hearing at this time and place, Case No. 18-1607-EL-BGN, which is captioned In the Matter of the Application of Firelands Wind, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct a Wind-Powered Electric Generation Facility in Huron and Erie Counties, Ohio.

Good morning, everybody. My name is Jay Agranoff and with me is Michael Williams and we are the Administrative Law Judges assigned by the Board to hear this case. At this point in time we will take the appearances on behalf of the parties.

On behalf of the Applicant.

MR. SECREST: Good morning, your Honor. On behalf of Applicant Firelands Wind, LLC, Jonathan Secrest, Christine M.T. Pirik, Terrence O'Donnell, William Vorys, and Madeline Fleisher, all with the law firm Dickinson Wright, 150 East Gay Street, Suite 2400, Columbus, Ohio 43215.

We also, your Honor, have James Lynch and Adam Tabor, who have been admitted pro hac vice, with

1 K&L Gates, LLP, 925 Fourth Avenue, Suite 2900,  
2 Seattle, Washington.

3 ALJ AGRANOFF: Thank you, Mr. Secrest.

4 MR. SECREST: Thank you, your Honor.

5 ALJ AGRANOFF: On behalf of the City of  
6 Willard.

7 MS. HEYMAN: Yes. Heather Heyman on  
8 behalf of the City of Willard.

9 ALJ AGRANOFF: Thank you.

10 On behalf of Norwich and Richmond  
11 Townships.

12 MR. STEPHENS: Yes. This is Assistant  
13 Prosecutor Jacob Stephens of the Huron County  
14 Prosecutor's Office on behalf of both Norwich and  
15 Richmond Townships.

16 ALJ AGRANOFF: Thank you.

17 On behalf of Erie County. Ms. Esposito.

18 MS. ESPOSITO: Good morning. This is  
19 Alexandria Esposito on behalf of Erie County.

20 ALJ AGRANOFF: Thank you.

21 On behalf of Huron County.

22 MR. STRICKLER: Good morning, your  
23 Honors. Randal Stickler from the Huron County  
24 Prosecutor's Office on behalf of the Huron County  
25 Board of Commissioners.

1 ALJ AGRANOFF: Thank you.

2 On behalf of the Ohio Department of  
3 Natural Resources.

4 MS. WALKER: Good morning. This is  
5 Katherine Walker, Ohio Attorney General's Office, on  
6 behalf of ODNR.

7 ALJ AGRANOFF: Thank you very much.

8 On behalf of the Board Staff.

9 MR. MARGARD: Thank you, your Honor. On  
10 behalf of the Staff of the Ohio Power Siting Board,  
11 Dave Yost, Ohio Attorney General, John Jones, Section  
12 Chief, Public Utilities Section, by Assistant  
13 Attorneys General, Werner L. Margard and Robert A.  
14 Eubanks, 30 East Broad Street, 16th Floor, I think,  
15 Columbus, Ohio.

16 ALJ AGRANOFF: Thank you, Mr. Margard.

17 On behalf of Mr. Yingling and Mr. Erf.

18 MS. AIDUN: Hillary Aidun at the Sabin  
19 Center for Climate Change Law, 435 West 116th Street,  
20 New York, New York 100027.

21 ALJ AGRANOFF: Thank you very much.

22 On behalf of the Black Swamp Bird  
23 Observatory.

24 MR. VAN KLEY: This is Jack Van Kley on  
25 behalf of the Black Swamp Bird Observatory and also

1 on behalf of the local residents, with Van Kley and  
2 Walker at 132 Northwoods Boulevard, Suite C-1,  
3 Columbus, Ohio 43235.

4 ALJ AGRANOFF: Thank you, Mr. Van Kley.

5 Are there any of the pro se residents  
6 that were granted intervention in this particular  
7 matter that are currently on the line that are able  
8 to represent that they are participating in this  
9 particular proceeding?

10 I do understand that it is possible that  
11 they may be an attendee and if that is the case, then  
12 at this moment they are unable to actually have the  
13 capability of speaking. But if you can please send a  
14 chat message so that we are aware of the fact that  
15 you need to be promoted to a panelist status, we will  
16 be able to do that. Thank you.

17 I would point out that this is an  
18 adjudicatory hearing that is taking place pursuant to  
19 the parameters set forth in the Entries of July 13,  
20 August 21, and September 3 of this year. Due to the  
21 COVID-19 emergency that remains in effect, pursuant  
22 to Executive Order 2020-01(D), issued by the Governor  
23 of the State of Ohio, and consistent with Amended  
24 Substitute House Bill 197, this hearing is being held  
25 through Webex which enables parties to participate by

1 video conference while also affording public access  
2 to the hearing by telephone or video -- video via the  
3 internet.

4 Before we get started with the first  
5 witness, I would like to address some preliminary  
6 issues.

7 First, if counsel or witnesses experience  
8 any technical difficulties while testifying, or they  
9 have any difficulties with the ability to see or hear  
10 what is going on in this particular proceeding, they  
11 need to indicate as such by either the chat function  
12 or by letting us know by calling the Board's offices,  
13 and the phone number for that is 614-466-6843, and  
14 again you can also utilize the chat function to  
15 immediately -- immediately let us know that you are  
16 experiencing a particular problem with being able to  
17 participate in today's proceeding.

18 One thing that you should realize when  
19 using the chat function is that the chats are being  
20 recorded and should not be considered private. The  
21 chats are also not part of the official record in  
22 this case.

23 For those of you that are watching or  
24 listening as an attendee, as I indicated before, you  
25 will be able to observe the hearing. Your

1 microphones will be muted.

2 Now, as we did this morning and we will  
3 do for subsequent days of this hearing, there will be  
4 a 15 minute tech session prior to each day that  
5 individuals that will be testifying for particular  
6 days of the proceeding will be able to join and get  
7 some background information as to how the Webex  
8 platform should be utilized. So please let your  
9 witnesses know for the subsequent days that that  
10 availability will be provided to them to the extent  
11 that they want to get a little bit more comfort with  
12 the Webex technology.

13 Now let's talk a little bit about how  
14 this hearing is going to be conducted today. In many  
15 respects it's going to be no different than the way a  
16 typical normal hearing would take place at the Board.  
17 However, due to the remote nature of the hearing,  
18 here are some general ground rules and reminders for  
19 the hearing.

20 First, to avoid unnecessary background  
21 noise, I would ask that counsel keep their  
22 microphones on mute unless they are speaking or are  
23 prepared to speak as quickly as possible for the  
24 purposes of raising objections during  
25 cross-examination of a particular witness.



1           The microphones of the witnesses shall be  
2 kept on mute until it is their time to testify.

3           With respect to the video, counsel should  
4 leave cameras on at all times except during breaks.  
5 You can also turn your video off if you need to step  
6 away from the hearing when your co-counsel is taking  
7 the lead. Just remember to turn your camera back on  
8 when you return.

9           Witnesses will need to turn on their  
10 cameras and microphones when they are ready to begin  
11 their testimony.

12           The key thing with respect to how this  
13 will run in a very seamless manner will be if we make  
14 the court reporter's job as easy as possible. So the  
15 key thing to remember is to speak clearly, at a  
16 reasonable speed, so that the court reporter can  
17 accurately transcribe the hearing.

18           As a reminder, everyone should do their  
19 best to avoid speaking over one another by taking  
20 proactive steps, like intentionally allowing for a  
21 pause at the end of their questions to witnesses, and  
22 generally slowing down in order to allow for  
23 connectivity lags and objections from counsel.

24           During their testimony, witnesses will  
25 have access only to the filings in this case as well

1 as other documents that have been identified as  
2 potential exhibits that have already been exchanged  
3 amongst the parties and shared with the Bench.  
4 Witnesses should not have access or seek other  
5 information in other documents. And it's important  
6 that the witnesses not attempt to communicate with --  
7 through other means with anyone privately during  
8 their particular testimony.

9 Now, one thing that I would like to  
10 ascertain at this point in time is whether or not  
11 there is going to be a need for a closed record at  
12 some point in time during the proceeding. I'm aware  
13 of the fact that I believe Ms. Pirik, you had filed  
14 an exhibit that will now allow for the safety manuals  
15 to have a public version that would be able to be  
16 utilized for the purposes of cross-examination in  
17 this particular proceeding; is that correct?

18 MS. PIRIK: Yes, your Honor, we did. And  
19 we have not heard that there was additional  
20 information needed but Mr. Van Kley may be able to  
21 address that.

22 ALJ AGRANOFF: Mr. Van Kley, could you  
23 confirm that what you have is now acceptable for the  
24 purposes of having your cross-examination take place  
25 on the public record?

1           MR. VAN KLEY: So far as I can tell  
2           currently, that is the case. The versions of the  
3           safety manuals that I plan to use are the public  
4           versions and I do not currently anticipate the need  
5           to use any confidential information.

6           ALJ AGRANOFF: Okay. Are any other  
7           counsel aware of a situation for which we would be  
8           required to go into a closed record for the purposes  
9           of any cross-examination?

10          Okay. Hearing none, then we will work  
11          off of the assumption that everything that we'll be  
12          doing will be indeed on the public record today.

13          Now, this is going to be a multi-week  
14          hearing based on the schedule that has been agreed  
15          upon by counsel and the parties. And as that  
16          schedule reflects, we will be working on a daily  
17          basis through the witnesses that have been identified  
18          on the schedule for a specific day.

19          Now, I do know that we had talked about  
20          the fact that beginning on Wednesday, we would begin  
21          to, in essence, slot Staff witnesses in at least one  
22          a day.

23          At this point in time, Mr. Margard, has  
24          there been a discussion as to specific witnesses and  
25          specific days that they would be allocated to?

1                   MR. MARGARD: Yes, your Honor. As we've  
2 informed the parties, we anticipate for convenience  
3 sake, if nothing else, proceeding with Staff  
4 witnesses in alphabetical order, so that would mean  
5 Mr. Bellamy, Mr. Conklin, Mr. Conway, et cetera, and  
6 we are anticipating being able to follow that  
7 sequence.

8                   That said, your Honor, I did learn on  
9 Friday, for example, that a number of the Staff  
10 witnesses would be unavailable on Tuesday, the 13th,  
11 in the morning because of a site visit. Staff, of  
12 course, does have their regular duties and  
13 responsibilities to conduct during the course of the  
14 hearing. And it may be that a witness is unavailable  
15 unexpectedly.

16                   We are trying to stay as on top of their  
17 availability as possible, and currently we don't  
18 anticipate any other instances other than the ones  
19 I've previously identified to the parties so we'll --  
20 we'll try to make sure we have them available in  
21 sequence.

22                   ALJ AGRANOFF: Okay. And if you could  
23 then each day prior to when a particular Staff  
24 witness is supposed to be testifying, let us know  
25 that here is what the upcoming next-day schedule will

1 be for Staff relative to their witness availability.

2 MR. MARGARD: We will do that, your  
3 Honor. And it's our expectation we will have a  
4 witness in case some cross-examination either  
5 concludes earlier than anticipated or because of  
6 unavailability, so we'll always anticipate having a  
7 next witness identified as well.

8 ALJ AGRANOFF: Okay. Greatly  
9 appreciated.

10 With respect to how we will proceed on a  
11 daily basis. Today obviously we began at 10 o'clock.  
12 For each subsequent day of this hearing, it's our  
13 expectation that we are going to begin at 9 o'clock  
14 each day in order to help assure that we stay on  
15 schedule as previously agreed upon by the parties.

16 We'll take a one-hour lunch break, and  
17 basically as to when that particular lunch hour will  
18 begin, we're going to, you know, wait and see each  
19 day as to when an ideal breaking point will be and  
20 we'll take that break accordingly once we identified  
21 that particular point in time.

22 With respect to the order of  
23 cross-examination of witnesses, since it appears that  
24 the only parties who have not agreed with the  
25 proposed Stipulation are Mr. Van Kley's local

1 residents and the Black Swamp Observatory, therefore  
2 with respect to the Company witnesses that have been  
3 identified in this case, Mr. Van Kley will be the  
4 only counsel that would be engaging in  
5 cross-examination of those particular witnesses.

6 And then with respect to the other  
7 witnesses in this particular case, we'll -- we'll  
8 allow the -- obviously with respect to the Black  
9 Swamp Observatory witnesses, the local residents, all  
10 of the other parties would have the opportunity to  
11 cross-examine those particular witnesses.

12 Is that clear as to how we are going to  
13 proceed relative to cross-examination?

14 As I had discussed with the court  
15 reporter, Ms. Gibson, before we actually went  
16 formally on the record, it would probably make sense  
17 that the following day if you could please send all  
18 of the admitted exhibits to the court reporter so  
19 that she then would have the most current and  
20 accurate listing of all those exhibits and be able to  
21 keep them tracked in the most efficient manner. If  
22 you could e-mail those exhibits to her at  
23 kspencer@aando.com. So that's the letter A, then  
24 A-N-D, the letter O, .com.

25 Before we actually begin with the

1 testimony that is scheduled for today and that is  
2 Mr. Pedder, I believe is the sole witness that we  
3 have on our schedule for today's proceeding, I wanted  
4 to kind of clean up any pending matters that we  
5 currently had that was in need of ruling. So we will  
6 deal with that at this point in time.

7 And specifically I know that Ms. Pirik,  
8 you had sent and docketed a letter on the -- let's  
9 see the date -- the 24th of September where I believe  
10 you were basically trying to account for the filing  
11 of the redacted safety manuals to then incorporate  
12 that filing in the context of the pending motions  
13 that we have for protective treatment. Is that  
14 correct? I think, Ms. Pirik, you have to turn your  
15 mic on.

16 MS. PIRIK: Yes, your Honor.

17 ALJ AGRANOFF: Okay. And I just wanted  
18 to make sure that your records and what I had in  
19 front of me matched just so that we didn't have any  
20 unresolved motions after this particular filing. I  
21 know that you referenced the January 31, July 10,  
22 September 12 motions of 2019 that pertain to the  
23 safety manuals. And then you also had an October 4,  
24 2019, and I couldn't find the October 4 motion but I  
25 had November 26, 2019, and a February 11, 2020. Do

1       you have those filings as well that pertain to the  
2       safety manuals? If you have to go back and check,  
3       that's perfectly fine. We can deal with this at a  
4       later point in time.

5               MS. PIRIK: I think that might be a good  
6       idea just so that I can, you know, look at everything  
7       and then give you a better response.

8               ALJ AGRANOFF: Okay. That would be  
9       perfect. Yeah, if you can just check, I think there  
10      was -- again, I couldn't find the October 4, 2019,  
11      but again, November 26, 2019, and February 11, 2020,  
12      I think had turbine safety manual issues raised in  
13      them.

14              And then with respect to the financial  
15      information that had previously been requested  
16      protective treatment, I assume those requests are  
17      still in need of ruling as well?

18              MS. PIRIK: Yes, your Honor.

19              ALJ AGRANOFF: Okay. And just so that we  
20      make sure that we're not missing anything, I had  
21      January 31, 2019, that dealt with the financial  
22      issues as well as the February 11, 2020. So if you  
23      could confirm on your end that that is what you have  
24      as well, that would be helpful.

25              MS. PIRIK: We will do that. Thank you.



1 ALJ AGRANOFF: Thank you.

2 And then the only other pending motion  
3 that I saw was the motion for pro hac vice relative  
4 to Mr. Brian Knox.

5 MS. PIRIK: That's correct, your Honor.

6 ALJ AGRANOFF: And I think that was filed  
7 on July 1 of 2020. And with respect to that  
8 particular motion, it shall be granted and Mr. Knox  
9 can participate in this proceeding.

10 MS. PIRIK: Thank you, your Honor.

11 ALJ AGRANOFF: You're welcome.

12 Okay. Is there anything else before we  
13 begin with today's testimony that any counsel or  
14 Mr. Williams that you believe we need to speak about?

15 ALJ WILLIAMS: I think you did a very  
16 thorough job of getting us started, Jay.

17 ALJ AGRANOFF: Thank you. And with that  
18 I'll turn it over to you.

19 MR. SECREST: Thank you, your Honors. If  
20 I may pose a question. John Secrest on behalf of the  
21 Applicant. We obviously have direct testimony  
22 prefiled and we've accounted for cross-examination  
23 exhibits through the prehearing order and exchange of  
24 those exhibits. How does the Bench want to deal with  
25 the potential redirect exhibits? Frankly, I don't

1 know what, if any, those will be until  
2 cross-examination has been completed or during the  
3 course of cross-examination. So what's the process  
4 the Bench would like for us to, one, introduce those  
5 and, two, get those in the hands of everybody  
6 including the court reporter?

7 ALJ WILLIAMS: Have they been distributed  
8 already?

9 MR. SECREST: No, they have not, your  
10 Honor.

11 ALJ AGRANOFF: Why don't we wait until we  
12 get to that first point where that particular issue  
13 may become relevant and at that juncture we can then  
14 ascertain the best way to deal with that on a  
15 going-forward basis.

16 MR. SECREST: Fair enough. Thank you,  
17 your Honor.

18 ALJ WILLIAMS: Any other preliminary  
19 matters?

20 Okay. With that, we will invite the  
21 Applicant to call their first witness.

22 MR. SECREST: Thank you, your Honor. May  
23 the Applicant call Nate Pedder to the stand.

24 ALJ WILLIAMS: Good morning, Mr. Pedder.

25 THE WITNESS: Good morning.

1 ALJ WILLIAMS: Can you hear me?

2 THE WITNESS: Yep.

3 ALJ WILLIAMS: Fantastic. Would you  
4 raiser your right hand, please.

5 (Witness sworn.)

6 ALJ WILLIAMS: Please begin on direct.

7 MR. SECREST: Thank you, your Honor.

8 - - -

9 NATHAN PEDDER

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

12 DIRECT EXAMINATION

13 By Mr. Secrest:

14 Q. Mr. Pedder, would you please state your  
15 full name for the record.

16 A. Nathan Pedder.

17 Q. And by whom are you employed?

18 A. Apex Clean Energy.

19 Q. What is your business address?

20 A. I believe it would be 301 Fourth Street,  
21 Suite 210, Charlottesville, Virginia.

22 Q. Thank you, Mr. Pedder. Do you have in  
23 front of you what has been marked as Exhibit 31?

24 A. I do.

25 Q. Is that a true and accurate copy of your

1       prefiled direct testimony?

2               A.     Yes.

3               Q.     Do you have any changes or revisions to  
4       that testimony?

5               A.     No.

6               MR. SECREST:   Your Honor, Mr. Pedder is  
7       sponsoring Exhibits 1 through 30 as well as 82.  
8       Would you like those marked now or should I do that  
9       at the end of his examination?

10              ALJ WILLIAMS:   Go ahead and mark them  
11       now.

12              MR. SECREST:   Your Honors, we've marked  
13       as Exhibit 1, the Application filed on January 31,  
14       2019.

15              Exhibit 2 is the Supplement to the  
16       Application filed on March 18, 2019.

17              Exhibit 3 is the Second Supplement to the  
18       Application.

19              Exhibit 4 is the Third Supplement to the  
20       Application.

21              Exhibit 5 is the Revised Fourth  
22       Supplement to the Application.

23              Exhibit 6 is Application part 8 of 17,  
24       filed January 24, 2020.

25              Exhibit 7 is Response to First Set of

1 Interrogatories.

2 Exhibit 8, Response to Second Set of  
3 Interrogatories.

4 Exhibit 9, Response to Third Set of  
5 Interrogatories.

6 Exhibit 10, Response to Fourth Set of  
7 Interrogatories.

8 Exhibit 11, Response to Fifth Set of  
9 Interrogatories.

10 Exhibit 12, Response to Sixth Set of  
11 Interrogatories.

12 Exhibit 13, Response to Seventh Set of  
13 Interrogatories.

14 Exhibit 14, Supplemental Response to  
15 Sixth Set of Interrogatories.

16 Exhibit 15, Supplemental Response to  
17 Seventh Set of Interrogatories.

18 Exhibit 16, Response to Eighth Set of  
19 Interrogatories.

20 Exhibit 17, Second Supplemental Response  
21 to Seventh Set of Interrogatories.

22 Exhibit 18, Certificate of Service of the  
23 November 15, 2018, Public Information Meeting, notice  
24 on property owners and entities.

25 Exhibit 19, Proof of Publication of

1 November 15, 2018, Public Information Meeting in the  
2 "Sandusky Register" and the "Norwalk Reflector."

3 Exhibit 20 is Certificate of Service of  
4 the April 3, 2019, Second Public Information Meeting,  
5 notice on property owners and entities.

6 Exhibit 21, Proof of Publication of  
7 April 3, 2019, Second Public Information Meeting in  
8 the "Sandusky Register" and "Norwalk Reflector."

9 Exhibit 22, Certificate of Service of the  
10 accepted, complete application on local public  
11 officials and libraries.

12 Exhibit 23, Second Certificate of Service  
13 of the accepted, complete application on local public  
14 officials and libraries.

15 Exhibit 24, Third Certificate of Service  
16 of the accepted, complete application on local public  
17 officials and libraries.

18 Exhibit 25, Supplement to Third  
19 Certificate of Service of the accepted, complete  
20 application on local public officials and libraries.

21 Exhibit 26, Proof of Service of the  
22 accepted, complete application on all local public  
23 officials, libraries, and each owner of property  
24 crossed and/or adjacent to the proposed facility  
25 site, and Proof of Publication of the accepted,

1 complete application in the "Sandusky Register" and  
2 the "Norwalk Reflector."

3 Exhibit 27, Proof of the Second Service  
4 of the accepted, complete application on all local  
5 public officials, libraries, and each owner of  
6 property crossed and/or adjacent to the proposed  
7 facility's site, and Proof of Second Publication of  
8 the accepted, complete application in the "Sandusky  
9 Register" and "Norwalk Reflector."

10 Exhibit 28, Proof of Service and Proof of  
11 Publication in the "Sandusky Register" and "Norwalk  
12 Reflector" that the procedural schedule has been  
13 postponed, in accordance with the Administrative Law  
14 Judge's March 11, 2020, Entry.

15 Exhibit 29, Proof of Service and Proof of  
16 Publication in the "Sandusky Register" and "Norwalk  
17 Reflector" that the procedural schedule has been  
18 reestablished, in accordance with the ALJ's July 13,  
19 2020, Entry.

20 Exhibit 30, Proof of Second Service and  
21 Proof of Second Publication in the "Sandusky  
22 Register" and "Norwalk Reflector" that the procedural  
23 schedule has been reestablished, in accordance with  
24 the ALJ's July 13, 2020, Entry.

25 Exhibit 31 is the Prefiled Testimony --

1 Direct Testimony of Nate Pedder.

2 And lastly, Exhibit 82 is the  
3 nonconfidential GE, Nordex, Siemens Gamesa, and  
4 Vestas Safety Manuals filed September 24, 2020.

5 May I have all referenced exhibits  
6 marked, your Honor?

7 ALJ WILLIAMS: So marked. Thank you,  
8 Counsel.

9 (EXHIBITS MARKED FOR IDENTIFICATION.)

10 MR. SECREST: Thank you, your Honor.  
11 With that, I tender Mr. Pedder for cross-examination,  
12 your Honor.

13 ALJ WILLIAMS: Thank you, Counsel.

14 MR. SECREST: Thank you.

15 ALJ WILLIAMS: Mr. Van Kley.

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

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Van Kley:

20 Q. Good morning, Mr. Pedder. My name is  
21 Jack Van Kley. I represent the local residents and  
22 the Black Swamp Bird Observatory.

23 Why don't we start off your  
24 cross-examination by talking a little bit about your  
25 experience and background. If you could turn to the



1       résumé that you have attached to your written direct  
2       testimony in Applicant Exhibit 31, I think that would  
3       help move our discussion along.

4             A.     I am there.

5             Q.     Okay. So looking at your experience  
6       starting after you graduated from college, it looks  
7       like your first position was as a project developer  
8       for Apex Clean Energy; is that correct?

9             A.     That's correct.

10            Q.     Okay. And you were in that position from  
11       January 2016, to December 2018, correct?

12            A.     Correct.

13            Q.     What were your duties in that position?

14            A.     My duties in that position were primarily  
15       project development work so I was working locally  
16       with land leasing and permitting efforts on a number  
17       of projects as well as coordinating efforts among a  
18       variety of subject-matter experts both internal and  
19       external to Apex.

20            Q.     Did any of that work involve wind  
21       projects?

22            A.     Yes.

23            Q.     Okay. Which wind projects did you work  
24       on during that period of time?

25            A.     During that period of time, I worked on

1       Timbermill Wind, as well as Dakota Range I, II --  
2       yeah, Dakota Range I and II, and then briefly on the  
3       Bowman Wind Project.

4               Q.     Then you became a development manager for  
5       Apex Clean Energy; is that correct?

6               A.     Correct.

7               Q.     And you've been in that position since  
8       January of 2019?

9               A.     Correct.

10              Q.     What have been your -- what have been  
11       your duties in that position?

12              A.     Largely the same as the previous role,  
13       just more management responsibility and individual  
14       ownership of projects.

15              Q.     Did any of that work involve wind  
16       projects?

17              A.     It did.

18              Q.     Okay. And during the period of time that  
19       you were the development manager, did you work on any  
20       wind projects other than the ones you've already  
21       named with respect to your position as a project  
22       developer?

23              A.     Yes.

24              Q.     And what were the names of those  
25       projects?

1           A.     Would have been Honey Creek Wind, and  
2     then this project, the Emerson Creek Project, and  
3     then I assisted on the Heritage Wind Project and  
4     the -- yeah, that's it.

5           Q.     When did you start working on the Emerson  
6     Creek wind project?

7           A.     Would have been -- let's see. I'm  
8     trying -- I think it's been about two years. So it  
9     would have been early or mid 2018, I believe. I  
10    actually think, now looking at my résumé, I think I  
11    have those dates wrong.

12                I think I was the project developer  
13    through -- I was project developer for two years, so  
14    that would have been January 2016 through  
15    January 2017 rather than December 2018. And then in  
16    January of 2018, I would have become development  
17    manager. So the dates are wrong. But starting in  
18    2018, I would have been working on the Timbermill  
19    Project and then transitioned to Honey Creek Wind,  
20    Emerson Creek Wind, and then briefly helped on the  
21    Heritage Wind Project.

22           Q.     Is there any difference in the nature of  
23    your duties as a project developer versus the duty  
24    you have been undertaking as a development manager?

25           A.     Largely, no.

1           Q.    Now, when you started working on the  
2   Emerson Creek wind project, what was the status of  
3   the project at that time?  Was it just beginning or  
4   was it already underway as to its development?

5           A.    It was underway in its development.

6           Q.    Okay.  For how long of a period had it  
7   been in -- under development by the time you started  
8   working on it?

9           A.    I believe it was -- I believe development  
10   started on the Emerson Creek project around 2010.

11          Q.    So generally speaking, what work had  
12   already been finished on the Emerson Creek wind  
13   project by the time you started working on it?

14          A.    By the time I started working on the  
15   Emerson Creek wind project, leasing had been underway  
16   as well as a variety of studies as well as agency  
17   coordination.

18          Q.    Have you been involved at all in  
19   negotiating leases with participating landowners for  
20   the project?

21               MR. SECREST:  Objection, vague.

22               ALJ WILLIAMS:  I'll let him answer.

23          A.    What do you mean by "negotiating"?

24          Q.    Have -- did you have any discussions  
25   with -- with landowners about signing leases for the

1 Emerson Creek wind project?

2 A. Yes.

3 Q. Okay. And what involvement did you have  
4 in that regard?

5 A. I would reach out to landowners and  
6 answer questions regarding the project and work with  
7 them towards a decision on whether they would sign a  
8 lease or not.

9 Q. Are you familiar with the leases that  
10 have been signed by participating landowners?

11 A. Largely, yes.

12 Q. To your knowledge did any of those leases  
13 prohibit the participating landowners from discussing  
14 their leases with other people such as their  
15 neighbors?

16 A. No.

17 Q. When was the first time that the Emerson  
18 wind -- or the Emerson Creek wind project was  
19 announced to the public?

20 A. I don't know a firm date, but I'm aware  
21 that we met with county official -- like county  
22 commissioners as well as township trustees throughout  
23 the early stages of development so I believe that  
24 would have probably started perhaps in 2012.

25 Q. Were those meetings with the local

1 government officials held as public meetings or  
2 private meetings?

3 A. I believe those were held publicly. I  
4 don't have a firm date off the top of my head. I  
5 believe some of that information is included in the  
6 Application.

7 Q. Let's talk a little bit about some of the  
8 issues that my clients have raised in this  
9 proceeding.

10 MR. VAN KLEY: And for the record, Judge  
11 Williams, my cross-examination of Mr. Pedder would be  
12 on behalf of both the Black Swamp Bird Observatory  
13 and the local residents; although, the Black Swamp  
14 Bird Observatory is interested primarily in wildlife  
15 issues and not necessarily some of these other  
16 issues.

17 Q. Let's talk a little bit about the issues  
18 and I would like to start with a discussion about  
19 T.V. reception. Do you have Exhibit No. 1 for the  
20 Applicant in front of you?

21 A. Would that be -- what is the title of  
22 that exhibit?

23 Q. That would be your Exhibit No. 1 which is  
24 the narrative portion -- which is the Application.

25 A. Okay. Yes.

1           Q.    Okay.  And once you have that in front of  
2   you, go to page 101.

3           A.    Okay.

4           Q.    All right.  Actually let's go to page 100  
5   to start with.

6           A.    Okay.

7           Q.    I would like to refer you to the second  
8   paragraph on that page.

9           A.    Okay.

10          Q.    And specifically the last sentence states  
11   "Based on the 10 percent criteria described above, up  
12   to 233 households may be affected to varying  
13   degrees."  Do you see that?

14          A.    Yes, I do.

15          Q.    Now, Firelands had T.V. reception  
16   evaluated by a company called Evans Engineering; is  
17   that correct?

18          A.    Yes.

19          Q.    And Evans Engineering did a study to  
20   determine how many households would potentially be  
21   affected in their T.V. viewing by the turbines; is  
22   that correct?

23          A.    That's generally my understanding of the  
24   analysis that they conducted, but Ben Evans, from  
25   Evans Engineering, will be testifying later and he

1 will be able to answer those specifics.

2 Q. Now, did -- after Evans Engineering  
3 provided its evaluation to Firelands, did Firelands  
4 change any of its turbine layout as a result of the  
5 information submitted by Evans Engineering?

6 A. I cannot recall specifically if we did or  
7 did not. I -- no.

8 Q. Do you have a copy of the Stipulation  
9 that has been entered in this case and marked as  
10 Joint Exhibit No. 1?

11 A. I do.

12 Q. Okay. Great. Would you go to page 9 of  
13 that Joint Stipulation, paragraph 38.

14 A. I'm sorry. Which paragraph did you say?

15 Q. 38.

16 A. Okay.

17 Q. All right. Now, paragraph 38 talks about  
18 some commitments that Firelands would make if there  
19 is interference with T.V. reception; is that correct?

20 A. That would be my understanding of the  
21 proposed condition No. 38.

22 Q. Uh-huh. Has Firelands, in signing this  
23 Stipulation or in its Application, made any  
24 commitment to pay for installing cable T.V. for any  
25 neighbors whose T.V. reception is impaired by the



1 turbines?

2 A. I believe that somewhere in the  
3 Application, if not specifically, it is stated in  
4 this condition, we have made that -- a similar  
5 commitment. I don't believe it was specifically for,  
6 you know, cable, but it may have been for satellite  
7 reception so sort of dish.

8 Q. The satellite reception that you are  
9 talking about is -- is for something other than  
10 television; is that correct?

11 A. No. I believe the cable, it depends on  
12 the location as to availability but I believe the  
13 commitment was for something to that equivalency so  
14 whether it's Dish Network, Comcast, whatever would be  
15 available and best suit that location.

16 Q. Uh-huh. If -- if a neighbor needs to  
17 have cable T.V. in order to replace the digital  
18 reception that's impaired by the turbines, has  
19 Firelands made a commitment to pay the monthly  
20 subscription fees for that cable T.V. service?

21 A. I believe we have and, if not, we commit  
22 to that. That would all be covered under the  
23 complaint resolution and so, yes, if those issues  
24 were to occur, we would -- we have an established  
25 complaint resolution process that was included in the

1 Application.

2 Q. Let's move on to another issue concerning  
3 wildlife. Let's talk first about bald eagles. To  
4 your knowledge, has Firelands ever asked  
5 participating landowners to inform Firelands about  
6 any eagles sighted in the project area?

7 A. To my knowledge, we have not requested  
8 that.

9 Q. To your knowledge, has Firelands asked  
10 the participating landowners to report any eagle  
11 nests present in the project area?

12 A. To my knowledge, we have not requested  
13 that.

14 Q. Has Firelands, to your knowledge,  
15 received any information from participating  
16 landowners about eagles in the project area?

17 A. Yes and no.

18 Q. What about eagle nests? Has Firelands  
19 received any information from participating  
20 landowners concerning the presence of eagle nests in  
21 the project area?

22 A. Yes and no.

23 Q. Okay. Would you explain that answer,  
24 please?

25 A. Yes. We had a landowner that approached

1 us with what he believed was a bald eagle nest and so  
2 we sent out wildlife and biology experts to go  
3 observe the nest and determine what type of nest it  
4 was, and it was determined to be a red-tailed hawk  
5 nest.

6 Q. Can you tell me where that nest was  
7 located approximately?

8 A. Maybe if I had a map in front of me. The  
9 exact locations of those would best be left to the  
10 wildlife experts. They will be able to discuss the  
11 locations of all nests.

12 Q. So you don't recall by memory where it  
13 was located?

14 A. Not -- not without a map.

15 Q. Has Firelands had any conversations or  
16 other communications with U.S. Fish and Wildlife  
17 Service about eagles in 2020?

18 A. I'm sorry, could you repeat the question?  
19 I think I missed that.

20 Q. Sure. Has Firelands had any  
21 communications with the U.S. Fish and Wildlife  
22 Service about eagles in 2020?

23 A. Yes.

24 Q. What was -- what was the subject matter  
25 of these conversations generally speaking?

1           A.    I would probably defer those -- specifics  
2           of those conversations to the wildlife experts as  
3           they are the most informed on what was involved with  
4           those.  I believe we may have had a meeting with them  
5           in February and discussed some -- some findings and  
6           some next steps.

7           Q.    Okay.  Did you participate in that  
8           discussion with the U.S. Fish and Wildlife Service?

9           A.    I was at maybe half of that meeting.  I  
10          had to step out.  I had a different meeting to go to.

11          Q.    What are the names of Firelands' wildlife  
12          experts that have been involved in discussions with  
13          U.S. Fish and Wildlife Service about eagles in the  
14          year 2020?

15          A.    I'm not sure which specific external  
16          consultants were involved directly in those  
17          communications.  But internally to Apex, Jennie  
18          Geiger would have been involved in those  
19          conversations.

20          Q.    Do you know if Rhett Good was involved in  
21          those conversations?

22          A.    Not off the top of my head.

23          Q.    Okay.  How about Chris Farmer, was he  
24          involved in those conversations?

25          A.    Not off the top of my head.

1           Q.    Did the conversations occur in -- or  
2           conversation occur in 2020, include a discussion  
3           about Firelands applying for a take use permit for  
4           eagles?

5           A.    I would defer the specifics of those  
6           conversations to some of the wildlife experts.

7           Q.    Well, do you know the answer to the  
8           question?

9           A.    I believe we would have discussed with  
10          them an Eagle Conservation Plan and so I believe that  
11          that would involve potentially a take permit. I am  
12          not always sure on some of those specifics.

13          Q.    Uh-huh. Do you know whether Firelands  
14          has submitted an application for a take use permit  
15          for eagles?

16          A.    Not that I'm aware of, no.

17          Q.    Do you know whether Firelands intends to  
18          submit such an application?

19          A.    I believe one of the conditions in the  
20          Stipulation -- may I refer to the Stipulation to tell  
21          you which condition?

22          Q.    Sure.

23          A.    I believe condition No. 31, we commit to  
24          apply for an Eagle Take Permit.

25          Q.    At this point in time does Firelands have

1 any expectation as to when it will be submitting such  
2 an application?

3 A. I believe with that condition, if I may  
4 refer to it again, we applied to -- we commit to  
5 applying for an Eagle Take Permit from the U.S. Fish  
6 and Wildlife prior to the project becoming  
7 operational.

8 Q. And what's your current expectation as to  
9 when you think the project would become operational?

10 A. That will depend largely on the  
11 resolution of this hearing and the timing of  
12 receiving that certificate.

13 Q. Would you go back to Applicant Exhibit  
14 No. 1, which is your permit application, and you find  
15 Exhibit K to that application, that application.

16 A. Yes. Give me a moment. I don't believe  
17 I have binder No. 3. Sorry. Yes, I have -- I  
18 believe I have a copy of Exhibit K in front of me.

19 Q. Okay. Great. Go to Exhibit K which is  
20 the U.S. Fish and Wildlife Service and ODNR  
21 correspondence.

22 A. Uh-huh.

23 Q. And I would like you to find the meeting  
24 summary for October 18, 2018, between ODNR and U.S.  
25 Fish and Wildlife Service and Firelands.

1           ALJ WILLIAMS: Attorney Van Kley, I have  
2 got these exhibits and K listed 1 through 12 in the  
3 advanced file. Do you know what number you are in?

4           THE WITNESS: It would be No. 1.

5           ALJ WILLIAMS: Thank you.

6           MR. VAN KLEY: Yes, yes, Applicant's  
7 Exhibit No. 1. For those of you who are looking at  
8 the online version at the Power Siting Board website,  
9 if you go to part 6 of 17, you will find that  
10 Exhibit K. I'll get there and I will tell you what  
11 PDF page. It's PDF page 886.

12          ALJ WILLIAMS: Okay.

13          A. Okay. I believe I am -- I am there.

14          Q. Okay. Great. Did you find -- is there  
15 an e-mail from Keith Lott to Rhett Good and Kevin  
16 Davis, dated June 9 -- June 9, 2010?

17          A. I'm sorry. So not the October 18, 2018,  
18 meeting summary?

19          Q. Yes. It's in that summary.

20          A. I don't see it in that summary. I can  
21 look through Exhibit K and see where that is. You  
22 said it was from Keith Lott to Rhett Good?

23          Q. Yes.

24          A. I believe you are referring to  
25 actually -- hold on a second. Let me figure out what

1 the beginning of this section was. No. 6 of Exhibit  
2 K, February 22, September 17? And then from there --  
3 John, can you go on mute?

4 From there I believe it would be probably  
5 about 10 pages in. It's after the ODNR report. I am  
6 not sure exactly what this is. It looks like a  
7 series of pages from ODNR and then the first e-mail  
8 there, June 9, 2010, from Keith Lott to Rhett Good,  
9 is that what you are referring to?

10 Q. Yes. You found it, uh-huh.

11 MR. SECREST: So we are on page 12 of  
12 Exhibit 8 of K6.

13 THE WITNESS: That sounds correct to me.

14 MR. VAN KLEY: I am looking at the online  
15 version and it's page 886 of part 6 of 17 parts, and  
16 you are correct, I gave you the wrong heading name.  
17 It should have been 6, February 22, 2017, Survey  
18 Recommendations of ODNR. I believe that's the  
19 heading for the documents in which the page that I  
20 want to ask you about appears.

21 ALJ WILLIAMS: I think he is there. Go  
22 ahead.

23 Q. (By Mr. Van Kley) Okay. So referring you  
24 to the e-mail of June 9, 2010, from Keith Lott to  
25 Rhett Good and Kevin Davis, I am just going to read



1 the text of that e-mail to you and then I will have a  
2 question to you about it.

3 The e-mail states: "Attached are the  
4 Division of Wildlife survey recommendations for the  
5 Emerson project. Please review, if you have any  
6 questions please feel free to give me a call. As for  
7 Seneca Caverns, this is a commercial cave, there may  
8 be a few bats that over winter within it. But  
9 similar to Ohio Caverns, it is not considered to be a  
10 hibernacula. Given that we know there are karst  
11 regions within the area, I would suggest contacting  
12 leased landowners to inquire about whether there are  
13 any caves within the region. If so, I would  
14 recommend surveying those to see if they are being  
15 used by bats." Did I read that correctly?

16 A. It appears so.

17 Q. Okay. So my question to you, and I  
18 understand I didn't -- that you were not involved in  
19 this project at this time, but to your knowledge, did  
20 Firelands ever ask participating landowners to  
21 inquire about whether there were any caves in the  
22 region?

23 A. I am unaware.

24 Q. Do you know whether there are any caves  
25 in the project area?

1           A.    I do not believe so.

2           Q.    To your knowledge, has Firelands ever  
3 asked the participating landowners to report any bat  
4 roosts present in the project area?

5           A.    I do not believe so.

6           Q.    To your knowledge, has Firelands received  
7 any information from anyone concerning bat roosts in  
8 the project area?

9           MR. SECREST:  Objection, vague as to  
10 "anyone."

11           MR. VAN KLEY:  "Anyone" means any person.  
12 That's what I am asking about.

13           ALJ WILLIAMS:  I will let him answer and  
14 explain.

15           A.    Not that I'm aware of.

16           Q.    Has Firelands had any conversations or  
17 other communications with U.S. Fish and Wildlife  
18 Service about bats in the year 2020?

19           A.    Specifically about bats, I am not sure.  
20 I believe we would have included an overview of that  
21 in our discussion with them earlier this year, but I  
22 can't be sure.  I would leave that to the experts to  
23 be able to talk about that.

24           Q.    Does Firelands have any plans to apply  
25 for a takings permit for Indiana bats for its

1 project?

2 A. As far as -- as far as impacts in our  
3 plans, I would leave that to the experts to be able  
4 to talk about that. I'm not aware.

5 Q. And who are those experts that would have  
6 that knowledge?

7 A. I believe Rhett Good would be the one  
8 primarily speaking on that.

9 Q. Do you believe Mr. -- do you believe that  
10 Mr. Good would know about whether Firelands has the  
11 intent to apply for a takings permit for the Indiana  
12 bat?

13 A. Yes. I believe he would be aware.

14 Q. Does Firelands have the intent to conduct  
15 post-construction monitoring for bird or bat  
16 fatalities at the Emerson Creek wind project after it  
17 is in operation?

18 A. I believe that post-construction  
19 monitoring -- may I look at the Stipulation?

20 Q. Yes, you may.

21 A. I believe post-construction monitoring is  
22 considered in the Stipulation. Give me a moment. I  
23 believe it's in here. I am not exactly sure where.  
24 I would refer to Rhett Good and Chris Farmer. I  
25 believe they will best be able to answer questions on

1 plans for post-construction monitoring.

2 Q. Uh-huh. Does Firelands plan to make its  
3 mortality data available to the public?

4 A. I am unaware if we will or will not. We  
5 will be following the rules and regulations of U.S.  
6 Fish and Wildlife and ODNR and OPSB applicable.

7 Q. Uh-huh. Well, if -- if ODNR and U.S.  
8 Fish and Wildlife do not prohibit the release of this  
9 information to the public, is it Firelands' intent to  
10 make that data public?

11 A. So I -- if they are not requiring it to  
12 be public, I suspect not.

13 Q. Let's move on to a different topic.  
14 Let's talk about turbine foundations. Would you  
15 describe for me the size of the foundations that will  
16 be built for the turbines.

17 A. Sure. The foundations planned for the  
18 turbines are spread footer foundations and so those  
19 will be about somewhere in the range of 60 to 80 feet  
20 probably in diameter. They'll extend about 10 feet  
21 below the surface.

22 As a spread footer foundation starts  
23 closer to directly underneath the turbine, they will  
24 be closer to the surface level, and then by the time  
25 they get out to the edge of that foundation, I

1 believe they'll be, I want to say somewhere in the  
2 range of 6 feet below the surface.

3 Generally a spread footer foundation  
4 starts closer to the surface -- I suppose the court  
5 reporter won't be pleased if I talk with my hands --  
6 and slopes down towards the outer edge of that  
7 diameter.

8 Q. Has Firelands commissioned any field work  
9 that has identified the depth to the groundwater  
10 table in the areas where it wants to put its  
11 turbines?

12 A. I believe so.

13 Q. Can you tell me how far below the surface  
14 of the ground it has been found that the groundwater  
15 table exists?

16 A. I could probably tell you approximately.

17 Q. Okay. What's the shallowest that -- to  
18 your recollection that groundwater has been found  
19 below the surface?

20 A. It's my recollection it would be  
21 somewhere in the 5 to 10 foot depth. As for  
22 specifics on that, I would defer to Witnesses Alfred  
23 Williams and Ralph Corzatt.

24 Q. In situations where a turbine foundation  
25 is being dug and groundwater is encountered, what is

1 the typical procedure that is followed by a wind  
2 company in order to address that groundwater?

3 A. I believe pumping is used to remove  
4 water.

5 Q. So the hole is dewatered?

6 A. That's my general understanding.

7 Q. Are you aware of any sinkholes in the  
8 project area?

9 A. Yes.

10 Q. How many are you aware of?

11 A. I am not aware of a specific number.

12 Q. Have you personally seen any of these  
13 sinkholes in the project area?

14 A. No.

15 Q. How did you become aware of those  
16 sinkholes?

17 A. I have been made aware by citizens in and  
18 near the project area.

19 Q. Now, Firelands has conducted borings in  
20 the project area at some of the turbine sites; is  
21 that correct?

22 A. The majority of those turbine sites,  
23 correct.

24 Q. And have those borings discovered the  
25 existence of bedrock at an elevation less than 10

1 feet from the surface at any of those locations?

2 A. I'm not sure. That -- the results of  
3 those borings, the bedrock depth, would be a question  
4 best left to Witness Alfred Williams.

5 Q. Are you aware of any plans that Firelands  
6 has to conduct blasting of bedrock in order to  
7 install any of its turbines?

8 A. We have no plans for that at this time.

9 Q. Has Firelands ruled out the use of  
10 blasting for that purpose?

11 A. I do not believe so. Can you hear me?

12 Q. Yes.

13 A. Did you hear my answer on that?

14 Q. I did, yes, thank you.

15 MR. SECREST: Thank you.

16 Q. All right. Let's go to page 8 of your  
17 written direct testimony which was marked as  
18 Applicant Exhibit 31.

19 A. Okay.

20 Q. I would like you to go to the fourth  
21 bullet point on that page which discusses shadow  
22 flicker.

23 A. Yes.

24 Q. All right. And looking through the  
25 testimonies that have been filed for other people who

1 are going to be testifying for Firelands in this  
2 hearing, I don't see that any of the other witnesses  
3 have submitted any testimony about shadow flicker.  
4 Am I right about that or am I mistaken?

5 A. You are correct.

6 Q. Okay. All right. So I want to ask you  
7 some questions about shadow flicker then.

8 A. Okay.

9 Q. All right. First of all, let's get a  
10 little bit of background about your experience with  
11 shadow flicker. Have you ever performed personally a  
12 shadow flicker study?

13 A. Not personally, no.

14 Q. Do you have any formal training in the  
15 analysis or evaluation of shadow flicker?

16 A. Personally, no.

17 Q. Okay. Have you ever done a model to  
18 evaluate the amount of shadow flicker that a source  
19 of flicker would produce?

20 A. Personally, no.

21 Q. Do you know why it's called a flicker?

22 A. I believe it would refer to the  
23 alteration of shadow to sunlight when a receptor has  
24 a turbine that is spinning between it and the sun.

25 Q. Uh-huh. So it creates an appearance of a



1 flickering light; is that accurate to say?

2 A. Yes.

3 Q. And shadow flicker can go through  
4 windowpanes; is that correct?

5 A. Yes.

6 Q. Or if a person is outdoors, a person  
7 could experience shadow flicker from a source nearby?

8 A. Correct.

9 Q. Have you personally ever lived in a  
10 property affected by shadow flicker from a wind  
11 turbine?

12 A. Personally, no.

13 Q. So you have no personal experience about  
14 how it feels to be subjected to shadow flicker?

15 A. I have been near a turbine and have  
16 experienced shadow flicker.

17 Q. But not -- you haven't experienced it at  
18 a location where you are living?

19 A. Correct.

20 Q. Would you go to -- back to the  
21 Application, to the narrative part of the  
22 Application, page 86.

23 A. Just give me -- give me a moment here.  
24 I'm sorry. You said page 86?

25 Q. I did, yes. But it looks like I gave you

1 the wrong page number. Just a second.

2 All right. I should have referred you to  
3 page 90 where the discussion about shadow flicker  
4 starts.

5 A. Okay.

6 Q. All right. Starting on page 90, we have  
7 a discussion in the Application about shadow flicker,  
8 correct?

9 A. Yes.

10 Q. Now, going to page 91, I would like to  
11 refer you to the second bullet point on that page.

12 A. Yes.

13 Q. And it refers to the latitude and  
14 longitude coordinates of 1,495 potential sensitive  
15 receptors located within the 10-rotor diameter,  
16 1,500 meter. Do you see that?

17 A. Uh-huh.

18 Q. Okay. Yes, right?

19 A. Yes.

20 Q. Okay. Yeah. All right. So let me first  
21 ask you whether you know how far shadow flicker from  
22 a wind turbine will travel.

23 A. Shadow flicker from a wind turbine  
24 dissipates over distance. I would have to refer to  
25 the study to know that exact distance. But I believe

1       beyond roughly 10-rotor diameters there -- it's  
2       negligible. But as you get further from the turbine,  
3       I believe those impacts dissipate due to atmospheric  
4       conditions.

5               Q. Did Firelands model their shadow flicker,  
6       the shadow flicker that potentially could go beyond  
7       1,500 meters from the turbine?

8               A. I would have to refer to the study itself  
9       as well as any updated study materials.

10              Q. All right. Why don't you go to the study  
11       itself then which is also part of the Application.  
12       And I believe that would be Exhibit H of the  
13       Application that is marked as Applicant Exhibit 1.

14              A. Yep. Give me one second.

15              Q. We will give everybody else the time to  
16       find it as well.

17              A. Okay.

18              Q. All right. Do you see anything in  
19       that -- first of all, let's just identify the report.  
20       Exhibit H, entitled "Shadow Flicker Report" is the  
21       report that was prepared for Apex Clean Energy for  
22       the Emerson Creek wind project, correct?

23              A. For the January 31, 2019, submission,  
24       correct.

25              Q. Uh-huh. And is the information in the

1 Application, starting on page 90 of the narrative,  
2 based on information in Exhibit H?

3 A. I believe so, yes.

4 Q. Is there anything in Exhibit H indicating  
5 that any shadow flicker beyond 1,500 meters got  
6 modeled?

7 A. I believe Figure 3 shows the shadow  
8 flicker wings in that exhibit, and it shows the  
9 distance at which shadow flicker is expected to  
10 extend beyond the turbines, and so it appears that  
11 modeling of the shadow flicker extends to the extent  
12 of the shadow flicker.

13 Q. Okay. Tell me again where you found that  
14 information.

15 A. Figure 3.

16 Q. In Exhibit H?

17 A. Yes.

18 Q. Okay. On what page is Figure 3?

19 A. It does not have a page number. Give me  
20 one second and I can ballpark it for you. The report  
21 ends on page 18 and then it's the third figure and  
22 the figure begins right after that, so it would be  
23 22, I believe.

24 Q. Is this a map of the project area?

25 A. Yes.

1           Q.    Okay.  All right.  And so tell me again  
2           where you see information on Figure 3 about the  
3           distance at which the modeling was occurred -- was  
4           conducted.

5           A.    Figure 3 shows the expected shadow  
6           flicker wings, and so it shows the extent at which  
7           impacts are anticipated.  And so you can see at the  
8           bottom, the legend shows what each of those results  
9           are, and so you can generally see where those wings  
10          extend to.

11          Q.    Okay.  Going back to the narrative of the  
12          Application marked as Applicant's Exhibit No. 1, go  
13          to page 92.

14          A.    Okay.

15          Q.    All right.  And according to the  
16          information here, the wind project, as modeled at the  
17          time that this information was obtained, showed that  
18          112 sensitive receptors may be affected for more than  
19          30 hours of shadow flicker per year, correct?

20          A.    Correct.

21          Q.    And what's the definition of a "receptor"  
22          as used on this page?

23          A.    A receptor is, I believe, a residence or  
24          any type of occupied dwelling.

25          Q.    And according to the modeling done at the

1 time that this report was written, 55 of the 112  
2 receptors were nonparticipants; is that right?

3 A. That appears so, correct.

4 Q. Have other modeling reports been  
5 submitted for this wind project as part of the  
6 Application or Supplemental Applications?

7 A. Are you asking --

8 MR. SECREST: Objection. Relating to  
9 shadow flicker?

10 MR. VAN KLEY: Yes.

11 A. Yes.

12 Q. Okay. How many other modelings have been  
13 submitted as part of the record for shadow flicker in  
14 this case?

15 A. I believe there was one memo regarding  
16 shadow flicker, or it may have just been a paragraph,  
17 and then there was additionally one more study.

18 Q. Uh-huh. What do you mean by the one  
19 paragraph? Can you explain that a little bit more?

20 A. I believe when submitting the -- one of  
21 the Application's supplements that included the  
22 Vestas V150 nameplate capacity upgrades as well as  
23 the Nordex N149 nameplate capacity upgrades, a --  
24 either a paragraph or memo was included to explain  
25 that no dimensions on those turbines had changed so

1       that no shadow flicker results had changed.

2               Q.    Okay.  So other than that one paragraph  
3       about shadow flicker, there's only one other  
4       additional shadow flicker report submitted as part of  
5       the Application in this case?

6               A.    That I can remember at this time.

7               Q.    Okay.  And to the best of your  
8       recollection, did the additional shadow flicker  
9       report supercede the report that we've been  
10      discussing on pages 90 through 92 of the original  
11      application, or was it a supplemental?

12              A.    I believe it was supplemental.

13              Q.    Uh-huh.  So the information about shadow  
14      flicker modeling that we see in the narrative of the  
15      Application on pages 90 through 92 of Applicant's  
16      Exhibit 1 is still applicable to the project; is that  
17      correct?

18              A.    For these turbines, correct.

19              Q.    Yeah.  And later Firelands added  
20      additional shadow flicker information concerning  
21      additional turbine models that were being considered;  
22      is that correct?

23              A.    Correct.

24              Q.    So our discussion then about the shadow  
25      flicker study discussed on pages 90 through 92 of the

1 narrative of the Application marked as Applicant's  
2 Exhibit No. 1, let me ask you a few more questions  
3 about that study.

4 A. Okay.

5 Q. In coming up with the number of potential  
6 minutes of exposure to shadow flicker for the  
7 receptors, were trees considered in that modeling to  
8 block any of the shadow flicker?

9 A. No. No blockage from trees or other  
10 buildings or other types of vegetation or structures  
11 were considered in that study.

12 Q. Uh-huh. Referring you to page 92 of the  
13 narrative of the Application, I want you to go to the  
14 second paragraph on that page.

15 A. Uh-huh.

16 Q. And look for a sentence that starts on  
17 the fourth line of that paragraph starting with the  
18 words "A receptor."

19 A. Yes.

20 Q. That sentence reads as follows: "A  
21 receptor in this 'greenhouse' model is defined as a  
22 one square meter area located one meter above ground;  
23 actual house dimensions are not taken into  
24 consideration." Do you see that sentence?

25 A. Correct.



1           Q.    Is it your understanding that all of the  
2 shadow flicker studies performed for the Emerson  
3 Creek wind project have defined the receptor in this  
4 manner?

5           A.    Yes, I believe all -- all of the shadow  
6 flicker studies that were conducted used this  
7 conservative estimate for homes.

8           Q.    So does this assumption mean that the  
9 receptor was assumed to be only 1 square meter in  
10 size?

11          A.    I believe 1 cubic meter, yes.

12          Q.    Let's go to page 94 of the Application  
13 marked as Applicant's Exhibit No. 1.

14          A.    Yes. Page 49?

15          Q.    Yeah. Actually let's go to page 95.

16          A.    Okay. I'm there as well.

17          Q.    All right. Allow me to refer you to the  
18 last sentence on the bottom of that page starting  
19 with the word "Furthermore."

20          A.    Yep.

21          Q.    It states: "Furthermore, as indicated  
22 above, the Applicant will implement the necessary  
23 mitigation measures through operational design,  
24 following the realistic shadow flicker analysis using  
25 the specific turbine array for construction, to reach

1 shadow flicker compliance of 30 hours per year at all  
2 nonparticipating receptors."

3 A. Correct.

4 Q. Let me ask you first to identify the  
5 potential mitigation measures that Firelands may  
6 undertake in order to reduce exposure to a shadow  
7 flicker of 30 -- to no more than 30 hours per year.

8 A. Those operational measures would involve  
9 some measure of curtailing, likely, as necessary, and  
10 so if the final shadow flicker analysis were to find  
11 a nonparticipating residence to be in exceedance of  
12 that -- the model to be in exceedance of that  
13 30 hours per year, then we are aware, through the  
14 modeled results, what times those impacts would most  
15 likely occur and so we would be able to be aware --  
16 since this analysis considered the turbines to be  
17 continuously operating from sunrise to sunset, we  
18 would be aware when we are operating what time it is  
19 that we would be most likely to impact any residents.  
20 And then as for -- if we were to be exceeding that  
21 30 hours per year, we would curtail so we would no  
22 longer be operating that turbine to create a flicker  
23 for that residence.

24 Q. Looking at the table numbered 08-4  
25 starting on page 93 of --

1           A.    Yes.

2           Q.    -- the narrative of the Application, I  
3    see there that the right-hand column identifies the  
4    approximate time of the day at which a receptor would  
5    potentially be affected by flicker; is that correct?

6           A.    Yes. Those times are, I believe,  
7    represented as a range since that will differ  
8    depending on the month of the year and location of  
9    the sun throughout the year.

10          Q.    So Firelands can tell, based on its  
11   modeling, what time of the day a potential receptor  
12   may be affected by flicker; is that correct?

13          A.    The modeling shows that, correct.

14          Q.    Can you think of any good reason why  
15   Firelands should not be required to simply shut off a  
16   turbine that is causing shadow flicker to be cast on  
17   a nonparticipating landowner's home?

18               MR. SECREST:  Objection, vague.

19               ALJ WILLIAMS:  I want to go ahead and  
20   uphold the objection. Do you want to clarify that,  
21   Attorney Van Kley?

22               MR. VAN KLEY:  I think it's pretty clear.  
23   I am asking if there is any good reason why Firelands  
24   can't shut off its turbines if they're casting shadow  
25   flicker on a nonparticipating neighbor's house.

1                   ALJ WILLIAMS: You can answer if you are  
2                   able to.

3                   THE WITNESS: I'm sorry, could you repeat  
4                   that question?

5                   MR. VAN KLEY: Yeah.

6                   Q. (By Mr. Van Kley) Can you think of any  
7                   good reason why Firelands could not shut off a  
8                   turbine that is casting a shadow flicker on the house  
9                   of a nonparticipating neighbor?

10                  MR. SECREST: Objection, same objection,  
11                  your Honor, vague as to shut off, time period and  
12                  total and Mr. Van Kley's definition of "good reason."

13                  ALJ WILLIAMS: I am going to go ahead and  
14                  uphold the objection. Attorney Van Kley, can you ask  
15                  the question with some more specificity and clarify  
16                  to the extent you're asking for a determination of  
17                  what might be "good reason."

18                  MR. VAN KLEY: I'm sorry, your Honor.  
19                  What was the last part of that?

20                  ALJ WILLIAMS: To specify the nature of  
21                  the shutoff you are contemplating or asking about, as  
22                  well as how you are defining "any good reason."

23                  Q. (By Mr. Van Kley) Well, let me -- let me  
24                  break this down a little bit. Is Firelands -- would  
25                  Firelands be able to shut off a turbine at a time

1 where it would otherwise expect that turbine to cast  
2 shadow flicker on the house of a nonparticipating  
3 neighbor?

4 A. I believe so, yes.

5 Q. Okay. Can you think of any reasons why  
6 it would be infeasible for Firelands to do so at a  
7 time where it would otherwise expect the turbine to  
8 cast that shadow flicker on a nonparticipating  
9 neighbor's house?

10 A. I believe we seek to operate the project  
11 in adherence to the rules and regulations of the  
12 Power Siting Board which state that we must remain  
13 below 30 hours per year at receptors.

14 Q. But my question is whether it's -- it's  
15 infeasible to shut it off at any time or at all times  
16 where it would otherwise be casting shadows on a  
17 nonparticipating landowner's house.

18 MR. SECREST: Object to the extent it  
19 calls for speculation.

20 ALJ WILLIAMS: To the extent you are  
21 aware of how curtailing the rotors when they might  
22 impact any nonparticipating parties of the project  
23 area, I am going to allow you to answer that  
24 question.

25 A. I'm sorry. Could you repeat the

1 question?

2 ALJ WILLIAMS: Could you read it back,  
3 Karen.

4 (Record read.)

5 A. To the extent I'm aware, our operations  
6 team has the ability to curtail turbines.

7 MR. VAN KLEY: Okay. Your Honor, seeing  
8 that it's almost noon and this would be a great  
9 breaking point, I would request --

10 ALJ WILLIAMS: I was going to let you  
11 finish shadow flicker, and I was going to suggest the  
12 same thing, Attorney Van Kley. We are of the same  
13 mindset. My gut here is that had we started at 9:00,  
14 we would probably take lunch around 12:30, so I am  
15 inclined to take maybe a 10-minute break and come  
16 back until 1:30 or so. If you guys want to take an  
17 early lunch, we will take an hour now and come back  
18 and break midafternoon. That's fine as well.

19 You are the one kind of leading the  
20 charge here, Attorney Van Kley. What's your  
21 preference? Do you want to go 10 minutes and come  
22 back, or do you want to break for lunch now?

23 MR. VAN KLEY: I would rather break for  
24 lunch right now because based on the answers to  
25 questions on shadow flicker, I have a little

1 reorganization to do.

2 ALJ WILLIAMS: That's more than fair, so.

3 MR. VAN KLEY: So I would -- I would  
4 prefer to take a lunch break right now. I can tell  
5 you that -- that the cross-examination is going  
6 faster than I expected, which is a rarity in these  
7 cases, but I'm expecting to finish with this witness  
8 probably well before 5:00.

9 ALJ WILLIAMS: Any thoughts to moving  
10 into the next witness today, or do you feel  
11 comfortable just going with Mr. Pedder today and  
12 that would be -- that seems reasonable.

13 MR. VAN KLEY: Yeah. I feel comfortable  
14 with the pace if we finish Mr. Pedder today, I think  
15 we can stay on schedule with the other witnesses.

16 ALJ WILLIAMS: Okay.

17 MR. VAN KLEY: Some of the other  
18 witnesses I'm now expecting may go a little faster  
19 than I projected as well, so I think that if we  
20 finish Mr. Pedder today, we can adjourn for the day  
21 and not jeopardize our schedule.

22 ALJ WILLIAMS: I appreciate that, and I  
23 appreciate the interest of the other parties as well,  
24 so I will invite anyone else to go off mute and  
25 interject, but the Bench is currently taking lunch

1 now from 12:00 to 1:00, coming back on the record at  
2 1 o'clock, and we'll probably build in an afternoon  
3 break sometime in the range of 2:30 or 3:00 depending  
4 on how we are proceeding.

5 Anybody have any objections or need for  
6 clarification of that? Seeing a couple of head  
7 shakes no. I don't see anybody coming off mute to  
8 stand down there, so with that we will go ahead and  
9 take a break now. It's 12 o'clock eastern. We'll  
10 resume at 1 o'clock.

11 We are off the record, Karen. Thank you.

12 (Thereupon, at 11:59 a.m., a lunch recess  
13 was taken.)

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Monday Afternoon Session,  
October 5, 2020.

- - -

ALJ AGRANOFF: Please proceed.

- - -

NATHAN PEDDER

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

CROSS-EXAMINATION (Continued)

By Mr. Van Kley:

Q. All right. Mr. Pedder, we're still  
talking about shadow flicker and I would like to take  
some time to finish up that discussion now. Would  
you please go to Applicant's Exhibit No. 4.

A. What would the title of that be?

Q. That is the Third Supplement to  
Application, filed on July 10, 2019.

ALJ AGRANOFF: Hold on for one second. I  
do not have the third supplement in front of me but I  
will momentarily.

MR. SECREST: Your Honor, I do. May I  
hand it to the witness?

Thank you.

ALJ AGRANOFF: Mr. Van Kley, that was the  
July 10, 2019, filing?

1 MR. VAN KLEY: Yes.

2 ALJ AGRANOFF: Okay.

3 A. Was there a specific portion of the third  
4 supplement?

5 Q. Yeah. You can go to the page -- page 4  
6 which should also be the fourth page of the PDF  
7 document. And you'll see there a paragraph labeled  
8 "Shadow Flicker."

9 ALJ AGRANOFF: Were you looking under  
10 Attachment 1 or?

11 MR. VAN KLEY: No, I don't think so.

12 THE WITNESS: I think it's just the body  
13 of the response.

14 MR. VAN KLEY: Yes.

15 ALJ AGRANOFF: Okay. I got it. Thank  
16 you.

17 MR. VAN KLEY: Sure.

18 Q. (By Mr. Van Kley) Mr. Pedder, are you at  
19 that page?

20 A. I believe so.

21 Q. Okay. And there's one paragraph under  
22 the heading of "Shadow Flicker" here, correct?

23 A. Correct.

24 Q. Yeah. And this is the paragraph that you  
25 referred to earlier in your testimony this morning

1 about an update to the shadow flicker discussion in  
2 the Application stating that no changes were  
3 occurring in the modeling as a result of some -- the  
4 addition of some turbine models, correct?

5 A. Correct. This -- this supplement covered  
6 change of nameplate capacity for the generators on  
7 those turbines but not the turbine dimensions.

8 Q. So what you're saying is that the -- the  
9 models that are referenced in this exhibit are the --  
10 have the same dimensions as models that were  
11 previously subject to the shadow flicker model,  
12 correct?

13 A. Yes. So the fourth supplement covers the  
14 Nordex N149 at the 4.8 megawatt nameplate capacity,  
15 5.5 and 5.7 megawatt nameplate capacities, as well as  
16 the V150 at the 5.6-megawatt nameplate capacity.

17 Those nameplate capacities for those  
18 generators were not in the original application so  
19 that's what this supplement covers but the change in  
20 generator nameplate capacity does not change any of  
21 the physical dimensions of a turbine and so the  
22 shadow flicker model results in the original  
23 application are the same for these turbines.

24 Q. All right. You can set that document  
25 aside. And now go to Applicant's Exhibit No. 5 which

1 is the Revised Fourth Supplement to the Application,  
2 filed on October 4, 2019.

3 ALJ AGRANOFF: One moment, Mr. Van Kley,  
4 while I retrieve that.

5 MR. SECREST: May I hand the witness a  
6 copy?

7 ALJ WILLIAMS: Go ahead. Please feel  
8 free. Thanks.

9 MR. SECREST: Certainly. Thank you.

10 EXAMINER AGRANOFF: Okay. I've got the  
11 binder.

12 Q. (By Mr. Van Kley) All right. Mr. Pedder,  
13 are you at that document?

14 A. Was there a specific document in here you  
15 wanted me to be at?

16 Q. Yes. I would like you to first go to the  
17 fourth page of the document.

18 A. I assume you mean the fourth page of the  
19 PDF, the second page -- the page that says page 2?

20 Q. Actually it's the sixth page of the PDF  
21 document and then it is a table of turbine models.  
22 "Attachment 1" is at the top of the page.

23 A. Okay. Attachment 1, thank you. Yes.

24 Q. So do you see a list of turbine models on  
25 the page you are looking at?

1           A.    I do, yes.

2           Q.    Okay.  And this table shows the  
3   identification of turbine models that were listed in  
4   the original application filed on January 31, 2019;  
5   is that correct?

6           A.    It does, correct.

7           Q.    And then it also shows which turbine  
8   models were identified in the third supplement to the  
9   application on July 10, 2019, correct?

10          A.    Correct.

11          Q.    And those models, the turbine models were  
12   in addition to -- to the Vestas V150 and the Siemens  
13   Gamesa SG 145 that were listed in the original  
14   application, correct?

15          A.    The Nordex N149 4.5-megawatt was also  
16   listed in the original application but so --

17          Q.    That's no longer under consideration in  
18   your third supplement, right?

19          A.    Correct.

20          Q.    Uh-huh.  So at the time of the third  
21   supplement then, you had six turbine models under  
22   consideration, correct?

23          A.    Correct.

24          Q.    And then the table also shows two  
25   additional models being added to those under

1 consideration in the fourth supplement of October 4,  
2 2019, correct?

3 A. Correct.

4 Q. Uh-huh. Now, are the -- are the eight  
5 turbine models listed there, that is all of the  
6 models in the original application, third supplement,  
7 and the fourth supplement, other than the one crossed  
8 out, those eight models are the ones currently under  
9 consideration?

10 A. Yes.

11 Q. All right. And if there is some way  
12 where you can kind of keep your finger in that page  
13 or mark it somehow, we are going to come back to this  
14 page a little later.

15 A. Okay.

16 Q. But I have a few more questions then  
17 about this exhibit which I would like to ask you  
18 about. So now go to the start of the shadow flicker  
19 report that is in Exhibit No. 5. For those of you  
20 using a PDF, it would be the ninety-third page of the  
21 PDF, and let me see --

22 A. It's Attachment 3.

23 Q. It is, yes.

24 ALJ AGRANOFF: And just so that I am  
25 clear, Mr. Van Kley, we're still talking about the

1 Revised Fourth Supplement to the Application?

2 MR. VAN KLEY: Yes, we are, and that's  
3 marked as Applicant Exhibit No. 5.

4 ALJ AGRANOFF: Okay. Thank you.

5 Q. (By Mr. Van Kley) All right. So  
6 referring you to Attachment 3 of Applicant Exhibit  
7 No. 5, that is the first page of -- or that is  
8 another shadow flicker modeling report, correct?

9 A. Correct.

10 Q. And this shadow flicker modeling report  
11 applies to the new -- the two new GE models of  
12 turbine that were added in the fourth supplement; is  
13 that correct?

14 A. Correct.

15 Q. This report does not contain any modeling  
16 results for the turbine models that had previously  
17 been the subject of shadow flicker modeling in the  
18 Application, right?

19 A. Wait a second. Let me confirm that. I  
20 believe that is correct.

21 Q. This -- this modeling report in  
22 Attachment 3 evaluates the shadow flicker from the  
23 two GE turbine models that are on the first page of  
24 Attachment 3, correct?

25 A. I'm sorry. Could you say that again?

1           Q.    Yeah.  Go to page 1 of the report that's  
2           in Attachment 3.  You will see your name at the top  
3           of it and then it's from Lindsey Donahoe and it's  
4           dated September 9, 2019.

5           A.    Yes.

6           Q.    Okay.  You are on that page then?

7           A.    Yep.

8           Q.    Okay.  And then you see two turbine  
9           models listed in Table 1 in that page, correct?

10          A.    Correct.

11          Q.    And this shadow flicker report pertains  
12          to the potential shadow flicker from those two GE  
13          turbine models, correct?

14          A.    Correct.

15          Q.    And the modeling of the shadow flicker  
16          reported in Attachment 3 used the same procedures  
17          that the shadow flicker monitoring in the original  
18          application had used, correct?

19          A.    Same methodology, correct.

20          Q.    Now, go to page 9 of Attachment 3 of  
21          Applicant's Exhibit No. 1.  For those of who you are  
22          looking online, that is PDF page 102.  And do you see  
23          a page there that has a conclusion in it?

24          A.    Yes.

25          Q.    Okay.  The conclusion reads as follows:



1 "In summary, as a result of modeling the proposed 87  
2 turbine locations, WindPRO predicted that 50  
3 non-participating receptors will receive more than  
4 30 hours of shadow flicker per year. The cumulative  
5 shadow flicker analysis predicted that 16  
6 non-participating receptors would experience over  
7 30 hours per year of shadow flicker due to cumulative  
8 effects of the Project and the proposed Republic Wind  
9 Farm." Do you see that language?

10 A. Yep.

11 Q. Okay. So at least with respect to the  
12 two General Electric turbine models being evaluated  
13 in this report, those models would expose -- both  
14 turbine models would expose 50 nonparticipating  
15 receptors to potentially more than 30 hours of shadow  
16 flicker per year; is that correct?

17 A. The model shows modeling for worst-case  
18 scenario and so under a worst case scenario that is  
19 true including all of the conservative assumptions  
20 included in this report, but the Stipulation includes  
21 a condition regarding ensuring that all  
22 nonparticipating receptors remain below 30 hours per  
23 year. And so no homes would go beyond that 30 hours  
24 per year limit.

25 Q. Uh-huh. At this point in time, Firelands

1 has not produced a shadow flicker model that shows  
2 that no nonparticipating receptor would be exposed to  
3 more than -- more than 30 hours of shadow flicker per  
4 year, correct?

5 A. Sorry. Could you repeat that question?  
6 I think I missed a little bit in the middle there.

7 Q. Sure. At this -- at this point in time,  
8 Firelands has not produced a shadow flicker modeling  
9 report showing that there will be no nonparticipating  
10 receptors exposed to 30 hours or more of shadow  
11 flicker per year, correct?

12 A. That will be included as part of the  
13 Stipulation as part of the pre-construction shadow  
14 flicker model that will be shared with OPSB Staff.

15 Q. Back to my question. It is correct that,  
16 at this point in time, Firelands has not done that.

17 A. Yes.

18 Q. Going back to the conclusion on page 9 of  
19 Attachment 3 of Applicant's Exhibit No. 5, the second  
20 sentence that I read to you states that it is  
21 "predicted that 16 non-participating receptors would  
22 experience over 30 hours per year of shadow flicker  
23 due to cumulative effects of the Project and the  
24 proposed Republic Wind Farm."

25 My question to you here is, whether the

1 16 nonparticipating receptors referenced in this  
2 sentence are different receptors than the 50  
3 predicted to receive more than 30 hours of shadow  
4 flicker per year from the Emerson Creek wind project  
5 itself?

6 A. I believe -- my -- I would have to go  
7 through each page of the table to be sure but my  
8 understanding of that sentence would be that there  
9 are 50 specifically because of the Emerson Creek wind  
10 modeling and then there would be an additional 16  
11 that would be due to the cumulative effects.

12 Q. Table 3 of Attachment 3, which starts on  
13 page 8, that is a table that provides the cumulative  
14 shadow flickers for the two wind projects we've been  
15 discussing, right?

16 A. Correct.

17 Q. And Table 2 is the table that provides  
18 the shadow flicker results for the general flicker  
19 coming from only the Emerson Creek wind project,  
20 right?

21 A. I'm sorry. Could you repeat that  
22 question as to what Table 2 is?

23 Q. Yeah. Table 2 contains the results of  
24 the shadow flicker modeling limited to the shadow  
25 flicker coming from Emerson Creek wind project

1       itself.

2           A.    It's not a full table of those results.  
3       It is a table that is limited to just receptors  
4       modeled for greater than 30 hours per year.  There  
5       would be an additional 1,577 receptors that would not  
6       be included in this.

7           Q.    Okay.  Very good.  So the question I have  
8       here then is you see the Receptor ID numbers used in  
9       both Tables 2 and 3?

10          A.    Yes.

11          Q.    Were the Receptor ID numbers the same  
12       regardless of the analysis, that is, if we found  
13       Receptor ID No. 319 in Table 2 and then we found it  
14       in Table 3, would the same Receptor ID number, those  
15       would be the same receptor?

16          A.    Between Table 2 and Table 3 in Attachment  
17       3?

18          Q.    Yes, uh-huh.

19          A.    Yes.

20          Q.    Okay.  So we would be able to cross --  
21       cross-reference the Receptor ID numbers in Table 2  
22       and Table 3 to confirm whether or not any of the 16  
23       receptors found to have a cumulative potential  
24       exposure to more than 30 from the two projects  
25       overlaps with or is different than those receptors

1 found in Table 2, right?

2 A. Yes. You can also determine that just by  
3 looking at Table 3 since it does include the Emerson  
4 Creek-only results. So you can see there are  
5 Receptor ID 275 and Receptor ID 923 are the two  
6 Receptor IDs that would be in both Table 2 and  
7 Table 3.

8 MR. VAN KLEY: Could we go off the record  
9 for just a second?

10 (Discussion off the record.)

11 ALJ AGRANOFF: And let's go back on the  
12 record at this time.

13 Q. (By Mr. Van Kley) All right. We are  
14 finished with our discussion of shadow flicker so you  
15 can put those documents aside for now.

16 All right. Now, would you go please to  
17 Applicant's Exhibit 82 which would be the turbine  
18 safety manuals.

19 A. Yes. I think I may have that in front of  
20 me but I suppose we'll find out.

21 Q. All right. Well, let's figure it out.  
22 It should have, on the first page, a cover letter of  
23 September 24, 2020, from Dickinson to the Board. Is  
24 that the document you are looking at?

25 A. No. I just have the two manuals, I

1 believe, that were included as exhibits that you have  
2 for cross. So if you have a different document --  
3 one second.

4 MR. SECREST: Mr. Van Kley, I think what  
5 Mr. Pedder has is the actual manuals, not the filing  
6 on the docket.

7 MR. VAN KLEY: Okay. I have -- I had  
8 marked one of the manuals as LR Exhibit 4 and the  
9 other one is my LR Exhibit 5 but those are duplicates  
10 of documents included in your Applicant's Exhibit 82.  
11 And since that document 82 has already been  
12 introduced, I thought I would use that.

13 Q. (By Mr. Van Kley) Do you have that  
14 document in front of you now?

15 A. Mine is marked as LR Exhibit 4 and 5 but  
16 it sounds like that's the exact same, so yes.

17 Q. Okay. All right. So let's go to --

18 ALJ AGRANOFF: Mr. Van Kley, what was the  
19 date of filing for Applicant Exhibit 82?

20 MR. VAN KLEY: I don't know and it's not  
21 written on my list of exhibits.

22 MR. SECREST: Your Honor, it was  
23 September 24, 2020.

24 ALJ AGRANOFF: Thank you.

25 MR. SECREST: You're welcome.

1 ALJ AGRANOFF: You can go ahead,  
2 Mr. Van Kley.

3 Q. (By Mr. Van Kley) So let's go to the  
4 Nordex safety manual. And for those who are looking  
5 at the Exhibit 82, the page I am going to go to is  
6 PDF page 153.

7 For Mr. Pedder, since you are using the  
8 paper copy, the Nordex safety manual should be LR  
9 Exhibit 4 on the document you are looking at and go  
10 to page 47 of that manual.

11 A. Where it says page 47 at the bottom right  
12 corner?

13 Q. Page 47 of 62 in the bottom right-hand  
14 corner.

15 A. Okay.

16 Q. All right. I would like you to look at  
17 the first paragraph that has the word "Danger" on the  
18 top.

19 A. Okay.

20 Q. And let me read to you what is stated in  
21 this paragraph. It states: "Danger.  
22 Life-threatening injuries due to falling turbine  
23 parts. In case of a fire in the tower, in the  
24 nacelle or on the rotor, parts may fall off the WT.  
25 Keep a safety distance of 500 meters around the WT.

1 Do not enter the WT." Do you see that language?

2 A. I do.

3 Q. Okay. And "WT," as used in this  
4 paragraph, refers to wind turbine, correct?

5 A. That would be my understanding.

6 Q. Uh-huh. And the -- the emergency that is  
7 being referred to in this language concerns the --  
8 concerns a fire in the wind turbine, correct?

9 A. Yes.

10 Q. And the -- the warning in this paragraph  
11 is that in case of a fire, parts may fall off of the  
12 wind turbine?

13 MR. SECREST: Objection. The document  
14 speaks for itself.

15 ALJ AGRANOFF: Mr. Van Kley, if you could  
16 give a little bit more specificity as to what it is  
17 that you are asking the witness to opine on.

18 Q. (By Mr. Van Kley) So the purpose of this  
19 warning is to protect people from being hit by parts  
20 falling off of the wind turbine, correct?

21 MR. SECREST: Objection, speculation.

22 MR. VAN KLEY: I don't think it's  
23 speculation. I think it's rather clear from the  
24 language.

25 ALJ AGRANOFF: Why don't you ask the



1 witness what his understanding of the specific  
2 language is intended to represent.

3 MR. VAN KLEY: All right.

4 Q. (By Mr. Van Kley) Mr. Pedder, what's your  
5 understanding what this language is meant to  
6 represent?

7 A. One second. I just want to make sure I  
8 reread it again.

9 My understanding this is meant to  
10 represent general instructions and information for  
11 those operating in or potentially near the wind  
12 turbines.

13 Q. Would you go -- keep your finger here,  
14 please, in Applicant's Exhibit 82, but go -- also go  
15 to your testimony which is Applicant's Exhibit 31.

16 A. Give me one second. Okay.

17 Q. Go to page 9 of your testimony in  
18 Applicant's Exhibit 31. And I would like to direct  
19 your attention to the first paragraph on the top of  
20 that page. In there you refer to a Nordex N149  
21 safety manual. Do you see that?

22 A. Yes, I believe so.

23 Q. Is that the same safety manual that we  
24 were talking about where we were looking at page 47  
25 of 82?

1           A.    It appears so.

2           Q.    Okay.  So in your testimony you talk  
3 about guidance to ensure that workers are not  
4 standing near or within a turbine during a  
5 thunderstorm.  And then you have a parenthetical  
6 saying "see Attachment NP-2."  So could we go to NP-2  
7 which I believe would be an attachment to your  
8 testimony?

9           A.    Yep.  I believe it's right after my  
10 résumé.

11          Q.    Okay.  Now, is -- are the pages in NP-2  
12 parts of the safety manual that is in Applicant's  
13 Exhibit 82 that we've been discussing?

14          A.    I'm sorry.  Can you repeat your question?

15          Q.    Yes.  In your Exhibit NP-2, you have a  
16 two-page letter from Nordex, correct?

17          A.    Correct.

18          Q.    Is this two-page letter contained in the  
19 Nordex safety manual that we've been discussing?

20          A.    It is not.

21          Q.    All right.  Can you identify the language  
22 in the safety manual, the Nordex safety manual, that  
23 is being discussed by the Nordex letter that is  
24 marked as Exhibit NP-2?

25          A.    I'm sorry.  Do you want me to read

1 through the whole Nordex safety manual to identify  
2 the appropriate language?

3 Q. Well, I was hoping that you would know  
4 where to find it. If you need to look through it, we  
5 can give you a few moments, if that's enough time.  
6 If it takes too long, then we'll move on.

7 MR. SECREST: I am happy to assist the  
8 witness, with your permission, your Honor and  
9 Mr. Van Kley.

10 MR. VAN KLEY: That would be fine with  
11 me, Mr. Secrest.

12 EXAMINER AGRANOFF: Yes. Go ahead.

13 MR. SECREST: Thank you. Page 46 of our  
14 4 or Applicant's 82.

15 THE WITNESS: Right where I already was.  
16 Thank you. Sorry about the delay.

17 Q. (By Mr. Van Kley) All right. Could you  
18 identify the specific language on that page that is  
19 referenced in the Nordex letter identified as NP-2?

20 A. Give me one moment, please.

21 ALJ AGRANOFF: Again we are looking at  
22 page 46 or page 146?

23 MR. VAN KLEY: It would be page 46 of 62  
24 in the Nordex safety manual.

25 ALJ AGRANOFF: Okay.

1 MR. VAN KLEY: If you are looking at the  
2 PDF, it would be PDF page 152.

3 ALJ AGRANOFF: Thank you. That's what I  
4 was looking for.

5 A. I believe it would be referring to the  
6 language under section 9.2.

7 Q. Okay.

8 A. At least the first part, yes.

9 Q. To your knowledge, how many wind-powered  
10 facilities does Apex Clean Energy own?

11 A. Own?

12 Q. Yes. Own and operate -- let me rephrase  
13 the question.

14 How many wind-powered facilities does  
15 Apex Clean Energy operate?

16 A. I believe we operate around 10 wind --  
17 wind farms at this time.

18 Q. Okay. Are you aware of any incident at  
19 any of these wind farms in which a turbine blade has  
20 been detached from the turbine tower?

21 A. I am not aware.

22 Q. Are you aware of any incidents at  
23 wind-powered facilities in Ohio where a blade has  
24 been detached from a wind turbine tower?

25 A. A whole blade, I do not believe so.

1           Q.    Are you aware of any incident where part  
2   of a blade has been detached?

3           A.    Yes.

4           Q.    Which incident or incidents are you aware  
5   of?

6           A.    I am not sure the specific project that  
7   occurred at.

8           Q.    Have you done any evaluation to determine  
9   how far a piece of a wind turbine blade can travel  
10   upon detachment from a wind turbine tower?

11          A.    I would -- may I refer back to the  
12   Application narrative? I believe there may be  
13   something in there.

14          Q.    Yes, you may.

15          A.    One second. I'll try not to lose that  
16   page in the Nordex manual.

17                I do not believe a specific analysis for  
18   blade shear distance was conducted for this project,  
19   but understand that the generally-accepted industry  
20   distance for that would be 1.2 times tip height.

21          Q.    What's the source of that standard?

22          A.    I've worked with folks that have done  
23   blade shear analysis, and I believe that's the number  
24   that's been used primarily.

25          Q.    All right. Are you aware of any

1 instances at any wind-powered facilities at which  
2 blades or pieces of blades have traveled as far as  
3 1,640 feet away from the tower?

4 A. I'm not aware.

5 Q. Let's go back to Applicant Exhibit 82,  
6 and for Mr. Pedder, the copy you are looking at would  
7 be LR Exhibit 5. It would be the General Electric  
8 safety manual. For those of you looking at the PDF,  
9 that manual starts on PDF page 171 of Applicant's  
10 Exhibit 82.

11 A. I have LR5 in front of me.

12 Q. Okay. Go to page 42 of that manual.

13 A. Uh-huh.

14 Q. And the top of that page should say  
15 Section 7.4, Special Dangers - Icing.

16 A. Yes.

17 Q. Okay?

18 ALJ AGRANOFF: Mr. Van Kley, what page is  
19 that in the PDF?

20 MR. VAN KLEY: Let's see.

21 ALJ WILLIAMS: 212.

22 ALJ AGRANOFF: Thank you, Judge Williams.

23 Q. (By Mr. Van Kley) All right. Referring  
24 you to the second paragraph on that page, there is a  
25 sentence there that states as follows: "If people or

1 objects near the wind turbine generator system  
2 (within the distance R2) could be endangered by  
3 pieces of ice thrown off during operation, GE  
4 Renewable Energy always recommends the use of ice  
5 detection." Do you see that sentence?

6 A. Yes.

7 Q. Does R2 refer to the footnote at the  
8 bottom of this page which is footnote 2 and then the  
9 letter R?

10 A. Yes. I believe that 2 is supposed to be  
11 superscripted.

12 Q. So the distance referred to in the second  
13 paragraph on that page is calculated by using the  
14 formula in footnote 2 on the bottom of that page,  
15 correct?

16 A. Yes.

17 Q. And that formula is 1.5 times hub height  
18 plus rotor diameter, correct?

19 A. Yes.

20 Q. Now, keep your finger there and go back  
21 to that list of turbine models that we earlier  
22 discussed in the fourth pair -- the fourth supplement  
23 of the Application that is marked as Applicant  
24 Exhibit 5.

25 A. Yep.

1           Q.    And go to the fourth page of the PDF  
2    which is that table in Attachment 1.

3           A.    Yes.

4           Q.    Could you tell me which of these turbine  
5    models has the highest combination -- or the largest  
6    combination of hub height and rotor diameter?

7           A.    That would be the Nordex N149 at  
8    125-meter hub height.

9           Q.    Okay. I see -- I see there are four --  
10   or three Vestas -- or three Nordex 149s here. So  
11   which one of these models are you referring to, the  
12   4.8 megawatts or 5.5 or 5.7?

13          A.    The nameplate capacity would not have any  
14   impact on the physical dimensions and so the physical  
15   dimensions of all of the Nordex N149 turbines are the  
16   same regardless of generator capacity so it would be  
17   referring to all three of those turbine models when  
18   they are at their 125-meter hub height.

19          Q.    And what is the rotor diameter for that  
20   model?

21          A.    149 meters.

22          Q.    And the 125 in height, that was given in  
23   meters as well?

24          A.    Correct. I can approximate it in feet if  
25   you would prefer.



1 MR. SECREST: I would not.

2 Q. That's quite okay.

3 Do you know what the minimum setback  
4 observed by Firelands between wind turbines and  
5 public roads other than state or federal highways  
6 use?

7 A. It would be -- I believe the -- that  
8 setback distance as laid out by the regulations in  
9 Ohio is, I believe, 1.1 times tip height.

10 Q. Okay. Would you go to Applicant  
11 Exhibit 1 which is the narrative of the Application.  
12 And go to page 192 of that document.

13 A. 192?

14 Q. Yes.

15 ALJ AGRANOFF: One moment, Mr. Van Kley.

16 A. I'm there.

17 ALJ AGRANOFF: Okay. Please proceed.

18 Q. All right. Look at the bottom of  
19 page 192 of Applicant's Exhibit No. 1. At the bottom  
20 of the page you'll see a bullet point.

21 A. Uh-huh.

22 Q. And it says there, "The maximum total  
23 height of the tallest turbine model under  
24 consideration for the Facility is 655 feet, for the  
25 Nordex N149 with a 125-meter hub height. Should this

1 model be selected, the turbine setback to public  
2 roads and electric/gas transmission and distribution  
3 lines for the proposed Facility would be 720.5 feet  
4 (655 feet times 1.1)." Do you see that?

5 A. Yes.

6 Q. So if you took -- if you used the formula  
7 in footnote 2, on footnote 2 on page 42 of the GE  
8 Renewable Energy safety manual, would the results of  
9 that formula for the N149, with a 125-meter hub  
10 height, exceed 720.5?

11 A. Hub height plus rotor diameter is greater  
12 than tip height and 1.5 is greater than 1.1, so yes.

13 Q. On page 42 of the GE safety manual, I  
14 would like to refer you to the third paragraph from  
15 the bottom which starts with the word "However." And  
16 that sentence reads as follows: "However, ice may  
17 form on the rotor blades considerably more quickly  
18 than the design of the ice detection considers. As a  
19 result, there is a residual risk for the reliable  
20 detection of ice build-up on the rotor blades." Do  
21 you see that?

22 A. Yes.

23 Q. Now, what's being referred to here is  
24 ice-detection equipment that can be installed on a  
25 wind turbine, correct?

1           A.    Yes.

2           Q.    The next paragraph states "The ice  
3           detection must be set relatively sensitively, in  
4           order to ensure that the time from when ice starts to  
5           build up on the rotor blades until the detection  
6           sends a message about the build-up of ice is as short  
7           as possible." Do you see that?

8           A.    Yes.

9           Q.    In your experience, can ice-detection  
10          equipment be set at different settings, some which  
11          are more sensitive to the buildup of ice than others?

12          A.    I do not have experience with that, so  
13          I'm not sure.

14          Q.    Let's go back to your testimony,  
15          Applicant's Exhibit 31, page 9.

16          A.    Am I still going to need the GE safety  
17          manual?

18          Q.    No. You can put that to the side.

19          A.    Thank you.

20                You said page 9 of the testimony?

21          Q.    Yes.

22          A.    Okay.

23          Q.    All right. I would like you to take a  
24          look at the second bullet on that page starting with  
25          the words "With respect to grid reliability."

1           A.    Yes.

2           Q.    What experience do you personally have  
3 with the electric grid?

4           A.    Professional, you know, through  
5 development of wind projects as well as a brief time  
6 at ISO New England.

7           Q.    A brief time at what again?

8           A.    The Independent System Operator in New  
9 England.

10          Q.    And what is that?

11          A.    It's the nonprofit entity that is the  
12 renewable -- or the regional transmission operator  
13 for Maine, Massachusetts -- the states up there.  
14 Rather than list them and strain my memory.

15          Q.    Is that the entity that operates the grid  
16 there?

17          A.    Yes.

18          Q.    Okay.  Have you ever operated an energy  
19 production facility?

20          A.    I have not, no.

21          Q.    Now, wind energy -- a wind project  
22 produces electricity only when the wind blows,  
23 correct?

24          A.    During specific wind speeds, correct.

25          Q.    Uh-huh.  The wind has to blow at a

1 fast-enough speed in order for the turbine to produce  
2 electricity?

3 A. Yes.

4 Q. Uh-huh. And if the wind is blowing too  
5 fast, then it can't produce electricity either,  
6 right?

7 A. Correct.

8 Q. Can the electricity that is produced by a  
9 wind turbine be stored prior to usage by the electric  
10 grid?

11 MR. SECREST: Objection as to relevance.

12 MR. VAN KLEY: Well, it's relevant to his  
13 claim that this system is not inconsistent with grid  
14 reliability.

15 MR. SECREST: And PJM made that  
16 determination, as did the Staff, in determining the  
17 basis for need was not at issue.

18 MR. VAN KLEY: We are not talking about  
19 need. We are talking about grid reliability. We are  
20 talking about -- about negative impacts on the grid.  
21 And that's -- that's something that's discussed in  
22 the witness's testimony where he is sponsoring the  
23 system impact study by PJM that's included in the  
24 Application.

25 MR. SECREST: That's exactly true. He is

1 sponsoring the study and that's what is referred to  
2 when his testimony addresses grid reliability that  
3 PJM made its determination.

4 MR. VAN KLEY: Yeah. And I have a right  
5 to -- to ask him questions about that report that he  
6 is sponsoring.

7 MR. SECREST: You are on mute, your  
8 Honor.

9 MR. VAN KLEY: I think you are still on  
10 mute, your Honor.

11 MR. SECREST: Your icon says you came off  
12 mute, your Honor. However, we cannot hear you.

13 ALJ WILLIAMS: All right. You guys can  
14 hear me?

15 MR. SECREST: Yes, your Honor.

16 ALJ WILLIAMS: We are going to allow some  
17 of this line of questioning. So this is certainly  
18 information that appears to be firsthand knowledge of  
19 Witness Pedder so we are going to allow some of this  
20 questioning. Attorney Secrest, if it gets more out  
21 of bounds, you are welcome to continue stating your  
22 objection. We will consider a ruling at that time.  
23 Please proceed.

24 MR. SECREST: Thank you, your Honor.

25 MR. VAN KLEY: Could we have the last

1 question read back for the witness, please.

2 (Record read.)

3 A. It can.

4 Q. What does it take -- what device can be  
5 used to store that electricity?

6 A. There are a variety of electricity  
7 storage generation types.

8 Q. Such as batteries?

9 A. Batteries would be one of those, correct.

10 Q. Okay. Does Firelands have included in  
11 its design, electricity storage devices such as  
12 batteries or other devices?

13 A. Not at this time.

14 Q. How fast does the wind have to blow for  
15 Emerson Creek wind project to produce electricity?

16 A. 3 meters per second. I believe that's  
17 actually on that table of turbines in supplement 4.  
18 I believe it's 3 meters per second which is  
19 approximately 7 miles per hour.

20 Q. Do you know what the average wind speed  
21 for the project area is?

22 A. Not precisely, no.

23 Q. Do you know what percentage of the time  
24 that Emerson Creek wind project is expected to  
25 produce electricity?

1           A.     I do not off the top of my head, no.

2           MR. VAN KLEY:   All right.   If you could  
3     give me about 5 minutes to check my notes to make  
4     sure I've asked everything, then I think we can wrap  
5     this up.

6           ALJ WILLIAMS:   Sure.   Why don't we go --  
7     why don't we double that for you.   Why don't we take  
8     10, have enough time to walk away and take care of  
9     business.   We will reconvene at 2:15.

10          All right.   Thank you.   We are off the  
11     record.

12          (Recess taken.)

13          ALJ AGRANOFF:   Mr. Van Kley, can you hear  
14     me?

15          MR. VAN KLEY:   Yes, I can.

16          ALJ AGRANOFF:   Okay.   At this point in  
17     time, are you ready to continue with whatever  
18     remaining questions you might have?

19          MR. VAN KLEY:   All right.   Yes, I do have  
20     additional questions.

21          Q.     (By Mr. Van Kley) Mr. Pedder, could you  
22     go back to your testimony marked as Applicant's  
23     Exhibit 31 and go to page 10, please.

24          A.     Okay.

25          Q.     Go to the second-to-the-last bullet point



1 on that page.

2 A. Yes.

3 Q. It discusses land use plans. And here  
4 you've stated that the proposed project adheres to  
5 the guidelines laid out in these plans. Do you see  
6 that?

7 A. Yes.

8 Q. Is there anything in the plans of the  
9 local governments that have jurisdiction over the  
10 project area pertaining to wind turbines  
11 specifically?

12 A. Not that I'm aware of.

13 Q. Let's go to page 11 of your testimony.

14 A. Okay.

15 Q. Second-to-the-last bullet point.

16 A. Okay.

17 Q. In the second sentence of that bullet  
18 point it states that Emerson Creek Wind Farm will  
19 likely utilize parts and components within the  
20 turbines and in its associated facility that will be  
21 manufactured in Ohio. Do you see that?

22 A. Yes.

23 Q. Has Firelands entered into any contracts  
24 with the Ohio manufacturers for individual parts and  
25 components?

1           A.    Not at this time.  Not that I am aware  
2   of.

3           Q.    Uh-huh.  Based on cost, what's the  
4   approximate percentage of turbine components in parts  
5   that you expect to be manufactured in Ohio for this  
6   facility?

7           A.    I am -- I would hesitate to speculate.

8           Q.    Have you been involved in the  
9   construction of any other wind projects for Apex?

10          A.    I have not been involved in construction,  
11   no.

12          Q.    Have you been involved in the procurement  
13   process for any other Apex wind projects?

14          A.    I have not.

15          Q.    With respect to other Apex wind projects  
16   that have been constructed, do you know where the  
17   turbine blades for those projects have been  
18   manufactured?

19          A.    Are you asking for a specific project?

20          Q.    No.  Just in general for all of your  
21   projects.

22          A.    No, not specifically.

23          Q.    Do you know generally whether those  
24   blades have been produced by manufacturers in the  
25   United States as opposed to other countries?

1           A.    My understanding is that blades are  
2           primarily manufactured here in the United States  
3           typically, as local to the project as possible, due  
4           to the constraints in transportation of those blades.

5           Q.    What about the components of the wind  
6           turbine tower, are those generally available in the  
7           United States?

8           A.    I believe tower components are also  
9           primarily manufactured stateside.  If we're talking  
10          specifically the tower itself.

11          Q.    Are there some components of the wind  
12          turbines that are not available in the United States?

13          A.    Not available?

14          Q.    Yes.

15          A.    I'm not aware of all of the manufacturing  
16          capabilities that exist in the United States.

17          Q.    Go to page -- page 13 of your testimony.

18          A.    Okay.

19          Q.    I would like you to look at the sentence  
20          that starts on page 7 and goes through line 9.

21          A.    Okay.

22          Q.    It states in that sentence that the  
23          project will create 305 jobs to construct and  
24          subsequently to operate and maintain the wind farm  
25          with associated annual earnings by those employees of

1 19.8 million. Do you see that?

2 A. Yes.

3 Q. My question is, of that 19.8 million, how  
4 much of that -- of those earnings are earned by  
5 employees who operate the wind farm?

6 A. I believe that is a figure -- a number  
7 that would be -- that is included in the  
8 socioeconomic report and Witness Erica Tauzer will be  
9 able to provide the specifics on what that exact  
10 figure is.

11 Q. Do you know what the expected salaries of  
12 the persons who are operating -- who are going to  
13 operate this facility would be?

14 A. I do not know the specific salaries. I  
15 believe that's also estimated in the socioeconomic  
16 report.

17 Q. Go to the last paragraph on page 13 of  
18 your direct testimony marked as Applicant's  
19 Exhibit 31.

20 A. The last paragraph.

21 Q. The last paragraph, I would like to refer  
22 you to the sentence that starts at line 25, which  
23 states "The Project facilitates economic health and  
24 growth by expanding the local tax and employment base  
25 while avoiding impacts to natural resources." Do you

1 see that sentence?

2 A. Yes.

3 Q. Do you regard a project that kills eagles  
4 as avoiding impacts to natural resources?

5 MR. SECREST: Objection, argumentative  
6 and speculative.

7 MR. VAN KLEY: It's certainly not  
8 speculative and it's factual. In the Application it  
9 states that eagles will likely be killed.

10 ALJ AGRANOFF: I'll allow the question if  
11 the witness has knowledge.

12 A. I'm sorry, Mr. Van Kley. Can you repeat  
13 that question?

14 Q. Yeah. Do you regard a project that kills  
15 eagles as a project that avoids impacts to natural  
16 resources?

17 A. I believe the impacts to wildlife will be  
18 covered by other witnesses but my understanding and  
19 my belief is that this project has a minimum adverse  
20 environmental impact.

21 Q. Go back to the question that I asked. If  
22 the project kills eagles, does it avoid impacts to  
23 natural resources?

24 MR. SECREST: Again, objection,  
25 speculative.

1 ALJ AGRANOFF: I'll allow the question.

2 A. I'm sorry, can you repeat the question?

3 Q. Yeah. If the project kills eagles, does  
4 it avoid impacts to natural resources?

5 A. I'm unsure as to whether or not it would,  
6 so I'm not sure how to best answer your question.

7 Q. Well, my question is straightforward.  
8 If -- if the project kills eagles, does it avoid all  
9 impacts to natural resources?

10 A. So it -- assuming in that hypothetical  
11 scenario?

12 Q. Yes.

13 A. I believe it would still have a minimum  
14 adverse environmental impact as long as it is  
15 approved and permitted appropriately by U.S. Fish and  
16 Wildlife Services and ODNR.

17 Q. So you're stating that you believe the  
18 project would minimize the impact to natural  
19 resources, not avoid impacts all together; is that  
20 correct?

21 MR. SECREST: Objection, asked and  
22 answered, relevance.

23 MR. VAN KLEY: I'm just going right back  
24 to his statement in his testimony where he says this  
25 project will avoid impacts to natural resources. I'm

1 testing the credibility of that statement.

2 ALJ AGRANOFF: If the witness can  
3 reconcile the statement in your testimony with the  
4 potential harm to eagles.

5 A. As far as potential harm to eagles, I  
6 believe that would be covered by a later witness.  
7 I'm not trying to be difficult here.

8 Q. (By Mr. Van Kley) Well, let's try this  
9 with a different natural resource. Let's try it with  
10 birds. Do you expect that this project will kill at  
11 least one bird?

12 A. I would -- I'm not sure the anticipated  
13 impacts on birds. I would defer that to, I believe,  
14 Witness Rhett Good.

15 Q. Uh-huh. Well, based on your -- your  
16 familiarity with the information in your own  
17 application, isn't it true that it is anticipated  
18 that the project will kill at least some birds?

19 A. I'm sorry. Could you repeat that  
20 question?

21 Q. Yes. Could we have the question reread.  
22 (Record read.)

23 A. I'm not aware of the specifics.

24 Q. So does that mean you don't know the  
25 answer to my question about whether the project is

1 expected to kill at least some birds?

2 A. If you're referring to the Application,  
3 in a study or correspondence therein, I would want to  
4 be able to look at that to know exactly what we're --  
5 what we're discussing here.

6 Q. So based on the conversation that you and  
7 I have just had, do you still hold to your statement  
8 in your testimony that the project will avoid impacts  
9 to natural resources?

10 MR. SECREST: Objection, argumentative.

11 ALJ WILLIAMS: I will allow a little bit  
12 of latitude, but I think the question is aimed at --  
13 the testimony that's been prefiled talks about  
14 avoiding impacts to natural resources, and it's the  
15 testimony -- whether there is a complete avoidance or  
16 is there some limitation regarding the avoidance of  
17 the impact on natural resources. So I think that's  
18 the question and we're going to allow the witness to  
19 answer the question.

20 A. I think -- thank you for that  
21 clarification. I think, you know, for wetlands, for  
22 example, I believe we have the potential for like a  
23 tenth of an acre of impacts and so that is not a  
24 complete avoidance. So I suppose perhaps a more  
25 accurate way to state this would have been that the



1 project facilitates economic health and growth by  
2 expanding the local tax and employment base while  
3 maintaining a minimum adverse environment --  
4 environmental impact to natural resources.

5 MR. VAN KLEY: Okay. I have no further  
6 questions at this time.

7 ALJ AGRANOFF: Thank you.

8 Before we get into redirect, is there  
9 anything from other counsel that they would like to  
10 raise?

11 MR. MARGARD: Actually, your Honor, Staff  
12 has a couple of clarifying questions, if I might.

13 ALJ AGRANOFF: It would have to be very  
14 limited in scope, please.

15 MR. MARGARD: Oh, absolutely, your Honor.  
16 Thank you.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Margard:

20 Q. Mr. Pedder, let me ask you to turn to  
21 page 9 of your testimony, please.

22 A. Okay. I'm there.

23 Q. You were asked some questions, were you  
24 not, about the setbacks in the first paragraph on  
25 that page, correct?

1           A.    Yes.

2           Q.    Specifically you were talking about  
3 guidance for workers and distance not intended as a  
4 setback distance. Does the Company distinguish  
5 between temporary and permanent setbacks?

6           A.    As far as the term "setback," no -- I  
7 don't believe we would delineate. I believe  
8 "setback" would refer specifically to permanent  
9 setbacks as far as where a turbine is allowed to be  
10 constructed.

11          Q.    And these other distances that you are  
12 referring to, the safety distance then would be  
13 temporary and circumstantial in nature; is that your  
14 understanding?

15          A.    Those are temporary guidance, yes.

16          Q.    And you indicate that you believe that  
17 that's what the manual is intended to imply. What's  
18 the basis for your understanding of the manual's  
19 intent?

20          A.    Attachment NP-2 includes Nordex  
21 stating -- actually let me flip to that. For  
22 everyone's understanding, I'm -- I flipped over to  
23 Attachment NP-2, in the second paragraph the -- it  
24 would be "We have become aware that there may be some  
25 misunderstanding around the safety guidance published

1 in our N149 manual regarding lightning. The manual  
2 is intended to protect the safety of...turbine  
3 mechanics and technicians by advising personnel not  
4 to work on turbines...."

5 I believe also then on the first  
6 paragraph of the second page it states that "We have  
7 become aware that Nordex work instructions regarding  
8 emergency operating conditions are being cited by  
9 opponents of wind energy projects in Ohio as they  
10 advocate for additional setback regulations.  
11 Nordex's safety manuals should not be misinterpreted  
12 as guidance for setback distances for wind turbines  
13 from homes, roads, and property lines or otherwise.  
14 The manual referenced does not specify any emergency  
15 clearance area for siting distance from wind  
16 turbines." Did that answer your question?

17 ALJ WILLIAMS: Would you reorient me as  
18 to where NP-2 is? I'm sorry.

19 THE WITNESS: Oh, I'm sorry. I believe  
20 this is Applicant Exhibit 31. It's my testimony. It  
21 would be the attachment right after my résumé. So my  
22 testimony runs for 21 pages, so it would be about  
23 three, four pages after that, I believe.

24 ALJ WILLIAMS: Got it. Thank you.

25 THE WITNESS: Yep. So the lines I

1 referenced there, your Honor, were the paragraph on  
2 the first page that began with "We have become aware"  
3 and then also the paragraph on the second page that  
4 also begins with "We have become aware."

5 ALJ WILLIAMS: PDF 26 and 27. Got it.  
6 Thank you.

7 Q. (By Mr. Margard) Was this submitted, do  
8 you know, as a result of conversations that the  
9 Company had with Nordex?

10 A. Yes. Otherwise I don't believe Nordex  
11 would have been aware that this misinterpretation was  
12 happening.

13 Q. And is this consistent with your general  
14 understanding of safety manuals for turbine  
15 manufacturers?

16 A. Yes.

17 MR. MARGARD: That's all I have. Thank  
18 you, your Honor.

19 ALJ AGRANOFF: Thank you.

20 Mr. Secrest.

21 MR. SECREST: Thank you, your Honor. May  
22 I have about 5 minutes to confer with counsel?

23 ALJ AGRANOFF: Certainly.

24 MR. SECREST: Thank you.

25 ALJ AGRANOFF: Why don't we -- we'll give

1       you -- let's give you 10 minutes just so you can --

2               MR. SECREST: I'll take it.

3               ALJ AGRANOFF: Okay. Come back at 2:50.

4               Let's go off the record. Thank you.

5               (Recess taken.)

6               ALJ AGRANOFF: Let's go back on the  
7 record at this time, please.

8               And, Mr. Secrest, if you would care to  
9 proceed with your redirect.

10              MR. SECREST: Thank you, your Honor.  
11 Appreciate it.

12              ALJ AGRANOFF: No problem.

13                               - - -

14                               REDIRECT EXAMINATION

15       By Mr. Secrest:

16              Q.    Mr. Pedder, on cross-examination you were  
17 asked questions related to ice throw and specifically  
18 portions of Exhibit 1, the Application narrative  
19 addressing ice throw. Do you recall those questions?

20              A.    I do.

21              Q.    Did the Applicant also have an ice throw  
22 analysis conducted as part of the application  
23 process?

24              A.    Yes.

25              Q.    And is that contained within Exhibit L of

1 Exhibit 1, the Application?

2 A. Yes.

3 Q. Okay. Generally what was the conclusion  
4 and results of the ice throw analysis?

5 A. I have Exhibit L here in front of me.  
6 Generally the results of Exhibit L found that the  
7 project is in adherence with the requirements set  
8 forth in -- I believe in Ohio code that the project  
9 have less than a 0.1 percent chance -- 0.1 percent  
10 probability that -- I believe the OPSB safety  
11 consideration is 1 percent annually, but the project  
12 has an annual impact probability for a 1 kilogram ice  
13 fragment to reach a road I believe at 0.1 percent and  
14 then at a nonparticipating parcel line that  
15 probability is at 0.01 percent.

16 And so the -- while the maximum distance  
17 is discussed in the safety manuals, the probability  
18 that that occurs is very low, and as outlined here in  
19 Exhibit L as well, this all assumes a breakdown in  
20 the control mechanism of the turbine, and so while  
21 the turbine is discussed with the GE model should  
22 cease operations during ice accumulation, the  
23 analysis for impact probability as well as the  
24 maximum distance calculations all assume a breakdown  
25 of that control mechanism.

1           Q.    Sorry.  The conclusions of the ice throw  
2           analysis, were those contained on page 4 of Exhibit  
3           L?

4           A.    Yes.

5                   MR. SECREST:  Okay.  Thank you,  
6           Mr. Pedder.

7                   Your Honor, no further questions.  Thank  
8           you.

9                   ALJ AGRANOFF:  Thank you.

10                   Based on that very limited redirect, any  
11          recross, Mr. Van Kley?

12                   MR. VAN KLEY:  No, your Honor.

13                   ALJ AGRANOFF:  Okay.  Thank you.

14                   Mr. Pedder, I believe you are excused  
15          unless -- one moment.  Any questions from Judge  
16          Williams?

17                   ALJ WILLIAMS:  I have no questions.

18                   ALJ AGRANOFF:  Okay.  I did have one  
19          question.

20                               - - -

21                               EXAMINATION

22          By ALJ Agranoff:

23               Q.    We had testimony where we were  
24          continuously talking about receptors.

25               A.    Yes.

1           Q.   How are those receptors actually  
2 identified or determined for the purposes of their  
3 locations?

4           A.   I believe -- I think that it was outlined  
5 somewhere in the Application, but I believe that  
6 receptors were identified through both GIS mapping, I  
7 believe also aerial photography that I believe Apex  
8 conducted to determine receptor locations as well as  
9 general updated imagery for the area as well as I  
10 believe potentially 911 data.

11          Q.   So those were the different criteria that  
12 was utilized for the purposes of selecting receptor  
13 sites?

14          A.   Yes, I believe so. Are you asking what  
15 would be a receptor or how we identify what had --  
16 where the receptors are?

17          Q.   How you selected the receptor sites.

18          A.   I think I answered that question. Did --  
19 was there -- is there any other information on that  
20 you were looking for?

21               ALJ AGRANOFF: No. I think that gave me  
22 enough information.

23               Based on that one question, anything  
24 further from counsel?

25               MR. SECREST: No, your Honor.



1 ALJ AGRANOFF: Thank you, Mr. Pedder.

2 THE WITNESS: Thank you very much.

3 ALJ AGRANOFF: Mr. Secrest, at this time  
4 do you care to move the identified exhibits?

5 MR. SECREST: Please, your Honor.  
6 Applicant would move for the admission of Applicant's  
7 Exhibit 1 through 31 as well as 82.

8 ALJ AGRANOFF: Any objection to the  
9 admission of those exhibits?

10 There being none, the aforementioned  
11 exhibits shall be admitted as part of the record at  
12 this time.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 ALJ AGRANOFF: And again, as we've  
15 discussed earlier, if you can please e-mail those  
16 exhibits to Armstrong & Okey tomorrow, that would be  
17 appreciated.

18 Okay. We are certainly ahead of schedule  
19 obviously since we expected Mr. Pedder to actually  
20 roll over into tomorrow. And if I understand  
21 correctly, Mr. Margard, at this moment there are no  
22 Staff witnesses prepared to --

23 MR. MARGARD: Yeah. I am still trying to  
24 track folks down. I think I probably have one for  
25 you tomorrow, but I need to confirm that. The rest

1 of my -- it doesn't look like they are available  
2 until Wednesday so. But I may have Mr. Bellamy ready  
3 tomorrow. I don't have anybody on tap at the moment.

4 ALJ WILLIAMS: Give people a chance to  
5 prepare. Let's get one for tomorrow and let's  
6 contemplate three for Wednesday.

7 MR. MARGARD: How many for Wednesday?

8 ALJ WILLIAMS: Try three for Wednesday.  
9 Give us somewhere in the range of seven or eight  
10 hours of testimony if we get to them.

11 MR. MARGARD: I'll see what I can do.

12 ALJ WILLIAMS: And I think the plan would  
13 be, to the extent we have witnesses who are going to  
14 testify that day, to have them all log on 8:45 or so,  
15 make sure the technology is working, and then  
16 obviously we'll tell them they can go until they are  
17 ready to take the stand.

18 MR. MARGARD: I understand. We are off,  
19 yes? Or are we on?

20 ALJ WILLIAMS: You're on.

21 ALJ AGRANOFF: We are still on the  
22 record.

23 MR. MARGARD: I wanted to ensure the  
24 invitations had been sent to all of the witnesses,  
25 so.

1           ALJ WILLIAMS: The witnesses are expected  
2 to log on and register to testify. That's been a  
3 change of protocol that went out Friday. So if there  
4 is a question regarding that, there should be an  
5 e-mail that I think Ms. Fischer issued on Friday.

6           MR. MARGARD: I think I forwarded that.  
7 I just need to confirm that my folks have received it  
8 and registered. Thank you.

9           ALJ WILLIAMS: No problem at all. Any  
10 other ancillary matters we can attend to this  
11 afternoon that will keep this case moving  
12 efficiently?

13           MR. SECREST: Your Honor, may I inquire?  
14 Mr. Van Kley had previously indicated that he thought  
15 that his cross-examination estimates would need  
16 revision as we've gone along today. That would  
17 really be helpful for purposes of our planning and  
18 letting our witnesses know when they may be actually  
19 testifying. If, Mr. Van Kley, you wouldn't mind  
20 actually providing re-estimates for our witnesses.

21           MR. VAN KLEY: I think, based on my best  
22 guesstimates, Good and Farmer should each go for  
23 about three hours. That's my guess. So that's the  
24 estimate, from five hours to three hours, but I would  
25 think at the very least we can finish both of those

1 witnesses tomorrow. Whereas, we had thought that  
2 Farmer would continue -- continue over into  
3 Wednesday.

4 MR. SECREST: Thank you.

5 ALJ WILLIAMS: Contemplating Witness  
6 Bellamy as well tomorrow then?

7 MR. MARGARD: I'm hoping, yes.

8 ALJ WILLIAMS: Okay. I just want the  
9 parties to be prepared to address questions to that  
10 witness if that does occur.

11 MR. VAN KLEY: Would Mr. Good be your  
12 first witness tomorrow then?

13 MR. SECREST: Yes, he will be.

14 MR. VAN KLEY: Okay.

15 ALJ AGRANOFF: And, Mr. Margard, you will  
16 have three witnesses identified for Wednesday to the  
17 extent that Mr. Bellamy goes tomorrow?

18 MR. MARGARD: That's my intention, yes,  
19 your Honor.

20 ALJ AGRANOFF: Thank you.

21 ALJ WILLIAMS: Anything else we can do  
22 today?

23 Ms. Gibson, you can give your hands a  
24 rest, I guess. Nice to be running on time or a  
25 little ahead of schedule. Jay, do you want to get us

1 out of here?

2 ALJ AGRANOFF: We have a game plan for  
3 tomorrow. We will begin with Mr. Good and then  
4 Mr. Farmer and then possibly Mr. Bellamy, and we will  
5 begin at 9:00 a.m.

6 ALJ WILLIAMS: Let's have the witnesses  
7 who are going to testify tomorrow, have them on at or  
8 around 8:45 to make sure their technology is working.  
9 Any questions, get ahold of us per our prior  
10 communications.

11 I see something in chat. Let me make  
12 sure. That's not directed toward me. So okay.  
13 Anybody else have any questions?

14 ALJ AGRANOFF: Appreciate everybody's  
15 help today.

16 ALJ WILLIAMS: We're adjourned. Thank  
17 you.

18 (Thereupon at 3:03 p.m., the hearing was  
19 adjourned.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is a  
3 true and correct transcript of the proceedings taken  
4 by me in this matter on Monday, October 5, 2020, and  
5 carefully compared with my original stenographic  
6 notes.

7  
8 \_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

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10 \_\_\_\_\_  
Carolyn M. Burke, Registered  
Professional Reporter.

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12 (KSG-6968)

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**Case No(s). 18-1607-EL-BGN**

Summary: Transcript in the matter of Firelands Wind, LLC hearing held on 10/05/20 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.