

BEFORE THE OHIO POWER SITING BOARD

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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,
Administrative Law Judges, Ohio Power Siting Board,
conducted via Webex, called at 9:03 a.m. on Tuesday,
October 13, 2020.

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VOLUME VI

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736

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26 - - -

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738

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739

INDEX TO WITNESSES

- - -

WITNESSES	PAGE
Alfred Williams	
Direct Examination by Mr. Secrest	745
Cross-Examination by Mr. Van Kley	747
Redirect Examination by Mr. Secrest	770
Recross-Examination by Mr. Van Kley	772
Rob Corzatt	
Direct Examination by Mr. Secrest	776
Cross-Examination by Mr. Van Kley	777
Redirect Examination by Mr. Secrest	789
Recross-Examination by Mr. Van Kley	791
Examination by ALJ Agranoff	792
Thomas Yingling	
Direct Examination by Ms. Aidun	797
Cross-Examination by Mr. Van Kley	800
Kevin Erf	
Direct Examination by Ms. Aidun	804
Cross-Examination by Mr. Van Kley	806
Grant Johnson	
Direct Examination by Mr. Secrest	814
Cross-Examination by Mr. Van Kley	816

- - -

INDEX TO EXHIBITS

- - -

APPLICANT EXHIBITS	IDENTIFIED	ADMITTED
37 Grant Johnson - Prefiled	815	822
Direct Testimony		
38 Alfred Williams - Prefiled	756	773
Direct Testimony		
39 Rob Corzatt - Prefiled	777	793
Direct Testimony		

740

INDEX TO EXHIBITS (Continued)

- - -

ERF & YINGLING EXHIBITS	IDENTIFIED	ADMITTED
1 Direct Testimony of Tom Yingling	798	803
2 Direct Testimony of Kevin Erf	805	813

- - -

JOINT EXHIBIT	IDENTIFIED	ADMITTED
1 The September 11, 2020, Stipulation Signed on Behalf of the Applicant, the City of Willard, the Huron Commissioners, the Richmond Trustees, the Norwich Trustees, the Local Residents, and the Staff	III-360	823

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1 Tuesday Morning Session,
2 October 13, 2020.

3 - - -

4 ALJ WILLIAMS: We're on the record. Good
5 morning. Welcome, everyone. It is Tuesday,
6 October 13, and we are reconvening after the
7 three-day holiday weekend.

8 At the outset, we would note that there
9 were several motions filed after we closed our
10 proceedings on last Friday. To summarize those, we
11 have a motion in limine to exclude testimony from
12 Witness Shawn Smallwood or, in the alternative, for
13 leave to submit rebuttal testimony as filed by the
14 Applicant on Friday, October 9.

15 We have a motion in limine to strike
16 improper intervenor testimony and memorandum in
17 support to strike portions of Witness Schreiner and
18 Shieldcastle's testimony, filed by Applicant on
19 Friday, October 9.

20 We have a memorandum contra filed by
21 Local Residents regarding those two motions filed by
22 Local Resident Intervenors which was filed, I
23 believe, early this morning on October 13.

24 We have a motion of Local Residents to
25 strike a portion of Witness Tom Yingling's testimony

742

1 that was filed by Local Residents on October 9.

2 And we have a memorandum contra to Local
3 Residents' motion to strike, filed by Attorney Aidun.
4 I believe the service date on that, it was served on
5 Saturday, October 10.

6 The intention of the Bench is to rule
7 definitively on the initial motion to exclude
8 testimony of Witness Smallwood or, in the
9 alternative, to allow rebuttal testimony. We'll
10 summarize the arguments of the parties. We'll make a
11 ruling on that.

12 We will defer rulings regarding the
13 remaining issues until at the outset of the
14 presentation of each witness for testimony and then
15 we'll address the pending motions that are pertinent
16 to that witness at the cusp of the presentation for
17 testimony, and we'll give rulings as appropriate to
18 restrict or declare the breadth of that testimony.

19 In regard to the motion in limine to
20 strike the testimony from Witness Smallwood, the
21 motion claims two bases. One, there was some issue
22 whether that witness was properly disclosed in
23 discovery or otherwise in a prehearing capacity in
24 the case. The Applicant notes that they first became
25 aware of the identification of Witness Smallwood on

1 September 21 in regard to prefiled testimony. The
2 Applicant requests that the witness be excluded from
3 testifying or, in the alternative, they be permitted
4 rebuttal testimony either written or live.

5 The Intervenors filed their memo contra,
6 indicating that they had identified that there would
7 be at least one or multiple bat witnesses as early as
8 March of this year in regard to discovery responses;
9 that they had changed their witness intentions on or
10 about September 9 such that advanced disclosure of
11 Witness Smallwood's testimony was not appropriate or
12 proper or feasible; and that they had provided the
13 opportunity to depose Witness Smallwood to Applicant
14 pursuant to a response on or about September 22, such
15 that Applicant had the opportunity to depose and/or
16 otherwise remedy any issues regarding the breadth or
17 intention of Witness Smallwood's testimony.

18 The Bench finds that Applicant -- the
19 Bench finds that Intervenors have provided adequate
20 notice and that Applicant is not prejudiced by
21 allowing Witness Smallwood to appear and testify.
22 Though we do agree that Applicant should be provided
23 the opportunity for rebuttal testimony if it proves
24 that that's something they feel they need in regard
25 to the contested issue.

744

1 So what we are going to do here is we are
2 going to allow Witness Smallwood to testify. We are
3 going to ask Applicant to let us know at the close of
4 that testimony, which is going to happen sometime
5 late Thursday morning or Thursday afternoon, if they
6 intend to present rebuttal testimony. If they do,
7 that will be due by the end of Thursday or very early
8 hours of Friday. And if we have to, we will
9 reconvene on Friday to allow the presentation of
10 cross-examination in regard to that rebuttal
11 testimony. So Witness Smallwood will testify and
12 Applicant will be provided the opportunity for
13 rebuttal testimony if that's something they feel they
14 need.

15 Are there any questions or need for
16 clarification regarding that determination?

17 All right. Seeing none, we'll then
18 proceed with our planned witness presentation today.
19 We have Witnesses Williams, Yingling, Erf, Corzatt,
20 and Johnson scheduled to appear today in that order,
21 and so, with that, we'll invite Applicant to call
22 their next witness.

23 MR. SECREST: Thank you, your Honor. May
24 the Applicant call Alfred Williams.

25 MS. KING: Mr. Williams, you have been

1 moved to the panelist position and you are unmuted.

2 Let's see, yes.

3 ALJ WILLIAMS: Oh, there you are.

4 MS. KING: We can see you and you are
5 unmuted so we should be able to hear you when you
6 speak.

7 ALJ WILLIAMS: Good morning,
8 Mr. Williams.

9 THE WITNESS: Good morning.

10 ALJ WILLIAMS: Welcome. I am going -- as
11 we begin, I am going to swear you in. Would you
12 raise your right hand.

13 (Witness sworn.)

14 ALJ WILLIAMS: Thank you. Please
15 proceed, Attorney Secrest.

16 MR. SECREST: Thank you, your Honor.

17 - - -

18 ALFRED WILLIAMS

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

21 DIRECT EXAMINATION

22 By Mr. Secrest:

23 Q. Good morning, Mr. Williams.

24 A. Good morning, Mr. Secrest.

25 Q. Would you please state your full name for

746

1 the record, by whom you are employed, and your
2 business address.

3 A. Yes. Alfred Williams. I'm employed by
4 Beyond Engineering & Testing, and the business
5 address is 3801 Doris Lane, Round Rock, Texas.

6 Q. Thank you, Mr. Williams.

7 Do you have in front of you a copy of
8 your prefiled direct testimony?

9 A. I do.

10 Q. And is that a true and accurate copy of
11 your prefiled testimony?

12 A. Yes.

13 Q. Do you have any changes or revisions to
14 that testimony?

15 A. I do not.

16 MR. SECREST: Thank you.

17 Your Honor, may I move to have
18 Mr. Williams' prefiled direct testimony marked as
19 Applicant's Exhibit 38?

20 ALJ WILLIAMS: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. SECREST: Thank you, your Honor, and
23 I also tender Mr. Williams for cross-examination.

24 ALJ WILLIAMS: Thank you, Attorney
25 Secrest. Attorney Van Kley.

1 MR. VAN KLEY: Okay. Thank you, your
2 Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Van Kley:

6 Q. Mr. Williams, good morning. Can you
7 explain how a turbine foundation is constructed?

8 A. Yes. So typically the ground surface is
9 excavated. Generally the excavation is anywhere from
10 about 80 to maybe 100 feet in diameter. They are
11 typically dug down to depths of about anywhere from
12 8-1/2 to 12 feet. It all depends on the size of the
13 foundation that is designed to support the turbine.
14 And from there, typically a seal slab is poured at
15 the bottom of the subgrade and rebar is installed,
16 followed by the pouring of the concrete and
17 backfilling of materials and erecting the turbine.

18 Q. How wide is the turbine foundation?

19 A. They vary in diameter but I believe for
20 this project, for Emerson Creek, they are expected to
21 be anywhere from about 60 to 70 feet in diameter.

22 Q. Have you done any evaluation of the
23 geology of the project area for the Emerson Creek
24 wind project?

25 A. Yes.

748

1 Q. And are you aware that at least in some
2 of the project area the land is within what is known
3 as the Bellevue-Castalia Karst Plains?

4 A. Yes.

5 Q. Can you tell me what the
6 Bellevue-Castalia Karst Plains is?

7 A. It's an area which is more susceptible to
8 karst. Karst is a type of terrain or landform. It's
9 generally characterized by sinkholes, springs, in
10 some areas depressions, and the cause of it is linked
11 to the underlying carbonate bedrock. In this case
12 it's limestone bedrock.

13 Q. Uh-huh. How is karst formed?

14 A. It's formed by the movement of water.
15 The water tends to be slightly acidic so it somewhat
16 dissolves away the bedrock and leads to the piping or
17 fissures and, in the larger extent, caves.

18 Q. Can this process create pathways to the
19 limestone?

20 A. Yes.

21 Q. And can groundwater move through those
22 pathways?

23 A. Yes.

24 Q. To the extent of your knowledge, what has
25 Firelands done to determine whether a karst is

1 present in the project area?

2 A. Firelands has completed the geotechnical
3 investigation where we assess, I guess, the presence
4 of the development of karst.

5 Q. And in the process of performing that
6 evaluation, has Firelands drilled some borings into
7 the ground?

8 A. That is correct.

9 Q. Would you go to your prefiled testimony
10 that is marked as Applicant Exhibit 38. And once you
11 get there, I would like you to go to Attachment AW-2
12 which is labeled as the Geotechnical Report of
13 April 2020. Please let me know when you have found
14 that.

15 A. Okay.

16 Q. Would you identify AW-2.

17 A. It is the Geotechnical Report that RRC
18 prepared for the Emerson Creek wind project.

19 Q. And is this the report that RRC prepared
20 to summarize the results of the borings that were
21 taken from the project area?

22 A. That is correct.

23 Q. How many borings were drilled at the --
24 well, let me first ask you a preliminary question
25 which is these borings were drilled at proposed

750

1 turbine sites for the project, correct?

2 A. Correct.

3 Q. Were borings conducted at every turbine
4 site?

5 A. No.

6 Q. Would you go to page 2 of AW-2.

7 A. Okay.

8 Q. And I would like to direct your attention
9 to the section headed "3.0 Site Exploration."

10 A. Uh-huh.

11 Q. And under the first paragraph you will
12 see that the second sentence states "A total of 7
13 proposed WTG locations are currently on hold per
14 Client's request." Do you see that?

15 A. Yes.

16 Q. What does WTG stand for?

17 A. Wind turbine generator.

18 Q. Did the client inform you as to why these
19 seven proposed locations were on hold?

20 A. No. I do not know the specifics.

21 Q. So the client did not -- did not tell you
22 why the locations are on hold.

23 A. No.

24 Q. Would you go to page 34 of Exhibit AW-2.

25 A. Okay.

1 Q. I would like to look at the first
2 paragraph under the heading "7.0 Limitations." And
3 let's go to the second sentence of that paragraph
4 which reads: "It is likely soil conditions will vary
5 between or beyond the points explored." Could you
6 explain what's meant by that sentence?

7 A. I guess from a geotechnical standpoint,
8 the soil vary -- can vary -- over an area.

9 THE COURT REPORTER: I'm sorry, can you
10 repeat that answer, please?

11 A. So from a geotechnical standpoint, it can
12 be likely that soil conditions can vary, I guess,
13 within an area.

14 Q. And when you say that soil conditions can
15 vary in an area, can you quantify the size of the
16 area you are talking about?

17 A. No. It depends on the geological
18 setting.

19 Q. What do you mean by that?

20 A. There is many factors that go into how --
21 how the soil was deposited and, you know, again we
22 are looking at soils and bedrock, there can be, you
23 know, different variations depending on the setting.
24 Many times in terms of glacial till there may be, you
25 know, many different types of soil that was

752

1 deposited, how the soil was deposited. However, in
2 other areas such as windblown deposits, the
3 deposition may be more consistent throughout compared
4 to glaciers, glacial till.

5 Q. Can the karst features vary from area to
6 area?

7 A. Yes.

8 Q. So if you -- if you drill a boring and
9 you find a karst feature, can you tell how far that
10 karst feature is present from the location of the
11 boring?

12 A. Not necessarily. We can -- if a karst
13 feature is identified, typically we recommend
14 additional investigation, further analysis to further
15 evaluate and map the size and extent of it.

16 Q. And if you do -- if you drill a boring
17 and you do not find a karst feature, does that
18 necessarily mean that there is no karst located
19 within a distance of let's say 50 feet away?

20 MR. SECREST: Objection, speculation.

21 ALJ WILLIAMS: We will let him answer and
22 explain. Please proceed to answer, Mr. Williams.

23 A. It's possible, yes.

24 Q. I'm not sure I caught that answer. Would
25 you repeat your answer, please.

1 A. It is possible.

2 Q. Okay. Would you go to page 5 of Exhibit
3 AW-2.

4 A. Okay.

5 Q. Let's start at the last paragraph on the
6 bottom of page 5 and go to the continuation of that
7 paragraph on -- on the top of page 6.

8 ALJ WILLIAMS: Attorney Van Kley, are we
9 in Applicant's Exhibit 2?

10 MR. VAN KLEY: We're in Mr. Williams'
11 direct testimony and Attachment AW-2 to that
12 testimony.

13 ALJ WILLIAMS: And what page are you on
14 there?

15 MR. VAN KLEY: We're starting on page 5.

16 ALJ WILLIAMS: Okay. So I am with you
17 now. We are on PDF 23 of 245?

18 MR. VAN KLEY: That's correct.

19 ALJ WILLIAMS: Okay. Thank you.

20 Mr. Williams, do you have the question?

21 MR. VAN KLEY: I haven't asked it yet,
22 your Honor.

23 ALJ WILLIAMS: Thank you.

24 Q. (By Mr. Van Kley) All right. So
25 Mr. Williams, on the bottom of page 5 of Exhibit AW-2

754

1 of your testimony, the report discusses potential
2 karst features in the project area, correct?

3 A. Correct.

4 Q. And then on the top of page 6, the last
5 paragraph -- the last sentence of the paragraph we
6 have been discussing states that "Figure 9, within
7 Appendix A depicts the project boundaries in
8 conjunction with mapped karst zones near the project
9 area." Do you see that?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. Okay. All right. So keep your finger
14 there, please, and let's go to Figure 9 of Appendix A
15 which I believe if you are on a PDF copy of this
16 document, you will find at PDF page 69.

17 ALJ WILLIAMS: Thank you.

18 Q. All right. Mr. Williams, have you found
19 Figure 9 of Appendix A?

20 A. Yes.

21 Q. Okay. Would you orient us a little bit
22 to how to read Figure 9. Figure 9 is a map of the
23 project area and surrounding areas, correct?

24 A. That is correct.

25 Q. And you will see on Figure 9 that the

1 proposed turbine locations are provided on this
2 figure; is that correct?

3 A. That is correct.

4 Q. And those turbine locations are all
5 numbered on the -- on the figure, right?

6 A. Yes.

7 Q. They all have the letter T followed by a
8 number?

9 A. That is correct.

10 Q. Uh-huh. And they are depicted as
11 circle -- green circles with Xs in them?

12 A. That is correct.

13 Q. Now, what is depicted by the different
14 shades of green color in Figure 9?

15 A. Those are sinkholes or karst, I guess
16 land features that have been identified by the ODNR.
17 Some are field-verified sites. And some are not
18 field-verified. They may be suspected karst features
19 at the ground surface.

20 Q. And the area in which karst has been
21 documented to occur is shown by the light green color
22 on Figure 9?

23 A. Correct.

24 ALJ WILLIAMS: I'm sorry, I missed that
25 answer.

756

1 A. Correct.

2 Q. And there are a whole bunch of circles in
3 that light green area that are colored in various
4 shades of brown and yellows and golds; is that
5 correct?

6 A. Yes.

7 Q. And those are locations at which karst
8 features have been confirmed in the field?

9 A. Some have been confirmed. Some are
10 suspected.

11 Q. All right. Now, if a turbine location is
12 in an area outside of the area colored light green in
13 Figure 9, does that necessarily mean that no karst is
14 present at that turbine location?

15 A. The probability of it occurring would
16 be -- would be lower or less.

17 Q. But the fact that the turbine location is
18 outside of the light green area known to have karst
19 does not rule out the possibility that the turbine
20 location has karst features, correct?

21 A. The formation outside of the shaded areas
22 is a different formation, and that formation, the
23 bedrock may consist of shale bedrock. Shale bedrock
24 is not conducive for the development of karst. It
25 would be unlikely to -- to find it outside of the

1 shaded area.

2 Q. So going back to my question then, the
3 fact that it's outside of the light green area does
4 not definitively rule out the possibility that the
5 area has karst, correct?

6 MR. SECREST: Objection, asked and
7 answered twice.

8 MR. VAN KLEY: Asked and evaded twice.
9 He still hasn't answered the question. All he's said
10 it's less likely but he hasn't --

11 ALJ WILLIAMS: I have what I need. We
12 are going to overrule the objection. We are going to
13 let him explain his response.

14 A. There is a possibility. The reasoning
15 why geotechnical investigations or borings were
16 performed at each of these turbine locations is so
17 that we can evaluate the subsurface.

18 Q. Let's continue our discussion of
19 Attachment AW-2.

20 ALJ WILLIAMS: Attorney Van Kley, can I
21 ask a clarifying question on the site map?

22 MR. VAN KLEY: Sure.

23 ALJ WILLIAMS: I don't want to interrupt
24 your progress here. Mr. Williams, I see this map has
25 a cream area which is largely within the project area

758

1 and then to the west on the map is the lighter green
2 area which I think you described as an area that had
3 been identified as the karst zone. Does that have a
4 better name than karst zone? What would you call
5 that light green area with all the circles in it?

6 THE WITNESS: So, I mean, both the light
7 green and the dark green, I guess, are identified as
8 a -- as areas where karst is -- can potentially be
9 found. The legend is not included in this map but
10 the light green area is where sediments or soil or
11 where the bedrock -- the bedrock is less than, I
12 believe, 30 feet if I remember correctly, and in the
13 dark green area is where bedrock is found greater
14 than 30 feet.

15 ALJ WILLIAMS: Thank you. That helps.

16 Q. (By Mr. Van Kley) As shown by Figure 9
17 which we have been discussing, how many of the
18 proposed turbine sites are located within the light
19 green area that has been identified as the potential
20 karst area?

21 A. 20 sites.

22 ALJ WILLIAMS: I missed that answer, I'm
23 sorry.

24 THE WITNESS: 20 sites.

25 ALJ WILLIAMS: 20? Okay.

1 Q. (By Mr. Van Kley) All right. Now, let's
2 go to Figure 13 of Attachment AW-2 to your testimony
3 which can be found at PDF page 73.

4 A. Okay.

5 Q. All right. Figure 13 is labeled as
6 "Recommended Void Assessment and Grouting at Selected
7 WTG Sites", correct?

8 A. Yes.

9 Q. And we have, on Figure 13, four purple
10 circles with Xs on them, correct?

11 A. Correct.

12 Q. And these four locations are proposed
13 turbine locations where karst features were
14 discovered by the borings, correct?

15 A. Correct.

16 Q. And turbine location 43 was one of those
17 sites?

18 A. Correct.

19 Q. And turbine 43 is located outside of the
20 light green area that has been identified as the
21 potential karst zone, correct?

22 A. Correct.

23 Q. Let's go to page 6 of Attachment AW-2 of
24 your direct testimony.

25 A. Okay.

760

1 Q. That page is at PDF page 24 of the
2 written direct testimony.

3 ALJ WILLIAMS: Got it. Thank you.

4 Q. I would like to direct your attention to
5 section 4.2 entitled Subsurface Strati -- Strati --
6 Stratigraphy, Stratigraphy, I think, and let's go to
7 the second-to-the-last paragraph of that section
8 which starts with the words "It should be noted."

9 A. Okay.

10 Q. And let's take a look at the sentence
11 that starts on the fourth line of that paragraph
12 which states: "Sudden loss of fluid circulation may
13 indicate the presence of open voids and/or fractures
14 within the limestone." Do you see that sentence?

15 A. Yes, sir.

16 Q. And then the next sentence states "These
17 WTG locations are summarized in Table A1 within
18 Appendix A." Do you see that?

19 A. Yes.

20 Q. Okay. Let's go to Table A1 of Appendix
21 A.

22 ALJ WILLIAMS: PDF page 55?

23 MR. VAN KLEY: That's correct.

24 Q. (By Mr. Van Kley) All right.
25 Mr. Williams, do you have Table A1 in front of you?

1 A. Yes.

2 Q. Can you point out to me on Table A1 where
3 the WTG locations that had a sudden loss of fluid
4 circulation are noted in this table?

5 A. Yes. So if you look at column -- the
6 column that's named "Depth of Potential Voids
7 Encountered within Borehole," it is the 13th column
8 from the left. And if you continue down you will see
9 the first -- most of them are "No." However, at T24
10 at depths of 11 to 13 feet the -- there is a
11 potential void encountered at that location at that
12 depth and also at T43 from 17 to 18 feet below ground
13 surface.

14 Q. Now, what's the significance, if any, of
15 the fact that drilling fluids were lost at these
16 locations?

17 A. So I guess why is -- what is, I guess,
18 the loss of fluids telling us?

19 Q. Yes.

20 A. When -- typically when you are drilling
21 the borehole, imagine that it's an enclosed cavity so
22 whatever is injected into it, typically comes out in
23 the same manner in terms of volume. However, if
24 there are voids or the bedrock is fractured, it
25 allows water to move out of the borehole and into the

762

1 bedrock mass. So if water is not coming back up the
2 borehole, then it must be going somewhere, so
3 typically it's an indication that either there's --
4 the bedrock is fractured or there is fissures or some
5 sort of solution cavity that's taking on this water
6 and not allowing it to return to the top of the
7 borehole.

8 Q. And the -- the water that you're
9 referring to is the water that was used in the
10 process of drilling the boring?

11 A. That is correct.

12 Q. What's the purpose of the use of that
13 water in drilling the boring?

14 A. Cooling, lubricating the core bit, and
15 also bringing the cuttings back up to the surface so
16 that the borehole stays clean.

17 Q. What is the diameter of the boring?

18 A. Typically for -- it varies, I guess,
19 whether you're drilling soil or coring into the
20 bedrock. Drilling in soil, typically the borehole
21 would be anywhere from 4-1/2 to 6 to 8 inches.
22 Coring into bedrock, that hole is usually about 2-1/2
23 inches in diameter.

24 Q. Well, what was the diameter of the
25 borings that are summarized in Attachment AW-2 of

1 your testimony?

2 A. They're 6-inch in diameter through soils,
3 and I believe we used NX rock coring bits and those
4 are 2-1/2 inch outside diameter.

5 Q. Okay. I'm not sure I caught the first
6 part of your answer. Did you say that some of the
7 borings were 6 inches in diameter?

8 A. Yes. Drilling through soil, they were
9 6 inches, and then the bedrock cores were probably
10 about 2-1/2 inches in diameter.

11 Q. Okay. Let's go to page 15 of Attachment
12 AW-2 of your testimony. And this would be PDF
13 page 33.

14 ALJ WILLIAMS: Got it. Thank you.

15 Q. (By Mr. Van Kley) Mr. Williams, let me
16 know when you have found that page.

17 A. Okay. I'm ready.

18 Q. Let's go to the second-to-the-last
19 paragraph on that page.

20 A. Okay.

21 Q. I would like to direct your attention to
22 the sentence that starts on the seventh line of that
23 paragraph with the words "It is our." And that
24 sentence reads as follows: "It is our understanding
25 that further void assessment and void mitigation

764

1 using pilot holes will be performed by the contractor
2 during construction phase." Do you see that
3 sentence?

4 A. Yes, I see it.

5 Q. Can you explain what void assessment you
6 understand will be performed during the construction
7 phase?

8 A. Yes. So in Table A1 of this Geotechnical
9 Report of Attachment AW-2, there are sites that are
10 identified where RRC recommends additional
11 investigations or void assessment. And I believe
12 Firelands -- yeah, Firelands intends to follow those
13 recommendations before the construction.

14 Q. And what are those recommendations again,
15 please?

16 A. Some of those sites recommend electrical
17 imaging which is a nonintrusive test method that can
18 be used in identifying voids or solution cavities.
19 And some sites we also recommended pilot hole or void
20 assessments and void mitigation through grouting.

21 Q. Uh-huh. Why -- why do you recommend
22 pilot holes?

23 A. It's more -- more borings to assess, I
24 guess, the bedrock material within the foundation.

25 Q. Does the term "pilot hole" have the same

1 meaning as the term "boring" or are they different
2 terms?

3 A. They are basically the same.

4 Q. At the bottom of the same page, 15 of
5 Attachment AW-2, the last paragraph on that page
6 discusses grouting, correct?

7 A. Yes.

8 Q. What is grout?

9 A. It is a mixture of sand and bentonite
10 with some sort of clay fraction and cement.

11 Q. Uh-huh. And what would the purpose of
12 grouting be as discussed in this paragraph on
13 page 15?

14 A. The purpose would be to, I guess, fill
15 the identified solution cavities to prevent any
16 further development or growth of these solution
17 cavities.

18 Q. And is the purpose of that grouting to
19 solidify the land under the foundation so that the
20 foundation has integrity?

21 A. Yes, to some extent it can.

22 Q. Okay. Is there another purpose for the
23 grouting?

24 A. It can prevent future development through
25 the growth of the karstic features within the

766

1 bedrock.

2 Q. So one of the purposes of the grouting is
3 to prevent the voids in the karst from growing
4 larger?

5 A. Correct.

6 Q. Do you recall by memory what the depth
7 from surface to bedrock is in the turbine sites that
8 were evaluated with borings?

9 MR. SECREST: Hold on, Mr. Williams.
10 Objection. Average depth across all or for each
11 individual site?

12 ALJ WILLIAMS: I will sustain the
13 objection. Can you clarify your question, Attorney
14 Van Kley?

15 MR. VAN KLEY: Yeah. Actually I am going
16 to change it and make it a little more specific.

17 Q. (By Mr. Van Kley) Do you recall the
18 shallowest depth from surface to bedrock that was
19 encountered in the borings that are described in
20 Attachment AW-2?

21 A. I would need to go back to the attachment
22 to look to be specific but I think the shallowest may
23 be around 4 to 7 feet below existing grade.

24 Q. Okay. Well, let's make sure. Go to
25 whatever attachment you need to look at in order to

1 give me a definitive answer and let us know where
2 you're going.

3 A. Okay. Okay. So on page PDF 106 of 245,
4 I did a quick review of the boring logs that were
5 completed and this is the boring log of T34. It
6 looks like at this site we encountered limestone
7 probably just below the topsoil so pretty close to
8 the ground surface.

9 Q. Okay. Would you give us that reference
10 again. What PDF page number are you at?

11 A. 106.

12 Q. 106?

13 A. Yes.

14 Q. And this is Attachment AW-2, correct?

15 A. That is correct.

16 Q. And PDF page 106 contains a copy of the
17 boring log for turbine site 34?

18 A. Correct.

19 Q. And the boring log shows that there were
20 2 inches of topsoil in that boring?

21 A. Correct.

22 Q. And after below that 2 inches of topsoil,
23 the limestone starts after 2 inches?

24 A. Correct.

25 Q. All right. Let's switch documents. Do

768

1 you have access to Exhibit E of the Application that
2 has been marked as Applicant's Exhibit 1?

3 A. I do not believe so. I'm sorry. What is
4 the --

5 Q. This would be Exhibit -- it's identified
6 as Exhibit E to the Application, and it is a copy of
7 the report done by Hull & Associates.

8 A. Okay. Yes, I do have that.

9 Q. Okay. Great. Let's go to PDF page 17 of
10 Exhibit E.

11 A. Okay.

12 Q. And you are familiar with Exhibit E,
13 correct?

14 A. Yes.

15 Q. Now, Exhibit E shows the project area
16 within yellow lines, correct?

17 A. Yes, correct.

18 Q. And it shows or it depicts -- sorry about
19 that. It depicts the probable karst area with blue
20 hash marks.

21 A. Yes.

22 Q. Figure 4, which is on the page that we're
23 discussing, also shows proposed turbine locations,
24 correct?

25 A. Yes.

1 Q. On this figure how many proposed turbine
2 locations are shown to be within the probable karst
3 area?

4 A. Six.

5 Q. Okay. Now, can you explain to me why
6 this figure in Exhibit E shows 6 turbines instead of
7 20 turbines to be in the probable karst area?

8 A. Since this is a report, I guess, prepared
9 by Hull & Hull & Associates, they would probably be
10 best to answer this. I'm not entirely sure what
11 reference or dataset they obtained to generate this
12 map.

13 MR. VAN KLEY: Okay. All right. We'll
14 take that up with another witness then.

15 I have no more questions at this time.

16 ALJ WILLIAMS: Thank you, Attorney Van
17 Kley.

18 Attorney Secrest, redirect?

19 MR. SECREST: Thank you, your Honor. May
20 I have a few minutes to discuss?

21 ALJ WILLIAMS: Yes. Why don't we come
22 back at 10:10.

23 MR. SECREST: Perfect. Thank you, your
24 Honor.

25 (Recess taken.)

770

1 ALJ WILLIAMS: Ms. Gibson, back on the
2 record.

3 Attorney Secrest.

4 MR. SECREST: Thank you, your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Secrest:

8 Q. Mr. Williams, do you still have your
9 prefiled testimony in front of you? If so, may I
10 direct you to AW-2, page 34. Please let me know when
11 you're there.

12 A. Okay.

13 Q. On cross-examination you were asked a
14 question about the second sentence under the heading
15 "7.0 Limitations." That sentence reads: "It is
16 likely soil conditions will vary between or beyond
17 the points explored." Do you see that?

18 A. Yes.

19 Q. Is that sentence standard language that
20 is included in your geotechnical investigations and
21 reports?

22 A. Yes, it is.

23 Q. Thank you.

24 Have you worked on projects with karst
25 geology?

1 A. Yes.

2 Q. How many?

3 A. I would say about eight.

4 Q. Okay. And have you worked specifically
5 on wind projects where grouting was performed?

6 A. Yes.

7 Q. On those projects have they experienced
8 any geotechnical issues?

9 A. No.

10 Q. Okay. You were also asked questions on
11 cross-examination related to grouting and filling
12 voids to address potential karstic features and
13 preventing those from essentially continuing to grow.
14 Do you recall that testimony?

15 A. Yes.

16 Q. When we're talking about the development
17 of karstic features, what's the time period we're
18 talking about? Is that human years or are we talking
19 about geological time?

20 A. Geological time. Thousands of years. I
21 can't remember exactly what an 1/8 of an inch of
22 bedrock to wear away, it may be a thousand, two
23 thousand years for that to happen.

24 Q. Okay. Thank you.

25 The borings that were completed and

772

1 referenced in the geotechnical report, were those
2 industry standard?

3 A. Yes.

4 MR. SECREST: Okay. Thank you,
5 Mr. Williams. I have nothing further, your Honor.

6 ALJ WILLIAMS: Recross?

7 MR. VAN KLEY: Yes, your Honor.

8 ALJ WILLIAMS: Go ahead.

9 - - -

10 RECROSS-EXAMINATION

11 By Mr. Van Kley:

12 Q. Mr. Williams, if the development of
13 enlarged karst voids occurs in terms of geologic
14 years, then why do you need to fill the holes for a
15 turbine?

16 A. I guess we don't know the full condition
17 of its current state, whether it could lead to, I
18 guess, imminent collapse or settlement over time.

19 MR. VAN KLEY: Thank you. No further
20 questions.

21 ALJ WILLIAMS: Mr. Secrest?

22 MR. SECREST: Nothing, your Honor, other
23 than moving for the admission of Applicant's Exhibit
24 38.

25 ALJ WILLIAMS: I am looking at the

1 remaining counsel. I don't see anyone indicating any
2 need for clarification. I'll turn to my co-Bench.
3 Judge Agranoff, do you have questions of this
4 witness? Nothing? Okay. Judge Agranoff tells me,
5 from across the hall, he has no questions of this
6 witness as well.

7 With that, Mr. Williams, you are excused.
8 Thank you for your testimony this morning.

9 Attorney Secrest, you moved to admit
10 Applicant's Exhibit 38?

11 MR. SECREST: Yes, your Honor.

12 ALJ WILLIAMS: Attorney Van Kley?

13 MR. VAN KLEY: No objection.

14 ALJ WILLIAMS: It will be admitted then.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 ALJ WILLIAMS: Attorney Agranoff, I think
17 you have the next witnesses. Judge Agranoff.

18 ALJ AGRANOFF: That's okay. Thank you,
19 Judge Williams.

20 At this point I believe our next witness
21 is Tom Yingling. And, Ms. Aidun, I believe you had
22 indicated previously that Mr. Gerrard was going to be
23 making an appearance and handling Mr. Yingling's
24 testimony?

25 MS. AIDUN: That's correct. He will be

774

1 making an appearance at 11:00, although I will handle
2 the testimony. If it's possible to wait until 11:00,
3 I would appreciate that.

4 ALJ AGRANOFF: Does that cause a problem
5 for anybody if we wait until 11:00 in order for
6 Mr. Gerrard to participate?

7 MR. VAN KLEY: No.

8 MR. SECREST: Your Honor, if we may have
9 about a 5-minute break, we could move Mr. Corzatt up
10 in the order.

11 ALJ AGRANOFF: That would be ideal if we
12 could do that reshuffling.

13 MR. SECREST: Certainly.

14 ALJ AGRANOFF: Okay. Thank you.

15 MR. SECREST: Thank you, your Honor.

16 ALJ WILLIAMS: 10:25?

17 ALJ AGRANOFF: That will work.

18 MR. SECREST: Perfect. Thank you.

19 (Recess taken.)

20 ALJ AGRANOFF: Let's go back on the
21 record.

22 And Mr. Secrest, were you able to
23 reshuffle a little bit in order to have Mr. Corzatt
24 testify out of order in order to accommodate
25 Ms. Aidun?

1 MR. SECREST: Indeed we were, your Honor,
2 and may we call Mr. Corzatt. May the Applicant call
3 Mr. Corzatt to the stand.

4 ALJ AGRANOFF: You certainly may.

5 MR. SECREST: Thank you. If we could
6 promote Mr. Corzatt.

7 MS. KING: Mr. Corzatt has been promoted
8 to a panelist.

9 ALJ AGRANOFF: Thank you.

10 MS. KING: Mr. Corzatt, can you hear us
11 and are you able to turn on your camera?

12 THE WITNESS: Yes, I can and I just did.

13 MS. KING: Yes. Perfect. Thank you.

14 THE WITNESS: You're welcome. Thank you.

15 ALJ AGRANOFF: There you are. Good
16 morning, Mr. Corzatt.

17 THE WITNESS: Good morning, sir.

18 ALJ AGRANOFF: If you could please raise
19 your right hand for me.

20 (Witness sworn.)

21 ALJ AGRANOFF: Thank you.

22 Mr. Secrest.

23 MR. SECREST: Thank you, your Honor.

24 - - -

25

776

1 ROB CORZATT

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

4 DIRECT EXAMINATION

5 By Mr. Secrest:

6 Q. Good morning, Mr. Corzatt.

7 A. Good morning.

8 Q. Would you please state your full name for
9 the record and spell your last name.

10 A. My name is Robin Colby Corzatt. My last
11 name is spelled C-o-r-z-a-t-t.

12 Q. By whom are you employed, Mr. Corzatt?

13 A. I'm employed by Hull & Associates.

14 Q. And what is your business address?

15 A. Our address is 6397 Emerald Parkway,
16 Dublin, Ohio.

17 Q. Thank you.

18 Do you have in front of you what's been
19 identified or what is identified as your prefiled
20 direct testimony?

21 A. Yes, sir, I do.

22 Q. Is that a true and accurate copy of your
23 direct testimony prefiled in this case?

24 A. Yes, sir, it is.

25 Q. Do you have any changes or revisions to

1 that testimony?

2 A. No, sir.

3 MR. SECREST: Your Honor, may I move to
4 have Mr. Corzatt's prefiled direct testimony marked
5 as Applicant's Exhibit 39.

6 ALJ AGRANOFF: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. SECREST: Thank you, your Honor. May
9 I also tender Mr. Corzatt for cross-examination.

10 ALJ AGRANOFF: Yes, you may.

11 Mr. Van Kley.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Van Kley:

15 Q. Mr. Corzatt, have you ever personally
16 visited the project area for the Emerson Creek wind
17 project?

18 A. No, sir, I haven't.

19 Q. Did someone else from Hull & Associates
20 visit the project area in order to perform Hull &
21 Associates' deeds for this case?

22 A. Yes, sir. It's my understanding that
23 Mr. Shawn McGee, who was our former geotechnical
24 practice leader, performed the site reconnaissance at
25 the time we did our project.

778

1 Q. Did that site reconnaissance include any
2 subsurface exploration in the field?

3 A. No, sir.

4 Q. Do you know whether Hull & Associates
5 representatives, who visited the project area,
6 interviewed any residents around the area about the
7 presence of karst features?

8 A. No, sir, I'm not aware that they did.

9 Q. Let's talk about Exhibit E to the
10 Application for this project and that Application is
11 identified as Applicant's Exhibit No. 1. Do you have
12 Exhibit E accessible to you?

13 A. If you are referring to Hull &
14 Associates' report, yes, I do.

15 Q. Okay. And that report is labeled
16 "Groundwater, Hydrogeological, and Geotechnical
17 Report"?

18 A. Yes, sir.

19 ALJ AGRANOFF: The date on that would be
20 January 17 of 2019?

21 THE WITNESS: Yes, sir.

22 ALJ AGRANOFF: Okay.

23 Q. (By Mr. Van Kley) And you're familiar
24 with this report?

25 A. I am, sir.

1 Q. Would you go to Figure 4 of this report
2 and you will find that at PDF page 17.

3 A. Okay.

4 Q. Okay. Were you listening to
5 Mr. Williams' testimony this morning?

6 A. Yes, sir, I was.

7 Q. And did you hear my questions to
8 Mr. Williams about Figure 4 of Exhibit E?

9 A. If you are referring to the discrepancies
10 in the number of locations shown on our figure as
11 opposed to his, yes, I did.

12 Q. Okay. Do you have an explanation for the
13 discrepancy?

14 A. I -- I do not. Our figure was based on
15 information provided to us by the ODNR's geological
16 survey at the time of the study in a GIS shapefile
17 superimposed on project boundary shapefiles provided
18 by the client, the Applicant.

19 Q. Go to page 5 of Exhibit E.

20 A. Are you referring to page 5 of the actual
21 letter report?

22 Q. Yes, that's correct.

23 A. Okay. I'm there.

24 Q. It's also PDF page 5 of the electronic
25 version.

780

1 A. I have that.

2 Q. Okay. Thank you. Look at the bottom
3 paragraph on page 5 of Exhibit E.

4 A. Is that the paragraph that starts with
5 "Approximately"?

6 Q. It is. I would like to direct your
7 attention specifically to the fourth line of that
8 paragraph and to the sentence that states: "Reported
9 well depths ranged between 16 and 200 feet." Do you
10 see that?

11 A. Yes, sir, yes, sir.

12 Q. Okay. So -- and what's referred to here
13 are well depths reported by persons who responded to
14 a survey from Hull & Associates about information
15 concerning wells located in the project area,
16 correct?

17 A. Yes, sir.

18 Q. And if you go to page 6, on the top of
19 the page in part of the same paragraph we've been
20 discussing, you'll see a statement that the water
21 depths vary between 8 and 100 feet, correct?

22 A. Yes, sir.

23 Q. Okay. And that refers to the depths of
24 groundwater in the wells located in the project area
25 as described in answers to Hull's survey, correct?

1 A. Yes, sir, it is.

2 Q. Do you know what percentage of the
3 occupants of the project area use groundwater as
4 their source of potable water?

5 A. I could not tell you a percentage of the
6 entire project area, but based on the results we
7 received from our well survey, it was approximately
8 50 percent.

9 Q. Let's go to page 4 of Exhibit E.

10 A. Okay.

11 Q. And I'd like to talk about the
12 second-to-the-last paragraph on page 4 of Exhibit E
13 which discusses Source Water Protection Areas.

14 A. I'm there.

15 Q. What is a Source Water Protection Area?

16 A. They are areas that have been defined for
17 public and nonpublic entities as a -- an area to
18 designate the protection of whatever water resources
19 they may have, whether it be groundwater, surface
20 water, or a combination of both. It's a program
21 implemented by the Ohio EPA.

22 Q. Do you know how many Source Water
23 Protection Areas are located wholly or in part within
24 the project area?

25 A. I believe the number was seven, six or

782

1 seven.

2 Q. Do you know how many of those six or
3 seven Source Water Protection Areas are related to
4 groundwater sources, water production?

5 MR. SECREST: Objection, vague.

6 MR. VAN KLEY: I think it was pretty
7 specific and apparently he was about to answer it.

8 ALJ AGRANOFF: I'll allow the question.

9 A. Based on the information we received from
10 Ohio EPA, the Capital Aluminum Source Water
11 Protection Area appeared to be specific to
12 groundwater. If I'm not mistaken, the remainder of
13 those Source Water Protection Areas were from surface
14 water, for surface water.

15 Q. Did you or anybody else from Hull &
16 Associates to your knowledge perform any
17 time-of-travel calculations for the migration of
18 groundwater in the project area?

19 A. No, sir, we did not.

20 Q. Just to make sure the record is
21 explanatory, what -- would you tell me what a
22 time-of-travel calculation is?

23 A. Yes. It's an estimate of the amount of
24 time it would take for let's say a particle of
25 whatever, groundwater, to move to an intake, whether

1 it's a well or surface water intake, it would be the
2 distance that that particle would travel in one
3 year's time.

4 ALJ AGRANOFF: So even though it's called
5 "time of travel," it's a measure of distance?

6 THE WITNESS: Yes, sir. If you were to
7 look at some of the figures that are -- that
8 accompany these Source Water Protection Areas, they
9 may have -- they will have a defined boundary that
10 would demark the one-year time of travel and may also
11 have a five-year time of travel. So it is a
12 distance.

13 Q. (By Mr. Van Kley) It is the distance in
14 which something, such as water, travels in the year,
15 right?

16 A. Yes, sir. The distance it would travel
17 in a year's time.

18 Q. Yeah. Are you familiar with the term
19 "groundwater recharge area"?

20 A. I'm familiar with the term of
21 "groundwater recharge." I'm not sure how there's one
22 specific to this project area.

23 Q. Tell me what your understanding of the
24 meaning of the term "groundwater recharge" is.

25 A. It would be the area that would

784

1 potentially provide water to a well that might be
2 installed, the groundwater recharge area would be the
3 distance away from that well, that that well would
4 actually capture as it's -- during its operation.

5 Q. Did Hull & Associates perform any studies
6 to determine locations of areas in the project area
7 in which groundwater recharge occurs?

8 A. No, sir, we didn't.

9 Q. Would you go to page 9 of Exhibit E.

10 A. Okay.

11 Q. And also go to your testimony on page 5,
12 Answer 9.

13 A. Okay.

14 Q. All right. Let's start with your
15 testimony, Answer 9, on page 5 of Applicant's
16 Exhibit 39. And I would like to direct you to the
17 sentence that is on lines 11 through 14 which reads
18 as follows: "Based on setback requirements of the
19 wind turbines from habitable structures and
20 neighboring properties, the construction of the
21 proposed turbines is not likely to have a negative
22 impact on the local geology and/or hydrogeology of
23 the Project boundary." Did I read that sentence
24 correctly?

25 A. Yes, sir.

1 Q. Now, keep your finger in Answer 9 of your
2 testimony and go back to page 9 of Exhibit E of the
3 Application. And I would like to direct your
4 attention to the first paragraph on page 9 of
5 Exhibit E.

6 A. Yes, sir.

7 Q. Does the first paragraph on page 9 of
8 Exhibit E address the same topic as the sentence I
9 read from Answer 9 of your testimony?

10 A. I believe it does.

11 Q. All right. So let's -- let's utilize the
12 first paragraph on page 9 of Exhibit E then to
13 discuss this topic further. Let's go to the last
14 sentence in that first paragraph on page 9 which
15 reads as follows: "Therefore, based on the
16 information presented herein and the associated
17 analysis, construction of the wind turbines, or other
18 project components, are not anticipated to result in
19 any significant negative impact to the property
20 owners' wells." Do you see that sentence?

21 A. Yes, sir.

22 Q. Okay. Tell me what "information
23 presented herein" is referenced in the first part of
24 that sentence?

25 A. Could you repeat that question?

786

1 Q. Sure. I'll rephrase it for you. The
2 sentence that I just read to you from paragraph 1 on
3 page 9 states that "based on the information
4 presented herein," et cetera, impacts are not
5 expected. And my question is what information are
6 you referencing where you state "based on the
7 information presented herein"?

8 A. That would be all of the information
9 provided in the sections of the report prior to that.
10 The information we obtained from ODNR, the geological
11 survey, the well surveys, seismic information, soil
12 survey information, that information. Information
13 provided by the client on just basic construction.

14 Q. And which of that information tells you
15 that any significant negative impact to property
16 owners' wells was not expected from this project?

17 A. I would say one of the primary pieces of
18 information was the setback requirement for this
19 project, if I'm not mistaken, are in the neighborhood
20 of 1,300-plus feet minimum from a residence or a --
21 or a non -- nonparticipant for the project. It's our
22 understanding and just common that the potable
23 well -- a potable well would be located in close
24 proximity to the residence or a structure at that --
25 and that construction of the wind turbines would have

1 little to no impact, negative impact, on -- on those
2 water sources as a result of construction at that
3 distance.

4 Q. What, if any, data do you have to support
5 that conclusion other than the distance itself in the
6 setbacks?

7 MR. SECREST: Asked and answered. He
8 responded to the question about information presented
9 herein.

10 MR. VAN KLEY: It's a big report. If he
11 can point out what data in this report supports this
12 conclusion, then I think that's useful information
13 for us to know.

14 ALJ AGRANOFF: If the witness could more
15 specifically delineate the information that he was
16 referencing, then he can do so.

17 A. I would also point out the information
18 that we obtained from the well surveys -- of the
19 folks that did respond, the depths of their wells
20 were variable. Water levels within those wells were
21 encountered at depths anywhere from 8 to 100 feet.
22 The well surveys were not specific to the point where
23 they didn't have yield information on them. But a
24 lot of the wells were installed at depths quite --
25 quite below where the proposed foundation base would

788

1 be completed. And a lot of those appeared to be
2 wells that were installed within the underlying
3 limestone and shale bedrock.

4 Q. Why does that information support your
5 belief that the project's not anticipated to result
6 in any significant negative impact to the property
7 owners' wells?

8 A. To the extent that in the majority of the
9 project area that the depth of construction would be
10 above the depth of the water-bearing zone or the
11 groundwater table for the majority of the property
12 owners.

13 Q. Going back to the sentence in paragraph 1
14 of the Exhibit E we've been discussing, it is stated
15 that the project is not anticipated to result in any
16 significant negative impact to the wells. Do you see
17 that?

18 A. Yes, sir.

19 Q. Does that mean that there may be some
20 impact to the property owners' wells but not to the
21 degree that you would consider them to be
22 significant?

23 A. I would say that there's always a
24 possibility of some impact, but the impact would not
25 be any greater than what might be encountered or

1 observed during any potential construction project in
2 a rural area or in a karst area.

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

4 ALJ AGRANOFF: Before we get to redirect,
5 any clarifying questions from other counsel?

6 If not, Mr. Secrest, redirect.

7 MR. SECREST: Thank you, your Honor. May
8 I just have 2 minutes to gather my stuff and confer?

9 ALJ AGRANOFF: Sure. Why don't we take 5
10 minutes and start at 11:00.

11 MR. SECREST: Good. Thank you, your
12 Honor.

13 ALJ AGRANOFF: We'll go off the record.

14 (Recess taken.)

15 ALJ AGRANOFF: Okay. Let's go back on
16 the record.

17 And, Mr. Secrest, any redirect?

18 MR. SECREST: Yes. Just briefly, your
19 Honor. Thank you.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Secrest:

23 Q. Mr. Corzatt, on cross-examination you
24 were asked some questions about time-of-travel
25 studies. Do you recall those questions?

790

1 A. Yes, sir.

2 Q. Are such studies standard for wind
3 turbine projects?

4 A. Not that I'm aware of.

5 Q. Okay. Are you aware of any construction
6 restrictions associated with Surface Water Protection
7 Areas?

8 A. Yes. There -- the Ohio EPA lists several
9 activities that are restricted for construction in
10 areas that have been designated as Source Water
11 Protection Areas.

12 Q. Is the -- sorry. Please finish your
13 answer.

14 A. I was just going to point out that
15 they're -- they are typically restricting -- restrict
16 operations that would lead to a greater potential of
17 contamination of that groundwater or surface water
18 area.

19 Q. Is the construction of a wind turbine one
20 of those activities that is restricted?

21 A. No, sir, not that I'm aware of.

22 Q. Okay. Based on your experience, are you
23 aware of any wind turbine construction project
24 causing harm or damage to private wells?

25 A. Not that I'm aware of.

1 Q. Okay. Based upon your experience, are
2 you aware of any wind turbine construction project
3 causing harm or damage to a Source Water Protection
4 Area?

5 A. No, sir, I'm not.

6 MR. SECREST: Thank you. I have nothing
7 further.

8 ALJ AGRANOFF: Mr. Van Kley?

9 - - -

10 RECROSS-EXAMINATION

11 By Mr. Van Kley:

12 Q. Mr. Corzatt, Ohio EPA's rules do not
13 prohibit the presence of every type of potential
14 source of pollution from being conducted in Source
15 Water Protection Areas, do they?

16 A. Could you repeat that, sir?

17 Q. Yes.

18 MR. VAN KLEY: Could we have that
19 question read.

20 (Record read.)

21 A. Correct.

22 MR. VAN KLEY: Okay. No further
23 questions.

24 ALJ AGRANOFF: Thank you.

25 - - -

792

EXAMINATION

By ALJ Agranoff:

Q. I had just one clarifying question, Mr. Corzatt, if you could please take a look at the first page of your prefiled testimony.

A. Yes, your Honor.

Q. And there's reference there towards the end of your testimony where you indicate "My testimony, together with the other witnesses for Firelands testifying in this case, supports the Ohio Power Siting Board's adoption of the Joint Stipulation and Recommendation which was filed in this docket." Do you see that?

A. Yes.

Q. Are there specific conditions within the Joint Stipulation that your testimony is directed towards?

A. I don't -- I don't know if there's a specific condition. We understand that the geotechnical study and any subsequent work would be used to further develop the siting of the turbines within the project area.

Q. Were you finished with your response?

A. Yes, sir.

ALJ AGRANOFF: Okay. Thank you.

1 Based on my limited clarifying question,
2 anything further from counsel?

3 MR. VAN KLEY: No, your Honor.

4 ALJ AGRANOFF: Mr. Secrest?

5 MR. SECREST: No, thank you, your Honor.

6 ALJ AGRANOFF: Okay. Thank you,
7 Mr. Corzatt.

8 THE WITNESS: You're welcome. Thank you.

9 ALJ AGRANOFF: Mr. Secrest.

10 MR. SECREST: Yes, your Honor. May the
11 Applicant move for the admission of what has been
12 marked as Applicant's Exhibit 39.

13 ALJ AGRANOFF: Any objection?

14 MR. VAN KLEY: None, your Honor.

15 ALJ AGRANOFF: There being none,
16 Applicant Exhibit 39 shall be admitted as part of the
17 record.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 ALJ AGRANOFF: And with that, I believe I
20 see Mr. Gerrard there. Thank you, Mr. Gerrard, for
21 joining us this morning.

22 MR. GERRARD: Thank you, your Honor.

23 ALJ AGRANOFF: Either you or Ms. Aidun
24 can proceed with the calling of Mr. Yingling.

25 MR. GERRARD: First I'll enter an

794

1 appearance if I may. Michael Gerrard with the law
2 firm of Arnold & Porter, 250 West 55th Street, New
3 York, New York 10019. I'm counsel together with
4 Ms. Aidun, representing Kevin Erf and Tom Yingling,
5 and now I will turn it over to my colleague,
6 Ms. Aidun.

7 ALJ AGRANOFF: Thank you. And as long as
8 we have Ms. Aidun and Mr. Gerrard present, before we
9 actually call Mr. Yingling, I just wanted to
10 reiterate my directive from back last week that
11 although you're certainly welcome to have co-counsel,
12 that we have a rule that only one counsel may
13 actually interact per witness. So as long as you
14 understand that guideline, we should be good.

15 MS. AIDUN: Yes, your Honor.

16 MR. GERRARD: Yes, that will be
17 Ms. Aidun.

18 ALJ AGRANOFF: Okay. Thank you.

19 Ms. Aidun.

20 MS. AIDUN: Thank you, your Honor. I
21 call Tom Yingling.

22 ALJ AGRANOFF: And if we could please
23 promote Mr. Yingling.

24 MS. KING: Yes. Mr. Yingling has been
25 promoted to a panelist. And unmuted. Just turn on

1 his camera and we'll be good.

2 ALJ AGRANOFF: Thank you, Kelli.

3 MS. KING: Mr. Yingling, can you hear me?

4 THE WITNESS: Yes.

5 MS. KING: It looks like Mr. Yingling's
6 camera is off.

7 THE WITNESS: Okay. I turned that on.
8 Let's see, where do I turn that on then?

9 MS. KING: Down at the very bottom of the
10 start video.

11 THE WITNESS: Oh, yep.

12 MS. KING: And also if you wouldn't mind
13 turning your volume down so the reverb.

14 THE WITNESS: Let's see.

15 MS. KING: It would be the same place as
16 your video, in the settings should be where your
17 sound is.

18 THE WITNESS: Yeah.

19 MS. KING: I am sorry. Your device
20 volume. So your volume.

21 THE WITNESS: Yeah. How would I turn
22 that down? I'm not good at this. I'm sorry.

23 MS. KING: That's okay.

24 MS. AIDUN: Would it also work for him to
25 mute himself when others are speaking?

796

1 THE WITNESS: Then we can do that.

2 MS. KING: Okay. Yeah, because I don't
3 know what kind of computer you have. Every computer
4 is different. Or you could do the space bar option.
5 Whenever you want to speak you could -- you mute
6 yourself but then hit the space bar button, that
7 would unmute you in order to speak.

8 THE WITNESS: Okay. I will mute on and
9 off then.

10 MS. KING: Okay. Thank you.

11 ALJ AGRANOFF: Okay. Mr. Yingling, can
12 you hear me?

13 THE WITNESS: Yes.

14 ALJ AGRANOFF: Perfect. If you could
15 please raise your right hand. I am going to swear
16 you in before you provide your testimony.

17 (Witness sworn.)

18 ALJ AGRANOFF: I need you to
19 affirmatively --

20 THE WITNESS: Yes.

21 ALJ AGRANOFF: Thank you.

22 THE WITNESS: Got to hit my mute button.

23 ALJ AGRANOFF: I understand. There's a
24 lot at once.

25 And with that, Ms. Aidun, you certainly

1 can proceed.

2 MS. AIDUN: Thank you, your Honor.

3 - - -

4 THOMAS YINGLING

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

7 DIRECT EXAMINATION

8 By Ms. Aidun:

9 Q. Mr. Yingling, could you state and spell
10 your name for the record.

11 A. Thomas A. Yingling, 5889 -- or 6247 Young
12 Road, Bellevue, Ohio 44811.

13 Q. And could you spell.

14 A. Spell it? Thomas, T-h-o-m-a-s, A,
15 Yingling, Y-i-n-g-l-i-n-g.

16 Q. And do you have in front of you your
17 prefiled direct testimony?

18 A. Yes.

19 Q. And is that a true and accurate copy of
20 your testimony?

21 A. Yes.

22 Q. Do you have any changes or revisions to
23 your testimony?

24 A. No.

25 MS. AIDUN: Thank you.

798

1 Your Honor, I move to mark Mr. Yingling's
2 testimony as Erf and Yingling Exhibit 1, and I tender
3 the witness.

4 ALJ AGRANOFF: Okay. The prefiled
5 testimony shall be marked accordingly.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 ALJ AGRANOFF: And before we proceed with
8 cross-examination, I'm aware of the fact there was a
9 motion to strike a portion of Mr. Yingling's
10 testimony filed by Mr. Van Kley. And Mr. Van Kley, I
11 need you to give me a little more detail. I believe
12 there was an omission of the end of the testimony --
13 the portions of the testimony that you were seeking
14 to have stricken. It indicates starting on line 26
15 at page 3 through line, and there is no line
16 identified on page 4.

17 MR. VAN KLEY: Oh. Okay. Yeah. It's
18 through line 3 on page 4. So it would be that --
19 that answer noted as answer -- the first Answer 8
20 starting on page 3 and going through page 4.

21 ALJ AGRANOFF: Okay. And I think a quick
22 synopsis of your motion to strike is that the
23 references made by Mr. Yingling in his testimony with
24 respect to climate change are beyond his expertise
25 and, therefore, he is not an expert with respect to

1 the issues of climate change.

2 And, Ms. Aidun, you had filed a memoranda
3 contra where you, I believe, just in summary, was
4 indicating that he was not providing or intending to
5 offer expert testimony with respect to climate change
6 but were basic -- was basically relying upon his
7 personal experience and observations in his role as a
8 farmer. Is that a correct assessment?

9 MS. AIDUN: Yes, your Honor, and it also
10 goes to his reasons for supporting the wind farm.

11 ALJ AGRANOFF: Okay.

12 MS. AIDUN: Which is relevant to the
13 Board's consideration.

14 ALJ AGRANOFF: Based on the motion to
15 strike that is currently before us and the memoranda
16 contra that was filed, I am going to allow for
17 Mr. Yingling's testimony to be included as part of
18 the record with the understanding that the
19 representations made by Ms. Aidun are that he is not
20 testifying with respect to climate change as an
21 expert but based on his personal experience and
22 observations.

23 And with that, Mr. Van Kley.

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

25 - - -

800

CROSS-EXAMINATION

By Mr. Van Kley:

Q. Mr. Yingling, have you signed a lease for the Emerson Creek wind project?

A. Yes.

Q. And generally speaking, what are you leasing for that project?

A. Our family's farms are involved in the footprint of the project, and we have potential for one windmill.

Q. Okay. And who is the other party or parties to this lease?

A. I have Woodside Farms where our family farm is, my brother and my mother.

Q. Okay. And is this lease with Firelands Wind, LLC?

A. Yes.

Q. When did you sign this lease?

A. We were early in the project. We signed actually with another company originally. Then the leases got bought out because there was a number of windmill project companies competing for this area.

Q. When did you sign -- when did you initially sign the lease that you just described?

A. I couldn't give you an exact date, I'm

1 sorry.

2 Q. Can you give me an approximate year?

3 A. The project has been in our area I
4 believe for 11 years now, so probably 10 years.

5 Q. Does this lease provide for payments to
6 you by the wind company?

7 A. Yes.

8 Q. And are you currently receiving those
9 payments?

10 A. Yes, as per the lease.

11 Q. Are these annual payments that are made?

12 A. Yes.

13 Q. Have you been receiving those payments
14 ever since you initially signed the lease?

15 A. Yes.

16 Q. Does the wind developer pay you or any
17 associated company to you for anything else?

18 A. No.

19 Q. Do you have any college degrees?

20 A. No.

21 Q. Before you did sign the lease with the
22 wind developer initially, did you discuss this lease
23 with any of your neighbors?

24 A. There were some community informative
25 meetings at that time so there was an open public

802

1 format where, as a community, there were discussions.
2 Personally not in any depth, no.

3 Q. Did you ask any of your neighbors who
4 live next to your company's property whether they
5 would object to your signing this lease?

6 A. Again, we were present at those same
7 community meetings, so if -- there was a lot of
8 public support; and so, yes, I knew their intentions
9 were to sign on as we did also.

10 Q. Do you have any neighbors to land owned
11 by your farm that have not signed leases with this
12 wind farm?

13 A. Yes.

14 Q. Did you ask them whether they would
15 object to your signing a lease to allow a turbine to
16 be placed on your property before you signed that
17 lease?

18 A. No.

19 MR. VAN KLEY: All right. I have no more
20 questions at this time.

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

22 Any clarifying questions from other
23 counsel before we get to redirect?

24 Okay. Ms. Aidun.

25 MS. AIDUN: Thank you, your Honor. May I

1 have 5 minutes?

2 ALJ AGRANOFF: Yes, you may. Why don't
3 we -- we'll come back at 11:30.

4 We are off the record. Thank you.

5 (Recess taken.)

6 ALJ AGRANOFF: Okay. Let's go back on
7 the record.

8 Ms. Aidun, any redirect?

9 MS. AIDUN: No, your Honor. Thank you.

10 ALJ AGRANOFF: Okay. Appreciate your
11 time, Mr. Yingling.

12 And would you care to renew your motion
13 for the admission of Mr. Yingling's testimony?

14 MS. AIDUN: Yes, your Honor. I move to
15 admit Exhibit 1.

16 ALJ AGRANOFF: Any objection to admission
17 of the aforementioned exhibit?

18 MR. VAN KLEY: No, your Honor.

19 ALJ AGRANOFF: There being none, it shall
20 be admitted at this time.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 ALJ AGRANOFF: And Ms. Aidun, could you
23 please call Mr. Erf.

24 MS. AIDUN: Thank you, your Honor. I
25 call Kevin Erf.

804

1 ALJ AGRANOFF: And if we could please
2 promote Mr. Erf to a panelist.

3 MS. KING: Mr. Erf, you have been
4 promoted to panelist. If you would just turn your
5 camera on, we will be ready to go.

6 THE WITNESS: Okay. I believe I've
7 turned everything on.

8 MS. KING: Yep. Thank you.

9 ALJ AGRANOFF: Good morning, Mr. Erf.

10 THE WITNESS: Good morning.

11 ALJ AGRANOFF: If you could please raise
12 your right hand for me.

13 (Witness sworn.)

14 (Recess taken.)

15 ALJ AGRANOFF: Let's go back on the
16 record. And Ms. Aidun.

17 - - -

18 KEVIN ERF

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

21 DIRECT EXAMINATION

22 By Ms. Aidun:

23 Q. Mr. Erf, could I ask you to state and
24 spell your name again for the record.

25 A. Yes. My name is Kevin Erf. My last name

1 is spelled E-r-f.

2 Q. And what is your address?

3 A. My address is 4704 Yingling Road,
4 Y-i-n-g-l-i-n-g, Road. I'm in Bellevue, Ohio. My
5 ZIP Code is 44811.

6 Q. And do you have in front of you your
7 prefiled direct testimony?

8 A. Yes, I do.

9 Q. And is that a true and accurate copy of
10 your testimony?

11 A. Yes, it is.

12 Q. Do you have any changes or revisions to
13 your testimony?

14 A. No, I do not.

15 MS. AIDUN: Your Honor, I would move to
16 mark Mr. Erf's testimony as Erf and Yingling Exhibit
17 2, and I tender the witness.

18 ALJ AGRANOFF: Thank you. Mr. Erf's
19 testimony will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 COURT REPORTER: I'm sorry.

22 (Discussion off the record.)

23 (Thereupon, at 11:40 a.m., a lunch recess
24 was taken.)

25 - - -

806

Tuesday Afternoon Session,
October 13, 2020.

- - -

ALJ AGRANOFF: Let's go back on the
record. And I believe, based on the conversation
that I just had with the court reporter, that we are
ready for the cross-examination of Mr. Erf. And,
Mr. Van Kley, if you would please proceed.

MR. VAN KLEY: Thank you, your Honor.

- - -

KEVIN ERF

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

CROSS-EXAMINATION

By Mr. Van Kley:

Q. Mr. Erf, do you have a lease with the
wind developer in this case?

A. Yes, I do.

Q. Is that lease on behalf of you personally
or on behalf of a company?

A. It's the -- our farm is incorporated so
the farm that my brother, myself, and my mother own
together are entered into that lease.

Q. When did your company enter into that
lease?

1 A. I believe it was in 2009.

2 Q. Were you contacted by the wind developer
3 in the communication that solicited your signing this
4 lease?

5 A. Yes. At the time there were three major
6 developers looking to develop the wind energy in our
7 area. We actually originally signed with a company
8 called Juwi and they sold out their leases to Apex.

9 Q. Did you attend any meetings with the wind
10 developer before you signed the lease?

11 A. There were several community meetings so
12 we went to some of those. We actually took all three
13 of the wind leases to attorneys and had them review
14 them.

15 Q. These community meetings that you
16 mentioned, were those meetings that were advertised
17 to the general public or were they by private
18 invitation?

19 A. I believe a lot of them were open to the
20 public.

21 Q. Was there any advertising that invited
22 the public to the meetings?

23 A. I'm uncertain.

24 Q. You said something about three leases.
25 Do you have more than one lease with this wind

808

1 developer?

2 A. No. I only have one lease -- well, we
3 are -- all of our property is leased to Apex now. At
4 the time that the wind-developing companies were
5 coming around, there were three major companies, Apex
6 was one, Juwi was the other, and the third one was I
7 think called Saint John's or Saint George's Wind
8 Energy. They were a very small player but they still
9 presented us with a lease. So those were the three
10 that I'm referring to that was in the beginning of
11 the project very early on.

12 Q. Did you communicate with any other
13 landowners to encourage them to also sign leases with
14 the wind developer?

15 A. No, I did not.

16 Q. Before you signed the lease, did you ask
17 any of the neighbors who occupy land next to your
18 farm whether they object or objected to the placement
19 of a wind turbine on your farm's land?

20 A. No, I did not.

21 Q. Pursuant to this lease that you have with
22 the wind developer, will your farm have a turbine or
23 turbines placed on it?

24 A. At the present time, yes, we will get one
25 wind turbine.

1 Q. Are you receiving payments from the wind
2 developer pursuant to this lease?

3 A. Yes. We're in lease with them, and for
4 them to secure our wind rights or develop our
5 property there's an annual payment.

6 Q. Does your lease have any restrictions
7 against your communicating about the project in any
8 way to other people?

9 A. I've not -- I talked to my neighbors
10 about it, if they ask. I don't know -- I haven't
11 read that specifically that -- other than the
12 financial aspect, I don't really discuss much else
13 with them.

14 Q. Has the wind developer ever instructed
15 you not to discuss the project with any other people?

16 A. No, they have not.

17 Q. Would you go to page 3 of your testimony,
18 please.

19 A. Yes, I have it.

20 Q. I was curious about a statement you made
21 on line 17 on page 3 of your testimony and I would
22 like to also mention that the sentence that contains
23 the statement starts on line 15 and goes through
24 line 17, and in line 17 you will say -- you said --
25 actually the line starts on 16 and goes to 17. In

810

1 this sentence you say "I see the wind project as an
2 opportunity for the community to generate more income
3 without destroying our lives." What was your intent
4 with respect to your including the words in that
5 sentence "without destroying our lives"?

6 A. Well, the statement I made was we want a
7 farm and we want to pass the farm on to the next
8 generation. And over the course of my lifetime I've
9 seen our property taxes continue to go up, our
10 markets have been -- we have very small, very minimal
11 margins. We used to be dairy farmers. We milked
12 cows for almost 100 years and it got to the point we
13 cannot make a living doing that so we had to revamp
14 and redo what we are, what we are currently doing now
15 which is a feeding operation. It was -- the intent
16 of that is our taxes continue to go up. This is an
17 opportunity for us to generate some additional income
18 and the tax revenue coming from this might help us
19 either keep our tax burden where it is or lower it so
20 that our government can still function and do what
21 they need to.

22 Q. What did you mean about your statement
23 that you could do this "without destroying our
24 lives"?

25 A. Well, at a certain point we can only bear

1 so much tax burden and there's nothing left for us.
2 So at that point you've taxed us to the point we
3 can't make a living which in my eyes or in my
4 statement is what would destroy our farm.

5 Q. Okay.

6 A. Taxes is a major burden to us.

7 Q. Yeah. Are you familiar with an
8 organization known as the Northern Ohioans for Wind?

9 A. Yes, I am.

10 Q. Uh-huh. And I'll just refer to this
11 organization by its acronym, NOW. Can you tell me
12 how you became familiar with this organization?

13 A. Yes. I was approached by somebody by the
14 name of Nate Wheeler. Nate was -- Nate Wheeland,
15 excuse me. Nate Wheeland was from the Columbus area.
16 He worked for, I'm not sure, like a lobbyist group or
17 something and they helped us put that organization
18 together.

19 Q. Uh-huh. Was he a lobbyist for the wind
20 power industry?

21 A. He never told me that he was or wasn't.
22 I don't know for sure.

23 Q. And were you involved in organizing NOW?

24 A. I helped him secure or helped us secure
25 meeting locations. We had one meeting at the D&D

812

1 Winery in Norwalk where we all met, and then we had
2 another public forum at the Ernsthausen Center in
3 Norwalk. So yes, I did help with those.

4 Q. Have you or your company received any
5 compensation for your work with NOW?

6 A. No, none whatsoever.

7 Q. NOW has a website, correct?

8 A. Yes, I believe so.

9 Q. Do you know who pays for the website?

10 A. No, I do not.

11 Q. Do you know who designed the website?

12 A. No, I don't -- do not know that either.

13 Q. Erf Family Farms is listed on the website
14 as a supporter; is that right?

15 A. Yes, that is correct.

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

17 ALJ AGRANOFF: Thank you. Before we get
18 to redirect, any clarifying questions from any of the
19 other counsel?

20 If not, Ms. Aidun?

21 MS. AIDUN: Thank you, your Honor. May I
22 take 2 minutes?

23 ALJ AGRANOFF: Certainly.

24 MS. AIDUN: Thank you.

25 ALJ AGRANOFF: Let's go off the record.

1 (Recess taken.)

2 ALJ AGRANOFF: Ready to proceed,
3 Ms. Aidun?

4 MS. AIDUN: Yes, your Honor. I have no
5 redirect.

6 ALJ AGRANOFF: Okay. Thank you.
7 Appreciate your time, Mr. Erf.

8 THE WITNESS: That will be all for me
9 then?

10 ALJ AGRANOFF: That is all. Thank you.

11 THE WITNESS: Thank you. I appreciate
12 the Board taking the time.

13 ALJ AGRANOFF: And Ms. Aidun, do you seek
14 renewal of your motion for the admission of Mr. Erf's
15 testimony?

16 MS. AIDUN: Yes, your Honor. Erf and
17 Yingling Exhibit 2.

18 ALJ AGRANOFF: Any objection?

19 MR. VAN KLEY: No, your Honor.

20 ALJ AGRANOFF: There being none,
21 Exhibit 2 shall be admitted as part of the record at
22 this time.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 ALJ AGRANOFF: And I believe we are now
25 ready for Mr. Johnson's testimony.

814

1 MR. SECREST: That's correct, your Honor.
2 May the Applicant call Grant Johnson.

3 ALJ AGRANOFF: There he is.

4 MS. KING: Mr. Johnson, you have been
5 promoted to a panelist position.

6 THE WITNESS: Thank you.

7 ALJ WILLIAMS: Good afternoon,
8 Mr. Johnson. How are you?

9 THE WITNESS: Good afternoon.

10 ALJ WILLIAMS: Welcome to the hearing.
11 As we begin, I will go ahead and swear you in. Would
12 you go ahead and raise your right hand.

13 (Witness sworn.)

14 All right. Mr. Secrest.

15 MR. SECREST: Thank you, your Honor.

16 - - -

17 GRANT JOHNSON

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

20 DIRECT EXAMINATION

21 By Mr. Secrest:

22 Q. Good afternoon, Mr. Johnson.

23 A. Good afternoon.

24 Q. Do you have in front of you what's
25 labeled as your prefiled direct testimony?

1 A. Yes, I do.

2 Q. And is that a true and accurate copy of
3 your direct prefiled testimony that was filed in this
4 case?

5 A. Yes, it is.

6 Q. Great. Do you have any changes or
7 revisions to that testimony?

8 A. I do not.

9 Q. Excellent. Would you please let us know
10 by whom you are employed and provide the -- your
11 business address as well.

12 A. Yes. Absolutely. I am employed by
13 Environmental Design & Research, which is located at
14 217 Montgomery Street, Suite 1100, Syracuse, New York
15 13202.

16 MR. SECREST: Thank you, Mr. Johnson.

17 Your Honor, may I move to have
18 Mr. Johnson's prefiled direct testimony marked as
19 Applicant's Exhibit 37.

20 ALJ WILLIAMS: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. SECREST: Thank you. May I also
23 tender Mr. Johnson for cross-examination.

24 ALJ WILLIAMS: Thank you, Mr. Secrest.

25 Attorney Van Kley.

816

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

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Van Kley:

5 Q. Mr. Johnson, you have 10 years of
6 experience with projects that involve cultural
7 resources?

8 A. That's correct, sir.

9 Q. During the last five years or so, can you
10 estimate the amount of time in which you worked on
11 energy development projects?

12 A. In the last five years, the amount of
13 time I've worked on energy development projects, a
14 portion of every week of the last five years if not
15 greater, sometimes the entire workweek, an entire
16 40-hour workweek or greater depending on the project
17 load but energy projects, both wind and solar, are a
18 large portion of EDR's cultural resources workload.

19 Q. In each of these wind energy cases, did
20 you work for the wind developer?

21 A. Yes. I -- sorry, let me take a second to
22 think about that. Yes, in -- in all instances I can
23 recall at this moment, yes, we were employed directly
24 by developers.

25 Q. Are you aware of the -- the work that was

1 done pertaining to cultural resources for the purpose
2 of developing the Application for the Emerson Creek
3 wind project?

4 A. I am aware of this, yes, sir.

5 Q. Just to provide some context for my
6 questions, can you give us a general overview of the
7 work pertaining to cultural resources that was done
8 for purposes of this application?

9 A. Certainly. We, EDR, prepared a cultural
10 resources records review to support the Application
11 which is a desktop review of a variety of sources
12 that are standard to Ohio in general and review of
13 projects by the Ohio Historic Preservation Office.
14 It includes such things as historic maps, atlases,
15 county histories, things of that nature as well as
16 the records of the Ohio Historic Preservation Office
17 in terms of previously-identified cultural resources
18 both archeological and architectural as well as
19 things like bridges and cemeteries. And basically
20 the records review consists of a review of all that
21 and providing an inventory essentially of the
22 quantity and location of resources relative to the
23 project.

24 Q. Prior to the submittal of the
25 Application, was any fieldwork done to identify

818

1 cultural resources in the project area?

2 A. Not prior to the Application and not as
3 part of that report. Strictly a desktop analysis.

4 Q. Okay. Now, since the Application was
5 submitted, has the wind developer commissioned any
6 fieldwork to be done in order to identify cultural
7 resources in the area of the project?

8 A. Yes, they have.

9 Q. And has any of that fieldwork been
10 performed at this point in time?

11 A. Yes, EDR has conducted a historic
12 resources survey associated with the project.

13 Q. What were the procedures that you used to
14 conduct that survey?

15 A. We -- so a -- a survey plan was submitted
16 by another consulting firm in 2019 and basically it
17 was consistent with our approach. There's -- the
18 Ohio Historic Preservation Office has sort of -- they
19 have sets of standards and guidelines for how surveys
20 are conducted and you basically need to submit a
21 survey plan before conducting any kind of fieldwork
22 unless there is some extenuating circumstances.

23 But anyway, so we conducted the survey in
24 accordance with this survey plan which included
25 surveying both previously-identified historic

1 resources, aboveground historic resources that is,
2 within a 5-mile radius in locations of anticipated
3 project visibility based on viewshed. And then also
4 based on the requirements of the Ohio Historic
5 Preservation Office identified newly -- or rather
6 previously-unrecorded, newly-identified resources
7 that were 50 years or older within that same viewshed
8 and study area.

9 And then those -- just to complete the
10 picture, those were compiled into an illustrated
11 survey report along with, you know, final tallies,
12 totals, things like that and a preliminary assessment
13 of whether or not those properties appeared to meet
14 criteria for listing in the National Register of
15 Historic Places. I say preliminary assessment
16 because only the SHPO can make the final
17 determination.

18 Q. That acronym stands for?

19 A. Oh, the State Historic Preservation
20 Office. Sorry.

21 Q. Have you completed the survey that you've
22 been describing?

23 A. Yes, we have. It is in the process of
24 internal review with the developer at the moment.

25 Q. Are you aware of any fieldwork that is

820

1 anticipated to identify cultural resources at or near
2 the project area?

3 A. I'm not aware of any additional
4 anticipated work regarding aboveground historic
5 resources. My firm was not involved in archeological
6 surveys so I'm not -- I can't really comment on that.

7 Q. Did your survey of cultural resources
8 identify cultural resources within 5 miles of the
9 project area that were not previously identified in
10 the Application for this project?

11 A. Yes, we did.

12 Q. Can you give me an estimate of how many
13 such cultural resources were found?

14 A. I do not have the report in front of me.
15 I'm trying to remember, I'm sorry. There were -- I
16 can tell you this, there were a total of -- it might
17 have been around -- well, hold on a second. This --
18 I think my answer requires a little qualification
19 because the Ohio Historic Preservation Office
20 standards require the identification of buildings
21 50 years or older. So this includes a lot of
22 buildings that in other states and even by National
23 Park Service standards who are the -- they are the
24 ones who oversee the national register. These
25 buildings probably would not qualify for, you know,

1 listing in the national register.

2 So we identified several hundred
3 buildings and I want to say that's 2- or 300 that
4 were over 50 years of age. Again, this is an
5 estimate without the benefit of having the report in
6 front of me, but as I recall, only about 30 to 40 of
7 those we thought might meet the criteria for listing
8 in the national register.

9 Q. And were any of those 30 or 40 structures
10 identified previously in the Application for this
11 case?

12 A. I believe some of them were, yes. They
13 were in the existing inventory that the Ohio Historic
14 Preservation Office maintains, but they did not have
15 a formal determination of national register
16 eligibility.

17 Q. Okay. Do you have any idea as to how
18 many approximately of the 30 or 40 buildings were
19 included previously in the Application?

20 A. I don't. I'm sorry.

21 MR. VAN KLEY: All right. I have no more
22 questions.

23 ALJ WILLIAMS: Thank you.

24 Any clarification from anybody else?

25 Seeing none, Attorney Secrest, redirect?

822

1 MR. SECREST: May I have 2 minutes, your
2 Honor?

3 ALJ WILLIAMS: Yeah. Take a couple
4 minutes. We will go ahead and just stay on camera
5 and go mute.

6 MR. SECREST: Perfect. Thank you.

7 (Discussion off the record.)

8 ALJ WILLIAMS: Okay. Redirect?

9 MR. SECREST: We have no redirect. Thank
10 you, your Honor.

11 ALJ WILLIAMS: Okay. Judge Agranoff, any
12 questions? He is shaking his head no.

13 All right. Mr. Johnson, thank you for
14 your testimony.

15 THE WITNESS: Thank you, your Honor.

16 ALJ WILLIAMS: Attorney Secrest.

17 MR. SECREST: May we move for the
18 admission of Applicant's Exhibit 40 -- 37, excuse me.

19 ALJ WILLIAMS: Attorney Van Kley.

20 MR. VAN KLEY: No objection.

21 ALJ WILLIAMS: Exhibit -- Applicant's
22 Exhibit 37 is admitted into the record then.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 ALJ WILLIAMS: That concludes our
25 expected witnesses for the day. We've already gone

1 over preliminary matters. As we indicated, we will
2 take up Mr. Schreiner's motion to exclude testimony
3 at the outset of his presentation tomorrow.

4 Anything else we need to do
5 administratively?

6 MR. SECREST: Your Honor, with the
7 conclusion of Applicant's witnesses, is now an
8 appropriate time for admission of Joint Stipulation
9 Exhibit 1?

10 ALJ WILLIAMS: That seems to make sense.
11 We seem to have some time on our hands.

12 MR. SECREST: Indeed.

13 ALJ WILLIAMS: Would you like to say
14 anything beyond that?

15 MR. SECREST: No, just formally Applicant
16 would like to move for the admission of Joint Exhibit
17 1, the Stipulation.

18 ALJ WILLIAMS: Attorney Van Kley?

19 MR. VAN KLEY: No objection.

20 ALJ WILLIAMS: Joint Exhibit 1, the Joint
21 Stipulation, is admitted into the record.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 ALJ WILLIAMS: As in the past, we will
24 send those via e-mail to Ms. Gibson for her
25 inclusion.

824

1 Anything else administratively?

2 Okay. Hearing nothing, so with that we
3 will sign off early for the day, and we will gather
4 again tomorrow to begin testimony at 9:00. So while
5 we have three witnesses on tap, let's try to get them
6 cued up at 8:45, 8:50, make sure the technology is
7 working, okay?

8 We're adjourned for the day. Thank you.

9 (Thereupon, at 1:17 p.m., the hearing was
10 adjourned.)

11 - - -

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 Tuesday, October 13, 2020,
5 and carefully compared with my original stenographic
6 notes.

7
8 _____
Karen Sue Gibson, Registered
Merit Reporter.

9
10 _____
Carolyn M. Burke, Registered
Professional Reporter.

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12 (KSG-6973)

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Summary: Transcript in the matter of the Firelands Wind, LLC hearing held on 10/13/20 - Volume VI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.