

South Dakota Public Utilities Commission

EL18-003- In the Matter of the Application by Dakota Range I, LLC and Dakota Range II, LLC for a Permit of a Wind Energy Facility in Grant County and Codington County, South Dakota, for the Dakota Range Wind Project- Evidentiary Hearing

June 14, 2018, 8:00 a.m.

Room 413, State Capitol Building, Pierre, SD

Please Print Legibly

Person	Representing/Company/Agency	Address/City/State
Kristi Mogen		Twin Brooks
Teresa Kaaz		South Shore, SD
Mollie Smith	Dakota Range	Minneapolis, MN
Lisa Gammanti	Dakota Range	Minneapolis, MN
Robert O'Neal	Dakota Range	Maynard, MA
Stephanie Petelos	Dakota Range	St Paul, MN
Alan Moon	Dakota Range	Charlottesville VA
Drew Silverman	Dakota Range	Charlottesville VA
MARK MAUBESSE	ll	ll
Brenna Gunderson	Dakota Range	Charlottesville, VA
Jennifer Bell	Dakota Range	Denver, CO

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1 The following transcript of proceedings was
2 held in the above-entitled matter at the South Dakota
3 State Capitol Building, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 14th day of June, 2018, commencing
5 at 10:00 a.m.

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1 MS. CREMER: We will call the Docket EL18-003 in
2 the matter of the permit for Dakota Range Wind Farm back
3 to order, back into session. When we left off last night
4 Dakota Range was going to present its rebuttal case
5 today.

6 So, Dakota Range, I will turn it over to you.
7 Thank you.

8 MS. SMITH: Thank you.

9 So I think our first question would be how the
10 Commission would like to proceed with respect to the
11 manual that was provided last night because we know that
12 if there's any discussion, that needs to be in
13 confidential session.

14 We do have someone that we could -- from Apex
15 with operations that's available by telephone if that is
16 something the Commission wants to -- if they want to
17 speak to that person, we can call that person.

18 Neal James is this person -- his name, with
19 Apex. We just are kind of open to however you guys want
20 to proceed on that piece.

21 We do have updates that we want to have our
22 sound and shadow flicker witness put in. We are just
23 waiting honestly for the copies to be made because we had
24 the map updated, and it's at the copy shop at this very
25 moment and someone is waiting for it. So we're getting

1 those copies. We've also got an updated turbine ID
2 chart.

3 So basically I think we're trying to close the
4 loop on all of those pieces. And once they're here, we
5 can have Mr. O'Neal come back up and address those items
6 for us.

7 So we're open to how you would like to proceed.

8 MS. CREMER: Commissioner Nelson.

9 COMMISSIONER NELSON: If I might, let me address
10 the first question of the manual.

11 First of all, thank you for the hustle that you
12 went through to get that and to get it filed. Greatly
13 appreciated.

14 I do not have any questions based on what was
15 filed, but I do have two additional pieces of information
16 that will need to be filed in order to help me settle the
17 issues that are rolling around in my mind.

18 The first thing that I would request be filed
19 would be a listing of the proposed turbine locations that
20 are less than 1,000 feet from the property line of a
21 nonparticipating landowner.

22 The second thing that I would request is my
23 original request. The original request was for the
24 turbine operations manual for the Vestas 4.2 turbine.
25 And your cover letter that was filed yesterday said that

1 you had submitted the turbine operations manual, which is
2 what we had requested.

3 It was clear that what was submitted to us was
4 not that. It didn't have a cover on it, but in reviewing
5 the 600 pages, it is clear that it was not a turbine
6 operations manual.

7 The best thing that I could guess is that it was
8 a safety manual for turbine work sites, but it certainly
9 was not an operations manual. And so I would reiterate
10 my request for the Vestas 4.2 turbine operations manual.

11 MS. SMITH: I can address that.

12 That manual is not going to be released until
13 November. We have confirmed that. It does not exist
14 yet. That's why we are not able to provide it. We were
15 requested to provide the safety manual. This is kind of
16 the safety operations manual. This is what we were
17 provided by Vestas.

18 There is -- how do I say this? There are not
19 setbacks proposed by Vestas in their manuals. They are
20 specifications about the turbines themselves. And so
21 that is why we cannot -- it does not exist. We cannot
22 produce it.

23 COMMISSIONER NELSON: So the obvious question
24 was if it doesn't exist, how can you tell me it doesn't
25 contain setbacks?

1 MS. SMITH: I think we may want to have our
2 operations person speak to that because I think my
3 understanding is the turbines themselves -- the turbine
4 manuals themselves are containing specifications for
5 specific turbine models. They are not containing -- they
6 have overarching manuals such as the one we provided to
7 you that contain the information.

8 This does address those. You know, the
9 allegation was with respect to some sort of danger zone.
10 That's why the safety manual does address that particular
11 issue in detail, and so that's why that was provided.

12 COMMISSIONER NELSON: And I can appreciate that.

13 And obviously having reviewed it, the type of
14 information that I was looking for I would expect to find
15 in there, and I did find some things in there that were
16 very helpful to me.

17 What I need -- I need to check this off my list
18 as something that I don't need to worry about. And until
19 I see the manual, I don't know that it's not in there.
20 That's what I'm up against.

21 MS. SMITH: I don't know -- if I may, we do have
22 this -- so I was just going to explain this. I apologize
23 for having to do it this way, but this is more efficient.

24 In response to data requests to Staff in I think
25 it was set 3 we provided a letter from Vestas. It was

1 from 2010, and it talked about this issue that has been
2 raised to date.

3 We do have a letter from 2018. We asked them
4 for an update. And I can provide copies of that.
5 Unfortunately, it looks like I only have -- we didn't
6 know that we'd really need it. We had it just in case we
7 needed to update what we have. I have copies of the 2018
8 letter I can circulate for you to look at to see if that
9 helps address your concern.

10 This particular letter does specifically say,
11 "In the rare case of abnormal operating conditions,
12 Vestas' Site Emergency Response Plan does specify a
13 safety radius that should be temporarily evacuated and
14 secured." And bold and underlined it says, "This is a
15 temporary clearance and not a permanent setback
16 requirement. Once the event is mitigated this temporary
17 clearance area is not required."

18 It also has a sentence that says, "Under normal
19 operating conditions Vestas has no documentation,
20 studies, or analysis prescribing a specified safety zone
21 or setback area around its wind turbines."

22 COMMISSIONER NELSON: And so would you be
23 willing to make that an exhibit?

24 MS. SMITH: Yeah. I've already marked it.

25 COMMISSIONER NELSON: And I appreciate that for

1 two reasons. First of all, I did see the Staff Data
2 Request response. The fact that it was a 2010 letter was
3 troublesome to me because this 4.2 turbine didn't even
4 exist in 2010. So I needed something more
5 contemporaneous.

6 The second thing that I will say is in an
7 emergency situation, if there's a turbine fire, it
8 doesn't matter if it's a turbine that's on fire or a
9 house that's on fire. The authorities are going to have
10 a setback area. And that's understandable. I mean,
11 those things happen. I'm not concerned at all about
12 that.

13 It's this issue of operations under normal
14 conditions or conditions that would be affected by
15 weather that I'm particularly concerned about.

16 MS. SMITH: So I will hand this out. And, as I
17 said, I apologize. I'll make sure that I give one if I
18 need to Ms. Kaaz and Ms. Mogen.

19 (The document is distributed.)

20 MS. SMITH: And we can also -- we will file a
21 copy. Lisa probably will attempt to do that right now
22 while we're talking so that we can get it circulated to
23 everyone.

24 But, yes, we've marked it as A23, and once
25 everyone has a chance to review it, we would offer A23.

1 COMMISSIONER NELSON: And I guess if I could --
2 do we -- we don't know who authored this; correct?

3 MS. SMITH: Brenna, can -- you can speak to -- I
4 mean, Brenna, you guys -- we could have Brenna come up
5 and indicate that it was specifically requested from
6 Vestas by --

7 COMMISSIONER NELSON: I think if we can get all
8 of that on the record, that would be helpful, yes.

9 Thank you.

10 MS. SMITH: Okay. So we'll -- if we may recall
11 Brenna Gunderson to the stand.

12 MS. CREMER: Yes. Please take the stand.
13 You're still under oath.

14 DIRECT EXAMINATION

15 BY MS. SMITH:

16 Q. So, Ms. Gunderson, did Apex specifically request an
17 update letter of Vestas that has been provided as A23?

18 A. Yes.

19 Q. And was that made in part because we had -- we,
20 Dakota Range, had a letter from 2010 and you wanted to
21 ensure that an update could be provided?

22 A. Yes.

23 Q. And can you verify personally that Vestas was
24 contacted and provided the letter that we are proposing
25 as A23?

1 A. Yes.

2 MS. SMITH: I would offer Ms. Gunderson for
3 cross-examination.

4 MS. CREMER: Thank you.
5 Staff.

6 MS. REISS: Yes. Thank you. Just briefly.

7 CROSS-EXAMINATION

8 BY MS. REISS:

9 Q. Why was this letter not provided to Staff prior to
10 this point when it's dated May 10, 2018?

11 A. We had it, and I thought that it had been and I
12 think it was just an older version of the letter -- the
13 2010 letter that had been filed. So I think that we just
14 didn't realize that it hadn't been filed.

15 MS. SMITH: I can answer that.

16 I simply hadn't provided that letter. We had it
17 with us, but the 2010 letter was what we had in our
18 possession. This letter is dated after the date of the
19 discovery responses, which were in April, mid-April.

20 So we had the letter, but we didn't get the
21 letter until later.

22 Q. Ms. Gunderson, did you have the chance to review any
23 of the data requests sent by Staff to Dakota Range
24 throughout this proceeding?

25 A. Yes.

1 Q. Did these data requests include a provision
2 requesting the company to provide updated responses
3 throughout the process?

4 A. Yes.

5 Q. Are there any other data requests that Dakota Range
6 has failed to update, other than this?

7 A. Not that I know of.

8 MS. REISS: Nothing further. Thank you.

9 MS. CREMER: Ms. Kaaz, did you have any
10 questions?

11 MS. KAAZ: No, I don't.

12 MS. CREMER: Ms. Mogen, did you have any
13 questions?

14 CROSS-EXAMINATION

15 BY MS. MOGEN:

16 Q. As part of my Exhibit 4MA I submitted from a court
17 case in --

18 MS. SMITH: I'm going to object because we have
19 not admitted any of Ms. Mogen's exhibits into evidence at
20 this point, and a court case is going to be irrelevant
21 unless it's speaking about Apex or Dakota Range.

22 MS. CREMER: And that is true. Your only
23 exhibit in is your testimony at this point. And so I
24 would sustain the objection.

25 MS. MOGEN: Okay.

1 MS. CREMER: And could you ask your question
2 without referencing the court case?

3 Q. There is information that has been reviewed and has
4 been submitted, even in comments, that does not match
5 what you submitted today.

6 Where is the manual for -- this just -- why does it
7 not match? Why did you not submit what we all have seen?

8 A. I'm sorry. I'm not familiar with what you're
9 referring to as of what we have seen.

10 Q. It is in the comments on the Public Utilities
11 Docket for EL18-003. I cannot reference -- I'm guessing
12 it's Amber Christiansen, that this has been filed.

13 MS. SMITH: I'm going to object to any
14 references to third-party statements at this point.
15 Unless she has personal knowledge of it.

16 Perhaps I could short circuit this with a
17 question if I -- I may be able to address Ms. Mogen's
18 concern if would you like me to try.

19 MS. CREMER: Yes. At this point I think I
20 understand what track you're on, but why don't we see if
21 Dakota Range can clear it up a little bit.

22 MS. MOGEN: Thank you.

23 MS. SMITH: Ms. Gunderson, did you review the
24 manual that's been provided to the Commission?

25 THE WITNESS: Yes.

1 MS. SMITH: Is this letter A23 consistent with
2 your understanding of that manual?

3 THE WITNESS: Yes.

4 MS. SMITH: And I'm hoping that that helps
5 address Ms. Mogen's concern.

6 Q. (BY MS. MOGEN) This letter does not address one of
7 my questions earlier about the assessed liability risk
8 area.

9 Is that in here?

10 MS. SMITH: Objection. I'm not sure what
11 question you're referencing earlier. Perhaps if you
12 could restate your question.

13 Q. The first day I asked Mr. Mauersberger for the
14 assessed risk -- the insurance assessed liability risk
15 area, and that does not -- that is part of the safety for
16 people who live near the turbines. This does not address
17 that.

18 MS. SMITH: I think we would stipulate that it
19 does not and was not intended to.

20 MS. MOGEN: Thank you.

21 MS. CREMER: Did you have any further questions?
22 No?

23 MS. MOGEN: No.

24 MS. CREMER: Commissioners. I guess I'll start
25 with Commissioner Fiegen.

1 Did you have any questions?

2 CHAIRWOMAN FIEGEN: I'm going to have some
3 clarifying questions on some other issues.

4 MS. SMITH: I'm guessing you're requesting that
5 those be in confidential session? Is that your --

6 CHAIRWOMAN FIEGEN: No. Actually one of them
7 she might be able to handle right now. Because I think
8 you had a lot of work to do on the maps?

9 THE WITNESS: Yes.

10 CHAIRWOMAN FIEGEN: So anyway when that's ready
11 I'll ask that question.

12 MS. SMITH: Okay. Thank you.

13 MS. CREMER: And then Commissioner Hanson.

14 COMMISSIONER HANSON: Thank you. No, I do not.

15 MS. CREMER: Commissioner Nelson.

16 COMMISSIONER NELSON: Just a couple of
17 questions. Why was this document requested from the
18 company?

19 THE WITNESS: Requested from Vestas?

20 COMMISSIONER NELSON: Yes.

21 THE WITNESS: We requested something more
22 updated than the 2010 letter that we had.

23 COMMISSIONER NELSON: And why did you do that?

24 THE WITNESS: We felt that the 2010 letter was,
25 you know, outdated and wanted to make sure that the

1 information was still valid.

2 MS. SMITH: And while she may not want to say
3 this because I said it, I requested that they provide the
4 letter because I understood this was a concern.

5 COMMISSIONER NELSON: Thank you. And the letter
6 that I'm referring to is Exhibit A23.

7 So just help me understand. When you say you
8 requested it from Vestas, Vestas who? Help me understand
9 what the relationship is there and who might have
10 actually authored this.

11 THE WITNESS: I can get that information for
12 you. I personally don't know. I requested the
13 information from somebody on my team who has connections
14 and deals with Vestas on a regular basis, and they
15 requested the letter from Vestas and sent it to me.

16 COMMISSIONER NELSON: Thank you. I think that
17 would be helpful if we could kind of close that loop as
18 to who actually authored this unsigned memo.

19 MS. SMITH: Yes. We will provide that
20 information.

21 MS. CREMER: So at this point let's just wait
22 until we have that to finish this witness on this matter?
23 Or do you want --

24 COMMISSIONER NELSON: I don't have any further
25 questions for this witness. I guess maybe just to close

1 the loop on my initial comments, I would reiterate my
2 request for the turbine locations within 1,000 feet of
3 nonparticipating property lines.

4 And understanding that the operations manual
5 that I have requested does not exist at this point,
6 obviously you can't provide it if it doesn't exist.

7 MS. SMITH: Thank you. We will address that
8 concern.

9 I will say on my part I apologize to Staff for
10 not providing that letter earlier. It came in during the
11 same time as another hearing and I did not have a chance
12 to review it until this week and we provided it as a
13 proposed exhibit in case the issue came up.

14 So I apologize.

15 COMMISSIONER NELSON: If I might, the other
16 issue that I'll address, I'm not sure how quickly you can
17 provide the list of those turbine locations. I'm
18 assuming it's probably not going to happen while we're in
19 session today.

20 MS. SMITH: I think it can. If we can have just
21 a short break, I'm pretty sure that we will be able to
22 get you that information.

23 COMMISSIONER NELSON: Okay. That makes the rest
24 of my comments moot.

25 MS. SMITH: Okay. Thank you.

1 MS. CREMER: So at this point A23 is offered.
2 It's not admitted yet until we can get the rest of the
3 information on that.

4 MS. SMITH: Certainly. So if we could take
5 15 minutes, we will get you that information.

6 MS. KAAZ: Excuse me. I didn't have time to
7 read this as we just got it. Can I ask another question?

8 MS. CREMER: Certainly.

9 CROSS-EXAMINATION

10 BY MS. KAAZ:

11 Q. On the bottom of this letter it states
12 Vestas-American Wind Technologies. Are not these
13 turbines being ordered from Sweden and that's their main
14 office? This is just perhaps a sales office?

15 Is that correct?

16 A. I would have to look into that, Ms. Kaaz. I'm not
17 sure of the address, and Vestas probably has many
18 locations. And so if you're requesting where the
19 turbines are coming from as opposed to where this letter
20 came from, I would have to get that information.

21 Q. I would appreciate if you could specify where the
22 turbines are coming from, who's manufacturing them.
23 Because you've made your final decision on the models; is
24 that correct?

25 A. Vestas is manufacturing them.

1 MS. KAAZ: That's the only question that I have
2 for now. Just see where this letter came from.

3 THE WITNESS: Okay.

4 MS. CREMER: Do you have any other witnesses?

5 MS. SMITH: Other than Mr. O'Neal, we do not.
6 So that was partly -- while I just got -- someone was
7 kind enough to give us an update, and they told us about
8 five minutes ago it would be 20 minutes on the copy. So
9 I think we will have them shortly so we can provide
10 them.

11 MS. CREMER: So I guess I was going to excuse
12 her for now. But you don't have anything in the
13 meantime?

14 MS. SMITH: We don't. And that's why we would
15 request the break, just to gather the information that's
16 been requested.

17 MS. CREMER: And so Ms. Gunderson will retake
18 the stand. Because I do know that Commissioner Fiegen
19 has questions on other matters.

20 MS. SMITH: Yes. Certainly. We will have
21 Ms. Gunderson retake the stand in part to provide the
22 information that was just requested. And then we will
23 also have Mr. O'Neal who will be addressing updates to
24 sound and shadow flicker.

25 MS. CREMER: Okay.

1 Okay. So let's go for a recess for about
2 20 minutes until Dakota Range let's us know they've got
3 their information.

4 MS. SMITH: Okay.

5 MS. CREMER: Thank you.

6 (A short recess is taken.)

7 MS. CREMER: We're going to call the hearing
8 back into session.

9 Dakota Range, I will let you proceed.

10 MS. SMITH: Thank you. So we're going to recall
11 Rob O'Neal to the stand.

12 MS. CREMER: Thank you. And I'll just remind
13 you you're still under oath.

14 MS. SMITH: And one thing -- and perhaps it will
15 speed things up if -- we have handed out some -- A24 is
16 information that Mr. O'Neal's going to speak to regarding
17 an updated noise, sound, and shadow flicker analysis.

18 A25 is an updated map of the project. There is
19 an A25 which does not contain confidential information.
20 A25-C contains the cultural information. And then
21 there's A26 which is an updated turbine status chart.

22 We would move admission of those in advance if
23 everyone is agreeable to that.

24 MS. CREMER: Staff, you heard the numbers. I
25 have 24, 25 with a confidential and a public, and 26. Do

1 you have any objection?

2 MS. REISS: No objection.

3 MS. CREMER: And Ms. Kaaz?

4 MS. KAAZ: No objection.

5 MS. CREMER: Ms. Mogen.

6 MS. MOGEN: No objection.

7 MS. CREMER: Thank you. These are all admitted,
8 and we're still holding 23, for everyone's information.

9 MS. SMITH: All right.

10 DIRECT EXAMINATION

11 BY MS. SMITH:

12 Q. So, Mr. O'Neal, can you please explain what you were
13 asked to do as far as the current layout that is shown in
14 Exhibit A25-C?

15 A. Absolutely. So I think as folks heard yesterday
16 from Ms. Gunderson, there have been some slight changes
17 to the layout over the last period of time. So when I
18 did my analysis that was submitted in the Application of
19 January of 2018, we modeled all 72 turbines plus the
20 25 spares at that time. You'll see in the exhibit that
21 was called Layout 38, just for identification purposes.

22 What we have here now in Exhibit 25 is the latest
23 layout, Layout 42. And this shows again the 72 primary
24 turbines, the ones that have been removed, and some of
25 the spares.

1 Last night and this morning we reran the sound model
2 and the shadow flicker models with just the 72 turbines
3 that the project is planning to go forward. It's largely
4 the same 72 as before, but this time we did not include
5 the alternates or the spares.

6 So the results that are shown in Exhibit 24 provide
7 the details of the new runs. And for convenience I also
8 included the results from the original run, Layout 38,
9 which is in the Application, so that you can see them
10 side by side.

11 I apologize for the rather small font, but to
12 squeeze them in we put it this way.

13 The conclusion is that, as you might suspect, when
14 you go from modeling 97 turbines to 72 turbines the
15 impacts are either equal to or in some cases
16 significantly lower at certain receptors.

17 So our conclusions don't change at all. Every
18 nonparticipating receptor is below 30 hours of shadow
19 flicker per year, and every home is below 45 decibels as
20 well.

21 Q. And just to orient everyone, the first sheet of
22 Exhibit A24 is just a list of the turbines that were
23 modeled with their coordinates; is that right?

24 A. That's correct. These are the turbines that are now
25 in the model.

1 Q. And then if you look at the second full page, we're
2 looking at modeled sound pressure levels?

3 A. Yep. The first pages are the results for Codington
4 County.

5 Q. Okay. And then is the second page for Grant County?

6 A. That's correct.

7 Q. And then if we look at the third set -- and there's
8 three pages in that set -- are both counties together in
9 that shadow flicker modeling?

10 A. That's correct.

11 Q. And just to confirm, in addition to satisfying both
12 the shadow flicker commitment that you just discussed, do
13 the sound levels also meet both the county requirements
14 and the condition that was agreed upon by Dakota Range?

15 A. Yes, they do.

16 Q. And if there were any adjustments, further
17 adjustments to the table, is it your understanding that
18 Dakota Range is committed to providing updated modeling
19 information?

20 A. That's my understanding, yes.

21 Q. And we had one question yesterday regarding what
22 appeared to be residences that were not identified as
23 residences on the map that was provided with your report.

24 What has been determined regarding those particular
25 locations?

1 A. Yes. I can offer a conclusion on those as well. It
2 will just be helpful for folks to turn to the
3 Application, and I can point out a map. It might be --

4 Q. So and for everyone's reference I think we would
5 want to look at A25. Are there now two nonparticipating
6 residences shown to the west of turbine 7?

7 A. Yes, there are.

8 Q. All right. And based on the information that is in
9 your sound and your shadow flicker report previously that
10 was submitted with the Application, are you able to
11 identify what the sound and shadow flicker levels are
12 modeled to be at those residences?

13 A. Yes, I can.

14 Q. And if you want to go ahead and turn to your report,
15 please do that. That is in the Application. And I
16 believe is it I and J, if I remember correctly?

17 A. Right.

18 Q. So Appendix I and J in the Application, which is A1.

19 A. Right. So if folks want to follow along, I'm in
20 Appendix I, which is the detailed sound level study. And
21 if you turn to Figure 5-2A, that has the sound level
22 modeling output in it for Grant County, which is where
23 the two locations that were missed in terms of putting
24 down discrete receptors yesterday.

25 If one can see here turbine 7 located there and this

1 map shows two empty parcels just to the west of that,
2 west and slightly north of west, that's where the two
3 residences are that were not explicitly modeled here.

4 But if you look at the contour plot, you can see the
5 yellow line here for sound is at 40 decibels. So those
6 two homes will be less than 40 decibels. They sit
7 between the 35 and the 40 decibel contour. So those
8 sound levels will be less than 40 decibels.

9 Q. And then can you also discuss the shadow flicker as
10 well and turn to that report?

11 A. Yes. Using the same approach for shadow flicker,
12 which is the Appendix J report, if you turn to Figure
13 3-2A in that report, that has the -- also has the
14 contours of shadow flicker per year in there.

15 And if you find turbine 7 amongst all the contour
16 lines and go to the west of that, you will see
17 approximate where those homes are. This does not have
18 the same parcel boundary map. But you can see the green
19 contour line here, which is the 10-hour per year shadow
20 flicker line.

21 And so those homes are approximately around that
22 10 hour per year line. And so our conclusion would be
23 that those two residences would be around 10 hours per
24 year.

25 Q. All right. Do you have any further updates than you

1 have provided so far?

2 A. I do not.

3 MS. SMITH: I would offer Mr. O'Neal for
4 cross-examination.

5 MS. CREMER: Thank you.

6 Staff, did you have any questions?

7 MS. EDWARDS: Yes.

8 CROSS-EXAMINATION

9 BY MS. EDWARDS:

10 Q. First of all, these people that weren't originally
11 on the map, were they given notice of the proceedings in
12 the Application?

13 A. I can't answer that question. I don't know.

14 Q. Okay. And then drawing your attention to the
15 conditions that Staff and the company have agreed upon,
16 specifically Condition 28, can you find that in A18?

17 Here. I'll just save you time and read it because
18 it's one sentence.

19 "The Applicant will take reasonable steps to
20 mitigate shadow flicker concerns at residences that could
21 experience shadow flicker levels above 30 hours per
22 year;" correct?

23 A. Correct.

24 Q. Okay. And I'm looking at this Table B-1, the shadow
25 flicker modeling we just received. Can you turn to

1 page 2 of 3 and Modeling ID 1915?

2 A. Okay. I'm there.

3 Q. Okay. And how many hours per year under each of the
4 expected -- each of the layouts is that residence
5 expected to get?

6 A. So receptor 1915 is a participating residence.
7 Under the original layout they were modeled at 54 hours
8 and 7 minutes per year. And under the new layout they're
9 modeled at 51 hours and 49 minutes per year.

10 Q. And would it -- isn't it correct to say that
11 Condition 28 as agreed upon doesn't specify participating
12 or nonparticipating?

13 MS. SMITH: We've already established that, I
14 believe.

15 MS. EDWARDS: Okay.

16 Q. So, to your knowledge, what reasonable steps has the
17 Applicant done to mitigate any concerns that that person
18 might have?

19 A. I can't speak for the Applicant at this point. My
20 understanding is that they're going to have conversations
21 with the residents that were modeled over 30 hours per
22 year, let them know about that, and then discuss whether
23 they want to look into possible mitigation. That could
24 be the vegetation or the room darkening shades, blinds,
25 things like that.

1 Q. Okay.

2 A. I don't know when those conversations are going to
3 happen.

4 Q. Thank you. And I think just one more.

5 And, just to clarify, were the alternate locations
6 considered in the modeling or just the ones that you
7 expect to build?

8 A. So the first table, Table A1, in Exhibit A24 has the
9 list of turbines. So at this point there are 72 turbines
10 total of which four of those 72 were originally
11 alternates. You can see at the end of the list there on
12 page 2, there's A11, A15, A18, A24. Those have now been
13 brought in to be considered primary turbines.

14 But for the analysis we just modeled 72.

15 Q. Is that just the primary turbines then?

16 A. So these are now what is considered the primary
17 turbines.

18 Q. Are you still asking for approval of the other
19 turbines then, the alternate turbines?

20 A. I'm going to have to defer that question to
21 Dakota Range.

22 Q. Okay. Also looking back at this modeling chart we
23 just got, some of these nonparticipating residences
24 appear to be getting up into the 20s. To your knowledge,
25 if another wind farm were to be built, would there be

1 cumulative impacts where it might get above 30 for
2 nonparticipating?

3 A. It's not likely. They would have to be very close
4 in proximity for the overlap to happen at the same time.
5 Because remember this is all geometry. Same time of
6 year, sunrise, sunset, and so forth. I would seriously
7 doubt that that would happen in this case.

8 Q. Can you be more specific on what you mean by close
9 in proximity?

10 A. Sure.

11 So generally 10 rotor diameters is what's considered
12 a rule of thumb for where the shadow flicker starts to
13 dissipate. So 10 rotor diameters. So in this case
14 1,360 meters. So a little less than a mile. Little less
15 than 5,000 feet.

16 Q. Thank you.

17 A. You're welcome.

18 MS. EDWARDS: No further questions.

19 MS. CREMER: Thank you.

20 Ms. Kaaz.

21 MS. KAAZ: I have no questions.

22 MS. CREMER: Thank you.

23 Ms. Mogen.

24 MS. MOGEN: No questions.

25 MS. CREMER: Thank you.

1 Commissioner questions. And we will start with
2 Commissioner Hanson.

3 COMMISSIONER HANSON: I have none. Thank you.

4 MS. CREMER: Commissioner Nelson.

5 COMMISSIONER NELSON: Thank you for your updated
6 work.

7 Obviously, the Intervenors needed to assist you
8 and Dakota Range in finding two of these residences.
9 That obviously begs the question, how many more are out
10 there that have not been identified?

11 THE WITNESS: That's a fair question. None that
12 I'm aware of. None else that have been brought to my
13 attention.

14 COMMISSIONER NELSON: Would it be your
15 understanding that if there are additional unidentified
16 nonparticipating residences, that given the proposed
17 conditions, Dakota Range would still have to accommodate
18 those locations under the proposed conditions dealing
19 with shadow flicker and sound?

20 THE WITNESS: Oh, absolute -- I would agree with
21 that. They would still be on the -- have to deal with
22 that.

23 COMMISSIONER NELSON: Thank you.

24 MS. CREMER: Chair Fiegen. I'm sorry. Yep.

25 CHAIRWOMAN FIEGEN: Thank you.

1 Could you remind me, what number is Ms. Kaaz in
2 the modeling ID?

3 THE WITNESS: She's ID No. 1698.

4 CHAIRWOMAN FIEGEN: 1698. Thank you.

5 During the questioning yesterday, just to follow
6 up, there was questions about the receptor and if it was
7 located at the right location to have a clear study.

8 Could you just clarify the question and the
9 information for me again.

10 THE WITNESS: Sure.

11 I believe the question was related to did we
12 place the symbol or the dot on the map, if you will, at
13 the right location. In other words, was it at the house?
14 And my response is yes, that it was.

15 CHAIRWOMAN FIEGEN: Okay. And I'm going to just
16 follow up with Commissioner Nelson's question, comment,
17 on the map. And it may be somebody else, but just to
18 ensure that -- I wanted to make sure we had a map with
19 the two residence. And not only that --

20 So you provided that this morning, but if there
21 are other residences that are missing, that's
22 discomfoting, of course, for the Commission not to see
23 an actual and true map. So we want to make sure that the
24 Commission has that before they make their decision.

25 THE WITNESS: Understood.

1 MS. CREMER: Dakota Range, did you have any
2 redirect?

3 MS. SMITH: Just a couple.

4 REDIRECT EXAMINATION

5 BY MS. SMITH:

6 Q. Regarding the alternates, we understand that for
7 this updating modeling that was provided, the intent was
8 to provide updated information on the primary layout; is
9 that correct?

10 A. That's right.

11 Q. And did you model the alternates, the alternates
12 that are still alternates and not primaries in the
13 original report?

14 A. Right. So we did. In the Layout 38 in the original
15 report all the alternates have been included.

16 Q. So that information has been provided in the record?

17 A. Yes, they have.

18 Q. And just to follow up, to your knowledge is A25 an
19 accurate map of the residences that you and Dakota Range
20 are aware of?

21 And you don't have to answer for Dakota Range, but I
22 know they provided the information.

23 A. Right. It's accurate to the best of my knowledge,
24 yes.

25 MS. SMITH: Thank you. I have no further

1 questions.

2 MS. CREMER: Thank you.

3 Staff, did you have any recross based on
4 Commission questions or redirect?

5 MS. EDWARDS: No.

6 MS. CREMER: Ms. Kaaz, did you have any
7 questions?

8 MS. KAAZ: No, I do not.

9 MS. CREMER: And, Ms. Mogen.

10 MS. MOGEN: No, I do not. Thanks.

11 MS. CREMER: Thank you.

12 Commissioners, did you have anything at all?
13 No. All right.

14 You may step down yet again. Thank you very
15 much.

16 THE WITNESS: Thank you.

17 (The witness is excused.)

18 MS. CREMER: And, Dakota Range, you may
19 continue.

20 MS. SMITH: I'm just going to take two seconds
21 to confer with my witness to see if we have gotten some
22 information.

23 (Pause.)

24 MS. SMITH: So we are ready whenever you are.

25 MS. CREMER: You may proceed. Thank you.

1 MS. SMITH: Thank you.

2 And we've recalled Brenna Gunderson to the
3 stand. And you're still under oath.

4 DIRECT EXAMINATION

5 BY MS. SMITH:

6 Q. So, Ms. Gunderson, can you explain what is shown in
7 Exhibit A25 for us, please. Maybe I should just ask it
8 this way.

9 Is it the updated map that we were just referencing
10 with Mr. O'Neal of the current layout?

11 A. Yes.

12 Q. And it does now show the two residences that were
13 omitted from the map?

14 A. Yes.

15 Q. To your knowledge, are there any other residences
16 that have not been included in this map?

17 A. Not that I'm aware of.

18 Q. And you heard the question that was asked about a
19 commitment that if a residence were identified, you would
20 abide by the conditions and requirements within the Order
21 for that residence?

22 A. Yes. Absolutely.

23 Q. And regarding A24, I'm going a little bit backwards,
24 but can you explain what is -- oh, not A24. I apologize.
25 A26.

1 Can you explain what is shown in A26?

2 A. A26 is showing as an alternate turbine location.

3 Q. I'm sorry. No. In Exhibit A26. I should have been
4 a little bit more specific. That was a bad question on
5 my part.

6 So in Exhibit A26 can you explain what this
7 provides?

8 A. A26 is a list of the turbine numbers and then the
9 turbine status. So the first column are the turbine
10 numbers. And there's two pages. And the turbine status
11 indicates if it's a primary turbine, a spare turbine, or
12 if that turbine has been removed from our layout.

13 Q. And, to your knowledge, is this the current status
14 of the turbines, and does it match the Exhibit A25 map?

15 A. Yes.

16 Q. And there were some questions that were posed to
17 Mr. O'Neal about outreach to participating landowners.
18 At this point I say "participating" only because we only
19 have participating landowners that are modeled at over
20 30 hours of shadow flicker.

21 Have there been any outreach efforts to those
22 landowners to discuss the modeling?

23 A. Yes. We have reached out to all 11, and we have
24 talked to them about mitigation options that would be
25 available to them.

1 Q. Have they voiced any concerns to you regarding the
2 shadow flicker levels?

3 A. None of them are concerned about it.

4 MS. SMITH: At this point we are still working
5 on the request for the name that goes with the letter.
6 So I think I will turn Ms. Gunderson over to answer any
7 questions that may be had, and we'll see if we get it in
8 the interim.

9 Thank you.

10 MS. CREMER: Thank you.

11 Staff, did you have any questions?

12 MS. REISS: Yes. Staff has just one question,
13 please.

14 CROSS-EXAMINATION

15 BY MS. REISS:

16 Q. You indicated that there were two residences left
17 off this map?

18 A. Yes.

19 Q. And did the Applicant provide the required statutory
20 notice to these residents?

21 A. Yes. Everybody within a mile of the project was
22 notified.

23 Q. Can you explain why these residences were left off
24 the map if you knew they existed?

25 A. It went unnoticed. But the -- our Apex person

1 has -- they were notified, and we know that our Apex
2 person has spoken to one of them of the two, that I've
3 been able to verify.

4 MS. REISS: Staff has nothing further.

5 Thank you.

6 MS. CREMER: Ms. Kaaz.

7 MS. KAAZ: I do have a quick question.

8 CROSS-EXAMINATION

9 BY MS. KAAZ:

10 Q. Because you just found out about this mistake
11 yesterday, what did you do last night to verify that
12 there was no other homes that could have possibly been
13 missed?

14 So what did you use to come to that conclusion?

15 A. We used -- looking at a map as well as reaching out
16 to David Lau, who lives in the area, to see if he could
17 identify any other homes that were potentially missed.

18 Q. So you only used David Lau to verify that; is that
19 correct?

20 A. And we were looking on our maps.

21 Q. On just your maps?

22 A. Uh-huh. Yes.

23 MS. KAAZ: That's the only question for now.

24 Thank you.

25 MS. CREMER: Ms. Mogen, did you have any

1 questions?

2 MS. MOGEN: No questions.

3 MS. SMITH: I'm sorry. I had someone asking me
4 a question. Can I have the question repeated?

5 Did somebody have a question for me?

6 MS. CREMER: I don't think so. You're hearing
7 things.

8 MS. SMITH: Oh. Well, then I'm just talking out
9 of turn. I apologize.

10 MS. CREMER: We will go to Commissioner
11 questions.

12 And Commissioner Nelson.

13 COMMISSIONER NELSON: Nothing at this point.

14 MS. CREMER: Chair Fiegen.

15 CHAIRWOMAN FIEGEN: When I look at -- continue
16 to look at the conditions like reasonable and practicable
17 and -- often that is hard to define.

18 So like the shadow flicker that you were just
19 talking about and you were talking about mitigation with
20 11 landowners, how can a Commissioner ensure that
21 reasonable will be defined properly according to the
22 Applicant and the Commission and the reasonable will
23 match?

24 THE WITNESS: We could provide a list of
25 standard mitigation options that we -- I think some of

1 those were identified in the Application. There are
2 others that can be. We like to work with the landowner
3 who has the complaint to find out what would be the best
4 option for them and for their situation.

5 So it's typically something that happens at the
6 time during operation of the project when they're
7 experiencing shadow flicker, and they can work directly
8 with the operation staff to mitigate that.

9 CHAIRWOMAN FIEGEN: Thank you. I just want to
10 ensure when we sign the conditions that our people are
11 protected.

12 MS. CREMER: Commissioner Hanson.

13 COMMISSIONER HANSON: No questions. Thank you.

14 MS. CREMER: I do have a question.

15 What are the names of the two people who were
16 left off the map?

17 THE WITNESS: I don't have them in front of me,
18 but I got them this morning. I would have to check.

19 MS. CREMER: Do you have them? I just want to
20 be able to confirm that we're all talking about the same
21 two.

22 MS. SMITH: Yes. I think it's important. So if
23 you want to take a second to go grab your notes.

24 THE WITNESS: I don't have it in the notes.
25 I'll have to contact David Lau, who is telling me.

1 MS. SMITH: Mark will e-mail David right now and
2 get that information.

3 And I also realized there are two additional
4 questions we've been asked that I did not ask of our
5 witness so if we could follow up with that.

6 REDIRECT EXAMINATION

7 BY MS. SMITH:

8 Q. For these two residences do you have the distance
9 that the closest turbine is from each residence?

10 A. I do. And they're on my notepad.

11 Q. Go ahead and grab them.

12 (Witness retrieves notes.)

13 A. So the home to the south, which is west of
14 turbine 7, is 3,315 feet. The pink dot to the north of
15 that, the closest turbine would be A8, and that's 3,492.
16 However, it's 4,041 feet from turbine 7, which is a
17 primary.

18 Q. Thank you.

19 And then you've just been handed an iPad that has a
20 list of the turbines that are within 1,000 feet of a
21 nonparticipating property line. We will print that off
22 and provide it, but for the record at this point we're
23 going to ask Ms. Gunderson to read into the record which
24 residents --

25 Do you have it by receptor ID? Is that --

1 A. I have it by turbine ID.

2 Q. Turbine ID. Okay.

3 A. And the distance to the property line.

4 Q. Let's start with how many are within 1,000 feet?

5 A. There are eight.

6 Q. And can you give the range of the distance they are
7 from the property line? So the closest is how far?

8 A. The closest is 624 feet.

9 Q. And what is the furthest?

10 A. 967.

11 Q. And we will provide a written copy of exactly
12 which -- and I apologize. How many did you say,
13 Ms. Gunderson?

14 A. I need to correct that. There are eight primary
15 turbines and two spare. So a total of 10.

16 Q. Okay.

17 MS. SMITH: And we will provide that list in a
18 few moments when we get it printed out. So I would offer
19 Ms. Gunderson for any questions on those additional
20 questions.

21 MS. CREMER: Staff, did you have anything
22 further?

23 MS. REISS: No, thank you.

24 MS. CREMER: Ms. Kaaz.

25 MS. KAAZ: No, thank you.

1 MS. CREMER: Ms. Mogen.

2 MS. MOGEN: No, thank you.

3 MS. CREMER: And Commissioner questions. And
4 I'll just use that same order.

5 Commissioner Nelson.

6 COMMISSIONER NELSON: Just so I'm clear, the
7 two, are those alternates that are not planned to be used
8 at this point?

9 THE WITNESS: They're considered two spare
10 turbines that are not planned to be used.

11 COMMISSIONER NELSON: Thank you.

12 MS. CREMER: Chair Fiegen. Good?

13 All right.

14 COMMISSIONER NELSON: Give me a minute.

15 MS. CREMER: Yep. Yep.

16 (Pause.)

17 THE WITNESS: I have the name of the two
18 landowners if you'd like me to give those.

19 MS. CREMER: All right. Yes. Thank you.

20 THE WITNESS: Randy Reisdorf, R-E-I-S-D-O-R-F.
21 And the second is Barth Adolph. B-A-R-T-H A-D-O-L-P-H.

22 CHAIRWOMAN FIEGEN: So just a quick question on
23 these eight primaries and two spares.

24 Are you doing a list for us, the turbine
25 numbers --

1 THE WITNESS: It will have the turbine number,
2 the distance to the property line.

3 CHAIRWOMAN FIEGEN: Okay. Perfect.

4 THE WITNESS: And then the turbine status.

5 CHAIRWOMAN FIEGEN: Okay. And so the two names
6 that you just gave us, were they notified of the
7 proceedings?

8 THE WITNESS: They were notified during the
9 Conditional Use Permit process and for this process as
10 well.

11 CHAIRWOMAN FIEGEN: Okay.

12 MS. CREMER: So, Mollie, will -- or, Ms. Smith,
13 will there be an additional exhibit with these 10? Is
14 that what you're thinking --

15 MS. SMITH: Ms. Agrimonti went to see if Joy
16 would be willing to print it for her.

17 MS. CREMER: Okay. Thank you.

18 COMMISSIONER NELSON: Are you familiar with the
19 contents of the manual that was filed last night in this
20 proceeding?

21 THE WITNESS: Some of it. It was quite large.

22 COMMISSIONER NELSON: Yes, it was. I'm going to
23 see how far I can go, and we may have to go into
24 confidential.

25 The manual indicated that there is a particular

1 condition in which there would be a concern for locations
2 that are less than 1,000 feet away from a turbine.

3 Are you familiar with that provision in the
4 manual?

5 THE WITNESS: I would say not just from a
6 turbine but a turbine that is operating abnormally.

7 COMMISSIONER NELSON: Then we're not on the same
8 page.

9 THE WITNESS: Okay.

10 COMMISSIONER NELSON: So we're probably going to
11 need to go into confidential for me to talk about what I
12 observed.

13 MS. SMITH: I agree. Yes. Please.

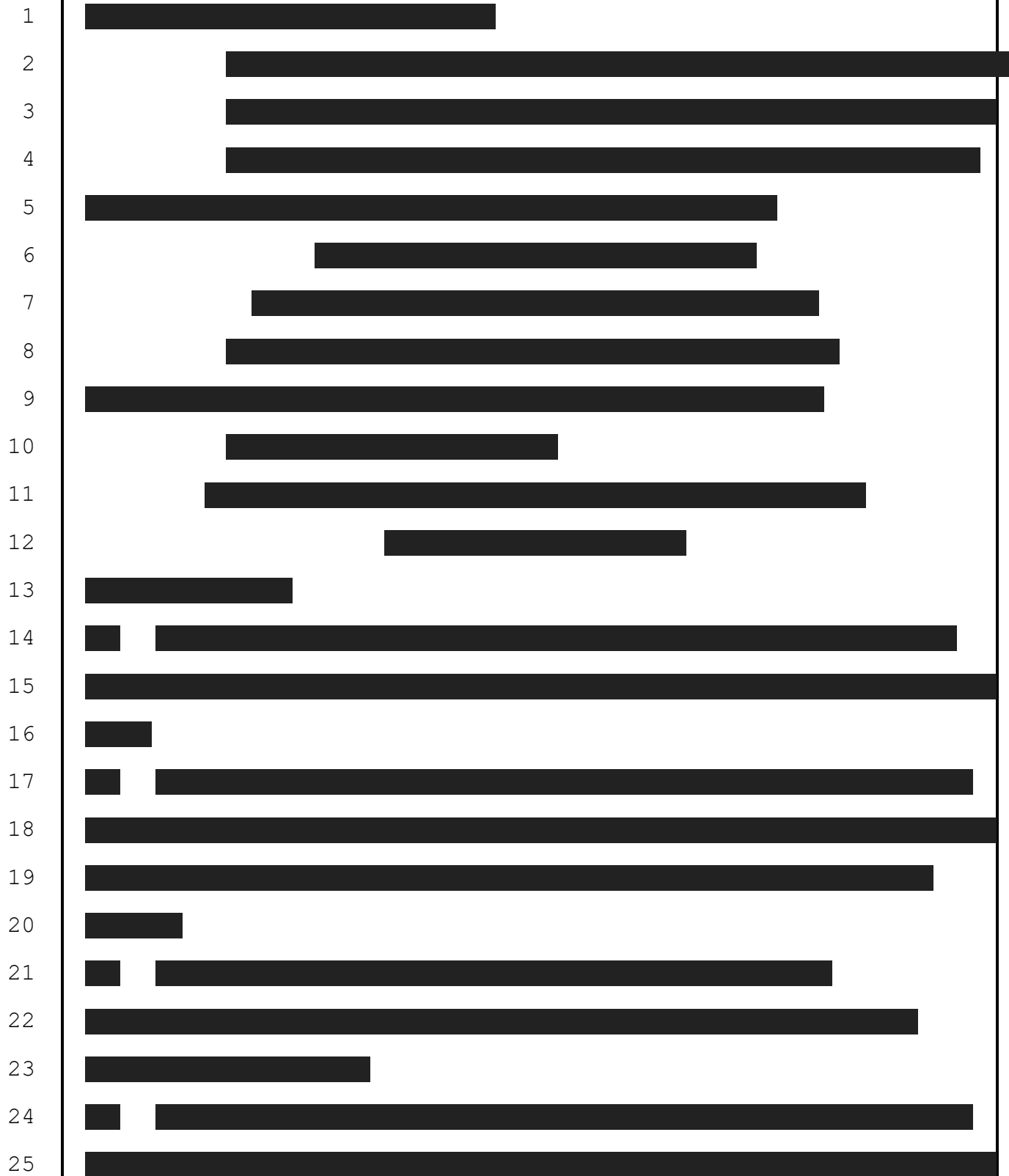
14 MS. CREMER: Okay. So at this point anybody who
15 does not have a signed nondisclosure agreement must
16 leave.

17 We will go off the webcast. This will take a
18 few minutes to clear the room and go off the webcast.
19 (The following portion of the transcript is confidential.)
20
21
22
23
24
25

008413

1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
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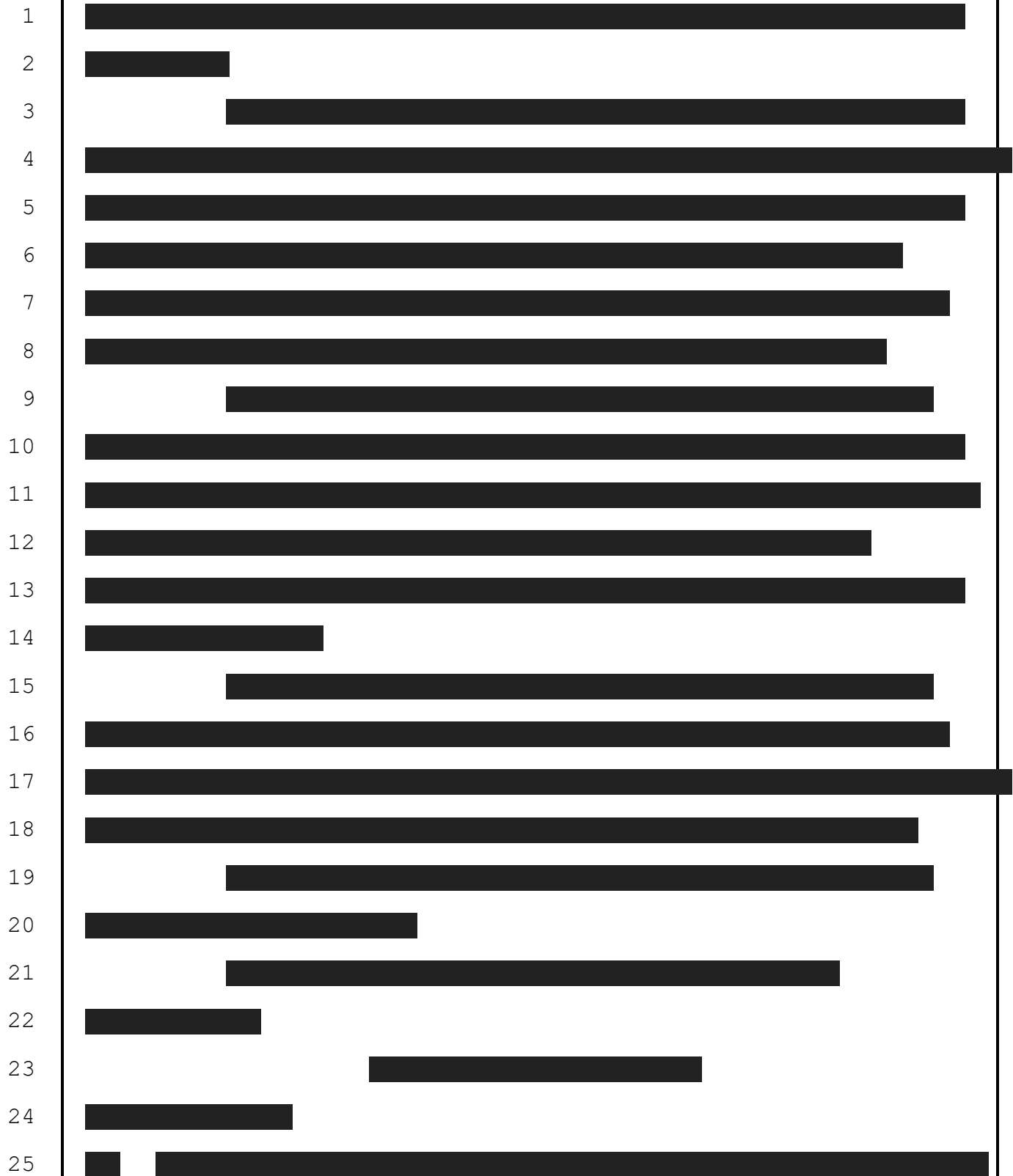
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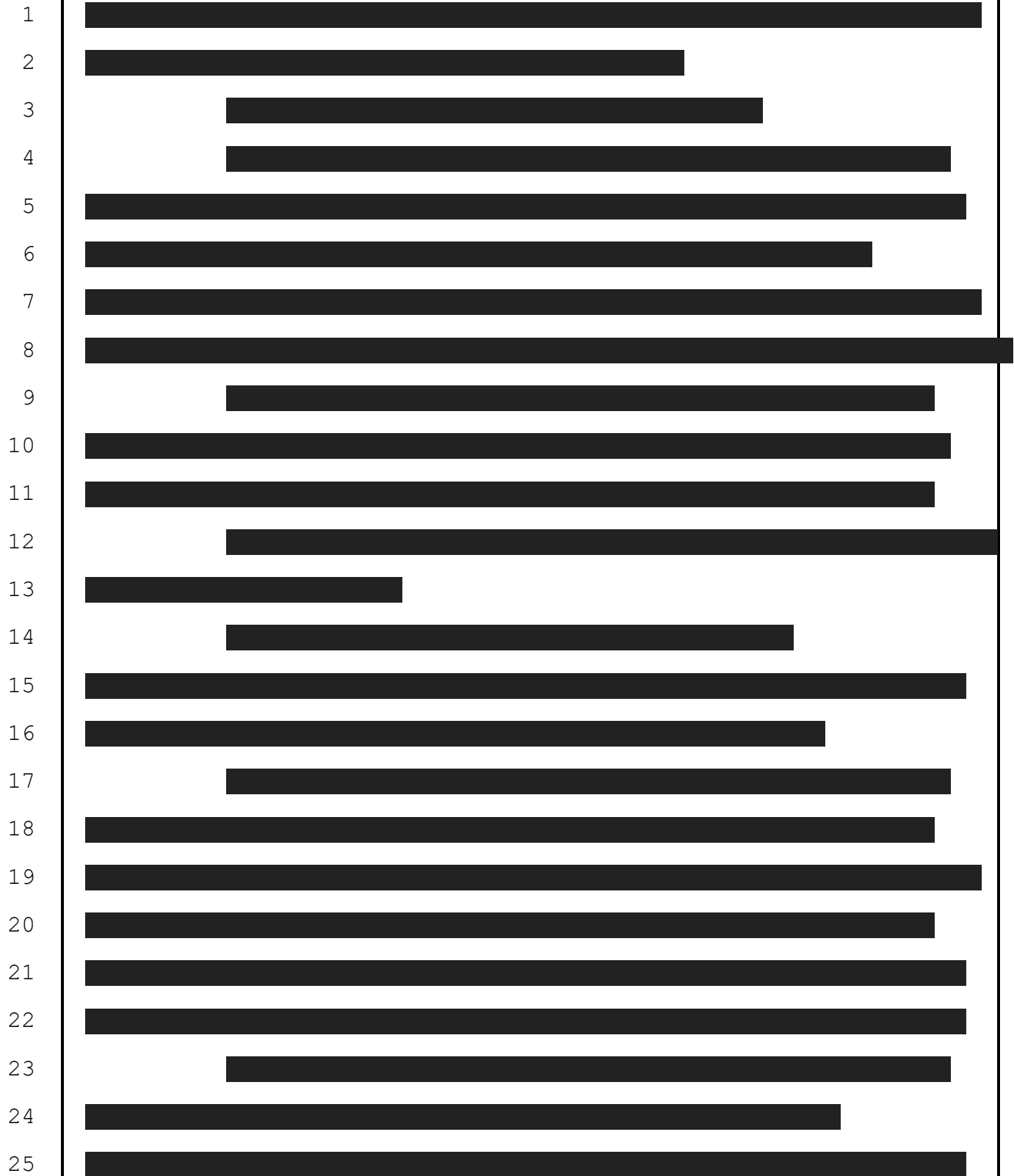


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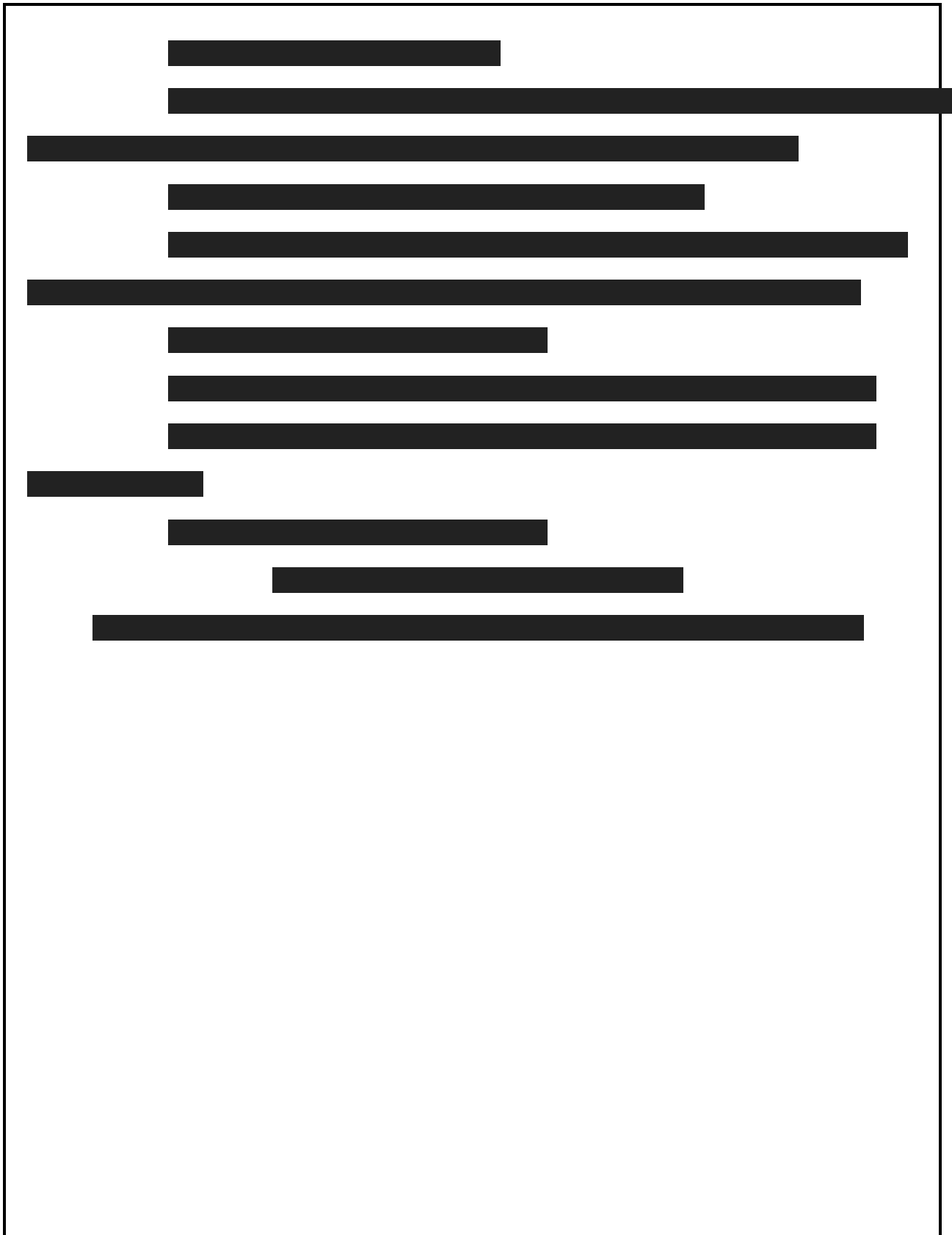
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1 MS. CREMER: Okay. We are out of confidential,
2 and we'll go back to our regular proceeding. Just to
3 clarify where we are, Exhibit A27 has been handed out,
4 and that is the turbines within 1,000 feet of
5 nonparticipating parcel boundary.

6 That has been offered by Dakota Range. Staff,
7 do you have any objection?

8 MS. REISS: No.

9 MS. CREMER: And, Ms. Mogen, you've had
10 10 seconds to look at that.

11 MS. MOGEN: No.

12 MS. CREMER: And, Ms. Kaaz, did you have any
13 objection?

14 MS. KAAZ: Could I clarify on turbine number 67,
15 the 624 feet.

16 What property line are you going off of?

17 MS. SMITH: I think we would just have to bring
18 somebody back up to address that. I can't answer it. So
19 if you would like us, we can do that.

20 MS. CREMER: Yep. Why don't we save that for
21 now.

22 COMMISSIONER NELSON: And I can just say if you
23 look at Figure 5 from the Application, it will answer
24 that question pretty quickly.

25 MS. KAAZ: That's all I have, I think, at this

1 time.

2 MS. CREMER: So did you have an objection to
3 admitting this exhibit and then we --

4 MS. KAAZ: No. No.

5 MS. CREMER: Okay. So we will admit that. And
6 if need be, we can call somebody back up to address if
7 she has a further concern or question on that.

8 MS. SMITH: Okay.

9 MS. CREMER: It's my understanding Staff is
10 going to be offering S7 as an exhibit, and once we get a
11 paper copy I guess you can put that in at that time and
12 we can discuss it.

13 At this time we need to figure out if we're
14 going to do lunch or plow through. So, Dakota Range,
15 what do you have left?

16 MS. SMITH: We have the information on the
17 author for the Vestas letter. So if it's all right, I'm
18 just going to read it into the record.

19 His name is Josh Irwin, J-O-S-H I-R-W-I-N,
20 Vice President of Sales, Vestas. His address is
21 1417 Northwest Everett Street, E-V-E-R-E-T-T, Portland,
22 Oregon 97209.

23 And as far as I know, with that, I think that
24 we've addressed the outstanding matters, but I will defer
25 to the Commissioners to identify if there's something

1 else.

2 COMMISSIONER NELSON: I'm good.

3 MS. CREMER: Commissioner Hanson, did you need
4 anything further?

5 COMMISSIONER HANSON: I am also good.

6 MS. CREMER: And Chair Fiegen.

7 CHAIRWOMAN FIEGEN: I'm good.

8 MS. CREMER: All right then. Would it be
9 every --

10 Oh. We would need --

11 MS. REISS: We're working on copies.

12 MS. SMITH: I mean, we're going to stipulate to
13 allowing it. If somebody has a -- we can describe it.

14 Staff has offered a Vestas de-icing manual that
15 they have identified that they would like to have in the
16 record. And we can provide an electronic version if you
17 would like to review it before you make a decision on if
18 you have any objections.

19 No witness is sponsoring it. It's just offered
20 for the record.

21 MS. CREMER: And that would go to Ms. Kaaz and
22 Ms. Mogen. And if you need, Staff can identify it a
23 little further if you would like.

24 So the question before you is just if you object
25 to it coming in. There would be no asking questions

1 about it. It's not being sponsored by anybody in
2 particular.

3 And so I would ask, Ms. Mogen, did you have any
4 objection to that Staff exhibit coming in?

5 MS. MOGEN: No objection.

6 MS. CREMER: And, Ms. Kaaz, do you have any
7 objection?

8 MS. KAAZ: No objection.

9 MS. CREMER: All right. In that case, Staff
10 Exhibit 7 has been offered and admitted.

11 Any other outstanding exhibits that anyone
12 thinks needs to --

13 COMMISSIONER NELSON: Ms. Cremer, could I just
14 ask for a little bit of understanding as to where this
15 has come from, this exhibit?

16 MS. EDWARDS: The Vestas website.

17 COMMISSIONER NELSON: Okay. Okay.

18 MS. CREMER: Anybody?

19 MS. SMITH: I believe the only outstanding items
20 are -- I just want to clarify that while there were
21 certain exhibits that were provided -- or filed initially
22 by the Intervenors, I do not believe any were offered.

23 And so if we could just close out the matter
24 that those particular exhibits are not part of the
25 record, just to clarify, I would appreciate that.

1 MS. CREMER: Yes. They were not offered and,
2 therefore, they were not admitted.

3 MS. SMITH: Thank you. We have nothing further.

4 MS. CREMER: Okay. Okay. Not hearing anything
5 from anyone.

6 MS. KAAZ: I do have -- I just have a question.
7 I apologize deeply.

8 The first day that we got here I had my exhibits
9 that I was going to manually put in because I didn't have
10 them downloaded. Mollie did come over and got those
11 exhibits, but I didn't know when the right -- because I
12 was told to wait until it was the right time to enter
13 them.

14 I ask that -- because I don't have them here
15 with me today because I did not find the time to put them
16 in, I ask that Mollie give you all your copies for those
17 exhibits because she took them from me.

18 MS. SMITH: I did not. I just asked if you had
19 a copy for us. I took a copy. I didn't have any
20 understanding that we were to provide copies. So that
21 wasn't --

22 MS. KAAZ: Well, I made eight copies of them so
23 I could bring them in. And you asked me for a copy.

24 MS. SMITH: Yes. I did ask you for a copy.

25 MS. KAAZ: Yes. So now that I don't have them

1 with me, they're on their way back with my husband
2 because he just left this morning. So if she could
3 provide a copy.

4 MS. SMITH: So it looks like I have a copy. So
5 I have a list -- and I will just tell you that from what
6 I see, there is nothing here that anyone that has been a
7 witness has personal knowledge of.

8 So we would object to admission. Or on
9 relevance grounds. So if we want to discuss them, we can
10 but --

11 One is from a third party. The TK-1 is from a
12 Christina Malkonka. The second is an Indianapolis
13 Supreme Court Decision, which we do not believe is
14 relevant to this case. The third is a document that is
15 from the internet by a Jergen Cronig [phonetic], an
16 article that we would object to lack of foundation.

17 The next one is something from a Freeborn County
18 Wind Project, which would be in Minnesota, which we would
19 object to on foundation and relevance. The TK-5 is
20 something on a Laufer Wind Aircraft Detection System.
21 Again, there's no foundation.

22 The next one is Wind Turbine Safety
23 Considerations, which was already requested to be
24 excluded as part of our Motion to Exclude prior to the
25 hearing, a few weeks prior to the hearing. So that one

1 has been excluded. The next one is something on a first
2 order for Vestas upgraded 136. Again, this is -- there's
3 no foundation.

4 TK-8 has to do with the Shaffer and Buhl, which
5 is referenced. I don't care if that one comes in, but no
6 one other than Mr. Kirschenmann could speak to it and he
7 is -- or Mr. Phillips and they've already spoken and it's
8 referenced in their testimony so I don't know that it
9 needs to come in as an exhibit at this point.

10 The others appear to be exhibits from the
11 Crocker Docket, and so we would object as they're from
12 the Crocker Docket and not relevant to this particular
13 case and there would be no one to provide foundation for
14 them.

15 So that would be our stance on the exhibits that
16 were offered by Ms. Kaaz.

17 MS. CREMER: Staff, do you have a response?

18 MS. REISS: Staff has nothing to add regarding
19 the exclusion at this point -- or the exhibits at this
20 point. I'm sorry.

21 MS. CREMER: Ms. Mogen.

22 MS. MOGEN: I have no comments, but I would like
23 my exhibit reviewed that I present -- I did not present
24 but I was under the -- I was with Teresa and we were told
25 there was a time to put them in and we did not understand

1 done? And we all think we're going home after this; is
2 that correct?

3 Dakota Range.

4 MS. SMITH: Yes.

5 MS. CREMER: Staff.

6 MS. REISS: While I wish I were going home, I
7 believe I have to finish out the day. But, yes, I
8 believe we're finished here.

9 MS. CREMER: I guess I was thinking of Ms. Mogen
10 and Ms. Kaaz.

11 Are you done and going home?

12 MS. KAAZ: Yes, we are.

13 And I apologize for anything I've done that I
14 should not have. So I'm sorry.

15 MS. CREMER: No. You were just fine. You guys
16 did very well for Intervenors, untrained Intervenors. So
17 thank you.

18 So that concludes the evidentiary part of this
19 hearing. We need to discuss a posthearing procedure.

20 I would like to receive Findings and Conclusions
21 from the parties, but I am absolutely not requiring it in
22 any manner.

23 And, Cheri, can you give us an estimate of a
24 transcript?

25 (Discussion off the record.)

1 MS. CREMER: And I will say that July 10 is the
2 last Commission meeting before the decision is due. So
3 that is when the decision will be heard.

4 Anybody want to suggest -- I'm trying to
5 remember. What did we come up with?

6 COMMISSIONER NELSON: I would.

7 What I would suggest is that posthearing briefs
8 be due by noon on July 2. And there was some discussion
9 among the Commissioners that we might want to do this in
10 the afternoon of the 10th as its own proceeding.

11 MS. CREMER: Right.

12 COMMISSIONER NELSON: As opposed to being part
13 of the -- that will all have to be worked out and firmed
14 up. But I think that's what we're shooting for is the
15 afternoon of the 10th.

16 MS. SMITH: Dakota Range would make a request
17 that we have the opportunity either to file our brief
18 two, three business days later than the other briefs or a
19 reply brief opportunity.

20 We are realizing from past practices that we
21 have no idea what's going to come in so it's a bit hard
22 to provide a response to -- and as the Applicant we feel
23 we should have the final word to respond to what comes in
24 in briefing.

25 We think our briefing would be more relevant and

1 useful to the Commission if we have the opportunity to
2 either provide a reply brief or have a couple days to
3 digest the other briefs and provide our brief.

4 MS. CREMER: Well, probably the reply would be
5 the easiest, I would think.

6 MS. SMITH: That's fine.

7 MS. CREMER: The problem is the 4th, of course,
8 is on that Wednesday. And so if you don't get your
9 brief --

10 MS. REISS: Ms. Cremer, if I might interject,
11 you know, if the Applicant wants the opportunity to
12 respond to what is put in our brief, I think Staff would
13 appreciate the opportunity to read their brief as we
14 prepare ours and then give them the opportunity to reply
15 to that.

16 MS. CREMER: Right. Isn't that what I said?

17 MS. EDWARDS: No.

18 MS. SMITH: I don't care. If you want ours to
19 come in first, that's fine by me.

20 MS. CREMER: Okay. That's what I meant.

21 COMMISSIONER NELSON: Yeah. Ms. Cremer, I guess
22 I would object to any response briefs. I think in my
23 mind I was able to fully evaluate everyone's arguments
24 with one round of briefing in the Crocker case, and I
25 wouldn't expect anything different here.

1 COMMISSIONER HANSON: There needs to be some
2 type of response opportunity, though. And I am going to
3 assume that that will take place on the 10th then, that
4 all of the parties can engage in those discussions and
5 concerns that you expressed.

6 MS. SMITH: We would appreciate that. Thank
7 you.

8 MS. CREMER: And by the 10th you mean when we
9 hear it, not a written response. Or what did you mean?

10 COMMISSIONER HANSON: That is correct. Oral
11 discussion.

12 COMMISSIONER NELSON: Well, then I need to --
13 yeah. I mean, I would -- I felt -- I don't know that we
14 need that but if -- so what you're talking about is oral
15 arguments on the 10th; is that correct?

16 COMMISSIONER HANSON: Yeah. And, frankly, I'd
17 prefer written ones ahead of time as opposed to having
18 them go through the oral process, but, again, because of
19 the time constraint of six months, it makes it impossible
20 to accomplish all of that.

21 So I guess we're going to have to say that we
22 simply don't have enough time to finish the Docket so
23 we'll start over.

24 COMMISSIONER NELSON: Would you like to -- so
25 we've established a parameter for the oral arguments

1 today so that everybody knows what the rules are.

2 CHAIRWOMAN FIEGEN: Are we doing oral arguments?

3 MS. CREMER: Yeah. I think we need to decide --
4 yes. The three Commissioners, one, do you want oral
5 argument? Or do you want to do like we did with Crocker,
6 which is it's a working session with the three
7 Commissioners and you can ask the parties questions at
8 that time?

9 And so I will leave that discussion to you.

10 COMMISSIONER HANSON: Either way you do it, it's
11 going to end up in some type of oral discussion. For my
12 mind it simplifies it if they are given a time limit to
13 hit those arguments that they feel they need to make.

14 Otherwise, the question of back and forth, back
15 and forth, just creates a longer duration in my mind. I
16 would ask each party what are your concerns with the
17 other party's process and they're going to go through it
18 anyway and then we all pile on with our questions.

19 CHAIRWOMAN FIEGEN: You know, I can do it either
20 way. I certainly thought the Crocker discussion or
21 working session worked extremely well. But I will work
22 with however the other two Commissioners would like to do
23 it.

24 COMMISSIONER NELSON: Yeah. I'd echo
25 Commissioner Fiegen's, but if Commissioner Hanson would

1 like those oral arguments, I'm fine with that. Just
2 set -- give us a time limit today so everybody knows what
3 we're looking at.

4 What would you prefer?

5 COMMISSIONER HANSON: Frankly, I think they
6 should be able to do it in five minutes. You want it
7 shorter?

8 COMMISSIONER NELSON: No. No.

9 MS. SMITH: And actually we would be willing to
10 agree that it just be anything that was not addressed in
11 our initial brief. The intent is just to -- if something
12 came up that we haven't seen before, we would like to be
13 able to provide -- we can't anticipate everything, I
14 guess.

15 And that goes for everybody. We're not trying
16 to say other people shouldn't get to respond to our brief
17 either. We just were trying to be judicious about the
18 time.

19 COMMISSIONER HANSON: Exactly. And our
20 experience in the past with situations of this nature
21 when we give opportunities for oral arguments, pretty
22 much the people just start over and go through the entire
23 process all over again.

24 We don't want that. We just want people to, as
25 Ms. Smith said, answer those questions that may have been

1 brought up that need to be clarified.

2 MS. CREMER: Should we set a time on that? Five
3 minutes? Is that what you said?

4 COMMISSIONER NELSON: Whatever you want.

5 COMMISSIONER HANSON: I was told whatever I want
6 by my fellow Commissioner.

7 Five minutes.

8 MS. CREMER: Okay. So if my understanding is
9 correct here, July 2, first round of briefs, noon on the
10 2nd.

11 MS. SMITH: I believe that's the only briefs.

12 MS. CREMER: That's the only brief. Okay. My
13 note wasn't reflecting a reply so I was confused a
14 little.

15 On the 10th then in the afternoon we will hold
16 our meeting. The parties will be given five minutes to
17 wrap it up for us. There will be questions asked of the
18 parties likely. And the decision will be out no later
19 than July 23.

20 Does anybody have concerns and/or issues?

21 MS. EDWARDS: If we're going to do proposed
22 Findings of Fact since it's optional, you don't need to
23 rule on them, do you want them by the 3rd -- 2nd? Or
24 just get them in before your decision?

25 MS. CREMER: I would prefer the earlier the

1 better, but no later than the 10th.

2 All right. In that case then I will turn the
3 gavel back to Chair Fiegen.

4 CHAIRWOMAN FIEGEN: Are there other items that
5 come before the Commission today?

6 MS. SMITH: No. Thank you.

7 CHAIRWOMAN FIEGEN: Okay. The Commissioners,
8 are there other items?

9 Hearing none, is there a Motion to adjourn?

10 COMMISSIONER NELSON: Move to adjourn.

11 CHAIRWOMAN FIEGEN: Move to adjourn.

12 All in favor say aye; opposed, nay.

13 Commissioner Nelson.

14 COMMISSIONER NELSON: Aye.

15 CHAIRWOMAN FIEGEN: Commissioner Hanson.

16 COMMISSIONER HANSON: Aye.

17 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
18 aye.

19 The hearing is adjourned.

20 (The hearing is adjourned at 12:45 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 14th day of
11 June, 2018, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 22nd day of
14 June, 2018.

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18 /s/ Cheri McComsey Wittler
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter
23
24
25

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