

South Dakota Public Utilities Commission

EL19-027 - In the Matter of the Application by Crowned Ridge Wind II, LLC for a Permit of a Wind Energy Facility in Deuel, Grant and Codington Counties – Evidentiary Hearing

February 6th, 2020

Matthew Training Center – Foss Building, 523 E. Capitol Ave., Pierre, S.D.

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| Full Name        | City/State      |
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Full Name

City/State

George Holborn

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Volume III, Pages 523-640

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Reported By Cheri McComsey Wittler, RPR, CRR  
Precision Reporting, 213 S. Main, Onida, South Dakota

1           The following transcript of proceedings was  
2 held in the above-entitled matter at the Matthew Training  
3 Center, Joe Foss Building, 523 East Capitol Avenue,  
4 Pierre, South Dakota, on the 6th day of February, 2020,  
5 commencing at 8:30 a.m.

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- A12-5      Exhibit CO-S-5: Impact of Wind Turbine Sound on Annoyance, Self-Reported Sleep Disturbance and Psychological Distress
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- A12-7      Exhibit CO-S-7: Health-Based Audible Noise Guidelines Account for Infrasound and Low-Frequency Noise Produced by Wind Turbines
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 A19-3 Exhibit TW-S-3: Grant Co. Ord. 2016-01C  
 A19-4 Exhibit TW-S-4: List of Primary and Alternate  
 Turbine Locations and Dropped Turbines  
 A20 Rebuttal Testimony Christopher Ollson  
 A21 Rebuttal Testimony Jay Haley  
 A21-1 Exhibit JH-R-1 Sound modelled with Hessler  
 and CRW proposal  
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 A27 Supplemental Response to Intervenor IR 2-15  
 A27-1 Attachment 1 Map  
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INTERVENORS' EXHIBITS

I-1 Affidavit of Garry Ehlebracht  
 I-2 Wind Farm Lease and Easement Agreement  
 I-3 Application for Party Status (Corrected)  
 I-4 Affidavit of Laretta Kranz  
 I-5 Affidavit of Steven Greber  
 I-6 Affidavit of Amy Rall

CHRISTENSON'S EXHIBITS

AC-1 A Cooperative Measurement Survey and Analysis  
 of Low Frequency and Infrasound at the Shirley  
 Wind Farm in Brown County, WI  
 AC-2 McPherson 6 18 May  
 AC-3 Riina\_Bray\_IWT\_Niagara  
 AC-4 Applicant's Responses to Christenson's DR



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## CHRISTENSON'S EXHIBITS

AC-5 Applicant's Responses to Staff's Third Set  
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AC-7 Attachment 1 to Staff DR 3-8  
AC-8 Applicant's Supplemental Responses to Staff's  
Second Set of DR  
AC-9 Applicant's Responses to Intervenors' Second  
Set of DR(4)  
AC-10 MN-buyout-20186-143575-01  
AC-11 Attachment 1 to Intervenor 2-2  
AC-12 Attachment 1 to Intervenor 2-10  
AC-13 Attachment 1 to Intervenor 2-16  
AC-14 Attachment 1 to Intervenor 1-1 Applicant's  
Responses to Staff's First Set of DR  
AC-15 Attachment 1 to Intervenor 1-4 Part 1

## STAFF'S EXHIBITS

S1 Prefiled Testimony and Exhibits Darren Kearney  
S2 Prefiled Testimony and Exhibits Darren Kearney  
(Confidential)  
S3 Prefiled Testimony and Exhibits of Hilary Morey  
S4 Prefiled Testimony and Exhibits of Paige Olson  
S5 Prefiled Testimony and Exhibits of David  
Lawrence  
S6 Prefiled Supplemental Testimony of David  
Lawrence  
S7 Proposed Permit Conditions

1 MS. CREMER: Good morning, everyone. We are on  
2 day three. I will call the hearing back to order in  
3 Docket EL19-027, In the Matter of the Application by  
4 Crowned Ridge Wind II, LLC for a permit of a Wind Energy  
5 Facility in Deuel, Grant, and Codington Counties.

6 When we went into recess last night, we were  
7 about to begin the direct case of Staff. At this time I  
8 will call upon Staff to call a witness.

9 MS. REISS: Thank you. Staff calls Paige Olson,  
10 please.

11 (The oath is administered by the court reporter.)

12 DIRECT EXAMINATION

13 BY MS. REISS:

14 Q. Good morning, Ms. Olson. Would you please state  
15 your name for the record.

16 A. Paige Olson.

17 Q. And how are you employed?

18 A. I work for the South Dakota State Historical Society  
19 as a review and compliance coordinator.

20 Q. Okay. And can you briefly explain how you got  
21 involved in this proceeding?

22 A. Yes. I received a subpoena from your office.

23 Q. I'm sure you were delighted to receive that.

24 A. As always.

25 Q. And can you just briefly explain what you reviewed

1 in order to prepare for this proceeding?

2 A. So in order to prepare for the proceeding, I  
3 reviewed my previous -- my prefiled testimony.

4 Q. And based on that answer, I can assume you filed or  
5 prepared testimony for this docket?

6 A. Yes.

7 Q. And drawing your attention to what's been marked as  
8 S4 for identification purposes on the table --

9 A. Yes.

10 Q. -- can you identify that document?

11 A. Yes, I can.

12 Q. What is it?

13 A. It is the Direct Testimony of Paige Olson.

14 Q. Okay. And do you have any additions or corrections  
15 to make at this time?

16 A. I do.

17 Q. Okay. Can you do so?

18 A. On page 4, there is a question if SHPO is waiting  
19 for additional studies to review. My answer was no at  
20 the time. But we were actually waiting for one  
21 additional report -- or an additional report that not  
22 only took into consideration the turbine locations but  
23 also the access road, the crane paths, the buried  
24 collector lines, the MET towers, the concrete batch plant  
25 areas, the laydown areas, and the O&M facilities.

1           That report has since been received by my office on  
2           January 13, and we have reviewed the information.

3           Q.    Okay.  Do you have any concerns based on that  
4           review?

5           A.    I do not.

6           Q.    Okay.  And save for your correction you just  
7           indicated, if I asked you the same questions today as in  
8           your Direct Testimony, would your answers be the same  
9           today?

10          A.    Yes.

11          Q.    And can you provide a brief summary of your  
12          testimony for the Commission, please.

13          A.    Yes.  So we reviewed a number of cultural resource  
14          survey reports.  The company worked with a number of  
15          tribes to do surveys.  They identified, I want to say, a  
16          thousand sites perhaps.  And they worked hand in hand  
17          with the tribes.  And they have committed to, as far as I  
18          know, avoiding those impacts, but if there are impacts,  
19          they have committed to working with the tribes to  
20          mitigate -- avoid or mitigate those impacts.  So I don't  
21          really have any concerns.

22                MS. REISS:  All right.  Staff has no further  
23          questions and would tender this witness for  
24          cross-examination.

25                MS. CREMER:  Thank you.  And I misspoke earlier.

1 You're not starting your case. You're clearly in the  
2 middle of it.

3 Crowned Ridge.

4 MR. SCHUMACHER: Crowned Ridge has no questions  
5 for this witness. Thank you.

6 MS. CREMER: Mr. Swanson.

7 MR. SWANSON: I have nothing for this witness.

8 MS. CREMER: Ms. Christenson.

9 MS. CHRISTENSON: No questions.

10 MS. CREMER: Mr. Robish.

11 MR. ROBISH: No questions.

12 MS. CREMER: Commissioner Nelson.

13 COMMISSIONER NELSON: This isn't fair to you,  
14 but I don't have any questions either.

15 MS. CREMER: Commissioner Fiegen.

16 COMMISSIONER FIEGEN: I'm not going to say I  
17 have a question but I certainly have -- so the number of  
18 tribes the Applicant worked with, there are 1,000 sites  
19 that they had to work around? Is that my understanding?

20 THE WITNESS: That is correct. So they  
21 identified a handful of -- I don't have the approximate  
22 numbers -- excuse me. They identified a number of  
23 archaeological sites. And then working with the tribes,  
24 they were able to identify a large amount -- I would say  
25 around 1,000 in the project total -- traditional cultural

1 properties.

2 Oftentimes these areas have not been opened for  
3 the tribes to survey for various reasons. So this is the  
4 first time the tribal representatives are being able to  
5 go out and be on the ground and identify these types of  
6 resources. And they did this in coordination with the  
7 archeologist from SWCA.

8 COMMISSIONER FIEGEN: That's very impressive.  
9 Thank you.

10 MS. CREMER: Chairman Hanson.

11 CHAIRMAN HANSON: Good morning, Paige.

12 THE WITNESS: Good morning.

13 CHAIRMAN HANSON: I understand that the  
14 Applicant has been completely cooperative with your  
15 office and with the tribal historic officers as well and  
16 have agreed to all of the recommendations from you?

17 THE WITNESS: Yes.

18 CHAIRMAN HANSON: Thank you.

19 MS. CREMER: Staff, do you have any redirect?

20 MS. REISS: I don't know if there was a question  
21 really but no redirect.

22 MS. CREMER: Okay. Thank you, Ms. Olson. And  
23 you may step down.

24 THE WITNESS: Thank you.

25 (The witness is excused.)

1 MS. REISS: Staff calls Hilary Morey to the  
2 stand.

3 (The oath is administered by the court reporter.)

4 DIRECT EXAMINATION

5 BY MS. REISS:

6 Q. Good morning. And please let me know if I have  
7 butchered your name.

8 A. No. That's correct.

9 Q. Okay. Would you please state your name for the  
10 record?

11 A. Hilary Morey.

12 Q. And did you submit testimony in this docket?

13 A. Yes, I did.

14 Q. And did you submit that with another name?

15 A. I did. I submitted that under my maiden name, and I  
16 have recently changed it.

17 Q. What was the maiden name?

18 A. The maiden name was Hilary Meyer.

19 Q. Thank you. How are you employed?

20 A. I'm employed by South Dakota Game, Fish & Parks.

21 Q. And what's your job title?

22 A. My job title is senior environmental review  
23 biologist.

24 Q. Okay. And can you just briefly explain how you got  
25 involved in this proceeding?

1 A. Yes. Our department coordinates with a number of  
2 wind energy development companies. So we've been in  
3 coordination with NextEra since about 2007. So we have  
4 been reviewing different documents that they have  
5 submitted to us, wildlife survey reports, and also  
6 providing data to them as well.

7 Q. Okay. And drawing your attention to a document I  
8 set before you marked as S3 for identification purposes,  
9 do you have that in front of you?

10 A. Yes.

11 Q. Do you recognize that document?

12 A. I do. It's my Direct Testimony.

13 Q. And do you have any additions or corrections to make  
14 at this time?

15 A. No, I do not.

16 Q. And if I asked you the same questions today as in  
17 your prefiled Direct Testimony, would your answers be the  
18 same?

19 A. Yes.

20 Q. And can you just provide a brief summary of your  
21 testimony?

22 A. Sure. So our role with Game, Fish & Parks is to  
23 provide recommendations to the developer to try and  
24 avoid, minimize, and mitigate any impacts of wind energy  
25 development to wildlife and wildlife habitats. Many of



1 those recommendations are stated in the testimony. One  
2 in particular that we've discussed in the previous docket  
3 is impacts to prairie grouse so I addressed that in my  
4 testimony.

5 In the previous Crowned Ridge Wind I docket, we  
6 recommended a permit condition for monitoring prairie  
7 grouse leks. We are not recommending that in this docket  
8 because we've been partnering with NextEra as well as  
9 Western Ecosystems Technology to put together a very  
10 robust grouse study based on GPS locations near turbines.  
11 So we thought that the willingness of the Applicant to  
12 put forth that amount of effort, we didn't see the need  
13 for that permit condition because we would actually be  
14 essentially doing that throughout that study.

15 The other recommendations that we generally provide  
16 to all developers is to avoid placing turbines in native  
17 grassland habitat, primarily the undisturbed prairies.  
18 And then we also provide a number of other  
19 recommendations related to avoidance of, for example,  
20 eagle nests, raptor nests, et cetera.

21 Q. Okay. Thank you.

22 MS. REISS: Staff has no further questions and  
23 tenders this witness for cross-examination.

24 MS. CREMER: Thank you.

25 Crowned Ridge.

1 MR. SCHUMACHER: Crowned Ridge has no questions  
2 for this witness. Thank you.

3 MS. CREMER: Mr. Swanson.

4 MR. SWANSON: Nothing for this witness.

5 MS. CREMER: Ms. Christenson.

6 MS. CHRISTENSON: No questions.

7 MS. CREMER: Mr. Robish.

8 MR. ROBISH: No questions.

9 MS. CREMER: Commissioner Fiegen.

10 COMMISSIONER FIEGEN: Good morning.

11 THE WITNESS: Good morning.

12 COMMISSIONER FIEGEN: Two questions. One of  
13 them is about the walk-in areas. And you talk a little  
14 bit about it in your testimony on page 17. I just want  
15 to be assured so I want you to publicly talk more about  
16 those walk-in areas and how you've worked with the  
17 Applicant.

18 THE WITNESS: Yes. So the walk-in areas are  
19 private lands that are leased for hunting rights by Game,  
20 Fish & Parks. So we don't own those lands but private  
21 landowners can enroll those lands with our department to  
22 allow hunting access to them.

23 So we were, through working with actually a  
24 different company, we've come to realize that there could  
25 be some conflicts, particularly during the hunting season

1 for safety issues. So in the northwest part of the state  
2 in another wind facility development, we've actually  
3 closed some of those walk-in areas just to provide for  
4 some safety for the workers that are working on  
5 construction activities there.

6 So we had asked the Applicants to just notify us  
7 60 days in advance so that we could post that on our  
8 Game, Fish & Parks app that shows hunters where they can  
9 access those properties. So then if we have 60 days'  
10 notice, then we can close them down so they wouldn't show  
11 up on our app, or we could provide additional signage as  
12 well.

13 COMMISSIONER FIEGEN: So you said or additional  
14 signage. Will you put the additional signage out there?

15 THE WITNESS: Yes, we can do that. Uh-huh.

16 COMMISSIONER FIEGEN: Okay. Because  
17 sometimes -- the younger hunters, of course, use the app.  
18 The older hunters might just use a map.

19 THE WITNESS: Yes. I believe it's in my  
20 testimony, but if we're notified prior to May 1, we can  
21 actually include that into our paper hunting atlas, but  
22 just because of printing guidelines we need to know by  
23 early May.

24 COMMISSIONER FIEGEN: You're right. I did see  
25 that too. The other question I have is about the prairie

1 grouse lek. I agree that maybe we shouldn't have two  
2 studies, but would it be helpful if you used the whole  
3 footprint of Crowned Ridge I and II in the study that  
4 you're doing?

5 THE WITNESS: Yes. And we actually are planning  
6 on incorporating both footprints for that project.

7 COMMISSIONER FIEGEN: Great. That's very  
8 helpful. Thank you.

9 MS. CREMER: Chairman Hanson.

10 CHAIRMAN HANSON: Good morning.

11 THE WITNESS: Good morning.

12 CHAIRMAN HANSON: I appreciate your testimony.  
13 And it appears that the Applicant has been very  
14 cooperative with Game, Fish & Parks. Would you say  
15 that's true?

16 THE WITNESS: Yes.

17 CHAIRMAN HANSON: And have they accepted all of  
18 the requests and suggestions from Game, Fish & Parks?

19 THE WITNESS: Yes.

20 CHAIRMAN HANSON: You mentioned to us,  
21 pertaining to the leks, the fact that you have an  
22 agreement but you apparently don't feel you need to  
23 memorialize that in writing; is that correct?

24 THE WITNESS: Correct.

25 CHAIRMAN HANSON: Will that agreement and

1 cooperation survive if the Applicant is no longer going  
2 to be the owner of the property, if they sell it to a  
3 future party? Does Game, Fish & Parks have the -- excuse  
4 me for asking a question on top of a question but give it  
5 a little bit more granular look.

6 Does the Game, Fish & Parks have an authority to  
7 pursue cooperation with a future party if there's not a  
8 memorialization of that?

9 THE WITNESS: I don't know for sure.

10 CHAIRMAN HANSON: Okay. Would you let us  
11 know --

12 THE WITNESS: Uh-huh.

13 CHAIRMAN HANSON: -- subsequent to this meeting?  
14 Appreciate it.

15 THE WITNESS: So could you repeat that just so I  
16 can make a note to myself?

17 CHAIRMAN HANSON: I'm just concerned with the --  
18 I like to look at everything on a long-term basis.

19 THE WITNESS: Uh-huh.

20 CHAIRMAN HANSON: And so I'm concerned with the  
21 Game, Fish & Parks' authority to continue to hold the  
22 feet to the fire of a future owner to cooperate with the  
23 Game, Fish & Parks in relationship to the leks on a basis  
24 that -- you have great cooperation now apparently, but we  
25 don't know what, five years from now or two years, if

1       there's a future owner to the property.

2               THE WITNESS:   Okay.

3               CHAIRMAN HANSON:   You asked me to explain.

4               THE WITNESS:   No.   I understand.

5               CHAIRMAN HANSON:   I gave you a much longer  
6 explanation.   Sorry about that.

7               THE WITNESS:   Uh-huh.

8               CHAIRMAN HANSON:   Your answers talk about -- on  
9 page 8 specifically, your answer to question on page 12  
10 state that "some species will not use grassland or  
11 wetland habitat within a certain distance of wind  
12 turbines."   And on page 16 you speak of the cumulative  
13 impacts.

14               There are a lot of wind towers in that area  
15 presently.   A lot is a relative term, I suspect.   But  
16 this one is going to have -- if it's approved, would have  
17 a greater concentration of turbines.

18               With all of those turbines presently there and  
19 the potential for these, are you concerned about the  
20 cumulative impact, knowing that there's -- there is, in  
21 fact, according to your testimony, that some species will  
22 not use the grassland areas close to wind towers?

23               THE WITNESS:   Yes.   We are concerned with  
24 cumulative impacts.   There has been, as you mentioned, a  
25 lot of development in this area.   And some of the

1 research out of North and South Dakota, there's seven out  
2 of nine breeding grassland bird species will avoid  
3 turbines up to 300 meters, so about a quarter mile -- not  
4 quite a quarter mile. About two-tenths of a mile.

5 So we are concerned about that. However, we've  
6 been having internal discussions about how do we quantify  
7 that. It's a really difficult question to answer right  
8 now with the data that we have.

9 CHAIRMAN HANSON: Am I to assume that you're  
10 going to have some data available eventually then and  
11 some thoughts on this?

12 THE WITNESS: Well, what we've done -- excuse  
13 me.

14 What we have done is started a literature review  
15 to find quantifiable methods to look at cumulative  
16 impacts. This hasn't really been done, to my knowledge,  
17 in the wind energy industry as of yet. So we're having  
18 some discussions with some of our biologists on how do we  
19 quantify this in a meaningful way.

20 So right now we don't have data, but we're  
21 looking into what we would need to collect.

22 CHAIRMAN HANSON: I recognize that departments  
23 turn over occasionally. Is there a commitment for a  
24 long-term analysis of this then?

25 THE WITNESS: Not to my knowledge. This is a

1 project that I've been undertaking.

2 CHAIRMAN HANSON: Well, tell the Department head  
3 that you want to have long-term -- never mind --  
4 employment.

5 THE WITNESS: I hope to have long-term  
6 employment.

7 CHAIRMAN HANSON: This is a study that should  
8 take at least 20 or 30 years.

9 Okay. I feel a little bit disarmed not knowing,  
10 but I understand that, you know, there's challenges to  
11 having that without having all of the turbines.

12 I appreciate it, when you folks come up with  
13 something, if you'd let us know.

14 Thank you. No further questions.

15 COMMISSIONER NELSON: Thanks for being here  
16 today. Yesterday there was a question posed to one of  
17 the Applicant's witnesses about river otters. And,  
18 ironically, last night on KELO news, there was a big  
19 story about river otters and their resurgence in  
20 South Dakota and the fact that they may no longer need to  
21 be on a threatened list.

22 Can you just speak to that a little bit?

23 THE WITNESS: Sure.

24 So I'm not the river otter expert for our  
25 department, but we periodically go through and review our



1 state threatened and endangered species list. I guess I  
2 don't remember off the top of my head when the last  
3 review of that was.

4 They have been making a resurgence and they've  
5 been expanding their population. And a lot of that's due  
6 to increases in water quality. That's a big one in our  
7 state.

8 COMMISSIONER NELSON: Thank you.

9 MS. CREMER: Any redirect, Staff?

10 MS. REISS: Yes. Just one.

11 REDIRECT EXAMINATION

12 BY MS. REISS:

13 Q. In your conversation with Commissioner Fiegen, you  
14 discussed the walk-in areas in the state. Did I hear  
15 correctly, did you say the northwest portion of the  
16 state?

17 A. Yes. That was an example of how we've been working  
18 with a wind developer in that part of the state. We have  
19 walk-ins all across the state.

20 Q. Northwest? Which project in the northwest?

21 A. Sorry. The Willow Creek or Wind Quarry, I believe  
22 it's called.

23 MS. REISS: Okay. Thank you. No further  
24 questions.

25 MS. CREMER: So do you have any -- based on the

1 redirect, do you have any recross, Crowned Ridge?

2 MR. SCHUMACHER: We do not. Thank you.

3 MS. CREMER: Mr. Swanson.

4 MR. SWANSON: No.

5 MS. CREMER: Ms. Christenson.

6 MS. CHRISTENSON: No questions.

7 MS. CREMER: Mr. Robish.

8 MR. ROBISH: No questions.

9 MS. CREMER: All right. Thank you. You may  
10 step down.

11 (The witness is excused.)

12 MS. REISS: Staff calls Darren Kearney.

13 (The oath is administered by the court reporter.)

14 DIRECT EXAMINATION

15 BY MS. REISS:

16 Q. Good morning, Mr. Kearney. Would you please  
17 introduce yourself for the Commission.

18 A. My name is Darren Kearney.

19 Q. And where do you work?

20 A. I work for the South Dakota Public Utilities  
21 Commission.

22 Q. And what is your job title?

23 A. Utility analyst.

24 Q. And can you briefly explain your job duties as they  
25 relate to this proceeding?

1 A. Over the course of my just about seven years at the  
2 Commission, I have reviewed a number of wind energy  
3 facility siting permits, as well as transmission line  
4 siting permits, natural gas plant permit application, and  
5 a hydrocarbon pipeline siting permit.

6 Q. Okay. And drawing your attention to the table  
7 before you, to the document that's been marked for  
8 identification purposes as Exhibit S1, do you have that  
9 in front of you?

10 A. I do.

11 Q. Do you recognize that document?

12 A. Yes, I do.

13 Q. Can you explain what that document is?

14 A. That's my direct -- my Prefiled Direct Testimony  
15 submitted on December 6, 2019.

16 Q. Okay. And do you have any updates or corrections to  
17 make to that document at this time?

18 A. Just a couple updates. There was one Q and A or  
19 line of questioning regarding setback distance from  
20 Kranzburg to a specific turbine, and in rebuttal  
21 testimony, they addressed my concern about that.

22 They did further investigation into defining the  
23 legal description, which apparently there isn't one for  
24 the city of Kranzburg. But they did look into the tax  
25 records and were able to conclude where the proper

1 boundary is for that municipal boundary. And the  
2 shapefile I was using to measure the distance from  
3 Kranzburg came from the Department of Revenue. And since  
4 I didn't generate that shapefile, I don't know how  
5 accurate it is, so I would rely on the Applicant's  
6 rebuttal for that municipal boundary.

7 And then also there was the line of questioning  
8 about the whooping crane condition. And given the  
9 Applicant's commitment to the Commission yesterday to  
10 agree to that, my testimony would now be updated to  
11 reflect that the company did agree to that whooping crane  
12 condition that Staff proposed.

13 Q. Okay. And at the time you prepared your prefiled  
14 testimony, was it true and correct to the best of your  
15 knowledge?

16 A. Yes, it was.

17 Q. And save for the updates you provided today, if I  
18 asked you those same questions today, would your answers  
19 be the same?

20 A. Yes, they would be.

21 Q. Can you please provide a brief summary of your  
22 testimony?

23 A. My Prefiled Direct Testimony consisted of what Staff  
24 reviews in these applications, the additional discovery  
25 that we send to gather further information based on the

1 application that was filed that we felt should be  
2 provided in order to address ARSD 20:10:22, which is the  
3 rules for applications of energy facility permits, as  
4 well as South Dakota Codified Law 49-41B, which is the  
5 chapter for energy facility siting permits.

6 I explained the witnesses that Staff hired to assist  
7 us in our review. I explained the agency coordination or  
8 consultation we went through to understand whether or not  
9 any state agencies had any concerns with the project. I  
10 identified historic -- a little bit of the permitting  
11 history by the Commission, which kind of was a basis for  
12 Staff's review of this Application. I identified some  
13 concerns that we had, which were addressed and I updated  
14 earlier. I identified expected impacts from the project  
15 and outstanding -- one outstanding permit condition,  
16 which was the whooping crane that we addressed.

17 So that's kind of my prefiled Direct Testimony in a  
18 nutshell.

19 Q. Thank you. And just finally, I'd like to direct  
20 your attention to a document on the table before you  
21 marked as S7 for identification purposes. Do you  
22 recognize this document?

23 A. I do.

24 Q. And can you explain what this document is?

25 A. This is a jointly proposed permit conditions between

1 Crowned Ridge Wind II and Staff. We worked with them to  
2 develop a number of conditions that Staff would like to  
3 see attached to the permit should the Commission find the  
4 Applicant met its burden of proof and issue an energy  
5 facility siting permit for the project.

6 Q. Okay. And did you work with anyone else to develop  
7 these conditions?

8 A. We did send an e-mail to the Intervenors in this  
9 docket, asking them if they had any recommended  
10 conditions. We received a couple of them from  
11 Ms. Christenson as well as Intervenor Kristi Mogen. We  
12 attempted to incorporate them into the permit conditions  
13 where we could jointly agree to them with the Applicant.

14 Q. Okay.

15 MS. REISS: I would move for the admission of  
16 Exhibit S7.

17 MS. CREMER: Crowned Ridge?

18 MR. MURPHY: No objection.

19 MS. CREMER: Mr. Swanson.

20 MR. SWANSON: No objection.

21 MS. CREMER: Ms. Christenson.

22 MS. CHRISTENSON: No objection.

23 MS. CREMER: Mr. Robish.

24 MR. ROBISH: No objections.

25 MS. CREMER: With that, the exhibit -- did you

1 say S7?

2 MS. REISS: Yes.

3 MS. CREMER: S7 is admitted.

4 MS. REISS: Staff has no further questions --

5 Q. Oh. Did you have anything to add regarding the  
6 conditions?

7 A. Yeah. I was going to walk through the material  
8 changes that were made to these proposed conditions from  
9 past ones, just to call out certain conditions that the  
10 Commission may be interested in understanding why the  
11 changes were made.

12 For the changes, I'll start with Condition No. 1.  
13 In the past, the Commission has ordered that the  
14 applicants file all permits that they receive. We --  
15 through implementing past projects, those filings are  
16 numerous pages of building permits for each individual  
17 wind tower, and Staff was comfortable with the Applicant  
18 filing an affidavit to the Commission prior to commercial  
19 operation attesting that they did, in fact, receive all  
20 permits as required.

21 And Condition No. 2, we removed one of the  
22 standards, and that would be all applicable industry  
23 standards. And there was some concern from the  
24 Commission -- or not Commission -- from the Applicant as  
25 to that being vague. When we had included it in the

1 past, we were thinking more along the lines of the  
2 National Electric Safety Code as well as NERC Reliability  
3 Standards. We felt that those standards would need to be  
4 complied with regardless of whether or not it is in the  
5 permit condition. Therefore, Staff was comfortable with  
6 removing all applicable industry standards from that  
7 condition.

8 And Condition No. 9, in the past permits, the  
9 Commission has required or ordered the applicants to  
10 provide signage in accordance with the Manual on Uniform  
11 Traffic Control Devices, which is a manual published by  
12 the Federal Highway Administration. Ms. Christenson  
13 provided some concerns from the Crowned Ridge I project  
14 construction activities where Staff felt it would be  
15 reasonable for the company to file a temporary traffic  
16 control plan, which is provided for in the Manual on  
17 Uniform Traffic Control Devices.

18 Staff would like that to be filed and posted on our  
19 website so that Intervenors can review what the company's  
20 plan is for notifying the public and vehicles in the area  
21 of certain construction activities, road closures, and  
22 whatnot.

23 Let's see. For the Condition 26, which is the noise  
24 condition, Mr. Hessler provided some suggested edits to  
25 Staff. We asked them to incorporate Crowned Ridge I into



1 the noise test protocol so we can understand the  
2 cumulative impact. Should testing be conducted, we  
3 wanted the test protocol to capture the projects that  
4 were adjacent to each other.

5 The changes were identified in Mr. Hessler's  
6 exhibit. After talking with the company, there were also  
7 a few additional changes made to it where Xcel -- or  
8 Northern States Power Company is going to be the owner of  
9 the project, and they had concerns about being able to  
10 directly work with NextEra to shut down turbines from  
11 Crowned Ridge I. They didn't feel like they could say,  
12 hey, shut down your turbines. We need to test.

13 So we put into a condition in Subpart B and E(5)  
14 that they will work with Commission Staff and Commission  
15 Staff will facilitate that coordination of curtailing  
16 certain turbines for the noise testing to be completed.

17 CHAIRMAN HANSON: Excuse me. Where was that on  
18 B?

19 THE WITNESS: That was 26, Condition 26(B). And  
20 then 26(E), subpart 5.

21 CHAIRMAN HANSON: Thank you.

22 A. Condition 27 was amended to reflect the NextEra  
23 proposal for addressing Hessler's testimony as they  
24 identified in their Rebuttal Testimony.

25 Condition 31 was added to account for Ms. Morey's

1 recommendation to notify the GF&P if work is going to  
2 occur in a walk-in area so they could properly notify the  
3 public about that impact to that walk-in area.

4 Condition 33 was revised. This is the  
5 decommissioning funding account. Based on the  
6 Application and the testimony we've heard, Northern  
7 States Power Company is going to be purchasing the  
8 project or owning the project, and the Commission has the  
9 ability to review decommissioning cost recovery in rate  
10 proceedings. So consistent with, I believe it was,  
11 Dakota Range I and II, we amended that condition to  
12 reflect that an escrow account would not be needed if the  
13 project is purchased and owned by Northern States Power  
14 Company.

15 Condition 34 -- I just want to make sure it's  
16 consistent here.

17 Yes. Condition 34 was the Aircraft Detection  
18 Lighting System condition that the Commission has ordered  
19 in the past. Staff amended the language in that to  
20 clarify when Staff's expectation is that the ADLS system  
21 would be operating and that it's required to be operating  
22 subject to normal maintenance and forced outage.

23 We understand there are going to be periods of times  
24 where there could be an issue with the system that they  
25 need a certain amount of time to fix and repair. So that

1 is memorialized into these proposed conditions.

2 And another one that was added is Condition 40. And  
3 this was added based on a request from Intervenor Kristi  
4 Mogen. Essentially, what the condition says is that the  
5 Applicant needs to construct the facility in accordance  
6 with the permit and applicable laws, and then failure to  
7 do so may lead to revocation or suspension of the permit  
8 pursuant to South Dakota 49-41B-33, which is the  
9 authority the Commission has to revoke a permit.

10 And we identify that if an individual turbine is  
11 constructed or operated in a materially different manner,  
12 then that could lead to removal of that turbine if  
13 ordered by the Commission. And we incorporated that  
14 based on a request from Ms. Mogen, as I stated earlier.

15 And I think that's it for the material changes from  
16 past wind projects. The basis for those conditions came  
17 from the Crowned Ridge I wind farm, and we worked off a  
18 template from that and incorporated the changes I just  
19 walked through. And that concludes.

20 MS. REISS: All right. No further questions. I  
21 tender this witness for cross.

22 MS. CREMER: Thank you.

23 Crowned Ridge.

24 MR. MURPHY: No questions.

25 MS. CREMER: Mr. Swanson.

CROSS-EXAMINATION

BY MR. SWANSON:

Q. Good morning, Mr. Kearney.

A. Good morning.

Q. You have Exhibit S1 before you, I assume?

A. Yes, I do.

Q. Before we conclude, I would like to ask you a question also about Exhibit JHR-3, which was circulated to the docket on January 22, 2020. Would you per chance have that?

It's also marked Exhibit A28.

A. Give me a second.

Q. And if it's convenient, I can come back to that a little later.

A. I'm going to have to find it so you can either do it now or later, whatever you prefer.

Q. Well, let's try to do it before we conclude. And the point of my inquiry is there are two entries for the Greber residence, on effects to be given to that residence. And I'm trying to figure out what your understanding of that might be.

A. Okay.

Q. It appears it's coming to you now.

A. That's Exhibit A28?

Q. A28. Yes.

1 A. Okay.

2 Q. Do you see the entries for the Greber residence?

3 A. I do.

4 Q. Which I think is Receptor 221. Am I correct? D221?

5 A. Yes. You are correct. D221-NP.

6 Q. And there are two entries for that receptor?

7 A. Yes.

8 Q. It shows a minute difference in distance to the  
9 nearest turbine?

10 A. Yep.

11 Q. And also changes to perceived dBA and shadow  
12 flicker. Am I correct?

13 A. You are correct. Yep.

14 Q. Do you have any understanding or recollection why  
15 that has been submitted as A28?

16 A. Well, I don't know why the Applicant submitted it as  
17 A28, but I could maybe explain why there are two --

18 Q. Well, let's try that angle. You tell me, if you  
19 would.

20 A. All right. Subject to check, I believe that,  
21 through discovery, Staff asked Crowned Ridge Wind II to  
22 provide updated modeling to reflect the receptor on the  
23 other side of the residence, and that's where the dash 1  
24 came from. And I would like to go to our discovery to  
25 verify that.

1 Q. All right.

2 A. So please give me a second.

3 Q. I will.

4 (Witness examines documents.)

5 A. It's much easier when I can do a word search. I  
6 have to read through every question.

7 MR. SWANSON: Well, could we let the witness  
8 respond to that out of order at a later time before he  
9 concludes his testimony and we can go on with other  
10 examination? Would that work or --

11 THE WITNESS: If I recall correctly, if I'm  
12 thinking correctly, then I think it was done in response  
13 to a Staff Data Request.

14 MR. SWANSON: All right. All right. Well,  
15 let's try to, I guess, confirm that if I may ask the  
16 question later so that we can plow ahead, but I'll wait  
17 for the Hearing Examiner to say that that's okay.

18 MS. CREMER: Certainly.

19 MR. SWANSON: All right. Thank you.

20 MS. REISS: If I may interject, I think if you  
21 would allow, we can help provide that Data Request.

22 MR. SWANSON: Absolutely.

23 MS. REISS: It would be 216. Page 109 of 157.

24 THE WITNESS: I'm there. I just needed the DR  
25 number.

1 MR. SWANSON: Page 109?

2 MS. REISS: Of DK2, page 109.

3 THE WITNESS: And that's in Exhibit S1.

4 A. And, yes, that's the Data Request that came to my  
5 mind as to why that dash 1 is likely included in  
6 Exhibit A28.

7 Q. All right. And you're referring to item 216 on  
8 page 109?

9 A. Yeah. It's Staff Data Request 2-16.

10 Q. Right.

11 Well, that confuses me a little bit further, because  
12 I had understood this was a green something or other  
13 receptor which assumed the house wasn't there and it was  
14 omnidirectional.

15 Do you remember that testimony of Mr. Haley?

16 A. Yeah. I heard that testimony.

17 Q. So if the receptor is on a different side of the  
18 house, that house isn't there, I'm not sure I understand  
19 why that would result in a change in noise or shadow  
20 flicker levels.

21 But whatever, Mr. Kearney. Let's you and I get on  
22 with Exhibit S1. How about that?

23 A. That sounds good. And I believe the change resulted  
24 in that receptor moving closer to the turbine, which  
25 would result in a slightly higher sound and noise and

1 shadow flicker, and depending upon probably where it  
2 falls in the --

3 Q. But it still assumed the house wasn't there?

4 A. Right.

5 Q. All right. Thank you for that, Mr. Kearney.

6 Let's go to Exhibit S1, if you have that before you.

7 A. I do.

8 Q. Page 7, line 26.

9 A. I am there.

10 Q. All right. Let me get to it, please.

11 At that point, your testimony discusses a response  
12 you received from South Dakota Department of Health. And  
13 I believe that relates to Exhibit DK-3 also. Am I  
14 correct?

15 A. I believe so. Let me look at DK-3 real quick.

16 Yep. That's correct.

17 Q. All right. And I've noted here in my notes a quote  
18 as follows, and I trust this is accurate: "Agency" --  
19 meaning South Dakota Department of Health -- "has not  
20 taken a formal position on wind turbines and human  
21 health."

22 Is that a correct statement or a summary of DK-3 in  
23 part?

24 A. Yes. That's correct.

25 Q. All right. They haven't taken a formal position,



1 but to your knowledge, have they taken an informal  
2 position, if that's possible?

3 A. The information that we have is what has been  
4 provided in this docket, and I'm not aware of an informal  
5 position --

6 Q. All right.

7 A. -- taken by the Department of Health.

8 Q. All right. Has the PUC itself, based on the  
9 response of the Department of Health, itself taken a  
10 position formally or informally about wind turbines and  
11 human health?

12 A. Commission Staff relies on the experts in the health  
13 field to provide that position, and we would rely on this  
14 letter from the Department of Health.

15 Q. But they haven't taken a position?

16 MS. REISS: Asked and answered.

17 Q. Is it my -- you're relying on an agency that hasn't  
18 taken a position is my understanding of your answer?

19 A. They identified a couple of studies that they  
20 pointed to and said that they generally concluded that  
21 there's insufficient evidence to establish a significant  
22 risk to human health.

23 Q. All right. So they're pointing you on to some other  
24 studies by other state -- or agencies in other states.

25 A. Correct.

1 Q. And so are you telling me that the PUC then is  
2 relying on the positions apparently taken by the agencies  
3 of other states?

4 A. When you say the PUC, are you talking about  
5 Commission Staff?

6 Q. Yes. Yes.

7 A. I can only speak for Commission Staff.

8 Q. I understand. Sorry.

9 A. Yes. We rely on the evidence as presented in each  
10 of these cases by the Applicant, the Intervenors, and  
11 what we have received in consultation with the Department  
12 of Health.

13 Q. All right. And would it be fair to say the  
14 Department of Health has told you, go read the stuff from  
15 Minnesota and Massachusetts?

16 A. They referred them to us, yes.

17 Q. All right. And you've read that material, I assume?

18 A. At one point in time, yes.

19 Q. Okay. Some point during the seven years?

20 A. At some point probably in the past year and a half  
21 when we started reviewing wind energy facilities.

22 Q. All right. Okay.

23 Line 32 of your testimony -- of that same page, I'm  
24 sorry -- says that the Department of Health letter says  
25 that whatever the issues are -- or there are common

1 complaints associated with wind turbines and studies  
2 indicate that these issues may be minimized by  
3 incorporating "best practices into planning guidelines."

4 Do you see that in your --

5 A. I do.

6 Q. All right. When you say "best planning practices,"  
7 what are you referring to, if you can tell us?

8 A. I would expect that best planning guidelines would  
9 be associated with noise limits and setback distances.

10 Q. Have you ever heard of the NARUC best practices  
11 report from January 2012?

12 A. I have heard of it, yes.

13 Q. Have you ever studied it or looked at it?

14 A. I have not.

15 Q. So that's not the document you're relying on for  
16 best planning practices, I gather?

17 A. We rely on our experts that we have help us review  
18 these applications for noise.

19 Q. All right. And who is -- so when you are referring  
20 to "best planning practices," I gather you are referring  
21 to the PUC's activity in planning a wind farm permit. Am  
22 I correct on that?

23 A. That would be correct. Yeah.

24 Q. All right. Are there any other sources of best  
25 planning practices that you would think authoritative or

1 of a guiding nature as you conduct your work?

2 A. For noise, we rely on Mr. Hessler to provide the  
3 expert testimony and opinion as to what the proper limit  
4 is that. For shadow flicker, we understand that it's a  
5 nuisance issue and Staff defers to the counties, as we  
6 feel that they're best suited to address that concern  
7 based on the feedback that they hear at the local level,  
8 and setback distance are set forth in county ordinances  
9 as well as state law, and that's what the planning  
10 guidelines entail.

11 Q. Okay. So if I understand what you've just told me  
12 then, for noise issues you rely on Mr. Hessler's  
13 guidance; correct?

14 A. Correct.

15 Q. And for shadow flicker duration, you rely on the  
16 county handling that issue. Am I correct?

17 A. We look to see what the county has done and if it --  
18 and take that into consideration when we review these and  
19 usually defer to the county, absent some -- if there's no  
20 ordinance or limit on shadow flicker, then Staff would  
21 probably -- Staff would recommend an hour per year limit  
22 consistent with Commission's past decision.

23 Q. And there's been one past Commission decision on  
24 shadow flicker in a situation where there was no zoning  
25 ordinance control. Am I correct?

1 A. Could you explain what project you have in mind?

2 Q. Well, the only one I'm aware of is Prevailing Wind  
3 Park. Am I correct?

4 A. They had local ordinances.

5 Q. In all the counties?

6 A. Not Charles Mix.

7 Q. Is there another wind farm permit that had no local  
8 control for shadow flicker?

9 A. I do not recall off the top of my head.

10 Q. So if I can continue the discussion with you just  
11 briefly, what source would be authoritative for you to  
12 look to for shadow flicker control if the county didn't  
13 have an ordinance governing shadow flicker?

14 A. Well, the first thing Staff would look to is the  
15 Commission's past decisions and what they were  
16 comfortable with for limits.

17 Q. And do you know what the Commission looks to as to  
18 what they're comfortable with? What do they look to?

19 A. They look at the record that's presented in each  
20 docket.

21 Q. All right. Are there regulations that the  
22 Commission has adopted setting parameters for shadow  
23 flicker endurance?

24 A. There are no regulations. It's a case-by-case  
25 basis. And that's determined on the record that's

1 developed at the time a docket is before the Commission.

2 Q. So it would be kind of a contest of the experts that  
3 are being called in?

4 A. That's what contested case hearings are for. Yeah.  
5 It would be somebody would need to offer up a certain  
6 hour limit, which is typically 30 hours per year, and  
7 then the experts come in and testify as to why that's the  
8 proper limit.

9 Q. Do you have any understanding of why it's typically  
10 30 hours per year?

11 A. We understand the genesis of the 30 hours per year  
12 coming from, as you have examined past witnesses, through  
13 a determined court case, and it's kind of slowly filtered  
14 through the U.S. in a lot of zoning ordinances and state  
15 ordinances.

16 Q. Is my examination of that witness your first  
17 understanding that this all came from Germany to begin  
18 with?

19 A. No.

20 MS. REISS: Objection. This is getting really  
21 outside the scope of Mr. Kearney's testimony. He hasn't  
22 ever indicated that he's an expert regarding shadow  
23 flicker. And this is just really outside the scope.  
24 I've tried to let it go as long as I can.

25 MR. SWANSON: Well, I appreciate that, but

1 Mr. Kearney is the one who has just authored Exhibit S7,  
2 which has a shadow flicker endurance obligation of 30  
3 hours per year. If it's under 30 hours a year, it's all  
4 good. And I think it's fair inquiry.

5 MS. REISS: If I may respond to that?

6 MS. CREMER: Sure.

7 MS. REISS: Mr. Kearney explained how these  
8 conditions were developed, he's explained that Staff has  
9 relied on expert witnesses for these items, and that  
10 these conditions came about through discussions with the  
11 company. This is really outside the scope.

12 MS. CREMER: And I would overrule the objection.

13 Mr. Kearney, when he -- can answer as he can.  
14 And once he gets in over his head or believes he has, he  
15 can so indicate.

16 Q. Where were we, Mr. Kearney?

17 A. I believe the court reporter is going to have to  
18 read back that last question.

19 Q. All right.

20 MS. CREMER: I believe you answered it and then  
21 your counsel objected. So I don't believe there's a  
22 question in front of the witness.

23 Q. What was your answer? Do you recall, Mr. Kearney?

24 A. I believe I said no.

25 Q. That doesn't help me much when I don't remember what

1 the question was.

2 MR. SWANSON: There's a reason old lawyers  
3 retire.

4 Q. Okay. And I know we've asked -- I asked you about  
5 regulations of the Commission setting parameters for  
6 shadow flicker, and I think you stated, a question or two  
7 before that, that, no, there weren't any regulations.  
8 Correct?

9 A. Correct. I indicated it's done on a case-by-case  
10 basis based on the record before the Commission.

11 Q. Right. And we also have no South Dakota statutes  
12 governing shadow flicker as such.

13 A. None in state law.

14 Q. Do you know whether the Commission, this Commission,  
15 has ever asked the legislature for further guidance about  
16 shadow flicker and what is an appropriate duration?

17 A. I am not aware of that. I would not be  
18 knowledgeable to that either.

19 Q. All right. Going back to Prevailing Winds where we  
20 found -- or Prevailing Wind where we found a 15-hour  
21 shadow flicker limit that apparently the Applicant had  
22 agreed to, did that number of 15 hours come from a  
23 recommendation of a -- I wasn't involved in that case so  
24 that's the reason I'm asking.

25 Did that come from the recommendation of an expert



1     that Staff had hired?

2             MS. REISS:  Objection.  I don't recall this fact  
3     being in evidence at this time.

4             MR. SWANSON:  Well, I thought he testified to  
5     it.

6             MS. REISS:  To the hours per year?  I withdraw.

7             MR. SWANSON:  It's on page 11.

8             MS. REISS:  All right.  I withdraw.

9     A.     For Prevailing Wind Park, Staff proposed a condition  
10    to the Commission of 30 hours per year based on county  
11    ordinance.  During the Commission's decision process,  
12    after the evidentiary hearing was closed, the Commission  
13    on its own motion changed it to 15 hours per year.

14            Staff did not recommend that amount in our  
15    testimony, and I did not -- we did not have an expert  
16    recommending 15 hours per year.  There was not an expert  
17    that I'm aware of in that case.

18    Q.     No expert in the case making a recommendation one  
19    way or the other?

20    A.     I believe there were some health experts that --  
21    such as the doctors that were presented here by NextEra  
22    that were recommending or providing support for a  
23    30-hour-per-year shadow flicker limit.

24            Staff relied on Bon Homme County ordinance and  
25    deferred to that, since we felt nuisance issues are best

1 addressed by the county, and that was in our proposed  
2 conditions to the Commission, which the Commission  
3 changed after considering the record.

4 Q. Okay. And that was a multicounty park, was it not,  
5 wind park?

6 A. Hutchinson, Bon Homme, and Charles Mix.

7 Q. I gather from your testimony that we've just gone  
8 through, that NARUC best practices guide is not a  
9 document that you've at all considered in your particular  
10 work as Staff?

11 A. No. We rely on our experts and county ordinances  
12 and state law. We would refer to it if we have any  
13 questions, but throughout the course of these past wind  
14 energy projects we've worked on, I have not referred to  
15 it. I might have skimmed through it briefly, but --

16 Q. Do you have a copy of it, perhaps?

17 A. I do not. I would have to search it on the web if I  
18 wanted to refer to it.

19 Q. All right. Yesterday I had had some discussion with  
20 Mr. Hessler about his work that had been done on noise  
21 and wind farm issues in October of 2011.

22 Do you, in your work as Staff on wind farm  
23 applications, do you delve into the work of Mr. Hessler,  
24 or do you depend just on Mr. Hessler to come forth as to  
25 what his recommendations are?

1 A. Could you explain what you mean by "delve into"?

2 Q. Well, do you go to his source document first to read  
3 or study and then coordinate that with his  
4 recommendations? Or you just leave it up to Mr. Hessler  
5 to make his recommendations?

6 A. We mainly rely on Mr. Hessler to make his  
7 recommendations. If we want to understand why those  
8 recommendations are being made, then we'll go to the  
9 document or search for the information.

10 Q. All right. Have you ever looked at his document,  
11 his study from October of 2011? It's called Noise  
12 Report, filed with the Minnesota Public Service  
13 Commission?

14 A. No. Not that specific one. He has provided us with  
15 a paper he and, I believe, his father had drafted to  
16 support his ideal design goal of 40 and the regulatory  
17 permit limit of 45 dBA.

18 Q. All right. Do you understand why there's a -- why  
19 he has distinguished between the ideal design goal of 40  
20 dBA and a regulatory limit of 45 dBA?

21 A. That would be a question for Mr. Hessler.

22 Q. All right. I was wondering whether you had an  
23 understanding of it?

24 A. My understanding would be what he has provided in  
25 his testimony. I could read it.

1 Q. All right. In DK-2, which is part of your S1, you  
2 had made inquiry of my clients, the Intervenors from  
3 Goodwin, and in I-5 response -- this is at page 6 of 157,  
4 part of S1. Did you find that?

5 A. Yep. Sorry. Yes.

6 Q. All right. Our response had made reference to a  
7 Dr. W. Ben Johnson from Des Moines, Iowa, who is an  
8 electrophysiologist or a cardiologist.

9 Did you make any effort to contact Dr. Johnson  
10 regarding possible medical testimony?

11 A. We did not. We relied on the Department of Health.

12 Q. That's the same Department of Health that said they  
13 didn't have a position or a formal position to take?

14 A. Correct.

15 Q. Did you discuss Dr. Ben Johnson's possible views  
16 with anyone at the Department of Health?

17 A. No, we did not.

18 Q. All right. I think I have just a couple questions  
19 left, Mr. Kearney.

20 If you could go to -- oh, boy. It's Exhibit DK-2,  
21 and it's page 21 of 157, but for some reason I'm finding  
22 it. And it's question I-8. And it has to do where you  
23 are inquiring of Crowned Ridge whether they offer a "good  
24 neighbor contract," and you had asked for a sample and  
25 they then made a response.

1           And you were here for that testimony, I believe,  
2           with their witnesses?

3           A.    Yes.  I heard that testimony.

4           Q.    All right.  All right.

5           Let me ask you this question.  Would you ever ask an  
6           applicant operating a wind farm in accordance with the  
7           response that's given here to I-8 about mitigating an  
8           identified impact with a nonparticipant if the impacts  
9           are within the permit limits, which in this case is  
10          proposed in your S7 to be 30 hours annually for shadow  
11          flicker and 45 dBA?

12          A.    If I could rephrase the question to make sure I  
13          understand it correctly, you're asking if we've ever  
14          asked an applicant or required an applicant to mitigate  
15          impacts below the regulatory limit?

16          Q.    Yes.

17          A.    We have not.  And I have not seen any permit  
18          conditions that require that.

19          Q.    All right.  I'm asking whether you have ever  
20          entertained that and whether you've ever done it, and I  
21          guess your answer is no.

22          A.    Correct.

23          Q.    All right.  And the regulatory limit, as you refer  
24          to it, in this case, assuming your S7 permit conditions  
25          come into fruition, will be, as to shadow flicker, 30

1 hours per year and 45 dBA. Am I correct?

2 A. For nonparticipants, 45 dBA. 50 dBA for  
3 participants. And 30 hours per year for shadow flicker.

4 Q. Right. Now, do you understand that the intervenors  
5 I represent take the position that, as to shadow flicker,  
6 they have a property right involved?

7 A. That's a legal question.

8 Q. I'm asking if you understood that, though. I'm not  
9 saying you're a lawyer. I'm asking if you understood it.

10 A. I understand the argument you're advancing.

11 Q. I'm sorry?

12 A. I understand the argument that -- the position  
13 you're advancing on behalf of the Intervenor, yes.

14 Q. All right. I gather you don't agree with the  
15 argument but you understand the argument?

16 A. I'm not in the position to agree or disagree with  
17 it. It's a legal argument.

18 Q. All right. Okay. So since that would have some  
19 bearing possibly on the validity of your proposed permit  
20 conditions, have you sought counsel on any of those  
21 points?

22 A. We have two Staff attorneys that help provide  
23 guidance to us.

24 Q. Oh, I can see them. They're sitting right next to  
25 you. But my question is, have you asked the question?

1 A. Have I asked the question to them?

2 Q. Yes. Or any other lawyer?

3 A. About property rights?

4 Q. Yes. As I have identified them.

5 A. No. I mean, they offer their position in legal  
6 briefs.

7 Q. All right. So you have not made any changes to your  
8 proposed permit conditions which would be based in  
9 recognition of our property rights claim being at all  
10 valid?

11 A. Our proposed conditions are based on the Applicant's  
12 burden of proof and the authority the legislature has  
13 given the Commission. We review the laws as the  
14 legislature enacted them. We review the rules that were  
15 developed and approved by the Commission in the  
16 rulemaking process. And we develop conditions off of  
17 that guidance that we feel are properly suited for wind  
18 energy facility permitting.

19 MR. SWANSON: All right. That will do it.  
20 Thank you.

21 MS. CREMER: Thank you.

22 (Discussion off the record.)

23 MS. CREMER: So 5 after 10:00.

24 (A short recess is taken.)

25 MS. CREMER: I will call the hearing back into

1 session. And, Ms. Christenson, it is your opportunity.

2 MS. CHRISTENSON: Thank you.

3 CROSS-EXAMINATION

4 BY MS. CHRISTENSON:

5 Q. Good morning, Mr. Kearney.

6 A. Excuse me. I was taking a drink of water. Good  
7 morning.

8 Q. I do have some questions for you, mostly regarding  
9 your testimony, your written Direct Testimony --

10 A. Okay.

11 Q. -- but some others as well.

12 In the past couple of days, we did hear some  
13 testimony that sufficient funds may not be available to  
14 build the entire Crowned Ridge Wind II project. In light  
15 of -- the Intervenors requested a balance sheet and  
16 profit and loss statement for the last three years from  
17 the Applicant and they said they didn't have one.

18 Do you recall that in our Data Request, and  
19 Mr. Hart's testimony that we had?

20 A. I do recall seeing your Data Request requesting that  
21 profit and loss statement, I believe.

22 Q. Okay. And then during Mr. Hart's testimony, we  
23 talked about the check that Crowned Ridge II had written  
24 in an application fee showing that they do have a  
25 checking account, so obviously there is a profit and loss



1 statement and balance sheet that could be produced  
2 somewhere?

3 MR. MURPHY: Objection.

4 MS. CREMER: What would be the objection?

5 MR. MURPHY: Argumentative. It's inferring that  
6 there is an obvious balance sheet. It's inferring facts  
7 that are not in evidence as well.

8 It was a statement of fact, and the lawyers need  
9 to ask questions instead of testifying. I can keep  
10 going.

11 MS. CREMER: No. That's all right. I'm just  
12 trying to recall the exchange with Mr. Hart.

13 Hang on one second.

14 Mr. Kearney, do you know anything about -- would  
15 it be speculation on your part?

16 THE WITNESS: Yeah. I'm not privy to how the  
17 funding or accounts are set up for Crowned Ridge Wind II.

18 MS. CHRISTENSON: I'm happy to rephrase.

19 MS. CREMER: Yes. And, again, if you don't  
20 know, it's speculation.

21 Q. Are you -- I don't have your resume like -- well, I  
22 do have it handy, but I will just ask you. Are you aware  
23 if there is a company, if they have funds, a checkbook  
24 and pay bills from a checking account, would a balance  
25 sheet and profit and loss statement be a reasonable

1 assumption to be a financial document for a company?

2 A. I don't want to assume anything for Crowned Ridge  
3 Wind II.

4 Q. No. Not for Crowned Ridge. Any company.

5 A. It depends on the business, but I expect there could  
6 be a profit and loss statement, balance sheet, income  
7 statement, cash flow statement, and all of that.

8 Q. Okay. Thank you.

9 So in light of their testimony that they may have  
10 limited funding, would Staff consider it prudent that  
11 Crowned Ridge Wind II update their Data Request -- well,  
12 I have two questions in there, I guess.

13 Crowned Ridge Wind II, according to the rules of the  
14 docket or according to what they agreed to in data  
15 requests, said that they would continue to update data  
16 requests as new information becomes available.

17 Is that your correct understanding? Or am I  
18 understanding correct?

19 MS. REISS: Objection. I think this is trying  
20 to call for some sort of legal conclusion as to whether  
21 we're in compliance with the rules. It just seems -- and  
22 it's outside of his testimony.

23 MS. CREMER: Did you have a response -- not you,  
24 Mr. Kearney -- Ms. Christenson, to her objection?

25 MS. CHRISTENSON: I do. I believe Staff came up

1 with the rules for the docket for data requests and  
2 submissions, the time frames, et cetera. And then when  
3 we did data requests as Intervenors and as Staff, we put  
4 in our data request asking for updates, and we've gotten  
5 updates on other questions, just not this one because  
6 this one's recent. Because it just came --

7 MS. CREMER: I'm going to have you reask the  
8 question because it is so confusing.

9 MS. CHRISTENSON: I know. I got confused in the  
10 middle there as well.

11 MS. CREMER: Yes, you did. So why don't you ask  
12 him again.

13 MS. CHRISTENSON: I'm just going to move on from  
14 that actually.

15 Q. Dr. Ollson referred to licensed, or perhaps it was  
16 another word that he used, landfills that would possibly  
17 take turbine blade waste. Is there any South Dakota law  
18 or rule that you're aware of when you review these  
19 applications that govern the disposal of waste on private  
20 property or landfills?

21 A. Well, I suspect that landfills are permitted by  
22 certain state laws, but that's not our bailiwick or area  
23 of expertise so I wouldn't be able to testify to what  
24 those license requirements, rules and laws entail for  
25 waste disposal at specific facilities or private lands.

1 Q. Okay. When you review the Application and  
2 documents -- and you've looked at the decommissioning so  
3 you do have thoughts 20, 25 years, you try to envision  
4 how that's going to play out at the end of life -- have  
5 you considered the waste product of these facilities and  
6 where it would go?

7 A. Well, it's identified in their decommissioning plan,  
8 that it would go to a licensed landfill or a landfill  
9 that can properly receive those waste depending upon the  
10 characteristics of the waste.

11 Q. But in protecting the state of South Dakota, have  
12 you thought about how much waste that is with these wind  
13 farms and where it would possibly go? Have you  
14 approached the Applicant about possibly identifying areas  
15 where it would go?

16 A. From a decommissioning perspective, Staff's  
17 concerned about them removing the facilities as they  
18 commit to in the decommissioning plan, having the funding  
19 available to remove those facilities, and as well as  
20 making sure that the wastes are properly disposed of.

21 In the decommissioning plan and through testimony,  
22 we heard that they're planning to dispose of it in a  
23 licensed landfill. Now you're talking about capacity of  
24 landfills available to receive the waste. We don't have  
25 any knowledge or expertise in that.

1           We also heard testimony that there could be advances  
2     in the industry where they look at using beneficial reuse  
3     of the turbine blades or the fiberglass from the turbine  
4     blades. So at this point in time, we want to make sure  
5     that you're going to decommission the facility, and when  
6     you do decommission the facility, you're going to dispose  
7     of those wastes properly.

8           We don't get into the details of where those wastes  
9     are going to go, what specific landfill they're going to  
10    be placed in. That will be decided 25 years from now  
11    when the blades are ready for removal.

12   Q. As well as the cement and rebar and -- that would  
13   all be disposed of in a landfill? That would be the  
14   same?

15   A. Up to a depth of four feet, they would remove the  
16   turbine foundations and haul out the construction debris  
17   to a landfill, I believe.

18   Q. Thank you.

19           In light of recent issues with at least one other  
20   wind facility in South Dakota having some problems, how  
21   is the PUC Staff prepared to monitor and enforce the  
22   conditions of the permit if this Commission does rule in  
23   favor of granting a permit?

24           And by that, I mean, would there be some milestone  
25   inspections? Is there a person that's going to be

1 designated to inspect locations, things of that nature?

2 A. Through permit conditions, there is the public  
3 liaison officer that's identified there to address  
4 concerns and complaints and be Staff's boots on the  
5 ground, so to speak. So if there are concerns raised by  
6 a member of the community, they help resolve that and  
7 identify what the issue is.

8 Depending upon what the issue is, it may warrant one  
9 of us, the analysts, that work on the projects to go out  
10 to the project site and determine what exactly is going  
11 on.

12 But from our experience, a lot of the issues are  
13 resolved through the public liaison officer.

14 Q. Thank you.

15 And we don't know who that public liaison officer is  
16 going to be yet at this project?

17 A. Correct. That would need to be, if the Commission  
18 issues the permit and attaches that proposed condition to  
19 the permit, the Applicant would need to identify that,  
20 submit that individual to the Commission for approval  
21 prior to construction.

22 Q. Okay. So I'm thinking about Crowned Ridge I right  
23 now. That public liaison officer lives in Sioux Falls.  
24 So boots on the ground, by boots on the ground, I'm  
25 thinking more of milestone inspections of like when I

1 build my house, an electrician has to come out and  
2 inspect. When I do the framing, it has to be inspected.

3 Are any steps intended to be put into place where --  
4 a checklist. Building permits: Yep, they're all there.  
5 And I realize they're going to add the permits. But is  
6 anybody going to go out to the facility itself and look  
7 at the hole in the ground and see if it's eight feet, see  
8 if it's -- I don't know what it could be. See if it's  
9 the turbine model that they say? See if it's the  
10 transformer that they say, that they've submitted?

11 That's what I'm looking for, someone to verify as we  
12 go along.

13 A. We do require them to provide a preconstruction  
14 filing, identify the most current plans, layouts, and  
15 then we also require them to provide a postconstruction  
16 filing to verify that setback distances have been met and  
17 so forth in the past.

18 Commission Staff expects the developers to construct  
19 the facility as permitted and proposed. We do not go out  
20 to the site and verify the foundations are constructed  
21 correctly because that's an engineering design that's  
22 needed. It's something that we wouldn't have the  
23 expertise to do.

24 And based on our experience with other projects that  
25 have been constructed, for example, Prevailing Wind Park,

1 Crocker, Willow Creek, we haven't had the issues come  
2 up where we needed to go out to the site and inspect it.  
3 Q. You don't have the expertise to go inspect, but you  
4 do have the ability to hire experts to go and inspect.  
5 Would that be a fair statement?

6 A. I think that could be an option if the Commission  
7 decides that it's needed.

8 Q. Okay. Thank you.

9 You discussed earlier -- I had offered a condition  
10 to you regarding noise, and it was to limit construction  
11 related noise -- if I can read that, or if I can tell  
12 what my condition proposal was -- to limit construction  
13 related noise to the hours of 7:00 a.m. to 7:00 p.m.

14 My understanding is the condition was not agreed to  
15 because there were no noise complaints in Crowned Ridge  
16 I. Is that a fair statement?

17 A. Yeah. We did receive your recommended permit  
18 condition of limiting noise from 7:00 a.m. to 7:00 p.m.  
19 Monday through Saturday and I believe it was until  
20 7:00 a.m. to 1:00 p.m. on Sundays.

21 Staff drafted some language and proposed it to the  
22 Applicant to limit noise from 7:00 a.m. to 7:00 p.m.  
23 Well, basically, the condition was drafted where if you  
24 receive -- if the company or the public liaison officer  
25 receives a complaint after 7:00 p.m., then the Applicant



1     should shut down that construction activity associated  
2     with that complaint until 7:00 a.m. the next morning.

3             Now I forgot the rest of your question because I was  
4     explaining the condition. Could you restate the  
5     question?

6     Q.     Actually, I think that's fine. You reiterated my --

7     A.     I remember the question now if you want me to answer  
8     it.

9     Q.     Okay, thanks, because I don't.

10    A.     And through discussions with Crowned Ridge I and our  
11    public liaison officer, Crowned Ridge, the only noise  
12    complaint that the Commission is aware of related to  
13    construction activities -- that Commission Staff is aware  
14    of, I should say -- related to construction activities  
15    was due to a helicopter working on the transmission line,  
16    which is permitted under a different permit.

17             It's my understanding that there were no noise  
18    complaints associated with the construction of the wind  
19    farm itself portion of the project and, therefore, we  
20    didn't feel that there were enough complaints received  
21    from the Crowned Ridge I project construction to warrant  
22    the need for a condition in this project.

23    Q.     Thank you.

24             You would agree that different people live in this  
25    project than do Crowned Ridge I, though; correct?

1 A. Yeah.

2 Q. Okay. Can we refer to the map, A27-2. And can you  
3 find the batch plant on that map? It's on Highway 212.  
4 If you look kind of --

5 A. It's right here (indicating).

6 Q. Right. Can you see the property right adjacent,  
7 right next to that batch plant?

8 A. Yep.

9 Q. Do you notice that cement batch plant is right next  
10 to a nonparticipant family?

11 A. I noticed that and we looked into the reason why.  
12 And when we started looking at historical aerial photos,  
13 there was already a concrete batch plant there from work  
14 on, I think, what highway is that? 212.

15 So we'd have to ask the company why they chose that  
16 spot, but I suspect, if it was already used as a batch  
17 plant for other related construction activities, then  
18 they probably determined it's a reasonable spot to use  
19 since the land has already been impacted due to work that  
20 was done in a past project.

21 Q. That may be reasonable for the company, but it may  
22 not be reasonable for the nonparticipants. They didn't  
23 have a choice when the batch plant was used for --

24 MS. REISS: Objection. This is testifying.

25 MR. MURPHY: I was waiting to do it in concert.

1 MS. CREMER: Well, then I'll sustain twice.

2 Q. Okay. Rephrasing. If there is a road construction  
3 batch plant, would that be -- my brother and I have a  
4 joke, I can't think of the English word -- would that be  
5 something that the PUC would have had control over, the  
6 batch plant location for a road project?

7 A. First, we did not hear from that nonparticipating  
8 landowner as to concerns associated with the batch plant  
9 proposed as is in this project.

10 Second, one of the permit conditions that Staff  
11 jointly proposed with the company is that they can adjust  
12 the location of the concrete batch plant, just as long as  
13 it's on leased lands for the project and meets all the  
14 cultural and environmental criteria that the company  
15 commits to.

16 Q. So if there were a daycare in that nonparticipator's  
17 home perhaps and there's a batch plant there -- batch  
18 plants are typically a hub of activity during  
19 construction.

20 Many trucks, much noise. Would that be fair?

21 MS. REISS: Objection.

22 MS. CREMER: And many grounds, but which one  
23 would you like?

24 MS. REISS: Let's try speculation, testifying.

25 MS. CREMER: I would sustain.

1 MS. REISS: Thank you.

2 MS. CHRISTENSON: Oh, come on. You have to have  
3 more than that. Just kidding.

4 MS. REISS: I was waiting for Mr. Murphy to  
5 interject.

6 MS. CHRISTENSON: Okay. I think my point is  
7 made, though.

8 Q. In your Direct Testimony, S1, under the heading of  
9 Application Completeness on page 9, line 6, you say you  
10 consider the Application complete. Is that correct?

11 A. That's correct.

12 Q. Does the split in Crowned Ridge II into two  
13 versions, a 300 megawatt and a 200 megawatt, which would  
14 bring two different build times and two different efforts  
15 by the company, does that split create any concern for  
16 Staff?

17 A. No. It doesn't have any specific concerns for us.  
18 And I addressed that in my testimony. And I believe that  
19 in 49-41B-11(5), one of the statutes identifies that the  
20 applicant can identify future additions and modifications  
21 it would like to include in the permit -- be permitted at  
22 that time.

23 So I think that the statutes and rules contemplate  
24 that future additions could be considered. And Staff has  
25 viewed this as, okay, well, 200 megs get built now and

1     then the future addition is 100 megs. And we think that  
2     the statutes and rules have contemplated for a scenario  
3     such as that.

4     Q.    Thank you.

5           Following on page 9, Section 6, the heading of  
6     Noise, you talk about Prevailing Winds being able to  
7     achieve a project design goal of 40 dBA so the Commission  
8     ordered a permit condition of 40 dBA for nonparticipants  
9     in that project.

10           Your expert, retained by the PUC, Mr. Hessler,  
11     testified yesterday that with the turbine configuration  
12     modification that he had suggested, the low noise  
13     trailing edge blades Crowned Ridge II has committed to  
14     using, and the EPCO software -- I guess they're calling  
15     it software -- that Crowned Ridge Wind II has committed  
16     to use, Crowned Ridge Wind II should be able to meet the  
17     design goal of 40 dBA, according to Mr. Hessler.

18           Will Staff recommend that same condition as applied  
19     to Prevailing Winds to be applied to the Crowned Ridge  
20     Wind II projects considering your expert believes it to  
21     be achievable like in the docket for Prevailing Winds?

22     A.    I think that you might have mischaracterized  
23     Mr. Hessler's testimony a little bit. And perhaps the  
24     record will show that I'm wrong, but I believe what he  
25     was indicating is that, based on the sound modeling that

1 was produced without the EPCO included and the 2 dBA  
2 uncertainty factor, that a lot of the nonparticipants he  
3 was concerned about would be near that 40 dBA.

4 I don't think he advocated for a 40 dBA permit limit  
5 in this case and was still standing by his 45 dBA  
6 regulatory limit. And that is what Staff's position is  
7 still at this time.

8 Q. On page 10 of your testimony, down to line 15, you  
9 have a question: Does Crowned Ridge Wind II's noise  
10 modeling account for accumulative impacts from adjacent  
11 wind projects?

12 In your answer you say yes. And you go on to say  
13 that Crowned Ridge I and Deuel Harvest are adjacent to  
14 Crowned Ridge Wind II. And then you say, and I quote,  
15 "The model did not account for Dakota Range turbines,  
16 which the report identified that project as being too far  
17 away to have significant cumulative impact on sound  
18 levels."

19 Last night I pulled up the wind project maps that  
20 have been permitted in the area of Crowned Ridge Wind II,  
21 and I have three here. And it's a bit difficult to tell  
22 because each company has a different scale to their map.  
23 And Crowned Ridge Wind II doesn't actually have a map  
24 that I could find that had streets and avenues on like  
25 other projects.

1           But I could use Waverly as a frame of reference on  
2 these maps to kind of jumble them together.

3           As near as I can tell, Crowned Ridge Wind II project  
4 area, the top of that project is 163rd Street, and the  
5 bottom of Dakota Range is 162nd Street. That seems very  
6 adjacent to me.

7           I am getting to my question. I thought that  
8 foundation was important to lay here so that you could  
9 picture what I'm talking about, because you've sited all  
10 of -- or you've permitted these facilities.

11           In the past, has the PUC ever asked an applicant for  
12 a map depicting the projects in the area all combined for  
13 a visual reference of the layout of the projects relative  
14 to each other?

15       A.    We have not asked the applicants for that because  
16 they wouldn't have the information of the turbine  
17 locations from projects that they're not developing.

18       Q.    Has the PUC Staff ever assembled such a document?

19       A.    I have GIS shapefiles for the projects that I use  
20 and look at the projects in relation to each other.

21       Q.    Could that document be produced for the public and  
22 the Commission so that they can see all of these projects  
23 relative to each other and turbine placements relative to  
24 each other?

25       A.    Yeah. I don't see why we can't generate a map.

1 Although, the turbine locations are based on shapefiles  
2 we receive during the permitting process, and some of  
3 them might change slightly throughout the course of final  
4 micrositings the projects. But that's something that  
5 Staff could produce.

6 Q. That would be very helpful. Thank you.

7 In your review of this Application and its  
8 associated reports and documents, did the PUC Staff ever  
9 discuss with Crowned Ridge Wind II, asking for the  
10 addition of the Dakota Range Crowned Ridge II -- or the  
11 addition Dakota Range to the Crowned Ridge Wind II sound  
12 studies?

13 A. Our expert, Mr. Hessler, did not identify that as  
14 being a concern, and he never suggested to Staff to work  
15 with Crowned Ridge to include Dakota Range I and II into  
16 the modeling. I have looked at the turbine locations  
17 between Crowned Ridge Wind II and Dakota Range I and II,  
18 and the turbines are about 7.4 miles apart.

19 Q. On page 11 of your testimony you discuss shadow  
20 flicker. This might be repetitive of Mr. A.J.'s -- or  
21 Mr. Swanson's.

22 In your first question and answer segment, you list  
23 seven projects the PUC Commission applied 30 hours of  
24 shadow flicker limit to permit conditions. You mentioned  
25 Prevailing Wind Park permitted with a condition of half



1     that amount, 15 hours annually. And in your previous  
2     testimony today, you said that was no recommendation by  
3     Staff but it was applied by the Commissioners.

4     A.    Correct.

5     Q.    Along those lines, your expert, Mr. Hessler, thought  
6     that those turbines were pretty crammed into a small  
7     project area. And I see a lot of white space in there.

8           Is there room for 15 hours of flicker limits in that  
9     project area the way that project is configured?

10    A.    I do not have the answer to that. That would need  
11    to be remodeled by Mr. Haley.

12    Q.    Thank you.

13           Did Staff ever inquire to Crowned Ridge Wind II as  
14    to what each receptor's daily flicker would be?

15    A.    We did not send a discovery request seeking that  
16    daily contribution from each turbine on a specific  
17    receptor.

18    Q.    No discovery, but you've never discussed that with  
19    them via e-mail or personally?

20    A.    No. When we go through these dockets, we send  
21    formal discovery to get the information so we can put it  
22    in the record if we think it's needed.

23    Q.    Okay. Because you do talk about that you discuss  
24    conditions and things with the Applicant, so I was just  
25    clarifying if there was other discussion.

1 A. No. That's a good clarification. And once we get  
2 to the point where we want to -- once our testimony's  
3 been submitted and we've gotten through the discovery  
4 part of the proceeding is when we start verbally  
5 discussing conditions with the Applicant. And it's  
6 easier to facilitate those negotiations face to face and  
7 verbally rather than through formal e-mails.

8 Q. Thank you.

9 Has the Commission ever limited the amount of daily  
10 flicker to anyone, participant or nonparticipant, in any  
11 wind project?

12 A. I believe it was in Prevailing Wind Park there was  
13 the 30 minute attached to that as well, as well as the 15  
14 hours per year.

15 Q. Thank you.

16 On page 12 of your testimony, you recommend a permit  
17 condition that indicates -- let me read this. "Shadow  
18 flicker at residences shall not exceed 30 hours per year  
19 unless the owner of the residence has signed a waiver."

20 Reading that, the "shall not exceed" is good wording  
21 and I thank you for that. I'm wondering, though, is each  
22 home going to have to self monitor by video, or how is  
23 that record supposed to be accumulated for that  
24 homeowner?

25 A. I think that would be a question for the modeling

1 expert because I think we review our applications -- the  
2 applications we receive based on the modeling results,  
3 which -- or the models are derived based on physics, I  
4 think, behind shadow flicker and the angle of the sun in  
5 the sky, the duration of the daylight hours and whatnot.

6 If we were to implement this condition, somebody  
7 complains, then Staff would work with -- informally with  
8 the Applicant to figure out a way that we could verify  
9 that this 30 hours per year is not being exceeded. At  
10 this time I don't know what that would look like and what  
11 type of monitoring would be used for it. But based on  
12 curtailment of turbines in other projects, I think it's  
13 more relative to the time of year, which sets the angle  
14 of the sun in the sky and the daylight length. And then  
15 that's how the wind companies decide which turbines to  
16 curtail in order to meet that permit limit.

17 Q. So you're not putting that burden onto a homeowner,  
18 that they have to keep track of every minute of every day  
19 they see a flicker?

20 A. Well, if they so choose to, I suppose they could.  
21 But if they think that, you know, it's three months in,  
22 I've gotten flicker every day, what's going on here, and  
23 they call us and say, hey, we've gotten flicker every  
24 day, we're going to work with the applicant informally to  
25 figure out what's going on, if we find that there could

1 be an issue, we would bring it to the Commission.

2 Q. That's a good answer. Thank you.

3 Because my question was recourse. What kind of  
4 relief do you envision during a complaint process? Would  
5 it be immediate? Like would you say --

6 For example, I call. Just imagine that I would  
7 call. And I say I've had 30 hours of flicker already and  
8 it's still going. You know, that's not going -- they're  
9 not going to turn off a turbine that day. It's not a  
10 light switch; right?

11 So I just want to see how you envision that  
12 happening.

13 A. At that point, it's just an allegation, and we need  
14 some factual evidence to support the conclusion that you  
15 think you're experiencing 30 hours per year of shadow  
16 flicker. We might be able to work with the company to  
17 provide some mitigating -- mitigating measures that  
18 wouldn't curtail the turbine that they might be willing  
19 to do.

20 But until we have factual evidence saying, yes,  
21 they're out of compliance, there isn't any basis for  
22 Staff to bring a complaint to the Commission to curtail  
23 the turbine.

24 Q. So that brings me to my possible suggestion. Would  
25 the PUC entertain a condition -- and I'm going to call it

1 a yellow light, a caution light. By that, I mean when  
2 flicker nears a certain threshold in a certain time of  
3 year, typically in the winter, the homeowner could notify  
4 the PUC that they're nearing 30 hours of flicker  
5 saturation so the PUC could contact Crowned Ridge II and  
6 put them on notice to monitor the issue as a preemptive  
7 strike against that annoyance for that family?

8 A. That was kind of -- I think I -- basically -- I'm  
9 trying to rephrase your question so I understand it.

10 Q. Good. Because I'm not good at questions. I do  
11 understand that.

12 A. So you're asking if the Commission Staff -- not the  
13 Commission because I can't speak for the Commission, but  
14 would the Commission Staff be supportive of a condition  
15 that a residence hits what they think is a certain amount  
16 of hours and then require the company to come monitor?

17 I mean, that's kind of the formal complaint  
18 process -- or informal complaint process we would go  
19 through before it becomes a formal complaint.

20 Q. I'm just talking about trying to alleviate the  
21 problem before it happens.

22 Because as a person who lives in a project, I make a  
23 complaint. That complaint goes on for how many days  
24 before there's a complaint resolution? Like when would  
25 that family who gets 30 hours of flicker expect a

1 resolution?

2 A. And I understand your concern is that, you know, you  
3 think you have a complaint, we need to shut it down now  
4 or resolve it immediately.

5 But on the other side of the -- on the other side is  
6 there's a due process that the Applicant deserves to be  
7 afforded as well. It's just an allegation until we get  
8 facts that support that, yes, Ms. Christenson, you're  
9 right, you're experiencing more than 30 hours per year.  
10 Now we can propose a solution for that and bring it to  
11 the Commission for approval.

12 So, I mean, once an allegation is received, from a  
13 due process perspective, the Applicant -- to the  
14 Applicant, we need to get and collect factual  
15 information, which may take some time, whether it's  
16 through measurement or others.

17 Q. So my yellow light suggestion of possibly getting to  
18 the point where -- the yellow light suggestion would help  
19 that family while you're collecting that information and  
20 coming to a resolution so that they possibly wouldn't  
21 have to endure over 30 hours of flicker.

22 Is that a better explanation of what I'm trying to  
23 get to?

24 A. Well, I understand kind of what you're getting at.  
25 And there's still some concerns from my perspective that

1 you've said you've had 20 hours of flicker already.  
2 Well, how do we know that? I mean, it's still an  
3 allegation at that point in time because it's one word,  
4 your word, against the company saying that -- however  
5 they respond, I guess.

6 Q. Okay. So then that goes back to like the first part  
7 of my question is, does a family have to self monitor and  
8 document every minute of every flicker every day if  
9 you're saying it's an allegation? I just don't  
10 understand where we're going.

11 MS. REISS: Objection. This is just getting  
12 argumentative. I believe the witness has answered her  
13 questions, and I think at this point we just need to move  
14 forward.

15 MS. CREMER: Sustained.

16 MS. CHRISTENSON: I lost my place.

17 Q. On page 10 of your testimony, talking about the  
18 noise modeling and accounting for accumulative impacts  
19 from adjacent wind projects, you talk about the model did  
20 not account for Dakota Range turbines and --

21 MS. CHRISTENSON: I really did lose my place.  
22 Wrong page. Strike that? Can I say that?

23 Q. Oh, my other question is regarding the complaint  
24 process and the liaison officer. When I talked to  
25 Mr. Riniker, who is the liaison officer for Crowned

1 Ridge I, his understanding is that the current liaison  
2 officer is a position that's most likely only for 90 days  
3 after commercial operations date.

4 Is that a correct statement?

5 A. Partially correct. He's correct in the fact that  
6 the permit condition sets forth that, at the end of  
7 90 days, that liaison officer can be terminated.

8 I think the company, since they completed  
9 construction in the fall, Staff has asked the company to  
10 keep him on through final restoration and reclamation of  
11 the disturbed land so he can be there to address any  
12 concerns that participating landowners might have. And  
13 it's my understanding that the company has committed to  
14 that. They'll keep him on longer than 90 days.

15 Now, in this project, in order to capture that, like  
16 the request of Staff, we amended the public liaison  
17 condition to identify that the public liaison officer  
18 will be retained through final restoration, reclamation,  
19 unless terminated earlier by the Commission or extended  
20 by the Commission.

21 Q. Very good. Thank you.

22 Page 14, line 17, you say, "The proposed turbine  
23 layout appears to have accounted for the Codington County  
24 setback requirements."

25 Oh, sorry. That was the Kranzburg thing. And I was



1 going to ask if that had been resolved. So that has  
2 been.

3 In the following two questions of your testimony,  
4 you say the proposed turbine layout appears to have  
5 accounted for the Deuel County and the same for the Grant  
6 County setback requirements. And you say, "For each  
7 county, I cannot verify which individual turbine location  
8 complies. That will need to be done by Crowned Ridge II  
9 during final micrositing of each turbine."

10 I'm a Reagan girl, trust but verify. How will the  
11 PUC verify each turbine is in compliance with its  
12 setbacks?

13 I realize that's in the postconstruction; right?  
14 But how do you verify that before they actually --  
15 they'll build the foundation, but wouldn't it be prudent  
16 to have some information on that before the actual tower  
17 goes up in case there is a problem with siting? Or what  
18 do you -- what do you see happening if there is a turbine  
19 not placed correctly?

20 A. If a turbine isn't sited correctly, pursuant to the  
21 condition we added to try to capture the spirit of  
22 Ms. Mogen's request, if it's materially different or it's  
23 not constructed in accordance with applicable laws, then  
24 the Commission, for an individual turbine, could decide  
25 that the turbine needs to be removed.

1           It's probably not cheap for a company to remove  
2           turbines so I expect that they probably want to make sure  
3           that the setback distances are properly met prior to  
4           putting a big hole in the ground and erecting the  
5           facility.

6           That's what Staff's relying on to make sure that the  
7           turbines are constructed as the hammer that the  
8           Commission could have if they so choose to remove a  
9           turbine.

10          To my testimony, Commission Staff doesn't have civil  
11          engineers, civil engineers, and we don't go out and  
12          survey each individual location. Like I said, that's  
13          Crowned Ridge, II's role to do that during micrositeing.

14          If a nonparticipating landowner complains that, hey,  
15          I think this turbine's closer than it should be to my  
16          property line, then we look at going out and making sure  
17          that it's measured properly and try to resolve the  
18          situation if there is one.

19          But, like I said, it's a risk to the company if they  
20          decide not to site it in accordance with the setback  
21          distances. And the Commission could always require that  
22          turbine be removed.

23          Q.    Okay. Thank you.

24          I want to comment on Chairman Hanson's discussion  
25          about the whooping cranes yesterday. It was very

1 compelling. It really got to me. And I want to thank  
2 him and the Staff and Crowned Ridge Wind II for the  
3 additional protection they're offering.

4 Has Staff ever considered turbine curtailment during  
5 the migration period like other states have done in the  
6 spring and the fall?

7 A. Are we talking specific to whooping cranes?

8 Q. Not necessarily.

9 A. So just waterfowl migration periods?

10 Q. Yeah.

11 A. That has not been offered by the GF&P or U.S. Fish &  
12 Wildlife Service as to a need for these facilities that  
13 are being proposed and constructed. So no, Staff has not  
14 recommended to the Commission to curtail turbines during  
15 migratory periods.

16 Q. And that same would hold true to just specifically  
17 whooping crane?

18 A. Whooping crane, the condition is that if a whooper  
19 is spotted within two miles of the project, then you  
20 curtail the turbines to protect that individual bird.

21 Q. Yesterday we did learn that there have been  
22 instances of loss of property value in and near the  
23 current project. With this information, would the PUC  
24 Staff consider a condition to protect our South Dakota  
25 family assets by working out a property value guarantee

1 with Crowned Ridge Wind II?

2 A. No. We would not consider that.

3 If I could add, it's been asked in past cases for  
4 property value guarantees, and our witness, Mr. Lawrence,  
5 has not recommended them because there's a lot of issues  
6 with implementation of a property value guarantee.

7 In addition, Mr. Lawrence's testimony, his  
8 conclusions are still that he has not observed an impact  
9 in the marketplace due to wind farms -- or an impact in  
10 property values due to wind turbines sited near a  
11 property.

12 He did call out the Richter sale as being one off  
13 case where he noticed that there could be an impact due  
14 to the turbine -- proposed turbine nearby.

15 Q. And I believe he sited one in Deuel Harvest; right?

16 A. I don't recall that in his --

17 Q. The \$250,000 value loss one that he submitted as an  
18 exhibit? You don't recall that?

19 A. I don't recall that one.

20 MS. CHRISTENSON: That's all my questions.

21 THE WITNESS: Thank you.

22 MS. CREMER: Thank you.

23 Mr. Robish.

24 MR. ROBISH: Yes.

25

CROSS-EXAMINATION

BY MR. ROBISH:

Q. Al Robish. Good morning.

A. Good morning.

Q. I'm going to talk about the cost of decommissioning. Has there been any bids for the cost of decommissioning to establish the baseline guideline for the escrow account?

A. All the decommissioning estimates that we have received -- cost estimates that we have received through the course of hearing these wind energy facility permits are engineering estimates.

And what they do is they know how much it costs to put a wind turbine up so they can use those costs and then estimate salvage values in the out years to come up with a cost to decommission the project, an estimated cost to decommission the project. So they're all engineering estimates and not bid related.

Q. You don't know what the total amount would be then, the cost of taking one down?

A. Well, for this project, I believe the Application identified it was 10 to 15 million to decommission the entire project. And in my testimony, I think I calculated that out to a per turbine basis.

Q. Okay. Why did they come up with only \$5,000 per

1 turbine a year for -- in the escrow? Why did they come  
2 up with that amount of money?

3 A. Oh, you're putting math on the spot here, but I  
4 think that initially when we were doing these wind energy  
5 projects, decommissioning cost estimates were anywhere  
6 from 60,000 to 150,000 per turbine. And so on a per  
7 turbine basis, if you want to accumulate the cost  
8 associated with that depreciation -- or not -- with that  
9 decommissioning over time, you would factor in the cost  
10 to decommission a turbine, divide it by 30 years, the  
11 life of the project, and that would come up to \$5,000 or  
12 so.

13 So it depended on the cost that was --  
14 decommissioning cost estimate that was provided in the  
15 docket where this escrow account was first ordered.

16 Q. Do you see a need for that to be increased as  
17 inflation?

18 A. The escrow account agreement, which the project  
19 isn't purchased by NSP, allows the Commission to review  
20 the financials, and they're required to submit an account  
21 statement annually. And then the Commission can request  
22 that the company add additional funding or reduce the  
23 amount of funding on a per turbine basis after year 10, I  
24 believe it is.

25 Q. Yeah. That's what I was going to say.

1 A. And then they can adjust it depending upon  
2 decommissioning cost study estimates at that time, so  
3 that once they do hit the end of life, the Commission has  
4 the ability to ensure that the adequate funding is there.

5 Q. Well, I was hoping it wouldn't fall back onto the  
6 landowner to take care of that.

7 A. And that is a concern that the Commission has  
8 expressed in the past.

9 Q. Yeah.

10 A. And based on the decommissioning condition, it's  
11 important to the Commission as well. And I believe, in  
12 the past dockets and for this docket, they do everything  
13 they can to make sure that doesn't happen.

14 Q. That would be devastating so --

15 Let's see. Okay. In your Direct Testimony you  
16 filed, on page 18, you gave your proposed condition for  
17 ice throw. On lines 13 and 14, it says, "Applicant will  
18 pay for any documented damage caused by ice thrown from a  
19 turbine."

20 How would that be documented?

21 A. That is a good question. And documented would be an  
22 individual -- I don't know if it's just a mere photo or  
23 an individual calling the Commission or what the company  
24 would consider to be adequate documentation, but that's  
25 a -- that's a good question.

1 Q. Yeah. I'll continue with that, but you kind of  
2 answered that. But ice shatters into small pieces when  
3 it hits something. If it hits your car or your -- a  
4 school bus or anything, you can show the picture of the  
5 dent. How do you prove it was ice that hit it?

6 A. Well, if the ice shreds are still around the car --

7 Q. Yeah.

8 A. -- you could probably take a picture of it. I'm  
9 guessing that if you were to call staff regarding a  
10 concern that, hey, we had damage due to icing, we would  
11 look to see, okay, when did this occur? You would let us  
12 know.

13 We would look at the weather data in the area. Was  
14 icing occurring in the area? And if it was, then there's  
15 a likely -- your story likely checks out, and then we'd  
16 probably seek to get additional information from you.

17 Q. It should be happening on more than one turbine.  
18 I'm just worried about the ones close to the road.

19 A. From a road-related one, I don't know if the highway  
20 patrolman or somebody would document it as well if there  
21 is an issue with damage. But I suppose somebody could  
22 keep driving if it strikes their vehicle too.

23 Q. Okay. Some of the turbines proposed will be sited  
24 600 feet or less from a highway or roadway. Will there  
25 be a requirement for a placard or warning sign to be



1 placed at such sites by that specific turbine to warn the  
2 public of a danger of ice throws? It's been done before.

3 A. Yeah. And there's not a specific proposed permit  
4 condition in this one.

5 The way Staff has always approached ice throw is  
6 that there's two ways you can prevent ice throw. One is  
7 through setback distances; right?

8 Q. Yep. Uh-huh.

9 A. So you'd increase the setback distance in case the  
10 turbine's icing and then ice is thrown off the turbine  
11 blade. Or, two, you can control the turbine not to  
12 operate during icing conditions.

13 And as reflected in this condition and the testimony  
14 of the Applicant, the Applicant has committed to  
15 controlling the turbines when ice is detected.

16 Q. Shut that one down?

17 A. Right. Through rotor imbalance or onsite  
18 meteorological data.

19 Q. Yeah. There might not be so much rotor imbalance if  
20 all three blades were throwing at the same time too.

21 A. Yeah. I don't know the technical information beyond  
22 how ice accumulates across the rotor blades and whether  
23 or not the accumulation is evenly distributed across each  
24 blade. But yeah.

25 Q. In your review of the Applicant's submissions and

1 applications concerning this project, what did you find  
2 in regards to insurance coverage?

3 A. Insurance coverage?

4 Q. For liability.

5 Well, okay, I'll go with my next one. Is there an  
6 insurance carrier listed to take care of liability for,  
7 say, ice throw?

8 A. Well, I would expect that NextEra or Crowned Ridge  
9 II has liability insurance. And once NSP purchases the  
10 project, they would also carry liability insurance.

11 Q. Do they list that insurance with the PUC?

12 A. We do not review that specific information.

13 Q. Okay. I was just wondering if they were  
14 self-insured or if they had a carrier?

15 A. That, I do not know.

16 Q. Okay. Who should be contacted to file such a  
17 liability claim? Would the sheriff be the first contact  
18 if it happened on the road?

19 A. To document it, I would say yes. But that's up to  
20 the individual's choice how they want to.

21 Q. Then would the company be the next one to contact or  
22 would the PUC be the next one to contact?

23 A. I would offer up that it's whatever that individual  
24 so chooses. I mean, the project site manager is going to  
25 be living in the area so you might get to know that

1 individual and you can just say, hey, we've got this  
2 issue. What can you do for me? And then that site  
3 manager can work with you to resolve it without getting  
4 the PUC involved.

5 But if you guys start coming to a point of  
6 disagreement, then we'd definitely want to know about it  
7 so we could facilitate a resolution.

8 Q. I'm trying to get the quickest path.

9 A. I would say the quickest path is site manager from  
10 the -- from NSP since they will be operating the turbine.

11 Q. Good answer for me.

12 If there's a serious injury or death, would the  
13 company contact be the same?

14 A. I can't answer for company contact.

15 MS. REISS: Objection. We're just -- we're  
16 going down the same line of asking the same question over  
17 that the witness has already answered.

18 MS. CREMER: It is speculative on his part, and  
19 I would sustain.

20 MR. ROBISH: I meant the insurance company.  
21 Would that be -- the company I was talking about. Would  
22 that insurance company be the one to contact?

23 MS. CREMER: Mr. Kearney, do you have any  
24 knowledge of how incident reports are filed in these  
25 matters?

1 THE WITNESS: I do not.

2 MS. CREMER: So any answers he gives would be  
3 speculation.

4 THE WITNESS: Okay.

5 MR. ROBISH: Thank you. You helped me.

6 MS. CREMER: Is that it?

7 MR. ROBISH: Yeah. No more.

8 MS. CREMER: That would take us to Commission  
9 questions. And, Chairman Hanson, I show you as next.

10 CHAIRMAN HANSON: Good morning, Mr. Kearney.

11 THE WITNESS: Good morning.

12 CHAIRMAN HANSON: Yes, we're still morning.

13 THE WITNESS: Still morning.

14 CHAIRMAN HANSON: I'm going to trespass a little  
15 bit here with Mr. Robish's questions. Obviously -- well,  
16 I shouldn't -- without testifying.

17 If there's a death from an ice throw, someone's  
18 not going to call the insurance company. They're going  
19 to call the sheriff, aren't they.

20 THE WITNESS: The sheriff and I suspect a  
21 lawyer.

22 CHAIRMAN HANSON: And if their car's damaged,  
23 they're going to just go through the regular process of  
24 contacting their insurance company saying, hey, I've got  
25 some damage. Isn't that the best thing for them to do

1 and just let the insurance company handle everything?

2 THE WITNESS: Well, I mean, from a damage to  
3 property perspective, I don't know if they would contact  
4 their insurer. But I don't know how that would work out.  
5 Because if it was me, I would want to contact the site  
6 manager and say, hey, what did you guys do here?

7 CHAIRMAN HANSON: I'm sorry, I got down that  
8 line. I mean, I just couldn't -- well, never mind.

9 Going through all of your testimony -- and I  
10 really, really appreciate the testimony that you provide  
11 to us, and the answers that you've given, at least up to  
12 this point, have been A plus. I've really enjoyed  
13 listening to you.

14 Has the Applicant agreed to all of Staff's  
15 recommendations that you've set forth here? Rather than  
16 me going through each one, have they agreed to all of  
17 them?

18 THE WITNESS: Yes, they have, after yesterday  
19 and the whooping crane condition that they agreed to.

20 CHAIRMAN HANSON: So we're 100 percent at this  
21 point?

22 THE WITNESS: From Staff's perspective, all the  
23 conditions we were advocating for have been agreed to by  
24 the company.

25 CHAIRMAN HANSON: And all of those are included

1 in your Exhibit S7?

2 THE WITNESS: Except the whooping crane  
3 condition because we didn't agree to that --

4 CHAIRMAN HANSON: Right. Okay.

5 THE WITNESS: -- at the start of the hearing.

6 CHAIRMAN HANSON: Well, thank you very much for  
7 your testimony. I really appreciate it. Remember,  
8 you're under oath for the next six years.

9 COMMISSIONER NELSON: Mr. Kearney, just a few  
10 questions. After Ms. Christenson's questions about the  
11 shadow flicker and her hypothetical about if it's  
12 approaching 30 and how do we know it's not going to go  
13 over 30, I just want to make sure that my understanding  
14 of the modeling is correct.

15 The modeling is based on physics. It's based on  
16 known angles and known distances. Correct?

17 THE WITNESS: That's my understanding as well.  
18 With the conservative assumptions.

19 COMMISSIONER NELSON: And so my understanding of  
20 that modeling is it would be physically impossible for  
21 the shadow flicker number to be higher than what the  
22 model shows unless the model was completely inaccurate or  
23 the mathematic equations in the model were incorrect?

24 THE WITNESS: I would agree with that.

25 COMMISSIONER NELSON: And based on one of the

1 exhibits, Ms. Christenson's shadow flicker is predicted  
2 to be somewhat less than seven hours a year.

3 Is there any possibility that it could exceed  
4 30 hours per year?

5 THE WITNESS: I don't believe so, based on the  
6 modeling.

7 COMMISSIONER NELSON: Thank you.

8 So I just had a couple of questions on the  
9 proposed permit conditions. And I appreciate your taking  
10 time to go through those this morning.

11 In permit Condition No. 1 where we're replacing  
12 the actual filing of the permits with an affidavit -- and  
13 that makes sense to me -- would it be wise that we  
14 require that affidavit to itemize the permits that have  
15 been garnered as opposed to simply at one sentence, yeah,  
16 we've got them all?

17 THE WITNESS: Yes. That would clarify it and  
18 identify the specific permits that they got and Staff  
19 said that would be a good revision to make.

20 COMMISSIONER NELSON: Thank you.

21 And then looking at 34, and this is the ADLS  
22 condition -- and I appreciate the update that you've made  
23 to this, but I'm still not sure that it tells me what  
24 happens if the FAA has not given approval and the company  
25 is ready to go commercial or if the FAA has, in fact,

1     turned it down and they're ready to go commercial? Does  
2     this --

3             Okay. Did my question make sense?

4             THE WITNESS: Yeah. And Staff drafted this  
5     condition based on the recently passed law. And so we  
6     didn't see how that situation would be handled, and we  
7     were cautious not to preclude one way or another how that  
8     situation would be handled should an FAA deny an  
9     application.

10            From the condition perspective, there's a  
11     condition that they could request exemption for, of that  
12     Condition 34, for a period of time and get approval for  
13     that from the Commission, and that would be Condition 41.

14            COMMISSIONER NELSON: Thank you. I appreciate  
15     that.

16            I may work on some language here to try to spell  
17     out what happens in those alternative possibilities. I  
18     don't think any of that would violate what the statute  
19     says, but I'll work through that between now and sometime  
20     next month.

21            Thank you.

22            COMMISSIONER FIEGEN: Thank you, Mr. Kearney.  
23     It's always nice to be able to ask you questions finally  
24     when we're only about 15 feet away and our doors are  
25     always closed so I don't get to come in there.



1           And if, you know, Eric Paulson can answer or  
2           Jon Thurber instead of you, you can certainly -- we can  
3           put them under oath; right, Cheri?

4           THE WITNESS: I already told Eric I was going to  
5           defer at least one question to him.

6           COMMISSIONER FIEGEN: I'm waiting.

7           THE WITNESS: Just as long as it's an SDSU  
8           question.

9           COMMISSIONER FIEGEN: That's true.

10          First of all, just your role as Public Utilities  
11          Commission Staff. Sometimes I think the public doesn't  
12          understand the role between the Commission and the Public  
13          Utilities Commission Staff.

14          So when I look at the -- just correct me if I'm  
15          wrong. When I look at the Staff, you interpret the laws  
16          and the regulation and make sure the public is protected  
17          with the laws that are on the books or the regulations  
18          that are on the books. You can't necessarily expand  
19          those laws.

20          THE WITNESS: Yeah. I would agree with that.  
21          And we would also look to expert testimony as well in the  
22          evidentiary record for developing our positions on the  
23          public interest.

24          COMMISSIONER FIEGEN: Thank you.

25          The question on the condition that you talked

1 about this morning when you were giving your opening  
2 comments, you talked about Crowned Ridge I and II, and  
3 that NextEra wants to put the Public Utilities Commission  
4 kind of as a mediator between Xcel -- or, I guess,  
5 Northern States Power legally it's called -- and NextEra.  
6 That kind of surprised me just because NextEra works with  
7 NSP, I'm not going to say on a daily basis but they  
8 certainly work with each other.

9 Why would they put the PUC Staff in the middle  
10 of that?

11 THE WITNESS: That was a request from NSP, that  
12 NextEra amend the condition, because NSP, when they  
13 reviewed them, wasn't comfortable with trying to tell  
14 NextEra, the owner of the project next to them, that they  
15 had to curtail their turbines.

16 And so it came about from NSP. And I think  
17 there's some caution as well. Well, you have NextEra  
18 willing to work with NSP at this point in time. If  
19 NextEra so chooses to sell the project to a competitor of  
20 NSP, then that's where there could be some head-butting  
21 going on where Commission Staff would need to come in and  
22 facilitate.

23 So I think it was just more as a future  
24 precaution rather than a today-based scenario.

25 COMMISSIONER FIEGEN: Okay. That makes more

1 sense to me. And the Public Utilities Commission Staff,  
2 once again, is willing to facilitate that mediation on  
3 the benefit of the public in that area.

4 THE WITNESS: Right. And if we started getting  
5 resistance from the one developer or the one project  
6 owner about curtailing turbines, I expect it would come  
7 before the Commission for consideration on how to  
8 proceed.

9 COMMISSIONER FIEGEN: Thank you.

10 So you have been on wind development permitting  
11 for a while. So would it be right to say that you have  
12 seen a lot of technology -- I better get rid of the word  
13 "a lot" -- technology changing so the public -- actually  
14 the protections are in there more, such as icing, sound,  
15 the megawatts of the turbines so there can be less  
16 turbines?

17 So just even in the two years that you've been  
18 involved -- well, you've been involved more than that,  
19 but would you say technology has changed to protect  
20 the --

21 THE WITNESS: Yeah. Wind turbine technology has  
22 definitely scaled up over time, as well as the amount  
23 of -- from a permitting perspective, the amount of  
24 conditions that the Commission has attached to these  
25 permits in the past has gone up and become more defined

1 and specific as the Commission and Staff has learned more  
2 about the impacts associated with the wind energy  
3 development.

4 And I think early on in the first projects that  
5 the Commission permitted in the 2007 to '10 time range,  
6 the noise limit was at 50 dBA. And over time it has been  
7 scaled down as we understood the impacts with that.

8 COMMISSIONER FIEGEN: Thank you.

9 This question I'm treading lightly because I  
10 know the record probably doesn't reflect a lot of this.

11 So the shadow flicker of 30 hours, and that's  
12 what the Commissioners, the three Commissioners, have put  
13 in most of the permits -- you know, that 30 minutes still  
14 is -- I'm always interested in that 30 minutes also, that  
15 limit. And is it Minnesota that has that regulation or  
16 not?

17 THE WITNESS: I don't recall off the top of my  
18 head.

19 COMMISSIONER FIEGEN: Okay. So has the PUC  
20 Staff and Mr. Hessler continued to look at that 30  
21 minutes also as a maximum per day?

22 THE WITNESS: First, Mr. Hessler's just noise so  
23 it would just be Commission Staff. And the approach that  
24 Commission Staff has always taken is, what does the  
25 county think is proper, given it's a nuisance issue? And

1     so if the county said we think 30 minutes is important,  
2     Staff would be advocating to include 30 minutes in a  
3     proposed permit condition.

4             But for this docket, it was 30 hours per year,  
5     and that's why the Commission -- or why the Commission  
6     Staff proposed that.

7             COMMISSIONER FIEGEN: Mr. Haley explained in his  
8     testimony, which I assume you heard -- I think he said  
9     that actually their modeling has all that information,  
10    but they only submit the total and instead of the  
11    day-to-day shadow flicker.

12            So have you ever thought to ask for a data  
13    request of the entire spreadsheet instead of -- I don't  
14    know. I assume they must send it to you in a pdf and  
15    they probably can't send you the files of their database.

16            THE WITNESS: In past projects, we have seen  
17    graphical results from each individual turbine for an  
18    individual receptor. So I think it's broken down by the  
19    receptor and what turbines are influencing -- or casting  
20    shadow flicker on that receptor at given times.

21            For this project we did not request that. But  
22    given Mr. Haley's testimony, I expect that it could be  
23    produced, should the company want to see -- should the  
24    Commission want to see that information.

25            COMMISSIONER FIEGEN: So would you think that

1 60 minutes of shadow flicker per day would be an  
2 annoyance possibly if that family was home?

3 THE WITNESS: I don't think I can answer that  
4 question. It's up to the individual person, I guess,  
5 whether or not it's an annoyance. Yeah.

6 COMMISSIONER FIEGEN: Some days I just wish I  
7 could do my own data request. It is so hard sometimes as  
8 a Commissioner that I can't come into your office to ask  
9 you questions and then, of course, the Commission doesn't  
10 ask for data requests.

11 THE WITNESS: What I can offer is that  
12 Commission Staff has not seen a study relating the amount  
13 of shadow flicker per day to an annoyance level. So I  
14 don't even know if that's been studied and if there's any  
15 data out there to support 30 minutes per day, 60 minutes  
16 per day, two hours per day, what the proper daily limit  
17 is.

18 COMMISSIONER FIEGEN: Yes. I would agree with  
19 you, Mr. Kearney. It appears to me shadow flicker hasn't  
20 been studied very much at all. And we're all using a  
21 standard across the U.S. and Germany and the European  
22 areas. So, yeah, I would agree with you on that. I just  
23 wish some days that Commissioners could ask for data  
24 requests.

25 I'm going to go to the FAA. There was only one

1 more question on the FAA.

2 So if the Applicant wasn't timely in their  
3 application to the FAA on using the ADLS system, would  
4 the Commission Staff have any resource in your Condition  
5 No. 34 if they weren't timely?

6 THE WITNESS: First, we would expect the  
7 Applicant to notify Commission Staff of any issues with  
8 it and then possibly seek an exemption of it pursuant to  
9 Condition 41.

10 If for some reason they don't notify us and then  
11 a member of the community complains, there are options  
12 for Commission Staff to pursue, such as a show cause  
13 order to bring before the Commission to determine whether  
14 or not they're in violation of the permit condition or  
15 state law. And then the recourse would be determined by  
16 the Commission.

17 COMMISSIONER FIEGEN: Okay. Mr. Kearney, do you  
18 have a question for Mr. Eric Paulson that I should ask as  
19 my final question?

20 THE WITNESS: I do not.

21 COMMISSIONER FIEGEN: Okay. Thank you.

22 MS. CREMER: Redirect?

23 MS. REISS: Can we actually take just a quick  
24 break? We've heard a lot and we just --

25 MS. CREMER: Sure.

1 MS. REISS: Five minutes?

2 MS. CREMER: Yeah. No, that's fine. I was just  
3 trying to think if it should be longer, but let's go with  
4 five because it will be longer.

5 (A short recess is taken.)

6 MS. CREMER: We will go back on the record.  
7 Staff.

8 MS. REISS: Thank you. Staff has no redirect.

9 MS. CREMER: Thank you.

10 (The witness is excused.)

11 MS. CREMER: You can call your next witness or  
12 whatever. Is that it?

13 MS. REISS: Staff has no further questions -- or  
14 further witnesses and would rest.

15 MS. CREMER: All right. Thank you.

16 That would take us to rebuttal. Did you guys  
17 need time to think about it, or are you prepared to go  
18 forward? Crowned Ridge, I should say.

19 MR. MURPHY: I'm prepared to say we do not  
20 intend to call any rebuttal witnesses.

21 MS. CREMER: Okay. Thank you very much.

22 Well, with that, I have some words to read. I  
23 have to find them.

24 So I believe that all of the exhibits listed on  
25 that master list from the first day were admitted, along



1 with the additional exhibit by Ms. Christenson.

2 And there was just one; is that correct?

3 MS. CHRISTENSON: (Nods head.)

4 MS. CREMER: The S7 of Staff. And then with the  
5 exception of the portions that we discussed in the motion  
6 to strike.

7 Are there any other exhibits out?

8 Mr. Swanson.

9 MR. SWANSON: Madam Examiner, I had put -- oops.

10 I had put on my exhibit list a request that the  
11 Commission consider taking official notice or judicial  
12 notice of two items of which I have had some  
13 cross-examination undertaken, and that would be the  
14 Hessler writing of October 2011, his noise report that  
15 was submitted to the Minnesota Public Service Commission.  
16 And then, secondly, the NARUC Best Practices Report of  
17 January 2012.

18 I've wrestled with this a bit because,  
19 typically, official notice or judicial notice is for  
20 adjudicated facts. And I have thought further about it.  
21 I do think it is proper to take official notice, in my  
22 humble opinion. If not, I would like to at least have  
23 the opportunity to late file these as physical exhibits  
24 to help support the writing of my brief and any  
25 subsequent arguments that I may wish to or need to make

1 to an appellate court.

2 I do think that both of these items are integral  
3 to our position in proving or trying to establish that  
4 simply because the county board claims to have zoning  
5 power doesn't mean that they do and that when this  
6 Commission stands and uses the very same devices to  
7 regulate sound and/or particularly shadow flicker as  
8 received on our property, those are the points I wish to  
9 challenge. And I would just ask that the Commission  
10 consider taking official notice of those two items as are  
11 specified.

12 They are available on the internet. The last  
13 time I asked for an agency to take official notice of  
14 something, Al Gore hadn't invented the internet yet. So  
15 they're readily available. But if the Commission would  
16 prefer that I late submit them as exhibits to your  
17 docket, I can do that too. It's about 250 pages total.

18 MS. CREMER: So my ruling would be that we will  
19 not take judicial notice of those, and for the reasons  
20 that you struggle with. These are not facts generally  
21 known within what we have jurisdiction over, zoning  
22 power, NARUC's Best Practices. So I will not take  
23 judicial notice of those.

24 As for the late filed, you know, we'll go around  
25 the room and see what people's objection, if any, to

1 submitting those. Good?

2 All right. So then I will take it you are  
3 asking to late file the two exhibits. I think everybody  
4 knows which two you are speaking of.

5 So Crowned Ridge?

6 MR. MURPHY: Thank you.

7 With regard to the report that was authored by  
8 Mr. Hessler, in my opinion, he laid a foundation with  
9 Mr. Hessler that he was familiar with that report and  
10 that he authored it. And if you read the second page,  
11 it's very clear that NARUC is saying this was authored by  
12 Mr. Hessler and it is his opinions. So I have no  
13 objection to that report being filed.

14 With regard to the Stanton report, which is a  
15 second NARUC report that was done subsequent to  
16 Mr. Hessler, there is no foundation for that, and I would  
17 object to that being admitted into the record.

18 MS. CREMER: Ms. Christenson.

19 MS. CHRISTENSON: I would have no objection to  
20 either exhibit being entered.

21 MS. CREMER: Okay. Mr. Robish.

22 MR. ROBISH: No objection to either.

23 MS. CREMER: Staff.

24 MS. EDWARDS: Well, generally, impeachment  
25 exhibits aren't admitted into the record as exhibits. I

1 won't object to the first one as counsel for Crowned  
2 Ridge stated, however, for the same reasons, I would  
3 object to the second.

4 MS. CREMER: And I would agree with that legal  
5 assessment of those two exhibits.

6 Does that answer your question then?

7 MR. SWANSON: Well, it gets me part of the way  
8 there, but you'll probably still hear about the NARUC  
9 Best Practices Report in one way or the other.

10 MS. CREMER: I look forward to it.

11 MR. SWANSON: Thank you.

12 MS. CREMER: Thank you for reminding me of that.  
13 You have reminded me of that on numerous occasions and,  
14 clearly, I didn't listen.

15 MR. SWANSON: I had forgotten that I reminded  
16 you.

17 MS. CREMER: So you will late file the one. And  
18 then that is all the exhibits, everyone agrees -- oh, no.  
19 Crowned Ridge.

20 MR. MURPHY: More for clarification. For the  
21 Exhibit AC-24, I want to understand whether that's being  
22 offered to be part of the record. And if it is, I'm  
23 going to object.

24 MS. CREMER: You'll have to tell me what that  
25 is, Ms. Christenson.

1 Well, first let me ask you, were you asking to  
2 have it admitted?

3 MS. CHRISTENSON: Yes. I offered it as an  
4 exhibit during testimony. And I believe it was admitted  
5 at that time. I had two exhibits entered during  
6 testimony.

7 MS. CREMER: And what is 24?

8 MS. CHRISTENSON: That was the e-mail chain  
9 between me and GE regarding the enhanced power curve  
10 software that I discussed with Mr. Thompson.

11 MS. CREMER: I would agree with you that you  
12 talked to him about it. I would not agree that it was  
13 ever offered nor admitted.

14 Does somebody have different information on  
15 that?

16 MS. CHRISTENSON: I believe I asked at the time  
17 if they were admitted and you said yes.

18 MR. MURPHY: I don't recall that. And if it was  
19 the case, I would like to revisit that, because clearly a  
20 foundation was not laid with Mr. Thompson. He did not  
21 recognize the author from GE or the e-mails so I would  
22 object on foundation.

23 MS. CREMER: And I would agree with that. I  
24 don't believe I would have ever allowed in an e-mail  
25 chain where the party who wrote the e-mails weren't here

1 unless everybody agreed to the admission of it and he --  
2 yeah. Then I probably would have.

3 But normally that would not have been anything  
4 that would have been allowed.

5 So let's go around the room. Mr. Swanson, do  
6 you have a dog in this fight or anything you want to say?

7 MR. SWANSON: No.

8 MS. CREMER: Mr. Robish.

9 MR. ROBISH: I thought it should be admitted.

10 MS. CREMER: Okay. Staff.

11 MS. REISS: Staff would echo Crowned Ridge's  
12 objection.

13 MS. CREMER: And so with that, I would deny the  
14 admission of the e-mail chain if that is AC-24 for the  
15 reasons listed: Lack of foundation, lack of ability to  
16 cross-examine the people who authored it, for all those  
17 reasons.

18 Does anyone have another -- oh.

19 MS. EDWARDS: I have an AC-18 on my list as  
20 well. And, unfortunately, I did not write down what it  
21 was.

22 A Grant County ordinance. I don't know that  
23 that was admitted, but she did identify it as 18. I  
24 don't know if she moved to have it in.

25 MR. MURPHY: I would agree with that, but I

1 don't have any objections to it being admitted.

2 MS. CREMER: Do you have an objection to it  
3 being admitted?

4 MS. EDWARDS: No.

5 MS. CREMER: Mr. Swanson.

6 MR. SWANSON: No.

7 MS. CREMER: Mr. Robish?

8 MR. ROBISH: No.

9 MS. CREMER: I would admit that. The ordinance  
10 will come in.

11 Anyone else think they need an exhibit admitted?  
12 This is your opportunity to get it done because I'm going  
13 to close the evidentiary record here.

14 Seeing nothing, so that will conclude the  
15 evidentiary part of the hearing.

16 Here will be the posthearing procedure. I  
17 would like to receive Findings of Fact and Conclusions of  
18 Law from the parties, but I am certainly not requiring  
19 that they do so. Briefs and findings and conclusions  
20 will be due by noon on March 2. On March 17 we will --  
21 there is a regularly scheduled agenda meeting and it  
22 will be at that when I anticipate a decision will be  
23 made.

24 We'll determine an amount of time for oral  
25 argument and that will all be in the posthearing order.

1 April 9 is the date the final decision is due. It is my  
2 anticipation it will be out before that.

3 And so the only other thing I would say is if  
4 you choose not to file a brief or something that looks  
5 like a brief, you may have oral argument today.  
6 Otherwise, we would consider your written brief to be  
7 your oral argument. And your oral argument would be a  
8 limit of five minutes.

9 So Mr. Swanson has indicated he will be filing a  
10 brief. So really I guess it would go to Ms. Christenson  
11 and Mr. Robish.

12 MR. SWANSON: No page limit?

13 MS. CREMER: Boy, I'd like to page limit you  
14 but --

15 Yeah. Less is better.

16 I assume Staff and Crowned Ridge will be filing  
17 a brief. You don't need oral argument today?

18 MR. MURPHY: Correct.

19 MS. REISS: That's correct.

20 MS. CREMER: And so Ms. Christenson or  
21 Mr. Robish, do you want to make final argument today or  
22 submit something at a later time?

23 MS. CHRISTENSON: I'll submit something at a  
24 later time. We are going to have a little closing  
25 statement. Am I right on that?



1 MS. CREMER: You mean today?

2 MS. CHRISTENSON: Yeah.

3 MS. CREMER: That would be your closing  
4 argument.

5 MS. CHRISTENSON: Okay. So if I have a comment  
6 to make today --

7 MS. CREMER: You know what, I'll let you do  
8 that. Just don't go on for an hour. Five minutes.

9 MS. CHRISTENSON: I'm getting a bad rap here.

10 MS. CREMER: Mr. Robish, did you want to speak  
11 briefly today?

12 MR. ROBISH: No, I don't.

13 MS. CREMER: All right. Thank you.

14 So with that, Ms. Christenson.

15 MS. CHRISTENSON: I do have brief comments, and  
16 that is I just want to thank everyone for their patience  
17 with me during this hearing, because I am so out of my  
18 wheelhouse. And I appreciate everything.

19 And I really appreciate you, Examiner Cremer.  
20 You've been very fair to me, and I just want to thank you  
21 for that.

22 And I do want to clarify with Commissioner  
23 Nelson, I didn't think I was going to get over 30 hours  
24 of flicker. I'm speaking for the entire project. So  
25 okay.

1           That's all I have, but thank you very much.  
2           It's been a good hearing.

3           MS. CREMER: Thank you.

4           Before I give the gavel back to Chairman Hanson,  
5           are there any other matters that anyone wants to raise at  
6           this time?

7           Hearing nothing, that concludes my hearing  
8           examiner portion of this docket. Thank you to everyone  
9           for the professional courtesies extended to all involved.  
10          Safe travels to all of you who have to travel further  
11          than the Capitol.

12          And, with that, Chairman Hanson, I would hand  
13          the gavel back to you.

14          CHAIRMAN HANSON: What? No safe travels for us  
15          going to the Capitol Building?

16          I'm not going to have any closing remarks and  
17          thank-you's and such. I really do feel everyone did a  
18          marvelous job, though, and we all appreciate the travel  
19          that you folks go through and wish you safe journeys.  
20          And I guess I will say thank you.

21          So with those, is there a motion?

22          COMMISSIONER NELSON: Move to adjourn.

23          CHAIRMAN HANSON: Commissioner Nelson.

24          COMMISSIONER NELSON: Aye.

25          CHAIRMAN HANSON: Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Fiegen votes aye.

2 CHAIRMAN HANSON: Hanson votes aye. The motion  
3 carries.

4 We are adjourned.

5 (The hearing is adjourned at 11:47 a.m.)

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1 STATE OF SOUTH DAKOTA)

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CERTIFICATE

3 COUNTY OF SULLY )

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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 6th day of  
11 February, 2020, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 25th day of  
14 February, 2020.

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/s/ Cheri McComsey Wittler  
Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

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| <b>'10</b> <sup>[1]</sup> - 624:5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>7</b> <sup>[1]</sup> - 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