

In The Matter Of:
McLEAN COUNTY ZONING BOARD OF APPEALS

March 6, 2018

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McLEAN COUNTY ZONING BOARD OF APPEALS

MEETING

**Wednesday, March 6, 2018
7:30 p.m.**

at

**McLean County Government Center
115 East Washington Street
Bloomington, Illinois**

Case Number SU-18-02

BOARD MEMBERS PRESENT:

**Brian Bangert
Chris Carlton - 1st Alternate
Rick Dean
James Finnigan - Chairman
Mary Beth Taylor - 2nd Alternate
Julia Turner**

ALSO PRESENT:

**Philip Dick, Director of Building and Zoning
Samantha Walley, Assistant State's Attorney
Luke Hohulin, Assistant County Engineer**

**June Haeme: CSR #084-003038
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1 (Commencing at 7:30 p.m.)

2 CHAIRMAN FINNIGAN: This is SU-18-02,
3 public testimony like the other night. I think
4 Phil's got the list.

5 MR. DICK: We have a person whose name we
6 can't really read and they have a phone number of
7 312-341-2526, on Lake Street, West Lake Street. And
8 we have two names of people who were called but
9 didn't answer the call when their names were called.
10 Matthew Cicero. Nathan Brefeld.

11 CHAIRMAN FINNIGAN: Would you like to be
12 sworn in?

13 MR. BREFELD: Sure.

14 (Mr. Nathan Brefeld was duly sworn.)

15 CHAIRMAN FINNIGAN: Would you state your
16 name and address and spell your last name please?

17 MR. BREFELD: Nathan Brefeld,
18 B-R-E-F-E-L-D, 13043 North 2900 East Road,
19 Ellsworth, Illinois. So I want to talk about the
20 wind farm a little bit that's around my house. I
21 moved into the wind park around 2013. It was built
22 in 2008. I've lived there since 2013 and I started
23 working for Vestas in 2014 in the area, so I've been
24 able to like live around the wind farm and work for

1 the wind farm all at the same. So there's a lot of
2 benefits for me, especially because whenever I moved
3 into the area, I drove 50 minutes to an hour to a
4 job commute, and now I drive less than a minute to
5 my thing, so that's been a big benefit in my drive
6 time with the jobs that the wind farm creates.

7 There's been a lot of talk since I sat in
8 these hearings about noise and stuff. I've never
9 heard a wind turbine in my house, like I know
10 there's been a lot of talk about it, but in my
11 house. I went out and I range find my -- the
12 closest turbine to my house, and it was like 601
13 yards which came out to .35 of a mile. And I sleep
14 on that side of the house, so that side of the house
15 I actually sleep closest to that wind turbine, and I
16 never had any sleep problems or nothing like with
17 being involved with the wind turbine.

18 You know, when I'm outside with my kids,
19 you know, I've lived around them for a while and
20 they don't disrupt me, I play catch with my boys, I
21 shoot, you know, bows and different things in my
22 backyard on that side, they really don't bother me.
23 I mean if you focus on them, you will hear them
24 outside, but again I've never heard them inside of

1 my house.

2 I know they've talked a little bit about
3 this gag order and stuff, but really it's encouraged
4 by the landowners and stuff to bring up loud issues
5 because us as wind techs, we go out and we'll visit
6 noise complaints. So there is on the board every
7 once in a while a noise complaint. We'll go out and
8 inspect, see what's going on with the turbine
9 because it could be just something totally wrong
10 with the turbine if you're hearing it that bad in
11 that area. And it does a good thing, it helps us
12 fix the problem and it helps you not have to listen
13 to them anymore, you know, I mean if they get loud
14 because there's a maintenance issue or whatever.

15 Like I said, I support them, I support
16 them, they bring money into the community and jobs
17 into the community, and then they don't really
18 bother me as living around them. So that's all.

19 CHAIRMAN FINNIGAN: Questions? Staff?

20 MR. DICK: No.

21 CHAIRMAN FINNIGAN: The applicant?

22 MS. ANTONIOLLI: No.

23 CHAIRMAN FINNIGAN: Anyone in the audience
24 have questions for this witness? Thank you.

1 MR. DICK: Jim Killian. Cheryl
2 Prairie-Stubers. Darrel Cambron. Matt Aldeman.
3 Sandra Whalen.

4 CHAIRMAN FINNIGAN: Push the little
5 button, right hand bottom. Would you like to be
6 sworn in or affirmed?

7 MS. WHALEN: Affirmed. I don't know if
8 there's any difference.

9 CHAIRMAN FINNIGAN: Affirmed?

10 MS. WHALEN: Yeah, I'm just --

11 (Ms. Sandra Whalen was duly affirmed.)

12 CHAIRMAN FINNIGAN: Would you state your
13 name -- you better pull that a little closer to you.
14 State your name and address, spell your last name
15 please.

16 MS. WHALEN: Sandra Whalen, W-H-A-L-E-N,
17 111 Diane Drive, Lexington, Illinois. Excuse me,
18 I'm kind of nervous. I haven't been to some of
19 these hearings, but I have managed to listen to your
20 last two meetings which was helpful, and I just
21 wanted to make you aware that my dad's farm I think
22 is probably the oldest farm in Yates Township. It
23 was established in 1863, so it's a centennial farm,
24 and we both have -- we farm it. We don't farm it

1 ourselves, we have tenants to farm it. It happens
2 to be on the road that's going to go to the layout
3 area, which is 3160, and I didn't know if you'd want
4 to see what the farm looked like, because I felt a
5 little disappointed when I listened to Mr. Haney
6 testify that the person that lived there, he moved
7 out and didn't know what he was going to do with it
8 because the house is empty right now. Made it sound
9 like it was a junk place.

10 My dad was born and raised there with his
11 five siblings, and I will be -- my brother and I
12 will be the fourth generation owners of this farm,
13 and we have -- my parents moved out about 22 years
14 ago because they were getting elderly and they
15 wanted to live in a house with a bathroom on the
16 same floor. This happens to be your usual two story
17 square farmhouse with the bathroom upstairs. And so
18 since then, he started -- he rented it because at
19 the time we were farming and living on a farm and I
20 said that when we quit farming we would probably
21 move to town, so that's when it became rental
22 property.

23 But we have been very selective in our
24 renters to rent it, and we've maintained the

1 buildings, which we still use for storage and stuff,
2 and we've had some good renters and some not so
3 great renters, but we've managed to keep the
4 property looking good. But now with the turbines
5 coming along, I don't think we'll be able to rent
6 it. I don't know of anybody who would want to rent
7 a house that's got -- I can't imagine it and I drove
8 down that road, there's going to be one turbine, I
9 think I figured it was about three-tenths of a mile
10 north of this location, the layout is going to be a
11 half-mile south and then there's another one, a big
12 turbine seven-tenths of a mile south. So north and
13 south is the way they would, the big turbines would
14 be set up. And then there's -- I used the map that
15 EDP had. I don't know if you people want to see
16 what I've got or not. I brought handouts if you'd
17 like to see it.

18 CHAIRMAN FINNIGAN: We want to see
19 whatever you want to show us.

20 MS. WHALEN: Okay. Well, just to give you
21 an idea of what I'm talking about. And I thought,
22 well, it helped you to see what Henline Creek looked
23 like. I think you were visualizing it as a little
24 grass creek and it's a little bit more than that.

1 And so I just -- I'm just concerned that we won't be
2 able to use the farmstead anymore for to have a
3 house lived in.

4 I made a little green dot, that's the
5 location where the farmstead is, and then I made
6 some red dots, a little bit brighter red, those are
7 all rental properties in that area. They used to be
8 farmer-lived-in farm properties, but they're all
9 rental properties now.

10 MR. DICK: We'll call this Objectors
11 Exhibit 11.

12 MS. WHALEN: There's not as many trees at
13 this location right now. There is a shed where
14 there's a large column of trees. There is a shop
15 there, my husband uses that for his shop, and we
16 just put new roofs on the shed and the car garage,
17 and the house has had a new roof on that also. We
18 had some well issues a couple years ago and we got
19 that fixed, and then I had some electrical issues in
20 the house and we have just now got that fixed, but
21 now I'm -- I've read where there's, the turbines
22 cause vibrations in the ground and it can affect
23 your water supplies, and I'm wondering if that's
24 going to affect the water for this farmstead. I

1 guess that's all I have to say.

2 CHAIRMAN FINNIGAN: Thank you. Questions
3 from the board?

4 MS. TAYLOR: How long do your renters
5 usually stay?

6 MS. WHALEN: Our longest one has been two
7 years because they usually have been town people
8 that want to live in the country to get away from
9 people, and then when they get to the country, they
10 find out it's not what they thought it was going to
11 be.

12 MS. TAYLOR: And how long has it been
13 since you've had family living there?

14 MS. WHALEN: It's been 22 years since my
15 dad has lived there.

16 MS. TAYLOR: So you've been renting it off
17 and on?

18 MS. WHALEN: And we've had some good and
19 we've had some not so good, and I talked to my --
20 one of my county board reps, she happens to be here,
21 and talking to her about the issue, she said, well,
22 you can lower the price, but I mean when you lower
23 the price of your rent, you don't get the quality of
24 renters, they don't take -- you know, cheaper rent

1 brings in people that aren't the quality that you
2 want to rent your house to, if you understand what I
3 mean.

4 MS. TAYLOR: Yes.

5 MS. TURNER: Were you approached about
6 putting a windmill on your farm?

7 MS. WHALEN: Yes.

8 MS. TURNER: And you decided not to do
9 that I assume.

10 MS. WHALEN: Well, my husband and I are on
11 two sides of the fence.

12 MS. TURNER: Okay.

13 MS. WHALEN: He would go for the windmill
14 and I says -- the first time Bright Stalk came
15 around, he talked me into signing it up and I went
16 along with it, and I didn't like the whole idea the
17 whole time. I felt very uncomfortable with it when
18 I read the contract. And this time around, I told
19 him not to talk me into it. I said a farmer is an
20 independent person and why do you want to sign your
21 property over to someone to tell them what you can
22 do with it[sic]. Everybody's looking at the money,
23 and I just wonder if the State of Illinois wasn't in
24 such horrible financial straits, if people would

1 really consider this stuff now like it is. I --
2 everybody's wanting the money from it, but there is
3 such a thing as maintaining good farm ground. I
4 happen to own 80 acres that's kind of catty-corner
5 from my dad's property, it's in the same section,
6 and I didn't sign up for a windmill on that either.

7 MR. DEAN: So this is an 80 that the house
8 is on?

9 MS. WHALEN: Uh-huh.

10 MR. DEAN: So the lay-down yard, it is
11 just due south of your property?

12 MS. WHALEN: About a half-mile and that
13 road is very narrow. When two cars meet on it, your
14 right passenger side is rubbing the grass when you
15 meet, that's how narrow. It's not a real wide road.
16 The township made the road a little wider on north
17 because there's a person up -- well, about two and a
18 half miles south of Route 24, they have a trucking
19 business, and so they made that road a little better
20 so they can get their semis in and out to Route 24.

21 MR. DEAN: Okay, thank you.

22 CHAIRMAN FINNIGAN: Questions from staff?

23 MR. DICK: No.

24 CHAIRMAN FINNIGAN: The applicant?

1 MS. ANTONIOLLI: No.

2 CHAIRMAN FINNIGAN: Anyone in the audience
3 have questions? I think you're in the clear. Would
4 you push that button please? Thank you for coming
5 up.

6 MR. DICK: Claire Powell?

7 CHAIRMAN FINNIGAN: Right hand bottom.
8 Would you like to be sworn in or affirmed?

9 MS. POWELL: Affirmed.

10 CHAIRMAN FINNIGAN: Affirmed?

11 MS. POWELL: Affirmed.

12 (Ms. Claire Powell was duly affirmed.)

13 CHAIRMAN FINNIGAN: Would you state your
14 name and address and spell your last name please?

15 MS. POWELL: Claire Powell, 32897 East
16 2700 North Road, Chenoa, Illinois. P-O-W-E-L-L.

17 MR. DICK: Could you please repeat the
18 address please?

19 MS. POWELL: 32897 East 2700 North Road,
20 Chenoa. I've been following the hearings and I have
21 concerns. I don't believe the expert testimony has
22 been refuted. Dr. Schomer, Dr. Punch and Mr.
23 Kielisch convinced me that important concerns have
24 not been satisfied. EDP did not answer Dr.

1 Schomer's testimony. Dr. Schomer explained that
2 sound is not totally predictable and that it has a
3 capacity to vary greatly depending on the
4 environmental conditions and other factors. He
5 testified that if the model is run without any room
6 for error, it would result in noise limits being
7 exceeded 50 percent of the time. He concluded that
8 a 9 dB cushion should be figured into the model to
9 ensure that EDP is in compliance with the IPCB noise
10 standards and the noise levels don't exceed the
11 limits more than once a year. EDP did not dispute
12 these findings. If the ZBA and county board approve
13 this application without adding a sizable decibel
14 cushion, it would be indefensible.

15 EDP also did not answer Dr. Punch's
16 testimony. He provided studies that showed how wind
17 turbines sited close to a residence caused annoyance
18 to approximately 30 percent of the population which
19 can lead to health effects for some sensitive
20 people. This evidence alone violates standard
21 number one and number two of the special use. EDP
22 also didn't answer Mr. Kielisch's testimony. His
23 comprehensive analysis of many properties showed
24 sizeable reduction in the property values where

1 turbines could be seen. EDP, their response is to
2 bring in supplemental to the first testimony, which
3 effects only showed market trends, which their
4 experts admitted had less than 1 percent chance of
5 being an accurate analysis and basically admitted
6 that the property values could be diminished. Here
7 again, the overwhelming undisputed evidence showed
8 that the property values will most likely be
9 negatively affected and violating standard number
10 two.

11 Also while the AIMA, A-I-M-A, is an
12 agreement between the applicant and the state, the
13 county has specific responsibilities set forth in
14 the agreement that were not adhered to in the
15 Invenergy application, and there are similar issues
16 with the EDPR application. It states the
17 specifications outlined in the AIMA shall be minimum
18 standards applied to all construction or
19 deconstructive -- deconstruction activities. In the
20 Invenergy application, the county only required the
21 AIMA standard to be applied once in the
22 decommissioning when it begins. This should never
23 happen.

24 AIMA sets the minimum standard for how

1 financial assurance will be phased in over the first
2 11 years of the project's operation, and in the
3 Invenergy application, the county stipulated that
4 the financial assurance would need to be provided to
5 the county only on the 12th year. We should not
6 reduce the standard in this way. It should be
7 followed.

8 AIMA says the salvage value of the
9 commercial wind energy facility, and this is kind of
10 straight from the book here, may only be used to
11 reduce the estimated costs of deconstruction in the
12 deconstruction plan if the county has an agreement
13 with the applicant that all interest in the salvage
14 value are subordinate or have been subordinated to
15 that of the county if abandonment occurs. So if
16 these turbines are abandoned, it would be the
17 county's responsibility for decommissioning. If the
18 county doesn't take responsibility, is it the
19 landowner's responsibility? The county needs to
20 have financial assurance that we will all be
21 compensated for salvage. The county must be assured
22 that all other interests in the salvage are
23 subordinate to the county's interest. This was not
24 stipulated in the Invenergy application nor either

1 the EDP. Both Invenergy and EDP reduced the
2 financial assurance by reporting the salvage value
3 to the county. So according to AIMA, doing this is
4 not legal.

5 EDP's application referred to the tower
6 height being 99 meters with a blade sweep of 136
7 meters. In their deconstruction plan, they refer to
8 the hub height of the proposed turbine to be 105
9 meters. We're left wondering is this a mistake or
10 are we actually ending up with a turbine that is 173
11 to the tip. This would make the turbine 567 feet.
12 I was looking at other sources that said it was 548
13 feet. I believe that if it's the 567, that would be
14 in violation of the McLean County board zoning
15 ordinance.

16 In reading the deconstruction plan, it was
17 somewhat obvious that the plan was completed with
18 uncertain pertinent information and not updated as
19 the data became more concrete. How can EDPR think
20 that this is sufficient? We should have accurate
21 data. If these turbines are theoretical, we should
22 have proof that they will not exceed the sound
23 levels and that Dr. Schomer -- do what he figures
24 and that their effects are desirable. They should

1 not be allowed until testing has been done and
2 proven safe.

3 In conclusion, EDP in their haste is
4 wholly unprepared and fabricated evidence that
5 doesn't even seem remotely credible for this
6 application. As much as the ZBA wants to enforce
7 the application to a positive for the applicant,
8 there is no such way they can do this on the
9 application as presented without violating the
10 standards of special use, the McLean County
11 ordinance and the very rules that govern the
12 process. Please deny the application.

13 CHAIRMAN FINNIGAN: Questions?

14 MR. DEAN: Do you know the number of the
15 tower that's closest to you?

16 MS. POWELL: I don't have that on me, I'm
17 sorry.

18 MR. DEAN: Okay.

19 MS. POWELL: I don't know. I can't see
20 that far, I'm sorry. I don't know the -- how far it
21 is, I'd like to know that, how far it is away from
22 our house.

23 MS. TURNER: Jeff Powell is the same
24 Powell?

1 MS. POWELL: Yeah.

2 MS. TURNER: Okay.

3 CHAIRMAN FINNIGAN: Questions from staff?

4 MR. DICK: No.

5 CHAIRMAN FINNIGAN: Would the applicant
6 have questions?

7 MS. ANTONIOLLI: No.

8 CHAIRMAN FINNIGAN: Anyone in the audience
9 have questions? Thanks for coming up.

10 MS. POWELL: Thank you.

11 CHAIRMAN FINNIGAN: Push the button
12 please.

13 MR. DICK: Cheryl Jolly.

14 CHAIRMAN FINNIGAN: Would you like to be
15 sworn in?

16 MS. JOLLY: Yes, please.

17 (Ms. Cheryl Jolly was duly sworn.)

18 CHAIRMAN FINNIGAN: Would you state your
19 name and address?

20 MS. JOLLY: Cheryl Jolly, 2700 North Road,
21 Chenoa, Illinois. Do I need to spell my name?

22 CHAIRMAN FINNIGAN: I think we've got it.

23 MS. JOLLY: Cheryl with a C. My husband
24 and I purchased a homestead and found out that we

1 will have a turbine directly south of our home --

2 CHAIRMAN FINNIGAN: Pull it a little
3 closer.

4 MS. JOLLY: -- along with a few others.
5 Okay. I want to mention that we followed up with
6 Dr. Schomer regarding the ZBA's question as to why
7 he had not tried to change the IPCB rules to
8 effectively regulate the wind farms. Dr. Schomer
9 indicated that the IPCB is a political board and
10 that it would be a very expensive, time-consuming
11 process, possibly costing hundreds of thousands of
12 dollars, besides legal counsel and economists who
13 understand acoustics would be required and there
14 would be probably 30 to 40 attorneys in the room.
15 We would expect the wind energy lobby to be there in
16 a strong way. Although Dr. Schomer would really
17 like to change the noise regulations, expecting the
18 public to fight this battle, even with his help,
19 seems to be a very difficult process with which --
20 with just a remote possibility of getting the laws
21 changed due to the politics.

22 However, it is not necessary to change the
23 IPCB rules to achieve a more applicable noise
24 standard for wind farms. The county just needs to

1 know the whole -- needs to follow the whole law not
2 just part of it. Dr. Schomer has stated that the
3 IPCB rules are written to be like a strict speed
4 limit, and the noise levels as measured in a one
5 hour length should never go over the IPCB nighttime
6 limits in any octave band during the appropriate
7 hours. This strict speed limit regulation is why
8 Dr. Schomer was stating that there is a need for a
9 three sigma or 9 dB cushion to be built into the
10 model to ensure that the noise limits will not
11 exceed more than once a year. If a model is run
12 with no cushion built in, the noise would be under
13 the predicted model one half of the time and over
14 one half of the time. According to Dr. Schomer,
15 EDPR has only built in approximately 1 and a half dB
16 cushion in their model.

17 Also, this application is a special use
18 application and therefore it must conform to the
19 seven standards of special use under the McLean
20 County ordinance, plus all the other federal, state
21 and local laws. I would like to discuss a few of
22 the serious issues with the EDP special use
23 application.

24 Number one, McLean County ordinance states

1 in Article 8, in no -- in no case shall a special
2 use permit be granted if the proposed use will
3 constitute a nuisance or a public health or safety
4 hazard to adjacent properties or to the community at
5 large. The zoning administrator agreed that the
6 agricultural nuisance disclaimer does not disclaim
7 any rights of rural residents to bring judgment
8 against an applicant for siting wind turbines if
9 they constitute a nuisance or a public health or
10 safety hazard. Therefore, it has no purpose and
11 should not be read nor included in the findings and
12 facts and recommendations sent to the county board
13 as it does not pertain to this special use.

14 It is improper for the ZBA or zoning
15 administration to enter this disclaimer into the
16 record with no basis other than to mislead the
17 county board's decision by leading them to believe
18 that the rural residents have disclaimed their
19 rights under the standard of special use in the
20 McLean County zoning ordinance. Dr. Schomer's and
21 Dr. Punch's testimonies were very clear that the
22 noise levels in the EDP application, this proposed
23 use, with its annoyance issues and adverse health
24 effects will constitute a nuisance and/or public

1 health issues to adjacent properties. While some of
2 the residents may have signed the agricultural
3 nuisance disclaimer, this disclaimer does not
4 disclaim any of the residents' rights to nuisance of
5 the special use.

6 Number two. Illinois Pollution Control
7 regulations Section 901.102B was violated. As
8 testified by Dr. Schomer, pursuant to the IPCB
9 regulations, all points within the receiving Class A
10 land shall be in compliance with noise levels. No
11 sound shall exceed the limits when measured at any
12 point within such receiving Class A land. EDP only
13 modelled at one point, at the center of the house.
14 Also as testified by Dr. Schomer, if a model is run
15 with no cushion built in, the noise should be under
16 the predicted model one half of the time and over
17 one half of the time. According to Dr. Schomer,
18 EDPR has only built in approximately a 1 and a half
19 dB cushion in their model and therefore does not
20 comply with the whole law.

21 Number three. The application failed to
22 meet the burden of proof of the McLean County rules
23 supported by the Supreme Court decision. No
24 credible evidence to refute the annoyance issue

1 raised by Dr. Schomer and health issues raised by
2 Dr. Punch which impact the enjoyment of life under
3 the standards of special use. No credible evidence
4 to support the sound study to show that noise levels
5 are in compliance on the whole property pursuant to
6 the IPCB. No evidence was provided showing that the
7 microwave study wouldn't interfere with the local
8 broadbands. No credible evidence to refute that
9 property values will be detrimentally affected.
10 Nothing was done to refute the Kurt Kielisch strong
11 evidence to support -- evidence of this supported by
12 his many studies.

13 The following standards of special use
14 were not met. Standard one states the proposed
15 special use will not be detrimental to or endanger
16 the health, safety, morals, comfort and welfare of
17 the public. As testified by Dr. Schomer and Dr.
18 Punch, this special use will most surely be
19 detrimental to the comfort and welfare of the
20 public. EDP did not refute this evidence.

21 Standard two states the proposed special
22 use will not be injurious to the use and enjoyment
23 of other property in the immediate vicinity for
24 purposes already permitted or substantially diminish

1 property values in the immediate area. Again, Dr.
2 Schomer's and Dr. Punch's testimony provided
3 evidence that this proposed special use would be
4 injurious to the enjoyment of our property. Mr.
5 Kielisch's testimony strongly showed that the
6 property values in the immediate area will most
7 likely be diminished.

8 Standard number three states the proposed
9 special use will not impede the orderly development
10 of the surrounding properties for uses permitted in
11 the district. With standards one and two not met,
12 standard three will also not be met, because with it
13 being detrimental to the public and to the property,
14 it will impede the orderly development of the
15 surrounding properties for special uses permitted in
16 the district.

17 Standard number seven states the proposed
18 special use in all other respects conforms to the
19 applicable regulations of the district in which it
20 was located. Of course, with all the testimony and
21 evidence from these three experts which were not
22 refuted, this standard was not met. It seems that
23 the applicant did not -- did not even understand the
24 responsibility under the McLean County rules.

1 Therefore, they did not even make a concerted effort
2 at meeting the required burden of proof. I would
3 like this application denied.

4 CHAIRMAN FINNIGAN: Thank you. Questions?

5 MR. DEAN: Is tower number 3 the one
6 closest to your home?

7 MS. JOLLY: No, 97.

8 MR. DEAN: Okay, thank you. I was looking
9 at the wrong place then.

10 MS. JOLLY: Okay.

11 CHAIRMAN FINNIGAN: Do you have another
12 question, Rick?

13 MR. DEAN: No.

14 CHAIRMAN FINNIGAN: Staff?

15 MR. DICK: No.

16 CHAIRMAN FINNIGAN: Applicant?

17 MS. ANTONIOLLI: No.

18 CHAIRMAN FINNIGAN: Anyone in the audience
19 have questions? Thanks for coming up.

20 MR. DICK: Nathan Brefeld.

21 MR. DEAN: He just testified.

22 MR. DICK: That's all I have.

23 CHAIRMAN FINNIGAN: It's time for the
24 applicant for rebuttal.

1 MS. ANTONIOLLI: Okay. Good evening, I'm
2 Amy Antoniolli from Schiff Hardin, attorney for EDP
3 Renewables, and I would like to start by where we
4 left off last week with the first part of rebuttal
5 testimony and that was from Mr. DeClark. And at
6 that time we did not move a copy of his presentation
7 into the record and I would like to do so now.

8 MR. LUETKEHANS: No objection.

9 CHAIRMAN FINNIGAN: We can do that. I
10 don't know if we have a number on that or not, but
11 we'll get one.

12 MS. ANTONIOLLI: Applicant Exhibit No. 15.

13 MR. LUETKEHANS: 15 I think was the
14 floodplain map.

15 MS. ANTONIOLLI: That hasn't been moved
16 into the record yet.

17 MR. LUETKEHANS: Well, we marked it and we
18 talked about it as 15.

19 MS. ANTONIOLLI: So why don't we say 16.

20 MR. DICK: I didn't enter that as an
21 exhibit since there was a dispute over it.

22 MS. ANTONIOLLI: Why don't --

23 MR. DICK: We'll make this one 16.

24 MS. ANTONIOLLI: Okay, thank you. So I

1 have with me tonight Ms. Allison Poe, environmental
2 manager for EDP Renewables, and I'm calling her back
3 on rebuttal to address testimony about EDP's
4 proposed responses to IDNR's recommendations. We
5 heard, we heard some testimony about the
6 recommendations, but they have changed since Mr.
7 Good's testimony about them, and so we present --
8 they have not changed since we discussed the
9 recommendations with Mr. Shank and Mr. Capparella,
10 but we have not had a witness testify about them
11 yet, so we would present Allison tonight to do that.

12 MS. POE: All right, thank you. So as Amy
13 mentioned, I'm going to go through each of our
14 proposed modifications to IDNR's recommendations as
15 well as review the recommendations that we are
16 accepting as is tonight.

17 All right, so the recommendations from
18 IDNR that we agreed to accept include
19 recommendations one, three, four and five. And I'll
20 go through each of those quickly. The first
21 recommendation is that the project will setback at
22 least one mile from the Weston Cemetery Prairie
23 Nature Preserve.

24 Recommendation three, we do plan on

1 conducting three years of post construction
2 mortality monitoring to examine bird and bat
3 fatalities at the wind project, and I will note that
4 originally we had proposed to conduct two years
5 reserving a third year for follow-up if need be, but
6 we've decided to go ahead and conduct the three
7 years of monitoring.

8 The fourth recommendation, the applicant
9 will perform and report fish and mussel surveys 100
10 meters up and down the stream of any proposed
11 physical disturbance of a perennial stream. At this
12 point we're unaware of any in-stream impacts, but if
13 there were to be any, we would conduct those
14 surveys.

15 Recommendation number five, we are
16 accepting the latter portion this recommendation in
17 that there are two turbines within 500 feet of a
18 perennial stream and we will support scientific
19 research to measure the effects of any turbine
20 noise, vibration or flicker on aquatic organisms in
21 those streams.

22 Okay, next I will go through our two
23 proposed modifications to IDNR's recommendations,
24 the first being recommendation number two. In this

1 recommendation, the IDNR recommended imposing a
2 requirement for the applicant to curtail the turbine
3 operations below wind speeds of 5 meters per second
4 during -- or from July 15th through October 15th to
5 conserve endangered, threatened and nonlisted bats.
6 We propose pursuing more of an adaptive management
7 approach. We feel that this is appropriate due to
8 extensive construction monitoring that's been
9 conducted in central Illinois has indicated no
10 fatalities of threatened or endangered bat species.
11 Additionally we will be implementing the WEA's best
12 management practice in which we are feathering the
13 turbines below manufacturer's cut-in speed which has
14 been shown to reduce bat mortality by approximately
15 30 percent. And we will be conducting three years
16 of post construction monitoring. And during those
17 three years, if either an endangered species is
18 found among the fatalities or nonlisted bat species
19 fatality numbers exceed the estimated number from
20 the Twin Groves facility, which is 12.4 bats per
21 megawatt, then we will implement an adaptive
22 management strategy which may be in the form of
23 curtailment or deterrents, something along those
24 lines, to reduce bat mortality.

1 Next, recommendation number six. The IDNR
2 recommended siting wind farms one-half mile from the
3 Mackinaw River INAI site, including Henline Creek.
4 We have five turbines proposed for within a half
5 mile of Henline Creek but over 500 feet from the
6 creek. IDNR bases its recommendation on potential
7 impacts to aquatic species from noise, shadow
8 flicker, vibration. Although those concerns aren't
9 necessarily based on scientific study, which Keith
10 Shank did testify to, they are based on concern,
11 which we appreciate, but given the fact that there
12 are no scientific studies available to date, we
13 would like to conduct those studies to aid in the
14 furthering of knowledge around this potential issue.

15 These survey methodologies will be
16 coordinated with IDNR and will consist of a
17 preconstruction inventory survey of aquatic species
18 to better understand what's there. Additionally,
19 post construction surveys will be conducted during
20 years one and five following construction of the
21 turbines to determine if any potential impacts have
22 occurred. We're also assessing the logistics of
23 implementing a hydro-acoustic study. That's
24 something I discussed with IDNR and they've shown

1 great interest in, so that would be paired with the
2 inventory surveys.

3 Additionally, we will commit to the
4 highest standard of care when avoiding -- in
5 avoiding impacts to that section of Henline Creek
6 through a robust SWPPP and will have -- will have
7 things in place such as weekly inspections and
8 inspections after significant rain events to ensure
9 that there's no pollution or runoff occurring in
10 those sections of stream.

11 All right, and this is -- this is just a
12 photo of Henline Creek where some of the surveys
13 will occur. Again, preconstruction and post
14 construction surveys for mussels, mudpuppies,
15 salamanders and fish. And with that, I'll take
16 questions.

17 MS. ANTONIOLLI: One more question for
18 you. You were asked about, during your testimony
19 about incidents that have occurred at the Twin
20 Groves facility, and what information do you have
21 about that in follow-up?

22 MS. POE: Sure. We followed up with our
23 operations folks at Twin Groves and there have been
24 two spills in the last -- over the last two years.

1 The first was from a hydraulic hose split which
2 resulted in approximately one gallon being released.
3 That was cleaned. The contaminated soil was cleaned
4 and properly disposed of per our spill prevention,
5 spill prevention control and countermeasure. The
6 second spill was also a ruptured hydraulic hose in
7 the turbine, 2.6 gallons were released, and again,
8 the oil contamination was cleaned and disposed of
9 properly.

10 I will also note some information that I
11 got from our turbine technicians is that turbines
12 have multiple sensors to shut down when oil pressure
13 or oil levels drop below a certain amount, so
14 they're turned off so that it doesn't just spew
15 continuously. And often that spill is maintained or
16 is contained within the nacelle.

17 MS. ANTONIOLLI: Okay, with that, I have a
18 copy of Ms. Poe's presentation from tonight that I'd
19 like to submit into the record as Applicant's
20 Exhibit No. 17. I also have a revised post
21 construction monitoring study plan for the project
22 which is just revised to reflect the three year
23 study that we testified to in response to
24 recommendation number two. That would be

1 Applicant's Exhibit No. 18.

2 MR. LUETKEHANS: I need to see it first.

3 MS. ANTONIOLLI: Sure.

4 MR. LUETKEHANS: Could I have a few --
5 could we just delay?

6 CHAIRMAN FINNIGAN: We're about break time
7 anyway. We can take a break if you want to look at
8 it.

9 MR. LUETKEHANS: Yeah, I just have --

10 CHAIRMAN FINNIGAN: Yeah, let's take about
11 ten minutes because we're about halfway through.
12 We'll take a ten minute break.

13 (Recess at 8:20 p.m. to 8:34 p.m.)

14 CHAIRMAN FINNIGAN: I think everybody's
15 back. Mr. Luetkehans, did you have a problem with
16 that?

17 MR. LUETKEHANS: We have no objection to
18 either Applicant's Exhibit 17 or 18.

19 MS. WALLEY: I just want to make sure
20 they're labeled correctly for everybody for
21 identification purposes. The PowerPoint
22 presentation is 18 and the study is 17; is that
23 right?

24 MR. LUETKEHANS: I had it the other way

1 around.

2 MR. DICK: I had it the other way around.
3 This [indicating] is 17, this is 17?

4 MS. ANTONIOLLI: Correct.

5 MR. DICK: And this [indicating] is 18 and
6 this here [indicating] is 16?

7 MS. ANTONIOLLI: Yes.

8 MR. DICK: And this [indicating] is the
9 one we didn't actually get -- we gave it a 15, but I
10 didn't enter it as an exhibit.

11 MS. ANTONIOLLI: Yes, that's right.

12 CHAIRMAN FINNIGAN: Any questions from the
13 board?

14 MS. TURNER: If in your studies of the
15 aquatic -- you didn't mention that if you find a
16 negative impact, what would happen.

17 MS. POE: So that's a great question. We
18 have discussed with Dr. Capparella and with Keith
19 Shank looking at some sort of mitigation or kind of
20 voluntary offset option. I think given that we
21 don't even really know what's there, it's difficult
22 to, you know, really hone in on a specific
23 mitigation option, but that is something that we
24 would pursue if we did -- if we did find a negative

1 impact.

2 MS. TURNER: Just with five of them there,
3 that's more of a risk --

4 MS. POE: Definitely.

5 MS. TURNER: -- where you guys are
6 concerned. If you're having to mitigate by closing
7 those down, that's a pretty good risk.

8 MS. POE: Yes, yes.

9 MR. DEAN: Tell me a little bit about a
10 hydro-aquatic study.

11 MS. POE: Yeah, I think I'm learning about
12 it as well right now, but from what I understand in
13 talking with Keith Shank, you know, one thing that
14 he would like to see would be basically putting
15 hydro-acoustic microphones in the streams and
16 measuring kind of a baseline noise, noise floor, and
17 then afterwards at the post construction phase doing
18 the same thing to see -- you know, to be able to
19 say, well, there was noise before and there's more
20 after, whatever. That way, one thing that Keith and
21 I have talked about is that it is quite difficult to
22 assign causation to the wind turbines or, you know,
23 to other things that may cause impacts to mussels
24 and aquatic species, like dredging or like if it's a

1 drought year or something like that that could
2 impact the species, so kind of having this baseline
3 noise study could shed some light on that.

4 MR. DEAN: Very good. You also mentioned
5 curtailment and deterrents. I understand
6 curtailment I think, but you can enlighten me on
7 that, and tell me more about deterrents.

8 MS. POE: So you would like me to tell you
9 a little bit more about curtailment as well?

10 MR. DEAN: Yes.

11 MS. POE: So curtailment is something that
12 we may do if bat mortality levels exceed the Twin
13 Groves project or if there's a threatened or
14 endangered species killed, so that's basically
15 increasing the cut-in speed of the turbines so that
16 they start operating and generating electricity at a
17 higher wind speed. And the kind of hypothesis
18 behind that is that we're finding more bats are
19 killed on low wind speed nights, and so by
20 increasing the cut-in speed, the turbines start
21 spinning at a higher wind when the bats would likely
22 not be there.

23 Deterrents. That's something that there's
24 ongoing research, and there has been for several

1 years, in developing deterrents that would be
2 installed on the turbines themselves, typically on
3 the nacelle, and those deterrents emit an ultrasonic
4 or a high frequency noise that makes it
5 uncomfortable for the bats that are echolocating to
6 navigate and catch insects and things like that. So
7 those are, those are potential mitigation measures
8 that we would investigate and apply if appropriate.

9 MR. DEAN: Okay, very good, thank you.

10 MR. BANGERT: This research that you're
11 talking about, would that be publicly available in
12 the future should it take place?

13 MS. POE: The aquatics research?

14 MR. BANGERT: Yeah, any of the research
15 along the five turbines close to the Henline.

16 MS. POE: That would likely be publicly
17 available, especially given that there really isn't
18 any science available and part of why we're doing
19 this is to make that available to others, so we
20 would work with IDNR and go through the proper
21 channels to make that available to folks.

22 MR. BANGERT: Okay, thanks.

23 MS. TURNER: Do you have the option to
24 keep that from being available? I guess I would

1 want to make sure that's available.

2 MS. POE: Yeah.

3 MS. TURNER: And I want to know if I need
4 to state that clearly.

5 MS. POE: Right, right. Yeah, you know,
6 for the most part we share our data with the
7 agencies freely, you know, so yeah, I don't see any
8 reason why we wouldn't.

9 CHAIRMAN FINNIGAN: Questions from staff?

10 MR. DICK: Is it your intent to work with
11 Angelo Capparella on discussing this, the studies
12 that you would be doing on Henline Creek?

13 MS. POE: Yes, I mean we've been working
14 or getting input from him on the local flora and
15 fauna and we consider him a local expert, so we
16 would be likely pursuing his expert input on these
17 studies.

18 MR. DICK: Thank you.

19 CHAIRMAN FINNIGAN: Mr. Luetkehans?

20 MR. LUETKEHANS: Thank you. Phil
21 Luetkehans, L-U-E-T-K-E-H-A-N-S.

22 QUESTIONS BY

23 MR. LUETKEHANS:

24 Q. You say that as far as recommendation

1 number two your information is based on studies done
2 in central Illinois; is that correct?

3 A. That's correct.

4 Q. Have you presented those studies to this
5 board?

6 A. I believe Mr. Good presented some
7 information on those studies.

8 Q. But not the actual study itself, correct?
9 Are you aware of whether he has actually submitted
10 that study to this board or not?

11 A. Oh, I don't think he submitted the actual
12 study.

13 Q. Thank you. You also mentioned that bat
14 mortality was reduced by approximately 30 percent at
15 Fowler Ridge, Indiana. That study itself has not
16 been presented to this board either, has it?

17 A. That study specifically has not.

18 Q. Okay. You also mentioned that the overall
19 mortality for nonbat listed species, if it exceeds
20 the number reported at the nearby Twin Groves
21 facility, then you would adapt management measures;
22 is that correct?

23 A. That's correct.

24 Q. Has the IDNR approved that -- the IDNR has

1 not approved that number, the number upon which you
2 should adapt management measurements, has it?

3 A. I would say the IDNR hasn't specifically
4 approved it, but through conversations with Keith
5 Shank, he has indicated that those measures seem
6 appropriate.

7 Q. But Mr. Shank has not changed his
8 recommendation number two at any point and provided
9 it to this board, has he?

10 A. He has not, but he did state that those
11 are recommendations, and that if we were to present
12 credible evidence, then the board may decide to not
13 go with his recommendations.

14 Q. Yeah, but his recommendation has not
15 changed, correct? Even after talking to you, the
16 recommendation to this board is still IDNR
17 recommendation number two, correct?

18 A. That's correct.

19 Q. Okay. Likewise is that recommendation
20 number six has not changed either, has it?

21 A. That's correct.

22 Q. Unlike recommendation number five, the
23 IDNR did not ask for a study upon this issue in its
24 testimony or report, correct?

1 A. Correct.

2 Q. And likewise, they have no new
3 recommendation since it was presented to this board
4 by Mr. Shank last week, correct?

5 A. Correct.

6 Q. Do you have any reason to disagree with
7 Mr. Shank's opinion that mussels and fish reside
8 within Henline Creek?

9 A. No, I don't have any reason to doubt that.

10 Q. You said that oftentimes the spill is
11 maintained within the nacelle; is that correct?

12 A. Correct.

13 Q. So oftentimes it's not; is that correct?

14 A. Correct.

15 Q. You say that in recommendation number six
16 likewise EDPR is currently assessing the logistics
17 of implementing a pre and post construction
18 hydro-acoustic study, correct?

19 A. That is correct.

20 Q. That's different than a commitment to do
21 that study, correct?

22 A. That is correct. There have not been any
23 hydro-acoustic studies to my knowledge looking at
24 baseline noise levels in regards to mussels, so we

1 are working with experts as well as consultants that
2 would have the capability to conduct those surveys
3 and hope to be able to implement those because we
4 think that that would be useful.

5 Q. So that's not a commitment to this board;
6 is that correct?

7 A. We can commit to do it in --

8 Q. Go ahead, I'm sorry, I didn't mean to cut
9 you off.

10 A. Sure. I think our hesitation is that
11 these surveys may not be possible. It's more of
12 kind of a --

13 Q. So you're asking for a study that, instead
14 of IDNR recommendation number six, that may not be
15 possible, is that what you're saying?

16 A. The hydro-acoustic study would complement
17 the pre and post inventory studies.

18 Q. Okay. But again, you just said it may not
19 be possible to even do, correct?

20 A. I have not done it in the past nor have I
21 seen it done. It would be new scientific research
22 at least to my knowledge.

23 Q. If it's even possible to be done; is that
24 correct?

1 A. That is correct.

2 Q. You also say you'd work to implement a
3 mitigation plan if there was a concern with Henline
4 Creek, correct?

5 A. Yes.

6 Q. Would that mitigation plan include
7 shutting down wind turbines within the half mile?

8 A. We would be open to several potential
9 options. At this time I don't know what would be
10 appropriate for the effects that we might see.

11 Q. Would -- if necessary, would that
12 mitigation plan also include the willingness to shut
13 down wind turbines within 500 feet of Henline Creek
14 or a half mile of Henline Creek?

15 A. That would be something we could discuss.
16 Again, I don't think committing to that at this
17 point would be necessary given that we don't even
18 know the impacts.

19 Q. Okay, so you're not committing to it.

20 MR. LUETKEHANS: Thank you very much.

21 CHAIRMAN FINNIGAN: Would anyone in the
22 audience have questions for this witness?

23 MR. TAYLOR: Travis Taylor, 28686 North
24 3050 East Road. A couple quick ones.

1 QUESTIONS BY

2 MR. TAYLOR:

3 Q. You were just speaking about the bat
4 deterrence devices that are placed on the windmills.
5 Have you used those in the past, and if you have,
6 have you ever had problems with animals being
7 disrupted by the high noises or like -- so there are
8 any studies for that?

9 A. Right, we have not used them in the past.
10 The technology is being developed. We're looking at
11 potentially using one at another facility to help
12 the company that's developing the technology in
13 testing, but to date, we have not used those. And
14 I'm unaware of any studies that would indicate
15 effects to other animals or wildlife.

16 I will say that one of the challenges in
17 developing the deterrence technology is that high
18 frequency or ultrasonic noise attenuates very
19 quickly, and so it's not like a foghorn, that that
20 sound travels far. So, you know, we're having a
21 hard time getting the sound to go beyond really the
22 blades. So we would assume that effects to animals
23 or wildlife farther than, you know, a few meters
24 away would probably not be effective.

1 Q. Do you think you'd have a study complete
2 with any of it before this project actually went in
3 since you're in the process of it?

4 A. By the time that we've conducted post
5 construction monitoring and see if there's an
6 effect, we might, but, you know, I can't commit to
7 that. I'm not conducting that research personally.

8 Q. There was a lot of talk about Henline
9 Creek again today, and it sounded like you guys are
10 proposing to do some studies on the water and the
11 life in it and whatnot. And you can tell me no to
12 this, it's just a question. If there was a future
13 project, do you think you could do the study now,
14 and then if you ever wanted to add on, you could add
15 in those turbines again after we found out if there
16 was life in the -- in there or it would -- or it
17 would not disrupt it, you know what I'm saying?
18 Like could you do a study on the life that's there,
19 the sound that's there, all the studies you talked
20 about, and like at a later date if you continued
21 with another project, since it looked like there
22 might be multiple stages to this, consider putting
23 them in at a later date instead of putting them in
24 now with a half mile setback?

1 A. I'm not exactly sure that I understand the
2 question, but I think you're asking can we study --

3 Q. Regardless, do the study to find out, and
4 then if you guys were to come back and do another
5 project some day later, then it would give the
6 opportunity to put those in if it wasn't going to
7 have an environmental impact.

8 A. But I think we would need to probably put
9 them in to determine if there's environmental
10 impact.

11 Q. Okay. I mean it's just it sounded like
12 there was a lot of other studies going on with
13 aquatic life and it sounds like you haven't done it
14 before, so maybe if we found out what was there
15 before we threw something in next to it that we
16 don't know is just what I was getting to.

17 MR. TAYLOR: I think that's all I have,
18 thank you.

19 MS. POE: Thanks.

20 CHAIRMAN FINNIGAN: Any other questions?

21 MS. WINTERLAND: Amy Winterland,
22 W-I-N-T-E-R-L-A-N-D, 22825 North 3075 East Road,
23 Colfax.

24 QUESTIONS BY

1 MS. WINTERLAND:

2 Q. Hi. So in your recommendation number
3 five, you clearly say how that like T15 is 249 feet
4 from the Rooks Creek and T101 is 343 feet from Rooks
5 Creek. Can you provide those same feet from Henline
6 Creek for the five turbines that are within the
7 one-half mile?

8 A. I can provide those. I don't have those
9 off the top of my head right now.

10 Q. Are -- as a ball park, are they around the
11 500 feet measure?

12 A. I know that they are anywhere from 500
13 feet to almost a half mile.

14 Q. To almost a half mile.

15 A. I just -- I don't have those numbers with
16 me.

17 Q. Because I think it would be interesting
18 to, as you're studying this, right, know that what
19 was the impact if it was a half a mile away versus
20 500 feet away. So I think it would be helpful to
21 the board, the zoning board, to know exactly what
22 those distances are and how those distances vary so
23 that if you're going to actually study those, you
24 know you're getting some diverse results based on

1 measurement. That's what I think.

2 The other thing I was going to mention is
3 so when Keith Shank testified, he did -- let me ask
4 it this way. When Keith Shank testified, did he say
5 that there was, in fact, aquatic fauna within the
6 Henline Creek?

7 A. I believe he did. As far as the specific
8 section, I don't think that the IDNR has the data.
9 I spoke with Trent Thomas, an aquatics biologist
10 with the IDNR, and asked if they have data to the
11 specific section, and he said that they did not,
12 that their only survey station was near the
13 confluence, so it would be really useful to get
14 inventory from this section.

15 Q. So they did not have site specific
16 inventory throughout the entire Henline Creek?

17 A. That's correct.

18 Q. Even though I believe Keith Shank had
19 testified, correct me if I'm wrong, that the
20 drainage district, it might not look like much, but
21 it, in fact, was teeming with endangered wildlife.

22 MS. ANTONIOLLI: In what drainage
23 district?

24 MS. WINTERLAND: The Henline Creek, that

1 just because it's considered a drainage district,
2 the fish and mussels love that because the water
3 temperature is held at a 50 degrees range, and even
4 though it didn't look like much, that it was teeming
5 with endangered wildlife.

6 MS. ANTONIOLLI: And what is the question
7 there?

8 Q. So were you aware of that?

9 A. I was aware of the fact that there's one
10 survey station along Henline Creek that IDNR
11 maintains and surveys every five years. I was not
12 aware of additional data that had been collected in
13 other sections of the creek.

14 MS. WINTERLAND: I'm just quoting what
15 Keith Shank had testified to on Tuesday. I just
16 listened to the audio about a couple hours ago. So
17 thanks.

18 CHAIRMAN FINNIGAN: Any other questions?

19 MR. TROWITCH: Don Trowitch, Yates
20 drainage district. I have a question. You
21 mentioned two wind turbines within --

22 MR. DICK: Mr. Trowitch, would you spell
23 your name again please?

24 MR. TROWITCH: T-R-O-W -- T-R-O-W-I-T-C-H.

1 QUESTIONS BY

2 MR. TROWITCH:

3 Q. Okay, you mentioned there was two turbines
4 going to be within 500 feet. I take it it's Rooks
5 Creek. You do realize we put in to -- presented to
6 the board it's got to be from the spoil bank clear
7 back as high as the turbine is, so that would be
8 more than 500 feet.

9 A. Okay, I don't, is there -- are you asking
10 me if I'm aware of that?

11 Q. Are you aware of it? Are you going to
12 follow it?

13 A. I think that per IDNR's recommendations, I
14 can really only comment on wildlife in IDNR's
15 recommendations.

16 Q. Well, we've got our own recommendations
17 since we had first easement upon the property. You
18 need to follow them. So at that point in time,
19 you're going to have to stay back.

20 MS. ANTONIOLLI: I'm not sure if there's a
21 question there, but her testimony tonight is limited
22 to responses to the IDNR's recommendations.

23 MR. TROWITCH: Yeah, she's talking about
24 the creek. Regardless of the recommendations, she

1 can't say we're going to do that 500 feet away.

2 MS. ANTONIOLLI: I'm sorry, she is
3 referring to a creek that was referenced in the
4 IDNR's recommendations.

5 MR. TROWITCH: What does that got to do
6 with the Yates drainage district?

7 MS. ANTONIOLLI: I object to the question.
8 We're just here to stick to the testimony.

9 CHAIRMAN FINNIGAN: We're kind of talking
10 what was testified to tonight is all that we can get
11 questions on, so what was the other night, they're
12 not going to answer that question.

13 MR. TROWITCH: So they're just telling me
14 that they're going to put it within 500 feet.

15 CHAIRMAN FINNIGAN: They're not going to
16 tell you anything.

17 MR. TROWITCH: That's what she just
18 stated.

19 CHAIRMAN FINNIGAN: She's just testifying
20 to -- what she testified to tonight is what you can
21 ask questions on. It's redirect, so that's what
22 we've got to work with tonight.

23 MR. TROWITCH: Okay, can I ask you a
24 question?

1 CHAIRMAN FINNIGAN: I don't know anything.

2 MR. TROWITCH: Well, I think you know more
3 than you think you know. Who's going to enforce the
4 setbacks of all these, of the wind turbines and
5 everything? Is this your responsibility or somebody
6 else's?

7 CHAIRMAN FINNIGAN: I'm not going to go
8 out and measure them.

9 MR. TROWITCH: Well, that's not my
10 question. Who's going to do it?

11 CHAIRMAN FINNIGAN: I mean it will have to
12 be certified somehow, but, you know, you could ask
13 Phil that question, he might be able to answer it.
14 Put you on the spot.

15 MR. DICK: Our regulations do not require
16 it to be necessarily to enforce the drainage
17 district's conditions, so that's -- the enforcement
18 of the drainage district conditions is going to be
19 up to the Yates Township to enforce and to work with
20 the applicant to try to get them to do that.

21 MR. TROWITCH: Okay. Who measures, who
22 enforces the setback from houses then, properties?

23 MR. DICK: We do that.

24 MR. TROWITCH: You do that.

1 MR. DICK: Yes.

2 MR. TROWITCH: Okay. One other question
3 is these turbines, being as the foundation is part
4 of the whole unit, where is the setback limit
5 measured from?

6 MR. DICK: For setback for what?

7 MR. TROWITCH: Say like to a house.

8 MR. DICK: The center of the turbine.

9 MR. TROWITCH: The center of the turbine.

10 MR. DICK: Yes.

11 MR. TROWITCH: Okay.

12 CHAIRMAN FINNIGAN: Any other questions?

13 I don't see any questions, so --

14 QUESTIONS BY

15 MS. ANTONIOLLI:

16 Q. Okay. Ms. Poe, are there any recognized
17 gaps in data on research on bat mortality?

18 A. There are some gaps in research. It's an
19 ongoing, it's an ongoing field of study and we
20 collect data every year from all of our facilities.

21 Q. And are there published studies on bat
22 mortality that you reference in making
23 determinations about your bat surveys and post
24 construction monitoring surveys?

1 A. Yes.

2 Q. Okay. If the hydro-acoustic studies that
3 you reference are possible, then does EDPR commit to
4 conduct them?

5 A. Yes.

6 Q. And did Mr. Shank find the recommended
7 modifications reasonable?

8 MR. LUETKEHANS: Objection, hearsay.

9 MS. ANTONIOLLI: We've heard a lot of
10 hearsay tonight.

11 MR. LUETKEHANS: I mean Mr. Shank has been
12 here to testify. If they want to modify the
13 recommendations, they should do so, but this isn't
14 the proper way to do it, especially on redirect
15 where I can't even cross-examine.

16 CHAIRMAN FINNIGAN: I think that's a good
17 point. You know, he's been here and talked to us.
18 We kind of know what his -- what he's got going.

19 MS. ANTONIOLLI: Okay, understood. That's
20 all the questions I have.

21 CHAIRMAN FINNIGAN: Okay, thank you. Do
22 you have any other redirect or rebuttal?

23 MS. ANTONIOLLI: I do. So on the issue of
24 the noise, we heard from our expert Mr. Dokouzian

1 that he -- he showed that the DNV-GL conservatively
2 modeled and stated sound emissions from the Bright
3 Stalk Wind Farm and demonstrated that the project
4 will be in compliance with the IPCB noise
5 regulations, also ensuring compliance with the
6 McLean County WECS ordinance. To address the
7 inference from the opponents' experts that his
8 modeling was perhaps insufficient, not sufficiently
9 conservative or would demonstrate exceedences of the
10 IPCB sound emission limits, we'd like to submit
11 additional evidence to rebut those suggestions.

12 Now we prepared written testimony for him.
13 He couldn't be available last week, and upon the
14 conclusion of hearings last week, we checked with
15 him again to see if he'd be available tonight and he
16 wasn't. So we would propose submitting his written
17 testimony supported by an affidavit into the record
18 tonight.

19 MR. LUETKEHANS: Strongly object. This is
20 a violation of Klaeren versus the Village of Lisle.
21 It does not allow us the right or the ability to
22 cross-examine, this is not allowed under your rules,
23 and it is clearly prohibited by the Fifth Amendment
24 and the Illinois Constitution and the Illinois

1 Supreme Court decision in Klaeren. There is no way
2 that this is proper and we have no right to
3 cross-examine this testimony and it is clearly,
4 clearly improper under the rules, under the Illinois
5 Supreme Court decision.

6 MS. ANTONIOLLI: And I would submit that
7 we would give the opponents opportunity to respond
8 in rebuttal testimony. Opposing counsel repeatedly
9 attempts to limit what evidence is accepted by the
10 board and what the zoning board members can
11 consider. This is a hearing and not a trial and the
12 same rules do not apply. In fact, there's no place
13 in the zoning board's procedural rules that require
14 this to be run exactly like a trial. The procedural
15 rules say strict compliance with Illinois rules of
16 evidence and examination will not be used. If we
17 are held to that procedural requirement, then it
18 would really restrict applicant's ability to respond
19 to testimony and to answer questions posed by the
20 board and to submit additional evidence into the
21 record.

22 So I mean opposing counsel has the
23 opportunity to respond, and if we were held to the
24 same standards as applied to a trial -- I mean

1 certainly the opposing counsel's clients are able to
2 testify separately and also ask questions of all of
3 our experts and that's -- that demonstrates that we
4 aren't held to those same standards. So we just ask
5 that we be allowed to submit additional evidence
6 into the record.

7 MR. LUETKEHANS: She is absolutely right,
8 this is not the standards of a trial, but Klaeren is
9 not a trial. Klaeren is a special use hearing.
10 It's specifically -- the Illinois Supreme Court
11 specifically says the right to cross-examine cannot
12 be wholly contravened at these types of proceedings.
13 That is why we're not allowed to submit evidence by
14 affidavit. It's absolutely inappropriate and a
15 violation of our Fifth Amendment rights under
16 Klaeren. If counsel had read Klaeren, she would
17 realize it's not a trial case, it is a special use
18 case, which is exactly what you have before you
19 today, and this is completely illegal under Klaeren
20 for a special use hearing.

21 MS. ANTONIOLLI: I disagree. I think that
22 this is appropriate as long as the opposing counsel
23 is given the opportunity to respond in due time.

24 MR. LUETKEHANS: And I guess I would like

1 counsel to show one case in the entire State of
2 Illinois where this has been allowed, because in
3 2002 the Illinois Supreme Court specifically said it
4 was inappropriate.

5 CHAIRMAN FINNIGAN: We're going to talk it
6 over. Turn your mics off.

7 (Discussion off the record.)

8 CHAIRMAN FINNIGAN: I don't know if the
9 board is going to agree with me or not, we'll see.
10 Could your witness come on Thursday? We only have
11 about -- I don't know how much more we're going to
12 get done tonight, we was hoping to get a little
13 further than this, but could he come on Thursday?

14 MS. ANTONIOLLI: Yes, we can have our
15 witness available on Thursday. And just to be
16 clear, it's a colleague of Mr. Dokouzian who worked
17 on the model and who can answer all the questions.

18 CHAIRMAN FINNIGAN: Because I think if he
19 comes on Thursday, we can have that admitted. I
20 don't think Mr. Luetkehans would dis -- you're okay
21 with that, aren't you, except for the fact coming
22 back on Thursday. We're going to come back on
23 Thursday anyways.

24 MR. LUETKEHANS: Well, I guess the only

1 question is I have no idea when -- I have an idea of
2 what they're going to say. I don't have time -- I
3 mean we may not finish Thursday. I may be asking
4 for time to bring back Dr. Schomer next week.
5 That's up to you, but I mean that's the risk you
6 run. It's not me that caused this problem.

7 CHAIRMAN FINNIGAN: We didn't cause the
8 problem either. We're just here.

9 MR. LUETKEHANS: Correct, but --

10 CHAIRMAN FINNIGAN: I think the board
11 would like to have all the information available we
12 could get; is that right?

13 (Board members nodding heads.)

14 CHAIRMAN FINNIGAN: My counsel suggested
15 that if you think it's going to be an issue, maybe
16 you can bring Mr. Schomer back, but I'm not sure
17 about that.

18 MR. LUETKEHANS: First of all, it's not
19 fair for my clients who are homeowners to pay for
20 that on the possibility that he may testify. Second
21 of all, I don't know if he's available. I mean
22 there's a whole different -- you know, they have
23 unlimited money. It's their burden of proof, it
24 isn't my burden of proof, and, you know, but --

1 MR. DEAN: Mr. Chairman, why don't we just
2 -- I'll be in favor of letting that go, you know,
3 just don't deal with it, unless --

4 CHAIRMAN FINNIGAN: The other thing we
5 could do is like we've done with a lot of other
6 stuff, we could have it admitted, you put as much
7 weight on it as you want to. We don't put as much
8 weight on it as what it would be if the man was here
9 to testify because we can't -- he can't be
10 cross-examined.

11 MS. TURNER: I would -- I would lean
12 toward having him come if he's available on
13 Thursday, and then instead of worrying about the
14 what ifs, what if we need, what if, just let it
15 happen. I mean if we can have live testimony, I
16 would rather have live testimony.

17 MR. BANGERT: Yeah, I agree.

18 MR. ELDER: Does that mean I'm not doing
19 closing testimony tonight because I can't --

20 CHAIRMAN FINNIGAN: At this point, I think
21 we're going to adjourned -- or not going to
22 adjourned, we're going to reconvene Thursday night
23 at six o'clock. And make sure your witness is here
24 because if he's not, we're not going to -- there

1 won't be another chance.

2 MS. ANTONIOLLI: Yes, we will have our
3 witness there then. And before we recess, I have
4 one more exhibit on the issue of noise that we can
5 submit, that I would like to submit into the record.

6 CHAIRMAN FINNIGAN: Mr. Luetkehans is
7 probably going to want to look at that.

8 MS. ANTONIOLLI: Yeah, he will. It is a
9 response to the opponent's memorandum of law
10 regarding noise. So the applicant's response --

11 MR. ELDER: Can I say one more thing? I
12 drove back from St. Louis early tonight so I could
13 get here. I know we're not on a certain schedule,
14 but when things are sort of presented out of order
15 like this, it does mess up a lot of people. I'm
16 trying to be respectful, but I need some respect
17 too.

18 MR. DICK: Is this Applicant's Exhibit 19?

19 MS. ANTONIOLLI: Yes, correct.

20 CHAIRMAN FINNIGAN: I'm presuming we're
21 going to admit that.

22 MS. ANTONIOLLI: Okay.

23 CHAIRMAN FINNIGAN: So if that's it for
24 tonight.

1 MR. LUETKEHANS: We have a motion.
2 Following up on the testimony or the issues last
3 week on the microwave report, et cetera, we have a
4 motion to strike Appendix 7, 16, 17, 18, 19, 20, 21,
5 22, and 23, a written motion. None of these
6 exhibits had any testimony regarding them from any
7 experts. In fact, one of them is a ten year old
8 study that as we talked about last time no one was
9 authorized to use at this hearing. We would -- so I
10 am renewing that objection and asking that those be
11 stricken from the record as far as any basis for
12 support for its decision. As I said, I have the
13 written motion here.

14 MS. ANTONIOLLI: And I oppose the motion
15 to strike. There's no requirement that every --
16 that an expert come testify in every issue that's
17 submitted as part of the application, and in fact,
18 if that were the case, that would set very rigorous
19 precedent for this board to have experts testify in
20 every application for a special use permit in every
21 situation. I think that the exhibits have been
22 submitted as part of the application and they can be
23 given the weight that they deserve.

24 MR. LUETKEHANS: Again, I will submit

1 this, I will let the board rule on it, but it is
2 very clear that, again, this is a violation of
3 Klaeren. Counsel has obviously not read Klaeren or
4 has been -- has any idea of complying with Klaeren,
5 but it's a violation of Klaeren and it's a violation
6 of your rules and we would ask for a ruling at the
7 next hearing.

8 CHAIRMAN FINNIGAN: We will do that.

9 MR. LUETKEHANS: Thank you.

10 CHAIRMAN FINNIGAN: So if that's all?

11 MS. ANTONIOLLI: Yes, that's all.

12 CHAIRMAN FINNIGAN: We're going to
13 reconvene Thursday night six o'clock in this room.
14 Thank you.

15 (Adjourned at 9:14 p.m.)

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1 STATE OF ILLINOIS)
)SS
2 COUNTY OF FORD)

3

4 I, June Haeme, a Notary Public in and for
5 the County of Ford, State of Illinois, do hereby
6 certify that the following hearing was taken at the
7 McLean County Government Center, 115 East Washington
8 Street, Bloomington, Illinois, on March 6, 2018.

9 That the said hearing was taken down in
10 stenograph notes and afterwards reduced to
11 typewriting under my instruction and that the
12 transcript is a true record of the testimony given
13 at the hearing.

14 I do further certify that I am a
15 disinterested person in this cause of action; that I
16 am not a relative, or otherwise interested in the
17 event of this action, and am not in the employ of
18 the attorneys for either party.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and affixed my notarial seal this 23rd day of
21 March, 2018.

22

23

24

25

JUNE HAEME, CSR
NOTARY PUBLIC

26

27 "OFFICIAL SEAL"
28 June Haeme
29 Notary Public, State of Illinois
30 My Commission Expires:
31 September 28, 2020

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