

A P P E A R A N C E S

1
2
3 XCEL ENERGY, Briggs and Morgan, P.A., by LISA
4 AGRIMONTI and VALERIE HERRING, 2200 IDS Center, 80
5 South 8th Street, Minneapolis, Minnesota 55402.

6
7 WPPI ENERGY, by TIM NOELDNER, 1425 Corporate
8 Center Drive, Sun Prairie, Wisconsin 53590.

9
10 DAIRYLAND POWER COOPERATIVE, Wheeler, Van
11 Sickle and Anderson, S.C., by JEFFREY L. LANDSMAN,
12 25 West Main Street, Suite 800, Madison, Wisconsin
13 53703.

14
15 AMERICAN TRANSMISSION COMPANY, Cullen Weston
16 Pines & Bach LLP, by LEE CULLEN, 122 West Washington
17 Avenue, Suite 900, Madison, Wisconsin 53703.

18
19 AMERICAN TRANSMISSION COMPANY, by PATRICIA
20 SMITH, W234 N2000 Ridgeview Pkwy Ct, Waukesha,
21 Wisconsin 53187

22
23 CITIZENS UTILITY BOARD, by KIRA E. LOEHR and
24 DENNIS DUMS, 16 North Carroll Street, Suite 640,
25 Madison, Wisconsin 53703.

1 A P P E A R A N C E S: (Continued)

2

3 CLEAN WISCONSIN, by KATIE NEKOLA and ELIZABETH
4 WHEELER, 634 West Main Street, Suite 300, Madison,
5 Wisconsin 53703.

6

7 PATRICIA A. CONWAY, 21715 Nordale Avenue,
8 Ontario, Wisconsin 54651.

9

10 MIDWEST INDEPENDENT TRANSMISSION SYSTEM
11 OPERATOR, INC., Day Law Offices, by WARREN DAY, 2010
12 Hawkinson Road, Oregon, Wisconsin 53575.

13

14 NOCAPX 2020, Legalectric, by CAROL A. OVERLAND,
15 1110 West Avenue, Red Wing, Minnesota 55066.

16

17 WISCONSIN DEPARTMENT OF TRANSPORTATION, by
18 JAMES S. THIEL and CARRIE COX, 4802 Sheboygan
19 Avenue, Room 115B, P.O. Box 7910, Madison, Wisconsin
20 53707-7910.

21

22 COMMISSIONERS:
23 Ellen Nowak
24 Eric Callisto
25 Phil Montgomery

25

1 A P P E A R A N C E S (Continued)

2

3 O F T H E C O M M I S S I O N S T A F F

4 D I A N E R A M T H U N , O f f i c e o f G e n e r a l C o u n s e l

5 J O H N L O R E N C E , A s s i s t a n t G e n e r a l C o u n s e l

6 W i l l i a m F a n n u c c h i

7 J a m e s L e p i n s k i

8

9

10

11

12

13

14

15

16 (F O R I N D E X S E E B A C K O F T R A N S C R I P T .)

17

18

19

20

21

22

23

24

25

1 TRANSCRIPT OF PROCEEDINGS (9:00 a.m.)

2 (Discussion held off the record.)

3 EXAMINER NEWMARK: Appearances the same as
4 yesterday. Anyone new? No.

5 Okay. Let's go right to witness then.
6 Mr. Hillstrom.

7 TOM HILLSTROM, APPLICANT WITNESS, DULY SWORN

8 EXAMINER NEWMARK: Have a seat.

9 DIRECT EXAMINATION

10 BY MS. HERRING:

11 Q Mr. Hillstrom, you have in front of you your direct
12 testimony with Exhibits 1 through 27, your
13 supplemental direct testimony with Exhibits 28
14 through 31, your rebuttal testimony with Exhibits 32
15 through 40, and your surrebuttal testimony with
16 Exhibits 41 through 47; is that correct?

17 A Yes.

18 Q And are these -- and are these in front of you true
19 and correct copies of your testimony and exhibits?

20 A Yes.

21 Q And were these -- this testimony and exhibits
22 prepared by you or at your direction?

23 A Yes.

24 Q And do you have any corrections to this testimony or
25 your exhibits?

1 A No.

2 MS. HERRING: Your Honor, I'd like to
3 offer the sur-surrebuttal and Exhibits 41 through
4 47, if those are not already in evidence.

5 EXAMINER NEWMARK: Okay. Are there any
6 objections? Yeah.

7 MR. THIEL: I would just ask that the
8 exhibits which are marked as, I believe, 42, 43, 44,
9 45, something like that, would you just ERF them as
10 those exhibits so that they can be found easier?

11 MS. HERRING: Sure. It's been our past
12 practice not to ERF something that has already been
13 ERFed. I've discussed this with the records
14 department, and for them that's a little bit more
15 confusing to have the same document in the ERF
16 system.

17 EXAMINER NEWMARK: Right.

18 MS. HERRING: But we can do that.

19 EXAMINER NEWMARK: We can go off the
20 record.

21 (Discussion off the record.)

22 EXAMINER NEWMARK: So the sur-surrebuttal
23 is in.

24 (Hillstrom sur-surrebuttal received.)

25 EXAMINER NEWMARK: And objections to the

1 exhibits? None?

2 You know, I was just curious about your
3 exhibit, I think it's 42. I'm just wondering, is
4 there any better picture to use than what we have
5 here? I'm just not sure we're really getting a
6 clear idea of what you're trying to show here, and I
7 don't know if that's -- if there's any other way to
8 do that or there's -- I guess, there's no other
9 picture back to 1993, is that -- is that your
10 understanding?

11 THE WITNESS: Oh, no, Your Honor. This
12 picture was taken from Google Earth.

13 EXAMINER NEWMARK: Uh-huh.

14 THE WITNESS: You have the capability of
15 going back in time, and this is the photo that was
16 just downloaded from that source.

17 EXAMINER NEWMARK: Okay.

18 THE WITNESS: It's -- it's a picture
19 that's available on the internet, and you can zoom
20 in and out and get the various resolutions on it.
21 This is the best quality that we could get out of a
22 printer.

23 EXAMINER NEWMARK: Okay. Let me look at
24 ERF. And it had to be black and white, or are there
25 any color pictures available?

1 THE WITNESS: It was a black-and-white
2 picture.

3 EXAMINER NEWMARK: Okay. All right.
4 Well, maybe it's a little bit better on the screen,
5 so -- okay. So I will just direct the Commission
6 to, if they have issues with trying to be able to
7 discern what's in that picture, that they look on
8 the -- on the electronic filing version, and they
9 can zoom in and see a little bit better the
10 difference in the vegetation there.

11 Okay. So with that, any objections to
12 Hillstrom's new exhibits? No. All right. They're
13 in, too.

14 (Hillstrom Exhibits 41-47 received.)

15 EXAMINER NEWMARK: So we can proceed.

16 MS. HERRING: Yes, Your Honor.

17 Mr. Hillstrom's available for cross-examination.

18 EXAMINER NEWMARK: Cross? DOT would be
19 first on our list. Do you want to go now?

20 MR. THIEL: Actually I'm not first on the
21 list. CUB is.

22 EXAMINER NEWMARK: Oh.

23 MR. THIEL: ATC, NoCap, then Citizens,
24 then DOT.

25 EXAMINER NEWMARK: All right. Well, let's

1 follow the list then. Well, okay. On my witness
2 and exhibit list I have you first. So I was going
3 to let you go and do your cross first, but it's up
4 to you if you want to let someone else go before
5 you.

6 MR. THIEL: I just was prepared to listen
7 to the others first.

8 EXAMINER NEWMARK: Okay. Well, who wants
9 to go first then?

10 MS. OVERLAND: Does CUB?

11 MS. LOEHR: No.

12 MS. OVERLAND: Okay. I'm ready.

13 EXAMINER NEWMARK: All right. Go ahead.

14 CROSS-EXAMINATION

15 BY MS. OVERLAND:

16 Q Okay. Good morning, Mr. Hillstrom.

17 A Good morning.

18 Q Let's see. Starting with your direct, I noticed on
19 page 7 of your direct at the bottom, lines 20, 21, it
20 discusses Dairyland's funding of Dairyland's
21 ownership interest in the project, and so that -- I
22 just want a little clarification because I thought it
23 was funding capital costs. So is this correct that
24 the -- Iowa's funding would be for the ownership's
25 interest in the project?

1 A Yes. Because Dairyland would borrow money from the
2 rural utility service. They became the lead agency
3 for the federal EIS.

4 Q And for their ownership interest in the project as
5 opposed to, like, say, capital costs?

6 A I don't really understand the distinction.

7 Q What -- is it correct that what they're looking for
8 is financing for buying into the project and not for
9 financing for buying poles and wires and
10 right-of-way?

11 A Again, I don't understand the distinction, and that
12 may be a question that's better directed at
13 Dairyland.

14 Q All right. That's a little late for that, but I
15 wanted to check with you because you mentioned it
16 here. So I'll just take this as what it says.

17 Okay. On page 11, you bring up the
18 Highway 88 connector alternative, and what I wanted
19 to know is, when did the landowners there receive
20 notice?

21 A I don't recall exactly. It was -- it was a segment
22 that was brought in later in the process, so they
23 received notice later than the rest of the routes.

24 Q Can you think of rough -- is the notice entered into
25 the record?

1 A I'm sure it is.

2 Q Do you know where?

3 A Not off the top of my head, no.

4 MS. OVERLAND: Your Honor, may I check
5 with counsel?

6 MS. HERRING: Yes. We can provide that
7 after cross-examination. It doesn't seem like he
8 knows that right off the top of his head. We'd have
9 to look.

10 MS. OVERLAND: You're confident it's in
11 there somewhere? And then can you provide it?

12 MS. HERRING: I believe so.

13 MS. OVERLAND: Okay. We'll check that
14 later.

15 BY MS. OVERLAND:

16 Q What type of notice did they get of -- was it a
17 letter? Was it newspaper notice? All of the above?

18 A Again, I just don't recall. I don't recall when it
19 was that they were noticed or the form that they were
20 noticed. There were mailings that were performed by
21 the PSC, and there was notice performed by the
22 applicant, and I just don't recall when that happened
23 or which form that took.

24 Q So you're saying there also was another notice by the
25 PSC to those landowners?

1 A I believe the PSC had a notice of their EIS
2 availability.

3 Q I'll check with them. Okay. And I have a question
4 regarding -- this project was declared a fast-track
5 project, rapid response team for transmission. Are
6 you familiar with that?

7 A Yes.

8 Q Have you received any contact from the feds about
9 this fast tracking of this project?

10 A Yeah. There's been some conversations with the
11 group, the rapid response group.

12 Q Would that be like Lauren Azar, one of the co-chairs?

13 A I believe she's the person in charge of the rapid
14 response group, yes.

15 Q And has the applicants have -- they had contact with
16 her about this?

17 A Yes.

18 Q And what has been the discussion about this? What
19 I'm looking at is, what does this mean for this
20 project?

21 A What it is is it's a -- the real impact of this
22 project is is that it focus -- focuses the staff's
23 attention on our process, and it's the federal agency
24 staff, and in particular the RUS. And what I've seen
25 be the real benefit of it is that it sets timelines

1 and expectations from the federal agencies to -- to
2 look at our project and make sure that it doesn't get
3 stalled because of lack of attention. And so what it
4 has done is it's focused the federal agencies on
5 making sure the project moves through the process.

6 Q Has there been a perception that this project has
7 been stalled?

8 A There's -- just the nature of the federal processes
9 that we go through, they're slow, and there are --
10 there are some times when -- when things don't happen
11 very quickly on the federal process.

12 Q And you mentioned RUS. Is -- where is that at at
13 this stage?

14 A The federal Environmental Impact Statement, they've
15 issued a draft EIS.

16 Q Uh-huh.

17 A And I believe that is out for comment. They have
18 received comments, and they're addressing them, and
19 they will issue a final EIS sometime this summer.

20 Q Can a decision be made on this project in Wisconsin
21 prior to the final EIS, the federal RUS EIS?

22 A Yeah, I believe so, yes.

23 Q Okay. Oh. Looking at your exhibit list, I noticed
24 there were some U.S. Fish and Wildlife comments in
25 here. Are all of the U.S. Fish and Wildlife comments

1 in the record thus far? Are all the U.S. Fish and
2 Wildlife comments thus far in the record?

3 A I believe so. There is another letter that I think
4 has just come out regarding the original Q1 route,
5 and that letter I think is -- I just skimmed through
6 it. I looked at it in my e-mail box just a couple of
7 days ago. What that is, it's another letter from the
8 Fish and Wildlife Service documenting why the
9 original Q1 alignment is not compatible with the use
10 of the federal refuge, and that was a letter that was
11 produced through the federal EIS process.

12 Q Can that be entered into the record?

13 A I believe so, yes.

14 MS. OVERLAND: Is that --

15 MS. HERRING: We can submit that letter
16 via ERF.

17 EXAMINER NEWMARK: Okay. So that's
18 Hillstrom 48; is that right?

19 (Exhibit No. 48 designated for delayed receipt.)

20 BY MS. OVERLAND:

21 Q Is there a memorandum of understanding with U.S. Fish
22 and Wildlife between the applicants and U.S. Fish and
23 Wildlife?

24 A No. Not that I can recall, no.

25 Q Okay. Are you familiar with -- I notice you have the

1 2007, oh, it was avian something or other and --
2 guidelines. And are you familiar with a more recent
3 version of transmission guidelines, specifically
4 transmission guidelines from U.S. Fish and Wildlife?

5 A I was aware that another document came up, but I have
6 not looked at it.

7 Q And are you aware that that is specifying
8 transmission?

9 MS. HERRING: Objection, Your Honor.
10 Calls for speculation. The witness has just said he
11 had not reviewed that.

12 MS. OVERLAND: He said he looked at it.

13 EXAMINER NEWMARK: Sustained.

14 MS. OVERLAND: I looked at it I think was
15 his --

16 THE WITNESS: I said I was aware that
17 there was another document that came up, but I had
18 not looked at it.

19 EXAMINER NEWMARK: Right. Sustained.

20 BY MS. OVERLAND:

21 Q Are you aware of the title of the document?

22 A No.

23 Q Are you familiar with U.S. Fish and Wildlife
24 guidelines for avian protection plans?

25 A Generally, yes.

1 Q Have you submitted an avian protection plan for this
2 project?

3 A No. And I want to clarify avian protection plan,
4 just the term of that. There's an -- Xcel Energy has
5 an avian protection plan for Xcel Energy facilities,
6 and that's a broad sort of inventory of our entire
7 system. And what it does is it documents our entire
8 system, and it prioritizes areas that pose a threat
9 to birds, and it also lists retrofit measures on a
10 priority system of that.

11 So Xcel Energy has voluntarily entered
12 into the system-wide avian protection plan that will
13 improve the system and its threat to birds, minimize
14 the threat to birds. So that's an overall
15 company-wide avian protection plan. Now, specific
16 avian protection plan for the project is different
17 than that, and we do intend to do that.

18 What we can -- what that will consist of
19 is the various studies that have already been
20 performed in the three different EISs that are being
21 prepared, and what it will amount to is recapping
22 those studies and showing how the measures that we've
23 already implemented in our proposal, how we designed
24 the project to minimize the impact to birds. And
25 again, that will be supplemented, what we've already

1 proposed will be supplemented with future measures
2 such as mark -- putting flight diverters on lines.

3 Q Okay. Are you aware that in Minnesota in an area
4 where the project could pass through, that an avian
5 protection plan for a wind project there was denied
6 recently?

7 A I heard that on the news, yeah.

8 Q Does that do anything to heighten your concern about
9 impacts on this project on eagles?

10 A It's an issue that we've been aware of, and I think
11 that our proposal -- first of all, our proposal does
12 have a lot of measures. We've designed the
13 structures that have sensitive areas to minimize the
14 impacts to birds. Now, with eagles in particular,
15 there's not a whole lot of data showing that
16 transmission lines are a threat to eagles because the
17 type of birds that may run into power lines are more
18 of the waterfowl, the larger sort of ungainly fliers.

19 Q Uh-huh.

20 A Not so much the good flying birds like eagles that
21 also have the good vision. So being that eagles are
22 good fliers and they can see very well, they don't
23 run into wires very much. And the other threat to
24 birds is electrocution.

25 Q Uh-huh.

1 A And what we have with the transmission lines,
2 anything 115 kilovolts or above has the kind of
3 clearance that you need between an electrified
4 conductor and a grounded surface, that that clearance
5 is so great that there's virtually no chance that a
6 bird could hit both surfaces at once.

7 Q Will this project require an Eagle Take Permit from
8 U.S. Fish and Wildlife?

9 A That's something that we'll have to figure out.

10 Q So it's a possibility?

11 A Yeah.

12 Q What does that involve?

13 A An Eagle Take Permit would typically involve
14 performing monitoring and, again, making sure that
15 the proposal has all the potential measures in it
16 that would reduce the likely impact to birds.

17 Q And is it correct that an Eagle Take Permit means
18 that they're presuming eagles will be killed or at
19 least an eagle will be killed?

20 A Yes. I believe that part of that Eagle Take Permit
21 is figuring out, you know, what's the -- what's a
22 possible number of birds that could be killed by a
23 project and then that's the authorization. You have
24 protection from prosecution if that number of birds
25 hits your line, you're approved to -- for that

1 number.

2 Q Okay. Is it your understanding that a step
3 preliminary to actually applying for an Eagle Take
4 Permit is a preliminary application, like a
5 preapplication?

6 A No. I'm not aware of that.

7 Q How does the process work that you know of then?

8 A I don't know. It's just we -- we have talked to
9 them, the Fish and Wildlife Service about that.

10 Q Uh-huh.

11 A They have not laid out the steps that we need to take
12 to get to that point.

13 Q What if they didn't issue an Eagle Take permit?

14 A Well, an Eagle Take permit, what that is is sort of a
15 risk reduction for the companies, the applicants.
16 It's not something that's mandatory. So it's the
17 company's decision on whether they want to reduce
18 that risk of being prosecuted or not.

19 Q Uh-huh. So essentially if -- so is what you're
20 saying then, if you applied and they did not issue
21 one, would you still go ahead and build the
22 transmission line?

23 A I believe so. And I also believe that the likelihood
24 of eagles running into the -- into the transmission
25 line is very low.

1 Q And your basis for that? You explained some of that,
2 so -- would you agree that the Mississippi River
3 corridor is an eagle migratory path?

4 A Yes.

5 Q I have a question on some of your exhibits. Let's
6 see. Here we go. Would you take a look at
7 exhibit -- I just need some clarification on
8 Exhibits 30 and 31. And if there are more updated
9 versions of these, please let me know because I'm not
10 keeping up with the exhibits. Are you there?

11 A Yep.

12 Q Now, first about the -- there's some different types
13 of corridors listed, and as you know, Minnesota has
14 the nonproliferation treaty theory -- of policy
15 actually for transmission. These are listed in a
16 similar manner. Does Wisconsin have nonproliferation
17 requirements for corridors?

18 A Wisconsin has statutes that list siting priorities.
19 And I don't recall the statute number, but what it
20 does is it prioritizes existing infrastructure that
21 the applicants would prioritize in selecting routes,
22 potential routes.

23 Q And then the categories would be, like, transmission
24 line, would that be the highest priority?

25 A Yes.

1 Q That's listed first. And then railroads?

2 A I believe railroads and highways are lumped together.

3 Q And railroads and highways are together. And is it
4 correct that property lines and field boundaries is
5 not one of those priorities?

6 A I believe that's right. I don't think that's in
7 there.

8 Q Okay. Did you do a tabulation of century farms in
9 the path of the construction on the line?

10 A On this particular table?

11 Q Not in that table, but anywhere. Because I'm not
12 seeing it.

13 A I don't believe that was a criteria that we -- we
14 generated data for.

15 Q Okay. Okay. In your rebuttal -- well, I don't have
16 it so I have to wing it. In your rebuttal on pages 4
17 and 5, you're referring to habitat fragmentation, and
18 you're stating that on -- Highway 35 has a greater
19 impact than the transmission line would have, and I'm
20 wondering if you could explain the basis for those
21 statements. It's rebuttal, page 4, lines 13 to 23,
22 and then page 5, lines one through eight.

23 A Okay. Would you mind repeating the question?

24 Q Sure. When you're stating that, a summarization of
25 it, that the Highway 35 corridor would have a greater

1 impact than the transmission line corridor and
2 fragmentation, is that -- first, is that an accurate
3 summary?

4 A I don't think that's what I'm saying here, but I
5 addressed that topic in my sur-surrebuttal.

6 Q Is it in the sur-surrebuttal?

7 A Yeah.

8 Q No.

9 A The concept of a highway having a greater
10 fragmentation effect than a transmission line, is
11 that what you were getting at?

12 Q Okay. All right. That's a concept. So why would
13 you say that the highway would have a greater
14 fragmentation effect? Well, first, the highway's
15 pre-existing, correct?

16 A Right.

17 Q Okay. And why would that have a greater
18 fragmentation effect than --

19 A Well, for the -- I list the reasons in my
20 sur-surrebuttal. Honestly I can't say it better than
21 it's written there.

22 EXAMINER NEWMARK: Can you just point to
23 the page in there?

24 MS. OVERLAND: Okay. Then that will speak
25 for itself.

1 EXAMINER NEWMARK: What page are you
2 referring to?

3 MS. OVERLAND: Page 5?

4 EXAMINER NEWMARK: 4 and 5.

5 THE WITNESS: Page 4.

6 EXAMINER NEWMARK: 4, okay.

7 BY MS. OVERLAND:

8 Q But would you agree that it's not binary? If we're
9 talking about two potential sources of fragmentation,
10 wouldn't that be cumulative and not binary?

11 A Well, the argument that I'm making on the initial
12 place where you pointed to in my -- in my rebuttal,
13 page 4, is that the concept of fragmentation is -- is
14 just the definition of fragmentation, breaking a
15 large thing into smaller pieces.

16 Q Uh-huh.

17 A The existing Q1 corridor goes through a large block
18 of habitat.

19 Q Uh-huh.

20 A The idea of building the Q1-Highway 35 route and
21 placing the proposed line adjacent to the highway and
22 then bringing that more remote existing Q1 line and
23 putting it along with it in my view reduces the
24 overall fragmentation of the Black River. And I also
25 have a graphic that explains or that shows that

1 concept in my -- I think it's in my rebuttal
2 testimony. And the idea is -- to sum it all up is
3 that the highway is a more intense source of
4 fragmentation than a power line. So to take a power
5 line out of a big block of habitat, place it next to
6 the highway, is a way that you can reduce the overall
7 fragmentation of the Black River.

8 Q So then are you saying in comparison with putting a
9 transmission line somewhere else, or are you saying
10 that reduces the impact of --

11 A No. What I'm saying is that if you compare the
12 existing condition --

13 Q Uh-huh.

14 A -- to what we're proposing, we remove a remote source
15 of fragmentation and rejoin two big blocks of habitat
16 and put the -- the proposed line near a more intense
17 fragmentation, therefore consolidating corridors in
18 one general area.

19 Q Well, if you're saying you removed one, isn't it the
20 plan that if one -- if the corridor's removed, that
21 it would remain a corridor and an easement and it
22 wouldn't be -- revert back to the owners?

23 A If we remove the existing Q1 line to the Black River?

24 Q Anywhere you remove a line.

25 A Yeah. The line would be gone. The trees could grow

1 back. It could be subject to a restoration plan to
2 make sure that it grows back. Based on what I've
3 seen in other corridors -- again, in my
4 sur-surrebuttal I provide documentation of a line
5 that was removed in the 1990s and the current picture
6 that shows that it has regrown back to its forested
7 condition.

8 Q So then you don't have an intent of keeping it as an
9 easement? The Applicants don't have the intent of
10 keeping it as an easement for potential future use?

11 A Not that I know of. It's a Dairyland easement, and I
12 don't -- even if they kept it, I don't see any reason
13 that they would prevent the trees from growing back.
14 But again, I can't speak for Dairyland.

15 Q Okay. Was that the case of the Q3 on the other side
16 of the river on this line, that it would remain as an
17 easement if it were removed?

18 A If -- if -- no, no. Because the -- in Minnesota,
19 there was no proposal that involved removing the Q3
20 line.

21 Q Okay. Okay. Thank you. One second. Oh. I didn't
22 get a chance to talk to Ms. King about this, and
23 you're sponsoring most of the application. Are you
24 responsible for the magnetic fields part of the
25 application?

1 A Yeah. I directed development of the application.

2 Q Okay. In the chart of magnetic fields -- do you
3 have -- I don't have my application. I could run
4 back and get it.

5 MS. OVERLAND: Oh, George --

6 MS. AGRIMONTI: What part do you need,
7 Ms. Overland?

8 MS. OVERLAND: Pardon?

9 MS. AGRIMONTI: What appendix do you need?

10 MS. OVERLAND: I need the magnetic field
11 part, which I think is in the application proper.
12 Is it E or --

13 MS. AGRIMONTI: I don't know.

14 EXAMINER NEWMARK: Let's go off the
15 record.

16 (Discussion off the record.)

17 EXAMINER NEWMARK: Let's get back on.

18 BY MS. OVERLAND:

19 Q Appendix U of the application.

20 A All right. I have it.

21 Q Okay. This is very small and difficult to read. I'd
22 like, if you could, turn to the page of the
23 representative sample of the line where we could read
24 the magnetic fields.

25 EXAMINER NEWMARK: What page are you on?

1 MS. OVERLAND: Right now it would be
2 page -- I'm on page 6 of 6. It's identified at the
3 top. It's a drawing. I'll find a better one. How
4 about if we take 5 of 5 -- 5 of 16 where it's the
5 345, 345/161 kV tangent triple. It would be page 5
6 of Appendix U. It's the horizontal configuration.

7 THE WITNESS: Are you looking at the
8 drawing number in the lower right-hand corner?

9 MS. OVERLAND: Drawing number -- I was
10 looking at the PDF page number. The drawing number,
11 S5-1.

12 EXAMINER NEWMARK: Okay. Thanks.

13 THE WITNESS: I'm there.

14 BY MS. OVERLAND:

15 Q Okay. In this chart, you give a 2015 normal load,
16 2015 normal peak, 2025 normal load, 2025 normal peak.
17 Can you explain what the amperage levels are for
18 that? There are some identified below, but I'm not
19 sure that they represent the numbers in the chart.
20 Because I'm looking for amperage levels associated
21 with these normal load/normal peak figures.

22 A I -- you know, I don't think I can add anything to
23 this table. The PSC has filing requirements, and
24 those requirements are for us to submit data in a
25 very prescribed fashion, and this is the fashion

1 that -- that they've asked us to submit the data.
2 And I can see amperages are listed there, and I can
3 see that the values that you mentioned are mentioned
4 there.

5 Is there a specific question?

6 Q All right. Well, then maybe this might help. For --
7 if you look at that amperage line, am I interpreting
8 this correctly to mean that 304.6 amps for a 345 line
9 for 2015, would that be correct?

10 A I'm having a hard time reading this. I'm coming to
11 the conclusion over the past two weeks that I need
12 reading glasses, and I can't see.

13 Q You can borrow mine. Okay. Looking at this -- let
14 me try this another way.

15 Looking at this under the amperage line
16 below the table, it lists an amperage and then a
17 voltage level, another amperage, another voltage
18 level for 2015, and then where it says and, and then
19 it has an amperage level, voltage level for 2025.
20 So, would you agree that this probably says that --
21 304.6 amps for 2015 and 354.8 amps for 2025?

22 A You know, I just -- I have to let the page speak for
23 itself. I don't think I can add anything to it.

24 Q Is there anyone that can explain where this came from
25 and what the information means?

1 A I think that Amanda is the one that probably
2 developed the amperages.

3 Q Okay. I'll try to deal with it through the PSC then.

4 Okay. Let's go to river crossings. This
5 line has a Mississippi River crossing, and is it
6 correct that when the Minnesota certificate of need
7 was applied for, there were four river crossings
8 proposed?

9 A Three or four.

10 Q Okay. And then for RUS, is it correct that that was
11 narrowed down to three?

12 A Yes.

13 Q And then for the Minnesota routing and for this
14 application, which includes both need and routing, it
15 was narrowed down to one crossing at the Alma?

16 A Yes.

17 Q And undergrounding isn't talked about much in this
18 application, but there is an undergrounding for the
19 river crossing; is that correct?

20 A Yes.

21 Q And which -- is that in an appendices?

22 A I know that it's in the Minnesota route permit
23 application, and I don't recall if it's in the
24 Wisconsin CPCN application.

25 MS. OVERLAND: It is, isn't it? One

1 moment.

2 MS. HERRING: Yes, Ms. Overland, it is in
3 the CPCN application. I'm just not sure exactly
4 what appendix it is.

5 MS. OVERLAND: I think it might be
6 Appendix E.

7 MS. HERRING: It's Appendix F.

8 MS. OVERLAND: Appendix F, okay.

9 BY MS. OVERLAND:

10 Q Why did the -- well, apparently undergrounding wasn't
11 a very high priority or a high -- you didn't regard
12 it as a highly potential result, but can you tell me
13 what the per mile undergrounding was for that river
14 crossing?

15 A As I remember it out of that study, I think that the
16 entire underground river crossing came in at about
17 \$90 million.

18 Q And for what distance?

19 A I -- I don't remember exactly the distance.

20 MS. OVERLAND: Okay. I'll just let the
21 appendix speak for itself. We'll do it that way.
22 Okay. That's in the sur-surrebuttal.

23 I have no further questions.

24 EXAMINER NEWMARK: Okay. Okay. Who's
25 next?

1 MS. WHEELER: I have a few.

2 EXAMINER NEWMARK: Draw straws.

3 MS. WHEELER: I have some questions. I'm
4 happy to go, or whoever wants.

5 EXAMINER NEWMARK: Okay.

6 CROSS-EXAMINATION

7 BY MS. WHEELER:

8 Q Okay. Mr. Hillstrom, I just have a few questions,
9 all pertaining to wetlands impacts, for you. Could
10 you explain the difference for me between an impacted
11 and affected wetland?

12 A Sure. I can -- I can provide an overall explanation
13 of that, not particularly focused on any one area.
14 The wetland impacts, and particularly wetland impacts
15 from the powerline, can fall into several categories.
16 The first category is -- is pretty cut and dry,
17 wetland impact where you are changing a wetland into
18 a non-wetland by filling in that wetland. And for
19 that calculation and that measure, it's the area of
20 the pole foundation where you -- where you build the
21 foundation that is -- and you take away existing
22 wetland that's no longer a wetland. That's one
23 measure.

24 Another measure is where you change the
25 type of a wetland. A good example of that is a

1 forested wetland that you cross and you have to
2 clear the trees off of that wetland. It remains a
3 wetland, but you're changing the type to forested to
4 non-forested.

5 And there are temporary impacts that you
6 get from having to drive across wetlands and perhaps
7 having to put matting down that would create a
8 temporary impact. I think those are the three
9 general categories.

10 Q So can you clarify which one of those are affected
11 versus impacted?

12 A You have to give me the context of what you're
13 talking about.

14 Q Well, there are some tables within the EIS, I
15 believe, that states a difference between an affected
16 impact -- an affected wetland and impacted wetland.
17 Are you aware of what I'm referring to?

18 A In general. But again, what the PSC asked us to do
19 is provide data in a very prescribed fashion. So
20 they take that data and prepare the EIS, so I don't
21 think I can speak for the EIS semantics.

22 Q Okay. Do you -- could you also explain the
23 difference between a modified and a disturbed
24 habitat?

25 A It's probably the same answer. That's probably the

1 EIS semantics, and I probably am not the best one to
2 speak to that.

3 Q Okay. On your rebuttal testimony on page 21, you
4 indicate that you are still in discussions with the
5 DNR regarding Segment 8B of the proposed line, and
6 that is the reason that there are no wetlands impacts
7 associated with Segment 8B and the EIS. Have you
8 finished these discussions with the Department of
9 Natural Resources?

10 A No. But what we've -- what this discussion is is
11 that there's -- the two ways that we could build this
12 section are accessing it on the ground or building it
13 via helicopter, and the more that we looked at it,
14 the more we talked to our contractors, the more we're
15 leaning toward helicopter construction. And that
16 would mean not only placing the structure there but
17 actually installing the foundation via helicopter.
18 So that would eliminate the need for heavy equipment
19 access, and that's what most of the data in this
20 reference table was about, it was about stream
21 crossings and access routes that you would need to
22 get the heavy equipment in there.

23 Q Okay. And even if you construct the Segment 8B
24 portions of the route with helicopters, there will
25 still be -- there will still be impacts to wetlands

1 in that area?

2 A Yes. There will be -- like we talked about earlier,
3 there will be poles that will be placed in wetlands,
4 and there will be clearing of trees.

5 Q Okay. In your rebuttal testimony on page 19, you
6 discuss the use of construction matting as a way to
7 avoid impacts to Southern Sedge Meadows. Can you
8 tell me how tall an average tussock sedge is?

9 A I would estimate 10, 12 inches.

10 Q Okay. And I've never worked with construction
11 matting before. Can you tell me what the clearance
12 underneath the matting would be?

13 A The matting is placed flat on the ground.

14 Q Okay.

15 A But again, if there's snow on the ground, the matting
16 can be placed right over the top of that snow. That
17 can provide some cushion. And from my -- I don't
18 have specific experience with tussock sedge
19 regeneration, but I know that wetland plants generate
20 really quickly from their root stock, and by
21 compressing the vegetative layer on top doesn't
22 destroy the roots. So I would expect them to grow
23 back.

24 Q Okay. Also in your rebuttal testimony on page 19 you
25 note that there are only seven habitat communities

1 within all of the proposed alignments that are
2 described as Southern Sedge Meadows. Are you aware
3 of the acreage, total acreage, of those seven habitat
4 communities?

5 A No, not off the top of my head.

6 Q Okay. Do the Applicants expect to need to provide
7 compensatory wetland mitigation for permanent wetland
8 impacts?

9 A Yes.

10 Q Okay. Are you familiar with the federal and state
11 guidelines for compensatory wetlands mitigation?

12 A Just generally. I think that's an Army Corp. of
13 Engineers' document, if I'm right.

14 Q Do you know what mitigation ratio will be applied to
15 this project?

16 A We have talked with the Corp. of Engineers, and while
17 we have not settled on a -- on a hard-and-fast
18 number, I can tell you what it's been in the past for
19 other transmission projects. For permanent wetland
20 impacts where you actually remove a wetland and fill
21 by filling it, those impacts are generally mitigated
22 by a ratio of 1-to-1 or 2-to-1, somewhere in that
23 range. Change of type impacts are generally
24 mitigated at a ratio of .25-to-1, which means if you
25 clear four acres of trees, you change the type and

1 you replace that with one acre of new wetland.

2 Q And would you agree that those ratios could be
3 increased if -- depending on the quality of the
4 wetlands that are impacted?

5 A The ratios are not set hard and fast like I said,
6 yes.

7 Q Have -- has your company done a quality assessment of
8 the various encountered wetlands along the routes?

9 A Yes. In the documentation of the permit application
10 and the associated DNR permit, there's a lot of data
11 in there assessing the vegetative communities and the
12 overall quality of each wetland.

13 Q Okay. With regard to the Department of
14 Transportation's assertion that they will require
15 undergrounding lines where they cross a DOT
16 right-of-way and/or scenic easement, have you
17 analyzed the wetland impacts of undergrounding the
18 line?

19 A No.

20 MS. WHEELER: Okay. I think that's all my
21 questions. I have no more questions.

22 EXAMINER NEWMARK: Okay. More cross?

23 MR. THIEL: Yes.

24 EXAMINER NEWMARK: Okay.

25 CROSS-EXAMINATION

1 BY MR. THIEL:

2 Q You filed a statement, Mr. Hillstrom, your direct
3 testimony, on January 9th. At that time it was
4 157989. I think it now is 160584. On page 13, line
5 10, you state that the Q1-Highway 35 route
6 alternative is the least cost option.

7 Subsequent to that statement, have you
8 taken into account the Department of Transportation's
9 position with regard to permitability on the Q1-35
10 route alternative?

11 A No. I think this ground was covered yesterday, that
12 the DOT's position of undergrounding at crossings
13 came in just a matter of a week or two ago, and we --
14 we obviously -- we have not accounted for that in our
15 costs.

16 Q So you were not able to consider that in any of your
17 surrebuttal or sur-surrebuttal testimony?

18 A No.

19 Q And is there any reason?

20 A Any reason why we didn't?

21 Q Yes.

22 A Well, I guess that we're a little bit unsure of
23 the -- of the position and even the rationale for
24 doing that. And I want to go back to a letter that
25 was submitted by Secretary Gottlieb where he

1 concluded that undergrounding is not feasible, and he
2 also indicated that -- that crossings would be
3 allowed overhead.

4 And secondly, I'm assuming that this would
5 be required for an aesthetic mitigation measure. And
6 when you think of undergrounding a crossing, you need
7 to install basically a substation at each transition
8 point, which in my opinion would be a greater
9 aesthetic impact than going overhead with the
10 crossing.

11 EXAMINER NEWMARK: Is Gottlieb's letter in
12 the record?

13 THE WITNESS: Yes, sir.

14 EXAMINER NEWMARK: Is it an exhibit or in
15 the application?

16 MS. HERRING: I believe it's an
17 attachment -- an exhibit to Mr. Hillstrom's
18 testimony. Let me find that number for you.

19 MS. AGRIMONTI: Hillstrom 19.

20 EXAMINER NEWMARK: Okay. Thank you.

21 MR. THIEL: That's PSC reference 156191.

22 EXAMINER NEWMARK: Go ahead.

23 MR. THIEL: And the response to that
24 letter from the Federal Highway Administration is
25 PSC reference 159 -- excuse me. Is exhibit --

1 Fasick Exhibit 2.

2 EXAMINER NEWMARK: Okay. Thanks.

3 BY MR. THIEL:

4 Q Are you aware of the analysis that was provided as
5 part of Mr. Fasick's direct testimony with regard to
6 each one of the nine route alternatives as what would
7 be required?

8 A Yes, sir.

9 Q Are there any routes that do not require
10 undergrounding according to that statement?

11 A I can't speak for Mr. Fasick. I don't have the
12 document in front of me.

13 Q Are you aware that some of the routes would -- from
14 DOT's position would require undergrounding to be
15 permissible?

16 A That is how I recall Mr. Fasick's statement, yes.

17 Q But you have no cost estimate of that for any of
18 those other routes as well?

19 A I'm sorry, can you be more specific?

20 Q Yes. On the original Q1 route, DOT's position is
21 that it would only issue a permit if the transmission
22 line was placed underground on all scenic easements,
23 on any WisDOT right-of-way along the Great River Road
24 National Scenic Byway, except for Segment 18H. With
25 regard to Q1-Highway 35, DOT would only issue a

1 permit if the transmission line was placed
2 underground on all scenic easements, on any WisDOT
3 right-of-way along the Great River Road National
4 Scenic Byway, except for Segments 9 and 18H. With
5 regard --

6 MS. HERRING: Objection, Your Honor. Is
7 he reading Mr. Fasick's testimony right now?

8 MR. THIEL: He asked to have his memory
9 refreshed.

10 MS. HERRING: Would it be better to
11 provide Mr. Hillstrom with a copy of that testimony
12 rather than reading it into the record?

13 MR. THIEL: Well, I think for my purposes
14 it's just to established that he has not considered
15 this position of DOT is sufficient.

16 BY MR. THIEL:

17 Q That's correct? You have not considered it?

18 A I believe this is the same line of questioning that
19 was with Grant Stevenson yesterday.

20 Q No, no. I'm just asking if you considered this
21 position.

22 A And I believe Grant Stevenson answered that question
23 yesterday, that the DOT's position that
24 undergrounding at the crossings came in late, and the
25 cost of doing that is not included in our cost

1 estimates.

2 Q Are there any routes which DOT would not require
3 undergrounding?

4 A Again, you're asking me to reinterpret your own
5 witness's testimony. I can't do that.

6 Q No. I'm just asking if you've considered those
7 routes that don't require undergrounding in any
8 fashion to adjust your testimony as to what's the
9 least cost alternative.

10 A I'm sorry, could you rephrase that?

11 Q Have you considered DOT's position on any of the
12 routes which do not require undergrounding in your
13 determination of what is the least costly
14 alternative?

15 A Again, I'll just reiterate that the DOT's position on
16 undergrounding at crossings came in late, and we did
17 not have time or we did not -- our cost estimates
18 were not done before the DOT's position was -- was
19 put out there.

20 Q Are you aware that the Final Environmental Impact
21 Statement indicates on page -- it looks like it's
22 page 26 regarding agency permitting approvals, that
23 DOT had potentially unpermissible segments on every
24 route?

25 A Could I see the document?

1 MS. HERRING: I'm sorry. What page are
2 you on, Mr. Thiel?

3 MR. THIEL: It's Roman numeral 26, Volume
4 1 of the final EIS.

5 MS. HERRING: I found it.

6 THE WITNESS: Yes. Yes, sir, I have read
7 that paragraph.

8 BY MR. THIEL:

9 Q So when Mr. Fasick offered his direct testimony
10 subsequent to this, you realize that he removed the
11 objections and said that the last four routes would
12 be permissible without undergrounding?

13 A You know, again, I -- I can't interpret what
14 Mr. Fasick has said. I believe that's the general
15 message.

16 Q Are you aware that the preparer of the final EIS also
17 amended this chart to indicate that those four routes
18 were permissible by DOT?

19 A No. I was not aware of that, no.

20 Q In Mr. Fasick's surrebuttal, PSC reference 160641, he
21 clarified his official position on the Q1, Q1-35, and
22 Q1-Galesville routes. Are you aware of his
23 clarification?

24 A Yes. But I think if you have a specific question, I
25 would like to look at the document.

1 Q Well, I'm just asking if you considered his
2 clarification in your sur-surrebuttal.

3 A In -- do you have a specific area that you're asking
4 about?

5 Q Well, in your sur-surrebuttal on page 5, all you
6 mention is constructabililty report and memorandum of
7 understanding, but you don't address any of the other
8 issues you mentioned in Mr. Fasick's surrebuttal. Is
9 there any reason for that?

10 A I don't know how to answer the question. I don't
11 really understand what you're getting at.

12 Q Well, I'm just asking you if you considered
13 Mr. Fasick's clarification of the department's
14 position regarding the Q1, the Q1-35, and the
15 Q1-Galesville routes in his surrebuttal testimony
16 when you filed your sur-surrebuttal. And if not, why
17 not?

18 A I can say that I didn't address it specifically in my
19 sur-surrebuttal. I'm having a hard time coming up
20 with a reason why I did not do something. I need a
21 more specific question.

22 Q Well, so are we. I mean -- over the years have you
23 had many conversations with Mr. Fasick regarding
24 this -- these route alternatives?

25 A Yes, sir.

1 Q And you were aware that DOT would or would not issue
2 permits based upon those route alternatives; is that
3 correct?

4 A We -- we assumed that the DOT would issue permits.

5 Q How did you reach that conclusion?

6 A Well, we -- we worked with the DOT to -- to develop a
7 route that minimized the aesthetic impacts. We did
8 everything we could to address the concerns of the
9 DOT except remove that route from consideration, and
10 we could not remove that route from consideration
11 because it -- it complies with the siting statutes.
12 It not only has existing transmission lines, it
13 follows existing highways and existing railroads.

14 So the route was in consideration, and it
15 is in consideration because we feel like it has to
16 be. It has all those siting priorities going for it,
17 and it's the most direct route. So we worked with
18 the DOT to -- to come up with the best proposal on
19 that route that would minimize the impacts. We've
20 done our best to stay out of the scenic easements
21 and, like I said, we've assumed that crossings are
22 okay because that's the message that we've got. And
23 in particular, I'll again reference the letter from
24 Secretary Gottlieb. We -- we have to assume that
25 that's permissible, the crossings.

1 Q Well, the Secretary's letter speaks for itself, among
2 other correspondence.

3 Why were you, in your testimony in
4 Ex-Applicant-Hillstrom-Rebuttal-36, that DOT did not
5 produce any evidence that federal funds were used to
6 acquire any of the WisDOT scenic easements?

7 MS. HERRING: I'm sorry, Mr. Thiel. What
8 page are you on? His rebuttal only goes to page 23.

9 MR. THIEL: I'm talk about Exhibit 36,
10 Rebuttal Exhibit No. 36.

11 THE WITNESS: Again, even if I had reading
12 glasses for this, it would be very cryptic for me.
13 I can't understand what this means.

14 BY MR. THIEL:

15 Q What what means? Your statement?

16 A No. Exhibit 36. It's the exhibit that you were
17 referring to.

18 EXAMINER NEWMARK: Let's go off the record
19 for a second.

20 (Discussion off the record.)

21 EXAMINER NEWMARK: All right.

22 BY MR. THIEL:

23 Q So you're stating that the information provided by
24 DOT did not indicate any federal funds were used to
25 acquire scenic easements?

1 A I'm saying that I can't make that interpretation, and
2 it's not only because of the quality of the copy,
3 it's just that it's not something that I have the
4 means to interpret.

5 Q That's not what you have stated though. I believe
6 your statement --

7 "Q. Has WisDOT produced any evidence that
8 federal funds were used to acquire any
9 WisDOT easements?

10 A. No."

11 A In -- and that's my interpretation, is that this to
12 me does not amount to the finding that there's been
13 federal funding.

14 Q How do you come to that conclusion?

15 A That this exhibit did not convince me that there's
16 federal funding.

17 Q Have you considered Mr. Fasick's surrebuttal
18 indicating that those documents do indicate federal
19 funding?

20 A No. But I would -- I would --

21 Q That's enough. You haven't considered it.

22 A No. And I would offer that Mr. Fasick is more
23 qualified to interpret this than I am.

24 Q But you responded to the rest of his surrebuttal
25 testimony in some fashion, didn't you?

1 A I'm sorry, what was the question again?

2 Q Well, you responded to other parts of Mr. Fasick's
3 surrebuttal. Why didn't you respond to that part?

4 A I don't know. Again, it's hard to come up with a
5 reason for something you didn't do. We respond to
6 points in rebuttal in testimony that we would like to
7 make a counterpoint to.

8 Q So you did not challenge it?

9 A No.

10 Q In your sur-surrebuttal you consider
11 Mr. Waldschmidt's surrebuttal testimony. This is on
12 page 4 of your sur-surrebuttal.

13 A Okay.

14 Q I don't want to mischaracterize your previous
15 testimony, but did you say the reason there is less
16 impacts is because you're putting your transmission
17 line alongside the existing highway?

18 A That's a fair summary. And again, I explained it
19 earlier that we're removing an existing --

20 Q No. That's -- that was your testimony.

21 MS. HERRING: Your Honor, I would ask the
22 witness be allowed to finish his response.

23 EXAMINER NEWMARK: Yeah. Go ahead.

24 THE WITNESS: It's what I described
25 earlier. Removing an existing remote crossing

1 through a habitat, placing it next to an existing
2 infrastructure, that in my estimation reduces the
3 overall fragmentation.

4 BY MR. THIEL:

5 Q But in fact is that what you're doing on the Q1-35
6 route?

7 A Yes, sir. The Q1-Highway 35 route proposes to build
8 the new transmission line along with the existing Q1
9 line, like Mr. Stevenson mentioned yesterday, in the
10 neighborhood of 350 to 390 feet off of the existing
11 highway.

12 Q Well, I won't belabor it because I think the Final
13 Environmental Impact Statement speaks for itself as
14 to where it's located or proposed to be located.

15 On page 4, lines seven and nine of your
16 surrebuttal, you state, "In my opinion, a highway
17 corridor represents a more intense fragmentation
18 than a transmission line."

19 Are there instances where a transmission
20 line corridor could be a more intense source of
21 fragmentation than a roadway?

22 A I -- no, I don't think so.

23 Q Is your rebuttal and surrebuttal testimony related to
24 fragmentation density based on the actual application
25 before the Commission, or is it based on general

1 assumptions?

2 A I'm sorry, I don't understand the question.

3 Q Well, I don't believe you've looked at every segment
4 of every route to come to that conclusion. You just
5 made some generalizations.

6 MS. HERRING: Objection, Your Honor. I
7 believe Mr. Thiel is testifying rather than a
8 question.

9 MR. THIEL: That's true, but I've heard
10 testimony from other counsel earlier, too.

11 EXAMINER NEWMARK: Well, I think you're
12 asking a question, did you go through the
13 application and apply your theory to the line, to
14 the routes?

15 THE WITNESS: No, sir. What I was
16 focusing on there, and it's illustrated by
17 Exhibit 34, is the -- the concept of fragmentation
18 and the Black River floodplain. And you can see the
19 orange line on that figure is the Q1 -- the existing
20 Q1 alignment. The proposed block shows the proposed
21 condition under the Q1-Highway 35 alignment, and
22 what -- what that -- what I'm referring to as a
23 reduction if fragmentation is the removal of the
24 orange line and placing it and consolidating it with
25 the highway line shown on the right-hand side of

1 that graphic.

2 MR. THIEL: I'm sorry. I don't have that
3 handy.

4 MS. HERRING: I have a noncolor version of
5 that. That's a black-and-white copy.

6 BY MR. THIEL:

7 Q Can you relate that, Applicants' Hillstrom 34, to any
8 part of the final EIS, any segment of the final EIS?

9 A I -- I don't know.

10 Q It looks like it's Trempealeau and La Crosse County
11 according to this exhibit.

12 MS. HERRING: Mr. Hillstrom can clarify
13 where the location of this map is.

14 THE WITNESS: Exhibit 34?

15 MR. THIEL: Yes.

16 THE WITNESS: Is the Black River
17 floodplain. I'm sorry, are you asking what segment,
18 what route segment?

19 MR. THIEL: Yes.

20 THE WITNESS: It's the Segment 5 and 8,
21 and I don't have a segment map in front of me, so
22 I'm just going to describe it, where it is. It's --
23 the feature that we're showing on this -- on this
24 photo is the Black River floodplain. Highway 35
25 goes east/west across the Black River floodplain,

1 and south of the highway is the diagonal line, which
2 is the existing Q1 line through the Black River
3 floodplain.

4 BY MR. THIEL:

5 Q There are 5 segments known as Segment 5A, 5B, and 5C,
6 and there are three Segments 8, Segment 8A, 8B, and
7 8C. Can you pinpoint this?

8 A I believe it's Segment 8B and 5B.

9 Q So you're stating that by taking out the line in the
10 Van Loon area where U.S. Fish and Wildlife says they
11 won't allow it anyway, you're moving that over to the
12 highway?

13 A Yes, sir.

14 Q Is that the only segment that you've analyzed like
15 this?

16 A That is a proposal for the Q1-Highway 35 route that
17 our proposal assumes consolidation of that existing
18 segment of the Q1 line with our proposal.

19 Q But only in the segment have you analyzed the impact
20 consolidation; is that correct?

21 A No. All the -- all of the other routes also have
22 consolidation or double-circuiting, and that analysis
23 is embedded in all of the data.

24 EXAMINER NEWMARK: Mr. Hillstrom, I just
25 want to interject while we have the exhibit in front

1 of us. I was just curious. The width of these
2 lines, are they in any way correlated to the ROW
3 that is related to that line, or is this just a --

4 THE WITNESS: No. Those are just -- those
5 are just lines on a map. They're not to scale.

6 EXAMINER NEWMARK: Okay. And that -- it
7 looks like the Q1, it's yellow on the proposed side
8 of the exhibit. It -- the fact that it's thicker
9 than the orange existing 161 and the existing side,
10 the one that you're proposing to take out, is there
11 any significance that those lines are different
12 widths?

13 THE WITNESS: I don't know the answer to
14 that. Our mapping people may have taken that into
15 account that there would be a wider right-of-way on
16 the yellow line, but at that -- at that point of a
17 scale, you don't get a very good representation. So
18 I wouldn't -- I wouldn't put too much stock in that.

19 EXAMINER NEWMARK: Okay. Thanks.

20 BY MR. THIEL:

21 Q To clarify your testimony, basically what you're
22 saying is removal of the line, Segment 5B, eliminates
23 fragmentation in that area and increases the
24 fragmentation over at 8B?

25 A What I'm saying is that on this particular graphic,

1 we show it as clearly as I can. Removal of the
2 orange line is removing a remote existing feature,
3 and we're placing it in the proximity to an existing
4 feature. So what we're in effect doing is we're
5 consolidating sources of fragmentation, and that in
6 my estimation reduces the overall fragmentation of
7 the Black River floodplain.

8 Q But the only instance you've analyzed is that
9 particular one?

10 MS. HERRING: Objection, Your Honor.
11 Asked and answered.

12 EXAMINER NEWMARK: Sustained.

13 MR. THIEL: Okay. I have no further
14 questions.

15 EXAMINER NEWMARK: Who's next?

16 MS. COX: Your Honor, and Applicants, too,
17 DOT respectfully requests the option of -- to do
18 additional cross of the current witness based on our
19 intent to offer some additional sur-surr for Fasick
20 and exhibits.

21 EXAMINER NEWMARK: So you want to make him
22 available for recall?

23 MS. COX: Yes.

24 EXAMINER NEWMARK: That's fine. I don't
25 have a problem with that. He'll just need to stay

1 here so we can do that.

2 MS. AGRIMONTI: Your Honor, can I ask for
3 clarification?

4 EXAMINER NEWMARK: Yeah.

5 MS. AGRIMONTI: If the Applicants are
6 calling their witnesses first, what rights do other
7 parties have to recall our witnesses?

8 EXAMINER NEWMARK: Well, based on that
9 request, that's --

10 MS. AGRIMONTI: So it is parties that can
11 request?

12 EXAMINER NEWMARK: Yeah.

13 MS. AGRIMONTI: Okay. Thank you.

14 EXAMINER NEWMARK: Anyone else for cross?
15 Go ahead.

16 CROSS-EXAMINATION

17 BY MS. CORRELL:

18 Q Good morning, Mr. Hillstrom.

19 A Good morning.

20 Q Megan Correll from DNR. You were just asked quite a
21 few questions regarding the DOT right-of-way along
22 Highway 35, and I just wanted to clarify one point.
23 In discussing your assessment of fragmentation, you
24 referred to consolidation, and I think you testified
25 that you're aware that the proposed utility line for

1 the Q1-35 route would be located approximately 350
2 feet off of the highway right-of-way; is that
3 correct?

4 A Yes.

5 Q And then the right-of-way itself for the utility line
6 would be approximately another 150 feet in width; is
7 that correct?

8 A That's correct.

9 Q Okay. And that's a new right-of-way impact outside
10 of the highway right-of-way; is that correct?

11 A That is right.

12 Q Why don't you turn to your direct testimony at
13 page 47 and then continuing on to 48. In general,
14 the question starting on line 17 refers to whether or
15 not any adjustments of the segments have been made to
16 avoid overlapping State Highway 35 right-of-way; is
17 that correct?

18 A Yes.

19 Q Okay. So the question -- I don't think you need to
20 read your entire response to refresh your
21 recollection because the question I have is fairly
22 general, which is, could you describe specifically
23 what it is that you're referring to is the 35
24 adjustment?

25 A I think this is the adjustment that Mr. Stevenson

1 explained yesterday where the original alignment had
2 some overlap of the transmission right-of-way with
3 the highway right-of-way, and that adjustment moved
4 the structures 40 feet to the north to avoid that
5 overlap.

6 Q I think Mr. Stevenson also said you were a little bit
7 more familiar with this area because it's a routing
8 issue. So can you clarify what the impetus of this
9 adjustment was and where the details are located in
10 the record for the 35 adjustment?

11 A This -- this adjustment was one of several that
12 proposed a way to allow a route to be tweaked so that
13 it could be permitted through the DOT's process. The
14 DOT had informed us that there was a chance that they
15 would not be able to permit a longitudinal occupation
16 of their highway right-of-way. So we found the
17 places where we had longitudinal occupation of
18 highway right-of-way and tweaked the alignment so
19 that that would not be the case. And as far as where
20 exactly that's laid out, I -- I would have to look
21 for it.

22 Q Is it in a CPCN application?

23 A No. It was something that was submitted in
24 testimony.

25 Q In testimony for this -- in preparation for this

1 hearing?

2 A Yes.

3 Q But in terms of the actual details of impacts,
4 location, was that information included in, for
5 example, the final EIS?

6 A No. I believe we've provided that in testimony.

7 Q Can you refer me specifically to what the testimony
8 is that you're referencing?

9 THE WITNESS: Can I ask for help?

10 MS. HERRING: Yes. And let me grab the
11 exhibit number for you. It's Exhibit 23,
12 Applicants' supplemental comments to the DEIS. The
13 PSC reference number is 157490.

14 THE WITNESS: Okay. I stand corrected.
15 It's comments on the EIS, not testimony.

16 BY MR. THIEL:

17 Q Can you provide what the date is for that?

18 A December 23, 2011.

19 Q So for purposes of this adjustment, is Segment 8AR
20 the same as Segment 8B?

21 A 8AR representing the revised or the tweaked
22 alignment, I believe.

23 Q Does the Highway 35 adjustment include any
24 north/south component?

25 A Yes. The adjustment was to move the proposed

1 alignment 40 feet to the north.

2 Q Are there any changes to Segment 2 with the
3 adjustment of Highway 35?

4 A Yeah. I believe that that -- those are shown on the
5 maps preceding the ones that we were just looking at.
6 There are a few, and they're called out on the
7 figures of Exhibit 23. The adjustment areas are
8 called out with text callouts in black-and-white
9 letters.

10 Q Okay. So the Highway 35 adjustment involves tweaks
11 to the original 8B and to Segment 2. Is that all the
12 segments that have been adjusted?

13 A I believe so, yes.

14 Q You provided new exhibits in your sur-surrebuttal
15 that are located at, I think, Exhibit 42. Would you
16 take a look at those, please.

17 A Okay.

18 Q And these depict the utility right-of-way from an
19 aerial view. Have you observed vegetation and
20 habitat on the ground of this right-of-way prior to
21 1992?

22 A No.

23 Q And have you observed the vegetation and habitat on
24 the ground in 2011?

25 A No.

1 Q So you don't have personal information with regard to
2 the habitat and vegetation; is that correct?

3 A No, I don't.

4 Q And can you also -- the ALJ had asked you a question,
5 and it sounds like there may be some assistance with
6 utilizing the electronic version of these documents,
7 but what is the flyby distance for the Google Earth
8 images that are depicted in your Exhibit 42?

9 A I don't understand the question.

10 Q Where -- it's my understanding that when you have
11 aerial photographs, they're taken from an airplane.
12 Would you agree with that?

13 A Yes.

14 Q And so there's various types of sources of
15 information that people go to in terms of evaluating
16 navigable waters and wetlands. Would you agree with
17 that?

18 A Yes.

19 Q Okay. So -- and depending on whatever the source of
20 the information is, we have information about what
21 the criteria are and when the information was taken.
22 Are you aware of what the distance was -- what the
23 elevation of the flyby was in creating these
24 documents?

25 A Okay. I understand the question. No, I'm not. I

1 don't know the specifics of the aerial imagery. What
2 I can tell you is if you go to Google Earth and you
3 adjust the history indicator, it will give you these
4 very photos. I don't have any details about the
5 altitude or the resolution that they were taken at.

6 MS. CORRELL: Okay. I have no further
7 questions. Thank you.

8 EXAMINER NEWMARK: Okay. Other cross?

9 MR. LORENCE: No questions.

10 EXAMINER NEWMARK: No, okay. Redirect?

11 MS. HERRING: No, Your Honor.

12 EXAMINER NEWMARK: No.

13 MS. HERRING: Oh. I apologize. No, Your
14 Honor.

15 EXAMINER NEWMARK: Okay.

16 MS. HERRING: Sorry.

17 EXAMINER NEWMARK: All right. Well, I
18 guess we will let Mr. Hillstrom step down for now,
19 and he'll be subject to recall.

20 I did want to discuss a little bit about
21 the intentions of DOT with the recall because I was
22 curious. It was mentioned that DOT had more
23 exhibits that Mr. Fasick was going to offer; is that
24 right?

25 MR. THIEL: Yes. They're previously ERFed

1 though.

2 EXAMINER NEWMARK: They're previously
3 ERFed documents?

4 MR. THIEL: Yeah.

5 EXAMINER NEWMARK: Okay. And have parties
6 been made aware that this was going to happen today?
7 When was that done?

8 MR. THIEL: They were filed in response to
9 the sur-surrebuttal that we received yesterday.
10 They were identified as exhibits that we were going
11 to bring to your attention.

12 EXAMINER NEWMARK: Hang on. I'm having
13 trouble hearing.

14 Okay. Can you repeat that? I'm sorry.

15 MR. THIEL: Yes. They were prompted by
16 the sur-surrebuttal by Mr. Hillstrom that was
17 presented to us yesterday.

18 EXAMINER NEWMARK: Okay. And -- but your
19 intention to offer them as exhibits, when was that
20 known to parties?

21 MR. THIEL: Yes. We intend to offer them
22 as exhibits, and they have been ERFed as exhibits
23 already.

24 EXAMINER NEWMARK: Right. And shared with
25 parties?

1 MR. THIEL: Well, we have copies.

2 EXAMINER NEWMARK: Okay. Let's share them
3 now so parties can have a chance to look at that.

4 MR. THIEL: Yeah. I might mention that we
5 did not receive copies of all of the exhibits
6 yesterday on their sur-surrebuttal.

7 EXAMINER NEWMARK: Right.

8 MR. THIEL: We just referred to previously
9 ERFed documents.

10 MS. AGRIMONTI: And Your Honor, I do have
11 a question about the recall. They're asking to
12 recall an Applicant witness based on their own
13 sur-surrebuttal, and I would be very concerned about
14 the scope of what they might want to ask him by
15 bringing him back. I want to avoid the opportunity
16 for a second cross-examination.

17 EXAMINER NEWMARK: Right. I understand
18 that. I think we'll -- we'll get a sense of what
19 their intentions are after Mr. Fasick is put on the
20 stand, and we'll see, you know, where we're going to
21 go from there. But we'll just have him subject to
22 recall for now.

23 MS. AGRIMONTI: Fine. He'll be available.

24 EXAMINER NEWMARK: Okay.

25 MS. COX: I have a procedural question. I

1 actually got a call from records center when I ERFed
2 the exhibits this morning.

3 EXAMINER NEWMARK: Do we need this on the
4 record?

5 MS. COX: No.

6 EXAMINER NEWMARK: Okay. Let's go off.

7 (Discussion off the record.)

8 (Break taken from 10:53 a.m. to 11:00 a.m.)

9 EXAMINER NEWMARK: I think we're ready for
10 Mr. Holtz.

11 PETER H. HOLTZ, ATC WITNESS, DULY SWORN

12 EXAMINER NEWMARK: Have a seat. We
13 finally have Mr. Holtz.

14 MS. SMITH: Didn't know we were waiting.

15 EXAMINER NEWMARK: Okay. He's ready.

16 DIRECT EXAMINATION

17 BY MS. SMITH:

18 Q Mr. Holtz, could you please state for the record your
19 name, employer, and title.

20 A Yes. My name is Peter Holtz, H-O-L-T-Z. I'm the
21 routing and citing manager for American Transmission
22 Company located at W234 N2000 Ridgeview Parkway
23 Court, Waukesha, Wisconsin.

24 Q Are you the Peter H. Holtz that filed direct and
25 surrebuttal testimony and Exhibit 1 in this

1 proceeding?

2 A Yes, I am.

3 Q Was that testimony and exhibit prepared by you or at
4 your direction?

5 A Yes, it was.

6 Q Would your answers to the questions still be the same
7 today?

8 A Yes, they would.

9 Q The Applicants have submitted a new exhibit,
10 Hillstrom 46.

11 A Uh-huh.

12 Q Have you reviewed this exhibit?

13 A Yes, I have.

14 Q Exhibit Hillstrom 46 claims to describe ATC's route.
15 What is your opinion of this characterization?

16 A My characterization would be that these are routes
17 that were developed by Mr. Hillstrom, not by ATC.

18 MS. SMITH: The witness is available for
19 cross.

20 EXAMINER NEWMARK: Okay. Questions?

21 MS. AGRIMONTI: No questions, Your Honor.

22 MS. OVERLAND: Yes, I have questions.

23 EXAMINER NEWMARK: Okay.

24 MS. OVERLAND: I'm trying to find them.

25 EXAMINER NEWMARK: At least somebody does.

1 CROSS-EXAMINATION

2 BY MS. OVERLAND:

3 Q Okay. Mr. Holtz, good afternoon. Or is it still
4 morning?

5 A Good morning.

6 Q Would you agree that the basic -- that a large part
7 of your testimony addresses the interconnect distance
8 between the project at issue, the
9 Hampton-La Crosse-Rochester Project and what you
10 refer to as the Badger Coulee line?

11 A It talks about points of interconnection between the
12 two projects, yes.

13 Q All right. And what -- can you explain the
14 interdependence of these projects? Like, how would
15 you rate the interdependence of these projects?

16 A Rating interdependence I guess would be -- I would
17 characterize it that the benefits that accrue to the
18 Badger Coulee Project are dependent on hooking into
19 the CapX 2020 Project.

20 Q Would you also agree that the benefits of
21 Hampton-Rochester-La Crosse are dependent on an
22 extension going east?

23 A We have not studied that. I'm not -- that has not
24 been part of my looking at this project or these
25 projects.

1 MS. OVERLAND: Okay. I think your
2 testimony speaks for itself. I have no further
3 questions.

4 EXAMINER NEWMARK: Okay. Other cross? Go
5 ahead.

6 CROSS-EXAMINATION

7 BY MR. LORENCE:

8 Q Mr. Holtz, correct me if I'm mischaracterizing your
9 testimony, but when I read your testimony,
10 particularly page 4 and 5, it seems to say that ATC
11 would be able to interconnect with this project
12 regardless of which route the Commission may select;
13 is that correct?

14 A Yes, it is.

15 MR. LORENCE: Thank you.

16 EXAMINER NEWMARK: That's it? Redirect?

17 MS. SMITH: No redirect.

18 EXAMINER NEWMARK: Okay. You're excused.

19 (Witness excused.)

20 EXAMINER NEWMARK: Okay. We have DOT and
21 staff left; is that right?

22 Okay. So I just wanted to check in with
23 staff. Is there any update with staff witnesses and
24 the DNR ones that were only supposed to be able to
25 come on Thursday?

1 MS. RAMTHUN: The two staff witnesses,
2 Julie Urban and Don Neumeyer who are out of state
3 will not be available until Thursday.

4 EXAMINER NEWMARK: And for Mr. Thompson;
5 is that right?

6 MS. CORRELL: I think he could move up his
7 schedule a little bit and be here by 3:30 tomorrow
8 instead of Thursday.

9 EXAMINER NEWMARK: Okay.

10 MR. LORENCE: Do we know if there's going
11 to be questions for any of the witnesses?

12 EXAMINER NEWMARK: Well, that's a good
13 question. Right. There should be, but there will
14 be cross we're expecting, right, for these? All
15 three or --

16 MS. AGRIMONTI: With respect to Julie
17 Urban, excuse me, and Mr. Neumeyer, we would like to
18 introduce discovery responses that they provided to
19 CapX 2020. I don't know that they actually need to
20 appear to do that. I don't have any additional
21 questions.

22 MS. OVERLAND: You're saying it was --
23 it -- clarify here. It was responses to your
24 discovery?

25 MS. AGRIMONTI: No, your discovery.

1 MS. OVERLAND: Oh, NoCapX.

2 MS. AGRIMONTI: Did I forget the no?

3 MS. OVERLAND: Yes, you did.

4 MS. AGRIMONTI: Silly.

5 MS. COX: Apparently they're on the same
6 team now.

7 MS. OVERLAND: No. Okay. I have to
8 review that. And in reviewing that, if that's
9 entered, I may not have questions.

10 EXAMINER NEWMARK: Okay. Well, just keep
11 us posted. And for Mr. Thompson then, questions for
12 him?

13 MS. HERRING: Applicants have a limited
14 number of questions for Mr. Thompson.

15 EXAMINER NEWMARK: Okay. Anybody else?

16 MS. OVERLAND: I don't know.

17 EXAMINER NEWMARK: All right. Well,
18 that's good to know.

19 Okay. Well, so let's start with DOT
20 witnesses then.

21 MS. AGRIMONTI: Your Honor, should we
22 preliminarily deal with this?

23 EXAMINER NEWMARK: Is Mr. Fasick first? I
24 guess I forgot your order, Mr. Thiel. I'm sorry.

25 MS. AGRIMONTI: That was the order that

1 was provided to Applicants, so I assume that he
2 would go first.

3 EXAMINER NEWMARK: Okay. All right. So
4 all right. Mr. Fasick.

5 MR. THIEL: PSC reference 143009 would be
6 WisDOT Fasick 9.

7 EXAMINER NEWMARK: Okay. Let's just start
8 from the beginning here. I'm curious. The
9 surrebuttal, there's a few questions here I think
10 you could just ask him on the stand. For instance,
11 additional --

12 MR. THIEL: Yes.

13 EXAMINER NEWMARK: Okay. And then, yeah,
14 his references to exhibits, they're already in the
15 record. We don't -- he doesn't need to offer them
16 again. So I guess basically when he gets up, you
17 can ask him those few additional questions, okay?
18 And let's get to --

19 MR. THIEL: Do you want to note which ones
20 by exhibit number from his testimony or --

21 EXAMINER NEWMARK: If you just want to
22 give the witness and the witness's exhibit number
23 for those that are already to the existing exhibit,
24 that would be -- probably be enough for us.

25 MS. AGRIMONTI: I have those numbers, Your

1 Honor, if that would be helpful.

2 EXAMINER NEWMARK: Great.

3 MR. THIEL: I have those numbers, too.

4 MS. AGRIMONTI: Oh. Well, then go right
5 ahead, Mr. Thiel. You have Mr. Hillstrom's exhibit
6 numbers?

7 MR. THIEL: No. I'm referring to them as
8 our exhibit numbers.

9 MS. AGRIMONTI: They're in the record
10 already as Hillstrom 4 or 143009.

11 MS. OVERLAND: Hillstrom 4?

12 MS. AGRIMONTI: Hillstrom 5 is 144025.

13 MR. THIEL: That's Hillstrom 5?

14 MS. AGRIMONTI: Uh-huh. Hillstrom 19 is
15 156191. And I believe that's all of them.

16 EXAMINER NEWMARK: That's four.

17 MS. AGRIMONTI: Is there one more? Which
18 one?

19 MS. COX: 16 is Hillstrom.

20 MS. AGRIMONTI: Yes. The December 23rd
21 letter, 157481, is Hillstrom 16.

22 MS. OVERLAND: Wait. I don't have that
23 one.

24 MS. AGRIMONTI: And Your Honor, for the
25 record, since Mr. Fasick's testimony is all about

1 exhibits that are already in the record, I would
2 object to recalling with respect to the
3 sur-surrebuttal.

4 MS. OVERLAND: Do you have No. 12?

5 EXAMINER NEWMARK: Does everyone have
6 those exhibit numbers?

7 MS. HERRING: Are you talking about the --

8 MS. OVERLAND: December 23rd?

9 MS. HERRING: December 23rd letter is
10 Hillstrom --

11 MR. THIEL: 157481.

12 MS. OVERLAND: And that's Hillstrom 16?

13 MS. HERRING: 16.

14 EXAMINER NEWMARK: Okay.

15 ROBERT C. FASICK, WisDOT WITNESS, DULY SWORN

16 EXAMINER NEWMARK: Have a seat.

17 DIRECT EXAMINATION

18 BY MR. THIEL:

19 Q Mr. Fasick, would you state your full name.

20 A Robert C, as in Charles, Fasick.

21 Q And what is your business?

22 A Business address or business -- I work for the
23 Wisconsin Department of Transportation.

24 Q And what is your position with the department?

25 A I'm the state right-of-way accommodation and permits

1 engineer.

2 Q Have you filed direct, rebuttal, and surrebuttal
3 testimony in this matter?

4 A Yes, I have.

5 Q Have you also filed comments on the draft EIS?

6 A Yes, I have.

7 Q And were those prepared by you or under your
8 direction and supervision?

9 A Yes.

10 Q And are they accurate and true as submitted in the
11 record?

12 A Yes.

13 Q And have you prepared sur-surrebuttal testimony?

14 A Yes.

15 Q And what is the purpose of your sur-surrebuttal
16 testimony?

17 A To respond to Thomas Hillstrom's last testimony, his
18 sur-surrebuttal, I believe.

19 Q Over the years did you have direct contacts with Tom
20 Hillstrom regarding this project?

21 A Yes.

22 Q Did those contacts occur routinely over a period of
23 several years?

24 A Yes, they did.

25 Q Were WisDOT requirements for permits and

1 permitability of the project the underlying subjects
2 of those contacts?

3 A Yes, they were.

4 Q Has evidence of DOT's concerns regarding
5 permitability of any of the routes previously been
6 submitted into the record?

7 A Yes. There has been evidence of communications
8 previously filed by DOT in many references, as a lot
9 of people were discussing today back and forth with
10 letters between us and Xcel.

11 MR. THIEL: Okay. We tender the witness
12 for cross-examination.

13 EXAMINER NEWMARK: Okay. Before I let you
14 do that, let me rule on the objection to recalling
15 Mr. Hillstrom. And there's been an objection. Do
16 you have a response?

17 MS. COX: Well, can I respond? I think
18 that the point was really just because we were
19 introducing new exhibits. We want Mr. Hillstrom to
20 have the opportunity to look at those documents
21 versus the here it is, place it in front of you, now
22 figure out what it says. And that was really the
23 purpose, was to get those in front of the witness
24 and have him get an opportunity to look at them.

25 EXAMINER NEWMARK: Okay. So it looks like

1 that's not necessary. So we can move on from there;
2 is that right?

3 MR. THIEL: Yes.

4 EXAMINER NEWMARK: Okay. All right. So
5 do you have any additional questions then in light
6 of he won't be recalled? Anything else you would
7 like to ask your witness?

8 MS. COX: No. That's fine.

9 EXAMINER NEWMARK: Okay. All right.
10 Cross.

11 MS. AGRIMONTI: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. AGRIMONTI:

14 Q Good morning, Mr. Fasick.

15 A Good morning.

16 Q I note that when you were asked -- answering the
17 introductory questions, I couldn't hear you. If you
18 could either raise the volume of your voice or
19 swallow the microphone, that would be helpful so that
20 I make sure I hear your response.

21 A Is that better?

22 Q It is. Thank you. In your sur-surrebuttal, you were
23 asked if you had met with Mr. Hillstrom routinely
24 over the years. Prior to February 10, 2012, did you
25 ever have a conversation with Mr. Hillstrom about the

1 need to underground facilities at crossings of any
2 highway right-of-way?

3 A No.

4 Q Prior to February 10, 2012, did you have any
5 conversations with Mr. Hillstrom about needing to
6 underground the project in any other location?

7 A Not that I can remember, no.

8 Q You also testified that you provided some information
9 over the years with Mr. Hillstrom about permitting
10 requirements by WisDOT. Can you as you sit here
11 today identify any time where you spoke with
12 Mr. Hillstrom about an MOU?

13 A No. We had -- he had asked about conversations that
14 we've had with ATC with -- regarding their
15 requirements for the Beltline Reliability Project,
16 Dane County Reliability Project.

17 Q So you never told Mr. Hillstrom that WisDOT would
18 require an MOU prior to the issuance of a CPCN?

19 A No.

20 Q With respect to a constructability report, did you
21 ever tell Mr. Hillstrom that the Department of
22 Transportation would require a constructability
23 report before the issuance of a CPCN?

24 A Not that I can remember, but it might have come up in
25 the conversations with regards to the Dane County

1 project.

2 Q Thank you. Are you here to speak on behalf of
3 WisDOT?

4 A Yes.

5 Q And you're the witness regarding the permitability of
6 utilities within the highway right-of-way?

7 A Yes.

8 Q And you're also knowledgeable about WisDOT scenic
9 easements; is that correct?

10 A To some degree, yes.

11 Q All right. If I ask you questions about scenic
12 easements that are better for Ms. Vetsch, please let
13 me know.

14 A Please. Sure.

15 Q You would agree that utility facilities in Wisconsin
16 may occupy highway right-of-way provided the utility
17 first gets a utility permit, right?

18 A Subject -- yes, subject to the conditions that are
19 placed upon it by the maintaining authority of the
20 highway.

21 Q And you would also agree that no WisDOT permit is
22 required for land that is not within the state public
23 highway?

24 A Yes.

25 Q Would you agree that the WisDOT scenic easements at

1 issue in this proceeding are not subject to WisDOT's
2 utility permitting authority?

3 A Not totally. There may be a caveat under which the
4 Statute 86.072 says we can place conditions on
5 permits, and those conditions could conceivably say
6 that we could -- we could say we would require
7 undergrounding in the scenic easements as a condition
8 of the permit.

9 Q That would have to be a condition of occupying a
10 highway right-of-way; is that correct?

11 A Correct.

12 Q At some periods throughout this proceeding there's
13 been suggestions and conversation and actually a
14 position by WisDOT that if any of the facilities were
15 placed on scenic easements, that WisDOT would have to
16 release those easements. Is that WisDOT's current
17 position?

18 A Yes.

19 Q And that would be whether it's overhead or
20 underground depending on whether it's a route WisDOT
21 approves of or not?

22 A Yes.

23 Q If the route were placed on one of the non-Q1 routes
24 which WisDOT says could be placed overhead, would the
25 release of the scenic easement be complete, or would

1 that be a partial release?

2 A On the overhead routes?

3 Q Yes.

4 A Depends on where we have the scenic easements.

5 Q What would be the different categories of locations
6 that would affect your decision?

7 A I guess I'd have to analyze where those scenic
8 easements are to totally evaluate. We had testified
9 that for most of the overheads involved, like the
10 Arcadia Route, for example, that we would release
11 those scenic easements down toward the end of Holmen.
12 I believe Segments -- I think it's 9A and 18, I
13 believe, because we have already had development down
14 in Holmen, and we have been releasing some of those
15 scenic easements already. The city's asked us to do
16 that because of the development.

17 So my take on that is that we would
18 analyze it, and we would release those. But, again,
19 it's all subject to looking at it as a whole, look at
20 the route as a whole.

21 Q Does WisDOT have a position with respect to whether
22 easements would be released in whole or in part?

23 A I can't answer that.

24 Q Are you aware of any analysis of the locations along
25 either the Q1 route where that has taken place where

1 WisDOT has talked about whether to release them in
2 whole or in part?

3 A I'm not aware of any.

4 Q And that same would be true for the Arcadia Routes
5 along -- near Holmen, you haven't decided whether
6 those would be a whole or in part release?

7 A Correct.

8 Q And if the Arcadia Route were selected, which is one
9 of the routes that WisDOT says is permissible, would
10 there still need to be a payment to WisDOT for the
11 release of the scenic easements along 54 by Holmen?

12 A Yes.

13 Q Has WisDOT calculated what those payments would be?

14 A No.

15 Q You asked Applicants to prepare an assessment and
16 valuation of the scenic easements; is that right?
17 Let me change that.

18 The value of the portions of the scenic
19 easement that would be occupied by the facility if
20 they had to be released?

21 Let me try it one more time. Let me get
22 an exhibit before you.

23 A Thank you.

24 Q Yeah. Mr. Fasick, I've handed you an exhibit. Do
25 you recognize this document?

1 A Yes.

2 Q Okay. And is this a scenic easement valuation
3 assessment that WisDOT asked from the Applicants with
4 respect to the routes that would cross scenic
5 easement areas?

6 A Yes.

7 Q And there was quite a bit of back and forth with
8 WisDOT about the scenic easements relative to mapping
9 and an exchange of documents. Do you recall that?

10 A Yes.

11 Q And indeed there's an e-mail Attachment 1 here dated
12 May 11, 2001 where you provided some additional input
13 with respect to what the overall maps should include,
14 which was to add Q1 easements as well as WisDOT plat
15 maps and the scenic easements at issue, right?

16 A Correct.

17 Q And have you reviewed that information that was
18 provided by the Applicants as final product?

19 A To some degree.

20 Q Are you satisfied that the Applicants provided the
21 data you asked for in the format that you wanted it?

22 A No.

23 Q What didn't you get that you thought should have been
24 included?

25 A We were looking for more of the -- I don't think we

1 agreed with this valuation, and we were looking for
2 comparisons parcel by parcel; and I know we had
3 problems with Buffalo County with GIS mapping, and
4 then we had problems with Xcel doing route
5 adjustments along the way as the testimony came out.
6 So we don't feel that there's been a proper -- a
7 total -- I mean, there has been some good analysis,
8 but we don't feel that there's been a total analysis
9 that would go parcel by parcel and kind of give us a
10 dollar amount parcel by parcel along the whole route
11 for the alternatives.

12 Q Let me back up and break these things in two pieces.
13 One was the mapping exercise. Is WisDOT satisfied
14 with all of the documentation and mapping that was
15 provided regarding scenic easements?

16 A To some degree because of the fact that we have --
17 now have had adjustments made along the way. I don't
18 know how much of that is accurate.

19 Q Have you asked the Applicants for any additional
20 information?

21 A There hasn't been time since it's now come to
22 hearing.

23 Q Okay. So the adjustments as you recall were made in
24 the DEIS comments made by the Applicants in December;
25 is that right? Is that when you became aware of

1 those adjustments?

2 A Well, we filed the 23rd of December, and I got word
3 shortly after that that had -- some adjustments had
4 been made.

5 Q So a couple of months ago?

6 A Correct.

7 Q Do you recognize the last page of this exhibit as
8 what was provided to you for scenic easement
9 valuation impacts?

10 A Yes.

11 MS. AGRIMONTI: I would move admission of
12 this exhibit, Fasick 9.

13 EXAMINER NEWMARK: Okay. I'm going to
14 need a copy.

15 MS. AGRIMONTI: Oh.

16 EXAMINER NEWMARK: I thought this was
17 already in the record so I didn't ask. Thanks.

18 Yeah, his next is Exhibit 9.

19 (Fasick Exhibit 9 marked.)

20 BY MS. AGRIMONTI:

21 Q Has WisDOT done any economic analysis of its own
22 regarding what the value of the scenic easements
23 would be if -- among any of the routes?

24 A I thought I answered that already. I'm sorry, no.
25 Typically what's done is there's a -- excuse me.

1 Scenic easements would have to be appraised as far as
2 I know the process.

3 Q Okay. And that's a process WisDOT has undertaken
4 before?

5 A WisDOT -- there's a previous project that was
6 recently done, recently -- a couple years ago. I
7 believe up in Warrens with ATC in which they went to
8 four remnant parcels that had scenic easements on
9 them, and we had to release those scenic easements.
10 And those parcels were appraised, I believe
11 independent -- by an independent appraiser.

12 Q Do you have an opinion about whether the scenic
13 easements at issue in this proceeding prohibit the
14 placement of the 345 kV transmission line in the
15 easement area overhead?

16 A I would defer with -- I would defer to what counsel
17 has been advising us with the department.

18 Q So you would have no independent analysis or opinion
19 with respect to the scenic easements?

20 A Again, I defer to what counsel has advised us.

21 Q Is it fair to say that WisDOT is concerned about the
22 aesthetic impacts the project would have along
23 Highway 35 if one of the Q1 routes were implemented?

24 A Yes.

25 Q And as the utility permit supervisor responsible for

1 making those decisions, can you define who the
2 receptor is of those impacts that WisDOT is concerned
3 about?

4 A The public.

5 Q When you say the public, is it those who drive the
6 road or somebody else?

7 A Yes. I don't mean to be trite about it, but we have
8 a duty to protect the interests of the Great River
9 Road, and that's by statutes. That would include
10 anybody who travels the road, the people that live in
11 the area, you know, tourists, whatever. Whoever
12 comes to the area. So it's the public, and plus the
13 taxpayers of Wisconsin that, excuse me, have -- you
14 know, use -- we've used their gas tax money to
15 procure scenic easements over the years to preserve
16 that corridor. So to be fair to answer your
17 question, it's all those groups.

18 Q And if you were concerned about the tax investment,
19 WisDOT could be made whole by payment; is that
20 correct?

21 A Not necessarily.

22 Q For the taxpayer expense, how is it that that
23 investment could not be made whole by repayment?

24 A You're trying to put a dollar value on it. I don't
25 know what kind of dollar value you'd try to put on it

1 to make the taxpayers whole. So I can't accurately
2 answer your question.

3 Q So is it your testimony there's no amount of money
4 that could pay for those scenic easements?

5 A I don't know.

6 Q Throughout your conversations with Mr. Hillstrom and
7 Mr. Stevenson on this project -- let me just back up.

8 You've also had conversations with
9 Mr. Stevenson, right?

10 A Yes.

11 Q Did you personally have conversations with them about
12 either design or alignment modifications that could
13 be done to reduce impacts on the Great River Road?

14 A Yes.

15 Q Approximately when did you have those conversations?

16 A That would be -- CPCN was filed June of '11, correct?

17 Q Yes.

18 A Probably the prior year I would assume toward -- I
19 could probably pull it up. I remember an e-mail
20 going back and forth between myself and Grant on some
21 of that stuff. So I could probably recall a date
22 better with that, but I have to say towards the end
23 of 2010.

24 Q What suggestions did you make to the Applicants to
25 reduce impacts along the Great River Road?

1 A There were a number of -- number of them. There were
2 ones like pole colorization, brown versus the sky
3 blue, for example. Height I believe was another one.
4 Excuse me.

5 Q And did they implement those suggestions in the final
6 proposal in their CPCN?

7 A Yes. They attempted to, yes.

8 Q After the application was filed, did you have any
9 other further conversations with the Applicants about
10 potential mitigation along the Great River Road?

11 A I can't recall conversations, no.

12 EXAMINER NEWMARK: Let's mark this Fasick
13 10.

14 (Fasick Exhibit 10 marked.)

15 BY MS. AGRIMONTI:

16 Q Mr. Fasick, do you recognize Exhibit E as a memo from
17 Jane Carrola to you dated March 2, 2010?

18 A Yes, I do.

19 MS. AGRIMONTI: Move admission of what
20 I've marked as Exhibit 10 for Fasick.

21 EXAMINER NEWMARK: Any objections to
22 either 9 or 10?

23 MR. THIEL: No objection.

24 EXAMINER NEWMARK: No, okay.

25 (Fasick Exhibits 9-10 received.)

1 BY MS. AGRIMONTI:

2 Q Did you ask Ms. Carrola to prepare this memorandum?

3 A I'm not sure if I did specifically or it was kind of
4 a department thing where, you know, our bosses
5 collectively.

6 Q Do you recall what the specific purpose of this
7 analysis was for?

8 A To look at the effect of the high voltage
9 transmission lines on scenic byway designation,
10 receipt of scenic byway grant dollars.

11 Q And Ms. Carrola concluded that she -- well, she found
12 that there had only been one D-designation, and that
13 was at Florida's request; is that right?

14 A If that's what the memo says, yes.

15 Q Let me ask it different --

16 A These are better answered by her directly. But if
17 the memo says that, then yes.

18 Q Let me ask you a different question. In your
19 conclusion that undergrounding is the only mitigation
20 technique because of concerns regarding the Great
21 River Road and its designation as a scenic byway, did
22 you consider the fact that no other scenic byway had
23 been involuntarily delisted according to your own
24 research?

25 A No.

1 Q Let me move to page 2. The Department of
2 Transportation has raised concerns about impacts to
3 tourism; is that correct?

4 A Yes.

5 MS. COX: I think, Your Honor and Counsel,
6 that that is a question that's better directed
7 towards our expert on scenic easements.

8 MS. AGRIMONTI: Your Honor, Mr. Fasick is
9 making an opinion about permitting the utility along
10 the right-of-way.

11 EXAMINER NEWMARK: We can let him answer.
12 And if he directs a portion of his answer to another
13 witness, then there's always the opportunity to ask
14 that witness, too.

15 BY MS. AGRIMONTI:

16 Q Did you consider impacting tourism in reaching your
17 conclusion that the line would have to be
18 undergrounded in highway right-of-way?

19 A To some degree.

20 Q Did you consider the memorandum provided to you by
21 Ms. Carrola that said she couldn't answer the
22 question about whether there was going to be an
23 impact on tourism?

24 A No.

25 Q Did you have any other data supporting your

1 conclusion that impact on tourism is a concern that
2 should be included in the analysis of whether to
3 issue a utility permit?

4 A Just the data that we're trying to comply with the
5 statutes.

6 Q So there's no other data other than Statute 14.85, is
7 that the statute you're referring to?

8 A No. There's the federal statute.

9 Q Okay. Federal statute and then the state statute
10 regarding the Mississippi River Parkway Commission?

11 A Yeah. And the part about the siting statute as well.

12 Q Yeah.

13 A We're hemmed in with the three statutes as I've
14 previously testified.

15 Q And I want to make sure I understand what data WisDOT
16 used regarding impacts on tourism that influenced the
17 utility permit decision to say it has to be
18 underground on highway right-of-way. Just tourism.
19 Do you have any other data other than Ms. Carrola's
20 memo to you that you are basing your opinion that
21 tourism is a concern?

22 A Well, I previously testified to the question with
23 regards to we're always concerned with the Great
24 River Road and impacts to tourism.

25 Q Sure. And I'm looking for any data WisDOT has to

1 show that the transmission line might impact tourism,
2 and the only document that's been provided to me is
3 Ms. Carrola's memo. Do you have anything else?

4 A I do not.

5 Q Thank you. The fact that the Great River Road is in
6 the scenic byways' program and eligible for federal
7 funding, was that also part of your consideration in
8 determining that the line would have to be
9 underground on the Great River Road right-of-way?

10 A No.

11 Q National designation did not influence your decision?

12 A Well, again, it's looking at the Great River Road as
13 a whole, and it's -- yeah, national designation is
14 part of the equation.

15 Q Are you aware that the American Energy and
16 Infrastructure Jobs Act of 2012 would eliminate
17 funding for scenic byways?

18 MS. COX: Objection.

19 THE WITNESS: I'm not aware.

20 MS. COX: That's speculative.

21 MS. AGRIMONTI: The bill is what the bill
22 is.

23 EXAMINER NEWMARK: Overruled.

24 MS. COX: It's withdrawn.

25 MS. AGRIMONTI: I'm sorry, I did not hear

1 your answer, Mr. Fasick.

2 THE WITNESS: Can you repeat the question?

3 BY MS. AGRIMONTI:

4 Q Yeah. I was asking if you were aware that the
5 American Energy and Infrastructure Jobs Act bill of
6 2012 in the House would eliminate funding for
7 national scenic byways?

8 A That, no.

9 Q Mr. Fasick, is Exhibit No. 11 another memo by
10 Ms. Carrola that was provided to you regarding the
11 scenic assessment and review of CAPX 2020?

12 A I need some clarification. I've got avian stuff on
13 the back of it that seems to be stapled to it, and I
14 don't think that was part of it. So I think the
15 stapler hit --

16 Q Okay. Let's make sure I've got the right paperwork
17 that ought to be with it. That should end with the
18 partial paragraph.

19 A I've got the last paragraph from the historical
20 perspective, and then there's literature cited, avian
21 power, avian power, Jenkins, Shimada, maps on Eastern
22 Massasauga Rattlesnake.

23 MS. OVERLAND: That's the U.S. Fish and
24 Wildlife.

25 MS. AGRIMONTI: Yeah. I am -- the page

1 numbering is sequentially correct. Hold on just a
2 moment.

3 EXAMINER NEWMARK: Let's go off the
4 record.

5 (Discussion off the record.)

6 EXAMINER NEWMARK: Let's get back on the
7 record. Let's note for the record we've marked
8 Fasick 11 and 12.

9 (Fasick Exhibits 11-12 marked.)

10 BY MS. AGRIMONTI:

11 Q All right. Mr. Fasick, now that I've corrected the
12 document in front of you, is this a true and correct
13 copy of the memorandum that Ms. Carrola provided to
14 you on or about June 24, 2010?

15 A I recognize 11. Are you saying 12 is from her as
16 well?

17 Q No. I'm not saying that 12 is from her. I'm only
18 looking at 11 right now.

19 A Oh, yeah. 11, yes.

20 MS. AGRIMONTI: Move admission of
21 Exhibit 11.

22 EXAMINER NEWMARK: And that goes for 9 and
23 10 as well. Any objections?

24 (No response.)

25 EXAMINER NEWMARK: Okay. They're all in.

1 (Fasick Exhibits 9-11 received.)

2 BY MS. AGRIMONTI:

3 Q And then I'll ask you if you recognize Exhibit G from
4 the aesthetics evaluation that the Applicants did and
5 included in their Appendix O of the application. I
6 believe that Ms. Carrola's memorandum references
7 various visual points on this diagram and the numbers
8 correspond. Is that your understanding?

9 A Yes. It appears that way.

10 MS. LOEHR: I'm sorry to interrupt. I
11 don't think that one's made it all the way down yet.

12 MS. COX: Well, look at that. Sorry.

13 BY MS. AGRIMONTI:

14 Q What consideration did you give to this analysis in
15 reaching the conclusion that the line has to be
16 underground in highway right-of-way along the Great
17 River Road?

18 A In answer to the same is we've used the three
19 statutes.

20 Q No specific consideration to this memo then?

21 A Well, as a whole, we looked at all of the documents
22 that have -- were provided by us to it from Xcel
23 Energy. So, I mean, I can't point to any single
24 document and say yes, yes, yes. We look at all the
25 documents when we comprise our -- I mean, we take

1 into account everything that has been submitted when
2 we form our testimony.

3 Q Let me ask you --

4 A So to answer your question, and probably the one
5 previously, anything that Jane provided along the
6 way, comments from the draft EIS, comments back and
7 forth exchanged between myself and Mr. Hillstrom and
8 Mr. Stevenson, I mean, it's all taken into
9 consideration.

10 Q Would you agree that Ms. Carrola concludes that eight
11 of the 14 photo locations -- photo simulation
12 locations she looked at were acceptable from a scenic
13 byways' prospective?

14 A That would be a question she could answer. If the
15 memo says that, then I would agree with that.

16 Q Did you ever ask Ms. Carrola to do any more scenic
17 assessment work along the Great River Road after
18 June 24th of 2010?

19 A I don't remember.

20 Q Do you know if she ever did any scenic assessment
21 work after that date?

22 A That would be a question for her to answer.

23 Q Has WisDOT ever required a 345 transmission line to
24 be placed underground at a crossing of a state
25 highway under its jurisdiction?

1 A No.

2 Q Has WisDOT ever required a voltage lower than a 345
3 kV transmission line to be placed underground at a --
4 in right-of-way of the highway under its
5 jurisdiction?

6 A Yes.

7 Q Please give me an example.

8 A There's a -- I hope I got it right, too. There's a
9 69 kV or 138 that is on the eastbound -- sorry -- the
10 westbound beltline near Odana Road going to the West
11 Towne substation. We've got a bike path over the top
12 of it, and it is also underground from the City of
13 Madison, and it is also underground crossing the
14 beltline by the pedestrian overpass at Whitney Way
15 and runs underground -- excuse me -- along the -- I
16 don't know if it's the Capitol City Trail or one of
17 the trails that heads out by Home Depot there. So
18 that's all interconnected. That's underground.

19 Q Is there any other example?

20 A I can't think of any. That's the one that stands
21 out.

22 Q Was this undergrounding due to WisDOT's requirements
23 or another agency's requirements?

24 A It was part of ours and part of -- MG&E had the
25 project, and it was a -- there was a really tight

1 clearance zone there, 30 feet, that was around the
2 edge of the -- where our right-of-way was and where
3 they wanted to put it. So they couldn't put it above
4 ground, plus they wanted to build the bike path over
5 the top of it so that we could foster bike and
6 pedestrian travel from the street underpass and along
7 that corridor over to the Odana/Whitney area. So it
8 made sense to do a combination of undergrounding and
9 putting the bike path on top.

10 Q Is it fair to say that that undergrounding with
11 respect to WisDOT's input was due to safety concerns?

12 A Safety and the pedestrian bike path as well. It was
13 one of the accommodation projects.

14 Q Was the entire line underground?

15 A I couldn't tell you for sure because I know it
16 swings -- it goes from West Towne and goes around the
17 city and I don't know if they've got any part of
18 it -- excuse me -- aboveground. I'm sorry. I know
19 the voltage is low enough that it was able to be put
20 underground without any problems.

21 Q Is it fair to say that before this proceeding WisDOT
22 has never stated that a transmission or distribution
23 or other electric line would have to be undergrounded
24 on its right-of-way due to aesthetic considerations?

25 A I'm sorry. I had a door slam over here.

1 Q Oh.

2 A Can you repeat it?

3 Q I'll do it again. Has WisDOT ever -- based on what
4 you just said, is it fair to say that WisDOT has
5 never required any undergrounding of electrical
6 facilities on its right-of-way due to aesthetics
7 concerns?

8 A I can't say that for sure.

9 Q But you only have one example of an undergrounding
10 that you're aware of; is that right?

11 A Yes. But there may be more in our region offices
12 that we required.

13 Q Is it WisDOT's position that any electric line that
14 would be proposed along the Great River Road would
15 have to be undergrounded?

16 A Excuse me. Our position is what I had testified, is
17 that if anything that crosses along the Q1-35, Q1,
18 Q1-Galesville, any of those scenic easements would
19 have to be underground.

20 Q And I'm trying to get a perspective for other
21 projects that may occur on the Great River Road and
22 what WisDOT's policy is going to be or is with
23 respect to other proposals that may be less than 345.
24 So is WisDOT going to be requiring, for example,
25 distribution lines to be undergrounded?

1 A We would have to take a look at it on a case-by-case
2 basis.

3 Q Do you have an opinion about whether a 161 voltage
4 would have to be undergrounded if it crossed the
5 Great River Road?

6 A Again, we have to look at it on a case-by-case basis.

7 Q And a 69 would be the same thing?

8 A Yes. I'm sorry, I should --

9 Q That's okay. Thank you. Please go to page 11 of
10 your direct testimony.

11 A What line, please?

12 Q Your testimony, yes.

13 A What line, please?

14 Q I'm sorry. Looking specifically at pages 4 and 5 and
15 6.

16 A Oh, I thought you said page 11.

17 Q I did say page 11, lines four, five, and six.

18 A Okay.

19 Q All right. You testify that there's two statutes
20 that WisDOT is relying upon to reach its
21 undergrounding conclusion. That's Wisconsin Statute
22 14.85 and then actually a rule, 23 CFR 645.209(h).
23 Did I paraphrase that correctly?

24 A 23 is a federal law?

25 Q Yep.

1 A Yes.

2 Q And then you said that the next line, line seven is,
3 WisDOT believes it's appropriate to make this
4 requirement of any permit issued in the Great River
5 Road National Scenic Byway right-of-way and scenic
6 easement released, paren, sold, unreleased, and then
7 it goes on, for except for certain segments?

8 A Yes. Uh-huh.

9 Q Does -- is it WisDOT's position that it must require
10 undergrounding based on these statutes?

11 A The way we're interpreting right now, yes.

12 Q There is no other statute or rule you're relying upon
13 for this determination that undergrounding is --

14 A Along the Great River Road National Scenic Byway.

15 Q Yep. These two statutes that you cite in your
16 testimony.

17 A Correct.

18 MS. AGRIMONTI: Let's talk about 14.85.

19 EXAMINER NEWMARK: We can forego this as
20 an exhibit, I think.

21 MS. AGRIMONTI: Uh-huh. I'm using it for
22 illustrative purposes.

23 EXAMINER NEWMARK: Sure. That's fine.

24 BY MS. AGRIMONTI:

25 Q Mr. Fasick, if I hand you a copy of 14.85, the same

1 14.85 you referenced in your testimony.

2 A Yes.

3 Q And this is a Mississippi Parkway Commission enacting
4 statute, right?

5 A Yes.

6 Q What portions of this statute is WisDOT relying upon
7 to form its belief that the line must be underground
8 along the Great River Road with certain route
9 choices?

10 A Paren seven.

11 Q Okay. Paren seven says, the departments and agencies
12 of the state shall, within existing appropriations
13 and to the best of their respective abilities,
14 cooperate with the commission in the execution of its
15 functions.

16 Has the Mississippi River Parkway
17 Commission issued any formal opinion, recommendation,
18 or directive to WisDOT with respect to this project?

19 A To us in particular?

20 Q To you in particular.

21 A Formally or informally?

22 Q I'm asking if the Mississippi River Parkway
23 Commission has taken a formal action.

24 A I don't know for sure because there might have
25 been -- there could have been something direct from

1 them to our secretary that I might not have seen. I
2 am not aware of -- I've seen -- I've seen formal
3 things come through like -- and I don't know if they
4 were directed at us in particular or submitted for
5 the record for this docket, so I -- I can't answer
6 your question fully. I'm sorry.

7 Q Okay. So what in paragraph seven leads you to
8 concludes that undergrounding would be required?

9 A To protect the interests of the Great River Road.

10 Q So the only way to protect the interests of the Great
11 River Road in WisDOT's opinion is to underground the
12 transmission facilities?

13 A As we've already stated that, yes.

14 Q When did WisDOT come to this opinion that
15 undergrounding is the only means by which the Great
16 River Road can be protected?

17 A As we were preparing our direct testimony.

18 Q Has the Mississippi River Parkway Commission asked
19 WisDOT to take any particular stance in this docket
20 informally?

21 A Informally they've -- I've received calls from Al
22 Lorenz asking what our -- he's asked us what our
23 position is, and I said you're just going to have to
24 wait until we submit our testimony. I mean, at the
25 time he -- at the time he called, there has not been

1 anything that we had that was written in stone as our
2 testimony has now been in stone.

3 Q Did he ever ask you to take a position that the line
4 is unpermissible along Highway 35?

5 A No.

6 Q Let's move on to your federal statute, Mr. Fasick.

7 A Are we done with this one?

8 Q I am, thank you.

9 Generally speaking, with respect to the
10 application of federal law, would you agree that
11 federal law only applies to federal highways or
12 rights-of-way or other areas acquired with federal
13 funds?

14 MS. COX: Objection. Calls for a legal
15 conclusion.

16 MS. AGRIMONTI: Mr. Fasick has testified
17 that WisDOT has relied on two statutes. It's from
18 his testimony.

19 MS. COX: Right. But you're asking him to
20 interpret it to a legal certainty.

21 EXAMINER NEWMARK: He can answer what he
22 knows.

23 THE WITNESS: I need the question again.
24 I'm sorry.

25 MS. AGRIMONTI: Sorry, what was it?

1 THE WITNESS: I need the question again.

2 BY MS. AGRIMONTI:

3 Q I asked if you -- it was your understanding that
4 federal regulations, specifically 23 CFR 645.209(h),
5 only applied to federal highways or other lands
6 acquired with federal funds.

7 A My understanding is that 645 as a whole, that's where
8 we get the basis for our utility accommodation
9 policy.

10 Q Okay. Your accommodation policy applies to both the
11 federal highways and nonfederal highways, right?

12 A Our accommodation policy applies to the state trunk
13 highway system, which is -- those highways are
14 federally funded.

15 Q All the state highways are federally funded?

16 A The state trunk highway system is typically federally
17 funded.

18 Q For those portions of the state system that are not
19 federally funded, is it your belief that this chapter
20 applies?

21 A I don't deal with -- in my job, I deal with the state
22 trunk highway system.

23 Q I'm sorry. I am asking whether there are portions of
24 the state highway system that are only funded by
25 state money.

1 A I don't know about those.

2 Q Thank you.

3 A The state --

4 Q I'm sorry. I didn't mean to cut you off.

5 EXAMINER NEWMARK: If you want to
6 continue, you can. But you don't have to.

7 MS. AGRIMONTI: I thought you were done.

8 THE WITNESS: No. The way I understand
9 the funding process, okay, as explained to me by our
10 accounting folks is that the state trunk highway
11 system, when we get -- we get federal money for it,
12 and there's a combination. Usually there's state
13 match with those dollars.

14 EXAMINER NEWMARK: Okay. Fasick 13.

15 (Fasick Exhibit 13 marked.)

16 BY MS. AGRIMONTI:

17 Q Mr. Fasick, we've talked a few moments ago about the
18 Wisconsin Mississippi River Parkway Commission and
19 some general communications between WisDOT and the
20 MRPC. Do you recognize this as an e-mail from you to
21 Mr. Marlin Beekman of the Wisconsin Mississippi River
22 Parkway Commission?

23 A Yes.

24 MS. AGRIMONTI: Move admission of
25 Exhibit 13.

1 EXAMINER NEWMARK: Okay. I don't think we
2 moved in 12 either.

3 MS. AGRIMONTI: 12 I'm not moving. It's
4 just the federal law.

5 EXAMINER NEWMARK: Oh. It was the map,
6 12.

7 MS. AGRIMONTI: Oh. I'm sorry. Did I
8 have the wrong number for that? If it was the map,
9 I would like it admitted.

10 EXAMINER NEWMARK: Any objections to 12?
11 People need some time to look at 13, they can. No?
12 Okay. No objections to 13 then. So they're both
13 in.

14 (Exhibits 12-13 received.)

15 BY MS. AGRIMONTI:

16 Q In this e-mail you took issue with Mr. Beekman's
17 representation of statements by WisDOT at one of the
18 MRPC meetings; would that be a fair characterization?

19 A Yes. From Mr. Beekman's draft meeting notes.

20 Q All right. And on the back page you correct him to
21 say that locating the towers in scenic easements
22 along the Great River Road National Scenic Byway
23 cannot be supported at this time due to potential
24 visual impacts rather than saying it won't be
25 permitted; is that right?

1 A Correct.

2 Q Okay. What new information did you get between
3 September 9th and 11th of 2010 and your testimony of
4 February 10, 2012 that led you to conclude that
5 indeed it couldn't be permitted unless it's
6 underground?

7 A It was the department's determination based upon the
8 culmination of all the data support placed in the
9 docket and decisions made internally on what position
10 we were going to take in this matter, including --
11 including meeting with Xcel and the Secretary's
12 office.

13 Q That was a meeting that took place in January, right?

14 A Yeah. Was it January or February? The last one that
15 you guys were there.

16 Q I have it here somewhere and I'll probably ask you
17 about it.

18 MR. THIEL: It was January 31st.

19 MS. AGRIMONTI: Thank you.

20 BY MS. AGRIMONTI:

21 Q On or about January 31st?

22 A That's fine.

23 Q And there was nothing mentioned in that meeting about
24 undergrounding either; is that right?

25 A The context of the meeting as I recall was that Xcel

1 representatives were wanting to -- they're
2 petitioning the Secretary to make sure that the Q1-35
3 would not be eliminated from consideration if the
4 Department did not issue permits.

5 Q Okay. I'd like you to go to Hillstrom 19. Give me
6 just a second. There's been some reference to the
7 Secretary Gottlieb letter. Is the -- Hillstrom
8 Exhibit 19 your understanding of the letter that's
9 been referenced? I did provide a binder of
10 Mr. Hillstrom's exhibits to your left if that might
11 be handy.

12 A Oh, it's too heavy. I don't know how Tom did it with
13 carrying it around. I can find it here. Just give
14 me a minute. I can pull the letter up.

15 MS. COX: I don't want to have to object
16 to Applicant counsel trying to injure my witness.

17 THE WITNESS: You said 19?

18 MS. AGRIMONTI: Yes, sir.

19 THE WITNESS: I got 21, 20, 18, 17, 15.

20 EXAMINER NEWMARK: Yeah. It's not -- it's
21 not marked as an exhibit, but here's a copy.

22 THE WITNESS: All right. Thank you.

23 EXAMINER NEWMARK: It's not marked in ERF
24 as an exhibit yet.

25 MS. AGRIMONTI: Oh, okay.

1 MS. COX: Yes, it is.

2 MS. OVERLAND: It's out of order.

3 THE WITNESS: Is it a different number?

4 MS. OVERLAND: Yeah.

5 EXAMINER NEWMARK: Let's go off.

6 (Discussion off the record.)

7 EXAMINER NEWMARK: Okay.

8 BY MS. AGRIMONTI:

9 Q Secretary Gottlieb was analyzing the same rule that
10 you cited in your testimony, right? 23 CFR
11 645.209(h)(2)?

12 A Yes.

13 Q Did you advise Secretary Gottlieb on the content of
14 this letter?

15 A My -- my point -- my portion of the letter is I
16 started a draft that was then sent up the chain of
17 command basically, and -- excuse me -- my bosses
18 looked at it. I believe our statewide bureau
19 director looked at it and our counsel looked at it.
20 So I started the letter, and it gets revised from
21 there.

22 Q In your draft letter, do you recall whether you
23 concluded that the line could not be built overhead
24 due to its high voltage as noted on page 2.3 about
25 the middle of the page?

1 A I don't recall.

2 Q Do you recall whether you provided any input with
3 respect to the last line of the letter that says,
4 WisDOT understands that this federal law is primarily
5 intended to address longitudinal installations such
6 as the proposed Q1 alternate route, but there may be
7 locations where a proposed transmission line would
8 merely need to cross highway right-of-way and thus
9 could be permitted to do so?

10 A Yeah. I remember that part, yes.

11 Q Okay. And was that your opinion at the time?

12 A Yes.

13 Q Was it your opinion when this letter was issued that
14 the line could not be economically built underground
15 using today's technology?

16 A I looked at that, but I've come to a different
17 determination.

18 Q At the time this letter was written, did you agree
19 with it?

20 A I -- I cannot say for sure. My opinion now is kind
21 of jaded based upon other things that I have gone
22 online to look at.

23 Q With respect to this letter, when Secretary Gottlieb
24 issues a letter on behalf of the agency, is it an
25 official declaration of the agency's position?

1 A It's our position, but our position can change.

2 Q Okay. And you're authorized to change -- I mean, let
3 me phrase that a different way.

4 A Yeah, please do.

5 Q You know, honestly, as the Applicants, we look at a
6 letter from Secretary Gottlieb, and we are trying to
7 assess the authority of your testimony to counter
8 what Secretary Gottlieb said in his letter. So I'm
9 asking what authority you have in this proceeding to
10 speak on behalf of the Secretary.

11 A I speak as the department as a whole, and my
12 testimony is reviewed from the Secretary's office.
13 So as this has progressed, it's obvious that our
14 position has changed, and that's why I developed my
15 testimony the way I did was based upon looking at
16 everything that has been submitted in the docket.
17 And then as a department we discuss it, formulate an
18 opinion. We go through the Secretary's office, and
19 he does accept the testimony that is sent out from
20 all of the witnesses.

21 Q So is part of the procedure all WisDOT testimony was
22 approved by the Secretary's office?

23 A Yes, to some degree.

24 Q What do you mean, to some degree?

25 A Well, I can't tell you for sure if he reads every

1 single line, if he has his -- the deputy secretary
2 look at it or his administrative assistant. But in
3 my opinion he -- he puts the final stamp on it, yes.

4 Q You said you found some things online that made you
5 change your opinion. What were those things?

6 A I looked at undergrounding -- I Googled underground
7 transmission projects and found a project out in
8 Connecticut that was done underground.

9 Q And was there some data about that project in
10 particular that made you change your mind, or just
11 the fact that the line was underground?

12 A Just the technology as far as the fact that oil
13 cooled -- the technology of oil cooled wasn't used in
14 that project, and the fact that they built many miles
15 of it, of 345, underground. It was the Middletown,
16 not Middleton, but Middletown to Norwalk Project.

17 Q So based on the existence of this project, you
18 concluded that it was technically feasible to build
19 it at crossings and other right-of-way locations on
20 the Great River Road?

21 MS. COX: Objection. Calls for him to
22 determine technical feasibility of the line when
23 that's the engineering department's job. I think
24 what you want to ask is --

25 EXAMINER NEWMARK: Well, let her rephrase

1 the question.

2 MS. COX: Yeah.

3 BY MS. AGRIMONTI:

4 Q And maybe I misunderstood your earlier testimony,
5 Mr. Fasick. I thought that you said when we're
6 talking about point three on Secretary Gottlieb's
7 letter about whether the line could be economically
8 built underground using today's technology, and you
9 didn't have an opinion at the time but you did say
10 that your opinion has differed from what's in this
11 letter based on what you looked at on the internet?

12 MS. COX: Objection. Presumes facts not
13 in evidence. We don't have those costs. They
14 haven't been provided by the Applicants.

15 MS. AGRIMONTI: Your Honor, I'm asking for
16 what data he made his decision on, and he said he
17 looked on the internet and changed his mind about
18 this point in Mr. Gottlieb's -- Secretary Gottlieb's
19 letter.

20 BY MS. AGRIMONTI:

21 Q Is that correct, Mr. Fasick?

22 EXAMINER NEWMARK: Go ahead.

23 THE WITNESS: I looked at this at the time
24 I was looking at 345 underground, that's what I
25 Googled, and I wanted to see what projects were out

1 there that were built 345 underground, and I found
2 two of them actually in Connecticut that were
3 underground.

4 BY MS. AGRIMONTI:

5 Q And that led you to the conclusion that
6 undergrounding was a feasible alternative here?

7 A I just Googled recently. This letter was previous to
8 that letter.

9 Q Okay. I understand. I thought that you said after
10 this letter you got new information from Googling
11 that led you to conclude differently than what's in
12 this letter about feasibility. Am I characterizing
13 that correctly?

14 A It's my opinion that undergrounding is more -- it's
15 not the big taboo that it once was, that everybody
16 says it's, you know, millions of dollars per mile,
17 and I've seen ranges all over the board now from
18 different projects, those two different projects
19 online. So, you know, it's hard to put a dollar
20 figure on what exactly the cost is for underground.
21 That would have to be engineered. But it seems to me
22 anyway that it's cheaper to do than it once was 10,
23 15, 20 years ago.

24 Q Do you have an opinion about whether the line can be
25 economically built underground using today's

1 technology?

2 A I think it could.

3 Q And that is based on the information you obtained on
4 the internet?

5 A Just looking at the type of technologies that are
6 coming on, yes.

7 Q You don't have any specific cost estimates that you
8 looked at for reaching that conclusion, right?

9 A No. It's just an opinion.

10 Q You did not give any consideration to the
11 availability of technical experts in Wisconsin to
12 operate and maintain underground facilities, did you?

13 A For what?

14 Q For the 345 project.

15 A This project?

16 Q This project.

17 A I'm not following your question. I'm sorry.

18 Q You would agree that this underground 345 facility
19 would be a unique facility in this region, would you
20 not?

21 A Yes.

22 Q Okay. And with every technology you need to have
23 specialists who can operate and maintain it, right?

24 A Yes.

25 Q Did you give any consideration to the availability of

1 technical expertise in this area to operate and
2 maintain the facility once it was constructed?

3 A No. The assumption was that the utilities involved
4 have experts that if they -- well, my assumption is
5 that the utilities have those people that are
6 knowledgeable and out there to do that kind of thing.

7 Q You said there was two projects. You gave me the
8 name of one on the East Coast. Do you recall the
9 name of the second project?

10 A That's a tie-in with the other one. I can't give you
11 the exact. I could probably find it for you if you'd
12 like, but the project goes in the Connecticut area
13 for a number of miles.

14 Q Okay. Did you have any occasion to look at the
15 transmission structures that are associated with
16 those projects?

17 A I saw the -- yes, I did.

18 Q Okay. Let's --

19 A The sur-surrebuttal, was that --

20 Q I'm asking if you looked at any when you were doing
21 your Google research.

22 A No. To answer your question, I looked at what was
23 provided with Mr. Hillstrom's sur-surrebuttal, I
24 believe.

25 Q Okay. I believe it's Mr. Stevenson's surrebuttal.

1 A Or Mr. Stevenson's. I'm sorry.

2 Q Let's go there now.

3 EXAMINER NEWMARK: That was a no to that,
4 you didn't see the transition structures on the
5 internet projects?

6 THE WITNESS: Correct. I have seen one, a
7 smaller one. There's one on the interstate that we
8 have. We have a -- ATC's got a -- I think it's a
9 345 along I-90 that we permitted aboveground that
10 is -- I don't know if it's a 345. But then there's
11 a stepdown right by -- I think it's County Highway
12 AB or BB that has to go underground. It was going
13 underground from there. So there's a partial
14 stepdown right out here in Madison.

15 BY MS. AGRIMONTI:

16 Q I'm sorry. Are you finished?

17 A I am now.

18 Q Let's look at Hillstrom Exhibit No. 17.

19 A Hillstrom 17?

20 Q No. Now I'm mixed up. It's sur-surrebuttal of
21 Mr. Stevenson 17. If WisDOT were to require
22 undergrounding at crossings, would you agree that the
23 line could be above ground once it got outside of the
24 road right-of-way provided it wasn't in a scenic
25 easement?

1 A As long as it's out of scenic easement and out of
2 road right-of-way, we have no authority.

3 Q So if the line had to go up from underground to
4 overhead to overhead to underground, you agree there
5 has to be a transition structure like the one you
6 mentioned for the ATC project?

7 A Yes. That's what I have been told, yes.

8 Q And you have had a chance to look at Mr. Stevenson's
9 Exhibit 17 showing a representation of what those
10 transitions stations would look like?

11 A Yes.

12 Q Is it your -- do you have an opinion about whether
13 these transition stations would have less or more
14 aesthetic impacts along the Great River Road than the
15 proposed project?

16 A I do not have an opinion.

17 Q WisDOT's opinion as I understand it is that the
18 Highway 88-Q1-35-Arcadia or Arcadia-Ettrick options
19 could be constructed all overhead; is that right?

20 A Yes.

21 Q There are some common segments along those routes and
22 the Q1-35 and the Q1-Galesville; isn't that right?

23 A Yes.

24 Q What's the difference between the same area on a
25 route that WisDOT approves of and would allow

1 overhead versus one that WisDOT doesn't approve of
2 and would require underground?

3 A Excuse me. The -- as I provided in testimony,
4 Mr. Stevenson assumed that Segments, I believe, 2A1
5 and 2A2 would be allowed overhead if they were coming
6 down the Q1 and Q1-Highway 35, and that's incorrect.
7 They would have to go underground as well because we
8 would look at the entire route. If they're going to
9 the Arcadia or the Highway 88 or Ettrick, then we
10 would take another look, and there's a possibility
11 that we would allow them -- possibility that we would
12 allow them to go overhead. It's just a matter of
13 looking at the entire route and how it plays into
14 what impacts it would have with the Great River Road.

15 Q I'm sorry. I'm confused. I thought you just
16 testified that the line could be above ground and
17 permitted by WisDOT if the three routes identified
18 were selected, and I think you just testified it
19 might be?

20 A No. I said they could go above ground. I'm saying
21 just the Segments 2A, 2A1, and 2A2, those common
22 segments. I thought the question was regarding
23 common segments.

24 Q I was. And I was trying to get a distinction between
25 the common segments being used with routes that

1 WisDOT approves of and routes that WisDOT doesn't
2 approve of, and I wanted to make sure that for the
3 Ettrick, Arcadia, and 88 Routes, that WisDOT has
4 determined that it can go overhead.

5 A Correct. There's just a couple of common segments
6 that we found that Mr. Stevenson's, I think,
7 surrebuttal, sur-surrebuttal, or actually
8 surrebuttal, I believe, which were 2A1 and 2A2 were
9 common ones.

10 Q Okay. Let's move on to page 2 of your --

11 A Two?

12 Q Yes. I would like to explore with you the
13 decision-making that WisDOT undertook to alter its
14 position to require undergrounding of the line and
15 right-of-way and specifically crossings. On page 2
16 of your testimony, lines 22, 23, and 24, you state
17 that WisDOT made a final decision as to our position
18 after receiving FHWA's response to our 11-22-11
19 letter on 2-9 of '12 and before submitting initial
20 testimony on 2-14-12. Do you see that?

21 A Yeah. The last line should be 2-10-12.

22 Q All right. So that's a correction to your testimony?

23 A Yeah.

24 Q All right.

25 A Counsel pointed that out to me, so --

1 Q Okay. So between the time WisDOT got the letter on
2 2-9 of '12 and filing of your testimony on 2-10,
3 WisDOT made its final decision; is that right?

4 A Correct.

5 Q All right. Do you know what time of day WisDOT
6 received the FHWA letter on 2-9 of '12?

7 A No, I don't.

8 EXAMINER NEWMARK: Okay. So that's Fasick
9 13 I have.

10 MS. HERRING: Your Honor, I believe it's
11 Fasick 14.

12 MS. AGRIMONTI: You're moving now.

13 EXAMINER NEWMARK: Right. Okay. 14.

14 (Fasick Exhibit 14 marked.)

15 BY MS. AGRIMONTI:

16 Q Mr. Fasick, I have handed you Exhibit Fasick 14.
17 It's an e-mail from Mr. Thiel. You're copied on that
18 e-mail; is that right?

19 A Yes.

20 Q And it's a discovery response, and the supplemental
21 response attaches the FHWA letter, and it notes that
22 was received at 3:58 p.m. on February 9, 2012.

23 A Right.

24 Q Does that refresh your memory?

25 A Correct.

1 Q What time did you file your testimony on February
2 10th?

3 A I'd have to check. My guess is we were pretty close
4 to cutting it to the deadline.

5 Q That's at noon, right?

6 A Yes.

7 MS. AGRIMONTI: Okay. Move admission of
8 Fasick 14.

9 EXAMINER NEWMARK: Any objections?
10 (No response.)

11 EXAMINER NEWMARK: So moved.
12 (Fasick Exhibit 14 received.)

13 BY MS. AGRIMONTI:

14 Q So between 4:00 p.m. and noon on Friday, WisDOT made
15 its final decision; is that right?

16 A That's what I testified to.

17 Q Okay. What activities took place at WisDOT between
18 4:00 p.m. on the 9th and noon on the 10th to reach
19 that final decision?

20 A I can't be specific on that.

21 Q You don't know?

22 A I'm saying I don't know.

23 Q Your testimony is that that's when the decision was
24 made though. How do you know it was made during that
25 time?

1 A Decision could have been made -- decision could have
2 been made without my involvement.

3 Q How was it conveyed to you what the final decision
4 was?

5 A Could have been a phone call. I don't recollect.

6 Q When was your testimony finalized?

7 A I think it was that day.

8 Q Do you know what criteria was used to make that final
9 decision?

10 A Yes. It's in lines 17 through 19, the three
11 statutes.

12 Q I'm sorry. Those two statutes existed before
13 February 9th when the FHWA gave you a letter, right?

14 A Yeah. That was part of it. The letter was kind of
15 the final, yes, we've been waiting for this, and FHWA
16 basically said to us, you are the decision -- we
17 stand behind -- our interpretation of FHWA's letter
18 was that we stand behind our decision to enforce 23
19 CFR 645.209(h). So that final confirmation from FHWA
20 was what we needed, I guess.

21 Q You're not aware of any formal analysis that took
22 place to change WisDOT's position between
23 February 9th and the 10th?

24 A We were just waiting for the letter basically. We
25 had advanced knowledge that the letter was

1 forthcoming.

2 Q So you made your final decision sometime before this?

3 A No. I said we had -- we had knowledge that the
4 letter was forthcoming. We weren't sure exactly what
5 was going to be in the letter. Once we got the
6 letter, then we drafted our testimony accordingly.

7 Q So you drafted the testimony after 4 o'clock on
8 Thursday and filed it by noon on Friday, and
9 Secretary Gottlieb's office reviewed it; is that
10 right?

11 MS. COX: Objection. Badgering. Maybe
12 rephrase.

13 MS. AGRIMONTI: Sure.

14 BY MS. AGRIMONTI:

15 Q Was your testimony reviewed by Secretary Gottlieb's
16 office, the February 10th testimony?

17 A Yes.

18 Q What -- why did WisDOT change its mind?

19 A Regarding what?

20 Q What changed between your letter from the Secretary
21 in November of '11 where you said WisDOT said certain
22 things could -- the crossings could be happening
23 overhead and that you believed that the line could
24 not be economically built underground and the time
25 you changed your mind, other than the Federal Highway

1 Administration saying go ahead, enforce your
2 accommodation policy?

3 A What changed our minds?

4 Q Yeah. What data did WisDOT analyze, consider, or
5 rely on?

6 A Everything. I repeatedly told you that everything
7 that's been submitted in this docket, testimony from
8 Xcel, all the rebuttals, surrebuttal, testimony from
9 everybody else, we all -- we looked at that, and the
10 decision that was made was to say it was going to go
11 under -- the thing of it is, if -- if we -- if we
12 said no to overhead through the scenic easements and
13 crossings because we want to protect the Great River
14 Road, then that kills -- if we said we're not going
15 to issue a permit, then that kills the viability of
16 the route. You guys came in on January 31st and said
17 don't kill the viability of that route. So what's
18 left, and that was to say it's going to go
19 underground.

20 Q Okay. Let's talk about crossings. What criteria
21 does WisDOT use to determine whether a line can be
22 overhead or underground?

23 A A number of different factors.

24 Q Could you please list them for me?

25 A Depends on the future highway project. If we have to

1 change the elevation. Depends on if there's a bridge
2 nearby. Depends if there are other utilities in the
3 area. Aesthetics could be one, especially on this
4 project.

5 Q Okay. Can you cite to me a particular provision and
6 rule or statute that you are relying on when you make
7 a decision whether to overhead or underground a
8 transmission line?

9 A It's in our accommodation policy.

10 Q And your accommodation policy is not a rule; is that
11 right?

12 A Correct.

13 Q Did not go through any formal rulemaking?

14 A Correct.

15 Q And you're not aware of any documents being generated
16 internally at WisDOT between 4 o'clock on the 9th of
17 February and noon on the 10th relating to this
18 changed position or final position; is that right?

19 A I am not aware of anything, correct.

20 Q And other than the general statute of -- excuse me.
21 Other than the statute regarding the 1480 -- other
22 than Statute 14.85 from the State and the federal
23 rule and in CFR Chapter 23, there are no other rules
24 or statutes that WisDOT is relying upon, right?

25 A Other than -- you mentioned a question earlier. We

1 do have 86.072 which we utilize to issue permits.

2 Q Did you apply any portion of your accommodation
3 policy to this decision, this final decision?

4 A Yeah. We have a whole section on scenic easements,
5 which is -- which mirrors federal -- the federal
6 rule.

7 Q Do you recall any discussion of that section of the
8 accommodation policy between Gottlieb's -- excuse
9 me -- between the FHWA's letter on the 9th and your
10 filing of testimony on the 10th?

11 A No.

12 Q Was there any analysis after Gottlieb's November 11th
13 letter and your direct testimony on February the 10th
14 that analyzed the application of the accommodation
15 policy with respect to scenic areas?

16 A I think Gottlieb's letter -- or Secretary Gottlieb's
17 letter had that in there already.

18 Q Are there any other documents that you're aware of
19 that analyze your accommodation policy?

20 A I -- I'm not sure.

21 Q Would you agree that the WisDOT decision to require
22 undergrounding is not based on any engineering
23 considerations? It's not an engineering requirement
24 from WisDOT's perspective that the line has to go
25 underground?

1 A I would agree with that.

2 Q Would you agree that WisDOT hasn't identified a
3 single safety concern with the project along any of
4 the routes that would require undergrounding?

5 A I would not agree with that. We've already -- we've
6 discussed with them making sure things are out of the
7 clear zone. So anything that they were going to
8 propose with regards to an overhead structure in a
9 clear zone, we would have objected to.

10 Q And that would just be fixed by moving it out of the
11 clear zone, right?

12 A That's one option, correct.

13 Q Are you aware of any clear zone encroachments from
14 the routes that have been proposed in the
15 application?

16 A I am -- I didn't analyze pole by pole.

17 Q So assuming that all poles were out of the clear
18 zone, there would be no safety consideration that
19 would warrant undergrounding?

20 A As far as I'm concerned, correct.

21 Q What consideration did WisDOT give to the aesthetic
22 impacts of undergrounding for making its final
23 decision?

24 A We looked at the visual assessment provided by Xcel.

25 Q Did you look at any information that would provide

1 data about the environmental or aesthetic impacts of
2 an underground construction?

3 A I don't believe so.

4 MS. AGRIMONTI: Your Honor, while we're
5 marking this one I do have --

6 EXAMINER NEWMARK: A number of questions?

7 MS. AGRIMONTI: You know what, I probably
8 can finish up in probably about 15 or 20 minutes.

9 EXAMINER NEWMARK: Okay.

10 MS. AGRIMONTI: I thought I had more.

11 EXAMINER NEWMARK: Thanks. This is marked
12 15.

13 (Fasick Exhibit 15 marked.)

14 BY MS. AGRIMONTI:

15 Q Okay. I'd like to return to the topic of federal
16 funding for scenic easements. There was some
17 discussion with Mr. Hillstrom about whether WisDOT
18 had provided data showing that scenic easements had
19 been acquired with federal funds. You were here for
20 that, right?

21 A Yes.

22 Q Okay. And in your testimony, you note there are two
23 projects that WisDOT provided paperwork for that
24 shows federal funding in the plat maps; is that
25 right?

1 A What records that -- that exhibit that the Judge
2 talked about, Exhibit 36, right, they were microfiche
3 records that I obtained from Frank Hilscher, who's
4 our senior accountant.

5 Q Okay. Those documents don't -- as part of that
6 project, both right-of-way and scenic easements were
7 required by WisDOT, right?

8 A I believe -- well, can I pull up 36 to take a look?

9 Q Absolutely.

10 A Okay. I'm looking at exhibits, and I put a red box
11 around final cost statement for Highway 35 Buffalo
12 County ID 7151-01-22. It says, contract with Buffalo
13 County right-of-way, \$408,560.05 funds provided,
14 federal, and then State of Wisconsin. So there were
15 federal funds in that project, and then if you look
16 at the plat for that, the plat bought scenic
17 easements.

18 Q Okay. And are you able to tell from this
19 documentation whether any of those federal funds
20 purchased the scenic easements?

21 A This documentation here that you gave me or --

22 Q I'm sorry. Mr. Hillstrom's 36.

23 A Yes. It says the plats, 7151-01-22, federal funding.

24 Q So there is never a circumstance where there's
25 federal funding used for right-of-way but not scenic

1 easements?

2 A Well, I'm sorry. You would have to get plat as well,
3 and those plats were provided to Xcel.

4 Q And it does identify that there are scenic easements
5 as part of the project?

6 A Yes.

7 Q I'm trying to find out if, just because it's part of
8 the project, does that mean federal money went to it?

9 A In my -- in my opinion, okay, based upon looking at
10 the ID, and maybe Ms. Vetsch can answer this better,
11 but the project had federal funding and it bought --
12 had a list of everything that it bought on I believe
13 the title page or the second page. So it had all the
14 fees and had the scenic easement. So the way I
15 looked at it is that federal funding was used to
16 purchase that -- those scenic easements and that
17 right-of-way on that plat.

18 Q Okay. But you don't know that for sure. That's your
19 belief?

20 A From my understanding of the way the process works.

21 Q Okay. Let's look at what's been marked as Exhibit
22 Fasick 15.

23 A Sure.

24 Q One of the projects that you identify as having
25 federal funding is 7151-01-22, right?

1 A Correct.

2 Q What we've done with Exhibit 15 is superimposed the
3 routes over the projects just for ease of reference.
4 Would you agree that project 7151-01-22 is outside of
5 any of the routes being proposed in this proceeding?

6 A No. I would have to look at the plat itself and have
7 it superimposed over.

8 Q This is your diagram of where those projects begin
9 and end.

10 A I understand that.

11 Q Okay.

12 A But to be totally accurate, I would have to see the
13 plat itself with your route superimposed over the
14 plat.

15 MS. AGRIMONTI: Okay. I will not move
16 Exhibit 15.

17 THE WITNESS: And, Judge, those are the
18 best copies that we have.

19 EXAMINER NEWMARK: Can I just interject a
20 minute? I was curious about that Exhibit 36,
21 Hillstrom, and I know you -- I didn't realize that
22 you had put the red box on that page.

23 THE WITNESS: That's how we did it in
24 discovery, to point out the fact that we're
25 concentrating on that project, not the other ones on

1 the page. That's the one that's relevant.

2 EXAMINER NEWMARK: So on the other pages
3 of that that are included in the exhibit, those are
4 other projects. Are they in this area? Do they
5 relate to this case at all?

6 THE WITNESS: Just the ones that I've got
7 marked up.

8 EXAMINER NEWMARK: Yeah. Maybe it's just
9 the way it appears in the screen. Is there one box
10 that's -- one box or two?

11 THE WITNESS: Let me --

12 EXAMINER NEWMARK: Oh, yeah. 21 and 22.

13 THE WITNESS: I've got -- there should be
14 two boxes.

15 EXAMINER NEWMARK: Okay. All right. So
16 just for the record, if you enlarge the electronic
17 PDF, you can see what -- the contents of what's in
18 the box. And if that's all that's relevant here,
19 then that exhibit's fine. We don't have to try to
20 come up with a new version or a clearer version of
21 that.

22 MS. AGRIMONTI: Thank you, Your Honor.

23 THE WITNESS: Even I have to give it --

24 EXAMINER NEWMARK: Yeah. So we have
25 something else that's marked as Fasick 16.

1 (Fasick Exhibit 16 marked.)

2 THE WITNESS: Are we done with 36?

3 MS. AGRIMONTI: We are.

4 THE WITNESS: Okay. Thank you.

5 BY MS. AGRIMONTI:

6 Q Quick question before I forget. Does the Secretary
7 approve utility permits? Let me ask it a different
8 way.

9 Does it go up through his office, like your
10 testimony does, for approval before they're issued?

11 A By the rule -- sorry. By 86.072, the Secretary -- I
12 mean, we do everything on his behalf. The general
13 issuance of permits is done at -- for a project like
14 this, it would be done at my level.

15 Q So --

16 A So I'm issuing it on behalf of the department under
17 his authority.

18 Q And you wouldn't necessarily have to issue it -- send
19 that permit through his office for final approval
20 before issuance?

21 A No. But if he requested to do so, I would.

22 Q All right. I've handed you Fasick 16. Do you
23 recognize this as some of redacted discovery
24 responses provide by WisDOT in this docket?

25 A I'm not sure. It's kind of -- you say redacted.

1 Q Yeah. There were --

2 A There's a lot of gaps here. I don't know what's
3 what.

4 Q Yeah. There were 24 pages. There are four responses
5 that I've included here, and I understand that you
6 were the person who signed on behalf of WisDOT on the
7 last page?

8 A Yes. Yes, I see that.

9 Q And so I would like to admit these selected answers
10 and wanted you to have an opportunity to take a look
11 at them to make sure they were true and correct
12 copies of what WisDOT provided.

13 A Yes, I recognize them.

14 MS. AGRIMONTI: Move Exhibit 16.

15 EXAMINER NEWMARK: Objections?

16 (No response.)

17 EXAMINER NEWMARK: So moved.

18 (Fasick Exhibit 16 received.)

19 BY MS. AGRIMONTI:

20 Q Then I would like to ask you about question number
21 nine. That's on the second page, and the bottom of
22 that paragraph says, from various discussions, staff
23 unanimously determined that Xcel's proposed
24 alignment, pole height, pole color, and pole
25 configuration choices has significant adverse impacts

1 on the Great River Road National Scenic Byway and
2 national parkway and natural beauty of the area.

3 My question to you is, what standard would
4 apply or did staff apply to determine whether the
5 impact was significantly adverse?

6 A We gathered and looked at the -- I did a presentation
7 for senior management. We looked at the visual
8 assessments that were done by Xcel, and then we made
9 our decision based upon those -- visual assessment
10 report.

11 Q Was there any specific identified criteria that
12 WisDOT applied in reviewing those assessments?

13 A It was how the picture -- the pole representations
14 would impact the Great River Road, excuse me.

15 Q How did you assess whether it was a big impact, small
16 impact, or no impact?

17 A It was basically the opinions of those that were in
18 the room.

19 Q Okay. So who was in the room?

20 A Senior management. I don't have -- I don't have a
21 listing. My guess, there would have been --
22 typically it's the Secretary, deputy secretary,
23 administrator, my boss, who is my bureau director.
24 It could have been Jim as well, general counsel.

25 Q So you all met in a room and decided that after

1 looking at the visual assessments, there was going to
2 be a significant aesthetic impact?

3 A Yes.

4 Q Also in discovery here - let's see if I can find it.
5 Request number 11, identify all instances in the last
6 25 years when WisDOT has authorized construction of a
7 transmission line of a voltage 69 or above within or
8 across lands which WisDOT holds a scenic easement,
9 either a trunk Highway 35 easement or other scenic
10 easements. And you stated that there was only one
11 instance, and you provided that ATC project?

12 A Correct.

13 Q Okay. Are you aware of Xcel Energy's Winona TAP
14 project?

15 A No.

16 EXAMINER NEWMARK: This is Fasick 17 and
17 18.

18 (Fasick Exhibits 17-18 marked.)

19 BY MS. AGRIMONTI:

20 Q Mr. Fasick, do you work with Heather Dresel?

21 A Yes, I do.

22 Q And what position does she hold in relationship to
23 you at WisDOT?

24 A She's the utility permit coordinator in the Northwest
25 Region, Eau Claire office.

1 Q So she would be equal to you in a different region?

2 A Not equal per se. I have oversight of the entire
3 utility permitting program, the accommodation policy,
4 and she would be the one issuing the permits out of
5 the region office.

6 Q And she would be responsible for Buffalo County?

7 A Correct. Unless it was a project-related permit,
8 meaning a highway improvement project related, then
9 Mr. Ricksecker and I think -- Richard Ricksecker
10 might issue -- might issue the permit.

11 Q Okay. Do you recognize this last page as his e-mail
12 address?

13 A Yes.

14 Q And the transmittal from Heather Dresel is a permit
15 for a project of Xcel Energy; is that right?

16 A Yes.

17 MS. AGRIMONTI: Move admission of
18 Fasick 17.

19 EXAMINER NEWMARK: Objections?

20 (No response.)

21 EXAMINER NEWMARK: So moved.

22 (Fasick Exhibit 17 received.)

23 BY MS. AGRIMONTI:

24 Q Let me look at the last page here with
25 Mr. Ricksecker's e-mail. He states that WisDOT

1 regional management agrees with the approval of this
2 permit for Xcel Energy overhead transmission
3 facilities as depicted in the permit located within
4 the scenic easement area.

5 Can you tell from the paperwork that I've
6 provided to you in this exhibit or in Exhibit 18
7 where this project is located?

8 A It looks like it's on Highway 35 in Buffalo County
9 from the plat.

10 Q And I'll represent that the project wasn't ultimately
11 built pursuant to this permit, but you'll note that
12 it moves the line from the north side of the road to
13 the south side of the road, and WisDOT did not
14 require any undergrounding; is that right?

15 A It's a possibility. I --

16 Q You can't tell from the paperwork?

17 A Well, hang on a minute. Unfortunately the facility
18 orientation box on number 10, underground and
19 overhead, was not checked.

20 Q Okay. What is Exhibit 18? Do you recognize that
21 document?

22 A It is a right-of-way plat.

23 Q Is that a document that WisDOT generally creates?

24 A Yes.

25 Q And would the markings on it be WisDOT markings, or

1 would that be from the applicant for a permit?

2 A Which markings are you referring to?

3 Q Fair. The existing and the new alignment for the
4 facility.

5 A The red and green lines in particular?

6 Q Yes, sir.

7 A Without background knowledge, I can't tell you for
8 certain if -- because I do my own superimposing on
9 permits. So WisDOT could have done this, or the
10 applicant could have done this.

11 Q Okay.

12 A So my guess would be the -- the applicant, but I
13 can't state that for sure.

14 MS. AGRIMONTI: Thank you. I will not
15 move admission of 18 at this time.

16 EXAMINER NEWMARK: Okay.

17 BY MS. AGRIMONTI:

18 Q Are you aware of any other national scenic byway
19 where the state DOT has required undergrounding of
20 utility facilities at crossings to mitigate visual
21 impacts?

22 A No.

23 Q Are you aware of any other national scenic byway
24 where a state DOT has required undergrounding of
25 utility facilities in other right-of-ways to mitigate

1 visual impacts?

2 A No.

3 MS. AGRIMONTI: Can I have a moment, Your
4 Honor?

5 EXAMINER NEWMARK: Sure.

6 MS. AGRIMONTI: I have nothing further for
7 this witness.

8 EXAMINER NEWMARK: All right. Let me just
9 gauge what we have left for cross, not that we'll do
10 it now, but who else has cross? Staff? No one
11 else?

12 MS. LOEHR: I might have some.

13 MS. COX: We will be redirecting.

14 EXAMINER NEWMARK: Let's take 45 minutes.
15 Be back at quarter to 2:00.

16 (Break taken from 1:00 p.m. to 1:45 p.m.)

17 (Change of reporters.)

18 EXAMINER NEWMARK: We're ready for more
19 cross, I think, right, with Mr. Fasick? The
20 Applicant is done, right.

21 MS. OVERLAND: You're done? You're sure?

22 MS. AGRIMONTI: For now.

23 EXAMINER NEWMARK: She said she was done.
24 Already.

25 MS. COX: For now she says.

1 CROSS-EXAMINATION

2 BY MS. OVERLAND:

3 Q Good afternoon.

4 A Good afternoon.

5 Q This should be considerably shorter. In your direct,
6 you refer to the Wisconsin Utility Accomodation
7 Policy. And you have a link, it's on page 3. I'm
8 wanting that to be in a document we can exhibit.

9 Your Honor, any -- ? That we can cite to,
10 not necessarily an exhibit or maybe --

11 MS. COX: Can we do it by hyperlink? How
12 big is it, Bob?

13 THE WITNESS: I want to say it would be a
14 hundred pages or so.

15 MS. AGRIMONTI: I have copies.

16 MS. COX: Oh, you have copies.

17 MS. OVERLAND: I told you you weren't
18 done.

19 MS. COX: They have more money than we do,
20 a lot more money than we do.

21 (Interruption by the reporter.)

22 MS. COX: Are we on the record?

23 EXAMINER NEWMARK: We've been on the
24 record. Once we have the witness here.

25 MS. AGRIMONTI: Can we go off for a

1 minute, Your Honor?

2 EXAMINER NEWMARK: Yes, we can go off.

3 (Discussion off the record.)

4 EXAMINER NEWMARK: Let's go on the record.

5 So parties have identified and agreed to an exhibit
6 that Mr. Fasick will file with two -- that will
7 include citations to two DOT documents by hyperlink.
8 One is the utility accomodation policy, the other
9 one is having to do with real estate -- something.

10 THE WITNESS: Program manual.

11 EXAMINER NEWMARK: Real estate program
12 manual. Thank you. So that will be marked.

13 MS. COX: Do you want those as two
14 separate exhibits?

15 EXAMINER NEWMARK: No. Just put it on the
16 same page.

17 (Fasick Exhibit No. 19 designated for
18 delayed receipt.)

19 EXAMINER NEWMARK: Ready for your cross?

20 CROSS-EXAMINATION

21 BY MS. OVERLAND:

22 Q Good afternoon again. This will be a little bit
23 longer. There's been some discussion about
24 memorandums of understanding. And for transmission
25 projects, at what stage would an Applicant normally

1 submit a memorandum of understanding?

2 A I've been involved on two electric transmission line
3 projects with ATC. One is the Morgan-Werner West,
4 and the other one is the Dane County Reliability
5 Project or Middleton to -- I can't think of -- in
6 which we required MOUs in discussions with them prior
7 to CPA -- CPCN submission.

8 Q How do they find out they need to do that?

9 A Through discussions with them. Basically we came up
10 with -- let me clarify. The MOU is a memorandum of
11 understanding that would detail items that are common
12 to the permitting process, for example, how trees and
13 vegetation will be handled. So we would detail those
14 common elements, put them into an MOU, and say this
15 is what we're going to utilize; and they would also
16 cover anything specific that, for example, in the one
17 for Dane County, on how we would handle moving
18 facilities because of beltline expansion projects.

19 So we wanted to get as many details
20 beforehand so that we could, in the case of the
21 beltline project, issue a letter of permitability,
22 let me get that right, so that the Commission could
23 render a decision. So we worked with ATC to get an
24 MOU prior to CPCN submission.

25 Q Now, I hadn't heard that part about the letter of

1 permitability before.

2 A That was a request from ATC. They wanted a letter
3 because we were having concerns about putting the
4 line on the beltline.

5 Q And is that something that would also be used in this
6 case, like a letter of --

7 A What we have determined is that -- by my direct
8 testimony, we could permit any of the routes; but
9 there would be specific conditions on those -- a
10 couple of those routes. For example, the
11 undergrounding.

12 Q And there was also discussion about constructability
13 reports, and I'm wondering also with relation to that
14 at what stage does an Applicant normally present
15 that?

16 A Again, this is relatively new. We did this for the
17 Dane County Reliability Project. They hired a
18 highway consultant, Ayres, it's A Y R E S. And Ayres
19 put together that constructability report to show us
20 where all of the poles would be, how anything within
21 the beltline expansion projects would perhaps affect
22 pole locations. And then we also discussed in that
23 as far as any problems with clear zone issues and how
24 poles have to be protected, like with additional
25 guardrail, which has come to fruition now with the

1 permitting process.

2 So, you know, you get a constructability
3 report; you say we are addressing all of these
4 particular issues, we agree upon the report. The
5 report was actually submitted as part of the docket
6 as well. And then when it comes to the permitting
7 process, we can rely on the constructability report,
8 things would go more -- goes quicker as far as we
9 don't have to review those items again. For example,
10 guardrail and how they're going to access poles for
11 construction purposes, things of that nature.

12 Q Okay. Thank you. Now, you were talking about
13 undergrounding. Have you had an opportunity to
14 review that -- yesterday's Stevenson 18 and 19, the
15 undergrounding cost estimates and studies from -- for
16 Avon and for Lakeville?

17 MS. AGRIMONTI: Your Honor, they haven't
18 been put into the record, so they would not be
19 available to this witness.

20 MS. OVERLAND: Your Honor, I ask that
21 because they're publicly available, so I was
22 wondering if he has seen them.

23 A No, I have not.

24 Q Okay. Thank you. And there's been a lot of
25 testimony about scenic byways, that's a big part of

1 this. Are you familiar with the 115 kV Chisago
2 project that crosses from Minnesota to Wisconsin over
3 the scenic byway of the St. Croix?

4 A No, I am not.

5 Q On the scenic assessment, Exhibit 11, Fasick 11, you
6 were asked whether Ms. Carrola had found that several
7 examples would be acceptable, and you had said yes.
8 And I'm wondering -- well, first, do you recall that
9 exchange?

10 A Yes.

11 Q Looking at the exhibit, for example, the photo .76,
12 would you agree that the language used in this is
13 that it may be acceptable, not that it would be
14 acceptable?

15 A Let me get to it. You're on number 11?

16 Q Exhibit 11.

17 A Fasick 11?

18 Q And then inside photo .78, for example.

19 A 76?

20 Q Yes.

21 A Pull out south of the Alma facility?

22 Q Right. And is it correct that the language there is
23 that it may be acceptable, not that would --

24 A That is correct.

25 Q Thank you. Now, in your surrebuttal, page 2, lines 2

1 through 22 -- no, that's not it. I think it's your
2 sur-surrebutal. I'm not sure.

3 Okay. Let's just wing it. In your
4 testimony somewhere, you're referring to -- and
5 there's been a lot of testimony about this, about the
6 November 22nd letter to the FHWA and then the
7 response that came in in February, just before your
8 testimony.

9 A Yes.

10 Q Do you have any idea why it took so long?

11 A We -- I've heard different things, and I heard that
12 there was a -- initially we -- when we talked at FHWA
13 and then submitted this letter, we thought an
14 answer -- or a reply would be forthcoming quickly. I
15 heard that there was a lobbying effort from -- I
16 don't -- I believe it was -- I don't know if it was
17 some of the Applicants through FERC to FHWA that
18 asked them to look at the letter that was coming our
19 way. And there was a holdup on FHWA to review the
20 Applicants' concerns, I believe. And so we were
21 waiting from FHWA on that process.

22 So that's what I had heard. I can't
23 confirm it. It's -- you know, second-, third-hand
24 that was told to me. So -- but I heard that there
25 was something going on in Washington, D.C., that

1 was -- you know, between federal agencies that was
2 delaying the response from FHWA.

3 Q Do you know if the delay had any connection to this
4 rapid response transmission -- whatever?

5 A Again, I'm hearing things second- and third-hand,
6 so it would be pure speculation on my part.

7 Q Okay. Thank you. Then stop.

8 A Sure.

9 Q And looking at your surrebuttal, let me make sure I
10 have the right page here, your surrebuttal, page 5.
11 After you've been through so much today, going back
12 and forth, and you also heard testimony of
13 Mr. Stevenson, on page 5, lines 6 through 21, there's
14 two parts of it. Do you still disagree with
15 Mr. Stevenson on the amount and cost of
16 undergrounding?

17 A Yes.

18 Q And then as to the second part of it, interpretation
19 of your position on Segments 2A1 and 2A2, do you
20 still disagree with that?

21 A Correct.

22 MS. OVERLAND: I have no further
23 questions.

24 EXAMINER NEWMARK: Okay. Other cross?

25 MS. LOEHR: Just a little bit, Your Honor.

CROSS-EXAMINATION

BY MS. LOEHR:

Q Mr. Fasick, you mentioned in your discussion with Ms. Agrimonti of a meeting on January 31st of this year. Do you recall that?

A Yes.

Q Who was present at that meeting?

A It was the -- the Secretary, Deputy Secretary, myself, Mr. Thiel, Ms. Cox, a representative from Dairyland Power, Ms. Agrimonti was there, a representative from -- another representative from Xcel, I'm not sure -- I can't name names. I know Mr. Hillstrom was there. I believe George Poirier from FHWA was there, Mark Chandler from FHWA. There might have been a couple other folks in the room at the time. But to the best of my knowledge -- representatives of Xcel, the Applicants, and DOT and FHWA.

Q And who called the meeting?

A It was called on -- I believe the Applicants called it.

Q What was the purpose of the meeting?

A To voice their concerns that DOT would not rule out issuing a permit on the Q1-35 -- Highway 35 alternative because if we did, then that would not

1 make it a viable alternative. So they wanted to say
2 please make sure all -- that alternative is still
3 viable so that this whole process that we're here
4 today with doesn't have to get restarted again.

5 Q Prior to that point, had the DOT made a determination
6 that the Q1-Highway 35 route was unpermissible?

7 A No.

8 Q Did that meeting affect DOT's opinion at all?

9 A We took it under consideration, and I believe
10 that's -- we utilized that to formulate our
11 testimony.

12 MS. LOEHR: Thank you. That's all.

13 THE WITNESS: Sure.

14 EXAMINER NEWMARK: Other cross? Staff?
15 Go ahead.

16 CROSS-EXAMINATION

17 BY MR. LORENCE:

18 Q Hello, Mr. Fasick. How are you?

19 A Fasick.

20 Q I'm sorry. I apologize.

21 A That's okay.

22 Q A couple of questions with respect to your direct
23 testimony. On page 3, you make a reference to the
24 utility accomodation policy and then there's a link
25 in your testimony. Is that on -- is that correct?

1 A Page 3?

2 Q Yes.

3 A Line 19?

4 Q Correct.

5 A Yes.

6 Q In the utility accomodation policy, in the section
7 on -- utility accomodation Section 15, there are a
8 couple of sections called 8.0 scenic considerations
9 and 8.1 scenic areas. Are you familiar with those
10 sections?

11 A Yes.

12 Q Are there any other sections or provisions in the
13 accomodation policy that deals with scenic
14 considerations or scenic easements?

15 A No.

16 Q And I believe there is another manual that may come
17 into play in review, the Real Estate Program Manual;
18 is that correct?

19 A The Real Estate Program Manual would have information
20 on the scenic easements, yes.

21 Q So there's some provisions in that document?

22 A Correct.

23 Q And neither the program man -- Real Estate Program
24 Manual or the utility accomodation policy, those are
25 DOT documents, correct?

1 A Yes.

2 Q They're not in the Wisconsin statutes or in the
3 administrative rules; is that correct?

4 A Yes.

5 Q I know you've had some questions earlier about the
6 memorandum of understanding and the constructability
7 report which are referred to on pages 4 and 5 of your
8 testimony. Again, those are not items that would be
9 found in the statutes or the administrative rules; is
10 that correct?

11 A That's correct.

12 Q Would they be found in the utility accommodation
13 policy?

14 A Someday I hope to put them in there. But no, they're
15 not in there now. It -- okay.

16 Q Okay. On page 8 of your direct testimony, lines 19
17 to 21, in that portion of your testimony, you
18 state -- and in reference to the Q1-Highway 35 route,
19 that the DOT would only issue permits or release
20 easements for Segments 8A, 8B or 8C if DNR permits
21 were also issued?

22 A Yes.

23 Q And is that anywhere in any of these manuals or
24 policies that we've talked about?

25 A No.

1 Q Okay. But is it your testimony that if DNR did issue
2 permits, then DOT would as well?

3 A Correct.

4 Q Would they still have the undergrounding conditions
5 that you've talked about?

6 A If they were -- we would have to base our permitting
7 requirements on conjunction with what DNR would like
8 us -- or would -- we would work with our sister
9 agency on that, depending upon what they would want
10 us to do as well. We would work with them. So it
11 would have to be evaluated at that time.

12 Q Okay. At several points in your testimony, one
13 example would be on page 9 -- and there were some
14 earlier questions I think from the Applicants
15 today -- about the reference where you stated that
16 the DOT would release some scenic easements in the
17 Holmen area. I'd like to ask a couple questions
18 about that. Have those easements been released?

19 A To the Applicant you mean or -- ?

20 Q No. The ones you refer to here in your testimony on
21 page 9, for example, on --

22 A There are scenic easements all along Highway 53 that
23 is to the west side of Holmen. And because 53 is a
24 freeway through that area and Holmen has developed in
25 some of those locations, we did release some of those

1 scenic easements on request of Holmen. So other
2 scenic easements along that corridor have been
3 released.

4 Q Okay. Thank you. And the ones that were released to
5 Holmen, did they pay anything for those?

6 A I don't have that knowledge.

7 Q You mentioned there was development by Holmen, but I
8 assume the development wouldn't be within the scenic
9 easement?

10 A It could have been. That would be the re -- that
11 would be the reason for releasing the easement
12 because nothing could have been built in the scenic
13 easement without it being released. So no -- for
14 example, no new structures, buildings, things of that
15 nature could have been built in there. So if the
16 area had been clear and a development had come in,
17 then we would have had to have it released.

18 Q But you had the scenic easement before the
19 development reached it, correct?

20 A Correct.

21 Q Wouldn't the easement have kept the development out?

22 A That's why Holmen requested us to release it. That's
23 why -- the context would have been -- and again, I'm
24 just familiar on the surface of this. But the
25 context as I am familiar with it is that there's an

1 area of scenic easement; and then as development
2 pushes towards it, all of a sudden the village says,
3 okay, we want to develop this particular area, we've
4 got this development that's proposed. Oh, there is a
5 land restriction, the scenic easement.

6 And then who holds that is us, as the DOT,
7 and then Holmen would come to us and say, well, this
8 what we want to do with our -- like in our land use
9 plan, we want this development here, but we need this
10 land restriction removed. And then they would ask
11 us, you know, to remove it or not -- or to remove it,
12 and then we have the ability to say yes or no.

13 Q And who made the decision in the Holmen case?

14 A I believe it would have been the region director who
15 is Joe Olson.

16 Q And which region is that?

17 A That would be the southwest region La Crosse office.

18 Q In your surrebuttal on page 5 -- and I apologize, I
19 think you addressed the question from
20 Ms. Agrimonti -- but that's where you testify that on
21 some of the routes, it would be possible for an
22 overhead permit on 2A1 and 2A2; but if other routes
23 were chosen, it would not be possible. Could you
24 explain to me why it would be a distinction here?

25 A I was trying -- we were trying to -- we're trying to

1 have a little give-and-take here. If 2A1 and 2A2
2 were part of the Q1-35, then we're going to say it's
3 all under -- those parts are going to be underground.

4 If 2A1 and 2A2 were part of the route that
5 went to Arcadia, then we would evaluate it again and
6 make a determination as to whether or not those had
7 to be underground or not. Since the rest of it was
8 aboveground, we may reconsider and allow those
9 portions to be above ground.

10 So in one case, you've got a route going
11 above ground with 2A1 and 2A2, we could say yes; and
12 in the other case, going with Q1-35 where we
13 testified that those parts would go underground, we
14 would be consistent with that.

15 Q So it's more of kind of a holistic viewpoint of the
16 entire routes; is that what you're implying?

17 A That's correct.

18 Q Not the impacts in that particular area in those
19 segments?

20 A That's correct. But I should clarify those impacts
21 would also be evaluated, as would other impacts along
22 the routes.

23 Q And you also testified earlier about a couple of
24 scenic easements that were released to ATC on another
25 transmission line project, correct?

1 A Yes.

2 Q And we talked about the scenic easements that were
3 released in Holmen not related to a transmission line
4 project. Are there other scenic easements that the
5 DOT has released?

6 A I can't testify to that.

7 Q Because you don't know?

8 A Correct.

9 Q Earlier today, you had indicated in questions and
10 answers regarding the undergrounding issue that you
11 had -- and I don't want to say it incorrectly, so
12 correct me if I'm wrong. But you had stated you had
13 recently come to the conclusion that undergrounding
14 was feasible in this situation because of some
15 research you had done on the internet. Is that a
16 fair statement?

17 A Yes.

18 Q I think you cited the Middletown-Norwalk transmission
19 line in Connecticut as one example?

20 A Yes.

21 Q And you had mentioned that there was a second one in
22 the same area. Would that have been Bethel-Norwalk?

23 A It sounds familiar, yes.

24 Q Do you know when Bethel-Norwalk was constructed and
25 placed in service?

1 A No, I don't remember. I know it was -- it was one of
2 the dockets had -- it was an older docket. It might
3 have been already closed. And I remember the --
4 there are, like, two projects that were consecutive
5 to each other.

6 Q These are the Connecticut projects?

7 A Correct.

8 Q You --

9 A So meaning one is probably already under construction
10 if not constructed, and the other one is forthcoming,
11 the way I remember it anyway.

12 Q Okay. Are you still the DOT's utility accomodation
13 liaison with the Public Service Commission?

14 A Yes.

15 Q In the Rockdale-West Middleton project, which the
16 Commission certificated in 2009 after holding hearing
17 in 2009, you testified in that case; is that correct?

18 A Yes.

19 Q And undergrounding was an issue in that case; is that
20 a fair statement?

21 A Yes.

22 Q And you recall that the Commission did not require
23 undergrounding because it was not in the public
24 interest?

25 A Yes.

1 Q Do you recall any of the cost estimates from that
2 case?

3 A Not off the top of my head, no.

4 Q In preparing for this case and before you issued your
5 determination as the liaison, did you talk with any
6 of the engineers at the Public Service Commission?

7 A No.

8 Q And you saw Mr. Stevenson's rebuttal testimony where
9 he stated the underground cost would be approximately
10 20 million per mile, correct?

11 A Yes.

12 Q And it's still your position that that's a reasonable
13 cost?

14 A Again, in looking at the quick stuff that I looked at
15 on the internet, it was anywhere from five to
16 20 million a mile, depending upon the circumstances
17 and the type of facility placed underground. Again,
18 oil-cooled seems to be at the higher end; and I
19 forget the other technology that they refer to that
20 was not oil-cooled. Again, I'm not an expert on
21 this. But they're referring to it as a newer
22 technology that allowed 345 to go in, and it was less
23 expensive than the oil-cooled was.

24 MR. LORENCE: I don't have any further
25 questions. Thank you.

1 EXAMINER NEWMARK: I just have one quick
2 one for you, sir. I'm just trying to nail down
3 the -- picture in my head. The easements would --
4 they deal with or they would affect the placement of
5 structures within that area? Is that what the
6 easement basically prevents is the building of the
7 towers or, you know, any kind of development --

8 THE WITNESS: It does say structures in
9 the actual language.

10 EXAMINER NEWMARK: So if a structure was
11 being built right outside the easement, but it
12 impacted the road say visually, that wouldn't be an
13 issue for the scenic easement -- the scenic easement
14 wouldn't come into play even though there is a
15 visual impact?

16 THE WITNESS: It -- we only have control
17 of our right-of-way and the scenic easement
18 interests. Anything outside of that we don't have
19 control over.

20 EXAMINER NEWMARK: Okay. But --

21 THE WITNESS: Does that answer your
22 question?

23 EXAMINER NEWMARK: Well, probably -- let
24 me just ask. But if there's visual impact on the
25 scenic easement with a structure that's off the

1 easement, you wouldn't consider that an issue for
2 you to deal with?

3 THE WITNESS: We wouldn't have control
4 over it, so -- and I -- the department only controls
5 what it can legally control.

6 EXAMINER NEWMARK: Okay. And the same
7 issue for -- would -- if the structure is in the
8 easement, that -- well, I'll leave it at that.
9 Forget it. Okay. Redirect.

10 REDIRECT EXAMINATION

11 BY MS. COX:

12 Q Mr. Fasick, is it unusual to have a case, such as
13 this one, where information and positions and
14 eventually decisions evolve and change over the
15 course of the application process?

16 A No.

17 Q You talked a little bit about MOUs and
18 constructability reports. And can you talk about the
19 benefit to the utility for those documents?

20 A The benefit is that specific details of the project
21 get nailed down ahead of time and it makes the permit
22 processing on the final end go much, much quicker
23 because I don't have to keep coming back to them and
24 saying, well, we forgot to talk about this or we
25 didn't talk about that or let's have a meeting on

1 this. And so the more things you can get nailed down
2 ahead of time, and that's what the constructability
3 report does.

4 A good example I gave Ms. Overland was
5 guardrail extensions. We did that for the beltline
6 project and we had a lot of cases where guardrail had
7 to be extended because their poles were in the clear
8 zone. So we got all those nailed down ahead of time;
9 so when it came to final permit approval, it was just
10 a matter of looking at their spreadsheet, looking at
11 where the locations were, saying, okay, we already
12 agreed upon them and we knew what the details were
13 ahead of time.

14 Q Is it accurate to characterize the MOU and
15 constructability reports as an evolving process
16 within the Department of Transportation?

17 A Yes.

18 Q Do you believe there is certainty in the record today
19 with respect to where the scenic easements lie and
20 where the utilities would be placing their facilities
21 within those scenic easements?

22 A With a high degree of certainty, no. There's been a
23 lot of adjustments back and forth from the Applicants
24 on where they are making adjustments and -- so, no.

25 Q I want to go back to, just quickly, the Hillstrom

1 exhibit. Let's see, what would be Hillstrom
2 Exhibit 5. And you've talked about this kind of
3 ongoing process between the DOT and the Applicants.
4 And in paragraph one of that document --

5 A Exhibit 5?

6 Q Yep. Can you talk a little bit about the DOT's
7 respect for the work that Xcel has done and their
8 attempt to accommodate?

9 A Let me get there. Tom, I'm going to borrow your
10 stuff here.

11 Q Beg your pardon?

12 A I was talking to Tom. I don't have a copy here.

13 Q Do you want to look at mine quick?

14 A That would be fine.

15 Q It's what we would have filed as your Exhibit 9 this
16 morning before we changed that determination. I'm
17 sorry, it would have been 10.

18 A 10?

19 Q What would have been 10.

20 A Okay. Got it.

21 Q Okay. So in the first paragraph, there's references
22 to working with Xcel and recognizing the work they've
23 done. Talk to me a little bit about that process and
24 how that goes and what your thoughts are there.

25 A The letter from -- to Mr. Fannucchi?

1 Q Right.

2 A Well, for the most part, it's a series of phone calls
3 and back-and-forth; and we met a few times as well
4 and discussed various ways to -- you know, they did a
5 first visual assessment, for example, and we
6 submitted comments on that visual assessment and they
7 made changes. So it went back and forth. And
8 Mr. Stevenson provided a spreadsheet, and we looked
9 at different pole colorizations, whether it was on
10 the bluff side or the river side. So, I mean, we did
11 a lot as far as back-and-forth with regards to trying
12 to work with them and trying to avoid these visual
13 impacts.

14 Q Okay. And are you generally appreciative of that
15 process?

16 A Oh, absolutely.

17 Q Okay. In Hillstrom's Exhibit 19, which we were going
18 to introduce as 11 but didn't need to, on the second
19 page. And this is a letter from the secretary. He
20 talks about why permitability was a problem. These
21 considerations that he lists 1 through 5 --

22 A This is the Secretary's letter?

23 Q Um-hmm.

24 A Okay.

25 Q (Continuing) -- are considerations that he believed

1 he couldn't overcome in this case; is that correct?

2 A The following are the main facts behind our
3 interpretation of the referenced federal law; is that
4 what you're referring to?

5 Q Right.

6 A Yes.

7 Q You talked a little bit with Applicant counsel this
8 morning on de-designation of a scenic byway. Is
9 de-designation a primary issue when we determine
10 whether or not a scenic easement should be used for a
11 high voltage transmission line?

12 A A primary issue? No.

13 Q Okay. Are the impacts to things like tourism, scenic
14 vista and natural beauty considered only as
15 individual parts of an analysis with respect to a
16 scenic easement or are those also -- or are they
17 taken together as a whole?

18 A Taken together as a whole.

19 Q Okay. You talked about crossings this morning as
20 well. Is a state highway crossing that would be part
21 of a scenic byway equivalent in some or all respects
22 to a state highway crossing of a high voltage line
23 that is not for purposes of requiring underground?

24 MS. AGRIMONTI: I --

25 MS. COX: Compound?

1 MS. AGRIMONTI: I'm sorry, I really was
2 unable to follow.

3 MS. COX: Let me restate.

4 Q We talked a lot about crossings this morning and
5 whether we've allowed them and under what
6 circumstances and whether we required undergrounding.

7 Is it appropriate to characterize those
8 discussions of requiring undergrounding as not
9 relating specifically to a 345 kV line?

10 A I'm confused.

11 Q Okay. Let me restate one more time for you. When we
12 talked about crossings this morning and not requiring
13 undergrounding, were those considerations in those
14 cases, did they also include scenic easement
15 considerations?

16 A No.

17 MS. AGRIMONTI: Objection, compound and
18 leading.

19 MS. COX: I'm redirecting.

20 EXAMINER NEWMARK: Well, I'm still not
21 very sure what you're asking, so try it again.

22 BY MS. COX:

23 Q Okay. Have you had occasion to consider an
24 underground crossing of a 345 kV line where a scenic
25 easement exists prior to this application?

1 A No.

2 Q And would the considerations for such an application
3 be different than a 69 or a 161 kV application
4 without scenic easement implications?

5 A Would they be different?

6 MS. COX: Do you want to read the question
7 back, please.

8 (Question read by the reporter.)

9 A There's differences in whether you have a project
10 with the scenic easements on it versus that you
11 don't. So I guess the answer to your question is
12 yes.

13 Q Okay. We also talked about the Mississippi River
14 Parkway Commission and whether or not they directed
15 the activity with respect to this application. And
16 is it your understanding that they are required to
17 direct state departments and agencies with respect to
18 the work that you do on scenic easements?

19 A No.

20 Q Okay. And I also want to turn everyone's attention,
21 including my witness, back to the FEIS on page 149,
22 which is part of Chapter 7. It's the second
23 paragraph, the first full paragraph. Do you have a
24 copy of that, Mr. Fasick?

25 A I've got volume 2. I don't have volume 1. Volume 1

1 is in my...

2 (Document tendered to the witness.)

3 Q There was a lot of discussion with respect to whether
4 or not there was agreement on impacts as identified
5 by the Mississippi River Parkway Commission. And in
6 that second paragraph, it talks about that issue.
7 Can you summarize that for us, please.

8 MS. AGRIMONTI: Objection, the document
9 speaks for itself.

10 BY MS. COX:

11 Q And what your position with respect to that
12 summarization is.

13 A The department's position agrees with the Wisconsin
14 Mississippi River Parkway Commission.

15 Q Okay.

16 A On the Q1-35 route as it's stated here.

17 Q And is it the department's position, as with the
18 River Commission's, that the Great River Roadway
19 would be impaired with placement of the 345 above
20 ground?

21 A Yes.

22 Q Is State Highway 35 a federally funded highway?

23 A Yes.

24 Q Is it part of the state trunk highway system in
25 Wisconsin?

1 A Yes.

2 Q Would State Highway 35 come under federal regulations
3 as such?

4 A Yes.

5 MS. AGRIMONTI: Object...

6 BY MS. COX:

7 Q Okay. Then we also talked about your e-mail, which
8 is now Fasick Exhibit 13, dated 9/16/10. Do you have
9 it handy?

10 A I'm looking for it. Exhibit 14?

11 Q I believe it's 13. Subject to verification by
12 counsel.

13 MS. AGRIMONTI: 13.

14 A Excuse me, Carrie. My exhibits are all out of order
15 here, so I'll get to it. Was it a memo or an e-mail?

16 BY MS. COX:

17 Q Well, it could have been a memo. The document, the
18 exhibit. Do you have it?

19 A Was it March 2nd, 2010? I've got something here
20 that's not labeled as an exhibit.

21 EXAMINER NEWMARK: It's September 16th; is
22 that right?

23 MS. COX: Yeah, September 16th, 2010.

24 EXAMINER NEWMARK: Here you go.

25 (Document tendered to the witness.)

1 A Oh, all right, that one, sure.

2 BY MS. COX:

3 Q And is it your opinion that this type of a
4 communication is part of that evolving and ongoing
5 process with respect to working with the Applicant in
6 a case like this?

7 A This is Exhibit 13, right?

8 Q Let me make sure you're looking at the right --

9 A This is the one to -- is this the one you --

10 Q Right, that's right. Just the general nature. Would
11 you consider that part of this evolving and ongoing
12 process of looking at an application and making
13 determinations --

14 A Yes.

15 Q -- that type of a communication?

16 A Yes.

17 Q Okay. Hillstrom Exhibit 19, which is a letter from
18 the secretary to George Poirier, who's the federal
19 highway administrator.

20 Is it typical in your daily work to have
21 staff such as yourself participate in drafting
22 secretary correspondence?

23 A Yes.

24 Q Okay. Do you have occasion to brief either your
25 supervisors or the secretary on these issues?

1 A Yes.

2 Q And with respect to the meeting that occurred in
3 January in the Secretary's office, which you just for
4 the Commission listed, I believe, or one of the other
5 cross counsels, the people you thought were at that
6 meeting.

7 Do you remember discussing with the
8 Applicants at that meeting the nature of the
9 crossings and whether they were longitudinal or not?

10 A Yes.

11 Q And what were your concerns regarding this issue?

12 A That the Applicants were mis -- perhaps
13 misunderstanding that their crossings were strictly
14 crossings; that because of the fact that they were
15 very skew in nature, that they appeared -- or could
16 appear to be more longitudinal in nature because they
17 took more right-of-way along Highway 35 and so,
18 again, it appears that they're more longitudinal in
19 nature than strictly a 90-degree crossing would be.

20 Q And do longitudinal crossings have different
21 considerations than 90-degree crossings in the
22 permitting process?

23 A For the most part, we look at placements of poles and
24 depth as where things are located. It would depend
25 upon what our future improvements might be in that

1 general area. So yeah, there could be some
2 differences.

3 Q Okay. You talked a little bit this morning as well
4 with Applicant counsel on the final decision prior to
5 filing your direct testimony. And you stated that
6 you were waiting for a letter from federal highways
7 with respect to a final decision.

8 Is that letter one of the inputs that's
9 included in this evolving process that you use with
10 respect to determining permitability?

11 A Yes.

12 Q In general, is it the Department of Transportation's
13 position that they don't want to allow accomodation
14 of utility facilities?

15 A No.

16 Q Okay. And what is the general position of the
17 Wisconsin Department of Transportation with respect
18 to utility accomodation?

19 A General position is that we will try to do our best
20 to accommodate as long as it doesn't conflict with
21 the operation, safety, maintenance, or impacts any
22 future highway projects.

23 Q We talked a little bit about the utility guide. How
24 do you develop that utility guide?

25 A Utility accomodation policy?

1 Q Yes, I'm sorry.

2 A It is an evolving document. It started in 1988. And
3 it is a series of -- well, a lot of it's based on
4 federal law. And then over time, things just get
5 added to it as we determine there is a need for it.
6 We also work with utility companies as well to talk
7 about specific issues as, you know, structure
8 attachments are a good example. I know utilities
9 like to get on our structures and our bridge folks
10 want them off, and so we try to strike a compromise.

11 Again, it's just a matter of -- it's
12 topical. You look at what issues are evolving and
13 you try to address those issues. The one I can call
14 out for is the use of controlled access highways.
15 For example, prior to Act 89 in 2003, we steered
16 electric transmission lines off our controlled access
17 highways, our interstates and freeways.

18 The Act 89, which is the siting statute,
19 in 2003, it's Statute 1.12(6), that opened up, if you
20 will, our previously unopened corridor. So we had to
21 adjust our policy then to allow electric transmission
22 lines on those interstates and freeways.

23 Q Okay. And does the federal government require you to
24 have a utility accommodation policy?

25 A Yes.

1 Q And do they approve that policy?

2 A Yes.

3 Q We also talked a little bit about whether or not the
4 secretary would approve permits and whether that's
5 something that you do or that he does. Would a
6 permit such as those discussed in this case be more
7 likely to garner the Secretary's attention?

8 A Once everything gets decided on the Commission level,
9 typically my bosses -- senior management would be
10 advised and I may or -- I might have to brief them on
11 what's going on. But, again, permit issuance would
12 probably fall into my lap.

13 Q Would he have the option to say, no, I won't allow
14 you to permit this?

15 A He always has that option.

16 Q So with respect to how ultimately a decision is made,
17 whether it's at one point in the process or a later
18 point in the process, is it done with the inclusion
19 of all the information that you have at the time and
20 then that evolves over time -- or talk a little bit
21 about the evolution of these decisions and whether or
22 not it is a case of three guys sitting in a room and
23 just saying we decide?

24 MS. AGRIMONTI: Objection, asked and
25 answered and leading.

1 EXAMINER NEWMARK: Yeah, sustained.

2 BY MS. COX:

3 Q Talk about the iterative process and how the
4 decisions evolve and how they're ultimately made, if
5 you would, please.

6 A Relating to --

7 MS. AGRIMONTI: Same objection, Your
8 Honor. I believe that we've asked several times how
9 it was made, I asked about it and I believe she's
10 redirected in that area as well.

11 EXAMINER NEWMARK: Sustained.

12 MS. COX: We've talked about the process.
13 We haven't talked about specifically kind of the
14 continuity between the pieces that we opened up in
15 redirect. We would request that you allow the
16 question.

17 EXAMINER NEWMARK: So can he give us a
18 timeline or time frame for each step; is that what
19 you're looking for?

20 MS. COX: Milestones perhaps.

21 Q Does that make sense, Bob?

22 A I would be guessing as to exact time and date.

23 Q Oh, not with respect to exact time and date. But
24 just, you know, what are the major points in time
25 where your decision could be altered and how that

1 happens?

2 MS. AGRIMONTI: Objection, Your Honor. I
3 asked questions about the process, and I was told he
4 couldn't determine when certain activities led to a
5 certain conclusion or what data was --

6 MS. COX: We're not asking about when,
7 we're asking about how.

8 MS. AGRIMONTI: He also was unable to
9 identify the data he used to make those decisions.
10 So if he's going to answer now how those are made, I
11 would like the data from which it was made as well.

12 MS. COX: I haven't asked about data.

13 EXAMINER NEWMARK: Are you asking about
14 this project or in general?

15 MS. COX: In general.

16 EXAMINER NEWMARK: Okay. Can you just
17 give us the milestones, the steps, in this
18 decision-making process? If there is one.

19 A Sure. Well, I can say with any project -- I'll use
20 Rockdale to West Middleton as an example. ATC came
21 to us with a concept of using the beltline. That
22 concept then is discussed at various meetings along
23 the way. And with that project we had numerous
24 meetings.

25 MS. AGRIMONTI: Your Honor, I'm going to

1 object to the relevance of a specific project if the
2 question is about a general process. I believe
3 general process is helpful, but using another
4 project and superimposing it here is not relevant.

5 EXAMINER NEWMARK: Okay. Can you speak
6 generally?

7 BY MS. COX:

8 Q Just leave out the name of the project and proceed.

9 A Okay. Utility comes to us with a concept for a
10 project that utilizes our right-of-way. We then meet
11 with the utility and it goes -- it goes back and
12 forth numerous times on various issues regarding that
13 project. I discuss that project with my bosses,
14 senior management; it really depends upon how much
15 involvement they want to do, what controversies there
16 could be with the project, what it may involve with
17 regards to affecting future highway projects. And we
18 then discuss our concerns with the utility. Again,
19 it goes back and forth. We try to obtain some sort
20 of mutual understanding as -- prior to their going to
21 CPCN.

22 And, you know, then after that process,
23 you know, we're proposing -- we still talk with them;
24 and, you know, we're doing testimony, testifying with
25 hearings, meeting with DNR on various things as well.

1 So there's just a lot of things that happen along the
2 whole timeline that go into the overall final, you
3 know, process, if you will.

4 Q And to the best of your knowledge, are those steps
5 and processes in general based on your obligations as
6 Wisconsin Department of Transportation under statute,
7 code, and where the programs and policies exist to
8 enumerate and effectuate those statutes and codes?

9 A Yes.

10 MS. COX: That's all I have for now.

11 EXAMINER NEWMARK: All right. So that's
12 redirect.

13 MS. AGRIMONTI: I have some more
14 questions.

15 MS. COX: Recross.

16 EXAMINER NEWMARK: This is recross.

17 MS. AGRIMONTI: May I have latitude to
18 follow up on some questions from Mr. Lorence?

19 EXAMINER NEWMARK: Oh, yeah.

20 RE-CROSS-EXAMINATION

21 BY MS. AGRIMONTI:

22 Q Mr. Lorence asked you some questions about the
23 guidelines in the UAP and the real estate manual
24 guiding WisDOT's decisions with respect to scenic
25 areas; do you recall that?

1 A Yes.

2 Q Is there any other document, rule, statute or
3 guideline that WisDOT uses to make decisions about
4 scenic areas?

5 A There could be some -- I'm trying to remember. There
6 might be some information in our facilities
7 development manual as well. I know that had been --
8 I thought that had been referenced at one time. I
9 don't know if it was referenced in -- it might have
10 been referenced in our draft EIS comments. I know we
11 made a number of references in our draft EIS to
12 various statutes and manuals and things of that
13 nature.

14 Q But specifically with respect to scenic
15 considerations, as you sit here today, can you think
16 of any other rule, statute or guideline?

17 A I just told you I think the FDM has some information
18 in it.

19 Q With respect to the factor in your scenic policy
20 about feasibility of undergrounding, who in the
21 department makes that determination about whether an
22 underground facility is technically feasible -- or
23 economically feasible? Excuse me.

24 A The ultimate decision rests with the secretary.

25 Q Is there any staff assigned to make that analysis and

1 make a recommendation to the secretary?

2 A I would be as part of the leader of the accomodation
3 policy. And my bosses, senior management, they
4 would -- you know, we would enter into discussion on
5 that.

6 Q How much time did you engage in researching the
7 projects in -- on the east coast for undergrounding?

8 A Not more than a couple hours, if that.

9 Q You mentioned some conversations with the DNR about
10 Segment 8. Are there any official documents or
11 letters between DNR and WisDOT regarding permitting
12 of Segment 8?

13 A Not to my knowledge.

14 Q Were you a participant in any meetings with DNR
15 regarding Segment 8?

16 A Not to my knowledge.

17 MS. COX: What do you mean by a meeting?

18 MS. AGRIMONTI: Did staff of WisDOT -- did
19 he get together with staff of DNR to talk about
20 permitting concerns on Segment 8.

21 A Not to my knowledge.

22 Q You talked about how having an MOU or
23 constructability report would be efficient for the
24 utilities; do you recall that?

25 A Yes.

1 Q Okay. In a CPCN proceeding, there are multiple
2 routes under consideration; is that correct?

3 A Yes.

4 Q And so there's some inefficiency for creating those
5 constructability designs for multiple routes; would
6 you agree?

7 A Half and half on that. Because there -- the parts
8 that really affect DOT right-of-way I think would be
9 advantageous to do a constructability report and
10 enter into an MOU. So if you're -- there are other
11 parts of those other routes that do affect DOT
12 right-of-way.

13 Q You also mentioned that you -- I don't want to put
14 words in your mouth -- but basically not satisfied
15 that the record is complete with respect to the
16 scenic easements affected by the right-of-way of
17 these routes, and you noted there had been a lot of
18 adjustments to the alignment. Do you recall that?

19 A Yes.

20 Q Do you recall that Applicants have made just three
21 alignment changes in their DEIS comments on the Q1-35
22 route?

23 A I don't know the exact number.

24 Q You also testified that if there were scenic
25 easements by a road and there was even a lower

1 voltage 161 or 69 line sought to be permitted on a
2 road right-of-way, there would be different
3 considerations than if there weren't scenic
4 easements.

5 Are you relying on the UAP provisions for
6 that distinction, or is there some other basis for
7 distinguishing those two circumstances?

8 A I'm relying on our accomodation policy and federal
9 law, which our accomodation policy is structured
10 under federal law.

11 Q Fasick Exhibit 13, you were asked if this was part of
12 the give-and-take, ongoing communications for a
13 transmission project proposal where there's going to
14 be a CPCN application. Am I recalling that
15 correctly?

16 A Yes.

17 Q And you forwarded this e-mail on to the Applicants;
18 is that right? And I know it doesn't show it here on
19 the e-mail. That's why I'm asking.

20 A I can't be certain of that. If it was part of
21 discovery, then the answer would be yes. But --

22 Q But the Applicants aren't on this long list of To's
23 and CC's, right, so this was not a communication with
24 and among the Applicants?

25 A I don't know, I would have to --

1 MS. COX: Objection, he just said it was
2 forwarded.

3 MS. AGRIMONTI: I'm asking the original
4 communication between these parties. That's okay.
5 I can point to the document.

6 Q Let's go back to the Holmen area. You mentioned that
7 there had been some easements released in the Holmen
8 area. When WisDOT released those easements, was
9 there any environmental assessment done?

10 A I don't have that information.

11 Q Do you know if government approval was required?

12 A What government are you talking about?

13 Q I'm sorry, Governor's approval. That's fair.

14 A I don't -- the thing of it is, I don't have all the
15 knowledge of the entire process. All I can tell you
16 is that they were released on behalf of the request
17 from Holmen on -- because of development.

18 Q And you don't know if a visual assessment was
19 required for that release?

20 A I'll just reiterate my last statement.

21 Q So you don't know?

22 A That is correct.

23 MS. AGRIMONTI: Thank you.

24 EXAMINER NEWMARK: Okay. Redirect?

25 MS. COX: No.

1 EXAMINER NEWMARK: I just have one other
2 question for you. I think it was with your counsel,
3 you had a question about the accomodation policy and
4 you were asked whether it was approved by the
5 federal government. I think you answered yes?

6 THE WITNESS: Federal Highway
7 Administration.

8 EXAMINER NEWMARK: Federal Highway
9 Administration. And without the benefit of the
10 document, is there some sort of approval and
11 certificate that comes with that or a letter, or how
12 do you know that's approved?

13 THE WITNESS: It can come in a variety of
14 ways. It can come --

15 EXAMINER NEWMARK: Well, let me just say,
16 how was this document approved? How do you know
17 this one is approved?

18 THE WITNESS: Typically there is a letter.

19 EXAMINER NEWMARK: And is that part of
20 our -- would that be in the hyper-text link that
21 we've allowed the citation? Any idea if it would be
22 in there?

23 THE WITNESS: That's not in our -- no,
24 it's not in our accommodation policy per se.

25 EXAMINER NEWMARK: But this particular one

1 was approved by the highway administration?

2 THE WITNESS: Yes.

3 EXAMINER NEWMARK: And what's the --
4 that's fine. Okay. Thanks.

5 MS. SMITH: Just a point of clarification.
6 Is the highway maintenance manual, is this an
7 exhibit?

8 EXAMINER NEWMARK: The maintenance manual?
9 I don't think I remember that.

10 MS. SMITH: Well, the accomodation policy,
11 whatever we want to call it.

12 MS. COX: No, we're going to link that in.
13 And that actually raises another question. When we
14 talked about the facilities development manual,
15 which is extensive; and if any of the parties
16 desire, we can certainly provide a link to that as
17 well.

18 MS. SMITH: So these are items, not
19 exhibits then again?

20 EXAMINER NEWMARK: That's correct.

21 THE WITNESS: And in clarification, the
22 accomodation policy is part of the highway
23 maintenance manual.

24 EXAMINER NEWMARK: Okay. So we're going
25 to include the maintenance manual as well or --

1 MR. THIEL: If I may, Your Honor, the
2 maintenance manual is much, much more extensive; you
3 just want the segment that deals with this and just
4 the segment in the Real Estate Program Manual, just
5 the segment --

6 EXAMINER NEWMARK: Just the two.

7 MR. THIEL: -- of the facilities manual.
8 We can get those relatively easily.

9 EXAMINER NEWMARK: There's agreement with
10 that?

11 MR. LORENCE: Yes.

12 EXAMINER NEWMARK: That's all we have
13 then. You're excused. Get some rest.

14 THE WITNESS: Really?

15 MS. CORRELL: Could I just ask a
16 clarifying question?

17 THE WITNESS: I guess I'm not excused.

18 EXAMINER NEWMARK: Yes, go ahead.

19 CROSS-EXAMINATION

20 BY MS. CORRELL:

21 Q In your surrebuttal testimony --

22 MS. COX: Oh, we didn't move that in.

23 EXAMINER NEWMARK: It's not --

24 A Surrebuttal or sur-sur?

25 EXAMINER NEWMARK: Sur-sur?

1 MS. COX: Sur-sur.

2 EXAMINER NEWMARK: Hang on just a second.

3 MS. CORRELL: You didn't move that in?

4 EXAMINER NEWMARK: Sur-sur was not moved
5 in. He was asked the questions that were still
6 relevant or useful, and everything else was already
7 entered as exhibits, so he didn't need to go over
8 those questions and answers.

9 MS. COX: I mean, I don't think we need to
10 move it in. We've gotten what we need.

11 EXAMINER NEWMARK: Yeah.

12 MS. CORRELL: I just want to clarify
13 something for the record.

14 Q You were asked a bunch of questions about DNR and
15 DOT. And I just wanted to have you clarify from your
16 testimony, from the surrebuttal on page 2.

17 A Hang on. Let me get there.

18 Q When you do get there, it's lines 13 and 14.

19 A Sure.

20 Q I'm referring to your testimony that WisDOT would
21 only issue permits and/or release scenic easements
22 for Segments 8A, B and C if DNR permits were also
23 issued. Could you just explain what you meant by
24 that testimony?

25 A We don't want to usurp the power of our other sister

1 agency, and we have a cooperative agreement to work
2 with DNR on these projects as well. So if -- it
3 would look bad if we're issuing permits that would --
4 and they're not issuing permits or if they're not
5 issuing permits -- or vice versa. So we're working
6 in conjunction with them. So if they refuse permit
7 authority in that area, we would honor and respect
8 their decisions.

9 Q All right. But there haven't been meetings between
10 DNR and DOT with regard to a specific position that
11 would be taken?

12 A No, just that we're working cooperatively together so
13 that we're not -- it doesn't look bad that...

14 Q And you are aware of the position that DNR had been
15 taking with respect to those particular segments that
16 you reference in your testimony; is that accurate?

17 A Yes.

18 MS. CORRELL: Thank you.

19 EXAMINER NEWMARK: Any re-re-redirect?

20 MS. COX: No.

21 EXAMINER NEWMARK: Okay. You're excused.

22 (Witness excused.)

23 MS. AGRIMONTI: Your Honor, can we go off
24 the record for a second?

25 EXAMINER NEWMARK: Sure.

1 (Discussion off the record.)

2 (Recess taken from 3:00 to 3:05 p.m.)

3 EXAMINER NEWMARK: Let's continue with
4 DOT. Who's our next witness?

5 MS. COX: Ms. Vetsch.

6 NANNETTE E. VETSCH, WisDOT WITNESS, DULY SWORN

7 DIRECT EXAMINATION

8 BY MS. COX:

9 Q Okay. State your name for the record, please.

10 A Nanette Vetsch.

11 Q And where do you work?

12 A Department of Transportation, Northwest Region Office
13 in Eau Claire, Wisconsin.

14 Q And is there an address associated with that office?

15 A 718 West Clairemont Avenue.

16 Q And did you file direct and surrebuttal testimony in
17 this proceeding?

18 A Yes, and one exhibit.

19 Q That was my next question. You answered it. And was
20 that testimony and those exhibits prepared by you or
21 at your direction?

22 A Yes.

23 Q And are they today true and accurate as to when
24 filed?

25 A Yes.

1 MS. COX: Okay. We tender our witness for
2 cross-examination.

3 EXAMINER NEWMARK: All right. Who wants
4 to cross?

5 MS. AGRIMONTI: Yes, I have a few
6 questions.

7 EXAMINER NEWMARK: Go ahead.

8 CROSS-EXAMINATION

9 BY MS. AGRIMONTI:

10 Q Good afternoon, Ms. Vetsch. My name is Lisa
11 Agrimonti. I think you've been here today and
12 yesterday, so you're aware that I represent the
13 Applicants?

14 A Yes.

15 Q Did you hear the questioning earlier about the Holmen
16 area scenic easement releases?

17 A Yes.

18 Q Are you familiar with the releases of WisDOT of the
19 scenic easements along 54 in the Holmen area?

20 A I am not. That is in another region; so no, I'm not
21 familiar with it.

22 Q You are currently the outdoor advertising
23 coordinator, which is a position you held since
24 January 15th, right?

25 A Yes. It's a six-month temporary assignment.

1 Q And how long did you work as a real estate specialist
2 and utility permit coordinator? And part of the
3 question I'll ask, is that one job or two?

4 A Well, this is state service. It's two positions and
5 one woman. Not uncommon in state service.

6 Q All right. Half a position for -- never mind.

7 A There was a vacancy in the utility permits position;
8 and so for a period of about two years, I did real
9 estate work and did utilities permitting in the
10 northwest region.

11 Q And you don't have any legal training; is that right?

12 A That's correct.

13 Q Have you been asked to do any analysis of the DPC Q1
14 easements?

15 A The analysis I did was to gather information related
16 to the location and language contained in the
17 easements for the Applicants' CapX project.

18 Q And did you prepare any memorandum regarding that
19 compilation of data?

20 A I'm not sure if I understand what you mean when you
21 say memorandum.

22 Q Did you collect the documents or did you also write
23 something about the documents?

24 A I wrote something about the documents, and that would
25 be my exhibit.

1 Q Okay. So let's go to Exhibit 1 because I did have a
2 couple of questions about that. First of all, do you
3 have access to Mr. Fasick's testimony up there?

4 Probably --

5 A I hope not.

6 Q -- not.

7 A I mean, I don't believe so.

8 MS. AGRIMONTI: Give me just a second,
9 Your Honor. Can we go off just a second?

10 EXAMINER NEWMARK: Yes.

11 (Discussion off the record.)

12 EXAMINER NEWMARK: This wasn't entered as
13 15; so we'll make this Vetsch -- am I saying that
14 right?

15 THE WITNESS: Vetsch.

16 EXAMINER NEWMARK: Vetsch 2.

17 (Vetsch Exhibit No. 2 marked.)

18 BY MS. AGRIMONTI:

19 Q Ms. Vetsch, if you look at that map, would you
20 generally agree that that includes the map of the
21 projects for WisDOT which are summarized on your
22 Exhibit 1 and the general location of the routes in
23 this proceeding?

24 A It appears to represent that.

25 MS. AGRIMONTI: Move Exhibit Vetsch 2.

1 EXAMINER NEWMARK: Any objections?

2 MS. COX: Is that Fasick 13 we're looking
3 at?

4 MS. AGRIMONTI: It's Fasick 13 with the
5 routes on top of it.

6 THE WITNESS: Mine says Fasick 15 in the
7 lower right corner, if that's what we just renamed
8 Vetsch 2.

9 MS. COX: We didn't want to move it last
10 time.

11 MS. AGRIMONTI: And it's actually a
12 superimposition on a different number of Mr. Fasick.
13 My apologies.

14 EXAMINER NEWMARK: Any objections? So
15 ordered.

16 (Vetsch Exhibit No. 2 received.)

17 BY MS. AGRIMONTI:

18 Q Your Exhibit 1 is intended to summarize all the
19 scenic easements along the Great River Road, right?
20 From Alma, let me be more specific, to --

21 A I believe it's intended to reflect all of those that
22 would be impacted on the Q1 and the variations of the
23 Q1 route. Is it all of the Great River Road? No.

24 Q So if you list, for example, S01194 and you have
25 seven parcels, your testimony is that all seven

1 parcels would be impacted? By one of the routes.

2 A No. What the parcel -- the column heading for those
3 parcels is that they're parcels with scenic easements
4 or development restriction easements. They're
5 included here because it's my belief, based on the
6 mapping I've seen, that one or more of these parcels
7 would be impacted by one of the routes.

8 Q Okay. So you're not stating that all seven of them
9 are, just that one or more would be impacted?

10 A That's my -- yes.

11 Q That's what you intended to convey with this exhibit?

12 A Yes.

13 Q Thank you. When did you compile this Vetsch 1? It
14 has a revised date of 2/10/12. When did you first do
15 it?

16 A I'm not absolutely sure. But I'm -- April of 2011 is
17 in my head connected with this. I could find that
18 out for you, but I couldn't tell you definitively
19 today.

20 Q Okay. Well, moving on to the other pages, there's
21 also some summaries, at least it's labeled as
22 summaries of easement language. But it's just
23 excerpted language from one or more of the easements
24 in that project, right?

25 A Right, right.

1 Q It may or may not be the same language across all
2 those parcels?

3 A There's no such thing as an easement that would have
4 exactly the same language because the easements
5 contain, for example, a legal description of the
6 piece of property. And so by excerpting this, I was
7 trying to save myself some work and still convey the
8 language that was in common; and it's permitted uses,
9 restrictive uses, those things that would be
10 important to this proceeding.

11 Q Okay. But even in that case, they may vary parcel to
12 parcel within a project?

13 A They may.

14 Q Okay. Were you aware that the Applicants prepared a
15 CD of Q1 easements, scenic easements, routes for the
16 project, as well as plat maps from WisDOT?

17 A I was reminded of that recently and it -- I did
18 recall it. I also recall that we did have some
19 issues back and forth with information, and I was
20 lucky to be in Eau Claire because on occasion
21 somebody could drive over and bring me a zip drive
22 and vice versa with information. But yes, I do
23 recall that.

24 Q And did you review that material?

25 MS. COX: When?

1 MS. AGRIMONTI: Fair.

2 Q Have you ever reviewed that material that was
3 provided by the Applicants in a CD format?

4 A I have reviewed it. But can I say that I did an
5 in-depth review of every document that was included
6 on that CD? I couldn't say that. I can say that on
7 some of the exhibits, if you will, that might relate
8 to information that was on that CD, I might have
9 taken some and done a more in-depth review, you know,
10 kind of a spot review of what was included there.

11 Q All right. Let's please turn to page 2 of your
12 direct testimony.

13 On line 23 through line 26, you note that
14 the easements do permit telephone, telegraph,
15 electric or pipelines; and then you go on to say that
16 they also say that the use shall not be expanded nor
17 shall any structures be erected or structure
18 alterations be made within a restricted area. Is
19 that your current understanding?

20 A Yes.

21 Q Is it WisDOT's position that no new electric lines
22 can be placed in scenic easements?

23 A I don't believe that's our position.

24 Q Could you tell me what WisDOT's position is with
25 respect to new electric facilities in scenic easement

1 areas?

2 A I don't know that DOT has a position, but I can maybe
3 speak to that and give you an example.

4 Q Okay.

5 A The Q1 line existed before the DOT scenic easements.
6 And when the easements were acquired, the reason this
7 language is in there, I believe, is because we
8 recognized people live here and they farm here and
9 run businesses here and they need electricity to do
10 that. And so when you ask me do we have a policy
11 that would prevent installation of an electrical
12 line, I would say no, because we know that people
13 need -- you know, people still live there and farm
14 there and run businesses there and they still need
15 electricity.

16 And so I think that the easements
17 recognize that; but, but, then go on to say but we
18 don't want -- and the language is here in my
19 testimony. So I guess I would say at the top of
20 page 3 is where I state the easements also state but
21 such use shall not be expanded nor shall any
22 structures be erected or structural alterations be
23 made within the restricted area.

24 So I can -- I don't know that there's a
25 policy that speaks to what you asked, but I hope that

1 that's an example that would explain my
2 understanding.

3 Q Okay. And that's your understanding just as a
4 layperson, right? Not an expert in interpreting
5 easements?

6 A Correct.

7 Q Have you been involved in reviewing any requests for
8 easement releases?

9 A I have reviewed -- in terms of a reviewer to either,
10 you know, recommend approval or denial? No.

11 Q Did you have any part in preparing an exhibit in
12 discovery that listed the release or modifications of
13 scenic easements done by WisDOT?

14 MS. COX: Do you want to show her that?

15 A I think I can tell from here that that's mine, yes.

16 BY MS. AGRIMONTI:

17 Q That's yours? Okay. Then I'd like to have it
18 marked.

19 A I believe -- was that something we provided in
20 discovery?

21 Q It is, Ms. Vetsch.

22 A It is, all right.

23 (Vetsch Exhibit No. 3 marked.)

24 BY MS. AGRIMONTI:

25 Q Handing you what's been marked as Vetsch 3. Was it

1 prepared by you or at your direction?

2 A Yes.

3 MS. AGRIMONTI: Move admission of
4 Exhibit 3.

5 EXAMINER NEWMARK: Objections? So --

6 MS. COX: Can I look at it first? But we
7 don't generally.

8 EXAMINER NEWMARK: You didn't see it yet.
9 Okay.

10 MS. COX: You're just too fast.

11 MS. AGRIMONTI: I like it when he asks for
12 objections before the document moves.

13 MS. COX: Before we raise an objection, I
14 would just like to have the witness verify there
15 have been no changes to the document since you
16 prepared it for discovery response?

17 THE WITNESS: It doesn't appear as though
18 there have been any changes.

19 MS. COX: Thank you.

20 EXAMINER NEWMARK: Everyone had a chance
21 to look at it? Still looking?

22 MS. AGRIMONTI: Are we done with 3, Your
23 Honor?

24 MS. SMITH: Your Honor, if this is number
25 3, what's number 2?

1 MS. AGRIMONTI: Number 2 was the map that
2 was Fasick 15.

3 EXAMINER NEWMARK: So any objections?
4 Okay.

5 (Vetsch Exhibit No. 3 received.)

6 (Vetsch Exhibit No. 4 marked.)

7 BY MS. AGRIMONTI:

8 Q One more document for you, Ms. Vetsch. Ms. Vetsch,
9 I've handed you a document that's an article by
10 Mr. Ohm. Are you familiar with that document?

11 A I think I've seen it.

12 Q Have you read it?

13 A I think it's been quite some time, but I think I -- I
14 think I did.

15 Q Can you recall if that article had anything to do
16 with your opinion regarding scope of the scenic
17 easements?

18 A I don't recall.

19 MS. AGRIMONTI: I will not move that
20 admission at this time. And I have no more
21 questions.

22 EXAMINER NEWMARK: Okay. So I don't know
23 if I got -- did we move in 3? Were there any
24 objections?

25 MS. AGRIMONTI: Um-um.

1 EXAMINER NEWMARK: Okay. That one's in.
2 4 is not in. Okay. Other cross?

3 CROSS-EXAMINATION

4 BY MS. OVERLAND:

5 Q I don't have very much. On page 1 of your direct,
6 you were -- you were talking about acquisition of
7 scenic easements, and there had been some discussion
8 of federally funded.

9 What I'd like to know is the acquisitions
10 that you're speaking of, is that federally funded,
11 state funded, combination? Where does the money come
12 from for this acquisition that you're talking about?

13 A Which acquisitions?

14 Q Well, you're talking about it generally. Acquisition
15 and management of scenic easements on state --

16 MS. COX: Line number?

17 BY MS. OVERLAND:

18 Q Page 1, line 11 through 13.

19 A And could you repeat your question, ma'am.

20 Q Sure. Right. Do you deal with acquisitions in terms
21 of the money source, the funding source for the
22 acquisition?

23 A I don't -- I don't think I understand.

24 Q I'm trying to get at is it federal funds, state
25 funds?

1 A It would really depend on the project. And my
2 understanding of project funding, what I've been
3 told, is that if there is a dollar of federal money
4 in a project, there are certain things that go along
5 with that. Exactly what they are, I don't know. But
6 I actually haven't acquired any scenic easements
7 myself, so I don't know that I can speak directly to
8 that.

9 Q So maybe -- well, see if you can answer this or not.
10 If a scenic easement -- if there are restrictions
11 with the scenic easement -- that may be done on that
12 scenic easement, or with it, if those easement
13 restrictions are violated or if it was used for
14 purposes other than, you know, what's specifically --

15 A Permitted.

16 Q Permitted, that's it, permitted, thank you. Then is
17 there a risk of a funding impact with that?

18 MS. COX: I think actually our witness
19 Ms. Carrola would be better suited to answer those
20 kinds of questions.

21 MS. OVERLAND: I can wait.

22 EXAMINER NEWMARK: Okay. Great.

23 BY MS. OVERLAND:

24 Q On page 3 of your testimony, lines 25 to 26, you
25 noted that the maps don't provide sufficient detail

1 to determine the exact number of easements. Has that
2 been figured out since this testimony was written?

3 A No.

4 Q No. So that you still don't have enough detail to
5 determine it?

6 A That's my opinion.

7 MS. OVERLAND: Okay. Thank you. No
8 further questions.

9 EXAMINER NEWMARK: Okay. Who's next?
10 Staff?

11 CROSS-EXAMINATION

12 BY MR. LORENCE:

13 Q I've just got a few questions with respect to your
14 direct testimony. You work in the northwest region?

15 A Yes.

16 Q And what counties does that entail that would overlap
17 with this project area?

18 A Buffalo and Trempealeau.

19 Q Okay. On page 3 and page 4 of your direct testimony,
20 there's a question on 3 and the answer is on 4. The
21 question on 3 says, "Does WisDOT have a policy of
22 releasing or modifying scenic easements?" And then
23 your answer is on page 4. Do you recall that?

24 A Yes.

25 Q I'm a bit confused, so I guess I have a couple of

1 questions. You state that -- you say yes, but then
2 you say the northwest region has a general policy of
3 denying. Does each region have its own policy?

4 A I am not familiar with the policies of all of the
5 regions. But for this purpose, I also did request a
6 copy of the procedure used by the southwest region
7 because La Crosse County is part of the routing
8 considerations here; and theirs is the same as for
9 the Eau Claire, for the northwest region.

10 Q So what you're describing here would apply to the
11 northwest and to the southwest, and that would cover
12 the entire project?

13 A Yes.

14 Q So it's not necessarily the DOT's policy, it's a
15 regional policy?

16 A I am not aware that DOT has -- this is a regional
17 policy that I'm addressing here in my testimony.

18 Q And this might just be me, but if you have a general
19 policy of denying requests, then you go and describe
20 how you put together a package and you make
21 recommendations and you submit it to four other
22 people. What's the point of that if the policy is to
23 deny?

24 A Well, it says it's a general policy of denying. And
25 the -- the exhibit that I -- I'm not sure if it was

1 entered or not, kind of lists some of those examples.
2 Some are things that the request would not be grossly
3 contrary to the intent of the easement. Someone
4 might want to trim some trees and we might say yes
5 and we might say no, depending on what they want to
6 do. There are restrictions -- I guess maybe I would
7 refer you to that spreadsheet to look at examples.

8 I can tell you that within the last year,
9 a request that was approved, I think we actually
10 released the easement in its entirety, and it was
11 because the request came from -- and it was either
12 Fish and Wildlife or the Army Corps of Engineers, and
13 it had -- and what they were going to do with the
14 property would actually have a better outcome than
15 doing nothing to the property as it was.

16 Q Okay.

17 A If that makes sense.

18 Q Yes. Thank you. On page -- or on page 4, lines 5,
19 6, 7, it talks about the people who this package is
20 routed when you get a request: the regional planning
21 chief, the operations chief, the technical services
22 chief, the regional director, and Mississippi River
23 Parkway Commission representative. So is my
24 understanding that any one of those people can deny a
25 request or grant a request?

1 A Any one of those people could -- I think that if the
2 opinion of any one of those parties were to not
3 release the easement, that further discussions would
4 be held before it would be released.

5 Q Do they have any criteria that they would apply when
6 they're looking at it independently?

7 A I couldn't speak to that.

8 Q Are these titles here the same in the southwest
9 region? So they have a regional planning chief,
10 operations chief, et cetera, et cetera?

11 A Those would be common positions in any region.

12 Q So the process would be the same there?

13 A I can't speak to that. That's a northwest region
14 process for sure.

15 Q Okay. I thought you said the southwest used the same
16 process?

17 A I'm sorry. You're correct. It would be the same as
18 southwest, you're right.

19 Q Thank you. And if the request is approved, you say
20 on lines 10 and 11 that the language to modify the
21 easement is developed and recorded; is that correct?

22 A Yes.

23 Q Does anybody in Madison at the DOT headquarters have
24 to approve an easement release?

25 A Not to my knowledge.

1 Q Okay. Do you have Exhibit Hillstrom 5 there?

2 MS. COX: Do you have a reference number?

3 MS. HERRING: Your Honor, it's in that
4 large binder right next to her.

5 MR. LORENCE: This is the same as what you
6 had suggested earlier today would be Fasick 10.

7 MS. COX: Oh, got it.

8 THE WITNESS: I got Fasick 10, if it's a
9 March 2nd memo.

10 MR. LORENCE: No, it's a letter dated
11 January 27th.

12 MS. HERRING: No, it's Hillstrom 5.

13 MS. COX: That's what we were intending to
14 submit as Fasick 10.

15 MR. LORENCE: Right.

16 MS. COX: To Fannucchi from the secretary.

17 MR. LORENCE: I believe that's entered as
18 Hillstrom 5; is that correct?

19 MS. AGRIMONTI: That's correct.

20 MR. LORENCE: Thank you.

21 MS. COX: Oh, I'm sorry, deputy secretary
22 signed this one. Do you need a copy?

23 THE WITNESS: I don't have that.

24 EXAMINER NEWMARK: I don't think I'm going
25 to find it.

1 (Document tendered to the witness.)

2 BY MR. LORENCE:

3 Q So you have a letter to Mr. Fannucchi dated
4 January 27, 2011?

5 A Yes.

6 Q And that's signed by Deputy Secretary Berg?

7 A Yes.

8 Q In the third paragraph, at the first sentence it
9 says, "We believe that approval of WisDOT and the
10 Governor is necessary to release our scenic easement
11 rights." Do you see that?

12 A Yes.

13 Q And that appears to be different from your policy of
14 the northwest; is that correct?

15 A I'm not aware of the Governor being listed as one of
16 the parties on the northwest process sheets that I
17 shared in discovery.

18 MR. LORENCE: Okay. Thank you. I have no
19 further questions.

20 EXAMINER NEWMARK: Okay. We're ready for
21 redirect?

22 MR. LORENCE: I'm sorry, Your Honor. I
23 had one more question I forgot to ask, if you --

24 EXAMINER NEWMARK: Go ahead.

25 BY MR. LORENCE:

1 Q If someone is denied an easement request, a release
2 request, is there any way they can appeal it?

3 MS. COX: If you don't know, just say you
4 don't know.

5 A I don't know, yeah. I don't recall right now, no.

6 MR. LORENCE: Thank you.

7 REDIRECT EXAMINATION

8 BY MS. COX:

9 Q Just a couple questions. You answered a couple
10 questions with respect to policies in the regions
11 versus at what we call our central office or Hill
12 Farms. Can you just describe the relationship
13 between central office and the regions and how those
14 policies get involved and what oversight central
15 office would have for the benefit of the Commission?
16 If you know.

17 A I don't know.

18 Q Okay. And with respect to language developed and
19 recorded, do you know if the real estate group at
20 central office or legal counsel looks at those
21 easements, the scenic easements at all when they're
22 changed?

23 A I don't know.

24 MS. COX: Okay. Thank you. That's it.

25 EXAMINER NEWMARK: All right. You're

1 excused.

2 (Witness excused.)

3 MS. COX: Ms. Carrola.

4 JANE V. CARROLA, WisDOT WITNESS, DULY SWORN

5 DIRECT EXAMINATION

6 BY MS. COX:

7 Q Hi, Ms. Carrola.

8 A Good afternoon.

9 Q Would you please state your name and business address
10 for the record.

11 A Jane V. Carrola, C A R R O L A, 4802 Sheboygan
12 Avenue, Room 901.

13 Q And that's for the Wisconsin Department of
14 Transportation?

15 A That is correct.

16 Q Did you file direct testimony in this docket?

17 A Yes, I did.

18 Q And was that testimony prepared by you or at your
19 direction?

20 A It was.

21 Q And is that testimony current and accurate as of the
22 hearing today as to when you prepared it for filing?

23 A It is.

24 MS. COX: All right. Wisconsin Department
25 of Transportation now tenders this witness for

1 cross-examination.

2 EXAMINER NEWMARK: Okay. Who has cross?

3 MS. AGRIMONTI: If I could take just a
4 couple of minutes and get the right documents in
5 front of the witness.

6 EXAMINER NEWMARK: That would be great.
7 Let's go off the record.

8 (Discussion off the record.)

9 EXAMINER NEWMARK: Let's get back on.

10 CROSS-EXAMINATION

11 BY MS. AGRIMONTI:

12 Q Good afternoon.

13 A Good afternoon.

14 Q I have placed before you Exhibits 10, 11 and 12. Do
15 you recognize those documents?

16 A I do.

17 Q And are 10 and 11 two memoranda provided and prepared
18 by you?

19 A Yes.

20 Q And is Exhibit 12 a map that would correspond to your
21 analysis in Exhibit 11?

22 A I would believe so.

23 Q All right. Thank you. Ms. Carrola, does WisDOT
24 process any studies or data demonstrating that the
25 proposed project as constructed on the Great River

1 Road will negatively affect tourism?

2 A As I noted in my testimony, WisDOT did commission in
3 conjunction with its sister agency a four-season
4 study. And this four-season study tried to determine
5 the baseline for tourism and travelers specifically
6 along the Great River Road. And we did find an
7 economic benefit to the road by those travelers.

8 Q But you have no study showing that if the project
9 were constructed on the Great River Road, that it
10 would negatively impact those benefits of tourism?

11 A That is correct.

12 Q Let's take a look at your March 2, 2010 memo, which
13 is Exhibit 10.

14 A Okay.

15 EXAMINER NEWMARK: This is Fasick 10?

16 MS. AGRIMONTI: Yes.

17 Q Why did you prepare this memo, Ms. Carrola?

18 A As noted in the introduction, Mr. Fasick had
19 contacted me regarding CapX's proposal and he had
20 asked me a series of questions regarding scenic
21 byways and that designation of the Great River Road
22 and possible impacts of --

23 Q Are those questions in bold in your memo here?

24 A Yes.

25 Q You looked into whether any other Great River --

1 excuse me, any other national scenic byways had been
2 de-designated, and you found one example in Florida.
3 Is that right?

4 A That is correct.

5 Q Since this memoranda was completed, have you learned
6 of any other de-designation?

7 A I believe there is one more, but I cannot recall the
8 specifics about it.

9 Q Do you know if it was voluntary or involuntary?

10 A I believe it was voluntary.

11 Q You also in this memo assume for your -- for purposes
12 of your analysis that seven to nine miles near Alma
13 might be pulled out of the scenic byway? I guess I'd
14 like a little bit of explanation -- let me ask a
15 different way.

16 What did you assume about the nine miles in
17 Buffalo County by Alma with respect to your analysis?

18 A Can you be more precise on what you're referring to,
19 please.

20 Q Sure. I'm looking at the first question, "Would
21 installation of high voltage power lines along State
22 Trunk Highway 35, the Great River Road national
23 scenic byway cause national designation to be
24 withdrawn or altered?" And your opinion is the
25 strongest action that the FHWA National Scenic Byways

1 Program would pursue is altering the route by
2 segmenting or excluding the seven to nine miles near
3 Alma in which the high power lines would be visible.

4 Was this the area of concern that you
5 studied, that is, the nine miles of the route by
6 Alma?

7 A Yes.

8 Q And would you agree that near the crossing of the
9 Mississippi River, that the views are dominated by
10 the Alma generating coal plant along the Great River
11 Road?

12 A Yes.

13 Q And is there other infrastructure in that area?

14 A I cannot recall.

15 Q Are you aware of any other infrastructure in the nine
16 miles near Alma where the power lines would be?

17 A I do not believe so.

18 Q Are you aware that there is a railroad?

19 A Yes.

20 Q And there are other transmission lines?

21 A Yes. I was construing it to mean businesses or
22 buildings of some sort.

23 Q Oh, all right. Thank you. Also, you were asked
24 about impact tourism at the end of your memo.

25 Actually, it's the second-to-last page. And you

1 noted that you could not answer that question. And
2 that's still your answer today; is that right?

3 A It says I mentioned we have a baseline for what is
4 spent there. If we were able to do another study, we
5 could perhaps determine that, but that would only be
6 after the power lines were installed.

7 Q And in your research, you didn't come across any
8 before-and-after study of another scenic byway where
9 there were transmission lines placed where tourism
10 impact was evaluated, did you?

11 A That is correct, I did not.

12 Q Okay. Let's move on to number 11. This is another
13 memoranda by you a couple of months later. And is
14 this your assessment of the Applicants' visual
15 assessment that was provided to WisDOT?

16 A That is correct.

17 Q And were you involved in making the request to
18 Applicants to provide this assessment?

19 A No, I was not.

20 Q Okay. So you, again, got a request from Mr. Fasick
21 to do an analysis?

22 A That is correct.

23 Q And since June 24, 2010, have you done any other
24 visual analysis of the project with respect to the
25 Great River Road?

1 A The Applicants submitted an additional scenic or
2 visual assessment -- I do not have the date -- since
3 the June 24th. I think there was one other scenic
4 assessment that the Applicants did that I looked at.

5 Q Okay. Was that in the application?

6 A I don't know.

7 Q Okay. Did you prepare a memoranda like you did here
8 for that analysis?

9 A I believe I might have done a spreadsheet.

10 MS. AGRIMONTI: Ms. Cox, I believe we
11 asked for all assessments on Great River Road. If
12 there is a spreadsheet, I would ask that it be
13 admitted as a late-filed exhibit.

14 MS. COX: We can look for it.

15 MS. AGRIMONTI: Thank you.

16 EXAMINER NEWMARK: Okay. If that comes
17 in, we'll -- is it Vetsch 4? No -- yes. 5, we'll
18 call it 5.

19 MS. AGRIMONTI: Thank you, Your Honor.

20 EXAMINER NEWMARK: So that's a spreadsheet
21 of visual impact --

22 MS. COX: Not Vetsch, Carrola.

23 EXAMINER NEWMARK: Carrola, I'm sorry.
24 Yeah. Does she have any other exhibits?

25 MS. HERRING: No, she does not.

1 EXAMINER NEWMARK: That will be her first.
2 (Carrola Exhibit No. 1 designated for
3 delayed receipt.).

4 BY MS. AGRIMONTI:

5 Q Ms. Carrola, were you involved in the original
6 request for designation of the Great River Road as a
7 national scenic byway?

8 A Yes, I was.

9 Q And did you assist in the drafting of the application
10 whereby you actually made an assessment of visual
11 quality of the Great River Road?

12 A I did not. It was more of an oversight role where I
13 assured that the Applicant road had all of the
14 materials necessary for national designation.

15 Q Do you recall any assessment whereby different
16 segments of the Great River Road were classified or
17 ranked in terms of aesthetic integrity or value?

18 A The Great River Road was administratively designated
19 by WisDOT. In other words, in 1999, then-Secretary
20 Thompson declared that the Great River Road would be
21 a state scenic byway because it would meet any
22 criteria that could be developed as part of the
23 Wisconsin scenic byways program. So as such, we did
24 not do a visual assessment. WisDOT did not do a
25 visual assessment.

1 Since it was designated as a state scenic
2 byway, the route was then eligible to compete for
3 national scenic byway designation. And that was a
4 separate application process totally managed by
5 federal highways and their national scenic byway
6 process. And I know that they reviewed the route,
7 but I don't -- they did not make available the
8 criteria by which they assessed it and by which they
9 made their decision.

10 Q This project would traverse the Great River Road in
11 Buffalo and Trempealeau Counties, right? Is that
12 your understanding?

13 A I'm sorry, the train. Can you please repeat.

14 Q Yes, I can. The Q1 routes, are you familiar with
15 what those are generally?

16 A Yes.

17 Q Along the Great River Road would generally affect
18 Buffalo and Trempealeau Counties; is that your
19 understanding?

20 A Yes.

21 Q Do you have an opinion as to the relative visual
22 quality of the Great River Road in either Buffalo or
23 Trempealeau County? Is one area better than the
24 other?

25 A I don't have an opinion.

1 Q Are you aware of the discussions that Applicants had
2 with WisDOT with respect to potential mitigation
3 techniques for the project along the Great River
4 Road?

5 A Some.

6 Q Do you recall what those mitigation offers were?

7 A I believe there was some talk about consolidation of
8 lines and also some changing of color on the poles
9 that would be in the right-of-way.

10 Q And were you asked to provide an analysis of whether
11 those mitigation techniques would alleviate the
12 concerns you identified in your June 24 of '10 memo?

13 A I looked, and I believe that -- determined that there
14 was incremental mitigation done; that because of
15 their size and length, it would be very hard to do
16 mitigation with those in the right-of-way.

17 Q Was your analysis of the state right-of-way or also
18 including scenic easement impacts?

19 A I just looked at what the Applicant was proposing.

20 Q Are you aware of pending federal legislation to
21 de-fund the national scenic byways program?

22 A Are you talking about the House version or the Senate
23 version?

24 Q I'm thinking of the House version, but clearly you
25 know about both. Tell me about those.

1 A There are two separate proposals before Congress.
2 The House has proposed total elimination of the
3 scenic byways program. The Senate version proposes
4 to streamline, if you will, the program and combine
5 it with other programs and leave the option up to the
6 states.

7 Q Do you have any opinion with respect to how likely it
8 is either one of these pieces of legislation will
9 pass?

10 A It's too early.

11 Q Let me look at a few of your mitigation locations.
12 In your memoranda of June 24, 2010, looking at
13 several locations, you specifically looked at 14 and
14 you found areas in six of those locations where
15 mitigation would be required, right?

16 A From a scenic byways perspective.

17 Q You say that from a scenic byways perspective. Can
18 you describe for me, what is that perspective?

19 A Basically the scenic byways program, the purpose was
20 to identify routes with outstanding natural and
21 scenic features along with complimentary things like
22 historical markers or other historical resource that
23 would make an outstanding travel experience for
24 visitors. And so that is the only way that I could
25 review the Applicants' proposal was from a

1 perspective because that is what I do for the
2 Wisconsin Department of Transportation.

3 Q Okay. And from the scenic byways perspective, the
4 receptors of those aesthetic impacts that you're most
5 concerned about are those who would travel in the
6 area?

7 A I think it is both travelers, but also the
8 preservation of the route for residents as well.

9 Q Let's look at number .77. You had some concerns
10 about the location of the facilities by the Lizzie
11 Pauls Pond. It's on page 4 of your memorandum, and
12 .77, the location can be seen on the map which is
13 Fasick No. 12.

14 Do you know how -- are you there? I'm
15 sorry.

16 A Yes.

17 MS. COX: Okay. I need to get there.

18 MS. AGRIMONTI: All right. Page 4 of her
19 memorandum. It's photo .77.

20 MS. COX: Got it.

21 BY MS. AGRIMONTI:

22 Q Do you know how far the alignment you analyzed was
23 from the picnic area?

24 A Could you rephrase, please.

25 Q Sure. Would you agree that the power line alignment

1 as proposed would be a quarter of a mile away from
2 Lizzie Pauls Pond?

3 A Approximately.

4 Q Thank you. Would you agree that the Alma generating
5 plant parallels the Great River Road for about 600
6 feet?

7 A It's adjacent to the road.

8 Q Is it about that length, would you agree?

9 A I will accept your --

10 Q That's fine. If you can't, that's okay.

11 A I can't.

12 Q Let's look at 169. That would be by Checksville
13 (phonetic), and it is on page 5 of your memorandum.
14 And you state that the proposed lines -- the lines
15 are proposed to be in the right-of-way.

16 Would it change your opinion if the lines
17 were outside the right-of-way, but close by, so say
18 right on the edge of the right-of-way?

19 A So the question is, is -- would my opinion of this
20 change if they were slightly out of right-of-way, but
21 the same height and visibility?

22 Q Yes.

23 A Without thinking a lot or having to respond in a
24 short time, my first reaction is that, yes, it would
25 still be an issue because of the height and size of

1 the lines, as I understand them. It would be
2 slightly better, but I think it would still be of
3 concern.

4 Q If the poles were of an H-frame design and 50 feet
5 shorter, would that change your opinion?

6 A I think that would be better.

7 Q Can you quantify how much better that would be?

8 A Not without seeing some sort of, you know, visual
9 assessment of that.

10 Q Okay. On the second-to-last page, you recommend,
11 right, last sentence of the page, says, "It seems
12 reasonable that the CapX 2020 utilities be asked to
13 develop alternative proposals that would be reviewed
14 using the WisDOT scenic byways assessment protocol."

15 Do you know if WisDOT ever made a request
16 to the Applicants to do that?

17 A I do not know.

18 Q And when you talk about the scenic byways assessment
19 protocol, what are you referring to?

20 A There is a citizens handbook for designation that had
21 been prepared, and this is more for routes that are
22 interested in applying for Wisconsin state scenic
23 byway designation. And so we asked that a
24 mile-by-mile assessment be done and that a numerical
25 rating be given based on parameters that are

1 developed in that book.

2 Q So you were thinking it would be a good idea for the
3 CapX utilities to run through that same analysis for
4 the Great River Road?

5 A Right, that it's imperfect, but at least it's what we
6 have and what's available.

7 Q And you didn't do that assessment, right?

8 A I did not.

9 Q Were you involved in the final decision to require
10 undergrounding at crossings of the Great River Road?

11 A I was not.

12 Q How were you informed of the final decision?

13 A I believe I received e-mails with testimony.

14 Q Did you prepare the first draft of your testimony?

15 A Yes, I did.

16 MS. AGRIMONTI: Just one moment, Your
17 Honor.

18 That's all I have, Your Honor. Thank you.

19 EXAMINER NEWMARK: Okay. Other cross?

20 MS. OVERLAND: Yes.

21 EXAMINER NEWMARK: Go ahead.

22 CROSS-EXAMINATION

23 BY MS. OVERLAND:

24 Q Good afternoon.

25 A Good afternoon.

1 Q It is afternoon. A couple of questions. First, I
2 noticed in your testimony you have citation to a
3 study called The Economic Impact Study and Marketing
4 Analysis of Wisconsin's National Scenic Byway?

5 A Yes.

6 Q There is no copy of that attached. Is there a
7 reason?

8 A I assumed if it was cited in my testimony it would be
9 part of the record. Maybe counsel can answer whether
10 or not --

11 MS. COX: We can get a copy of it.

12 MS. OVERLAND: Can we get a copy in the
13 record? I just Googled it and can't find it.

14 EXAMINER NEWMARK: Okay. Well, that will
15 be her second exhibit then.

16 MS. OVERLAND: Exhibit 2?

17 (Carrola Exhibit No. 2 designated for
18 delayed receipt.)

19 EXAMINER NEWMARK: What page of the
20 testimony were you pointing to?

21 MS. OVERLAND: What was that?

22 EXAMINER NEWMARK: Where were you citing
23 the testimony?

24 MS. OVERLAND: Direct, page 4, lines 15
25 and 16.

1 EXAMINER NEWMARK: Okay. Thanks.

2 BY MS. OVERLAND:

3 Q And along those lines -- that was in 2004. And in my
4 Googling just now, I noticed that there was a 2005
5 grant for a follow-up study to this called Just
6 Around the Road -- or, no, Just Around the Next River
7 Bend?

8 A That was actually a marketing grant.

9 Q It was what?

10 A A marketing grant. One of the benefits of scenic
11 byway designation is that local governments and
12 groups along the designated route have access or have
13 the ability to apply for national scenic byway grant
14 funds for a variety of projects. There are eight
15 categories of projects. Marketing is one of them,
16 interpretation is another, corridor management plans
17 which are akin to a strategic manage -- excuse me,
18 like a strategic plan is another. So there are eight
19 categories.

20 So one benefit of designation is to apply
21 for these funds. And the title I believe that you're
22 referring to was actually a marketing grant and not a
23 follow-up to the study. There has not been another
24 update to the study or version done.

25 Q Okay. And it -- I'll note it does say marketing.

1 It's says based on and expand upon the earlier
2 report.

3 A Right. They were trying to say, okay, look at what
4 does this report mean in terms of marketing because
5 one of the final things was what does that mean for
6 increasing visitation along the Great River Road.

7 Q Okay. Thank you. So I won't be looking for that
8 report. Let's see. And I was wondering where the
9 numbers came from in your testimony, but it came from
10 that report, so we will have that in the record.

11 I have no more. Thank you.

12 EXAMINER NEWMARK: Okay. Other cross?

13 CROSS-EXAMINATION

14 BY MR. LORENCE:

15 Q I just want some clarification in your direct
16 testimony. On page on the first line, you mention
17 some grant money, 7.3 million, that went to groups
18 and local communities along River Road. You're not
19 suggesting that any of that money would have to be
20 returned if this project was permitted in some way;
21 is that correct?

22 A That is correct. I am not.

23 Q Same with the moneys that you mention on lines 11 and
24 12?

25 A I do not manage that program, but my assumption is

1 that it would not as well since it was designated or
2 part of it at the time.

3 Q So you're not aware of any money that would need to
4 go back under any of those eight programs that you
5 had described earlier?

6 A That is correct.

7 MR. LORENCE: Thank you.

8 EXAMINER NEWMARK: Is that it? Redirect?

9 REDIRECT EXAMINATION

10 BY MS. COX:

11 Q A couple questions. You were asked about tourism and
12 whether or not you have been able to determine
13 whether tourism would be affected and that you were
14 not able to do a study. Would such a study be
15 feasible before the towers went up?

16 A It would not.

17 Q Why is that?

18 A If it was done in the manner of the 2003 study, this
19 was an all-seasons study, meaning that there were
20 intercept surveys each month of about 100 people
21 along various points on the Great River Road to
22 actually gather information while they were on the
23 route. So we'd need at least a year to collect data
24 and then time to analyze it.

25 Q Okay. You were also asked about the nine miles in

1 Buffalo County near Alma which is at the northern end
2 of the route, correct?

3 A The Great River Road goes from Prescott all the way
4 south to Kiehler. So it's closer to the northern
5 point, but it is not the northern point.

6 Q Okay. And Alma is where the proposed crossing would
7 be, to your knowledge?

8 A That is my understanding.

9 Q Okay. And I -- do you know if those are the segments
10 that WisDOT has discussed as being potentially
11 releasable for scenic easements because of the nature
12 of that area anyway?

13 A While I am knowledgeable that there are scenic
14 easements, I don't manage those and I can't speak to
15 the scenic easements.

16 Q Okay. You were also asked a question with respect to
17 moving towers -- I'm sorry, with respect to location
18 of the towers beyond the pond about a quarter mile
19 away. And would they still be visible from the road
20 if they were a quarter mile away?

21 A Based on the Applicants' visual assessment that they
22 submitted, I believe, yes, that they would be and --

23 Q And is it your opinion that they would still have an
24 impact, a visual impact?

25 A Yes.

1 Q A significant visual impact?

2 A Enough that I believe I stated it was a concern.

3 Q Do you know if those would still be in scenic
4 easements?

5 A I do not know that.

6 Q You also discussed the citizens handbook for
7 designation which uses a ranking system. Do you
8 think that that kind of a process would be helpful to
9 the Applicants in dealing with mitigation or
10 designing mitigation tactics?

11 A I believe I suggested that at the time that it was
12 something to have a conversation and to look at the
13 whole route.

14 Q Okay. You also talked a little bit about the
15 marketing grant, and that that's one of the
16 benefits --

17 A Yes.

18 Q -- that comes from the designation. Can you talk a
19 little bit or tell me, does that -- are there also
20 grants to determine whether not just marketing,
21 but -- what are the other categories that are
22 involved there?

23 A I don't know if I can list them all for you, but
24 there are eight categories. One is the development
25 of a scenic byways program, another category is

1 corridor management, a third category is safety.
2 Safety is not your typical DOT category in that you
3 have to show that there is a safety problem due to an
4 increase in byway traffic. So it's not for a normal,
5 traditional DOT safety concern.

6 A fourth area is access to recreation.
7 Another category deals with preservation. And that
8 would be by -- to preserve through scenic easements
9 or through development or some -- and that type of
10 thing. Did I say access to recreation?
11 Interpretation. And then marketing.

12 Q And moneys are potentially available under all those
13 categories?

14 A How the scenic byways program is currently structured
15 is that there is funds available and so there is --
16 the money is not apportioned to each category. For
17 instance, in federal fiscal 12, there was a grant
18 cycle. It was a half a year of funding, so there was
19 approximately 20 million, but then because of
20 takedowns and other things it was 17 million. So
21 there was 17 million this past grant cycle for all
22 those categories. So there's competition, but -- so
23 it's not 5 million is allocated to marketing and
24 et cetera.

25 Q Okay. Would -- in your opinion, would visual impact

1 changes on the Q1 or the Q1-35 route as currently
2 planned today impact the ability of groups to obtain
3 those kinds of moneys under those categories?

4 A I thought about that. There are those eight
5 categories. In addition, there is administrative
6 criteria that's listed in the grant guidance
7 associated with scenic byways. And there is only one
8 criteria, and it's called the liveability criteria.
9 And in that one, FHWA is looking for the coordination
10 of the project with your -- with the -- a town or
11 municipality's transportation plan, their land use
12 plan, and the conservation of their park space.

13 And so from that perspective, a grant may
14 be impacted from that dynamic. But that is the only
15 one that I can determine would have a direct impact
16 based on possible proceedings here.

17 Q Thank you. Would you agree -- or what's your opinion
18 with respect to those types of activities where
19 funding could be available to increasing the economic
20 viability of an area or supporting small business
21 development? Is there an impact there to having the
22 designation and having moneys available under those
23 categories?

24 MS. AGRIMONTI: Objection, compound. I
25 believe it's outside the scope of any of the cross

1 and appears to be more direct testimony.

2 MS. COX: Well, we're going back to
3 effective tourism and economic impacts to the
4 designation -- not the designation, but the byway
5 itself if we were to put up the 345 towers. So
6 that's what we're getting at.

7 MS. AGRIMONTI: I would object that her
8 opinion about what might be possibly impacted is not
9 relevant.

10 MS. COX: I think we've laid the
11 foundation that shows that this particular witness
12 is very well versed in not only the national
13 program, but how it's been developed and parlayed
14 into the Great River Road section and that she has
15 specific expertise that may not be available
16 anywhere else.

17 MS. AGRIMONTI: I don't know that the
18 witness has been shown to have expertise on the
19 awarding of grants through the Great River Road --
20 or, excuse me, the scenic byways program so that she
21 could opine about the probability of getting funds
22 in the future based on a transmission line.

23 MS. COX: I'm not talking about
24 probability --

25 EXAMINER NEWMARK: Okay. Hang on. You

1 can ask the question. You might want to just
2 simplify it.

3 MS. COX: Okay.

4 Q I'll break it up for you. Have you thought about or
5 do you have an opinion on whether the designation and
6 the categories that we talked about increase the
7 economic viability of the area?

8 A I think the four-season study has shown that there is
9 an economic benefit to designation; that in my
10 testimony, that there -- that in 2003, a non-resident
11 visitor spent an average of \$76.73 per day, residents
12 or day-trippers spent \$46. So those expenditures
13 supported approximately 10,219 full-time jobs and
14 generated approximately 145 million in proprietary
15 income and wages. And that went and helped state
16 government collect 39 million in revenues and local
17 governments 16 million.

18 Q Okay. And do you believe the same would be with
19 respect to small business development and
20 sustainability in those areas?

21 A On the Great River Road, there are 33 river towns
22 that are listed on the Great River Road website. So
23 having visitors travel along I think is an economic
24 benefit.

25 Q Okay. One last question. What is the importance of

1 the national parkway scenic byway designation?

2 MS. AGRIMONTI: Objection, vague,
3 open-ended.

4 EXAMINER NEWMARK: Sustained.

5 BY MS. COX:

6 Q Can you talk about -- well, in your opinion, what is
7 the importance of the national parkway designation?

8 MS. AGRIMONTI: Again, overly broad. To
9 what?

10 EXAMINER NEWMARK: Yeah. Sustained. Is
11 this related to cross?

12 MS. COX: Well, I mean, we're being
13 challenged on our scenic easements as not a
14 supportable basis for denying permitability. And
15 what we're trying to show is that giving up those
16 scenic easements to this project would be
17 detrimental to the area and detrimental to the
18 purpose for designating the byway.

19 MS. AGRIMONTI: Yeah, but the byway is not
20 dependent on the scenic easement designations.
21 Those are two separate issues.

22 MS. COX: Well, let me ask this question.

23 Q If the scenic easements were not in place, would this
24 area be as preserved as it is today?

25 MS. AGRIMONTI: Objection, foundation,

1 speculation.

2 EXAMINER NEWMARK: Sustained.

3 BY MS. COX:

4 Q Do you believe the scenic easements add to the value
5 of the corridor?

6 MS. AGRIMONTI: Objection, foundation.

7 MS. COX: Well, she's an expert on scenic
8 easements.

9 EXAMINER NEWMARK: Overruled.

10 MS. AGRIMONTI: She's an expert on scenic
11 byways, but --

12 EXAMINER NEWMARK: It's overruled. You
13 can answer.

14 A I think the scenic easements help in the preservation
15 of the scenic characteristics, and my understanding
16 is that a lot of these scenic easements came prior to
17 national scenic byway designation. In fact, that
18 they occurred for their other national designation
19 which I haven't heard too much discussion in the
20 testimony.

21 And the Great River Road has a second
22 national designation and that of a national parkway.
23 And it has -- so it has two designations, national
24 parkway designation and scenic byways. And that
25 parkway designation is not contingent upon scenic

1 byway designation.

2 And what is interesting to me in this
3 narrow perspective of scenic byways is that the Great
4 River Road was first considered to be a national
5 parkway beginning in 1936. And that was out there.
6 In other words, it was not common at that point in
7 time to be talking about having a scenic route, a
8 recreational route. And the only thing that I can
9 conclude from having that discussion in that point of
10 time is that it had something special and unique.
11 And even more remarkable was it wasn't one state, but
12 it was a consortium of ten states that got together
13 and said we wanted this.

14 And so it has been functioning as a
15 national parkway since I think the first parkway
16 commission was formed in 1938. And prior to scenic
17 byways, Congress allocated funds for scenic
18 easements, for the preservation of this road with
19 what we would call today enhancement-like structures,
20 the keeping it in its park-like setting. And
21 according to the report I cite in my testimony, the
22 1990 case study for the Great River Road that was
23 given to scenic byways when they were thinking of
24 forming, that approximately -- let me see my figures
25 here -- well, it was 1.6 billion in today's dollars,

1 it was approximately 300 million at the time, was
2 invested on this road.

3 And we can say, well, we all know that
4 some things change over time. And it could lose its
5 scenic characteristics to development or to -- for
6 other reasons. But, again, as remarkable to me is
7 that in 2000, the National Scenic Byways Program
8 reaffirmed the parkway designation, that this route
9 had to go through another federal application process
10 and apply. And it had federal review and it said,
11 yes, this is one of the best of the best in the
12 nation and gave the road additional exposure at the
13 national level.

14 So from that way, I think parkway
15 designation is interesting. And I think it also goes
16 to what Mr. Fasick was alluding to about the
17 importance of it and WisDOT having a role in
18 maintaining it. Because it is a multi-prong
19 approach, WisDOT does do access control on this
20 route. We do maintain scenic easements. We do
21 context-sensitive design to keep the park-like
22 standards. There are amenities on this road that
23 aren't readily available on others. I think it has
24 the most -- at least in my recollection, I can't
25 think of another road. It has numerous scenic

1 overlooks, there are pullouts with historical
2 markers, there are a few waysides; and there is a
3 scenic byways program that is infusing funds or has
4 infused funds for those.

5 So for all those reasons, I think it's a
6 unique and distinct route and something that WisDOT
7 treats differently. And from my small point as the
8 scenic byways coordinator for the Wisconsin
9 Department of Transportation, I would like to see
10 this preserved to the greatest extent possible.

11 MS. COX: No further questions.

12 EXAMINER NEWMARK: All right.

13 THE WITNESS: Thank you.

14 EXAMINER NEWMARK: You're excused.

15 MS. AGRIMONTI: Your Honor, I did have one
16 question.

17 EXAMINER NEWMARK: You had a question?
18 I'm sorry.

19 RECROSS-EXAMINATION

20 BY MS. AGRIMONTI:

21 Q You talked about the citizens handbook and that you
22 thought using that process would be helpful for
23 mitigation.

24 Were there any discussions in the agency to
25 work with the Applicants to provide that analysis?

1 A I believe I thought the citizens handbook at that
2 time would be good for discussion purposes and in
3 having a conversation with the Applicants.

4 Q Did you ever have a conversation with the Applicants?

5 A I was at at least one meeting with the Applicants, I
6 think with Mr. Stevenson and Mr. Hillstrom.

7 Q And did you discuss this?

8 A The purpose was to discuss the Applicants' CapX
9 visual assessment.

10 Q Okay. So at no time are you aware, either you or
11 anybody else at WisDOT talking about following the
12 handbook to do an assessment of the Great River Road
13 as part of this project proposal?

14 A I am not.

15 FURTHER REDIRECT EXAMINATION

16 BY MS. COX:

17 Q I just had one question. Is that a publicly
18 available document?

19 A Yes.

20 Q Is it on the website for either national parkway or
21 scenic byways?

22 A It is the Wisconsin National Scenic Byways portion of
23 the website.

24 MS. COX: No further questions.

25 (Witness excused.)

1 JAY A. WALDSCHMIDT, WisDOT WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MS. COX:

4 Q Mr. Waldschmidt, would you state your name, your work
5 address and your -- the agency you work for for the
6 record, please.

7 A Jay A. Waldschmidt. My work address is 4802
8 Sheboygan Avenue, Room 451, P.O. Box 7965, Madison,
9 Wisconsin, 53707-7965.

10 Q Okay. And did you file a surrebuttal testimony in
11 this docket?

12 A Yes, I did.

13 Q And was that testimony prepared by you or at your
14 direction?

15 A Yes.

16 Q And is that testimony as filed -- or was that
17 testimony as filed the same as what it is today?

18 A No, it is not. I would like to make two corrections.

19 EXAMINER NEWMARK: Let's go off the
20 record.

21 (Discussion off the record.)

22 EXAMINER NEWMARK: Back on the record.

23 MS. COX: Wisconsin Department of
24 Transportation tenders our witness, Jay Waldschmidt,
25 for cross-examination.

1 EXAMINER NEWMARK: Questions?

2 MS. AGRIMONTI: Applicants have no
3 questions.

4 MS. OVERLAND: I have no questions.

5 EXAMINER NEWMARK: Okay. Staff?

6 MR. LORENCE: No questions.

7 EXAMINER NEWMARK: That hasn't happened
8 yet.

9 THE WITNESS: What the heck.

10 EXAMINER NEWMARK: All right. You're
11 excused.

12 THE WITNESS: Wow.

13 MS. COX: No redirect, Your Honor.

14 THE WITNESS: I just want you to know I
15 sat two days for that.

16 (Witness excused.)

17 EXAMINER NEWMARK: Let's go off the
18 record.

19 (Discussion off the record.)

20 EXAMINER NEWMARK: Let's get on the
21 record.

22 CHERYL LAATSCH, DNR WITNESS, DULY SWORN

23 DIRECT EXAMINATION

24 BY MS. CORRELL:

25 Q Good afternoon, Ms. Laatsch. Can you please state

1 your name and business address for the record.

2 A My name is Cheryl Laatsch. I work for the Wisconsin
3 Department of Natural Resources Office of Energy. I
4 work at 101 South Webster Street, Madison, Wisconsin.

5 Q And did you prepare direct testimony and rebuttal
6 testimony for this hearing?

7 A Yes, I did.

8 Q And is your testimony today the same as it would be
9 as prepared in that written testimony?

10 A Yes.

11 Q I just have one or two questions. There's been
12 testimony during this hearing regarding Q1 original
13 route by both Witness Stevenson and Hillstrom. Have
14 you been present for that testimony?

15 A Yes.

16 Q And can you clarify with respect to permitability
17 what your testimony would be with respect to the
18 existing Q1 route? I'm sorry, with the original Q1
19 route.

20 A We have not made a permit decision for the original
21 Q1 route. However, we have stated previously that
22 Segment 5B would not be permissible.

23 Q Did you also provide -- going back to your testimony,
24 did you also provide one exhibit attached to that
25 direct testimony?

1 A Yes.

2 Q And you're offering that same exhibit with no
3 amendments here today?

4 A Yes.

5 MS. CORRELL: Okay. I'll tender her for
6 cross-examination.

7 EXAMINER NEWMARK: Okay. Questions?

8 MS. HERRING: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. HERRING:

11 Q Ms. Laatsch, I'm going to be discussing with you
12 today also Segment 8B, the portion of the
13 Q1-Highway 35 route that traverses the VanLoon
14 wildlife wetlands. Are you familiar with that
15 segment?

16 A Yes.

17 Q Let's turn to your direct testimony on page 12.
18 Specifically I'm going to be looking at lines 1
19 through 5. And in that portion of your testimony,
20 you reach the conclusion that Segment 8B of the
21 Q1-Highway 35 route will result in cumulative and
22 significant adverse impacts to the VanLoon wetlands.
23 Is that an accurate summary of this portion of your
24 testimony?

25 A Yes.

1 Q What process does the DNR use to reach the conclusion
2 that Segment 8B would result in cumulative and
3 significant adverse impacts to the VanLoon wetlands?
4 Can you describe that process for me?

5 A If you're asking specifically about a DNR process to
6 evaluate significant impacts, specifically to
7 VanLoon, or are you asking about the process to
8 evaluate significant impacts?

9 Q I'm talking about the process that you used to reach
10 this conclusion in your testimony specific to the
11 VanLoon wetlands area for Segment 8B.

12 A Okay. When we review utility projects and the
13 various route options that are presented through the
14 application process, the resource managers and the
15 team that makes up the decisions on resource impacts,
16 cumulative, temporary and permanent, is collaborated
17 to basically determine how significant those impacts
18 would be.

19 Q And you mentioned that there was a team of people who
20 get together to discuss the impacts. Can you
21 identify who would be part of that team and who was
22 part of that team in this evaluation?

23 A Sure. We typically rely on resource experts,
24 resource biologists, conservation biologists or land
25 managers who are familiar with the project area. We

1 also rely on biologists within our -- the areas of
2 program expertise, whether it be fisheries, wildlife,
3 land or such, to help evaluate the proposed projects
4 and its potential impacts on the resource.

5 For this particular project, the team that
6 we have consulted with is Craig Thompson, Shari
7 Koslowsky, Armund Bartz, and myself.

8 Q And so this is a standard process that the DNR uses
9 to evaluate wetland impacts for various projects when
10 they're -- a permit is requested?

11 A Yes.

12 Q Do you have any written documentation of the process
13 that was used here or conclusions reached throughout
14 this process other than what's stated in your
15 testimony?

16 A No. That's standard process.

17 Q So you didn't prepare a memorandum or any internal
18 documentation?

19 A No.

20 Q Can you list specific factors that you and your team
21 evaluated when reaching that conclusion? I'm talking
22 specifically about Segment 8B.

23 A Heavy input was provided by the regional land experts
24 due to their extensive knowledge of the VanLoon
25 wildlife area, the diversity of plants, communities

1 and wildlife, known occurrences of threatened
2 endangered resources, other documentation of other
3 wildlife that may be migrating through the area,
4 regional mapping that might demonstrate flooding or
5 other sensitive issues that could create a more
6 adverse impact than standard upland farmland type
7 communities.

8 We look at all of the various resource
9 information that we have access to along with the
10 materials that are provided by the Applicant and
11 their consultants. And we try to identify where is
12 the greatest risk. And then from there, we try to
13 identify avoidance of the risk or minimization of the
14 risk if avoidance cannot be achieved.

15 Q Let's turn back to the term "significant." How do
16 you define the term "significant" as used in your
17 testimony?

18 A The VanLoon area is a well-documented wetland complex
19 not only for its wetland diversity, but also for its
20 plant diversity, threatened endangered resources, and
21 various other national and international
22 designations. Therefore, it is my opinion that this
23 area is very important to the DNR and should be
24 recognized as such.

25 Q Let's back up a little bit. The term "significant"

1 is a term that's used in the statute that you've
2 cited in your testimony; is that correct?

3 A Can you refer to what statute you're referring to?

4 Q NR 103. Let me point you to the right... Let's ask
5 it another way.

6 In other projects where you've made a
7 determination that an impact would be significant,
8 how do you generally define the term "significant"?

9 A I have not had to make a determination on a project
10 that had significant adverse impacts because we've
11 been successful in avoiding those impacts for the
12 projects.

13 Q So you've never had another project where you made a
14 determination of significant adverse impacts; is that
15 your testimony?

16 A Yes.

17 Q Are you aware the Applicants have proposed mitigation
18 measures such as relocating the existing Q1 line and
19 purchase of private property for incorporation into
20 the VanLoon wildlife area?

21 A I'm aware of the proposal.

22 Q Did you consider these mitigation measures when
23 evaluating whether the impact to Segment 8B would be
24 significant?

25 A Yes.

1 Q Let's turn to your testimony, again, page 12. And
2 now we're going to move to lines 8 and 9. You state
3 here that the DNR has determined that, quote,
4 practical alternatives, end quote, exist to
5 Segment 8B that would avoid significant adverse
6 wetland impacts. Would you agree that all the routes
7 under consideration have wetland impacts?

8 A Yes.

9 MS. HERRING: That's all I have, Your
10 Honor.

11 EXAMINER NEWMARK: Okay. Other questions?

12 MS. OVERLAND: I have none.

13 EXAMINER NEWMARK: No? Redirect?

14 REDIRECT EXAMINATION

15 BY MS. CORRELL:

16 Q You were asked to refer to your -- the testimony that
17 you submitted for direct on lines 1 through 5 of page
18 12. But the question actually begins on the bottom
19 of page 20. And specifically this -- I'm sorry, did
20 I say that? On page 10 at line 20.

21 The sentence that you were directed to is
22 located at the bottom of page 11 beginning at line
23 22. And just for completeness, I'd like you to
24 review what your testimony was with respect to where
25 that testimony was provided from starting at line 22

1 on the bottom of page 11.

2 A Um-hmm.

3 Q Would you just read that for the record.

4 A "The March 31st, 2011, letter concluded, quote, 'It
5 appears that there are at least two practical
6 alternatives that avoid significant adverse impacts
7 to the VanLoon wetland complex.'" Would you like me
8 to continue?

9 Q No, that's fine. And so, again, if you could
10 explain, in your experience you've reviewed quite a
11 few permits over your career, what the wetland
12 program requires you to do in terms of what the steps
13 are that you would review? I think that you did just
14 provide this, but if you could just clarify what the
15 steps are for the record.

16 A Okay. The wetland certification application process
17 first requires that we evaluate avoidance of
18 wetlands. The second -- if avoidance of wetlands
19 cannot be achieved, then we look at minimization. On
20 large complex, utility corridor projects, it is
21 unrealistic to expect that all wetlands will be
22 avoided. Therefore, we try to achieve the avoidance
23 in the most sensitive communities possible, those
24 communities that would have the greatest risk or the
25 greatest loss.

1 Q Okay. So when you say sensitive, are there criteria
2 that you utilize to evaluate what sensitive factors
3 might be in terms of functions of values of those
4 wetlands?

5 A For the portion that I played a role in, I used the
6 term "sensitive" a little bit more general. I would
7 be collecting feedback from our resource experts; and
8 that would include land management, threatened and
9 endangered resources, cultural impacts, flooding and
10 saturation issues on site, temporary versus permanent
11 impacts, long-term monitoring, operation and
12 maintenance, evasive species, re-vegetation, regrowth
13 plans, and as such.

14 So when we talk about sensitive, we kind
15 of look at all of that together in a holistic
16 approach of what the impact may be to that particular
17 portion of the project.

18 Q And that's standard for how you reviewed utility
19 projects in the past?

20 A Yes.

21 Q And just to clarify your testimony again, DNR hasn't
22 made a permit decision, correct?

23 A Correct.

24 Q And would there be any additional documentation that
25 would be conducted if and when the department would

1 be asked to make a final determination on the utility
2 projects with respect to wetlands?

3 A Yes. We have 30 days after the order is issued to
4 make a permit decision. Once the decision -- once
5 our decision is issued, we would be working through
6 permit conditions that we would incorporate which
7 would include additional environmental access plans
8 and the such that really kind of the tweaking begins
9 after the route is selected. And those all
10 incorporate into the permit conditions which is part
11 of the permit decision.

12 Q Okay. And just to clarify, you'd be making findings
13 of fact and conclusions of law in actually forming a
14 permit decision; is that correct?

15 A Yeah, within 30 days of the order.

16 MS. CORRELL: I don't have any further
17 questions. Thank you.

18 MS. COX: DOT has just a couple questions.

19 CROSS-EXAMINATION

20 BY MS. COX:

21 Q Ms. Laatsch, is the VanLoon wetland area considered a
22 wetland of special natural resource interest under
23 NR 10304?

24 A Yes.

25 Q Okay. And considering that it is an area of special

1 natural resource interest, is the DNR even allowed to
2 consider mitigation for that area?

3 A Compensatory mitigation for Wisconsin Department of
4 Natural Resources was not part of the application.

5 Q Okay. So just to clarify, under natural resources
6 10308(4)(b), and I'll show you the section if you
7 want, does this prevent you from considering
8 mitigation?

9 A Yes.

10 MS. COX: Okay. Thank you.

11 MS. HERRING: Just one more question, Your
12 Honor.

13 RE-CROSS-EXAMINATION

14 BY MS. HERRING:

15 Q Ms. Laatsch, turning back again to your conclusions
16 on page 12. Would you characterize this conclusion
17 as a scientific conclusion based on a systematic
18 analysis or more like an opinion?

19 A DNR considers a finding of fact of what is required
20 to do regulatory-wise for our process.

21 Q And just to clarify again, you don't have any written
22 documentation supporting this conclusion other than
23 what's contained in this testimony?

24 A The NR 103 process is pretty straightforward.

25 MS. HERRING: I have nothing further.

1 EXAMINER NEWMARK: Okay. Redirect?

2 MS. CORRELL: I didn't hear what you just
3 said.

4 MS. HERRING: I just said that she didn't
5 have any other written documentations of that
6 conclusion or -- excuse me, how she characterized it
7 was a finding of fact other than --

8 MS. CORRELL: Okay. The last thing you
9 said is what I didn't hear.

10 MS. HERRING: Sorry.

11 EXAMINER NEWMARK: So we're good? Any
12 other questions on redirect?

13 MS. CORRELL: No.

14 EXAMINER NEWMARK: You're excused.

15 (Witness excused.)

16 EXAMINER NEWMARK: Let's go off the
17 record.

18 (Discussion off the record.)

19 EXAMINER NEWMARK: Back on the record.

20 SHARI KOSLOWSKY, DNR WITNESS, DULY SWORN

21 DIRECT EXAMINATION

22 BY MS. CORRELL:

23 Q Would you state your name and business address for
24 the record.

25 A Shari Koslowsky, Wisconsin Department of Natural

1 Resources, 101 South Webster in Madison.

2 Q And are you the same Shari Koslowsky who provided
3 both direct and surrebuttal testimony for purposes of
4 this hearing?

5 A Yes.

6 Q And your testimony today would be the same as what
7 you've provided in written testimony; is that
8 correct?

9 A Yes.

10 MS. CORRELL: Okay. I'll tender her for
11 cross-examination.

12 EXAMINER NEWMARK: Okay. Questions?

13 CROSS-EXAMINATION

14 BY MS. HERRING:

15 Q Just briefly. Ms. Koslowsky -- am I pronouncing your
16 name right?

17 A It's close enough.

18 Q I would like to be able to pronounce it.

19 A Koslowsky.

20 Q Koslowsky. That's a tongue twister. Let me try it
21 again. Mrs. Koslowsky.

22 A Koslowsky.

23 Q I should be better at this. My family is Czech,
24 so... Are you aware of whether any EMR had been
25 killed by vehicular traffic along Highway 35, to your

1 knowledge?

2 A No, to my knowledge, no.

3 MS. HERRING: Okay. Nothing further.

4 Your Honor.

5 EXAMINER NEWMARK: Other cross?

6 MS. OVERLAND: No.

7 EXAMINER NEWMARK: Any redirect before she
8 sneaks away?

9 MS. CORRELL: No. You're excused.

10 EXAMINER NEWMARK: I get to say that.
11 You're excused.

12 (Witness excused.)

13 EXAMINER NEWMARK: Let's go off the
14 record.

15 (Discussion off the record.)

16 EXAMINER NEWMARK: Let's get back on the
17 record. We'll convene again at 9 a.m. Thursday
18 morning.

19 (The hearing adjourned at 4:50 p.m.)

20

21

22

23

24

25

1 STATE OF WISCONSIN)

2 MILWAUKEE COUNTY)

3

4 We, LYNN M. BAYER, RPR, CM, and JENNIFER M.
5 STEIDTMANN, RPR, CRR, with the firm of Gramann Reporting
6 Ltd., 710 North Plankinton Avenue, Suite 710, Milwaukee,
7 Wisconsin, do hereby certify that we reported the
8 foregoing proceedings had on March 6, 2012, and that the
9 same is true and correct in accordance with our original
10 machine shorthand notes taken at said time and place.

11

12

13 Lynn M. Bayer
14 Registered Professional Reporter
15 Certificate of Merit

15

16 Jennifer M. Steidtmann
17 Registered Professional Reporter
18 Certified Realtime Reporter

18

19

20 Dated this 7th day of March, 2012.
21 Milwaukee, Wisconsin.

22

23

24

25

1	I N D E X		
2	WITNESS	EXAMINATION	PAGE
3	TOM HILLSTROM, APPLICANT WITNESS		
4		DIRECT EXAMINATION BY MS. HERRING	264
5		CROSS-EXAMINATION BY MS. OVERLAND	268
6		CROSS-EXAMINATION BY MS. WHEELER	290
7		CROSS-EXAMINATION BY MR. THIEL	295
8		CROSS-EXAMINATION BY MS. CORRELL	313
9	PETER H. HOLTZ, ATC WITNESS		
10		DIRECT EXAMINATION BY MS. SMITH	322
11		CROSS-EXAMINATION BY MS. OVERLAND	324
12		CROSS-EXAMINATION BY MR. LORENCE	325
13	ROBERT C. FASICK, WisDOT WITNESS		
14		DIRECT EXAMINATION BY MR. THIEL	330
15		CROSS-EXAMINATION BY MS. AGRIMONTI	333
16		CROSS-EXAMINATION BY MS. OVERLAND	400
17		CROSS-EXAMINATION BY MS. OVERLAND	401
18		CROSS-EXAMINATION BY MS. LOEHR	408
19		CROSS-EXAMINATION BY MR. LORENCE	409
20		REDIRECT EXAMINATION BY MS. COX	420
21		RECROSS-EXAMINATION BY MS. AGRIMONTI	437
22		CROSS-EXAMINATION BY MS. CORRELL	445
23	NANNETTE E. VETSCH, WisDOT WITNESS, DULY SWORN		
24		DIRECT EXAMINATION BY MS. COX	448
25		CROSS-EXAMINATION BY MS. AGRIMONTI	449

1	CROSS-EXAMINATION BY MS. OVERLAND	460
2	CROSS-EXAMINATION BY MR. LORENCE	462
3	REDIRECT EXAMINATION BY MS. COX	468
4	JANE V. CARROLA, WisDOT WITNESS, DULY SWORN	
5	DIRECT EXAMINATION BY MS. COX	469
6	CROSS-EXAMINATION BY MS. AGRIMONTI	470
7	CROSS-EXAMINATION BY MS. OVERLAND	483
8	CROSS-EXAMINATION BY MR. LORENCE	486
9	REDIRECT EXAMINATION BY MS. COX	487
10	RE-CROSS-EXAMINATION BY MS. AGRIMONTI	498
11	FURTHER REDIRECT EXAMINATION BY MS. COX	499
12	JAY A. WALDSCHMIDT, WisDOT WITNESS, DULY SWORN	
13	DIRECT EXAMINATION BY MS. COX	500
14	CHERYL LAATSCH, DNR WITNESS, DULY SWORN	
15	DIRECT EXAMINATION BY MS. CORRELL	501
16	CROSS-EXAMINATION BY MS. HERRING	503
17	REDIRECT EXAMINATION BY MS. CORRELL	508
18	CROSS-EXAMINATION BY MS. COX	511
19	RE-CROSS-EXAMINATION BY MS. HERRING	512
20	SHARI KOSLOWSKY, DNR WITNESS, DULY SWORN	
21	DIRECT EXAMINATION BY MS. CORRELL	513
22	CROSS-EXAMINATION BY MS. HERRING	514
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

NUMBER	DESCRIPTION	MRK'D	RECV'D
Nos. 41 - 47	(Hollstrom)		267
No. 48	(Hollstrom)	273	
No. 9	(Fasick)	341	345
No. 10	(Fasick)	345	345
No. 11	(Fasick)	351	351
No. 12	(Fasick)	351	364
No. 13	(Fasick)	363	364
No. 14	(Fasick)	379	380
No. 15	(Fasick)	387	--
No. 16	(Fasick)	391	392
No. 17	(Fasick)	395	396
No. 18	(Fasick)	395	
No. 19	(Fasick) delayed	401	
No. 1	(Carrola) delayed	476	
No. 2	(Carrola) delayed	484	
No. 2	(Vetsch)	451	452
No. 3	(Vetsch)	457	459
No. 4	(Vetsch)	459	--