

1 STATE OF VERMONT
2 PUBLIC UTILITY COMMISSION

3 CASE NUMBER 17-3550-INV
4

5 INVESTIGATION PURSUANT TO 30 V.S.A. SECTIONS
6 30 AND 209 REGARDING THE ALLEGED FAILURE OF
7 VERMONT GAS SYSTEMS, INC. TO COMPLY WITH THE
8 CERTIFICATE OF PUBLIC GOOD IN DOCKET 7970 BY
9 BURYING THE PIPELINE AT LESS THAN REQUIRED DEPTH
10 IN NEW HAVEN, VERMONT

11 September 2, 2020
12 9:00 a.m.

13 -----
14 112 State Street
15 Montpelier, Vermont

16 Day II of an Evidentiary Hearing held before the
17 Vermont Public Utility Commission via GoToMeeting video
18 conference on September 1, 2020, beginning at 9:30 a.m.

19 P R E S E N T

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21 Staff: Kyle Landis-Marinello, General Counsel
22

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1 HEARING OFFICER TOUSLEY: Okay. This hearing
2 is back in session. Mr. Byrd, you are on the witness
3 stand. You're reminded that you're under oath. Mr.
4 Dumont, you may proceed.

5 ATTORNEY DUMONT: Great.

6 MR. LANDIS-MARINELLO: And I'm going to make
7 you a presenter now, Attorney Dumont.

8 ATTORNEY DUMONT: Great.

9 MR. BYRD: And just a technical question. So
10 I guess we have to wait until somebody is presenting so
11 I can move all the images over to the other screen?

12 HEARING OFFICER TOUSLEY: Yeah. I think, as
13 soon as Mr. Dumont gets his images up, you'll be able
14 to do that. Looks like he's doing that now.

15 MR. BYRD: There we go.

16 ATTORNEY DUMONT: Just so all you all know
17 what I'm doing on my end, Ms. Bishop taught me
18 yesterday that I can see more of my screen if I
19 eliminate everybody's picture from my screen, because
20 your pictures were interfering with the documents on my
21 screen. So, in order to look at the complete document
22 that I'm showing to you, I have to take you all off my
23 screen. So, much of the time, I actually can't see you
24 when I have a document.

25

CROSS-EXAMINATION BY ATTORNEY DUMONT

- 1
- 2 Q. All right. Good morning, Mr. Byrd.
- 3 A. Good morning.
- 4 Q. How are you and your mom today?
- 5 A. Well, Mom was still asleep when I came over here,
- 6 so I think she's doing fine.
- 7 Q. Great.
- 8 A. Yeah.
- 9 Q. Before I went any further into depth of cover in
- 10 the Clay Plains Swamp, I thought it might be useful to
- 11 have an illustration of the setting. Do you remember
- 12 the video that was filed with the Commission by, was
- 13 taken by Mr. Shelton and then, when you met in my
- 14 office, he showed you the video --
- 15 A. Yes, I do.
- 16 Q. -- and that we gave you a copy to --
- 17 A. Right.
- 18 Q. -- take with you? This, I'll represent to you, is
- 19 -- I don't know what the right term is -- but a
- 20 snapshot from the video.
- 21 A. Okay.
- 22 Q. And this is, I don't know if you've seen the video
- 23 recently. When is the last time you've looked at that
- 24 video?
- 25 A. Oh, it's, shortly after you sent it to me, I

1 probably watched it again, but I haven't watched it
2 recently.

3 HEARING OFFICER TOUSLEY: Mr. Dumont, for
4 record purposes, what is the name of this? Where can
5 this be located in the record, if at all?

6 ATTORNEY DUMONT: I believe the video was
7 already in as part of one of the other exhibits, but I
8 took this snapshot and made it Exhibit 42 --

9 HEARING OFFICER TOUSLEY: Okay.

10 ATTORNEY DUMONT: -- Cross Exhibit 42.

11 HEARING OFFICER TOUSLEY: Cross Exhibit 42?
12 Thank you.

13 BY ATTORNEY DUMONT:

14 Q. I'm moving the picture up a little bit on the
15 screen. After it's finished adjusting, I'll ask Mr.
16 Byrd a question. Mr. Byrd, do you see that the buried
17 pipe in the right-hand corner or third of the
18 photograph?

19 A. Well, it, it looks like a pipe. I, it's mostly
20 obscured, but, and I remember the quality of the video
21 wasn't very good. So, I mean, I, I don't disagree that
22 something down there looks like a pipe.

23 Q. And the pipe has an external diameter of how much?

24 A. Well, it's, it's 12.75 inches, plus the concrete
25 layer, which, in this case, is another inch and a half

1 of radius, 3 inches in diameter total.

2 Q. So what would you say --

3 A. About 15 inches in diameter.

4 Q. 15 inches? So what would you say is the total
5 width of the trench shown in this photograph?

6 A. I really couldn't, couldn't guesstimate based off
7 of this picture. I mean, it looks to be, you know,
8 maybe three feet wide, but I, I really don't have any,
9 you know, any scale to go off of here.

10 Q. I've adjusted the picture a little bit.

11 A. Right.

12 Q. How would you describe the conditions in the
13 trench?

14 A. It looks like, like mud.

15 Q. Yeah. What would you say the width is of the
16 trench at the top of the trench, not the bottom?

17 A. Well, again, I, I, you're just asking me to
18 speculate off of this. I'm not going to try to give
19 you any precise number, because I really can't. I
20 mean, I, you know, there's nothing in here that has a
21 scale to it, you know.

22 Q. And would you say that it varies, as we, that it
23 varies; it's not a standard, it's not a uniform width?

24 A. Well, again, I, yeah, there's just no way to tell
25 from, from this screenshot. You know, it, I've seen

1 plenty of optical illusions that, you know, looks like
2 something is parallel when it's not or not parallel
3 when it is. I mean, I mean, it looks narrower the
4 farther away you get, but I don't know if that means
5 anything or not. It's just the way that it appears in
6 that image.

7 Q. Right. Are you aware of any other photographs
8 taken of the construction in the Clay Plains Swamp
9 while the construction was going on?

10 A. I don't recall seeing any other photographs of
11 this specific area.

12 Q. So I agree this is not exactly high-quality
13 photography. It was taken with a cell phone, and it's
14 from a video taken with a cell phone, but it's all we
15 had.

16 A. Right.

17 Q. Okay. Do you recall what Mr. Heintz testified
18 would be the expected standard width of the trench for
19 the Addison Natural Gas Pipeline?

20 A. I don't recall what he had said.

21 Q. I'm going to go to Cross-Examination Exhibit 8.
22 This is Mr. Heintz's testimony, his first prefiled
23 testimony. It's December 20th 2012, and I, I have the
24 screen on Page 25.

25 A. I'm seeing 28.

1 Q. All right. I'm sorry. Yes, but it's .pdf Page
2 28. It's Page Number 25 as paginated, but it's .pdf
3 Page 28.

4 A. Okay.

5 Q. And do you see here that Mr. Heintz testified,
6 "For the transmission main line, a four- to five-foot
7 wide trench will be excavated to a depth of
8 approximately five feet, and soil from the trench will
9 be stockpiled adjacent to the trench within the
10 construction corridor"; you see that there?

11 A. Yes, I do.

12 Q. Based on your experience in the pipeline
13 construction industry, does that seem -- is that
14 consistent with your experience?

15 A. Yeah, I would say he's describing a typical trench
16 installation, yes.

17 Q. I'm going to go to your Attachment 47. It's
18 report Attachment 47 which are the CHA loading
19 calculations from November 7th 2014.

20 A. Okay. Yeah, I see it.

21 Q. And I confess what's frustrating about using
22 GoToMeeting is that, for a document to be large enough
23 for anybody other than me to see it, you can only show
24 a third of it at a time, third of the page at the time,
25 so it makes it slow.

1 And I'm going to ask you whether you agree that
2 the 2014 calculations of load bearing, first, were done
3 by CHA. Do you agree with that?

4 A. Well, that's who authored this memo, yes.

5 Q. And do you agree also that they used API RP 1102?

6 A. Yes. That's, that was the basis of the
7 calculation method was 1102, and one of them used the
8 Pipeline Toolbox. The other one used Bradley Bean
9 software. They're both using the same basic method.

10 Q. This letter is dated November 7, 2014. It refers
11 to API Recommended Practice 1102 several times during
12 the letter, correct?

13 A. Well, I'm sure they did, yes.

14 Q. And it also refers to the technical specifications
15 that you and I talked about at length yesterday?

16 A. Right.

17 Q. 312333, you see that?

18 A. Yes.

19 Q. And does it say, in the tail end of the first
20 paragraph, "Our review is contingent on the contractor
21 adhering to the backfilling requirements detailed in
22 the contract documents, comma, specifically in the
23 following sections, colon", and then one of the
24 sections listed is Technical Specification 312333,
25 correct?

1 A. That's correct.

2 Q. And that's the technical specification that, in
3 your report and as we discussed yesterday, you said
4 Vermont Gas was justified in ignoring based on this
5 quote, unquote, narrative, correct?

6 A. Well, I didn't say they were justified in ignoring
7 the whole specification. I said they're, when there
8 was a conflict between the narrative specification and
9 312333, when it concerns the trenching and the backfill
10 operation, they should have chosen the narrative to
11 resolve the conflict, and they did for the first two
12 years. It was only in 2016 that they started using the
13 333 specification instead of the narrative. I mean,
14 it, you know, 312333 has lots of relevant stuff in it,
15 and I don't take issue with, with most of what's in
16 there.

17 Q. I'm going to scroll down a little bit here to the
18 last page of the exhibit, I'm sorry, of this letter,
19 last page of the letter. I'll wait for it to show up
20 on your screen.

21 A. All right. There you go.

22 Q. So everybody should have that now. And do you see
23 that after Mr. Curran's signature it says "Attachment,
24 parens(1)"?

25 A. I'm sorry. What are you trying to point out

1 again?

2 Q. After the signature line it says "Attachment" and
3 then, in parens, the number 1?

4 A. Right, okay. Yeah, okay.

5 Q. And that attachment, if you go back up, is the
6 calculations that are referred to in the very first
7 paragraph, which I'm now putting back on your page.

8 A. Okay.

9 Q. The very first paragraph says, "The review was
10 performed based on the specified materials, comma,
11 installation" --

12 A. I'm looking for that sentence. I'm sorry. I
13 don't see it. Okay. Yeah, in the middle. Okay, yes.

14 Q. It's, "The review was performed based on the
15 specified materials, comma, based on the specified
16 installation methods and calculation assumptions". You
17 see that?

18 A. Right. Yes, I do. Yeah.

19 Q. And did you ever see Attachment 1?

20 A. I don't recall if I, if that was, you know, in the
21 documents I reviewed or not, frankly. I mean, I just
22 don't remember.

23 Q. The reason I is ask is because this is your
24 Attachment 1, and it doesn't have the -- I'm sorry.

25 This is your Attachment 47 --

1 A. Right.

2 Q. -- but it doesn't have the attachment that's
3 referred to in the letter.

4 A. Right.

5 Q. So I've provided that in Cross-Examination
6 Exhibit, the next exhibit, which is Cross-Examination
7 Exhibit 43. There it is okay. I now have 43 showing
8 up on your screen, and, just, I'm going to scroll up so
9 you can see that it goes with the letter.

10 A. Yeah, and, actually, now that you bring that up, I
11 do believe I've seen it, because I think that's where I
12 saw that they used the Pipeline Toolbox or the Bradley
13 Bean software, one or the other. That's, I can
14 probably tell if you give me a chance to look at it,
15 but it's not that important.

16 Q. So, looking at the attachment to the November 7,
17 2014 letter, it had these are the calculations
18 assumptions, correct?

19 A. Yeah, that looks like the program inputs for the
20 whatever program they're using.

21 Q. So we know from the letter that one of the
22 assumptions was that Technical Specification 312333 was
23 complied with, correct?

24 A. Well, the calculations based off assumptions, some
25 of which came from 312333, and I think the relevant

1 data is going to be right here in the page you're
2 showing.

3 Q. And one of the assumptions here is that the
4 trench, slash, bore width is three feet, correct?

5 A. Okay. Yes.

6 Q. Do you see that there?

7 A. I do, yes.

8 Q. So this gets back to Mr. Liebert's question and
9 the National Transportation Safety Board question. If
10 there had been a responsible charge engineer, do you
11 think a responsible charge engineer would have noticed
12 that Mr. Heintz said the trenches would be four to five
13 feet but the CHA calculations were based on a trench
14 width of three feet?

15 A. Well, I can't really tell you what a responsible
16 charge engineer would have, would have said, but I am,
17 you know, it's one of those variables that I can tell
18 you without even looking that it's not going to matter
19 if you put in four feet or five feet. If I'd been the
20 professional engineer reviewing this, I wouldn't have
21 questioned three feet. It's just a standard number.
22 And the calculation that can be sensitive to the width
23 of the trench, I'm even surprised it's a variable. It
24 probably has some effect somehow, but --

25 Q. You haven't run those calculations, have you?

1 A. I actually had one of my employees run the
2 calculations using the Pipeline Toolbox just to make
3 sure he came up with the same kind of answers, and he
4 did.

5 Q. You haven't run your calculations, you haven't run
6 the calculations using a trench width of four to five
7 feet?

8 A. No. We didn't do any kind of sensitivity analysis
9 like that. I just wanted to make sure that the answers
10 that we got if we, if we ran the calculations would be
11 similar to what the consultants in this case got, and,
12 and we got same basic answers.

13 There's one thing on this page I'd like to point
14 out, though, while we're here. If you look down
15 towards the bottom, the crossing data, maximum load per
16 wheel set 18,400 pounds. So, even though in the
17 definition of 1102 it says that highway includes
18 driveways, the calculations are based off of semi
19 tractor-trailers that are fully loaded. I mean, you
20 know, a car, a tractor, you know, even a big truck
21 isn't going to have a wheel loading per axle of 18,400
22 pounds. So this is heavy, heavy trucks that they're
23 actually calculating for.

24 Q. There was no pending question. I'm not going to
25 move to strike, but, Mr. Byrd, I think it would be

1 better if you answer questions rather than making
2 observations, at least easier for me to do what I'm
3 supposed to do. But, since you've brought it up,
4 what's the weight of a large farm tractor --

5 A. I don't --

6 Q. -- a large one?

7 A. Well, I can't say off the top of my head. I'm not
8 even sure how to describe a large tractor, but, you
9 know, the, the issue is the wheel loading, and large
10 tractors have really large, fat tires because, you
11 know, they're designed to go across soft dirt. They
12 have very low wheel loadings. The wheel loadings you
13 get in this case, you know, are based off of 90 psi
14 truck tires, which have very hard pressure points
15 directly below the axle, and that's how this
16 calculation is done. So the point I'm making, it's
17 relevant to the calculation.

18 HEARING OFFICER TOUSLEY: If I could
19 interrupt for a second just so it's clear in my mind,
20 what kind of traffic would have been anticipated in
21 that area of the Clay Plains Swamp next to the VELCO
22 right, or within the VELCO right-of-way?

23 MR. BYRD? Well, none. It, it would be very
24 difficult to even send a tracked vehicle down that
25 right-of-way, and, in fact, you know, there were

1 problems that the construction contractor had while
2 working in that right-of-way, even with tracked
3 vehicles. So, I mean, we could -- we struggled to walk
4 along it because the, the soil is so, so mushy. So,
5 you know, this point load calculation in that kind of
6 soil is really irrelevant. I mean, you'd never be able
7 to get a tractor-trailer truck into the Clay Plains
8 Swamp, much less impose this kind of external load on
9 it. Does that make --

10 HEARING OFFICER TOUSLEY: How close that --
11 yes, it does. I have another question. How far from
12 the, the pathway of the pipeline are the transmission
13 towers for VELCO; do you know?

14 MR. BYRD: Well, if you go to the picture
15 that Mr. Dumont just had up, and there are some
16 diagrams, and, you know, we can give you a more precise
17 number on that, but, but you can see -- oh, can you
18 scroll up a little bit on that picture, or do you have
19 a different? I know there's some -- okay. So, so you
20 can see the width of the right-of-way. The
21 transmission lines are pretty much on the east side,
22 you know, hugging the east side of the right-of-way,
23 and the transmission pipeline is hugging the west side
24 of the right-of-way right along the tree line.

25 So, so there's no point along the Clay Plains

1 Swamp where the pipeline is underneath the transmission
2 lines, and, and my guesstimate, albeit exact number,
3 you're probably about 50 feet from the edge of the
4 transmission lines to get to the pipeline.

5 HEARING OFFICER TOUSLEY: Okay. What kind of
6 vehicles, if any, would VELCO use to maintain and
7 access that transmission line?

8 MR. BYRD: Well, you'd have to ask VELCO
9 that, but, but, in my experience, and, of course, I'm,
10 probably very seasonally, you know, in this case, as I
11 described in my report, there had been quite a bit of
12 rain in the weeks leading up to them constructing this
13 site, which is the worst possible situation. It's
14 called a swamp for a reason. You know, so maybe in a
15 dry season you could get a tracked vehicle in there,
16 but in most cases I would think you'd have to do what
17 the construction contractor in this case did, which is
18 you'd have to lay mats along the right-of-way in order
19 to get a vehicle into it.

20 HEARING OFFICER TOUSLEY: Okay.

21 MR. BYRD: You know, you couldn't just drive
22 a vehicle down there in a normal circumstance.

23 HEARING OFFICER TOUSLEY: Are you familiar at
24 all with the requirements for maintaining those
25 transmission lines?

1 MR. BYRD: Well, I'm not an electrical
2 transmission line expert.

3 HEARING OFFICER TOUSLEY: Okay. Then, yeah,
4 okay. I'm just curious what kind of vehicles, if any,
5 might be going up there, what their frequency would be,
6 how big and fat their tires are, etc. I do recognize
7 that, that the pipeline is at the edge of the
8 right-of-way --

9 MR. BYRD: Right.

10 HEARING OFFICER TOUSLEY: -- as opposed to
11 anywhere close to -- or it's, it's at the edge rather
12 than in close proximity to the transmission lines. So
13 thank you for that answer.

14 MR. BYRD: That's correct, yeah, and, you
15 know, there's, you know, from my generalization of it,
16 there's as much separation as physically possible
17 between the VELCO electrical transmission lines and the
18 VGS gas transmission line.

19 HEARING OFFICER TOUSLEY: I'm, I'm sorry to
20 be jumping ahead, but I was thinking of Mr. Bubolz's
21 testimony, which we haven't talked about yet. But in
22 that testimony, as I recall, he indicated that, that he
23 had asked why it was such a narrow right-of-way for the
24 pipeline. Do you remember that? Is that accurate?

25 MR. BYRD: Mr. Dumont probably remembers that

1 testimony better than I do. I do know that, and I
2 don't recall it being Mr. Bubolz. I think it was
3 afterwards. Well, the Michael's superintendent, maybe
4 that was Mr. Bubolz. You know, after the fact, we had
5 very little room to work with here, and that made the
6 construction issues even more difficult in this
7 situation.

8 It wasn't going to be an easy situation, no matter
9 how they did it or how much right-of-way they had, but
10 they did have a narrow right-of-way to deal with here,
11 which, you know, I, I don't know why, but, obviously,
12 you know, the construction contractor would have liked
13 a larger, wider right-of-way, and the situation seems
14 to be that VELCO wasn't willing to give it to them.

15 HEARING OFFICER TOUSLEY: Okay, okay. I
16 think I may be challenging how much you actually know,
17 so I'm going to stop.

18 MR. BYRD: Right.

19 HEARING OFFICER TOUSLEY: Mr. Dumont.

20 BY ATTORNEY DUMONT:

21 Q. Thank you. Mr. Byrd, do you recall whether or not
22 any of the technical specifications in 2014 specified
23 the width of the trench?

24 A. The width of the trench?

25 Q. Yeah.

1 A. Well, I mean, you have the, the diagrams that show
2 typical installation setups, configurations of, you
3 know, this is where the side booms go, this is where
4 the spoil goes, this is where the trench is, and they,
5 you know, may have had trench widths called out on
6 them. I don't recall that detail.

7 Q. Do you want to -- I have those if you want to look
8 at them. Let's see. Your Attachment 23 --

9 A. Okay.

10 Q. -- which is design drawings, let's see if that
11 helps you. Let's see if I can find that. This is your
12 Attachment 23. There it is, and I'll go through this.
13 So this one is only nine pages. So let's start at the
14 top. Sorry.

15 A. Okay.

16 Q. And you can, you can direct me where you want me
17 to go on this.

18 A. Well, I'm not sure what you want me to direct you
19 to. A trench width?

20 Q. Yes.

21 A. Well, I don't -- I mean, frankly, I can't read any
22 of this on my screen, so it's --

23 Q. Let's look. And your attachment is the typical
24 trench detail. This is .pdf Page 4, and I'm going to
25 try and make it as big as I can.

1 A. Right. So I --

2 HEARING OFFICER TOUSLEY: Mr. Dumont, I
3 missed it, but which attachment to Mr. Byrd's report is
4 this?

5 ATTORNEY DUMONT: Number 23.

6 HEARING OFFICER TOUSLEY: Thank you.

7 MR. BYRD: So I see, you know, one example
8 where you'd have a -- this, the one you're zoomed in on
9 here, shows a, you know, sheeting on one side of the
10 trench to provide, you know, physical support for the
11 wall of the trench while you're installing the
12 pipeline. You know, I don't see that specifying a
13 trench width. Maybe it's in the notes here.

14 BY ATTORNEY DUMONT:

15 Q. I'll move it up so you can read all the notes.

16 A. I mean, I, maybe I'm missing something, but I
17 don't see it calling out a trench width.

18 Q. No, I don't think you're missing anything, because
19 I looked, and I haven't found it anywhere.

20 A. Right.

21 Q. And I'm not -- I don't want to testify, but I want
22 to do the examination in the most efficient way we can.
23 So would you agree, Mr. Byrd, this, the Issued for
24 Construction drawings are in the record, and the
25 specifications are in the record, and you don't, you've

1 told us you don't recall any specification of trench
2 width, and I'll represent to you that I've looked, and
3 I don't see it either, but we'll rely on those
4 specifications and the drawings in our briefing. Is
5 that okay?

6 A. Well, I, if I followed that correctly, I mean,
7 I'm, I'll just say that the width of the trench isn't
8 really a pipeline safety issue. It's, it's, if
9 anything, from a trench dimension standpoint, it's the
10 depth that you're concerned about, not the width. So
11 the width is really, What do you need to install the
12 pipeline? There's a certain minimum width that the
13 contractor generally likes just to make sure everything
14 fits and you have a little bit of wiggle room, to use a
15 technical term.

16 But, I mean, there are other times in the, in the
17 gas pipeline industry or pipeline industry in general,
18 and you've seen it plenty of times just around your
19 neighborhood where, where you use a trencher to install
20 the pipeline, so the width is barely larger than the
21 diameter of the pipe, so and that can be perfectly
22 acceptable.

23 So I don't remember them calling out width of
24 trench, because, frankly, it, from an engineering
25 standpoint, it hardly matters. It's mostly up to the

1 contractor in the field to make it as wide as he needs.

2 Q. So, when CHA wrote in the exhibit we looked at
3 that construction was, had to adhere to the
4 calculations and one of the calculations was three
5 feet, you think that, as well, was excessively
6 conservative?

7 A. Yes. I mean, we can do a sensitivity analyses on
8 that, but it's, you know --

9 Q. So, if you have a, a steel pipeline at the bottom
10 of a trench and the steel pipeline is 2.5 feet deep,
11 and the trench --

12 A. Okay.

13 Q. -- is 2 feet wide, does that make any difference
14 on the load that would be imposed on the pipeline as
15 compared to a trench that's 5 feet wide?

16 A. Well, assuming that the material you're
17 backfilling the trench with is consistent with the
18 material in the area, no, it doesn't matter at all.
19 You know, it's, the trench width, really, from a
20 calculation standpoint, is only going to matter if the
21 material in the trench physically, you know, bears load
22 differently than the material around the trench, and,
23 in this case, it's backfilled with the exact same
24 material that came out of the trench. So, you know,
25 the width of the trench during construction is, is more

1 of, you know, a curiosity than anything else. It's not
2 going to matter from an engineering calculation
3 standpoint.

4 Q. And I'm sure your answer is correct, but you left
5 out a part, which is that API RP 1102 says just what
6 you say, but it says that with the assumption that
7 backfill has been compacted so that it is consistent
8 with the density of the surrounding soil, correct?

9 A. Well, I trust you to quote it correctly. That
10 sounds correct.

11 Q. Before we leave, let's see. I'll move out of this
12 exhibit and go back to Cross Exhibit 43, Page 16, .pdf
13 Page 16. So the firm that wrote the November 7, 2014
14 letter and that did the calculations was also the firm
15 that prepared the contract drawings, correct?

16 A. Yeah, CHA, yes.

17 Q. Now, if we go to Mott MacDonald calculations, I'm
18 going to now turn to the Mott MacDonald calculations
19 done on May 25th 2016, which are your report Attachment
20 48. You see that?

21 A. Yes.

22 Q. And is this May 25th 2016 calculation that is
23 referred to in the VELCO letter that you, in turn,
24 referred to in your report in discussing the load
25 bearing of the pipeline at three feet rather than four

1 feet, correct?

2 A. That's correct.

3 Q. And these 2016, May 25, 2016 calculations which
4 are now on the screen also use API RP 1102, correct?

5 A. That's correct.

6 Q. I'm going to scroll down so that you can see the
7 rest of the page. So this May 25th 2016 report has no
8 author, does it?

9 A. I don't recall if it was signed by anybody or not,
10 tell you the truth.

11 Q. Scrolling back up to the top of the page, it just
12 has the firm's name, correct?

13 A. Well, that's what it looks like, yes.

14 Q. And Mott MacDonald were not the engineers of
15 record for the project, were they?

16 A. Not to my recollection, not -- frankly, I don't
17 remember why Mott MacDonald was involved at this stage
18 of the game.

19 Q. And Mott MacDonald used a different width than CHA
20 used, correct?

21 A. I didn't look.

22 Q. All right. Well, let's scroll down. I'm going to
23 -- this is .pdf 3 of the exhibit. See here?

24 A. So I, I'm still looking for trench width on that.
25 I don't see it.

1 Q. Let's see here. There it is. Sorry. Let the
2 page catch up. It says bore diameter in inches.

3 A. Okay, yeah.

4 Q. And the assumed trench width that Mott MacDonald
5 used was 12.75 inches, correct?

6 A. Yeah, it looks like they, they analyzed it as if
7 it was installed as a bore instead of an open trench.

8 Q. Do you know if Mott MacDonald's calculations were
9 ever run by CHA to say, hey, do you guys agree with
10 this?

11 A. I don't know.

12 Q. I'm going to go to Mr. St. Hilaire's Exhibit 2.
13 Okay. And I believe it's .pdf page -- I have the wrong
14 St. Hilaire. It's the St. Hilaire rebuttal, I believe.
15 Let's see here. Sorry for this. But maybe we'll just
16 skip over this.

17 Do you agree that it was the Mott MacDonald
18 calculations that Mr. St. Hilaire used as the basis for
19 his communication on September 20th with, of 2016, with
20 VELCO resulting in VELCO's agreement on September 21st
21 2016 of three feet of burial rather than four feet?

22 A. Yes, that's my understanding.

23 Q. Okay, great.

24 A. Yeah. So, so I mentioned this yesterday, and I
25 said I might get it confused, but, now that we've

1 reviewed them, so the initial ones done by CHA was to
2 verify the method specification for the VELCO
3 right-of-way, because, when you read the original MOU
4 with VELCO, it says that we will meet the HS20, plus 15
5 percent wheel loading requirement that VELCO has in
6 this MOU by building the pipeline to Class 3 specs and
7 burying it four feet.

8 So that was a method specification. It said
9 we'll, we'll follow this method, and then it will give
10 us that loading standard or meet that loading standard.
11 So the CHA calculations specifically answered that
12 question and said, yes, you'll meet that loading
13 standard by burying it four feet deep with a Class 3
14 pipe.

15 And the subsequent calculations by Mott MacDonald
16 were, well, is it okay at three feet, basically, you
17 know? So they looked at three feet, four feet, five
18 feet depth, how does that change the calculation? And
19 the answer was it barely changed at all. So, so then
20 they said, well, it's even okay at three feet. So the
21 method specification could have been three feet from a
22 loading standpoint and still be fine, and that's what
23 was sent to VELCO, you know, for the second memorandum
24 that they got.

25 Q. Okay. Now I'm going to go to our Cross Exhibit,

1 43 which I'll find here. Cross Exhibit 43 is 39 pages.
2 I'm going to go to the very first page.

3 ATTORNEY McCLAIN: I'm sorry, Jim. Did you
4 say 36?

5 ATTORNEY DUMONT: This is Exhibit 43, Cross
6 Exhibit 43.

7 ATTORNEY McCLAIN: 43? Thank you.

8 BY ATTORNEY DUMONT:

9 Q. 43. And you can see it's a discovery answer that
10 we obtained. Mr. Byrd, did you ever look at this,
11 start with this email from Ms. Simollardes to the
12 Department enclosing calculations?

13 A. I believe I've seen it, yes.

14 Q. And so these calculations provided to the
15 Department the Mott MacDonald May 25th 2016
16 calculations, correct?

17 A. I believe that's what they transmitted, yes.

18 Q. And then later, after this was transmitted to the
19 Department and after a nonsubstantial change letter was
20 filed with the Commission, the additional calculations
21 were done by Mott MacDonald. Did you ever look at
22 those, the ones done in June of 2017?

23 A. I think I've seen them, but I don't recall them.

24 Q. Okay. They're in Mr. St. Hilaire's Exhibit 8. So
25 I'm going to see if I can find that.

1 A. Actually, I'm sure I've seen them, because my
2 report said that they were analyzed at least three
3 times, but then, when I was going back to refresh my
4 memory, I couldn't find the third time. So you're now
5 showing it to me, so thank you.

6 Q. Well, I'm trying to find this Exhibit 8, and I
7 thought I had it handy here, but I don't. Give me a
8 second.

9 A. While you're doing that, I'll refill my glass.

10 ATTORNEY DUMONT: That's all right. Maybe,
11 Mr. Tousley, if you give me five minutes, I'll find it.
12 I thought I had it right here.

13 HEARING OFFICER TOUSLEY: It's now 9:46, and
14 we'll take a break until 9:55.

15 ATTORNEY DUMONT: Thank you. I just found
16 it, but we can take a break anyway.

17 HEARING OFFICER TOUSLEY: Okay.

18 (A recess was taken from 9:46 a.m. to 9:55 a.m.)

19 HEARING OFFICER TOUSLEY: All right. We're
20 back at 9:55. I think everybody's here. Thank you for
21 the delightful conversation we just had. Mr. Dumont,
22 are you prepared to go forward?

23 ATTORNEY DUMONT: Yes.

24 HEARING OFFICER TOUSLEY: Very well, proceed.

25

1 BY ATTORNEY DUMONT:

2 Q. I have on the screen Mr. St. Hilaire's Exhibit 8,
3 and it's, it's in evidence. We've stipulated to this.
4 The first page is an email from Daniel Hartman at Mott
5 MacDonald to Mr. St. Hilaire on June 20th 2017.

6 A. Right, okay.

7 Q. Have you had a chance to look at this at all when
8 -- I think this is mentioned in your report, I believe.

9 A. Yes, I mentioned it in my report, and then, when I
10 was, just the past couple of days, you know, going back
11 and refreshing my memory on my report, it's like I
12 couldn't put my finger on this third analysis, and I
13 guess I had forgotten it was attached to some rebuttal
14 testimony.

15 Q. Okay. So I'll scroll down to the middle of the
16 page, and I'll read it so the record is clear:

17 "Hey, John. The previous calculations we ran were
18 using the 2-foot depth of cover and produced effective
19 stresses less than allowable, period. New paragraph.

20 "I just ran a scenario where we would have 1 foot
21 of cover with a 25 kip load, parentheses, (the
22 calculation will not allow a trench depth, slash, width
23 ratio less than .5 so I changed the trench width from 3
24 feet to 2 feet now that the cover is down to 1 foot),
25 end of parentheses, period. The results produced a

1 hoop stress of 71,752 psi from external loading alone
2 and a total hoop stress of 111,175 psi which exceeds
3 the allowable by a large margin without even adding in
4 the S2 and S3 principal stresses, period. Long story
5 short the calculations pass for up to a depth of 2
6 feet, but that is the cutoff, period. I reduced the
7 load from 25 kips down to 10 kips, and it still fails
8 at the 1 foot of cover, period.

9 "New paragraph, Hopefully, this answers your
10 question, period. Feel free to reach back out should
11 you need any further clarification or evaluation,
12 period. Kind regards, Danny".

13 Did I read that correctly?

14 A. Yes, you did.

15 Q. And so do you agree that the calculations that
16 Mott MacDonald did in 2017 assumed trench width was
17 three feet?

18 A. In 20, these, these calculations you're talking
19 about?

20 Q. Yeah, yeah.

21 A. Well, I think it says they changed it down to two
22 feet for width.

23 Q. And it didn't work.

24 A. Well, at one foot of cover, but let me clarify.

25 And I can't see the whole document here, and I, like I

1 said, I'm fussing on the details of it, but I think
2 this also used API RP 1102.

3 Q. It actually didn't. I'm going to interrupt and
4 say I'm going to show you that page next where they
5 talk about what method they used, but go ahead.

6 A. Well, my point was regarding the method, so I'd
7 need to refresh my memory on what method they used.

8 Q. I'm scrolling to Page 4, .pdf Page 4.

9 A. Um-hum.

10 Q. And I'll stop with this email from Kelsey,
11 K-E-L-S-E-Y, Kibbe, K-I-B-B-E, to Joseph Wojnas,
12 W-O-J-N-A-S, on May 1, 2017.

13 A. Right.

14 Q. And I'll read it:

15 "Hi, Joe. As requested, comma, I've attached two
16 calculations using two-foot depth of cover and the
17 weakest soil type, period. One calculation was run
18 using 1,440 psig internal pressure, comma, the other
19 was run using no internal pressure, period. Both
20 scenarios pass, comma. The total calculated combined
21 stress for each is less than 90 percent SMYS, new
22 period, new paragraph.

23 "Note, colon, the calculations were performed
24 using the GPTC guide, comma, as two-foot depth of cover
25 is out of scope for the API 1102, parens, (method used

1 for previous calculations), end of parens, period. A
2 more conservative design wheel load of 25 kips was
3 used, period.

4 "New paragraph, let me know if you need anything
5 further."

6 Did I read that correctly?

7 A. Right. I guess you did.

8 Q. And the GPTC guide is the Gasoline Piping
9 Technology Committee, correct?

10 A. Gas.

11 Q. I'm sorry. Thank you.

12 A. Not gasoline, yes.

13 Q. Thank you. Gas Piping Technology Committee,
14 correct?

15 A. That's correct.

16 Q. And that's a committee of the American Gas
17 Association?

18 A. I think the American Gas Association coordinates
19 the committee. I'm not sure that it's limited to AGA
20 members. My, one of my employees is, is on the GPTC
21 committee that, that authors the guide. It's an
22 ANSI-published standard. So the GPTC guide goes
23 through the standards publication process. It's a Z,
24 something or other. I forget the number.

25 Q. And you agree that GPTC, the GPTC guideline is not

1 part of API RP 1102?

2 A. No. But I'll -- let me just interject here that,
3 you know, as I reread this, I'm going, I didn't realize
4 the GPTC guide even had a loading calculation method in
5 it. So I'd like to go back and refresh my memory on
6 exactly, you know, what basis they used for that
7 calculation, because I, frankly, am not familiar with
8 it.

9 Q. Thank you. Do you agree that the only
10 calculations that CHA used were API RP 1102
11 calculations?

12 A. Well, they're the ones in their memo. I don't
13 know if they used different ones and decided to select
14 the 1102 or, or something else, but that's, that's all
15 I've seen is RP 1102.

16 Q. Do you agree that no responsible charge engineer
17 at CHA approved the use of the Gas Piping Technology
18 Committee guideline instead of API RP 1102?

19 A. I haven't seen any evidence of that.

20 Q. And I'm going to go back up to the first page now.
21 There we go. And do you agree that, even using the
22 GPTC guideline, Mott MacDonald found they could support
23 depth of less than three feet only by assuming trench
24 width would be three feet?

25 A. Well, they, the way I read that, they aren't

1 saying that they, they had to change the trench width
2 in order to get an acceptable answer. They said that
3 the, the program they were using wouldn't accept a
4 trench width ratio less than .5, so they had to change
5 the trench width in order to run the calculation.

6 Now, one reason I want to refresh my memory on
7 what the GPTC guide says about loading calculations is
8 I'm not sure what scientific basis they're using for
9 that, if it's based off of 1102 or some other method.
10 It's, I'm surprised that there's a, a software package
11 out there that would cover a one-foot depth of cover
12 for this kind of calculation, because, like you
13 mentioned, API RP 1102 says this really isn't good for
14 depths less than three feet, because the generalized
15 assumptions you use when you're calculating loading,
16 you know, become less and less generalized the closer
17 you are to the surface. It becomes much more of a very
18 specific pipe, wheel, soil interaction calculation.

19 And, you know, they say, you know, 1102 says we're
20 just not good for less than three feet. You need to do
21 some more site-specific analysis for that. So I don't
22 know at this stage of the game if it's even appropriate
23 to use the GPTC guide at those depths of cover. I, you
24 know, I can't really speculate very much on, on the,
25 the appropriateness of some of the calculation

1 assumptions they made, other than note that they were
2 originally using 25,000 pounds per square inch for
3 wheel loading, which is even higher than HS20 plus 15
4 loading factor that VELCO required, which itself was,
5 you know, extraordinary for something like the Clay
6 Plains Swamp. You know, so they're using very high,
7 you know, highway truck traffic wheel loading
8 calculation or assumptions when they're running their
9 calculations.

10 Q. Thank you. Did you want to add to your answer? I
11 don't want to cut you off?

12 A. I was going to offer, I mean, we have a copy of
13 the GPTC guide, and I'd be happy to, to pull it up at a
14 break and see if I can offer anything more relevant
15 than what I've said so far.

16 Q. Well, I was done with this exhibit, and I was
17 going move on to another exhibit.

18 A. Okay.

19 Q. So I've put up on the screen Cross-Examination
20 Exhibit 12, and move down a little bit. You're going
21 to see what it is. This is the prefiled testimony of
22 Eric Sorenson, S-O-R-E-N-S-O-N, on behalf of the
23 Vermont Agency of Natural Resources that was filed in
24 Docket 7970, and the date is June 11, 2013. Got the
25 date on Page 1 of 25. You see that?

1 A. I am currently looking at Page 1 of 25.

2 Q. Okay. Which is .pdf Page 2.

3 A. Yes, yes.

4 Q. Have you ever seen this before?

5 A. I believe I have, yes.

6 Q. When did you see this?

7 A. Well, I at least saw -- this is one of your
8 cross-examination documents, right?

9 Q. Yes.

10 A. So I reviewed it shortly after you posted it, and
11 I frankly can't remember if I reviewed it, you know, a
12 year ago when I was reviewing other documents or not.
13 It, it did look familiar the last time I looked at it,
14 so --

15 Q. I'm going to go to Page 20.

16 A. Well, and I'll, and I'll add that, if it was
17 posted in Docket 7970, we did go through a process
18 early in the investigation of downloading all the
19 documents from the docket, and, and I had an admin
20 organize them, summarize them. I reviewed the things
21 that I thought were relevant, so that would include
22 this document. So I'm pretty sure I've seen it more
23 than a year ago.

24 Q. Okay. Now I'll turn to .pdf 21, which is
25 testimony Page 20, Question 18.

1 A. I see it.

2 Q. And, moving on to page .pdf 22, which is Page
3 Number 21 --

4 A. Is there some specific spot you want to focus on
5 here?

6 Q. I'm just going to read part of it, and it's
7 starting around Line 11. Before I read from it, just
8 from having looked at this before, do you understand
9 that Mr. Sorenson said that the wetlands at this
10 location was a rare, was a RINA --

11 A. Right.

12 Q. -- which I think is rare, irreplaceable natural
13 area?

14 A. That sounds correct, yes.

15 Q. And so here he states, "The proposed open
16 trenching in the wetland and clearing of the swamp edge
17 could be completely avoided by locating the Vermont Gas
18 alignment adjacent to Parks Hurlburt Road, parens,
19 (Monkton), and North Street, parens, (New Haven), as
20 was originally proposed in the December 2012 pipeline
21 alignment."

22 You see that?

23 A. Yes, I do.

24 Q. And after that does it state that Vermont Gas's
25 own consultants, Gilman & Briggs, had recommended the

1 alignment that ANR was proposing in order to avoid harm
2 to the RINA?

3 A. Right.

4 Q. Do you see that?

5 A. Well, I don't see the part about their own
6 consultant, but also referenced by Gilman & Briggs,
7 right. Okay.

8 Q. Yes, it's Line 15 and 16.

9 A. Right.

10 Q. It states, "This alignment along North Street is
11 also referenced in the December 13th 2012 Gilman &
12 Briggs report as a way of avoiding impacts to this
13 natural community".

14 A. Right.

15 Q. So we know that another location for the pipeline
16 was originally proposed by Vermont Gas, Vermont Gas's
17 own consultants said it was the preferable location,
18 but it wasn't chosen, right?

19 A. Well, apparently.

20 Q. And, and on Lines 17 through 20, Mr. Sorenson
21 explains that the reason Vermont Gas chose the RINA
22 instead of going along the road was there are some
23 residences along the road and this was a way to avoid
24 going through a residential area. Do you see that?

25 A. Well, I see Vermont Gas has identified the

1 presence of residences as the reason for moving the
2 alignment away from roads and other locations in
3 Monkton. I don't think it spells out the specific
4 location in that case.

5 Q. Okay. And you'll remember from yesterday's
6 discussion that part of API RP 1102 says that wet soils
7 should be avoided if there is a practical alternative;
8 do you remember that?

9 A. Right. It was speaking in general terms. We
10 mentioned it didn't really describe what wet meant.

11 Q. Do you agree that, at least according to Mr.
12 Sorenson, there was a practical alternative?

13 A. Well, that's what this seems to -- yeah. At
14 least, in his opinion, he had a preference for a
15 different route.

16 Q. So let's assume again, Mr. Byrd, that you are a
17 state regulator and you're applying Section 248 of
18 Title 30 and you know from a reliable witness that
19 there's a practical alternative to going through this
20 wetland, and then you find out that it's not possible
21 to bury the gas pipeline four feet deep in the wetland.
22 Do you think you would want to know about that before
23 it's too late and the wetland has been excavated?

24 A. Well, I'll, I'll preface my answer by saying this
25 wasn't exactly a virgin wetland. This is a VELCO

1 right-of-way, and I think you showed a picture earlier,
2 the aerial or satellite image that, you know, shows
3 heavily wooded areas on both sides of this clear-cut
4 right-of-way that contains the VELCO transmission
5 pipeline.

6 So, yes, it's a wetland. I'm not a wetlands
7 biologist, but I would have a hard time believing that
8 a cleared utility company right-of-way was rare and
9 irreplaceable, because, you know, clearly, VELCO has
10 tremendously impacted the right-of-way by installing a
11 electrical transmission line through there, and it's
12 very common for FERC and other regulatory agencies to
13 prefer to collocate utilities.

14 So we've already impacted this wetland by
15 installing an electrical transmission system through
16 it. You know, impacting it again by installing a gas
17 pipeline through it, that might be preferable to
18 impacting someplace completely new, like some area that
19 contains even a few residences or is beside a road,
20 which they're starting to consider roads to be a, a
21 more like a high-consequence area, because you've got
22 so many people on the roadway.

23 So, so, as a regulator, I'm not trying to speak
24 for a regulator, and I can't pretend to be one, but,
25 you know, I frequently see regulators making a decision

1 to, I want to colocate these, these utilities. As
2 opposed to creating new impact somewhere else, I'll
3 take an existing impact and make it a little bit worse.

4 So that's a thought process I see frequently, and
5 apparently, even though Mr. Sorenson, his specialty is
6 the environment, and he obviously had a preference to
7 say, I don't want to impact this environment any
8 farther than it's already been impacted, and I don't
9 blame him. That's his job. The regulator has to
10 balance his needs or his desires versus all the other
11 ones when they come up with a route. So, when I read
12 this, I thought, well, you know, he lost the argument.
13 But I, I certainly don't see anything here that says he
14 had the prevailing argument or should have had the
15 prevailing argument.

16 ATTORNEY DUMONT: This may be unnecessary, I
17 think, Mr. Tousley, since you've said you're going to
18 take judicial notice of all the files in 7970, but I
19 want to have the record clear. I'm going to move
20 Exhibit 12, which is Mr. Sorenson testimony.

21 HEARING OFFICER TOUSLEY: Is there any
22 objection? Department?

23 ATTORNEY GUZMAN: No objection.

24 HEARING OFFICER TOUSLEY: ANR?

25 ATTORNEY MILLER: No objection.

1 HEARING OFFICER TOUSLEY: VGS?

2 ATTORNEY McCLAIN: No objection.

3 HEARING OFFICER TOUSLEY: What's Mr.

4 Sorenson's prefiled testimony in Docket 7970 that we're
5 referring to now -- I'm not sure of the date of it --
6 is entered into evidence.

7 (Exhibit marked Intervenors Cross 12 was admitted
8 into the record.)

9

10 <https://epsb.vermont.gov/?q=downloadfile/426751/111907>

11

12 BY ATTORNEY DUMONT:

13 Q. Thank you. I'm going to switch gears now and talk
14 about compaction. Mr. Heintz's prefiled testimony has
15 a typical trench detail we've talked about many times
16 that states, "All backfill material with the exception
17 of resource areas, see Note 4, shall be compacted at
18 near optimum moisture content to layers not exceeding
19 12 inches in compacted thickness by pneumatic tampers,
20 comma, vibrator compactors, comma, or other approved
21 means", and Note 7 stated --

22 HEARING OFFICER TOUSLEY: Which prefiled
23 testimony are you referring to?

24 MR. BYRD: If you're showing a document,
25 we're not seeing it.

1 ATTORNEY DUMONT: Sorry. It's in so many
2 places. Let me get it.

3 HEARING OFFICER TOUSLEY: And I think Mr.
4 Heintz had a couple of -- he had prefiled testimony,
5 and then he had supplemental prefiled testimony.

6 BY ATTORNEY DUMONT:

7 Q. Okay. And I'm quoting from his Exhibit 3. So
8 many different places here. Let me get it here. We
9 can go back to -- this is cross-examination Exhibit
10 11B, as in baby. I'll get that, and I'll try and make
11 it big. There we go. I'm sorry for the jerkiness on
12 this one. When I touch my screen, it move, it, it
13 tends to go further than I anticipated. There we go.
14 Is that too small for people to read?

15 A. I can read it.

16 Q. Okay. And I was referring to Note 6.

17 A. I see it, yes.

18 Q. And Note 7 states, "The contractor shall provide
19 testing to ensure that the in-place density of the
20 backfill meets the above requirements".

21 Mr. Byrd, am I correct that nowhere in your report
22 did you address the compaction specifications for a
23 typical trench that were set forth in Mr. Heintz's
24 Exhibit JH-3, Typical Trench Detail Notes 6 and 7?

25 A. Well, I think I addressed it in, in general terms

1 in the section where I deal with backfill and
2 compaction, and my opinion when I wrote the report and
3 now, is that CHA's compaction specification was really
4 inappropriate for this type of a steel gas transmission
5 pipeline and they should have used the Curtis
6 specification from Vermont Gas and corrected the CHA
7 specification, which wasn't done until late in the
8 project.

9 Q. So what you're saying is -- well, I want to be
10 clear on what you're saying, honestly. Because
11 yesterday, when I read you the 2014 version of 312333
12 and its requirement of six inches of backfill beneath
13 the pipe, you stated it was your view that it applied
14 only to bell-and-spigot pipes, correct?

15 A. Well, their specification, it's hard to, to guess
16 what they were thinking at the time, but, when you,
17 when you narrowly read 312333, when it talks about
18 bedding, it talks about bedding underneath the bell of
19 the pipe, and, to me, that's a red flag that says, hey,
20 they're using the wrong specification for this, because
21 this isn't a bell-and-spigot pipe.

22 So CHA, I'm presuming -- I can't speak for CHA,
23 and I'm not aware of all the work that they do, but,
24 but in Vermont, as the PHMSA inspection report shows,
25 there's only one gas transmission operator in the

1 entire state, and that's Vermont Gas, and they hardly
2 ever build any transmission pipeline, so I have to
3 assume the local engineering firms rarely design one.

4 But they do have lots of water, sewer, and other
5 kinds of utility lines that are much different than a
6 high, high-strength welded steel pipeline, and those,
7 which do have bell-and-spigot construction, you'll see
8 it in water mains. You'll see it -- you know, the
9 easiest example people probably see is concrete
10 culverts where you see a section of concrete pipe
11 that's expanded on one end, and you stick them together
12 like Tinker Toys, that's bell-and-spigot pipe.

13 And when you've got bell-and-spigot pipe that you
14 want to keep from leaking, well, you have to make sure
15 it's laid nice and straight on a very firm foundation
16 and is firmly supported, because the pipe joints in and
17 of themselves have little, if any, strength, and so you
18 have to be very clear about how much compaction you
19 have, exactly how flat the trench is, how well it's
20 compacted, and you've got to do all kinds of detailed,
21 you know, work to ensure that that pipe is going to
22 stay exactly where you put it, because the pipe joints
23 really aren't holding the pipe together. The
24 environment is holding the pipe together.

25 This pipe is a totally different kind of pipe, and

1 the Vermont Gas narrative specification was appropriate
2 for that kind of pipe, and the, you know, there are
3 numerous places throughout the CHA specifications that
4 I simply think they used the wrong specification. So
5 they should have resolved the differences in favor of
6 the VGA (sic.) narrative, not per the what, in my
7 opinion, inappropriate CHA specification for those
8 things.

9 Q. I was starting to ask you about compaction. We've
10 talked -- and I am to blame for this, I'm sure. We've
11 switched from compaction to six to nine inches of fill
12 beneath the pipe, so let's stick with that for a
13 minute.

14 A. Okay.

15 Q. So we're clear, you're saying that the CHA
16 specifications could be read as applying only to
17 bell-and-spigot pipes?

18 A. At least, well, the section that specifically
19 talks about the bell of the pipe, I believe, had to do
20 with bedding. I don't think it was in the section that
21 deals with compaction, but, in my mind, they go
22 together. The compaction specification CHA was also
23 appropriate for a bell-and-spigot type of construction
24 but not appropriate for a welded steel pipeline like
25 ANGP.

1 Q. And I believe your recollection is correct that
2 the section of 312333 that states there shall be six
3 inches of bedding beneath the pipe said beneath the
4 bell of the pipe.

5 A. That is correct, yes.

6 Q. Okay. Now, but the exhibit we have in front of
7 us, Exhibit 11B, doesn't say that?

8 A. No, it doesn't.

9 Q. No. This is the specification submitted by CHA to
10 Vermont Gas to file with the Public Utility Commission,
11 and it specifically says 12-inch gas main. So we know
12 they're talking about not something off the shelf that
13 would be a sewer pipe.

14 A. Right.

15 Q. This is a gas pipeline, 12 inches, and it says 6
16 inches, it shows 6 inches of sand fill beneath the pipe
17 and 12, 9 inches if it's, the pipe is on ledge,
18 correct?

19 A. That's correct.

20 Q. And in your report I don't recall you addressing
21 whether or not this specification that was submitted to
22 the Public Utility Commission was complied with.

23 A. Well, like I said, I think I addressed it in
24 general terms under the section of my report dealing
25 with compaction and backfill. I didn't attempt to

1 address every statement and every diagram submitted by
2 CHA or by, by VGS. And I, you know, my issue is that,
3 you know, fundamentally, I think all of those mentions
4 of compaction, except as clarified in my report, when
5 you're dealing with an area that does require
6 compaction such as a road bed, you know, the, the
7 compaction specification was simply inappropriate, and,
8 as soon as it was raised to CHA's attention, CHA should
9 have said, You're right, that's the wrong spec for
10 this. We should go to the Vermont Gas narrative spec.
11 But, for whatever reasons, they didn't do that.

12 Q. So now I'm going to refer you to your report, Page
13 60. Pulling it up on the screen here. In the middle
14 of the page, did you write, "Any noncompliance is
15 noncompliance, comma, but I differentiated, parens, (as
16 does PHMSA), end of parens, between noncompliance that
17 impacts pipeline safety versus noncompliance that does
18 not when formulating my conclusions and
19 recommendations, comma, including noncompliance with
20 specifications that were unnecessary or inappropriate
21 to that situation, period".

22 Did I read that correctly?

23 A. Yes, you did.

24 Q. So what you're saying is what -- what you're
25 saying is that, in writing your report, you applied the

1 same standard that PHMSA applies, to wit, if a
2 deviation would not affect safety or if the deviation
3 was from a specification that you believe was
4 unnecessary or inappropriate, you concluded that it was
5 not a violation, correct?

6 A. I didn't say I did it the same as PHMSA. I did it
7 in a similar fashion in that PHMSA considers certain
8 types of violations to be paperwork violations. You
9 know, paperwork is maybe a generic term, but, but
10 they're not the kinds of things that lead to real
11 safety issues. So, so and I believe I included as an
12 attachment PHMSA's recently published at the time
13 penalty guidance where they specifically call out, you
14 know, was the noncompliance due to a specification,
15 noncompliance with a specification that went above and
16 beyond the minimum regulatory requirements, which could
17 actually end up giving a credit in their penalty
18 calculation.

19 So you're saying, I was planning to do better than
20 average, but I only did average. Well, that's
21 noncompliance, because your plan was better than
22 average. But PHMSA says, well, you know, you still met
23 my basic requirements, so I'm not going to penalize you
24 very much for that, you know, if at all.

25 So, so that I, what I'm saying here in this

1 paragraph is that, hey, you know, there are some things
2 that I think are potentially serious, and I'll deal
3 with those as serious issues, and the things I don't
4 think are serious, well, I'm going to point out that it
5 was noncompliance, but I'm also not going to try to
6 make a mountain out of a molehill for something that
7 was technically noncompliant but wasn't required in the
8 first place, or maybe it wasn't even required but
9 wasn't even appropriate.

10 Q. Did you determine whether or not the Addison
11 Natural Gas Pipeline had, typically had a trench detail
12 with six to nine inches of sand fill beneath the
13 pipeline?

14 A. Well, I'm not sure I got the gist of your
15 question, but this diagram does show six to nine
16 inches, and it's mentioned elsewhere as well. So I
17 would agree that that's, that was the general
18 specification for the pipeline.

19 Q. Did you determine whether or not, typically, the
20 ANGP was constructed with six to nine inches of sand
21 fill beneath the pipeline?

22 A. Did I determine?

23 Q. Yes.

24 A. Okay. Well, I, I think we discussed this
25 yesterday. You know, the inspection reports that I saw

1 don't call out six inches of gap between the bottom of
2 the pipe and the bottom of the trench or nine inches of
3 gap between the bottom of the pipe and the bottom of
4 the trench, but they do call out from time to time
5 where there wasn't a gap between the pipe and the
6 bottom of the trench, which tells me by exception that,
7 well, the rest of the time they were checking and there
8 was a gap.

9 Now, they don't document that it was six inches.
10 They don't document that it was nine inches. So, you
11 know, I, I'm left to assume that it was appropriate to
12 the situation, or they would have called it out like
13 they did elsewhere, but, you know, the documentation
14 just isn't that detailed.

15 Q. I've turned to Page 64 of your report. Just a
16 minute. Okay. You got it there? And it says,
17 "Burial" is the caption or the subcaption, and the
18 subheading is "Backfill Materials". Did you write,
19 "There was never any requirement for the pipeline to be
20 laid in clean sand above the trench bottom, comma, and
21 that was not typically done"? Did I read that
22 correctly?

23 A. Yes, you did.

24 Q. All right. But, in fact, there was a requirement.
25 You just looked at it, right?

1 A. Yeah. So the, you know, so it seems that there's
2 a tremendous amount of emphasis in this case that --

3 Q. Well, yes or no?

4 A. Well, I'm answering the question. So there's a
5 tremendous amount of emphasis in this case on the word
6 "sand". You know, what is clean sand? Is clean sand
7 something you have to -- you know, is it only clean
8 sand if you buy it from a vendor? You know, the
9 specifications, throughout the specifications both for
10 VGS and CHA, they talk about sand, but they also talk
11 about select fill material, which is mostly the
12 material that was already there that you excavated from
13 the trench, and they're synonymous terms.

14 So the implication that I am trying to address
15 here is that you had to buy sand somewhere else, put it
16 in, lay a nice bottom on there, and then put the trench
17 in or put the, lay the pipe on top of it, and that's
18 simply not a requirement, even though you do find, from
19 time to time that people say it'll be on clean sand.
20 Well, in the pipeline industry, they're saying
21 sand-like material. So it's, select backfill is a more
22 wonky way to say it.

23 You know, so, so I do agree the specifications
24 said, yeah, you're going to have select backfill
25 between the pipe and the trench bottom, at least on the

1 CHA specification.

2 Q. I want to make sure I understood what you just
3 said. Are you testifying that clean sand is the same
4 thing as select backfill, there's no difference?

5 A. In this context, yes, they're the same thing.

6 Q. So, if it's loam or silt, to you, that's still
7 clean sand?

8 A. Well, if it's select backfill, that's what you put
9 around the pipeline. So, when they say it's going to
10 be sand, what they're, what they're saying from a
11 practical standpoint in the pipeline industry, they're
12 saying it's not going to have rocks, it's not going to
13 have things that would damage the coating.

14 When you actually read in the specifications
15 what's the purpose of this, it's finely grained
16 material that can support the pipe and will not damage
17 the coating, and, and that's the gist of what you're
18 looking for. So the easy way to say that is it's clean
19 sand. Doesn't have anything else in it. It's just
20 finely grained material. It's going to be great. So
21 but the, the more precise way to say it is select
22 backfill, and, you know, you see both terms used
23 throughout the specifications and throughout the
24 testimony.

25 So I, I don't -- I think it's a big mistake, and

1 this is what I'm trying to address here, to think that
2 there's only one specific type of thing that you have
3 to buy that would classify itself as clean sand for
4 purposes of backfilling a pipe.

5 Q. When you wrote on Page 64 that, "There was never
6 any requirement for the pipeline to be laid in clean
7 sand above the trench bottom, comma, and that was not
8 typically done", tell us what was not typically done if
9 clean sand means the same thing as select backfill.

10 A. Yeah. Well, this is getting to the -- so maybe
11 there's a, you know, better way to have said that, but
12 I'm getting at the usage of the term "clean sand", and
13 I clarify that later in the paragraph where I say the
14 select fill material and/or padding material. You just
15 scrolled off of it.

16 Q. Yeah, sorry. Do you want to go back to that?

17 A. Yeah. So I was, I was saying the, the first
18 sentence taken in context, you know, goes on to explain
19 what I was trying to say in the first sentence, which
20 is that select fill material and/or padding material
21 shall be sand in accordance with this or shall be
22 screened native material containing silt, sands,
23 gravels, large material be no greater than a one-inch
24 longest diameter, yada, yada.

25 So what I'm trying to say here, and I apologize if

1 it wasn't stated as clearly as I intended, was that
2 clean sand and select backfill are the same thing as
3 far as these specifications are concerned, so --

4 Q. I don't want to interrupt. Tell me when you're
5 done.

6 A. Okay. So, so, if you -- like I said, maybe I, in
7 hindsight, would rephrase the first sentence more along
8 the lines of the point I'm trying to make, which is,
9 for purposes of the pipeline specifications, clean sand
10 and select backfill material are synonymous terms.

11 Q. Okay. Then how can you explain the quote that's
12 right after that, Section 3.13.I? Quote, "Select fill
13 material and/or padding material shall be sand in
14 accordance with the VTrans Standard Specification
15 703.03 or shall be screened native material containing
16 silts, sands, and gravels with the largest material
17 being no larger than one inch on the longest
18 dimension".

19 A. Um-hum.

20 Q. You don't see an inconsistency between that
21 sentence and your position today that clean sand and
22 select backfill are the same thing?

23 A. Well, I'm saying, for practical purposes, okay?
24 So they're saying sand, meaning a specific VTrans
25 Standard Specification 7.03, 703.03, which I don't

1 know, but I'm sure it's a very specific requirement
2 about, Here's what we call sand, or it needs to be this
3 stuff, the select screened native material. So,
4 instead of using a sentence that's 40 words long every
5 time, you know, frequently within the specifications or
6 in verbal communication, you say, well, it's going to
7 be sand. So it's a generic term, kind of like Kleenex.
8 You know, it's, when we say clean sand, I'm trying to
9 say that involves more than something that meets VTrans
10 Standard Specification 703.03.

11 Q. Let's go back to the exhibit.

12 A. All right.

13 Q. This exhibit was submitted to the Public Utility
14 Commission, right? You understand that?

15 A. Yes, yes.

16 Q. And it used the common English term "sand", right?

17 A. Yes, it does.

18 Q. And it also referred to backfill, correct?

19 A. Yes, yes.

20 Q. But you're saying, when -- let me have you read
21 Note 2. Note 2 says, "Backfill with clean sand to
22 twelve inches over pipe". We've been talking about six
23 to nine inches of bedding beneath the pipe. The same
24 term is used. The term "clean sand" is used for the
25 twelve inches over the pipe.

1 A. Right.

2 Q. So you believe that, when it said backfill with
3 clean sand to twelve inches over the pipe, that also
4 meant any kind of select backfill?

5 A. Yes, but, when they say sand, they really mean
6 select backfill.

7 Q. If you felt that clean sand means the same thing
8 as select backfill, is there a reason you didn't
9 explain that in your report?

10 A. Well, I, as I just explained, I was trying to
11 explain it, and, if I wasn't as clear as I needed to
12 be, I'm sorry. But I think the paragraph, taken as a
13 whole, says exactly what I was trying to say.

14 Q. Okay. We'll go back to your paragraph. Quote,
15 "There was never any requirement for the pipeline to be
16 laid in clean sand above the trench bottom, comma, and
17 that was not typically done".

18 A. Right. Are you showing the report again?

19 Q. Yes.

20 A. Yeah, yeah. So and there's actually two aspects
21 to that sentence. You know, one is the point I'm
22 trying to make, which I clarify a little later, that,
23 you know, for purposes of this, clean sand includes, is
24 synonymous with select backfill.

25 The other is the concept of bedding the pipe

1 before you put it in the trench. You know, so we
2 discussed yesterday a couple of different options that
3 you would have for installing a pipe. So, so one would
4 be you excavate the trench, you lay the six inches of
5 material in the bottom, you put the pipe on top of
6 that, and then you fill around the rest of it, and
7 that's one way to do it. So laying it in clean sand
8 over the trench bottom would be that method.

9 The other method is you take the pipe, you support
10 it every 15 or 20 feet with sandbags, as we discussed
11 yesterday, and then you fill in around it, including
12 the bottom, and that was typically the method done for
13 this pipeline, so and, and it's common throughout the
14 gas transmission pipeline industry.

15 So I'm also saying, hey, you know, they didn't lay
16 the bed of sand or select backfill and then put the
17 pipe on it. They were supporting the pipe and then
18 filling around it, but that point is kind of secondary.
19 I mean, the heading here is "Backfill Material", so I'm
20 talking about the material primarily in this paragraph.

21 Q. Are you, are you saying -- well, is it your belief
22 -- is it your opinion that, even though the
23 specifications submitted to the Commission used the
24 words "sand" and "clean sand", in your judgment, select
25 backfill does just as good a job, and, therefore, you

1 differentiated -- I'm now paraphrasing from your report
2 -- you differentiated, as does PHMSA, between
3 noncompliance that impacts pipeline safety versus
4 noncompliance that does not in formulating my
5 conclusions and recommendations, including
6 noncompliance with the specifications that were
7 unnecessary or inappropriate to that situation?

8 A. That's not exactly what I'm saying. What I'm
9 saying is there was no noncompliance in that case,
10 because, you know, clean sand and select backfill are
11 synonymous terms. So, if I had it to do over again, I
12 would just put that in my report. They're synonymous
13 terms. So, so there's no noncompliance at all. I
14 think it's perfectly in compliance, what they did.

15 Q. All right. Going back to Exhibit 11B where we
16 started a while ago, we started talking about
17 compaction. Notes 6 and 7 say that the typical trench
18 shall be compacted in a certain way and shall be --

19 A. Yes.

20 Q. Am I correct that nowhere in your report did you
21 address the compaction specifications for a typical
22 trench that are set forth in this exhibit that was
23 submitted to the Commission?

24 A. Well, as I explained earlier, I, I didn't attempt
25 to address that issue drawing-by-drawing and

1 exhibit-by-exhibit. I dealt with the issue generally
2 when I talked about compaction.

3 Q. And so you looked at whether or not CHA's
4 specifications were complied with or the narrative was
5 complied with, right?

6 A. Yes, I compared both of them, yes.

7 Q. And you concluded the narrative was complied with,
8 and that sufficed, correct?

9 A. That is correct from a, from a practical
10 standpoint. Now, that does get to the point you were
11 making earlier that there's noncompliance, and I will,
12 you know, I'm not shy about saying it. They didn't
13 comply with the compaction part of the CHA
14 specification. I mean, they just didn't, right? They
15 complied with the narrative part of the specification
16 when it comes to compaction.

17 So, you know, I'm not, I'm not trying to ignore
18 the fact that, no, they didn't test the compaction,
19 they didn't compact in the methods that were explained
20 or required in the CHA specification for that, but my
21 opinion is, well, that was the wrong specification. So
22 I don't fault VGS for not following the wrong
23 specification. You know, somebody, either at VGS or
24 CHA, should have eventually resolved that. I think
25 they did, but it took, you know, quite a bit of time

1 into the project before they, they fixed that one
2 specification.

3 Q. I've moved to Page 67 of your report. There we
4 go. That's the right part. You wrote near the top of
5 the page, third paragraph from the top, "The issue
6 concerning compaction isn't noncompliance with the
7 specifications, comma, but rather that the
8 specifications were excessively conservative and
9 overprescribed and should have been changed prior to
10 construction". Did I read that correctly?

11 A. That's correct.

12 Q. So your opinion is that the specifications
13 submitted to the Commission and the evidence that Mr.
14 Heintz submitted were excessively conservative and
15 overprescribed and should have been changed prior to
16 construction, correct?

17 A. Regarding compaction, that is correct.

18 Q. Excuse me one second. I have to turn off the
19 timer in the kitchen.

20 A. There's always something new, isn't there?

21 Q. The oven is on, and the timer went. So I'm,
22 hopefully, I'll get to share with all of you the bread
23 that's in the oven.

24 A. I was going to say, What's for lunch? Yeah.
25 You're not eating at Circle K, I take it.

1 Q. No, I'm not.

2 A. Right.

3 Q. So, Mr. Byrd, the specifications were not changed
4 prior to construction, right?

5 A. That is correct.

6 Q. So, in this respect, the ANGP was built in
7 violation of the evidence and plans submitted to the
8 Commission, correct?

9 A. On that one topic, you know -- well, I will grant,
10 yes, there was noncompliance with that specification,
11 and my, my report says the issue in my mind, as a
12 pipeline safety expert, isn't that they didn't comply
13 with the specification but that they didn't get it
14 changed. So the failure, to the extent there was one,
15 was failing to reconcile the specifications before they
16 started construction. So that didn't happen.

17 Q. You're aware there's a procedure that was
18 available to Vermont Gas to come in before the
19 Commission and obtain approval to depart from the
20 evidence and plans that had been submitted to the
21 Commission?

22 A. Yeah. Well, I see the nonsignificant change
23 submittals. I assume that's the process or some
24 similar process.

25 Q. You are an expert in this, and you're an expert on

1 API RP 1102, so let me ask you. We'll start with we
2 can agree that 1102 calls for compaction so that the
3 soil in the trench is the same density as surrounding
4 soils, correct?

5 A. Yes. It's similar, words to that effect, yeah.

6 Q. And the API standard, by its terms, applies to
7 highways, which it defines as any paved or unpaved
8 route of travel that is frequently used by
9 self-propelled vehicles, correct?

10 A. I, that sounds familiar to what we read yesterday,
11 yes.

12 Q. But Mr. Heintz's typical trench, the typical
13 trench detail we've been looking at right now was not
14 limited to highway crossings, was it?

15 A. Well, actually, the, the part that you were zoomed
16 in on was road crossings. If you go back to that
17 diagram, it shows a road on top of the trench.

18 Q. Okay. It's paved or unpaved.

19 A. Yeah, I think they had one paved and one unpaved
20 side-by-side examples.

21 Q. So, with regard to compaction for what the API
22 refers to as highways, Mr. Heintz was not being very
23 conservative, was he? He was simply reiterating API RP
24 1102, correct?

25 A. I'm lost about what Mr. Heintz was talking about,

1 so you have to refresh my memory. What was that?

2 Q. So the requirement of compaction that Mr. Heintz
3 puts in the typical trench detail, that is also found
4 in API RP 1102, correct?

5 A. Well, I mean, here they're -- and I really see the
6 compaction described here different than the compaction
7 the way they describe it in 1102. 1102 just says it's
8 got to be similar to the surrounding soils. This one
9 says, you know, Note 6, "shall be compacted at near
10 optimum moisture content". That's a more specific
11 requirement.

12 You know, when you're compacting soils -- and,
13 actually, when I was in grad school, I did a little bit
14 of that, you know, on the side, so compaction testing
15 of soils, and there's standard methods you use to do
16 it. Basically, you're dropping a hammer on a container
17 of soil and, you know, measuring how thick it is and
18 how much it weighs, and, and the ability for that soil
19 to compact together varies with moisture content.

20 So there is an optimum moisture content at which
21 the soil will be its densest, and, if you put too
22 little water in there, it doesn't compact as much. If
23 you put too much water in there, it doesn't compact as
24 much. So there's, you know, when you think about soil
25 as being a whole bunch of small, little grains of

1 material and the water in between them, you know,
2 that's about the optimum amount of water.

3 You know, so this is a very specific part about
4 compaction saying optimum moisture content, which is
5 the kind of thing that you would do for a road
6 crossing, and I mentioned that in my report, because
7 you want it to never compact any more, right? So you
8 want the optimum amount of moisture content for road
9 crossings, and that's what they're showing here, you
10 know, but API 1102 just says, well, it just needs to be
11 consistent with the surrounding area. Well, the
12 surrounding might be suboptimum. That make sense?

13 Q. So what you're saying is what Mr. Heintz submitted
14 to the Vermont Public Utility Commission was more
15 conservative than the American Petroleum Institute
16 recommended practice, correct?

17 A. Well, I'm not saying it's more conservative. I'm
18 just saying it's not exactly the same.

19 Q. It's more protective; is that correct?

20 A. I wouldn't say that either. It, it's more
21 specific. It's definitely more specific.

22 Q. Well, whether it's more specific, more protective,
23 the requirement of compaction is consistent with API RP
24 1102, correct?

25 A. Well, they both address compaction. Frankly, 1102

1 says hardly anything about it.

2 Q. Well, we've now read it two or three times. It
3 says it shall be consistent with the density of the
4 surrounding soils, correct?

5 A. That's about all it says about compaction, right
6 there. You just quoted it out of a multipage standard.
7 You know, it just doesn't say much about compaction.

8 Q. And you've said now several times that it just
9 didn't happen for the ANGP, correct?

10 A. That's correct. There was a handful of places
11 where compaction was actually tested, and those are
12 areas, you know, looking at aerial photography, that
13 clearly were places where VELCO routinely crossed the
14 pipeline. You can see the, you know, basically dirt
15 road kind of environment where the VELCO roadway, you
16 know, has an access point that crosses over the
17 pipeline, and that, you know, even though they're all
18 unpaved, you know, those, those are getting routine
19 truck traffic, and those are the areas where VGS
20 actually measured compaction. They didn't do it
21 anywhere else that I've seen.

22 Q. So there's a measurement of compaction which was
23 required by this, and then there's compaction. Are you
24 saying that, generally, the soil was compacted or it
25 wasn't?

1 A. Well, so they have a, you know, VGS deals with
2 compaction, and I, I deal with it in my report where I
3 talk about there are two ways to look at this. There's
4 method specifications, and there's end product
5 specifications.

6 So the method specification is I'm going to do
7 things a certain way, and, because I did them that way,
8 I can reasonably expect to get the right result, and
9 that goes back to the CHA loading calculations that you
10 mentioned earlier on, in 2014 where they answered the
11 specific question for VELCO right-of-way, If the
12 pipeline is built to Class 3 standards and buried four
13 feet deep, will it meet the HS20 plus 15 percent
14 loading specification that VELCO demands for their
15 right-of-way, which I think is incredibly conservative,
16 but, nevertheless, that's what they insisted on, and
17 CHA said, yes, it will, okay?

18 So the VELCO MOU has a method specification in it.
19 That is confirmed by the CHA calculations where they
20 say, You will meet HS20 plus 15 percent loading
21 criteria by building the pipeline to Class 3 standards
22 and burying it four feet. You know, so that's a method
23 specification, and, you know, so they met that, and
24 that --

25 You know, then and end-product specification is,

1 I'm going to meet 90 percent, you know, optimum, you
2 know, soil compaction in every area, okay? Well, how
3 do I know I'm at 90 percent or 95 percent? Well, I
4 actually have to test that, and that's the areas where
5 they tested in the VELCO right-of-way.

6 But the, you know, the ANGP or the VGS narrative
7 specification deals with, you know, methods of
8 compaction, and it will be done with lifts and, you
9 know, compressed with the excavator bucket and, you
10 know, the final compaction be done by, you know,
11 running the tracked vehicles over the trench, you know,
12 to ensure that it's, you know, adequately pushed down.
13 You know, it says those kinds of things. The CHA
14 specification tends to be more end-product
15 specifications, you know, you have to test it to ensure
16 it meets this specification.

17 Q. We talked about this yesterday. We don't need to
18 go back over it. So let me switch gears to stream
19 crossings.

20 HEARING OFFICER TOUSLEY: If we could, why
21 don't we take a break until 11:10?

22 ATTORNEY DUMONT: Okay, great. Thanks.

23 (A recess was taken from 11:02 a.m. to 11:15 a.m.)

24 HEARING OFFICER TOUSLEY: Mr. Dumont, you may
25 continue.

1 BY ATTORNEY DUMONT:

2 Q. All right. Thank you. I have a few questions for
3 you, Mr. Byrd, about stream crossings. Have you read
4 Mr. Nelson's prefiled testimony and his affidavits?

5 A. Yes, I have.

6 Q. I've put Exhibit JAN-2 on the screen.

7 A. Um-hum.

8 Q. Go on to the page, it's .pdf 5 onto 6 of the, of
9 his affidavit, Paragraph 17.

10 A. Right, I see it.

11 Q. In his affidavit he states that the EPSC plans
12 that were filed with the Commission were incorrect,
13 because they stated there would be seven feet of cover
14 under all of the streams identified in the plans. Do
15 you see that?

16 A. Yes, I do.

17 Q. And he writes that Vermont Gas intended to bury
18 that pipe, the pipeline that depth only when crossing
19 ANR jurisdictional streams. Move that down a little
20 bit.

21 In your report on Page 68, you state that you
22 disagree that the ANGP was constructed in violation of
23 the CPG in this regard.

24 A. Yeah, I'm looking for that sentence.

25 Q. I think I found it here.

1 A. Right.

2 Q. On .pdf Page 68 you say, "I disagree with their
3 interpretation of the specifications as to the depth of
4 cover requirement but agree that any violation would be
5 purely of a technical nature with no impacts on
6 pipeline safety or the environment".

7 I have a couple of questions about that.

8 A. Okay.

9 Q. You're definitely an expert on pipeline safety.
10 Why do you think that you're qualified to talk about
11 whether depth of burial raised any issues for the
12 environment?

13 A. The depth of cover, I guess, is what you're
14 referring to, right?

15 Q. Yeah.

16 A. Yeah. So I'm -- you're right. I'm nothing more
17 than a knowledgeable layperson when it comes to the
18 environmental impacts of trenches across streams or any
19 kind of wet area. You know, I'm relying more on the,
20 the environmental consultant and ANR when they say it
21 doesn't really matter. When I look at it from a
22 layman's standpoint, it's like you're digging a trench
23 across the, the wet stream, whatever you want to call
24 it. The term "stream" is loaded in this situation, but
25 I'll use the word "stream".

1 But whether it's, whether you dig that trench four
2 feet deep or seven feet deep, you've trenched across
3 it, and then you put your pipe in, and then you
4 backfill it. So I have a hard time imagining, from a
5 depth-of-cover standpoint, that there's any
6 environmental impact that's different from digging a
7 four-foot-deep trench or a seven-foot-deep trench, you
8 know, and I would argue, if there's any difference, the
9 deeper trench makes a bigger impact, because you have
10 more fill, and you have to do more backfilling, whereas
11 a shallower trench would have less impact. That's my
12 layman's interpretation of it.

13 Q. Okay. Your report doesn't say why you disagree.
14 We know Mr. Nelson has testified that the incorrect
15 specifications were filed with the Commission.

16 A. Correct.

17 Q. And you disagree with that. You're saying the
18 correct ones were filed with the Commission. So tell
19 us why.

20 A. Well, I'm saying -- so the ANR letter of October
21 12th 2017 says there was a technical violation. Well,
22 the, the plans had been modified prior to that letter
23 to eliminate the nonjurisdictional streams from that
24 Type 7 construction, so and that, that nonsignificant
25 change had been approved by the Commission. So I don't

1 even think it's a technical violation, because the
2 specification had already been changed.

3 Q. Are you sure that the change in depth of cover of
4 the trench in streams was approved of by the
5 Commission, or was it approved of by ANR?

6 A. Well, I believe it was, if I'm recalling
7 everything correctly, the nonsubstantial change Number
8 3, that was approved by the Commission. I don't
9 remember, you know, the details of the ANR.

10 Q. So Mr. Nelson has explained in his affidavits
11 that, in a nonsubstantial change request that had
12 nothing to do with depth of cover, some of the
13 supporting documents had the new depth of cover, but he
14 does not claim that this change was brought to the
15 Commission's attention or that any request was made of
16 the Commission to accept the change. It was just in
17 the backup materials without any mention in the
18 request. But it's your position that, in that setting,
19 the Commission actually approved of the change; is that
20 what you're saying?

21 A. That, I, I can't speak for the Commission. I'm
22 just saying that those, those revised plans were
23 submitted, and the change was approved, and, and that's
24 -- I'm just going by the facts.

25 Q. Okay. Your report at Page 68 discusses, which is

1 the page we're on right now, residential. There we go.
2 It will show up on your screen. There it is.

3 A. Yes, I see it.

4 Q. You agree that Mr. Heintz's testimony on December
5 20th of 2012 and on February 28th of 2013 stated, "The
6 pipeline will have four feet of cover in agricultural
7 areas within the VELCO right-of-way and residential
8 areas, comma, and generally five feet of cover at road
9 crossings and seven feet of cover at open cut streams".

10 As I understand your report, Page 68, you're
11 saying that, because the Commission, in its order, did
12 not reiterate that part of Mr. Heintz's prefiled
13 testimony, the Commission rejected it. Am I
14 summarizing your position correctly?

15 A. Well, you could summarize it more accurately by
16 saying they quoted his prefiled testimony verbatim with
17 the exception of that one statement about residential
18 areas. So, you know, it's more than a coincidence, in
19 my mind. When they quote something verbatim and then
20 leave four words out, or six words out of a verbatim
21 quote, to me, that's intentional. So I didn't ask the
22 Commission if they did it intentionally, but it
23 certainly looks that way to me.

24 Q. And you are aware that the CPG and the final order
25 both stated that the project had to be constructed in

1 accord with the evidence and plans that were filed?
2 The Commission, the CPG and the order did not state it
3 has to be constructed in accord with those parts of the
4 evidence and plans we specifically referred to in our
5 decision; you understand that?

6 A. You seem to be arguing, from my perspective here,
7 that nothing that is said in any, you know, statement
8 to the Commission can ever be changed, and I, I don't
9 see it that way, and, clearly, that statement was
10 modified in the final order. That's the way I read it,
11 and that's the way I described it in my report. You
12 know, these things, once said, can never be retracted,
13 I don't think is correct.

14 Q. Why do you think that's the Intervenors' position?

15 A. Well, because you keep harping on it. That's --

16 Q. Our position is, if you change, make a material
17 change from the evidence and plans, you have to go to
18 the Commission first and obtain their approval.

19 A. Yeah.

20 Q. You understand that?

21 A. I would look at it as, if you want to change
22 things in the final order or the certificate of public
23 good, I would want to go back and get approval, but,
24 once I know what the final order says or the CPG says,
25 I would assume that's what I need to comply with and

1 that's -- you know, there is some circular logic
2 involved, I will grant you, that says, well, our
3 approval is contingent on all the stuff you told us to
4 begin with. So and there is, there is kind of a -- you
5 can go around in circles forever on that, which would
6 lead you to the conclusion, in my mind, that nothing
7 said can ever be retracted. It's like, I don't think
8 that's what they're trying to say.

9 Q. All right. Thank you. I want to talk about the
10 first day you and I met. Do you remember you were
11 staying at the Inn at Baldwin Creek at Mary's
12 Restaurant in Bristol?

13 A. Yes, that name sounds familiar, yes.

14 Q. Because you had asked where would be a good place,
15 and I, I had recommended the Inn at Baldwin Creek.

16 A. You said there's not much to choose from, so I was
17 searching for a place that was close to your office,
18 and you said this would be a good place. Like, okay,
19 fine, I'll take your word for it.

20 Q. And you didn't have a car, so you asked if I would
21 pick you up and bring you to the meeting?

22 A. Yeah. I, you know, normally, I would just rent a
23 car and drive down, but, since I had been warned of the
24 winter conditions and remote rural area, that that
25 might be tricky driving, I decided it was better to

1 hire a car to take me down there that knew the area
2 better than I did. So, yeah, I didn't have a car, and
3 I needed a ride, and you offered to pick me up, so I
4 appreciate that.

5 Q. And, when you got into the car, did you say to me,
6 "We're not going to discuss the investigation, because
7 I don't want to discuss the investigation unless all
8 the parties are present"?

9 A. Well, this is the first time I'd ever seen you,
10 and, you know, I didn't want to begin our investigation
11 just you and me. You know, we were, the whole purpose
12 of the visit was to go meet with all the other parties.
13 So I don't remember exactly what I said, but I'm sure I
14 said something about, hey, I don't want to talk about
15 the case in the car. Let's talk about the case when we
16 get to your office when everybody else is there, and we
17 talked about logging and everything else. I, you know,
18 it's not a long car ride. It was 15 minutes, something
19 like that.

20 Q. I think we talked about the Red Sox.

21 A. I remember talking about logging too. Yeah. You
22 were talking about deforestation and, you know, history
23 of the area and that kind of thing.

24 Q. You agree you made it clear that, in your view,
25 there would be no conversations during your

1 investigation, unless all the parties were involved,
2 conversations with me, unless all the parties had the
3 opportunity to participate?

4 A. I didn't say it that way. What I do remember
5 saying, you know, number one, I was telling you -- I
6 don't know how you heard it, but I was saying, I don't
7 want to begin this by being lobbied by the lawyer for
8 one side. I want to, you know, I want to, I want to
9 start the discussion in the group setting that we had
10 already set up. And I remember telling the Intervenors
11 at the meeting or the people who were in attendance at
12 the meeting, I said, I am an independent investigator.
13 I'm not an advocate.

14 No, the wrong word. I said I'm not an ombudsman,
15 right, so I'm not here to be the ombudsman. I'm here
16 to investigate certain issues as described in the scope
17 of work with the Public Utility Commission. So and I
18 remember telling them, "Look, don't call me directly
19 with your issues. I want to make sure the issues are
20 vetted, you know, in a larger setting". I didn't want
21 individual landowners calling me up and saying, hey,
22 you know, you need to look at this, you need to look at
23 that. It's like, you know, I didn't want to do that,
24 because I'm not the ombudsman. I'm not the individual
25 troubleshooter. I'm just doing an investigation.

1 Q. Thank you. I've put on the screen our Exhibit 23.
2 Are these your answers to interrogatories?

3 A. It looks like it, yes.

4 Q. I'll go to the end of it. There's a signature
5 page somewhere else. Do you agree this is an accurate
6 copy of what, how you answered the interrogatories?

7 A. It appears to be, yes.

8 Q. I'm going to move Exhibit 23.

9 HEARING OFFICER TOUSLEY: Is there any
10 objection? Department?

11 ATTORNEY GUZMAN: No objection.

12 HEARING OFFICER TOUSLEY: ANR?

13 ATTORNEY MILLER: No objection.

14 HEARING OFFICER TOUSLEY: VGS?

15 ATTORNEY McCLAIN: Sorry. Couldn't find the
16 button. We have no objection. Thank you.

17 HEARING OFFICER TOUSLEY: Okay. So what's
18 been previously marked as Intervenors Cross Exhibit
19 Number 23 is entered into evidence.

20 (Exhibit marked Intervenors Cross 23 was admitted
21 into the record.)

22

23 <https://epsb.vermont.gov/?q=downloadfile/426809/111907>

24

25

1 ATTORNEY DUMONT: Mr. Tousley, I have about a
2 half an hour of questions left, and I, I'm going to
3 suggest that, if everybody is willing, that we take our
4 lunch break now, and, that way, I'll be more efficient
5 and I'll have my leftover questions better organized.
6 I could go forward now, but it's only about a half an
7 hour's worth of questions.

8 HEARING OFFICER TOUSLEY: Okay. I think
9 that's a good idea. Mr. McClain?

10 ATTORNEY McCLAIN: Yeah, that's, that's
11 absolutely fine with me, whatever works best for
12 everyone else. I, what was it? We're going to take
13 lunch now and then do a half an hour of questioning,
14 Jim?

15 ATTORNEY DUMONT: Roughly half an hour, 40
16 minutes. So, you know, it's a, I'm at a good
17 transition place.

18 ATTORNEY McCLAIN: Yeah. So, as a practical
19 matter that would be helpful, I believe that Mr.
20 Rendall will be ready to testify after lunch, and so
21 earlier than 3:00 if needed, and I don't think we need
22 to rush Mr. Dumont in any fashion. I do not expect to
23 have -- I need to review my notes, and I'll do that
24 over lunch, but I do not expect to have questions for
25 Mr. Byrd.

1 HEARING OFFICER TOUSLEY: Okay. With that,
2 it's now 11:30. I think 45 minutes seemed to give Mr.
3 Byrd the opportunity to go across the street to the
4 Circle K yesterday, and we'll do 45 minutes again.
5 We'll try to get back together again at 12:15.

6 (A recess was taken from 11:31 a.m. to 12:17 p.m.)

7 HEARING OFFICER TOUSLEY: Okay. We're back
8 in session, and you may proceed.

9 BY ATTORNEY DUMONT:

10 Q. All right. Mr. Byrd, we were talking about DPS
11 inspection reports yesterday. I told you we would
12 return to that subject.

13 A. Yes.

14 Q. Page 60 of your report was the jumping-off point.
15 It still is. You found that the critical comments were
16 minor deficiencies that are routinely found and
17 corrected on a daily basis during a project of this
18 type.

19 I want to now go to the DPS inspection report for,
20 the summary of the DPS inspections that is your
21 Attachment 39.

22 A. Okay.

23 Q. This, so we'll go to the top. This is your
24 Attachment 39, and, if we go through that, I'm going to
25 start on .pdf 8, and you'll see here an unsatisfactory

1 rating under the heading "Weld Inspections and
2 Nondestructive Testing Requirements". Now, on the
3 left-hand side of this form are some numbers, and
4 correct me if I'm wrong. Those are, the numbers refer
5 to the PHMSA regulations?

6 A. Yes. Those are citations under 49 CFR Part 192,
7 and, to clarify what you said earlier, I said the
8 things that didn't result in NOPVs were minor and, you
9 know, didn't indicate a large -- the welding did
10 actually result in an NOPV, so --

11 Q. Okay. Thank you for that clarification.

12 A. Just to make sure we're talking about the same
13 topic here.

14 Q. So here's one that resulted in an NOPV?

15 A. Right.

16 Q. If we look at the footnotes, there's an X with a 9
17 and an X with a 10. Scroll down. You see some
18 comments, and I'll wait until you've got it there.

19 A. Um-hum.

20 Q. The comment for September 17th 2014, is that large
21 enough for you to read?

22 A. Yes, I can see it. Thank you.

23 Q. As I read it, it says, "Inspection of NDT
24 procedures at Redmund Road", R-E-D-N-U-N-D is how it's
25 spelled here, "Redmund Road, radiographer advised that

1 he uses TEAM procedures, period. Unable to locate NDT
2 procedures in any of VGS documents".

3 A. Right.

4 Q. Footnote 9, a little further -- I'll wait until
5 the page catches up. There we go. Footnotes 9 and 10
6 say, "As of December 8th 2014, NDT procedures have not
7 been adopted from TEAM NDT, and, as of 12/8/14, have
8 not been provided that information". So how do you
9 interpret that?

10 A. So, so I'll preface this by saying I think issues
11 with welding are potentially serious, and, you know,
12 when I saw this, I thought, oh, there you go. That
13 could be a real issue, and, and PHMSA or, in this case,
14 the State, you know, called out a situation where --
15 you know, the person who is performing the NDT, which
16 stands for nondestructive testing, which is in the
17 regulations, you know, when you weld a steel pipe
18 together in the transmission industry, you have to
19 inspect that weld using some kind of nondestructive
20 testing.

21 And, in this case -- doesn't always have to be an
22 x-ray, but, in this case, they were using x-rays, and,
23 you know, the x-ray is only as good as the person and
24 the procedure that they used to create that x-ray. So,
25 so PHMSA demands detailed procedures for how I conduct

1 that x-ray. You know, because the thickness of the
2 material, the strength of the radioactive source, the
3 location of the, of the radiographic film, all of that
4 matters, you know, to ensure that you get a good x-ray.
5 So PHMSA demands detailed procedures for that.

6 And, in this case, as I read the inspection
7 report, they're saying, well, the person who is doing
8 the x-rays had procedures, and PHMSA didn't raise any
9 questions about the adequacy of those procedures, but
10 they did note, hey, VGS, as part of their project
11 specifications, doesn't have procedures for this, and
12 they should, and I agree. They should.

13 So, so, you know, obviously, the state inspector
14 was okay with them using the procedures from TEAM, and
15 I assume that's a company name. I'm, it's not an
16 industry term, so I assume that's a company, TEAM, NDT
17 that had their own procedures for doing this, and you
18 would expect a company that specializes in it to have
19 procedures for it, but those procedures hadn't been
20 adopted by VGS officially as of the end of December.

21 So that's how I read this, and the inspector is
22 clearly saying, hey, I need to see that VGS has
23 officially adopted these NDT procedures into their
24 procedures. That's what I think this is saying.

25 Q. So the, the state inspector raised this issue on

1 September 7th, and three months later it had not been
2 addressed, correct?

3 A. Well, they, they hadn't seen an official adoption.
4 That's what it looks like to me. Now, Footnote 10,
5 having not been provided that information, I would have
6 to go back up to the item that had Footnote 10, because
7 I don't remember exactly what that was. Okay. So are
8 there records to qualify procedures. Okay. So, so, if
9 you'll stop crawling for just a second. So .243,
10 Question A is a detailed written NDT procedure
11 established and qualified, and I'm sorry. You scrolled
12 past it.

13 Q. I thought you wanted me to go down to the bottom.
14 I misheard you.

15 A. No. I wanted to stay there.

16 Q. Okay.

17 A. So is the procedure established and qualified?
18 Okay. So you have to, not only have a written
19 procedure that's very detailed, but you have to show
20 that that procedure works, okay, so qualify the
21 procedure. So they said "unsatisfactory", and the
22 footnote explains that, while there is a procedure, but
23 Vermont Gas hasn't officially adopted it yet, so it's
24 not a Vermont Gas procedure. So they wanted to see the
25 official adoption.

1 Then B is a slightly different question, Are there
2 records to qualify the procedures? So A asked if you
3 had a qualified procedure, and then B goes a step
4 further and says, okay, where are the records that
5 document that your qualification of this procedure was
6 done properly? You know, so some test x-rays perhaps
7 with weld defects in them so that you could see the
8 defect and know that the procedure worked.

9 So Footnote 10 says, I'm still waiting on the
10 records. So my, my assumption in this case would be
11 that TEAM NDT was the, the party that needed to provide
12 the records to show that the procedure was qualified,
13 and the inspector is just noting that, hey, I still
14 haven't gotten those records from TEAM as of that date.
15 Q. Here on .pdf 9 is more information about what
16 you've been discussing. It looks like October 2nd 2014
17 addresses the same subject.

18 A. Right. And that's consistent with what I was
19 trying to explain earlier, and they refer to ASME.
20 The, the pipeline safety regulations let you qualify
21 welding under an ASME code or the API code. So they're
22 obviously following the ASME code here.

23 Q. Here we are. I moved this, the document to Page
24 10, "Construction Requirements", and the regulation is
25 .303. The question is, "Are comprehensive written

1 construction specifications available and adhered to?",
2 and the check box was "Unsatisfactory".

3 A. Right.

4 Q. Further down, "When pipe is placed in the ditch,
5 is it installed so as to fit the ditch, minimize
6 stresses and protect the pipe coating from damage?",
7 and the check box was "Unsatisfactory".

8 A. That's right.

9 Q. Below that it says, "Does backfill provide firm
10 support under the pipe, and is the ditch backfilled in
11 a manner that prevents damage to the pipe and coating
12 from equipment or the backfill materials?", and that
13 was checked "Unsatisfactory".

14 A. That's correct, yes.

15 Q. I'll wait until it catches up. Going down, it
16 says, "Is there 12 inches clearance between the
17 pipeline and any other underground structure? If 12
18 inches cannot be attained, are adequate provisions made
19 to protect the pipeline from damage that could result
20 from the proximity of the other structure?", and that
21 was "Unsatisfactory".

22 A. That's correct, yes.

23 Q. Then I tried to scroll down so that you could see
24 the comments.

25 A. Um-hum. Right. So the comment on 10/15/14 where

1 they say, Observed pipe at Station 198 being forced
2 into ditch. Chief pipeline inspector's finding, after
3 meeting with the contractor, a section was cut out and
4 replaced with a field bend.

5 So, so the point there is, you know, we talked
6 about width of ditch earlier today, and, you know, in
7 this case, obviously, the pipe was bending at a certain
8 diameter, and, you know, it was being forced into the
9 ditch, and that's against the rule. The ditch has to
10 be, has to fit the pipe and vice versa. You know, so,
11 so the inspector noted, hey, you're squeezing the pipe
12 into this ditch, you know, around some kind of bend,
13 and you need to fix that.

14 So they cut it out and bent the pipe. You know,
15 field pipe bending is actually a thing, right? They,
16 it's a service that companies provide. So they bend
17 the pipe to the right diameter, then put it in the
18 ditch, and that time it worked fine. So the field
19 inspector noticed that.

20 Q. The field inspector for APS or for VGS?

21 A. Well, in this case, it was a PHMSA or a state
22 inspector report. So the state inspector noticed it.

23 Q. Turn to .pdf Page 11. Let's see here. Testing
24 records. I'm sorry I'm moving around. I want to show
25 you the top of the page first. You see it says

1 "Testing Requirements"? And I'll move down the page a
2 little bit. What do you see on this page that's
3 relevant?

4 A. Mostly, they're talking about the issues with
5 documentation of the pressure test, and I don't, I
6 don't see Footnote 13. So I see the comments here, and
7 this, this seems to be for pressure testing that was
8 done of horizontally directionally drilled pipe. So,
9 so, but my opinion of that particular decision, see,
10 they're saying they didn't have these detailed
11 documents that back up the pressure tests for those HDD
12 pipes, and, you know, ideally, you would document that
13 just as completely as you would a code test.

14 But I, my assumption here, and this is a pretty
15 decent assumption, I think, is that these weren't
16 code-compliant tests, they weren't intended to be. So
17 that the point is, when you do a horizontal directional
18 drill, you're going to weld together a long segment of
19 pipe, maybe thousands of feet. Then you, you drill
20 the, the directional drill, you know, the hole for the
21 well bore, and then, and then you pull the pipe through
22 it, and that's, then you tie it off on each end.

23 Well, and, eventually, you're going to pressure
24 test the entire pipeline system, and that's your
25 code-compliant pressure test. That includes the

1 directional drill. But people learned early on that,
2 hey, I don't want to have a failure in a directional
3 drill during a pressure test to cost me a fortune to go
4 back and replace it. I can't fix it after it's been
5 pulled through, so we should pressure test these things
6 before we pull them through, and, and, that way, you
7 know, or at least you're fairly confident, that that
8 section of pipe is going to pass your code-compliant
9 test.

10 So this is really, from what I can read on the
11 form, more of a pretest that the operator was doing for
12 those sections of pipe, the HDD sections, so that they
13 could be fairly confident that it would pass the final
14 code-compliant test. So, clearly, when they did those
15 pretests -- that's my word, not theirs -- but, when
16 they did the pretests, they didn't keep all the
17 documentation that they would normally you're required
18 to have for a code-compliant test. You know, so, if I,
19 I probably would have argued with the inspector over
20 that if I had been on site, but that's, that's the way
21 I read it.

22 Q. Turn to .pdf 13 on this exhibit. Do you see that?

23 A. Yes, Attachment 1, but I'll start by saying this
24 whole section is nonapplicable, because they were not
25 using an alternative MAOP, so this attachment is

1 specifically for pipes that are using an alternative
2 MAOP, so it didn't apply to ANGP.

3 Q. Well, let's look at that. Do you see the comments
4 at the bottom?

5 A. I can't see the bottom.

6 Q. It will show up in a minute.

7 A. Okay.

8 Q. The comment is, "Vermont Gas has not provided the
9 QA, slash, QC data to substantiate pipe inspection
10 conducted at pipe and coating mills".

11 Did I read that correctly?

12 A. Yes.

13 Q. That's really, really, really important, isn't it?

14 A. I have no idea why an inspector would put a
15 comment like that on a form that doesn't apply to that
16 pipeline. The whole form is checked "NC" for not
17 checked, which is appropriate, because you wouldn't
18 check something that doesn't apply to this pipe. So
19 how he came up with that comment down there, I don't
20 know. Maybe he should have just put the comment
21 somewhere else. But I do believe there's a lot of
22 documentation in the file where that data was later
23 provided. I don't remember the exact reason why.

24 Q. This report was the end-of-the-year report for
25 2014, correct?

1 A. Yes.

2 Q. And, as of the date it was written at the end of
3 the year, Vermont Gas had not provided QA/QC data to
4 substantiate pipe inspection conducted at pipe and
5 coating mills, right?

6 A. That's what it says.

7 Q. That's really, really, really important, isn't it?

8 A. Well, that applies to pipe that's using an
9 alternative maximum allowable operating pressure. So
10 what do I mean when I say maximum allowable operating
11 pressure? So, under the normal gas piping code, the
12 regulations, I can operate a pipe up to 72 percent of
13 SMYS, the specified minimum yield strength. So it's a
14 percentage of the ultimate yield strength of the pipe,
15 but, if I get an alternative MAOP and I have a special
16 section of the code to go to for that, then I can
17 operate up to 80 percent, about 10 percent higher.

18 Well, we wouldn't bother with doing all of that
19 for a 40-mile pipe. It, there's not enough steel
20 involved to make a difference. If I was building a
21 3,000-mile-long pipe or a \$3 billion pipe, 10 percent
22 makes a huge difference, because I buy steel by the
23 pound, okay? So, so large transcontinental kind of
24 transmission systems will, will go through all the
25 hassles to comply with alternative MAOP requirements,

1 and that goes all the way back to the steel mill, okay?

2 So here they're saying, hey, you don't have QA/QC
3 data to substantiate the pipe inspection at the pipe
4 mill and at the coating mill. Well, you have to do
5 that to get an MAOP, alternative MAOP, but you don't
6 have to do that for a pipeline like the ANGP. You
7 know, you can trust that the steel is, is what the
8 manufacturer said it was.

9 You know, so, I, I think the comment is irrelevant
10 and inappropriate. You know, I haven't talked to the
11 inspector, so maybe he's thinking something different
12 than I am, but -- on the largest pipeline systems, you
13 know, companies will send people to Korea. They'll
14 send people to India and actually inspect the QA/QC
15 data for that steel mill, for the pipe mill. You know,
16 it's a totally different level of inspection for those
17 specific types of pipelines.

18 Q. So sorry I'm moving around here. So on the next
19 page, sorry, the bottom of the page -- hopefully, now
20 we're at the bottom of the page.

21 A. Right.

22 Q. There it is. Sorry. 192.328, Quality Assurance,
23 under the heading of "Additional Construction
24 Requirements for Pipe Using Alternative MAOP", and "NC"
25 meaning what?

1 A. Not checked. Again, they just weren't using an
2 alternative MAOP, so this section of the form is
3 irrelevant.

4 Q. So, if we turn to the next page where I've now
5 gone, Page 14, the comments -- wait until they show up
6 on your screen. There we go. The comments are, quote,
7 "Vermont Gas has not provided QA/QC program details,
8 period". And your criticism of that is the same as the
9 criticism on the earlier page?

10 A. They didn't need to is, is my response. So I
11 guess my, my quibble with the, the way that form was
12 filled out is they, they shouldn't have just checked
13 NC. They should have checked NA. It's just not
14 applicable.

15 Q. But, if your interpretation is correct, then their
16 comments don't make any sense?

17 A. That's correct. So I think they made two mistakes
18 on the form. Well, they didn't make a mistake by
19 checking NC. I mean, they're admitting they didn't
20 check it, but they didn't fill out the part that says
21 NA. Because, I mean, this pipe, it's almost the
22 opposite of a pipe that is trying to get an alternative
23 MAOP. An alternative MAOP means I want to run at a
24 higher stress level than you let a normal pipe operate
25 at.

1 And ANGP did the exact opposite of that. They
2 said, we're going to build it to Class 3 everywhere, no
3 matter what stress level you'd let me operate at. So
4 most of it you'd let me operate at 72 percent, but I'm
5 only going to operate at 50 percent. So, so, yeah, it,
6 it's not only irrelevant, it's, like, doubly
7 irrelevant.

8 Q. So you, you take the position that, because this
9 wasn't a large enough pipeline, there was no need to
10 provide quality assurance or QC documentation from the
11 mill that manufactured the pipe? That's what you're
12 saying, correct?

13 A. I don't think you heard me correctly.

14 Q. Okay.

15 A. Yeah. So what I'm saying is there are a number of
16 extra requirements that apply to pipelines that want to
17 use an alternative MAOP, okay? So that's, you know,
18 the platinum standard, if you will, of quality control
19 to get PHMSA's approval to operate at 80 percent of
20 your yield stress, you know, 10 percent or more higher
21 than the normal limit, okay? So, if you want to
22 operate at this higher level, we've got some extra
23 special requirements for you, okay? So ANGP didn't do
24 that, so they don't have those extra special
25 requirements that only apply when you're trying to get

1 an alternative MAOP, okay?

2 Now, my part about expensive long pipelines is
3 more, more commentary that nobody does that for small
4 pipelines because there's just not enough money at
5 stake for the hassle. You know, there's only enough
6 money at stake when you're building a really long,
7 really expensive pipeline and that extra 10 percent
8 makes a difference. So that's --

9 Q. Perhaps, perhaps I didn't ask my question
10 carefully, and I'm sure that's true. Is it your
11 testimony that, if a pipeline construction company or a
12 pipeline operator is not using the alternative
13 operating pressure, that the operator is just using
14 standard operating pressure, is it your testimony that
15 there is no need to obtain QC documentation from the
16 mill?

17 A. Well, I'm saying the specific questions that are
18 asked on that form don't apply. I'm not saying you
19 don't need any QA or QC documentation from the mill,
20 but you don't have to do it the way you would have to
21 do it as asked on this form.

22 Q. So aren't you really saying the inspector used the
23 wrong form, but what he wrote is very clear; there is
24 no QA/QC documentation from the mill, right?

25 A. Well, he's answering questions on that form. He's

1 not answering questions on the general PHMSA inspection
2 form. I mean, you know, the form includes the general
3 PHMSA inspection questions, and he answered those.
4 These questions are specific to the QA/QC process
5 required for an alternative MAOP, and he's saying I
6 haven't seen that. Well, surprise, you didn't need it.

7 Q. The standard, the comment says, We haven't
8 received QA/QC documents from the mill or that VGS
9 doesn't have QA/QC documents --

10 A. Right.

11 Q. -- from the mill. That's a very broad and clear
12 statement. It's not saying we lack the QA/QC for the
13 alternative operating pressure. It's we don't have the
14 QA/QC documents from the mill, right?

15 A. When he puts it on the form in the section that
16 deals with alternative MAOPs, I assume he's commenting
17 on alternative MAOP requirements. Otherwise, he'd put
18 it in the normal inspection form, and he didn't do
19 that.

20 Q. But you just told us that this is not an MAOP
21 pipeline, right?

22 A. That's why that part of the form is irrelevant.

23 Q. So doesn't it make -- isn't it obvious to you that
24 he just used the wrong form when writing down the
25 relevant information?

1 A. No, that's not obvious to me at all. I think he
2 was trying to answer questions that are irrelevant, you
3 know, and, otherwise, he wouldn't write it down under
4 that section.

5 Q. Okay. Let's go to .pdf 15. Now, you've seen
6 this, these pages before, right?

7 A. Yes, I have.

8 Q. And these pages go on four or five, six of these
9 pages. Can you describe what Attachment A consists of?

10 A. So it's a, it's a listing of various pipeline
11 construction issues that the inspector found during
12 2014, and the first one is, in my opinion, probably the
13 most significant and potentially serious where he's
14 saying VGS, you know, VG Systems, Inc., failed to
15 qualify welding procedure, quote, "16X-65 butt weld",
16 close quote, in accordance with the written procedure
17 specification.

18 And then it goes on to give the details. The
19 record indicates an electrode E6010 was used in the
20 root pass only, while the welding procedure
21 specification requires E6010 electrode in both the root
22 pass and the hot pass, okay? So this is a very
23 detailed finding here, going down to the specific type
24 of welding rod that was used in different layers of the
25 weld.

1 So, when you're welding a pipe like the ANGP, you
2 don't just go around one time and have it welded
3 together. Each weld lays down a little bit more metal,
4 and then you go around again, and then you go around
5 again, and you go around again. It's kind of like
6 filling something up with the layers of glue, and you
7 let the glue dry and you do it again and again. That's
8 kind of how you build out the entire weld.

9 So there will be multiple passes, and the very
10 first pass you make is the root pass, okay? So that's
11 where you have, I have pieces of metal that are
12 adjacent to each other, but they're not welded at all,
13 and I've got a bevel so I can get to the bottom of the
14 metal where they're joined together, and I do the very
15 first weld, and that's a root pass, okay?

16 So they, they spelled out root pass electrode
17 E6010, and one procedure said you use that for the root
18 pass only, but then another procedure said you can use
19 it for the root pass and the hot passes, the additional
20 layers. So can you use that electrode for both or only
21 for one? And, and this really points to the fact that,
22 you know, PHMSA inspectors, I mean, they were digging
23 pretty deep to find that, but I agree, hey, you know,
24 you have to follow your welding procedure verbatim, I
25 mean, to the letter, and, if you don't, they will find

1 a violation, and they may cause you to cut out the
2 welds and do it over again.

3 So the status -- well, they said violation, yes,
4 and I agree that that was a violation. And the status
5 was the company requalified the procedures, okay? So,
6 so what the resolution here was, they didn't have to
7 change the process. They just qualified the way they
8 did it to show that it was okay. So it was okay to do
9 E6010 electrodes for the whole weld, not just for the
10 root pass. You know, so you had to prove that to the,
11 to the PHMSA inspector, and they did, and then they,
12 you know, then their procedure conformed with what they
13 were actually doing in the field.

14 Q. Thank you. So why don't we scroll down to -- I
15 don't want to rush you through this, but I think it's
16 fair to say that the next page is, there are many
17 entries similar to what you've described where
18 procedures were questioned, and then they were
19 requalified.

20 A. Right.

21 Q. I'll stop a couple of places here so you can see
22 that.

23 A. Yes, I remember there were several specific issues
24 with the, with welding.

25 Q. And then we get to some on .pdf Page 17 which were

1 not resolved, and I'm going to try and get the page in
2 the right spot there. Okay. This is .pdf 17, Issue
3 Number 9.

4 A. Okay. Yes, I remember this one.

5 Q. So this was unresolved as of the date of the
6 year-end report?

7 A. Right.

8 Q. Would you describe what the issue was and how it
9 was unresolved?

10 A. Well, so, in this case, it was a, a specific
11 circumstance that occurred at one point in time, and
12 it's unresolved, because you can't unring a bell. I
13 mean, that's basically the way I read unresolved. It's
14 like, I can't undo what happened.

15 So what happened there is there, because the
16 welding process is so important, their requirement was
17 that you don't weld without a welding inspector present
18 so they can ensure that, you know, for example, like we
19 were just discussing, you're using the right kind of
20 electrode. You know, you can't tell what kind of
21 electrode they used after they weld. You can only know
22 that while they're welding.

23 So, you know, so they checked that and a million
24 other things. So there was a tie-in weld that was
25 being made, and there was no inspector present. So, at

1 the bottom of the paragraph there as to why no
2 inspection staff was present, and she advised me that
3 the contractor had been ordered to stop work and had
4 disregarded the order, okay?

5 So somebody -- I don't know if it was VGS or
6 somebody else -- had told them, look, we're not ready
7 to inspect this. We're not ready to do this. Don't
8 weld it, and the welder did it anyway without an
9 inspector present, and, and they got caught. So, like
10 I said, you can't unring a bell. I mean, that's why I
11 assume it's shown as unresolved.

12 Q. Okay. Thank you. I'm going to move down a little
13 bit on the page, same page. Issue Number 10,
14 "Compliance with specifications or standards,
15 9/19/2014".

16 A. Right.

17 Q. Can you describe this one?

18 A. As I was talking about the backfilling
19 requirements, and it says on, at the very bottom, "On
20 said date, in a pipeline ditch which traversed an
21 abandoned sanitary landfill, numerous articles of
22 plastic, metal, and glass were observed in the backfill
23 material in the ditch".

24 Okay. So this goes to the word "clean". When we
25 talk about clean sand or, you know, you know, select

1 backfill, it's not supposed to have junk in it, and the
2 inspector in this case is saying, hey, I, I observed a
3 place where the pipeline had been installed across an
4 abandoned sanitary landfill, and I saw a bunch of junk
5 in the backfill. I mean, that's essentially what it's
6 saying.

7 Q. And it was unresolved by the end of the year,
8 correct?

9 A. Yeah, they showed that as unresolved. I do know
10 that VGS went back later and did some test digs, and,
11 certainly, there's a bunch of junk in the area, but in
12 the pipeline trench they didn't see any. So, so I
13 don't know what the inspector was expecting on that, at
14 that point in time to show that as resolved, and --

15 Q. Sorry. Go ahead.

16 A. Yeah. I was going to say, in my mind, it's a
17 pretty minor issue. You know, you shouldn't have junk
18 in your backfill, yeah.

19 Q. Turn to .pdf Page 18, Issue Number 11,
20 Nondestructive Testing Procedures, 9/24/14.

21 A. Um-hum.

22 Q. This is the same issue that -- I'm sorry. This is
23 a different issue than you've discussed, isn't it?

24 A. Well, it looks like it's maybe the same issue that
25 we talked about at the very start about the NDT

1 procedures. It looks like an NDT procedure finding,
2 and let me just read in the middle:

3 "On 9/24/2014 VGS representative Kristy Oxholm
4 presented the following response to our request:
5 Quote, 'All nondestructive examinations, NDE, will be
6 provided by a third-party company. Personnel will be
7 qualified and certified to the American Society of
8 Nondestructive Testing Procedures, ASNT SNT-TCIA or
9 ASNT C9. Examinations will be performed in conformance
10 with the VOS NDT specification" -- I assume that should
11 say VGS -- "and using procedures approved by a
12 certified ASNT Corporate Level 3".

13 So that was VGS's position at the time, and the
14 inspector disagrees with that, says, "It is the
15 exclusive responsibility of the operators, capitalized,
16 of pipelines to conform to the requirements of the
17 pipeline safety regulations embedded in 49 CFR 192.
18 The above statement does not constitute a procedure".

19 And I agree with it. It's like you can't say that
20 my procedure is to depend on somebody else's procedure,
21 and that's essentially what VGS said is like, well, our
22 procedure is we're hiring people that have procedures,
23 and they're going to comply. You know, as the
24 inspector noted, it's like, it's not that easy. You
25 need to have your own procedures.

1 Now, you might adopt their procedures, which may
2 be what they did. I don't know. You know, that's
3 fine. But you, you can't just depend on your
4 contractors to have adequate procedures. It's the
5 operator's responsibility to ensure people have
6 adequate procedures.

7 Q. And, by the end of year, this remained unresolved,
8 correct?

9 A. That's what it shows, yes.

10 Q. Did VGS ever obtain the missing procedures, obtain
11 them and share them with the Department?

12 A. Yeah. I don't have any recollection of that, but
13 I don't remember seeing this issue in the, in
14 subsequent inspections, so I assume the answer to that
15 question is "yes".

16 Q. Move down to the second half of the page. Issue
17 12, Pipeline Construction QA/QC, is this the issue we
18 were discussing earlier about awaiting QA/QC
19 documentation?

20 A. No, I don't think so. The issue we were
21 discussing earlier was where he was filling out QA/QC
22 documentation on a portion of the form that I believe
23 is irrelevant. This seems to be referring to 110
24 identified anomalies by the materials manager on site,
25 and, you know, that's not very specific about who found

1 what, but my assumption would be that's referring to
2 coating anomalies that were found at the pipe storage
3 yard, because I have seen other notices of that kind of
4 thing.

5 So, you know, so the, the comment is, "I've not
6 received the QC findings from the mill inspections".
7 So the, so what I'm assuming this means -- and, again,
8 I'm reading between the lines quite a bit, because it
9 doesn't have a lot of backup here. You know, they're
10 saying, hey, you found 110 places where the pipe mill
11 or the coating mill, in this case, didn't, you know,
12 didn't correctly repair the coating on the pipe they
13 shipped to you, okay?

14 So, well, shame on them, good for VGS to find 110
15 locations that, that weren't repaired correctly, but,
16 but, obviously, the inspector is saying, hey, you need
17 to go back to the mill and, and get their QC records.
18 You know, how come they didn't find this and you found
19 it? So it's more of a manufacturing quality control
20 process, I think, where the inspector is saying, look,
21 you know, it's good to find the problem, but, you know,
22 how come the pipe mill or the coating mill had the
23 problem to begin with? So go back, and let's try to
24 solve the root cause of the problem, not try to fix it
25 once it shows up on our site. I think that's what

1 they're saying on Item 12.

2 Q. So, as of the end of the year, the company had
3 requested from the mill the QA/QC documentation and had
4 not received it, correct?

5 A. That's what it looks like to me, yes.

6 Q. And this is pipeline that had already been buried
7 in the trench and covered up?

8 A. Again, this is kind of a root cause analysis, you
9 know, let's keep this problem from happening in the
10 future. I don't see it as a, as something that tells
11 you the current pipe is unsafe or, or noncompliant.
12 It's just that, you know, if I'm on an assembly line
13 and a number of the parts that I need to assemble are
14 defective when they come to me, well, I can throw out
15 the defective parts and keep going, but somebody needs
16 to ask the question, How come defective parts are
17 coming to me down the assembly line?

18 So, as long as I'm catching the defective parts
19 and not putting them in the final product, you know,
20 the final product's okay, but, you know, somebody needs
21 to go back upstream in this process and go, How come
22 I'm getting defective parts to begin with? So that
23 seems to be what's happened here. It doesn't imply
24 that the pipe that was buried is noncompliant in any
25 way.

1 Q. Okay. The next one is Issue Number 13, Pipeline
2 construction, installation of pipe in ditch. That's
3 the incident you've already told us about --

4 A. Right.

5 Q. -- with someone forcing, a contractor forcing the
6 pipe into the ditch?

7 A. Right.

8 Q. And that pipe was cut out, or that part of the
9 pipe was cut out and replaced, correct?

10 A. Yeah, with a, with a field bend. So they, they
11 permanently bent the pipe and then reinstalled it in a
12 way that actually fit the ditch.

13 Q. Next issue, Number 14, welding, why don't you just
14 describe that very briefly?

15 A. Let's see. "Observed fabrication of pig launcher
16 piping consisting of Grade BX42 pipe being welded with
17 welding procedure 16X65 butt weld".

18 Okay. So, so this, again, points to the, to the
19 level of detail involved in a welding procedure. So,
20 so, even though they look the same, you know, to the
21 naked eye, X42 pipe has a 42,000-pound yield strength,
22 and X65 pipe has a 65,000-pound yield strength, and the
23 procedure to weld what appears to be identical pipe may
24 actually be different to weld the X42 as opposed to the
25 X65.

1 Now, I would, you know, as a nonexpert welding
2 engineer knowing enough, you know, knowing more than
3 the average person about welding, you know, I would
4 assume the issue was really more the opposite, right?
5 If I had an X42 welding procedure and I used it on X65
6 pipe, it's like, oh, that weld might not be strong
7 enough. If I'm using an X65 procedure and using it to
8 weld X42, pipe that's probably fine, maybe
9 overspecified.

10 But, nevertheless, you know, your procedure is
11 specific to the type of pipe that you're welding, and
12 it's going to have a pretty narrow band of this
13 procedure's good for X60 to X70, or this is good for
14 X30 to X45, or whatever, and they were welding using a
15 procedure that wasn't qualified for that strength of
16 pipe, and so, again, they went back, and they
17 requalified the procedure.

18 Q. Thank you.

19 A. Yeah.

20 Q. On Page 19, which is the last page, and I'm going
21 to participate a little bit interactively in the
22 question here. Issue Number 15, procedure, slash,
23 support, November 3rd 2014, quote, "Observed
24 installation of pipe in ditch at Station 120 plus 00 in
25 area where shot rock in ditch, comma, supported by

1 sandbags spaced between 23 feet and 35 feet on center,
2 period".

3 So am I correct that they observed a pipe in an
4 area where there was shot rock in the ditch supported
5 by sandbags that were 23 to 35 feet apart?

6 A. That's correct.

7 Q. That's a long distance between sandbags, isn't it?

8 A. Actually, I think elsewhere in my report I deal
9 with the unsupported span calculations for this pipe,
10 and this pipe being a 65,000-pound yield strength,
11 relatively thick for its diameter. You know, I, I
12 think I used a couple different methods to say, What's
13 the unsupported span, acceptable unsupported span
14 distance, and it was well in excess of these distances.

15 So it wasn't really a safety problem for an
16 unsupported span, because the pipe can handle that.
17 The, the problem was that it was in excess of what
18 their specification said they were going to have. So
19 you see the resolution, the contractor went back and
20 put sandbags at 16 feet, and then they rewrote their
21 procedure for pipe support.

22 I'm not sure exactly what changed in the pipe
23 support procedure there, but this is more an issue of
24 noncompliance with the procedure at the time that this
25 was done as opposed to a safety problem where the pipe

1 was strung too far apart between supports.

2 Q. So, Mr. Byrd, if the pipeline specifications and
3 training had specified compliance with our exhibit,
4 Cross Exhibit 11B, which is Mr. Heintz's drawings that
5 he submitted to the Commission, which required at least
6 six inches of sand beneath the pipe if it was on earth
7 and at least nine inches of sand beneath the pipe if it
8 were on ledge, we wouldn't have to worry about how far
9 apart the sandbags are, would we?

10 A. Well, if I'm following what you're saying, you're
11 just describing two different construction techniques.
12 So this, this observation here on the inspection report
13 doesn't say anything. It quotes the specification,
14 which does talk about, you know, nine inches and things
15 like that, but, but the finding here wasn't, didn't
16 have to do with the elevation of the pipe above the
17 bottom of the ditch. It, it, my assumption would be
18 the elevation was fine, because he didn't cite that.
19 All he cited was the spacing between the sandbags.

20 So I've explained earlier, you know, there are a
21 couple of different ways to provide the bedding around
22 the pipe, and the most common way in the transmission
23 pipeline industry is you support it above the bottom of
24 the ditch with sandbags, as they're describing here,
25 and then you put the select fill and let it go

1 underneath as well as on the sides and on top of the
2 pipe.

3 So, so they didn't, they didn't raise any issues
4 with the actual distance between the bottom of the pipe
5 and the bottom of the ditch. They just raised issue
6 with, hey, your supports are too far apart. You're
7 supposed to have them closer together. They went back
8 and put them closer together.

9 Q. I'm sure I asked a poorly worded question, so I'll
10 try and ask a better one. Exhibit 11B, the drawings
11 that, the typical trench detail that Mr. Heintz
12 submitted to the Commission, didn't say anything about
13 sandbags. It said the pipe will rest on six to nine
14 inches of sand, correct? That's a yes-or-no question
15 if you can handle it.

16 A. Well, I would prefer to see the exact exhibit,
17 because I don't remember the details of that exhibit
18 and what else it might have said. So I don't want to
19 be tied into a yes-or-no answer where sandbags might
20 have been somewhere else that you didn't talk about.

21 Q. All right. We'll get Exhibit 11B up on the screen
22 here again. Jumping around here. There we go. Do you
23 see Exhibit 11B, .pdf Page 4 of 9?

24 A. Yes. Yeah. So, so Item 5 there, the typical
25 trench detail, I mean, that, that is specific to roads.

1 I mean, it's, it's clearly a trench for roads, whether
2 they're paved or unpaved. It talks about the crushed
3 stone and gravel sub-base, "See pavement section". So
4 this, in my mind, this particular image you're showing
5 me here isn't a general trench detail. It's a road
6 crossing trench detail.

7 Q. Mr. Byrd, it says "Typical Trench Detail", does it
8 not?

9 A. I'm also looking at the road surface in the
10 detail. I mean, you know, I'm just -- all these titles
11 don't necessarily go on for six paragraphs to tell you
12 every single thing they might apply to or not apply to.
13 I'm just seeing typical trench detail. By the way,
14 these are the road details.

15 Q. Well, we'll start with this exhibit. Does it say
16 anything about using sandbags?

17 A. I don't see the word "sandbag" on that part, but I
18 think I saw lots of sandbags in some of the other
19 diagrams as you were scrolling around.

20 Q. This example for erosion control trench breakers?

21 A. Well, I didn't get a chance to actually examine
22 all of that, although I think these are the EPSC, you
23 know, diagrams. So EPSC stands for erosion prevention
24 and sedimentation control. So the focus of these
25 diagrams would be, How do I prevent erosion and how to

1 prevent sedimentation, you know, from, you know, muddy
2 water getting off site and stuff like that. So you'd
3 see lots of detail around, you know, sandbags for
4 stream crossings and that kind of thing. You know, I'm
5 not sure the point of this set of diagrams was even
6 intended to give you a lot of detail about the trench
7 itself.

8 Q. Mr. Byrd, typical trench detail Item 5 has nothing
9 to do with EPSC, does it?

10 A. I think these are the EPSC diagrams we're looking
11 at. If you'd scroll down a little bit, maybe it will
12 show.

13 Q. Right. It says "Construction Details - Vermont
14 Gas Proposed 12-inch Pipeline".

15 A. Yeah. So this is ANGP. If you see the drawing
16 number on the bottom right-hand side, some of them say
17 ANGP. Some of them say EPSC. So, yeah, so this is the
18 ANGP diagram, not just the erosion prevention
19 sedimentation control.

20 Q. And you if look at -- okay. Detail Number 4,
21 permanent trench break spacing guideline, that typical
22 drawing does use the word "sandbags", right?

23 A. Well, let me read this. Yeah, trench breaker,
24 sandbags. Yeah. So, I mean, that's how a trench
25 breakers are typically done is you build a sandbag wall

1 across the trench.

2 Q. And, if we return back to typical trench detail,
3 which is Number 5, there's no mention of sandbags. It
4 says, sand fill 6 inch under the pipe and 12 inches
5 over it, right?

6 A. Right. But in this diagram you would presume that
7 the pipe magically floats in the air until I backfill
8 it, and it doesn't do that. I mean, something has to
9 put the pipe six or nine inches higher than the bottom
10 of the trench so I can backfill it, and that happens to
11 be sandbags. They just didn't call out that detail in
12 this diagram, but I don't see that as an issue at all.

13 Q. Are you testifying that it is not a common
14 procedure to put the padding down first and lay the
15 pipe on top of it?

16 A. Not for transmission pipeline like this, no, it's
17 not.

18 Q. Why not like this?

19 A. Okay. I thought I explained that pretty clearly
20 this morning, but I'll try again. Okay. So, so it's
21 common to -- you excavate the trench. You're welding
22 the pipe together outside the trench, you know, so,
23 when you're excavating the trench, you put the spoil on
24 one side of the ditch, the spoil side, and the other
25 side of the ditch is where you're putting your, you're

1 stringing your pipe together and all of your joints of
2 pipe and you're welding them together, and now you have
3 an above-ground pipe that's all welded together, and
4 now it's going to become a below-ground pipe when you
5 lift it up and you stick it in the ditch.

6 And, when they do that, they put, you know,
7 various locations, maybe too far apart, 16 feet, 20
8 feet, whatever, they've got sandbag supports, and then
9 you lay the pipe in the ditch on top of the sandbags,
10 and, in my opinion, that, that is a better way to
11 guarantee that you've got the proper amount of
12 clearance between the pipe and the bottom of the ditch,
13 because I can measure with a ruler before I ever start
14 backfilling exactly how high it is.

15 So that's the common technique in the industry.
16 It is not the alternative that you're suggesting is I
17 excavate the ditch, I put six inches of padding down,
18 and then I put my pipe on top of the padding, then I
19 fill around it. Now, that is common for
20 bell-and-spigot pipe. You know, it's common for pipe
21 that doesn't have a lot of strength in and of itself
22 that I can't support every 15 or 20 or 30 feet with
23 sandbags. You know, so water pipelines and things like
24 that, you've got to lay them on a prepared bed. You
25 don't have to do that with this kind of pipe, and,

1 typically, within the industry it's not done that way.

2 Q. I want to ask you to listen to my question a
3 little more carefully. I didn't ask you whether laying
4 it on a pipe on a bed of sand is the only way to do it.
5 I didn't ask you whether it's the most common way. I
6 only asked you whether it is a common way.

7 Is laying the pipe directly on a bed of sand a
8 common way of laying a transmission pipe into a trench?

9 A. I would say it's an uncommon way.

10 Q. And, whether you view it as common or uncommon,
11 isn't that what typical trench detail exhibit number,
12 Diagram Number 5 on Exhibit 11B shows?

13 A. With all due respect, Mr. Dumont, that is what an
14 untrained person might assume, but that is not what
15 anybody in the transmission pipeline industry would
16 assume when they look at that diagram. That's my
17 professional opinion, and I'm sticking with it.

18 Q. Why don't we turn to our cross exhibit -- I'm
19 sorry. It's not a cross exhibit. It's an exhibit to
20 Mr. Liebert's prefiled testimony. It starts at Page
21 193 of his prefiled rebuttal testimony. Excuse me.
22 Scroll this down a little bit so you can get the date
23 here. Are you familiar with this document called
24 "Pipeline Integrity Management - a Report to the
25 Secretary of Transportation"?

1 A. It's not one that I'm very familiar with, no.

2 Q. Where have you seen it before? Where have you run
3 into it before?

4 A. Well, I've certainly seen it in the documents you
5 produced. This, as I recall, is a report that was
6 commissioned by PHMSA, you know, to PHMSA. You know,
7 if you'd scroll up a little bit so I can see the whole
8 title here. So I'm familiar with the issue.

9 Okay. So the report to the Secretary of
10 Transportation, and let's see. What's the date of this
11 report? Could you refresh my memory? 2013? Okay. So
12 seven years ago. So, if you scroll back up a little
13 bit, the focus of this report is the words
14 "performance-based", okay? So an evaluation to help
15 improve PHMSA's oversight of performance-based pipeline
16 safety programs.

17 And, and, when they use the word or the phrase
18 "performance-based", that's as an alternative to
19 prescriptive, and the PHMSA regulations are both, okay?
20 So there are numerous places in the PHMSA regulations
21 where they spell out a very specific thing. You have
22 to do your cathodic protection readings every year.
23 You have to inspect your rectifier 6 times a month, or
24 6 times a year, not to exceed 2.5 months between
25 inspections. You have to inspect your right-of-way at

1 a certain frequency. So there are very clear
2 expectations, and it's easy for an auditor to say they
3 did it or they didn't do it, right? Do I see the
4 inspections, or are they properly spaced in time?
5 Okay. Then they met that requirement.

6 Integrity management, even though there are
7 prescriptive parts to it, it's a much more
8 performance-based. You know, the operator has to do a
9 risk assessment. Well, they don't tell operators how
10 to do a risk assessment. You know, they, they say
11 these are the factors you have to consider when you
12 perform a risk assessment, but they say you have to do
13 a risk assessment. You have to do a risk
14 prioritization of your pipeline segments. You have to
15 do a threat identification process.

16 So, you know, so there are all these things that
17 are very pretty high-level from a management system
18 standpoint that PHMSA regulations require operators to
19 do. Well, it makes the inspectors's life very
20 difficult, because, you know, operators like
21 performance-based stuff, because it gives them a lot of
22 latitude to do things differently, you know, as
23 appropriate to their situation.

24 But inspectors generally don't like it, because
25 it's like, well, where, where is the bar, right? What,

1 what exactly do I have to require somebody to do, and
2 how do I know that they did it correctly? And it
3 requires a lot more expertise for an auditor to
4 evaluate a performance-based system like integrity
5 management.

6 So this report was to help inform PHMSA about how
7 to do that better. You know, how do you train, how do
8 you qualify your inspectors? Because, I mean, there
9 was, at this point in time, there was a lot of
10 back-and-forth between PHMSA and the pipeline industry,
11 because, you know, the pipeline industry felt a lot of
12 inspectors were missing the point, you know, and they
13 were trying to create expectations that didn't exist,
14 or they were focusing on insignificant issues and not
15 really looking at the big picture, and so this report
16 was to help improve PHMSA's oversight of the
17 performance-based stuff. You know, because, at the end
18 of the day, they have to audit these programs, and they
19 need to figure out a way to do it effectively. So
20 that's, that's my understanding of this report and why
21 it was generated.

22 Q. And you agree this is, was paid for by the US
23 Secretary of Transportation and filed with PHMSA?

24 A. It, it looks like it. I don't know the details.

25 Q. It's on PHMSA's website.

1 A. I'm not surprised. I don't know who paid for it.

2 Q. But you saw it before I produced it as an exhibit,
3 correct?

4 A. I'm sure I, I'm sure I have seen it. I mean, I
5 typically would see this kind of thing as it's
6 generated, but it wasn't written for me. It wasn't
7 written for consultants. It's not the kind of thing
8 that I would -- you know, it wasn't actually written
9 for the pipeline industry. It was written for PHMSA to
10 help them do a better job with their audits. So it's
11 not the kind of report that I would spend a lot of time
12 on.

13 Q. If it's written for PHMSA, do you believe it would
14 be a reliable source of information about pipeline
15 safety for the Vermont Public Utility Commission?

16 A. Well, I mean, I, I'm sure that you can find a
17 roomful of experts that will disagree with different
18 parts of this report. I mean, it is what it is. It's
19 a report to PHMSA for a specific purpose as of that
20 point in time. You know, so, I mean, I, I don't grant
21 it any authority other than that.

22 HEARING OFFICER TOUSLEY: Mr. Byrd, just a
23 quick question if I can interject. Did, in the
24 construction of the ANGP, was a performance-based
25 pipeline safety program used?

1 MR. BYRD: That's a, that's a pretty
2 high-level question. A performance-based pipeline
3 safety program? I would say, generally, the answer to
4 that is "yes". Now, did they have a manual that says,
5 This is my performance-based pipeline safety program?
6 I don't recall seeing anything like that. But they did
7 have management systems that they were using, and they,
8 you know, went through, you know, kind of the standard
9 processes that you would do to say, What did we do?
10 How well did it work? What adjustments do we need to
11 make, you know, based off of their learnings, based off
12 of problems that they had during construction, and
13 that's, you know, generally speaking, the
14 performance-based safety management system thing that I
15 would expect them to have.

16 So I would answer your question, functionally, I
17 think, yes. You know, did they have a manual to point
18 to? I don't remember one.

19 HEARING OFFICER TOUSLEY: Okay, thank you.

20 MR. BYRD: Did that answer your question
21 correctly?

22 HEARING OFFICER TOUSLEY: Yes, it did. Thank
23 you.

24 ATTORNEY DUMONT: Thank you. Mr. Tousley,
25 since this was an exhibit to Mr. Liebert's testimony

1 and his testimony and exhibits were stipulated as not
2 being objected to, it's actually an exhibit already,
3 but I felt I should still try and lay that foundation.

4 BY ATTORNEY DUMONT:

5 Q. If you could turn to -- I'm going to turn to .pdf
6 196.

7 A. Now go ahead. Yeah, sorry.

8 Q. This is Page Number 1 of the report.

9 A. Okay. The part about scope, objectives, and
10 methodology?

11 Q. Just above that, the paragraph above that, I'm
12 going to read it to you and see if you agree:

13 "Pipelines have been a comparatively safe mode of
14 transportation over the last several decades, comma,
15 with relatively few deaths and injuries while
16 transporting extremely large quantities of energy
17 products across the country, period".

18 Do you agree with that?

19 A. I do.

20 Q. "Nevertheless, comma, they present a substantial
21 threat of low-probability, comma, high-consequence
22 accidents with very high public concern when these
23 accidents occur". Do you agree with that?

24 A. I do.

25 Q. Great.

1 A. I think the bottom of the page really speaks to
2 the purpose of the report. They say the evaluation was
3 planned initially in 2006, but they only finished the
4 report in 2013. So seven years to do a report of this
5 type seems exceptionally long, but they, they started
6 thinking about how to do this better in 2006, but they
7 mention specifically the San Bruno incident.

8 And, for those who aren't in the pipeline industry
9 and don't live outside of San Francisco, maybe you're
10 not familiar, but San Bruno is a suburb of San
11 Francisco, basically between San Francisco and the San
12 Francisco Airport, and a pipeline ruptured there, a
13 50-plus-year-old pipeline, large diameter gas
14 transmission in the middle of a neighborhood and burned
15 down 30-something houses, killed, you know, a dozen or
16 so people. I forget all the exact numbers.

17 A tragic, tragic pipeline incident, and that pipe
18 was in an integrity management program, and PHMSA had
19 been, or the state, in this case, the California Public
20 Utility Commission, had been inspecting that operator
21 and that pipe, which was part of an integrity
22 management program.

23 So, so, obviously, the question of, hey, is your
24 oversight of integrity management programs effective?
25 You know, how can you have an operator that has an

1 integrity management program and you inspect that
2 integrity management program, and yet you still have
3 this tragic incident? You know, why did you not see
4 this coming?

5 So, so that, you know, from, from my reading of
6 this is what really kicked off this report again, and
7 then they finalized it, Here's how you can do a better
8 job inspecting these integrity management programs that
9 are performance-based. So that's the rest of the
10 context on that report.

11 Q. Now, turning to .pdf 220, middle of the page --

12 A. Right.

13 Q. -- chart, the name of the chart is "Gas
14 Transmission Pipeline Incidents".

15 A. Right.

16 Q. And then the text to the left of it states, "Gas
17 transmission pipeline incidents were rising at a rate
18 of about 3 percent per year before IM implementation,
19 and the total number of reported incidents has
20 increased even more after IM implementation. In fact,
21 every year since IM implementation in 2004 has been
22 higher than any of the 18 years before IM. While the
23 numbers and proportion of HCAs are relatively small,
24 the patterns here appear to be increasing since 2004 as
25 well".

1 Did I read that correctly?

2 A. Actually, you made a mistake in there. It's
3 proportion in HCAs. I think you said proportion of
4 HCAs. HCA in this context stands for high-consequence
5 area. So those are the specific areas that the
6 integrity management program rule applies to. So
7 they're saying this is the trend for all pipelines,
8 and, by the way, the trend is similar even inside the
9 specific parts of the pipe or the environment that
10 integrity management was intended to protect.

11 Q. Is there anything that I just read that you, as a
12 pipeline safety expert, disagree with?

13 A. No. I, I have no doubt that those are facts.
14 I'll add, you know, for, for context that these numbers
15 aren't normalized by miles. So, so what they didn't
16 say is, well, you've been building more than 3 percent
17 per year of extra mileage too. So the actual trend
18 isn't up per mile. It's flat or down a little bit, but
19 that's not the point they wanted to make.

20 Q. If I turn to .pdf 223, which is Page Number 28 of
21 the report --

22 A. Okay.

23 Q. -- there's a chart on the right that says
24 "Hazardous Liquid Accidents Property Damage". Does
25 that apply, or are we not -- no, I'm sorry. That's the

1 wrong chart. That's hazardous liquid accidents. I
2 guess I want you to look at the part above that which
3 has gas transmission pipelines, "Accidents, Incidents
4 and Consequences". On the left it says "Hazardous
5 Liquid". On the right it says "Gas Transmission". You
6 see that?

7 A. That's right. So and the graph is property
8 damage, right?

9 Q. Right.

10 A. So this is dollar values, yeah.

11 Q. And the text says "Property Damage: Incident
12 reports show property damage overall rising
13 substantially clearly in contrast to the expected
14 reduction from IM". Did I read that one right?

15 A. Yeah. So, when you, when you look at the graph
16 just above that statement on the right-hand side for
17 gas transmission pipelines and HCAs for 2004 and 2012,
18 you see it's virtually zero, and then you have one huge
19 jump, which was San Bruno. I mean, you have a
20 billion-dollar accident, and, all of a sudden, the cost
21 for property damage goes through the roof.

22 You know, you could make of this what you will as
23 far as, most of the time, it's almost nothing. Every
24 now and then, you have a really huge, expensive one,
25 and that's just the case, and you see the same thing on

1 the liquid side as well.

2 Q. Okay. The next page is Page Number 29, .pdf
3 Number 224. On the bottom of the page, there is a
4 chart "Accidents/Incidents and Consequences". On the
5 left it's for hazardous liquid pipelines. On the right
6 it's gas transmission pipelines, and then there are two
7 rows beneath that. One is corrosion failure. One is
8 material failure. And then there's text underneath it.
9 I will read the text.

10 It says, "Corrosion and material failure, colon,
11 the IM program concentrated most attention on two
12 accident causes, dash, corrosion and material failure
13 in HCAs, period. The program expected these incidents
14 to go down, semicolon; instead, comma, they are rising
15 for gas transmission pipelines, period. Data for
16 liquid lines are inconclusive".

17 Next paragraph, "Corrosion and material failure
18 are the two most frequent causes of incidents for both
19 liquid and gas transmission pipelines".

20 Starting with did I read that correctly?

21 A. Yes, you did.

22 Q. And, as a pipeline safety expert, do you agree
23 with what I just read?

24 A. I, I don't doubt their facts, yes, but I agree
25 with that.

1 Q. Next page is .pdf 225, Page Number 30. There's
2 more detail about gas transmission incidents due to
3 corrosion and material failure. Why don't you take a
4 second to look at that?

5 A. So this whole paragraph here? Yeah.

6 Q. Yes, that wraps around the two charts.

7 A. Right.

8 Q. Why don't you explain in your own words what it
9 says here?

10 A. Well, so, I mean, the larger issue that I think
11 they're trying to get at is, hey, if we've got this
12 integrity management regulation and companies are
13 spending billions of dollars, which they are, to comply
14 with it, how come we're not seeing a much more dramatic
15 decrease in the types of incidents that this program is
16 intended to prevent?

17 And I think that's an excellent question, and, you
18 know, we're still grappling with that. Is the, you
19 know, program, you know, I mean, already, already at a
20 level so low that you just can't do any better? I
21 don't believe that. I think that, you know, you can do
22 better, but we're already at a very low level, and you
23 do see a trend going up.

24 Now, like I've mentioned earlier, these aren't
25 normalized by mile. So, so we're also building a lot

1 more miles of pipe. The other thing that this doesn't
2 give any, you know, doesn't recognize at all is there
3 isn't data that starts in 1986, and the criteria to
4 report an incident have changed significantly over that
5 period of time. So they didn't normalize the data to
6 say, well, yeah, but back in the day, we didn't even
7 have to report that stuff.

8 So, you know, they didn't go back and say, well,
9 using the 20, you know, 2016 or 2013 criteria, this is
10 what would have been reported back then. They have no
11 way of knowing that. All they know is what was
12 reported back then, and the criteria were much more,
13 less strict than they are now.

14 So, so, in one respect, I'm not surprised to see
15 the trend go up, because the reporting criteria become
16 more, more strict, but, that being said, even when you
17 use the same reporting criteria for the past, you know,
18 10, 20 years, you know, there's an upward trend. It's
19 offset by the upward trend in mileage, but the question
20 remains, hey, how do we do better on these integrity
21 management programs? And, and PHMSA was working on it
22 then, and they're continuing to work on it now.

23 Q. The text states, "Corrosion and material failure
24 are the most frequent causes of GT incidents, comma,
25 accounting for 20 percent and 28 percent respectively

1 of all reported GT incidents since 2004".

2 GT means gas transmission, correct?

3 A. Yes. In this context, they're talking about gas
4 transmission.

5 Q. And do you agree that corrosion and material
6 failure are the most frequent causes?

7 A. Well, I'm not surprised. I mean, I don't
8 remember, you know, I don't remember all the data since
9 2004, but, but they consistently show higher on the
10 list. Now, now, what they're, what they're showing is
11 here is all reportable incidents. They're not showing
12 these are the tragic incidents, and these are the
13 nontragic incidents. They're just showing what's a
14 reportable incident.

15 So, in the, the liquid industry, and I know we're
16 not talking about liquid pipelines, but in the liquid
17 industry they've come up with some different
18 definitions that they use for significant, serious.
19 You know, I forget the other phrase. You know, trying
20 to look, okay, what's the -- you know, the point of
21 integrity management isn't to eliminate incidents.
22 It's to eliminate tragic incidents, okay?

23 So, you know, I know lots of operators will tell
24 you, look, I'd happily have ten spills inside my
25 containment in my pipeline facility as opposed to one

1 big spill out on the right-of-way. Okay. So spills
2 aren't all the same. Incidents in this situation
3 aren't all the same.

4 So they didn't really parse, you know, what's, are
5 you getting rid of the really important stuff? You
6 know, this part of the report, anyway, doesn't really
7 address that, and, and I would argue that that was the
8 whole point of integrity management wasn't to eliminate
9 all incidents. It was to get rid of the worst ones in
10 the, quote, "high-consequence areas".

11 So we have shown in other analysis that, you know,
12 incidents in high-consequence areas very rarely, like,
13 2 percent of the time actually affected that area. So
14 you can argue that, well, at the end of the day, it's
15 pretty effective. It doesn't show up in the numbers.

16 Q. The next sentence is, "The next highest causes are
17 excavation damage and natural force damage, comma, both
18 at 14 percent". Do you agree with that?

19 A. Well, again, I, I, I haven't checked their math,
20 but I'm not surprised. And it's interesting. The last
21 sentence, "The change in reporting might account for
22 some increase here too", and that's all they say, you
23 know, a little parenthetical statement saying, hey,
24 well, some of this increase is probably because we
25 report more stuff now, but they didn't attempt to

1 reconcile, and, you know, if I were putting on my
2 cynical hat for just a second, I would say, well, they
3 didn't intend to reconcile, because that would refute
4 their point, but I don't know that for a fact.

5 Q. All right. Go to .pdf 229, which is report Page
6 Number 34, the section on aging infrastructure, which
7 states, "The infrastructure is aging, comma, but the
8 data suggest that pipe 50 to 80 years old is just as,
9 quote, 'safe', unquote, as pipe that is 10 to 50 years
10 old, period. Newer pipe, parens, (zero to six years
11 old) tends to present a greater rate of failure, comma,
12 but there is not enough newer pipe to account for the
13 increases", and then I ran off the bottom of the page.
14 Next page, "for the increases in accidents".

15 A. Right.

16 Q. I'm now on the next Page 35, .pdf 230, "for the
17 increase accidents, period. At about six years old,
18 comma, the failure rate for newer pipe reaches the,
19 quote, 'base rate', dash, the level we continue to see
20 for pipe up to 80 years old".

21 Do you agree with what I just read?

22 A. Well, I, you know, there is, not just within the
23 pipeline industry, but in all industries, when you look
24 at failure rates by age of a component or a system, the
25 system, a phenomenon they refer to as the bathtub

1 curve. So brand-new systems fail fairly frequently for
2 a variety of reasons, and then you level out, and
3 that's the bottom of the bathtub, and then, eventually,
4 they reach the end of their life, and then you get to
5 the other end of the bathtub where the failure rates go
6 really high, okay?

7 So what they're saying here is, well, you know,
8 once you get to the six years, you're kind of at the
9 bottom of the bathtub curve, and, you know, there's,
10 there's good news in that statement, which is, hey,
11 we've learned how to effectively manage integrity of
12 pipes, even when they're 50, 60, 70, 80 years old,
13 until they reach the end of their life, and then you
14 just start replacing them or abandoning them.

15 So, so it's true, and there's plenty of data that
16 shows failure rates for brand-new pipes are higher for
17 a number of reasons. You know, inside facilities,
18 construction defects, operational errors, because
19 people didn't know how to operate it correctly. You
20 know, there's a variety of, of causes for that.

21 Q. All right. I've moved to .pdf 241, Page Number
22 46. No, I put in the wrong number. I put in 246.
23 Wrong number. There we go. This is a discussion on
24 in-line inspection tools.

25 A. Yes.

1 Q. I'm going to read it to you and ask you if you
2 agree. "In-line inspection tools, dash, called smart,
3 quote, 'pigs', unquote, because of the squealing sound
4 these kinds of tools made as they moved through a
5 pipeline, dash, provide measurements of wall thickness,
6 comma, length and depth of corrosion, pitting, or
7 excavation gouging, comma, detection of certain kinds
8 of cracks, comma, and measurement of dents or other
9 deformation in the pipe, period. Different tools
10 typically are used for each kind of threat, period.
11 ILI tools offer the most extensive characterization of
12 defects and condition of the pipe, period. But they
13 have several important limitations, colon: First
14 bullet point. ILI tools generally can't detect seam
15 cracks or stress corrosion cracking, period".

16 So let me ask you. Is there anything I've read up
17 until now that you disagree with?

18 A. Well, I disagree -- well, I agree that their
19 statement was probably accurate back in 2003 when they
20 wrote the report, but there's been quite a bit of
21 development within the industry on ILI tools that can
22 detect seam cracks and stress corrosion cracking. So I
23 disagree with that statement, but that was probably
24 true when they made it.

25 Q. I'm sorry. You said 2003. Did you mean to say

1 that?

2 A. Did I say 2003 instead of 2013? Even in the last
3 seven years, and that's, crack detection and stress
4 corrosion cracking has been a focus of the pipeline
5 industry, and they've been, you know, rapidly
6 developing tools that can do that better, but I will
7 add that those are irrelevant for the, for the ANGP
8 pipeline anyway.

9 Q. Because?

10 A. Well, let's take stress corrosion cracking. So
11 the key word here is "stress". So, so this is designed
12 to be a Class 3 pipeline, so it operates at a maximum
13 of 50 percent of SMYS, and you tend to see stress
14 corrosion cracking in pipelines that are operating at a
15 high stress level, not a 50 percent stress level, and
16 you tend to see it in old, thin-wall pipe that has bad
17 coating in a corrosive environment.

18 So this pipeline has excellent coating and
19 excellent cathodic protection through its entire
20 length, so you don't have the corrosion problem. You
21 don't have the stress problem. It really is just not
22 susceptible to stress corrosion cracking, period.

23 Seam cracking, on the other hand, is almost
24 exclusively for pipes that were manufactured prior to
25 1970 using electronic resistance welded technology. So

1 low-frequency ERW pre-1970 pipe is particularly
2 susceptible to seam cracking, and there's plenty of
3 that pipe in the industry, and, you know, so we've been
4 developing tools so we can find those kinds of seam
5 cracks. I mean, this, this is an ERW pipe, but it's
6 designed with modern technologies. It's just not
7 susceptible to seam cracking.

8 Q. Thank you. Bullet point, I'm sorry, the next
9 bullet point, "Different kinds of tools, parens, (EG
10 magnetic flux or ultrasonic), end of parens, have
11 different strengths and weaknesses in finding different
12 kinds of anomalies, comma, and even within the same
13 type of tool the detection capabilities can vary,
14 period".

15 Do you agree with that?

16 A. I do, yes.

17 Q. Next bullet point, "ILI tools can't detect every
18 defect in the pipe, comma, because of a basic design
19 limitation, dash, most ILI tools advertise a 90 percent
20 probability of detection, comma, which means that about
21 10 percent of defects simply will be missed with a
22 single ILI run".

23 Do you agree with that?

24 A. Well, I think that statement's a little too
25 simplistic, and, when you start talking about ILI

1 specifications, they have a probability of detection,
2 and they have a probability of identification. Those
3 are two different things.

4 So probability of detection is, Did I see
5 anything? And then probability of identification, Did
6 I correctly identify it? So these, these tools are
7 giving you what I refer to as squiggly lines on a page,
8 and, you know, you have trained operators using
9 computer algorithms. It's kind of like reading an EKG
10 on your heart. So, if you've ever been to the doctor
11 and gotten a EKG, I look at it it's just a squiggly
12 line on a page. I have no idea what it means, but a
13 doctor who knows what they're doing can look at it and
14 go, oh, well, you've got this heart valve defect, or
15 you've got this rhythm problem or, you know, whatever.
16 They know how to read the squiggly line.

17 Well, that's, that's what a technician is doing
18 when they're reading an in-line inspection result. At
19 the end of the day, it boils down to that. It's a lot
20 more sophisticated, but, you know, did the squiggly
21 line detect something? Did it identify it correctly as
22 internal corrosion, external corrosion, cracking,
23 pitting, you know, selective seam corrosion? You know,
24 the list goes on and on.

25 So this is a very general statement saying that,

1 well, they don't have 100 percent detection for every
2 kind of anomaly, and that's true. You know, the 10
3 percent of defects simply missed, I think, is a little
4 bit misleading, because the things they're missing are
5 the least significant ones. They're, they have a
6 better than 90 percent probability of detection for a
7 significant defect.

8 Q. I don't want to interrupt you. Are you done? Or
9 keep going if you want.

10 A. But I'll grant that they can miss even a
11 significant defect. I mean, we've seen that in the
12 industry. So it's a -- I agree, in general, with what
13 this says, but I believe it's too simple.

14 Q. Okay. I've scrolled to the bottom half of the
15 page. The next bullet point says, "For defects that
16 are detected, comma, measurement of their size is
17 subject to a margin of error, dash, typically 10 to 20
18 percent with 95 percent confidence, comma, meaning that
19 the reported depth and area would be within 10 to 20
20 percent of the actual measured depth and area 95
21 percent of the time, period".

22 Do you agree with that?

23 A. Yes. And this is a, it's a good example of how
24 the math gets incredibly complicated very fast, because
25 you're talking about probabilities of probabilities.

1 So what's the probability that I'm within this
2 probability of being accurate? What's the probability
3 that I'm within this probability of being accurate?

4 So I'm looking at now a matrix of probabilities,
5 and, you know, that's where, you know, I guess people
6 make their money, right, knowing how to do risk
7 assessment with complicated math, but, but, yeah, you
8 don't have 100 percent confidence of anything 100
9 percent of the time. That's just the way it is, and
10 ILI tools are a perfect example of that.

11 Q. Next bullet point, "ILI tools also present a
12 problem of, quote, 'false calls', unquote, dash,
13 indicators of anomalies that do not, in fact, meet the
14 detection criteria, period. False calls are like false
15 alarms, semicolon; they waste resources, comma, and
16 lead to questioning of results, period".

17 Do you agree with that?

18 A. I do, and, in fact, we've seen that in the ILIs
19 for ANGP where the, the ILI tools have detected very
20 few anomalies, and none of them, even under a normal
21 program, would be considered significant enough to dig,
22 but Vermont Gas did dig a number of those anomalies,
23 and none of them were significant. So, so, basically,
24 all they're dealing with is false calls.

25 Q. Now I'm going to read the following, the paragraph

1 that follows the bullet points.

2 A. Um-hum.

3 Q. Quote, "How you read these uncertainties can make
4 a big difference, period. A 90 percent probability of
5 detection sounds like a lot, comma, but knowing that
6 you are completely missing 10 percent of the actual
7 defects in the pipe should make people very cautious
8 about how to interpret what they see and the predicted
9 burst pressures that result, period".

10 Do you agree with the sentence as I just read it?

11 A. Yeah. I mean, the pipeline industry has a way to
12 deal with that, which I'd be glad to explain, but, I
13 mean, what they said is true.

14 Q. Next sentence, "There is no way to know what
15 wasn't detected, semicolon; it's not just the smallest
16 defects, comma, it's a function of whether the pads or
17 gauges on the tool missed a spot, period".

18 Do you agree with that?

19 A. That's true. Sometimes it's the tool's fault.
20 It's not the, you know, something else about the
21 defect.

22 Q. Next sentence, "A 10 to 20 percent measurement
23 tolerance is another matter, semicolon; this could be
24 accounted for in the calculations, comma, except that
25 the 95 percent confidence means 5 percent of measured

1 values will fall outside the reported range, period".

2 Do you agree with that?

3 A. Yes.

4 Q. Next sentence, "PHMSA's guide to operators,
5 parens, (FAQ7.19), end of parens, requires tool
6 tolerances to be used in the risk evaluation, comma,
7 but provides latitude for the operator to decide how to
8 do this, period".

9 Do you agree with that?

10 A. Yes.

11 Q. The next paragraph, "Tests comparing ILI tools
12 results and predictions to findings from excavations
13 and actual failures have shown that anomaly depths can
14 exceed the reported depths, D-E-P-T-H-S, depths,
15 semicolon; anomalies are missed even", and we go to the
16 next page, "even though their length and width exceed
17 the threshold detection limits of the tools,
18 semicolon", and this is now in italics, "pipe
19 sometimes" -- I'm sorry. Start over. And, in italics,
20 "Pipe sometimes fails at less than the predicted burst
21 pressure, end of italics, from ILI data, period".

22 Do you agree that?

23 A. Yes, I do. So and the predicted burst pressure is
24 a common field that you get from an in-line inspection
25 tool inspection. So it says, not just -- you know,

1 when you run an in-line inspection tool, the vendor
2 will give you a report. Of course, the details vary
3 from vendor to vendor and the type of tool that you
4 ran, but, but they'll generally tell you, okay, here's
5 all the defects I found. These are the locations.
6 This is the length. This is the width. This is the
7 depth, and, and, based off of that calculated
8 information, I can tell you this pipe would rupture at
9 a certain pressure, okay?

10 So, obviously, a pipeline operator would look at
11 that and go, well, do I have any that are predicted to
12 rupture at a pressure lower than I'm operating at or
13 that I want to be able to operate at? And those would
14 be critical defects, at least until you prove
15 otherwise. Because, if, if you think you can operate
16 your pipeline at 1,440 psi like the ANGP and you get a
17 predicted burst pressure of 1,000, you'd go, well,
18 jeez, that, that calculation tells me I'm not good for
19 my operating pressure. I need to go work on that or
20 go, go deal with it immediately, and those are what the
21 regulations refer to as immediate repair conditions.

22 Of course, as we've already explained, the tools
23 aren't perfect. So what they said was a length, what
24 they said was a width, what they said was a depth all
25 comes with a margin of error. So sometimes that margin

1 of error is conservative. Sometimes that margin of
2 error works against you. So there are times where the
3 predictive burst pressure might be 1,000 and it
4 actually bursts at 900. You know, it's, that's just
5 the nature of random statistical variation, and that's
6 why operators build in these margins of errors into
7 their calculations to, to try to accommodate for that.

8 Q. Thank you. Now I'm going to turn to -- sorry. I
9 have a different one.

10 HEARING OFFICER TOUSLEY: Mr. Dumont, I want
11 to remind you that it's just about 2:00 o'clock.

12 ATTORNEY DUMONT: Yes.

13 HEARING OFFICER TOUSLEY: Okay.

14 ATTORNEY DUMONT: I'm nearly done.

15 HEARING OFFICER TOUSLEY: Okay, thank you.

16 BY ATTORNEY DUMONT:

17 Q. I just wanted to ask about Pages 1, 2, 3, 4 of our
18 Exhibit 1. This is PHMSA, the PHMSA website frequently
19 asked questions about pipeline construction.

20 A. Okay, yeah. Just, if you would pause just a
21 second so I can -- yeah, they have lots of FAQs. So
22 this is the pipeline construction FAQs, I assume, for
23 gas and liquid. Okay. You can go ahead.

24 Q. Have you seen these or this page before?

25 A. I'm familiar with the things that are on PHMSA's

1 website. I mean, I, you know, the nature of websites
2 is they just change all the time, but, you know, yeah,
3 I'm familiar with this.

4 Q. Do you believe that the information in PHMSA's
5 frequently answered questions is reliable information?

6 A. Well, it's PHMSA. You know, I'll give you my, my
7 small diatribe about, you know, they call it frequently
8 asked questions, but, frequently, it's not a question.
9 It's just something that PHMSA wants to opine about.
10 So they call it an FAQ, and then they opine about it.
11 So, with that caveat, it's just PHMSA opining about
12 different topics. It doesn't bear the weight of
13 regulation. It doesn't go through a rulemaking
14 process. There's no peer review process or anything
15 like that.

16 Q. This is a question that I know you'll want to talk
17 about. Number 9, "Don't high-strength steels make
18 pipelines safer?" And the answer is, "Pipelines are
19 designed with a safety margin, period. As
20 high-strength steels are used, comma, new pipelines are
21 being designed to use thinner walled and higher
22 strength steel pipe, comma, and may operate at higher
23 pressures, period. It is thus important to assure that
24 the high-strength pipe material meets specifications to
25 assure that the required safety margin is maintained".

1 Do you agree with that?

2 A. I do, and that, that goes to some of the earlier
3 conversation we had about the alternative MAOPs and
4 expensive, you know, really expensive pipeline
5 projects, if I spent a billion dollars on a pipeline
6 project, it makes sense for me to buy the highest
7 strength steel possible so I buy less of it. So the
8 higher the strength, the thinner the wall, especially
9 if I run it at a higher stress level.

10 So that's what operators are doing, and, and you
11 can do that from an engineering standpoint, but it
12 comes with its own set of risks, and, like I said
13 earlier, that's the opposite of what ANGP did. They
14 built it thicker than normal. They didn't go to the
15 thinnest option.

16 And I, my report deals with the
17 diameter-to-thickness ratio for this pipe and how it's
18 much less than the commonly accepted industry limits.
19 So I think that's what this question is getting to.
20 You know, high-strength steel, yeah, all by itself is
21 better, but, if you use high-strength steel to make a
22 thinner pipe, well, it comes with its own issues, and I
23 think that's what they're saying.

24 Q. Turn to Question 14, "Isn't nondestructive testing
25 required after welding? Why is it not finding the

1 problems?" Answer, "Nondestructive testing is required
2 following welding. Ultrasonic inspection and
3 radiographic inspection, parens, (similar to x-rays)
4 end parens, are the most common techniques used,
5 period. These inspection techniques are designed to
6 find gaps in the weld and foreign materials, parens,
7 (i.e. inclusions), end parens, in the weld metal".

8 New paragraph, "Welds in high-strength steels are
9 more susceptible to hydrogen-induced cracking, period.
10 Hydrogen from the welding rods dissolves to make the
11 mold weld to the metal. This hydrogen comes out of
12 solution as the metal cools. If all of the hydrogen is
13 not allowed to escape, comma, it can result in delayed
14 cracking of the finished weld, period. In some recent
15 cases, comma, reviews of NDT records following weld
16 failures have found that there were no cracks or
17 inclusions in the welds, period. In these cases,
18 comma, it is likely that hydrogen-assisted cracking
19 occurred after the post-welding NDT was done".

20 Do you agree with that?

21 A. Not exactly. I mean, I agree with most of it, but
22 I don't agree with their conclusion at the end. You
23 know, an x-ray frequently, I mean, it's, it's a pretty
24 lousy tool to find cracking. So, so the fact that they
25 missed the cracking in that weld during the

1 post-welding NDT just tells me that's what the NDT
2 wasn't good for it. UT, if they had UT'ed it instead
3 of x-rayed it, then they very likely could have found a
4 crack.

5 But this goes to the thing we were talking about
6 earlier on the 2014 PHMSA inspection and the issues
7 they had with welding. You know, the question is,
8 well, hey, didn't I inspect the weld after I welded it?
9 Why didn't it find all the problems? Well, because
10 your inspection can't find all the problems, and that's
11 why it's so important that you have very detailed
12 procedures and you follow them to the letter, and
13 that's what the PHMSA inspector or the state inspector,
14 in this case, was requiring, that I want to see the
15 detailed inspection, and I want to know that you're
16 following it to the letter.

17 Because, otherwise, you can create problems in a
18 weld that aren't visible to the naked eye and won't be
19 found during a post-welding inspection like NDT, and
20 hydrogen is a specific example, and this FAQ goes to a
21 specific pipeline project that was done a few years
22 earlier that was one of these billion-dollar pipeline
23 projects, and they weren't following the welding
24 procedure as it had to do with time between passes.

25 I had mentioned that, when you're welding a

1 pipeline, it's not just one time around and you're
2 done. It's, you do the root pass, and you add all
3 these extra passes, and every one you do adds a little
4 bit more metal.

5 When you're building, you know, a 36-inch or a
6 46-inch diameter pipeline, that's a tremendous amount
7 of weld metal, and the point is you have to keep
8 welding. If you stop and let it cool down and then you
9 weld over it, well, then you get a hydrogen-induced
10 cracking problem, and they were not following their
11 procedure correctly, and they were allowing hydrogen to
12 build up in the weld.

13 And I've got pictures I use in my training
14 programs of that specific example where they had to cut
15 out all the welds and reweld the pipeline, an
16 incredibly expensive problem, and it's, it was a stupid
17 problem, frankly, because they should have followed
18 their procedure, and they should have avoided the
19 problem.

20 Q. Thank you. What I believe is the last question I
21 have for you is about your Attachment 20.

22 A. Okay.

23 Q. Attachment 20 says, "IFC plans 5/13/16 in
24 Modification Bulletin Trans-09", and then there's two
25 asterisks after it, and at the bottom of your list of

1 attachments, it says asterisk, asterisk, "Too large to
2 post to PUC's website".

3 A. Okay. Yeah, you're not showing anything, but I
4 remember, I remember saying that. Okay.

5 Q. Right. Because it, you never posted it. So it's
6 on your list of attachments, but I don't believe you
7 filed it. So I want to first put that in the record.
8 And do you remember looking at that document?

9 A. Yes, I do, and, and I remember sending an email to
10 you and to Officer Tousley and to Ms. Dumont (sic.)
11 indicating that it was one that was simply -- it was,
12 like, 800 megabytes or something, and the PUC's ePUC
13 website doesn't allow you to post anything that size,
14 one huge document. So I said in the cover letter that
15 I would send a thumb drive to you and to Ms. Dumont and
16 to Mr. Tousley containing that attachment, and so the
17 PUC was served with that document, and I notified you
18 and the others of that.

19 Q. Right. And I just want to make sure it's actually
20 in the record and that we can all use it, because it's
21 not on the ePUC, and it's a very important document.

22 A. Yeah, it can't be, unfortunately. It's just a
23 technical limitation. There's nothing, you know,
24 there's nothing, you know, extraordinary about that
25 document. It was a very comprehensive list of, you

1 know, hundreds and hundreds of pages of diagrams, and,
2 you know, I found it to be one of the most
3 comprehensive ones that I had, so that's why I included
4 it as an attachment, but, unfortunately, the file was
5 just so large that I couldn't post it.

6 Q. Yeah. In your list of attachments, you said it
7 was the IFC plans. That means the Issued for
8 Construction plans, correct?

9 A. Right.

10 ATTORNEY DUMONT: Okay. I just wanted that
11 in the record, and I'll have the record reflect that I
12 hope we all agree that that, those IFC plans are, in
13 fact, part of the record of the case. That's all I
14 have.

15 MR. BYRD: Thank you.

16 HEARING OFFICER TOUSLEY: Great. Thank you.
17 Do the other parties have questions in light of Mr.
18 Dumont's questions? Department?

19 ATTORNEY GUZMAN: No, I don't have any
20 further questions.

21 HEARING OFFICER TOUSLEY: Okay, thank you.
22 ANR?

23 ATTORNEY MILLER: I have no questions. Thank
24 you, Mr. Byrd.

25 MR. BYRD: Thank you.

1 HEARING OFFICER TOUSLEY: And, Mr. McClain,
2 VGS, do you have additional?

3 ATTORNEY McCLAIN: We don't have any
4 questions for Mr. Byrd. Thank you for your time.

5 HEARING OFFICER TOUSLEY: Yes, thank you, Mr.
6 Byrd. That was, that was extensive testimony, and you
7 did a great job, and I hope you liked that Circle K.

8 MR. BYRD: Yeah, well, you know, frankly, I
9 didn't mention it, but we, we broke for lunch at, like,
10 you know, 10:45 local time, so I'm going to eat lunch
11 after I'm done here.

12 HEARING OFFICER TOUSLEY: Okay, sounds good.

13 MR. BYRD: All right. Well, I'm logging off,
14 unless you need me.

15 HEARING OFFICER TOUSLEY: Just a second. Do
16 we see any reason why we might want to call him back?

17 ATTORNEY DUMONT: Well, he wanted some of my
18 bread, Mr. Hearing Officer.

19 MR. BYRD: The next trip, Mr. Dumont, I'll
20 expect homemade bread.

21 HEARING OFFICER TOUSLEY: With that, Mr.
22 Byrd, you're excused. Thank you very much for your
23 testimony.

24 MR. BYRD: All right, thank you.

25 HEARING OFFICER TOUSLEY: Okay. It's now

1 2:10 or thereabouts, just about 2:10. Mr. McClain,
2 when will, when will our next witness be ready?

3 ATTORNEY McCLAIN: Mr. Rendall will be ready.
4 Could I, could we take a break and, and I can just make
5 sure he's got a computer set up and everything?

6 HEARING OFFICER TOUSLEY: What time would you
7 like to start with Mr. Rendall?

8 ATTORNEY McCLAIN: How about 2:20, ten
9 minutes?

10 HEARING OFFICER TOUSLEY: Let's make it 2:30.

11 ATTORNEY McCLAIN: Okay, that's fine.

12 HEARING OFFICER TOUSLEY: Okay, thank you.
13 So we're, we're adjourned until 2:30.

14 (A recess was taken from 2:10 p.m. to 2:30 p.m.)

15 HEARING OFFICER TOUSLEY: It appears that we
16 are all back together again. Mr. McClain, are you
17 ready to present your witness?

18 ATTORNEY McCLAIN: Yes. Mr. Rendall's
19 testimony has been admitted into the record by
20 stipulation and is listed on the Joint Exhibit 1, and
21 he's available for cross-examination.

22 HEARING OFFICER TOUSLEY: Okay. Let's just
23 identify him first, though, just to say that we can see
24 his face.

25 ATTORNEY McCLAIN: Absolutely. Mr. Rendall,

1 can you please state your name for the record?

2 MR. RENDALL: Yes. I'm Don Rendall.

3 ATTORNEY McCLAIN: And could you state your
4 occupation?

5 MR. RENDALL: Yes. I'm the President and CEO
6 of Vermont Gas Systems, VGS.

7 ATTORNEY McCLAIN: Mr. Tousley, is that
8 sufficient, or would you like me to go through any more
9 background before he's available?

10 HEARING OFFICER TOUSLEY: No, I think that's
11 sufficient. Thank you. I'm just trying to find my
12 script for the swearing-in. Since we're not in the
13 hearing room, it's not taped on a piece of paper in
14 front of me.

15 DONALD RENDALL,
16 duly sworn to tell the truth, testifies as follows:

17 HEARING OFFICER TOUSLEY: Very well. Mr.
18 Rendall is available for cross-examination. I think
19 we'll start with the Department. Do you have questions
20 for Mr. Rendall?

21 ATTORNEY GUZMAN: I have no cross-examination
22 questions at the moment.

23 HEARING OFFICER TOUSLEY: Okay. ANR?

24 ATTORNEY MILLER: The Agency has no questions
25 for Mr. Rendall. Thank you.

1 HEARING OFFICER TOUSLEY: Okay. Mr. Dumont?

2 ATTORNEY DUMONT: I do have some questions.

3 HEARING OFFICER TOUSLEY: Very well. You may
4 proceed.

5 CROSS-EXAMINATION BY ATTORNEY DUMONT

6 Q. Good afternoon, Mr. Rendall. How are you?

7 A. I'm fine, thank you. How are you?

8 Q. I'm good. You became Chief Executive Officer and
9 President on January 1st of 2015, correct?

10 A. Yes.

11 Q. Do you agree that, in Docket Number 8328 on July
12 31st of 2015, Vermont Gas Systems was fined \$100,000
13 for waiting 164 days in 2014 before informing the
14 Commission of a significant cost increase in the ANGP?

15 A. Yes.

16 Q. Do you agree that the principal reason given by
17 the Commission for the \$100,000 fine was the length of
18 the delay?

19 A. I'd have to go back read the order, which I
20 haven't read in a long time, but I, I recall that the
21 delay was a significant issue for the Commission.

22 Q. Do you agree that, while you were the CEO after
23 the Docket 8328 ruling, VGS waited 256 days before
24 informing the Commission of the agreement to bury the
25 ANGP three feet deep in the VELCO right-of-way rather

1 than the four-foot depth in Mr. Heintz's testimony and
2 in the final order?

3 A. I, I recall that the nonsubstantial change filing
4 we made with the Commission was in the timeframe that
5 you have described. We certainly had had direct and
6 detailed conversations with the Department of Public
7 Service leading up to that filing.

8 Q. In Docket Number 8328, do you realize the same
9 defense or argument was raised by the company, that,
10 Gee, we informed the Department?

11 A. I'm not, I'm not raising it as a defense. I'm
12 simply explaining the circumstances.

13 Q. Okay. We'll get into those circumstances in a few
14 minutes then. Do you agree that, while you were the
15 CEO in May of 2016, Vermont Gas began exploring with
16 Mott MacDonald burial only three feet deep?

17 A. I don't recall what you're referring to, Mr.
18 Dumont. I'm sorry.

19 Q. I'm referring to Mr. Byrd's Attachment 48. It
20 will show up on your screen.

21 A. I see the exhibit.

22 Q. And scroll down a little bit. I'm now in the
23 middle of the page where it describes results, three
24 feet of cover is sufficient.

25 A. Okay, yeah.

1 Q. This is an --

2 A. You'll have to -- if that's what the date on the
3 document is, then it speaks for itself, yes.

4 Q. So Vermont Gas began exploring with Mott MacDonald
5 in May of 2016 burial depth of only three feet,
6 correct?

7 A. I don't think that's what the document says, and I
8 don't recall that being, those being the facts.

9 Q. Okay. Well, you were CEO in May of 2016?

10 A. Yes.

11 Q. Why was the company in communication with Mott
12 MacDonald about burial depth of three feet?

13 A. I think that this, this document, which is, if you
14 could scroll up, we can all be comfortable with what
15 the date of it is. This document is the result of an,
16 a review, not the beginning of it.

17 Q. So you started exploring three-foot depth of cover
18 before May of 2016?

19 A. I don't recall precisely when the, the discussions
20 with, which, with Mott MacDonald began that led to the
21 report on May 25th 2016. I wasn't directly involved in
22 those discussions. I generally recall that our
23 operations team and the pipeline team were having those
24 discussions with Mott MacDonald.

25 Q. When did you, when do you think those discussions

1 began?

2 A. I don't, I don't specifically recall when they
3 began, Mr. Dumont.

4 Q. Would it have been in 2015?

5 A. Yes. I'm looking at this now. I, I, actually, I,
6 this is before the construction was done. This was in
7 May of 2016. I had my years wrong in my own mind. So
8 I don't, I don't have any recollection of these
9 discussions. May of 2016. Yeah.

10 Q. So can we agree it was no, these discussions began
11 no later than May of 2016?

12 A. Yeah. I, as I said, I don't have personal
13 knowledge or recollection as I'm sitting here of the
14 discussions that underlie this document.

15 Q. Do you agree that, weeks or months prior to
16 mid-September of 2016, Mr. Bubolz, B-U-B-O-L-Z, of the
17 Michels company informed Vermont Gas that the planned
18 open-trench construction down to four feet would not
19 succeed in the Clay Plains Swamp?

20 A. I don't have a recollection of when Mr. Bubolz
21 from Michels informed our project team of its concerns.

22 Q. You do agree that he did, in fact, inform the
23 project team of his concern?

24 A. Yeah, I don't dispute that.

25 Q. Have you read his deposition?

1 A. I, I have not read his deposition from cover to
2 cover. I have seen his deposition. I have scanned it,
3 but I can't say that I have closely read it.

4 Q. Have you made any inquiry, as the Chief Executive
5 Officer of the company, when the first date was that
6 you were informed by the construction foreman or by
7 Michels Corporation generally that the planned four
8 feet of burial in the Clay Plains Swamp would not work?

9 A. I, well, my best recollection, Mr. Dumont, as I'm
10 sitting here is that the, the specific issue of
11 construction in the Clay Plains Swamp and achieving a
12 four-foot depth arose in the timeframe that the
13 construction was undertaken. At least that's, that's
14 when I remember it --

15 Q. Well, you told us --

16 A. -- arising.

17 Q. Sorry. Go ahead. Are you done?

18 A. Yes.

19 Q. Well, you told us you haven't read Mr. Bubolz's
20 deposition, but you scanned it. I guess I need to
21 know. What does that mean?

22 A. Well, that means that I remember having -- I
23 remember seeing a, a copy of his, of a written copy of
24 his transcript, either in paper form or on a screen,
25 and I may have flipped through the pages. I did not

1 read it for substance or detail.

2 Q. Do you recall whether he got on the phone or he
3 sent an email or he --

4 A. I'm sorry, Mr. --

5 Q. Let me just finish the question so we have a
6 complete record.

7 A. Sure.

8 Q. Do you remember whether he got on the phone, sent
9 an email or got in a car and drove to Williston to make
10 his point known?

11 A. I don't recall.

12 Q. Did Vermont Gas Systems make any record whatsoever
13 of the communication from Mr. Bubolz about what we now
14 know as the Clay Plains Swamp?

15 A. I don't know.

16 Q. If you don't know, who would?

17 A. Mr. St. Hilaire may well know. He was the
18 executive sponsor of the project.

19 Q. You testified in your prefiled testimony that
20 you're basically proud of how the company constructed
21 the ANGP, including the construction in the VELCO
22 right-of-way, right?

23 A. Yes.

24 Q. But you made no inquiry when the company learned
25 from Mr. Michels that four feet of burial wasn't going

1 to work; is that right?

2 A. My, my recollection of the facts are that the,
3 that, that there was a concern about whether or not
4 they would be able to achieve four feet of burial in
5 the Clay Plains Swamp, and they were going to make
6 their best efforts to achieve it, and they, and they
7 undertook their construction with the hope and
8 expectation that they would.

9 ATTORNEY DUMONT: That wasn't my question.
10 So I'm -- Ms. Donath, could you read back the question?

11 (Question read by the reporter:

12 "Q. But you made no inquiry when the company
13 learned from Mr. Michels that four feet of burial
14 wasn't going to work; is that right?")

15 THE WITNESS: My answer stands.

16 BY ATTORNEY DUMONT:

17 Q. Your answer was your recollection was we were
18 going to make the best effort, but the question was,
19 What inquiry did you, as the testifying witness, make
20 before you wrote your testimony to answer that
21 question?

22 A. Oh, I'm sorry. I was, I -- that is the basis for
23 my, my conclusion on that particular point. That is
24 one of the bases for my conclusion on that particular
25 point that the company proceeded in a, in an

1 appropriate manner using appropriate judgment in
2 undertaking the construction.

3 Q. So you reached your conclusion without finding out
4 when Mr. Michels came to the company to warn the
5 company it wasn't going to work; is that what you're
6 telling us?

7 A. Well, I'm looking at this exhibit, Mr. Dumont,
8 and, and the exhibit seems to refer to, to compaction,
9 not to depth of cover, at least, at what, at least the
10 portion that you're making visible to me, and, as I
11 said to you before, my recollection is that the company
12 learned that Michels was anticipating having a
13 challenge in the Clay Plains Swamp. They made that
14 known to us.

15 The construction and project management team
16 evaluated how best to proceed, and, together, they
17 determined that it would be appropriate to proceed by
18 proceeding with construction with the hope and
19 expectation that they would be able to reach four feet
20 of depth of cover in the Clay Plains Swamp and that,
21 that area of, of the project.

22 Q. Mr. Rendall, isn't it true that, even though
23 you've just said they evaluated it, they created no
24 document whatsoever of the contact by Mr. Bubolz or any
25 of their evaluation?

1 A. I don't know if they did or didn't. It would not
2 surprise me if they did not.

3 Q. Well, you're testifying as the President and CEO
4 of the company that you're proud of the way they
5 handled the Clay Plains Swamp situation. Are you
6 telling us that you don't know whether there are any
7 documents that show how they evaluated this
8 information? Is that what you're telling us?

9 A. No. I'm saying it would not surprise me if the,
10 if the discussions were, were verbal, as were the
11 reports that I received about this during and after
12 construction, and that the, and that the team was
13 working together in the, in the construction trailer,
14 in the field, wherever they were working, to, to make
15 their determinations in the midst of a large
16 construction project.

17 Q. Your answer was, "It would not surprise me to
18 learn that an evaluation was purely verbal". My
19 question was, As the testifying witness about what the
20 quality of the work that your company did, did you make
21 any effort to see if there were any documents that
22 would show the evaluation the company went through?
23 Did you ask? Did you get any documents?

24 A. No.

25 Q. You did not ask?

1 A. I did not.

2 Q. Why not?

3 A. I did not consider it to be necessary.

4 Q. Why not?

5 A. Because I had confidence in the reports I was
6 getting from my team, from the project team, about the
7 facts and circumstances in the field.

8 Q. Do you know of any document that contradicts Mr.
9 Bubolz's testimony in his deposition that he went to
10 your company to warn them it wasn't going to work?

11 A. I don't know if that was his testimony or not, and
12 I don't know of any specific document that would refute
13 his testimony. There may be. I just don't know.

14 Q. Do you agree that the agreement that VGS reached
15 with VELCO in the fall of 2016 about burial less than
16 four feet consists of an email from Mr. St. Hilaire on
17 September 20th and a reply by VELCO on September 21st?

18 A. I, I'm generally aware of that email exchange. I
19 don't know if that is the, the only evidence of the
20 agreement, including conversations that Mr. St. Hilaire
21 may have had with, or others on the project team may
22 have had with VELCO or VELCO representatives.

23 Q. So this is -- I, I've put up on the screen Mr.
24 Byrd's Attachment 55. So this is Attachment 55 to Mr.
25 Byrd's report. This same document appears under

1 various names elsewhere in the record. Have you seen
2 this email dated September 21 from Mr. Lind to Mr. St.
3 Hilaire?

4 A. I may have seen it at some point before. I'm
5 looking at it now. Let me just refresh myself.

6 Q. All right.

7 A. It appears to have a stamp on it of an exhibit to
8 an affidavit from Mr. St. Hilaire, and I may have seen
9 it in connection with that affidavit. I don't recall.
10 I may have seen it also at the time that it was, it was
11 prepared. I just, I don't have a specific
12 recollection.

13 Q. We can agree that Mr. Lind gets up early to go to
14 work?

15 A. Or at least that he punches the "send" button
16 early.

17 Q. 5:21 in the morning. So I'm now scrolling down
18 through Attachment 55 to the email dated September 20th
19 from Mr. St. Hilaire to Mr. Lind. Do you recall seeing
20 this before?

21 A. Is this also an exhibit to Mr. St. Hilaire's
22 affidavit? I just don't recall. I may have seen it.
23 I, I don't have a specific recollection.

24 Q. And, if we scroll down on Byrd Attachment 55 to
25 the .pdf Page 3, we get back to that same Mott

1 MacDonald 5/25/16 report. You see that?

2 A. Okay. So, just so I'm clear, we're shifting now
3 from September back to May; is that right?

4 Q. No. If you look at the September 20th email from
5 Mr. St. Hilaire, he's attaching the Mott MacDonald
6 report from May 26th 2016.

7 A. Okay. I, I didn't read the document closely when
8 it was up on the screen.

9 Q. All right. We'll go back there. Yeah.

10 A. All right. I see that, that this, the May
11 document, was an attachment to the September 20th email
12 from Mr. St. Hilaire to Mr. Lind.

13 Q. So on September 20th and 21st you were the CEO of
14 the company, correct?

15 A. I was.

16 Q. Did you know it was, that this agreement was being
17 reached?

18 A. I knew contemporaneously, right? I say that
19 because I don't remember what specific date I became
20 aware of which facts, but I knew contemporaneously with
21 this, this exchange that, that we had communicated with
22 VELCO about the, the construction in the Clay Plains
23 Swamp and that we had an analysis that made clear that
24 the depth of cover at three feet would be ample with
25 respect to the, the concerns that VELCO had about their

1 load limits, my phrasing, in the right-of-way.

2 Q. Did you personally approve of the agreement that's
3 shown in these two emails?

4 A. No.

5 Q. Were you asked?

6 A. I, I, no, I, I relied on the project team to
7 address the issue, along with the field issues that
8 arose every day over the course of the project. I had
9 confidence in their professionalism and in their
10 ability to do so effectively.

11 Q. Were you aware that Mr. Heintz had testified that
12 the depth of cover in the right-of-way would be four
13 feet?

14 A. I, I'm sure I was aware that the, that the, the
15 depth of cover that we were expecting to achieve was
16 four feet based on the agreement with VELCO and based
17 on the, the record in the CPG case.

18 Q. Were you aware that there was explicit testimony
19 from VGS's witness that the depth of cover in the VELCO
20 right-of-way would be four feet?

21 A. Well, I was aware that there was testimony about
22 four feet and, and the, and I would just say that the
23 testimony speaks for itself as to the adjective that
24 you used.

25 Q. I wasn't asking if I was characterizing the

1 testimony rightly or wrongly. I'm asking whether you
2 were aware that Vermont Gas Systems' witness had
3 explicitly stated the depth of cover in the VELCO
4 right-of-way would be four feet. Were you aware of
5 that in September of 2016?

6 A. Yeah, actually, I don't recall that testimony as
7 I'm sitting here. I, you'd have to refresh my
8 recollection on what exactly Mr. Heintz said.

9 Q. Well --

10 A. You're asking -- you're using the, the term
11 "explicitly", Mr. Dumont, and I don't mean to quibble
12 with you, but, as I said, the testimony speaks for
13 itself.

14 Q. What's your best recollection, as you sit here
15 today, what you personally understood on September 20th
16 of 2016 about the representations your company had made
17 to the Vermont Public Service Board about depth of
18 cover in the VELCO right-of-way?

19 A. My understanding was that we had an agreement with
20 VELCO, that the agreement with VELCO was focused on --
21 I'm going to use the term, because this is my term --
22 loading limits, making sure that we achieved those
23 loading limits and that we agreed on a four-foot depth
24 of cover, and we agreed to continue to discuss and
25 negotiate as, as appropriate, on issues inside of that

1 MOU.

2 I also remember that, that Mr. Heintz testified in
3 the CPG case, remember being informed -- I was not a
4 part of VGS at the time. I remember being informed
5 that Mr. Heintz had testified in the CPG case about a
6 depth of cover including 4 feet at depth of cover at
7 various places in the 41-mile project. I don't
8 remember his specific words, and I don't remember if he
9 made a specific representation about, about the MOU. I
10 just, I don't remember what his specific testimony was
11 in the case.

12 Q. As of September 20th 2016, had you read the Public
13 Service Board's December 23rd 2013 final order?

14 A. Yes.

15 Q. Did it say anything about depth of cover within
16 the VELCO right-of-way?

17 A. Yeah, I don't remember. I mean, the, as of 2016,
18 I had read it, I'm sure, more than once. I haven't
19 read it in a long time. I just don't remember what
20 specifically it says in the final order about depth of
21 cover. I, I don't remember.

22 Q. In September of 2016, did you go look at the
23 December 23rd 2013 final order issued by the Public
24 Service Board?

25 A. I don't remember if I went and looked. I'm sure I

1 received a briefing on it from our counsel.

2 Q. Did you possess a copy of it in your own office,
3 or did you, did only your lawyer have a copy?

4 A. Oh, I'm sure that I, that I had a copy available
5 to me on, either in paper form or in an electronic
6 file.

7 Q. Do you recall whether or not you read it in
8 connection with the depth-of-cover decision being made
9 in September of 2016?

10 A. Yeah, I, the, I, I don't have a specific
11 recollection. I generally remember reviewing the order
12 in connection with the briefing that I received on this
13 issue.

14 Q. So, to summarize, you delegated to your team the
15 decision whether or not to enter into this agreement
16 with VELCO; you didn't make the decision, correct?

17 A. Which agreement are we referring to, the MOU or
18 the, or the, the confirmation that, that VELCO was
19 content with three feet or greater of depth of cover?

20 Q. The proposal on September 20th to construct the
21 ANGP through the VELCO right-of-way with as little as
22 three feet of cover, which VELCO agreed to on September
23 21.

24 A. Yeah, yeah, I delegated the project team, yes.

25 Q. And you did so knowing that that subject was -- or

1 let me start over. Did you do so knowing or not
2 knowing that that subject was explicitly addressed by
3 one of the company's witnesses during the hearings
4 leading to the CPG?

5 A. I did so understanding what the, what the VELCO
6 MOU provided, what the CPG provided, and what was in
7 the final order.

8 Q. So it, regardless of who that worked for you
9 actually made the decision, you knowingly delegated
10 that decision to that person?

11 A. I, I, yes, but make no mistake. The buck stops
12 here, and I'm not, and I am accountable for the
13 decisions of the team, and I delegated to the team.
14 The team had the authority to, to address and resolve
15 this issue as they deemed appropriate. I was
16 confident, and I, I'm confident as I sit here in that
17 determination.

18 Q. So now I have to ask you. Did you find out
19 whether anyone on the team to whom you had delegated
20 this decision were aware of Mr. Heintz's testimony?

21 A. I, I'm sure they were.

22 Q. Why are you sure that they were?

23 A. Because I, because I have confidence that the team
24 made a, a reasoned evaluation of how best to proceed
25 and they did it with an understanding of the, the

1 relevant conditions in the MOU and the CPG.

2 Q. So, Mr. Rendall, you were a practicing lawyer for
3 over three decades, correct?

4 A. Yes.

5 Q. You went to one of the best law schools in the
6 country, correct?

7 A. I went to excellent law school, yes. I was
8 privileged to have done so.

9 Q. In September of 2016, you were aware that this
10 issue had come up in the 7970 permitting, but you
11 couldn't remember the detail; is that right?

12 A. I'm sorry. Could you repeat the question?

13 Q. Yes. In September of 2016 you were aware that the
14 depth of cover in the VELCO right-of-way had come up
15 during the 7970 proceedings, but you weren't sure
16 exactly of the details, correct?

17 A. I, I, I'm not, I'm not -- I want to be careful
18 here about timeframes. At the time of September '16, I
19 received briefings from my team, including our legal
20 team, about the issues relating to depth of cover. At
21 that time, I am, I was aware of the issues as they were
22 presented to me and the portions of the CPG and the
23 VELCO MOU as they related to this issue.

24 So I was, at the time, aware of the facts and
25 circumstances, including the, the compliance-related

1 facts and circumstances. I'm, today, right, which is
2 now, what, four years later; is that right, four years
3 later? My recollection of the specific things that
4 were happening at that time is, is not crystal clear.

5 Q. Just now you used the term "CPG", that your
6 briefing from the legal team included the CPG. We know
7 -- you and I are lawyers. We know that the CPG was a
8 separate document that was attached to the final order,
9 but it's separate from the final order. Can you
10 clarify what documents you were aware or briefed on by
11 your legal team?

12 A. I was briefed on the relevant documents. I don't
13 recall a specifically a, a checklist of what those
14 documents were, but I received a thorough briefing.

15 Q. Okay. In that briefing were you told that Mr.
16 Heintz had testified that depth of burial in the VELCO
17 right-of-way would be four feet?

18 ATTORNEY McCLAIN: Can I interrupt, please?
19 I'm happy for Mr. Rendall to answer the question. I
20 just want to clarify that, you know, to the extent Mr.
21 Dumont is asking Mr. Rendall what legal advice he was
22 given, it would be privileged information, and I don't
23 think that's what you intended to do, Mr. Dumont, but I
24 just wanted to make sure that we understood.

25 MR. RENDALL: Thank you, Mr. McClain, and I,

1 I remember seeing the, a set of materials in connection
2 with a briefing that included testimony from Mr.
3 Heintz. As I said, what I don't remember as I'm
4 sitting here today is what that, what those words were.

5 BY ATTORNEY DUMONT:

6 Q. Did the team to whom you delegated this decision
7 also receive the legal briefing with Mr. Heintz's
8 testimony?

9 A. Um, yes. Leaders on the team were, were, I'm
10 confident as I'm recalling it, part of that briefing.
11 I don't recall what, whether the entire project -- I
12 don't recall who from the project team was, but the,
13 but I'm, I'm sure that the, that Mr. St. Hilaire was,
14 for example. I don't recall what, who else may have
15 been involved.

16 Q. This was back in the good old days when meetings
17 were held in person.

18 A. Yes.

19 Q. Where was this meeting held?

20 A. At, at VGS. There were -- it wasn't just one
21 meeting. It was that the, I received a briefing. I
22 received follow-up. We talked about this during this
23 time. We talked about it.

24 Q. Thank you. So that was September 21 of 2016?

25 A. That was, that was in this timeframe. It was not

1 necessarily September 21 or September 20 or September
2 24th. It was during this timeframe. That is the best
3 of my recollection. I cannot tell you what day, with
4 reference to any of this documentation, what day the,
5 the briefing, the briefings, the, the discussions that
6 we had occurred. It was contemporaneous. It was
7 during this timeframe.

8 Q. So we, we know that the email to Mr. Lind from Mr.
9 St. Hilaire, which was on the screen here, was
10 September 20. We know the reply was September 21, and
11 we know the work was then done immediately, correct?

12 A. The work? I'm not sure what you're referring to
13 when you say "the work".

14 Q. The excavation and laying --

15 A. I don't remember in relation to these, these
16 emails when the excavation occurred. I just don't
17 remember.

18 Q. Okay. But you do recall that, on April 12 of
19 2017, you personally held a press conference and
20 announced that gas was running through the pipeline?

21 A. I recall gassing up the pipeline, actually, Mr.
22 Dumont. The, I'm, I don't recall the press conference.

23 Q. Do you recall giving a statement that said, quote,
24 "Now that the project is completed and we're fully
25 commissioned, we'll be rolling out the service to

1 families and businesses throughout Middlebury"?

2 A. If that's what our, our statement says, then I
3 recall that we issued a statement. I don't recall its
4 specific contents. It's been a long time since I
5 looked at it, and, as I said, I don't recall a press
6 conference, and I don't recall whether we issued a
7 press release or how we communicated it.

8 Q. Do you recall the date?

9 A. I, I don't recall the specific date. I recall
10 April of 2017.

11 Q. I'll represent to you that the "Burlington Free
12 Press" reported it on April 12th. Does that refresh
13 your recollection?

14 A. Sure. It would have been then the day before
15 that, perhaps, or two days before that. I don't know.

16 Q. And you had mentioned earlier today that you
17 informed the Department of Public Service of the change
18 in depth, correct?

19 A. The Department of Public Service? Yes. I didn't,
20 but the, but VGS did, the company did.

21 Q. Right. And I've put up on the screen here Cross
22 Exhibit 43, which is part of a discovery response we
23 obtained from the company, Discovery Response
24 VGS1-84.3J, as in Jim. Have you ever seen this?

25 A. It's not ringing a bell. I don't, I don't recall

1 it. I may have. I just don't recall it.

2 Q. It's dated April 26th 2017, and it's from Ms.
3 Simollardes to Louise Porter at the Department of
4 Public Service. Let me read it to you. "Hi, Louise".

5 A. No. I, I, I have it in front of me. I can read
6 it myself.

7 Q. All right. Well, I want to read it into the
8 record:

9 "Hi, Louise. Vermont Gas has been working with
10 VELCO regarding a few locations within the VELCO
11 right-of-way where the pipe does not have four feet of
12 cover but does meet the loading standard articulated in
13 the VELCO/VGS MOU, period. We thought it would be
14 appropriate to share the information regarding the
15 agreement with VELCO and the underlying analyses that
16 confirm the standard is being met with the DPS. We
17 would appreciate the DPS, apostrophe, DPS's reviewing
18 this information as soon as possible. Please let
19 either John or me know if you have any questions.
20 Regards, Eileen".

21 Did I read that right?

22 A. Yes.

23 Q. So the Vermont Gas Systems waited through October,
24 November, December, January, February, March, April,
25 until after gas was running, and then you sent this

1 email to the Department saying, We want to let you know
2 we don't have four feet of cover; am I right?

3 A. If this is the first communication that we had
4 with the Department about the, about the depth of
5 cover, then, then you would be correct that we, that,
6 that April 26th would be the date.

7 Q. Are you aware of any communication prior to April
8 26, 2017 to the Department of these facts?

9 A. Not, not without going back and, and asking for a
10 review of the records, no.

11 Q. And, in preparing your prefiled testimony, you did
12 not make that inquiry either, did you?

13 A. No, I did not.

14 Q. Who made the decision not to inform the Department
15 until April 26th of 2017?

16 A. I don't believe anyone made a decision not to
17 inform the Department.

18 Q. Why was the Department informed on April 26th 2017
19 and not in September, October, November, December or
20 some other earlier month?

21 A. The, the issues that, that the company was dealing
22 with during this timeframe were, as you know, were,
23 there was a lot going on, and the, this issue, this was
24 an issue. As I said, I received a briefing on it.
25 The, the team did a, a significant amount of work

1 around it, and the, in connection with this while a lot
2 of other things were going on, and the, and our view at
3 the time was that this was a nonsubstantial matter with
4 respect to the, to the CPG, that is, that it was with
5 VELCO's agreement that the, that the, that the depth of
6 cover was adequate in the VELCO right-of-way in this
7 area, the, with the, the standards under which the, the
8 team was working.

9 The federal standard of three feet meant the, that
10 the, the matter of whether or not the, the pipeline was
11 safe and compliant in the, in the Clay Plains was one
12 that was not a, an issue that required special
13 handling, if you will, special attention. We were
14 confident that we had done the right thing and that
15 the, that, that the pipeline was, was adequately
16 installed.

17 Q. So on June 2nd of 2017, you notified the
18 Commission, correct?

19 A. I'll, I'll take you at your, at your assertion on
20 the date. I'm not familiar with a specific date, but
21 if that's when it was, then yes.

22 Q. So tell us what relevant facts had changed from
23 September 21, 2016 to June 2nd 2017 such that you
24 initially thought it was clearly an insubstantial
25 change, but then you changed your mind and said, Well,

1 maybe we should run this by the Commission.

2 A. Yeah, the, the, the Department, my recollection is
3 that the Department recommended -- that may be too
4 strong a term. The Department thought that that's what
5 we should do. The, we were determined to, to be sure
6 that we didn't create an issue that, that was of
7 concern to the Department or perhaps to other
8 stakeholders that, that could create a, a claim or an
9 allegation that we had done something inappropriate,
10 and we concluded that it was the best course to file a
11 nonsubstantial change request with the Commission, even
12 though it was different than the nonsubstantial change
13 requests that we had made before, which my recollection
14 serves me were focused on changing the location of the
15 pipe, rerouting the, the pipeline.

16 Q. When you became Chief Executive Officer in January
17 of 2015, Vermont Gas was actively in proceedings before
18 the Board in which private citizens and public interest
19 groups were seeking to reopen the approval and shut
20 down the construction, correct?

21 A. Yes.

22 Q. So are, isn't what you're saying you didn't want
23 to give them any grist for their mill?

24 A. Well, we, we -- no, that's not what I'm saying.
25 What I'm saying is that we concluded, when we filed the

1 nonsubstantial change, that there could be a concern,
2 and we made the filing to provide an analysis as to why
3 it was not significant and why it was nonsubstantial.

4 Q. But that doesn't explain why you waited until
5 after gas was flowing to notify the Department of
6 Public Service.

7 A. I, the, I actually don't recall the, the, there
8 being any relationship between gases flowing and the
9 timing of the, of the determine of the, of the filing.
10 I do recall that we, we discussed how best to proceed.
11 We were informed by the, not only by our own analysis,
12 but also by the, the encouragement from the Department,
13 and we made the determination that the best course to,
14 to undertake was to file a nonsubstantial change on our
15 own.

16 ATTORNEY DUMONT: So, Mr. Tousley, this
17 raises an interesting point. Mr. Rendall has just
18 talked about the advice he was given by his lawyers,
19 and I know Mr. McClain doesn't want to --

20 MR. RENDALL: I think I said "we", and, when
21 I said "we", I meant VGS.

22 BY ATTORNEY DUMONT:

23 Q. Well, you said the advice you got from the
24 Department and from your own team.

25 A. So my team, yeah.

1 Q. So I've just -- I don't want to make this an
2 inadvertent way --

3 ATTORNEY McCLAIN: Mr. Dumont, I'm happy for
4 the Witness to testify how he wants to, and, if you
5 want to try to characterize it different ways, that's
6 fine, too, but I'm not uncomfortable with what the
7 Witness has stated so far, so you can proceed with your
8 questioning.

9 BY ATTORNEY DUMONT:

10 Q. Great. So let's clarify. Did the advice you got
11 that led you to file with the Commission include advice
12 from your lawyer?

13 A. The advice that I got regarding the nonsubstantial
14 change, actually, I'm, as I'm recalling it, I don't
15 recall having any specific conversations directly with
16 counsel on it. I recall discussing it with, with my
17 VGS team.

18 Q. Okay. So, when you said the team, that did not
19 involve your lawyers?

20 A. Well, no, it did not specifically involve my
21 lawyers in my recollection.

22 Q. Okay. Well, then that's my mistake. I assumed
23 they were part of the team, so I apologize about that.

24 A. We do not have a, a lawyer in-house at Vermont
25 Gas --

1 Q. Other than the CEO?

2 A. -- acting, practicing as a lawyer.

3 Q. So I'd like to talk about the company's history of
4 violations that precede this proceeding. Do you agree
5 in 2014 the docket in the case we've discussed, the
6 Commission found that Vermont Gas had violated Rule
7 5.409 by delaying notice to the Commission of large
8 cost overruns by 164 days? Do you agree with that?

9 A. Yes, I, I -- we, we talked about that at the
10 beginning of my testimony here today. Yes, I do recall
11 that.

12 Q. And the decision by the Commission to impose a
13 penalty of \$100,000 was issued in July of 2015,
14 correct?

15 A. Sounds, sounds right.

16 Q. And then, on December 8th 2016, the Commission
17 approved a stipulation between Vermont Gas and the
18 Department in which Vermont Gas agreed to pay a civil
19 penalty of \$95,000; do you remember that?

20 A. I don't remember that specifically. I remember a
21 \$95,000 penalty. I don't remember the specific date.

22 Q. Do you remember what it was for?

23 A. I, actually, as I'm sitting here, I, I don't
24 recall the specific violation that, that underlies that
25 particular penalty.

1 Q. In 2017 there was another penalty case. In this
2 one the Commission imposed a fine of \$25,000. Do you
3 remember what the violation was in that case?

4 A. I, I recall violations. I recall a harsh
5 sunflower violation. I recall a, an induced voltage
6 violation. There, I'm recalling there was -- I believe
7 there was one other violation, but I don't recall the,
8 the, as I'm sitting here, I don't recall the sequence
9 or which monetary penalty went with which violation
10 without, without having my recollection be refreshed.

11 Q. And in June of 2016 there was a fourth violation.
12 Do you remember what that one was?

13 A. June of 2016?

14 Q. That's when the violation occurred, and the
15 proceedings just finished up this summer.

16 A. Oh, that. So that would have been the -- I'm
17 guessing here that you're talking about the blasting
18 pattern.

19 Q. Yes.

20 A. Yes, yes, I, I recall that. I recall those
21 circumstances as well, yes.

22 Q. So in your prefiled testimony, for example, on
23 Page 5 Line 11 --

24 A. Are you going to call it up, or do you want me to
25 pull out a copy?

- 1 Q. I can. Whatever works for you.
- 2 A. Let me see. I have a copy here. Let me --
- 3 Q. Sure.
- 4 A. Page 5?
- 5 Q. Yes. Answer 8.
- 6 A. Answer 8? Yes, I have it.
- 7 Q. You refer to an admittedly troubled early start
- 8 with the ANGP, correct?
- 9 A. Yes.
- 10 Q. You were referring to what had happened when you,
- 11 before you were the CEO, correct?
- 12 A. Yes, and the, and the time in my first several
- 13 months as CEO as we, as we reset, reorganized, and
- 14 determined how best to proceed with the project.
- 15 Q. You used the term "reset", R-E-S-E-T. What do you
- 16 mean by that?
- 17 A. Well, we, as you may recall, Mr. Dumont, in, in
- 18 the, at the end of the construction year in 2014, we
- 19 sent the contractors home, closed up the project and,
- 20 and made a reevaluation as to how we wanted to proceed.
- 21 We determined that we would not proceed with
- 22 construction immediately in 2015. We terminated the,
- 23 the work on the, the phase of the project that was
- 24 designed to bring natural gas service to the
- 25 International Paper facility in Ticonderoga. We, we

1 shut down all of our planning and, and early
2 development work regarding any further extension of the
3 pipeline beyond Middlebury.

4 We made the decision to proceed with construction
5 only on the first, what we called the first 11 miles,
6 which was that segment of project that had been started
7 in 2014 and had been constructed on kind of a hopscotch
8 basis over the, over the span of 11 miles. We
9 determined that we would only complete that portion of
10 the project until we had further guidance from the
11 Public Utility Commission, and we, we reevaluated our
12 contractors.

13 We, we made some decisions about not retaining
14 contractors. We made some decisions about, about
15 project management. We made some decisions about
16 project governance, and, and those were all ongoing
17 from the, from the time that I first walked through the
18 door at Vermont Gas, which was actually in November.
19 My tenure as CEO began in January and continued through
20 -- well, it was, it was an ongoing process that really
21 never had an end, but the, the, we had put the, the
22 pieces in place for how we would proceed with
23 construction by the spring of 2015, as I recall it.

24 Q. Did you say that deciding not to go to Ticonderoga
25 was part of your reset?

1 A. Yes.

2 Q. But that wasn't your decision; International Paper
3 had informed you it would no longer participate in the
4 project, correct?

5 A. Yes, we, yes, we, we had, we had many rounds of
6 discussion with International Paper around what it
7 would take to proceed, and, yes, it was International
8 Paper that actually made the decision not to proceed
9 after we had presented them with the, the, the manner
10 in which we thought it was, it could be feasible to
11 proceed.

12 Q. So, of the four violations that we've discussed,
13 the cost increase --

14 A. The cost increase?

15 Q. -- the electrical risk to your workers, the harsh
16 sunflowers, and the blasting plan violation, three of
17 them occurred well after you began work as CEO,
18 correct?

19 A. Yes, they did.

20 Q. If you have your prefiled in front of you, I have
21 another quick question about it, Page 7. It's the tail
22 end of Answer 8. You stated that, "We self-reported
23 issues that we discovered", and I want to --

24 A. Yes.

25 Q. -- ask you if you've read Ms. Lyons's rebuttal

1 testimony.

2 A. In this case?

3 Q. Yes.

4 A. I, I'm sure I did at the time it was submitted. I
5 just don't have a -- I'm not recalling it as I'm
6 sitting here.

7 Q. She testified in her prefiled that, in the
8 blasting plan violation case, the company did not
9 report itself to the Commission until she he reached a
10 settlement agreement with the company that compelled
11 the company to report its conduct to the Commission.
12 Do you remember that?

13 A. We, I don't dispute it. We reported to Ms. Lyons
14 as soon as we discovered that the, that the incident
15 had occurred. We were very proactive in, in contacting
16 her and letting her know what had happened.

17 Q. In her testimony she says the company had waited
18 until the next day. Are you aware of that?

19 A. Well, I, the, we may have waited until the next
20 day. I don't know when we exactly determined that the,
21 that it had occurred, but we, I view the next day as
22 prompt and proactive.

23 Q. And you're aware that, by the time she was
24 notified, your contractor had removed all of the
25 blasted rock from her property, so there was no

1 evidence left of what had happened?

2 A. Well, I wasn't aware of that, but it wouldn't
3 surprise me that the contractor was, was prompt and
4 diligent about removing blast rock from her property.
5 I would think that that's what they would do. I would
6 hope that that's what they would do.

7 Q. Tell me, are you informed? Do you know what the
8 process was that the company used for implementing the
9 plans and evidence that the company had submitted to
10 the Public Service Board in order to obtain the CPG?

11 A. I'm sorry. I, I'm not getting the question.

12 Q. Sure. You know from reading -- well, start off.
13 You know from your prior experience that, whether it's
14 Act 250 or Section 248, there's a general principle
15 that you would only construct in accordance with the
16 plans you submitted; you're aware of that right?

17 A. It would construct in accordance with a CPG and
18 the final order. I, from my experience, a, a utility
19 has or a permitted party with a CPG has a range of, of
20 appropriate flexibility around the construction methods
21 and, and details that they use in construction. So,
22 when you say "in accordance with the plans", I'm, I, I
23 don't want to agree with that. I can't agree with that
24 based on the, the discussion that you had with, with
25 Mr. Byrd this morning about the -- because I think your

1 view of what is in accordance with the plans and mine
2 are not the same.

3 Q. But what counts is what the Commission's view is,
4 right?

5 A. Of course it does, yes.

6 Q. Did the Commission put in the final order and it
7 put in the CPG that construction must be in accord with
8 the plans and evidence submitted, did it not?

9 A. Or words to that effect, shall be in accordance
10 with, or words to that effect, yes.

11 Q. So my question is, What process did the company
12 engage in to take the plans and evidence it had
13 submitted and transform them into the specifications
14 for the project?

15 A. Process? Well, there was a whole project
16 execution that involved final plans. It involved
17 obtaining right-of-way. It involved reaching out to
18 stakeholders. It involved hiring contractors. it
19 Involved reviewing with contractors the plans and
20 specifications involved, the, all of the contract
21 documents that that we had with all of the contractors.
22 It involved the management of those contractors, the,
23 the, ensuring that those contractors were working
24 effectively together. It involved hiring inspectors to
25 review the work. It involved putting our own people in

1 the field to, to ensure that our contractors and our
2 inspectors were doing the work that, that they were
3 hired to do. It involved our receiving regular reports
4 on the progress. It involved our, our reviewing the
5 progress of the, of the project on a, on a regular
6 basis. It involved a whole host of things. That's not
7 a complete list. That's an indicative list.

8 Q. In your prefiled you talk about keeping gas
9 flowing to help people reduce their carbon footprint.
10 It's on Pages 9 and 10. And you refer to using
11 renewable gas. What percent of the company's gas
12 portfolio is renewable right now?

13 A. A very small percentage, not even a percent.

14 Q. Not even a percent?

15 A. Not yet. That's right.

16 ATTORNEY DUMONT: That's all I have. Thank
17 you.

18 MR. RENDALL: Thank you, Mr. Dumont.

19 HEARING OFFICER TOUSLEY: Thank you, Mr.
20 Dumont. Do the other parties have questions in light
21 in Mr. Dumont's questions and the answers provided by
22 Mr. Rendall? Mr. Guzman?

23 ATTORNEY GUZMAN: The Department has no
24 questions. Thank you.

25 HEARING OFFICER TOUSLEY: Mr. Miller?

1 ATTORNEY MILLER: The Agency does not. Thank
2 you.

3 HEARING OFFICER TOUSLEY: Okay. I have a few
4 questions. We talked a little bit about the
5 nonsubstantial change determination, or you talked
6 about it with Mr. Dumont. What is a nonsubstantial
7 change determination from your perspective?

8 MR. RENDALL: From my perspective, it is a, a
9 request by the company for a confirmation from the
10 Commission that the, that, that the, that a deviation
11 that we either had made or propose to make was, did not
12 require an amendment to the CPG.

13 HEARING OFFICER TOUSLEY: Okay. So it's,
14 it's both prospective and retrospective? Because I
15 know the, there were six. This case began with the six
16 nonsubstantial change determination requests. The
17 first five, as you noted, addressed changes in the
18 route of the pipe because of different things that
19 happened across the way, you know, along the way.
20 Those were all prospective, weren't they?

21 MR. RENDALL: I believe that they were, yes.

22 HEARING OFFICER TOUSLEY: Why was this one
23 retrospective? Why wasn't the determination made in
24 September of 2016 or earlier when Mr. Bubolz said it
25 wouldn't work here to seek a nonsubstantial change to,

1 to put the pipeline somewhere else?

2 MR. RENDALL: My recollection, Mr. Tousley,
3 is that the, apart from whatever Mr. Bubolz has said,
4 and I don't know specifically what he said, but, apart
5 from what, what he said, is that the, our construction
6 team believed at the time that they went into the, the
7 swamp that they had a, a means and method that they,
8 they hoped and expected to be able to achieve four feet
9 of depth, and the, and the, once they had come out of
10 that, that exercise and, and determined that, that they
11 had not been able to do so, then that's when the issue,
12 that's when the issue presented itself, Okay, what's,
13 what's next here? The, the, the question was
14 hypothetical prior to construction.

15 HEARING OFFICER TOUSLEY: Okay. I guess, as
16 I understood it from Mr. Bubolz's testimony, he, as the
17 field supervisor for Michels, was concerned that the
18 location of the pipeline as projected and that as
19 constructed eventually, was, was, the right-of-way was
20 too narrow to address the, the wetness, the swamp issue
21 in the Clay Plains Swamp, and he asked, Why can't we
22 put it somewhere else? Does that, does that ring bells
23 for you?

24 MR. RENDALL: I, actually, I wasn't, I wasn't
25 privy to those conversations and, and, and wasn't aware

1 of them until fairly recently, but I, I the --
2 certainly, a, that would have been a major decision for
3 us to have made at that time to reroute the project
4 while we were in the midst of a construction season
5 and, actually, in the, whatever it was, the sixth
6 inning of the season to stop and say, Time out. Let's,
7 let's engineer a reroute, present it to the Commission,
8 and, and determine how to proceed. That would have
9 been a, a, that would have been a very big deal for us
10 and, no doubt, would have delayed progress on an
11 ongoing construction project for many months.

12 HEARING OFFICER TOUSLEY: As had been the
13 case with at least one, if not two, of the prior
14 nonsubstantial change determinations where there was,
15 not protracted, but there was litigation associated
16 with the request to make the nonsubstantial change?

17 MR. RENDALL: Yes. And, and I, I, I recall
18 that the, the nonsubstantial change requests, some of
19 them took more work, were litigated more vigorously
20 than others and, in some cases, were, involved
21 significant time, time periods and significant
22 distraction of resources, yes.

23 HEARING OFFICER TOUSLEY: Okay. You talked a
24 lot about -- go ahead.

25 MR. RENDALL: I say "distraction" in the

1 sense of, of a, of a diversion of bandwidth to, to
2 those matters, not, not to, to, to understate the
3 significance or importance of the, of the process
4 involved.

5 HEARING OFFICER TOUSLEY: Okay. I have
6 participated in -- at least, I helped write the 7970
7 decision, and I have participated in Vermont Gas issues
8 since I came to the Commission in 2013, and I remember
9 when, you know, the change happened when, when there
10 was the, the project reset in 2015 and, and how that
11 occurred, and, frankly, I was, I was, I've, you know,
12 I've spent a lot of time working with senior leadership
13 in different settings and, and both in the military and
14 in the civilian world, and, and it, I find it
15 fascinating to see how leadership adapts to challenges
16 and how well or how, what systematic or organizational
17 changes they make to deal with those challenges.

18 You know, I participated in, you know, the, the
19 Katrina response. I participated in a number of
20 activities that required instantaneous leadership, and
21 I thought, in some ways, that's what you stepped into
22 in 2014 and 2015, or 2015 in particular, when, when the
23 reset occurred.

24 What, what did -- how did you make yourself smart
25 enough to do your job? How did you keep yourself

1 briefed?

2 MR. RENDALL: The, it went -- it was, it was,
3 and continues to be, a, a work in progress, an ongoing
4 learning experience. When the, when I walked in the
5 door, I, I, I sat down with all of the individuals that
6 were involved in the project at VGS, consultants,
7 lawyers, project management, professionals who were
8 contracted to the project, the company's leadership,
9 the company's board of directors.

10 I, I reviewed volumes of materials at the time,
11 including the, many of the materials -- I won't say all
12 of them -- many of the materials relating to the, to
13 the CPG. I reached out to other leaders in Vermont and
14 elsewhere for advice and counsel about how best to
15 proceed, and, and I made the determination at the time
16 that the, that it was -- I made changes around, in my,
17 in my leadership team to bring in expertise that, that
18 I thought was important, because this wasn't something
19 that, that I was going to be able to do without -- my
20 role, my role as CEO is not something that I was going
21 to be able to succeed in without both strong support
22 and, and excellent advice and counsel.

23 And I did make the decision at the time that we,
24 that we needed to, to make a, we needed to make a
25 significant change in the way the project was being

1 undertaken. It was very clear to me when I arrived
2 that the project was, was deeply struggling. It was
3 struggling at almost every level.

4 It was struggling, we were struggling with our
5 contractors. We were struggling with all of our
6 contractors. We were struggling with internal, with
7 internal, with, with our project management staff. We
8 were struggling with the, with project governance. We
9 were struggling with how best to, to receive and
10 disseminate information, internally as well as
11 externally, around the project. We were certainly
12 struggling with our stakeholders and, and our being
13 much more thoughtful about how to deal with the
14 communities that were being impacted, the individuals
15 that were being impacted by the project.

16 So it was a -- did I have a, a playbook, kind of
17 a, a specific playbook about what, what action steps I
18 should take when I arrived? No. To the contrary, I
19 came in really with an open book and then developed the
20 playbook in, over a period of, of weeks and months with
21 a lot of help and, and, as you may recall, that
22 involved, first, understanding; second, in December,
23 saying we're going to, we're going to stop. That was
24 really the first most important decision we made, stop.
25 And then we did, we spent many months hearing from

1 professionals and, and evaluating how best next to
2 proceed. Does that help?

3 HEARING OFFICER TOUSLEY: No. That, that,
4 you know, I, I, unfortunately, I'm, I'm reminiscing
5 about observing Admiral Thad Allen's response to the
6 Katrina disaster in New Orleans and south Louisiana.
7 Several years ago, I was, I was part of his staff. I
8 helped support that, and I, I, and, as, you know, I
9 suppose I aspired to do what he did, because I became
10 an incident commander at some point later in my career
11 in the military, and I appreciate that kind of
12 guidance.

13 You know, what, what -- how, you know, how did
14 you, as an individual, take on that responsibility and,
15 and use the talent that you had to, to address the
16 challenge that was before you? And you've talked a lot
17 about your teams. I mean, what, what was your chain of
18 command structure? How did you, how did you -- you
19 know, let's get to the year of 2016, by which, you
20 know, the reset had occurred. Construction is going
21 pretty much in regular swing with, with the new team.
22 What was that team, and how did it work?

23 MR. RENDALL: So we had a, we had a project
24 structure both in terms of, of people and in terms of,
25 in terms of governance. We had a, we had an executive

1 sponsor who was, as of 2016, John St. Hilaire. We had
2 a project manager, which was, 2016, I can't remember
3 whether it was Patrick Dailey or John Stamatov from
4 PwC. We had a project management team that we had
5 that. We had an extensive contract with PwC to provide
6 us with project management, leadership, and support.

7 We had, we had assigned different aspects of the
8 project to, to individuals, whether they be internal
9 VGS individuals or contractors, but we had a defined
10 organizational chart and chain of command, and, and we
11 operated through that organizational chart, which we
12 reviewed periodically, more than once a year, as I
13 recall.

14 We, we had an executive steering committee, which
15 you might analogize to an incident command team, a
16 project steering committee that received monthly
17 updates and reports from the, from the executive
18 sponsor and the project management team. We reported
19 monthly, every single month, to our board of directors
20 on, on project status and across the, across the gamut
21 of the project, construction activities, regulatory
22 activities, stakeholder activities, schedule, costs,
23 forecasts, and we, and we repeated.

24 And the, and we had, both formally and informally,
25 we, we, I made a, a commitment to be, to be involved

1 without, without micromanaging the team, but I made
2 regular field visits. I spent a lot of time in the
3 construction trailer. I had a lot of conversations
4 with the, with many of the, the people on the ground
5 doing the work to keep my finger on the pulse of what
6 was going on so that I felt like I was both visible to
7 them and understanding what was going on.

8 HEARING OFFICER TOUSLEY: So did you have,
9 like, a war room where you had, you know, the map and
10 lines on it and where assets were and that kind of
11 thing?

12 MR. RENDALL: The, the, we had a bunch of war
13 rooms. So, so we had, yeah, we had some, we had some
14 space at VGS that was, that was not 100 percent
15 dedicated to the project, but that -- it, it morphed
16 over time, actually. We rented some space in
17 Williston, which you could call a war room, which had
18 the maps up, and that's where we would meet. We
19 eventually brought that, left that space and brought it
20 back to, to VGS. We, there was, there was dedicated
21 space in the, in the main construction management
22 trailer at, at our staging facility in Williston where
23 all the maps were available.

24 HEARING OFFICER TOUSLEY: Did you receive
25 daily status reports?

1 MR. RENDALL: Not in a formal sense. I
2 received, I received virtually daily status reports for
3 a time probably through -- I can't remember if it went
4 into 2016, but, once we were in the swing of
5 construction in 2016, I would say that my status
6 reports were, were more on a weekly basis and were, and
7 so ranged from very formal -- very formal was once a
8 month -- to very informal, which was, which was talking
9 to our leaders every day, including John St. Hilaire,
10 our, our executive sponsor, including the, the PwC
11 project management leaders, John Stamatov and Pat
12 Dailey, including talking, I'm sure, virtually every
13 day with Eileen Simollardes, because we had a lot of
14 regulatory work going on at the same time.

15 HEARING OFFICER TOUSLEY: So, if stuff was
16 happening, you usually knew about it relatively, as you
17 said, contemporaneously?

18 MR. RENDALL: Yes, I knew about it
19 contemporaneously if it was happening and, certainly,
20 if it presented a, a significant issue or concern, and
21 we had plenty of significant issues and concerns. We
22 had the, the four items that Mr. Dumont cross-examined
23 me about, three that happened after I came, the, the
24 harsh sunflower. We had the blasting. We had the, we
25 had this, this debate with the, with, with the

1 Department's engineer on induced voltage, where we
2 ultimately accepted a, a penalty and changed our
3 procedures.

4 We had, we, we had no -- I will say that, that we,
5 we had, we had a fire drill going on the case on, in
6 the project pretty much continuously from the time I
7 arrived until actually after the project finished,
8 which I'm trying to remember when that Supreme Court
9 decision came down on the, on the park, but we had
10 protests. We had -- I mean, it, we had -- our
11 bandwidth was -- we had lots of bandwidth, and our
12 bandwidth was stretched continuously through the
13 project construction period, that 3.5 years.

14 HEARING OFFICER TOUSLEY: And, and that was a
15 long time. I mean, I'm trying to remember what I was
16 doing in September of 2016, and, and, frankly, I can't
17 remember precisely. I'm sure, if I looked at some
18 documents, I could figure it out. But do you remember
19 at, you know, at, in September 2016 when the work took
20 place in the Clay Plains Swamp, what your routine was
21 for participating in and engaging in information about
22 pipeline construction?

23 MR. RENDALL: I, I, I, what I remember about
24 2016, about that period is that, is that construction
25 was proceeding. I'm, I can't remember what else we had

1 going on at the time, 2016. Probably Geprags Park was
2 occupying most of my bandwidth at that point.

3 HEARING OFFICER TOUSLEY: It would make
4 sense. It occupied a lot of mine too.

5 MR. RENDALL: Yeah. But I, I remember, as I
6 said to Mr. Dumont, I remember this issue about the
7 swamp arising. I remember the, being briefed on it. I
8 remember that the, that the -- I remember being
9 confident that, that, that we were okay at three feet.
10 That's what I remember.

11 HEARING OFFICER TOUSLEY: And that didn't --
12 you thought that was a nonsubstantial change?

13 MR. RENDALL: Yes.

14 HEARING OFFICER TOUSLEY: Okay.

15 MR. RENDALL: And I still think so.

16 HEARING OFFICER TOUSLEY: Okay. But you
17 didn't tell us about it until the next summer.

18 MR. RENDALL: We did not file our, make our
19 filing until June, I guess, is the timeframe, yeah.

20 HEARING OFFICER TOUSLEY: Okay. And that was
21 in a prospective change, nonsubstantial change
22 determination request, rather than a retrospective one
23 like the other ones were?

24 MR. RENDALL: I think it's the other way
25 around. That was retrospective.

1 HEARING OFFICER TOUSLEY: That was
2 retrospective.

3 MR. RENDALL: We did it. We want you to
4 affirm it, yes.

5 HEARING OFFICER TOUSLEY: Okay. And, and
6 that was prompted by the Department?

7 MR. RENDALL: Well, it was the, it was the --
8 I, I would say, from my perspective, the Department
9 pushed, pushed it over the edge of, of the, of its, we
10 got to make this filing. This is not something that we
11 can, that we can, that we can wait to, to have someone
12 else raise and, and challenge us on.

13 HEARING OFFICER TOUSLEY: Okay. Do you
14 remember most of the people that you worked with during
15 that period?

16 MR. RENDALL: With respect to the, to the
17 Clay Plains Swamp?

18 HEARING OFFICER TOUSLEY: Yes.

19 MR. RENDALL: Yes. It would have been Mr.
20 St. Hilaire, Ms. Simollardes, principally, Mr. St.
21 Hilaire and Ms. Simollardes. I'm, I'm not recalling
22 anyone else specifically who was --

23 HEARING OFFICER TOUSLEY: Was Mike Regan
24 involved?

25 MR. RENDALL: I, not, not with me. I'm sure

1 he was involved with, with Mr. St. Hilaire, but not
2 with me.

3 HEARING OFFICER TOUSLEY: Okay, okay. And do
4 you know who Daryl Crandall is?

5 MR. RENDALL: No.

6 HEARING OFFICER TOUSLEY: No? Okay. They
7 were folks who were more on the ground when things were
8 happening in September of 2016 on the Clay Plains
9 Swamp.

10 MR. RENDALL: Yes, yes. Well, Mike Regan
11 was, he was on the ground every day, and I spent a lot
12 of time with him over the time that he was there,
13 mostly in the field at the, or in the trailer.
14 Occasionally, be in the VGS offices, and we would
15 confer on an informal basis, but he was, but Mike was
16 not someone that I had any direct, I don't recall any
17 direct engagement on with respect to the Clay Plains.

18 HEARING OFFICER TOUSLEY: Okay. Well, that
19 makes sense. Do you remember a piece of heavy
20 equipment sliding and sinking in the swamp that they
21 had to pull out because it was so wet?

22 MR. RENDALL: I, I, I remember, as you're
23 saying it, I remember that there were, that -- I
24 remember there were issues around that the construction
25 was a big mess out there was, that was my, that was

1 what I concluded is that construction was a, was a mess
2 and a challenge out there when they were out there
3 actually doing it.

4 HEARING OFFICER TOUSLEY: One of the things
5 that we've talked about in this last couple days is the
6 VELCO-VGS MOU. Are you familiar with that?

7 MR. RENDALL: Yes, but not conversant without
8 having it in front of me.

9 HEARING OFFICER TOUSLEY: Okay.

10 MR. RENDALL: I would --

11 HEARING OFFICER TOUSLEY: Well, I just want
12 to -- there's a phenomenon in it that it refers to
13 regular iterative discussion between VGS and VELCO
14 about final concerns that, that's reflected in the
15 final order in 7970. Does, does that, does that help?

16 MR. RENDALL: Well, I, the, I recall the -- I
17 understood the MOU to be what I would describe as a, a
18 living document, that is, a document that, that, that,
19 by agreement, required the parties to continue to
20 confer to deal with, with any relevant details of, in
21 the, in the project that, that impacted VELCO in the
22 right-of-way.

23 HEARING OFFICER TOUSLEY: Yeah. My memory,
24 you know, from September of 2013 was that VELCO was
25 very protective of its right-of-way, that it, it didn't

1 want to share that space with you. Does that, is that
2 an accurate --

3 MR. RENDALL: I wasn't, I wasn't around at
4 time. I was at Green Mountain Power. I do have a
5 recollection that, that, that there was a, a, some,
6 some reluctance on VELCO's part to having the pipeline
7 in the right-of-way.

8 HEARING OFFICER TOUSLEY: Right. I mean, the
9 MOU was completed kind of very late in the process in
10 1970, and it was incomplete, and, and inasmuch as there
11 weren't formal agreements between VELCO and VGS about
12 the use of the right-of-way, was it going to be a
13 lease? How much, if anything, would VELCO get paid by
14 VGS for doing it? Those sorts of details had not yet
15 been fleshed out.

16 Were those discussions still going on in 2015 and
17 2016 while construction was taking place in the
18 right-of-way?

19 MR. RENDALL: I, I, I can't recall a specific
20 timeframe. I do recall that the, that, that we had
21 ongoing discussions with VELCO about the terms and
22 conditions of the, of, of the, the arrangement that,
23 the lease, the payment, whether it was going to, how it
24 was going to be, whether it was going to be long-term
25 lease or a periodic, short -- I, I recall that there

1 were, there were still many details to, to work out.

2 HEARING OFFICER TOUSLEY: Yeah. And then we,
3 we talked, or you talked earlier about the, or Mr.
4 Dumont brought up the, the discussion in June or in
5 September itself, between, in September of 2016 itself,
6 on the, the 20th, the 21st, and the 22nd about what
7 VELCO thought was okay in the Clay Plains Swamp. Did
8 you participate in those discussions?

9 MR. RENDALL: Not, not directly, no.

10 HEARING OFFICER TOUSLEY: Okay. So these
11 were not leadership, executive leadership things?
12 These were, you know, you had Mr. St. Hilaire, who was
13 the executive manager. I'm guessing he's the one who
14 initiated and engaged in those discussions.

15 MR. RENDALL: I, I believe that, that John
16 was directly involved in those discussions. I, I had,
17 from time to time, and still have, from time to time, a
18 check-in with the, the CEO at VELCO Tom Dunn, and,
19 while I don't specifically recall any discussions
20 around this, I do recall having discussions with him
21 that, that, in which, in which we would discuss and
22 affirm the fact that our teams were working together,
23 that it seemed to be going well, and that the, and that
24 the, and that, that if, if we hit a roadblock, that one
25 or the other of us would, would alert the other and we

1 would engage as appropriate, and, and we did not engage
2 on, on this issue. In fact, we haven't engaged on any
3 issue in specifics that I can recall.

4 HEARING OFFICER TOUSLEY: Okay. Thank you.
5 I don't have any more questions right now. Do any of
6 the other parties have questions in light of the
7 questions that I asked and the answers Mr. Rendall
8 asked? Mr. Dumont?

9 ATTORNEY DUMONT: I do not. Thank you.

10 HEARING OFFICER TOUSLEY: Mr. Guzman?

11 ATTORNEY GUZMAN: I do not. Thank you.

12 HEARING OFFICER TOUSLEY: Mr. Miller?

13 ATTORNEY MILLER: The Agency does not. Thank
14 you.

15 HEARING OFFICER TOUSLEY: Mr. McClain, do you
16 want to ask any more questions? Would you like to ask
17 any questions of Mr. Rendall?

18 ATTORNEY McCLAIN: I lost my mouse again.
19 No, I have no questions. Thank you very much.

20 HEARING OFFICER TOUSLEY: Okay. Thank you,
21 Mr. Rendall. I want to thank you very much for your
22 testimony and your service. You're excused.

23 MR. RENDALL: Thank you.

24 HEARING OFFICER TOUSLEY: Okay. I think
25 where we are now, why don't we take a ten-minute break

1 and come back and talk about the events tomorrow?

2 ATTORNEY McCLAIN: Okay, thank you.

3 HEARING OFFICER TOUSLEY: So we'll come back
4 at, let's say, 4:20.

5 ATTORNEY McCLAIN: Sounds perfect.

6 ATTORNEY DUMONT: Thanks.

7 (A recess was taken from 4:12 p.m. to 4:30 p.m.)

8 HEARING OFFICER TOUSLEY: We've just
9 completed a scheduling discussion for the remainder of
10 the proceeding, and we are adjourned for the day to
11 start up tomorrow morning at 9:30. Thank you all.

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15 (Whereupon at 4:29 p.m. the hearing was adjourned.)

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