

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 3, 2020
12 9:30 a.m.

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

16 Day III of an Evidentiary Hearing held before the
17 Vermont Public Utility Commission via GoToMeeting video
18 conference on September 3, 2020, beginning at 9:30 a.m.

19 P R E S E N T

20 Hearing Officer: Michael E. Tousley, Staff Attorney

21 Staff: John Cotter, Deputy General Counsel
22 Ann Bishop, Operations Director

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1 HEARING OFFICER TOUSLEY: Okay, good morning.
2 Looks like we're all here now for the third day of the
3 evidentiary hearing in Case Number 17-3550-INV, which
4 is an investigation, pursuant to 30 V.S.A. Sections 30
5 and 209, regarding the alleged failure of Vermont Gas
6 Systems, Incorporated, to comply with the certificate
7 of public good in Docket 7970 by burying the pipeline
8 at less than the required depth in New Haven, Vermont.

9 I see that John's just stepped out. John Cotter
10 is serving today, or at least through the morning, as
11 the Commission staff's GoToMeeting platform manager.
12 John, if you could hop back on for a second and give
13 everybody your phone number so they can reach you
14 should they drop out, I'd appreciate that.

15 MR. COTTER: Sure, and I'll still be here,
16 even though my camera's off. I'll turn my camera off
17 and create a little bit more real estate and reduce any
18 potential distractions.

19 HEARING OFFICER TOUSLEY: Thanks, John. Now,
20 John will be with us for the morning, and I think Ann
21 may be coming back this afternoon.

22 MR. COTTER: Yeah. Ann, actually, just so
23 everybody is clear, Ann is actually expected back
24 sometime during the morning. So, assuming she makes it
25 back, you'll just see Ann Bishop's name and initials

1 will appear, and mine, shortly thereafter, will
2 disappear, so --

3 HEARING OFFICER TOUSLEY: Thanks, John.

4 MR. COTTER: Yeah.

5 HEARING OFFICER TOUSLEY: This morning -- and
6 I guess, Sunnie, we are on the record. Thank you.
7 This morning we're going to resume questioning, our
8 cross-examination of witnesses, and we're up, and as we
9 discussed -- well, before we get going, are there any,
10 do we have any scheduling issues or changes that we
11 want to make before we get started?

12 ATTORNEY DUMONT: Yes.

13 HEARING OFFICER TOUSLEY: Please.

14 ATTORNEY DUMONT: I read over both my notes,
15 conferred with clients, and decided last evening that I
16 have no questions for Mr. St. Hilaire. After I reached
17 that decision last night, I emailed all the attorneys
18 to inform them of that.

19 HEARING OFFICER TOUSLEY: Okay. But you
20 still want Mr. Nelson and Mr. LeForce?

21 ATTORNEY DUMONT: Yes, although it will be
22 brief for Mr. Nelson and also fairly brief for Mr.
23 LeForce.

24 HEARING OFFICER TOUSLEY: I have questions
25 for Mr. St. Hilaire.

1 ATTORNEY DUMONT: Okay.

2 HEARING OFFICER TOUSLEY: So we will need to
3 bring him up first. Is he available, Mr. McClain? I
4 did see him there just a second ago, so I'm guessing
5 he's available.

6 ATTORNEY McCLAIN: I'm sorry. I, I was
7 muted. Jim likes it when I'm muted. John is available
8 and, and, whenever you guys are ready, I'll just, I'll
9 ask him a couple of initial questions, Mr. Tousley, and
10 you can swear him in if that works for everybody.

11 HEARING OFFICER TOUSLEY: That sounds good.
12 And then we'll -- does Mr. Nelson know that he's going
13 to be up a little bit earlier than he thought he might
14 be?

15 ATTORNEY McCLAIN: Yes, he does.

16 HEARING OFFICER TOUSLEY: Is Mr. Godfrey
17 available later in the afternoon?

18 ATTORNEY McCLAIN: Yes, he is.

19 HEARING OFFICER TOUSLEY: Okay. So I guess
20 what we'll attempt to do today is to work through the,
21 the remaining VGS witnesses. Depending upon what time
22 it is that we finish with them, you know, if we're done
23 closer to lunchtime or pretty close to done by
24 lunchtime, we might be able to move into the Intervenor
25 witnesses. As I recall, only Mr. Liebert was

1 anticipated. So is Mr. Liebert available today?

2 ATTORNEY DUMONT: Yes. I contacted him, and
3 he is available in the afternoon.

4 HEARING OFFICER TOUSLEY: Okay. Mr. McClain,
5 did you have something?

6 ATTORNEY McCLAIN: Yeah. I went through a
7 similar process last night as Mr. Dumont has described
8 and have decided that I do not have any questions for
9 Mr. Liebert, either. So I do not need to, need any
10 time with him today or tomorrow.

11 HEARING OFFICER TOUSLEY: Okay. I don't, I
12 don't have any cross-examination questions for Mr.
13 Liebert, either.

14 ATTORNEY PORTER: This is the Department, Mr.
15 Tousley.

16 HEARING OFFICER TOUSLEY: You do?

17 ATTORNEY PORTER: We do not.

18 HEARING OFFICER TOUSLEY: Okay. How about
19 ANR?

20 ATTORNEY MILLER: The Agency has no questions
21 for Mr. Liebert.

22 HEARING OFFICER TOUSLEY: Okay. So let's
23 just, let me just confirm that the remaining live
24 witnesses will be Mr. St. Hilaire this morning, and I
25 will cross-examine him. The other parties have no

1 cross-examination for him; is that correct?

2 Department?

3 ATTORNEY PORTER: That's correct.

4 HEARING OFFICER TOUSLEY: I see Jim shaking
5 his head.

6 ATTORNEY PORTER: Yes.

7 HEARING OFFICER TOUSLEY: Thank you. And
8 ANR?

9 ATTORNEY MILLER: That's correct.

10 HEARING OFFICER TOUSLEY: Okay. And, and so
11 we'll have Mr. St. Hilaire. Then we'll have Mr.
12 Nelson and Mr. LeForce.

13 ATTORNEY DUMONT: Excuse me, Mr. Tousley. I
14 do have a question.

15 HEARING OFFICER TOUSLEY: Sure.

16 ATTORNEY DUMONT: I would like to call Mr.
17 Liebert for a very brief surrebuttal of what Mr. Byrd
18 said in his testimony --

19 HEARING OFFICER TOUSLEY: Okay.

20 ATTORNEY DUMONT: -- that differs somewhat
21 from what he had in his report.

22 HEARING OFFICER TOUSLEY: Okay, all right.
23 That's fine. So that would bring -- so we'll attempt
24 to, to get through the VGS witnesses this morning into
25 the early afternoon, and then we'll pick up Mr. Liebert

1 for surrebuttal cross or surrebuttal examination maybe
2 this afternoon if, if he's available then and we have
3 the time. Do the parties concur with that plan for
4 going forward? Department?

5 ATTORNEY PORTER: Yes, sir.

6 HEARING OFFICER TOUSLEY: ANR?

7 ATTORNEY MILLER: Yes.

8 HEARING OFFICER TOUSLEY: Mr. Dumont?

9 ATTORNEY DUMONT: Yes.

10 HEARING OFFICER TOUSLEY: Mr. McClain?

11 ATTORNEY McCLAIN: I'm sorry. I guess I
12 missed what, the -- we're surrebuttal with Mr. Liebert?

13 HEARING OFFICER TOUSLEY: That's what he's
14 requested, yes. Do you have an objection?

15 ATTORNEY McCLAIN: I guess I don't understand
16 the basis for the request. I thought we had all
17 prefiled our testimony and, you know, the witnesses
18 would be available for cross-examination. It seems
19 like an awfully untimely request at this point in time.
20 What, what is -- yeah, I guess I would object to that
21 with the absence of any rationale for why we would
22 allow witnesses to present new testimony at this stage
23 of the proceeding.

24 HEARING OFFICER TOUSLEY: Well, it was my
25 understanding from Mr. Dumont that there was new

1 testimony that had arisen from Mr. Byrd during his
2 cross-examination that he wanted to address that he was
3 unable to address because it hasn't arisen before in
4 the written prefiled surrebuttal testimony. Is that
5 correct, Mr. Dumont?

6 ATTORNEY DUMONT: Yes.

7 HEARING OFFICER TOUSLEY: So that would be
8 the rationale.

9 ATTORNEY McCLAIN: And what, what was the new
10 evidence that you elicited on cross-examination? I
11 mean, the witness, if you want to cross-examine a
12 witness, that's the risk you run, as I understand it,
13 about, about how they answer, and that was, that was
14 Mr. Dumont's choice, and I guess, I, I'm not clear what
15 new evidence exists and whether or not -- I have no way
16 to assess whether it would justify additional evidence.
17 I don't know what --

18 HEARING OFFICER TOUSLEY: Okay. Mr. Dumont.

19 ATTORNEY DUMONT: Mr. Byrd went into great
20 detail. I believe it was yesterday, although the days
21 have sort of merged into one day in my mind. At some
22 point -- I think it was yesterday -- he explained in
23 detail his experience as pipeline engineer and how he
24 had never encountered a situation where a corrosion
25 engineer wasn't licensed, and he explained, he went

1 into that. We spent a lot of time on that. It went
2 well beyond his report, and that's what I would like
3 Mr. Liebert to address.

4 HEARING OFFICER TOUSLEY: Okay. Is Mr.
5 Liebert qualified to respond to that question?

6 ATTORNEY DUMONT: Yes, I believe he is, not
7 as a pipeline engineer, but, for example, what he will
8 say is that, if you look at the ARK Engineering report,
9 some of what's in their reports were the, the Issued
10 for Construction plans, excuse me, is pure electrical
11 engineering, and, even if Mr. Byrd has a point about
12 corrosion engineering may be separate in some way, much
13 of the IFC plan is pure standard electric engineering
14 and requires an electric engineer to sign off on, such
15 as lightning protection and grounding, things like
16 that.

17 HEARING OFFICER TOUSLEY: And what does he
18 base that -- well, we can ask him those questions, but
19 my understanding is that he's a civil engineer who is
20 speaking to the requirement in Vermont, based on his
21 experience, for signatures on documents that were
22 engineering, professional engineer signatures on
23 documents that were prepared for construction based on
24 his experience as a civil engineer. Is there, is there
25 something in his resume that we can point to that would

1 lead to the conclusion that he has some expertise in
2 the licensing of corrosion engineers in Vermont?

3 ATTORNEY DUMONT: Yes. He's actually a
4 mechanical engineer, not a civil engineer, and in what
5 he does, part of his job is he'll run into something
6 and say, okay, this is beyond my competence as a
7 mechanical engineer. This has to be addressed by an
8 electrical engineer. That's part of what he does as an
9 engineer.

10 ATTORNEY McCLAIN: If I could, my
11 understanding of the history of the record on this is
12 that Mr. Liebert raised this issue a very long time ago
13 in his reports, and that is why Mr. Byrd assessed the
14 PE stamp issue, because the PUC order that he should.
15 The specific ARK Engineering and other, other drawings
16 that Mr. Liebert testified, he to testified to that
17 after Mr. Byrd had already issued his report, and he
18 testified on, on, in his prefiled testimony that those
19 other plans should have been stamped by an electrical
20 engineer.

21 He has already testified about that. That issue
22 has been testified about, and you have had an
23 opportunity to question Mr. Byrd's perspective on it,
24 and there's, and I just don't see any, a new issue.
25 We're, we're -- it sounds, it looks to me like the same

1 issue that Mr. Liebert raised months and months ago
2 and, also, responded to the report in his prefiled
3 testimony. He had plenty of time to respond to Mr.
4 Byrd's perspective on that.

5 ATTORNEY DUMONT: Well, this is an
6 interesting process we have where we have prefiled
7 testimony and then cross-examination. It's standard
8 trial practice to call a rebuttal witness to respond to
9 answers that have been elicited on cross-examination.
10 That's part of what a rebuttal witness does, and, if
11 this were not with prefiled testimony, we'd be in
12 essentially the same situation we would at a pretrial
13 deposition. Yes, we know what the expert we've deposed
14 is going to say. When they say something on cross, we,
15 that wasn't in the deposition, we can recall our expert
16 to respond to what they said on cross that wasn't in
17 their deposition.

18 HEARING OFFICER TOUSLEY: As I understand it,
19 well, I haven't looked at the report in its total, Mr.
20 Byrd's report, in its totality recently. I've just
21 looked at bits. I don't recall a specific element. I
22 think what I'd like to do is reserve ruling on this and
23 provide the parties an opportunity to, to locate the
24 prior testimony of Mr. Liebert that might or might not
25 be germane to the issues addressed by Mr. Byrd's, in

1 particular, the fact that what ARK Engineering does is
2 corrosion engineering, as opposed to electrical
3 engineering, per se.

4 I do recall Mr. Byrd testifying to that extent.
5 If that is not something that he previously addressed
6 in his report or in his other testimony, that, that
7 then I will -- that's something that we'll talk about,
8 and I'll make that ruling once we finish with the, the
9 VGS witnesses.

10 ATTORNEY DUMONT: If I might just to finish
11 the thought while we're on it, it was only yesterday in
12 deposing, I'm sorry, in cross-examining Mr. Byrd that
13 he clarified his report. I had read his report as
14 saying that, in the final analysis, he didn't know of a
15 reason why ARK Engineering had not submitted signed and
16 sealed plans, and in cross-examination yesterday he
17 said, Oh, I can see why that paragraph was perhaps
18 confusing or misleading, because it was right after his
19 discussion of ARK Engineering and corrosion
20 engineering.

21 And I had understood and Mr. Byrd had, Mr. Liebert
22 had understood that, essentially, Mr. Byrd was agreeing
23 that, in the final analysis, maybe it was just that the
24 ARK Engineering electronic signing and sealing hadn't
25 happened, because he knew of no reason why it shouldn't

1 have happened, and we learned only on cross-examination
2 that that paragraph was not intended to apply to ARK
3 Engineering.

4 HEARING OFFICER TOUSLEY: Okay. I think I,
5 what I'd like to do is provide Mr. McClain and the
6 other parties an opportunity to do their own digging
7 into Mr. Byrd's testimony, as well as his report, to
8 assess whether there is something that needs to be
9 rebutted that, and if, and we'll address that after we
10 move through the VGS witnesses.

11 ATTORNEY DUMONT: Thank you.

12 HEARING OFFICER TOUSLEY: But, right now, I
13 see Mr. St. Hilaire standing by. Thank you, Mr. St.
14 Hilaire. I'm going to go ahead and swear you in.

15 JOHN ST. HILAIRE,
16 duly sworn to tell the truth, testifies as follows:

17 HEARING OFFICER TOUSLEY: Okay. If, if you
18 could introduce your witness, Mr. McClain.

19 DIRECT EXAMINATION BY ATTORNEY McCLAIN

20 Q. Good morning, Mr. St. Hilaire. Can you please
21 state your full name for the record?

22 A. John St. Hilaire.

23 Q. Thank you. And would you please state your
24 occupation and title at Vermont Gas?

25 A. I am Vice President of Operations at Vermont Gas.

1 ATTORNEY McCLAIN: Thank you. With that, Mr.
2 Tousley, I believe that Mr. St. Hilaire's prefiled
3 testimony and rebuttal testimony and exhibits have,
4 have all been stipulated to, with the exception of Mr.
5 Dumont's motion which the Commission has ruled on, and
6 so I'd move Mr. St. Hilaire's testimony and all of the
7 exhibits into evidence, to the extent that's necessary,
8 but, and, and, otherwise, I think he's available for
9 cross-examination, unless you'd like me to do any more
10 background with him before we get going.

11 HEARING OFFICER TOUSLEY: Okay. Is there any
12 objection to moving that evidence, moving that material
13 into evidence? Department?

14 ATTORNEY PORTER: No objection.

15 HEARING OFFICER TOUSLEY: ANR?

16 ATTORNEY MILLER: No objection.

17 HEARING OFFICER TOUSLEY: Mr. Dumont?

18 ATTORNEY DUMONT: The same objections as
19 before, which you had ruled on.

20 HEARING OFFICER TOUSLEY: Okay, all right.
21 Well, then, I think I am ready to ask questions. I
22 have to admit I didn't prepare myself to be a
23 presenter, so I don't have the particular documents
24 that I'm going to be referencing, but I will be reading
25 from them. In particular, I'm going to be looking at

1 both sets of Mr. St. Hilaire's prefiled testimony. Do
2 you have those available, Mr. St. Hilaire? If not,
3 I'll go through the steps to bring them up.

4 MR. ST. HILAIRE: I can probably find them.
5 You're talking about my prefiled testimony?

6 HEARING OFFICER TOUSLEY: Yes. There were
7 two sets of prefiled testimony. One was from --

8 ATTORNEY McCLAIN: If it helps, if it helps
9 anybody, I have his testimony and, if I was made a
10 presenter, could call up things as, as requested if, if
11 it helps, but I'll defer to you.

12 HEARING OFFICER TOUSLEY: Why don't you go
13 ahead and do that, Mr. McClain? That might be helpful.
14 So it's the prefiled testimony of July 10th and the
15 prefiled rebuttal testimony of July 31st 2020.

16 ATTORNEY McCLAIN: Okay. Give me one second.

17 HEARING OFFICER TOUSLEY: And thank you for
18 doing that. John, have you made Mr. McClain a
19 presenter?

20 ATTORNEY McCLAIN: I think that I have a
21 screen in front of me, Mr. Tousley, that I just need to
22 figure out which screen to choose, and then we'll be
23 good to go.

24 HEARING OFFICER TOUSLEY: Okay, thank you.
25 Great. If you could move to Page 4, Line 14.

1 ATTORNEY McCLAIN: Does that look right? I
2 can zoom out if you want.

3 HEARING OFFICER TOUSLEY: Yeah, why don't you
4 try to zoom it out a little bit? And let me just
5 repeat for the record that I, I note Mr. Dumont's
6 objections to Mr. St. Hilaire's testimony. I have
7 already ruled on them, as he noted, and then his
8 testimony and exhibits have been admitted into
9 evidence.

10 That's a little bit hard to read. I don't have --
11 it's not an extensive, and I'll just -- in Line 4 of
12 this testimony, you state, "With the exceptions that
13 have been addressed in other Commission proceedings,
14 the ANGP meets or exceeds applicable pipeline safety
15 and integrity standards and complies with regulations
16 and conditions mandated by the Commission's final order
17 and CPG in Docket 7970", and this, this appears to
18 conflict with testimony you had on Page 7 at Line 7, so
19 if we could move forward to there --

20 ATTORNEY McCLAIN: John, are you, or, Mr. St.
21 Hilaire, are you ready for me to move to Page 7, Line
22 7, or do you want to --

23 MR. ST. HILAIRE: Can you, would you just --
24 I actually have to zoom in on my side. Would you
25 scroll down just a couple lines? Go back. I just want

1 to finish reading the paragraph on that one. Stop.
2 Can you go to the bottom of that paragraph?

3 ATTORNEY McCLAIN: That's the end of that
4 page.

5 MR. ST. HILAIRE: All right. Can you --

6 HEARING OFFICER TOUSLEY: Yeah, I was talking
7 about Line 14, so --

8 MR. ST. HILAIRE: Okay.

9 HEARING OFFICER TOUSLEY: So that is the
10 relevant language.

11 MR. ST. HILAIRE: Okay. I'm ready to move to
12 the next section.

13 HEARING OFFICER TOUSLEY: So this is Page 7,
14 Line 7.

15 ATTORNEY McCLAIN: Page 7, Line 7. This is
16 Page 7, if you could see, and then Line 7 is here. Is
17 that visible to everybody?

18 HEARING OFFICER TOUSLEY: If you could make
19 it bigger, can you see it Mr. St. Hilaire?

20 MR. ST. HILAIRE: Yes, thank you.

21 HEARING OFFICER TOUSLEY: Okay, great. With
22 that, on Page 7, Line 7, you state, "The ANGP was
23 appropriately buried at required depths throughout the
24 41-mile pipeline, except for a span of approximately
25 0.5 miles in the Clay Plains Swamp, where our general

1 contractor encountered challenging construction
2 conditions and was unable to achieve the 4 foot of
3 cover contemplated by the CPG and the final order for
4 purposes of VELCO right-of-way load requirements".

5 Is that what it says?

6 MR. ST. HILAIRE: That's correct. That's
7 correct.

8 HEARING OFFICER TOUSLEY: So, so is it your
9 position that the sink-in-the-swamp burial technique
10 used in the Clay Plains Swamp is a deviation from the
11 CPG and final order and a violation, like the other
12 violations investigated in the other cases?

13 MR. ST. HILAIRE: No. The sink-in-swamp
14 method is, is another form of open trenching. I think
15 what I'm referring to is the, is the depth, which is
16 the foundation of the nonsubstantial change, not, not
17 referencing the specific sink-in-swamp method.

18 HEARING OFFICER TOUSLEY: Okay. So is it
19 your opinion then that that change from a four-foot
20 burial depth to a three-foot-or-less burial depth in
21 the, in the Clay Plains Swamp is not a substantial
22 change?

23 MR. ST. HILAIRE: In my, in my view, I don't
24 view that as a material change in the safety on the
25 pipeline. And can I have a moment to just go through

1 my rationale on that?

2 HEARING OFFICER TOUSLEY: Please.

3 MR. ST. HILAIRE: Okay. You know, this is, I
4 think there's no question that that area was a
5 difficult construction corridor, but, when I look at
6 the safety of that pipeline, it is on the edge of the
7 VELCO corridor. I think it's about 10 feet within the
8 VELCO corridor. If that pipe was constructed just 15
9 feet to the west, it would have been outside the VELCO
10 corridor. It would have been subject to 3 feet of
11 depth of cover, and, all else being equal, with the
12 same results, it would have met the 3-foot depth of
13 cover, and we wouldn't be here.

14 So, when I look at the safety requirements, I kind
15 of evaluate what's, what's materially different between
16 those two, and there's two main factors. One is the
17 third-party damage, which is really the safety factor
18 of depth of cover. The swamp in that area is remote.
19 There's no real access to it. With the swamp
20 vegetation, there's really no travel across it, and
21 it's protected by a utility right-of-way. So in both
22 situations I, I think the, the pipeline is safe.
23 Actually, with the additional markers that we've placed
24 out there in the VELCO corridor, it actually has a
25 better factor of safety where it is today.

1 And then, secondly, I look at the, the loading,
2 which was the impetus to the 4 foot of cover in VELCO.
3 There, we've done some engineering standards. We've
4 installed the pipeline at the edge of the right-of-way.
5 The right-of-way, I think, is 150 feet it's open
6 right-of-way. VELCO does have additional acreage on
7 the other side of the power lines. So, if they want to
8 expand, it will be well away from this pipeline.

9 So, when I look at the, the safety factors of the
10 potential travel by VELCO or vehicles and third-party
11 damage, I, I just believe that the safety of the
12 pipeline is not materially changed by the difference of
13 four feet and three feet and think it would be a
14 nonsubstantial impact to safety.

15 HEARING OFFICER TOUSLEY: So you believe that
16 -- so, so why did you propose four foot in the first
17 place?

18 MR. ST. HILAIRE: My understanding is that,
19 at the time, there was, someone had mentioned in a
20 previous day that the, that discussions with VELCO went
21 back and forth early on in the process, and one of the
22 concerns with VELCO was being able to bring their
23 vehicles out, and the loading standard was what the
24 commitment was that we wanted to meet in there to make
25 VELCO comfortable, and, to meet that, we committed to

1 four feet.

2 HEARING OFFICER TOUSLEY: So, so there is a
3 distinction between three feet and four feet inasmuch
4 as the four foot is the, allows for more weight on top
5 of the pipeline; is that not correct?

6 MR. ST. HILAIRE: Well, actually, that was
7 the, that was the loading standard calculations that we
8 were running, and, if you look at the Ashmont report,
9 which was done for a totally different reason, it
10 actually shows that the loading or the weight
11 requirements on the pipe is relatively, it's pretty
12 minor between three, four and five feet.

13 And that's why we actually had reached out to, I
14 reached out to them back in 2017, just inquiring. At
15 the time, I didn't know, but wanted to understand what
16 happens below three feet, and they confirmed that, even
17 at three feet, the loading standard is met as far down
18 as two feet. So the concern that VELCO had as far as
19 meeting that loading standard is the same, basically
20 the same at three and four feet.

21 HEARING OFFICER TOUSLEY: Okay. So, based on
22 this, it was your conclusion that there was no change
23 in public safety under criterion, 248 criterion (b) (5),
24 there was no potential for a change in safety.
25 Therefore, it was a nonsubstantial change. Is that how

1 the logic went?

2 MR. ST. HILAIRE: Yes, that's correct.

3 HEARING OFFICER TOUSLEY: Okay. So, so why
4 did you apply for a nonsubstantial change determination
5 in June of, of 2017?

6 MR. ST. HILAIRE: And that is because the
7 requirement of four feet, I think it is, the four feet
8 requirement was in the CPG. That was the expectation
9 of constructing this pipeline of VELCO, and we and my
10 team were, we knew that goal, we planned for it, and it
11 wasn't until we actually got into construction before
12 we realized that we may not get there. And I think the
13 Bubolz testimony on Page 83 confirms that or supports
14 that.

15 So, even with the evaluation of the safety aspect
16 isn't materially changed, the underlying question is
17 the four feet that's in the CPG. So there was -- and,
18 if you want me to go through some of the timeline, we
19 finally, we finally understood that the, the depth of
20 cover in the Clay Plains could not be remediated in
21 November or December of 2016, and, at that point, we
22 started evaluating next steps, and, because of the four
23 feet, we, again, talking with internal counsel, talking
24 with the regulatory folks, we decided that we would
25 file a nonsubstantial change for that reason.

1 HEARING OFFICER TOUSLEY: Because that's what
2 you promised in, or what VGS promised in the final
3 order and CPG was four feet, and you wanted to deal
4 with that change, though it was not --

5 MR. ST. HILAIRE: Correct.

6 HEARING OFFICER TOUSLEY: -- from your
7 perspective, a nonsubstantial change; is that correct?

8 MR. ST. HILAIRE: Well, I, well, it was not a
9 nonsubstantial change around safety, but, as far as it
10 was a, it was an expectation of our CPG, and we needed
11 to address that.

12 ATTORNEY McCLAIN: Sorry to -- if I may, I
13 think you guys are both talking in double negatives on
14 it's not a nonsubstantial. If you guys know, if it's
15 clear that you guys mean what you're saying --

16 HEARING OFFICER TOUSLEY: Let me do this, Mr.
17 McClain. So I want to make sure I understand your
18 testimony too. So it's your testimony that the change
19 from four foot to something less than four foot in the
20 Clay Plains does not amount to a substantial change?

21 MR. ST. HILAIRE: That's correct.

22 HEARING OFFICER TOUSLEY: Okay. And that's
23 because, from your perspective, the, the loading
24 concern that VELCO had that it articulated in its, in
25 its MOU with, with VGS for weight bearing was it made

1 no difference whether it was at three feet or four
2 feet?

3 MR. ST. HILAIRE: That's correct.

4 HEARING OFFICER TOUSLEY: Okay. So there was
5 no substantial change. Okay. But, but, nonetheless,
6 were you aware of -- you know, I'm, I'm thinking about
7 Mr. Shelton's testimony and the interest of the
8 intervenors and the public awareness that was
9 associated with that. Did that play a role in the
10 determination to file a nonsubstantial change
11 determination?

12 Somebody learned about it. Somebody learned about
13 the difference, and, you know, nonsubstantial changes
14 are not, there's not, it's not a regulatory requirement
15 to ask for a nonsubstantial change determination. It's
16 something that VGS did five times before this, because
17 it wanted to make sure that it was okay so that, when a
18 change happened, they weren't challenged for it.

19 MR. ST. HILAIRE: Yeah. And, again, sorry.

20 HEARING OFFICER TOUSLEY: Go ahead.

21 MR. ST. HILAIRE: Sorry to interrupt. Let me
22 back -- if you don't mind, I just want to back up,
23 because, again, I just want reiterate that the
24 expectation of four feet was, that was our expectation.
25 That was -- we expected to, to meet that four-foot

1 depth as we planned and prepared to go into the swamp.
2 Again, it, it wasn't until we got in, the team got in
3 there and encountered the, the wet, swampy conditions
4 where we first realized this might not happen, we may
5 not get there.

6 I, I became aware of it on September 19th, and on
7 September 20th Michels actually said they had completed
8 the work. The, we actually, at that time, we didn't
9 know if they did or didn't. The process is for Michels
10 to complete the work, to return final grading, and then
11 have survey do the final measurement. Due to the wet
12 conditions, CHA, their survey crew couldn't get out
13 there until the beginning of November.

14 So they provided us with the data in mid-November
15 with a list of areas that had depth concerns or depth
16 readings that were less than expected. We provided
17 that to Michels and told them to remediate all of them.
18 At that time, I notified VELCO that we had these
19 locations in the swamp. I let the DPS engineer know
20 that we had them out there. Michels worked diligently
21 to resolve them.

22 The week of, I think it's December 16th, Michels
23 notified me that they fixed all of them but the ones in
24 the Clay Plains Swamp, and, at that time, we, we were,
25 we, at that point, we knew that that wasn't going to be

1 fixed during normal recontouring, and so on -- you
2 know, we talked internally about it, you know, that
3 additional work in there could be more environmentally
4 destructive if we go back in there. The vegetation
5 started coming back. We were talking about the
6 loading.

7 We actually updated the DPS in late December,
8 early January, just to keep them informed, and they
9 wanted, and then they mentioned that they wanted to
10 keep updated. We continued our conversations with
11 VELCO to make sure, one, to confirm that the
12 understanding that, that their concern on loading was
13 consistent, that they, they were comfortable with it.
14 We worked with VELCO from January until April 25th when
15 they actually sent us a signed letter saying that they
16 agreed with that conclusion, and I think that was the
17 document that, or email from Eileen Simollardes to the
18 Department that we sent.

19 Again, the Department wanted to be apprised of
20 what we were doing, and we wanted to share our view of
21 proposing a nonsubstantial change for this area, and
22 then we ended up filing the nonsubstantial change.

23 So it really was, one, making sure that we, could
24 we fix it in the means that were available at the time,
25 and, two, making sure that VELCO was comfortable with

1 the, the analysis of the loading standard, and, once we
2 had the, VELCO had confirmed that, that's when we
3 decided to file the nonsubstantial change.

4 HEARING OFFICER TOUSLEY: Okay. I want to
5 make sure I understand what happened in the swamp in
6 September.

7 MR. ST. HILAIRE: Sure.

8 HEARING OFFICER TOUSLEY: I mean, I've seen
9 the, the emails or the communication, the
10 correspondence back and forth between VGS and VELCO in
11 September. So in September Mr. Bubolz, the Michels
12 crew, made you aware that there was a problem in the
13 swamp; is that correct?

14 MR. ST. HILAIRE: My construction manager
15 notified me on Monday, December 19th. The Michels crew
16 and my team were in daily communications. They were in
17 doing work on the Thursday. They did a lot of work on
18 the Friday. Saturday, they did a little bit of work,
19 but Friday's the day that the excavator slid off the
20 mats and they had to pull that out. On Monday they
21 were doing work, and they ran into what Mr. Bubolz
22 called the "tough area", and, at that point, my
23 construction manager had called me and said that
24 Michels is having a tough time and we may not get four
25 feet. So Monday --

1 HEARING OFFICER TOUSLEY: Who was your
2 construction manager?

3 MR. ST. HILAIRE: Mike Regan.

4 HEARING OFFICER TOUSLEY: Okay, okay. So
5 and, at that time, so that was sometime around the 20th
6 of September?

7 MR. ST. HILAIRE: It was the 19th.

8 HEARING OFFICER TOUSLEY: The 19th? Okay.
9 So all that happened on the 19th, and then there was a
10 dialogue between you and VELCO about what VELCO could
11 live with in the swamp; is that correct?

12 MR. ST. HILAIRE: So, at that point, I knew
13 that we had a commitment of four feet, and that was
14 based on a loading standard. So the loading standard
15 sets the safety bar. So I reached out to VELCO to
16 understand, well, what happens next? We may or may not
17 get there. We have to start making decisions. And the
18 first thing I wanted to know was how to evaluate the
19 safety of that pipe and the expectations from VELCO.

20 So I reached out to VELCO, and, and I shared the
21 analysis that we had and said, I, I want to understand
22 your comfort level around loading and safety of this
23 pipeline if we don't get the four feet. I just need
24 information, because I don't know what's going to
25 happen next.

1 I think I sent that to Peter -- it's, I think it
2 was the 19th. Michels worked on Tuesday, the 20th. On
3 Wednesday, the 21st there was an email from, from Peter
4 Lind with VELCO to myself. It's early in the morning,
5 and Peter said, yeah, we agree with the analysis. We
6 can live at less than that.

7 When I called my, my team, Mike Regan, that
8 morning, and said, "How we doing?", he said, "We're
9 done", and Michels actually had finished it, the work,
10 on Tuesday night, and that's confirmed with the Michels
11 time sheet by the superintendent, and it says, I think
12 it says 885 feet complete Clay Plains. So they
13 actually completed it the day before. So that was at
14 the point where they said they were able to achieve it.
15 We didn't -- we weren't sure, and we were waiting for
16 survey to give us the final determination, which is
17 when the, when they finally got in there, which was
18 early November, and gave us the results in
19 mid-November.

20 HEARING OFFICER TOUSLEY: Okay. So, so
21 Michels never really asked for permission to do the
22 sink-in-the-swamp adjustment; they just did it, and
23 then, after they did it the next day, VELCO said, yeah,
24 we can live with that? Is that correct?

25 MR. ST. HILAIRE: Well, I think the, there's,

1 there's two topics. I mean, one is the excavation
2 method.

3 HEARING OFFICER TOUSLEY: Yeah.

4 MR. ST. HILAIRE: I think the team -- you
5 know, it's a narrow right-of-way. It's 40 feet. And
6 the team, Mr. Bubolz mentioned that it's narrower than
7 normal. Most right-of-ways are 50 feet, and there's
8 times where you get temporary work space. So he was
9 evaluating how to proceed with that work, how to best
10 do it for the, you know, safety of the pipe, the
11 environment, the contractors, and they developed their
12 plan, and it was one of the Michels employees who came,
13 you know, who proposed using this method.

14 They, Mr. Bubolz, I think he jotted down a great
15 idea. I mean, they thought it was a good application
16 here that would be successful, and they went into the
17 swamp to execute it. They didn't ask permission. It
18 is, in my mind, a form of open trenching, and they
19 proceeded and expected to get four feet when they
20 started.

21 HEARING OFFICER TOUSLEY: Do you know if sink
22 -- I mean, I'm sure you've reviewed the final order and
23 CPG; is that correct?

24 MR. ST. HILAIRE: Yeah.

25 HEARING OFFICER TOUSLEY: Have you reviewed

1 Mr. Heintz's testimony?

2 MR. ST. HILAIRE: Yes.

3 HEARING OFFICER TOUSLEY: Was
4 sink-in-the-swamp ever mentioned as a excavation
5 installation method? Was the Commission ever briefed
6 on that as a potential?

7 MR. ST. HILAIRE: Well, I think that it's a
8 nuance of, of open trenching. I mean, open trenching
9 is you excavate the trench, and you lower the, the pipe
10 into it, and, essentially, that was what they were
11 doing. Rather than, traditionally, you would have the
12 pipe on what they call skids, which are wood blocks.
13 You would excavate the trench, and then you would lower
14 the pipe into it.

15 Our specifications are pretty -- they gave
16 flexibility to the construction team, because every
17 lowering-in and, and cribbing is, is unique based on
18 the terrain. So there's not a lot of guidance as far
19 as how you move the pipe from the staging area into the
20 trench. So here we have an open trench construction,
21 which is an excavator removing material, and the pipe
22 going in and into the trench.

23 You know, the specifications for moving the pipe
24 in is essentially protect the pipe and handle with
25 care, and here the pipe is protected with coating.

1 They used several pipe booms to guide it in, and it's
2 very similar to the open trench method.

3 HEARING OFFICER TOUSLEY: Right. But, you
4 know, I participated in the review of the 7970 final
5 order and reviewed all the materials and submissions
6 then, and many of them more recently in 7970, and the
7 phrase "sink-in-the-swamp", I don't think, ever arises.
8 You know, we have the specifications that we spent time
9 looking at yesterday with Mr. Byrd, the general open
10 trench excavation scheme, which is broadly general,
11 because it, it appears that, that it, it, it was in a
12 circumstance where there was, where it was a highway
13 setting, that is, that, you know, the six to nine
14 inches differentiation, and there was, the, the diagram
15 pointed out pavement or, or some sort of other top
16 layer surface in the picture.

17 And, you know, this is the one where we talked
18 about, Is the pipe just floating in midair? Does it
19 get, does it get -- you know, that's what the
20 Commission was briefed on in, in the, in the CPG or
21 the, in the approval process, the, the
22 sink-in-the-swamp method, and, and, when we were
23 briefed on that, we were also briefed that, that, in
24 order to ensure more than necessary safety, we're going
25 to bury it to four feet, because that's what VELCO

1 wants.

2 So do you think -- but what your, what your
3 response, though, is is that, well, this is just
4 another reasonable change in the open trench excavation
5 methodology; is that correct?

6 MR. ST. HILAIRE: So there's two things. One
7 is, for the open trench methodology, yes, but you
8 referred to a trench detail that showed the pipe with
9 trench walls and segregation of soils, and I think it
10 had paving. So, and, essentially, that's a trench
11 cross-section, and I think, when you look at the trench
12 in the swamp profile, it's very similar to that. You
13 have, again, you have a trench that's excavated. You
14 have a pipe that's in, that's in the trench. So I
15 think that's very consistent with the, what the trench
16 looks like out there. It's just dug in a different
17 way.

18 But the detail itself is, if you took a trench
19 detail out there and a trench detail in the field
20 coming into it, they're fairly similar.

21 HEARING OFFICER TOUSLEY: Okay. Because,
22 again, my memory of the 7970 process was that there
23 were two ways. One was open trench excavation. The
24 other one was HDD --

25 MR. ST. HILAIRE: Correct.

1 HEARING OFFICER TOUSLEY: -- horizontal
2 directional drilling, and that there was some
3 flexibility that was given to VGS to alter it's ACD
4 determinations in swampy settings. So I think the
5 Commission's expectation in a setting like the Clay
6 Plains Swamp was that, either the more normal, you
7 know, open trench excavation.

8 Sink-in-the-swamp was something new. That doesn't
9 mean that the final result might not have been as safe,
10 but it wasn't what the Commission was informed might
11 occur. So I guess where I'm going with this is that,
12 that I have the -- when you made the determination that
13 this was a nonsubstantial change but that you would
14 still inform the Commission about it because it was
15 different, was that a factor?

16 MR. ST. HILAIRE: No, no. To me, that
17 installation method is essentially the open cut method.
18 It was the four feet that was what was behind filing
19 for the nonsubstantial change.

20 HEARING OFFICER TOUSLEY: Okay, okay. And
21 let me just go back to what your earlier testimony was
22 with regard to what happened in the swamp in September.
23 It's your testimony that Michels did it, and then you
24 were able to verify what they did later on in November
25 and December when you did survey studies, because you

1 couldn't get out there and do the survey in September?

2 MR. ST. HILAIRE: Right. So the normal
3 process is, when the pipe is put in the trench, the
4 survey crew comes in and takes a measurement from the
5 top of the pipe, and then they, they backfill, they do
6 final grading, and the survey crew will come in. You
7 know, that might be a week or two afterwards. Could be
8 a couple days if it's really quick. But in this area
9 it was so wet they were not able to get in there until
10 it was the first week of November. So they had to get
11 back in to take their readings on the surface, and, at
12 that point, they turned the data around and provided it
13 to us within the week.

14 HEARING OFFICER TOUSLEY: Okay, thank you.
15 What happens, you know, in a dry place when, when you
16 don't have muck and ooze and mud and you don't use the
17 sink-in-the-swamp method? When does, when does the
18 survey crew come to verify the depth of the pipeline
19 then?

20 MR. ST. HILAIRE: It depends on how long it
21 takes to do the work, but you expect it to be normally
22 from a couple days to two weeks and somewhere in that
23 time period on normal construction. Because some of
24 the, some of the, the runs are, are long. So, if
25 you're actually putting in the pipe, it just depends on

1 when final grading comes in.

2 HEARING OFFICER TOUSLEY: Okay. So, so, in a
3 dry location, the, the Michels crew would dig the
4 trench, weld the pipe, lay the pipe, backfill, cover
5 the, cover the trench, and then a couple days or two
6 weeks later, there would be a survey crew. There's no
7 survey crew while the trench is still open?

8 MR. ST. HILAIRE: There is. So there's a
9 survey crew that's there, because what they do is, when
10 the pipe is put in the trench, they take a measurement
11 on the top of the pipe, and that's --

12 HEARING OFFICER TOUSLEY: Okay.

13 MR. ST. HILAIRE: -- essentially the first,
14 and then, when it's backfilled and final grade, they
15 come back and they take a reading at that new location,
16 and the vertical difference is what tells you the
17 depth.

18 HEARING OFFICER TOUSLEY: Okay. So, when you
19 use -- I'm sorry. You did break up again. If you
20 could, what you just said.

21 MR. ST. HILAIRE: Sorry. They have to be on
22 site twice, once to take the width of the pipe in the
23 trench and once to take the, the elevation at the
24 surface.

25 HEARING OFFICER TOUSLEY: Okay. And I think

1 it was your testimony that, in the Clay Plains Swamp,
2 because it was so wet, they couldn't do it the first
3 time; they just came out the second time. Is that
4 correct?

5 MR. ST. HILAIRE: I think they tried several
6 times, but they could not get in there until the
7 beginning of November. So it was, it was finished on
8 the, the 20th, I think, in one of my affidavits or
9 filings. It took them a while to do final cleanup,
10 because it was so wet, and so it was another week and a
11 half or two weeks. So that extended it. The survey
12 crew tried several times, but they finally got out
13 there the first week of November.

14 HEARING OFFICER TOUSLEY: In, in a, in a
15 normal, in a dry trench open excavation, the Michels
16 crew would have had to wait for that first inspection
17 or that first survey before it did backfill, wouldn't
18 it? They wouldn't have just finished it and covered
19 it. They'd have to wait for the survey crew to come
20 out and say there's two feet or three feet or four
21 feet, whatever is the depth or the height above the
22 pipe?

23 MR. ST. HILAIRE: Typically, the crew, the
24 survey crew, would be out there.

25 HEARING OFFICER TOUSLEY: So they'd be out at

1 the same time?

2 MR. ST. HILAIRE: Yeah.

3 HEARING OFFICER TOUSLEY: Okay. So the --

4 MR. ST. HILAIRE: It's not during the -- but
5 before, they have to be out there when the pipe is in
6 the trench, and before they backfill, they have to take
7 that measurement. So they might, Michels, might have,
8 you know, trenched, put the pipe in. If the survey
9 crew is not there, they have to stop, but, if the
10 survey crew is there, and, oftentimes, they were, they
11 would just take the readings and then move on. So it
12 just depends if both crews are there, but, if the
13 survey crew is not there, Michels can't move forward.

14 HEARING OFFICER TOUSLEY: Okay. But that
15 didn't happen in the Clay Plains. What happened in the
16 Clay Plains was Michels just did it, even though there
17 was no survey crew there. They just completed the work
18 where they did the excavation. They laid the pipe.
19 They let the pipe sink in the swamp. They covered it
20 over before any survey crew could assess the burial
21 depth. Is that correct?

22 MR. ST. HILAIRE: That's incorrect. The
23 survey crew was out there.

24 HEARING OFFICER TOUSLEY: They were?

25 MR. ST. HILAIRE: Yes.

1 HEARING OFFICER TOUSLEY: Okay. And what did
2 -- do we know what they determined at the time?

3 MR. ST. HILAIRE: We do not. They were
4 taking depths at the, at the pipe, but they were not
5 taking depths at the, at the surface, because the final
6 topsoil was not replaced. So, when they did go
7 through, you can see that in Mr. Shelton's video and
8 picture where they actually had material that was piled
9 up near the trees. So all of that still had to be
10 graded down. So they had a rough idea, but you can't
11 take the final depth until final surface preparation is
12 made.

13 HEARING OFFICER TOUSLEY: Okay. I'm just
14 trying to think about it the way the survey crew might
15 have thought about it when they were there. I mean,
16 this was -- was the pipe covered with mud and muck
17 sinking when they had to do that initial survey
18 assessment?

19 MR. ST. HILAIRE: Yes, in parts of it.

20 HEARING OFFICER TOUSLEY: Okay.

21 MR. ST. HILAIRE: In parts of it.

22 HEARING OFFICER TOUSLEY: And, and -- okay.
23 But then the final verification step, which is what is
24 relied on even in a dry setting, would happen later,
25 and, in this case, it happened a couple months later,

1 because it was so wet?

2 MR. ST. HILAIRE: Correct.

3 HEARING OFFICER TOUSLEY: Okay. Why don't we
4 take a ten-minute break? I may have more questions. I
5 haven't, I haven't figured that out just now. I want
6 to reflect upon what we just discussed, and then we'll
7 either, I'll either ask more questions, or I'll make
8 you available for the cross-examination by the other
9 parties. So it's now 10:27. Why don't we come back at
10 10:35? Yes, Mr. Dumont?

11 ATTORNEY DUMONT: Yes. Some of what we just
12 heard from Mr. St. Hilaire is new information, and some
13 of it, from my recollection, is contradicting the
14 inspection reports we obtained in discovery. My
15 recollection is the inspection reports from September,
16 including the 16th and the 19th and 20th, have the
17 inspectors recording that we can't meet four feet and
18 that this is okay because VELCO has agreed to it.

19 I believe it happened on the 16th and either the
20 19th or 20th. It's right in the inspection reports
21 that we can't reach four feet depth of cover. And so
22 I'm, I'm bringing this up now, because I want to ask
23 Mr. St. Hilaire during the break to go find those
24 inspection reports, because I think it would be helpful
25 to answer the questions you've been asking.

1 HEARING OFFICER TOUSLEY: Mr. McClain?

2 ATTORNEY McCLAIN: Yeah, thank you. Mr. St.
3 Hilaire testified in detail about this situation in his
4 August 11th affidavit, which was submitted to the
5 Commission at the very commencement of this
6 investigation back in 2017. It's also an attachment to
7 his prefiled testimony. He's testified about this
8 before.

9 I have no objection to following up on questions
10 within the scope. Of course, that's typical practice.
11 We do that all the time, and I have no objection to
12 that. If Mr. Dumont has a document he wants to
13 cross-examine and make an allegation about, he can, he
14 can present that. Mr. St. Hilaire is prepared to
15 testify today. He is not about to go on a discovery
16 hunt in the middle of an investigation based on an
17 allegation.

18 HEARING OFFICER TOUSLEY: I agree. I think,
19 Mr. Dumont, if you have those inspection reports and
20 you want to use them in your cross-examination of Mr.
21 St. Hilaire, you're welcome to do so, but Mr. St.
22 Hilaire on his own might want to look for them in the
23 break just so he's ready for it.

24 ATTORNEY McCLAIN: If they existed, you could
25 look for them.

1 HEARING OFFICER TOUSLEY: Right. But, but
2 I'm going to, I'm going to go ahead, and it's now
3 10:30, so we'll, we'll take a break until 10:40, and
4 then I'll come back, and I may have some more
5 questions. Thank you.

6 ATTORNEY McCLAIN: Thank you.

7 (A recess was taken from 10:30 a.m. to 10:40 a.m.)

8 HEARING OFFICER TOUSLEY: Okay. It's 10:40,
9 and everyone's back. I do have some more questions for
10 you, Mr. St. Hilaire. I want to thank you for your
11 patience as we move through this. I want to think --
12 okay. So you've talked about what happened out in the
13 swamp and the field. What was, you know, where were
14 you physically on the 19th, 20th, and 21st?

15 MR. ST. HILAIRE: In my office in South
16 Burlington, Vermont.

17 HEARING OFFICER TOUSLEY: Okay. Because
18 that's what I wanted to talk about was how the, the
19 information about the -- you know, yesterday I talked
20 with Mr. Rendall about, you know, did they have a war
21 room, how was he briefed on what happened, you know,
22 did he have a little map that showed where things were,
23 how was he briefed on a daily basis, and he articulated
24 that he was fairly well-informed about what happened
25 and, in particular, that he knew contemporaneously

1 that, that the sink-in-the-swamp method was being
2 contemplated and then was used in, in the Clay Plains
3 Swamp on those days.

4 Do you remember how that was communicated? You
5 know, did you have a -- how did you brief the, you
6 know, the sort of senior executives at, of which you
7 are one, your fellow senior executives at VGS about
8 this, this deviation, this adjustment that was
9 occurring in the Clay Plains Swamp?

10 And I don't want you to -- I know Mr. McClain has
11 been very sensitive to the attorney-client privilege.
12 I don't want you to talk about what the, what the
13 lawyers told you to do. I just want you to tell me how
14 you told, how you briefed, you know, the executive, the
15 other executives about this and how -- I want to know
16 how that decision was made that it was okay to go
17 forward with the sink-in-the-swamp adjustment.

18 MR. ST. HILAIRE: So I, the communication at
19 Vermont Gas, as Mr. Rendall testified to yesterday, we
20 had formal meetings ESE board meetings. We had weekly
21 senior team meetings, and we had a lot of just informal
22 day-to-day meetings. We talked continuously.
23 The, the concept of the sink-in-swamp method, as it's
24 called, is, never went through the approval, you know,
25 any kind of approval process.

1 The team in the field, Michels owns the means and
2 methods. They evaluated, you know, the construction
3 that was in front of them, and this is consistent with
4 the open trench method, and they felt that this was
5 going to be successful in that area, and they
6 proceeded.

7 We knew that they had talked about this for a
8 while, but it wasn't anything that was elevated or
9 escalated or thought that this was a material change
10 from what they've been doing. So, as far as a
11 escalation up to, for formal approval, that did not
12 happen.

13 HEARING OFFICER TOUSLEY: But Mr. Rendall
14 indicated that he was aware that there was a, a concern
15 about, you know, the wet conditions in the swamp and
16 that, you know, he didn't, he, he never said that you
17 asked him for permission and he approved it. He said
18 he trusted his team to do the right thing.

19 MR. ST. HILAIRE: Yes.

20 HEARING OFFICER TOUSLEY: But he was briefed
21 on the use of this methodology?

22 MR. ST. HILAIRE: I think that he was told
23 after the fact. Again, the, the use of it was
24 consistent with open trenching. The team proceeded. I
25 was notified of the conditions that they were

1 experiencing, the difficulty of getting depth on the
2 19th. At that time, I notified several of the
3 executive team of the difficulties that were going on
4 and the potential that we may not get to four feet at
5 that time. Again, I don't believe that I updated them
6 on the technique that they were using. It was more
7 about the difficulties and next steps and how to manage
8 the, the situation.

9 HEARING OFFICER TOUSLEY: Okay. And I'm
10 reminded, too, and I'm going to take you back in time a
11 little bit. I know you've indicated that you've seen
12 Mr. Bubolz's testimony. He talked about having
13 informed, I want to say, Mike Regan and Daryl Crandall
14 about his concerns, and you talked about this, too,
15 with, with the, with the width of the right-of-way,
16 and, you know, the, you know, that there are other
17 methodologies that can be used in the face of swampy
18 conditions.

19 One of them is to, you know, slide plates
20 effectively around the swamp, around the, the trench in
21 the swamp, but that, that -- and he foresaw that as a
22 potential methodology, but he couldn't do that, because
23 it was so wet in there and the right-of-way was so
24 small, so narrow that he wouldn't be able to get the
25 equipment in to do that. Is that correct?

1 MR. ST. HILAIRE: Let me -- if you don't
2 mind, I'll kind of talk through that.

3 HEARING OFFICER TOUSLEY: Please.

4 MR. ST. HILAIRE: So the, as I've stated,
5 Bubolz, Mr. Bubolz was the superintendent of Michels,
6 so he was in charge of all the construction. Mike
7 Regan was the construction manager for Vermont Gas and
8 managed the construction team, the inspection, and they
9 spoke daily. They talked about difficult construction
10 on steep hills, in other swamps. We had areas with,
11 that had drainage issues, how do you deal with the
12 water in the construction?

13 So it was, you know, almost a daily conversation
14 of, What's next? What's coming up? What are the
15 risks? How are we going to manage it? So that
16 conversation happened throughout the whole project, so
17 it doesn't surprise me that he had several
18 conversations with Mike and Daryl. So, but,
19 ultimately, the means and methods was Michels's. So
20 Mr. Bubolz had talked with our team, had talked with
21 his team, and someone on his team, Mr. Vincent, came up
22 with the idea to install it in that fashion. Mr.
23 Bubolz thought it was a great idea, and they moved
24 forward with it.

25 The, the sliding in the plates that you mentioned

1 is called sheeting, and Michels used that several times
2 on our project. When they felt it was applicable, they
3 submitted the request for that and proceeded with it.
4 In this case, they never submitted a request for it,
5 but, once they got in and you disturb the surface area,
6 at that point, what Mr. Bubolz was testifying to is you
7 can't go in and do it after the fact. The surface is
8 already disrupted, and, if you bring heavy equipment
9 in, the surface becomes unstable, and you're putting in
10 very long sheeting with heavy equipment, long
11 extensions. You've got an electric power line in that
12 area. So, after the fact, it would not work.

13 HEARING OFFICER TOUSLEY: Okay, okay. So the
14 bottom line is that Mr. Vincent, as part of Mr.
15 Bubolz's team, made up the idea, or, I mean, he also
16 testified that sink-in-the-swamp, and I believe Mr.
17 Byrd may have testified as well, that it's not an
18 unknown technique in, in open trenching, that they
19 decided that, that the Michels team decided to do it,
20 and they just did it. Did you know they were doing it
21 when they did it?

22 MR. ST. HILAIRE: I don't know. I don't
23 recall knowing ahead of time before they went in.
24 Again, the field team has these conversations. They
25 work through a plan, and they, they proceed it. If

1 they felt they needed to elevate it, they would, but,
2 in this situation, I do not believe I knew about it
3 before it started.

4 HEARING OFFICER TOUSLEY: Okay. Thank you.
5 I don't have any further questions. Do the other
6 parties have questions in light of the questions and
7 answers that Mr. St. Hilaire just provided?
8 Department?

9 ATTORNEY PORTER: We do not have any
10 questions. Thank you.

11 HEARING OFFICER TOUSLEY: ANR?

12 ATTORNEY MILLER: We don't have any questions
13 either. Thank you.

14 HEARING OFFICER TOUSLEY: Mr. Dumont?

15 ATTORNEY DUMONT: Yes, I do.

16 HEARING OFFICER TOUSLEY: Please.

17 ATTORNEY DUMONT: So I'd like to explain
18 where I am on this. During, while you were finishing
19 your examination, I went to Cross Exhibit 33 that was
20 filed last week.

21 HEARING OFFICER TOUSLEY: Can we make Mr.
22 Dumont a presenter? Great.

23 ATTORNEY DUMONT: And, hopefully, I'm doing
24 this right. Do you folks have my screen on yours? Do
25 you see?

1 HEARING OFFICER TOUSLEY: Yes.

2 MR. ST. HILAIRE: I can see it.

3 ATTORNEY DUMONT: Okay. So this is .pdf Page
4 62 of the lowering-in reports from 2016.

5 ATTORNEY McCLAIN: Can I -- I'm sorry, Jim.
6 Can I interrupt you? Because Cross Exhibit 33 is a, is
7 a placeholder that says, "Dropbox file of all
8 inspection reports listed by Mr. Byrd in Report
9 Attachment 3", and we had discussed, you and I, jointly
10 reviewing a file of all inspection reports that you
11 wanted to submit, and that hasn't happened.

12 So I'm not opposed to us questioning this witness
13 about this, but I just want to point out that this
14 Dropbox file, I don't -- it's not filed with the
15 Commission, and I, you know, I don't, I don't know how
16 we would deal with it. I think, if there are specific
17 inspection reports that you would want to move for
18 evidence, that that would be, that would be the
19 appropriate way to do it.

20 I have not had time since you sent me a link on,
21 like, I think, the day before the hearing, to have
22 someone check whether your compilation of the
23 inspection reports is complete or accurate or
24 consistent with the list on Mr. Byrd's report. So I'm
25 just in no position to, to weigh in on, on how to

1 address the way that these inspection reports have been
2 handled, but I have no objection to proceeding with the
3 questioning. I just wanted to make it clear that this
4 is, has not been filed with the, with the Commission
5 other than the Dropbox link, and I don't, I don't know
6 what compilation this really is.

7 ATTORNEY DUMONT: So, for the record, we
8 provided a Dropbox link to Mr. McClain the week before
9 the hearings, and it has all of the inspection reports.
10 I believe it's 16,000 pages of inspection reports. We
11 also were in touch with the Deputy Clerk Holly
12 Anderson, How do you file a document with 16,000 pages?
13 Because you can't upload it to the ePUC website. It's
14 impossible. So we provided a Dropbox link
15 simultaneously to Ms. Anderson and to all the counsel
16 in this case of all 16,000 pages.

17 ATTORNEY McCLAIN: Yeah.

18 ATTORNEY DUMONT: And, during the last 15
19 minutes, I went through them, and I found this
20 inspection report, which I am labeling as Exhibit 33A,
21 and I asked my paralegal. During the break, I emailed
22 her these two pages, which I made into a .pdf, and I
23 asked her to immediately file this excerpt as Exhibit
24 33A on the ePUC website.

25 ATTORNEY McCLAIN: Jim, that's consistent

1 with my, my recollection. I just wanted to make it
2 clear that I have not checked whether the 16,000,
3 whatever documents you say are on this Dropbox link
4 reflect a complete record of inspection reports or
5 anything else like that.

6 HEARING OFFICER TOUSLEY: Okay. Well, Mr.
7 Dumont, I appreciate the steps that you've taken to get
8 the documents that you want to have Mr. St.Hilaire look
9 at effectively addressed in the record. You may
10 proceed.

11 ATTORNEY DUMONT: Thank you.

12 ATTORNEY McCLAIN: Thank you.

13 CROSS-EXAMINATION BY ATTORNEY DUMONT

14 Q. Mr. St. Hilaire, is this the trenching,
15 lowering-in and backfill report for September 19th
16 2016?

17 A. It appears to be so, yes.

18 Q. And it's, in fact, it's by Inspector Michael Ray,
19 correct?

20 A. Yes.

21 Q. And he's talking about the same area you've been
22 discussing with the hearing officer?

23 A. A portion of it, yes.

24 Q. And did he write, "Verified OQs, period"; that's
25 the operator qualifications?

1 A. Yes.

2 Q. And then did he write, "Ditched 388 feet today,
3 period. Backfilled 375 feet today, period. Depth of
4 coverage, 1,649 plus 75 to 1,648 plus 75, 3 feet,
5 period. 1,648 plus 75 to 1,647 plus 75, 3.2 feet,
6 period. 1,647 plus 75 to 1,646 plus 75, 3.6 feet,
7 period. 1,646 plus 75 to 1,645 plus 87, 3.9 feet,
8 period".

9 Did I read that correctly?

10 A. Yes.

11 Q. And the depth of cover was provided by a surveyor
12 at the time, correct?

13 A. I don't know how that was provided. I don't know.

14 Q. Didn't requirement specification 312333 require,
15 in black-and-white terms, that the pipeline not be
16 covered up until the depth had been surveyed by the
17 surveyor?

18 A. I would have to look at that specification.

19 Q. Regardless of your memory of the specification,
20 was that the standard practice?

21 A. It was the customary practice to take a reading
22 from the top of the pipe before backfill or --

23 Q. And that reading was not performed by the
24 construction contractor, was it?

25 A. The construction contractor did not take the

1 reading. The survey contractor did.

2 Q. Right. You had an independent surveyor who came
3 up with these readings, correct?

4 A. No. These are from the inspection. So these are,
5 this is from the inspection team, which, from Mott
6 MacDonald, and they can take those measurements however
7 they deem fit. This is a inspection. They're just
8 monitoring. Michels owned the means and methods to get
9 there, and my team monitored. So I'm not sure exactly
10 how they got those, but they're, they're not final
11 depth numbers.

12 Q. The standard operating procedure before a pipeline
13 was covered with backfill was to use GPS from the
14 topmost weld on the top of the pipe to measure from the
15 topmost weld to the height of the surrounding land on
16 either side of the trench, correct?

17 A. After final restoration, yes.

18 Q. No, I'm talking about when, during, before the
19 pipe is backfilled.

20 A. During backfill, Michels, there was no standard
21 way that I know of, specified way, to measure that, or
22 stipulated. If there is, if that's written down, I'm
23 happy to look at a document, but I don't believe that
24 there was a specified way of measuring that and
25 checking it in the midst of construction.

1 Q. Regardless of whether it's, you recall how it was
2 written down, the practice was, before the pipe was
3 backfilled, the measurement was taken by someone other
4 than Michels to measure the distance from the top of
5 the pipe to the height of the surrounding land on
6 either side of the trench, correct?

7 A. I can tell you my team was out there. They are
8 monitoring. If they see, if they see something that
9 seems lower or off, they'll mention it. I'm sure that
10 it is apparent by this that they take measurements in
11 some fashion. I can't attest to how they do that, what
12 tools they use, what methodology, and if there was a
13 standard across all inspectors. They were monitoring
14 to make sure that we got our depth here and noting that
15 the contractor didn't, and I know that that work
16 continued on the 20th.

17 Q. And so I wasn't asking you the method they used.
18 I'm just asking whether it was the standard procedure
19 for someone other than Michels to make the measurement
20 before the pipe was backfilled. That's should be, it
21 should be -- I'm asking that you answer that "yes" or
22 "no".

23 A. No.

24 Q. So there was not a standard practice to measure
25 the depth of the pipe before it was backfilled; is that

1 your testimony?

2 A. It was up to Michels to ensure that and our team
3 to visually monitor it, but I don't believe it was the
4 standard to measure in every location.

5 Q. Do you agree, in this case on this date, it was
6 measured?

7 A. By reviewing the document and seeing the, the
8 measurements, I believe that some measurement was done
9 at this time.

10 Q. And do you agree that this, the measurement shown
11 on this inspection report, was brought to your
12 attention by the end of that day?

13 A. The measurements were not. The situation that
14 they were having difficulty were brought to my
15 attention. It is not uncommon to have inspection
16 reports document situations that need follow-up. I
17 think there was one item or situation that was brought
18 up by the, by your, your clients, Mr. Dumont, on Sucker
19 Brook where we had an inspection report we had
20 documentation that work wasn't complete, and we looked
21 at the inspection report the final day, and the work
22 was completed, and we achieved our objective. So I
23 look at this, and it's information on a site that was
24 in process, but not completed that day.

25 Q. Mr. St. Hilaire, wasn't there a standard procedure

1 that inspection reports would be provided to management
2 the day they were completed?

3 A. To our construction manager, Mike Regan, yes.

4 Q. So your construction manager had this report the
5 day it was completed, correct?

6 A. I would have to go back and see when he actually
7 got it. Typically -- I can't see the bottom of the
8 report.

9 Q. I'll move it up.

10 A. Yeah. So I know the, the initials, it looks like
11 MR or M. Mike would review these. So I can't say when
12 Mike actually received this report, but he does get
13 those, and he reviews them.

14 Q. Get them at the end of each day, correct?

15 A. I would have to go back and evaluate when, when
16 they come in. Our contractors, we worked 7:00 in the
17 morning to 7:00 at night. So, when they come in,
18 they're dropping off their paperwork, and I know Mike
19 worked late often. So they might have been there. I
20 just can't, can't attest to the exact paper flow in the
21 office.

22 Q. At the very latest, Mr. Regan would have had this
23 when he came to work the next morning, correct?

24 A. Correct.

25 Q. Correct. Okay.

1 A. Yeah, I would believe so. And, again, I wasn't
2 there. I can't attest to it, but I would believe so.
3 The, the inspectors meet in the Williston yard pretty
4 much daily, and the expectation was, at the latest, it
5 would be in the trailer the next morning.

6 Q. Now, do you agree with me that the company
7 represented to the Commission in its testimony in 2012
8 and 2013 that final grading would match the preexisting
9 contours?

10 A. I think, in a general sense. It's not down to
11 the, to the exact inch, but, in general contours,
12 that's my understanding.

13 Q. So, if that was the practice, the measurement
14 taken before backfill is put in which uses the existing
15 contour on either side of the trench should be the same
16 as the final depth of cover, correct?

17 A. Not necessarily. It all depends on the general
18 contour of the area.

19 Q. So, if both sides of the trench are the same
20 height, then the backfill would be the same height,
21 correct?

22 A. Again, I can't, I can't tell you the, the contour
23 of the area. It's a swamp. It rolls. You know, we
24 have areas that were on hillsides that have different
25 in the -- it wouldn't, that methodology wouldn't work.

1 So I, I can't attest that, if you take the exact one
2 side of the ditch to the other and take that
3 calculation, that, I can't attest to that.

4 Q. Would you agree that the standard procedure was to
5 attempt to match the existing contours to the extent
6 possible?

7 A. I think that the team out there used the
8 information that they had and that they had techniques
9 to verify, and, and sometimes, you know, they visually
10 could determine that they had their depths, and I think
11 Mr. Bubolz mentioned that.

12 Q. So the inspector wrote down depth of 3 feet, depth
13 of 3.2 feet, depth of 3.6 feet, depth of 3.9 feet on
14 September 19th. When is the next, what's the next date
15 that a depth-of-cover measurement was made?

16 A. You'd have, I'd have to look at the next date and
17 see if there was any. They weren't required to mark
18 down any depths.

19 Q. What's the next date you know of where the depth
20 of cover of this part of the pipeline was measured?

21 A. You'd have to look at the next day's inspection
22 report. Michels was out the next day. And, again, if
23 they -- do you have that available?

24 Q. I'd have to go back through the 16,000 pages. I'm
25 not aware that this section was ever revisited.

1 A. They were out there on the 20th, and that's
2 consistent with the daily report or the daily Michels
3 reports that were even part of and attached to the
4 Dumont or, sorry, I apologize, the Bubolz deposition
5 that were reviewed. So the work continued on in the
6 20th.

7 Q. I'm certainly willing to, over the next break,
8 look for the 20th and see what we find, but I'm
9 interested in the dates you gave Mr. Tousley when you
10 said this was measured. You gave a date in November or
11 December, I believe.

12 A. No, that was from CHA. So they were, they
13 returned in early November.

14 Q. Okay. So --

15 A. That was from CHA.

16 Q. Yes. In early November CHA came back in, and
17 their measurements confirmed the exhibit that's in
18 front of you, right?

19 A. I don't believe I've compared the two. I, I don't
20 know if they actually are the same. There's two months
21 that had transpired, so I'm not sure if the depth had
22 changed between then, and I don't know, so I can't
23 attest to that. I have not compared those two
24 documents.

25 Q. In general terms, would it, would you agree that,

1 when CHA came back in and did the measurements, they
2 confirmed that parts of the pipe were buried less than
3 four feet deep?

4 A. They confirmed that the depth over the pipe in 18
5 locations in the swamp were less than 4 feet, yes.

6 Q. So I want to get back to what I think was the
7 point of Mr. Tousley's questions is, When were you and
8 Mr. Rendall on notice that you weren't burying the pipe
9 four feet deep? You were on notice at least at the end
10 of the day on the 19th or the first, early the next
11 morning, and then, when CHA came in, they confirmed the
12 general concept that depth of burial was less than four
13 feet, correct?

14 A. Correct. So we were informed that the process
15 that the team was had not concluded, but they were
16 working on installing. This, as I read this inspection
17 report, is a in-progress report where documentation
18 that the crews were out there on the 20th, which is a
19 Tuesday, and they completed their work. At that time,
20 we knew that they had trouble. We didn't know if, for
21 certain, if they did, and it was when we received the
22 CHA data, which was middle of November. So CHA went
23 out on site in the beginning of November, turned it
24 around in about a week, provided us the data. At that
25 time, we learned it was not at four feet of burial

1 depth.

2 ATTORNEY DUMONT: Thank you. That's what I
3 wanted to include in the record. And, for the record,
4 I guess I move, at this point, I will formally move
5 Exhibit 33 and Exhibit 33A.

6 HEARING OFFICER TOUSLEY: Is there any
7 objection? Department?

8 ATTORNEY GUZMAN: No objection from the
9 Department.

10 HEARING OFFICER TOUSLEY: ANR?

11 ATTORNEY MILLER: No objection.

12 HEARING OFFICER TOUSLEY: Mr. McClain?

13 ATTORNEY McCLAIN: I have no objection to the
14 admission of this document. I haven't actually been
15 able to download it from ePUC since Jim uploaded the
16 cross exhibit that I think he's moving into evidence.
17 So I guess I'd say I have no objection, subject to just
18 confirming that it actually, you know, reflects, you
19 know, the inspection report that, that we have on and
20 produced in discovery, but I have no objection.

21 HEARING OFFICER TOUSLEY: Yeah, and I just
22 want a clarification, Mr. Dumont. Are you moving the
23 admission into evidence of just this report that we're
24 looking at now or the whole Dropbox?

25 ATTORNEY DUMONT: The entire Dropbox.

1 HEARING OFFICER TOUSLEY: Okay.

2 ATTORNEY DUMONT: But, for ease of reference,
3 I've asked my paralegal to file this as 33A, because
4 this is not 16,000 pages. It's easier to find and work
5 with.

6 HEARING OFFICER TOUSLEY: Okay. I think I'm
7 going to grant your request to move 33A and deny your
8 request for the remainder of the Dropbox. So I am
9 doing that. So this, this 33A, what we're looking at,
10 is admitted. The Dropbox material, because it hasn't
11 been assessed and because it's so long and, and I'm
12 uncertain as to how we would document it in ePUC, I'm
13 not going to grant that. If there's other materials
14 within that Dropbox that you want to draw out and seek
15 the admission of, I would entertain that, but the whole
16 Dropbox, because of its length, I'm going to have to
17 deny for technical reasons.

18 (Exhibit marked Intervenors Cross 33A was admitted
19 into the record.)

20

21 <https://epsb.vermont.gov/?q=downloadfile/428045/111907>

22

23 ATTORNEY McCLAIN: Yeah. And, just so that
24 my position's clear, I have no objection to the
25 admission of various inspection reports. I just, I

1 don't know how to, I don't know how to assess a
2 16,000-page document either. But so, Jim, you know, if
3 there are other ones you'd like to move in, if we could
4 share them and give me a chance to look at them, I'm
5 sure that we could manage to get them in the record.

6 ATTORNEY DUMONT: Let's go through an
7 iterative process to do that. I do have a question in
8 that regard for Mr. Tousley.

9 HEARING OFFICER TOUSLEY: Yeah.

10 ATTORNEY DUMONT: Mr. Byrd's Attachment 20,
11 he had the same concern about. He testified he thought
12 it was about 800 megabytes. On my computer it was 600
13 megabytes, and that was after I used my Adobe function
14 to reduce it in size. But I do think it's important
15 that Mr. Byrd's Attachment 20 is also officially in the
16 record, even though it's huge.

17 HEARING OFFICER TOUSLEY: Yeah. Let me -- I
18 will have to talk to -- I see Ann is now available, Ann
19 Bishop, and the Clerk of the Commission -- to verify or
20 to find out how we would -- it may be that we would
21 have to retain these in a separate electronic form as
22 part of the record, rather than having them filed in
23 ePUC, which would be a unique circumstance. So I don't
24 know the answer to that question right now, but I think
25 that we will admit 33A, and if, I'm guessing that, that

1 -- I'm assuming, without talking to the clerk and Ms.
2 Bishop, that we'd be able to admit the other elements,
3 the other, the Dropbox, and I think you said it was
4 Attachment 22 to Mr. Byrd's report can be admitted into
5 the record, but not as an ePUC document.

6 ATTORNEY DUMONT: Excuse me. It was
7 Attachment 20 to Mr. Byrd's report.

8 HEARING OFFICER TOUSLEY: 20? Okay.

9 ATTORNEY DUMONT: Yeah, 20. Thank you.

10 HEARING OFFICER TOUSLEY: Okay. Do you have
11 any additional questions for Mr. St. Hilaire?

12 ATTORNEY DUMONT: I do not.

13 HEARING OFFICER TOUSLEY: Do any of the other
14 parties have any questions for Mr. St. Hilaire? Mr.
15 Porter?

16 ATTORNEY PORTER: No, sir.

17 HEARING OFFICER TOUSLEY: Mr. Miller?

18 ATTORNEY MILLER: Agency does not. Thank
19 you.

20 HEARING OFFICER TOUSLEY: Mr. McClain, do you
21 have any questions for Mr. St. Hilaire in light of the
22 questions that were asked and answered?

23 ATTORNEY McCLAIN: No, I don't. Thank you
24 very much.

25 HEARING OFFICER TOUSLEY: Mr. St. Hilaire, I

1 want to thank you for your testimony. You're excused.
2 I think we have, I think we have -- who's up next here?

3 ATTORNEY DUMONT: Mr. LeForce.

4 HEARING OFFICER TOUSLEY: Mr. LeForce?

5 ATTORNEY McCLAIN: No, I believe, I believe
6 we had scheduled for Jeff Nelson to be available.

7 HEARING OFFICER TOUSLEY: Oh, Mr. Nelson is
8 up next. Is he available?

9 MR. NELSON: Here I am.

10 ATTORNEY McCLAIN: He is available. If, if
11 we could have a short break in between --

12 HEARING OFFICER TOUSLEY: Sure. How much
13 time would you like?

14 ATTORNEY McCLAIN: Maybe just 15 minutes or
15 --

16 HEARING OFFICER TOUSLEY: Okay. It's 11:15,
17 and we'll come back at 11:30.

18 ATTORNEY McCLAIN: Okay. Thank you.

19 (A recess was taken from 11:15 a.m. to 11:30 a.m.)

20 HEARING OFFICER TOUSLEY: I just want to
21 confirm, Mr. Dumont, you do have cross-examination
22 questions for Mr. Nelson?

23 ATTORNEY DUMONT: Very brief.

24 HEARING OFFICER TOUSLEY: And Mr. LeForce?

25 ATTORNEY DUMONT: Yes.

1 HEARING OFFICER TOUSLEY: Okay. I did have a
2 conversation with, with the Clerk of the Commission and
3 with Ann Bishop, our operations director. What they
4 are going to do is what they do with those two large
5 documents, the Attachment 20 to Mr. Byrd's report and
6 the exhibit, the Cross Exhibit 33, they, they will be
7 entered into evidence, so they have been admitted.

8 They'll be kept separately, because they can't be
9 put in ePUC and then ePUC will have a placeholder
10 indicating their location, just like we do with
11 confidential information that can't be filed in ePUC.
12 So, Mr. Dumont, you may have another -- your paralegal
13 may have another call from Holly about how to do that,
14 and we have to find Mr. Byrd's thumb drive, and we may
15 have to ask for another copy if we can't find it,
16 because I think I might have a copy of it on my desk,
17 but I don't know that, because I'm not at my desk in
18 the office anymore.

19 So I'm sure I could go and look for it, and we'll
20 have to find that other Attachment 20, but they will be
21 they will be noted in ePUC as admitted into evidence
22 and available through the clerk.

23 (Exhibit marked as Intervenors Cross 33 was
24 admitted into the record.)

25

1 <https://epsb.vermont.gov/?q=downloadfile/426855/111907>

2 ATTORNEY DUMONT: And, if it helps, and Owen
3 can be part of the call or email, I have it on my
4 computer, and I can send it to Owen and make sure he
5 agrees. And we'll send it to Mr. Byrd and make sure he
6 agrees it's the right one and then provide it by
7 Dropbox again to the Commission.

8 HEARING OFFICER TOUSLEY: You're talking
9 about Attachment 20? Okay, Yeah.

10 ATTORNEY McCLAIN: Yeah. As I've indicated
11 to Jim, I have absolutely no objection to having all
12 the inspection reports filed into evidence, and I think
13 that's what Jim intended to do with the Attachment 33,
14 and all I need, really, is an opportunity to verify the
15 completeness of the set. We produced all the
16 inspection reports during this case, and I just, I'd
17 just like to have my office, give my office an
18 opportunity to look through them to make sure that what
19 is submitted includes the complete set, that's all.

20 So, Jim, if you could, if, I guess, once, once you
21 finalize whatever we're filing or, if you already have,
22 remind me what link it is, I'll have my office do that
23 next week, and we can confirm.

24 ATTORNEY DUMONT: Sure.

25 HEARING OFFICER TOUSLEY: Okay. I see Mr.

1 Nelson standing by. Mr. Dumont, are you prepared to
2 cross-examine Mr. Nelson?

3 ATTORNEY DUMONT: Yes.

4 HEARING OFFICER TOUSLEY: Okay. Good
5 morning, Mr. Nelson. Thank you for being with us.

6 MR. NELSON: Good morning. Thank you.

7 HEARING OFFICER TOUSLEY: If you could, raise
8 your right hand and repeat after me.

9 JEFFREY NELSON,
10 duly sworn to tell the truth, testifies as follows:

11 HEARING OFFICER TOUSLEY: Thank you. Mr.
12 McClain, if you could introduce your witness, please.

13 DIRECT EXAMINATION BY ATTORNEY McCLAIN

14 Q. Good morning, Mr. Nelson. How are you?

15 A. Good morning. I'm fine. I would just note, if I
16 may, I've been undergoing a skin treatment for my,
17 something on my face, and so my complexion is red and
18 blotchy, but I'm not currently taking any medications,
19 and I'm perfectly able to give my testimony today.

20 Q. Okay, thank you. I don't have the same excuse.
21 I'm just red and blotchy. Mr. Nelson, could you please
22 state your full name for the record?

23 A. Sure. It's Jeffrey A. Nelson.

24 Q. And could you state your name or your occupation
25 and title?

1 A. Sure. I'm a principal with the firm of Vanasse
2 Hangen Brustlin, otherwise know as VHB, based in our
3 South Burlington, Vermont office.

4 Q. And have you conduct -- have you presented
5 testimony in, in this case?

6 A. Yes, many times, going back to the original filing
7 that Vermont Gas made back in December of 2012.

8 ATTORNEY McCLAIN: Mr. Tousley, I believe the
9 parties have stipulated to the admission of all of Mr.
10 Nelson's testimony and affidavits in this case, and so
11 I don't believe there's any need to move it into
12 evidence, but I'm happy to do so if that's a formality
13 that we're abiding by. You're on mute, Mr. Tousley.

14 HEARING OFFICER TOUSLEY: I couldn't find my
15 mouse either. That's already been conducted, so it is
16 admitted into evidence.

17 ATTORNEY McCLAIN: Thank you. Mr. Tousley,
18 Mr. Nelson is available for cross-examination. Thank
19 you very much.

20 HEARING OFFICER TOUSLEY: Mr. Dumont, he's
21 your witness.

22 CROSS-EXAMINATION BY ATTORNEY DUMONT

23 Q. How are you today, Mr. Nelson?

24 A. I'm fine, subject to the qualifier I just gave.

25 Q. Right. And I know it, it's similar to what my

1 family is going through. It's a painful experience, so
2 I'm sorry.

3 A. Yes. Thank you.

4 Q. Painful, but necessary.

5 A. Right, exactly.

6 Q. My question pertains to Exhibit JAN-2, your
7 affidavit, and I've got Paragraph 20 up on the screen.

8 A. I see that, yes.

9 Q. So in, in this part of your affidavit, you explain
10 that corrected plans showing only five feet of burial
11 within nonjurisdictional streams were filed with the
12 Commission, correct?

13 A. Well, I noted that this detail was added to that
14 particular plan set. There, prior, to that, the
15 nonjurisdictional streams would have been subject to
16 whatever underlying depth requirements there were. So,
17 for general cross-country areas on the pipeline, three
18 feet; for areas within, you know, ag lands and so
19 forth, there were specific depths that would have
20 applied to those areas and, you know, as the project
21 went forward.

22 Q. In Paragraph 20 you state that plans showing only
23 five feet of burial for nonjurisdictional streams were
24 filed with the Public Utility Commission on August 25,
25 2015, correct?

1 A. Yes. That, that detail was included in that, in
2 that filing, correct.

3 Q. But do you agree with me that that filing was part
4 of a nonsubstantial change application that did not
5 pertain to depth of burial beneath streams?

6 A. That's correct, and nor did it need to.

7 Q. I didn't understand your last statement. Could
8 you explain that?

9 A. Sure. Based on all of the plans and evidence that
10 were provided to the Commission during the initial
11 proceeding, the seven-foot depth of burial for streams
12 applied to the jurisdictional streams, DEC streams that
13 are well-documented in our filings. For the remaining
14 streams, very small streams that don't come to the
15 level of jurisdiction under DEC's stream alteration
16 program, there was no specific depth requirement called
17 out so that those streams were subject to, as I
18 mentioned a moment ago, whatever depth requirements
19 would otherwise be applicable at a particular section
20 of the pipeline.

21 Q. All right. I've moved your affidavit back up to
22 Paragraph 17 --

23 A. I see that, yes.

24 Q. -- in which you summarize what had been filed with
25 the Commission in 2013, and you said that the 84-inch

1 minimum cover was incorrectly shown as applying to all
2 the streams. I'm paraphrasing, of course.

3 A. Well, it, it was not shown as applying at all
4 streams. There were certain drawings where that Type 7
5 was shown on, for certain smaller streams as I say in
6 the first sentence on Page 6.

7 Q. Okay. So you wrote on the first page of, first
8 line on Page 6 of the exhibit, "These crossing
9 locations included certain smaller nonjurisdictional
10 streams, comma, which is incorrect".

11 A. That's right.

12 Q. And it's incorrect because, if you look at
13 Paragraph 18 -- moving it up on the page -- because, if
14 you look at Paragraph 18, your intent was otherwise,
15 your intent was different than what was shown in the
16 filing, correct?

17 A. Well, the intent was that those nonjurisdictional
18 streams would be obliged to achieve the depth of cover
19 that would otherwise be applicable for the sections of
20 pipe that the stream happened to be located within.

21 Q. So, whether we agree or disagree on what your
22 submissions informed the Commission in 2013, let's go
23 back to Paragraph 20. I want to make sure whether
24 you're arguing, alleging, or trying to prove that, by
25 filing the correct drawings on August 25, 2015, part of

1 a nonsubstantial change request that pertained to a
2 different issue, you were obtaining Commission approval
3 for depth of burial under streams of only five feet.

4 A. No. I think that my statement is fairly clear
5 there as to why this information was added, and I'll
6 read it, if I may, which is the first sentence of
7 Paragraph 20, "Ultimately, to provide clarity to the
8 construction contractor regarding the original intent
9 of the design, project engineering firm, sorry, project
10 engineering firm CHA included a table on the updated
11 EPSC plan set including, included in the NSC 3 filing",
12 and it goes on.

13 So it was not the intent of that, the inclusion of
14 that table to obtain PUC approval. It was put on there
15 for the purposes of providing clarity to the contractor
16 that it was something that Vermont Gas wanted to
17 provide that level of depth in those, in those areas.
18 It was not something that was required by any permit,
19 any regulatory action, nor did any regulator ever
20 request that kind of depth of cover for those small
21 streams.

22 ATTORNEY DUMONT: Thank you. That's, I just
23 -- you've clarified the issue I wanted clarified.
24 That's all I have.

25 MR. NELSON: Thank you.

1 ATTORNEY McCLAIN: You're muted, Mr. Tousley.

2 HEARING OFFICER TOUSLEY: I am muted. I was.
3 Thank you. Do the other parties have any questions for
4 Mr. Nelson in light of Mr. Dumont's questions?
5 Department?

6 ATTORNEY GUZMAN: The Department has no
7 questions for Mr. Nelson. Thank you.

8 HEARING OFFICER TOUSLEY: ANR?

9 ATTORNEY MILLER: The Agency has no questions
10 for Mr. Nelson. Thank you.

11 HEARING OFFICER TOUSLEY: Mr. McClain?

12 ATTORNEY McCLAIN: No, I have no follow-up
13 with Mr. Nelson. Thank you.

14 HEARING OFFICER TOUSLEY: Very well. Mr.
15 Nelson, I want to thank you for your testimony. You're
16 excused.

17 MR. NELSON: Okay, thank you.

18 ATTORNEY McCLAIN: Thank you, Mr. Nelson.

19 MR. NELSON: Sure.

20 HEARING OFFICER TOUSLEY: Is Mr. LeForce
21 available?

22 ATTORNEY McCLAIN: He is. I believe so.

23 HEARING OFFICER TOUSLEY: How long do you
24 think you might be with Mr. LeForce, Mr. Dumont?

25 ATTORNEY DUMONT: Ten minutes.

1 HEARING OFFICER TOUSLEY: Okay. Well, then
2 we'll try to catch him now before we go to lunch.

3 ATTORNEY McCLAIN: There he is.

4 HEARING OFFICER TOUSLEY: I see Mr. LeForce
5 is visible. If you could -- Mr. LeForce, good morning.
6 I'm Mike Tousley. I'm the hearing officer for the
7 Commission. How are you this morning?

8 MR. LEFORCE: I'm good. Thank you.

9 HEARING OFFICER TOUSLEY: Good. If you could
10 raise your right hand, I'm about to swear you in as a
11 witness.

12 CHRISTOPHER LEFORCE,
13 duly sworn to tell the truth, testifies as follows:

14 HEARING OFFICER TOUSLEY: All right. Well,
15 Mr. McClain, if you could, introduce your witness,
16 please.

17 ATTORNEY McCLAIN: Yes. Yeah. So good
18 morning, Mr. LeForce. Just, I guess, just to clarify
19 the record, I think it's probably pretty clear Mr.
20 LeForce hasn't filed testimony in this case.

21 HEARING OFFICER TOUSLEY: Okay.

22 ATTORNEY McCLAIN: And Vermont Gas has not
23 asked him to file testimony in this case.

24 HEARING OFFICER TOUSLEY: Okay.

25 ATTORNEY McCLAIN: Mr. Dumont has deposed Mr.

1 LeForce in connection with issues in the case and filed
2 Mr. LeForce's deposition transcript. Now, that's an
3 unusual process. It's an unusual procedure. And we
4 have set aside the various evidentiary issues and
5 concerns that one might have in a typical setting with
6 the introduction of a complete deposition transcript
7 when a witness is, in fact, available to testify, which
8 Mr. Dumont requested that we do here, and we have
9 abided by Mr. Dumont's request and made Mr. LeForce
10 available.

11 So that's just context for where we are at today.
12 Mr. LeForce was, has not submitted his own prefiled
13 testimony. He's only been subject to the questions
14 that Mr. Dumont wanted to ask him.

15 HEARING OFFICER TOUSLEY: Okay. I guess I
16 was simply referring to the way I had filed Mr.
17 LeForce's deposition, which was as rebuttal testimony.

18 ATTORNEY McCLAIN: Right.

19 HEARING OFFICER TOUSLEY: So, okay, with that
20 clarification.

21 ATTORNEY McCLAIN: Yeah. That, that, that's
22 how Mr. Dumont filed it, and, as I mentioned in a
23 rather long-winded way, we ultimately do not object and
24 are happy to have Mr. LeForce here. So thank you for
25 being here. I think I don't have any testimony to move

1 into evidence. We have not objected to Mr. Dumont's
2 approach to this.

3 DIRECT EXAMINATION BY ATTORNEY McCLAIN

4 Q. And so I'll just start by asking your to state
5 your full name for the record, Mr. LeForce.

6 A. Christopher A. LeForce.

7 Q. And, and why don't identify your title at Vermont
8 Gas? And then I'll make you available for
9 cross-examination.

10 A. Yes. I work at VGS, and I'm project engineering
11 manager.

12 ATTORNEY McCLAIN: Unless you think there's
13 further clarification or other background required, Mr.
14 Tousley, Mr. LeForce is available for the parties and
15 the Commission to, for questioning. Thank you.

16 HEARING OFFICER TOUSLEY: Just, just for the
17 record, was, was Mr. LeForce's deposition one of those
18 items stipulated to in, in the stipulation of exhibits?

19 ATTORNEY McCLAIN: Yes. We have not
20 presented any objection to the admission of Mr.
21 LeForce's transcript, with the, with the exception --
22 and this is in the written papers. You know, the
23 statements of an attorney are not evidence, and neither
24 in the hearing or in a deposition, and I think that we
25 put in our, in our comments or objections to the

1 rebuttal prefiled testimony the relevant legal
2 citation.

3 The PUC, the Commission's, you know, acknowledged
4 that, and I don't think there's any real debate about
5 it, but, with the condition that, of course, the
6 questioning during the deposition should be considered
7 for context about what Mr. LeForce testified during
8 that. It's not itself evidence, and, and so we would
9 object to reliance on Mr. or Attorney Dumont's
10 speculation about facts or articulation of facts.

11 HEARING OFFICER TOUSLEY: Understood,
12 understood. But the document has otherwise been
13 entered into evidence?

14 ATTORNEY McCLAIN: Yeah, absolutely, yeah.
15 Thank you.

16 HEARING OFFICER TOUSLEY: Okay. Mr. Dumont,
17 are you prepared?

18 ATTORNEY DUMONT: Yes.

19 HEARING OFFICER TOUSLEY: He's your witness.

20 ATTORNEY DUMONT: I just want to remind Mr.
21 McClain he actually had an additional document he filed
22 with the exception that he wanted admitted, which was
23 an affidavit from Mr. LeForce.

24 ATTORNEY McCLAIN: Yes. Yeah, that's right.
25 Thank you. Thank you for reminding. So, so a very

1 brief, one-page affidavit, we would ask for that to be
2 moved into evidence if there's no objection by the
3 other parties. It's, it's simply a background
4 statement from his perspective about his experience on
5 the ANGP.

6 HEARING OFFICER TOUSLEY: Is there any
7 objection from the Department?

8 ATTORNEY GUZMAN: No objection. Thank you.

9 HEARING OFFICER TOUSLEY: From ANR?

10 ATTORNEY MILLER: No objection. Thank you.

11 HEARING OFFICER TOUSLEY: Mr. Dumont?

12 ATTORNEY DUMONT: No objection.

13 HEARING OFFICER TOUSLEY: Very well. Now
14 he's your witness.

15 (The Affidavit of Christopher LeForce was admitted
16 into the record.)

17

18 <https://epsb.vermont.gov/?q=downloadfile/426580/111907>

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CROSS-EXAMINATION BY ATTORNEY DUMONT

Q. Mr. LeForce, how are you today?

A. I'm good, thank you. How are you?

Q. I'm good, thank you. I have up on the screen Mr. Byrd's report at Page 19. Mr. LeForce, have you read Mr. Byrd's report?

A. Yes, I have.

Q. Do you remember reading -- I'm not going to quiz you about it. It's not a memory test. I just want to know in general whether you remember running into this page in this part of his report.

A. I remember this part of the, or parts of the report talking about the specifications and the construction management team and about these items that I can see on the screen.

Q. So I'd like to ask you, in general, how the pipeline was typically constructed in the areas on the screen here. For example, was it left to the contractor and the inspector to determine the first bullet point? The first bullet point is, "The suitability of materials that are to be used, comma, specifically for select backfill, slash, pipe padding, semicolon; and general backfill".

So I'll, I'll ask the question over again. Was

1 this decision about the suitability of materials made
2 by the contractor and the inspector, or was someone
3 from the construction management team present in the
4 field every time backfill was used? Typically -- I
5 shouldn't say every time -- typically, when backfill
6 was used?

7 A. I would say that, typically, yes, it was the, the
8 contractor and the inspector on site. The inspector on
9 site was part of the construction management team, and
10 they were there to look at the suitability of the, the
11 materials used for the, the different, for the
12 different layers of backfill.

13 Q. If I understand your answer, you're saying that
14 the CMT was present because, in your view, the
15 inspector was part of the CMT; is that right?

16 A. Yes. I believe the, the inspectors out, that were
17 working on behalf of Vermont Gas under the construction
18 management team, yes, they were part of that, that
19 team.

20 Q. And that would be true for each of the bullet
21 points on Page 19?

22 A. I, I'd just like a moment to, to read them,
23 please. From what I can see on the screen, yeah,
24 generally, they were there on site looking. These were
25 items that inspectors generally would look at during

1 construction.

2 Q. Let me move up the document a little bit, make
3 sure you've got the whole thing.

4 A. Yes --

5 Q. All right.

6 A. -- it was.

7 ATTORNEY DUMONT: Those are the only
8 questions I had. Thank you very much.

9 MR. LEFORCE: You're welcome. Thank you.

10 HEARING OFFICER TOUSLEY: Do the other
11 parties have any questions for Mr. LeForce in light of
12 Mr. Dumont's questions and Mr. LeForce's answers?
13 Department?

14 ATTORNEY GUZMAN: The Department has no
15 questions for Mr. LeForce. Thank you.

16 HEARING OFFICER TOUSLEY: ANR?

17 ATTORNEY MILLER: No questions for Mr.
18 LeForce. Thank you.

19 HEARING OFFICER TOUSLEY: VGS?

20 ATTORNEY McCLAIN: No, no we have no further
21 questions for Mr. LeForce. Thank you.

22 HEARING OFFICER TOUSLEY: Great. Okay. Mr.
23 LeForce, I want to thank you for your testimony. You
24 are excused.

25 MR. LEFORCE: Thank you.

1 ATTORNEY McCLAIN: Thank you, Mr. LeForce.

2 HEARING OFFICER TOUSLEY: Okay. We have now
3 completed all of the VGS witnesses who were to be
4 cross-examined this morning. We discussed -- oh,
5 except for Mr. Godfrey. Why don't we go ahead and take
6 -- it's now 11:55 -- take a break until 12:30 for
7 lunch, if that's enough time. Is that enough time?
8 Okay. I had asked -- we had talked about the, about
9 bringing in Mr. Liebert as a surrebuttal witness. I
10 think I'd asked Mr. Dumont to isolate precisely what
11 testimony of Mr. Byrd he was going to be responding to
12 just so the parties were aware of that. Do you need
13 time to do that, Mr. Dumont?

14 ATTORNEY DUMONT: Yes, I do.

15 HEARING OFFICER TOUSLEY: When, would you --
16 would you like to do that over lunch, or would you like
17 to take another break after Mr. Godfrey?

18 ATTORNEY DUMONT: I think I would appreciate
19 another break after Mr. Godfrey.

20 HEARING OFFICER TOUSLEY: Okay. Well, I
21 mean, I can make lunch longer.

22 ATTORNEY DUMONT: Either way, either way.
23 I'll have lunch and a break after Mr. Godfrey, whatever
24 works best.

25 HEARING OFFICER TOUSLEY: Okay. Why don't we

1 go ahead then and take an hour for lunch and come back
2 at 1:00 o'clock?

3 ATTORNEY DUMONT: Thank you.

4 HEARING OFFICER TOUSLEY: Very well. We're
5 adjourned until 1:00 o'clock. Thank you, folks.

6 (A recess was taken from 11:57 a.m. to 1:00 p.m.)

7 HEARING OFFICER TOUSLEY: Good afternoon,
8 everyone. I just wanted to -- I was looking at my
9 script that I originally read the first day, and I
10 wanted to reread a part of it in the hopes that I had
11 actually read it before, because I'm uncertain whether
12 I read it before. In particular, this is some other
13 business.

14 Basically, the parties have stipulated to the
15 admission of some of the prefiled testimony and
16 exhibits as identified in list format. That has been
17 admitted as Exhibit Joint 1. So everything in Exhibit
18 Joint 1 is admitted. All items on that list as having
19 been stipulated to are admitted into the record.

20 As for the cross exhibits, as the parties have
21 done, they've uploaded those into ePUC, and admission
22 of those cross exhibits has been sought throughout the
23 proceeding. So I wanted to make sure that that
24 language was in the record, because I wasn't sure if
25 I'd said it the first day or not.

1 I see Mr. Godfrey there. Mr. Dumont, are you
2 prepared to cross-examine Mr. Godfrey?

3 ATTORNEY DUMONT: I'll do my best.

4 HEARING OFFICER TOUSLEY: Okay. Good
5 afternoon, Mr. Godfrey. Thank you for making yourself
6 available today. If you could raise your right hand.

7 JOHN GODFREY,
8 duly sworn to tell the truth, testifies as follows:

9 MR. GODFREY: Yes.

10 HEARING OFFICER TOUSLEY: Mr. McClain?

11 ATTORNEY McCLAIN: Thank you, Mr. Tousley.
12 Thank you for the clarification regarding the, the
13 prefiled testimony and our Joint Exhibit 1. On that
14 joint exhibit, Mr. Dumont reserved his right to object
15 to Mr. Godfrey's testimony, and I, just for the record,
16 we move to reconsider that. I think it's all clear,
17 but, to the extent required, I'd move the portions of
18 his testimony and exhibits that have not been stricken
19 by the hearing officer into evidence.

20 HEARING OFFICER TOUSLEY: Okay. So,
21 effectively, I think what you're saying is that, in my
22 ruling, I determined that Mr. Godfrey would be made
23 available to address his testimony inasmuch as it
24 related to the Palmers', the rebuttal to Mr. Liebert's
25 testimony and the Palmers' testimony on project

1 oversight and inspection, but not Mr. Godfrey's
2 testimony as it related to Mr. Byrd or Mr. Byrd's
3 report. So, effectively, I'm looking at Mr. Godfrey's
4 prefiled testimony now. So that means that the --
5 excuse me. That means that pages, pages from Page 5
6 Line 8 through --

7 ATTORNEY McCLAIN: Right.

8 HEARING OFFICER TOUSLEY: -- Page 9, Line 2,
9 will not be entered into evidence.

10 ATTORNEY McCLAIN: That's my understanding,
11 and, and, to the extent it's not already clear, we'd
12 move the remainder of the evidence and his testimony
13 into evidence and, of course, not, not the portion that
14 you have ordered stricken.

15 HEARING OFFICER TOUSLEY: Is there any
16 objection? Department?

17 ATTORNEY GUZMAN: No objection from the
18 Department. Thank you.

19 HEARING OFFICER TOUSLEY: ANR?

20 ATTORNEY MILLER: No objection from the
21 Agency. Thank you.

22 HEARING OFFICER TOUSLEY: Mr. Dumont?

23 ATTORNEY DUMONT: Only the objections that
24 you've already ruled on.

25 HEARING OFFICER TOUSLEY: Okay, thank you.

1 So Mr. Godfrey's testimony, with the exception of that
2 section I just noted that is not being admitted into
3 evidence are available to serve as evidence. Mr.
4 McClain, could you introduce your witness, please?

5 DIRECT EXAMINATION BY ATTORNEY McCLAIN

6 Q. Yeah. Thank you, Mr. Tousley. Good afternoon,
7 Mr. Godfrey.

8 A. Good afternoon, sir.

9 Q. As you just heard, we have admitted, the hearing
10 officer has admitted your, your prefiled rebuttal
11 testimony in this case into evidence, with the
12 exception of the portions of your testimony identified
13 by the hearing officer, and I'm going to make you
14 available for cross-examination on the remainder of
15 your testimony. Is that clear?

16 A. Understood, yes.

17 Q. Okay. Please state your full name for the record.

18 A. John F. Godfrey.

19 Q. And would you just tell us what your occupation
20 and title is currently?

21 A. I am the Senior Principal Consultant for the
22 Integrity Solutions Section within the Pipeline
23 Services Group of DNV GL USA, Incorporated.

24 ATTORNEY McCLAIN: Thank you. Mr. Tousley,
25 unless there's any other background you'd like me to

1 cover with him, I'll make him available for
2 cross-examination.

3 HEARING OFFICER TOUSLEY: Thank you, Mr.
4 McClain. Mr. Dumont, he's your witness.

5 CROSS-EXAMINATION BY ATTORNEY DUMONT

6 Q. How are you today, Mr. Godfrey?

7 A. I'm good, sir. How about yourself?

8 Q. Good. Are you still in Wyoming?

9 A. No, sir. I am in Oklahoma.

10 Q. In Oklahoma? Am I correct that, when you wrote
11 the prefiled testimony in this matter, you had not read
12 the Commission's final order in Docket 7970?

13 A. You're correct.

14 Q. Am I correct that you did not read any of the
15 prefiled testimony filed in Docket 7970?

16 A. I don't believe so. I read the prefiled testimony
17 filed in this case that was provided by counsel. I am
18 not sure if any of that prefiled testimony was in that
19 docket.

20 Q. Thank you. In preparing your prefiled testimony,
21 did you read Specification 312333 that was written by
22 CHA?

23 A. I can't recall specifically if I read the whole
24 specification. I have seen the specification over the
25 last two days during this hearing, at least portions of

1 it, but I can't recall if I read the entire
2 specification.

3 Q. When you prepared your prefiled testimony, had you
4 seen any of Specification 312333?

5 A. I do not believe so.

6 Q. Okay. In your prefiled testimony, which I will
7 try and call up -- do I have the ability to share the
8 screen?

9 MS. BISHOP: Mr. Dumont, you are the
10 presenter. You should be able to click on the circle
11 on the bottom of your screen.

12 BY ATTORNEY DUMONT:

13 Q. Good, thank you. Okay. So I've turned to Page 12
14 of your prefiled testimony. Are you able to see that?

15 A. Yes, sir.

16 Q. On this page and elsewhere, you state the general
17 proposition that inspections are intended to find and
18 record nonconformances; is that right?

19 A. Yes, that's correct.

20 Q. I'm going to show you -- let's see. There we go.
21 This is Intervenor's Cross Exhibit 1, Page 252. This
22 is an HDD daily inspection report. So let's go to 25,
23 go to the next page, 254. There we go. Okay. This is
24 .pdf 254 from Exhibit 1, "Main Line Daily Inspection
25 Report". Have you seen one of these before?

1 A. Yes, I have.

2 Q. I'm not asking whether you've seen this particular
3 one, but you've seen this, the main line, reports of
4 this nature in the ANGP case, correct?

5 A. Yes, exactly right.

6 Q. And do you agree that, on these inspection
7 reports, the inspector was called to affirmatively
8 write in information about something that was
9 happening, not just to record nonconformities?

10 A. Could you scroll through the entire report,
11 please? See it in its entirety?

12 Q. I'll go down to the bottom of the first page.
13 Take a look at that. When you're done, I'll scroll to
14 the next page.

15 A. Okay. I'm finished with that page.

16 Q. Well, there's a little bit more on the bottom I
17 didn't see.

18 A. Okay.

19 Q. I'm going to 255. 255 is a different report, so
20 it's a one-page report.

21 A. Okay. And very similar.

22 Q. Yeah. Back to where we started on 254, do you see
23 that the report called on the inspector to write in the
24 distance, the station numbers of where an activity
25 started and where it stopped, and the total footage for

1 that date and the total footage up to that date? See
2 that?

3 A. Yes, I do.

4 Q. And on this particular inspection report, the
5 inspector wrote in lowering-in went from a certain
6 station to another station. The inspector wrote in the
7 number of feet that day. The inspector wrote in the
8 total number of feet, and then for padding the
9 inspector wrote in the station number of the starting
10 point, the station number of the ending point, the
11 total footage that day, and the total footage to date.
12 And then backfill, the inspector wrote in the starting
13 point for the backfill, the ending point for the
14 backfill, total footage for the backfill that day, and
15 total footage to date, correct?

16 A. Correct.

17 Q. And do you agree that, if an inspection report
18 showed no entries in the padding line, padding row, no
19 starting point for padding, no ending point for
20 padding, no footage for padding, it would be reasonable
21 to infer that no padding was placed beneath the
22 pipeline?

23 A. No, no, I disagree with that. It would be
24 reasonable to say that no padding activities occurred
25 on that day. It's not to say that no padding was

1 placed below the pipe. You also have to understand the
2 other purpose for these inspection reports.

3 Construction contracts are generally set up on a
4 progress payment sort of a criteria where the
5 construction contractor is paid at certain intervals
6 based on the progress made to date. In addition, this
7 information is sent back to the project management team
8 for scheduling, tracking, and allocation of resources.

9 It's extremely common on all of the jobs I've been
10 on to see inspection reports that say, from this
11 location to that location for a daily footage of this,
12 we completed these tasks for a cumulative footage of
13 this number, and, as I said, that's to facilitate
14 contract management, scheduling and allocation of
15 resources during construction.

16 So the absence of any sort of entry on that line
17 would simply mean to me that that activity did not
18 occur that day. For example, welding tie-in, for this
19 inspector in his report for the sites he was
20 responsible for, there was no welding tie-in on that
21 particular day, or the number of welds would have been
22 noted.

23 Q. Mr. Godfrey, on this example there's padding
24 starting at Station 301 plus 00, and, I'm sorry,
25 there's lowering-in starting at 301.00 and ending at

1 298 plus 00, and the padding starts at the same station
2 number, 301 plus 00, and ends at 29 plus 00. Doesn't
3 that indicate to you that the padding was put down when
4 the pipe was lowered in?

5 A. It would indicate to me that the padding and
6 lowering-in were done at the same time through that
7 section, yes.

8 Q. So, if one were to examine a year's worth of these
9 reports and find very few which wrote down padding from
10 a certain station to another station, would that
11 indicate to you that padding was not being used beneath
12 the pipeline?

13 A. Could you rephrase that question, please?

14 Q. Sure. We're just looking at one day here.

15 A. Right.

16 Q. If one were to look at all of the inspection
17 reports for a given year and see that, on very few days
18 were starting points and ending points for padding
19 written in, what would you infer from that?

20 A. I would have to look at all of the reports in
21 context to be able to make any inference at all. I
22 mean, this is, this is typical of what I see in
23 construction practices. I'm not familiar with all the
24 inspection reports for this project.

25 Q. Okay.

1 ATTORNEY McCLAIN: Jim, can you remind me
2 what cross exhibit we're looking at? Sorry to
3 interrupt.

4 ATTORNEY DUMONT: Cross Exhibit 1.

5 ATTORNEY McCLAIN: Okay, thank you. What
6 page are you on? My recollection is that it's
7 gigantic.

8 ATTORNEY DUMONT: 254.

9 ATTORNEY McCLAIN: Thank you.

10 BY ATTORNEY DUMONT:

11 Q. Okay. Let's go -- Mr. Godfrey, do you agree with
12 me that there is no American Petroleum Institute
13 recommended practice or standard governing inspections
14 when constructing a pipeline?

15 A. I'm sorry. Could you repeat that, please?

16 Q. Sure. Do you agree that there is no American
17 Petroleum Institute recommended practice or standard
18 governing inspection when constructing a pipeline, a
19 natural gas pipeline?

20 A. I'm sorry. There is an API construction inspector
21 qualification program. I can't recall if that's
22 incorporated into a standard or if it's an RP, but
23 inspectors for construction can be qualified through
24 API.

25 Q. Do you remember -- I've placed up on the screen

1 your deposition. Do you remember you and I had a
2 deposition a week or two ago?

3 A. Yes.

4 Q. And I asked you, "To your knowledge, are there any
5 API standards in effect today, not recommended
6 practices, but standards, that govern inspection during
7 construction of a natural gas pipeline", and did you
8 answer, "I don't recall at this time"?

9 A. That is on Line 2 of Page 35, yes.

10 Q. So, today, you recall that there might be
11 something?

12 A. Well, yes. I mean, obviously, going through and
13 looking at the errata sheet and my deposition and
14 rereading my deposition, it caused me to go back and
15 refresh my memory and my recollection.

16 Q. Did you complete the errata sheet?

17 A. Yes, I did.

18 Q. When did you provide that to me?

19 ATTORNEY McCLAIN: I don't think I've
20 forwarded that to you yet, Jim, no. I think there's
21 maybe a typo or two on it. Maybe there's -- I think
22 that's it.

23 ATTORNEY DUMONT: Mr. Tousley, I think we
24 need to take a break and I need to see the errata sheet
25 before going any further. I hate to do this.

1 ATTORNEY McCLAIN: That's fine. I think it
2 will just take a second. I think there's one typo or
3 two. No. I'll look at it and forward it to you, Jim.
4 If you want to take a break to look at it, it's fine
5 with me.

6 HEARING OFFICER TOUSLEY: It's now 20 minutes
7 after 1:00. Let's come back at 1:30, but, if you need
8 more time, let me know, and I'll be -- let me know at
9 1:30.

10 ATTORNEY DUMONT: Okay, thank you.

11 (A recess was taken from 1:20 p.m. to 1:30 p.m.)

12 HEARING OFFICER TOUSLEY: Okay. So we're
13 resuming, and it's my understanding that Mr. Dumont and
14 Mr. McClain have been able to resolve their concern
15 with regards to the errata; is that correct?

16 ATTORNEY DUMONT: Yes. Mr. McClain emailed
17 that to me, and I read it. Hopefully, I won't have to
18 make it an exhibit. If we need to, we will.

19 HEARING OFFICER TOUSLEY: Okay. Are you
20 ready to proceed, Mr. Dumont?

21 ATTORNEY DUMONT: Yes.

22 HEARING OFFICER TOUSLEY: Very well, you may
23 proceed.

24 BY ATTORNEY DUMONT:

25 Q. Mr. Godfrey, Mr. McClain just sent me your errata

1 sheet. Am I correct you made no correction to the line
2 we've been talking about, the answer you gave, "No,
3 that I'm not aware of", Not that I'm aware of, no"?

4 A. That was not on my errata sheet; you're correct.
5 But are you referring to Page 35, Line 5?

6 Q. Line 2. I'm sorry. "I don't recall at this
7 time." I was asking the wrong thing. "I don't recall
8 at this time." Yes. You made no change to, "I don't
9 recall at this time"?

10 A. No, I did not.

11 Q. So, going up to the question, the question was
12 about standards today. Let me ask you about standards
13 in 2014. Were there any standards issued by the
14 American Petroleum Institute or any other
15 standard-issuing group that governed inspections during
16 the construction of a natural gas pipeline in 2014?

17 A. Well, there would have been many, and I can't
18 recall all of them off the top of my head, but you have
19 American Welding Society for welding inspection. You
20 have ASNT for nondestructive examination and
21 inspection. You would also have various NACE standards
22 around coating inspection, coating repairs. There
23 would be a number of different standard bodies that
24 would have standards applicable to gas pipeline
25 construction.

1 Q. Thank you for that clarification. With regard to
2 backfilling of trench, lowering the pipe in, padding
3 underneath the trench, compaction of backfill, testing
4 of compaction, are there any state or federal standards
5 or industry, industry standards -- I'm asking a broad
6 question -- state or federal or industry standards in
7 2014?

8 A. I believe that those items are covered in ASME
9 B31.8 under the construction section. They'd also be
10 covered in 49 CFR Part 192, federal regulations for gas
11 pipelines, gas transmission pipelines.

12 Q. So there were no American Petroleum Institute
13 recommended practices or standards?

14 A. I just don't recall if there were any in '14
15 specific to those areas.

16 Q. Am I correct that, in 2014, there were no state or
17 federal standards for qualifications of personnel
18 involved in quality assurance during pipeline
19 construction, except for welders?

20 A. I'm not familiar with that in 2014. I, I just
21 don't know, not for any state, or all states, I should
22 say.

23 Q. How about federal?

24 A. I cannot recall when the federal regulations
25 around -- and did you, were you specific when you asked

1 about welder qualification?

2 Q. I'm saying there were no standards for
3 qualifications other than for welders.

4 A. In 2014? I can't recall at what time the various
5 rules were changed and when standards were promulgated
6 six years ago. I just don't recall which ones were in
7 place at that time.

8 Q. Okay. I put your deposition Page 88 up on the
9 screen, and I asked you on Line 1, "As of 2014, do you
10 agree that federal regulations did not require
11 qualified personnel to do work on new pipeline
12 construction?" And you answered there were a few
13 exceptions, the operator qualification rule and
14 welders.

15 A. No, I actually state that there were a few
16 exceptions.

17 Q. Yes.

18 A. Now, the operator qualification rule did not, in
19 2014, and, to my knowledge, today, does not extend into
20 new construction. It's focused on facilities, well,
21 operation and maintenance of pipeline facilities. New
22 construction is specifically excluded. There are,
23 however, certain other requirements in the regulations
24 that apply to qualification of personnel performing the
25 tasks or inspecting the tasks, and I believe I covered

1 that beginning on Line 8.

2 Q. Welders?

3 A. There are certain requirements in the regulation
4 for certain construction activities to require
5 qualified people.

6 Q. And we discussed those, welders being the one that
7 came to your mind at the time?

8 A. Yeah, welding and certain nondestructive
9 examination, those were the ones off the top of my
10 head, and those were examples.

11 Q. All right. So, other than welders and
12 nondestructive examiners, were there federal standards,
13 were there standards and federal regulations governing
14 qualifications for persons involved in constructing new
15 pipeline, new gas pipeline?

16 A. I can't quote every section of the federal
17 regulation off the top of my head. I will say that,
18 under the cathodic protection section, there's
19 requirements for qualified personnel, and, if that's
20 involved in construction, that would apply. I, I just
21 don't recall all the various sections of the, the
22 federal regulations that would apply to which people
23 are qualified or have to be qualified and which ones
24 are not covered.

25 Q. So you've mentioned the operator qualification

1 rule. Tell us what that is.

2 A. Operator qualification rule was passed to, to
3 provide a uniform, well, actually, to require operators
4 to qualify their personnel for operations and
5 maintenance tasks. Those are called covered tasks.
6 And it's a performance-based regulation. The operators
7 are to establish the covered tasks for their operation,
8 and they're to establish a qualification procedure and
9 requalification procedure for the people that perform
10 those tasks.

11 It's a, it's a fairly involved rule. It's been
12 out for a number of years now. I believe it started
13 around 1999, but it generally covers operations and
14 maintenance activities such as turning valves, starting
15 and stopping compressors or pumps and performing
16 maintenance on existing pipelines. It does not apply
17 to new construction.

18 Q. So, if, if you are a pipeline operator and you
19 want to repair an existing pipeline, your personnel
20 have to meet the operator qualification rule, correct?

21 A. That is correct.

22 Q. But, if you're a pipeline operator and you're
23 constructing a new pipeline, your personnel do not have
24 to satisfy the operator qualification rule, correct?

25 A. That is correct, with, again, the world is full of

1 exceptions. Unless the operator commits to following
2 the OQ rule during construction as part of a special
3 permit or as part of some other action that they've,
4 they've agreed to take with PHMSA, or unless it's
5 required under a more prescriptive state requirement.

6 Q. Thank you. Am I correct that the prefiled
7 testimony that you prepared was not intended to
8 evaluate the correctness of Mr. Byrd's conclusions or
9 his observations?

10 A. I believe the entire section in my prefiled
11 testimony regarding Mr. Byrd has been struck, sir.

12 Q. No, it hasn't, just part of it, not this part.

13 A. I'm sorry. Could you refer me to what part of my
14 testimony you're referring to then?

15 ATTORNEY McCLAIN: Mr. Tousley, I mean, I'm
16 happy for my witness to testify on the full scope of
17 his testimony, but, I mean, I believe your order is
18 that his testimony about Mr. Byrd, the entire section
19 that he cited is struck. I'm happy to go with that --

20 HEARING OFFICER TOUSLEY: That's correct.

21 ATTORNEY McCLAIN: -- ask him questions. I
22 also think --

23 HEARING OFFICER TOUSLEY: Okay. You made
24 that point. You're opening a door that I closed.

25 ATTORNEY DUMONT: All right. I

1 misunderstood. I take it back. I withdraw that.

2 ATTORNEY McCLAIN: Thank you.

3 BY ATTORNEY DUMONT:

4 Q. Am I correct that your testimony is not addressing
5 whether the pipeline is safe? You have drawn no
6 conclusions about whether the pipeline is safe; is that
7 right?

8 A. In general, that's correct, yes.

9 Q. I've put up on the screen Page 61 of the
10 deposition, and I apologize for my prior question.
11 That's, I'm guilty of following my notes and not
12 bringing them up-to-date. I apologize.

13 On Page 61 of your deposition, did I ask you,
14 "You're being careful in limiting your testimony. You
15 are not opining about the safety of the pipeline?"
16 There was an objection. Then you answered, "That's
17 correct"?

18 ATTORNEY McCLAIN: Again, excuse me. Again,
19 Mr. Dumont and Mr. Tousley, this is a discussion about
20 Mr. Byrd's report, and I'm happy for this witness's
21 testimony on Mr. Byrd's report and his assessment of
22 the methodology that Mr. Byrd used and his assessment
23 of some of the investigative processes that Mr. Byrd
24 used. I have moved that into evidence, and it's been
25 stricken from evidence, and I'm happy to reverse that,

1 but it does not make sense to cross-examine a witness
2 on testimony that's been stricken. It, and so, again,
3 that's what this deposition piece is about, and that's,
4 that's what the question is about. So I'm at a loss as
5 to how it makes sense to cross-examine him when he --

6 HEARING OFFICER TOUSLEY: Okay, okay. Mr.
7 Dumont, where precisely in the deposition are you
8 referring to?

9 ATTORNEY DUMONT: That was Page 61, Lines 5
10 through 13.

11 HEARING OFFICER TOUSLEY: Okay.

12 ATTORNEY McCLAIN: Which, which discusses his
13 review of Mr. Byrd's report and his investigative
14 process. That's the question, and that's what the
15 question is about, and that's what his answer is about.

16 ATTORNEY DUMONT: But my question was not
17 really about Mr. Byrd's view. I was, wanted to make
18 the record clear he was not giving an opinion about the
19 safety of the pipeline, that he was only discussing
20 with respect to Mr. Byrd's view.

21 ATTORNEY McCLAIN: And I guess I would move
22 for the remainder of Mr. Godfrey's testimony to be
23 admitted in evidence if we're going to continue to ask
24 him questions about that portion of his testimony.

25 ATTORNEY DUMONT: Well, if you're willing --

1 HEARING OFFICER TOUSLEY: I'm going to grant
2 the objection or rule, and, and you're, you're moving
3 closely into Mr. Godfrey's rebuttal prefiled testimony
4 related to Mr. Byrd, which has been excluded.

5 ATTORNEY DUMONT: Okay. Well, then that
6 shortens this up. I have no further questions for the
7 Witness.

8 HEARING OFFICER TOUSLEY: Okay. Do any of
9 the other parties have questions? Department?

10 ATTORNEY GUZMAN: No questions for Mr.
11 Godfrey. Thank you.

12 HEARING OFFICER TOUSLEY: Mr. Miller?

13 ATTORNEY MILLER: The Agency has no questions
14 for Mr. Godfrey. Thank you.

15 HEARING OFFICER TOUSLEY: Mr. McClain, do you
16 have questions in light of the questions and answers
17 Mr. Godfrey has, questions that have been asked of Mr.
18 Godfrey that he's answered?

19 ATTORNEY McCLAIN: Just one follow-up
20 question.

21 HEARING OFFICER TOUSLEY: Sure.

22 REDIRECT EXAMINATION BY ATTORNEY McCLAIN

23 Q. Mr. Godfrey, you were asked whether you'd reviewed
24 Specification, Specification 312333. Do you recall
25 that question?

1 A. Yes, I do.

2 Q. To the extent that that specification is cited or
3 portions of it are cited in Mr. Byrd's report, have you
4 reviewed those provisions of that specification?

5 A. Yes, I did.

6 ATTORNEY McCLAIN: Okay. That's all I have.
7 Thank you. Oh, that's, that's my only question, Mr.
8 Tousley.

9 HEARING OFFICER TOUSLEY: Okay. Mr. Dumont,
10 do you have any question in response to Mr. McClain's
11 question?

12 ATTORNEY DUMONT: I'm sorry. I didn't catch
13 the question. I was looking at my notes. I apologize.

14 ATTORNEY McCLAIN: He's not accustomed to
15 listening to me when I'm --

16 ATTORNEY DUMONT: What was the question?

17 HEARING OFFICER TOUSLEY: Sunnie, if you
18 could read back the question and the answer, please.

19 (Question read by the reporter:

20 "Q. To the extent that that
21 specification is cited or portions of it are cited
22 in Mr. Byrd's report, have you reviewed those
23 provisions of that specification?

24 "A. Yes, I did.")

25 ATTORNEY DUMONT: Yes, I heard that. Oh, I

1 have no follow-up questions to that. I'm sorry. No.

2 ATTORNEY McCLAIN: That's the only question.

3 HEARING OFFICER TOUSLEY: Okay, thank you.

4 ATTORNEY DUMONT: I have no follow-up
5 questions.

6 HEARING OFFICER TOUSLEY: All right. I'm
7 going to take it, then, that there are no more
8 questions for Mr. Godfrey. Mr. Godfrey, I want to
9 thank you for your testimony. You're excused.

10 MR. GODFREY: Thank you, sir.

11 ATTORNEY McCLAIN: Thank you, Mr. Godfrey.

12 HEARING OFFICER TOUSLEY: Okay. Now we need
13 to talk a little bit about Mr. Liebert's testimony and
14 the potential for surrebuttal direct examination. Mr.
15 Dumont, precisely what testimony of Mr. Byrd do you
16 seek to rebut?

17 ATTORNEY DUMONT: I've looked this over the
18 break, thank you, and what I've, I sought to rebut was
19 Mr. Byrd's testimony that went beyond his report. His
20 report said at Page 61 that corrosion engineers are not
21 licensed in Vermont, and that's why this wasn't signed,
22 and, in his answers to cross-examination, he said, in
23 his career outside of Vermont, he's never seen a
24 licensed professional engineer signing corrosion
25 reports either. So that was the new element that I

1 wanted Mr. Liebert to respond to.

2 So I went back. Over the lunch break, I went back
3 and looked at the rebuttal testimony that we submitted
4 on behalf of Mr. Liebert and looked at it. I, it
5 probably does cover this on Page 2, the top half of the
6 page. He does, Mr. Liebert has already said that,
7 typically, AC mitigation plans are sealed and signed by
8 electrical engineers and cathodic protection plans are
9 sealed and signed by mechanical, chemical, or
10 metallurgical engineers. Mr. Liebert did not restrict
11 his prefiled rebuttal to just what's in Vermont. So I
12 don't want to mislead the hearing officer in that
13 sense. He did already respond.

14 HEARING OFFICER TOUSLEY: Okay. I
15 understand. I understand. So, so then is it correct
16 to assume that you don't want to bring Mr. Liebert in
17 to address this issue?

18 ATTORNEY DUMONT: Well, I do want to bring
19 him in, but I have to be candid. To an extent, he has
20 already respond to what Mr. Byrd said.

21 HEARING OFFICER TOUSLEY: Okay. Then I'm
22 going to deny your request.

23 ATTORNEY DUMONT: Okay.

24 HEARING OFFICER TOUSLEY: With that, I
25 believe we've finished with all of our potential

1 witnesses; is that correct? Department?

2 ATTORNEY GUZMAN: Yes, that's correct.

3 HEARING OFFICER TOUSLEY: ANR, do you agree?

4 ATTORNEY MILLER: ANR agrees.

5 HEARING OFFICER TOUSLEY: Mr. Dumont?

6 ATTORNEY DUMONT: Yes.

7 HEARING OFFICER TOUSLEY: Mr. McClain?

8 ATTORNEY McCLAIN: I agree, yeah.

9 HEARING OFFICER TOUSLEY: Okay. Then we're
10 finished with the principal purpose of the, of the
11 evidentiary hearing. When, when had you anticipated
12 filing? Have you talked about when you wanted to file
13 initial briefs? Go ahead, Mr. McClain.

14 ATTORNEY McCLAIN: I, I have not had a chance
15 to reach out to, to the other parties on this subject,
16 and the current scheduling order already contemplates
17 deadlines for briefs, and I apologize. It's just been
18 a busy week, I guess, but, if, if others would, would
19 be amenable to it, we currently have a two-week
20 deadline to file initial briefs followed by a one-week
21 deadline to file replies, and I might just request a
22 more humane schedule of three weeks for the initial one
23 and a two-week one for the reply, if there's no
24 objection to that.

25 I just, I, I think, in light of the fact that we

1 have three days of hearing transcript for Sunnie to, to
2 finalize, which I would request we could have that
3 expedited, if possible, I don't know. Two weeks just
4 seems awful quick for me. And so it's a humble
5 request. If everyone would, would abide by it, I'd
6 appreciate the opportunity to take three weeks with the
7 initial brief and two weeks with the reply.

8 HEARING OFFICER TOUSLEY: Mr. McClain, did
9 you plan to file proposed findings with your brief?

10 ATTORNEY McCLAIN: I, I had planned that for
11 -- I had planned on the normal practice, I suppose, Mr.
12 Tousley, which would be to include a proposal. We
13 would include proposed findings, as well as arguments
14 on the issues that are germane to the case. Yeah. I,
15 our proposed findings would be submitted in that
16 initial filing, and, and then we would, we would, of
17 course, respond to whatever is filed in the, in the
18 reply brief.

19 HEARING OFFICER TOUSLEY: Okay. Do other
20 parties have an objection to three weeks for the first
21 set of initial briefing, which would include any
22 filings of proposed findings? Mr. Porter?

23 ATTORNEY PORTER: If I could, thank you, Mr.
24 Tousley. If I could just ask one question. The
25 Department is currently in the process of implementing

1 various Covid-related relief programs from the
2 legislature from this past session. Would, would four
3 weeks just be outrageous to everyone? Eric, as are
4 others, are involved in some of these programs, and we
5 can do three weeks if we have to, but I might ask for
6 four weeks.

7 HEARING OFFICER TOUSLEY: I'm not opposed to
8 four weeks, Mr. Porter. We've been at this since, for
9 three years now. You know, waiting another week or two
10 to make the product better would be a good idea, unless
11 there's some reason we should go faster.

12 ATTORNEY PORTER: Thank you.

13 HEARING OFFICER TOUSLEY: Mr. Dumont?

14 ATTORNEY DUMONT: Four weeks is fine.

15 HEARING OFFICER TOUSLEY: Mr. Miller?

16 ATTORNEY MILLER: The Agency has no objection
17 to four weeks for the response brief. Would that still
18 be two --

19 HEARING OFFICER TOUSLEY: That would be two
20 weeks later.

21 ATTORNEY MILLER: Very good. Thank you.

22 HEARING OFFICER TOUSLEY: Sure. Go ahead.

23 ATTORNEY McCLAIN: And so, just for
24 clarification, is, are we talking October 1st, which is
25 four weeks from today, or October 2nd, which is the

1 Friday four weeks from tomorrow?

2 HEARING OFFICER TOUSLEY: October 2nd.

3 ATTORNEY McCLAIN: October 2nd is the
4 deadline for initial briefs? Thank you.

5 HEARING OFFICER TOUSLEY: Yes. And then the
6 reply briefs would be due October 16th, two weeks after
7 that.

8 ATTORNEY McCLAIN: Thank you very much.

9 HEARING OFFICER TOUSLEY: Okay. Do we have
10 any other matters to take up before we adjourn? I
11 didn't see any hands raised. Yes?

12 ATTORNEY DUMONT: I, I want to thank you for
13 your attention and your patience with me.

14 HEARING OFFICER TOUSLEY: Oh, absolutely.
15 There's no, no issues. Thank you all for your
16 attention to me and patience as well. This is a, a new
17 format, and it's, it's challenging, especially over an
18 extended period. With that, this hearing is adjourned.
19 Thank you all, and have a nice weekend.

20

21

22 (Whereupon at 1:52 p.m. the hearing was adjourned.)

23

24

25

1 C E R T I F I C A T E

2 I, Sunnie Donath, RPR, do hereby certify that
3 I recorded by stenographic means the Evidentiary
4 Hearing Re: Investigation pursuant to 30 V.S.A.
5 Sections 30 and 209 regarding the alleged failure of
6 Vermont Gas Systems, Inc. to comply with the
7 certificate of public good in Docket 7970 by burying
8 the pipeline at less than required depth in New Haven,
9 Vermont, on September 3, 2020, beginning at 9:30 a.m.

10 I further certify that the foregoing testimony was
11 taken by me stenographically and thereafter reduced to
12 typewriting and the foregoing 114 pages are a
13 transcript of the stenographic notes taken by me of the
14 evidence and the proceedings to the best of my ability.

15 I further certify that I am not related to any of
16 the parties thereto or their counsel, and I am in no
17 way interested in the outcome of said cause.

18 Dated at Westminster, Vermont, this 5th day of
19 September, 2020.

20

21 //Sunnie Donath, RPR

22

23

24

25