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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NUMBER 17-3550-INV

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

September 1, 2020
9:30 a.m.

112 State Street
Montpelier, Vermont

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

P R E S E N T

Hearing Officer: Michael E. Tousley, Staff Attorney
Staff: Ann Bishop, Operations Director

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A P P E A R A N C E S

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1 HEARING OFFICER TOUSLEY: Good morning. This
2 is an evidentiary hearing in Case Number 17-3550-INV,
3 which is an investigation pursuant to 30 V.S.A.
4 Sections 30 and Section 209 regarding the alleged
5 failure of Vermont Gas Systems to comply with the
6 certificate of public good in Docket 7970 by burying
7 pipeline at less than the required depth in New Haven,
8 Vermont.

9 My name is Mike Tousley. I am a staff attorney
10 with the Vermont Public Utility Commission and have
11 been appointed to serve as the hearing officer in this
12 matter. Ann Bishop, as we just listened to, of the
13 Commission staff is serving as the GoToMeeting platform
14 manager for this hearing.

15 If a party or a participant intends to, intends on
16 recording the hearing via video or audio, please
17 indicate that at this time or when you provide your
18 name by appearances, which is what we'll do next.
19 Okay. So I guess we'll start by taking appearances,
20 starting with the Vermont Department of Public Service.

21 ATTORNEY GUZMAN: Hi. This is Eric Guzman
22 for the Department of Public Service.

23 ATTORNEY PORTER: Jim Porter on behalf of the
24 Department of Public Service. Are we not going to have
25 any time for preliminary issues, or are we just going

1 to do that after we all go on the record?

2 HEARING OFFICER TOUSLEY: Why don't we -- if
3 you have stuff you want to talk about, let's go ahead
4 and do that now, and then we can come back on the
5 record when we're finished. So, Sunnie, if you could,
6 we're going to be off the record a little while.

7 (A discussion was held off the record.)

8 HEARING OFFICER TOUSLEY: I was taking
9 appearances. I had heard from the Department. ANR?

10 ATTORNEY MILLER: Randy Miller on behalf of
11 ANR.

12 HEARING OFFICER TOUSLEY: The Intervenors?

13 ATTORNEY DUMONT: James Dumont for the
14 Intervenors, and I was going to ask if I could do an
15 audio recording at my end. If anybody wasn't going to
16 object, I was just going to record. Because you know
17 Sunnie does great transcriptions, but they probably
18 won't be available for a few days. So I was going to
19 audio record just so I could have it at the end of the
20 day.

21 HEARING OFFICER TOUSLEY: Okay, thank you.
22 Is there any objection? No? Okay. Vermont Gas?

23 ATTORNEY McCLAIN: Good morning. My name is
24 Owen McClain from Sheehey, Furlong & Behm. I'm here to
25 represent Vermont Gas. I, typically, in the hearing

1 room, would also introduce my colleague, Debra
2 Bouffard, who is also here with me, and she has a
3 separate camera and can appear as needed.

4 I also have Jill Pfenning and Eileen Simollardes
5 from the company, and I believe that participating in
6 or, or observing the hearing today are also Don
7 Rendall, the CEO of VGS; John St. Hilaire, the Vice
8 President of Operations at VGS, and Chris LeForce is on
9 the call, I believe as -- yeah, there's Chris's name.
10 I believe that's a complete intro of the Vermont Gas
11 team. Oh, sorry. Jeff Nelson from VHB is also on the
12 call, as is John Godfrey.

13 HEARING OFFICER TOUSLEY: Okay, great. I see
14 that we have one person calling in. If you would like
15 to identify yourself, now is the time. Okay. I'll
16 assume that means you don't want to and you're just
17 listening and we won't hear from you throughout the
18 hearing.

19 Here are some procedures in addition to those that
20 Ann talked about already. Due to the COVID-19
21 pandemic, the Commission is limiting in-person contact.
22 As a result, the parties have agreed to conduct this
23 hearing remotely, although I haven't asked you that
24 question yet. I'd like to confirm, take a moment to
25 confirm that all the parties have consented to have a

1 remote hearing. If anyone no longer consents to
2 conducting this hearing remotely, they must speak up
3 now.

4 ATTORNEY DUMONT: Intervenors consent.

5 HEARING OFFICER TOUSLEY: Okay, great.
6 Hearing no objections, let's talk a little bit about
7 logistics. We are using the web-based platform
8 GoToMeeting. During this hearing, we will be using
9 some special hearing procedures uniquely related to
10 using a web-based platform. I will read them now for
11 the benefit of the parties, and I apologize if you've
12 heard them before, and to ensure that we have them on
13 the record.

14 Parties may raise objections to these procedures
15 either now or at any point during the hearing. In
16 addition to formal objections, parties may also raise
17 concerns at any time if the platform is not performing
18 as expected or if you are having difficulties. We
19 expect that this hearing will proceed more slowly than
20 usual, and we may need to stop along the way to resolve
21 technical issues as we are able.

22 We also recognize that, because we are all in
23 remote locations, such as our homes, there may be
24 unexpected interruptions at those locations like Mr.
25 Byrd's mom giving him a call.

1 The representatives in this case should keep their
2 cameras on during the entire hearing, except during
3 breaks. It is very helpful for us to see you,
4 particularly when you are raising objections or
5 questioning witnesses. Witnesses should leave their
6 cameras off until they are testifying, at which time
7 they should turn them on. Even with your own camera
8 turned off, you will still be able to see everyone who
9 has their cameras turned on. My preference is that
10 people who are not actively participating in this
11 proceeding leave their cameras off so that pictures of
12 active participants are larger.

13 Commission staff will not mute anyone's
14 microphone, whether a party, a participant, or a member
15 of the public. This means that you should keep
16 yourself on mute, unless you are speaking. That way,
17 we can minimize background noises, which can be very
18 disruptive. During breaks in the hearing, all
19 participants are asked to turn their cameras off and
20 mute their microphones.

21 Each time you begin talking, please identify
22 yourself by name for the court reporter. If your
23 internet connection cuts out, please try to rejoin
24 GoToMeeting or call in to the hearing using the
25 GoToMeeting telephone number that was provided in the

1 hearing notice.

2 I know that I've had past hearings using
3 GoToMeeting where I've lost the connection as the
4 hearing officer. I've moved to a different room where
5 I'm a little bit closer to my Wi-Fi transmitter, so I
6 haven't had that problem recently, but, if, all of a
7 sudden, I'm frozen and it doesn't, and you can't, and
8 I, and you can't see any movement out of me, that means
9 I've lost my Wi-Fi connection, and I would ask you to
10 cease your conversation at that point until I'm able to
11 get in. When it happened to me previously, I was able
12 to get in within a couple of minutes, so I didn't miss
13 much in the, in the transcription or the, or the
14 proceeding.

15 If the audio or video from the hearing has cut
16 out, let me know when you are able to rejoin, and I
17 will summarize what happened, and we will revisit any
18 questions on which an objection may have been allowed,
19 including any admission of an exhibit. If you are
20 unable to call in or rejoin, notify Ann, the platform
21 manager, immediately via email or the clerk's office or
22 by telephone or the clerk's office by email or
23 telephone, and we will pause the hearing until your
24 inability to rejoin has been resolved. If it cannot be
25 resolved, we will reschedule the hearing.

1 Similarly, if, at any point, any of you become
2 aware of another party, participant, or a member of the
3 public having trouble accessing the video or audio
4 feeds of this remote hearing, please let us know
5 immediately. We will pause the hearing until the issue
6 is resolved. If it cannot be resolved, we will
7 reschedule the hearing.

8 It's very important that we avoid talking over one
9 another. Of course, if you have an objection, then you
10 must raise it at the moment the objection arises. That
11 type of interruption is allowed and required. When
12 objections or issues are raised, I will ask each
13 representative one by one whether they have a response.
14 We will go in the following order, basically, the same
15 way that we did during notices of appearances where
16 I'll start with the Department, ANR, then the
17 Intervenors, and then VGS. So that's generally the
18 order that we'll proceed in.

19 Please wait until I call on you to proceed. Then
20 answer verbally so that we have your response in the
21 record. When you are asking questions of witnesses, we
22 will make you the presenter in GoToMeeting, just as we
23 did during the practice this morning. If you refer to
24 any documents during your questioning, you must share
25 the documents on your screen by clicking the "Share

1 Screen" icon. Alternatively, someone else from your
2 firm may show the documents for you during your
3 questioning.

4 The questioner must wait to ask questions about a
5 document until the document is being shared. Please
6 verbally identify the document you are sharing for the
7 court reporter. For example, clearly state, "I am
8 showing Department Cross-1". When you are done with
9 the document, please click "Stop Sharing Screen", as we
10 practiced this morning. Whenever you are sharing your
11 screen, I advise you to close out of any other
12 unnecessary applications, such as email, to avoid
13 notifications being visible to others in the hearing.

14 There have been two protective orders issued in
15 this case. Do the parties intend to use the
16 confidential information that is the subject at least
17 of the first order? Department?

18 ATTORNEY PORTER: No, we do not.

19 HEARING OFFICER TOUSLEY: Okay. ANR?

20 ATTORNEY MILLER: No, we do not.

21 HEARING OFFICER TOUSLEY: Mr. Dumont?

22 ATTORNEY DUMONT: The first order pertains to
23 the KMZ document, I believe, and we do not intend to
24 use that.

25 HEARING OFFICER TOUSLEY: Okay. Mr. McClain?

1 ATTORNEY McCLAIN: I, I don't anticipate
2 using the KMZ file. The second order pertained to a
3 different document. I, I don't plan on using that
4 document either.

5 HEARING OFFICER TOUSLEY: Okay, great. So,
6 if, in fact, at some point during the hearing,
7 something arises where you want to use confidential
8 information, just stop me, and we'll go through that
9 process of excluding others' ability who have not been
10 read into the confidentiality of the document. I don't
11 anticipate that, but, should it arise or should you
12 file, should the parties feel the need for it, they
13 should let me know.

14 Does anybody have any questions or concerns about
15 these procedures? I don't see any hands raised, so
16 I'll continue. With that covered, we now will begin
17 the substantive portion of the hearing.

18 As of this morning, there are three outstanding
19 motions. I really like that feature in, in ePUC that
20 shows you which ones are not yet resolved, because it
21 reminds that they're there. The first is the motion to
22 withdraw by Attorney Gjessing of the Vermont Fish and
23 Wildlife Department. I've heard no objection, and I'm
24 aware that Attorney Miller remains as the
25 representative of the Vermont Agency of Natural

1 Resources, of which Fish and Wildlife is a department.
2 That motion is granted.

3 The second is the motion to clarify the order
4 striking Mr. Godfrey's testimony filed by Vermont Gas
5 Systems yesterday. I am prepared to rule on this
6 motion but wanted to give other parties an opportunity
7 to respond before I did so. I did not receive
8 responses from the other, from all the other parties
9 with regard to that motion, so I'm going to do the roll
10 call to see if there's anybody who wants to comment on
11 yesterday's motion by VGS seeking clarification of the
12 order striking Mr. Godfrey's testimony. Department?

13 ATTORNEY GUZMAN: We have no objection to the
14 motion.

15 HEARING OFFICER TOUSLEY: Okay. ANR?

16 ATTORNEY MILLER: ANR has no objection to the
17 motion.

18 HEARING OFFICER TOUSLEY: Since it was -- Mr.
19 Dumont?

20 ATTORNEY DUMONT: Yes, we do object to the
21 motion. Perhaps it could be clarified, but the outcome
22 should not change for the reasons we've put in our
23 objection to Mr. Godfrey's testimony. One basis was
24 that it was character evidence. The other was that the
25 evidence is being offered in violation of the

1 Commission's scheduling order.

2 HEARING OFFICER TOUSLEY: Okay. Does, does
3 VGS wish to respond to Mr. Dumont's comments?

4 ATTORNEY McCLAIN: No, I don't think so. I
5 think the, I think that we've offered our legal
6 arguments on all of those issues in the papers. Thank
7 you.

8 HEARING OFFICER TOUSLEY: Okay. Then I'm
9 going to rule. I'm clarifying my order granting the
10 Intervenors' motion to exclude Mr. Godfrey's testimony
11 as follows:

12 Inasmuch as the basis for the order related to Mr.
13 Godfrey's testimony about Mr. Byrd and his independent
14 investigation report, I am now clarifying the order by
15 limiting its effect only to Mr. Godfrey's testimony
16 about Mr. Byrd and the investigation report, which
17 remain excluded.

18 Mr. Godfrey's testimony responding to Mr. Palmer's
19 and Mr. Liebert's testimony is not excluded, because
20 the character evidence issue that was the basis for the
21 order does not apply there. So Mr. Palmer's and Mr.
22 Liebert's testimony is -- Mr. Godfrey's testimony about
23 Mr. Palmer's and Mr. Liebert's testimony is not
24 excluded, and Mr. Godfrey may be cross-examined about
25 that testimony as the last witness to testify.

1 I know that doesn't respond to the Intervenor's
2 timing concern in terms of the order. I'm going to,
3 inasmuch as Mr. Godfrey's testimony is excluded with
4 regard to Mr. Byrd, it was based on the character
5 evidence issue. With regard to Mr. Palmer and Mr.
6 Liebert, the testimony about Mr. Palmer and Mr.
7 Liebert's testimony, I, I'm not persuaded by the
8 argument that it violates, that, that Mr. Godfrey's
9 testimony violated the, the order, the order about
10 what's going to go on in the proceeding inasmuch as
11 it's rebuttal, Mr. Godfrey's testimony is rebuttal
12 testimony.

13 This resolves the motion to clarify. Are there
14 any questions? Mr. McClain, did you have a question?

15 ATTORNEY McCLAIN: Yes. Thank you very much.
16 With regard to the portion of Mr. Godfrey's testimony
17 that discusses -- I guess I, I guess I feel like it
18 would be helpful for the parties to understand
19 precisely what pages of Mr. Godfrey's testimony are
20 stricken. There may be a disagreement about what
21 portions of the testimony address character evidence
22 and which portions of the testimony address what would,
23 what would be typically expected in a formal
24 independent investigation and what kinds of processes,
25 documents, and information an independent investigator

1 would typically rely upon.

2 And so I, I guess I'd just ask, not to belabor the
3 point too much, but, if we could just have clarity on
4 the record about which pages you believe or you have
5 ordered should be stricken from Mr. Godfrey's
6 testimony. The character evidence referred to in Mr.
7 Dumont's motion is on Page 9 at Line 17, I believe.

8 HEARING OFFICER TOUSLEY: All of the
9 testimony Mr. Godfrey has with regard to Mr. Byrd is
10 stricken, is, is excluded. And I'm trying to pull up
11 that order. So anything beneath the header that says
12 "Mr. Byrd" up until we get to the header that says "Mr.
13 Liebert".

14 ATTORNEY McCLAIN: Okay. Thank you for the
15 clarification.

16 HEARING OFFICER TOUSLEY: Okay, great. The
17 third motion was filed by Vermont Gas Systems sometime
18 after ePUC's close of business last night. So it's a
19 motion that was made today. It was a motion requesting
20 that I take judicial notice of evidence in the Docket
21 7970 case. I am prepared to rule on this motion but
22 wanted to give the other parties an opportunity to
23 respond to VGS's motion before I did so. Does the
24 Department have anything in response?

25 ATTORNEY GUZMAN: No response at this time.

1 HEARING OFFICER TOUSLEY: Okay. ANR?

2 ATTORNEY MILLER: No response from ANR.

3 HEARING OFFICER TOUSLEY: Mr. Dumont?

4 ATTORNEY DUMONT: Yes. I did receive that
5 last night. I have two responses. One is that I think
6 the Commission and the hearing officer have broad
7 discretion as to admission as to judicial notice. So I
8 don't, in general, whether -- I don't think it's
9 objectionable in general. You have broad discretion to
10 take judicial notice of your own files. I think that's
11 a given. It's just a timing question.

12 There are so many documents in the list, and we
13 have the hearing starting right now, and they haven't
14 been offered as exhibits. So the process is troubling
15 to me that these documents that aren't being offered as
16 exhibits a witness can't be cross-examined about
17 because they're not exhibits. So I go back to the
18 rule, and it talks about notice and the opportunity to
19 object. I just don't know how that works in this
20 procedural setting.

21 HEARING OFFICER TOUSLEY: Mr. McClain, do you
22 or Ms. Bouffard want to respond to this?

23 ATTORNEY McCLAIN: I think my understanding
24 is that the Commission may take judicial notice of
25 documents such as its own files and what was filed, not

1 for the truth of the matter as asserted therein,
2 necessarily, but for the fact that there were filings
3 and that those were representations that were made, and
4 I think my understanding with respect to the timing of,
5 of that notice would be that the Commission is required
6 under the rule to provide the parties general notice
7 that it would take judicial notice of certain
8 categories of things, and I think I thought it would be
9 helpful at the outset of the hearing for us to
10 understand that we could, we could rely on, on
11 extensive amounts of documents, really, that are filed
12 in Docket 7970 for the fact that they were filed. I
13 don't, I don't think that they need to be moved in as
14 cross exhibits in order for us to be on notice that
15 they were filed in Docket 7970. It's true there's a
16 lot of information.

17 I think, with respect to the Commission's notice,
18 which is the, the rule, I believe, that a proposal for
19 decision would put the parties on notice of any
20 portions of that docket which they did, in fact, take
21 judicial notice of or, in this case, your proposal for
22 decision took judicial notice of, and the parties would
23 have an opportunity to comment on.

24 HEARING OFFICER TOUSLEY: Okay. So it sounds
25 like what you're saying is that you know I'm going to

1 need them for the proposal for decision, but you aren't
2 necessarily going to use them for questioning
3 witnesses; is that correct?

4 ATTORNEY McCLAIN: Yeah, that, that's
5 correct. I mean, I think, depending on the variety of
6 issues that the parties may end up briefing and the
7 various facts they may end up relying upon, those
8 documents and what the remainder of those documents say
9 could ultimately be relevant to the context of whatever
10 arguments are being made by the various parties, and I
11 think that context is, not only important, but probably
12 vital, to understanding what was filed in Docket 7970
13 and what the ultimate intent of the Commission was in
14 that case.

15 HEARING OFFICER TOUSLEY: Okay. Mr. Dumont,
16 do you have a response?

17 ATTORNEY DUMONT: Yes. I think most of what
18 Mr. McClain said makes sense, and I don't object to it,
19 but it leads to the further question of, if the hearing
20 officer, in a proposal for decision or, later, the
21 Commission, in its decision, provides notice that
22 judicial notice will be taken of a certain document, at
23 that point, the parties have a right to do more than
24 comment. Mr. McClain said comment. The parties, I
25 believe, have the right to respond, if necessary, by

1 asking to submit responsive evidence.

2 Hopefully, that's not going to happen, but I just
3 want to put on the record that, since we just got this
4 request last night at 6:15 and there are huge amounts
5 of documents, if one of those documents that I haven't
6 considered in preparing for today ends up being
7 important to the hearing officer or the Commission, the
8 Commission or the hearing officer would then give us
9 notice, and I might, at that point, need to respond by
10 actually offering evidence.

11 HEARING OFFICER TOUSLEY: Okay. I
12 understand. I'm going to say that all the materials
13 that VGS requests notice of are in the Commission's
14 record for that case and are available to be used as
15 evidence in this case. I know that, in the proposal
16 for decision, I will rely upon elements of the language
17 of the final order and the CPG, at a minimum, if not --
18 it's, it's unlikely that I will draw from other
19 documents, unless they have been addressed during this
20 week of discussion.

21 However, that whole record for, for Docket Number
22 7970 and for Case Number 18-0395-PET, which was the
23 notice of probable violations by Vermont Gas Systems
24 filed by the Department, that, I believe, is subsumed
25 in this investigation, the record in both 7970 and

1 18-0395-PET, I am now providing administrative notice
2 may be relied upon in my proposal for decision. The
3 opportunity that the parties will have to comment on
4 that proposal for decision will be the opportunity to
5 comment on that notice that's being given now.

6 So I don't know yet what I'm going to use that are
7 from those cases, and you will see it in the proposal
8 for decision, and the proposal for decision is not a
9 final document. It's, it's a proposal upon which the
10 parties get to comment and, and which, eventually, the
11 Commission will issue an order in response to both the
12 proposal and the comments of the parties. So, if
13 there's a challenge to those documents from those two
14 cases that arise in the proposal for decision context,
15 they can be addressed in the comments on the proposal
16 for decision.

17 So with, with that clarification, I will grant
18 VGS's motion to treat 7970 documents as I am providing
19 notice that they may be relied upon in this case, as
20 well as potentially documents that were filed in Case
21 Number 18-0395-PET, but we'll talk a little bit more
22 about that case here in a second.

23 Any question about my ruling? Okay. So those are
24 the three motions, and now I can get the Clerk of the
25 Commission to change those to "Resolved" in ePUC. I

1 don't have to think about that again, necessarily,
2 except when they arise.

3 Finally, I want to take this opportunity to
4 address two other issues, and, since we have been
5 talking about it, I'll go to the second issue first,
6 which is the relationship between this case and Case
7 Number 18-0395, which was a notice of probable
8 violation by Vermont Gas Systems, Incorporated, for
9 certain aspects of the construction of the Addison
10 Natural Gas Project that was filed by the Vermont
11 Department of Public Service.

12 We haven't talked about that case in some time,
13 and, as I remember it, this NOPV case was folded into
14 this case inasmuch as it also addressed alleged
15 violations of the final order and CPG. My expectation
16 earlier was that evidence related to this case would
17 also be addressed, evidence related to the NOPV case
18 would also be addressed and resolved in this case. Is
19 my memory and expectation accurate, Mr. Guzman?

20 ATTORNEY GUZMAN: I, I believe so, yes.

21 HEARING OFFICER TOUSLEY: Okay. Mr. Miller?

22 ATTORNEY MILLER: That's the Agency's
23 understanding.

24 HEARING OFFICER TOUSLEY: Okay. Mr. Dumont?

25 ATTORNEY DUMONT: Yes.

1 HEARING OFFICER TOUSLEY: Mr. McClain?

2 ATTORNEY McCLAIN: Yes. I think my, my
3 recollection, Mr. Tousley, is that that case was stayed
4 and that, at the time that it was stayed, Vermont Gas
5 had accepted a proposed resolution by the Department,
6 and so the Department's NOPV and Vermont Gas's
7 acceptance of it is the status of it when it was
8 stayed.

9 And then my other recollection and understanding
10 is that your orders in this case have directed the
11 investigation to include matters that are broadly
12 within the scope of the issues that are pending, the
13 PUC's determination on the agreement, essentially,
14 between the Department and Vermont Gas about how to
15 resolve those issues. So, with that further detail, I,
16 I think I agree with your characterization that an
17 order in this case could resolve the matters in Docket
18 0395.

19 HEARING OFFICER TOUSLEY: Okay. I guess the
20 way I'm thinking about this is that the issues that
21 arose in 18-0395-PET, the parties will brief and
22 propose for inclusion as appropriate in any proposed
23 findings. Does that conform to your expectation, Mr.
24 Guzman?

25 ATTORNEY GUZMAN: Yes, thank you.

1 HEARING OFFICER TOUSLEY: Mr. Miller?

2 ATTORNEY MILLER: Yes.

3 HEARING OFFICER TOUSLEY: Mr. Dumont?

4 ATTORNEY DUMONT: Yes.

5 HEARING OFFICER TOUSLEY: Mr. McClain?

6 ATTORNEY McCLAIN: Yes, that does. We will
7 plan to do that.

8 HEARING OFFICER TOUSLEY: Great. Okay. So
9 the other issue that I wanted to talk about was the
10 bifurcation of this investigation hearing. I wanted to
11 address the penalty aspect of this investigation. The
12 hearing we are now beginning principally addresses the
13 substantive issues that were investigated by Mr. Byrd
14 and the parties. There has been no filing of evidence
15 that I can recall related to any potential penalty.

16 We have, in effect, bifurcated, by our own
17 actions, this investigation, allowing for a conclusion
18 as to whether VGS violated the final order and CPG in
19 Docket 7970 before addressing any potential factual
20 issues that might be appropriate in determining a
21 penalty.

22 That said, after briefing and proposed findings
23 are filed, I will issue a proposal for decision
24 addressing the question, the bifurcated question of
25 whether VGS violated the final order and CPG. The

1 parties will have an opportunity to comment on that
2 proposal for decision. If I conclude that the final,
3 that the final order and CPG were not violated, I will
4 forward that proposal for decision without any
5 discussion of penalty with the parties' comments to the
6 Commission for its decision.

7 If I conclude that VGS violated the final order
8 and CPG, I will ask the parties in the proposal for
9 decision for, for comments on scheduling any penalty
10 phase of this proceeding. So the proposal for decision
11 that will be derived from this hearing will address
12 only the substantive question of whether or not there
13 was a violation of the CPG and final order. If I
14 determine that there was, then I will ask you in that
15 proposal for decision for comments and proposals for
16 the penalty phase that would, that would arise after
17 that conclusion is made.

18 Do the parties have any comments or questions
19 about the bifurcation of this proceeding? Mr. Guzman?

20 ATTORNEY GUZMAN: No, I do not.

21 HEARING OFFICER TOUSLEY: ANR? I don't see
22 you there right now.

23 ATTORNEY MILLER: ANR does not. Thank you.

24 HEARING OFFICER TOUSLEY: Oh, there you are.
25 You moved on my screen up to the corner. Mr. Dumont?

1 ATTORNEY DUMONT: Yes, I do have a question.

2 HEARING OFFICER TOUSLEY: Sure.

3 ATTORNEY DUMONT: Mr. Rendall's prefiled
4 testimony addressed the remedies.

5 HEARING OFFICER TOUSLEY: Okay.

6 ATTORNEY DUMONT: I just want the record to
7 be clear that, if I don't cross-examine Mr. Rendall
8 about that issue, I will not be waiving the opportunity
9 to cross-examine him about that; that would arise at a
10 later time?

11 HEARING OFFICER TOUSLEY: That's a good
12 question. I, my immediate response is that, if you
13 have questions for Mr. Rendall about the penalty phase,
14 I would like you to address them during this hearing
15 and be reserved for use later. However, I would defer
16 to any concern that Mr. McClain and Ms. Bouffard might
17 have.

18 ATTORNEY McCLAIN: Is it my turn, or, Jim,
19 did you have another question?

20 ATTORNEY DUMONT: No, that was it.

21 ATTORNEY McCLAIN: I guess my perspective on,
22 on this would be, would be the following, and I don't
23 mean to belabor the point and would defer to the
24 hearing officer's best judgment about how to
25 efficiently proceed. It's not clear to me, in the

1 event that there is a filing, a finding, made that
2 there was a CPG violation, it's not clear to me that
3 the issues that would be considered under 30 V.S.A.
4 Section 30 regarding an appropriate penalty for such a
5 violation could not be most efficiently addressed with
6 the witnesses that we have here.

7 And so I would propose that, to the extent it's
8 feasible and efficient, that we, that the parties try
9 to address issues that would relate to that here in the
10 interest of efficiency and that our discussion in the
11 event that there is a finding that there's a CPG
12 violation should, should, I think, really commence on
13 determining what the scope of, of any necessary
14 additional information would be and what the most
15 efficient way would be to provide it.

16 I guess I, I guess my larger point being that
17 we've put a lot of time and energy into this proceeding
18 and, and hope that we can make efficient use of the
19 evidentiary issues as needed and, and, if the hearing
20 officer needs additional information to render a
21 decision regarding the factors under Title 30, we, of
22 course, are available to provide any information that
23 would be helpful in making that determination.

24 HEARING OFFICER TOUSLEY: Okay, okay. Well,
25 I appreciate that. I was, I, I have not seen much

1 discussion in any of the prefiled that addressed the
2 penalty factors, other than Mr. Rendall's discussion,
3 so I hadn't anticipated that, however, and I'm not sure
4 the other parties anticipated that. I think that it's
5 appropriate and might be much more efficient to attempt
6 to deal with it now if the parties are prepared to do
7 so. I know I have not looked at this case with a
8 thought to the title, the 3030 factors. That doesn't
9 mean that they couldn't be addressed now and
10 supplemented later.

11 So I think that's, Mr. McClain, where I'm going to
12 leave this. I'm going to ask the other parties what
13 they think about it, but my initial thought is that, to
14 the extent the other parties are prepared to address
15 the 3030 factors in their cross-examination of the
16 witnesses appearing this week, they should do so. If
17 they are unprepared to do so, they should tell me in a
18 minute when I give you the chance. And, if we need to
19 do a supplementary procedure, then we can do so. But
20 let me go through the roll call. Mr. Guzman, what do
21 you think?

22 ATTORNEY GUZMAN: The, the penalty factors
23 are not something that we have considered for cross at
24 this time. I believe that we would be able to reserve
25 the 30 minutes that we have allocated to cross after

1 the other parties have, have conducted their own
2 cross-examination, but I think --

3 HEARING OFFICER TOUSLEY: Let me jump in a
4 second. And we have Mr. Byrd prepared to testify and
5 Mr. Rendall the next two days. Do the parties
6 anticipate 3030 factor questions for Mr. Byrd that they
7 are not prepared to ask?

8 ATTORNEY GUZMAN: Oh, no, I do not have any
9 questions to ask on that at the moment.

10 HEARING OFFICER TOUSLEY: Okay. Mr. Miller?

11 ATTORNEY MILLER: No, ANR doesn't anticipate
12 any questions for Mr. Byrd on that.

13 HEARING OFFICER TOUSLEY: Mr. Dumont?

14 ATTORNEY DUMONT: I do not anticipate
15 questioning Mr. Byrd about that issue.

16 HEARING OFFICER TOUSLEY: Okay. What do you
17 think about allowing the parties to -- now, the reason
18 I ask -- I'm sorry, Mr. McClain.

19 ATTORNEY McCLAIN: No, we, we don't have any
20 questions for Mr. Byrd about title or Section 30
21 factors, no.

22 HEARING OFFICER TOUSLEY: Okay. I know we do
23 have four long days ahead of us, conceivably. Would
24 the, do the parties need additional time to prepare
25 questions for the witnesses that are on the schedule

1 related to the 3030 factors? Mr. Guzman?

2 ATTORNEY GUZMAN: I believe that we would be
3 able to ask questions as we needed during this
4 proceeding on those factors.

5 HEARING OFFICER TOUSLEY: Okay. Mr. Miller?

6 ATTORNEY MILLER: ANR doesn't anticipate
7 needing any additional time.

8 HEARING OFFICER TOUSLEY: Okay. Mr. Dumont?

9 ATTORNEY DUMONT: Thank you for asking. I
10 think it's a somewhat more complicated question than
11 we've been addressing, because there, it's not just
12 Section 30 that addresses the remedy. It's also, I
13 believe it's 209 that's cited in the, the caption and
14 that in the, we're proceeding under both sections.

15 HEARING OFFICER TOUSLEY: Yes.

16 ATTORNEY DUMONT: And, while I don't see any
17 need or, really, appropriateness to question Mr. Byrd
18 on those factors, I do think it's appropriate to
19 question Mr. St. Hilaire, Mr. Rendall, and perhaps
20 others about them.

21 HEARING OFFICER TOUSLEY: Okay. Well, then
22 I'll do some homework tonight and be prepared to do so
23 too. I am not prepared to ask penalty-related
24 questions. That doesn't mean I couldn't be ready when
25 the witnesses arise in the next couple -- I don't have

1 any for Mr. Byrd, but I do have some potentially for,
2 for Mr. Rendall and the other witnesses that will be
3 beginning tomorrow afternoon.

4 So this evening I'll, I'll review 3030 and 209 and
5 be prepared, to the extent that it's appropriate, to
6 ask questions of the witnesses in that regard, and we
7 will not bifurcate that, but I am going to say that
8 with the proviso that, while I'm writing the P for D,
9 if, in fact, I make the conclusion that a penalty is
10 appropriate because a violation occurred and I need
11 more information to meet those factors, I may seek that
12 information if it's not available in the record that we
13 create this week, because Mr. McClain offered me that
14 opportunity. So and the other parties can have that
15 opportunity as well.

16 If we need additional proceeding, I would
17 anticipate that that could be a paper proceeding, as
18 opposed to a live proceeding, because many of the
19 questions are paper evidentiary questions, but, but I
20 -- do the parties have any questions about what I just
21 said? Mr. Guzman?

22 ATTORNEY GUZMAN: No, thank you.

23 ATTORNEY PORTER: Well, actually, Mike, could
24 I ask one question? Does anybody object -- and I've
25 gotten a little confused. I understand the efficiency

1 of talking about penalties under 3030. Are we
2 presupposing that that's going to be the case? That is
3 typically a fairly entailed process for the Department,
4 and I really -- does anyone object to having this as a,
5 if there are findings, then we deal with that in the
6 penalty phase, if you will?

7 ATTORNEY DUMONT: This is Intervenors'
8 counsel speaking. I agree with Mr. Porter. To the
9 extent Mr. Rendall has already addressed this in his
10 direct, it makes sense to cross-examine him about it
11 now, but I am concerned that, going beyond that, I end
12 up in Mr. Porter's position on this.

13 ATTORNEY McCLAIN: If I could, the hearing
14 officer's initial proposal on how to address this is
15 completely amenable to, to me, and I didn't mean to
16 suggest that we would have any objection to chasing
17 down appropriate information. Of course, VGS, with all
18 due respect to the Intervenors' claims in this case,
19 doesn't believe there is a violation, so we naturally
20 haven't put any information in about what the
21 appropriate way to assess such a violation would be.

22 And I have no objection to, to folks obtaining the
23 necessary information that, that they need to brief
24 that issue following a finding, if there is one. I
25 just meant to suggest that, you know, to the extent

1 that it could be a paper proceeding or there should be
2 other efficiencies that we could work into it, that I
3 would support that as well.

4 HEARING OFFICER TOUSLEY: Okay. I think
5 we're all on the same page, and I think that page, if I
6 could summarize, is that, to the extent, as in the case
7 with Mr. Rendall, he addresses penalty issues in his
8 testimony directly, that the parties should, and, if
9 any of the other parties, if, if any of the other, if
10 the parties have any other questions for witnesses that
11 they would like to ask this week that arise for them
12 before those witnesses are made available, they should
13 do so.

14 That doesn't preclude, after a proposal for
15 decision is issued, an additional round of questioning
16 that might be a live proceeding by video conference or
17 a, or a paper proceeding. So we would have the chance
18 then to, to address the 3030 factors as well as 209,
19 should, in fact, it arise. Do the parties concur with
20 my conclusion? Mr. Porter?

21 ATTORNEY PORTER: Yes. Thank you.

22 HEARING OFFICER TOUSLEY: Okay. Mr. Miller?

23 ATTORNEY MILLER: Yes. Thank you.

24 HEARING OFFICER TOUSLEY: Mr. Dumont?

25 ATTORNEY DUMONT: Yes.

1 HEARING OFFICER TOUSLEY: Mr. McClain?

2 ATTORNEY McCLAIN: Yes. Thank you.

3 HEARING OFFICER TOUSLEY: Okay, great. The
4 other sort of business I have before we get to Mr. Byrd
5 is just a reminder as to the, the general witness
6 schedule. It remains the same, that is, Mr. Byrd today
7 and tomorrow with Mr. Rendall at 3:00 o'clock tomorrow
8 -- this is, again, a general schedule -- Mr. St.
9 Hilaire, Nelson, and LeForce on Thursday; the
10 Intervenors' witnesses on Friday morning, and Mr.
11 Godfrey on Friday afternoon.

12 Also, I want to defer talking about initial briefs
13 and reply briefs, but I want you thinking about dates
14 for those items, and we'll talk about that after we're
15 finished with Mr. Godfrey on Friday.

16 Any other general procedural or practice matters
17 that we'd like to discuss before we, before we call in
18 Mr. Byrd?

19 MR. BYRD: Excuse me. Mr. Tousley, I just
20 have one question on the schedule. I'm assuming, once
21 I'm done being examined, that I'm relieved so I don't
22 need to be calling in on the rest of the time?

23 HEARING OFFICER TOUSLEY: We, we may ask
24 whether or not you're subject to recall, but I would
25 anticipate -- that's a rare thing that arises, that

1 I've never seen arise in a Commission case. So I'm
2 hoping everybody gets everything done in the next day
3 and a half with you.

4 MR. BYRD: Great.

5 HEARING OFFICER TOUSLEY: And you won't be
6 subject to recall, but I will ask the question.

7 MR. BYRD: And you'll send me an email or --

8 HEARING OFFICER TOUSLEY: Oh, you'll be
9 there. If we get to the finish with you, before I
10 dismiss you, I will ask the question.

11 MR. BYRD: Okay.

12 HEARING OFFICER TOUSLEY: And then I'll ask,
13 Why is there a delay --

14 MR. BYRD: Yeah, okay.

15 HEARING OFFICER TOUSLEY: -- if, in fact,
16 questions haven't been asked up to that point with you.
17 So I don't anticipate that you'll be needed after
18 tomorrow, unless there's something that unexpectedly
19 arises.

20 MR. BYRD: Great. Okay.

21 HEARING OFFICER TOUSLEY: Other questions
22 from the parties before we move on? Mr. Guzman?

23 ATTORNEY GUZMAN: Not at this time. Thank
24 you.

25 HEARING OFFICER TOUSLEY: Mr. Miller?

1 ATTORNEY MILLER: None from the Agency.

2 Thank you.

3 HEARING OFFICER TOUSLEY: Mr. Dumont?

4 ATTORNEY DUMONT: We're all set.

5 HEARING OFFICER TOUSLEY: And Mr. McClain?

6 ATTORNEY McCLAIN: No. Thank you very much.

7 HEARING OFFICER TOUSLEY: Okay. It's now
8 10:00 o'clock. I want to take a ten-minute break,
9 because I drank coffee earlier today. And we'll be
10 back at 20 minutes after 10:00. Thank you.

11 (A recess was taken from 10:09 a.m. to 10:20 a.m.)

12 HEARING OFFICER TOUSLEY: I think we're all
13 back. Before we get started with Mr. Byrd's testimony,
14 I wanted to refer to Exhibit Joint 1, which is the
15 exhibit list that was prepared that indicated those
16 items that are stipulated to and those items which are
17 subject to objection, and I wanted to admit Exhibit
18 Joint 1 into evidence as a fundamental document in this
19 case. Is there any objection? Mr. Guzman?

20 ATTORNEY GUZMAN: No objection.

21 HEARING OFFICER TOUSLEY: Mr. Miller?

22 ATTORNEY MILLER: No objection.

23 HEARING OFFICER TOUSLEY: Mr. Dumont?

24 ATTORNEY DUMONT: No objection.

25 HEARING OFFICER TOUSLEY: Mr. McClain?

1 ATTORNEY McCLAIN: No objection.

2 HEARING OFFICER TOUSLEY: Thank you.

3 (Exhibit marked Joint 1 was admitted into the
4 record.)

5

6 <https://epsb.vermont.gov/?q=downloadfile/424790/111907>

7

8 HEARING OFFICER TOUSLEY: Okay. Mr. Byrd, I
9 believe you are the first witness if you could raise
10 your right hand.

11 WILLIAM R. BYRD,

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

13 HEARING OFFICER TOUSLEY: Could you state
14 your name, please?

15 THE WITNESS: William Randall Byrd, B-Y-R-D.

16 HEARING OFFICER TOUSLEY: And where are you
17 employed?

18 MR. BYRD: RCP, Inc.

19 HEARING OFFICER TOUSLEY: And what's your
20 relationship to this proceeding?

21 MR. BYRD: I was hired by the Vermont Public
22 Utility Commission to investigate the issues as
23 described in the scope of work but, generally, the
24 issues that are at play in this, this case.

25 HEARING OFFICER TOUSLEY: Thank you. Mr.

1 Byrd is, is available for questioning. I think I'd
2 like to go in the order that we've been using for roll
3 call. Does the Department have any questions for Mr.
4 Byrd?

5 ATTORNEY GUZMAN: Yes, I do have a few
6 questions.

7 CROSS-EXAMINATION BY ATTORNEY GUZMAN

8 Q. Mr. Byrd, as part of your practice, do you
9 regularly engage in independent communications with the
10 company that you're investigating?

11 A. Well, I, I'm not sure exactly how to answer that
12 question, because, usually, I'm not conducting
13 investigations. We, we do audits on a regular basis,
14 but, as far as investigations are concerned, this may
15 be my first one. So I, I can't say what, what the
16 normal practice would be.

17 Q. Okay. And, as for your, your conduct of
18 investigations or audits, do you engage in
19 communications with the companies that you are
20 auditing?

21 A. Yes. By the nature of the process, you know,
22 they're the ones with the answers to the questions, so
23 --

24 Q. And, in this case, were communications between
25 Vermont Gas representatives and yourself necessary to

1 conduct your investigation?

2 A. Yes. Like I said, you know, they're the ones that
3 had the majority of the information that was relevant
4 to the investigation. So, although I'll clarify that
5 my practice during this investigation was to route my
6 questions through Ms. Bouffard with the, the VGS
7 attorney's office, and then she would coordinate
8 whatever people from VGS might have the information I
9 was looking for.

10 Q. Okay. And, during your, or in your communications
11 with VGS or its representatives, do you recall
12 receiving any opinions or legal advice from those
13 representatives?

14 A. No.

15 Q. And, if you were to receive -- I'm sorry. I take
16 that back.

17 As part of your investigation, were you to propose
18 a survey method to assess the burial depth of the
19 41-mile length of the pipeline?

20 A. Yes.

21 Q. And did you do that in this investigation?

22 A. Yes, I did. I'm getting a little bit of feedback,
23 so some of your, the words in the questions are a
24 little hard to understand. So I don't know why.

25 HEARING OFFICER TOUSLEY: If I could

1 interject, I know there's at least one person, a couple
2 of people who have green microphones next to their
3 names, which means that they're not muted. So I would
4 ask Mr. Marks if he could mute himself, please.

5 BY ATTORNEY GUZMAN:

6 Q. Okay. So you, as part of this investigation, you
7 did propose a survey method to assess the burial depth
8 of the pipeline for the entire 41-mile length?

9 A. Yes, I did.

10 Q. In, in your report, you stated you disagreed with
11 Intervenors' expert, Mr. Liebert's, conclusion that the
12 ANGP was constructed in a manner that does not
13 adequately protect the public. Was there any evidence
14 of oversight, sufficient oversight in drafting the Not
15 for Construction and Issued for Construction plans?

16 ATTORNEY DUMONT: Excuse me, Mr. Hearing
17 Officer. I'm objecting. This is really in the nature
18 of friendly cross-examination, and it's leading.
19 Number one, I object to it because it's friendly
20 cross-examination. Number two, if they have questions
21 for the Witness, it's clear that this is friendly
22 cross-examination, because they're asking leading
23 questions.

24 HEARING OFFICER TOUSLEY: What would you
25 propose, Mr. Dumont?

1 ATTORNEY DUMONT: I would propose that, if
2 the Department wanted to shore up or bolster Mr. Byrd's
3 testimony, they had a duty to file prefiled testimony.
4 This is not the right time or place to do it.

5 HEARING OFFICER TOUSLEY: Okay. I'm going
6 to, I'm going to overrule your objection. Mr. Byrd is
7 not the witness of any of these parties. He is an
8 independent investigator, and, and cross-examination is
9 appropriate. To the extent that there is bolstering,
10 as you say, I would ask that that be limited. However,
11 fact questions using cross-examination techniques will
12 be permitted.

13 ATTORNEY DUMONT: Thank you.

14 BY ATTORNEY GUZMAN:

15 Q. Yeah, I'll rephrase the question. Was there
16 insufficient evidence of oversight in drafting the Not
17 for Construction and the Issued for Construction plans
18 in your investigation?

19 A. So I guess I'm a little bit fuzzy on insufficient
20 oversight by who. Are you saying insufficient
21 oversight by Vermont Gas or its project management
22 team?

23 Q. Yes, by the project management team.

24 A. Okay. And, no, I didn't see evidence of
25 insufficient oversight for those things.

1 ATTORNEY GUZMAN: I believe that is all I
2 wanted to ask right now. Would it be possible to
3 reserve the remainder of my 30 minutes' time to
4 cross-examine?

5 HEARING OFFICER TOUSLEY: Sorry about that.
6 If you have additional questions that you'd like to ask
7 after other cross-examination, I will provide that
8 opportunity to you if they're derived from, you know,
9 from that cross-examination. If you have questions you
10 know you want to ask now, you've got to ask them now.

11 ATTORNEY GUZMAN: I will reserve my remainder
12 time after cross from the other parties.

13 HEARING OFFICER TOUSLEY: As long as the, as
14 long as your questions then are derived from the
15 questions that have just been asked.

16 ATTORNEY GUZMAN: Okay.

17 HEARING OFFICER TOUSLEY: Thank you. Mr.
18 Miller, do you have questions for Mr. Byrd?

19 ATTORNEY MILLER: The Agency does not have
20 any questions. Thank you.

21 HEARING OFFICER TOUSLEY: Mr. Dumont?

22 ATTORNEY DUMONT: Yes, I do. Getting the
23 message that I am a presenter. So I am calling up on
24 the screen Report Attachment 17. Does everybody have
25 that?

1 MR. BYRD: I am seeing the project manual.

2 CROSS-EXAMINATION BY ATTORNEY DUMONT

3 Q. Good. Well, then that, my biggest task of the day
4 has been completed successfully. Mr. Byrd, I hope
5 you're well, and I hope your mom is okay, and, if, at
6 any time during my cross-examination of you, which will
7 be lengthy, you want to take a break for any reason
8 whatsoever, just say so, and I'm sure the hearing
9 officer will agree you should take a break.

10 A. Thank you.

11 Q. I have a lot of ground to cover with you, and I'd
12 like to start with issues that I hope we can agree on.
13 Do you agree that 49 CFR Part 192.303 required that
14 every pipeline, quote, "be constructed in accordance
15 with comprehensive written specifications or
16 standards"?

17 A. I don't have all the citations memorized, but I
18 will, I will trust that you've cited it correctly, and,
19 and, yes, that, that sounds like verbatim what the rule
20 says, yes.

21 Q. If you look at Exhibit 17 to your report, I've got
22 the first page up on the screen. This is the project
23 manual for 2014, correct?

24 A. Well, I can't see the entire first page. So it
25 seems to say "Not for Construction", but it is titled

1 "Project Manual". I'll agree with that.

2 Q. And the one that's titled "Not for Construction"
3 is the only copy that you obtained of the manual from
4 2014, correct?

5 A. The, the thing that's titled "Project Manual", I
6 believe that is correct.

7 Q. This is your Exhibit 17, correct?

8 A. Right. I'm just saying I don't believe I saw any
9 other copy of a project manual for 2014.

10 Q. And you engaged in a very thorough process with
11 Vermont Gas, and this is the end product of that
12 investigation. The copy that's labeled "Not for
13 Construction", that's labeled "Draft: Not for
14 Construction" was what you ended up with as the project
15 manual for 2014, correct?

16 A. That's my recollection, yes.

17 Q. I'm going to scroll down to .pdf Page 3, and Page
18 3, top of it says "Contract Documents List", and I see
19 that GoToMeeting has a little bit of a time delay, so
20 there it should be. Okay. .pdf Page 3 says "Contract
21 Documents List", correct?

22 A. Yes.

23 Q. If you scroll down the page a little bit, in
24 boldface it says "Technical Specifications", correct?

25 A. Yes.

1 Q. And then there is, within that there are
2 subheadings. The first one is "Division VGS - Special
3 Construction, parentheses, (Gas Pipeline), end of
4 parentheses", correct?

5 A. That's correct.

6 Q. That's the first division, and then the same page
7 says, Division 01, Division 02, Division 09, Division
8 13, Division 26, Division 27, Division 31, and, running
9 onto the next page, Division 32, correct?

10 A. Well, there's apparently a delay. I just see
11 through Division 27, but I believe you're correct, yes.

12 Q. Sorry about that. Have to learn to scroll more
13 slowly. There, you see 32?

14 A. Yes.

15 Q. And within each division there are numerous
16 sections, correct?

17 A. That's correct.

18 Q. So just listing all the sections single-spaced
19 takes a whole page, correct?

20 A. It seems to take more than a page --

21 Q. Yes.

22 A. -- but yeah.

23 Q. And does this document refer to all these
24 divisions and all these sections as, quote, "The
25 Technical Specifications", unquote?

1 A. I believe that was the title of this, of this
2 section of the index so --

3 Q. Do you agree that these specifications constitute
4 comprehensive written specifications or standards?

5 A. I believe they do, yes.

6 Q. Now I'm going to scroll to .pdf Page 475. Let's
7 see how long that takes on here.

8 A. It will be easier if you just type 475 in the
9 middle of your screen up where it says 5/517 right now.

10 Q. Yeah, okay.

11 A. Just type 475.

12 Q. That doesn't work. I know there's a -- right
13 there. There we go. Thank you.

14 A. The more time we can save in this process, the
15 happier I'll be.

16 Q. Yeah, okay. I'm going to move up the screen a
17 little bit so you can see that this is a part of
18 Section 312333. Sorry. Oh, that's earth moving,
19 sorry, instead of -- I'm sorry. Not 475. I was on the
20 wrong page. I want to go to the start of 312333.
21 Sorry. I'll get there. There we are. So it's .pdf
22 Page 490, and I'll give a second for the screen to
23 catch up.

24 A. I'm showing 490 right now.

25 Q. Starting over here, we've now arrived at .pdf Page

1 493, and I think the Witness has agreed that this is
2 part of Section 312333. Correct, Mr. Byrd?

3 A. That's correct.

4 Q. In this page in Section 312333, Subsection 3.4B
5 and C says, in B, "Bedding and backfilling shall be
6 accomplished in three stages unless otherwise specified
7 on the contract drawings. The first stage shall
8 involve placement of, quote, 'pipe zone bedding',
9 unquote, as a layer of selected material required to
10 support, comma, or to stabilize unsound or
11 unsatisfactory foundation conditions, period. The
12 second stage shall involve placement of quote, 'pipe
13 zone backfill', unquote, from the top of the bedding
14 material up to one foot above the pipe, period. The
15 third stage involves the placement of, quote, 'trench
16 backfill', unquote, in the remainder of the trench up
17 to the surface of the ground or the bottom of any
18 special surface treatment subgrade elevation, period".

19 And then Paragraph C, as in cat, says --

20 A. I can't see Paragraph C, by the way.

21 Q. I'm sorry. Do you have C on the screen there?

22 A. Not yet.

23 Q. Okay. There it is.

24 A. Okay. Yeah, the C was obscured by the R in
25 "Draft". Okay.

1 Q. C states, "The bedding material shall be placed in
2 the trench after the trench has been excavated a
3 minimum of six inches in earth, in parentheses, (nine
4 inches in ledge), end of parentheses, below the bell of
5 the pipe to permit the placing of not less than six
6 inches in earth, parentheses, (nine inches in ledge),
7 end of parentheses, of bedding material unless
8 otherwise specified on the contract drawings, period.
9 Where, comma, in the opinion of the engineer, comma, if
10 more bedding material is required, comma, the
11 excavation shall be performed and bedding placed to the
12 depth ordered by the engineer, period". Did I read
13 that correctly?

14 A. I believe you did.

15 Q. And I know you're going to want to talk about a
16 narrative that, in your view, modifies this, and we'll
17 get to that. I'm going to give you plenty of chance to
18 talk about the narrative, but we need to do this step
19 by step. So let's start here. You agree that this
20 section I just read requires six to nine inches of
21 bedding beneath the pipe, correct?

22 A. That's what it says, yes.

23 Q. If you turn to the next .pdf page, Page 494,
24 Section 312333, Subsection 3.8

25 A. Although, Mr. Dumont, if you don't mind --

1 Q. Go ahead.

2 A. -- I'd like to clarify a question, just, or my
3 response just a tiny bit. It, it talks specifically
4 about bedding, quote, "below the bell of the pipe",
5 unquote. So I, I want to note that, that it was very
6 specific where the bedding was required.

7 Q. But the bell of the pipe is the widest part of the
8 pipe, correct?

9 A. In my opinion, that's actually referring to
10 bell-and-spigot pipe. We don't refer to the bell of
11 the pipe in welded transmission pipelines.

12 Q. But the bell of the pipe is the widest, if there
13 is a bell on a pipe, it's the widest portion of the
14 pipe, correct?

15 A. Yeah, in bell-and-spigot pipe, the bell is the
16 expanded part on one end of the pipe.

17 Q. All right. So this is saying the six inches is
18 below the widest part of the pipe, correct?

19 A. In a bell-and-spigot pipe, yes.

20 Q. Yes. Okay, thank you. Section 3.8, hopefully
21 that will -- I'll wait for it to catch up.

22 A. I can see 3.8.

23 Q. Okay. If you look at 3.8B, C, F and G, I'm going
24 to give you a second to read B, C, F and G. After
25 you've read C, let me know, and I'll scroll down after

1 G, because they're on the next page.

2 A. Right. Do you want me to read them aloud?

3 Q. No, just read it to yourself, please.

4 A. Okay, okay. I'm done with B and C.

5 Q. Also read D. I'm sorry. Also read D, as in

6 David.

7 A. Oh, you want D too? Okay, okay.

8 Q. I'm going to scroll down to 495.

9 A. All right. I'm, I'm -- you just wanted half on

10 that page, right?

11 Q. Okay. So now I have some general questions about

12 3.8.

13 A. All right.

14 Q. Does this require testing of backfill compaction,

15 testing of backfill compaction?

16 A. It does.

17 Q. And it requires that testing occur for every 500

18 cubic yards of fill?

19 A. Yes.

20 Q. And it requires testing by the nuclear method,

21 correct?

22 A. That's correct.

23 Q. And the nuclear --

24 A. Well, it, it, specifies -- just to be clear here,

25 the nuclear method would be used for in-place density

1 testing. There's other density tests you would do for
2 pipe that you've taken from the, from the excavation to
3 confirm that you're reaching a certain density level.
4 I know that's in the weeds, but the nuclear method is
5 for the in-place density testing.

6 Q. Thank you. The nuclear method involves use of
7 specialized equipment that emits nuclear radiation in
8 small amounts, correct?

9 A. Well, I'm not really familiar with that method,
10 but that certainly sounds like it, yes.

11 Q. Now, my next question relates to your report at
12 Page 65. Would you like me to call up a copy of your
13 report on the screen?

14 A. Yeah, please. Just click on the tab. It's
15 already open.

16 Q. Okay. Let's see here.

17 A. The far left tab.

18 Q. All right. I think we're at Page 65 of your
19 report.

20 A. It shows 64 on my screen.

21 Q. Give it a second. The way this was filed with the
22 Commission, this report is filed, and then the
23 attachments were filed just by the number. They're not
24 called exhibits. So I'm just calling them Report
25 Attachment Number 1, 2, 3 and 4, but, you know, I don't

1 know, if Mr. Tousley has a suggestion on how to
2 respond. I'm just assuming attachment number is the
3 same as exhibit number.

4 HEARING OFFICER TOUSLEY: That makes sense to
5 me.

6 ATTORNEY McCLAIN: Yeah. You know, the joint
7 exhibit that was submitted with all of the stipulated
8 testimony and exhibits also includes this, the report
9 and the attachments to the report, and that includes
10 the ePUC numbers, which I understand is helpful for the
11 court reporter and the Commission to reference. So, if
12 the court reporter has that joint exhibit, that may be
13 a helpful resource for you during the next couple of
14 days, I would think.

15 BY ATTORNEY DUMONT:

16 Q. In your report Mr. Byrd, at Page 65 in the third
17 paragraph from the top, you state that Vermont Gas did
18 not follow these specifications that I've been reading
19 from in 2014. Instead, they followed a, quote,
20 "narrative", unquote, that Vermont Gas Systems had
21 written?

22 A. Well, that's not exactly what I said. I said they
23 relied on the VGS narrative specification specifically
24 for pipe support and protection for bedding and
25 backfill. I'm sure they also relied on the CHA

1 specification for some things, but they didn't rely on
2 it for the bedding and backfill.

3 Q. And, in your report at this page, you state that,
4 in your opinion, Vermont Gas was correct in
5 disregarding the engineer's specifications and
6 following the narrative instead, right?

7 A. I do believe that, yes.

8 Q. And the, quote, "narrative", unquote, that you say
9 they properly relied on starts at page, .pdf Page 296
10 of Exhibit Attachment 17. Let me see if you agree with
11 that. Let me get it up here.

12 A. Yes, that's the one you were just on, right?

13 Q. Yeah, there we go. Does, is .pdf Page 296 the
14 first page of that narrative?

15 A. Yes, I see it.

16 ATTORNEY McCLAIN: I'm sorry. I didn't catch
17 the attachment number. Which one are we on?

18 BY ATTORNEY DUMONT:

19 Q. We're back on 17. Now I'm going to turn to
20 Section 7 of the narrative, and it's on .pdf Page 307,
21 and the very tail end of Section 7, appears on Page
22 307. Are you there on the screen?

23 A. Yes, I see it.

24 Q. The very last section is about the section on
25 trenching in the specifications, I'm sorry, in the

1 narrative in Subpart Z, as in zebra, that says, "Refer
2 to the following specifications for additional
3 requirements, colon, and then it says, A, 312319,
4 dewatering; B, 312333, trenching and backfill; and, C,
5 315000, excavation support and protection". Did I read
6 that correctly?

7 A. Yes, you did.

8 Q. So the narrative that you're relying on that you
9 say Vermont Gas properly followed instead of the
10 specifications itself says refer to the following
11 specifications for additional requirements, correct?

12 A. That's correct.

13 Q. And one of the additional requirements is the
14 312333, which requires six to nine inches of backfill
15 beneath the pipe, correct?

16 A. The bell of the pipe.

17 Q. Beneath the bell of the pipe, and it requires
18 compaction of all backfill, correct?

19 A. I guess I should clarify. This pipe doesn't have
20 bells.

21 Q. I know. You've already made that clear in your
22 opinion.

23 A. All right, okay.

24 Q. This 312333 requires compaction of backfill,
25 correct?

1 A. Yes, it does have a section dealing with
2 compaction, yes.

3 Q. And it requires testing of the compacted backfill,
4 correct?

5 A. That's correct.

6 Q. Using the nuclear method, correct?

7 A. For in situ testing, yes.

8 Q. If we go to .pdf 316, we have a section, Section
9 13 on backfilling.

10 A. I see it, yes.

11 Q. And, in fact, this Section 13 on backfilling is
12 what you quoted several times in your report, am I
13 right?

14 A. I don't recall it specifically, but I believe you,
15 yes.

16 Q. And, if we go to Page 318, we're still in Section
17 13. We're now on .pdf Page 318, and this has a
18 subsection T, as in Tom.

19 A. Right.

20 Q. And this subsection within the section on
21 backfilling that you refer to in your report also says,
22 quote, "Refer to the following specifications for
23 additional requirements, colon". Then it says, "A,
24 312333, trenching and backfilling", correct?

25 A. That's correct.

1 Q. So, Mr. Byrd, the narrative that in your report
2 you say superseded 312333 in fact informed the reader
3 that the reader should look at 312333 for additional
4 requirements, correct?

5 A. That's correct.

6 Q. When you wrote your report, were you aware of what
7 I just read to you, the clause saying, "Refer to the
8 following specifications for additional requirements"?
9 Were you aware of that when you wrote your report?

10 A. Yes.

11 Q. So your report included that the narrative
12 superseded 312333, even though, even though the
13 narrative says 312333 provides additional requirements?

14 A. I didn't say one superseded the other. I, I
15 pointed out in my report that they were in conflict in
16 a couple of areas in that, you know, I think my final
17 conclusion was that the conflict should have been
18 resolved in favor of the narrative specification, not
19 the 312333 on those topics.

20 Q. So in your --

21 A. They were just different.

22 Q. In your view, the way PHMSA, P-H-M-S-A, would look
23 at this under their regulations, the narrative is a
24 written specification, that's what you're saying?

25 A. Well, they're both written specifications.

1 Q. So, in your view, written specification A that
2 says, "Refer to written specification B", can be
3 followed by a regulated, followed by a pipeline
4 constructor, even though A says B controls?

5 A. Well, I don't believe it says A says B controls in
6 your example.

7 Q. Mr. Byrd, your report says that 2014 and 2015 were
8 alike. Do you want me to bring your report Page 65
9 back up here?

10 A. Sure.

11 Q. The same paragraph saying it is more appropriate
12 for VGS to rely on the narrative in 2014 and 2015 than
13 the, than 312333, and you say it was only in 2016 that
14 312333 was changed, correct?

15 A. Well, I don't believe it, it -- well, it, it
16 changed several times. So the, the point of this
17 paragraph was that it seemed like the inspectors were
18 comparing the project to the narrative specification
19 when it came to pipe support and protection for bedding
20 and backfill in 2014 and 2015, and, for some reason,
21 they started relying on the CHA specification on those
22 topics in 2016, and that's what appears in the
23 inspection reports. I mean, both, both specifications
24 were in play the entire time.

25 Q. The situation we've been discussing where the

1 narrative says, "See 312333 for additional
2 requirements", that remained in effect in 2015,
3 correct?

4 A. Yes, I believe it said that the entire time.

5 Q. And the additional requirements in 312333 were not
6 changed until 2016, correct?

7 A. Well, like I said, there's, that document changed
8 multiple times during the project. So, when you say
9 the additional requirements, I mean, they changed a
10 bunch of times, you know, because everything they
11 changed in 312333 was an additional requirement. So I,
12 I believe you're referring to the specific parts about
13 bedding and backfill, and, yeah, my recollection is
14 that was changed in 2016 to reflect more of the VGS
15 narrative.

16 Q. Now, as far as whether or not six to nine inches
17 of backfill was placed beneath the pipe in 2014, are
18 you aware of any record in the thousands of files
19 you've looked at that you could turn to that answers
20 that question?

21 A. Could you be more specific about the question?

22 Q. Certainly. If we wanted to find documents showing
23 that, in fact, fill was placed six to nine inches
24 beneath the pipe in 2014 or that fill was not placed
25 beneath the pipe in 2014, do such documents exist?

1 A. Well, I'm not sure I agree with that statement,
2 and the inspection reports dealt with the, you know,
3 compliance with the specifications, and, and it's clear
4 that there was supports put underneath the pipe during
5 that period of time and then backfilled around it.
6 That's as opposed to laying a layer of backfill down
7 and then putting the pipe on top of that backfill,
8 which is, you know, I guess, one way of bedding the
9 pipe.

10 So this was the more traditional method of you put
11 the pipe on supports, typically sandbags, spaced a
12 certain distance apart, and then you fill around that,
13 and the fill goes underneath the pipe as well as on the
14 side of it, and that fill provides the bedding for the
15 pipe, and, and it, you know they were checking for that
16 kind of thing by exception, because there were places
17 where we see in the DPS inspection records where they
18 noted where that was not done, or one specific example
19 I can think of is where the supports were too far
20 apart.

21 And the specification dealt with how far you could
22 space the supports underneath the pipe, and, you know,
23 I don't remember the precise number, but it was, you
24 know, some spaces were, like, 23 feet apart, and they
25 were supposed to be 15 feet apart, and the inspector

1 noticed that and, and wrote it down. So, you know, so
2 these, this is one of the things that you, you know
3 they were checking by exception, because, every now and
4 then, they, they make a point of, hey, you didn't do
5 this the way you were supposed to.

6 But you're correct that there aren't affirmative
7 inspection reports that say, I checked this specific
8 thing, and it was spaced appropriately or, or
9 backfilled appropriately, for every inspection report.
10 They just didn't do that.

11 Q. We're going to have a long day together, and I
12 know you have a lot to tell us. I think we'll get done
13 sooner if you don't anticipate what you think I'm going
14 to ask later and try and answer that. I think we'll
15 get done quicker if you just answer the question that's
16 in front of you.

17 A. Just trying to explain my answer, Mr. Dumont.

18 Q. So the pending question was, Are there documents
19 that you would look at that would answer the question
20 of whether or not there were six to nine inches of
21 backfill beneath the pipe in 2014?

22 Let's start with, yes or no, are there such
23 documents?

24 A. Yes.

25 Q. Okay. And what are they?

1 A. As I was explaining, the inspection report from
2 the Department noted noncompliance with the
3 requirements, and that's how I would look for that, for
4 confirmation is, you know, if they never noted
5 noncompliance, you wouldn't know they were checking,
6 but, when they do note noncompliance, you know they
7 were checking. So that's, those are documents that
8 actually show me they were checking.

9 Q. So these were the Department's inspection reports?

10 A. That's the one I recall. I'm not claiming that
11 there were no other documents, but I, I believe I
12 remember seeing that on the Department's inspection
13 reports.

14 Q. And where you saw that in the Department's
15 inspection reports was not in 2014, was it?

16 A. I can't remember that, the precise timeline.

17 Q. Okay. Well, we're going to get to those reports
18 later this morning.

19 A. Okay.

20 Q. Did you look at Ms. Palmer's prefiled testimony?

21 A. I did.

22 Q. Did you look at her exhibits?

23 A. I'm sure I did. I don't recall them with any, you
24 know, precision.

25 Q. Let me see if I can call that up here. Okay.

1 Everybody -- I'll wait. Everybody should have on the
2 screen the Exhibit 1 inspection report summary from
3 2014.

4 A. I see "Main Line Inspection Report Summary 2014".

5 Q. And I'll represent to you that, as it states in
6 this document, Ms. Palmer was not looking at Department
7 records; she was looking at Vermont Gas's inspection
8 records, and she's saying for 2014 her review of all
9 the inspection reports did not show whether there was
10 bedding material six inches above a soil trench bottom
11 and nine inches above a rock trench bottom. I'm not
12 asking what the Department's reports say. Just looking
13 at the company's reports. Did you have a chance to
14 look at, to see whether she's correct?

15 A. Well, I guess I'm -- this page that we're
16 currently viewing, I'm not sure I understand. I'm
17 sorry. You scrolled down past the part I was going to
18 talk about. You can scroll back up so I can see the
19 top of the page?

20 Q. Sure.

21 A. Yeah, so I'm unclear, I guess, on the, on the
22 right-hand column number of apparent violations, and it
23 shows, "Entire pipeline, parentheses, (Curtis and DPS
24 notes), close parentheses". So I assume DPS stands for
25 the Department of Public Service. So it seems she was

1 looking at something other than just VGS inspection
2 reports.

3 Q. Yes. So that's explained in the note below, but,
4 as far as -- and that's, that's a good point. As far
5 as the number of reported inspections by the company,
6 is she correct that this -- just, not, we're not
7 judging whether or not her inspection reports should
8 have or shouldn't have, but just whether they did.

9 A. Well, I, I did not attempt to verify that, but it
10 seemed clear to me that the inspection reports don't
11 note six inches of bedding material above soil trench
12 bottom, check mark, you know, for every place the
13 pipe's buried. I mean, they just didn't ask that
14 precise question on the inspection reports. So I would
15 agree that she probably found zero inspection reports
16 that stated that specific thing.

17 Q. And --

18 A. My understanding -- I'm sorry.

19 Q. Go ahead. Finish your answer.

20 A. I was just going to say that was my understanding
21 of what she was counting was she was looking for that
22 specific statement or words to that effect and she
23 didn't find it, but that's my understanding of what she
24 did.

25 Q. So, if you look at Number 2, "Was pipeline

1 separated from trench bottom by bedding material", she
2 was looking to see whether that was covered, and she
3 reported, of all the 2014 inspection reports, none
4 addressed that, correct?

5 A. Well, I would disagree that they don't address it.
6 I would agree that they probably don't state that
7 verbatim or words to that effect. She probably didn't
8 see that. I agree.

9 Q. If you look at her explanation for Item 2, bedding
10 beneath the pipe, do you see she states there was a
11 category labeled "Padding and Compaction"?

12 A. Yeah, if you don't mind, I'll read that paragraph.
13 Yes. Okay. Yes, I've read that paragraph. So what
14 were your questions?

15 Q. I'm trying to -- I'm learning, doing this
16 GoToMeeting thing, and I, and the GoToMeeting picture
17 of all of you is blocking part of the paragraph on my
18 screen.

19 MS. BISHOP: Mr. Dumont, this is Ann Bishop.
20 You could drag the part with the pictures of folks to
21 the, to your other monitor and then be able to see the
22 text on your screen, if that's helpful.

23 ATTORNEY DUMONT: Okay. Can I just get rid
24 of the pictures? Because I don't have my other monitor
25 on GoToMeeting right now. Is there a way to just get

1 rid of the pictures?

2 MS. BISHOP: You should be able to change
3 where it says, whenever it says to view, you could say
4 "Hide Everyone".

5 ATTORNEY DUMONT: "Hide Everyone"? Okay,
6 thank you.

7 BY ATTORNEY DUMONT:

8 Q. Item 2, Ms. Palmer wrote, "The 2014 reports did
9 not include anyplace for inspectors to note whether the
10 pipeline had been separated from trench bottom by
11 bedding material or had been laid directly on trench
12 bottom, period. There was a category labeled, quote,
13 'Padding and Compaction', unquote, but the padding that
14 was noted, comma, in each case, comma, was added after
15 the pipe had been lowered into the trench, parens,
16 (usually padding was added the day after), end parens,
17 so it was padding placed alongside or over the pipe but
18 not bedding onto which the pipeline was lowered".

19 Do you agree with that?

20 A. Well, I agree you read it correctly, and I don't
21 doubt Ms. Palmer's statements where she said that's
22 what she found in the reports. That, that does comport
23 with what I was mentioning earlier where this pipe was
24 installed, as most welded steel transmission pipes are,
25 by putting the pipe onto supports like sandbags and

1 then padding, adding padding after the fact, and that's
2 exactly what she saw in the inspection reports.

3 Q. And are those sandbags nine inches in height?

4 A. Well, you stack them however, how you need to.
5 You know, sandbags come in all different sizes.

6 Q. So, if the specification in 312333 was nine inches
7 of padding beneath the pipe when you're on rock ledge,
8 someone at the construction scene would need to know
9 you need to stack the sandbags high enough so that the
10 bottom of the pipe is nine inches above the bottom of
11 the trench, correct?

12 A. That's correct.

13 Q. And same for six inches, right?

14 A. That's correct.

15 Q. So, in explaining Item 3 -- we're still on .pdf
16 Page 7 of Ms. Palmer's exhibit -- she wrote, "The 2014
17 reports did not include anyplace for inspectors to note
18 the depth of the bedding substance that was used
19 beneath the pipeline, period. It appears that bedding
20 depth is a moot point, comma, since no bedding was
21 used, period. Sandbags every 20 feet were used,
22 period. See Note 2 above", which you're agreeing with
23 that, that sandbags were used, correct?

24 A. Yes. I, I'm not stating that that's the only
25 method they used, but that's my understanding of the

1 method they typically used.

2 Q. So there, the inspection reports did not include
3 anyplace for the inspectors to note that the bedding
4 that resulted one way or the other was six inches to
5 nine inches deep, correct?

6 A. Well, they, my understanding and recollection is
7 that they don't have, you know, a check box or a
8 fill-in-the-blank saying how deep was or how far was
9 the pipe supported above the bottom of the trench, you
10 know, six inches, nine inches. I, I wouldn't expect to
11 see that in an inspection report, so I'm not surprised
12 that she didn't see it either.

13 Q. You found in your report that in 2014 and 2015
14 Vermont Gas complied with the narrative rather than
15 312333 with respect to six to nine inches of bedding,
16 am I right?

17 A. That's, well, I was speaking more generally about
18 the entire practice of backfill and trenching and
19 bedding and pipe support. I don't believe my report
20 got into the details of six inches versus nine inches.
21 I don't recall doing that.

22 Q. So you drew no conclusions as to whether or not
23 the statement in 312333 that there be six to nine
24 inches of bedding or padding was or was not
25 accomplished in 2014 and 2015, correct?

1 A. Well, I, I did look at the, at the fact that the
2 pipe wasn't laid on trench bottom. That was, that was,
3 to me, seemed to be a pretty important issue in the
4 case. I don't recall, you know, really looking for was
5 it six inches or nine inches, you know, depending on
6 whether it's over soil or over rock. You know, that, I
7 don't think I ever looked into that issue.

8 Q. How about with regard to compaction of the
9 backfill in 2014 and 2015; did you conclude that
10 Vermont Gas complied with the narrative but not the
11 specification by failing to compact backfill and by
12 failing to test the compaction?

13 A. Yeah, I'm not sure I followed the entire part of
14 that question. I would agree that, you know, they
15 performed very few compaction tests in the 2014-2015
16 timeframe. So, so, to the extent that you would assume
17 or someone assumes that 312333 required, you know,
18 compaction testing, you know, for five, every 500 cubic
19 yards of fill or whatnot, that does not seem to have
20 been done, because I haven't seen any incident. I
21 haven't seen any records of that.

22 Q. In fact, the only records of testing were
23 conducted within the VELCO right-of-way, correct?

24 A. Those are the only ones I've seen, yes.

25 Q. And the total number of tests for the entire \$165

1 million Addison Natural Gas Pipeline was how many
2 tests?

3 A. I don't recall exactly, but around a dozen.

4 Q. And some of those were repeat tests at the same
5 location?

6 A. That's correct.

7 Q. We've been talking about compaction testing. What
8 about the compaction itself? Are there any records
9 that you know of that addressed whether, in 2014,
10 compaction was being conducted in six, was being
11 compacted -- I'm sorry. Let's start over.

12 Are there any records you're aware of that would
13 tell you whether or not, in 2014, backfill was being
14 compacted for the ANGP?

15 A. It seems to me that I think even Ms. Palmer's
16 report mentioned that at least the form in 2014 had a,
17 had a check box for compaction, but then it, it wasn't
18 normally checked, as I recall, so --

19 Q. That's what -- yes.

20 A. Yes. So, yeah, I would agree that I don't recall
21 seeing records, you know, affirmative records that say,
22 yes, the trench was compacted after we backfilled or
23 during the process of backfilling.

24 Q. So -- I'm sorry. Did you want to add something?

25 A. I was going to say, if you don't mind, I'm going

1 to step away for just a second and get a little more
2 Diet Coke, because my mouth's getting dry. I'll be
3 right back.

4 Q. Sure.

5 (Brief pause.)

6 A. Okay. Sorry.

7 Q. No need to apologize. I've scrolled down to the
8 bottom of her Exhibit 1. It's .pdf Page 7 of her
9 testimony. Item 7, she wrote, "The 2014 reports
10 include, quote, 'padding and compaction', as a single
11 category, period. This report assumes that, on the
12 nine occasions when this box was checked" --

13 A. I'm getting a lot of bad feedback right now.

14 Q. Yeah, me too. "On the nine occasions when this
15 box was checked, comma, the inspector had found both
16 that padding was installed and that the subsequent
17 backfill had been compacted, period". And it runs over
18 onto the next page. "The other 171 reports contain no
19 indication that backfill was compacted; semicolon, if
20 it was, comma, the inspector failed, comma, each time,
21 comma, to check the appropriate box."

22 Do you agree that the form used in 2014 had an
23 affirmative box to check off that was called "Padding
24 and Compaction"?

25 A. Yes. There, I do recall that check box at, at --

1 but that's all it says is "Padding and Compaction", so
2 it left me a little unclear as to whether you check the
3 box when it was wrong or check the box when it was
4 right, and, you know, I, I just don't know. I haven't
5 seen any instructions for the form.

6 Q. Well, if you -- I'll represent to you that, if you
7 look at the form, it's a series of check-off boxes,
8 and, for example, there would be a check-off box for
9 backfill, and it was routinely checked. Do you
10 remember that?

11 A. Well, I, I don't recall that specifically, but I
12 will agree with your assertion.

13 Q. So that wouldn't suggest to a reasonable reader
14 that, when the box for compaction was not checked, that
15 compaction had not occurred, correct?

16 A. I'm not sure I would go that far. It's a, you
17 know, the, you know, from my impression looking at the
18 forms, they just didn't, they weren't testing
19 compaction, and maybe that's why they didn't check it,
20 but they did, you know, have a method of compaction
21 described in the, in the VGS narrative, narrative
22 specifications.

23 So, you know, with no further comment notes on the
24 inspection form that, that indicate a problem with the
25 compaction method, I'm, I'm not sure that them not

1 checking the compaction box means there was a problem
2 with it. Because, if there were, I would have expected
3 to see, you know, supplemental notes that say, hey,
4 they didn't compact, they didn't use the method they
5 were supposed to, or what have you, and, in the absence
6 of any notes, I'm thinking they just skipped checking
7 the compaction box for some reason, and maybe, because
8 they weren't testing compaction, they didn't feel like
9 they needed to check the box. I can't say for sure.

10 Q. I've turned the screen up to .pdf -- I moved
11 forward to .pdf Page 9 of Ms. Palmer's exhibit.

12 A. Right.

13 Q. It's the exhibit for 2015.

14 A. Okay.

15 Q. Would you agree that for 2015, as we said for
16 2014, the inspection forms do not call for affirmative
17 documentation that the pipeline was separated from the
18 trench by bedding material?

19 A. I mean, I don't remember the, the details of, of
20 the inspection report contents for each year, but I
21 will agree I don't remember seeing any inspection
22 reports that show the specific height of the pipe above
23 the bottom of the trench before they backfilled.

24 Q. And you also don't recall any inspection reports
25 that call for documentation of whether the pipeline was

1 separated from the trench by any bedding material,
2 correct?

3 A. Well, I disagree with that. Because, I mean, you
4 do see in the documentation, you know, a couple of
5 instances where they noted the pipe was on the trench
6 bottom without separation, and, and that was an issue
7 or raised as a potential issue.

8 So, again, I've, you know, looking at these kind
9 of reports, you look for the exception which proves the
10 rule, to use a common phrase. So the fact that they
11 pointed out a couple of exceptions tells me the rule
12 was it wasn't directly on the trench bottom. So that
13 says they were supporting it somehow, perhaps with,
14 with sandbags or, or I've seen reference to the term
15 pillows, but, but it was separated from the trench
16 bottom.

17 Now, I don't recall seeing documents that, that
18 say it was six inches or nine inches or eight inches or
19 whatever above the trench bottom, but, you know, I have
20 seen exceptions that point out it wasn't separated.

21 Q. Mr. Byrd, I apologize for not being clear. I'm
22 only asking you about the VGS inspections. I'm not
23 asking you right now about the DPS inspections.

24 A. Okay.

25 Q. Your answer that you just gave me was referring to

1 DPS inspections, correct?

2 A. That's my recollection is I saw it on the DPS
3 inspection form. I've looked at thousands and
4 thousands of inspection forms, so I, I'm not stating
5 categorically that I haven't seen it on any other
6 inspection form. I just don't recall.

7 Q. And how many DPS inspectors were there, for
8 example, in 2015?

9 A. Well, year by year, I don't recall. I know that
10 there was a Mr. McCaulay, I believe, who worked for the
11 DPS, and then there was a contractor that, who they had
12 retained to support him, and then one or the other was
13 on the site most days during construction.

14 Q. So we're going to get to those DPS inspection
15 reports later. It's a separate area that I plan to ask
16 you about. I'm really just trying to focus on what
17 Vermont Gas's own inspectors, the ones they paid, were
18 reporting.

19 A. Oh, okay. I'm sorry. So ask the question again.
20 I thought you were asking about DPS.

21 Q. Ms. Palmer's exhibit was about the inspection --
22 I'll start over.

23 Are you aware of any inspection reports created by
24 the VGS inspectors that addressed, in 2015, whether the
25 pipeline was separated from trench bottom by bedding

1 material?

2 A. I, I don't recall the details of those reports,
3 but I, I'm not sure I could answer "yes" or "no". I
4 could go back and review them at a break if you'd like,
5 but, but, again, it, I don't recall seeing any
6 inspection reports that, that had affirmative
7 information about the separation. If anything, it
8 would be the exception being noted where it wasn't
9 separated.

10 And I think you have a notice on your screen that
11 you need to close.

12 Q. The exceptions that you noted were strictly on the
13 DPS reports, correct?

14 A. Well, again, I, I, as I said earlier, I don't
15 recall the detail of all thousands of inspection
16 reports that I looked at. The one I do recall is from
17 the DPS reports, or I believe it was from there, best
18 of my recollection.

19 Q. You read Ms. Palmer's prefiled testimony when it
20 was filed or within a day or two thereafter, I assume.

21 A. Yes, yes.

22 Q. And she said it's a summary. She did the best she
23 could, but one reason we were providing this was so
24 that other parties, between the date of her testimony
25 and the hearing, could make any corrections. Do you

1 remember reading that?

2 A. Well, I, that does sound familiar, yes.

3 Q. Did you go through any process to see if her
4 summary was correct or incorrect?

5 A. No, I didn't. And, by the way, I'm not a party to
6 the case.

7 Q. For 2015 is your answer the same about records of
8 compaction as the answer you gave me for 2014?

9 A. I believe it is, yes.

10 Q. And that the answer is the form called for
11 checking off of padding and compaction, just like it
12 did for backfilling, but you're not sure whether that
13 really meant you only check it if there's a problem?

14 A. Well, or, since they weren't measuring compaction,
15 they weren't, they weren't testing the level of
16 compaction, I, I don't know if they weren't checking
17 the box because they hadn't checked it to confirm. So
18 I'm not sure at this stage what the lack of a check on
19 that particular box on the form actually means.

20 Q. All right. Thank you. I'm now going to ask you
21 some, a series of questions about quality control and
22 quality assurance. So I'm going to see if I can bring
23 up Exhibit Cross-Examination 36. Do you see that, the
24 cover page of Cross Exhibit 36?

25 A. Yes.

1 Q. I'm going to scroll down a little bit so you can
2 see more. This is the 2016 ANGP Inspection Manual.

3 A. Yes.

4 Q. This was provided to you by Vermont Gas or by
5 Intervenors as part of your investigation?

6 A. Yes.

7 Q. You did not include it in the list of attachments
8 to your report, correct?

9 A. I don't remember all the attachments to my report,
10 but, I, as I recall what it said was I, I attached one
11 and mentioned that the other years were similar, and I
12 didn't include them all as attachments.

13 Q. I'm directing you to page, .pdf Page 96 of our
14 Cross Exhibit 36, but, before I do, let me ask you if
15 you agree that Exhibit 36, the 2016 manual, is a -- let
16 me start over.

17 Let me ask you if you agree that Exhibit 36 is a
18 true copy of the 2016 inspection manual that Vermont
19 Gas provided to you.

20 A. I, I was assuming that. I haven't taken any steps
21 to verify it.

22 ATTORNEY DUMONT: For an orderly record, Mr.
23 Hearing Officer, I'm going to move the admission of 36,
24 Cross-Exam 36.

25 HEARING OFFICER TOUSLEY: Is there any

1 objection? Department?

2 ATTORNEY GUZMAN: No objection.

3 HEARING OFFICER TOUSLEY: ANR?

4 ATTORNEY MILLER: No objection.

5 HEARING OFFICER TOUSLEY: VGS?

6 ATTORNEY McCLAIN: We don't have any
7 objection to the admission of this document, though I
8 think that it would be helpful, especially with
9 383-page documents or substantially long documents, if
10 we would be able to identify a reference to a discovery
11 response or something so that we could, that would help
12 with authentication. As the Witness indicated, it's
13 impossible to tell whether all 383 pages of this
14 reflect what the actual document is.

15 So, if there's a way for us to do that, I don't
16 want to slow us down, and I have no objection, but long
17 documents, and, in some cases, these cross exhibits
18 have more than one document kind of melded together,
19 and so I do have some concern about, about that
20 generally, but I have no objection to this exhibit.

21 HEARING OFFICER TOUSLEY: Mr. Dumont, do you
22 remember where you got this document from?

23 ATTORNEY DUMONT: Yes. It, it had a long
24 discovery tag attached to it, which dropped off my copy
25 a while ago, but it -- I can, if I go offline, I have

1 it in my computer with the discovery answer on it.

2 HEARING OFFICER TOUSLEY: That's okay. As
3 long as you represent that it's material that you
4 received during discovery and that it's intact, to the
5 extent you know it's intact, with what you received.

6 ATTORNEY DUMONT: Yes. We received the 2014,
7 2015, and 2016 inspection manuals in discovery. This
8 is the 2016.

9 HEARING OFFICER TOUSLEY: Okay. Then it's
10 entered. Then what has previously been marked as
11 Exhibit, Cross Exhibit 36 is entered, is admitted into
12 evidence.

13 (Exhibit marked Intervenors Cross Exhibit 36 was
14 admitted into the record.)

15

16 <https://epsb.vermont.gov/?q=downloadfile/426904/111907>

17

18 MR. BYRD: And, if I may, I'll clarify. I believe
19 this is part one of a two-part document. You actually
20 have a second file that you've produced that is the
21 second part of this same manual.

22 BY ATTORNEY DUMONT:

23 Q. Mr. Byrd, you may be right, but my notes indicate
24 that it was 2015 was in two parts, not 2016.

25 A. Okay. Well, I perhaps am mistaken. I'm sorry.

1 Q. 2015 was a Part A and a Part B, which we've
2 labeled as Exhibits 34 and 35.

3 A. I stand corrected.

4 Q. Now, I've scrolled to the bottom. I'm sorry. Let
5 me start at the top. This is Vermont Gas's -- do you
6 understand that this is Vermont Gas's Quality
7 Assurance/Quality Control Plan for inspection of new
8 transmission facilities?

9 A. Well, I don't recall the exact title, but, yeah,
10 that sounds right.

11 Q. And in the top right-hand corner it says "Page 1
12 of 13, Revision zero". You see that?

13 A. Yes.

14 Q. And, if you go to the bottom of the page, there's
15 a date, original date. It says June 18, 2015, correct?

16 A. I can't see the bottom of the page right now, but
17 it does now, yes.

18 Q. And I'm going to turn to Exhibit 1. Exhibit 1,
19 .pdf Page 890 if I can do this right. Mr. Byrd, do you
20 see Page 890 of Exhibit 1?

21 A. I do, yes, the top part.

22 Q. And Exhibit 1 is the first of two collections of
23 documents we provided to you on May 21st 2019, correct?

24 A. That, I don't recall, but I'll take your word for
25 it. You did provide me with a number of documents

1 early in the case.

2 Q. In fact, this is also found in one of your
3 exhibits. I believe it's your Attachment 8. Yes, your
4 Attachment 8 is Intervenors's summary of the evidence
5 for WRB, annotated 5/21/19, and our Exhibit 1 is
6 actually all of the attachments that are included
7 within your Attachment 8. It's smaller than your
8 Attachment 8, because it doesn't have the cover memo.
9 I will represent that to you and others.

10 ATTORNEY McCLAIN: Just for clarification of
11 the record, this 908-page document that's marked today
12 as VGS or Intervenors' Cross Exhibit 1 is not
13 Attachment 6, as I understand it, to Mr. Byrd's report.

14 ATTORNEY DUMONT: 8.

15 ATTORNEY McCLAIN: It's not Attachment 8,
16 either, is it?

17 ATTORNEY DUMONT: Yes, it's -- we can go to
18 it, but it was provided.

19 MR. BYRD: And my recollection was I attached
20 your Intervenors' summary as an attachment, but I just
21 referenced the attachments to your report. I didn't
22 attach them individually or separately, is my
23 recollection.

24 ATTORNEY McCLAIN: Yeah, that's what I
25 intended to clarify. So Attachment 8 to Mr. Byrd's

1 report is a, is a document that you drafted, Mr.
2 Dumont, but it is not a 908-page document like Exhibit
3 1 is.

4 ATTORNEY DUMONT: And, yeah, I'm putting up
5 on the screen Attachment 8, Mr. Byrd's Attachment 8.
6 I'm going to put it up on the screen. I'll start on
7 the first page.

8 HEARING OFFICER TOUSLEY: Why don't we just
9 take a break for ten minutes and come back at 11:55?

10 ATTORNEY DUMONT: Okay.

11 (A recess was taken from 11:43 a.m. to 11:55 a.m.)

12 HEARING OFFICER TOUSLEY: Mr. Dumont, you may
13 continue your questioning.

14 BY ATTORNEY DUMONT:

15 Q. Thank you. So, Mr. Byrd, you said a few minutes
16 ago that you did not attach to your report all of the
17 attachments that I appended to our motion to broaden
18 the scope that I gave you in May. It's a convoluted
19 question, but is that, is that what you're saying?

20 A. Well, my recollection is I didn't include all the
21 attachments, but, you know, the annotated version of
22 what you sent to me after the first meeting, you know,
23 after the first version you gave me after our first
24 meeting referred to your motion to broaden the scope,
25 which itself had numerous attachments, and you just

1 referred to those attachments in the Intervenors'
2 summary of the evidence, you know.

3 So there's, maybe I didn't say it as correctly as
4 I could have, but, you know, there are lots of
5 attachments that you had referenced in your
6 Intervenors' summary that I did not include as
7 attachments to my report. That's, I believe that's
8 factual.

9 Q. And I've got up on the screen here your Attachment
10 8 that you filed with the Commission.

11 A. It's very small. If you could blow it up a little
12 bit, that would help.

13 Q. Okay.

14 A. That's better.

15 Q. And this is Page 27 of the motion, annotated
16 motion to broaden the scope that I provided to you on
17 May 21st of 2019, and I, in the motion, we said the
18 company did not begin to draft the QA plan until
19 January of 2015. VGS believed it had developed a
20 complete plan on July 2nd of 2015, and then it said
21 excerpts from DPS engineering weekly reports, Appendix
22 Pages 890 to 902, and that was referring to the massive
23 appendix I gave you with the motion, correct?

24 A. I, I don't recall precisely, but that, I would
25 agree that's probably the case, yeah.

1 ATTORNEY DUMONT: Mr. Hearing Officer, just
2 so you know the origin, this, the biweekly reports, the
3 weekly reports, I'm sorry, were obtained from the
4 Department in 2016 or during one of the remand cases,
5 and they're actually, those very reports are admitted
6 into the evidence in one of the remand cases in Docket
7 7970, and I provided these to Mr. Byrd and all of the
8 parties in May of 2019.

9 HEARING OFFICER TOUSLEY: Okay.

10 ATTORNEY DUMONT: So I apologize. I thought
11 he'd attached all of them to his version of the motion
12 to broaden the scope, Attachment 8. When I, I just
13 checked, and what he has filed with the Commission as
14 his Attachment 8 includes our second appendix, but not
15 our first appendix. We gave him two appendices. The
16 second one was only 200-some-odd pages. The first one
17 was about 1,000 pages.

18 MR. BYRD: Right. And I didn't -- you know,
19 from my standpoint, the first was already in the
20 docket, and I didn't -- it's already public, publicly
21 available, so I didn't attach it to my report. I had
22 plenty of attachments to my report already. So I
23 wasn't trying to ignore them. I cited them in my
24 report.

25 ATTORNEY DUMONT: Okay, thank you. So, with

1 that, let's see. Where are we here? Go back to our
2 Exhibit 1, the biweekly reports. Okay. Mr. Hearing
3 Officer, so we have a clean record, I'm going to move
4 all of Exhibit 1 at this point as documents that were
5 provided to Mr. Byrd by my clients in May of 2019.

6 HEARING OFFICER TOUSLEY: Mr. Byrd, does that
7 conform to your recollection?

8 MR. BYRD: Well, I'll, I'll preface this with
9 the fact that I've received tens of thousands of
10 documents as part of this case. So, so I'm not going
11 to state factually that that's what happened, but that
12 does comport with my recollection.

13 HEARING OFFICER TOUSLEY: Are you familiar
14 with this document?

15 MR. BYRD: It does look familiar, yes.

16 HEARING OFFICER TOUSLEY: Okay. Is there any
17 objection to admitting -- what is this now marked, Mr.
18 Dumont?

19 ATTORNEY DUMONT: Well, this is part of
20 Exhibit 1. It is Pages 890 to 902 of Exhibit 1,
21 Exhibit 1 being the first appendix, first of two
22 appendices that were provided to Mr. Byrd on May 21st
23 2019.

24 HEARING OFFICER TOUSLEY: And has this been
25 filed in ePUC?

1 ATTORNEY DUMONT: Yes, yeah. It's our --
2 Exhibit 1 is, we filed it on Friday.

3 HEARING OFFICER TOUSLEY: Okay, okay. You
4 don't have the ePUC number immediately available?

5 ATTORNEY DUMONT: I didn't go through that
6 process. I'm sorry.

7 HEARING OFFICER TOUSLEY: Okay, that's okay.
8 Is there any objection? Mr. Guzman?

9 ATTORNEY GUZMAN: No objection.

10 HEARING OFFICER TOUSLEY: Mr. Miller?

11 ATTORNEY MILLER: No objection.

12 HEARING OFFICER TOUSLEY: Mr. McClain?

13 ATTORNEY McCLAIN: I, I don't not -- let me,
14 I guess, let me say not necessarily, but I guess I'd
15 like some clarification about what the, what we
16 understand this document to be. You know, this
17 document is a, is a 908-page curated document created
18 by Intervenors and counsel, and, if we're going to
19 admit it as evidence that it was provided to Mr. Byrd
20 and, at some point, maybe he reviewed it, I have no
21 objection to that.

22 I would say it's, it's filled with unauthenticated
23 hearsay and other things as well as documents that are
24 very easily verifiable, and I have no objection to it
25 on the merits, but, I guess, I guess I'd have no

1 objection to the admission of it, so long as we are not
2 accepting it as anything more than it truly is, which
3 is a mishmash of documents that has been curated by
4 Intervenors and provided to Mr. Byrd, and, and I guess
5 I would object to acceptance of, of the entire document
6 for the truth of the things asserted there or, or any
7 other purpose.

8 ATTORNEY DUMONT: May I, Mr. Tousley,
9 respond?

10 HEARING OFFICER TOUSLEY: Sure.

11 ATTORNEY DUMONT: Every single document in
12 Exhibit 1 is one we got either from the Department or
13 from Vermont Gas, or the only exception is Mr. Bubolz's
14 deposition testimony and his attachments to his
15 deposition, so --

16 HEARING OFFICER TOUSLEY: But this is, it's a
17 summary of, of those deposition -- it's those
18 materials, right? These are excerpts? It's not the
19 entirety of those? So it's a, it was crafted by the
20 Intervenors to help sort and organize that volume of
21 material but isn't that volume of material itself; is
22 that correct?

23 ATTORNEY DUMONT: That's not correct. None
24 of this includes any summary or interpretation by
25 myself or any witness. These, every single document in

1 these 900-plus pages is from the discovery from Vermont
2 Gas, with two exceptions. One is the deposition of Mr.
3 Bubolz and the exhibits, and the third is the
4 engineering reports we obtained from the Department of
5 Public Service, which I am not summarizing. This is a
6 -- there were many different pages. It's the quotes
7 that were all put on --

8 HEARING OFFICER TOUSLEY: So these are
9 excerpts, not summaries?

10 ATTORNEY DUMONT: That's correct.

11 HEARING OFFICER TOUSLEY: Okay, all right.
12 Well, I think, I think we will admit it into evidence,
13 with the noted exceptions stated by Mr. McClain. You
14 may proceed.

15 (Exhibit marked Intervenors Cross Exhibit 1 was
16 admitted into the record.

17

18 <https://epsb.vermont.gov/?q=downloadfile/426767/111907>

19

20 BY ATTORNEY DUMONT:

21 Q. Thank you. I'm going to turn to the excerpt for
22 July 14th, July 22nd, and July 29th of 2015. That's
23 going to take us down to .pdf 897. Got an entry on the
24 screen here for July 14th 2015. Let's see. There you
25 go. .pdf Page 897 is referring to a quality assurance

1 plan. Give you a minute just to read that paragraph.

2 HEARING OFFICER TOUSLEY: I'm going to
3 interject just for a second and tell everybody that I'm
4 going to take a lunch break at 12:30 if that's
5 something you all are thinking about, and it will be at
6 least a half an hour, if not longer, if the parties
7 think they need more than a half an hour, but we'll
8 address that when we get there just as something in the
9 near future.

10 MR. BYRD: And okay. And I'm going to need
11 to go out to lunch. I think there's a place just a
12 block away. So 30 minutes might be a little bit tight
13 for me, but I'll certainly try to do that.

14 BY ATTORNEY DUMONT:

15 Q. So do you understand from the Department's report
16 that the Department's gas engineer was planning to meet
17 with Vermont Gas representatives and, at the meeting,
18 Vermont Gas was going to present the status for
19 implementation of management systems related to quality
20 control with particular focus on the ANGP project?

21 A. That's what it says, yes.

22 Q. And then, going back to the -- hopefully, you
23 still have in mind Exhibit 36 where we looked at Page
24 96, which was their quality plan for inspection, and it
25 was dated June 15th of 2015. Do you remember that?

1 A. I do, yes.

2 Q. So do you understand that, in July of 2015,
3 Vermont Gas was presenting to the Department its
4 quality control plan for inspection of the ANGP?

5 A. Well, I would say that quality control plan, yes.

6 Q. Was there a quality control plan for inspection of
7 the ANGP before that one, which was Exhibit 36, Page
8 96, dated June 15th 2015?

9 A. Well, that shows that that plan is a version one
10 or edition one or zero, whatever they said. You know,
11 clearly, that's the first version of that plan, but,
12 you know, it appears that it's a, you know, a
13 reorganization of many things already existing,
14 probably adding some more management systems to it, you
15 know. So it's a stand-alone plan, I mean, their
16 stand-alone plan. That was it.

17 Q. I've now turned to Page 898 of the exhibit dated
18 July 22nd 2015. The second paragraph is captioned "VGS
19 Welding Program, comma, Quality Management System and
20 Operator Qualification Program", and it states, "The
21 gas engineer continued to review the Vermont Gas
22 Systems programs, comma, plans and procedures which are
23 necessary to ensure the ANGP facilities are constructed
24 as designed and are compliant with the project's CPG
25 and Vermont Gas safety regulations, period.

1 Previously, comma, the gas engineer informed VGS
2 representatives that critical elements were missing
3 from each of the programs referenced above, period.
4 These elements include adequate criteria for inspection
5 of production-welding processes, comma, methods to
6 identify root causes of non-conforming conditions,
7 comma, methods to monitor the efficacy of corrective
8 actions, comma, specific task training modules for
9 construction personnel, comma, and individual skill
10 assessment verifications, period".

11 Are those aspects of quality control in your view,
12 Mr. Byrd?

13 A. Yes, I would say those are aspects of a quality
14 control program, yes.

15 Q. Scroll down to the bottom of Page 898. This is an
16 entry July 29th 2015. The caption is "VGS Welding
17 Program, comma, Quality Management System and Operator
18 Qualification Program", and it states, "The gas
19 engineer continued to review Vermont Gas Systems
20 programs, comma, plans and procedures which are
21 necessary to ensure the ANGP facilities are constructed
22 as designed and are compliant with the project's CPG
23 and Vermont Gas safety regulations, period.

24 Previously, comma, the gas engineer informed VGS
25 representatives that critical elements were missing

1 from each of the programs referenced above, period.
2 These elements include adequate criteria for inspection
3 of production-welding processes, comma, methods to
4 identify root causes of nonconforming conditions,
5 comma, methods to monitor the efficacy of corrective
6 actions, comma, specific task training modules for
7 construction personnel, comma, and individual skill
8 assessment verifications, period. The gas engineer
9 reviewed these elements with VGS again during this
10 report period, comma, and VGS indicated these elements
11 are not currently available".

12 And those elements are part of a quality assurance
13 or quality control program?

14 A. Well, I would say, yes, those are, those are the
15 types of things that are in a quality assurance and
16 quality control program.

17 Q. Mr., the gas engineer stated that these are
18 necessary to ensure that ANGP facilities are
19 constructed as designed and are compliant with the
20 project's CPG and Vermont Gas safety regulations. Do
21 you agree?

22 A. Well, I agree that's what it says.

23 Q. Do you agree with what it says?

24 A. Well, it's very common when dealing with, when
25 PHMSA is dealing with pipeline operators, to review

1 their programs, plans and procedures and to ask for
2 amendments. They even have a formal process where you,
3 where you formally notify an operator, an NOA, Notice
4 of Amendment, so, hey, we've looked at your operator
5 qualification program, and we don't think it meets the
6 regulations in this aspect or that aspect, and we want
7 you to go modify or amend your program. So a Notice of
8 Amendment is the formal way of doing that.

9 In this case, it looks like the gas engineer was
10 looking at the existing programs and saying, hey, I
11 think you need to add some more detail around this
12 process or this, this procedure or this method of doing
13 something. They mention specific task training modules
14 for construction personnel. You know, so I don't -- he
15 doesn't clarify which tasks he's talking about, but
16 the, but there must have been some task or tasks that
17 were performed as part of the construction project that
18 VGS didn't have a specific training module to, to do
19 that task.

20 So I don't know, again, what task he was thinking
21 of, but he spelled out, he identified some things,
22 said, hey, I think you ought to have a specific
23 training module for people that do this, and VGS
24 obviously had said, okay, we'll develop specific
25 training modules for that, and those modules were not

1 prepared in this hypothetical example, at least as of
2 that date. You know, that element is not currently
3 available, I mean, and that would apply to, you know,
4 the other things that are listed in that paragraph, you
5 know, the methods to identify root causes of
6 nonconforming conditions.

7 So that's a very specific statement. He's saying,
8 not that you don't identify root causes of
9 nonconformance, he's saying you haven't defined the
10 method that you use to identify nonconformance. Well,
11 that's, that's kind of a management layer on top of a
12 management layer, you know? So you're doing the root
13 cause analysis, but you didn't define the method by
14 which you do it, and PHMSA is, is pretty, you know,
15 persistent about that kind of thing. It's like, you
16 know, we don't want to just see evidence that you did
17 the right thing. We want to see that you've got a
18 process to ensure that you do the right thing the same
19 way every time.

20 So, when I read that, I see, okay, they didn't
21 have as much information about the method they used for
22 root causes as this inspector thought they should. So
23 VGS, again, was responding to that inspector, and it's,
24 we'll see it, you know, companies that have been
25 following procedures for 20 years, and then a new

1 inspector comes along and says, I don't like, you know,
2 I don't think your procedures are good enough for this
3 thing or that thing, and, you know, so it's a kind of
4 continuous process of continual improvement, and that's
5 what this looks like to me.

6 Q. My question was whether you agree with the gas
7 engineer of the Department of Public Service that the
8 missing programs, plans and procedures were necessary
9 to ensure that the ANGP facilities were constructed as
10 designed and were compliant with the project's CPG and
11 Vermont Gas safety regulations.

12 A. I don't agree or disagree. The fact is I just
13 don't know what he specifically thought was necessary.
14 You know, so, I mean, if I saw the examples or the
15 exact things that he was saying you needed to do for
16 construction task training, for example, or the method
17 you need to monitor the efficacy of corrective actions.

18 So, again, he's saying, You're taking corrective
19 actions, but you don't have a system in place to
20 monitor whether that corrective action worked or not.
21 Okay, well, then again, that's kind of an extra layer
22 of management system on top of what VGS is already
23 doing. You know, so, so reasonable people disagree
24 about this kind of stuff all the time, and I don't
25 know, if I saw the same facts that the gas engineer

1 did, if I would agree that those additional steps are
2 necessary. He felt, obviously, that they were, and
3 I'm, you know, all I can note is that that's the
4 opinion he stated, and I don't have enough information
5 to agree or disagree with it.

6 Q. Construction had been going on for over a year by
7 the time, by July of 2015, correct?

8 A. About a year, yes.

9 Q. So these components that the gas engineer stated
10 were necessary had been missing throughout all of that
11 construction, correct?

12 A. Well, in his opinion, yes, or it would appear,
13 yeah.

14 Q. And --

15 ATTORNEY McCLAIN: Can I -- sorry, Jim. Can
16 I, before we break for lunch, can I make sure that
17 we're clear on the record about what we're looking at?
18 And I think, if we're going to continue to ask Mr. Byrd
19 about these DPS reports, that I think I would object to
20 asking him about an excerpt of a larger report that
21 isn't included here, Jim. I think these reflect very
22 limited excerpts of specific reports that you've
23 selected for the purposes of attaching to this filing,
24 and, and I think, for the record, and just for clarity
25 and fairness to the Witness, it would, it would be a --

1 I would prefer if you could show him the whole report.

2 ATTORNEY DUMONT: I thought --

3 ATTORNEY McCLAIN: I guess, what I'm
4 requesting is, first, clarification that what we're
5 looking at is a very limited excerpt of these reports
6 and does not reflect the Department's report, and, and
7 I, it's just not the best evidence of the report, the
8 problem, and so, you know, I don't know if it's -- I
9 assume that it accurately reflects the language that's
10 in a very limited portion of the report, but, if you
11 have the actual reports, Jim, that would be the best
12 evidence to use as a cross exhibit for purposes of
13 cross-examining this witness on what that report says
14 and what kind of implications it may have for this
15 case.

16 ATTORNEY DUMONT: I submit the reports are in
17 evidence from the prior case. They are weekly reports
18 for a long period of time. They're very voluminous. I
19 can find them. We submitted these, this excerpt to the
20 Department, Vermont Gas, and to the Witness over a year
21 ago. Vermont Gas chose not to ask us any discovery
22 questions. So, right now in the middle of examining
23 this witness, it's, I'm not able to go get those
24 reports. For one thing, I'm working at home. I don't
25 have a paralegal. We're in the middle of a pandemic.

1 I'm doing the best I can. If I had notice that Vermont
2 Gas wanted all of the reports, I would have gotten
3 them.

4 ATTORNEY McCLAIN: No, I don't want all the
5 reports. I'm saying that, if you're going to use it as
6 a cross exhibit, which we got notice of these when you
7 filed them on Friday, that, that we should use the
8 actual reports, and I believe that they're in evidence.
9 I believe that Mr. Byrd has, has included the DPS
10 inspection reports.

11 My point is that, for the record, we're looking at
12 a very limited, limited excerpts of these reports, and
13 we're not looking at the best evidence of what the
14 report says, which I believe are attached to Mr. Byrd's
15 report or are definitely otherwise in evidence. I have
16 no argument with that, Jim, and I'm not saying they
17 shouldn't be used. I'm saying that we're looking down
18 a very narrow scope right here, and the reports
19 themselves are in evidence or should be in evidence if
20 we're going to discuss them at much length.

21 MR. BYRD: And let me clarify. The
22 attachments to my report are the DPS annual summary
23 inspection forms, which follow the, the PHMSA
24 inspection form, you know, outline. I did not attach
25 the weekly summaries, which is what we're looking at

1 now with Mr. Dumont.

2 ATTORNEY McCLAIN: And, and the weekly
3 summaries, these are excerpts of the weekly summaries;
4 is that right, Mr. Dumont?

5 ATTORNEY DUMONT: That's right,
6 word-for-word.

7 ATTORNEY McCLAIN: And, and the word-for-word
8 with the exclusion of other portions of the weekly
9 summaries?

10 ATTORNEY DUMONT: The other weeks, many, many
11 pages of weeks of reports.

12 ATTORNEY McCLAIN: Yeah, but, for a given
13 week, this is not the entire summary; is that correct?

14 HEARING OFFICER TOUSLEY: I think I'm going
15 to shut down this dialogue right now.

16 ATTORNEY McCLAIN: Okay. Sorry.

17 HEARING OFFICER TOUSLEY: I think that what
18 we have is what we have, and we've accepted it into
19 evidence recognizing its shortfalls, and now I accept
20 Attorney Dumont's representations that getting the
21 larger documents would be very difficult, if not
22 impossible. I think that we just move forward,
23 recognizing the limitations of this document, which has
24 been admitted into evidence and which does have a basis
25 in, in other documents. So, with that, Mr. Dumont, you

1 have five more minutes of questions.

2 ATTORNEY DUMONT: Thank you. So I'm now
3 turning back to Mr. Byrd's report, Page 60. There it
4 is.

5 HEARING OFFICER TOUSLEY: So, Mr. Dumont,
6 what we're looking at now as Mr. Byrd's actual report.
7 Is this the latter, the, the updated version?

8 ATTORNEY DUMONT: Yes.

9 HEARING OFFICER TOUSLEY: Okay.

10 BY ATTORNEY DUMONT:

11 Q. Page 60, the paragraph, it's within the conclusion
12 section, and it's the section, subsection called
13 "Compliance". Mr. Byrd, did you write, "I have
14 reviewed the DPS inspection reports for each year and
15 found any critical comments, parens, (aside from those
16 that resulted in NOPVs), end of parens, to be minor
17 deficiencies that are routinely found and corrected on
18 a daily basis during a project of this type, period"?
19 Did I read that correctly?

20 A. Yes, you did.

21 Q. Next sentence, "They caused no overall compliance
22 concerns, period".

23 A. That's correct.

24 Q. Is it your opinion that the documents that the gas
25 engineer, the Department gas engineer, were necessary

1 to comply with the CPG and safety regulations were
2 missing by, in July of 2015 after a year of
3 construction, in your view, is that a minor deficiency?
4 A. Well, I could answer that by saying, if it was a
5 major deficiency, they would have submitted a Notice of
6 Amendment to VGS, which they didn't do. So, so it
7 seems to me that the gas engineer, you know, was giving
8 his input to VGS as to what their procedures and
9 manuals needed to say, and VGS was responding. And so,
10 of course, the gas engineer thinks that those
11 amendments are necessary, or he wouldn't have asked for
12 them.

13 Again, like I said, without seeing the specific
14 information that he had objections to or thought was
15 missing, I can't really opine as to whether I agree
16 with his opinion or not, but that's what he put in his
17 weekly report. It's not what he put in the annual
18 summary.

19 ATTORNEY DUMONT: So, on that note, I was
20 going to switch to another exhibit, and it is exhibit,
21 actually, Exhibits 39, 38, 39, 40, and, since it's
22 12:29 and we're going to break for lunch, maybe we
23 should stop before I open the new exhibits.

24 HEARING OFFICER TOUSLEY: Sounds good. Why
25 don't we go ahead and take a break? Given Mr. Byrd's

1 need to get out of his room to go get something and it
2 may take more than half an hour to do that, we'll come
3 back at 1:15. Thank you all.

4 (A recess was taken from 12:29 p.m. to 1:17 p.m.)

5 HEARING OFFICER TOUSLEY: I think we're all
6 back now. Mr. Dumont, are you prepared to resume
7 questioning?

8 ATTORNEY DUMONT: Yes.

9 HEARING OFFICER TOUSLEY: Okay. Do you have
10 a document up?

11 BY ATTORNEY DUMONT:

12 Q. I'm about to do that. Let's start with 38. Okay.
13 I put on the screen exhibit, Cross Exhibit 38.

14 A. Yes.

15 Q. You all set?

16 A. Yes.

17 Q. You testified before we took the lunch break that
18 the concerns that the Department had -- I'm using, not
19 your words, but just summarizing -- the concerns the
20 Department had couldn't have been too serious, because
21 they didn't issue a notice to the company; is that
22 right?

23 A. Well, the, the comments they had about wanting
24 changes to procedures or new procedures or additional
25 procedures are pretty commonplace, and, and that's what

1 I said in my report. But the other issues for NOPVs
2 were the kind of things that commonly come out during
3 agency inspections, and that's what those occurred to
4 me too.

5 Q. The document I have in front of you is the 2014
6 Gas State Program Evaluation by PHMSA. Have you seen
7 documents like this before?

8 A. I don't normally see their documents to where
9 they're inspecting a state agency, but I have reviewed
10 this document, yes.

11 Q. And when did you first see this document?

12 A. When you posted it.

13 Q. Okay. So it's your understanding that every year
14 PHMSA evaluates those state agencies that have been
15 delegated inspection authority by PHMSA?

16 A. Yeah. I, I don't know that it's necessarily an
17 annual process, but they routinely do it, yes.

18 Q. And do the reports for 2014 and 2015 and 2016
19 actually address the very point you just made?

20 A. Well, you can point me to the -- I'm not that
21 familiar with the documents.

22 Q. I'm turning to .pdf 11. This is the 2014 PHMSA
23 report, and I'll represent to the hearing officer and
24 all the parties this is on PHMSA's website. Every
25 state inspection report is a public document on PHMSA's

1 website. I just downloaded these from the PHMSA
2 website.

3 So, looking at .pdf Page 11, Question Number 3,
4 the question was, "Did the State issue compliance
5 actions for all probable violations discovered?" A
6 total of two points was available, and, in this case,
7 the Department of Public Service got a zero. Two
8 points was a "yes", zero was a "no", and one was "needs
9 improvement". The Department got a zero for 2014, and
10 then the evaluator wrote a note. "Evaluator notes,
11 colon: No, all have not been followed through on and
12 need to be taken care of and all compliance action
13 brought up-to-date".

14 Did I read that correctly?

15 A. Yes.

16 Q. Okay. And, if we turn to .pdf Page 13, Question
17 Number 4, it's confusing to me, and maybe you can
18 explain it. Question 4 was, "Were all incidents
19 investigated, thoroughly documented, and with
20 conclusions and recommendations?", and the answer was
21 "NA", not applicable. Then it said, "Evaluator Notes:
22 No incidents in CY2014". Can you explain that one to
23 us?

24 A. Well, so for gas pipelines there is a requirement
25 to report incidents, and an incident for a gas pipeline

1 is defined in 49 CFR Part 192 as meeting certain
2 criteria for, you know, impacts, whether it's volume of
3 gas released or cost or, you know, fatalities,
4 injuries, that kind of thing.

5 And so my reading of this response is that there
6 weren't any incidents, as PHMSA defines an incident, in
7 the State of Vermont for calendar year 2014, at least
8 for the facilities that the Department of Public
9 Service was responsible for inspecting. That's how I
10 would read that.

11 ATTORNEY DUMONT: Okay, thank you. I'm now
12 on Cross Exhibit 39, but, actually before I leave 38,
13 I'll move for admission of 38.

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

16 MR. BYRD: It looks like you're on 39.

17 ATTORNEY DUMONT: Yes, I just moved to 39.

18 MR. BYRD: Okay.

19 ATTORNEY GUZMAN: No objection.

20 HEARING OFFICER TOUSLEY: ANR?

21 ATTORNEY MILLER: No objection.

22 HEARING OFFICER TOUSLEY: Mr. McClain?

23 ATTORNEY McCLAIN: No, we don't have any
24 objection.

25 HEARING OFFICER TOUSLEY: All right. Well,

1 what's been marked as Cross, Intervenors Cross Exhibit
2 38 is admitted.

3 (Exhibit marked Intervenors Cross Exhibit 38 was
4 admitted into the record.)

5

6 <https://epsb.vermont.gov/?q=downloadfile/426868/111907>

7

8 BY ATTORNEY DUMONT:

9 Q. Thank you. Mr. Byrd, do you want me to scroll up
10 to the top of Exhibit 39 so you can see the caption,
11 the year?

12 A. Sure. Thank you.

13 Q. So 39, is that the 2015 version of the last
14 document we looked at?

15 A. Yes.

16 Q. I'm going to scroll back down to .pdf Page 8. I'm
17 sorry. Page 8, Number 7. Okay. .pdf Page 8, Question
18 7.

19 A. I'm still seeing Page 7.

20 Q. Sorry. Wait until it gets there.

21 A. Now I see Page 8. Okay, go ahead.

22 Q. Question 7, "Did inspection forms cover all
23 applicable code requirements addressed in federal
24 inspection forms, question mark? Did State complete
25 all applicable portions of inspection forms, question

1 mark? Chapter 5.1". This says "yes" equals 2, "no"
2 equals zero, 1 equals "needs improvement", and Vermont
3 received a zero in this category, correct?

4 A. That's correct.

5 Q. And the evaluator wrote the following notes:

6 "While inspection forms have been in place for the most
7 part, comma, all parts of inspection forms were not
8 completed and while a very small amount of progress
9 made, comma, significant improvement needed, period.
10 This is a continuing issue and two points deducted,
11 period".

12 Did I read that correctly?

13 A. Yes.

14 Q. I'm going to turn to .pdf Page 11, Question Number
15 2. Are you there?

16 A. No, I'm still seeing 8.

17 Q. Okay.

18 A. Okay. Now I see 11. Now I see 11, Question 2.

19 Q. Take a second to read it.

20 A. I've read it. Thank you.

21 Q. So do you agree with me that the PHMSA oversight
22 changed from asking about incidents to asking about
23 probable violations?

24 A. Well, it's a different question.

25 Q. Okay.

1 A. I, I don't know that there is not also an incident
2 question here. I'm just not that familiar with the
3 form.

4 Q. Okay. So Question 2 asks, "Did the State follow
5 compliance procedures, parens, (from discovery to
6 resolution), end parens, and adequately document all
7 probable violations, comma, including what resolution
8 or further course of action is needed to gain
9 compliance, question mark? Chapter 5.1". "Yes" equals
10 4, "no" equals zero, "needs improvement" is 1 through
11 3, and the State of Vermont that year got a 2, correct?

12 A. That's correct.

13 Q. And the evaluator wrote a note: "Continued issue,
14 comma, and due to lag in compliance actions being
15 issued to companies, comma, only one letter went out in
16 CY2015 and none yet in CY2016, period. Two point
17 deduction, period."

18 Did I read that right?

19 A. Yes, you did.

20 Q. I'm going to move to Exhibit 40, Cross 40. Oh,
21 sorry. I'm going to move Exhibit 39.

22 HEARING OFFICER TOUSLEY: Any objection,
23 Department?

24 ATTORNEY GUZMAN: No objection.

25 HEARING OFFICER TOUSLEY: ANR?

1 ATTORNEY MILLER: No objection.

2 HEARING OFFICER TOUSLEY: VGS?

3 ATTORNEY McCLAIN: No objection.

4 HEARING OFFICER TOUSLEY: Very well. What's
5 been marked as Intervenors Cross Exhibit 39 is admitted
6 into evidence. You may proceed.

7 (Exhibit marked Intervenors Cross 39 was admitted
8 into the record.)

9

10 <https://epsb.vermont.gov/?q=downloadfile/426872/111907>

11

12 BY ATTORNEY DUMONT:

13 Q. Thank you. So, hopefully, I did this right. Here
14 we are, 2016. This is Exhibit 40. .pdf Page 1, cover
15 page, says it's for 2016, correct?

16 A. I don't see it, but I recall that's the case, yes.
17 Now I see it.

18 Q. Sorry. I forget there's a lag.

19 A. Yeah. I see it now.

20 Q. Okay. I'm going to go down to .pdf Page 7.

21 A. Looks like it went to Page 8.

22 Q. Yeah. I overshot it, and then I had to fix it.

23 A. Okay. Now it looks like you're on Page 7.

24 Q. Question 3, "Did state records and discussions
25 with state pipeline safety program manager indicate

1 adequate knowledge of PHMSA programs and regulations,
2 question mark? Chapter 4.1, comma, 8.1.". This area
3 -- I'm sorry. Strike that.

4 And then beneath that it says "yes" equals 2, "no"
5 equals zero, "needs improvement" equals 1, and did the
6 State get a 1 that year?

7 A. Is that a question?

8 Q. Yes. Did the State get a score of 1?

9 A. Yes, they did.

10 Q. And did the evaluator write, "Due to the overall
11 lack of improvement and progress on program activities,
12 comma, deducting one point on this question"?

13 A. They did.

14 Q. Okay. If we go down to the next page, .pdf 8,
15 Question Number 7 --

16 A. I see it now.

17 Q. -- did Question 7 ask, "Did inspection forms cover
18 all applicable code requirements addressed on federal
19 infection forms, question mark? Did State complete all
20 applicable portions of inspection forms, question mark?
21 Chapter 5.1". "Yes" equals 2, "no" equals zero, "needs
22 improvement" equals 1, and did the State receive a
23 score of zero?

24 A. They did.

25 Q. And did the evaluator write, "Continued issued as

1 in past inspection reports are incomplete and virtually
2 no progress has been made"; is that what the notes say?

3 A. Yes, it is.

4 Q. Now I'm going to go to .pdf 9.

5 A. I'm still on 8. Okay. There we go.

6 Q. Sorry.

7 A. Question 18 is what I see.

8 Q. There we go. Give it a second to catch up. I was
9 in the wrong place there.

10 A. Which question are you shooting for?

11 Q. 16.

12 A. I don't see that one. Okay. Here we go.

13 Q. Move it up a little bit. There, Question 16, "Is
14 State verifying operators OQ programs are up-to-date,
15 question mark? This should include verification of any
16 plan updates and that persons performing tasks, parens,
17 (including contractors), end parens, are properly
18 qualified and requalified at intervals determined in
19 the operators plan, period. 49 CFR 192 Part N". "Yes"
20 equals 2, "no" equals zero, "needs improvement" equals
21 1. And did the State get a 1 on this issue in 2016?

22 A. Yes, they did.

23 Q. And did the evaluator write, "Improvement needed,
24 comma, LPG operators Jack Corse, C-O-R-S-E, and Keyser
25 Energy, K-E-Y-S-E-R, still outstanding and need follow

1 up"; is that right?

2 A. That's correct.

3 Q. And then Question 17, "Is State verifying
4 operator's gas transmission integrity management
5 programs, parens, (IMP), end parens, are up-to-date,
6 question mark? This should include a previous review
7 of IMP plan, comma, along with monitoring progress on
8 operator tests and remedial actions, period. In
9 addition, comma, the review should take into account
10 program review and updates of operators plans, period.
11 Parens, (Are the State's largest operators programs
12 being contacted or reviewed annually, question mark?)
13 49 CFR 192 Subpart 0. "Yes" equals 2, "no" equals zero,
14 "needs improvement" equals 1. And did the State get a
15 score of 1?

16 A. Yes, they did.

17 Q. And did the evaluator write, "Marking needing
18 improvement as partial inspections done and none fully
19 complete, period. VGS is only transmission operator,
20 period. Also again recommend placing in procedures
21 what is going to happen with IMP on an annual basis".
22 Did I read that correctly?

23 A. Yes, you did.

24 Q. Okay. Let's go to .pdf 12, Question 2. I'll wait
25 until it shows up.

1 A. I still see Page 11. I see part of Question 2
2 now. Still don't see all of Question 2.

3 Q. Got it there?

4 A. I see it now, yes. Thank you.

5 Q. In Question 2 did PHMSA ask, "Did the State follow
6 compliance procedures, parens, (from discovery to
7 resolution), end of parens, and adequately document all
8 probable violations, comma, including what resolution
9 or further course of action is needed to gain
10 compliance, question mark? Chapter 5.1." "Yes" equals
11 4, "no" equals zero, "needs improvement" equals 1
12 through 3. And did the State get a score of zero?

13 A. They did.

14 Q. And in Question 2(b) there was a specific issue,
15 "Did the State document probable violations?", and the
16 answer was "no". You see that?

17 A. I do.

18 Q. And did the evaluator write, "Continued issue
19 again this year, comma, only one letter went out again
20 in CY2016, period. There is a problem with compliance
21 issues and all reports in general getting completed by
22 staff, period. Zero points due to unacceptable actions
23 in this area, period"? Did I read that correctly?

24 A. Yes, you did.

25 Q. So, going back to your observation before the

1 lunch break that, if the State had thought the
2 deficiencies in the quality assurance or quality
3 control plan were significant, they would have written
4 up some kind of notice, do you remember you said that?

5 A. I do.

6 Q. Do these PHMSA reports change your opinion in any
7 way?

8 A. They do not.

9 Q. Go back to your report. I've got it on the screen
10 here. Got to go fetch your report. I'm going to Page
11 60, if I can, of your report. Wrong page here. Hold
12 on.

13 A. I see Page 60, "Compliance" heading. I'm on Page
14 60.

15 Q. Yeah. No, I'm sorry. Is it the wrong page? It
16 is. Find the right page. sorry. I was on the wrong
17 page. Find it in one sec. There we go. I think it's
18 Page 12. Let's see here. .pdf Page 12 of your report.
19 I used the old word search function again.

20 A. I saw. I'm on the page. I see it.

21 Q. And did you write, referring to the Department's
22 inspections of the ANGP, "In my experience, comma, this
23 level of inspection by a pipeline regulatory agency was
24 extraordinary"?

25 A. I did.

1 Q. And do you still feel that way?

2 A. I do.

3 Q. And the scores by PHMSA of zero in certain
4 categories don't change your judgment?

5 A. Not at all.

6 Q. Okay. I'm going to talk to you about a related
7 issue, closely related issue, which is the integrity
8 management plan, that whole concept. I'm sure you're
9 quite familiar with integrity management planning, I'm
10 sure; is that right?

11 A. That is correct.

12 Q. And do you agree that, in its permitting, in the
13 permitting process, Vermont Gas committed to compliance
14 with Class 3 PHMSA standards?

15 A. Yes, they did.

16 Q. And do you agree that Class 3 PHMSA standards
17 include having an integrity management plan?

18 A. Well, the, the criteria for what pipes are in an
19 integrity management plan are a bit convoluted. So
20 I'm, I'm not sure that I would agree with that
21 statement as a blanket statement, but, yeah, generally,
22 yeah. The coverage under integrity management is based
23 off of actual population density within the potential
24 average radius of the pipeline, and, you know, Class 3
25 may or may not meet that criteria.

1 Q. So it will be a question of interpreting the
2 federal regulations, correct, whether or not all Class
3 3 --

4 A. That's correct.

5 Q. -- pipelines require an integrity management plan?

6 A. Yeah, I don't believe that that is actually in
7 regulation, but I could be forgetting a paragraph
8 somewhere but --

9 Q. And you do agree that the American Society of
10 Mechanical Engineers has established standards for an
11 integrity management plan?

12 A. I do, yes.

13 Q. And that's ASME B31.85, and the version in effect
14 was 2012?

15 A. It's not a 5; it's an S.

16 Q. 8S? I'm sorry. You're right. Thank you.

17 A. And, and, actually, you have produced the wrong
18 edition. PHMSA is very precise in the edition that
19 they incorporate by reference, and the regulations at
20 the time of the ANGP and today incorporate the 2004
21 edition, not the 2012 edition. So this one isn't
22 incorporated by reference, but the 2004 edition of
23 B31.8S is.

24 Q. Is there any significant difference between the
25 2012 version and the 2004 version?

1 A. I can't hear you.

2 Q. I'm sorry. Are you aware of any significant
3 difference between the 2012 version and the 2004?

4 A. It sounds like you're trying to talk. Your audio
5 is really cutting out, so I'm not sure I'm hearing your
6 whole question.

7 Q. Are you aware of any difference between, any
8 significant difference between the 2004 version and the
9 2012 version?

10 A. Well, I didn't attempt to do any kind of detailed
11 comparison, but I did check. The version posted, you
12 posted 46 pages of a longer document. So the, the
13 document that you posted ends in, like, Section, I
14 forget, 14, something like that, which is on Page 46.
15 I did check. In the 2004 edition that section begins
16 on Page 36. So there's 10 more pages of, in the 2012
17 edition that were not in the 2004 edition, and I don't
18 know exactly what those pages deal with.

19 Q. Okay. You're aware that the company committed to
20 meet or exceed federal standards?

21 A. That's correct.

22 Q. So, if PHMSA was only holding to, holding
23 companies to the 2004 edition, is it reasonable to
24 expect that a pipeline being constructed in 2014 would
25 satisfy the 2012 edition of the American Society of

1 Mechanical Engineers standards?

2 A. It is not.

3 Q. Why not?

4 A. PHMSA has been, PHMSA has been very clear that
5 they want operators to comply with the specific edition
6 that they incorporate and not future editions, and
7 they've gone on the record plenty of times about that.
8 Specifically, there are some new editions of the public
9 awareness recommended practice from API that PHMSA has
10 said they don't like, and they specifically don't like,
11 so they want you to use the previous edition or the
12 original edition, not the updated editions.

13 The same thing has happened with NACE standards,
14 with ASME standards other than B31.8S. So, when PHMSA
15 says you have to build it or you have to comply with
16 the incorporated standard, they mean the one
17 specifically incorporated in their regulations, and
18 that's why they have, not just ASME B31.8S, but ASME
19 B31.8S-2004, and you'll find that exactly in the
20 pipeline safety regulations.

21 Q. This is very disappointing to me, because the 2004
22 version is public, and it's a free document. I just
23 spent a lot of money to buy the 2012 version.

24 A. I hate when that happens.

25 ATTORNEY DUMONT: So what I might want to ask

1 to do is I have the 2004 version on my computer, but I
2 haven't prepared it as an exhibit. So I'm going to,
3 with the hearing officer's permission, return to this
4 issue tomorrow, and this evening I will post everybody
5 and file as an exhibit the 2004 version.

6 HEARING OFFICER TOUSLEY: Sounds like a plan.

7 ATTORNEY DUMONT: So I will continue that
8 line of questioning after we get the 2004 version to
9 everybody. Now I'd like to turn to the question of a
10 licensed engineer acting as the responsible charge
11 engineer. So I'm going to take a minute. I need to
12 change all the exhibits that are on my screen and
13 switch to a different topic. So, maybe, if you could,
14 give me five minutes to get rid of these exhibits and
15 bring up the other ones.

16 MR. BYRD: Take a five-minute break?

17 HEARING OFFICER TOUSLEY: Yes. Why don't we
18 go ahead and take a break until 2:00 o'clock?

19 (A recess was taken from 1:51 p.m. to 2:00 p.m.)

20 HEARING OFFICER TOUSLEY: Okay. I think
21 we're all back. Mr. Dumont, are you ready to go
22 forward?

23 ATTORNEY DUMONT: I am.

24 HEARING OFFICER TOUSLEY: Okay. You may
25 proceed.

1 ATTORNEY DUMONT: Thank you. First, Mr.
2 Tousley, I neglected to move Exhibit 40, which was the
3 PHMSA report from 2016.

4 HEARING OFFICER TOUSLEY: Is there any
5 objection?

6 ATTORNEY GUZMAN: No objection.

7 HEARING OFFICER TOUSLEY: ANR?

8 ATTORNEY MILLER: No objection.

9 HEARING OFFICER TOUSLEY: VGS?

10 ATTORNEY McCLAIN: No objection.

11 HEARING OFFICER TOUSLEY: Very well. What
12 was previously marked as Intervenors Cross Exhibit 40
13 has been admitted into evidence. You may proceed.

14 (Exhibit marked Intervenors Cross 40 was admitted
15 into the record.)

16
17 <https://epsb.vermont.gov/?q=downloadfile/426876/111907>

18

19 BY ATTORNEY DUMONT:

20 Q. Mr. Byrd, if you could turn to exhibit, your, I'm
21 sorry, your Attachment Number 23, which I have on the
22 screen.

23 A. I assume you're the one turning to it.

24 Q. Hopefully, I did already.

25 A. Yes, yes, I see -- it's very hard to read any of

1 the text, but I see a diagram from CHA.

2 Q. Yeah, sorry.

3 A. Now I can see it.

4 Q. Trying to get to the bottom of the page there.
5 There we go. And this is your Attachment 17. You
6 agree that these are the Issued for Construction plans
7 that were dated June 28th 2013?

8 A. Well, I agree they're what I said they were in my
9 report. I don't remember all the attachments, but I
10 trust your, your statement about that.

11 ATTORNEY McCLAIN: Jim, just for the record,
12 you said Attachment 17. I thought we were on
13 Attachment 23.

14 ATTORNEY DUMONT: You're correct. I meant
15 23. I misspoke.

16 ATTORNEY McCLAIN: Yeah.

17 MR. BYRD: Well, then I was right to hedge.
18 BY ATTORNEY DUMONT:

19 Q. Yes.

20 A. I don't remember the number of all the
21 attachments, but I agree it's what I said it was in my
22 report.

23 Q. 23, it's not 17. 17 was the 2014 project manual.

24 A. I'm not aware of any errors in the way I described
25 my attachments.

1 Q. Nor am I. Do you agree that Michael Hollowood's
2 name is not on your Attachment 23?

3 A. I can't see the entire bottom of that form, but I
4 don't see it on the screen right here, and I'll, I'll
5 follow your implication that it's not anywhere on that
6 page.

7 Q. There we go.

8 A. Although I didn't, I didn't actually look at all
9 the initials. I mean, I don't see any initials that
10 end in H.

11 Q. Right. So I'm, I tried to enlarge the page so you
12 can look at the initials here.

13 A. Yes, I, not knowing everybody's initials, I would
14 assume that his is not on there.

15 Q. And you agree with Mr. Liebert that Mr. Hollowood
16 was not licensed in Vermont in June of 2013, correct?

17 A. Yeah, I believe my report went into that. He was
18 licensed in September, as I recall.

19 Q. Yes. And do you agree that the design engineer on
20 Attachment 23 had the initials MDF?

21 A. That seems to be what that indicates, yes.

22 Q. Now, if you'll -- I'm going to refer you to Mr.
23 Liebert's rebuttal, and it's the attachment at .pdf
24 Page 43, which, hopefully, I have ready to go here.
25 Should I make that larger?

1 A. Well, it looks like it's just poor quality. I
2 can, I can probably see it okay, but it's rather
3 pixilated. Go ahead.

4 Q. So this is .pdf Page 43 of the CHA document that's
5 attached to Mr. Liebert's testimony. Does it list
6 Michael Flock, F-L-O-C-K, as part of the --

7 A. It does.

8 Q. -- part of the engineering survey and right-of-way
9 team, engineering services and right-of-way team?

10 A. It looks like survey on my screen, but --

11 Q. Whatever it is.

12 A. Yes, I see the name.

13 Q. And --

14 A. I see that. I see the name Michael Flock.

15 Q. Did you read Mr. Liebert's testimony that Mr.
16 Flock is not licensed in Vermont?

17 A. I don't recall that detail, but I did read Mr.
18 Liebert's testimony.

19 Q. Do you know whether Mr. Flock is licensed in
20 Vermont?

21 A. I do not.

22 Q. Would you agree that Mr. Flock is not licensed as
23 an engineer in any state?

24 A. I simply don't know. I also don't know if Michael
25 Flock is MDF. I don't know.

1 Q. If we go back to your Attachment 23, I'll wait
2 until it shows up. MDF was the design engineer, and
3 the design manager was SAB. Do you see that?

4 A. I see, yes.

5 Q. Then go back to Mr. Liebert's exhibit, and you see
6 Sean Barry, PE, is listed as being part of the
7 engineering team?

8 A. I see that, yes.

9 Q. Do you agree with Mr. Liebert that Mr. Barry was
10 not licensed in Vermont?

11 A. I didn't check. I don't know.

12 Q. Do you agree that, in 2014, 2015, and 2016, the
13 ANGP was constructed without Issued for Construction
14 plans that had been signed and sealed by an engineer
15 licensed in Vermont?

16 A. I believe that's what my report says, yes.

17 Q. And do you agree that, in 2014, 2015, and 2016,
18 the ANGP was constructed without Issued for
19 Construction plans that had been signed and sealed by
20 an engineer licensed in any state?

21 A. Well, they weren't signed and sealed prior to
22 construction, so that would be true, yes.

23 Q. Do you agree that modification bulletins were used
24 by Vermont Gas that changed some of the ANGP
25 specifications that you address in your report?

1 A. Well, that was the process they used to, to change
2 the, formally change the specifications was through a
3 modification bulletin, yes.

4 Q. And none of the modification bulletins that you
5 saw were signed and sealed by Mr. Hollowood, correct?

6 A. I can't recall if they were signed and sealed by
7 anybody, so I, I certainly don't recall if it was
8 signed and sealed by Mr. Hollowood.

9 Q. None of the modification bulletins were signed by
10 Mr. Hollowood, were they?

11 A. I just don't recall.

12 Q. Was Mr. Hollowood's name on any of the
13 modification bulletins?

14 A. Again, I don't recall.

15 Q. Was Mr. Flock's name on any of the modification
16 bulletins?

17 A. Don't recall that either.

18 Q. Same question about Mr. Barry. Was Mr. Barry's
19 name on any of the modification bulletins?

20 A. I don't remember seeing any person's name on the
21 modification bulletins. They may have been there under
22 a cover letter or something, but I, I don't recall.

23 Q. I'm going back to your report. I've placed on the
24 screen Page 62 of your report, the bottom paragraph of
25 the page.

1 A. All right.

2 Q. You state in the last paragraph that the
3 construction plans, quote, "had been developed by
4 engineering firms licensed in Vermont". Do you see
5 that?

6 A. Oh, you're starting halfway through the sentence,
7 so, okay, "but the plans had been developed by
8 engineering firms licensed in Vermont". That's what it
9 says.

10 Q. Are you aware that you cannot be a licensed
11 engineering firm in Vermont, only individuals can be
12 licensed?

13 A. That's a detail I'm not aware of.

14 Q. So who told you -- what was the basis of your
15 statement here that the firms had been licensed in
16 Vermont?

17 A. Well, I will admit that may be an incorrect
18 statement, that there are a number of -- most states I
19 deal in, you have the individuals are licensed, and the
20 firm that they work for is licensed, you know? So I'll
21 have, you know, RCP is a licensed engineering firm in
22 the State of Texas. I'm a licensed professional
23 engineer in the State of Texas. And, and I'll admit I
24 didn't check to see if Vermont doesn't license
25 companies. So, if they don't, then I would have to

1 modify that statement, at least the first part of the
2 statement.

3 Q. I put up on the screen Page 16 of your report.
4 The bottom half of the page --

5 A. Right.

6 Q. -- just above the footnote it says, "VGS hired a
7 professional engineering firm, comma, CHA, comma,
8 licensed in Vermont, comma, and various other
9 contractors".

10 So this is the second time where you stated that
11 CHA was licensed in Vermont, correct?

12 A. That's correct, and, likewise, that would, that's
13 based on a false impression on my part, apparently. So
14 it would be more appropriate to say an engineering firm
15 with PEs licensed in Vermont, which I guess would be
16 the precise way to say it.

17 Q. So in Texas can an engineering firm sign and seal
18 Issued for Construction plans without identifying the
19 individual who's responsible?

20 A. I don't believe so. I think they have to be
21 signed and sealed by an individual professional
22 engineer.

23 Q. It's like getting a prescription drug, isn't it?
24 You can't go to the hospital and have the hospital sign
25 a prescription or a medical firm sign a prescription.

1 Somebody whose reputation and license is on the line
2 has to sign the prescription, right?

3 A. I'm not really familiar with how medical licensing
4 works, but that sounds like a decent analogy to me.

5 HEARING OFFICER TOUSLEY: Mr. Dumont, if,
6 you've made the representation that the State of
7 Vermont doesn't license firms in a way that Mr. Byrd is
8 familiar with from his experience in Texas. Is there a
9 reference source for that assertion?

10 ATTORNEY DUMONT: Yes, 26 V.S.A. Section 1161
11 says that only persons can be licensed, and then, when
12 you go to the Secretary of State's website, as I've
13 done, for some professions like accountants, you can
14 choose to search by individual or by firm because
15 accounting firms are licensed, but, when you try and do
16 that for engineers, it won't let you, because it only
17 lets you search for individuals, which is affirmed
18 under the statute.

19 HEARING OFFICER TOUSLEY: Okay, thank you.

20 MR. BYRD: Yeah. So let me just add to that.
21 In my experience in the states where firms are
22 licensed, the PEs are required to work for a licensed
23 firm. So I may have jumped to the conclusion that,
24 since they had PEs licensed in Vermont, that CHA was
25 itself licensed in Vermont, and perhaps in Vermont

1 that's not required.

2 BY ATTORNEY DUMONT:

3 Q. I've put on up on the screen again Page 62 --

4 A. Okay.

5 Q. -- the same sentence we were looking at before,
6 "but the plans had been developed by engineering firms
7 licensed in Vermont and under the supervision of
8 engineers licensed in Vermont". Did I read that
9 correctly?

10 A. That's what it says. Yes, you did.

11 Q. And you, you have no evidence that Mr. Liebert is
12 wrong that neither Mr. Flock nor Mr. Barry are licensed
13 in Vermont; am I correct?

14 A. I haven't checked the veracity of that. I simply
15 don't know.

16 Q. But you stated here in your report that the plans
17 were developed by a firm licensed in Vermont and under
18 the supervision of engineers licensed in Vermont,
19 right?

20 A. I did.

21 Q. Well, if it wasn't Mr. Hollowood, it wasn't Mr.
22 Flock, and it wasn't Mr. Barry, who was it?

23 A. Well, I mean, the Department of Public Service --
24 well, I guess it's the Office of Professional
25 Regulation had looked into that specific issue early in

1 the project, as you have noted, and they determined
2 that there were Vermont licensed PEs who were in
3 responsible charge of the project. So, so that's the
4 basis of my, my statement, not whose initials showed up
5 on the drawings.

6 Q. But, Mr. Byrd, let's be candid. Your reference to
7 the construction plans here is the Issued for
8 Construction plans that we're talking about, correct?

9 A. Well, I think that's what you pulled up, yes.

10 Q. Well, that's what Mr. Liebert's testimony was
11 about, and you're responding to Mr. Liebert's
12 testimony, correct?

13 A. Well, I wasn't responding to his testimony when I
14 wrote that paragraph.

15 Q. Mr. Byrd, the whole point of Mr. Liebert's
16 testimony was that the Issued for Construction plans
17 had not been signed and sealed by a licensed Vermont
18 engineer. You understand that, right?

19 A. And that's exactly what I said.

20 Q. Mr. Byrd, you understand that Mr. Liebert's
21 prefiled testimony and his reports asserted that the
22 Issued for Construction plans had not been signed and
23 sealed by a responsible charge engineer licensed in
24 Vermont, and in your report you're responding to Mr.
25 Liebert's claims about the Issued for Construction

1 Plans, correct?

2 A. I'm not responding to Mr. Liebert in my report.
3 That's not the purpose of my report.

4 Q. So when you --

5 A. I read Mr. --

6 Q. Go ahead, finish.

7 A. Well, as I read Mr. Liebert's report, as, you
8 know, information I would consider, but I, my, the
9 purpose of my report is not to respond to or rebut Mr.
10 Liebert's report. The purpose of my report is to
11 fulfill my contract with the State of Vermont, and it
12 specifically requested that I evaluate whether the,
13 whether the pipeline had been constructed --

14 Q. Are you still there?

15 ATTORNEY McCLAIN: I think I lost sound for a
16 minute.

17 HEARING OFFICER TOUSLEY: Mr. Byrd, we lost
18 about half of what you just now said.

19 MR. BYRD: I'm not hearing anybody right now.

20 HEARING OFFICER TOUSLEY: Okay. How about
21 now?

22 MR. BYRD: Maybe that, maybe that message is
23 for me. Okay, yeah, okay. Do you hear me now okay?

24 HEARING OFFICER TOUSLEY: Yes. Can you hear
25 us?

1 MR. BYRD: Is everybody hearing me now? Yes,
2 I can hear you fine.

3 ATTORNEY McCLAIN: Yeah.

4 MR. BYRD: Okay. So I'll say that again. So
5 the, the purpose of my report wasn't to respond to Mr.
6 Liebert's filings. It was to fulfill my scope of work
7 with the State of Vermont, and that specifically
8 included a question that I should resolve as to whether
9 the plans were signed and sealed by Vermont licensed
10 engineers at the time of construction, and the answer
11 to that question is "no", and that's, that's clearly
12 what my report says. I wasn't trying to respond
13 point-by-point to anything that Mr. Liebert was
14 claiming.

15 BY ATTORNEY DUMONT:

16 Q. Mr. Byrd, let's go through the sentence on the
17 bottom of Page 62: "The construction plans were not
18 stamped by professional engineers in responsible charge
19 of the engineering work at the time of construction,
20 comma".

21 Just looking at the first half of your sentence,
22 that has to be a reference to the Issued for
23 Construction plans, because the Not for Construction
24 plans had been signed, correct?

25 A. I'm not sure that's true either, but, but my, my

1 point is a pretty broad one. You know, the plans that
2 were used for construction of this pipeline had not
3 been stamped and signed by professional engineers in
4 the State of Vermont at the time of construction. So
5 that's, that's a pretty broad statement.

6 Q. You know Mr. Colantonio signed and sealed the
7 plans for two reasons. Number one, they're in your
8 package that we gave you, but, number two, the OPR
9 ruling that you've relied on says that he was, that he
10 signed it and that he was licensed. That wasn't in
11 dispute with reference to the Not for Construction
12 plans, right?

13 A. I'm not referring to Not for Construction plans in
14 this sentence.

15 Q. That's right.

16 A. I'm referring to the construction plans, yes.

17 Q. Yes, you're referring to the Issued for
18 Construction plans, because those were the ones that
19 were not stamped by professional engineers in
20 responsible charge of the work, correct?

21 A. I'm referring to the construction plans. So what
22 version of those, you know, I'm not trying to parse out
23 one Issued for Construction version versus another.
24 You know, the ones that were used for construction were
25 not stamped, and that's the issue I was supposed to

1 resolve for the State of Vermont, and I think I
2 resolved it.

3 Q. And you stated in this sentence that those plans
4 that were not stamped had been developed by engineering
5 firms licensed in Vermont and under the supervision of
6 engineers licensed in Vermont, correct?

7 A. That's correct.

8 Q. And, in fact, that's not true. The engineers who
9 supervised its development were Mr. Flock, Mr. Barry,
10 and neither of them were licensed in Vermont, correct?

11 A. I don't agree with your assertion that they're the
12 only people who were supervising the work. That's not
13 what CHA has said.

14 Q. Mr. Corso wrote a letter that you referred to,
15 correct?

16 A. Well, I don't remember the, you know, the author
17 of the letter. I've just seen documentation from CHA
18 that said these were the licensed engineers that were
19 supervising the work. Now, whether their initials are
20 the ones that show up on the diagrams, I do not know.

21 Q. Well, we just went through that. Mr. Corso said
22 it was Mr. Hollowood, and you've agreed with me that
23 Mr. Hollowood's initials were not on the Issued for
24 Construction plans, correct?

25 A. They don't appear to be.

1 Q. Is it your testimony today that the Issued for
2 Construction plans for the ANGP were developed under
3 the supervision of engineers licensed in Vermont?

4 A. That's my understanding, yes.

5 Q. What do you base it on?

6 A. Well, the, the representations made by CHA as to
7 who was supervising the work.

8 Q. And you know that the person they named, Mr.
9 Hollowood, was not licensed in Vermont at the time,
10 correct?

11 A. Well, at the start of the project, but my report
12 explains that states have -- you know, I forget the
13 phrase they used -- but the, but basically interim
14 licensure for somebody whose license is pending or they
15 can work in that state. It's, it's very common for
16 that to happen, because PEs are licensed
17 state-by-state. So, even though I'm a licensed in PE
18 in four states, I'm not a licensed PE in all the other
19 states.

20 So but, if I'm in a multinational or national firm
21 and doing PE work in a state I'm not licensed in,
22 that's very common, and the state, most states
23 basically have some temporary reciprocity that they
24 allow so that I could be working on a project while my
25 license is pending. I simply don't know if that's the

1 case for Mr. Hollowood, but he was licensed just a few
2 months after the time that you're talking about.

3 Q. Do you remember, Mr. Byrd, I urged you to obtain
4 the billing records from VGS so you could actually find
5 out if Mr. Hollowood had worked on the project before
6 the Issued for Construction plans were issued? Do you
7 remember I asked you to do that?

8 A. I do.

9 Q. And did you refuse?

10 A. I did. You're not my client, Mr. Dumont.

11 Q. It's very clear that you don't view me as your
12 client or my clients as your client.

13 A. And neither is VGS, by the way.

14 Q. So you read Ms. Engvall's testimony, correct?

15 A. I'm sorry. What was the name again?

16 Q. E-N-G-V-A-L-L.

17 A. Ms. Engvall's, yeah.

18 Q. I'm going to put those up on the screen. I put
19 Ms. Engvall's prefiled testimony up on the screen, Page
20 3. She explains that, through discovery, we obtained
21 the documents that we asked you to review before you
22 issued your report. She explains that she's read
23 through all of the invoices and billing records and
24 discovered that Mr. Hollowood had seven hours invoiced
25 to VGS during this time period. However, before June

1 28th of 2013, he had a total of six hours working on
2 this project.

3 For a 41-mile natural gas transmission project, do
4 you think that an engineer can spend 6 hours and be the
5 responsible charge engineer?

6 A. Well, I've made note of the Line 10 on the screen
7 that you're showing, which is the very top line, "I was
8 also instructed not to count hours that were designated
9 as spent on the International Paper or lateral
10 project", and I saw that as a huge exception that made
11 it impossible for me to make sense of the rest of the
12 report. Because now, as a consulting engineer,
13 professional engineer, and as a consultant, I
14 frequently have, you know, for me, billable time. For
15 the client sometimes it's, I want you to bill it on
16 this job or that particular job number or this site
17 number or what have you, and, you know, I'm agnostic on
18 that issue. That's an issue for the client.

19 So, so I don't know how much time he spent on the
20 ANGP project as a whole. All I know is the time that
21 he spent, you know, per, per this representation, at
22 least, on things that weren't listed as something else.
23 So, you know, the question that popped in my mind
24 immediately is, Well, does he have thousands of hours
25 on International Paper or lateral? And it's, the

1 report simply ignores all that. So, to put it in
2 context, and I just don't know how many hours he spent
3 on the total project.

4 Q. You understand that Vermont Gas is a regulated
5 utility in Vermont, right?

6 A. Yes.

7 Q. And you understand that the international project,
8 International Paper project was never constructed,
9 right?

10 A. I don't know anything about that.

11 Q. You don't? Do you know that under Vermont law --

12 A. And I --

13 Q. Do you recognize that, under Vermont law, if a
14 utility were to put into its rate base of a project
15 that it constructed expenses that it incurred
16 developing a project that it did not construct, that
17 would be a very serious problem; do you understand
18 that?

19 ATTORNEY McCLAIN: Excuse me. Excuse me, Mr.
20 Tousley.

21 HEARING OFFICER TOUSLEY: Yes?

22 ATTORNEY McCLAIN: I would have objection to
23 continued characterization or mischaracterization of
24 Vermont law and asking this witness in particular to
25 speculate about the meaning of Vermont law or, or other

1 related legal questions that aren't pipeline-related,
2 anyhow. I don't believe the Witness is competent to
3 start weighing in on those kinds of questions.

4 HEARING OFFICER TOUSLEY: I'm not sure that
5 that was the nature of the question. Mr. Dumont, as I
6 remember it, you were asking him what, whether he
7 thought it was a big problem if, in a rate case, the
8 ratepayers were billed for work that was not done, that
9 was not completed and for a project that the ratepayers
10 could take advantage of; is that correct?

11 ATTORNEY McCLAIN: That's not how I heard the
12 question. I heard it as, Are you aware that, under
13 Vermont law, that would be a real problem, which is a
14 characterization of Vermont law.

15 HEARING OFFICER TOUSLEY: Okay. I don't
16 remember it that way. Mr. Dumont, I'm going to ask you
17 to remember that, you know, Mr. Byrd is not a lawyer,
18 he's a, he's an engineer, and to frame your questions
19 appropriately.

20 BY ATTORNEY DUMONT:

21 Q. Thank you. Mr. Byrd, let's just assume for
22 purposes of this discussion that neither CHA nor
23 Vermont Gas would have billed engineering work
24 inaccurately. I'm going to ask you to assume that the
25 billing records are accurate. Can you do that?

1 A. Well, I think we're probably going to disagree on
2 the meaning of the word "accurate", but go ahead.

3 Q. Well, I'm going to ask you to assume that accurate
4 has the plain, the meaning we generally attribute to it
5 in modern English usage. Assume that the billing
6 records are accurate. If the billing records are
7 accurate and Mr. Hollowood spent six hours on the ANGP
8 before the Issued for Construction plans were issued,
9 could he have been the responsible charge engineer?

10 A. Well, I'll just go back to my, my personal
11 experience as a, as a consultant. Frequently, I'm
12 supervising the work of other people, and, and that
13 work may span several different project billing
14 numbers. So I don't subdivide my time into five
15 different project billing numbers. I'll usually say,
16 well, it's mainly this project, so I bill my time to
17 that one, and, you know, so my records are accurate.
18 I'm not billing for time I didn't spend, but, but I
19 don't necessarily parse out every hour or subhour that
20 I spent that could proportionately have been allocated
21 to Job Number 1 versus Number 2 versus Number 3, and
22 sometimes it's impossible to know that.

23 So, while granting that I don't believe that their
24 records are accurate, I'm also skeptical of any
25 analysis that, you know, as a blanket approach, says,

1 well, I didn't consider anything that was charged to
2 this job or that job, because I simply don't know how
3 much information I'm missing. So, so six hours
4 certainly doesn't sound like enough time, in and of
5 itself, for a project of this size. I would agree with
6 that. But I don't believe that this document proves
7 that.

8 Q. I've put up on the screen your report again, Page
9 63, okay?

10 A. I see it.

11 Q. You state, "I disagree with Mr. Liebert's opinion
12 that the cathodic protection and AC mitigation system
13 designs were required to have a PE stamp, period. The
14 Vermont Office of Professional Regulation licenses
15 engineers by discipline, parens, chemical, comma,
16 structural, comma, et cetera), end parens. The
17 practice of corrosion engineering has been recognized
18 at least since 1943 when the National Association of
19 Corrosion Engineers, parens, (NACE), end parens, was
20 established, comma, but Vermont has no classification
21 for professional corrosion engineers and does not
22 license them". Did I read that correctly?

23 A. Yes, you did.

24 Q. Mr. Liebert didn't state or assert that a
25 corrosion engineer should have signed the AC mitigation

1 and cathodic protection plans, did he?

2 A. He did not.

3 Q. And you agree with Mr. Liebert, don't you, that,
4 typically, AC mitigation plans are signed and sealed by
5 electrical engineers?

6 A. I do not agree with that assertion.

7 Q. Okay. Who typically signs AC mitigation plans in
8 a state that requires utility projects to be designed
9 by licensed engineers?

10 A. Well, the, the PHMSA regulations are fairly,
11 worded fairly broadly when it comes to corrosion
12 control programs, saying that they need to be under
13 the, you know, guidance and supervision of a person who
14 is competent, and competence, if you're looking for a
15 license, doesn't come from most professional
16 engineering regulations, because they simply don't have
17 it, but the National Association of Corrosion
18 Engineers, NACE, does have certifications that they
19 issue, and the person who signed off on the AC
20 mitigation program has high levels of certification
21 through NACE.

22 So that's the appropriate organization if you are
23 looking for a license, not from PE. You know, I would
24 dare say 99 percent of licensed electrical engineers
25 have absolutely no idea how to design an AC mitigation

1 system for a buried steel pipeline, and with good
2 reason. They never do it. That's not their job.
3 So I don't care. As far as I'm concerned, you can say,
4 you know, they weren't licensed in cosmetology. It's
5 like these are totally irrelevant licenses. So, you
6 know, to say that the AC mitigation program wasn't done
7 correctly because a person wasn't a licensed engineer,
8 to me, just is a nonsense statement.

9 ATTORNEY DUMONT: I hate to do this, Ms.
10 Donath, but could you read back the question? Because
11 I'd like the Witness to listen to the question and
12 answer the question.

13 (Question read by the reporter:

14 "Q. Okay. Who typically signs AC mitigation
15 plans in a state that requires utility projects to
16 be designed by licensed engineers?")

17 MR. BYRD: Do you want me to respond to that?

18 BY ATTORNEY DUMONT:

19 Q. Yes.

20 A. Okay. So I guess the, the short and simple answer
21 is that nobody, unless the state has an engineering
22 license for corrosion engineers. So that simply
23 doesn't exist in the State of Vermont. So, so I would
24 say there would be no expectation that an engineer
25 would sign those plans.

1 Q. So you disagree with Mr. Liebert when he says
2 that, typically, AC mitigation plans are sealed and
3 signed by electrical engineers?

4 A. I do.

5 Q. And you disagree with his statement that,
6 typically, cathodic protection plans are sealed and
7 signed by mechanical, chemical, or metallurgical
8 engineers?

9 A. Cathodic protection plans?

10 Q. Yes.

11 A. Yes, I disagree with that statement.

12 Q. Who typically signs cathodic protection plans in
13 those jurisdictions in which utilities are not exempt
14 from engineering licensure requirements?

15 A. Again, it's normally not considered the practice
16 of engineering to do cathodic protection. That's, it's
17 under a totally separate organization, the National
18 Association of Corrosion Engineers, and, you know, so,
19 you know, the only time you would see engineering
20 stamps on those kinds of documents are, you know, if
21 it, you know, if there were power supply systems or
22 something that might be signed by an electrical
23 engineer because there is a power supply system, you
24 know, but the actual cathodic protection system, you
25 know, usually, those are produced, and, if they're

1 signed, they're signed by people that have NACE
2 certifications, not state PE certifications. So that's
3 just the practice within the industry, and I've had
4 plenty of people who work for me that do that.

5 Q. So you said a few minutes ago that the person who
6 signed the AC mitigation and cathodic protection plan
7 in this case was, I think you said, a highly qualified
8 individual or words to that effect?

9 A. Well, the, the person who runs ARK Engineering,
10 you know, has -- I forget what level cathodic or what
11 level NACE certifications he has, but it was, they
12 were, they were high professional levels, yes.

13 Q. But the person whose name is on the documents is
14 James Smith, correct?

15 A. I don't recall who ultimately signed them.

16 Q. Well, were they signed at all?

17 A. Again, I don't recall.

18 Q. Okay. So why don't we get your, the ARK
19 Engineering report? And that is 29 and 30. We'll get
20 Exhibit 29 up here, put on the screen, and it will show
21 up shortly. There it is.

22 A. Right.

23 Q. There's the cathodic protection system designed by
24 ARK, May 20, 2016, correct?

25 A. Well, you -- yes, I see that.

1 Q. And the name on the front page is Mr. James Smith?

2 HEARING OFFICER TOUSLEY: Let me just
3 interject for the record that what you're looking at is
4 Attachment 29 to Mr. Byrd's report.

5 ATTORNEY DUMONT: Yes, thank you.

6 MR. BYRD: Yeah. So this, this page shows it
7 was prepared by ARK and, for further information,
8 contact James Smith. So it doesn't say it's issued by
9 James Smith. It says it's prepared by ARK, the firm.

10 BY ATTORNEY DUMONT:

11 Q. Right. But you said it was signed. It wasn't
12 signed, was it?

13 A. I think I said I don't recall if it's signed.

14 Q. Was it signed?

15 A. Like I said, I don't recall.

16 Q. Well, if you could look at exhibit, your
17 Attachment 29.

18 A. Yeah. It says, "For information, please contact
19 Mr. James Smith". That's not a signature. That's a
20 point of reference.

21 Q. Right. And then right below that it says "Report
22 Number R-12145-CP" and then in large letters "Issued
23 for Construction", correct?

24 A. That's correct.

25 Q. And, if a licensed engineer were to sign and seal

1 a report such as this, this is where you would expect
2 to see the signature and the seal, correct?

3 A. I, typically, they're on the cover page. So I
4 wouldn't disagree with that.

5 Q. I'll now put Byrd Report Attachment 30 on the
6 screen.

7 A. Yeah, I see it.

8 Q. It says, "For information contact Mr. James Smith,
9 Report Number R-12144-AC", and then in large letters
10 underneath that or in capital letters underneath that,
11 "Issued for Construction", correct?

12 A. That's correct.

13 Q. No signature or sealing anywhere on this document,
14 correct?

15 A. I can't see the whole page, but, but that's my
16 recollection, yes.

17 Q. So any reference you might have made earlier today
18 to it being signed, we can ignore that. Your point is
19 the person who runs this firm is very professional,
20 right?

21 A. They, yeah, they have, you know, a high level of
22 certifications through NACE, yes. And, you know, my,
23 my firm has done AC mitigation programs for other
24 companies. I'm not an expert in AC mitigation, but
25 we've had employees who were, and, you know, this is,

1 this a very detailed and comprehensive. Both of these
2 reports, I thought, were highly professional. So I
3 would have been proud to issue them out of RCP if that
4 had been the situation.

5 Q. If we could turn to your Page 64, I've got it up
6 on the screen. Do you have it in front of you?

7 A. I do, yes. Page 64?

8 Q. Yeah. Mr. Byrd, let's be frank. Isn't the answer
9 you just gave us the polar opposite of what you put in
10 your report on Page 64? Let me read it to you:

11 "I have not seen or heard of any specific reason
12 that the relevant plans were not stamped by a Vermont
13 PE prior to construction, period. The Vermont PE
14 regulations allow for electronic stamps and signatures,
15 parens, (not just physical stamps and signatures), end
16 of parens, comma, so there may have simply been a
17 misunderstanding about work products having been
18 officially stamped or not, period". Did I read that
19 correctly?

20 A. Yes, you did.

21 Q. So, when you wrote your report, you knew of no
22 reason why ARK Engineering didn't sign and seal the
23 relevant plans, correct?

24 A. I think we've been through this plenty of times,
25 Mr. Dumont. The work that ARK Engineering did should

1 not be signed by a PE, because Vermont doesn't license
2 PEs in those specialties. So I stand beside my report,
3 and we can go around this tree all day long, but, you
4 know, I don't see the point.

5 Q. Well, I think it's an important tree, so I'm not
6 going to leave it yet. The second sentence in that
7 paragraph says, "The Vermont PE regulations allow for
8 electronic stamps and signatures, (not just physical
9 stamps and signatures), so there may have simply been a
10 misunderstanding about work products having been
11 officially stamped or not".

12 That's very different from saying people who
13 design AC mitigation and cathodic protection don't
14 generally put their signature and their seal on their
15 work product, isn't that? Isn't it very different from
16 what you've just said today?

17 A. Somehow --

18 (Internet connection cuts out briefly.)

19 MR. BYRD: All right. So, if we could scroll
20 down to the part of the report --

21 BY ATTORNEY DUMONT:

22 Q. This is the paragraph that we've been talking
23 about. It should be right in front of you.

24 A. Okay, yes. So where you say, "I have not seen or
25 heard of any specific reason that the relevant plans

1 were not stamped by a Vermont PE prior to
2 construction".

3 So the point of my original answer, I could have
4 made it simpler and shorter by saying the key word in
5 that sentence is "relevant". So I don't know why the
6 relevant plans weren't stamped, and the relevant plans
7 are the ones from CHA. I explained earlier in my
8 report that the ARK plans simply weren't relevant from
9 a PE certification standpoint. So I wasn't talking
10 about ARK Engineering when I wrote that sentence or
11 that paragraph.

12 Q. Go to the prior page I've now got on the screen
13 here, Page 63. I disagree -- I'll wait until it shows
14 up on your screen, sir. You got it there?

15 A. I see it, yes.

16 Q. So, "I disagree with Mr. Liebert's opinion",
17 that's about cathodic protection and AC mitigation,
18 correct?

19 A. That's correct, yes.

20 Q. And then the next paragraph is your quotation of
21 the federal regulations and your argument that the
22 federal government doesn't require sign-off by a state
23 licensed engineer, correct?

24 A. That's correct.

25 Q. And then you say, "Lastly, Mr. Liebert's point

1 about corrosion protection is of little relevance
2 because they're installed afterwards. In fact, the
3 federal regulations allow it", and it runs over onto
4 the next page.

5 So what you're saying is -- and the, as it runs
6 over onto the next page, is it showing up? No, it
7 hasn't shown up. There it is. Sorry.

8 Referring to the sentence before it refers to the
9 cathodic protection, and you're saying, "I haven't seen
10 or heard of any specific reason why the relevant plans
11 were not stamped". So what you're explaining now is
12 you intended that to apply to only the plans that did
13 not have to do with the AC mitigation and cathodic
14 protection?

15 A. That's correct. I see now the confusion, and I
16 apologize if there was any. That, you know, that the
17 paragraph that starts, "I have not seen or heard", you
18 know, assumes that -- and we've already discounted the
19 fact or already clarified the fact that you have to,
20 you know, the AC mitigation plans and CP plans did not
21 require it.

22 So I'm just continuing the entire subject here,
23 not continuing the discussion specific to ARK, when I
24 say I don't know why the relevant plans were not
25 stamped, though maybe I should have put summary or

1 something in front of that paragraph to avoid that
2 implication, but I wasn't trying to imply that that
3 paragraph was discussing the two paragraphs right above
4 it, because it wasn't.

5 Q. Okay. And tell me why the ARK plans were not
6 relevant.

7 A. Well, relevant from a PE stamp standpoint. Had a
8 whole section that talked about PE stamping, as I
9 recall. You know, so I addressed Mr. Liebert and the
10 Intervenors, in their filings, have made several
11 assertions that, you know, Vermont Gas was noncompliant
12 because the cathodic protection and the AC mitigation
13 plans weren't stamped by a professional engineer, and,
14 and the, you know, rather dismissive analogy I used
15 was, You might as well argue that they weren't
16 certified in cosmetology, because they're both equally
17 irrelevant.

18 You know, AC mitigation and cathodic protection
19 system design is not typically considered the practice
20 of professional engineering, and it's certainly not
21 considered that in Vermont. You couldn't get a license
22 in that if you wanted to. So, so it's simply not
23 relevant. So, when I say the relevant plans, it's the
24 things you do license people for. So, if you don't
25 even license somebody for it, how can you argue that

1 they're noncompliant by not having a license to do it?
2 You know, it seems to me a circular argument that's
3 nonsensical.

4 Q. Mr. Byrd, have you read the statute in Vermont
5 that defines professional engineering?

6 A. I have, yes.

7 Q. And you interpret the statute as not applying to
8 AC mitigation and cathodic protection plans for a
9 natural gas transmission line; that's what you're
10 telling us?

11 A. That is what I'm telling you, yes.

12 Q. When did you read that section?

13 A. And Vermont is not unique in that regard, by the
14 way. I mean, I'm not aware of any state that, where
15 those plans are required to be certified by a PE. I
16 read those --

17 Q. What states have you worked in where licensure for
18 the responsible charge engineer is required for utility
19 work?

20 A. For utility work? I can't give you a list. I
21 don't know.

22 Q. Can you think of a single state in which you've
23 worked where the licensure requirement applies as it
24 does in Vermont?

25 A. I'm not sure I understand the question.

1 Q. Well, we know that 31 states do not apply the
2 engineering licensure requirement to utility projects,
3 correct?

4 A. Okay. So now you're speaking specifically on, on
5 construction of the utility itself, yes. I mean,
6 that's probably in the NTSB report, but --

7 Q. I'm asking, In what states have you worked, like
8 Vermont, where utility projects are not exempt?

9 A. I, I can't tell you that. I mean, we've, we've
10 worked in pretty much all 50 states, and I've worked in
11 a whole bunch myself. Personally, I'm not prepared to
12 answer that question. I just don't know.

13 Q. So the fact that you haven't had a licensed
14 mechanical engineer or a licensed electrical engineer
15 sign AC mitigation or cathodic protection plans may
16 just be because engineers don't need to sign off in
17 those states anyway, right?

18 A. I think that's highly unlikely, because --

19 Q. You can't think of a single state where the
20 licensure requirement applies in which you've worked,
21 can you?

22 ATTORNEY McCLAIN: I think that Mr. Dumont
23 should let the Witness answer the question instead of
24 cutting him off in the middle of it.

25 MR. BYRD: Yeah. You're asking me to list

1 specific examples of states, and in the NTSB report,
2 you know, their count, anyway, is it's about 50/50.
3 About half of the states require it. About half of the
4 states don't. My answer is, I don't remember which
5 specific states I've worked in that did or did not
6 require that, but I've done work in almost all the
7 states.

8 So, so I think it's pretty obvious by inspection
9 that, yeah, we've done work in states that don't exempt
10 utilities. I just can't name any off the top of my
11 head. So it's not just the fact that I've worked in
12 one or two states that didn't require it that's behind
13 my opinion. I'm pretty confident.

14 BY ATTORNEY DUMONT:

15 Q. So you're testifying that you can recall instances
16 in which you did work in a state that did not exempt
17 utility projects, and that work included design of AC
18 mitigation and cathodic protection; that's what your
19 testimony is?

20 A. Well, not me, personally, but our firm has, yes,
21 and those plans were not signed or stamped or sealed by
22 a professional engineer. I, I don't have a list in
23 front of me, but I had a high-level professional for a
24 few years who specialized specifically in AC mitigation
25 design, and his work was never stamped in any state.

1 Q. And you're saying you're sure it must have been in
2 a state that had licensure, but you can't recall which
3 ones?

4 A. I, I don't recall what states he worked in. He,
5 he traveled the country doing this. So I, I mean, I, I
6 simply don't know, you know, exactly what states he was
7 going to and if their state regulations exempted or did
8 not exempt a utility work, but I do know that we never
9 stamped those plans, and we never had a question about
10 it.

11 Q. Do you agree that the cathodic protection plan is
12 within the competence of a mechanical, chemical, or
13 metallurgical engineer?

14 A. I, the closest one would probably be a
15 metallurgical engineer, but even then it's a, it's not
16 necessarily within their competence.

17 Q. Isn't it a fundamental aspect of metallurgical
18 engineering that metals placed in the ground corrode?

19 A. Well, it sounds reasonable to say that. I, I
20 mean, I don't think that the document that says that
21 verbatim, but I would say that most metallurgical
22 engineers that would agree that metals corrode. That's
23 what most metals do, whether they're in the ground or
24 not.

25 Q. And isn't it a fundamental aspect of metallurgical

1 engineering that you have to understand corrosion of
2 metals in the ground?

3 HEARING OFFICER TOUSLEY: Mr. Dumont, I'm
4 going to cut of you off, because I think he's asked and
5 answered your question. Please move on.

6 BY ATTORNEY DUMONT:

7 Q. Okay, all right. I have here the OPR report,
8 which I believe is our Exhibit Number 13.

9 A. I see it.

10 Q. You relied on this report in your own report,
11 correct?

12 A. I did.

13 Q. Do you agree that this OPR report addressed the
14 progress drawings filed by Mr. Colantonio for the
15 Section 248 application?

16 A. Well, I think that's a fair way to characterize
17 it. I think the answer to the question is "yes".

18 Q. Do you agree that the OPR ruling did not address
19 the Issued for Construction plans?

20 A. Yeah, I believe he pointed out the timing was
21 inconsistent with that because this report was issued
22 before the Issued for Construction plans.

23 Q. Well, actually, it was issued in January of 2014,
24 and the Issued for Construction plans were issued in
25 June of 2013, right?

1 A. Okay. Well, I, I was wrong about the timeframe
2 then. Sorry.

3 Q. But construction had not started in January of
4 2014, correct?

5 A. That's, that's what I was remembering, that the
6 construction started sometime mid-2014.

7 Q. And the first issue in the OPR case was a claim
8 that some of the engineers who worked on the project
9 under Mr. Colantonio's supervision were not licensed in
10 Vermont, correct?

11 A. You'll have to scroll down to that part, because
12 I'm going off memory here.

13 Q. Let's see here. There you go. I'm on .pdf Page
14 2.

15 A. Right. So I see, "The team assessed, one, whether
16 the licensed respondent engaged in unprofessional
17 conduct, and, two, whether the unlicensed out-of-state
18 professionals practiced without lawful authority. The
19 team answered these questions in the negative".

20 So what point would you like to make on that?

21 Q. So one of the claims was that it was wrong to have
22 the unlicensed out-of-state professionals work under
23 the supervision of a Vermont licensed professional, and
24 the Commission, the Board rejected that argument,
25 right?

1 A. That's correct.

2 Q. And what does that have to do with Mr. Liebert's
3 report?

4 A. I'm not sure I follow the -- you know, I'm not
5 sure how you're trying to make the connection.

6 Q. Well, you did in your report. That's why I'm
7 asking you.

8 A. You'll have to refresh my memory in the report how
9 I connected this particular thing to Liebert's
10 assertion.

11 Q. Right now, can you think of any connection?

12 A. Would you go to the report?

13 Q. I'm just asking you, as a long-time engineer,
14 right now, can you think of any connection between this
15 OPR ruling and Mr. Liebert's report?

16 A. It sounds like a hypothetical question. I'm --
17 yeah.

18 Q. I'll put the report up if I can.

19 A. If you want to question me about something I put
20 in my report, I'd like to see --

21 HEARING OFFICER TOUSLEY: I'm going to cut in
22 here a second and ask Mr. Byrd a couple questions. Mr.
23 Byrd, from the way I read the OPR report, it indicates
24 that there's no requirement for a licensed engineer to
25 sign and seal those documents that are used for the CPG

1 application; is that correct? Is that your read?

2 MR. BYRD: I would have to refresh my memory
3 on that. I don't recall their report talking about the
4 PE certification not being required at all. I don't
5 recall it going into that topic. Perhaps it did. I'm,
6 I'm just not remembering everything the document said.
7 The way I remember it -- and the section, if you would
8 stop scrolling for a second, the investigation
9 confirmed that the Vermont license respondent served as
10 principal in charge of the Vermont project remained
11 meaningfully in charge of those activities undertaken
12 by other design team members.

13 Both unlicensed respondents under the Vermont
14 licensee's supervision are highly qualified by training
15 experience and education, and each had attained
16 licensure in a foreign jurisdiction, meaning not the
17 State of Vermont. The Vermont licensee was actively
18 engaged in the project and verified the support of this
19 work. He did not act as a rubber stamp. The Vermont
20 licensee directly supervised the preparation of design
21 progress drawings and application to materials.

22 So, when I read that, I think the OPR is saying,
23 well, PE stamp, you know, to the extent it was
24 required, was properly done. Well, at least it was
25 properly supervised by a PE. I don't recall anything

1 that said they didn't think it was required.

2 HEARING OFFICER TOUSLEY: Okay. So there's
3 no statement in the OPR report that, that applying for
4 a CPG with the Public Utility Commission does or does
5 not require PE stamps on the application materials?
6 There's nothing about that?

7 MR. BYRD: Yeah. I don't think they rendered
8 any opinion about that.

9 HEARING OFFICER TOUSLEY: All they did was
10 they said that, that the guy who was in charge, Mr.
11 Colantonio, didn't violate his professional ethics by
12 working with unlicensed people in this circumstance?

13 MR. BYRD: Yeah. So the, the allegation, as
14 I recall it, is, is it could be phrased simply as these
15 people are doing professional engineering in the State
16 of Vermont without being properly licensed, and, and so
17 that's the heart of the allegation, that they're doing
18 work that should require a license, and they're not
19 licensed. And the response was, well, as long as the
20 responsible people who are actually just licensed in
21 other states than Vermont are working under the direct
22 charge and supervision of an engineer who is licensed
23 in the State of Vermont, then that's okay. So there's
24 no -- they weren't --

25 HEARING OFFICER TOUSLEY: Okay. So this had

1 nothing to do with the requirement for a PE signature
2 on those documents?

3 MR. BYRD: Right. They didn't opine whether
4 it was engineering to begin with.

5 HEARING OFFICER TOUSLEY: Right, okay.

6 MR. BYRD: They kind of presumed that that
7 was actually the practice of engineering and was
8 required.

9 HEARING OFFICER TOUSLEY: Okay. So, so the
10 OPR report deals with the circumstance of the CPG
11 application, which is when this work was occurring, as
12 we've discussed already today. Not, this, this does --
13 there's nothing in here also about whether a PE
14 signature would have been required on the
15 as-constructed documents. Those words as, or
16 to-be-constructed or designs does not arise in this
17 report? Is that --

18 MR. BYRD: I don't think it did.

19 HEARING OFFICER TOUSLEY: Okay.

20 MR. BYRD: I don't recall them dealing with
21 that.

22 HEARING OFFICER TOUSLEY: Okay. So, if Mr.
23 Liebert was talking wholly about the as-constructed
24 phase of design documentation, this report would be
25 irrelevant to that assertion?

1 MR. BYRD: I, this report does not deal with
2 whether certain things were stamped or not stamped
3 prior to construction. They didn't look into that.
4 They were just looking at the unlicensed practice of
5 engineering, you know, as alleged.

6 HEARING OFFICER TOUSLEY: Okay, okay. Thank
7 you. I'm sorry, Mr. Dumont. You may ask the next
8 question.

9 BY ATTORNEY DUMONT:

10 Q. Yes. Mr. Byrd had asked me whether he could look
11 at his report to see where it discussed the OPR ruling,
12 and I was going to give him that opportunity.

13 A. Well, if you were going to ask me a question about
14 linkages between my report and this and what Liebert
15 alleged, I'd like to see what part of my report you're
16 referring to, because I guess there are lots of ways to
17 link, and I'm not sure I'm following the way you're
18 trying to link them.

19 Q. Okay. I put on the screen Page 63 of your report.

20 A. Right, okay. Right, okay. So I see it.

21 Q. Having seen what you wrote in your report, is
22 there anything you want to add to your answers to my
23 questions or the hearing officer's questions?

24 A. Well, and I, I agree with the, the principle of
25 what Mr. Liebert was saying, that, if the engineering

1 plans are not done adequately or the specifications
2 aren't developed adequately, well, if you're following
3 inadequate plans and specifications, it can put the
4 public at risk. I certainly agree with that assertion.

5 But Mr. Liebert makes, in my opinion, a huge leap
6 between saying, well, it didn't have a stamp on it;
7 therefore, it was inadequate, and the public's at risk,
8 and I disagree with that. And that's where the OPR
9 investigation, even though it wasn't specific to every
10 situation that we're, that we're concerned about here,
11 you know, they went in and said, no, this, this process
12 that CHA is using and that Mr. Colantonio is using as
13 the responsible charge engineer is a valid process, and
14 he was, quote, "not a rubber stamp", unquote. So he
15 wasn't just affixing a signature and a stamp to
16 drawings that he had no connection with or had
17 knowledge of, which is a serious violation in every
18 state that I'm aware of.

19 So they, they specifically looked at that and
20 said, no, he's actually paying attention. He actually
21 knows what's going on with these things. He knows what
22 his subordinates are doing, that his subordinates are
23 highly qualified, and I'm quoting from their letter.
24 So, so, when you look at their investigation, at least
25 at that point in time, there was no indication that

1 there was inadequate engineering going on. Quite the
2 contrary, they seemed to show that they had very
3 adequate engineering, and they closed it with no
4 action.

5 So, so, yes, there was a problem with them
6 stamping the final work products before they were used
7 for construction, and I agree they should have, but I
8 don't see that that put the public at risk, because, at
9 the end of the day, the fact is that things were
10 adequately engineered sufficient for, you know,
11 ensuring public safety.

12 Q. Mr. Byrd, I think you said you're not sure if you
13 recall seeing the plans that Mr. Colantonio signed and
14 sealed. Do you recall seeing them?

15 A. I have looked at many different versions of plans.
16 I'm sure I have seen those, but I don't recall them
17 with any specificity.

18 Q. They were labeled, quote, "Not for Construction",
19 unquote. Do you remember that?

20 A. Well, yes, I remember seeing Not for Construction
21 plans.

22 Q. Do you want to look at the documents we've been
23 talking about? I can put them on the screen if you'd
24 like?

25 A. Well, I, I don't know what question you're going

1 to ask me, so I don't know if I need the plans on the
2 screen or not.

3 Q. Just the question you've already answered, whether
4 they stated they were, quote, "Not for Construction".

5 A. I will agree with that, yes.

6 Q. The signed and sealed plans we've been talking
7 about that were signed and sealed by Mr. Colantonio
8 stated "Not for Construction"; you agree with that?

9 A. That's the best of my recollection, yes.

10 Q. Okay. Well, then we don't need to pull them up.
11 Turn to Page 21 of your report. Bottom paragraph on
12 Page 21, you state that the NTSB report was not issued
13 until after the ANGP had been completed, and you state,
14 at that time, 31 states exempted gas utility work. Do
15 you see that?

16 A. Yes, yes.

17 Q. Is your point that Vermont Gas did not have to
18 comply with the Vermont statute because the NTSB had
19 not yet ruled that Massachusetts's failure to adopt a
20 similar statute caused the explosion?

21 A. Well, I disagree with your conclusion about what
22 the NTSB was saying, but that, I wasn't trying to point
23 that Vermont Gas didn't --

24 (Internet connection briefly cuts out.)

25 Okay. Is everybody else hearing me okay?

1 Q. You're breaking up.

2 A. So yeah. So, without agreeing to the way Mr.
3 Dumont was characterizing the NTSB report, I will just
4 note that I, I wasn't trying to imply in this paragraph
5 that Vermont Gas wasn't required to have PE-stamped
6 plans in the State of Vermont. I was just putting the
7 NTSB report into context, because the Intervenors had
8 raised NTSB's report, you know, in some of their
9 filings, and I wanted to, to bring it up here.

10 Q. You've lost me, Mr. Byrd, because the NTSB report
11 itself states that 31 states exempted utility work from
12 licensure. So it's right in the NTSB report. What
13 were you adding by making that statement in your own
14 report?

15 A. Well, I was just mentioning that from the NTSB.
16 You know, I didn't say the State of Vermont did or
17 didn't. It's just 31 states, at the time of the
18 report, which is after construction of the ANGP, had
19 blanket exemptions for PE stamps on gas utility work,
20 and that was relevant to the NTSB's recommendation,
21 which the Intervenors have pointed to saying that you
22 should require PE stamps. So, so one reason the NTSB
23 made that recommendation is that, at the time of the
24 report, 31 states did not require it.

25 Q. I've put on the screen, and it will show up

1 shortly, the NTSB report. This is our Exhibit 5. For
2 the record, I'm moving admission of Exhibit 5.

3 MR. BYRD: Mr. Tousley, you're muted if
4 you're trying to respond to him moving Exhibit 5, the
5 admission.

6 HEARING OFFICER TOUSLEY: I'm sorry. Is
7 there any objection?

8 ATTORNEY McCLAIN: No objection.

9 ATTORNEY GUZMAN: No objection.

10 HEARING OFFICER TOUSLEY: Mr. McClain?

11 ATTORNEY McCLAIN: No, no objection.

12 HEARING OFFICER TOUSLEY: Very well. What's
13 been marked as Intervenors Cross Exhibit 5 is admitted
14 into evidence.

15 (Exhibit marked Intervenors Cross 5 was admitted
16 into the record.)

17

18 <https://epsb.vermont.gov/?q=downloadfile/426710/111907>

19

20 HEARING OFFICER TOUSLEY: You may proceed.

21 BY ATTORNEY DUMONT:

22 Q. I'm sorry. Thank you. Your report states, "The
23 NTSB report was made in late 2018, dash, after the ANGP
24 had been designed, comma, built and put into service".

25 I'm struggling to find the relevance in that. Why

1 did you think that was important?

2 A. Well, I thought it was important because the
3 Intervenors had raised the NTSB report, you know, in
4 their filings, and it's important to know some of the
5 circumstances, you know, surrounding that report. So
6 that's why I thought it was relevant.

7 Q. Are you suggesting that a utility that sells and
8 transports natural gas should be excused from knowing
9 what a state statute that explicitly imposes a safety
10 duty on utilities says because in other states the
11 legislature has exempted them?

12 A. No, I'm not trying to suggest that.

13 Q. In fact, as a matter of common sense and based
14 your experience, isn't the opposite inference more
15 logical, that Vermont chose not to follow the example
16 of 31 other states?

17 A. Well, I'm, I may be lost in a double negative, so
18 I'm not sure exactly how to respond to that, but, but,
19 I agree with your assertion that Vermont Gas should be
20 aware of the requirements in the State of Vermont for
21 building utility systems.

22 Q. I'm going to go back to your report to Page 81,
23 the paragraph that begins, "NTSB states", and so on.
24 Why don't you read that over?

25 A. The last paragraph there?

1 Q. Yes. It begins with the word "NTSB".

2 A. Yeah, right. "NTSB states that, quote, 'weak
3 engineering management', quote, unquote, was the
4 probable cause of the incident and notes that having a
5 PE officially stamp engineering design documents
6 provides, quote 'greater', unquote, safety assurance,
7 comma, and, quote, 'illustrates', unquote, that the
8 plans have been approved by a qualified individual,
9 period. NTSB notes that two licensed PEs were in the
10 management chain above the engineering intern who
11 prepared the plans, ellipsis, but they didn't exercise
12 appropriate oversight, period."

13 "The implication", and this is me speaking, "The
14 implication is that, if these PEs had been required to
15 officially stamp the plans, they would have done a more
16 thorough job of reviewing them, dash, hopefully
17 noticing and correcting the design oversight that led
18 directly to the incident, period."

19 Q. Thank you. So your view is that the NTSB just
20 implied that signing by a responsible charge engineer
21 could have avoided the accident?

22 A. Well, I mean, they said you should require it. So
23 the implication is, Why did they say that? And the
24 implication for why they said it -- I'm not saying they
25 didn't say it. They did say it, but why did they say

1 it? Well, because, if they had been required to
2 officially stamp it, maybe they would have actually
3 read it. Because there's other testimony in that
4 particular case that they, that they didn't even look
5 at the plans before they signed off on them.

6 ATTORNEY DUMONT: Mr. Hearing Officer, if I
7 could take a short break and organize my notes and
8 exhibits as I move to another subject?

9 MR. BYRD: Not hearing you, Mr. Tousley.
10 You're muted.

11 HEARING OFFICER TOUSLEY: How much time do
12 you need?

13 ATTORNEY DUMONT: Just five minutes or ten,
14 whatever works for everybody.

15 HEARING OFFICER TOUSLEY: Okay. Well, let's
16 come back at 3:40. We're adjourned for ten minutes.

17 (A recess was taken from 3:30 p.m. to 3:40 p.m.)

18 HEARING OFFICER TOUSLEY: Okay. I think
19 we're all back now. Mr. Dumont, are you prepared to
20 ask your next question?

21 BY ATTORNEY DUMONT:

22 Q. Yes. Mr. Byrd, I've put on the screen Attachment
23 9 to your report.

24 A. Yes, I see it.

25 Q. Do you agree that the Addison Natural Gas Pipeline

1 has less than four feet of cover in parts of the Clay
2 Plains Swamp within the VELCO right-of-way?

3 A. Yes, I do.

4 Q. Do you agree that roughly 500 feet of the pipeline
5 is less than 4 feet deep?

6 A. I don't recall the exact number, but that sounds
7 right.

8 Q. If you want to turn to, go down to Page 8 of this,
9 when you're ready, tell me, and I'll scroll to the next
10 page.

11 A. I see Page 8.

12 Q. All right. So just look at those station numbers
13 there, and when you've got your starting point in line,
14 let me know, and I'll go to the next page.

15 A. Well, I'm not sure what you want me to use as a
16 starting point. I assume 1,641 plus 00.

17 Q. Well, where it's less than four feet deep.

18 A. Okay. Well, there are, there are a few spots like
19 that, but I see -- it's hard to line up on this little
20 screen I'm seeing, but 1,645 plus 20 looks to be the
21 first one in a row.

22 Q. Yes, and then I'm going to scroll onto the next
23 page.

24 A. Okay. And it looks like the last one in that row
25 is, if I'm lining things up correctly, 1,650 plus 25,

1 which would be about 500 feet.

2 Q. Okay, thank you. And within that distance there's
3 about 260 feet that is less than 3 feet deep, correct?

4 A. At the time we -- well, again, I haven't done the
5 math, so I'd have to go back, but I would agree with
6 your characterization of that. There is some stretch
7 of it that's less than 3 feet.

8 Q. And, using this, the data from your Attachment 9,
9 that distance is roughly 260 feet, correct?

10 A. Well, again, I haven't recreated your math, but
11 I'll take you at your word on that.

12 Q. Now, if we go to your report, Page 59 --

13 ATTORNEY McCLAIN: I'm sorry. While you're
14 finding that, Jim, can, Sunnie, could you read back the
15 last question from Mr. Dumont and the answer, just so
16 that I'm clear on the record?

17 (Question read by the reporter:

18 "Q. And, using this, the data from your
19 Attachment 9, that distance is roughly 260 feet,
20 correct?

21 A. Well, again, I haven't recreated your
22 math, but I'll take you at your word on that.")

23 ATTORNEY McCLAIN: And I'm sorry, Jim. That
24 distance, what are you referring to as that distance?

25 ATTORNEY DUMONT: The question was the areas

1 where the depth of burial is less than 3 feet.

2 ATTORNEY McCLAIN: And, and so the question
3 is, Is the area where it's less than 3 feet 260 feet of
4 pipe?

5 ATTORNEY DUMONT: The linear distance, yes.

6 ATTORNEY McCLAIN: Okay. I'll reserve my
7 time to clarify that later, but I thank you.

8 HEARING OFFICER TOUSLEY: If, just for my own
9 edification, if someone could remind me what the
10 numbers mean. One's 1,642 plus 00. So, if you went
11 from 1,642 plus 00 to 1,642 plus 80, is that 80 feet?

12 MR. BYRD: Yes. Mr. Dumont, if you wouldn't
13 mind going back to that attachment, I'll be glad to
14 explain it to Mr. Tousley if you could zoom in just a
15 little bit so we can maybe read the numbers a little
16 clearer.

17 HEARING OFFICER TOUSLEY: Yeah. So we're
18 starting at 1,645 plus 20, right?

19 MR. BYRD: So, yeah, okay.

20 HEARING OFFICER TOUSLEY: And we're going
21 from 1,645 plus 20 to -- yeah, I'm looking at those
22 that are less than 3 feet on this scale, and it goes
23 until --

24 MR. BYRD: Right.

25 HEARING OFFICER TOUSLEY: This is a little

1 bit hard to see, but it looks like 1,650 plus 25.

2 MR. BYRD: If you could -- he just scrolled
3 up the page. So, if you would allow me to explain a
4 little bit about this spreadsheet.

5 HEARING OFFICER TOUSLEY: Sure.

6 MR. BYRD: So, this spreadsheet, the, the
7 origin of this spreadsheet was from Vermont Gas when
8 they -- I had submitted early into the investigation --
9 Owen, we're hearing you. I think you need to mute
10 yourself.

11 ATTORNEY McCLAIN: Oh, sorry, sorry. Trying
12 to watch me do math is very challenging.

13 HEARING OFFICER TOUSLEY: We don't want to
14 have to listen too.

15 ATTORNEY McCLAIN: Yeah, yeah.

16 MR. BYRD: Okay. So this spreadsheet, the
17 original version of the spreadsheet came from Vermont
18 Gas. They gave it to me either at or shortly before
19 the first site visits, and it lists on the left-hand
20 column -- Mr. Dumont, if you don't mind scrolling up a
21 little bit just so we can see the titles. There you
22 go. Thank you.

23 So, so the first column is appropriate station
24 number, and the stationing is linear distance along the
25 pipeline from one, but, in this case, the station

1 numbering starts at the northern end of pipeline
2 system, and then they literally measure foot by foot
3 along the length of the pipe --

4 (Internet connection cuts out briefly.)

5 HEARING OFFICER TOUSLEY: So how far away
6 from the northern end of the pipeline is Station 1,641?

7 MR. BYRD: Yeah, so 1,641 plus 00, I assume
8 is what you're talking about.

9 HEARING OFFICER TOUSLEY: Yes.

10 MR. BYRD: Would be 164,100 feet from the
11 beginning. So divide by 5,000, you're looking at
12 basically 30-something miles from the northern end of
13 the pipeline system, and that's the area of the Clay
14 Plains Swamp. So does that answer your question?

15 HEARING OFFICER TOUSLEY: So 1,645 plus 20 is
16 how far from the beginning, from the northern end?

17 MR. BYRD: Well, that would be 164,520 feet.

18 HEARING OFFICER TOUSLEY: Okay. And then --
19 okay. So then we go --

20 MR. BYRD: I'm sorry. I may have written
21 down the number you just read incorrectly 1,654 plus
22 20?

23 HEARING OFFICER TOUSLEY: Yeah. 1,645.

24 MR. BYRD: 1,645, okay. I wrote it down the
25 right way. Okay.

1 HEARING OFFICER TOUSLEY: Okay. And then it
2 goes to 165,025. So you're just, so that's 165,025?

3 MR. BYRD: Feet, yes.

4 HEARING OFFICER TOUSLEY: Okay. So, to
5 determine the distance between the first station point
6 and the second station point, you just subtract 164,520
7 from 165,025?

8 MR. BYRD: Yes, and that's measured along the
9 length of the pipeline, so that's not necessarily as
10 the crow flies. It's not a straight line distance.
11 It's following the pipe distance. Does that answer
12 your questions about the station numbers?

13 HEARING OFFICER TOUSLEY: So, if I'm
14 measuring the distance from 164,520 to 165,025, it's
15 505 feet?

16 MR. BYRD: So that would be 505 feet. That's
17 correct, yes.

18 HEARING OFFICER TOUSLEY: Okay, thank you.
19 I'm sorry, Mr. Dumont. I wanted to make sure that was
20 clear.

21 MR. BYRD: Do you want me to explain the rest
22 of the spreadsheet, or can we just go with the
23 questions?

24 HEARING OFFICER TOUSLEY: Let's go. He's
25 your witness, Mr. Dumont.

1 BY ATTORNEY DUMONT:

2 Q. Okay. So I, going back to Mr. Byrd's report, and
3 we're looking at Page 59, the paragraph begins, "The
4 depth of cover", so I'll read it this time.

5 A. I see it.

6 Q. "The depth of cover ultimately achieved in this
7 area was measured during my site visit and is shown by
8 station number on my site visit summary spreadsheet,
9 parens, (Attachment A09), end of parens, period. VGS
10 has admitted that portions of the pipeline are not
11 buried as deep as required in the Clay Plains Swamp
12 area, dash, and that was confirmed by my readings,
13 period. However, comma, VGS obtained agreement from
14 VELCO that the shallow DOC in that area was acceptable,
15 parens, (under terms and conditions), end of parens,
16 parens, (Attachment A56), end of parens, period."

17 And did I read that correctly?

18 A. Yes, you did.

19 Q. And then, if we go to Page 69, of your report --

20 A. I think that was Page 69.

21 Q. That was 59. We're now on 69.

22 A. Okay. I see 69, yeah.

23 Q. You state starting in the middle of the paragraph,
24 "Not achieving that DOC was technically a change from
25 the approved plans and specifications, even though

1 VELCO based -- even though VELCO, comma, based on
2 engineering analyses for loading capacity, comma,
3 approved a variance to DOC in their ROW in the Clay
4 Plains Swamp, period".

5 New paragraph. "The CPG, parens, (Attachment A05,
6 Page 12), end of parens, was approved with the
7 following statement, parens, (emphasis added), end of
8 parens, colon, quote, 'The VGS, dash, VELCO MOU does,
9 comma, however, comma, commit the parties to certain
10 safety and emergency standards and binds both parties
11 to negotiate in good faith in an iterative process as
12 the final form of the project plan is resolved, period,
13 unquote.'" "

14 New paragraph. "Thus, comma, the PUC appears to
15 have deferred to VGS and VELCO to determine the final
16 requirements for safety and emergency standards for the
17 collocated right-of-way, ROW, period." Did I read that
18 correctly?

19 A. Yes.

20 Q. Mr. Byrd, I'm sure you're aware that the CPG
21 stated that the ANGP must be constructed as set forth
22 in the plans and evidence submitted, right?

23 A. That's correct.

24 Q. And you are aware that Mr. Heintz's December 20th
25 2012 and Mr. Heintz's February 28th 2013 prefiled

1 testimony stated, quote, "The pipe will be covered by
2 at least 36 inches of soil, period. The pipeline will
3 have 4 feet of cover in agricultural areas, comma,
4 within the VELCO ROW and residential areas, comma, and
5 generally 5 feet of cover at road crossings and 7 feet
6 of cover at open cut streams, period, unquote."

7 You're aware of that?

8 A. That sounds very familiar, yes.

9 Q. And you were aware of that when you wrote your
10 report?

11 A. Yes.

12 Q. Now, unlike his description of road crossings and
13 his description of open cut streams, Mr. Heintz did not
14 qualify his testimony by saying that depth of cover
15 within the VELCO right-of-way would, quote,
16 "generally", unquote, be 4 feet. He said it would be 4
17 feet, correct?

18 A. I don't recall precisely what he said, but I
19 believe you've claimed that, but I haven't seen
20 anything that would contradict it, so I'm willing to
21 agree with you.

22 Q. Do you want me to put his testimony up on the
23 screen? It's our Cross Exhibit 8?

24 A. I'm not disagreeing with you. If you feel, that's
25 fine, but I'm just saying I don't remember verbatim

1 what he said, so I can't independently agree, but I
2 trust that you're quoting it correctly.

3 Q. Looking for Cross Exhibit 8.

4 A. I mean, the CPG says that it will be 4 feet in the
5 VELCO right-of-way. So it seems that the CPG would
6 take precedence over Mr. Heintz's testimony, anyway,
7 but I'm not sure what point you're trying to make here.

8 Q. Just use of the word "generally" in --

9 A. And I agree "generally" doesn't apply, because
10 the, the CPG says it will be 4 feet.

11 Q. Okay, all right. Well, we'll leave it for now.
12 On Page 62 of your report, which we'll go to here, you
13 state on Page 62 that all of the commitments made by
14 Mr. Heintz were qualified by his statement that they
15 would, quote, "generally proceed in the following
16 sequence", unquote, and, therefore, were not to be
17 taken literally.

18 A. I'm looking for where that says. Okay.

19 Q. Underneath the table, that paragraph underneath
20 the table.

21 A. Right, right, right.

22 Q. The sentence in the middle of the paragraph
23 states, "As an example" --

24 A. Right.

25 Q. -- "Mr. St. Hilaire's prefiled testimony of

1 2/28/13, Section 3, says the project, quote, 'will
2 generally proceed in the following sequence', unquote".
3 I think you meant Mr. Heintz.

4 A. Well, if I cited it incorrectly, I apologize. I,
5 I thought that was Mr. St. Hilaire, but I'm, I won't
6 claim perfection. So, if I cited the wrong person's
7 testimony, I apologize. Be happy to correct that.

8 Q. That's fine. So you're relying on the statement
9 that the project will generally proceed in the
10 following sequence to say that, when he said it would
11 be four feet deep, that was just a general statement;
12 it wasn't the statement that it would always be four
13 feet deep, agree?

14 A. I don't believe that's what I'm trying to imply
15 here. I mean, like I said, the CPG says four feet. So
16 the only time that this kind of statement that I was
17 making in the report would apply to things that are
18 said during the prefiled testimony that aren't
19 addressed in black-and-white in the CPG. So, if
20 somebody said something in prefiled testimony that
21 didn't get incorporated in black-and-white in the CPG,
22 well, then I think the word "generally" in the prefiled
23 testimony is very important, and the case that you're
24 talking about, four feet in the, in the VELCO
25 right-of-way, was spelled out in black-and-white in the

1 CPG. So I don't care what they said in their prefiled
2 testimony. The requirement is four feet. So I, I
3 think we're finally agreeing with each other.

4 Q. It's a frightening prospect. Yeah, all right.
5 I've put the VELCO MOU on the screen. It's your
6 Attachment 44. Do you see that?

7 A. Yes, I see it.

8 Q. I'm going to scroll down to Page 8 where I'm going
9 to go down to Page 8 if I can. Paragraph 21 on Page 8
10 is what I'm interested in. Do you agree that Paragraph
11 21 states that the MOU is to be subject to all, quote,
12 "conditions or limitations that may be imposed by the
13 Board"?

14 A. That's what it says, yes.

15 Q. And one of those conditions was that the project
16 had to be constructed in accord with the plans in
17 evidence, correct?

18 A. That's my recollection, yes.

19 Q. And Mr. Heintz testified it would be four feet
20 deep in the VELCO right-of-way, correct?

21 A. Yes.

22 Q. So the MOU said that the, in effect, that the
23 plans in evidence controlled over the wording of the
24 MOU, correct?

25 A. Oh, yes, this was the original MOU. You know,

1 this isn't an MOU dealing specifically with the Clay
2 Plains Swamp, but, yeah, that's what it says.

3 Q. But this is the only MOU with VELCO that was
4 adopted before the CPG was issued, right?

5 A. To my knowledge, yes.

6 Q. And it's the one you were referring to in page, at
7 Page 59 of your report that we looked at a minute ago?

8 A. I would have to go back to the page in my report
9 to, to be able to answer that question.

10 Q. Let's see. Sorry. 69, there you go, 69. All
11 right. So on Page 69 you're referring to the VGS-VELCO
12 MOU and the iterative process that was contemplated in
13 the VELCO-VGS MOU, right?

14 A. Well, I think you scrolled off the part of the
15 page that talks about that.

16 Q. Should be here now.

17 A. Yeah, that, that part.

18 Q. Yeah.

19 A. Right. So, so I, yeah, so the MOU, and cited in
20 that paragraph is discussing the original MOU that was,
21 you know, in place at the time of the CPG.

22 Q. And, based on the wording of the MOU, you
23 concluded, quote, "Thus, because the PUC approved of
24 the MOU", back to your quote, "Thus, the PUC appears to
25 have deferred to VGS and VELCO to determine the final

1 requirements for safety and emergency standards for the
2 collocated ROW, period".

3 So you're basing that conclusion upon the MOU,
4 right?

5 A. Well, I'm basing that conclusion on the statement
6 in the CPG that says they're going to continue to
7 negotiate in good faith in an iterative process. So a
8 CPG, in my opinion, clearly anticipated the fact that
9 all the details had not been worked out between VGS and
10 VELCO at the time of the CPG, but the MOU was in place
11 and they would continue to negotiate in good faith,
12 iterative process, as the final form of the project
13 plans resolved. So it, to me, it clearly states that
14 the final form hasn't been resolved, but they're
15 issuing a CPG anyway.

16 Q. And you agree that whatever VELCO and VGS might
17 negotiate in good faith, they were still subject to the
18 CPG requirement that the project be built in accord
19 with the evidence and testimony submitted, including
20 Mr. Heintz's testimony, four feet deep in the VELCO
21 right-of-way, right?

22 A. Well, I'm not trying to be evasive here, but I
23 think that might call for a legal conclusion that I'm
24 not prepared to make or not qualified to make. You
25 know, at the end of the day, I don't know how the, the

1 Public Utility Commission would --

2 You know, the CPG itself clearly indicates here
3 that there were continuing negotiations between VELCO
4 and VGS, and if I tried to read their minds, it would
5 be that, well, VELCO and VGS know best how to protect
6 both utility systems, and we're letting them figure it
7 out amongst themselves, and that appears to be what
8 VELCO and VGS did in the Clay Plains Swamp when the
9 original commitment, you know, wasn't being met.

10 You know, I'm not disagreeing with you. I mean,
11 the, the CPG was very clear. It said four feet in the,
12 in the VELCO right-of-way, and I think that is what led
13 us to the nonsubstantial change request that, that led
14 to the investigation. That's my understanding.

15 Q. Well, let me push back a little bit and suggest to
16 you you haven't yet taken into account Paragraph 4 and
17 Paragraph 5 of the MOU. Why don't you read Paragraph
18 4, which I put on the screen, and then, when you've got
19 to the bottom of the page, I'll scroll to the next
20 page.

21 A. So I can't count the paragraph numbers. Okay,
22 there we go.

23 Q. Yeah, it's attachment 44 and Page Number 22.

24 A. Yeah, we were just on a page that didn't have
25 paragraph numbers. So for project plans -- and, just

1 to be clear, the document we're looking at is the
2 original MOU?

3 Q. Yeah.

4 A. And that's a question.

5 Q. Yeah. First, just read it to yourself. You don't
6 have to read it out loud.

7 A. Okay. So I've read that paragraph. Okay. So
8 I've read Paragraph 4. Paragraph 5 as well?

9 Q. Yes.

10 A. Right, okay. So I've read Paragraph 5.

11 Q. So in Paragraph 4 the parties are saying they've
12 agreed to the existing plans, except for easement
13 compensation and finalization of the operating
14 agreement, the very first sentence in Paragraph 4.

15 A. It seems there to be a missing "and" in that
16 sentence, but I would read it the same way you would.

17 Q. Except for easement compensation and finalization
18 of the operating agreement, the plans that are already
19 in existence adequately address VELCO's concerns and
20 VGS's concerns. What's left to negotiate is easement
21 compensation and finalization of the operating
22 agreement. That's your interpretation, right?

23 A. That's the way I would read it, yes.

24 Q. So that's a pretty clear statement that depth of
25 burial was not on the table to be negotiated in the

1 future, right?

2 A. Well, it, what it says is VGS has adequately
3 addressed. It doesn't say that they're addressed for
4 all time, forever and ever, amen. It's just that the
5 current thing there being addressed is satisfactory to
6 VELCO. I don't read that at all to say "and none of
7 those issues can never be revisited". I mean, it just
8 doesn't say that.

9 Q. Hold on a second. Sorry. But in your report you
10 stated your opinion that, by accepting this MOU, the
11 Board was allowing or authorizing VGS and VELCO to
12 revise the four-foot depth of burial, right, without
13 coming back to the Board?

14 A. Well, I would just -- I didn't say that. I just
15 said that the, the CPG, you know, clearly anticipated
16 that there were going to continue to be negotiations
17 between VELCO and VGS beyond what's currently, you
18 know, in the file when they issued the CPG. You know,
19 you can imply that that also includes four-foot burial
20 depth. You know, they didn't say that. I didn't say
21 that. I'm just saying that there was continuing
22 negotiations that the CPG anticipated.

23 Q. I'll leave this, I'll stop beating this dead horse
24 in one second. I just want to make sure I understand
25 what you're saying. Paragraph 4 says, Except for

1 easement compensation and the operating agreement,
2 we've agreed on the plans. That iterative process that
3 you're relying on in Page 69 of your report, which I
4 have on the screen, refers to the easement compensation
5 and the operating agreement, right?

6 A. I don't have that shown on your screen right now.

7 Q. Okay. Your quote in your report -- I've got your
8 report on the screen, and you're quoting --

9 A. Okay.

10 Q. -- the MOU, but you're not quoting the first part
11 of the paragraph. The first part of the paragraph said
12 that we have --

13 A. I'm sorry. On the screen you're showing, I'm not
14 quoting from the MOU. I'm quoting from the CPG.

15 Q. Yes, right. And the part of the CPG that you're
16 quoting from doesn't quote the entire, that entire
17 paragraph?

18 A. The CPG is not, not quoting any paragraph out of
19 the VELCO MOU. It just refers to it.

20 Q. Right. And, when you look at the MOU that the CPG
21 is summarizing, the MOU refers to the iterative process
22 only with regard to compensation and the operating
23 agreement, correct?

24 A. Well, I, I, again, I'm, you know, the CPG isn't
25 trying to summarize the VELCO-VGS MOU. It's just

1 referring to the fact that there is an MOU in place and
2 they're committing to negotiate an iterative process.
3 I mean, I don't think they're quoting from it. I don't
4 think they're trying to summarize it. They're just
5 citing the fact that VGS and VELCO are already working
6 together and that, you know, the MOU at the time just
7 said that VGS had adequately addressed VELCO's
8 concerns, you know, except for the two things they
9 mentioned. So I think that what I have quoted here is
10 not what you're trying to make it out to be. I don't
11 know.

12 Q. Okay. Well, this is my last chance. I won't do
13 this again. Won't ask you about this again. The
14 statement in your report just says, "Thus, the PUC
15 appears to have deferred to VGS and VELCO to determine
16 the final requirements for safety and emergency
17 standards". You're basing that on the part of the CPG
18 that summarizes the MOU, and the MOU refers to the
19 iterative process only with regard to easement
20 compensation and the operating agreement, right?

21 A. Well, you keep, you keep using the word
22 "summarize", and I disagree with that word. So sorry.
23 I keep looking over here, because that's where your
24 face is on the GoToMeeting. I'm trying to look at my
25 camera. I'd be a lousy actor.

1 So you keep saying the word "summarize". It's not
2 summarizing at all. So, you know, the VELCO-VGS MOU is
3 what they point to in the CPG, and they say that the
4 MOU commits the parties, you know, it binds them to
5 negotiate in good faith as the, as to the final form or
6 as the final form of the project plan. So, when you
7 talk about the final form of the project plan, that's
8 more than just easement compensation. That's
9 everything about the project, if you ask me, and the
10 CPG anticipates that VELCO and VGS are the two entities
11 that are best, you know, in the best position to decide
12 what that final form of the project plan needs to look
13 like.

14 Q. So I've got the CPG, the final order on the screen
15 here. It's your Attachment 5, Page 12.

16 A. So this is Attachment 5? Now, could you refresh
17 my memory what this entire document is?

18 Q. This is the long --

19 A. This is the CPG? Okay. I'm sorry. Well, I said
20 this is the CPG, and it looked like Mr. Tousley was
21 shaking his head "no". So I, I want to make sure I
22 know what document --

23 HEARING OFFICER TOUSLEY: It's the final
24 order.

25 MR. BYRD: The final order? Okay.

1 BY ATTORNEY DUMONT:

2 Q. Reading from .pdf Page 12 of the final order, it
3 says, starting in the middle of it, quote, "The
4 VGS-VELCO MOU does not establish whether the
5 collocation will be documented with a lease, comma,
6 license, comma, or an easement, comma, nor does the MOU
7 address any specific terms of payment, period".

8 So, just looking at that sentence, you agree that
9 the Commission was saying those are the open issues,
10 right?

11 A. Well, you used the word "the open issues", and,
12 again, I think you're trying to read things into this
13 that the Commission didn't say. They're just saying
14 these are open issues. You know, it's not exclusive.

15 Q. Okay. And the next sentence says, "The VGS-VELCO
16 MOU does, comma, however, comma, commit the parties to
17 certain safety", and scroll to the next page here if I
18 can figure it out, "safety and emergency standards and
19 binds both parties to negotiate in good faith in an
20 iterative process as the final form of project plan is
21 resolved, period". Did I read that correctly?

22 A. Yes, I believe that's the part I quoted in my
23 report.

24 Q. Right. So, in the context of the sentence before
25 it, isn't the Board saying, well, what's already been

1 decided and agreed on are the safety and emergency
2 standards, and this, and the MOU binds the parties to
3 negotiate the issues that haven't been decided yet?

4 A. Yeah, I, I think you're trying to make this out
5 into something that it's not. I don't think there the,
6 the PUC is saying everything in the current plan is
7 carved in stone and then the only thing that's left are
8 these two things that I specifically cited.

9 To me, it says the exact opposite of that. I'm
10 sorry. It says they're going to continue to negotiate
11 in good faith on the final form of project, and, once
12 the final form of project, capital P, to me, that's the
13 entire project everywhere the, you know, ANGP is
14 collocated with the VELCO right-of-way, and, you know,
15 that's the project.

16 So it's not just easements. It's not just, Do you
17 have a license agreement? It's not just compensation.
18 It's the entire project, and they say you're going to
19 continue to negotiate on it. I mean, you have, you
20 have an original MOU that, as VELCO says, you know,
21 addresses their concerns. It doesn't mean they're not
22 going to have new concerns down the road as they get
23 more information that will also need to be addressed.
24 I mean, I think that's what was anticipated here with
25 this iterative process.

1 Q. Okay, thank you.

2 HEARING OFFICER TOUSLEY: Mr. Byrd, would you
3 say that burial depth was a safety standard in the
4 VELCO MOU?

5 MR. BYRD: You know, safety writ large, I
6 would agree that burial depth is, is one factor in, in
7 safety of a buried pipeline.

8 HEARING OFFICER TOUSLEY: Okay, thank you.

9 MR. BYRD: Yeah.

10 ATTORNEY DUMONT: Your report refers to the
11 April 27, 2017 letter between VELCO and VGS, which is
12 your Attachment 56. Do you want me to start with the
13 part of your report that refers to that?

14 MR. BYRD: Yes, that would be helpful. Thank
15 you. And, while you're scrolling down, just for
16 planning purposes, Mr. Tousley, I think you said
17 something about trying to wrap up at 4:30, your time
18 today, which is about now.

19 HEARING OFFICER TOUSLEY: I don't think I
20 ever said that.

21 MR. BYRD: I just want to know. Okay. Maybe
22 I was just wishing you said that.

23 HEARING OFFICER TOUSLEY: I think that may
24 have been a hopeful expectation. I think at 4:30 we
25 may discuss whether we should go to 6:00 or whether we

1 think you're going to be done by 3:00 o'clock tomorrow
2 afternoon. I think that what I have told the parties
3 is that there's every possibility that we'll go to 6:00
4 Tuesday, Wednesday, Thursday this week, depending upon
5 how swiftly we're able to move along. So I will likely
6 defer to the parties, in particular Mr. Dumont, who
7 wants a lot of your time, as to whether, as to what
8 time we should finish today in order to finish and get
9 Mr. Rendall by tomorrow at 3:00, but we can do that at
10 4:30, since you were thinking about that time.

11 MR. BYRD: Yeah, okay.

12 BY ATTORNEY DUMONT:

13 Q. If you turn to your report, Page 59, the second
14 paragraph from the bottom --

15 A. Yes. Okay. I think we read that paragraph
16 already.

17 Q. We did. I'm just going back to that, because
18 that's the reference to the April 27, 2017 letter
19 that's in Attachment 56 --

20 A. Right.

21 Q. -- in your report. "However, comma, VGS obtained
22 agreement with VELCO that the shallow depth of cover in
23 that area was acceptable, parens, (under terms and
24 conditions), end of parens, Attachment 56". So let's
25 go to Attachment 56.

1 A. I see it.

2 Q. Okay. And I'm going to -- let's see here. Sorry.
3 Got to find the reference here. Yes, there it is.
4 Exhibit 56 relies on a 2016, an engineering analysis by
5 Mott MacDonald, and I'm sorry. It will take a second
6 for that page to catch up.

7 A. Right. I see it.

8 Q. And that May 25th 2016 report by Mott MacDonald,
9 you state in your report, back at your report, was
10 calculated using American Petroleum Institute
11 Recommended Practice 1102. Do you remember that?

12 A. Yes.

13 HEARING OFFICER TOUSLEY: Mr. Dumont, for the
14 record, I just want to make sure it's clear that we're
15 looking at Attachment 56, not Exhibit 56 to Mr. Byrd's
16 report.

17 ATTORNEY DUMONT: Thank you.

18 HEARING OFFICER TOUSLEY: Is that correct?

19 ATTORNEY DUMONT: That's correct.

20 HEARING OFFICER TOUSLEY: Okay.

21 BY ATTORNEY DUMONT:

22 Q. So Attachment 56 is the April 27, 2017 letter.
23 The 2017 letter relies upon May 2016 calculations by
24 Mott MacDonald, and those May 2016 calculations used
25 API RP 1102. The question is, Do you agree with me

1 that, before the 2016 Mott MacDonald calculations, CHA
2 had already done calculations on load bearing in 2014?

3 A. Yeah, there were two different sets of
4 load-bearing calculations done. My understanding is
5 the first one had to do with -- well, maybe I'm
6 confused, but, yes, there were two.

7 Q. And we can go back to your report if it helps. In
8 your report at Page 43, you stated that the 2014
9 calculations also used API RP 1102. Do you want me to
10 put that on the screen?

11 A. No. I recall that. I think my report also points
12 out that they used different software. So the, so API
13 RP 1102 is an industry recommended practice that
14 explains how calculations are to be done, and then
15 different vendors, software vendors, have built those
16 calculations into their software packages, and, and so
17 one company used one software package, and then another
18 company used a different software package, and
19 sometimes you'll get minor differences in the results
20 based on, you know, how the, how the programmer built
21 in some of the assumptions that are used in RP 1102.
22 So that's the same recommended practice, a slightly
23 different calculation, you know, software used to come
24 up with the answers. Hopefully, that makes sense.

25 Q. Right. Let's see here. Take me a second. There

1 we go, Page 41. You discuss API RP 1102 on Page 41 of
2 your report, which I have on the screen.

3 A. I'm seeing Page 40.

4 Q. Yeah. It will get here in a second.

5 A. Okay. Now I'm seeing 41. I see it.

6 Q. And you have a discussion that's called "Industry
7 Standards, slash, Recommended Practices". The first
8 paragraph concludes with the statement that use of API
9 RP 1102, quote, "for the VELCO right-of-way, comma,
10 which is rarely traversed is very conservative",
11 unquote. Did I read that correctly?

12 A. That's correct.

13 Q. It's a rarely traversed area, but it's a
14 right-of-way for a high voltage line, correct?

15 A. That's correct.

16 Q. Do you agree with me that the Vermont Public
17 Service Board, as it was then known, when it was
18 approving of the ANGP, intended to be, quote, "very
19 conservative", end quote?

20 A. Well, I don't know that those are their words,
21 "very conservative". I mean, I just -- and maybe it's
22 somewhere, but, you know, it seemed to me they, VGS,
23 had committed to go above and beyond, if you will, and
24 some of the things like building to Class 3 standards
25 everywhere, regardless of class location, was very

1 conservative, you know, and, like I said, use of RP
2 1102 in a utility right-of-way is also very
3 conservative, but I don't know what the CPG said or
4 what the final order said about very conservative.

5 Q. You do agree that, based on your own reading, as
6 an engineer, of the final order, the Vermont Board was
7 not content with just satisfying federal standards,
8 correct?

9 A. Yeah, there are a number of areas where it went
10 above and beyond the minimum federal regulations.
11 That's true.

12 Q. And I know you're very, very well familiar with
13 API RP 1102. So let's spend just a little time going
14 through.

15 A. I've used it before.

16 Q. I'm sure you have.

17 A. But I have not memorized it.

18 Q. That's good. We'll have it here in just -- there
19 we go. This is contained in our Exhibit 1, the API
20 Recommended Practice 1102. When I answered the hearing
21 officer's questions this morning, I overlooked to
22 mention that Exhibit 1 also includes the American
23 Petroleum Institute Recommended Practice. So it is in
24 that as well, and it's, that's where we are with the
25 document right now, and this is .pdf 293. It's the

1 first page of the API. So I'll go to the -- let's see.
2 293, I'll go to the cover page. So I've got 287 is the
3 cover page, Mr. Byrd. You've seen this hundreds or
4 thousands of times, correct?

5 A. I don't know about hundreds or thousands, but I've
6 seen it plenty of times.

7 Q. Yeah. So do you have any question that what I'm
8 getting, what I'm discussing with you right now is, do
9 you have any doubt it is the API Recommended Practice
10 1102, correct?

11 A. I will trust you to have copied it correctly. I
12 haven't audited it, but I, I'm not going to question
13 the fact that you probably copied the right version of
14 1102, or a version of 1102. It's not incorporated by
15 reference, as I pointed out in my report, so there is
16 no correct version.

17 Q. I put on the screen .pdf Page 293, Section 1 on
18 scope. It states, the recommend, "This recommended
19 practice, comma, steel pipelines crossing railroads and
20 highways, comma, gives primary emphasis to provisions
21 for public safety".

22 Is that your understanding of the intent of API RP
23 1102?

24 A. Well, they're just saying that the focus of the RP
25 was, it was to ensure public safety, you know, and the

1 implication being that a pipeline that fails under a
2 road or a railroad is unsafe, which I would agree with.
3 So, as I read it as an engineer, it's like, This is
4 what you do to make sure your pipe doesn't fail.
5 Here's a recommended practice to help you calculate it.

6 Q. And I've put on the screen .pdf Page 297, which
7 includes Section 2.3.8 of API RP 1102. This is the
8 part of the definitions section. Let me read to you
9 the definition of highway:

10 "Highway, any road or driveway that is used
11 frequently as a thoroughfare and is subject to
12 self-propelled vehicular traffic". Did I get that
13 right?

14 A. That's what it says.

15 Q. So, even though in common English usage we might
16 think of a highway as like an interstate, the way 1102
17 uses the word, it means any road or driveway that is
18 used frequently as a thoroughfare by cars or trucks or
19 other self-propelled vehicles, right?

20 A. Well, that's how they define the word.

21 Q. Then we go to Page 299, Section 4.3. Couple
22 questions I have for you about this. 4.3 governs
23 location and alignment. 4.3.1 says, "The angle of
24 intersection between a pipeline crossing and the
25 railroad or highway to be crossed should be as near to

1 90 degrees as practicable, period. In no case should
2 it be less than 30 degrees, period".

3 Can you explain what that means in layperson's
4 terms?

5 A. So in the pipeline industry a crossing angle is a
6 common thing where your pipeline, you know, being a
7 linear asset, tends to go in a straight line, and you
8 cross other linear assets that are also going generally
9 in a straight line. So they're going to cross each
10 other, and, you know, to get from Point A to Point B.
11 So the angle at which you cross another utility or, in
12 this case, a road or a railroad, is the crossing angle,
13 and, generally, you want those intersections to be as
14 short as possible to minimize interaction between the
15 utilities.

16 So, in this case, they're talking about an angle
17 of intersection between a pipeline crossing and a
18 highway railroad and saying, hey, it shouldn't be less
19 than 30 degrees, but you ought to make it as
20 perpendicular as possible so that they interact over
21 the shortest possible distance. So that's what this is
22 saying in layman's terms.

23 Q. Thank you. Section 4.3.2 says, "Crossings in wet
24 or rock terrain, comma, and where deep cuts are
25 required, comma, should be avoided where practicable,

1 period".

2 Now, I looked in the definitions, and I didn't see
3 a definition of wet terrain. How would you understand
4 wet, how would you understand wet terrain?

5 A. Well, I, your guess is good as mine on what they
6 mean by wet or rock. You know, to me, I read that, and
7 I don't think it's worded very clearly, and that's why
8 we're discussing we don't know what that means. To me,
9 it is just saying, hey, don't cross in, in areas that
10 are difficult for construction if you can avoid it.
11 You know, that's, that's the layman's way I would read
12 that.

13 Q. Now let's look at Page 300. It's .pdf 300.

14 A. Right.

15 Q. Section 4.4.2 "Highway Crossings", it states,
16 "Carrier pipe under highways should be installed with
17 minimum cover, comma, measured from the top of the pipe
18 to the top of the surface, comma, as follows, parens,
19 (see Figure 1), end of parens", and it says, "Location,
20 A, under highway surface proper, minimum cover four
21 feet", correct?

22 A. That's what it says, yes.

23 Q. So under, for example, a driveway that is
24 frequently used, the minimum cover should be four feet,
25 correct?

1 A. Well, you know, reading the, the standard, you
2 know, word-for-word, that's the way they define highway
3 included driveway. You know, my, I can tell you that
4 this RP was not written with driveways in mind. It was
5 written with interstate highways and railroads in mind.
6 But, but, yeah, they defined highway to include
7 driveways that are frequently used. So, so you can
8 connect the dots and say, well, under driveway you need
9 four feet deep. That's what the recommended practice
10 recommends.

11 Q. So this recommended practice is issued by the
12 American Petroleum Institute. This may seem like a
13 really dumb question, dumber than lots of my other
14 questions, but can you tell us what the American
15 Petroleum Institute is?

16 A. Well, it's a, it's an organization that's kind of
17 a multifaceted organization that deals with all aspects
18 of the petroleum industry. So pipelines are one of the
19 things, but, you know, rail, shipping, production,
20 refining, all of those things, you know, fall under the
21 purview of the Petroleum Institute, and it's a trade
22 association, but it's also a standards-issuing
23 organization.

24 So, in all the other things they do, they publish
25 standards and recommended practices, and, you know,

1 when they go through the process of publishing a
2 document like this, a recommended practice or a
3 standard, they, they are certified by ANSI, the
4 American National Standards Institute. So they have to
5 follow the ANSI process, which includes balloting and
6 resolution of issues and participation on a committee
7 by various stakeholders, yada, yada, yada.

8 So the American Petroleum Institute, being an
9 ANSI-certified standards-issuing organization, you
10 know, follows that process to publish documents like
11 this, which are published -- going back to the, the
12 part I mentioned earlier about PHMSA incorporating
13 specific editions of recommended practices and
14 standards, you know, you notice this one was, I
15 believe, 2007, if I recall correctly. You know, I
16 don't know how many updates they've done to this
17 document since then.

18 The, the standard process through ANSI requires
19 either revision or reaffirmation of these officially
20 published documents on a regular basis, and I think
21 it's, it gets kind of complicated. I don't remember
22 the details, but about every five years it either has
23 to be updated or reaffirmed, in which case, if they
24 don't do that, it becomes an obsolete or an inactive
25 standard. That's probably more than you wanted to

1 know.

2 Q. No, that was very interesting. So this, this
3 four-foot minimum cover is found in a standard that the
4 American Petroleum Institute -- promulgated is probably
5 the wrong word -- but they issued, correct?

6 A. It's a recommended practice, to be precise.

7 Q. Okay. And, because it's the API, everybody in the
8 pipeline business is familiar with the four-foot
9 standard, right?

10 A. Well, I can't state what everybody in the industry
11 knows, but, you know, API recommended practices are
12 commonly used throughout the industry.

13 Q. So, when Mr. Heintz, in 2012 and 2013, testified
14 to the Commission that, in the VELCO right-of-way, the
15 minimum cover would be four feet, in the context of the
16 API RP, that made a lot of sense, didn't it?

17 A. Well, they had the same number. I don't know that
18 he was thinking of the API RP when he said that, but, I
19 mean, they both have four feet.

20 Q. It's a generally accepted depth of cover for areas
21 that, when you expect vehicles to cross over a
22 pipeline, correct?

23 A. Well, I would say that's the, that's the minimum
24 cover listed in this recommended practice, and I would
25 agree that, as a general, general statement, pipelines

1 are generally buried deeper or they're installed with a
2 thicker wall pipe in areas where they cross highways or
3 -- and this says four feet. That's not an industry
4 standard. It's not in the regulations, and this has
5 not been incorporated by reference into the
6 regulations. So I would look at this as four feet as a
7 recommendation from a recommended practice.

8 Q. If you were a regulator, Mr. Byrd, and if you
9 wanted to be very conservative in how you protected the
10 public, wouldn't four feet be a reasonable number?

11 A. You're breaking up. I can't hear.

12 Q. Sorry. If you were a regulator, Mr. Byrd, and
13 wanted to be very conservative --

14 A. I --

15 Q. Can you hear me?

16 A. I lost you after the word "conservative".

17 Q. If you were a regulator and you wanted to be very
18 conservative in how you protected the public, wouldn't
19 the four feet be a reasonable standard?

20 A. Well, I wouldn't be surprised if they said four
21 feet, and I, I'm not going to opine about what the safe
22 distance or depth of cover might be, you know, in every
23 situation, but, you know, 30 inches is the minimum in
24 some parts of the regulation, and it goes up from
25 there.

1 Q. You're talking about the PHMSA regulation?

2 A. Yes. You asked me to presume I was a regulator,
3 so --

4 Q. You're right. What if you were a state regulator?
5 I should have asked it that way. What if you were a
6 state regulator and you weren't interested with the
7 federal standards; would you agree that four feet would
8 be a reasonable standard to protect the public?

9 A. Well, no. I mean, I don't think that's a
10 reasonable blanket standard, and I don't want to
11 digress, but I've looked at depth of cover in a lot of
12 aspects, and, you know, personally, I don't think it's
13 all that important for most of them, but, you know,
14 the, the general theory from most people is, you know,
15 deeper is better. So, if you want to just use that
16 theory in a vacuum, then you would say, well, four feet
17 is more conservative than three feet, so I'm going to
18 demand four feet, but I think that's too simplistic.

19 Q. Turn to .pdf Page 326, which is Page 34 of the API
20 standard, and I'm scrolling down to the section on open
21 cut or trenched installation. Okay. Do you see
22 Section 6.2.1.3?

23 A. Yes.

24 Q. In this section is the American Petroleum
25 Institute recommending, quote, "The bottom of the

1 trench should be prepared to provide the pipe with
2 uniform bedding throughout the length of the crossing,
3 period. In addition to being properly compactable
4 padding and backfill must be of appropriate quality to
5 prevent damage to pipeline and/or casing coatings,
6 period". Did I read that right?

7 A. Yes, you did.

8 Q. And then in the next section, 6.2.2 called
9 "Backfill", does it state, "Backfill should be
10 compacted sufficiently to prevent settlement
11 detrimental to the facility to be crossed, period.
12 Backfill should be placed in layers of 12 inches,
13 parens, (305 millimeters or less), parens, (uncompacted
14 thickness), end of parens, and compacted thoroughly
15 around the sides and over the pipe to densities
16 consistent with that of the surrounding soil, period.
17 Trench soil used for backfill, parens, (or a
18 substituted backfill material) end parens, must be
19 capable of producing the required compaction, period.
20 In addition to being properly compactable, comma,
21 padding and backfill must be of appropriate quality to
22 prevent damage to pipeline and/or casing coatings,
23 period". Did I read that correctly?

24 A. Yes, you did.

25 Q. So, according to the American Petroleum Institute,

1 backfill must be properly compactable and must be
2 compacted; do you agree?

3 A. I think it's important to look at the first
4 sentence in that Section 6.2.2, the reason for
5 compaction, "Backfill should be compacted sufficiently
6 to prevent settlement detrimental to the facility to be
7 crossed". It doesn't say anything about protecting the
8 pipeline, because, in fact, it doesn't really matter
9 for the pipeline, the kind of pipelines that we're
10 talking about here.

11 So the purpose of compaction was to, or this
12 section, was to deal with settlement that, if you're
13 crossing a road or a railroad and it settles, you know,
14 over the pipeline trench, well, that's a problem for
15 the road or the railroad, so you should avoid that, and
16 the way you avoid that is by compacting it consistent
17 with the surrounding soil.

18 So, if everything settles at once, it's not a
19 problem. It's just when your ditch settles and nothing
20 else settles that it's a problem. So that's what that
21 section is dealing with. But they do say the soils
22 you're using need to be compactable to the level of
23 compaction around it.

24 Q. So, before I go to how CHA used API RP 1102 in
25 2014 and so we can summarize your understanding of API

1 RP 1102, it defines highway as any road or driveway
2 used frequently by self-propelled vehicles, correct?

3 A. That's, I believe, what we read, yes.

4 Q. Crossing should not be less than a 30-degree
5 angle, correct?

6 A. Where practicable, I believe, is what it said.

7 Q. Let's go back to that Section 4.3.1. Let's go
8 back to that. It's .pdf 299. Are you at 4.3.1

9 A. As near to 90 degrees as practicable, yes. In no
10 case should be less than 30 degrees.

11 Q. So not less than 30 degrees is not where
12 practicable; it's in no case, correct?

13 A. That's the recommended practice, yes, but I'll
14 note that there are cases where pipelines are laid
15 along the length of a roadway, so it's not unheard of
16 that the crossing angle is zero. They're one on top of
17 the other.

18 Q. You testified earlier that the reason for having
19 as perpendicular an angle as possible is because that
20 reduces the stress on the pipeline from a heavy
21 vehicle, correct?

22 A. Well, I didn't say it reduces stress. I said it
23 minimizes the interaction length, and they're two
24 different things, but the minimizing the length of
25 interaction just gives you fewer opportunities for

1 there to be a problem. So, if I can only interact over
2 a 20-foot distance or a 50-foot distance, that's
3 probably better than interacting over a 50,000-foot
4 distance.

5 Not to say you couldn't do both of them safely,
6 but, as a general practice, you just want to minimize
7 the potential length of the problem, and that's why you
8 want to minimize the level of interaction. Plus, I
9 mean, it goes more than just interaction length. You
10 know, it has to do with maintenance of both facilities.
11 So, if only 1 percent of my facility crosses the, if
12 only 1 percent of my facility crosses another utility,
13 then I only have to worry about the interactions on 1
14 percent of my facility, but, if I cross in such a way
15 that 10 percent of my facility is collocated with their
16 facility, then I have to worry about interactions on 10
17 percent of my right-of-way.

18 So, naturally, I, I don't like other people
19 messing with my facility, so I want to minimize the
20 crossing intersection as much as possible. So that's
21 just a general approach within the pipeline industry,
22 and you see it frequently on plans where -- well, we
23 see an old stagecoach road on this facility where the
24 ANGP jumps from one side of an old stagecoach road to
25 the other a few different times, and it pretty much

1 goes at a perpendicular angle across the road, goes
2 down perpendicular across the road again.

3 That's just a general design concept within the
4 pipeline industry, so I'm not surprised that they say
5 that. I would take exception when they're saying in no
6 case should it be less than 30 degrees. I think that's
7 overstating the situation. But I think the larger
8 point stands. You want to minimize the crossing as
9 much as possible, the distance.

10 Q. And just to finish your summary --

11 A. But I disagree with your statement, Mr. Dumont,
12 that it's, that it is to minimize stress on the
13 pipeline. You're going to get the same imposed stress
14 whether you cross for 50 feet or 50,000 feet, all other
15 things being equal.

16 Q. But, as you just said, it increases the travel
17 time of the vehicle over the pipeline?

18 A. Well, travel time isn't -- I didn't talk about
19 travel time. You know, it gives you, you know, the,
20 the more length of your pipeline that, that is subject
21 to a threat, the larger that threat becomes, I mean,
22 you know, and that applies to every kind of threat. So
23 having a crossing is a threat to a pipeline, and I want
24 to minimize or eliminate as many of those threats as I
25 can. So why cross for 500 feet if I can only cross for

1 50 feet?

2 Q. Further, under API RP 1102 wet soil should be
3 avoided where practicable, correct?

4 A. I believe that's what we read, yes.

5 Q. And soil should be compacted --

6 A. Or they, they --

7 Q. And soil should be compacted so that it is the
8 same density as the surrounding soil, correct?

9 A. Yeah, words to that effect. I don't remember the
10 exact quote.

11 ATTORNEY DUMONT: So, Mr. Hearing Officer, it
12 is 5:00. I don't know if you -- we went past 4:30
13 without taking a break. I don't know how you want to
14 proceed.

15 HEARING OFFICER TOUSLEY: I think that what
16 I'd like to do is take a ten-minute break right now and
17 allow Mr. Dumont and Mr. McClain to confer with the
18 other parties as to whether or not -- you know, I want
19 to try to stick to our schedule and get Mr. Rendall up
20 tomorrow at 3:00.

21 If we need to go to press on a little while longer
22 here now to get this, then we will, but, if we think
23 that the combination of remaining cross-examination
24 will allow for us to quit now, we'll quit now, but I
25 want you guys to tell me that. So I'm going to take a

1 five-minute break. It's now 5:00 o'clock. At 5 after
2 you can tell me if we're going to go on longer or not.

3 (A recess was taken from 5:00 p.m. to 5:06 p.m.)

4 HEARING OFFICER TOUSLEY: We'll go on the
5 record now and say we're going to adjourn at this time.
6 Mr. Byrd, I really appreciate your patience with this.
7 I did tell you we might be done sometime after 5:00 in
8 my email to you. I don't know if you saw that or not.

9 MR. BYRD: It was wishful thinking on my
10 part. I'm sorry.

11 HEARING OFFICER TOUSLEY: But we will get
12 started tomorrow morning at 9:00 o'clock. Are there
13 any questions? No? Okay. Have a good evening. We're
14 adjourned for the night.

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17 (Whereupon at 5:10 p.m. the hearing was adjourned.)

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