

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of NRG Ohio :
Pipeline Company LLC for :
Approval of a Letter of : Case No. 14-1717-GA-BLN
Notification for the Avon :
Lake Gas Addition Project :
in Lorain County, Ohio. :

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PROCEEDINGS

before Ms. Sarah Parrot, Administrative Law Judge, at
the Ohio Power Siting Board, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 10 a.m. on
Friday, April 24, 2015.

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VOLUME II

- - -

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Friday Morning Session,
April 24, 2015.

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ALJ PARROT: All right. Let's go back on the record. This is the continuation of the hearing in Case No. 14-1717-GA-BLN.

Let's begin with brief appearances, names only and on whose behalf you are here today. And we will start with the company.

MR. BORCHERS: Thank you, your Honor. On behalf of the applicant Dillon Borchers and Dan Gerken.

ALJ PARROT: Thank you.

MR. BRAUNSTEIN: On behalf of the Lorain County Property Owners, Michael Braunstein and Clint Stahler.

ALJ PARROT: Thank you.

MR. SCHMIDT: On behalf of the FirstEnergy intervening companies, Robert Schmidt.

ALJ PARROT: Thank you.

MR. JONES: On behalf of the staff of the Ohio Power Siting Board, John Jones.

ALJ PARROT: All right. Very good. Are we ready to call the next witness, Mr. Braunstein?

MR. BRAUNSTEIN: Yes. John Eavenson,

1 please.

2 ALJ PARROT: Okay.

3 (Witness sworn.)

4 - - -

5 JOHN EAVENSON

6 being first duly sworn, as prescribed by law, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Braunstein:

10 Q. Good morning.

11 A. Good morning.

12 Q. Sir, could you state your name, please.

13 A. John Eavenson.

14 Q. I'm sorry I mispronounced it.

15 A. That's okay.

16 Q. And, John, where are you employed?

17 A. I'm employed with K. Hovnanian Homes out
18 of Cleveland, Ohio.

19 Q. And what is your business address?

20 A. 6150 Park Square Drive, Lorain, Ohio.

21 Q. Okay. And how long have you been
22 employed with K. Hovnanian Homes?

23 A. 11-1/2 years but that was per a buyout.
24 We were originally Oster Homes and then K. Hovnanian.

25 Q. Right. And are you involved with the

1 Arlington Place Subdivision in Lorain County?

2 A. I have been from the beginning.

3 Q. And what is your involvement or what are
4 your duties at K. Hovnanian?

5 A. I am the director of land for the Ohio
6 division of K. Hovnanian, and I directly oversee the
7 installation of infrastructure.

8 Q. All right. And did you submit written
9 testimony in this matter?

10 A. I did.

11 Q. And I am going to show you what has been
12 marked as LCPO No. 9. LCPO is Lorain County Property
13 Owners. And is that a copy of your written
14 testimony?

15 A. It is.

16 Q. Thank you.

17 ALJ PARROT: The exhibit is so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. BRAUNSTEIN: Thank you, your Honor.

20 Q. And since preparing that testimony did
21 you have occasion to -- well, let me back up for a
22 second. Your testimony has a number of exhibits or
23 figures attached to it; is that correct?

24 A. That's correct.

25 Q. And since preparing that testimony, did

1 you have occasion to have those figures checked by a
2 licensed surveyor?

3 A. I did.

4 Q. And that -- were those -- was the
5 surveyor given the signed legal description that you
6 were given by NRG to check the figures?

7 A. That's correct.

8 Q. And what was the result of the review by
9 the licensed surveyor?

10 A. The licensed surveyor declared that the
11 original exhibits we submitted were in line with what
12 the original legal description displayed.

13 Q. All right. And if I were to ask you all
14 of the questions that you responded to in your
15 written testimony here today while you were under
16 oath including the exhibits, would your answers and
17 would the exhibits or figures, if you will, be the
18 same?

19 A. Yes, they would.

20 MR. BRAUNSTEIN: Thank you.

21 Your Honor, I would submit the witness to
22 cross-examination. If you have any questions on the
23 figures that are attached, they are somewhat
24 complicated, I am sure the witness would be happy to
25 answer them.

1 ALJ PARROT: Any questions from
2 FirstEnergy companies?

3 MR. SCHMIDT: No, ma'am.

4 ALJ PARROT: All right. Very good.
5 NRG?

6 MR. GERKEN: Yes, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Gerken:

10 Q. Good morning, Mr. Eavenson. I am Dan
11 Gerken, an attorney for NRG. Have you and I spoken
12 before?

13 A. I'm sorry?

14 Q. Have you and I spoken before?

15 A. We did on Monday, I believe, during an
16 oral deposition over the phone.

17 Q. And during that deposition I asked you
18 some questions about your direct testimony; is that
19 your recollection?

20 A. Yes, sir.

21 Q. And about the figures 1 through 4
22 attached to that testimony?

23 A. Yes.

24 Q. And your testimony concerns property
25 owned by your employer, K. Hovnanian; is that right?

1 A. Yes.

2 Q. And is that the same property discussed
3 by Tom Oster in his direct testimony?

4 A. That's correct.

5 Q. Okay. Could you just restate -- it was
6 difficult for me to hear earlier. What was your job
7 title?

8 A. I am the director of land -- director of
9 land for K. Hovnanian Homes in the Ohio division.

10 Q. Do you maintain any professional licenses
11 for your job?

12 A. I do not.

13 Q. You are not a licensed surveyor, correct?

14 A. I am not.

15 Q. You are not a licensed engineer, correct?

16 A. I am not.

17 Q. Who prepared figures 1 through 4 in your
18 attached testimony?

19 A. Myself and a person from our office, Cody
20 Bruce.

21 Q. Cody Bruce you said?

22 A. That's correct.

23 Q. Is Mr. Bruce a licensed surveyor?

24 A. He is not.

25 Q. Is Mr. Bruce a licensed engineer?

1 A. He is not.

2 Q. Describe for me the process that you and
3 Mr. Bruce used to develop figures 1 through 4 just
4 generally, if you would.

5 A. We took the original -- original legal
6 description that was given to us in November of 2014,
7 and we plotted out using that legal the exhibits,
8 originally used that to lay out the direction of the
9 line through our property, and then we took that and
10 overlaid it over our subdivision and created the
11 exhibits from this.

12 Q. You said that you used the legal
13 description from NRG; is that correct?

14 A. Correct.

15 Q. Could you please turn, Mr. Eavenson, to
16 figure 1 that you prepared attached to your direct
17 testimony which is property owners' page 48.

18 A. Okay.

19 Q. Is this figure drawn to scale?

20 A. It is drawn to scale. It is not printed
21 to scale.

22 Q. Explain that to me, please.

23 A. This was drawn to I think 20 scale and
24 when it was printed, I am not sure what -- what
25 this -- I don't know what it's printed out to here,

1 but it was -- it was drawn to scale.

2 Q. As it was submitted as a -- as -- well,
3 as submitted in this proceeding, was it submitted to
4 scale?

5 A. It was drawn to a scalable exhibit. You
6 could place a scale on it. We did not place a scale
7 on it.

8 Q. So there's no scale on this figure.

9 A. There is not.

10 Q. Is there a scale on any of the figures 1
11 through 4?

12 A. No, there is not.

13 Q. Would you call this a plat map?

14 A. I would call this a proposed plan.

15 Q. Is that a "No"?

16 A. No.

17 Q. Would you call this a survey?

18 A. No.

19 Q. This figure 1 is titled "Arlington Place
20 Phase 10, approved plan"; is that right?

21 A. That's correct.

22 Q. How many phases are there in the
23 Arlington Place Development in total?

24 A. There's 10 -- there was 10 original
25 phases. We've added another one which would make it

1 11.

2 Q. How many homes in total comprise
3 Arlington Place?

4 A. Currently it's about 230 homes. There
5 will be another 19 or 20 when we finish design of the
6 next phase.

7 Q. Do you know approximately how many
8 housing developments in total K. Hovnanian has
9 developed that you are aware of?

10 MR. BRAUNSTEIN: I am going to object,
11 relevance.

12 A. I am not aware.

13 ALJ PARROT: I will allow the question.
14 He has already answered it anyway.

15 Q. And, again, this says "approved plan" at
16 the bottom, correct?

17 A. That's correct.

18 Q. Approved by whom?

19 A. Approved by the municipality of Avon,
20 Ohio.

21 Q. Is this the plan, figure 1, that was
22 submitted to the municipality?

23 A. This is a representation of that plan.

24 Q. Is that a "No"?

25 MR. BRAUNSTEIN: He answered the

1 question. Your Honor, I object to the idea of he
2 asked a question, he gets an answer, and then he
3 recharacterizes it as a no or a yes.

4 MR. GERKEN: I'm sorry. It's a yes or no
5 question.

6 MR. BRAUNSTEIN: It was not a yes or no
7 question.

8 MR. GERKEN: Is this the plan that was
9 submitted to the staff?

10 MR. BRAUNSTEIN: This actual document?

11 ALJ PARROT: I am going to allow the
12 question to stand.

13 Do you need us to reread it at this
14 point, the last pending question, or do you recall
15 what it was?

16 THE WITNESS: Could you reread the
17 question?

18 ALJ PARROT: Yes, we can do that.

19 (Record read.)

20 A. Could you clarify the question? What
21 does a plan mean to you?

22 Q. Is the plan that you and Cody drafted
23 that's depicted in Figure 1 the plan that was
24 submitted and approved by the city of Avon?

25 A. This is the plan that was submitted to

1 Avon and approved.

2 Q. What we see here on the page is what was
3 submitted to the city of Avon?

4 A. I guess I am still not understanding the
5 question. This layout, this was what was submitted
6 to the city and approved.

7 Q. My question isn't do the streets and
8 buildings represented on figure 1 comprise the
9 streets and buildings represented on the plan
10 submitted to the city of Avon. That's not my
11 question. If I was unclear, I apologize. The
12 question is as depicted here in front of you on
13 property owners' testimony 48 without a scale,
14 without a surveyor's seal, is this the plan that was
15 submitted to the city of Avon?

16 A. This was exhibits created by myself and
17 Cody Bruce.

18 Q. This wasn't submitted to the city of
19 Avon.

20 A. This was not submitted to the city.

21 Q. Are any of the homes depicted on figure 1
22 built today?

23 A. No, they are not.

24 Q. And I think on Monday, if I recall
25 correctly, you described them as hypothetical homes.

1 Do you remember saying that?

2 A. I described them as homes that we offer
3 in that subdivision.

4 Q. Do you remember you using the phrase
5 "hypothetical homes"?

6 A. I don't recall that.

7 Q. Okay. If you could turn, Mr. Eavenson,
8 to figure 2 which is the next page.

9 A. Okay.

10 Q. Is that figure drawn to scale?

11 A. It is drawn to scale.

12 Q. As presented here, is this figure 2
13 scaled?

14 A. It is not printed to scale.

15 Q. What is the scale?

16 A. It doesn't have a scale on the sheet.

17 Q. Okay. Would you call this a plat or a
18 survey?

19 A. No.

20 Q. And this also says "approved plan"; is
21 that correct?

22 A. That is correct.

23 Q. Would our discussion about whether figure
24 2 was submitted to the city of Avon similar to our
25 discussion that we had --

1 MR. BRAUNSTEIN: Excuse me, your Honor.
 2 I am going to have to object again. This does not
 3 say "approved plan" on figure 2. It says "approved
 4 plan overlayed with proposed NRG pipeline/easements."
 5 I think it's important that he be precise in creating
 6 a record of what he is referring to.

7 ALJ PARROT: Can you rephrase your
 8 question, please, Mr. Gerken?

9 MR. GERKEN: I'll move on.

10 ALJ PARROT: Okay.

11 Q. If you could turn to figure 2, exhibit A,
 12 Mr. Eavenson. Is this figure as depicted here
 13 scaled?

14 A. It is not scaled on this sheet.

15 Q. What did you try to show in drawing
 16 figure 2, exhibit A?

17 A. What we are showing here is the proposed
 18 pond for the subdivision which we've started already
 19 constructing where the easement was proposed to us,
 20 where our outflow structures are to be installed, and
 21 the proposed temporary easement for NRG as well as
 22 our financial easement line. Based on our research,
 23 when we finance the homes, we have to have 10 foot
 24 off the easement, so we have put that on this drawing
 25 too.

1 Q. Could you turn, please, to the next page,
2 figure 2, exhibit B.

3 A. Okay.

4 Q. Do you remember our conversation about
5 this figure on Monday afternoon?

6 A. I do.

7 Q. During that conversation did you discuss
8 a modification that would probably need to be made to
9 this figure in order to more accurately portray the
10 pipeline location on figure 2, exhibit B?

11 A. I remember the conversation but since
12 that conversation there's been some other factors
13 that have gotten involved. And if I can explain
14 that.

15 Q. What was the modification that you and I
16 discussed on Monday afternoon?

17 A. We discussed moving the pipe to the west
18 or to the left side of the sheet.

19 Q. When you say moving the pipe, you mean
20 depicting the pipe in a different location than is
21 pictured here?

22 A. Correct.

23 Q. And for what purpose?

24 A. At the time what I believed was true
25 information I did agree we should move the pipe.

1 Q. To more accurately reflect the as
2 proposed location of the pipe?

3 A. Per the exhibits that were sent to me on
4 Monday, yes.

5 Q. So here in figure 2, exhibit B, the
6 proposed pipe location appears near the surface of
7 the wall of the retention pond; is that correct?

8 A. That's correct.

9 Q. What is your understanding of the
10 accurate as proposed by NRG location of the pipeline
11 as you sit here today?

12 A. I believe it's exactly the way we are
13 showing here on this exhibit.

14 Q. What has changed between our discussion
15 on Monday afternoon and your assessment of figure 2,
16 exhibit B, as you sit here today?

17 A. The easement on Monday that you forwarded
18 to me during our conversation is different than what
19 was submitted to us originally in November. So when
20 our offer -- when NRG submitted an offer to us, they
21 sent us a different legal than what you represented
22 that day, and so I was confused during my deposition
23 because it didn't make sense. And so today I sit
24 here and say this is the way it was sent to us.

25 Q. Does that comport with the easement that

1 we examined during your deposition on Monday or not?

2 A. It was a total different legal
3 description.

4 Q. Is that a "No"?

5 A. That's a "No."

6 Q. So you compared -- I just want to
7 understand what happened. You confirmed what you
8 stated today is your understanding about the pipe
9 location by looking at a prior draft of an easement
10 submitted by NRG?

11 MR. BRAUNSTEIN: I am going to object as
12 it mischaracterizes his testimony. There has been no
13 testimony about drafts.

14 MR. GERKEN: I can rephrase.

15 ALJ PARROT: Okay.

16 Q. You -- in order to confirm your
17 understanding of the pipe location --

18 A. Correct.

19 Q. -- in the proximity of the retention pond
20 we have been talking about, you compared your figures
21 1 through 4 with an easement that NRG submitted in
22 November and not the easement that we discussed
23 during your deposition; is that correct?

24 A. All of these exhibits were created from
25 the original easement that was submitted to us which

1 I have a copy of it here today. So our understanding
2 of what NRG was asking for was based on the original
3 offer.

4 Q. Your testimony about a licensed surveyor
5 today --

6 A. Correct.

7 Q. -- having corroborated and reviewed
8 figures 1 through 4 --

9 A. Correct.

10 Q. -- was that in -- did he analyze those as
11 compared to the easement proposed in November?

12 A. He analyzed them per the easement that we
13 believed was the true easement in November.

14 Q. What do you mean when you say the true
15 easement?

16 A. Well, the one that I have is signed and
17 sealed by a professional -- a surveyor which was sent
18 to us originally in November. The one you sent over
19 on Monday didn't have any seals or anything. It was
20 just a piece of paper. I am assuming that the one
21 that was legally signed and sealed is the one that we
22 were working off of and that's what all our exhibits
23 were created from.

24 Q. Did you seek to confirm which easement
25 was the accurate and current proposal from NRG at any

1 time?

2 A. I didn't realize there were two of them.

3 Q. Is that a "No"?

4 MR. BRAUNSTEIN: Wait a minute.

5 A. That's a "No."

6 MR. BRAUNSTEIN: The question is
7 misleading. The witness can't know what is in NRG's
8 mind. NRG -- the testimony is NRG gave him an
9 easement which was signed and sealed. To ask this
10 witness to say what's in their mind for their plan is
11 a question he cannot possibly answer and it's
12 misleading to even ask it that way.

13 MR. GERKEN: I didn't ask what was in my
14 client's mind.

15 MR. BRAUNSTEIN: He asked what was the
16 correct easement.

17 ALJ PARROT: And I believe the witness
18 already answered the question that was pending, so I
19 think we are --

20 MR. GERKEN: Agreed, your Honor.

21 ALJ PARROT: -- we are past the point of
22 objecting.

23 MR. BRAUNSTEIN: Mr. Eavenson, if you
24 would give me time to object, I would appreciate it.

25 THE WITNESS: Okay.

1 Q. (By Mr. Gerken) Mr. Eavenson, you said
2 you recalled being deposed by telephone with me on
3 Monday afternoon?

4 A. Yes, sir.

5 Q. Do you recall being sworn in --

6 A. I do.

7 Q. -- before that testimony was given? I am
8 going to hand you the one and only exhibit that was
9 discussed during that deposition and just to see if
10 that refreshes your recollection about whether the
11 plat attached to that exhibit is stamped by a land
12 surveyor that's licensed through the state of Ohio.
13 After you review that, can you confirm for me whether
14 that refreshes your recollection?

15 MR. BRAUNSTEIN: I am going to object
16 again, your Honor. There has been no testimony that
17 the plat was not stamped by a surveyor. The
18 testimony was that the legal description was not
19 signed or sealed.

20 MR. GERKEN: The testimony, if I recall
21 it, and I may be misrecollecting, was that
22 Mr. Eavenson overlaid a map or a plat onto certain
23 internal documents maintained by K. Hovnanian. And
24 then he later said that he did not recall that there
25 was a survey stamp on such documents proposed by NRG.

1 I am seeking to clarify the record on that point.

2 ALJ PARROT: And the witness may clarify
3 in his answer if he needs to. The objection is
4 overruled.

5 A. The legal description that was sent over
6 to me on Monday didn't have a seal on it. This
7 one -- this is not the legal. This is the exhibit to
8 a legal and it does have a seal on it.

9 Q. I am just going to leave that there for
10 now. I am not sure I have any more questions about
11 it at the moment. In your direct testimony,
12 Mr. Eavenson, you refer to silting and freeboard
13 stabilization. It's lines 57 to 58 if you want to
14 take a look at it. And this is, I believe,
15 activities related to maintenance of the retention
16 pond that K. Hovnanian would have to abide by; is
17 that correct?

18 A. That's correct.

19 Q. If the pipeline were rather than very
20 near the surface of the retention pond wall instead
21 approximately 10 feet inside that earthen embankment
22 making up the mound containing the water to the
23 retention pond, would your concerns about safety
24 related to silting and freeboard stabilization
25 activities be alleviated?

1 MR. BRAUNSTEIN: I am going to object
2 again, your Honor. This is a fact witness and he is
3 asking a hypothetical.

4 MR. GERKEN: Several hypotheticals were
5 allowed yesterday.

6 MR. BRAUNSTEIN: Experts, your Honor.

7 ALJ PARROT: I agree. The objection is
8 overruled.

9 MR. BRAUNSTEIN: Those were to expert
10 witnesses. This is a fact witness.

11 ALJ PARROT: The objection is overruled.
12 To the extent that the witness is able to answer the
13 question, he may do so.

14 A. I assumed that it would be more protected
15 10 feet way.

16 Q. Those concerns would be alleviated?

17 A. I don't know what my concerns are. I
18 don't know enough about it, but I am assuming it
19 would be more protected. That's my answer.

20 Q. Well, I get it. And I am just referring
21 to your testimony about what's -- what would be
22 required under certain circumstances. And it's your
23 testimony that there would be certain safety concerns
24 related to silting and freeboard stabilization
25 activities, correct?

1 A. That is correct.

2 Q. And is it your opinion as you sit here
3 today those concerns would be alleviated if the
4 pipeline -- pipeline, sorry, were located 10 feet
5 inside that earthen embankment?

6 A. Yes, I believe.

7 Q. If you could turn back to figure 1,
8 please. I want to try to figure out and clarify for
9 the record what parts of figure 1 represent what has
10 been approved by the city and what parts of figure 1
11 represent structures or other boundary lines or other
12 features that have not been approved by the city. Do
13 you understand my question?

14 I haven't asked anything specific yet but
15 generally that's what I am going to try do with a
16 couple of questions here. Are the lots as they are
17 represented in figure 1 --

18 MR. BRAUNSTEIN: Excuse me, Dan. Can you
19 move so I can see the Judge? Thank you.

20 MR. GERKEN: Sure.

21 Q. Are the lots as subdivided here in figure
22 1, do those coincide -- and I know that we don't have
23 scale and I know that it's not a sealed figure, but
24 do those coincide with the lots that were approved by
25 the city of Avon?

1 A. Yes, they do.

2 Q. The homes depicted here inside of those
3 lots, are those structures -- were those what was
4 proposed and approved by the city of Avon?

5 A. No, they are not.

6 Q. These are representations of homes that a
7 buyer could build; is that right?

8 A. That's correct.

9 Q. And the footprint of those homes is yet
10 to be determined; is that right?

11 A. That's correct.

12 Q. Because K. Hovnanian offers eight
13 different homes each which has a different footprint.

14 A. That's correct.

15 Q. As you sit here today, is it your opinion
16 that some of the lots in figure 1 would be impacted
17 by the proposed pipeline in this proceeding?

18 A. Yes, I do.

19 Q. Which lots?

20 A. Well, as you look at the pond, 10 lots to
21 the right of the pond.

22 Q. The pond is the sort of rounded off
23 rectangle sort of near the middle of the page?

24 A. That's correct.

25 Q. Okay. And we counted 10 lots to the

1 right of it which you believe is to the south of the
2 pond; is that correct?

3 A. That's correct.

4 Q. There's no cardinal direction indicator
5 on this figure, is there?

6 A. There is not.

7 Q. Okay. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. So
8 to me that looks like the lots directly adjacent to
9 the pond, correct?

10 A. That's correct.

11 Q. The first of those 10 and then continuing
12 down that line to what looks like a corner lot that
13 appears on this unscaled drawing to be larger than
14 any of the previous nine parcels; is that correct?

15 A. Yeah, that's the width of it, yes.

16 Q. Okay. How would, in your opinion as you
17 sit here, those lots be impacted by the proposed
18 pipeline route?

19 A. They would make them unbuildable per the
20 current homes that we sell.

21 Q. And why is that?

22 A. Because the 50-foot easement that's been
23 requested would encroach into the building envelopes
24 of the homes that we've proposed.

25 Q. Could you turn to figure 2, please, which

1 is the next page. There's kind of a bubble there
2 that purports to zoom into a section of the property.
3 Do you see that?

4 A. Yes, sir.

5 Q. And it zooms into a section that you just
6 testified depicts lots that would be impacted by the
7 pipeline; is that correct?

8 A. That's correct.

9 Q. I'm not going to, you know, play games
10 with you, but I want to dial in on this 10-foot issue
11 that we discussed on Monday afternoon to see what
12 your testimony is before the court today. And to
13 make the record clear, so I am going to ask you a
14 question about that zoomed in area there. The zoomed
15 in area depicts a 50-foot permanent easement,
16 correct?

17 A. That's correct.

18 Q. And the width of that 50-foot permanent
19 easement as depicted in your figure 2 is indicated
20 with diagonal small lines where it intersects the
21 boundaries of such easement; is that correct?

22 A. I believe so.

23 Q. As depicted here, does the western edge,
24 which would be toward the bottom of the page,
25 correct?

1 MR. BRAUNSTEIN: Could you move back just
2 a little?

3 A. Correct.

4 Q. Does the western edge of the 50-foot
5 permanent easement that you and Cody depicted on
6 figure 2 coincide with the western boundary of the
7 property today? And to clarify I mean the western
8 boundary of the property which coincides with the
9 Norfolk Southern property.

10 A. This -- this figure does not indicate
11 it's the western property line.

12 Q. How far away from the western property
13 line is it indicated on your figure 2?

14 A. Approximately 10 feet.

15 Q. And why is that?

16 A. Because we utilized the original easement
17 that we were given the legal description and we
18 plotted the easement on this -- on our drawings and
19 that left that gap there.

20 Q. Are you aware that the 50-foot permanent
21 easement proposed by NRG as of today, the date that
22 you are testifying, the western boundary of such
23 proposed easement coincides with the property line
24 that this property shares with Norfolk Southern?

25 MR. BRAUNSTEIN: Again, I am going to

1 object. There is no evidence in this record that
 2 would allow that question to be asked that the
 3 easement -- that the NRG easement proposed today
 4 coincides with the western property line. The
 5 witness has testified that based on the only -- other
 6 than deposition exhibits, the only legal description
 7 he has been given is the one that's shown here. If
 8 they have a secret other description, they will have
 9 to figure out how to present that.

10 MR. GERKEN: Your Honor, if I could
 11 reply.

12 ALJ PARROT: I was going to say again the
 13 objection is overruled.

14 So go ahead, please, Mr. Eavenson, and
 15 answer the question. Do you need us to?

16 THE WITNESS: Well, I am trying to -- my
 17 answer -- I guess is it a "Yes" or "No" answer? I am
 18 trying to figure that out.

19 ALJ PARROT: If you need -- I want you --
 20 if you need to elaborate, don't feel like you have to
 21 give a "Yes" or "No." You may clarify with a
 22 complete response if you need to do that. But do you
 23 need us to reread the question?

24 THE WITNESS: No. Thank you.

25 ALJ PARROT: Okay.

1 A. The legal that was given to us is
2 represented in our figures, and I don't know if --
3 which one is the official one today. So, no, I would
4 say today I believe it's 10 feet inside the property
5 line.

6 Q. You are aware that a survey of a proposed
7 easement could change from time to time?

8 A. I would assume so, sure.

9 Q. And any such proposed easement could and
10 should, in fact, be -- in order to be authenticated
11 and reliable should be stamped with a surveyor's
12 seal?

13 A. I would agree.

14 Q. Just one moment, Mr. Eavenson.

15 For the lots that you believe are
16 impacted by NRG's proposed pipeline route, what is
17 the rear building setback as approved by the city of
18 Avon?

19 A. It's 25 feet.

20 Q. K. Hovnanian is not allowed to build any
21 structures west of that setback line, correct?

22 A. That's correct.

23 Q. And that includes morning rooms, correct?

24 A. That's correct.

25 Q. And decks; is that right?

1 A. That's correct.

2 Q. And any other structures or option that
3 K. Hovnanian might add?

4 A. That's correct.

5 MR. GERKEN: If I could have just one
6 moment, your Honor, I think I am wrapping up.

7 ALJ PARROT: Okay.

8 MR. GERKEN: Thank you, your Honor.

9 Q. I just have a couple more questions,
10 Mr. Eavenson. I will try to wrap this up. So the
11 building setback on the rear of these homes that you
12 have testified are affected by the pipeline is 25
13 feet, correct?

14 A. Yes.

15 Q. And that's 25 feet from the property line
16 proposed to the city of Avon? What I am getting at,
17 I am not trying to confuse you, the existing property
18 line coincides with the Norfolk Southern property
19 line, correct?

20 A. Correct.

21 Q. And my understanding, tell me if I am
22 wrong, I believe it's your understanding too, that
23 property line is going to shift 10 feet sometime in
24 the near future because a 10-foot strip is being
25 conveyed to the city of Avon for a walking path or

1 something similar?

2 A. That is correct.

3 Q. Okay. So the proposed boundary line on
4 the back end of these 10 lots will be 10 feet closer
5 to the home than the current property line; is that
6 right?

7 A. I would say closer to the proposed road
8 but, house, road.

9 Q. 10 feet closer to the east.

10 A. Closer to the east, yes.

11 Q. Okay.

12 A. Thank you.

13 Q. So presuming that the western boundary of
14 the proposed easement from NRG coincides with the
15 present day western boundary of the property which
16 abuts the Norfolk Southern line, are you with me so
17 far?

18 A. Uh-huh.

19 Q. And presuming further that that 10-foot
20 strip to be conveyed to the city of Avon is located
21 entirely within the 50-foot permitted easement, are
22 you with me there?

23 A. Yes.

24 Q. Extends up from that 40 feet and that
25 would be the eastern edge of the proposed easement,

1 correct?

2 MR. BRAUNSTEIN: Your Honor, I am going
3 to object just for the record.

4 ALJ PARROT: Grounds?

5 MR. BRAUNSTEIN: That this is a
6 hypothetical that I believe is unintelligible, calls
7 for one assumption piled on top of another.

8 ALJ PARROT: I think so far anyway the
9 witness has said he's following along, so if we get
10 to the point where he needs to request clarification,
11 we can let him do that, but I think so far we're
12 good.

13 Q. The point of my question is is there an
14 easement width that would permit K. Hovnanian to
15 build homes on these parcels?

16 A. Are you saying as it's proposed today or
17 a different -- a whole another offer of easement?

18 Q. A different offer. If the width of the
19 permanent easements -- which I take it is the problem
20 here, wouldn't you agree with that, it's the
21 permanent easement?

22 A. I wouldn't necessarily agree with that.

23 Q. You would?

24 A. I would not.

25 Q. Okay.

1 A. I don't think that's the only problem
2 that we have, but I am trying to answer your
3 question.

4 Q. Well, I didn't see any other problems in
5 your direct testimony, correct?

6 A. Correct.

7 Q. And you didn't testify today that you had
8 additions to your direct testimony, did you?

9 A. If you could just give me a minute.

10 Q. Sure.

11 THE WITNESS: Do I just -- okay.

12 ALJ PARROT: Yeah. If you are ready.

13 A. It's not only the homes but the retention
14 pond that's there. We have a concern of how the
15 retention pond would be put in with the proposed
16 easement that -- or legal description that we
17 received.

18 Q. Understood. The concern with regard to
19 the 10 homes that you mentioned is primarily, if not
20 universally, with the permanent easement; is that
21 correct?

22 MR. BRAUNSTEIN: Your Honor, I am going
23 to have to object. I don't know what universally
24 means in this context.

25 MR. GERKEN: I need to understand the

1 universe of his concern. I believe it's limited to
2 the permanent easement. This is a set-up question to
3 be honest so I can move on.

4 ALJ PARROT: To the extent the witness is
5 able to answer the question, you may do so.

6 MR. BRAUNSTEIN: And, your Honor, could
7 you instruct the witness if he is being asked the
8 universe of his concern, he can then reply to
9 concerns that are not necessarily in his direct
10 testimony. That's not the question.

11 A. I mean, I have a lot of concerns.

12 ALJ PARROT: Are you able to respond to
13 the question, Mr. Eavenson?

14 THE WITNESS: No.

15 MR. GERKEN: I can rephrase.

16 ALJ PARROT: Let's do that.

17 Q. What's your main concern with regard to
18 the 10 lots you referred to earlier?

19 A. We would like to be able to sell them in
20 a timely manner.

21 Q. And it's your belief that you can't sell
22 the lots?

23 A. We believe it would be very difficult
24 with the installation of the pipeline where it's
25 being proposed.

1 Q. But not impossible.

2 A. I can't say anything is impossible.

3 Q. Your concern about not being able to sell
4 the lots, which to be clear you are in the business
5 of selling lots with homes constructed on them; is
6 that right?

7 A. My primary job is putting the lots in,
8 but our primary goal is to sell homes, yes.

9 Q. Is there a plan to sell these 10 lots
10 without a home on them?

11 A. No, not at this time.

12 Q. Could you do that and comply with the
13 city of Avon's proposed plan?

14 A. That could happen, sure.

15 Q. Similarly you could build a smaller home
16 with a smaller footprint on these lots whether or not
17 it's currently on the list of eight homes that you
18 currently sell, correct? And that would still comply
19 with the city of Avon's proposed plan?

20 A. I don't know that.

21 Q. Why not?

22 A. Avon has a minimum area footage for the
23 downstairs, and I can't say exactly today what that
24 is, but it's in their code. I don't know how small
25 that house could be on the first floor to be built

1 properly and to be approved by the city.

2 Q. I think you mentioned today "financial
3 easement line." Do you recall that?

4 A. Yes.

5 Q. What were you referring to then?

6 A. FHA requires there to be a 10-foot
7 separation between the easement and the construction
8 of a structure for financial purposes when our
9 homeowners go to get loans.

10 Q. That's the Federal Housing Authority?

11 A. (Witness nods head.)

12 Q. What percentage of homes bought by buyers
13 at K. Hovnanian get FHA mortgages?

14 A. I don't know the answer to that.

15 Q. Is it more than 80 percent?

16 A. I don't know.

17 Q. Is it more than 60 percent?

18 A. I don't know.

19 Q. Do you have any idea what percentage of
20 buyers use FHA mortgages?

21 MR. BRAUNSTEIN: Your Honor, I am going
22 to object again. This is argumentative now. He said
23 he didn't know.

24 MR. GERKEN: I am trying to figure out
25 percentage. It goes directly to damages which he put

1 at issue.

2 MR. BRAUNSTEIN: Damages are not at issue
3 in this case. The only issue in this case is the
4 impact of this easement on the property, the impact
5 of this pipeline on this property.

6 MR. GERKEN: Mr. Eavenson has said that
7 there is some impediment to development based on a
8 mortgage line. I am trying to figure out what that
9 is and what the likelihood of impact will be.

10 ALJ PARROT: And I believe the witness
11 has already said he doesn't know so let's move on.

12 MR. GERKEN: I have no further questions.

13 ALJ PARROT: Thank you.

14 Mr. Jones, any questions from staff?

15 MR. JONES: No questions, your Honor.

16 ALJ PARROT: Thank you.

17 Any redirect?

18 MR. BRAUNSTEIN: Briefly, your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Braunstein:

22 Q. Just so that I'm clear how many signed
23 and sealed legal descriptions has K. Hovnanian been
24 presented with relative to this easement?

25 A. One.

1 Q. And is that signed and sealed legal
2 description the one that you used to present these --
3 your testimony and these figures?

4 A. That's correct.

5 Q. And were you also given during your
6 deposition another legal description?

7 A. I was.

8 Q. Is that the first time you had seen it?

9 A. Yes.

10 Q. Was it signed by a licensed surveyor?

11 A. It was not.

12 Q. Was it sealed?

13 A. No.

14 Q. Notwithstanding all the questions you
15 have been asked on cross-examination, as you sit here
16 today, do you still believe that your testimony as --
17 your direct testimony as reflected in LCPO Exhibit
18 No. 9 is true and correct including the figures
19 attached to it?

20 A. Yes, it is.

21 MR. BRAUNSTEIN: Thank you.

22 ALJ PARROT: Mr. Schmidt?

23 MR. SCHMIDT: No questions.

24 ALJ PARROT: Very good.

25 Any follow-up, Mr. Gerken?

1 MR. GERKEN: Just one question, if I
2 could, your Honor.

3 ALJ PARROT: Yes.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Gerken:

7 Q. Are you aware that your counsel has been
8 provided with NRG's current proposed easement with
9 regard to K. Hovnanian?

10 A. I'm aware.

11 MR. BRAUNSTEIN: I am going to object to
12 it because I don't know that it's true, your Honor,
13 so I don't know how the witness could answer it.
14 Plus it calls for attorney-client communications.

15 MR. GERKEN: It doesn't call for that.
16 It calls for whether he is currently aware as
17 Mr. Braunstein's client of the current proposal of
18 the easement, width and scope of that easement, from
19 NRG which goes directly to his testimony today.

20 ALJ PARROT: Mr. Eavenson, I am going to
21 direct you not to get into anything you consider to
22 be discussion between you and your counsel.

23 But I am also going to ask you,
24 Mr. Gerken, if you could maybe try to rephrase the
25 question that you put to the witness and let's try it

1 that way.

2 Q. Can you say with certainty that you know
3 today what NRG's current proposal is regarding the
4 location and scope of the easement that it proposes
5 for the K. Hovnanian property?

6 A. No.

7 Q. Can you say for certain as you sit here
8 today that that has not been provided to your
9 counsel?

10 A. No.

11 MR. GERKEN: No further questions.

12 ALJ PARROT: Thank you.

13 Mr. Jones?

14 MR. JONES: No questions, your Honor.

15 ALJ PARROT: Very good. Thank you very
16 much, Mr. Eavenson. You are excused.

17 THE WITNESS: Thank you.

18 ALJ PARROT: Mr. Braunstein, you may go
19 ahead and move for the admission of your exhibit.

20 MR. BRAUNSTEIN: Thank you, your Honor.
21 We would move for the admission of LCPO No. 9.

22 ALJ PARROT: Are there any objections?

23 Hearing none LCPO Exhibit No. 9 is
24 admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 ALJ PARROT: And you may call your next
2 witness.

3 MR. BRAUNSTEIN: Thank you, your Honor.
4 Mr. Gary Conlin.

5 (Witness sworn.)

6 ALJ PARROT: Please have a seat.

7 - - -

8 GARY CONLIN

9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Braunstein:

13 Q. Good morning.

14 A. Good morning.

15 Q. Mr. Conlin, could you state your name,
16 please.

17 A. Gary Conlin.

18 Q. And spell your last name for the court
19 reporter.

20 A. C-O-N-L-I-N.

21 Q. And what is your address?

22 A. 37560 Eagle Nest Drive, Grafton, Ohio
23 44044.

24 Q. And is Eagle Nest Drive rel -- or is your
25 home located within the Flint Ridge Subdivision?

1 A. Yes, it is.

2 Q. And is your home -- or your property,
3 rather, impacted by the proposed NRG pipeline?

4 A. Yes.

5 Q. And just for clarification you are a
6 client of my law firm, Goldman & Braunstein?

7 A. Yes, I am.

8 Q. Okay. And you prepared written testimony
9 in this case; is that correct?

10 A. Yes.

11 Q. And I am going to show you a copy of your
12 written testimony which we have tentatively marked as
13 LCPO No. 10 and ask you if that is a correct copy of
14 your testimony.

15 A. Yes.

16 ALJ PARROT: The exhibit is marked LCPO
17 Exhibit No. 10.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. BRAUNSTEIN: Thank you, your Honor.

20 Q. And as you sit here today, if I asked you
21 those same questions under oath, would your answers
22 be the same?

23 A. Yes, they would.

24 MR. BRAUNSTEIN: Thank you.

25 Your Honor, the witness is available for

1 cross.

2 ALJ PARROT: Mr. Schmidt?

3 MR. SCHMIDT: No, ma'am.

4 ALJ PARROT: All right.

5 Mr. Gerken?

6 MR. GERKEN: Yes, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Gerken:

10 Q. Good morning, Mr. Conlin. My name is Dan
11 Gerken. I am an attorney for NRG. How are you?

12 A. I'm good. How are you?

13 Q. Good, thanks. If you could refer to the
14 testimony that Mr. Braunstein just directed you to,
15 your direct testimony lines 54 through 56. Do you
16 have a copy that shows the line numbers?

17 A. Yes.

18 Q. Okay, okay. Could you read starting with
19 "The Flint Ridge Development" through the end of line
20 56, please.

21 A. Sure. "The Flint Ridge Development has
22 always been known for its quiet, scenic beauty which
23 provided a peaceful serenity to the visits and any
24 visitors to our neighborhood. This will now be
25 compromised due to the pipeline."

1 Q. Are you aware that an interstate natural
2 gas pipeline regulated by the Federal Energy
3 Regulatory Commission traverses the entire width of
4 the Flint Ridge Subdivision and has been there since
5 1963?

6 A. No, I don't.

7 Q. You are not aware of such a pipeline?

8 A. No.

9 MR. BRAUNSTEIN: Asked and answered, your
10 Honor.

11 Q. So not being aware of it, that pipeline
12 hasn't affected your opinion that Flint Ridge is
13 known for its "quiet, scenic beauty"; is that right?

14 MR. BRAUNSTEIN: There is no evidence
15 that the pipeline is there, your Honor. It's just a
16 question; it's not evidence so I object.

17 ALJ PARROT: Overruled.

18 Q. You can answer the question, sir.

19 A. Repeat the question.

20 Q. Not being aware of that pipeline, that
21 pipeline hasn't affected your opinion that Flint
22 Ridge is known for its "quiet, scenic beauty"; is
23 that correct?

24 A. It doesn't affect my opinion of --
25 because the quiet, scenic beauty was there when we

1 purchased our property; and, now, it will be changed
2 due to your proposed pipeline.

3 Q. If you could turn to line 75 of your
4 direct testimony.

5 A. Yes.

6 Q. Could you please read starting with "I
7 requested again" at line 75.

8 A. "I requested again to talk with Alan
9 Sawyer and also to have him come to view my property.
10 This request again went unanswered. On the last
11 offer the total easement area was reduced to 35 feet
12 total."

13 Q. Did you engage Mr. Braunstein to
14 represent you in this proceeding after the events you
15 describe here occurred?

16 A. Yes, I did.

17 Q. Is it your understanding that
18 communications regarding pipeline placement and
19 easements must occur through counsel after that point
20 in time?

21 A. I'm sorry?

22 Q. Is it your understanding that after
23 engaging Mr. Braunstein, communications about the
24 pipeline occur through counsel?

25 A. Yes.

1 Q. Have you voiced concerns to NRG about
2 minimizing the pipeline's impact on trees on your
3 property?

4 A. Yes.

5 Q. And to clarify by your I mean you or your
6 wife.

7 A. Yes.

8 Q. Do you recall that in early October,
9 2014, some folks representing NRG visited a wooded
10 section of your property?

11 A. Yes.

12 Q. Did you or your wife escort them to the
13 affected wooded portion of that property?

14 A. I am not sure escort. But walked back
15 there with them?

16 Q. Yep.

17 A. Yes, I did.

18 Q. Do you recall that they plotted the
19 location of specific trees on your property?

20 A. Yes, I do.

21 Q. Is it your understanding that they
22 plotted the location of those trees in an attempt to
23 accurately assess their location and to minimize the
24 impact of the pipeline on those trees?

25 A. That was the purpose of it.

1 Q. Do you happen to recall how many days
2 they were on the property for that task?

3 A. Days?

4 Q. That's right.

5 A. One.

6 Q. Do you recall that NRG followed up with
7 you about this issue by phone a few weeks later?

8 MR. GERKEN: Could we let the record
9 reflect that the witness is reviewing some notes that
10 have not been admitted as evidence.

11 A. Oh, they are probably -- well, the notes
12 are a -- the only other phone call was on October 31
13 after the October 8 day that they came and measured
14 trees and was at that point just stating what their
15 easement price would be. There was no -- there was
16 no other conversation regarding the trees.

17 MR. GERKEN: I have no further questions.

18 ALJ PARROT: Okay. Thank you.

19 Mr. Jones?

20 MR. JONES: No questions, your Honor.

21 ALJ PARROT: Any redirect?

22 MR. BRAUNSTEIN: Very briefly, your
23 Honor.

24 - - -

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REDIRECT EXAMINATION

By Mr. Braunstein:

Q. I'm going to direct you specifically without reading it to question No. 15 and your response to that question. Why don't you take a second just to look at that. That's lines 78 to 81.

A. Okay.

Q. Is that still your testimony as you sit here today?

MR. GERKEN: Asked and answered.

MR. BRAUNSTEIN: Yes, but it's come up in the cross-examination, and I am trying to do this as briefly as possible.

ALJ PARROT: I will allow it.

A. Regarding the route that was stated to be final and no changes would be made?

Q. Yes.

A. Yes, there was -- I mean, the land representative from NLS, John Nipperer, at one point stated to me that he had a meeting with the NRG folks and that one of the project managers slammed down their, you know, paperwork and said there will be no changes to this line.

Q. Thank you.

A. And, you know, we are just asking for

1 some consideration here.

2 Q. All right. And notwithstanding the
3 cross-examination that you've just had and the
4 questions that were posed, is the remainder of your
5 testimony, you've already testified with respect to
6 question 15, do you believe that the remainder of
7 your testimony is still true and accurate as of this
8 moment?

9 A. Absolutely.

10 MR. BRAUNSTEIN: Thank you.

11 ALJ PARROT: Mr. Schmidt?

12 MR. SCHMIDT: No, ma'am.

13 ALJ PARROT: Mr. Gerken?

14 MR. GERKEN: Just very briefly, your
15 Honor.

16 - - -

17 RECROSS-EXAMINATION

18 By Mr. Gerken:

19 Q. You just testified that you are just
20 looking for some consideration, Mr. Conlin.

21 A. I am looking for the pipeline to be moved
22 out of the Flint Ridge Development due to safety
23 concerns of the pipeline and --

24 Q. I'm sorry.

25 A. I am not done speaking.

1 ALJ PARROT: Mr. Gerken, let him finish,
2 please.

3 A. Due to the safety of the development
4 being where the pipeline is going to cross under a
5 road that goes -- that we have only the one way in
6 and out of our development and the pipeline is going
7 under there so if there was to be a catastrophe
8 situation, no resident could get in or out of the
9 development nor could safety forces come in to help.

10 Q. And is it --

11 A. That --

12 Q. Is it your --

13 A. We are concerned about that.

14 Q. -- opinion that those concerns will be
15 addressed through Mr. Braunstein, your counsel in
16 this matter?

17 A. I hope that they will.

18 MR. GERKEN: No further questions.

19 MR. BRAUNSTEIN: I hope that they are.

20 ALJ PARROT: Mr. Jones?

21 MR. JONES: No questions, your Honor.

22 THE WITNESS: If I could --

23 ALJ PARROT: We're done.

24 THE WITNESS: Well, he didn't let me
25 finish talking so that's fine.

1 MR. BRAUNSTEIN: Well, your Honor, can he
2 just finish?

3 ALJ PARROT: Did you finish?

4 THE WITNESS: I did not.

5 ALJ PARROT: You are talking with respect
6 to Mr. Gerken's final question?

7 THE WITNESS: His question what's my
8 concern about consideration. Well, consideration
9 is -- my consideration is I want it moved because of
10 the safety issues and because the pipeline is also
11 going to be transversing the Ohio Energy power lines
12 as well as the LORCO sewer lines three times within
13 about a 400-yard distance from one side of our
14 development to the other of the pipeline, so
15 crisscrossing. That is an absolute accident waiting
16 to happen just because they can come and maintain
17 those pipelines, those power lines, and do something
18 to the gas line which would be very dangerous.

19 I mean, we just had some roads replaced
20 in front of our house. And, yes, the lines were all
21 marked for the electrical, the gas lines, and things
22 like that. And so everybody knows where they are.
23 But was there an accident? Did somebody nick the
24 pipeline, the gas line, and gas had to be shut off
25 and there was gas smells? Yes.

1 MR. GERKEN: Your Honor, I have to
2 object. These questions should have been asked --

3 ALJ PARROT: Hang on.

4 MR. GERKEN: These questions should have
5 been raised and asked on direct. We are now past
6 that point; and, you know, the witness respectfully
7 to his concerns is engaging in a soliloquy about his
8 grievances here. This is not the correct procedure
9 for that.

10 MR. SCHMIDT: Your Honor, I am also going
11 to interpose an objection to in particular anything
12 having to do with the power lines.

13 ALJ PARROT: Mr. -- before we proceed
14 there, were you finished with your response,
15 Mr. Conlin?

16 THE WITNESS: Yes, I am.

17 ALJ PARROT: With that I think I am going
18 to allow his testimony to stand.

19 Mr. Gerken, do you have any follow-up
20 questions you wish to ask in light of what you've
21 heard since you --

22 MR. GERKEN: No, your Honor.

23 ALJ PARROT: Okay. Mr. Jones?

24 MR. JONES: No, your Honor, no questions.

25 ALJ PARROT: Thank you, Mr. Conlin. You

1 are excused.

2 MR. SCHMIDT: Your Honor.

3 ALJ PARROT: I'm sorry, Mr. Schmidt. I
4 guess in light of the fact that -- yes, we will take
5 things a little out of order. Yes, go ahead.

6 MR. SCHMIDT: I appreciate that. Just a
7 couple of questions.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Schmidt:

11 Q. You indicated you have some safety
12 concerns regarding the intersection of the proposed
13 pipeline and Ohio Edison's power lines?

14 A. Yes.

15 Q. What's the basis for that concern?

16 A. It's just there will be people from Ohio
17 Edison on the pipeline potentially.

18 Q. So you don't have any specific
19 information that would suggest the pipeline cannot
20 coexist in the area of power lines?

21 A. No, I don't.

22 Q. Thank you.

23 A. I am just saying things that could happen
24 that are unexpected and why put something in a
25 situation that doesn't have to.

1 Q. But you have no --

2 A. I am not an engineer, no. I am not a
3 construction guy either.

4 MR. SCHMIDT: Okay. Thank you. No
5 further questions.

6 ALJ PARROT: All right. Thank you.

7 MR. BRAUNSTEIN: Is Mr. Conlin excused,
8 your Honor?

9 ALJ PARROT: Yes, he is.

10 MR. BRAUNSTEIN: You can stay or.

11 ALJ PARROT: Mr. Braunstein, you can go
12 ahead and move for admission of your exhibit.

13 MR. BRAUNSTEIN: Your Honor, at this time
14 we would move for the admission of LCPO No. 10,
15 Mr. Conlin's direct testimony.

16 ALJ PARROT: All right. Are there any
17 objections to the admission of LCPO Exhibit No. 10?

18 MR. GERKEN: No, your Honor.

19 ALJ PARROT: Hearing none it is admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 ALJ PARROT: And next witness,
22 Mr. Braunstein.

23 MR. BRAUNSTEIN: Thank you, your Honor.
24 Robert Kubasak.

25 (Witness sworn.)

1 ALJ PARROT: Please have a seat.

2 THE WITNESS: Thank you.

3 - - -

4 ROBERT KUBASAK

5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Braunstein:

9 Q. Good morning.

10 A. Good morning.

11 Q. Still morning, yes. Could you state your
12 name and spell your last name for the record.

13 A. Sure. My name is Robert Kubasak, last
14 name is K-U-B-A-S-A-K.

15 Q. And, sir, where do you reside?

16 A. I reside in Flint Ridge. My address is
17 37580 Eagle Nest Drive in Grafton, Ohio 44044.

18 Q. And is your property impacted -- your
19 Flint Ridge property impacted by the proposed NRG
20 pipeline?

21 A. Yes, it is.

22 Q. All right. And did you prepare written
23 testimony in this case?

24 A. Yes, I did.

25 Q. And I am going to show you what has been

1 tentatively marked as LCPO 11 and ask you if that is
2 a true and accurate copy of your direct testimony.

3 A. Yes, it is.

4 ALJ PARROT: The exhibit is so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. BRAUNSTEIN: Thank you, your Honor.

7 Q. And as you sit here today under oath, if
8 I asked you the same questions that you have
9 responded to in your direct written testimony, would
10 your answers be the same?

11 A. Yes, they would.

12 MR. BRAUNSTEIN: Thank you, sir. The
13 witness is available for cross.

14 ALJ PARROT: Mr. Schmidt?

15 MR. SCHMIDT: No questions.

16 ALJ PARROT: Mr. Gerken?

17 MR. GERKEN: Yes, your Honor. Just
18 briefly.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Gerken:

22 Q. It's Dr. Kubasak, correct?

23 A. No, it is not.

24 Q. My apologies. I am Dan Gerken, also not
25 a doctor.

1 A. Okay.

2 Q. Do you recall approximately what date you
3 engaged Mr. Braunstein with regard to this
4 proceeding?

5 A. I would have to go back and check; but,
6 no, I don't know exactly what date, no.

7 Q. Approximately what date, the month and
8 the year maybe?

9 A. Possibly January.

10 Q. Of this year?

11 A. Yeah, maybe before. Again, I don't
12 recall.

13 MR. GERKEN: No further questions.

14 ALJ PARROT: Mr. Jones?

15 MR. JONES: No questions, your Honor.

16 ALJ PARROT: All right. Thank you.

17 I'm sorry, Mr. Braunstein. Did you have
18 redirect in response to that?

19 MR. BRAUNSTEIN: Extensive redirect.

20 ALJ PARROT: I cut you off. I assumed
21 maybe you wouldn't.

22 MR. BRAUNSTEIN: No. I was just kidding.

23 ALJ PARROT: You might want to clarify
24 something.

25 MR. BRAUNSTEIN: No redirect.

1 ALJ PARROT: Sorry. I was just making a
2 big assumption there.

3 Thank you, Mr. Kubasak.

4 MR. BRAUNSTEIN: And it was correct. And
5 at this time may we move for the admission of the
6 witness's direct testimony, LCPO 11.

7 ALJ PARROT: All right. Very good. Are
8 there any objections?

9 Hearing none LCPO Exhibit No. 11 is
10 admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 MR. BRAUNSTEIN: Thank you, your Honor.
13 Is the witness excused?

14 ALJ PARROT: Yes, he is.

15 MR. BRAUNSTEIN: Next, we would like to
16 call Mary Thorne.

17 - - -

18 MARY THORNE

19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Braunstein:

23 Q. Good morning.

24 A. Hi.

25 Q. Can you state your name for the record,

1 please.

2 A. I am Mary Thorne, M-A-R-Y T-H-O-R-N-E.

3 Q. Thank you. And what is your address?

4 A. 37570 Eagle Nest Drive, Grafton, Ohio
5 44044.

6 Q. And is that part of Eagle Nest Drive
7 within the subdivision commonly referred to as Flint
8 Ridge?

9 A. Yes.

10 Q. And is your property impacted by the
11 pipeline?

12 A. Yes.

13 Q. And if you know, approximately how far is
14 the pipeline from your home?

15 A. I do not know that answer to that.

16 Q. Do you reside on the property?

17 A. Yes.

18 Q. And do you have children?

19 A. Yes.

20 Q. And what are their ages?

21 A. 2 and 4.

22 Q. Thank you. And you are married to
23 Brandon?

24 A. Yes.

25 Q. Okay. Great. And I am going to show you

1 a document which has been tentatively marked for
2 identification as LCPO 12 and ask you if that is a
3 true and accurate copy of your direct testimony that
4 was filed in writing in this case.

5 A. Yes, this is what I rendered.

6 ALJ PARROT: The exhibit is marked as
7 LCPO Exhibit 12.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. BRAUNSTEIN: Thank you, your Honor.

10 Q. And if I asked you all the same questions
11 today that you responded to in your written
12 testimony, would your answers be the same?

13 A. They would be similar based on what I
14 recall from answering, yes.

15 Q. I understand. Let me ask it another way.
16 Are the answers that are contained -- the testimony
17 that is contained in LCPO 12; is that correct and
18 your sworn testimony under oath?

19 A. Yes.

20 MR. BRAUNSTEIN: Thank you. The witness
21 is available for cross.

22 ALJ PARROT: Thank you.

23 Mr. Schmidt?

24 MR. SCHMIDT: No, ma'am.

25 ALJ PARROT: Mr. Gerken?

1 MR. GERKEN: Yes, your Honor, just
2 briefly.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Gerken:

6 Q. Good morning, Mrs. Thorne. How are you?

7 A. Nervous.

8 Q. No need to be nervous. Can I refer you
9 to the direct testimony that you gave in this case
10 which Mr. Braunstein just put in front of you,
11 specifically line 47. I think it's on the last page
12 at the top.

13 A. Yes. Would you like me to read the whole
14 response?

15 Q. Well, you see where it says "the company
16 insists on tearing up this small, quiet
17 neighborhood"? Do you see that part?

18 A. Yes.

19 Q. That's your testimony?

20 A. Yes.

21 Q. Are you aware that pipeline construction
22 regulations require NRG to reasonably restore the
23 property to its original condition?

24 A. Yes.

25 Q. Are you aware that NRG meets or exceeds

1 all municipal, county, and state regulations
2 regarding restoration of property?

3 MR. BRAUNSTEIN: Again, I am going to
4 object, your Honor. There is no evidence of that
5 and, in fact, some of the testimony from Mr. Sawyer,
6 I think, was to the contrary in terms of subsoil
7 ending up at top.

8 MR. GERKEN: I take issue with
9 Mr. Braunstein's characterization of Mr. Sawyer's
10 testimony. Mrs. Murphy's testimony was unequivocal
11 on this point.

12 ALJ PARROT: And I am going to allow the
13 question. If you know. If you don't know, please
14 state that. If you do know, you can answer the
15 question.

16 A. No, I am not aware of NRG's practices.

17 Q. If you could refer to lines 36 through 38
18 of your direct testimony now on the previous page.
19 Could you read question 13 and your answer, please.

20 A. Question 13.

21 Q. Do you see there line 36 through 38?

22 A. Oh. "Have you had any direct contact
23 with NRG or its land agents regarding the pipeline
24 project?" And I said, "Yes, until we hired a
25 lawyer."

1 Q. So you had "direct contact" with NRG?

2 A. Well, it was with their contract --
3 contractor for them.

4 Q. Understood. Was that contractor's name
5 Matt Countryman?

6 A. Yes.

7 Q. And he was a land agent working on behalf
8 of NRG; is that your understanding?

9 A. Yes.

10 Q. Was -- well, to you I'll ask did it
11 appear that Matt appeared to make a good faith effort
12 to consider your concerns and, to the extent he
13 could, to address them?

14 A. Yes.

15 Q. Were you making progress in your
16 discussions with him, you and Brandon I'll include in
17 this question?

18 A. I -- I don't know. I guess what would --
19 what would you say would be progress? Almost signing
20 a contract with him?

21 Q. Well, say on a scale of 0 percent to
22 100 percent where 0 percent is -- you've got concerns
23 that seem irreconcilable and 100 percent is you
24 signed the easement. Where were you on a scale of 0
25 to 100 percent?

1 A. I would say for me personally, because my
2 husband and I were not in agreement, I was maybe
3 about 40 or 50 percent.

4 Q. Where do you think your husband was on
5 that scale?

6 A. Probably about 60 or 70 percent.

7 Q. And after that time, you engaged counsel
8 for this matter?

9 A. Yes.

10 Q. Do you recall approximately what
11 timeframe?

12 A. Yes. It was, I believe, the third week
13 of October, 2014.

14 MR. GERKEN: I have no further questions.

15 ALJ PARROT: Thank you.

16 Mr. Jones?

17 MR. JONES: No questions, your Honor.

18 ALJ PARROT: Any redirect?

19 MR. BRAUNSTEIN: No, your Honor.

20 ALJ PARROT: All right. Thank you very
21 much. You are excused.

22 MR. BRAUNSTEIN: Your Honor, at this time
23 we would move that our Exhibit No. 12 be admitted
24 into evidence.

25 ALJ PARROT: All right. Are there any

1 objections?

2 Hearing none LCPO Exhibit No. 12 is
3 admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 ALJ PARROT: Mr. Braunstein, do you have
6 any further witnesses today?

7 MR. BRAUNSTEIN: Yes. Is Ms. Thorne
8 excused, your Honor?

9 ALJ PARROT: She is.

10 MR. BRAUNSTEIN: Thank you. We do,
11 Mr. Samuel Dennis.

12 MR. GERKEN: Your Honor, if we could
13 request a brief recess due to a witness named now
14 that was not noticed yesterday?

15 MR. BRAUNSTEIN: That's fine. I didn't
16 believe Mr. Dennis was going to be able to make it
17 because I think he just had surgery and didn't think
18 he could come down.

19 MR. GERKEN: And before the recess could
20 I just ask any other additional witnesses be
21 identified at this time?

22 ALJ PARROT: Yes, Mr. Braunstein. Do we
23 have others?

24 MR. BRAUNSTEIN: There are no other
25 additional witnesses.

1 ALJ PARROT: With that, Mr. Gerken, 10
2 minutes is sufficient? I do want to give you some
3 time in light of the fact --

4 MR. GERKEN: Yes, your Honor. I think 10
5 minutes would do the trick.

6 ALJ PARROT: Let's go off the record for
7 a 10-minute break. Thank you.

8 (Recess taken.)

9 ALJ PARROT: Let's go back on the record.
10 Mr. Braunstein.

11 MR. BRAUNSTEIN: I can't remember, your
12 Honor. Was the witness sworn?

13 ALJ PARROT: Not yet. I just want you to
14 go ahead and officially call him on the record for
15 us.

16 MR. BRAUNSTEIN: I'm sorry. Your Honor,
17 we call Samuel Dennis.

18 ALJ PARROT: Thank you.

19 Mr. Dennis, please raise your right hand.

20 (Witness sworn.)

21 ALJ PARROT: Very good.

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SAMUEL DENNIS

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Braunstein:

Q. Sir, can you state your full name and
spell your last name.

A. Samuel Dennis.

Q. And state your full name and spell your
last name for the court reporter.

A. Samuel Dennis, D-E-N-N-I-S.

Q. And where do you reside, Mr. Dennis?

A. 965 Salem Avenue in Elyria.

Q. And is -- what -- do you own property
that is affected by the proposed NRG pipeline?

A. Yes, sir.

Q. And is that the property you reside on?

A. No, sir.

Q. And where is that property located?

A. That's located on Chestnut Bridge in
north Eaton.

Q. Eaton Township?

A. Yes, Eaton Township.

Q. Thank you. And the pipeline is going
through that property?

1 A. Yes, sir.

2 Q. Now, I am going to show you what we
3 have -- what we have tentatively marked as LCPO
4 Exhibit 13, which is a copy of your direct testimony,
5 and ask you if that is a true and accurate copy of
6 the direct testimony that you submitted in this case.

7 A. Yes, sir.

8 Q. Thank you.

9 ALJ PARROT: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. BRAUNSTEIN: I'm sorry?

12 ALJ PARROT: So marked.

13 MR. BRAUNSTEIN: Thank you, your Honor.

14 Q. And if I asked you all the same questions
15 that you were asked and responded to in writing,
16 would your responses be the same today as you sit
17 here under oath?

18 A. Yes, sir.

19 MR. BRAUNSTEIN: Thank you. The witness
20 is available for cross, your Honor.

21 ALJ PARROT: Mr. Schmidt?

22 MR. SCHMIDT: No, ma'am.

23 ALJ PARROT: Mr. Gerken?

24 MR. GERKEN: Yes, your Honor. Just
25 briefly.

CROSS-EXAMINATION

By Mr. Gerken:

Q. Good morning, Mr. Dennis.

A. Good morning.

Q. My name is Dan Gerken. I am an attorney for NRG. How are you?

A. Good. And yourself?

Q. I'm good, thanks. Did you raise concerns to NRG or its land agents about the pipeline's proximity to your pond?

A. Yes, I did.

Q. And are you aware that NRG has responded to your concerns by routing the pipeline away from your pond?

A. Yes, sir; yes, sir.

Q. Are you aware that the existing proposed pipeline construction plan which you can access in this proceeding and is available through your attorney includes additional --

MR. BRAUNSTEIN: Again, I am going to object. I don't know that a construction plan for this pipeline is available to me. I don't believe I've ever been provided with it.

MR. GERKEN: I haven't completed the question yet, and I represent that the substance of

1 this question is in the record in this proceeding.

2 ALJ PARROT: All right. Please finish
3 your question and then we'll go from there.

4 Q. Are you aware that the existing proposed
5 pipeline construction plan includes specific erosion
6 and sediment control measures like silt fencing
7 specifically with regard to the area around your
8 pond?

9 A. I understand that that wasn't my problem
10 I was having. Just past experiences with pipelines,
11 I've been out on construction, and a lot of times the
12 water will find a way and will drain my pond. See,
13 that's one of the problems.

14 Q. Are you aware that this pipeline, the one
15 proposed by NRG, that the erosion and sediment
16 control plan for this pipeline which deals with
17 erosion and water issues meets or exceeds any
18 applicable regulation regarding these issues?

19 MR. BRAUNSTEIN: I am going to object,
20 your Honor, foundation, no statement of applicable
21 regulation of statement that the witness -- no
22 evidence the witness has ever reviewed it.

23 A. I don't understand. My concern is
24 just --

25 ALJ PARROT: There is an objection

1 pending, but you said you didn't understand the
2 question though?

3 THE WITNESS: Yes. I was going to bring
4 up another issue.

5 ALJ PARROT: Let's wait there then. The
6 fact that the witness has requested some
7 clarification, Mr. Gerken, if you could try it
8 another way.

9 MR. GERKEN: I'll move on.

10 ALJ PARROT: Okay.

11 Q. Are you aware that in response to your
12 concerns regarding the pond NRG obtained an
13 additional easement from your neighbor to reroute the
14 pipeline around your pond -- or, sorry, to avoid your
15 pond?

16 A. It wasn't just my pond. It's the
17 wetlands around me.

18 Q. Do you recall your last proposal to NRG
19 in terms of compensation from them to acquire an
20 easement in your property? Do you remember --

21 A. I don't understand what you are getting
22 at.

23 Q. Do you remember what your last proposal
24 moneywise to NRG was?

25 A. It was around 40.

1 Q. Is it your recollection that NRG's last
2 counterproposal to you was \$55,352?

3 A. I don't remember that.

4 MR. BRAUNSTEIN: I am going to have to
5 object again. They have said repeatedly, and I
6 agree, this is not the eminent domain case. The
7 compensation has nothing to do with this case. What
8 we are objecting to is the route and the failure to
9 consider alternatives, not to the compensation issue.

10 MR. GERKEN: To the extent there has been
11 admitted into the record testimony regarding these
12 issues which, of course, as the record reflects, NRG
13 has opposed, that has opened the door to this
14 discussion.

15 ALJ PARROT: And I agree the door was
16 opened through the witness's own direct testimony, so
17 I am going to allow the question.

18 MR. GERKEN: Do we need to read the
19 question back to the witness?

20 Q. Do you recall the question, Mr. Dennis?

21 A. No, I don't. I don't.

22 (Record read.)

23 A. I don't remember nothing like that.

24 Q. Do you recall that NRG offered you the
25 appraised value of the entire fee interest in your

1 front parcel where the driveway is in exchange for an
2 easement on that property that would allow you to
3 keep the fee ownership of that parcel?

4 A. I remember something like that but
5 nothing in writing. I never got anything in writing
6 from them, nothing except for the -- what they were
7 trying to offer me on the money part.

8 Q. Do you recall when you engaged counsel
9 for this matter?

10 A. It was early summer.

11 Q. And you understand that all conversations
12 and negotiations about the pipeline and the easements
13 must occur through counsel since having obtained
14 counsel?

15 A. Right, uh-huh.

16 Q. Yes, sir? I'm sorry, I didn't hear you.

17 A. I didn't understand. Can you say it
18 again?

19 Q. Yes.

20 A. I got a hearing problem.

21 Q. Oh, I'm sorry. Do you understand that
22 since you engaged Mr. Braunstein for this matter all
23 of the negotiations about the pipeline and the
24 easement must occur through Mr. Braunstein rather
25 than from NRG --

1 A. Yes, I understand.

2 Q. -- directly to you?

3 A. Yes.

4 Q. Okay. Just only a couple more questions,
5 Mr. Dennis. Did you raise issues regarding a gate on
6 your property with NRG?

7 A. Yes.

8 Q. And did they respond to those concerns in
9 any way?

10 A. They did a lot of talking, that's all I
11 can say, but nothing in writing.

12 Q. Okay. Did you raise concerns about a
13 culvert pipe on your property with NRG?

14 A. That's what the creek runs through my
15 property, yes.

16 Q. And did they also have discussions with
17 you about that concern?

18 A. They -- they had a discussion, that's
19 about it. I never seen anything in writing and so
20 that's why I am here today, I guess.

21 MR. GERKEN: I have no further questions.

22 ALJ PARROT: Mr. Jones?

23 MR. JONES: No questions, your Honor.

24 ALJ PARROT: Any redirect?

25 MR. BRAUNSTEIN: No, your Honor.

1 ALJ PARROT: All right.

2 Thank you very much, Mr. Dennis. I
3 appreciate it.

4 MR. BRAUNSTEIN: Thank you, your Honor.
5 At this time we would move that LCPO 13 be admitted
6 into evidence.

7 ALJ PARROT: Are there any objections to
8 the admission of LCPO Exhibit 13?

9 Hearing none it is admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. BRAUNSTEIN: And the witness can be
12 excused?

13 ALJ PARROT: He has been.

14 MR. GERKEN: Your Honor, NRG wishes to
15 renew its earlier motion to strike
16 appropriations-related testimony from the direct
17 testimony in Lorain County Property Owners' Exhibits
18 9 through 13.

19 ALJ PARROT: And the objection is noted
20 on the record. I am going to allow the testimony to
21 stand, and the Board will determine what weight, if
22 any, to give to it. Thank you, Mr. Gerken. Thank
23 you, Mr. Braunstein.

24 Any further witnesses, Mr. Braunstein?

25 MR. BRAUNSTEIN: We have no further live

1 testimony, your Honor. I do have some motions to
2 make regarding the admission of other testimony.

3 ALJ PARROT: All right. Let's go ahead
4 and take those up now.

5 MR. BRAUNSTEIN: As to the testimony of
6 Charles Borling, Wesley Parker, and Mary Miller on
7 cross-examination -- excuse me, on redirect
8 examination of NRG's, the applicant's, witnesses,
9 reference was made to that testimony and parts of it
10 either read into the record or distinctly referred
11 to. I believe that having entered a part of the
12 written document into the record, we are entitled to
13 have the whole document written -- excuse me, the
14 whole document included in the record, and I would
15 request and move that that testimony be admitted.

16 ALJ PARROT: And are any of those
17 witnesses here today?

18 MR. BRAUNSTEIN: No, they are not, your
19 Honor.

20 ALJ PARROT: Response?

21 MR. GERKEN: NRG vigorously objects to
22 the admission of any direct testimony from any
23 witnesses who are not available to appear and to be
24 cross-examined specifically on the authority of In
25 Re: Application of Black Fork Wind Energy, LLC, 138

1 Ohio St. 3d 43, a decision from the Supreme Court of
2 Ohio in 2013. Only when a witness is sworn in at the
3 hearing says the Supreme Court of Ohio does he or she
4 adopt the prefiled testimony under oath. It is at
5 that point that the written testimony becomes
6 evidence, not at the time of filing. Allowing --
7 further, allowing written testimony to be admitted
8 without the opportunity for cross-examination
9 develops an incomplete record. We have made further
10 still -- NRG has made out-of-town witnesses available
11 for cross-examination and has not sought to enter any
12 direct testimony into evidence without making them
13 available for cross-examination.

14 And, finally, as we hope we've exhibited
15 yesterday, we've attempted to limit our objections to
16 each and every mention of appropriations and
17 compensation-based issues yesterday in the
18 proceedings and this morning in the proceedings. And
19 it would be contrary to Ohio Supreme Court precedent
20 and the Board's hearing procedures to admit this
21 testimony into the record.

22 For those reasons we adamantly oppose and
23 in the alternative move affirmatively in limine to
24 eliminate that testimony from the record.

25 ALJ PARROT: Mr. Schmidt.

1 MR. SCHMIDT: The FirstEnergy intervenors
2 would join in that objection to the admission of
3 prefiled direct testimony that the witnesses were not
4 made available for cross-examination.

5 MR. JONES: Your Honor, staff would join
6 in that objection as well.

7 MR. BRAUNSTEIN: It seems that there are
8 a number of -- that there is resistance to the
9 motion.

10 ALJ PARROT: To say the least.

11 MR. BRAUNSTEIN: I would point out that
12 the distinguishing factor here -- we are going to
13 move to admit the other testimony too, but the
14 distinguishing factor here is that NRG, the
15 applicant, has used that testimony in their direct
16 and redirect examination. That is the source of the
17 incomplete record and we are entitled as a matter of
18 the Rules of Evidence to have the entire document
19 included once a portion of it is referred to.

20 MR. GERKEN: Your Honor, NRG's
21 affirmative anticipation of certain narrow excerpts
22 from the testimony that Mr. Braunstein just referred
23 to was only made by virtue of the Lorain County
24 Property Owners' failure to identify an exhaustive
25 list of the witnesses. That was the only reason for

1 affirmatively anticipating that testimony.

2 ALJ PARROT: Thank you, Mr. Gerken.

3 With that the motion is denied. I would
4 note though that to the extent that the testimony of
5 NRG's witnesses makes reference to the property
6 owners' testimony, the Board will be cognizant of the
7 fact that the property owners' testimony has not been
8 admitted into the record.

9 So with that I am saying the Board will
10 not be relying on testimony from NRG witnesses that's
11 pointing to testimony that's not been admitted into
12 the record. So I am just making that clarification,
13 but the motion is denied.

14 MR. BRAUNSTEIN: Thank you, your Honor.
15 And just for the record and without argument, I would
16 also move that because of hardship of people
17 appearing at this hearing who live in Lorain County
18 and who are employed and who went to great effort to
19 prepare written testimony, I would ask that their
20 written testimony be admitted as well. Thank you,
21 your Honor.

22 ALJ PARROT: And I will likewise deny
23 that motion, but I will make a statement at this
24 point that if there are any individual members of the
25 group of property owners, intervenors, excuse me,

1 that have filed testimony in this proceeding that
 2 weren't able to be here, they do have the choice to
 3 withdraw from the group of intervenors, and at that
 4 point they could file their testimony -- what's now
 5 called their testimony but what would be considered
 6 then by the Board as a public comment in the docket
 7 of the case but that would require that they withdraw
 8 from party status. So that's a choice they have to
 9 make. They may either remain a party of the group of
 10 intervenors or they may withdraw from the group and
 11 notice all the parties to that effect by filing
 12 something in the docket along with their public
 13 comments.

14 MR. BRAUNSTEIN: Thank you, your Honor.

15 MR. GERKEN: Your Honor, to that last
 16 point, if I may, it has come to our attention that
 17 property owner Cheryl Vajada --

18 ALJ PARROT: Yes. I have noticed that as
 19 well.

20 MR. GERKEN: -- V-A-J-A-D-A is not a
 21 party to this case.

22 ALJ PARROT: Yes.

23 MR. GERKEN: And we would, therefore,
 24 move that all of her direct testimony either be
 25 stricken or that she somehow -- if she is engaged by

1 counsel, be instructed of the same instruction that
2 you just advised Mr. Braunstein of moments ago.

3 MR. BRAUNSTEIN: Your Honor, I believe
4 that she is a party now. Was she not in the second
5 group?

6 ALJ PARROT: She was not included in the
7 second group of intervenors that were recently
8 granted intervention, so if she was here to testify,
9 it was my intention to clarify what -- what her plans
10 were, if she just was merely inadvertently excluded
11 from your second petition to intervene, if she was
12 filed -- trying to file this testimony in some other
13 capacity then as a member of the group of
14 intervenors.

15 So because she is not here and hasn't,
16 you know, attempted, we haven't had any admission of
17 her testimony, I kind of see it as a nonissue at this
18 point unless she does wish to be part of the
19 intervenor group still at this stage. And if so, you
20 will need to file a late petition for intervention on
21 her behalf, and we will take it up from there.

22 MR. BRAUNSTEIN: Instead of doing that --
23 and I have to admit I am not certain why she was not
24 listed, but instead of doing that, could I just ask
25 that the court accept her written testimony since she

1 is not an intervenor as a public comment?

2 ALJ PARROT: In light of the fact she is
3 not here, I think I would be more comfortable with
4 you checking with her first, and then if that is
5 truly her intention not to be part of your group of
6 intervenors, at that point I think you can file
7 something in the docket to that effect and along with
8 her public comment.

9 MR. BRAUNSTEIN: Thank you, your Honor.

10 MR. GERKEN: Your Honor, just one more
11 point to maybe clean up on that same issue, would
12 there be a timeframe for the withdrawal of any of the
13 direct testimony and submission to the public record?

14 ALJ PARROT: I am not expecting anybody
15 to formally -- it's not part of the record. I
16 haven't admitted any of this other testimony.

17 MR. GERKEN: Understood.

18 ALJ PARROT: I have only admitted the
19 witnesses that were here and available for
20 cross-examination. That is considered the record
21 that the property owners have submitted in this case.
22 As far as I'm concerned, the rest of it is just a
23 filing that's out there in the docket. If they do
24 though wish to withdraw as part of the intervenor
25 group, they need to do that -- I am not going to set

1 a deadline but in an expeditious fashion. I think
2 all the parties to the case realize the Board is
3 working under a very tight timeframe here. And with
4 that in mind they will need to do that quickly.
5 That's all I am going to say.

6 MR. GERKEN: Understood. Thank you.

7 ALJ PARROT: All right. At this point
8 let's go off the record.

9 (Discussion off the record.)

10 ALJ PARROT: Let's go back on the record.

11 Mr. Gerken, the company had reserved the
12 right to request to file rebuttal testimony, if
13 necessary. And at this point I will turn things over
14 to you to address that request.

15 MR. GERKEN: Thank you, your Honor. NRG
16 will waive its reserved rebuttal. There is no need
17 for that.

18 ALJ PARROT: All right. Thank you very
19 much.

20 With that while we were off the record
21 the parties have discussed a briefing schedule. In
22 light of the timeframe for a Board decision in this
23 matter, a briefing deadline has been set of Tuesday,
24 May 5, 2015. The parties will all file simultaneous
25 briefs on that date and that will be the only

1 briefing that is had in this case.

2 Is there anything else to come before the
3 Board today?

4 MR. JONES: No, your Honor.

5 ALJ PARROT: Hearing nothing the matter
6 will be submitted to the Board for its consideration.
7 Thank you.

8 (Thereupon, the hearing was concluded at
9 11:51 a.m.)

10 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Friday, April 24, 2015,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6034)

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Summary: Transcript in the matter of NRG Ohio Pipeline Company LLC hearing held on 04/24/15 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.