

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
Thursday, April 23, 2015.

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VOLUME I

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Siting Board.

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Thursday Morning Session,
April 23, 2015.

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ALJ PARROT: Let's go on the record. The Ohio Power Siting Board has called for hearing at this time and place Case No. 14-1717-GA-BLN, being in the Matter of the Application of NRG Ohio Pipeline Company LLC for Approval of a Letter of Notification for the Avon Lake Gas Addition Project in Lorain County, Ohio.

My name is Sarah Parrot. I am the Administrative Law Judge assigned by the Board to hear this case. At this time I would like to take the appearances of the parties, and we will start with the NRG Ohio Pipeline Company.

MR. BORCHERS: Thank you. Good morning, your Honor. On behalf of the Applicant, Dillon Borchers and Dan Gerken of the law firm of Bricker & Eckler, 100 South Third Street, Columbus, Ohio 43215.

ALJ PARROT: Thank you. On behalf of the Lorain County Property Owners.

MR. BRAUNSTEIN: Michael Braunstein, William Goldman, and Clint Stahler of the Goldman & Braunstein on behalf of the property owner intervenors.

1 ALJ PARROT: Thank you. On behalf of the
2 FirstEnergy companies.

3 MR. SCHMIDT: Good morning. Rob Schmidt
4 on behalf of American Transmission Systems,
5 Incorporated, Ohio Edison, and the Cleveland Electric
6 Illuminating Company. We are collectively referring
7 to them as FirstEnergy intervenors, excuse me, of the
8 law firm Porter, Wright here in Columbus.

9 ALJ PARROT: Thank you. And on behalf of
10 the Board's Staff.

11 MR. JONES: Good morning, your Honor, on
12 behalf of the Staff of the Ohio Power Siting Board,
13 Ohio Attorney General Mike DeWine, Assistant Attorney
14 General John Jones, Sara Anderson, 180 East Broad
15 Street, Columbus, Ohio 43215.

16 ALJ PARROT: Thank you. Before we get
17 started with the formal evidentiary hearing I would
18 like to ask if there are any members of the general
19 public that are present today who are not parties to
20 this case that wish to offer public testimony at this
21 time.

22 Let the record reflect that we have no
23 members of the general public that wish to testify.

24 And then at this point I would like to
25 ask if there are any preliminary matters to be

1 addressed among the parties.

2 We will start with Mr. Schmidt.

3 MR. SCHMIDT: Yes, thank you. On behalf
4 of the FirstEnergy intervenors and all the other
5 parties, we have reached an agreement concerning the
6 testimony of Mr. Ted Krauss on behalf of the
7 FirstEnergy intervenors. The parties have agreed
8 that Mr. Krauss does not need to be here for these
9 proceedings and that his direct testimony as filed in
10 this matter will be admitted into evidence.

11 To that end with the parties' agreement I
12 would like to move at this time for FirstEnergy
13 Exhibit 1 which would represent the direct testimony
14 as filed with the Board by Mr. Krauss into evidence.
15 May I -- do you need a copy?

16 ALJ PARROT: I'm fine but please provide
17 a copy to the court reporter. The exhibit will be
18 marked as FirstEnergy Exhibit No. 1.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 ALJ PARROT: Do any of the parties have
21 anything they wish to say about the stipulation as
22 represented by Mr. Schmidt?

23 Hearing nothing FirstEnergy Exhibit No. 1
24 is admitted into the record.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 ALJ PARROT: Anything else from
2 FirstEnergy at this point in time?

3 MR. SCHMIDT: No, ma'am.

4 ALJ PARROT: Thank you. Any other
5 preliminary matters from any of the other parties?

6 MR. GERKEN: Your Honor, NRG would like
7 to request rebuttal testimony.

8 ALJ PARROT: All right. We will reserve
9 the -- NRG will be considered to have reserved the
10 right to request that rebuttal testimony and will be
11 addressed at some point. We will see how things go
12 with our witnesses and go from there. Thank you very
13 much.

14 MR. GERKEN: Thank you.

15 ALJ PARROT: Anything else?

16 MR. BRAUNSTEIN: Your Honor, we would
17 make the same request then.

18 ALJ PARROT: I will -- let's see how
19 things go with the parties' direct testimony and then
20 we will go from there. We don't typically allow
21 surrebuttal from intervening witnesses, but we will
22 address that if the need arises.

23 MR. BRAUNSTEIN: Thank you.

24 ALJ PARROT: I will defer ruling on that.
25 Anything else?

1 All right. With that I will turn things
2 over to counsel for NRG.

3 MR. BORCHERS: Thank you, your Honor.
4 Before we call our first witness, we would like to
5 mark our exhibits.

6 ALJ PARROT: Okay. Very good.

7 MR. BORCHERS: Your Honor, we request to
8 mark as Applicant Exhibit 1 the NRG Ohio Pipeline
9 Company LLC letter of notification application filed
10 on December 19, 2014.

11 ALJ PARROT: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. BORCHERS: We request that Applicant
14 Exhibit 2 be the proof of service of application on
15 local public officials and libraries filed on
16 April 21, 2015.

17 ALJ PARROT: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. BORCHERS: We request that Applicant
20 Exhibit 3 be the proofs of publication of notice of
21 the major utility facility filed January 8, 2015.

22 ALJ PARROT: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. BORCHERS: We request that Applicant
25 Exhibit 4 be the proofs of publication of notice for

1 local public hearing filed April 14, 2015.

2 ALJ PARROT: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. BORCHERS: We request that Applicant
5 Exhibit 5 be the proofs of publication of notice for
6 the adjudicatory hearing filed April 20, 2015.

7 ALJ PARROT: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. BORCHERS: We request Applicant
10 Exhibit 6 the response to OPSB Staff data requests
11 filed March 4, 2015.

12 ALJ PARROT: All right. So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. BORCHERS: We request that Applicant
15 Exhibit 7 be the supplement to the letter of
16 notification application filed March 19, 2015.

17 ALJ PARROT: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. BORCHERS: We request Applicant
20 Exhibit 8 be the direct testimony of Alan Sawyer
21 filed April 6, 2015 -- 2015.

22 ALJ PARROT: So marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 MR. BORCHERS: We request that Applicant
25 Exhibit 9 be the direct testimony of Donell Murphy

1 filed April 6, 2015.

2 ALJ PARROT: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. BORCHERS: And finally we request
5 Applicant Exhibit 10 be the direct testimony of
6 Salvatore Caiazzo filed April 6, 2015.

7 ALJ PARROT: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. BORCHERS: Your Honor, that concludes
10 the Applicant's exhibits. However, we have entered
11 into a Joint Stipulation and Recommendation with the
12 FirstEnergy intervenors. We are prepared to mark
13 that as Joint Exhibit 1.

14 ALJ PARROT: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. BORCHERS: Your Honor, would you like
17 a copy of these exhibits now or at the end?

18 ALJ PARROT: I think I have most of them,
19 not all of them. I think I'm good. Thank you.

20 Mr. Borchers, I think I want to clarify
21 for the record with respect to the application that
22 has been marked as Applicant's Exhibit 1. I am not
23 sure you specifically mentioned this, but I am going
24 to consider that exhibit the application as it was
25 corrected and supplemented on various dates,

specifically I think the 19th of December, the 5th of January, and the 15th of January, so I am going to consider that entire application as it was subsequently amended and supplemented as Applicant Exhibit 1.

MR. BORCHERS: Yes, thank you, your Honor. And just for the record we are not providing copies of the Applicant Exhibit 1 and Exhibit 7 due to their volume.

ALJ PARROT: The volume.

MR. BORCHERS: We are happy to provide a copy if anybody requests.

ALJ PARROT: Okay. Thank you for that offer.

MR. GERKEN: Your Honor, NRG is prepared to call witnesses if you are ready.

ALJ PARROT: Thank you.

MR. GERKEN: NRG would like to call its first witness Alan Sawyer.

(Witness sworn.)

ALJ PARROT: Please have a seat.

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ALAN SAWYER

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

DIRECT EXAMINATION

By Mr. Gerken:

Q. Mr. Sawyer, could you please state your
full name for the record.

A. My name is Alan Sawyer.

Q. And who is your employer?

A. My employer is NRG Energy, Inc.

Q. What is your position with respect to the
LON application that's the subject of this
proceeding?

A. As employed by NRG, I am the director of
asset management relevant to the LON application. I
am the vice president of NRG Ohio Pipeline Company,
LLC.

Q. Mr. Sawyer, I am going to hand you a copy
of what has been marked today as Applicant's Exhibit
8. Could you take a look at that, please. When you
are ready, can you answer this question, is this your
previously filed testimony in this proceeding?

A. Yes, this -- yes, it is.

Q. Do you have any corrections to make to
your direct testimony?

1 A. I do have a correction. Let me find
2 the -- yes. So on line 91 of my testimony where it
3 talks about the depth in farm fields. It say 5 feet.
4 It should have said 4 feet is the minimum depth,
5 4 feet to top of pipe.

6 Q. Do you have any other corrections to
7 make?

8 A. No, I do not.

9 Q. And if I asked you the same questions
10 that were asked in your prefiled testimony today,
11 would your answers be the same other than the
12 correction you just made?

13 A. Yes, that is correct.

14 Q. Do you have any additions to make to your
15 testimony?

16 A. I do. Based upon reading the prefiled
17 testimony of the property owners, I noticed that
18 there was a lot of questions and answers relative to
19 the communications that occurred between NRG Pipeline
20 and the various property owners.

21 One of the things that I would like to
22 point out is that while we engaged various property
23 owners through our process, once property owners
24 retained counsel we invoked a protocol with our land
25 agents such that they were no longer allowed to talk

1 to property owners. They were only allowed to
2 communicate through their retained counsel in that
3 regard, Mr. Braunstein or Mr. Goldman. And so that
4 changed the nature of our communications once that
5 occurred.

6 Q. Have you had a chance to review then the
7 property owner's testimony filed in this case?

8 A. I have reviewed the property owners'
9 testimony.

10 Q. Do you have any additions to your
11 testimony after having done that review?

12 A. Yes. I would like to point out the
13 nature of our integrant process and our effort to
14 talk with a lot of landowners from the regard that we
15 worked with all the landowners that were willing to
16 communicate with us, and we worked very hard when the
17 landowner came to us with a question or a concern
18 that we worked in good faith to try to solve those
19 concerns and questions. And multiple times, I can
20 think of a couple of examples where we would have
21 made changes to our proposed route based upon
22 landowner questions and concerns.

23 If I may point out, for example, in the
24 prefilled testimony there was Mr. Borling talked about
25 his property, I would like to use as an example, and

1 Mr. Boling's property we presented a plat to him.
2 The proposed route we had done was to go through the
3 western edge of his agricultural field, and then when
4 explaining that route, he asked if we would stake the
5 proposed route. And so we had our land surveyor team
6 come out and stake the route. He was able to look at
7 it.

8 Based upon that he would like the route
9 relocated, so we marked to relocate the route into a
10 forested area that we had originally looked to avoid
11 in order to avoid environmental impact. And then we
12 looked to then -- when we went at his request to go
13 through the forested area, we then went to try to
14 reduce the size of the plat so that we could reduce
15 the impact of that forested area. And then we did a
16 couple of evolutions and iterations of our -- of our
17 plats that work with the property owner. But then
18 once he retained counsel under our protocol we were
19 no longer able to continue those communications.

20 A similar event occurred with Carmen. As
21 an example where our route goes through the utility
22 corridor along their back property. I know I
23 personally walked that route various times with
24 contractors and consultants to try to look at how to
25 minimize the impact. We had land surveyors out and

1 plotted every tree on their property in order to
2 figure out a route that would minimize impact of
3 those trees. We worked to reduce the size of the
4 requested easement a few times, I think at least
5 three times, to try to continue to reduce the impact
6 and avoid as many trees as possible.

7 Another example would be Parker. So
8 Mr. Parker has the industrial truck lot area that's
9 just south of the turnpike, and we've met with him a
10 couple of times. I've walked his property again with
11 different contractors and consultants to figure out
12 how to accommodate his request. He asked us to move
13 the -- realign the route numerous times looking --
14 and we've tried to figure out a route that would be
15 amenable that would work for his future desires and
16 still traverse the property. And we worked with him
17 up to the point, again, where he retained counsel,
18 and we were no longer able to talk with him.

19 And then the last example would be Mary
20 Miller. There is a property where when we initially
21 looked at trying to use that property, we were
22 thinking about how we might go under this road in
23 front of her property, Colorado Avenue. We were
24 trying to figure out how to go under that road, and
25 so one of the things we did to minimize the impact on

1 her property was to we actually decided to increase
2 our cost and expand a horizontal directional drill
3 such that we would go completely under her property,
4 not doing any surface work. There is no
5 construction. There's no trucks. There's no
6 clearing of any land. We are just going to drill
7 completely under her property as a means to reduce
8 the impact.

9 So I thought it was worthwhile to have --
10 having read the testimony, talk about the fact that
11 we worked hard to try to accommodate, and we talked
12 about the fact that we worked with a lot of
13 landowners to the tune of numerous changes to the
14 various plats in order to try to work in good faith
15 with them.

16 MR. GERKEN: Your Honor, I have no
17 further questions and present the witness for
18 cross-examination.

19 ALJ PARROT: Thank you. Any
20 cross-examination from the property owners?

21 MR. BRAUNSTEIN: Yes, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Braunstein:

25 Q. Good morning, Mr. Sawyer.

1 A. Good morning.

2 Q. You talked about -- well, you mentioned
3 that once counsel was involved, my law firm, that you
4 stopped -- you instituted a new procedure in talking
5 to the landowners that we represented; is that
6 correct?

7 A. Yes.

8 Q. Okay. And are you aware that we, the law
9 firm of Goldman & Braunstein, continued to have
10 negotiation or discussions at any rate with your
11 counsel, both Bricker & Eckler and Dennis O'Toole?

12 A. Yes, I am.

13 Q. And are you aware that we submitted
14 probably over a month ago an easement document that
15 contained the protections that our landowners needed?
16 Did Bricker & Eckler communicate that to you?

17 A. As part of the condemnation proceedings,
18 yes.

19 Q. No, not part of the condemnation
20 proceedings, as part of this proceeding that we told
21 them what sort of protections we wanted to have
22 included in the order if it's granted or the
23 certificate if it's granted. Did they communicate
24 that to you?

25 A. I have seen the easement that you have

1 provided.

2 Q. And did you respond to that?

3 A. I worked with counsel.

4 Q. Did you respond to it specifically? I
5 don't have a response to it.

6 MR. GERKEN: Objection, insofar as it
7 calls for privileged communication between counsel
8 and the client.

9 MR. BRAUNSTEIN: Well, first of all, I am
10 just asking if he responded. I am not asking him for
11 the nature of the communication.

12 ALJ PARROT: I will allow this particular
13 question but let's be careful not to be asking for
14 communications between the client and counsel.

15 MR. BRAUNSTEIN: Yes, I will.

16 A. I did not respond to you directly.

17 Q. Okay. But you did respond to your
18 counsel about it?

19 A. Yes.

20 Q. Okay. And you don't know if they
21 responded to us about it, I assume? Am I correct?

22 MR. GERKEN: Same objection.

23 Q. I am just asking what you know.

24 A. What I know was there were numerous
25 communications between counsel.

1 Q. Okay. And, of course, that procedure was
2 only instituted after the landowners were represented
3 by us. So prior to that you did communicate with
4 them.

5 A. Yes.

6 Q. And the -- in your direct testimony you
7 describe an iterative; is that correct?

8 A. Iterative, correct.

9 Q. It is not a word that I am really
10 familiar with in this context process. Is what you
11 just gave us an example of that iterative process
12 deciding to directionally drill in one area or maybe
13 to move the pipeline some in another area?

14 A. Those were examples of our efforts to
15 work with landowners to accommodate their requests.

16 Q. But is that an example as well of an
17 iterative process?

18 A. There was a different process -- slightly
19 different process that was used with the consultants
20 that we retained to develop the route that we then
21 proposed to the landowners and that was also an
22 iterative process.

23 Q. Okay. Good. You also mentioned that you
24 are the president -- excuse me, vice president of NRG
25 Pipeline Ohio LLC?

1 A. You didn't quite have the name right but,
2 yes.

3 Q. What is the name?

4 A. NRG Ohio Pipeline Company LLC.

5 Q. Well, I am going to try to call it LLC,
6 the LLC from the NRG side so I don't make that
7 mistake again. And who is the president of the LLC?

8 A. I would want to look at the -- I would go
9 to legal and verify that.

10 Q. You don't know?

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

12 Q. All right. Who owns the LLC?

13 A. The LLC is a subsidiary of NRG Energy,
14 Inc.

15 Q. Does that mean NRG owns it? You are
16 answering my question, yes, NRG owns it?

17 A. Either directly or indirectly, yes.

18 Q. In other words, it may be owned through
19 another subsidiary of NRG; and, finally, it's owned
20 by NRG Energy?

21 A. That's possible.

22 Q. Okay. And who owns the Avon Lake
23 generating plant?

24 A. NRG Power Midwest LP.

25 Q. And is that company, that LP, is that a

1 subsidiary of NRG as well?

2 A. Yes, it is.

3 Q. And I noticed in your -- the
4 certification phase.

5 A. I'm sorry, I didn't hear you.

6 Q. Should I turn the microphone on?

7 A. No, no. Say it again.

8 Q. In the certification case -- do you know
9 what I am talking about, where NRG got certified --
10 where the LLC got certified as a public utility? Are
11 you familiar with that?

12 A. Are you talking about the PUCO case?

13 Q. Yeah.

14 A. If that's what you are referring to, yes.

15 Q. Yes. Could we call it the certification
16 case? That's the way the Board refers to it.

17 A. Okay.

18 Q. All right. In the certification case,
19 in -- when the question was what -- essentially is
20 the LLC financially responsible, the response was to
21 submit a financial statement -- actually the
22 application filed with the SEC for the NRG Energy,
23 Inc.

24 MR. GERKEN: I am going to object.

25 Q. Is that correct?

1 MR. GERKEN: If he is going to ask about
2 what a document in another proceeding says, I think
3 he needs to show the witness the document.

4 Q. Do you need to see it?

5 A. Yeah. I'm trying to follow your
6 question.

7 MR. BRAUNSTEIN: Did you have a copy of
8 it?

9 Then, your Honor, can we go off the
10 record for a second?

11 ALJ PARROT: Yes, we may. Off the
12 record.

13 (Discussion off the record.)

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

15 MR. BRAUNSTEIN: Thank you.

16 Q. I believe that's it. You may have my
17 only copy.

18 MR. GERKEN: Does counsel for the
19 property owners have copies for the rest of counsel?

20 MR. BRAUNSTEIN: No. You have that, I am
21 sure. It's referred to in the Board's order setting
22 this hearing, but we expected to be able to show this
23 on -- so that everybody could see it at the same
24 time.

25 MR. GERKEN: Does the document have a

1 date or a title, Mr. Braunstein?

2 Q. Could you read the date and title,
3 please, Mr. Sawyer?

4 A. Before the Public Utilities Commission of
5 Ohio, in the Matter of the Application of NRG Ohio
6 Pipeline Company LLC for Authority to Operate as an
7 Ohio Pipeline Company, Case No. 13-2315-PL-ACE.

8 MR. GERKEN: I am going to object just on
9 relevance grounds. I am not sure what this has to
10 do. We will see where this is going.

11 ALJ PARROT: And I will overrule the
12 objection for now. I agree. We will see where it's
13 going.

14 MR. BRAUNSTEIN: Thank you.

15 Q. So do you see a section -- I am trying to
16 recover here. But do you see a section of that
17 document -- maybe it would be easier if I refer you
18 to it. I would ask you if you could read for the
19 record what this line says about Exhibit D.

20 A. So I'm reading page 3 of what he handed
21 me. On page 3 he asked me to read it says "Exhibit D
22 Financial Information of NRG Pipeline's Parent
23 Company."

24 Q. And then would you refer -- so the -- is
25 it your understanding that in terms of financial

1 qualifications, the financial qualifications were
2 given not for the LLC but for NRG Energy, Inc.?

3 A. I don't know if that's what this means or
4 not.

5 Q. All right. Would you look at Exhibit D
6 to that document. I believe it's the last one. Page
7 8 says "Exhibit D Pro Forma Financial Statement." Of
8 whom?

9 A. Of who? I am reading the words on the
10 page. It says "The financial information of NRG's
11 pipeline's parent company NRG Energy, Inc., can be
12 accessed in this most recent quarterly report to the
13 United States Security and Exchange commission" and
14 there is a URL which goes on.

15 Q. And do you know where that link leads you
16 to?

17 A. No.

18 Q. Does -- do the revenues from the LLC
19 ultimately find their way to the financial statement
20 of the parent company?

21 A. I don't know the proper accounting
22 treatment of that LLC.

23 Q. All right. And do the revenues of the
24 Avon generating plant end up in the coffers of NRG
25 Energy, Inc.?

1 A. Again, the accounting treatment of the
2 various subsidiaries, that's not my area of
3 expertise.

4 Q. But they might.

5 A. I don't know how to answer your question.

6 Q. Well, it's -- ultimately it's NRG's
7 money, right?

8 A. I don't know that.

9 Q. Where is NRG -- excuse me. Where is the
10 LLC's office in Ohio?

11 A. I don't know if there is a registered
12 office. There is probably a registered agent.

13 Q. That's not the question. I am sure there
14 is an agent for service of process. Does NRG --
15 excuse me. Does the LLC have an office in Ohio?

16 A. Not that I am aware of.

17 Q. Well, you are the vice president. You
18 can't answer that definitely? They do or they don't?

19 A. Not that I am aware of.

20 Q. Do they have a local telephone number?

21 A. No.

22 Q. Do they have any employees?

23 A. I doubt it.

24 Q. Did you hire any?

25 A. No.

1 Q. Does it have any assets?

2 A. I don't know how to answer it. That
3 would be an accounting question.

4 Q. To your knowledge does it have any
5 substantial assets?

6 A. Again, I don't know the accounting
7 treatment of the work that's been done.

8 Q. So its only asset that you are referring
9 to here would be the drawings and design plans and so
10 forth that have been done?

11 A. Again, I don't know all of -- I don't
12 know.

13 Q. Well, do you know of any assets -- as the
14 vice president of the LLC, do you know of any assets
15 that the LLC has?

16 A. I'm sure if I go ask an accountant, he
17 will show me the balance sheet and if there are
18 assets, it will show on the balance sheet.

19 Q. Yes. But my question is as vice
20 president here presenting the LLC as a financially
21 responsible company to build, I assume, a
22 multimillion dollar pipeline? Do you have an
23 estimate of the cost of this pipeline?

24 A. Do I have an estimate of the cost? Yes.

25 Q. And what is that?

1 A. It's multimillion dollars, absolutely.

2 Q. All right. And as the vice president of
3 this company that is asking the Board to approve the
4 LLC to build that pipeline, can you tell me, do you
5 know if the LLC has any assets?

6 MR. GERKEN: Objection. It has been
7 asked and answered four times.

8 MR. BRAUNSTEIN: It has not been
9 answered.

10 A. If you want to --

11 ALJ PARROT: Mr. Sawyer, hang on just a
12 moment. I am going to sustain the objection. I
13 think we've gotten the answer we are going to get out
14 of the witness.

15 MR. BRAUNSTEIN: Thank you.

16 Q. You are vice president, you said, of the
17 LLC?

18 A. Yes.

19 Q. Do you have any experience working for a
20 pipeline company?

21 A. I have not worked for this particular
22 pipeline company or others. I have worked and
23 associated with them but not worked for them.

24 Q. And have you ever had line authority? Do
25 you know what I mean by that?

1 A. No. What do you know by that?

2 Q. Direct authority, not as a staff, not as
3 a consultant, but direct authority in connection with
4 the construction of a pipeline?

5 A. I'm not -- I am trying to think. I
6 worked on construction forming pipelines, and I am
7 not sure of your definition.

8 Q. You don't know -- you have never heard
9 the term line authority before?

10 A. Could you explain it again so I know how
11 you are trying to define it?

12 Q. Direct authority where you were directing
13 the people how to build the pipelines, where to build
14 it --

15 A. I did not.

16 Q. -- what to construct it of?

17 A. No, I did not.

18 Q. You don't know who the president is, so I
19 guess you don't know if he or she has either.

20 A. That's correct.

21 Q. In your testimony and in your written
22 testimony and also in your additions to your
23 testimony here today, you indicated that you were
24 concerned with landowner impacts; is that correct?

25 A. That I'm concerned --

1 Q. Concerned with -- I'm sorry. I shouldn't
2 have said you. And I sometimes do that, but I mean
3 the LLC was concerned with landowner impacts.

4 A. Yes.

5 Q. Okay. And you recognize that this --
6 this pipeline like all high pressure natural gas
7 pipelines is inherently -- inherently has some risk
8 associated with it of events that could cause damage
9 to adjoining landowners; is that true?

10 A. I'm not sure I would agree with your
11 characterization.

12 Q. You don't think it has any risk?

13 A. That was not your question so I said I
14 disagree with your characterization.

15 Q. Well, what part of my characterization?
16 I just don't understand what you are saying.

17 MR. GERKEN: Objection to form of the
18 question.

19 THE WITNESS: I'm sorry? I'm trying to
20 figure out. Do me a favor.

21 Q. Just restate it?

22 ALJ PARROT: Restate it, please.

23 Q. Sure.

24 A. Yeah.

25 Q. Pipelines are inherently risky. Natural

1 gas, high pressure natural gas pipelines are
2 inherently risky, are they not?

3 A. I would not use inherently risky. I
4 would say natural gas pipelines have a risk to them.

5 Q. Have a risk to them. And that would be a
6 risk of fire or explosion or leaking?

7 A. There -- I would say that the federal
8 rules and regulations and requirement on how the
9 pipelines are designed and constructed were designed
10 to deal with perceived risks, that's correct.

11 Q. Okay. In fact, your -- what has
12 previously been marked as your Exhibit 6 is designed
13 to address some of those issues, is it not?

14 A. Remind me, what is Exhibit 6?

15 Q. I have written the -- your response --
16 your -- the LLC's response to the Ohio Power Siting
17 Board's request for additional data.

18 MR. GERKEN: Objection. If
19 Mr. Braunstein is going to ask the witness about a
20 document, I would like the witness to see the
21 document.

22 MR. BRAUNSTEIN: Well, I certainly have
23 no objection to you providing him with a copy of it.

24 MR. GERKEN: They are your questions,
25 Mr. Braunstein.

1 MR. BRAUNSTEIN: You don't have the copy
2 of the exhibit you tendered? I'll provide it. I
3 don't know why you are trying to make this more
4 difficult than it needs to be.

5 MR. GERKEN: If you will allow me a
6 minute with your questions, I will present him with a
7 copy.

8 MR. BRAUNSTEIN: That might be best. It
9 might be helpful if you could give him a binder of
10 your exhibits.

11 Your Honor, while the witness reviews
12 that document, the Applicant's Exhibit 6, we would
13 like to mark the Public Utilities Commission
14 application that the witness was referring to earlier
15 for the certification of the pipeline as Defendant's
16 Exhibit 1.

17 ALJ PARROT: Let's relabel them.

18 MR. BRAUNSTEIN: Excuse me, Intervenors
19 Exhibit 1.

20 ALJ PARROT: I think we need to come up
21 with a designation. Lorain County Property Owners is
22 a little long for my liking. I was thinking maybe
23 you want to call them LCPO. The Board likes its
24 acronyms.

25 MR. BRAUNSTEIN: LCPO, Lorain County

Property Owners.

ALJ PARROT: I don't know. I am open to ideas. We need to find a way to clearly designate your exhibits.

MR. BRAUNSTEIN: On behalf of the LCPO and I think I said Exhibit 1, but I think it would be probably better if we lettered ours by letters.

ALJ PARROT: We are sticking with numbers.

MR. BRAUNSTEIN: Should I mark them?

ALJ PARROT: We choose a designation and stick with it so we are using numbers so this will be LCPO Exhibit 1 unless you want to --

MR. BRAUNSTEIN: LCPO Exhibit 1. Thank you.

ALJ PARROT: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Have you had a chance to look at --

A. No. I was listening.

MR. GERKEN: NRG would like to request a copy of the document.

MR. BRAUNSTEIN: This is your exhibit.

ALJ PARROT: Let's go off the record briefly.

(Discussion off the record.)

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

2 Q. The question was simply isn't NRG's
3 Exhibit 6 directed to safety -- to addressing safety
4 concerns that the staff had?

5 A. Among other things this exhibit answers
6 five questions that staff asked.

7 Q. About -- they are -- some of those
8 questions, one of them is archeological but most of
9 those questions have to do with safety issues, do
10 they not?

11 A. So there is a -- question No. 1 is about
12 Ohio Historic Preservation Office, archeological.
13 No. 2 is about measurements, distances. No. 3 is --

14 Q. Let me interrupt you just for a second.

15 A. I'm sorry?

16 MR. GERKEN: Objection. You have to let
17 the witness answer your question.

18 MR. BRAUNSTEIN: Well, but I just asked
19 him aren't they about safety and what he is doing he
20 is reading to me what they are about. I am going to
21 ask if he is going to do that, I would like to ask
22 him about each one.

23 ALJ PARROT: All right. Let's take them
24 one by one. We are on No. 2. What are your
25 questions, Mr. Braunstein?

1 Q. That has to do with safety? Is that why
2 they are concerned about how far it is from houses
3 and things like that, how many houses are near it?
4 Isn't that a safety issue?

5 A. I didn't ask staff why they come up with
6 questions. Staff asked questions and we answered
7 them.

8 Q. And minimum yield strength, would you say
9 that's a safety issue?

10 A. I would say that yield strength goes to
11 the type of pipe, the design of the pipe, absolutely.

12 Q. But not to safety. I really don't
13 understand. You are concerned with safety, are you
14 not?

15 A. Absolutely.

16 Q. Given that there are certain risks
17 inherent in the pipeline as I believe you stated and
18 your concern with landowner impacts, did you as one
19 of your accommodations for landowners offer to
20 provide the landowners with any form of insurance
21 coverage or evidence of insurance coverage?

22 MR. GERKEN: Objection. That exceeds the
23 scope of what's at issue in this proceeding which is
24 the siting of the pipeline location --

25 MR. BRAUNSTEIN: Well --

1 MR. GERKEN: -- environmental impacts of
2 the pipeline.

3 MR. BRAUNSTEIN: Well, blowing up houses,
4 if that were to happen, whatever kind of event it is,
5 is certainly an environmental impact. I think I am
6 entitled to inquire -- there has been a fair amount
7 of testimony about an accommodation to landowners'
8 requests and the landowner impacts of this pipeline,
9 and I believe I am entitled to inquire as to how some
10 of these impacts were actually considered.

11 ALJ PARROT: I am going to allow this
12 particular question.

13 Q. So did you consider providing the
14 landowners with certificates of insurance?

15 A. Yes.

16 Q. And did you do it?

17 A. I don't think we've provided any
18 certificates of insurance.

19 Q. Did you think about providing landowners
20 with any form of indemnification agreement or promise
21 to hold them harmless in the event there was some
22 incident with the pipeline?

23 MR. GERKEN: Same objection because this
24 deals with appropriation of the land, not pipeline
25 siting issues.

1 MR. BRAUNSTEIN: This does not deal with
2 appropriation of land. It deals with how to mitigate
3 some of the serious consequences or possible
4 consequences of locating this pipeline where it is in
5 close proximity to homes.

6 ALJ PARROT: And I am going to take these
7 questions one by one, and I am going to allow this
8 question as well.

9 A. Can you rephrase your question again,
10 restate your question?

11 Q. Did you offer the landowners or have you
12 offered landowners any form of indemnification or
13 hold harmless agreement with respect to any liability
14 that may arise out of this pipeline?

15 A. Through the process of negotiating
16 easements with various landowners, there have been
17 discussions about indemnity.

18 Q. Well, discussions about indemnity but I
19 am not talking about negotiations of easements. I am
20 talking about conditions of this permit, all right?
21 Are you in a position to say we will indemnify
22 landowners if there is any liability arising out of
23 this pipeline?

24 A. As part of our easement process, that's
25 where we are addressing indemnity.

1 Q. So is my answer -- is your answer, no, as
2 part of the certificate you are not willing to commit
3 to that? That's all I am asking. It is just a "Yes"
4 or "No" question or "I don't know."

5 A. I think that's a legal question that I
6 would go to counsel and ask what's the proper place
7 to do indemnification. So I'm not sure I can answer
8 your question.

9 Q. Digging the trench for the pipeline, I
10 assume that's something that you are familiar with?

11 A. Okay.

12 Q. Is that a "Yes"?

13 A. Yes.

14 Q. Are you going to use a double ditch
15 method? Do you know what that is?

16 A. We -- there are certain landowners that
17 have asked us to do a double ditch method which I
18 refer to as being a method of digging open trenches
19 where you segregate topsoil from subsoil and, yes,
20 we've agreed to do that on certain landowners at
21 their request.

22 Q. And are you willing to commit as part of
23 your concern about landowner impacts, I am concerned
24 about the certificate, not agreements that you may or
25 may not have made with other landowners, as part of

1 the certificate, are you willing to say that you will
2 do a double ditch method on the property of all
3 landowners who request it?

4 A. That's a very difficult question to
5 answer because double ditch method is very subject to
6 the land in question, the size of the easements, the
7 amount of access, the topography, and so I don't
8 think you can just make a blanket statement that
9 across all landowners you will do double ditch
10 because -- and many times it might not be applicable.
11 It might not be possible. Maybe the landowner
12 doesn't want double ditch so, no, I don't think
13 that's an appropriate commitment to do.

14 Q. My question was landowners who request
15 it, by the way, not all landowners, are you willing
16 to make that commitment?

17 A. I'm willing to discuss it with a specific
18 landowner. Again, it goes to whether or not a
19 landowner that may request such a thing, whether or
20 not they have the amount of property and are willing
21 to give us the amount of easement necessary to do
22 such a thing.

23 Q. You have 50 easement and 100 -- let me
24 back up.

25 When you say the amount of easement

1 necessary, I think what you actually mean is the
2 amount of temporary work space in order to do it?

3 A. I would say it goes to both the amount of
4 permanent and temporary easement area in terms of the
5 entire work space combined of those two areas.

6 Q. How wide -- how wide would this easement
7 be?

8 A. How wide would? You used a pronoun this.
9 What's this?

10 Q. Well, you are applying -- you have an
11 application to build a pipeline on an easement. How
12 wide an easement are you applying for, are you
13 asking?

14 A. Typically the permanent easements are
15 50 feet in width.

16 Q. And what about the temporary work space,
17 how wide is that?

18 A. Typically that's another 50 feet.

19 Q. And so the 100 feet which you are saying
20 is not enough for double ditching on landowners who
21 ask for it.

22 MR. GERKEN: Objection.

23 A. I don't think I said that.

24 MR. GERKEN: That mischaracterizes the
25 testimony.

1 A. Yeah.

2 Q. Then let me just ask is the 100 feet
3 enough for double ditching?

4 A. On -- in an agricultural field with no
5 other constraints 100 feet would be sufficient to do
6 double ditch.

7 Q. Well, what about in -- let's talk
8 specifically about the Flint Ridge Subdivision. You
9 are familiar with that, aren't you?

10 A. Yes.

11 Q. All right. If those people who are
12 affected by the pipeline want double ditching and
13 they are intervenors in this case, will you commit
14 that they are entitled to receive that?

15 A. That's difficult because there are some
16 of the easements in the Flint Ridge area, for
17 example, I called about Conlin, their total combined
18 easement area at their request was reduced to 35 feet
19 in total width. That is not sufficient room to do a
20 double ditch.

21 Q. No temporary work space?

22 A. No.

23 Q. And what about with Thorne?

24 A. Thorne --

25 MR. GERKEN: Objection to form.

1 A. I would need to see the plat. I don't
2 know their exact dimensions off the top of my head.

3 ALJ PARROT: Can you clarify for the
4 record --

5 MR. BRAUNSTEIN: Brandon and Mary Thorne.
6 I'm sorry, I thought you knew.

7 ALJ PARROT: Thank you.

8 Q. I thought the witness knew. You did know
9 who I was talking about.

10 A. I made an assumption.

11 Q. Brandon and Mary Thorne, that was your
12 assumption?

13 A. Yes.

14 Q. What consideration are you taking and
15 what assurances are you willing to put in the
16 certificate concerning restoring wells and septic
17 systems to their preconstruction condition?

18 A. So this type of work we have managed most
19 of this -- actually every time we have been asked of
20 this we have managed this through the easement
21 process so that's typically where I have done it.
22 But what that -- what we have committed to do is to
23 the extent that a landowner identifies to us a septic
24 system and we have not been able to go around that
25 septic system, that if we were to damage it, we would

1 restore it to its precondition. Of course, it's
2 important that the septic system be a legal system.
3 But, yeah, we have committed to restoring things like
4 that.

5 Q. Well, what if -- what if it's not a legal
6 system, what if it's preexisting before there was any
7 regulation?

8 A. If they don't tell us about it, it's
9 going to be very difficult to restore that without
10 the landowner obtaining permits. That's my
11 understanding.

12 Q. Now, my question again -- you keep
13 talking about easements, but I'm not asking you about
14 easements. I am asking you if you or the LLC is
15 willing to make a condition of the certificate that
16 any septic system disturbed by the pipeline will be
17 restored, whatever that case for the LLC to restore
18 it?

19 A. I am not sure I can make that commitment
20 here on the stand. I would need to consult with
21 environmental and legal counsel to figure out if that
22 is something that's appropriate to do.

23 Q. Well, are you aware that I gave a list of
24 all these landowner impacts to your counsel Tom
25 O'Brien at Bricker & Eckler?

1 A. I am aware that you gave a laundry list
2 of many different things that you were asking for.

3 MR. BRAUNSTEIN: Well, I am going to move
4 to strike the characterization as a laundry list.

5 ALJ PARROT: The motion is denied.

6 Q. You are aware of the laundry list then,
7 if that's what you want to call it?

8 A. I am aware of a list that you provided to
9 counsel, yes.

10 Q. And did you consider those items?

11 A. Absolutely.

12 Q. But so then even though the issue of
13 septic systems was brought up in that list, you're
14 still unprepared to talk about it or commit to it?

15 MR. GERKEN: Objection, argumentative.

16 ALJ PARROT: Overruled.

17 A. Can I have your question again, please?

18 Q. You saw the issue about septic systems --
19 and we might as well bring in wells and try to
20 shorten this a little bit in that you characterize as
21 a laundry list, all right? You had an opportunity to
22 consider and discuss it with your counsel. Whether
23 you did or not don't tell me, you know, because it's
24 privileged. You had an opportunity to consider it.
25 Were you still after that unable to make a commitment

1 or to refuse to make a commitment with respect to
2 restoring wells and septic systems?

3 A. We have been and I will continue to be
4 prepared to talk about specific properties, and if a
5 landowner identifies something on their property that
6 they are concerned about that might be interrupted by
7 the pipeline, we will work to restore it to its
8 preexisting condition, but I don't think it's
9 appropriate to make a blanket commitment that if
10 there is a septic system on the person's property,
11 that no matter what happens it's covered. I don't
12 know that that is the right thing to do.

13 Q. And what about with respect to wells, if
14 a well is located within 200 feet of the easement,
15 are you willing to test the well water before
16 construction and test it also after construction in
17 terms of quality and quantity to make sure that the
18 construction has not interfered with it?

19 A. We are prepared to talk to individual
20 landowners about that, yes.

21 Q. Are you prepared to make -- I keep asking
22 the same question. I am not trying to be
23 argumentative, but you're not really answering my
24 question. I am not asking you if you are prepared to
25 talk about it. I am asking you if you are prepared

1 to make a commitment that you will do that.

2 A. And I'll make the statement again that
3 says that each and every land may have unique
4 attributes to it such that it needs to be considered
5 in response to that particular landowner and we'll
6 work to accommodate that; but, no, no, I don't think
7 it's appropriate to make a blanket commitment of
8 things like this.

9 Q. Are you willing -- are you aware the Ohio
10 Department of Natural Resources has guidelines or
11 best practices with regard to pipeline construction
12 through agricultural areas?

13 A. Yes, I am.

14 Q. And some of the -- I forgot -- LCPO's own
15 agricultural land; is that correct?

16 A. Yes, that's correct.

17 Q. Are you willing to commit as a condition
18 to the certificate that you will follow the ODNR
19 guidelines?

20 A. That is not appropriate because there are
21 circumstances even on some of your clients'
22 agricultural fields that some of those guidelines are
23 inappropriate.

24 Q. All right. I would like to talk to you
25 about route selection a little bit.

1 MR. BRAUNSTEIN: Your Honor, is it
2 necessary to mark the Board's order as an exhibit?

3 ALJ PARROT: No, it's not but I would --
4 again, if you have a copy that you can show to the
5 witness, I think you need to do that.

6 MR. BRAUNSTEIN: Yes.

7 Q. Would you read the highlighted portion of
8 the Board's order paragraph 8 into the record,
9 please.

10 MR. JONES: I'm sorry, your Honor. Can
11 we identify what entry date we are talking about?

12 MR. BRAUNSTEIN: March 9 of this year.

13 A. All right. So what you handed me is you
14 referred to this as an entry dated March 9. You
15 pointed to page 4.

16 THE WITNESS: Are these called
17 paragraphs, your Honor?

18 ALJ PARROT: Findings.

19 A. Finding 8 and part of it is highlighted
20 so you want me to read the highlighted section?

21 Q. Yes.

22 A. All right. In the certification case
23 which is italicized capitalized NRG Pipeline provided
24 a map that depicts the corridors of two potential
25 pipeline routes as a supplement to its letter of

notification application in this case. NRG Pipeline should supply a detailed application of the route selection process it used to determine the proposed route and the reasons why the proposed route is best suited for the pipeline as well as descriptions of the major alternatives considered addressing both of the corridors depicted and the application and the certification case and any other alternatives that were evaluated. The supplement should be filed.

Q. All right. I'm sorry. I went a little bit too far, but you did file the supplement; is that correct?

A. Yes, we did.

Q. And you have, I assume -- let me ask it as a question, have you tried as best you could to provide the documents that the Board requested?

A. Yes.

Q. And that's true for documents concerning the proposed routes; is that right?

A. We answered -- I'm sorry, finding, we provided a supplement.

THE WITNESS: Counsel, you marked it as something, I believe, right? I don't know.

ALJ PARROT: Applicant's Exhibit 7.

THE WITNESS: I'm sorry?

1 ALJ PARROT: Applicant's Exhibit 7.

2 A. Applicant's Exhibit 7 in response to this
3 question.

4 Q. All right. And in -- if we can go back
5 to defense -- I'm sorry, LCPO's Exhibit 1, do you
6 still have a copy of that, or did I take it back?

7 A. Which one is Exhibit 1?

8 Q. It's the application, the certification.

9 A. No. I don't have that.

10 Q. If you could take a look at that, are
11 there two corridors described in that exhibit,
12 potential corridors for the pipeline?

13 A. So there is Exhibit B is called map of
14 the proposed pipeline and there's a map with
15 corridors depicted on it.

16 Q. Okay. Two of them.

17 A. And this -- and this document you handed
18 me, yes.

19 Q. Yeah. And that's a correct copy as far
20 as you know of the certification application, isn't
21 it?

22 MR. GERKEN: Objection. He doesn't have
23 a foundation for the document.

24 Q. Do you have any reason to doubt that that
25 is a correct copy of the certification application

1 filed by your company, the LLC?

2 A. Yes.

3 Q. You doubt it?

4 A. You handed it to me.

5 Q. So that makes you doubt it.

6 A. Yes.

7 Q. Do you think this proceeding is funny?

8 A. No.

9 Q. Did you propose those two alternative
10 routes, you being the LLC?

11 A. There were two -- yes, there was a map
12 that was provided as part of the -- what's the
13 correct terminology, your application and the
14 certification case where we showed two corridors.

15 Q. Right. And those are reflected on this
16 map that I just gave you, right?

17 A. Yes.

18 Q. All right. And there's an east one and a
19 west one.

20 MR. GERKEN: Objection to form.

21 MR. BRAUNSTEIN: That's a question.

22 Q. Is there an east one and west one, or can
23 we refer to them that way? Because on your exhibits
24 the colors sometimes change.

25 A. If you're referring to the corridors that

1 both -- at one end let's call it start -- actually
2 it's finish. The corridors fit -- both corridors
3 finish at the power plant. The two corridors
4 depicted have a different origination point.

5 Q. One of them is more easterly and one of
6 them is more westerly.

7 A. Okay. I would agree with that.

8 Q. All right. Thank you. And, now,
9 referring to the east corridor, where in your letter
10 of notification is that corridor analyzed?

11 A. That corridor in the -- are you referring
12 to the LON application?

13 Q. Yes.

14 A. I believe the LON application answers a
15 very prescriptive set of questions.

16 Q. Where in your LON application is that
17 corridor that we've described as the east corridor
18 referred to? That's my question.

19 A. Should I review the LON?

20 Q. If you feel that it's necessary. I have
21 no objection if the judge doesn't.

22 ALJ PARROT: Do you have a copy for the
23 witness?

24 MR. GERKEN: Yes, your Honor.

25 A. So within the LON application there is a

1 section entitled "Alternatives Considered."

2 Q. Yes.

3 A. On page 6.

4 Q. All right. And does that consider the
5 east route?

6 A. This is a discussion of what was looked
7 at in order to present the route submitted in the LON
8 application.

9 Q. Does that look at the east corridor or is
10 that looking at route alternatives within the
11 corridor that you selected?

12 A. It discusses in general the process that
13 we went through to present the route in the
14 application.

15 Q. I am just going to ask you a very
16 specific question, does it refer to the east
17 corridor?

18 A. It does not use those words, no.

19 Q. Thank you. Does it analyze the east
20 corridor?

21 A. It talks about the results of having
22 analyzed that.

23 Q. Does it analyze the east corridor?

24 A. No.

25 Q. Thank you. Now, I am going to ask you

1 the same questions about the supplemental
2 notification of the letter. Does it refer to the
3 east part? And I assume your counsel will provide
4 you with a copy of it.

5 MR. GERKEN: Are you finished with
6 Applicant's Exhibit 1, Mr. Braunstein?

7 MR. BRAUNSTEIN: I can't answer that. It
8 depends how things go.

9 A. Mr. Braunstein, repeat your question
10 again.

11 Q. Does the supplemental letter of
12 notification refer to the east corridor?

13 A. Not as depicted in the Exhibit 1.

14 Q. Not as depicted in the certification case
15 Exhibit 1? Is that what you --

16 A. Yes, yes.

17 Q. Thank you. Now, in fact, I believe you
18 testified -- well, you didn't testify earlier. It's
19 in a previous deposition, but the east corridor, you
20 decided, and I believe this was your decision,
21 decided was infeasible? Is that right?

22 A. I'm trying -- I am absorbing your
23 question.

24 Q. Okay. I don't mean to rush you.

25 A. I'm thinking about your words. When we

1 worked with our consultants to continue our route
2 analysis process and after having met with the
3 Dominion East Ohio, the owners and operators of the
4 pipeline that we are looking to tap to provide
5 natural gas for this pipeline, it became apparent
6 that it was technically appropriate to tap their pipe
7 as far west as possible which would correspond to I
8 believe that you are referring to the assumption your
9 west route as opposed to the east route.

10 Q. East west corridor as opposed to the east
11 corridor?

12 A. Correct.

13 Q. And that was based on discussions with
14 Dominion East Ohio --

15 A. Yes.

16 Q. I'm sorry I paused but I wasn't finished.

17 A. Yeah, you did.

18 Q. Dominion East Ohio, the supplier of the
19 natural gas the Avon plant is going to use?

20 A. Not quite technically accurate but, yeah,
21 this pipe taps Dominion East Ohio to get gas.

22 Q. You have an alternate tap in case there
23 is an interruption of service or something like that?

24 A. There is an alternate tap that would tap
25 into a Columbia pipeline if they can figure out if

1 they have enough gas to supply us.

2 Q. Well, if that happens, that one is
3 actually closer to the Avon Lake plant, isn't it?

4 A. Absolutely.

5 Q. And if that happens then, would you give
6 up the part of the route between the Columbia Gas
7 plant -- or pipeline and the Dominion East Ohio
8 pipeline?

9 A. That's a possibility.

10 Q. So then what you are saying it's a
11 possibility you are not going to build this at all
12 south of the Columbia Gas line?

13 A. It's highly probable that we will but
14 if -- in the world of possible.

15 Q. When will you have an answer to that
16 question?

17 A. We have -- we have an answer that has not
18 changed from Columbia that they do not have
19 sufficient gas.

20 Q. So then you are -- I guess I don't
21 understand what you just said. You're not -- at this
22 point are you considering not building the southern
23 portion of the pipeline described in your letter of
24 notification?

25 A. I'm trying to remember your negatives,

1 but our intention is to build the entire 20 miles
2 because there is not sufficient gas to be able to tap
3 at the Columbia point.

4 Q. All right. And so to get back to my
5 question, am I correct that you determined that the
6 east corridor was not feasible because of information
7 that you got from Dominion East Ohio?

8 A. That is correct.

9 Q. All right. And you got that information
10 during conversations in the spring and summer of
11 2013; is that correct?

12 A. Yes.

13 Q. Okay. And where is the analysis of that
14 information?

15 A. Define your pronoun.

16 Q. The information that the tap was not
17 appropriate to serve the western route -- excuse me,
18 the eastern route -- or the eastern route was
19 infeasible because of the application. Strike all
20 that and ask it.

21 In the spring and summer of 2013, you
22 state that you learned from Dominion that the
23 easterly tap site was for some reason not
24 appropriate; is that correct?

25 A. Yes.

1 Q. All right. Did you analyze the
2 information -- let me strike that part too.

3 It was not appropriate because there was
4 higher pressure as you moved to the west; isn't that
5 your testimony?

6 A. Yes, that is correct.

7 Q. Okay. Now, did you analyze the pressure
8 gradient between the two points? Did you analyze
9 whether there was sufficient pressure to supply the
10 pipe on the eastern corridor?

11 A. I did not but we consulted our
12 engineering consultants at the time.

13 Q. That would be AECOM?

14 A. That would have been AECOM.

15 Q. AECOM.

16 A. They pronounce it AECOM.

17 Q. For the court reporter, correct me if I'm
18 wrong, I believe it's all caps A-E-C-O-M. So -- and
19 where is that analysis in your letter of
20 notification?

21 A. I don't think that's in there.

22 Q. And in your supplemental letter of
23 notification.

24 A. I don't believe that's in there.

25 Q. When -- what is the date -- do you still

1 have LCPO's Exhibit 1?

2 A. Yes, I do.

3 Q. And what is the date that that was filed?

4 A. How do you find that?

5 Q. Good question.

6 A. I'm sorry?

7 Q. I said good question.

8 A. Okay.

9 Q. I am going to give it to Clint.

10 MR. BRAUNSTEIN: Your Honor, the date is
11 actually not on the document. The only date we have
12 on the docket which dates it is November 27, 2013.
13 And what is this telling me? Oh.

14 Q. And I think that is -- unfortunately the
15 pages are not numbered, but the last page of the
16 document, do you see this?

17 A. You are pointing to the date and time?

18 Q. Yes.

19 A. So you are pointing to a date and time on
20 this piece of paper that says 11-27-2013 at
21 10:16:21 a.m.

22 Q. All right. Now, on November 27, 2013,
23 you already knew that the easterly corridor was not
24 feasible; is that correct?

25 A. No.

1 Q. Didn't you have the discussions with
2 Dominion in the spring and summer of 2013?

3 A. Yes.

4 Q. And didn't you learn then that the route
5 was not feasible?

6 A. No.

7 MR. BRAUNSTEIN: Let me have his
8 deposition, please.

9 Q. Do you recall having your deposition
10 taken in this case on April 15 of this year?

11 A. I don't remember the exact date, but I
12 remember the deposition.

13 Q. Now, I asked you, and this is a little
14 confusing, but I ask you "Now, was the one here on
15 Exhibit J that is in green," and I will represent to
16 you that's what we are calling the east corridor,
17 "was that ever considered by any of your
18 consultants?"

19 MR. GERKEN: Objection.

20 MR. BRAUNSTEIN: I am going to give it to
21 him.

22 Q. Do you see that on line 21 of page 97?

23 MR. GERKEN: I am going to object because
24 the exhibit is not attached. The witness has not yet
25 signed and verified his deposition, though I am sure

1 he will let us know if there are any mistakes he
2 notices when he is being asked on the stand.

3 ALJ PARROT: Well, with that in mind I
4 think I will allow the line of questioning.

5 A. Where are we?

6 Q. Do you see my question? The last one on
7 the page.

8 A. Line 21 Q?

9 Q. The Q stands for question.

10 A. Right. So now what? What -- "now, was
11 the one on here on Exhibit J that is in green, was
12 that ever considered by any of your consultants?"

13 Q. Now, I am going to show you Exhibit J to
14 your deposition, and the one in green is the easterly
15 route; is that correct?

16 A. So you've got a document going by Exhibit
17 J?

18 Q. Yes.

19 A. There is a document here that has blue
20 and a green and there is a green on it that you are
21 referring to as the easterly route.

22 Q. Right. So the green mark on Exhibit J is
23 the easterly route; is that correct?

24 A. Yes.

25 Q. Okay. And then I asked you was it ever

1 considered, right?

2 A. Yes.

3 Q. Okay. And then you answer. What do you
4 say?

5 A. On this page it says "That corridor was
6 considered at one time when AECOM was retained."

7 Q. All right. And then I asked you?

8 A. "Where is it in the report, the AECOM
9 report, do they talk about that?

10 Answer: I don't believe they did because
11 that tap location was deemed to be technically
12 infeasible; and, therefore, we needed to go to the
13 other tap location."

14 Q. All right. So and in that conversation
15 was had -- technically deemed infeasible you have
16 already testified here today was in the spring or
17 summer of 2013.

18 A. I didn't say that. You said that.

19 Q. And you agreed, did you not?

20 A. We analyzed it. We had conversations at
21 that time. I remember walking down the green route
22 and snow on the ground.

23 Q. Yes. But that's not my question, sir.
24 In all fairness my question is that in 2013, you had
25 conversations with Dominion East Ohio that indicated

1 to you although, it's not discussed in the letter of
2 notification, but indicated to you that the tap
3 location for the easterly route was infeasible; isn't
4 that right?

5 A. Not --

6 Q. Wasn't that your testimony?

7 A. I'm sorry. Go ahead.

8 Q. Isn't that your testimony here today?

9 A. My testimony is that starting in spring
10 and summer we had conversations with DEO. Those
11 conversations concluded the following
12 winter-springtime period when it was determined that
13 did not -- that you needed to go to the blue. I
14 remember walking down the green area and the blue
15 area in the wintertime of -- get my years straight,
16 of '14. So you asked me a question did I have
17 conversations in the summer. Yes.

18 Q. Well, okay. So at least you had some
19 indication in the spring and summer of 2013 that the
20 route was infeasible; is that right? Excuse me. I
21 should have said corridor but what I really meant was
22 tap location for that corridor.

23 A. We had ongoing communications with
24 Dominion to learn about those two options as well as
25 the Columbia options.

1 Q. And did you ever file a supplement to
2 your certification case, your application in your
3 certification case?

4 A. I don't know.

5 MR. BRAUNSTEIN: Your Honor, I would like
6 to mark for identification as LCPO No. 2 a cover
7 letter from the law firm of Bricker & Eckler as well
8 as a supplement or a -- excuse me, an update to their
9 application as described by the Bricker & Eckler law
10 firm.

11 ALJ PARROT: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. GERKEN: NRG would like to request a
14 copy of the exhibit.

15 MR. JONES: So would staff, your Honor.

16 ALJ PARROT: And I think I've already
17 stated we will need to be distributing copies to the
18 parties and the court reporter that goes for all
19 exhibits.

20 MR. BRAUNSTEIN: I understand, your
21 Honor, and I apologize for not having it already
22 done, but we will certainly get everybody a copy of
23 this. In fact, if I can get them now, I can do it.

24 Q. But anyways all I am asking you is you
25 filed an update to that application in the

1 certification case.

2 A. Okay. So -- what exhibit number is this?

3 Q. 2, LCPO 2.

4 A. What's this document labeled 2?

5 Q. This is the -- you are correct it is
6 labeled 2 but this is the entry that the court -- in
7 this case that the court ruled we did not need to
8 make an exhibit so that's Exhibit 2.

9 A. That's not an exhibit, okay. All right.

10 Q. So my only question -- I am not going to
11 ask any questions about the document. My only
12 question is that -- that that update was filed in the
13 certification case; is that correct?

14 A. Yes.

15 Q. All right. And on what date was that
16 filed?

17 A. That was filed -- this letter is dated
18 February 2, 2014.

19 Q. Of 2014. All right. And by the winter
20 of 2014, you knew that the green route, the easterly
21 route, was not feasible; is that correct?

22 A. I remember walking in snow. I do not
23 know the exact date of when we walked down that
24 route. I know that we walked down to continue those
25 discussions.

1 Q. All right. So by -- what was the date,
2 February what?

3 A. This letter is dated February 12.

4 Q. February 12, 2014, you might have known
5 that the green route was infeasible.

6 MR. GERKEN: Objection.

7 Q. Excuse me --

8 MR. GERKEN: Speculative.

9 MR. BRAUNSTEIN: I am just asking him.

10 MR. GERKEN: Asked and answered.

11 MR. BRAUNSTEIN: I think he is saying he
12 didn't know when he knew; so, now, I am just asking
13 him if it might have been in February -- by February
14 12 of 2014.

15 ALJ PARROT: Overruled. I would just
16 like to ask too for clarification of the record. Can
17 we dispense with the blue and green and go with
18 easterly and westerly designations which will make
19 more sense in the record?

20 MR. BRAUNSTEIN: Absolutely. Thank you.

21 Q. We are talking about the easterly
22 corridor. By February 12, 2014, you might have known
23 that it was infeasible in your opinion.

24 A. I doubt that conclusion was there at that
25 time.

1 Q. Shortly thereafter?

2 A. Without going back and looking at dates,
3 no. I don't know.

4 Q. All right. At any rate the update that
5 was filed that has been marked as LCPO 2 contains no
6 reference to the easterly route; is that correct?

7 A. That's correct. This update refers to
8 the information on personnel.

9 Q. Thank you. Now, isn't it true that in
10 February -- by February you had for one reason or
11 another let go of AECOM and hired ERM and Hanover
12 Engineering?

13 A. By February of '14, that is correct.

14 Q. All right. And at that time I believe it
15 is their testimony, they will testify later but you
16 have their written testimony, at that time in
17 February of 2014, didn't the pipeline company give
18 them a route that was proposed?

19 A. Say your question again.

20 Q. By February of 2014, did the LLC give ERM
21 and/or Hanover the proposed route?

22 A. No.

23 Q. A version of the proposed route.

24 A. No. We gave them a start and stop point.

25 Q. Would you please look at what was Exhibit

1 D to your deposition and tell me what that document
2 is.

3 MR. BRAUNSTEIN: I'll get it by lunch.

4 A. So this document is a 17-sheet set of
5 route concept plans. It is dated February, 2014.

6 Q. February 14, is that correct, 2014?

7 A. That's correct.

8 Q. And that document is a printout of the
9 route at a particular point in time; is that correct?

10 A. That is correct.

11 Q. And that time is as you stated
12 February 14.

13 A. That's correct.

14 Q. And that is the route that the so-called
15 iterative process worked on to improve; is that
16 correct?

17 A. Yes.

18 Q. To your knowledge, was there any other
19 update or supplement or whatever you want to call it
20 filed in the certification case to reveal to the
21 Board that that second corridor was not being
22 actively considered any longer?

23 A. Not that I recall.

24 Q. Right. And, in fact, in the provision
25 that you read earlier from the Board's entry of

1 March 9 of this year, they asked for information
2 about both roads -- or, excuse me, I'm sorry, both
3 the east and west corridor? Do you still have that,
4 or did I take it back?

5 A. You took it back.

6 MR. BRAUNSTEIN: Can I have it, please?

7 Q. Particularly -- it's right at the end.
8 You don't have to read it out loud. Just look. It's
9 right at the end. I think it asks for information on
10 both corridors.

11 A. Okay. What's your question again?

12 Q. Does the Board's entry paragraph 8 of
13 March 9, 2015, ask for information about the
14 consideration of both corridors?

15 A. It says "as well as description of the
16 major alternatives considered addressing both the
17 corridors depicted in the application and
18 certification case."

19 Q. Thank you. Now, I would like to talk to
20 you about Flint Ridge for a second. Are you familiar
21 with that subdivision?

22 A. Shifting gears.

23 Q. Yes, I'm shifting gears a little bit.
24 Still on route selection but, now, we are talking
25 about Flint Ridge.

1 A. So your question was am I familiar with
2 Flint Ridge? Yes.

3 Q. Yes. And at one point this pipeline was
4 designed -- or I think the pipeline easement was
5 designed to go around Flint Ridge; is that right?

6 A. There were four different ways of
7 analyzing the traverse section of the route.

8 Q. And one of them was to go around it; is
9 that right?

10 A. Of the four ways one went on the east
11 edge of it, one went on the west edge of it, one went
12 through part of it, and then the route selected with
13 the least impact is the one that followed the
14 existing utility corridor.

15 Q. I am going to show this to counsel first,
16 and then I will give it to you just so they have.

17 A. Okay.

18 MR. GERKEN: NRG would just like to renew
19 its request for copies of exhibits.

20 ALJ PARROT: Noted.

21 MR. BRAUNSTEIN: I repeat my statement I
22 thought this was going to work somewhat differently,
23 but I will get them.

24 Q. All right. Do you see Flint Ridge
25 Subdivision on what has now been marked as LCPO 3?

1 ALJ PARROT: I don't think we've marked
2 it yet so just for the record let me describe what
3 this is, Mr. Braunstein.

4 MR. BRAUNSTEIN: This is a map of the NRG
5 Avon Lake pipeline project aerial constraints page 5
6 of 8 prepared by AECOM.

7 ALJ PARROT: Thank you. So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. And will you take a look at that? I
10 believe that that map is reproduced from your letter
11 of notification. But at any rate you recognize Flint
12 Ridge on that map?

13 A. I recognize the Flint Ridge neighborhood
14 on this map, yes.

15 Q. And you recognize that originally the
16 pipeline was designed to go around Flint Ridge.

17 A. I see that this map from the -- from
18 AECOM shows a westerly -- westerly and an easterly
19 depiction around Flint Ridge, that is correct.

20 Q. All right. And one of those is a
21 semicircle that goes around; is that a fair
22 description? A semicircle that goes around Flint
23 Ridge?

24 A. I'll accept that.

25 Q. All right. And one is a straight line

1 more or less that goes through Flint Ridge.

2 A. No.

3 Q. You wouldn't say the purple one is a
4 straight line?

5 A. No.

6 Q. How would you characterize it?

7 A. Sort of diagonal but you said it goes
8 through Flint Ridge. This line goes to the west of
9 Flint Ridge.

10 Q. It doesn't cross the property of people
11 that live in Flint Ridge?

12 A. I didn't say that. It probably touches
13 the back property of people who live in Flint
14 Ridge -- Flint Ridge.

15 Q. That is wooded property? Do you know
16 that?

17 A. Where is -- oh. Okay. I had the map
18 upside-down because you handed it to me that way, so
19 the east and west are reversed.

20 Q. All right. So?

21 A. Okay. So then I think I need to correct
22 what you asked. Can you start again now that I have
23 got the map in the right orientation?

24 Q. There were two routes reflected on that
25 map.

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. The original one is a semicircle that
5 goes around Flint Ridge?

6 A. The -- there is a red-orange line that
7 goes to the east side of Flint Ridge that we -- that
8 you want to refer to as the semicircle, yes.

9 Q. Yes. And then there is more or less a
10 straight line or diagonal line. It's a straight
11 line, I guess, that goes on a diagonal that goes
12 through Flint Ridge; is that correct?

13 A. Yes.

14 Q. Thank you. And that line affects that --
15 the first route that was proposed was the semicircle
16 route; is that correct?

17 A. I don't know if one is first versus
18 second. There are two routes on this.

19 Q. Well -- well, let me just ask this, in
20 the iterative process that you have described, you
21 decided not to use the semicircle route but to use
22 the line that goes through Flint Ridge; is that
23 correct?

24 A. Actually the route proposed in the LON is
25 different than either of these two.

1 Q. But it is a line -- it's not the
2 semicircle. It's a line that goes through Flint
3 Ridge?

4 A. The route proposed in the LON is the line
5 that follows the utility corridor, not the eastern
6 approach on this one.

7 Q. Would you -- you have the LON, I believe,
8 the whole thing in front of you. Would you refer me
9 to the page that shows that.

10 A. All right. Bear with me a second. So I
11 have the LON in front of me Attachment A, and
12 Attachment A is a -- is a five-page -- five-sheet
13 map. And on sheet 4, page 4 of that map, it shows
14 the Flint Ridge area.

15 Q. And can you indicate to me and to the
16 court where that is?

17 A. For the record it's between mile marker
18 13 and 14 on this map.

19 Q. And can you point it out to me with your
20 finger?

21 A. So there is 13 and there is 14 so there
22 is a lot of glare but the Flint Ridge is between
23 those two mileposts.

24 Q. And between those two mileposts does the
25 route go through Flint Ridge?

1 A. Yes.

2 Q. And does the route go in a semicircle
3 around Flint Ridge?

4 A. No.

5 Q. And the route through Flint Ridge is
6 shorter; is that correct?

7 A. I'm not sure about that. Probably close.

8 Q. Close to the same size?

9 A. Probably close.

10 Q. So what you are telling me is the
11 diameter of the circle is equal to the circumference
12 of the semicircle?

13 A. Well, because this isn't a pure straight
14 line so there are some angles in it.

15 Q. Earlier -- changing subjects.

16 A. Changing subjects, oh, let me put this
17 away.

18 Q. Just as a warning.

19 A. Thank you.

20 Q. Earlier we talked about the relationship
21 between the LLC and NRG and between Avon Lake
22 generating and NRG and the LLC, how they are all
23 owned through intermediaries or not by NRG Energy,
24 Inc. Do you recall that conversation?

25 A. Yes.

1 Q. And would it be fair to characterize NRG
2 Energy, Inc., the LLC, and the Avon Lake generating
3 plant as affiliated companies?

4 A. They are all affiliate -- the two, the
5 Avon Lake generation and the pipeline company, are
6 affiliates, that's correct.

7 Q. And they are both, in turn, affiliates of
8 NRG, are they not?

9 A. Subsidiaries.

10 Q. Subsidiaries. And has the LLC, Avon
11 Lake, or NRG for that matter ever filed a corporate
12 separation agreement with the Public Utilities
13 Commission?

14 A. I have no idea. I don't know what one
15 is.

16 Q. All right. Now, I believe that in your
17 application you say that the purpose of this plant is
18 to serve the Avon Lake generating plant and other
19 customers whose identity -- this is not in the
20 application but, in fact, whose identity is not
21 presently known; is that correct?

22 A. Your statement -- your question did not
23 make sense to me.

24 Q. All right. Let me ask it in a more
25 direct way. Who are the intended beneficiaries of

1 this pipeline? Who will it serve?

2 A. This pipeline will serve the Avon Lake
3 power plant.

4 Q. And what about other potential customers?

5 A. There are no customers on this pipe.

6 Q. But don't you ask for permission to serve
7 other potential customers?

8 A. In the certification case, absolutely.

9 Q. Yes. And isn't that also referred to in
10 the letter of notification?

11 A. You are going to make me look. Let me
12 look.

13 Q. It would be the very first part if it's
14 there.

15 A. So on page 3 -- I am on page 3 of the LON
16 application under the subheading that says why the
17 project meets the requirements for LON. It says "The
18 project qualifies as a letter of notification, LON,
19 because it fits the criteria of the Ohio Revised Code
20 Chapter," there's numbers in that. "It is primarily
21 needed to meet requirements of a specific customer or
22 specific customers. At the time of this filing the
23 sole customer is the Avon Lake power plant, and the
24 primary purpose of the project is to provide natural
25 gas as a fuel source to the plant."

1 Q. Okay. So it is designed to serve the
2 specific customer Avon Lake power plant and other
3 customers whose identity is not known.

4 A. It doesn't say that. It says "the sole
5 customer is the Avon Lake power plant."

6 Q. Right. Well, what about the
7 certification case? Doesn't that say specific
8 customer Avon Lake and other customers?

9 A. It says --

10 MR. GERKEN: Objection. Is there a
11 document you are referring to, Mr. Braunstein?

12 A. That was very confusing.

13 Q. No. Let me just ask this, do you plan to
14 sell gas to other customers besides Avon Lake?

15 A. There are no other customers in the
16 pipeline.

17 Q. That's not what I asked you. Do you plan
18 to sell gas to other people, entities, corporations
19 other than Avon Lake from this pipeline?

20 A. There are no other customers of the
21 pipeline.

22 Q. I asked you do you plan to sell --

23 MR. BRAUNSTEIN: Your Honor.

24 Q. Do you plan to sell, do you intend to
25 sell, is it your aim to sell to customers other than

1 Avon Lake generating plant?

2 MR. GERKEN: I am going to object because
3 it's asked and answered and insofar as it implies,
4 you know, a criterion above and beyond what is at
5 issue in this proceeding, it's completely irrelevant.

6 ALJ PARROT: I disagree. The objection
7 is overruled.

8 A. So when -- then I will answer it this
9 way, when we've met with organizations along the
10 route, an example LCCC, they asked us if they could
11 become a customer. We told them no. We have no
12 other customers at this time. We are not looking to
13 serve you on this pipe. That is our application.
14 Did we reserve the right under the rules that say you
15 can have a specific customer or specific customers?
16 Yes.

17 Q. So, in other words, you have reserved the
18 right to sell to people other than Avon generating?

19 A. That was not your question but that is
20 your question now, yes.

21 Q. Thank you. Now, over the course -- well,
22 you're a peak load generator, correct?

23 A. Are we changing subjects again?

24 Q. Just try to follow me. If I confuse you,
25 let me know. Avon Lake generating is a peak load

1 generator; is that correct?

2 A. Today, no.

3 Q. When it is served by this natural gas
4 line and operated the way you intend, will it be a
5 peak load generator?

6 A. When the plant runs on natural gas from
7 this pipeline, we expect it will operate in a
8 peaking-type condition.

9 Q. And, in fact, I believe you say in your
10 application and in your deposition testimony that you
11 have a contract with PNJ to supply peak load
12 electricity.

13 A. That's not what I said.

14 Q. Do you have a contract with PNJ?

15 A. Do you mean PJM?

16 Q. If that's the correct initials, yes.

17 A. We have --

18 Q. I thought it was Pennsylvania New Jersey?

19 A. But it's Poppa Juliette Mike.

20 Q. PJM, okay.

21 A. So we have -- the power plant has a
22 capacity obligation as a result of the basic residual
23 auction three years out with PJM.

24 Q. Does that mean your answer is "Yes, the
25 power plant has a contract with PJM?"

1 A. I don't know if that's the right
2 terminology.

3 Q. Does the power market have an obligation
4 to provide electricity to the grid that PJM
5 maintains?

6 A. The specifics of your words can have a
7 lot of meaning, and your words don't make sense to
8 me.

9 Q. All right. Well, let's talk about when
10 these -- you did admittedly say it was a peak load
11 generator.

12 A. When it runs on natural gas on this
13 pipeline, it would operate -- we expect it to operate
14 as a peaking-type facility.

15 Q. Okay. And all my questions are related
16 not to how this plant is running as a coal-fired
17 plant, but I am talking about what NRG Energy intends
18 to do with this plant, okay?

19 A. Okay.

20 Q. Now, the peak loads that you anticipate
21 are primarily in the summer; is that correct?

22 A. No. It can occur both winter and summer.

23 Q. Don't you expect it is more likely that
24 you will have these peak loads at least for extended
25 periods of time in the summer?

1 A. Not if the last two winters are
2 indicative of the future.

3 Q. I don't want to get into that debate with
4 you. Isn't it true that the peak electricity usage
5 is summer afternoons?

6 A. I believe the PJM system peak -- the
7 summer system peak I believe is larger than the
8 winter system peak.

9 Q. And -- okay. So let's talk about how
10 much gas this plant needs. You testified, I
11 believe -- let me ask you this, the amount -- the
12 percentage of time that this plant will run at full
13 capacity, NRG Energy's planning for the plant, is
14 between 0 and 15 percent; is that correct?

15 A. Again, Mr. Braunstein, your words perhaps
16 are not the right words.

17 Q. Perhaps they're not.

18 A. I'll answer this that when you asked me
19 the question prior, I said that our expectation is
20 that when this plant operates on gas, that we would
21 expect it to operate in a peaking-type operation
22 which would be something between 0 and 15 percent
23 capacity factor.

24 Q. All right. And that means if it's 15 --
25 can we use 10 percent because it's in the range?

1 A. Yes.

2 Q. And it makes the math a lot easier. So
3 if this -- your plans, your expectations as a
4 corporation or limited liability company are that
5 this plant will operate at full capacity -- or could
6 operate at full capacity for 10 percent of the year
7 which would be 36 days; is that correct?

8 A. That is one way to do the math, that is
9 correct.

10 Q. I understand that. And if the plant
11 operated -- if PJM called for the plant to operate,
12 it might call for it to operate at 50 percent for I
13 guess it would be then 72 days, twice half the
14 percentage of capacity twice as long.

15 A. That would be an equivalent 10 percent
16 capacity factor.

17 Q. All right. And, in fact, PJM during the
18 summer since they don't intend -- since the plant, I
19 believe you said, can't start and stop on a dime in
20 terms of generating that you might expect to get
21 100 percent capacity during a heatwave you testified,
22 and then it might drop off to 0 after that for some
23 period of time.

24 A. That would be typical of a peaker-type
25 operation, absolutely.

1 Q. Okay. Now, if your plan to use 0 to
2 15 percent of the capacity -- I'm sorry, I am going
3 out of order. The pipeline --

4 MR. GERKEN: I didn't hear that.

5 MR. BRAUNSTEIN: I started with the wrong
6 question and I apologized and I apologized under my
7 breath, so I apologize for starting with the wrong
8 question, and I apologize for apologizing under my
9 breath. Okay?

10 Q. Now, the pipeline is designed so that it
11 will supply enough gas to I believe it's 50 PSI to
12 allow this plant to operate at 100 percent of
13 capacity; is that correct?

14 A. That is correct.

15 Q. Okay. Now, when this plant is not
16 operating at all or is operating at a less than
17 100 percent of capacity, you are storing -- the LLC
18 is storing natural gas under pressure in the
19 pipeline; is that correct?

20 A. Storing may have distinct connotations in
21 the natural gas industry. When the -- if the gas is
22 not flowing, the pipe continues to have gas in it.

23 Q. Right. All right. So when -- during the
24 periods when the plant is not anticipated to be
25 called by PJM, I would assume from the example that

1 we've talked about with summer peak loads, for
 2 example, that at times in the winter or times when
 3 you don't use air conditioning like today, in fact,
 4 in those you would have excess capacity. In those
 5 times you would have excess capacity, and you could
 6 sell it to other customers; isn't that correct?

7 A. Two-part answer, if the plant is not
 8 operating, there is gas in the pipe that is not being
 9 used by the plant.

10 Q. Yes.

11 A. There are no other customers so, no, it
 12 is not going to be sold to anybody else.

13 Q. I didn't ask you -- I know you don't have
 14 any customers right now. You've said that a lot of
 15 times, but you have asked for permission to sell
 16 excess to your customers. You said that in your
 17 letter of notification.

18 A. We reserved the right, that's correct.

19 Q. And, now, what you are telling me is this
 20 excess gas in the pipeline, and we know how much it
 21 is because you've identified what you expect -- how
 22 you expect this plant to run. So we have excess gas
 23 in the pipeline, and my question to you simply is
 24 couldn't that be sold to other customers?

25 A. And I would suggest your term excess is

1 not the term that the gas people would use, that they
2 have released capacity in the pipe, that it could be
3 available.

4 Q. Okay. For sale to other customers.

5 A. It's hypothetical, yes.

6 Q. You could call it hypothetical if you
7 want, but you are saying there is release or excess
8 capacity of natural gas in the pipeline that could --
9 that is available to be sold to other customers.

10 A. The terminology of excess versus release
11 are two different things.

12 Q. What does release mean to you?

13 A. Release means that the customer that has
14 the right to transmit gas on a pipe doesn't need it
15 at a particular point in time.

16 Q. And releases it.

17 A. And might release it.

18 Q. And it would then be available for sale
19 to other customers.

20 A. You kept harping on the word excess.
21 That's what's confusing me.

22 Q. I truly apologize for that. In your
23 definition the gas that is released is available for
24 sale to other customers; isn't that what you are
25 saying?

1 A. If we had other customers, that is a true
2 statement.

3 Q. Okay. Now, could you imagine a scenario
4 where this plant is used primarily -- the Avon
5 generating plant is used primarily in the summer to
6 supply electric for peak loads, notably air
7 conditioning, refrigeration, and then not use it in
8 the winter, but the natural gas would be used for
9 heating or some other purpose in the winter? Just
10 could you imagine that scenario?

11 MR. GERKEN: Objection, hypothetical,
12 speculative.

13 ALJ PARROT: Response?

14 I'm sorry. I am looking to
15 Mr. Braunstein for a response from him first in
16 regard to the objection.

17 MR. BRAUNSTEIN: I could ask him if it's
18 possible if that would be preferred. I am trying to
19 avoid a long discussion is all.

20 Q. Is it possible that this plant could be
21 used to -- primarily in the summer to address peak
22 loads for electricity and that the released gas that
23 is available in other times of the year could be used
24 for heating or some other industrial purpose?

25 ALJ PARROT: I will allow you to answer

1 that question.

2 A. What I answered to part of your question
3 before is that there are peaking needs, a curve, both
4 in the winter and in the summer. So there is a
5 likelihood that when it's cold, that the plant --
6 really cold, for example, I referred to the last two
7 winters, that would be an example of when it's really
8 cold and that plant might be needed to run during
9 that time period.

10 Q. All right. When you take all those time
11 periods together, it maxes out at 15 percent capacity
12 of the plant, right? That's what you said, it's
13 going to run at 0 to 15 percent capacity.

14 A. Oh, you said -- I thought you said 50.

15 Q. 15.

16 A. Oh, we expect the plant to run, yes, at 0
17 to 15 percent. We were going to use 10 percent for
18 easy numbers, the capacity factor.

19 Q. And that means if we use 0 to 15 or
20 whatever, that means that 85 percent -- according to
21 your plans 85 percent to 100 percent of the gas in
22 that pipeline could be released by Avon generating.

23 A. It's possible.

24 Q. Thank you.

25 ALJ PARROT: Let's go off the record at

1 this point.

2 (Discussion off the record.)

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

4 MR. BRAUNSTEIN: I have nothing further
5 and thank you, Mr. Sawyer.

6 ALJ PARROT: Okay. At this point we are
7 going to -- actually let's go off the record.

8 (Discussion off the record.)

9 ALJ PARROT: At this point we are going
10 to talk a recess for lunch. We will reconvene at
11 1:15. Thank you.

12 (Thereupon, at 12:18 p.m., a lunch recess
13 was taken.)

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1 Thursday Afternoon Session,
2 April 23, 2015.

3 - - -

4 ALJ PARROT: Let's go back on the record.
5 Mr. Schmidt, did you have any questions
6 for the witness? Sorry, caught you.

7 MR. SCHMIDT: No, ma'am.

8 ALJ PARROT: Thank you.

9 Any questions from Staff?

10 MR. JONES: No questions, your Honor.

11 ALJ PARROT: Any redirect?

12 MR. GERKEN: Yes, your Honor.

13 - - -

14 ALAN SAWYER

15 being previously duly sworn, as prescribed by law,
16 was examined and testified further as follows:

17 REDIRECT EXAMINATION

18 By Mr. Gerken:

19 Q. Mr. Sawyer, has the applicant in this
20 proceeding entered into a stipulation with
21 FirstEnergy in this case?

22 A. Yes, we have.

23 Q. Can you just briefly describe for your
24 Honor how this stipulation was entered into.

25 A. Yes. So we have worked with FirstEnergy;

1 and, again, we are using the term FirstEnergy to
 2 represent their various entities, but we have worked
 3 with FirstEnergy folks over quite a period of time
 4 providing them with a lot of information relevant to
 5 our pipeline route, relevant to design information.
 6 We've also had numerous conversations with them about
 7 what information is appropriate, answering their
 8 questions, and we worked with -- together revising a
 9 number of different versions to the point where we
 10 were able to enter into the agreement that we're
 11 submitting as part of this stipulation.

12 Q. The stipulation is the end result of
 13 those negotiation; is that fair?

14 A. Yes, yes.

15 Q. Mr. Sawyer, do you recall your
 16 conversation with Mr. Braunstein this morning about
 17 this sort of peaker operation nature of the Avon Lake
 18 power plant?

19 A. I do.

20 Q. And am I correct that you are an asset
 21 manager for NRG?

22 A. Excuse me, yes, I am an asset manager for
 23 NRG.

24 Q. Can you discuss in your capacity for
 25 asset manager for NRG just generally for the room how

1 the power plant generates revenue?

2 A. Yes. So the Avon Lake power plant is --
 3 receives revenue and participates in the wholesale
 4 electric market in two different ways. One of the
 5 ways is to deliver what is termed capacity and the
 6 other way is to deliver energy or actual electricity.
 7 And it is -- the process of delivering capacity which
 8 is what we talked about, the fact that the wholesale
 9 market looks for a commitment by a power plant such
 10 as Avon Lake three years in advance to agree to want
 11 to deliver capacity in the future.

12 Now, when you agree to deliver capacity,
 13 what that means is that your power plant is designed,
 14 is staffed, is maintained ready to operate whenever
 15 the PJM system deems your plant to be economic. And
 16 the PJM organization decides to tell you you should
 17 run at a certain point in time. And typically that
 18 is called day-ahead market or the real-time market.

19 Then when you actually are called upon to
 20 operate and you generate electricity, that's called
 21 energy revenue or the energy market and you get paid
 22 for the energy that you generate and you get paid for
 23 your capacity which means you're available and ready
 24 to generate electricity.

25 And if I may, it's the capacity

1 application which is used in this particular case
2 from the standpoint that this pipeline is there to be
3 able to provide a source of gas for the power plant
4 so that they are ready and able to operate whenever
5 they are called. And that's the basis of the
6 pipeline providing its gas to the power plant.

7 Q. During your conversation with
8 Mr. Braunstein, you referred to the gas in the
9 pipeline as excess gas. Do you recall that?

10 A. I do.

11 Q. Given what you just described as the two
12 different revenue streams, how would you characterize
13 the capacity of gas in the pipeline to the Avon Lake
14 power plant?

15 A. The pipeline -- the pipeline was sized to
16 be able to provide the needs of the power plant and
17 specifically the needs of the power plant. If at any
18 time the power plant is asked to run, all of the gas
19 in the pipeline or its design capacity to flow could
20 be consumed by the power plant. And if it operates
21 at 100 percent, it will consume all the gas that can
22 flow through the pipeline. So the pipeline capacity
23 is basically dedicated to the plant as part of its
24 capacity obligation such that if the PJM were to tell
25 the plant to operate tomorrow, it has the gas

1 available to do that. But at the same time PJM can
2 call you up in what's called the real-time market and
3 say start your plant now and you have to have the gas
4 available to do that.

5 Q. Under the pipeline plans that exist
6 today, is there any physical mechanism to offload gas
7 from the pipeline to any customer other than Avon
8 Lake power plant?

9 A. No, there is not. Our pipeline has been
10 designed with no taps, and taps would be the
11 terminology I would use to indicate that there is a
12 hole in the pipe that can be used to service some
13 other load. There is only one point at which gas can
14 flow out of this pipe which is the Avon Lake power
15 plant, its sole customer.

16 Q. Mr. Sawyer, I am going to hand you LCPO 3
17 which was marked today. And do you recall referring
18 to that in your discussion with Mr. Braunstein about
19 the Flint Ridge development?

20 A. Yes.

21 Q. And in that discussion you were talking
22 about the orange route and the purple route depicted
23 there?

24 A. Yes.

25 Q. Are those the only routes that NRG

1 considered in the vicinity of the Flint Ridge
2 development?

3 A. No. There were actually four different
4 routes considered.

5 Q. Could you talk a little bit more about
6 those.

7 A. So the analysis that was performed over
8 time there were actually four different routes that
9 were -- and I will use the term route but there were
10 four different methods to try to traverse that area
11 of the pipeline and look at one to the east, one to
12 the west along the river, one along the utility
13 corridor, and then one along the backside of the
14 eastern portion.

15 Q. And to your knowledge is there someone
16 available today to testify more about those different
17 options that were considered?

18 A. Absolutely. My colleague Sal would be
19 the appropriate person to talk about those, the
20 details of those routes.

21 Q. You also discussed with Mr. Braunstein a
22 potential provision of an easement or some other
23 arrangement that would require you to do double
24 ditching on a landowner's property. Do you recall
25 that conversation?

1 A. Yes, I do.

2 Q. Okay. I just wanted to make sure we all
3 understand what that discussion was about, explain
4 how that process works, and specifically with regard
5 to the width of the easement that NRG is permitted to
6 work on.

7 A. So, again, the double ditching
8 methodology refers to in general that during the
9 actual construction of the pipeline from an open
10 trench standpoint when they remove the soil, dirt out
11 of the trench area, you would separate the top
12 portion of the dirt or the topsoil into one pile of
13 dirt, perhaps called a windrow, and you would
14 separate the other lower portion of the dirt, the
15 subsoil, into a separate pile such that those two
16 windrows do not mingle so they can be maintained
17 separate so you can put them back into the trench
18 subsoil on first so the topsoil ends up on top again
19 like it was before.

20 But in order to do that type of
21 construction you have to have sufficient space
22 available to you via the easements to be able to do
23 all of that construction work and to be able to both
24 dig the trench, build your pipeline, install it,
25 separate out these two soil areas, and if a

1 landowner -- and this is why it's very important to
 2 think about this from a very specific landowner's
 3 standpoint and it's not just generic. Some
 4 landowners may not have sufficient space available to
 5 even allow you to do that type of construction. Some
 6 landowners may want you to reduce your easement space
 7 because they would rather have less impact from
 8 easement size than double ditching. All of those
 9 factors need to be considered when you decide and
 10 work with a landowner to figure out what's the
 11 appropriate construction best practices.

12 Q. Mr. Braunstein asked you about whether
 13 you have history as I think you called it a line
 14 supervisor on the construction of the pipeline
 15 projects. Do you recall that conversation?

16 A. Yes.

17 Q. Can you just describe generally the
 18 pipeline construction process specifically with
 19 regard to your role in that process.

20 A. So NRG Ohio Pipeline, which I am the vice
 21 president, we will look to use a number of different
 22 individuals within our company, engineers,
 23 construction individuals, procurement people, a
 24 number of different folks, all of which who will work
 25 together and hire a number of contractors, whether

1 they are additional engineers, whether they are
2 environmentalists, whether they are actual
3 contractors who would install a pipeline, they'll go
4 out and procure the pipe, all of which will be
5 performed by individuals directly, but as a vice
6 president, I will be overseeing those activities.

7 Q. Mr. Sawyer, I am going to hand you what
8 was marked today as Applicant's Exhibit 7 which is
9 the supplement to the LON. Before you turn your
10 attention to that, I just want to ask, do you recall
11 your conversation with Mr. Braunstein about two
12 different corridors that were referred to in an
13 order, specifically the eastern and western corridors
14 as they were referenced here today? Do you recall
15 that conversation?

16 A. I do.

17 Q. Can you turn your attention to the first
18 page of the supplement that I just put in front of
19 you. Do you recall which -- do you recall which
20 numbered finding was discussed in that entry when you
21 were talking with Mr. Braunstein about that?

22 A. Yes. This was finding No. 8 of the Board
23 entry.

24 Q. Okay. Can you read for me the sentence
25 that has a footnote to entry finding No. 8 which is

1 the last sentence on the first page of Applicant
2 Exhibit 7.

3 A. Right. So our supplement --

4 MR. BRAUNSTEIN: I'm sorry. Help me a
5 minute. Are you referring to the supplemental or to
6 an order?

7 MR. GERKEN: Applicant Exhibit 7,
8 supplement to the letter of notification, page 1.

9 MR. BRAUNSTEIN: Right.

10 MR. GERKEN: Last sentence.

11 MR. BRAUNSTEIN: Oh, all right.

12 Q. Go ahead, Mr. Sawyer.

13 A. So it reads "The Board limited this
14 instruction by noting that it does 'not expect NRG
15 pipeline to undertake any new analysis of the
16 proposed route or alternatives,'" and it's footnoted
17 to the entry.

18 Q. Can you describe over the course of this
19 pipeline selection process just in general how NRG
20 went from considering two corridors referenced in
21 finding 8 in the certificate case, that eastern and
22 western corridors referred to today, to the route
23 that it's proposed in this proceeding?

24 A. Yes. So when the -- get my terminology
25 correct. So when the certificate case was put forth,

1 there were two corridors identified because there was
2 the possibility of -- there were two possibilities of
3 how we might submit an application for the pipeline.
4 During the process of doing our route analysis,
5 having conversations with gas suppliers, having
6 conversations with our consultants, we determined
7 that the appropriate method to apply to the Siting
8 Board was through the LON application given that the
9 LON then says that you should provide your route
10 analysis for a single route.

11 So at that time it made sense to make the
12 switch from possibly needing to do two routes to the
13 LON application we needed to supply one route, and so
14 we chose the western route as the basis for that
15 analysis work.

16 Q. Was one of those routes more practical
17 than the other one from a business and logistics
18 standpoint?

19 A. Yes. And that was what I was referring
20 to earlier from the standpoint that in conversations
21 with Dominion East Ohio, it was technically better to
22 select a tap location further to the west than to the
23 east. An eastern more tap location would probably
24 require -- could require a compressor station, could
25 require a different sized pipe so technically that is

1 an inferior option to the west so if you are going to
2 choose the LON application, which is the appropriate
3 form here, and a single route, you would choose the
4 technically superior tap location which is the
5 western corridor.

6 Q. And just to be clear, that's because the
7 western most -- well, the more westerly tap location
8 has higher pressures than an eastern tap location; is
9 that correct?

10 A. That is correct.

11 Q. Was there a written analysis concluding
12 that the eastern corridor was inferior or infeasible?

13 A. No, there was no -- there was no written
14 analysis of that. That was a culmination of many
15 conversations and site visits and walk downs.

16 Q. So it's your testimony that's not missing
17 from the record today; it just doesn't exist?

18 A. That's correct.

19 Q. Mr. Sawyer, would there be any advantage
20 to filing with the PUCO in the certificate case a
21 route that would be unworkable or unfeasible?

22 A. No.

23 Q. And why is that?

24 A. No. The corridors that were submitted
25 are possible corridors. They are -- they could be

1 analyzed. We could look at them. One would
2 certainly be technically different than the other but
3 they are both certainly physically feasible routes.

4 Q. Do you recall talking with Mr. Braunstein
5 about an outfit called AECOM's involvement in this
6 pipeline project?

7 A. I do.

8 Q. And you mentioned that that work
9 transitioned to ERM at one point; is that right?

10 A. Yes.

11 Q. Can you tell us generally about that
12 transition?

13 A. So AECOM did -- analyzed and developed
14 some routes. They issued a route which was the
15 culmination of their work representing the conclusion
16 of their analysis. We made a decision to then switch
17 from AECOM to ERM and Hanover Engineering, at which
18 time we produced the AECOM report to ERM and we gave
19 ERM direction that we're looking for a route analysis
20 to support an LON application.

21 We then gave them a starting and stopping
22 point for that route. We said it should end at the
23 plant and it should tap into the Dominion pipe in a
24 general location and then ERM then did an independent
25 analysis how to best route the pipeline to accomplish

1 that starting and ending point.

2 Q. I want to turn your attention back to
3 LCPO No. 3.

4 A. That's this document. This is the one
5 you gave me.

6 Q. Uh-huh. Mr. Braunstein referred to a
7 straight route and a semicircular route. Do you
8 remember that?

9 A. Yes, I do; yes, I do.

10 Q. Was cost a primary or major factor in
11 NRG's decision about the pipeline route in the
12 vicinity of Flint Ridge?

13 A. No. When we gave instructions to analyze
14 possible routes, we did not indicate the cost was in
15 any way the primary function. In many cases they
16 said give us an analysis of the best alternatives
17 independent of cost.

18 MR. GERKEN: Your Honor, if I could have
19 just one minute --

20 ALJ PARROT: Okay.

21 MR. GERKEN: -- to consult with my
22 co-counsel.

23 We have no further questions for the
24 witness. If it's the appropriate time, the applicant
25 would like to move Exhibit 8 into the record.

1 ALJ PARROT: Okay. We will defer ruling
2 until we finish with any recross, and then we will
3 rule on that at that point. Any recross,
4 Mr. Braunstein?

5 MR. BRAUNSTEIN: Yes, yes, your Honor.

6 - - -

7 RE CROSS-EXAMINATION

8 By Mr. Braunstein:

9 Q. When was AECOM fired?

10 A. I don't recall off the top of my head.

11 Q. 2012?

12 A. Certainly 2013.

13 Q. 2013?

14 A. Yes.

15 Q. Okay. You stated that the pipeline has
16 no taps. Have you ever been involved where you were
17 operating a pipeline and taps were installed?

18 A. I'm aware of that process, yes.

19 Q. With a pipeline that you are operating?

20 A. Conversely, pipelines that we are
21 building we would tap into other pipes.

22 Q. That's not that complicated a process, is
23 it?

24 A. It can be.

25 Q. Well, but it's often done?

1 A. It is done, yes.

2 Q. And, in fact, it could be done with this
3 pipeline as well the pipeline that LLC -- that the
4 LLC is building.

5 A. Yes, it could be done.

6 Q. All right. Now, when you talk about --
7 you talked about LCPO No. 3 and the four different
8 routes that were considered in Flint Ridge just a
9 second ago?

10 A. Okay.

11 Q. And you said you decided to follow the
12 utility corridor?

13 A. Yes, that's what I said.

14 Q. And that utility corridor consists of a
15 storm sewer and an electric line?

16 A. I believe it's a forced sewer.

17 Q. Forced sewer?

18 A. Forced sewer main and electric lines.

19 Q. And how far are you from the electrical
20 line?

21 A. The general guidelines provided by
22 FirstEnergy, general, are that you want to be 35 feet
23 from a wooden structure and 50 feet from a metal
24 structure.

25 Q. But in Flint Ridge how far are you from

1 the utility line?

2 A. It's going to be along those guidelines.

3 Q. Well, those are minimums, right?

4 A. Correct.

5 Q. I am asking you how far you actually are.

6 Do you know?

7 A. No, not without pulling up a plat.

8 Q. The individuals you referred to when you
9 were inquired about if you had any line experience,
10 line supervisor, you said that certain individuals
11 would be hired for procurement and --

12 A. I'm sorry. I am having trouble hearing
13 you.

14 Q. You said certain individuals would be
15 required for procurement and other things? Do you
16 recall that just a minute ago?

17 A. Okay.

18 Q. And those would be NRG employees?

19 A. Yes.

20 Q. NRG Energy.

21 A. Maybe, the employees may be employed by a
22 different organization within NRG.

23 Q. Okay. But they are not the LLC
24 employees.

25 A. That is correct.

1 Q. Because the LLC doesn't have any.

2 A. That is correct.

3 Q. Now, I just want to make sure I
4 understand this, where you are not doing double
5 ditching because you say that it's infeasible, are
6 you going to then just put the subsoil -- it will end
7 up with the topsoil next to the pipe and the subsoil
8 on top?

9 A. I don't know the specifics of how the
10 contractor is going to do that.

11 Q. Well, if you don't double ditch, you
12 correct me if I am wrong, the topsoil comes off first
13 because it's on top.

14 A. Okay.

15 Q. Is that right?

16 A. Topsoil comes off first, yes, it does.

17 Q. And then you get the subsoil.

18 A. Correct.

19 Q. And then the topsoil will go in last
20 because it's at the bottom of the pile.

21 A. Depends.

22 Q. Isn't that the way it works?

23 A. It could work -- it could work
24 differently.

25 Q. And rock is in the subsoil typically?

1 A. I don't know the topography of this
2 particular soil.

3 Q. I am just curious. So the -- I will make
4 the question simply if there are rocks in the
5 subsoil, it is certainly possible that you will end
6 up in areas like Flint Ridge putting the topsoil at
7 the bottom of the pit and putting the subsoil and if
8 it has rocks, the rocks in it at the top -- I said
9 pit. I meant trench, excuse me. Topsoil at the
10 bottom of the trench, subsoil on top of it, and then
11 if there are rocks or branches or whatever is in the
12 subsoil, they will just be lying there; is that
13 correct?

14 A. I would say that's maybe not a completely
15 accurate characterization.

16 Q. Well, make it accurate for me.

17 A. Depending upon the amount of work space
18 available in the area, depending upon the specific
19 means and methods of the contractor along that route,
20 they might be able to segregate some soil in piles.
21 They may not be able to segregate at all. I
22 certainly don't think though that the branches
23 installed in the dirt, I don't think that they are
24 going to be mounding rocks on the top of the -- on
25 the top of the construction area when they're done.

1 I would expect the contractor to adhere
2 to good practices which would be to put the subsoil
3 in first to the extent that he can and to put the
4 topsoil on the top.

5 Q. That's great if everything works out
6 ideally but you're telling me you are not going to
7 commit to double ditching so that in some areas the
8 subsoil is going to end up on top.

9 MR. GERKEN: Objection. It
10 mischaracterizes his testimony.

11 Q. Is that correct?

12 A. Say your statement again so I get it
13 right.

14 Q. You are not going to commit as a
15 condition to this certificate to use double ditching
16 for whatever reason. We don't have to go into it
17 again. So in some cases you are going to end up with
18 topsoil on the bottom of the ditch and the subsoil on
19 top.

20 A. Those are two distinct issues.

21 Q. Yes. But am I correct? Do you want --

22 A. Yes and no.

23 Q. All right. So, yes, you are not going to
24 double ditch; is that correct?

25 A. In some cases, in some cases. That's not

1 the question you asked.

2 Q. I wish I was as precise as you are but
3 I'm not.

4 A. Yes, that would be good.

5 Q. Yes. But in some cases you are not going
6 to double ditch.

7 A. That is correct.

8 Q. Okay. And in those cases is it possible
9 that the subsoil will end up on top of a ditch when
10 it's backfilled?

11 A. Yes.

12 Q. And whatever is in it will just be in it.
13 I am not going to say you would pile rocks in it but
14 whatever is in it they will just be on top.

15 A. Whatever is in the subsoil like the dirt,
16 yes, the dirt will be there, yes.

17 Q. And you've seen rocks in subsoil, haven't
18 you?

19 A. Sure.

20 Q. And branches.

21 A. No.

22 Q. You've never seen a branch in subsoil.

23 A. Not that I'm thinking of.

24 Q. Okay. All right. When you were talking
25 about routes which you talked about with Mr. Gerken,

1 I just want to be clear that that testimony was about
2 routes, not about corridors. When you say route, you
3 mean route; is that correct?

4 A. Give me a specific -- because many times
5 we've gone back and forth in our questions and
6 answers and so specifically what?

7 Q. All right. When AECOM was released or
8 fired or whatever happened, you said, as I wrote down
9 your testimony, that you gave I guess ERM and Hanover
10 two routes to consider. You want to know -- and to
11 analyze. Those routes you're talking about are not
12 the east and west corridors that we were talking
13 about early -- earlier. Those are just routes
14 specifically designed for the location of the pipe.

15 A. I'm listening to your question, and I
16 don't think you characterized it accurately.

17 MR. BRAUNSTEIN: Let's go ahead and mark
18 this. Am I up to 4? Does everybody have a copy of
19 this?

20 Q. This is what we are going to mark for
21 identification as LCPO 4. You've already seen it.
22 It's the same as this. It's just the first page.

23 ALJ PARROT: Can you identify it a little
24 more specifically for the record, please.

25 MR. BRAUNSTEIN: It is a plan prepared by

1 Hanover last dated -- Hanover Engineering last dated
2 February 14, 2014.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Is that essentially the route that you
5 gave to Hanover to consider and to start as their
6 working point, beginning point?

7 A. Your question is a little difficult to
8 answer. What ERM was given to do, their route
9 analysis work was a beginning point and an endpoint.
10 And we asked them to do a route analysis to come up
11 in their opinion as an independent analysis how to
12 get from point A to point B. We did not tell them
13 that this is a route you must now justify. I think
14 that's what you are trying to imply.

15 Q. No, I am not trying to imply it. If you
16 would just answer my question instead of guessing
17 what I am trying to imply. I want to know if that
18 route was --

19 MR. GERKEN: Mr. Braunstein, objection.
20 Sort of harassing the witness here. He is trying to
21 answer your question.

22 MR. BRAUNSTEIN: Well, okay. I will
23 withdraw it.

24 ALJ PARROT: Let's let him answer.

25 Were you finished, Mr. Sawyer?

1 THE WITNESS: Where was I.

2 ALJ PARROT: Do you remember where you
3 were at?

4 THE WITNESS: I don't remember where I
5 was.

6 Q. When did you retain ERM?

7 A. ERM and Hanover were retained -- we
8 started talking with them in around the end of
9 year -- get my right dates, end of year '13,
10 beginning of '14.

11 Q. So January of '14, they are retained; is
12 that correct?

13 A. I don't know the exact date of the
14 purchase order.

15 Q. Well --

16 A. So retained to me means that this is a
17 purchase order.

18 Q. All right. So you had an agreement with
19 them, but then you have to have a purchase order that
20 is actually the contract; is that what you are
21 saying?

22 A. I didn't say that. So they're not -- an
23 entity such as ERM is not authorized to do work until
24 they are given a purchase order. That purchase order
25 may include a contract with it. It may include a

1 specification.

2 Q. All right. So, you know, I asked you if
3 you recall in your deposition when ERM was hired.
4 And you said "They were hired around Christmastime
5 of -- I am drawing a blank on the year.

6 "Question: 2013?"

7 You said "What year is this?"

8 I say "2015."

9 MR. GERKEN: Mr. Braunstein, can you tell
10 us what you are looking at, please, with the witness?

11 MR. BRAUNSTEIN: I am looking at page 80
12 of his deposition.

13 MR. GERKEN: Thank you.

14 Q. Can you read it on here? I guess I can
15 get you a hard copy if you want.

16 A. Okay. So --

17 Q. The very top and we can go to the
18 previous page -- well, maybe we can go to the
19 previous page.

20 A. Yeah. I don't use a Mac so you have got
21 to manipulate.

22 Q. Is that page 79?

23 A. 74.

24 Q. Go ahead.

25 A. So there is a question on line 24 of this

1 page 79. It says "Question: So then when were they
2 hired?" That's the end of the page.

3 Q. And then the next page is?

4 A. How do you move a page?

5 Q. Oh, let's do it this way. Is that 80
6 now?

7 A. No. 80, top of page 80, line 1, it says
8 "Answer: They were hired around Christmastime of --
9 I am drawing a blank on what year.

10 "Q. '13, 2013.

11 "Answer: What is this? This is --

12 "Question: This is 15.

13 "Answer: I think this is time '13. That
14 is correct."

15 Q. All right. So -- so does that refresh
16 your recollection that they were hired around
17 Christmastime of 2013?

18 A. Yes.

19 Q. Thank you. Now, what I would like to ask
20 is I believe -- and we will get their testimony, but
21 I believe they say they started with a route that had
22 been prepared by AECOM. Have you reviewed their
23 testimony? Have you seen it?

24 A. Yes.

25 Q. Is that correct to your recollection?

1 A. Say it again because I'm not sure.

2 Q. That they started with the route that had
3 been prepared by AECOM.

4 A. Am I testifying to other witnesses'
5 testimony?

6 Q. I am asking you if that's where they
7 started.

8 MR. GERKEN: If you are referring to a
9 statement filed in this case that they made, please
10 refer the witness to that statement.

11 Q. Well, can I borrow this? Did they start
12 with the route that had -- route work that had been
13 done by AECOM?

14 A. I would expect they used it as input, but
15 they did an independent analysis of -- of determining
16 a route.

17 Q. Right, okay. Good. And can you read
18 when this route -- well, let me ask you a question
19 without getting into why. This route --

20 MR. GERKEN: Mr. Braunstein, sorry. What
21 are we looking at here?

22 MR. BRAUNSTEIN: Will you just let me ask
23 the question?

24 Q. This route that is shown on LCPO 4,
25 Exhibit 4, was first prepared when? You can look at

1 the document.

2 A. May I -- this turned off. May I close
3 it?

4 Q. Yeah. I'll take it. I'm sorry.

5 A. Are these both the same?

6 Q. Yeah. I didn't realize you still had
7 that, yes.

8 A. I guess you took that from counsel.

9 Q. I'll figure that out. Thank you.

10 A. Are you asking me the date of the
11 revision?

12 Q. No. I am asking you the date of the
13 first drawing.

14 A. The date of the first drawing. There is
15 a date on here of 7-23-13.

16 Q. That's when that drawing was first
17 prepared?

18 A. I think that's what that indicates.

19 Q. All right. Are you sure that's a 7?

20 A. No.

21 Q. Well, give me your best judgment of it.
22 That's your document.

23 A. That's fuzzy and they are copied.

24 Q. Do you have a better copy?

25 A. I don't know.

1 Q. Well, it came in documents that you
2 produced to us.

3 MR. GERKEN: Your Honor, I am not sure
4 where we are going with this. I think it exceeds the
5 scope of the redirect.

6 MR. BRAUNSTEIN: I asked him about
7 routes, all right? And I just want to know what his
8 starting point was on those routes. That's all I am
9 trying to get.

10 MR. GERKEN: I think that's been asked
11 and answered.

12 MR. BRAUNSTEIN: If it's been answered,
13 please tell me what the answer is so I can go on to
14 something else. I don't enjoy this any more than the
15 witness does, I'm sure. I am just trying to figure
16 it out.

17 Q. Your best recollection looking at that is
18 that that was prepared by Hanover in July of 2013?

19 A. There is a date on here that looks like
20 7-23-13 that's in the box that to me would indicate
21 perhaps when it was first drawn. I would suggest
22 that you might want to ask my colleague Sal since
23 his firm did this work what that might mean.

24 Q. I'll ask him.

25 A. Okay.

1 Q. But what I want to ask you is that the
2 route that is shown on LCPO No. 4 is entirely within
3 the westerly corridor that -- of the route of the
4 corridors that were on the -- filed in the
5 certification case.

6 A. Okay. That's a new question.

7 Q. Yes, it's a new question. I think you
8 would be happy about that.

9 A. And the accurate answer would be I would
10 ask one of my consultants in their GIS to overplat
11 those two to truly answer that question. I would say
12 in general it is certainly more westerly than east.

13 MR. BRAUNSTEIN: Thank you. Thank you.
14 I don't have anything further.

15 ALJ PARROT: Mr. Schmidt?

16 MR. SCHMIDT: No, ma'am.

17 ALJ PARROT: Mr. Jones?

18 MR. JONES: No, your Honor. Thank you.

19 - - -

20 EXAMINATION

21 By ALJ Parrot:

22 Q. Mr. Sawyer, I just have a quick -- what I
23 hope are quick questions for you. I think we sort of
24 danced around it but what was your role in the
25 certification case? Were you involved in that in any

1 way in preparing the application that was filed by
2 the pipeline company?

3 A. Yes. I'm familiar with it. I certainly
4 would have reviewed it.

5 Q. Okay. So you reviewed the application
6 and any updates that were made to it in that case.

7 A. Yes, yes.

8 Q. Thank you. Also are you here today to
9 testify in support of the stipulation filed between
10 the FirstEnergy company witness -- FirstEnergy
11 intervenors in this case and the pipeline company?

12 A. Yes.

13 Q. So I am going to ask you a few questions
14 about that then.

15 A. Okay.

16 Q. So were you involved in the process of
17 negotiating that agreement?

18 A. Yes.

19 Q. And would you say that that agreement is
20 the product of serious bargaining among capable and
21 knowledgeable parties?

22 A. Oh, absolutely.

23 Q. And can you just generally describe that
24 process a little bit. I don't want you to get into
25 confidential discussions with attorneys or that sort

1 of thing but generally how that came about.

2 A. Certainly it started many months ago
3 with, you know, first contacting FirstEnergy and
4 talking about how we would go about obtaining their
5 permissions, changing a lot of information, and then
6 specific to this -- this agreement there were
7 numerous drafts and went back and forth. There were
8 red lines, there were analyses, there were gnashing
9 of teeth, but we eventually got to the point where we
10 both could agree to something.

11 Q. And were both parties represented by
12 capable and competent counsel that are familiar with
13 proceedings before the Board to the best of your
14 knowledge?

15 A. Yes.

16 Q. And would you say that the stipulation is
17 in the interest of the public?

18 A. Yes.

19 Q. How so?

20 A. It would allow both our proposed pipeline
21 and the existing FirstEnergy infrastructure to
22 coexist and continue to operate in a safe and
23 appropriate manner.

24 Q. Thank you. And would you say the
25 stipulation violates any important regulatory

1 principle or practice?

2 A. Not that I am aware of.

3 Q. Okay. And, finally, do you find the
4 stipulation reasonable?

5 A. When parties agree, it's a reasonable
6 agreement.

7 Q. And do you recommend the Board adopt the
8 stipulation?

9 A. Please, I do recommend that.

10 ALJ PARROT: Thank you very much. You
11 are excused. I appreciate your time today.

12 THE WITNESS: Thank you.

13 ALJ PARROT: All right. Mr. Gerken, back
14 to your motion for the admission of Applicant's
15 Exhibit No. 8. Are there any objections to the
16 admission of that exhibit?

17 MR. JONES: No objection.

18 ALJ PARROT: Hearing none Applicant's
19 Exhibit No. 8 is admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 ALJ PARROT: Do you want to go ahead and
22 move for the admission of the stipulation that's been
23 marked as Joint Exhibit 1 at this time, Mr. Gerken?

24 MR. GERKEN: Yes, your Honor.

25 ALJ PARROT: Any objection to the

1 stipulation that was marked as Joint Exhibit 1?

2 Hearing none it will also be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 ALJ PARROT: Mr. Braunstein, your
5 exhibits?

6 MR. BRAUNSTEIN: We would move to admit
7 at this time Exhibits LCPO 1 through 4.

8 ALJ PARROT: Are there any objections?

9 All right. Hearing none LCPO Exhibits 1,
10 2, 3, and 4 are also admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 ALJ PARROT: All right. Next witness.

13 MR. GERKEN: Thank you, your Honor. NRG
14 would like to call Mr. Salvatore Caiazzo.

15 (Witness sworn.)

16 ALJ PARROT: Please have a seat.

17 - - -

18 SALVATORE CAIAZZO

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

21 DIRECT EXAMINATION

22 By Mr. Gerken:

23 Q. Mr. Caiazzo, can you please state your
24 full name for the record.

25 A. Salvatore Caiazzo.

1 Q. And who is your employer?

2 A. Hanover Engineering Associates,
3 Incorporated.

4 Q. And what is Hanover's relationship to the
5 LON application at issue in this proceeding?

6 A. We reviewed the constructability and
7 prepared the engineering and design for the project.

8 Q. And you partnered with the applicant for
9 that process?

10 A. Correct.

11 Q. What is your position and what did you do
12 with respect to this LON application?

13 A. I was project manager over not really the
14 LON process but the acquisition process, the route
15 analysis process, and now the design process, oversaw
16 the work that was going on in that respect.

17 Q. And what's your title at Hanover?

18 A. I am a partner in the company, project
19 manager for this project.

20 Q. Are you the same Mr. Caiazzo who
21 previously filed testimony in this case on April 6,
22 2015?

23 A. I am.

24 Q. I am handing you what has been marked as
25 Applicant's Exhibit 10 in this proceeding. Is this

1 your previously filed testimony?

2 A. Yes.

3 Q. Did your involvement in this pipeline LON
4 application process require you to examine certain
5 safety issues with regard to the pipeline?

6 A. Yes, it did. You know, we were
7 responsible for the design of the pipeline and one of
8 the things that we -- we worked on was to make sure
9 that the design met all federal regulations, CFR 192
10 specifically was examined. The pipeline, ERM
11 prepared a class -- a class location study. A class
12 location is a determination of the population
13 adjacent to the pipeline within the 660-foot
14 corridor, generally speaking class 1 through 4.
15 Class 1 is within a mile either direction along the
16 pipeline route. If the population is under 46, it's
17 class 1. Between 46 and 100 it's class 2. Over 100
18 it's class 3. And if there is any buildings that are
19 four stories or higher, that would be a class 4
20 location.

21 As the location goes up, so does the
22 design factors go down meaning that the percent of
23 the space which is the specified minimum yield
24 strength of the pipeline that you are allowed to
25 reach it goes down. So for factor -- it's a factor

1 of point -- .5 for a class 3 location which we have
2 designed the plant for and actually came below this.
3 The pipeline is actually near 40 percent SMYS for the
4 project.

5 MR. BRAUNSTEIN: I'm sorry, 40 percent
6 what?

7 THE WITNESS: SMYS, specified minimum
8 yield strength. And the -- the design -- design
9 pressure is at 676 PSI for the -- for a class 3
10 location. Now, the -- along the pipeline there is
11 class 1, class 2, and class 3. We designed the
12 entire length of the pipeline to be compliant with
13 the class 3 location, however, even though it's not
14 required. So this is a minimum wall thickness of the
15 pipeline of 3.12. And that, like I said, meets the
16 40 percent SMYS which is the -- you know, the
17 pressure, the maximum anticipated operating pressure
18 which is -- the pressure that we expect within the
19 pipeline is only at 540 so design -- the project has
20 been basically overdesigned is what I am getting to.

21 Q. Mr. Caiazzo, did you review the property
22 owners' testimony filed in this proceeding?

23 A. Yes, I did.

24 Q. Do you have any -- anything to add to
25 your direct testimony after having made that review?

1 A. I saw two things that I would like to
2 comment on. The first there was a property owner
3 Kaulins, the first name escapes me. But Kaulins had
4 commented on the location of the route. Generally in
5 the locational to the north of -- north and south of
6 a property, we are going along the utility corridor
7 and back property line of -- of the properties
8 immediately adjacent to the Kaulins' property, and
9 she makes a comment that the pipeline is going
10 diagonally through her property.

11 And I just wanted to point out there was
12 a specific reason for that and that's because there
13 is -- the FirstEnergy infrastructure located along
14 where we would like to put the route which is up
15 against the back property boundary of a property
16 along the existing utility corridor. We had to
17 reroute around there to stay within the minimum
18 setbacks as required by FirstEnergy. So going
19 diagonally across her property is the only way we
20 could have done that.

21 The second is I wanted to go into a
22 little bit of the previously discussed Flint Ridge
23 Development. As was stated before, we looked at, you
24 know, four alternatives. One went to the far east
25 and that was -- that was evaluated. The one that was

1 evaluated through what we called the Ricky reroute,
 2 there's a property owner named Ricky in between the
 3 side lot lines of four -- four lots that get over to
 4 the open field on the east side of the development,
 5 we looked at the route that we chose which is going
 6 along the existing utility corridor on the backs of
 7 the properties, and we looked at alternatives to the
 8 west which goes along the back of other properties in
 9 Flint Ridge.

10 The issues with the western property is
 11 there is a river that oxbows which basically meanders
 12 greatly through that area, and in order to go in that
 13 direction, first of all, we would need to create a
 14 new utility corridor through woods through the backs
 15 of other people's properties, and it could require us
 16 to cross that river three times. So we eliminated
 17 that as an option.

18 We looked at the route to the far east
 19 that would cross Butternut Ridge Road. And what we
 20 found there was existing buildings, the lots were
 21 roughly 60 to 100 feet generally, and each one of
 22 those lots has already been developed with commercial
 23 or residential development. In our opinion when we
 24 looked at that route, it looked like we would have to
 25 condemn at least one or two buildings or go through a

1 graveyard or something along those lines in order to
2 get across this to get to the field that avoids the
3 lots. So we eliminated that because we put a high
4 priority on not condemning buildings.

5 We took a look at a route that went
6 through the Ricky property. We eliminated that
7 because we felt that it had greater impacts to the
8 property owners that we were going along because we
9 were going along the sight property boundaries. We
10 were much closer to the houses than the route we
11 chose. We would once again be creating a new utility
12 corridor, and we would be affecting a similar number
13 of properties and to a greater extent.

14 So the route we eventually arrived at
15 goes along the backs of the properties that we are
16 affecting in the Flint Ridge Subdivision along an
17 existing utility corridor which has electric and
18 sewer lines running in it so that's -- that's how we
19 arrived at that route.

20 Q. Do you have any other additions,
21 corrections, or deletions to your testimony?

22 A. No, I don't.

23 Q. If I asked you the same questions as are
24 asked in your prefiled testimony, would your answers
25 be the same?

1 A. Yes.

2 Q. Other than the additions you just made,
3 that is.

4 A. Correct.

5 MR. GERKEN: Your Honor, I have no
6 further questions and present the witness for
7 cross-examination.

8 ALJ PARROT: Thank you.

9 Mr. Braunstein?

10 MR. BRAUNSTEIN: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Braunstein:

14 Q. You've been here all morning, right?

15 A. Yes.

16 Q. And afternoon now. And so you know what
17 I mean when I say east and west corridors?

18 A. Yes.

19 Q. All right. How -- if you had used the
20 eastern corridor for the route, how would that have
21 affected Flint Ridge?

22 A. Is this the map that you are speaking of?
23 It looks like it -- this is the blue and green?

24 Q. Yes.

25 A. It would have avoided Flint Ridge.

1 Q. Altogether.

2 A. Correct.

3 Q. Thank you. Did you consider that
4 corridor?

5 A. No, we did not, not that far east.

6 Q. Did you review all of the property owner
7 testimony?

8 A. Yes.

9 Q. And those are the only two things you
10 took issue with?

11 A. Those are the only two things that I am
12 speaking on.

13 Q. Now, in terms of distance to homes, did
14 you consider 49 CFR 192.903 which deals with
15 something called PIR or projected impact radius?

16 A. The -- for the project we had a
17 mechanical engineer that worked on it and he has made
18 sure and he has assured me that all federal
19 regulations have been adhered to. I personally did
20 not prepare that, but I did oversee the design.

21 Q. But specifically the projected impact
22 radius?

23 A. I couldn't say for sure.

24 Q. Did you make -- it's my understanding
25 that at one point this pipeline, in fact, in the

1 certification case that exhibit is a part of, that at
2 one time there was consideration of a 30 -- well, the
3 pipe was specified, I believe, is 24 to 30 inches.
4 Are you familiar with that?

5 A. Familiar with the 30-inch requirement?

6 Q. Well, it wasn't a requirement. The
7 possibility that it would be 30 inches. What I am
8 trying to get at were you involved in -- this is a
9 much better way to ask the question -- in the
10 decision as to the size of the pipe?

11 A. I believe we did an analysis to see if
12 the 24 inch would -- would deliver the appropriate
13 flow at the velocities and pressures that are
14 required, and it came out to be truth, yes, that
15 24 --

16 Q. Did you also look at a 30-inch pipe?

17 A. I believe our mechanical engineer did
18 evaluate that, yes.

19 Q. Let me ask the question and see if you
20 can answer this, with -- would a 30-inch pipe with
21 less pressure deliver the same number of dekatherms
22 or the same amount of gas as a 24-inch or higher
23 pressure?

24 A. I couldn't say if it could meet the
25 requirements that the station needs.

1 Q. Well, I'm sorry, say that again.

2 A. I couldn't say right now without talking
3 with our mechanical engineer that it would deliver
4 the required pressures.

5 Q. Well, but just can you tell me in general
6 can a 30-inch pipe with less pressure deliver the
7 same amount of energy, if you will, if that's the
8 direct testimony?

9 MR. GERKEN: Objection. It's
10 hypothetical. He's answered as to the issues in this
11 case.

12 MR. BRAUNSTEIN: I thought he was
13 proffered as an expert. I think I can ask a
14 hypothetical.

15 ALJ PARROT: I'll allow the question.
16 It's overruled.

17 A. It's possible, yes.

18 Q. Okay. Now, I believe that you were given
19 one preferred route that you started with for this
20 pipeline.

21 A. We were given the route that was
22 developed by AECOM when they switched and that's --
23 this discussion here is what --

24 Q. Yeah. We are referring to LCPO 4; is
25 that correct?

1 A. Correct. And that's what this does show.
2 This was a -- this was what was given to us initially
3 to say, you know, here is your start and stop points,
4 and from there ERM jointly with Hanover started
5 looking at routes to connect the two, A to B.

6 Q. But that's a lot more than a start and
7 stop point, isn't it? That's the whole -- that shows
8 the whole line.

9 A. Yeah. This shows the whole line, yeah.

10 Q. All right.

11 A. We were given a shape file that was --

12 Q. A shape file?

13 A. It's a GIS term for a -- when you import
14 the file, it shows the line work.

15 Q. Okay. Is it similar to what you are
16 looking at there on LPC -- LCPO 4?

17 A. This -- this would reflect the shape file
18 that was given to us from AECOM.

19 Q. Okay. Great. When Mr. Sawyer was
20 testifying, he testified that the earlier date he saw
21 on that was July of 2013. Was that when AECOM was
22 working on it or is that when Hanover?

23 A. I believe --

24 Q. I know it's very small.

25 A. Oh, the date over in this corner here. I

1 see what you mean. Yeah, 7-23-13 would have been
 2 initially when we were asked -- 7-23, that was the
 3 timeframe when the consultants were asked to put a
 4 bid in on the project and so what we did we prepared
 5 a map similar to this using this similar template
 6 that showed routing because it was a method for us to
 7 try to obtain the work. We showed them just a really
 8 rough desktop review of what the route would look
 9 like --

10 Q. All right. So that --

11 A. -- before we were even hired or selected
 12 to do the work.

13 Q. That was July of 2013.

14 A. Right.

15 Q. All right. And then that work carried
 16 forward until February of 2014?

17 A. No. There was no work that was done on
 18 it between that point and towards the end of January
 19 of 2014. There was no -- Hanover completed
 20 absolutely no work. We were not brought on board to
 21 do any of the work until that point.

22 Q. Until January of 2014.

23 A. Yeah.

24 Q. And that's -- and then you carried that
 25 forward and with other restrictions; is that correct?

1 A. Well, we used what's called a template.
2 We used the template because it showed the general
3 location of the pipeline. So instead of creating a
4 whole new set of mapping from scratch, we just used
5 the same template and that's why that date shows up
6 there.

7 Q. Okay. And that template is, in fact,
8 base -- shows the basic route. I know you made a lot
9 of changes.

10 A. Sure.

11 Q. But that template shows the basic route
12 as it has now been proposed in the letter of
13 notification?

14 A. We've made a lot of -- a lot of reroutes,
15 but it's -- I would say it's a similar corridor.
16 It's not exactly -- it is nowhere near exactly the
17 same.

18 Q. All right. But in terms of where it's
19 located, east and west, it's similar to that?

20 A. It's not the eastern route; it's the
21 western corridor.

22 Q. Okay.

23 A. The western -- we will call it the
24 western tie-in point.

25 Q. I'm sorry.

1 A. Western tie-in point.

2 Q. We called it the western corridor, so we
3 will stick with that if we can.

4 A. Sure.

5 Q. And in some places this pipeline is going
6 fairly close to homes; is that right?

7 A. Can you define fairly close?

8 Q. 100 feet?

9 A. Yes, it's within 100 feet of some homes.

10 Q. Some places it's less than 100 feet?

11 A. Yes.

12 Q. If the K. Hovnanian property is
13 developed, how far will the pipeline be from the
14 houses that might be built on that property?

15 MR. GERKEN: Objection. Sorry.
16 Objection. It's speculative. I can say more. The
17 K. Hovnanian property, as I understand it, the
18 footprints for those homes is yet to be determined.
19 There's a development plan that's approved with
20 certain sizes of certain lots on that development.
21 But the footprint of the homes has not been
22 determined according to the officers of K. Hovnanian.

23 Q. Do you know --

24 ALJ PARROT: Can I hear your question
25 again?

1 MR. BRAUNSTEIN: How far would the
2 pipeline be from the K. Hovnanian homes if they were
3 built, so they have not been built, although they
4 have been platted.

5 MR. GERKEN: That's not correct. They
6 haven't been platted.

7 MR. BRAUNSTEIN: The lots are platted.

8 MR. GERKEN: The lots are there and in --

9 MR. BRAUNSTEIN: I thought this was my
10 turn to speak.

11 MR. GERKEN: Go ahead.

12 MR. BRAUNSTEIN: Thank you. They have
13 been platted and they have seen -- in fact, I got it
14 from them. They have seen the plats, and if he
15 doesn't know, he can say he doesn't know.

16 ALJ PARROT: I will allow the witness to
17 answer the question if he knows.

18 A. Yeah. The answer is I don't know. There
19 has been no building -- building application or
20 building application made for -- that I am aware of
21 for any of those homes, so I couldn't say what the
22 building footprint would look like.

23 Q. Well, can we assume -- I am just asking
24 you hypothetically to assume that they will be
25 less -- forget K. Hovnanian. There are some houses

1 that are indicated 30 feet from this pipeline; is
2 that correct.

3 A. There is existing homes that close, yes.

4 Q. Existing and would you want to live that
5 close to this pipeline?

6 A. When you -- when you say that, I consider
7 my own lot.

8 Q. Your what?

9 A. My own property and would I want the
10 pipeline to go through that close to my property, no,
11 because what it would do it would affect my on lot
12 septic which would affect the functionality of my
13 home.

14 Q. And that would be your only concern
15 with -- it is the septic?

16 A. Yes, affecting the functionality of my
17 home, yes.

18 Q. You wouldn't be concerned about safety?

19 A. Knowing what I know and what the federal
20 regulations are and what the operational and
21 maintenance of the pipelines are, no, I would not be
22 concerned with that, but I have the advantage over
23 some people because --

24 Q. Right. Okay. And, of course, the issues
25 you have with your septic system, those could affect

1 other people as well, right --

2 A. It could affect other people.

3 Q. -- who are on the route.

4 A. As far as I'm aware, no one along the
5 route has identified any septic issues to us.

6 Q. You, sir, depend on self-reporting for
7 that?

8 A. If there is any physical evidence of a --
9 of a septic system, then we will certainly lo --
10 survey and locate that after having walked the route,
11 not personally but after our surveyors have walked
12 the route, they have not identified any above ground
13 evidence of a septic system within the route.

14 Q. And then tell me, if you would, this
15 pipeline has shut-off valves, I believe?

16 A. Yes.

17 Q. Now, you may not be able to answer this
18 question but do you know who the intervenors are, the
19 Licking County Property Owners?

20 A. Do I know, I'm sorry?

21 Q. Who they are, where their properties are
22 located.

23 A. Yeah, I have a pretty good idea.

24 Q. Are shut-off valves located on any of the
25 properties of the intervenors?

1 A. No.

2 Q. All right. Are the shut-off -- how many
3 shut-off valves are there?

4 A. There will be three -- three main line
5 block valves along the route and then at either end.

6 Q. And those are manually operated I believe
7 you told me?

8 A. Correct. The main line block valves are.

9 Q. I'm sorry?

10 A. The main line block valves are.

11 Q. And wouldn't it be better if they were
12 remotely operated?

13 A. That's -- you know, if the remote
14 operation doesn't work, then, you know, I guess that
15 would be based on your opinion.

16 Q. Well, I am asking your opinion.

17 A. I wouldn't say -- I don't know if you
18 would say better. I would say just different
19 operational procedure.

20 Q. Let me ask it this way, if there is an
21 event that threatens life or property, their shut-off
22 valves have to be shut off; is that correct?

23 A. Correct. They would have to be manually
24 shut off with the manual valve and --

25 Q. And is it faster if you can flip a switch

1 then to have to send crews out to shut them off?

2 A. It would be faster, yes, as long as
3 everything worked correctly.

4 Q. Well, if it didn't work correctly, then
5 you would just send a crew out, right?

6 A. Yeah, you can send out to manually
7 operate that.

8 Q. I'm sorry?

9 A. You can send that out to be manually
10 operated, yes.

11 Q. Now, earlier on your direct examination
12 you said that your employer was Hanover Engineering;
13 is that right?

14 A. Yes.

15 Q. Is that your only employer?

16 A. Yes.

17 Q. Are you an officer or director of any
18 other companies?

19 A. No.

20 Q. Do you know that you are listed as an
21 officer of this LLC that we are talking about?

22 A. No. I should not be.

23 Q. I'm sorry?

24 A. No, I am not.

25 Q. I would like you to take a look at what

1 has previously been marked as LCPO Exhibit No. 2 and
2 ask if your name appears there and if that is your
3 resume.

4 A. Under Exhibit C under technical and
5 managerial experience my name is listed. That
6 doesn't say -- on the page before that it says
7 "Application Exhibit C identifies key personnel of
8 NRG Pipeline in order to demonstrate that NRG
9 Pipeline has the requisite technical and managerial
10 capability to operate the type of natural gas
11 transmission system described in the Application."

12 Q. Okay. So I may have misread that then.
13 So you are not an -- so that would be correct is what
14 you said, you are not an officer but you are a
15 tech -- and not a manager, but you are a technical
16 consultant.

17 A. I work for Hanover Engineering who is a
18 consultant to NRG, but in no way have I ever worked
19 directly for NRG.

20 Q. Thank you. You can just leave that
21 there. And then in the concluding part of your
22 testimony you say that the route is optimal, all
23 right? Now, again, I believe what you are saying is
24 that you have made the optimal changes to the route
25 given the corridor that it is in; is that correct?

1 A. A -- we worked with ERM to develop a
2 route that connects point A to point B roughly. A
3 lot of that does coincide with the original corridor
4 that -- the western corridor that AECOM had prepared
5 because for a good portion of it they were following
6 along an existing utility corridor which is one of
7 the items that we try to maximize also.

8 Q. So you made it optimal within the
9 corridor.

10 A. We made it optimal to connect point A to
11 point B.

12 Q. Well, but point -- what is point A? Is
13 that the source?

14 A. Point A is the plant, and point B would
15 be the tap location to the Dominion -- Dominion
16 transmission.

17 Q. Well, did you analyze where the best tap
18 location would be so that you could in terms of the
19 route that was optimal -- I asked that badly. Did
20 you analyze where the best tap application would be
21 so you would choose the optimal corridor to get from
22 the pipe to the plant?

23 A. I believe there were negotiations with
24 Dominion to figure --

25 Q. Wait. Were you involved in those

1 negotiations?

2 A. Not directly. That's more of a
3 commercial decision.

4 Q. All right. So I just want to know what
5 you have knowledge of, all right? So the pipeline is
6 on the Dominion line, all right? So did you consider
7 that you could have used other tap locations and then
8 analyzed those tap locations in terms of the line
9 that you -- the pipeline route that you were
10 designing?

11 A. When we were involved, there were
12 actually two tap locations analyzed. One of them --
13 and this doesn't correspond with --

14 Q. Right.

15 A. -- this tap location to the far east but
16 there was another tap location further to the east on
17 a property that's owned by Dominion transmission.
18 That was initially where we were looking to do the
19 tap location. However, when we did the routing
20 through there, we were going through a public park
21 disturbing large wetland areas. And it didn't seem
22 to be an optimal location to have that tap, so we
23 moved it further to the west just south of the class
24 property.

25 Q. Did you analyze the possibility of a tap

1 location on the eastern corridor that's shown on the
2 document you have in front of you?

3 A. No.

4 Q. Is that something your firm has the
5 capacity to do --

6 A. Yes.

7 Q. -- in terms of pressure and so forth?

8 A. Yes.

9 MR. BRAUNSTEIN: Thank you, sir.

10 ALJ PARROT: Mr. Schmidt?

11 MR. SCHMIDT: No questions. Thanks.

12 ALJ PARROT: Mr. Jones?

13 MR. JONES: No questions, your Honor.

14 ALJ PARROT: Any redirect?

15 MR. GERKEN: Yes, your Honor. If I could
16 have maybe 2 minutes?

17 ALJ PARROT: Actually let's just take a
18 brief break then. We'll take 5. That way if people
19 need to run outside quickly, you can do that. Let's
20 go off the record.

21 (Recess taken.)

22 ALJ PARROT: All right. Let's go back on
23 the record.

24 Any redirect?

25 MR. GERKEN: Yes, your Honor.

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REDIRECT EXAMINATION

By Mr. Gerken:

Q. Mr. Caiazzo, you spoke with Mr.

Braunstein about manual and remote valves. Do you recall that conversation?

A. Yes.

Q. Do the manual valves that will be installed on this pipeline as proposed meet or exceed all applicable requirements?

A. Yes, they do.

Q. You talked about sort of the optimization of the route with Mr. Braunstein. Do you recall that?

A. Yes.

Q. Can you speak generally about how -- given a route corridor emerges and how the pipeline route as proposed comes to fruition from repeated analysis. Just generally.

A. Sure. I mean, one of the -- one of the things you look for first is any buildings within your right-of-way. What you do you try to follow existing utility corridors because they -- they provide the least impact in creating a new corridor yourself.

With this project in particular it's no

1 coincidence that there's -- that we are sharing
 2 right-of-way or going along right-of-way of overhead
 3 electric lines, water lines, sewer lines, other gas
 4 lines. They are all following along a similar
 5 corridor because that is how you do it. That is how
 6 you best minimize the impacts to the property owners
 7 and hopefully the environment surrounding it. With
 8 this pipeline in particular because of the densely
 9 populated corridor the right route just kind of, you
 10 know, it emerged.

11 Following along that existing utility
 12 corridor avoided major subdivisions. The one we do
 13 have to go through is the Flint Ridge but, once
 14 again, that's following along the existing utility
 15 corridor so that's why -- that's why we have
 16 collocation. That's why our route is similar to the
 17 route provided by AECOM and that's why we proposed
 18 the route where we did.

19 MR. GERKEN: I have no further questions.

20 ALJ PARROT: Mr. Braunstein?

21 MR. BRAUNSTEIN: No recross.

22 ALJ PARROT: Mr. Schmidt?

23 MR. SCHMIDT: No, ma'am.

24 ALJ PARROT: Mr. Jones?

25 MR. JONES: No questions.

1 ALJ PARROT: Thank you very much.

2 MR. GERKEN: Your Honor, the applicant
3 would like to move Exhibit 10 into the record.

4 ALJ PARROT: Any objections to the
5 admission of Applicant's Exhibit 10?

6 MR. BRAUNSTEIN: I thought we already
7 admitted 10.

8 ALJ PARROT: Hearing none Applicant's
9 Exhibit No. 10 is admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 ALJ PARROT: Next witness, please.

12 MR. GERKEN: Your Honor, the applicant
13 would like to call Ms. Donell Murphy.

14 - - -

15 DONELL MURPHY

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

18 DIRECT EXAMINATION

19 By Mr. Gerken:

20 Q. Ms. Murphy, can you please state your
21 name for the record.

22 A. Yes. My name is Donell Murphy.

23 Q. And who is your employer?

24 A. Environmental Resources Management or
25 ERM.

1 Q. And what is your position with respect to
2 the pipeline in the LON -- or the LON application at
3 issue in this proceeding?

4 A. The ERM was -- ERM was engaged in
5 assisting in conducting a routing study conducting
6 field studies and also preparing permit applications
7 for the project, and specific to the LON, ERM was
8 largely involved in preparing the environmental
9 sections of the application as well as the
10 attachments, environmental attachments, including the
11 permit applications themselves.

12 Q. Are you the same Ms. Murphy who
13 previously filed testimony in this case on April 6,
14 2015?

15 A. Yes, I am.

16 Q. I am handing you what's been marked as
17 Applicant's Exhibit 9, I believe.

18 ALJ PARROT: Yes.

19 Q. Thank you. Is this your previously filed
20 testimony?

21 A. Yes, it is.

22 Q. Do you have any additions, corrections,
23 or deletions to your testimony?

24 A. I do have one correction. Page 3, line
25 61, beginning at the end of line 60, the statement

1 "Some agricultural uses do occur along the route,
2 though these uses are isolated to its southern end
3 and undeveloped portions of Eaton, Carlisle and
4 LaGrange Townships." In line 61 I would insert the
5 word "mostly" before "isolated."

6 Q. And then that phrase would read "mostly
7 isolated"; is that right?

8 A. That is correct.

9 Q. Do you have any other corrections to your
10 written testimony?

11 A. No other corrections, no.

12 Q. Do you have any additions to make?

13 A. I do. I think as it pertains to the
14 environmental permit, I would add that as we
15 developed the environmental -- excuse me, the erosion
16 sediment control plan for the project. We went
17 through a comprehensive exercise of looking at all of
18 the applicable jurisdiction requirements. That
19 includes the four municipal jurisdictions, the city
20 of Avon, city of Avon Lake, city of North Ridgeville,
21 the city of Elyria. We also looked at the Ohio
22 Environmental Protection Agency's best management
23 practices, the Ohio Department of Natural Resources
24 Rainwater Land Development Manual. We also looked at
25 the various conditions that pertain to federal and

1 state permitting in the state of Ohio so, again,
2 referencing back to the OEPA as well as U.S. Army
3 Corps. of Engineers.

4 And through that exercise of comparing
5 all the different requirements that pertain to
6 erosion and sediment control and stormwater
7 management, we identified the most stringent of those
8 collective requirements and developed our erosion and
9 sediment control plan to meet or exceed those
10 stringent requirements.

11 As a couple of quick examples, we've
12 committed to permanent and temporary stabilization in
13 both wetland and upland areas following a ground
14 disturbance within two days that exceeds both Lorain
15 County as well as state requirements.

16 We've also committed to vegetative cover
17 at a higher percentage that is -- than is required at
18 the county level or state level, so we've really
19 tried to impose upon ourselves the strictest -- the
20 most strictest conditions to ensure that we are
21 minimizing impact and intend to adhere to those
22 permit conditions to the maximum extent during
23 construction.

24 Q. As a consultant with ERM, would you have
25 input into the ODNR guidelines that have been talked

1 about today as well? And if so, do you have any
2 comment on those?

3 A. As -- as it specifically pertains to some
4 of the environmental conversations, yes, of course,
5 and we did evaluate those as part of our review of
6 permit requirements and the development of the
7 various permit applications and the erosion and
8 sediment control plan.

9 I think that there are some standards
10 that has been discussed here today that would require
11 additional work space, for lack of a better term, to
12 implement those measures, and in many instances as
13 specifically, for example, in an area where we are
14 already making every effort to reduce the extent of
15 tree clearing or reduce the impact to wetlands to
16 consider additional work space area would result in
17 additional potential for impact. So it's really not
18 possible in some areas to implement those standards
19 just very carte blanche for the entire project.

20 Q. Did you review property owner testimony
21 filed in this proceeding?

22 A. I did.

23 Q. Do you have any additions to your
24 testimony after having done that review?

25 A. I do. One particular witness's

1 testimony, Mr. Borling identified that he would like
2 NRG to remove stumps in wetlands and leave those
3 wetlands as tillable property. But, again, that
4 would have not only an additional impact which we are
5 certainly looking to minimize and avoid but also that
6 would put us in direct conflict with our current
7 pending applications.

8 Q. How's that?

9 A. Removing the stumps would result in
10 additional impact to the wetlands.

11 Q. And that impact would not be permitted?

12 A. That is correct.

13 Q. If I asked you the same questions as are
14 asked in your prefiled testimony, would your answers
15 be the same other than the additions and correction
16 that you just made?

17 A. Yes, that is correct.

18 MR. GERKEN: Your Honor, I have no
19 further questions. Present the witness for
20 cross-examination.

21 ALJ PARROT: Thank you.

22 Mr. Braunstein?

23 MR. BRAUNSTEIN: Thank you.

24 - - -

CROSS-EXAMINATION

By Mr. Braunstein:

Q. Good afternoon. You talked about the permits that are required I guess from the Army Corps. of Engineers?

A. That is one of the many permits, that's correct, yes.

Q. The Army Corps. would be the permit for the wetlands?

A. There are two permits that pertain to the project that have to do with wetlands and one of them is a U.S. Army Corps. of Engineers and the second is a water quality certification from the Environmental Protection Agency.

Q. Okay. And have you received either of those?

A. No. Both applications are still pending before those two agencies.

Q. And can work start before those are received?

A. Construction cannot start without those permits, no.

Q. And do you know when they will be received?

A. As I sit here today, I don't know with

1 certainty when the agencies expect to issue those
2 permits, no.

3 Q. Are you familiar with the existence of
4 restrictive covenants that are sometimes granted to
5 the Army Corps. of Engineers dealing with wetlands?

6 A. You would have to -- I apologize. If you
7 can provide more detail as to --

8 Q. Well, have you ever seen a restrictive
9 covenant where the Army Corps. of Engineers enters
10 into a covenant as a special kind of contracted
11 property, enters into an agreement with the property
12 owner about the preservation of wetlands?

13 A. Yes. As you've characterized it that
14 way, yes, I am aware of those.

15 Q. Did you encounter any of those
16 agreements, if you will, or restrictive covenants in
17 connection with this project?

18 A. Not to my -- I mean, I personally am not
19 aware of any, no.

20 Q. Well, if there were any, would that have
21 an impact on what you do?

22 A. It would depend on the terms of those
23 agreements and where -- you know, the extent of any
24 portion of the property that pertains to the terms of
25 those easements occurs relative to what we are

1 proposing in terms of the construction of the
2 pipeline.

3 Q. Well, I am not sure I fully understand
4 your answer, but you are saying it depends on when
5 the easement and the pipeline go through the area
6 that is covered by this restrictive covenant; is that
7 what you meant?

8 A. Yes, in terms of location but also the
9 terms of whatever this agreement is as well.

10 Q. I'm sorry. I couldn't hear you.

11 A. I apologize.

12 Q. People have been telling me that all day
13 too.

14 A. The location as well as the terms of the
15 agreement itself, I think you would have to consider
16 both.

17 Q. Right. Okay. Good. Let me ask a
18 question about the K. Hovnanian property. Are you
19 familiar with that?

20 A. Generally, yes.

21 Q. And that has wetlands on it? Are you
22 familiar with that?

23 A. Yes, I am aware of that, yes.

24 Q. And are you planning to bore under those
25 wet -- I shouldn't say you, but is the LLC, the

1 pipeline company, planning to bore under those
2 wetlands for -- to open trench?

3 A. I don't recall off the top of my head if
4 that is a location where boring is proposed.

5 Q. Well, do you have your reports with you?
6 Can you tell me that?

7 A. It wouldn't have been a report that I
8 prepared so.

9 Q. Who would have prepared that?

10 A. I'm actually not sure.

11 MR. GERKEN: If there is something you
12 can look at. If you are not sure, you can say you
13 are not sure.

14 ALJ PARROT: If you don't know, say you
15 don't know.

16 THE WITNESS: I don't know. Thank you.

17 Q. I am going to get in trouble again, but I
18 ask you can you identify what this collection of maps
19 is?

20 MR. GERKEN: Mr. Braunstein, do you have
21 a copy for NRG?

22 MR. BRAUNSTEIN: That's what I said, I
23 got them from NRG but, no, I did not know the witness
24 would not have an answer to this question. But,
25 again, I will provide it.

1 MR. GERKEN: Pardon me?

2 MR. BRAUNSTEIN: I will provide it to
3 you.

4 MR. GERKEN: Okay.

5 MR. SCHMIDT: Your Honor, may I suggest
6 that when Mr. Braunstein does this, that prior to
7 approaching the witness, he identify what he is
8 approaching the witness with, that it be identified
9 on the record, and that the counsel that wants to
10 observe it be afforded that opportunity before he
11 approaches the witness.

12 MR. BRAUNSTEIN: I think that's an
13 excellent suggestion.

14 ALJ PARROT: That's helpful, yes. Is
15 this part of the application?

16 MR. BRAUNSTEIN: Is this -- let me follow
17 and then I can ask some questions.

18 Q. This is a document entitled "NRG Avon Gas
19 Addition Project." I don't see any authorship, and
20 it is an aerial photograph that purports to show
21 areas of boring and direct -- excuse me, not boring
22 but horizontal directional drilling. I also do not
23 see, although I wouldn't guarantee it, I do not see a
24 date on the document. Let me ask you first, do you
25 recognize this document? Is it something that you

1 had a hand in preparing?

2 MR. GERKEN: Can you let her examine it,
3 please.

4 Q. If you need to, yes, absolutely. And
5 this is where I am specifically going to refer.

6 A. Yes. This is a map that was generated by
7 ERM.

8 Q. Okay. Great. And is this part of your
9 report and part of either the original letter of
10 notification or supplemental filing?

11 A. I can't answer that question because I
12 don't know for sure if this was extracted from some
13 report that has been filed into -- into the record or
14 if -- I mean, how it's marked I'm just not sure. I
15 am just not sure if it was extracted out of
16 something.

17 Q. The mark -- the exhibit mark, if that's
18 what's concerning you, has nothing to do with this
19 case. It was used in a deposition.

20 A. Okay. That kind of answers my question
21 though because I would still reiterate that I'm not
22 sure if it was extracted out of a report or if it was
23 just provided to you during the course of the
24 deposition. So to answer your question does it come
25 out of a report, I can't tell you with certainty.

1 Q. All right. So it was done by ERM.

2 A. That is correct, yes.

3 Q. Can you locate -- would you look at the
4 page that I was showing you and I will ask you if you
5 can locate the K. Hovnanian property on that page.

6 A. Yes, I can. I am referencing page 7 of
7 this particular map book and K. Hovnanian property
8 occurs generally at milepost 5 or what is marked as
9 milepost 5 on this page.

10 Q. All right. And can you tell me if that
11 collection of maps, in particular the one that you
12 are looking at that shows milepost 5, does that
13 refresh your recollection or make you -- enable you
14 to determine if trenching is being used or horizontal
15 directional drilling?

16 A. In this -- in this particular location I
17 can identify that it is not marked as a location for
18 horizontal directional drilling.

19 Q. So would that mean trenching is being
20 used or do you not know?

21 A. I don't know for certainty if that
22 implies trenching or some other form of boring.

23 Q. All right. I'm going to --

24 MR. BRAUNSTEIN: Pursuant to
25 Mr. Schmidt's suggestion I am going to show Avon

1 Lake's boring locations revised 4-15 of 2014 and
2 ask -- and I am going to give copies to counsel as
3 well, I am pleased to report, and ask if you -- and,
4 again, this is a -- depositions were taken in this
5 case but this is not an identification number in this
6 proceeding or in any other official Power Siting
7 Board proceeding.

8 MR. GERKEN: Mr. Braunstein, could you
9 please wait for questions until we have our copies.

10 MR. BRAUNSTEIN: Yes. I'll do whatever
11 you would like me to do, Mr. Gerken.

12 Your Honor, while Mr. Gerken is
13 considering the exhibit I would like to mark for
14 identification as Exhibit 5 --

15 Q. I believe you said this was page 5 that
16 you were looking at?

17 A. No, page 7.

18 MR. BRAUNSTEIN: Page 7 of the NRG Avon
19 Lake Gas Addition Project Plans that show the
20 locations for horizontal directional drilling.

21 ALJ PARROT: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. GERKEN: Just to be clear for the
24 record I think the testimony was that showed
25 horizontal directional drilling at some point in time

1 in the -- as proposed today, there was no testimony
2 to that effect, but you can certainly ask the witness
3 if you want.

4 MR. BRAUNSTEIN: And have you looked at
5 the other exhibit? Can I proceed?

6 MR. GERKEN: I have.

7 MR. BRAUNSTEIN: Thank you.

8 Q. Now, have you ever seen --

9 MR. BRAUNSTEIN: Might as well go ahead
10 and mark this for identification as LCPO Exhibit No.
11 6. It is the Avon Lake Bore Locations Revised 4-15
12 of '14.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Have you ever seen that before?

15 A. ERM did not provide that.

16 Q. Does that mean you have never seen it
17 before?

18 A. I don't know for certain I have never
19 seen it before because I think you may have asked me
20 about it during deposition, but I'm not overly
21 familiar with it, no.

22 Q. Do you know who did prepare that? Was
23 that Mr. Caiazza?

24 A. I believe that Hanover did prepare that.

25 Q. Would you take a look at that? Can you

1 interpret that document for us?

2 MR. GERKEN: Objection. She testified
3 that her entity didn't prepare it and that
4 Mr. Caiazzo is the better witness to speak to that
5 document.

6 MR. BRAUNSTEIN: She did not testify he
7 was the better witness to testify to.

8 MR. GERKEN: She testified -- she
9 testified that at her deposition, that's right, not
10 today.

11 MR. BRAUNSTEIN: Right now, I don't
12 recall that in her deposition but I don't dispute it
13 but at any rate I'm just asking if she could tell me
14 what this document means.

15 ALJ PARROT: With that clarification I
16 will allow the question.

17 A. And I apologize. Are you asking me to
18 interpret it or just --

19 Q. I want to know if that document gives any
20 indication of any sort of boring on the K. Hovnanian
21 property -- or horizontal drilling.

22 MR. GERKEN: I'm sorry, same objection.
23 She can't speak to the document. She didn't -- if I
24 may, your Honor. She didn't create it. She's not
25 familiar with revised versions of it. And she

1 doesn't know about the document.

2 ALJ PARROT: I didn't hear that yet so.

3 MR. BRAUNSTEIN: She's an expert witness.

4 ALJ PARROT: To the extent you can answer
5 the question, please do so.

6 A. That was actually going to be my response
7 is I can't tell you looking at this document and I
8 did note that you asked me to look at the maps which
9 have a 2015 date and this is an April, 2014, date and
10 I don't know how to interpret this --

11 Q. Okay. That's fine.

12 A. -- if this is still accurate or not.

13 Q. That's fine. Thank you. So the only
14 thing -- I just want to be sure I'm clear. You can
15 identify from looking at Exhibit 5 there is no
16 horizontal directional drilling on the K. Hovnanian
17 property, but you don't know if it's going to be open
18 trenched or some other procedure is going to be used;
19 is that correct?

20 A. Not as I sit here today based on what we
21 have just discussed, no.

22 Q. Wait. I'm sorry. That's what happens
23 when you ask a terrible question. I don't know what
24 the answer means. Am I correct that the exhibit we
25 referred to as Exhibit 5 shows that there will not be

1 horizontal directional drilling on the K. Hovnanian
2 property.

3 A. That is correct.

4 Q. But it is possible. I believe your
5 testimony is that either open trenching or boring,
6 using boring pits could be used.

7 A. I believe I stated that I could not
8 confirm with certainty what other installation method
9 was being proposed across this property if not
10 horizontal directional drilling.

11 ALJ PARROT: We need copies at the Bench
12 as well, counsel.

13 MR. JONES: Lorain County Exhibit 5, was
14 that taken out of the application in this case?

15 ALJ PARROT: I don't think I got a
16 response when I asked that question so.

17 MR. BRAUNSTEIN: I think the witness
18 testified she didn't know.

19 Q. Is that correct?

20 A. That was -- that is what I stated, yes.

21 MR. BRAUNSTEIN: If you want the source,
22 it was provided to us at a deposition. You only had
23 telephone participation.

24 MR. JONES: Okay.

25 Q. I would like to show you what all counsel

1 and the court has received which is Exhibit 7, and I
2 would like you to take a look at that, please.

3 ALJ PARROT: For the record can you tell
4 us what this is, Mr. Braunstein?

5 MR. BRAUNSTEIN: The document titled
6 "Declaration of Restrictions," and I believe that the
7 testimony will reveal that it relates to the K.
8 Hovnanian property.

9 ALJ PARROT: The document is marked as
10 LCPO Exhibit 7.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. BRAUNSTEIN: And are we out of copies
13 of that now?

14 Q. I take it from your prior testimony you
15 have not seen that document before?

16 A. That is correct.

17 Q. As part of your environmental work, do
18 you do a document search?

19 A. No, not in the -- no.

20 Q. You don't do a public records search?

21 A. We did not, no.

22 Q. Okay. And in the, "Now, therefore"
23 clause, do you see where that it says that the
24 property and all parts of it "and each of them is,
25 impressed and opposed upon each and every part of the

1 Property and shall run with the land," and continuing
2 on "which shall hereafter become the owner of any
3 interest in all or any part of the Property, by
4 reason of deriving title, from, through or under the
5 Declarant." Do you see that language?

6 MR. GERKEN: I am going to object on a
7 couple of bases. It's an unofficial document. The
8 witness has never seen it before as she's testified.
9 There's no foundation for the document and
10 Mr. Braunstein is reading the document into the
11 record. So, I'm sorry, several bases. I just have
12 to voice those.

13 ALJ PARROT: Response?

14 MR. BRAUNSTEIN: This is an admissible
15 document. It says unofficial because Lorain County
16 Auditor's website prints unofficial on everything
17 that you don't pay to have certification for. But it
18 is a document that is publicly available, publicly
19 maintained website, is an official record of Lorain
20 County, and it is perfectly admissible. If the
21 witness hasn't seen it before, that is no basis for
22 an objection. If Mr. Gerken would prefer for me to
23 have the witness read the document rather than asking
24 her if she sees a certain section of it, that's fine
25 too.

1 MR. GERKEN: If I could in response,
2 foundational grounds is a perfectly good objection
3 and I think perfectly appropriate here. There's also
4 no mention of what property or whether this property
5 is on the map and I don't know how this witness is to
6 be tied to this document at all.

7 MR. BRAUNSTEIN: Well, the -- whether the
8 document is described the K. Hovnanian property will
9 be established by K. Hovnanian witnesses, all right?
10 Right now, I am trying to see if the construction of
11 this pipeline is consistent with the deed
12 restrictions imposed by this document.

13 ALJ PARROT: I do agree. I think you
14 need to lay some foundation for this witness in
15 respect to this exhibit. She testified that she's
16 never seen this document before, so I am not going to
17 allow her to just read it into the record.

18 MR. BRAUNSTEIN: I don't want her to read
19 it into the record.

20 ALJ PARROT: That's what you were doing
21 actually so.

22 MR. BRAUNSTEIN: I was just asking her if
23 she saw it. Mr. Oster is here to testify, and
24 Mr. Oster signed this document.

25 ALJ PARROT: Then we can have him testify

1 to it. If you have some way of trying to establish
2 that the witness on the stand at the moment has some
3 familiarity with the document, you may try to
4 establish that, but otherwise we need to move on.

5 Q. All right. Make it clear you have never
6 seen this document before?

7 A. I have not, no.

8 Q. All right. And so I take it it hasn't
9 been described to you.

10 A. This document, no.

11 Q. Yes. And so you have no opinion as to
12 whether -- what the effect of this document is on the
13 construction of this pipeline?

14 A. That is correct.

15 Q. When you talked about commitments that
16 were being made with respect to vegetative cover, and
17 I think you may have mentioned some other things,
18 those are commitments that are contained in this
19 OPSB, the letter of notification, or were you talking
20 about commitments contained in your application for
21 the wetlands' permits and other permits you might
22 need?

23 A. The two examples that I gave pertain to
24 the erosion/sediment control plan and that plan and
25 all methods and measures that are identified within

1 it are attached to the LON application.

2 Q. And are they also part of your permit
3 application to the Army Corps., for example?

4 A. The erosion/sediment control plan, yes,
5 has been submitted to the Army Corps. of Engineers as
6 well as to the Ohio Environmental Protection Agency.

7 Q. Now, when you began work on this project,
8 previously we've identified, and I think you were
9 here when the discussion was had, LCPO Exhibit No. 5,
10 have you got a copy of that in front of you?

11 A. This is 4.

12 Q. I'm sorry. I take that back. It's LCPO
13 Exhibit No. 4. Have you got a copy of that in front
14 of you?

15 A. I do.

16 Q. And I believe the testimony was that that
17 exhibit was prepared by Hanover.

18 A. That is correct.

19 Q. Have you ever seen that exhibit before?

20 A. No, I have not.

21 Q. Can you tell me how you started your
22 work, how you began work on the route?

23 A. I believe I stated in my direct testimony
24 that we were provided with a route that had been
25 identified by NRG and AECOM, we routed that route,

1 but we also started the process of collecting our own
2 data as it pertains to the various environmental
3 considerations that we took into account for the
4 purposes of the routing study that we conducted and
5 proceeded from there.

6 Q. All right. But you -- and we talked
7 about this earlier this morning, I assume you were
8 here, you did not consider the two corridors
9 contained in the certification application; is that
10 correct?

11 A. That is correct.

12 Q. All right. But so you started with the
13 AECOM route and then made whatever modifications to
14 that you thought were needed or desirable.

15 A. I don't know that I would characterize it
16 as if we started with that route and just made
17 modifications. Again, because we had to collect our
18 own data and do our own independent review to look
19 not only at what they had identified but then also
20 for our own purposes to look at different
21 alternatives, alternative locations for placing the
22 pipeline.

23 I think previous testimony identified
24 there was also consideration of different
25 installation methods, and so I wouldn't say that this

1 was just an exercise of modifying the AECOM route,
2 no.

3 Q. All right. When you say in your
4 testimony as you do that this is the optimal route,
5 you did not, I believe, compare it to a route that
6 might exist in the easterly corridor; is that
7 correct?

8 A. That is correct, yes.

9 Q. Thank you.

10 MR. BRAUNSTEIN: Could I have just one
11 second? I think I'm finished.

12 I have nothing further.

13 ALJ PARROT: Mr. Schmidt?

14 MR. SCHMIDT: No, ma'am.

15 ALJ PARROT: Mr. Jones?

16 MR. JONES: Just one question, your
17 Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Jones:

21 Q. The study you saw from AECOM, that was
22 done in the western corridor as well?

23 A. That is correct, yes.

24 MR. JONES: Thank you.

25 ALJ PARROT: Any redirect?

1 MR. GERKEN: Can I have one moment?

2 ALJ PARROT: You may.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Gerken:

6 Q. Doni, you testified -- I'm sorry.

7 Ms. Murphy, you testified today in response to
8 Mr. Braunstein that you don't do document searches
9 typically when he was referring you to an unofficial
10 copy of an easement; is that right?

11 A. That is correct, yes.

12 Q. If an easement that encumbers a property
13 that you are analyzing for a pipeline route, if that
14 easement is filed in the county recorder's office and
15 it covers a portion of the proposed pipeline that you
16 are analyzing, would that filed easement of public
17 record come to your attention through one source or
18 another?

19 A. Yes, typically through whomever is
20 responsible for obtaining those title-related
21 documents.

22 MR. GERKEN: I have no further questions.

23 ALJ PARROT: Any recross, Mr. Braunstein,
24 based on that?

25 MR. BRAUNSTEIN: Yes, just very briefly.

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RECROSS-EXAMINATION

By Mr. Braunstein:

Q. Are you saying this document was not recorded, that's why you didn't see it, or are you just saying you haven't seen it?

A. No. I simply said I have not seen it prior to today.

MR. BRAUNSTEIN: Thank you.

ALJ PARROT: Mr. Schmidt?

MR. SCHMIDT: Nothing.

ALJ PARROT: Mr. Jones?

MR. JONES: No questions, your Honor.

ALJ PARROT: Thank you, Ms. Murphy.

MR. GERKEN: Your Honor, the applicant moves to admit Exhibit 9 into the record.

ALJ PARROT: Are there any objections to the admission of Applicant's Exhibit No. 9?

Hearing none it is admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

ALJ PARROT: NRG, at this point do you want to go ahead and move the rest of your exhibits?

MR. GERKEN: Yes, your Honor.

MR. BORCHERS: Yes, your Honor.

Applicant moves to admit Exhibits 1 through 7.

ALJ PARROT: Are there any objections to

1 the admission of Applicant's Exhibit 1 through 7?

2 Hearing none those are also admitted into
3 the record.

4 (EXHIBITS ADMITTED INTO EVIDENCE.))

5 ALJ PARROT: Anything further from the
6 company at this point?

7 MR. GERKEN: No, your Honor.

8 ALJ PARROT: Mr. Braunstein, you may call
9 your witness.

10 MR. BRAUNSTEIN: Thank you, your Honor.
11 We call Tom Oster.

12 ALJ PARROT: I'm sorry. Before we do,
13 Mr. Braunstein, did you intend to move any of your
14 exhibits into the record?

15 MR. BRAUNSTEIN: Yes, your Honor, thank
16 you. We intend to move Exhibit 4.

17 ALJ PARROT: 4 has been admitted already.

18 MR. BRAUNSTEIN: And --

19 ALJ PARROT: 5, 6, or 7.

20 MR. BRAUNSTEIN: 5 and 6. And what was
21 7? And 7 is the wetland restrictions, and I think
22 that will have to wait.

23 ALJ PARROT: Wait on that. Okay. Are
24 there any objections to the admission of LCPO
25 Exhibits 5 or 6? 5 or 6?

1 MR. GERKEN: No, your Honor.

2 ALJ PARROT: Very good. LCPO 5 and 6 are
3 admitted into the record.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 MR. GERKEN: Your Honor, just a
6 procedural matter?

7 ALJ PARROT: Yes.

8 MR. GERKEN: If NRG moves to strike
9 certain exhibits or certain direct testimony, when
10 would that be appropriate?

11 ALJ PARROT: My personal preference would
12 be that you do that at the outset of the individual
13 witness's testimony so, for example, right now, if
14 you have something with respect to Mr. Oster, we
15 can -- I guess a couple of ways you can do it. First
16 thing or we can wait -- it might make sense to let
17 Mr. Braunstein go through his direct examination and
18 do it at that point, but I will leave that to you to
19 decide. I'm flexible but make sure we do it on a
20 witness-by-witness basis is what I am saying.

21 MR. GERKEN: Understood.

22 ALJ PARROT: You may call your witness.

23 MR. BRAUNSTEIN: Mr. Oster.

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THOMAS J. OSTER

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

DIRECT EXAMINATION

By Mr. Braunstein:

Q. Hello. How are you?

A. Good.

Q. Good. Could you state your name, please.

A. Thomas J. Oster, O-S-T-E-R.

Q. And where are you employed?

A. K. Hovnanian Homes, LLC, a division of K.
Hovnanian Companies out of New Jersey.

Q. And does K. Hovnanian Homes own property
on the route of this pipeline?

A. Yes, we do.

Q. And what is the -- is that a subdivision?

A. Subdivision called Arlington Place.

Q. All right. And have you filed written
testimony in this case?

A. Yes.

Q. And based on anything that has occurred
or come to your knowledge since the date of filing
that written testimony, do you have anything that you
would like to add to it?

A. No.

1 Q. All right. Let me ask you this, what is
2 the smallest -- the footprint of the smallest home
3 that you would build in Arlington Place?

4 MR. GERKEN: I am -- sorry. I am going
5 to object insofar as this line of questioning and
6 Mr. Oster's direct testimony deals with compensation
7 and appropriations based considerations rather than
8 pipeline routing issues.

9 MR. BRAUNSTEIN: That is entirely
10 inaccurate. If I could ask the witness.

11 ALJ PARROT: I will allow the questions,
12 and we'll see where it goes.

13 Q. Okay. Well, first, tell me what is the
14 smallest -- the footprint of the smallest home that
15 you could build on -- this is space -- what we are
16 going to call phase 10 of Arlington Place?

17 A. Correct.

18 MR. BRAUNSTEIN: Is that agreeable with
19 you, Mr. Gerken?

20 MR. GERKEN: I don't know what we are
21 referring to.

22 MR. BRAUNSTEIN: Phase 10 of Arlington
23 Place. You understand that it is actually
24 technically been renumbered now but all the way
25 through we have called it phase 10?

1 MR. GERKEN: My understanding doesn't
2 matter, Mr. Braunstein. It's a matter of whether
3 it's clear in the record.

4 MR. BRAUNSTEIN: Thank you.

5 Q. Okay. Phase 10 of Arlington Place, is
6 that affected by the pipeline?

7 A. Yes, it is.

8 Q. And phase 10 of Arlington Place, what is
9 the smallest footprint home that you put on that
10 property?

11 A. The smallest plan we have is 54 feet wide
12 by 37 feet deep is the minimum.

13 Q. All right. And with that plan would you
14 build it with a 30 -- are there any add-ons to it
15 that increase the size of the footprint?

16 A. Yes. We actually have -- if I'm giving
17 too much information, just say answer the question
18 and I will be happy to --

19 Q. He'll tell you.

20 A. -- answer the question. Okay. We have
21 eight homes that we offer in Arlington Place. Those
22 are on the K. Hovnanian website so they are, you
23 know, available for viewing. The homes range in
24 depth from 37 feet deep to 60 feet deep and that
25 would be the basic home. 81 percent of our buyers do

1 put on what's called a morning room, and a morning
2 room is -- in the old days was like a sunroom, but
3 it's bolted onto the back of the home. Generally
4 it's about 12 feet in depth so for the most part the
5 37-foot home actually 100 percent of the people that
6 bought the 37-foot home did put the morning room on
7 so that home is 49 feet at a minimum. And most of
8 the other homes are 42 feet to 60 before adding on
9 the morning room.

10 Q. All right. And if they don't have the
11 morning room, would they have a patio that extends
12 into the back?

13 A. Generally everybody would have a patio,
14 you know, 10 or 12 feet in depth, yes.

15 Q. All right. And is this a requirement by
16 the FHA or the financing authorities for a separation
17 between the footprint of the home and a pipeline
18 easement?

19 A. Yes. FHA, Freddie Mac, Fannie Mae, they
20 have a minium guideline that requires any structure
21 to be a minimum of 10 feet off of a high pressure gas
22 line easement.

23 Q. All right. And if you take into account
24 the 10 feet, the morning room, and the 37-foot
25 footprint, will there be enough space on phase 10?

1 At least the lots that have the pipeline on it, would
2 there be enough room on phase 10 to construct a home?

3 MR. GERKEN: Your Honor, I have to renew
4 my objection here. I don't see where this is going
5 other than -- sorry, because these are unbuilt homes
6 and the pipeline is routed on the land, I don't see
7 how this is leading anywhere but diminution of value
8 arguments. And unless we can see another ground for
9 this line of questioning, I renew the objection.

10 MR. BRAUNSTEIN: Well, this has got
11 nothing for diminution of value. Mr. Oster is going
12 to testify about the fact that he can't build homes
13 and what those homes are worth to show the economic
14 impact of this project, in the same way the economic
15 impact of this project on the landowner, in the same
16 way that the applicant wants to wrap itself in all
17 the economic benefits of this project. What he's
18 testifying to it is true they have sued in eminent
19 domain but what Mr. Oster is testifying to is that
20 this pipeline has a serious impact that should be
21 considered, although I believe the witness that
22 testified it wasn't, that should be considered in any
23 routing decision. That is the purpose of his
24 testimony.

25 MR. GERKEN: Your Honor, respectfully the

1 appropriate witness for such testimony would be
2 someone who can attest to the economic impact of the
3 diminution of residential value that this pipeline
4 route presents, not the owner of the development
5 that's putting in the homes. If the argument is
6 about economic impact, then we need an economist to
7 talk about that, not a business owner.

8 MR. BRAUNSTEIN: They have testified
9 about employment, about economic impact. It's all
10 over their letter of notification. You know, it's
11 saying that we have to have an economist when this
12 man has been doing this as his testimony shows for 30
13 years, and he is more knowledgeable about the
14 economic impact of this pipeline on his property than
15 any economist would be. I believe that this is silly
16 argument.

17 ALJ PARROT: Mr. Braunstein, I am going
18 to allow the question, but I'm also going to ask you
19 to try to move this along. The time for your direct
20 testimony has basically come and gone. Unless this
21 is new information that has come to light as you just
22 yourself asked, new information is okay to add at
23 this point. But if this is just covering old ground
24 so to speak.

25 MR. BRAUNSTEIN: Let me ask this one

1 question and I believe I will be finished.

2 Q. You have before you Exhibit 10.

3 ALJ PARROT: We haven't marked it so
4 let's do that.

5 Q. You have before you an exhibit that I am
6 going to mark for identification as LCPO Exhibit 8.

7 ALJ PARROT: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Which is your filed testimony in this
10 case. What is the purpose of exhibit -- the exhibit
11 to your testimony?

12 A. I think the purpose of the exhibit is --
13 and, yes, yes, K. Hovnanian does have a substantial
14 financial impact by the easement going through 10 of
15 the lots in the phase, so obviously our request is to
16 have the pipeline moved some other location or on the
17 other side of the railroad tracks off of our property
18 because, right now, it impacts 10 building lots. And
19 this is, you know -- we're -- Arlington Place we
20 started back in 2005, so our plans have been on file
21 with the city for the better part of a decade, you
22 know, we've sold through the first nine phases.
23 We're selling, you know, the most recent phase is one
24 house a week for the last 12 weeks. And we've sold
25 through the first nine phases and this is phase 10 so

1 we are approved with the city, the engineering is
2 complete, and we actually started putting the street
3 in and we are getting ready to sell homes when we got
4 notified of this easement. But it does eliminate 10
5 lots and -- and I guess my opinion has a substantial
6 impact on the 10 lots that would be across the street
7 because it's also so close to the pipeline for fear
8 factor.

9 Q. Is there any way to mitigate that damage
10 other than moving the pipeline off the K. Hovnanian
11 property that you are aware of?

12 A. Moving off the property is probably the
13 best way to mitigate it. We did look at, you know,
14 developing the plan as it was before the pipeline and
15 a couple of mitigation examples, but I don't think --
16 I am not sure if we are talking about financial
17 impact today so. But we do look at ways to mitigate,
18 and the best mitigation for us is to still put the
19 road in and still have lots on one side of the street
20 versus two which is about a million 283 negative
21 impact.

22 Q. Now, if I asked you the same questions
23 today while you are under oath that were asked and
24 answered in your direct testimony, would your answers
25 be the same?

1 A. They would be the same, yes.

2 MR. BRAUNSTEIN: Thank you. I'm
3 finished, your Honor.

4 ALJ PARROT: Mr. Schmidt, did you have
5 any questions for this witness?

6 MR. SCHMIDT: No, your Honor.

7 ALJ PARROT: Mr. Gerken?

8 MR. GERKEN: I wonder if there is a
9 ruling on the pending motion to strike?

10 ALJ PARROT: Yeah. Go ahead at this
11 point.

12 MR. GERKEN: Okay.

13 ALJ PARROT: The basis for your motion
14 or -- are you moving to strike the entire testimony
15 or --

16 MR. GERKEN: Moving to strike --

17 ALJ PARROT: -- go through line by line?

18 MR. GERKEN: Well, all of -- Mr. Oster,
19 is it?

20 THE WITNESS: Yes.

21 MR. GERKEN: All of Mr. Oster's testimony
22 including the exhibit attached to it dealing with the
23 diminution of value of his property. And none of it
24 is directed at the sort of communitywide economic
25 impact. That would be a significant influential jump

1 in his testimony. And for those reasons, you know,
 2 and because, you know, the Board's responsibility
 3 under Revised Code 4906, you know, they don't
 4 supplant the appropriations concept under 163, the
 5 siting process needs for utility facilities and when
 6 the route for this facility presents the minimum
 7 adverse environmental impact in the context of when
 8 relevant alternatives have been considered. This
 9 testimony does not go to whether this route is the
 10 least impactful route under Revised Code 4906.10(A).

11 So for those reasons we move to strike
 12 all of Mr. Oster's written testimony dealing with
 13 economic impact to his property, the K. Hovnanian
 14 property, and his testimony today that goes to the
 15 same subject.

16 ALJ PARROT: Response?

17 MR. BRAUNSTEIN: His testimony is related
 18 to statements that the applicant has made that they
 19 have considered landowner impacts that this is very
 20 important, and all of the witnesses for the exhibit
 21 had made that same statement, that they have
 22 considered landowner impacts. And what this
 23 landowner is describing is what the impact of this
 24 pipeline will be on his property. And that is
 25 something that certainly the Board can take into

1 consideration in determining whether this pipeline
2 was properly routed.

3 ALJ PARROT: Thank you, Mr. Braunstein.
4 I am going to deny the motion to strike, and we will
5 allow the Board to determine what weight to give to
6 the testimony assuming it is admitted into the record
7 at some point.

8 Cross-examination.

9 MR. GERKEN: Yes, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Gerken:

13 Q. Mr. Oster, my name is Dan Gerken. I
14 don't think we've met before.

15 A. No.

16 Q. Is that your recollection as well?

17 A. Correct, correct.

18 Q. I am an attorney for NRG. Thank you for
19 coming in and giving testimony. You mentioned
20 that -- well, you and Mr. Braunstein talked about
21 mitigation of this alleged impact to your property,
22 correct?

23 A. Okay.

24 Q. Do you recall that conversation just now
25 with Mr. Braunstein?

1 A. Yes, yes.

2 Q. What does the word mitigation mean to you
3 exactly?

4 A. Well, I think it has a couple of
5 different meanings. I think I -- you know, one of
6 the things I alluded to was -- or testified was we
7 looked at our options as far as developing the
8 property and if the pipeline was going through, what
9 impacts it had, and how we could mitigate our damages
10 or our losses with the pipeline going through so
11 financial obviously was one.

12 You know, we also have the
13 environmentally protected wetland on the property.
14 You know, I don't think there is any consideration
15 given for that, you know, as far as impacting
16 those -- those protected wetlands which are perpetual
17 easements that's recorded at the Lorain County
18 Recorder's Office back in 2000 --

19 Q. Sorry. The question was what is the
20 meaning of mitigation to you? You know, that's the
21 question.

22 A. Mitigate would be to reduce, I guess to
23 minimize the impact or minimize -- I guess to
24 minimize.

25 Q. Okay. But you just mentioned to Mr.

1 Braunstein that the best mitigation plan would result
2 in losses of I think you said \$1.2 million; is that
3 right?

4 A. No, no. The best mitigation plan would
5 be to not have the easement on our site, to have it
6 off our site would be the best way to mitigate that.

7 Q. I must have misheard your testimony. Has
8 K. Hovnanian proposed an alternative route to NRG?

9 A. We have not.

10 Q. And why is that?

11 A. Other than to, you know, relocate it off
12 our property, it could just -- in my mind I'm no -- I
13 am not an engineer. It could be moved on the other
14 side of the railroad tracks on other vacant property
15 as opposed to going directly through our sublots.

16 Q. So has anyone from K. Hovnanian reached
17 out to NRG or after K. Hovnanian engaged counsel
18 reached out to counsel to discuss with NRG an
19 alternative path that would mitigate the financial
20 losses?

21 MR. BRAUNSTEIN: Excuse me. I am going
22 to object for a minute. Is he asking whether I or my
23 partner have communicated with his law firm
24 concerning this? Because we certainly have. You
25 know perfectly well that the client has not.

1 MR. GERKEN: What's the basis for the
2 objection?

3 MR. BRAUNSTEIN: I don't understand your
4 question, but if you are asking him what we have done
5 and what we've told him that we've done, then that's
6 attorney-client privilege.

7 MR. GERKEN: I am asking if the entity he
8 is here and testifying on behalf of has talked to my
9 client either through counsel or otherwise about a
10 different path for the property to mitigate his
11 losses.

12 MR. BRAUNSTEIN: Well, how would he know
13 what we've talked about other than attorney-client
14 privilege? You can ask him what he's talked about.

15 MR. GERKEN: And that's what I did ask
16 him.

17 ALJ PARROT: Yes. Mr. Oster, you can
18 answer the question with the understanding that we
19 are not asking you to divulge any sort of
20 communications with your counsel.

21 THE WITNESS: Right.

22 A. All -- to the best of my knowledge, all
23 of our communications have been through our attorney
24 to NRG.

25 Q. So you are not aware of anyone from K.

1 Hovnanian voicing an alternative route to NRG?

2 A. Correct.

3 Q. You said the smallest plan on K.
4 Hovnanian's roster of eight homes is 54 feet by
5 37 feet deep?

6 A. That's the minimum, correct.

7 Q. Could you consistent with all approved
8 permitting so far and the building codes that apply,
9 could you build a home on these lots that you allege
10 are impacted by the pipeline so long as the footprint
11 is within the 25-foot frontage setback and 25-foot
12 rear setback?

13 A. Before the easement or after the
14 easement? Because we would not be able to build a
15 home within your 50-feet easement or within 10 feet
16 outside of that for financing purposes.

17 Q. As permitted in the plan filed with the
18 city of Avon now.

19 A. Well, currently the easement is not of
20 record, so at this point we could build a footprint
21 within the 25-foot front yard and rear yard setback
22 because there is no easements of record.

23 Q. And are you here today to testify about
24 the technical reasons that construction would be
25 impossible with this easement here as you allege?

1 A. No. I think the testimony is based on
2 the location of the easement, and I am not even sure
3 what that is because we have been provided --
4 initially when NRG wanted to take the easement, they
5 provided us a legal description that was certified by
6 a surveyor, and then in the complaint or the lawsuit
7 they provided a different legal that was not stamped
8 by a surveyor, so I guess we're uncertain exactly
9 where that easement is to be located.

10 Q. Are you here today to testify about the
11 technical aspects of the easement interference with
12 your construction project as planned?

13 A. I think regardless of which one of those
14 legals are correct it does impact our building
15 envelope and our ability to build the majority of the
16 plans that we offer.

17 Q. How does it impact your building plans?

18 A. We have a 12-foot deep building envelope,
19 and if the easement is 50 off the rear and 25 feet
20 off the front, the 25-foot setbacks, then we lose 75
21 foot of -- 75 off of 122-foot envelope, so we have
22 47 feet in which to construct a home.

23 Q. And the smallest home --

24 MR. BRAUNSTEIN: I don't think his answer
25 was finished.

1 A. Out of that 47 feet you have to be 10
2 foot minimum off easement for financing which leaves
3 us exactly 37 feet. So it is possible that we could
4 build one base home with a vinyl front that would fit
5 there, but we do have a look alike ordinance where we
6 can't build the same home side by side, so it's
7 possible we could build one -- the reason I say vinyl
8 front, as soon as they put brick on this is -- we
9 have got to extend the foundation 4 inches for the
10 brick ledge, and we are -- now, we are 37 foot
11 4 inches, so it is possible we could build one house,
12 one base house in there, but nobody has bought that
13 house without adding the 12 foot morning room to the
14 rear which would make it 49 feet.

15 Q. Does the look alike clause that you just
16 referenced, does that apply just to the front or to
17 the back as well?

18 A. We don't allow the same homes side by
19 side within a community so this -- we only have one
20 37-foot home. The rest of them are between 42 and 60
21 minimum in depth.

22 Q. So if homeowners chose the 37-foot deep
23 home on all of the properties you are talking about,
24 you would tell them, no, you can't build that home?

25 A. Correct.

1 Q. And that's because why exactly?

2 A. And some of them less than 37, the
3 envelope, I think the ones on the end, because we
4 don't allow the same home side by side.

5 Q. But that's a self-imposed rule that you
6 have for your communities?

7 A. Most municipalities have that rule.
8 That's something that --

9 Q. Would --

10 MR. BRAUNSTEIN: Let him answer.

11 A. We build about 2,500 homes so
12 historically, you know, forever that's how we've done
13 it to try to protect property values instead of
14 having row housing.

15 Q. Would the city of Avon prohibit you from
16 constructing homes as we just discussed?

17 A. I'm not sure.

18 Q. Are you prepared to give testimony today
19 about the sort of economic ripple effects of the
20 affect of the pipeline on your development?

21 A. The economic ripple effects, I'm not sure
22 what you mean.

23 MR. GERKEN: No further questions.

24 ALJ PARROT: Mr. Jones, did you have any
25 questions?

1 MR. JONES: No questions, your Honor.

2 ALJ PARROT: Mr. Braunstein, any
3 redirect?

4 MR. BRAUNSTEIN: Yes, your Honor. Thank
5 you.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Braunstein:

9 Q. First, you talked about the protected
10 wetlands on your property and recorded document. Is
11 this the recorded document you are referring to? And
12 I believe we already marked this for identification
13 as LCP -- LCPO 8?

14 ALJ PARROT: 7. The testimony is 8. The
15 deed restrictions are 7.

16 MR. BRAUNSTEIN: Thank you, your Honor.

17 A. Yes. This is a copy of the recorded
18 document recorded in Lorain County Recorder's Office
19 file 2009-0320321 on December 21, 2009.

20 Q. And could you turn to I believe it's the
21 second page of that document --

22 MR. GERKEN: Your Honor, I'm sorry. I am
23 just going to object because this exceeds the scope
24 of my questioning to the witness.

25 MR. BRAUNSTEIN: He asked about

1 environmental protective wetlands and to be frank you
2 told me to hurry up and I forgot to ask it which is
3 my fault.

4 ALJ PARROT: I'll allow you a little
5 leeway on this.

6 MR. BRAUNSTEIN: Thank you, your Honor.

7 Q. All right. On the second page is that
8 your signature that appears in the document?

9 A. That is my signature, yes.

10 Q. And did you sign on behalf of a company?

11 A. I signed as president of at the time
12 Ontario Land Company.

13 Q. All right. And has the property owned by
14 Ontario Land Company subsequently become property
15 owned by K. Hovnanian Homes?

16 A. Yes. We sold it to K. Hovnanian Homes.

17 Q. Is that -- are those wetlands on the
18 phase 10 of the Arlington Place subdivision?

19 A. They are, yes.

20 Q. And are they also partially on Phase 11?

21 A. Yes.

22 Q. Of the Arlington home subdivision?

23 A. Yes.

24 Q. And can you tell me what the substance of
25 those deed restrictions are?

1 A. It's a protective easement to protect the
2 wetlands, you know, perpetuity so, yeah, they cannot
3 be impacted.

4 Q. All right. And I believe I highlighted
5 something in yellow on that. On this page, can you
6 read the part that's highlighted in yellow on page 2?

7 A. "Any judge or magistrate before whom a
8 cause of action may be pending concerning these
9 restrictions shall coordinate with and contact the
10 U.S. Army Corps. of Engineers prior to any negative
11 declaration concerning this instrument or the
12 abolishment of this instrument."

13 Q. Thank you. Are there deed restrictions
14 that -- not that deed restriction but are there other
15 deed restrictions in the K. Hovnanian Arlington Place
16 Subdivision that are enforceable by the people that
17 have already bought homes there?

18 A. There is a homeowners association. I
19 believe it's called Avon Arlington Place Estates Home
20 Owners Association which does encumber all of
21 Arlington Place including phases 10 and 11.

22 Q. And is that document of record?

23 A. That document is of record, yes.

24 MR. BRAUNSTEIN: Thank you. I have
25 nothing else, your Honor.

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ALJ PARROT: Mr. Schmidt?

MR. SCHMIDT: No questions, your Honor.

ALJ PARROT: Mr. Gerken?

MR. GERKEN: Nothing further, your Honor.

ALJ PARROT: Mr. Jones?

MR. JONES: No questions, your Honor.

ALJ PARROT: Thank you, Mr. Oster.

MR. BRAUNSTEIN: Is Mr. Oster excused?

ALJ PARROT: Yes, he is.

MR. BRAUNSTEIN: Thank you.

ALJ PARROT: Mr. Braunstein, do you want
to move your exhibits?

MR. BRAUNSTEIN: Yes, your Honor. I
believe we used Exhibits 7 and 8 and would like to
move them into evidence.

ALJ PARROT: All right. Are there any
objections to LCPO Exhibits 7 or 8?

MR. GERKEN: NRG objects to the Exhibit 7
on grounds that it's not a certified copy. It's not
authenticated.

ALJ PARROT: Response?

MR. BRAUNSTEIN: The witness
authenticated his signature and stated that he had
signed it, and the document was still in effect and
had been recorded plus it is a public record that is

1 available online, and it's an exception to the --
2 it's self-authenticating on that basis.

3 ALJ PARROT: I am going to go ahead and
4 admit LCPO Exhibit 7 and allow the Board to determine
5 whether to give it any weight in this proceeding, and
6 I'm also going to admit LCPO Exhibit 8 at this time.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 ALJ PARROT: Thank you.

9 Mr. Braunstein?

10 MR. BRAUNSTEIN: At this time we don't
11 have further witnesses today but I believe --

12 ALJ PARROT: Yes. We are turning things
13 over to staff at this point. Thank you.

14 MR. JONES: Thank you, your Honor. At
15 this time we call Ed Steele to the stand.

16 - - -

17 EDWARD STEELE

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

20 DIRECT EXAMINATION

21 By Mr. Jones:

22 Q. Would you please state your name for the
23 record.

24 A. It's Edward Steel.

25 Q. And where are you employed?

1 A. The Public Utilities Commission of Ohio.

2 Q. And I have before you Staff Exhibit 1.

3 Would you please identify that for the record,
4 please.

5 A. That is my prefiled testimony in this
6 case.

7 Q. So that's the testimony you previously
8 filed in this case?

9 A. It is.

10 ALJ PARROT: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. And was this testimony prepared by you or
13 at your direction?

14 A. Yes, it was.

15 Q. Do you have any corrections to make to
16 that testimony?

17 A. I do not.

18 Q. And if I were to ask you the same
19 questions today that are in that Exhibit 1, would
20 your answers be the same?

21 A. Yes, they would.

22 Q. You also have before you marked as Staff
23 Exhibit 2. Could you please identify that for the
24 record, please.

25 A. That is the Ohio Power Siting Board staff

1 report of investigation in this case.

2 ALJ PARROT: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. And did you have a role that you played
5 in the investigation of this case?

6 A. Yes. I drafted the engineering and
7 safety section of this case.

8 Q. And what did you do as far as your
9 investigation? What did you review or what did you
10 see?

11 A. I reviewed the application as filed by
12 the applicant and also went on a field visit up to
13 the site.

14 Q. And do you have any changes to make to
15 the part of the staff report of investigation that
16 you had authored?

17 A. I do not.

18 MR. JONES: At this time, your Honor, I
19 would offer Mr. Steele for cross-examination.

20 ALJ PARROT: Thank you. Mr. Schmidt?

21 MR. SCHMIDT: No, ma'am.

22 ALJ PARROT: Mr. Braunstein?

23 MR. BRAUNSTEIN: Yes, thank you.

24 - - -

25

CROSS-EXAMINATION

By Mr. Braunstein:

Q. At the time that the staff report was written, was the Staff aware that only one of the two corridors referred to in the certification case were considered by the applicant or analyzed by the applicant?

MR. GERKEN: Objection. Assumes facts not in evidence.

MR. BRAUNSTEIN: I believe they are in evidence, your Honor.

ALJ PARROT: Let's try to rephrase it.

Q. At the time that the Staff wrote its report --

MR. BRAUNSTEIN: I really don't know how to rephrase it. I think it is in evidence, or at least it's certainly reasonable inference from the evidence, that the western corridor was never considered, or if it was considered, it was immediately dismissed because of the claim not analyzed, that it had insufficient -- that the tap had insufficient pressure.

MR. GERKEN: I think Mr. Braunstein is equivocating on the meaning of the term considered. It was clearly considered at one point by NRG. If

1 Mr. Braunstein is referring to the lack of a written
2 analysis or writeup of the merits of that corridor,
3 then I suppose the question can be limited to that.

4 MR. BRAUNSTEIN: Well, I will certainly
5 ask that, thank you.

6 Q. At the time that the staff prepared its
7 report, was the Staff aware that there had never been
8 a written report or written writeup, I think you
9 said, or analysis of the western corridor.

10 A. For my part of the staff report I
11 reviewed the application which had one route listed
12 in the application.

13 Q. So you were not in any sense comparing
14 the two corridors in terms of which was best. You
15 were simply looking at the corridor they proposed?

16 A. For my section of the staff report,
17 that's correct.

18 MR. GERKEN: If I could just clarify the
19 record, I think Mr. Braunstein was referencing the
20 western corridor when he may have meant the eastern.

21 MR. BRAUNSTEIN: If I said that, then you
22 are correct and I thank you. I meant the eastern
23 part of it.

24 Q. When you say your part of the staff
25 report, were there other parts of the staff report

1 that were -- or would have been concerned with that
2 issue of the analysis and writeup of the eastern
3 corridor?

4 A. I was assigned a section of the staff
5 report to complete and that's the section I
6 completed.

7 MR. BRAUNSTEIN: Thank you, sir.

8 ALJ PARROT: Mr. Gerken?

9 MR. GERKEN: We have no questions, your
10 Honor.

11 ALJ PARROT: Any redirect?

12 MR. JONES: No, your Honor.

13 ALJ PARROT: All right. Thank you,
14 Mr. Steele.

15 Move the admission?

16 MR. JONES: I move for the admission,
17 your Honor, of Staff Exhibits 1 and 2.

18 ALJ PARROT: Any objections to the
19 admission of Staff Exhibits 1 or 2?

20 Hearing none they are admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 ALJ PARROT: Let's go off the record.

23 (Discussion off the record.)

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

25 Staff, your next witness please.

1 MR. JONES: Yes. Staff would call Jim
2 O'Dell to the stand, please.

3 - - -

4 JAMES S. O'DELL
5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Jones:

9 Q. Could you please state your name for the
10 record, please.

11 A. Yes. James S. O'Dell.

12 Q. And where are you employed?

13 A. For the Ohio Power Siting Board at the
14 Public Utilities Commission of Ohio, 180 East Broad
15 Street, Columbus, Ohio 43215.

16 Q. What is your job title and
17 responsibilities?

18 A. I am a senior siting analyst. My
19 responsibility in this case?

20 Q. Yes.

21 A. I was lead analyst for preparing the
22 staff report of investigation.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. And you have before you marked as Staff
25 Exhibit 3. Could you please identify that document

1 for the record, please.

2 A. This is my prefiled testimony.

3 Q. And was this testimony prepared by you or
4 at your direction?

5 A. Yes, it was.

6 Q. And do you have any changes to make to
7 that testimony?

8 A. No, I do not.

9 Q. And if I were to ask you the same
10 questions today that are in Staff Exhibit 3, would
11 your answers be the same?

12 A. Yes, it would.

13 Q. And as the project lead here on behalf of
14 staff, are you here today to sponsor the staff report
15 of investigation as well?

16 A. Yes, I am.

17 MR. JONES: Your Honor, I will offer
18 Mr. O'Dell for cross-examination.

19 ALJ PARROT: Thank you.

20 Mr. Schmidt?

21 MR. SCHMIDT: No, ma'am.

22 ALJ PARROT: Mr. Braunstein?

23 MR. BRAUNSTEIN: Mr. O'Dell -- thank you.

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CROSS-EXAMINATION

By Mr. Braunstein:

Q. If -- were you aware at the time of preparing the staff report that there was no written -- there was no writeup or analysis of what has been identified here today as the eastern route -- or east corridor? Excuse me.

A. I'm sorry. Could you speak up again?

Q. Were you aware at the time of the staff report that the applicant's materials contained no writeup or analysis of the eastern corridor?

A. Staff reviewed the applicant's site selection study. Staff also in the preparation of the report reviewed what was presented by the applicant as their route.

Q. And so that would just be within what we have identified here today as the western corridor; is that right?

A. It appears that route is in the western corridor, sir, but staff only reviewed what was presented by the applicant for the route.

MR. BRAUNSTEIN: I understand. Thank you very much.

ALJ PARROT: Mr. Gerken?

1 MR. GERKEN: No questions, your Honor.

2 ALJ PARROT: Redirect?

3 MR. JONES: No redirect, your Honor.

4 ALJ PARROT: Thank you very much.

5 MR. JONES: Your Honor, at this time
6 staff would move for the admission of Staff Exhibit 3
7 into evidence.

8 ALJ PARROT: Are there any objections to
9 the admission of Staff Exhibit 3?

10 Hearing none it is admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 ALJ PARROT: All right. I think we have
13 a few remaining -- I have one issue I would like to
14 address before we adjourn for today, and I think
15 Mr. Braunstein has an issue as well that he would
16 like to raise.

17 MR. BRAUNSTEIN: Yes, your Honor.
18 Mr. Caiazzo -- I am hesitant to say one question but
19 I think all I want to ask him is how they are
20 planning to get across this pipeline, across the K
21 Hovnanian property phases 10 and 11.

22 MR. GERKEN: Your Honor, there is new
23 information since this was last considered. So I
24 became aware that the erosion, sediment, and control
25 plan attached to the LON states the method of

1 installation for every stretch of the -- of the
2 pipeline across every property. So to the extent a
3 less burdensome method of answering Mr. Braunstein's
4 question is available in the application of record in
5 this case, you know, I would ask that Mr. Caiazzo be
6 spared the additional witness time.

7 MR. BRAUNSTEIN: Could you simply tell me
8 the answer then?

9 MR. GERKEN: Absolutely we can do that,
10 yep.

11 MR. BRAUNSTEIN: Why don't you.

12 MR. GERKEN: I don't have that page
13 number.

14 ALJ PARROT: I think this is a discussion
15 we can have after we adjourn for the day. I don't
16 think it's necessary to recall the witness so.

17 The one issue I wanted to address at this
18 point is in preparation for our witness list
19 tomorrow, a motion was filed just recently by the
20 property owners group requesting leave to file the
21 testimony of Brandon and Mary Thorne, I believe, and
22 at this point I know it was just recently filed, and
23 the company has not had an opportunity yet to respond
24 by our typical timeframe provided under the Board's
25 rules. But if you wish to offer a response to that

1 motion at this time, I am here to hear it.

2 MR. GERKEN: Your Honor, we have no
3 objection to the motion. We would like to reiterate
4 and preserve our potential right to have rebuttal
5 testimony should they testify.

6 ALJ PARROT: Okay. Very good. With that
7 the motion is granted in terms of leave to file that
8 testimony.

9 Anything else to come before us today? I
10 think we're out of witnesses.

11 MR. GERKEN: Yes, your Honor. Do we have
12 a witness list for tomorrow?

13 ALJ PARROT: Let's go off the record and
14 I would like to discuss that at this point so.

15 (Discussion off the record.)

16 ALJ PARROT: Let's go back on the record.
17 The parties have discussed the witness schedule for
18 tomorrow, Friday. We will reconvene at 10 o'clock in
19 the same room, and we're adjourned for the night.
20 Thank you all.

21 (Thereupon, the hearing was adjourned at
22 4:17 p.m.)

23 - - -

24

25

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, April 23,
2015, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6033)

- - -

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Case No(s). 14-1717-GA-BLN

Summary: Transcript in the matter of NRG Ohio Pipeline Company LLC hearing held on 04/23/15 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.