

COUNTY OF HUDSON  
STATE OF NEW JERSEY

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In Re:     APPLE VIEW  
7009-7101 RIVER ROAD  
NORTH BERGEN, NEW JERSEY 07047  
CASE NO. 4-10

Applicant.

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June 7, 2012  
8:10 p.m.

B E F O R E:

THE NORTH BERGEN PLANNING BOARD

PRESENT:

GEORGE AHTO, JR., Acting Chairman  
ROBERT BASELICE, Member  
PATRICIA BARTOLI, Member  
STEVEN SOMICK, Member  
RICHARD LOCRIKCHIO, Member  
MANUEL FERNANDEZ, Member  
REHAB AWADALLAH, Alternate Member

GITTLEMAN, MUHLSTOCK & CHEWCASKIE, ESQS.  
Attorneys for the Planning Board  
BY: Steven Muhlstock, Esq.

Geraldine Baker, Board Clerk  
Jill Hartmann, Board Planner  
Derek McGrath, Board Engineer

Reported by:

CELESTE A. GALBO, CCR, RPR, RMR

## A P P E A R A N C E S:

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1 MR. AHTO: Meeting is called to  
2 order. Appleview. Now we're going to quit at  
3 9:30. Let the record reflect that everyone is  
4 here who was here before the break.

5 MR. ALAMPI: Thank you. Chairman,  
6 Carmine Alampi continuation of the hearing on  
7 Appleview, LLC. At the last meeting I think  
8 Mr. Lamb was still in cross-examination of a  
9 witness, Jose Rodriguez from Transco, and I  
10 suspect that will continue.

11 The only development has been that we  
12 had submitted a Johnson Soils report, what's  
13 called a Slope Stability Report dated June 1,  
14 2012 submitted on behalf of Appleview. That was  
15 submitted I believe on June 4th, and I'm not sure  
16 that the board had time to consider and review  
17 it. We're not expecting to give any testimony on  
18 this report per se but I'd like to mark it into  
19 the case record as the next exhibit for  
20 Appleview, A, I don't know where we left off, A  
21 something. John, I didn't want to change the  
22 sequence of your --

23 MR. LAMB: I've got a revised  
24 exhibit list.

25 MR. ALAMPI: I'll just indicate for

1 the record Mr. Lamb raised issues as to the  
2 labeling of the different exhibits and Celeste  
3 through the transcript reorganized those exhibits  
4 for us as per the correct marking and we're  
5 satisfied with all that. I just don't know --

6 MR. MUHLSTOCK: We'll go through  
7 that in a second. I have the next exhibit for  
8 Applevue being A-8. Mr. Lamb, if you want to  
9 check that on your list.

10 MR. ALAMPI: I don't want to be  
11 belabor it, Mr. Muhlstock. We'll mark as A-8,  
12 today's date for identification a Johnson Soils  
13 report dated June 1, 2012. I don't intend to go  
14 into any testimony on it, at the appropriate time  
15 we'll lay its foundation and I'm not looking to  
16 interfere with Mr. Lamb's cross-examination, I  
17 yield the floor to him.

18 MR. MUHLSTOCK: All right. Before  
19 Mr. Lamb starts up again, I do want to indicate  
20 for the record that Ms. Bartoli has read the  
21 transcripts of April 3 and March 6, I will get a  
22 signed certification subsequently. Also Mr.  
23 Somick has read the March 6th transcript and Mr.  
24 Fernandez has read the March 6th transcript and  
25 I'll get certifications from them. Mr. Chairman,

1       that would bring everyone here absolutely current  
2       in terms of either being here for each of the  
3       remand hearings or having read each of the  
4       transcripts.

5               MR. AHTO:   Okay.

6               MR. ALAMPI:  Chairman, lastly when I  
7       submitted the report A-8 I did also send directly  
8       to all counsel to the board's attorney and to the  
9       board engineer for their review, and with that  
10      I'll turn it over to Mr. Lamb.

11              MR. LAMB:  Thank you.  Just to  
12      correct, and I do have a list but I guess it  
13      didn't make into it -- we have to not take all  
14      the files because they're voluminous so I will  
15      circulate that before the next meeting.  I note  
16      that the May 1st transcripts indicates that  
17      there's a Remand Exhibit 8, so yours should be 9.  
18      That's what page 43 of the transcript indicates.

19              MR. MUHLSTOCK:  You are correct,  
20      Mr. Lamb, you are correct, I do have RA-8, okay,  
21      Celeste, so this report that Mr. Alampi just  
22      identified actually should be let's use RA-9.

23                      (Remand Applicant Exhibit 9, Johnson  
24                      Soils report dated June 1, 2012, was marked  
25                      for identification.)

1 MR. ALAMPI: Thank you. Nothing  
2 further.

3 MR. LAMB: Yes, the only other thing  
4 I had if you recall at the end of the last  
5 hearing we marked for identification G-15 and  
6 G-16, and the board I guess with their counsel  
7 was going to consider whether that should be  
8 introduced into evidence and whether I will be  
9 permitted to ask questions on it. If you recall  
10 that's the e-mail of Mr. McLaughlin dated January  
11 15, 2008 and the letter of Mr. Stevens to Mr.  
12 Oury, prior developer's counsel, dated January  
13 18, 2008. So that's the only procedural issue I  
14 guess that has remained open to the best of my  
15 knowledge that we haven't addressed before.

16 MR. MUHLSTOCK: I didn't get any  
17 argument one way or the other from any of the  
18 counsel on that, so...

19 MR. ALAMPI: I just renew my  
20 objection, it was a different application. I  
21 think you were going to rule on it, Mr.  
22 Muhlstock.

23 MR. MUHLSTOCK: I mean if it has  
24 bearing on credibility of the witness here, why  
25 is it not fair game for cross-examination?

1 MR. ALAMPI: Well, he wants to move  
2 it into evidence. He can use it for  
3 cross-examination but I don't see how -- it's a  
4 different application.

5 MR. MUHLSTOCK: It's like any other  
6 document.

7 MR. ALAMPI: You can overrule it.

8 MR. MUHLSTOCK: Overruled. G-15 and  
9 G-16 are in the record. G-15 was a January 15,  
10 2008 e-mail. G-16 was a January 18, 2008 e-mail  
11 from Mr. Stevens to Mr. Oury.

12 (Galaxy Exhibit 15, January 15, 2008  
13 e-mail, was marked for identification.)

14 (Galaxy Exhibit 16, January 18, 2008  
15 letter from Mr. Stevens to Mr. Oury, was  
16 marked for identification.)

17 MR. LAMB: And the latter one was a  
18 letter, not an e-mail.

19 MR. MUHLSTOCK: Letter, sorry.

20 MR. LAMB: And then the only then  
21 I'll just talk while Mr. Alampi is here, the only  
22 other thing, Mr. Chairman, Mr. Muhlstock because  
23 this slope stability study had been submitted to  
24 the board and I spoke to Mr. Alampi, I know  
25 testimony will come later, what I'd like to do is

1 have our expert on the slopes, Robert Kuniff,  
2 inspect the property or walk the property. He  
3 had previously testified in the original hearings  
4 and so although we don't need that for tonight, I  
5 wanted to anticipate it so that his inspection  
6 wouldn't delay anything at a later date.

7 Obviously we can't --

8 MR. ALAMPI: If they provide a  
9 certificate of insurance, typical protocol for  
10 coming on the property, he can climb up and down  
11 the hill.

12 MR. MUHLSTOCK: Well, what's your  
13 position, Mr. Alampi, on whether or not this RA-9  
14 is relevant on the remand?

15 MR. ALAMPI: The scope of the  
16 remand?

17 MR. MUHLSTOCK: Yes.

18 MR. ALAMPI: I think that this was a  
19 report that the board had requested upon the  
20 approval of the resolution last year, that  
21 resolution of course is in litigation, and the  
22 court has held up the resolution and subject to  
23 further disposition in court that was a follow-up  
24 requirement. And I think Mr. Lamb asked the  
25 witness Rodriguez and went through I think a



1 series of questions on two evenings in his  
2 cross-examination with regard to the information  
3 that's contained in that report or the data that  
4 supported that report. I think it just ties into  
5 his testimony and he's already given testimony  
6 with regard to information that's revealed in the  
7 report. It basically codifies what's been  
8 testified to under oath. I don't think it's  
9 going anywhere beyond that.

10 MR. MUHLSTOCK: Mr. Lamb.

11 MR. LAMB: I would just say, Mr.  
12 Muhlstock, that one of the issues is the slope  
13 stability as far as the pipeline safety is  
14 concerned. The testimony of Mr. Rodriguez  
15 concerns the various risks that they look at and  
16 one of the risks that they look at is obviously  
17 landslides, earthquakes, other things and its  
18 proximity to the pipe. So I believe -- we don't  
19 have any objection to the slope stability study  
20 because the more information and the safer this  
21 is, that's one of the major objectives, so we  
22 don't have any objection.

23 MR. ALAMPI: Now I'm nervous because  
24 Mr. Lamb is not objecting. So I must have done  
25 something wrong strategically and all I could say

1 is I think that this is an issue that I would  
2 surmise that the court, given the spirit of the  
3 order surrounding the remand and the oral  
4 argument presented by all attorneys and the  
5 court's opinion it seemed to me that this  
6 information is something that has enough of a  
7 value that I think the court would embrace this  
8 document.

9 MR. MUHLSTOCK: Okay. Fine, no  
10 objection, it's in the record.

11 MR. TUCKER: Mr. Muhlstock, if I  
12 may, I've been giving the objectors the benefit  
13 of the doubt. I think the slope stability study,  
14 the one dated June 1, 2012 in the broadest  
15 context could be relevant only insofar as  
16 construction of this project would impact  
17 stability of the slope.

18 MR. MUHLSTOCK: I agree. Because  
19 that's what the remand is all about.

20 MR. LAMB: Let me just -- I don't  
21 want to interrupt the gentleman. Again, for the  
22 record, Transco has avoided becoming a party in  
23 this action. Now, the Chair let Transco's  
24 counsel take over the cross-examination of a  
25 witness -- an examination of a witness that Mr.

1 Alampi required as part of his case to help prove  
2 that there's safety and the risks are minimized,  
3 et cetera. Now, we have -- so I can understand  
4 him addressing objections to questions to Mr.  
5 Rodriguez. But if he's now going to weigh in on  
6 other issues on Mr. Alampi's witness and Mr.  
7 Alampi's report, then I want to confirm that  
8 Transco is a party to this action and they are  
9 therefore in this. They're either in it or  
10 they're not in it, but that type of comment means  
11 they're in it.

12 MR. MUHLSTOCK: Okay, Transco is not  
13 in the case.

14 MR. ALAMPI: They're not in the  
15 case, they're not a co-applicant, they're here  
16 because of the directive from the court and  
17 they're here.

18 MR. MUHLSTOCK: Let's move on with  
19 the cross.

20 JOSE RODRIGUEZ, having been duly sworn by the  
21 Notary Public, was examined and testified as  
22 follows:

23 CROSS-EXAMINATION (cont'd)

24 BY MR. LAMB:

25 Q. Good evening, Mr. Rodriguez.

1 A. Hello.

2 Q. Mr. Rodriguez, one of the questions  
3 that arose at the prior hearings was an area  
4 where you testified it could use more fill. Has  
5 there been any maintenance to that area or to the  
6 property since you last testified a little more  
7 than a month ago?

8 A. There's been no work in the last  
9 month that I'm aware of.

10 Q. Okay. You recall also one of the  
11 things outstanding was you were waiting for the  
12 pig test that you done in 2011, that had not been  
13 I guess received by Transco as of the last  
14 meeting. Has that come in in the last month  
15 since the last hearing?

16 A. The pig results have come in. A dig  
17 list has come in.

18 Q. And so that is something that did  
19 not come in prior to the last hearing on May 1st?

20 A. Not true. Prior to the last meeting  
21 in fact my testimony was that we repaired an item  
22 that we found as a result of the pig run. So  
23 therefore a dig list must have been made before  
24 that and I said that.

25 Q. And the dig test is in writing?

Rodriguez - cross

1           A.       The dig list is in writing  
2       somewhere.

3           Q.       Okay. And is that a document that  
4       was provided in connection with the subpoena  
5       request that we asked the board to issue which  
6       they issued?

7           A.       No.

8           MR. LAMB: Mr. Chairman, I'm going  
9       to request that prior to the next meeting that  
10      the results of that test, what Mr. Rodriguez  
11      indicated was a dig test be provided in  
12      sufficient reasonable time in advance of the  
13      hearing.

14          THE WITNESS: Clarification, I said  
15      dig list, not dig test.

16          MR. LAMB: Dig list.

17          MR. MUHLSTOCK: Dig, D-I-G --

18          THE WITNESS: List, dig list, a list  
19      of locations we needed to dig and investigate.  
20      Which we have done, there was only one location  
21      in this area and it was fixed prior to the last  
22      meeting. I testified to it at the last meeting.

23          MR. MUHLSTOCK: What's your  
24      position?

25          MR. TUCKER: Transco objects to the

1 production of the dig list. It's proprietary  
2 information, it's not information that's shared  
3 with the public. We have a continuing objection  
4 to it. We posed that objection in the response  
5 to the subpoena by letter dated March 29th and  
6 our position remains.

7 MR. LAMB: My position also remains.  
8 I again renew my motion to strike the testimony  
9 of Mr. Rodriguez. He was going to provide  
10 testimony, refer to documents and then not  
11 provide the documents, that is not appropriate.

12 MR. MUHLSTOCK: Well, the documents  
13 that have been requested were requested by you.  
14 They weren't brought out on his direct testimony.  
15 They were brought out by you on cross.

16 MR. LAMB: Yes, because his -- I'm  
17 sorry, go ahead.

18 MR. MUHLSTOCK: So I could  
19 understand your objection if these were -- these  
20 documents were referred to on direct, then you'd  
21 have a legitimate argument. But your asking  
22 things on your cross that brought out these -- or  
23 reference to these documents. And if counsel is  
24 going to object, I'm going to tell you again,  
25 that I think if you need these for

1 cross-examination, I think you should make a  
2 motion to the court.

3 MR. LAMB: I'm also going to  
4 reiterate that this witness has given a number of  
5 opinions over his -- the last three hearings of  
6 testimony. And we have the right through  
7 cross-examination to explore the basis for his  
8 opinions. And part of the basis for his opinions  
9 is there is written documentation and tests and  
10 writings and documents. And so what he's  
11 essentially given to us is a net opinion and  
12 without the supporting information and that's why  
13 it's a proper subject of cross-examination.

14 MR. MUHLSTOCK: Well, you can  
15 certainly make that argument to the court. And  
16 if the court feels you're right, so be it. And,  
17 again, you can, if you feel it's necessary for  
18 your cross, then make a motion to the court.

19 MR. LAMB: We are right now on a  
20 remand hearing, I think it's necessary for the  
21 cross but I don't think it's my burden to go run  
22 into court for motions on a pending matter. I  
23 have indicated my objection, you've indicated  
24 your advice to the board.

25 MR. MUHLSTOCK: Transco --

1 MR. LAMB: Transco has indicated  
2 their objection.

3 MR. MUHLSTOCK: Transco is not going  
4 to produce it. They're here voluntarily as a  
5 witness, they're not going to produce it. The  
6 board is not going to make the motion to the  
7 court. The board doesn't feel it's necessary on  
8 this remand, you do and that's your prerogative,  
9 so if you feel you need it, go right ahead.

10 MR. LAMB: And with respect to  
11 Transco being here voluntarily, Transco is here  
12 as a result of the judge's decision which ordered  
13 the applicant to provide safety information  
14 concerning the gas pipeline. The applicant  
15 apparently chose to address that issue by having  
16 Transco witnesses appear.

17 MR. MUHLSTOCK: There is no  
18 subpoena.

19 MR. LAMB: Well, I respectfully --  
20 in the first remand, the original hearing I did  
21 request a subpoena of Transco and that subpoena  
22 was not granted. Now the judge has required that  
23 there be safety information.

24 MR. MUHLSTOCK: And you have the  
25 safety information from this witness so far.



Rodriguez - cross

1 MR. LAMB: I don't want to belabor  
2 it. We all put our positions on the record.

3 MR. MUHLSTOCK: Go ahead.

4 BY MR. LAMB:

5 Q. Mr. Rodriguez, you've testified that  
6 there is geofabric on the site?

7 A. Yes.

8 Q. And I don't think we need to get out  
9 the exhibits, but if you recall I think you were  
10 here, Mr. Bertin had R-1 A, B and C, he had a  
11 bunch of pictures of the site?

12 A. Yes.

13 Q. And you've also inspected the site?

14 A. Yes.

15 Q. And you've seen -- you've seen this  
16 geofabric, it's visible?

17 A. Yes, I have.

18 Q. The purpose -- you and I went, had  
19 some discussion about the purpose of geofabric.  
20 Is it fair to say that the purpose of geofabric  
21 is to provide soil stability in that area?

22 A. Yes.

23 Q. And is it also fair to say that what  
24 the normal procedure is geofabric is placed in  
25 the area and then soil is placed on top of it so

1 that grass can grow with the geofabric underneath  
2 that area?

3 A. The dirt is placed within it not on  
4 top of it and then the idea is that it will hold  
5 the dirt and that it could naturally vegetate.  
6 Originally it was probably seeded.

7 Q. And the objective then is it not  
8 after the seeds take place and the grass grows  
9 the geofabric is no longer visible, there's grass  
10 there, there's dirt, the geofabric is underneath  
11 all that; is that correct?

12 A. Unless the dirt washes away as it  
13 has in this situation.

14 Q. Okay. And thank you. And so  
15 therefore when you see geofabric exposed, is that  
16 not an indication that there has been some  
17 erosion in that area?

18 A. It would be no different than if you  
19 painted your car 20 years ago and it faded, I  
20 couldn't expect it to remain the same over 20  
21 years. It is of no significance that there is a  
22 washing away of the soil of maybe an inch or two,  
23 but, yes, you could call that erosion.

24 Q. Okay. And isn't it one of the  
25 issues here to look at erosion on this area by

1 the proposed construction of a building on these  
2 steep cliffs?

3 MR. TUCKER: Excuse me, Mr.  
4 Chairman. I thought maybe Mr. Lamb was going  
5 somewhere with this but I have a twofold  
6 objection. Number one, we've been all over this  
7 in prior testimony. Number two, it's totally  
8 irrelevant because as is proven by the fact this  
9 occurred in 1994, it's totally unrelated to the  
10 construction of this building therefore it's  
11 beyond the scope of the remand. I object to any  
12 continuing questions on this line -- on this  
13 subject matter. It's totally irrelevant.

14 MR. LAMB: First of all I did not  
15 ask him what the condition was in 1994. I asked  
16 him what the condition is right now when he  
17 inspected it recently. And he indicated that he  
18 could see it and yes, there was soil erosion,  
19 there was erosion on it. And one of the issues  
20 is erosion.

21 MR. TUCKER: Not erosion occasioned  
22 by construction of this building and therefore  
23 it's beyond the scope of the remand.

24 MR. MUHLSTOCK: All right.  
25 Mr. Lamb, let me ask you --

1 MR. LAMB: Can I say something to  
2 make sure the board understands my position?

3 MR. MUHLSTOCK: That's what I was  
4 going to ask you, please, make a proffer.

5 MR. LAMB: I am going to jump ahead  
6 to the slope stability study that Mr. Alampi has  
7 submitted. You can see what the proposal is for  
8 the slope on their exhibits. There's A, B and C.  
9 And you can see exactly how the building is  
10 cutting into the cliffs. You can see that. And  
11 so one of the issues under the regulations, the  
12 federal regulations is to make sure that this is  
13 safe, and soil stability is an issue. Erosion is  
14 an issue. Your own ordinance dealing with steep  
15 slopes one of the issues is to keep the terrain  
16 the same, to avoid soil erosion, to keep the  
17 natural habitat. So Transco's counsel can make  
18 every objection they wants but unfortunately I  
19 think they're wrong and I think we're going to be  
20 back. So if you don't want the witness to  
21 answer, that's your decision.

22 MR. MUHLSTOCK: Well, let's do it  
23 this way. How much longer on this line of  
24 questioning do you think you have?

25 MR. LAMB: I think, frankly, I

1 finished because he answered that yes, there is  
2 soil erosion.

3 MR. MUHLSTOCK: Well, that's your  
4 take.

5 MR. LAMB: The take is whatever she  
6 said in the record I'm satisfied with.

7 MR. MUHLSTOCK: The record speaks  
8 for itself.

9 MR. LAMB: I'm satisfied with it.

10 MR. MUHLSTOCK: Let's leave it at  
11 that.

12 BY MR. LAMB:

13 Q. Mr. Rodriguez, is it fair to say  
14 that pipes have different grades of materials?

15 A. Yes.

16 Q. Do you know the grade of material on  
17 this particular pipe that's on the subject  
18 property?

19 A. If you're referring to yield  
20 strength, yes, I do.

21 Q. And what would that be?

22 A. I believe it's 52,000 pounds per  
23 square inch.

24 Q. That's called the grade?

25 A. That's called the yield, the yield

1 strength of the pipe and I may or may not have  
2 said that.

3 Q. I asked you in your original  
4 questioning about the --

5 A. By the way that yield strength is in  
6 the load calculations that were submitted that  
7 has been subpoenaed or asked for, so it's in the  
8 record in one form or another.

9 MR. LAMB: Thank you for reminding  
10 me. I should have put in the record that that  
11 was also an outstanding item, Mr. McGrath's  
12 review of the load calculation. I confirmed with  
13 Mr. McGrath by leaving a message at his office  
14 yesterday, I wanted to make sure he had that  
15 letter and that load calculation and he was  
16 reviewing it because that's something that arose  
17 on May 1st and he wasn't copied on the letter.  
18 And he confirmed by a message to me today that he  
19 was in the process of reviewing it.

20 Q. Have you reviewed the National  
21 Transportation Safety Board bulletins in general  
22 for pipelines, applicable to pipelines?

23 A. I do from time to time but not very  
24 often.

25 Q. Did you review the January 3, 2011

1       bulletin?

2               A.       I don't know. I don't think so.

3               MR. LAMB: While we pass it out I'm  
4 going to give you a copy, counsel. We can mark  
5 that G-17.

6               Q.       Mr. Rodriguez, have you had a chance  
7 to review that?

8               MR. MUHLSTOCK: Why don't we  
9 identify it on the record for the court reporter.

10              MR. LAMB: I'm sorry. It's the  
11 NTSB, National Transportation Safety Board News  
12 Bulletin dated January 3, 2011, reference number  
13 SB-11-01 entitled "NTSB issues urgent safety  
14 recommendations as a result of preliminary  
15 findings in San Bruno pipeline rupture  
16 investigation."

17              (Galaxy Exhibit 17, National  
18 Transportation Safety Board News Bulletin  
19 dated January 3, 2011, reference number  
20 SB-11-01, was marked for identification.)

21              A.       To answer your question I've looked  
22 at it but it would take me more than a moment to  
23 review. I'd have to sit down and reread it.

24              Q.       Did you ever review the entire  
25 document previously?

1 A. No.

2 Q. That's simple. You are aware of the  
3 requirements on Transco to provide integrity  
4 management programs?

5 A. Yes.

6 Q. Okay. Is there an integrity  
7 management program in writing that Transco has  
8 prepared for this section of the pipeline?

9 A. We have integrity management program  
10 which I've copied you on the website that says  
11 that. We do not have integrity management  
12 program for a segment of pipe.

13 Q. So you have --

14 A. We manage the entire system  
15 according to the program which is very in-depth  
16 and detailed of how we maintain the integrity of  
17 the pipeline.

18 Q. Okay. And that you're saying was --  
19 that's never been provided to us, that's on your  
20 website?

21 A. No, an overview of it is on our  
22 website and that was provided to you.

23 Q. An overview. When was it provided  
24 to me?

25 A. It was one of the items I had in my



1 hands that you asked for a copy of.

2 Q. And when did you give that? Was  
3 that marked for identification?

4 A. It was one of the first things we  
5 gave to you prior to subpoena or the request for  
6 a subpoena.

7 MR. TUCKER: Excuse me, Mr.  
8 Chairman, I'm going to request that Mr. Lamb make  
9 some kind of proffer here. I can see how this  
10 might be generally relevant to pipeline safety in  
11 the abstract. What I don't see is how this  
12 relates to the construction of this building and  
13 that is the scope of the remand. And I think  
14 we're wandering off into general pipeline safety  
15 which is not where the judge wanted us to go.

16 MR. LAMB: With all due respect,  
17 this person, this Transco is not a party to the  
18 lawsuit, we've already been through this and if  
19 the board wants to limit questions, the board can  
20 make that ruling and I'll abide by obviously the  
21 board's ruling.

22 MR. MUHLSTOCK: The document was --  
23 I think the document you're referring to was  
24 marked T-5. I have it as T-5.

25 Q. There is a Gas Pipeline Integrity

1 Management Program Summary that I have marked as  
2 T-5. Is that what you're referring to?

3 A. I believe it probably is.

4 Q. Is there an entire -- other than the  
5 is summary is there an actual document upon which  
6 that summary was based?

7 A. I would assume so.

8 Q. Did you prepare the summary?

9 A. No.

10 MR. LAMB: I'm going to request that  
11 the actual document be provided to the board and  
12 to myself a reasonable period of time prior to  
13 the next hearing.

14 MR. MUHLSTOCK: Let me ask the  
15 witness --

16 THE WITNESS: Yes.

17 MR. MUHLSTOCK: -- because I don't  
18 have that document, the one that was marked T-5.  
19 What did it indicate?

20 THE WITNESS: That indicated that we  
21 have a pipeline integrity management program and  
22 it detailed some of the things that we do. And  
23 of that program the only item that I can really  
24 speak to in any detail was that we manage  
25 projects that are built around the pipeline and

1 proposed around the pipeline and that's what I do  
2 as a division engineer. The program is much  
3 larger than that, it covers items that have  
4 nothing to do with this building and therefore  
5 there is no reason why I would be knowledgeable  
6 of those details because it's not part of my job.  
7 The part of that program that is part of my job  
8 is protecting the pipeline from construction in  
9 the vicinity of the pipeline and that I can speak  
10 to in a great deal. That's what this project is  
11 about.

12 MR. MUHLSTOCK: These inspections,  
13 these reports have anything to do with the  
14 pipeline itself?

15 THE WITNESS: Well, the things that  
16 we do as integrity management -- and as I've said  
17 once before Dan Schweitzer can speak more of  
18 those details, I'm just familiar with them. But  
19 we're talking about items like why we do smart  
20 pig runs and the cathartically protect the  
21 pipeline. There are a lot of things that we do  
22 as a pipeline company to make sure that the pipe  
23 is safe. These, again, are all outside of this  
24 building, we do regardless if there's a building  
25 there or not.

1 MR. MUHLSTOCK: Mr. Tucker, is this  
2 document, are these reports that are requested  
3 somehow privileged? I understand your objection  
4 that it might be far afield, okay, but let's find  
5 out. Would you assert that they're privileged?

6 MR. TUCKER: I think so, because  
7 these are -- this is not an industrywide  
8 document, it is a company document. And we  
9 certainly don't want this to be released to be a  
10 matter of public record. It's something that we  
11 have created, it's our program, it's proprietary  
12 and it doesn't go to any other pipeline operator.

13 MR. MUHLSTOCK: Who has access to  
14 these reports?

15 MR. TUCKER: The PHMSA which is the  
16 federal regulatory body and the company.

17 THE WITNESS: Can I speak?

18 MR. TUCKER: Sure.

19 THE WITNESS: Rick is exactly right.  
20 In other words, I guess I'm not a lawyer, I can  
21 only speak as a layman because I'm just a layman.  
22 There are private policy as a private company.

23 MR. MUHLSTOCK: Okay, I get it.

24 THE WITNESS: And we're regulated by  
25 PHMSA, PHMSA is the ruling authority that makes

1       sure that our program is appropriate, follows  
2       their code of regulations. We are audited by  
3       them.

4               MR. MUHLSTOCK: Okay, PHMSA is a  
5       federal regulatory body?

6               THE WITNESS: Part of DOT.

7               MR. MUHLSTOCK: Part of DOT.

8               MR. TUCKER: Federal DOT.

9               MR. MUHLSTOCK: If this was OPRA'd,  
10      do you think it would be producible?

11              MR. TUCKER: I don't know, it would  
12      be up to PHMSA.

13              MR. LAMB: Let me clarify that the  
14      Code of Regulations 195.452(b)(1) is the  
15      regulation that requires a utility company such  
16      as Transco to have an IM program that addresses  
17      the risks on each segment of the pipeline. And  
18      since we are here at a hearing and one of the  
19      major issues is the risks on the pipeline, the  
20      underlying document that supports the summary and  
21      whether that summary is accurate or correct to me  
22      is a relevant piece of information.

23              MR. TUCKER: If that's relevant,  
24      then it would also be relevant every other  
25      policy, internal procedure, practice that Transco

1 has would be equally relevant because none of  
2 them would have anything to do with construction  
3 of this building on this site and with the extent  
4 of risk if any posed to this pipeline. And I  
5 take issue with the assertion, and I don't  
6 believe it's accurate that a pipeline operator  
7 has to have a unique integrity management program  
8 for each segment of pipe. I don't even know what  
9 is meant by each segment of pipe. But we  
10 couldn't possibly have regulations for every  
11 segment of pipe from the Gulf of Mexico to New  
12 York City, it's just not feasible.

13 MR. STEVENS: Mr. Muhlstock, I have  
14 a copy --

15 MR. LAMB: Could we either have one  
16 attorney from Transco --

17 MR. MUHLSTOCK: No, both attorneys  
18 are here. This is not a court of law. Both  
19 attorneys can speak.

20 MR. STEVENS: Thank you, Mark  
21 Stevens. I have a copy of Part 192.49, CFR Part  
22 192 which is applicable to natural gas pipelines.  
23 If Mr. Lamb has a copy, may I see a copy of Part  
24 195 which is the citation to which he referred?

25 MR. LAMB: I'm going to pass out and

1 mark for identification the entire set of  
2 regulations. If you recall, Mr. Rodriguez  
3 testified we comply with all the regulations, all  
4 of those regulations but on cross-examination he  
5 really couldn't pinpoint it thus far. If the  
6 regulations are going to become an issue, I think  
7 we should mark it as part of the record.

8 MR. STEVENS: I would like to see  
9 what he's referring to because some of these  
10 regulations pertain to liquid carrying pipelines.  
11 Thank you.

12 MR. LAMB: Okay. We have 192 --

13 MR. MUHLSTOCK: Mr. Lamb, I think  
14 that you are somewhat afield here, that's what my  
15 recommendation to the board is. And that if this  
16 document, if these reports are critical to you, I  
17 think, again, you can either OPRA them from the  
18 federal regulatory agency or make application to  
19 Judge Farrington at your convenience.

20 MR. LAMB: Let me just clarify. I  
21 believe I got that cite from the attachment to  
22 the NTSB Bulletin. I believe Mr. Stevens may be  
23 correct because it does say for hazardous liquid  
24 pipelines, that particular cite.

25 MR. MUHLSTOCK: Again, I think

1       that's what I'm going to suggest to the board as  
2       a ruling on these documents. Why don't you send  
3       an OPRA request to the federal agency?

4               MR. LAMB: We will send the OPRA  
5       request, but, again, first of all I don't have  
6       the summary, I'm not saying Mr. Rodriguez didn't  
7       give it to me. I don't have that. Whether I  
8       lost it in the paper shuffle, I don't remember  
9       him submitting a copy to everybody, so I'm going  
10      to request that they provide that to you, Mr.  
11      Muhlstock, and the board and myself again, the  
12      summary.

13             MR. ALAMPI: Mr. Lamb went through a  
14      painstaking effort of putting all the exhibits  
15      together and providing it to all of us and then  
16      conferring with Celeste in the transcript to  
17      correct the proper designation of all these  
18      exhibits.

19             MR. LAMB: And I said that, Mr.  
20      Alampi. I said that it was on my list.

21             MR. ALAMPI: He must have it. He  
22      must have it in his possession because we all  
23      have it.

24             MR. LAMB: If I have it in my  
25      possession I cannot locate it. So I'm requesting



Rodriguez - cross

1 a duplicate copy. I'll assume that Mr. Rodriguez  
2 handed it to me and that I didn't get that  
3 reference from the transcript.

4 MR. MUHLSTOCK: Well, I can't put my  
5 hands on it right now because I have literally  
6 four box on this case, so I'll have to look for  
7 it.

8 MR. AHTO: Mr. Lamb, we're all over  
9 the place here. I think we're back here for the  
10 safety of this pipeline, this specific pipeline  
11 during the construction of the building. And  
12 we're going all over the place. We've been going  
13 all over the place for months. Can we keep it to  
14 where we're supposed to be?

15 MR. LAMB: Mr. Chairman, if your  
16 board wants to rule that I can only ask about  
17 construction, I previously said on the record  
18 this is more than construction. They have asked  
19 for an easement, a 20-foot easement to be part of  
20 that right-of-way, that Transco right-of-way.  
21 They're running vehicles across that easement.  
22 They are excavating into the cliffs. The risks  
23 associated with their activities both  
24 construction and what happens post construction  
25 are relevant. If you do not believe that post

1 construction operations of the building, the  
2 project, the easements is relevant, then you can  
3 make that determination. I respectfully  
4 disagree.

5 MR. MUHLSTOCK: Yes, but there's  
6 been no evidence on anything that could be  
7 conceivably post construction here that would  
8 have an impact on the pipeline. After  
9 construction is completed, there is no evidence  
10 that is in the record that I can think of as to  
11 how the pipeline could be impacted other than  
12 general slides, general erosion which could  
13 happen whether a building is there or not. I  
14 think that's what the board needs to hone in on.

15 MR. LAMB: Okay. Okay. You may  
16 recall that Richard Kuprewicz wrote a report and  
17 testified concerning the fact that some risks,  
18 some problems occur after the construction.  
19 We've also been through the fact that --

20 MR. MUHLSTOCK: But related to the  
21 construction. I don't remember anything in his  
22 report that said that, you know, after  
23 construction as a result of the construction  
24 there could be incidents whereby the pipeline  
25 could be ruptured. I don't remember anything

1       like that.

2                   MR. LAMB:   If you weaken the slopes,  
3       you dig into the steep slopes, it could happen  
4       when you dig, it could happen next year, it could  
5       happen in five years.   If you run trucks down the  
6       20 foot right-of-way that is between the building  
7       and the pipeline when you do repair to the pipe,  
8       the drainage pipe and whatever other improvements  
9       are in that 20 foot right-of-way, those are all  
10      post construction involved in the maintenance and  
11      operation of the building.

12                  MR. AHTO:   I think that's where the  
13      questioning should be, during construction,  
14      running trucks, I think that's where you should  
15      be now not afterwards and maybe that's where your  
16      questioning should be.

17                  MR. LAMB:   One of the things that we  
18      have maintained and the judge, we believe, agreed  
19      with us, is that a risk assessment analysis and a  
20      mitigation of those risks be provided.   They  
21      didn't have to do it in writing and they haven't  
22      done it in writing.   We haven't heard the rest of  
23      their witnesses but respectfully it's our  
24      position Mr. Rodriguez is not the pipeline safety  
25      expert.   That's what we've said.   But he's

1 provided testimony and we're trying to address  
2 what he's said. He's made a lot of statements  
3 that there is no problem and no objection, but  
4 when we've cross-examined him and asked for the  
5 details, the details don't seem to all be there  
6 and that's my position.

7 MR. MUHLSTOCK: Okay.

8 MR. TUCKER: The board has heard the  
9 evidence and will decide what is there and what  
10 isn't there but I think we're getting into --

11 MR. MUHLSTOCK: Let's let Mr. Lamb  
12 continue his cross.

13 MR. TUCKER: Well, I want to address  
14 where I since hopefully corrected where he is  
15 going and it may raise an important point. And  
16 that is I don't think it's the burden of Transco  
17 or even the applicant to demonstrate that with  
18 respect to each and every regulation or policy or  
19 procedure that affects a pipeline that we are in  
20 compliance with this one, the next one, the next  
21 one and the next one. I think that's getting the  
22 burden mixed up. I think at some point the  
23 objector should have the burden of coming forward  
24 and demonstrating that there is something unsafe  
25 about what's going on here and about this

1 application. They haven't done that.

2 MR. MUHLSTOCK: Well, you've heard  
3 the board indicate tonight that we do think that  
4 the cross-examination is going quite far afield  
5 but we certainly don't want to preclude -- I  
6 certainly don't want to get into a situation  
7 where Judge Farrington is going to read the  
8 transcript and say boy, the board precluded  
9 Mr. Lamb from proper questioning. So we're  
10 allowing beyond what I personally would think is  
11 appropriate on the remand, but we've allowed  
12 this, you know, cross-examination to go on at  
13 this point and we'll continue and allow Mr. Lamb  
14 to make his arguments so that no one can look  
15 back on the transcript and indicate that he was  
16 precluded.

17 MR. TUCKER: We understand that  
18 concern and we share it with you. I'm just  
19 saying there's got to be some outer limit to it  
20 or we'll be here forever.

21 MR. LAMB: Well, we will be here  
22 forever if we keep getting objections to every  
23 question.

24 MR. MUHLSTOCK: You've heard the  
25 board, Mr. Lamb. Why don't you see if you can

1 narrow this down.

2 MR. LAMB: Let me also respond. It  
3 is not my purpose to go over each regulation that  
4 is applicable to this. All we ask for, our  
5 expert reviewed this and if you recall our expert  
6 only said Transco in the person that is most able  
7 to provide a risk assessment and mitigation or  
8 addressing of the risks. They should do it. And  
9 when they -- and if the they do that, then we  
10 will review it to see if it's appropriate. So we  
11 intend to bring someone back if we believe that  
12 what Transco has said is not appropriate.

13 MR. MUHLSTOCK: Okay.

14 BY MR. LAMB:

15 Q. Mr. Rodriguez, do you recall how  
16 much an easement Transco requested of the  
17 applicant? Are you familiar with them asking for  
18 more than 25 feet of an easement?

19 A. Since my involvement I asked that  
20 the setback area remain unencumbered which was 20  
21 feet.

22 Q. But prior to your involvement, in  
23 your investigation of this do you have any  
24 knowledge that Transco asked for more than the 20  
25 foot additional area? Do you have any knowledge,

1 yes or no?

2 A. I have a recollection of something  
3 but I cannot recall whether it's 20 or 25 feet.

4 Q. So are you saying that there was a  
5 request for more than 20 feet or you're not sure?

6 A. I'm not sure.

7 Q. Are there any improvements in the 20  
8 foot area, the right-of-way, are there  
9 improvements that the developer is making other  
10 than the drainage line that is going to be above  
11 grade?

12 A. There is a retaining wall in the --  
13 near where our pipeline turns.

14 Q. Northwesterly corner?

15 A. Yes.

16 Q. Any others?

17 A. No. By the way, you might find it  
18 interesting that about that location of the  
19 retaining wall, when the pipeline was built there  
20 used to be a building there.

21 Q. Any other improvements?

22 A. Not that I can recall.

23 Q. Okay. Is there manholes, any  
24 manholes in that area, in that 20-foot  
25 right-of-way?

1           A.       There may be manholes associated  
2       with the sewer system.

3           Q.       And isn't it fair to say that the  
4       general 2009 guidelines of Transco prohibit those  
5       type of above grade improvements in a Transco  
6       right-of-way?

7           A.       Yes.

8           Q.       And you also agree that that's new  
9       construction in that 20-foot accessway, that's  
10      new construction?

11          A.       Well, those are our guidelines for  
12      where we own right-of-way and someone wishes to  
13      build within our existing right-of-way. Those  
14      improvements are in areas that we do not own the  
15      right-of-way right now and so we cannot keep them  
16      out of a right-of-way that we don't own.

17          Q.       Does Transco have a damage  
18      prevention program applicable to its pipelines  
19      that is required under the federal regulations?

20          A.       Yes, yes.

21          Q.       Is that something that's in writing?

22          A.       Part of the damage prevention  
23      program, the part that would be in writing would  
24      be those requirements that we shared with you.

25          Q.       Have you provided us the damage



1 prevention program in the subpoena request that  
2 was in writing or to this board?

3 A. We provided you with the -- with our  
4 requirements. I also want to add that --

5 Q. No, I want you to answer the  
6 question, please.

7 A. Okay.

8 Q. Did you provide a document called  
9 Damage Prevention Program for this stretch of  
10 pipe or the pipe on this property in connection  
11 with this application?

12 A. I don't know.

13 MR. TUCKER: I'm going to object to  
14 the question. We're getting into the same  
15 semantics we got into with who is a pipeline  
16 safety engineer and those two magic words were in  
17 somebody job description, well, they were that  
18 was determinative of their expertise. Here the  
19 question is have we produced a document that has  
20 a certain title. There may not be any such  
21 document. Why don't we get to the substance of  
22 the request and ask if that information has been  
23 produced in writing by whatever the document may  
24 be called so we don't get hung up on no, I didn't  
25 produce a document that has this exact title to

1 it. I think we're getting a little lost here.

2 MR. LAMB: I think there is under  
3 the federal regulations there's a document called  
4 Damage Prevention Program, that's a requirement  
5 and so my question was very specific.

6 Q. Do you have a written damage  
7 prevention program? The answer is either yes or  
8 no. I thought you answered it yes.

9 A. The answer is yes.

10 Q. And therefore have you provided that  
11 in the context of this case?

12 A. You know, I provided you two  
13 documents which you don't have the one, you  
14 probably don't have the other. I believe the  
15 other one might have been the damage prevention.  
16 You might check that exhibit list. They were  
17 references to pages from our website.

18 Q. I don't want to spend more time on  
19 this. If you could provide that before the next  
20 hearing through your counsel, I'll continue.

21 The regulations also require Transco  
22 to prepare a potential impact zone analysis; is  
23 that correct?

24 A. I believe so.

25 Q. Is that a document that Transco has

1 prepared?

2 A. I don't know.

3 Q. Would that document be in writing?

4 A. If it was a document it would be.

5 MR. LAMB: I'm going to request also  
6 they produce a potential impact zone analysis  
7 which I believe is required under the  
8 regulations.

9 MR. MUHLSTOCK: If they have one.

10 MR. LAMB: If they have one.

11 MR. ALAMPI: I do understand it's  
12 not a court of law, the strict rules of evidence  
13 are not applying. But of course Mr. Lamb raises  
14 this and that and thus and such as required under  
15 the regulations. We don't know if any of that is  
16 true, we don't know what regulations and then  
17 again we've seen time and again we talk about  
18 safety standards that deal with hazardous liquid  
19 product as opposed to what's here. It goes on  
20 and on. This is a form of an objection. My  
21 statements are with a great deal of reluctance  
22 but with an even greater deal of patience to try  
23 to get through this process but if Mr. Lamb is  
24 going to parse all different regulations about  
25 laying a foundation without quantifying it, it

1 just makes no sense. It's an inappropriate  
2 method of cross-examination.

3 MR. LAMB: We have an expert here  
4 who has held himself out as an expert who says  
5 that Transco has complied with all the  
6 regulations. So I would expect that the expert  
7 would know if Transco is required to provide  
8 those documents, keep those documents and whether  
9 they exist.

10 MR. MUHLSTOCK: Okay. So let's --  
11 Mr. Rodriguez, do you know if Transco has to  
12 prepare a damage prevention study with respect to  
13 the proposed development by Appleview?

14 THE WITNESS: We are not.

15 MR. MUHLSTOCK: Okay. You're not.  
16 Do you know if Transco has the obligation to  
17 prepare a potential impact zone analysis with  
18 respect to the potential development by  
19 Appleview?

20 THE WITNESS: We are not.

21 MR. MUHLSTOCK: Thank you.

22 MR. LAMB: I'm going to ask the same  
23 questions in general without limiting it to for a  
24 prospective development.

25 Q. Do you have to have those documents

Rodriguez - cross

1 for your pipeline including the pipeline over the  
2 subject property?

3 A. We're required to have a damage  
4 prevention program which we do.

5 MR. MUHLSTOCK: This is a general  
6 damage prevention program. Okay. You have that?

7 THE WITNESS: Yes.

8 MR. MUHLSTOCK: So but you're saying  
9 that you don't, you don't think in your opinion,  
10 you don't have to provide or prepare any of these  
11 other analyses with respect to the proposed  
12 development of the Appleview site?

13 THE WITNESS: That is correct.

14 MR. MUHLSTOCK: Okay.

15 MR. LAMB: Mr. Muhlstock, I'm not  
16 asking him with respect to the development.

17 MR. MUHLSTOCK: I heard. He said,  
18 he testified that they have a general damage  
19 prevention study.

20 THE WITNESS: Program, yes.

21 MR. MUHLSTOCK: Program, excuse me.

22 THE WITNESS: Which is many  
23 facettted.

24 MR. MUHLSTOCK: Many, many facets.  
25 Right. Okay.

1 THE WITNESS: Lots of people, lots  
2 of things are done.

3 MR. SOMICK: Required by federal  
4 law.

5 MR. AHTO: I think we're here for  
6 this development. And if you're saying you're  
7 not asking for this particular development,  
8 you're asking for a different development, we're  
9 here for this particular --

10 MR. LAMB: I'm not asking for a  
11 development. I don't expect that a utility  
12 company has a specific damage prevent plan for a  
13 specific piece of property. What I expect -- and  
14 we will provide you with a letter before the next  
15 hearing, what I suspect is that they have a  
16 general program and respectfully it's relevant  
17 whether whatever is in that general program, I  
18 haven't read it so I don't have any comments on  
19 it, but whether that is relevant to this project.  
20 Just like they have general guidelines that Mr.  
21 McGrath located at seminar that he went to. They  
22 have guidelines, those are general guidelines.  
23 They don't make the guidelines for a piece of  
24 property, they make the guidelines in general.

25 MR. MUHLSTOCK: Is the damage

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1 prevention program in writing by Transco? Is  
2 there a booklet?

3 THE WITNESS: There is the overview  
4 which I've submitted.

5 MR. MUHLSTOCK: Okay.

6 THE WITNESS: Then there is a more  
7 in-depth program that I don't believe that we  
8 want to share with the public.

9 MR. MUHLSTOCK: Okay.

10 THE WITNESS: We share with our  
11 regulator.

12 MR. MUHLSTOCK: Okay.

13 THE WITNESS: And that regulator is  
14 PHMSA who insures the public safety in this  
15 regard.

16 MR. MUHLSTOCK: Okay. Mr. Tucker,  
17 do you believe that the damage prevention program  
18 analysis or report or study of Transco is somehow  
19 privileged?

20 MR. TUCKER: I think it's privileged  
21 as their work product.

22 MR. MUHLSTOCK: Okay.

23 MR. TUCKER: And as proprietary.

24 MR. MUHLSTOCK: Same thing with  
25 potential impact zone analysis?

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1 MR. TUCKER: Yes.

2 MR. MUHLSTOCK: Mr. Lamb, I'm going  
3 to suggest that you file the same procedure that  
4 I set forth earlier, OPRA it from the federal  
5 agency or make an application to Judge Farrington  
6 that you think it's critical --

7 MR. LAMB: I don't think we have the  
8 burden, they have the burden based upon the  
9 judge's decision and it's my position that  
10 they're not satisfying the burden.

11 MR. MUHLSTOCK: The board thinks,  
12 the board thinks that you're going far afield --

13 MR. LAMB: I understand that.

14 MR. MUHLSTOCK: -- that's why the  
15 board thinks that you do have that obligation if  
16 you want to pursue those lines of questioning.

17 MR. LAMB: I understand what you're  
18 saying. I'm going to be happy to write to PHMSA  
19 and the National Safety Board I guess is the  
20 regulatory body and I'm going to be happy to tell  
21 them exactly what's going on here and what the  
22 answer to the questions, and I'm happy to request  
23 all of it.

24 MR. MUHLSTOCK: Okay.

25 MR. LAMB: If they tell me that



1       there's some safety issue, I have no desire to  
2       cause a potential problem but I'm trying to make  
3       sure that there's not a potential problem and the  
4       only way to do that is to get these documents.  
5       And -- I never expected, nor my questions  
6       presumed that they prepared each one of these  
7       documents for a specific piece of property.

8               MR. MUHLSTOCK:   Okay.

9               MR. TUCKER:   And that's what makes  
10       them irrelevant to this application I  
11       respectfully submit.

12              MR. MUHLSTOCK:   You know what, I'm  
13       not Judge Farrington.   She'll decide --

14              MR. TUCKER:   We all understand that  
15       we have to go somewhat far afield.

16              MR. MUHLSTOCK:   -- if this remand  
17       requires those type of documents.

18              MR. TUCKER:   And I think generally  
19       whatever PHMSA will release to the public on  
20       request as to this pipeline company and others we  
21       have no problem with that.

22              MR. LAMB:   Well, if Mr. Tucker --  
23       Mr. Tucker just argued they're privileged.   Now  
24       he's saying if PHMSA releases them.   If they're  
25       privileged PHMSA shouldn't release them.

Rodriguez - cross

1 MR. TUCKER: I don't think they  
2 will.

3 MR. MUHLSTOCK: Okay. We'll find  
4 out. Go ahead.

5 MR. AHTO: You have ten minutes.

6 BY MR. LAMB:

7 Q. Now, Mr. Rodriguez, I'm going to go  
8 over this slowly, we had -- I want to make sure  
9 we didn't have a misunderstanding at the last  
10 hearing.

11 You made a -- you gave an opinion  
12 that you have no objection to this project and  
13 that was before you received the slope stability  
14 study that we all were anticipating from Mr.  
15 Alampi's client's expert. Now we're not going to  
16 ask any questions on that because that's for  
17 another day. So assume that you have not seen  
18 that. Do you agree that before you can  
19 categorically say that Transco has no objection  
20 or there is no problem, that it's appropriate and  
21 reasonable to review a slope stability study for  
22 this particular piece of property?

23 A. For me reviewing it, no.

24 Q. Okay.

25 MR. MUHLSTOCK: Why?

1 THE WITNESS: Because I'm familiar  
2 with the property, I'm a licensed civil engineer,  
3 I'm familiar with situations like this by years  
4 of experience, I can recognize situations by  
5 observation and my training and knowledge. I  
6 don't need a report that's going to tell me what  
7 I know.

8 MR. MUHLSTOCK: And?

9 THE WITNESS: And the person that  
10 asked for the report is a mechanical engineer,  
11 not licensed at the time and from his point of  
12 reference he needed to see a little bit more. In  
13 addition, the report was requested for a  
14 different proposal that went deeply into the  
15 slope. My review of this project, it was far  
16 less impact and very minor on the slope, so I did  
17 not need to see a slope stability study of a past  
18 proposal. The area that I was concerned with,  
19 there is hardly any impact.

20 MR. LAMB: I'm going to mark G-18, a  
21 portion of the April 3, 2012 transcript.

22 MR. MUHLSTOCK: Why do you have to  
23 mark a portion of the transcript?

24 MR. LAMB: Because I'm going to ask  
25 him questions about it, Mr. Muhlstock. It's --

Rodriguez - cross

1 MR. MUHLSTOCK: It's already part of  
2 the record, G-18 is a portion of the April 3  
3 transcript. So what page are you on, Mr. Lamb?

4 MR. LAMB: 83. It's page 83 of the  
5 transcript but 90 is the text. The bottom page  
6 83 as on Celeste's transcript.

7 MR. MUHLSTOCK: Okay.

8 (Galaxy Exhibit 18, a portion of the  
9 April 3, 2012 transcript, was marked for  
10 identification.)

11 MR. MUHLSTOCK: Is there a question?

12 MR. ALAMPI: I'm just trying to  
13 follow. It's obvious to me this is a portion of  
14 the April transcript but the page numbers may not  
15 correlate because sometimes the transcript comes  
16 through e-mail first and then comes in the  
17 traditional format. But for Mr. Lamb's purposes,  
18 the bottom of the page is page 83.

19 MR. LAMB: Correct.

20 MR. MUHLSTOCK: I'm not sure how  
21 that correlates with the e-mail.

22 MR. STEINHAGEN: It's page 90 of the  
23 actual transcript.

24 MR. ALAMPI: So there it is. It's  
25 actually page 90 of the transcript. For those

1 who are not familiar we now get things by e-mail  
2 and the pagination is different than the  
3 traditional booklet that you get. We would call  
4 it page 90 of the transcript.

5 Q. Mr. Rodriguez, have you had a chance  
6 to review what I just marked as G-18?

7 A. Yes.

8 Q. Is it not fair to say that on April  
9 3, 2012 you indicated it would be relevant for  
10 you to see the slope stability and review of the  
11 cliffs documents?

12 A. Yes.

13 Q. But now when you testified in May  
14 it's not relevant to see that for purposes of  
15 your opinion?

16 MR. ALAMPI: This is June.

17 MR. LAMB: No, but we had the  
18 discussion in May at the end of the hearing.

19 A. Let me clarify it again.

20 Q. Please. Please clarify it.

21 A. I'll try again. I did not -- I do  
22 not need the study to make my analysis because of  
23 the -- because of this specific design and this  
24 specific situation. A report was made, I would  
25 certainly welcome reading it and seeing what

1 someone has to say. I do not rely on this report  
2 or someone else's report to make a decision.

3 Q. So if this report says that there  
4 are certain problems that should be addressed to  
5 resolve safety issues or minimize risks, that  
6 that's something that's not relevant to your  
7 opinion?

8 MR. TUCKER: Object to the form of  
9 the question. It's totally speculative. I don't  
10 --

11 MR. MUHLSTOCK: Can you rephrase  
12 that?

13 MR. LAMB: You know, Mr. Muhlstock,  
14 since we don't have the report in front of us  
15 it's probably better that we -- we're going to  
16 have the slope stability study, Mr. Alampi has  
17 advised me that at the appropriate time he's  
18 going to have testimony on it. So I can't -- if  
19 you want me to --

20 THE WITNESS: You could ask. I've  
21 read the report.

22 Q. Is not landslides one of the risks  
23 under the regulations that Transco must address  
24 when approving projects or operating their  
25 pipelines?

1           A.       Yes and in great detail I spoke  
2       about landslides before and how they do not apply  
3       to this situation, how this area has been  
4       reported to be not subject to deep seated  
5       landslides.

6           Q.       I didn't say deep seated landslides.  
7       I said landslides.   Aren't there surface  
8       landslides and subsurface, deep seated issues?  
9       Isn't there a difference?

10          A.       You're getting into semantics and  
11       there's landslides that have significance to a  
12       pipeline and there is erosion that is not.   And  
13       if there's surface erosion, that is not  
14       significant to the pipeline, to the safety of the  
15       pipeline.

16          Q.       So no surface erosion ever adversely  
17       affects a pipeline, is that what you're saying?

18          A.       Only if it gets deep enough to  
19       remove support to the pipeline, then it is a  
20       problem.

21                 MR. AHTO:   Mr. Rodriguez, I have a  
22       question.

23                 THE WITNESS:   Yes, sir.

24                 MR. AHTO:   You're talking about a  
25       landslide.   If the building was there or if

1 building is not there, is that going to prevent  
2 that landslide if it's going to happen?

3 THE WITNESS: Actually if the -- no  
4 it's not going to prevent it but if the building  
5 was there the land would stop sliding when it  
6 slid into the building and it actually would kind  
7 of be more stable for the slope from our  
8 perspective.

9 MR. AHTO: With that time is up.  
10 We'll have to continue at another meeting and if  
11 you are going to set up a special or at the next  
12 regular meeting.

13 MR. ALAMPI: Thank you. Chairman,  
14 we have attempted to avoid the special meeting  
15 process because we noted that your agenda had had  
16 two, sometimes only one other matter, but we're  
17 really not progressing in the last two or three  
18 public hearings through no one's fault. So now  
19 it becomes necessary to request a series of  
20 special meetings. I did not anticipate that this  
21 remand would be reviewed in only one, even two  
22 hearings but I certainly didn't think that we'd  
23 be in the fifth or sixth hearing and on the first  
24 witness. So I would like to schedule a special  
25 meeting.



1                   Mr. Lamb and I spoke yesterday and  
2                   again today, we all have crazy schedules because  
3                   this is what we do, this night work all over the  
4                   area. I don't know what you would like to do.  
5                   Do you keep them on the same day of the week,  
6                   your special meetings?

7                   MR. MUHLSTOCK: Go off the record.

8                   (Discussion off the record.)

9                   MR. AHTO: Okay, there's three  
10                  specials, July 12th, 19th and the 26th and there  
11                  will be no notice given because we're giving it  
12                  now. It will be continue.

13                  MR. LAMB: And I've indicated that  
14                  the latter dates would be subject to the  
15                  availability of my experts. One I have to fly in  
16                  from a long distance, the likelihood.

17                  MR. ALAMPI: 7:00 each hearing?

18                  MR. AHTO: 7:00.

19                  MR. ALAMPI: Thank you, Chairman.

20                  MR. AHTO: You're welcome.

21                  Is there a motion.

22                  MR. SOMICK: Motion to adjourn.

23                  MR. FERNANDEZ: Second.

24                  THE CHAIRMAN: All in favor.

25                  (Chorus of ayes.)

MR. AHTO: Meeting is adjourned.

(Time noted: 9:35 p.m.)

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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JOSE RODRIGUEZ

Mr. Lamb		11		
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E X H I B I T S

<u>APPLICANT'S</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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RA Exhibit 95	Johnson Soils report dated June 1, 2012	5
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<u>Galaxy</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Exhibit 15	January 15, 2008 e-mail	7
Exhibit 16	January 18, 2008 letter from Mr. Stevens to Mr. Oury	7
Exhibit 17	National Transportation Safety Board News Bulletin dated January 3, 2011, reference number SB-11-01	23
Exhibit 18	a portion of the April 3, 2012 transcript	52

CERTIFICATE

I, CELESTE A. GALBO, a Certified  
Court Reporter and Notary Public within and for  
the State of New Jersey do hereby certify:

That all the witnesses whose  
testimony is hereinbefore set forth, was duly  
sworn by me and that such is a true record of the  
testimony given by such witnesses.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage and that I am in no way  
interested in the outcome of this matter.

In witness whereof, I have hereunto  
set my hand this 22nd day of June 2012.

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CELESTE A. GALBO, CCR, RPR, RMR  
License No. 30X100098800