

COUNTY OF HUDSON
STATE OF NEW JERSEY

-----x

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

Applicant.

-----x

March 6, 2012
8:01 p.m.

B E F O R E:

THE NORTH BERGEN PLANNING BOARD

PRESENT:

HARRY D. MAYO, III, Chairman
GEORGE AHTO, JR., Vice Chairman
ROBERT BASELICE, Member
SEBASTIAN ARNONE, Member
RICHARD LOCRIKCHIO, 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
James Fordham, Board Engineer

Reported by:

CELESTE A. GALBO, CCR, RPR, RMR

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

ALAMPI & DeMARRAIS
Attorneys for the Applicant
1 University Plaza
Hackensack, New Jersey 07601
BY: CARMINE R. ALAMPI, ESQ.

BEATTIE & PADAVANO, LLC
Attorneys for Objectors Galaxy Towers
Condominium Association, Inc.
50 Chestnut Ridge Road
Montvale, New Jersey
BY: JOHN J. LAMB, ESQ.
DANIEL STEINHAGEN, ESQ.

MARIA GESUALDI, ESQ.
Attorney for Objector Township of
Guttenberg
6806 Bergenline Avenue
Guttenberg, New Jersey 07093

WATSON, STEVENS, RUTTER & ROY, LLP
Attorneys for Transcontinental Gas
Pipeline Company, LLC
3 Paragon Way, Suite 300
Freehold, New Jersey 07728
BY: MARK STEVENS, ESQ.
RICHARD TUCKER, ESQ.

1 THE CHAIRMAN: Okay, Appleview.

2 Mr. Lamb, I think you were in the midst of cross.

3 MR. LAMB: Yes. I have some
4 housekeeping but after Mr. Alampi.

5 THE CHAIRMAN: Okay. Mr. Alampi.

6 MR. ALAMPI: You were in the midst
7 of cross? I thought you were done.

8 MR. LAMB: I thought I just started.

9 MR. ALAMPI: It feels like that.

10 Chairman, this is a continuation from the April
11 3rd meeting of Appleview, LLC. There was a
12 submission just prior to the April meeting and an
13 updated report, a Risk Identification Report from
14 Mr. Calisto Bertin that was marked as A-6 for
15 identification subject to his returning to the
16 podium to authenticate it. Two days later I sent
17 to the board and to all the professionals,
18 Mr. Lamb, a further revision and you should have
19 that just like the case record to mark it as A-7.
20 It's the Risk Identification Report. You'll
21 notice that it says the last revision date is
22 March 30, 2012.

23 MR. MUHLSTOCK: What's -- Mr.
24 Alampi, what's the difference between A-6 and
25 A-7?

1 MR. ALAMPI: Just two or three
2 sentences that had changed.

3 MR. MUHLSTOCK: Okay.

4 MR. ALAMPI: But for the case record
5 that will be A-7 for identification. I do have
6 Mr. Bertin here. I don't expect we're going to
7 reach him. Last meeting he was unable to attend
8 and he had possession of those large photographic
9 exhibits but they are here tonight for anyone's
10 ready reference including Mr. Lamb, and Mr.
11 Bertin is here as well and I think that's the
12 only update that I have.

13 (Applicant's Exhibit 7, Risk
14 Identification Report with a last revision
15 date of March 30, 2012, was marked for
16 identification.)

17 MR. ALAMPI: Mr. Stevens is here
18 from Transco. I think he had some documentation
19 he supplied and I think Mr. Lamb will continue.

20 MR. MUHLSTOCK: Yes. Before we go
21 on, Mr. Chairman, just let me indicate that
22 Messrs. Baselice and Locricchio have indicated by
23 certifying in writing that they did read the
24 transcript of the April 3rd hearing, so everyone
25 here is fully qualified to act if we got to that

1 point. Thank you.

2 THE CHAIRMAN: All right. Thank
3 you. Mr. Lamb.

4 MR. STEVENS: Good evening,
5 Mr. Chairman, board members, Mark Stevens,
6 appearing on behalf of Transco. I also have a
7 couple of items of housekeeping. Since I'm here,
8 I guess I'll proceed or I can go after Mr. Lamb.

9 But two things: The young lady is
10 actually copying a few documents for me. I was
11 handed something by Mr. Rodriguez this afternoon
12 as part of the documents requested by Mr. Lamb in
13 his subpoena. He had requested documentation
14 between Transco and the applicant, and Mr.
15 Rodriguez gave me this afternoon a couple of
16 pages of e-mails dated April 12th which I'm
17 prepared to give a copy to Ms. Gesualdi and to
18 Mr. Lamb and to Mr. Alampi when she comes back.

19 Secondly, and just as important, I'd
20 like to make a correction in the record. Back on
21 the last meeting, April 3rd, I believe, during
22 the cross-examination of Mr. Rodriguez Mr. Lamb
23 asked a question that had actually puzzled me. I
24 didn't have a document with me at the time in
25 order to refresh my memory as to the nature of

1 the question, and that is that Mr. Lamb had
2 raised a 1966 deed. And his question actually to
3 Mr. Rodriguez which I believe is at page -- it's
4 either 51 or 52 of the transcript, the question
5 was: "Are you aware that the easement that
6 Transco has is set forth in 1966 deed?" And the
7 board may recall that Transco's previous
8 testimony is that we do not have an easement on
9 the Applevue property. And so this, the premise
10 of this question sort of contradicts the previous
11 testimony of Transco.

12 I went back to my files and I have
13 pulled out a copy of the 1966 deed in question
14 and if I may, I'll provide a couple copies to
15 Mr. Lamb and to Ms. Gesualdi.

16 MR. LAMB: Mr. Stevens, just to help
17 you out, I attached that to my letter dated April
18 27th. I don't know whether -- I believe I sent
19 you a copy of the letter.

20 MR. STEVENS: Yes, I received that.
21 Thank you.

22 MR. LAMB: Okay.

23 MR. STEVENS: And I'll provide a
24 copy to Mr. Muhlstock as well.

25 MR. MUHLSTOCK: Why don't we mark

1 that -- it's called an Indenture at that time,
2 that's what they referred to recorded documents
3 in those days, dated December 1966 between the
4 Township of North Bergen and Tibetts,
5 T-I-B-B-E-T-T-S, Contracting Corp. And that
6 would be, I believe that would be T-7 because
7 we're going to be making some changes in the
8 documents --

9 MR. LAMB: Mr. Muhlstock, also -- we
10 took the liberty of going through all the
11 transcripts and doing an updated list. I'm going
12 to pass it out, but if you want to look at it to
13 help you.

14 MR. STEVENS: Thank you.

15 MR. MUHLSTOCK: All right. So
16 Mr. Lamb, help me out here, you're indicating
17 that the last Transco document was actually T-5.

18 MR. LAMB: Correct. Based upon
19 review of the transcripts. So if the board
20 wants --

21 MR. MUHLSTOCK: So this deed or this
22 indenture we can mark T-6.

23 MR. STEVENS: I had already marked
24 it T-7, if you'd be kind enough to make that
25 correction.

1 MR. MUHLSTOCK: Well, we're going to
2 make the record clear that it's T-6 at this
3 point.

4 MR. STEVENS: Thank you, Mr.
5 Muhlstock, T-6.

6 (Transco Exhibit 6, Indenture dated
7 December 1966 between the Township of North
8 Bergen and Tibetts Contracting Corp., was
9 marked for identification.)

10 MR. STEVENS: The point is this, on
11 the third page of that deed there is a sentence
12 in the deed -- let me just set the stage for the
13 board. This is a 1966 deed between the township
14 and a party that is buying a number of properties
15 in North Bergen including the Applevew -- what
16 is then the Applevew lot and as well as other
17 parcels. And the -- there's a sentence on the
18 third page of that deed which states that "A gas
19 pipeline and facilities of the Transcontinental
20 Pipeline Corp. is excepted from the sale of Lot 5
21 in Township Block 316." And the sentence
22 continues but it is of no -- it's not connected
23 or relevant to the Transco pipeline.

24 The -- in other words, when the
25 property was conveyed, it conveyed real estate

1 and what the scrivener of this deed merely did
2 was state the obvious, I am selling you the land,
3 I am not selling you a pipeline belonging to
4 Transco which is on the land. It is excepted, in
5 other words, it's excepted from what I am giving
6 you. And Mr. Lamb's question last time to Mr.
7 Rodriguez implied that there was an easement
8 either pre-existing or created by this document,
9 whereas there is none. That's the sole purpose
10 of my raising this.

11 And I have been handed the copies of
12 the e-mails which I will give a copy to Mr.
13 Alampi, to Ms. Gesualdi and to Mr. Lamb. Thank
14 you, Mr. Chairman.

15 THE CHAIRMAN: I'm just looking at
16 the next sentence, though, or actually the
17 remainder of that sentence says "and the Township
18 will also reserve an easement for the operation
19 and maintenance of a cast iron sewer to the
20 extent of 10 feet on each side of same, reserving
21 the right to enter, repair, replace separate and
22 maintain same."

23 MR. STEVENS: That has nothing to do
24 with the Transco pipeline.

25 THE CHAIRMAN: That's right, sewer.

1 Sorry.

2 MR. MUHLSTOCK: Okay. Mr. Lamb, why
3 don't we go right to your letter of April 27 and
4 start by correcting the designations of some
5 documents that were marked at the last meeting.

6 Celeste, here is what happened. We
7 marked some of the documents from Mr. Lamb as T-7
8 through T-12. They should been G-7 through G-12.
9 Now, can you go back and make that correction in
10 the last month's transcript?

11 THE COURT REPORTER: Yes, I can.

12 THE CHAIRMAN: Okay.

13 MR. LAMB: And also, Mr. Muhlstock,
14 the Transco exhibits marked T-5 and T-6 on the
15 March 6th hearing should have been T-4 and T-5
16 but now we correctly picked up the next one, the
17 deed is T-6.

18 MR. MUHLSTOCK: Correct.

19 (Discussion off the record.)

20 MR. LAMB: Also, we did not mark,
21 when I looked at the transcript, we did not mark
22 Ms. Gesualdi's letter dated April 3rd. Although
23 I it submitted it to the board and Ms. Gesualdi
24 had to leave and so that should have been marked
25 as Guttenberg 1.

1 MR. MUHLSTOCK: Well, mark it GU-1
2 not to confuse it with G, Galaxy.

3 MR. LAMB: Right.

4 MR. MUHLSTOCK: We'll mark her
5 letter as GU-1.

6 (Guttenberg Exhibit 1, letter dated
7 April 3, 2012 from Maria Gesualdi, Esq.,
8 was marked for identification.)

9 MR. LAMB: And then my letter of
10 April 27, just to make sure we mark everything
11 that was distributed to the board would be G-13.

12 MR. MUHLSTOCK: We can mark
13 Mr. Lamb's letter. I don't think we marked all
14 the letters throughout the entire proceeding but
15 we can mark that G-14.

16 MR. LAMB: Mr. Alampi, just showed
17 me that because of Mr. Stevens letter of April
18 12th, 2012 was submitted to the board that that
19 should be another T exhibit and that also had
20 documents attached to it.

21 MR. MUHLSTOCK: Those documents had
22 already been marked.

23 MR. LAMB: I believe so, yes.

24 MR. MUHLSTOCK: All right. So we'll
25 mark G-13 which is Mr. Lamb's April 27, 2012

1 letter. Of course, Mr. Lamb, statements made in
2 that letter, some of the statements made in the
3 letter have been responded to and have been
4 discussed, so the marking of the document should
5 not be meant to imply that everything if it comes
6 into evidence, which it probably will, that
7 everything is necessarily exactly as written by
8 you, but in any case we'll mark it. Then Mr.
9 Stevens' letter or I should say Mr. Tucker's --

10 MR. LAMB: That's right, I'm sorry,
11 Mr. Tucker's letter.

12 MR. MUHLSTOCK: Mr. Tucker's letter
13 of April 12, 2012 which included certain exhibits
14 on behalf of Transco will be now that's going to
15 be T-7.

16 MR. LAMB: Correct.

17 MR. MUHLSTOCK: Okay.

18 (Galaxy Exhibit 13, letter from John
19 J. Lamb, Esq. dated April 27, 2012, was
20 marked for identification.)

21 (Transco Exhibit 7, letter from
22 Richard Tucker, Esq. dated April 12, 2012
23 with attachments, was marked for
24 identification.)

25 MR. LAMB: Okay. Also I had a

1 question for Mr. McGrath, there was a discussion
2 as to whether the load analysis provided by Mr.
3 Rodriguez was submitted to the board engineer.
4 When I looked at the transcript, it indicated
5 that it was submitted, the attorney for Transco
6 submitted it, but when I looked at a copy of the
7 letter it didn't copy Mr. McGrath, and our
8 request was to have that load analysis reviewed
9 by the board engineer. And so my simple question
10 is did Mr. McGrath ever get a copy of that
11 letter?

12 MR. McGRATH: Not to my knowledge.

13 MR. LAMB: That was a letter dated
14 March 29, 2012 which enclosed the loading
15 analysis.

16 THE CHAIRMAN: You'll see that he
17 gets a copy?

18 MR. LAMB: Right. Mr. Stevens did
19 refer to the portion of the deed in that
20 paragraph, and I think actually the entire
21 paragraph, since we discussed it, the entire
22 paragraph was somewhat relevant because what the
23 paragraph also indicates is that the Township of
24 North Bergen apparently owns a piece of this
25 property, something that we I guess really didn't

1 focus on, but because the Township of North
2 Bergen reserved that, then the Township of North
3 Bergen owns a piece of this property essentially.
4 And we have been discussing for a very long time
5 Transco's request that the easement and agreement
6 be set forth in a document, and we've discussed
7 for a very long time that the Township of North
8 Bergen should have rights to it as a grantee,
9 just like the Town of Guttenberg and just like
10 the NB MUA I believe was the three entities, but
11 what we never discussed is the Township of North
12 Bergen actually has to consent as a part owner of
13 the property.

14 Now, we've taken the position
15 previously that the Lot 8 owner, the North Bergen
16 Municipal Utilities Authority should be an
17 applicant in this, and to the extent that the
18 Township of North Bergen owns a piece of this
19 property we have the same -- the position is
20 consistent. But the important part for this
21 easement is that an easement not signed by the
22 Township of North Bergen as the grantor even if
23 they get rights, frankly they already own it, it
24 appears, assuming this deed is correct.

25 MR. MUHLSTOCK: I don't read it

1 exactly like you do. Reserves an easement.

2 THE CHAIRMAN: Yes.

3 MR. ALAMPI: Let me just state for
4 the record, of course I object to -- I disagree
5 with Mr. Lamb's legal analysis. I understand
6 what he's saying. I disagree that North Bergen
7 is an owner of any part of this property. It's a
8 reserved easement for the sewer easement,
9 et cetera. The document speaks for itself.
10 Mr. Lamb has made his point. I don't see North
11 Bergen as a property owner that has to authorize
12 and consent to the application or be part of the
13 application.

14 We disagree with each other. It's on
15 the record. Somebody will tell us --

16 MR. MUHLSTOCK: It's another issue
17 for --

18 MR. ALAMPI: Somebody will tell us
19 what they think the law is.

20 MR. MUHLSTOCK: If it goes there.

21 MR. LAMB: And lastly with respect
22 to that issue, the sewer easement that was
23 referred to is indicated -- that second part
24 reserves a sewer easement on each side of the
25 property of 10 feet. And I'm noting -- I'm not

1 going to bring this out on cross-examination --
2 I'm telling you right now that when I look at the
3 sewer easement and I go 10 feet to both sides of
4 the property, that is not reflected on the site
5 plan. The site plan reflects a sewer easement
6 and then it reflects a Transco easement. It
7 doesn't reflect a sewer easement over a part of
8 the Transco easement to the extent of 10 feet.
9 So --

10 MR. ALAMPI: Again, we'll disagree
11 because the language is 10 feet of either side of
12 the same, the same being a sewer line, not the
13 Transco line. Somebody will clear this up some
14 day.

15 MR. LAMB: Also, another question
16 had arisen. Mr. Alampi respectfully disagreed
17 with me on the augering, pre-augering and said
18 that it was his opinion that he -- that this was
19 raised at the initial hearing before the remand.
20 We since went back, we looked at all of his
21 geotechnical reports submitted during that
22 hearing and there were I think three versions,
23 the first one was revised twice and then there
24 was a subsequent one. None of those refer to
25 augering and we looked quickly at the transcripts

1 and also did not have any reference to augering.
2 So I'm basically suggesting that Mr. Alampi
3 believes augering was mentioned in that hearing;
4 he could find it, I couldn't find it.

5 MR. ALAMPI: Perhaps I'm -- it's a
6 figment of my imagination but we do know that we
7 made these representations to the board. We also
8 had of course as you know an application at the
9 Hudson County Planning Board level. There were
10 four or five public hearings and it was addressed
11 there with specificity and engineering. But, Mr.
12 Chairman, perhaps I'm thinking of that hearing
13 and not this. Either way, we're representing
14 that the augering -- and everyone can get a
15 transcript of the county hearing process and the
16 county resolution of approval. And you can take
17 judicial notice to the board of the county
18 resolution that is under appeal, but nonetheless
19 those items are incorporated in the county
20 resolution of approval all of which I'm sure will
21 be appealed as we go along.

22 MR. LAMB: Those are all my
23 preliminary issues, Mr. Chairman.

24 THE CHAIRMAN: Okay. Then let us
25 proceed to the cross. Mr. Lamb, just so we can

Rodriguez - cross

1 properly manage this, how much longer do you
2 anticipate with this witness?

3 MR. LAMB: It's going to be a while.

4 THE CHAIRMAN: Days? Months?
5 Years?

6 MR. LAMB: If you're stopping at
7 9:00 tonight, I don't know what time it is,
8 probably at least an hour and a half to two
9 hours.

10 THE CHAIRMAN: Okay.

11 JOSE RODRIGUEZ, having been duly sworn by the
12 Notary Public, was examined and testified as
13 follows:

14 CROSS-EXAMINATION

15 BY MR. LAMB:

16 Q. Mr. Rodriguez, actually you heard
17 just some discussion about the sewer easement.
18 Is it fair to say that the sewer easement to the
19 rear of the subject property directly abuts the
20 Transco pipeline easement as is shown on the site
21 plan?

22 A. I don't know. I did not research
23 the sewer easement.

24 Q. Okay. Do you know how old the sewer
25 easement pipe is?

Rodriguez - cross

1 A. No, I don't.

2 Q. Do you know the size of it?

3 A. The sewer easement is not my
4 concern. The pipeline easement is. I cannot
5 speak to the sewer easement. I have not studied
6 anything in regards --

7 MR. MUHLSTOCK: Just answer the
8 question. If you don't know the answer, just
9 answer the question.

10 A. No. Sorry.

11 Q. Do you know the distance of depth of
12 the sewer easement as it passes over the Transco
13 pipeline?

14 A. No.

15 MR. ALAMPI: I would object. I'm a
16 little slow tonight, I'm sorry. I'm on a time
17 delay. How does anyone know if it's over or
18 under the pipeline?

19 MR. LAMB: Mr. Alampi, I'll rephrase
20 the question.

21 Q. Either over or under, do you know
22 the distance either over or under?

23 A. No.

24 Q. But you do agree that to get to the
25 sewer easement if you're coming from the top,

1 from the Boulevard East of the cliffs, you would
2 have to go over the Transco easement to get to
3 the sewer easement to maintain it, that's one of
4 the ways to do it?

5 A. I can't say that, no, I don't know.

6 Q. Okay. You don't know whether
7 there's any casing over the Transco easement that
8 the location where that sewer easement
9 intersects?

10 A. There is not.

11 Q. And is it fair to say that you've
12 done, based upon testimony you've done no load
13 analysis where the sewer easement connects to the
14 Transco pipeline?

15 A. I've done a general load analysis
16 across that area of the slope, yes, I have.

17 Q. That's the one that you submitted,
18 your attorney submitted to the board that we
19 referenced to Mr. McGrath?

20 A. That would be the type of analysis
21 that I would do, that's not that specific
22 analysis.

23 Q. Did you do a specific analysis for
24 that location?

25 A. I did a specific analysis for

1 existing loading conditions of that hill, yes.

2 Q. Okay. And has that --

3 MR. AHTO: Excuse me a minute. Mr.
4 McGrath, is there a sewer pipe right there?

5 MR. McGRATH: Guttenberg's sewer
6 discharges down that hill to the Woodcliff plant.

7 MR. AHTO: How far way from the
8 pipeline, do you know?

9 MR. McGRATH: According to the tax
10 maps the two easements abut each other. In other
11 words, the Transco stays to the north, the sewer
12 easement stays to the south. At some point the
13 sewer turns approximately from a northeasterly
14 direction to a northern direction, crosses the
15 Transco easement and enters into the Woodcliff
16 plant where the sewerage is processed.

17 MR. AHTO: Okay.

18 MR. LAMB: Mr. Alampi, do we have
19 the site plan that was previously marked?

20 MR. ALAMPI: I believe, John,
21 whatever exhibits we have are here.

22 Q. Mr. Rodriguez, I pulled out what's
23 been marked Transco 2, it's a site plan submitted
24 by Applevue, last revised October 4, 2007.
25 There's the old plan.

Rodriguez - cross

1 MR. STEINHAGEN: It's T-2.

2 MR. LAMB: Mr. Chairman, we did find
3 the current site plan, C-2.2 last revised
4 February 7, 2011 which we can -- it's in the same
5 package. It was just three or four plans behind
6 it. If we can mark that as RA-8.

7 MR. ALAMPI: RA-8, RA is for Remand
8 Applicant, RA-8.

9 (Remand Applicant Exhibit 8, Site
10 Plan C-2.2 last revised February 7, 2011,
11 was marked for identification.)

12 MR. ALAMPI: I don't know what's the
13 last revision.

14 MR. LAMB: Last revision February 7,
15 2011. RA-8. I'd also mark it 5/1/12.

16 Q. Mr. Rodriguez, Mr. Ahto just asked
17 about the connection. Can you point to the
18 connection on the Guttenberg sewer easement where
19 it intersects with the gas pipeline?

20 A. Apparently it crosses here. I don't
21 know that it does but that's what the -- these
22 drawings --

23 THE CHAIRMAN: Here meaning the
24 northwest?

25 THE WITNESS: In the northwest

1 corner.

2 Q. Can you mark that in yellow? I'm
3 going to give you a Magic Marker. Mark that in
4 yellow, approximately.

5 (Witness complies.)

6 Q. Thank you. Now, Mr. Rodriguez --

7 MR. LAMB: Mr. Muhlstock, I'm going
8 to mark this. I have some questions to ask on
9 this, I'm going to mark it as G-14. It's the
10 letter of Mr. McGrath dated October 18, 2010.

11 MR. MUHLSTOCK: I'm sorry, repeat
12 the date.

13 MR. LAMB: October 18, 2010, G-14
14 and I'll mark it 5/1/12.

15 (Galaxy Exhibit 14, letter from Derek
16 McGrath, P.E., P.P. dated October 18, 2010
17 was marked for identification.)

18 MR. MUHLSTOCK: Can you give the
19 court reporter a copy?

20 MR. LAMB: Yes, I am.

21 MR. MUHLSTOCK: Good, just pass
22 those around. You can just leave them, we'll
23 pass them.

24 Q. Mr. Rodriguez, I'm going to draw
25 your attention to the attachments to that which

Rodriguez - cross

1 are the construction details and construction
2 requirements of Williams Gas Line Transco.

3 A. Okay.

4 Q. I believe you already testified that
5 the current requirements for Transco are set
6 forth in the second part of that attachment which
7 is the -- which entitled Williams Gas Pipeline
8 requirements for Land Owner and Third Party
9 Construction dated September 16, 2009?

10 A. Yes.

11 Q. And I believe you also said that to
12 the best of your knowledge this is was the latest
13 set of construction details?

14 A. General guidelines, yes.

15 Q. General guidelines. Now, I'm going
16 to draw your attention to A-7 of 7, the last page
17 of that attachment where it says Disposal
18 Systems, that's the first full paragraph with the
19 title Disposal Systems.

20 Can you read that, please.

21 (Witness complies.)

22 Q. Can you read it out loud?

23 A. Yes, I can read it out loud.

24 Q. Fine.

25 MR. ALAMPI: Now he's instructing

1 you.

2 A. "No septic tank liquid disposal
3 systems or hazardous waste disposal systems will
4 be allowed on WGP's right-of-way or within 25
5 feet of WGP's facilities. This prohibition
6 includes but is not limited to facilities that
7 have the potential of discharging effluent from
8 sewer disposal systems, the discharge of any
9 hydrocarbon substance, the discharge or disposal
10 of any regulated waste or any other discharge
11 that may prove damaging or corrosive to WGP's
12 facilities."

13 Q. And is it also fair to say that even
14 in the earlier version, and I'm going to refer
15 you to the fourth page, paragraph 10 on the
16 October 17, 2006 set of regulations. It's
17 substantially the same paragraph was in there?

18 A. Yes, it would be the similar
19 language.

20 Q. So that paragraph has been part of
21 the Transco general requirements for a
22 substantial period of time?

23 A. Yes.

24 Q. Now, is it fair to say that the
25 sewer easement contains a pipe to the best of

Rodriguez - cross

1 knowledge, it does have the effluent and
2 materials that are close to Transco's pipeline in
3 violation of that requirement?

4 A. Well, let me --

5 MR. ALAMPI: I'll object to the
6 characterization as violation. There's been no
7 proffer and no foundation laid as to whether
8 these things went into existence, et cetera, so
9 I'll object that there's a violation.

10 MR. AHTO: Mr. Lamb, I want to ask
11 something. What does a sewer easement have to do
12 with the construction of a building and being
13 these pipes were existing? And what does it have
14 to do with the safety of the Transco pipeline
15 during the construction?

16 MR. LAMB: Okay. First of all, it's
17 not just during the construction, it's how the
18 entire project is going to operate in this
19 environment. And one of the factors in this is
20 that there is a sewer easement that -- and a
21 sewer pipe that goes over the Transco easement.
22 There is also a building that's proposed and the
23 building in fact is proposed to be excavated from
24 part of the cliffs, that's part of the project.
25 And so you have a project which is going to have

1 excavation on it, which involves a sewer pipe,
2 which involves a Transco line and all of this,
3 all of these things happening, whether during
4 construction or when the access easement is used
5 after construction, all of this is adjacent to
6 a -- the North Bergen Municipality Utilities
7 Authority with large sewer tanks also very close.

8 MR. AHTO: Wasn't this remanded back
9 from the courts as to the safety of the pipeline
10 during construction?

11 MR. LAMB: No, I don't think so.
12 That's what Transco's -- Transco's attorney
13 argued that as a non-party but it involves safety
14 both during construction and after construction
15 while it operates. Just like any site plan.
16 When you look at a site plan, you don't look at
17 just construction, you look at what's going to
18 happen after its up, who is going to use -- how
19 is it going to be used, what's going to go over
20 it. There's a 20-foot access easement proposed
21 as part of this to the north of the property.

22 MR. ALAMPI: Mr. Ahto, Chairman, we
23 of course disagree with Mr. Lamb's attempt to
24 expand the scope of the remand. We understand
25 the remand to be limited to the construction

1 protocol and public safety issues with regard to
2 the construction of this building which is a
3 permitted use in the zone. Moreover these
4 questions raised from these reports talk about
5 violations, he's referring to disposal systems.
6 And my understanding -- again, we'll get
7 clarification -- disposal systems are seepage
8 pits or septic tanks and such, not a fully
9 contained and enclosed pipe. So why don't we get
10 clarification on what a disposal system is,
11 otherwise I know we're going to spend a half hour
12 on this. That's not a sewer line, it's a septic
13 system.

14 MR. STEVENS: Mr. Chairman, I'm
15 sorry, I just wanted to add for the record that
16 my recollection, I don't have a copy of the first
17 transcript handy, but with respect to the point
18 of Mr. Lamb's about post construction, this was
19 addressed I believe in the direct testimony
20 because I have a specific recollection of asking
21 Mr. Rodriguez a question to the effect of post --
22 assuming that the building will be constructed,
23 can the pipeline be safely maintained in the
24 presence of the building as designed. And I
25 believe Mr. Rodriguez responded to that so we

1 also did address post construction. Thank you.

2 MR. LAMB: And also with all due
3 respect that is the net opinion of the engineer
4 and I am now probing the basis for that opinion.
5 One of the things which I didn't mention is what
6 the judge clearly said is that it doesn't have to
7 be in writing, but the risk analysis and
8 assessment for this proposed project is what's
9 involved. And what I'm suggesting is based upon
10 their old guidelines that there's an issue of the
11 proximity of the sewer line and the sewerage
12 tanks close to the pipeline when they haven't
13 even studied them. And Mr. Rodriguez just
14 admitted he has no idea, he doesn't know whether
15 they're going to burst tomorrow, he doesn't know
16 what the conditions are.

17 MR. MUHLSTOCK: All right. I won't
18 put words in the witness' mouth. Why don't we
19 ask the witness the question that you framed
20 yourself, Mr. Lamb, which is what is the effect
21 on the area where the sewer line is adjacent to
22 the pipeline, what is the effect of this
23 construction if any, that's the question.

24 THE WITNESS: May I clarify this?

25 MR. MUHLSTOCK: First answer the

1 question.

2 THE WITNESS: No effect. But I'd
3 like to explain our guidelines. It will only
4 take a moment.

5 MR. MUHLSTOCK: Go ahead.

6 THE WITNESS: If you look on page
7 A-6, that's where it covers sanitary sewer and
8 water crossings which is what that is and that is
9 allowed.

10 MR. ALAMPI: Where is that, Mr.
11 Rodriguez?

12 THE WITNESS: A-6. The page right
13 in front of the one that he's speaking of.

14 MR. ALAMPI: Go ahead.

15 THE WITNESS: The page he is
16 speaking of is disposal systems exactly what
17 counsel has said. It's for homeowners. We don't
18 want a disposal field on our pipeline or near our
19 pipeline. We run from Texas to here, you can
20 imagine the hundreds of thousands of sewer
21 crossings that must be across the pipeline.
22 They're allowed, they're on page A-6, it's not an
23 issue.

24 Q. And so your testimony is that A-6,
25 that paragraph, is applicable to this project?

1 A. To this situation right here along
2 with this situation where the sewer line crosses
3 at the road.

4 Q. Okay. Can you read the first line
5 of that to the board?

6 A. "All sanitary sewer and pressurized
7 water lines will be protected with steel casing
8 the full width of the right-of-way."

9 Q. Now, do you know whether that's
10 protected with steel casing for the full
11 right-of-way? You just testified that you had no
12 idea what --

13 A. These are guidelines as if you were
14 to build something new. This not something
15 proposed.

16 Q. Is there a steel casing on that
17 sewer line, yes or no or you don't know?

18 A. I don't know.

19 Q. You don't know what even type of
20 material it is?

21 A. That's correct.

22 Q. Number one on that paragraph says
23 ductile line or steel pipe. You don't know which
24 one?

25 A. Correct.

1 Q. Number two says plastic pipe, number
2 three says concrete pipe, we don't know which one
3 of those applies.

4 Can you read the second to the last
5 sentence which starts on the third line at the
6 end "No piping connections"?

7 A. "No piping connections will be
8 allowed within five feet of any WGP pipeline."

9 Q. And we don't -- is it fair to say
10 that there is a piping connection within five
11 feet or we don't know?

12 A. At that crossing, I don't know.

13 Q. So in looking at this isn't it fair
14 to say that one of the risk assessments that you
15 look at is to see the proximity of the sewer line
16 and where it connects and if there's any problem
17 or issue? I'm not suggesting you can't go over
18 it. I understand that, you know, United States
19 you go over it but there's some protections.
20 Isn't it a risk assessment to review it to see if
21 there's any effect or to eliminate it as any
22 adverse effect because there's a certain distance
23 between it, it's got the right materials?

24 A. They are not working on this side
25 slope. There is no need for me to review what's

Rodriguez - cross

1 not happening. There is no work proposed here,
2 there is a limited disturbance here.

3 Q. Right. And when you're drawing your
4 line, isn't it fair to say that there's a limited
5 disturbance below that intersection, that the
6 cliff is being disturbed below that area?

7 A. The face of the slope is being
8 disturbed at the rear of the property not the
9 cliff. There is no cliff except along the
10 extreme property edge, western edge and there's
11 no work proposed there.

12 Q. Okay. Let's go back to that. Why
13 don't you show me the cliff where you think the
14 cliff is.

15 THE CHAIRMAN: Mr. Lamb.

16 MR. MUHLSTOCK: No, just because the
17 witness used the word cliff, Mr. Lamb, doesn't
18 mean -- excuse me -- doesn't mean that you're
19 going to go into the issue of what the cliff is.

20 MR. LAMB: Oh, I'm not, I'm not
21 because I think the board disagreed with the
22 applicant. I think we're passed that.

23 MR. MUHLSTOCK: The board disagreed
24 with the applicant's engineer completely.

25 MR. LAMB: Right.

1 MR. MUHLSTOCK: And found that there
2 was a rear yard variance needed because the board
3 disagreed with the engineer's definition of
4 cliff.

5 MR. LAMB: But my problem is that
6 what Mr. Rodriguez was doing is pointing to that
7 upper location where we already have gone through
8 this.

9 MR. MUHLSTOCK: Why don't we ask the
10 witness, again, and I asked five minutes ago, in
11 your opinion does this construction of this
12 building have any effect on the sewer -- the
13 interplay between the sewer and the pipeline in
14 the northern part of the property?

15 THE WITNESS: I do not believe it
16 has any effect. I do not believe it will disturb
17 that crossing, what would be a problem for the
18 sewer would be a problem for us.

19 MR. MUHLSTOCK: And does -- Mr. Lamb
20 was asking you factors about the sewer,
21 construction, the type, the casing, et cetera.
22 Does any of that, even assuming that what he's
23 saying may or may not be true, in your opinion
24 does it have an effect, does the construction
25 have an effect on that -- on your pipeline in the

Rodriguez - cross

1 northwest part of the property?

2 THE WITNESS: No.

3 Q. And Mr. Rodriguez, the follow-up
4 question is, didn't you say that you could not
5 say that before you looked at the new slope
6 stability study that the applicant's engineer was
7 going to provide you, didn't you testify to that?

8 A. To what?

9 Q. That you couldn't say for sure that
10 there was no effect until you saw that slope
11 stability study?

12 A. Effect on what?

13 Q. Effect on the pipeline. You had to
14 review that slope stability study, isn't that
15 what you testified to?

16 A. I don't believe so.

17 Q. You don't believe so. Didn't you
18 put that in writing? Didn't Transco put that in
19 writing, that they had to see the effect of the
20 slope, they had to have the steep slopes
21 analyzed? Didn't Transco put that in writing?

22 A. No.

23 Q. They did not.

24 THE CHAIRMAN: Mr. Lamb, I'm going
25 to let you find that and refer to it but you're

Rodriguez - cross

1 done for the night after that.

2 MR. LAMB: If I can just finish this
3 one up.

4 Mr. Muhlstock, I'm going to mark
5 G-15. It's an e-mail from a Gerald McLaughlin to
6 Calisto Bertin.

7 MR. MUHLSTOCK: What's the date?

8 MR. LAMB: January 15, 2008.

9 MR. MUHLSTOCK: Was this previously
10 marked or no?

11 MR. LAMB: I don't believe so, no.
12 If I can pass this out.

13 MR. MUHLSTOCK: Well, just give it
14 to the clerk, we'll pass it around.

15 MR. ALAMPI: Mr. Muhlstock, before
16 it's distributed, can we just hold on
17 distributing that? Distribute it to counsel.

18 MR. LAMB: And I'm going to make one
19 caveat that this was an e-mail in connection with
20 the prior project.

21 MR. MUHLSTOCK: Just give it to me
22 so we can decide.

23 MR. ALAMPI: There's a document,
24 it's an e-mail but it's regarding the prior
25 application which was withdrawn. It's not this

1 application. I don't think it's appropriate,
2 that's why I'm asking for a moment that it just
3 be shared to your counsel, distributed and
4 Mr. Lamb just also acknowledge it, it's from the
5 prior application. Different building, different
6 footprint.

7 MR. TUCKER: That's Transco's
8 objection as well. Thank you.

9 MR. LAMB: And coming right behind
10 that is a letter three days later January 18,
11 2008 from Mr. Stevens which makes a similar
12 request of Mr. Bertin to provide engineering
13 calculations to Transco concerning "the
14 anticipated soil cliff stability after your
15 client excavates into the base of the Palisades."

16 MR. ALAMPI: And now that he's read
17 it into the record, again, since I have an
18 objection pending for counsel to read it to you
19 as opposed to handing it out is inappropriate.
20 Why don't we allow Mr. Muhlstock to digest this
21 for the next meeting. I don't think I can absorb
22 it quickly enough because I'm a slow learner. I
23 would hope that we can carry it at tonight's
24 meeting. Again, I ask that had it not be
25 distributed, it goes to your counsel and then let

1 him rule on it, on the issue.

2 MR. MUHLSTOCK: Well --

3 MR. ALAMPI: We're not going to
4 finish tonight.

5 MR. MUHLSTOCK: No, I understand
6 that, but let's not torture this. Mr. Lamb, let
7 me ask you what -- proffer for me -- for the
8 board, not for me, proffer for the board what
9 these two documents, January 15, 2008 and January
10 18, 2008, give the board your proffer as to what
11 you believe is relevant with regard to these two
12 documents.

13 MR. LAMB: Okay. What is relevant
14 is that Transco thought it important to review
15 the soil cliff stability of that project and get
16 the calculations in review. And as I stated,
17 this is a different project but it still involves
18 excavation into the cliffs. I don't think
19 anybody is contesting that. And so if it was
20 relevant for this project, I believe it's
21 certainly relevant for a project that doesn't
22 excavate as much into the cliffs.

23 MR. MUHLSTOCK: Okay. Okay. Mr.
24 Alampi.

25 MR. ALAMPI: Thank you, Mr. Lamb.

1 MR. MUHLSTOCK: Go ahead.

2 MR. ALAMPI: For a project that
3 penetrated much deeper into the slope area as
4 opposed to the current application. I don't
5 think it's appropriate to probe into these
6 what-if scenarios for a building that doesn't
7 exist, that's not before the board and has been
8 withdrawn and is much larger in all ways,
9 footprint, penetration, et cetera. It's wrong
10 for the board to go into it.

11 The question can be asked. It's
12 answered. I don't think these documents should
13 be part of the case record.

14 MR. MUHLSTOCK: Well, in order to
15 preserve the record --

16 MR. ALAMPI: You can mark it for
17 identification.

18 MR. MUHLSTOCK: -- we'll mark them
19 for identification. The board heard the
20 objector's basis for these documents and you'll
21 have to consider that in determining the
22 credibility of the Transco witnesses clearly and
23 we'll mark the January 15, 2008 e-mail as G-15.

24 (Galaxy Exhibit 15, e-mail dated
25 January 15, 2008, was marked for

Rodriguez - cross

1 identification.)

2 MR. MUHLSTOCK: And the letter from
3 Mr. Stevens to Mr. Oury dated January 18, 2008 as
4 G-16 for identification.

5 (Galaxy Exhibit 16, letter from Mr.
6 Stevens to Mr. Oury dated January 18, 2008,
7 was marked for identification.)

8 MR. LAMB: Mr. Muhlstock, should I
9 pass out the second one?

10 MR. MUHLSTOCK: I'm going to hold
11 these.

12 THE CHAIRMAN: We haven't made a
13 ruling.

14 MR. MUHLSTOCK: We haven't made a
15 ruling on whether or not they're coming into
16 evidence.

17 THE CHAIRMAN: Okay. With that the
18 Chair will entertain a motion for adjustment.

19 MR. AHTO: Motion to adjourn.

20 MR. BASELICE: Second.

21 MR. ALAMPI: Chairman, when is your
22 next regular meeting?

23 THE CHAIRMAN: Well, let me make an
24 announcement for the public's benefit. The
25 applicant and the objectors as well as the public

1 should note that the next hearing on this will be
2 at the next regular planning board meeting which
3 is?

4 THE CLERK: Thursday, June 7th.

5 THE CHAIRMAN: Which is on Thursday,
6 June 7th. That's a regular meeting, so once
7 again it will be the last item on the agenda.
8 Whatever time is left between the other cases and
9 9:00 is the amount of time that will be allotted
10 to this case.

11 MR. ALAMPI: Mr. Chairman, we'll go
12 with the regular meeting cycle, and if we don't
13 get more than ten or 12 minutes real testimony,
14 then the applicant will probably request from the
15 board if it has the will and determination to
16 give us a special meeting schedule.

17 THE CHAIRMAN: Well, it might be
18 wise but, again, we're going to deal with our
19 regular schedule.

20 MR. ALAMPI: Right, I wasn't aware
21 of exactly the cutoff time on these regular
22 meetings, if it was fixed at 9:00 or that is a
23 time honored policy or if it's fixed in stone but
24 I understand. So we'll wait in June, if we don't
25 see that we're making progress because I believe

Rodriguez - cross

1 the board as well, not just the applicant, want
2 some meaningful presentation.

3 THE CHAIRMAN: It would be nice.

4 MR. ALAMPI: We may go to the
5 special meetings sessions.

6 THE CHAIRMAN: Okay. Thank you.

7 MR. ALAMPI: Thank you,
8 Mr. Chairman.

9 THE CHAIRMAN: It's been moved and
10 seconded that the meeting be adjourned. All in
11 favor?

12 (Chorus of ayes.)

13 THE CHAIRMAN: Opposed?

14 Meeting stands adjourned.

15 (Time noted: 9:12 p.m.)

16

17

18

19

20

21

22

23

24

25

E X H I B I T S (Continued)

<u>GUTTENBERG</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Exhibit 1	letter dated April 3, 2012 from Maria Gesualdi, Esq.	11
<u>GALAXY</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Exhibit 14	letter from Derek McGrath, P.E., P.P. dated October 18, 2010	23
Exhibit 15	e-mail dated January 15, 2008	39
Exhibit 16	letter from Mr. Stevens to Mr. Oury dated January 18, 2008	40

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 24th day of May 2012.

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