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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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PEOPLES GAS SYSTEM,
Petitioner,

vs. Case No. 18-4422

SOUTH SUMTER GAS COMPANY, LLC.
AND CITY OF LEESBURG.

RESPONDENTS.

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VOLUME 1
PAGES 1 - 132

PROCEEDINGS: FINAL HEARING
BEFORE: E. GARY EARLY
Administrative Law Judge
DATE: June 24, 2019
TIME: Commenced at 9:30 a.m.
LOCATION: DIVISION OF ADMINISTRATIVE
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Tallahassee, Florida
REPORTED BY: DEBRA R. KRICK
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the State of Florida
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P R O C E E D I N G S

THE COURT: So let's go ahead and go on the record. This hearing will now be in order. Today is Monday, June 24th, 2019. Pursuant to notice, this case is being held here in Tallahassee, Florida, before the Division of Administrative Hearings. I am Gary Early. I am the Administrative Law Judge presiding.

The case before me is Peoples Gas System versus South Sumter Gas Company, LLC, and City of Leesburg. Case number 18-4422.

The purpose of this hearing is to take evidence to allow me to develop findings of fact, conclusions of law and a recommended order that will be submitted to the Public Service Commission for the entry of a final order resolving a territorial dispute regarding extension of gas service to areas of The Villages in Sumter County Florida. In doing so, I will apply, in general, the standards set forth in Section 366.04(3)(b) Florida Statutes, and Florida Administrative Code Rule 25-7.0472.

Could I have counsel identify yourselves for the record, starting with counsel for petitioners, Peoples Gas.

1 MR. BROWN: Andy Brown, Your Honor, Macfarlane
2 Ferguson. I am here with Thomas Farrior.

3 THE COURT: All right.

4 MR. KRUPPENBACHER: Frank Kruppenbacher, Your
5 Honor.

6 THE COURT: All right. Mr. Kruppenbacher, all
7 right.

8 And, we will do them in order. South Sumter.

9 MR. WHARTON: Jon Wharton and Floyd Self for
10 Sumter Gas.

11 THE COURT: And for the City.

12 MR. MOYLE: Your Honor, Jon Moyle for the City
13 of Leesburg, and Karen Putnal is with us. Another
14 lawyer with the firm, Ian Waldick will be here in
15 and out as well.

16 THE COURT: All right. I think I probably
17 know the answer to that question, but I always ask
18 it. Do the parties anticipate a transcript will be
19 ordered?

20 MR. BROWN: Yes, sir.

21 THE COURT: All right. A couple of
22 preliminary matters before we get going.

23 I think everybody here is experienced enough.
24 You understand the rules of hearsay in a proceeding
25 such as this. Hearsay is admissible to supplement

1 or explain other non-hearsay evidence that is it's
2 not sufficient in itself to support a finding of
3 fact unless it's admissible over objection in a
4 civil trial; therefore, I intend to admit hearsay.

5 I noticed from the joint stipulation that
6 there were a number of hearsay objections to
7 certain of the exhibits. I intend to admit
8 hearsay. I will ask that when we do have a hearsay
9 objection, if you make the objection, if you just
10 specify it for the record so that I know that it's
11 there.

12 And if you do have some reason -- I mean,
13 there are obviously reasons that would make
14 something that's otherwise hearsay non-hearsay. If
15 it's being introduced for something other than the
16 truth of the matter asserted in the document, it's
17 not hearsay. If it's subject to an exception, it's
18 not hearsay.

19 So if you have something that would cause me
20 to be able to rely on a particular piece of
21 evidence without substantiating information, I will
22 certainly accept argument and make a ruling and go
23 from there.

24 Official recognition. I did have the Public
25 Service Commission's motion for official

1 recognition, which I granted. I intend to take
2 official recognition of any statute, any
3 administrative rule, any final order of the Public
4 Service Commission or any other agency, all
5 decisional case law in the state of Florida so you
6 don't have to make a specific request for official
7 recognition. I am going to take into account
8 everything.

9 Let's talk -- and I have a couple of other
10 things, but let's go ahead and get the
11 sequestration issue.

12 I know that -- are there any fact witnesses
13 that are here in the room at this point?

14 MR. BROWN: Your Honor, we would argue that
15 Jack Rogers from the City, who was one of their
16 designated corporate representatives for
17 deposition, would be a fact witness. I think Mr.
18 Moyle's position is he is also an expert. I think
19 they designated pretty much everybody who is a fact
20 witness as an expert, but our position would be,
21 given that he was the corporate representative, we
22 would view him as a fact witness.

23 THE COURT: Okay. All right.

24 MR. MOYLE: Your Honor, if I could be heard on
25 that as well.

1 We actually had three corporate
2 representatives when he noticed the deposition
3 because there are a whole host of topics, so we had
4 three people that appeared. But Mr. Rogers is the
5 Director of Natural Gas. He has been there since
6 1979. He has expertise in safety and in operations
7 and in construction.

8 When your predecessor entered the order, he
9 told us to identify our witnesses by fact and by
10 expertise. And we identified Mr. Rogers as fact
11 and expert. And we talked about what he would
12 provide fact testimony on, and then we said,
13 Mr. Rogers may provide opinion testimony about the
14 construction, operation, safety and oversight of
15 natural gas distribution systems, customer
16 interaction and natural gas supply. He may provide
17 responsive testimony and PGS testimony that has
18 been the scope of the topics identified above.

19 So that was done months and months ago when
20 this was identified. I just learned that my
21 colleague, my esteemed colleague was going to ask
22 for Mr. Rogers to be excused right before we the
23 got up today.

24 And Mr. Rogers, not only does he have
25 expertise and I plan to ask him about some safety

1 issues and he has a lot of operational experience,
2 I think the record would be better informed. But
3 also I have been working on this case for a number
4 of months now, and I am getting up to speed, and I
5 am no expert in natural gas matters and he can help
6 me with work product during the case, so I would
7 respectfully ask that he remain in.

8 MR. WHARTON: Briefly, Your Honor?

9 THE COURT: Hang on.

10 Let me ask you, Mr. Moyle, who is your client
11 representative?

12 MR. MOYLE: Mr. Minner, he is the City
13 Manager.

14 THE COURT: All right.

15 MR. MOYLE: And he was also part of the
16 (b)(6). We had three people, the Chief Financial
17 Officer, and Mr. Rogers, the Director of Utilities
18 and the City Manager.

19 THE COURT: All right, Mr. Wharton.

20 MR. WHARTON: Briefly, Your Honor, this issue
21 will come up again.

22 THE COURT: I noticed there are a number of
23 witnesses listed that are listed as fact and expert
24 witnesses.

25 MR. WHARTON: Yes. First of all, Your Honor,

1 I have done previous trials with you and I ask that
2 it be okay that we remain sitting here in argument.
3 If I stand up, it's a no see zone because of my
4 glasses and my nose.

5 I think another important fact --

6 THE COURT: We will get that off the table.
7 We are going to be here for a few days and we are
8 going to be taking lots of breaks. When I come
9 in -- I mean, I appreciate it the first time, it
10 was great. I always love it. But don't feel like
11 you have to spring to your feet every time I walk
12 in that door, so --

13 MR. WHARTON: Coats on or off?

14 THE COURT: If I need you to stand up, I will
15 have somebody come in and say oy yay, oy yay,
16 otherwise be seated.

17 MR. WHARTON: I think one additional fact,
18 Judge, and there are other witnesses who are in the
19 same, it is true he was the corporate
20 representative all the way back in October or
21 November, whenever it was. Then in January, there
22 was an exchange of witness list, and for whatever
23 reason, Mr. Rogers' deposition was never taken in
24 his personal capacity. That would have made this
25 issue about whether or not he is really an expert

1 easier to get to, but for whatever reason, that was
2 not done.

3 THE COURT: Okay. All right. Anything
4 further?

5 MR. BROWN: Your Honor, very simply. He is
6 not a retained expert. I think that's generally
7 the dividing line when we are talking about
8 sequestration, is that the retained experts can sit
9 in to listen to the testimony to help them with
10 their expert opinions.

11 He is a fact witness. He may know a lot about
12 the gas business, but he's a fact witness. He is
13 here as the Director of Operations for the Leesburg
14 system.

15 THE COURT: All right. I think, under the
16 circumstances -- I didn't make any kind of a
17 distinction when I entered my order at our
18 prehearing conference. Given the representation
19 that Mr. Rogers is going to be appearing in some
20 capacity as an expert witness, I am going to allow
21 him to stay in the room.

22 I would think, at this point, there has been
23 enough discovery that there probably aren't a great
24 number of secrets left to be uncovered. So given
25 my previous ruling, and the lack of anything to the

1 contrary since then, I am going to go ahead and
2 allow all witnesses who have been identified on the
3 list as being expert witnesses, whether they also
4 have a factual component, to stay in the room.

5 Now, do we have any people who are listed
6 solely as fact witnesses that are in the room
7 today?

8 All right. I hate to do this to you, but I am
9 going to have to ask you to be seated in the room
10 outside. I would ask that you not discuss your
11 upcoming testimony with each other. Every other
12 topic in the world is okay, but just to avoid --
13 and I am sure you probably discussed this matter at
14 length before this, but now that we have convened
15 this hearing, if you would refrain from discussing
16 matters related to your testimony until after you
17 are done testifying, okay?

18 (Fact witnesses left the courtroom.)

19 THE COURT: All right. So I have a
20 question -- I have two questions, actually. Let me
21 do the easy one first.

22 Confidentiality. I know there is likely going
23 to be a good bit of it confidential information in
24 this proceeding. I'm not going to -- I know at the
25 PSC, you have got the red folders and they are all

1 gathered up and given back. I have an obligation
2 to transmit a record to the Public Service
3 Commission, so I am going to be keeping
4 confidential exhibits that are provided to me for
5 transmission to the PSC.

6 I think the only instruction that I can give
7 you in terms of confidentiality is when
8 confidential exhibits are proffered, that you just
9 advise your witness to avoid specific discussion of
10 the confidential elements.

11 If it's something that's on a map or on an
12 exhibit, I can see it. But it's really -- I mean,
13 I have always been a little -- the way the
14 Commission deals with confidential information,
15 given the fact that these are public hearings, it's
16 always been a little bit of a mystery to me. I am
17 going to be take confidential information, and to
18 the extent that the parties feel -- and I sure you
19 have discuss discussions, all three of you, I
20 suspect, are going to have confidential information
21 flowing around, so I think it's in all three of
22 your interests to make sure that the
23 confidentiality is maintained for everything, but I
24 am going to kind of leave it up to you as to how
25 you instruct the witnesses to deal with it.

1 Anything that y'all feel like I need to do to
2 make that anymore enforceable? I guess, it's not
3 really a matter of enforceability, but -- you know
4 what I mean. Does that sound reasonable?

5 MR. MOYLE: Okay. At least here, you don't
6 have the live TV that they have at the PSC.

7 THE COURT: True enough. True enough.

8 All right. Now, the last question I have, and
9 I have to find it.

10 All right. So as I was going through -- and
11 this issue was not addressed in the prehearing
12 stipulation. So as I going through 366.04, in
13 subsection (5), which I read as pertaining to
14 electrical, but it contains the standard that, at
15 least in electrical territorial disputes, one of
16 the issues for disposition is whether there is
17 uneconomic duplication of facilities. And I don't
18 see that in subsection (3) specifically pertaining
19 to gas. And I don't see that in rule 25-7.0472.
20 However, I have gone through a number of Commission
21 orders, and there are at least a half a dozen, if
22 not more, some dealing with approval of territorial
23 agreements, some dealing actually with the
24 disposition of a territorial dispute that apply
25 that standard. So is there any dispute among the

1 parties as to whether I have the authority, or
2 whether I should take up the issue of uneconomic
3 duplication of facilities during this proceeding?

4 Y'all want to talk about that amongst
5 yourselves? I don't know if you have had that come
6 up yet, but like I said, I made it a point last
7 week to go through a lot of Commission orders, and
8 it seems to be an item that the Commission thinks
9 it has the authority to take up.

10 MR. BROWN: That is correct, Your Honor. I
11 think you do have the authority to do that. And in
12 particular, if you look at 25-7047 -- I am sorry,
13 that's the wrong one -- 25-0471 -- that may not be
14 the right one either -- the rule on territorial --

15 THE COURT: Territorial agreements?

16 MR. BROWN: -- talks about that as a concept,
17 and they do talk about that. I think that the
18 Commission, over the years, has de facto adopted
19 that as a standard to be considered. Certainly the
20 cases certainly go into that. So our position
21 would be that you are certainly allowed to do that,
22 and that a legitimate subject of discussion in this
23 case.

24 THE COURT: Well, and I did make sure that I
25 was looking at more than just the, you know, orders

1 that are adopting the territorial agreement that
2 has come about as a result of the territorial
3 disputes. There was at least one case I looked at
4 that dealt with a territorial gas dispute, where
5 they said, we are looking at the issue and apply
6 the policy of determining whether there is
7 uneconomic duplication of facilities.

8 I guess the issue is, is there any dispute on
9 the part of any of the parties as to whether that's
10 something I should be looking at?

11 MR. WHARTON: That's something that the
12 parties could address in the PROs, and I think will
13 address in the PROs, but beware of the de facto
14 adoption of policies by the Commission. That's
15 something we can also address in the PROs.

16 THE COURT: Well, it may well be an unadopted
17 rule that I can't apply under 120.57(1). So there
18 are all kinds of issues that you will have an
19 opportunity to explore, but that's one that came
20 up --

21 MS. MILLER: Your Honor, I guess it's a good
22 question. We probably will address it in the PRO.

23 THE COURT: I only have good questions.

24 MR. MOYLE: But I think obviously, the staff
25 is using the rules and have gone through the

1 process, and PSC is not immune from rule-making,
2 so --

3 THE COURT: I am going to take a look at 0471
4 a little more closely when we have our first break
5 and see if that applies, because they are certainly
6 related, and typically most of the territorial
7 agreements arise because of territorial dispute, so
8 it makes sense. But I will take a look at that and
9 I will give you all an opportunity to explore that
10 as well.

11 All right. Anything else we need to take up
12 as a preliminary matter?

13 MR. WHARTON: The only thing I can think of,
14 Your Honor, whether you want do this before or
15 after openings, the parties have talked among
16 themselves and agreed that all the exhibits to
17 which there are no objection could be moved in
18 now --

19 THE COURT: All right.

20 MR. WHARTON: -- so they could be used
21 throughout the case.

22 THE COURT: Why don't we do that after when we
23 get into the more evidentiary portion of this.

24 MR. WHARTON: That's fine.

25 THE COURT: But let's go ahead and start with

1 opening. And as I indicated, we will start with
2 the petitioner, and then the respondents can have,
3 I assume you divided up your 20 minutes --

4 MR. WHARTON: We have.

5 THE COURT: -- as you have chosen, so we will
6 start with Peoples.

7 MR. BROWN: Your Honor, could I move that
8 black lecturn around just to have something to set
9 my notes on?

10 THE COURT: Sure. Absolutely. And if you
11 need -- I mean, we have -- it looks like you all
12 brought some. We have whiteboards and things
13 around here.

14 (Discussion off the record.)

15 THE COURT: All right.

16 MR. BROWN: May it please the Court?

17 Your Honor, in this case, the evidence is
18 going to show that SSGC and Leesburg have created
19 an unregulated natural gas utility, and that in
20 doing that, they have extended service to an area
21 that should be reasonably served by Peoples Gas and
22 is part of the Peoples' territory.

23 Now, in this case, you are going to hear two
24 different versions, whether it's Leesburg or SSGC,
25 talking about how this all came about. The

1 Leesburg version from Al Minner is that he had this
2 idea Leesburg had a municipal gas system and that
3 it would be great if they could monetize that, and
4 if they could expand it and become a competitor
5 with regular gas utilities, with natural gas --
6 with public gas utilities such as Peoples Gas, and
7 that he approached The Villages and came up with
8 this idea, and that they extended their lines into
9 an area that Al Minner will admit in testimony that
10 he knew that Peoples had the capability to serve.
11 He knew they were the closest gas company in the
12 area, and yet he extended up in that area. I am
13 going to show a map about that in a moment.

14 The other version is The Villages version.
15 And their version is that they originally had an
16 area known as Fenney, where Peoples Gas was
17 serving, and Peoples Gas had done the
18 installations. And their view is going to be that
19 Peoples Gas did such a horrible job on the
20 installations that they had to switch companies,
21 they had to go to Leesburg because that was the
22 only reasonable thing to do.

23 Now, there is going to be some issues the come
24 up about that. First of all, with regard to these
25 construction problems, you are going to hear that

1 they aren't particularly severe. There is not
2 going to be any testimony that they lost sales, for
3 example, or that they had anything like that
4 happen. And I am not sure if they are going to put
5 on testimony about the dollar amounts that were
6 involved, but in the context of a three-and-a-half
7 million dollar or so project, they are not very
8 significant. Most importantly is the fact that the
9 problems with construction were solved long before
10 this agreement gets entered into.

11 Peoples had a contractor by the name of R.A.W.
12 Construction. Peoples was brought into this job
13 late. The job had already gotten going. And you
14 will hear from The Villages saying that they are
15 very big on speed and like things moving along.
16 And well before the time of this agreement, The
17 Villages and Peoples agreed that R.A.W. will be
18 replaced by another contractor named Hamlet. And
19 Hamlet was the contractor that The Villages wanted.
20 And most critically, you will hear that Hamlet is
21 the contractor that continued doing the installs
22 once Leesburg came in.

23 In other words, it's not going to be a
24 situation where they say, well, we had to switch
25 contractors and they bring in Leesburg and suddenly

1 it's a whole new work crew. What you will hear is
2 that they have used the same crews with Leesburg
3 that they already using on the Fenney project that
4 The Villages is already using, it's the same crew.
5 There is no change. The problems have already been
6 solved, and so this really -- there is not going to
7 be any testimony that this is an ongoing problem
8 once the contractors are switched.

9 Most importantly what you will hear is that
10 this -- that there was more than just switching
11 contractors. And the testimony from Brian Hudson
12 will be that they did this deal with The Villages
13 once there was sufficient revenue for The Villages
14 and once there was control by The Villages.

15 And so you are going to hear that they don't
16 just substitute a new joint trench agreement, and
17 that's the agreement typically used by The Villages
18 when doing these installations. They come up with
19 this huge new agreement known as the Purchase and
20 Sale Agreement. And that's what this case is going
21 to be focused on a great deal.

22 That agreement is negotiated throughout 2017.
23 It is signed in February of 2018, and it originally
24 starts out as a lease. And, in fact, when Your
25 Honor looks at the copies of the agreement, the

1 headings on all pages after the first pages refer
2 to the lease. That gets changed because of tax
3 implications. Nobody wants to pay the property
4 taxes on this. And if The Villages owns the
5 property, they have got to pay the taxes or else
6 Leesburg has got to pay the taxes, and so they say,
7 aha, we will now change this so that it is a sale.
8 We are selling the assets to The Villages -- from
9 the Villages, or SSGC.

10 And I use those terms interchangeably. They
11 are going to be used interchangeably. SSGC is
12 South Sumter Gas Company. It's a partner of The
13 Villages, and The Villages land company is
14 mentioned in the agreement. They are all kind of
15 really the same thing. The evidence is going to be
16 that they are all really kind of the same entity in
17 terms of who is running it.

18 You will hear that SSGC will describe this as
19 some sort of a financing arrangement. They will
20 describe it as a whole lot of things. But the big
21 thing they will say is that this is a sale. And
22 this sale, this agreement, in effect, creates a
23 natural -- it creates a unregulated natural gas
24 utility. And I want to show you kind of the
25 highlights of what the agreement does.

1 The first thing is that SSGC receives revenue
2 from the sale of gas. The purchase price in the
3 agreement is not set forth. There is not something
4 that says, we are buying this stuff for, you know,
5 \$20, \$80 million, whatever your number is. They
6 don't do that. What they do is they set up an
7 arrangement where they are going to share gas
8 revenue.

9 The other thing they do that's interesting
10 is -- the evidence is going to be this is not the
11 Leesburg gas system that's serving here, because
12 it's not like they just extend Leesburg and they
13 use the same rates and they use all the same stuff.
14 They don't.

15 What the agreement does is, it says that The
16 Villages' customers, the people being served
17 pursuant to this agreement, are going to be charged
18 the Peoples Gas rate. And you will hear evidence
19 that they do that because they don't want
20 discrimination of rates within The Villages,
21 although it will create it within the City of
22 Leesburg.

23 But the big thing is that is how they set this
24 up so that essentially The Villages is receiving
25 roughly 50 percent of revenues. You will hear

1 52 percent at one point, 55 percent, somewhere in
2 that magnitude of revenues are going to The
3 Villages as part of this agreement.

4 You will note there is no fixed payment
5 schedule. That is important in a lot of the cases
6 that will be cited to you once we send our PRO. So
7 there is not a schedule. The revenue is unrelated
8 to the cost of construction. It doesn't -- there
9 is no indication anywhere.

10 In fact, the testimony will be from, I
11 believe, Jack Rogers, we will say, or maybe even Al
12 Minner will say, we don't know what the cost of
13 construction is because the only thing we know is
14 what we are paying under the agreement, and so we
15 just have to pay based on this division of the
16 revenue.

17 SSGC controls the rates. Leesburg cannot
18 change the rates for The Villages' customers
19 without permission from SSGC. In fact, in the
20 agreement, that is the only way that Leesburg can
21 get out of the agreement, is if a certain metric of
22 costs gets within a certain parameter, they can go
23 to SSGC and say, we need to raise our rates, and
24 SSGC, in its absolute and sole discretion,
25 determines whether they can do that. And if they

1 don't do it, then that's Leesburg's one option to
2 get out of the agreement. We will talk about that
3 in a second.

4 The important thing is, Leesburg doesn't get
5 to raise the rates. They are going to testify
6 that, well, you know, this is Leesburg, it's
7 Leesburg, it's Leesburg. But Leesburg would be a
8 municipal gas system that can't control its own
9 rates for The Villages customers, and that's what
10 the evidence is going to show.

11 It's also going to show that SSGC determines
12 where the expansion is, and there is language in
13 that agreement that says that the parties shall
14 expand wherever SSGC wants to go, and it is
15 contemplated that there is going to be new areas in
16 which to expand.

17 The other thing is that SSGC is the ultimate
18 owner of this infrastructure. Now, although the
19 agreement is styled as a purchase and sale, on
20 virtually any way that the agreement ends, Leesburg
21 has to give everything back to The Villages.

22 If the agreement ends and -- if there is early
23 termination, the scenario I just talked about,
24 whereby Leesburg were to say, we are not making
25 money on this, we are squeezed on our margin and so

1 we got to cancel this agreement, then that means
2 they have got to give all of this infrastructure
3 that's been built back to The Villages.

4 The same thing happens if they -- upon the end
5 of the 30-year term -- and the agreement doesn't
6 say a 30-year term. It's tied to the City of
7 Wildwood Franchise Agreement, which is a 30-year
8 term, and that's why everyone is going to refer to
9 that, although the agreement does not specifically
10 mention the term of 30 years. It says, the term of
11 the City of Wildwood Franchise Agreement for this
12 entity, for SSGC -- or Leesburg, rather.

13 And so what happens is at the end of the 30
14 years, Leesburg has to sell it back to SSGC for
15 depreciated value if SSGC desires to buy it. Not
16 for actual value, but for depreciated value after
17 30 years of payments. And we are going to talk
18 about how much that might be.

19 The other thing that happens is that Wildwood
20 has an option at the end of the 30 years to
21 purchase the system from Leesburg. And the
22 agreement says that if that option is exercised,
23 then SSGC could purchase the system again back from
24 The Villages -- or back from Leesburg for the
25 depreciated rate, and then The Villages would be the

1 ones who negotiated the terms of sale with the City
2 of Wildwood, and they would keep all the revenue
3 derived from that sale.

4 So they talk about it being a purchase and
5 sale, but the overwhelming evidence is that SSGC is
6 getting all of this back at the end of the
7 agreement under virtually any scenario that you
8 come up with in terms of how it ends.

9 You will hear testimony from our expert Terry
10 Deason, a former commissioner, who is going to say
11 that when you put all of this together, along with
12 some other factors, SSGC is operating as a utility.
13 They are an unregulated natural gas utility, a
14 public utility, and that this is not a Leesburg
15 system. This is not a case where the Leesburg has
16 extended its lines out to an area outside the city
17 and it's still in the Leesburg system. This is
18 something that is very different.

19 Now, the next issue in all of this is that the
20 lines by Leesburg and SSGC have been extended out
21 to where they clearly infringe upon Peoples'
22 territory. And I show you this, Your Honor. This
23 shows what Peoples -- this shows kind of what
24 Peoples' infrastructure was shortly before this
25 agreement gets signed. And you will see that this

1 is their lines here. This is going to be known as
2 State Road 44, the 468 line. This big area here is
3 The Villages of Fenney that we talked about
4 earlier -- that I talked about earlier, that that
5 is where Peoples installed and is serving those
6 customers. They also have lines that extend along
7 all the way down here.

8 And you are going to hear testimony from T.J.
9 Szelistowski, the President of Peoples, from Rick
10 Wall, from various experts, and really various
11 experts on both sides, you are going to hear a lot
12 of testimony that generally the way natural gas
13 territories are created is that one extends lines,
14 typically you have a customer -- and you will hear
15 that Peoples had customers down to this area, they
16 had additional customers here, and then over time
17 they extended this 468 line. And when they do all
18 of this, they build it and design it with the
19 understanding and the hope that they are going to
20 be able to serve all the people off of this line.
21 And you are going to hear testimony to that effect.

22 You will ear testimony that that's part of the
23 whole regulatory scheme. You will hear testimony
24 that if you can't fully utilize these lines because
25 somebody else comes in here, then you are going to

1 end up having an effect on the rates for the
2 existing customers, and at the same time, if you
3 are allowed to expand, it has the effect of
4 lowering rates and makes sure that there aren't
5 underutilized investments. And that's generally
6 the way this works.

7 So what has SSGC and Leesburg done?
8 Here's what they have done. Here's where they
9 extended. And they have built all of these areas
10 here, here, here. They are known as Bigham North,
11 some testimony is Bigham North, Bigham West, Bigham
12 East.

13 And they also are building two -- the green
14 lines are mainlines, and there will be discussions
15 about this, and that the only way they can serve is
16 they have got to build a line right up against and
17 alongside of Peoples' already existing line. They
18 have had to build a line her for about two miles to
19 get up in this area to be able to serve here.
20 Whereas, the testimony would be that Peoples is
21 right there. They could tie-in -- there is going
22 to be testimony it's a couple of feet away from
23 Bigham West to the Fenney development that actually
24 crossed over lines. There is going to be testimony
25 about the difficulties and potential safety

1 concerns when you cross over lines. And so that's
2 what has happened here, and they have simply just
3 taken all of this territory.

4 So the question becomes, how do we resolve
5 these territorial disputes? Well, how do you
6 figure out who is supposed to serve when somebody
7 has come miles and run lines immediately parallel
8 to existing lines?

9 And really the way that happens is you go
10 into -- and I forgot my page here. But you end up
11 talking about generally the cost to serve, and what
12 the regulations talk about is the capability of
13 each utility to serve the area. You are going to
14 hear testimony about Peoples' capabilities in a lot
15 of areas in terms of disaster recovery, in terms of
16 their ability to have gas.

17 The cost of each utility to provide natural
18 gas service, you are going to hear that costs --
19 obviously, it's going to cost more. Just on the
20 basis of these two lines alone, it's going to cost
21 more for Leesburg and SSGC to serve because they
22 have got to build lines to duplicate lines that are
23 already existing, and they have got to run a line
24 up from the south from 470 up north to the 501
25 line, it is known.

1 They talk about the cost of labor. They talk
2 about the mains. They talk about all of these
3 things. And normally, in a typical dispute, we
4 would be in a big argument over how this all comes
5 together, and who is paying more for meters and who
6 is paying less for meters; who is paying more for
7 labor and who is paying less for labor.

8 But in this case, it's very different, and
9 that is because Leesburg's cost to serve is the
10 amount of money that it is paying in the agreement.
11 They are paying -- as long as they have the
12 infrastructure, you are going to hear testimony
13 that they are paying. It doesn't matter if it's
14 paid off. You are going to see -- you are going to
15 see there is emails where this was a concern by the
16 City of Leesburg. There is discussions about the
17 fact that, you know, it doesn't make any sense that
18 after 15 years, a lot of this stuff is paid off and
19 we are still making payments. And so if you start
20 to measure what the difference in cost to serve is,
21 it is going to be substantial.

22 So what's the difference in cost to serve?
23 Well, the first difference is the line on 501 and
24 44/468, those green lines that I just showed, the
25 testimony is that it's 2.2 million. In fact, the

1 testimony will be that it's an oral contract
2 between Leesburg and The Villages that the Villages
3 will build those lines and that Leesburg will
4 reimburse them for construction, and that's 2.2
5 million. And frankly, once our PRO is done, we
6 start seeing the cases, I mean, that's already a
7 significant difference right there.

8 There is going to be an issue about Sabal
9 Trail. And I didn't talk about that, the Sabal
10 Trail tie-in. This is the Sabal Trail transmission
11 line, interstate transmission line. And there is
12 going to be an issue about whether or not Leesburg
13 has to get gas off of there to in order to fully
14 serve these customers. And there is certainly
15 indications that they do have to do it. There is
16 going to be some disagreement about whether it's
17 specifically for The Villages or not.

18 But there will be testimony in order to
19 reserve the spot on the line, and to build actually
20 what's known as a gate station, which is a station
21 that ties into that Sabal Trail line. That will be
22 another two to five million, depending on the
23 testimony.

24 The biggest issue is the cost of
25 infrastructure. We will have our expert Stephen

1 Durham, who is an economist, who is going to say if
2 you take the numbers and make some reasonable
3 assumptions about what the Peoples Gas rates are,
4 and you take reasonable assumptions about what this
5 looks like, 2,000 homes over 30 years, 200 firms,
6 and there is various estimates and there is various
7 testimony about it. The testimony will be
8 essentially what he's doing is taking kind of the
9 middle-of-road numbers. That over 30 years, it
10 will -- that the City of Leesburg will pay to The
11 Villages, or more properly, The Villages will
12 receive in revenue, shared revenue, from the sale
13 of natural gas \$180 million. That over that same
14 30-year period, it would cost Peoples Gas roughly
15 \$90 million to build the same infrastructure. So
16 The Villages is receiving from gas revenue an
17 additional \$90 million.

18 Keep in mind, their position is that SSGC is
19 not a utility. So if it's not a utility, then what
20 is compared by -- then what the Commission has to
21 do is determine which utility's cost to serve and
22 you compare them. And so the SS -- the Leesburg
23 cost to serve is whatever is in the agreement, and
24 the difference between those two numbers, what it
25 would cost Peoples to put together this

1 infrastructure and install it versus what Leesburg
2 is paying for that infrastructure is approximately
3 \$90 million.

4 So you end up with a difference in the cost to
5 serve of approximately \$94 million total once those
6 numbers are totaled up. It is a vast difference in
7 the cost to serve, and that's what the evidence is
8 going o to show.

9 And the evidence is further going to show --
10 there is nobody who is really going to come up and
11 say those numbers are particularly wrong. They are
12 going to say, well, they make assumptions, but
13 there is no one -- you are not going to hear an
14 expert from either Leesburg or SSGC who gets up and
15 says, oh, that analysis is crazy. Here is what the
16 real number is. There is nobody who's testified to
17 that, and nobody will testify to that in this case.

18 THE COURT: Mr. Brown, let me give you your
19 DCA three-minute yellow light.

20 MR. BROWN: Thank you.

21 So the question is what would we be asking the
22 Court to do? And what we will be asking the Court
23 to do is declare that the area in the blue, shaded
24 blue here, is Peoples' territory. And what it does
25 is it reflects the fact that this is where they

1 have existing lines. It reflects the fact that
2 they are in the position to serve. This particular
3 map shows some areas that, based on construction
4 notices, that there are plans to expand. And you
5 are going to hear testimony from the rest of the
6 people, from SSGC -- or The Villages are going to
7 say they had all sorts of expansion plans all along
8 here.

9 We cut it off here for a couple of reasons.
10 One is there is a line down here that Leesburg has
11 that serves a prison that's right there, the
12 Coleman prison. But more significantly, the
13 testimony is going to be that there is not going to
14 be any customers -- other customers for The
15 Villages in this area for 20, 30 years. And so our
16 position is who knows what -- the evidence is going
17 to be that nobody really knows what this is going
18 to look like in 20 or 30 years. When the PROs are
19 filed, you are going to deal with questions about
20 whether you go that far in the future what you do
21 if somebody is planning to serve an area.

22 But in terms of the light blue, this is an
23 area where Peoples has infrastructure. This is an
24 area that has been invaded by Leesburg in terms of
25 where they've built. And so this is the area we

1 will ask that the Court determine is Peoples'
2 territory. It is based on its already existing
3 infrastructure. It's based on the way that
4 infrastructure -- that territories are created and
5 expanded in the state of Florida, and so that can
6 where we will be at the end of the day.

7 This case really is going to be -- the
8 evidence in this case is going to be pretty clear
9 that Peoples was here. Leesburg came up to get to
10 them to build right on top of them, right across
11 their lines in some cases. The evidence will be
12 clear that the cost differential is massive. It is
13 on the offered \$94 million. And so -- and the
14 evidence is also going to be clear that this
15 agreement has created an unregulated natural gas
16 utility that should be regulated by the state of
17 Florida.

18 Thanks you.

19 THE COURT: You must have practiced, you hit
20 it right at 20.

21 MR. MOYLE: Mr. Wharton and I worked it out if
22 I could go next.

23 THE COURT: All right, Mr. Moyle.

24 MR. MOYLE: And could I ask a slight exception
25 to your known no phone rule? I was going to try to

1 use it to divide my time.

2 THE COURT: As long as it doesn't make noise.

3 MR. MOYLE: It won't. I planned it as 13
4 minutes and Mr. Wharton have --

5 MR. WHARTON: He is going to leave me some
6 scraps.

7 THE COURT: All right.

8 MR. MOYLE: This is a little smaller than
9 Mr. Brown's map.

10 THE COURT: Are you suggesting that my acuity
11 is not as good as it should be?

12 MR. MOYLE: I don't know. My eyes are a
13 little different these days.

14 Good morning, Your Honor. Jon Moyle on behalf
15 of the Moyle Law Firm. It is my privilege and
16 honor today to represent the City of Leesburg.

17 The City has a long, rich history. It was
18 founded more than a century ago, in the 1850s.
19 They have had a natural gas system since 1959, and
20 it's a proud community located in Central Florida.
21 There are a lot of lakes in Central Florida, Lake
22 Helen is a central feature of the area. And you
23 will get a little better feel and description of
24 Leesburg from Al Minner, who will be testifying and
25 talking to you, who is the City Manager.

1 I am going to spend a little time and tell you
2 who the witnesses are, some of the witnesses from
3 Leesburg; but I thought it would be important, as
4 we start the case, to just describe what is the
5 case about? What are we arguing about?

6 And I think there is a disagreement about what
7 the case is about. I heard Mr. Brown's opening,
8 and most of it -- or a lot of it was spent on
9 talking about an agreement and a contract. And
10 there is an agreement, and there is a contract; but
11 respectfully, this is a territorial dispute. And
12 the charge, we believe to you, is to, number one,
13 determine is there a territorial dispute? And we
14 are going to take the position that there is not,
15 based on case law, and based on what has happened
16 in this area.

17 I would like to briefly describe the history,
18 and Mr. Brown hit on some of it. But this is the
19 map that Leesburg has prepared. All of this yellow
20 area is the City corporate limits of Leesburg.
21 This brown area are customers that Leesburg serves,
22 but they are not within the municipal limits.
23 There is some enclaves and other things that's
24 happened in municipalities, but that's fine. A lot
25 of municipalities serve people outside of their

1 municipal limits. Nothing wrong with it. It
2 happens.

3 This line here goes to the Coleman prison,
4 which Leesburg has served for 25 years. So if we
5 are going to talk about historical presence in the
6 area, my client has had a line serving the Coleman
7 prison for 25 years.

8 They have also been up in Fruitland Park, up
9 in this area. And they served a number of
10 customers, including some Villages accounts there.

11 And you will hear T.J. Szelistowski, the
12 President of TECO, he will come in and say that PGS
13 has been up in northern Sumter County. Their
14 recent business plan -- and you will see the
15 business plan, it's a confidential document --
16 suggests, and this has been testified to in a
17 nonconfidential way, but that they are moving this
18 way.

19 This line -- this blue line, which is the PGS
20 line, that was put in is very recently. I think it
21 was 2016. And the reason largely it was put in was
22 to go pick up industrial load over here. There is
23 industrial load over here. Over here there is
24 industrial load. And my client was assuming and
25 thought that, well, all this is going -- they are

1 going west to serve industrial load. We are at the
2 Coleman prison, our municipal boundaries are here
3 and the Villages is moving in this direction, in
4 the southeasterly direction down toward the City of
5 Leesburg. It just makes sense.

6 One of the criteria is urbanization, you look
7 at the degree of urbanization. The Villages
8 development, there is a lot of homes, commercial
9 centers, it's going in this direction and it will
10 match up nicely with the City of Leesburg in this
11 area.

12 So we are going to take the position first of
13 all that there is not a dispute. And there is a
14 case -- you will hear from witnesses, but there is
15 a Gulf Power versus Gulf Cooperative case that we
16 actually raised with you in the prehearing stip
17 that the Commission looked at an area that had a
18 lot more interspersed facilities. It was in the
19 Panhandle. And that they said, you know, we are
20 not going to get in the middle of this. We don't
21 think centralized planning and drawing lines on the
22 ground is the best way to go. There is a rule for
23 competition, and there is a rule for market forces,
24 and we think that's what's happening here.

25 You know, The Villages is a desired customer.

1 They are one of the biggest developers in the state
2 of Florida. We have a lot of developers in the
3 state, but they are a very substantial developer.
4 They had this blue place, the Fenney area, that was
5 served, but they didn't have a good experience.
6 And you will hear them talk in detail about why the
7 experience was not good. And my client, again with
8 the Coleman prison that's adjacent to this
9 development right here, was well positioned, ready,
10 willing and able to serve, and they struck up a
11 conversation. They worked and talked about how can
12 we make this happen.

13 To go back, Judge, a little bit, you are going
14 to here, as I mentioned, from Mr. Minner. He is
15 the City Manager. He is going to tell you about
16 the City. He is also going to tell you about the
17 relationship with The Villages.

18 My client provides electricity to The
19 Villages. They provide wastewater services, water.
20 So natural gas, you know, they had a basis for
21 dealing with each other, and it's a good
22 relationship. If they have problems, they work
23 through those problems. And we do not think that
24 there is a dispute, you know, that would require
25 the PSC -- you and the PSC to get in and say, well,

1 notwithstanding your business decision and your
2 preference, we are going to have you go the other
3 direction.

4 The natural gas business is competitive. It's
5 about getting a customer. And you will hear people
6 talking about how do you get it? Well, you got to
7 have a customer, and sometimes lines cross. We
8 have a difference of opinion about that. We
9 don't -- there is no rule on that. There is no PSC
10 rule. There is no anything it that says it's a
11 safety issue, and Jack Rogers will talk about that.

12 But there are a lot of additional instances
13 where you have companies competing and are up
14 against each other. And that's just a natural
15 occurrence. So we don't think that there is a
16 dispute at all.

17 You are going to hear from -- you are going to
18 hear from two PSC Commissioners who served and who
19 were chairs. Joe Garcia will be testifying on
20 behalf of the City. Mr. Deason will be testifying
21 on behalf of PGS. I think they will have different
22 public policy views, and I think that there will be
23 some interesting testimony that comes out.

24 Let me talk for a minute, if I could, David
25 Dismukes is also going to testify. He is an

1 expert. He worked for the PSC for many years. He
2 is a professor at LSU now, and he has done an
3 analysis, a report where he looked at the statutory
4 criteria and the rule criteria, looked at the
5 factors and said, you know, I think this one is
6 better for, you know, for Leesburg. I think this
7 is a jump wall or a try tie, and he came up with a
8 thoughtful analysis.

9 It's important because we think that Leesburg
10 prevails when you apply the rule criteria. So if
11 you find -- first of all, no dispute. But if you
12 do find there is a dispute, we think Leesburg wins
13 on the criteria. But if the criteria, when you
14 balance them out, are about equal, there is a rule
15 provision that says, customer preference is a
16 factor. We call it the tiebreaker. And so
17 customer preference is an important component.

18 Let me spend a minute and talk about some of
19 the issues that you will hear.

20 I have touched on competition, and with all
21 due respect, we believe this is a bit of a
22 last-ditch effort by PGS to have the territory
23 granted to them. And why is that?

24 You will hear from the President of TECO's,
25 T.J., who has just recently been put in that

1 position, because the position that he is in was
2 never created until a company, Emera, bought TECO.
3 And it's a company that is traded on the Toronto
4 Stock Exchange. I think you will hear -- I am
5 going to ask him questions about, you know, the
6 corporate goals. Growth is a big corporate goal.
7 Growth in Florida is a big corporate goal. And we
8 think that what you are seeing here is consistent
9 with those corporate policies, and that this is
10 akin to a last-ditch effort.

11 The agreement, there has been some discussion
12 about an agreement. I think -- we would take the
13 position that, yes, there is an agreement, but all
14 of the back and forth, you know, can we do it this
15 way? Can we do it that way? You know, I have
16 negotiated a lot of agreements with utilities over
17 at the PSC, and you give back and forth, this for
18 that, and it comes together.

19 But at least at the Commission, when an
20 agreement is in place, they don't pull it and look
21 and what about this, what about that and delve into
22 all of the back and forth on the agreement. It's a
23 business agreement. I don't think anybody is going
24 to suggest that it's wrong.

25 I think some people may say, yeah, we have

1 concerns about this. And I think you will zero
2 T.J. say, I think that the agreement is of more
3 concern to us than the territory. And why is that?
4 Well, other people may look at this agreement and
5 say, that's creative. It works out pretty well for
6 the parties. Let's do that. But respectfully, we
7 don't think that is the issue before you. That's a
8 legislative issue as to whether these agreements
9 should somehow be regulated. They are not now.

10 And the idea that they are some kind of hybrid
11 utility. Mr. Rogers is going to testify all of the
12 things that go along with providing gas service.
13 Who gets the gas? Who maintains the lines? Who
14 builds? Who collects the money? Who does safety?
15 Who reports to the PSC? All of those things are my
16 client, the City of Leesburg. They are the
17 utility. And you may have to make a finding of
18 fact on that, but we don't think it will be a hard
19 finding to make.

20 The thing cut off.

21 THE COURT: Tick, tick, tick.

22 MR. MOYLE: I know.

23 MS. PUTNAL: You got two minutes.

24 MR. MOYLE: Two minutes. Thank you.

25 The cost issue, the \$90 million, if you have

1 to do a cost -- and I am not even sure you have to
2 given the earlier discussion about the rule, and we
3 will deal with that in a PRO. But if you do have
4 to do one, it ought to be an apples to apples
5 comparison. And it's a creative theory are,
6 admittedly. But this -- you know, this big number
7 out there based on a formulaic approach to the
8 sharing of revenues, that's not what the past cases
9 of the Commission do.

10 The past cases of the Commission, as you have
11 read, they look at infrastructure costs and say,
12 this costs X number of dollars. They look at pipe
13 costs. And that's where their focus is.

14 You know, this 90 million, you know, we have a
15 stipulation of fact that capital costs are not a
16 dispute. You know, arguably, that's a capital
17 cost, so we don't think that argument and that
18 contention holds waters.

19 The final point is safety. PGS has had some
20 challenges in safety. Rick Moses, the head of
21 safety division for the PSC will testify. He is
22 going to talk about some of those challenges.

23 Leesburg has a culture of safety. It has a
24 very good track record on safety. And the rule
25 says you have some discretion with respect to

1 applying factors and looking at factors. And
2 respectfully, we think safety should be given a lot
3 of weight. And things, when they go bad in a
4 natural gas situation, we've seen on the news what
5 can happen, and the Leesburg culture of safety and
6 track record on safety is very good, and I think
7 should be something that, as you consider it, you
8 give serious weight to it.

9 So I think that hits my time. Thank you.

10 THE COURT: All right. Thank you, Mr. Moyle.

11 MR. WHARTON: The how long do I have, Your
12 Honor?

13 THE COURT: I think you have seven minutes.
14 Did you take all 13? I saw you have it over there.
15 You probably did 14.

16 MR. WHARTON: I will remain here with your
17 permission.

18 THE COURT: That's fine.

19 MR. WHARTON: Your Honor, it's appropriate to
20 explain up front that despite things, South Sumter
21 Gas Company is not a gas utility. SSGC neither
22 supplies nor proposes to supply gas to the public.
23 That's the statutory definition. Rather, it's an
24 affiliated party and the de facto proxy for The
25 Villages in this proceeding.

1 The Villages is easily Florida's most dynamic
2 development, having developed over 60,000 homes to
3 date, and poised to develop tens of thousands more
4 as the evidence will show. It's The Villages, by
5 the execution of the agreement between SSGC and the
6 City of Leesburg, which desires to receive natural
7 gas from the city as the development grows and
8 expands.

9 It's The Villages which PGS seeks as part of
10 PGS service territory, not based on any previous
11 public or otherwise legitimate claim. Not based on
12 some concern for the ultimate user. Not because
13 PGS wants to save Leesburg from itself, but rather,
14 based on the desire to capture the revenues from
15 the state's most vigorous and successful
16 development.

17 PGS attempts to secure an agency order making
18 it the only option for natural gas in the
19 development despite the fact that The Villages,
20 whose track record of success demonstrably shows
21 that they know what they are doing and they are the
22 very best at what they do, does not desire to force
23 the establishment for the first time of a PGS
24 service territory, which would encompass the
25 development as it grows.

1 And despite the fact that PGS knows full well
2 that unlike water, electric, wastewater, the
3 decision whether to utilize central natural gas is
4 in the hands of the developer. And despite the
5 fact that PGS knows full well that The Villages has
6 developed tens of thousands of homes without
7 natural gas, and intends to return to building
8 homes without natural gas if it is forced to do
9 business with PGS and unable to honor its agreement
10 with Leesburg.

11 I want to talk about two things about the
12 statute and the factors to be considered.

13 One thing you will hear all the way through
14 the PROs is that the Legislature clearly and
15 unequivocally wrote the applicable statutes, at
16 least in some respect, in a very clear and specific
17 way, and a way that as important implications to
18 the outcome of the case.

19 The first one is is that the Legislature
20 clearly and specifically said that activities of
21 municipal gas utilities are not regulated by the
22 Public Service Commission or anyone else except on
23 the issue of safety. And the evidence will show
24 that the PSC has no safety concerns with Leesburg's
25 natural gas system.

1 The Legislature also specifically and clearly
2 spelled out in the statute that certain enumerated
3 factors should be considered in resolving the
4 dispute, and that after enumerating some of those
5 factors, the statute states those factors aren't
6 exclusive, and that Your Honor is not limited to
7 those factors.

8 This was wise of the Legislature because there
9 has never been a natural gas territory dispute like
10 this. It's broad. It's encompassing. It's,
11 because of the nature of The Villages, it's more
12 like a dispute over a whole growing city than a
13 dispute over a mall or a law force.

14 The PSC then wrote a rule implementing the
15 statute which provides that one of the factors that
16 you could consider is customer preference if
17 everything is substantially equal. And the rule
18 then reiterates that the list is not exhaustive,
19 and that Your Honor could look to other factors and
20 information if you determine it's warranted.

21 These two facts about the way the statute and
22 rule are written are important in two separate
23 ways. One is that The Villages, which both the PSC
24 and Supreme Court authority has found stands as the
25 proxy for the customer under these circumstances,

1 obviously desires to receive service from the city.

2 The second important thing about the way the
3 statute and rule are written is that it allows you
4 to consider all of the information that you deem
5 pertinent. And that because of the size and the
6 growth and the economic importance of The Villages,
7 you should consider more than just The Villages'
8 mere preference, but rather the nature of the
9 territory itself, what's going to happen in the
10 future, which means to consider the nature of The
11 Villages itself.

12 I would like to address two of PGS's theory.
13 The first is this accidental partnership theory.

14 The position of PGS that the agreement between
15 SSGC and the City somehow forms a partnership will
16 invite Your Honor to stretch, to use a euphemism,
17 the bounds of your jurisdiction to interpret the
18 intricacies of that contract to find that it
19 creates a partnership which SSGC and the City of
20 Leesburg deny exists, have never desired to enter
21 into in any way, shape or form, in which the
22 agreement itself says it's not its intent.

23 This is an issue that will inform some of the
24 evidentiary issues which may arise in this case,
25 but I think it will have to be primarily addressed

1 in the PROs, but it's the position of SSGC, and
2 will remain the position of SSGC, that this is not
3 a partnership. It's never been a partnership, and
4 never intended to be a partnership.

5 On the issue of policy -- you heard PGS in the
6 opening remarks proffer that there were policy
7 reasons, and there will be a policy expert why PGS
8 should prevail in the case, and PGS will call a
9 witness who will opine on several unwritten and
10 unpromulgated policies which you should consider.

11 This is going to invite you, on policy
12 grounds, to determine that the agreement between
13 SSGC and the City should be effectively voided by
14 you, despite the fact that there is no argument,
15 none that it either violates or is contrary to any
16 rule, order or statute of the PSC.

17 No Florida law condemns, prevents, disallows,
18 nullifies, voids, any word you want to come up
19 with, either this agreement or the arrangement
20 between the City and The Villages by and through
21 SSGC.

22 This is why PGS will turn to the more nebulous
23 concept of policy. I could spend my entire seven
24 minutes talking about policy and the APA, but you
25 already know that body of law as well as anyone.

1 It is the position of SSGC, consistent with
2 the APA, that the rules and the statutes and the
3 applicable case law, or however you are going to
4 have to decide this case, not on the basis of the
5 testimony of the ostensible policy expert.

6 To conclude, Your Honor, very quickly, PGS's
7 apparent frustration with this fact aside, the
8 Legislature has chosen not to regulate the rates of
9 the City, nor its conditions of service, nor how it
10 earns or distributes its revenues after they are
11 collected, nor any other facet of its
12 administration or operation other than safety.

13 The evidence will show that the area which PGS
14 asserts is in dispute doesn't lie within the
15 territory of PGS. Leesburg is ready, willing and
16 able, and has the operational and administrative
17 capability to provide the service. And The
18 Villages, who has a track record of showing that
19 they know what's best for their own development,
20 desires to receive service from Leesburg on a
21 going-forward basis.

22 THE COURT: All right. I have a couple of
23 things I just kind of want to throw out there,
24 because I want to make sure that we have a
25 well-organized, well-run hearing. And I will, at

1 some point, want to hear the parties' positions on
2 these.

3 You will find, as we go through the next
4 couple of days, I don't hesitate when I have a
5 question to ask a question. So, Mr. Wharton, you
6 have dealt with me before, you can jump in. I am
7 here as a finder of fact. I have a obligation to
8 make sure that I have a complete factual record in
9 order for me to make the correct decision, so I am
10 not going to hesitate when I have a question,
11 believe me.

12 I want to comment a little bit, and then we
13 are going to take a break. I want to comment a
14 little bit on the issue of policy. I recognize
15 both Mr. Garcia and Mr. Deason as being highly
16 accomplished former Commissioners. I have a lot of
17 respect for both of them. I appeared before both
18 of them, but I kind of view them in the same
19 capacity as I would view the President of the
20 Senate coming in here to explain to me a Senate
21 Bill, and what the policy and intent of that Bill
22 was.

23 So I don't know if I would spend a lot of time
24 on policy, because what I am going to apply as
25 policy is going to be based on cases, statutes,

1 rules. I think it would be outside of my authority
2 to tell the Commission what its policy is in a
3 recommended order. I think they would flip me
4 pretty quick.

5 And I have experience in my days as a
6 practicing attorney where I had a not -- you know,
7 a Administrative Law Judge explain what the policy
8 of the Pilot Rate Board was and the Pilot Rate
9 Board quickly determined that that wasn't their
10 policy. And that was upheld on appeal.

11 So I recognize my limitations in trying to
12 explain to the Commission what its policy is,
13 because I think it's pretty very well versed, and
14 in my experience, doesn't have hesitation
15 explaining itself. So that's one issue.

16 I will take evidence. I am not going to
17 strike any witnesses or anything at this stage of
18 the game, but, you know, when you are putting a
19 policy witness on, just kind of keep that in mind.

20 The other question, and this may be -- this is
21 more a question at this point, Mr. Brown. But as I
22 view my role in this territorial dispute, I am
23 here, and I don't recall the names, I know the
24 Fenney, but you had a name for the other -- for the
25 specific developments that are at issue here.

1 And my view is that in this territorial
2 dispute, I am limited to determining whether
3 service is being lawfully provided by Leesburg, or
4 whether it should be being provided by Peoples to
5 those three areas. I don't think I am here to make
6 a broader determination as to a territorial area.
7 And I think there is some case law that supports
8 that.

9 But I will give you an opportunity, if you
10 think I should go broader, to let me know. I am
11 not going to foreclose you from making any
12 argument. But my view as to what I am here to do
13 today is not to establish a territorial boundary,
14 or a territorial limit that would go beyond the
15 specific developments that are being proposed to be
16 served by Leesburg and by Sumter.

17 So that's sort of my view -- because you had a
18 pretty big area that was covered in blue, and I
19 don't think that's my role in this case.

20 MR. BROWN: I have a question, but I won't
21 interrupt. I understand where you are coming from.

22 THE COURT: Okay. All right. Let's take 10
23 minutes. We will come back, we will reconvene. We
24 will put exhibits into evidence that aren't
25 disputed and then we will start taking evidence.

1 MR. WHARTON: Thank you, Your Honor.

2 THE COURT: All right. Thank you.

3 (Brief recess.)

4 THE COURT: I understand we have a batch of
5 undisputed exhibits that we can deal with.

6 MR. MOYLE: We do.

7 THE COURT: Okay.

8 MR. WHARTON: Ours is simple, Judge. They are
9 in a notebook, and there are no objections.

10 THE COURT: Okay.

11 MR. WHARTON: I think there are something like
12 19.

13 THE COURT: Yes, I have your exhibit pages
14 from the prehearing stip, so if you can just tell
15 me which ones they are so I can mark them as
16 admitted.

17 MR. WHARTON: Mr. Self will run through that.

18 THE COURT: All right. So we will start with
19 South Sumter.

20 MR. SELF: So it's Exhibit No. 1, which is the
21 confidential SSGC construction contracts between
22 SSGC and Hamlet. And these are all identified in
23 the pretrial stip.

24 No. 2, which is additional confidential
25 construction documents.

1 SSGC Exhibit No. 3, which is the Fenney
2 developer joint trench agreements.

3 Exhibit 4, which is the Leesburg SSGC
4 agreement. That's the agreement that everybody
5 references. I think several people have put
6 different versions that sometimes include the
7 ordinance as a subsequent amendment.

8 Exhibit 5, which is some bill of sale
9 documents between SSGC and City of Leesburg.

10 Exhibit 6, which is some PGS maps that they
11 provided in production.

12 No. 7 is some confidential correspondence with
13 FPL.

14 No. 8 is confidential PGS Hamlet contracts for
15 Fenney.

16 No. 9 is confidential SSGC construction
17 documents produced in March 25th, 2019.

18 10 is confidential The Villages growth map.

19 11 is confidential PGS permit documents that
20 they provided in response to discovery.

21 No. 12 is simply called Fenney problems, which
22 is some email and other supporting documentation.

23 SSGC Exhibit 13 is the Brian Hudson letter to
24 the Sumter County manager.

25 SSGC Exhibit 14 is a Villages map as of

1 May 2018.

2 SSGC Exhibit 15 is some confidential McCabe
3 economic matrix. Only the first page of that is
4 confidential.

5 No. 16 is a Florida PSC natural gas utility
6 map, and there is a website reference which is
7 where that's from.

8 And No. 17 is some confidential PGS Ocala
9 system overview map that was provided by PGS to us.

10 And No. 18 are some County Road 470
11 construction documents regarding some of the
12 construction by PGS in that area. So we would move
13 all of those into the record.

14 THE COURT: All right. Mr. Moyle, I take it
15 Leesburg has no --

16 MR. MOYLE: No objection.

17 THE COURT: All right. Mr. Brown?

18 MR. BROWN: No objection.

19 THE COURT: All right. Without objection,
20 then, South Sumter Exhibits 1 through 18 are
21 received in evidence.

22 (Whereupon, SSGC Exhibit Nos. 1-18 were
23 received into evidence.)

24 THE COURT: What I think I will do with these
25 confidential exhibits when I transmit them back to

1 the Public Service Commission, I will have them in
2 some sort -- in probably a big manila envelope, or
3 something like that, marked confidential, and then
4 it will be up to the PSC staff to figure out if
5 they want to put them in red folders or not.

6 MR. SELF: Your Honor, we have two notebooks
7 with all of them. They are integrated together. I
8 can give those to the court reporter.

9 THE COURT: No, I will take them.

10 MR. SELF: Okay.

11 THE COURT: So you have folders just with 1
12 through 18?

13 MR. SELF: Yes, sir.

14 THE COURT: All right. I will take them.

15 Thank you, sir. Who's next?

16 MR. MOYLE: I can go.

17 THE COURT: All right.

18 MR. MOYLE: So here is a book for you.

19 THE COURT: All right. So is this all of your
20 exhibits?

21 MR. MOYLE: It is.

22 THE COURT: Are there any of these that have
23 no objection?

24 MR. MOYLE: I was just going to go through
25 them.

1 THE COURT: Perfect. All right.

2 MR. MOYLE: The first exhibit that's objected
3 to, the first one -- would you prefer I just go
4 through and tell you what they are?

5 THE COURT: Why don't you tell me the ones
6 that have no objection, and then I will receive
7 those in evidence, and the other ones can come in
8 through whatever sponsoring witness you have.

9 MR. MOYLE: Okay. So there is no objection,
10 as I understand it, to 1, 2, 4, 5, 6, 6A, 7, but
11 there is no objection to the attachments only.

12 MR. BROWN: Yes, Your Honor, may we -- this
13 may speed things along.

14 The objection there is to the report of the
15 expert. And I think you kind of indicated where
16 you may be coming down on that, given -- our
17 objection of it is it is a hearsay. He can testify
18 to anything he wants to testify to, but our
19 objection is to the report coming in.

20 THE COURT: All right. Well, as I look at the
21 Rules of Civil Procedure that have been adopted in
22 the Uniform Rules, it says a deposition of an
23 expert can be used for any purpose, and I --
24 experts or parties -- and I typically take a fairly
25 broad view of that.

1 So I recognize that the experts may have
2 testified. If that's your only objection, then I
3 will tip you off now that I am going to probably
4 receive it in evidence.

5 MR. BROWN: I was going to make it for the
6 record now, and we could just dispose of that --
7 those particular exhibits where the issue is solely
8 the expert report.

9 THE COURT: All right.

10 MR. MOYLE: Your Honor --

11 THE COURT: If you are going to maintain the
12 objection, then I am not going to bring it in now.

13 MR. BROWN: Okay.

14 THE COURT: This is kind of just for anything
15 that everybody agrees can come in, I will bring it
16 into evidence. If you are going to maintain the
17 objection as to hearsay on the expert report, I
18 will just withhold ruling on its admissibility at
19 this point. Like I said, I will tip you off, I am
20 probably going to be receiving it in evidence at
21 some point.

22 MR. BROWN: I understand.

23 MR. MOYLE: I think Mr. Brown has not objected
24 to the attachments to the report.

25 MR. BROWN: Correct.

1 MR. MOYLE: I think we will deal with it all
2 at once.

3 THE COURT: Deal with it all at once.

4 MR. MOYLE: Okay. They don't object to 8.
5 No. 9 is another expert report of Mr. Dismukes, and
6 it's the -- I think it's the same issue there. So
7 we will just deal with that, I guess, when
8 Mr. Dismukes takes the stand.

9 THE COURT: Okay.

10 MR. MOYLE: And they do not object to 10, 11,
11 12, 16 and then 19 through 18 -- I am sorry, 19
12 through 28 they do not object to.

13 THE COURT: Through 28?

14 MR. MOYLE: Right.

15 THE COURT: Okay.

16 MR. MOYLE: So the ones that, in my notes, say
17 are open that we need to deal with, are Leesburg
18 Exhibits 3, 7, 9, 13, 14, 15, 17 and 18.

19 THE COURT: All right. And then I have City's
20 29 through 45, some of which have no objection Xs
21 on them. Are those ones you are intending to
22 introduce, or are you going to hold off on those?

23 MR. MOYLE: We were probably going to wait
24 until the end, they are deposition transcripts, and
25 see how the evidence goes.

1 THE COURT: All right. That's fine.

2 All right. Mr. Brown, any objection to City
3 Exhibits 1, 2, 4, 5, 6, 6A, 8, 10, 11, 12, 16, and
4 19 through 28?

5 MR. BROWN: No objection, Your Honor.

6 THE COURT: All right. Mr. Self, Mr. Wharton,
7 any objection to those?

8 MR. SELF: No objection, Your Honor.

9 THE COURT: All right. So without objection,
10 those exhibits as listed are received in evidence.

11 (Whereupon, Leesburg Exhibit Nos. 1, 2, 4, 5,
12 6, 6A, 8, 10-12, 16 & 19-28 were received into
13 evidence.)

14 THE COURT: All right. Mr. Brown.

15 MR. BROWN: Your Honor, I have also got --
16 this is a copy of all of our exhibits.

17 THE COURT: Okay.

18 MR. BROWN: This is objected to and unobjected
19 to, correct.

20 THE COURT: All right.

21 MR. BROWN: So the unobjected to are numbers
22 2, 4, 5, 6, 7, 8, 12, 13, 16, 19, 31, 32, 44, 45,
23 49, and then 71, 72, 73, 74, 75 and 76.

24 And then we also have the depositions that we
25 talked about in our last hearing about those that

1 are going to be submitted.

2 THE COURT: Okay. All right. So, Mr. Moyle,
3 Mr. Self, any objection to Peoples Gas Exhibits No.
4 2, 4, 5, 6, 7, 8, 12, 13, 16, 19, 31, 32, 44, 45,
5 46, 49 and 71 through 76 being received in
6 evidence?

7 MR. SELF: No objection from SSGC, but we
8 would note for the record that some of the SSGC
9 answers to interrogatories were designated as
10 confidential in our response.

11 MR. BROWN: Your Honor, yes, there is a couple
12 others that were confidential.

13 THE COURT: All right. Well, if someone will
14 just let me know before the end of the hearing
15 which ones I should designate as confidential. And
16 like I said, I will segregate those somehow in my
17 transmittal of the record to indicate which
18 exhibits.

19 All right. Mr. Moyle, any objection?

20 MR. MOYLE: No objection.

21 THE COURT: All right. So without objection,
22 Peoples Gas exhibits as I just listed them off are
23 received in evidence.

24 (Whereupon, PGS Exhibit Nos. 2, 4-8, 12-13,
25 16, 19, 31-32, 44-46, 49 & 71-76 were received into

1 evidence.)

2 MR. BROWN: Your Honor, I can tell you the
3 confidential ones on ours.

4 THE COURT: All right.

5 MR. BROWN: 8 was confidential.

6 Did you guys designate the joint trench
7 agreement as confidential? I can't remember. I
8 thought I heard that it was.

9 MR. SELF: With Fenney -- for Fenney?

10 MR. BROWN: Yes.

11 MR. SELF: No, that's not confidential.

12 MR. BROWN: Okay. Then -- okay, 8 and 71,
13 certain interrogatory answers are confidential.

14 THE COURT: All right.

15 MR. BROWN: In addition, portions of the
16 deposition of -- there is a volume of Brian
17 Hudson's deposition that is the confidential
18 portion, and it's a separate volume.

19 THE COURT: All right. Which exhibit -- is
20 that one of the ones that's entered?

21 MR. BROWN: That is number -- hold on.
22 That's -- yeah, I forgot to list it when I
23 mentioned those earlier, but it's 77, 78, 79 and 80
24 are the four depositions which we wish to introduce
25 that we talked about in our last hearing.

1 THE COURT: All right.

2 MR. MOYLE: Do you want to handle those now or
3 later? I think there is one that we had a
4 discussion on.

5 THE COURT: Yeah.

6 MR. MOYLE: So unfortunately, both parties had
7 safety experts who have had health issues. Mr.
8 Howe was the safety expert that he listed in
9 rebuttal to a safety expert Mr. McGee that we had.
10 Both of them are in a similar position in that they
11 were deposed, and we would contend on
12 unavailability of the witness given the health
13 issue. I can get into details, but I don't think I
14 prefer not to.

15 THE COURT: It would be a HIPAA violation, so
16 I don't need that level of detail.

17 MR. MOYLE: I don't want to do that.

18 So we would ask that if we are going to do the
19 depositions admitted with exhibits, that we also admit
20 Mr. McGee's, because his witness, Mr. Howe, was
21 complete rebuttal on safety expert that we had
22 McGee, so --

23 THE COURT: Why don't we do this, maybe at
24 lunch, you guys can come up with your list of
25 other -- I don't mind -- I don't have any objection

1 to 77 through 80, I think it was, but if you could
2 give me a list of what those are, because my listen
3 ends at 76.

4 MR. BROWN: I have got a copy. We did a
5 revised one.

6 MR. MOYLE: You want us to talk about it over
7 lunch?

8 THE COURT: Yeah, if we can.

9 MR. BROWN: Your Honor, here is a copy. It
10 goes to 80 with all of the list.

11 THE COURT: All right.

12 MR. KRUPPENBACHER: Judge, are you ordering me
13 to have lunch with Mr. Moyle?

14 THE COURT: Yes, I am. It's an unenforceable
15 order, but you are on your own.

16 All right. So 77 is Hudson, Howe, Minner and
17 Rogers.

18 All right. I will work this while I am at
19 lunch, and then we will figure out the
20 admissibility on those when we get back.

21 All right. With that, then we are ready to
22 start taking some evidence and hearing from some
23 witnesses.

24 Mr. Brown, who do you have?

25 MR. KRUPPENBACHER: Your Honor, could I have

1 one minute to talk to Mr. Brown?

2 THE COURT: You bet.

3 MR. KRUPPENBACHER: Your Honor, we are going
4 to call, at this time, the President of Peoples
5 Gas, Mr. Szelistowski.

6 THE COURT: All right.

7 MR. KRUPPENBACHER: Your Honor, may I stand
8 over there?

9 THE COURT: Absolutely. Some people like to
10 walk and pace, and some people like to sit. It's
11 at your discretion, however you like to present
12 your case, it's not going to bother me.

13 MR. KRUPPENBACHER: I generally walk on cross
14 but stand on direct.

15 MR. WHARTON: The only thing I would ask,
16 Judge, during openings, this table doesn't really
17 see the demonstratives. If there is a way to tilt
18 them a tiny bit?

19 THE COURT: I can see them pretty well.

20 MR. WHARTON: Yeah, maybe if that's --That
21 will work.

22 THE COURT: Raise your right hand, please.

23 Whereupon,

24 THOMAS J. SZELISTOWSKI

25 was called as a witness, having been first duly sworn to

1 speak the truth, the whole truth, and nothing but the
2 truth, was examined and testified as follows:

3 THE COURT: Your full name, please.

4 THE WITNESS: Thomas J. Szelistowski.

5 THE COURT: Please have a seat.

6 Would you spell your name, please?

7 THE WITNESS: S-Z-E-L-I-S-T-O-W-S-K-I.

8 MR. KRUPPENBACHER: Your Honor, for the
9 benefit of the record, would it be all right if all
10 the lawyers refer to them him as T.J.?

11 THE COURT: That's fine.

12 DIRECT EXAMINATION

13 BY MR. KRUPPENBACHER:

14 Q T.J., would you please tell the Court your
15 educational background?

16 A Sure. High school in St. Petersburg, Florida.
17 Graduated from high school. Went to Georgia Institute
18 of Technology for Engineering. Graduated with a
19 Bachelor of Electrical Engineering from Georgia Tech in
20 1983. I also have a Master's degree in Business
21 Administration from the University of Tampa.

22 Q And would you provide chronologically your
23 employment background for the benefit of the Court?

24 A I started with Tampa Electric in the
25 cooperative education as I went to college. I started

1 in 1978. Seven different co-op assignments at Tampa
2 Electric. I graduated in 1983, started as an engineer.
3 Went from there to engineering management, operation
4 management. I did spend some time in labor relations in
5 our HR department, regulatory affairs, and then moved to
6 the gas company in -- about three years ago.

7 Q What is your position at Peoples Gas?

8 A I am the President of Peoples Gas Company --
9 Peoples Gas System.

10 Q And what are your responsibilities as
11 President?

12 A So I have responsibility for the entire
13 operation, including safety, employees, customer,
14 customer care, operation, maintenance of the gas system.

15 Q And what is the size of Peoples Gas?

16 A We have about 600 full-time employees, about
17 that same number of construction contract crews, or
18 employees. We serve about 390,000 customers across the
19 state of Florida.

20 Q Why were you brought to Peoples Gas in your
21 current position?

22 A I was brought to Peoples Gas actually in the
23 spring of 2016 as the Vice-President of Operations, and
24 then promoted to the President of Peoples Gas in the
25 fall of 2016.

1 I was brought over to Peoples Gas because
2 Emera was in the process of buying TECO, and Peoples Gas
3 is a part TECO, TECO Energy, and they wanted to have
4 more emphasis -- more directed emphasis on the gas
5 company, everything from safety and compliance to the
6 operation.

7 Q Since you have become President of Peoples
8 Gas, could you tell the Court what awards the company
9 has won during the last three years?

10 A Sure. For the last three years, we have been
11 awarded by our customers, as measured through JD Power,
12 top and residential overall customer satisfaction for
13 those three years. So that would be the top of the
14 midsize utilities, gas utilities in the south.

15 In addition, we actually -- that's what the
16 award goes -- is designated as. We actually did have
17 the top score in the nation in those three years as
18 well.

19 In addition, we've recently been awarded a
20 safety achievement award from the American Gas
21 Association for gas for our individual employee safety
22 for 2018. That was awarded earlier this year.

23 Last year, we were awarded by Cogent
24 Enterprises, which is another research marketing firm,
25 as the most trusted utility in the United States.

1 Q Now, the area that the Court is going to be
2 looking at as it relates to the agreement in the
3 territorial dispute is within what division of Peoples?

4 A The Ocala Division.

5 Q And has the Ocala Division been cited at all
6 during your tenure for any safety issues by the State of
7 Florida?

8 A In the last three years, there have been no
9 citations or violations from the Florida Public Service
10 Commission, either from a construction standpoint or an
11 operation and maintenance standpoint.

12 Q This has been admitted into evidence as our
13 exhibit Petitioner's No. 5. Do you recognize where the
14 lines owned by Peoples are placed?

15 A I do.

16 Q Could you point to those -- well, I will point
17 to them.

18 Down here, running down State Road 468?

19 A Yes, that's correct.

20 Q And flipping over to State Road 501?

21 A 301.

22 Q 301. And did those lines exist and in place
23 installed by Peoples prior to Leesburg and South Sumter
24 Gas ever entering into an agreement for service to this
25 area?

1 A Yes. Those lines were put in -- we began the
2 construction from State Road 44 down through to Coleman
3 in the spring of 2016, and so all those lines were
4 placed by about January 2017.

5 Q I want to clarify one point. The entity known
6 as South Sumter Gas Company has not, prior to this
7 agreement, operated any gas operations in Florida; is
8 that correct?

9 A Not to my knowledge, no.

10 MR. MOYLE: Object to the form. It assumes --
11 he can ask if they operated.

12 THE COURT: Overruled.

13 Hang on a second. So you started construction
14 from State Road 44 when?

15 THE WITNESS: In May or so of 2016.

16 THE COURT: And it was completed?

17 THE WITNESS: Right around the first of
18 January 2017.

19 THE COURT: All right. Completed to the
20 terminus?

21 THE WITNESS: No, I am sorry, Your Honor, to
22 the Coleman area. And then we proceeded to build
23 this later, in 2017, down to a customer off of 470.
24 The first section was to serve a customer right in
25 this area right south of Coleman.

1 THE COURT: All right.

2 BY MR. KRUPPENBACHER:

3 Q T.J., are you knowledgeable about how the gas
4 industry in Florida decides to install lines and where
5 to provide service?

6 A I am.

7 Q Please explain how the industry -- well, let
8 me back up.

9 Does Peoples follow an industry approach to
10 installing lines and deciding where to install them?

11 A I believe all the utilities generally follow
12 the same type of procedures when they install lines.
13 It's generally for -- it could be for an anchor
14 customer, where you would have a large-use customer.
15 That could be a development. That could be a large
16 single user of natural gas. And we would install lines
17 to feed those anchor customers. And then we grow our
18 system by picking up the load and serving customers
19 along that same route.

20 Another way we potentially can expand the
21 system is if we see an area of growth. While we may not
22 have a specific anchor customer, we know that an area is
23 going to develop with a lot of commercial development,
24 and we will install mains, as we refer to them,
25 distribution lines, in anticipation of that growth.

1 Q And then one of these cases, Sumter County
2 asked you to build to an industrial park, correct?

3 A That's correct.

4 Q Where is that park?

5 A It's up in this area here.

6 Q Okay. Thank you.

7 THE COURT: Hold on a second. Let me do this.
8 I like having a clean record because somebody is
9 going to be looking at this that's not me. So if
10 you could -- do you have a pen?

11 THE WITNESS: I do.

12 THE COURT: If you could just put a little X
13 and your initials next to the industrial park that
14 you just designated.

15 THE WITNESS: Okay. And so to clarify --

16 THE COURT: Hang on. So that's where he
17 designated. All right.

18 THE WITNESS: To clarify, that was for a
19 single customer, or really for an industrial park
20 that had the potential to add customers in the
21 future.

22 Initially, my understanding is when we were
23 approached by the County, we were not comfortable
24 enough to add the line ourselves because we didn't
25 see customers dedicated and potentially signed up.

1 Again, it's an expansion area, a potential area for
2 the future development in the county, and so what
3 ended up happening is the County built that line
4 and then assigned it over to Peoples Gas.

5 BY MR. KRUPPENBACHER:

6 Q T.J., when a gas company, and your company in
7 particular, extended the line from State Road 468 to the
8 terminus of State Road 301, or U.S. 301, was it
9 contemplated, as part of your analysis, that you would
10 be coming off that line to serve the areas adjacent to
11 the lines?

12 A Yes. Whenever we build a line, as I mentioned
13 before, it is in anticipation if there is going to be
14 growth in the area. And we saw this area of Sumter
15 County as a strong potential area for growth, whether
16 that would be residential or commercial, or on the west
17 side industrial as well.

18 Q And does that same answer apply for the
19 extension down to 301?

20 A It does.

21 Q Now, as President of Peoples, you authorized
22 the filing that commenced this proceeding, am I correct?

23 A I did.

24 Q Why did you authorize the filing?

25 A There were several reasons. One was we --

1 what I saw as a very blatant encroachment on an
2 established service territory of Peoples Gas.

3 The other was the model that was being used, I
4 believe, disrupted the -- what has always been a fairly
5 organized monopoly structure in terms of how utilities,
6 gas utilities have been regulated in the state by the
7 Public Service Commission. I think it actually
8 undermined the Public Service Commission's authority in
9 the way it was set up, and I think it very much
10 disrupted the orderly business of serving natural gas
11 across the state.

12 MR. WHARTON: I didn't want to interrupt the
13 response, Your Honor, but I move to strike. That's
14 the exact kind of policy testimony. Well, it's not
15 in a rule, it's not in a statute, it's not illegal,
16 but, oh, somehow this, quote, unquote, model upsets
17 the apple cart. I move to strike on the basis of
18 relevancy.

19 THE COURT: I recognize the limitations that I
20 have placed on policy. I am going to -- I am going
21 to deny the motion to strike, but to the extent
22 that this comes up with any of the parties, to the
23 extent that you believe that there is a valid
24 objection to be made on policy, please make it, and
25 I just want -- and the record will reflect, and I

1 will just sort of weigh it out.

2 We are so early in this process yet, I am not
3 sure what's policy and what's not. I am sure by
4 day five, I will have a better understanding.

5 MR. WHARTON: Thank you, Your Honor.

6 THE COURT: Feel free any time this comes up
7 with any of these discussions to make the
8 objection.

9 MR. MOYLE: To be clear, you are okay with us
10 objecting on the policy?

11 MR. KRUPPENBACHER: Not with you objecting.
12 It's okay with him objecting.

13 MR. MOYLE: Yeah, Mr. Garcia is getting on a
14 plane this afternoon, so I was kind of wondering.

15 THE COURT: Like I said, I mean --

16 MR. MOYLE: Yeah.

17 THE COURT: -- I intend to kind of treat both
18 Mr. Deason and Mr. Garcia, like I said, as almost
19 like a legislator coming in here and telling me how
20 they believe a statute should be construed because
21 of their understanding of the policy of the
22 Legislature when it was -- I'm probably going to
23 let them have a bit of a say, but I am -- the
24 weight that I give it -- and the PSC, when it gets
25 to the PSC, the PSC may give it a lot more weight

1 than I do, but my intent is to limit my decision to
2 written expressions of the position of the PSC as
3 that has come down in various cases, et cetera.

4 MR. KRUPPENBACHER: I am not going any further
5 on that, Judge.

6 THE COURT: That's okay. It gave a good segue
7 as to kind of what's pinging around my brain.

8 BY MR. KRUPPENBACHER:

9 Q T.J., when the company installed the lines
10 along 468 and into 301, is it contemplated in planning
11 for the expense and return on investment that eventually
12 there would be full utilization of those lines?

13 A The expectation is, as you install
14 infrastructure in an area, that you are going to realize
15 a return on your investment based on the things that you
16 know about the first day and the things that come up in
17 the years to come.

18 Q Does full utilization of a line and lines that
19 a company has, older lines, result in lower costs for
20 customers?

21 A Absolutely.

22 Q So in the case in question, the line you put
23 in on the 468, if this scenario occurs with South Sumter
24 Gas being the operator, your line is going to be
25 underutilized, because you won't be able to go out and

1 supply these areas; is that correct?

2 A That's correct.

3 Q And is that the same, what you just testified
4 to, there would be an under utilization on the 301 to
5 the extent they were in that area?

6 A Depending on where The Villages expands, and
7 South Sumter Gas expands, quite possibly, yes.

8 Q So if anybody expanded in this area, whether
9 it be South Sumter Gas or any other gas operator, you
10 would have underutilization if you weren't in a position
11 to be able to expand out?

12 A That's correct, it would certainly be
13 inefficient utilization in those pipelines.

14 Q You are familiar with the term territory as
15 it's used in the vernacular in the gas industry in
16 Florida, correct?

17 A I am.

18 Q How is that term used?

19 A It's the area that's served by a utility, or
20 where they have installed infrastructure and, therefore,
21 established themselves in an area to serve future load
22 in that area.

23 Q I show what we have marked as Petitioner's
24 Exhibit 1. Are you familiar with those two documents?

25 A I am sorry, the two documents, is this one or

1 two?

2 Q The resolution and the agreement.

3 A Oh, okay. I have seen both of these
4 documents, yes.

5 Q What are they?

6 A The first is a resolution from the City of
7 Leesburg authorizing and directing the Mayor and City
8 Clerk to execute a natural gas system construction
9 purchase and sale agreement with South Sumter Gas
10 Company.

11 And the other is the agreement between the
12 two, between South Sumter Gas and the City of Leesburg.

13 MR. KRUPPENBACHER: We would move for
14 admission of that exhibit, Your Honor.

15 THE COURT: I think 1 is already -- let me
16 check. No, 1 is not already in.

17 All right. Objection to PGS Exhibit 1?

18 MR. MOYLE: Your Honor, we had objected to
19 this, and part of it was we were not clear for what
20 purpose it's being offered, and so we were hoping,
21 you know, during this process to get a better
22 understanding for what purpose.

23 THE COURT: Okay.

24 MR. MOYLE: Obviously, there is some purposes
25 that may not be pertinent.

1 THE COURT: So the objection is strictly a
2 relevance objection then?

3 MR. WHARTON: We would join the objection.

4 THE COURT: All right. And I see on the list
5 it's hearsay and relevance. Is the hearsay
6 objection also being maintained?

7 MR. MOYLE: No. Just as to relevancy.

8 THE COURT: Okay.

9 MR. WHARTON: We are going to get very deeply
10 into the intricacies of this agreement when, in
11 fact, this territorial dispute should -- should --
12 whether the money is going to build a new ballpark
13 or whatever, or the things that you could get into.

14 THE COURT: I am going to recognize that there
15 are likely limitations in my jurisdiction on this.
16 I don't know at this point where they are, so I am
17 going to ahead and receive Peoples Gas Exhibit No.
18 1 into evidence over the objection. And as we get
19 to -- as we get further into this proceeding, I
20 will give it the weight --

21 MR. KRUPPENBACHER: Your Honor, if I may.

22 THE COURT: Yes, Mr. Kruppenbacher.

23 MR. KRUPPENBACHER: We are asserting that it
24 is within your jurisdiction and part of this case.

25 THE COURT: I understand.

1 MR. KRUPPENBACHER: I didn't want to sit
2 silent.

3 THE COURT: I am just saying I recognize that
4 that's an issue as to what are the limitations, if
5 any, on my jurisdiction in this matter. So I mean,
6 I am not foreclosing.

7 MR. KRUPPENBACHER: I just didn't want to stay
8 silent, when Mr. Moyle speaks.

9 MR. MOYLE: Except he is giving you a good
10 reminder to speak here, which is just for the
11 purposes of the record, I think we have already set
12 forth our position with respect, you know, to the
13 agreement and --

14 THE COURT: Yeah. I was paying attention
15 during the openings, and I understand kind of --

16 MR. MOYLE: But I don't want somebody to say,
17 oh, you waived it. When it came in you didn't
18 preserve --

19 THE COURT: I am assuming at this point
20 nothing is waived.

21 MR. MOYLE: Okay.

22 THE COURT: I am going to receive evidence.
23 Like I said, I am here as a fact-finder. I am
24 going to take as much in the way of actual evidence
25 as I can get, and then I will give you guys the

1 opportunity to efficiently sort it out for me in
2 the post-hearing submittals.

3 (Whereupon, PGS Exhibit No. 1 was received
4 into evidence.)

5 BY MR. KRUPPENBACHER:

6 Q T.J., looking at Exhibit 1, the document
7 entitled Natural Gas System Construction Purchase and
8 Sale Agreement, you are familiar with that document?

9 A I have read through it, yes.

10 Q Does South Sumter Gas control the rates for
11 customers?

12 MR. WHARTON: Objection.

13 MR. MOYLE: Object.

14 MR. WHARTON: I think the agreement speaks for
15 itself, and if it doesn't, we are going into the
16 parol evidence rule, I am not sure why --

17 THE COURT: I would tend to agree that the
18 document speaks for itself. Whatever is in this
19 document is the terms of the document, so I will
20 sustain the objection.

21 MR. KRUPPENBACHER: Okay.

22 BY MR. KRUPPENBACHER:

23 Q In Florida, is the gas regulatory structure,
24 as it relates to a regulated gas company and an
25 unregulated municipal, both contemplate there is a

1 responsible entity to where a customer could file a
2 grievance, raise issues regarding rates, regarding any
3 issue; am I correct?

4 A Yes, that's correct.

5 Q And for a regulated utility, that's the PSC,
6 correct?

7 A That's correct.

8 Q And for an, what we will call unregulated
9 other than for safety, such as City of Leesburg, is the
10 elected body of the City of Leesburg, correct?

11 A I would say yes, except that there are people
12 that are served outside the City limits in this case.

13 Q That's where I am going, but for the people --

14 A Theoretically, yes.

15 Q People within the City have the power to
16 impact the regulatory body through the election process,
17 that being their elected City Council or Commission
18 members?

19 MR. WHARTON: I object and move to strike the
20 prior answers.

21 This -- not to use a bad metaphor, this is the
22 wolf in sheeps clothing. This is the testimony Mr.
23 Deason gave in his deposition about, well, you can
24 go to the PSC, but it's outside the limits. This
25 is a fact witness, a fact witness. It sounds like

1 he is quantifying it as an opinion, object on that
2 basis.

3 THE COURT: I think we are kind of getting
4 into an issue of law, Mr. Kruppenbacher.

5 MR. KRUPPENBACHER: They make a lot about
6 customer preference, except the customer is not
7 involved in this matter, neither the City nor South
8 Sumter is the customer. The customer are these
9 people who I want to point out have no regulatory
10 body to go to that they have any --

11 MR. WHARTON: I would love to cross --

12 THE COURT: Hang on. Let me just see -- I
13 assume that somewhere in the laws of the state of
14 Florida there is something that establishes that a
15 city gas utility is essentially the regulatory body
16 for city customers. And I would -- so I guess the
17 question is, is there also something in the laws of
18 the State of Florida that would establish whether
19 the city utility, the city gas utility is an
20 unregulated, for lack of a better term, entity when
21 you are dealing with customers that are outside of
22 the City limits? Is there something that
23 establishes the jurisdictional bounds of a city gas
24 utility?

25 MR. MOYLE: That's a legal question.

1 THE COURT: I am going to ask
2 Mr. Kruppenbacher first. I just want to know if
3 it's there. If it's there, then I will sustain the
4 objection on the basis it calls for a legal
5 conclusion and somebody can direct me to the
6 statute.

7 MR. KRUPPENBACHER: It's not there. I am very
8 limited on this, Judge. I am not going to spend
9 much time, it's just that --

10 MR. MOYLE: Hang on.

11 THE COURT: We have a standing objection out
12 there.

13 MR. MOYLE: Could I just be heard? I mean,
14 you kind of asked the question --

15 THE COURT: I think this is going to come up
16 more than once, so let's establish parameters now.

17 MR. MOYLE: Right. It's a legal question.
18 Can a municipality serve outside of its boundaries?
19 And the answer is, that's how it happens, yes.
20 There is nothing that precludes it. It's done all
21 over the state.

22 THE COURT: Well, it may be done all over the
23 state, but is there a statute that establishes how
24 it's done?

25 MR. WHARTON: There is a statute that

1 establishes that it can be done.

2 THE COURT: Is that chapter -- I think it's
3 what, Chapter 171?

4 MR. WHARTON: Certainly. And what's really
5 occurring here, Your Honor, is a question through
6 the testimony of a witness that, well, the
7 Legislature wasn't wise when it created the PSC for
8 regulated customers to turn to, but customers that
9 municipalities serve outside of their limits have
10 to go to a city commission whose municipal
11 boundaries they live outside of, and that was not a
12 wise thing to do.

13 THE COURT: Let me -- I will call you T.J.,
14 too.

15 THE WITNESS: Please.

16 THE COURT: You can sit and ignore this for
17 now.

18 I am looking at 171.208, which is one of the
19 statutes that was cited to me by Mr. Trierweiler at
20 the PSC. And it says -- it sort of talks about a
21 municipality being able to serve both within and
22 without its territorial boundaries; but then, as I
23 read it, it says these powers are -- it says,
24 however, this power to serve is subject to the
25 jurisdiction of the PSC to resolve territorial

1 disputes.

2 MR. WHARTON: If it wasn't, we would have
3 moved for a summary recommended order months ago,
4 but that doesn't mean --

5 THE COURT: Hang on a second.

6 MR. WHARTON: All right.

7 THE COURT: So as I read this, I am still
8 governed in this case to resolve the territorial
9 dispute brought under 366.04, regardless of what
10 the jurisdiction of City of Leesburg may or may not
11 be to regulate the utility within the bounds of its
12 service territory. Is that accurate?

13 MR. WHARTON: He is deciding whether that's
14 good or bad.

15 MR. KRUPPENBACHER: I want to think about it,
16 Judge.

17 THE COURT: Okay. All right. Well, I think
18 we all know what I am looking at, so I am going to
19 overrule the -- let me take some evidence.

20 MR. WHARTON: That's fine, Your Honor.

21 THE COURT: We are in the first 20 minutes of
22 testimony. Like I said, when I am looking at
23 relevance objections, I have so little -- I have
24 such a small base at this point to determine what's
25 relevant and what's not. I am inclined to let more

1 in than not. So I am going to overrule the
2 objection, and if you want to restate the question,
3 Mr. Kruppenbacher, I won't make the court reporter
4 go back and find it.

5 MR. MOYLE: My friend, Mr. Kruppenbacher, has
6 been a lawyer for a long time, he is doing a lot of
7 leading, maybe as a heads-up on that.

8 BY MR. KRUPPENBACHER:

9 Q T.J., the customers that The Villages are
10 currently looking into have and to serve in the future
11 by the South Sumter Gas Company are not citizens of the
12 City of Leesburg, correct?

13 A Where your hand is now, they are not. I don't
14 know what all of the future plans are for The Villages.
15 But where were you pointing, that's correct.

16 Q And those customers are not the people who
17 expressed a preference to have service by South Sumter
18 Gas, correct? It was South Sumter Gas that went and did
19 the deal with Leesburg, not those customers, correct?

20 A I am not aware of any customers that have
21 expressed a preference for South Sumter Gas to serve
22 them.

23 MR. KRUPPENBACHER: Your Honor, if I could
24 have a minute.

25 THE COURT: Sure.

1 BY MR. KRUPPENBACHER:

2 Q T.J., a couple of questions left.

3 This is Peoples Gas -- the lines form here on
4 468 and along 301 existed prior to any agreement being
5 entered into with South Sumter Gas and the City of
6 Leesburg, correct?

7 A That's correct.

8 Q I am going to flip this overlay, T.J., and on
9 the overlay --

10 MR. KRUPPENBACHER: Judge, you may want to
11 give him that map he marked for the record, the one
12 you put the red marking on.

13 THE COURT: I just want to make sure. So you
14 are showing me an overlay now. Do I have this
15 overlay? Is that -- that is exhibit -- part of
16 Exhibit 5?

17 MR. KRUPPENBACHER: Five, correct. And for
18 the record --

19 THE COURT: Exhibit 5 is a two-page document.
20 The first page is a document that's already been
21 initialed by the witness. And then the second
22 document, I guess if you hold it up to the light,
23 you could figure out the overlay, but it does
24 appear to be what's on the demonstrative exhibit.

25 So I will give you both of those, and

1 Mr. Kruppenbacher can tell you what he wants you to
2 do with them.

3 BY MR. KRUPPENBACHER:

4 Q T.J., the green lines on the overlay, are
5 those gas lines installed by this agreement between City
6 of Leesburg and South Sumter Gas Company?

7 A Yes, they are the line up 501, so the lower of
8 the two lines I know is installed, and I know they had
9 plans to install, and I believe they have installed,
10 along 468.

11 Q Would you write the number for the benefit of
12 the Court?

13 A Yes.

14 Q That line did not exist prior to this
15 agreement being entered into, correct?

16 A That's correct.

17 Q And that line was extended from 470, which is
18 down here, up to serve areas that immediately abutted
19 the 468 line that Peoples already had in place, correct?

20 A That's correct.

21 Q There is then a line that comes along State
22 Road 444 and down into the 468 paralleling, am I
23 correct, a Peoples line already in existence?

24 A That's correct.

25 Q And that line is to be used to serve customers

1 who would immediately about the Peoples Gas line in
2 existence prior to South Sumter and City of Leesburg
3 ever installing those lines?

4 MR. WHARTON: Objection. I am sorry, Judge,
5 just a lot of leading questions.

6 THE COURT: It is a little leading. If you
7 could -- I do like to hear testimony.

8 MR. KRUPPENBACHER: I go as far as I can.

9 THE COURT: I do like to hear the testimony
10 from the witness. It always impresses me more. So
11 if you can allow the witness to testify.

12 MR. KRUPPENBACHER: Okay.

13 BY MR. KRUPPENBACHER:

14 Q Was your line along the 468 ready and
15 available to serve the areas abutting that are marked
16 yellow, red, blue and pink in the exhibit?

17 A Absolutely, it was.

18 Q Okay. And did the line that the City of
19 Leesburg put in come before or after the agreement --
20 the installation of your lines?

21 A It came after the installation of our lines.

22 Q Okay. And did the line running up the 501 to
23 the same area come before or after Peoples Gas had
24 already put in a line where it was available to serve
25 that area?

1 MR. MOYLE: Objection, leading and compound.
2 I mean, ask him when did it happen.

3 THE COURT: Hang on. I will sustain the
4 objection. Although, I don't think the first part
5 was necessarily leading because I don't think it
6 was suggestive of an answer, but you did get a
7 little compound there.

8 MR. KRUPPENBACHER: You got compounding with
9 the objection.

10 BY MR. KRUPPENBACHER:

11 Q Is the line on the 501 that the respondents
12 put in, did that -- was that line put in before or after
13 Peoples Gas line was put in along the 301?

14 A You mean along 468?

15 Q Yes. I am sorry, 468.

16 A And, yes, it was put in after. So the line
17 put in by the respondent was put in significantly after,
18 about two years after we had our line established along
19 468.

20 Q So --

21 THE COURT: I am just looking at the map.

22 MR. KRUPPENBACHER: Actually, Judge, I think I
23 am done, but I want to check one thing.

24 THE COURT: Okay.

25 MR. KRUPPENBACHER: No further questions.

1 THE COURT: All right. How are we going to do
2 cross? Will we start with --

3 MR. WHARTON: I would like to go first.

4 THE COURT: All right. So that will be the
5 normal course?

6 MR. WHARTON: I think so.

7 MR. MOYLE: That's right.

8 THE COURT: Okay.

9 CROSS EXAMINATION

10 BY MR. WHARTON:

11 Q Good afternoon, sir.

12 A Good morning.

13 Q Do you recall that I took your deposition on
14 December 3rd, 2018?

15 A I do.

16 Q Have you reviewed that deposition?

17 A I have.

18 Q Now, you didn't testify any about there being
19 any stranded facilities, or underutilization of
20 facilities in that deposition, did you?

21 A I answered the questions that were asked, and
22 I don't believe I was asked.

23 MR. KRUPPENBACHER: Your Honor, I object. The
24 question wasn't asked when they deposed him.

25 THE COURT: Well, I think that's what he is

1 suggesting at this point. So this is going to
2 be --

3 MR. KRUPPENBACHER: Relevancy --

4 THE COURT: Hang on a second. If it's going
5 to be impeachment, I assume he will show me some
6 inconsistent statement. If there is not an
7 inconsistent statement, there is not.

8 BY MR. WHARTON:

9 Q Were you there when Mr. Wall was testified --
10 when Mr. Wall testified at deposition?

11 A I was not.

12 Q Have you read Mr. Wall's deposition?

13 A I have not.

14 Q Are you aware that other PGS personnel have
15 testified in depositions in this case that none of the
16 lines you have testified about were built with The
17 Villages in mind?

18 A Could you ask the question again, please?

19 Q Yeah. Are you aware that other PGS personnel
20 have testified in deposition that none of the mains that
21 you testified about, which may experience
22 underutilization if you don't use them to serve The
23 Villages in the future, none of those were built with
24 The Villages in mind?

25 A I am not aware.

1 Q All right. Now, you do agree that to the
2 extent that any line that you have testified would be
3 underutilized if PGS is not allowed to provide service
4 to The Villages in the future, you built that without
5 any established territory in The Villages, correct?

6 A Could you ask that question again?

7 Q Sure. Does PGS have any established territory
8 in any part of The Villages? Is there a PSC order
9 granting PGS any territory in The Villages?

10 A So those are two different questions. The
11 first one, absolutely, yes. We have established
12 territory within The Villages where we serve tens of
13 thousands of customers in The Villages who are current
14 residents of The Villages as well as serving, at The
15 Villages request, Fenney, which is the large blue area
16 right south of 468. And so absolutely, yes, we do have
17 territory that's been established throughout The
18 Villages.

19 Q But you -- that PGS has established
20 internally?

21 A That has been established by the construction
22 of our infrastructure.

23 Q Has it ever been recognized by the Public
24 Service Commission?

25 A There has not been a case where it's been

1 officially recognized by the Public Service Commission.

2 Q Is there an order of the PSC saying that
3 that's a part of PGS's territory?

4 A Not that I am aware of.

5 Q All right. With regard to any other part of
6 The Villages, is there such an order establishing any
7 other part of The Villages as part of the territory of
8 PGS?

9 A Not that I am aware of.

10 Q All right. So when you built these mains that
11 you now say may -- ended up being under utilized, you
12 actually did that without any PSC order recognizing that
13 as PGS territory, correct?

14 A That's correct. As you recall my earlier
15 testimony, we --

16 MR. WHARTON: Your Honor, I asked a yes or no
17 question.

18 THE COURT: Yeah, just ask the question, and
19 then I am sure on redirect --

20 BY MR. WHARTON:

21 Q So the answer to my question is yes?

22 A Yes.

23 Q And you built that without any developer
24 agreements between The Villages or any of its related
25 entities for any of those future areas, didn't you?

1 A I believe the developer agreement with The
2 Villages for Fenney was in the summer 2016.

3 Q Okay. So were all of the lines that you are
4 saying will be underutilized only used to provide
5 service to Fenney?

6 A No.

7 Q All right. Then what about any areas outside
8 of Fenney? When you built those lines and you oversized
9 them and testified now they will be underutilized, did
10 you have any developer agreements to serve any areas of
11 The Villages outside of Fenney?

12 A So I would not characterize it as oversized.
13 We size our infrastructure for anticipated and future
14 load so that we are only -- we are only disturbing the
15 ground and the right-of-way once. So we oftentimes will
16 put in a larger pipe than is necessary for the initial
17 customers served because we anticipate growth in the
18 future, and we anticipated potential growth both from
19 The Villages as well as from other customers.

20 Q Well, thank you for that.

21 When you sized those facilities thusly, did
22 you have any developer agreements with The Villages for
23 any areas outside of Fenney?

24 A We did not.

25 Q And did you have any kind of a verbal deal or

1 a handshake deal with The Villages for any areas outside
2 of Fenney?

3 A Not to my knowledge.

4 Q And were you aware at that time that The
5 Villages had already developed tens of thousands of
6 homes without gas?

7 A I don't know the exact count, so I don't -- I
8 don't know the count.

9 Q But you decided to build those lines anyway at
10 the sizes that you built them?

11 A That's correct.

12 Q All right. Do you have -- is the Leesburg
13 exhibit book up there, sir?

14 MR. WHARTON: Do you know if it is, Jon?

15 MR. MOYLE: It is.

16 THE WITNESS: It is not.

17 MR. MOYLE: Well, the judge has a copy.

18 THE COURT: It's right here.

19 THE WITNESS: Now it is.

20 MR. MOYLE: We have an extra copy.

21 THE COURT: I'll take that one back.

22 BY MR. WHARTON:

23 Q Take a look at, if you will, at Leesburg
24 Exhibit 12.

25 Now, you mentioned PGS's ability to serve, and

1 you talked specifically about one of the reasons you
2 were hired was to help address the safety record of the
3 company; is that right?

4 A I believe what I said was I was brought in to
5 PGS to have a more intense focus on all parts of the
6 operation, including compliance.

7 Q And safety is a big part of that?

8 A That's correct.

9 Q Okay. Are you familiar with this exhibit?

10 A I am.

11 Q And will you identify it for the record?

12 MR. KRUPPENBACHER: Your Honor, at this point,
13 I want to object. Your predecessor specifically
14 said during hearing we were not going to relitigate
15 the consent matter.

16 Now, if it's simply to admit the order, I have
17 no issue with it. But we did not prepare to
18 relitigate it, and it appears they may be trying to
19 go down the road to relitigate it now.

20 THE COURT: Mr. Wharton, this is a matter that
21 dealt with some complaint, I take it, on safety
22 issues with regard to --

23 MR. WHARTON: It is, in which the Commission
24 levied the biggest penalty in history. But I --

25 THE COURT: Hang on a second. I think the

1 more fundamental question is, other than this
2 witness saying, you know, that he was brought in to
3 Peoples to talk about safety, I haven't really seen
4 anything in what I consider his direct examination
5 that dealt with safety. So how does this tie into
6 his exam? I mean, I guess he did -- I mean, I
7 guess he talked about safety in words.

8 MR. WHARTON: He talked about the safety and
9 how many complaints the Ocala Division had had.

10 THE COURT: All right. I am going to overrule
11 the objection for now, but keep the thought in
12 mind, and I will give a little latitude.

13 MR. WHARTON: All right.

14 THE COURT: Having not been privy to the
15 agreement unless -- was it reduced to writing?

16 MR. KRUPPENBACHER: Judge, he orally said it
17 during the hearing that he was not going to
18 relitigate.

19 THE COURT: I will listen to a little bit for
20 now.

21 MR. WHARTON: I disagree with that.

22 THE COURT: The agreement says what it says.
23 This is probably one that speaks for itself if
24 there is something in here, the PSC is usually
25 pretty --

1 MR. WHARTON: We will leave it that way,
2 Judge.

3 THE COURT: It's already in evidence.

4 MR. WHARTON: We will argue in the PRO.

5 MR. BROWN: It's not in evidence?

6 MR. WHARTON: It has been objected to.

7 MR. MOYLE: I don't think so.

8 MR. BROWN: Am I right?

9 THE COURT: I just looked at my list, and I
10 showed City 12 as being admitted.

11 MR. BROWN: All right.

12 MR. MOYLE: Plus it's an order, right?

13 THE COURT: Yeah, it was admitted without
14 objection. So I think this will say what it says,
15 and obviously I would have taken official
16 recognition, but it is in evidence and I will give
17 it the weight that it warrants.

18 BY MR. WHARTON:

19 Q Sir, do you know anything about the settlement
20 between PGS and the City of Clearwater that occurred in
21 the '90s?

22 A I do not, other than I know one exists.

23 Q Okay. Do you recall whether, in that
24 particular case, that PGS ultimately settled that
25 dispute with Clearwater by agreeing to allow Clearwater

1 to serve --

2 MR. KRUPPENBACHER: Your Honor, I am going to
3 object to the relevancy. This --

4 THE COURT: Well, I think he already said he
5 doesn't know anything about the order other than it
6 exists, so I think that's as much as you are going
7 to realistically get from this witness.

8 BY MR. WHARTON:

9 Q All right. Let me ask you this, then.

10 You had testified some about the City of
11 Leesburg serving outside of its municipal limits. Are
12 you aware, as we sit here today, whether PGS has ever
13 entered into a settlement agreement that agreed that a
14 municipality could serve outside of its City limits
15 adjacent to a PGS service area?

16 A I don't know where the exact demarcation is
17 with the agreement of City of Clearwater.

18 Q So the answer to my question is you are not
19 aware?

20 A I don't know where that demarcation is.

21 Q I understand.

22 Now, do you recall that -- well, strike that.

23 The original petition PGS filed in this case
24 had a map attached to it of the area that PGS asserted
25 was its service territory, correct?

1 A Yes, I believe it did.

2 Q Okay. And do you remember telling me in
3 deposition that that map was only created a few weeks
4 before the litigation started?

5 A Yes.

6 Q All right. PGS didn't actually have any maps
7 or internal documents or long-term strategic plans
8 depicting these area that are in dispute in this case as
9 part of its service territory, did they, prior to the
10 filing of the petition?

11 A We had drawings that showed the projects, or
12 potential projects in the area. I don't know that I
13 would refer to that as a strategic plan, but we did have
14 projects where we reviewed projects for the construction
15 of our lines in areas, and so we had drawings that
16 showed that back in 2016.

17 Q But did you have maps or drawings depicting
18 these areas as part of PGS service areas -- that's my
19 question -- prior to filing the petition?

20 A Again, we don't -- we establish our territory
21 as we add infrastructure, and so I would say, yes, we
22 didn't show explicit limits of territory, because that's
23 not what we do. What we do is, as we expand the system,
24 we serve load along that new infrastructure without
25 necessarily ever demarcating, unless there has been a

1 historical agreement with another utility on where there
2 might be a territorial line.

3 Q Isn't it true that you told me in your
4 deposition that there might be other maps depicting the
5 same areas as PGS service area as the exhibit to the
6 petition, but that you were not aware of any at that
7 time?

8 A You would have to refer me specifically to
9 what part -- I don't --

10 Q Let's do that.

11 THE COURT: Hang on. Mr. Kruppenbacher, don't
12 show the witness anything at this point.

13 MR. KRUPPENBACHER: He is going to question
14 him regarding his deposition.

15 THE COURT: I think that's what Mr. Self is
16 looking for.

17 BY MR. WHARTON:

18 Q So you have got a copy, sir?

19 THE COURT: Are you okay with him looking at
20 the copy of the deposition?

21 MR. WHARTON: That's all we've got, too. In
22 this age of electronic, it's really changing having
23 the Gold Seal original. You are lucky if you
24 didn't get stuck with a mini.

25 BY MR. WHARTON:

1 Q Take a look at page 123.

2 A Okay. I am there.

3 Q All right. On page 123 -- well, in your
4 deposition of December 3rd, 2018, on page 123, line 15.

5 Question: "Okay, was that the first time
6 that, to your knowledge, that PGS had specifically
7 delineated the boundaries of its service area in this
8 particular region? I am using that phrase loosely. I
9 mean, what's depicted on the map that's Exhibit E to
10 Deposition Exhibit 2."

11 Answer: "Certainly the first time this map
12 was created. I don't know if there is other times we
13 have established a map that showed what we believed is a
14 service territory. This is the first time I have been
15 involved with, so I am not aware of any of it."

16 Do you stand by that territory -- do you stand
17 by that testimony?

18 A I do, consistent with what I said before which
19 is we establish -- when we establish territory by
20 putting in infrastructure, and we generally do not show
21 a demarcation line.

22 Q Okay. But you don't -- but, again, you do
23 stand by this testimony?

24 A I stand by what I said in the deposition, yes.

25 Q All right. And you didn't produce any such

1 maps or plans in response to discovery, did you?

2 A I did not.

3 Q And you haven't put any in as exhibits in this
4 case to your knowledge, have you?

5 A Could you -- when you say any --

6 Q Maps that were preexisting, showing this as
7 PGS territory. That's all I am trying to get to.

8 A I don't know that we did. No.

9 Q All right. You testified about that the way
10 that PGS likes to build its lines is that there would be
11 an anchor customer preferably when a line is extended,
12 correct?

13 A No. What I said is that was one of the ways
14 that we built lines.

15 Q Okay. You would agree that none of these
16 lines were specifically extended with future Villages
17 developments as the primary motivation?

18 A That's correct.

19 THE COURT: By these lines, you are referring
20 to the PGS blue line?

21 MR. WHARTON: Yes.

22 THE COURT: Okay.

23 BY MR. WHARTON:

24 Q And, in fact, you were trying to extend those
25 lines to get to industrial customers in most cases?

1 A That was one the considerations. Again, we
2 had served The Villages residential areas in the past,
3 as well as commercial areas. We knew that there was
4 going to be growth in this area, whether it was The
5 Villages, or whether it was another development, or
6 another real estate developer. While we didn't have
7 specific loads identified, we certainly targeted any
8 gas, potential gas customers along that route.

9 Q But you didn't actually go have a conversation
10 with The Villages before you decided to design, permit
11 and pay for those lines about whether not The Villages
12 was interested in receiving services in the future, did
13 I?

14 A I did not, but I have marketing and sales
15 folks across the state that had an ongoing relationship
16 with folks at The Villages. And our hope was that we
17 always would have The Villages see the benefit of having
18 natural gas in their homes and would come back and say,
19 we would like you to add gas, and, in fact, did.

20 Q That was your hope?

21 A Yes.

22 Q Now, isn't it true that you agree that
23 competition plays a role in natural gas?

24 A Yes.

25 Q Natural gas isn't like water, wastewater,

1 electric. It's a service that developers do not have to
2 put in, correct?

3 A That's correct. It's the developers.

4 Q And you would also agree that in order to
5 provide natural gas service on a central basis to a
6 development, you need the consent and acquiescence of
7 the developer?

8 A If it's going to go in at the beginning of the
9 construction, that would be the case, that they
10 generally -- that developers generally control the roads
11 at that point. And obviously when you are building the
12 homes, it's much less expensive for customers if gas
13 facilities are put in at the homes, and appliances put
14 in the homes initially when the home is built rather
15 than after a neighborhood has been established.

16 Q That's what you refer to as retrofitting,
17 which would be very expensive, right, after-the-fact?

18 A Yeah, I wouldn't call it retrofitting, but,
19 yeah, that's fair.

20 Q Okay. And you agree that in the future,
21 growth of The Villages, the people you are going to have
22 to deal with to provide natural gas services is the
23 developer of The Villages itself. You would need
24 developer agreements, you would need easements?

25 A I am sorry, could you reask that?

1 Q Yeah. You would agree that in the future
2 areas for growth in The Villages, it is The Villages
3 developer that you would need to deal with in order to
4 put in natural gas?

5 A For the initial installation, if it's being
6 done in construction with the agreement in construction,
7 yes, I agree.

8 Q Have you -- has PGS ever retrofitted -- again,
9 you don't like that word. Let me rephrase.

10 Has PGS ever put in any natural gas service
11 into The Villages at any period after the construction
12 had been completed?

13 A I don't know.

14 MR. WHARTON: That's all we have, Judge.

15 THE COURT: All right.

16 MR. MOYLE: Your Honor, what's your pleasure
17 with respect to -- I think it's noon.

18 THE COURT: I would like to finish up this
19 witness.

20 MR. MOYLE: Okay. All right.

21 CROSS EXAMINATION

22 BY MR. MOYLE:

23 Q Good morning --

24 A Good morning.

25 Q -- T.J.

1 A Jon.

2 Q Just a couple of things I want to just make
3 sure the record is clear on.

4 There is no territorial agreement that you
5 have that relates to Sumter County, is that correct?

6 A I don't believe there are any territorial
7 agreements for our company within Sumter County.

8 Q And you would agree there is a difference when
9 the PSC is looking at cases at whether or not there is a
10 territorial agreement is a big fact and a big factor,
11 correct?

12 A Yes, I would say that's true.

13 Q And if there is not a territorial agreement,
14 companies are able to compete a little more broadly, all
15 things being equal, correct?

16 A Yeah. I am not sure if I would use the term
17 compete. I know we covered this in my deposition in
18 terms of what I consider competition for the gas
19 business, and I was asked about competition. I see
20 competition for the gas business being competition with
21 electric companies, competition with fuel oil companies,
22 competition with gasoline. When I think about --

23 Q And also with --

24 MR. KRUPPENBACHER: Wait, let him finish.

25 THE WITNESS: And when I think about other gas

1 companies. So the partnership is performed for
2 South Sumter Gas and Leesburg, I think about that a
3 little differently in that the PSC has jurisdiction
4 over territories for utilities. And so it's a
5 monopoly versus competition the way you would think
6 about, again, competition with another source of
7 energy or, you know, a Wal-Mart and a Target.

8 BY MR. MOYLE:

9 Q So that was a long answer and we did talk
10 about it in the deposition. I think you also agreed
11 that regulated natural gas companies compete for
12 customers, do they not?

13 A There is the potential for generally large
14 industrial customers in an unserved area, that that is a
15 possibility, yes.

16 Q So that would be a yes to the question?

17 A Yes.

18 Q And with respect the role that you play with
19 the company, you are the President, as you told the
20 Court, Peoples Gas. And who is your direct report to?

21 A Who do I report to?

22 Q Yeah, who do you report to?

23 A I report to a board of directors in Tampa that
24 is headquartered in Tampa, Scott Balfour is the CEO of
25 Emera. He is my direct -- if you are looking for my

1 boss, he is my boss. He is also the Chairman of that
2 board.

3 Q And the way it's set up is you have the
4 company, you have a local board that's an advisory
5 board, but the hard line report, PGS is a subsidiary
6 company of Emera, correct?

7 A Down several layers, but yes.

8 Q And Emera is traded on the Toronto Stock
9 Exchange, is that right?

10 A Yes.

11 Q And headquartered in Nova Scotia?

12 A Yes, Halifax.

13 Q All right. And as President, I assume that
14 you review Emera documents that set forth strategic
15 objectives for the parent company, is that fair, for
16 annual reports, things like that?

17 A I have looked at annual reports. I have
18 reviewed some documents. It's kind of a broad brush
19 that you have painted, so you would have to say
20 specifically have I looked at this or this, but I do
21 look at, obviously, Emera documents.

22 Q Sure. And you mentioned annual reports.

23 Are you aware that Emera, in their most recent
24 annual report, has indicated to investors that they are
25 looking to grow six percent of their rate base growth in

1 2021 would be driven by Florida investments?

2 MR. KRUPPENBACHER: Your Honor, I am going to
3 object, one, to the relevance of this issue; but I
4 am also going to object because it appears Mr.
5 Moyle is trying to take your order from going to
6 lunch to going to dinner, and I really don't want
7 to wait until then.

8 THE COURT: I am curious as to where this ties
9 into anything I heard on direct testimony.

10 MR. MOYLE: Okay. Well, he talked about his
11 duties and responsibilities and the business
12 objectives. And part of our position is that what
13 is really going on here is, is that is something
14 that's being pushed by the corporate parent,
15 consistent with what their annual reports say about
16 how we are going to get Florida companies to
17 grow --

18 THE COURT: I think we had some general
19 discussion about who he works for, but I didn't
20 hear anything of this nature in the direct
21 examination, so I am going to sustain the objection
22 as being beyond the scope of direct.

23 MR. MOYLE: I am going to just put this
24 exhibit up. This is the map that my client
25 submitted. It's admitted as Exhibit 2, Your Honor.

1 MR. BROWN: That's actually not. That's our
2 map.

3 MR. KRUPPENBACHER: You can use it, Jon.

4 THE COURT: I was going to say, that looks
5 like Exhibit 6.

6 MR. MOYLE: Okay. This is 2.

7 BY MR. MOYLE:

8 Q Is this map more current than the map that you
9 were referring to in your direct testimony?

10 MR. KRUPPENBACHER: Excuse me, Your Honor, but
11 could he define what he means by more current,
12 because I don't know what you mean by that.

13 THE COURT: Yeah. You want to that a bit?

14 BY MR. MOYLE:

15 Q The map you were looking at doesn't have a
16 line on 470, correct?

17 A I thought I interrupted you.

18 Q No, let's maybe do it -- well, this doesn't
19 have a line on 470, this being the original map you were
20 looking at?

21 A That's correct.

22 Q So when did the 470 line come into being?

23 A Over approximately the last six months.

24 Q And was that line constructed while this
25 litigation was pending with the Public Service

1 Commission?

2 A Yes.

3 Q And you are aware that my client has taken the
4 position that it serves the Coleman prison, and the
5 American Cement plant is right next door, and it's
6 better positioned and closer to serve it?

7 MR. KRUPPENBACHER: Your Honor, I will object.
8 There is another proceeding regarding that line,
9 and so your attempts to try that case in this case,
10 I object to. It's not relevant to even what the
11 judge said earlier about he was interested in that
12 territory.

13 THE COURT: All right. Let me not get too
14 much into law and speaking objections, but I am
15 really -- I mean, frankly, I see where you are
16 going, because I see this line. But I am looking
17 at the area that is up on County Road 468 and the
18 line, you know, in the area of Fenney. And if
19 there is another proceeding going on, or if there
20 is a dispute as to Coleman and American Cement, I
21 think that's for a different time and place.

22 MR. MOYLE: And that's okay, but with respect
23 to, you know, credibility and the relevancy with
24 respect to how they expand, you know, that once you
25 have a system in place, the closest person should

1 serve, I think that is all fair game.

2 THE COURT: I am going to disagree with you,
3 Mr. Moyle. I am sorry, I am going to sustain the
4 objection.

5 If there is another proceeding going on,
6 perhaps I will be fortunate enough to get that one
7 too, but until I do, I am going to limit what I
8 hear about that.

9 MR. MOYLE: I renew my request to take a lunch
10 break.

11 THE COURT: Ask Mr. Wharton, sometimes I go
12 without lunch.

13 BY MR. MOYLE:

14 Q You keep up with regulatory matters for your
15 company, is that right?

16 A I am aware of many of the regulatory matters.
17 I wouldn't say I am up to speed on all the regulatory
18 matters.

19 Q Can you tell the judge what your current
20 return on equity is for PGS?

21 A It's --

22 MR. KRUPPENBACHER: Your Honor, I object. Now
23 we are getting -- we stipulated to things. We are
24 getting well beyond what's relevant to this
25 particular issue.

1 THE COURT: Well, I think, again, I don't
2 recall hearing anything on direct that would tie
3 into that testimony to make it appropriate for
4 cross, so I sustain the objection.

5 BY MR. MOYLE:

6 Q Maybe I can try it this way. Is a part of
7 what your duties and responsibilities are to make sure
8 the company is profitable?

9 A On measured -- I would say yes, that are
10 graded and are assessed, among any other things, in
11 terms of net income on the company.

12 Q All right. And another thing you looked at is
13 customer counts, right, can you increase customer
14 counts, that's metric by which you are measured,
15 correct -- or have been measured in the past?

16 A Yes, we have had that in our corporate
17 scorecard, yes.

18 Q All right. And The Villages presents an
19 opportunity for a lot of increase in customer counts,
20 does it not?

21 A It does.

22 Q And I believe you were asked about your
23 expected ROI in your direct. Is ROI different than the
24 ROE?

25 MR. KRUPPENBACHER: I object, Your Honor. I

1 never asked him about return on investment in
2 direct.

3 MR. MOYLE: Let me come at it this way.

4 THE COURT: All right. I will sustain the
5 objection as posed. You can rephrase.

6 BY MR. MOYLE:

7 Q Okay. Your profit is regulated by the Public
8 Service Commission, is it not?

9 A Yes, it is.

10 Q And the return on equity is what does that?

11 A They monitor the return on equity, correct.

12 Q And what is your range of allowed profit as we
13 sit here today?

14 MR. KRUPPENBACHER: Your Honor, I object.
15 It's beyond what I got into on direct.

16 THE COURT: I think that's well beyond what
17 I -- anything I heard on direct, so I am going to
18 sustain the objection.

19 BY MR. MOYLE:

20 Q The return on equity is set forth in orders of
21 the Commission, is it not?

22 A It is.

23 MR. MOYLE: All right. Judge, I have a
24 confidential document I would like to talk to him
25 about.

1 THE COURT: All right.

2 MR. MOYLE: This is 16.

3 MR. BROWN: Our 16 or your 16?

4 MR. MOYLE: Our 16.

5 BY MR. MOYLE:

6 Q If you could go to 16, to the very back of 16.

7 A There is nothing.

8 THE COURT: Mr. Szelistowski, we had --

9 THE WITNESS: There is nothing in 16.

10 THE COURT: All right. So this is a
11 confidential document, and I would ask -- and you
12 may -- you may have to talk about it, you know, but
13 to the extent that you can be less descriptive in
14 your testimony.

15 THE WITNESS: Okay.

16 THE COURT: I am going to hand you my copy.
17 Just make sure I get that back.

18 MR. MOYLE: Judge, I am only going to ask him
19 about one page. That's it, so I will just get that
20 back from you.

21 THE COURT: All right. I will tell you what,
22 if you want to give me that back and you can look
23 at this.

24 MR. MOYLE: It should be the last page.

25 THE COURT: So for purposes of the next

1 reviewing tribunal, this is City Exhibit 16, page
2 seven.

3 MR. MOYLE: It's the very last document.

4 BY MR. MOYLE:

5 Q All right. So I am going to show you what's
6 been marked as Exhibit 16, and I would ask you to go to
7 the last page. Do you have that in front of you?

8 A I believe this is the same page.

9 Q Okay. And what is the document entitled?

10 A PGS Construction Project.

11 Q All right, and this is in evidence.

12 There is a number of things that are listed on
13 this document, are there not, with respect to activity
14 of PGS in the Sumter County area?

15 A There is quite a bit of information on here,
16 yes.

17 Q Okay. And a lot of this stuff on here has
18 already taken place, has it not?

19 A It's very hard to read the details of the
20 document, but as we talked before, the directional line
21 along 468 is done, the one down 301 is done. And so it
22 shows several customers, the asphalt plant.

23 Q And these construction projects, they are done
24 to help you figure out where you are going, where you
25 are going to grow in part; is that correct?

1 A This is a specific construction project
2 description document.

3 Q All right. And it shows, I think, the
4 construction of the line on 468, is that -- do you
5 consider that confidential now still? I mean, we just
6 talked about it, so I don't think you do. I mean, is
7 this document confidential? If will you just look at
8 it, it would be easier to ask you questions about it.

9 A I am not sure the reasoning behind why it was
10 marked confidential. I did not determine that it was
11 confidential, and so I -- so for me to guess why it is
12 or isn't now, and why it would change, I don't know.

13 Q All right. My understanding is that it
14 relates to stuff you have already testified about, is
15 that true?

16 A Not all of it.

17 Q With respect to the bullet points?

18 A With respect to the map, I believe that's
19 true. I don't think with respect to the figures at the
20 bottom, the dollar figures at the bottom, I don't think
21 that's true. With respect to the bullet points, some of
22 them. Some of this we have not talked about.

23 Q Okay. With respect to the numbers, how about
24 I tread gently on the numbers, and with respect to the
25 project descriptions, talk about those, if I can a

1 little more liberally, would that be all right?

2 A Okay.

3 Q Okay. All right. So this outlines there were
4 four phases in South Sumter County, correct? The first
5 phase was on 468. Just show exactly where that first
6 phase, as it ties to this document, is on the map.

7 A That would be the section from here --

8 Q So it comes from 44?

9 A Correct.

10 Q And you go south, and then you get on 468?

11 A No, actually, I take that back. Yes, this
12 area.

13 Q So just so the record is clear, you went on 44
14 down 468 to about 301, the intersection of 301; correct?

15 A That's the way it looks to me as though Phase
16 I is described.

17 Q All right. And then --

18 A The terminus isn't explicitly listed, however.

19 Q All right. And what is Phase II?

20 A That would be the gate station here.

21 Q And that's the Sabal Trail gate station?

22 A That's correct.

23 Q Okay. And the number for the Sabal Trail gate
24 station shown on the bottom. I don't want to say it out
25 loud, but is that the right number with respect to the

1 cost?

2 A I don't know.

3 Q Who would know that?

4 A Mr. Wall may have a better idea than I do.

5 Q Okay. And then Phase III, what is that? And

6 just show on the map. The fact that you are serving

7 that customer, that's not confidential, is it?

8 A And actually, I believe -- so to clarify, or
9 maybe to correct what I said, Phase I is from here to
10 here. Phase II is that gate station. Phase III is to
11 serve Anderson Columbia, which is here.

12 Q So Anderson Columbia is --

13 A Right south of Coleman.

14 Q South of Coleman.

15 A South of Coleman.

16 Q And they are big industrial?

17 A They are an asphalt plant.

18 Q And you contacted them and talked to them --

19 MR. KRUPPENBACHER: I'm going to object, Your
20 Honor. This is beyond direct.

21 THE COURT: I think I -- I will overrule.

22 THE WITNESS: I did not. Peoples Gas had been
23 in contact with that company as well as many
24 others.

25 BY MR. MOYLE:

1 Q And you solicited them as customer, you being
2 PGS?

3 A I don't know if PGS solicited them or they
4 solicited PGS.

5 Q Okay. And then the next phase, the Phase IV,
6 what is that?

7 A So that would be the section down 301 and
8 across 470, to serve American Cement.

9 Q And American Cement, are they a customer now?

10 MR. KRUPPENBACHER: Your Honor, I am going to
11 object.

12 MR. MOYLE: I will withdraw it.

13 THE COURT: He is withdrawing the question.

14 Who does this belong to?

15 BY MR. MOYLE:

16 Q Would you agree that it's a prudent business
17 practice in the natural gas business if you don't have a
18 territorial agreement to enter into a contractual
19 arrangement with a customer?

20 A We do enter into gas service agreements with
21 customers whether or not we have a territorial
22 agreement.

23 Q And you do that so that you can depend and
24 rely on that customer, is that right?

25 A That's correct.

1 Q Okay. The testimony you gave about the
2 additional capacity on the line, that that could help
3 defray costs previously. Don't -- as a matter of
4 regulatory policy, doesn't the -- when you are making a
5 decision about serving a customer, don't you run a CIAC
6 calculation to determine whether to serve a customer?

7 A For a single customer, we will often run a
8 calculation that if we don't anticipate any other load
9 along that line in the future, that that customer would
10 help pay a portion of that construction cost, yes.

11 Q And did you run CIAC calculations with respect
12 to the construction project we just talked about, all of
13 those phases?

14 A All of those phases?

15 Q Yes.

16 A I don't know specifically for any part of that
17 construction project. Again, that CIAC is generally
18 for -- it's specifically for a single customer, to look
19 at a single customer versus as we expand into an area
20 and know there is going to be multiple customers that
21 can help pay for the infrastructure in return on the
22 infrastructure.

23 Q Do you know if you ran one for Anderson
24 Columbia?

25 A I don't know.

1 Q Mr. Wall would know that?

2 A I don't know.

3 MR. MOYLE: Could have a minute, Your Honor?

4 THE COURT: Sure.

5 MR. MOYLE: I have nothing further.

6 THE COURT: All right. Mr. Kruppenbacher,
7 anything on redirect?

8 MR. KRUPPENBACHER: Yes.

9 REDIRECT EXAMINATION

10 BY MR. KRUPPENBACHER:

11 Q T.J., are territorial agreements in the gas
12 industry in Florida generally far and few between?

13 A I would say they are generally uncommon
14 compared with, say, electricity utility.

15 Q Is that because of the nature of the gas
16 industry, the way people lay the lines and then develop
17 off of it?

18 A Yes.

19 Q And you don't overdevelop one another?

20 MR. WHARTON: Objection, leading. The whole
21 answer is in the question.

22 THE COURT: Sustained. You can rephrase it.

23 MR. KRUPPENBACHER: No further questions. I
24 said no further questions, Judge.

25 THE COURT: All right. That concludes -- let

1 me ask, do any of the parties anticipate recalling
2 this witness on rebuttal or can he be excused at
3 this point?

4 MR. WHARTON: We do not, Your Honor.

5 MR. BROWN: Well, I say this, I don't think
6 so, but we will keep him secluded until -- if he is
7 back in, that will be a sign that we have decided
8 not to call him on rebuttal.

9 THE COURT: All right. So you are still in
10 the outer room, I am afraid. Actually, at this
11 point, he could probably go back to his hotel and
12 do something.

13 MR. KRUPPENBACHER: Your Honor, let the record
14 reflect Mr. Brown said T.J. couldn't leave. It
15 wasn't me.

16 THE COURT: Well, I am not excusing him from
17 the subpoena to the extent that you are here under
18 subpoena, and -- but for now, you are excused.
19 Thank you, sir.

20 All right. We are in recess for now.

21 (Lunch recess.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA R. KRICK, Professional Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 5 through 131, are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 19th day of July, 2019.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020