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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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PAGES 817 - 910

PROCEEDINGS: FINAL HEARING
BEFORE: E. GARY EARLY
Administrative Law Judge
DATE: June 27, 2019
TIME: Commenced at 9:00 a.m.
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P R O C E E D I N G S

THE COURT: All right. Would you raise your
right hand?

Whereupon,

THOMAS MCDONOUGH

was called as a witness, having been first duly sworn to
speak the truth, the whole truth, and nothing but the
truth, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: Your full name, please.

THE WITNESS: Thomas K. McDonough.

THE COURT: All right. Please be seated.

We sort of jumped right into that. Put on the
record today is day four, Thursday, June 27th,
2019, and we are proceeding with the final hearing
in Peoples Gas System versus South Sumter Gas
Company and City of Leesburg, 18-4422.

All right. Mr. Moyle -- I'm sorry. Mr.
Wharton. South Sumter's case.

MR. WHARTON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. WHARTON:

Q Sir, would you state your name for the record?

A Thomas K. McDonough.

Q All right. And by whom are you employed and

1 in what capacity?

2 A I am employed by The Villages of Lake Sumter
3 as Director of Development.

4 Q And what are the duties of your position?

5 A I oversee all contracts, draws, work
6 schedules, anything that has to do with the utilities
7 and horizontal work, which includes roads and streets,
8 street lights, landscape irrigation for commercial and
9 housing developments.

10 Q And let's just make sure the record's clear.
11 Is that a complete definition of -- for what is
12 horizontal construction?

13 A Basically, but it's a lot more involved with
14 being that we have to work with the engineers prior to
15 the start of construction. We have to establish the
16 contracts. We have to do the schedules. We have to
17 complete everything to be supportive of home
18 construction, or commercial construction.

19 Q How long have you been --

20 THE COURT: You said The Villages of Lake
21 Sumter. Is that the official name of The Villages
22 or is that a piece of The Villages?

23 THE WITNESS: That's the official name for it.

24 THE COURT: So when people say The Villages,
25 it's actually The Villages of Lake Sumter and

1 that's the entirety of the area that we saw
2 yesterday on a -- one of the maps?

3 THE WITNESS: That's what I understand.

4 THE COURT: Okay. All right.

5 BY MR. WHARTON:

6 Q How long have you been with The Villages or
7 one of its affiliated companies?

8 A Thirty-one years.

9 Q All right. And how many -- the construction
10 of how many homes have you been involved in during that
11 time?

12 A 70,000, 71,000.

13 Q All right. Describe your professional
14 experience, if you will.

15 A As far as what I've done in the --

16 Q Sure. Just go all the way back and don't
17 repeat stuff you've already said.

18 A I was born and raised in Beaver Island,
19 Michigan. Worked in my family's food store for -- while
20 I was in high school and grade school. Did a small
21 stint -- graduated from high school. Did a small stint
22 at a local university for one semester. Returned home
23 and went to work for my uncle in site construction. We
24 did some light commercial, some residential type things.
25 In the winter time worked as a logger. In the spring

1 time worked in the saw mills to produce the lumber out
2 of the materials that we cut.

3 And then in 1987 I was offered a position with
4 the, what was then called Orange Blossom Gardens, which
5 is now The Villages of Lake Sumter as a superintendent
6 for utility work, which was the water mains and the
7 curbing, roads and wire utilities. And then, as the
8 years progressed, I was moved into the position of
9 managing all of the -- we went from a -- originally had
10 all in-house personnel that did all the work. In 1989
11 they decided that we were moving at a pace that we
12 couldn't afford to continue with trying to manage all
13 the equipment and personnel and we needed to become
14 managers of subcontractors. So we started in the
15 subcontracting of all of our work in 1989.

16 And been in basically that same position since
17 that time, running the contracts, running the schedules,
18 running the engineers, landscape architects, golf course
19 architects, to make sure that every part and piece got
20 put together to complete an entire infrastructure and
21 road system that supported the residential and
22 commercial.

23 It also had, with the contracts, I was -- one
24 of my jobs was to continue with job costs, and that was
25 broken down into a lot of different entities. We have a

1 water system. We have a sewer system. We have an
2 irrigation system. We designed and construct a complete
3 cable TV system that was sold to Comcast. And then it's
4 just continue to keep those jobs and spreadsheets on
5 costs per home site, or cost per linear foot of roads,
6 so that when other projects are coming up, we have the
7 appropriate cost estimates that they can use to project
8 what's coming in the near future.

9 Q You alluded to this and -- but just as a
10 general matter, describe for the judge, if you will, the
11 pace of construction at The Villages. How would you
12 characterize it?

13 A It's very aggressive. You know, it all
14 depends on the rate of sales, but we've seen on an
15 average now from -- we have to produce, now with its
16 entirety of all the infrastructural work, 200 home sites
17 a month right now. We've seen it in cases in the past
18 where it was nearly 600 home sites per month in the
19 mid-2000s. So it's adjustable by the rate of sales, but
20 we have to be in front of it enough to -- you know, most
21 of our unit development is based on that first home
22 started and most of our development units run from 75 to
23 150 average, so we have to make sure that, you know,
24 that we complete 150, so that first home gets started
25 within that subdivision.

1 So I've only known The Villages throughout my
2 whole career, but in listening to, you know, magazines
3 and other things, we're one of the fastest-growing
4 single-site developments in the Unites States. So we
5 hear from other contractors we deal with, utility
6 companies that come in that we work with, Duke Energy,
7 Sumter Electric, TECO from time -- in the past and
8 present, and they think it's pretty absurd, but we have
9 a very good -- and it's based on communication -- with
10 all of our providers to be able to fit in and handle
11 that kind of pace. So to me it's just fairly normal.
12 To other people it seems to be very aggressive.

13 Q So how many individuals, whether they're
14 employed by The Villages or an affiliated company or
15 not, are under your responsibility and supervision on a
16 typical day?

17 A About 450.

18 Q All right. You also alluded to this, but in
19 your experience have you overseen the installation of
20 different kinds of utilities like water, wastewater,
21 cable, natural gas?

22 A I have. We do -- like I said, we designed --
23 in my office we designed and constructed a complete
24 cable TV system that's in agreement with Comcast and
25 turn it over to them. We have, in the gas, worked with

1 agreements with City of Leesburg and TECO Peoples Gas.
2 We have direct coordination with Sumter Electric, who is
3 our electric provider right now to -- for design and
4 construction. We, in the past, we've had agreements
5 with Century Link. That was a phone and internet
6 provider that we had retained contracts for. They no
7 longer work with us, but we have in the past for all of
8 our development. So, yeah, we do multiple coordination
9 with other utility companies.

10 Q I think you may have also alluded to this, but
11 so the record's clear, your experience includes working
12 with both Peoples Gas and the City of Leesburg's natural
13 gas system?

14 A Yes, it is. We developed a subdivision, about
15 2,500 units in Fruitland Park, which was in the area of
16 City of Leesburg that provided gas to our commercial
17 development within that, and we also worked with the
18 City of Leesburg on electric, and we have in the past,
19 for years, probably in the late '90s and early 2000's
20 had an extensive part of the agreement with the TECO
21 Peoples Gas to supply gas service to our commercial and
22 residential home sites north of State Road 44.

23 Q Are you the fellow at The Villages who is
24 ultimately responsible for making sure the kind of
25 elements you've been testifying about come together so

1 that the pace of construction can be maintained?

2 A Yes, I am.

3 Q As a part of the duties you've been
4 describing, do you also do things such as price,
5 infrastructure, calculating cost, track cost, things
6 like that?

7 A Yes, we do that -- spreadsheets monthly that
8 update all of our new contracts that are coming in,
9 broken down into each subsection that deals with the
10 roadways, the drainage systems, the sanitary and sewer,
11 the water, the irrigation, the survey, the geotechnical
12 testing, joint trenching, recreation trails. And we
13 keep that broke down into the subsections to come up the
14 total costs per home site, but we do that monthly and
15 it -- once we have input, the only thing that we have to
16 do is make adjustments during the course of the contract
17 if there's change orders that change the scope of the
18 work that's added to those contracts.

19 Q During the course of your duties as you've
20 described them, have you been involved in projects in
21 both residential and commercial?

22 A I have. We have postal facilities. We have
23 recreation facilities, large, small and medium. We have
24 strip centers for food stores, all kinds of restaurants,
25 banks, medical facilities, medical office complexes.

1 It's a full array of all different services to provide
2 service to the --

3 MR. WHARTON: We tender Mr. McDonough as an
4 expert on residential and commercial horizontal
5 construction.

6 MR. BROWN: No objection.

7 MR. MOYLE: No objection.

8 THE COURT: Without objection, Mr. McDonough
9 is found to meet the criteria established in 90.702
10 and is accepted as an expert as tendered.

11 MR. WHARTON: Thank you. Your Honor, may I
12 approach?

13 THE COURT: Yes, sir.

14 BY MR. WHARTON:

15 Q Okay. Let's knock down an easy one. I think
16 I -- as good as an easel. This is PGS --

17 MR. BROWN: Six.

18 BY MR. WHARTON:

19 Q Okay. Take a look at PGS No. 6, if you will,
20 Mr. McDonough. Do you recognize these areas that we've
21 been sometimes referring to with the spaghetti lines
22 that are in blue and red here?

23 A I do.

24 Q All right. What's the blue one?

25 A The blue one is The Village of Fenney where we

1 entered into the agreement with TECO Peoples Gas.

2 Q Okay. And what about these red ones?

3 A The red ones is what I refer to as Bigham
4 East, Bigham North, Bigham West. They're subdivisions
5 that are outside the Fenney and the TECO Peoples Gas.

6 Q Okay. How many homes have been constructed to
7 date in the three Bighams?

8 A To date?

9 Q To date, roughly.

10 A 2,000.

11 Q Okay. What is the total number of homes that
12 could be built in the three Bighams and in these
13 cross-hatch areas that is shown on this map?

14 A Well, part of the cross-hatch area is a
15 commercial area, but if the slash to the east -- the
16 dash to the east and the other ones, there's 4,200.

17 Q Okay. 4,200 units?

18 A Yes.

19 Q 4,200 homes?

20 A Yes.

21 THE COURT: So residentially, you're about
22 halfway built out?

23 THE WITNESS: Yes.

24 BY MR. WHARTON:

25 Q Mr. McDonough, what is the joint trench method

1 of construction?

2 A If I can go back just a little bit. Back when
3 we first started doing development, we had some really
4 serious problem with multiple wire utilities that were
5 having to construct their facilities as not necessarily
6 part of our development, but their obligation to permit
7 service to our homes, there is easements that are set up
8 for those utilities to be placed so that they're within
9 dedicated easements, or that type of work. And, you
10 know, first in took a spot, second in, try to avoid the
11 first one so they moved around a little bit. Third one
12 came in. All of a sudden we started homes and we got
13 wires up underneath houses. We've got second utility
14 and third utility cutting and doing damage to the first
15 utility in.

16 So we came up with a plan to pull in all of
17 the wire utility companies that we would provide trench
18 for them four-foot wide, four-foot deep. We did the
19 survey for them. We did -- make sure the grades were
20 prepared properly for them to construct those
21 facilities, and it also -- we did details to make sure
22 that all of those utilities had the appropriate
23 separation from one another to meet their requirements
24 by electrical set by the state or feds for separation.
25 Everybody could see where everybody was at. They

1 replaced in different lifts to make that separation
2 happen, staking in the corners so they could know where
3 to stub up their stubs to support the houses, and then
4 we backfilled -- we safed up and then we backfilled and
5 put back grade and then they came back in and did their
6 makeup of their splicing makeup so that they were ready
7 to support the houses.

8 As the time went on, we had some different
9 options with type of homes that we were offering and
10 the -- what was a fairly simple just rear-yard easements
11 and construction became necessary for zero-lot-line
12 villa types of projects that were -- would be
13 constructed only in the front yards and all the utility
14 stubs would be in the front of the home, so that -- that
15 added additional detail and width to our trenches to
16 support not only water, irrigation, sewer force mains,
17 and then we have electric, we have telephone, we have
18 cable TV, we have services running to the homes;
19 water -- irrigation, sanitary, sewer.

20 So we expanded on the trench to be able to
21 support multiple different entities and still allowed
22 them to maintain their separation by what they're
23 required to do. And everything was in plain sight.
24 Everything was placed -- if they had to go over a water
25 main, they had dirt, we had dirt. Put them at different

1 levels so that nobody had to come back in after it was
2 complete. All the stubs were there for everything to
3 support that home, and then it was simply safe out,
4 backfill and all the stubs were at the homes to support.

5 Q Within the course and scope of your duties,
6 are you personally acquainted with the provision of
7 natural gas service by PGS and The Village of Fenney?

8 A I am.

9 Q Was The Villages satisfied with the
10 performance of PGS in The Village of Fenney?

11 A We were hoping that was going to happen. We
12 had worked with them in the past and we had a very good
13 relationship with them. At some point we were doing
14 three times the amount of homes per month that we were
15 doing in Fenney, but we were somewhat surprised and we
16 started off almost immediately with problems.

17 Q Relate if you will the kind of problems that
18 were experienced with PGS and The Villages of Fenney.

19 A Well, the agreement -- there was -- we had
20 already started our work in Fenney. So we had four
21 development units that were, as far as the horizontal
22 construction, were complete prior to the agreement being
23 signed and TECO Peoples Gas coming in to start in our --
24 with us in our joint trench system and knowing they
25 still had to go back and go into the four development

1 units to provide gas service to all the homes, part of
2 the agreement was that they were guaranteed that every
3 home within The Village of Fenney would have gas service
4 and would have certain appliances that would be hooked
5 up to that gas service.

6 So we have biweekly meetings. We started
7 communication with TECO Peoples Gas immediately after
8 the -- it was signed. We brought them in. You know,
9 gave them the proper maps on what we had already
10 completed, maps on where we were going in the future for
11 them to be able to do their engineering for their gas
12 mains and services, and give them schedules on where we
13 were proceeding and at the rate that we were proceeding
14 for them to enter into the trench with us so that we
15 could complete the trench.

16 There was, you know, wording that they had
17 to -- they had to make sure that they ran at our pace
18 and if they didn't run at our pace we were -- we would
19 have to just move ahead and backfill our facilities and
20 we could charge them for the trench. We didn't do that,
21 but there was, in a couple of the first units that
22 started, that were -- we had to backfill our facilities
23 and they then had to come back in and add that onto the
24 areas that they had to complete the four units that we
25 had.

1 THE COURT: How many homes in a unit? Is that
2 a standard --

3 THE WITNESS: In the typical villa unit,
4 there's 75 average.

5 THE COURT: So you had already completed
6 roughly 300 homes --

7 THE WITNESS: Yes, sir.

8 THE COURT: -- before completing the units?

9 THE WITNESS: That's about right.

10 In the course of that, when we complete our
11 unit construction, or our villa construction, home
12 construction moves in almost immediately after we
13 complete. So they started their work. R.A.W., the
14 contactor that was working for TECO, brought in
15 folks to try to not only complete the units that
16 are behind them, but try to get caught up with our
17 joint trench schedules. They never moved in the
18 appropriate amount of people to do that. When they
19 were doing, you know, like the villa products are
20 35-foot right-of-ways, pretty much everything is
21 stacked tight, so when they went in there then they
22 started cutting our facilities with our cable TV,
23 they had problems with cutting the phone system.
24 We had sewer laterals that were being broken. We
25 had water lines that were being broken and service

1 lines to the houses were being broken. But we
2 worked through that.

3 And then they had to go back in the units
4 where we had backfilled the trench and had to
5 re-dig their facilities in, and they kind of went
6 on their own, completed a whole unit, Unit 3 and
7 Unit 2, and homes construction started and we found
8 that they were out of the easement and they were up
9 underneath homes and outside of where they had to
10 be.

11 So that set them back even further, not
12 bringing any more personnel in to try to get it put
13 back together. They had to go back and remove all
14 the lines that they had put in and start
15 readjusting and put them in the proper locations
16 that are within in the easements.

17 As we went along, they caught up on the actual
18 laying of the lines within our actual trenching,
19 but they weren't completing tie-ins, putting valves
20 on, doing a complete -- a complete job testing of
21 their facilities. So that caused us more problems
22 with -- we were having to do roads and started a
23 Fenney's project and that was giving us another
24 holdup on completing our work.

25 As the home construction started, they -- home

1 construction is -- it's a computerized system and
2 each task that -- from start to finish on a home is
3 put into the computer bank, giving so many days
4 depending on the type of home that they're trying
5 to build, so many days for the foundation, so many
6 days for the rough plumbing. So many days for
7 the -- and it's on a computer printout that all of
8 the subcontractors are hooked into. So it's a very
9 defined amount of time for every home, which people
10 were supposed to be in there, what time, and so
11 that it's a continuous pace of people completing,
12 entering into the computer they're complete, so
13 that the next subcontractor can come in and do his
14 work.

15 So they're very regimented when it comes to
16 that kind of a schedule and almost immediately we
17 were having problems with them not meeting those --
18 they're sent the computer program everyday, which
19 home sites they're supposed to be on, what they're
20 supposed to be doing when they're running the
21 services up to the house to get ready for the
22 meter.

23 So then we were starting to get complaints
24 from home construction that they were backed up.
25 They don't stop. They -- the next task comes in,

1 they got a certain amount of days they have to have
2 to meet that closing of that home. So they're not
3 flexible in any manner of anybody that can't keep
4 up with the work. They hire contractors, as I do,
5 to make sure that we don't miss closing dates for
6 homes. It's just not acceptable. That's why most
7 of us have been here as long as we have, most of
8 the guys that have been here that many years, is
9 that we do whatever it takes to get the right
10 people in place and we get our work done so that we
11 can close homes. That's the whole basis for the
12 success of The Villages.

13 So they got seriously behind. We brought up,
14 you know, biweekly meetings where the problems were
15 happening, what type of problems were happening,
16 how many home sites they were behind in running
17 services. It got up to, in one case, 150 that they
18 were behind from where they were supposed to be.
19 Of course, that caused other problems because other
20 subcontractors with grading and pouring sidewalks
21 and setting AC units, doing irrigation and in some
22 cases even the home sites were sodded prior to them
23 getting in there and getting their service lines
24 done. So it just -- it caused havoc for all of the
25 home construction guys.

1 We continued from time to time, R.A.W. would
2 send in a few more personnel on the weekends and
3 where they could pull them off of other jobs and
4 get somewhat caught up, but never to the point
5 where they were ahead of the game from day one. We
6 had made suggestions on -- so that they didn't have
7 to go and run the service back to the main, that we
8 could do -- as part of the construction we brought
9 a stub -- they could run a stub away from the main,
10 away from all the other utilities and put it in the
11 front yard of the home so that they wouldn't have
12 to come back and dig across all the other utilities
13 and make their connection to the mains.

14 They didn't -- they didn't take that in. They
15 never did that. We continued to ramp up our
16 pressure on them for maybe getting a different
17 contractor in, one that we had worked with previous.

18 That did, like I said, the mid-2000's did
19 three times the pace that they were working at.
20 That didn't happen until we were already looking
21 into different alternatives to trying to get it
22 right and look at our options and then they finally
23 moved in Hamlet Construction, who had done work
24 with us previous, and it -- but it was only service
25 to the homes. The mains were already -- we already

1 completed the mains and service to the houses and
2 Hamlet moved them out, personnel worked weekends
3 and stuff to get them caught up in a very short
4 period of time.

5 So, you know, that's when -- but that was
6 after we had already started looking into some
7 other opportunities that we could provide and allow
8 the folks the opportunity to have gas to their home
9 if they wanted.

10 BY MR. WHARTON:

11 Q How long did these problems persist?

12 A If was from the onset. It was from basically
13 day one when they came in. But we had -- you know, we
14 felt -- we had good feelings about it, but you don't
15 know until you really get into the field and you get
16 down into the dirt to figure out if they really can
17 participate in, you know, something that most people
18 aren't familiar with the pace that we run at.

19 Q Was there a certain number of months, though,
20 or how long, really, did the problems go on?

21 A I think when we started, you know, talking to
22 the guys from TECO in our meetings, eight months.

23 Q Did the performance of PGS and Fenney, as
24 you've described it, have a domino effect? In other
25 words, did it affect other downstream personnel or

1 construction activities?

2 A Oh, absolutely. That's why I indicated that
3 it not only affected us with our next process and the
4 completion of our home site development, but it
5 affected -- it began to affect the home construction,
6 so.

7 Q And, I'm sorry, Ms. McDonough, I think you
8 said this, I'm not sure I heard you, but you indicated
9 to the Judge there was a point you were a certain number
10 of home behind schedule?

11 A Yes, at one point when we met they were 150
12 services to the homes behind.

13 Q Okay. Was there a regulation station or
14 regulator station that had to be built?

15 A There was.

16 Q And was that done to the schedule and on time?

17 A It -- they got it done with just a very slight
18 holdup to the home construction. They actually supplied
19 meters. They had to have the first facilities within
20 the house and a couple of our commercial pools, and
21 heaters ready to go.

22 Q Did The Villages ever offer to PGS to take
23 over the work in order to try to make some of these
24 problems go away?

25 A I don't know that we offered to take over the

1 work. We were very insistent on them either changing
2 contractors or getting somebody with some authority to
3 get the appropriate amount of people with the contract
4 that they were held with R.A.W. to get it up to date.

5 Q Now, you're also familiar with the City of
6 Leesburg's natural gas utility?

7 A I am.

8 Q And you have some experience working with the
9 City of Leesburg's natural gas utility in The Villages?

10 A I do. As I mentioned before, I was -- it was
11 Fruitland Park. It was in Lake County. It was part of
12 their territory that they were supplying gas to. So I
13 worked with -- mainly with the electric company, but
14 then I worked with Jack and his folks on supplying
15 services to, I believe it was, six different commercial
16 entities that were within that project.

17 Q All right. And what was were experience with
18 the City of Leesburg?

19 A It was a very good experience. It was a joint
20 trench agreement. We provided the trench. We brought
21 them into our biweekly meetings so that they could
22 understand when the contractor would be providing them
23 trenches for them to get into and they were always there
24 before, had things set up before the trenches even
25 opened.

1 Q Okay. Let's talk about one more subject.
2 Explain to the Judge, if you will, all of the
3 construction-related activities that go on under the
4 agreement with the City of Leesburg? Who installs what?
5 Just explain the process.

6 A We hire a contractor to construct the
7 regulator station at the end of the high-pressure line,
8 and we construct the facilities from that point into --
9 down roadways and into our subdivisions, including all
10 the service lines and the meters and the meters set for
11 a complete -- complete system.

12 Q All right. Does Leesburg oversee that process
13 then?

14 A Leesburg is involved throughout the process.
15 We do the engineering. We've hired the engineer. We do
16 the engineering for the project. We sit down with Jack
17 and all his people and we go through to make sure that
18 they're satisfied with the firms that we're -- based on
19 our calculations and what we need to provide per home
20 and the pressures that they'd like to see at the those
21 homes.

22 So they're involved with us from day one on
23 the design. They have personnel that are on site on a
24 daily basis to watch the install of the mains, the
25 service lines, not so much everyday with the meters, but

1 they're involved on a daily basis from start to finish
2 when we do the bill of sale after all the testing and
3 the as-builts and everything are completed and turned
4 over to them.

5 Q Have you had occasion to estimate the
6 cost-per-customer per natural gas installation in the
7 areas being served by Leesburg?

8 A Yes, I have.

9 Q All right. Relate to the judge, if you will,
10 when you did that the first time. In late 2017 I was
11 asked to get together an estimate of what it would cost
12 to construct a gas system within our development units
13 to provide gas on a cost-per-house basis. I went out
14 and contacted some folks that I had worked with in the
15 utility of, you know, water sewer, all those things, and
16 he was also involved with gas systems throughout the
17 state. He had some folks that were engineers and had
18 worked with other gas providers that could --

19 MR. BROWN: Your Honor, I'm going to object at
20 this point. I think he's about to be getting into
21 what other experts in the field are -- have told
22 him about what it would cost.

23 MR. WHARTON: He's just explaining the
24 process.

25 THE COURT: Yeah. Overruled at this point.

1 But let me ask, you were referring to Jack. Who's
2 Jack? You mentioned his name a couple of times,
3 let me make sure the record's clear as to who
4 you've been talking about.

5 THE WITNESS: Oh, I'm sorry. Jack is with the
6 City of Leesburg gas company.

7 THE COURT: Do you know his last name?

8 THE WITNESS: I don't.

9 THE COURT: Okay.

10 THE WITNESS: Sorry. Sorry, Jack.

11 MR. WHARTON: Jack Rogers, would that --

12 THE WITNESS: Jack Rogers. Give me my
13 phone --

14 (Laughter.)

15 MR. BROWN: Your Honor, I'd object again. Mr.
16 Rogers was here as a witness and was never asked
17 about any of this analysis that he's done and now
18 the only way I'm going to be able to deal with it
19 is --

20 THE COURT: I'm going to hear a little bit of
21 testimony. Keep your powder dry and we'll take it
22 up when I've heard something.

23 MR. BROWN: Okay.

24 THE WITNESS: So I got together with some
25 folks that I knew that had been in the gas business

1 for quite time and we sat down and ran the numbers
2 on a -- you know, basically for one home to
3 complete a -- complete service for a house.

4 BY MR. WHARTON:

5 Q Did you consider that a conservative figure?

6 A Yes. I have tendencies to do that. I've done
7 it for when we run the numbers for our cable TV system.
8 I don't try to overestimate, but I do get conservative,
9 knowing that who I'm supplying this to is trying to cut
10 a business deal and the last thing I want to do is
11 provide them with some numbers that are too low and
12 makes for them making a bad call on a business deal.

13 Q So what was the cost per home you came up
14 with?

15 A The original cost per home is \$1,800.

16 Q That was an estimate?

17 A That was an estimate.

18 Q Did you have a later occasion to provide that
19 same calculation within the course of this litigation?

20 A I did, in late March of 2019, after we had --

21 Q Well, hang on a second. Let's talk about the
22 interrogatory, interrogatory response. Did you ever use
23 the 1,800 subsequent to your calculation in 2017?

24 A I did.

25 Q All right. How?

1 A In my testimony.

2 Q And that's fine. When you testified as a
3 representative of the corporation, you were asked about
4 your calculation?

5 A I was.

6 Q Had your calculation been provided in an
7 interrogatory response prior to that deposition?

8 A I'm not sure.

9 Q Okay. That's fine. Was your judgment that
10 that \$1,800 was a reliable estimate at the time it was
11 made?

12 A Of course.

13 Q All right. Let's -- have you recently
14 calculated the cost-per-customer based on actual
15 figures?

16 MR. BROWN: Your Honor, this is well after
17 anything that was disclosed and well after any in
18 his deposition. It's never been disclosed to us
19 previously.

20 THE COURT: Is this information that's new?

21 MR. WHARTON: Absolutely not, Your Honor. May
22 I?

23 THE COURT: Hang on a second. Go ahead.

24 MR. WHARTON: I think if --

25 THE COURT: Go ahead, Mr. Brown.

1 MR. BROWN: The numbers in his deposition and
2 in the interrogatories, what we just heard, \$1,800.
3 Now he's coming up with a new calculation and that
4 is all new.

5 THE COURT: All right. I tend to agree, but
6 I'm going to hear him out. I want you to take it
7 up on cross. Hang on a minute. I don't know what
8 the deposition says at this point. I'm going to
9 have to get that deposition. That will be your job
10 on cross examination to bring that out. If you
11 convince me that he's formed a new opinion after
12 the date of his deposition, contrary to the order
13 of prehearing instruction, I will take up a motion
14 to strike at that time, or I will discount his
15 testimony accordingly, but at this time I just
16 don't have enough information.

17 MR. BROWN: All I would say is he has already
18 said it's a new calculation. He said at the time
19 you came up with 1,800.

20 THE COURT: I've ruled on it. Let's go ahead.

21 MR. WHARTON: Your Honor, may I give you --

22 THE COURT: Let me hear some questions and
23 then you can have him flesh it out a little bit.
24 We'll sort this out.

25 BY MR. WHARTON:

1 Q All right. So have you recently calculated
2 that cost-per-customer calculation, based on actual
3 numbers?

4 A I did, in March of 2019.

5 Q All right. And why did you feel that was
6 appropriate?

7 A It was appropriate because I was asked to
8 provide an updated number for accounting and for the
9 owners of South Sumter Gas. I felt better about
10 recalculating my number to get a more-defined cost
11 because I had history in some completed areas of The
12 Villages at that time.

13 Q How many homes did you have worth of data at
14 that time?

15 A Near 1,000.

16 Q All right. And what cost-per-customer did you
17 arrive at?

18 A Just a little over 1,200. \$1,219.

19 Q All right. Do you believe this current
20 calculation is more reliable than your 2018 estimate?

21 A Absolutely.

22 Q And why do you think this calculation, which
23 was based on the actual data, differs from your
24 estimate?

25 A Well, you know, after the agreement was signed

1 I had the opportunity to start locking down some and
2 negotiate with the subcontractor that would be
3 installing, with the supply companies that were going to
4 be supplying the pipe, the people that were going to be
5 doing the service lines, the folks that were going to be
6 setting out meters. So we got down in our negotiations
7 with suppliers and contractor to, you know, get some
8 good pricing. And on the onset I'd seen, from those
9 negotiations, sometimes in the 10, 15, 20 percent
10 decrease in the numbers that I had originally offered
11 up.

12 Q Were there any other reasons that you can
13 think of as we sit here today as to why those numbers
14 might differ?

15 A I don't think so. I think it was, you know,
16 materials and suppliers and our contracted cost.

17 MR. WHARTON: Okay. That's all we have, Your
18 Honor.

19 THE COURT: Mr. Moyle.

20 CROSS EXAMINATION

21 BY MR. MOYLE:

22 Q You've been with The Villages for how many
23 years?

24 A Thirty-one.

25 Q And in those 31 years, have you ever been in a

1 proceeding like this where you had to testify to a court
2 or to a judge or a tribunal?

3 A No, I have not. So my hands are still a
4 little --

5 THE COURT: Put this on your resume. It'll
6 look great.

7 (Laughter.)

8 THE WITNESS: And on my birthday, too.

9 THE COURT: Happy birthday.

10 THE WITNESS: Thank you.

11 MR. MOYLE: That's all I have, Judge.

12 THE COURT: All right. Mr. Brown. So let's
13 start with your immediate concern. Let's talk a
14 little bit about the new numbers, where they came
15 from and when.

16 CROSS EXAMINATION

17 BY MR. BROWN:

18 Q All right. Sir, you said that they -- first
19 of all, you were asked to do this partly because of this
20 litigation?

21 A No. I was asked to do this as part of being
22 able to supply the cost numbers to our accountants and
23 to the owners and I'm sure it was the -- the lawyers
24 were able to see it, too.

25 Q Okay. And so at this time did you take the

1 actual records of what it had cost to do construction?

2 A Yes. I had our accounting system set up a few
3 different accounts codes where I could break down better
4 in smaller areas to be able to get a feel as we
5 completed. For instance, Bigham West was going to be
6 the first one completed. Broke that down into a billing
7 code where I could track and at the completion of home
8 construction in the area, then I could have better
9 costs.

10 Q So if I understand what you're saying is there
11 was no billing code at the outset, correct?

12 A Yes, there was.

13 Q Well, you said you broke down a billing code.
14 What do you mean by that?

15 A When -- before we started the work, I had
16 billing codes set up to break down into smaller areas so
17 that it could get, when as the work in the home
18 construction got completed, I had a final cost for that
19 area.

20 Q And how much billing information did you have
21 at your disposal?

22 A Is that a completed question?

23 Q No. As of November 2018, how many homes had
24 been built at that point?

25 A I'm not sure.

1 Q Well, give me an estimate. You've been
2 building the homes out there. Tell me, by November of
3 2018 when you signed the interrogatory answers that said
4 it's \$1,800 a home, tell me about the billing
5 information that you had at your disposal at that time.

6 A I had very little billing information. I
7 didn't have any -- I don't know if the homes were
8 complete in that November time frame or not.

9 Q Well --

10 THE COURT: So this number you calculated,
11 1,219, is that --

12 THE WITNESS: Yes.

13 THE COURT: -- that was solely based on Bigham
14 homes, is that correct?

15 THE WITNESS: Bigham North, East and West.

16 THE COURT: All right.

17 BY MR. BROWN:

18 Q Well -- and you're saying none of those homes
19 were built by November of 2018?

20 MR. MOYLE: Objection; asked and answered. He
21 said he didn't know.

22 THE COURT: Overruled. He didn't real give a
23 definitive answer, so you can answer.

24 THE WITNESS: I do not know how any homes were
25 constructed in November of 2018.

1 BY MR. BROWN:

2 Q Well, when you did -- when you answered your
3 interrogatories in November of 2018 and said that it was
4 an \$1,800 cost, I assumed you based that on the
5 experience you had on construction thus far, correct?

6 A I did not.

7 Q You just came up with the number out of
8 your -- out of a hat?

9 A No, it's the number that I originally had
10 estimated to cost-per-home to service.

11 Q And so you were off by a third on your
12 estimate?

13 A Basically.

14 Q Okay. And when you -- did you create a
15 spreadsheet at all that would show what these numbers
16 were?

17 A Yes.

18 Q And that's not been provided to us, has it?

19 A I don't know.

20 Q Do you have that in front of you, sir?

21 A I do.

22 Q Could I see it for the first time?

23 A John?

24 THE COURT: Yeah, if they're your notes that
25 you're relying on, he has a right to see them.

1 Let's take a quick -- what I want to do is I want
2 to take a closer look at that for five minutes.

3 (Discussion off the record.)

4 THE COURT: Mr. Brown.

5 MR. BROWN: Your Honor, I'd ask again that
6 this be stricken from the record. This is the
7 first time I've seen this is today and they've had
8 it for months.

9 MR. WHARTON: If you would allow --

10 THE COURT: I'm a little concerned.

11 MR. WHARTON: If you would allow me, Judge. I
12 don't think you will be.

13 THE COURT: All right.

14 MR. WHARTON: All right. May I proceed, Your
15 Honor?

16 THE COURT: Well, we've already -- you've
17 already proceeded and explained. You're not
18 questioning any further at this point, right?

19 MR. WHARTON: I understand. Am I responding
20 to the motion to strike?

21 THE COURT: Yes.

22 MR. WHARTON: All right. On November 15, the
23 witness was one of the corporate representatives
24 that spoke through the voice of the corporation.
25 On January 10th, the parties put in an unopposed

1 motion that modified the discovery schedule. That
2 created a deadline on January 23rd to disclose all
3 witnesses, expert and fact. That order granting
4 that unopposed motion also created a deposition
5 window for respondents, witnesses, responsive
6 opinions included. The order of prehearing
7 instructions, which was issued in October, said
8 that for depositions taken after the date of
9 disclosure, so for depositions, taken after
10 January 23rd, 2019, expert witnesses shall have
11 formulated their deposition -- their opinions by
12 the time of their deposition. That deposition has
13 never occurred.

14 I do not know why the fine lawyers for PGS did
15 not choose to depose this expert after the
16 disclosure date, but they did not. And I want to
17 point out, Judge, that we could have put anyone
18 into that spot in November, who was speaking with
19 the voice of the corporation. That was not the
20 deposition of -- but even if it was, even if they
21 had made the tactical error of deposing Mr.
22 McDonough in October of 2018, when the order said
23 that for expert witnesses, of which he was listed
24 as an expert on January 23rd, who at their
25 depositions, which occur after the disclosure date,

1 shall have their final opinions, you cannot -- that
2 he could still testify, and that was not his
3 deposition earlier, but even if it was, you cannot
4 reward for some reason not taking an expert's
5 deposition.

6 I would also point out that the Rule 1.280 of
7 the Florida Rules of Civil Procedure says a party
8 who is responding to a request for discovery with a
9 response that was completed when made --

10 THE COURT: I know, but then there's an
11 ongoing issue with regard to continuing obligation.
12 I just -- this to me seems like such a -- because I
13 know that there -- I've heard testimony that has
14 been based on the \$1,800, and I'm not suggesting
15 that there's a violation of discovery. Although,
16 if Mr. McDonough had been deposed in February of
17 2019, after the date of his disclosure, he still
18 wouldn't have this information.

19 MR. WHARTON: Then he would not be able to
20 give the opinion.

21 THE COURT: The fact that we're this late in
22 the game and this, what seems to me to be a fairly
23 critical piece of information that was known since
24 March, is just now coming out --

25 MR. WHARTON: Solely because --

1 THE COURT: -- it doesn't give me -- it does
2 give me a good bit of pause.

3 MR. WHARTON: And I understand that, Judge,
4 but solely because they chose not to take the
5 deposition. We're locking his opinion into October
6 because of a tactical decision they made.

7 THE COURT: He was a (b)(6) deponent then, and
8 he's not a (b)(6) deponent as an expert witness?

9 MR. WHARTON: Even that, it had to occur after
10 the date of disclosure.

11 THE COURT: And I recognize that, as well.
12 Here's what I'm going to do --

13 MR. MOYLE: Your Honor, could I be heard just
14 briefly?

15 THE COURT: Sure.

16 MR. MOYLE: Thank you. So slightly different.
17 I mean, the PGS had Mr. Durham up and he was
18 talking about this chart and everything and he
19 said -- I thought I recall him saying, you know,
20 based on the information I heard and, you know,
21 he -- he didn't change anything, but he was in here
22 listening to information that took place and I have
23 a maybe slightly different view. I don't know that
24 what this gentleman has put together, you know, is
25 necessarily opinion. I look at it kind of like Mr.

1 Durham doing the math --

2 THE COURT: I was about to get to that part of
3 it. This doesn't seem to be fact --

4 MR. MOYLE: Right, so --

5 THE COURT: I mean, I'm still -- I recognize
6 the lack of a specific ongoing obligation to
7 supplement discovery, but in my practice, I've
8 always -- if something this fundamental came up, I
9 would try to make sure that the other side --

10 MR. WHARTON: I will say this, though --

11 THE COURT: -- even when we're months away --

12 MR. WHARTON: I will say this, though, Judge.
13 One more thing. When Judge Alexander shut the case
14 down and these figures came out on the last day of
15 March, Judge Alexander had already written in his
16 order, discovery is closed. I was supposed to just
17 call up PGS, who had decided not to depose this
18 fellow after the deadline of disclosure and say,
19 oh, by the way. I would never do anything wrong
20 under the rules, Judge. This is exactly that way
21 it reads. They chose not to depose him.

22 THE COURT: But the discovery -- and I don't
23 recall seeing that. I'm pretty familiar with the
24 October 2nd order of prehearing instructions.

25 MR. WHARTON: Look at the Judge's order of

1 continuance of March where he said discovery is
2 closed.

3 THE COURT: Well if discovery is closed, then
4 shouldn't the development of new exhibits and
5 information be closed?

6 MR. WHARTON: I do not understand that, Your
7 Honor --

8 THE COURT: Because then there wouldn't be --
9 there wouldn't even be an ability of the petitioner
10 to get that information if the discovery was
11 closed. Like I said, I'm --

12 MR. WHARTON: Well, there wasn't an ability
13 after the deposition window closed back in March.

14 MR. BROWN: But this didn't exist then.

15 THE COURT: All right.

16 MR. WHARTON: They are benefiting from --

17 THE COURT: Hang on. Let me ponder this for a
18 bit.

19 All right. I'm going to -- I'm going to
20 reserve ruling on the motion, but I'm -- Mr. Brown,
21 I'm pretty sympathetic to your position here. I
22 may still grant it. I want to hear -- go ahead and
23 put the evidence in the record, then I'll rule on
24 it in my -- in fact, let me make sure I put that in
25 here.

1 MR. WHARTON: Should we address it in the PRO,
2 Your Honor?

3 THE COURT: Yes.

4 MR. WHARTON: I would appreciate the
5 opportunity.

6 THE COURT: In fact, I might even give you --
7 well, we'll discuss that all --

8 MR. WHARTON: That's an interesting point,
9 too.

10 THE COURT: We can have a separate memorandum.
11 I don't want you eating up a lot of your allotted
12 pages. I don't even know what the page number is
13 going to be yet. But I want to -- I want to give
14 this some thought. I'm concerned that the
15 petitioner's have kind of been, I don't like really
16 like the word blindsided, because that has an
17 implication that there was wrongdoing and I'm not
18 finding that there was anything legally incorrect.

19 MR. WHARTON: That's what depositions are for.

20 THE COURT: But given how -- given the length
21 of time that this case has been going on, that
22 seems to me to be such a fundamental piece of
23 information that probably should --

24 MR. WHARTON: That's why you take the
25 depositions of every expert.

1 THE COURT: Well, but discovery had been
2 closed, right?

3 MR. WHARTON: No. No.

4 THE COURT: This was in March.

5 MR. BROWN: This was in March.

6 MR. WHARTON: Right. And he could not have
7 done it if his deposition was taken. It's saying
8 you had to have your final opinion.

9 MR. BROWN: And so what they -- yeah --

10 THE COURT: Couldn't have his deposition taken
11 because discovery had been closed. I mean, we're
12 kind of in a big circle here.

13 MR. WHARTON: No, I don't agree with that,
14 Your Honor. If it's taken in February --

15 THE COURT: Well, I'm going to defer ruling.
16 You can both --

17 MR. WHARTON: We will.

18 THE COURT: As part of your -- what I'll
19 probably do is allow a short memorandum instead of,
20 like I said, eating up your PRO room, but if you
21 want to give me, you know, attachments or exhibits
22 to your memorandum, deposition notices, the close
23 of discovery order, whatever it is you think might
24 be applicable, but -- and some of this, regardless
25 of whether I ultimately strike anything, some of

1 this may have -- may go to weight a little bit and
2 that type of thing, but I'm going to go ahead and
3 put the evidence in the record. I'm going to
4 withhold ruling. I'm not denying your motion to
5 strike at this point, Mr. Brown. I'm going to
6 withhold and get the evidence in the record and
7 that way if I do -- regardless of what I do with
8 regard to the motion to strike, somebody will have
9 an opportunity to come in behind me and clean up my
10 mess.

11 All right. So go ahead and question the
12 witness.

13 BY MR. BROWN:

14 Q Well, let's start with this since we've been
15 talking about it, sir. If we look at this summary --

16 MR. BROWN: And does the Court have a copy of
17 this, Your Honor?

18 THE COURT: I do not.

19 MR. BROWN: Did we get one for the Court?

20 MR. WHARTON: That's just the witness' notes.

21 THE COURT: I don't know, but I think it's
22 just witness notes and it's not something listed as
23 an exhibit.

24 MR. WHARTON: Yeah.

25 THE COURT: You can have him describe it with

1 whatever degree of specificity you need.

2 BY MR. BROWN:

3 Q All right, sir. If we look on this list that
4 you have, there is nothing on there indicating the
5 number of feet of pipe that have been installed,
6 correct?

7 A That is correct.

8 Q There is nothing in there indicating the type
9 of pipe that has been installed, correct?

10 A That is correct.

11 Q There is nothing indicating the cost of any of
12 the pipe, correct?

13 A That is correct.

14 Q There is nothing indicating what the cost of
15 associated materials, such as fittings and valves and
16 other things of that nature, correct?

17 A That is correct.

18 Q There is nothing that is indicating any
19 materials that is done, correct? In terms of the actual
20 material cost -- well, except, I guess --

21 A Yes, there is.

22 Q You got one line for regulator, right?

23 A Meter cost.

24 Q You got the meter cost and you've got the
25 regulator that goes to each meter, correct?

1 A Regulator being the regulator on the end of a
2 high pressure main.

3 Q And, other than that, there is no other
4 listings of materials, correct?

5 A That is correct.

6 Q There's no other listings of labor other than
7 the labor to install a meter, correct?

8 A That is correct.

9 Q All right. Now, if we talk about who did this
10 installation, was this by Rainey?

11 A By what?

12 Q Was it done by a contractor named Rainey? Is
13 that who did most of this installation?

14 A Hamlet did a big part of it, most of it.

15 Q And didn't Rainey do a big part of it, as
16 well?

17 A No.

18 Q How many homes did Rainey put in?

19 A Rainey is the utility contractor, the work
20 contractor, for these areas.

21 Q Well, aren't they doing installation of gas
22 lines, as well?

23 A They are now.

24 Q And did they do installation of gas lines for
25 some of the areas that are described on this list?

1 A Very few.

2 Q How many is very few, do you know?

3 A Approximately 500.

4 Q So, 500. So if we talk about the total
5 here -- if we talk about Bigham North, I think you said
6 300 complete. So there's only 300 homes there, correct,
7 that are built?

8 A What was the question?

9 Q On your note, residential homes, it has the
10 home sites and then to the right it says 300 complete.
11 Do you see that?

12 A I don't have -- you have my copy.

13 Q Don't you have another copy in front of you?

14 A No.

15 THE COURT: Here. I'm going to make a couple
16 copies so everybody other than me has one.

17 BY MR. BROWN:

18 Q In fact, you've got a whole different copy
19 here. There's two copies, right?

20 A Yes.

21 Q Well, let's get both copies.

22 MR. BROWN: I'd like more time to see the
23 second one, Your Honor.

24 (Brief recess.)

25 MR. BROWN: Could I have some more time to

1 discuss the second page?

2 THE COURT: Of course. All right. We'll take
3 ten minutes so Mr. Brown can review and we'll
4 reconvene at 25 after.

5 (Brief recess.)

6 THE COURT: So, as I indicated, what I'm going
7 to do is reserve ruling on this, but one of the
8 things I think the parties need to be prepared to
9 brief me on, when it comes to that, is the fact
10 that 90.403 and my ability to exclude otherwise
11 relevant material on the basis of undue prejudice
12 and surprise, because I'm concerned about this.

13 So I'm sure there's some case law somewhere
14 that says how far that extends. I'm going to do my
15 own research on it, but I'm concerned that what is
16 probably the last day of hearing with the second or
17 third to last witness and all of a sudden I get
18 these numbers in here that are inapposite to
19 anything that I've seen to this date, and I
20 recognize the potential for prejudice to Peoples
21 Gas and -- but I also equally recognize that there
22 was no wrongdoing here on any party. I'm not
23 suggesting that there is, but I think something
24 like this that is such a fundamental change -- and
25 obviously we have expert witnesses who developed

1 expert opinion based on 1,800 bucks, to then have
2 that come in at a wildly different number on the
3 last day --

4 MR. WHARTON: May I generally --

5 THE COURT: -- hang on a minute. I am
6 concerned with the issue of prejudice and surprise.

7 MR. WHARTON: May I generally address the
8 matter?

9 THE COURT: Yeah.

10 MR. WHARTON: I do strongly feel this is a
11 door that could have been closed, but wasn't, but
12 let's forget that. These cases go on appeal
13 straight to the Supreme Court. Let's don't do
14 this. We were not going to call any other
15 witnesses. Let's stop this. Let him be deposed.
16 Find another day. Come in. Give them a rebuttal
17 witness and finish it. I strongly feel that I'm
18 right here and if I laid it out in writing for you,
19 you would see, but that --

20 THE COURT: Mr. Brown.

21 MR. BROWN: He's prejudiced us and now he
22 wants to correct it because they've come up with a
23 new number. So, we'll go forward right now. We'll
24 deal with it right now.

25 THE COURT: All right. We've got a noticed

1 hearing. I'm prepared to go forward.

2 MR. WHARTON: That's fine.

3 THE COURT: I'm sure that the Supreme Court
4 will, with no hesitation, tell me if I'm wrong on
5 that. And, frankly, I don't know, you know, at
6 this point. Like I said, I'm reserving ruling. I
7 don't know what I'm going to do, but I want to make
8 sure the parties understand that I do have concern
9 and that there are issues that probably will need
10 to be dealt with on -- in written memoranda, which
11 I will -- we'll discuss at the end.

12 Mr. Brown, you ready to go?

13 MR. BROWN: I am.

14 THE COURT: Mr. McDonough, are you ready to
15 go?

16 THE WITNESS: I am.

17 MR. BROWN: All right, sir. I'll renew my
18 objection in case Mr. Wharton or someone says I've
19 waived something, so I'll renew it again at this
20 point.

21 THE COURT: I didn't take anything as being
22 waived, I'll guarantee you.

23 MR. BROWN: And that would be in regard to
24 both pages that the witness has up there that he's
25 testifying from, because they have different

1 information on them.

2 THE COURT: And although that was not included
3 as an exhibit, if you want to offer those pages at
4 the end of his testimony, I'll accept them.

5 MR. BROWN: No, I don't want to offer them.
6 No.

7 BY MR. BROWN:

8 Q All right, sir. We were talking about
9 different materials that are not included in here --
10 well, first of all, you said this was completed by -- at
11 the end of March, March 30th, 31st, somewhere in there?

12 A In March, yeah.

13 Q I think you said late March, correct?

14 A Right.

15 Q And late March being 25th, 26th?

16 A Between the 15th and 30th.

17 Q Okay. Thank you. So let's talk about this.
18 There's nothing on here about meter loops, correct, for
19 listing equipment and materials that need to be put in
20 here? Nothing about meter loop?

21 A There is not specific. They are in there.

22 Q Is that part of the meter?

23 A That's part of the meter installation, yes.

24 Q And how do we know that based on just the
25 information in front of you? Just that you've attested

1 that that's what it is?

2 A What you have in front of you is an
3 accumulation of all the invoices that I've received to
4 date for that particular job.

5 Q Okay. Now, let's talk a little bit about the
6 number of homes that were done. I think you said before
7 we took a break that Rainey did about 500 homes. And so
8 if we look at this -- if I'm looking on one of these
9 sheets, it says 300 complete with regard to Bigham
10 North. Do you see that?

11 A I do.

12 Q And so that's all that were complete for
13 Bigham North at the time you did your analysis?

14 A That the meter was set and house was complete.

15 Q So that's a yes to my question, it's 300 on
16 Bigham North, correct?

17 A That were -- the homes were a hundred percent
18 complete, yes.

19 Q And that's what you used in making your
20 calculations, didn't you? Or did you make calculations
21 on homes that weren't a hundred percent complete?

22 A I made calculations with assumptions on homes
23 that were not complete, also.

24 Q All right. So when you did this calculation,
25 you're taking homes that are complete and you're also

1 taking homes that aren't complete, correct?

2 A That is correct.

3 Q So the homes that aren't complete don't have
4 all the cost built into them, yet, do they? Don't look
5 over to Mr. Wharton for advice. Just answer my
6 question.

7 A I thought he said something. I'm sorry. I
8 did -- the reason that I did it the way I did it is if
9 you look at Bigham West --

10 MR. BROWN: Your Honor, he's not answering my
11 question. I just need to know how he did it.

12 THE COURT: I'm not sure if he's answering or
13 not. Go ahead.

14 THE WITNESS: Okay. These price updates
15 are -- were on completed numbers, like Bigham West,
16 where it says they were near all complete. So we
17 have actual cost and I used the 300 in Bigham North
18 and then I assumed the cost-per-home, based on the
19 remainder of those.

20 BY MR. BROWN:

21 Q Okay. Well, what I'm trying to figure out is
22 the number of homes you actually had that were complete
23 that formed the basis for your analysis. And so for
24 Bigham North, it's 300, correct?

25 A That's right.

1 Q For Bigham East it's zero because there were
2 none compete, correct?

3 A Correct.

4 Q And for Bigham West, it says nearly all
5 complete. So that would roughly, let's call it, 750
6 homes, right?

7 A 780, 786, 785.

8 Q Okay. Well near all complete. We don't know
9 what that means, do we? Correct?

10 A Close to being completed.

11 Q All right. So we've got about 1,000 homes
12 roughly, close to 1,100 homes total, that you based your
13 analysis on, correct?

14 A That's correct.

15 Q And then you also took -- did you take
16 additional information from the uncompleted homes?

17 A All I did with the uncompleted homes was use
18 the cost that we have for materials and labor to
19 complete.

20 Q Well then if that's true, then Bigham East's
21 numbers should look the same as the other two, shouldn't
22 they? I mean, if you're just taking those two -- well,
23 strike that.

24 All right. So let's talk a little bit about
25 Rainey Homes, who did about half of these installations,

1 right? Half of the completed homes was done by -- I'm
2 sorry -- that the gas installations for approximately
3 half the homes were done by Rainey, correct?

4 A No.

5 Q You told me they did 500 homes of this total.

6 A They did in Bigham East, is where they began
7 their work for completed homes. They did not work in
8 March on any completed homes.

9 Q Well, in March, but were they worked before
10 March?

11 A It was about March.

12 Q So did you take the information just for the
13 completed homes that were done in March?

14 A No.

15 Q I'm confused.

16 A I took all the homes that were completed prior
17 to the March date.

18 Q Okay. And you're telling me Rainey didn't do
19 any of those homes?

20 A Rainey did not do at that time any of the
21 completed homes.

22 Q Well did they do any homes from which you took
23 your data?

24 A I don't know why it matters where I took my
25 data from. The cost for Rainey is the same as it was

1 for Hamlet.

2 Q Well, we don't know that, do we, because we
3 don't have any backup materials to do that. We're just
4 taking your word on that, right?

5 A I have invoices that prove that Rainey is
6 doing the -- all of the components of the system at the
7 same cost as Hamlet was doing.

8 Q And regardless of whatever this number is,
9 this isn't the amount that Leesburg's paying for the
10 homes, is it?

11 A I don't know what Leesburg's paying for the
12 homes.

13 Q Okay. Let's talk a little bit about Rainey.
14 Rainey is a company that used to do sprinkler irrigation
15 installations?

16 A Not that I'm aware of.

17 Q They didn't do any of that for The Villages?

18 A You said sprinkler irrigation?

19 Q Yeah. What did Rainey do? What was Rainey's
20 job before they started putting in pipe for natural gas
21 systems for The Villages?

22 A They are our general contactor that does
23 underground sewer, water, storm drain, every component
24 that we work on, as far as services to the house,
25 grading, earth moving, DRA construction.

1 THE COURT: What's DRA?

2 THE WITNESS: Drainage retention areas.

3 BY MR. BROWN:

4 Q And that's who's now doing the installation of
5 the pipe?

6 A Yes.

7 Q All right. Is this the first time Rainey's
8 ever done natural gas installations, to your knowledge,
9 doing it for The Villages?

10 A I'm not familiar with what they've done in the
11 past.

12 Q Are they a company that's owned by The
13 Villages?

14 A I don't know that -- if it's a company with
15 The Villages or not.

16 Q All right, sir.

17 MR. BROWN: Your Honor, I would renew my
18 motion at this point in time on a couple
19 different --

20 THE COURT: I'll reserve my ruling on it.

21 MR. WHARTON: And I would renew my offer.

22 BY MR. BROWN:

23 Q All right, sir. Let's talk about the
24 construction activities that were going on, on the site.
25 You would agree that, I think you testified, that

1 Peoples got on the job late, correct?

2 A No.

3 Q In Fenney. I'm talking about in Fenney.

4 A No.

5 Q That's not true?

6 A No.

7 Q I'm going to direct you to page 34 of your
8 deposition, sir. And starting at Line 2: If you could
9 just tell me what the problems were.

10 Answer: Well there was -- they just -- they
11 got in just a little late, so I believe that there were
12 four of the projects that were eliminated from the
13 agreement that I wasn't having to coordinate with
14 because we were already completed.

15 Question: When you say four projects late,
16 and those projects where The Villages did the install?

17 Answer: No, them were projects that we
18 completed the work we had, not knowing that TECO Peoples
19 Gas was going to join us in serving Fenney.

20 Question: So -- and when you say projects,
21 those are areas within the Fenney Development.

22 Answer: Yes.

23 Question: So in other words, Peoples came
24 late so they had to do a retro-install, kind of after
25 everything had already gone in.

1 Answer: Right.

2 Do you remember that testimony, sir?

3 A I do.

4 Q And are you saying that's not correct now?

5 A Well, it's exactly what I said. They came in
6 late after we had already completed some areas of Fenney
7 that were in the agreement.

8 Q And I thought that's what I just asked you.

9 A It is.

10 Q Okay. So they did -- so Peoples did come in
11 late after certain areas were complete?

12 A They weren't late by the signature on the
13 agreement from when they came in.

14 Q I understand, but you -- in terms of the
15 Fenney project that The Villages was working on, when
16 Peoples came in, there had already been installs done?

17 A No.

18 Q I thought you told me the joint trench had
19 been closed already?

20 A They had on the four projects prior to the
21 agreement being signed.

22 Q Okay. That's what I'm talking about and
23 then --

24 THE COURT: Installs of other utilities other
25 than gas?

1 THE WITNESS: Oh, yes. Yes.

2 BY MR. BROWN:

3 Q So, in other words, Peoples had to come in and
4 install the gas lines in a closed trench for the first
5 four projects?

6 A That's what the agreement said.

7 Q But I'm asking you if that's what happened.
8 You were there.

9 A Yes. They --

10 Q Okay. That's all I'm trying to get to.

11 A Okay.

12 Q And so, as a result of that, they faced the
13 situation that The Villages had tried to avoid in its
14 construction practices by having a joint trench
15 agreement, correct? Let me break it down. In other
16 words, you testified that the reason The Villages came
17 up with a joint trench agreement was because there are
18 always problems with different utilities coming at
19 different times and they were causing problems and they
20 hit each other's lines, and so the decision was made to
21 have one trench go in at the beginning and so you could
22 try to avoid those problems, correct?

23 A Correct.

24 Q All right. And so what happened with Peoples
25 having to come in late, is that they were in a situation

1 that The Villages had hoped to avoid by having a joint
2 trench, correct?

3 A Correct.

4 Q So the problems that were occurring at the
5 front end on the first four developments were things
6 that could reasonably have been expected because that's
7 the nature of coming in after the fact and putting in
8 infrastructure into a closed trench, correct?

9 A That's correct, unless you don't bring the
10 right personnel in to complete the job in a timely
11 manner.

12 Q Well I'm not talking about the completion.
13 We're going to get to that in a second. I'm talking
14 about the damages that occurred during the four segments
15 when Peoples had to come in and do a retrofit. Those
16 are the kind of things that you'd expect to happen in
17 that situation, correct?

18 A You would hope not.

19 Q I understand you hope not, but that was the
20 whole purpose of having the joint trench was The
21 Villages knew that when you have to come in after the
22 fact, it's going to cause some damage. It has the
23 potential to cause some damage, right?

24 A Agree.

25 Q Okay. And so there was nothing unusual,

1 really, about the issues that arose during the first
2 four projects on the Fenney development, correct?

3 A I would believe that they were extraordinary.

4 Q Okay. Now, I think you testified earlier
5 that -- and just so we're clear, the work's being done
6 by a contractor named R.A.W. who was working for
7 Peoples, correct?

8 A That's correct.

9 Q And so -- I think you said that R.A.W. got
10 better as they -- once we got over that first four
11 sections that you -- your testimony was that R.A.W.
12 improved and got better for a time, correct?

13 A I had said that they got better at getting the
14 main line in the trench, but not completing their work.

15 Q Okay. Well, in fact, they got better with in
16 terms of being able to meet dates, didn't they?

17 A Not completely.

18 Q Well, I didn't say completely. I said better.
19 I didn't say completely without problems. They got
20 better.

21 A They got better.

22 Q Okay. And they continued to make progress on
23 Projects 12, 11, 10, 9 and 8, correct?

24 A That's correct.

25 Q All right. And then at some point Hamlet came

1 on the scene for the last four or five units, correct?

2 A No.

3 Q Do you remember your deposition -- let me turn
4 you to Page 50, Line 14: Okay. All right. Do you know
5 approximately when Hamlet came on to the scene? Answer:
6 I don't remember exactly, but I believe it was within
7 the last four or five units. Do you recall that
8 testimony?

9 A That's right.

10 Q Okay. So it was within the last four or five
11 units, correct?

12 A Not for main line construction.

13 Q All right. But regardless of when they came
14 in, once Hamlet came in, the performance improved?

15 A The performance of the service to the homes
16 improved.

17 Q Okay. And once Hamlet came in, there weren't
18 really any significant -- there were just minor problems
19 going on at that point in time?

20 A Because of the main line construction was
21 complete.

22 Q Right, but I'm saying once Hamlet came in the
23 main line's done and they're finishing up doing the
24 homes?

25 A Correct.

1 Q And the main line was done by R.A.W.?

2 A Correct.

3 Q Okay. Now -- and then Hamlet continued to do
4 the installations on Bigham West?

5 A Yes, he did.

6 Q Or Bigham -- back to your -- I guess it would
7 be -- yeah, on Bigham West. Okay. And then the
8 problem -- and you haven't had any significant problems
9 with Hamlet doing the installations on Bigham West,
10 correct?

11 A I have not.

12 THE COURT: Did they do both main and the
13 service lines for Bigham West?

14 THE WITNESS: Main service lines, yes.

15 BY MR. BROWN:

16 Q Now, just so we're clear, you've talked a lot
17 about Leesburg. Leesburg is not doing any installations
18 on any of the Bighams, are they?

19 A They are not.

20 Q And you said that they're intimately involved.
21 That just means they're inspecting, correct?

22 A They're -- have input on designing and
23 construction and oversight, yes.

24 Q Okay. So, in other words, they say, here
25 would be a good way to design the gas system, correct?

1 A That's right.

2 Q And they have oversight because they say --
3 and they've got to do the inspections, correct?

4 A Yes.

5 Q All right. But in terms of the actual
6 construction, they're not doing anything, correct?

7 A Correct.

8 Q All right. And so you were earlier asked
9 about the fact that The Villages had had this great
10 experience with Leesburg up in the Fruitland Park
11 development. Do you remember that testimony?

12 A I do.

13 Q Okay. And, in that case, Leesburg actually
14 did the installations?

15 A That's correct.

16 Q And they signed a joint trench agreement?

17 A Don't believe we had a joint trench agreement
18 with the gas company.

19 Q All right. But, in any event, when you talk
20 about this great experience with Leesburg doing the
21 installations, that's irrelevant to the installations in
22 the Bighams because Leesburg's not doing them, correct?

23 A Correct. I don't believe I ever said they
24 were doing them.

25 Q Let me go back. I forgot one other thing

1 about your sheets here. I hate to loop back to this,
2 but there's nothing in here about commercial load, is
3 there?

4 A The commercial load is in with the overall
5 residential. I didn't break out specifically commercial
6 and residential, because they're always integrated
7 almost within the development units.

8 Q But there's different amounts of commercial in
9 each development, right?

10 A Yes.

11 Q And so the numbers aren't really at -- well,
12 strike that. I will leave it at that.

13 All right. Now, I want to direct you to
14 Exhibit 8 of our exhibits. And I don't know if you've
15 got book a up there or not. Actually, I've got it right
16 here. Sir, you've got a --

17 MR. BROWN: Judge, I hate to do this. There's
18 another note up here I haven't seen previously.

19 THE COURT: Have a look at it. See if it's
20 something you need to talk about. He gets a chance
21 to look at your notes, Mr. McDonough.

22 THE WITNESS: That's fine. Nothing in there
23 that's --

24 MR. BROWN: Well, let me -- we may need -- I
25 may need a copy so the witness can have one of

1 these.

2 THE COURT: Let me make a copy.

3 (Brief recess.)

4 BY MR. BROWN:

5 Q All right. Sir, let me direct you to Exhibit
6 8. And Exhibit 8 is a map that you marked up during
7 your deposition. Do you recall that, sir? And this is
8 confidential so I will try to speak in a way -- it's in
9 the confidential section, Your Honor, and I will try to
10 be -- I don't think I need to get into the details of
11 it -- and that map I had asked you to indicate where the
12 next Villages developments were going to go. Do you
13 recall that?

14 A I do.

15 Q And you had indicated -- and you drew on the
16 map where they were all going, correct?

17 A I don't remember it, but if that --

18 Q Well, I mean, is that -- do you recall if
19 that's what you did?

20 A I don't know that this is my handwriting on
21 here.

22 Q Well, do you see it says Exhibit 4 to your
23 deposition?

24 A Yes.

25 Q Okay. Do you see it says Confidential Exhibit

1 4 -- I'm sorry. It was Hudson Depo Exhibit 4. I think
2 4A was to your deposition.

3 MR. WHARTON: Your Honor, no matter what's
4 written on this piece of paper, I think it's
5 important that the record is clear that all of
6 these references to your deposition, meaning the
7 (b)(6) deposition.

8 THE COURT: All right.

9 MR. WHARTON: It's a distinction.

10 THE COURT: The corporate representative
11 deposition. And I do see on the exhibit label it
12 says McDonough 4A, and the date being 11-16-18.

13 BY MR. BROWN:

14 Q Okay, sir. Now, what I I'd like to know is,
15 first of all -- and you put numbers of some sort on
16 these different future developments, correct?

17 A I did.

18 Q Okay. And so if -- and on that map -- you'll
19 notice that what we've been talking about is Bigham
20 North, that on our Exhibit 6 there's a little more
21 that's been built in since the time of your deposition.
22 Do you see that?

23 A That's correct.

24 Q All right. What is -- and using your map,
25 what is the next area that -- well, what's the next area

1 that's going to be working on by The Villages or in
2 terms of building homes?

3 A It's the area of 3B.

4 Q And is that the area that's the cross-hatched
5 area here that we talked about earlier?

6 A No, that's the Bigham North. That's north of
7 the area, the difference between that map and this map.

8 Q I'm sorry. 3B?

9 A 3B and 3C.

10 Q And has construction already started in 3B and
11 3C?

12 A Home construction or site development?

13 Q Well, let's start with site development. Is
14 that going on?

15 A Yes.

16 Q And is there home construction started in 3B
17 and 3C?

18 A Yes -- not 3C. I'm sorry.

19 Q Okay. How many homes are slated to be built
20 in 3B?

21 A I don't know the exact count.

22 Q Well, you're an expert in construction. I
23 mean, you -- and you have a good idea on having a feel
24 for how much land there is and how many homes can be put
25 in there. Give me your best estimate as to how many

1 residences are going to go in 3B?

2 A 300.

3 Q And then how about 3C?

4 A About the same.

5 Q 300 each? Are they going with larger home
6 sites?

7 A No, it's the same. Pretty much the same mix
8 as what we do with other areas.

9 Q All right. And then what's the next area to
10 go in after that?

11 A This map indicated -- it's actually 6B. That
12 would be in the hashed area.

13 Q Okay. I think you said that's going to be how
14 many -- I think you said -- did you say 7,000? Am I
15 remembering correct? You said 4,200 in that area,
16 correct?

17 A 450.

18 Q Maybe I wrote it down wrong. So let me make
19 sure I understand this. How many homes are going to be
20 built totally in the three Bighams?

21 A About 3,500.

22 Q Okay. And you said it's only going to be 400
23 in all of that, or is it 4,200 in all?

24 A In the 6A part?

25 Q Yes.

1 A There is 450.

2 Q Okay.

3 A And the 5A part that is part of the hatch,
4 there's approximately 250.

5 Q Okay. And has construction started on those
6 homes?

7 A They have not.

8 Q Do you know when that's slated to begin?

9 A About 30 days from now, for site construction,
10 not home construction.

11 Q Right. I understand. Now -- and you're
12 right, and I appreciate your precision on this. So site
13 construction in this cross-hatch area is going to start
14 in 30 days, correct?

15 A We've already started some with our mass
16 grading work.

17 Q Okay. And what's the next area to get -- to
18 have homes in after that?

19 A The 5A.

20 Q And 5A is kind of off the cross-hatched area
21 somewhere, right?

22 A No, it's the lower part of the cross-hatched
23 area.

24 Q All right. And has site work started there?

25 A Mass grading has, yes.

1 Q And then how many homes are -- well, what's
2 the next area to -- I think you said -- I can't remember
3 what you said now. There's so many numbers of homes and
4 I'm not writing them down. So how many are going in
5 there?

6 A About 250.

7 Q Okay. Now, what's the next area after that
8 that's going to have homes in it?

9 A Most likely would be 5B.

10 Q All right. And has site work started on 5B?

11 A Mass grading has started, yes.

12 Q And when do you anticipate homes will start to
13 be built on that point?

14 A Probably nine months.

15 Q All right. And what's the -- how many homes
16 will go in there?

17 A Roughly 1,100.

18 Q Okay. And then let us go to -- what's the
19 next area after that?

20 A It hasn't been a hundred percent decided, but
21 most likely 5C or it could be up in the 4A area.

22 Q All right. And is 5C on this map?

23 A It is not.

24 Q Okay. Can you give me a rough estimate of
25 where that is? Let's just say is it north or south of

1 468?

2 A South and east.

3 Q So is -- okay. So it's in that general
4 vicinity of 5A and 5B?

5 A That's correct.

6 Q And how many homes are going in there?

7 A I would think that's in the thousand.

8 Q Okay. And has any mass grading or site work
9 started there?

10 A It has.

11 Q And so when do you anticipate that there will
12 be construction or homes commencing there?

13 A About a year.

14 Q All right. When's the next -- what's the next
15 area after that?

16 A That's up in the air.

17 Q Okay. So we've covered all the areas that
18 you're aware of in terms of short-term home development
19 and home building that's going to be going on?

20 A That's correct.

21 Q And really I think you've covered a time line
22 in terms of what is going to at least have construction
23 started over the next year, is that a fair statement?

24 A Well, it's -- it's close. I mean, we start
25 200 a month. You know, I'm not keeping track of all the

1 numbers. I have no idea how that works out at, but the
2 pace is -- sales is increasing now so pace of home
3 construction starts is going to increase also.

4 Q Okay. And just so we're clear, all the areas
5 we just talked about are in Sumter County, correct, on
6 your map here?

7 A Yes.

8 MR. BROWN: Your Honor, I'm done with the
9 witness. I would renew my motion, in particular
10 based on the fact that the discovery cutoff in the
11 order for the deposition of witnesses was March
12 15th and he has testified that all of this
13 information was gathered up some time after that.

14 THE COURT: I'll renew my reservation of
15 ruling and that -- the evidence is in the record at
16 this point. I'm going to give the parties an
17 opportunity to advise me as to my correct course of
18 action.

19 Mr. Wharton, anything further for this
20 witness?

21 MR. WHARTON: Yes, Your Honor.

22 THE COURT: And I have a quick question. I'm
23 just sort of counting up the numbers. You're
24 looking at roughly about 3,500 houses for the area
25 that you described? That's sort of how I had added

1 it up.

2 THE WITNESS: Yeah, we do about 5,000 homes
3 per district so that's -- yeah, that's about right.

4 THE COURT: Mr. Wharton.

5 REDIRECT EXAMINATION

6 BY MR. WHARTON:

7 Q Well, let's talk about a couple of things.
8 You had indicated that you did not want to do your
9 calculation based on actual data until you felt like you
10 had a sufficient number of homes, is that correct?

11 A That's correct.

12 MR. BROWN: That's leading, Your Honor,
13 particularly in this area.

14 THE COURT: You can ask him a little less
15 leading and just ask him what he --

16 BY MR. WHARTON:

17 Q Why didn't you do your --

18 THE COURT: I'll sustain it.

19 BY MR. WHARTON:

20 Q -- calculation of the cost-per-home at an
21 earlier time, say two or three months before that?

22 A Because I really didn't have invoicing of
23 completed areas that would give me a good indication of
24 what my -- the actual costs were.

25 Q Okay. Let's do a little bit of math. Am I

1 correct that you said that Bigham was putting in about
2 200 homes a month?

3 A Yes.

4 Q And you did your estimate at the end of March?

5 A That's correct.

6 Q So if you look at -- and there was 1,000 homes
7 when you put your information in?

8 A Approximately, yes.

9 Q If you look at 200 a month, that would mean in
10 order to build 1,000 homes and 200 a month, it would
11 go -- it would have taken about five months to do that?

12 A That's correct.

13 Q Okay. So there were very few homes built,
14 say, at the -- in November of 2018?

15 MR. BROWN: Leading, Your Honor, particularly
16 in this area.

17 THE COURT: It's a little leading. Do you
18 know -- do you have kind of a rough estimate of the
19 number of homes that were completed in November of
20 2018 at the time that interrogatories were --

21 THE WITNESS: I do not.

22 BY MR. WHARTON:

23 Q Now, Mr. Brown asked you a lot of questions
24 about things, calculations or component parts of your
25 calculations, which were not on your sheet. Do you

1 recall that?

2 A That's correct. I do.

3 Q Does your sheet reflect all of the component
4 parts that you used to put into your calculation?

5 A Yes. The -- each of the components, for
6 instance, the main line, the regulator cost, the main
7 line -- the main line cross unit and villa main line
8 cross are very specific completed paid invoices, what I
9 used to come up with those numbers.

10 Q But are there sometimes subcomponents that go
11 into those categories in order to make those totals?

12 A Oh, absolutely. Yes. There's many
13 components.

14 Q Let's take a look at an exhibit. Take a look
15 at SSGC Exhibit 9, if you will.

16 MR. WHARTON: May I approach, Your Honor?

17 MR. BROWN: Your Honor, this is beyond in
18 terms of having him go through these invoices.

19 THE COURT: All right. Well, I don't know
20 what the question is at this point. SSGC9 is in
21 SSGC9 is in evidence. So go ahead, Mr. Wharton.

22 BY MR. WHARTON:

23 Q What is SS -- what are the documents in South
24 Sumter Gas Company Exhibit 9?

25 A These are -- the first one is Hamlet, services

1 to certain home sites within courtyard villas. There's
2 documents that are as-builts of the service lines going
3 into each house, the main lines going into each house.

4 Q Let me ask a different question. Does that
5 exhibit include the documents at -- from the
6 construction of the gas lines and gas infrastructure at
7 Bigam through the end of March?

8 A It does.

9 MR. WHARTON: That's all we have, Your Honor.

10 THE COURT: Okay. Mr. Moyle, anything? I'm
11 sorry. You're -- never mind. All right.

12 MR. MOYLE: No.

13 THE COURT: And, Mr. McDonough, thank you.
14 You are excused, which is probably the best
15 birthday present you're going to get today.

16 THE WITNESS: I appreciated being here with
17 you guys.

18 MR. WHARTON: Give us five minutes to talk
19 about not calling anyone else, Your Honor.

20 THE COURT: Why don't we come back at 11:30.
21 It'll be a nice even number.

22 (Brief recess.)

23 MR. WHARTON: We rest, Your Honor.

24 THE COURT: All right. South Sumter Gas
25 Company having rested. Mr. Brown, any rebuttal on

1 part of Peoples Gas?

2 MR. BROWN: We anticipate there to be another
3 witness, but can we have five minutes just to
4 discuss that?

5 THE COURT: Sure. Take another five. We're
6 making progress, you know. You catch the ball, you
7 get a first down, you take a time-out. That's how
8 it works.

9 (Laughter.)

10 MR. BROWN: No. That's right. I think the
11 issue with Leesburg was going to be next because
12 they were going to call Mr. Moses.

13 THE COURT: Oh, you had -- that's right, but
14 you were sleeping on whether or not mister --

15 MR. BROWN: Yeah, so I think that's the issue.

16 THE COURT: On that one. So we do we have
17 another Leesburg witness?

18 MR. MOYLE: Yeah, we've slept on it. Our case
19 is still open, but we're not going to call Mr.
20 Moses, but I do want to make sure the deposition
21 of -- I think it may already be in -- TJ -- TJ is
22 in, but I don't think we gave you the --

23 THE COURT: Does TJ have a last name?

24 MR. MOYLE: I can't say it.

25 MR. BROWN: Was that on your list? He wasn't

1 on the exhibit list.

2 MR. MOYLE: Yeah, he was.

3 MR. BROWN: Was he? Oh, the all-depo. The
4 all-depo one.

5 THE COURT: Yeah, he appeared as a
6 representative of the --

7 MR. MOYLE: He's the president of --

8 THE COURT: He's an expert.

9 MR. MOYLE: No, he's the President of Peoples
10 Gas. The first guy that took the stand, first
11 witness. Just like Mr. Brown, I just want to give
12 you the depo.

13 THE COURT: All right. So we're going to
14 have -- once we go off the record and adjourn, Mr.
15 Wharton knows the drill, we're not leaving after we
16 adjourn. We've probably got 30 or 40 minutes to
17 sort through all this stuff and make sure we're
18 squared. I'm going to give everybody back whatever
19 didn't come into evidence, so I have nothing but
20 what's in evidence.

21 MR. MOYLE: So that's 28. I just wanted to --
22 if I'm resting, I wanted to make sure that was --

23 THE COURT: So you've rested. Mr. Brown, any
24 objection to -- although 28 may already --

25 MR. BROWN: Well, I mean, yes, just because

1 it's under the all-deposition. I guess I should
2 have objected to that, so.

3 THE COURT: All right.

4 MR. BROWN: Can we have five minutes, Your
5 Honor?

6 THE COURT: Yes, sir.

7 MR. BROWN: So you've rested now, too?

8 MR. MOYLE: Right.

9 THE COURT: All right. So 28 is in.

10 (Whereupon, City of Leesburg Exhibit No. 38
11 was entered into evidence.)

12 MR. WHARTON: So now the five minutes.

13 (Discussion off the record.)

14 THE COURT: Where do we stand, Mr. Brown?

15 MR. BROWN: Your Honor, I'm going to call Mr.
16 Rick Moses, Your Honor.

17 MR. MOYLE: And, Your Honor, they've rested
18 their case. I think both of us have --

19 THE COURT: It's rebuttal. They get rebuttal
20 as petitioner.

21 MR. MOYLE: I just was trying to understand
22 what they're going to rebut. I understand what
23 rebuttal is you only call them if there's something
24 you couldn't anticipate and --

25 THE COURT: Well, it's not only couldn't

1 anticipate. If it's in response to anything that's
2 put on in the other party's case-in-chief. I think
3 not having heard Mr. Moses yet, I don't know if
4 that fits or not, but we will find out.

5 Mr. Moses, can I have you raise your right
6 hand?

7 Whereupon,

8 RICHARD MOSES
9 was called as a witness, having been first duly sworn to
10 speak the truth, the whole truth, and nothing but the
11 truth, was examined and testified as follows:

12 THE WITNESS: Yes, sir.

13 THE COURT: Your full name.

14 THE WITNESS: Richard Allen Moses.

15 THE COURT: You can be seated, sir.

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q Could you state your name for the record,
19 please?

20 A Richard Allen Moses.

21 Q And what is your current job, sir?

22 A Bureau Chief of the Bureau of Safety for the
23 Florida Public Service Commission.

24 Q And what do you do as Bureau Chief for the
25 Bureau of Safety for the Public Service Commission?

1 A I'm responsible for the entire state for
2 natural gas and electric and I've also got the DOC
3 Emergency Operations Center.

4 Q When did you come to the PSC?

5 A December of 1990.

6 Q And when did you become the Bureau Chief of
7 the Bureau of Safety?

8 A April 1st, 2011.

9 Q And is -- as Bureau Chief, are you generally
10 aware of the safety capabilities of all of the natural
11 gas utilities in the State of Florida?

12 A Yes, sir.

13 Q Do you believe that from the period of
14 February 2018 until today that PGS and the City of
15 Leesburg are able to safely provide natural gas service
16 to customers in Sumter County?

17 A Yes.

18 MR. BROWN: No further questions, Your Honor.

19 THE COURT: All right.

20 MR. WHARTON: I don't --

21 THE COURT: Seemed pretty --

22 MR. MOYLE: We don't have anything either.

23 THE COURT: All right. Mr. Moses.

24 Off the record.

25 (Discussion off the record.)

1 THE COURT: Anything further on the part of
2 Peoples?

3 MR. BROWN: No, Your Honor.

4 MR. WHARTON: No, Your Honor.

5 THE COURT: So let's talk a little bit -- and
6 we can go off the record for this and I'll put it
7 on the record at the completion.

8 (Discussion off the record.)

9 THE COURT: So having concluded the
10 evidentiary portion of the proceeding, we just
11 discussed the time for submitting post-hearing
12 submittals. Peoples preferred to keep it at the
13 ten days for filing PRO's. Both the City and South
14 Sumter asked for 30. I've agreed to allow 30 days
15 for the filing of PRO's. I understand that waives
16 the time for my submitting the proposed -- the
17 recommended order beyond the 30 days from the
18 receipt of the transcript, but I typically gauge my
19 time based on the PRO's. I'll do my best to get my
20 own out in 20 days. It will be little a bit on one
21 side or the other, but it won't be anything
22 dramatic past that.

23 So 30 days from the filing of the transcript,
24 proposed recommended orders. Length of proposed
25 recommended orders will be limited to 50 pages and

1 there will be a ten-page separate memorandum with
2 regard to the information provided by Mr. McDonough
3 with regards to the cost of service is \$1,219. And
4 I have a motion it strike on that and I'll allow a
5 ten-page memorandum both either in support or
6 opposition to that due at the same time as the
7 proposed recommended orders. So, any questions as
8 to our timing?

9 All right. So I'm going to go through each of
10 the exhibits. I've already kind of done this with
11 Peoples, but I'm going to do it again, just to make
12 we're clear. So if somebody has their list and can
13 follow along and make sure I haven't neglected to
14 put anything in.

15 So, for PGS, I have Exhibits 1, 2, 4 through
16 13; 16, 19 through 21; 27, 29 through 32; 44
17 through 46; 49, 51, 71 through 80.

18 MR. BROWN: That's what we have, Your Honor.

19 THE COURT: All right. Now, the only
20 confidential documents I have for Peoples are 8 --

21 MR. BROWN: And 71, I believe.

22 THE COURT: And 71.

23 MR. BROWN: And 77, which is a portion of Mr.
24 Hudson's deposition.

25 THE COURT: All right. I didn't have that.

1 So 77, confidential. So what I'll do is that will
2 go in a separate envelope to the Commission. Don't
3 know if we have red envelopes here, but if we do --

4 MR. BROWN: We provided you red envelopes for
5 those. And I think the confidential portion of Mr.
6 Hudson's deposition is also, I think, in a red
7 envelope in the binder.

8 THE COURT: Okay. Well, if I don't have
9 enough red or I lose them, it will just say
10 confidential in big bold letters. I don't think it
11 will be too much of a stretch to pick it out.

12 All right. For the City of Leesburg, I have
13 Exhibits 1, through 6A; 8 through 12; 16.

14 MR. BROWN: Wait. We were behind the
15 eight-ball. Can we start at the top with that,
16 Your Honor?

17 THE COURT: Sure. I have 1 through 6A, none
18 of which are confidential. I have 8 through 12. I
19 don't show any of those being confidential.
20 Sixteen, which is confidential. Nineteen through
21 28, none of which are confidential. And that's it.

22 MR. MOYLE: That's right.

23 THE COURT: All right. Now, do I have these
24 other depositions? I have the deposition of Mr --
25 it says -- Szelistowski? I know I didn't get that

1 right. Sorry. Do I have the deposition
2 transcripts, 23 through 27? I know you just gave
3 me 28.

4 MS. PUTNAL: Yes, Your Honor, 23 and 26 --
5 well, hold on.

6 MR. BROWN: Yeah, I don't think -- did we
7 agree on --

8 MR. PUTNAL: I think you have through 24 in
9 the main binder for City of Leesburg. We provided
10 28 this morning, but --

11 THE COURT: Some of those, I don't know why
12 they would come in because they aren't -- for
13 instance, Mr. Moses wasn't offered as an expert. I
14 don't know how or why his deposition would
15 necessarily be in, although it's technically been
16 received in evidence by stipulation of the parties,
17 but I don't -- anything that doesn't fall within --
18 I may have a deposition in evidence, but if it
19 doesn't fall in one of the categories for me to be
20 able to use it, I don't intend to use it for any
21 purpose.

22 MR. BROWN: I think that would be true for the
23 deposition of Mr. Isaac and I'm not sure how
24 that --

25 MR. MOYLE: Could we do this? Could I just

1 send you the depositions? Do we have to do it now
2 in terms of getting you those transcripts?

3 THE COURT: You can late-file them.

4 MR. BROWN: But the one's we're late-filing
5 are not Mr. Moses or Mr. Isaac?

6 MR. MOYLE: Well, Isaac's is already in and
7 Mr. Moses, you know --

8 THE COURT: Mr. Moses is in.

9 MR. BROWN: Is it? Okay. That's fine.
10 That's fine.

11 THE COURT: But he appeared. He's not greater
12 than 100 miles away. He's not a party. He's not
13 an expert. I don't intend to use his deposition
14 for any purpose. I know -- I know PSC has filed a
15 notice of appearance, but my recollection is that's
16 not as a party. So it's kind of --

17 MR. BROWN: That's correct.

18 THE COURT: So, like I said, I'll evaluate the
19 deposition transcripts. If they don't fit the
20 category of me being able to use them, I'm not
21 going to use them, whether it's in evidence or not.
22 All right. So --

23 MR. SELF: Excuse me. Can I clarify? Is 24,
24 Ed McGee, does that include the report, McGee
25 report, as well?

1 MR. MOYLE: It does.

2 THE COURT: I believe it does.

3 MR. BROWN: Twenty-four is for all parties.
4 He's not a party.

5 MR. MOYLE: No, that was the argument we had
6 about admitting his deposition and that the safety
7 expert that we went around and around on.
8 That's --

9 THE COURT: I remember the -- I remember it.

10 MR. MOYLE: That's in.

11 MR. BROWN: Well it's not -- it was never
12 listed.

13 MR. PUTNAL: His deposition -- his exhibits
14 were included in his report.

15 THE COURT: It's listed in the prehearing
16 stipulation under the list of exhibits and there
17 wasn't any objection to it coming in at the
18 beginning of the hearing. So it's in for my
19 purposes.

20 MR. BROWN: All right. The depo, but not the
21 report --

22 MR. MOYLE: No, the report it attached to the
23 depo and it's in --

24 MR. BROWN: Oh, that's right. I do recall
25 that.

1 MR. MOYLE: That's what we had the argument
2 about.

3 THE COURT: Let me go back and look at my
4 notes and figure out what to do with it.

5 All right. So South Sumter, I have Exhibit 1
6 and 2, both of which are confidential. I have 3
7 through 6, none of which are confidential. I have
8 7 through 11, all of which are confidential. I
9 have 12 through 16, none of which are confidential.
10 Seventeen, which is confidential. Eighteen, which
11 is not confidential. And that's it.

12 MR. SELF: That's what I have.

13 THE COURT: Does that fit everybody's personal
14 notes?

15 All right. So, with that, is there anything
16 we need to take up today before we adjourn this
17 proceeding?

18 MR. WHARTON: I don't think so, Your Honor.

19 MR. MOYLE: No, Your Honor.

20 THE COURT: Well, with that, at 12:03 p.m. we
21 stand adjourned. Thank you.

22 (Whereupon, the proceedings were concluded at
23 12:03 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, 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 817 through 910, 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 24th day of July, 2019.



DANA W. REEVES
NOTARY PUBLIC
COMMISSION #FF968527
EXPIRES MARCH 22, 2020