



1 and  
Carla Boehl, Reporter, Ln. #084-002710

2 APPEARANCES: (Continued)

3 MS. LINDA M. BUELL  
527 East Capitol Avenue  
4 Springfield, Illinois 62701  
(Appearing on behalf of the Staff of the  
5 Illinois Commerce Commission.)

6 MR. ROBERT RONGEY  
1326 Niedringhaus Avenue  
7 Granite City, IL 62040  
(Appearing on behalf of the Metro East  
8 Sanitary District.)

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## I N D E X

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## WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

4

PHIL HARDAS

By Ms. Buell

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DONALD HOPGOOD

6

By Mr. McNamara

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By Ms. Buell

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By Mr. Rongey

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By Judge Albers

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DENNIS KALLASH

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By Mr. McNamara

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By Ms. Buell

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By Mr. Rongey

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WALTER GREATHOUSE

By Mr. Rongey

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By Ms. Buell

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By Mr. McNamara

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By Judge Albers

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MARK MAPLE

By Ms. Buell

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By Mr. Rongey

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By Mr. McNamara

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By Judge Albers

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## I N D E X

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## EXHIBITS

## MARKED

## ADMITTED

4

Petitioner's 1

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Petitioner's 2.0, 2.1

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Petitioner's 3

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Petitioner's 4

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Petitioner's 7

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ICC Staff Exhibit 1.0

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ICC Staff Exhibit 3.0

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MESD 3.0

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P R O C E E D I N G S

(Whereupon Petitioner's  
Exhibit 7 was marked for  
identification as of this  
date.)

JUDGE ALBERS: By the authority vested in  
me by the Illinois Commerce Commission, I now call  
Docket Number 02-0664. This docket was initiated by  
St. Louis Pipeline Corporation. The Petitioner has  
filed pursuant to Section 8-503, 8-509, 15-101 and  
15-401 of the Public Utilities Act.

May I have the appearances for the record,  
please.

MR. McNAMARA: Judge, on behalf of the  
Petitioner, my name is Edward D. McNamara, Jr. I'm  
an attorney admitted to practice law in the state of  
Illinois. My business address is 931 South Fourth  
Street, Springfield, Illinois, 62703. My phone  
number is 217-528-8476.

MR. RONGEY: Robert Rongey on behalf of  
Metro East Sanitary District. My office address is

1 1326 Niedringhaus Avenue, Granite City, Illinois,  
2 62040. My telephone number is 618-452-1323.

3 MS. BUELL: Appearing on behalf of Staff  
4 witnesses of the Illinois Commerce Commission, Linda  
5 M. Buell, 527 East Capitol Avenue, Springfield,  
6 Illinois, 62701, and my telephone number is  
7 217-557-1142.

8 JUDGE ALBERS: Thank you. Let the record  
9 reflect that there are no others wishing to enter  
10 appearances.

11 Are there any preliminary matters this  
12 morning?

13 MR. McNAMARA: Judge, I have a preliminary  
14 matter. I was directed by you to do a publication  
15 in the Official State Newspaper, and I've given you  
16 the original of that and I've given Mr. Rongey a  
17 copy. I've marked it as Exhibit 7.0, and pursuant  
18 to your directions I would ask that 7.0 be admitted  
19 into evidence.

20 JUDGE ALBERS: Why don't we address that  
21 once we have your witnesses on the stand in case  
22 there's any questions regarding that.

1                   Anything else?

2                   MR. McNAMARA: I think we have -- I don't know  
3 if you want to treat them as preliminary. With  
4 regard to my witness, Mr. Robert Rose, whose Direct  
5 was in 2.0, I believe everyone has waived cross  
6 examination of Mr. Rose. I want to make sure that  
7 we're clear on the record on that.

8                   MS. BUELL: Yes, Your Honor, Staff has no  
9 questions for Mr. Rose. In fact, Staff received a  
10 copy, an electronic copy of Mr. Rose's affidavit  
11 yesterday. It has no objection to that.

12                  MR. RONGEY: We have no objection to  
13 Mr. Rose's also. I did not bring an affidavit,  
14 however, for Mr. Warfield. I saw that Mr. Rose  
15 hadn't submitted an affidavit and I did not get a  
16 chance yesterday to provide one. Mr. McNamara and I  
17 had agreed that there were no questions of  
18 Mr. Warfield as well, and I don't think Linda had  
19 any of him either. We would ask leave to submit an  
20 affidavit, if that is required, in order to submit  
21 his Direct Testimony.

22                  MR. McNAMARA: Judge, I have no objection to

1 Mr. Rongey filing a late filed exhibit, being an  
2 affidavit in support of Mr. Warfield's testimony.

3 MS. BUELL: Your Honor, Staff has no  
4 questions for Mr. Warfield either and would have no  
5 objection to a late filed exhibit, which would be  
6 his affidavit.

7 MR. RONGEY: I think I also need an  
8 affidavit for Mr. Greathouse in terms of his Direct  
9 Testimony, although he is here to testify today.

10 MS. BUELL: Actually, Staff has cross  
11 questions for Mr. Greathouse.

12 MR. McNAMARA: With regard to Mr. Rose, we  
13 previously filed on E-docket his testimony as  
14 Petitioner's Exhibit 2.0 and the affidavit is 2.1.  
15 I'd ask that that testimony be admitted into the  
16 record on behalf of Petitioner.

17 JUDGE ALBERS: As long as we're all talking  
18 about that then, any objection to the admission of  
19 the Petitioner's Exhibit 2.0 and 2.1?

20 MS. BUELL: No objection from Staff, Your  
21 Honor.

22 MR. RONGEY: No objection.



1 course of this proceeding we had a couple of revised  
2 briefs and what not submitted and I wanted to make  
3 sure the correct one is what actually gets admitted  
4 into the record.

5 MR. McNAMARA: Yeah. Maybe we ought to talk  
6 about that, Judge.

7 In September of '04, it's my recollection  
8 that we all, pursuant to directions of the Court,  
9 filed revisions of some of our initial evidence in  
10 this matter, and I believe those revisions became  
11 irrelevant once it was deemed that we would go  
12 forward with both issues.

13 So when I'm talking about my evidence in  
14 this case, it's all the initial evidence, not  
15 anything that might have been amended in September  
16 of '04.

17 JUDGE ALBERS: I agree about the later  
18 versions being irrelevant.

19 MR. McNAMARA: I presume everyone else is  
20 working under the same idea that the revisions  
21 became irrelevant by virtue of the Judge's ruling.

22 MS. BUELL: That's correct. In fact, at one

1 of the status hearings Your Honor ruled that the  
2 revised testimony that had been filed by parties was  
3 no longer relevant.

4 MR. RONGEY: I agree.

5 JUDGE ALBERS: I just want to make sure when  
6 I tell the Clerk's office what's in the record I'm  
7 telling them the right version so I want to know  
8 what date it is that the document being moved into  
9 evidence was filed on E-docket. So if the one you  
10 want in evidence was filed on May 20th of '03 that's  
11 the one I'll tell the Clerk's office to admit into  
12 evidence. If we need to recess a few minutes to  
13 check those dates, that's fine.

14 MR. McNAMARA: Why don't we.

15 (Whereupon a brief recess  
16 was held.)

17 MR. McNAMARA: With regard to 2.0,  
18 Mr. Rose's Direct Testimony, it was filed May 20,  
19 2003 and that's what I'm asking be admitted into the  
20 record.

21 JUDGE ALBERS: And 2.1 was filed yesterday,  
22 February 22nd. All right. Those are the revision

1 documents that will be admitted into evidence.

2 MR. RONGEY: Your Honor, one other thing as  
3 matter of cleanup on Mr. Warfield's testimony, I  
4 would ask that it be admitted as MESD Exhibit 2, is  
5 what we had filed it under, subject to the affidavit  
6 that I will be filing with this Court no later than  
7 Monday of this next week.

8 JUDGE ALBERS: Before admitting that I want  
9 to take a look at something in that before, so we  
10 can get to that later.

11 Anything else then from MESD?

12 MR. RONGEY: No.

13 JUDGE ALBERS: Ms. Buell, I believe  
14 previously before we went on the record you asked if  
15 Phil Hardas could enter his testimony.

16 MS. BUELL: He's here personally and would  
17 like to put his testimony into the record first, if  
18 that's acceptable.

19 JUDGE ALBERS: Right. I think everyone  
20 indicated previously that was all right.

21 Why don't we go ahead and I will swear in  
22 all the witnesses. If there are no other

1 preliminary matters I'll go ahead and swear in all  
2 the witnesses at once and we can hear from Mr.  
3 Hardas first and then hear from St. Louis  
4 Pipeline's witnesses and then from MESD.

5 If you could all please stand and raise  
6 your right hand if you're testifying today.

7 (Whereupon the witnesses  
8 were sworn.)

9 JUDGE ALBERS: Thank you, gentlemen.

10 MS. BUELL: Your Honor, Staff calls Phil A.  
11 Hardas to the stand.

12 PHIL HARDAS  
13 called as a witness herein, having been previously  
14 duly sworn on his oath, was examined and testified  
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. BUELL:

18 Q. Good morning.

19 A. Good morning.

20 Q. Mr. Hardas, would you please state your  
21 full name and spell it for the record.

22 A. My name is Phil Albert Hardas, P-h-i-l,

1 A-l-b-e-r-t, H-a-r-d-a-s.

2 Q. Mr. Hardas, but whom are you employed?

3 A. I'm employed by the Illinois Commerce  
4 Commission.

5 Q. And what is your position at the Illinois  
6 Commerce Commission?

7 A. I'm a senior finance analyst with the  
8 finance department.

9 Q. Mr. Hardas, have you prepared written  
10 testimony for purposes of this proceeding?

11 A. Yes.

12 Q. And do you have before you a document which  
13 has been marked for identification as ICC Staff  
14 Exhibit 2.00 which consists of three typewritten  
15 pages and is titled Direct Testimony of Phil A.  
16 Hardas?

17 A. Yes.

18 Q. Is this a true and correct copy of the  
19 Direct Testimony that you prepared for this  
20 proceeding?

21 A. Yes.

22 Q. Do you have any corrections to make to your

1 prepared Direct Testimony?

2 A. No.

3 Q. Is the information contained in ICC Staff  
4 Exhibit 2.00 true and correct, to the best of your  
5 knowledge?

6 A. Yes.

7 Q. And if I were to ask you the same questions  
8 today would your responses be the same?

9 A. Yes.

10 MS. BUELL: Your Honor, at this time I would  
11 ask for admission into evidence of Mr. Hardas'  
12 prepared Direct Testimony marked as ICC Staff  
13 exhibit 2.00, and I note for the record that this is  
14 the same document that was originally filed via  
15 E-docket on August 7th, 2003.

16 JUDGE ALBERS: Any objection?

17 MR. McNAMARA: No objections, Judge.

18 MR. RONGEY: No objection.

19 JUDGE ALBERS: Then Staff Exhibit 2.0 is  
20 admitted.

21 (Whereupon Staff Exhibit 2  
22 was admitted into evidence

1 as of this date.)

2 MS. BUELL: Your Honor, I would tender  
3 Mr. Hardas for cross examination but it's Staff  
4 understanding there is no cross for him.

5 MR. McNAMARA: Petitioner has no questions.

6 MR. RONGEY: MESD has no questions.

7 JUDGE ALBERS: And I have no questions.

8 Thank you, Mr. Hardas.

9 JUDGE ALBERS: Mr. McNamara, before your  
10 witness takes the stand I want to recess for a few  
11 minutes, look over my notes for something.

12 (Whereupon a brief recess  
13 was taken.)

14 JUDGE ALBERS: Mr. McNamara, if you'd like to  
15 call your first witness.

16 MR. McNAMARA: I'd call Mr. Don Hopgood.

17 DONALD HOPGOOD  
18 called as a witness herein, having been previously  
19 duly sworn on his oath, was examined and testified  
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. McNAMARA:

1 Q. Would you please state your name for the  
2 record, sir, and spell your last name.

3 A. My name is Donald Keith Hopgood.  
4 H-o-p-g-o-o-d.

5 Q. Maybe you better spell your middle name,  
6 too.

7 A. K-e-i-t-h.

8 Q. By whom are you employed, sir?

9 A. St. Louis Pipeline.

10 Q. What is your job description or title?

11 A. I am the general manager.

12 Q. Are you authorized to appear here this  
13 morning and testify on behalf of your company?

14 A. Yes, sir, I am.

15 Q. And you previously prepared certain  
16 testimony to be presented in this docket, is that  
17 correct?

18 A. Yes, sir, I did.

19 Q. And do you have copies of that testimony  
20 before you, sir?

21 A. Yes, sir, I do.

22 Q. First I'm going to refer you to what was

1 marked as Petitioner's Exhibit 1.01 through 1.6  
2 inclusive, being the Direct Testimony of Don Hopgood  
3 filed in this docket on 5-20-03. Do you have that  
4 in front of you, sir?

5 A. Yes, sir, I do.

6 Q. Have you had a chance to review that  
7 testimony?

8 A. Yes, sir, I have.

9 Q. If I were to ask you the same questions  
10 here this morning would your answers be the same?

11 A. Yes, sir, they would.

12 Q. Do you have any need at this time to amend  
13 the testimony that we've set forth in Petitioner's  
14 Exhibits 1.01 through 1.6?

15 A. No, sir.

16 Q. Do you have in front of you, sir, your  
17 supplementary testimony, which was identified as  
18 Petitioner's Exhibit 3.0 through Exhibit 3.6  
19 inclusive, being your Supplemental Testimony filed  
20 in this docket on 5-30 of '03? Do you have that,  
21 sir?

22 A. I do.

1           Q.   If I were to ask you the same questions as  
2           is set forth in that Supplemental Testimony would  
3           your answers be the same?

4           A.   Yes, sir.

5           Q.   Do you have any reason at this time to  
6           amend any of that testimony?

7           A.   No, sir.

8           Q.   Do you have in front of you, sir, what  
9           we've previously marked as your Rebuttal Testimony,  
10          being Petitioner's Exhibit 4.0 through 4.2 being  
11          filed in this docket on 11-10-03?

12          A.   Yes, sir, I do.

13          Q.   If I were to ask you the same questions as  
14          is asked in 4.0 through 4.2 would your answers be  
15          the same?

16          A.   Yes, sir, they would.

17          MR. McNAMARA:  Judge, I would just note that  
18          I'm looking at the docket sheet at this time and it  
19          appears that we initially attempted to file our  
20          Rebuttal Testimony on November the 7th, '03, and  
21          apparently for some reason we went again and took  
22          another run at it on November 10th, so it will

1           either be November 7th or November 10, '03 for Mr.  
2           Hopgood's 4.0 through 4.2 and it will be the same  
3           when we get to Mr. Kallash.

4           JUDGE ALBERS: While we're at a pause here,  
5           what was the date 3.0 was filed on E-docket?

6           MR. McNAMARA: May 30th of '03.

7           JUDGE ALBERS: Okay.

8           MR. McNAMARA: Our Direct was 10 days before  
9           that. May 20th we put in our Direct, May 30th we  
10          put in our Supplemental.

11          JUDGE ALBERS: Okay. Thank you.

12          Q. (By Mr. McNamara) So I believe I've asked  
13          but I'll ask you again, Mr. Hopgood, with regard to  
14          4.0 through 4.2, your Rebuttal, if I were to ask you  
15          the same questions your answers would be the same?

16          A. Yes, they would.

17          Q. No additions or corrections at this time?

18          A. No, sir.

19          Q. Do you have in front of you what we've  
20          marked as Petitioner's Exhibit 6.0, your Surrebuttal  
21          Testimony?

22          A. Yes, sir, I do.

1           Q. If I were to ask you the same questions as  
2 are set forth in our Exhibit 6.0 would your answers  
3 be the same?

4           A. Yes, sir, they would be.

5           JUDGE ALBERS: Judge, with regard to 6.0 we  
6 filed that on February 20, 2004.

7                   And at this time I would move for the  
8 admission of Petitioner's Exhibits 1.0 through 1.6,  
9 3.0 through 3.6, 4.0 through 4.2, and 6.0. I would  
10 move for the admission of those exhibits and I would  
11 tender the witness for cross examination.

12           MS. BUELL: Your Honor, before I say I have  
13 no objection to the admission of these documents I  
14 wanted to ask a question about Mr. Hopgood's Direct  
15 Testimony.

16                   When you first referred to it you didn't  
17 mention Petitioner's Exhibit 1.0 at all and you  
18 referred to the attachments as 1.01 through 1.06,  
19 and my records reflect that Mr. Hopgood's Direct  
20 Testimony is Petitioner's Exhibit 1.0 and the  
21 attachments are 1.1 through 1.6.

22                   Is that correct?

1           MR. McNAMARA: I certainly stand corrected,  
2           yes.

3           MS. BUELL: Your Honor, Staff has no  
4           objection to the admission of these documents into  
5           the record.

6           MR. RONGEY: No objection subject to our  
7           right to cross examine.

8           JUDGE ALBERS: Why don't we hear the cross  
9           and then we'll rule on admission after that.

10                    You've tendered Mr. Hopgood for cross.  
11           Which of you would like to go first?

12           MR. RONGEY: Go ahead, Linda. Mine will be  
13           longer.

14                                    CROSS EXAMINATION

15                                    BY MS. BUELL:

16           Q. Good morning, Mr. Hopgood.

17           A. Good morning.

18           Q. My name is Linda Buell. I am an attorney  
19           representing Staff witnesses in this proceeding and  
20           I have several questions to ask you, mostly about  
21           your Surrebuttal Testimony in this proceeding. Do  
22           you have a copy of that in front of you?

1           A.    Yes, ma'am, I do.

2           JUDGE ALBERS:  Will you speak loudly so the  
3 court reporter can hear you?

4           A.    Yes, sir, I sure will.

5           Q.    (By Ms. Buell) Mr. Hopgood, on Page 2 of  
6 your Surrebuttal Testimony you indicate that the  
7 easement to be granted to St. Louis Pipeline by the  
8 Sanitary District will be non-exclusive, is that  
9 correct?

10          A.    That is correct.

11          Q.    Could you please explain to us what a  
12 non-exclusive easement is?

13          A.    A non -- it is my understanding that a  
14 non-exclusive easement is a piece of ground that a  
15 pipeline or utility has the ability to lay the  
16 utility.  The owner of the ground has -- maintains  
17 the right to also allow other utilities within the  
18 same five foot wide easement, is my understanding,  
19 if it is non-exclusive.

20          Q.    In fact, on Page 2 of your Surrebuttal  
21 Testimony you say that since it's a non-exclusive  
22 easement Metro East Sanitary District would have the

1 right to grant additional easements within any  
2 easement that might be granted to our company. Is  
3 that correct?

4 A. Yes, ma'am, it is.

5 Q. So there could actually be additional  
6 facilities in the very same easement in which the  
7 pipeline lies?

8 A. That is my understanding.

9 Q. And then I presume that the Sanitary  
10 District at the same time would have the opportunity  
11 or ability to use the same property?

12 A. My understanding, that's correct.

13 Q. Okay. And that is not a concern to you?

14 A. That is a concern to me with limitations of  
15 the distance between our utility and any other  
16 utility they may put into the same easement five  
17 foot wide.

18 Q. Would St. Louis Pipeline have any  
19 opportunity to provide input to the additional  
20 parties who might be utilizing the very same  
21 property?

22 A. Normally speaking they would have input

1 under the code, DOT Division of Pipeline Safety that  
2 restricts other utilities within 12 to 18 inches of  
3 petroleum pipeline.

4 Q. 12 to 18 inches, but the easement being  
5 granted here is only a foot, isn't that correct?

6 A. It is a foot wide, ma'am.

7 Q. Can you explain how a non-exclusive  
8 easement differs from an exclusive easement?

9 A. Yes, ma'am. An exclusive easement, in my  
10 understanding, is an easement that is granted by a  
11 land owner to a utility that they are the only  
12 company or utility that has a right to use that  
13 exclusive easement for their utility purposes.

14 Q. So in the case of an exclusive easement no  
15 other utility would be able to be granted an  
16 easement on the same property?

17 A. That's my understanding.

18 Q. But the Sanitary District would still have  
19 access to that property?

20 A. They would still have access to use that  
21 property for their purposes above ground.

22 Q. So the main difference then between an

1 exclusive and non-exclusive easement is the ability  
2 of additional parties to be granted an easement on  
3 the same property?

4 A. I'm sorry, could you repeat that?

5 Q. What you would say the main difference  
6 between an exclusive and non-exclusive easement is?

7 A. A non-exclusive allows other utilities to  
8 be placed upon the same grounds as the grounds that  
9 have been granted to the company originally.

10 Q. Would St. Louis Pipeline prefer an  
11 exclusive or non-exclusive easement with the  
12 Sanitary District?

13 A. St. Louis Pipeline would always prefer an  
14 exclusive easement.

15 Q. Why is that?

16 A. Because it takes away the concerns of other  
17 utilities being granted rights to use the same land  
18 for other utilities. In other words, it keeps a  
19 distance and lessens the possibilities of damage to  
20 our utility that is there already placed.

21 Q. So when you talk about concerns you're  
22 referring to safety concerns?



1 take a job with another firm and was gone from July  
2 '98 until November of '98 when I rejoined the  
3 company. What transpired during those four months,  
4 whether that be negotiate with Metro East or anyone  
5 else, I do not know and cannot testify to that.

6 Q. (By Ms. Buell) Okay, thank you. Do you  
7 also have your Rebuttal Testimony there in front of  
8 you? You still need to hold on to your Surrebuttal.  
9 I want to ask you to compare something you said in  
10 your Rebuttal with your Surrebuttal.

11 Referring to your Rebuttal Testimony, it's  
12 Petitioner's Exhibit 4.1. Now, this is a series of  
13 data request responses to the Staff of the Illinois  
14 Commerce Commission, and there's a group of them, so  
15 the one I'm referring to, if you count the cover  
16 page it's on Page 3 of Petitioner's Exhibit 4.1, and  
17 it appears as if that's Data Request Number 2. Do  
18 you see that?

19 A. Yes, ma'am.

20 Q. The question is, provide a sheet detailing  
21 size, length, current capacity, product shipped and  
22 normal operating flow rates for each pipeline.

1           A. Yes, ma'am, I have found it.

2           Q. Now, I would specifically refer you to the  
3 first line of your response where you that say  
4 St. Louis Pipeline consists of one pipeline that has  
5 sections of pipe that are four, six and eight inches  
6 in diameter with the total length of 22.5 miles.

7           A. That is correct.

8           Q. And then I would like you to compare this  
9 to your Surrebuttal Testimony, Page 1 of that  
10 testimony, Lines 16 through 17, where you say, our  
11 pipeline, which crosses the property of Metro East  
12 Sanitary District, is a six inch pipeline.

13          A. Yes, ma'am.

14          Q. Reading these two statements together,  
15 would it be correct to say that the portion of  
16 St. Louis Pipeline's pipeline that crosses the  
17 property --

18          MR. McNAMARA: I'm sorry, would you repeat it?  
19 I couldn't hear you.

20          MS. BUELL: Of course.

21          Q. (By Ms. Buell) Mr. Hopgood, reading those  
22 two sentences together, would it be correct to say

1           that the entire portion of St. Louis Pipeline's  
2           pipeline that crosses the property of the Metro East  
3           Sanitary District is a six inch pipeline without  
4           exception?

5           A.    That is correct.

6           Q.    I just wanted to make sure that I  
7           understood it.  It appeared to be somewhat  
8           inconsistent but I wanted to clarify that although  
9           the entire pipeline might have varying widths of  
10          pipe that the portion that crosses the Sanitary  
11          District is exclusively six inch?

12          A.    That is correct.

13          Q.    Excellent.  Thank you.

14                 Now, is it correct that the Sanitary  
15          District has proposed a non-exclusive easement  
16          that's five feet wide?

17          A.    That is correct.

18          Q.    And would you agree that Staff Witness  
19          Maple has recommended that St. Louis Pipeline should  
20          be required to obtain an easement that is at a  
21          minimum five feet wide?

22          A.    Yes, ma'am.

1           Q.   And would you agree there would be less of  
2           a chance of a pipeline being damaged if St. Louis  
3           Pipeline were granted a five foot wide easement  
4           versus a one foot wide easement?

5           A.   If it was an exclusive easement I would say  
6           yes.  As a non-exclusive the widths would have no  
7           bearing.

8           Q.   I believe you addressed that in your  
9           testimony why the width would have no bearing in a  
10          non-exclusive easement.  Is that correct?

11          A.   I'm sure that I did.

12          Q.   You say the width of the easement makes no  
13          difference.  Could you explain that?

14          A.   Yes, ma'am.  The width of an easement when  
15          it is non-exclusive has no restrictions on other  
16          utilities to dig within the same easement.  
17          Exclusive has restrictions on other utilities that  
18          would apply to that easement which would have to be  
19          given approval by the land owner and by the company  
20          that maintain the exclusive easement.

21                        So by it being non-exclusive is, in my  
22          opinion, anyone could come in and dig any area in

1 any location and compromise the pipeline.

2 Non-exclusive does not give St. Louis Pipeline any  
3 rights to restrict.

4 Q. So then would the converse be true; if the  
5 easement to be granted were exclusive would there be  
6 a difference in the potential safety and protection  
7 of the pipeline if there were a five foot wide  
8 easement instead of a one foot wide easement?

9 A. If it was exclusive it would maintain more  
10 safety, yes, ma'am.

11 Q. What's the exact outside of the pipeline  
12 that's presently installed on the Sanitary District  
13 property?

14 A. Outside diameter?

15 Q. Outside diameter.

16 A. Six-and-five-eighths inches.

17 Q. And does the existing pipeline lie directly  
18 on the center line of the easement St. Louis  
19 Pipeline is trying to acquire?

20 A. As far as I know, ma'am.

21 Q. Then would you agree that a one foot wide  
22 easement, if a one foot wide easement is granted,

1           there would be three inches or less of clearance on  
2           each side of the pipeline?

3           A.   Yes, ma'am, I would agree.

4           Q.   Do you know by what method the existing  
5           pipeline was installed?

6           A.   The existing pipeline was installed by  
7           directional bore.

8           JUDGE ALBERS:   Can I ask a clarifying  
9           question?   When you say existing pipeline you're  
10          referring to the one that's in place now as opposed  
11          to the one that they had to move?

12          MS. BUELL:   Yes.   That's why I'm making the  
13          distinction by using the word existing pipeline.

14          JUDGE ALBERS:   So the one that's there in  
15          the ground now?

16          MS. BUELL:   At the present time, correct.

17          JUDGE ALBERS:   I just want to make sure I  
18          understand.   Thanks.

19          Q.   (By Ms. Buell) You said directional boring?

20          A.   Yes, ma'am.

21          Q.   Can a pipeline installer always be accurate  
22          within three inches when replacing pipe?

1           A. My understanding is with directional bore  
2 they can be.

3           Q. Now, referring to your Surrebuttal  
4 Testimony again, on Page 2, Line 33 and 34 you refer  
5 to difficulties during maintenance and repair of the  
6 pipeline. To what difficulties are you referring?  
7 Do you see that, Lines 33 and 34 on Page 2?

8           A. Where it starts, as to replace it would be  
9 possible to do a directional bore?

10          Q. Actually, I was referring to the next  
11 sentence where you say, as to maintenance or repair  
12 our company would have the same difficulties whether  
13 we were working within a one foot easement or a five  
14 foot easement, and I was wondering to what  
15 difficulties you were referring.

16          A. What I was referring to, should there be a  
17 problem with the pipeline itself it could be  
18 identified as to there being like an exposure,  
19 whether it be a one foot or five feet, I mean, we  
20 would be able to do the same type of maintenance on  
21 the area.

22          Q. And why exactly is it that those

1           difficulties exist for both the one foot and five  
2           foot wide easement?

3           A.    The difficulties would not change was my  
4           point.  You would have the same difficulties.

5           Q.    I see.  Thank you, Mr. Hopgood.

6           MS. BUELL:  Your Honor, Staff has no further  
7           questions for this witness.

8           JUDGE ALBERS:  Mr. Rongey?

9                                    CROSS EXAMINATION

10                                   BY MR. RONGEY:

11           Q.    Mr. Hopgood, I want to follow up on some  
12           of the questions from Ms. Buell.

13                                   If I understand your testimony earlier you  
14           talked about the Office of Pipeline Safety requires  
15           a minimum of 12 to 18 inches between pipelines?

16           A.    That's correct.

17           Q.    You've got a six-and-five-eighths inch  
18           pipeline, correct?

19           A.    That's correct.

20           Q.    And within a one foot wide easement then  
21           that would suggest that approximately three,  
22           three-and-a-half inches over from the exterior of

1           that pipeline another pipeline could be placed even  
2           if you had an exclusive easement?

3           A.   That's correct.

4           Q.   But that would be in violation of the  
5           regulations of the Office of Pipeline Safety because  
6           then you're going to have two pipelines that are  
7           basically three, four inches apart potentially?

8           A.   That's correct.

9           Q.   Okay.  You understand, do you not, that in  
10          this particular area where this pipeline crosses the  
11          property of the Metro East Sanitary District there  
12          are five or six other pipelines?

13          A.   I do.

14          Q.   Now, if you get an exclusive easement here  
15          what are we going to do about the other six  
16          pipelines?

17          A.   Sir, it's my understanding with an  
18          exclusive easement does not limit or restrict the  
19          ability for another utility to cross under or over,  
20          and the distance over or under is the same distance  
21          as required by DOT.  If you brought another pipeline  
22          in and said they're going to run within three inches

1 of you we would have to require to meet DOT that  
2 they drop that line at least 18 inches deeper than  
3 our existing pipeline.

4 Q. Well, I guess the exclusive easement that  
5 you're proposing here, though, is it not fair to say  
6 it starts at the top and goes all the way to the  
7 core of the earth?

8 A. That is not my understanding.

9 Q. How far down does it go?

10 A. It would go to the width of an exclusive  
11 easement is above ground to the right and the left  
12 of the center line. It does not refer to a depth.

13 Q. Okay. So you have no problems with  
14 pipelines above or below you in terms of depth,  
15 correct?

16 A. Crossing. Well, that's correct. You're  
17 right. I'm sorry.

18 Q. They could run parallel, couldn't they?

19 A. Yes, sir.

20 Q. But the five foot width easement that is  
21 required by the Metro East Sanitary District,  
22 doesn't that basically eliminate any pipelines

1 running parallel to you at that same depth within  
2 that five foot width?

3 A. Not if it is not exclusive. If it's  
4 exclusive, yes. Non-exclusive, no.

5 Q. Are you aware of any pipelines at all in  
6 that area, there's six pipelines or so that are in  
7 that particular area, in which they are at the same  
8 depth and running parallel to your pipeline or any  
9 other ones?

10 A. No, sir, I am not aware of any.

11 Q. In fact, is it not your understanding that  
12 the pipelines all run at different depths within  
13 that five foot wide non-exclusive easement?

14 A. I don't know, sir. I don't know the depth  
15 of the other pipeline.

16 Q. Regardless, the five foot wide easement  
17 does allow additional protection even if it was  
18 exclusive for you?

19 A. Exclusive it would provide protection, yes,  
20 sir, it would.

21 Q. Do you not foresee that there could be some  
22 problems with other pipelines? If you were to get

1 an exclusive easement in terms of them coming in to  
2 work on their pipelines, the ones that are in this  
3 particular area, are they going to have to go  
4 through you?

5 A. There is a one call system in Illinois  
6 called the Julie system that anytime a pipeline is  
7 working and operating within the operating of your  
8 pipeline, normally in our grid anything that is  
9 within 25 foot, any work, we are notified of that  
10 work and we put an individual on site while the  
11 excavation is taking place to protect the pipeline  
12 and ensure that it's not damaged.

13 Q. Would you have the right with an exclusive  
14 easement to restrict access to other pipeline  
15 operators?

16 A. Is your question crossing us or running  
17 alongside us?

18 Q. Getting into excavating to get to their  
19 pipelines, any work that might be required with  
20 their pipelines, coming out onto that property for  
21 purposes of merely inspecting or testing their  
22 pipelines, could you with an exclusive easement

1 restrict that access?

2 A. My understanding is no, sir, I cannot.

3 Q. When did the construction of this pipeline  
4 begin, the present location of this pipeline? Is  
5 that around the middle of October of '98?

6 A. It was in October of '98. I was not with  
7 the company at that particular time but I've seen  
8 documents that indicated in October.

9 Q. And have you seen Exhibit 1.6, off the top  
10 of my head, of the Metro East Sanitary District's  
11 submissions? I'll be glad to show it to you, sir.

12 MR. RONGEY: May I approach, Your Honor?

13 JUDGE ALBERS: Yes.

14 MR. McNAMARA: Which?

15 MR. RONGEY: 1.6. It's an October 1, 1998  
16 letter from MESD to Bill Horn.

17 A. I have seen this letter.

18 Q. (By Mr. Rongey) All right. Now, sir,  
19 correct me if I'm wrong, in that letter, and I  
20 apologize, I need to kind of follow along with you  
21 here, that letter is a letter from Mac Warfield, the  
22 executive director of the Metro East Sanitary

1 District, is that correct?

2 A. That's correct, sir.

3 Q. All right. And that letter talks about the  
4 MESD is providing permission to St. Louis Pipeline  
5 Corporation to go ahead and proceed with the  
6 construction of that pipeline?

7 A. That is correct.

8 Q. And there were conditions associated with  
9 that condition being granted to St. Louis Pipeline,  
10 is that correct?

11 A. That is correct.

12 Q. One of the conditions that is required is  
13 they have to go through the US Army Corp of  
14 Engineers and get their approval?

15 A. Yes.

16 Q. And all work has to be performed in  
17 accordance with that, correct?

18 A. Yes, sir.

19 Q. And it would be performed in accordance  
20 with generally the pipeline drawing Number 231-209,  
21 is that right?

22 A. Yes, sir.

1           Q. It also says St. Louis Pipeline must be  
2 willing to proceed promptly with the establishment  
3 of a new ordinance, correct?

4           A. Yes, sir.

5           Q. Now, the prior ordinance governing that  
6 pipeline expired in 1995, is that right?

7           A. That's correct.

8           Q. Now, are you aware that the prior ordinance  
9 granted a non-exclusive easement to St. Louis  
10 Pipeline?

11          A. I did not know that it specified.

12          Q. Well, was there any change between 1970 and  
13 1995? 1970 is when the first ordinance was enacted,  
14 is that correct?

15          A. That is correct.

16          Q. And what I'm wondering is if there were any  
17 changes between 1970 and this new pipeline time  
18 period such that it was okay to have a non-exclusive  
19 easement in 1970 yet we need an exclusive one now?

20          A. Sir, we did not own the company at that  
21 time. That was Joyce Corporation that owned the  
22 pipeline. I do not know what their policies were.

1 Q. Was it Joyce Company doing business as  
2 St. Louis Pipeline Corporation?

3 A. That is correct, sir.

4 Q. The easement's was St. Louis Pipeline Corp?

5 A. Yes, sir.

6 Q. Somebody from St. Louis Pipeline signed off  
7 on it?

8 A. Ordinance 719?

9 Q. Yes.

10 A. Yes, sir.

11 Q. Again, I guess the question I still have is  
12 has there been any changes such that a non-exclusive  
13 easement was okay in 1970 yet we need an exclusive  
14 one now?

15 A. I cannot speak for Jim Joyce, the owner at  
16 that time, of what their company's policies were.

17 Q. Apparently he didn't have a problem with  
18 it, at least?

19 A. Probably not, sir.

20 Q. Now, one of the other conditions that  
21 allowed you to go forward with the construction of  
22 this pipeline is on the second page at the top that

1           there would be an annual cost associated with the  
2           use of the MESD owned right of way, and that cost  
3           was based on 50 cents per square foot area with a  
4           five foot width minimum multiplied by the distance  
5           the line runs on the property. Do you see that?

6           A. Yes, sir.

7           Q. St. Louis Pipeline Corporation went ahead  
8           and constructed this pipeline after receiving this  
9           letter of October 1, 1998, didn't they?

10          A. My understanding, yes, sir.

11          Q. And St. Louis Pipeline hasn't complied with  
12          what it agreed to do when it built this pipeline  
13          subject to the permission being granted by the MESD,  
14          have they? They haven't paid anything, have they?

15          MR. McNAMARA: I'm going to object to the form  
16          of the question. I don't know that there was ever  
17          an agreement. This -- these were conditions  
18          imposed. I don't know, when you talk about an  
19          agreement you talk about a meeting of the minds. I  
20          don't know that there was ever a meeting of the  
21          minds. Someone is imposing conditions and someone  
22          is acting. That's all I think it shows.

1 JUDGE ALBERS: Response to the objection?

2 MR. RONGEY: Well, my response is we granted  
3 permission subject to a condition subsequent. The  
4 condition subsequent is you have to meet all of  
5 these conditions, or actually, condition precedent,  
6 I should say, and you have to meet all of these  
7 conditions. They go ahead and do the pipeline.  
8 That's an implied contract at law that they've  
9 agreed to meet all of these conditions. They didn't  
10 say a word about it, they went ahead and  
11 constructed their pipeline, and now we're here and  
12 they still haven't paid a dime. I think it gives  
13 rise to a contract at law.

14 JUDGE ALBERS: Well, the witness is not an  
15 attorney. I'm not going to expect him to make such  
16 distinctions and I'm not going to make any finding  
17 at this point in time whether there is such a  
18 contract or not. I'll sustain Mr. McNamara's  
19 objection.

20 Q. (By Mr. Rongey) Has St. Louis Pipeline paid  
21 anything to Metro East Sanitary District since this  
22 ordinance expired in 1995?

1           A.   Not that I'm aware of.

2           Q.   Have they paid anything since they built  
3           their pipeline after receiving the letter of October  
4           1, 1998 from the Metro East Sanitary District?

5           MR. McNAMARA:   You're saying the Metro East  
6           Sanitary District?

7           MR. RONGEY:    Correct.

8           A.   Not that I'm aware of.

9           Q.   (By Mr. Rongey) Mr. Hopgood, on a number of  
10          occasions in this matter you've indicated that  
11          according to your belief Metro East Sanitary  
12          District does own that property?

13          A.   I do not know or am I qualified to  
14          determine the owner of the property.  When this  
15          issue first began I assumed they did own the  
16          property.

17          Q.   Are you familiar with your testimony, your  
18          Supplemental Testimony, in which you testified that  
19          St. Louis Pipeline was the owner of the property?  
20          I'm sorry, Metro East Sanitary District that was the  
21          owner of the property?

22          MR. McNAMARA:   Which exhibit?

1           MR. RONGEY: I think I'm referring to  
2           Petitioner's Exhibit 3.0.

3           MR. McNAMARA: If you could, sir, I think he's  
4           gathering the exhibit. If you could refer him to  
5           the page.

6           Q. (By Mr. Rongey) Page 2, Lines 23 through  
7           31.

8           A. What lines again?

9           Q. Well, specifically Lines 29 through 31  
10          starting with "I believe." Maybe if you could read  
11          that into the record, sir.

12          A. I will. Would you like me to read the  
13          question as well?

14          Q. I'll ask you the question.

15                 "Are you aware of the identity of the land  
16          owners both immediately north and immediately south  
17          of the Cahokia Diversion Canal?"

18          A. My answer is:

19                 "Yes, I believe I am. It is my  
20          understanding that the Wood River Drainage and Levy  
21          District owns the land immediately north of the  
22          center line of the canal which would include all



1           our --

2                   MR. RONGEY: I can help with that a little  
3 bit.

4                   Q. (By Mr. Rongey) To clear up the record,  
5 Mr. Hoppood, we had a brief recess here and there  
6 had been some revised testimony, which we alluded to  
7 previously, which had been submitted and now I think  
8 is withdrawn.

9                               Your original testimony is what I'm  
10 seeking with response to the question I read to you  
11 earlier concerning the land owners north and south  
12 of the Cahokia Diversion Canal. We're on the same  
13 page now, no pun intended.

14                              What was your response with regard to the  
15 ownership by the Metro East Sanitary District, if  
16 you could read Lines 29 through 31?

17                              A. "I believe the Metro East Sanitation  
18 District owns the land immediately south of the  
19 center line of the canal which would include all of  
20 that portion of the pipeline depicted in  
21 Petitioner's Exhibit 3.1 south of the center line of  
22 the canal."

1           Q. Now, sir, you were asked previously by your  
2 attorney in your Direct Testimony as to whether you  
3 needed to change any of your testimony in this  
4 matter, including Petitioner's Exhibit 3.0. Do you  
5 recall that?

6           A. I do.

7           Q. All right. And you indicated that you did  
8 not desire to make any changes at that time,  
9 correct?

10          A. That's correct.

11          Q. All right. And, in fact, you hired an  
12 engineering firm to do some work to determine the  
13 ownership of the land that is at issue here, is that  
14 correct?

15          A. I did.

16          Q. Mr., if I say it correct, Kallash, who is  
17 here today, is that correct?

18          A. Yes, sir.

19          Q. And Mr. Kallash told you that according to  
20 all the investigation he's done, the survey work  
21 he's done, MESD owns this property, at least the  
22 property we're here about, doesn't he?

1           A. I do not remember Mr. Kallash ever telling  
2 me that MESD owns all the property.

3           Q. Mr. Kallash hasn't indicated to you that  
4 MESD is the owner of this property ever?

5           A. He has not.

6           Q. Are you aware that he told the Metro East  
7 Sanitary District that that was his opinion?

8           A. I was not aware of that.

9           Q. Do you -- you're still of a belief, though,  
10 that the MESD does own it or we wouldn't be here, I  
11 assume? Or would you like to change that?

12          A. I believe that MESD has the rights of that  
13 ground and controls the ground.

14          Q. As opposed to ownership in fee simple?

15          A. That's correct.

16          Q. Could you explain the distinction?

17          A. Well, it's my understanding, and I think  
18 that Finch & Associates can explain it much better  
19 than I, is that that ground that is fee simple  
20 versus owning the ground as a right of way or an  
21 easement is, based on the documents that I've read,  
22 that what MESD has is the control of that ground

1 through an easement.

2 Q. Who granted the MESD an easement?

3 A. I don't have those documents. I would  
4 refer the questions to Mr. Kallash.

5 Q. St. Louis Pipeline doesn't routinely build  
6 pipelines on land without seeking the permission of  
7 the owners, do they?

8 A. No, sir, they do not.

9 Q. In fact, St. Louis Pipeline sought  
10 permission from Metro East Sanitary District to  
11 build this pipeline, correct?

12 A. That's correct.

13 Q. Was this pipeline reinforced or constructed  
14 with power crete?

15 A. The crossings, critical crossings of our  
16 pipeline such as the Cahokia Diversion Canal, the  
17 Mississippi River, some of the road crossings, we do  
18 use a reinforcement called power crete or Lilly  
19 coating which adds to the strength of the outer  
20 coating of the pipe.

21 JUDGE ALBERS: Could you explain what power  
22 crete is a little better?

1           A. Yes, sir, sure. It's -- normally you  
2 put -- the pipe is coated with epoxy and then in  
3 certain areas where you feel there could be  
4 additional strength required because of flooding or  
5 heavy traffic then we will add an additional coating  
6 on top of it. And it's a power crete coating or  
7 equivalent that it's very strong and it adds a lot  
8 more strength to the outside of the pipe plus  
9 protects it from any damage.

10           JUDGE ALBERS: Is that a type of concrete?

11           A. It is a concrete type of coating that goes  
12 over the pipe.

13           JUDGE ALBERS: Thank you.

14           A. Yes, sir.

15           Q. (By Mr. Rongey) And in reviewing the  
16 documents in this matter it's my understanding that  
17 power crete was used for the Mississippi River  
18 transmission, the pipe crossing through the  
19 Mississippi. I didn't see anything indicating that  
20 power crete was used at the Cahokia Diversion Canal.

21           A. I believe there was another coating used  
22 that was a Lilly coating that is also equivalent to

1 a power crete that was added to the line where it  
2 crosses Cahokia Diversion Canal.

3 Q. But the power crete was what was needed  
4 for the Mississippi River transmission?

5 A. It was available at that time, sir.

6 MR. McNAMARA: I'm wondering for the record if  
7 we could get a spelling for power crete and Lilly.

8 MR. RONGEY: Power, and crete is c-r-e-t-e.

9 A. That's correct.

10 MR. RONGEY: I don't know about Lilly.

11 A. Lilly is L-i-l-l-y.

12 MR. RONGEY: It doesn't sound real strong.

13 JUDGE ALBERS: Could you distinguish the  
14 power crete and Lilly coating so I know what the  
15 difference is?

16 A. I think the main difference is that there  
17 is different companies that come out with a  
18 different product of equivalent strength. It's like  
19 a -- I don't really know how to explain it, sir.  
20 It's an additional coating that's added over the  
21 existing.

22 JUDGE ALBERS: Is it another kind of

1 concrete or is it a --

2 A. It is not concrete. I don't know what the  
3 chemical makeup is of that coating for Lilly, but  
4 it's, it's a thicker -- normally we use between 12  
5 and 15 mills of epoxy bond coating over it, and this  
6 adds another additional 10 to 12 mills of coating  
7 over the line, but it doesn't -- it doesn't seem --  
8 it seems to have a lot of strength whether it's  
9 bending or whether it hits a rock when they're  
10 pulling it through and doesn't allow damage to the  
11 outside of the pipe itself.

12 JUDGE ALBERS: And I assume this is a metal  
13 pipe on the inside?

14 A. Yes, sir, it is.

15 JUDGE ALBERS: Thank you.

16 Q. (By Mr. Rongey) Sir, this pipeline, in  
17 terms of its present location, was actually moved  
18 back in the 1998 time period, correct?

19 A. You're talking about for MESD where we  
20 moved?

21 Q. The relocation.

22 A. Yes, sir.

1 Q. Now, not all of that pipeline, however, was  
2 replaced, is that correct?

3 A. It was replaced.

4 Q. Every single bit of it?

5 A. Through that area of MESD, yes, sir, that's  
6 all new pipe.

7 Q. Now, the St. Louis Pipeline Corporation had  
8 originally submitted a joint application for the  
9 relocation of this pipeline. Are you familiar with  
10 that?

11 A. No, sir, I'm not.

12 Q. Are you aware of this pipeline having  
13 problems due to erosion previously?

14 A. I am aware that it was exposed in the  
15 canal.

16 Q. And as a result of that erosion did not  
17 St. Louis Pipeline take the position that it needed  
18 to move that pipeline or perform construction on it?

19 A. There were several alternatives to the  
20 exposure that the engineers were working on. It was  
21 along the same time as the issue of the bridge  
22 complex came up and we had determined from the

1 bridge complex that yes, we needed to move it.

2 Q. In reading your testimony that you had  
3 previously submitted it almost sounded like St.  
4 Louis Pipeline was forced to move this pipeline by  
5 the state of Illinois and that's just not accurate,  
6 is it?

7 A. That is very accurate.

8 Q. Well, the state of Illinois actually forced  
9 St. Louis Pipeline to move this or that was  
10 something that was agreed upon?

11 A. The state of Illinois IDOT, due to the  
12 construction and due to the pipeline being close to  
13 the construction of the new twin bridges or the new  
14 bridge to replace the twin bridges was requested to  
15 move due to safety concerns.

16 Q. And that was safety concerns raised by  
17 St. Louis Pipeline, was it not?

18 A. Safety concerns raised by IDOT in the close  
19 proximity to the bridge itself.

20 Q. Are you -- I'm looking for the document.  
21 You're not aware of the application whereby St.  
22 Louis Pipeline requested that it be allowed to move

1           that pipeline because it had problems of erosion  
2           and didn't mention anything else about the IDOT  
3           bridges?

4           A.    The initial move of that pipeline was to  
5           lower the pipeline and do a directional bore under  
6           both levies to resolve the erosion issue.  But  
7           because the Corp of Engineers would not allow any  
8           directional boring under the two levies and all work  
9           had to be conducted on the inside of the levies and  
10          the bridge project it was -- we had to go out at  
11          askew the way the pipeline exists today.

12          MR. RONGEY:    I'm trying to locate the exhibit  
13          number, Your Honor, if I could just have a minute.

14          JUDGE ALBERS:   Okay.

15          MR. McNAMARA:   Let me ask you this, maybe we  
16          can -- I don't know that it's relevant with regard  
17          to this case but make we can just make some  
18          agreements here and keep the thing moving.

19                        You have handed me, Mr. Rongey, a document  
20          of 12-22-97 from Don Hopgood to Walter Greathouse.

21          MR. RONGEY:    Correct.

22          MR. McNAMARA:   A letter with attachments.

1           MR. RONGEY:     Correct.   And it was submitted  
2 with Mr. Greathouse's Direct Testimony.

3           MR. McNAMARA:   Well, you're making the  
4 representation it was submitted with his Direct?

5           MR. RONGEY:     Correct.

6           MR. McNAMARA:   And we can figure that out as  
7 we go along when we get to Mr. Greathouse.  I've  
8 got no problem with you using it.

9           Q.   (By Mr. Rongey) Sir, showing you an  
10 unknown exhibit at this point in time.  This is a  
11 letter from Walter Greathouse, Sr. to yourself dated  
12 12-22-97, is that correct?

13          MR. McNAMARA:   Judge, just so I can make my  
14 record, I presume this is all going to be tied up  
15 when we get Mr. Greathouse on.  Subject to that I  
16 won't have an objection.  If it's not I'm going to  
17 object and ask that it be stricken.

18          MR. RONGEY:     That's fine.

19          JUDGE ALBERS:   Take a minute here.  This is  
20 part of Mr. Greathouse's testimony, you said?

21          MR. RONGEY:     It is one of the exhibits.

22          JUDGE ALBERS:   Just in case I want to follow

1 along here, what's the date on that?

2 MR. RONGEY: 12-22-97.

3 JUDGE ALBERS: 1.2, I believe.

4 MR. RONGEY: And I can't find my 1.2.

5 It's a group exhibit, I believe, with a number of  
6 letters.

7 MR. McNAMARA: 1.2 of Greathouse.

8 MR. RONGEY: If I could follow along, Judge.  
9 Yes, that's it.

10 JUDGE ALBERS: Thank you.

11 Q. (By Mr. Rongey) I'm showing you what has  
12 been submitted as Exhibit 1.2 of the Metro East  
13 Sanitary District, which is a letter of 12-22-97  
14 from Greathouse, Sr. To yourself. Would agree with  
15 that?

16 A. It was from me to Mr. Greathouse.

17 Q. I apologize. That included some  
18 attachments, notably on the fourth page down, what  
19 is called as a joint application form. Is that  
20 correct?

21 A. Yes, sir, it does.

22 Q. Sir, that joint application form states

1           that St. Louis Pipeline Corporation owns and  
2           operates a six inch Jet A pipeline which supplies  
3           the Lambert International Airport with jet fuel.  
4           The pipeline crosses the Cahokia Creek and has  
5           become exposed at the creek bottom due to erosion.  
6           Is that correct?

7           A.    That is correct.

8           Q.    St. Louis proposes to replace the line and  
9           lower below creek bottom, is that correct?

10          A.    That is correct.

11          Q.    You also talked about installing a new  
12          eight inch pipeline at that point in time?

13          A.    That is correct.

14          Q.    I take it that was decided against?

15          A.    Yes, sir.  That was decided against because  
16          we was not going to be allowed to lower the line due  
17          to the -- we were not allowed to do a directional  
18          bore under either of the two levies.  That was  
19          initially our resolution to the exposure.  If we  
20          were allowed to lower directly across then that  
21          eliminated the problem with the bridge relocation  
22          because we would be deep enough that we would not

1           have to be concerned about damage from falling  
2           debris of the bridge.

3           Q. My point is, regardless of the best of care  
4           with these pipelines they corrode, they're subject  
5           to erosion, they're eventually damaged and need  
6           repair. Would that be a fair statement?

7           A. I don't agree with that.

8           Q. How come this one eroded?

9           A. The channel eroded it in that particular  
10          location. I can't tell you at what point when it  
11          was installed, where it was installed, or how deep  
12          it was installed. I have no idea the construction  
13          of it.

14          Q. Well, these pipelines are always subject to  
15          forces of nature, are they not?

16          A. Yes, sir, they are.

17          Q. And these pipelines are subject to forces  
18          of corrosion as a result of the forces of nature,  
19          would you agree with that?

20          A. No, sir.

21          Q. They don't corrode at all?

22          A. Very little corrosion occurs on a pipeline.

1           They are installed with cathodic protection that  
2           protects the line from corrosion. We have pipelines  
3           that are over 50 years old that look like they're  
4           brand new.

5           Q. You have joints in the pipelines, don't  
6           you?

7           A. We do.

8           Q. You have seams?

9           A. We do. And we also protect those with the  
10          power crete. Two part power crete coating is  
11          initially put on all of our joints when we install  
12          the pipes, and the pipeline is X-rayed at that  
13          point. It is also equipped with cathodic protection  
14          that runs a constant current to avoid any foreign  
15          particulate that would cause corrosion on the  
16          pipeline.

17          Q. So the only way these pipelines would ever  
18          break is due to forces of some third party?

19          A. Third party. There's a lot of reasons why  
20          a pipeline could rupture. Lord knows we don't want  
21          that to ever happen but it has in the past. But  
22          generally, it's a third party.

1 Q. Such as down at -- with the Tampa pipeline?

2 A. That's correct.

3 Q. In fact, you had a rupture due to a backhoe  
4 incident at the Tampa International Airport?

5 A. That is correct.

6 Q. At that time 1300 gallons of -- well, put  
7 it this way; there was 300 gallons, approximately, I  
8 think, that was recovered from the soil?

9 MR. McNAMARA: Well, I'm going to interpose an  
10 objection. I believe it's beyond the scope of the  
11 Direct.

12 MR. RONGEY: Your Honor, I think it  
13 certainly gets into his testimony about the fact  
14 that whether or not there should be a safety  
15 component with the installation of these pipelines,  
16 the easements, et cetera, I'm showing that these  
17 pipelines are a hazard or attempting to show that  
18 these pipelines are always a hazard, which is a  
19 concern of the Metro East Sanitary District.

20 JUDGE ALBERS: I'll allow the question.

21 A. I do not remember exactly how many gallons  
22 was spilled in Tampa due to the backhoe incident. I

1 know immediate remediation was taken place. It was  
2 not the fault of the pipeline company but a third  
3 party.

4 JUDGE ALBERS: Just so I'm clear, this is  
5 Tampa, Florida?

6 MR. RONGEY: Yes.

7 Q. (By Mr. Rongey) The Tampa, Florida  
8 incident. Now, is that Mr. Rose that owns the Tampa  
9 Pipeline Corporation as well?

10 A. Yes, sir, it is.

11 Q. Does Tampa Pipeline own St. Louis Pipeline  
12 Corporation?

13 A. Yes, sir, it does.

14 Q. You have an integrated contingency plan for  
15 pipeline breaks?

16 A. I have an integrated contingency plan for  
17 St. Louis Pipeline that's approved by headquarter  
18 Department of Transportation.

19 Q. In that integrated contingency plan there  
20 seems to be a great deal of emphasis on problems  
21 with pipelines breaking or rupturing due to erosion  
22 and corrosion. Would you agree with that?

1           A. I would agree that that's the purpose of  
2 having that plan is to plan should there ever be an  
3 incident of that nature.

4           Q. Well, in fact, in terms of causes under the  
5 integrated contingency plan the number one cause of  
6 concern under that integrated contingency plan is  
7 corrosion. That's the first one listed, isn't it?

8           A. I believe that it is.

9           Q. Under the corrosion section of the  
10 integrated contingency plan it is noted that the  
11 pipeline can be damaged by earth movement. Are you  
12 familiar with that?

13          A. Yes, sir.

14          Q. That includes subsidence?

15          A. Correct.

16          Q. That includes landslides, washouts?

17          A. That's correct.

18          Q. That includes frost?

19          A. If it caused land movement, yes, sir.

20          Q. You realize that in the Tampa incident  
21 there was 157 tons of soil removed?

22          A. I'm not aware of how much they removed.

1 Q. Would you have any reason to doubt that?

2 MR. McNAMARA: I didn't hear your question.

3 Q. (By Mr. Rongey) I said do you realize in  
4 the Tampa International Airport incident there was  
5 157 tons of soil removed as a result of that  
6 pipeline rupture?

7 MR. McNAMARA: Well, I think I'm going to have  
8 to interpose another objection. We're going beyond  
9 the Direct Testimony of this witness, Rebuttal or  
10 any of his testimony in this docket, and I fail to  
11 see the relevance.

12 MS. BUELL: Your Honor, Staff has similar  
13 concerns with this line of questioning. Staff fails  
14 to see the relevancy of it.

15 MR. RONGEY: If you're going to take 157 tons  
16 of soil from the Metro East Sanitary District levy  
17 in the event of a rupture I think it's very  
18 significant in terms of what that does to our levy.

19 MR. McNAMARA: I think, you know, we don't get  
20 overly technical with the Rules of Evidence here  
21 before the Commission, but if we're going to start  
22 doing that you have to lay some foundation.

1                   First off, it's not within the scope of  
2                   this witness' testimony. That's basic. So he  
3                   shouldn't be able to cross examine on it. But more  
4                   importantly, if you're going to take an incident  
5                   that happened in the state of Florida you're going  
6                   to have to lay some foundation as to a similar  
7                   situation, a similar construction mode, a similar  
8                   availability for a rupture.

9                   MR. RONGEY: Be glad to.

10                  MR. McNAMARA: I don't know that it can be  
11                  done. I don't know that this witness has that kind  
12                  of knowledge of what occurred in Tampa, Florida,  
13                  number one.

14                  But, in any event, it's irrelevant and  
15                  it's  
16                  beyond the scope of his testimony.

17                  MS. BUELL: In addition, Your Honor, Staff  
18                  has concerns about whether it's appropriate to bring  
19                  up these matters in light of the relief being  
20                  requested in this proceeding.

21                  JUDGE ALBERS: I do want to take a moment to  
22                  remind you, Mr. Rongey, that what the Commission is

1           concerned with is, given the Public Utilities Act,  
2           with regard to the easement is the need for the  
3           easement, the location of it, and the size of it,  
4           and then as far as eminent domain whether or not the  
5           benefits of the pipeline rise to the level of  
6           requiring or warranting eminent domain.

7                        And if your point is that you're trying to  
8           say there's inherent risks associated with  
9           pipelines, I don't think anybody would dispute that.

10                   MR. RONGEY: Not only there's an inherent  
11           risk of pipelines but in particular where this  
12           pipeline is located the risk is much, much greater  
13           than Tampa International Airport or any other place  
14           we've heard about here, Your Honor.

15                        But with this witness I think I can  
16           establish foundation to show similarity. He's  
17           talked about non-exclusive easements versus  
18           exclusive easements.

19                        One, I can establish that Tampa  
20           International Airport is a non-exclusive easement  
21           with other pipelines in the vicinity. I can also  
22           establish they took out 157 tons of soil as a result

1 of the pipeline rupture.

2 And I understand, you know, one of the  
3 elements they have to show is this is in the best  
4 interest of the people of the state of Illinois or  
5 the public good, the needs of the public. I think  
6 it goes to that. And perhaps I'm off base on that.  
7 That's my position.

8 JUDGE ALBERS: Does this get to MESD's  
9 position regarding the width of the easement?

10 MR. RONGEY: I think that is part of it. I  
11 think that is part of it. If I could go along that  
12 line, Your Honor, I think I can help with that.

13 JUDGE ALBERS: Okay.

14 Q. (By Mr. Rongey) Sir, you're familiar with  
15 the Tampa International Airport incident, correct?

16 A. I am briefly. I mean, I have seen  
17 literature on the incident and I know that it  
18 occurred. I have not read the total incident report  
19 to know exactly what all happened.

20 Q. Did you assist Mr. McNamara in obtaining  
21 that information and providing it to me?

22 A. I did.

1           Q. Now, that Tampa International Airport  
2 incident, that did involve construction work by a  
3 separate entity in the vicinity of the pipeline  
4 owned by Tampa Pipeline Company, correct?

5           A. That's my understanding, yes, sir.

6           Q. That was another entity working on another  
7 pipeline in the same vicinity as Tampa Pipeline  
8 pipeline, correct?

9           MR. McNAMARA: I mean, if he knows.

10          A. I don't know. I know that it was a third  
11 party that hit the line. What that third party was  
12 doing, I do not know.

13          MR. McNAMARA: I think we've got to have some  
14 foundation. I don't even know if it's an above  
15 ground pipeline at the airport down there or below  
16 ground.

17          JUDGE ALBERS: Mr. Rongey, try to bring this  
18 back into Illinois for us. I'm trying to grant you  
19 some leeway here in case you're getting to a point  
20 that would be very important for me in deciding this  
21 case but I'm still looking for it, basically.

22          Q. (By Mr. Rongey) Sir, without a five foot

1 wide easement I take it that other contractors can  
2 come in and there's an increased risk of them  
3 damaging your pipeline and thereby contaminating the  
4 soil of the Metro East Sanitary District. Would  
5 that be a fair statement?

6 A. Without having an exclusive five foot, yes,  
7 sir, you're correct.

8 Q. Even a non-exclusive five foot wide  
9 easement you understand they'd have to go through  
10 the Metro East Sanitary District before they can do  
11 any work out there?

12 A. That is correct, yes.

13 Q. I assume you would agree that would provide  
14 some additional protection to your pipeline because  
15 they can't get out there even with a non-exclusive  
16 easement for you without going through us?

17 A. Absolutely.

18 Q. You would agree in the event of a pipeline  
19 rupture on the Metro East Sanitary District property  
20 literally tons of soil may have to be removed from  
21 the levy?

22 A. I -- it depends on what type of break it

1 is, sir. I mean, when you're comparing ground  
2 conditions, sand versus clay versus a lot of things  
3 has a lot of different issues. Because they replace  
4 so much in Tampa, which is sandy ground versus clay  
5 ground where Metro East is, it isn't going to absorb  
6 into the ground as quickly, but I'm not qualified to  
7 say exactly how much would be by the quantity of  
8 product and how long the product -- how long it took  
9 the product to leak.

10 Q. You agree that the Cahokia Creek Diversion  
11 Canal is an environmentally sensitive area?

12 A. It is.

13 Q. And it's environmentally sensitive from the  
14 standpoint of the ecological system as well as  
15 drinking water of the residents of Metro East.  
16 Would you agree with that?

17 A. I know that it's very sensitive. I'm not  
18 aware of the drinking water intake being near the  
19 diversion canal.

20 Q. I think it's 2000 feet or something like  
21 that south.

22 A. It's over -- the drinking water intake is

1 over on the Mississippi. The diversion canal drains  
2 into basically the Chain of Rocks Canal, which is  
3 not close to that intake.

4 Q. Does it drain into the Mississippi River  
5 where the facility is?

6 A. The intake?

7 Q. Yes.

8 A. The intake is in the Mississippi River,  
9 yes.

10 Q. And that's just south of this area,  
11 correct?

12 A. It is southwest of this area.

13 MR. McNAMARA: Judge, unless -- if we're going  
14 to go further with this I think we ought to get --  
15 I'm rather familiar with the area and the more I  
16 hear these questions I don't know what they're  
17 talking about and I don't know how anyone that's not  
18 familiar with the area would know.

19 If you're going to go further with this,  
20 Rob, I think we ought to try to somehow get a better  
21 description on the record.

22 JUDGE ALBERS: Is that your intent,

1 Mr. Rongey?

2 MR. RONGEY: I'm moving on.

3 Q. (By Mr. Rongey) Sir, I wanted to talk about  
4 public need. What is public need?

5 A. My interpretation of public need is the  
6 necessity to provide a product to, in my particular  
7 case to the airport in the safest manner possible in  
8 the quantities necessary to support aircraft coming  
9 into and out of Lambert.

10 Q. Who actually owns the product?

11 A. The airlines that are our customers.

12 Q. That was American Airlines at one point in  
13 time and now is it American and Southwest?

14 A. That is correct.

15 Q. Anybody else?

16 A. No, sir.

17 Q. So there was a total of two airlines that  
18 actually are benefiting from your providing this  
19 fuel, is that correct?

20 A. At this time, yes, sir.

21 Q. And you would agree that's not the public  
22 in general, that's American Airlines and Southwest,

1 correct?

2 A. That's correct.

3 Q. And I take it that if American Airlines and  
4 Southwest can't get this fuel from you they can get  
5 it from other sources?

6 A. Yes, sir, I'm sure they could.

7 Q. And you indicate that you supply about  
8 three million gallons a month to American Airlines  
9 and Southwest approximately?

10 A. Approximately about 1.8 million.

11 Q. 1.8 million gallons a month to those?

12 A. Yes, sir.

13 Q. So in your petition that was originally  
14 filed with this Commission you indicated it was  
15 three million gallons of fuel per month. Has it  
16 gone down?

17 A. I would have to see where I said that. It  
18 has gone down since 1995. We used to provide up to  
19 15 million gallons a month.

20 Q. And you're down to 1.8?

21 A. 1.8 is right now our average.

22 Q. Now, sir, in the petition filed with this

1 Commission, and it was actually verified by Robert  
2 Rose, he had indicated it was three million gallons  
3 per month. Do you feel that your 1.8 is more  
4 accurate currently?

5 A. Could I see that, where that's referenced,  
6 please?

7 Q. Certainly. That's Paragraph 8 of the  
8 petition. You see where he put three million  
9 gallons?

10 A. That's correct.

11 Q. Of course, that was filed back in October  
12 of 2002. Do you feel your 1.8 million is more  
13 accurate?

14 A. It is more accurate as of today, yes.

15 Q. Thank you. 1.8 million, you're supplying  
16 about 60,000 gallons a day?

17 A. In that neighborhood, yes, sir.

18 Q. And I take it then if St. Louis Pipeline  
19 didn't get this easement, in fact had to cease their  
20 operation, that would amount to eight trucks a day?

21 A. Nine.

22 Q. Nine would actually -- at 7400 gallons,

1           nine would put us up to 70,000 gallons a day,  
2           wouldn't it?

3           A.   Well, nine, yes, sir.

4           Q.   Just doing simple math, somewhere between  
5           65 and 70,000?

6           A.   Okay.

7           Q.   So a total of one truck per hour, roughly,  
8           1.2 trucks per hour on the Illinois highways?

9           A.   That's correct.

10          Q.   And St. Louis International Airport has the  
11          capacity to serve 40 trucks, I think, at a time?

12          A.   No.

13          Q.   I'm sorry, handle 40 a day?

14          A.   I think that I provided some of that  
15          information and I don't remember it as far as how  
16          many trucks they can handle a day.

17          Q.   I can get it through Mr. Maple, I think.  
18          But roughly one an hour, would that be a fair  
19          statement?

20          A.   Sure.

21          Q.   Not a whole lot of effect on our roadways,  
22          I would take it, at one an hour?

1           A. I think any time you've got a fuel truck on  
2 the roadway it's a danger.

3           Q. There are currently, what, Shell pipeline  
4 provides, they've got, what, ten-and-five-eighths?

5           A. They have a 10 inch. My understanding,  
6 they have a 10 inch pipeline into Lambert.

7           Q. When you have a six-and-five-eighths is it  
8 a six inch pipeline and five-eighths of exterior  
9 protection?

10          A. No. The pipe itself is  
11 six-and-five-eighths. The interior of the line is  
12 six inches.

13          Q. Okay.

14          A. There's steel. The exterior is all steel.  
15 The mills of epoxy coating, as I was telling the  
16 judge, is in addition to, so it's 12 to 14 mill.

17          Q. There's been some testimony submitted by I  
18 believe Mr. Maple that there is 650,000 to 850,000  
19 gallons of fuel a day being needed by Lambert  
20 airport?

21          A. That's correct.

22          Q. You guys supply less than 10 percent of

1           that fuel?

2           A.   At current, yes, sir.

3           Q.   We know Shell supplies it.  Does Conoco  
4           Phillips also?

5           A.   Shell does not own any product or  
6           facility.  They're interconnected with Conoco  
7           Phillips and Conoco Phillips uses Shell to receive  
8           product and uses their line, so there's two separate  
9           entities now, where it used to, when we started this  
10          proceeding it was Shell Pipeline and Shell Refinery.

11          Q.   And I also understand it that Lambert also  
12          gets fuel from as far as Kansas City by motor  
13          transport.  Are you familiar with that?

14          A.   I'm not aware of that.

15          Q.   Do you even know how many other sources  
16          Lambert has for Jet A fuel besides yourself?

17          A.   As far as pipelines, Shell pipeline and  
18          ours is the only.

19                  As far as in the Metro East, the only  
20          source for jet fuel outside of coming up from the  
21          Gulf Coast, which we take product from the Gulf  
22          Coast, is Conoco Phillips.  There is no other source

1 at this moment.

2 Q. What about Explorer?

3 A. Explorer comes up from the Gulf Coast. We  
4 receive product through Explorer into our tanks.

5 Q. And I take it Explorer could also provide  
6 it to Shell, if needed?

7 A. I don't know whether they have the  
8 capability. I don't know whether the refinery is  
9 interconnected with Explorer or not.

10 Q. As I understand it, there's absolutely no  
11 product, or no market for this product in the Metro  
12 East area?

13 A. There's several other airports in the Metro  
14 East area.

15 Q. Well, in your testimony, I think it's on  
16 submissions to Staff data requests, is there -- have  
17 you not indicated previously that there's no other  
18 market for this Jet A fuel other than Lambert  
19 airport?

20 A. I don't know that I've said that. I don't  
21 remember saying that.

22 Q. I'll find exactly where it is. The

1 responses to Staff Data Request Number 17, looking  
2 for that exhibit.

3 MR. McNAMARA: Well, are we on the record now?

4 JUDGE ALBERS: Yes.

5 MR. McNAMARA: I don't know that unless it's  
6 been raised in the testimony it's proper cross  
7 examination. I don't know the relevance, but I  
8 don't know that simply because in discovery at some  
9 point in time there was an answer given it's proper  
10 to cross examine him on it at this time. He's not  
11 testified to it. It's simply beyond the scope of  
12 his direct examination and his rebuttal and every  
13 other thing he said.

14 JUDGE ALBERS: Mr. Rongey, you're referring  
15 to Petitioner's Exhibit 1.1?

16 MR. RONGEY: I'm referring to St. Louis  
17 Pipeline's response to Staff data requests.

18 JUDGE ALBERS: Just read the question so we  
19 can know which question it is you're getting at and  
20 that may help us.

21 MR. RONGEY: I understand.

22 JUDGE ALBERS: I just want to make sure I

1 know which one he's talking about here.

2 MR. RONGEY: Staff Data Request Number 17 is  
3 in my notes. That's what I'm looking for.

4 MS. BUELL: Your Honor, I believe that's  
5 Petitioner's Exhibit 4.1, which is attached to  
6 Mr. Hopgood's Rebuttal Testimony, and Data Request  
7 Number 17 is towards of front of that packet. The  
8 pages aren't numbered.

9 MR. McNAMARA: I'll withdraw my objection.

10 Q. (By Mr. Rongey) Sir, the question posed to  
11 St. Louis Pipeline is, does the pipeline in question  
12 serve any customers other than Lambert airport? If  
13 so, provide the location and number of customers  
14 served. The answer is no.

15 A. That is correct. The question you asked me  
16 is that product not needed in Metro East. The  
17 product and pipeline are two different things.  
18 There's a lot of customers for jet fuel but St.  
19 Louis Pipeline only provides service to Lambert.

20 Q. It's a poor question but your answer  
21 certainly clears it up. Thank you.

22 And I think my additional question was

1           that there's absolutely no demand in Illinois for  
2           your product?

3           A.    There is no demand in Illinois for my  
4           pipeline at this time.

5           Q.    Would you agree that since 1995 there has  
6           been a constant reduction in demand for the Jet A  
7           fuel supplied by St. Louis Pipeline Corp.?

8           A.    Yes, sir.

9           Q.    It's decreased every single year?

10          A.    Up until 2003 it had, then it's sort of  
11          back and forth.  Now it's beginning to increase back  
12          with the ontake of Southwest.

13          Q.    So you've been even below the 60,000  
14          gallons you're currently doing per day?

15          A.    I believe at one time we were at 44,000 a  
16          day.

17          Q.    Less than six trucks a day?

18          A.    At that point, as well as being the second  
19          and the backup pipeline to the airport should Shell  
20          go down, which they have.

21          Q.    Now, one other development that's occurred  
22          recently is out at Lambert Field they now have a new

1 storage facility?

2 A. No, sir, they do not.

3 Q. They're building one in 2005?

4 A. Not that I'm aware of. There is plans in  
5 the expansion to build a new fuel storage facility  
6 but that has not -- they have not broke ground on  
7 that as yet.

8 Q. I'm just referring to your response to the  
9 same exhibit we just referenced at Number 22.

10 Sir, there was a Staff data request to  
11 you, 1.22. I'm referring to the previous exhibit we  
12 had.

13 Number 22; what means besides those listed  
14 in response to Staff Data Request EMG 1.21 are  
15 projected to be available to provide the market area  
16 with supplies one year, five years and 10 years from  
17 today?

18 Answer; we are not aware of any changes in  
19 the modes of receipt of Jet A aviation fuel into  
20 Lambert International Airport. There's a new fuel  
21 storage system in the design phase of the W1W  
22 airport expansion project that is due to be built in

1           2005. This system will give the airport more  
2 storage capacity.

3                   Are you familiar with that response?

4           A. Yes, sir, I am.

5           Q. Is that the -- I mean, is there a new  
6 storage system that is being contemplated to be  
7 built out at Lambert Airport?

8           A. There is.

9           Q. Sir, assuming that new storage system is  
10 built that could also have a bearing on if St. Louis  
11 Pipeline wasn't supplying fuel Lambert's ability to  
12 meet its needs even if there's an interruption from  
13 other suppliers?

14           A. Well, the long range, my understanding of  
15 the long range forecast of Lambert is to be to  
16 pre-2001 levels of product requirement by 2008,  
17 which would be -- and I'm saying that, I think it's  
18 2008 they should be back up over a million to a  
19 million-one a day, which their requirements would  
20 increase as far as they projected out.

21           Q. The fuel storage facility, would, in fact,  
22 reduce the need for the St. Louis Pipeline fuel

1 supply at least on a basis of a week, or whatever  
2 the case may be, in the event there was an  
3 interruption of the fuel supply. Would you agree  
4 with that?

5 A. No.

6 Q. They wouldn't draw upon their reserves?

7 A. Well, they have not built and completely  
8 designed the system yet, and for me to answer your  
9 question would be assuming that I knew the capacity  
10 that they're going to have total at that time. They  
11 do have plans and are designing a new fuel storage  
12 system.

13 Q. And they also, I think in your answers,  
14 they've got plans to expand their airport?

15 A. They are expanding their airport, yes, sir.

16 Q. Some two billion dollars worth of work?

17 A. That is correct.

18 Q. But the expansion has nothing to do with  
19 adding gates, would you agree with that? It's not  
20 adding airlines or gates?

21 A. That's correct.

22 Q. It's only changing the location of the

1 runways?

2 A. I can't debate what all their expansion  
3 consists of. I know that they've paid me a million  
4 dollars to relocate on two different occasions  
5 because the airport realizes the necessity for the  
6 pipeline. If there wasn't a necessity they wouldn't  
7 have paid us to relocate.

8 Q. But in your answer that you had provided in  
9 response to the Staff data request you allude to the  
10 fact that the airport is expanding suggesting the  
11 need for the additional fuel consumption. The  
12 expansion that has occurred out there has been a  
13 relocation of runways. Are you not familiar with  
14 that?

15 A. I am familiar that the expansion is  
16 relocating and adding runways but the -- currently  
17 they are not using all the gates that they were  
18 using pre-9/11.

19 Q. I would agree with that. In fact, the  
20 airline traffic has been reduced significantly  
21 pre-9/11?

22 A. That's correct.

1           Q.   And the loss of American or TWA as a hub,  
2           that's had an impact, would you agree with that?

3           A.   I agree with that.

4           Q.   There's no plans for there to be another  
5           hub in St. Louis at least in the immediate future;  
6           would you agree with that?

7           MR. McNAMARA:   I'm going to object.   I don't  
8           think this witness can testify to that.

9           JUDGE ALBERS:   Sustained.

10          Q.   (By Mr. Rongey) Sir, you've indicated that  
11          you feel that St. Louis Pipeline has engaged in  
12          negotiations with the Metro East Sanitary District  
13          prior to proceeding before this Commission?

14          A.   I do.

15          Q.   Have you ever seen a single offer from  
16          St. Louis Pipeline to the Metro East Sanitary  
17          District prior to the filing of this proceeding for  
18          the easement that we're -- that's at issue here?

19          A.   I have not.

20          Q.   There's no bargaining that's taken place,  
21          would you agree with that?

22          A.   I would.   I would agree that we have not

1 bargained any prices at this time. Well, up until

2 --

3 Q. Well, go ahead.

4 A. We have provided an offer to Metro East.

5 Q. That's the one that took place about a  
6 month and a half after you filed here?

7 A. In that neighborhood, yes, sir.

8 Q. There was no bargaining prior to that point  
9 in time?

10 A. There was none from me.

11 Q. None from St. Louis Pipeline, at least that  
12 you've seen?

13 A. I provided the information that came from  
14 Metro East to Mr. Rose in Tampa, and if he did any  
15 negotiation I'm not aware of it.

16 Q. Sir, you have been directed by Mr. Rose to  
17 appear on his behalf, have you not?

18 A. I have.

19 Q. Once again, sir, you haven't seen any  
20 bargaining whatsoever by St. Louis Pipeline  
21 Corporation prior to the filing of this proceeding?

22 A. I have not.

1           Q. You know the five foot width minimum that  
2 the MESD is requiring. The Wood River Levy District  
3 also required a five foot width minimum, didn't  
4 they?

5           A. I haven't reviewed theirs. I'm not sure.

6           Q. St. Louis Pipeline paid \$2.50 per linear  
7 foot to the Wood River Levy District. Are you  
8 familiar with that?

9           A. One time payment, yes, sir.

10          Q. Was that \$2.50 regardless of the width or  
11 was that 50 cents for the five foot width minimum?

12          A. I would have to look at the document to see  
13 exactly how wide it is.

14          Q. Well, if it's just \$2.50 per linear foot  
15 regardless of the width you guys paid more to them  
16 than Metro East Sanitary District has even  
17 requested?

18          A. I think we offered you \$2.50 for a one time  
19 payment, which that's what we gave them. Yours is  
20 annual that works its way up to \$2.50.

21          Q. And Wood River wanted it to be an annual  
22 thing but there was a problem with that, correct?

1           A. I don't know of why there was a problem. I  
2 mean, there was some issues as to a quit claim deed.

3           Q. And the problem that arose in that is that  
4 they gave a quit claim deed to St. Louis Pipeline  
5 Corporation basically for a permanent easement  
6 forever back in 1970?

7           A. I'm assuming that's correct.

8           Q. But until that problem was discovered  
9 St. Louis Pipeline Corporation was paying \$2.50 per  
10 linear foot and that was at least being negotiated  
11 by Wood River on an annual basis?

12          A. Not that I'm aware of.

13          Q. Are you aware that the US Army Corp of  
14 Engineers requires a five foot width crown over the  
15 pipelines crossing the levy properties?

16          JUDGE ALBERS: Could you define what you  
17 mean by crown?

18          MR. RONGEY: Fill or deposit over the pipeline.

19          Q. (By Mr. Rongey) Do you understand what I  
20 mean, Mr. Hopgood?

21          A. Yes, sir, I do.

22                 Your Honor, it's where they required us to

1 put the pipeline on top of the levy, that we could  
2 not dig into the levy, so with cover we had to crown  
3 a minimum of five foot out over the pipeline itself  
4 to have covered protection.

5 JUDGE ALBERS: So five feet across the top  
6 and five feet from the pipeline in service?

7 A. I know that they require us to crown it. I  
8 do not have the requirements in front of me to tell  
9 you exactly how much it was, but I know there is a  
10 crown. I'm not disputing what you say, I just, I  
11 don't have it in front of me.

12 JUDGE ALBERS: Just some layer of earth over  
13 the pipeline on top of the levy?

14 A. That's correct.

15 JUDGE ALBERS: Did you get your question  
16 answered then?

17 MR. RONGEY: I think it's answered  
18 sufficiently and Mr. Greathouse has shed further  
19 light on that as he has submitted before.

20 Q. (By Mr. Rongey) Would you agree, sir, that  
21 it would be almost impossible for St. Louis Pipeline  
22 to fix its pipeline and stay solely within a one

1 foot wide easement?

2 A. It would depend on the repairs that were  
3 required. If we were replacing the pipe and leaving  
4 the existing pipe in line we could do a directional  
5 bore under the existing and stay within the one  
6 foot.

7 As far as exposing the pipeline we would  
8 have to -- we would have to go in and request a  
9 temporary.

10 Q. Sir, don't you have much wider easements  
11 that you have negotiated with other entities beyond  
12 one foot, beyond five foot, in fact, as much as 20  
13 to 50 foot?

14 A. The only other easements that I've been  
15 involved in negotiating is the utility corridor for  
16 the Corp of Engineers which is called a 75 foot wide  
17 easement, but it's a corridor that allows all the  
18 utilities to put their pipeline through this  
19 corridor. We are giving permission to put our  
20 pipeline, relocate it through the corridor for the  
21 length, not the width. We've got to stay within the  
22 75 feet, and they approved the location of our pipe.

1 But it's in a corridor and there's three pipelines  
2 in that corridor.

3 Q. Three pipelines within 75 feet?

4 A. Yes, sir, that are in that 75 foot bore.

5 Q. You also have easements with railroads and  
6 various other entities, is that correct?

7 A. That's correct.

8 Q. How wide are those easements? Can you give  
9 me a range?

10 A. I would prefer to pull some easements. I  
11 don't really -- we have a great deal of easements,  
12 and many places where there's multiples that it's  
13 not exclusive it's in corridors, it's in utility  
14 corridors. But to tell you exactly the width of or  
15 even the range of the railroads, I'm not sure that I  
16 really know offhand.

17 Q. Would you agree that by the Metro East  
18 Sanitary District's insistence upon the five foot  
19 width minimum that the MESD has the ability to  
20 restrict the number of pipelines in a given  
21 horizontal spectrum of the ground?

22 A. Yes, sir.

1 Q. And that's a good thing, isn't it?

2 A. Very good thing.

3 Q. Good thing for safety purposes?

4 A. That's correct.

5 MR. RONGEY: Thank you, sir. That's all I  
6 have at this time.

7 CROSS EXAMINATION

8 BY JUDGE ALBERS:

9 Q. I have a few questions for you,  
10 Mr. Hopgood, but before -- you've been on the stand  
11 for a couple hours. Do you need a break?

12 A. No, sir, I'm fine. Thank you.

13 Q. The first thing I want to do is make sure  
14 I have a clear understanding of exactly where this  
15 pipeline is. I want to refer to Exhibit 3.1  
16 attached to your Supplemental Direct. And it will  
17 probably just be easiest if I ask you to come over  
18 here and show me, and the three attorneys are  
19 welcome to come up here and make sure that what  
20 he's showing me.

21 MS. BUELL: I'd like to know the same thing.

22 JUDGE ALBERS: This is 3.1.

1 MR. McNAMARA: Do we have 3.1 up there? Good.

2 Q. (By Judge Albers) I added a highlighting  
3 for my own purposes, but is the original one, the  
4 one I was hearing, say 1990, whenever it was  
5 originally, is it fair to say it's that blue line?

6 A. Yes, sir, it is.

7 Q. And the one where it exists today is the  
8 yellow line?

9 A. That's correct.

10 Q. And the bridge that's constructed, on this  
11 side you have Wood River, on this side MESD?

12 A. Yes, sir. And these are the levies. This  
13 is all inside the levies.

14 Q. These areas here are the levies, correct?

15 A. Yes, sir.

16 Q. All right.

17 MR. McNAMARA: Mr. Hopgood, the north is  
18 towards the judge, the south is towards me?

19 A. That's correct.

20 Q. (By Judge Albers) I think I can ask the  
21 rest of my questions without you having to stand  
22 there. So thank you.

1                   Now, based on some earlier -- actually,  
2                   based on some of your attachments to your testimony,  
3                   in particular the one that Mr. Rongey discussed with  
4                   you was that letter from Mr. Rose.  Actually, it has  
5                   the joint application attached to it.  Does that  
6                   help your recollection?

7                   A.  Yes, sir.

8                   MR. RONGEY:     1.2.

9                   Q.  (By Judge Albers) In any event, it  
10                  appeared that at one point there was some concern  
11                  about erosion based on that particular document?

12                  A.  Yes, sir.

13                  Q.  First, is the erosion being referred to  
14                  simply the removal of soil from the bottom of the  
15                  canal?

16                  A.  That's correct, sir.

17                  Q.  By the flow of the water?

18                  A.  Yes, sir.

19                  Q.  And at least in theory some -- whatever  
20                  degree of possibility, there's some possibility of  
21                  the corrosion of the exposed pipeline.  If the soil  
22                  is removed, the soil at the bottom of the canal

1 covering the pipeline is removed?

2 A. As it sets today, sir. As the replacement  
3 is now.

4 Q. No, where it was -- where it was in '95,  
5 whenever.

6 A. Yes, sir. I mean, it eroded due to the  
7 flooding and to the current. There were several  
8 methods that we investigated about adding new cover  
9 to it, dams and silting it in and rocking it in and  
10 different options.

11 And spoke with the Corp of Engineers.  
12 They felt that the alternatives were not a good idea  
13 and that we should look and investigate replacing  
14 that pipeline across since it had eroded out, that  
15 they felt if we did some additional cover in a  
16 matter of time it would erode as well.

17 Q. And prior to the IDOT bridge project am I  
18 correct in understanding that St. Louis Pipeline  
19 Corp. Contemplated simply putting the pipeline  
20 deeper in the same location?

21 A. That's correct, sir.

22 Q. But the Corp of Engineers did not like that



1           delayed due to funding until the '98 when the  
2           project was actually started and completed.

3           Q.   Okay.  And so you moved it out of safety  
4           concerns, and then this says the reason it's such an  
5           angle, is that the product of having to do  
6           directional boring?

7           A.   Yes, sir.  And that was also the reason  
8           that we changed back from wanting to put in an eight  
9           inch line to a six inch.  We couldn't do an eight  
10          inch line at that skew.

11          Q.   And so the construction on the pipeline  
12          started in October of '98 and completed in November  
13          of '98?

14          A.   I believe it was December, sir.

15          Q.   December, okay.  Let me ask this, just to  
16          make sure I understand.  On Page 9 of your Direct  
17          Testimony, Lines 193, 194, you state the project was  
18          completed in November of 1998.  Was that the bridge  
19          project then or the pipeline project?

20          A.   That was the pipeline project was installed  
21          in November.  As far as the grounds keeping and  
22          cleaning it up we closed the project down I believe

1 in December.

2 Q. And in December of '98, is that when the  
3 pipeline began operating?

4 A. We restarted. We were only -- we were  
5 still running up until we did the tie-ins, and we  
6 were only down I want to say 10 days, 10 or 12 days  
7 for the tie-ins.

8 Q. Was that in December or so of '98?

9 A. I'm going to say it was probably in  
10 November that we actually went down for the 10 days.  
11 I don't remember exactly.

12 Q. Can you tell me how many different parcels  
13 this Illinois portion of the pipeline crosses?

14 A. I don't know offhand. We have that.

15 Q. But the --

16 MR. McNAMARA: Judge, if I might say.

17 JUDGE ALBERS: I'm trying to get a big picture  
18 view here.

19 MR. McNAMARA: Parcels, are you saying  
20 different land owners?

21 JUDGE ALBERS: Different piece of property,  
22 whether it's the same land owner in different

1 locations.

2 MR. McNAMARA: The only thing I know that  
3 might give us a clue, depending upon what you mean  
4 by parcels, is I believe our supplement to the  
5 Petition lists the land owners that we believe are  
6 along and upon the pipeline. That's about the best  
7 I think we can do.

8 JUDGE ALBERS: If the information doesn't  
9 exist I'm going to kind of --

10 MR. RONGEY: Your Honor, I know it came up,  
11 I think there was like 104 easements in this 22 mile  
12 stretch, but that's from Illinois all the way to  
13 Lambert. Something along that line 104, 105, off  
14 the top of my head.

15 Q. (By Judge Albers) And the total length?

16 A. 22.5 miles is the total length.

17 Q. And the Illinois portion is roughly eight  
18 miles?

19 A. Yes, sir.

20 Q. Can you tell me how long is the easement  
21 which you're seeking?

22 A. It's 25.

1 Q. As far as feet?

2 A. 627 feet I believe is what was calculated.

3 Q. And that covers the area from the center  
4 line of the canal south to wherever MESD's property  
5 stops?

6 A. That's correct.

7 Q. And how many different -- you might not  
8 know this but how many different parcels were  
9 involved in the relocation of the pipeline?

10 A. Just Wood River and MESD, and Illinois  
11 Department of Transportation said they owned it, so  
12 three.

13 Q. Okay. Now, after learning that the  
14 previous -- let me ask you this first; do you know  
15 how wide the easement was under the prior ordinance  
16 with MESD?

17 A. No, sir, I don't.

18 Q. So after learning that the previous MESD  
19 easement expired in 1995 and prior to the actual  
20 pipeline relocation work, did St. Louis Pipeline  
21 Corporation at any time think it had obtained an  
22 agreement with MESD to actually build or install new

1 pipeline?

2 A. No, sir. I was not aware of Ordinance 797  
3 until '96 or '97 when the relocation issue came up.

4 Q. Could you refresh my memory which  
5 ordinance?

6 A. I'm sorry, 797 is the ordinance that was  
7 between MESD and St. Louis Pipeline originally in  
8 1970.

9 MR. RONGEY: I think it's 719.

10 A. I'm sorry, you're right, 719. And it was  
11 the original from 1970 to 1995 when it expired.

12 I was not aware of the ordinance until we  
13 started talking about relocating due to problems and  
14 talking to MESD and they brought up the issues that  
15 our records show it's expired.

16 Q. But you learned it expired before you began  
17 the work on the pipeline, is that correct?

18 A. Yes, sir.

19 Q. And you didn't think you had any type of  
20 agreement in place before you began the work, is  
21 that correct?

22 A. As far as I know we had a permit from MESD

1 to begin with.

2 Q. Was that the letter referred to earlier?

3 A. There was an original permit submitted in  
4 1996 to Walter Greathouse, Sr., and that was when we  
5 first began talking of the relocation. The one, the  
6 other permit came later.

7 Q. So St. Louis Pipeline Corp. Began work on  
8 the new pipeline in October of '98 based on this  
9 1996 permit?

10 A. I believe it was on the later permit that  
11 we actually did work on. When we first asked for a  
12 permit was in 1996.

13 Q. And is there -- which permit then did you  
14 actually base the work on?

15 A. The one that Mr. Rongey showed me earlier  
16 was the one that -- with the letter.

17 MR. RONGEY: The letter of October 1, '98.

18 JUDGE ALBERS: That's the one I'm thinking  
19 of. All right.

20 Q. (By Judge Albers) So based on that October  
21 1 letter you thought -- St. Louis Pipeline thought  
22 that this was permission to install the new line?

1           A. Yes, sir. And let me say also, again, I  
2 was not with the company then so I'm going by what I  
3 read that they assumed that they had permission to  
4 proceed with the project itself.

5           Q. Okay. I understand. I believe you told  
6 Mr. Rongey a few minutes ago that you do not recall  
7 how wide any of the other easements are that  
8 St. Louis Pipeline Corp. Has?

9           A. I know that we have several but I don't  
10 know as far as the railroads of how wide those  
11 easements are. We do have some easements that are  
12 up to 25 foot that were created back in the early  
13 1900s. I'd say probably the smallest one we probably  
14 have is probably two foot. But I would have to  
15 verify that.

16          Q. You think you have some as small as two  
17 feet?

18          A. Yes.

19          Q. Do you have any that are one foot wide?

20          A. No, sir.

21          Q. And are you certain you have no other one  
22 foot wide easements?

1           A.  No, sir.

2           Q.  You're not certain?

3           A.  I am certain I do not.

4           Q.  Just to be clear, I'm referring to the  
5           St. Louis Pipeline pipeline running near Wood River  
6           and the Mississippi, so from that eight mile stretch  
7           you don't have any other one foot wide easements?

8           A.  No, sir, I do not.

9           Q.  Now, is St. Louis Pipeline Corporation --  
10          you're seeking a one foot easement from MESD?

11          A.  Yes, sir.

12          Q.  And are you asking that it be exclusive?

13          A.  We would want a one foot exclusive, yes,  
14          sir.

15          Q.  Now, am I correct in recalling in the  
16          earlier discussions you had with Ms. Buell and  
17          Mr. Rongey that there hasn't actually been any  
18          request for an exclusive easement?

19          A.  Not that I'm aware of.

20          Q.  Why do you want a one foot easement in this  
21          instance when you don't have any others?

22          A.  It's due to the exorbitant cost of the

1 easements that Metro East was levying against it.

2 Q. Okay. So it's just a way to keep the cost  
3 down?

4 A. Yes, sir.

5 Q. Earlier you talked about or you brought up  
6 the Illinois Department of Transportation's rules  
7 for petroleum pipelines, and I believe you indicated  
8 that they require 12 to 18 inches separation. Is  
9 that from the center line of the pipeline or from  
10 the edge of the pipeline?

11 A. It would probably be, and I'd have to look,  
12 but I'm sure it's center line.

13 Q. So from the center of the pipeline 12 to 18  
14 inches, right?

15 A. Over, under, side by side as the minimum.  
16 They prefer 18 but they will settle at 12.

17 Q. Now, are you looking at that minimum 12  
18 inch under the IDOT rules as -- strike that.

19 What type of maintenance and repair work  
20 is typically done on a pipeline such as this?

21 A. Until we would have a relocation for a  
22 bridge project or any type of work along the

1 pipeline it's just inspected every two weeks for  
2 signs that there could be any leaks or exposed  
3 damage that we could see above ground. We inspect  
4 each section of our pipe every two weeks.

5 As far as maintenance, the only place that  
6 we physically do maintenance on a recurring basis is  
7 at our isolation pitch where we have valves where we  
8 can isolate certain sections of the line without the  
9 whole line running continuously. We perform  
10 maintenance and breathe those valves as well as  
11 operate them once a month, and the transfer station  
12 where we receive and where we issue, which is all  
13 above ground, we do maintenance.

14 But physically underground pipe we observe  
15 it for people working around it and we observe it  
16 for any condition that would give us an indication  
17 there's a leak or some type of damage.

18 Q. So unless somebody dug a backhoe into it or  
19 some other unforeseen accident occurs or unless the  
20 useful life of the pipeline had simply come due and  
21 you're moving it there wouldn't be any need, in your  
22 opinion, to actually get into the earth and work on

1 the pipeline?

2 A. That's correct, sir.

3 Q. And if any of those situations occurred  
4 would you need more than five feet from the center,  
5 you know, two-and-a-half feet from each side of the  
6 center of the pipeline to do that work?

7 A. For excavation, most likely, yes, sir.  
8 Depending on what type of work we was doing we would  
9 most likely have to go to the land owner and ask for  
10 temporary easement to excavate.

11 Q. Around that area?

12 A. Yes, sir.

13 Q. Now, earlier you mentioned that there was  
14 one other pipeline that feeds into Lambert Airport  
15 and that's the -- at least when the petition was  
16 filed it was the Shell pipeline?

17 A. That's correct, sir. It's owned by Buckeye  
18 now.

19 Q. So ownership of the Shell pipeline has  
20 changed since the petition was filed?

21 A. Yes.

22 Q. And Buckeye owns that pipeline now?

1           A. Yes, sir, they do.

2           Q. And I thought I heard reference to Conoco  
3 Phillips.

4           A. Conoco Phillips owns the refinery that was  
5 once owned by Shell. Conoco Phillips is the other  
6 provider on refined products. It does not have a  
7 pipeline to the airport.

8           Q. So does Conoco Phillips send its product  
9 over the Buckeye pipeline?

10          A. They do. And we're in negotiations that  
11 they can interconnect into our pipeline as well and  
12 be able to ship product through our pipeline.

13          Q. So does Shell play any part in this?

14          A. No, sir. They're out of the picture  
15 totally.

16          Q. I just wanted to be clear.

17          A. Yes, sir.

18          Q. Absent the cost concerns you had with MESD  
19 for an easement, what is the minimum easement width  
20 that you would feel comfortable with from a safety  
21 perspective?

22          A. Normally speaking we would ask for a five

1 foot wide easement.

2 Q. But in light of the cost concerns that  
3 St. Louis Pipeline has you believe a one foot wide  
4 easement would still satisfy your safety concerns?

5 A. Yes, sir, I do. Since we can't have an  
6 exclusive five foot I believe that the one foot will  
7 meet our needs.

8 If we have a five foot that's not  
9 exclusive, to me, in my interpretation, it would be  
10 no different than having one foot. People still are  
11 going to have access to the pipeline. And it's more  
12 the issue of the five foot exclusive versus  
13 non-exclusive than it is whether I would prefer to  
14 have a five foot. Did I make that clear?

15 Q. I think so. Would St. Louis Pipeline  
16 Corporation be agreeable to an exclusive easement  
17 that was, just hypothetically, five feet wide and  
18 five feet from top to bottom? Is that ever done?

19 A. Yes, sir. Normally top to bottom is not a  
20 concern. If we have an exclusive we can restrict  
21 the companies coming through to maintain the 18  
22 inches.

1                   We have no objection to anyone going under  
2                   us, and we've given it to a lot of people as long as  
3                   they'll maintain the 18 inches and they'll expose us  
4                   where they're going to cross and we're there to  
5                   verify we get the 18 inches at the crossing.

6                   Q.   And to the extent that you can answer this,  
7                   is St. Louis Pipeline Corp. Only seeking a  
8                   certificate from the Commission now because of the  
9                   dispute with MESD?

10                  A.   Not only that is we should have, I don't  
11                  know whether it's we or Jim Joyce, the original  
12                  owner, should have come to the Commission well  
13                  before that to become a common carrier.

14                  JUDGE ALBERS:  I think that's all the  
15                  questions I have for you, sir.  Thank you.

16                  Do you have any redirect?

17                  MR. McNAMARA:  Yes, sir.

18                                 REDIRECT EXAMINATION

19                                 BY MR. McNAMARA:

20                  Q.   Mr. Hopgood, as far as doing any type of  
21                  maintenance on that pipeline, is having a five foot  
22                  wide easement much better than having a one foot

1 wide easement or are you going to have to go back to  
2 the land owner in any event?

3 A. We're going to have to go back either way.  
4 If we're going to expose the pipe we can't excavate  
5 right at five feet.

6 Q. As far as exclusive versus non-exclusive,  
7 in your opinion would you be better off with a one  
8 foot exclusive easement versus a five foot  
9 non-exclusive easement?

10 A. Yes, sir.

11 Q. Throughout your testimony and probably  
12 throughout some of the answers that we've given from  
13 time to time we've referred to the Shell pipeline.  
14 Should we now, as we're looking back on that  
15 testimony, consider that to be the Buckeye pipeline?

16 A. Yes, sir, we should.

17 Q. So the other source of Jet A fuel to  
18 St. Louis International Airport comes from a  
19 refinery that now is owned by Conoco Phillips and it  
20 goes over there via a pipeline owned by Buckeye?

21 A. That's correct.

22 Q. The judge, in response to one of the

1 questions of the judge you used the term useful life  
2 of the pipeline. Are you able to give us an opinion  
3 as to the useful life of that portion of the  
4 pipeline that traverses the property that is claimed  
5 to be owned by the Intervener, Metro East Sanitary  
6 District?

7 MR. RONGEY: I'm going to object on the  
8 basis of lack of foundation and as to his competence  
9 to offer that type of testimony.

10 MR. McNAMARA: Let me lay some foundation.

11 Q. (By Mr. McNamara) In the course of your  
12 business have you become familiar with the useful  
13 life of a pipeline?

14 A. Yes, sir.

15 Q. How did you gain this familiarity?

16 A. Normally by relocations when we've had to  
17 expose existing line that was installed in certain  
18 years, such as we have one area that we replaced  
19 along the Mississippi River for the Mississippi  
20 crossing that was installed in the 1920s, and the  
21 condition of that line, which was not coated was  
22 probably -- it probably was I would not say new but

1           its life, it still had a long life ahead of it.

2           Q.   Do you from time to time in the regular  
3           course of your business deal with suppliers of  
4           pipeline?

5           A.   I do.

6           Q.   Do they have brochures and make  
7           representations to you as to what you should expect  
8           from their products?

9           MR. RONGEY:  Objection, calls for hearsay.

10          MR. McNAMARA:  I think this is the type of  
11          evidence that we normally rely upon and is normally  
12          relied upon by business people in the community and  
13          I think it's proper for this to be considered.  It  
14          might go to the weight of it but not the  
15          admissibility.

16          JUDGE ALBERS:  I'm going to overrule the  
17          objection.

18          A.   Concord Steel, who we buy most of our steel  
19          pipe from, tells me that the life expectancy of a  
20          pipeline is between 50 and 75 years based upon the  
21          cathodic protection system that is used on the  
22          pipeline.  As long as it's maintained properly and

1           meets the standards there's no reason the pipeline,  
2           its life shouldn't extend to 75 years.

3           Q.    (By Mr. McNamara) So in this instance we  
4           would look reasonably 75 years from November or  
5           December of '98?

6           A.    Yes, sir.

7           Q.    We've been using the words erosion and  
8           corrosion, right?

9           A.    Yes, sir.

10          Q.    With regard to the pipeline, either prior  
11          to its removal and after, has there ever been any  
12          problem on the property at or near this Cahokia  
13          Diversion Canal, any corrosion problem?

14          A.    Not that I'm aware of.

15          Q.    The problem was an erosion problem?

16          A.    That's correct.

17          Q.    With regard to the municipal airport, have  
18          there been occasions when your pipeline was the sole  
19          supplying pipeline to the St. Louis Municipal  
20          Airport?

21          A.    Yes, sir, there have.

22          Q.    Can you explain when that occurred and why?

1           A. We -- we in the pipeline business, and I'll  
2 use we as all pipelines, when they perform  
3 maintenance such as running a pig through the  
4 pipeline, which is a clean -- not a ball but it's a  
5 cleaning brush that goes through that they push  
6 through with fuel and clean their pipeline on the  
7 inside to make sure it maintains its integrity and  
8 doesn't pass along any type of contaminants that may  
9 reach the other end, on occasion those will hang up  
10 in places.

11           Now, Shell has had theirs to hang up, or  
12 it was Shell, now Buckeye, had had theirs to hang up  
13 probably four or five times over the last seven or  
14 eight years. And when it does they have to locate  
15 that, that pig, and they have to cut that pig out.

16           That has happened. And when it plugs up  
17 that line they have no other source to get that fuel  
18 to the airport, so the airlines will call us and  
19 we'll start shipping around the clock for the  
20 airport if it's necessary to support the needs of  
21 the airport.

22           Generally, we do hydrostatic testing. We

1 do not run pigs on occasions like Shell does. They  
2 do not have filtering at both ends. We do, so we  
3 don't run into that problem. The airport uses us as  
4 a backup should anything happen to the Shell, to the  
5 Buckeye pipeline.

6 So that's -- there have been occasions  
7 where we have been the sole source.

8 Q. There were questions about the potential as  
9 to how possibly we might have a rupture with regard  
10 to our pipeline, and Mr. Rongey went into that as to  
11 movement of the earth, corrosion, these types of  
12 problems.

13 In your opinion, would a one foot versus a  
14 five foot easement have any effect whatsoever if  
15 there's movement of the earth or if there's  
16 corrosion? Does it makes any difference?

17 A. No. There is no difference.

18 Q. Likewise, as to public need, sir, you were  
19 cross examined and you mentioned that you are  
20 currently supplying two airlines at Lambert Field?

21 A. Yes, sir.

22 Q. With regard to those two airlines, sir,

1 does the general public from time to time travel  
2 upon those airlines?

3 A. Yes, sir, they do.

4 Q. From time to time do those airlines carry  
5 packages that are shipped by the general public?

6 MR. RONGEY: I would object, Your Honor,  
7 from the standpoint he's already testified that the  
8 airlines are the benefactors of this pipeline, not  
9 the general public, and he's also testified that the  
10 airlines have other sources to obtain this fuel  
11 other than St. Louis Pipeline if St. Louis Pipeline  
12 isn't here. So I don't think the questioning is  
13 proper in light of his prior testimony.

14 JUDGE ALBERS: I'm going to allow the  
15 question. I'll give it the appropriate weight when  
16 I hear comments, Mr. Rongey.

17 Q. (By Mr. McNamara) Does the general  
18 shipping public from time to time utilize the two  
19 airlines that you currently supply?

20 A. Yes, sir, they do.

21 Q. And likewise regarding the general  
22 traveling public?

1           A. Yes, sir, that's correct.

2           Q. The dates of your employment, so we have it  
3 on the record, when did you start, when did you go  
4 away for a while, when did you come back?

5           A. I began work for St. Louis Pipeline in May  
6 of 1996. I left St. Louis Pipeline in July of 1998  
7 and rejoined St. Louis Pipeline in November of 1998.

8           Q. With regard to the current placement of the  
9 pipeline which is the subject, portion of the  
10 subject of this litigation, approximately how deep  
11 is that pipeline buried?

12          A. Under the canal I want to say it's in the  
13 range of 20 foot of the center of the canal, and I  
14 would say at the banks of the canal it's probably a  
15 minimum of eight foot deep.

16          JUDGE ALBERS: Is that from the water surface?

17          A. From the floor surface.

18          MR. McNAMARA: Judge, it gets confusing, and  
19 I've had to try to beat some of this into my own  
20 head from time to time. Let me try and clarify this  
21 as best I can.

22          Q. (By Mr. McNamara) We have a diversion

1 canal, correct?

2 A. Yes, sir.

3 Q. And that's simply a canal full of water?

4 A. That's correct.

5 Q. And under the water portion of that you go  
6 down about 20 feet?

7 A. Under the floor of it.

8 Q. Under the floor?

9 A. Not the water surface but the floor.

10 Q. Okay, excuse me. Then on each side of that  
11 water surface we have what we call, do you call them  
12 berms?

13 A. Well, there's the bank itself, the normal  
14 bank.

15 Q. Okay, the bank. And you run pursuant to  
16 the direction of the Corp of Engineers, you didn't  
17 drill under that bank, you went over the bank?

18 A. You're talking about over the levy?

19 Q. Excuse me, the levy.

20 A. Yes, sir, we did.

21 Q. And there's a levy on each side of the  
22 canal?

1           A.   That's correct.

2           Q.   So rather than going under the levy you  
3 went over the levy?

4           A.   That's correct.

5           Q.   But as it goes over the levy it's eight  
6 foot under the top of the levy?

7           A.   No, sir.  It stays on top of the levy all  
8 the way to the toe.  Once we get to the toe then  
9 they start to bore back, okay.

10          Q.   Explain to me what you mean by toe.

11          A.   Toe means the bottom portion of the levy.  
12 It's my understanding it's the last portion that  
13 helps support the purpose of the levy, and, of  
14 course, the Corp will not let you dig into the levy  
15 because of the integrity.

16          Q.   Okay.

17          JUDGE ALBERS:  I think I understood it better  
18 before you tried to help.  No offense.

19          MR. RONGEY:  I was following Ed hook, line  
20 and sinker.

21          Q.   (By Mr. McNamara) Your company previously  
22 had what was referred to as an ordinance, 719, and

1           it was a 25 year ordinance. For lack of a better  
2           word, it's an agreement with Metro East Sanitary  
3           District?

4           A. Yes.

5           MR. McNAMARA: That's all I have.

6                     I would, since the judge had some question  
7           about it, maybe file a late filed exhibit, maybe do  
8           it jointly, and put that ordinance so the judge will  
9           see it. I thought it was in the record somewhere.

10           JUDGE ALBERS: It may be. I just thought  
11           for my purposes it may be easier just to ask him.

12           MR. RONGEY: Mr. Greathouse can certainly  
13           speak to it.

14           MR. McNAMARA: I've got it somewhere. I'm  
15           going to ask to make late filed Exhibit Number 8, a  
16           copy of the ordinance, just so it's in the record.

17           MR. RONGEY: No objection.

18           MS. BUELL: No objection from Staff, Your Honor.

19           MR. McNAMARA: I have no redirect.

20           JUDGE ALBERS: That's Ordinance 719. You'll  
21           both have an opportunity to recross.

22                     Before I forget I just wanted to ask, can

1           you tell me the proper name of Buckeye?

2           A.   As far as I know that is it, Buckeye  
3 Pipeline Corporation.

4           JUDGE ALBERS:   Pipeline Corporation.   Just  
5 in case it made its way into the order I wanted to  
6 refer to it correctly.   Is it spelled B-u-c-k-e-y-e?

7           A.   Yes, sir, all one word.

8           JUDGE ALBERS:   Okay, thanks.

9           MR. McNAMARA:   Is the witness excused?

10          MS. BUELL:   Staff has no recross, Your Honor.

11          MR. RONGEY:   I have just a few very quickly.

12                           RE CROSS EXAMINATION

13                           BY MR. RONGEY:

14          Q.   If you're granted an exclusive easement in  
15 this matter, what does that mean with regard to the  
16 non-exclusive easement owners that are in direct  
17 proximity of your pipeline?   How does that affect  
18 them?

19          A.   As you had asked earlier the same question,  
20 it has no effect on them.   We cannot even -- my  
21 understanding, with an exclusive easement I cannot  
22 stop another utility from crossing me.   All I can do

1 is ensure they meet the requirement of maintaining  
2 the 18 inches of separation crossing. If it's  
3 exclusive for the others they don't run alongside of  
4 me, that I'm aware of.

5 Q. But the US Army Corp of Engineers is the  
6 one who actually ensures that this 18 inches of  
7 cover is complied with. Would you agree with that?

8 A. No.

9 Q. They're the ones who you build according to  
10 their specs, don't you?

11 A. I build according -- they approve the  
12 drawings that we submit. The rules and regulations  
13 of constructing a petroleum pipeline comes from the  
14 Department of Transportation, Division of Pipeline  
15 Safety.

16 Q. And just so I'm sure, and I can follow up  
17 on that, but the MESD by giving this non-exclusive  
18 right to all of you we still have the right, the  
19 ability to make sure that any operations done on  
20 that property are controlled appropriately and  
21 monitored by the Metro East Sanitary District?

22 A. As far as -- I know that you would, yes. I

1 don't know whether you follow the guidelines of DOT.

2 I don't know.

3 Q. Let me ask you this, these pipelines seem  
4 to come and go; I mean, they're sold, they're  
5 merged, they're consolidated. Would you agree with  
6 that?

7 A. Yes, sir.

8 Q. And if you're not granted a certificate as  
9 a common carrier or the power to proceed under  
10 eminent domain proceedings would it be a fair  
11 statement that your pipeline could be purchased by  
12 another pipeline?

13 A. I don't know that that would be -- I  
14 can't -- I know that I'm here on behalf of the owner  
15 but I can't speak whether he's going to sell because  
16 he doesn't get common carrier status or what his  
17 motivation would be.

18 Q. Obviously, that is a potential, would you  
19 agree with that?

20 A. I'd say it's a potential either way.

21 Q. And there certainly seems to be a market to  
22 purchase these pipelines; they seem like they're

1 purchased by various companies all the time. Would  
2 you agree with that?

3 A. Almost like banks.

4 Q. So some other entity could certainly,  
5 provided it was willing to negotiate with the MESD  
6 and obtain an easement, could take over your  
7 pipeline and provide the same fuel that St. Louis  
8 Pipeline does?

9 A. It's possible.

10 Q. The lifetime of the pipelines that you were  
11 talking about previously, is that -- the 75 years I  
12 think you were talking about, does that include the  
13 repairs of the pipeline that are necessitated from  
14 time to time?

15 A. Yes.

16 Q. And that 75 years, does that exclude  
17 landslides, earthquakes, floods?

18 A. It excludes third-party damage. Obviously,  
19 anything can damage the pipeline.

20 MR. RONGEY: Okay. That's all I have.

21 JUDGE ALBERS: Okay. I don't think I have  
22 any other recross, so thank you very much.

1 I've got just about 10 after 12:00.

2 Before I get into that, any objection then  
3 to Petitioner's Exhibits 1, 3, 4, 6, and the  
4 aforementioned attachments?

5 MR. RONGEY: No, Your Honor.

6 JUDGE ALBERS: Those are all admitted.

7 (Whereupon Petitioner's  
8 Exhibits 1, 3, 4 and 6 were  
9 admitted into evidence as  
10 of this date.)

11 JUDGE ALBERS: And then I did want to ask you  
12 one question. I don't think one will object if I  
13 throw this out here. The 12 to 18 inch DOT  
14 standards, is that federal or state DOT?

15 A. That's federal, sir.

16 JUDGE ALBERS: It occurred I should perhaps  
17 make the distinction.

18 MS. BUELL: Thank you, Your Honor. In  
19 fact, I do believe when you were asking Mr. Hopgood  
20 you referred to IDOT regulations and Staff believes  
21 those are federal regulations as well.

22 A. I'm sorry for that. I should have pointed

1           that out.

2           JUDGE ALBERS:   And then also before I forget  
3           then, was there any objection then to the late  
4           filing of Ordinance 719?

5           MR. RONGEY:     No.   In fact, I was just showing  
6           Ed I have an unsigned copy of it but we can submit  
7           it, the signed copy, won't be a problem at all.  
8           He's got a copy and I know we do, too.

9           JUDGE ALBERS:   If there's no objection then  
10          that will be admitted into the record upon its  
11          receipt.  Were you going to file that on E-docket or  
12          send it straight to me?

13          MR. McNAMARA:   Probably both.

14          JUDGE ALBERS:   If you file it on E-docket  
15          please serve me.

16          MR. McNAMARA:   I will.

17          JUDGE ALBERS:   And then before I forget, the  
18          certificate of publication, Petitioner's Exhibit 7,  
19          I guess everyone got a copy of that, was there any  
20          objection to that?

21          MS. BUELL:     No objection from Staff, Your  
22          Honor.



1

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## AFTERNOON SESSION

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(Whereupon the

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9

JUDGE ALBERS: Back on the record.

10

MR. McNAMARA: Call Dennis Kallash.

11

## DENNIS KALLASH

12

called as a Witness on behalf of Petitioner, having

13

been first duly sworn, was examined and testified as

14

follows:

15

## DIRECT EXAMINATION

16

BY MR. McNAMARA:

17

Q. Would you state your name for the record,

18

sir, and spell both your first and last name.

19

A. Name is Dennis Kallash, D-E-N-N-I-S, last

20

name K-A-L-L-A-S-H.

21

Q. And what is your business or occupation,

22

sir?

1           A. I am a registered professional licensed  
2 surveyor in the state of Missouri and I own Fitch  
3 and Associates.

4           Q. Do you have before you what was previously  
5 marked as Petitioner's Exhibit 5.0 and 5.1, your  
6 direct testimony and attachment thereto?

7           A. I don't see the 5.0. Mine is 8.503. 5.0  
8 down here.

9           Q. Yes, sir.

10          A. Okay. Down at the bottom it says 5.0.

11          Q. You have got it?

12          A. Okay, I have got it.

13          Q. Have you had occasion to read that over?

14          A. Yes, sir.

15          Q. If I were to ask you the same questions,  
16 would you give the same answers that are set forth  
17 in 5.0?

18          A. Yes, sir.

19          MR. McNAMARA: I would tender the witness for  
20 cross examination. I would move for the admission  
21 of 5.0 and 5.1.

22          JUDGE ALBERS: We'll see if there is any cross

1 exam and any motions concerning the admission  
2 following that. Questions from Staff?

3 MS. BUELL: First, Your Honor, Staff has no  
4 objection to the admission of these two exhibits  
5 into the record, and I do have very few clarifying  
6 questions.

7 MR. RONGEY: Same here, Your Honor.

8 JUDGE ALBERS: Okay. Ms. Buell?

9 MS. BUELL: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MS. BUELL:

12 Q. Good afternoon, Mr. Kallash. My name is  
13 Linda Buell and I am representing Staff witnesses in  
14 this proceeding. And I would like to ask you just a  
15 very few clarifying questions regarding your  
16 rebuttal testimony. Specifically I am referring to  
17 the explanation that you provide on page 3 of your  
18 rebuttal testimony where you indicate that St. Louis  
19 Pipeline asked you to prepare a very exact legal  
20 description for the pipeline as it actually existed  
21 on MESD's property. Do you see that?

22 A. Yes.

1           Q.    Would it be correct to say that St. Louis  
2 Pipeline asked you to perform a survey?

3           A.    No.

4           Q.    Could you then explain to us exactly what  
5 St. Louis Pipeline asked you to do?

6           A.    Okay.  I think the instructions state that  
7 St. Louis Pipeline, and after the pipeline was in,  
8 they said there was a discrepancy between the  
9 as-built and a legal description.  I went out in the  
10 field with my instrument and had St. Louis Pipeline,  
11 since it is under the canal -- normally when I  
12 locate a pipeline we have it exposed or the top off  
13 so I can see the pipeline.  I could not do that  
14 under the canal.  So we walked into this with a, I  
15 think it is called, a metro tech device to locate.  
16 They located the flags and I located those flags and  
17 then I wrote a description of where those flags were  
18 because you can't dig up the canal.

19          Q.    When you say flag or flags, are you talking  
20 about the stakes that were placed into the ground  
21 that you refer to in your testimony?

22          A.    They are wire -- we call them flags or

1 stakes. They are wires about this long with little  
2 flags on top of them.

3 Q. Did you place the stakes on the center line  
4 of the pipeline, the outer edges or just somewhere  
5 in the general vicinity?

6 A. I didn't place the stakes. What the  
7 pipeline company did with their metro tech is they  
8 located it. When you get right above the center of  
9 the pipeline, it beeps or it's got arrows. When  
10 they do that, they would then stick a wire in it.  
11 The bar code is about this wide, so if it is there,  
12 you stick a wire in dead center. Then I located  
13 that wire. I didn't place no stakes.

14 Q. Would it be correct to say that the flags  
15 are placed in the center of the pipeline?

16 A. That's correct.

17 Q. And what would be your estimate of the  
18 distance between the flags?

19 A. On each side of the canal we went up to the  
20 water's edge. Boy, this is years ago. I was out  
21 there. I am going to say it is somewhere between 10  
22 and 15 feet, 10 and 15 feet. I don't know if it was

1           8 or 9 but, I mean, they was close. We had a bunch  
2           of flags when we shot. And what we do is when we  
3           locate them, if we have got two flags and they are  
4           2/100ths off, we know there is not a bend in the  
5           pipeline from a man sticking a wire in the ground.  
6           So I took them calculations and that's what I  
7           prepared the description off of.

8           Q. So using the process that you just  
9           described, how exact was your legal description?

10          A. My legal description was exact as you can  
11          get it without digging up the pipeline and visually  
12          seeing it.

13          Q. Mr. Kallash, do you know when the flags  
14          were placed how accurate they were? Were they  
15          accurate in your estimation to be, say, within one  
16          inch or six inches or a foot?

17          A. I don't know what the specifications is on  
18          metro tech. But on the job we did last week in  
19          Texas for a pipeline company they told me they was  
20          locating them with, we dug the pipeline up after  
21          they located them and they was locating them within,  
22          let's say, an inch to within a half inch each way of

1 the mark. And I dug one up in Texas. I dug several  
2 up. I couldn't dig this one up under the canal. So  
3 I don't know what metro tech puts out on the  
4 specifications of their equipment, but every  
5 pipeline I work with tells me they are within an  
6 inch or a half inch, either way.

7 MS. BUELL: Okay, thank you very much. Staff  
8 has no further questions.

9 JUDGE ALBERS: Mr. Rongey?

10 CROSS EXAMINATION

11 BY MR. RONGEY:

12 Q. Mr. Kallash, just a couple in follow up to  
13 that. If I understand your testimony then, you are  
14 not able to do anything with that portion of the  
15 pipeline that would be in water?

16 A. No, what we do is we shoot the last  
17 location going into the water and the last location  
18 coming out because the bores are straight and we  
19 connect those two points.

20 Q. And you understand, of course, that the  
21 MESD has had problems with comparing the as-built  
22 drawing to the -- I am just going to use the word,

1 the survey work that you had done out there at the  
2 scene, do you understand that?

3 A. The last time I looked at the as-built  
4 drawings, that was the construction drawings stamped  
5 As Built on them.

6 Q. Okay. And what are you saying now? I am  
7 not sure if I am following you.

8 A. As built's are supposed to reflect how a job  
9 is done in the field. As built's represent sewers,  
10 pipelines, water lines, whatever. A lot of times,  
11 generally most of the time, when we design a project  
12 and draw up a set of plans and then they construct  
13 it and if it is underground, when they dig the  
14 trench and lay it, they are within -- it depends.  
15 If it is a six-inch water line, they dig an  
16 eight-inch trench, they are following our stakes,  
17 they are within an inch plus or minus. So that  
18 instead of having a surveyor go back out there and  
19 say, well, pour over that job because you wouldn't  
20 know without digging the whole line up and exposing  
21 it all and shooting it, they stamp as built's on the  
22 plans. And I didn't stamp as built's on those plans

1 but I am assuming when I got contacted to go out  
2 there, the construction drawings had as built  
3 stamped on them. So I located where it was.

4 Q. With the work that you did, the stakes on  
5 one side of the levy are going to be on ground  
6 that's owned by the Wood River Drainage District?

7 A. That's correct.

8 Q. And the stakes on the other side are going  
9 to be ground that is purportedly owned by the Metro  
10 East Sanitary District?

11 A. Purportedly owned, yes.

12 Q. And where I guess we -- and what the MESD  
13 has struggled with here is we can't tell at what  
14 point the pipeline starts on our property and at  
15 what point it ends on our property and goes onto  
16 someone else's such as Wood River Levy District.  
17 That part appears to be in that water area, at least  
18 where there is a change in ownership?

19 A. Okay. So what --

20 Q. Would you agree with that?

21 A. No, say that question again.

22 Q. Well, the part that's underneath the water,

1 we can't tell at what point your pipeline becomes on  
2 property that is owned by Wood River Drainage  
3 District as opposed to property that is owned by  
4 Metro East Sanitary District. And your drawing  
5 doesn't identify that, does it?

6 A. My drawing shows the center of the canal.  
7 I was told -- I have not seen a survey of Wood  
8 River's property or MESD's property. I have not  
9 seen a survey showing that. I was told the center  
10 of the canal. So I think my drawing -- I will share  
11 my drawing -- shows the center of the canal because  
12 I went down and measured, shot the water's edge to  
13 water's edge and divided that in half and that's the  
14 center of the canal.

15 Q. In terms of the center point of the canal,  
16 is that uniform throughout that area?

17 A. When you say uniform --

18 Q. The canal width is basically the same and  
19 the center line of that canal would always be the  
20 same?

21 A. It fluctuates every day with the rise and  
22 lowering of the water.

1           Q.   So in terms of how much of your pipeline or  
2           of the pipeline, St. Louis Pipeline, is on there, to  
3           some extent that's going to depend on where the  
4           center point of that canal is and that could be  
5           based upon perception, based upon water level, is  
6           that a fair statement?

7           A.   No, because I don't think it is a  
8           meandering line.  I think it would be that the  
9           thread of the stream -- and if you or Wood River  
10          would have it surveyed by an Illinois surveyor, I  
11          think they would determine the center line would be  
12          the thread of the stream.  And if the water came up  
13          six inches on day and went down four inches the next  
14          day, the center line does not change.

15          Q.   Sir, you seemed to agree with my use of the  
16          term "purported" earlier in terms of the ownership  
17          of the property by the Metro East Sanitary District,  
18          do you recall that?

19          A.   Say that again.

20          Q.   I will just try that.  Do you have an  
21          opinion as to whether the Metro East Sanitary  
22          District owns the property that's at issue here

1           today?

2           A.   My opinion is they own a piece to the south  
3           that they have a quit claim and they do not own the  
4           ground inside the levy.

5           Q.   The ground inside the levy?

6           A.   Between the center line and the levy to the  
7           south, they do not own that ground fee simple.

8           Q.   You are talking about the part that's in  
9           the water?

10          A.   From the water to the piece that they own  
11          with their quit claim deed.  They do not own that  
12          fee simple.

13          Q.   Now, do you recall discussing the ownership  
14          of the subject property with Mr. Greathouse and  
15          myself by telephone back shortly after you had done  
16          this survey work?

17          A.   I remember talking to you all and I read  
18          that in your report, and I never said that you all  
19          owned that piece of ground.  You all have a quit  
20          claim deed to a tract of land but not that tract.

21          Q.   Who do you think owns that ground?

22          A.   We haven't done enough research to find out

1 exactly who owns it. Maybe the heirs of --

2 Q. Louie Hill?

3 A. Louie Hill.

4 Q. Did you see that Louie Hill had deeded all  
5 of that property to the Metro East Sanitary  
6 District, the property from the center line south?

7 A. I seen a right-of-way deed, not a fee  
8 simple deed.

9 Q. Well, actually the deed said he granted it  
10 to the Metro East District -- I am sorry, the Metro  
11 East Levy District at the time, for purposes of a  
12 right-of-way, for purposes of a right-of-way as  
13 opposed to granting a right-of-way, did you see  
14 that?

15 A. You will have to get that deed and let me  
16 read it. I have read a bunch of deeds but I can't  
17 remember the exact wording on the deed. I would  
18 read it if you had it.

19 Q. How much of the area do you believe the  
20 Metro East Sanitary District owns? Is that 627  
21 feet?

22 A. No.

1           Q. Did you -- how long was your survey? What  
2 was the length that you had indicated?

3           A. I ran the survey out over to a point with  
4 70 and, if I remember, 141 so it was about 210 feet  
5 south of the center line. There is nothing out  
6 there that -- there is no ornamentation in the field  
7 and nobody ever presented me with a survey showing  
8 me how far the Metro East line goes or the property  
9 was surveyed. So I extended it out to where the  
10 pipeline was over in the right-of-way.

11          Q. Is that by extrapolation the kind of thing  
12 that -- what do you mean you extended it out?

13          A. I located the pipeline all the way and just  
14 terminated at a point. I gave the legal -- it is up  
15 to MESD to provide them with a survey showing them  
16 where their line is and then they can see where it  
17 crosses their line. But nobody has ever showed me a  
18 line or a survey of what you all own out there or  
19 claim to own.

20          Q. That would generally be your burden, would  
21 it not? You are seeking to take that property.

22          A. Okay, what was your question?

1           Q. I guess based on your testimony would it be  
2 fair to say that St. Louis Pipeline built this  
3 pipeline on property it didn't even know who owned  
4 it?

5           A. When I was brought into the picture, okay,  
6 and asked to stake it out, I was told they had the  
7 permit from the highway department and I staked it  
8 out. After it was built and after we did this,  
9 that's when I have been brought into all this  
10 before. I never check a deed out when I do a  
11 pipeline relocation. That's up to them to obtain  
12 the permits. I stake it out for them but I don't  
13 check ownership. I did all this afterwards.

14          Q. I take it based on your testimony it would  
15 appear that they did not obtain all of the necessary  
16 permits to build this pipeline?

17          A. I think they did because when I went and  
18 talked to IDOT, Illinois Department of  
19 Transportation, they told me that they owned it and  
20 that they give a permit to construct it.

21          Q. Have you seen any documents to that effect,  
22 that IDOT owned it?

1           A. I went in and I seen some plans at their  
2 office and I have a copy of a permit from IDOT  
3 showing the skew. And they said -- and this was --  
4 we did the profile so this profile was drawn by us  
5 and then Nancy Erhat (sp), an engineer for St. Louis  
6 Pipeline, put the stuff and put the existing  
7 right-of-way on there. And it says existing  
8 right-of-way and where the pipeline was. IDOT told  
9 me that it had to be moved because of the bridge and  
10 that they had the right-of-way out there, to just  
11 move it. And this is -- and so I have got the  
12 permit and it shows our drawing. I did not go ask  
13 IDOT to stake their right-of-way nor did I determine  
14 the right-of-way because I was satisfied that we had  
15 a permit to do it.

16           Q. Did you see the ordinance that was given to  
17 IDOT to go ahead and construct the new bridges and  
18 all they were given was the right-of-way to  
19 construct the new bridge?

20           A. I seen your ordinance. And when I asked  
21 IDOT about your ordinance -- I visited IDOT three  
22 different occasions now at their office because this

1           was after the pipeline was in. They told me that  
2           they did in fact own fee simple after I told them  
3           about your ordinance, the last time I was over  
4           there.

5           Q. The only thing you can tell me about that,  
6           I take it, is what somebody who is not here has told  
7           you?

8           A. That is correct.

9           Q. Okay. Nothing objective or not hearsay --  
10          nothing that's not hearsay, put it that way?

11          A. I am telling you what --

12          Q. What permits did they obtain from Louis  
13          Hill or the owners of the Louie Hill property?

14          A. We didn't take no permits from Louis Hill  
15          because at the time it was installed, like I said,  
16          when I staked it and it was installed, then they  
17          contacted me and said MESD says they own it. We  
18          went and talked to IDOT. IDOT says they don't own  
19          it, and this is after the fact, and they showed me  
20          this. And since they requested it be moved, I was  
21          satisfied.

22          Q. But you just indicated you believe that

1 Louie Hill or somebody like Louie Hill or somebody  
2 who has inherited from Louie Hill or whatever owns  
3 that property?

4 A. Because we did more extensive research  
5 after that when we got into this court case.

6 Q. If that's your opinion, then I take it this  
7 pipeline was built without securing the permission  
8 of the property owners?

9 A. That's what I feel right now, yes, sir.

10 MR. RONGEY: That's all I have.

11 JUDGE ALBERS: Any redirect?

12 MR. McNAMARA: No, sir.

13 JUDGE ALBERS: Thank you, sir.

14 (Witness excused.)

15 MR. McNAMARA: 4.0 and 4.1.

16 JUDGE ALBERS: Actually I was going to ask you,  
17 5.0 and 5.1, but I was going to ask you what dates  
18 were those put on E-docket?

19 MR. McNAMARA: November 10, '03, they were  
20 filed on e-Docket. Judge, I have got mine marked,  
21 maybe it is 5.0 and 5.1. Is that what I said?

22 JUDGE ALBERS: That's what you said the first

1 time and that's what I wrote down the first time.

2 MR. McNAMARA: Good, that's what I am moving to  
3 have admitted.

4 JUDGE ALBERS: That's what I am going to admit  
5 then. I don't think anybody objected. So 5.0 and  
6 5.1 are admitted.

7 (Whereupon Petitioner's  
8 Exhibits 5.0 and 5.1  
9 were admitted into  
10 evidence.)

11 JUDGE ALBERS: And is there anything further  
12 from St. Louis Pipeline?

13 MR. McNAMARA: I rest my case at this time.

14 JUDGE ALBERS: Okay, thank you. I think next  
15 we will hear from the Metro East Sanitary District.

16 MR. RONGEY: We would call Mr. Greathouse,  
17 Walter Greathouse, Jr.

18 JUDGE ALBERS: I think before we go any  
19 further, briefly I would like to remind the parties  
20 the Commission will not be issuing any kind of  
21 ruling on who actually owns the property. That is  
22 not the appropriate body to be deciding that. And

1 to the extent that eliminates some cross, all the  
2 better.

3 Go ahead, Mr Rongey.

4 WALTER GREATHOUSE

5 called as a Witness on behalf of the Metro East  
6 Sanitary District, having been first duly sworn, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RONGEY:

10 Q. Would you state your name, please.

11 A. Walter Greathouse, W-A-L-T-E-R,

12 G-R-E-A-T-H-O-U-S-E.

13 Q. Mr. Greathouse, you previously submitted  
14 testimony in this matter, the direct testimony of  
15 Walter Greathouse which is Metro East Sanitary  
16 District Exhibit 1.0 with Exhibits 1.1 through 1.15,  
17 is that correct?

18 A. This is correct.

19 Q. Mr. Greathouse, have you had an opportunity  
20 to review that testimony?

21 A. Yes, I have.

22 Q. Let me ask you this, Mr. Greathouse. Have

1           you been authorized by the Metro East Sanitary  
2           District, in particular Mr. Warfield, to testify on  
3           behalf of the Metro East Sanitary District today?

4           A.    Yes, I have, sir.

5           Q.    And, Mr. Greathouse, with regard to the  
6           testimony you have previously submitted in this  
7           matter and what you have heard here today, are there  
8           any changes to your testimony that you intend or  
9           think need to be made?

10          A.    No, sir.

11          Q.    Mr. Greathouse, just a little bit in terms  
12          of your background, you have been with the Metro  
13          East Sanitary District or its predecessor the East  
14          Side Levy District for how many years?

15          A.    Over 21, 22 years maybe at this point.

16          Q.    Your position at the Metro East Sanitary  
17          District is what?

18          A.    I am a supervisor right now with Metro  
19          East.

20          Q.    Mr. Greathouse, in terms of a percentage of  
21          the work that you do at the Metro East Sanitary  
22          District, how much of that is devoted to the things

1 we are here about, easements, ordinances, pipelines,  
2 areas of entry and exit of pipelines on your  
3 property, that type of thing?

4 A. I would say 75 percent or so of my work at  
5 this point.

6 JUDGE ALBERS: Are you trying to put any  
7 additional direct into the record?

8 MR. RONGEY: Only I think it is important for  
9 the record that I don't think it is completely clear  
10 in his direct testimony in terms of his background.  
11 I am doing very little on his background, Judge. I  
12 just wanted to embellish the record, I guess.

13 JUDGE ALBERS: I haven't heard any objections  
14 yet, but we have prefiled testimony to avoid asking  
15 him all this.

16 MR. RONGEY: I intended to be brief. I think  
17 that's all I have of this witness. We would offer  
18 Exhibits 1.0 through 1.15.

19 MR. McNAMARA: I have no objection.

20 MS. BUELL: Staff has no objection, Your Honor.

21 JUDGE ALBERS: All right. What date did you --

22 MR. RONGEY: Your Honor, I was looking at that

1 from e-Docket and I don't think I did that under  
2 e-Docket at that point in time. I had it as August  
3 6, 2003, that it was delivered by regular mail.

4 JUDGE ALBERS: Okay, that's fine. It doesn't  
5 have to be on e-Docket.

6 MR. RONGEY: I was beginning to think I was  
7 the only one who wasn't.

8 MS. BUELL: Your Honor, actually I have a hard  
9 copy of it and my hard copy is stamped with a stamp  
10 from the Chief Clerk's office that's dated August 7,  
11 2003, at 10:44 a.m.

12 MR. RONGEY: I think my proof of service was  
13 August 6.

14 JUDGE ALBERS: I only need the date if it is on  
15 e-Docket, so if it is not on e-Docket, we are not  
16 going to worry about it.

17 Let's hear any cross examination we have  
18 for Mr. Greathouse.

19 MR. McNAMARA: You want to go?

20 MS. BUELL: Yes, thank you.

21 CROSS EXAMINATION

22 BY MS. BUELL:

1           Q.    Good afternoon, Mr. Greathouse.    I am Linda  
2           Buell and I represent Staff witnesses in this  
3           proceeding and I have just a few questions to ask  
4           you about your direct testimony.    Actually, it is  
5           around page 11, pages 11 through 13 specifically,  
6           where you discuss the reasons why MESD utilizes a  
7           five-foot width easement.    Do you see that  
8           testimony?

9           A.    Yes, I do.

10          Q.    Mr. Greathouse, what was the width of the  
11          easement that MESD offered St. Louis Pipeline?

12          A.    Whenever we were first approached by  
13          Mr. Hopgood -- and this goes back, I believe, I  
14          would have to check the notes, but I believe it goes  
15          back to like '96 -- he came in and we spoke briefly.  
16          At this point I made it very clear, in my mind very  
17          clear, that we had -- the way we were doing  
18          easements and writing them up at this time was  
19          five-foot wide minimum easements.    I believe I even  
20          remarked that it was 50 cents a square foot,  
21          five-foot minimum, and we would work with them in  
22          whatever way they had to be worked with in order to

1 work the thing out.

2 Q. And then the reasons for offering a  
3 five-foot width minimum are the reasons that you  
4 provide on pages 12 and 13, is that correct?

5 A. Yes, ma'am.

6 Q. Prior to this time you state that there  
7 were -- that MESD had no required easement width?

8 A. Before '96?

9 Q. Yes.

10 A. No, ma'am. To be quite frank with you, we  
11 have been having -- there again I have not been  
12 handling this for 20 years but I did go back on the  
13 records some 20 years ago and it seems very obvious  
14 even up to 20 years ago that all the easements were  
15 written up in five-foot increments, minimum widths.

16 Q. Oh, I see.

17 A. I believe that's stated somewhere. I am  
18 not sure if it is in this particular document but it  
19 has been submitted.

20 Q. Okay. You say it looks as if that first  
21 started sometime in the 1970s?

22 A. Yes.

1 Q. Would that be accurate?

2 A. I believe that would be, yes.

3 Q. To the best of your knowledge has MESD ever  
4 granted any easements less than five feet?

5 A. Not to the best of my knowledge.

6 Q. Now, if MESD granted a five-foot wide  
7 easement to St. Louis Pipeline, would MESD grant a  
8 larger temporary easement if St. Louis ever needed  
9 to perform repair or maintenance work?

10 A. That is written into our basic ordinance  
11 form, that I believe I addressed that in the  
12 engineering end of this, and there would be no  
13 problem at all in that. The question has been  
14 addressed. I believe it is written up with  
15 something to the effect that to give us 30 days  
16 notice. But obviously if you have got to get in  
17 there and fix an item, just let us know and we will  
18 be more than happy to work with you. And we have  
19 notoriously been very, very helpful to anybody that  
20 needs any kind of help out there for anything, for  
21 obvious reasons.

22 Q. Now, in your opinion would a one-foot

1           easement give St. Louis Pipeline adequate room to  
2           perform repair and maintenance work?

3           A.    No, ma'am.

4           Q.    Hypothetically, if St. Louis were granted a  
5           one-foot wide easement, would MESD grant a larger  
6           temporary easement if the company needed to perform  
7           repair or maintenance?

8           A.    Our easements or ordinances, actually is  
9           the way we write them up at the district, they are  
10          written in a form where once you do have an  
11          ordinance with us, it is basically you do have  
12          permission to go in, as I referred to a moment ago,  
13          and do what you have got to do, obviously. Now,  
14          would it be replace it with a new line, perhaps. I  
15          am not saying that's out of the question. As long  
16          as it's in the same general vicinity and in our  
17          five-foot easement, we have no problem.

18          Q.    Now, you mentioned your original  
19          discussions with Mr. Hopgood, I believe you said,  
20          sometime around 1996?

21          A.    I believe that's right.

22          Q.    Wherein you explained to him that MESD was

1 offering five-foot wide easements. In the course of  
2 that discussion did an exclusive versus  
3 non-exclusive easement come up?

4 A. No, ma'am, it did not. To be quite frank  
5 with you, all of our ordinances to the best of my  
6 knowledge are non-exclusive and the ordinance  
7 signed, referring back to Ordinance 719 with St.  
8 Louis Pipeline, that also, within the ordinance  
9 itself, it basically calls it out as a non-exclusive  
10 ordinance.

11 Q. Has MESD ever granted an exclusive  
12 ordinance?

13 A. To the best of my knowledge, no.

14 Q. And what are MESD's reasons for only  
15 offering non-exclusive easements?

16 A. To be quite frank with you, I would have to  
17 refer that onto the legal department. I quite  
18 frankly don't know. This is just our modus  
19 operandi.

20 Q. So then obviously the type of easement that  
21 MESD would prefer to offer St. Louis Pipeline would  
22 be non-exclusive?

1           A.   Standard, non-exclusive easement, yes,  
2   ma'am.

3           Q.   So then if MESD issued a non-exclusive  
4   easement to St. Louis Pipeline, would MESD have the  
5   right to put other facilities within the  
6   non-exclusive easement?

7           A.   The idea of having the five-foot wide  
8   easement would be to keep people off so they  
9   wouldn't be on top of each other, running alongside  
10   each other.  Obviously they would -- in this  
11   particular case it is very obvious that the lines --  
12   there are several lines that do cross St. Louis  
13   Pipeline's line.  To be quite frank with you, some  
14   of those lines probably were there before St. Louis  
15   Pipeline's were put there.  In fact, St. Louis  
16   Pipeline has crossed over existing lines.  But we  
17   try to keep them separated by five foot for obvious  
18   reasons, safety reasons mostly.  I say obvious  
19   reasons, but safety reasons mostly.

20          Q.   The lines that cross St. Louis Pipeline's  
21   lines, are they above or below St. Louis Pipeline's  
22   lines?

1           A.   Some are above, some are below.  And there  
2   are several different types of lines also.

3           Q.   If MESD wouldn't put other utilities within  
4   the same easement, then why wouldn't an exclusive  
5   easement be granted?

6           A.   There again, quite frankly, I don't know.  
7   This is the standard procedure for us for many, many  
8   years.

9           Q.   And if a non-exclusive easement were  
10  granted, not only are there other existing lines  
11  that, as you indicated, presently exist, would MESD  
12  have the opportunity to grant additional new  
13  easements to other utilities?

14          A.   Within the five-foot strip, we would not do  
15  anything parallel to the five-foot strip.  There  
16  very well might be places where they would cross.

17          Q.   Have you read Mr. Hopgood's surrebuttal  
18  testimony in this proceeding?  He says there that  
19  there is no difference between a one-foot easement  
20  and a five-foot easement if they are both  
21  non-exclusive?

22          A.   We like to keep -- there again, ma'am, I

1 keep referring back to way back in the '70s. To the  
2 best of my knowledge, and I have looked up several  
3 of these ordinances from way back when, and we have  
4 always stuck with the five-foot minimum width.

5 Q. So then you disagree with him that they  
6 are --

7 A. Yes, ma'am.

8 Q. Mr. Greathouse, if a one-foot easement were  
9 granted to St. Louis Pipeline, wouldn't MESD still  
10 have the opportunity to exclude any additional  
11 parties within five feet?

12 A. Yes, ma'am.

13 MS. BUELL: Thank you. Staff has no further  
14 questions for this witness.

15 JUDGE ALBERS: Mr. McNamara?

16 CROSS EXAMINATION

17 BY MR. McNAMARA:

18 Q. Mr. Greathouse, how long have you been  
19 employed by the Metro East Sanitary District or its  
20 predecessor, whatever you call that?

21 A. Twenty-two years at this point.

22 Q. Prior to that time, sir, what was your

1 business or employment?

2 A. The employment I had right before this  
3 particular job, I drove a truck, to be quite frank  
4 with you.

5 Q. How many years did you do that?

6 A. Oh, gosh, I want to say three years.

7 Q. Prior to that what did you do, sir?

8 A. I operated a family business with my  
9 father.

10 Q. What was the name of that business, sir?

11 A. It was a wholesale liquor place. Actually  
12 it was a retail liquor -- I am sorry, retail liquor  
13 outlet.

14 Q. How many years were you involved with that?

15 A. I want to say six years, sir.

16 Q. Prior to that what did you do?

17 A. College kid.

18 Q. Where did you go to college?

19 A. Southern Illinois University, Edwardsville.

20 Q. SIU-E?

21 A. Yes, sir.

22 Q. Did you get a degree?

1           A.  No, sir.

2           Q.  What year did your college career  
3 terminate?

4           A.  I would say sophomore year, sir.

5           Q.  What year?

6           A.  Sophomore -- oh, what year, I want to say  
7 '71, '72.

8           Q.  So after you got out of college up until  
9 now, you have either been in the liquor business  
10 with your dad, drove a truck or worked for Metro  
11 East Sanitary District?

12          A.  That is correct, sir.

13          Q.  Do you have any formal education that would  
14 bear upon your opinions or testimony in this case?

15          A.  Only from there again I do have 20 some odd  
16 years in the Metro District.  In 20 years you would  
17 think you would learn something along the way.

18          Q.  I will get to that.  I was just asking like  
19 formal?

20          A.  No, no, sir.

21          Q.  You have had a lot of on-the-job training?

22          A.  Yes, sir, I believe so.

1           Q. With regard to your career driving a truck  
2 for three years, was that involved in the sanitary  
3 district or with pipelines?

4           A. Neither one, sir.

5           Q. Okay. So for the last 22 years you have  
6 been with the sanitary district which in fact you  
7 have gained some familiarity with pipelines, is that  
8 right, sir?

9           A. Yes, sir, among many other things.

10          Q. Am I correct that -- you have heard all of  
11 the facts and figures as to the size of the  
12 pipeline?

13          A. Yes, sir.

14          Q. Am I correct that the type of pipeline, the  
15 size of the pipeline, Brian wants to put through  
16 here would fit within a one-foot easement?

17          A. Well, if it is less than a foot, I  
18 certainly would think it would fit within a one-foot  
19 easement.

20          Q. You have sat through this and you have  
21 looked at all the records and everything?

22          A. Yes.

1 Q. Would you agree with me then it would fit  
2 within a one-foot --

3 A. Certainly.

4 Q. And once a company has an easement from  
5 Metro East Sanitary District, along with that flows  
6 the right upon proper notice to be able to go in and  
7 utilize more of your ground in order to do  
8 maintenance upon that easement?

9 A. That's standard, what can I say, that would  
10 be a standard section in the ordinance, yes, sir.  
11 It has been for many years, sir.

12 Q. So if in fact we were granted a one-foot  
13 easement and we needed to go in and do some  
14 maintenance on it, we give you whatever is proper  
15 notice and go ahead and do our maintenance?

16 A. That is absolutely correct.

17 Q. You have heard the testimony of Mr. Don  
18 Hopgood as to federal DOT requirements with regard  
19 to the spacing of underground pipelines?

20 A. Yes, sir.

21 Q. What is your understanding in that regard  
22 or do you have an understanding?

1           A.  Actually, what happens, when someone would  
2           come to the district and ask, let's say, it would be  
3           a pipeline, let's say, because we are dealing with  
4           pipelines, they would take their plans, submit them  
5           to Metro East, Metro East would take the plans to  
6           the Corps of Engineers, St. Louis District.  The  
7           Corps of Engineers would review both in their  
8           engineering branch and their readiness branch, they  
9           would look offer the plans, ship them back to Metro  
10          East, then Metro East would go back to the proposed  
11          pipeline location, and their specifications, the  
12          United States of America Corps of Engineers'  
13          specifications, would be the specifications that the  
14          district would insist that the proposed pipeline  
15          locate or would follow.

16          Q.  And you follow the federal guidelines by  
17          virtue of the fact that you submit everything to the  
18          Corps of Engineers?

19          A.  Absolutely, yes, sir.

20          Q.  And that's going to be true whether we have  
21          a five-foot easement or a one-foot easement?

22          A.  Yes, sir.

1           Q.    During our break over the noon hour did you  
2           locate and did you call my attention to what is  
3           Exhibit 1.1 attached to your testimony which  
4           includes Ordinance 719?

5           A.    That is correct, sir.

6           MR. McNAMARA:   Judge, I had previously stated  
7           that I am going to file a late-filed exhibit.  I  
8           believe it was going to be 8.0.  The ordinance is in  
9           by virtue of Mr. Greathouse's testimony so I think  
10          it would be redundant to put anything else in unless  
11          you deem it necessary.

12          JUDGE ALBERS:   No, I agree.  As long as it is  
13          the same ordinance and everyone agrees it is the  
14          same ordinance, I don't see any reason to have it in  
15          twice.  What was the exhibit number again?

16          MR. RONGEY:     It is 1.1 and that is a signed  
17          copy of the ordinance.  The last one we had wasn't  
18          signed but that one is.

19          JUDGE ALBERS:   Would you like to withdraw your  
20          8.0?

21          MR. McNAMARA:   I would, thank you.

22          JUDGE ALBERS:   8.0 would be withdrawn.

1 BY MR. McNAMARA:

2 Q. With regard to your five-foot width  
3 easement, to the best of your knowledge that was  
4 established by usage and custom rather than any  
5 requirement of the Corps of Engineers or the federal  
6 Department of Transportation?

7 A. I am sorry, would you repeat that? I am  
8 sorry.

9 Q. With regard to your five-foot width  
10 requirement, that was established by usage and  
11 custom at the sanitary district, rather than an  
12 edict from the Corps of Engineers or the federal  
13 Department of Transportation?

14 A. That is correct.

15 Q. I am going to refer your attention to page  
16 5 of your testimony.

17 A. Uh-huh. Yes, sir.

18 Q. The lines, I don't believe, are numbered.  
19 They are not in mine. Am I correct?

20 MR. RONGEY: Correct.

21 Q. I can work with it. I just wanted to make  
22 sure I am --

1           A. No, I am working with the same copy you  
2 are, sir, I believe.

3           Q. Okay. I am going to refer your attention  
4 to a series of questions and it starts with the  
5 third question is on page 5, third question on page  
6 5 starting out,

7                   "Question: Were there any restrictions as  
8 to the size of the easement or the width of the  
9 easement that was granted to St. Louis Pipeline  
10 Corporation at that point in time?" And you give  
11 the answer, "There was not. I first recall  
12 discussing with Mr. Hopgood when he came to our  
13 office on August 31, 1996, and provided his card.  
14 We spoke generally about the proposed move of his  
15 pipeline and I explained to him generally MESD's  
16 requirements."

17                   As you sit here today, sir, do you have an  
18 independent recollection of that meeting with  
19 Mr. Hopgood back in 1996?

20           A. I believe I have got a copy of a card that  
21 he gave that he had given me at that time and I  
22 believe I have got that dated.

1 Q. Do you recall meeting with him?

2 A. I certainly thought it was Mr. Hopgood.

3 Now, I might be --

4 Q. I am not questioning that. I am just

5 asking --

6 A. Yes, I do want to say it was October 31 and

7 not August 31, I am sorry. Yes, I believe this to

8 be correct.

9 Q. Excuse me. But my question was again --

10 A. I certainly do believe this to be correct,

11 whatever.

12 Q. Do you recall that meeting? That's all I

13 am asking you.

14 A. Yes, sir.

15 Q. The next question, who was present at that

16 meeting, sir?

17 A. I believe this particular issue, I believe

18 that day I know we were quite busy in the office and

19 Mr. Hopgood, it was just himself and myself at the

20 counter. He wanted to talk to Mr. Warfield, I

21 believe, who is our boss. And he was busy at the

22 time. Don came in, handshake, how you doing, blah,

1           blah, blah and stated that they were going to have  
2           to move their pipeline. At this point we spoke in  
3           general about the movement of the pipeline.

4           Q. Next question: "And after meeting with you  
5           with regard to that, Mr. Greathouse, did you receive  
6           or did MESD receive correspondence from Mr. Hopgood?

7                     "Answer: Yes, we did receive  
8           correspondence from them dated 12/22/97 from  
9           Mr. Hopgood, Exhibit 2"?

10           A. I believe this is correct, sir.

11           Q. Prior to preparing that answer, sir, did  
12           you do a check of your correspondence file at the  
13           sanitary district to find out if there was any other  
14           correspondence intervening between October 31 of '96  
15           and 12/22 of '97?

16           A. I believe, yes, I certainly do believe this  
17           all to be correct, yes.

18           Q. Well, that's not my question. Was there  
19           other correspondence between the sanitary district  
20           and Mr. Hopgood between 10/31 of '96 and 12/22 of  
21           '97 to your knowledge?

22           MR. RONGEY: Listen to the question.

1 BY MR. McNAMARA:

2 Q. I am not trying to trick you.

3 MR. RONGEY: You are looking at your notes and  
4 it is not in there.

5 A. I just want to give you a good answer here.  
6 To my knowledge, no, this was it. This was the next  
7 time we heard from Mr. Hopgood.

8 Q. The way I read this is you had a meeting in  
9 October of '96 and the next time you hear from my  
10 client is over a year later in '97?

11 A. Yes, I believe that's exactly what  
12 happened. Yes, I believe that is correct.

13 MR. McNAMARA: I guess then we can mark this as  
14 Petitioner's Exhibit 8.

15 JUDGE ALBERS: This is a cross exhibit?

16 MR. McNAMARA: Yes.

17 JUDGE ALBERS: Call it Petitioner's Cross  
18 Exhibit 1 to differentiate.

19 MR. McNAMARA: Good deal.

20 MR. RONGEY: I believe also, Your Honor, this  
21 is the same exhibit that I introduced earlier, 1.6,  
22 no, I'm sorry, 1.2. It started with a 12/22/97

1 letter.

2 MR. McNAMARA: If it is, I will just use yours.

3 MR. RONGEY: No, I apologize. I misspoke  
4 there.

5 JUDGE ALBERS: They are different?

6 MR. McNAMARA: Can you mark these then?

7 (Whereupon Petitioner's  
8 Cross Exhibit 1 was  
9 marked for purposes of  
10 identification as of  
11 this date.)

12 BY MR. McNAMARA:

13 Q. Mr. Greathouse, I am going to hand you a  
14 multi-page document which is previously marked as  
15 Petitioner's Cross Exhibit 1, ask you to look at  
16 that, sir. Have you had occasion to review that  
17 document, sir?

18 A. I am looking at it real quick.

19 Q. Okay, take your time.

20 A. Yes, sir, I have looked at it.

21 Q. Does it appear then in fact that my client  
22 did get back with you in shorter than a year, in

1 fact in fairly short order after your 10/31/96  
2 meeting?

3 A. Actually, this particular letter was  
4 written to my father.

5 Q. Are you Walter Greathouse, Jr.?

6 A. That is correct. I am sorry, sir, if there  
7 is any confusion.

8 Q. No, that is all right. But in any event,  
9 recalling your attention to 1996, was your dad  
10 actively involved at the Metro East?

11 A. Yes, he was, sir.

12 Q. And would your dad have been an appropriate  
13 person to write to at that time?

14 A. Yes, he would have, sir.

15 Q. And in general back in that period of time  
16 would the two of you gentlemen discuss on a regular  
17 basis the business of what was then the Metro East  
18 Levy District?

19 A. Yes.

20 Q. Does it appear then that my client did  
21 follow up as a result of his meeting with you in  
22 October of '96 in short order, in fact on November 4

1 of '96?

2 A. Yes, he did, sir. It appears that way,  
3 although --

4 Q. Pardon?

5 A. This is the first time I have -- obviously  
6 I was not privy to this. I mean, the files are  
7 extensive here so perhaps it might have slipped  
8 through. I don't know. I have not seen this  
9 document before today.

10 Q. Okay. I want to refer your attention to  
11 page 6 of your testimony, the first question. I  
12 would ask that you read the question and the answer.

13 A. "Did you ever receive any further  
14 communication --"

15 Q. No, just to yourself so you are familiar  
16 with it.

17 A. I am sorry. I thought you wanted that  
18 read. I am sorry.

19 (Pause.)

20 Yes, sir, I have read it.

21 Q. And in March of 1998, sir, what was the  
22 charge that Metro East was seeking at that time for

1 an easement for an underground pipeline?

2 A. Fifty cents a square foot, five-foot  
3 minimum width, sir.

4 Q. And did that change after that period of  
5 time, sir? As the years go by, do you change the  
6 amount? For instance, in '99 would it have been a  
7 little more than \$2.50 per square foot?

8 A. No, it would have been the same in 1999.

9 Q. What about 2000? What was the charge then?

10 A. In 2000 we went to a different rate scale  
11 and I believe that's covered. Let's see here.

12 (Pause.)

13 According to my notes and my testimony and  
14 the best of my knowledge --

15 Q. If you would refer me to the page you are  
16 talking about?

17 A. I am sorry, yes, sir. Nine and 10 and the  
18 very last question on page 9, what happened then,  
19 and the answer is on the top, first answer on page  
20 10.

21 Q. And at that time your attorney, Mr. Rongey,  
22 who sits here to my left...

1           A.   That's correct.

2           Q.   ..wrote a letter to my client, Mr. Hopgood,  
3           who sits to my right, and that is Exhibit 1.13, is  
4           that correct, sir?

5           A.   I don't have the exhibits with me right now  
6           but is that correct, Rob? Have you looked at the  
7           Exhibit 1.13? Is that correct?

8           MR. RONGEY:    Yes.

9           MR. McNAMARA:  You don't have the exhibit  
10          before you?

11          THE WITNESS:  I don't have the exhibit right  
12          here before me.

13          MR. McNAMARA:  Let me with your lawyer's  
14          permission to approach and the Judge's permission.

15          MR. RONGEY:    Your Honor, at this point in time  
16          I would also like to object on two grounds. One, we  
17          are not here about this Commission establishing a  
18          rate. Two, this is irrelevant in terms of what the  
19          rates have become since after 1997 when they built  
20          this pipeline, even after 1998 when they built this  
21          pipeline. What was offered to them in 1998 was for  
22          a 25-year ordinance and what difference does it make

1           that the rates changed after that period of time.  
2           Therefore, I think that this area of inquiry is  
3           irrelevant in that regard.

4           MR. McNAMARA: In the direct and I think I  
5           ought to be able to probe it a little bit on cross  
6           examination. I am not going to go very far with it.

7           JUDGE ALBERS: I granted you some leeway,  
8           Mr. Rongey, so I will grant the same to  
9           Mr. McNamara.

10          BY MR. McNAMARA:

11          Q. You have got Mr. Rongey's letter?

12          A. Yes, sir.

13          Q. And what happened at that time in April of  
14          2002? What were your charges going to be at that  
15          time for the easement?

16          A. The 25-year easement from the date of  
17          passing, the charge for the use of the property  
18          shall be \$1 per square foot, five-foot minimum  
19          width, for the first five years; \$1.50 per square  
20          foot, five-foot minimum width, for the next five  
21          years; \$2 per square foot, five-foot minimum width,  
22          in the next five years; \$2.50 per square foot,

1 five-foot minimum, for the next five years; \$3 per  
2 square foot, five-foot minimum, for the next five  
3 years. As to the prior seven years in which St.  
4 Louis Pipeline has operated this pipeline without  
5 authority, the MESD is willing to accept the sum of  
6 50 cents per square foot per year, five-foot minimum  
7 width, from June 3, 1995, to the date of the passage  
8 of the new ordinance.

9 Q. First off, let me ask you this. Have you  
10 ever -- have you, by that I mean Metro East Sanitary  
11 District, have you ever achieved the rate structure  
12 set forth in the April 2002 letter from Mr. Rongey  
13 to my client? Have you ever actually been able to  
14 get a pipeline to sign an agreement that would have  
15 that kind of rate structure?

16 A. To the best of my knowledge, not at this  
17 time.

18 Q. Since 2002 have you raised that rate  
19 structure any?

20 A. I am trying to think if we have had any new  
21 ordinances since 2002. I cannot recall any  
22 underground pipelines that we have had to deal with

1 since 2002. Let me think about this to be sure.

2 Q. Have you crunched the numbers to determine  
3 what these per square foot figures would amount to  
4 with regard to the easement that my client is  
5 seeking?

6 MR. RONGEY: Let me object to it as vague. Is  
7 he talking about the numbers that were offered to  
8 him at 50 cents per square foot or numbers that were  
9 offered to other pipelines currently?

10 MR. McNAMARA: Very good point, sir.

11 Q. With regard to Exhibit 1.13, Mr. Rongey's  
12 letter to Mr. Hopgood where we start out at a dollar  
13 per square foot and go up to there?

14 MR. RONGEY: Again, Your Honor, I would  
15 object. That is not what was offered to St. Louis  
16 Pipeline back when they put this pipeline in. The  
17 rates went up long after they put this pipeline in.  
18 It is simply not relevant in terms of what St. Louis  
19 Pipeline had the opportunity to negotiate with and  
20 refused to negotiate.

21 JUDGE ALBERS: Would you repeat the question  
22 first of all to make sure I heard it right?

1 MR. McNAMARA:

2 Q. My question is, and I will try to repeat it  
3 as best I can, have you ever crunched the numbers to  
4 determine what my client would be paying based upon  
5 the figures set forth in Mr. Rongey's April 2, 2002,  
6 letter?

7 MR. RONGEY: I would also object on the basis  
8 of settlement negotiations being negotiable, Your  
9 Honor, but certainly he can answer.

10 JUDGE ALBERS: Okay, your first objection was  
11 that --

12 MR. RONGEY: The first objection was he is  
13 attempting to use a rate increase that occurs in  
14 2001 or 2002 to say what this would have cost St.  
15 Louis Pipeline, when the reality of the situation is  
16 St. Louis Pipeline was offered, and it has been  
17 uncontradicted, 50 cents a square foot, five-foot  
18 width minimum from 1995, '96, '97, '98, '99, 2000.  
19 It really doesn't matter what they raised the rates  
20 to later. It was a 25-year ordinance they were  
21 offered.

22 MR. McNAMARA: This is our last offer. This is

1           what we are dealing with today. I asked them if  
2           they changed the figures since then. That's why I  
3           asked is that.

4           JUDGE ALBERS: You can answer that. Your  
5           leeway is getting narrower.

6           BY MR. McNAMARA: Okay, I understand.

7           Q. Mr. Greathouse, do you recall my question?

8           A. Please repeat it.

9           Q. I will take a try. Referring your  
10          attention once again to Mr. Rongey's letter to  
11          Mr. Hopgood, I believe it is April 7, 2002, I  
12          believe it is Exhibit 1.13 attached to your  
13          testimony which you have in front of you, have you  
14          ever determined what my client would be paying if in  
15          fact you were to achieve those figures with regard  
16          to an easement?

17          A. To be quite frank with you, I have not,  
18          sir. I have not sat there and --

19          Q. Did you ever sit down and attempt to  
20          determine what your costs would be to Metro East  
21          Sanitary District to have my client's pipeline upon  
22          the property that you allege to own?

1           A. As I have referred to in my answer here  
2 previously submitted, we don't -- we have never  
3 broken out costs per pipeline per maintenance item  
4 or anything to that effect, if that's where you are  
5 headed at.

6           Q. But what I am asking you, sir, is there any  
7 relationship between what you are asking my client  
8 to pay and what you have to do as a result of my  
9 client being on the property that you allege to own?

10          MR. RONGEY: Objection, it is beyond the scope  
11 of direct. It is also irrelevant in this  
12 proceeding.

13          MR. McNAMARA: Well, they put the figures in in  
14 direct and I am just trying to figure out where they  
15 came from. He either knows or he doesn't.

16          A. I don't know.

17          JUDGE ALBERS: Okay.

18          BY MR. McNAMARA:

19          Q. Subject to check would you agree with me  
20 that if we based it upon 627 linear feet times five  
21 feet, we come up with 3,135 square feet?

22          MR. RONGEY: I will stipulate it is 3,000

1 plus.

2

3 BY MR. McNAMARA:

4 Q. Okay. Likewise, subject to check would you  
5 agree with me that during the first year that would  
6 amount to some \$3,135?

7 MR. RONGEY: At what rate?

8 Q. At a dollar a foot.

9 A. Yes.

10 Q. Would you agree with me during the first  
11 five years my client would be paying to you \$15,657?

12 A. I don't have a calculator here but, yes, I  
13 can follow your thinking.

14 Q. Okay. Can you agree with me if we go to a  
15 buck 50 per square foot, we are then up to \$23,512  
16 for a five-year period?

17 MR. RONGEY: The numbers are what the numbers  
18 are.

19 JUDGE ALBERS: Can the parties stipulate as to  
20 the math?

21 MR. RONGEY: And again --

22 BY MR. McNAMARA: Let's just bring this to a

1 conclusion.

2 Q. Can you agree with me in general, for 25  
3 years it is going to cost my client \$156,750?

4 A. If that's the way the numbers work out, I  
5 can agree with that.

6 Q. Pardon?

7 A. If that's the way the numbers work out,  
8 yes, I am going to say that would be correct.

9 Q. And you are not able to tell me, as you sit  
10 here today, how that would in any way relate to what  
11 you have to do as a result of my client having that  
12 pipeline on your real estate? I mean, you have not  
13 attempted to show us and there is no way, am I  
14 correct, that you can say, well, that 156,000, we  
15 have got to use 5,000 for shrubbery or this, that or  
16 the other thing? You have not done that?

17 A. No. The only thing that we do, Ed, is we  
18 make sure that your client's -- the property that  
19 your client's pipeline is located is maintained by  
20 the district. There is no trees on it. We try to  
21 keep all the trespassers off of there. We try to  
22 keep any unforeseen -- and if we see work out there

1 going on that we don't know what it is, we will try  
2 to let your client know. We try to keep the levy --  
3 and obviously our business is the levy business.  
4 Our main priority is the levy business and we try to  
5 keep our levy in excellent shape.

6 Q. But there is no relationship?

7 A. No direct correlation, I don't see one,  
8 generally.

9 Q. Pardon?

10 A. I said just generally, sir.

11 Q. And you are going to do that kind of work  
12 whether my client has a one-foot wide easement or a  
13 five-foot wide easement, correct?

14 A. I am going to maintain the levy, yes, sir.

15 Q. And your work really isn't going to vary  
16 whether my client has a five-foot wide easement or a  
17 one-foot wide easement?

18 A. Correct.

19 MR. McNAMARA: That's all I have. Thank you,  
20 sir.

21 JUDGE ALBERS: Just a handful of questions for  
22 you, sir.

1 THE WITNESS: Yes, sir.

2 EXAMINATION

3 BY JUDGE ALBERS:

4 Q. Just first by way of background, just  
5 roughly how wide is this canal?

6 A. Oh, gosh, it is very wide, sir. Oh, gosh,  
7 I hate to guess.

8 Q. The case won't hinge on it. I am just  
9 trying to get a picture.

10 A. Over 300 feet.

11 Q. Over 300 feet wide?

12 A. Very wide.

13 Q. That's the water itself?

14 A. The water itself, maybe 100 feet. It is  
15 very large. This is a big -- this is like a river  
16 levy. What this is, it would be back water. If the  
17 Mississippi does rise, sir, it would back up into  
18 this. So it is as big and as strong as a regular  
19 river levy that you would see on the Mississippi  
20 River.

21 Q. So from levy to levy it is 300 feet  
22 roughly?

1           A.   At least, yes.

2           Q.   And how deep is this canal again, the water  
3   itself?

4           A.   Oh, gosh.

5           Q.   Barring there is no flood at the time?

6           A.   If there is no flood it might be 8, 10 feet  
7   deep.  It might be up to 50 feet deep, flood.

8           Q.   Flood?

9           A.   Flood.

10          Q.   And all of the MESD easements are a minimum  
11   of five-feet wide, correct?

12          A.   All that we have done since the '70s.

13          Q.   And they are all non-exclusive?

14          A.   That's correct, to the best of my  
15   knowledge, sir.

16          Q.   Now, earlier I believe I heard there were  
17   perhaps five or six other utility facilities in this  
18   general area we are talking about today?

19          A.   Uh-huh.

20          Q.   Are they other pipelines?  Are they  
21   electrical conduit?  What's the nature of them?

22          A.   There is one of them that is a fiber optic

1 pipe, a fiber optic line, to be quite frank. There  
2 is several gas lines, gas type pipelines. There is  
3 two sewer lines out there and a water line out  
4 there, that's off the top of my head, Your Honor.  
5 There is quite a few of them out there.

6 Q. And none of them run parallel to the St.  
7 Louis Pipeline? If they do, just say so.

8 A. Not within the five-foot width, Your Honor.

9 Q. Not within the five-foot. So as a  
10 practical matter right now, is the five-foot area,  
11 which you believe should constitute the easement for  
12 the St. Louis Pipeline Corporation pipeline, as a  
13 practical matter is that shared with any other  
14 utility at the moment?

15 A. Only where another utility might cross  
16 under or over that particular line. There is no one  
17 parallel to their line within the five-foot minimum  
18 width.

19 Q. And when they cross over or under, is that  
20 at least 12 or 18 inches above or below?

21 A. Yes, we would assume that's correct. They  
22 built the pipeline and I assume that it was correct.

1 Q. But that's supposed to be the minimum?

2 A. That's supposed to be what happened. Did I  
3 physically go out and see that's what did happen,  
4 no, I did not.

5 Q. And that's pursuant to the federal DOT  
6 regulations?

7 A. Yes, I would assume that would all be  
8 correct, uh-huh.

9 Q. Okay. Now, you believe that the five-foot  
10 wide easement was necessary from a safety  
11 perspective?

12 A. Just, just to keep -- Your Honor, I  
13 definitely believe that, yes.

14 MR. McNAMARA: I didn't hear the answer.

15 A. I definitely believe that, Ed, is what I  
16 said.

17 Q. In areas where another pipeline or other  
18 fiber optic facility, whatever it may be,  
19 crisscrosses the St. Louis Pipeline, is it then by  
20 definition less safe because it is closer than the  
21 five feet or --

22 A. Actually, well, hopefully it is always safe

1           and hopefully everybody has followed the correct  
2           dimensions to be away from pipeline to pipeline of  
3           whatever. But as a rule we would not -- we would  
4           definitely try not to have two pipes running  
5           parallel within the five-foot area. We are just  
6           trying to space it out a little bit, give everybody  
7           a little elbow room. Certain situations, as in this  
8           particular situation, the pipelines are going to  
9           cross. There is just no way hardly to get it in  
10          without something crossing.

11           Q. Okay. How much space on the shore, and I  
12          realize you can't disturb the earth that constitutes  
13          part of the levy, but between the levy and the  
14          water, how much space are you talking about there,  
15          assuming no flood?

16           A. Oh, gosh, there is several hundred -- it is  
17          very large, Your Honor. I wish I had a map here to  
18          show you, but quite frankly I don't. I am more than  
19          willing to send you that information or submit that  
20          at a later date.

21           Q. I am just trying to get a general idea  
22          here. You say you try to keep --

1           A.  It is very large.

2           Q.  So at least a hundred feet?

3           A.  Oh, yes.

4           Q.  And you can put, you believe -- MESD can  
5 authorize easements along that strip on that side of  
6 the canal?

7           A.  Yes.

8           Q.  Okay.  And you try to keep the five-foot  
9 wide easements -- strike that.  It sounds to me that  
10 you try to put only one pipeline or conduit per five  
11 foot as far as parallel courses?

12          A.  Absolutely, that's the general rule of  
13 thought there, yes.

14          Q.  Does that then as a practical matter in  
15 some respects become an exclusive easement, a  
16 non-shared easement?

17          A.  I know that in the verbiage itself, Your  
18 Honor, it is always -- and this is something that  
19 the lawyers put together, to be quite frank with  
20 you -- it is always written as a non-exclusive  
21 easement.  But as a practical matter, to the best of  
22 my knowledge we try to always keep these guys

1           separated, in their own little five-foot strip to  
2           the best that we can.

3           Q.    Okay.  But occasionally somebody  
4           crisscrosses above or below?

5           A.    That's just the nature of the beast, sir.  
6           Sometimes there is too many people going too many  
7           ways.

8           Q.    Okay.  I think earlier you referred some of  
9           Ms. Buell's questions to the attorneys for the  
10          district or at least legal counsel of some sort  
11          within the district.  What do you personally believe  
12          as far as the benefits of exclusive or non-exclusive  
13          easements?

14          A.    We have had very good luck with  
15          non-exclusive easements as we have been running for  
16          many, many years.  I don't see any reason to change  
17          it.  If it is not broke, why fix it.  We have been  
18          very fortunate.

19          Q.    Do you know why -- I think you might have  
20          answered this question already but I am going to ask  
21          it any way because I don't recall what you said.  Do  
22          you know why five feet was chosen?

1           A.   Quite frankly, I don't know, Your Honor.  
2           But if I was to guess on the subject, I know that  
3           any time that the Corps of Engineers, when you pull  
4           out their standard, see, I have got one here in  
5           engineering, when you pull out their standard  
6           procedure here and it is in their book of how they  
7           want things done, your typical pipeline crossing and  
8           this was submitted to Staff on the engineering end,  
9           they always call for this five-foot crown at the  
10          top, Your Honor, near the top of a pipe.  That's  
11          always covered with a five-foot --

12          Q.   Is that an exhibit within the record you  
13          are referring to?

14          A.   Yes, it is.

15          Q.   Could you just for the record identify what  
16          you are referring to?

17          A.   Yes, it is -- Rob, do you have that?  It is  
18          Exhibit A, I believe, in the engineering.

19          MR. RONGEY:   It is in the Staff data request,  
20          engineering.

21          JUDGE ALBERS:   Has that been made part of  
22          someone's exhibit?  If he is referring to something

1 on the record, I just want to be able to refer to it  
2 again.

3 MR. RONGEY: I know it was in the Staff data  
4 request, if I can find it, Your Honor. It is  
5 actually in response to Number 1, Staff Data Request  
6 1.1.

7 MR. McNAMARA: Data request to who?

8 MR. RONGEY: To Metro East Sanitary District,  
9 and it is attached as Exhibit A to that exhibit.  
10 And also there is an Exhibit B that also refers to  
11 that, also.

12 JUDGE ALBERS: Was that moved for admission  
13 into the record, though? That is what I am getting  
14 at.

15 MR. RONGEY: I have not moved for admission of  
16 the Staff -- of the responses of the Metro East  
17 Sanitary District to the data requests of the Staff  
18 but I would do so at this time as we are getting  
19 into that.

20 JUDGE ALBERS: I am not necessarily asking that  
21 you do so. I just wanted to know what he was  
22 referring to.

1           MR. RONGEY:    I think it is important that I do  
2            anyway, Your Honor.

3            JUDGE ALBERS:   Can I see what you are talking  
4            about then?   Because I have never actually seen this  
5            document.   And then I will ask for any objections at  
6            that point.

7            MR. RONGEY:    This is the response and you will  
8            see starting here he talks about three submittals.  
9            And we had an engineering firm do three submittals.  
10           This would be the cover.   Here is the document he  
11           has got right there in front of him and it is  
12           referring to Section BB, the five-foot minimum cover  
13           that is required for pipeline crossings as well as  
14           up here typically there is 20 feet.

15                           (Whereupon there was  
16                           then had an  
17                           off-the-record  
18                           discussion.)

19           BY JUDGE ALBERS:

20            Q.   So just so I'm clear then, Mr. Greathouse,  
21            you are -- as you put it, your guess as to why that  
22            five-foot is used is based on certain Corps of

1 Engineer documents?

2 A. Yes, Your Honor, I believe that's right.

3 Q. And otherwise you are not -- there is no  
4 express policy at MESD that you are aware of that  
5 this five-foot must be used because of --

6 A. That is correct, sir. You have said that  
7 correctly. There is no express policy.

8 JUDGE ALBERS: I don't think I have any other  
9 questions for you, Mr. Greathouse. Thank you.

10 Do you have any redirect?

11 MR. RONGEY: Yes, Your Honor.

12 MR. McNAMARA: I am going to have some  
13 questions as a result of your questions. I guess we  
14 will get to that.

15 JUDGE ALBERS: Well, maybe.

16 MR. RONGEY: My turn.

17 JUDGE ALBERS: Typically just take it by the  
18 order they come. Why don't we see what Mr. Rongey  
19 has on redirect. Maybe that will give you an  
20 opportunity to ask some questions.

21 REDIRECT EXAMINATION

22 BY MR. RONGEY:

1           Q. First of all, Mr. Greathouse, Ordinance  
2 Number 719 enacted in 1970, was that a non-exclusive  
3 easement granted to St. Louis Pipeline?

4           A. Yes, sir.

5           Q. Secondly, Mr. Greathouse, are you familiar  
6 with the requirements of the Corps of Engineers for  
7 pipeline crossings over the Metro East Sanitary  
8 District's levies?

9           A. Yes, sir, I am, sir.

10          Q. And in fact you have obtained certain  
11 documents from the Corps of Engineers and the  
12 Hurst-Rosche Engineering Firm?

13          A. Yes, I have received both those documents,  
14 sir.

15          Q. And for a six-inch pipeline that crosses  
16 the Metro East Sanitary District, how much cover is  
17 required for the crown over the pipeline itself?

18          A. Referring back to the Hurst-Rosche  
19 information, it would be a five-foot crown, sir.

20          Q. How much additional fill is required by the  
21 St. Louis Corps of Engineers over the pipelines that  
22 cross the Metro East Sanitary District levy?

1           A. For a six-inch pipeline the Corps calls for  
2 55 feet, sir.

3           Q. That's 55 feet of fill added to our levy?

4           A. Yes, sir.

5           Q. And does that result in additional  
6 maintenance responsibilities of the levy?

7           A. Obviously that would change the whole  
8 contour of the levy itself.

9           Q. How does that affect the maintenance  
10 performed by the Metro East Sanitary District?

11          A. Well, first of all, several different  
12 things came into being. Obviously, you have to look  
13 for erosion. Our maintenance crews are out, they do  
14 maintain the levies, they cut the levies. In  
15 maintaining the levy, it changes the whole contour  
16 of the levy simply because of the way the levies are  
17 shaped. When you are sitting on a levy in a 3 to 1,  
18 then you add a hump to it, it obviously changes. It  
19 changes your whole demeanor on how you are going to  
20 go out and try to maintain the levy, to be quite  
21 frank with you. There are times when the guys under  
22 certain weather conditions will not even attempt to

1 go left to right, let's say it this way, and will  
2 just go straight up and down these things because  
3 they get to be very slick and kind of dangerous.

4 Q. Does that result in additional time in  
5 terms of labor in maintaining the levy?

6 A. At some times it does, yes, sir.

7 Q. And actually does that sometimes result in  
8 times when you can't even cut a particular area of  
9 the levy due to the additional fill?

10 A. Yes, it does, sir.

11 Q. Does the MESD lose man-hours or days as a  
12 result of weather conditions and the increased slope  
13 caused by these pipelines?

14 A. We have had to go back and get these areas  
15 at a later date many times.

16 Q. Is that part of the justification for the  
17 fees that are charged to these pipelines?

18 A. Yes, sir.

19 Q. Now, in addition does it create humps in  
20 the levy road?

21 A. Yes, sir. Again, I refer back to your  
22 standard typical pipeline crossing. Yes, it would.

1           It would, sir.

2           Q.   Have there been instances in which those  
3           humps have become exposed due to erosion?

4           A.   We have had instances where we have had --  
5           where the maintenance crews have had to go back out  
6           and re-rock areas on top of the pipelines before.

7           Q.   Does the MESD also do road grading?

8           A.   Yes, sir.

9           Q.   How does the pipelines affect that?

10          A.   Well, obviously if there has been some  
11          erosion around the top where a rock or something  
12          like that would get kicked out on the levy roads on  
13          top of the levies, that we would have to come back  
14          and re-grade those and get them back up to snuff.

15          Q.   And are the fees generated by these  
16          pipeline ordinances also utilized for that purpose?

17          A.   Yes, sir.

18          Q.   Mr. Greathouse, are you familiar with  
19          Solutia Pipeline?

20          A.   Yes, I am, sir.

21          Q.   They have a pipeline that runs through MESD  
22          property?

1           JUDGE ALBERS:   What is the name of that company  
2   again?

3           MR. RONGEY:     Solutia.

4           JUDGE ALBERS:   Would you spell that for the  
5   court reporter?

6           BY MR. RONGEY:    S-O-L-U-T-I-A.

7           Q.   And in the last couple of years has there  
8   been an ordinance enacted with Solutia?

9           A.   That is correct, sir.

10          Q.   Do you recall what the rate of that was?

11          MR. McNAMARA:   Your Honor, I am going to  
12   object.  I think the best evidence of that is the  
13   ordinance.  Let's see it.

14          MR. RONGEY:     It was given to you.

15          MR. McNAMARA:   Well, then let's put it in the  
16   record.

17          BY MR. RONGEY:

18          Q.   Mr. Greathouse, do you recall what the  
19   amount of that was, the rate?

20          A.   No, sir, I don't.

21          Q.   All right.  Showing you Petitioner's or  
22   MESD's Group Exhibit 1.5 -- I have to withdraw that,

1 Your Honor. I don't think I brought that one with.  
2 I know it has been given to Mr. McNamara, but. I  
3 will have to -- I would ask that I be allowed to  
4 file that out of time if that's the issue. Could we  
5 stipulate to that, Ed? I gave it to you.

6 MR. McNAMARA: Well, Solutia -- let's go off the  
7 record.

8 JUDGE ALBERS: Off the record.

9 (Whereupon there was  
10 then had an  
11 off-the-record  
12 discussion.)

13 JUDGE ALBERS: Back on the record.

14 BY MR. RONGEY:

15 Q. Mr. Greathouse, you indicated while we were  
16 off the record you do not recall the rate for the  
17 Solutia ordinance, is that correct?

18 A. That is correct.

19 Q. And we don't have that evidence with us  
20 here?

21 A. We have not been able to find that, that is  
22 correct, sir.

1           Q. That's fine. The objection would be well  
2 taken. Mr. Greathouse, are you familiar with Conoco  
3 Phillips?

4           A. Yes, I am, sir.

5           Q. And has Metro East Sanitary District had  
6 pipeline ordinances with Conoco Phillips over the  
7 years?

8           A. Yes, sir.

9           Q. And what has Conoco Phillips' position been  
10 with respect to those ordinances? Do they pay more  
11 or less than the 50 cents per square foot, five-foot  
12 width minimum, over the last 30, 40 years?

13           MR. McNAMARA: I am going to object. Let's  
14 look at the Conoco Phillips. I think we do have  
15 that one here, don't we?

16           JUDGE ALBERS: This is on redirect to which  
17 area of cross?

18           MR. RONGEY: Well, it is going to  
19 Mr. McNamara's cross examination of him about the  
20 rates. And, of course, I objected to the relevance  
21 but he has opened the door and I should be entitled  
22 to go into it.

1           JUDGE ALBERS: Do we have that ordinance handy  
2 then? We don't have that one either?

3           MR. RONGEY: Huh-uh, it wasn't relevant until  
4 he got into it.

5           JUDGE ALBERS: I can see where my granting some  
6 leeway to the parties is coming back to haunt me.  
7 Again, I am not -- the Commission is not going to  
8 decide what dollar value is appropriate. So I think  
9 we can probably move on here.

10          BY MR. RONGEY: Very well, Your Honor.

11          Q. Does the five-foot width minimum  
12 requirement help the MESD restrict the number of  
13 pipelines that come into the levy?

14          A. Yes, sir.

15          Q. And, Mr. Greathouse, in terms of the  
16 relationship between the rates charged and what the  
17 MESD does with the proceeds received from those  
18 rates, first of all where do the funds go?

19          A. The funds all work its way back into our  
20 general fund at the Metro East Sanitary District.

21          Q. And how does that help the Metro East  
22 Sanitary District run its business?

1           A. Out of the general funds we buy all of our  
2 equipment. It is for -- our wages come out of  
3 there, our equipment comes out of there, all our  
4 supplies that we need, if any, within the jobs, rock  
5 or whatever, blades for mowers, whatever you need  
6 along the line. It all goes back into a big pot of  
7 money that is used to keep the district running on a  
8 day-to-day operation.

9           Q. And in that regard is there a benefit to  
10 the taxpayers of the Metro East Sanitary District?

11          A. Obviously if we are generating money, then  
12 the tax rate would not have to be as high as it  
13 would have been if that money, those moneys, were  
14 not present.

15          Q. Have there been occurrences where pipelines  
16 have been placed where there has been subsidence?

17          A. Yes, there has.

18          Q. Have there been injuries as a result of  
19 pipelines and subsidence?

20          A. I believe this is the case, yes, sir. That  
21 has happened.

22          Q. Have there been claims as a result of

1 injuries which are the result of subsidence or land  
2 slides, mud slides, anything along those lines?

3 A. Yes.

4 Q. Have we had mowers overturn?

5 A. Yes.

6 Q. On muddy property?

7 A. Yes, we have.

8 MR. RONGEY: Thank you. That's all I have.

9 JUDGE ALBERS: Mr. McNamara, do you have any  
10 questions in response?

11 MR. McNAMARA: I am going to have a few.

12 JUDGE ALBERS: In response to the redirect?

13 MR. McNAMARA: Oh, yes, sir. Can you give me  
14 about two minutes to confer with my client?

15 JUDGE ALBERS: I will grant you that. If you  
16 need to take a break, Mr. Greathouse, why don't you  
17 go ahead and do that now.

18 MS. BUELL: Actually if we could have a  
19 five-minute break, I would appreciate it.

20 (Whereupon the hearing  
21 was in a short recess.)

22 JUDGE ALBERS: Back on the record.

## 1 RE CROSS EXAMINATION

2 BY MR. McNAMARA:

3 Q. Now, Mr. Greathouse, I believe the last  
4 series of questions, one of the questions from your  
5 counsel was the five-foot wide requirement helps you  
6 limit the number of pipelines coming onto the levy?

7 A. Uh-huh.

8 MR. RONGEY: Yes or no.

9 A. Yes, sorry.

10 Q. How much space do you have to work with on  
11 that levy? How much feet of space do you have?

12 A. In this particular portion of the levy,  
13 several thousand feet.

14 Q. So by several thousand are we talking about  
15 1,000, 2,000, 3,000?

16 A. Ten thousand.

17 Q. So we have gotten thousands of linear feet?

18 A. Length, yes, yes.

19 Q. Okay. And we can divide that up into  
20 five-foot strips for easements?

21 A. If there were -- if we had to, yes, I guess  
22 we could.

1           JUDGE ALBERS: I am sorry, Mr. McNamara, I just  
2 want to make sure which direction we are going here  
3 with thousands of feet.

4           THE WITNESS: The length of the levy is  
5 thousands of feet long.

6           JUDGE ALBERS: Right. So you are talking about  
7 easements that would be perpendicular?

8           THE WITNESS: I would assume, going across.

9           JUDGE ALBERS: All right. Perpendicular to the  
10 levy.

11          BY MR. McNAMARA:

12          Q. So even at the five-foot restriction you  
13 have got a lot of potential there for more  
14 pipelines, do you not?

15          A. Well, if there was that many pipelines that  
16 would have to cross there, would like to cross  
17 there, I would assume that would be correct, sir.

18          Q. I mean the five-foot wide easement  
19 requirement at this time is not really restricting  
20 anyone or limiting at this point in time the number  
21 of pipelines crossing the levy, will you give me  
22 that?

1           A. Yes, sir.

2           Q. Now, you had a document that you were  
3 referring to that had a five-foot crown on it?

4           A. That is correct, sir.

5           Q. Can I see that document?

6           A. Yes, you may.

7           Q. And this is part of your response?

8           A. I believe that was.

9           Q. To Staff Engineering 1.1 through 1.7 and it  
10 is Exhibit 7, right?

11          A. Exhibit A, I believe, sir.

12          Q. Excuse me, Exhibit A?

13          A. Yes.

14          Q. Now, so we are clear on this, this Exhibit  
15 A does not refer to the pipeline in question?

16          MR. RONGEY: I am going to object as vague. I  
17 think the question is vague.

18          BY MR. McNAMARA:

19          Q. Well, your Exhibit A that you have there in  
20 front of you that you have been talking about for  
21 the five-foot crown?

22          A. Yes, sir, uh-huh.

1           Q. Does that five-foot crown on Exhibit A  
2 depict the St. Louis Pipeline crossing?

3           MR. RONGEY: My objection is still that it is  
4 vague. And I guess the question -- the point I am  
5 making on that is, is he saying that was that  
6 document prepared for St. Louis Pipeline or is that  
7 the Army Corps of Engineers' requirements in  
8 general? And I guess that's what I am -- I am not  
9 sure if you are talking about in specific or  
10 generally.

11          MR. McNAMARA: Well, I was first off  
12 specifically asking if this particular document  
13 referred to the pipeline that we are talking about  
14 here today. I wasn't clear on that.

15          JUDGE ALBERS: I think I am clear on what he is  
16 asking. Do you still have your objection?

17          MR. RONGEY: I still do because it could refer  
18 to it if that was the requirement of St. Louis  
19 Pipeline, even though that's the general requirement  
20 of the U.S. Army Corps of Engineers. The question  
21 is still vague in my opinion, but.

22          JUDGE ALBERS: Okay. I think I see the

1           distinction you are getting at. Do you see a  
2           distinction here between what Mr. Rongey is asking?

3           BY MR. McNAMARA: Yeah, and I think I can --

4           Q. Can you answer the question as I posed it?

5           A. What is it and Exhibit A is the standard  
6           typical pipeline crossing.

7           Q. Is there anything in Exhibit A set forth on  
8           that document that says that this is a requirement  
9           of the Corps of Engineers, the five-foot crown?

10          A. No, this is just your typical pipeline  
11          crossing.

12          Q. Okay. With regard to the crossing that is  
13          the subject matter of this proceeding, are you aware  
14          of whether or not there is a crown over the  
15          pipeline?

16          A. There should be a crown over the top of the  
17          pipeline, yes, sir. There has to be some type of  
18          crown over the top of the pipeline or else the  
19          pipeline would be exposed.

20          Q. Do you know what the width of that crown is  
21          with regard to the pipeline in question?

22          A. I have not went out and physically measured

1           that, no, sir.

2           Q.   Are you aware of -- I take it before this  
3 was put in, the Corps had to sign off on it?

4           A.   Uh-huh.

5           Q.   Are you aware from the permit that was  
6 granted to my client what the crown is, how wide the  
7 crown is?

8           A.   I do not have a copy of that permit at this  
9 time, no, sir.

10          MR. McNAMARA:  Let's mark this as Petitioner's  
11 2 on cross.  I don't have an extra copy.  We will  
12 make copies.

13          JUDGE ALBERS:  Can I see that?

14          MR. RONGEY:  Do I have that?

15          MR. McNAMARA:  No.

16          JUDGE ALBERS:  And this is the permit from  
17 Illinois Department of Transportation?

18          MR. McNAMARA:  No, it is from Corps of  
19 Engineers -- excuse me, IDOT to my client.  I  
20 believe it has a Corps of Engineers' approval on it.

21          JUDGE ALBERS:  Ms. Buell, Mr. Rongey, do you  
22 want to take a look at this?

1 MS. BUELL: Yeah.

2 MR. RONGEY: I would like to be able to go  
3 through it with my client, too.

4 MS. BUELL: Yeah, we don't have a copy of this.  
5 If it is going to be offered as Petitioner Cross  
6 Exhibit Number 2, we would like to have a copy of  
7 it.

8 (Whereupon there was  
9 then had an  
10 off-the-record  
11 discussion.)

12 JUDGE ALBERS: Everyone has had a chance to  
13 look at that document.

14 MR. McNAMARA: Can you mark that as Petitioner's  
15 2?

16 MS. BUELL: Your Honor, Staff has only seen  
17 this, what's purported to be Petitioner's Cross  
18 Exhibit 2 for the first time today. Staff has had  
19 minimal chance to review it. Staff questions the  
20 relevance of it and Staff hasn't heard foundation  
21 laid for its admission either.

22 JUDGE ALBERS: Well, I am interested too as to

1           what exactly this purports to show.

2           MR. McNAMARA:   What it purports to show is that  
3           we obtained a permit.   It has a three-foot crown on  
4           it.   The point we are trying to make is, you might  
5           have a typical plan that shows a five-foot crown but  
6           that there is nothing in that document that I am  
7           aware of that says that that's a Corps of Engineers  
8           requirement.   Point of fact, when we built this  
9           thing, and we did have to go to the Corps as part of  
10          the process, we put a three-foot crown on it.   I am  
11          trying to show that there is really very little  
12          relevance to whether you have a three-foot crown, a  
13          five-foot crown as to the width of the easement.  
14          That's the only point I am trying to make.   And  
15          that's the limited purpose I am putting this thing  
16          in for.

17          MR. RONGEY:    From my standpoint and from what  
18          I can tell, all that is is an IDOT approval.   It has  
19          nothing to do with the Corps of Engineers.

20          MR. McNAMARA:   What I plan on doing is  
21          recalling Mr. Hopgood.   I am going to hand him this.  
22          I am going to ask him about it.   I am going to ask

1           him about the process of getting approval. I am  
2           going to ask him if this went through the Corps of  
3           Engineers.

4           MR. RONGEY: To short circuit this, if we  
5           could have the approval from the Corps of Engineers  
6           which I don't think we have.

7           MR. McNAMARA: Well, likewise, I guess we can  
8           argue about this document. There is nothing that I  
9           can find in that document -- I mean, you point out  
10          if I am wrong -- that says this is a Corps of  
11          Engineering requirement.

12          THE WITNESS: Typical pipeline crossing is all  
13          it says.

14          MR. McNAMARA: It says typical.

15          MS. BUELL: Your Honor, Staff still questions  
16          the relevance of this document.

17          MR. RONGEY: As does MESD.

18          MR. McNAMARA: Pardon?

19          MR. RONGEY: I said as does MESD.

20          MR. McNAMARA: Well, then what I am going to do  
21          is obviously I am going to question the relevance of  
22          a typical crossing unless it is a requirement.

1           JUDGE ALBERS:  Are the parties at all wanting  
2           to stipulate whether there is any type of standard  
3           requirement for a crown?

4           MR. RONGEY:  We are certainly willing to  
5           stipulate to that.

6           JUDGE ALBERS:  That there is or there isn't?

7           MR. RONGEY:  That there is.  I doubt that's  
8           what Mr. McNamara is going to stipulate to but it  
9           doesn't hurt to ask.

10          MR. McNAMARA:  Well, I think we are going to be  
11          able to tie it up eventually when I recall my  
12          witness.  I mean, I don't think we have anything --  
13          I mean, if they can come up with something there  
14          that shows that there is a five-foot requirement, so  
15          be it.  We can come up with the actual permit that  
16          was granted and the approval from the Corps of  
17          Engineers showing we did this with a three-foot  
18          crown.

19          MR. RONGEY:  The MESD would stipulate that it  
20          is between three and five foot for your crown.

21          MR. McNAMARA:  I am just saying there is no  
22          requirement, at least not in this record.

1           MR. RONGEY:     You opened the door when you  
2           asked him about where the five-foot width came from.  
3           He indicated what is his belief why.  As to whether  
4           it is three feet or five-foot, I really don't care.

5           MR. McNAMARA:   Can we stipulate that we have no  
6           probative evidence in this docket so far showing a  
7           requirement from the Corps of Engineers for any  
8           particular width of the crown?

9           MR. RONGEY:     Of the crown at issue?

10          MR. McNAMARA:   I guess that's fine, crown at  
11          issue.

12          MS. BUELL:     I don't know why we would need to  
13          enter into that type of stipulation because the size  
14          of the crown is not an issue here.

15          MR. McNAMARA:   I only see the size of the crown  
16          as being an issue in that they are somehow trying to  
17          relate the size of the crown to the width of the  
18          easement.

19          JUDGE ALBERS:   I can see that point.  And if  
20          the parties are willing to stipulate that generally  
21          the crowns are three to five feet, would that  
22          characterize what you proposed?

1           MR. RONGEY:    I am willing to stipulate to  
2           that.  I am willing to stipulate to that.

3           JUDGE ALBERS:  Is that what you proposed a  
4           minute ago?

5           MR. RONGEY:    Yes, yes.

6           MR. McNAMARA:  Here is what I would like.  I  
7           think we can stipulate that in general the crowns  
8           are three to five feet for a six-inch pipeline if we  
9           can stipulate that we don't have anything in the  
10          record showing a Corps of Engineers' requirement for  
11          requiring three to five feet.

12          JUDGE ALBERS:  Okay, wait a minute.

13          MS. BUELL:    Your Honor, Staff has no basis on  
14          which to enter into that stipulation.  We simply  
15          don't know.

16          MR. McNAMARA:  I would stipulate that we don't  
17          know what the Corps of Engineers' requirement is.  I  
18          like that.  That's better.  That's more exact.

19          MR. RONGEY:    I don't think you have asked  
20          Mr. Greathouse that and maybe that's a short circuit  
21          to this.

22          JUDGE ALBERS:  Okay.  If we can make it shorter

1 by doing that, by all means. Try to avoid recalling  
2 witnesses and late-filed exhibits if we can.

3 MR. RONGEY: You can ask him where he got the  
4 information.

5 BY MR. McNAMARA:

6 Q. Mr. Greathouse?

7 A. Yes, sir.

8 Q. As you sit there right now, do you have any  
9 documents here that would tell us the requirement of  
10 the Corps of Engineers for the size of the crown?

11 A. The only thing I have is the typical  
12 pipeline crossing. This is out of the Corps of  
13 Engineers' -- there is a book, let me see, I think I  
14 might have referred to this, where this thing came  
15 from here. There is a standard operating book that  
16 the Corps has. This is where I retained this  
17 particular piece of information. There is a name  
18 for it. I don't have that name with me right now  
19 today, sir.

20 Q. I take it you don't have the book with you?

21 A. I am sorry, I don't.

22 Q. And we have shown you a document that

1           purports to show a three-foot crown that we put in  
2           with regard to this pipeline, is that correct?

3           A.    You have shown me a document with an IDOT  
4           sticker on it, yes, sir.

5           Q.    Do you have any reason to believe that we  
6           put in any different size crown with regard to the  
7           pipeline in question?

8           A.    No, sir.

9           MR. RONGEY:    Again we would stipulate it is  
10          between three and five feet.

11          JUDGE ALBERS:   Well, I don't believe Staff is  
12          willing to make that.

13          MR. McNAMARA:   I won't stipulate to that.

14          MR. RONGEY:    It could have been ten, I don't  
15          know.

16          BY MR. McNAMARA:

17          Q.    With regard to Ordinance 719, that's part  
18          of your testimony, is it not, sir?

19          A.    Yes, sir.

20          Q.    And you are saying that's a non-exclusive  
21          easement?

22          A.    I believe this is correct, yes, sir.

1           Q.   And that easement in effect has no width on  
2   it, does it?

3           A.   No, it does not, sir.

4           Q.   So whether it is exclusive or non-exclusive  
5   doesn't make a whole lot of difference unless we  
6   have a width?

7           A.   Have a what?

8           Q.   Unless we have a width?

9           A.   I am sorry.  I still didn't hear you.

10          Q.   What I am asking you is 719 just goes by  
11   linear feet, does it not?

12          A.   Let me pull up 719, if you don't mind, for  
13   a moment.  There doesn't seem it be a width on here,  
14   sir.

15          Q.   So exclusive or non-exclusive doesn't make  
16   a whole lot of difference, does it?

17          A.   I just know that it is not exclusive.  I  
18   don't want to comment on that.

19          MR. McNAMARA:  That's all I have.

20          MS. BUELL:  Staff has no recross, Your Honor.

21          JUDGE ALBERS:  I don't think I have anything  
22   else.

1 I did not hear any objection then to MESD  
2 Exhibits 1.0 through 1.15. Assuming that's still  
3 the case, those exhibits will be admitted.

4 (Whereupon MESD  
5 Exhibits 1.0 through  
6 1.15 were admitted into  
7 evidenced.)

8 And Petitioner's Cross Exhibit 1, I believe  
9 you moved for admission of that, Mr. McNamara?

10 MR. McNAMARA: Petitioner's Exhibit 1 on cross,  
11 move for admission.

12 JUDGE ALBERS: Any objection?

13 MS. BUELL: No objection.

14 MR. RONGEY: No objection.

15 JUDGE ALBERS: That too is admitted.

16 (Whereupon Petitioner's  
17 Cross Exhibit 1 was  
18 admitted into  
19 evidence.)

20 Thank you, Mr. Greathouse. You may step  
21 down.

22 THE WITNESS: Thank you, Your Honor.

1 (Witness excused.)

2 JUDGE ALBERS: And I think, given  
3 Mr. Warfield's testimony, based on --

4 MR. RONGEY: Which is Metro East Sanitary  
5 District Exhibit Number 2 and I would ask that that  
6 be admitted. Your Honor, I apologize for not  
7 clearing his non-attendance with you. I actually  
8 only cleared that with Ed and I. I think Linda only  
9 mentioned the people she was questioning, not the  
10 people that didn't need to be here. But I was under  
11 the impression nobody required his attendance. If  
12 necessary, I could bring him tomorrow.

13 JUDGE ALBERS: No, I think Mr. Greathouse  
14 might -- he was able to address my question and no  
15 one else had any questions for Mr. Warfield. That's  
16 right, Mr. McNamara?

17 MR. McNAMARA: I have no questions for  
18 Mr. Warfield.

19 MS. BUELL: Your Honor, Staff has no questions  
20 for Mr. Warfield either.

21 JUDGE ALBERS: You did move for admission.

22 MR. RONGEY: I am moving for admission. I

1 believe that is MESD Exhibit 2.0.

2 MR. McNAMARA: No objection.

3 MS. BUELL: Will there be an affidavit for  
4 Mr. Warfield's testimony filed next Monday as well?

5 MR. RONGEY: Yes. Your Honor, I will have  
6 that filed next Monday.

7 JUDGE ALBERS: Why don't we call that 2.1?  
8 Hearing no objection, then Exhibits 2.0 and 2.1 are  
9 admitted.

10 (Whereupon MESD  
11 Exhibits 2.0 and 2.1  
12 were admitted into  
13 evidence.)

14 And 2 is not -- I assume the same applies  
15 to Mr. Greathouse's exhibit? Exhibit 2 is not on  
16 e-Docket?

17 MR. RONGEY: No, it is not. That was privy to  
18 somebody handling that for me.

19 JUDGE ALBERS: All right. Anything further  
20 from MESD?

21 MR. RONGEY: I want to make sure, Ed, did you  
22 mark the document that you were just involved with,

1 the purported Corps of Engineers' general  
2 requirements, as an exhibit?

3 MR. McNAMARA: No, sir.

4 MR. RONGEY: It certainly has been alluded to  
5 sufficiently within the record that I think it is  
6 important that that be identified as an exhibit in  
7 this matter for the record.

8 MR. McNAMARA: If you want to mark it.

9 JUDGE ALBERS: Just for reference?

10 MR. RONGEY: I think it needs to be, just to  
11 make the record clear as to what was being  
12 referenced for whatever reason. It may come up on  
13 appeal or anything else.

14 MR. McNAMARA: I will object to it being  
15 admitted into evidence. Who can stop someone from  
16 marking an exhibit?

17 MR. RONGEY: I would move to admit it for  
18 another reason. I think he has identified it but  
19 certainly there is enough reference to it on the  
20 record that I think the record needs to be clear on  
21 that.

22 JUDGE ALBERS: Ms. Buell, do you have an

1 opinion?

2 MS. BUELL: Your Honor, which exhibit are we  
3 speaking of exactly?

4 MR. RONGEY: The purported U.S. Corps of  
5 Engineers' typical pipeline crossing exhibit.

6 MS. BUELL: Is this correct that this is  
7 Exhibit A to Metropolitan East Sanitary District  
8 responses to data engineering data?

9 MR. RONGEY: Correct, and that was Staff  
10 Engineering Data Request 1.1.

11 MS. BUELL: Staff has no objection if the only  
12 data request response that is admitted in the record  
13 is Data Request Response 1.1 including Exhibit A.

14 MR. RONGEY: I think there was an Exhibit A  
15 and Exhibit B but I think Exhibit A was all we  
16 addressed. So we would limit it to the Exhibit A.

17 MS. BUELL: Staff sees no reason to object  
18 then. Staff sees no reason to admit the entire set  
19 of data requests into the record.

20 JUDGE ALBERS: Just so we are clear what is  
21 being addressed here, Staff wants the attached  
22 response and the attached Exhibit A?

1           MR. RONGEY:     And we would submit that as  
2 Exhibit 3.0, MESD Exhibit 3.0.

3           MR. McNAMARA:   You are going to make a copy and  
4 send it to us?

5           JUDGE ALBERS:   Do you have any objection based  
6 on that request?

7           MR. McNAMARA:   I do object.   I don't think it  
8 has any relevance.   I think he is attempting to use  
9 it for the purpose of creating a five-foot crown  
10 requirement and I don't think it does that.

11          MR. RONGEY:     I think it is responsive to  
12 Mr. McNamara's questioning of the relationship of  
13 the five-foot width minimum to the MESD's  
14 requirements and Mr. Greathouse's response that he  
15 believes it stems from the typical pipeline crossing  
16 requirements of the Corps of Engineers.

17          JUDGE ALBERS:   Well, whether it does or  
18 doesn't, I am not going to make a ruling on that  
19 today.   However, because it was heavily referred to,  
20 I think it would be useful just simply for a  
21 reference tool at this point.   So I will let it in  
22 just as a reference tool at a minimum since if this

1 does happen to go on appeal, at least we will know  
2 what was discussed here today.

3 MR. RONGEY: As a matter of cleanup, if I  
4 could submit that with the affidavit of  
5 Mr. Warfield, I will also get copies of that  
6 complete response to both Linda and Ed as an  
7 exhibit, as Exhibit 3.0, and ask that that be  
8 admitted subject to my filing that with  
9 Mr. Warfield's affidavit.

10 JUDGE ALBERS: Just as far as both, submitting  
11 both at the same time?

12 MR. RONGEY: Right, so I can make copies for  
13 everything.

14 JUDGE ALBERS: Yes, and don't forget me.

15 MR. RONGEY: No, I already ignored you with  
16 respect to Mr. Warfield.

17 JUDGE ALBERS: Actually you can send me two  
18 copies of that, one for myself and one for the  
19 Clerk's office.

20 MR. RONGEY: Very good.

21 JUDGE ALBERS: All right. Then MESD 3 is  
22 admitted as indicated a moment ago.



1           Q. Mr. Maple, would you please state your full  
2 name and spell your last name for the record.

3           A. Mark Edward Maple, M-A-R-K, E-D-W-A-R-D,  
4 M-A-P-L-E.

5           Q. Mr. Maple, by whom are you employed?

6           A. The Illinois Commerce Commission.

7           Q. And what is your position with the Illinois  
8 Commerce Commission?

9           A. I am an energy engineer in the Engineering  
10 Department of the Energy Division.

11          Q. Mr. Maple, have you prepared written  
12 testimony for purposes of this proceeding?

13          A. Yes, I have.

14          Q. Do you have before you a document which has  
15 been marked for identification as ICC Staff Exhibit  
16 3.00 which consists of eleven typewritten pages and  
17 is titled Direct Testimony of Mark Maple?

18          A. Yeah, the exhibit --

19          Q. I am sorry. I said 3.00. I meant 1.00?

20          A. Yes.

21          Q. And is this a true and correct copy of the  
22 direct testimony that you prepared for this

1 proceeding?

2 A. Yes, it is.

3 Q. And do you also have before you a document  
4 which has been marked for identification as ICC  
5 Staff Exhibit 3.00 which consists of three  
6 typewritten pages and is titled Rebuttal Testimony  
7 of Mark Maple?

8 A. Yes.

9 Q. And is this a true and correct copy of the  
10 rebuttal testimony that you prepared for this  
11 proceeding?

12 A. Yes, it is.

13 Q. Do you have any corrections to make to  
14 either your direct or rebuttal testimony?

15 A. No, I do not.

16 Q. And is the information contained in ICC  
17 Staff Exhibit 1.00 and 3.00 true and correct to the  
18 best of your knowledge?

19 A. Yes.

20 Q. And if I were to ask you the same questions  
21 today, would your responses be the same?

22 A. Yes.

1 MS. BUELL: Your Honor, at this time I ask for  
2 admission into evidence Mr. Maple's prepared direct  
3 testimony marked as ICC Staff Exhibit 1.00 and  
4 Mr. Maple's prepared rebuttal testimony marked as  
5 ICC Staff Exhibit 3.00, and I note for the record  
6 that these are the same documents that were  
7 originally filed via e-Docket on August 7, 2003, and  
8 January 30, 2004, respectively.

9 JUDGE ALBERS: Okay.

10 MR. McNAMARA: Petitioner has no objection.

11 MR. RONGEY: No objection by MESD subject to  
12 just a couple questions.

13 JUDGE ALBERS: Is Mr. Maple tendered for cross?

14 MS. BUELL: Yes, he is, Your Honor.

15 JUDGE ALBERS: Both of you have questions,  
16 right?

17 CROSS EXAMINATION

18 BY MR. RONGEY:

19 Q. Mr. Maple, you have indicated that you  
20 still believe a five-foot width easement will be  
21 best in this situation as opposed to the one-foot  
22 wide easement requested by St. Louis Pipeline?

1           A. Yes, although I would like to add that my  
2 preference would be for a five-foot wide exclusive  
3 easement.

4           Q. And with regard to that exclusive easement,  
5 do you have an opinion as to how that's going to  
6 affect all the other pipelines that are also within  
7 that area at various depths?

8           A. Could you repeat the question?

9           Q. In that same five-foot wide easement there  
10 are various pipelines below it, above and below, the  
11 pipeline of St. Louis Pipeline, are you aware of  
12 that?

13          A. If you say so.

14          Q. So you don't?

15          A. I am not aware of what other pipelines  
16 exist in that five-foot wide easement.

17          Q. Did you hear Mr. Greathouse's testimony  
18 about there is two sewer lines, there is a water  
19 line, there is two other petroleum lines?

20          A. Yes.

21          Q. Within that same five-foot wide easement?

22          A. Yes.

1           Q. Do you understand those to be parallel to  
2 each other at the same level or at various depths?

3           A. I thought he said that they crossed each  
4 other.

5           Q. And that's true. They would cross, though,  
6 at various depths, would they not?

7           A. Right, with at least 12, 18 inches apart.

8           Q. And my question to you is, what would the  
9 granting of an exclusive easement to St. Louis  
10 Pipeline do or cause or potentially cause with  
11 respect to the other pipeline operators out there?  
12 Are they going to have to go to St. Louis Pipeline  
13 and get permission to come out and work on their  
14 pipelines?

15           A. I am not a legal expert in the field of  
16 easements, so I don't know what recourse they would  
17 have or what --

18           Q. So in terms of whether it is exclusive or  
19 non-exclusive, would you agree you are not in a  
20 position to offer the best opinion on what should be  
21 granted in this, exclusive vis-a-vis non-exclusive?

22           A. I don't know how it would affect the

1 utilities that are already in existence.

2 Q. Certainly you would like to know that  
3 before offering that opinion, would you agree with  
4 that? It could affect interstate commerce?

5 A. I suppose I would agree.

6 Q. Now, you also indicated that you were in  
7 favor of this certificate as a common carrier being  
8 granted and that they be allowed to proceed for  
9 eminent domain?

10 A. Yes.

11 Q. As a basis for that, part of the basis for  
12 that, it seemed to me that you placed reliance on  
13 Mr. Hopgood's testimony as to the fact that if you  
14 don't grant that, then we are going to have to  
15 resort to motor transportation to carry this fuel,  
16 is that correct?

17 A. In part on his testimony.

18 Q. In fact, you made an analysis of that and  
19 contacted Allied Aviation?

20 A. Yes, I did.

21 Q. Allied Aviation advised you that they can  
22 handle about 40 trucks a day at Lambert Field?

1           A. I think that's correct.

2           MR. McNAMARA: That in the direct?

3           MR. RONGEY: It is in his direct.

4           MR. McNAMARA: Okay.

5           BY MR. RONGEY:

6           Q. And I think you have indicated that was  
7 based on a capacity that Mr. Hopgood was talking  
8 about at least in his initial testimony of over a  
9 hundred thousand gallons of fuel a day, do you  
10 recall that?

11          A. I don't see how what Mr. Hopgood was  
12 referencing has to do with what I testified.

13          Q. It is probably a poor question.  
14 Mr. Hopgood has testified today that St. Louis  
15 Pipeline is delivering only about 60,000 gallons of  
16 fuel a day. You heard that, didn't you?

17          A. I think that was the number.

18          Q. Okay. And each of these tanker trucks  
19 carries about 7400 gallons of fuel?

20          A. Right.

21          Q. That's roughly eight trucks a day, one per  
22 hour, does that sound about right to you?

1           A.    Okay.

2           Q.    In light of the fact that that is only one  
3           tanker truck per day versus -- I think St. Louis  
4           Pipeline said there were going to have to be 120  
5           trucks a day?

6           A.    You said one tanker truck a day.    You  
7           mean --

8           Q.    I am sorry.    One tanker truck per hour as  
9           opposed to 120 trucks a day or 115 trucks per day,  
10          which she said would occur if they were not granted  
11          this certificate, does that affect your opinion on  
12          whether they ought to get this in terms of public  
13          need?

14          A.    Well, you are assuming the average daily  
15          deliveries when you are talking about the one truck  
16          per hour.    There have been times when the other  
17          pipeline that serves Lambert has been temporarily  
18          shut down in which case St. Louis holds the entire  
19          burden for supplying the airport.    So in that case  
20          they would be supplying much more fuel per hour and  
21          would need a lot more trucks than one per hour.

22          Q.    You also heard Mr. Hoppood's testimony that

1           there are other sources for this fuel besides St.  
2           Louis Pipeline?

3           A.    There is only two ways to deliver it to the  
4           airport that I am aware of, two pipelines.  The  
5           sources are irrelevant as to how it gets to the tank  
6           farm in Illinois.  The constraint is how it is  
7           delivered from there into Lambert.

8           Q.    Well, in fact, it is being delivered wholly  
9           outside of Illinois to Lambert Airport.  Are you  
10          familiar with that, that there are sources that are  
11          nearly totally in Missouri?

12          A.    Can you give me an example of what they  
13          are?

14          Q.    Mr. Hopgood's testimony is that they are  
15          using tanker trucks all the way from Kansas City to  
16          deliver fuel to Lambert Airport.

17          MR. McNAMARA:  I am going to object.  I don't  
18          think that is part of the record.

19          MR. RONGEY:  Well, it is in his testimony.

20          MR. McNAMARA:  His direct testimony?

21          MR. RONGEY:  Direct or rebuttal or  
22          supplemental or surrebuttal, I am not going to -- I

1 am not making up Kansas City, I can assure you.

2 MR. McNAMARA: Well, whatever, let's keep it  
3 going.

4 THE WITNESS: If you can point me to that?

5 MR. McNAMARA: No, I won't object. We have got  
6 to move on.

7 BY MR. RONGEY:

8 Q. You heard Mr. Hopgood's testimony that if  
9 St. Louis Pipeline was denied this, there is a big  
10 market for these pipelines among the pipeline  
11 carriers, did you hear that?

12 A. I heard that.

13 Q. Would it be fair to assume in your opinion  
14 that even if St. Louis Pipeline isn't granted this  
15 and they cannot proceed to deliver this via this  
16 pipeline, that another pipeline could?

17 MS. BUELL: Your Honor, I am going to object  
18 to that. That is beyond the scope of his testimony.  
19 He has no way to know the answer to that.

20 JUDGE ALBERS: Response to the objection?

21 MR. RONGEY: I will just go on your ruling.

22 JUDGE ALBERS: Sustain the objection.

1 MR. RONGEY: Nothing further.

2 MR. McNAMARA: My turn?

3 JUDGE ALBERS: It is your turn.

4 CROSS EXAMINATION

5 BY MR. McNAMARA:

6 Q. Mr. Maple, are you familiar with the  
7 process that a company has to go through before they  
8 can place a pipeline?

9 A. Before they can place a pipeline?

10 Q. Yeah, before they can construct a pipeline,  
11 the regulatory bodies that they have to go to when  
12 they -- before they can actually put the pipeline  
13 in?

14 A. Generally speaking.

15 Q. What is your understanding? And I am just  
16 asking generally, sir, who has to sign off on it.  
17 For instance, with regard to the pipeline in  
18 question that we are talking about down by this  
19 Cahokia Diversion Canal, what's your understanding  
20 of that?

21 A. Well, the federal DOT has safety  
22 requirements and build requirements. They would

1           have to approve the plans for the construction. Of  
2           course, they would need -- the pipeline would need  
3           to get all of the necessary easements or right of  
4           ways from the various landowners. They would have  
5           to check with any local environmental agencies that  
6           would have jurisdiction in that area.

7           Q. I am just referring to a safety aspect.  
8           There is certainly federal DOT requirements, is that  
9           right?

10          A. There are, yes.

11          Q. What's your understanding as to those  
12          requirements?

13          A. Could you be more specific?

14          Q. Spacing requirements, I am sorry. How far  
15          do you have to separate a petroleum pipeline  
16          carrying jet fuel from another structure under the  
17          ground? Do you have any understanding in that  
18          regard?

19          A. I am not sure I know what those are offhand  
20          without checking.

21          Q. But you are aware that there are some  
22          requirements?

1           A. I don't know what they are.

2           Q. I am not asking you what they are but there  
3 are requirements?

4           A. I think there are but I am not entirely  
5 sure.

6           Q. Let's assume that you heard the testimony  
7 of Mr. Hopgood that there are such requirements?

8           A. Okay.

9           Q. You did, sir; you have been here all day?

10          A. Yes, I heard his testimony.

11          Q. You have no reason to doubt Mr. Hopgood, do  
12 you?

13          A. No.

14          Q. So, if it is a one-foot pipeline, they are  
15 still going to have to meet the safety specs of  
16 federal DOT, right?

17          MS. BUELL: You mean one for the easement or  
18 one for the pipeline?

19          MR. McNAMARA: Excuse me, you are so correct,  
20 excuse me.

21          Q. If we have a one-foot easement, we are  
22 going to have to meet the federal DOT safety specs,

1 right?

2 A. Yes.

3 Q. If we have got a five-foot easement, we are  
4 going to have to meet the federal DOT safety specs?

5 MR. RONGEY: I am going to object to the  
6 foundation in terms of this witness's ability to  
7 testify in this manner.

8 Q. Let me ask you, you are advocating a  
9 five-foot easement. No matter what, whether it is  
10 50-foot, one-foot or five-foot, we still have to  
11 meet the safety specs of federal DOT?

12 MR. RONGEY: Same objection.

13 JUDGE ALBERS: I am going to sustain it. He  
14 indicated he is not familiar with the requirement,  
15 so.

16 BY MR. McNAMARA:

17 Q. Do you, sir, have any background that would  
18 allow you to give an opinion as to what the ideal  
19 spacing would be between underground pipelines?

20 A. What the ideal spacing would be?

21 Q. Yes, sir. Do you know from being in  
22 school, being a professional engineer or on-the-job

1 training what the ideal spacing is?

2 A. The only thing I can point you to is back  
3 to my testimony where I have said that in the cases  
4 that I worked at here at the Commission, I have  
5 never seen a pipeline similar to this one that was  
6 granted an easement of less than five feet. So in  
7 my experience all pipelines that I have seen have  
8 had at least five feet of clearance.

9 Q. You are aware of the fact that even if we  
10 have a five-foot non-exclusive, there can be other  
11 pipelines in less proximity, in other words a foot  
12 and a half under?

13 A. Yes.

14 Q. So that five-foot non-exclusive isn't going  
15 to do us a lot of good, is it?

16 A. I would agree that it does not actually  
17 provide you five feet of clearance if they are able  
18 to put another pipeline within 12 to 18 inches of  
19 you.

20 Q. So the width of the pipeline in this  
21 particular case really isn't affecting how close  
22 another pipeline can get?

1 MS. BUELL: The width of the easement or --

2 Q. The width of the easement, excuse me.

3 A. That is why I said that I prefer an  
4 exclusive easement so that you could limit all  
5 pipelines to where they are not within five feet of  
6 the pipeline in question.

7 MR. McNAMARA: Thank you.

8 JUDGE ALBERS: Is that all you have?

9 MR. McNAMARA: That's all I have.

10 JUDGE ALBERS: Just one question for you,  
11 Mr. Maple.

12 EXAMINATION

13 BY JUDGE ALBERS:

14 Q. If the Commission indicated that a  
15 five-foot wide exclusive easement were appropriate  
16 -- let me rephrase that. In your opinion if a  
17 five-foot wide exclusive easement were granted, is  
18 it your understanding then that there would not be  
19 any crossing of other utility facilities at any  
20 depth?

21 A. Well, clearly, according to other testimony  
22 we have heard today there already are those

1 pipelines in place. So I am not sure -- I mean, I  
2 doubt you could remove those pipelines at this  
3 point. I am not sure what you would do with them.  
4 The exclusive easement might be able to limit future  
5 construction to where there are no future pipelines  
6 or utilities within the five feet of the pipeline in  
7 question.

8 Q. I just want to make sure I understand what  
9 you are comfortable with as the Staff engineering  
10 witness. Would it be your preference that there be  
11 no crisscrossing of pipelines in this particular  
12 geographic area?

13 A. Yeah, that would be the ideal preference.  
14 I mean, any time you can avoid any other utility  
15 company from working on a pipeline in that area, it  
16 should be safer for the pipeline that's already in  
17 place.

18 Q. But even at different depths you still want  
19 to avoid that? At any depth you would want to avoid  
20 that?

21 A. I think so. I mean, if there was something  
22 that was buried below the pipeline in question, they



1           A. Just as I was telling the Judge, an  
2 exclusive easement would prevent future construction  
3 in that area and potentially make the pipeline safer  
4 so that there weren't any digging or any other  
5 intrusion in the immediate area of the pipeline  
6 already in place.

7           Q. So then would it be fair to say that your  
8 rationale is based on safety concerns?

9           A. Yes.

10          MS. BUELL: Thank you. I have nothing further,  
11 Your Honor.

12          JUDGE ALBERS: Any recross?

13          MR. McNAMARA: No, sir.

14          JUDGE ALBERS: Mr. Rongey?

15          MR. RONGEY: No, sir.

16          JUDGE ALBERS: All right. Thank you,  
17 Mr. Maple.

18                               (Witness excused.)

19           Okay. Anything further from Staff?

20          Actually hearing no objection then to Staff exhibits  
21 1 and 3, those are admitted.

22                               (Whereupon ICC Staff

1 Exhibits 1.0 and 3.0  
2 were admitted into  
3 evidence.)

4 And, Ms. Buell, did you have anything  
5 further?

6 MS. BUELL: Nothing further, Your Honor.

7 JUDGE ALBERS: Okay. I don't think we have any  
8 other witnesses today.

9 MR. McNAMARA: I have no rebuttal testimony.

10 JUDGE ALBERS: Okay, very good.

11 MR. RONGEY: Nothing, Your Honor.

12 JUDGE ALBERS: I think the only thing left then  
13 is the briefing schedule. So let's go off the  
14 record then and figure out some dates for briefs.

15 (Whereupon there was  
16 then had an  
17 off-the-record  
18 discussion.)

19 JUDGE ALBERS: Back on the record. We will  
20 have initial briefs and any proposed orders  
21 submitted on April 2 and reply briefs submitted on  
22 April 13, and please don't ask for any extensions on

