

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Illinois Commerce Commission

DOCKET NO.

05-0407

IN THE MATTER OF:

ILLINOIS CMMERCE COMMISSION
ON ITS OWN MOTION

VS

QUALITY SAW & SEAL, INC

PLACE: Chicago, Illinois

DATE: August 24, 2005

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OFFICIAL REPORTERS

TWO NORTH LA SALLE STREET

SUITE 1780

CHICAGO, ILLINOIS 60602

312-782-4705

SPRINGFIELD, ILLINOIS

217-528-6964

EXHIBIT A

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BEFORE THE
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION)
On Its Own Motion,)
-vs-) DOCKET NO.
QUALITY SAW & SEAL, INC.,) 05-0407
Determination of Liability under)
the Illinois Underground Utility)
Facilities Damage Prevention Act.)

Springfield, Illinois.
August 24, 2005.

Met, pursuant to notice at 9:00 A.M.

BEFORE:

MR. STEPHEN YODER, Administrative Law Judge

APPEARANCES:

MS. LINDA BUELL
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

(Appearing on behalf of Staff of the Illinois
Commerce Commission)

SULLIVAN REPORTING COMPANY, by
H. Lori Bernardy, Reporter
Ln. #084-004126

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APPEARANCES

(CONT)

MR. JOSEPH P. BUELL
Atty. For Respondent
Law Offices of Joseph P. Buell
20 North Wacker Drive, Ste. 1660
Chicago, Illinois 60606

(Appearing telephonically on behalf of Quality
Saw & Seal, Inc.)

1			<u>I N D E X</u>		
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	WILLIAM RILEY				
4	By Ms. Buell	21		54/61	
5	By Mr. Buell		23		58
6	TED ANDERSEN				
7	By Ms. Buell	62			
8	By Mr. Buell		65		
9	MIKE SEALS				
10	By Mr. Buell	83			
11	BY JUDGE YODER		86		
12	THOMAS HAHN				
13	By Mr. Buell	88			
14	JAMES PROLA				
15	By Mr. Buell	91			
16	BY JUDGE YODER		92		
17	SCOTT EILKEN				
18	By Mr. Buell	94		99	
19	BY JUDGE YODER		96		
20					
21			<u>I N D E X</u>		
22	<u>EXHIBITS</u>		<u>MARKED</u>		<u>ADMITTED</u>
23	ICC Staff Exhibit 1.0				
24	With Attachments 1.1 through 1.3				23
25	ICC Staff Exhibit 2.0				
26	With Attachments 2.1 through 2.5				65
27	Quality Exhibit 2.0				
28	With Attachments 2.1 through 2.4				85
29	Quality Exhibit 3.0				
30	With Attachments 3.1 through 3.8				90
31	Quality Exhibit 1.0				
32	With Attachments 1.1 through 1.6				95

1 to enter their appearance.

2 One matter before we get started, I
3 would note for the record that there was originally
4 filed in this docket a Petition to Intervene by SBC
5 Illinois before that. And any of the parties that
6 filed any response or positions on that, there was
7 filed a Notice of Withdraw of this Petition to
8 Intervene by SBC on July 19, 2005, which resolved
9 that issue.

10 Are we then ready to proceed with the
11 hearing?

12 MS. BUELL: Yes, your Honor.

13 JUDGE YODER: All right.

14 MS. BUELL: Staff would like to call its first
15 witness. Staff calls Mr. William Riley to the stand.

16 JUDGE YODER: Mr. Riley, would you raise your
17 right hand.

18 (Whereupon the Witness was sworn
19 by the Administrative Law
20 Judge.)

21 JUDGE YODER: All right. Please proceed.

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W I L L I A M R I L E Y

having been first duly sworn by the Administrative
Law Judge, witnesseth and saith as follows:

DIRECT EXAMINATION

BY MS. BUELL:

Q Good morning, Mr. Riley, would you please
state your full name and spell your last name for the
record?

A William Burton Riley, R-I-L-E-Y.

Q And, Mr. Riley, by whom are you employed?

A I'm employed by the Illinois Commerce
Commission.

Q And what's your position at the Illinois
Commerce Commission?

A I'm the Manager of J.U.L.I.E. Enforcement.

Q Now, Mr. Riley, have you prepared written
testimony for purposes of this proceeding?

A Yes, I have.

Q And would you have before you a document
which has been marked for identification as ICC Staff
Exhibit 1.0 which consists of a cover page, nine
pages of narrative testimony, Attachments 1.1 through

1 1.3, and is titled "Direct Testimony of William
2 Riley"?

3 A Yes, I do.

4 Q And is this a true and correct copy of the
5 Direct Testimony that you've prepared for this
6 proceeding?

7 A Yes, it is.

8 Q Do you have any corrections to make to your
9 prepared testimony?

10 A No, I do not.

11 Q Is the information contained in ICC Staff
12 Exhibit 1.0 and the accompanying attachments true and
13 correct to the best of your knowledge?

14 A Yes, it is.

15 Q And if I were to ask you the same questions
16 today, would your responses be the same?

17 A Yes, they would.

18 Q Thank you.

19 MS. BUELL: Your Honor, at this time I move for
20 admission into evidence Mr. Riley's Prepared Direct
21 Testimony marked as ICC Staff Exhibit 1.0 including
22 Attachments 1.1 through 1.3.

1 I note that this is the same document
2 that was filed on the Commission's e-Docket system on
3 August 3, 2005.

4 JUDGE YODER: Any objection to the admission of
5 those exhibits?

6 MR. BUELL: No objection.

7 JUDGE YODER: All right. Exhibit 1.0 and three
8 Attachments will be admitted into evidence.

9 (Whereupon ICC Staff Exhibit
10 Number 1.0 with Attachments 1.1
11 through 1.3 was admitted into
12 the record.)

13 JUDGE YODER: Do you have any other questions
14 of Mr. Riley?

15 MS. BUELL: No, your Honor, I tender Mr. Riley
16 for cross-examination.

17 JUDGE YODER: All right.

18 CROSS-EXAMINATION

19 BY MR. BUELL:

20 Q Mr. Riley, according to your direct
21 testimony you have a degree from Bradley University
22 in Mechanical Engineering; is that correct?

1 A That's correct.

2 Q That is a discipline that's different from
3 civil engineering; is that correct?

4 A Yes, it is.

5 Q Okay. And with respect to mechanical
6 engineering, you deal with issues involving motors,
7 components, products similar to that; is that
8 correct?

9 A Mechanical components, that's what the
10 general coursework was.

11 Q Now during the course of your training in
12 mechanical engineering, did you take any civil
13 engineering courses?

14 A Yes, I did.

15 Q Okay. Did you minor some degree of
16 certification regarding civil engineering?

17 A No, I do not.

18 Q You were first employed by the Illinois
19 Commerce Commission in, what was it, 19 -- was it
20 1989?

21 A Ummm, yes 1989.

22 Q Okay. And your first duties with the

1 Illinois Commerce Commission was an Economic Analyst;
2 is that correct?

3 A That's correct.

4 Q Did that have anything to do with civil
5 engineering?

6 A No, it did not.

7 Q You were then promoted to the Chief of the
8 Electric Section in 1998; is that correct?

9 A Yes, that's correct.

10 Q And did your promotion to the chief of the
11 Electric Section have anything to do with civil
12 engineering?

13 A No, it did not.

14 Q Subsequently, you were promoted the manager
15 of J.U.L.I.E. Enforcement in 2002; is that correct?

16 A That's correct.

17 Q And was that like January -- February 2002?

18 A Yeah, somewhere in that frame, time frame.

19 Q Okay. Now while you were Chief of the
20 Electric Section, did you have any responsibility
21 with respect to reviewing the Illinois Underground
22 Utility Facilities Damage Prevention Act?

1 A No, I did not.

2 Q And while you were working as an Economic
3 Analyst for the Illinois Commerce Commission, were you
4 involved in reviewing the Illinois Underground
5 Utility Facilities Damage Prevention Act?

6 A No, I did not.

7 Q Was your first involvement with the
8 Illinois Underground Utility Facilities Damage
9 Prevention Act when you were appointed the Manager of
10 J.U.L.I.E. Enforcement in 2002?

11 A Actually, it was prior to that date. I was
12 charged during 2001 with getting the Commission's
13 J.U.L.I.E. Enforcement Program up and running as in
14 response to changes to the Intervention Act which
15 occurred in either 2000 or 2001.

16 I think 2001.

17 Q Okay, but prior to -- the Act was initially
18 amended effective July 1, 2002; is that correct?

19 A Well, the Act was amended and became
20 effective prior to that. However certain provisions
21 of the Act did not become effective until July 1,
22 2002, that being our enforcement provisions.

1 Q Okay, but the Act was initially effective
2 back in 1991; correct?

3 A Yes.

4 Q Okay, and then the Legislature amended the
5 Act, amending various provisions of the Act effective
6 July 1, 2002?

7 A That's correct.

8 Q And you were familiar with both the initial
9 Act as it was effective in 1991 and along with the
10 Amendments that then became effective in July 1,
11 2002; is that correct?

12 A I have looked back at the previous version
13 of the Act prior to changes made in 2002.

14 Q And the enforcement actually then began
15 subsequent to July 1, 2002 when that became
16 effective; is that correct?

17 A That's when we actually began receiving
18 reports of incidents and investigating those.

19 Q Now with respect to the initial incident
20 that arose here, there was a report prepared by North
21 Shore Gas; is that correct?

22 A That's correct.

1 Q And that report would have been submitted
2 to you?

3 A That's correct.

4 Q And then you would have requested that the
5 Respondent in this case, Quality, submit some type of
6 response to that report; is that correct?

7 A That's correct. We sent a Notice of
8 Investigation and included an Information Request
9 that we asked Quality to complete and return to us.

10 Q And Quality did return that to you; is that
11 correct?

12 A That's correct.

13 Q Okay. Now prior to July 1, 2002, were you
14 familiar with a document called the Standard
15 Specifications for Road and Bridge Construction
16 adopted January 1, 2002 by the Illinois Department of
17 Transportation?

18 A No, I am not.

19 Q Okay. Since you became the Chief of
20 J.U.L.I.E. Enforcement, have you reviewed the
21 Standard Specifications for Road and Bridge
22 Construction adopted January 1, 2002 by the Illinois

1 Department of Transportation?

2 A No, I have not.

3 Q Are you familiar with the Illinois
4 Department of Transportation?

5 A Yes.

6 Q To your knowledge, is Illinois Department
7 of Transportation involved with respect to design of
8 roadways within the state of Illinois?

9 A I'm not familiar with what role they play
10 in the design of the roadways.

11 Q Okay. Are you familiar with any role that
12 they play with respect to roadways and highways
13 within the state of Illinois?

14 A They do play a role.

15 Q A significant role?

16 A Well, I'm not sure how you would define
17 significant, but they did play a large role with
18 regard to State highways in Illinois.

19 Q All right. Now prior to your appointment
20 as the Chief of J.U.L.I.E Enforcement, were you
21 familiar with saw cutting of concrete pavement?

22 A I was aware that it was done.

1 Q Okay. Subsequent to your appointment, the
2 enforcement of -- as a J.U.L.I.E. Enforcement
3 Officer, did you ever have occasion to go out on the
4 site to observe saw cutting of concrete pavement?

5 A I haven't ever gone out and actually
6 observed it for the purpose of observing it, no.
7 I've seen it done, you know, driving by certain types
8 of projects.

9 Q Okay. So your knowledge of it is when you
10 drive down a roadway, you see that activity being
11 done at a construction site; correct?

12 A Correct.

13 Q Okay. And you have no knowledge as to
14 specifically what type of equipment is used in saw
15 cutting?

16 A Not other -- not other than what I've seen.

17 Q Now at the time that you were appointed the
18 Enforcement Officer or Manager of J.U.L.I.E.
19 Enforcement in 19 -- or, excuse me - 2002, were you
20 familiar with the various different statutes
21 regarding the minimum Federal Safety Standards
22 regarding the installation of various facilities in

1 roadways?

2 A Did you say prior to?

3 Q Yeah, prior to your appointment?

4 A Yes.

5 Q Okay. And since you've been appointed,
6 have you reviewed the legislation regarding the
7 minimum Federal Safety Standards, Section 192.361,
8 providing for depth of varied surfaces in roads and
9 streets?

10 A Yes, I have.

11 Q All right. Did the Illinois Commerce
12 Commission adopt this Federal standard as their
13 minimum safety standard?

14 A I'm not sure but I believe that they have
15 with regard to the Pipeline Safety Program.

16 Q All right. And is it your understanding
17 from your knowledge of the statute that services have
18 to be buried at a minimum depth of 18 inches in
19 streets and roadways?

20 A That is my understanding of the
21 installation note.

22 Q Now this incident, what we're here about

1 today, occurred at 2180 Kipling Lane, Highland Park,
2 Illinois; is that correct?

3 A That's correct.

4 Q Did you ever have occasion to review the
5 contract between the City of Highland Park, Illinois
6 and Chicagoland Paving regarding any work that was
7 being done at that location?

8 A No, I had not.

9 Q The Incident Report -- do you have a copy
10 of the Incident Report with you today? If not, we
11 can give you a copy.

12 THE WITNESS: Do you have a copy of the
13 testimony?

14 MS. BUELL: Okay, if you have an extra, sure.

15 THE WITNESS: Okay, I have that.

16 BY MR. BUELL:

17 Q There's an indication in the report that a
18 facility was 8 inches deep; is that correct?

19 A That's correct.

20 Q All right. When you reviewed that report,
21 did that indicate to you that there may have been a
22 question regarding the depth of a facility at that

1 location?

2 A What do you mean by a question about the
3 depth?

4 Q Well, you said that you were aware of the
5 Statute that facilities are to be buried with 18
6 inches cover, in this case, the service.

7 And the report indicates there was a
8 three-quarter gas service; is that correct?

9 A That's correct.

10 Q And according to the statute, that facility
11 should have been buried within 18 inches of cover
12 from the top of pavement; is that correct?

13 A The statute does require service to be
14 buried 18 inches

15 Q Okay. But it was reported by North Shore
16 Gas that their facility was at a dept of 8 inches at
17 the time that this incident occurred; correct?

18 A That's correct.

19 Q And North Shore Gas reported that saw
20 cutting was being performed for road reconstruction;
21 is that correct?

22 A That's correct. Nah, I don't know if --

1 oh, yes, it does.

2 Q Okay. It's up in the incident description;
3 is that correct?

4 A Yes, it is.

5 Q Now after you reviewed the report prepared
6 by North Shore Gas, did that raise any concern that
7 at the time this incident occurred that the
8 facilities at that location may have been in
9 violation of Federal or State law?

10 A As far as the Damage Prevention Act goes
11 the Act is silent on burial looking at the
12 facilities. Therefore, if a facility is hit,
13 regardless of what the depth is, it can be a
14 violation of the Damage Prevention Act.

15 Q Okay. I'm talking about the Federal
16 statute regarding the depth of various facilities.
17 When you reviewed that report, did that indicate to
18 you that there could be an issue regarding the depth
19 of the facility at that location which may have then
20 violated the Federal statute or the Illinois
21 Administrative Code that was adopted by the ICC
22 regarding the various facilities?

1 A I realize that it was less than the
2 required burial depth. But as far as enforcing any
3 provisions of the laws that require certain burial
4 depth, that's not what I do.

5 Q Okay, that's out of your realm?

6 A Yes, it is.

7 Q Okay, but just for your purposes, it drew
8 some attention to you that there was a problem with
9 the depth of the facility in relationship to what the
10 law provided for?

11 A I don't ever recall a problem with the
12 depth. We see facilities that are reported to us
13 that are less than the required installation depth
14 all the time. That does not mean that it was
15 necessarily buried at the current depth.

16 Q Did you see any photographs of the
17 facilities?

18 A Yes, I did.

19 Q And were those photographs provided by
20 North Shore Gas?

21 A I received photographs provided by North
22 Shore about two weeks ago, however I also received

1 the photographs provided by Quality Saw.

2 Q Okay. And you had occasion to observe the
3 location of the three-quarter inch gas service in
4 relation to the pavement; is that correct?

5 A Yes, I did.

6 Q Now after you had occasion to receive the
7 report from North Shore Gas and received a response
8 from Quality Saw & Seal, Inc., did you at that point
9 have that an occasion to review the Standard
10 Specifications for Road and Bridge Construction
11 adopted January 1, 2002 by the Illinois Department of
12 Transportation?

13 A No.

14 Q Now you're familiar with Section 52.3, of
15 the Illinois Underground Utility Facilities Damage
16 Prevention Act; is that correct -- excuse me 50/2.3?

17 A Yes, I'm familiar with that section.

18 Q And that's a Section that you review
19 regularly in the course of your position as the
20 Manager of the J.U.L.I.E. Enforcement; is that
21 correct?

22 A That's correct.

1 Q Now this is a definition Section; is that
2 correct?

3 A Yes, it is.

4 Q And within that Section it lists various
5 activities which the Legislature felt would be
6 encompassed within the scope of the term
7 "excavation"; is that correct?

8 A That's correct.

9 Q We've got a listing of grading; is that
10 right?

11 A Yes.

12 Q And trenching in that section?

13 A Yes.

14 Q We also have digging?

15 A Correct.

16 Q Ditching?

17 A Correct.

18 Q Drilling?

19 A Correct.

20 Q Bartering?

21 A Correct.

22 Q Boring?

1 A Yes.

2 Q Okay, now with respect to boring, wasn't
3 that added into the Act effective July 1, 2002 in the
4 term "excavation" versus the way it says the statute
5 read prior to that day?

6 A I don't recall.

7 Q If I show you a copy of the statute, and
8 I'm going to show you the 92nd General Assembly PA
9 92-178.

10 This shows Amendments to the statute
11 with the additions which are underlined and the
12 deletions which are striked-out. If you take a look
13 at that Section, is there an underline under the word
14 "boring" to indicate that that's included in the
15 statute?

16 A That appears to be the case.

17 Q Okay, now the site definition Section also
18 includes tunneling; is that correct?

19 A Yes, it does.

20 Q It also includes scraping?

21 A Yes.

22 Q Does it also include cable or pipe plowing?

1 A Yes, it does.

2 Q And it also includes the word "driving"?

3 A Correct, yes.

4 Q And is the word "saw cutting" included
5 within the definition of excavation?

6 A No, it is not.

7 Q Now are you also familiar with 220 ILCS
8 50/2.4, the definition of demolition?

9 A Yes.

10 Q Okay. Within the definition Section of
11 demolition is the word saw cutting in that Section?

12 A No, it's not.

13 Q Now with respect to Section four of the
14 Act, are you familiar with that section as well?

15 A Yes, I am.

16 Q And if we call the Act -- if we make
17 reference to it, the Act, we're referring to Illinois
18 Underground Utility Facilities Damage Prevention Act;
19 is that correct?

20 A Yes.

21 Q Now Section four, that introductory
22 Section says every person who engages in

1 non-emergency excavation or demolition shall; do you
2 see that?

3 A Yes.

4 Q Okay, so the key is you have to engage in
5 non-emergency excavation or demolition, correct?

6 A That's correct.

7 Q And if a person is not engaged in
8 non-emergency excavation or demolition, that person
9 does not have to contact the statewide one-call
10 system; is that correct?

11 A That's correct.

12 Q And for purposes of the statewide one-call
13 system is sometimes referred to as J.U.L.I.E.; is
14 that correct?

15 A That's correct.

16 Q Now, Section -- if we refer to Section 11
17 of the Act, that Section contains various paragraphs
18 that are penalty Sections as provided by the Act; is
19 that correct?

20 A Yes.

21 Q Okay. And the Section 11(a) of the Act,
22 that's a penalty Section; is that correct?

1 A Yes.

2 Q And Section 11(a) refers to Section four of
3 the Act; is that correct?

4 A Yes, it does.

5 Q Now if a person is not engaged in
6 non-emergency excavation or demolition, does that
7 person willfully fail to comply with Section 11(a) of
8 the Act?

9 A If they weren't engaged in any excavation
10 or demolition they wouldn't have been required to
11 provide notice under Section 4; therefore,
12 Section 11(a) would not be applicable.

13 Q Now let's take a look again at
14 Section 50/2.3, the definition Section of Excavation.
15 Does the definition of excavation, Section 50/2.3
16 define burial depth?

17 A No, it does not.

18 Q Does the Definition Section of Section
19 50/2.3 Excavation specify any depth for which an
20 activity becomes excavation?

21 A No, it does not.

22 Q Does Section 50/2.4 Demolition define

1 burial depth?

2 A No, it does not.

3 Q Does Section 50/2.4 Demolition specify any
4 depth for which an activity becomes demolition?

5 A No.

6 Q Now has Quality Saw & Seal, Inc. maintained
7 that saw cutting of pavement is not excavation?

8 A They have indicated that.

9 Q Okay. Have they also indicated that saw
10 cutting of pavement is not demolition?

11 A I believe they've indicated that as well.

12 Q Now let's go back to the Definition Section
13 again, Section 50/2.3 excavation. There's a word
14 that's referred to in the definition section "rock";
15 is that correct?

16 A Yes.

17 Q Okay, to your knowledge is a rock a
18 relatively hard, natural-forming mass of mineral or
19 petrified matter such as stone?

20 A Sure.

21 Q Rock is usually found within the subsurface
22 of the Earth; is that correct?

1 A Yes.

2 Q Now are you familiar with concrete
3 pavement?

4 A I'm not sure what you mean by familiar.

5 Q Well, have you had any courses in material
6 analysis of concrete pavement?

7 A No, not concrete pavement.

8 Q Okay, have you had any classes or any
9 training regarding analysis of concrete pavement?

10 A No.

11 Q To your knowledge, is concrete construction
12 material consisting of a conglomerate of gravel,
13 pebbles, broken stone or slag in a mortar or cement
14 matrix?

15 A Yes.

16 Q Okay. To your knowledge the concrete
17 pavement is a man-made material?

18 A Yes, it is.

19 Q You can't dig in the Earth's surface and
20 find concrete pavement, correct?

21 A Not naturally occurring, no.

22 Q It's something that's put together and

1 mixed -- and is being mixed usually when it's being
2 brought out to a site where it's been poured; is that
3 correct?

4 A Sure.

5 Q Okay, now it's your Direct Testimony that
6 -- that if you refer to page four that excavation
7 appears to include saw cutting of a paved road --

8 A Yes.

9 Q -- (continued) at line 126; is that
10 correct?

11 A That's correct.

12 Q Now is that an opinion that you get, that
13 excavation appears to include saw cutting of a paved
14 road?

15 A Yes, that's my opinion.

16 Q And that opinion that you have, was that
17 based on any reasonable degree of civil engineering
18 certainty?

19 A It's not based on civil engineering
20 analysis, no.

21 Q Okay. Was it your opinion that excavation
22 appears to include saw cutting of a paved road based

1 upon any standard treatise, such as the Standard
2 Specifications for Road and Bridge Construction
3 adopted January 1, 2002 by the Illinois Department of
4 Transportation?

5 A No.

6 Q Now your Direct Testimony - again page
7 four, page five - is it your Direct Testimony that it
8 could be argued that saw cutting of a paved road,
9 rending/removing a structure should be considered
10 demolition under the Act?

11 A That's what my testimony says.

12 Q All right. And was your opinion that it
13 could be argued that saw cutting of a paved road,
14 rending/removing a structure should be considered
15 demolition under the Act based upon a reasonable
16 degree of civil engineering, sir?

17 A It was not based on a civil engineering
18 analysis.

19 Q Okay. Was it your opinion that it could be
20 argued that saw cutting of a paved road
21 rending/removing of a structure should be considered
22 demolition under the Act based upon any standard

1 treatise, such as the Standard Specifications for
2 Road and Bridge Construction adopted January 1, 2002
3 by the Illinois Department of Transportation?

4 A No.

5 Q Are you familiar with saw cutting that's
6 performed for traffic control signal activation in
7 the roadway?

8 A Not really.

9 Q Okay. Do you have any knowledge that when
10 new concrete pavement is designed with saw cuts in
11 order to locate connection joints in the roadway?

12 A Would you read the question again?

13 Q Sure. Is new pavement designed with saw
14 cuts in order to locate connection joints in the
15 roadway?

16 A It may be.

17 Q Okay, you don't have any personal knowledge
18 of that?

19 A No.

20 Q All right. You testified at the Advisory
21 Committee Hearing on January 13, 2005 in Chicago; is
22 that correct?

1 A I presented Staff's findings.

2 Q Okay. And at that time, your findings were
3 not based upon any reasonable degree of civil
4 engineering certainty; is that correct?

5 A My finding were not based on civil
6 engineering analysis.

7 Q And your findings were not based on any
8 standard treatise such as the Standard Specifications
9 for Road and Bridge Construction adopted January 1,
10 2002 by the Illinois Department of Transportation?

11 A No, they were not.

12 Q Okay, now, I want you to take a look again
13 at Section -- the definition Section, Section 2.3.
14 Do you have it?

15 A Uh-huh.

16 Q Okay, now --

17 MS. BUELL: As presently adopted?

18 MR. BUELL: As presently adopted,
19 Section 50/2.3.

20 MS. BUELL: Thank you.

21 BY MR. BUELL:

22 Q In that Section it has the word "driving";

1 is that correct?

2 A Yes.

3 Q Okay. Now with respect to excavation that
4 word "driving," that could include pile driving; is
5 that correct?

6 A Yes.

7 Q It may appear that that word "driving"
8 includes pile driving, correct?

9 A Yes.

10 Q That word driving could also include the
11 operating of a motorized vehicle such as a crane,
12 backhoe or truck in an area where work is being done;
13 is that correct?

14 A I probably would not interpret it that way.

15 Q Okay, but it just has the word driving?

16 A That's right.

17 Q Okay. It could be a word that could be
18 interpreted various different ways, correct?

19 A It could be.

20 Q Okay. So as you sit here today, you cannot
21 testify, can you, based upon any reasonable degree of
22 engineering certainty whether that word "driving"

1 refers only to motorized vehicles traveling over a
2 roadway?

3 A I don't know that there would be
4 engineering analysis involved in that. It would be a
5 reading of the statute.

6 Q Well, you can't testify with any reasonable
7 degree of certainty whether that term driving
8 includes motorized vehicles?

9 MS. BUELL: I'm going to object to that
10 question. I believe that calls for a legal
11 conclusion.

12 JUDGE YODER: Sustained.

13 BY MR. BUELL:

14 Q Well, the term "driving," that could lead
15 to some type of guess or speculation as to really
16 what that term means in the statute, couldn't it?

17 MS. BUELL: I'm going to object to that, too.
18 That's just a different way of asking him what his
19 legal opinion of the word "driving" in the statute
20 is.

21 MR. BUELL: Well, he's trying to render a legal
22 opinion with respect to excavation. And I'm just --

1 MS. BUELL: In any event he's already answered
2 the question. That's been asked three times now.

3 JUDGE YODER: What he thinks or how he
4 interprets the word "driving," I guess he interprets
5 the word "excavation" one way and we have a different
6 interpretation.

7 MR. BUELL: Okay.

8 JUDGE YODER: Can I --

9 BY MR. BUELL:

10 Q Reading the statute, you can interpret the
11 term "driving" in various different ways depending on
12 how you would look at that term, correct?

13 A I probably could.

14 Q So in other words, you could have one
15 interpretation, I could have a different
16 interpretation?

17 A That's correct.

18 Q And those interpretations may lead to some
19 guess or speculation as to really what that word
20 meant in the statute with respect to the term
21 "driving" in the Section 50/2.3?

22 A Certainly.

1 Q Okay. Now, if Quality did not violate
2 Section 4(d), then Quality would not have willfully
3 violated Section 11(a) of the Act; is that correct?

4 A Well, the penalty which Staff assesses
5 looks for a willful violation of Section 4(d) not for
6 a willful violation of Section 11(a).

7 If it was Section 11(a), that's what
8 gives the Commission the authority to assess a
9 penalty for a violation of Section 40.

10 Q If Quality did not violate Section 4(d),
11 there would be no need to assess a penalty under
12 11(a)?

13 A That's correct.

14 Q And if Quality did not engage non-emergency
15 excavation or demolition, then Quality would not have
16 had to contact the statewide one-call system pursuant
17 to Section 4(d), correct?

18 A Yes. If they were not engaged in
19 excavation, they would not need to call J.U.L.I.E.

20 Q Now, your testimony, Direct Testimony on
21 page seven, line 196, you testified that it is clear
22 that on August 10, 2004 Quality was performing

1 excavation or demolition as defined in Sections 2.3
2 and 2.4 in the Act. Do you see that?

3 A Where is that again?

4 Q Page number seven, line Number 196, 197,
5 and 198.

6 A Yes.

7 Q And your testimony is that it is clear,
8 correct?

9 A Uh-huh.

10 Q Okay, now earlier you rendered some
11 opinions back on page four and page five that your
12 testimony was that excavation appears to include saw
13 cutting.

14 Okay, the word "appear" leads to some
15 degree of guess or speculation, doesn't it?

16 A In that specific place it might have one
17 meaning. Where I say "appears," that means it
18 appears to me, which means that I believe that it is
19 excavation.

20 Q Okay. But it is not based upon any
21 reasonable degree of engineering certainty, correct?

22 A As I've indicated, there's no engineering

1 analysis which leads to that decision.

2 Q Okay, but the term that you used, "appear,"
3 that basically could lead to guess or speculation
4 depending on who reviewed it and the way it looks or
5 was interpreted?

6 MS. BUELL: I think that question has been
7 asked and answered. He has already indicated that it
8 is his expert opinion that that's what the statute
9 says.

10 Asked and answered.

11 JUDGE YODER: Sustained.

12 MR. BUELL: Okay.

13 BY MR. BUELL:

14 Q Now going on to page five where you have
15 your direct -- where it says your direct testimony,
16 that it could be argued that saw cutting of a paved
17 road, rending/removing of a structure, should be
18 considered.

19 Again, that is an answer that calls
20 for some type of speculation or guess; does it not?

21 A I've indicated in my testimony that it can
22 be considered demolition as well.

1 Q Okay, but you cannot base it, as you sit
2 here today, on any reasonable degree of engineering
3 certainty?

4 A As I've indicated before, that conclusion
5 was not based on engineering analysis.

6 Q That was just based on your interpretation
7 of the statute?

8 A That's correct.

9 Q And just solely your interpretation?

10 A No.

11 Q You didn't have any treatises, any type of
12 precedent that you could rely upon in order to reach
13 that conclusion; is that correct?

14 A No.

15 Q Now --

16 MR. BUELL: That's all the questions I have.

17 JUDGE YODER: Any redirect, Ms. Buell?

18 MS. BUELL: Yes, thank you, your Honor.

19 REDIRECT EXAMINATION

20 BY MS. BUELL:

21 Q Mr. Riley, do you recall when Mr. Buell
22 asked you about your qualifications as Manager of

1 J.U.L.I.E. Enforcement?

2 A Yes.

3 Q And is it correct that you became Manager
4 of J.U.L.I.E. Enforcement in 2002?

5 A That's correct.

6 Q And was one of the requirements for that
7 position that you be a civil engineer?

8 A No.

9 Q And you've performed in this capacity now
10 for approximately three years?

11 A That's correct.

12 Q In your opinion after performing these
13 responsibilities for three years, is a degree in
14 civil engineering a necessity?

15 A No.

16 Q Now in the position of Manager of
17 J.U.L.I.E. Enforcement, you're responsible for
18 enforcing what laws?

19 A I'm responsible for enforcing the
20 provisions of the Underground Utility Facilities
21 Damage Prevention Act.

22 Q Are you responsible for enforcing any other

1 state laws?

2 A No.

3 Q Department of Transportation laws?

4 A No.

5 Q Are you responsible for enforcing any
6 Federal laws?

7 A No.

8 Q Do you recall when Mr. Buell asked you
9 about the definition of "Excavation" under
10 Section 2.3 of the Act?

11 A Yes.

12 Q And do you recall that you indicated that
13 saw cutting was not specifically listed in the
14 definition?

15 A That's correct.

16 Q Now as Manager of the J.U.L.I.E.
17 Enforcement Program, was your main responsibility
18 enforcing the J.U.L.I.E. Act?

19 And in your opinion does Section 2.3,
20 the definition of Excavation include saw cutting?

21 A Yes, it does.

22 Q And you've discussed this in your Direct

1 Testimony; have you not?

2 A Yes.

3 Q Do you recall when Mr. Buell asked you
4 about the definition of demolition under Section 2.3
5 of the Act -- I'm sorry, 2.4 of the Act?

6 A Yeah, 2.4.

7 Q And you responded that saw cutting was not
8 specifically included in the definition of demolition
9 under 2.4; is that correct?

10 A That's correct.

11 Q In your opinion as Manager of the
12 J.U.L.I.E. Enforcement Program for over three years,
13 do you believe that saw cutting meets the definition
14 of demolition of under the Act?

15 A Yes.

16 Q And you've indicated such in your Direct
17 Testimony; have you not?

18 A That's correct.

19 Q As such, Mr. Riley, is it your opinion that
20 on August 10, 2004, Quality Saw was engaged in
21 excavation or demolition in Highland Park?

22 A Yes, they were.

1 Q And as such, Mr. Riley, would it be
2 appropriate to assess penalties under Section 11 of
3 the Act against Quality Saw?

4 A Yes.

5 MS. BUELL: I have no further questions, your
6 Honor.

7 JUDGE YODER: Anything based on --

8 MR. BUELL: Yes.

9 RE CROSS EXAMINATION

10 BY MR. BUELL:

11 Q With respect to your opinions regarding saw
12 cutting being excavation, your opinion is based upon
13 the word that you used "appears" to include saw
14 cutting of the paved road; is that correct?

15 A Well, my opinion is not based on the word
16 "appears."

17 Q Well --

18 A It's based on my reading of the Damage
19 Prevention Act.

20 Q But your testimony on direct examination on
21 page four, line 126 makes specific reference to that
22 excavation appears; is that correct, that you used

1 the word "appears"?

2 A That's correct.

3 Q And with respect to questions that were
4 asked regarding demolition and saw cutting being
5 related to demolition, it's your testimony on Direct
6 Examination that it could be argued that saw cutting
7 of a paved road should be considered.

8 So you used the words "could" and
9 "should"?

10 A Uh-huh.

11 Q Is that correct?

12 A Yeah.

13 Q And that's your basis of your opinion the
14 use of the words could or should be considered -- saw
15 cutting should -- could and should be considered
16 demolition under the Act; correct?

17 A As I said, the basis of my opinion is not
18 based on the words "could" and "should" --

19 Q Well that's your answer --

20 A -- (continued) the basis of my opinion is
21 my reading of the Damage Prevention Act.

22 MR. BUELL: Again, I'd ask that that answer be

1 stricken. It is nonresponsive to the question.

2 JUDGE YODER: I think he's answered the
3 question that that's his interpretation.

4 MR. BUELL: Okay.

5 BY MR. BUELL:

6 Q My question was based on your Direct
7 Examination. You used the words it could be argued
8 that saw cutting of a paved road should be considered
9 under the Demolition Act.

10 You used those words in your
11 testimony?

12 A Yes.

13 Q And you would agree that if saw cutting is
14 not an activity that's included within excavation or
15 demolition under the Act, that Staff was in error
16 when they assessed the penalty against Quality
17 pursuing the Section 11 --

18 MS. BUELL: Asked and answered.

19 MR. BUELL: -- (continued) for violation of the
20 Section --

21 MS. BUELL: I object.

22 MR. BUELL: -- for the --

1 MS. BUELL: He's asked this question three or
2 for times already.

3 JUDGE YODER: Sustained. Yes, I think we can
4 all agree on the interpretation of the statute --

5 MR. BUELL: Okay.

6 JUDGE YODER: -- (continued) in that respect.

7 MR. BUELL: I have nothing further.

8 REDIRECT EXAMINATION

9 BY MS. BUELL:

10 Q Mr. Riley, when you use words in your
11 Direct Testimony such as "appears" or "could" or
12 "should," do those words indicate anything other than
13 the fact that this is your opinion as Manager of the
14 J.U.L.I.E. Enforcement Program?

15 MR. BUELL: I'm going to object. I think the
16 testimony -- the Direct Testimony speaks for itself.
17 His answers that he's given have already spoken with
18 respect --

19 JUDGE YODER: I'll sustain because I think he
20 has indicated why he used those words.

21 MS. BUELL: I have nothing further, your Honor.

22 JUDGE YODER: All right. Do you have any other

1 witnesses to present, Ms. Buell?

2 MS. BUELL: Yes, your Honor. Staff calls
3 Mr. Ted Andersen to the stand.

4 JUDGE YODER: All right, Mr. Andersen, would
5 you stand and raise your right hand, please.

6 (Whereupon the Witness was sworn
7 by the Administrative Law
8 Judge.)

9 JUDGE YODER: All right, please proceed,
10 Ms. Buell.

11 T E D A N D E R S O N
12 having been first duly sworn by the Administrative
13 Law Judge, witnesseth and saith as follows:

14 DIRECT EXAMINATION

15 BY MS. BUELL:

16 Q Good morning, Mr. Andersen.

17 A Good morning.

18 Q Would you please state your full name and
19 spell your last name for the record.

20 A Ted Alan Andersen, A-N-D-E-R-S-E-N.

21 Q Mr. Andersen, by whom are you employed?

22 A I'm a Special Claims Investigator for North

1 Shore Gas Company, a subsidiary of People's Energy
2 Corporation.

3 Q And is it correct today that you're
4 testifying on behalf of the Illinois Commerce
5 Commission?

6 A That's correct.

7 Q And do you have before you a document which
8 has been marked for identification as ICC Staff
9 Exhibit 2.0 which consists of a cover page, five
10 pages of narrative testimony, Attachments 2.1 through
11 2.5 and is entitled Direct Testimony of Ted Andersen?

12 A Yes, I do.

13 Q Is this a true and correct copy of the
14 direct testimony that you've prepared for this
15 proceeding?

16 A Yes, it is.

17 Q Do you have any corrections to make to your
18 prepared Direct Testimony?

19 A Yes, I do. On line 77, I say I believe
20 that the pictures have been destroyed and I have
21 later determined that not to be true.

22 Q So on line 77 when you say unfortunately

1 pictures of the incident are not longer available;
2 that statement is no longer true?

3 A Yeah. At the time of the written
4 testimony, I believed that the pictures had been
5 destroyed but have later determined that to not be
6 true. We were able to locate those photos.

7 Q Okay. But at the time you prepared your
8 written Direct Testimony you believed that no
9 photographs were available?

10 A That's accurate.

11 Q Okay. Other than line 77, is the
12 information contained in ICC Staff Exhibit 2.0 and
13 the accompanying attachments true and correct to the
14 best of your knowledge?

15 A Yes.

16 Q And if I were to ask you the same questions
17 today, would your responses be the same?

18 A Yes.

19 MS. BUELL: Your Honor, at this time I move for
20 admission into the record of Mr. Andersen's Prepared
21 Direct Testimony marked as ICC Staff Exhibit 2.0
22 including Attachments 2.1 through 2.5, and I note for

1 the record that this is the same document that was
2 originally filed via the Commission's e-Docket system
3 on August 3, 2005.

4 JUDGE YODER: Any objection to the admission of
5 those Exhibits?

6 MR. BUELL: No, no objection.

7 JUDGE YODER: All right. Exhibits 2.0 and
8 Attachments 2.1 through 2.5 will be admitted into
9 evidence then with the correction on line 77 of the
10 admission Mr. Andersen indicated on the record
11 regarding the pictures.

12 MS. BUELL: Thank you, your Honor.

13 (Whereupon ICC Staff Exhibit
14 Number 2.0 and Attachments 2.1
15 through 2.5 were admitted into
16 the record.)

17 JUDGE YODER: Do you have any other questions
18 of Mr. Andersen?

19 MS. BUELL: No, I do not, your Honor. I tender
20 Mr. Andersen for Cross.

21 CROSS EXAMINATION

22 BY MR. BUELL:

1 Q Mr. Andersen, your Direct Testimony does
2 not identify what your educational background is.
3 Could you tell us what that is?

4 A Yes. I graduated from the University of
5 Wisconsin Parkside in Kenosha, Wisconsin, with a
6 double major: One -- one of the majors was Business
7 Administration and the other was in Labor and
8 Industrial Relations.

9 Q Okay. Have you taken any courses in civil
10 engineering?

11 A No.

12 Q And have you ever been employed by anyone
13 in a capacity of doing any work which would be in the
14 civil engineering field?

15 A No.

16 Q Now you prepared an incident report
17 following the damage to the North Shore facility; is
18 that correct?

19 A Yes.

20 Q Were you present at the site at any time?

21 A No.

22 Q Your answer was "no"?

1 A Yes, I was not at the site.

2 Q Okay. The information that you prepared in
3 the Underground Utility Facilities Damage Prevention
4 Incident Report, was that information that was given
5 to you by someone else at North Shore Gas?

6 A Yes.

7 Q And you testified that you had photographs;
8 is that correct?

9 A Yes, I do.

10 Q And those were taken by somebody from North
11 Shore Gas?

12 A Yes.

13 Q Have you ever reviewed any photographs that
14 were taken by Quality Saw & Seal?

15 A Yes.

16 Q And do those photographs that you reviewed
17 from Quality Saw & Seal reflect basically what was
18 seen in the photographs that were taken by North
19 Shore Gas?

20 A Essentially.

21 Q When you say "essentially," basically they
22 show the same surface, they show the pavement and

1 where the service is in relationship to the pavement;
2 is that correct?

3 A That's correct.

4 Q Okay. Now on the report -- you've got a
5 copy of the report in front of you which was attached
6 with your testimony; is that correct?

7 A Yes.

8 Q And in the report, you list the facility
9 that was damaged as a three-quarter inch gas service;
10 is that correct?

11 A Yes.

12 Q And you list the depth of the facility at
13 being eight inches?

14 A Yes.

15 Q Now, was any of the information given to
16 you by North Shore Gas that the facility was eight
17 inches deep?

18 A Yes.

19 Q And was information provided to you that
20 the pavement was nine inches thick?

21 A That was not included in any information
22 from North Shore Gas employees.

1 Q Okay. And did you subsequently receive
2 some information from the Illinois Commerce
3 Commission that the depth of the pavement was nine
4 inches?

5 A I read that as part of one of your
6 witness's Direct Testimony.

7 Q All right, and which witness was that?

8 A Ummm, I'm not sure.

9 Q Okay. Have you read all the testimony of
10 all of the witnesses at Quality Saw & Seal, Inc.?

11 A No.

12 Q All right. When you say one of the
13 witnesses, do you recall which witness's testimony
14 you reviewed?

15 A No.

16 Q Well, are you familiar with the Illinois
17 Underground Utility Facilities Damage Prevention Act?

18 A Somewhat.

19 Q When you say "somewhat," are you familiar
20 with Section 50/2.3 entitled Excavation?

21 A Yes.

22 Q Are you familiar with Section 50/2.4

1 entitled Demolition?

2 A Somewhat.

3 Q Okay. Not as familiar then with the
4 Demolition Section as you are with Excavation; is
5 that correct?

6 A That's correct.

7 Q And are you familiar with the Act when it
8 was amended July 1, 2002?

9 A I'm aware that it was amended July 1st of
10 '02.

11 Q Okay. Do you have a copy of the Act in
12 front of you?

13 A No.

14 Q Do you know if the word "saw cutting" is
15 included within the Definition Section of 50/2.3?

16 A I do not have the Act in front of me, so
17 I'm not certain whether saw cutting is included.

18 Q Okay. Do you know if Section 50/2.3
19 entitled Excavation is silent on burial depth?

20 A I don't believe the Act addresses depth at
21 all.

22 Q Okay. And are you familiar with the

1 Standard Specifications for Road and Bridge
2 Construction adopted January 1, 2002 by the Illinois
3 Department of Transportation?

4 A No.

5 Q Now, you're familiar with the term "rock,"
6 are you not?

7 A I believe I know what rock is.

8 Q And would you agree that a rock is a
9 relatively hard, naturally formed mass of mineral or
10 petrified matter such as stone?

11 A Yes.

12 Q Okay. Are you familiar with the term
13 "concrete pavement"?

14 A Yes.

15 Q And would you agree that concrete is the
16 construction of material consisting of a conglomerate
17 of gravel, pebbles, broken stone or slag in a mortar
18 or cement matrix?

19 A Yes.

20 Q Now, did you receive a document request
21 from my office on behalf Quality seal and saw, Inc.?

22 A Yes.

1 Q And with respect to that document request,
2 you produced some documents in response to that; is
3 that correct?

4 A Yes.

5 Q And do you have a copy of those documents
6 in front of you?

7 A Yes, I do.

8 Q Okay. One of those documents was a
9 document which identified the date a service was
10 installed at or near 2180 Kipling Lane, Highland
11 Park, Illinois; is that correct?

12 MS. BUELL: Excuse me, I have a question: Are
13 you offering new information into the record?

14 MR. BUELL: No, that was part of the
15 witness's -- one of the Quality witness's Exhibits.

16 MS. BUELL: So you plan to offer it --

17 MR. BUELL: Right.

18 MS. BUELL: -- (continued) when you offer
19 Quality's testimony?

20 MR. BUELL: Right.

21 MS. BUELL: Okay. Can you refer him to a
22 specific Attachment, to a specific piece of

1 testimony?

2 MR. BUELL: I'm looking at what's been
3 identified as Document B which is the document name
4 on top, untitled, and it has a reference to 2180
5 Kipling Lane.

6 MS. BUELL: Who's testimony?

7 MR. BUELL: It's in the testimony of Thomas
8 Hahn.

9 MS. BUELL: I'm sorry, what Attachment?

10 MR. BUELL: It's attached as Exhibit 3.8, the
11 last page.

12 Do you have a copy of that document?

13 THE WITNESS: Well, I'm not sure which document
14 to which you're referring. Does it have some
15 printing on it, some hand printing?

16 MR. BUELL: It does. It has hand printing on
17 it. It looks like the first hand printing is the
18 Number 860.

19 THE WITNESS: Okay, yes, I have that document
20 in front of me.

21 BY MR. BUELL:

22 Q Okay, that is a document which would

1 indicate that the date that the service was installed
2 was 1977; is that correct?

3 A That's correct.

4 Q Okay. And you're familiar with the minimum
5 Federal Safety Standards regarding the installation
6 of buried services, in particular Section 192.361 for
7 service line installation; are you not?

8 A I am not familiar.

9 Q Okay. So you're not aware that various
10 facilities have to be installed with a minimum cover
11 in streets and roads?

12 MS. BUELL: Objection; asked and answered.
13 He's not familiar with the statute.

14 JUDGE YODER: Sustained.

15 BY MR. BUELL:

16 Q Now since you were not at the site? You
17 have no personal knowledge of the type of saw blade
18 that was used at that location; is that correct?

19 A Well, I have a photo of the machine and of
20 the saw blade.

21 Q Okay, but just looking at the photo, could
22 you tell what the size of the blade was?

1 A No. There's not a photo that has a ruler
2 in the picture next to the saw blade.

3 Q Okay. So you could just visually see what
4 the type of equipment it is?

5 A Correct.

6 Q Okay. Now what I want you to do -- you
7 have your testimony in front of you, do you not?

8 A Yes, I do.

9 Q And if you refer to page four, beginning
10 with line Number 95 through 97, do you have that in
11 front of you?

12 A Yes.

13 Q Okay. You testified under direct
14 examination that when a saw cutter's blade goes
15 beyond the thickness of the pavement and penetrates
16 to the soil below, it becomes an excavation and thus
17 requires a call to J.U.L.I.E.; is that correct?

18 A Yeah, that's my testimony.

19 Q Now just so we understand you, are you
20 saying that until the saw cutter's blade goes beyond
21 the thickness of the pavement - that's the concrete
22 pavement - and penetrates the soil below, saw cutting

1 does not become excavation?

2 A As I stated when a saw cutter's blade goes
3 beyond the thickness of the pavement and penetrates
4 the soil below, in my opinion it becomes an
5 excavation.

6 Q Okay. Were you provided with any
7 information that the facility that was damaged here,
8 this three-quarter inch plastic service was eight
9 and-a-half inches within the concrete pavement?

10 A Well, first of all, it wasn't a plastic
11 service as you've stated, it was a three-quarter inch
12 steel service.

13 Q All right. So we'll strike the word
14 plastic out of there. It is three-quarter inch
15 steel.

16 Did you read or were you provided with
17 any information that that service was eight
18 and-a-half inches within the concrete pavement?

19 A I believe that Quality has alleged that the
20 pipe was embedded in the pavement. But the pictures
21 that I have viewed don't support that contention.

22 Q Okay, but let's assume that the steel

1 service is embedded in the pavement at eight
2 and-a-half inches, when it is hit by the blade, it's
3 your testimony that until that blade goes into the
4 soil, that is not excavation; is it not?

5 A I'm not comfortable making the assumption
6 that you're asking me to make.

7 Q Well, I'm basing it upon your Direct
8 Testimony. Because you've testified on direct
9 testimony that when the saw cutter's blade goes
10 beyond the thickness of the pavement and penetrates
11 the soil, it becomes excavation.

12 My question to you is: Until that
13 blade penetrates the soil, there is no excavation?

14 MS. BUELL: Objection. I think he's already
15 stated that he is not comfortable agreeing with that
16 or answering that question.

17 It's the same question that was asked
18 twice before.

19 JUDGE YODER: Well, he's given his answer
20 and -- but his testimony is in the record. So each
21 party have interpret the testimony. He's said what
22 he has said on state lines 95, 96, and 97.

1 And Mr. Buell wants him to interpret
2 that. I think he's said what he said, and you're
3 asking him to restate it.

4 MR. BUELL: Well, I'm asking him to --

5 JUDGE YODER: You're asking him to state the
6 opposite of what he's saying. You want the
7 corollary.

8 MS. BUELL: Correct.

9 JUDGE YODER: And he does --

10 MS. BUELL: And I think he's said it three
11 times now.

12 JUDGE YODER: I understand your point, but he
13 doesn't need to say it. You can argue based on what
14 he's got in his testimony, the corollary.

15 MR. BUELL: Okay.

16 BY MR. BUELL:

17 Q Now I want to refer you to page four again
18 of your testimony, beginning with line 105 through
19 line 108?

20 A Okay.

21 Q All right. Now you, in your testimony you
22 state that there are ways saw cutters could avoid

1 damaging facilities or causing harm. Do you see
2 that?

3 A Yes.

4 Q And one of the ways is by not going
5 completely -- or not cutting completely through the
6 pavement; is that correct?

7 A In my opinion, that would be a way to avoid
8 damaging the line that was below the pavement.

9 Q Now, do you know if Quality did not
10 completely cut through the pavement at the time that
11 this incident occurred?

12 A Based on the pictures that I have viewed,
13 it appears that they completely cut through the
14 entire thickness of the pavement.

15 Q All right. But my question was to you was:
16 You don't know whether they attempted to come up and
17 go over any type of facilities while they were saw
18 cutting; is that correct?

19 A I don't know if they attempted to do that.

20 Q All right. Now with respect to potholing,
21 you indicate in your direct testimony that you can
22 pothole on each side of the roadway; is that correct?

1 A Yes.

2 Q Okay. And to pothole in concrete, you'd
3 have to dig a hole in the concrete; is that correct?

4 A I suspect, yes.

5 Q Do you have any personal knowledge whether
6 Quality did not pothole on each side of the roadway?

7 A It is my belief that they did not pothole.

8 Q On each side of the roadway?

9 A On either side of the roadway.

10 Q Now, your opinion which you gave on page
11 34, your testimony is that a saw cutter's blade that
12 goes through the thickness of pavement and penetrates
13 the soil then becomes excavation.

14 Was that based upon any reasonable
15 degree of engineering certainty?

16 A No, it's not based on any engineering
17 certainty.

18 Q Okay. Now, going back to your testimony on
19 page three, line 89 through 92 where you have:
20 According to the definition of excavation contained
21 in the Illinois Underground Utility Facilities Damage
22 Prevention Act, saw cutting is clearly an operation

1 which requires a call to J.U.L.I.E.; do you see that?

2 A Yes.

3 Q Did you have the statute in front of you at
4 the time you prepared that answer?

5 A Yes.

6 Q Okay. And when you gave that answer where
7 you say saw cutting is clearly an operation, was that
8 answer based upon any reasonable degree of
9 engineering certainty?

10 A No.

11 Q Was that answer based upon any treatise
12 which is a treatise that's relied upon by those
13 engaged in civil engineering in order to arrive at
14 that answer?

15 A It was not based on any type of engineering
16 certainty.

17 Q Okay. It was just based upon what your
18 feeling was regarding this activity?

19 A It was my interpretation of the Act, not my
20 feeling.

21 Q And when you interpreted the Act, you did
22 not find the word saw cutting in Section 50/2.3; is

1 that correct?

2 A I do not believe saw cutting was
3 referenced, but I don't have the Act in front of me.

4 Q Okay. You don't have it in front of you
5 today, but you had it at the time you did your
6 testimony?

7 A That's correct.

8 MR. BUELL: That's all the questions I've got.

9 JUDGE YODER: Any redirect, Ms. Buell?

10 MS. BUELL: No redirect, your Honor.

11 JUDGE YODER: All right. Can I excuse

12 Mr. Andersen?

13 MS. BUELL: Yes.

14 JUDGE YODER: Then I assume we're done.

15 Mr. Andersen, you are excused.

16 MR. ANDERSEN: Okay, can I stay on and listen
17 in to the testimony?

18 JUDGE YODER: Sure. Any further evidence,
19 Ms. Buell, on behalf of Staff?

20 MS. BUELL: No, your Honor.

21 JUDGE YODER: Do you rest?

22 MS. BUELL: I do.

1 JUDGE YODER: All right. Mr. Buell, do you
2 have anything to present on behalf of Quality Saw &
3 Seal?

4 MR. BUELL: Yes, I do. First of all, we would
5 be calling Mike Seals as a witness on behalf of
6 Quality.

7 JUDGE YODER: All right, Mr. Seals, would you
8 stand and raise your right hand, please.

9 MR. SEALS: Yes.

10 (Whereupon the Witness was sworn
11 by the Administrative Law
12 Judge.)

13 JUDGE YODER: All right, please proceed.

14 MR. BUELL: All right.

15 M I K E S E A L S

16 having been first duly sworn by the Administrative
17 Law Judge, witnesseth and saith as follows:

18 DIRECT EXAMINATION

19 BY MR. BUELL:

20 Q Okay, Mr. Seals, you're testifying here
21 today on behalf Quality Saw & Seal, Inc.?

22 A Correct.

1 Q Okay. And are you employed by Quality Saw
2 & Seal, Inc.?

3 A Correct.

4 Q And you have in front of you your Direct
5 Testimony; is that correct?

6 A Yes.

7 Q Is that testimony true and correct?

8 A Yes, it is.

9 Q And along with your testimony, which has
10 been identified as Quality Exhibit 2.0, were there
11 various photographs that were attached to that
12 testimony including Quality Exhibits 2.1, 2.2, 2.3,
13 and 2.4; is that correct?

14 A Correct.

15 Q And those photographs truly and accurately
16 portrayed the condition as it existed on August 10,
17 2004 at or near 2180 Kipling Lane, Highland Park; is
18 that correct?

19 A Yes, it is correct.

20 MR. BUELL: Your Honor, at this time I'd like
21 to offer as evidence Quality's Exhibit 2.0 including
22 the Attachments which are Quality Exhibit 2.1, 2.2,

1 2.3, and 2.4 into evidence as Quality Exhibits.

2 JUDGE YODER: Any objection to those exhibits,
3 Ms. Buell?

4 MS. BUELL: No, objection, your Honor. I'm
5 just not certain whether this was filed.

6 MR. BUELL: Well, let me just put on the record
7 that it was filed on August 10, 2005 with the Chief
8 Clerk's Office at the Illinois Commerce Commission.

9 JUDGE YODER: All right, no objection then?

10 MS. BUELL: No objection, your Honor.

11 JUDGE YODER: Exhibit 2.0 with Attachments, I
12 believe it's 2.1 through 2.4, will be admitted into
13 evidence in this Docket then.

14 (Whereupon Quality Exhibit
15 Numbers 2.0 with Attachments
16 2.1, 2.2, 2.3, and 2.4 were
17 admitted into the record.)

18 JUDGE YODER: Do you tender Mr. Seals?

19 MR. BUELL: I tender Mr. Seals.

20 JUDGE YODER: All right. Do you have any
21 questions for Mr. Seals?

22 MS. BUELL: Staff has no cross for Mr. Seals,

1 your Honor.

2 JUDGE YODER: I have I think one question:

3 EXAMINATION

4 BY JUDGE YODER:

5 Q Mr. Seals, you testified that you were the
6 operator of the saw cutting machine in question; is
7 that correct?

8 THE WITNESS: That's correct.

9 JUDGE YODER: All right. And it appears from
10 the pictures that it was basically a square hole that
11 was being cut into the pavement?

12 THE WITNESS: Yes, patches.

13 JUDGE YODER: Okay. And was then a -- I call
14 it a lateral cut or a cross, a corner to corner cut
15 made where the gas line in question became damaged;
16 is that correct?

17 THE WITNESS: I believe it would be a lateral
18 cut.

19 JUDGE YODER: Okay, so you'd made four cuts and
20 then were going across, like from corner to corner?

21 THE WITNESS: Correct. It was more like a box
22 in that area.

1 JUDGE YODER: I'm just looking at your picture,
2 Exhibit 2.4 and the angle of the cut in the pipe. It
3 looks like it was going crosswise; is that correct?

4 THE WITNESS: Correct.

5 JUDGE YODER: And you were observed -- you were
6 there at the scene and there appeared to be on your
7 picture some yellow -- I would call them arrows in
8 the pavement and then across what might be on the
9 sidewalk, like in 2.2 it's fairly visible, you were
10 able to observe those?

11 THE WITNESS: Correct.

12 JUDGE YODER: Okay. I don't have any other
13 questions. Do you have anything based on --

14 MR. BUELL: I have no further questions.

15 JUDGE YODER: Do you have any other evidence
16 you wish to present, Mr. Buell?

17 MR. BUELL: I don't. At this time, your Honor,
18 we'd like to call Thomas Hahn.

19 JUDGE YODER: All right, Mr. Hahn, would you
20 stand and raise your right hand, please.

21 MR. HAHN: Okay.

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(Whereupon the Witness was sworn
by the Administrative Law
Judge.)

JUDGE YODER: All right, please proceed.

T H O M A S H A H N

having been first duly sworn by the Administrative
Law Judge, witnesseth and saith as follows:

DIRECT EXAMINATION

BY MR. BUELL:

Q Mr. Hahn, do you have in front of you your
Direct Testimony?

A Yes, I do.

Q Okay. And that testimony, does it truly
and correctly reflect your testimony?

A Yes, it does.

Q Are there any changes that need to be made
to your testimony?

A No, there is not.

Q And you've reviewed the testimony with the
attached exhibits to it; is that correct?

A Yes, I have.

Q Beginning with Quality Exhibit 3.1 through

1 3.8; is that correct?

2 A Let me see here, let me double check. I
3 believe so, yes.

4 Q Okay. And this exhibit, Quality Exhibit
5 3.0 including the Attachments 3.1 through 3.8 was filed
6 with the Chief Clerk's Office on August 10, 2005?

7 A Correct.

8 MR. BUELL: Your Honor, at this time I'd like
9 to offer into evidence the testimony of Thomas Hahn
10 identified as Quality Exhibit Number 3.0 including
11 attached exhibits -- Quality Exhibits 3.1 through 3.8
12 into evidence.

13 MS. BUELL: I only have Exhibits 3.1 through
14 3.7; what is 3.8?

15 JUDGE YODER: 3.8 was the one we referenced
16 earlier. You might have pulled it off.

17 MS. BUELL: Yes, I did. Okay, thank you.

18 JUDGE YODER: Any objection then to Exhibit 3.0
19 and Attachments 3.1 through 3.8?

20 MS. BUELL: No.

21 JUDGE YODER: Without objection then those will
22 be admitted into evidence in this docket.

1 (Whereupon Quality Exhibit
2 Number 3.0 with Attachments 3.1
3 through 3.8 was admitted into
4 the record.)
5 JUDGE YODER: Do you tender Mr. Hahn?
6 MR. BUELL: I tender Mr. Hahn, your Honor.
7 MS. BUELL: Staff has no cross of Mr. Hahn,
8 your Honor.
9 JUDGE YODER: All right. Do you have any other
10 evidence to present?
11 MR. BUELL: Your Honor, I'd like to call at
12 this time James Prola.
13 MR. HAHN: Can I go back to work?
14 JUDGE YODER: Is that Mr. Hahn? Yes, you can
15 be excused. Thank you, Mr. Hahn.
16 MR. HAHN: Bye now.
17 JUDGE YODER: Mr. Prola, would you stand and
18 raise your right hand please.
19 (Whereupon the Witness was sworn
20 by the Administrative Law
21 Judge.)
22 JUDGE YODER: All right, please proceed.

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J A M E S P R O L A

having been first duly sworn by the Administrative
Law Judge, witnesseth and saith as follows:

DIRECT EXAMINATION

BY MR. BUELL:

Q Mr. Prola, did you have occasion to review
your Direct Testimony identified as Quality
Exhibit 4.0?

A Yes, I did.

Q And is that, the testimony that's
contained, true and correct?

A Yes, it is.

Q Is there any corrections that have to be
made to that testimony?

A No, there is not.

Q Did you also have occasion to review with
the testimony identified as Quality Exhibit 4.0,
Quality Exhibits 4.1 through 4.13?

A Yes, I did.

MR. BUELL: Your Honor, the Direct Testimony of
James Prola identified as Quality Exhibit 4.0,
including attached exhibits 4.1 through 4.13 was

1 filed with the Chief Clerk of the Illinois Commerce
2 Commission on August 10, 2005.

3 And at this time I'd like to offer
4 into evidence the direct testimony of James Prola
5 with attached Exhibits 4.1 through 4.13 into
6 evidence.

7 JUDGE YODER: Any objection, Ms. Buell?

8 MS. BUELL: No objection from Staff, your
9 Honor.

10 JUDGE YODER: All right. Then those exhibits
11 4.0 and Attachments 4.1 through 4.13 will be admitted
12 into evidence in this docket.

13 MR. BUELL: I tender Mr. Prola.

14 JUDGE YODER: Do you have any questions?

15 MS. BUELL: No, your Honor.

16 JUDGE YODER: I have two questions: One might
17 be a correction. Do you have your testimony in front
18 of you Mr. Prola?

19 THE WITNESS: Yes.

20 EXAMINATION

21 BY JUDGE YODER:

22 JUDGE YODER: If you could reference page 11,

1 line 423, the third word is payment. I think that
2 maybe should be corrected to pavement; is that right?

3 THE WITNESS: Yes, you're right.

4 JUDGE YODER: And it's your testimony there on
5 line 418 that your opinion is the saw cutting does
6 not move or remove concrete pavement.

7 THE WITNESS: Yes.

8 JUDGE YODER: I don't have any other questions.

9 MR. BUELL: Okay, can Mr. Prola be excused?

10 JUDGE YODER: I don't have anything further for
11 him.

12 MS. BUELL: Staff has nothing, your Honor.

13 JUDGE YODER: He can be excused.

14 MR. BUELL: Mr. Prola, you can be excused.

15 Thank you.

16 Your Honor, at this time our next
17 witness is Mr. Scott Eilken.

18 JUDGE YODER: All right, Mr. Eilken, would you
19 stand and raise your right hand, please.

20 (Whereupon the Witness was sworn
21 by the Administrative Law
22 Judge.)

1 JUDGE YODER: All right, please proceed.

2 S C O T T E I L K E N

3 having been first duly sworn by the Administrative
4 Law Judge, witnesseth and saith as follows:

5 DIRECT EXAMINATION

6 BY MR. BUELL:

7 Q Mr. Eilken, have you reviewed your
8 testimony identified as Quality Exhibit 1.0?

9 A Yes.

10 Q Have you also reviewed the attached
11 Exhibits that are identified as Quality Exhibits 1.1
12 through 1.6?

13 A Yes.

14 Q Are there any changes or corrections to
15 your testimony that's been identified as Quality
16 Exhibit 1.0?

17 A No.

18 Q And does that testimony truly and
19 accurately reflect what the testimony is?

20 A Yes.

21 MR. BUELL: Your Honor, let the record note
22 that the testimony of Scott Eilken identified as

1 Quality Exhibit 1.0, including Attachments 1.1
2 through 1.6 was filed with the Chief Clerk's Office
3 on August 10, 2005.

4 JUDGE YODER: Do you tender?

5 MR. BUELL: I offer into evidence the Direct
6 Testimony of Scott Eilken identified as Quality
7 Exhibit Number 1.0 including Attachments 1.1 through
8 1.6 into evidence.

9 JUDGE YODER: Any objection to the admission of
10 those exhibits?

11 MS. BUELL: No objection, your Honor.

12 JUDGE YODER: All right. Exhibit 1.0 and
13 Attachments 1.1 through 1.6 a couple of which appear
14 to be what I call group exhibits will be admitted
15 into evidence in this Docket.

16 (Whereupon Quality Exhibit
17 Number 1.0 with Attachments 1.1
18 through 1.6 was admitted into
19 the record.)

20 JUDGE YODER: Do you tender Mr. Eilken?

21 MR. BUELL: I tender Mr. Eilken.

22 JUDGE YODER: Do you have any cross, Ms. Buell?

1 MS. BUELL: Staff has no cross, your Honor.

2 JUDGE YODER: I think I have two questions.

3 EXAMINATION

4 BY JUDGE YODER:

5 JUDGE YODER: You're the owner and partner of
6 Quality Saw & Seal?

7 THE WITNESS: An owner and a partner.

8 JUDGE YODER: Okay, you were not running the
9 cutting machine on this day?

10 THE WITNESS: No.

11 JUDGE YODER: And have you run them in the
12 past?

13 THE WITNESS: Yes.

14 JUDGE YODER: Are you aware of what thickness
15 blade was being used on this day?

16 THE WITNESS: My employees stated to me the
17 size blade that they would use at this time.

18 JUDGE YODER: And they vary -- in your
19 testimony you indicate they can be from 12 inch - now
20 I've got to think - diameter to 88 inch diameter.

21 THE WITNESS: Yes.

22 JUDGE YODER: Okay, and that would be all the

1 way across.

2 What is -- does the thickness of each
3 blade or the curve of each blade vary depending on
4 the diameter of the blade?

5 THE WITNESS: Yes.

6 JUDGE YODER: Okay. I assume they get larger
7 as the blades get larger in diameter?

8 THE WITNESS: Yes.

9 JUDGE YODER: Okay. What is the curve or the
10 thickness of, as far as you're aware, the blade that
11 your employee testified was being used today, if
12 you're aware?

13 THE WITNESS: I'm sorry.

14 JUDGE YODER: I believe you testified that it
15 was a nine-inch blade being used?

16 THE WITNESS: A 26 inch blade to cut a maximum
17 depth of 10 inches.

18 JUDGE YODER: All right. What would be the
19 thickness or width of that blade be?

20 THE WITNESS: If I'm not mistaken, it was a 187
21 width of the core blade.

22 JUDGE YODER: I might need that in English.

1 What does that mean?

2 THE WITNESS: They do it in a decibel.

3 JUDGE YODER: Okay.

4 THE WITNESS: So a 187 width is basically --
5 125 would be a quarter inch, so it's a little wider
6 than a quater inch.

7 JUDGE YODER: Okay, so your estimate would be
8 between a quarter and a third of an inch,
9 approximately?

10 THE WITNESS: Yes.

11 JUDGE YODER: Okay. Were you an owner or
12 partner of Quality Saw & Seal back in 2003?

13 THE WITNESS: Yes.

14 JUDGE YODER: Okay. And you're aware of the
15 previous - and I don't have the number in front of me
16 - the previous investigation regarding saw cutting
17 which no penalty or proceeding was involved in in
18 that case.

19 THE WITNESS: Yes.

20 JUDGE YODER: But it's Quality Saw & Seal's
21 position that saw cutting should not be included in
22 the definition of either excavation or demolition?

1 THE WITNESS: Yes.

2 JUDGE YODER: I don't have any other questions.

3 MR. BUELL: I just have a couple.

4 REDIRECT EXAMINATION

5 BY MR. BUELL:

6 Q With respect to saw cutting, Standard
7 Specifications for Road and Bridge Construction
8 adopted January 1, 2002 by the Illinois Department of
9 Transportation do reference saw cutting; is that
10 correct?

11 A Yes.

12 Q And the Standard Specifications for Road
13 and Bridge Construction adopted January 1, 2002 by
14 the Illinois Department of Transportation provide
15 that that activity is not an excavation; is that
16 correct?

17 A Yes.

18 Q And that same Standard Specifications for
19 Road and Bridge Construction adopted January 1, 2002,
20 by the Illinois Department of Transportation was
21 applicable in 2003 at the time that this other
22 incident occurred?

1 A Yes.

2 Q And again, the policy of the Illinois
3 Department of Transportation again in 2003 was that
4 saw cutting is not excavation?

5 A Yes.

6 MR. BUELL: That's all the questions I have.

7 JUDGE YODER: Do you have anything based on
8 anything?

9 MS. BUELL: Nothing.

10 JUDGE YODER: Do you have any other evidence to
11 present, Mr. Buell?

12 MR. BUELL: I have no other evidence to
13 present.

14 JUDGE YODER: Any rebuttal.

15 MS. BUELL: No, your Honor.

16 JUDGE YODER: All right. Then I think we're
17 done today.

18 We, as far as testimony, prior to
19 going on the record we had a discussion as to a
20 briefing schedule in this docket and I will read that
21 into the record and anybody can correct me if I
22 misspeak.

1 It's my understanding that the parties
2 will each file briefs in this Docket by the close of
3 business, September 21, 2005.

4 Any reply briefs that the parties
5 decide to file will be filed on or before October 3,
6 2005.

7 I will endeavor to have a Proposed
8 Order out to the parties by October 14, 2005.

9 And these next dates -- if I get it on
10 the 15th -- but any briefs on exception will be due
11 from the parties two weeks after that which if I get
12 my job done on time would be October 28.

13 And any reply to exceptions of the
14 Proposed Order would be due then one week after that,
15 so at this point, a tentative November 4th.

16 And the parties understand that there
17 is a deadline in this case of December 26 and the
18 last Commission Session before that will be December
19 21.

20 Anything else we need to handle today?

21 MS. BUELL: Nothing further from Staff, your
22 Honor.

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MR. BUELL: Nothing further.

JUDGE YODER: All right. I will mark the
record heard and taken.

(Which was all the proceedings
had in this cause.)

HEARD AND TAKEN