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BEFORE THE

ILLINOIS COMMERCE COMMISSION

ENBRIDGE PIPELINES (Illinois) )  
L. L. C. )  
Application pursuant to Sections )  
8-503, 8-509 and 15-401 of the )  
Public Utilities Act - the Common )  
Carrier by Pipeline Law to )  
construct and operate a petroleum )  
pipeline and, when necessary, to )  
take private property as provided )  
by the Law of Eminent Domain. )

DOCKET NO.  
07-0446

Tuesday, July 8, 2008

Springfield, Illinois

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

LARRY JONES, ALJ

APPEARANCES:

GERALD A. AMBROSE  
G, DARRYL REED  
JOHN A. HELLER  
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(Appearing on behalf of the  
Applicant.)

SULLIVAN REPORTING CO., by  
Laurel Patkes, Reporter  
CSR #084-001340

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7 Applicant.)

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13 (Appearing on behalf of Shelby  
14 Coal Holdings, LLC and two other  
15 affiliates, intervenors.)

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JANIS VON QUALEN  
JIM OLIVERO  
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(Appearing on behalf of staff  
witnesses of the Illinois  
Commerce Commission.)

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I N D E X

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PROCEEDINGS

JUDGE JONES: Good morning. I call for hearing Docket No. 07-0446. This is the matter of Enbridge Pipelines (Illinois) L.L.C., petition pursuant to Sections 8-503, 8-509, 15-101 and 15-401 of the Public Utilities Act for a certificate by pipeline and for other relief.

Next we will ask the parties to enter your respective appearances orally for the record.

Most of you, if not all of you, have already entered appearances at earlier prehearings or status hearings in this case.

If that's the case, you do not need to give us your business address and business phone number. That will be up to you.

At this time then, may we have the appearances orally for the record, first on behalf of the applicant Enbridge Pipelines (Illinois).

MR. AMBROSE: Good morning, Your Honor. On behalf of the Applicant, Gerald A. Ambrose, G. Darryl Reed and John A. Heller, Sidley & Austin. The address is already in the record.

1                   Also with us is Joel W. Kanvik, senior  
2 counsel of Enbridge Energy, and his address is also  
3 in the record.

4                   JUDGE JONES: Thank you.

5                   ICC Commission staff?

6                   MR. OLIVERO: Appearing on behalf of the staff  
7 witnesses of the Illinois Commerce Commission, Janis  
8 Janice E. Von Qualen and Jim Olivero, and I believe  
9 our address is already on file.

10                  JUDGE JONES: Other parties?

11                  MR. HELMHOLZ: Mr. Jones, good morning. My  
12 name is Scott Helmholtz, and I'm appearing on behalf  
13 of Shelby Coal Holdings, LLC and two other  
14 affiliates, intervenors.

15                  JUDGE JONES: Thank you.

16                  Others?

17                  MR. BRANDT: Yes, your Honor. Peter Brandt,  
18 Barbara Taft and Thomas Pliura on behalf of the  
19 groups collectively known as the Pliura intervenors.

20                  JUDGE JONES: Thank you.

21                  Other appearances?

22                  MR. TURNER: Your Honor, Mercer Turner from

1 Bloomington. My address is in the record also, and  
2 I'm on behalf of several intervenors.

3 JUDGE JONES: Thank you.

4 Next.

5 MR. HOLSTINE: Your Honor, Andrew Holstine. My  
6 address is also on the record appearing on behalf of  
7 intervenors Alice E. Temple Trust and Nina Armstrong  
8 Trust.

9 JUDGE JONES: Other appearances?

10 MR. HEDIN: Good morning, Judge Jones. Elliott  
11 Hedin on behalf of Oelze Equipment Company, LLC.

12 JUDGE JONES: Thank you.

13 MR. BYERS: Bob Byers. My information is in  
14 the record. I'm appearing on behalf of a number of  
15 intervenors.

16 JUDGE JONES: Other appearances?

17 Let the record show there are not, at  
18 least at this time.

19 Again, if anybody is having any  
20 trouble hearing, just interrupt. Just let us know,  
21 and we'll see what we can do about that.

22 As most of you are probably aware,

1 there are a lot of parties and witnesses in this  
2 case. The witness testimony and exhibits have been  
3 filed with the Commission and appear on the  
4 Commission's Web site under e-docket, so again, as  
5 you probably already know, those documents are  
6 accessible on the Commission's Web site and can also  
7 be printed out.

8 Most of what will occur today will be  
9 an opportunity for other parties to ask questions or  
10 cross-examine those witnesses who have submitted that  
11 testimony. The witnesses on the schedule today are  
12 witnesses who filed testimony on behalf of Enbridge.

13 There are many other witnesses in the  
14 case, and they will be, at least some of those will  
15 be subject to cross-examination on a later date.

16 There are a fair number of witnesses  
17 as there typically are in these proceedings for whom  
18 there is no cross-examination.

19 As noted in some earlier rulings,  
20 witnesses for whom there is no cross-examination and,  
21 again, assuming no objections, will be permitted to  
22 have that testimony offered by affidavit.

1                   There was a ruling sent out relating  
2 to witness lineup by day late last week. There may  
3 be some tweaking of that witness lineup. I do not  
4 want to spend a lot of time on that first thing this  
5 morning because we really need to get moving forward  
6 with the examination of those witnesses.

7                   There is quite a bit of  
8 cross-examination time that were provided in those  
9 cross estimates, so witnesses who are scheduled to  
10 testify later in this round of hearings are ones we  
11 will not look at revising the witness lineup at this  
12 specific point in time this morning unless there is  
13 agreement among the parties to modify that order of  
14 witnesses in which case you can indicate what that is  
15 right now.

16                   Otherwise, we'll get back to that  
17 later in the day at some point.

18                   MR. BRANDT: Your Honor, Peter Brandt on behalf  
19 of intervenors.

20                   I do have one issue. I know you've  
21 asked not to take this up, but it has to do with the  
22 logistics in getting one of our witnesses here.

1                   Mr. Hazell is listed for Thursday. He  
2 is in Canada. We ask that he be allowed to testify  
3 by phone and be cross-examined by phone. There's  
4 been a request for 20 minutes of cross-examination.

5                   I've spoken with petitioner's counsel,  
6 and at least the indication was they weren't taking a  
7 position on this request.

8                   The reason I'm bringing it up at this  
9 point in time is we have to logistically get him  
10 here, so that's why I'm making this request.

11                  JUDGE JONES: Well, I'm not going to take that  
12 up at this specific point in time. That's really  
13 exactly what we need to avoid. That request was  
14 filed late last week, and I appreciate the desire to  
15 get a prompt ruling on it, but we will get back to  
16 that later today.

17                  I think there are about a dozen  
18 witnesses set up for that day, and the so called 20  
19 minutes may not sound like much by phone but you can  
20 run into all kinds of complications attempting to get  
21 witnesses worked in by phone on a day that has 11  
22 other witnesses scheduled for it. 20 minutes doesn't

1 always mean 20 minutes by the time you factor in  
2 redirect and that sort of thing.

3 We will make every effort to provide  
4 some accommodation to that witness, but that's as  
5 much as I'm going to deal with at this specific point  
6 in time.

7 MR. BRANDT: Very good.

8 JUDGE JONES: If there are any reordering of  
9 witnesses for subsequent days to which there is  
10 agreement among the parties at this time, you can go  
11 ahead and indicate what that is right now, and we  
12 will see if we can go ahead and take care of that,  
13 but if you are not at that point, then we will deal  
14 with that later which I think provides two  
15 advantages.

16 Number one, we can get moving forward  
17 with the cross, and number two, that gives counsel  
18 for these parties a chance to talk among yourselves  
19 on break or over lunch to see if you are in agreement  
20 rather than just start arguing about something at the  
21 outset of this hearing.

22 Are there any such proposed

1 modifications to the witness lineup that are agreed  
2 to at this time?

3 MR. AMBROSE: Not at this time to my knowledge,  
4 Your Honor.

5 However, I do wish to make sure that  
6 everybody is aware that Mr. Felmy from the American  
7 Petroleum Institute, as his counsel has indicated,  
8 will be here tomorrow in person. I believe in the  
9 e-mail there was similar communication sent.

10 JUDGE JONES: Thank you.

11 As far as today's witness lineup, I  
12 assume that the three witnesses are still in the same  
13 order as was circulated.

14 Are there any changes in today's  
15 witness order?

16 MR. AMBROSE: No, Your Honor. The witnesses  
17 are here. Mr. Burgess will begin. Mr. Aller will be  
18 next and then Mr. Batis.

19 JUDGE JONES: Thank you.

20 Let me mention one other thing while  
21 I'm at it. We have obviously a lot of persons here  
22 in the room and a lot of attorneys up at the table

1 and elsewhere representing various parties. At least  
2 in the initial stage of this hearing, anyone that  
3 speaks, if you could identify yourself, I think that  
4 would help our court reporter and perhaps others in  
5 the room who do not know you, so if you could try to  
6 remember just to do that, that would be appreciated.

7 I think we're ready to proceed with  
8 the first of the witnesses.

9 Does Enbridge Pipelines (Illinois)  
10 have a witness to call at this time?

11 MR. AMBROSE: Yes, Your Honor. We will call  
12 Mr. Burgess as our first witness.

13 JUDGE JONES: Are all three witnesses actually  
14 in the room?

15 MR. AMBROSE: Yes, they are.

16 JUDGE JONES: Why don't you all stand and raise  
17 your right hand to be sworn, and we will swear you  
18 all in and maybe save a little bit of time later.

19 (Whereupon the witnesses were  
20 sworn by Judge Jones.)

21 JUDGE JONES: Thank you.

22 MR. BRANDT: Your Honor, could we have a rule

1 excluding nonparty witnesses?

2 JUDGE JONES: Any response to that?

3 MR. AMBROSE: I don't think that's necessary,  
4 Your Honor. It's not, to my knowledge, the custom  
5 and practice of the Commission, besides which we  
6 already have prefiled testimony that everybody has  
7 seen.

8 Consequently, I see no need to do  
9 that. Mr. Burgess and Mr. Aller are both company  
10 witnesses. Mr. Batis is an expert of course, so I  
11 don't see there's any need for invoking of the rule.

12 MR. BRANDT: If I could respond, Your Honor.

13 JUDGE JONES: Go ahead.

14 MR. BRANDT: Obviously there's going to be a  
15 lot of overlapping cross-examination by a lot of  
16 these witnesses who would testify in a similar  
17 fashion. Queuing up the other witnesses as to what  
18 the cross-examination is going to be is not helpful  
19 to the Commission, it's not helpful to the court in  
20 making a determination as to the veracity of their  
21 testimony, so in this particular case, I think it's  
22 appropriate for us to get a rule excluding those

1 witnesses until at least they've testified, and  
2 obviously after they've testified, I think it's  
3 perfectly appropriate for them to come back into the  
4 room. I don't have an objection to that.

5 JUDGE JONES: Okay. Thank you.

6 Anyone else on that.

7 MS. VON QUALEN: Yes, Your Honor. Jan Von  
8 Qualen on behalf of staff. We would like to be able  
9 to have Mr. Maple who is a staff witness sit in  
10 throughout the proceeding. That would enable him to  
11 know what was said and avoid the necessity for him to  
12 read the entire transcript to find out what was said.

13 I don't really see the necessity for  
14 exclusion of witnesses.

15 JUDGE JONES: Okay. Anyone else?

16 Okay. That request is denied. I  
17 understand the basis for the request. It's pretty  
18 common practice in circuit court. It's pretty rare  
19 at the Commission for a combination of reasons, one  
20 of those being that we use prepared testimony which  
21 is circulated to all and placed on e-docket prior to  
22 the hearings, and I can understand there is still

1 some benefit to excluding witnesses in some  
2 situations but all things considered, the witnesses  
3 will not be excluded.

4 Okay. Your first witness.

5 MR. AMBROSE: We will call Mr. Burgess to the  
6 stand, please.

7 JUDGE JONES: Could you identify yourself just  
8 a couple more times?

9 MR. AMBROSE: Yeah. I'm Gerald Ambrose on  
10 behalf of the applicant.

11 JUDGE JONES: Thank you.

12 MR. AMBROSE: I apologize.

13 JUDGE JONES: No problem.

14 MR. AMBROSE: Your Honor, a procedural  
15 question.

16 JUDGE JONES: Sure.

17 MR. AMBROSE: Mr. Burgess is also the proponent  
18 of the various responses to data requests that have  
19 been made in the course of this proceeding, and we  
20 have, as you know from our exhibit list, indicated  
21 that those will be exhibits in our case.

22 The question is do you wish us to mark

1     them now or shall we just do that later on as a  
2     matter of convenience? They've already been served.  
3     Everybody has copies of them.

4             JUDGE JONES: Are you talking about the  
5     responses that were generated by another party?

6             MR. AMBROSE: The responses generated by  
7     Enbridge, our responses to the various staff data  
8     requests that are being made exhibits by Enbridge as  
9     part of this case.

10            JUDGE JONES: You're referring to Enbridge  
11    responses to staff data requests?

12            MR. AMBROSE: Yes, exactly. There's a fairly  
13    extensive list of them, and I just thought it would  
14    be more convenient if we marked them later on.  
15    Mr. Burgess is available to be asked about them of  
16    course.

17            JUDGE JONES: Are there copies of those  
18    somewhere?

19            MR. REED: Darryl Reed. We do have physical  
20    copies here, Your Honor, yes. They have not been  
21    filed on e-docket.

22                            Pursuant to the Commission's rules,

1 data request responses are not required to be filed.  
2 However, if that's your pleasure, we'd be more than  
3 happy to do so.

4 JUDGE JONES: Well, of course, typically  
5 they're not exhibits so data requests are not filed  
6 on e-docket if they are just data request responses  
7 or data request themselves typically, but here the  
8 request is that they be, I assume, put into the  
9 evidentiary record as evidence, correct?

10 MR. REED: Correct.

11 MR. AMBROSE: Yes.

12 JUDGE JONES: And there are copies here  
13 available for other parties and me?

14 MR. REED: We do have a copy for you. We have  
15 copies for the court reporter. The parties have  
16 previously been served. We did not bring physical  
17 copies here for the parties although they were on  
18 notice that we were going to introduce these  
19 documents as exhibits.

20 It's my assumption that they may have  
21 physical copies with them.

22 JUDGE JONES: And you're referring to the

1 various responses that are listed in the filing that  
2 was made on July 3rd identifying the exhibits that  
3 Enbridge intends to offer?

4 MR. REED: That is correct, Your Honor;  
5 Exhibits 7 through 12 with various iterations of each  
6 one of them.

7 JUDGE JONES: All right. Thank you.

8 And what are you proposing to do at  
9 this time with these?

10 MR. AMBROSE: Just have Mr. Burgess available  
11 to answer any questions about them if anybody wants  
12 to ask such questions during the cross-examination  
13 period.

14 JUDGE JONES: Are you intending to offer them  
15 at this time?

16 MR. AMBROSE: Yes. We will offer them as  
17 evidence, and that's why Mr. Burgess is here to speak  
18 to them if necessary.

19 MR. PLIURA: Your Honor, Tom Pliura for the  
20 record. I don't believe the Pliura intervenors have  
21 been provided with copies of all of the data  
22 requests. I know that there are quite a few that we

1 don't have.

2 I don't have any opposition if they  
3 are willing to just provide us copies.

4 MR. REED: With all due respect, Mr. Pliura --  
5 well, I'll direct my comments to the judge.

6 Your Honor, pursuant to staff's  
7 original data request, a request was made on Enbridge  
8 to make sure that all parties had been served  
9 pursuant to various provisions of the Illinois  
10 statute, particularly the ex parte rule and the  
11 Illinois Ethics Act. We, in fact, did make sure that  
12 we served all parties.

13 To the extent that anyone did not  
14 receive such documents, they surely could have  
15 requested those documents prior to today.

16 I know for a fact, because I  
17 physically sent those documents out, that Mr. Pliura  
18 and the Pliura intervenors were, in fact, copied with  
19 each one of those documents as well as co-counsel for  
20 the Pliura intervenors, so the assertions to the  
21 contrary are simply false.

22 MR. HELMHOLZ: Judge, I brought an extra copy,

1 and since you don't need one, I gave that to  
2 Mr. Pliura. I think that will solve it.

3 JUDGE JONES: Does that work for you,  
4 Dr. Pliura?

5 DR. PLIURA: Yes, absolutely.

6 JUDGE JONES: Thank you.

7 Do any of the parties have any points  
8 of clarification or objection with respect to what  
9 Enbridge wants to do in terms of offering these data  
10 request responses into the record?

11 MR. BRANDT: Your Honor, I don't have any  
12 objections to them being used here. As to their  
13 admission into evidence, I'd just like a chance to  
14 look them over. We can proceed on with  
15 cross-examination of these documents, but actually  
16 making them part of the record, I think I'd just like  
17 some time to look them over. It won't take much, but  
18 if I have an objection, I want to at least be able to  
19 in an educated fashion respond to the proposal.

20 Peter Brandt for the court reporter's  
21 sake.

22 Thank you.

1           JUDGE JONES: I think that's a reasonable  
2 suggestion there. While these DR responses may have  
3 been distributed long ago in some instances, there  
4 does not appear to be any way that other parties  
5 would have had knowledge prior to the circulation of  
6 that exhibit list that Enbridge was intending to  
7 offer them into the evidentiary record.

8                         That being the case, I think what  
9 Mr. Brandt suggests is reasonable to provide a little  
10 bit of an opportunity this morning to familiarize  
11 himself with those items in the context of their  
12 potentially becoming exhibits in the proceeding.

13           MR. REED: Your Honor, this is Darryl Reed.  
14 May I approach and hand you a courtesy copy of these  
15 documents for your use?

16           JUDGE JONES: Yes. Thank you.

17                         Now, was it the applicant's intent to  
18 have the witness identify these items or you just  
19 going to do it by reference to the exhibit list?

20           MR. AMBROSE: Just by reference to the exhibit  
21 list, Your Honor.

22           JUDGE JONES: I think particularly where there

1 are a lot of exhibits on any given list, it will  
2 likely save some time to allow parties and their  
3 witnesses just to refer to those lists whenever  
4 possible.

5 To the extent we need to zero in on a  
6 particular item on a list for clarification or other  
7 reasons, we can do that, but I think allowing parties  
8 to refer to the list will be helpful.

9 Okay. Anything else with respect to  
10 that before we actually proceed with the  
11 identification of the witness?

12 MR. HELMHOLZ: Judge Jones, Scott Helmholtz.

13 JUDGE JONES: Yes, sir.

14 MR. HELMHOLZ: I apologize. I do not have the  
15 exhibit list, but my understanding is we had not  
16 actually formally labeled those exhibits. Is that  
17 correct at this point? Because I intended in cross  
18 just to refer to, for example, Attachment C to  
19 Enbridge's response to staff data request 1.8 as an  
20 example.

21 I hope that wouldn't confuse anyone by  
22 just referring directly to staff's nomenclature.

1           JUDGE JONES: All right. I think the exhibit  
2 list has exhibit numbers on there, but you're  
3 suggesting it would be simpler, at least at this  
4 point, if you were allowed to refer to the DR number?

5           MR. HELMHOLZ: Correct, Your Honor. I would  
6 ask leave to do that.

7           MR. REED: Your Honor, this is Darryl Reed. In  
8 order to facilitate matters, we have prepared a  
9 document that we're certainly willing to share with  
10 the parties that cross-referenced the staff  
11 designation with the designation that we have  
12 provided, and if the parties would like to utilize  
13 the document for purposes of cross-examination of  
14 Enbridge's witnesses, I think that will help in that  
15 regard.

16           MR. HELMHOLZ: Judge, I don't have time to  
17 digest that, and my proposal is to seek leave to  
18 refer directly to the data request number.

19           MR. REED: We have no objections to that.  
20 We're simply trying to facilitate matters.

21           JUDGE JONES: That's fine.

22                           Okay. Anything else with respect to

1 that?

2 All right. You may proceed with the  
3 witness.

4 MR. AMBROSE: Thank you, Your Honor. Gerald  
5 Ambrose on behalf of the applicant of course.

6 DALE WILLIAM BURGESS

7 called as a witness herein, on behalf of the  
8 Applicant, having been first duly sworn on his oath,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. AMBROSE:

12 Q. Mr. Burgess, would you state your full name  
13 for the record, please?

14 A. Dale William Burgess.

15 Q. Mr. Burgess, you have in front of you a  
16 binder of documents which I believe includes the  
17 prepared and prefiled testimony in this proceeding,  
18 is that correct?

19 A. That's correct.

20 Q. And does that include the document marked  
21 as Enbridge Exhibit No. 1 bearing the date of  
22 October 5, 2007?

1 A. Yes, it does.

2 Q. Does it include the document marked as  
3 Enbridge Exhibit 1A bearing the date of February 4,  
4 2008?

5 A. Yes.

6 Q. And does it include the document marked as  
7 Enbridge Exhibit 1B bearing the date of May 21, 2008?

8 A. Yes.

9 Q. Now, Mr. Burgess, you do not have in front  
10 of you right at the moment all of the data request  
11 responses we just referred to, correct?

12 A. No, I do not.

13 Q. But we do have a set right here for you if  
14 necessary, and you are familiar with those, correct?

15 A. Yes, I am.

16 Q. And you, in fact, verified all those  
17 responses to the data requests when they were  
18 submitted?

19 A. Yes.

20 Q. Thank you.

21 Mr. Burgess, if I were to ask you the  
22 questions that are included in the Enbridge

1 Exhibits 1, 1A and 1B, would your answers be the same  
2 as those set forth in those documents?

3 A. Yes, they would.

4 Q. Do you have any changes or corrections to  
5 those documents, those prepared testimony pieces?

6 A. No, I do not.

7 Q. Do you adopt those exhibits, those prepared  
8 testimony documents as your sworn testimony in this  
9 case?

10 A. Yes.

11 MR. AMBROSE: Your Honor, at this time, I would  
12 offer that Mr. Burgess is available for  
13 cross-examination subject to any further redirect I  
14 may need to do.

15 JUDGE JONES: Thank you, Mr. Ambrose.

16 It appears that three parties have  
17 cross-examination for Mr. Burgess.

18 In terms of who leads off,  
19 Mr. Helmholtz, you want to go ahead?

20 MR. HELMHOLTZ: I'd appreciate that.

21 MR. AMBROSE: Excuse me, Your Honor.

22 Before we begin, just for the record,

1 I would formally move for the admission into evidence  
2 of the prepared testimony and the data request  
3 exhibits that we've been referring to.

4 JUDGE JONES: The exhibits have been offered.  
5 That includes the DR responses, is that correct?

6 MR. AMBROSE: Yes, it does, Your Honor.

7 JUDGE JONES: I think we've already noted we  
8 will hold off on admissibility of those DR responses  
9 for the time being.

10 Are there any responses to the request  
11 to admit the direct, reply and surrebuttal testimony  
12 of this witness?

13 MR. HELMHOLZ: I would just ask that it be  
14 admitted subject to cross-examination and motion to  
15 strike.

16 JUDGE JONES: Any other responses?

17 MR. BRANDT: Peter Brandt. I'd adopt the same  
18 response.

19 JUDGE JONES: Anyone else?

20 Let the record show that the exhibits  
21 sponsored by Mr. Burgess other than the  
22 aforementioned DR responses are admitted into the

1 evidentiary record subject to cross-examination and  
2 motion to strike.

3 As noted, they are listed on the  
4 exhibits list filed on July 3 and include Exhibit 1,  
5 Exhibit 1A and Exhibit 1B.

6 (Whereupon Enbridge Exhibits 1,  
7 1A and 1B were admitted into  
8 evidence at this time.)

9 JUDGE JONES: All right. We'll proceed with  
10 cross-examination.

11 Mr. Helmholtz?

12 MR. HELMHOLTZ: Thank you, Judge Jones.

13 Mr. Burgess, again, my name is Scott  
14 Helmholtz. I am an attorney here in Springfield. I'm  
15 representing some intervenors, Shelby Coal Holdings,  
16 LLC and two affiliates as indicated in our pleadings  
17 on some coal reserves in central and southern  
18 Illinois.

19 CROSS-EXAMINATION

20 BY MR. HELMHOLTZ:

21 Q. First of all, I'd like to ask you to  
22 describe your current title and position. I think

1 you've recently had a designation in title change, is  
2 that correct?

3 A. That is correct.

4 Q. What is your current title?

5 A. My current title is general manager of  
6 western region for Enbridge Pipelines.

7 Q. And I believe you're a mechanical engineer  
8 by training?

9 A. Yes.

10 Q. Do you hold any certifications in pipeline  
11 construction, design or engineering?

12 A. I'm a registered professional engineer.

13 Q. And where is that registration?

14 A. In Alberta.

15 Q. Have you made any attempt to obtain  
16 registration in the State of Illinois?

17 A. No.

18 MR. HELMHOLZ: I'm going to move to strike the  
19 witness's testimony to the extent it seeks to offer  
20 opinions that require the Illinois Registered  
21 Professional Engineering qualification.

22 MR. BRANDT: Same objection.

1 JUDGE JONES: Who joined in that?

2 MR. BRANDT: Join in that. Peter Brandt.

3 Thank you, Judge.

4 MR. HELMHOLZ: And to the extent the witness  
5 has not stated such opinions at this point, I will  
6 just I guess make that for the record, and we can  
7 address it perhaps when it comes up more  
8 particularly.

9 May I proceed, Your Honor?

10 JUDGE JONES: Yeah. I'm just trying to be  
11 clear on what it is you're moving to do at this time.

12 MR. HELMHOLZ: It's in the nature of a voir  
13 dire. If this individual was going to offer expert  
14 mechanical engineering and pipeline engineering  
15 opinions in this docket, I am preliminarily asserting  
16 that his opinions are inadmissible based on his  
17 failure to obtain an Illinois Professional  
18 Engineering registration as required by the Illinois  
19 Professional Engineering Act.

20 JUDGE JONES: Thank you.

21 The motions have been made. We'll  
22 deal with any specifics later including any responses

1 to those motions.

2 Right now we'll just proceed with the  
3 cross.

4 To the extent we need to get back to  
5 them at some point to make things flow the way they  
6 need to flow this morning, we will do so, but right  
7 now, we will continue with the cross-examination.

8 MR. HELMHOLZ: Thank you, Your Honor.

9 Q. Mr. Burgess, in your current or your most  
10 immediate recent position, have you been responsible  
11 for the planning and design of the proposed pipeline  
12 extension that's involved in this docket?

13 A. This application was prepared under my  
14 direction, yes.

15 Q. Is it fair to say then that you are the  
16 official conduit to speak for Enbridge to the  
17 Illinois Commerce Commission in this proceeding?

18 A. Yes.

19 Q. So are you prepared to tell the Commission  
20 today whether, in fact, this pipeline extension will  
21 be constructed regardless of the Commission's  
22 decision on the Enbridge application?

1           A.    I cannot say for certain.

2           Q.    So your testimony is that Enbridge has not  
3   made a final decision to actually construct the  
4   proposed Flanagan to Patoka extension?

5           MR. AMBROSE:  I'll object.  That  
6   mischaracterizes the witness's testimony just a  
7   moment ago.

8           JUDGE JONES:  Any response?

9           MR. HELMHOLZ:  I believe the testimony stands.  
10                    If he wants to say his testimony was  
11   not responsive, then that's fine.

12          JUDGE JONES:  Could I have the question back,  
13   please?

14                            (The reporter read back the last  
15                            question.)

16          JUDGE JONES:  This is cross.  I think it's a  
17   fair question.  How directly it relates to the  
18   question that preceded it is really sort of another  
19   matter, but I think that's a fair question on  
20   cross-examination.

21                    If the witness has an opinion, I would  
22   ask him to answer the question.

1 MR. AMBROSE: Can we have the question read  
2 back for him?

3 (The reporter reread the last  
4 question.)

5 THE WITNESS: Yeah. Absent Commission ruling  
6 in this case, it cannot be assumed that the proposed  
7 project will be constructed.

8 Q. BY MR. HELMHOLZ: Let me ask it to you this  
9 way.

10 Has Enbridge made a decision that it  
11 will not construct the proposed extension if the  
12 Commission denies the pending application?

13 A. No, it has not.

14 Q. Has it considered the question?

15 A. Yes.

16 Q. Have you been involved in discussions over  
17 that question?

18 A. Yes.

19 Q. Have you heard other opinions voiced of  
20 other people in the company?

21 A. Yes.

22 Q. And what were their opinions?

1           A.    That the decision of the Commission will  
2 weigh heavily on whether this project is constructed.

3           Q.    That it won't be the sine qua non or "but  
4 for"?

5           A.    I don't know.

6           Q.    Just so my question is clear, has Enbridge  
7 as an entity who you speak for today made any  
8 decision one way or the other on how the Commission's  
9 resolution of the application will impact the  
10 proposed pipeline extension?

11          A.    No. No final decisions have been made.

12          Q.    All right. Now, as part of your duties,  
13 you're responsible for construction planning I take  
14 it?

15          A.    Correct.

16          Q.    And that entails the preparation of bid  
17 packages that are delivered to potential construction  
18 contractors?

19          A.    Yes.

20          Q.    And have you supervised the delivery of bid  
21 packages to potential construction contractors on  
22 this project?

1           A.    I have not.

2           MR. AMBROSE:   Excuse me.   I'm going to object  
3   to these questions.   They're not relevant to the  
4   application here and the matters before the  
5   Commission.

6                        The Commission has no authority over  
7   the award of contracts to contractors who are going  
8   to build the pipeline, and we're not seeking the  
9   Commission's approval of any such contracts.

10          JUDGE JONES:   Any response?

11          MR. HELMHOLZ:   Nothing could be more relevant  
12   than Enbridge's plans for this pipeline, and the  
13   witness has, to my mind, not answered the question  
14   squarely.

15                        I want to inquire into the depth and  
16   level of their current preparation for construction.  
17   I think it's absolutely fair game.

18          MR. BRANDT:   Your Honor, Peter Brandt.   This is  
19   cross-examination.   I think he's entitled a lot of  
20   latitude on cross-examination of this witness.

21          MR. HELMHOLZ:   I don't think I need latitude,  
22   Your Honor.   I think it's squarely relevant.

1 JUDGE JONES: Anything else?

2 Could I have the question back,

3 please?

4 (The reporter read back the last  
5 question.)

6 MR. HELMHOLZ: Do you understand the question?

7 THE WITNESS: Yes.

8 MR. HELMHOLZ: And what is your answer?

9 MR. AMBROSE: Excuse me.

10 JUDGE JONES: There hasn't been a ruling yet.

11 MR. HELMHOLZ: I'm sorry. I'm sorry.

12 JUDGE JONES: The objection is overruled. The  
13 issue really is not whether the Commission has the  
14 authority to approve certain elements of contracts,  
15 etc. It's really about the planning and preparation  
16 process and how that relates to Enbridge's plans and  
17 intentions with respect to the construction of this  
18 line. That's a question that is before us. That's  
19 what intervenors are entitled with at least some  
20 leeway to explore on cross-examination, and in some  
21 regards, a question like the one just asked, though  
22 it may appear to go to other factors, is a

1 preliminary question of sorts or a foundational  
2 question of sorts with respect to that line of  
3 inquiry.

4 So based on all that, the objection is  
5 overruled.

6 Please answer the question if you have  
7 an answer.

8 Do you need it read back?

9 THE WITNESS: Yes, please.

10 (The reporter read back the last  
11 question.)

12 THE WITNESS: Yes.

13 MR. HELMHOLZ: And what was the answer?

14 (The reporter read back the  
15 answer.)

16 Q. Did you also supervise or direct the  
17 content of the design of the bid packages?

18 A. No. That was handled by our engineering  
19 office and superior.

20 Q. You do not supervise that office?

21 A. No.

22 Q. Were you made aware that bid packages were

1 actually delivered at or about the time they were  
2 delivered?

3 A. Yes.

4 Q. What did those bid packages specify in  
5 terms of response time?

6 A. I'm not sure.

7 Q. Do you know if responses to the bid  
8 packages have been received by Enbridge?

9 A. With any particular components of  
10 construction?

11 Q. Were they sent out in separate components  
12 or were they one bid package?

13 A. Well, for a pipeline project of this size,  
14 there are many activities and contractors that would  
15 be involved in construction.

16 Q. Well, let's just talk about the general  
17 contractor then.

18 Are you aware whether or not bid  
19 packages have been sent to a general pipeline  
20 contractor for this project?

21 A. Yes. Information has been provided to  
22 pipeline construction contractor.

1 Q. And do you know how many?

2 A. It's a single consortium of pipeline  
3 contractors.

4 Q. So you will only receive one bid for the  
5 general contracting work on this construction  
6 project?

7 A. Before the earlier components of the  
8 Southern Access Program, Enbridge entered into...

9 MR. HELMHOLZ: That's not my question.

10 Your Honor, I would ask to strike that  
11 answer and have the witness answer my question.

12 JUDGE JONES: Go ahead and finish your answer  
13 and then we'll see if it's strikeable.

14 You can finish your answer.

15 THE WITNESS: At the beginning of the Southern  
16 Access Program, Enbridge received bids from a number  
17 of pipeline construction contractors and entered into  
18 an agreement with a consortium to construct the  
19 number of projects for Enbridge over the coming  
20 years.

21 Q. BY MR. HELMHOLZ: So Enbridge has a high  
22 level of comfort with the previous contractors, and

1 it has a good idea about their projected costs and  
2 plans?

3 A. Yes.

4 Q. Okay. Now, I believe you've been  
5 responsible for answering staff data requests about  
6 the bid packages.

7 Do you recall that?

8 A. That's correct.

9 Q. And so the question about the bid packages  
10 has been thoroughly examined in some of the staff  
11 data requests, correct?

12 A. I'm not sure.

13 Q. You were responsible...

14 MR. AMBROSE: I object to the characterization  
15 thoroughly.

16 MR. HELMHOLZ: Well, I'll rephrase it.

17 Q. You were responsible for sponsoring -- I  
18 believe you said you affirm Enbridge's responses to  
19 the staff data requests, correct?

20 A. Correct.

21 Q. Do you have any recollection that the staff  
22 asked you about how detailed your construction

1 planning was for this project?

2 MR. AMBROSE: If counsel wants to ask a  
3 question about a data request, I think he needs to  
4 refer to the one he's asking about.

5 MR. HELMHOLZ: I don't hear that as an  
6 objection to form or foundation of the question.

7 MR. AMBROSE: Well, it's certainly an objection  
8 to the form of the question in that you're asking the  
9 witness to recall a lot of details of a lot of data  
10 requests.

11 MR. HELMHOLZ: Your Honor, Mr. Ambrose is  
12 attempting to coach the witness and direct his  
13 testimony.

14 I'd ask that you instruct Mr. Ambrose  
15 to state the grounds for his objection and move on so  
16 that we can move expeditiously.

17 JUDGE JONES: The objection is overruled. The  
18 parties are entitled to object. You're entitled to  
19 argue, but I think everybody needs to take a look at  
20 that witness list, and one thing we're not going to  
21 do is stay here till 9 o'clock or 10 o'clock at  
22 night.

1                   We've got to cover some ground. If  
2 you feel like you need to object and argue, you're  
3 entitled to do it, but the practicalities enter in  
4 here somewhere. We're getting a lot of objections,  
5 and I don't take issue with those. We hear the  
6 argument. We rule on it. That's just part of the  
7 process, and I think the parties have been  
8 cooperative and very courteous to each other this  
9 morning. That's not an issue, but the practical side  
10 of it is an issue.

11                   So you do to what you need to do, but  
12 I do mention to the parties that with this very large  
13 number of parties and witnesses, it puts a lot of  
14 pressure on that schedule. There's a lot of cross  
15 reserved for today, and we're a few minutes into the  
16 first witness and it's close to 11 o'clock.

17                   So having said all that, I'll say no  
18 more about that just yet. The objection is  
19 overruled. I think that there is some merit to a  
20 portion of the objection. If there are specific DR  
21 responses that are pertinent to that line of  
22 questioning, it is helpful to have those referenced.

1 I think the particular question was  
2 more preliminary or foundational in nature. It may  
3 lead to more specific questions and more specific DR  
4 responses. If it does, we will see where that goes.

5 But based on that rationale, for  
6 better or worse, the objection is overruled.

7 You need the question read back.

8 THE WITNESS: Yes please.

9 (The reporter read back the last  
10 question.)

11 THE WITNESS: The staff did ask about  
12 construction plans for the project, yes. I can't  
13 characterize how detailed.

14 Q. BY MR. HELMHOLZ: Well, Mr. Burgess, you  
15 have the data request with you, correct?

16 A. Yes, I do.

17 Q. I'd like you to turn to Enbridge's response  
18 to staff data request ENG 1.30 which is on page 29 of  
19 41, and those staff requests are dated August 31,  
20 2007.

21 A. ENG 1.30?

22 Q. Correct.

1 A. I have it.

2 Q. Now, in that question, staff asked about  
3 the criteria Enbridge would use when selecting  
4 contractors.

5 Do you see that?

6 A. Yes, I do.

7 Q. And they wanted to ask in particular how  
8 you evaluate a contractor's safety record.

9 Do you see that?

10 A. Yes.

11 Q. It asked you to include RFP forms, decision  
12 matrices or other evaluation tools Enbridge will use.

13 Do you see that?

14 A. Yes.

15 Q. And so staff had some very poignant and  
16 detailed questions about your construction plans,  
17 correct?

18 A. Yes, they did.

19 Q. And in this response which I believe was  
20 made on or about October of 2007, at your response to  
21 ENG 1.26, you indicated Enbridge proposes to meet an  
22 in-service date of early 2009; is that correct?

1 A. At that time, that was correct.

2 Q. Has that changed?

3 A. Yes, it has.

4 Q. What is now the projected in-service date?

5 A. It depends on the results of these  
6 proceedings.

7 Q. So you do not have a projected in-service  
8 date as you've testified today?

9 A. Our participated in-service date is the end  
10 of 2009, but that is subject to change.

11 Q. All right. Also in this response to 1.26,  
12 you indicated Enbridge proposes to commence  
13 construction activities in mid spring 2008.

14 Do you see that?

15 A. That's 1.26?

16 Q. Yes.

17 A. Yes, I see that.

18 Q. And now when do you propose to commence  
19 construction activities?

20 A. Again, that would depend on the results of  
21 these proceedings and then the eventual construction  
22 schedule.

1 Q. Has a bid package been returned with firm  
2 projected pricing in it?

3 A. We have received some pricing from the  
4 contractor.

5 Q. When did you receive that?

6 A. I'm not sure specifically.

7 Q. Have you made the Commission staff aware of  
8 that response or that projected cost?

9 MR. AMBROSE: I'm not sure that Mr. Burgess  
10 will know the answer to that question, but I don't  
11 believe we have provided the details.

12 MR. HELMHOLZ: Your Honor, that's not an  
13 objection to me.

14 MR. AMBROSE: It is an objection in that he's  
15 asking him detail that should be directed to us as  
16 the lawyers if there's a further data request from  
17 the staff or a need to update.

18 JUDGE JONES: Objection is overruled.

19 You need the question read back?

20 THE WITNESS: Yes.

21 JUDGE JONES: Please answer if you have an  
22 answer.

1 (The reporter read back the last  
2 question.)

3 THE WITNESS: I do not know.

4 Q. BY MR. HELMHOLZ: Now, Enbridge I take it  
5 has standard operating procedures that govern  
6 pipeline construction and/or service, is that  
7 correct?

8 A. That's correct, and we follow the  
9 prescribed regulations.

10 Q. And are you familiar with Enbridge's  
11 standard operating procedures for pipeline  
12 construction and service?

13 A. Yes.

14 Q. And have you contributed or authored any of  
15 those or revised any?

16 A. No, I have not.

17 Q. Enbridge has a quite far flung network.  
18 I'm sure it gets to different topographies. Is that  
19 true?

20 A. Correct.

21 Q. And on occasion, Enbridge may encounter  
22 ground slippage is that correct?

1           A.    It could be possible, yes.

2           Q.    And are there standard operating procedures  
3 that are in place to address the situation involving  
4 ground slippage?

5           A.    I believe so, yes.

6           Q.    And ground slippage can have deleterious  
7 effects on pipeline integrity. Is that fair?

8           A.    Depending on the extent, yes.

9           Q.    It can create stress on girth wells?

10          A.    Yes.

11          Q.    It can create stress on longitudinal wells?

12          A.    Yes.

13          Q.    And stress on wells is the most likely  
14 point where a failure could occur. Is that fair?

15          A.    I'm not --

16          Q.    Other than corrosion.

17          A.    I would suggest third-party damages  
18 probably is the most likely cause of failure.

19          Q.    Okay, but my question is not about  
20 third-party damage. It's about nature and ground  
21 slippage, so do you want to answer the question  
22 again?

1 MR. AMBROSE: Can we have the question repeated  
2 for the witness, please?

3 JUDGE JONES: Sure.

4 (The reporter read back the  
5 following: "Q. Okay, but my  
6 question is not about  
7 third-party damage. It's about  
8 nature and ground slippage.")

9 MR. AMBROSE: Actually, I needed the one just  
10 before that.

11 (The reporter read back the  
12 following: "Q. And stress on  
13 wells is the most likely point  
14 where a failure could occur. Is  
15 that fair?")

16 MR. AMBROSE: I think the witness did answer  
17 that question, so my objection is asked and answered.

18 JUDGE JONES: Any response?

19 MR. HELMHOLZ: I don't even follow the  
20 objection, Your Honor. I thought it was a  
21 straightforward question.

22 MR. AMBROSE: And the answer he gave was no.

1 The major cause was third-party damage. That was the  
2 answer to the question.

3 JUDGE JONES: All right. Well, I think the  
4 witness did make an attempt to answer the question  
5 that was asked, and so the objection to answering the  
6 same question again is sustained.

7 Counsel can certainly proceed with  
8 other questions relating to that very matter.

9 MR. HELMHOLZ: Thank you, Your Honor.

10 Q. Now, you're familiar with the prior docket  
11 involving Enbridge that I believe is numbered  
12 06-0470?

13 A. Yes.

14 Q. And did you offer testimony in that docket?

15 A. Yes, I did.

16 Q. And that docket -- can you just tell us  
17 exactly what authority Enbridge sought in that  
18 docket?

19 A. We sought authority to construct and  
20 operate a pipeline and to take property by eminent  
21 domain if required.

22 Q. And what was the commencement point and the

1 terminal point on the segment authority was sought  
2 for in 06-0470?

3 A. The commencement point was the  
4 Wisconsin-Illinois border, and the termination point  
5 was the terminal at Flanagan, Illinois.

6 Q. Has Enbridge actually constructed that  
7 segment?

8 A. That segment is under construction right  
9 now.

10 Q. So Enbridge was apparently able to make  
11 that decision without having heard from the  
12 Commission on the application in this docket?

13 MR. AMBROSE: I object to that question. It  
14 assumes a fact not in evidence.

15 MR. HELMHOLZ: It just seeks the witness's  
16 knowledge.

17 JUDGE JONES: Any further response?

18 I think it's a proper cross question.  
19 If the witness is able to answer it, please do.

20 THE WITNESS: If you could read that back  
21 again.

22 JUDGE JONES: Sure.

1                                    Could you read it back?

2                                    (The reporter read back the last  
3                                    question.)

4                    MR. AMBROSE: Well, I will also object as to...

5                    JUDGE JONES: The objections have been raised.  
6 They've been ruled on.

7                    MR. AMBROSE: Okay.

8                    JUDGE JONES: If you have an answer to the  
9 question, please answer it. If you're able to answer  
10 it, please answer it.

11                  THE WITNESS: Yeah, the Commission did approve  
12 the previous application and Enbridge moved forward  
13 with construction of that project based on that  
14 approval, and obviously, it's before a decision on  
15 this particular application which is separate.

16                  Q. BY MR. HELMHOLZ: Well, isn't it true that  
17 every time Enbridge extends a pipeline segment  
18 anywhere in its system, it constrains future choices  
19 about future extensions?

20                  A. No.

21                  Q. So you're just free to run pipeline from  
22 Flanagan in 360 degrees for example?

1           A.   Well, we're a link between producers and  
2 refiners so there needs to be...

3           Q.   But there is a --

4           JUDGE JONES:  Let the witness finish his  
5 answer, please.

6                           Go ahead and finish your answer.

7           A.   So there needs to be a market for the  
8 pipeline.  We provide that link.

9           Q.   So Enbridge does follow some precepts in  
10 designing and configuring its system?

11          A.   It goes through a route selection process  
12 when it looks for a route for a potential new  
13 segment.

14          Q.   And the market is the driving or overriding  
15 concern?

16          A.   Yes.

17          Q.   And so all of the choices Enbridge has made  
18 about pipeline routing configuration prior to this  
19 docket and prior to the 06-0470 were made without  
20 authority of the Illinois Commerce Commission for  
21 eminent domain?

22          JUDGE JONES:  Is that a question?

1 MR. HELMHOLZ: Yes, sir.

2 I'll rephrase it.

3 MR. AMBROSE: Well, I'm going to object to the  
4 form of that question. I don't know what he's  
5 referring to. I'm not sure the witness understands  
6 what he's referring to as decisions without  
7 authority.

8 The question originally was about the  
9 decision to proceed with the expansion pipeline, and  
10 Mr. Burgess answered that, and I don't know what  
11 decision this question is even about.

12 MR. HELMHOLZ: Your Honor, I have to observe  
13 once again Mr. Ambrose is making rambling discourses  
14 which appear to me to be an attempt to educate the  
15 witness on a particular desire to answer.

16 I think the question was fairly clear.  
17 Mr. Ambrose's objection also presumes that the  
18 witness was unable to understand my question. The  
19 witness made no such indication.

20 MR. AMBROSE: Well, my objection is as to the  
21 form of the question being ambiguous and unclear.

22 MR. HELMHOLZ: Well, you stated that the

1 witness did not understand it. I don't think you  
2 have telepathy.

3 JUDGE JONES: All right. Could we have the  
4 question read back, please?

5 (The reporter read back the last  
6 question.)

7 JUDGE JONES: If the witness understands the  
8 question, please answer it.

9 THE WITNESS: Are you asking specifically about  
10 projects in Illinois?

11 MR. HELMHOLZ: Let me rephrase it.

12 Q. You're familiar with Enbridge's national  
13 and international configuration, correct?

14 A. Yes.

15 Q. You know where their pipelines are and  
16 where they move today, correct?

17 A. Yes.

18 Q. And it's a large network, correct?

19 A. Yes, it is.

20 Q. And all of those decisions about that  
21 configuration and that routing prior to the two  
22 dockets in Illinois were made without reference to

1 any eminent domain authority that might or might not  
2 be granted by the Illinois Commerce Commission in  
3 some future segment procedure, correct?

4 MR. AMBROSE: I will object again to the form  
5 of that question. It's just ambiguous and vastly  
6 overbroad if nothing else.

7 MR. HELMHOLZ: Let me try to rephrase it, Your  
8 Honor. I'll withdraw that.

9 Q. Prior to entering the State of Illinois,  
10 the pipeline, Enbridge had made many, many decisions  
11 about extensions, segments, markets, correct?

12 MR. AMBROSE: I'm going to make an objection to  
13 the entire relevance of this line of questioning.  
14 Enbridge's decisions prior to the filing of this  
15 application are not relevant to anything that's  
16 considered in this proceeding.

17 JUDGE JONES: Any response?

18 MR. HELMHOLZ: Well, Your Honor, the line of  
19 questioning is quite simply designed to demonstrate  
20 that Enbridge makes free market decisions about  
21 configuring pipelines in many, many situations in  
22 cases not involving this Commission's grant of

1 eminent domain. They've been perfectly able to make  
2 private interest decisions about configuring the  
3 pipeline. I just want that to be clear for the  
4 record.

5 I don't think it's a complex question.

6 JUDGE JONES: Any reply?

7 MR. AMBROSE: My reply is that counsel just  
8 wants to make a legal argument, and he's asking a  
9 question that has no bearing on the issues that are  
10 involved in this application at this hearing.

11 JUDGE JONES: Objection Overruled.

12 Please answer the question if you  
13 understand it and have an opinion to render a  
14 response to it.

15 If you don't understand it, you can  
16 say so and we'll go from there.

17 Do you need it read back?

18 THE WITNESS: Well, I'll just try to clarify.

19 The Illinois Commerce Commission has  
20 jurisdiction in Illinois, so I'm not sure how that  
21 applies outside of Illinois. Other states and other  
22 provinces have eminent domain authority that we have

1 used to construct our pipeline elsewhere along our  
2 system.

3 Q. BY MR. HELMHOLZ: Let's talk about your  
4 routing decision in this particular docket.

5 When you obtained authority to  
6 construct the segment in 06-0470, you had a  
7 destination point in mind at Flanagan, correct?

8 A. Correct.

9 Q. And there's a tank farm at Flanagan,  
10 correct?

11 A. Yes.

12 Q. And you constructed the tank farm at  
13 Flanagan to accommodate the Spearhead line, correct?

14 A. No. The tank farm already existed.

15 Q. Who constructed the tank farm?

16 A. The previous owner of that pipeline system.

17 Q. And so at some point in time, Enbridge  
18 purchased that pipeline which you now denominate the  
19 Spearhead line?

20 A. That is correct.

21 Q. And that is a line from Cushing, Oklahoma  
22 to the Chicago area?

1 A. No. It's from the Chicago area to Cushing.

2 Q. Well, you reversed the direction of it when  
3 you purchased it, correct?

4 A. That's correct.

5 Q. So that pipeline is now presently  
6 transporting Canadian crude from Alberta to Cushing,  
7 Oklahoma, correct?

8 A. Correct.

9 Q. And Enbridge actually has a number of other  
10 pipelines that deliver Canadian crude into Illinois,  
11 is that correct?

12 A. Yes, it does.

13 Q. In fact, I believe in your testimony you  
14 said Enbridge operates multiple crude pipelines  
15 between Canada and Illinois, correct?

16 A. We have two current pipelines in Illinois,  
17 line 6 and line 14.

18 Q. The segment from Wisconsin to Flanagan, is  
19 any part of that known as line 14?

20 A. No.

21 Q. Was line 14 ever the subject of a  
22 Commission docket?

1           A.    Yes, it was.

2           Q.    And did the Commission authorize line 14?

3           A.    No, it did not.

4           Q.    Is that the Lakehead line?

5           A.    It is one of the Lakehead lines.

6           Q.    Is that the line that was involved in

7 previous litigation in which the Commission denied

8 the application and there was an appeal?

9           A.    That's correct.

10          Q.    Now, in the right-of-way in line 14 above

11 Flanagan, is there only one pipeline?

12          A.    Line 14 does not go to Flanagan.

13          Q.    Where is the line 14 end point?

14          A.    It ends at our Griffith terminal near

15 Chicago.

16          Q.    Have you used any portion of the Spearhead

17 right-of-way in the vicinity of Flanagan for another

18 pipeline?

19          A.    No.

20          Q.    Do you propose to use any portion of the

21 line 14 right-of-way to co-locate a second or

22 additional pipeline?

1 A. Not that I'm aware of.

2 Q. Do you consider Spearhead south and line 6B  
3 as alternate routes out of Chicago for crude?

4 A. Two different markets, yes.

5 Q. And the Mustang line, are you familiar with  
6 that line?

7 A. Yes, I am.

8 Q. And that's a crude oil pipeline that  
9 Enbridge operates?

10 A. We do not operate. We are a minority owner  
11 in that pipeline.

12 Q. You're not designated as a co-operator of  
13 the Mustang line?

14 A. I'm not sure of the specific designation  
15 but that is operated by Mobil pipeline.

16 Q. The entity that operates Enbridge or  
17 Enbridge affiliate has an ownership position?

18 A. Yes.

19 Q. And actually, you conducted a routing  
20 survey or your contractor did that included an  
21 evaluation of the possibility of use of the Mustang  
22 line for this market you perceive in this case?

1           A.    That was one of the route alternatives that  
2 was evaluated.

3           Q.    I'm going to refer to your consultant's  
4 routing report which, Your Honor, for the record is  
5 Attachment C to ICC staff data request 1.8.

6                    Do you have that handy, Mr. Burgess?

7           A.    Yes, I have it here.

8           Q.    The contractor appears on the first page to  
9 be URS Corporation, is that correct?

10          A.    That is correct.

11          Q.    Were you involved in selecting URS  
12 Corporation to prepare the Southern Access Extension  
13 route alternatives analysis?

14          A.    No, not directly.

15          Q.    Were you involved indirectly?

16          A.    That selection was made by our  
17 environmental group which was part of the project  
18 team.

19          Q.    Did you have input as to the criteria that  
20 URS should apply in analyzing potential routes?

21          A.    No.

22          Q.    Are you familiar with the report?

1           A.    Yes, I am.

2           Q.    You've sponsored it in response to data  
3 requests, correct?

4           A.    That's correct.

5           Q.    Did you review it before you sponsored it?

6           A.    Yes, I did.

7           Q.    Now, this report apparently has proprietary  
8 aspects; is that true?

9           A.    I'm not sure.

10          Q.    Well, this was prepared confidentially for  
11 Enbridge at the time?

12          A.    I don't recall if there was a  
13 confidentiality agreement.

14          Q.    Well, what public input did URS receive  
15 prior to commencing its routing analysis for you?

16          A.    I don't believe there was any.

17          Q.    And that's because you did not want public  
18 input at that point in the proceedings, correct?

19          A.    Well, it's not typical at that point to --

20          Q.    My question wasn't whether it's typical or  
21 not. My question is you did not want public input or  
22 participation in the route selection and planning

1 process, correct?

2 MR. AMBROSE: Well, I object and ask the  
3 witness be allowed to finish his answer.

4 JUDGE JONES: That's true.

5 You may finish your answer.

6 THE WITNESS: It's not typical at that point to  
7 generate public input because there are a lot of  
8 alternatives that are evaluated, and then once the  
9 selection process streamlines those, then public  
10 input is sought.

11 Q. BY MR. HELMHOLZ: Well, when has Enbridge  
12 sought public input on the proposed Flanagan to  
13 Patoka extension that's involved in this docket?

14 A. We have contacted local public officials  
15 early on in the process and have had significant  
16 contact with potential landowners along the system as  
17 well.

18 Q. And how did those contacts affect the  
19 routing analysis of the preferred route that was  
20 selected?

21 A. There have been minor deviations as the  
22 route has been developed.

1 Q. So no significant adjustment to your  
2 preferred route based on those contacts?

3 A. Not significant, but there will continue to  
4 be deviations as we work with constituents to select  
5 the route that is most effective.

6 Q. Let's take a look at figure 3-1 which is in  
7 the URS report. Do you have that? It's after page  
8 6. It's not numbered but it would be page 7.

9 A. 3-1, yes.

10 Q. And someone has drawn a slightly tilted  
11 rectangle on that exhibit, correct?

12 A. That's correct.

13 Q. And that rectangle roughly encompasses  
14 Flanagan at the northern point and Patoka on the  
15 southern point, and those have stars on them on the  
16 figure, correct?

17 A. That's right.

18 Q. Now, that box or that rectangle contains  
19 all 28 of the routes that URS analyzed?

20 A. I believe so, yes. That was the study area  
21 that they looked at.

22 Q. About how many square miles exist in that

1 box or that rectangle?

2 A. I can't say.

3 Q. You don't know?

4 A. No.

5 Q. By selecting that box, constraints were  
6 created, correct?

7 A. Correct.

8 Q. So in other words, your area of preferred  
9 routes was immediately constrained by the rectangular  
10 box URS drew on figure 3-1?

11 A. That was the limits of the study area, yes.

12 Q. And you didn't reject that limitation,  
13 correct?

14 A. No, we did not.

15 Q. And you proceeded forward to plan this line  
16 somewhere within that rectangle?

17 A. Correct.

18 Q. So in doing so, you ruled out all the area  
19 east and west of the rectangle as potential routes,  
20 correct?

21 A. Correct.

22 Q. And by that I mean you've constrained your

1 choices. Is that a fair use of the word?

2 A. A box was drawn that encompassed both the  
3 initiation and the termination point and provided a  
4 reasonable study area to make an efficient routing  
5 decision.

6 Q. And so now you have further constrained  
7 your choices by actually selecting what you've  
8 designated a preferred route, correct?

9 A. Correct.

10 Q. And prior to you designating a preferred  
11 route, no landowner in that rectangle would have  
12 known that they might be involved in your process,  
13 correct?

14 A. Yes, I believe that's true.

15 Q. So basically you have self-selected the  
16 property owners that you intend to impact with your  
17 preferred route?

18 A. With our preliminary preferred route, and  
19 as I've said, that's subject to deviations as we gain  
20 more information about the topography and the  
21 particular properties.

22 Q. But it's fair so say none of the affected

1 landowners selected you or solicited you to build  
2 this pipeline on your preferred route?

3 A. That's correct.

4 Q. No one came to you and said we would prefer  
5 that you build this across our property, correct?

6 MR. AMBROSE: Well, I object. That's the same  
7 question just asked with a little more color.

8 JUDGE JONES: Any response?

9 MR. HELMHOLZ: What are the grounds for the  
10 objection?

11 MR. AMBROSE: Question was asked and answered;  
12 repetitious.

13 MR. HELMHOLZ: Well, I'll leave that to Judge  
14 Jones.

15 JUDGE JONES: There really was no response to  
16 the objection so the objection is sustained.

17 Q. BY MR. HELMHOLZ: I'd like to direct your  
18 attention to Exhibit 4-1, again, in the same URS  
19 report.

20 Do you have that, Mr. Burgess?

21 A. I do.

22 Q. Now, on the far right, there is a pretty

1 straight diagonal line going from the area of Gilman  
2 almost directly to Vandalia.

3 Do you see that?

4 A. Are you speaking of the highway?

5 Q. I'm speaking of the hatched line that goes,  
6 actually, it is connected to point D laterally but  
7 then goes in an almost straight diagonal all the way  
8 to Vandalia on the far right. It's a hatched line.

9 I'm on figure 4-1.

10 A. Yes, I see that.

11 Q. Do you see that?

12 A. Yes.

13 Q. In fact, that's the Mustang right-of-way?

14 A. That would be the Mustang or Chicap  
15 right-of-way.

16 Q. How wide is that right-of-way?

17 A. I'm not sure.

18 Q. You apparently evaluate that particular  
19 stretch for this project, correct?

20 A. That particular routing, yes.

21 Q. And it came out I believe number 6 of the  
22 28?

1 A. Yes, I think that's correct.

2 Q. And you don't know the width of that  
3 right-of-way?

4 A. Not offhand, no.

5 Q. Did you ask URS to examine the actual  
6 instruments that create the right-of-way rights for  
7 that Mustang line?

8 A. No.

9 Q. So you don't know, for example, whether the  
10 operator would have the right to co-locate an  
11 additional pipeline in that right-of-way?

12 A. No.

13 Q. And I believe in your testimony you suggest  
14 that or URS suggests that the Mustang route was  
15 rejected because the Mustang line has capacity  
16 restraints. Is that your understanding?

17 A. To use the Mustang line to deliver to  
18 Patoka?

19 Q. Correct.

20 A. Yes, that line is operating full.

21 Q. And do any easements prohibit you from  
22 laying a 22-inch line co-located right on top of the

1 Mustang or in the same right-of-way?

2 A. I don't know.

3 Q. Do you know whether anyone investigated  
4 that?

5 A. I'm not sure.

6 Q. Wouldn't that be a much more simple method  
7 to accomplish what you want here than building a new  
8 pipeline from scratch on unpurchased easements or  
9 right-of-way?

10 MR. AMBROSE: Well, I'm going to object to  
11 calling for kind of an argumentative conclusion there  
12 in the question.

13 JUDGE JONES: Objection overruled. It sounded  
14 like appropriate cross to me.

15 If you understand the question and  
16 have an answer, please provide it.

17 Do you need it read back.

18 THE WITNESS: Yes, sir, please.

19 JUDGE JONES: Can you read it back?

20 (The reporter read back the last  
21 question.)

22 THE WITNESS: Enbridge does not control the

1 easements for that pipeline.

2 Q. BY MR. HELMHOLZ: Well, Enbridge can  
3 negotiate with the owners, correct?

4 A. Possibly.

5 Q. So whether or not that was a possibility,  
6 URS didn't evaluate it, correct?

7 A. No, they did not.

8 Q. It's entirely conceivable that purchasing  
9 co-location rights or expansive right-of-ways in the  
10 Mustang right-of-way could have a lesser impact on  
11 the Illinois public, correct?

12 MR. AMBROSE: I will object to that as calling  
13 for speculation.

14 JUDGE JONES: Objection overruled. It sounds  
15 like appropriate cross regarding routing.

16 Again, if the witness understands the  
17 question and has an answer to it, please provide it.

18 THE WITNESS: Based on the routing evaluation  
19 and analysis by URS, that route did not calculate out  
20 as the preferred route.

21 As you mentioned, it was somewhere  
22 around No. 6.

1 Q. BY MR. HELMHOLZ: So you can't tell the  
2 Commission today whether there are actual legal  
3 property right impediments to actually laying 42-inch  
4 crude oil pipeline in or alongside the Mustang line?

5 A. No, I can't.

6 Q. And what exactly are the capacity  
7 constraints you referred to on the Mustang line?

8 A. It's operating at capacity. It cannot move  
9 any additional crude oil. It's full.

10 Q. Well, you're telling the Commission that  
11 the proposed Flanagan to Patoka line is basically  
12 scalable in capacity from 400,000 to 800,000,  
13 correct?

14 A. That's correct. It's designed that way.

15 Q. Why is the proposed -- I'm sorry. Were you  
16 done?

17 A. It was designed to be expandable.

18 Q. And so you're saying that it is physically  
19 impossible to expand the current capacity of the  
20 Mustang line?

21 A. I don't know. I'm not familiar with its  
22 design.

1 Q. You're familiar, and I believe your  
2 testimony includes your opinions, that adding  
3 horsepower at pumping stations can increase capacity,  
4 correct?

5 A. If the pipeline is designed for that.

6 Q. And are you stating categorically the  
7 Mustang line was not designed for additional  
8 throughput from adding horsepower?

9 A. I don't know.

10 MR. AMBROSE: I object. He asked the question.  
11 The witness answered before he was not familiar with  
12 the design of that line. Now he's just arguing in  
13 the question.

14 JUDGE JONES: Well, the witness answered it  
15 again anyway so...

16 MR. HELMHOLZ: Your Honor, I'd like to be clear  
17 on this point.

18 The witness has testified the Mustang  
19 line has "capacity constraints," and I want to  
20 understand what the witness meant by that.

21 JUDGE JONES: Well, there's no objection  
22 pending right now so if you want to move on to the

1 next question. The witness provided some sort of  
2 answer there so...

3 Q. BY MR. HELMHOLZ: So your testimony is that  
4 the capacity constraint is solely a design issue with  
5 the Mustang line?

6 A. I don't know.

7 Q. So you haven't studied it and aren't  
8 prepared to advise the Commission today on that, are  
9 you?

10 A. No. Mustang is rationing capacity, so it  
11 is operating at full capacity.

12 Q. And Mustang is delivering Canadian crude  
13 oil to Patoka at this moment?

14 A. There would be some Canadian crude, yes.

15 Q. Now, I believe in a lot of your testimony  
16 you talk about the benefits or the projected benefits  
17 to particular areas if this project is constructed,  
18 and if I may just paraphrase some of your answers.

19 I believe you have in almost every  
20 instance referred to Illinois and the Midwest,  
21 Illinois and PADD II. You've referred to PADD II  
22 refiners. You just frequently refer to Illinois and

1 the Midwest in your discussion of benefits; is that  
2 accurate?

3 A. That's correct.

4 Q. Is there a reason you do not differentiate  
5 out discrete benefits to the citizens of Illinois  
6 when you use those aggregating phrases?

7 A. The pipeline and refined products systems  
8 in the U.S. are closely integrated, so no particular  
9 area is independent from another.

10 Q. So you are not able to tell the Commission  
11 today a distinct discrete differentiated benefit that  
12 will solely operate for the citizens of Illinois?

13 A. Additional reliable supplies of crude oil  
14 would be beneficial to the citizens of Illinois  
15 because they utilize the refined products created  
16 from those.

17 Q. Well, Illinois citizens do not use crude  
18 oil, correct?

19 A. No; they use the products of crude oil.

20 Q. So you're basically relying on the  
21 refineries as proxies for Illinois' public interest?

22 A. No.

1 Q. Well, you solicited letters of support from  
2 refiners, is that correct?

3 A. We did have letters of support from  
4 refiners, and one is testifying in this application.

5 Q. And you solicited support from the Canadian  
6 Association of Petroleum Producers?

7 A. Yes.

8 Q. American Petroleum Institute?

9 A. Yes. They support the project.

10 Q. Illinois Chamber of Commerce?

11 A. Uh-huh.

12 Q. Which of those people you solicited are  
13 speaking to the public interest of the citizens of  
14 Illinois as opposed to their special interest  
15 designations?

16 A. I'm not sure there's a specific group that  
17 speaks to the public interest for the specific public  
18 of Illinois.

19 Q. Let's talk about the Illinois refineries  
20 that are served by the Enbridge system.

21 Can you tell us what those refineries  
22 are that are situated physically in the State of

1 Illinois?

2 A. The ExxonMobil refinery in Joliet, the  
3 Sitko refinery, Marathon in Robinson, and the WRB or  
4 the ConocoPhillips Refinery in Wood River, and then  
5 immediately across the border is the BP Refinery in  
6 Indiana.

7 Q. My question is just about Illinois-sited  
8 refineries. Is there four in total?

9 A. Off the top of my head, those are the ones  
10 I can think of, yes.

11 Q. And those refineries are interconnected to  
12 and capable of accessing crude oil deliveries via the  
13 Enbridge system currently?

14 A. Not all directly from the Enbridge system  
15 but through interconnecting pipelines.

16 Q. Are there impediments to their ability to  
17 be the destination of crude oil shipped through the  
18 Enbridge system?

19 A. Yes, there are capacity impediments.

20 Q. Which of those refineries is experiencing  
21 shortages of crude oil feedstock at this moment?

22 A. Crude oil feedstock in general or from a

1 specific market?

2 Q. Well, let's talk about both.

3 Do any of them experience crude oil  
4 shortages at the moment?

5 A. I'm not aware.

6 Q. And typically, the only reason they might  
7 have a crude oil shortage would be due to a pipeline  
8 rupture or other outage along the delivery system?

9 A. Or it could be as a result of some natural  
10 disaster like the hurricanes that were experienced in  
11 the Gulf Coast a number of years ago or it could be a  
12 production upset somewhere.

13 Q. These refineries have been configured so as  
14 to accept deliveries from multiple directions and  
15 sources, correct?

16 A. That's correct.

17 Q. Are any of those refineries in any sort of  
18 landlocked situation where they would be unable to  
19 have an extension pipeline access?

20 A. Extension pipeline access?

21 Q. In other words, are any of those islands  
22 that cannot have any further pipeline system access?

1           A.    I don't know.

2           Q.    Do you believe they're getting all the  
3 crude they can refine at this point in time today?

4           A.    I don't know.

5           Q.    You don't have any testimony for this  
6 Commission about the capacity of your refinery  
7 shippers too?

8           A.    We know the nameplate ratings of the  
9 refineries, yes.

10          Q.    Supplies are very tight at this point in  
11 time, aren't they?

12          A.    They are.

13          Q.    And the Energy Information Administration  
14 is projecting that these refineries will be at full  
15 capacity for many years to come, aren't they?

16          A.    I believe so yes.

17          Q.    So when you project a benefit to these  
18 refineries, you're just talking about additional  
19 profits they will make if they have access to cheaper  
20 Canadian crude? Is that the benefit?

21          A.    No. The benefit is reliable and stable  
22 supplies that they can then use to provide the

1 refined products.

2 Q. Have you submitted any studies to the  
3 Commission that indicate there is some imminent  
4 security threat to crude oil supplies to the  
5 Illinois-sited refineries?

6 A. I can't say an imminent threat.

7 Q. A remote threat?

8 A. You know, many things can happen in the  
9 world.

10 Q. Well, as I understand it, you're projecting  
11 that the refineries in Illinois will benefit from  
12 this additional pipeline capacity, correct?

13 A. Yes.

14 Q. And it won't benefit in terms of getting  
15 additional volumes of crude oil, correct?

16 A. In some cases they will. Some refineries  
17 are retooling their refineries so that they can  
18 produce additional volumes.

19 Q. Well, my question is they're not laying off  
20 any employees right now because they can't use all  
21 the refining capacity, correct?

22 A. I don't know.

1           Q.   Well, you know that the market is sated  
2 right now for crude on these Illinois refineries.  
3 Isn't that true?

4           A.   How do you mean?

5           Q.   They have all the supply they need right at  
6 this minute.

7           A.   I know they're operating at high capacity.

8           Q.   They might want to obtain cheaper crude  
9 from other sources but that's not because they need  
10 it, correct?

11          A.   Well, options are always beneficial to  
12 refiners.

13          Q.   So you're postulating that if  
14 Illinois-sited refiners had access to cheaper  
15 Canadian crude, that will benefit Illinois consumers  
16 of refined products?

17          A.   Yes. That will ensure that the Illinois  
18 refiners remain viable businesses.

19          Q.   And what proof do you offer of that?

20          A.   We do have some economic analysis by  
21 another expert.

22          Q.   So you're not sponsoring that opinion or

1 that testimony yourself?

2 A. No.

3 Q. Now, I believe you've indicated that you do  
4 not desire to exercise eminent domain authority. You  
5 prefer in all situations to negotiate; is that fair?

6 A. Yes, we do prefer to negotiate.

7 Q. If this proceeding ultimately boils down to  
8 simply the question of whether Enbridge shall proceed  
9 with eminent domain or without eminent domain, will  
10 the only cost input then to be affected be land  
11 costs?

12 A. No.

13 Q. What other costs could this proceeding  
14 impact?

15 A. It could impact the length of the pipeline  
16 which is additional steel costs. As the line gets  
17 longer, additional horsepower is required to move the  
18 crude oil so it's additional pumping costs.

19 Q. Well, do you believe the Commission has  
20 authority to change your preferred route?

21 A. I don't believe so.

22 Q. So how could this proceeding then affect

1 the length of pipe you put in the ground?

2 A. If we do not have eminent domain authority,  
3 it's not certain that we would be able to assemble  
4 all the properties to make a contiguous pipeline or  
5 how far we may have to go to do that.

6 Q. All right. I see that.

7 So you're talking about a potential  
8 increase in the cumulative length that could result  
9 in more welding costs, more land costs, more pipe  
10 costs, etc.?

11 A. Yes.

12 Q. All right. Has someone in Enbridge  
13 performed a projection or an analysis of A) the costs  
14 with eminent domain, and B) the costs if eminent  
15 domain is not obtained?

16 A. No, not to my knowledge.

17 Q. Now, you've indicated there's been some  
18 rather detailed financial and capital cost planning  
19 for this project, correct?

20 A. That's correct.

21 Q. And that's laid out in your responses to  
22 the data requests, and you've actually gone to the

1 point of determining the financing at various stages  
2 in the projects, correct?

3 A. Yes.

4 Q. And so when you're telling me no one has  
5 made a high and low projection on land and pipe  
6 costs, that could change based on the outcome of this  
7 proceeding?

8 A. No. It's an open-ended question really.  
9 Land costs, you know, they could be so high that the  
10 project becomes uneconomical, so we do not know what  
11 those costs might be.

12 Q. In addition to the cheaper Canadian crude,  
13 you've indicated that the refiners will also benefit  
14 by having access to what you described as distressed  
15 barrels. Do you recall that?

16 A. Yes.

17 Q. And distressed barrels, you mean a  
18 situation where some barrels enter the system based  
19 on a nomination by a shipper but because of some act  
20 of God or force majeure, those barrels cannot reach  
21 their destination.

22 Is that a fair summary of what you

1 consider a distressed barrel?

2 A. Yes, that's a distressed barrel.

3 Q. So you believe that construction of this  
4 pipeline will benefit those refiners by giving them  
5 access to these distressed barrels?

6 A. Yes.

7 Q. And do you think construction decisions on  
8 the magnitude of this order really would turn on a  
9 sporadic or accidental occurrence of an opportunity  
10 to buy distressed barrels?

11 A. Barrels are traded on our system every day.

12 Q. And is that a significant cost saving to  
13 any refinery, the access to distressed barrels?

14 A. I believe it is.

15 Q. And why do you believe that?

16 A. Because barrels are traded on our system  
17 every day.

18 Q. Well, do you believe that a certain  
19 percentage of refined barrels every year constitute  
20 distressed barrels?

21 A. I wouldn't know what that percentage is.

22 Q. So you have no study or data to indicate

1 what percentage of the overall deliveries in any  
2 calendar year would be distressed barrels?

3 A. No.

4 Q. And yet you're willing to conclude it's a  
5 significant price point for the refineries?

6 A. Based on the fact that batches and barrels  
7 are traded every day on our system, it is obviously a  
8 benefit to the shippers and refiners.

9 Q. And I believe at some points in your  
10 testimony you talk about the PADD II region.

11 Do you recall that?

12 A. Yes.

13 Q. And I believe you postulate there will be  
14 benefits for Illinois and the PADD II region,  
15 correct?

16 A. That's right.

17 Q. Do you believe the Illinois Commerce  
18 Commission has interstate jurisdiction in this  
19 matter?

20 MR. AMBROSE: To the extent he's asking the  
21 witness to give a legal opinion, I object.

22 JUDGE JONES: Any response?

1           MR. HELMHOLZ: Well, the witness has given  
2 multiple testimonies that the proposed project will  
3 benefit Illinois and other areas, other regions,  
4 other refineries outside the State of Illinois.

5                   I presume he has a basis for  
6 testifying to, you know, areas outside the boundaries  
7 of the State of Illinois. I'm inquiring as to why he  
8 has offered that testimony.

9           MR. AMBROSE: That's a different question than  
10 what he posed.

11           JUDGE JONES: That is a little different  
12 question.

13                   Do you want to put the second question  
14 to the witness?

15           MR. HELMHOLZ: Certainly.

16           Q. Why have you testified to the Commission  
17 about the benefits to areas or refineries outside the  
18 State of Illinois?

19           A. Because as I mentioned, Illinois is part of  
20 an integrated pipeline network that receives refined  
21 products from outside of the state.

22           Q. And do you believe that this Commission has

1 the responsibility to act in the public interest of  
2 areas outside of the State of Illinois?

3 MR. AMBROSE: Well, again, I object to asking  
4 for legal opinions from this witness.

5 JUDGE JONES: Any response?

6 MR. HELMHOLZ: Well, this witness has gone to  
7 great lengths to expand and magnify the proposed  
8 benefits of this 160 mile or so intrastate extension.  
9 I believe it's highly germane to ascertain if  
10 Enbridge is proposing that extraterritorial benefits  
11 should impel this Commission to grant eminent domain  
12 in the State of Illinois.

13 MR. AMBROSE: Again, that's a different  
14 question than what he posed.

15 JUDGE JONES: Well, I understand Mr. Helmholtz's  
16 response to be why he is asking the particular  
17 question.

18 Those questions of that nature or the  
19 ones objected to are ones we hear frequently in these  
20 proceedings. They're difficult to deal with because,  
21 let's face it, numerous witnesses refer to all kinds  
22 of things such as what authority is required from

1     them and so on.  None are really purporting to give  
2     legal opinions.  Typically when pressed, they will  
3     defer to their counsel for legal opinions in briefs  
4     and otherwise, but many of these witnesses, be they  
5     staff witnesses or party witnesses, generally have a  
6     working knowledge of what the laws and the rules and  
7     the regulations are wherever they glean that  
8     information because it's just part of their job.

9                     So we don't make non-attorney  
10    witnesses give legal opinions, but to the extent they  
11    are able to answer the questions based on what they  
12    know in the course of their duties, then I think  
13    those are fair questions.

14                    So for that reason or reasons to the  
15    extent the witness is able to answer the question  
16    without rendering a legal opinion, I think it's a  
17    fair thing to ask him to do that.

18                    So to that limited extent, the  
19    objection is overruled.

20                    Do you need it read back?

21                    THE WITNESS:  Yes.

22                    JUDGE JONES:  I thought you might.

1 Ms. Reporter, could you read that  
2 back, please, the question that is?

3 (The reporter read back the last  
4 question which read as follows:  
5 "And do you believe that this  
6 Commission has the  
7 responsibility to act in the  
8 public interest of areas outside  
9 of the State of Illinois?")

10 THE WITNESS: As a non-lawyer, I'm not certain  
11 how the Commission makes its decisions or what  
12 information it takes into account, but I would think  
13 because of the integrated network and the reliability  
14 that's required, Illinois cannot look at itself as an  
15 island, and Patoka is an important crude oil hub, and  
16 it will enhance Illinois' position as an important  
17 part of this vital transportation network.

18 Q. BY MR. HELMHOLZ: Now, Mr. Burgess, I  
19 believe in your testimony, you have given some  
20 indication about spare capacity on some of the other  
21 Enbridge lines in the area.

22 Do you recall that testimony?

1           A.    Not specifically.  Is there a --

2           Q.    Yeah.  Let me direct your attention to your  
3   reply testimony, Enbridge Exhibit 1A on page 9 and  
4   particularly the statement at lines 191 on, and I'd  
5   just like to read that for the record if I may, Your  
6   Honor.

7                               "The ability of the Lakehead system to  
8   respond effectively to a non-Enbridge pipeline outage  
9   elsewhere will be significantly improved by the  
10  presence of the extension of pipeline because of the  
11  available space on the alternative routes out of  
12  Chicago (via Spearhead south in line 6B) is less than  
13  the extension pipeline capacity."

14                           Have I read that correctly?

15           A.    Yes.

16           Q.    So I take it the alternative routes out of  
17  Chicago, being Spearhead south in line 6B, are not  
18  operating at capacity at this time or at the time of  
19  your testimony?

20           A.    That would probably be correct at that  
21  time.

22                           I believe now Spearhead is at full

1 capacity.

2 Q. You have not, prior to that answer, updated  
3 your testimony or any other discovery response with  
4 the information you just related?

5 A. No.

6 Q. What is the evidence that you call to mind  
7 right now for the statement you just made about  
8 Spearhead capacity?

9 A. Space on that pipeline is being apportioned  
10 or rationed which means that it's operating at full  
11 capacity.

12 Q. And how do you know that?

13 A. Through knowledge of nominations on that  
14 system, general knowledge.

15 Q. Is that information publicly available  
16 either at FERC on the Enbridge Web site?

17 A. I'm not sure if it's publicly available.

18 Q. 6B then still has spare capacity?

19 A. I'm not sure.

20 Q. Well, your testimony, you haven't corrected  
21 it when you took the stand today. Should the  
22 Commission presume that you will not change your

1 testimony as to line 6B then?

2 A. Yeah, it will not be changed.

3 Q. So line 6B has spare capacity as far as  
4 your sworn testimony today?

5 A. Yes.

6 Q. Now, do you get involved in the land  
7 acquisition process either in terms of planning or  
8 cost projection?

9 A. Not directly, no.

10 Q. Have you been involved in some of these  
11 contacts with local or county governments?

12 A. Not directly.

13 Q. Do you supervise or get involved in those  
14 communications?

15 A. I review communications, the letters, and  
16 make comments on those.

17 Q. You have, however, given some testimony  
18 about a potential conflict with a highway in McLean  
19 County?

20 A. That's correct.

21 Q. And I believe in your testimony, you  
22 indicate that although this highway is somewhat

1 speculative and far off in the future, Enbridge has  
2 made a commitment to cover the costs of accommodating  
3 your pipeline that the county might incur?

4 A. Yes. We would work with the county at the  
5 appropriate time to ensure that the pipeline and the  
6 highway can co-exist.

7 Q. Well, I believe you went further than  
8 saying you would work with them. You actually said  
9 you would pay their cost as I recall.

10 Do you recall that testimony?

11 A. Yes, that's correct.

12 Q. And you don't know what those costs are as  
13 you sit here today?

14 A. No, we do not.

15 Q. And yet you're willing to commit to them in  
16 the nature of a blank check?

17 A. No. We have rerouted pipelines for highway  
18 projects before or lowered pipelines so it's not  
19 unreasonable to do it in this case.

20 Q. Well, McLean County won't incur costs if  
21 you relocate around their highway, correct?

22 A. That's correct.

1 Q. So according to your testimony, you're  
2 actually willing to reimburse some McLean County  
3 costs; is that fair?

4 A. I'm not sure. I'd have to look at that  
5 particular item.

6 MR. HELMHOLZ: A moment, please, Your Honor.

7 MR. AMBROSE: Do you want to direct him to the  
8 page, counsel?

9 MR. HELMHOLZ: I'm trying to find that,  
10 counsel.

11 Mr. Burgess, I'm looking at Enbridge  
12 Exhibit 1B, surrebuttal testimony of Dale W. Burgess,  
13 and I'm at page 3, lines 63 to 65, and if I may read  
14 those for the record, Your Honor.

15 JUDGE JONES: Go ahead.

16 MR. HELMHOLZ: "To that end, we recently  
17 advised McLean County that if and when it finalizes  
18 its highway project, we will work with it to do  
19 whatever is reasonably necessary both to protect our  
20 pipeline and accommodate the highway and will do so  
21 at our expense."

22 Is that your testimony?

1 A. Yes.

2 Q. So you're willing to incur expenses to  
3 accommodate McLean County's highway?

4 A. Yes, and typically those would be pipeline  
5 expenses.

6 Q. Okay. But your testimony didn't say that,  
7 did it?

8 A. Not specifically.

9 Q. So does McLean County understand that there  
10 are limitations or restrictions on what your  
11 testimony is about doing it at your expense?

12 A. No. It would be at our expense.

13 Q. So you have not communicated that that  
14 phrase "at our expense" has qualifications or  
15 limitations?

16 A. It does not have qualifications or  
17 limitations.

18 Q. Now, have you become aware at any point in  
19 time that your preferred route will traverse  
20 underground coal reserves in the State of Illinois?

21 A. We have been made aware by your clients  
22 that that could be a possibility.

1 Q. And prior to that, had you made any  
2 independent investigation or attempt to discover  
3 whether the preferred route would traverse  
4 underground coal reserves?

5 A. Not specifically.

6 Q. Are you or anyone in your organization  
7 aware that Illinois is a pretty active coal mining  
8 state?

9 A. I don't know.

10 Q. Has Enbridge made any assessment about the  
11 importance of coal resources to the public interest  
12 of Illinois?

13 A. No.

14 Q. Basically, Enbridge has proceeded at this  
15 point without any acknowledgement or recognition that  
16 its pipeline could negatively impact the economic  
17 recoverability of underground coal reserves?

18 MR. AMBROSE: Well, I have to object to the  
19 assertion of a fact not in evidence that it's going  
20 to negatively affect anything. There's no basis for  
21 that.

22 JUDGE JONES: Any response?

1           MR. HELMHOLZ: Your Honor, the witness has gone  
2 to great lengths to persuade the Commission that  
3 Enbridge has cast a wide net in an attempt to  
4 accommodate and have discussions with property  
5 owners.

6                   I assume they've done that because  
7 they want to persuade the Commission of their  
8 deep-seated concern for public interest.

9                   If, in fact, they have not accounted  
10 for the loss of potential coal mining jobs or coal  
11 resources, I believe that is something the Commission  
12 will be intimately interested in.

13           JUDGE JONES: Well, the objection went to the  
14 form of the question, and it assumed certain facts by  
15 the use of the term "are you aware of that," and  
16 based on that objection as to the form of the  
17 question, it is sustained. It does assume facts that  
18 are either not in evidence or haven't been cited to  
19 the evidence.

20           Q. BY MR. HELMHOLZ: I take it you are aware  
21 at some level though that the preferred route  
22 traverses underground coal reserves?

1 MR. AMBROSE: Well, that's been asked and  
2 answered just a moment ago.

3 MR. HELMHOLZ: Just trying to make it clear,  
4 Your Honor. The objections throw me off and I need  
5 to get back on the subject, and I apologize,  
6 Mr. Ambrose.

7 MR. AMBROSE: Okay. Let's just move on.

8 MR. HELMHOLZ: Thank you.

9 Do you recall the question?

10 THE WITNESS: Could you restate it?

11 Q. You became aware at some point that your  
12 preferred route will traverse underground coal  
13 reserves in the State of Illinois, correct?

14 A. We became aware through your clients at  
15 some point that there may be an impact. We have  
16 tried to work with them to understand exactly the  
17 specifics of that, but at this point, I don't believe  
18 that's been defined.

19 Q. Do you understand that in Illinois, coal  
20 can be owned and held as a separate or severed  
21 property estate?

22 A. I am not aware of that.

1 Q. Have you had any input or information from  
2 your land and right-of-way people about how one might  
3 go about discovering that there are severed coal  
4 estates in the pathway of a proposed route?

5 A. No.

6 Q. I take it that was not one of the criteria  
7 you asked URS to factor into their route design or  
8 planning?

9 A. No, it wasn't.

10 Q. I believe you indicated before you're  
11 familiar with the concept of ground slippage and the  
12 problems that could pose for pipeline integrity,  
13 correct?

14 A. Yes.

15 Q. Have you ever heard of the longwall or high  
16 extraction mining technique?

17 A. I've heard of longwall mining, yes.

18 Q. And do you understand that longwall mining  
19 extracts virtually an entire underground coal seam?

20 A. Yes.

21 Q. And it actually results in what's known as  
22 planned subsidence to the overburden or the overlying

1 surface?

2 A. I wasn't aware that that was always the  
3 case.

4 Q. Have you ever been involved in the  
5 construction or planning of a pipeline that traversed  
6 a proposed or an actual longwall coal mine?

7 A. No.

8 Q. Do you understand that under Illinois law,  
9 when the coal in the state is severed, it is  
10 sometimes the case that the coal purchaser also  
11 obtains the right to subside or cause the surface to  
12 sink without liability for damages?

13 MR. AMBROSE: Well, again, I'm going to object  
14 to asking this witness to give legal conclusions. If  
15 the question is only does he have any knowledge of  
16 this, I guess that's okay, but legal opinions, no.

17 JUDGE JONES: Any response?

18 MR. HELMHOLZ: Your Honor, this man is in  
19 charge of the design and engineering of a pipeline.  
20 The question does not ask his legal opinion as that  
21 would be unnecessary. The question asks in terms of  
22 his engineering or land acquisition duties is he

1 aware of this potentiality and how would he plan for  
2 it.

3 JUDGE JONES: Ms. Reporter, could you start to  
4 read the question back, please?

5 (The reporter read back the  
6 beginning of the last question  
7 which read as follows: "Do you  
8 understand that under Illinois  
9 Law...")

10 JUDGE JONES: That's fine. Thank you.

11 There again, there's an assumption in  
12 there "that under Illinois law." In this particular  
13 instance, the assumption is with respect to what  
14 Illinois law is, and given the form of the question,  
15 the objection is sustained.

16 MR. HELMHOLZ: May I try to rephrase that, Your  
17 Honor?

18 JUDGE JONES: Sure.

19 Q. BY MR. HELMHOLZ: What I'm getting at is  
20 from an engineering perspective, you're familiar with  
21 the concept of ground slippage?

22 A. Yes.

1 Q. And that can occur naturally due to defects  
2 in the composition of soils underlying the pipeline?

3 A. Yes.

4 Q. And you've agreed I believe that that is  
5 problematic for an operating liquid or crude oil  
6 pipeline?

7 A. Yes.

8 Q. And that's because it can cause the  
9 pipeline to buckle or it can cause damage at the  
10 wells?

11 A. It can cause damage to the pipeline.

12 Q. And crude is generally pumped at a pretty  
13 high pressure, is that correct?

14 A. Relative to what?

15 Q. Well, relative to natural gas for example?

16 A. Much lower pressures than natural gas.

17 Q. But it has weight, so the stresses on a  
18 pipeline are greater with the liquids pipeline than a  
19 gas?

20 A. I'm not sure.

21 Q. Well, let's look at it this way then.

22 The consequences to the environment of

1 a liquid spill in a pipeline are fairly serious,  
2 correct?

3 A. That depends on the --

4 Q. Well, the crude oil -- I'm sorry.

5 A. That depends on the particular instance of  
6 the spill.

7 Q. If crude oil leaks out of one of your  
8 pipelines and gets into, for example, streams or  
9 waterways, that could be a significant environmental  
10 hazard, correct?

11 A. Depending how much gets out and how quickly  
12 we could contain it.

13 Q. Sometimes it's very difficult to monitor  
14 for small leakages, is that correct?

15 A. We do have a sophisticated leak detection  
16 system that we use.

17 Q. And does that involve sensors in the  
18 ground?

19 A. No, it doesn't.

20 Q. So it's really just like a smart pig or a  
21 corrosion investigation device?

22 A. No. It's actually ongoing volume

1 monitoring.

2 Q. And what sensitivity would that have for  
3 say, example, a ten-barrel seepage?

4 A. I'm not sure specifically about that.

5 We also patrol our right-of-ways  
6 regularly to look for evidence of possible leaks.

7 Q. Is it possible to design weld criteria that  
8 will withstand ground slippage that you might  
9 encounter?

10 A. It would depend on the extent of the ground  
11 slippage.

12 Q. So in other words, you're able to adjust to  
13 anticipated pipeline movement?

14 A. Some pipeline movement can be accommodated.

15 Q. And how do you do that?

16 A. Just naturally through the laying of the  
17 pipeline. Some movement can be accommodated in the  
18 pipe.

19 Q. No. I'm talking about after the pipeline  
20 is covered and it's in service, what anticipatory  
21 protective measures can you take if you're in an area  
22 where you might anticipate subsidence?

1           A.    There would be more regular inspections of  
2 that particular area.

3           Q.    Those are post-construction. I was  
4 interested in pre-construction.

5           A.    I'm not sure specifically.

6           Q.    Assuming if you will that the longwall  
7 mining technique will extract a four or five foot  
8 coal seam entirely and will result in anywhere from  
9 three to four feet of subsidence of the overlying  
10 overburden, that scenario cannot be good for a  
11 pressured and operating crude oil pipeline; is that  
12 fair?

13          A.    Well, I would say in that instance, we  
14 would want to work with your client's engineers to  
15 understand the impact of what that subsidence could  
16 be and see if there's some method to design for it.

17          Q.    And have you undertaken the effort to do  
18 that?

19          A.    Yes. We have contacted them to try and  
20 understand specifically where the impacts could be.

21          Q.    Well, let's talk for a moment about what  
22 protective procedures might be necessary in the event

1 that there is not an agreement or anticipation.

2                   Would it be something in the nature of  
3 standard operating procedure to uncover a pipeline  
4 that might be subjected to a ground slippage or  
5 subsidence?

6           A.    Yes.

7           Q.    And you do that to relieve stress on the  
8 pipeline and on the welds?

9           A.    No, not necessarily. We would do that to  
10 reposition the pipeline.

11          Q.    But you're going to reposition it to avoid  
12 a buckling stress, correct?

13          A.    That's correct.

14          Q.    So uncovering the pipeline will, you know,  
15 it could have certain costs, correct?

16          A.    That's correct.

17          Q.    And if the pipeline is going to move, and I  
18 take it under your standard operating procedures,  
19 when you move a pipeline, do you examine the welds?

20          A.    Yes, we do.

21          Q.    Prior to moving the pipeline?

22          A.    Yes.

1 Q. And you do that to make sure that the welds  
2 have integrity?

3 A. Correct.

4 Q. Because when you move the pipeline, you  
5 don't want to create a rupture or a crack?

6 A. No. We do not want to overstress the line.

7 Q. And so the actual act of inspecting these  
8 wells, how do you do that?

9 A. We have internal inspection tools that we  
10 use where they can be inspected once the line is  
11 uncovered as well.

12 Q. So what devices do you use to do the  
13 external inspection?

14 A. Ultrasonic inspection or radiography.

15 Q. So ultrasound or an x-ray?

16 A. Yes.

17 Q. And do you have to remove coating from the  
18 wells to do that?

19 A. Sometimes, yes.

20 Q. And so you'll incur an expense both in  
21 removing the coating and then replacing the coating  
22 when you recover the pipeline?

1 A. Yes.

2 Q. And I take it you're going to incur land  
3 damages or land expenses if you have to pile the  
4 overburden outside your right-of-way?

5 A. That's correct.

6 Q. And you're going to have to have mechanized  
7 equipment to lift the pipeline if you're going to  
8 reposition it?

9 A. Yes.

10 Q. And so all of these things are potential  
11 costs that could protect the pipeline from subsidence  
12 damage, correct?

13 A. That's correct.

14 Q. And can you tell the Commission today who  
15 will bear those costs if my clients commence a  
16 longwall coal mining under your preferred route?

17 A. I wouldn't be able to say today.

18 It would be our position to work with  
19 your clients to come to a mutually acceptable  
20 solution that looks after both our interests.

21 Q. Are you able or willing to make the same  
22 commitment to Shelby Coal Holdings that you've made

1 to the County of McLean about their highway project?

2 A. Likely not without an evaluation of the  
3 extent of what the impact might be.

4 Q. Let's say just for discussion purposes this  
5 preferred route traverses 33 miles of underground  
6 coal reserves that my clients own, and let's further  
7 assume that the cost of protecting the pipeline from  
8 subsidence damage would be on the order of one  
9 million dollars per mile.

10 Who can you tell the Commission might  
11 bear that cost?

12 A. As I said, I can't say at this time. We  
13 would negotiate with your clients over that.

14 Q. Can you commit to absorb any of that cost?

15 A. Again, I can't say at that time without  
16 knowing the extent.

17 Q. All right. Well, let's further talk about  
18 a scenario where Enbridge refuses to contribute to  
19 any portion of that cost, all right?

20 In that scenario...

21 MR. AMBROSE: Well, let me object. It's  
22 assuming a hypothetical situation that doesn't have

1 any basis in fact. Mr. Burgess has explained the  
2 company's position on dealing with that. There's no  
3 reason to create a further hypothetical that says if  
4 everybody can't do something, let's paint this  
5 terrible picture.

6                   Whatever interest these entities are  
7 pursuing here, Mr. Burgess has already explained the  
8 company's position on dealing with them and taking  
9 the necessary measures. This is just becoming  
10 repetitive, and we are certainly well exceeding the  
11 time that has been allowed for this party's  
12 cross-examination.

13               JUDGE JONES: Well, I think the question had  
14 begun but was not yet finished as I understand it.

15                   Were you finished with your question?

16               MR. HELMHOLZ: Your Honor, these interjections  
17 are so lengthy that I'm frequently losing my point.  
18 I'm sorry. I can't answer your question.

19               JUDGE JONES: Ms. Reporter, could you read back  
20 the question, please?

21   (The reporter read back the last  
22 question.)

1           JUDGE JONES: The question hadn't actually been  
2 posed so I think counsel is entitled to pose it.

3           Q. BY MR. HELMHOLZ: You know, I think that  
4 the trend here, Mr. Burgess, is to elicit from you  
5 whether you can educate the Commission on how these  
6 admitted costs of protection will be apportioned from  
7 Enbridge's perspective.

8                           Can you do that?

9           A. I cannot specifically say. It's a  
10 hypothetical question at this point.

11           MR. HELMHOLZ: Well, Your Honor, the McLean  
12 County highway is a hypothetical speculative too, and  
13 he was able to commit to covering those costs, so I  
14 don't see any distinction.

15           MR. AMBROSE: Well, that argument doesn't  
16 address the issue here at all.

17                           Counsel is asserting a bunch of  
18 so-called facts that he hasn't put in evidence. He  
19 doesn't even have any evidence in this record, has  
20 offered no evidence in this record to support any of  
21 this. His opportunity to do so is gone because his  
22 filed testimony has nothing to do with any of these

1 points, and now he's trying to make it up.

2 JUDGE JONES: All right. Could we have the  
3 witness's answer read back, please, Ms. Reporter?

4 (The reporter read back the last  
5 answer.)

6 JUDGE JONES: The witness provided an answer to  
7 the question.

8 Whether there's a follow-up question  
9 to that is unknown to me. What followed was some  
10 argument and then some more argument, so if there's  
11 another question to be asked, we'll hear what it is  
12 and go from there.

13 MR. HELMHOLZ: Your Honor, I'll do my best. I  
14 do think the Commission will be intimately interested  
15 in what societal costs are imposed by Enbridge's  
16 proposed project. I believe the witness has  
17 acknowledged there are costs involved in protecting  
18 the pipeline from ground slippage of which subsidence  
19 by longwall mining is a species.

20 Q. Mr. Burgess, can you testify today to any  
21 facts that will aid the Commission in assessing who  
22 will bear the costs of protecting the Enbridge

1 pipeline in the event that longwall mining is  
2 authorized beneath the pipeline?

3 MR. AMBROSE: Well, that question has been  
4 asked and answered.

5 JUDGE JONES: Any response?

6 MR. HELMHOLZ: Your Honor, this witness has  
7 gone to great lengths to persuade the Commission of  
8 Enbridge's heartfelt desire to accommodate all kinds  
9 of property owners and potential expenses,  
10 speculative locations of highways and sewers. We  
11 found an area that they have not considered, and if  
12 all the other testimony is relevant to the  
13 Commission's decision in this case, putting a gag  
14 order on my clients is highly improper.

15 And let me point out in response to  
16 Mr. Ambrose, my client has no burden of proof in this  
17 case. We have no obligation to present testimony.  
18 We are here as intervenors, and we are entitled to  
19 make a record on cross-examination of Mr. Burgess's  
20 testimony and admissions, and if he is allowed to  
21 just talk about the good and not talk about the bad,  
22 then, you know, cross-examination would be rendered

1       meani ngl ess.

2               JUDGE JONES:    Could we have the question read  
3       back, Ms. Reporter?

4                               (The reporter couldn't readily  
5                               find the requested question to  
6                               be read amidst all the  
7                               argument.)

8               JUDGE JONES:    There's a question in there  
9       somewhere but rather than take any more time to try  
10      to hunt it down, Mr.   Helmholz, you just want to  
11      either ask the same question or a different question?

12              MR. HELMHOLZ:   Your Honor, I would like to try  
13      to get to the point on this, and again, it's an  
14      effort to have Enbridge educate the Commission.

15                               If the witness is unable to do that,  
16      that's fine.   I just want the record to so reflect.

17              Q.    Let me refer to your testimony.   It's in  
18      your surrebuttal testimony at page 2, Enbridge  
19      Exhi bi t 1B.

20                               There's reference in your testimony  
21      beginning at line 36 that you communicated with the  
22      mayor of Downs to discuss the planned location and

1 depth of sewer and water lines so that Enbridge can  
2 build a pipeline to avoid any conflict by placing it  
3 deeper at crossing points, etc.

4 And I take it you're telling the  
5 Commission about this because you want the Commission  
6 to believe you when you say you're in earnest in  
7 accommodating conflicting land usages or ownerships,  
8 correct?

9 A. Yes. We want to work with other  
10 constituents to address issues so we can co-exist.

11 Q. And the issues actually boil down to costs  
12 of co-existing with the preferred route, correct?

13 A. Well, typically these things come down to  
14 cost.

15 Q. Your choices about routing can constrain  
16 other owners or public entities of choices about  
17 their projects or public interests?

18 A. Pipelines co-exist with many other  
19 facilities everywhere in the state, and typically  
20 those issues can be worked out.

21 Q. In the case of the coal reserves, you  
22 cannot tell the Commission at this point with any

1 definition how that potential conflict will get  
2 resolved?

3 A. No, because I'm not aware of the specific  
4 impact areas between our pipeline and the coal  
5 reserves.

6 Q. And part of the reason you're not informed  
7 would be your own failure to investigate?

8 MR. AMBROSE: Well, I object. He's now  
9 assuming a fact that's not in evidence, and he's  
10 contradicting and misstating the testimony.

11 Mr. Burgess's testimony was that  
12 Enbridge has contacted his clients, tried to work  
13 with them and has had no response from them.

14 MR. HELMHOLZ: Well, I didn't hear that in the  
15 testimony so I may need to inquire into that.

16 JUDGE JONES: Mr. Helmholtz, how much more do  
17 you have?

18 MR. HELMHOLZ: If the interjections and the  
19 evasive answers would cease, I think I can wrap up  
20 pretty quickly, Your Honor.

21 JUDGE JONES: It sounds like Mr. Helmholtz is  
22 about ready to proceed with his next question as I

1 understand it. I don't believe there's a question  
2 pending.

3 Q. BY MR. HELMHOLZ: Your counsel has just  
4 stated you had made some communications to my  
5 clients, is that correct?

6 A. Yes. Our engineering group has contacted  
7 your client to try and understand the potential  
8 co-location, yes.

9 Q. And what did your engineers learn?

10 A. I don't think they've learned anything yet.

11 Q. They didn't learn that there actually are  
12 coal reserves under 33 miles of your preferred route?

13 A. I don't know that they have those  
14 specifics.

15 Q. You haven't reviewed any documents that  
16 they might have obtained from my clients?

17 A. No.

18 Q. So if, in fact, they possess a map showing  
19 underground coal reserves, you're not aware of it?

20 A. I'm not aware of it.

21 Q. Mr. Ambrose I believe said my clients had  
22 refused to cooperate or respond.

1                                   Is that an accurate statement?

2                   MR. AMBROSE: I said had not responded,  
3                   counsel .

4                   Q. Well, is that an accurate statement?

5                   A. I'm not sure. I understood that there was  
6                   some delays in communications back and forth, and  
7                   that we weren't able to get the information that we  
8                   had initially asked for.

9                   Q. So Mr. Ambrose is not correct when he  
10                  states my clients have not responded?

11                  A. I'm not sure specifically.

12                  Q. Are you aware of whether Enbridge made any  
13                  communication that called for or solicited a  
14                  response?

15                  A. I believe our engineers did.

16                  Q. And do you know what the nature of that  
17                  request was?

18                  A. Not specifically, no.

19                  Q. So you can't say whether or not my clients  
20                  have responded or not?

21                  A. Not in specifics, no.

22                  Q. Do you have any claim that my clients have

1 withheld information that you wanted?

2 A. Just through regular project updates where  
3 the engineers indicated they were having trouble  
4 getting information from the coal companies.

5 Q. And what was the trouble?

6 A. I'm not sure.

7 Q. And what information?

8 A. Any areas where coal mining activities  
9 would take place under the proposed pipeline.

10 Q. You have land and right-of-way people,  
11 right?

12 A. Yes, we do.

13 Q. And is it safe to assume that they would  
14 know how to go to a county recorder and find the  
15 legal description of severed coal estates?

16 A. I would guess, yes.

17 Q. And that's their job, isn't it? That's how  
18 they discovered who owns the property rights along  
19 your preferred route, correct?

20 A. They do title searches, yes.

21 Q. And apparently they didn't make any effort  
22 to determine exactly the description of my client's

1 underground coal reserves though?

2 A. No, that was not identified.

3 MR. HELMHOLZ: Just a few, Your Honor, and then  
4 I'll try to wrap up.

5 Q. Is there any sense in which the market for  
6 crude oil pipeline transfer capacity to the four  
7 Illinois refineries you have identified has failed?

8 A. For short periods of time, possibly it has  
9 failed, but markets are changing as the world demand  
10 for crude oil changes.

11 Q. Now, I believe we've talked a little bit  
12 about Spearhead before.

13 Is there a segment of Spearhead that  
14 is co-located or parallel sited with your line 6B?

15 A. No.

16 Q. Line 6B does not parallel Spearhead for 14  
17 miles in the area of Flanagan?

18 A. No.

19 Q. There is no other Enbridge operated line  
20 that parallels Spearhead?

21 A. No.

22 Q. Does Mustang parallel Spearhead?

1 A. No.

2 MR. HELMHOLZ: One moment, Your Honor. I think  
3 I'm done.

4 Just a few questions.

5 Q. PADD II is a region, correct?

6 A. That's correct.

7 Q. And within that region, there are  
8 districts?

9 A. That is a district itself.

10 Q. It's not subdivided from a region into  
11 districts?

12 A. Not that I'm aware of.

13 Q. How many states are included in the PADD  
14 II?

15 A. I believe it's 15.

16 Q. And so when you talk about the benefits to  
17 refineries in PADD II in your testimony, you're  
18 talking about refineries in 15 states?

19 A. Yes.

20 MR. HELMHOLZ: That's all I have for the  
21 witness, Your Honor.

22 JUDGE JONES: Okay. Thank you Mr. Helmholtz.

1 Dr. Pliura or Mr. Brandt?

2 MR. BRANDT: Yes, we have some questions, Your  
3 Honor.

4 You want us to proceed at this time?

5 JUDGE JONES: You may.

6 MR. BRANDT: Thank you very much.

7 If I can just stand, Your Honor, so I  
8 can see around so I can see the witness. Is that  
9 acceptable to you?

10 JUDGE JONES: Not a problem.

11 CROSS-EXAMINATION

12 BY MR. BRANDT:

13 Q. Mr. Burgess, you were asked about societal  
14 costs by questioning here a moment ago.

15 I guess my first question to you is,  
16 have you ever been a farmer?

17 A. No, I have not.

18 Q. Okay. Are you familiar with the problems  
19 that beset farmers along the route that you have  
20 chosen for the pipeline that's before the Commission  
21 today? Are you familiar with the land and how it  
22 drains?

1           A. I know there are significant drain tile  
2 areas.

3           Q. Do you know from your experience in the  
4 business that you're in that once a pipeline is  
5 placed, it can cause a disruption to the drainage  
6 systems the farmers have in place or had in place for  
7 years? Would that be so?

8           A. Pipeline is designed so it would not impact  
9 the drainage systems of the farms that it crosses.

10          Q. But you know from your experience and what  
11 you do that from time to time, the placement of the  
12 pipe can disrupt the drainage systems that are  
13 existent on a number of farms?

14          A. It can happen, and in those cases, we would  
15 go back in and remediate the drainage.

16          Q. There isn't any indication in your  
17 testimony that I saw that Enbridge has put aside any  
18 costs or any amounts to cover those types of costs.

19                         That's true, isn't it?

20          A. Those would be normal operating costs.

21          Q. But my question is, there's nothing in the  
22 testimony that you've submitted to the Commission

1 that indicates a promise on the part of Enbridge to  
2 cover those societal costs?

3 A. I think those commitments would be  
4 contained in our standard easement agreement.

5 Q. My question is different. There's nothing  
6 in the testimony that you've submitted to the  
7 Commission that indicates that you would cover those  
8 costs, the costs that are incurred by farmers, to  
9 reroute or rework the drainage system on their  
10 property.

11 That's true, isn't it?

12 MR. AMBROSE: No. I object. He just answered  
13 that question.

14 JUDGE JONES: No, that's a different question.  
15 Answer it if you have an answer, if  
16 you know.

17 THE WITNESS: Yeah, and there's been a lot of  
18 testimony filed, a lot of evidence filed, but it is  
19 always Enbridge's policy to ensure that the  
20 landowners are kept whole both during and after  
21 construction.

22 Q. BY MR. BRANDT: In the testimony that has

1     been sited here already in cross-examination, there's  
2     been reference made by you in your testimony to costs  
3     Enbridge is willing to incur to address issues from  
4     McLean County and for the Village of Downs. Is that  
5     true? You've heard those. You've been  
6     cross-examined on those; right?

7             A. Yes.

8             Q. There's nothing in your testimony, not a  
9     scintilla of evidence in your testimony that relates  
10    to the costs I've just asked you about, is there?

11            MR. AMBROSE: Well, I object to this  
12    characterization of his testimony. There is a lot of  
13    testimony from Enbridge. It may not be specifically  
14    in Mr. Enbridge's testimony, but he can point to  
15    other evidence that's not just in his testimony.

16                    So the scintilla of evidence is  
17    misleading and a mischaracterization.

18            JUDGE JONES: Any response?

19            MR. BRANDT: If he can point this Commission to  
20    anything in his testimony that supports that  
21    proposition, great, but I'm confident he can't.

22                    The question is, is there anything in

1 his testimony. It's very clear, but I haven't gotten  
2 an answer to that question.

3 JUDGE JONES: And by your testimony, you're  
4 referring just to Mr. Burgess's testimony?

5 MR. BRANDT: Just to Mr. Burgess's testimony.  
6 I'm not asking him about the testimony of others.

7 JUDGE JONES: Do you understand the question?

8 THE WITNESS: Yes, I do.

9 JUDGE JONES: Okay. Then go ahead and answer  
10 if you have one.

11 THE WITNESS: My direct testimony specifically  
12 talks about the agricultural impact mitigation  
13 agreement that we have executed with the Illinois  
14 Department of Agriculture and that's appended as  
15 Exhibit C to my testimony, and it does deal with  
16 specifics on agricultural issues including drainage.

17 Q. BY MR. BRANDT: My question is this.  
18 You've been referenced to your testimony, for  
19 instance, that you've been willing to pay the Village  
20 of Downs or McLean County whatever costs they incur  
21 in dealing with their projects in the future as it  
22 relates to the placement of pipe.

1                   You've not made that type of  
2                   commitment in testimony that you submitted to the  
3                   Commission, is that correct?

4                   MR. AMBROSE: I object as an argumentative  
5                   question here. He just answered that question. Now  
6                   the lawyer just wants to argue with the witness.

7                   JUDGE JONES: That question is, if not the  
8                   same, awfully similar to some previous ones.

9                   The objection is sustained. It's not  
10                  to say you can't ask a different question on the same  
11                  topic.

12                 Q. BY MR. BRANDT: Mr. Burgess, you were asked  
13                 some questions about the commitments made by your  
14                 company to build this pipeline, and the questions I  
15                 think were asked of you whether you're willing to  
16                 build the pipeline with or without eminent domain  
17                 status.

18                                 My question to you is, are you  
19                 familiar with the proposition that pipe for this  
20                 pipeline is currently being stored in Bloomington,  
21                 Illinois? Are you familiar with that proposition?

22                 A. Yes.

1 Q. And can you tell the Commission and tell  
2 the judge in this case how much pipe is being stored  
3 in Bloomington, Illinois for the construction of this  
4 pipeline?

5 A. I'm not sure specifically.

6 Q. All right. Enbridge has entered into an  
7 agreement with landowners or property owners in  
8 Bloomington, Illinois to store this pipe. Would that  
9 be true?

10 A. Yes, we have a pipe yard that's been  
11 developed.

12 Q. And this pipe that's being stored in  
13 Bloomington, Illinois, is for this project?

14 A. It was originally ordered for this project,  
15 that's correct.

16 With the market conditions the way  
17 they are today for materials and equipment, orders  
18 have to be placed many months, sometimes well over a  
19 year ahead of when the project will take place.

20 Q. The point is that you have, Enbridge has  
21 proceeded to purchase the pipe for the pipeline  
22 that's at issue in this docket, correct?

1           A.    The pipe was originally purchased for this  
2 project.  Much of it is now being redirected to  
3 another Enbridge project while this one is being  
4 evaluated.

5           Q.    Counsel asked you questions about the  
6 refineries that are serviced in PADD II.

7           JUDGE JONES:  Now, let me interrupt you a  
8 minute.  Are these questions you were going to ask  
9 anyway because cross on cross is really not something  
10 we're going to permit.  It would never end, so  
11 once -- somebody has to go first on cross-examination  
12 but that doesn't really open up cross about cross  
13 questions to the remaining cross-examining attorneys.

14                    If you're representing this is  
15 something that you were going to ask anyway, you make  
16 that representation to me, and that you're simply  
17 referring to earlier cross questions and answers by  
18 another party to facilitate the discussion, fine, but  
19 as I said, one thing we're not going to permit is the  
20 second or third cross-examining party to build on its  
21 own cross by referring to cross that was given  
22 earlier and responses given earlier by another party.

1                   I've seen proceedings where everybody  
2 wants to ask some more cross about that cross, and  
3 you can have multiple rounds all within the  
4 cross-examining exercise. We just have to draw the  
5 line somewhere.

6                   But having said that, if you're  
7 telling me that you were going to ask that anyway and  
8 you're just making the reference to facilitate that,  
9 fine, go ahead.

10               MR. BRANDT: It was just a segue, Your Honor,  
11 and I apologize.

12               Q. The refineries in PADD II are at capacity.  
13 That's been your testimony, is that right?

14               A. Yes.

15               Q. Okay. And that includes the refineries  
16 that are in Illinois, the four that you talked about  
17 earlier?

18               A. Yes.

19               Q. Okay. There's no plans that have been  
20 adopted that are concrete in place to expand the  
21 capacity of either Robinson or Wood River to accept  
22 Canadian crude?

1           A.    No, that's not correct.  There are plans in  
2 place to expand the capacity of the Wood River  
3 refinery.

4           Q.    No projects have been approved to go  
5 forward by those refineries though as you sit here  
6 today though, have they?  Construction hasn't begun  
7 on changes to those particular refineries, have they?

8           A.    I'm not aware.

9           Q.    There is, in fact, sufficient capacity at  
10 the Gulf Coast refineries for Canadian crude.

11                         Would that be true?

12          A.    I'm not sure what you mean.

13          Q.    There are refineries in the Gulf Coast that  
14 do refine Canadian crude that is the substance that's  
15 going to be pumped through these pipes.  Would that  
16 be so?

17          A.    A very small amount of Canadian crude does  
18 find its way to the U.S. Gulf Coast.

19          Q.    And you understand, Mr. Burgess, at the  
20 Gulf Coast at those refineries, there is capacity,  
21 unlike in Illinois, to refine that product?

22          A.    The U.S. Gulf Coast refineries are complex

1 and can refine various types of crude oil, yes.

2 Q. In your testimony -- and this would be the  
3 first testimony that you gave or the first affidavit  
4 that you gave. This would be at page 6 of that  
5 document. At page 6, you indicate, correct me if I'm  
6 wrong, that there is supply or, I'm sorry, supplying  
7 tar sand downstream is critical to this project for  
8 the refinery of these tar sands; is that right? Do  
9 you see where I'm speaking of?

10 MR. AMBROSE: Can we have a line reference,  
11 counsel?

12 MR. BRANDT: Sure.

13 MR. AMBROSE: What are you talking about?

14 MR. BRANDT: Line 136.

15 Let me just read it into the record so  
16 it's clear.

17 "Access to Canadian crude through such  
18 movements benefits Illinois and PADD II refiners, and  
19 is needed, because substantial amounts of refined  
20 product produced by such downstream refineries move  
21 within and/or back into Illinois PADD II via product  
22 pipelines to satisfy consumer demand."

1 Do you see that?

2 A. No, I can't find the specific place.

3 Is that my direct testimony?

4 Q. Yes, sir.

5 MR. AMBROSE: Exhibit 1, Mr. Burgess.

6 THE WITNESS: Page 6?

7 MR. AMBROSE: Page 6.

8 MR. BRANDT: Yes, sir. It's line 132.

9 THE WITNESS: Yes, I see that.

10 Q. Okay. And what you're talking about with  
11 respect to downstream refineries are those refineries  
12 outside the State of Illinois?

13 A. That's correct.

14 Q. And what you're proposing here is that the  
15 Canadian crude which is the subject of this docket  
16 will be moving through Illinois, through the area  
17 where the PADD II refiners exist, and because of  
18 that, substantial amount of the refined product will  
19 be produced by downstream refineries, is that right?  
20 Is that what you're talking about?

21 A. No. What we're saying there is that if  
22 Canadian crude does move past Illinois to Gulf Coast

1 refiners, it could come back as refined products  
2 because much refined products are shipped back to  
3 this area from the Gulf.

4 Q. And the next sentence reads this way:  
5 "There is not enough refining capacity in PADD II to  
6 meet such consumer demand, and thus, supplying crude  
7 to downstream refiners is critical to meeting local  
8 needs."

9 Did I read that correctly?

10 A. That's right.

11 Q. And so what you're talking about is that  
12 the crude oil that's the subject of this docket, that  
13 would go through the pipeline that is also the  
14 subject of this docket, would end up traveling  
15 downstream in order to be refined?

16 A. No, that's not right. The pipeline in this  
17 docket ends at Patoka, Illinois.

18 Q. Let's talk about that for a moment. You  
19 read the testimony of Mark Maple.

20 Do you know who Mark Maple is?

21 A. Yes.

22 Q. Did you read his initial testimony, his

1 rebuttal testimony, all of his testimony?

2 A. Yes, I did.

3 Q. Do you recall that it's pretty clear to him  
4 that the pipeline that is the subject of this docket  
5 is essentially going to be extended down to the Gulf  
6 Coast for refinery? That was his conclusion?

7 A. That was his speculation.

8 Q. Certainly when you filed for a rate request  
9 with FERC, the federal government, there was mention,  
10 was there not, of an extension of this pipeline in  
11 the docket from Patoka all the way to the Gulf Coast,  
12 correct?

13 A. There's a potential project that could go  
14 to the Gulf Coast.

15 Q. And when you filed your petition with the  
16 federal government, I assume you wanted to inform the  
17 federal government in a truthful manner.

18 A. Is there a question there?

19 Q. I assume you wanted to inform the federal  
20 government in a truthful manner about the plans of  
21 your company.

22 A. We indicate potential plans to, yes, to

1 many of our customers and government agencies.

2 Q. All right. And when you made your filing  
3 with the federal government, you made reference to  
4 the Texas Access line, correct?

5 A. Yeah. That was a potential project that  
6 was proposed.

7 Q. Okay. And the Texas Access line, according  
8 to the FERC filings that you made, was a line that  
9 was going to travel from Patoka that Enbridge was  
10 going to build down to the Gulf Coast, correct?

11 A. That was the concept, yes.

12 Q. Now, when you made the filings here in this  
13 proceeding, there was a document that you filed, this  
14 was Exhibit E, page 32, Part 10.

15 If you'd pull that out and take a look  
16 at that.

17 MR. AMBROSE: Counsel, are you referring to the  
18 application filing?

19 MR. BRANDT: It may be the application filing.

20 What I'm referring to is -- yes, I  
21 think it is the application. It would be Exhibit E,  
22 page 32.

1 I've got it here if you'd like to take  
2 a look at it, Mr. Burgess.

3 MR. AMBROSE: I'd like to see it.

4 (Pause)

5 MR. AMBROSE: Your Honor, may I approach with  
6 counsel's exhibit and show it to Mr. Burgess?

7 JUDGE JONES: Is that all right with you?

8 MR. BRANDT: Please. No, I'd like him to look  
9 at it.

10 JUDGE JONES: Go ahead.

11 MR. AMBROSE: And, Your Honor, may I also give  
12 Mr. Burgess the filed application with the  
13 Commission?

14 MR. BRANDT: Sure.

15 JUDGE JONES: Go ahead.

16 Q. BY MR. BRANDT: Mr. Burgess, in what I've  
17 showed you as Exhibit E, page 32, do you see that  
18 map?

19 A. Yes, I do.

20 Q. There's a corner of it in the exhibit that  
21 I've shown you that's blacked out.

22 Do you see that?

1           A.    It looks like it didn't copy well, but yes.

2           Q.    Now, the area that's blacked out in that  
3 particular exhibit that I've shown you, that covers  
4 the Texas Access Pipeline, does it not, the area  
5 where that Texas Access Pipeline would be placed?

6           A.    No.  That's the legend that explains the  
7 various potential projects that are identified on  
8 this map.

9           Q.    Is the Texas Access Pipeline shown in  
10 Exhibit E to the application?

11          A.    Is this Exhibit E?

12          Q.    I think what you're looking at is  
13 possibly --

14          MR. AMBROSE:  It is, yes.

15          MR. BRANDT:  I don't want to vouch for it, but  
16 I believe that's possibly the original or a photocopy  
17 of the original application.

18          MR. AMBROSE:  That is exactly what it is,  
19 counsel.

20          THE WITNESS:  Yeah.  There is a U.S. Gulf Coast  
21 pipeline identified as a potential product.

22          Q.    BY MR. BRANDT:  In the application then

1 which you've made to the ICC, you reference therein  
2 the Texas Access Pipeline.

3 Is that the pipeline that's referred  
4 to as the Texas Access in the FERC filings?

5 A. Yes. In this annual report, it's referred  
6 to as the U.S. Gulf Coast Pipeline. It wasn't given  
7 the name Texas Access until some time later.

8 Q. Okay. But the drawing that's shown in the  
9 ICC filing is what's identified in the FERC filing as  
10 the Texas Access Pipeline.

11 Would that be so?

12 A. The concept identified here did turn into  
13 the Texas Access proposal.

14 Q. And when you filed the application with  
15 FERC for rates, you referred specifically, there's a  
16 clear reference to the Texas Access Pipeline.

17 Would that be so?

18 A. Yes.

19 Q. And this is an Enbridge pipeline, correct?

20 A. It's a proposed project.

21 Q. I'm just saying this is a proposed project  
22 or whatever you want to call it that is one that

1 Enbridge is proposing to build, not some other  
2 pipeline company?

3 A. That's correct.

4 Q. In the -- are you familiar with the FERC  
5 filing?

6 A. For which project -- for this project?

7 Q. For this project.

8 A. Yes.

9 Q. You have some familiarity with it?

10 A. Yes.

11 Q. In there, I just wanted to ask you a  
12 question about this.

13 It was indicated that the number of  
14 barrels per day to Patoka was somewhere in the area  
15 of 91,809 barrels per day as of 2010.

16 Do you remember that being the  
17 indication in the FERC filing?

18 A. That might be an estimate on flows that  
19 would occur.

20 Q. All right. Now, in the filing that you  
21 made here, you indicated that the amount of crude oil  
22 to Patoka would be 400,000 barrels a day initially,

1 is that right?

2 A. That's the initial design capacity for the  
3 pipeline, yes.

4 Q. And that that might peak also up to 1.2  
5 million.

6 Would that be so?

7 A. No, no. The maximum capacity of the  
8 extension pipeline in this docket is 800,000 barrels  
9 a day.

10 Q. So it would go from 400,000 to 800,000 at  
11 full capacity, is that right?

12 A. It is expandable to 800,000 with pumping  
13 stations, yes.

14 Q. Okay. And the FERC filings, are those made  
15 under oath? Are those filings that have to be made  
16 under oath?

17 A. I'm not sure.

18 Q. Okay. Nonetheless, it is I'm sure the  
19 posture of Enbridge to be honest and truthful with  
20 respect to whatever you file with the federal  
21 government.

22 Would that be so?

1 A. Yes.

2 JUDGE JONES: Mr. Brandt, do you have a  
3 citation to the FERC filing you're referring to?

4 MR. BRANDT: I sure do, Your Honor. Give me  
5 just a second.

6 If I could, Your Honor, maybe I'll  
7 just finish up this line of questioning, and then  
8 I'll give the court a citation because I have six  
9 binders here and I'll have to find it.

10 Would that be okay?

11 JUDGE JONES: That's fine. That works.

12 MR. BRANDT: Thank you.

13 Q. The thing I don't understand, Mr. Burgess,  
14 is this. The filing with FERC showed that as of  
15 2010, the amount of crude oil to Patoka was going to  
16 be 91,809 barrels per day, but the amount of crude  
17 oil that you've indicated to the ICC is going to be  
18 initially 400,000 to 800,000 total capacity.

19 A. No. Those would be two different things.

20 Q. Clearly they are two different figures,  
21 right?

22 A. Yeah. The design capacity of this pipeline

1 is 400,000 barrels a day.

2 The number that would have been in the  
3 FERC filing would have been an estimate of potential  
4 movements in that year.

5 Q. Well, just so I understand it, the  
6 proposition that you were making to FERC was for  
7 approval of rates for this pipeline in particular,  
8 correct?

9 A. That's correct.

10 Q. And were you also seeking approval for  
11 rates for the Texas Access Pipeline?

12 A. Not in the same application, no.

13 Q. You will be at some point in time if the  
14 Texas Access Pipeline is built, is that right?

15 A. If the project is ever built, yes, we would  
16 have to get FERC approval for rates.

17 Q. All right. You've mentioned a moment ago  
18 the easement documents.

19 There is in Exhibit J a reference to  
20 the easement document. If you want to turn to that.

21 MR. AMBROSE: Counsel, again, for clarity,  
22 you're referring to Exhibit J to the application

1 that's filed?

2 MR. BRANDT: Yes. I'm sorry.

3 MR. AMBROSE: Thank you.

4 MR. BRANDT: And it's I think in the documents  
5 you have in front of you.

6 THE WITNESS: Yes, I have it.

7 Q. Okay. Am I correct, Mr. Burgess, that that  
8 particular exhibit references one pipeline?

9 A. That's correct.

10 Q. All right. Now, the easement document that  
11 you've given or discussed with the landowners along  
12 the proposed route of this pipeline references two  
13 pipelines, is that correct?

14 A. I think you're probably referring to the  
15 segments where there's already existing pipeline in  
16 place, so this would be a second pipeline.

17 All we are asking for here are rights  
18 to construct and operate one pipeline.

19 Q. Well, the easement document itself does  
20 discuss the proposition of two pipelines, does it  
21 not, the easement document that's been shared with  
22 landowners along the pipeline route?

1 A. I'd have to see that one specifically.

2 Q. All right. I'll get back to that.

3 All right. Let me ask you about  
4 decertification.

5 What does decertification mean to you  
6 within the confines, if you will, of ICC  
7 certification, eminent domain status?

8 Do you have an understanding what that  
9 means?

10 A. Not really, no.

11 Q. You understand that Enbridge is currently  
12 seeking to decertify one of the pipelines that it  
13 previously had certification for in front of the ICC?

14 A. No.

15 MR. AMBROSE: I object. That states a fact not  
16 in evidence and misstates the facts.

17 MR. BRANDT: I'm just asking him what he knows.

18 JUDGE JONES: That's a little different  
19 question. In the question you've used the term  
20 "that," are you aware that.

21 A challenge has been placed to that  
22 assumption, so if you want to rephrase that

1 assumption and ask him what he knows, that's fine.

2 MR. BRANDT: That's fine. Thank you.

3 Q. Are you aware of any decertification  
4 applications that have been made by your company to  
5 the ICC?

6 A. No.

7 Q. Is it your position as you sit here today  
8 that you've never, the company has never sought  
9 decertification from ICC?

10 A. Enbridge has not, no.

11 Q. How about are you familiar with the Mustang  
12 line?

13 A. Yes, I am.

14 Q. All right. And who owns that line?

15 A. ExxonMobil Pipeline Company.

16 Q. All right. Do you have any relationship  
17 with ExxonMobil Pipeline Company?

18 A. We are also a 30 percent owner in that  
19 pipeline.

20 Q. Okay. And is ExxonMobil seeking  
21 decertification of its pipeline?

22 A. Yes.

1 Q. And the purpose of decertification is to  
2 take this particular pipeline, Mustang Pipeline, out  
3 of the regulatory control of the ICC?

4 MR. AMBROSE: Well, I object. Again, it  
5 assumes a fact not in evidence. Mr. Burgess hasn't  
6 testified that he knows anything about that  
7 decertification situation.

8 JUDGE JONES: Could I have the question back,  
9 please, Ms. Reporter?

10 (The reporter read back the last  
11 question.)

12 JUDGE JONES: I'll allow the question with the  
13 notation that the witness can answer it if he has an  
14 answer, if he knows.

15 THE WITNESS: I am not a party to that  
16 decertification.

17 Q. BY MR. BRANDT: You mentioned earlier that  
18 you had looked at the testimony of Mark Maple, right?

19 A. Yes.

20 Q. And he's an engineer at the ICC. That's  
21 your understanding, is that right?

22 A. Yes.

1           Q.    You recall in his testimony that he had  
2    some concerns about the fact that there was a move to  
3    decertify the Mustang Line in this particular case  
4    while Enbridge at the same time was seeking to  
5    certify the pipeline that's the subject of this  
6    docket.  Do you remember that testimony?

7           A.    Yes.

8           Q.    It's true, is it not, that you can't give  
9    the Commission any promise as you sit here today that  
10   you won't be seeking to decertify this line if  
11   certification is granted?

12          MR. AMBROSE:  Well, I object to this kind of  
13   speculation about something that may occur in the  
14   future and making promises to the Commission.  That's  
15   improper.

16          JUDGE JONES:  Any response?

17          MR. BRANDT:  I think it's perfectly appropriate  
18   for the Commission to understand what the intentions  
19   are of Enbridge with respect to this pipeline.

20                    If the purpose is simply to obtain  
21   eminent domain status in order to provide a leverage  
22   to purchase property rights only to decertify as soon

1 as those property rights are obtained, I think the  
2 Commission ought to know it.

3 MR. AMBROSE: Then let him ask that question.

4 JUDGE JONES: Could you read the question back,  
5 Ms. Reporter?

6 (The reporter read back the last  
7 question.)

8 JUDGE JONES: I think the problem there lies in  
9 the use of the term making a promise to the  
10 Commission.

11 MR. BRANDT: I'll be happy to rephrase it, Your  
12 Honor.

13 JUDGE JONES: Go ahead.

14 Q. BY MR. BRANDT: Mr. Burgess, you're not  
15 making any promises in this particular matter that  
16 Enbridge will not decertify the pipeline that is the  
17 subject of this docket?

18 A. That would not be our intent but there have  
19 been no promises made either way.

20 Q. There has been discussion amongst the  
21 control group if you will, the individuals at  
22 Enbridge making decisions, about an alternative route

1 than the route at issue here, is that right?

2 A. Other alternatives are being evaluated.

3 Q. And I'm correct, am I not, that as in the  
4 alternative route, Enbridge is not seeking eminent  
5 domain status currently?

6 A. That's correct.

7 Q. Enbridge has built other pipelines in this  
8 state without eminent domain status?

9 A. Yes.

10 Q. Enbridge can build this pipeline without  
11 eminent domain status, can't it?

12 MR. AMBROSE: I object. That question was  
13 asked and answered long ago. That's cross on cross.

14 MR. BRANDT: I don't think that particular  
15 question was asked, Your Honor.

16 JUDGE JONES: It's not really cross on cross as  
17 such. It doesn't appear to be referring to and  
18 relying on some cross that was given earlier to  
19 provide the basis for some additional questions.

20 Whether that specific question was  
21 asked earlier on cross is somewhat of an unknown at  
22 this point without plowing back through the

1 transcript to see, which might be time-consuming.

2 I think the simpler path is to permit  
3 the question. I mean, Mr. Ambrose may be right, that  
4 that specific question was asked and answered, but I  
5 think it would be more time-consuming to confirm that  
6 than confirm that than is available, so for that  
7 reason, we will allow the question.

8 Do you need it read back?

9 THE WITNESS: No. I'm okay.

10 JUDGE JONES: Okay. Go ahead.

11 THE WITNESS: I can't say that Enbridge could  
12 complete this pipeline effectively or efficiently  
13 without eminent domain. It may not have to.

14 Q. BY MR. BRANDT: My question was not whether  
15 it could be done effectively or efficiently. The  
16 question is can it be done.

17 You've shown that this company can  
18 build pipelines in this state without eminent domain  
19 status, correct?

20 MR. AMBROSE: I object he now wants to argue  
21 with the witness about his answer. The witness  
22 answered the question.

1           JUDGE JONES: He actually moved on to a  
2 different question. I understand the last portion of  
3 that comment to be essentially a new question, so  
4 we'll permit that.

5                           Do you need it read back?

6           THE WITNESS: Yeah.

7           JUDGE JONES: Could you read it back, please,  
8 Ms. Reporter?

9   (The reporter read back the last  
10   question.)

11          THE WITNESS: Yes, we have built pipelines  
12 without eminent domain. I can't say that this one  
13 could be completed under the same circumstances.  
14 Each project is different.

15          MR. BRANDT: Let me ask you about a few other  
16 areas.

17          Q. There's been testimony that you gave at  
18 page 7, line 153, and this would be in your original  
19 affidavit if you want to take a look at that.

20          A. Okay. I'm there.

21          Q. Okay. In there, you were talking about the  
22 relationship between Enbridge and big oil, that there

1 had been references made to a proposition that your  
2 company was associated with, quote, "big oil."

3 Do you see where I'm talking about?

4 A. No.

5 Q. Okay. Bear with me just a minute.

6 (Pause)

7 Q. If you look at page 7, it says this. I'll  
8 read it into the record. Line 153: "Enbridge is one  
9 of North America's largest independent pipeline  
10 systems. It is not owned by or affiliated with any  
11 oil producing or refining company."

12 Did I read that correctly?

13 A. That's correct.

14 Q. That was your testimony under oath?

15 A. Yes.

16 Q. Now, you've just indicated to us that, in  
17 fact, Enbridge is in partnership with ExxonMobil with  
18 respect to the Mustang line?

19 A. ExxonMobil Pipeline Company.

20 Q. When someone uses the phrase "big oil,"  
21 would that include ExxonMobil?

22 MR. AMBROSE: Well, I object to asking him to

1 speculate what someone else means in their mind when  
2 they use the phrase.

3 MR. BRANDT: I'll withdraw the question.

4 Q. The petitioner in this case is the company  
5 Enbridge (Illinois) L.L.C., right?

6 A. Correct.

7 MR. AMBROSE: No, that's not correct.

8 THE WITNESS: Enbridge Pipelines.

9 MR. AMBROSE: Enbridge (Illinois) Pipelines  
10 L.L.C.

11 MR. BRANDT: I stand corrected. It's Enbridge  
12 Pipelines (Illinois) L.L.C., correct?

13 A. Correct.

14 Q. Do you know if that company has any  
15 capital? Does it have any capital whatsoever?

16 A. I'm not sure of that financing background  
17 of the various entities.

18 Q. So as you sit here today, you can't tell  
19 the Commission whether or not this company that's  
20 petitioned for a pipeline in the State of Illinois  
21 does or does not have any capital, is that correct?  
22 Is that correct?

1 A. Yes.

2 Q. In your testimony, throughout your  
3 testimony, there's reference to the phrases "public  
4 purpose" and "public convenience and necessity."  
5 You've made those statements in your testimony, is  
6 that right?

7 A. Perhaps, yes.

8 Q. And you would agree with me, would you not,  
9 that the definition of those terms is something that  
10 should be left not to witnesses or experts in this  
11 case but the definition should be left to the judge  
12 and to the ICC?

13 MR. AMBROSE: Your Honor, I object to that  
14 question. If he wants to ask the witness what he  
15 meant by using those phrases, that's fine, but all  
16 he's doing is trying to argue about who decides what  
17 the public convenience and necessity is.

18 By law, that's the business of the  
19 Commission.

20 MR. BRANDT: If that's an admission by  
21 Enbridge, then I'll accept it and won't ask further  
22 questions about it.

1           MR. AMBROSE: It's a statement of what's in the  
2 Public Utilities Act in the Common Carrier by  
3 Pipeline Law.

4           JUDGE JONES: Is your question still pending in  
5 your point of view?

6           MR. BRANDT: My question -- assuming that's an  
7 admission that a witness or an expert in this case  
8 should not be defining these terms, then I'll accept  
9 that as an admission on the part of Enbridge, and  
10 I'll move on.

11          MR. AMBROSE: No. What I said was he can ask  
12 what Mr. Burgess meant by his use of those terms.

13          JUDGE JONES: So you want to proceed with your  
14 question?

15          MR. BRANDT: I'll ask my question.

16          Q. Mr. Burgess, the question is this.

17                    You've used those phrases in your  
18 testimony, and my question to you is, the definition  
19 of those terms should be left to the judge in this  
20 case and to the members of the ICC in terms of their  
21 definition?

22          MR. AMBROSE: That's the same question that I

1 just objected to.

2 JUDGE JONES: Okay. There's an objection.

3 Any response?

4 MR. BRANDT: I think that's it's a  
5 straightforward question, Your Honor. This is  
6 cross-examination. He's used those phrases. I think  
7 I need to have an appreciation for his definition,  
8 and this is one way in which we can establish what  
9 that definition is.

10 MR. AMBROSE: Well, then let him ask the  
11 witness what he means by using those terms, not what  
12 is the proper role of the witness and what is the  
13 proper role --

14 MR. BRANDT: I think...

15 MR. AMBROSE: -- of the judge or of the  
16 Commission.

17 MR. BRANDT: I apologize.

18 I think counsel can redirect on this  
19 topic if he likes, Your Honor. I don't think that  
20 his desires about what I should ask should limit the  
21 cross.

22 JUDGE JONES: Well, in order to move on here,

1 I'll allow the question and ask the witness to answer  
2 it if he has an opinion on that.

3 THE WITNESS: Could you read it back, please?

4 (The reporter read back the last  
5 question.)

6 JUDGE JONES: Answer it if you have an answer.

7 THE WITNESS: And I find it hard to understand  
8 because it's asking me to comment on whether those  
9 terms should be defined by the Illinois Commerce  
10 Commission.

11 MR. BRANDT: That's the question.

12 JUDGE JONES: I'll interpret the witness's  
13 response as one saying he does not really understand  
14 the question, so...

15 MR. BRANDT: Okay. I'll try and ask it again  
16 or differently.

17 Q. Is the phrase "for the public benefit" one  
18 that in Enbridge's opinion, in your opinion as a  
19 representative of Enbridge, that should be defined by  
20 Enbridge or should it be defined by the ICC?

21 MR. AMBROSE: No. I would object. He's asking  
22 the witness to give a legal opinion.

1                   If he wants to point the witness to  
2 something in his testimony where he's used that  
3 phrase and ask him what he meant, I will not object,  
4 but to this kind of legal opinion inquiry, I do  
5 object.

6           MR. BRANDT: I think, Your Honor, that we've  
7 established that the witness acknowledged that he  
8 used these phrases in his testimony time and again.  
9 He's acknowledged that.

10                   I think I should have every  
11 opportunity to establish in cross-examination his  
12 understanding of who should define those terms.  
13 That's all I'm asking.

14           MR. AMBROSE: And, Your Honor, I'll make a  
15 further objection.

16                   His understanding of who gets to  
17 define the terms is not relevant. He's not the  
18 decision-maker here. He's a witness and certainly  
19 not a legal expert witness.

20           JUDGE JONES: Do you understand the question  
21 any more than you understood the previous one?

22           THE WITNESS: No.

1           JUDGE JONES: All right. The witness has  
2 indicated he does not understand the question. I  
3 mean, this isn't a witness who has pulled that lever  
4 dozens of times during the course of this  
5 cross-examination. He says he doesn't understand the  
6 question any more than the previous one.

7                    You'll just have to move on with a  
8 different question.

9           MR. BRANDT: Very good.

10                   Just a moment if I can, Your Honor.

11           JUDGE JONES: Sure. Go ahead.

12                               (Pause)

13           MR. BRANDT: Just two other questions.

14           Q. If you can turn to page 17 of your reply  
15 testimony, Mr. Burgess, and look at line 359.

16                    Do you see that?

17           A. Yes, I see it.

18           Q. Let me just read this into the record for  
19 the benefit of the Commission.

20                    It says, and I quote, "Nor are we  
21 somehow in 'big oil' -- as some intervenors say.  
22 Enbridge is neither a producer of petroleum nor a

1 refiner thereof but rather an independent common  
2 carrier. We are not linked to any major oil company  
3 or 'big oil.'"

4 Did I read that correctly?

5 A. That's correct.

6 Q. When you filed the filings with FERC, when  
7 Enbridge filed that filing with FERC, was there any  
8 co-filer?

9 A. No.

10 Q. Did ExxonMobil file as a co-filer for the  
11 FERC regulation of that pipeline?

12 A. Not for this project.

13 Q. How about the Texas Access?

14 A. I'm not sure.

15 MR. BRANDT: Thanks very much.

16 JUDGE JONES: Does that conclude your cross,  
17 Mr. Brandt?

18 MR. BRANDT: Yes. Thank you, Your Honor.

19 JUDGE JONES: All right. Thank you.

20 Mr. Turner, looks like you're up.

21 Do you want to come up to the table?

22 Will that work better for you?

1           MR. TURNER: May it please the court, I have a  
2 solid hour and am prepared to proceed. We haven't  
3 had a break this morning I don't believe. I didn't  
4 know if Your Honor wanted us to consider lunch or a  
5 bathroom break or anything.

6                     You want me to start for an hour and  
7 keep going then?

8           JUDGE JONES: That's a good question. Off the  
9 record regarding scheduling.

10                             (Whereupon an off-the-record  
11 discussion transpired at this  
12 time.)

13           JUDGE JONES: Back on the record.

14                     There was a short off-the-record  
15 discussion that we hereby recess for five minutes.

16                             (Recess taken.)

17                             (Whereupon Turner Intervenors  
18 Exhibits 1 and 2 were marked for  
19 identification as of this date.)

20           JUDGE JONES: Back on the record.

21                     Mr. Turner, I believe you're up.

22                     Do you still have some cross of the

1 witness?

2 MR. TURNER: Yes, please. If it please the  
3 court and counsel, Mr. Burgess, my name is Mercer  
4 Turner. I'm an attorney from Bloomington, Illinois.  
5 I'm very pleased to make your acquaintance here  
6 today.

7 CROSS-EXAMINATION

8 BY TURNER:

9 Q. I'd like to refer you to page 2 of your  
10 May 21, 2008 prefiled testimony where you discuss a  
11 letter to the mayor of the Village of Downs.

12 A. What exhibit number is that?

13 Q. I don't have the -- well, I guess I do.  
14 It's Enbridge Exhibit 1B.

15 A. Page 2?

16 Q. Yes.

17 A. Yes.

18 Q. Do you have that letter with you today?

19 A. I don't have it here.

20 Q. Well, I've got it here, and I've had it  
21 marked by the court reporter as Turner Intervenors  
22 Exhibit No. 1.



1                   On page 2 of his testimony, he refers  
2     in the same sentence, the same paragraph, to his  
3     letter and the response that I provided to it, so I  
4     stapled them together.

5                   I'm just going to ask him if that is  
6     his letter and my response that he mentions in his  
7     testimony.

8                   THE WITNESS: Yes.

9                   MR. AMBROSE: First of all, that ought to be  
10    two exhibits rather than one. An April 18th letter  
11    cannot be a response to an April 24th letter.

12                   If he makes it two exhibits, I'll  
13    withdraw the objection and let us go ahead, get this  
14    moving.

15                   JUDGE JONES: Mr. Turner, is that all right  
16    with you?

17                   MR. TURNER: Yes, sir.

18                   Q. Cross Exhibit 1 is the letter you refer to  
19    in your testimony to the mayor of the Village of  
20    Downs?

21                   A. Correct.

22                   Q. And then attached to that will be Cross

1 Exhibit --

2 MR. AMBROSE: Well, I want it detached, not  
3 attached.

4 JUDGE JONES: Okay. You want to make that 3 or  
5 do you want to label it something else?

6 MR. TURNER: We'll make it 3.

7 JUDGE JONES: 3 it is.

8 (Whereupon Turner Intervenors  
9 Cross Exhibit 3 was marked for  
10 identification as of this date.)

11 Q. BY MR. TURNER: So Cross Exhibit 1 is the  
12 letter to the mayor of Downs that you referred to in  
13 page 2 of your prefiled testimony of May 21, 2008, is  
14 that correct?

15 A. That's correct.

16 Q. And then Cross Exhibit 3, do you know what  
17 Cross Exhibit 3 is? It's the attachment that I  
18 just pulled apart so it's not together. That's Cross  
19 Exhibit 3.

20 Do you know what that document is?

21 MR. AMBROSE: Is the question can he read the  
22 document and tell you what it is or has he seen it

1 before and understands what it is?

2 Q. Have you seen that document before?

3 A. Yes.

4 Q. Okay. And what is it?

5 A. It looks like it's a letter from you to  
6 Jerry Ambrose.

7 Q. And is that the letter that you quote on  
8 page 2 of your testimony?

9 A. Yes.

10 Q. Are you now today familiar with the fact  
11 that the Village of Downs doesn't have a staff or  
12 staff engineers?

13 A. Yes, I am.

14 Q. Okay. And in your letter, you say you're  
15 anxious to work with the mayor's staff to resolve the  
16 conflicts that you're causing in their facility's  
17 planning district of their sanitary sewer project?

18 A. Yes.

19 Q. Okay.

20 A. That letter was written on April 18, 2008.

21 Q. What is your understanding as to what the  
22 primary concern is of the Village of Downs relative

1 to the location that you're proposing for your  
2 pipeline?

3 A. My understanding is that the village is  
4 concerned about potential impacts to a future  
5 sanitary sewer.

6 Q. And do you know why the village is  
7 concerned about a sanitary sewer?

8 A. No.

9 Q. It has not been brought to your attention  
10 based on filings in this case that the village is  
11 under orders from the Illinois Environmental  
12 Protection Agency to create a sanitary sewer for its  
13 residents?

14 A. I wasn't specifically aware of that order.

15 Q. Okay. Now, what has your company done to  
16 follow up on Cross Exhibit 1 with the Village of  
17 Downs?

18 A. I believe our engineers have been in  
19 contact with the engineering firm that is working on  
20 the sewer plan for the village.

21 Q. Okay. Other than that what have you done?

22 A. I'm not aware of anything.

1 Q. Okay. And you have not personally had  
2 direct communication with Farnsworth & Wiley,  
3 Farnsworth Engineering Firm in Bloomington that you  
4 mention in your testimony, have you?

5 A. No, I have not.

6 Q. So when you in your testimony state what  
7 Farnsworth & Wiley Engineering has said relative to  
8 conflicts between your pipeline and the Village of  
9 Downs sanitary sewer mains, you're relying upon an  
10 explanation given to you by individuals in your  
11 company?

12 A. That's correct.

13 Q. You're familiar with the prefilled testimony  
14 of the former mayor of the City of Bloomington, Jesse  
15 Smart, the director of the McLean County Regional  
16 Planning Commission, Paul Russell, the chairman of  
17 the McLean County Board, Matt Sorenson, the mayor of  
18 the Village of Downs Jeffrey Schwartz, who all  
19 indicated that the pipe should be located east of  
20 where it's presently being proposed? Are you  
21 familiar with that prefilled testimony?

22 A. Yes.

1 Q. Okay. And as we sit here today at this  
2 hearing, isn't it true that your company is active in  
3 trying to relocate the pipeline in McLean County,  
4 Illinois in a corridor that's consistent with the  
5 testimony of those individuals?

6 A. No. We are evaluating other routing  
7 alternatives.

8 Q. Well, don't you have your land agents  
9 contacting farm owners asking them to sign documents  
10 giving you rights to put your pipeline two and a half  
11 miles approximately east of where it's being proposed  
12 to the Illinois Commerce Commission in this  
13 proceeding in McLean County, Illinois?

14 A. We are asking for option agreements.

15 Q. For the purpose of the crude oil pipeline  
16 which is the subject matter of this case, is that  
17 correct?

18 A. Potentially, yes.

19 Q. And the route that you have chosen to ask  
20 for those options is consistent with the prefilled  
21 testimony of those four individuals that I mentioned,  
22 the two mayors, the director of the McLean County

1 Planning Commission, Paul Russell, and the chairman  
2 of the McLean County Board?

3 A. I can't say that it is.

4 Q. Well, didn't all four of those individuals  
5 suggest that a more appropriate route in McLean  
6 County was two and a half miles east of where it's  
7 now located or being proposed?

8 A. I'm not sure if it was that specific.

9 Q. Well, in general, did they recommend that  
10 that be the location?

11 A. I believe they recommended that it be moved  
12 eastward.

13 Q. Okay. So tell me how your options that  
14 you're asking for now relate to the specific route  
15 that you are proposing to the Commerce Commission?

16 You're asking for eminent domain over  
17 an area that you may not use then? That's what I'm  
18 trying to get to.

19 A. No. The route we have proposed to the  
20 Commerce Commission is our preferred route.

21 Q. Okay. Then what is the purpose today of  
22 having your land agents out asking for the option?

1           A.    It's to investigate alternatives should we  
2 not be successful with the Illinois Commerce  
3 Commission.

4           Q.    On page 4 of your testimony, May 21, 2008,  
5 you testify about the Clydesdale Pipeline being a  
6 proposal only, and my question for you today is,  
7 isn't it accurate that the Clydesdale and this  
8 pipeline are actually interconnected, directly  
9 related, and they rely upon each other?

10          A.    I don't see any reference to a Clydesdale  
11 Pipeline.

12          Q.    Well, in the industry and in publications  
13 from the Canadian Association of Petroleum Producers,  
14 isn't the Southern Access Pipeline consistently  
15 referred to as the Clydesdale Pipeline?

16          A.    No.

17          Q.    Well, you know that the Southern Access  
18 Pipeline is sometimes referred to by CAPP as  
19 Clydesdale?

20          A.    I've never heard it referred to by that  
21 name.

22          Q.    Okay. Well, I have a recent CAPP map here.

1                   Are you familiar with the fact that  
2 just in June of 2008 that CAPP prepared a report of  
3 the petroleum economy relating to Canada and the  
4 United States and in it provided maps and projections  
5 of the direction the industry was going?

6           A.    I have not seen the report.

7           Q.    The Southern Access Pipeline you believe is  
8 just a mere proposal at this stage?

9           A.    I don't understand the question.

10          Q.    Okay. What's the distinction between the  
11 Southern Access Extension and the pipeline known as  
12 the Texas Access Pipeline?

13          A.    Those are independent projects.

14          Q.    And there's no economic relationship  
15 between the two?

16          A.    No.

17          Q.    Well, at Patoka, Illinois, you're familiar  
18 with the fact that it is supplied by the CAPP line  
19 pipeline, it's supplied by the Mustang Pipeline, and  
20 it's supplied by the Woodpac Pipeline, is that  
21 correct?

22          A.    Yes.

1 Q. Now, who owns Woodpac?

2 A. I'm not sure.

3 Q. Does Enbridge own it?

4 A. No.

5 Q. You don't know or --

6 A. Yeah, I don't know.

7 Q. Okay. In your testimony you mentioned

8 Woodpac in a footnote.

9 Are you familiar with that?

10 A. I'm not sure. You can point me to the

11 spot.

12 Q. Okay. I'll go ahead and point that out to

13 you here in a second.

14 Now, the outlets from Patoka are two

15 Marathon lines. They're 20-inch lines, is that

16 correct?

17 A. I'm not sure of the size.

18 Q. Okay. But they go east?

19 A. Yes.

20 Q. One goes to the Marathon Refinery in

21 northern Kentucky, Catlettsburg?

22 A. Yes.

1           Q.    The other one goes to Robinson Illinois and  
2 goes on then across Indiana and into Ohio, Lima and  
3 Canton, and Marathon has a refinery in Canton, is  
4 that correct?

5           A.    That's correct.

6           Q.    And at Lima there's a Husky plant?

7           A.    Yes.

8           Q.    And the Husky plant is planning to be  
9 retooled to process the heavy Canadian sour  
10 manufactured product?

11          A.    That's my understanding.

12          Q.    But also serving the Ohio and Michigan area  
13 are the MidValley Line which comes from the south  
14 very similar to the CAPP line?

15          A.    Yes.

16          Q.    And also Enbridge has a line that goes into  
17 Toledo that's called the Enbridge (Toledo) L.L.C.  
18 Pipeline?

19          A.    Yes.

20          Q.    And also Sunoco services, both Detroit and  
21 Toledo, with the Sunoco Logistics Pipeline?

22          A.    I'm not sure if that's crude oil or a

1 products line.

2 Q. Okay. But you're familiar with a Sunoco  
3 Logistics line that comes from Michigan into Toledo,  
4 Ohio?

5 A. Yes, there's another line there.

6 Q. But as you sit here today, you don't know  
7 whether that's crude or refined?

8 A. Yes, that's right.

9 Q. Okay. So is there any outlet at Patoka  
10 that I haven't talked about?

11 There's a Chicap line that takes  
12 product north, isn't there?

13 A. That's correct.

14 Q. Okay. Is there any other pipeline that  
15 goes to Patoka or leaves Patoka that I haven't  
16 mentioned?

17 A. There's the Capwood Pipeline.

18 Q. Okay. The Capwood pipes from Patoka to  
19 Wood River?

20 A. Correct.

21 Q. Are there any other lines?

22 A. Not that I can think of no.

1 Q. And are those lines all generally at  
2 capacity use now?

3 A. I don't know.

4 Q. You do not know?

5 A. No.

6 Q. Was that issue studied at the time the  
7 company made a decision to seek an application for  
8 eminent domain before the Illinois Commerce  
9 Commission for the Southern Extension Pipeline?

10 A. No.

11 Q. And why is that?

12 A. I'm not sure.

13 Q. You're not sure why it wasn't determined  
14 whether those pipelines were being fully utilized?

15 The reason I ask you this... Let me  
16 withdraw that question.

17 What I'd like to know is when Enbridge  
18 pipes 400,000 barrels a day to Patoka in the proposed  
19 pipeline, if that occurs, and when the TransCanada  
20 ConocoPhillips line comes from Wood River to Patoka,  
21 where is that product going to exit Patoka at?

22 A. I'm not sure; various outlets.

1 Q. We didn't talk about Pegasus. It carries  
2 about 66,000 barrels of oil a day from Patoka to the  
3 Texas Gulf Coast?

4 A. That's correct.

5 Q. And it is supplied, is it not, by Mustang?

6 A. It's supplied by any number of sources out  
7 of Patoka.

8 Q. Okay. That would be the Mustang and also  
9 products that come on the Woodpac over to Patoka,  
10 right?

11 A. Yes.

12 Q. And so Enbridge actually, through its 30  
13 percent ownership in the Mustang and through Cushing,  
14 from Flanagan to Cushing, can ship it back through  
15 Wood River to Patoka, is that correct?

16 A. From Cushing to Wood River over to Patoka?

17 Q. Uh-huh. There's no other way to get from  
18 Cushing to Patoka without going through Wood River,  
19 is there?

20 A. I don't believe so.

21 Q. Well, doesn't Enbridge use the Spearhead  
22 from Flanagan to take product to Cushing?

1           A.    Yes.

2           Q.    Okay.  And part of that product could be  
3   the heavy sour Canadian material?

4           A.    Yes.

5           Q.    And then doesn't Enbridge have a line that  
6   goes from Cushing to Wood River?

7           A.    That would be the Ozark Pipeline.

8           Q.    Okay.  And it's in use, isn't it?

9           A.    Yes.

10          Q.    Okay.  And then the Woodpac carries the  
11   product from Wood River to Patoka, doesn't it?

12          A.    Yes.

13          Q.    Okay.  So for the Pegasus to be supplied,  
14   it would either come from the Mustang or from the  
15   Spearhead line to Cushing over to Patoka, is that  
16   correct?

17          A.    Or through the Express Platte system that  
18   delivers at Wood River.

19          Q.    Okay.  The Express Platte also brings the  
20   heavy Canadian product, the sour product, to Wood  
21   River?

22          A.    I'm not sure specifically what products

1 they carry.

2 Q. Okay. Are you familiar with the fact that  
3 that line begins near Edmonton?

4 A. Yes.

5 Q. Okay. And that's where your office is  
6 located?

7 A. Yes.

8 Q. And you don't know what is specifically  
9 piped in that line?

10 A. No.

11 Q. But it is a crude product?

12 A. It's a crude oil pipeline, yes.

13 Q. Okay. And also, the line that's been  
14 approved for TransCanada and ConocoPhillips is going  
15 to bring 435 barrels a day to Patoka of the heavy  
16 Canadian product?

17 A. I'm not sure how much would find its way to  
18 Patoka.

19 Q. Okay. But that line has been approved?

20 A. I'm not sure if they have all their  
21 approvals or not.

22 Q. Okay. And it does have a capacity of

1 435,000 barrels a day?

2 A. That's what they have stated, yes.

3 Q. Okay. Tell me then, what are the options,  
4 for the product that would ship in your proposed line  
5 here to Patoka, what are the options for it to exit  
6 Patoka?

7 MR. AMBROSE: I object. I think we went over  
8 all these pipelines just a little bit ago, but if he  
9 wants to have him repeat it, I guess we can do so.

10 A. It would be the Pegasus pipeline to the  
11 south, the two Marathon pipelines to the east, and  
12 Chicap pipeline to the north.

13 Q. Okay. Now, do you think it's realistic  
14 that you would ship product from Pontiac to Patoka  
15 and back on the Chicap to the north?

16 A. It's possible.

17 Q. I know it's possible, but is that a likely  
18 corridor that's going to be used?

19 A. Well, depending on access through other  
20 pipelines in that area.

21 Q. Well, the Pegasus only carries 66,000  
22 barrels, and Chicap that goes north back to Chicago

1 carries about 350,000 barrels a day, and it presently  
2 carries product, does it not, primarily from the CAPP  
3 line?

4 A. Which line was that you're --

5 Q. Okay. CAPP line goes from Louisiana to  
6 Patoka.

7 A. Yes.

8 Q. And that carries about a million barrels of  
9 crude oil a day?

10 A. Okay.

11 Q. Not okay. Do you know?

12 A. I don't know specifically its capacity.

13 Q. Okay. So I understand what you know about  
14 this, is it fair to say that at least you did not and  
15 no one under your direction on behalf of Enbridge  
16 studied whether there was an outlet for the product  
17 that you're wanting to pipe to Patoka based on the  
18 existing pipelines that are in the ground now?

19 A. No. Patoka is an important hub with  
20 various in and out pipelines, so it's an important  
21 destination in and of itself.

22 Q. Well, there's no refinery at Patoka.

1 A. No, there isn't.

2 Q. It has to leave Patoka on a pipeline,  
3 doesn't it?

4 A. Yes.

5 Q. In the application and also on your page 7  
6 of your May 21, 2008 prefilled testimony, you make  
7 reference to the easement south of Heyworth that runs  
8 all the way to Patoka?

9 A. Yes.

10 Q. Okay. In the application reference is made  
11 to having consent of 80 percent of the property  
12 owners to survey their land.

13 Is that 80 percent calculated by  
14 including all the landowners that are in this  
15 easement from south of Heyworth to Patoka?

16 A. Yes, I believe it would be.

17 Q. And the consent is considered to be the  
18 1939 easement that was made by the landowners at that  
19 time?

20 A. I don't think so, no.

21 Q. Okay. Where did the consent come from?

22 A. Actual survey consents that were signed by

1 landowners.

2 Q. Current ones?

3 A. Pardon me?

4 Q. Current ones?

5 A. I believe so, yes.

6 Q. Okay. So you're saying here today under  
7 oath that your company has, at the time it filed the  
8 application with the Illinois Commerce Commission,  
9 written, signed, current consents from landowners  
10 over 80 percent of the proposed route for purposes of  
11 allowing your company to do a survey inspection?

12 A. Yes, I believe that's correct.

13 Q. Let me then go to your February 4, 2008  
14 prefiled testimony.

15 On page 3, you testify about a zero  
16 sum gain not being analogous to what is involved in  
17 this matter, is that correct?

18 A. Do you have a specific line?

19 Q. Sure.

20 (Pause)

21 Q. Well, let me withdraw that question and ask  
22 it this way.

1                   On page 4 of your prefilled testimony,  
2 you do specifically state that the Texas Access  
3 Pipeline will not deprive Illinois and PADD II of the  
4 benefits of the extension project that you're  
5 proposing in this proceeding.

6                   That is correct, is it not?

7           A.    Yes.

8           Q.    Okay. And the benefits that Illinois  
9 receives is having a solid supply of the heavy  
10 Canadian product into the State of Illinois, is that  
11 correct?

12          A.    Yes, that's the benefit.

13          Q.    And before the Southern Extension is ever  
14 built, Enbridge has several ways in which to bring  
15 the heavy Canadian product to the State of Illinois?

16          A.    To northern Illinois, yes.

17          Q.    Okay. And to Wood River?

18          A.    That would be a long tortuous route to get  
19 it there to our system.

20          Q.    But that route is presently being used,  
21 isn't it?

22          A.    I'm not sure.

1 Q. And with the Lakehead system and the  
2 Enbridge Pipelines that extend off the Lakehead  
3 system, you are also providing a substantial amount  
4 of the Canadian product to other areas in PADD II and  
5 many other states, many other refineries that provide  
6 services to the Midwest?

7 A. That's correct, yes.

8 Q. And, in fact, Enbridge has announced that  
9 it is considering additional pipelines that would,  
10 for example, go directly from the Chicago area to  
11 Lima, Ohio?

12 A. Yes. We are always considering new  
13 pipeline proposals to meet demands.

14 Q. And also a pipeline that would actually  
15 bypass the United States almost completely with the  
16 Gateway project?

17 A. There is a proposed project to the west  
18 coast of Canada called Gateway, yes.

19 Q. And isn't it true and wouldn't you agree  
20 that when Enbridge provides this service of  
21 transporting the product, the heavy Canadian product  
22 to market, that it actually does contribute to the

1 world price of that product?

2 A. Anything that can be done to help the  
3 supply demand balance to help protect price  
4 increases.

5 Q. Okay. And the crude oil is determined on a  
6 worldwide market, is it not?

7 MR. AMBROSE: Crude oil what?

8 MR. TURNER: Price.

9 MR. AMBROSE: Thank you.

10 THE WITNESS: Yes.

11 Q. BY MR. TURNER: Okay. So supplying it  
12 through the Gateway project or supplying it to  
13 another area in the United States other than Illinois  
14 would actually provide a benefit to Illinois, would  
15 it not?

16 A. It could provide a secondary benefit.

17 Q. Well, isn't the benefit that it provides  
18 that it would contribute to price stabilization of  
19 the world price established for crude oil?

20 A. It could help do that.

21 Q. And that would pass down to the gasoline  
22 that we buy at the pump?

1           A.   Possibly.

2           Q.   Okay.  In the case of the Southern  
3   Extension, the only real benefit to the State of  
4   Illinois is that the orphan loads that you mention in  
5   your testimony, the loads that do not have a home for  
6   them that are put into the pipe system not by  
7   accident but put in to create an outlet for something  
8   upstream, other than that, there really is no benefit  
9   to the State of Illinois for the Southern Extension,  
10  is there?

11          A.   No, that's not correct.

12                    With domestic supplies of U.S. crude  
13  oil declining, Illinois refiners will have to make up  
14  their crude slates from other areas, and this  
15  pipeline would provide a reliable, stable and  
16  abundant supply to do that.

17          Q.   Well, isn't it true that at FERC when you  
18  made two failed applications to set your tariffs for  
19  the Southern Extension that the decision was entered  
20  by FERC that British Petroleum was not going to  
21  benefit or use the Southern Extension?

22                    Do you know what was in the FERC

1 filing?

2 MR. AMBROSE: Excuse me. Is the question about  
3 the FERC filing? Is the question about a FERC  
4 decision?

5 Frankly, I object to the relevance of  
6 the FERC decisions on tariff matters. It's not an  
7 issue here. The Commission doesn't have jurisdiction  
8 over tariff matters. That's a FERC issue.

9 MR. TURNER: Your Honor, I'll withdraw the  
10 question.

11 Q. On page 10 of your February 4, 2008  
12 testimony, the Southern Access Extension actually  
13 would have no effect on refineries in Toledo,  
14 Detroit, Ontario, western Pennsylvania regarding  
15 these orphan loads or these loads that get into your  
16 system that really have no home?

17 A. Well, it depends at what point along the  
18 system the particular batch becomes a distressed  
19 batch or an orphan load.

20 If it's early enough that it could be  
21 redirected to those locations, they could have some  
22 benefit by higher movements on the overall Enbridge

1 system.

2 Q. Let's then move on to the bottom of page 11  
3 and the top of page 12 where you testify about  
4 decertification of the Mustang.

5 It says there that you would make  
6 accommodations or assurances suggested by the staff  
7 of the ICC to block your decertification of the  
8 Southern Extension Pipeline that's proposed here?

9 A. We have no plans to decertify the Southern  
10 Access Extension.

11 Q. Do you have any suggestions as to  
12 assurances that you can provide about that?

13 MR. AMBROSE: I object. That question was  
14 asked a long time ago and discussed.

15 Repeating cross-examination done by  
16 another lawyer only eats up the time we've got here.

17 JUDGE JONES: It's a different question. I  
18 think there was a hang-up on terms like promises and  
19 things like that before. I mean, it's very related,  
20 very similar, but I think that Mr. Turner is entitled  
21 to ask that particular question and see where it  
22 goes.

1 Do you need that read back?

2 THE WITNESS: Yes, sir, please.

3 JUDGE JONES: I'd ask the witness do answer it  
4 if he understands it and has an answer.

5 (The reporter read back the last  
6 question.)

7 THE WITNESS: I'm not sure what type of  
8 assurances the Commission would like to see but we  
9 would be willing to work with them on those.

10 Q. BY MR. TURNER: Decertification would only  
11 be considered if there was a major change in the use  
12 of the pipeline in the marketplace. Isn't that  
13 correct?

14 A. That's fair.

15 Q. If it were to continue as an interstate  
16 pipeline, then you wouldn't seek decertification?

17 A. Correct.

18 Q. And there would have to be a major change  
19 if there was a, you know, fundamental event in world  
20 history that would cause these things to change such  
21 as Venezuela becoming an ally of the United States in  
22 terms of providing the heavy Venezuelan crude to the

1 refiners in the Gulf Coast area?

2 MR. AMBROSE: I must object to asking these  
3 type of speculative questions about something that's  
4 going to happen in the future without any premise,  
5 any foundation in fact, for no apparent purpose.

6 JUDGE JONES: You want to respond?

7 MR. TURNER: Yes, Your Honor.

8 Decertification is an issue that has  
9 come up in this case. Mr. Burgess has testified that  
10 his company would consider assurances. He doesn't  
11 know what type of assurances.

12 I'm trying to establish that actually  
13 this could be an issue that is sooner than later.  
14 All that would have to happen is for Venezuela to  
15 become closer to the United States, and then to have  
16 a Canadian product in the Gulf Coast is not needed at  
17 all, and neither is the Southern Extension Pipeline.

18 MR. AMBROSE: Well, there's no evidence,  
19 there's no facts in the record to support any of that  
20 or to sustain such a question.

21 Counsel can speculate all he wants  
22 about what Venezuela may do in the future, but that

1 doesn't constitute a fact in evidence to pose a  
2 question on.

3 JUDGE JONES: May I have the question read  
4 back, please, Ms. Reporter?

5 (The reporter read back the last  
6 question.)

7 JUDGE JONES: The question as worded is pretty  
8 far out there, but to the extent that counsel is  
9 asking if that would be the type of change that would  
10 trigger decertification and the witness has an answer  
11 to it, with that assumption, then I'll allow him to  
12 proceed with it.

13 You need it read back?

14 THE WITNESS: No.

15 I don't see why that event would cause  
16 us to decertify this pipeline.

17 MR. TURNER: Okay. Good.

18 Q. On page 20 you have a footnote where you  
19 talk about Woodpac not being at capacity technically  
20 speaking or strictly speaking.

21 Strictly speaking, what is intended by  
22 that footnote?

1           A. I think that's intended to indicate that  
2 the Express Platte Pipeline which connects through to  
3 Woodpac is at capacity, so therefore, the Woodpac  
4 Pipeline, although it's not at its capacity, it's  
5 constrained by access through the Express Platte  
6 system.

7           Q. One of the elements of the application that  
8 you verified in this matter pertains to fitness to  
9 own and operate the pipeline.

10                           Are you familiar with the line that  
11 leads into Illinois being constructed by Enbridge  
12 through Wisconsin?

13           A. Which particular line? There are three.

14           Q. Are you familiar with all three?

15           A. Yes.

16           Q. Okay. Are you familiar with the Department  
17 of Natural Resources in Wisconsin asking the attorney  
18 general or the prosecutorial arm of the State of  
19 Wisconsin for the state to prosecute violations of  
20 Enbridge that apparently number in the hundreds in  
21 regard to its very recent construction of that  
22 pipeline?

1           A.    I know the Department of Natural Resources  
2 has passed a file to the Department of Justice for  
3 review.

4           Q.    And the number of complaints made by the  
5 Wisconsin Department of Natural Resources numbers in  
6 the hundreds?

7           A.    I wouldn't characterize those all as  
8 complaints but observations and things that were  
9 quickly rectified.

10          Q.    Okay. Are they things that were routinely  
11 done by Enbridge in the construction of pipeline in  
12 Wisconsin?

13          A.    I'm not sure I understand the question.

14          Q.    You speak about things being quickly taken  
15 care of in terms of the violations, and I'm just  
16 curious. Did Enbridge, even after they corrected the  
17 violation, continue to make the same violation  
18 somewhere else in the route?

19          A.    No. It's Enbridge's goal to meet all  
20 conditions of its permits.

21          Q.    Do the alleged violations that have  
22 occurred in Wisconsin, do they have an impact on your

1 qualifications to be fit and able to construct the  
2 pipeline in this case?

3 A. No. I don't believe so.

4 Q. And why is that?

5 A. Because these alleged violations were all  
6 quickly corrected and remediated, and the  
7 construction is done to the best industry practices.

8 Q. Is the contractor you had in Wisconsin that  
9 committed these violations the same contractor that  
10 you committed to for the Illinois construction?

11 A. For this particular project?

12 Q. Yes.

13 A. We have not committed to a contractor for  
14 this project.

15 Q. Isn't it true that there are pipes stored  
16 in West Normal, Illinois of a quantity sufficient to  
17 create 70 miles of your pipeline?

18 A. I'm not sure how much pipe is stored there.

19 Q. Approximately 70 miles?

20 A. I don't know.

21 Q. It's measured in tens of miles though,  
22 isn't it?

1           A.    I'm not sure.  I know there is some pipe  
2    there.

3           Q.    Okay.  Do you think there could be actually  
4    less than ten miles of pipe there?

5           A.    I don't know.

6           Q.    You don't know?

7           A.    No.

8           Q.    Is that because you've been promoted to  
9    have a much larger district with Enbridge?

10                    When this started, weren't you the  
11    number one guy in charge of this particular proposal?

12           A.    Yes; I was the director of the Southern  
13    Access Program.

14           Q.    And as director, you're not involved in  
15    knowing when the pipe arrives on the scene?

16           A.    Yes, I am but not in specific quantities.

17           Q.    Okay.  You are familiar though -- the pipe  
18    in West Normal is specifically for the Southern  
19    Extension?

20           A.    No.  As I mentioned before, it was first  
21    ordered for the Southern Access Extension, but much  
22    of it is now being redirected to other Enbridge

1 projects.

2 Q. Are any of those in Illinois?

3 A. No.

4 Q. What are those other Enbridge projects?

5 A. The Alberta Clipper project and the Line 4  
6 extension project.

7 Q. Where is the Line 4 Extension?

8 A. That's from Edmonton, Alberta to Hardisty,  
9 Alberta.

10 Q. Well, I'm just a little curious. How does  
11 the pipe gets from Normal back to Canada?

12 A. Well, some pipe that is now coming out of  
13 the mill that was destined for Southern Access  
14 Extension is being redirected north to that other  
15 project.

16 Q. Well, I've got to ask that then.

17 So the pipe that actually gets  
18 delivered to Normal is not used at another project,  
19 is it?

20 A. It may be shipped by rail to other  
21 projects.

22 Q. But it hasn't been so far to the best of

1 your knowledge?

2 A. That's correct.

3 Q. In Normal, there are at least three  
4 different colors of pipe.

5 Do those indicate different  
6 thicknesses of the pipe or something?

7 A. I'm not sure.

8 Q. Okay. What size pipe is the Alberta  
9 Clipper?

10 A. 36-inch diameter.

11 Q. Are you or do you know if someone in your  
12 company is familiar with the composition of farmland  
13 in McLean County, Illinois?

14 A. Composition how so?

15 Q. Of the soils.

16 A. There have been environmental surveys  
17 conducted along the route, yes.

18 Q. Okay. In McLean County, Illinois and  
19 obviously in the counties adjacent thereto,  
20 Livingston and DeWitt and Macon County, you know,  
21 we're fortunate to have a very good natural resource  
22 there, a thick topsoil, thicker than most areas of

1 the world, and about five feet down, a clay surface  
2 begins.

3 Are you familiar with that?

4 A. Not directly, no.

5 Q. Well, in this subsurface of clay is where  
6 you're going to actually construct your pipeline, and  
7 based upon the regulations of the State of Illinois  
8 through the Department of Agriculture and the  
9 Agriculture Mitigation Agreement, it provides that in  
10 fields where there is tillage that the top of the  
11 pipe has to be at least five feet below the ground.

12 A. That's the agreement we have made with the  
13 Department of Agriculture, yes.

14 Q. And has anyone at your company studied the  
15 adverse impact that putting it in that clay  
16 subsurface has on the drainage patterns in the  
17 fields?

18 A. I'm not aware of any impacts to drainage  
19 patterns.

20 Q. Okay. So no one in your company has  
21 studied that issue. Is that what you're saying?

22 A. I don't believe, so but our commitment

1 through the Agriculture Impact Mitigation Agreement  
2 also was that we would bury the depth in drain tile  
3 areas.

4 Q. Which means you would go below the drain  
5 tile so as to not interfere with the flow of the  
6 drain tile?

7 A. Yes.

8 Q. Is it your commitment to the farmland  
9 owners in areas where drainage is a problem that if  
10 there is discovered to be some drainage issue created  
11 by your construction, that after the fact, you'll  
12 come back and work in regard to remediating that  
13 problem?

14 A. Yes. That's our normal practice.

15 Q. And that's a commitment you're making to  
16 the Illinois Commerce Commission in this proceeding  
17 regarding drainage, farm drainage, part of the  
18 commitment?

19 A. Yes, that we will design the pipeline to  
20 accommodate any drainage systems out there.

21 Q. I appreciate the fact you'll design it to  
22 accommodate any farm drainage systems out there, but

1 in addition to that, the question also covers the  
2 situation about where a drainage problem is created  
3 by your construction.

4 A. Yes, and I said it's our normal practice to  
5 go back and remediate that.

6 Q. In planning for this corridor that you're  
7 proposing here today, what communications did your  
8 company have with the Village of Downs or the  
9 Tri-Valley Grade School in the Village of Downs which  
10 is adjacent to the proposed pipe?

11 A. I'm not sure.

12 Q. In working with units of local government  
13 before filing your application, what communications  
14 did you have with the unified school district in  
15 Normal regarding its proximity to the new grade  
16 school in the east side of Bloomington that's a few  
17 hundred feet from the pipe?

18 A. I'm not sure.

19 Q. What communication did your company have  
20 with McLean County regarding putting the pipe in the  
21 actual roadway of the highway that's being studied to  
22 run east of Bloomington-Normal?

1           A.    As I understand it, there's no route for  
2 the proposed highway, so we were just in a broad  
3 study area, potential highway route.

4           Q.    Doesn't the route that is being proposed  
5 here today and in your application actually run right  
6 under the pavement of one of the alternatives for  
7 that new highway?

8           MR. AMBROSE:   Well, I object.  There's no  
9 pavement of a new highway.  It doesn't exist.  It  
10 assumes a fact not in evidence.

11                        If he wants to ask about the planning  
12 nature of it, that's fine.

13           MR. TURNER:  I'll restate it.

14           Q.    Isn't it true that the proposal you're  
15 making actually proposes to put your pipeline under  
16 the proposed pavement of one of the alternatives for  
17 that highway east of Bloomington-Normal?

18           A.    I'm not sure.  It could be.  Pipelines  
19 cross under roadways numerous times.

20           Q.    In this instance, I'm not talking about  
21 crossing it.  I'm talking about actually running a  
22 distance right under the pavement.

1           A.    But as I understand it, there has been no  
2 route selected for the highway.

3           Q.    No, and I don't disagree with that, but I'm  
4 asking you, doesn't your proposal match one of the  
5 proposals in a way where your pipeline actually runs  
6 right underneath proposed pavement?

7           A.    I don't know.

8           Q.    You don't know?

9           A.    No.

10          Q.    You verified the data responses to the  
11 Commission staff.

12                        Were you the one that verified the  
13 responses of Enbridge to the data request that asked  
14 if Enbridge had documents that pertained to the Texas  
15 Access Pipeline?

16          A.    Is there a specific data request?

17          Q.    Yes, there is. It's intervenors data  
18 request that had attached to it the subpoena, the  
19 proposed subpoena for information about the Texas  
20 Access Pipeline.

21          MR. AMBROSE: Your Honor, I object. This is  
22 irrelevant. It is factually incorrect, assuming

1 facts that do not exist. We never verified an  
2 intervenors data request, and that subpoena request  
3 has been denied both by Your Honor and the  
4 Commission.

5 No relevance.

6 JUDGE JONES: Any response?

7 MR. TURNER: I'm not asking him if it's  
8 relevant, if the Texas Access Pipeline is relevant.  
9 I'm asking if this witness verified those answers.

10 And I guess what counsel is saying is  
11 that no one from Enbridge verified the intervenors,  
12 the answers provided by Enbridge to the intervenors  
13 data request.

14 MR. AMBROSE: That is correct. We did not  
15 verify those answers.

16 MR. TURNER: Then that answers my question,  
17 Your Honor.

18 Q. I have just one quick question about the  
19 alternative route that I mentioned that you talked  
20 about here in response to my question that's in  
21 McLean County.

22 Is Enbridge making a decision on that

1 alternative route either today or in the immediate  
2 future?

3 A. No.

4 Q. Just one quick follow-up about that.

5 Will then your decision about that  
6 alternative route in McLean County hinge on the  
7 decision of the Illinois Commerce Commission in this  
8 case?

9 A. Yes. As I said, this is our preferred  
10 route as we filed.

11 MR. TURNER: Thank you, Mr. Burgess.

12 Thank you, Judge.

13 JUDGE JONES: Thank you, Mr. Turner.

14 Is there redirect, Mr. Ambrose.

15 MR. AMBROSE: Well, I thought you wanted to  
16 take a little break for people, and I think that  
17 would probably be a good idea since it's now 2:15 in  
18 the afternoon, including the witness.

19 JUDGE JONES: Well, off the record regarding  
20 scheduling.

21

22

1 (Whereupon an off-the-record  
2 discussion transpired at this  
3 time.)

4 JUDGE JONES: Back on the record.

5 We hereby recess for lunch for 45  
6 minutes.

7 (Whereupon the lunch recess was  
8 taken.)

9 JUDGE JONES: Back on the record.

10 Mr. Ambrose, is there redirect?

11 MR. AMBROSE: No, Your Honor, there's no  
12 redirect for Mr. Burgess.

13 I would again move the admission into  
14 evidence of his prepared testimony and the requested  
15 responses to which he provided the verification.

16 JUDGE JONES: Thank you.

17 There was one motion. What's the  
18 status of that, Mr. Helmholtz?

19 MR. HELMHOLTZ: Your Honor, I have an additional  
20 motion too.

21 I would like to reserve the right to  
22 have you take that motion with the case and to have

1 briefing on it, and I also have another motion I'd  
2 like to mention when you give me a second.

3 MR. BRANDT: Your Honor, Plura intervenors  
4 would join in that motion.

5 MR. TURNER: If it please Your Honor and  
6 counsel, the Turner Cross Exhibit 1 and 3 at some  
7 point I'd like to move be admitted into evidence.

8 JUDGE JONES: All right. Thank you. We'll get  
9 back to those cross exhibits in a minute.

10 Mr. Helmholtz, what were you saying  
11 about a second motion?

12 MR. HELMHOLTZ: Your Honor, I would like at this  
13 time to move to strike a number of instances in the  
14 witness's testimony where he aggregates Illinois and  
15 the Midwest, Illinois and the PADD II region,  
16 Illinois and the Midwest PADD II refineries, Illinois  
17 and Midwestern Refineries.

18 His testimony is replete with these  
19 aggregated references. I believe this raises a  
20 serious question of the Commission's jurisdiction  
21 which is it's not interstate in nature. It's not the  
22 Regional Commerce Commission. It's the Illinois

1 Commerce Commission.

2 I believe the witness is totally  
3 unable to differentiate or identify discrete public  
4 need in the State of Illinois, and therefore, he  
5 abjectly fails to meet the requirement of the  
6 statute.

7 In the motion, if you will allow leave  
8 to put that into writing, I would want to more  
9 specifically identify pages and lines of what would  
10 be the precise subject of the motion to strike.

11 MR. BRANDT: Your Honor, Peter Brandt on behalf  
12 of Pliura intervenors will be joining the motion.

13 JUDGE JONES: All right. And that's the motion  
14 you're joining in?

15 MR. BRANDT: Yes, sir.

16 JUDGE JONES: All right. And how about the  
17 earlier motion, what is the status on that?

18 MR. HELMHOLZ: I would like to rest on that and  
19 again have leave to either adopt it or withdraw it at  
20 a later time in writing at a briefing phase of the  
21 case.

22 JUDGE JONES: It's probably fair to say we

1 really do not have time to argue these motions at  
2 this point today, so for now, they'll be taken under  
3 advisement. We'll get to them at some point.

4 That may involve putting them in  
5 writing. It may involve some other form of  
6 attention, but as for right now, we need to move  
7 forward.

8 Now, with respect to the data request  
9 responses, are there any objections to the admission  
10 of those in the evidentiary record?

11 MR. BRANDT: Your Honor, Peter Brandt on behalf  
12 of Pliura intervenors. I know that the position of  
13 the petitioner or the applicant is that they have  
14 provided everybody with a copy of those.

15 If they provided it to us, I haven't  
16 seen it. I'd just like an opportunity to look  
17 through it. I may not have any objections to it, but  
18 I'd just ask the court at this point to reserve the  
19 admission into evidence until we can take a look at  
20 it, please.

21 Thank you.

22 JUDGE JONES: Well, we'll get back to those too

1     then.  Rather than argue that right now or do  
2     anything else with it, we'll put it under advisement  
3     and decide at some point how we're going to deal with  
4     it.

5                     I would say that there is some  
6     argument to be made there that there is a question of  
7     context even assuming that those responses were  
8     served on other parties, and if counsel says they  
9     were, I'm sure they were.  There is the context in  
10    which they are being used at this point, and that is  
11    being offered as exhibits into the evidentiary record  
12    that would support some brief opportunity on the part  
13    of other parties to review them for that purpose, so  
14    we will leave it at that.

15                    MR. BRANDT:  Thank you, Your Honor.

16                    JUDGE JONES:  Exactly how we will deal with  
17    these at a later time is really going to depend in  
18    part on how much time we have available during this  
19    round of hearings to deal with such issues.

20                             Giving leave to make written filings  
21    is another option we may need to use.

22                             Mr. Turner, you had Turner Cross

1 Exhibits 1 and 3 that you wanted to offer, is that  
2 right?

3 MR. TURNER: Yes, Your Honor.

4 JUDGE JONES: Are there any objections to the  
5 admission of Turner Cross Exhibits 1 and 3?

6 MR. AMBROSE: We have no objections, Your  
7 Honor.

8 JUDGE JONES: All right. Anybody else?

9 MR. BRANDT: No, Your Honor.

10 JUDGE JONES: All right. Let the record show  
11 that Turner Intervenors Cross Exhibits 1 and 3 are  
12 hereby admitted into the evidentiary record.

13 (Whereupon Turner Intervenors  
14 Cross Exhibits 1 and 3 were  
15 admitted into evidence at this  
16 time.)

17 JUDGE JONES: I think that may cover it then  
18 with respect to this witness.

19 Anything else with regard to the  
20 witness's testimony?

21 All right. There is not.

22 (Witness excused.)

1           JUDGE JONES: All right. We'll move on then to  
2 the next witness.

3                       Regarding the order of witnesses, we  
4 hereby go off the record very briefly.

5                               (Whereupon an off-the-record  
6 discussion transpired at this  
7 time.)

8           JUDGE JONES: Back on the record.

9                       There was a short off-the-record  
10 discussion regarding the order of witnesses for the  
11 balance of the day, and I believe the indication is  
12 that the order will remain as before.

13                       You may proceed with the next witness.

14           MR. AMBROSE: We'll call Mr. Aller as our next  
15 witness, please.

16           JUDGE JONES: He has been previously sworn,  
17 correct?

18           MR. AMBROSE: Yes, Your Honor. You did that  
19 this morning as I recollect.

20           JUDGE JONES: So you've been sworn. You're  
21 still under oath and you may proceed.

22           MR. AMBROSE: Thank you.

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DOUGLAS BRIAN ALLER

called as a witness herein, on behalf of the Applicant, having been first duly sworn on his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. AMBROSE:

Q. Mr. Aller, would you please state your name for the record, your full name?

A. Douglas Brian Aller A-l-l-e-r.

Q. Mr. Aller, you have in front of you a binder with documents in it, correct?

A. Yes.

Q. Okay. In that binder are various documents marked as Enbridge Exhibit 2, Enbridge Exhibit 2A and Enbridge Exhibit 2B.

Can you tell us what those documents are?

A. Yes. Those are my submittals, my testimony, my reply testimony and surrebuttal testimony.

Q. This is the testimony you prepared for prefiling in this case?

1 A. Yes.

2 Q. If I were to ask -- well, do you have any  
3 changes or corrections in that testimony, Mr. Aller?

4 A. No, I do not.

5 Q. Okay. If I were to ask you the questions  
6 set forth in each of those documents today, would  
7 your answers be the same as presented in those  
8 documents?

9 A. Yes.

10 Q. And do you adopt those exhibits as your  
11 testimony in this case?

12 A. Yes.

13 MR. AMBROSE: Mr. Aller may be examined by  
14 anybody that Your Honor wants to have go forward.

15 JUDGE JONES: All right. Thank you,  
16 Mr. Ambrose.

17 It looks like we have three  
18 intervening parties whose counsel will be having  
19 cross-examination questions for Mr. Aller.

20 Who wants to lead off?

21 MR. HELMHOLZ: I'll be happy to do that, Your  
22 Honor. If I may proceed.

1 JUDGE JONES: Sure.

2 CROSS-EXAMINATION

3 BY MR. HELMHOLZ:

4 Q. Mr. Aller, I take it you're intimately  
5 involved with land and planning issues relating to  
6 the proposed project?

7 A. Yes.

8 Q. And there's a lot of nomenclature about  
9 these different segments. If you don't mind, I'm  
10 going to call this the Flanagan to Patoka proposal or  
11 Flanagan to Patoka project. Is that okay?

12 A. That would be fine.

13 Q. Now, Mr. Aller, I believe you testified in  
14 your reply testimony at page 2, lines 28 to 30, "We  
15 continue to examine the planned route because there  
16 are always issues identified upon close examination  
17 and consultation with landowners."

18 Do you recall that testimony?

19 A. I'm sorry. Which page was that?

20 Q. Page 2, lines 28 to 30 of Exhibit 2A. It's  
21 your reply testimony.

22 A. Yes.

1 Q. And is that process occurring today as you  
2 sit here?

3 A. To an extent it is, yes.

4 Q. To what extent is it occurring?

5 A. As we talk with, work with, negotiate with  
6 landowners and collect survey data, various other  
7 type of land data, sometimes we do need to make  
8 slight deviation to the route that we go until we get  
9 it totally finalized.

10 Q. I believe your testimony discusses some  
11 issues or concerns you've discovered along the way  
12 which relate to the County of McLean, the Village of  
13 Downs.

14 Do you recall that testimony?

15 A. That was regarding the highway, proposed  
16 highway area?

17 Q. At this point, I'm just trying to identify  
18 the parties that you've had some issues and concerns  
19 with.

20 That would include the Village of  
21 Downs and the County of McLean?

22 A. Yes.

1 Q. Are there any other similar parties or  
2 entities that you've had any issues or concerns  
3 arise?

4 A. The Fayette Water Company.

5 Q. I'm sorry. I didn't hear that.

6 A. Fayette Water Company.

7 Q. Fayette Water Company.

8 Now, were you involving in tasking the  
9 URS Corporation on the confidential and proprietary  
10 route consultation process?

11 A. I did have some input into their process  
12 and their criteria that they would look at.

13 Q. And what was your input?

14 A. My input was along the line as to what we  
15 in the land business and the right-of-way business  
16 look for when we're looking for a route, what we  
17 consider off the top of our head as a good route,  
18 which we want to avoid villages, towns, and as much  
19 population as we can, try to stick as rural and  
20 agricultural as possible.

21 Q. Were you involved or did you recommend the  
22 decision to have absolutely no public input into this

1 route selection process?

2 A. We've had public input later in the  
3 process, not in the initial scoping of the project.

4 Q. Well, isn't it true that you had no public  
5 input whatsoever up until the point in time they  
6 selected, and you agreed, on the so-called preferred  
7 route?

8 A. Specifically we probably did not, but  
9 historically and from our experience, we did pull on  
10 some of that as to some of the same things that I was  
11 talking about is the villages, the towns, the various  
12 government agencies like to see us route pipelines in  
13 certain locations.

14 So in that sense, we had historical  
15 input until such a time in the project where it was  
16 time to come public and start seeking consultation of  
17 those agencies, the public, etc.

18 Q. None of the historical input you're  
19 referring to was specific to the preferred route  
20 that's the subject of this docket?

21 A. No; just categorically.

22 Q. And some of these issues and concerns could

1 have certainly been flushed out before you selected a  
2 preferred route had you chosen some public  
3 participation in the route selection process?

4 A. Well, the way the process is designed is  
5 not to attach a burden to so many different entities  
6 and government agencies and so forth with a broad  
7 brush of the project until we get more specifics,  
8 something that we can all wrap our arms around.

9 Q. Well, you're before the Commission today  
10 postulating a scenario that Enbridge might find land  
11 acquisition costs so expensive in the absence of  
12 eminent domain, it might abandon the project.

13 Is that true?

14 A. That's outside of my discipline to be  
15 deciding those things.

16 Q. But your testimony discusses some very  
17 clear scenarios where you actually indicate to the  
18 Commission Enbridge may abandon this project if it  
19 does not receive eminent domain authority, do you  
20 not?

21 A. Well, if it's the case where we do not  
22 receive our certification and the right to use

1 eminent domain, there could conceivably be a  
2 roadblock where we could not complete the acquisition  
3 for the right-of-way.

4 Q. But don't you postulate a scenario where on  
5 any given route you propose, the last landowner, by  
6 virtue of a refusal to deal, could block the entire  
7 project?

8 A. Without an even playing field, that could  
9 happen.

10 Q. And your suggestion is that eminent domain  
11 would level the playing field?

12 A. Yes.

13 Q. Now, in that scenario, let's use that one  
14 you had in your testimony about the last landowner  
15 being able to have a veto or block of the route.

16 If that were to actually occur in  
17 reality, how much oil would Illinois refiners face in  
18 terms of a shortage?

19 A. Again, that's outside of my discipline to  
20 be able to give you an answer as to the volume of  
21 oil.

22 Q. All right. So you cannot tell the

1 Commission that any Illinois-sited refinery will  
2 experience a shortage of oil if Enbridge elects not  
3 to construct this pipeline segment?

4 A. That would be for other witnesses.

5 Q. And yet you're comfortable raising the  
6 specter that Enbridge may, in fact, abandon the  
7 project if the Commission does not grant eminent  
8 domain authority?

9 A. We could be roadblocked, yes.

10 Q. And these roadblocks, you're referring to a  
11 potential landowner holding?

12 A. Yes.

13 Q. Haven't you selected and designated or  
14 empowered the landowners to have this holdout  
15 ability?

16 A. Could you ask that another way?

17 Q. The landowners in your scenario, and let's  
18 use the one landowner in the scenario, that  
19 particular landowner would have no power or no market  
20 power had you not determined irrevocably on a  
21 preferred route, correct?

22 A. Yes; if we had not crossed their property,

1 they wouldn't have that.

2 Q. The URS report, Figure 3-1, do you have  
3 that? Do you have the data requests handy?

4 A. I'm sorry. Which one?

5 Q. It would be Figure 3-1, general project  
6 corridor location. It's in the URS report which is  
7 Attachment C to Enbridge response to staff data  
8 request, I believe it's 1.19. Let's see. 1.8,  
9 response to data request 1.8. It would be about page  
10 7 of the URS report.

11 A. 1.8?

12 Q. Yes. Data request 1.8, Enbridge response,  
13 and it's Attachment C.

14 A. Okay. I've got that in front of me.

15 Q. Do you have figure 3-1, the general project  
16 corridor location?

17 A. 3-1.

18 Q. 3-1, second page, do you have that?

19 A. Yes.

20 Q. Now, based on the criteria that you had  
21 some input in formulating, URS came up with this  
22 slightly tilted rectangle that basically goes north

1 and south from Flanagan to Patoka.

2 Do you see that rectangle?

3 A. Yes.

4 Q. And as a professional land manager who gets  
5 involved in right-of-way, I take it you can make  
6 fairly good estimates of acreages and square mileages  
7 involved?

8 A. Yes.

9 Q. Okay. Would it be fair to say there are  
10 many thousands of acres in the tilted rectangle of  
11 figure 3-1?

12 A. 150 by approximately 150 miles square, so  
13 it would be thousands of acres to consider.

14 Q. And so the permutations of potential routes  
15 throughout that rectangle could number in the  
16 thousands?

17 A. Conceivably.

18 Q. And URS, in fact, evaluated 28?

19 A. Yes.

20 Q. And at the point in time that the actual  
21 preferred route has been selected, again, that  
22 designation automatically empowered landowners along

1 that route to have some bargaining leverage, correct?

2 A. Yes.

3 Q. And that's leverage you conferred on them  
4 by selecting the preferred route?

5 A. Yes.

6 Q. It's not a scenario where landowners all  
7 along your preferred route came to you and said we'd  
8 like to talk to you and make this the route, correct?

9 A. I'm not aware of any of that aspect  
10 specifically.

11 Q. And really, you didn't ask for any public  
12 input, so that scenario really would not have  
13 occurred, correct?

14 A. Right.

15 Q. Now, you were present during Mr. Burgess's  
16 testimony today?

17 A. Yes.

18 Q. And do you recall some questions I asked  
19 him about co-location or parallel siting of Enbridge  
20 lines?

21 A. With some other pipelines, yes.

22 Q. Yes.

1                   And do you recall I asked him about  
2 Enbridge Line 14 and whether that had any co-located  
3 or parallel-sited lines in it?

4           A.    For this project?

5           Q.    No. My question right now is do you recall  
6 that I asked him about whether the Spearhead line,  
7 Line 14, had any co-located Enbridge lines in it, in  
8 the right-of-way?

9           A.    Line 14 and Spearhead are two different  
10 companies.

11          Q.    I'm sorry. Well, let's talk about Line 14  
12 then.

13                   Line 14, in fact, that was the...

14                   I do want to ask about Spearhead.

15                   Do you recall my questions to  
16 Mr. Burgess about that subject?

17          A.    I recall you asking a question about  
18 Spearhead paralleling something for 14 miles or  
19 something like that.

20          Q.    And doesn't the URS report indicate that  
21 your preferred route will parallel the Spearhead line  
22 for 14 miles?

1           A.    Approximately that.

2           Q.    So when Mr. Burgess told me there was no  
3 such plan, he was not correct?

4           A.    I would have to see that question  
5 specifically to answer that question.

6           Q.    All right. That's fine.

7                         But you could confirm that as part of  
8 your preferred route, you've actually attempted to  
9 co-locate at least 14 miles of the Flanagan to Patoka  
10 route in an existing right-of-way?

11          A.    No.

12          Q.    No?

13          A.    Clarification on that. What we are doing  
14 is we are paralleling that existing pipeline  
15 right-of-way for about 14 miles. If you're referring  
16 to that as a co-locating, we're paralleling and  
17 abutting that existing system.

18          Q.    Well, let me ask you specifically.

19                         Do the legal instruments that grant  
20 property rights for that Spearhead line include and  
21 encompass a right to parallel a line within the  
22 right-of-way?

1 I don't want to complicate it. Did  
2 you have to buy more right-of-way or can you use what  
3 you had?

4 A. We had to buy more right-of-way because  
5 that is a separate entity with its own rights to that  
6 portion of that right-of-way, so, yes, we are  
7 requiring a stand-alone right-of-way for this  
8 project.

9 Q. So the entity that operates Spearhead is a  
10 different entity than the applicant in this docket?

11 A. It's a different owner, different Enbridge  
12 entity, yes.

13 Q. It's a different Enbridge entity.

14 A. Yes.

15 Q. That owns and operates Spearhead?

16 A. Right.

17 Q. What entity is that?

18 A. I believe it's Enbridge Pipelines Spearhead  
19 L. L. C. and folks.

20 Q. Would that be an affiliate of the applicant  
21 in this docket?

22 A. I'm not sure how that affiliation would

1 occur.

2 Q. So can you tell me whether you've  
3 investigated to see if the applicant here could  
4 negotiate for co-location rights within the existing  
5 Spearhead line?

6 A. Yes.

7 Q. Apparently the negotiations succeeded?

8 A. Well, we've succeeded in the point that  
9 we're going to be paralleling and abutting that  
10 pipeline system.

11 Q. Well, the applicant here is not asking for  
12 eminent domain authority against the Enbridge  
13 Spearhead entity, is it?

14 A. No.

15 Q. So is it fair to infer then that the  
16 right-of-way in which the Spearhead line lays allows  
17 expansion or paralleling with a second line?

18 MR. AMBROSE: I think that mischaracterizes  
19 what Mr. Aller was testifying to.

20 MR. HELMHOLZ: I didn't characterize anything,  
21 Your Honor. I asked a question.

22 MR. AMBROSE: By using paralleling and

1 co-location as...

2 MR. HELMHOLZ: If the witness doesn't  
3 understand paralleling and co-location, I think he  
4 can tell me.

5 JUDGE JONES: Don't talk at the same time.

6 MR. HELMHOLZ: Sorry, Your Honor.

7 MR. AMBROSE: If I can finish my objection.

8 He's mischaracterizing the testimony  
9 by equating co-location and paralleling line.

10 MR. HELMHOLZ: I think the witness seems  
11 perfectly capable of telling me if he doesn't  
12 understand my question or the phraseology is  
13 improper.

14 JUDGE JONES: Could we have the question read  
15 back, Ms. Reporter?

16 (The reporter read back the last  
17 question.)

18 JUDGE JONES: That seems like an appropriate  
19 question.

20 If the witness understands it, he can  
21 answer.

22 THE WITNESS: I'll maybe give an explanation

1 that might help explain the situation there.

2 That existing system, the Spearhead  
3 system, has its own right-of-way, and the  
4 right-of-way is designed where it can have a pipe or  
5 it may allow more pipes in there for that company  
6 entity.

7 That entity needs to protect the  
8 integrity of its pipeline from encroachments from  
9 outside the boundaries and from other utilities.

10 Thus, for this project, we are  
11 requesting underlying landowners in adjacent parallel  
12 stand-alone right-of-way for this pipeline so it also  
13 can protect the integrity of the pipeline from  
14 encroachments.

15 Q. BY MR. HELMHOLZ: And so the Spearhead  
16 Enbridge entity does not have the legal authority to  
17 unilaterally grant additional use of the easement to  
18 the applicant in this docket?

19 A. I would have to again see the exact  
20 easement documents and probably confer to our legal  
21 attorneys for having an interpretation of the  
22 easement language.

1 Q. I'm not trying to be difficult. I just  
2 want to know, do you have to go out and buy it on the  
3 market or can you cooperate with your affiliate to  
4 exercise whatever rights it may have to co-locate or  
5 lay an additional line in that easement?

6 A. We have in this project made the  
7 application to go out and, as you say, buy it on the  
8 market.

9 Q. All right. So the 14 miles of parallel  
10 constitutes property you will seek to purchase or  
11 condemn if you're granted the authority?

12 A. Paralleling and abutting, yes.

13 Q. So paralleling is just a coincidence then?

14 A. It was part of the route analysis, the  
15 alternate route analysis that did all 28 routes.

16 Q. But you will deal at arm's length with the  
17 Enbridge Spearhead entity?

18 A. Yes.

19 Q. Meaning you will actually seek and exercise  
20 eminent domain against your affiliate if you deem it  
21 necessary?

22 A. No.

1 Q. No?

2 A. No. Because as I've explained, the  
3 easement that we are acquiring in this project is  
4 outside of their easement. It's abutting it, outside  
5 and parallel to it. It's not overlapping.

6 Q. So the affiliate has no ownership property  
7 interest whatsoever in your preferred route that  
8 parallels that line?

9 A. Right.

10 Q. Thank you.

11 Now, again, I'd like to draw you out a  
12 little bit on the scenario that if the Commission,  
13 the Illinois Commerce Commission denies the  
14 application for eminent domain authority, do you have  
15 any understanding as to whether Enbridge actually  
16 intends to build the Flanagan to Patoka extension  
17 anyway?

18 A. My understanding is we'd have to reevaluate  
19 everything and have our shippers reevaluate and see  
20 if it's a viable project.

21 Q. Will the refiners market for crude product  
22 change if the Commission denies eminent domain

1 authority in this proceeding?

2 A. That's outside of my knowledge and scope.

3 Q. Do you have any reason to believe the  
4 refiners intake capacity would be impacted by whether  
5 or not Enbridge obtains eminent domain in this  
6 docket?

7 A. I don't go into that type of detail outside  
8 of my discipline. I'm sorry. I'm not aware of it  
9 and not knowledgeable so I can't speak on that.

10 Q. Do you want the Commission to agree that  
11 there is a public interest in preventing the last  
12 landowner designated in your preferred route from  
13 refusing to deal?

14 MR. AMBROSE: Well, I'll make my objection  
15 again about asking for a legal opinion from this  
16 witness if that's what he's trying to get.

17 JUDGE JONES: Any response?

18 MR. HELMHOLZ: I don't understand the  
19 objection, Your Honor. I don't hear the grounds. It  
20 sounded to me like a discourse connected to an  
21 objection.

22 MR. AMBROSE: The question seemed to be are you

1 asking the Commission to make a particular legal  
2 determination.

3 JUDGE JONES: Anything further?

4 MR. HELMHOLZ: Your Honor, this witness's  
5 testimony purports to tell the Commission about a  
6 scenario or hypothetical where a holdout landowner  
7 could actually, by refusing to deal, have some impact  
8 on Enbridge's decision to construct this line, and so  
9 he has raised the subject.

10 This is cross-examination about the  
11 nature of his testimony, why he believes that, how he  
12 came to those conclusions.

13 If he's not trying to influence the  
14 Commission, why is he testifying?

15 JUDGE JONES: Could we have the question read  
16 back, please?

17 (The reporter read back the last  
18 question.)

19 MR. AMBROSE: You know, if that question --

20 JUDGE JONES: Huh-uh, you had your shot.

21 MR. AMBROSE: If that question is asking are we  
22 asking the Commission to grant the power of eminent

1 domain because there's the possibility that there  
2 would be holdouts in the last mile or otherwise, the  
3 answer to that is, yes, that's what our application  
4 is.

5 MR. HELMHOLZ: I don't intend to examine  
6 Mr. Ambrose today, Your Honor.

7 JUDGE JONES: Could we have the question read  
8 back, please?

9 (The reporter read back the last  
10 question.)

11 JUDGE JONES: The objection is overruled.

12 Answer the question to the extent you  
13 understand it. You do not need to give a legal  
14 opinion.

15 THE WITNESS: Could you read it one more time  
16 then, please?

17 (The reporter reread the last  
18 question.)

19 THE WITNESS: The answer would be yes.

20 Q. BY MR. HELMHOLZ: And where is the interest  
21 of Illinois citizens protected by that yes answer?

22 A. For the public need of the product, and if

1 we can't secure the contiguous right-of-way from  
2 point A to point B, if there is one holdout, we  
3 cannot sell that pipe to make the product available  
4 for the shippers and refiners.

5 Q. All right. So under that scenario then,  
6 the pipeline is not constructed, will Canadian  
7 producers cut back on their production?

8 A. That's outside my field. I couldn't tell  
9 you.

10 Q. All right. So you're not telling the  
11 Commission that any less Canadian oil will cross the  
12 border into the United States if the Commission  
13 declines eminent domain in this project?

14 A. I guess that's what I'm saying.

15 Q. And you're not saying there will be any  
16 shortages of crude oil feedstock deliveries to any  
17 Illinois-sited refineries if the Commission declines  
18 eminent domain in this matter, correct?

19 A. That again is outside my scope.

20 Q. All right. So your answer would be no to  
21 my question?

22 JUDGE JONES: He answered the question. Go on

1 to the next one.

2 Q. On page 13 of Exhibit 2A which is your  
3 reply testimony, beginning on line 277, this  
4 statement appears, and I'd like to read it for the  
5 record, please.

6 "There is no guarantee that just  
7 rerouting will not produce more such blockade  
8 opportunities, thus, driving up the costs evermore  
9 until the point of impossibility is reached."

10 Did I read your testimony correctly?

11 A. I couldn't catch up with you. What page is  
12 that on?

13 Q. That is on page 13 of Enbridge Exhibit 2A  
14 which is your reply testimony, February 4, 2008.

15 A. And the line?

16 Q. The segment I read was on lines 277 to 279.

17 A. Yes.

18 Q. Well, the point of impossibility, is that  
19 an economic calculation then?

20 A. Economics, yes, and sometimes it could just  
21 result in a flat out no regardless of the dollar  
22 amounts.

1 Q. So it would be also technical because  
2 zigzags can be functionally problematic?

3 A. Correct.

4 Q. Even if they might be cost effective?

5 A. Correct.

6 Q. So you have configuration issues as well as  
7 cost issues in the event you do not succeed in  
8 obtaining eminent domain?

9 A. Right.

10 Q. Well, let's talk about the cost issues for  
11 a second.

12 Has someone in your company advised  
13 you on how to calculate the land costs that would  
14 lead to the so-called point of impossibility you've  
15 referred to in your testimony?

16 A. No, we haven't calculated that.

17 Q. Now, this phrase blockade opportunities,  
18 who created the blockade opportunity that you refer  
19 to in that sentence?

20 A. Well, if there was not the certification  
21 and the right of eminent domain, then the blockade  
22 opportunity is created by the project.

1                    However, the reason we're making  
2 application is to keep that playing field level and  
3 to avoid the opportunities for such blockades.

4            Q.    Now, you're in the business of transporting  
5 crude oil for compensation, correct?

6            A.    Yes.

7            Q.    And you don't sell refined products in the  
8 State of Illinois?

9            A.    No, we do not.

10           Q.    I want to be very clear on this, and I'm  
11 anticipating Mr. Ambrose's asked and answered  
12 objection, but I do think it's an important point.

13                    Will Canadian crude oil be stranded if  
14 Enbridge elects not to construct this Flanagan to  
15 Patoka segment?

16            A.    Again, that's out of my scope, my  
17 knowledge.

18            Q.    So you cannot say that Canadian oil will be  
19 stranded if this project --

20            A.    I can't answer that.

21            Q.    Please.

22                    -- if this project does not get built?

1 JUDGE JONES: That question was just answered.

2 MR. HELMHOLZ: I just want to make sure it's  
3 clear, Your Honor.

4 Q. Now, I believe you testified that you  
5 involve land management and you also have some  
6 supervisory involvement with land acquisition  
7 professionals or agents of the company?

8 A. Yes.

9 Q. And you have been involved in Illinois land  
10 acquisitions in connection with other projects?

11 A. Yes.

12 Q. And are you certified or licensed in any  
13 professional category in the State of Illinois?

14 A. No.

15 Q. You're not a land surveyor?

16 A. Correct, I'm not.

17 Q. Have you sought any legal input or advice  
18 on how to search Illinois recorder of deeds records  
19 to determine exactly what sort of property rights or  
20 interests might lie in the path of your preferred  
21 route?

22 MR. AMBROSE: Well, I won't object to a yes or

1 no answer to that question, but I will object to  
2 disclosing any legal advice received by Mr. Aller if  
3 there was such a legal advice.

4 JUDGE JONES: Could I have the question back,  
5 please?

6 (The reporter read back the last  
7 question.)

8 JUDGE JONES: That question is foundational or  
9 preliminary in nature. I don't know where it would  
10 go, but as worded, it is a proper question, so  
11 objection overruled.

12 Please answer.

13 THE WITNESS: We have sought confirmation that  
14 we were proceeding with our jobs appropriately.

15 Q. BY MR. HELMHOLZ: You've made some effort  
16 to identify property interests so that you could  
17 contact the owners of the property interests,  
18 correct?

19 A. Yes.

20 Q. And those property interests, some of them  
21 it appears that you gleaned from examining property  
22 tax records, is that correct?

1           A.   Initially.

2           Q.   And were there other techniques?

3           A.   Yes.  I'll extrapolate that a little bit.  
4   I'd say initially because our initial routing, our  
5   initial contacts are based off the tax records.

6                    As we get farther into the project and  
7   more detail, then, yes, our staff does do title  
8   searches to try to ascertain the actual landowners  
9   via the recorded documents.

10          Q.   And so you have professional title  
11   searchers or right-of-way agents who actually  
12   physically go into county courthouses, go to the  
13   recorder of deeds or similar agency and actually ask  
14   for access to certain land records so that they can  
15   examine them?

16          A.   Correct.

17          Q.   Have you ever instructed anyone to go into  
18   Shelby County for example to ask for coal severance  
19   deeds?

20          A.   I don't recall that specifically.

21                    What we do search for are actually the  
22   owners, you know, the conveyance of warranty deeds or

1 quit claim deeds, etc., as well as easements for  
2 utilities, roads, power lines, etc., and from time to  
3 time, if they are running into other severances, they  
4 should be able to pick those up.

5 Q. In fact, in this case, you did not discover  
6 any coal severance instruments prior to either  
7 designating your preferred route or filing the  
8 application in this docket, correct?

9 A. I would say we probably did not. I'm not  
10 sure if we did. You know, we have many, many pieces  
11 of land we're on. They may have found some on  
12 certain ones that are not knowledgeable of every  
13 single tract.

14 Q. You're familiar with the concept of severed  
15 mineral estates in Illinois?

16 A. I'm becoming familiar with it, yes.

17 Q. And it's your understanding that those are  
18 sold and conveyed by conveyance instruments that are  
19 the same in form and substance as any kind of deed or  
20 right-of-way instrument?

21 A. I'm becoming educated on that.

22 Q. And those are placed of record with the

1 recorders of deeds?

2 A. Yes.

3 Q. And have you gained any understanding to  
4 the effect that a severed estate in coal actually  
5 becomes the dominant estate to the surface, and the  
6 surface estate becomes the servient estate under  
7 Illinois law?

8 A. To me, that would be a legal question. I'd  
9 have to seek counsel on that.

10 Q. Of course, land and right-of-way agents  
11 need to be cognizant of legal principles of that  
12 nature, do they not?

13 A. Cognizant yes.

14 Q. Because it's their job to anticipate land  
15 use conflicts prior to determining preferred routes,  
16 correct?

17 A. That would be a component of that process.

18 Q. Certainly URS would want to know if there  
19 were a federal coal license granted somewhere in the  
20 path of the preferred route, correct?

21 A. That would be beneficial, yes.

22 Q. It would be beneficial because you would

1 then be able to anticipate the potential conflict  
2 with the property interest and address it up front  
3 prior to seeking eminent domain authority from the  
4 Commission?

5 A. During the process, yes.

6 Q. Would you agree it's better generally to  
7 flush out these issues before you file the  
8 application than after?

9 A. I think the whole process; you know, as  
10 we're going through establishing our route, beginning  
11 contacts to all landowners, having public meetings  
12 asking for various types of inputs from landowners  
13 and other stakeholders of interest, trying to get  
14 that information.

15 Q. In the situation involving these severed  
16 coal estates, if, in fact, that coal estate also  
17 carried with it and included the right to subside the  
18 surface without liability for damages, could that be  
19 an important factor in planning your route or  
20 something that URS might have taken into  
21 consideration?

22 A. That would be needed to take into

1 consideration if that was a land right of public  
2 record, yes.

3 Q. And your failure to discover that is really  
4 an omission, is it not?

5 MR. AMBROSE: Well, I object. There is no  
6 evidence, no fact in evidence in this case that says  
7 rights exist on any property involved here.

8 MR. HELMHOLZ: Well, you know...

9 MR. AMBROSE: Counsel asserts it, but there's  
10 no such evidence. He's assuming facts that are not  
11 in evidence.

12 MR. HELMHOLZ: Your Honor, this assuming facts  
13 not in evidence, I'm not aware that the intervenors  
14 have a burden of proof or that they have any  
15 obligation to go forward with any evidence.

16 Where is this coming from? I'm not  
17 familiar with this principle.

18 MR. AMBROSE: If he's asking a question based  
19 on a fact that he asserts, either he's going to prove  
20 it up -- and he hasn't offered any evidence in this  
21 case that will prove that up.

22 MR. HELMHOLZ: Well, we may need to ask leave

1 to do that if that's Mr. Ambrose's position, but I  
2 believe the witness has acknowledged he's familiar  
3 with these concepts, these estates, and, you know, he  
4 knows what's going on here.

5 MR. AMBROSE: He's discussing the general  
6 concepts, but now he seems to be implying this matter  
7 as a fact, this particular piece of land.

8 JUDGE JONES: All right. Thank you for the  
9 argument.

10 I think the question did assume  
11 certain facts. Once the question builds in that  
12 assumption of certain facts, then whether those facts  
13 are in evidence, headed for the evidence, becomes  
14 relevant to the review of that question, and I  
15 believe that question did assume that fact, so the  
16 objection is sustained.

17 If you want to reword the question,  
18 feel free.

19 MR. HELMHOLZ: Your Honor, I don't want to  
20 prolong it, but might I have Madame Reporter read the  
21 question back?

22 JUDGE JONES: For what purpose?

1 MR. HELMHOLZ: Because I forgot it, and I want  
2 to see if I can cure your concern.

3 JUDGE JONES: Fair enough.

4 Could you read it back, Madame  
5 Reporter?

6 (The reporter read back the last  
7 question.)

8 Q. BY MR. HELMHOLZ: Well, in the course of  
9 your land and right-of-way agent's actual  
10 investigation into the property rights and interest  
11 that might exist along this line, did they, in fact,  
12 uncover or bring to your attention the existence of  
13 any severed coal estates in the preferred route path?

14 A. Not specifically, no, they have not.

15 Q. Well, did they in any other fashion that  
16 wasn't specific bring that to your attention?

17 A. Only from some of our general meetings and  
18 some contacts with your client's company that there  
19 may be some interest out there as such.

20 Q. And so then you're saying the source of  
21 that information came from outside Enbridge or your  
22 staff?

1           A.    Yes, pointing out the fact that there may  
2   be some type of interest.

3           Q.    Did that cause you then to go back to the  
4   courthouses to investigate whether, in fact, severed  
5   coal estates existed in the path of your preferred  
6   path?

7           A.    I think what we tried to arrange with your  
8   clients was providing them with an electronic route,  
9   an exact route where our pipeline was so we could  
10  work with them to pinpoint it down to specific lands  
11  that you might have interest in.

12                           And to the best of my knowledge, we  
13  haven't been able to get any information back as to  
14  specific lands to look for and try to work with you  
15  folks.

16           Q.    So you believe that Enbridge provided  
17  Shelby Coal Holdings or its affiliates with some  
18  actual route coordinates, very specific route  
19  coordinates on the preferred route?

20           A.    Yes, that's my belief.

21           Q.    And the purpose of providing those route  
22  coordinates to Shelby Coal Holdings was to elicit a

1 response from Shelby as to where their coal holdings  
2 might actually lie?

3 A. To see if we had overlapping interest.

4 Q. And is it your testimony that Shelby Coal  
5 Holdings did not provide information to you about the  
6 location of their coal reserves?

7 A. To the best of my knowledge, they didn't  
8 get back to us with those specific sites.

9 Q. Do you know Mr. Joel Kanvik?

10 A. Yes.

11 Q. And do you interact with Mr. Kanvik in the  
12 course of this proceeding?

13 A. Yes.

14 Q. Have you ever asked him if I provided him  
15 with a reserve map of Shelby Coal Holdings coal  
16 reserves?

17 A. I have not asked him that, no.

18 Q. Has he informed you or advised you in any  
19 fashion that he possessed such a map?

20 A. I think we have general maps of that, yes.

21 Q. You think you have general maps of my  
22 client's coal holdings as they relate to the surface?

1           A. I believe the general maps that we're both  
2 speaking of, we were asking to try to get specific  
3 overlays with our line exactly on them so we could  
4 continue to talk about what implications there may or  
5 may not be.

6           Q. And, in fact, didn't Shelby furnish a map  
7 that shows the coal reserves in exact relation to the  
8 overlying preferred route?

9           A. I personally haven't seen that map, but I  
10 think where we were wanting to go with the  
11 information was to get right down to actual specific  
12 land descriptions so we could take things farther  
13 with it.

14          Q. Well, how many coal severance deeds with  
15 land descriptions do you think might underlie 33  
16 miles of a preferred route?

17          A. I couldn't guess.

18          Q. At 80 to 120 acres per instrument, would  
19 you agree it would be a very large number?

20          A. It could be.

21          Q. And it couldn't really be assembled in any  
22 sort of quick fashion?

1           A.    Not in a quick fashion.

2           Q.    Now, you understand that there is a  
3    technique in use in Illinois coal mines known as the  
4    longwall technique?

5           A.    I've heard of that.

6           Q.    And you understand that that results in  
7    authorized and planned subsidence of the overlying  
8    surface or overburden when the coal miner uses that  
9    technique?

10          A.    My understanding of that is only what I've  
11    been hearing you discuss on that.

12          Q.    If, in fact, that is the case, that could  
13    present a very significant conflict with your  
14    purported or proposed use of the surface, correct?

15          A.    That I would also refer to our legal  
16    counsel for getting that opinion as to that.

17          Q.    That's not the sort of land use conflict  
18    that you would have responsibility for identifying  
19    and dealing with?

20          A.    We could identify it and bring it to the  
21    counsel for discussion.

22          MR. HELMHOLZ:   Just a moment, Your Honor.

1 (Pause)

2 MR. HELMHOLZ: That's all I have for the  
3 witness, Your Honor.

4 JUDGE JONES: Okay. Thank you, Mr. Helmholtz.  
5 Mr. Turner, Mr. Brent, Dr. Pliura?

6 MS. TAFT: Barbara Taft on behalf of the Pliura  
7 intervenors, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. TAFT:

10 Q. Mr. Aller, are you an employee of Enbridge  
11 Pipelines (Illinois) L.L.C.?

12 A. No.

13 Q. But you've been tasked with the  
14 responsibility for overseeing the acquisition of the  
15 right-of-way for this project?

16 A. Yes. I'm an employee of Enbridge  
17 Pipelines, Enbridge Services.

18 Q. Do you remember who you're employed by?

19 A. Yes. One of our entities supplies all the  
20 labor to all of our operating units and our projects.

21 Q. Did you agree with Mr. Burgess's testimony  
22 that the URS corporation analysis report was the sole

1 basis for the initial selection of the preferred  
2 route?

3 A. It was used to bring us to the final  
4 selection of what would be our preferred route if  
5 that's what you're asking.

6 Q. That is what I'm asking.

7 A. Okay.

8 Q. And is it true that that preferred route  
9 was selected before there was any input from  
10 landowners or local government officials?

11 A. As I spoke a little bit before, in one  
12 sense it is, but historical information and  
13 experience that we have, we take some of the broader  
14 brush concerns that landowners, public agencies,  
15 etc., concerns they would have and try to build that  
16 into the whole selection process to nail down or  
17 narrow down to a preferred route before we start  
18 seeking all the input from all the agencies and  
19 landowners.

20 Q. I'd like to call your attention to your  
21 direct testimony, Exhibit 2, page 4. I'll be  
22 starting at line 83.

1           A.    Did you say direct testimony?

2           Q.    It should be labeled Enbridge Exhibit 2, so  
3 it should be your direct testimony.

4           A.    Oh, I'm sorry.

5           Q.    That's okay.   Page 4.

6           A.    Okay.

7           Q.    Beginning at line 83, it states,  
8 "Environmental and land use databases were consulted,  
9 and field investigations and site inspections were  
10 conducted."

11                        That was not done before you filed  
12 this application, is that correct?

13           A.    I'm not sure of the timing on that, the  
14 filing versus these type of investigations.

15           Q.    All right.   And it goes on to say as well,  
16 "Enbridge representatives met with state level  
17 officials and authorities, landowners, and other  
18 interested parties to gain knowledge and input and  
19 continue to do so."

20                        Other than the last four words,  
21 "continue to do so," none of that action was taken  
22 before this application was filed, correct?

1           A.    Again, I'm not sure of the timing of filing  
2 of the application versus when we were starting to  
3 consult with agencies and landowners.

4           Q.    And, in fact, URS didn't undertake  
5 consulting with any local agencies, did they?

6           A.    Enbridge would've.

7           Q.    Well, let me have you turn to the URS  
8 report. It's Exhibit C of the data request  
9 responses. It's going to be actually page 2, not  
10 Roman numeral II but numerical 2, the very last  
11 paragraph.

12          A.    Roman numeral II?

13          Q.    No, numerical number 2.

14          A.    Okay.

15          Q.    The very last paragraph. It starts out,  
16 "Due to the confidential nature of the proposed  
17 project, communication with government regulatory  
18 agencies were not conducted."

19                    Were you aware of that?

20          A.    I think that would have been during the  
21 preliminary narrowing down of the study. They would  
22 have been using government databases, publicly

1 available government databases.

2 Q. Now, isn't the genesis for the selected or  
3 the preferred route the recommendation that Enbridge  
4 acquire the easement rights that were currently owned  
5 by the Central Illinois Pipeline Company, CIPC?

6 A. Could I have that again, please?

7 Q. Certainly.

8 Wasn't the preferred route or primary  
9 component of the preferred route a proposition that  
10 Enbridge would purchase in some fashion the easement  
11 currently owned by the Central Illinois Pipeline  
12 Company?

13 A. Yes. I believe that was one of the factors  
14 that weighed into the selection of that as being a  
15 preferred route.

16 Q. And in your same exhibit, if you turn to  
17 page roman numeral I and look at the last paragraph,  
18 about midway through it, it describes the purchase of  
19 that right-of-way from Central Illinois Pipeline  
20 Company, and the report states, "Through this  
21 approach, avoidance of the Illinois Commerce  
22 Commission ICC certificate of need process and

1 associated potential land condemnations is  
2 maximized. "

3                   Isn't that the recommendation that  
4 Enbridge decided to go with?

5           A. Yes. The major routing of that system is  
6 along that preferred route.

7           Q. And by merging with CIPC and obtaining that  
8 easement, Enbridge has accomplished the avoidance of  
9 having to go through this entire process. Isn't that  
10 correct?

11          A. Not entirely.

12          Q. Well, let's see how much of that they have  
13 avoided.

14                   Isn't it your testimony that that  
15 right-of-way gives Enbridge the right, or they've  
16 acquired the right-of-way of 80 percent of the 170  
17 miles that are needed for this project?

18          A. The consents for surveys, is that what  
19 you're saying, 80 percent?

20          Q. No. I'm sorry. Let me rephrase that.

21                   In acquiring this easement, is it not  
22 true that Enbridge has represented to this body that

1 they have acquired 80 percent of the right-of-way  
2 requirements that they're in need of for this project  
3 simply by obtaining this easement?

4 A. I think we were -- I'm saying that by  
5 acquiring this existing system, that helps do the  
6 evaluation for a good and proper and useful best  
7 route.

8 We talk about co-locating and  
9 paralleling existing systems. This allowed us to do  
10 that, to weigh that into the factors for making the  
11 decision regarding environmental features, population  
12 centers, etc.

13 So along that existing route, we still  
14 have areas of, many areas of deviation where we had  
15 to deviate around population centers, single family  
16 homes or environmental features. So the acquisition  
17 of that system helped facilitate finding a preferred  
18 route.

19 Q. Well, let me turn your attention to the  
20 application that was filed in this case. There  
21 should be a copy up there, and I'll have you turn to  
22 page 24.

1                   If you'll look under paragraph 21  
2 about midway through the page, it states, when it's  
3 discussing Enbridge's efforts to have good faith  
4 negotiations with the landowners, it says, "To that  
5 end, Enbridge has already paved a majority of the  
6 route via the CIPC right-of-way and has instituted  
7 for the extension project the land acquisition  
8 program identical and found adequate and acceptable  
9 in Docket 06-0470."

10                   Do you see that?

11           A.    Yes.

12           Q.    And, in fact, you've echoed that in your  
13 own testimony that you've presented to this  
14 Commission.

15                   If you'd go back to Exhibit 2, your  
16 direct testimony, page 5.

17           A.    Okay.

18           Q.    Beginning at line 90, it says, "After  
19 investigation, Enbridge decided to acquire PIPC and  
20 the right-of-way, thus establishing the basis for  
21 about 120 miles of the needed 170 plus/minus miles of  
22 the right-of-way for the expansion project."

1                   Isn't that correct?

2           A.    That's what I've said there, yes, and where  
3    I say "establishing the basis for about 120 miles,"  
4    that's approximately the length of that system, but,  
5    as I was saying, we needed to evaluate that system  
6    and the appropriateness to follow the whole 120 miles  
7    which we've deemed would not be the most preferred  
8    route, so we have some variations and deviations from  
9    that.

10          Q.    And have any of these deviations from that  
11    preferred route, have you encountered any holdouts?

12          A.    Yes.

13          Q.    And who would you identify as a holdout?

14          A.    People that are at this time not being  
15    willing to negotiate with us or to hear our  
16    presentations.

17          Q.    So no one has declined an offer that's been  
18    presented. They just haven't yet been willing to  
19    enter into negotiations with you, correct?

20          A.    Well, some people have actually said, no,  
21    we don't want this pipeline here. Go away.

22          Q.    And have you then looked for alternative

1 routes at this point?

2 A. Again, I can't say on any specific point if  
3 we ran into that situation that we then started  
4 looking for a reroute, but there are several  
5 reroutes, deviations along that whole pipeline  
6 system.

7 Q. Now, you presented quite a bit of evidence  
8 through your direct and your reply and surrebuttal  
9 testimony talking about the possibility of holdouts  
10 and the speculation of holdouts, but you have not yet  
11 identified any single property owner or property  
12 tract owner who you would consider a holdout that  
13 would make this project impossible for Enbridge,  
14 isn't that correct?

15 A. Well, I think partly in the process as a  
16 whole, we haven't gotten to that point because people  
17 are hanging back and waiting to negotiate with us or  
18 to tell us, no, we're not going to let you come  
19 across her at any odds.

20 Q. So currently there isn't any evidence in  
21 the record whatsoever of an existing holdout that  
22 would make this project impossible for Enbridge, is

1 that correct?

2 A. I'm trying to think if I can think of any  
3 specific.

4 I can't think of a specific one at  
5 this time.

6 Q. You've had the opportunity to give direct  
7 testimony, reply testimony, surrebuttal testimony,  
8 and in those three offerings, there's not anybody or  
9 any party identified that you would consider a  
10 holdout that would terminate this project for  
11 Enbridge, correct?

12 A. Not in the testimony, correct.

13 Q. Now, in your direct testimony, you've  
14 outlined a course of action that Enbridge would  
15 undertake negotiating with landowners for easement  
16 rights which would include modifications to the route  
17 to address any landowner concerns or preferences, is  
18 that correct?

19 A. Yes.

20 Q. And do you agree with Mr. Burgess's  
21 testimony that to date, there has only been minor  
22 modifications to that route?

1 A. To our preferred route?

2 Q. Correct.

3 A. Yes, minor.

4 Q. All right. So if you'll turn to Exhibit 2,  
5 page 7.

6 A. Okay.

7 Q. Beginning at line 133, it begins, "Through  
8 these initiatives, i.e., negotiations or  
9 communications with landowners, we have made a number  
10 of significant and numerous minor refinements and  
11 adjustments to the route."

12 That's not completely accurate, is it?  
13 You've only made some minor adjustments to the route,  
14 correct?

15 A. I'd have to check to see at what point this  
16 was made.

17 Q. Now, you've indicated that your  
18 negotiations with landowners is ongoing?

19 A. Yes.

20 Q. And I believe you've testified in your  
21 direct testimony that you believe the project was  
22 keeping apace?

1           A.    At the time we were making my filing here,  
2    yes.

3                        It has slowed substantially.

4           Q.    And through various negotiations or  
5    communications with landowners, you were making minor  
6    adjustments to the route, correct?

7           A.    Yes, we were.

8           Q.    There isn't any evidence in the record that  
9    those continued efforts by Enbridge would not result  
10   in getting full property assemblage for the pipeline  
11   to be constructed without eminent domain, is that  
12   correct?

13          A.    Could you rephrase that?

14          Q.    Sure.

15                        So far the process that Enbridge has  
16   endeavored in is working, correct?

17          A.    Actually, we're not making very much  
18   process because people are in a holding pattern that  
19   has slowed tremendously.

20          Q.    Up till the point where people were in a  
21   holding pattern, in the conversations, communications  
22   you've had with landowners, you were able to work out

1 route variations on their property, etc., to meet  
2 whatever their needs may be?

3 A. With the landowners that were cooperating,  
4 yes.

5 Q. Have you submitted any updates to the staff  
6 in your reply testimony or surrebuttal testimony  
7 which I believe was filed May 21st of any  
8 difficulties in moving forward in that progress?

9 Has any of that evidence been  
10 submitted to this tribunal yet?

11 A. I'm not sure if there have been specific  
12 details like that.

13 Q. Now, you cited in your direct testimony and  
14 I believe in your reply testimony as well the  
15 Lakehead ICC case as an example of how eminent domain  
16 is conducive to good faith negotiations in acquiring  
17 right-of-way, is that correct?

18 A. Yes.

19 Q. Isn't it true that the Lakehead Pipeline  
20 was constructed without the necessity of eminent  
21 domain?

22 A. It was, and we learned basically from that

1 project it's not the way you'd want to do it. It's  
2 not the right way to build a project.

3 Q. And is that because it actually cost  
4 Enbridge or Lakehead a little more money to get it  
5 done?

6 A. Not only increase in cost but increase in  
7 efficiencies for owning and operating a pipeline.

8 Q. Did you not also testify that Lakehead  
9 decided to spend over three million dollars just to  
10 obtain a shorter route through a water reserve?

11 A. I think I do have some testimony in here  
12 that has part of what you're talking about in it, but  
13 I don't believe it was -- I don't think you're  
14 referring to a water reserve. It was county forest I  
15 think is what you're referring to for three million  
16 dollars.

17 Q. Right.

18 A. I believe there's something in there about  
19 a county forested land that was set aside for the  
20 public's use, and we were changing land use and their  
21 county park system planning.

22 And also in that case, even if there

1 was an eminent domain certification, we could not  
2 have used it across county land. We couldn't use the  
3 system.

4 Q. But in picking that route, in choosing to  
5 go that route, Lakehead made the market decision to  
6 pay the extra fee or the extra price to do that for  
7 three point some million dollars, is that correct?

8 MR. AMBROSE: Well, I will object to the  
9 assumption of a fact not in evidence that it was an  
10 extra price, that there was somehow an increase in  
11 the value of that property.

12 The value of the property is what was  
13 paid for. There's no evidence here as a basis for  
14 that question that that was an increase over the  
15 value of that property.

16 MS. TAFT: Well, let me ask the question this  
17 way.

18 Q. Isn't it true that Lakehead was willing to  
19 pay three million dollars to traverse the Kane County  
20 Forest Preserve because it was a shorter route to  
21 take regardless of the price?

22 MR. AMBROSE: Let me object as well to the

1 relevance of this line of questioning.

2                   What we paid for some other property  
3 in some other circumstance is not relevant to the  
4 application that we have here.

5           MS. TAFT: With all due respect to Mr. Ambrose,  
6 Your Honor, I believe there has been testimony from  
7 this witness that the need for eminent domain arises  
8 because of the holdouts who may have higher  
9 expectations of the value for their property than  
10 Enbridge or the applicant would be willing to pay.

11                   So I think what Enbridge is willing to  
12 pay under what circumstances is relevant to these  
13 proceedings.

14           JUDGE JONES: Thank you.

15                   I think there has been a certain  
16 amount of door opening on this issue by the witness's  
17 testimony, so I think the question is proper. We'll  
18 see where the line of questioning goes. If there are  
19 other objections, we'll deal with them.

20                   You need the question read back?

21           THE WITNESS: Yes.

22           JUDGE JONES: Ms. Reporter?

1 (The reporter read back the last  
2 question.)

3 JUDGE JONES: If you understand.

4 THE WITNESS: Actually, I believe the route  
5 going through and across the Kane County forestland  
6 was longer, and one of the reasons we did go that way  
7 was because we didn't have the certification to go  
8 across private property across the shorter route  
9 where those people were trying to negotiate for  
10 dollar amounts which we couldn't work with.

11 Q. BY MS. TAFT: Well, let me direct your  
12 attention to Enbridge Exhibit 2A, which is your reply  
13 testimony, at page 15.

14 A. 15?

15 Q. 15. Beginning at line 336.

16 In the context of the discussion of  
17 purchasing the right-of-way across the Kane County  
18 Forest Preserve, you testified, "Obviously this is a  
19 unique situation and very valuable to us as a way to  
20 shorten the route significantly."

21 So, in fact, going through the Kane  
22 County Forest Preserve shortened the route for

1 Lakehead, did it not?

2 A. Well, I may have to clarify or perhaps  
3 backtrack a little bit on the statement I made.

4 The route through that entire area as  
5 I'm recalling was rerouted to go through the Kane  
6 County forestland, and while, in essence, yes, going  
7 through Kane County forestland was going to shorten  
8 it somewhat, the entire route we had to go through  
9 there was lengthened because of the lack of  
10 certification.

11 I hope that clarified it.

12 Q. Isn't it true that the public interest is  
13 met in the construction of that pipeline without  
14 eminent domain?

15 MR. AMBROSE: I object. I think she's asking  
16 him to make a legal determination, and I guess it's  
17 about the Lakehead line in that question.

18 MS. TAFT: That's correct.

19 JUDGE JONES: Any response?

20 MS. TAFT: Yes, Your Honor.

21 I'm asking about the Lakehead line. I  
22 believe this witness has offered up some testimony,

1     albeit slight, regarding public benefit with regard  
2     to construction of the Southern Access Extension.

3             JUDGE JONES:    Could you give us a citation to  
4     that testimony?

5             MS. TAFT:    Where he's talked about the public  
6     benefit?

7             JUDGE JONES:    Well, you said used the term  
8     public interest or something similar.

9             MS. TAFT:    Sure.

10                            It would be on Exhibit 2.  It's at the  
11     very bottom of the page, Your Honor, beginning at  
12     line 60, and also...

13             JUDGE JONES:    In which exhibit?

14             MS. TAFT:    Well, Exhibit 1B, Your Honor, more  
15     direct.

16             MR. AMBROSE:    I'm confused.  Could we please --  
17     what exhibit are we in?

18             MS. TAFT:    Sure.

19                            I'll direct everyone to Exhibit 1B  
20     which would be the surrebuttal testimony of  
21     Mr. Aller.

22             MR. AMBROSE:    Mr. Aller's testimony is

1 Exhibit 2. You mean 2B?

2 MS. TAFT: I'll direct the court's attention to  
3 Exhibit 2, page 3. At the bottom of the page  
4 beginning about line 60, it says, "At Patoka, the  
5 extension project includes connections to third party  
6 (non-Enbridge tankage and pipelines which will  
7 enhance petroleum storage capacity of Patoka pipeline  
8 hub and allow shippers improved flexibility in  
9 delivering numerous refineries in South PADD II and  
10 the Gulf Coast."

11 And I believe that has been the theme  
12 of Enbridge's application with regard to what they  
13 deem a public benefit.

14 JUDGE JONES: Okay. Objection overruled.

15 Q. BY MS. TAFT: And my question to you, sir,  
16 was, wasn't the public interest met by Lakehead being  
17 completed even without eminent domain?

18 A. In my understanding of what it would be,  
19 and again, that's outside my line of expertise or  
20 discipline or scope, but I would think that there was  
21 some need met.

22 Q. All right. In looking at that testimony

1 that I just cited to, is it your understanding that a  
2 portion of the crude that will be transported on the  
3 Southern Access Extension will travel to the Gulf  
4 Coast?

5 A. As we say, it will be up to the shippers.  
6 It's for their determination, and this allows more  
7 flexibility as to where they need to take the  
8 product, where the product needs to be transported  
9 down various connecting pipelines.

10 Q. Are you familiar with the capacity loads of  
11 the PADD II refineries, the southern refineries in  
12 Illinois?

13 A. I'm not real familiar with those.

14 Q. Have you read any testimony from any of the  
15 witnesses who have been offered up by Enbridge with  
16 regard to the capacity of southern refineries in PADD  
17 II specifically located in Illinois?

18 A. I would say that I have read testimonies.  
19 Now, whether or not I recall everything that they  
20 said would be another question.

21 Q. All right. Are you familiar with  
22 Mr. Cook's testimony that there are no current plans

1 to convert the Robinson refinery to process the  
2 Canadian crude oil?

3 A. I'm not familiar with that one.

4 Q. Now, you've testified that through the  
5 process, as complaints have come to your attention  
6 from landowners, you've attempted to address them, is  
7 that correct?

8 A. Correct.

9 Q. And have you learned of some complaints  
10 through this process, through this filing process?

11 A. Through our process as a whole with the  
12 project, there were some complaints brought to my  
13 attention which we acted on promptly to try to  
14 substantiate any wrongdoings or misdoings on behalf  
15 of our right-of-way agents, and I found them through  
16 the filing.

17 Q. And I guess that really wasn't responsive  
18 to my question.

19 My question to you is, have you  
20 learned of any complaints specifically through this  
21 filing process, either complaints or affidavits filed  
22 by landowners in this process?

1           MR. AMBROSE: Well, that question was just  
2 asked and answered.

3           MS. TAFT: I don't believe it was, Your Honor.  
4 I think he just generally answered how he may deal  
5 with complaints, but he didn't answer my question of  
6 whether he learned of any complaints through this  
7 process, and that's my question.

8           MR. AMBROSE: What does this process mean?

9           MS. TAFT: This filing process. There have  
10 been numerous landowners who have filed affidavits in  
11 these proceedings.

12                         Has he been privy to those affidavits?  
13 Has he learned about those complaints through this  
14 process?

15           MR. AMBROSE: And he just answered that he  
16 investigated the complaints that came to his  
17 attention through the filing of the testimony that's  
18 been allowed to be filed.

19                         What we're having here is a back door  
20 attempt to get into the reasons it was struck.

21           MS. TAFT: No, Your Honor, we're not. There  
22 were other landowners...

1 JUDGE JONES: Thank you for the argument.

2 Could we have the question read back,  
3 please?

4 (The reporter read back the last  
5 question.)

6 JUDGE JONES: I think there is some possible  
7 confusion there over the choice of words of the  
8 process and filing and that sort of thing.

9 So if you want to rephrase the  
10 question, we'll go from there.

11 Q. BY MS. TAFT: Mr. Aller, have any  
12 complaints by landowners been brought to your  
13 attention because they have arisen in the application  
14 reviewed for this application?

15 A. How I'd like to answer this is that a  
16 complaint to me when it reaches me and is brought to  
17 my attention, I don't care where the source is, I  
18 investigate it.

19 So I can't exactly say that any of  
20 those complaints came through this ICC process.

21 If they did, I addressed them. If  
22 they came from another source, I addressed them. I

1 lumped them altogether.

2 Q. Has anyone come to you and said, look, a  
3 landowner has filed an affidavit in the application  
4 proceedings complaining about some abuse by an  
5 Enbridge employee or that someone is entering their  
6 property without their permission? Has anyone come  
7 to you and said that's been filed specifically in  
8 this application process?

9 A. I can't recall if there was.

10 Q. Do you recall ever speaking to a  
11 Mr. Schwartz about any problems he may have with  
12 Enbridge employees entering his property without his  
13 permission?

14 A. I don't recall.

15 Q. Do you recall talking to Mr. Barth about --

16 JUDGE JONES: Do you have a spelling on that?

17 MS. TAFT: B-a-r-t-h.

18 JUDGE JONES: Thank you.

19 Q. -- about Enbridge employees entering his  
20 property?

21 MR. AMBROSE: Well, I'm going to have to object  
22 to the assertions of things happening, and there's no

1 evidence of them happening.

2 There have been no affidavits filed in  
3 this proceeding by Mr. Barth or Mr., whatever the  
4 other gentleman was, to that effect.

5 JUDGE JONES: Could I have the question read  
6 back, please, and we'll go from there.

7 Thank you.

8 (The reporter read back the last  
9 question.)

10 MS. TAFT: There was an affidavit, Your Honor,  
11 that was filed throughout the proceedings.

12 JUDGE JONES: Why don't you rephrase that  
13 question and strike that one or reask it. I'm not  
14 sure we have it captured here.

15 MS. TAFT: I'll just ask it straightforward.

16 Q. Has anyone brought to your attention any  
17 complaints by a landowner by the name of Mr. Barth  
18 regarding employees entering his property without his  
19 permission?

20 A. I can't specifically recall that.

21 Q. Has anyone brought to your attention a  
22 complaint of a landowner named Mr. Marshall who

1 testified that he was threatened by Enbridge with  
2 eminent domain indicating that the offering price for  
3 his easement would drop by 40 percent if and when  
4 Enbridge obtained eminent domain?

5 A. I do recall discussion of that.

6 Q. Did you ever talk to Mr. Marshall?

7 A. I don't believe I talked to him personally.

8 Q. And would you agree that by exercising the  
9 authority of eminent domain, the applicant, Enbridge  
10 in this instance, would be in a superior bargaining  
11 position with the landowner, and therefore, good  
12 faith negotiations requirements would be void?

13 A. No, I don't believe we would be in a  
14 superior position because under the process and  
15 procedures that would go on, we would still need to  
16 make good offers to these folks at a market value  
17 which is what we are doing at this time and we will  
18 continue to do at fair market value.

19 Q. Well, isn't it true that you testified  
20 that Enbridge is currently offering values for the  
21 right-of-way easements sought at a fee value as  
22 opposed to an easement value plus 20 percent, but by

1 obtaining authority for eminent domain, that would  
2 allow Enbridge to automatically withdraw that and  
3 reduce the previous offer to an easement value which  
4 could be 25 to 50 percent less than what Enbridge is  
5 currently offering?

6 MR. AMBROSE: Can I ask for reference to such  
7 testimony in the prefiled testimony for Mr. Aller?

8 (Pause)

9 MS. TAFT: Your Honor, I refer to Exhibit 2B,  
10 page 2 of 3, and beginning at line 37, it states, "As  
11 I've noted (previously in his testimony I'm  
12 guessing), we routinely offer 100 percent of the  
13 market value of the permanent easement area and are  
14 now offering 120 percent to induce agreements."

15 MR. AMBROSE: Where is the reference to 40  
16 percent?

17 I renew my objection to the question.

18 MS. TAFT: I'm sorry. I didn't have a 40  
19 percent in my question.

20 MR. AMBROSE: May I have the question read back  
21 then, please?

22

1 (The reporter read back the last  
2 question.)

3 MR. AMBROSE: I stand corrected in my objection  
4 then. It was the 25 to 50 percent.

5 MS. TAFT: Your Honor, I'd reference Enbridge  
6 Exhibit 2A, page 10 of 17 in Mr. Aller's testimony  
7 where he's talking about the bonus, the 20 percent  
8 bonus beginning at line 227, page 10, line 227.

9 "As easement values generally run from  
10 25 to 50 percent of fee values, in my experience, the  
11 compensation recovered by a landowner would probably  
12 be in the range of maybe 40 percent but probably less  
13 than our fee offers."

14 So that's where I got those numbers,  
15 from Mr. Aller's testimony.

16 JUDGE JONES: Well, that's not the way they  
17 were used in the question.

18 Objection sustained. You can reask  
19 the question if you want.

20 MS. TAFT: Sure. I'll be happy to.

21 Q. If Enbridge obtained the right of eminent  
22 domain, wouldn't it be true that the current offers

1 being extended by Enbridge for payment of a fee value  
2 plus a 20 percent bonus could be withdrawn, and  
3 Enbridge would only be made to pay the value of an  
4 easement which generally runs less than the value of  
5 a fee?

6 A. Our program, our offers, the whole  
7 compensation program to the landowners will not  
8 change if we're certificated. We'll still offer the  
9 landowners the hundred percent market value and also  
10 a percentage for a temporary work space.

11 What I was referring to in Exhibit 2A  
12 here that you went to, the 25 to 50 percent, if  
13 negotiations broke down and it came to a loggerhead  
14 and we had to actually take steps to file for  
15 condemnation, which is our last case resort, then  
16 what we would need to ask the court system to do is  
17 evaluate the situation and place proper valuation on  
18 the easement.

19 And the easement values typically are  
20 worth less than the market value for the same thing,  
21 the easement interest, and those are usually, you  
22 know, 25 to 50 percent, maybe 40 percent.

1                                   Definitely any percentage of that  
2 would be less than our hundred percent that we're  
3 offering.

4           Q.    So the answer to my question would be yes,  
5 that Enbridge would have the ability to do that, to  
6 withdraw an offer they believe now is a fair price  
7 for the property and offer a value which would be 25  
8 to 50 percent less?

9           A.    Only as a last case effort with the  
10 landowner.  If the landowner basically is still not  
11 moving forward in negotiations and forced us in a  
12 situation to file condemnation, then our offer, yes,  
13 would be taken off the table, and we'd be asking the  
14 court system for the proper relief and the  
15 satisfaction of the case.

16          Q.    And in this particular instant, Enbridge is  
17 really concerned with only about 20 percent of this  
18 line since they believe about 80 percent of the line  
19 is covered through the easement they acquired through  
20 Central Illinois Pipeline Company, isn't that  
21 correct?

22          A.    Approximations.

1 MS. TAFT: I have no other questions, Your  
2 Honor.

3 JUDGE JONES: Thank you, Ms. Taft.  
4 Mr. Turner?

5 MR. TURNER: May it please the court and  
6 counsel .

7 CROSS-EXAMINATION

8 BY MR. TURNER:

9 Q. Mr. Aller, your discipline that you've  
10 testified about this afternoon covers what  
11 geographical area?

12 A. My discipline?

13 Q. Yes.

14 A. Lands and right-of-way for the project.

15 Q. Just for this project?

16 A. My responsibilities?

17 Q. As an employee of one of the Enbridge  
18 affiliates.

19 A. No. I have responsibilities for multiple  
20 projects.

21 Q. In what geographical areas?

22 A. Wisconsin, Illinois, Minnesota, North

1 Dakota.

2 Q. Does it include the entire State of  
3 Illinois?

4 A. Across the whole state, yes.

5 Q. Mr. Burgess today identified in the letter  
6 he sent the mayor of Downs and also the letter I sent  
7 in response to that to counsel for the applicant and  
8 then indicated that there was follow-up with the  
9 Farnsworth Engineering Company in Bloomington.

10 Please explain what follow-up occurred  
11 after that.

12 Has anything been done regarding your  
13 interference with the growth pattern of the Village  
14 of Downs?

15 MR. AMBROSE: I object. There's no evidence of  
16 interference with the growth patterns of Downs.

17 JUDGE JONES: Well, let counsel finish his  
18 question, and then we'll hear what you have to say  
19 about it.

20 MR. AMBROSE: I apologize. I thought his  
21 question was done. I thought I heard a question mark  
22 there.



1 question.

2 Q. Mr. Aller, what has been done after your  
3 company spoke with engineers of the Farnsworth  
4 Engineering Company relative to the Village of Downs  
5 and the concerns expressed in Mr. Burgess's letter to  
6 the mayor of Downs?

7 A. As being I'm not totally responsible or  
8 not, I shouldn't say responsible but in tune with the  
9 day-to-day happenings on the project, I can't answer  
10 that. I don't know what has taken place since that  
11 time. I don't have my finger on every single  
12 day-to-day task that's going on in the other  
13 disciplines.

14 Q. And there have been no reports made to you  
15 by the underlings in your company of any  
16 communications with Downs relative to concerns raised  
17 by Mr. Burgess in his letter?

18 A. No. If that's a concern regarding a sewer  
19 line that they talked about this morning, our  
20 engineers and our designers will design that pipeline  
21 to accommodate the sewer line.

22 Q. That's within your discipline?

1 A. Is what within my discipline?

2 Q. Knowing about the engineers designing the  
3 pipeline to not interfere with the sewer line?

4 A. That's not within my discipline, but it's  
5 within the practicalness of what we do in our  
6 projects, and it comes from the common knowledge of  
7 working on projects for years.

8 Q. Well, within the practicalness of the  
9 project, what is it that Enbridge is going to do  
10 relative to the land use that it no longer be devoted  
11 to residential activity near the pipeline as it runs  
12 near the Village of Downs?

13 MR. AMBROSE: I hate to do this, but I'm going  
14 to object again to the assertion that there's some  
15 impact on the residential use of property near the  
16 pipeline.

17 Counsel has no facts to sustain that.  
18 There is nothing in the record to sustain that except  
19 his assertion.

20 JUDGE JONES: Any response?

21 MR. TURNER: Your Honor, the mayor's testimony  
22 is not in the record, and he's been identified as one

1 who would be cross-examined and will be present here.

2 MR. AMBROSE: Let him prove it up.

3 JUDGE JONES: Could I have the question back,  
4 please?

5 (The reporter read back the last  
6 question.)

7 JUDGE JONES: Whether the record does or will  
8 support that assertion I do not know.

9 If you want, you can cite the  
10 testimony that you think accomplishes that, but I  
11 think the simpler path is to reword the question in  
12 some manner to get answers from the witness.

13 MR. TURNER: Okay. I'll do that, Judge. Thank  
14 you.

15 Q. Mr. Aller, within the practicalness of the  
16 way that Enbridge conducts itself in trying to  
17 complete pipeline projects, is there a pattern or  
18 habit or policy of Enbridge that you're aware of  
19 where Enbridge would do things to reduce interference  
20 that it might cause to a residential community such  
21 as the Village of Downs?

22 A. I think at this stage, the development of

1 our project with each individual landowner, if a  
2 landowner has some long-term plans of their land  
3 usage, if they have anything even from a paper  
4 subdivision that they think about doing on their land  
5 some day, that's part of our negotiations with them  
6 as to how best, what location would be best for us to  
7 cross your land.

8                   Typically what we would like to do is  
9 follow along one of their property boundaries or a  
10 quarter line or a section line, something of a  
11 straight nature where then any developer could take  
12 the presence of an existing pipeline and its easement  
13 into account when they actually design their  
14 subdivisions.

15           Q. You understand that the Village of Downs  
16 interest is in its facilities planning district and  
17 within its comprehensive plan and that Downs actually  
18 doesn't have ownership interest of private property?

19           A. I understand that they wouldn't have  
20 ownership of private property.

21           Q. Okay. So is there anything that Enbridge  
22 does as a practical matter that would help a small

1 community like Downs regarding its facilities  
2 planning district for sewer and regarding its  
3 preliminary plan for zoning and growth to pay for the  
4 sewer, if you know?

5 A. I wouldn't believe that it be Enbridge's  
6 responsibility to pay for infrastructure for  
7 communities if that's what you're asking.

8 Q. No, I wasn't asking that.

9 I was trying to get around whether  
10 Enbridge would recognize that this area is important  
11 to Downs because it has to provide sanitary sewer and  
12 it has to pay for it in some fashion, and therefore,  
13 you might move the pipeline so you wouldn't interfere  
14 with the growth.

15 A. I don't understand how the presence of a  
16 pipeline would interfere with their growth.

17 Q. Would you like your home to be on top of  
18 your 36-inch high pressure pipeline?

19 MR. AMBROSE: I object. He's just arguing,  
20 badgering the witness on this. Let him finish his  
21 answer.

22 MR. TURNER: I'll withdraw the question. I

1 apologize.

2 Let's move on.

3 Q. On page 3 of your May 21, 2008 testimony,  
4 that would be the surrebuttal testimony, that would  
5 be Exhibit 2B, page 3, let me just ask you quickly,  
6 you got around Merton Miller real easily, didn't you?

7 MR. AMBROSE: I'll object. I don't even  
8 understand the question.

9 MR. TURNER: I'll restate it, Your Honor.

10 Q. Merton Miller was a Nobel laureate, was he  
11 not, during his lifetime?

12 A. Yes, we was.

13 Q. And he was a member of the faculty of the  
14 University of Chicago for a number of years?

15 A. I believe he was.

16 Q. And his wife had a farm or rural property  
17 that was in the preferred route when the Lakehead  
18 loop line was proposed approximately ten years ago by  
19 your company, is that right?

20 A. Yes.

21 Q. And Mr. Miller in his capacity, Dr. Miller  
22 in his capacity as an economic expert explained to

1 the Illinois Commerce Commission that in his view as  
2 an economic expert and Nobel laureate that there was  
3 no public benefit provided by that loop line.

4 Isn't that true?

5 MR. AMBROSE: Well, I object. First of all,  
6 that mischaracterizes Merton Miller's testimony from  
7 15 years ago.

8 Secondly, it is irrelevant to what he  
9 testified to and has no bearing on this application.

10 MR. TURNER: I'll withdraw that question.

11 Q. I'm just trying to get to the point that  
12 the Millers were a property owner, and in your  
13 testimony, page 3, Exhibit 2B filed May 21, 2008 as  
14 prefiled testimony in this matter, your company got  
15 around the Millers very conveniently, didn't they,  
16 according to your testimony?

17 A. We were able to route to a landowner next  
18 to him, and at that time the Millers were negotiating  
19 with me personally for us to actually purchase their  
20 property whereas the neighbor next door said come  
21 over here and I will give you an easement, and so the  
22 economics for the project went that way.

1           Q.    It makes perfectly good sense where  
2    Enbridge -- it was Lakehead at the time but Enbridge  
3    today -- had flexibility and the property owner in  
4    the immediate area had flexibility.  You got  
5    together.  No need for eminent domain.  No need for,  
6    you know, major blockades or anything.  It was a  
7    matter of people using common sense, getting together  
8    and getting it done.

9           A.    Now, in that instance, we did find a  
10   solution, but not in all instances can you find that  
11   solution.

12          Q.    That is the real purpose, is it not, of  
13   your company since May of 2008, trying to acquire  
14   options for an alternative route through McLean  
15   County, Illinois which is approximately two and a  
16   half miles east of the proposed line that's the  
17   subject matter of this case?

18          MR.  AMBROSE:  Let me ask for clarification.  
19   What do you mean by the real purpose?

20          MR.  TURNER:  As an alternative that's analogous  
21   to the Merton Miller situation.

22          MR.  AMBROSE:  Two and a half miles east?

1           MR. HELMHOLZ: Your Honor, I object to  
2 Mr. Ambrose examining counsel and asking questions of  
3 counsel. He's not here to testify in response to  
4 Mr. Ambrose's questions.

5           MR. AMBROSE: My real objection is that this  
6 was gone over with Mr. Burgess this morning in great  
7 detail, and they're just plowing ground that's  
8 already been plowed.

9           JUDGE JONES: The objection appears to be that  
10 the question has been asked and answered, and  
11 frankly, we would probably have to go well back into  
12 the record from earlier today to see whether that  
13 specific question was, in fact, asked and answered.  
14 I don't think that's a good use of our time.

15                               Certainly there were some similar  
16 questions that were asked and answered, but I think  
17 we need to give Mr. Turner some leeway in proceeding  
18 with this. I think he is attempting to word these  
19 questions in a way that avoids objections that were  
20 arising because of arguably argumentative  
21 characterizations of things, and so given all that,  
22 we'll allow the question and ask the witness to

1 answer it if he understands it and has an answer to  
2 provide us.

3 But first, do you need it read back?

4 THE WITNESS: Yes.

5 JUDGE JONES: Mrs. Reporter, if you would.

6 (The reporter read back the last  
7 question.)

8 THE WITNESS: I think the underlying purpose  
9 for even considering or investigating such a reroute  
10 as a prudent purchase is to try to look forward as to  
11 minimizing costs to our project.

12 Whether or not certification is  
13 granted to us, we also have a schedule that we need  
14 to consider, and negotiations even with the  
15 certification could take quite some time. We may  
16 find other problematic things along the existing  
17 route which in this case we'd be prepared in advance  
18 to see if there is potential for a reroute around an  
19 area such as that trying to make a beneficial  
20 forecast of what can happen for economics.

21 MR. TURNER: Thank you. Let me then move on to  
22 another area.

1 Q. In your October 5, 2007 testimony, which is  
2 Enbridge Exhibit 2, page 3, you talk about enhanced  
3 petroleum capacity for Patoka Pipeline being created  
4 by the extension project.

5 Is Enbridge or one of its affiliates,  
6 the Enbridge Patoka affiliate, to the best of your  
7 knowledge engaged in any current construction  
8 relative to petroleum storage capacity at Patoka?

9 A. I'm not sure. I hear various things, but  
10 I'm not positive if there's anything going on.

11 Q. Okay. Are you familiar with Plains All  
12 American Pipeline L.L.C. having a 60 some million  
13 dollar storage construction project ongoing -- it  
14 looks like it's halfway completed to me -- at Patoka  
15 Illinois presently?

16 A. I think they do have some things under  
17 construction.

18 Q. And that's on land owned by Enbridge?

19 A. It's on land owned by Plains.

20 Q. It's adjacent to your Enbridge --

21 A. Yes. There's several different pipeline  
22 storage tank facility owners that own their own land.

1 Enbridge does own some land. They're all adjacent to  
2 each other, and they all have interconnects from  
3 various degrees.

4 Q. And at Patoka, the real estate has been  
5 consolidated, has it not, between Exxon and Enbridge  
6 into one operation?

7 A. Property, land or facilities?

8 Q. Yeah. Your signage and Exxon signage is  
9 right next to each other at Patoka at the same gate.

10 JUDGE JONES: Is that a question?

11 MR. TURNER: Yes.

12 MR. AMBROSE: Is the question are the signs  
13 next to each other or has the property been somehow  
14 merged?

15 MR. TURNER: Has the property been merged is  
16 the right question. Mr. Ambrose is on top of that  
17 one.

18 THE WITNESS: To the best of my knowledge it  
19 has not been merged.

20 Most likely, the two entities are  
21 using a common roadway to get in there perhaps  
22 through the same common gate.

1 Q. Okay. Thank you.

2 You're responsible for collecting or  
3 counting the easements that you get and the consents  
4 that are received for the route that's at issue in  
5 this case?

6 A. There are other people that are responsible  
7 for those duties. I look at them periodically.

8 Q. Under your supervision?

9 A. Yes.

10 Q. Because you write the documents, don't you?

11 A. I help.

12 Q. You're responsible for their creation, the  
13 easements?

14 A. Yes.

15 Q. Are you also responsible for the creation  
16 of the consents?

17 A. Yes.

18 Q. Now, when the application was filed in this  
19 case, how many consents did Enbridge have relative to  
20 the property that's being surveyed or inspected?

21 A. The exact number I'm not sure but I recall  
22 being upwards of 80 plus percent of the route we had

1 consents, both written and verbal. Some were verbal  
2 consents.

3 Q. Last question.

4 It's your understanding that the  
5 eastern alternative route in McLean County will not  
6 be utilized or a decision made on that until a  
7 decision is made in the instant case?

8 MR. AMBROSE: I'm going to object to the form  
9 of that question. It's, if nothing else, compound if  
10 not prolix.

11 JUDGE JONES: What was that?

12 MR. AMBROSE: I said I'm going to object to the  
13 form of that question. If nothing else, it is  
14 compound if not prolix.

15 MR. TURNER: It is pretty compound, Your Honor.  
16 I'll restate it.

17 Q. Before Enbridge were to use or elect to  
18 use -- let me start over again.

19 Before Enbridge would make the  
20 decision to use the alternative route it is working  
21 on in McLean County, do you agree that Enbridge would  
22 want, first of all, to have a decision in the instant

1 case?

2 MR. AMBROSE: I object to the assertion of an  
3 alternative route it is working on. That  
4 mischaracterizes the testimony that Mr. Aller just  
5 gave.

6 JUDGE JONES: Any response?

7 MR. TURNER: No response.

8 JUDGE JONES: There being no response, the  
9 objection is sustained, but counsel has leave to  
10 rephrase the question and proceed with the line of  
11 questioning.

12 Q. BY MR. TURNER: Do you know when it is that  
13 Enbridge may decide to actually use the eastern route  
14 it's now seeking in McLean County if -- let me just  
15 stop there.

16 Do you know when Enbridge may decide  
17 to use the eastern route in McLean County?

18 A. No. That would be at a future date, both  
19 routes.

20 The preferred route which we will  
21 continue to work on, and again, I emphasize preferred  
22 route, would go in parallel with our investigation of

1 just putting our feelers out there for an eastern  
2 route.

3 Q. I do have one more question.

4 You do know how much pipe is in West  
5 Normal, don't you?

6 A. No, I do not.

7 Q. You know approximately, don't you?

8 A. No, I do not.

9 MR. TURNER: Okay.

10 Thank you, Judge.

11 JUDGE JONES: Okay. Thank you, Mr. Turner.

12 Is there redirect?

13 MR. AMBROSE: Can I have a moment? Can we take  
14 five?

15 JUDGE JONES: We'll hereby take a five-minute  
16 recess.

17 (Recess taken.)

18 JUDGE JONES: Back on the record.

19 I think we're ready to proceed. We're  
20 going to finish up with the second witness and  
21 proceed with the third.

22 Is it correct that there is no

1     redire ct?

2             MR. AMBROSE:   That is correct, Your Honor.

3             JUDGE JONES:   All right.   Thank you for that.

4                             (Witness excused.)

5             JUDGE JONES:   I believe that then will bring us  
6     to the next witness, and that is who?

7             MR. AMBROSE:   Mr. Joseph E. Batis, and as I  
8     said off the record, I move for admission into the  
9     evidence of Mr. Aller's testimony, the three pieces  
10    he previously testified to.

11            JUDGE JONES:   Any objections to the admission  
12    of those three pieces of testimony?

13            MS. TAFT:    No objection, Your Honor.

14            JUDGE JONES:   Okay.   Thank you.

15            MR. BRANDT:   Your Honor, just to clarify;  
16    except to the extent that whatever has been brought  
17    out on cross-examination I guess.

18            JUDGE JONES:   I'm sorry?

19            MR. BRANDT:   I have no objection to his written  
20    testimony coming into evidence except to the extent  
21    what has been brought out on cross-examination, just  
22    to be consistent with what we said with respect to

1 Burgess.

2 Does that make sense?

3 MR. AMBROSE: No.

4 JUDGE JONES: I'm not sure I follow that.

5 MR. BRANDT: We'll withdraw our objections.

6 JUDGE JONES: All right. Thank you.

7 Anything else with regard to

8 Mr. Aller?

9 MR. HELMHOLZ: Yes, Your Honor. Helmholtz from  
10 Shelby.

11 I make the identical motion to strike  
12 that I made with respect to Mr. Burgess's testimony  
13 which is to the extent Mr. Aller has identified  
14 aggregate regional benefits without disaggregating or  
15 differentiating to Illinois specific public needs, I  
16 would move to strike and ask for leave to identify  
17 the exact testimony by page and line and a written  
18 motion.

19 MR. BRANDT: That motion we'll join in, Your  
20 Honor. Peter Brandt for Pliura intervenors.

21 JUDGE JONES: Anything else with respect to  
22 that?

1           MR. AMBROSE: Just let us know what you want us  
2 to do.

3           JUDGE JONES: All right. We'll leave it at  
4 that for now.

5                        What form that motion will ultimately  
6 take will be determined later. It will possibly  
7 depend in part on a time factor.

8                        If this has not already occurred, the  
9 exhibits sponsored by Mr. Aller are admitted subject  
10 to those motions.

11                                (Whereupon Enbridge Exhibits 2,  
12                                2A and 2B were admitted into  
13                                evidence at this time.)

14           MR. TURNER: May it please the court, briefly?

15           JUDGE JONES: Yes, sir.

16           MR. TURNER: The motions to strike kind of took  
17 me by surprise.

18                        The Village of Downs would like to  
19 join in both motions to strike that Mr. Helmholtz has  
20 proposed.

21           JUDGE JONES: Join in which?

22           MR. TURNER: Both of them, both the Aller

1 testimony and the testimony this morning.

2                   There was a motion to strike for  
3 failure to distinguish between the benefits to the  
4 Midwest as opposed to benefits for Illinois.

5           JUDGE JONES: Any response with respect to the  
6 timing of that joining in?

7           MR. AMBROSE: I suppose I could argue he's a  
8 little tardy, but I think we just ought to get on  
9 with this witness and let them file whatever they  
10 want to file in a very short schedule and get this  
11 taken care of.

12           JUDGE JONES: All right. Well, we will get  
13 back to the question of what form those motions will  
14 take and the timing to be applied to those. That may  
15 depend in part on the progress we are making as we  
16 proceed through the witnesses, but we will not devote  
17 any more time to that at this time so that we can go  
18 forward with the final witness today.

19                   Anything else before we do that on the  
20 record?

21                   All right. That being the case, then  
22 the exhibits sponsored by Mr. Aller are admitted into

1 the evidentiary record if they have not already been  
2 subject to the above referenced motions.

3 All right. The next witness has been  
4 sworn so proceed.

5 MR. AMBROSE: Thank you, Your Honor, and I've  
6 taken the liberty of having Mr. Batis sit down in the  
7 witness chair.

8 JOSEPH EDWARD BATIS  
9 called as a witness herein, on behalf of the  
10 Applicant, having been first duly sworn on his oath,  
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. AMBROSE:

14 Q. Would you state your full name for the  
15 record, please?

16 A. Joseph Edward Batis (B-a-t-i-s).

17 Q. Mr. Batis, you have in front of you a  
18 binder, but in that binder is a document marked as  
19 Enbridge Exhibit 6. Do you see that?

20 A. I do.

21 Q. Do you recognize that document?

22 A. Yes.

1 Q. Can you tell us what it is?

2 A. It's a copy of my reply testimony submitted  
3 on February 4, 2008 regarding this application  
4 process.

5 Q. Did you prepare that testimony for this  
6 proceeding as your testimony to be offered?

7 A. Yes, I did.

8 Q. Do you have any changes or corrections in  
9 that testimony, Mr. Batis?

10 A. None.

11 MR. AMBROSE: Let me just note for the record  
12 on the cover sheet of various peoples copy we may  
13 have a typo in the word consultant but we'll give you  
14 a new cover sheet later on.

15 Q. Mr. Batis, if I were to ask you the  
16 questions that are set forth in that document today,  
17 would your answers be the same as presented in  
18 Enbridge Exhibit 6?

19 A. Yes, they would.

20 Q. You adopt that as your testimony here?

21 A. I do.

22 MR. AMBROSE: The witness is available for

1 cross-examination.

2 JUDGE JONES: Thank you, Mr. Ambrose.

3 I believe there are three parties that  
4 have some cross for this witness.

5 Who wants to lead off?

6 CROSS-EXAMINATION

7 BY MR. BRANDT:

8 Q. Mr. Batis, tell us about your background.

9 You are a real estate appraiser, is  
10 that right?

11 A. I am a real estate appraiser and  
12 consultant.

13 Q. Okay. And what kind of consulting work do  
14 you do?

15 A. The consulting services I provide cover a  
16 wide range of services including buy/sell decisions,  
17 assisting clients with buy/sell decisions, helping  
18 clients, assisting clients in the instance of  
19 pipeline easements, determining whether or not  
20 properties are impacted by takings, assisting clients  
21 in determining what fee values are for properties for  
22 purposes of acquisition or negotiation.

1                    Feasibility studies fall under the  
2 umbrella of consulting services, market studies,  
3 damage studies, etc.

4            Q.    Have you ever worked for a landowner?

5            A.    On many occasions I have, yes.

6            Q.    How many times have you reviewed matters  
7 for the petitioner or the applicant in this case?

8            A.    I'm sorry. I couldn't hear your question.

9            Q.    How many times have you reviewed matters  
10 for the petitioner or the applicant in this case?

11           A.    For the Enbridge Company or one of its  
12 affiliates?

13           Q.    Yes.

14           A.    Various times over the last two and a half  
15 to three years.

16           Q.    When you say various, can you put a number  
17 on it?

18           A.    Between 50 and a hundred occasions I can  
19 think of where one of the Enbridge employees or  
20 representatives or subcontractors would have called  
21 me and asked for my advice or asked for my input on a  
22 specific issue.

1 Q. Have you testified before the Illinois  
2 Commerce Commission on behalf of Enbridge prior to  
3 today?

4 A. No, I have not.

5 Q. Have you testified on behalf of Enbridge  
6 prior to today in any other location or any other  
7 state?

8 A. No, I have not.

9 Q. Have you given testimony in other matters  
10 for Enbridge, written testimony?

11 A. No, I have not.

12 Q. How many other pipeline companies have you  
13 worked for?

14 A. Probably seven or eight over the last 15 to  
15 20 years.

16 Q. Tell us the companies that you've worked  
17 for, their names.

18 A. I've worked for Quantum Pipeline, Vector  
19 Pipeline, Alliance Pipeline, Guardian Pipeline,  
20 Northern Border Pipeline, Kinder Morgan Pipeline.

21 Those are the ones that come to mind.

22 I don't know if there's been any additional ones.

1 Q. If we were going to look at the percentage  
2 of the work that you do in the area of real estate  
3 appraisal, how much of that work is done for  
4 pipelines versus the rest of the work that you do?

5 A. It varies over the course of time, of  
6 course, depending upon a project I might be involved  
7 with and the stage that that project is in with  
8 regard to acquisition.

9 For instance, there was a time  
10 approximately four or five years ago where I worked  
11 for a pipeline client three or four days a week over  
12 the course of six months because that particular  
13 project regarded several hundred tracts that were in  
14 condemnation.

15 Over the last six to nine months, that  
16 involvement with pipeline companies or  
17 pipeline-related projects has been minimal.

18 Q. Let's put together the last five years.

19 When we put all those together, how  
20 much of your working time was spent related to  
21 pipeline companies?

22 A. I don't know, but my best guess would be 20

1 to 30 percent of my time.

2 Q. Do you do other type of real estate  
3 appraisals?

4 A. Other types of appraisals and for other  
5 types of clients, yes.

6 Q. And do you appraise residential property?  
7 Is that part of what you do?

8 A. Yes, I do.

9 Q. How much of your time is spent on  
10 residential property appraisals?

11 A. I should clarify, I don't appraise  
12 typically single family residences as stand-alone  
13 properties, but I appraise properties that have  
14 residential highest and best use and subdivisions  
15 that are proposed for residential uses, and the  
16 properties that fall in that category I would say for  
17 the last five years, maybe five to ten percent of the  
18 volume of work that I get involved with.

19 Q. You're located in Joliet, Illinois, is that  
20 right?

21 A. My office is, yes.

22 Q. How many employees with Edward J. Batis &

1 Associates, Inc.?

2 A. Full-time employees, two.

3 Q. You and who else?

4 A. My assistant and secretary.

5 Q. What's the rate that you're charging

6 Enbridge to testify in this matter?

7 A. My customary rate is \$325 per hour, and  
8 that is the rate I'm charging in this proceeding as  
9 well.

10 Q. All right. Is that rate the rate that  
11 you've charged for all that you have done in terms of  
12 materials you reviewed, the research that you did,  
13 that type of thing?

14 In other words, is it a different rate  
15 to testify versus the rate to charge to review  
16 materials you discussed in your testimony?

17 A. At the present time, the rate that I charge  
18 is the same for any and all services I perform in  
19 this project.

20 Q. How many hours have you spent on this  
21 project?

22 A. I don't know.

1 Q. Did you send any bills to Enbridge for your  
2 time?

3 A. Yes.

4 I think the most recent bill was  
5 probably about \$25,000 for the last six or seven  
6 months of work.

7 Q. Give us your best estimate of the total  
8 amount that you billed Enbridge to date.

9 A. Over the last three years?

10 Q. I'm talking about for this project how much  
11 you have billed them to date.

12 A. Probably 30 to \$40,000.

13 Q. And how much have you billed them generally  
14 over the last five years of work done, this project  
15 and others?

16 A. Over the last five years, including all the  
17 consultants that I hired and paid, probably close to  
18 \$400,000.

19 Q. How much have you charged other pipelines  
20 for whom you have worked over the last five years?

21 A. Some as few as five or ten thousand dollars  
22 and some hundreds of thousands of dollars in the

1 instance of a case that involved 400 properties and  
2 over three years of testimony, so it varies.

3 Q. If you were to add all that up over the  
4 last five years, what would be your best estimate of  
5 the amount that you have charged pipeline companies  
6 during that time period?

7 A. Over the last five years, I really don't  
8 know. In excess of \$500,000.

9 Q. In your testimony at page 6, I'm sorry,  
10 yes, page 6, it actually begins at line 107 on page 5  
11 and it goes over to the top of page 6.

12 Take a look at that. I want to ask  
13 you a question about it.

14 Are you ready?

15 A. Yes.

16 Q. Now, in here you've talked about the fact  
17 that you understand the project to involve 170 miles,  
18 is that right?

19 A. I'm sorry. Where are you referring to?

20 Q. Well, on page 5 of your testimony, you talk  
21 about the fact or you were asked the question, "Have  
22 you been retained in this case and what is your

1 function?" And your answer is, "I have been retained  
2 by Enbridge Energy Company."

3 Then you go on to talk about the  
4 appraisal and consulting services, and then you say,  
5 "As part of my duties, I've been asked to review the  
6 Enbridge right-of-way agreement and determine if the  
7 proposed permanent easements have a negative impact  
8 over landowners' remainder property."

9 Did I read that correctly?

10 A. Yes.

11 Q. My question to you is did you look at the  
12 whole 170-mile length of this proposed project from  
13 Flanagan to Patoka?

14 A. Yes. Early on in the project, I did review  
15 the general route as was available at that time as  
16 well as other legs or segments of the project further  
17 north.

18 Q. And how is it that you reviewed the route?

19 A. Taking advantage of various maps that were  
20 provided by the company, by the client I should say.  
21 In some instances, I was able to drive by the  
22 proposed location. I had the opportunity to review

1 aerial photographs, etc.

2 Q. Am I correct to say then that you've  
3 actually seen only a portion of the 170-mile length  
4 of this project, actually seen it?

5 A. Seen it as far as having visited it and  
6 inspected it and been on the property.

7 Q. Yes.

8 A. That's true.

9 Q. And isn't it true also that a part of the  
10 real estate appraisal process is to at least take a  
11 look at the property? Do you agree with that?

12 A. In some instances, yes, but not necessarily  
13 in all.

14 Q. On page 6 of your testimony, you talk about  
15 the proposition that -- or I think it's on page 6 --  
16 you reviewed some 3,000 pages of information.

17 A. In Exhibit A or Attachment A?

18 Q. Exhibit A. I'm sorry. Yes, page 6 of  
19 Exhibit A.

20 A. Yes, I'm there.

21 Q. Is that information that you have reviewed  
22 prior to your involvement in this matter?

1           A.    For the most part it was prior to, but some  
2 of the easements that I have included in that sum  
3 would be easement documents that I have reviewed as  
4 part of my research for the Enbridge project.

5           Q.    On page 7 of the attachment to your  
6 testimony, you state, "In summary, the data I  
7 obtained and/or researched regarding the effects of  
8 pipelines on remainder properties resulted in a  
9 compilation of approximately 30,000 pages of  
10 information."

11                               Did I read that correctly?

12           A.    You, in fact, did.

13           Q.    And what you're saying to me is that you  
14 didn't actually review 30,000 pages of information.  
15 This is information you had already reviewed before  
16 your involvement in this matter, is that right?

17           A.    Not necessarily before.

18                               I think what I'm stating is that in  
19 the course of my research of remainder properties and  
20 how they're impacted by easements for pipelines, I  
21 assembled large volumes of data that totals somewhere  
22 in the neighborhood of 30,000 pages.

1           Q.    And so this is information that you already  
2 had available to you before you were retained by  
3 Enbridge to testify or to review this matter, is that  
4 right?

5           A.    Well, I'm not sure.  There's two questions  
6 there.

7                         Before I testified, yes.  Before I  
8 submitted this written testimony, I did, in fact,  
9 compile and research more than 30,000 pages worth of  
10 documents and data.

11                        As far as the other part of your  
12 question, before I did any consulting or gave  
13 opinions?  I'm not sure what your question was, but  
14 some of this was collected during the process and  
15 during my research for the Enbridge project.

16           Q.    I'm just trying to get an understanding of  
17 the proposition that you have spent time to  
18 accumulate 30,000 pages of documentation as part of  
19 your involvement in this matter.

20                        And what you're saying to me is that  
21 you actually obtained during the time period that  
22 you've been retained in this matter 30,000 pages of

1 documentation?

2 A. No. That's not what I'm saying at all.

3 The 30,000 pages has been obtained  
4 during several years of research going back eight to  
5 ten years.

6 Some of the 30,000 pages of documents  
7 that I have obtained and reviewed and studied have  
8 been collected during the last two or three years of  
9 my involvement with the Enbridge project, but much of  
10 it was obtained prior to my engagement in this  
11 project.

12 Q. Am I correct that you've also cited this  
13 number, 30,000 pages of documentation or information,  
14 in other similar reports that you have issued to  
15 pipelines?

16 A. Which reports are you referring to?

17 Q. Well, the ones that you wrote, the  
18 appraisals and the reports that you have rendered for  
19 the other pipelines that you've worked for?

20 A. I'm sorry. So your question is have I  
21 cited my reference to 30,000 pages in those other  
22 appraisal reports in those other matters?

1 Q. Yes.

2 A. Not in all of them because some of them  
3 were, some of the appraisal reports were prepared  
4 eight or ten years ago in the very early stages of  
5 this extensive research. It wasn't all completed at  
6 the time I did appraisals ten years ago.

7 Q. Do you use this tens of thousands of pages  
8 of information citation in other reports?

9 A. Reports other than for this Enbridge  
10 proceeding or --

11 Q. Yes.

12 A. -- this particular document?

13 Q. Other than the one we're looking at here  
14 today.

15 A. I'm not sure if I used it in other  
16 documents or matters for other clients or not.

17 Q. You may have?

18 A. I may have or I may have been asked as a  
19 witness how many pages I've collected, how much data,  
20 and I may have made reference to it, but I don't  
21 recall reciting it in the reports.

22 Q. If we look at page 7, the one we just

1 looked at or I'm referring to now, it appears that  
2 you indicated that you reviewed more than 3,000  
3 reported easements for pipelines in northern  
4 Illinois.

5 Do you see that?

6 A. Yes, I do.

7 Q. Okay. And do you have an understanding --  
8 when you say northern Illinois, does that include the  
9 area that we're talking about or does that include  
10 some area outside of the pipeline that's being  
11 proposed here from Flanagan to Patoka?

12 A. The 3,000 reference is to areas starting in  
13 LaSalle, Livingston, and Kankakee Counties and  
14 working north from there, so primarily north of the  
15 area of the expansion.

16 Q. Okay. And so these 3,000 reported  
17 easements are for pipelines in other areas, is that  
18 right, than the one we're talking about here today?

19 I just want to make sure I understand.

20 A. I'm not sure when you say other areas.

21 They're in areas not necessarily in  
22 close proximity to the expansion, but they're in, for

1 very important and obvious reasons, areas where there  
2 are similar pipelines, similar pipeline projects.

3 Q. Now, you also reviewed route maps and  
4 aerial maps for several pipelines traversing northern  
5 Illinois, is that right?

6 A. Yes, I have.

7 Q. Have you had an occasion to appraise farm  
8 property prior to your involvement in this case?

9 A. Yes.

10 Q. And do you have a farming background? Do  
11 you come from a farming family?

12 A. I do not.

13 Q. In your process of appraising farmland,  
14 have you had a chance to discuss the drainage  
15 problems that farmers encounter?

16 A. What drainage problems?

17 Q. Well, on any occasion when you've been  
18 asked to appraise any farmland, has it come up in  
19 your appraisal process that there are drainage issues  
20 with the property?

21 A. There have been a number of issues,  
22 including drainage and topographical problems that

1       come up in just about every appraisal assignment.

2               Q.   All right.  And so you'd agree with me that  
3       drainage is an issue for farmers whose property is  
4       going to be disrupted, if you will, by the placement  
5       of a pipeline?

6               A.   Subject to the highest and best use of the  
7       property, it may be a factor, yes.

8               Q.   And do you know from the time -- well, how  
9       many farms do you think you've appraised over the  
10      time period that you've been an appraiser?

11              A.   Several thousand.

12              Q.   You'd agree with me that a common complaint  
13      would be that if the drainage system that the farmer  
14      has established is disrupted that it's often very  
15      difficult to repair or replace that?

16              A.   I don't know if that's a common  
17      characterization.  I've heard that.  I've heard a  
18      number of comments and thoughts about impacts of  
19      drainage on properties, but again, depending upon the  
20      highest and best use of the property, the drainage  
21      could be an issue.

22              Q.   And I assume you've heard from some farmers

1 that if their drainage pattern is disrupted, it's  
2 never going to be the same. You've heard words to  
3 that effect?

4 A. I don't know that I've heard words to that  
5 effect from a farmer, no.

6 Q. You understand from your work for the  
7 various pipeline companies that you work for that  
8 drainage and the effect pipeline placement has on  
9 drainage is an issue, right?

10 A. It can be. It is not necessarily all the  
11 time but it certainly may be.

12 Q. Okay. And you understand that placing the  
13 pipe across the farmers property is going to make  
14 some disruption or has the potential to make some  
15 disruption of that drainage?

16 A. Again, subject to the location of drain  
17 tiles in the pipeline, it's a possibility.

18 Q. It certainly is something you've had to  
19 address, right, in your business?

20 A. The actual problems or the location of  
21 pipelines with regard to drain pipes?

22 Q. Either one.

1           A.    I don't think I've had to address problems.  
2    I've addressed the location of pipelines with regard  
3    to property boundaries and farm properties, but I  
4    can't recall instances where I've been asked to  
5    address or opine regarding the impact of a pipeline  
6    on the efficiency of drain tiles or a drain tile  
7    system.

8           Q.    In fact, in terms of making your assessment  
9    as to the value of property, the effect it may have  
10   on drainage isn't really an issue?

11          A.    It may or may not be depending on the  
12   highest and best use of the properties.

13          Q.    Certainly it's not something if you're  
14   looking at the highest and best use for farmland,  
15   you're not going to take into consideration the  
16   effect drainage problems may have on the highest and  
17   best use?

18          A.    I'm not sure I understand your question,  
19   counsel.

20          Q.    All right. Have you read any of the other  
21   testimony in this matter?

22          A.    Yes.

1 Q. Did you read the testimony of Mr. Aller?

2 A. I'm sorry. What was his name?

3 Q. The gentleman who was just on the stand.

4 A. Oh, Mr. Aller. No, I did not read

5 Mr. Aller's testimony. Sorry.

6 Q. All right. In his testimony, in his reply

7 testimony, page 8, and it's in front of you if you

8 want to take a look at it. It's Exhibit 2A, page 8.

9 If you want to take a moment to look at that.

10 A. Page 8?

11 Q. Yes.

12 A. Okay.

13 Q. Take a look at the question at the top of

14 the page and the answer thereto, and I want to ask

15 you a question about it.

16 (Pause)

17 A. I've read question 14 and the answer.

18 Q. It's true, is it not, there's nothing in

19 there that this gentleman indicated that Enbridge --

20 what he's talking about -- I'll withdraw the

21 question.

22 What he's talking about is the

1 approach that Enbridge takes to valuing property.

2 Would that be so?

3 A. Based upon consulting, I believe in part  
4 with me in conferences we've had together, it's very  
5 consistent with advice and counsel I have given them.

6 Q. All right. Very good.

7 Nothing in what he's said in this  
8 testimony indicates that Enbridge takes into  
9 consideration the diminished value of rural farmland  
10 in its negotiations with landowners, correct?

11 A. Nor does it say they ignore it. They're  
12 simply addressing I believe Mr. Aller. Although I  
13 hesitate to speak for him, I believe what he's saying  
14 is explaining the process of how they arrive at the  
15 compensation for a permanent easement and the  
16 temporary easement.

17 Q. My question though is this. There's  
18 nothing in the testimony on this page from this  
19 witness that indicates that it's Enbridge, the  
20 Enbridge approach to take into consideration the  
21 diminished value of the farmland property in its  
22 negotiations?

1           MR. AMBROSE: Your Honor, I've been very  
2 patient in not objecting to this witness being  
3 cross-examined about somebody else's testimony when  
4 that witness was just available and could have been  
5 cross-examined on this. I believe this to be  
6 improper.

7           MR. BRANDT: I think this witness has just  
8 testified that this was all consistent with what he  
9 believed and also consistent with his approach.

10          MR. AMBROSE: And as I've said, I've been very  
11 patient in not objecting to some of these questions.  
12 That doesn't mean I'm waiving the objection if you  
13 continue to press this line of improper  
14 cross-examination.

15          JUDGE JONES: Thank you.

16                    It's a close call. I'll allow the  
17 question. I think there's been somewhat of a  
18 foundation laid for it, so you may proceed for now.  
19 We'll see where it goes.

20          THE WITNESS: I believe Mr. Aller's statement  
21 regarding -- and I'll read from page 8, line 172 the  
22 following: "We base the offers, as I have stated, on

1 professional studies of real estate values all along  
2 the route and take into consideration any data  
3 offered by landowners regarding the value of their  
4 property."

5 I believe in great part the studies  
6 that I have done regarding real estate values along  
7 this pipeline route and many other pipeline routes  
8 may be what Mr. Aller was referencing with regard to  
9 compensation because we had many discussions  
10 regarding the impact of the easement within the  
11 permanent easement strip and the impact of the  
12 easement on the owner's respective remainder  
13 property.

14 MR. BRANDT: My question was a little different  
15 though. My question was this. There's nothing on  
16 this page that indicates from this witness, and he's  
17 describing an approach that you have acknowledged is  
18 the approach as you've discussed with him, nothing on  
19 this page makes reference to the proposition that the  
20 diminution in value of rural farmland is taken into  
21 consideration in the negotiation with landowners.

22 MR. AMBROSE: Well, I object again. The

1 document speaks for itself. What it says it says.  
2 The proponent of this testimony has already testified  
3 to it. We're all perfectly capable of reading what  
4 it says.

5 MR. BRANDT: All I'm asking for is an answer to  
6 the question.

7 JUDGE JONES: Was that the same question that  
8 was ruled on before? Did you just repeat the  
9 question?

10 MR. BRANDT: It is the same question but I have  
11 yet to receive an answer to it.

12 JUDGE JONES: All right.

13 MR. AMBROSE: The witness answered his  
14 question.

15 MR. BRANDT: He did not. He gave me an answer  
16 that he wanted to give me, but he did not answer the  
17 question.

18 The discrete question was, does the  
19 testimony that he has now looked at say anything  
20 about the approach or that it's Enbridge's position  
21 that they take into consideration specifically the  
22 diminished value of rural farmland in its negotiation

1 with landowners?

2 That's my question.

3 MR. AMBROSE: Your Honor, if counsel wants to  
4 ask if Mr. Batis knows if Enbridge considers such  
5 matters in its evaluation, let him ask that question  
6 and get on with it.

7 MS. TAFT: I don't want to ask that question  
8 because that's not my question.

9 MR. AMBROSE: It sure sounded like it to me.

10 JUDGE JONES: All right. That's enough back  
11 and forth there.

12 The question has been posed about  
13 three different times, all within the same set of  
14 arguments here. I'm not sure if that's the same  
15 question three times or not.

16 The original question was ruled that  
17 counsel could ask. So to the extent the second  
18 question was the same question as the first one and  
19 he didn't think he got an answer to it, we would  
20 basically have to travel back through the court  
21 reporter's notes there to see whether that, in fact,  
22 occurred or not, but there was a ruling that the

1 question could be posed, but frankly, I don't think  
2 that's a good use of our time to travel back through  
3 that maize of argument and three repeated questions  
4 to see whether the answer was responsive to the  
5 question on which there was a ruling.

6 So how to best escape this maize  
7 without chewing up a lot of clock, whatever time it  
8 is on the wall, 6 o'clock, we need to figure out some  
9 way to move forward.

10 Frankly, what we need to hear is what  
11 that question is --

12 MR. BRANDT: I'll restate it.

13 JUDGE JONES: -- and get the witness's answer  
14 to it and move forward from there.

15 MR. BRANDT: I'll be happy to restate it.

16 Q. Looking at page 8 of Enbridge Exhibit 2A,  
17 please point in there, point us to that location in  
18 this testimony between lines 162 and 176 where it is  
19 indicated specifically that it's Enbridge's position  
20 that it will take into consideration the diminished  
21 value of rural farmland in its negotiations with  
22 landowners is all I'm asking.

1           A.    First of all, the question presumes a  
2   diminution in value of remainder property, which I  
3   don't agree with, but accepting that for the moment,  
4   I recall over the last three years several meetings,  
5   discussions with Mr. Aller and other representatives  
6   and right-of-way agents and right-of-way supervisors  
7   regarding the proper way to determine offers for the  
8   property.

9                           And based upon our research and  
10  studies of property values and other uses, property  
11  uses along the pipeline and other pipelines, I  
12  explained to Mr. Aller that there was no evidence  
13  that properties that are affected by a permanent  
14  easement for an underground pipeline, that the  
15  remainder properties are damaged, and that for  
16  purposes of negotiation and acquisition, it is  
17  reasonable to offer anywhere from 25 to 50 percent of  
18  the fee value for the area when pressed with a  
19  permanent easement.

20                           As I read lines 172 forward with the  
21  understanding and the background of those meetings  
22  and consultation, I believe that the impact, whatever

1 it may have been, to the remainder properties was  
2 addressed by Enbridge and by Mr. Aller and his  
3 right-of-way agents in their negotiations; that it  
4 was not overlooked.

5 Q. Is there anything else you wanted to say?

6 A. Not on that issue.

7 MR. BRANDT: I'd ask that the answer be  
8 stricken. It's wholly unresponsive to the question.  
9 I'd ask that the question be put to the witness again  
10 and that he be asked to answer it.

11 JUDGE JONES: Could you read the question back,  
12 Ms. Reporter?

13 (The reporter read back the last  
14 question.)

15 JUDGE JONES: Any response to the objection?

16 MR. AMBROSE: Yes.

17 The question was answered. He said  
18 where is it, and he told him right there in the  
19 professional studies of real estate values all along  
20 the route.

21 JUDGE JONES: Let's have the answer back,  
22 please.

1                   Could you read the answer back?

2                   Off the record regarding scheduling  
3 while she's looking for the answer.

4                   (Whereupon an off-the-record  
5 discussion transpired at this  
6 time.)

7           JUDGE JONES: Ms. Reporter, could you read the  
8 last thing that was on the record there, please?

9           THE REPORTER: The last answer?

10          JUDGE JONES: Whatever was the last thing in  
11 front of you there that was stated by somebody.

12                  (The reporter read back  
13 Mr. Ambrose's last statement.)

14          JUDGE JONES: Now if you could read the last  
15 answer.

16                  (The reporter read back the  
17 answer which started as follows:  
18 "First of all, the question  
19 presumes...")

20          JUDGE JONES: All right. Now, the question  
21 again, please, the question that preceded that  
22 answer.

1 (The reporter read back the  
2 question which started as  
3 follows: "Looking at page 8 of  
4 Enbridge Exhibit 2A...")

5 JUDGE JONES: All right. I'll take that  
6 objection under advisement.

7 Move on to the next question.

8 Q. BY MR. BRANDT: Did you speak with any  
9 landowner, sir?

10 A. In the expansion project?

11 Q. The project that we're talking about here  
12 today.

13 A. I don't believe so.

14 MR. BRANDT: Thank you.

15 THE WITNESS: You're welcome.

16 MR. BRANDT: I have no further questions.

17 JUDGE JONES: All right. We're going to  
18 proceed with the rest of the cross, and then we'll  
19 get back to the disputed matter if we need to.

20 Who's next? Who wants to be next?

21 MR. HELMHOLZ: I'm ready, Your Honor. I've got  
22 five minutes.

1 JUDGE JONES: All right. Mr. Helmholtz?

2 CROSS-EXAMINATION

3 BY MR. HELMHOLTZ:

4 Q. Mr. Batis, among your areas of expertise is  
5 an assessment of remainder damage which you define as  
6 involving a diminution in market value of an owner's  
7 property?

8 A. Resulting from a partial taking.

9 Q. Resulting from a partial taking. Thank  
10 you.

11 You had, as part of your duties and  
12 your experience, you had some research on page 7 of  
13 your testimony that purportedly includes studying a  
14 wide range of property types. Is that fair?

15 A. Yes.

16 Q. In those property types, they did not  
17 include severed mineral or several coal estates?

18 A. I don't recall specifically properties that  
19 had severed mineral estates or coal estates.

20 Q. Are you familiar with the concept of a  
21 severed mineral estate?

22 A. Yes.

1 Q. And is that something that you have any  
2 background, training or expertise in evaluating or  
3 assessing a diminution in value of?

4 A. I've been involved in evaluation of  
5 properties, not for condemnation but where there were  
6 mineral rights conveyed, an evaluation of those  
7 rights.

8 Q. And so you are qualified to, for example,  
9 put a present cash value on coal reserves?

10 A. With proper resources to study the market,  
11 certainly I'm capable of doing that.

12 Q. Have you ever given testimony in any  
13 proceeding as an expert witness on evaluation of coal  
14 reserves?

15 A. Not coal reserves, no.

16 Q. Do you have any training or background in  
17 mining engineering?

18 A. I do not.

19 Q. Are you familiar with the concept of  
20 volumetric or aerial appraisal of coal reserves?

21 A. Very vaguely but --

22 Q. Are you familiar with the formula for

1 calculating the number of tons in a given acre of  
2 surface land overlying coal reserves?

3 A. Not off the top of my head, no.

4 Q. Difference between recoverable coal  
5 reserves and noneconomic coal reserves?

6 A. I understand the concept, but...

7 Q. Do you understand that if a pipeline is  
8 situated above the surface of recoverable underground  
9 coal reserves, that could create a land use conflict  
10 if those reserves are to be mined by the longwall or  
11 high extraction mining technique?

12 A. I suppose subject to review of engineering  
13 reports, that's a possibility. I don't know for  
14 certain if that's the case, but I suppose it could  
15 be.

16 Q. Well, longwall coal mining, in fact, causes  
17 planned subsidence, and ground subsidence is not  
18 helpful to the integrity of a liquid pipeline.

19 Would you agree?

20 A. I'm not sure I understand. What is not  
21 helpful?

22 Q. If the ground sinks below this pipeline,

1 that is not helpful to the integrity of the pipeline.  
2 Would you agree?

3 MR. AMBROSE: I think that question exceeds the  
4 scope of the testimony certainly and the scope of his  
5 expertise.

6 A. I have no opinion regarding... I'm sorry.  
7 I shouldn't answer.

8 MR. AMBROSE: My objection is it exceeds the  
9 scope of the testimony and asks him a question about  
10 an area he doesn't have any expertise and he's not  
11 been presented as an expert in.

12 MR. HELMHOLZ: He's actually confirmed he has  
13 some experience in valuing coal reserves, and that  
14 valuation would have to take into account costs of  
15 recovery.

16 JUDGE JONES: Did the witness actually answer  
17 the question?

18 MR. AMBROSE: Pardon me?

19 JUDGE JONES: The witness started to answer the  
20 question.

21 Could I have that response, please?

22

1 (The reporter read back the last  
2 answer.)

3 MR. AMBROSE: I'll withdraw the objection in  
4 view of the witness's answer.

5 Q. BY MR. HELMHOLZ: Do you understand that in  
6 Illinois, the severed coal estate is considered the  
7 dominant estate as opposed to the servient surface  
8 estate?

9 A. Yes, I'm aware of that.

10 Q. And depending on the chronology of the  
11 severance and the taking of a gas crude oil pipeline  
12 easement, one might have a dominance or superiority  
13 over the other?

14 A. Subject to the nature of taking, one might,  
15 sure.

16 Q. And the severed coal estate typically has  
17 either expressly or impliedly the right to use so  
18 much of the surface as is necessary to access the  
19 underground coal reserves.

20 Do you understand that?

21 A. I do.

22 Q. And so right there is your potential

1 surface land use conflict, correct?

2 A. Pardon me?

3 Q. Right there do you perceive the nature of a  
4 surface land use conflict in that each party, the  
5 pipeline and the coal miner, have access to the  
6 surface and a desire to use the surface  
7 simultaneously possibly?

8 A. Within the area of the permanent easement  
9 or outside the area of the permanent easement?

10 Q. In this scenario, we're talking about a  
11 pipeline preferred route that may overlie underground  
12 coal reserves.

13 A. And your question regarding the conflict,  
14 are you referring to a conflict within the boundaries  
15 of the permanent easement or to the remainder  
16 property outside the permanent easement?

17 Q. Well, I'll leave that to you to  
18 differentiate.

19 What I'm actually focusing in on is  
20 the actual physical conflict between the co-existence  
21 of a pressured-up liquids pipeline at the same time  
22 the surface ground below it will sink four to five

1 feet.

2                               Would that be a conflicting land use  
3 in your view?

4           A. I have no knowledge or experience to accept  
5 the notion that it will result in the pipeline  
6 sinking four or five feet so I'm not sure how to  
7 answer that.

8           Q. Well, do you understand the law of gravity?

9           MR. AMBROSE: Objection.

10          MR. HELMHOLZ: Grounds?

11          MR. AMBROSE: I'll withdraw. He can answer.

12          Q. Do you understand the law of gravity?

13          A. I do.

14          Q. If four feet of soil that's compacted under  
15 a pressured-up oil pipeline sinks, won't the pipeline  
16 move towards the area away from the surface, and  
17 since it's fixed at both ends, it will become concave  
18 and perhaps buckle?

19          A. It may or may not. I'm not familiar with  
20 the dynamics of the integrity or strength of the pipe  
21 and how it's impacted by the sinking of the ground  
22 underneath it.

1           Q.   If, in fact, there are costs that must be  
2 incurred to prevent the pipeline from becoming convex  
3 or sinking because of subsidence, could those costs  
4 result in diminution in value of the coal reserves?

5           A.   Depending upon who's responsible for those  
6 costs and how significant they are.

7                         Again, a lot of hypotheticals and a  
8 lot of blanks to fill in before I could answer such a  
9 question, but I suppose anything is possible with  
10 very limited information.

11          Q.   Well, and I don't know if you were present  
12 today, but did you hear Mr. Burgess testify about the  
13 costs that are involved in uncovering pipeline to  
14 protect it from subsidence?

15          A.   I didn't hear dollar amounts but I believe  
16 I heard that as one would suspect, there is a certain  
17 expense involved with uncovering and recovering a  
18 pipeline which is reasonable.

19          Q.   And without determining the magnitude or  
20 quantifying that expense, it's going to be something  
21 more than the expense of doing nothing?

22          A.   Typically, an expense of doing something is

1 more than an expense of doing nothing. I would agree  
2 with that concept.

3 Q. Right.

4 So to the extent a coal estate bears  
5 that cost, wouldn't there be a diminution in value of  
6 the coal estate?

7 A. Again, subject to many more details and  
8 blanks that would have to be filled in: how much  
9 that cost is relative to the entire operation and  
10 review of the profits and so forth and the revenues  
11 generated.

12 I think it's a very difficult question  
13 to answer with such limited information with the  
14 parameters you've set forth.

15 Q. And I'm not asking you to even venture  
16 close to quantifying it.

17 A. Thank you.

18 Q. I'm just saying assuming that there is a  
19 cost, if the coal estate had to bear it, it would  
20 diminish the value of the coal estate, correct?

21 A. It may or may not. There are instances  
22 where, I can give you many instances where there are

1 costs associated with dealing with the presence of a  
2 pipeline that, in fact, have no impact on the  
3 remainder value or the value of the whole property.

4 Q. I'm not talking about --

5 A. So it's a study that needs to be  
6 undertaken, and all the costs need to be analyzed,  
7 and I'd defer to a third party or engineer to  
8 determine what those costs are before I'd answer  
9 absolutely one way or the other.

10 Q. But whatever those costs are, if the coal  
11 mine has to incur them, aren't their coal reserves  
12 automatically ipso facto worth less?

13 MR. AMBROSE: Objection. That's the third time  
14 the question has been asked and answered.

15 JUDGE JONES: Any response?

16 MR. HELMHOLZ: I don't believe it's been  
17 answered to my satisfaction, and I don't know about  
18 the chair's but it seems to be evasive to me, Your  
19 Honor.

20 JUDGE JONES: The question is slightly  
21 differently worded, so we'll allow the question to be  
22 presented and ask the witness to answer it if he has

1 an answer to give.

2 Do you need it read back?

3 THE WITNESS: Please.

4 JUDGE JONES: Ms. Reporter, could you read the  
5 question back, please?

6 (The reporter read back the last  
7 question.)

8 THE WITNESS: Not necessarily, no. There are  
9 many instances where the landowner has incremental or  
10 additional costs involved with the development or  
11 operation of a property resulting from the presence  
12 of a pipeline, and that does not result in, based  
13 upon market evidence, a reduction in the contribution  
14 of that property, so I can't, based upon --

15 MR. HELMHOLZ: My question is not about lands.  
16 It's about coal.

17 THE WITNESS: -- based upon my experience in  
18 those areas and the incremental costs affiliated with  
19 pipelines, I can't tell you today that absolutely  
20 additional costs are going to render the coal  
21 deposits less valuable if you will. I don't know  
22 that without additional studies being done.

1           Q.   Well, how would paying for the protective  
2 costs to prevent a pipeline from rupturing enhance  
3 the value of the coal reserves?

4           A.   I didn't say it would enhance the value  
5 just as dealing with a pipeline in a development for  
6 instance and having an additional incremental cost to  
7 develop a property impressed with a pipeline doesn't  
8 enhance the value. It doesn't necessarily have a  
9 negative impact either.

10          Q.   So there are some costs that even though  
11 you have to pay them, you don't consider them a  
12 negative if you own the coal?

13          A.   Absolutely. Market evidence is very clear  
14 in that regard that the costs must be looked at with  
15 regard to the whole property, and when a property is  
16 exchanged in the open market, particularly a large  
17 property where the property could be worth millions  
18 of dollars, incremental costs may not impact the  
19 value of the whole property or may have very little  
20 impact, if any, and studies are very clear on that.

21          Q.   Let's be very clear here. I'm not talking  
22 about the whole property. I'm talking about a

1 five-foot coal seam being the ending and beginning of  
2 the entire coal estate, all right?

3 And I'm asking you, if the coal owner  
4 has to pay the cost of protecting the pipeline, how  
5 is that conceivably even neutral or beneficial to the  
6 value of the coal reserves?

7 A. Well, again...

8 MR. AMBROSE: Your Honor, I must object. He's  
9 just arguing with the witness here, trying to badger  
10 him to get an answer that he wants.

11 MR. HELMHOLZ: No, I'm not. He's obviously  
12 answering another question.

13 JUDGE JONES: Let Mr. Ambrose complete his  
14 objection.

15 MR. AMBROSE: My objection is he's asked this  
16 question. The witness has given him his answer as  
17 best as he can in the circumstances in this  
18 hypothetical that's far away.

19 He didn't like the answer. Now he's  
20 going to badger him again to get another answer to  
21 the same thing. He's arguing with the witness.

22 JUDGE JONES: Okay. Mr. Helmholtz?

1           MR. HELMHOLZ: The witness continues to talk  
2 about some obscure whole property or whole estate.  
3 It appears he does not understand the concept of a  
4 severed coal estate, which is just the coal, and so  
5 all his answers have been directed to something other  
6 than the subject matter of the question.

7                         So I'm sorry if asking him to answer  
8 my exact question is considering badgering by  
9 Mr. Ambrose but, in fact, he has not answered the  
10 question.

11           JUDGE JONES: Thank you.

12                         Could you read the question back,  
13 Ms. Reporter?

14                                 (The reporter read back the last  
15 question.)

16           JUDGE JONES: That's a close call. It is  
17 somewhat argumentative in nature, but I think it is  
18 sufficiently different than previous questions, so we  
19 will ask the witness to answer it if he has an answer  
20 to provide.

21           THE WITNESS: I'm sorry, Your Honor, but  
22 without more details about this proposed area and the

1 nature of the taking, I don't have an answer for  
2 that.

3 MR. HELMHOLZ: Well, Your Honor, given the time  
4 of day, I'm not going to press this. I believe we  
5 can address it in briefing in arguments because the  
6 witness has utterly failed to explain how incurring  
7 costs enhances the value of the coal estate.

8 That's all I have.

9 JUDGE JONES: Okay. Thank you, Mr. Helmholtz.

10 Do you want to re-identify yourself  
11 for our court reporter, please?

12 MR. HOLSTINE: Sure. Andrew Holstine.

13 Mr. Batis, how are you doing?

14 THE WITNESS: Fine. Thank you.

15 CROSS-EXAMINATION

16 BY HOLSTINE:

17 Q. I'll try to keep this moving. I have a  
18 couple questions for you about your Exhibit 8 to your  
19 testimony which was I believe a seven-page response.

20 On page 5 and going onto the top of  
21 page 6, you go into a discussion on several people  
22 that you've surveyed. I believe you stated that you

1 surveyed over a hundred people over the years, is  
2 that correct?

3 A. I wouldn't use the term surveyed. I  
4 believe it says I've interviewed market participants  
5 who have been involved with transactions but not  
6 surveyed.

7 Q. Okay. And how many years were you doing  
8 this?

9 A. Doing the interviewing?

10 Q. These interviews.

11 A. I've interviewed market participants for  
12 the last 23 years.

13 Q. Okay. And prior to going into these  
14 interviews, did you develop your own set of questions  
15 that you went over with these people, market  
16 participants?

17 A. No. For obvious reasons, that wouldn't be  
18 appropriate.

19 Q. Okay. If I can ask who developed the  
20 questions for you.

21 A. I developed the questions as the interview  
22 and discussion developed, but they weren't

1 prearranged before the interview as your question  
2 asks because that's not the manner in which an  
3 appraiser researches market reaction to preset  
4 questions.

5                               It's more a discussion of what the  
6 market participant, what knowledge he has and doesn't  
7 have and what his motivations were, so it's kind of a  
8 running discussion if you will, not necessarily a  
9 list of questions that were prearranged.

10               Q.    Okay.  And outside of your education and  
11 experience in the appraisal industry, do you have any  
12 particular training or expertise in doing marketing  
13 or data collection or things of that nature?

14               A.    Outside of the appraisal, appraisal  
15 discipline?

16               Q.    Well, do you have any special expertise in  
17 collecting data or doing impartial interviews or  
18 anything along those lines?

19               A.    Other than the 23 years of doing it with  
20 regard to real estate appraising?

21               Q.    Well, let me ask, do you think that  
22 qualifies you to conduct impartial interviews and

1 data collection in this area?

2 A. Well, it means it qualifies me to explore  
3 and understand the motivations of buyers and sellers  
4 and their knowledge and what went into their actions.

5 By all means, that's what the  
6 Appraisal Institute teaches, that very process of  
7 interviewing buyers and/or sellers and other market  
8 participants.

9 Q. Sure.

10 And when you're going out and  
11 interviewing the market participants for oil  
12 pipelines and this type of interview, during these  
13 times, these were instances where you were under  
14 consultation contract with pipeline companies,  
15 correct?

16 A. Incorrect.

17 Q. Okay. Could you explain?

18 A. Certainly.

19 Some of them were. In the course of  
20 my involvement with projects, I was conducting a  
21 research specifically for those projects, but there  
22 have been many instances, even through the current

1 date, where if I have knowledge about a certain  
2 market participant who can shed light on a situation,  
3 whether it be a project I'm involved with or not, I  
4 use that opportunity to gather the information stored  
5 in my database and in my records.

6 Q. Okay. And during the time that you've been  
7 interviewing market participants, one question I had  
8 was, you indicate that throughout, a lot of the  
9 market participants weren't even aware that pipelines  
10 were located nearby or even in the area, is that  
11 correct?

12 A. In many cases, there were owners who  
13 weren't either aware that there were pipelines in  
14 their backyard or, if they were aware of the  
15 existence, they failed to understand many of the  
16 characteristics such as the depth, the product, the  
17 diameter, the direction, the location, etc.

18 So there was a variety of levels of  
19 understanding by property owners.

20 Q. Okay. Regarding the petition that we're in  
21 here for today, were you the one that's created the  
22 market valuations for each of the properties subject

1 to this petition?

2 A. I believe my research in part was relied  
3 on. I don't know, I'm not privy to everything that  
4 went into the offers of the negotiations, but  
5 certainly I was asked starting three years ago to  
6 provide certain information that the company would  
7 rely on, as I understood it, in making offers for  
8 acquisition.

9 Q. And in regards just to this petition, at  
10 what point had you kind of concluded that period of  
11 your work for Enbridge?

12 A. I'm sorry. I didn't understand your  
13 question.

14 Q. In determining valuations and you were  
15 getting numbers and other information to Enbridge, at  
16 what point did that period of your participation  
17 conclude?

18 A. I'm not sure it has concluded. It's an  
19 ongoing process up to the last month or so where I  
20 get calls from right-of-way supervisors or managers  
21 regarding special issues and circumstances on  
22 properties when I'm asked to do additional research,

1 so this is an ongoing project which, to the best of  
2 my knowledge, I'm still involved with.

3 Q. Now, specifically in the last 12 months,  
4 have you been given any additional information or  
5 instructions by Enbridge as far as creating  
6 valuations on these properties?

7 A. I wouldn't say instructions. I've been  
8 asked to provide opinions that would reflect the  
9 value of the property or the impact of the remainder  
10 but not directed or instructed to do anything in  
11 particular; more a request to provide information.

12 Q. Okay. And this would be for specific  
13 properties then, correct?

14 A. In some cases it's for specific properties,  
15 and in some cases it's for general information about  
16 a concept that might be of benefit to the landowner  
17 for the land acquisition agents in their negotiations  
18 and in their efforts to acquire the easements.

19 Q. Are you familiar with productivity indexes?

20 A. I am.

21 Q. Okay. And did you consult PI indexes in  
22 preparing evaluations for Enbridge?

1 A. In some cases we did, yes.

2 Q. Okay. And for the cases that you did not,  
3 what did you consult?

4 A. Again, it goes back to the highest and best  
5 use of the property. Very often there are  
6 agricultural properties where productivity  
7 information is available but has no bearing on the  
8 market value of the property because property is  
9 bought for speculative purposes or alternate uses  
10 even though it may be farmed or used for farming  
11 purposes in the interim, and the investors and buyers  
12 aren't weighing and determining values based upon  
13 PIs.

14 MR. AMBROSE: Mr. Batis, could you just slow  
15 down a little bit?

16 THE WITNESS: Okay.

17 MR. HOLSTINE: Can you read back the last  
18 question, please? Oh, you know what, skip it.

19 Q. Are you aware that the PI (productivity  
20 index) for Illinois was updated in 2000 by the State  
21 Soil Conservation Agency?

22 A. Yes.

1 Q. And did you consult the updated index in  
2 doing evaluation for this?

3 A. Again, to the extent that they were relied  
4 on in certain areas, that information was considered,  
5 but not for all properties or not for all areas of  
6 pipeline.

7 Q. In determining the highest and best use for  
8 a property, you've indicated that that would be  
9 instances where there was uses for the property  
10 outside of agriculture or outside of the immediate  
11 use which would qualify as the highest and best use,  
12 is that correct?

13 A. Partially but, in fact, the agricultural  
14 use could be the highest and best use as well.

15 Q. Now, in going through and doing valuations  
16 for these properties, did you actually collect  
17 specific information on each of the properties along  
18 the route?

19 A. For many properties in Stage 2 or,  
20 actually, for all the properties in Stage 2 we did.

21 For the southern expansion, it was  
22 general information, not property specific

1 information for every tract.

2 Q. If I can ask, what is Stage 2?

3 A. The point from the Wisconsin border down to  
4 Flanagan.

5 Q. Down to Flanagan.

6 I'm sorry. I got thrown off. So what  
7 your answer was is that for this stage of the  
8 pipeline, you didn't collect specific information on  
9 each of the properties necessarily?

10 A. For each of the subject properties, that's  
11 correct.

12 Q. Okay. You already indicated that you had  
13 not been out to all the properties. You've only  
14 visited -- you haven't visited all the properties,  
15 correct?

16 A. Correct.

17 Q. Okay. For the properties you did not visit  
18 that were agricultural, how did you collect  
19 information on the tiling of those properties?

20 A. I don't believe I testified to collecting  
21 information on the -- are you talking about the drain  
22 tiles?

1 Q. Yeah, drain tiles.

2 A. I don't believe I collected drain tile  
3 information on those I didn't inspect or see.

4 Q. Okay. And on those you didn't inspect or  
5 see, did you collect any information on internal or  
6 surface draining of the properties?

7 A. No.

8 Q. Have you collected any information on how  
9 the properties have been maintained?

10 A. No.

11 Q. Have you collected any information on how  
12 the properties actually performed in the yields on  
13 the properties?

14 A. Again, in some areas we looked at  
15 productivity indexes on a broad range, but I don't  
16 recall specifically for identified subject property  
17 tracts gathering that information, no.

18 Q. Did you collect any data on soil fertility  
19 or run any soil fertility tests along the proposed  
20 line?

21 A. I did not.

22 Q. Okay. Did you collect any data on

1 government payments for these properties, direct  
2 payments for corn or soybeans, anything along that  
3 line?

4 A. I did not.

5 Q. Did you also do -- well, strike that.

6 You've been in here all day today, and  
7 there's been some testimony from Burgess and Aller  
8 about possibly a second corridor that's being  
9 considered by Enbridge two and a half miles east of  
10 Bloomington where the corridor runs there.

11 Do you recall that testimony earlier  
12 today?

13 A. I recall a lot of testimony about routes  
14 and alternate routes and proposed routes, but I don't  
15 recall specifically the route you're referencing  
16 that's two and a half miles away.

17 Q. Okay. Do you recall the -- well, you  
18 stated you recalled an alternate route, and if I may,  
19 is that alternate route -- well, strike that  
20 question.

21 Have you been asked by Enbridge in the  
22 last six months to conduct any other valuations on

1 properties between Flanagan and Patoka, any  
2 properties outside this petition?

3 A. South of Flanagan or outside of the  
4 Flanagan --

5 Q. Between Flanagan and Patoka, generally  
6 where this pipeline is running, have you been asked  
7 to conduct any other valuations along that route?

8 A. I have not.

9 Q. So you wouldn't have any personal knowledge  
10 why offers made to landowners in an alternate route  
11 there would be between two and three thousand dollars  
12 an acre higher?

13 A. I can speculate but I can't tell you with  
14 any certainty why because I wasn't privy to those  
15 offers.

16 Q. Well, I'm not asking you to speculate. I  
17 just want to know, do you have any personal knowledge  
18 of that?

19 A. I have no personal knowledge, no.

20 Q. In the last two years, your valuations of  
21 properties along this pipeline, were they impacted in  
22 any way in the form of the easements that were

1 drafted?

2 A. I need clarification on the parcels in this  
3 pipeline.

4 Are you talking again from Flanagan  
5 south?

6 Q. Yeah; the parcels that are the subject of  
7 this petition.

8 A. Okay. I understand.

9 Q. Okay. Go ahead.

10 A. I have not appraised any specific  
11 properties in that route.

12 Q. Okay. Do you keep current with ordinances  
13 and laws and statutes that would affect the  
14 properties along this pipeline route?

15 A. Along this route, I don't think I have, no,  
16 not over the last six months or year, no.

17 Q. Prior to the last six months or year, have  
18 you done any studies of that or do you have any  
19 personal knowledge of those?

20 A. None that come to mind.

21 Q. If a setback regulation were in place,  
22 would you advise your client to consider this when

1 making an offer?

2 A. A setback requirement regarding an  
3 improvement or a building on a property?

4 Q. Yeah, in proximity to the pipeline.

5 A. Yes. I believe that if I was appraising  
6 such a property that had setback lines that could be  
7 discovered or known through research, to the extent  
8 that they affected the location of the pipeline,  
9 that's something I would communicate to the client.

10 Q. Okay. And your testimony is that you're  
11 not aware of any laws or ordinance or setbacks or  
12 anything else that affect the proposed pipeline  
13 route?

14 A. I haven't done any research with regard to  
15 any laws or requirements, no.

16 Q. In Grundy County, there is a 500-foot  
17 setback from a pipeline of this size.

18 If you were told that by Enbridge,  
19 would that affect your recommendation as far as  
20 making a valuation or an offer in this matter?

21 A. I'm not sure I understand your question.

22 You're talking about if the pipeline

1 is in that setback or outside the setback?

2 Q. Well, let me -- when I refer to a setback,  
3 just so we're clear, you understand what I mean by a  
4 building setback?

5 A. Off a lot line or off a property or off an  
6 easement?

7 Q. Yeah. Those are residential uses that you  
8 commonly see, correct, building setbacks?

9 A. Residential, commercial, industrial, sure,  
10 all types of development.

11 Q. Okay. If there's a regulation in place  
12 that stated no development could take place within  
13 500 feet of a pipeline of this size and magnitude,  
14 would that affect your recommendations to your client  
15 as far as the value of an offer in this matter?

16 A. It certainly could depending upon the  
17 highest and best use of a property.

18 If the highest and best use is  
19 agricultural and there was no reasonable probability  
20 that there would be any development in the  
21 foreseeable future, that becomes a moot point.

22 If it's in a high growth area with

1 dense subdivisions and growth patterns taking place,  
2 it certainly could have an impact.

3 Q. Are you aware of a 2004 transmission  
4 research or report entitled "Transmission Pipelines  
5 and Land Use: A risk-informed approach?"

6 A. Vaguely. I don't know. I remember seeing  
7 or hearing about the report, but I don't recall the  
8 substance of it.

9 Q. Okay. To your recollection, did you ever  
10 study that report?

11 A. I did not study it, no.

12 Q. Okay. Did it ever come up in any of your  
13 appraiser continuing education seminars or anything  
14 else that you've attended?

15 A. Neither in the ones I've attended nor the  
16 ones I've taught.

17 Q. Okay. In the 2004 report, there is a C-FER  
18 consequence model which defined a hazard area and had  
19 a model projecting proposed setbacks as just one of  
20 the ways that a municipality or a governing body  
21 could come up with setbacks. For a 36-inch high  
22 pressure, maximum high pressure pipeline, there was

1 an 800-foot setback as set forth in that model.

2 Now, a setback like that, again, would  
3 that impact your decision on the offer that would be  
4 appropriate in this situation if there was an  
5 800-foot setback?

6 MR. AMBROSE: Well, I must object to the  
7 assertions of facts in this question that are not  
8 facts in evidence here and not correct by the way.

9 But the part of the question about the  
10 800-foot setback he was just asked and he just  
11 answered, or maybe it was a 500-foot setback.

12 Are you expanding it to 800-foot?

13 MR. HOLSTINE: Well, okay, if I can address  
14 Mr. Ambrose's point.

15 JUDGE JONES: Sure.

16 MR. HOLSTINE: He testified regarding a  
17 500-foot setback which is in Grundy County, and I was  
18 just asking if he was aware of this transmission  
19 report, some of the proposed models and the other  
20 setbacks which were proposed, and how that would  
21 affect his answer.

22 MR. AMBROSE: And his answer was that he's

1 vaguely aware of the report and hadn't read it.

2 MR. HOLSTINE: And how it would affect his  
3 advice that he would give the company that he's  
4 consulting for.

5 JUDGE JONES: Well, the objection is sustained.

6 I don't think that the witness has  
7 really indicated a level of familiarity with that  
8 report to be asked a question following a series of  
9 recitations from counsel about what is in that  
10 report. That's the problem.

11 If you want to try to get at it  
12 another way, that's up to you, but I don't think  
13 there has been sufficient foundation laid for that  
14 question that you've got to under the circumstances  
15 at this point.

16 MR. HOLSTINE: Your Honor, I'll withdraw the  
17 question and move on.

18 Q. Are you familiar with conservation  
19 easements?

20 A. Yes.

21 Q. Have you ever conducted appraisals for  
22 conservation easements?

1           A.    Yes.

2           Q.    Is it fair to describe in general terms a  
3    conservation easement as being typically when a  
4    private person voluntarily agrees to put restrictions  
5    on the development of their property?

6           A.    Yes.

7           Q.    Okay.  And isn't it true that typically  
8    when that is done, the grantor of a conservation  
9    easement is allowed to take an income tax deduction?

10          A.    Based upon the value of the rights that are  
11    being conveyed and subject to some type of valuation  
12    of real estate appraisal, I believe the tax code  
13    allows for that, yes.

14          Q.    And it's also true that based on the  
15    appraisals as you said and what the tax code allows  
16    that the value of the land can also see a reduction  
17    for estate tax purposes, is that correct?

18          A.    For clarification, are you referring to the  
19    land within the boundaries of the easement or the  
20    owner's land outside the boundaries of the easement  
21    because there could obviously be an impressment of a  
22    conservation easement over just part of the tract.

1 Q. Sure. I'll let you go ahead and answer  
2 that how you want.

3 A. Okay. Like I said, there's two ways to  
4 approach it.

5 I valued many properties for the  
6 purposes of that exact instant, and in the case of a  
7 conservation easement over part of a larger holding  
8 or whole property, there is a technique and a  
9 methodology which an appraiser follows which is to  
10 value the rights conveyed and measure the impact to  
11 the remainder property, and depending upon how large  
12 the remainder is and how large the conservation  
13 easement is, there could be some impact to the  
14 remainder property.

15 In other cases, there may be no impact  
16 at all to the remainder property in which cases the  
17 valuation would include nothing more than the rights  
18 within the easement area itself.

19 So again, there's a number of factors  
20 that come into play for any of these valuation  
21 scenarios.

22 Q. Okay. And then pointing directly to the

1 property within the conservation easement, that is  
2 also subject to appraisal and valuation, correct?

3 A. As part of a whole tract, yes, not as an  
4 independent parcel or component, but the appraisal is  
5 based upon the valuation of the conveyance relative  
6 to the whole tract or the owner's whole tract.

7 Q. Okay. Have you personally ever valued a  
8 property higher after placing a conservation easement  
9 on the property?

10 A. Yes. I have seen instances where --

11 Q. I'm asking if you personally have done it.

12 A. Where the remainder property is worth more  
13 as a result of the conservation easement?

14 Q. I haven't been focusing on the remainder  
15 property. I think you were the one turning the focus  
16 on the remainder property.

17 I'm just asking in the general concept  
18 of doing a conservation easement, have you ever seen  
19 valuations higher or have you ever done valuations  
20 higher?

21 A. Well, I think there needs to be  
22 clarification of property because I've appraised

1 property that backs up to a conservation easement,  
2 for instance, a residential lot, that will have, for  
3 purposes of an example here, a market value of a  
4 hundred thousand dollars.

5 JUDGE JONES: A little slower, please.

6 THE WITNESS: I'm sorry.

7 For instance, a tract would have as a  
8 buildable site a value of a hundred thousand dollars.  
9 Once a...

10 MR. HOLSTINE: If I can clarify one point  
11 before we get too far into it.

12 THE WITNESS: Yes.

13 Q. Are these properties owned by the same  
14 landowner?

15 A. In some cases, yes, they are, sir.

16 Q. Okay. Go ahead.

17 A. So there would be a component or part of a  
18 property or a lot that would have a value of a  
19 hundred thousand dollars for instance.

20 Upon a conservation easement being  
21 impressed on the adjacent property to preserve it as  
22 open space forever, the value of that single family

1 residential lot may be enhanced by the fact that  
2 there is now open space forever behind it, and there  
3 will not be any other type of development, any other  
4 type of use adjacent to it, etc.

5 Q. And then in the actual area of the  
6 conservation easement itself, that is still subject  
7 to a landowner taking deductions for that actual area  
8 that was donated in the conservation easement,  
9 correct?

10 A. I'm not sure I understand what you mean by  
11 it's subject to a donation.

12 Very often when a conservation  
13 easement is put in place, as a consequence of that,  
14 the owner does file, with his tax return, files for a  
15 deduction based upon that donation or impressment on  
16 easement.

17 I'm not sure if that answers your  
18 question or not.

19 Q. Isn't it basically the whole point of  
20 conservation easement for property owners in part to  
21 take a tax deduction?

22 A. That is a byproduct of it and certainly a

1 benefit to the owner to do so, but there are other  
2 motivations for property owners to do it.

3 Q. Well, I don't doubt there are, but isn't it  
4 fair to say that one of the major motivations is tax  
5 deductions and the economic benefit?

6 A. Property owner specific, I know a landowner  
7 who has extensive holdings and doesn't need the tax  
8 write-off yet has impressed many of his holdings with  
9 conservation easements because he's a nature lover.  
10 He has tolerated enough of the urban sprawl near his  
11 farms and properties and no longer wishes to see  
12 more.

13 So again, there's a number of reasons  
14 why owners may do it, but certainly a tax benefit is  
15 one of them.

16 Q. And one point to clarify real quick on  
17 conservation easements.

18 Isn't it also true that adjoining  
19 properties don't mean properties that literally back  
20 up to each other? It can also mean properties across  
21 the road?

22 The IRS defines contiguous properties

1 a little differently in that context, is that  
2 correct?

3 A. As do the courts under the theory of the  
4 larger parcel. Contiguity does not necessarily mean  
5 their adjacent in the court's views.

6 MR. HOLSTINE: Hang on one second, Your Honor.

7 Two or three quick questions and I  
8 will wrap this up.

9 Q. First of all, have you been asked to do  
10 valuations of the properties from Patoka to the  
11 southern border of Illinois?

12 A. To this date, no, I have not been asked to  
13 do that.

14 Q. Okay. Now, isn't it true that you've  
15 testified as an expert witness in numerous litigation  
16 procedures including matters of eminent domain,  
17 zoning matters and ad valorem matters?

18 A. Yes.

19 Q. Isn't it true you've been appointed by the  
20 circuit court on several occasions to serve as a  
21 commissioner regarding disputes on property values?

22 A. Particularly for partition suits, yes.

1 Q. Okay. Isn't it true that you're qualified  
2 as an expert witness in circuit court and federal  
3 court?

4 A. I have been, yes.

5 Q. Last question.

6 What was the Alliance project that you  
7 worked on?

8 A. Alliance?

9 Q. Yeah, Alliance.

10 A. Alliance, the stage or part of the project  
11 that I was involved with ran from the Mississippi  
12 River east to Joliet or to Grundy County, Illinois  
13 including Rock Island, Lee County, Bureau County,  
14 Grundy County. I think there were about six or seven  
15 counties that were impacted, but it was in that  
16 general area.

17 MR. HOLSTINE: Okay. No further questions,  
18 Your Honor.

19 JUDGE JONES: Okay. Thank you.

20 I think we have one holdover item  
21 here. There's a pending motion to strike and  
22 whatever may flow from that from the earlier round of

1 questions.

2                   The motion to strike is granted. It  
3 exceeds the scope of the question, but in terms of  
4 having the witness attempt to answer or re-answer the  
5 question that was asked, that's pretty far back in  
6 the record there and probably not flagged, so if you  
7 want to ask your question, since the previous answer  
8 has been stricken, you can go ahead and ask your  
9 question if you want to, and we'll see where that  
10 takes us.

11                   I think you made an objection to...

12                   MR. HELMHOLZ: Are you addressing me,  
13 Mr. Jones?

14                   JUDGE JONES: No. I should have been more  
15 speci fi c.

16                   MR. HELMHOLZ: I was getting happy my motion  
17 was granted.

18                   MR. BRANDT: I think the record speaks for  
19 itself. I don't think I need to embellish it any  
20 further, Judge.

21                   JUDGE JONES: Well, I guess I just need to know  
22 the status. There's a motion to strike the answer

1 that was levied, and so let me see if that motion is  
2 still one you want ruled on.

3 MR. BRANDT: Yes, I do.

4 JUDGE JONES: All right. And so that being the  
5 case, then, yes, the motion to strike is granted as  
6 just noted, and did you have any -- did you want to  
7 reask the question or have any follow-up questions to  
8 that?

9 MR. BRANDT: I do not. Thank you.

10 JUDGE JONES: Okay. Thank you.

11 I think that concludes the cross then.

12 Is there some redirect of this  
13 witness?

14 MR. AMBROSE: No, Your Honor, there is no  
15 redirect.

16 I do wish to renew the motion to admit  
17 the testimony into evidence, the prepared testimony.

18 JUDGE JONES: Okay. That is Enbridge Exhibit  
19 No. 6?

20 MR. AMBROSE: 6.

21 JUDGE JONES: Any objections to the admission  
22 of that exhibit, Enbridge Exhibit No. 6, testimony of

1 the witness?

2 MR. BRANDT: I'd make a motion to strike his  
3 testimony, Your Honor, based upon the proposition of  
4 the cross-examination here today.

5 This gentleman hasn't spoken to a soul  
6 along the line. He has not viewed the properties,  
7 and his testimony as set forth in Exhibit 6 with the  
8 exhibit is general in nature and not specific to this  
9 particular project, so I see it having little value  
10 to moving the issue forward.

11 JUDGE JONES: Okay. Anyone else?

12 Any response?

13 MR. AMBROSE: Yes.

14 The testimony applies to assertions  
15 made by the intervenors that Enbridge is not dealing  
16 in good faith with the landowners because it was not  
17 offering huge amounts of money as remainder damages  
18 as is the normal process of negotiating with  
19 landowners.

20 Mr. Batis explained at length in his  
21 testimony based on his great expertise and work in  
22 the area that there is no basis to automatically

1 assume that any property impressed with a pipeline  
2 easement incurs damages to the remainder and that  
3 such assertions by witnesses offered by the  
4 intervenors were unfounded and incorrect and not  
5 supported by acceptable appraisal valuation  
6 approaches.

7 That's what the testimony is about.  
8 He's not here to testify to the valuation of any  
9 particular property involved because this is not a  
10 valuation hearing on those properties.

11 JUDGE JONES: Thank you.

12 Any reply to that?

13 MR. BRANDT: I have nothing else to add. Thank  
14 you, Your Honor.

15 JUDGE JONES: Let the record show that the  
16 motion to strike the testimony is denied.

17 Enbridge Exhibit 6 will be admitted,  
18 and the objections will go to the weight to be  
19 afforded that testimony.

20 (Whereupon Enbridge Exhibit 6  
21 was admitted into evidence at  
22 this time.)



1 JUDGE JONES: And which witness is that?

2 MR. AMBROSE: Olson.

3 JUDGE JONES: Witness Olson. All right.

4 And then one witness will not be  
5 required to travel to Springfield but rather will  
6 either be cross-examined by phone on the 10th or on a  
7 later date.

8 You want to indicate for the record  
9 who that witness is?

10 MR. BRANDT: Hazell, Steve Hazell

11 (H-a-z-e-l-l).

12 JUDGE JONES: And that witness will be kept  
13 available to testify on the 10th, and sometime  
14 between now and then we'll be able to figure out  
15 whether the witness will, in fact, be crossed on the  
16 10th or at a later time by phone.

17 And then I think there are some other  
18 clarifications with respect to the schedule on the  
19 10th.

20 Who else would like to state what else  
21 needs to be noted for the record there?

22 MR. AMBROSE: I think we just agreed that

1 Professor Makholm could be the first witness of the  
2 day on the 10th, whatever time we're going to begin.

3 JUDGE JONES: All right. Fair enough.

4 Anything else with respect to either  
5 the witness lineup or order of witnesses on the 10th  
6 or with regard to estimated cross-examination time on  
7 either the 9th or the 10th that would be helpful for  
8 somebody to know today?

9 All right. Let the record show no  
10 response to that.

11 We'll continue to look at the cross  
12 time as we move through the witnesses here.

13 I think that should do it for today's  
14 purposes then but let's make sure.

15 Anything else that would be helpful to  
16 the parties to take up right now before we recess for  
17 the evening?

18 MR. AMBROSE: Nothing from us, Your Honor.  
19 Thank you.

20 JUDGE JONES: All right. Let the record show  
21 that today's hearing is over.

22 Our thanks to all participants for

1 your participation and patience, and we'll see you  
2 tomorrow.

3 (Whereupon the hearing was  
4 continued to July 10, 2008 at  
5 9:30 a.m.)

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