

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 18-12378 (LSS)
WELDED CONSTRUCTION, L.P.,
et al., (Jointly Administered)
Debtors.
WELDED CONSTRUCTION, L.P., Adversary Proceeding
Plaintiff, No. 19-50194 (LSS)
v.
THE WILLIAMS COMPANIES, INC.,
WILLIAMS PARTNERS OPERATING Courtroom 2
LLC, and TRANSCONTINENTAL GAS 824 Market Street
PIPE LINE COMPANY, LLC, Wilmington, Delaware 19801
Defendants. Wednesday, August 23, 2023
9:29 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

TRIAL (DAY TWO)

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INDEXWITNESSES CALLED
BY THE DEBTORS:PAGESTEPHEN HAWKINS

Cross-examination (Cont'd) by Mr. Burwood 196

Redirect examination by Mr. Guerke 377

RICHARD WALL

Direct examination by Mr. Neiburg 387

Cross-examination by Mr. Burwood 413, 424

MARCUS HOOD

Direct examination by Mr. Guerke 436

1	<u>EXHIBITS</u>		
2	<u>PLAINTIFF'S EXHIBITS:</u>		<u>PAGE</u>
3	PX-9	Letter of intent	401
4	PX-13	Email, 11/03/15	395
5	PX-300	Browning email, 7/25/18	466
6	PX-352	Browning email, 9/11/18	466
7			
8	<u>DEFENDANTS' EXHIBITS:</u>		<u>PAGE</u>
9	D-6	Request of services	206
10	D-29	McDowell email w/Welded Construction board book attachment, 10/26/16	302
11			
12	D-39	Consulting services agreement	196
13	D-42	Request for services	428
14	D-63	McDowell email w/Welded Construction board meeting materials, 2/21/17	305
15			
16	D-66	Hernandez mail w/attachments, 2/21/17	307
17	D-66A	Hernandez w/attachments, 2/21/17	307
18	D-70	Hernandez email, 2/27/17	217
19	D-70A	Attachment to Hernandez email	217
20	D-82	Peters email, 3/13/17	229
21	D-83	Attachment to Peters email	229
22	D-86	Grindinger email, 3/17/21	236
23	D-325	McNabb email, 8/29/17	260
24	D-326	Attachment to McNabb email	260
25	D-466	Emails	366

1		<u>EXHIBITS</u>	
2	<u>DEFENDANTS' EXHIBITS:</u>		<u>PAGE</u>
3	D-533	Email w/spreadsheet, 11/12/17	292
4	D-533A	Email w/spreadsheet, 11/12/17	292
5	D-607	Email w/spreadsheet, 12/11/17	299
6	D-716	McNabb email, 1/17/18	278
7	D-1000	Kuxhausen email, 3/23/18	331
8	D-1251	Rothgeb email, 6/14/18	346
9	D-1251B	Email	346
10	D-1291	Rothgeb email, 7/03/18	351
11	D-1380	McDonald email, 7/30/18	284
12	D-1434	Bryan email, 8/16/18	288
13	D-1434A	Bryan email, with spreadsheet	288
14	D-1894	Wire transfer	376
15	D-1895	Wire transfer	376
16	D-1896	Wire transfer	376
17	D-1897	Wire transfer	376
18	D-1898	Wire transfer	376
19	D-1899	Wire transfer	376
20	D-1900	Wire transfer	376
21	D-1901	Wire transfer	376
22	D-1902	Wire transfer	376
23	D-1903	Wire transfer	376
24	D-1904	Wire transfer	376
25	D-1905	Wire transfer	376

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

DEFENDANTS' EXHIBITS:

PAGE

D-2045 Welded CSAS Job number 25362

434

D-2112 Email, 1/25/16

417

JOINT EXHIBITS:

PAGE

JX-14 Incentive Program slide

480

Transcriptionists' Certificate

482

1 (Proceedings commenced at 9:29 a.m.)

2 THE CLERK: Please rise.

3 THE COURT: Please be seated.

4 Good morning.

5 MR. BURWOOD: Good morning.

6 THE COURT: Mr. Hawkins, back on the stand,
7 please.

8 MR. BURWOOD: Your Honor, before we get started
9 with the witness, can I address two things? We've got for
10 you a copy of Transco's opening statement and then, also,
11 there's a few exhibits that we expect we may deal with
12 Mr. Hawkins today that didn't make it into your binder --

13 THE COURT: Okay.

14 MR. BURWOOD: -- so I've got a supplement for you.
15 May I approach?

16 THE COURT: You may.

17 MR. BURWOOD: Thank you.

18 THE COURT: Thank you.

19 MR. BURWOOD: And we've provided copies of both to
20 counsel for Welded.

21 THE COURT: Okay. And Mr. Hawkins, I'll just
22 remind you, you're still under oath.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: Thank you.

25 //

1 STEPHEN HAWKINS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN,

2 RESUMES STAND

3 CROSS-EXAMINATION (CONT'D)

4 BY MR. BURWOOD:

5 Q Good morning, Mr. Hawkins.

6 A Good morning.

7 Q If you recall yesterday when we broke, we were on
8 Exhibit D-39 and that was an agreement for consulting
9 services between Welded and PTAG.

10 Do you recall that?

11 A Yes.

12 MR. BURWOOD: Okay. And, Your Honor, I neglected
13 to move to admit that into evidence at the break yesterday
14 and I'd move to do so now, please.

15 THE COURT: Okay. And that's D-39?

16 MR. BURWOOD: Yes, Your Honor.

17 THE COURT: Okay. That's admitted.

18 (Exhibit D-39 received into evidence)

19 BY MR. BURWOOD:

20 Q Mr. Hawkins, in addition to the contracting for PTAG
21 employees, Welded also contracted for Bechtel employees to
22 be, I think the term is seconded to the job; is that correct?

23 A Correct.

24 Q And I'm going to referring you to Exhibit D-6 in your
25 binder, and D-6 is a request for services between Bechtel and

1 Welded.

2 Let me know if you see that?

3 A Yes.

4 Q Okay. And you executed that document on behalf of
5 Welded, correct?

6 A Let me make sure I signed it. Yes.

7 Q And looking at Section 2 on page 1, the effective date
8 of that agreement is December 13 of 2016; is that right?

9 A Yes.

10 Q Okay. That's the same week that the PTAG/Welded
11 agreement was executed, if you recall?

12 A Yes.

13 Q Okay. And in the first paragraph it says:

14 "The request for services applies to the
15 continuing services agreement between Welded and Bechtel,
16 dated May 29, 2015."

17 Do you see that?

18 A Yes.

19 Q Okay. What -- do you understand -- let me back up.
20 You've just joined Welded at this pointed, right?

21 A Yes.

22 Q Okay. But you were at Bechtel prior to that, correct?

23 A Correct.

24 Q Okay. Were you aware at this point that there was a
25 continuing services agreement, a CSA, between Bechtel and

1 Welded that went back to at least 2015?

2 A Yes.

3 Q Okay. What, if you know, is the purpose of that CSA?

4 A It's to provide, if we need to get other people to
5 perform the work that have an agreement with Bechtel to
6 provide those services; that's simply what it is.

7 Q And when you say "we," you mean Welded?

8 A Welded. I'm sorry, yeah, Welded Construction.

9 Q And, specifically, as to this instance, why would
10 Welded have that need?

11 A The company, meaning Bechtel, has specific pipeline
12 competencies that we may not meet all the time on this staff,
13 but we need to bring in to fill any particular gaps that we
14 have in staffing or needs or skill sets from time to time.
15 So, that's the vehicle to do it.

16 Q And Bechtel was one of the two shareholders of Welded
17 at this time, correct?

18 A Yes, correct.

19 Q And the other is McCaig?

20 A McCaig, yes.

21 Q And are you back working at Bechtel now?

22 A I am, yes.

23 Q And so did you leave Welded and go back to Bechtel?

24 A Yes, I'm currently living and working in Kazakhstan for
25 another joint -- a Bechtel joint venture.

1 Q Focusing back on Exhibit D-6, in terms of the services
2 requested, it's the first paragraph, do you see where it
3 says:

4 "Welded has requested the services of personnel
5 from Bechtel to assist in the planning of projects and
6 project-management activities."

7 A Yes.

8 Q Okay. And so, do you know -- and, actually, I'll refer
9 you to paragraph 3 for a reference -- this agreement referred
10 to not just the ASR project, right?

11 A Yes, it did not -- confirming, yes, it did not apply
12 only to ASR.

13 Q And specifically in Section 3, there are five
14 romanettes that talk about the Saginaw, Leach, OPP1, OPP5,
15 and the ASR projects, right?

16 A Yes.

17 Q Okay. And these are all projects that around the time
18 of this RFS, those are in some way, shape, or form, on
19 Welded's plate?

20 A Correct.

21 Q In terms of manner and times of payment, do you see
22 paragraph 4?

23 A Yes.

24 Q Okay. And this RFS required Bechtel to invoice Welded
25 on a monthly basis, right?

1 A Yes.

2 Q And Welded, in turn, was required to make prompt
3 payment of said invoice immediately upon receipt, correct?

4 A Yes.

5 Q Okay. Mr. Hawkins, would you agree that Welded
6 ultimately failed to pay all of Bechtel's invoices promptly
7 upon receipt?

8 A Yes.

9 Q Okay. Would you agree, Mr. Hawkins, that with respect
10 to most of the Bechtel invoices in connection with ASR,
11 Welded did not pay them at all?

12 A I don't know the status of what was paid or unpaid. I
13 know they weren't all paid.

14 Q Part of your responsibilities as president and CEO are,
15 you said, is profits and losses, correct?

16 A Yes.

17 Q Okay. And do you get involved in AR?

18 A AR?

19 Q Accounts receivable?

20 A Not normally monthly reporting, but I wasn't involved
21 in the invoicing, accounts receivable, accounts payable
22 process.

23 Q Who, primarily, on your team was in charge of that?

24 A The CFO and the controller and the AP manager and the
25 AR manager.

1 Q And can you just give me the names of the people?

2 A Yeah, the CFO was Dean McDowell. The controller was
3 Dean for a time and then we -- I think Brian stepped up to be
4 the controller. I forget Brian's last name. And then Rachel
5 was AP and AR.

6 Q Okay. Mr. Hawkins, if Bechtel's records reflect that
7 Welded failed to pay approximately \$2.9 million in connection
8 with these Bechtel seconded employees, do you have any reason
9 to dispute that?

10 A No.

11 Q And Mr. Hawkins, do you have a sense as to why Welded
12 failed to pay Bechtel for the seconded employees on ASR in
13 that regard?

14 A Well, in fact, they were old payments that couldn't be
15 made due to the cash constraints that we were operating under
16 at the time.

17 Q So let's unpack that.

18 A Uh-huh.

19 Q Cash constraints, when, in time?

20 A When in time?

21 Q Well, you said that there were cash constraints, so I'm
22 trying to get a sense as to what time period are you talking
23 about these cash constraints?

24 A Well, specifically, at the end of the AR project, for
25 sure; the ASR project, that's one period.

1 Q October of 2018?

2 A October 2018, September 2018. They were cash
3 constrained in June with the short payments in July and so on
4 and so forth.

5 Q Any cash constraints that you're aware of in January of
6 2018?

7 A I'd have to take a look at the cash flow to see where
8 we were. Cash flow is what lays out our cash position.
9 And I know they were forecasted to go negative during certain
10 times and recovered during others.

11 Q Mr. Hawkins, if I offer to you that the last payment
12 that Welded made to Bechtel in connection with this RFS was
13 in December of 2017, does that sound right to you?

14 A I can't confirm it one way or another. I don't know
15 when the last payment to Bechtel was.

16 Q If that fact were true, would you ascribe that to
17 Welded having a cash flow concern?

18 A I'd have to look at the reason why it wasn't paid.

19 Q And it is the case that with respect to the cash-
20 neutral, sort of component of this job, Transco was paying
21 its bills, right?

22 A Yes.

23 Q Okay. And so if there was no money to pay Bechtel in,
24 for example, December of 2017, you have no reason to ascribe
25 that to Transco, do you?

1 A I don't have -- I don't know why or why we did or
2 didn't pay them after December of 2017.

3 Q Mr. Hawkins, do you know how many Bechtel employees
4 were seconded to Welded for ASR sort of at the high-water
5 mark?

6 A I don't know the total number, no.

7 Q Do you have a ballpark?

8 A Yeah, half a dozen, 10. I'm totally guessing here. I
9 do not know.

10 Q Okay. I don't ask you to guess, but I appreciate the
11 estimate.

12 A Okay.

13 Q Whose decision was it, Mr. Hawkins, to hire the Bechtel
14 seconded employees for ASR?

15 A Whose decision was it? I think it was just the
16 collective management decision. We needed the people.

17 Ultimately, I guess it would have been my decision to
18 hire and request the services since I put the request out
19 there, but I left it to the team to source the people that
20 they needed; in other words, Marcus is probably my decision
21 to bring him in and then -- Marcus Hood -- and then I would
22 have left it to Marcus to flush out the team that he needed,
23 along with his customer, the team that they needed to manage
24 the work.

25 Q Mr. Hood's role was, remind me again, on the project?

1 A He was the senior project manager for ASR.

2 Q Okay. Was it the case, pre-NTP, that Welded didn't
3 have anybody on payroll that could fulfill Mr. Hood's role?

4 A Welded didn't have anybody on payroll? That's probably
5 fair.

6 Mr. Hood's an extremely competent senior project
7 manager for major pipeline projects. He's, you know, of this
8 size and magnitude, he's probably the best that we had in the
9 Bechtel-Welded realm, yeah.

10 Q Mr. Hawkins, any particular reason why Welded didn't go
11 out into the market and actually hire employees, rather than
12 getting them from PTAG or getting them from Bechtel?

13 A Well, one, we go to the competence issue, number one.

14 You know, I know Marcus Hood is extremely competent.
15 He would want Marcus Hood.

16 And I know some of the individuals that we brought in
17 from Bechtel were extremely competent and professional people
18 that I felt added a benefit to the project. That's why we
19 brought them in.

20 As far as PTAG versus direct hire, when you have a
21 period like we had on the projects that we -- you know, a beg
22 peak all at once, going out into the market and hiring and
23 bringing in all of those extra elements of hiring is
24 sometimes more -- I don't want to say "more convenient" --
25 but they -- they're independent contractors. They come in.

1 They get a day rate. You know, we don't pay their insurance.

2 We don't pay their taxes; they're 1099 employees. And
3 they cover all those costs and expenses on their own, and
4 it's less burden to have to set all that up for the hires.
5 And we know it's going to be for a short, a short duration of
6 time. You know, these are contemplated to be less than a
7 year.

8 So, that's the reasons why agencies exist. They have a
9 line on extremely competent people from the market, many
10 known to the customers that we were working with, the names
11 that we were able to bring in. So that's the reason, as
12 opposed to hiring long-term Welded employees.

13 And we don't maintain staffs. You know, 2013, '14, and
14 '15, we had 50 people in the company. We did not have a
15 large backlog of work. So when you hit a big backlog of
16 work, you need to source the properly. You need to have
17 competent people to do it and then you need to use whatever
18 resources and tools you can to bring them to the work.

19 Q Okay. And in addressing that dynamic you just
20 described --

21 A Uh-huh.

22 Q -- is it also the case, though, that there's a
23 premium -- there's an expense to be paid for that above and
24 beyond what it would be to just hire an employee for Welded?

25 A Hire an employee for Welded? Well, you asked me

1 yesterday was the \$1300 a day comparable to Welded employees
2 and I looked at that last night in the contract and it, in
3 fact, is comparable.

4 Superintendents were somewhere around 7,000 bucks a
5 week. You know, divided that by six, you know, it's north of
6 a thousand dollars a day is what they were being paid. So
7 that is market, especially during a big pipeline peak market,
8 where everybody is competing for labor and there's a lot of
9 work going at the same time and labor is a premium --
10 everything is a premium. You pay a premium, correct.

11 Q And with respect to, specifically, Bechtel,
12 Mr. Hawkins, in addition to sort of the daily rate, was there
13 also a multiplier paid to Bechtel on top of that?

14 A Yes. If you want me to comment on it, I'd like to look
15 at it. If you could just bring that up so I'm not --

16 Q That's good enough for me, thank you very much.

17 A Thanks.

18 MR. BURWOOD: Your Honor, I would offer
19 Exhibit D-6 into evidence.

20 THE COURT: D-6 is admitted.

21 (Exhibit D-6 received into evidence)

22 BY MR. BURWOOD:

23 Q Mr. Hawkins, drawing your attention to the next
24 exhibit, which is D-70.

25 A Okay.

1 Q Just let me know when you're there.

2 A Yes, you can call it up again. Okay. Thank you.

3 Q Yes. And so, Mr. Hawkins, to orient you, D-70 is the
4 first -- is an email dated February 27, 2017; do you see
5 that?

6 A Yes.

7 Q Okay. And it's from Cecelia Hernandez, right?

8 A Yes.

9 Q Who is Ms. Hernandez at Welded? What was her role?

10 A During this time, I believe she was the project
11 controls manager in Welded, Perrysburg, reporting to John
12 McNabb, who was the contract and project controls manager for
13 Welded.

14 Q Okay. And Mr. McNabb is included on this email,
15 correct?

16 A He's CCed, yeah. I am not, but I see it.

17 Q And as is Mr. McDowell, the CFO, correct?

18 A Yes.

19 Q And Mr. McDowell reported to you?

20 A Dean McDowell is the CFO who reported to me.

21 Q Okay. And there's an attachment referenced here in
22 D-70. It says, "Welded Staffing 2016."
23 Do you see that?

24 A "Welded Staffing," yes.

25 Q Okay. And would you agree with me that the time frame

1 of this, that we're in this pre-NTP planning phase, correct?

2 A Yes. In February of 2017, yes, we are waiting for not
3 only ASR to break, but also Leach. LPP is ongoing. We're
4 awaiting for permits for the other Sunoco ETP spreads. So,
5 yeah, we're just waiting for -- waiting to be able to start
6 the work.

7 Q Okay. And part of the pre-NTP planning work that
8 Welded was doing for ASR involved the plan on how to staff
9 that project, right?

10 A I believe so, yes.

11 Q Do you recall if Welded prepared a staffing plan for
12 the ASR project?

13 A I don't recall. I wouldn't be surprised, but I don't
14 recall.

15 Q Okay. So let me ask you to look at D-7D0 -- sorry --
16 70A, which is the -- it's the attachment to this email.

17 Do you see that?

18 A Yes.

19 Q Okay. And I appreciate it's a pretty significant Excel
20 spreadsheet, but there's a copy of it in your notebook, as
21 well.

22 A Uh-huh.

23 Q But what I'm going to ask you is, you know, are you
24 able to tell me if you've seen this document before?

25 A Yes, I have seen mobilization and manpower spreadsheets

1 before.

2 Q Okay.

3 A Are you asking me if identify seen this specific
4 spreadsheet or if I've seen manpower spreadsheets before?

5 Q Well, let me ask this: Manpower spreadsheet, that's a
6 staffing plan?

7 A Yeah, a staffing plan. Yes.

8 Q Okay. And you've seen documents such as this in
9 connection with Welded projects, right?

10 A Correct, yes.

11 Q It's a document that Welded sort of prepares and
12 maintains, sort of in connection with the normal course of
13 projects, right?

14 A Correct.

15 Q Great.

16 I'm going to ask Ms. Bair to assist us on the screen,
17 rather than have you navigate the PDF. But I'm going to ask
18 you to --

19 So, the date of Ms. Hernandez's email, just as a sort
20 of reference point, it's February 27 of 2017. We're at the
21 end of February. Okay?

22 A Yes.

23 Q And so, Ms. Bair has highlighted column M in this ASR
24 staffing plan.

25 Do you see that on the screen?

1 A Yes.

2 Q Okay. And column M corresponds to week ending 2/26/17,
3 very close to the date of the email.

4 Do you agree?

5 A Column M? Yes.

6 Q Okay. And so, this is a plan, though.

7 Do you understand this to be a projection of how this
8 project is going to be staffed?

9 A Yeah, these are -- it's a projection. That's the best
10 way to put it.

11 Q Okay. And we had talked about Mr. Hood.

12 If you look at row 5, column M, do you see where it
13 says, "Project director: Marcus Hood"?

14 A Yes.

15 Q And there's a .5.

16 Do you see that?

17 A Yes.

18 Q Do you know what that means?

19 A It means 50 percent of his time was projected to be
20 assigned to that project during that time.

21 Q And Mr. Hood was a PTAG hire, correct?

22 A No. Mr. Hood's Bechtel.

23 Q Bechtel. I apologize.

24 A Uh-huh.

25 Q Mr. Hawkins, I understand the .5 means 50 percent.

1 Do you have a sense as to, in terms of hours, how that
2 breaks down? Is that 50 percent of 40 hours? Do you know?

3 A I don't know if they -- if this is based on 60 or 40 at
4 this point.

5 Q Is it your understanding that sort of this decimal,
6 this .5, reflects that, perhaps, Mr. Hood was going to be
7 working on other projects in the same time period?

8 A That's what it suggests, yeah.

9 And, by the way, that's person months, not hours
10 associated. So, it's .5 months. And I think we calculate
11 all this up into person months, as to roll-up, not hours, *per*
12 *se*.

13 Q Well, this is it broken down by week.

14 You would agree?

15 A Yes.

16 Q Okay. And so how do you reconcile the fact it's person
17 months, but it's broken down by week?

18 A Well, the total roll-up at the end of the job is how
19 many person months, and it all -- it all aggregates and
20 accumulates.

21 Q Okay.

22 A But it's -- but that's the same thing, I guess.

23 Q Okay. Do you recall if, in fact, Mr. Hood was working
24 at this time, on projects, other than the pre-NTP ASR work?

25 A I don't know what Mr. Hood is doing during this time.

1 Q Okay. Going further down the spreadsheet, row 13 is
2 John McNabb.

3 Do you see that?

4 A Yes.

5 Q And he was project controls, right?

6 A Home office support for project controls, at this
7 point. Premobilization for ASR in February, correct.

8 Q Okay.

9 A And then mobilized out, yeah.

10 Q And at that time, he's planned to be at the job .1 --
11 10 percent of his time, correct?

12 A 10 percent of the time, .1?

13 Yes, correct.

14 Q And Mr. McNabb is PTAG, right?

15 A Correct.

16 Q Okay. And also, below him is Cecelia Hernandez.

17 Do you see that?

18 A Yes.

19 Q Okay. And she is projected to spend point -- 40
20 percent of her time on this ASR project work, right?

21 A Correct.

22 Q Okay. She's also PTAG?

23 A No, she was direct hire from Bechtel. She wasn't
24 seconded. We hired her from Bechtel.

25 Q Okay.

1 A She's Welded, in other words.

2 Q Thank you.

3 Do you see Jim Grindinger below that? He's project
4 controls?

5 A Yes.

6 Q And he's also -- is he PTAG?

7 A I believe Jim is PTAG -- was PTAG, yes.

8 Q All right. And at this point, at least, Welded is
9 projecting that he's not yet sort of working on this project,
10 but perhaps he's going to in the following week at 100
11 percent, right?

12 A Probably, yes. By -- according to this projection,
13 yes.

14 Q Going further down in terms of the premobilization
15 construction. It's row 27. And so, I just want to draw your
16 attention.

17 Do you see where it talks about Gary Gavlock?

18 A Yes.

19 Q And Mr. Gavlock was slated to be a general
20 superintendent for the ASR project?

21 A During the premobilization period, yes.

22 Q Okay. And at least, with respect to couple M,
23 February 26th, the staffing plan has him there at about 60
24 percent of his time, correct?

25 A Yes.

1 MR. BURWOOD: Okay. Would you please move to the
2 tab that says -- it's two tabs to the left -- PPP1 and 5.

3 Next one to the right. Okay?

4 We'll blow that up for you, Mr. Hawkins.

5 THE WITNESS: Uh-huh.

6 MR. BURWOOD: And under "Construction," I'm
7 looking for Gary Gavlock again. He's row 26.

8 BY MR. BURWOOD:

9 Q Mr. Hawkins, do you see where we've highlighted row 26
10 on this sheet?

11 A Yes.

12 Q Okay. And this is a different job. This is pipeline
13 pre-mob for PPP1 and 5, correct?

14 A Correct.

15 Q And this is the Sunoco job we talked about yesterday?

16 A Yes.

17 Q Okay. And in the same time period that we just looked
18 at for Mr. Gavlock where he was 60 percent projected on ASR,
19 he's also 60 percent projected for Sunoco, correct?

20 A Correct.

21 Q Okay. And do you have any sense as to -- strike the
22 question.

23 MR. BURWOOD: Ms. Bair, can you turn back to the
24 ASR tab, please.

25 And can we go down to "Home office."

1 BY MR. BURWOOD:

2 Q So let me just say this. In addition to management and
3 construction -- controls in construction, there are also
4 categories on this sheet offered to you that talk about HR,
5 payroll, accountants.

6 Those are all people that need to be staffed to this
7 job, right?

8 A Yes.

9 Q Okay. And I'm focusing your attention on column P,
10 which is March 19th, 2017, do you see in row 103, it says,
11 "13.3"?

12 A Yes.

13 Q Okay. Would you agree with me that that indicates that
14 as of mid-March, Welded's staffing plan indicated that there
15 would be, in my jargon, 13.3 sort of full-time equivalents
16 working on the pre-NTP work, FTEs, 13 people?

17 A Thirteen? Yeah, it's full-time equivalents; that's
18 correct.

19 Q Okay. And if we project that value all the way out to,
20 for example, to the end of the job to the right, the high-
21 water mark FTEs is 36.2; is that right?

22 A By the end of 2017, yes.

23 Q I apologize. To the end of the spreadsheet; you're
24 right.

25 And so for this pre-NTP period, or for this period that

1 ends end of the year in 2017, Welded was at least planning to
2 staff this project where, in March -- mid-March there was
3 about 13 people working on the project and by the end of the
4 year, they've got about 36 people; is that correct?

5 A On that line item, yes.

6 Q Okay. And which line item?

7 A Well, the -- you'd have to go back over. The total of
8 craft field, non-manual, and subs for pipeline
9 premobilization.

10 Q Yeah, okay.

11 Mr. Hawkins, do you know if Welded actually invoiced
12 Transco during the period this spreadsheet covers, according
13 to this plan?

14 A I don't know.

15 Q Do you know recall sitting here today, any sort of
16 significant departures from the staffing numbers that are
17 reflected in this plan?

18 A Well, I know there was a change in execution from two
19 spread to three, so that would have been a significant
20 deviation from any staffing during -- you know, once it
21 started up after October. This goes to the end of the year,
22 right.

23 So, we mobilized in September and October. I don't
24 know where we ended up on those numbers, but we -- the
25 execution model changed from two spreads to three, which

1 would have increased all of these numbers.

2 Q And that would have driven, potentially, the staffing
3 numbers up, correct?

4 A Not potentially. It should have, yeah.

5 Q Okay. Fair enough.

6 But just putting your view in March of 2017, okay,
7 there's pre-NTP planning going on, right?

8 The staffing plan shows --

9 A Yes.

10 Q The staffing plan shows approximately 13 people working
11 on the job at that time, right? That's what we looked at?

12 A On these dates, that's what it's showing, full-time
13 equivalents of around 13, 13.3, ramping up to 30, and then
14 down again in June for some reason, and then back up to --
15 back up to 36 by the end of the year, yes.

16 MR. BURWOOD: Your Honor, I'd offer Exhibit 70
17 and 70A into evidence. No objection.

18 THE COURT: They're admitted.

19 (Exhibits D-70 and D-70A received into evidence)

20 BY MR. BURWOOD:

21 Q Mr. Hawkins, Exhibit D-82 is an email from Holly Peters
22 at Welded to Dean McDowell.

23 Let me know when you're there.

24 It's dated March 13, 2017.

25 A I'm here.

1 Q Okay. And --

2 THE COURT: I'm sorry, can you tell me what
3 exhibit you're on?

4 MR. BURWOOD: D-82, Your Honor.

5 THE COURT: Thank you.

6 MR. BURWOOD: May I proceed?

7 THE COURT: Yes.

8 BY MR. BURWOOD:

9 Q Mr. Hawkins, there's an -- the subject line of this
10 email is "Payroll data for the ASR job," right?

11 A Yes --

12 Q Okay. And at least --

13 A -- in the subject --

14 Q Sorry.

15 A Yes.

16 Q And at least in the email, it references an attachment
17 and it shows some week ending January 8 of '17 through
18 March 5 of '17.

19 Do you see that?

20 A Yes.

21 Q Okay. Payroll date is something that would cross your
22 desk sort of during this time period at all?

23 A No.

24 Q Okay. Who would be responsible for payroll data?

25 A The ones that are on this email.

1 Q Okay. And Dean McDowell, again, is the CFO, right?

2 A Dean McDowell, Holly Peters, yes.

3 Q And he answers to you -- or he reports to you, correct?

4 A Correct.

5 Q Okay. And would you agree with me that payroll data is
6 something that -- it's information that Welded sort of would
7 prepare and maintain sort of in the usual course of business?

8 A Yes.

9 Q Okay. Focusing on the email, it's several pages long.
10 I'm going to ask you to go for page 4. Just the last
11 page of Exhibit D-82.

12 And I'm going to focus your attention on a March 10,
13 2017, email from Renee Bisnett.

14 Do you see that?

15 A Yes.

16 Q Okay. And Mr. Bisnett was a contractual manager for
17 Welded?

18 A Ms. Bisnett, yes.

19 Q I apologize. I knew I had a 50 percent chance and I
20 knew I'd get it wrong.

21 A That's okay. The two Es gives it away.

22 Q And Ms. Bisnett says to -- the recipient of this is
23 unknown -- well, actually, we know that it's Dean McDowell,
24 because she says:

25 "Dean, Jim Grindinger is being denied payroll data

1 for ASR and he needs this information to invoice the client."

2 Do you see that?

3 A Yes.

4 Q Okay. March of 2017, this is six months after the RFS
5 was executed, right?

6 A Yes.

7 Q Okay. To your recollection, was the pre-NTP planning
8 work underway at this point?

9 A I saw a document yesterday that was dated March 13th
10 that I signed with Mr. Sztroin, so I don't know if it had
11 started by this point or not.

12 I don't know. I don't know what day we started that
13 planning.

14 Q When was the original NTP date, if you recall?

15 A NTP? So, this is March 7th. The NTP was in
16 September 25th, I thought, of 2017. So, it's six months.

17 So, I'm just saying, I'm not saying that we're not
18 doing planning. I don't know the date that -- the actual RFS
19 date for the commencement of the pre-NTP planning started.

20 Q Okay. Let's see if we can clear that up. I'm going to
21 bring you back to the first page of D-82.

22 And at the bottom of that page on March, as part of
23 this chain, John McNabb writes to Dean McDowell.

24 Do you see that?

25 A Yes.

1 Q Okay. And Mr. McNabb, who is manager of project
2 controls, right?

3 A Correct.

4 Q He reports to --:

5 "I've asked Jim" -- presumably Jim Grindinger --
6 "to prepare an invoice for ASR."

7 Do you see that?

8 A Yes.

9 Q Okay. Did you have an understanding that as of mid-
10 March of '17, that Welded had not yet invoiced Transco for
11 any of this planning work?

12 A I don't know.

13 Q Getting to the question of sort of when the work
14 started, Mr. McNabb's email says:

15 "Mr. Grindinger needs, one, a weekly list of
16 charges to ASR from January 1st, by employee with hours and
17 dollars."

18 Does that refresh your recollection that, at least,
19 perhaps, work had been going on since January 1st?

20 A Yeah, that's what this suggests.

21 Q Okay.

22 A Yeah.

23 Q I have -- Mr. McNabb continues:

24 "I told him to take the hours, charges, and
25 payroll costs for each hour and add the .85 as our markup to

1 cover overhead and labor."

2 Do you see that?

3 A Yes.

4 Q Okay. And this, also, will apply to PTAG, right?

5 A Yes.

6 Q Okay. Do you recall that the invoices from PTAG for
7 those contracted employees, Welded, then, marked those up by
8 a factor of 85 percent before passing them to Transco?

9 A That's what this says to do.

10 I don't know that that -- how we marked them up without
11 looking at invoices to confirm --

12 Q Okay.

13 A -- what that is. I'm acknowledging that there was a
14 markup, but I don't know what it was and how much it was.

15 Q This email suggests it was .85, correct?

16 A Yes, I'm agreeing with you.

17 Q You have no reason to disagree with that, right?

18 A No, I do not.

19 Q Okay. Mr. McNabb continues:

20 "We'll need a list of expenses, which will be
21 billed at cost."

22 Right?

23 A Yes.

24 Q He then says:

25 "To ensure we are billing the correct hours, I've

1 asked Jim to take the staffing plan" --

2 The staffing plan -- we just looked at a staffing plan,
3 right?

4 A Correct.

5 Q -- "I've asked him to take the staffing plan and do two
6 things: one, if we charges that are not on staffing plan,
7 add to the plan."

8 Right? He says that.

9 And the second thing he says is:

10 "If we have people on the staffing plan that have
11 not charged, add them to the invoice and then make sure we
12 put through charges -- through changes on the payroll to
13 capture these changes."

14 Do you see that?

15 A Yes.

16 Q Okay. Do you have a recollection of sort of this
17 exercise that Mr. McNabb is describing in March of 2017?

18 A I do not.

19 Q Okay. He says, in closing to Dean McDowell, the CFO:

20 "If you have questions, please call me."

21 Right?

22 A Yes.

23 Q And several hours later, Mr. McDowell responds in the
24 email above and he says:

25 "This information is being put together now and he

1 will deliver it as soon -- and will be delivered as soon as
2 available."

3 Right?

4 A Uh-huh. Yes.

5 Q Okay. At least from this email, it doesn't appear that
6 Mr. McDowell had any questions, right?

7 A It does not appear that he did. I agree.

8 He did not have questions at this point, it appears.

9 Q So focusing on the top email from Holly Peters that
10 same day to Dean McDowell, Ms. Peters expresses this, meaning
11 this exercise that Mr. McNabb has described:

12 "This is the only time that has been" --

13 I apologize. Strike that.

14 Ms. Peters says:

15 "This is the only time that has been allocated to
16 the job, thus far, by week."

17 And "the job" being ASR, correct?

18 A Correct.

19 Q "If ASR comes in and audits what has actually been paid
20 to employees for the job versus billed, we may have some
21 issues."

22 Do you see that?

23 A I do.

24 Q Okay. And then she asks a question:

25 "According to the email below," referring to

1 Mr. McNabb's email, "they are going to bill for all the
2 employees listed below?"

3 Do you see that?

4 A Yes.

5 Q And she says this is the only time allocated.

6 The inference there is that she's referring to the
7 attachment, which is Exhibit 83. So I'll ask you to just
8 look at that.

9 And so Exhibit 83 is several tabs comprising payroll
10 data from the ASR project.

11 Do you see here that on the screen, at least, this is
12 Gary Gavlock's payroll data?

13 A Yes.

14 Q Okay.

15 A Just a question, though.

16 Is this Gary Gavlock's -- is this his regular payroll
17 recap run? This is a Welded employee? Is that what I'm
18 looking at? That's my question.

19 I don't know that this -- I don't see what this is
20 charged to or not.

21 Q Well, the email indicates this is the only time that's
22 been charged to ASR, correct?

23 A Yes, but I don't -- I just don't know the codes.

24 All I'm saying is I can't, looking at these codes,
25 confirm what the charge went to. That's all I'm saying.

1 I just see Gary's charge is for 40 hours for that week,
2 but the other wasn't.

3 Q Yeah, and I'm not asking you to sort of confirm whether
4 it was.

5 What I'm saying is that at least what Holly Peters is
6 saying, this spreadsheet is the only time that's been charged
7 to the ASR project. Okay?

8 Do you understand that?

9 A Yeah, I do.

10 But is this spread -- and I'm not trying to be
11 difficult here. I just want to be really precise.

12 Is this spreadsheet the attachment to the email?

13 Q It is.

14 A Okay. Thank you.

15 Q It is.

16 MR. BURWOOD: And then, Ms. Bair, can you just
17 please page through to the next page of this.

18 BY MR. BURWOOD:

19 Q So, we've got more Gary Gavlock, 40 hours a week on
20 this ASR job. More Gary Gavlock at 40.

21 We're going, basically, from January along the way.
22 And this -- you know, we're in February right now.

23 In February, he appears to jump to 60 hours a week for
24 the ASR job.

25 Do you see that?

1 A Yes.

2 Q Okay. Do you recall when we looked at the staffing
3 plan that the plan recalled in this time period that he was
4 going to be -- 40 percent of his time was going to be spent
5 on ASR?

6 A Under the staffing plan, yes.

7 Q Okay. And from -- in your experience, would 60 hours a
8 week represent 40 percent of Mr. Gavlock's time?

9 A Would 60 hours? I've got to do the math on this.

10 So 80 would be 120 hours. Another 20 on top of that.

11 No, he's probably not working that many hours in a
12 week.

13 Q Particularly, given on the staffing plan we saw that in
14 this time frame, he's also allocated 40 percent to the Sunoco
15 job, right?

16 A Yes. Under that proposed staffing plan that Cecelia
17 Hernandez put together, just plugging in numbers.

18 Q Going back to Ms. Peters' email, which is Exhibit 82,
19 do you recall that she says:

20 "If ASR comes in and audits..."

21 Do you have a sense of who she means by "ASR" there?

22 Do you think she means Transco?

23 A I don't know who she means.

24 Q To your knowledge, who is the full universe of people
25 that could come in and audit this job?

1 A By -- in ASR? I mean, under the contract, Transco had
2 the audit rights available.

3 Q Okay. And she -- Ms. Peters -- and Ms. Peters' role,
4 she's in HR, correct?

5 A Holly Peters, yes.

6 Q Okay. She's the manager of HR?

7 A The manager of HR, yes.

8 Q Okay. And she says that if ASR comes in and audits
9 what has actually been paid to employees for the job versus
10 the billed, we may have some issues.

11 Do you have an understanding of what she means by "we
12 may have some issues"?

13 A No, I don't.

14 My assumption is that it's, you know, reconciliation,
15 you know, paid versus invoiced. I think that's probably what
16 she's describing.

17 Q The suggestion here is that Welded is talking about
18 invoicing their client Transco for hours that are reflected
19 on the staffing plan, but they're not necessarily reflected
20 in the payroll data.

21 Is that your understanding?

22 A Yeah, I think that's an accurate description.

23 Q Do you recall if this concern was ever brought to your
24 attention at that time?

25 A I don't recall that it was, no.

1 Q Do you recall how this was worked out? More
2 specifically, Mr. McNabb suggests, if it's on the staffing
3 plan, we need to bill it.

4 Do you know if that happened?

5 A I do not know.

6 MR. BURWOOD: Your Honor, I'd ask to move
7 Exhibits 82 and 83 into evidence.

8 MR. GUERKE: No objection.

9 THE COURT: They're admitted.

10 (Exhibits D-82 and D-83 received into evidence)

11 BY MR. BURWOOD:

12 Q Mr. Hawkins, Exhibit 86, I'm going to actually ask you
13 to start on page 2 -- strike that.

14 The bottom of page 1, for the moment, is an email from
15 James Grindinger to Marcus Hood and others, and it's dated
16 March 21 of 2017.

17 Do you see that?

18 A Yes.

19 Q Okay. And so if you turn the page, the subject is
20 "Access to payroll data for the ASR project."

21 Do you see that?

22 A Yes.

23 Q Okay. And, again, we've already covered the fact that
24 these documents, at least, reflect that work had commenced no
25 later than early January of 2017, right?

1 A Correct.

2 Q Okay. So Welded should be approximately three months
3 into the -- two to three months into that work, right?

4 A Yes.

5 I'm sorry, what's the date of this email.

6 Q This is March 21 of '17.

7 A Yes.

8 Q Okay.

9 A Correct.

10 Q And Mr. Grindinger of project controls says to his
11 audience here:

12 "I'm getting payroll access and received the first
13 report from Paylocity."

14 Is Paylocity Welded's payroll software?

15 A Yes.

16 Q Okay.

17 A It's a time sheet.

18 Q And Mr. Grindinger continues:

19 "The problem is that only two Welded people have
20 even charged to the project. It appears that the charge code
21 was not 'available' for Welded employees to charge to. I've
22 asked them to discuss making an entry to add the appropriate
23 time/cost for the project and turn the code on to their
24 project personnel."

25 Do you see that?

1 A Yes.

2 Q Okay. When he says in the third, second or third
3 sentence, "It appears the charge code was not available for
4 Welded employees -- so, first of all, had you seen this or
5 heard about this situation that Mr. Grindinger is describing
6 here?

7 A No.

8 Q Okay. I'll strike the question about the third
9 sentence, then.

10 Does it surprise you, looking at this, that as of late
11 March of 2017, that Welded had only charged time to the ASR
12 pre-NTP planning work for two people?

13 A Yeah. My understanding is we had more people working
14 on the job than that, so yes, it would be if there's only two
15 charging, I think that's what he's saying, is that we need to
16 make sure we have the appropriate charge codes available to
17 the people so they can charge their time appropriately.

18 That's what this reads to me.

19 Q Is it possible, though, that it's too late for the time
20 that has been incurred in January and February and March at
21 this point?

22 A Is it too late?

23 Q Let me ask a better question.

24 A Yeah.

25 Q If they turn the charge codes on now --

1 A Yes?

2 Q -- is it your understanding that Welded could, then,
3 go back and capture the time that had already been incurred?

4 A I don't know Paylocity well enough to know, you know,
5 how you would go back and retroactively allocate time
6 properly. I don't know it that well.

7 Q Well, practically speaking, it would require the people
8 that had not charged to at least have recorded their time in
9 some fashion, correct?

10 A Well, our time -- Paylocity is, everybody does a time
11 sheet through Paylocity and you're assigned your charge code
12 so that it gets charged. That's how Paylocity works.

13 And the access to a charge code has to be entered. It
14 has to be entered in the Paylocity system and people have to
15 be given access to it to charge to it. I think that's what
16 they're describing here.

17 So if they were working and they didn't have access to
18 the charge code or didn't know that there was a charge code,
19 that sounds like what the situation is here.

20 Q Gary Gavlock, we know, had access to the charge code,
21 right?

22 A Yep. If he's on a time sheet -- if that code on the
23 time sheet that you showed me is the ASR time sheet, then the
24 answer is yes.

25 Q Okay. Gary Gavlock, we also know, is working on at

1 least the ASR and the Sunoco project, right?

2 A It's probably multiple during this period, yes.

3 Q And that is also the case for some of the other people
4 on the ASR staffing plan; they were working on multiple
5 projects at that time, right?

6 A Yes.

7 Q Okay. So, presumably, they would have to record their
8 time for each project in order to bill it to each respective
9 client accurately, right?

10 A Yes, on the weekly time sheets that get paid out in
11 Paylocity. You go and put your time in and allocate it to
12 the charge code that you worked. They would have to keep
13 track of that.

14 Q Holly Peters from HR is not a recipient of this email,
15 is she?

16 A I only see S. Williams and James Grindinger. I've got
17 to go back to the top. Gym and Marcus and McNabb and sandy,
18 yes.

19 Q But this is --

20 A Holly is not.

21 Q This is related to the issue that she raised about
22 eight days prior, right?

23 A Yes.

24 Q Okay. And you're not -- you're not copied on this
25 particular email, right?

1 A I don't see myself copied on it, no.

2 Q Okay. But Mr. McDowell, the CFO, your direct report,
3 he then sends it to you later that day, correct, the second
4 email in the chain?

5 A I can see that.

6 Q And Mr. McNabb reports -- I apologize -- Mr. McNabb
7 added you to the conversation by March 21st in that second
8 email; is that right?

9 A He CCed me, yes.

10 Q Okay. And Mr. McNabb says:

11 "We need to fix this so people can charge and we
12 need to go back to January 1st and make sure people charged
13 their time."

14 Do you see that?

15 A Yes.

16 Q Okay. Do you recall receiving this from Mr. McNabb?

17 A I'm CCed, so I received it. I don't recall reading it
18 at the time.

19 Q Do you recall if you responded at all?

20 A I do not, no.

21 Q Okay. Sitting here today, Mr. Hawkins, do you think
22 it's appropriate, Mr. McNabb's suggestion, that Welded go
23 back and -- back to January 1, so almost three months
24 prior -- and make sure people charged their time to the ASR
25 project?

1 A Well, I think it's appropriate if people were working
2 on the project and not charging it to the project that it
3 should be corrected, yes. I think that's appropriate.

4 Q To the extent that data is available, right?

5 A Yes. So, if you have people working and they didn't
6 have the charge code and they weren't charging and they
7 should have been charging, that should be corrected and
8 reflected, yes.

9 Q Yeah. So those, in that situation, those employees
10 would had to have been recording that time, distinguishing
11 between time spent on one project or another?

12 A They would need to know that, yeah.

13 Q Okay. And, in fact, Mr. McDowell, the CFO, responds to
14 Mr. McNabb's email, in the top email in the chain, and he
15 says:

16 "I'll put a note out to all people here in the
17 building today regarding charging their time."

18 Right?

19 A Yes.

20 Q He then goes on to say in the second paragraph:

21 "If we go back to Jan. 1 and change time, our
22 payroll records will not match project charges and, thus,
23 will not be sufficient for audit. I also don't believe
24 people are keeping an offline ledger of their time to charge
25 to ASR."

1 Right?

2 A Yes.

3 Q So at least from Mr. McDowell's perspective, the CFO at
4 this time, he's not sure that that data, to distinguish
5 between one project versus another during this time frame, is
6 available, correct?

7 A He's -- yes, he said he doesn't believe that the
8 individuals are keeping an offline ledger to their time to
9 charge to ASR. That's what he says.

10 Q And the CFO's solution here is, "I will get this
11 corrected going forward," right?

12 A Yes.

13 Q He doesn't say, "Let's go back and try to add time,"
14 right?

15 A Correct.

16 MR. BURWOOD: Your Honor, I would offer D-86 into
17 evidence.

18 MR. GUERKE: No objection.

19 THE COURT: It's admitted.

20 (Exhibit D-86 received into evidence)

21 BY MR. BURWOOD:

22 Q Mr. Hawkins, Exhibit D-325, I'll just orient you. The
23 top email in the chain is August 29, 2017. It's from
24 Mr. McNabb to yourself.

25 Do you see that?

1 A I do.

2 Q And we're now five months ahead in time, okay. It's
3 end of August 2017, right?

4 A Yes.

5 Q NTP was, ultimately, about a month later, correct?

6 A Yes.

7 Q So, the pre-NTP planning, by definition, should be
8 coming to a close, right?

9 A Yes.

10 Q Okay. And the subject line of Mr. McNabb's email is,
11 "ASR PTAG compensation conversion," right?

12 A Yes.

13 Q I want to, having oriented us in sort of time and
14 subject, I want to go to the email from Jackie Krzysztofik
15 dated August 29, 2017. It is on the second page, a little
16 below the top.

17 And I'm just going to ask you to just scan
18 Ms. Krzysztofik's email and I'm just going to ask you a
19 couple of questions when you're ready.

20 A Okay.

21 Q In that email, Mr. Hawkins -- so, first of all, Jackie
22 Krzysztofik is an HR manager for Welded, right?

23 A Yes.

24 Q Okay. And in that email, among other things, she's
25 talking about many different conversations she's had

1 regarding the conversion transition of our current PTAG
2 employees over the Welded.

3 Do you see that?

4 A Yes.

5 Q Okay. Do you recall those conversations?

6 A I don't know who she was talking to, whether she was
7 talking to actual PTAG employees about converting. I don't
8 know the many different conversations she's referring to
9 here.

10 Q But do you recall those conversations happening with
11 Jackie Krzysztofik?

12 A I don't remember the conversations exactly, but I
13 remember this issue now that you've showed it to me, yeah.

14 Q Okay.

15 A But I don't remember the conversations.

16 Q And the issue, as you recall it, is that Welded was
17 contemplating taking these PTAG contractor employees and
18 actually hiring them, right?

19 A Yes, hiring them directly into Welded.

20 Q Okay. What's the primary motivating factor driving
21 Welded to want to hire these people into Welded?

22 A One, I would say -- again, I'm recalling here -- but
23 the quality of people wanted to join Welded. We had the
24 work. They may have wanted to join Welded. They liked the
25 company. You know, there could be any number of motivations

1 of why they wanted to it.

2 Q Well, what's Welded's motivation?

3 You testified earlier that it was convenient to have
4 sort of a pool of experienced people available --

5 A Yes.

6 Q -- during times when work is flush, correct?

7 A Absolutely, yeah.

8 Q And this is certainly, the end of August, ASR is about
9 to start, right?

10 A Yes.

11 Q This is a time when work is flush for Welded, right?

12 A Correct, yeah.

13 Q So why hire them away from PTAG, rather than continue
14 the existing relationship?

15 A Well, as I said, if they were good people and they were
16 motivated to be part of the company, I mean, we would welcome
17 that. If people want to join our team and are proud of the
18 Welded brand and are proud of being on the team, I think
19 that's a benefit to the team.

20 Q Okay. Is there an economic aspect to it, as well?

21 A I'd have to look at the math, yeah. I don't know.

22 Q You just don't recall?

23 A I don't know if there was an economic benefit.

24 But, in general, people wanting to join Welded, you
25 know, and leave PTAG, that would be a benefit to the company.

1 Q Okay. Do you recall we looked at the PTAG agreement
2 yesterday during your cross-exam?

3 A For Mr. McNabb and the day rate and the cap of 300,000,
4 yes.

5 Q Yeah. Do you recall that that particular agreement, at
6 least, purported to expire at the end of 2017, right?

7 A Yes.

8 Q Okay. And we are now here at the end of August
9 of 2017, right?

10 A Yes.

11 Q And the ASR project execution is, at least at this
12 point, slated to continue through at least June of '18,
13 right?

14 A Yes.

15 Q Ms. Krzysztofik reports that:

16 "Relative to converting or transitioning PTAG
17 employees over to Welded, we've run into a few different
18 issues."

19 And one of the issues she identified is that the PTAG
20 employees have non-competes.

21 Do you see that?

22 A Yes.

23 Q Okay. And another issue that she identifies is that
24 there's a standard transition fee scheduled to convert folks
25 over.

1 Do you see that?

2 A Yes.

3 Q Okay. Do you recall having read that, that Welded was
4 faced with the prospect of having to pay a transition fee if
5 it hired any particular PTAG employee over to Welded?

6 A Well, that's what Ms. Krzysztofik is describing here;
7 yes, that that would be -- that's what the agreement says, is
8 that if they transition over, (A), that -- first of all,
9 she's saying that they can't do it because there's a
10 noncompete for a year. And then suggesting that if they
11 leave, that there's a -- or that there's a fee payable to
12 PTAG for any transition. So, it's two separate things.

13 Q She then sort of explains the schedule of this
14 transition fee.

15 Do you see that?

16 A Yes.

17 Q Certain percentages, based on time -- time in role,
18 right?

19 A Correct.

20 Q And then in that last paragraph, she says:

21 "I hope to start the conversation with this group,
22 as we need to decide if this is cost-effective."

23 Do you see that?

24 A Yes.

25 Q "They've got to -- we've got to decide who we want to

1 convert and we've got to start negotiations with PTAG on the
2 fee," right?

3 A Yes.

4 Q Ms. Krzysztofik then says:

5 "With ASR ramping up quickly, we need to move on
6 this now, if possible. It's not a guarantee that these folks
7 with accept our offers, so we need to be prepared with Plan
8 B. I want us all to be on the same page and come up with a
9 plan to move forward."

10 Do you see that?

11 A Yes.

12 Q Okay. Do you have any sense what Ms. Krzysztofik meant
13 there about Plan B?

14 A No. It could be above, but I don't remember what Plan
15 B was by reading this email.

16 Q Okay. In late August of 2017, you're on the doorstep
17 of the NTP, right?

18 A Yes.

19 Q Okay. Welded has known for at least seven months that
20 this work is starting and that these PTAG employees are all
21 on the PTAG roster.

22 They're not on the Welded roster, right?

23 A Yes.

24 Q Okay. And Ms. Krzysztofik is expressing urgency now, a
25 few weeks before the NTP, about addressing this potential

1 conversion, right?

2 A Yes.

3 Q And to your knowledge, do you understand from this
4 email that she's concerned that some of these PTAG employees
5 that were staffed to this ASR job, that they might leave?

6 A That's what she says, yeah.

7 "There's no guarantee that they'll accept our
8 offer," is what that says.

9 Q Okay. Thinking back to that time period, Mr. Hawkins,
10 in fact, did some of the PTAG employees that were working on
11 the planning phase, did they leave the project around the
12 time of the NTP?

13 A I don't know. I don't know who came and who went.

14 Q Would -- who would -- would Mr. Hood be more familiar
15 with that?

16 A Yes, Mr. Hood, Mr. McNabb.

17 Q If we go up the email chain, Ms. Krzysztofik goes on
18 to, on August 29th -- I apologize.

19 At the bottom of page 1, beginning of page 2, you send
20 an email to Ms. Krzysztofik and others and you say, at the
21 top of page 2:

22 "How many total people on PTAG remain? Please
23 send a roster of all."

24 Do you see that?

25 A Yes.

1 Q And she, in response, sends a PTAG master list.

2 Do you see that?

3 A Yes.

4 Q And we'll look at the master list in a minute, but she
5 says:

6 "We currently have 33 PTAG employees, 20 of which
7 are in the org chart for ASR."

8 Right?

9 A Yes.

10 Q Okay. The PTAG master list -- well, let me say this.

11 The attachment to this email is Exhibit 326. And this
12 may be one instance where it might be easier to look at in
13 your notebook here.

14 A Okay.

15 Q Mr. Hawkins, before we get into that, do you recall
16 that at least during the construction phase or the latter
17 half of 2017, the staffing plan we looked at earlier called
18 for a high-water mark of, like, 36.2 employees in that --
19 that -- in that bucket of employees we looked at?

20 A Yeah, for the pre-NTP period, right?

21 Q Yeah.

22 A So, pre-NTP, that projected out to the end of the year,
23 yes.

24 Q And based on this email, the inference is that at
25 least 20 of those employees were PTAG employees, right?

1 A Of the 33, 20 -- no.

2 Of 33 PTAG employees, 20 of the 33 were assigned to ASR
3 is what the email from Ms. Krzysztofik says.

4 Q From your perspective, thinking about the fact that
5 planning is about to be over and execution is about to
6 happen, 20 people being sort of -- there's some uncertainty
7 about whether they're going to stick around -- that would --
8 that's something that would have concerned you, correct?

9 A Would it concern me? I don't know if "concern" is the
10 right word.

11 It's been brought to my attention. They're asking me
12 to weigh in and be involved, so I am. I don't know if I'm
13 concerned.

14 Q Fair enough.

15 We talked earlier about some of the people from PTAG
16 that were in key positions, right?

17 A Yes.

18 Q And Mr. Grindinger is one of those, correct?

19 A Correct.

20 Q Okay. And Mr. McNabb is one of those, correct?

21 A Yes.

22 Q Sue Hallowell, is she a PTAG employee?

23 A I think she was PTAG, yeah.

24 Q Mary Lynn Murphy, do you recall her role?

25 A Mary Lynn? I think she's PTAG.

1 Both of them were the cost folks on ASR.

2 Sue Hallowell prepared the invoices. I think she was
3 PTAG. I know she wasn't a Welded direct hire or a Welded
4 hire, so -- she's on here. She's PTAG.

5 Q Sue Hallowell prepared the invoices to Transco?

6 A I think Sue was the one who prepared the backup and
7 invoice preparer on ASR, yes.

8 Q And given the cost-reimbursable nature of this job, the
9 invoicing would have been -- was more robust in terms of
10 amount of paper and detail, correct?

11 A Yes --

12 Q Okay.

13 A -- there's a lot of backup.

14 Q And Mary Lynn Murphy, what was her role?

15 A She was in cost. I don't know. She was on the project
16 controls team. I don't know specifically what he title was,
17 but she was on the project controls team.

18 Q All right. But at least on this cost-reimbursable job,
19 we've got Sue Hallowell from PTAG and Mary Lynn Murphy from
20 PTAG, who are both in cost roles, right?

21 A Yes.

22 Q And construction --

23 A In project controls, for sure. I know that.

24 What their specific day-to-day task is, I do not know
25 that.

1 Q Okay. But before we get into 326, Mr. Hawkins -- I
2 apologize for distracting us.

3 Back in the email on 325, further up the chain on
4 August 29 of 2017, you write and say, relative to this list
5 you've seen of 33 employees, 20 of which are on ASR:

6 "That's a lot of people, indirects, at high
7 compensation we can't afford to carry."

8 Do you see that?

9 A Yes.

10 Q And you say to your team:

11 "We need to consider, one, reduction immediately;
12 two, whether it is in Williams' and Welded's best interests
13 to staff ASR with agency personnel; and whether those
14 positions are necessary."

15 Do you see that?

16 A Yes.

17 Q Okay. And in that regard, you say to your team:

18 "We are a construction general contractor, not
19 construction management."

20 Right?

21 A Yes.

22 Q What do you mean by that?

23 A We're a construction general contractor; we're not a
24 construction management firm. Just what it says.

25 Q Well, how does that relate, though, to the fact that

1 you've got high-compensation indirects -- you know, the
2 context of your email, what did you mean in this context?

3 A Just exactly what you said.

4 Yeah, we're a construction general contractor and it
5 appeared that we were flushing out a construction management
6 team. I was just challenging the team as to whether that was
7 necessary, whether we needed it, whether the customer wanted
8 it, whether we wanted it. That was the whole thing.

9 Q Transco retained Welded to build this pipeline, right?

10 A Yes.

11 Q They didn't retain Welded to manage PTAG, right?

12 A No. But they hired us to build the pipeline and manage
13 all the activities of the pipeline across these three
14 spreads, including all the costs and the invoicing, the
15 project controls, the procurement, the subcontracting
16 management, the subcontracting administration.

17 That is all construction management activities and they
18 hired Welded to do that, and we augmented our team with PTAG
19 to do that.

20 So this is me challenging the team. Again, to go
21 through your chain:

22 Jackie has raised an issue. Asked for management to be
23 part of the discussion. This is me looking at the list and
24 me challenging the team is: Are we staffing the job properly
25 to do the work that we need? And is it in Williams'

1 interests and ours?

2 That's what this is: challenging their perspective,
3 making them be responsive.

4 Q Mr. Hawkins, one of your challenges in that regard was
5 whether it is in Williams' and Welded's best interests to
6 staff ASR with agency personnel.

7 Why would it be in -- not in Welded's best interests to
8 staff the project with agency personnel, for example?

9 A Potential reputational issues is one that comes to
10 mind. You never know.

11 I mean, they're not Welded people, *per se*. They can
12 leave. You know, there's a connotation of commitment if
13 you're a Welded person over agency. They're independent
14 general contractors, but the offset for that is the expertise
15 that they bring to do the work.

16 Q Well, you identified one of the risks. Above, you say:

17 "There's a lot of people, indirects at high
18 compensation that we can't afford to carry."

19 Right?

20 A Correct, yeah.

21 Q So, part of the "not in the best interests of Welded"
22 is economic, right?

23 A Yes, correct.

24 Q And so, the same sentence, why would it not, for
25 example, be in Williams' best interests to staff the ASR

1 project with agency personnel?

2 A Well, I think the "we" here is Williams' and Welded's.
3 I say that, "whether it's in Williams' and Welded's best
4 interests to staff with agency personnel."

5 I'm thinking the collective team to construct the
6 project. I'm not thinking only in Welded's best interests
7 here. I said, "Williams' and Welded's best interests."

8 Q And I wasn't suggesting that.

9 I guess what I'd ask is you've just identified that
10 there's, in terms of best interests, there's an economic
11 component of that, that applies to Welded, right?

12 A Yes.

13 Q These are high-compensation people, right?

14 A Yes.

15 Q Okay. And so, that also applies to Williams, right,
16 because Welded is billing Williams for these people's times,
17 right?

18 A Yes. I want to make sure that this team is considering
19 the best interests of the project, of our customer, of
20 Welded, of the team as they staff the project before we get
21 ready to go.

22 Is it the right staffing? Is it the right complement?
23 Is it the right competency? Is it the right cost? All of
24 that is what we're doing here.

25 Again, Jackie has raised an issue that she wants me to

1 address, all of this. These are the questions that I'm
2 asking: Is this in the best interests of Williams and Welded
3 to bill the project?

4 Q And relative to the issue of costs that you just
5 mentioned, do you recall that the contract requires Welded to
6 build this project at the lowest capital cost, correct?

7 MR. GUERKE: Objection; misstates the record.

8 THE COURT: Overruled.

9 You can answer the question.

10 If you need it again, why don't you --

11 MR. BURWOOD: I'll rephrase, Your Honor.

12 BY MR. BURWOOD:

13 Q Mr. Hawkins, sitting here today, do you recall that the
14 contract, one of the components of the contract required
15 Welded to build the project, essentially, at the lowest
16 capital cost.

17 Do you recall that term?

18 A I would like to see it if we're going to ask me to
19 confirm a contract term.

20 MR. BURWOOD: So, if we could have JX-1, please,
21 page 53.

22 MS. BAIR: May I show it to him?

23 MR. BURWOOD: Oh.

24 THE COURT: Oh, you may, yes.

25 THE WITNESS: I do have it in here?

1 MR. BURWOOD: I was just going to ask you to call
2 it up on the screen. I apologize.

3 THE WITNESS: Oh.

4 MR. BURWOOD: Ms. Bair, could we have it on the
5 screen? Okay. Thank you.

6 BY MR. BURWOOD:

7 Q Mr. Hawkins, while we're pulling it up on the screen,
8 as you go through JX-1, it's under the tab "Contract,
9 Section 2" and the page is at the middle top of each page of
10 JX-1.

11 MR. BURWOOD: And I'm looking for JX-1, page 53.

12 MS. BAIR: Okay.

13 BY MR. BURWOOD:

14 Q Let me know when you're there.

15 THE COURT: Can I have a copy of JX-1, because
16 it's different than -- it seems to be marked differently.
17 Is there an extra one floating?

18 UNIDENTIFIED SPEAKER: May I?

19 THE COURT: Please.

20 UNIDENTIFIED SPEAKER: We just took what was on
21 the docket as 386 and just ran another copy.

22 THE COURT: Thank you.

23 MR. BURWOOD: And Your Honor --

24 THE COURT: So, where are we?

25 MR. BURWOOD: We are at JX-1, 53.

1 THE COURT: Thank you.

2 MR. BURWOOD: And Ms. Bair, it's Section 2,
3 page 4, at the bottom if you're looking for an orientation.

4 There you go. Great.

5 And then, could you please blow up the section
6 that says, "Project team assistance," first paragraph only.

7 BY MR. BURWOOD:

8 Q Mr. Hawkins, I'm showing you what is a copy of the ASR
9 contract between Welded and Transco.

10 And this is Article 3: Highlight of job-specific
11 details. And Section A, the topic is "Project team
12 assistance," right?

13 A Yes.

14 Q Okay. And it says:

15 "Contractor," Welded in this case, "shall commit
16 expertise to the ASR project team to assist in final planning
17 and scheduling of progress needed for the defined mechanical
18 completion deadlines."

19 Do you see that?

20 A Yes.

21 Q Okay. And part of your project team, Welded's project
22 team are at least these 20 PTAG employees, right?

23 A Correct.

24 Q Okay. And going on:

25 "Company and contractor will work together ahead

1 of the notice to proceed" --

2 In August, we're one month ahead of the notice to
3 proceed, right?

4 A Yes.

5 Q Okay.

6 -- "to jointly determine the execution plan to
7 achieve the lowest capital cost to build the project in the
8 allotted schedule."

9 Do you see that?

10 A Yes.

11 Q Cost is not only a practical concern to Welded
12 regarding the PTAG employees; cost is a concern that is laid
13 out specifically in the contract, right?

14 A Yes.

15 "Company and contractor will work together ahead
16 of the notice to proceed to jointly determine the execution
17 plan to achieve the lowest capital cost."

18 We were going to work together on it to come up with
19 that plan.

20 Q And refocusing your attention -- thank you,
21 Mr. Hawkins -- refocusing your attention on Exhibit 325, your
22 email in that chain where you itemize considerations for your
23 team.

24 Number 3, you go on to say:

25 "The intent of the engagement of PTAG was always

1 short term, to handle the sharp increase and peak to meet
2 rapid mobilization of seven spreads, nearly simultaneously,
3 plus cover ASR planning, not a long-term approach to
4 staffing."

5 Is that what you wrote?

6 A Yes.

7 Q Okay. PTAG has been on board, for lack of a better
8 term, since the end of 2016, right?

9 A With John McNabb coming on board as the first one; yes,
10 December, right.

11 Q Okay. And so when you said, "short term" in this
12 email, at this time, what did you mean by "short term"?

13 A Not long term. I don't mean to be flip. But I mean,
14 just, you know, not -- not a long-term hire into the company,
15 a short-term competency that we bring on board to cover the
16 work that we're performing.

17 Make sure we are able to meet the, you know, the
18 staffing needs, as you just read, that we would be required
19 to provide.

20 Q Well, it's August now.

21 Have we -- has "short term" expired in your mind?

22 A Has "short term" expired?

23 I don't know, in my mind at the time.

24 "Short term," to me, I mean, if you want, a
25 year -- a year time frame.

1 Q And, in fact, the agreement was for about a year,
2 right?

3 A Yeah.

4 Q And so --

5 A The first one.

6 And it needed to be extended after a year.

7 Q Okay. The agreement expired, I think, in January
8 of '18, correct?

9 A Yes.

10 Q When you say here that "the engagement of PTAG was
11 always short term to handle the sharp increase in peak to
12 meet rapid mobilization of seven spreads, plus cover ASR
13 planning," those seven spreads you referenced there, those
14 are not ASR spreads, right?

15 A Correct. Yeah, we had seven spreads that were going on
16 nearly simultaneously, three of them on ASR.

17 Q So part of the reason you brought PTAG people into ASR
18 was that you had resources on seven other spreads happening
19 at that same time, right?

20 A And PTAG resources on other spreads at that time, as
21 well, not just on -- so, there's 33. 20 of the 33 are on
22 ASR. That suggests 13 are on other spreads.

23 Q The non-ASR work, though, right, that's all work that
24 Welded went out and bid and successfully -- strike the
25 question.

1 The non-ASR work, Welded made the decision to go after
2 that work, right?

3 A Yes.

4 Q Welded's volume of work at this time is Welded's
5 making, correct?

6 A Welded -- yes, correct.

7 Q Okay. And if Welded needs to bring PTAG in to sort of
8 meet a deficiency of personnel, that's Welded's decision,
9 right?

10 A Yes. But, however, the timing of the projects were not
11 Welded's decision or Welded's control. And they all got
12 realized at the same time, as opposed to separated over three
13 separate seasons, which was originally contemplated with the
14 seven spreads.

15 So the plan, the baseline plan in 2016, '15 was never
16 to do all of this work simultaneously. It wasn't bid that
17 way. The dates in the contracts weren't during that time.
18 This circumstance came about because all of the permits got
19 released, essentially, at the same time in the industry.

20 So the industry dynamic, then, was that everybody
21 needed people to do the job at the same time, because it
22 wasn't just Welded's seven spreads, right; there were
23 multiple spreads that were out there. So the nearly
24 simultaneous execution of all this major work was not
25 Welded's decision or control.

1 Q When you say, "everybody needed people," you mean --

2 A The industry.

3 Q -- contractors needed people?

4 A Contractors needed people.

5 Ultimately, the -- as did -- so, therefore, the
6 customers did, too, because they needed their jobs built.

7 So, we needed to find -- to do the seven simultaneous
8 spreads that were going on -- it wasn't the plan, but the way
9 it was working out, we needed to make sure we could get
10 adequate, competent staffing to perform the work that we were
11 required to perform.

12 Q Thank you, Mr. Hawkins.

13 You go on to say in that email, closing it:

14 "Please review and provide options and
15 recommendations now so we can adjust and revise staffing
16 plans, as required."

17 Do you see that?

18 A Yes.

19 Q What, to your recollection, Mr. Hawkins, was done to
20 adjust Welded's staffing plan, specific to these 20 PTAG
21 employees?

22 A I don't recall what specific actions were taken, what
23 was reflected.

24 Q Okay. So you don't know if any of those employees were
25 converted over to Welded, right?

1 A I don't recall right now.

2 I mean, if you have it, I'll be glad to confirm it.

3 But, you know, this was -- this is making sure, me wanting to
4 make sure, (A), first of all, Jackie Krzysztofik raised an
5 issue to my attention, asking me to weigh in. I did. I
6 wanted to be responsive to that.

7 And I also wanted to make sure that the team was
8 focusing on what was in the best interests of the project,
9 the best interests of the customer, that this wasn't all of a
10 sudden growing and turning into a bigger effort than what was
11 contemplated.

12 I'm just reading the rest of the emails here. You
13 know, we're being boxed in by PTAG now and I was responding
14 to that. I wasn't going to be boxed in or leveraged on any
15 of this. And I just wanted to make sure that we were -- you
16 know, that this was getting in the box and that we were
17 staffing appropriately with the right people and that's it.

18 And challenge the team to make sure that they were
19 thinking along those lines.

20 Q One of the things you asked your team to consider was
21 reduction immediately.

22 That was number one, actually, right?

23 A Yeah.

24 Q Okay. Do you recall if there was any reduction?

25 A I don't know.

1 MR. BURWOOD: Your Honor, I'd ask to move
2 Exhibits 325 and 326 into evidence.

3 MR. GUERKE: No objection.

4 THE COURT: They're admitted.

5 (Exhibits D-325 and D-326 received into evidence)

6 BY MR. BURWOOD:

7 Q Mr. Hawkins, you testified yesterday that:

8 "Starting in the early winter, construction
9 progress started to see productivity impacts due to weather."

10 Do you recall that?

11 A Winter production? Yes --

12 Q Okay.

13 A -- I recall that.

14 Q And at the same time, you testified that:

15 "Welded offered to stop the work for the winter."

16 Right?

17 A I think in the December time frame, I think we
18 recommended that because there were productivity issues and
19 the weather was bad and we weren't getting good production,
20 that one of the options would be to stop and wait and come
21 back in March time frame and start the normal season again
22 when things dried out, instead of trying to go through the
23 wintertime slog, which, you never know what the winter is --
24 and the weather got worse.

25 But that was certainly an option and a course of action

1 that we recommended.

2 Q I just want to be clear.

3 Your testimony is that that proposition was made to
4 Transco?

5 A Yes.

6 Q Okay. Do you recall who made that proposition?

7 A I do not.

8 Q Okay. How do you know about it?

9 A I recall the conversation. Perhaps an email discussion
10 proffered to the customer.

11 Q Okay. Do you recall, perhaps, who at the customer it
12 was proffered to?

13 A I do not, no.

14 Q Welded planned to work through the winter of '17
15 and '18, correct?

16 A Correct.

17 Q Okay. And Welded priced its work, knowing that it was
18 going to work through the winter of '17 and '18, right?

19 A Correct.

20 Q And Welded scheduled its work knowing it's going to
21 work -- was going to work through that winter, right?

22 A Correct.

23 Q And, in fact, Welded adjusted its schedule when it
24 became apparent that there was going to be winter work,
25 right?

1 There was a shift in the NTP date, right?

2 A Yes.

3 Q Okay. When that happened, Welded adjusted its planning
4 to assume that there were going to be two and a half of the
5 six days in the week were going to be lost to weather, right?

6 A I believe so, yeah. It sounds right.

7 Q Mr. Hawkins, Exhibit 716 is a January 17, 2018, email
8 from John McNabb, who is the -- well, strike that.

9 From John McNabb, and it is to yourself and others,
10 correct?

11 A Yes, correct. Scott Schoenherr, myself, and Marcus
12 Hood.

13 Q And the subject line is "ASR productivity," right?

14 A Yes.

15 Q Okay. January -- mid-January of '18, Welded is
16 approximately four months into project execution, right?

17 A Yes.

18 Q And the subject is "ASR productivity," and the
19 attachment indicates here that there's a PowerPoint of the
20 same name, "ASR productivity," right?

21 A Yes.

22 Q Okay. And Mr. McNabb says to you and others:

23 "We have promised the client a re-forecast of ASR
24 by January 26th."

25 Do you see that?

1 A Yes.

2 Q Okay. And he goes on to say:

3 "In reviewing the current situation, the adherence
4 to schedule, productivity, and headcount is not good.
5 Included herein, is an analysis."

6 Do you see that?

7 A Yes.

8 Q Okay. Mr. McNabb goes on to say:

9 "In order for project controls to produce a
10 realistic forecast, we need to first deal with productivity
11 in the field, which is ranging from .40 to .80."

12 Do you see that?

13 A Yes.

14 Q Okay. What's your understanding of what he means there
15 when he says, "productivity in the field is ranging from .40
16 to .80"?

17 A Either getting anywhere from 40 to 80 percent of the
18 plan production rates, I guess, is what he's describing.

19 But we can look at the data and I can tell you
20 specifically what he's referring to.

21 Q Generally speaking, what he's saying here is that we
22 are achieving 40 to 80 percent, actually, of what we planned,
23 right?

24 A If we planned to get a 100 of something, we were
25 getting between 40 and 80 of that 100.

1 Q He goes on to say in the email, "Since arrived" --
2 strike that.

3 The next sentence there says:

4 "With the current productivity being experienced,
5 our forecast" -- Welded's forecast -- "would have a 40
6 percent overrun of approximately \$120 million."

7 Right?

8 A Correct.

9 Q Do you recall receiving this?

10 A Yes.

11 Q Mr. McNabb goes on to say:

12 "Since arriving, it is apparent that we are not
13 working as one team. Example, we had two schedules
14 referenced in the client meeting."

15 He closes by saying:

16 "In total resolution on one schedule, productivity
17 and staffing, we can't provide an accurate forecast."

18 Right?

19 A Yes.

20 Q Okay. And he encloses, as referenced here, a
21 PowerPoint, is his analysis regarding productivity, correct?

22 That's what the email reflects?

23 A Yes.

24 Q Okay. And so the first PowerPoint slide says:

25 "ASR productivity assessment."

1 And then the second slide goes on to be the
2 productivity assessment itself, correct?

3 A Yes.

4 Q Okay. And Mr. McNabb, who is -- is he the lead of
5 project controls for the project at this point?

6 A No, he's in Canada at this point, because he had
7 cancer, so he was no longer in the U.S. He was home
8 receiving treatment. He wasn't associated with the project.

9 Q He wasn't associated with the project?

10 A Well, he was supporting the project. I asked him to
11 look at this. But he was back in Canada at this point for a
12 different reason.

13 Q Physically?

14 A Yeah, physically located in Canada, yes.

15 Q You just said you asked Mr. McNabb to do this analysis?

16 A I knew we had to put the assessment -- I don't know if
17 I asked him to do this analysis. I asked him to do another
18 analysis. I don't remember which one that was, but it could
19 have been this one.

20 Q He suggests in his email that there was a -- well, that
21 the re-forecast had been promised to Transco?

22 A Yeah, we owed the customer our forecast coming out of
23 the winter at the end of January, first forecast, yes.

24 Q And you testified yesterday, I think several times,
25 that relative to costs, schedule, we were being transparent

1 with Transco all the time, right?

2 A We gave them the forecast at the end of January. It
3 exceeded the base contract. Yes, we were being transparent
4 about that.

5 Q And did they ask for that forecast?

6 A I don't remember if they asked for it. It says they
7 owed it, but we would have given it to them anyway, just like
8 we gave it the following months after that.

9 Q Okay. So in terms of the second slide of Mr. McNabb's
10 PowerPoint -- it's the productivity assessment -- he reports
11 combined to-date productivity -- "combined," meaning,
12 Spreads 5, 6, and 7, right?

13 A Yes.

14 Q Okay. Productivity at just under 60 percent, right?

15 A Yes.

16 Q Okay. At this time, was that acceptable to you?

17 A No, it's not acceptable.

18 But that's against the plan that they put together for
19 the baseline of the job during the preplanning, correct.

20 That's based on footage and productivity assessments in
21 the plan.

22 Q They put together -- Welded put together, right?

23 A Welded put together, with the customer; yeah, it was a
24 joint effort, right. So the team worked together to produce
25 the deliverables, costs, schedule. We didn't do it on our

1 own and just pitch it over --

2 Q So --

3 A We worked it as a team, yes.

4 Q I apologize.

5 Mr. McNabb continues. He reports on combined headcount
6 on the spreads is, you know, a little higher, 80 people
7 higher.

8 A 80 people higher, yeah.

9 Q "Combined lost costs due to productivity to date:
10 \$23.6 million."

11 Right?

12 A Yes.

13 Q Okay. He's reporting direct hours budgeted of
14 \$2.3 million and then direct hours forecasted using current
15 productivity -- he's essentially projecting how many direct
16 hours we're going to incur at this rate of productivity,
17 right?

18 A Correct.

19 Q And he says 3.1 million, right?

20 A Correct.

21 Q Okay. So the discrepancy between 3.1 million and
22 2.3 million is approximately 800,000 hours, right?

23 A 800,000 hours over the life of the project, correct, an
24 increase.

25 Q Okay. And the sub-bullet there is he says the impact

1 of that could be \$117 million, right?

2 A Yes.

3 Q To whom? Who's going to bear the brunt of that impact?

4 A The cost of the job ultimately goes to the customer.

5 Q He goes on to say that there was a January 11th, '12,
6 client meeting that was a direct hours forecast.

7 Do you know what he means by that last bullet?

8 A I don't. I don't recall when it was, if I was there.
9 I don't recall the meeting.

10 Q That was my next question.

11 A But I'm assuming that there was a -- do I recall what?

12 Q I was going to ask if you recall a meeting in the
13 second week of January?

14 A I don't know if that's the meeting that we had as our
15 regular standing meeting with the executives, but I know
16 that -- I just don't know which meeting we're talking about.

17 Q Okay. And just like you challenged your team to
18 address sort of some of the PTAG staffing considerations,
19 Mr. McNabb, here, challenges this group, Mr. Schoenherr,
20 yourself, Mr. Hood.

21 What was Mr. Schoenherr's role?

22 A He was the general superintendent.

23 Q Okay. He challenges that group:

24 "What are we going to do different?"

25 Right?

1 A Correct.

2 Q Okay. He then goes on -- then there are a series of
3 slides that are basically a per-spread breakdown of this
4 data.

5 A Uh-huh.

6 MR. BURWOOD: Can I have the next slide, please?

7 BY MR. BURWOOD:

8 Q And so, on Spread 5, for example, the progress actually
9 is a little ahead of plan, right? 19 versus 13 percent,
10 correct?

11 A Yes.

12 Q Okay. Productivity, nonetheless, is still trailing at
13 83 percent, right?

14 A Yes.

15 Q Manpower is trailing a little bit, right?

16 A They're below plan.

17 Q And the cost of that lost productivity is, in his view,
18 on this spread, \$3.1 million, right?

19 A Yes.

20 Q It says there:

21 "Lost days, 15 versus 30 plan."

22 Do you know what he means by that?

23 A I don't know if he's referring to lost weather days or
24 other lost days in the schedule, but it suggests that the
25 plan was we'd have 30 lost days by then and we only had 15.

1 Q And to your knowledge -- you said -- you testified
2 earlier that Welded knew they were going to work through the
3 winter and Welded -- in Welded's schedule, they planned for
4 two and a half days a week -- a six-day week, right -- two
5 and a half of those days were going to be lost for weather,
6 right?

7 A Weather days, yeah --

8 Q Right.

9 A -- where you didn't show up and couldn't work.

10 Q Right. And that's --

11 A That doesn't assume productivity, due to the weather
12 that came through. That's just actual days not working.

13 Q Well, this says "lost days," right?

14 A Yeah, but that's what "lost days" means, yes.

15 Q Okay. So let me just ask you this.

16 The job starts in September. It's now January, okay.
17 You're four months into the work, right?

18 A Yes.

19 Q Okay. Two and a half days a week of weather losses
20 over that time would be -- I can't do the math, but you're
21 talking about --

22 A It's 10 days a month, so --

23 Q 50 or -- 40 or 50 days, right?

24 A It's actually 30 days, by plan.

25 Q Oh, correct.

1 And at this point, you've lost half the weather days
2 that were scheduled, right?

3 A Up to that point, yes.

4 Q Okay.

5 MR. BURWOOD: Can we go to Spread 6, please.

6 BY MR. BURWOOD:

7 Q Similar analysis regarding Spread 6, however, the
8 progress to date on Spread 6 is trailing Spread 5
9 considerably, right? Only 19 percent versus 35 percent,
10 right?

11 A Yes.

12 Q Productivity is much lower on Spread 6.

13 It's hovering just below 60 percent?

14 A Yes.

15 Q But manpower is considerably up on that spread, as
16 well, right?

17 A Yes.

18 Q Okay. And Mr. McNabb is forecasting lost productivity
19 relative to Spread 6 at this time, the cost would be
20 \$9.3 million, right?

21 A Yes.

22 Q Okay. And the lost days is the same, right?

23 A Yes.

24 Q Okay. And then going to Spread 7, Mr. McNabb
25 indicates, again, here:

1 "Progress to date on Spread 7, also trailing 16
2 percent achieved versus 38 percent planned."

3 Right?

4 A Yes.

5 Q Okay. Productivity is below 50 percent for Spread 7,
6 right?

7 A Yes.

8 Q Okay. Manpower is hovering right -- just above where
9 it was planned, correct?

10 A Yes.

11 Q But Mr. McNabb is forecasting a productivity loss at
12 this point, using this data, of \$11.2 million, correct?

13 A Yes.

14 Q Okay. And same data, as relative to the lost days; 15
15 actually, as opposed to 30 planned, right?

16 A Yes.

17 Q Okay. So the last slide of Mr. McNabb's presentation
18 here, he addresses what he thinks are the probable causes of
19 that productivity loss, right?

20 And he identifies the first one as "out of sequence"
21 work, correct?

22 A Yes.

23 Q Okay. Whose responsibility was it to make sure -- who
24 was responsible for sequencing the work in the field? Is it
25 Welded?

1 A Yes. But a lot of elements go into the work sequence:
2 availability of the work fronts, permitting, crossings,
3 access to the crossings.

4 I'm not saying that those weren't in place; I'm just
5 saying that sequence has a lot of assumptions built into it.

6 Q Okay. He's identified "out of sequence" work that was
7 one of the probable causes here, right?

8 A Yes, but not the reasons for the "out of sequence"
9 work. That's what you have to get to, as well.

10 Q He's also identified too many people for available work
11 fronts, right?

12 A A broad statement, yes. Not the case on Spread 5,
13 but...

14 Q We saw from the --

15 A You know, it's got 90. Too many people out of 1,500.

16 It's not a huge number, but it's -- his analysis is
17 there's too many for the available work fronts.

18 Q Yeah. In the aggregate, though, he's projecting this
19 out to be potentially 800,000 additional man-hours, right?

20 A Yes. Based on that -- based on these reasons here,
21 yes.

22 Q One of the other things he identifies as a probable
23 cause of this issue is the right-of-way conditions and the
24 weather, right?

25 A Yeah. I don't think the fact that it's number three

1 means it's the least significant. But, you know, it's
2 certainly one of the major conditions.

3 Q Well, but he's always identified that you've lost half
4 as many days at this point than you thought you would, right?

5 A Yeah, it's different than conditions, though.

6 Spread 5 up north is like an ice-skating rink, at
7 times, right. Where the productivity is impacted by a lot of
8 those things.

9 So it's not just the actual weather; it's the
10 conditions of the right-of-way, as well.

11 Q But you've given yourself two and a half days a week
12 for weather and the resulting conditions, right?

13 A For -- in the schedule, yes.

14 Q Okay.

15 A I'm not disputing that.

16 Q And then the last thing in that regard is Mr. McNabb
17 identifies as a probable cause of productivity lost is
18 schedule adherence, right?

19 A Yes.

20 Q So you recall on that second slide, Mr. McNabb's
21 challenge was: What are we going to do different?

22 Mr. Hawkins, what is it, at this time, that Welded did
23 differently to address the concerns laid out in Mr. McNabb's
24 analysis?

25 A I don't know.

1 Did he give us some recommended things to do
2 differently that I can address?

3 Q You've seen the full PowerPoint.

4 A Okay. It's the full thing, right.

5 Q So let me ask a specific question.

6 Do you know if the productivity increased after January
7 of 2018 for Welded?

8 A No, it would have gotten worse in January.

9 I think, you know, part of this is if you take a look
10 at what the assumed base-lay rates for the wintertime in
11 Pennsylvania, especially during this bad winter, in terms of
12 the conditions, I'm not sure we had a baseline. I'm not sure
13 anybody did. Because we don't work in the wintertime in that
14 area for reasons, especially, a 42-inch pipeline.

15 So a baseline assumption that went into the plan, you
16 know, I would say that that was high and aggressive to begin
17 with, based on what we actually performed, right. So, some
18 of the actual performed here is what we're witnessing. I
19 would like to know what the superintendents thought about his
20 assessment. You can't just will more footage in a day under
21 those conditions.

22 So, you know, I don't know how to get -- getting more
23 footage in those conditions wasn't possible. That's why we
24 gave the forecast in January, showing the overage of end of
25 January forecast was in the 600s. We accounted for all that

1 in the forecast --

2 Q Do you know if schedule --

3 I apologize.

4 A Go ahead.

5 Q Do you know if schedule adherence improved after
6 January of 2018?

7 A I don't know what "schedule adherence" means. You
8 know, we didn't meet the schedule of June for a variety of
9 reasons, so, again, the reasons stated as to why we didn't
10 mean the June 14th or 15th. We didn't make that schedule.
11 We didn't make that schedule. We didn't adhere to the
12 scheduling.

13 Q The June dates slipped to September, correct?

14 A Yeah. Schedule adherence did not improve, if that's
15 your question.

16 Q Welded's final construction costs, as sort of set in
17 the contract, at this point, I think it's \$454 million?

18 A 454, yeah.

19 Q 454, right?

20 A Uh-huh.

21 Q Did the cost of the project increase dramatically
22 from 454 to the end of the job?

23 A It increased by the end of January dramatically as we
24 got to the winter, yeah. That's the whole point of this, you
25 know, is -- this was the actual productivity rates that we

1 were seeing and these were the costs.

2 I mean, that's the number that we provided.

3 Q But you say it increased dramatically before the end of
4 the winter.

5 This is the winter that you --

6 A I'm saying by the end of January, the forecast was
7 over 454.

8 Q But this is the winter that Welded planned for,
9 scheduled for --

10 A Yes.

11 Q -- estimated for, and its cost estimate reflected that,
12 right?

13 A Yes, correct.

14 Q Okay. Mr. McNabb, did he stay on with Welded after
15 January of 2018?

16 A Yeah, I believe so.

17 Yeah, he stayed on. He worked up there as a Canadian
18 operations manager, up in Calgary, while he was getting
19 treatment.

20 Q I guess I should have asked you a better question.

21 Was he involved with the Welded project after January
22 of 2018?

23 A The Welded project after January of 2018?

24 Yeah, I think -- I believe so, yeah.

25 MR. BURWOOD: Your Honor, I would ask to move

1 Exhibit D-716 into evidence.

2 MR. GUERKE: No objection.

3 THE COURT: It's admitted.

4 (Exhibit D-716 received into evidence)

5 MR. BURWOOD: Your Honor, I'm at a breaking point.

6 Can we take 5?

7 THE COURT: Yes. Let's take 10.

8 MR. BURWOOD: Thank you, Your Honor.

9 THE COURT: We're in recess.

10 (Recess taken at 10:58 a.m.)

11 (Proceedings resumed at 11:11 a.m.)

12 THE COURT: Please be seated.

13 You may continue.

14 MR. BURWOOD: Thank you, Your Honor.

15 BY MR. BURWOOD:

16 Q Mr. Hawkins, Exhibit 1380D, 1380, if you could
17 reference that in your binder, please?

18 And the first page is an email from Troy McDonald, it's
19 dated July 30th, 2018, and it's to yourself. Do you see
20 that?

21 A Yes.

22 Q And the subject line is final board materials; right?

23 A Yes.

24 Q Okay. End of July, this is six, seven weeks before
25 mechanical completion was ultimately reached?

1 A Yes.

2 Q Okay. Can you turn to page 8 of Exhibit 1380 for me,
3 please?

4 Let me know when you're there, please. It's
5 actually -- you can use the version on the screen, if you'd
6 like, Mr. Hawkins.

7 A Thank you.

8 Q In the upper-left quadrant there -- well, first of all,
9 page 8 -- let me back up.

10 These are Welded board of director meeting materials;
11 correct?

12 A Yes.

13 Q Okay. And we just talked about the fact that these are
14 August 1 of '18; right?

15 A Is that the date of the meeting?

16 Q It was.

17 A Yes.

18 Q Okay. And so this particular page, page 8, deals with
19 safety; right?

20 A Yes.

21 Q Okay. And there's a chart in the upper-left quadrant
22 that says high-risk incidents by location, June 17 to
23 June 18. Do you see that?

24 A Yes.

25 Q And is this information -- you would attend the Welded

1 board meetings; correct?

2 A Correct.

3 Q Okay. Do you recall if you were at this particular
4 meeting?

5 A Yes.

6 Q And you would review -- the board would review this
7 material during the meeting; correct?

8 A Yes.

9 Q Okay. And this particular content, high-risk incidents
10 by location, do you see the bar charts? There's multiple
11 projects reflected there; right?

12 A Yes.

13 Q But three of those vertical lines refer to ASR;
14 correct?

15 A Yes.

16 Q Okay. And, by my count, there are 36 high-risk safety
17 incidents at ASR in this June '17 to June '18 period; do you
18 agree?

19 A Correct.

20 Q Okay. And I'll offer to you that there are only 47
21 total high-risk incidents reflected in this chart. Does that
22 sound right to you?

23 A Yes.

24 Q Okay. So you'd agree with me that 75 percent,
25 approximately, of all the high-risk incidents, safety

1 incidents in this year were on ASR?

2 A Yes.

3 Q And does that comport with your recollection about sort
4 of Welded's safety performance during the June '17 to
5 June '18 period at ASR?

6 A Well, I mean, June '17, we weren't doing anything on
7 ASR, right? So we weren't doing anything until September,
8 October, so to that period. But, I mean, this is accurate
9 data, it was what was recorded from our safety systems, yes.

10 Q Well, that's a great point, right?

11 A Yeah.

12 Q So this is one year of data; correct?

13 A Uh-huh.

14 Q But, relative to ASR, it really is only nine months of
15 data; right?

16 A And same with the other projects. This suggests that
17 everybody was working 12 months, they weren't. So, I mean,
18 you know, everybody was -- MXB, LX -- the same thing. It's
19 just a fact, for the periods that we were working, those are
20 the incidents, correct.

21 Q Fair enough. According to this chart, which is in the
22 board materials, and you're saying the data is accurate,
23 Welded's safety performance relative to high-risk incidents
24 on ASR was significantly worse than it was on the other
25 projects at this time; right?

1 A Well, it was higher than the others, yes.

2 Q Okay.

3 A It's your categorization --

4 Q Would you please --

5 A Go ahead.

6 Q No, please.

7 A No, that's it.

8 Q Would you please turn --

9 A Do you have the list of what all those were, by the
10 way, what --

11 Q Pardon me?

12 A Do you have the list of what they were, what the
13 incidents were?

14 Q I do, but I'm going to move forward into this exhibit,
15 please.

16 A Okay, thank you.

17 Q So page 15. In these same materials, page 15, the
18 title of that slide is Current Projects, and I just want to
19 focus on the row for ASR at the top there. And this is as of
20 August 1 of '18; right?

21 A Yes.

22 Q Okay. And this board presentation indicates that,
23 relative to impacts to the ASR project, there were seven days
24 of weather impacts; correct?

25 A Force majeure weather impacts. It's a different

1 classification. That's seven days of force majeure due to
2 the named storms.

3 Q Okay. So 2.5 days of regular weather impacts was
4 scheduled and costed; right?

5 A Yes --

6 Q Okay.

7 A -- but force majeure is not.

8 Q So you're saying that these seven days would be in
9 addition to the two and a half days a week that Welded
10 planned for for weather loss?

11 A These are force majeure events specifically tied to the
12 named storms that impacted the project, that's what that is.

13 MR. BURWOOD: Your Honor, I'd offer Exhibit 1380
14 into evidence.

15 MR. GUERKE: Your Honor, we don't have an
16 objection based on the safety and the letter that's being
17 discussed. We may have an objection to this exhibit on other
18 grounds, which is, to foreshadow, these board books relate to
19 our motion *in limine* for the financial condition of the
20 company that's I think going to be raised a couple exhibits
21 down.

22 So we don't have an objection based on the safety
23 incidents and the weather that's included in this, but we may
24 have on other grounds as we go.

25 THE COURT: Okay. A response to that? Can we

1 admit it for that purpose now and deal with the other issue
2 later?

3 MR. BURWOOD: Yes, Your Honor. I'm offering it
4 for the purposes of the testimony that was offered.

5 THE COURT: Okay.

6 MR. BURWOOD: This is a board meeting that he was
7 at, so --

8 THE COURT: Okay. So it will be admitted for the
9 discussion we've had around it and we'll deal with any other
10 objections later.

11 MR. GUERKE: Thank you, Your Honor.

12 (Exhibit D-1380 received in evidence)

13 BY MR. BURWOOD:

14 Q Mr. Hawkins, I'm going to move to Exhibit D-1434,
15 staying on the issue of safety. And 1434, the bottom email
16 is from yourself and it's to an Alex Bryan at Welded, and the
17 date is August 16 of 2018. Do you see that?

18 A Yes.

19 Q And you ask Alex, please send a summary of all ASR
20 incidents since 1 July, I need for a Williams executive
21 meeting this afternoon. Thank you.

22 Do you see that?

23 A Yes.

24 Q Okay. Do you recall requesting this data?

25 A Yes.

1 Q Do you recall why you needed it for that meeting?

2 A No, I don't remember. It would be a normal talking
3 point of discussion in an executive meeting with the
4 customer, safety was always on the agenda.

5 Q Okay. And those meetings were monthly; correct?

6 A Yes.

7 Q All right. And you're asking generally for a month's
8 worth of data, right, July to mid-August?

9 A That's what this request says, yes.

10 Q Okay. And all I'm asking is, at this time, do you
11 recall, was there any specific focus from Transco about
12 Welded's safety data and asking you to bring it to that
13 meeting, the next meeting?

14 A I don't recall that, but it could be the source of the
15 request on my part.

16 Q Okay. And Alex Bryan responds and provides you with a
17 spreadsheet with a list of ASR incidents since July 1; right?

18 A Yes.

19 Q All right, and 1434A is that spreadsheet. And I
20 apologize for the small print and I just --

21 MR. BURWOOD: -- Ms. Bair, can you just blow up
22 that one page, just so we can get an indication of what the
23 data is?

24 BY MR. BURWOOD:

25 Q Mr. Hawkins, I'm not going to go through this line-by-

1 line, unless, you know, you'd like to, but what I'd say to
2 you is that this is an 11-page spreadsheet and there are
3 approximately 75 safety incidents reported here for the time
4 period July 1 to August 16. Okay?

5 A Okay.

6 Q Okay. Do you --

7 A This is just the first page?

8 Q This is the first page --

9 A Okay.

10 Q -- and the full Excel is in your notebook at 1434A, and
11 you're welcome to page through it. What I'm going to ask
12 you, though, is that, upon receiving this, do you recall if
13 you had any particular reaction one way or another about the
14 volume of safety incidents during this time period?

15 A Well, my reaction seeing it now is, one, we want good
16 reporting and safety data reporting, we want everything
17 reported. The culture of the industry for years was to not
18 report things and so I'm glad we have this degree of
19 reporting going on, even things like first aids, bee stings.
20 I mean, you have to know in order to have it.

21 So my first response is, I'm glad we have it. The
22 second is, I'd have to read each individual one, which I'm
23 willing to do, to give you -- to give you a read on what
24 concern I would have after seeing this, and I'm willing to do
25 that.

1 Q I appreciate that. In August, you're at a board
2 meeting and you see that 75 percent of the high-risk safety
3 incidents across Welded's pipeline performance have been on
4 ASR in the past year; correct?

5 A Yes.

6 Q Then you request this report for the time period
7 August -- July 1 to August 15; right?

8 A Yes.

9 Q Okay. And so what I'd say is that, looking -- upon
10 receiving this report, do you recall if your reaction was
11 that safety was getting better or not?

12 A I don't have a qualification on it. Safety is always a
13 concern to me, even on the job I'm on now over in Kazakhstan.
14 It is the A-work every single day to be paying attention to
15 safety, period. So, you know, I wanted it for that reason,
16 I'm sure, and if it was a conversation with the customer, I
17 wanted to be prepared for that conversation, but there's, you
18 know --

19 Q And so that's my question --

20 A Yeah.

21 Q -- is do you recall was there a subsequent conversation
22 with Transco about safety at the next meeting?

23 A I mean, if there was a meeting, it was part of the
24 meeting. If this was a specific ask that they wanted to talk
25 to me about safety, then I would have asked for this so that

1 I could be, you know, transparent, have the discussion with
2 them for sure. It could be any one of those, yeah.

3 MR. BURWOOD: Your Honor, I'd ask to move Exhibits
4 D-1434 and D-1434A into evidence.

5 MR. GUERKE: No objection.

6 THE WITNESS: Can we just go through it, though,
7 because this is interesting to me. This --

8 MR. BURWOOD: Mr. Hawkins, with respect, we have a
9 lot of ground to cover --

10 THE WITNESS: Okay, all right.

11 MR. BURWOOD: -- and I don't have an additional
12 question about this exhibit.

13 THE WITNESS: That's fine. Thank you.

14 MR. BURWOOD: I apologize.

15 THE WITNESS: I'm sorry.

16 THE COURT: If your counsel wants to go through it
17 with you, they will do that.

18 THE WITNESS: Okay, that would be good. Thank you
19 very much.

20 MR. BURWOOD: Thank you, sir.

21 THE COURT: Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Okay, so those two exhibits are
24 admitted, 134 and -- I'm sorry, 1434 and 1434A.

25 (Exhibits D-1434 and D-1434A received in evidence)

1 MR. BURWOOD: Thank you, Your Honor.

2 BY MR. BURWOOD:

3 Q Staying on safety for a couple more minutes,
4 Mr. Hawkins. Exhibit D-533, do you see that?

5 MR. BURWOOD: And, Your Honor, this is one of the
6 supplements I gave you today --

7 THE COURT: Thank you.

8 MR. BURWOOD: -- D-533. It's on the screen,
9 Mr. Hawkins, if you'd like to refer there.

10 THE WITNESS: Okay.

11 BY MR. BURWOOD:

12 Q D-533 is an email November 12, 2017. So, just to
13 orient everybody, we've gone back in time to the fall of
14 2017. It's from Dean McDowell, the CFO, to Scott Yeager at
15 Bechtel.

16 Who is Scott -- what was Scott Yeager's job on the
17 Welded job, if you know?

18 A Scott wasn't on the Welded. Scott was in Bechtel
19 working in the pipe -- he was the project controls manager in
20 the Houston Pipeline office.

21 Q The subject line is "Update," and the attachment
22 purports to be project profit SAY comments, Scott Yeager
23 comments, it's in Excel; correct?

24 A Yes.

25 Q Okay. And so let's turn to the Excel, that's 533A, and

1 I'm going to actually bring us to page 2 of that Excel. At
2 the bottom, there's a section for ASR.

3 MR. BURWOOD: If we can just blow that up? Thank
4 you.

5 BY MR. BURWOOD:

6 Q And some of the data in this spreadsheet that
7 Mr. Yeager sends along to Mr. McDowell, you see that it deals
8 with ASR; correct?

9 A Yes.

10 Q And is this data characterized as sort of profit --
11 forecast profit analysis, if you know?

12 A Yes, margin of profit. The same term, I think. Yes,
13 that's what it looks like.

14 Q And there are four sort of elements to this analysis,
15 one is the current forecast. Do you see that?

16 A Yeah, this is -- I'm sorry, this is a min-max analysis,
17 is what this is, yes.

18 Q Okay.

19 A Okay.

20 Q One of the components of this analysis in the third row
21 says removal from project, safety; do you see that?

22 A Removal from project for safety -- yes.

23 Q And, if you play that all the way out to the right, the
24 note is assume Williams removes Welded for safety
25 infractions; correct?

1 A Yes.

2 Q Okay. Do you recall a conversation with Mr. McDowell
3 or anyone on the Welded ASR team about the prospect of Welded
4 being removed from the project for safety infractions?

5 A I don't remember that conversation happening, but this
6 is -- especially this is November 2017, right? I mean, we're
7 just a month into the work. So I don't -- I don't have any
8 reference to that.

9 Q Well, I guess that's my question is a month -- do you
10 recall that one month into the work that there had been
11 safety infractions that, to your knowledge, rose to the level
12 of imperiling Welded's profit margin?

13 A Well, I don't. I don't recall that.

14 MR. BURWOOD: Your Honor, I'd ask to move
15 Exhibits D-533 and D-533A into evidence, please.

16 MR. GUERKE: No objection for the basis that it
17 was offered and the testimony that was elicited, but we do
18 have a continuing objection based on our motion *in limine*
19 connected to the cash flow analysis that Transco is trying to
20 get into evidence that isn't connected to any particular
21 claim or damages that we've asserted.

22 THE COURT: Okay. Was this -- I'm sorry, was this
23 a motion *in limine* that was filed previously, before the
24 trial started?

25 MR. GUERKE: Yes, Your Honor.

1 THE COURT: Okay. Well, I'll admit it for the, I
2 guess, limited purpose of the testimony. I'll deal with the
3 motion *in limine* later.

4 MR. BURWOOD: Your Honor, do you want to hear
5 argument on the objection, or you're suggesting that perhaps
6 you're going to resolve that --

7 THE COURT: I'm going to -- I did not rule ahead
8 of time on the motion *in limine*, so I'm going to have to do
9 that at some point in time, but I'm not prepared to do it
10 this moment. So I will admit it for the limited purpose of
11 this testimony and then I'm going to have to make a decision
12 on the motion *in limine*.

13 (Exhibits D-533 and D-533A received in evidence)

14 MR. BURWOOD: Okay. And just to clarify, Your
15 Honor, to the extent that these exhibits are being admitted
16 for a limited purpose, your decision on the motion *in limine*
17 will impact -- potentially, Your Honor, if you rule in our
18 favor, the admission will no longer be for a limited purpose?
19 I'm just --

20 THE COURT: Correct.

21 MR. BURWOOD: Thank you. Thank you, I appreciate
22 it.

23 THE COURT: Uh-huh.

24 BY MR. BURWOOD:

25 Q Mr. Hawkins, we're going to go to D-607. And D-607 is

1 an email from James Grindinger, it's dated December 11, 2017,
2 and Mr. Grindinger is sending along the January 2018 cash
3 call with the October 2017 reconciliation. Do you see that?

4 A Yes.

5 Q Okay. Do you recall, the cash calls are issued on
6 the 5th for the -- strike that.

7 The cash calls are issued for billings in the coming
8 month; correct?

9 A Yes, estimated costs in the coming month.

10 Q And then the reconciliation is due within, I believe,
11 30 days after the work month; is that your recollection?

12 A Yes.

13 Q Okay. And here it appears that Welded is submitting
14 their October reconciliation in mid-December; correct?

15 A Yes.

16 Q Okay. If we could turn to page 3 of Exhibit D-607,
17 please? And it's the January 2018 cash call. And there's --
18 on page 3, there's a line 8 of that cash call, and it talks
19 about equipment NTP delayed. Do you see that?

20 A Yes.

21 Q And it's about \$1.6 million; right?

22 A Yes.

23 Q Okay. Yesterday, during your testimony, Attorney
24 Guerke showed you an exhibit which was ultimately admitted as
25 P-171. On page 18 of this exhibit, D-607 -- and we'll pull

1 that up on the screen for you because it's going to be
2 difficult to read in the binder, Mr. Hawkins -- so page 18,
3 do you recall -- so, just to orient you, pre-NTP equipment
4 standby reconciliation, and the amount total is almost
5 \$6.1 million. Do you see that?

6 A Yes.

7 Q Okay. Do you recall looking at this with your
8 attorney, with Welded's attorney yesterday?

9 A Yes.

10 Q Okay. And this is included in the January cash call,
11 I'll offer to you, because part of this \$6.1 million was
12 billed, \$1.5 million of it was billed in the January cash
13 call; is that your understanding?

14 A Based on what you showed me, yes.

15 Q Okay. And so, of the total \$6.1 million invoiced by
16 Welded for this pre-NTP equipment standby, do you recall that
17 Welded invoiced Transco \$6.1 million for equipment that
18 Welded maintains was on standby?

19 A Do I recall that?

20 Q Yes.

21 A Yes, that's what this --

22 Q All right.

23 A -- that's what this says.

24 Q And I'm just asking if you recall the circumstances
25 that led to this.

1 A Yes.

2 Q Okay. And of that \$6.1 million --

3 MR. BURWOOD: -- if Ms. Bair could blow up sort of
4 the first three lines?

5 BY MR. BURWOOD:

6 Q We've got 24 CAT-594s, five CAT-594s, and some PL-87s.

7 I'm going to ask you to see that.

8 I'm not sure we can get that any bigger. Are you able
9 to read the first three lines of this Excel?

10 A On the blowup, I can --

11 Q Yeah.

12 A -- yeah -- I can't now --

13 Q All right, there you go.

14 A -- yes, I can see that. Thank you.

15 Q Great. Thank you.

16 So part of that standby equipment invoicing to Transco
17 were 24 CAT-594 pipelayers; correct?

18 A Yes.

19 Q And the rate charged to Transco was \$943.50 a day;
20 right?

21 A Yes.

22 Q And those 24 CAT-594s were billed to Transco --
23 actually -- yeah, to Transco for the months of February, all
24 the way through September of 2018; right?

25 A Yes.

1 Q The assertion from Welded being that these 24 CAT-594s
2 were on standby pending the ASR NTP; correct?

3 A Per the contract, yes.

4 Q Mr. Hawkins, having invoiced Transco in connection with
5 this spreadsheet, was it Welded's position that all of
6 those 24 CAT-94s were ready to work, but on standby as of,
7 for example, February of 2017?

8 A I don't think that's what that represents. I think it
9 represents the contract deal that we would have -- that that
10 was the deal. If they were on standby waiting for the NTP
11 that we would be able to invoice for those pipelayers.

12 Q Well, what's the distinction you're making? Let me ask
13 a better question.

14 A Well, you're asking me -- you're asking me if they were
15 ready to work and --

16 Q I am.

17 A -- and I know that they were having roll cages put on
18 and other things being performed on.

19 Q So help me understand. The concept of standby is that
20 we would have either been using this equipment on your job or
21 potentially we'd be using it elsewhere but for the fact that
22 we're waiting on the NTP; is that accurate?

23 A Yeah -- well, yes.

24 Q Is that accurate?

25 A Yes, yes, that's accurate.

1 Q Okay. And just --

2 A Yes, it's accurate.

3 Q Inferred in that is the fact that, if this equipment is
4 waiting, okay, and we're going to charge our client for it to
5 be waiting, do you agree with me that that equipment must at
6 least be ready to perform at that time?

7 A Not necessarily.

8 Q Why not?

9 A Well, like I said, we were -- my understanding on each
10 one of those pieces is that we were actually upgrading the
11 equipment to get ready for the ASR spread in the conditions,
12 and that's what was going on, we were using that time to
13 upgrade the equipment roll cages.

14 Q That equipment was not ready to perform the work, 42-
15 inch diameter work on Welded as of February of 2017; was it?

16 A That's -- I would say no.

17 Q Okay. Was it ready in March?

18 A I don't know when they were ready.

19 Q Do you know if they were ready in April?

20 A I don't know.

21 Q Okay. How about May?

22 A I don't know.

23 Q All right. It's safe to assume you don't know any of
24 those months they were ready?

25 A I don't know -- I don't know the status of each 24,

1 when they were or were not ready to go in service and were
2 complete with the upgrades, I do not know that.

3 Q I'm not trying to be overly illustrative, but in
4 September when the project started, do you know if those 24
5 CAT-594s were ready then?

6 A I don't know.

7 Q Okay. The second line of that, there's sort of a
8 subset of the CAT-594s and it's five of them; do you see
9 that?

10 A Yes.

11 Q Same rate, \$943.50 a day; right?

12 A Yes.

13 Q But there's no charge there and that's because those
14 had been rented to Precision as of June 6th of 2017; right?

15 A Correct.

16 Q Okay. If Welded rented them to Precision, is it safe
17 to conclude that those had been upgraded and repaired and
18 were ready to work?

19 A I don't know if they had been upgraded and repaired or
20 not, I just know what's reflected here is that they were
21 rented to Precision.

22 MR. BURWOOD: Your Honor, this page was admitted
23 as P-171, I'm asking that this full Exhibit D-607 be
24 admitted.

25 MR. GUERKE: No objection, Your Honor.

1 THE COURT: Okay, I'll admit it, but let me say
2 this because I said this in the beginning. I'm not going to
3 read through an entire exhibit for pieces that you didn't
4 talk about to -- you know, as evidence. So I'll admit it,
5 there's no objection, but if it's not talked about and not
6 testified to, I'm not going to be looking at it.

7 (Exhibit D-607 received in evidence)

8 MR. BURWOOD: I understand, Your Honor.

9 MR. NEIBURG: And, Your Honor, I apologize, before
10 we move on to the next document. This is more of
11 housekeeping, but keeping the record clean. I think, shortly
12 before trial began, the parties agreed to a list of JXs, in
13 which case, if it was previously a PX or a DX, it should have
14 came off those lists and be JXs.

15 And I think, at least just representative, this
16 last one, D-607 is now, technically, JX-34. D-6 that was
17 admitted is, technically, now JX-3.

18 So I think -- nothing to hold us up right now, but
19 I think what the parties need to do and just so you know it's
20 coming, we'll reconcile the numbers and then provide the
21 Court with the list of what it's actual current J, P, or D
22 is.

23 THE COURT: Thank you.

24 MR. NEIBURG: Thank you, Your Honor. I'm sorry.

25 MR. BURWOOD: And I apologize to the Court and to

1 Counsel. I did note that, I meant to make a record of that,
2 and I just neglected to do so. So I'll do better going
3 forward.

4 BY MR. BURWOOD:

5 Q Mr. Hawkins, let's turn to D-29, please.

6 D-29 is October -- it's an October 26th, 2016 email
7 from Dean McDowell to yourself; right?

8 A Yes.

9 Q And attached -- the subject is board book review, and
10 the Welded Construction board book, October 26th, 2016, is
11 attached; right?

12 A Yes.

13 Q Okay. So we're back in October of '16 now, which is
14 the outset of that pre-NTP RFS period; right?

15 A Outside of the pre-NTP --

16 Q The pre-NTP work has just begun?

17 A For ASR, you mean?

18 Q Yes.

19 A Okay, I'm sorry. Yes.

20 Q Don't be sorry.

21 MR. BURWOOD: Page 12, please, if you don't mind?

22 BY MR. BURWOOD:

23 Q In the middle of that page there's a paragraph that
24 starts, "Based on the revenue above," if we could focus on
25 that.

1 The second sentence says, "Profitability is driven
2 lower by the continued focus on equipment readiness and
3 modernization."

4 Do you see that?

5 A Yes.

6 Q The 594 fleet, along with the eight newly-leased PL-87s
7 will be made ready for work. The 594s have not been utilized
8 since 2008, and required repairs and upgrades. Much of this
9 work was scheduled to be completed in 2016; however, with the
10 slide to the right in the Sunoco projects, this has been
11 delayed. The machines will be ready mid-summer 2017.

12 Do you see that?

13 A Yes.

14 Q Okay. Do you have any reason to believe that that's
15 not accurate?

16 A No.

17 Q If you'd turn to page 20 of that same exhibit for me,
18 please? And the heading on that page is "Large Pipelayers."

19 And on that page there's pictures of and descriptions
20 of the 594s and the PL-87s; correct?

21 A Yes.

22 Q And, focusing on the 594s, this indicates here that
23 Welded owns 29 of them; right?

24 A Yes.

25 Q That comports with the standby spreadsheet that

1 showed 24 on standby and five with Precision; right?

2 A Yes.

3 Q Okay. And there's a note here that the average age of
4 the fleet of Welded's 594s is 41 years old; right?

5 A Yes.

6 MR. BURWOOD: Your Honor, I'd offer D-29 into
7 evidence, please.

8 MR. GUERKE: The same kind of objection, Your
9 Honor. No objection for this testimony on these subjects,
10 but I think they're trying to get them admitted for this
11 reason and then using them down the road for a different
12 reason, and that's my concern and subject -- just subject to
13 our motion *in limine*, that's our position.

14 MR. BURWOOD: Your Honor, I -- Transco accepts
15 that you're going to get to the motion *in limine* and we
16 accept that Attorney Guerke is making sort of a standing
17 reservation in that regard. I'm just acknowledging the
18 reservation is made.

19 THE COURT: Okay, so I will admit it for purposes
20 of this discovery and we'll deal with the motion *in limine*
21 when I get to that.

22 (Exhibit D-29 received into evidence)

23 MR. BURWOOD: Thank you, Your Honor.

24 BY MR. BURWOOD:

25 Q The next exhibit, Mr. Hawkins, is D-63. And D-63 is --

1 we've gone to February 21st of 2017, it's from Mr. McDowell
2 to yourself, and it's some more Welded board meeting
3 materials. Do you see that?

4 A Yes.

5 Q Okay. And on page 18 of Exhibit 63 -- so now we're in
6 February of '17, the NTP is approximately seven months away,
7 and under the heading Fleet Management at the top of that
8 page, the board materials indicate that Welded's management
9 continues preparing the Welded equipment fleet for work in
10 2017. Work is ongoing to upgrade the existing pipelayers;
11 correct?

12 A Yes.

13 Q And later in that paragraph it says, once complete,
14 work will resume on similar projects for the fleet of PL-
15 594s. This work -- I'm going to back up.

16 I read you the first sentence that talks about
17 preparing the equipment fleet for work in '17. It then goes
18 on to talk about in September of '16 the Welded board
19 approved the purchase and installation of nine PL-583
20 conversion kits and 19 rollover-protection structures.

21 Did you testify earlier that some of the work that was
22 being done on the 594s was this adding of the rollover
23 protection?

24 A Yes.

25 Q Okay. These pipelayers are needed for the execution of

1 Leach XPress Project. What was the diameter, if you recall,
2 of Leach XPress?

3 A Thirty six, I believe it was thirty six.

4 Q And these 594s are for large-diameter pipe?

5 A Yes, but I don't think the 19 rollover-protection
6 structures that are being referred to for Leach are the 594s.

7 Q Okay. So let me see if I can get there.

8 A We had to put rollover kits on other pipelayers for
9 Leach because it was in the mountains.

10 Q So it says this work, the work on the 583s, is expected
11 to be complete by March 31 of '17.

12 A Yes.

13 Q Once complete, work will resume on similar projects for
14 the fleet of PL-594s. Okay?

15 A Uh-huh.

16 Q This work is expected to be complete by August 31, in
17 support of the ASR start in September; right?

18 A Correct.

19 Q Okay. So, at this time in February, the board is being
20 told that upgrades -- repairs, upgrades, work on the 594s to
21 ready them for ASR is projected to be complete by August 31;
22 correct?

23 A Correct.

24 MR. BURWOOD: Your Honor, I'd ask to admit Exhibit
25 D-63.

1 MR. GUERKE: Same position, same objection, Your
2 Honor.

3 THE COURT: Okay, and the same ruling. I'll take
4 it for purposes of the fleet management equipment issue and
5 we'll deal with the rest of it on the motion *in limine*.

6 (Exhibit D-63 received into evidence)

7 MR. BURWOOD: Thank you, Your Honor.

8 BY MR. BURWOOD:

9 Q Mr. Hawkins, Exhibit D-66 is an email from Cecilia
10 Hernandez, it's dated February 21st of 2017, it's the same
11 date as the prior exhibit, it's to yourself, and the subject
12 is staffing curves updated. Do you see that?

13 A Yes.

14 Q Okay. And there are some attachments and one of the
15 attachments to the email purports to be Welded Equipment
16 Curves 2017. Do you see that?

17 A Yes.

18 Q And I'll refer you to page 6 of Exhibit D-66 just
19 quickly, and I'm going to show you a black-and-white chart
20 there that says Welded Side Booms 2017. Do you see that?

21 A Yes.

22 Q Okay. Is a 594 a side boom, Mr. Hawkins?

23 A Yes.

24 Q Okay.

25 MR. BURWOOD: Ms. Bair, can you go to 66A, please?

1 BY MR. BURWOOD:

2 Q And by way of explanation, Mr. Hawkins, 66A is color
3 copies of those, and so I just want us to look at those. And
4 we are going to -- in 66A, we're going to go to page 6 again.

5 And so Welded Side Booms 2017, I'm going to -- if we
6 could focus on the -- I just -- can you see the lines there,
7 Mr. Hawkins, without them being blown up, that say ASR 56
8 and 67?

9 A Yes.

10 MR. BURWOOD: Ms. Bair, would you mind actually
11 highlighting those for me?

12 (Pause)

13 BY MR. BURWOOD:

14 Q This presentation to Welded's board in February of '17
15 indicates that the allocation of side booms for the ASR
16 project in January, February, March, April, May, June, July,
17 and August is zero; correct?

18 A Yeah, correct. There was no work going on then.

19 Q Okay. No allocation, though, of that equipment to the
20 ASR project; right?

21 A Correct.

22 Q And then, in September, there are 33 side booms that
23 will be allocated; correct?

24 A Correct --

25 Q Okay.

1 A -- based on a contemplated NTP of September, yes.

2 Q Well, it's also based on the fact that in the last
3 exhibit we saw that the board was told at this time this work
4 on the 594s will be completed on August 31; right?

5 A I'm not sure that -- I'm not following your connection
6 here. To me, the allocation goes with the start of the
7 work --

8 Q And I'm just --

9 A -- and this was an NTP of September, is what we were --
10 so that's when it would start showing up on the -- you know,
11 on these curves.

12 Q And what I'm asking you is, it's also consistent that,
13 when we looked at the board meeting materials in Exhibit 63,
14 the board was told that the work on the 594s was expected to
15 be complete by 8/31 in support of ASR; right?

16 A In support of a September start of the work, yes.

17 Q Okay. And here there's no side boom allocated to ASR
18 until September; correct?

19 A Correct.

20 Q Okay.

21 MR. BURWOOD: Your Honor, I'd ask to move to admit
22 D-66 and D-66A.

23 MR. GUERKE: No objection, Your Honor.

24 THE COURT: They're admitted.

25 (Exhibits D-66 and D-66A received into evidence)

1 BY MR. BURWOOD:

2 Q Mr. Hawkins, Exhibit D-1382 is a July 30, 2018 email
3 from Troy McDonald of Zolfo Cooper and it's to Frank Pometti
4 and others. The subject is as-bid versus as-performed.

5 I'd ask you to take a look at the second page, the as-
6 bid versus as-performed analysis that's dated August 1, 2018.
7 I'd ask you to page through that, and what I'm going to ask
8 you is, do you recognize and have seen this document before?

9 A I'm sorry, do you want me to go through the book?

10 Q I just want you to -- yeah, if you can go through the
11 book, it's probably easier.

12 A And which one is it? It's 1382?

13 Q It's D-1382.

14 (Pause)

15 Q And it's long, I'm not looking for you --

16 A Yes.

17 Q -- to sort of get into every page. What I'm asking you
18 is do you recognize having seen it before?

19 A Yes.

20 Q Okay.

21 A Well, let me go through the pages first, but --

22 Q Yeah.

23 (Pause)

24 A Yes, I recognize it. I'm not going to go through 60
25 pages of it, but, yes, I recognize it.

1 Q Thank you, Mr. Hawkins.

2 On page 55 of that -- we can probably just refer back
3 to the screen now because I'm only going to touch on a couple
4 pages -- page 55 is entitled Williams ASR.

5 A Yes.

6 Q And if we specifically go to page 61 in the ASR
7 section, the heading on that page is Summary Analysis of
8 Equipment Activity ASR. Do you see that?

9 A Yes.

10 Q And there's a chart here that identifies in the left-
11 hand column certain ASR equipment; is that your
12 understanding?

13 A Yes.

14 Q And then there is data tied to bid and there's data
15 tied to actual, and then there's a variance of that bid
16 versus actual data; correct?

17 A Yes.

18 Q And, focusing on the bottom third of that chart, it
19 talks about side booms. Do you see that, side booms?

20 A Yes.

21 Q Okay. And specifically under side boom it says CAT-594
22 Side Boom. Do you see that?

23 A Yes.

24 MR. BURWOOD: Ms. Bair, can we blow up that?

25 Smaller than that, actually, just -- that's fine. No, that's

1 great.

2 BY MR. BURWOOD:

3 Q Mr. Hawkins, do you see the rate, the actual rate in
4 Zolfo Cooper's analysis relative to the CAT-594s?

5 A Yes.

6 Q And what is it?

7 A The 789?

8 Q So Ms. Bair has given us the headings, right? What's
9 the actual rate per day, according to Zolfo Cooper, for the
10 CAT-594 side booms?

11 A Seventy eighty nine, if I'm reading the right -- the
12 right line.

13 Q So that's the bid price --

14 A Oh, I'm sorry.

15 Q -- what's the actual?

16 A Oh, I'm sorry, I'm with you now. Okay, 480.60.

17 Q Four hundred -- four hundred and eighty --

18 A Eighty dollars and sixty cents --

19 Q -- four hundred and eighty one dollars; right?

20 A Yes.

21 MR. BURWOOD: Ms. Bair, can I ask you to bring 607
22 back up for me for a minute? We're going to go to page 18.

23 BY MR. BURWOOD:

24 Q So actual rate per day on the 594s is \$480, per Zolfo
25 Cooper's analysis. When we go back to page 18 of

1 Exhibit 607, we see that the rate charged to Transco in
2 standby for these CAT-594s is \$943.50; correct?

3 A Yes.

4 Q Relative to the contract period -- not pre-NTP, not
5 standby, relative to the contract period -- to your
6 knowledge, would a CAT-594, would that be included equipment?

7 A Included equipment, yes.

8 Q Okay. So not invoiced to Transco during the normal
9 course --

10 A Correct, yes.

11 Q -- of the job? Okay.

12 Staying on page 18 of 607 for a minute, Mr. Hawkins,
13 are aware of any backup that Welded has that verifies this
14 rate of \$943.50 a day for the CAT-594s?

15 A I'm not aware of any, no.

16 Q Okay. How, to your knowledge, could Transco ever
17 verify that rate given the information Welded provided to it?

18 A I said I don't have any knowledge. I don't know what
19 Welded provided with it or didn't provide with it, is my
20 answer.

21 MR. BURWOOD: Ms. Bair, can I have JX -- the
22 contract article 26?

23 (Pause)

24 BY MR. BURWOOD:

25 Q So we're going to go to JX-1, page 27, please?

1 And, Mr. Hawkins -- I'm just going to let everybody
2 catch up.

3 A Okay, I'm sorry. So equipment (indiscernible) I'm
4 sorry.

5 Q That's okay.

6 THE COURT: That's okay, I'm catching up too.

7 MR. BURWOOD: I'm jumping around. I apologize.

8 BY MR. BURWOOD:

9 Q So we were just talking about this \$6.1 million in pre-
10 NTP standby equipment that Welded invoiced Transco for;
11 right?

12 A Yes.

13 Q And we're talking about the fact that Zolfo Cooper
14 identifies the actual rate for those CAT-594s at about \$481;
15 right?

16 A Yes, that's the number that -- yes.

17 Q Yeah, the standby invoicing, Transco was invoiced a
18 rate approximately almost double that, right, \$943?

19 A Yes.

20 Q Okay. So I want to draw your attention to article 26
21 in the contract, it's project delays and contractor notice to
22 proceed. And deep in that paragraph, about a third of the
23 way down, on the right side, there's a sentence that says,
24 "Contractor shall be entitled to a change order
25 for payment of contractor's demonstrable costs associated

1 with the NTP delay."

2 Do you see that?

3 A Yes.

4 Q And it goes on to say, "For purposes of this provision,
5 demonstrable costs means contractor's substantiated, direct,
6 actual costs incurred due to NTP delay."

7 Do you see that?

8 A Yes.

9 Q Are you aware of any substantiation provided by Welded
10 of the direct and actual cost of \$943 a day for these CAT-
11 594s?

12 A I'm not aware one way or another.

13 MR. BURWOOD: Your Honor, I'd ask to move
14 Exhibit 1382 into evidence, please.

15 MR. GUERKE: Same objection, same subject as the
16 last ones, Your Honor.

17 THE COURT: Okay. And then --

18 (Pause)

19 MR. BURWOOD: Your Honor, may I have a minute? I
20 just want to talk about the objection.

21 THE COURT: Yes, you may.

22 (Pause)

23 MR. BURWOOD: Your Honor, just in response, from
24 my perspective, this is a different issue, okay? This is
25 not -- this document doesn't contain any analysis about -- I

1 think the concerns that he's raising about Welded's financial
2 condition. This is an analysis by Zolfo Cooper of how they
3 bid the job, how they priced the job, how they built to that
4 number, and then the actual costs they incurred. So I think
5 it more speaks directly to the issues on this cost
6 reimbursable contract, not to the cash flow issues or the
7 financial health issues that Mr. Guerke is referring to.

8 MR. GUERKE: We've repeatedly heard about cash
9 flow, as-bid versus as-performed, for like three years
10 relating to the cash flow issues and finances of Welded.
11 That's the basis of my objection that there's a lot more in
12 here than simply a comparison of the as-billed pipelayers
13 versus the -- I mean the actual cost of the pipelayers versus
14 the rates in that invoice, that's my concern and that's the
15 basis for my objection.

16 THE COURT: Okay. Well, I'm going to take this
17 objection under advisement and I will decide whether more of
18 this document should come in based on the motion *in limine*,
19 perhaps relevance with respect to the rest of the document,
20 or, again, the fact that we've talked about one page and I'm
21 happy to look at that, but I'm not going to be looking at
22 anything that we're not discussing. But I'll take this one
23 under advisement.

24 MR. BURWOOD: Your Honor, may I just be heard on
25 relevance for one moment?

1 THE COURT: Yes.

2 MR. BURWOOD: I just want to bring the Court's
3 attention to the fact that yesterday this witness testified
4 that around the time that letters were being received from
5 Mr. Springer, emails from Mr. Poarch, the withholding
6 happened, he testified about, you know, their ability to meet
7 payroll, okay? Their ability to continue as a going concern;
8 the impact that the withholding, for example, had on their
9 financial health, whether or not it led to the bankruptcy.

10 So, to the extent that relevance is in question,
11 what I would offer is that Mr. Hawkins's testimony makes that
12 issue squarely relevant, but I understand that Your Honor is
13 going to reserve judgment on that issue.

14 THE COURT: I am and I don't see it relative to
15 this particular -- that argument relative to this particular
16 document, but I'll consider that.

17 MR. BURWOOD: Thank you, Your Honor.

18 BY MR. BURWOOD:

19 Q Mr. Hawkins, we're going to go to D-37. And D-37, the
20 first page is from yourself and it's to Rich Wall at Bechtel
21 and others, and it's in December of 2016. Do you see that?

22 A Yes.

23 Q Okay. And the subject is Welded's November 2016
24 Operations Report; right?

25 A Yes.

1 Q And this is an email you prepared; correct?

2 A Yes.

3 Q Do you recall, seven years later, drafting it?

4 A Yeah, this was my executive summary to the monthly
5 financial reports --

6 Q Okay.

7 A -- I wrote this.

8 Q And under the heading Financials, about halfway down
9 the page, you say management recommends a special dividend of
10 \$10 million in December; correct?

11 A Yes.

12 Q Was that dividend paid?

13 A I believe so, yes.

14 Q To whom?

15 A To the shareholders.

16 Q Bechtel?

17 A And McCaig, yeah.

18 MR. BURWOOD: Your Honor, I'd offer D-37, please.

19 MR. GUERKE: We do have an objection based on
20 relevance.

21 THE COURT: What's the relevance of this document?

22 MR. BURWOOD: Mr. Hawkins testified yesterday that
23 because the lawsuit was filed in Oklahoma that the
24 shareholders consider it to be -- I don't want to misquote
25 him, but sort of an unresolved or an open liability, and,

1 therefore, they were unwilling to provide further financial
2 assistance to this company. And what I'm trying to do is
3 establish, in response to that, that Bechtel and McCaig had,
4 when times were good, taken dividends out of the company;
5 when Welded needed help, they had offered money into Welded;
6 and I want to draw a distinction between those times, '14,
7 '15, '16, and then in '17, '18, when Welded fell on hard
8 times, Bechtel and McCaig decided they weren't going to do
9 that anymore.

10 THE COURT: What's the relevance of that to a
11 claim in this lawsuit? Whether Bechtel took money out or
12 not, whether Bechtel supported this company or not, what's
13 the relevance of that to a claim in this lawsuit --

14 MR. BURWOOD: Well --

15 THE COURT: -- a claim or counterclaim in this
16 lawsuit?

17 MR. BURWOOD: I guess I'd say, Your Honor, the
18 whole reason we're here is that they were unable to perform
19 on the job because of the way they handled their cash
20 advances on this job, not paying their subcontractors and
21 suppliers --

22 THE COURT: How's that the whole reason why we're
23 here? We're here because Bechtel has said you owe them money
24 and we're here because -- not Bechtel -- Welded has said you
25 owe Welded money, and Transco says, no, you owe us money

1 under the contract. That's the dispute I have in front of
2 me, not why they didn't pay you, but that they didn't pay
3 Transco.

4 MR. BURWOOD: So, Your Honor, I'd offer that even
5 though that's the position they took pretrial, Mr. Hawkins
6 during his direct was asked about and testified about the
7 impact on their finances and what it did to the company that
8 led to the commitment letters, that potentially led, in their
9 eyes, a descoping of the restoration work. They are not
10 ignoring that, it is part of their case in chief already.

11 THE COURT: Well, what's your response to that,
12 Mr. Guerke?

13 MR. GUERKE: That's not the effort here. The
14 effort here is to make an argument that Welded was in
15 financial distress way before there was a dispute with
16 Transco and, therefore, Transco doesn't owe us any money
17 under the contract.

18 THE COURT: And, if that's the argument, I don't
19 see the relevance -- I don't buy the argument, but I'm not
20 seeing the relevance of whether Bechtel took a distribution
21 at any particular time. So I'll sustain the objection.

22 MR. BURWOOD: May I have a minute, Your Honor?

23 THE COURT: Yes.

24 (Pause)

25 MR. BURWOOD: Thank you, Your Honor.

1 THE COURT: Certainly.

2 (Pause)

3 BY MR. BURWOOD:

4 Q Mr. Hawkins, can you turn to Exhibit D-822, please?

5 On page 2 of 822, there's an email from a Paul
6 Rodriguez at AON to Dean McDowell, it's dated January 17,
7 2018. Let me know if you see that.

8 A Yeah, I'm trying to find this tab in the book.

9 Q Ms. Bair has it on the screen.

10 A Are you going to have everything on the screen?

11 Q It's on the screen. I can do that, yeah.

12 And in the email, Mr. Rodriguez of AON -- do you know
13 who Mr. Rodriguez is?

14 A I know who he is; I've never met him, but I was on a
15 call with him and I know who he is, yes.

16 Q What is your understanding of his role relative to the
17 ASR project?

18 A I don't know what AON is specifically, but I think
19 they -- I don't know if they were brokers, but they handled
20 the relationship with Chubb, is my understanding. I don't
21 know specifically what AON does.

22 Q Chubb being the surety for the --

23 A The surety, yes --

24 Q -- ASR project?

25 A -- yes, correct.

1 Q Okay. Mr. Rodriguez says to Mr. McDowell, the CFO,
2 that -- he refers to, per our conversation, we wanted to
3 provide the surety's updated financial information when
4 available. Do you see that?

5 A Yes.

6 Q And the main areas that would be helpful he identifies,
7 one of them is narrative on the project issues discussed,
8 impact to cash flow, potential remedies being addressed. Do
9 you see that?

10 A Yes.

11 Q Were you a part of this per our conversation, do you
12 know, at or around January 17th with Mr. Rodriguez?

13 A I don't know if -- I don't know what he's referring to.
14 I know that I've had conversations with Mr. Rodriguez in the
15 past, I don't know if this was the one or not, or the timing
16 of it.

17 Q Okay. Do you recall at or around this time, January 17
18 of 2018, that there were conversations with Chubb, for
19 example, relative to impacts to Welded's cash flow?

20 A Yeah, I think that's the source of this email, yes.

21 Q Okay. And January 17, 2018, do you recall that that's
22 actually the same day that Mr. McNabb issued that
23 productivity analysis PowerPoint?

24 A January -- this is February -- I'm sorry --

25 Q January 17, 2018.

1 A Yeah. I'm sorry, what am I linking here on the dates?

2 Q I'm asking if you recall that's that same date that

3 Mr. McNabb created that PowerPoint, that productivity

4 PowerPoint. I'll offer to you it's the same date --

5 A Yes --

6 Q -- correct?

7 A -- yes, I agree.

8 Q All right. And, in that PowerPoint, Mr. McNabb flagged

9 the fact that that job could potentially go \$120 million over
10 cost; right?

11 A Yes.

12 Q In a later email in the chain, so back on page 1,

13 Mr. Rodriguez again emails Mr. McDowell and basically says

14 we've -- we have discussed the benefit of having Chubb sit

15 down with Welded in San Francisco, if possible, at the

16 Bechtel office. Do you see that?

17 A Yes.

18 Q Okay. So Chubb is Welded's surety and, at least from

19 this email, there was a prospect of a meeting between Welded

20 and Bechtel and Chubb; right?

21 A Was it with Chubb? Yes.

22 Q Okay. And do you recall that -- the prospect of this

23 meeting at all, do you recall that?

24 A No, I don't.

25 Q In the last sentence there Mr. Rodriguez says has there

1 been an update around funding commitments by the equity
2 partners. Do you see that?

3 A Yes.

4 Q Okay. Do you recall if there were conversations with
5 Welded, Bechtel, and McCaig at the time whereby those
6 shareholders would issue funding commitments to Welded?

7 A I don't recall that.

8 Q Do you recall that at any time?

9 A Yes, I do. I just don't remember what period of time
10 that was.

11 Q So during the ASR project there were conversations
12 between Welded on the one hand and their shareholders on the
13 other, Bechtel and McCaig, about the shareholders providing
14 funding to Welded; correct?

15 MR. GUERKE: Objection, Your Honor. It's the same
16 issue, it's addressed in the Court's ruling that the Court --
17 it's not relevant on whether a shareholder funded or didn't
18 fund, or took a dividend or didn't take a dividend, to the
19 issues in this case, the claims in this case.

20 THE COURT: What's the relevance?

21 MR. BURWOOD: Again, Your Honor, Chubb, okay, had
22 to come in and they had to pay \$70 million in payment bond
23 claims, right?

24 THE COURT: Yes.

25 MR. BURWOOD: And part of the issue here is

1 Mr. Hawkins testified yesterday that when we were
2 experiencing production overruns, when we were experiencing
3 cost overruns, we were forecasting and we were fully
4 transparent with our client Transco, okay? What I'm
5 offering -- what I'm trying to do is make a record that
6 Welded knows they're in trouble in January of 2018, their
7 project controls manager is projecting potentially a
8 \$120 million impact to this job because, in part, of their
9 lack of productivity, okay, that I will get to. There was no
10 transparency with Transco there, there was also no
11 transparency with Chubb there, and they're only speaking to
12 Bechtel about it.

13 And so, to the extent that subs weren't being
14 paid, Your Honor, okay, they're required to be paid promptly
15 pursuant to the subcontract, and that the use of those funds
16 led to the demise of this job and all of those claims, and
17 Bechtel and Chubb's proofs of claim in this proceeding that
18 are driving this adversary proceeding, that is all relevant
19 to why we're here.

20 THE COURT: How are those -- how are Chubb and
21 Bechtel driving why we're here? I thought what we were here
22 on is not simple, but it's a breach of contract case, that's
23 what it is. However we got here, we got here, but we have a
24 breach of contract case.

25 And how does the transparency to Chubb have

1 anything to do with transparency to Transco, which I did hear
2 testimony about?

3 MR. BURWOOD: I guess I'd say, Your Honor, is
4 yesterday there was -- again, they're saying it doesn't
5 matter and then during Mr. Hawkins's direct testimony we hear
6 about it, right? And, you know, there was testimony
7 yesterday that it all worked out, the subs all got paid --

8 THE COURT: Uh-huh.

9 MR. BURWOOD: -- but the fuller context is that,
10 no, their surety had to step in and pay \$70 million in
11 claims.

12 THE COURT: Right, but how does that impact
13 whether a claim in this case or a counterclaim in this
14 case -- what claim has Transco asserted that it's harmed by
15 the fact that Chubb, instead of Welded, paid those
16 claimants --

17 MR. BURWOOD: We have -- we have --

18 THE COURT: -- paid those claims?

19 MR. BURWOOD: I'm sorry, Your Honor. We have a
20 breach of contract claim, okay? One of their material
21 breaches of contract was the failure to abide by article 24,
22 which says we must promptly pay all subcontractors upon
23 receipt. The record has and it will further develop that
24 they did not do that, that's a material breach of the
25 contract, and the --

1 THE COURT: And what's your harm?

2 MR. BURWOOD: In terms of --

3 THE COURT: What's your harm --

4 MR. BURWOOD: -- the material --

5 THE COURT: -- from that material breach?

6 MR. BURWOOD: Well, the job, ultimately, because
7 of that, fell apart in late October -- Your Honor, if I could
8 just finish, okay?

9 THE COURT: Uh-huh.

10 MR. BURWOOD: And like just, for example, relative
11 to the restoration work, Transco had to ultimately, because
12 Welded couldn't continue, bring in a contractor to perform
13 50 million additional dollars in restoration work.

14 THE COURT: So that's a cover claim, but how is
15 that -- how is that -- I understand that, but the fact of
16 the -- what you're going to argue that Welded didn't complete
17 the work and we had to complete it through another
18 contractor, I understand that claim, I don't understand how
19 that's related to the fact that the subs didn't get paid or
20 the -- whoever didn't get paid.

21 MR. BURWOOD: Your Honor, we recognize the
22 fundamental unfairness for them to be able to testify that
23 there was transparency, that all the subs got paid, that, you
24 know, we used the funds in comport with the contract, we
25 abided, and we were -- essentially, we did what we were

1 supposed to do, when the record is that that's not true.

2 And so there's an imbalance in the evidence if
3 they're allowed to say those things and we're not allowed to
4 at least rebut them with our own evidence.

5 THE COURT: Oh, I think you can rebut them with
6 all those facts, with every single one of those facts you
7 just gave me, but this is not that fact, this is a different
8 fact.

9 MR. BURWOOD: Well, I'd offer that I'm building
10 facts into that case, but --

11 THE COURT: Okay. I'm going to -- I'm going to
12 permit the testimony, but I don't really think it's relevant
13 to anything, I'm telling you right now, I don't think it's
14 relevant to a thing. I've asked this question several times
15 now during pretrial conferences and I have yet to hear a
16 response that tells me that the fact that Chubb paid
17 contractors, that Transco has a claim for that.

18 MR. BURWOOD: So I guess the last thing I'd offer,
19 Your Honor, if I could continue one more thing, is that, you
20 know, this CASPA claim is still in the case, okay?

21 THE COURT: It is.

22 MR. BURWOOD: Whether or -- so, pursuant to
23 Section 504 of CASPA, the contractor has to comply with the
24 contract before they're entitled to recover under CASPA, for
25 example, okay? They're taking of some contract funds and

1 potentially not complying with article 24 is directly
2 material to the CASPA claim --

3 THE COURT: And I think that's fair, but that's
4 different evidence. I think that's fair. I mean -- and I
5 don't think it's going to be disputed. I think we're talking
6 about undisputed facts.

7 Okay, I'm sorry, I'm taking us far away from what
8 I think is --

9 MR. GUERKE: May I say one thing, Your Honor?

10 THE COURT: Yes.

11 MR. GUERKE: Our objection was based on this
12 exhibit and it's from February of 2018. There's no claim
13 that there is an unpaid subcontractor part of this case in
14 February 2018. I'd like to hear it, if that's the fact; I
15 don't believe that's the fact.

16 THE COURT: All right. This does seem to me to be
17 sort of after the fact. And I don't have my timeline -- I
18 might have my timeline --

19 MR. GUERKE: This is before the fact, before the
20 fact, Your Honor.

21 THE COURT: Yeah. I think I may have my timeline
22 in front of me, but, yeah, I -- okay. I'm permitting the
23 testimony, but I'm not going to admit this exhibit.

24 MR. BURWOOD: Thank you, Your Honor.

25 BY MR. BURWOOD:

1 Q Mr. Hawkins, can we go to D-1000, please? It's a few
2 exhibits further along.

3 A Yes.

4 Q And D-1000 is an email from a Steven Kuxhausen to
5 Mr. Wall of Bechtel and yourself; correct?

6 A Yes.

7 Q And it's sent in March, March 23rd of 2018; right?

8 A Yes.

9 Q Okay. And it starts actually with an email from
10 Mr. Wall on Friday, 23rd to Mr. Kuxhausen and yourself,
11 right, down at the bottom of the page?

12 A Yes.

13 Q And it says, I need to brief the OG&C management team
14 this morning on Welded; right?

15 A Yes.

16 Q OG&C management team is Bechtel; right?

17 A Bechtel Oil, Gas & Chemicals at the time, they're now
18 Bechtel Energy.

19 Q Okay. And just sort of focusing on in particular ASR,
20 what I'd say is that in Mr. Kuxhausen's response, in the
21 second-to-last paragraph it starts, it says "I think you also
22 need to mention," do you see that paragraph?

23 A Yes.

24 Q Who's Mr. Kuxhausen, what's his role at Bechtel?

25 A He's retired now, but at the time he was Bechtel's

1 internal audit, head of Bechtel's internal audit, and also a
2 former CFO for Welded -- I'm sorry, for Bechtel -- not
3 Welded, Bechtel -- for Bechtel Energy.

4 Q And he's providing feedback to this Welded summary
5 document that Mr. Wall prepared that we're not looking at
6 right now; right?

7 A Yes.

8 Q Okay. And some of his feedback is, "I think you also
9 need to mention somewhere in the document that Welded has
10 been living off advanced funding from Williams ASR that is
11 now ending and Williams could be withholding payment soon if
12 the issues are not resolved quickly."

13 Do you see that?

14 A Which paragraph is it?

15 Q "I think you also need to mention," it's highlighted.

16 A I'm sorry, it's highlighted yellow. My bad, I got it.
17 Yes, I see it.

18 Q And, specifically, Mr. Kuxhausen says Williams could be
19 withholding payment soon if the issues are not resolved
20 quickly; correct?

21 A Yes.

22 Q Okay. So at least as late as March 23rd, 2018,
23 Mr. Kuxhausen, yourself, and Mr. Wall were at least
24 contemplating or discussing the prospect that Williams might
25 withhold money from Welded; correct?

1 A Yes.

2 Q You testified yesterday that the withholding in October
3 was a complete surprise; correct?

4 A Yes.

5 Q Okay. So if you look further into this paragraph,
6 Mr. Kuxhausen continues to say, Williams will likely get hurt
7 if Welded goes Chapter 11, which would taint any future
8 business opportunities with a major customer.

9 He also goes on to say suppliers may also get hurt,
10 which would hurt Welded's chances of resurrecting the
11 business; correct?

12 A Yes.

13 MR. BURWOOD: Your Honor, I'd offer
14 Exhibit D-1000.

15 MR. GUERKE: It's the same continuing objection,
16 Your Honor. I don't have an objection to that part and his
17 testimony, but to the extent it's going to be used in this
18 overall argument that they're trying to make that in March
19 2018, that there was some issue and financial problems that
20 Welded was facing, that was the true cause of their downfall
21 and it wasn't Transco.

22 So that's the basis of my objection, so consistent
23 with my earlier --

24 THE COURT: Okay, I think this document is a
25 little different. I'm going to admit this document --

1 MR. BURWOOD: Thank you, Your Honor.

2 THE COURT: -- overruled.

3 (Exhibit D-1000 received into evidence)

4 BY MR. BURWOOD:

5 Q Mr. Hawkins, if you would turn to D-1296, please.

6 (Pause)

7 THE COURT: I'm sorry, what document are we going
8 to?

9 MR. BURWOOD: 1296. We're a little further into
10 the binder, Your Honor.

11 (Pause)

12 BY MR. BURWOOD:

13 Q Mr. Hawkins, we can put this on the screen for you.

14 A Okay. I'd still like to try to find it.

15 Q Yeah, understood, and that's absolutely your right, so
16 please do so.

17 A Thank you.

18 Q Exhibit D-1296 is an email from John Poarch; it's dated
19 July 3rd, 2018. It was admitted -- I apologize -- yesterday
20 during your direct examination -- oh, it's Exhibit D-1296,
21 okay.

22 You said yesterday during your testimony about this
23 that the subject was -- we're in July 3rd of 2018 and this is
24 Mr. Poarch emailing you when I think you said you were in
25 England; correct?

1 A Yes.

2 Q Okay. And he's raising concerns about Welded's failure
3 to meet expectations on productivity, accuracy of Welded's
4 billings in compliance with the contract obligations, and
5 uncontrolled growth in the estimate of costs; right?

6 A Yes.

7 Q Okay. And one of the things that we talked -- you
8 testified about in the context of this exhibit was this June
9 payment that was due at or around this time and the prospect
10 that it had been -- the fact that it had been split, I think,
11 into two payments; correct?

12 A Yes.

13 Q Okay. And in talking about that you testified, I
14 believe you said that, from your perspective, the reason
15 Transco had to make that payment in two buckets was that you
16 understood that Transco needed more governance, right, that
17 was your testimony?

18 A That's what I was told, yes, by Chris Springer.

19 Q More practically, Transco needed more money; right?

20 A Well, they needed the governance to have more money. I
21 don't know how much money Transco has or doesn't have, but
22 they needed to have the governance to be able to, you know,
23 pay the invoices against.

24 Q So when you say governance, they had to approve funds
25 to move into this project; correct?

1 A That's my interpretation of governance, yes. They
2 needed management approval, their governance board needed to
3 increase the amount of the budget and they didn't have that.
4 That's my understanding of governance.

5 Q The final construction contract value, okay, the
6 operative contract, Amendment 1, \$454 million; right?

7 A Yes.

8 Q That money had been exceeded by, I think you testified,
9 January; right?

10 A The forecast hadn't been exceeded, the forecast was to
11 exceed at the end of January.

12 Q Fair. Thank you --

13 A Yeah.

14 Q -- I appreciate that.

15 By July of 2018, is it the case that the costs had
16 exceeded \$454 million?

17 A Well, but by July the costs exceeded whatever
18 governance limit they had at that point, which would be in
19 excess of \$454 million.

20 Q Well in excess, right? I think at this point the
21 conversation was focused on \$700 million, right?

22 A I don't know the exact number. If you have it, I'll
23 take a look at it and --

24 Q Well --

25 A -- probably agree, but probably about --

1 Q -- and I'm not trying to commit you to anything, but
2 I'm just trying to orient everyone -- for purposes of
3 efficiency, the \$454 million sort of cost estimate that was
4 operative in the contract, the actual cost had gone several
5 hundred million dollars beyond that or at least a couple
6 hundred million dollars beyond that?

7 A Yes, we exceeded 454, Amendment 1, and we exceeded
8 their governance after the 454, Amendment 1, and they needed
9 more governance and more budget authority to pay these
10 invoices --

11 Q And it was the fact --

12 A -- that's my understanding -- that's my understanding,
13 as Chris related to me.

14 Q And nine months of work was quickly becoming one year
15 of work; correct?

16 A Yes.

17 Q At this time, July of 2018, Mr. Hawkins, was Welded
18 having difficulty forecasting the amount of remaining work,
19 if you recall?

20 A Forecasting in what way, the cost of it or the
21 quantity?

22 Q The quantity. So --

23 A The quantity.

24 Q -- specific to tie-ins, actually. Do you recall that
25 Transco was asking for estimate of remaining tie-ins --

1 A Yes.

2 Q -- around this time?

3 A Yes.

4 Q And were those estimates provided?

5 A Yes.

6 Q And, to your recollection, did Welded have a difficult
7 time coming to an accurate or consistent amount of remaining
8 tie-in welds when providing those estimates?

9 A I don't think we were having a difficult time. I think
10 the tie-in count was increasing as the work progressed, is
11 the issue. As the work progresses and leave-outs, for
12 whatever reason, happen -- leave-out meaning a section of the
13 pipeline isn't covered by the mainline and it's -- whether
14 it's a crossing, you know, the tie-ins increase. It's a
15 condition of the work, it's not a -- to answer your question,
16 they were increasing. Were we having difficulty with it?
17 The conditions were changing for driving a tie-in count. I
18 think that's the way I would -- I would represent it.

19 Q You'd agree with me that the project execution plan at
20 the outset of the project called for some finite number of
21 tie-ins; correct?

22 A Yes, the tie-in counts from the beginning of the plan
23 until the end exceeded that plan and, as the project went
24 along, we updated the tie-in counts based on the actual
25 conditions of the work that remained, which is -- that's what

1 we did.

2 Q And, generally speaking, on a pipeline project like
3 this, the tie-ins tend to be the critical path; correct?

4 A It seems they always tend to be the critical path at
5 the end of the job because they have to go in and tie-in the
6 project, yes --

7 Q Okay. And do you recall --

8 A -- every job.

9 Q -- do you recall, sitting here today, if in fact at the
10 end of this job the tie-ins became the critical path?

11 A The tie-ins absolutely became the critical path on this
12 job, yes.

13 THE COURT: So can I ask a question --

14 THE WITNESS: Yes, ma'am.

15 THE COURT: -- since we're talking about it, can
16 you tell me what a tie-in is?

17 THE WITNESS: Yes. Yeah, you bet. It's -- do you
18 want me to go -- is there a time limit? I can --

19 THE COURT: Well, for the layperson --

20 THE WITNESS: I'm with you, yeah.

21 THE COURT: -- at a high level.

22 THE WITNESS: So, on a high level, when you have
23 a -- when you're constructing a pipeline, in the best case
24 you have what's called a mainline pipeline crew, a main gang,
25 and that's consisting of, you know, several side booms, your

1 welding crew, and that's the most productive part, that's
2 like the manufacturing part of the pipeline. And as you go
3 through with your mainline, that's where you try to get your
4 best productivity. A lot of things can affect the
5 productivity of the mainline, creek crossings, crossings on
6 the roads, other things, or you get to a part of the pipeline
7 and after you've cleared the pipeline -- because it's not a
8 precisely engineered project -- you know, once it's cleared
9 or you get to the actual terrain, that the main gang will get
10 to a point and they will leave out a section because they
11 can't do it because it requires some bends, so you have a
12 bending engineer that bends the pipeline, but they're going
13 to keep going, right?

14 So, as you go on, for all of these various reasons
15 your tie-in count can increase or it can decrease, but,
16 historically, it increases.

17 A tie-in crew is a smaller crew. It typically has
18 one or two side booms and welders and welding machines and,
19 you know, other equipment to do that work, it goes behind and
20 then it does those tie-ins. So the leave-outs, the things
21 that were left behind for the various reasons, then the tie-
22 in crew goes in and does that.

23 THE COURT: So it's connecting one part --

24 THE WITNESS: It's connecting one --

25 THE COURT: -- of a pipeline to another part of a

1 pipeline?

2 THE WITNESS: Yes, it's tying it all in. So the
3 sections were left open, the tie-in crew goes in and connects
4 that part that was left open. Yes, that's -- I could have
5 said that and you would have the same understanding and --

6 THE COURT: No. It was helpful.

7 I just wanted to make sure I understand what it
8 is. If that prompts any further questions from you or you
9 want to take him after lunch and ask him something more
10 specific, certainly, you can.

11 MR. BURWOOD: Your Honor, I didn't ask him in the
12 first place because you never ask a question you don't know
13 the answer to.

14 THE COURT: I know. But I need to understand it
15 because it's so important, apparently, to what we're talking
16 about. I want to understand it, and I didn't see a picture
17 or something, so I asked.

18 MR. BURWOOD: I appreciate it, Your Honor.

19 THE COURT: Okay.

20 BY MR. BURWOOD:

21 Q Mr. Hawkins, sort of refocusing on sort of our
22 conversation here about -- for example, tie-ins, right.

23 I mean, you'd agree with me that Welded spent months
24 and invoiced Transco about \$6.1 million planning this job,
25 right?

1 A Yes.

2 Q Okay. And the primary elements of that planning were
3 cost and schedule and sequence of the work, right? Execution
4 of the work, correct?

5 A Yes.

6 Q Okay. And, ultimately, by this point in early July of
7 2018, things had just not gone according to that plan.
8 You would agree?

9 A That plan did not survive the
10 elements.

11 MR. BURWOOD: Your Honor, I'd offer to admit
12 D-1296 into evidence. Oh, actually, it's been admitted.

13 Withdrawn. Force of habit.

14 BY MR. BURWOOD:

15 Q Mr. Hawkins, D-1251 --

16 MR. BURWOOD: Your Honor, this exhibit is one of
17 the supplements from today, as are the next few. D-1251.

18 BY MR. BURWOOD:

19 Q Mr. Hawkins, D-1251 is a June 14, 2018, email from
20 LaDonna Rothgeb of Williams to Sue Hallowell at Welded.

21 Do you see that?

22 A Yes.

23 Q Okay. Do you recognize the name LaDonna Rothgeb?

24 A No.

25 Q And you testified earlier Sue Hallowell was one of the

1 cost staff, correct?

2 A Project controls cost staff, yes.

3 Q And I want to get this right.

4 Was she the one that was responsible for preparing
5 Welded's invoice on this job?

6 A I think so. That's my recollection. But, again,
7 it's -- I didn't oversee exactly what she did every single
8 day.

9 Q Okay.

10 A But this also supports that theory.

11 MR. BURWOOD: Ms. Bair, if you could pull out -- I
12 wanted to show him LaDonna Rothgeb's signature block, so if
13 you could just pull out to the full document.

14 BY MR. BURWOOD:

15 Q Down below, at the bottom of the page, it says "LaDonna
16 Rothgeb." And it says, "assistant area accountant."

17 Do you see that?

18 A Yes.

19 Q All right. So she's a Williams accountant.

20 Understood?

21 A Yes, I understand. Thank you.

22 Q Have you seen this email before?

23 A Let me see if I can read it.

24 I don't remember if I had seen this as part of my
25 deposition prep before in the deposition or not, but I'm

1 tracking that's what it is.

2 Q The subject line is "January reconciliation discrepancy
3 questions," right?

4 A Spread 5, Spread 6, yes.

5 Q Those are the attachments.

6 But in June, Ms. Rothgeb is sending an email to
7 Ms. Hallowell, and the re line is "January reconciliation
8 discrepancy questions," right?

9 A Yes.

10 Q Okay. And in the email, Ms. Rothgeb, the Williams
11 accountant, says:

12 "Good morning, Sue. Please find attached the
13 January discrepancy questions. We'll have February and March
14 to you in a few days. They're all complete except for a few
15 days on the manhours."

16 Second paragraph:

17 "We, Williams, still have not received any reply
18 on any of our discrepancy questions for October through
19 December. Can you please provide an update on this?"

20 Do you see that?

21 A Yes.

22 Q Okay. Are you familiar with a dialogue between
23 Williams' field accountants and Ms. Hallowell and her team
24 regarding what she's calling "reconciliation discrepancy
25 questions"?

1 A Through this email, I'm aware of it, yes.

2 Q Were you aware of it before today?

3 A Again, if I read this as part of my deposition prep, I
4 would be. But I don't recall this discussion, I guess, is
5 what I'm saying.

6 But this is also, as I read it, the time sheet part of
7 the audit. This is going -- the audit going back and looking
8 at the -- am I correct? Going back in time looking at it.

9 And Williams, through the audit, is providing
10 discrepancies that they're finding for Welded to respond to;
11 is that right?

12 Q Well --

13 A That's what I think.

14 Q Well, I'll ask you.

15 You see Adrian Green, OGCS Global, is cc'd here, right?

16 A Yes.

17 Q OGCS did the audit, right?

18 A Yes.

19 Q Okay. If you look at 1251B -- so for the purposes of
20 the record, I'll offer you, Mr. Hawkins, there are several
21 attachments to this email. They were itemized on the email
22 itself.

23 I'm not going to ask you about all of them, but I want
24 the record to be clear that I'm just asking you about one.
25 So I'd ask you to look at 1251B. You're welcome to look at

1 whatever you'd like.

2 I've got that on the screen. I just want to use it as
3 an example. Just bear with me for one minute, please.

4 You testified yesterday, I believe, that the John
5 Poarch email of July 3rd, when you were in England, that was
6 sort of the first notice that you received that there were
7 any concerns about the billing discrepancies, right?

8 A Well, precisely what I said in this email is that we
9 were taking advantage that they had concern. I mean --

10 Q And my question is: You didn't know about it before or
11 then? That was your testimony?

12 A I didn't -- that's correct. That level of concern at
13 the John Poarch executive level, I was not aware of that at
14 all.

15 Q Okay. But in looking at Exhibit 1251, which is dated
16 June 14th, would you agree with me that in that context that
17 there was a dialogue ongoing between Williams and Welded
18 relative to what were being called reconciliation discrepancy
19 questions, right?

20 A Yes.

21 Q So July 3rd may have been the first time you became
22 aware of it.

23 But seeing this, you realize that Sue Hallowell at
24 least was aware of it before June 14th, correct?

25 A Yes. But, again, the qualifier is the level of concern

1 that was expressed by John Poarch in that email was not known
2 to me.

3 And I don't see that in this -- in this either. 1251B
4 is -- this looks like we had housekeeping going on between
5 the invoices and the auditors to clear up the discrepancies.

6 Q Well, let's talk about that level of concern.

7 So, you know, the -- there's vendors sort on the left
8 side. There's a service described in the second column.

9 There's invoice numbers. There's dates. And then
10 there's quantum, right? Those invoices have amounts, right?

11 A Yes.

12 Q And, you know, you're welcome to do the math.

13 I'll offer to you that just on this one page, this one
14 example of one month of billing discrepancy questions that
15 are being looked at, the total is \$1.8 million.

16 Does that sound right to you?

17 A I'm just looking at the big numbers, yeah.

18 Q Well, one of them is \$1.1 million, right?

19 A I'm just saying I'm looking at the big numbers. I
20 think it's close to that.

21 I mean, go back to the email. That email --

22 Q Sure.

23 A The email to Sue from --

24 Q I'm happy to go back to that, yeah.

25 A Yeah, I'm just saying that doesn't express concerns.

1 That's -- they're working on it. Please provide. Hey, we'll
2 send you ours. Theirs will come back.

3 I'm not disputing that we were looking at it or that it
4 wasn't being looked at. Here you're talking about the level
5 of concern being expressed. And that's what I'm referring
6 to.

7 Q Well, setting aside level of concern -- I understand
8 that's your testimony -- you would agree with me that both
9 sides are talking about what are called reconciliation
10 discrepancy questions, right?

11 A Yes, correct.

12 Q And having looked at only one of them, they are in the
13 order of magnitude of over \$1 million, correct?

14 A That need to be reconciled.

15 Q And we can tell from the exhibit that at a minimum this
16 goes all the way back to October because Ms. Rothgeb hasn't
17 heard yet from Ms. Hallowell about those raised in the
18 October -- a discrepancy raised relative to the October
19 invoice, correct?

20 THE COURT: Wait a second, Mr. Hawkins.

21 THE WITNESS: Yes.

22 MR. GUERKE: We have an objection based on the
23 description of this of 1-point-something million dollars. It
24 misstates the record. Misstates the record.

25 THE COURT: I think you can cross on this if you

1 want to -- or redirect on this, if you want to. It says what
2 it says.

3 MR. BURWOOD: Your Honor, I'll move on from this.

4 But I would move to admit Exhibit 1251 and 1251B,
5 please.

6 MR. GUERKE: No objection.

7 THE COURT: They're admitted.

8 (Exhibits D-1251 and D-1251B received into evidence)

9 BY MR. BURWOOD:

10 Q Mr. Hawkins, similar to that, Exhibit D-1291. D-1291
11 is another email from -- at least the first page is from
12 LaDonna Rothgeb. It's dated July 3rd, 2018.

13 This is the same date as Mr. Poarch emailed you, right?

14 A Yes.

15 Q Okay. And she's emailing numerous people within
16 Williams. Okay. But what I want to do is I want to build
17 into that last email. So I'd like to focus your attention on
18 a Sue Hallowell email from the day before, July 2nd, same
19 subject line: "March invoice reconciliation discrepancies."

20 Okay?

21 A Uh-hum.

22 Q And Ms. Hallowell is responding to an earlier email
23 from Ms. Rothgeb.

24 It's on the second page. You're welcome to review it.
25 I'm not going to ask you questions about it, but I'm just

1 indicating that it goes Ms. Rothgeb, then Ms. Hallowell's
2 response. Okay?

3 A Uh-hum.

4 Q And she says good morning. And she's saying:

5 "The home office is still completing my request
6 for the adjustments/corrections that were not on the time
7 sheets."

8 Do you know there what she means by "the home office"?

9 A I don't, but I assume it's Perrysburg.

10 Q Okay. Ms. Hallowell was -- her desk was where?

11 A She was -- Ms. Hallowell was in Mount Joy.

12 Q Okay. And relative to, for example, the audit being
13 performed by Transco, okay, were accountants in both Mount
14 Joy and Perrysburg involved in that?

15 A I don't know.

16 Q Okay. She says:

17 "The home office is still completing my requests
18 for adjustments."

19 Do you know what adjustments/corrections she's
20 referring to there?

21 A No.

22 Q Okay. "I had hoped to have these returned by now, but
23 the holiday schedules have interfered."

24 Ms. Hallowell goes on to say:

25 "I will continue my reviews and will have November

1 ready for them to resolve also. We are also working on
2 completing missing invoice backup from November."

3 Do you recall, at or around this time, that the audit
4 had revealed that there were missing invoices?

5 A I don't recall that.

6 Q Okay. Earlier in the paragraph, she talks about
7 adjustments and corrections.

8 Do you recall, at or around this time, that adjustments
9 and corrections to Welded's invoicing to Transco were
10 necessitated by this audit?

11 A I don't know that.

12 Q She goes on to say that:

13 "Due to the holiday schedule, this extra work may
14 be delayed for another week."

15 Right?

16 A Uh-hum.

17 Q Yes?

18 A Yes.

19 Q Okay. And then she lays out a plan for addressing
20 these invoice discrepancies.

21 And her plan is to deal with October by July 13,
22 November by July 21, and December by July 28, correct?

23 A Correct.

24 Q Okay. She also goes on to note that:

25 "Relative to this effort, Welded is not adding

1 additional resources to research discrepancies" -- not adding
2 additional resources, right?

3 "We're utilizing our current staff to complete
4 this extra work. As a result, the response time is taking
5 longer than I first anticipated. I hope to complete the
6 above plan earlier, but some of the resources are leaving for
7 other assignments as the project gets closer to
8 completement."

9 Did I read that correctly?

10 A Yes.

11 Q This is July 3rd.

12 Do you recall when the OGCS audit --

13 A July 2nd.

14 Q July 2nd.

15 Do you recall when the OGCS audit started?

16 A I don't recall the date.

17 Q Okay. You testified yesterday that one of your
18 frustrations with the communications from Mr. Poarch and
19 Mr. Springer relative to their concerns was that in your view
20 you weren't seeing enough -- I don't want to put words in
21 your mouth -- but data detail, right, relative to the audit?

22 A We weren't getting the audit findings is what I said, I
23 believe, that we could then respond to audit findings.

24 I don't know that this is an audit finding. This is
25 part of the audit process.

1 Q Well, okay. Would you agree with me, though, that
2 Welded is part of that process?

3 A Of course, yes.

4 Q Okay. All the invoices that need to be audited, they
5 are with Welded, correct?

6 A Yes.

7 Q All of the data, all of the compiling, all of the --

8 A All the backup, in addition to what backup had
9 previously been provided and invoices provided. Any
10 additional backup would be with Welded. I would agree with
11 that.

12 Q To the extent that Sue Hallowell here acknowledges
13 there's missing invoices from November, we could -- Transco
14 can only get those missing invoices from Welded, correct?

15 A Yes.

16 Q Okay.

17 A That's correct.

18 Q So in terms of that process and the timing of that
19 process, do you recognize here that Ms. Hallowell is saying
20 that, you know, they're still going to be -- Welded is still
21 going to be handling their end of those inquiries for the
22 December invoicing right up until the end of July?

23 Do you see that?

24 A Yes, I see that.

25 When was it asked for?

1 Q Well, I guess what I'd ask is: Is it possible, in your
2 view, for Transco to provide an audit finding to you if the
3 underlying invoice discrepancy issues haven't been addressed
4 by Welded?

5 A No. Until the audit is complete, there can't be an
6 audit finding released. I agree with that. This is the
7 audit process we're talking about, though.

8 Q It is.

9 MR. BURWOOD: I'd offer 1291 into evidence.

10 (Exhibit D-1291 received into evidence)

11 MR. GUERKE: No objection.

12 THE COURT: It's admitted.

13 MR. BURWOOD: Mr. Hawkins, can we go to D-1371,
14 please.

15 Your Honor, just to update you and the room, in
16 terms of planning, I'm hoping to be done by 1:00 o'clock.

17 And so if we can push through to lunch, I'm happy
18 to do that. If nobody wants to wait, I'm happy to suspend
19 now.

20 THE COURT: Mr. Hawkins, how are you doing?

21 THE WITNESS: I'm good. I'd just as soon keep
22 going.

23 THE COURT: Okay. You can go.

24 MR. BURWOOD: Thanks, Your Honor.

25 BY MR. BURWOOD:

1 Q Mr. Hawkins, D-1371 is a July 25, 2018, email from Sean
2 Singleton to yourself, right?

3 A Yes.

4 Q And the subject line is "ASR de-mob and consolidation,"
5 right?

6 A Yes.

7 Q And there purports to be an attachment that is a ramp-
8 down plan, right?

9 A Yes.

10 Q Okay. Yesterday, on your direct, you testified that in
11 July of 2018 that Transco was pushing Welded to staff up the
12 project, right?

13 A After July, yes.

14 Q Okay. Operation Walmart, right?

15 Like, let's get more people on the right-of-way?

16 A Yes. More equipment, yes.

17 Q How far after July?

18 A I don't remember. July-August time frame.

19 Q Okay. But not too far removed from July 25th, you
20 would agree, right?

21 A This is all very proximate in time.

22 A lot of things were happening concurrently.

23 Q So you send an email to Sean Singleton, Marcus Hood,
24 Mr. Schoenherr. The subject line of your email is actually
25 "ASR de-mob and consolidation."

1 And you say:

2 "Please schedule meeting for tomorrow morning. We
3 owe Williams an aggressive plan, and we are fixing to hear
4 about it."

5 Okay?

6 A Yes.

7 Q What was the nature of the aggressive plan?

8 A A demobilization plan.

9 Q So you testified yesterday that you were being asked to
10 staff the project up at this time?

11 A Yes.

12 Q And now I'm seeing here that you're preparing a
13 demobilization plan?

14 A They asked for a demobilization plan. That's what this
15 is.

16 Q Right. So I understood your testimony yesterday to be
17 that they asked for you to add staffing equipment.

18 A Chris Springer asked for staffing equipment, and were
19 asked to get as many tie-in crews as possible after this
20 aggressive de-mob plan, correct.

21 Q How do we reconcile the fact that you're preparing a
22 demobilization plan? Which, am I correct, that that is to
23 de-staff the project?

24 A Yes.

25 Q Okay. How do you reconcile those two things?

1 A That's the point. We're being asked to do two things
2 at once.

3 Williams wants an aggressive de-mob plan. That's why
4 I'm asking for it.

5 And then on the other hand, pushing us to get other
6 people, more -- as many tie-in crews as possible as the tie-
7 in count goes up. Two things at once.

8 Q Did you identify that discrepancy for your customer?

9 How am I supposed to do those two things?

10 A I didn't raise it like that. I'm trying to be
11 responsive and give them a plan and also give them the
12 people, including telling them I can't go to Walmart to get
13 non-union folk.

14 So, you know, it's just part of the dialogue and the
15 conversation.

16 Q All right. D-1371A is the ramp-down plan.

17 And what I would do is -- I would just call your
18 attention, Mr. Hawkins, to page 7 of D-1371A. It's going to
19 be a chart.

20 Ms. Bair will show it to you.

21 And this is sent in late July. And so left-hand column,
22 that axis, is that a headcount axis? What's the 1,400?

23 A Yes.

24 Q You're familiar with this?

25 A I mean, I can read it and understand it and know what

1 it is, yes.

2 Q This was provided to you in response to your email,
3 right?

4 A Yes.

5 Q This is the plan you asked for, right?

6 A If this is the attachment to the email that came in,
7 then the answer is yes.

8 Q It is. Thank you.

9 Okay. This plan contemplates the mechanical completion
10 for Spreads 5, 6, and 7 of 826, right?

11 A As of end of July, yes.

12 Q So as of the end of July, Welded anticipated hitting
13 mechanical completion within four weeks?

14 A Yes.

15 Q That didn't happen, right?

16 A The middle of September is what we got.

17 Q Okay. And regardless of the color, the lines indicate
18 a ramping down from a headcount and staffing perspective over
19 time of the ASR project, right?

20 A Yes. Commissioning the work and demobilizing the
21 people.

22 Q Okay. Was this plan presented to Transco?

23 A I don't know, when I gave them a response, if I sent
24 this along. Certainly, I was responsive to a plan. I don't
25 know if this is the slide that I gave them or not.

1 MR. BURWOOD: Thank you.

2 BY MR. BURWOOD:

3 Q Mr. Hawkins, yesterday you were shown the October 4,
4 2018, Transco notice of withholding.

5 Do you recall that?

6 A Yes.

7 Q And in the context of, I believe, that exhibit or at
8 least your testimony around that exhibit, you were shown
9 portions of the contract. And I'm going to pull some of
10 those up for you right now.

11 So, we're going to go to JX1, and we're going to go to
12 page 42. We'll put it on the screen. I just wanted to
13 reference for the courtroom and for you we're on 42 of JX-1.

14 And so this is -- for orientation, this is Appendix G
15 to Section 1, "Invoicing and payment of invoices." We are on
16 the next page, and we're looking at Subparagraphs 1.2.3,
17 1.2.4, and 1.2.5. Do you recall testifying -- reviewing and
18 testifying as to these provisions during your direct
19 examination yesterday?

20 A Yes.

21 Q Okay. And if I recall your testimony correctly, from
22 your perspective, Transco did not abide by these provisions,
23 right?

24 A By the dispute provision.

25 Q Well, I recall your testimony being that they didn't

1 abide by Appendix G, but let's go through it now and let's
2 just cover it. So, 1.2.3 deals with payment of invoices,
3 right?

4 A Yes.

5 Q Okay. And it says that Williams will pay Welded the
6 undisputed amounts, invoices, right?

7 A Yes.

8 Q And in the event there's a dispute as to a portion of a
9 contractor's invoices, the parties will work diligently to
10 resolve any disputed amounts, right?

11 A Yes.

12 Q Okay. Prior to the date for payment of such invoice,
13 right?

14 A Yes.

15 Q Okay. And any amounts that can't be resolved within
16 ten business days, they'll be immediately escalated to senior
17 management, right?

18 A Yes.

19 Q Okay. John Poarch and Chris Springer escalated to you
20 when they had concerns about the billing, correct? We agree
21 that happened?

22 A Yes.

23 Q Okay. The provision of 1.2.3 then goes on to say if
24 the matter remains unresolved after senior management
25 discussion -- it did remain unresolved, correct?

1 A When was the senior management discussion?

2 Q Well, you testified yesterday as to a series of
3 meetings and conversations you had with Transco senior
4 management about their concerns, correct?

5 A Yes. But that's not -- that's not talking about the
6 disputes. That's telling me their concerns.

7 Q Okay. But there were senior management conversations
8 about invoicing concerns, correct?

9 A Yes.

10 Q Okay. And in context, it's not just one invoice,
11 right? Transco came to you and said, "We're concerned about
12 potentially all of the invoices," right?

13 A Well, all of the invoices, I don't know. But can we
14 just go back to what was the record so I can comment on it
15 because you're characterizing it and I don't want to --

16 Q I don't mean to characterize it. What I'm trying to do
17 is get through this provision. So let me ask you a new
18 question, okay.

19 1.2.3 then goes on to talk about, if it can't be
20 resolved by senior management, it will be resolved in
21 accordance with the provision of Article 37, right? And
22 Article 37 is the ADR provision, correct?

23 A Yes.

24 Q And that's ten pages back:

25 "Alternative dispute resolution. Company and

1 contractor shall give good faith consideration to using ADR
2 prior to or in lieu of litigation to resolve disputes arising
3 under or in connection with this contract."

4 Right?

5 A Yes.

6 Q You testified yesterday that when the lawsuit was
7 filed, you felt that that was a failure to abide by the ADR
8 provisions, right?

9 A Yeah. I don't think litigation is an alternative
10 dispute resolution.

11 Q Relative to the complaint that was filed in Oklahoma,
12 okay.

13 A Yeah. I'm speaking about the complaint.

14 Q Right. I am too. So, what I'm asking, Mr. Hawkins:
15 Was Welded ever served service of process on Welded with that
16 complaint?

17 A No, I don't think so. In fact, they said they didn't,
18 but the filer just didn't serve it. But go ahead.

19 Q Do you know, sitting here today, was Welded ever
20 required to file an answer or a response to that complaint?

21 A I do not believe so, no.

22 Q Okay. Until Welded filed this adversary proceeding,
23 are you aware of any litigation activity between Transco and
24 Welded relative to this time frame?

25 A No.

1 Q Okay. And at any time, did Transco ever communicate to
2 Welded "We will not engage in any type of ADR proceeding. We
3 will not do it"?

4 A I don't recall that, no.

5 Q If we could go back to 1.2.5 of Appendix G. So, we're
6 going back to page 42. I apologize, we're going to 1.2.4.
7 1.2.4 deals with reconciliation of prior invoices. And it
8 says that:

9 "Not later than 30 days following each pay month,
10 Welded will provide a written reconciliation to Transco of
11 all internal audits actually incurred." Correct?

12 A Yes.

13 Q Did Welded do that every month? Was the reconciliation
14 provided within 30 days?

15 A I don't know.

16 Q If -- strike that.

17 1.2.5, disputes regarding reconciliation:

18 "Any differences between the parties related to
19 verifying actual expenditures or invoices and adjusting
20 against forecast and funded amounts shall be reconciled
21 within one pay period."

22 Do you see that?

23 A Yes.

24 Q Okay. So, in terms of verifying actual expenditures,
25 would you agree with me that Williams' accountant Rothgeb and

1 Sue Hallowell were engaging in a process trying to verify
2 actual expenditures? They're asking for invoices? Invoices
3 are being provided. Is that -- would you agree with that?

4 A Yes. In response to audit findings that were finding
5 discrepancies on review from the past. I don't know if
6 you're asking me if they were reconciled prior to that or
7 what the actual question is.

8 Q Well, I think the record is clear. The reconciliation
9 was going on in July, for example, for invoices that had been
10 submitted in the past. What I'm asking you is that dialogue
11 they're having about billing discrepancies, you would agree
12 with me that that is verifying -- them trying to verify
13 actual expenditures, right?

14 A Yes.

15 Q Okay. And are you aware if prior to the audit, okay,
16 earlier in 2018, late 2017, are you aware if any of Transco's
17 field accountants, LaDonna Rothgeb or otherwise, had been
18 asking Welded for missing invoices, had questions about
19 reconciling invoices, was trying to verify actual
20 expenditures before the audit started? Are you aware of
21 that?

22 A I'm not, no.

23 Q Okay. 1.2.5 talks about getting this verification
24 process done. They shall be reconciled within one pay
25 period, right?

1 A Yes.

2 Q Okay. We saw Ms. Hallowell's email, though, where,
3 because of their resources, because people were staffing off
4 of the job, because the home office was involved, because of
5 the holidays, she wasn't able to process all of the questions
6 and answers as quickly as she would like. We saw that,
7 right?

8 A Yeah. But that's a different thing than the
9 reconciling the invoices within 30 days. That's going back
10 and addressing discrepancies that are found over time by an
11 auditor, they're not the same thing, in my mind anyway.

12 Q 1.2.5 goes on to say that:

13 "Such differences will not interrupt the payment
14 of contractors' undisputed invoices."

15 Right?

16 A Yes.

17 Q Okay. And it did not, isn't that the case? Transco
18 paid Welded's undisputed invoices, right?

19 A Which ones?

20 Q Well, for example, right, Chris Springer sends you a
21 letter and says, "We're making this payment under protest."

22 And then you proceeded to get two payments combining
23 \$75 million, right?

24 A Prior to that they didn't pay the full invoice in June.
25 They short-paid it and then caught up. They short-paid

1 \$10 million on the fee. So, I mean, my answer is yes but.

2 Q Well, you agree that Welded had not earned the
3 \$10 million cost fee, correct?

4 A Correct.

5 Q So not in dispute, right?

6 A Correct.

7 Q And the contract parlance is "disputed invoices."

8 Okay. So, what I want to focus you on is, like, let's
9 talk about withholding, right.

10 A Yes.

11 Q The withholding, part of that cash call was withheld,
12 right? Millions of dollars were also paid at that time,
13 though, correct?

14 A Yes.

15 Q So Transco identified disputed components of that cash
16 call, right, but then they paid the undisputed components to
17 Welded, correct?

18 A Yes. But the disputes were not addressed. I mean,
19 they unilaterally withheld the money -- called it a dispute
20 and withheld the money without going through the invoice
21 dispute process was my point yesterday.

22 Q Mr. Hawkins, can we go to Exhibit D466, please.

23 A Yes.

24 MR. BURWOOD: This is one of the new ones, Your
25 Honor.

1 THE COURT: Thank you.

2 BY MR. BURWOOD:

3 Q Mr. Hawkins, do you recall testifying yesterday that
4 protest activity was one of the -- I think you called them
5 sort of unforeseen or unanticipated impacts to the project?

6 A Yes.

7 Q Okay. D466 is two emails. The first is October 17th,
8 2017. It's from Ryan Hill at Welded, and it's to yourself
9 and others, correct?

10 A Yes.

11 Q And the subject --

12 A Yes.

13 Q And the subject line is "ASR Spread 7 Adorers property
14 execution update," right?

15 A Yes.

16 Q Looking at that, do you recall, what's the Adorers
17 property?

18 A I don't remember exactly. It was -- I don't remember
19 the Adorer property.

20 Q Okay.

21 A I remember it being affiliated with some religious
22 activity or group, and we needed a plan to work around it or
23 something. It was delaying the start. It was delaying going
24 through -- we had do something.

25 Q Okay.

1 A If I can read this, I'll --

2 Q Yeah, so why don't I go through it with you. So,
3 Mr. Hill, in that paragraph, says:

4 "Protesters were surrounding the LODs when we
5 arrived."

6 That's the limit of disturbance, right?

7 A Yes.

8 Q Okay.

9 "We spent part of the morning potholing at Locust
10 Grove Road without any interference. Around 11:00 a.m., our
11 equipment and fencing material arrived. Once the equipment
12 was dropped onto the property, the protesters created a human
13 blockade.

14 "After a verbal warning, the local police arrested
15 each protester within the limits of disturbance. There were
16 no incidents as the protesters were peaceful. All of our
17 employees handled the situation very well. Around 2:00 p.m.,
18 we were able to resume work. We proceeded to install safety
19 fence down the edge of the right-of-way in front, crossing
20 the protesters' stands."

21 Do you see that?

22 A Yes.

23 Q Okay. Any reason to dispute that that's what happened?

24 A I'm glad there wasn't an issue.

25 Q So the second email, again from Mr. Hill, it's the next

1 day. It's to yourself and others. It's the same subject
2 line "The Adorers property."

3 He provides an update, okay:

4 "Yesterday we continued to install the security
5 fence with screening down the right-of-way edge. Overnight
6 the protesters had moved the fence. We moved everything
7 back. We also continued with the installation of ECDs. We
8 finished rock entrances at each side of the property."

9 Mr. Hill's update says:

10 "The protester action was very limited as they
11 only had a few people sitting at the chapel post. None of
12 these people were on the thing right-of-way. We are
13 continuing to prepare for grading activities."

14 Do you see that?

15 A Yes.

16 Q Okay. Is that your recollection of how this particular
17 protest activity unfolded?

18 A Yes. In the first week or so of the project, yes,
19 that's my recollection.

20 MR. BURWOOD: Your Honor, I'd move to admit D-466.

21 MR. GUERKE: No objection.

22 THE COURT: It's admitted.

23 (Exhibit D-466 received into evidence)

24 MR. BURWOOD: Mr. Hawkins, D-180. Also, a new
25 exhibit, Your Honor.

1 THE COURT: Thank you.

2 BY MR. BURWOOD:

3 Q Mr. Hawkins, D-180 is a June 21, 2017, email from Jim
4 Grindinger, and it's to yourself. The subject line is "ASR
5 estimate review meeting."

6 Do you see that?

7 A Yes.

8 Q Okay. This is pre-NTP planning phase, right?

9 A June of 2017, yes.

10 Q One of the attachments to this is an ASR execution
11 plan, Revision E, dated June 20th, right?

12 A Yes.

13 Q And in that regard, Mr. Grindinger's email says:

14 "Steve, among other things, I have attached the
15 PEP."

16 Do you understand that to be the project execution
17 plan?

18 A Yes.

19 Q And he's responding to an email from yourself earlier
20 that day where you say:

21 "Please send all deliverables in PDF tonight, so I
22 can review, including the execution plan." Right?

23 A Yes.

24 MR. BURWOOD: If we turn to page 57 of Exhibit D-
25 180. And Ms. Bair will put that on the screen for you. I

1 apologize. I would like to turn to page 3 first.

2 Just briefly, I want to orient everybody that at
3 page 3 this is the Welded Construction project execution
4 plan. And then I'd like to go deeper into the document to
5 page 57. And continuing to orient, 57, the heading there is
6 "Estimate Basis." This is the estimate plan section of the
7 report.

8 And then on the next page, page 58, at the bottom,
9 there's a section that says "Clarifications." Can we have
10 that blown up, please.

11 BY MR. BURWOOD:

12 Q The second clarification in Welded's PEP, as of this
13 date, their project execution plan, is that:

14 "The original estimate based on spring start,
15 March 1, 2017, and six-month execution schedule and summer
16 conditions. New schedule based on September to October 1st
17 start. Winter execution schedule and mechanical completion
18 on May 31, 2018. This currently adds two calendar months and
19 three major holidays to the execution schedule as well as
20 increased possibility of weather delays."

21 Do you see that?

22 A Yes.

23 Q Welded's project execution plan says assumption for
24 weather delay factor on tie-in welding is 35 percent or two
25 and a half days per week, and does not include any force

1 majeure events, right?

2 A Yes.

3 Q Okay. So that's consistent with your testimony earlier
4 today that two and a half days a week had been built into the
5 schedule for lost weather days, correct?

6 A Yes.

7 Q Mr. Hawkins, are you familiar with Welded project tool
8 or a document called trends?

9 A Trends?

10 Q Yeah.

11 A Yes.

12 Q On this job, what was a trend?

13 A A trend is something that you use to try to capture any
14 foreseen increase or decrease, up or down, that would result
15 in a change to the basis of the project either scheduled,
16 trend or (indiscernible).

17 Q So is trend a contract tool, or is it just an internal
18 Welded tool?

19 A I think it's an industry -- an industry tool.

20 Q What I meant to ask is: Is there a contract vehicle
21 for if a trend, for example, collects, that maybe there had
22 been a delay impact, right, and Welded is tracking it in a
23 trend?

24 Do you follow?

25 A Yes. Trends ultimately should turn into change orders

1 and then into contract amendments and agreements. So that's
2 the early notification that something is trending one way or
3 another, up or down, to make sure that we're keeping track of
4 it.

5 Q Trends don't always turn into a change order, right?

6 A Correct.

7 Q On this job, was the -- was the vocabulary that a
8 change order was, like, an EWR, an extra work request? Do
9 you recall that?

10 A I don't know what the vehicle was.

11 Q Okay. So, we can just call it a change order. You
12 testified several times yesterday, okay, that the weather was
13 a significant driver of Welded's inability to maintain
14 productivity, correct?

15 A It was an impact to productivity, yes.

16 Q It was an impact to adherence to schedule, correct?

17 A Yes.

18 Q By extension, it was an impact to the ultimate cost of
19 construction, correct?

20 A One of the impacts, yes.

21 Q Okay.

22 A Not the ultimate impact, but one of the impacts, yes.

23 Q We talked a little bit about the planning that went
24 into that in the two and a half days. We've seen a little
25 bit about the fact that, you know, as of January, only 15

1 of 30 days had been used, right, sort of milepost data,
2 right.

3 What I'd ask you, though, is: Did Welded open up a
4 trend to capture any time any impacts caused by weather on
5 this job?

6 A I don't know if they had trends set up for that at all.
7 I don't know.

8 Q You just don't know?

9 A I don't know.

10 Q Okay. Are you aware if Welded ever created an EWR or a
11 change order for Transco to request, you know, a schedule
12 extension or additional compensation or any sort of change
13 tied to delays caused by weather and the, by extension,
14 conditions the weather create, the wet right-of-way? Are you
15 aware of any EWR change order in that regard?

16 A Well, I can infer that there was, because this is
17 May 31 and then it went to June 14th. So that suggests that
18 there was a change to the MC data at some point for some
19 reason.

20 But I don't recall a specific EWR or -- I'm not saying
21 there wasn't, but I don't remember that.

22 Q You're not sure specifically -- and also, by the way,
23 you're saying that at some point, the mechanical completion
24 date was actually May 31st on the schedule?

25 A I'm reading what's in this plan. It says right here

1 "mechanical completion." So, I'm just piecing together
2 what --

3 Q This is June of '17, right?

4 A That's all I'm saying.

5 Q So a projection?

6 A Yeah.

7 Q So, I want to be clear about your testimony, right.

8 You're not aware of any trend that Welded created to
9 track impacts to the schedule or to the costs that were tied
10 to weather, right?

11 A I don't know that they did or didn't is what I'm
12 saying.

13 Q Okay.

14 A The practice would be that we did, but I don't have it
15 to view it that that was a project --

16 Q Same question about a change order. You're not aware
17 of anything tied to weather, right?

18 A I'm not aware of any change orders tied to weather.

19 Q Mr. Hawkins, last topic. Would you turn to D-1894,
20 please. So, Mr. Hawkins --

21 A Okay. I got it.

22 Q Do you need us to blow that up a little bit more,
23 actually?

24 A Yeah.

25 MR. BURWOOD: Ms. Bair, could you just blow up,

1 like, "capture," "reports," "transaction," "search report"
2 down to the bottom. Just try to get a little tighter. Thank
3 you.

4 Having said that, I have a question. Can you go
5 up for one second. I apologize.

6 BY MR. BURWOOD:

7 Q I just want to reference -- Mr. Hawkins, do you see
8 that in the lower right-hand corner this is a Welded
9 document? This was produced by Welded?

10 A Yes.

11 Q Okay. And if we could go into the content. This is a
12 record from Huntington Bank, and there are two transactions
13 in November of '17 reflected here.

14 Do you see that?

15 A Yes.

16 Q And they're wire transfers, right?

17 A Correct.

18 Q And the first one is almost \$12 million, and the second
19 one is \$44 million, right?

20 A Yes.

21 Q Okay. And do you see that in the details of the
22 transaction that this wire originated from Transcontinental?

23 A Yes.

24 Q And the wire originated from Transcontinental in Tulsa,
25 Oklahoma, correct?

1 A Yes.

2 Q Okay. It went to Welded Construction, right?

3 A Yes.

4 Q Okay. So, I've got several exhibits that are very
5 similar, and so what I'd ask you to do, so I don't have to
6 ask you about each one, is I'm going to ask you to look at --
7 I'll identify exhibit numbers for you.

8 I'm just going to ask you the question: Does it
9 indicate that the wire transfer came from Tulsa, Oklahoma?

10 Yes or no, okay. So, can you turn to 1895, please.
11 It's probably easier if you do it because I think we can get
12 through it quicker. I apologize.

13 A There are separate tabs. Okay. Got it, 1895.

14 Q Yes. So, wire transfer reflected in 1895, did that
15 come from Transco in Tulsa?

16 A Yes.

17 Q Same question for 1896. The wire transfer there, did
18 it originate from Transco in Tulsa?

19 A 1896? I was waiting for you to ask me if it went to
20 Perrysburg. 1896, yes.

21 Q 1897, did the wire transfer referenced in that document
22 come from Transco in Tulsa, Oklahoma?

23 A Yes.

24 Q How about in 1898, two of them, both Tulsa?

25 A Yes.

1 Q 1899, did that wire transfer to Welded from Transco
2 originate in Tulsa, Oklahoma?

3 A Yes.

4 Q 1900, did that wire transfer from Transco to Welded for
5 this project originate in Tulsa, Oklahoma?

6 A Yes.

7 Q 1900, same question.

8 A 1900 or 1901?

9 Q I've lost track. 1901.

10 A 1901, yes.

11 Q There's two transfers indicated in 1902 from Transco to
12 Welded. Did they all originate in Tulsa, Oklahoma?

13 A Yes.

14 Q Three more. 1903, does that indicate a wire transfer
15 from Transco to Welded that originated in Tulsa, Oklahoma?

16 A Yes.

17 Q 1904, did that come from Tulsa?

18 A Yes.

19 Q And 1905, did the wire transfer reflected there in the
20 amount of \$3.8 million from Transco to Welded originate in
21 Tulsa, Oklahoma?

22 A Yes.

23 Q Do you recall where Welded was sending invoices to
24 Transco, what the location was?

25 A I don't.

1 MR. BURWOOD: Your Honor, I'd ask that we move the
2 following exhibits into evidence based on his testimony:
3 D-1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903,
4 1904, 1905.

5 MR. GUERKE: No objection.

6 THE COURT: They're admitted.

7 (Exhibits D-1894, 1895, 1896, 1897, 1898, 1899, 1900,
8 1901, 1902, 1903, 1904, 1905 received into evidence)

9 MR. BURWOOD: Your Honor, I have no further
10 questions for this witness.

11 THE COURT: Thank you. Okay. We will take our
12 lunch break now. So, we'll reconvene at 2:15 for redirect.

13 In terms of tomorrow, so you know, I have an 8:30
14 hearing which should be done in advance and we should start
15 at 9:30. And then I do have my 2:30 docket, but I've looked
16 at it. I'm thinking it will be done in an hour.

17 So, we will reconvene at 3:30. We may be off 15
18 minutes or so, but we'll do 2:30 to 3:30. And you can talk
19 and let me know whether you'd like -- well, I need to talk
20 with my staff, so I'll knock it off with that. Never mind.
21 That's the schedule we'll be taking.

22 MR. BURWOOD: Thank you, Your Honor.

23 THE COURT: Thank you. We're in recess.

24 And, again, Mr. Hawkins, please don't talk to
25 anybody about your testimony.

1 THE WITNESS: All right.

2 (Recess taken at 1:09 p.m.)

3 (Proceedings resumed at 2:16 p.m.)

4 THE COURT: Please be seated.

5 Okay. Mr. Hawkins, you're still under oath.

6 THE WITNESS: Okay. Thank you.

7 THE COURT: Counsel?

8 MR. GUERKE: Thank you, Your Honor. Again, for
9 the record, Kevin Guerke on behalf of Welded Construction.

10 REDIRECT EXAMINATION

11 BY MR. GUERKE:

12 Q Good afternoon, Mr. Hawkins.

13 A Good afternoon.

14 Q Could you pull up JX-94, please.

15 Mr. Hawkins, when we talked yesterday, do you remember
16 testifying about this Exhibit JX-94, which is an October 5th,
17 2018, email with the October 4th, 2018, Mr. Springer letter
18 attached?

19 A Yes.

20 Q Could you flip to the next page, please.

21 When you were testifying earlier this morning with
22 Transco's counsel, do you recall discussing PTAG and the
23 agency agreement with PTAG?

24 A Yes.

25 Q This morning with Transco's counsel, do you remember

1 discussing Bechtel and the arrangement -- the seconded
2 agreement with Bechtel?

3 A Yes.

4 Q Do you recall earlier today with -- your testimony with
5 Transco's counsel, the discussion about side booms and the
6 594 pieces of equipment?

7 A Yes.

8 Q Do you remember this morning - or maybe it was
9 afternoon by this point - you discussed some missing invoice
10 verification with LaDonna and Sue Hallowell in June or July
11 of 2018?

12 A Yes.

13 Q I'd like to turn your attention to -- or back to PX --
14 I'm sorry, JX-94. Is JX-94 the October 4th, 2018,
15 withholding?

16 A The letter?

17 Q Yes.

18 A Yes.

19 Q Could you take a look at the line items starting with
20 "Erroneous charges currently identified are set forth below."

21 Do you see that part?

22 A Yes.

23 Q Are there various amounts and identified issues listed
24 below there?

25 A Yes.

1 Q Is it your understanding that at this point these were
2 the amounts being withheld by Transco?

3 A Yes.

4 Q Is there any reference in this October 4th, 2018,
5 withholding letter to PTAG?

6 A No.

7 Q Is there any reference in this October 4th, 2018,
8 withholding letter to Bechtel or the arrangement that Welded
9 had with Bechtel?

10 A No.

11 Q Is there any reference in this October 4th, 2018,
12 withholding letter referencing the side booms, the 594s that
13 you discussed with Transco this morning?

14 A No.

15 Q Is there any reference in this October 4th, 2018,
16 withholding letter relating to the missing invoice
17 verification that was discussed in that email exchange in
18 June and July of 2018 that you discussed with Transco's
19 counsel today?

20 A No.

21 Q Could you pull up JX-1, page 53, please. Could you
22 blow up Paragraph A in the middle there, the first Paragraph
23 A.

24 Do you recall, during your testimony this morning,
25 discussing this part of Exhibit JX-1 at page 53?

1 A Yes.

2 Q Is this the section of the contract with the heading
3 "Project Team Assistance"?

4 A Yes.

5 Q I would like you to focus on the second sentence, which
6 reads:

7 "Company and contractor will work together ahead
8 of the notice to proceed to jointly determine the
9 execution plan to achieve the lowest capital cost to build
10 the project in the allotted schedule."

11 Do you see that part?

12 A Yes.

13 Q Did I read it correctly?

14 A You did.

15 Q Is there a time limit on the - the lowest capital cost
16 looking together -- strike that, that wasn't a great
17 question.

18 Is there a time limit on this clause of the contract?

19 A Not a time limit, but it does say ahead of the notice
20 to proceed.

21 Q And what does that mean as far as general dates?

22 A Up to September.

23 Q Is that 2017?

24 A 2017. Yeah, middle of September 2017.

25 Q Did, in fact, Welded and Transco work together, ahead

1 of the notice to proceed, to jointly determine the execution
2 plan to achieve the lowest capital cost to build a project in
3 the allotted schedule?

4 A Yes.

5 Q Could you pull up DX-716, I think.

6 Mr. Hawkins, is the exhibit I put in front of you
7 DX-716?

8 A Yes.

9 Q Do you recall discussing that earlier today?

10 A Yes.

11 Q And generally, just to refresh, what is this email and
12 what's attached?

13 A It's an email from John McNabb on January 17th, 2018,
14 to Scott Schoenherr, general superintendent, myself, and
15 Marcus Hood, the project manager, discussing productivity
16 analysis that he conducted.

17 Q Does Welded have to have an official loss day to have a
18 subsequent reduction in productivity?

19 A No.

20 Q Could you explain that, please.

21 A Well, you don't have to have a major weather event in
22 order to have a productivity impact. Productivity could be
23 impacted by any number of things, including weather. But
24 that's not the only exclusive productivity impact.

25 Q Let's use a weather event, rain, for example. If you

1 had a rainout and that -- can that be an official lost day?

2 A Yes.

3 Q After a rainout, what are the conditions of the right-
4 of-way the next day?

5 A Well, if it was a heavy rainout, it could be extremely
6 muddy, deeply muddy. There could be damage to the trenches
7 that need to be corrected. You could have seed and
8 environmental control measures that were washed away. It
9 could be any number of things.

10 Q Could there be a continuing effect of the previous lost
11 day on productivity going forward?

12 A Yes.

13 Q Could you pull up DX-1434, please.

14 Do you recall in your testimony earlier today
15 discussing this exhibit, DX-1434? And there's also an
16 attachment sheet with -- marked as DX-1434A.

17 A Yes.

18 Q Is this an email from Alex Bryan dated August 16th,
19 2018, to you?

20 A Yes.

21 Q And what, again, was attached to this email? We'll move
22 to that next.

23 A It was a spreadsheet of all the incidences I requested
24 since July 1st until the 16th of August 2018.

25 Q Could you flip to the next page -- the next exhibit,

1 please, which is 1434A.

2 What is 1434A, Mr. Hawkins?

3 A 1434A is one sheet from the spreadsheet that Alex Bryan
4 sent me detailing some of the safety incidents in the log.

5 MR. GUERKE: May I have a moment, Your Honor?
6 I've lost my way.

7 THE COURT: Yes.

8 (Pause)

9 BY MR. GUERKE:

10 Q Mr. Hawkins, what is -- forgive me if I just asked you
11 this, but what is 1434A?

12 A It's one page from the incident log.

13 Q And what's included in an incident log like this?

14 A Well, the incident number, the location of the
15 incident, the type of incident it was, who the superintendent
16 was, the date of the incident, the name of the employee,
17 employee title and the foreman's name, and the description of
18 the incident.

19 Q Did you take it today that this incident report
20 included major incidents?

21 A Yes, I took that it included all incidents.

22 Q Could you look at the second incident from the top.
23 It's fiscal year '18, 00710, and could you -- yeah, there we
24 go.

25 Could you read what the incident is under "Description

1 of incident"?

2 A Yes.

3 "On Hoover Road, an employee was transported to
4 Rose Medical due to a nose bleed, which is a prior medical
5 condition. Foreman called safety, and safety met employee at
6 Rose Medical where the employee was given napkins and advised
7 to pinch nose until bleeding stopped."

8 I'm sorry. That's not funny:

9 "Employee was released back to full duty."

10 Q Did you consider that a major medical issue or
11 incident?

12 A No. It's a report only, and that's it. It's not a
13 major incident.

14 Q On this spreadsheet, does it include all types of
15 incidents regardless of severity?

16 A Yes. The point of this is to get good reporting,
17 everything reported, and get it cataloged so that we have it.
18 That's the purpose of this.

19 Q Could you flip to page 3, please. And could you zero in
20 on fiscal year FY18-00755. It's third from the bottom.

21 What is the incident that's being described in this
22 incident report?

23 A "An employee scratched his left arm with a rusty nail
24 as he was performing housekeeping duties. Employee was
25 brought into the on-site medical facility for an evaluation.

1 The on-duty nurse cleaned the scratch and then, as a
2 preventative measure, gave the employee a tetanus shot."

3 Q Did you take this incident report, as a whole, as an
4 implication of Welded having a poor safety record?

5 A No.

6 Q What is your view on Welded's actual safety record on
7 this job?

8 A I don't recall what the LTIR rate was, but I believe we
9 had an overall good safety record against the metrics in the
10 contract.

11 Q Could you turn to D-1251, please. Do you recall your
12 testimony about this exhibit, D-1251?

13 A Yes.

14 Q What was the invoice that's being -- that's the subject
15 of this email?

16 A January -- it looks like January -- yeah, January
17 reconciliation discrepancy questions.

18 Q Do you know if the January reconciliation invoice was
19 paid by Transco?

20 A I believe so, yeah.

21 Q Do you have any reason to believe that this issue
22 that's addressed in this email in the attachment was not
23 resolved before payment?

24 A No.

25 MR. GUERKE: Thank you, Mr. Hawkins.

1 That's all I have, Your Honor.

2 THE COURT: Thank you.

3 MR. BURWOOD: Nothing further for this witness.

4 THE COURT: Thank you. Mr. Hawkins, thank you for
5 your testimony. You may step down.

6 THE WITNESS: Thank you very much.

7 (Witness excused)

8 MR. NEIBURG: Good afternoon, Your Honor. Michael
9 Neiburg from Young Conaway on behalf of Welded.

10 The next witness, Mr. Rich Wall, is in the
11 conference room. We're grabbing him now.

12 THE COURT: Okay.

13 MR. NEIBURG: Your Honor, may my colleague,
14 Ms. Eastes, approach with the witness binder?

15 THE COURT: Yes.

16 MR. NEIBURG: Your Honor, should the witness take
17 the stand to be sworn in?

18 THE COURT: Please.

19 RICHARD WALL, PLAINTIFF'S WITNESS, SWORN

20 THE CLERK: Please state your full name and spell
21 your last name for the record.

22 THE WITNESS: Richard Christopher Wall, W-A-L-L.

23 THE CLERK: Thank you.

24 MR. NEIBURG: May I proceed, Your Honor?

25 THE COURT: You may.

1 MR. NEIBURG: Thank you.

2 DIRECT EXAMINATION

3 BY MR. NEIBURG:

4 Q Good afternoon, Mr. Wall.

5 By whom are you currently employed?

6 A Bechtel Energy Incorporated.

7 Q And what position do you hold at Bechtel?

8 A I am currently the general manager of the downstream
9 chemicals business globally.

10 Q Okay. Can you briefly describe your day-to-day
11 responsibilities in that role?

12 A I have operational and financial oversight and control
13 of Bechtel's refining chemicals and advanced fuels business.
14 Again, around the world.

15 Q And were you employed by Welded during 2015 and 2016?

16 A I was.

17 Q And what was your role?

18 A I was brought in as the president and CEO of Welded,
19 replacing Don Thorn, who had been my predecessor for many
20 years.

21 Q And do you recall during the time period in which he
22 served as Welded's president and CEO?

23 A It was during '15 and '16, I believe. It ended around
24 about September timeframe of 2016.

25 Q And what were your day-to-day responsibilities as

1 Welded's president and CEO?

2 A Well, similar to my current role, I had operational and
3 financial responsibility and control over the activities of
4 Welded at the time.

5 Q And why did you move back to Bechtel in 2016?

6 A I was offered a job as the head of Bechtel's global
7 pipeline business.

8 Q And after you returned to Bechtel, did you remain
9 involved with Welded in any way?

10 A I believe I came off the board when -- when I was
11 president and CEO, I was a board member. When I left Welded,
12 I came off the board but remained as, you know, an invited
13 guest to most of the board meetings.

14 Q So you became Welded's president and CEO in early 2015.
15 Can you briefly describe for the Court your professional
16 experience prior to becoming Welded's president and CEO?

17 A Sure. I graduated from law school in 1994. I
18 practiced in private practice in Washington, DC, for four --
19 almost five years before joining Bechtel's legal department
20 initially. I worked in Bechtel's legal department for five,
21 six years before I moved over to the operations side. I
22 became the commercial manager within the oil and gas or
23 what's now the energy business for a period of time. I then
24 moved into project management and managed multiple LNG
25 projects on three different continents and was a project

1 manager over multiple downstream chemicals projects as well.

2 Q Okay. Let's talk about Welded. Can you generally
3 describe the nature of Welded's business in early 2015 when
4 you became president and CEO?

5 A When I showed up at Welded, it was -- it was tough
6 times. We probably only had about 35 to maybe 50 total
7 employees. Again, Welded is a project company. So, as it
8 takes projects on, the population gets bigger. But at the
9 time, there was very little work in 2015 when I showed up.
10 We had great expectations, though, that the Marcellus field,
11 which was located in Pennsylvania and West Virginia, had been
12 developed during the preceding years. And we thought that a
13 number of export projects would be coming online toward the
14 second half of 2015.

15 Q Is it fair to say that Welded was in the pipeline
16 construction industry at the time?

17 A That's correct. The union pipeline construction
18 industry.

19 Q And based on your professional experience and your role
20 as Welded's president and CEO, were you familiar with general
21 market conditions in the pipeline construction industry at
22 that time?

23 A I was. I was.

24 Q How would you describe the market conditions for the
25 pipeline construction industry in mid to late 2015?

1 A Prospects certainly started picking up significantly,
2 kind of along the lines of what we were talking about. The
3 export projects were beginning to reveal themselves.
4 Proposals were being put on the street for multiple projects.

5 At the time, I remember -- and I can't remember exactly
6 when it was, but I remember it kind of being the late summer
7 timeframe. We received two requests for proposals that came
8 in about the same time, within a week or two of each other.

9 One was for the Williams ASR project. The other was
10 for Spectra's project that -- and I forget the name of it, I
11 apologize, but it was -- it took gas out of Marcellus in a
12 36-inch pipeline to the west across all of Ohio. That was a
13 multi-spread. That was a 36-inch pipeline. Those came in at
14 the same time.

15 Q In response to those requests for proposal from both
16 Williams and Spectra, did Welded submit a proposal to each
17 company?

18 A We did.

19 Q At that time, did Welded have a preference as to
20 whether it obtained the work for Williams or Spectra?

21 A Welded had done work over the years for both Williams
22 and Spectra, both were considered good customers. I think we
23 thought at the time we had a better relationship with
24 Williams, and we were actually keen to work on the ASR
25 project more so than the Ohio project for Spectra.

1 Q Let's first talk about Spectra. How many spreads did
2 Spectra want Welded to work on, on its project?

3 A They initially came out to us asking us to quote on --
4 for two spreads of work on the Ohio project. That later came
5 to be a request when they couldn't fill up -- it was a large
6 project, so I think it had eight to ten spreads on it, if I
7 remember correctly.

8 After we had bid on the initial two spreads, they were
9 still having -- they were still having trouble getting enough
10 contractors across the entire right-of-way. And so they came
11 to us and asked us whether or not Welded would be willing to
12 do a third spread on that project.

13 Q And what was Welded's response to Spectra asking if
14 Welded would do three spreads?

15 A We -- we were concerned about having, if you will, all
16 of our eggs in one basket with Spectra, but we wanted to be
17 responsive to the customer. So, we said that we would be
18 prepared to do three spreads of work for Spectra if they
19 agreed to have all three spreads performed on a cost-
20 reimbursable fixed-fee basis.

21 Q And why did Welded request that Spectra agree to a
22 cost-reimbursable fixed-fee contract?

23 A Well, we -- again, Welded was a -- what's known as a
24 large-diameter pipeline company. That's what it's been known
25 as and known for historically. And part of the reason why

1 they're known that way is because they had a fleet of large
2 equipment that was capable of laying pipelines that were
3 greater than 36 inches. Once you get above 36 inches, you
4 really need specialized equipment that can lay that kind of
5 pipe.

6 So, Welded had in its fleet a number of large
7 pipelayers that were capable of doing both the ASR work and
8 the Spectra work. So, to answer your question, coming back
9 to it, we realized that there was going to be greater demand
10 for Welded's equipment and its expertise in this coming
11 market.

12 So, we went to Spectra and we said that we thought that
13 "If you want us to cover three spreads, we'll do it on this
14 cost-reimbursable plus fixed-fee basis."

15 Q And did Spectra agree to a cost-reimbursable contract?

16 A They thought about it for almost a month and then
17 finally came back to us and said no, they wanted to move
18 forward with us on the -- just the two spreads under the
19 initial proposal, which was a unit rate, essentially a fixed-
20 price contract.

21 Q Now, just taking a step back. You said you submitted a
22 proposal to Williams. Did -- in the near term, after that
23 proposal to Williams, did you get any response from Williams?

24 A So, we didn't, actually, in the near term. It was --
25 it was actually -- it seemed like it was at least a couple of

1 months before we had heard back from Williams from the time
2 we had submitted the proposal and when they actually
3 initially contacted us.

4 In the meantime, we had had multiple negotiations with
5 Spectra, and we had gotten to the point where we were -- by
6 the time -- it was about the beginning of November, I
7 believe, when we were scheduled to sign the Spectra contract
8 for two spreads' worth of work in Ohio on a Tuesday. It may
9 have been, you know, the first or second week of November, as
10 I recall.

11 Q That's 2015?

12 A That was 2015.

13 Q So do you recall who initially contacted you from
14 Williams in early November 2015?

15 A So I was not initially contacted. Some people who
16 worked in Welded were. I believe the initial contact came in
17 from a Victor Elizondo. I may be getting his name close.

18 Q Does Elizondo sound correct?

19 A Elizondo is correct. Victor, I think, reached out
20 either to Aaron Westbrook or Alex Epstein at our office. And
21 I remember both of them distinctly coming in and -- to my
22 office and telling me that they finally reached out. And the
23 comment back to Victor had been "Where have you guys been?"
24 Like, "We wanted to do your work. You know, we haven't
25 heard from you, and now we're way down the path with Spectra"

1 And that was -- that was kind of how we left it. But
2 Victor called back the next day and said, "We really want to
3 get you guys involved on ASR. Can you tell us how we might
4 be able to do that?"

5 Q And did you recall what Mr. Elizondo's role was at
6 Williams at the time?

7 A He was -- he was a contracts administrator. He was
8 not -- he was a mid-level person in the Williams
9 organization.

10 Q And you mentioned Aaron Westbrook and Alex Epstein.
11 Can you tell the Court what their respective roles were
12 at Welded?

13 A Alex Epstein was the vice president of the company at
14 the time. He was probably the closest thing to an operations
15 manager that they had. Aaron Westbrook was the lead
16 estimator for Welded.

17 Q If we could pull up PX13. And I think you have a
18 binder there that has PX13 in there.

19 Now focus on the first email in the chain, the
20 November 3, 2015, email from Alex Epstein to Victor Elizondo
21 and yourself. Do you recall that email?

22 A I do.

23 Q And do you see -- if you could fast-forward a couple
24 pages, do you see that there's a draft proposed letter of
25 intent attached to that email?

1 A I do.

2 Q Do you know who prepared this draft letter of intent?

3 A I was the primary author of it.

4 MR. NEIBURG: Your Honor, I'll move to admit
5 PX-13.

6 MR. BURWOOD: No objection, Your Honor.

7 THE COURT: Thank you. It's admitted.

8 (Exhibit PX-13 received into evidence)

9 MR. NEIBURG: Thank you. If you could, on that
10 email, see the top three bullets, if you could zoom in on the
11 top three bullets. Oh, no. It's the email, not the letter
12 of intent. You have to go back to the first page.

13 There you go.

14 BY MR. NEIBURG:

15 Q So this is the email that Mr. Epstein, in which you
16 were copied, sent to Mr. Elizondo. I'll read that:

17 "We are currently scheduled to attend the meeting
18 on Monday, November 9th regarding the award of two and
19 possibly three big-inch spreads on a project to be
20 constructed in 2017. The owner has signaled that this meeting
21 will result in a contingent award. We already have one big
22 inch spread under contract for work beginning in late 2016
23 and continuing through 2017. And so this pending award would
24 greatly diminish or eliminate outright our ability to
25 participate in ASR."

1 Did I read that correctly?

2 A You did.

3 Q Is it your understanding that -- the reference to "the
4 owner" in that second sentence, does that refer to Spectra?

5 A It does.

6 Q Okay. And do you recall that at that time, in early
7 November of 2015, that Welded had conveyed to Williams that
8 Welded was about to sign a deal with another project owner?

9 A I do.

10 Q If we look at the second bullet point:

11 "Welded's fleet of owned equipment includes 30
12 Caterpillar 594 pipelayers, all of which would be required
13 for three spreads of ASR. These tractors are in extremely
14 high demand, as evidenced by multiple offers from our
15 competitors to lease them in 2016 and 2017 for commitments
16 already on their books."

17 Did I read that correctly?

18 A You did.

19 Q And do you recall that at the time, in early November
20 of 2015, that Welded conveyed to Williams that Welded's fleet
21 of big-diameter pipeline layers were in high demand?

22 A I do.

23 Q And do you see -- and I'll just read the first sentence
24 of the third bullet point:

25 "Welded is firmly committed to the message that we

1 delivered earlier this year that Williams occupies the top of
2 our list of preferred clients."

3 Do you see that?

4 A I do.

5 Q So is it fair to say that -- like you testified, that
6 Williams was the preferred between Spectra and Williams?

7 A It was. And we thought that was the case even when the
8 RFPs came out.

9 Q And do you recall conveying that to Williams?

10 A I do.

11 Q So let's look at the attached proposed letter of
12 intent, that same document. In broad terms, can you describe
13 the terms that Welded proposed to Williams by this draft
14 letter of intent?

15 A This letter of intent is almost identical to what we
16 had sent to Spectra. It proposes a cost-reimbursable
17 contract - fully cost-reimbursable contract with a fixed fee.
18 The contract would not allow for markups or anything other
19 than the fixed fee.

20 Q And why did Welded request a cost-reimbursable plus
21 payment terms to work on the ASR project?

22 A We were essentially looking to take the risk out of the
23 project for Welded at the time. We knew that we had
24 something that was in high demand, and we wanted to get the
25 best terms we could.

1 Q And just to confirm. I think you said it, but were
2 these terms in this letter of intent essentially the same as
3 the terms you had proposed to Spectra?

4 A Yes. It's almost identical. In fact, I think I left
5 it -- accidentally left a typo in this one that went to
6 Williams. It refers to an exhibit in a Spectra contract.

7 Q From your perspective, as Welded's president and CEO at
8 the time, were these proposed terms favorable to Welded?

9 A They were.

10 Q How so?

11 A It's as we discussed. You know, for any cost incurred
12 by Welded, it would be paid at the cost incurred. There
13 would be no markup on that. And then Welded, at the end of
14 the job, would be entitled to earn a fixed fee that had some
15 skin in the game for cost overruns and some bonus in the case
16 we were able to underrun.

17 Q And if we could pull up PX638.

18 And focusing on the first email, just let me know when
19 you're ready, Mr. Wall.

20 A I'm with you.

21 Q And do you recall receiving this email on November 7,
22 2015, from Fred Pace attaching a letter of intent signed on
23 behalf of Williams?

24 A I do.

25 Q Do you know what role Mr. Pace had with Transco or

1 Williams at the time?

2 A Fred Pace was very well known in the pipeline
3 construction industry. Fred was probably -- I guess his
4 title here points out that he was a senior vice president
5 over engineering and construction work for Williams and
6 Transco at the time. It was -- Fred was -- was kind of the
7 most senior member in Williams that really oversaw the
8 installation of facilities and pipeline facilities.

9 Q Okay. And during the time period of November 3, 2015,
10 when Welded first sent Williams a draft letter of intent and
11 when Mr. Pace sends back a signed letter of intent, was Mr.
12 Pace the person you primarily communicated with concerning
13 the letter of intent?

14 A Yes, it was. This was clearly something that needed to
15 be done fast. It was transmitted to Mr. Elizondo. But,
16 clearly, it couldn't stay at that level. If we were going to
17 do this in the time frame that we were looking to get it done in
18 before we were to execute the Spectra contract, it needed to
19 be elevated to the highest levels within Williams. My
20 understanding is that Fred actually talked to the CEO of
21 Williams at the time of this.

22 MR. NEIBURG: And if you could, Mr. Ziggle
23 (phonetic), just turn to the attachment. And just scroll
24 through slowly just to see the signature page. There you go.
25 BY MR. NEIBURG:

1 Q And is this the letter of intent that you received that
2 day signed by Mr. Pace on behalf of Transco?

3 A It is.

4 MR. NEIBURG: Your Honor, I'll seek to admit
5 PX-638.

6 MR. BURWOOD: Objection, Your Honor. As you know,
7 we filed a motion relative to Welded's use of parole evidence
8 in trial. That motion is pending.

9 To the extent that they're seeking to offer a
10 document that predates the contract, it's in Article 39,
11 which is the integration clause in the contract. And parole
12 evidence is inadmissible in the sense of the four corners of
13 this contract, Your Honor, what Your Honor needs to review to
14 interpret the agreement, not an agreement that was superseded
15 by the contracts.

16 MR. NEIBURG: Your Honor, I think, as Welded
17 stated in its papers, Mr. Wall is not going to be asked to
18 walk through turns of the drafts of Section 8 of the
19 contract. He's not going to ask to interpret any specific
20 contract terms. He is simply here to provide some context
21 for the circumstances in which Transco and Welded found
22 themselves in late 2015.

23 He's going to walk us through in broad strokes how
24 the parties negotiated the contract and the process by which
25 they signed the deal. And then Mr. Wall will say how his

1 involvement in October 4, 2018, and meetings that occurred
2 shortly thereafter -- his direct involvement in those
3 meetings. And that's the extent of his testimony.

4 MR. BURWOOD: Our objection is just to any
5 evidence that would come in relative to the interpretation or
6 the intent of the contract itself as broad evidence, Your
7 Honor.

8 THE COURT: I'm not sure I'm hearing any of that
9 yet. I think I'm hearing the background to the -- to this.
10 But I'm going to overrule the objection. I'll take a look at
11 the motion in limine. If anything strikes me differently,
12 then I'll deal with it. But for now, I'm overruling the
13 objection.

14 MR. BURWOOD: Thank you, Your Honor.

15 MR. NEIBURG: Thank you, Your Honor.

16 Mr. Ziggle, if you could pull up PX-9.

17 THE COURT: And so PX638, then, is admitted.

18 (Exhibit PX-9 received into evidence)

19 MR. NEIBURG: Thank you, Your Honor.

20 BY MR. NEIBURG:

21 Q Mr. Wall, do you have PX9 in front of you?

22 A I do.

23 Q And I'm looking at the email at the bottom. It's an
24 email from yourself on November 8, 2015, to Fred Pace, Chris
25 Springer, Evan Kirchen, and others. Do you recall sending a

1 fully executed letter of intent back to Transco on
2 November 8, 2018?

3 A I do.

4 Q And is the fully executed letter of intent the document
5 that's attached?

6 A It is.

7 MR. NEIBURG: Your Honor, I'll seek to admit PX-9.

8 MR. BURWOOD: Your Honor, I just want to make the
9 same objection relative to relevance.

10 THE COURT: Okay. Thank you. Same ruling.

11 Let me ask a question. Did PX638 have an exhibit
12 or an attachment?

13 MR. NEIBURG: Are you referring to Exhibit C that
14 is referenced?

15 THE COURT: I just -- I thought you had said it
16 had an attachment. I've got the one-page email. Is that
17 all 638 is?

18 MR. NEIBURG: No. 638 should have been -- no.

19 638 is, in fact, where there is a letter of intent
20 signed on behalf of Transco.

21 THE COURT: Okay.

22 MR. NEIBURG: Does your binder not have that?

23 THE COURT: So, if that could be corrected at some
24 point, that would be great.

25 MR. NEIBURG: Did you check to see if that had

1 that?

2 THE COURT: Can you grab that exhibit for me?

3 Thank you.

4 MR. NEIBURG: Sorry about that, Your Honor.

5 THE COURT: That's okay. I wanted to make sure I
6 had the whole exhibit. Thank you. Okay. I'm good.

7 MR. NEIBURG: Thank you, Your Honor.

8 BY MR. NEIBURG:

9 Q Mr. Wall, if we could turn to attachment 1 of this same
10 document.

11 THE COURT: Okay. And just to get everybody back
12 on, then, we're on PX-009?

13 MR. NEIBURG: Correct, your Honor.

14 THE COURT: Okay.

15 THE WITNESS: On attachment 1 on -

16 BY MR. NEIBURG:

17 Q Attachment 1 to the letter of intent. In general terms,
18 Mr. Wall, could you just provide what were some of the more
19 important terms of the compensation structure that Welded was
20 seeking?

21 A I think attachment 1 is pretty straightforward. It
22 makes it clear that - that labor costs incurred by Welded
23 would be paid for at the cost occurred. It makes it clear
24 that subcontracts material, specialty equipment, and outside
25 services would be paid for by Williams at actual cost

1 incurred.

2 Timber mats are called out specifically because, on a
3 pipeline, you never know how many you're going to actually
4 use. We elected to use a multiplier for the -- the big --
5 what we refer to as a yellow iron, the pipeline-specific
6 equipment. We used a multiplier of 50 percent of labor cost.
7 We've used that in the past at Welded on other projects. And
8 it's -- we did our own numbers on it, and we thought it was
9 about right.

10 Q And, Mr. Wall, what did you do immediately after
11 emailing the fully executed letter of intent to Fred Pace?

12 A I remember distinctly going to my wife and saying, "I
13 can't believe we actually got this done" and having a moment
14 of real satisfaction that was only tempered by the fact that
15 it dawned on me that I needed to call Tina Faraca, who is
16 essentially Fred Pace's counterpart at Spectra, and tell her
17 that I would not be showing up for the meeting on Tuesday.

18 Q And what was her reaction?

19 A I walked out into my backyard on my mobile and called
20 her on her mobile. I let her know that Welded had just done
21 a deal with another customer to commit its equipment. And
22 Tina is a small woman, lovely woman, but I've never heard her
23 more angry on the phone. She was absolutely irate.

24 She said, "I can't believe you're doing this to us. We
25 were counting on you." And it wasn't until I actually said

1 to Tina that "Tina, we offered you the exact same deal. And
2 this customer took it, and you didn't." And she actually
3 realized at that point that she had the opportunity to do
4 this deal, hadn't, and in some sense, it was Spectra's own
5 fault.

6 Q After the letter of intent was executed, did Welded and
7 Transco proceed to work on negotiating the contract?

8 A We did.

9 Q And who negotiated the contract on behalf of Welded?

10 A It was a team of Welded individuals, some of whom we've
11 already talked about. I probably led the negotiations. But
12 it was me, Alex Epstein, Aaron Westbrook, Renee Bisnett. We
13 also had a contracts attorney in the room for most of the
14 discussions.

15 Q And who negotiated the contract on behalf of Transco?

16 A For Transco, my counterpart was Chris Springer. Chris
17 was not in for every part of the negotiation. But anything
18 substantive or wherever there was a disagreement on
19 something, you know, Chris came in and helped get it
20 resolved. In addition to Chris, Victor Elizondo was in the
21 room. Tina Malone was in the room. There was a Williams
22 attorney that was in the room for every one of the
23 conversations.

24 And I'm sorry. I'm blanking on that individual's name
25 right now. I'm sure it's in emails, but I don't recall it.

1 Q Can you generally describe for the Court how the
2 contract negotiation process played out?

3 A Sure. You know, after the letter of intent was signed,
4 Williams sent through to Welded its draft form of contract
5 that it uses for almost every pipeline contract that it uses.
6 And we modified that document to reflect the terms of the
7 letter of intent. And that was really, you know, probably 98
8 percent of the substantive changes that were made to the
9 contract.

10 MR. BURWOOD: Your Honor, objection.

11 THE COURT: On what ground?

12 MR. BURWOOD: Parol evidence. To the extent he's
13 saying 98 percent of the content of the letter of intent
14 (indiscernible) he's interpreting the contract and comparing
15 it to the letter of intent.

16 THE COURT: Overruled.

17 MR. NEIBURG: Thank you, Your Honor.

18 BY MR. NEIBURG:

19 Q And, Mr. Wall, you mentioned meetings. Did any of
20 these meetings take place in person?

21 A I would say I'm a big believer in having face-to-face
22 meetings when you're trying to negotiate, so I think the
23 majority of them took place in person in Williams Tower, in
24 Williams' offices in Houston. But clearly, there were phone
25 calls on different weeks, and there were conference calls.

1 It was a relatively cordial negotiation. I'm sure
2 there were a couple points where people tried to push it one
3 way or the other. I recall once or twice having to pull out
4 the letter of intent and say, "This is what we agreed, so
5 we're not going to stray away from this."

6 Q And was the contract ultimately signed on August 10,
7 2016?

8 A It was. It was one of my -- I don't want to say it was
9 my last duty, but it was one of my -- the last major
10 significant thing I did at Welded before turning over.

11 Q So did you sign the contract on behalf of Welded?

12 A I did.

13 Q Did Steve Hawkins sign the contract on behalf of
14 Welded?

15 A I think Steve -- Steve signed as a witness. So, I
16 don't know whether it's proper to say that he signed the
17 contract on behalf of Welded. I actually -- it was not known
18 widely at that point, but Steve and I both knew that he would
19 be coming in as the next president and CEO of Welded at the
20 time.

21 So, I wanted to bring him over at that time to be able
22 to introduce him to Chris Springer because, you know, I had
23 developed a good rapport with Chris. I thought Chris was a
24 good guy. And I wanted Steve to get to know him because he
25 was going to have to work with him for, you know, the next

1 year or so.

2 Q You mentioned Chris Springer a couple of times. Do you
3 recall what his role was at Transco or Williams?

4 A Honestly, not specifically. I believe he was a project
5 director-type over -- he may have been over all of ASR. I
6 think he probably was. But he was -- he was a well-
7 experienced pipeline owner.

8 Q Okay. You testified that the letter of intent was
9 fully executed as of November 8th, 2015. And the contract
10 was signed on August 10, 2016, right?

11 A Yes.

12 Q Do you recall why it took from November to August 10 to
13 get a fully signed contract?

14 A It was a series of -- we had finished negotiating kind
15 of the terms of the contract within a couple of months, but
16 it was a series of regulatory delays. There were permit
17 issues at the time that kept pushing the start of - the
18 ability to start the project to the right. I was very
19 concerned that we didn't have an executed -- fully executed
20 contract, and I was constantly pushing Williams to execute
21 the contract. And we were finally able to get it done in
22 August.

23 Q And was it your belief that the contract terms were
24 clear and that both parties fully understood the deal?

25 A It was.

1 MR. BURWOOD: Objection, Your Honor.

2 THE COURT: I'm not sure it makes a difference.

3 I'm going to overrule the objection.

4 BY MR. NEIBURG:

5 Q Now, Mr. Wall, let's talk about the events of
6 October 4, 2018. Do you recall that Transco withheld payment
7 of approximately \$24 million from Welded on October 4, 2018?

8 A I do.

9 MR. NEIBURG: If you could pull up JX-94.

10 Your Honor, this document was admitted yesterday.
11 I just have some brief questions about it.

12 BY MR. NEIBURG:

13 Q Particularly paying attention to the top email when
14 Steve Hawkins, on October 5, 2018, sends you a letter in
15 which he indicates:

16 "Williams' letter just received is attached."

17 Do you see that?

18 A I do.

19 Q And if you could turn to the attachment.

20 Do you recall -- and this is the October 4, 2018,
21 withholding letter sent by Transco to Welded, correct?

22 A It is.

23 Q And do you recall? Is the email from Steve on
24 October 5 how you first learned of the October 4 letter?

25 A I believe it was either through this email or perhaps a

1 phone call from Steve, either the night before or earlier
2 that day, when he knew that it was coming.

3 Q And what was your reaction to when you first learned
4 that Transco had withheld approximately \$24 million from
5 Welded?

6 A I was indignant.

7 Q Why is that?

8 A I thought there was no basis in contract, at law for
9 any of the categories of withholding that had been set forth
10 in this letter.

11 Q And were you aware that Transco had also filed a
12 complaint against Welded in Oklahoma on October 4, 2018?

13 A I was.

14 Q Were you aware that Transco had received FERC approval
15 for the ASR project into service on October 4, 2018?

16 A I was and thought it was ironic that the day they went
17 in service and started generating revenue for themselves and
18 their shareholders they decided to withhold money from, in
19 comparison, what was a relatively small contractor.

20 Q And do you recall if Welded sent Transco a written
21 response to the October 4 letter?

22 A I do.

23 Q And do you recall if Welded had any meetings with
24 Transco following receipt of this October 4 letter?

25 A There was a meeting within a week or so. So, it may

1 have been the following week where some senior executives
2 from Welded and two representatives of the shareholders went
3 to Williams Tower and met with executives from Williams.

4 Q And did you attend that meeting?

5 A I did.

6 Q Do you recall who attended the meeting on behalf of
7 Transco?

8 A On behalf of Transco, it was Evan Kirchen. It was
9 Chris Springer. There was an attorney in the room. There
10 were other hangers-on in the room that I don't actually
11 recall being -- I remember other Williams people being in the
12 room, but I don't remember who they were. Evan was doing
13 most of the talking that day.

14 Q And what was your intention for the meeting going in?

15 A My intention in the meeting and -- as well as the --
16 everyone on the Welded side -- and I'm representing the
17 shareholders as well -- wanted to understand the basis for
18 this. Like, you know, if you had issues with this, why
19 hadn't you brought it up the past 12 or 13 months we had been
20 working together on this project? Why are you waiting for
21 the day you go in service? Trying to actually understand
22 whether we were missing something. We had no good answers in
23 that meeting.

24 Q And you mentioned Evan Kirchen. Do you recall his role
25 with Transco or Williams at the time?

1 A Evan was above Chris Springer in the pecking order,
2 kind of below where Fred Pace was and above where Chris
3 Springer was. So, he was a -- he was a vice president
4 over -- I think, in the E&C business as well. But he wasn't
5 as high as Fred was at the time.

6 Q You testified just a minute ago that Evan Kirchen did
7 most of the talking. Do you recall anything in particular
8 that he said at the meeting?

9 A I remember Evan -- you know, when -- because we went to
10 Evan and said, "Evan, if you want a pound of a flesh, tell us
11 what the number is. What do we have to do to make this thing
12 going away?" And I remember distinctly Evan saying, "Well,
13 I've got an audit report and my hands are tied. I can't do
14 anything."

15 Q Did Transco present any audit findings or any reports
16 at that meeting?

17 A No, despite repeated requests for it.

18 Q And you mentioned Chris Springer attended the meeting,
19 right?

20 A I did.

21 Q And he was one of the people that negotiated the
22 contract on behalf of Transco?

23 A He was.

24 Q Do you recall if he said anything at the meeting?

25 A What I distinctly remember is Chris saying almost

1 nothing during the meeting and looking down at the table
2 throughout almost the entire meeting, unwilling to make eye
3 contact with either me or Steve Hawkins.

4 MR. NEIBURG: No further questions at this time,
5 Your Honor.

6 THE COURT: Thank you. Cross.

7 MR. BURWOOD: Thank you, Your Honor. Jonathan
8 Burwood on behalf of Transco.

9 CROSS-EXAMINATION

10 BY MR. BURWOOD:

11 Q Good afternoon, Mr. Wall.

12 A Good afternoon.

13 MR. BURWOOD: Your Honor, I've got a witness cross
14 binder.

15 THE COURT: Thank you.

16 MR. NEIBURG: Ours was thinner, Your Honor.

17 THE COURT: Does that mean you win?

18 BY MR. BURWOOD:

19 Q Mr. Wall, in your -- good afternoon.

20 A Good afternoon.

21 Q In your notebook that you used during your direct
22 examination, one of the exhibits is PX-9. Do you see that?

23 A Is it in your binder, or do you want me to go back to
24 it?

25 Q It's a copy of the letter of intent. It's dated

1 November 5, 2015. It's Exhibit PX9. Do you see that?

2 A I do.

3 Q Okay. That is not the agreement between Transco and
4 Welded that governed performance of the ASR work, correct?

5 A This is the letter of intent.

6 Q Not the contract for the parties, right?

7 A No. It's the letter of intent.

8 Q In the notebook that we just handed you, Mr. Wall, if
9 you could turn to Exhibit D2112. And there's also a copy on
10 the screen, to the extent you want to reference it there.
11 Exhibit D-2112, the top email in that chain, is an email from
12 yourself to Chris Springer and -- Chris Springer at Transco,
13 correct?

14 A I'm sorry. What was the question?

15 Q Exhibit D-2112, it's an email from yourself to Chris
16 Springer dated January 25, 2016. Do you see that?

17 A It is.

18 Q Okay. And in the subject line is "Transco ASR contract
19 documents." And in the first paragraph, you mention to Chris
20 that:

21 "We had another productive call with the team last
22 Wednesday."

23 Do you see that?

24 A Yes.

25 Q Okay. And you talk about walking through the latest

1 draft of the T&Cs, the terms and conditions. You go on to
2 talk about providing a markup of your comments. And you
3 close that paragraph by saying to Mr. Springer:

4 "We also provided an updated cost estimate that is
5 down about \$15 million from our bid."

6 Do you see that?

7 A I do.

8 Q Okay. What does that refer to, Mr. Wall?

9 A I don't recall.

10 Q Okay. Did you place -- prior to entering into the
11 LOI -- strike that. At some point, did Welded provide a firm
12 fixed-price bid for the performance of the ASR work?

13 A No.

14 Q Okay. Was there ever a time when Welded offered to do
15 the work for \$341 million?

16 A No. I believe we gave an estimate of that.

17 Q Well, I guess that's my question. You said here in the
18 email --

19 A That's a big difference between the fixed price and an
20 estimate.

21 Q Okay. So let me rephrase.

22 MR. NEIBURG: Your Honor, I just object on the
23 grounds of relevance. On the one hand, he said PX-9 is not
24 the agreement. Now we're talking about an agreement that
25 never happened or materialized. This is not the contract

1 between Welded and Transco.

2 THE COURT: Okay. I'm going to give some leeway
3 because I permitted the testimony to come in on the
4 background, and I'm going to permit it.

5 MR. BURWOOD: And I'm actually not on PX-9, Your
6 Honor. I'm on D-2112.

7 BY MR. BURWOOD:

8 Q Okay. Let's refocus on that last sentence in your
9 paragraph. You say to Mr. Springer:

10 "We provided an updated cost estimate that is down
11 about \$15 million from our bid."

12 When you said, "from our bid," what were you referring
13 to?

14 A I believe the estimated cost that we thought it would
15 cost at the time.

16 Q Okay. And between the estimated cost you provided and
17 January 25th of 2016 you're reporting to Mr. Springer that
18 you'd been able to lower that cost estimate by approximately
19 \$15 million, right?

20 A That's what I understand that to say. It was based on
21 a construction period that never materialized.

22 Q Mr. Wall, would you turn to D1000, please.

23 MR. BURWOOD: Your Honor, I'm sorry to go back.

24 May I move Exhibit D-2112 into evidence?

25 MR. NEIBURG: No objection, Your Honor.

1 THE COURT: Admitted.

2 (Exhibit D-2112 received into evidence)

3 MR. NEIBURG: As it relates just to the question,
4 there's drafts of Section 8 attached. So, I think the
5 admission of the document should be limited to just the
6 portion of the document that the witness has testified about.

7 MR. BURWOOD: I agree.

8 THE COURT: Okay. We're in agreement. It's
9 admitted.

10 MR. BURWOOD: First page only.

11 THE COURT: First page only.

12 BY MR. BURWOOD:

13 Q Mr. Wall, do you see D-1000 there?

14 A I do.

15 Q And that's an email from Steve Kuxhausen at Bechtel to
16 yourself and to Mr. Hawkins, correct?

17 A It is.

18 Q Okay. And just the time period --

19 MR. NEIBURG: Your Honor, I'm sorry. Objection.

20 There's nothing on this document that relates in
21 any way, shape, or form to the parties entering into the
22 contract. It has nothing to do with the scope of direct.

23 This is not a witness that Transco also identified
24 as a witness, so the rule that you can ask beyond because it
25 was a witness you identified does not apply to Mr. Wall.

1 MR. BURWOOD: Your Honor, our witness list
2 reserves the right to call every witness list they're going
3 to respond to. We agreed to the one-up/one-down rule. If we
4 need to recall Mr. Wall in our case, we will, but I'm not
5 sure that that is most efficient.

6 THE COURT: What the pretrial order says is they
7 can call any witness -- Transco -- let's see -- also reserves
8 the right to call in its direct case any witness identified
9 on any other parties' witness disclosure list.

10 MR. NEIBURG: Our express agreement was
11 identified. Does that really identify a witness? I think --
12 Your Honor, if I may expand a little?

13 THE COURT: Yes.

14 MR. NEIBURG: There's a difference between
15 identifying in advance, which we did, like, on Friday. They
16 had X amount of days to prepare. We had X amount of days to
17 prepare our witnesses, including for cross because we knew --
18 or direct that goes beyond the scope of direct. Mr. Wall was
19 not identified. He didn't have the benefit of preparing
20 counsel for a potential cross that goes well beyond the scope
21 of a limited direct.

22 MR. BURWOOD: Your Honor, practically speaking, we
23 both had the same language in the pretrial, right. We
24 reserved the right to call each other's witnesses. They did
25 declare that Mr. Wall was going to appear. We prepared to

1 examine him on the one-up/one-down process so he doesn't need
2 to come back. I'd ask that -- I've got limited cross. I'd
3 ask to do it. If not, I think the reservation stands that we
4 could recall him in our case. I'm just not sure that makes
5 sense for the Court or the witness or the parties.

6 THE COURT: Okay. Well, my concern is if I'm
7 misunderstanding perhaps between counsel as to how this was
8 going to proceed and that Mr. Wall be prepared -- be able to
9 be properly prepared for -- for matters beyond his direct.

10 MS. EWALD: At the pretrial order, we had the --
11 we had a colloquy or discussion about the one-up/one-down
12 rule and that it would be any witness that was being called
13 on either party's direct case would be subject to being
14 examined beyond the scope of direct examination in order to
15 avoid that witness being recalled. And both parties put on
16 their list that they would call -- reserve the right to call
17 in their direct case anybody on the other side's list. And
18 Mr. Wall was on -- has been identified in the pretrial order
19 and was the subject of that discussion, I submit, Your Honor.

20 THE COURT: Well, that concerns me because then
21 that meant that you would have to prep every single witness
22 so that they may possibly be called on their -

23 MR. NEIBURG: Your Honor, they actually
24 specifically identified Mr. Hawkins, Mr. Pometti, and
25 Mr. Hood, which would lead me to believe that, well, he was

1 listed on our witness list. That means they did not intend
2 to go -- to call him in their case in chief.

3 MS. EWALD: And the reason for that, Your Honor,
4 is stated in the pretrial order. It's because we had a
5 pending motion in limine that sought to exclude Mr. Wall from
6 appearing at all with regard to addressing parol evidence.
7 So I think the -- and I think it's addressed in the pretrial
8 order that we are not waiving any rights with regard to
9 Mr. Wall and our motion to exclude his testimony.

10 There's a very good reason for that.

11 THE COURT: There may be a reason, and the fact
12 that I didn't get to the motions in limine seems to have
13 created an issue. But I don't think it should have. I still
14 think there could have been a better reservation, if that was
15 the issue, that you wouldn't -- you weren't preparing to call
16 Mr. Wall but you would specifically call him if I didn't
17 grant your motion in limine. That's what concerns me is
18 that I have a witness that should have had that opportunity
19 to have been prepared.

20 MS. EWALD: And I will just note that on page 48
21 of the pretrial order that Transco -- under Subparagraph (e),
22 which required identification of any witnesses for whom there
23 is an objection, that paragraph number 3 indicated that
24 Transco objected to the testimony of Mr. Wall at -- in a
25 lengthy paragraph with regard to the contract, the November

1 2015 contingent award notice, et cetera.

2 And, thus, we wanted to ensure we lodged that
3 objection. But that didn't detract from the fact that if the
4 Court were to allow Mr. Wall to testify that we reserve the
5 right to call him and that the one-up/one-down agreement
6 should apply in that regard. And that was my understanding,
7 Your Honor, when we had that conversation in the pretrial
8 order -- or at the pretrial meeting.

9 MR. NEIBURG: One last brief comment, Your Honor.
10 I'll just note that D1000, that they're seeking to ask about,
11 has nothing to do with the contract. So, your ruling on the
12 parol evidence motion does not impact in any way whether or
13 not they wanted to ask him about this document.

14 THE COURT: This doesn't indicate parol evidence,
15 does it?

16 MR. BURWOOD: I'm not asking questions about parol
17 evidence. I agree, Your Honor.

18 THE COURT: Then it's beyond the scope of direct,
19 isn't it?

20 MR. BURWOOD: Yes. This question is beyond the
21 scope of Attorney Neiburg's direct.

22 MS. EWALD: And, Your Honor, I agree with that as
23 well. And I would say that the entirety of this discussion
24 regarding the one-up/one-down rule was to apply to all
25 parties' witnesses and that we have Mr. Wall listed on our

1 list, by virtue of the provision, that we're going to reserve
2 the right to call him in our direct case.

3 And we can point that -- I think I pointed that
4 out, Your Honor, to the page. But I can -

5 THE COURT: No, I read that. But it stands, then,
6 in sharp contrast with the other witnesses that were
7 specifically identified.

8 MS. EWALD: I appreciate that, Your Honor. And my
9 thinking -- if I can tell the parties' intent, my thinking
10 was that I wanted to preserve the objections as stated in the
11 motion in limine.

12 THE COURT: But the objection, the motion in
13 limine went to the parol evidence rule. It didn't go to
14 matters that were not part of that objection, as I understand
15 it.

16 MS. EWALD: That is correct, Your Honor, but it
17 doesn't -- but I would say, the reservation to call him -- to
18 call any witness on their list was unlimited.

19 THE COURT: I'm going to sustain the objection.

20 MR. BURWOOD: Thank you, Your Honor.

21 Your Honor, in light of the ruling, may I have a
22 minute to just look at my notes?

23 THE COURT: Of course.

24 MR. BURWOOD: Thank you.

25 THE COURT: In fact, we can take a break if you'd

1 like.

2 MR. BURWOOD: Five minutes?

3 THE COURT: Yes.

4 MR. BURWOOD: Thank you, Your Honor.

5 THE COURT: We're in recess.

6 (Recess taken at 3:24 p.m.)

7 (Proceedings resumed at 3:33 p.m.)

8 THE COURT: Please be seated.

9 MR. BURWOOD: Thank you, your Honor.

10 Your Honor, given your ruling and our prior
11 understanding that we'd have the opportunity to examine
12 Mr. Wall beyond the scope of his direct, we do intend to call
13 him in our case in chief. We've identified August 31st as
14 the date for his examination. We want to request here on the
15 record that if counsel is willing to accept a trial subpoena
16 on Mr. Wall's behalf for that date or a date that is
17 convenient for the witness during our case on direct.

18 THE COURT: I would suggest that you talk with
19 him offline and let me know if there are any issues.

20 MR. NEIBURG: I wish we had talked about this on
21 break, Your Honor, because Mr. Wall travels to foreign
22 countries.

23 THE WITNESS: I'm in town tomorrow, and then I'm
24 in Saudi Arabia.

25 THE COURT: I'll take another break, and you guys

1 can talk, but --

2 MR. NEIBURG: Your Honor, I apologize. We'd like
3 to talk now.

4 THE COURT: Thank you. We'll take ten minutes.
5 And if you need more, just let me know.

6 (Recess taken at 3:34 p.m.)

7 (Proceedings resumed at 3:48 p.m.)

8 THE CLERK: Please rise.

9 THE COURT: Please be seated. Mr. Burwood?

10 MR. BURWOOD: Your Honor, we were able to work out
11 amongst ourselves that my cross-examination is going to
12 proceed.

13 THE COURT: Is going to proceed?

14 MR. BURWOOD: Yeah.

15 THE COURT: Okay.

16 MR. NEIBURG: And Mr. Wall just simply is not
17 available over the next trial time so, in the spirit of
18 cooperation and getting Mr. Wall off the stand, let's just
19 get to it.

20 THE COURT: Okay. Then you may proceed.

21 MR. BURWOOD: Okay.

22 CROSS-EXAMINATION (CONT'D)

23 BY MR. BURWOOD:

24 Q Mr. Wall, would you please take a look at Exhibit D-42
25 in the notebook in front of you? We'll also put it up on the

1 screen for your reference.

2 THE COURT: Well, could you give me that number
3 again?

4 MR. BURWOOD: Sure. It's D-0042. It's about a
5 little past --

6 THE COURT: I got it.

7 MR. BURWOOD: -- the middle.

8 THE COURT: Thank you.

9 BY MR. BURWOOD:

10 Q Mr. Wall, let me know when you're there, please.

11 A I'm with you.

12 Q Mr. Wall, were you aware that for the ASR project, that
13 Bechtel had provided personnel to Welded?

14 A I was, along with other projects as well.

15 Q Okay. And Exhibit D-42 is a request for services
16 between Bechtel and Welded, is that the case?

17 A I believe it is.

18 Q Okay. And under services requested, it indicates that
19 Welded has requested the services of personnel from Bechtel,
20 right?

21 A Yes.

22 Q Okay. And those services are to assist in the planning
23 of projects and project management activities on selected
24 projects with Welded. Did I read that correctly?

25 A I believe it says Welded has requested service of

1 personnel from Bechtel Oil Gas & Chemicals to assist in the
2 planning of projects and project management activities on
3 select projects with Welded Construction.

4 Q It does. Thank you. The schedule for performance of
5 the services, the work effective date, is December 13 of
6 2016, correct?

7 A Yes.

8 Q Okay. And, at that point, had you left Welded and gone
9 back to Bechtel?

10 A I believe I had at that point.

11 Q Okay. And please remind me, what was your role in
12 December of 2016 with Bechtel?

13 A I was running the -- I was a general manager of the
14 pipeline group.

15 Q The third section of Exhibit D-42 talks about
16 compensation. Do you see Item 3 there?

17 A I do.

18 Q Okay. And it reads, for performance of the
19 aforementioned services, Welded Construction, LP, agrees to
20 pay Bechtel Oil Gas & Chemicals, Inc. the following, right?

21 A I do.

22 Q Yes? You see that?

23 A Yes.

24 Q Okay. And (A) is they agree to pay actual wages and
25 salary and standard United States payroll burdens, both

1 adjusted as deemed appropriate by Bechtel Oil & Gas
2 Chemicals, Inc., all such wages, salary, and burdens
3 attracting a 1.5 multiplier. Did I read that correctly?

4 A That is correct.

5 Q Okay. If you go further down in Section 3, under sub
6 (f), there are five projects listed. Do you see ASR listed
7 there?

8 A I do.

9 Q Okay. Under Section 4, Manner and Times of Payment, it
10 provides, Bechtel Oil Gas & Chemicals, Inc. shall invoice
11 Welded Construction, LP on monthly basis as cost is incurred.

12 Is that what it says?

13 A Yes.

14 Q Okay. And then D-42 goes on to say, Welded
15 Construction, LP shall make prompt payment of said invoice
16 immediately upon receipt of invoice, correct?

17 A Yes.

18 Q Okay. And, if you flip to the second page of D-42, is
19 that your signature?

20 A It is.

21 Q Okay. Do you recall signing this document?

22 A No, not specifically.

23 MR. BURWOOD: Your Honor, I'd ask to admit
24 Exhibit D-42.

25 MR. NEIBURG: No objection, Your Honor.

1 THE COURT: It's admitted.

2 (Exhibit D-42 received into evidence)

3 BY MR. BURWOOD:

4 Q Mr. Wall, if you would please turn to Exhibit D-2045,
5 and just let me know when you've had an opportunity to find
6 it and have a look.

7 A Okay.

8 Q Mr. Wall, do you see the Bates stamp in what is the
9 lower left-hand corner that says BCHTL? Do you see that?

10 A I do.

11 Q Okay. Do you recognize this, Mr. Wall, as a Bechtel
12 document?

13 A I don't recognize it necessarily as a Bechtel document.
14 I assume it is, based on the Bates stamp.

15 Q Okay. So this document is titled Welded CSAS Job
16 Number 25362, and the description is Invoices Issued to
17 Welded Containing Atlantic Sunrise ASR Project Costs. Do you
18 see that?

19 A Yes.

20 Q Okay. Do you understand this to be a summary of
21 Bechtel's invoicing to Welded for the seconded employees in
22 connection with the ASR Project?

23 A I believe that is what it is.

24 Q Okay. And the invoice number, date, and total are
25 listed in the three columns, right, the first three columns?

1 A I think that's correct.

2 Q Okay. And invoice total reads \$3,381,735.56. Do you
3 see that?

4 A I do.

5 Q Okay. And then the fourth column says, Payment Receipt
6 Amount. Do you see that?

7 A I do.

8 Q Okay. And the total there is just under \$487,000,
9 right?

10 A Agreed.

11 Q Okay. Do you also see there that the last -- so --

12 MR. NEIBURG: Your Honor, I'm sorry. I just have
13 to object. I don't think Transco has established that
14 Mr. Walls [sic] has any personal knowledge of what Bechtel
15 invoiced Welded in connection with their request for services
16 agreement.

17 I mean this document is a Bechtel document, but
18 that doesn't mean he has -- he knows anything about it.

19 MR. BURWOOD: Well, let me try and establish some
20 foundation.

21 THE COURT: Okay.

22 BY MR. BURWOOD:

23 Q Mr. Wall, you signed the RFS in connection with the
24 Bechtel seconded employees for Welded and ASR, correct?

25 A Yes.

1 Q Okay. Did you have any involvement after that in
2 whether or not invoices were issued by Bechtel to Welded?

3 A None whatsoever.

4 Q Okay.

5 A It comes in under a job charge.

6 Q All right. In your role as the general manager of the
7 pipeline group, would the invoicing of seconded employees to
8 Welded fall under your group?

9 A No. It would fall under Central Accounting. It would
10 fall under the CFO's --

11 Q Okay.

12 A -- office.

13 Q In looking at this document today, is this a type of
14 document that Bechtel would sort of create and maintain in
15 the normal course of managing their AR -- AP?

16 A It seems reasonable to say that that would be the case.

17 MR. BURWOOD: Okay. Thank you.

18 Your Honor, I'd oppose the objection by saying
19 it's a business record of Bechtel and he's established that
20 it's a document that's regularly --

21 THE COURT: Okay. But he hasn't established he
22 has any knowledge of it. I thought that was the objection.

23 MR. NEIBURG: Correct, Your Honor.

24 I think this is where -- as earlier, when
25 Mr. Hawkins was being asked questions, that this is a witness

1 that's a Bechtel witness on the stand that laid the
2 foundation for the document in that deposition, which has
3 been designated testimony.

4 That doesn't mean that document gets to be used
5 with any witness who doesn't have any knowledge about the
6 document.

7 MR. BURWOOD: I'm going to ask him some additional
8 questions about the document.

9 THE COURT: Okay. I'm sustaining the objection as
10 to that question, but you can ask him another question.

11 MR. BURWOOD: Okay.

12 BY MR. BURWOOD:

13 Q Mr. Wall, you're aware of the RFS for the seconded
14 employees, correct?

15 A Yes.

16 Q Okay. And you're aware that those employees were
17 provided by Bechtel to Welded for the ASR job, right?

18 A I couldn't tell you specifically which employees were
19 provided.

20 Q But --

21 A But, yes, we provided employees.

22 Q Okay. Are you aware that Bechtel then invoiced Welded
23 to be paid for that -- those employees?

24 A I assume so, yes.

25 Q Well, do you know that they were invoiced?

1 A Again, I have profit and loss responsibility for the
2 pipeline group.

3 Q Yep.

4 A Okay? So I assume that the organization is doing what
5 it would normally do, but I do not generate invoices.

6 Q In your role of being responsible for profit and
7 losses, if one of your vendors failed to pay \$2.9 million in
8 invoices, is that something that would normally bubble up to
9 your desk?

10 A Absolutely.

11 Q Okay. So, here, I'll offer to you that this document
12 reflects that, of the \$3.4 million that Bechtel invoiced to
13 Welded, invoices that Welded was required to pay immediately
14 upon receipt, that they only paid \$487,000. Okay? And, by
15 extension, that \$2.9 million of those invoices was not paid
16 by Welded to Bechtel. Were you aware of that?

17 A I believe it says it was written off.

18 Q Well, I'm not there yet, right? The question is
19 invoices were issued and most invoices were not paid. Did --

20 THE COURT: No. I think your question was was he
21 aware of that.

22 MR. BURWOOD: That's what I was just going to say.
23 Was he aware of that.

24 THE WITNESS: I was aware that we wrote off
25 receivables.

1 BY MR. BURWOOD:

2 Q In being aware of that then, you were aware that they
3 were not paid, correct?

4 A Yes, that's a logical extension.

5 Q Okay. And the -- as reflected in this exhibit, D-2045,
6 the last column, in Comment Information, it says, GBU
7 approved receivable of a write-off on December of 2020,
8 correct?

9 A Yes.

10 Q December of 2020, right?

11 A December of 2020, yes.

12 Q Okay.

13 A That's what it says.

14 Q And it lists basically every invoice that there's no
15 payment reflected, there's a write-off, and, without
16 counting, it looks like about a dozen invoices, right?

17 A Yeah, I'd say this is correct.

18 Q Okay. What role did you play in the decision to write
19 those invoices off?

20 A I'm sure it was my signature on the write-off.

21 Q Okay. Why were they written off?

22 A Because I don't believe that Welded was in a position
23 to either pay them or to pay them with (indiscernible).

24 Q Mr. Wall, are you familiar that Chubb had issued a
25 payment bond in connection with the ASR project?

1 A Vaguely, yes.

2 Q Okay. Were you aware, for example, at the time that
3 these invoices were written off, that there was a payment
4 bond out there?

5 A Not specifically.

6 Q Okay. Did -- are you aware of any -- strike that. Do
7 you know if Bechtel ever issued a claim on the payment bond
8 to recover its \$2.9 million on unpaid invoices to Welded?

9 A I have absolutely no idea. Once a write-off is done,
10 it's gone.

11 MR. BURWOOD: Thank you, Your Honor. I have no
12 further questions.

13 THE COURT: Thank you. Do you have re-direct?

14 MR. BURWOOD: I apologize, Your Honor. I
15 neglected to move -- I want to remove -- I want to move again
16 to move D -- can I move 2045 into evidence, please?

17 MR. NEIBURG: No objection, Your Honor.

18 THE COURT: It's admitted.

19 (Exhibit D-2045 received into evidence)

20 MR. BURWOOD: Thank you.

21 MR. NEIBURG: And no questions, Your Honor.

22 THE COURT: Thank you for your testimony.

23 THE WITNESS: Are you done with me?

24 THE COURT: I'm done.

25 THE WITNESS: Because I'm going to get on a plane.

1 THE COURT: Go.

2 THE WITNESS: Thank you so much, Your Honor.

3 (Witness excused)

4 THE COURT: Thank you.

5 MR. GUERKE: Your Honor, our next witness is

6 Marcus Hood. Could we have five minutes to grab him?

7 THE COURT: Yes.

8 MR. BURWOOD: Is he in the building?

9 THE COURT: Yes. We're in recess.

10 MR. GUERKE: Thank you.

11 (Recess taken at 4:00 p.m.)

12 (Proceedings resumed at 4:06 p.m.)

13 THE CLERK: Please rise.

14 THE COURT: Please be seated.

15 Mr. Guerke?

16 MR. GUERKE: Thank you, Your Honor. Kevin Guerke,
17 again for the record.

18 Welded's next witness is Marcus Hood.

19 THE COURT: Mr. Hood?

20 MR. GUERKE: Your Honor, I have several witness

21 binders. I have a stack for the Court and a stack for the

22 witness. May I approach and --

23 THE COURT: If you have a stack, you don't win on
24 the binder thing then.

25 MR. GUERKE: Guess we're losing on this one.

1 THE COURT: Okay. A stack? Okay. Thank you.

2 MR. GUERKE: Mr. Hood, please stand to be sworn.

3 MARCUS HOOD, PLAINTIFF'S WITNESS, SWORN

4 THE WITNESS: Yes.

5 THE CLERK: Please state your full name and spell
6 your last name for the record.

7 THE WITNESS: Marcus Edward Hood, H-O-O-D.

8 THE CLERK: Thank you. You may be seated.

9 DIRECT EXAMINATION

10 BY MR. GUERKE:

11 Q Good afternoon, Mr. Hood.

12 A Hi, Kevin.

13 Q When you worked with Welded Construction, what was your
14 role?

15 A I was the senior project manager.

16 Q Did you manage Welded's project team?

17 A Yes.

18 Q Who did you report to?

19 A I reported to Mr. Steve Hawkins.

20 Q What was your tenure at Welded?

21 A I began with Welded in the spring of '17, up to spring
22 of '19.

23 Q Has your career always been in construction?

24 A Yes, always been with Bechtel in construction.

25 Q When did you start in construction with Bechtel?

1 A I started with Bechtel in May of 1990.

2 Q What type of work does Bechtel do?

3 A Bechtel does a lot of engineering and construction
4 jobs, you know, around the world, a lot of infrastructure, a
5 lot of pipelines, a lot of L&G plants, large industrial
6 commercial construction.

7 Q What's your title and role -- let me ask you this
8 first. Is that where you're currently employed?

9 A I'm currently employed with Bechtel, yes.

10 Q And what is your title and role?

11 A Senior Project Manager with the Pipeline Division.

12 Q Where did you go to college, Mr. Hood?

13 A Texas A&M.

14 Q What degree did you obtain?

15 A Bachelor of Science in Civil Engineering.

16 Q In your 30 plus years of experience, roughly how many
17 pipeline projects have you worked on?

18 A I think it's been eight now in the last 30 plus years
19 with Bechtel.

20 Q Could you give us a brief rundown of those past
21 pipeline jobs?

22 A Yes, indeed. I started off with about a 700 kilometer
23 pipeline down in Mexico on the Yucatan Peninsula. After that,
24 I was over in the Algerian desert in Hassi R'Mel. We did
25 about a 600 kilometer and 48-inch line. Followed that up

1 with a 56-inch line down in -- on the Island of Trinidad, gas
2 pipeline. Then I was involved with the Keystone in the U.S.
3 and Canada for a number of years. That was 30-inch -- 36-
4 inch pipe. A couple of jobs down in Chile, 42-inch
5 waterlines, and another 44-inch waterline down in Chile.

6 Q Was -- you mentioned the size of some of these pipe.
7 What was AS -- was ASR a large diameter pipe job?

8 A Yeah. ASR was 42-inch. Yes.

9 Q How does the size of the pipe affect the work and
10 equipment involved in a project?

11 A Well, you use the heavy equipment, like, you know, 594s
12 and large sidebooms to lower it in, large tractors for
13 lowering pipe, large excavators to dig ditch and, you know,
14 quite a wide right-of-way, generally.

15 Q Is your career focused on managing pipeline
16 construction projects?

17 A Well, the last 25 of my 33 years has been pipeline
18 work, yes.

19 Q Have you always worked on the contractor side of a
20 project, compared to an owner side?

21 A No. No. It's been a little of both. We've -- I've
22 done PMC jobs where the -- you know, the project manager for
23 the owner; done EPCM jobs where we're the construction
24 manager for the owner; and done direct hire pipeline work as
25 well with my time in Welded.

1 Q When you joined Welded in March 2017, did you
2 immediately start working on ASR?

3 A We started with the pre-NTP work on ASR and also
4 started over in Ohio on a Sunoco job that Welded had at the
5 time.

6 Q When did you move over to ASR on a full-time basis?

7 A September of '17 it was.

8 Q What were your duties and responsibilities as senior
9 project manager on ASR?

10 A Managing the team we had. We -- you know, making sure
11 we had the staffing needed to perform the work, making sure
12 that all the team members had their -- had the training, had
13 the resources, had the tools to do their job, you know, just
14 keeping the team focused.

15 Q Did you have billing and invoicing responsibilities?

16 A That was part of the project management responsibility,
17 yes.

18 Q Where was the ASR work performed?

19 A It was in Pennsylvania. It was in -- specifically, we
20 had three spread offices in Pennsylvania and an office in
21 Mount Joy, Pennsylvania.

22 Q Did you ever work with Transco in the field?

23 A On ASR?

24 Q Yes.

25 A Yes. So on the -- when we started the pre-NTP work, we

1 were actually in Transco's offices there in Mount Joy for a
2 bit.

3 Q Did Transco have its own offices in Pennsylvania?

4 A Yeah. They had a field office there. I think it was
5 on a -- like a golf course driving range. We had -- they had
6 leased some space to -- for the office at that point.

7 Q And what was Transco's home base during ASR?

8 A Houston.

9 Q On a basic level, could you walk us through the
10 sequence of Welded's work installing pipe on ASR?

11 A Yeah. In installing pipe, it's -- I like to look at it
12 as a sequence of individual crews. Each crew, you know, has
13 a specialty and each crew builds upon the work the crew in
14 front of it, you know, has performed.

15 So, you start off, you know, with environmental and
16 safety crews. They go out and build access roads and then
17 put up the signage and the safety signs for, you know, around
18 your electric lines and such.

19 Then you have a -- generally, a clearing crew come in.
20 They will, you know, move topsoil. They will move the trees
21 out of the way. They will put the bridges in place.

22 And, generally behind that, you've got an environmental
23 crew that comes in and then puts your -- what's called ECD's,
24 environmental control devices, in.

25 After your clearing, your trees are done, you'll have a

1 grading crew come in, which is blasting involved. You'll
2 have a blasting contractor that works with your grading crew.
3 They will level the right-of-way for the pipe.

4 And that's the next step is stringing, which is
5 basically hauling pipe from a stockpile yard over to the
6 right-of-way, laying it along -- you know, next to where you
7 plan to dig the ditch and install it.

8 Once your pipe's all strung out, you'll have a --
9 what's called a bending engineering crew will come in,
10 measure each piece of pipe, shoot the elevations, shoot the
11 curves, you know. So, and then what they'll do is measure
12 the pipe and then lay out the amount of bends for -- that
13 each pipe needs to have put in it to meet the curvature of
14 the earth, right?

15 After that engineering is done, the actual bending crew
16 itself comes in with a bending machine and actually, wherever
17 a pipe needs to be bent, either an over-bend sag, left or
18 right ride bend. That bending crew bends that pipe.

19 And then it's basically -- it's ready to be welded up.
20 So then we use a couple of different methods of welding on
21 ASR. We did some stick rod welding and we did some semi-
22 automatic welding.

23 So then it's -- you know, the pipe gets welded up in
24 strings. After the welding is done, it's either x-rayed or
25 UT'd to make sure the weld has integrity.

1 After that UT, then that weld joint area needs to be
2 coated, so there'll be a coating crew comes in behind the
3 inspection crew and puts on an epoxy coating under that field
4 joint.

5 After that, then -- in the case of ASR, then the ditch
6 is ready to be dug and then that string is ready to be put in
7 and, in some cases, that ditch has got to be blasted and
8 then, in a lot of cases, that blasting will happen before you
9 do the stringing because you want that done before you take
10 pipe to the right-of-way.

11 So a ditch is dug either with a -- either with
12 excavators or ditch machines and then you bring in your lower
13 it in crew with sidebooms to lower each section in -- of pipe
14 that's been welded up into the ditch.

15 Following that, you'll -- your tie-in crew will tie in
16 those two sections of pipe together and just continues on
17 down the right-of-way.

18 Once it's -- after the pipe's lowered in the ditch,
19 you're backfilling starts. You put a padding in. You push
20 the grading back in.

21 Following that, topsoil goes back and then restoration
22 and then your final cleanup and removal of all your ECDs and
23 removal of the bridges and all that.

24 So that's it very quickly.

25 Q And what was the terrain on ASR, on the ASR spreads?

1 A It varied. It varied a lot. Varied up north and on
2 spread 5 it was a lot of hills, a few steeper slopes, a lot
3 of road crossings, a lot of string crossings, a lot of
4 different landowners, a lot of the environmental restricted
5 areas. There was a couple of them where, in particular, we
6 had hyper -- bat hibernation areas.

7 As we got further south, spread 6 was, again, some
8 slopes on the north part and then it started to get into a
9 lot of more farmland, rolling hills, still a lot of roads,
10 still a lot of sting crossings, lot of landowners.

11 And then spread 7, you know, we had to continue that.
12 It was a little bit flatter, still had some rolling hills,
13 lot of farmland, one significant river crossing we had down
14 in spread 7 that was formed by an HTD.

15 So it was varied. It varied. It was a pretty
16 challenging job with all the slopes and hills and roads and
17 streams.

18 Q Would you pull up PX-226, please?

19 MR. GUERKE: Your Honor, we have a short video
20 clip that we are going to show and hopefully Mr. Hood will
21 describe. Could you pause that for a second, please?

22 Describe what we're seeing.

23 THE COURT: Okay.

24 MR. GUERKE: But before I start the video, let me
25 ask you some questions, Mr. Hood.

1 BY MR. GUERKE:

2 Q Was the pipeline videoed at certain points of
3 construction?

4 A Yeah, there were several because we did it periodically
5 every month or two to give a -- you know, give a highlight of
6 what's going on. The superintendents -- we did it mainly for
7 their benefit so they could, you know, see from a bird's-eye
8 view, you know, where everything was, what the right-of-way
9 looked like, you know, get a good view of work to go, and
10 then it was recorded. So then the engineers and the office
11 could take a look at it and, you know, do counts of where
12 else to go and so forth.

13 Q How was the video recorded?

14 A We used a helicopter service that had a video camera on
15 it.

16 Q What's --

17 A And then, generally, the superintendent or myself would
18 fly when the video was taken.

19 Q What was the -- what's the date and the location of the
20 clip we're about to see?

21 A This is April 14th of '18, and this is up on spread 5,
22 somewhere in the 80 -- milepost 80 plus range.

23 Q And if you're looking at a map of Pennsylvania; we've
24 talked about spread 5, spread 6, and spread 7, how does it
25 flow? Does it flow north to south?

1 A Yeah. So 5 was the most northerly spread, 6 was in the
2 middle, and 7 was the southerly spread.

3 Q And the direction that the helicopter is flying on this
4 video, which direction is it going?

5 A This flight is from south to north.

6 Q Was this and other flyover videos provided to Transco
7 during the project?

8 A Yes. They were all provided to Transco, yes.

9 MR. GUERKE: Could you start the video at 1 hour,
10 29 minutes, and 30 seconds, please? Or -- this is fine, 20
11 seconds.

12 (Playback of video at 4:22 p.m.)

13 BY MR. GUERKE:

14 Q Mr. Hood, could you describe what we're seeing here,
15 what phase of the project we're looking at?

16 A Well, this is -- so we talked about that bat
17 hibernacula. This is -- this -- we're flying over a section
18 of it here. So the trees were knocked down but we couldn't
19 have heavy equipment on this area at this point in time
20 because of the bats, but the trees were hand felled.

21 We see some of the roads here, a cross road. Looks
22 like more of the bat area where the trees have been knocked
23 down.

24 Q Was this the -- one of the initial steps in clearing
25 the right-of-way?

1 A Yeah. Tree felling is one of the first steps that
2 takes place. In this case, we couldn't remove them because
3 we couldn't get heavy equipment on that back area.

4 Q What is this sandy area we're approaching?

5 A So, okay. So this is right-of-way that has been
6 cleared and graded already. You can see water bars in place
7 for erosion control. Here's a road crossing. There's a
8 railroad crossing with a bore pit. There's some pipe that's
9 been strung. This pipe here has been welded up and sectioned
10 already.

11 I think he's now turned around here and headed back
12 south.

13 Yeah. So there's a pretty good stream you see
14 underneath that bridge and then next to -- that's a bore pit
15 for that railroad crossing. It's just on the top of the
16 screen.

17 Q So when Welded would get to a railroad crossing or a
18 stream, how did it pass?

19 A You can do it a couple different ways. You can either
20 dam and pump the stream and open cut it or you can bore it
21 with a -- like this was a pit that was dug and you go on each
22 side and you put a boring machine in and bore underneath of
23 the trenches crossing.

24 Q When you were describing the sequence before, before we
25 started the clip, you talked about the welding of the pipe.

1 What is this extended length of pipe here?

2 A Yeah. So this is pipe that's been welded up. It's --
3 looks like it's been welded. It's been coated. So the next
4 step would be to dig the ditch and then put this pipe in the
5 ground.

6 You see the elevation change here going downhill to
7 another road and stream down at the bottom.

8 Q And you see approaching a yellow piece of pipe that's
9 in the ground. Could you describe what that is, please?

10 A Yeah. That -- what that yellow is, that's a rock
11 shield. It's a fabric that wraps around the pipe to
12 protected it when it's backfilled from any rock damage to the
13 coating.

14 Q And how is the pipe lowered into the ground?

15 A With sideboom tractors. So it's either placed as a
16 single section or you can use what's called rolling cradles
17 and, you know, rope it in, you know, a long section at one
18 time with five or six --

19 MR. GUERKE: Could you pause it right there?

20 THE WITNESS: -- sideboom tractors.

21 BY MR. GUERKE:

22 Q When you come on the right-of-way to a sharp turn like
23 this, how is it that the pipe can do like a 90-degree angle?

24 A Okay. Well, you see in the middle of the screen
25 there's a green piece of pipe with a curve in it?

1 Q Yep.

2 A It's going -- it just went off the screen. Yeah,
3 that's a -- that's what we call a factory bend or an induced
4 curve. So that's -- those were procured that way, you know,
5 with that bend. It comes from the factory. So that bend
6 gets welded into the pipe.

7 Less severe bends are done with a bending machine. But
8 this is a -- like a 30-degree bend here or something.

9 Q And what is this area here? Is this --

10 A This is -- yeah. It's just more of the same thing.
11 There's a section that looks like it just got lowered in, you
12 know, a long section of rock shield on the pipe. And so it
13 looks like they're getting ready to move another section
14 there.

15 Those are the sideboom tractors we talked about.

16 Q And is this terrain typical of what you would find or
17 encounter on spread 5?

18 A Spread 5 was a lot of terrain like this. Yeah, a lot
19 of up and down, a lot of hills, a lot of slopes, you know, a
20 lot of roads and, generally, if there was a road, there was a
21 stream next to it, so that's what we keep seeing.

22 So there's mats in place. It's generally a wetland
23 area. There's another road in the middle.

24 Q I see this. This looks like going up a hill. What's
25 it like working on a hill like that when the weather gets

1 cold?

2 A Yeah. That was -- we just passed milepost 88. So,
3 yeah, steep slopes and hills were very challenging to us in
4 the wintertime. In fact, we had to stop work on the hills
5 in -- for a period of time because of the ice and the
6 slickness of that slope. It just was not safe to do so.

7 And going back downhill, there's another couple
8 sections down here ready to -- ready for this to be dug and
9 lowered in looks like.

10 MR. GUERKE: Okay. You can stop that. Thank you.

11 BY MR. GUERKE:

12 Q Mr. Hood, I have one more one-minute clip to show you
13 and ask you what we're seeing in this next phase.

14 MR. GUERKE: Could you go to a minute, 37 and 20
15 seconds?

16 (Playback of video at 4:28:26 p.m.)

17 BY MR. GUERKE:

18 Q What spread are we about to see here?

19 A Yeah, I believe this is down in spread 7.

20 Q Looks like it's much flatter.

21 A Down sought. Yeah. Yeah, it's flatter. As you can
22 see, the -- there's more farmland and more pastureland, not
23 as many hills down here. But, again, there's a creek
24 crossing we just passed over, a couple of roads we're looking
25 at here.

1 Q What stage of the construction are you seeing here?

2 A So the section we're looking at here, the pipe has been
3 lowered into the ground and it's been backfilled. You can
4 see the skid piles are remaining there where the pipe used to
5 be. It's been backfilled in the ground. So the next step
6 would then be to move that topsoil back on to the right-of-
7 way.

8 You can see they're spreading some straw out there.
9 This is a, you know, environmental erosion control effort
10 going on.

11 And all of that black sock that -- that's a silk sock
12 which is -- that's filled with mulch and woodchips to keep
13 the water and erosion -- settlement from getting off the
14 right-of-way.

15 Q What type of piece of equipment is that that's
16 facing --

17 A That's a straw blower. That's a -- you can see there
18 it's got haybales behind it and a couple of guys operating
19 that straw blower to spread that straw out over the right-of-
20 way for erosion control.

21 Q Is that one of the piece of equipment that was built as
22 specialty equipment under the contract?

23 A Yeah. That's erosion control. That's a -- well, it's
24 a straw blower. So that's a specialty piece that we rented
25 from a environmental supplier.

1 Q And are there vehicles like this -- is this a Maruka?
2 I've heard that term a lot.

3 A That's a Maruka-type tractor that it's sitting on. So,
4 yeah, that's a -- that's the carrier, the mechanism it's
5 riding on.

6 Q Were there Marukas or Maruka-type tractors that were
7 not billed as specialty equipment?

8 A Yeah. We had quite a few. We had some of our own and
9 then some Marukas that we used for material hauling on
10 different crews that were part of the included equipment.

11 Q And for this particular piece of equipment, what
12 distinguished it between, you know, a piece of included
13 equipment versus something that's billed separately --

14 A Yeah.

15 Q -- as a specialty -- piece of specialty equipment?

16 A So this is -- you know, this was rented from that
17 environmental supplier. This was a -- you know, a big straw
18 blower unit that we didn't own. Typically, this work is
19 either subcontracted out or leased from those specialty
20 equipment suppliers. So this was not a Welded included
21 piece.

22 Q Okay. Thank you, Mr. Hood. I think we're good with
23 the -- that video.

24 Mr. Hood, we just took a spin through part of an April
25 2018 video, saw the terrain. Was this an easy job?

1 A Say that again, Kevin.

2 Q Was this an easy job?

3 A I would not categorize it as easy. It was very
4 challenging.

5 Q Did --

6 A Challenging in terms of terrain. Challenging in terms
7 of weather was -- you know, presented a lot of challenges to
8 us. Protester activity had a lot of impact on the job. Just
9 the location, the timing, the steep terrain, the conditions
10 that the guys had to work in all presented many challenges
11 for us.

12 Q You mentioned weather and we were talking earlier today
13 with Mr. Hawkins about the weather turning for the worst in
14 January 2018. Do you recall that?

15 A Yes. Yes.

16 Q Could you describe how the weather worsened in January
17 2018?

18 A So, yeah. In '18, we took a break over Christmas and
19 New Years' and came back and the weather turned extremely
20 cold. It was below zero for, you know, quite a few days
21 going in and then a lot of the ground was froze -- frozen
22 and, you know, very difficult to work in those conditions.

23 After -- you know, then it, you know, it warmed up a
24 bit. I think we actually got rain in February, which is --
25 was odd, and then -- which, you know, turned right away to

1 another slick mess.

2 And then March, it did -- we got quite a bit of snow.

3 So, you know, we went from one extreme to the other --

4 Q What does --

5 A -- and then back.

6 Q What does that type of weather do to productivity?

7 A Well, on days of the weather events, there was no
8 productivity. There -- you know, there were rainout days
9 or -- you know, weather rainouts for quite a number of those
10 and then, you know, when we were able to go to work, you
11 know, right-of-way conditions had to be -- we had to wait
12 until it dried up a little bit to even get back on the right-
13 of-way and then a few days later you'd have another event,
14 so.

15 MR. GUERKE: Your Honor, I neglected to move into
16 evidence Exhibit PX-226, the video. I'd like to move that
17 into evidence.

18 MS. EWALD: Your Honor, I appreciated the
19 demonstrative. I didn't hear Mr. Hood testify as to how or
20 who prepared that video itself.

21 MR. GUERKE: He did testify to that.

22 THE COURT: I thought he did, but --

23 MS. EWALD: As to who actually recorded the video,
24 I didn't hear the person's name.

25 THE COURT: Oh.

1 MR. GUERKE: He testified that a third-party
2 helicopter company was hired and videoed the right-of-way
3 that we looked at and gave us the date and time and location.

4 THE COURT: Yeah. I thought he did. Is that not
5 sufficient for you?

6 MS. EWALD: So, typically when a video or
7 photograph is moved into evidence, as opposed to being a
8 demonstrative, the person who took the video or photograph
9 identifies that they took it and it represents accurately the
10 conditions that are being portrayed. I did not hear that
11 evidence.

12 MR. GUERKE: I mean there's -- is there any doubt
13 that that's an accurate video? He described it in detail
14 what we were seeing.

15 THE COURT: He did. Do I remember correctly that
16 you were often in the helicopter? I don't know if you were
17 for this, or am I misremembering testimony?

18 MR. GUERKE: He did say he was often in the
19 helicopter. I didn't ask him if he was in this -- on this
20 flight. May I?

21 THE COURT: You may.

22 BY MR. GUERKE:

23 Q Mr. Hood, when the third-party helicopter companies
24 videoed the right-of-way, did you often ride along?

25 A At times, I did.

1 Q Do you remember if you were on this particular flight?

2 A I don't know if this section I was on it or one of our
3 superintendents was on it. I don't recall that.

4 Q Does the video that we just saw and the narration you
5 just gave us, does it accurately depict the right-of-way --
6 the areas that we saw on the dates in the video?

7 A Yes. Yes. It shows the milepost of where we were and
8 the date.

9 MR. GUERKE: I apply again, Your Honor, to
10 move 226 into evidence.

11 MS. EWALD: Your Honor, I have no objection to
12 using this as a demonstrative. I don't know who took the
13 video. I don't know who was responsible for ensuring that it
14 was actually a video of what we're supposed to -- what it is
15 supposed to be.

16 THE COURT: Okay. I'm not going to admit it into
17 evidence, but it's a demonstrative and I've heard the
18 testimony on it and I'll consider it as a demonstrative.

19 MR. GUERKE: Thank you, Your Honor.

20 BY MR. GUERKE:

21 Q Mr. Hood, you have some binders in front of you. I
22 think you're probably in the first binder. Could you take a
23 look at Exhibit PX-277?

24 Mr. Hood, do you have PX-277 in front of you?

25 A In binder number one?

1 Q Yes. I apologize. I said 277. I mean 274.

2 A I have 274.

3 Q Okay.

4 A Yes.

5 Q Forgive me. Mr. Hood, could you identify at the top --
6 this is an email, but could you identify who sent the email,
7 the date, and who received it?

8 A Yeah. This email is from Mr. Stringer to --
9 Mr. Springer to Mr. Sztroin on the 28th of June 2018.

10 Q Are you familiar with the content of this email?

11 A I have read it and familiar, yes.

12 MR. GUERKE: Could you scroll up, please? I'd
13 like to take a -- have you take a look at a particular part.
14 Could you highlight the part, starts with the word, A key
15 cost overrun and then run it down to the sentence -- yes, the
16 sentence that ends with a period and the word costs. It's
17 about one, two, three, four, five, six, seven lines down.
18 Okay.

19 BY MR. GUERKE:

20 Q Mr. Hood, I want to ask you some questions about
21 statements that are made in this email from Mr. Springer to
22 Mr. Sztroin and I direct your attention to about 60 percent
23 down the email to the sentence that starts with the word, A
24 key cost overrun.

25 That sentence states, "A key cost overrun contributor

1 that affected all pipeline construction spreads was the level
2 of effort in resources, both manpower and material, needed to
3 maintain environmental compliance." Did I read that sentence
4 correctly?

5 A Yes.

6 Q Do you agree with that?

7 A Yeah, that was one of the key cost overrun
8 contributors.

9 Q Could you explain, please?

10 A Well, there were -- as we talk about the weather
11 impacts, you know, these environmental devices, you know,
12 they're engineered to handle a certain amount of water and a
13 certain amount of weather. You know, the -- I guess
14 intensity of the rainfalls and intensity of the weather
15 events that we had, you know, a lot of these silk socks were,
16 you know, overcome with silt and had to be replaced, had to
17 be maintained, and there were, you know, just a lot more of
18 that, a lot more silt sock that was resultant from changes in
19 drawings that came out, just a lot more effort it took to
20 maintain those with these weather events that kept hammering
21 the job, right?

22 Q The next sentence, Mr. Hood, in this email, states,
23 "Other significant factors that added to the cost include (a)
24 resources needed to address potential sinkholes, karst
25 features in Lancaster and Lebanon Counties, spread 7 and 6,

1 respectively." I'm going to stop there for now. Did I read
2 that part correctly?

3 A Yes, sir.

4 Q Do you agree with that statement?

5 A Yeah. The karst features, so that -- you know, the
6 karst is a -- or karst feature is a void in the -- in some of
7 the limestone underneath the ground. So there was a quantity
8 that was factored into the original estimate and it was
9 planned for. And then there were quite a number of these
10 features that showed up, you know, once we cleared the right-
11 of-way. Once we dug the ditch, there were a lot more areas
12 that came to fruition.

13 So, yeah, that was a lot more mitigation needed. Like
14 what had to happen there was we had a subcontractor that
15 would come out and drill piles and fill those with cement and
16 then build structures, basically, to support underneath the
17 pipeline.

18 So, yeah, that was a significant growth on the project.

19 Q Picking up on Part B of that same sentence, it states,
20 "(B) SMAW, a/k/a stick welding, issued, coupled with
21 radiography interpretation on spread 5." Did I read that
22 part of the sentence correctly?

23 A Yes, sir.

24 Q Do you agree with that?

25 A Yeah. That -- SMAW, that's stick welding that we

1 talked about earlier, a couple different times. So welding.
2 So what was going on on spread 5 was we were making welds,
3 then the Williams x-ray or inspection company would come in,
4 shoot them, and they -- they couldn't -- they didn't know
5 what was going on with the films. They had what was called a
6 TI, or transverse indications, in a lot of these films and
7 so, as a result, they were calling them as either repairs or
8 cutouts.

9 So we -- you know, so we -- like we were instructed to
10 go back and either repair them where it was called out to
11 repair or more cutout, which means you cut that weld out, you
12 start it over, and you made a new weld and there were times
13 where the new weld, you know, had the same indication in it.

14 So -- and then -- but then later on, Williams did some
15 more research into the situation and then found that it
16 wasn't actually -- the indications weren't what they were
17 being called and then -- and they were then allowed to be
18 left in the line.

19 So those cutouts -- we went from, you know, a -- some
20 number of repairs and cutouts to zero, you know, for those
21 particular sets. So, like I say, we -- you know, we had to
22 go back and do a lot of re-work unnecessarily.

23 Q And what did that mean to your production?

24 A Well, production, production was stopped and then, you
25 know, we had to go back and then cut out. So we're

1 actually -- not only are we not making progress, but we're
2 losing progress because we're -- you know, we're going back
3 and re-doing work that was already completed.

4 Q And was that work unnecessary?

5 A Yeah. As it turned out, it was, in many cases.

6 Q And who was responsible for that?

7 A Well, the inspection company was a Williams contractor.

8 Q The next part of that sentence states, "(C) Higher than
9 estimated quantity of rock removal and disposal costs and
10 related rock shield costs to protect the integrity of the
11 line pipe coating." Did I read that part correctly?

12 A Yes.

13 Q Do you agree with that statement?

14 A Again, that was a -- you know, we had an estimate that
15 we -- that was given to us or -- where there was a rock study
16 actually that was done by Williams and provided to us that we
17 used it for the estimate that, you know, allowed for so many
18 miles of rock that would need to be blasted and managed. I
19 think, again, that was a quantity that I think ended up about
20 three times the estimated quantity and that slows you down a
21 lot because, you know, you've got to -- you can't just do
22 your grading. You may have to have rock blasting on your
23 grading crew. You may have to have rock blasting before you
24 dig the ditch.

25 So all of those -- all those activities get

1 impacted. And then not only is it in digging the ditch, but
2 then you've got to make padding material to pad that. You
3 got to haul in sand or you've got to use a padding machine to
4 pad some of that rock. It's just a lot more tedious when you
5 have rock than no rock.

6 Q And for these three items we just ran through, when you
7 encountered -- or when Welded encountered them on a job, what
8 did that do to the schedule?

9 A Well, it -- like I say, it impacts productivity, which
10 pushes things out to the right. So if you're not able to dig
11 ditch or it takes longer to dig ditch, then those number of
12 days are going to push everything out behind it. So it's
13 going to push out your lower downs. It can push out your
14 tie-ins. It can push out clean-up. Everything's going to
15 slide.

16 Q And, in particular, about the radiography
17 interpretation, what did that problem do to the schedule?

18 A Well, the same thing. So, you know, if you -- again,
19 we were not making progressive welds, we were going back and
20 making, you know, re-welds. So then, you know, everything
21 from welding to the end of the job gets pushed out.

22 Q What spread was that on?

23 A The welding was up on spread 5 primarily.

24 Q The next sentence -- I'll pick up where I left off.

25 The next sentence states, "The original production targets

1 were overly aggressive and, as such, extended the work
2 duration and subsequently increased the installation costs.
3 Collectively, Welded's estimate costs climbed from the
4 original 335 million to 454 million prior to the start of
5 construction to the current forecast at completion of \$723
6 million." Did I read that sentence mostly correct?

7 A Yes.

8 Q Do you agree with that -- those two sentences?

9 A Well, the term, overly aggressive, I don't necessarily
10 agree with.

11 Q Why is that?

12 A Well, you know, we had an estimate based on the facts
13 we knew at the time. So, you know, we assumed a certain
14 productivity. We assumed that, you know, the permits were
15 going to be in place. We assumed a certain amount of rock.
16 We assumed, you know, that -- you know, a certain number of
17 rainout days. We, you know, made a lot of assumptions to
18 come up with a weld rate and a progress rate and, you know,
19 because of whether, because of protestors, because of karst,
20 because of rock, because of all of these impacts through the
21 life of the job, it -- the productivity was impacted.

22 MR. GUERKE: Your Honor, I move Exhibit PX-274
23 into evidence.

24 MS. EWALD: Objection with regard to foundation.
25 This witness did not see this document until discovery. It's

1 solely internal Williams or a transfer document between Mr.
2 Springer and Mr. Sztroin and, as I understand, Mr. Hood's
3 testimony was entirely based on reading it after receiving it
4 in discovery.

5 He cannot testify with regard to the knowledge of
6 this, the veracity of what's written here. All he's
7 testifying is to whether or not he agreed with it. The
8 document cannot be admitted through this witness.

9 MR. GUERKE: It's not being offered for the
10 veracity of the statements. It is whether Mr. Hood agreed
11 with the events that are described in here.

12 His testimony is his -- what we're eliciting and
13 the foundation, authenticity, had been established in
14 multiple depositions with this exhibit. You can see it's
15 marked as -- in Mr. Springer's exhibit -- deposition exhibit
16 as Springer 22 and we'd move it into evidence, Your Honor.

17 THE COURT: Do you all have any agreement with
18 respect to admissions of documents that were authenticated
19 during deposition?

20 MR. GUERKE: We -- can't say we've -- we were able
21 to reach an agreement, Your Honor.

22 THE COURT: Okay. Well, I'm going to sustain the
23 objection. His testimony is in and -- as is the statement
24 which was read in too from the document.

25 So I'm not -- I'm going to sustain the objection.

1 MS. EWALD: I appreciate that, Your Honor. I
2 mean, typically, I would anticipate that the attorney would
3 seek to move the document in before examining the witness. I
4 understand that that's not how we are proceeding, but I will
5 just, again, state that Mr. Hood had no foundation for what
6 was shown in this document. Thank you.

7 THE COURT: I believe he had a foundation for his
8 testimony as to whether he agreed with it or not.

9 MS. EWALD: Thank you, Your Honor.

10 THE COURT: Um-hum.

11 BY MR. GUERKE:

12 Q Mr. Hood, you were talking about weather a little bit
13 here and previously. Is there a force majeure clause in the
14 contract?

15 A Yes, sir.

16 Q And did Welded issue two force majeure letters?

17 A Yes we did.

18 MR. GUERKE: Could you pull up Exhibit PX-300,
19 please?

20 BY MR. GUERKE:

21 Q Mr. Hood, this is a two-pager. The first is an email.
22 The second is a letter. Could you identify what the email is
23 and what's attached?

24 A Well, this email is from Mr. Browning (phonetic), who
25 is a Welded contract administrator, to Mr. Sztroin, 25th of

1 July, '18, and it attaches a force majeure notice. It's a
2 notice of an event that started July 21 of severe ongoing
3 rainfall weather event which prevented us from access to many
4 portions of the right-of-way.

5 Q Is this a letter that you wrote and signed?

6 A Yes it is.

7 Q What's the date at the top left of the letter?

8 A 25 July '18.

9 Q And could you describe briefly this -- the weather
10 event and the effect it had on the right-of-way?

11 A Yeah. So this was -- we talked earlier, you know, in
12 the summer of '18, we had quite a few, you know, significant
13 rainfall events. Some of them were, you know, multiple
14 inches of rain over several days and caused quite a bit of
15 flooding, quite a bit of, you know, damage to the right-of-
16 way and, you know, mats had floated out of place and erosion
17 control devices got overwhelmed and certainly crews could
18 not, you know, go out and work in those kind of conditions.

19 So the force majeure notice was issued because it
20 was -- you know, an event had occurred out of our control,
21 so.

22 MR. GUERKE: Could you -- Your Honor, I move PX-
23 300 into evidence.

24 MS. EWALD: No objection.

25 THE COURT: It's admitted.

1 (Exhibit PX-300 received into evidence)

2 MR. GUERKE: Would you pull up PX-352, please?

3 BY MR. GUERKE:

4 Q Mr. Hood, I'm putting in front of you an exhibit that's
5 been marked PX-352. It's similar to the last one. It has
6 like a cover email and then there's an attached letter.
7 Could you identify, please, the email and the attached
8 letter?

9 A Yeah. Again, this email from Mr. Browning, our Welded
10 contract administrator, to Mr. Sztroin on the 11th of
11 September, '18, and attached is a letter dated 10 September.
12 Again, this one is -- had to do with Tropical Storm Gordon
13 and its remnants which moved up into Pennsylvania and
14 dropped, again, torrential rains it's described as, August
15 31st, causing road closures and then flooding events.

16 So, yeah, again, you know, significant rainfall
17 hampering work for quite a bit of time and, again, access to
18 the right-of-way was with question at this point.

19 MR. GUERKE: Your Honor, I move PX-352 into
20 evidence.

21 MS. EWALD: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (Exhibit PX-352 received into evidence)

24 BY MR. GUERKE:

25 Q Mr. Hood, what did these two significant weather events

1 do to the schedule?

2 A Again, it delays our work. So it moves schedule
3 activities to the right, delays like access to the right-of-
4 way. It delays forward progress until such time as it dries
5 up and we're able to go out and get the environmental ECDs
6 and water bars put back into place and then get the right-of-
7 way cleaned up and then you can go out and do productive
8 work.

9 Q Mr. Hood, I'd like to shift gears a little bit and talk
10 about your billing duties, your invoicing responsibilities at
11 Welded.

12 What was your job as it relates to invoicing on ASR?

13 A Yeah. So we had -- I supervised the team in Mount Joy
14 and the project controls guys, cost engineers, and invoice
15 techs that prepared those invoices. They were done by the
16 cost engineers on each spread. We had a cost engineer in --
17 a couple of them in the Mount Joy office who their primary
18 responsibility was to prepare the invoice, collect the data,
19 prepare the invoice.

20 Q Did you have the responsibility to approve and sign all
21 the invoices?

22 A I did. I reviewed them and signed all the invoices
23 before they went out.

24 Q Did you have ultimate responsibility over the invoices?

25 A Yeah. Yeah, I -- like I say, I reviewed them, signed,

1 them, made sure that they were complete.

2 Q I'm going to ask you how -- about cash calls and about
3 reconciliation invoices and how they were prepared.

4 Let's start first with cash calls. How did Welded --
5 briefly, how did Welded prepare a cash call?

6 A So a cash call is a forecast. So it's basically a --
7 you know, to -- we would submit a cash call at the beginning
8 of the month or at the -- you know, for the -- for that next
9 month's projected costs. So it was based on a cash flow,
10 based on a manpower curve for the labor, based on, you know,
11 the expected progress, expected, you know, expenditures of
12 labor for each crew. It was based on expected invoices from
13 third-party vendors and subcontractors. So, you know,
14 invoices that we would receive during that month, plus a
15 forecast of labor to be expended during that month.

16 Q So same question about reconciliation invoices. Just,
17 generally, big picture, how did you and your team prepare
18 reconciliation invoices?

19 A So, yeah, reconciliations -- so, two months following,
20 once we had all those invoices from the vendors and suppliers
21 and subcontractors and equipment leasing companies, we would
22 compare that back to what we had forecast and then, you know,
23 whether a plus or minus would then be added to the next cash
24 call and then the same with labor. We'd take the actual
25 labor cost for that month, compare it to what we had

1 forecasted two months prior, whatever plus or minus got
2 carried over to the next month's cash call.

3 MR. GUERKE: Could you pull up PX-150, please?

4 BY MR. GUERKE:

5 Q Mr. Hood, I want to ask you about the invoices that
6 were submitted by Welded to Transco on this job, and I want
7 to direct your attention not yet to the screen, but to the
8 binder you have in front of you. On the front of the binder
9 it says Marcus Hood Invoice/Reconciliation Trial Exhibits.

10 A Yeah. I got that on here.

11 Q Do you have that particular binder in front of you?

12 A I do.

13 Q Mr. Hood, are you familiar with the cash call and the
14 reconciliation invoices that are contained in -- on -- in
15 this binder?

16 A Yes. These are the invoices, cash calls and
17 reconciliation invoices, that we submitted.

18 Q There's one in here that just has a slipsheet because
19 it's so big; it would take up, you know, several volumes of
20 binders, that's the one that's on the screen, PX-150.

21 A Okay.

22 Q So, including PX-150 on the screen, are these the 16
23 cash call and reconciliation invoices for October 2017
24 through October 2018 Welded submitted to Transco for payment,
25 and please take your time to review them.

1 A So the one on the screen is -- looks like this has
2 three invoices. There are multiple pages on this one screen.

3 Q Yes. Could you turn to the -- page 1 -- I'm sorry,
4 page 2 of 150? Page 3, please, page 4, and page 5?

5 A Okay.

6 Q Page 6. Okay. Page 7. So, Mr. Hood, are this -- are
7 these 16 cash call and reconciliation invoices for October of
8 2017 through October of 2018 the ones Welded submitted to
9 Transco for payment?

10 A Yeah, with the just the clarification. Some of these
11 are prior to October. So there's June and July of '17
12 invoices here as well, so.

13 Q Is that the one on the screen, the PX-150?

14 A On the screen, yes.

15 Q Are these 16 cash call and reconciliation invoices that
16 Welded submitted to Transco for the ASR project?

17 A Yes, indeed. They are.

18 Q Did you review and approve each one?

19 A Yes I did.

20 MR. GUERKE: Your Honor, I move the binder of
21 exhibits, and that's PX-124, PX-151, PX-140, PX-150, JX-034,
22 PX-182, PX-192, PX-207, JX-060, JX-067, JX-068, JX-071, PX-
23 329, JX-085, PX-394, and JX-102.

24 MS. EWALD: Your Honor, the document on the
25 screen, PX-150, I read that to be the pre-NTP invoices, I

1 believe. Is that correct?

2 MR. GUERKE: I may have described it incorrectly,
3 but what I tried to do is clarify that these are the 16
4 invoices submitted by Welded to Transco on the ASR.

5 MS. EWALD: And I think that's not -- and just for
6 a point of clarification, what is PX-150?

7 MR. GUERKE: PX-150 is a collection of invoices
8 that was submitted by Welded to Transco on the ASR.

9 MS. EWALD: And is it the pre-NPT invoices?

10 MR. GUERKE: I would suggest that the date speaks
11 for itself, whatever is on the invoice. Mr. Hood testified
12 that that's -- that they were submitted by Welded to Transco.

13 MS. EWALD: Your Honor, I apologize if it's my own
14 misunderstanding or inability to appreciate what is being
15 described in PX-150.

16 MR. GUERKE: I'll try to clean this up, Your
17 Honor.

18 With the exception of PX-150, I move all the other
19 15 invoices into evidence.

20 MS. EWALD: With the representation of counsel
21 that what's included in those exhibits are the reconciliation
22 invoices, I have no objection to them. I'm just a little
23 confused about what we're --

24 THE COURT: Okay. Here's what --

25 MS. EWALD: -- what they comprise.

1 THE COURT: Here's what we're going to do on
2 those. I would like tonight for counsel to confer on these
3 exhibits and let's see if there's any issue with respect to
4 it.

5 I understand these to be invoices that were
6 submitted in connection with the ASR project. The dates are
7 whatever the dates are. But that's what I understand them to
8 be.

9 But I will give counsel an opportunity, especially
10 on this one that's in Excel to just confirm that that's what
11 we're talking about.

12 MS. EWALD: Thank you, Your Honor.

13 MR. GUERKE: Your Honor, just a point of
14 clarification. My understanding is that these are the
15 invoices that we're fighting about.

16 THE COURT: Yeah. I assume they are and so that's
17 why I'd like to make sure we're all in agreement on that, and
18 I've got testimony from, you know, from Mr. Hood that he
19 approved, he signed. These are the invoices. I expect they
20 are, but I will give counsel an opportunity to review and
21 make sure that there aren't any issues.

22 MS. EWALD: Thank you, Your Honor. I appreciate
23 that.

24 THE COURT: Okay. But you can proceed with your
25 questioning on the documents and make sure, please,

1 Mr. Guerke, that we take this up in the morning to make sure
2 they get admitted or, if there's any issues, we get it
3 resolved.

4 MR. GUERKE: Sure thing, Your Honor. I -- that
5 was my attempt at streamlining the process --

6 THE COURT: I know.

7 MR. GUERKE: -- of getting these uncontroversial,
8 non-controversial invoices into the record. We weren't
9 successful doing that before the trial and I can go through
10 each one, and I'm happy to do that, but it seems unnecessary.

11 MS. EWALD: Your Honor, I don't have an objection
12 if the documents that are identified are the reconciliation
13 invoices.

14 My concern is I don't understand what's here in
15 PX-150 and it does not seem to be what Mr. Guerke described
16 it to be. I just want to ensure that I understand what is
17 being sought to be introduced.

18 I don't think we have any disagreement with regard
19 to the reconciliation invoices or the introduction of them.
20 I just want to make sure that they are consistent with the
21 description.

22 THE COURT: And that's why I'm going to give you
23 the opportunity this evening to take a look at PX-150 or any
24 other document here that you want to ensure that. But I do
25 think that we won't end up with a controversy at the end of

1 the day, but I think counsel should have the opportunity to
2 review it.

3 MS. EWALD: Thank you.

4 BY MR. GUERKE:

5 Q Mr. Hood, did -- when Welded submitted a reconciliation
6 invoice like the ones that are in the binder in front of you,
7 did it also submit documentation and backup invoices in its
8 reconciliation to support that invoice?

9 A Yes. There was the voluminous, you know, third-party
10 invoices from equipment supplies, vendors, materials,
11 suppliers, and so forth. All those, you know, either
12 receiving reports or third-party invoices were attached as a
13 document.

14 Q Did you oversee the compilation and collection of the
15 backup invoices for the reconciliation invoices that Welded
16 submitted to Transco?

17 A Yes. That process was overseen by myself.

18 Q Mr. Hood, how did you and your team determine the
19 different elements for the contract compensation -- or
20 compensation under the contract?

21 A We used the terms of Section 8 in the -- the
22 compensation section of the contracts. We -- you know, we
23 did -- early in the job we did a commercial awareness
24 training thereby to get them familiar with the contract terms
25 and how to bucketize those costs.

1 Q Can you briefly describe that training?

2 A Yeah. It was a PowerPoint slide deck that we put
3 together that described, you know, what is labor costs, how
4 do you calculate equipment fee, what are the other costs,
5 like mats and soot contracts and, you know, the living
6 allowances and materials and how to keep everything in the
7 right bucket.

8 MR. GUERKE: Could you pull up JX-14, please?

9 BY MR. GUERKE:

10 Q Mr. Hood, is JX-14 an email with a -- looks like a
11 PowerPoint presentation attached?

12 A Yeah. JX-14 is an email from James Grindinger, our
13 project controls manager, to Andrea Galey (phonetic), our
14 admin assistant on the project with a -- this is a kickoff
15 meeting and a slide deck that was put together.

16 Q Could we flip to the next page, page 2, please, of this
17 exhibit? And what is generally the PowerPoint that's
18 attached? Go to the next page, please.

19 A Yes. So this document was the -- a slide deck that was
20 prepared for the kickoff meeting which was late in September
21 of '17.

22 So it was -- there's several parts to it there. You
23 know, the -- Brad Brittig was our quality manager out of
24 Harrisburg. Dennis Morgan was our site quality rep. So they
25 presented a quality introduction. Rita Cotton (phonetic) was

1 document control. She did something similar. Patrick was
2 one of our project controls guys. He talked about our
3 SharePoint site and filing mechanisms. And then Jim
4 Grindinger presented the cost scheduling procedures and then
5 the invoicing.

6 MR. GUERKE: I want to focus on the part dedicated
7 to the compensation under the contract. Could you go to
8 page 12, please? I'm sorry. Page -- oh, yeah. That's it.
9 Page 12.

10 BY MR. GUERKE:

11 Q I put on the screen, and you may have it in front of
12 you in your binder, page 12 of this presentation. What
13 is -- what's shown here?

14 A So this is -- this was part of Jim's presentation. It
15 was part of the project controls and invoicing. This
16 describes the components of the -- the components of
17 reimbursable activities under Section 8. So I think there's
18 about ten different -- 10 or 11 different categories of
19 costs. This is just a high level that describes each
20 category, each bucket, if you will.

21 Q And what's the source of the information you and your
22 team used for the compensation section of this presentation?

23 A Section 8 of the contract was where this is all
24 defined.

25 Q What was the purpose of this part of the presentation?

1 A This is the -- like I said, this was to identify
2 the -- you know, the various buckets of reimbursable cost.

3 MR. GUERKE: Could you go to the next one, please?
4 Page 13.

5 BY MR. GUERKE:

6 Q What's being described in this part of the
7 presentation, Mr. Hood?

8 A Okay. So here we took the first item from the last
9 page, the labor, and then it breaks down into the different
10 components of what makes up labor cost, so those eight or
11 nine items, eight or nine bullets there at the top, all
12 rolled into labor costs.

13 Q And do these items trace to the definition of labor
14 costs in the contract?

15 A Yes they are.

16 Q Could you go to the next page, please? What is this
17 page -- I believe it's 14 of the exhibit, page 13 of the
18 PowerPoint?

19 A So this shows how the equipment fee is to be
20 calculated. It takes all those labor components and you take
21 a 50 percent factor of that and that becomes the equipment
22 fee that gets billed on each invoice.

23 MR. GUERKE: Next slide, please.

24 BY MR. GUERKE:

25 Q I believe the next two go together. So, first, what is

1 shown on this slide, which is the exhibit, page 15, but the
2 slide, page 14?

3 A Yes. This is -- it's an excerpt of the cutout of
4 that -- I think it's Exhibit 2, maybe, of the -- of that
5 Section 8, which lists the included equipment.

6 MR. GUERKE: Go to the next slide, please.

7 BY MR. GUERKE:

8 Q And what does this show?

9 A Again, this continues on. It describes what's
10 included. So these are non-reimbursable items. There are
11 included costs under that 50 percent fee. So just a laundry
12 list of various items that do not get billed.

13 MR. GUERKE: Go to the next slide, please.

14 BY MR. GUERKE:

15 Q The next one has at the top, Specialty Equipment. What
16 is depicted on this slide?

17 A Yeah. Specialty equipment was another component of
18 cost and then, you know, the definitions are provided in the
19 top two bullets and then a list, not an inclusive list, but a
20 sample list of the types of things that could be specialty.

21 MR. GUERKE: Next slide, please.

22 BY MR. GUERKE:

23 Q Next slide has the title, Subcontracts. Can you
24 describe what you're showing here?

25 A Those are just some of the terms out of the subcontract

1 section. You know, subcontracts were, again, a reimbursable
2 cost. There were some stipulations on which ones needed, you
3 know, bid list approval and needed to be competitively bid
4 for --

5 MR. GUERKE: Next slide, please.

6 THE WITNESS: -- for the project.

7 BY MR. GUERKE:

8 Q We can go through the next two quickly. What's being
9 shown on the materials slide, Mr. Hood?

10 A Again, similar. Materials was one of those cost
11 categories, with a definition at the top and then a sample
12 list of the types of materials that fall under the category
13 materials.

14 MR. GUERKE: Next slide, which is number 20 on the
15 slide deck, but 21 in the exhibit.

16 THE WITNESS: Yeah, there's a couple of things
17 here. Mats is the first one. So mats, again, was a
18 competitively bid provided item and then under, Other, was
19 mode and de-mode costs.

20 MR. GUERKE: Next slide, please. I think I
21 missed -- I gave you the wrong number last time. This slide
22 is page 20 of the PDF, page 21 of the exhibit.

23 BY MR. GUERKE:

24 Q What are you showing here under the heading, Living and
25 Travel Expenses?

1 A Yeah. Another one of those cost categories and then
2 the definitions that come out of Section 8 of the contract.

3 MR. GUERKE: Next slide, please.

4 BY MR. GUERKE:

5 Q This is titled, Fixed Fee. What is -- what are you and
6 your team showing here?

7 A Yeah. Again, another cost category, which just
8 describes how we handle and then bill the fixed fee.

9 MR. GUERKE: And the last one I want to look at is
10 the next slide, Slide 22, page 23 of the exhibit.

11 BY MR. GUERKE:

12 Q This one's titled, Incentive Program. Can you tell us
13 what we're -- what's included in the Incentive Program slide?

14 A Yeah. This was just a brief on to the audience there
15 on what that incentive program consisted of. There were
16 three components where there was a cost incentive, there was
17 a schedule incentive, and there was a safety incentive. So
18 this was to make them aware of those three components.

19 MR. GUERKE: Your Honor, I move Exhibit JX-14 into
20 evidence.

21 MS. EWALD: No objection.

22 THE COURT: It's admitted.

23 (Exhibit JX-14 received into evidence)

24 MR. GUERKE: Your Honor, this a natural breaking
25 point for me. Can I suggest we stop for the day?

1 THE COURT: Okay. Mr. Hood, your testimony will
2 continue in the morning. You are not to talk to anybody
3 about your testimony over the night.

4 THE WITNESS: Okay.

5 THE COURT: Okay? And is there anything we need
6 to take up before we break?

7 MR. GUERKE: I don't think so, Your Honor. We're
8 starting at 9:30 tomorrow and is tomorrow when you have
9 afternoon - -

10 THE COURT: Tomorrow is --

11 MR. GUERKE: -- Chapter 7s?

12 THE COURT: It is. So 2:30. So think about it in
13 terms of your presentation. If there's a more or less
14 natural break for lunch, given that we're going to be taking
15 a break at 2:30 for about an hour. So just keep that in
16 mind.

17 Ms. Ewald?

18 MS. EWALD: I have no -- I have nothing to address
19 the Court. Thank you.

20 THE COURT: Okay. Thank you. Then we're
21 adjourned for the evening.

22 MR. GUERKE: Thank you, Your Honor.

23 THE COURT: See you in the morning.

24 (Proceedings concluded at 5:20 p.m.)

25

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling

September 2, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams

September 2, 2023

Tracey J. Williams, CET-914
Certified Court Transcriptionist
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/s/ Mary Zajackowski

September 2, 2023

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