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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 18-12378 (LSS)
WELDED CONSTRUCTION, L.P.,	.	
<i>et al.</i> ,	.	(Jointly Administered)
	.	
Debtors.	.	
.	
WELDED CONSTRUCTION, L.P.,	.	Adversary Proceeding
	.	No. 19-50194 (LSS)
Plaintiff,	.	
	.	
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, September 6, 2023
.	9:28 a.m.

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

TRIAL (DAY 9)

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ADVERSARY MATTER GOING FORWARD:

WELDED CONSTRUCTION, L.P., Plaintiff, v. THE WILLIAMS COMPANIES, INC., WILLIAMS PARTNERS OPERATING LLC, and TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC, Defendants.
Case Number 19-50194 (LSS)

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1 (Proceedings commence at 9:28 a.m.)

2 (Call to order of the Court)

3 THE COURT: Please be seated.

4 MR. GUERKE: Good morning, Your Honor.

5 (Pause)

6 JOSEPH SLAVIS, WITNESS FOR THE DEFENDANTS, PREVIOUSLY

7 AFFIRMED, RESUMES STAND

8 THE COURT: Mr. Guerke.

9 MR. GUERKE: Thank you. Good morning, Your Honor.

10 For the record, Kevin Guerke on behalf of Welded
11 Construction.

12 We left off Thursday evening with Mr. Slavis on
13 the stand, and he is back there today.

14 THE COURT: I see that. And Mr. Slavis, you are
15 still under oath.

16 THE WITNESS: Understood.

17 MR. GUERKE: May I proceed?

18 THE COURT: You may.

19 CROSS-EXAMINATION (Cont'd)

20 BY MR. GUERKE:

21 Q Good morning, Mr. Slavis.

22 A Good morning.

23 Q I'm going to ask you about PTAG.

24 A Okay.

25 Q It's your interpretation of the contract that an agency

1 fee paid to PTAG is not a wage or benefit paid directly to
2 employees, so you contend that that's unallowable, right?

3 A Correct.

4 Q After you removed the alleged agency fee from the costs
5 of the PTAG people, you ran an analysis comparing those folks
6 to calculate the excess over 7.5 percent, right?

7 A Correct.

8 Q You then added the 50 percent equipment fee, right?

9 A In terms of the unallowable calculation?

10 Q Correct.

11 A Yes.

12 Q Those were your basic three steps related to PTAG,
13 right?

14 A Correct.

15 Q You used percentages in an email to establish the
16 agency fee, correct?

17 A Correct.

18 Q And could you pull up your slide presentation, Page 44,
19 please. You should have that in front of you; if not, it's
20 going to come up on the screen.

21 A Yes, sir.

22 Q This is the email that you reference to support your
23 opinion, correct?

24 A Correct.

25 Q This email doesn't say that these percentages were paid

1 going forward, right?

2 A Right. As I explained, I think both in my report and
3 certainly in our deposition discussion and listening to trial
4 here the -- the past two weeks, I -- I think everybody is in
5 agreement that an agency fee was paid. Nobody has been able
6 to identify what that fee was. So I used these percentages
7 as a proxy for the fee that was paid.

8 And behind this email was a spreadsheet identifying by
9 name which one of these 5, 15, 20, 25 percent fees was
10 applied or was applicable to each person. So I used that as
11 a proxy for the agency fee that was paid to PTAG.

12 Q So you're assuming that these percentages apply to all
13 the PTAG personnel for the life of the project, correct?

14 A Well, what I'm assuming is that PTAG wants their fee.
15 And if this is the fee that they would establish for what I
16 believe to be the transition of employees, then I assumed
17 that it would be a similar fee they would want to earn
18 throughout the life of the contract, yes.

19 Q But you don't know, in fact, whether the percentages
20 from this email were actually invoices that Transco paid,
21 right?

22 A Well, we know what Transco paid because the salary for
23 each of those people was included on that sheet. And we know
24 that, you know, just by looking at two-hundred-something-
25 thousand for an administrative assistant that it certainly

1 includes more than just base wages.

2 Q But you don't know, in fact, whether the percentages on
3 this spreadsheet were actually invoices that Transco paid,
4 right?

5 A Right. I said it's a proxy for the fee that's built
6 into those wages because no one has been able to identify
7 what the agency fee was, just that there is one.

8 Q So you compared the PTAG invoice details. Then you
9 identified employees' respective agency percentages, which
10 are contained in Ms. Krzysztofik's email, right?

11 A Yeah, I believe so. It was the backup -- this is the
12 body of the email, and then it was an attachment to it.

13 Q And as part of that email involved -- email exchange
14 with Mr. Hawkins and Mr. McNabb, correct?

15 A Yes.

16 Q Let's take a look at that email that you have part of
17 it in Slide 44. It is Exhibit D-325. And we'll put that on
18 the screen for you.

19 Q Mr. Slavis, just to identify D-325, this is, at the
20 top, an email from John McNabb. It's dated August 29, 2017.
21 It's to Stephen Hawkins and a few other people. Is that
22 correct?

23 A I see that, yes.

24 Q This is part of the -- part of this email is what you
25 used in your report and also Slide 44 of your presentation,

1 correct?

2 A It -- is it Slide 44 from the next page of this, I
3 suppose?

4 Q Slide 44 is in your slide presentation.

5 A Right. I just -- I was only seeing one page, but I see
6 it now, yeah.

7 Q Okay. Well, let's start at the bottom. It's the first
8 email on page -- D-325, Page 2. And it is from Jackie
9 Krzysztofik. It states:

10 "Hello. I have had many different conversations
11 in regards to the conversion/transition of our current PTAG
12 employees over to Welded."

13 Did I read that sentence correctly?

14 A Yes.

15 Q So this email is talking about Welded hiring PTAG
16 people directly and converting them to Welded employees,
17 correct?

18 A Correct.

19 Q The next sentence states:

20 "We have run into a few different issues with
21 this. I spoke to Tom Hopper, and he said that many of the
22 employees signed a non-compete disclosure which limits them
23 coming to work for Welded once their contracts end" --
24 "contract ends for up to a year. Tom also mentioned that
25 there is a standard transition fee schedule to convert folks

1 over. This can be quite costly."

2 Did I read those sentences correctly?

3 A You did.

4 Q So what she's saying here is that there are non-
5 competes in a standard transfer fee to convert a PTAG person
6 to a Welded employee, correct?

7 A Correct.

8 Q Next part -- and this is the part you quote in your
9 report in Slide 44:

10 "I have drafted a list of our current PTAG
11 employees slated for ASR (for now) and what we current" --
12 "what we are currently paying them under the PTAG work
13 authorization. I have outlined how many months each
14 individual has been with us and what their fee percentage
15 would be off a base salary."

16 Did I read those sentences correctly?

17 A You did.

18 Q And then, following that, there are five lines with
19 certain time-elapse periods and potential fees paid to PTAG,
20 correct?

21 A Correct.

22 Q And these are the percentages you used to determine
23 agency fees paid to PTAG, right?

24 A As they apply to each of the individuals, based on the
25 hours they charged the job, yes.

1 Q But part of your presentation, Slide 44, does not
2 include the first paragraph in this email, correct?

3 A Correct.

4 Q It also does not include the last two paragraphs in
5 this email, correct?

6 A Correct.

7 Q These percentages are not agency fees; they're
8 potential transfer fees, correct?

9 A Correct. That I had to use as a proxy because the
10 amount of the agency fee was not identified anywhere.

11 Q And this is the beginning of a discussion about whether
12 Welded wants to try to convert these PTAG people to Welded
13 employees, right?

14 A Appears so, yes.

15 Q You have no evidence that Welded actually paid these
16 transfer fees, correct?

17 A Well, there's been testimony that Welded paid agency
18 fees. We don't know exactly the percentage. It could be
19 higher. I think the average worked out to be about 17, 18
20 percent.

21 Q You have no evidence Welded ever paid these transfer
22 fees, right?

23 A I have not seen it, no.

24 Q And you have no evidence Welded ever charged Transco
25 these transfer fees, correct?

1 A Well, again, we know that what Welded charged Transco
2 included an agency fee.

3 Q You have no evidence Welded ever charged Transco these
4 transfer fees, right?

5 A Right. No one has identified what the fee is.

6 Q So if you slide up the email, it's the August 29th,
7 2017, email at 4:45 p.m. Ms. Krzysztofik is writing to Steve
8 Hawkins at this point. Do you see what part I'm looking at?

9 A Yes.

10 Q Here she states:

11 "Steve, here is the PTAG master list I put
12 together with the information I have. We currently have 33
13 PTAG employees, 20 of which are on the org chart for ASR. I
14 have two individuals that I need to confirm if they are still
15 working for us. I do not see them on the time sheet for last
16 week. Including them in the numbers for now."

17 Did I read those sentences correctly?

18 A You did.

19 Q So, here, Ms. Krzysztofik sent a list of PTAG people
20 with estimated transfer fees, right?

21 A Assuming that's the same email list attached to the
22 other email, yeah.

23 Q Mr. Hawkins then responds at 4:48 p.m. He states:

24 "That's a lot of people, indirects at high
25 compensation we can't afford to carry. We need to consider,

1 one, reduction immediately; two, whether it is in Williams
2 and Welded's best interest to staff ASR with agency personnel
3 and whether those positions are necessary. We are a
4 construction general contractor, not construction
5 management."

6 Did I read those parts correctly?

7 A Yes.

8 Q He states then:

9 "Three, the intent of the agreement of PTAG was
10 always short term to handle the sharp increase and peak to
11 meet rapid mobilization of seven spreads nearly
12 simultaneously, plus cover ASR planning, not a long-term
13 approach to staffing."

14 Did I read that part correctly?

15 A I think you said "agreement" instead of "engagement."
16 But generally speaking, yes.

17 Q The next part Mr. Hawkins states:

18 "If PTAG employees signed a non-compete, that is
19 their issue and I won't be boxed in by that."

20 That's what he states, correct?

21 A Correct.

22 Q And then the last part, he says:

23 "Please review and provide options and
24 recommendations now so we can adjust and revise staffing
25 plans as required."

1 Did I read that part correctly?

2 A Yes.

3 Q So Mr. Hawkins is asking for options and
4 recommendations, correct?

5 A Yes.

6 Q He notes that the non-compete are not Welded's issue,
7 right?

8 A Correct.

9 Q And he notes -- takes note of the high compensation for
10 these indirect people, right?

11 A Correct.

12 Q Mr. McNabb then responds at the top, a few hours later.
13 He writes:

14 "The intent of our agreement with PTAG was that we
15 could hire whoever we want when we wanted. I don't agree
16 with any additional compensation or any non-compete clause.
17 I will get them to back off if we wish."

18 Q Did I read that correctly?

19 A You did.

20 Q So Mr. McNabb responds and he says he doesn't agree
21 with any transfer fee, right?

22 A Well, he's saying he's going to try to get them to back
23 off it.

24 Q Mr. McNabb and Mr. Hawkins do not state that the PTAG
25 fees are not reimbursable costs, correct?

1 A That -- they don't state that here, no.

2 Q They're actually discussing the high cost of PTAG,
3 right?

4 A Right.

5 Q So, because they discuss the high cost of PTAG, you
6 conclude Mr. McNabb and Mr. Hawkins don't think it's
7 reimbursable, right?

8 A No. I don't think it's reimbursable because it's a fee
9 that's not paid directly to the employee.

10 (Pause)

11 Q Give me that answer again, please.

12 A I don't think the fee is reimbursable because it's a --
13 it's a fee, a benefit, a pay that's not paid directly to the
14 employee.

15 Q Now do you have your deposition in front of you, Mr.
16 Slavis? I gave it to you Thursday. It should be in a small
17 binder.

18 A Yeah.

19 Q Could you please turn to your transcript, Page 140.

20 (Pause)

21 Q Page 140 of your transcript, Line 13:

22 "Question: But Mr. Hawkins and Mr. McNabb don't
23 say that the PTAG fees are not reimbursable costs, do they?

24 "Answer: I don't think they use those terms, but
25 they talk about indirect and high compensation we can't

1 afford to carry. You know, so if they've got to carry it,
2 then I would imagine that is something that they don't think
3 is a reimbursable -- is reimbursable."

4 Did I read that correctly?

5 A Yes.

6 Q And that's your -- that was your conclusion even though
7 that's not what the email says?

8 A Right.

9 And then on my Page 141, I talk about agency fee not
10 being benefits paid to the personnel.

11 Q But they're expressing concerns with the cost. They
12 want to lower the costs, right?

13 A Right. Because they're higher-paid people, because
14 they're getting them from a third-party agency, which
15 necessarily includes a fee.

16 Q So to the extent they're eliminating high costs,
17 they're looking out for Transco, correct?

18 A Trying to. But to the extent they billed Transco for
19 agency PTAG people, then those were higher-cost people than
20 could potentially have otherwise been found.

21 Q Concern for cost doesn't make it a non-reimbursable
22 cost, right?

23 A I'm not saying it does.

24 Q Any agency fee would be part of the fee that Welded had
25 to pay to PTAG to use PTAG people, right?

1 A If they chose to use them, yes.

2 Q And there is always some compensation to an agency for
3 that agency providing its personnel, correct?

4 A Correct.

5 Q The invoices that you reviewed don't parse out the fees
6 from the wages, correct?

7 A Not that I've seen, no.

8 Q You don't know what part of the PTAG labor cost was
9 paid directly to PTAG employees, right?

10 A No.

11 Q Right? You don't know?

12 A I don't.

13 Q There's no separate agency fee, correct?

14 A Not identified on the invoices, no.

15 Q And agency fee paid to agency personnel is not
16 addressed anywhere in the contract, correct?

17 A The contract just talks about fees and benefits paid
18 directly to the employees.

19 (Pause)

20 Q The agreement with PTAG that you cite is from December
21 of 2016, right?

22 A I don't recall. But is that in the slide there?

23 (Pause)

24 A I mean, the email is from August of '17. I don't know
25 when the agreement was.

1 Q Well, you know the PTAG agreement that you're -- that
2 you cite in your report was signed after the August 26th,
3 2016, contract, correct?

4 A I mean, I'm sure that's right. I don't have the date
5 in front of me, but ...

6 Q And the PTAG people you analyzed were brought on the
7 job, you know, months later in 2017, right?

8 A Correct.

9 MR. GUERKE: Could you pull up D-410, please?

10 BY MR. GUERKE:

11 Q Mr. Slavis, D410 is on your screen. This is an email
12 dated October 3rd, 2017, from Renee Bisnett to Jackie
13 Krzysztofik, and the subject is "PTAG conversions," correct?

14 A That's the subject, yes.

15 Q This is one of the emails that you rely on, Footnote 62
16 of your report, correct?

17 A I would have to double-check that, but ...

18 MR. GUERKE: Could you pull up D-2047, Page 56,
19 please.

20 BY MR. GUERKE:

21 Q This is Page 56 of Exhibit 2047. It's page 52 of your
22 report. And I'll draw your attention to Footnote 62.

23 Footnote 62 references the October 3rd, 2017, email
24 that I just pulled up on the screen, which is D-410, right?

25 A I see that, yes.

1 MR. GUERKE: Okay. Back to D-410, please.

2 Q So here D-410, the second email in this string.

3 MR. GUERKE: f you could show us the second half.

4 Q The second email in this string is from Jackie
5 Krzysztofik to Renee Bisnett. The subject is "PTAG
6 conversion." And she says:

7 "Hi. I know you said that you have the electronic
8 WA for the PTAG employees. Can you please send me the
9 following" --

10 And then she lists several names, right?

11 A Correct.

12 Q And then attached -- if you go to the next page, then
13 attached are several work authorizations from PTAG people,
14 right?

15 A Yes.

16 Q And these are the work authorizations that you
17 referenced in your report, right?

18 A Correct.

19 Q And you can flip through all of them if you'd like.

20 But these work authorizations show start dates in 2017,
21 correct?

22 A I mean, I'm just looking at the ones on the screen, but
23 yes. April, yep.

24 (Pause)

25 A March '17, March '17. March '17. I have no reason to

1 believe they're not all in '17.

2 Q Fair enough.

3 You know that Welded invoiced Transco for PTAG
4 personnel in its invoices, correct?

5 A Correct.

6 Q Transco reviewed the invoices before paying them,
7 correct?

8 A Presumably, yes.

9 Q And like any other invoices, if there was an agency
10 fee, Transco paid the agency fee associated with the PTAG
11 agency personnel, right?

12 A Right. If they paid the total, then they paid agency
13 fee.

14 Q And you don't know why Transco didn't dispute those
15 PTAG charges at the time --

16 A As I've --

17 Q -- correct?

18 A -- said before, I wasn't around back then.

19 MR. GUERKE: Your Honor, I move to admit D-410,
20 D-325, and D-326, which is the attached spreadsheet.

21 (Participants confer)

22 MR. BURWOOD: Your Honor, we understand that D-325
23 and 326 may already be admitted, but no objection.

24 THE COURT: Okay. What about D-410?

25 MR. BURWOOD: No objection, Your Honor.

1 THE COURT: Thank you. They're admitted.

2 (D-325 and D-326 received in evidence)

3 (D-410 received in evidence)

4 MR. GUERKE: Thank you, Your Honor.

5 BY MR. GUERKE:

6 Q Mr. Slavis, Bechtel provided seconded employees to the
7 ASR project, right?

8 A Correct.

9 Q Bechtel invoiced Welded for its seconded employees,
10 right?

11 A Correct.

12 Q You have no reason to believe that Bechtel did not
13 perform the services in those invoices, correct?

14 A As I said, I wasn't around during the time, so I have
15 no reason one way or the other.

16 Q Welded paid \$486,000 at one point for the Bechtel
17 seconded employees, correct?

18 A I believe that's the number, yes.

19 Q You understand that Bechtel wrote off roughly a 2.8-
20 million-dollar balance that Welded owed to Bechtel, correct?

21 A Correct.

22 Q The Bechtel write-off occurred in December 2020, right?

23 A I think that's when the write-off actually happened,
24 yes.

25 Q The write-off occurred over two years after the

1 bankruptcy was filed, right?

2 A Sounds about right.

3 Q You don't know, one way or the other, the reason
4 Bechtel wrote off the debt, right?

5 A Only that they had stopped paying it as of like
6 November of '17. So apparently it wasn't going to get paid.

7 And I think -- was it Mr. Wall who testified that they
8 knew it wasn't going to get paid, so they wrote it off?

9 Q If Bechtel was paid, you agree that the 50 percent
10 equipment fee would apply, correct?

11 A I think it counts as labor, so it carries a fee, yeah.

12 Q You didn't know at the time of your report that Bechtel
13 filed proofs of claim in this bankruptcy case, correct?

14 A I did not.

15 Q On November 4th, 2022, the date of your deposition, you
16 were not aware that payments were made on a surety either,
17 right?

18 A At that time, no. But I've seen them since, yes.

19 Q You did not know there was a settlement related to
20 Bechtel's proof of claim in this case either, right?

21 A I guess I still don't know the details of that
22 settlement, but I certainly didn't know it then.

23 Q It's common in the industry for a company to charge a
24 multiplier to cover benefits of a -- of seconded employees,
25 correct?

1 A A multiplier for benefits?

2 Q Yes.

3 A Typically, yes.

4 Q And the contract here doesn't preclude a multiplier,
5 right?

6 A It doesn't include a multiplier for the benefits paid
7 directly to the employee.

8 Q Transco would get the benefit of Bechtel's work without
9 paying for it if it's not deemed a reimbursable cost, right?

10 (Pause)

11 A I'm sorry. I don't understand the question.

12 Q Transco would get the benefit of Bechtel's work without
13 paying for it if it's not considered a reimbursable cost,
14 correct?

15 A A. Right. Or alternatively, they paid for it and
16 Welded didn't have to pay Bechtel.

17 Q So the answer to my question is correct?

18 A I mean, assuming those employees did that work, yes.
19 But if there's no reimbursement, I don't know how you pay it.

20 MR. GUERKE: Could we take a look at Slide 67 from
21 Mr. Slavis' presentation, please.

22 BY MR. GUERKE:

23 Q Mr. Slavis, Slide 67 includes part of your opinion
24 about pickup trucks and included equipment, right?

25 A Correct.

1 Q So it's your opinion that pickup trucks were improperly
2 charged to Transco because trucks are part of included
3 equipment, right?

4 A Correct.

5 Q That's based on Exhibit 2, in your view, right?

6 A Yes.

7 (Pause)

8 Q But if you go to --

9 MR. GUERKE: Could you go to Slide 63, please?

10 (Pause)

11 BY MR. GUERKE:

12 Q In Slide 63, you have a cutout of Exhibit 2, correct?

13 A Correct.

14 Q And as you note, Exhibit 2 carves out pickup trucks
15 that appear under labor costs, right?

16 A Correct.

17 Q Labor costs include wages and benefits paid to NPLA
18 personnel, right?

19 A Yes.

20 Q Labor costs include vehicle rental/pay also, right?

21 A Some of them, yes, sure.

22 Q The \$3.1 million that you're challenging are for rented
23 vehicles for personnel, right?

24 A It appears so, yes.

25 Q That's vehicle rental and a labor cost by definition,

1 right?

2 A I don't see how that is a labor cost when it's rented
3 from a third party.

4 (Pause)

5 Q Your unallowable pickup rental costs total \$3.1
6 million, that's on Page 67 of your slides, right?

7 A Correct.

8 Q It's your interpretation of the contract that Welded
9 invoiced for pickup truck rentals that are within the
10 definition of "included equipment." That's why you're
11 challenging it.

12 A Correct.

13 Q The pickup trucks that are subject to your 3.1-million-
14 dollar included equipment opinion were leased and provided to
15 labor as part of their union benefits, correct?

16 A I don't see how -- I don't see that as the evidence
17 here.

18 The ones that were part of the benefits are the \$7.6
19 million that I quantify there in the next sentence.

20 (Pause)

21 Q The \$3.1 million that you're challenging were paid as
22 subcontractor expenses, correct?

23 A Yes.

24 Q You don't know who was provided with the pickup trucks
25 that you're challenging, correct?

1 A I do not.

2 Q You agree that, if a pickup truck was provided as a
3 benefit under labor costs, it's not considered included
4 equipment, correct?

5 A Right. That's the 7.6 million.

6 MR. GUERKE: Could you pull up JX-1, Page 487,
7 please.

8 (Pause)

9 BY MR. GUERKE:

10 Q And can you take a look at Page 487? here's a
11 definition of "subcontractor" at the top.

12 (Pause)

13 Q Mr. Slavis, the "subcontractor" definition includes:

14 "Third parties with whom contractor had entered
15 into leases or rental agreements for equipment, machinery, or
16 other project/construction items."

17 Right?

18 A Correct.

19 Q Subcontractor costs are reimbursable costs under the
20 contract, right?

21 A Generally speaking, yes.

22 Q And this \$3.1 million in trucks were provided by
23 subcontractors, right?

24 A Right. But included equipment is covered by the
25 equipment fee.

1 Q So it's correct that the \$3.1 million in trucks were
2 provided by subcontractors, correct?

3 A Right. But ultimately provided by Welded through a
4 subcontractor.

5 (Pause)

6 Q I want to ask you about dump trucks.

7 The \$1.2 million you're challenging, that's not a
8 situation where Welded rented dump trucks itself and did the
9 hauling, correct?

10 A I believe some of it is, yes.

11 Q What you're challenging -- and it's on Slide 73 of your
12 presentation. What you are challenging are third-party
13 service providers and subcontractors, correct?

14 A Yeah. Some is in material invoices, and some is in
15 subcontract invoices.

16 Q Welded contracted with a subcontractor to provide
17 hauling services for which the subcontractor used trucks,
18 right?

19 A Correct.

20 Q What's being subcontracted is hauling services, right?

21 A Including the rental of the truck, yes.

22 Q That hauling service used its own dump trucks, so you
23 excluded it, correct?

24 A As included equipment, yes.

25 Q The definition of "subcontractor" includes

1 subcontractors for leases and rental of equipment, correct?

2 A Correct.

3 Q So, if a service uses any equipment covered under
4 included equipment, you excluded it, correct?

5 A Well, again, we did it for dump trucks, and we just
6 discussed pickup trucks.

7 And I believe, when I testified, I also said that this
8 is the way that Welded had been treating it earlier in the
9 project, and then they moved this hauling line item to
10 reimbursable.

11 Q By your definition, every time a subcontractor is
12 retained to provide services or equipment, materials,
13 supplies, or consumables to the project, you have to parse
14 out what part is the included equipment and what part is the
15 labor, right?

16 A Well, again, as I testified originally, not every time
17 because the delivering of that stuff to the site was allowed.
18 This was all intra-site.

19 Q But my general statement is correct, right?

20 A That if it's included equipment, how it's provided,
21 whether they own it, lease it, rent it, then it's included
22 equipment and covered by the fee.

23 Q I'll try it again.

24 By your definition, every time a subcontractor is
25 retained to provide services and/or equipment, materials,

1 supplies, or consumables to the project, you have to parse
2 out what part is included equipment and what part is labor,
3 right?

4 A Well, that's what I did here, yes.

5 Q And that's regardless of whether it's incidental to the
6 subcontractors' service, right?

7 A Right. Under the premise that the equipment they're
8 using was included equipment.

9 Q Most subcontractors providing services on a pipeline
10 project involve the use of a vehicle or equipment, right?

11 A Some of them, yes.

12 Q So, under your theory, if equipment or a vehicle is
13 involved, it's included equipment regardless of whether it
14 was provided by a subcontractor, if it meets the definition
15 of "included equipment," right?

16 A Correct.

17 Q I want to ask you about hauling services.

18 It's your opinion that the hauling of equipment to
19 different parts of the project after that equipment was
20 provided to the project is the provision and supply of
21 equipment, correct?

22 A Right. Assuming it's included equipment.

23 Q And that opinion is just based on your reading of the
24 contract and the language of "provision and supply," right?

25 A Correct.

1 Q It's your opinion then that, when a piece of equipment
2 is originally delivered to the job, that is the supply and
3 provision of included equipment, correct?

4 A Correct.

5 Q That's the dropping it off at the start of the job,
6 right?

7 A Getting it there, yeah.

8 Q It's also your opinion that hauling that equipment,
9 let's say a month later, to different parts of the project is
10 also the provision and supply of equipment, right?

11 A Correct.

12 Q So, once the piece of equipment hits the job site, it's
13 your opinion everything related to it is then supply and
14 provision of equipment until it leaves the job site, correct?

15 A Correct.

16 Q You agree that the words "freight" and "hauling" are
17 not in the definition of the equipment fee, correct?

18 A It just says:

19 "The cost, expense, overhead, profit, and all
20 compensation due and payable to contractor in connection with
21 the provision and supply of included equipment."

22 Q So it -- so you agree the words "freight" and "hauling"
23 are not included in the definition of the equipment fee,
24 correct?

25 A But "provision" is and "supply" is and "all

1 compensation due" is.

2 Q But the words "freight" and "hauling" are not included
3 in the definition of "equipment fee," right?

4 A The words "freight" and "hauling" are not in that
5 sentence.

6 Q The words "freight" and "hauling" are not included in
7 the definition of "included equipment," right?

8 (Pause)

9 Q We can pull it up on the screen if you'd like.

10 A Yeah, or I can get it in here.

11 MR. GUERKE: Could you put up -- pull up JX-1,
12 Page 485, please?

13 (Pause)

14 That was the definition of "equipment fee." If
15 you could go to the next page, please. Next page, please.

16 BY MR. GUERKE:

17 Q Okay. This is on Page 487.

18 A Yeah.

19 Q And my question is: The words "freight" and "hauling"
20 are not included in the definition of "included equipment,"
21 right?

22 A I mean, they have sleds for transporting,
23 transportation and handling of materials.

24 I do not see "freight" or "hauling."

25 Q And the words "freight" and "hauling" are not in

1 Section E either for equipment fee, right?

2 A Section E, did you say?

3 Q E, yes.

4 MR. GUERKE: If you can flip, I think it's two
5 pages forward. One more, please. There it is.

6 THE WITNESS: Yeah. That's the section we were
7 just reading a second ago with:

8 "Provision, supplies, overhead profit, all
9 compensation due."

10 But, no, "freight" and "hauling," those two words
11 are not in there.

12 BY MR. GUERKE:

13 Q Next, I want to ask you about the commitment letters.

14 In your opinion, the equipment fee should not be billed
15 under the commitment letters as they were under the contract,
16 right?

17 Let me ask that again.

18 A Yeah.

19 Q In your opinion, the equipment fee should be billed
20 under the commitment letters as they were under the contract,
21 correct?

22 A That's my understanding, yes.

23 Q But none of the commitment letters state that included
24 equipment would be charged a 50 percent -- as 50 percent of
25 labor costs, correct?

1 A I don't recall.

2 Q You would have had -- you would have included that in
3 your report if that's what it stated, right?

4 A I would assume so, yeah.

5 Q And you did not state that in your report, correct?

6 A I know there has been some testimony about the 50
7 percent equipment fee and those commitment letters, or at
8 least in the treating of the costs associated with those
9 commitment letters. But really, it's just my understanding
10 that the equipment fee and the contract provision stand from
11 the original contract, and that's how I did my calculation.

12 Q But you did not write that in your report, correct,
13 from May 2022?

14 A I don't think so, no.

15 Q Safety stand downs is next subject I want to talk to
16 you about.

17 For the \$1.1 million that you quantify, you're relying
18 on Mr. Triche's identification of 12 days that he stated were
19 non-compensable safety incidents in his report, right?

20 A Correct.

21 MR. GUERKE: If you could, could you go to Slide
22 104 please in Mr. Slavis' presentation.

23 BY MR. GUERKE:

24 Q This is your presentation, Page 104. The title is
25 "Safety Stand Down Costs," correct?

1 A Correct.

2 Q In the first part you state:

3 "As discussed in the Brian Triche expert report,
4 Welded incurred labor costs related to various safety
5 incidents and/or safety training. Per Article 12 and
6 Section 2(g) of the contract, all resulting costs will be at
7 contractor's sole cost and expense."

8 That's what you wrote, right?

9 A Correct.

10 Q You're implying that the first sentence there triggers
11 the second sentence, right?

12 A Right. I mean, I'm -- again, I'm literally just
13 calculating the daily rate for the crews affected on the 12
14 days identified.

15 Q Well, it doesn't look like -- Slide 104, is that --
16 that's all you're doing. Would you agree that that's not
17 just --

18 A Well, I'm just --

19 Q -- a calculation?

20 A -- giving the reference to his report to show why I did
21 the calculation.

22 Q But there's a whole section, Article 12, that has seven
23 lines covering this issue, right?

24 A On this slide, yes.

25 Q You're ignoring the condition precedent triggering the

1 part that you're quoting in the second sentence of your top
2 paragraph.

3 A I mean, again, I just referenced this as the background
4 to the calculation I performed.

5 Q Well, you can see from Article 12 that Transco must
6 issue a stop work notice first, right?

7 A That's how that sentence starts.

8 Q You know that Transco never issued a stop work notice,
9 correct?

10 A I don't know that I know one way or the other.

11 Q You have no stop work notices cited in your report,
12 right?

13 A Correct.

14 Q And there are none referenced in your slide
15 presentation, right?

16 A Correct.

17 Q When you wrote your report, you didn't know that there
18 was a contract definition covering this subject, correct?

19 A Again, I'm relying on another expert and performing the
20 calculation that broke it out by crew day, by -- by crew.

21 A As part of your safety stand down opinion of \$1.1
22 million, you assume that any safety-related event results in
23 a half-day of lost time, correct?

24 A Correct.

25 Q In many cases, you couldn't determine how long the

1 safety incidents were, so you discussed that with Mr. Triche
2 and came up with that half-day, right?

3 A Yes.

4 Q There's no empirical data to support that, correct?

5 A It didn't exist in the data I had, no.

6 Q I'm going to ask you about dent remediation.

7 MR. GUERKE: Could you go to Slide 108, please?

8 BY MR. GUERKE:

9 Q Slide 108 of your presentation is where you describe
10 dent investigation and remediation costs, correct?

11 A Correct.

12 Q The 2.4-million-dollar number that's the subject of
13 your opinion includes both the investigation and the remedial
14 work, right?

15 A Correct.

16 Q You agree that there's no basis for Transco to recoup
17 money from Welded to investigate alleged anomalies that do
18 not need remediation, right?

19 A I think that's more of a legal opinion.

20 But I know there's a defective work clause. I know
21 that Transco's position is that these costs were necessary
22 and were incurred as a result of that work. But I'm not
23 forming an opinion on, you know, the applicability of -- of
24 whose fault that was. That's beyond my purview.

25 Q But what you're including in your calculation are costs

1 for investigation that did not result in remediation, right?

2 A I don't know that that's true.

3 Q You know that Transco conducted an ACVG survey and
4 originally claimed to have identified 177 anomalies, right?

5 A I -- I know I put some of this background in my report.
6 I don't remember numbers specifically like that.

7 Q But you know that was the first step in this process?

8 A They did a review, yeah.

9 Q And then Transco ran, for lack of a better term, a
10 smart pig device through the pipeline, and that number was
11 reduced from 177 down to 22, correct?

12 A Again, I have no recollection of those numbers, but the
13 process sounds like what they did.

14 Q But you know that only eight of those sites were
15 actually remediated, correct?

16 A Same answer. I don't have the specifics behind that.

17 Q But in your \$2.4 million, you're including costs for
18 Hillis, costs for Mears, costs for ROSEN, costs for
19 Whitetail, right?

20 A Correct.

21 (Pause)

22 MR. GUERKE: Thank you, Your Honor. That's all I
23 have for now.

24 THE COURT: Thank you.

25 MR. GUERKE: Thank you, Mr. Slavis.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Redirect.

3 MR. BURWOOD: Thank you, Your Honor. Jonathan
4 Burwood, for the record.

5 MR. BURWOOD: Good morning, Mr. Slavis.

6 THE WITNESS: Good morning.

7 MR. BURWOOD: Your Honor, just in terms of
8 housekeeping, during Mr. Slavis's direct examination on the
9 31st, I had moved for the admission of certain support
10 schedules to his original report.

11 The exhibit reference is Exhibit D-2047A through
12 D-2047-AU. That's 47 tabs. We provided those documents to
13 Welded's counsel, and I understand that they've got a
14 reservation that they'd like to make.

15 MR. GUERKE: Yeah, we have no general objection to
16 the exhibits. We just want it to be subject to our
17 objections on the scope and qualifications of Mr. Slavis,
18 part of our motion in limine and then our trial objections.

19 THE COURT: Okay. Well, it will come in subject
20 to those objections. I'm going to consider all of that when
21 I issue my opinion.

22 MR. BURWOOD: Okay. Your Honor, that's part of
23 our larger exhibit set, but I have specific binders that
24 contain those work papers for the Court. Can I approach and
25 provide those in some fashion?

1 THE COURT: Yes.

2 MR. BURWOOD: Okay. I'm trying not to hand you
3 these on the bench, Your Honor. What's the best way?

4 THE COURT: Yeah, come over here, please.

5 (Pause)

6 REDIRECT EXAMINATION

7 BY MR. BURWOOD:

8 Q Mr. Slavis, on the screen in front of you is Page 30
9 from Transco's Demonstrative 25. Do you recall seeing that
10 during your direct examination?

11 A Yes.

12 Q Okay. Can you just remind us generally of the -- your
13 opinion relative to unallowable non-NPLA labor costs? Just
14 what's the background in that opinion?

15 A The basis for this opinion is that my understanding is
16 non-NPLA labor costs are supposed to be paid in accordance
17 with Section 8, Exhibit 1.

18 So we took the non-NPLA people and their titles and
19 their functions and compared them to the list on that
20 Exhibit 1 and identified people that did not fall within the
21 listing of Exhibit 1.

22 Q Okay. And before applying the equipment fee, that
23 number is approximately \$3.2 million. Is that right?

24 A Correct.

25 Q Okay. And do you recall testimony regarding -- or who

1 is Scott Schoenherr, if you know, Mr. Slavis?

2 A I believe he was one, if not the general superintendent
3 for most of the project.

4 Q Okay. And was he a non-NPLA employee?

5 A Yes.

6 Q Okay. And do you know, Mr. Slavis -- have you heard
7 testimony regarding whether or not Mr. Schoenherr was
8 dedicated full time to the ASR project?

9 A I believe he was on several projects, five or six.

10 Q And based on your quantification that you performed in
11 connection with this opinion, do you recall, Mr. Slavis,
12 approximately how many hours per week Welded invoiced Transco
13 for Mr. Schoenherr's time at ASR?

14 A I believe it was 60 hours a week spread across the
15 three spreads.

16 Q Okay. And focusing on the \$3.2 million here for non-
17 NPLA employees billed to Transco, do you have any order-of-
18 magnitude sense how much of that number is representative of
19 Mr. Schoenherr's time billed by Welded?

20 A I believe general superintendent was about a million
21 dollars. Without looking at my -- I can't recall whether
22 that's before or after the equipment fee.

23 Q Okay. Thank you, Mr. Slavis.

24 You testified on direct that you've been engaged
25 approximately how many times during your career to analyze

1 costs invoiced in the context of a cost-reimbursable contract
2 structure?

3 A Forty, fifty.

4 Q Okay. And relative to those other engagements, you
5 reviewed those contracts as part of that analysis?

6 A Correct. It's a standard part of performing a cost
7 audit or any sort of measurement of damages.

8 Q Okay. In your experience, Mr. Slavis, how often did
9 those cost-reimbursable contracts contain some form of an
10 audit clause?

11 A Almost 100 percent.

12 Q Okay. And in your experience, what purpose does an
13 audit clause serve in a cost-reimbursable contract structure?

14 A Well, I mean, I think, obviously, as has been discussed
15 several times in this trial, a cost-reimbursable contract
16 generally shifts the risk to the owner given that, you know,
17 there -- as opposed to, say, a fixed-price contract, which
18 would keep a lot of the risk with the contractor.

19 So when you have a cost-plus contract, it's important
20 to have, like in the AIA at Section 7, the allowable or
21 unallowable costs, so that, yes, it's cost-plus but it's
22 cost-plus in accordance with those compensation sections.
23 And in this contract, it's Section 8.

24 But the idea is that that audit is there so that you
25 can go back and see if all of the costs billed or incurred

1 are in accordance with those -- you know, whatever the
2 reimbursable cost section is. In this case, it's Section 8.

3 Q Mr. Slavis, you reviewed the contract between Welded
4 and Transco at issue here, right?

5 A Correct.

6 Q Okay. And did that contract, to your recollection,
7 contain an audit clause?

8 A Yes.

9 Q Okay. Can you please turn your attention to JX-1, Page
10 30.

11 A 30, you said?

12 Q 30, three zero. Thank you.

13 (Pause)

14 Q And directing your attention to Article 31 on Page 30,
15 is that the audit clause in the contract between Welded and
16 Transco?

17 A Yes.

18 Q Okay. And did you review this clause in connection
19 with your preparing your opinions?

20 A Yes.

21 Q Okay. Mr. Slavis, how long did Transco have the right
22 to audit Welded's project records, according to Article 31?

23 A Well, it says right about the middle

24 "Contractor shall retain all books and records
25 relating to the work for at least three years after company's

1 final acceptance of the work."

2 Q Mr. Slavis, do you recall during your cross-examination
3 last Thursday that Attorney Guerke asked you to confirm that
4 Transco had approved certain invoices that contained charges
5 you now maintain through your opinions were not allowable
6 under the contract?

7 A Yes.

8 Q Okay. And, for example, today you looked -- that
9 question was offered to you in connection with the PTAG
10 invoices, right?

11 A The PTAG charges within the invoicing, yes.

12 Q Okay. And similarly, do you recall counsel asking you
13 to confirm that Transco had paid certain invoices that
14 contained charges you now maintain through your opinions were
15 not allowable under the contract?

16 A Yes.

17 Q Okay. Mr. Slavis, in your experience analyzing cost-
18 reimbursable contracts, is it uncommon that an audit will
19 reveal as unallowable charges that the owner previously
20 approved or paid?

21 A It is because, typically, in the field, they're just
22 looking for a piece of paper or a total. It's not often that
23 they're sitting there with the contract and looking at each
24 of the contract sections to identify what is or isn't
25 allowable at that point in time.

1 Q Okay. And so focusing on the -- Article 31, the audit
2 clause here in this contract -- do you understand?

3 A (No verbal response.)

4 Q Is it the case, Mr. Slavis, that it's your opinion that
5 this audit clause enabled Transco to look at Welded's
6 invoices and determine whether or not costs were properly
7 billed up to three years after final completion?

8 THE COURT: Mr. Guerke?

9 MR. GUERKE: Objection, Your Honor. It's asking
10 the witness to give a legal opinion or legal conclusion,
11 interpret this contract clause. He's not qualified to do
12 that. That's within your realm, Your Honor.

13 MR. BURWOOD: Your Honor, I'll change my question.

14 THE COURT: Okay.

15 BY MR. BURWOOD:

16 Q Mr. Slavis, did you rely on Article 31 in connection
17 with preparing your opinions?

18 A Yes, under the premise that, you know, there's audit
19 rights. You have the right to go look at all the documents.

20 Q Okay. Mr. Slavis, do you recall counsel asking you
21 during your cross-examination last week about your opinions
22 concerning the 7.5 percent cap on wages and benefits for
23 field personnel beyond those set forth in Exhibit 1, Section
24 8, of the contract?

25 A Yes.

1 Q Okay. And can I ask you to turn in JX-1, the contract,
2 to Page 499?

3 And on Page 499, do you see "Exhibit 1, rates and
4 benefits for field personnel"?

5 Take your time.

6 A Yes.

7 Q Okay. Mr. Slavis, are you familiar with this provision
8 of the contract?

9 A Yes.

10 Q Okay. Did you rely on -- upon it in forming your
11 opinions?

12 A Yes.

13 Q Okay. Do you recall during your cross-examination
14 counsel asking you if your opinion on this issue would
15 require Welded to, quote, "absorb \$1.4 million of costs paid
16 to field personnel"?

17 A I think I recall that, yes.

18 Q Okay. Mr. Slavis, thinking about your opinion relative
19 to this clause, is it your opinion that Welded was precluded
20 from invoicing Transco for rates exceeding those identified
21 in Exhibit 1?

22 A Not if they sought approval in -- ahead of time.

23 Q Okay. So focusing on the language here on the screen
24 in front of you. There's language here -- do you see where
25 it says:

1 "Contractor shall issue notification to company."

2 Do you see that?

3 A Yes.

4 Q Okay. How do you interpret that, or how did you use
5 that in connection with your opinion here?

6 A Well, I -- again, the calculation is based on the fact
7 that it's my understanding that there was no notification
8 that the rates would exceed seven and a half percent of
9 Exhibit 1.

10 Q Okay. And then further on, I think you mentioned
11 approval just now in your testimony. What did you mean by
12 that?

13 A I thought there was another sentence. Can you show me
14 the next -- I just can't read it on this page.

15 Q So you want to look at --

16 A The footnotes. You know, I didn't -- thought there was
17 a section that said -- oh, no. I'm sorry. It's back on the
18 first page.

19 Q So what language were you relying on in Exhibit 1 when
20 you testified just now that you -- your understanding was
21 that approval could be sought by Welded in connection with
22 this 7.5 percent cap?

23 A Just right there about the middle. It says:

24 "Contractor must seek approval from company before
25 implementing any changes to any" -- "to wages and benefits

1 for any field personnel member in excess of 7.5 percent."

2 Q Okay. In forming your opinions, Mr. Slavis, did you
3 see any evidence that Welded notified Transco or sought
4 approval to charge rates in excess of 7.5 percent of those
5 identified in Exhibit 1?

6 A I did not.

7 Q Mr. Slavis, just now during your cross-examination,
8 some of the questions were directed to the PTAG fee
9 component. Do you recall that?

10 A Yes.

11 Q Okay. And I believe you testified you heard testimony
12 during this trial from Welded's witnesses that the fee --
13 that that fee, the PTAG fee, was paid -- strike the question.

14 Do you understand that Transco was billed -- in
15 connection with the PTAG invoices, that those included some
16 sort of a fee component?

17 A An agency fee, yes.

18 Q Agency fee. Okay. Thank you.

19 And it's your understanding that agency fees are not
20 wages or benefits paid directly to those PTAG employees?

21 A That's my understanding.

22 Q That's part of your opinion, right?

23 A Yes.

24 Q Okay. And have you ever seen any documents in the
25 record that indicated the amount of that PTAG agency fee?

1 A No.

2 Q Okay. And have you heard any testimony that identified
3 the amount of that PTAG agency fee?

4 A No.

5 Q Okay. And so in connection with your opinion, you
6 calculated a proxy for that PTAG agency fee. Is that right?

7 A Correct.

8 Q Okay. And Mr. Slavis, are you familiar with the markup
9 component in connection with the Bechtel seconded employees,
10 how much that was?

11 A I believe that was 50 percent.

12 Q Okay. And your proxy calculation on the PTAG agency
13 fee was approximately what percentage?

14 A I think the blended rate came out to about 18 percent.

15 MR. BURWOOD: May I please have D-25, Page 104?

16 (Pause)

17 MR. BURWOOD: I apologize. Demonstrative 25,
18 Page 104. My apologies, Ms. Bair.

19 BY MR. BURWOOD:

20 Q Mr. Slavis, a few minutes ago, during your cross-
21 examination, do you recall looking at Slide 104 of
22 Demonstrative 25?

23 A I do.

24 Q Okay. And do you recall Welded's counsel asking you --
25 in the context of this Article 12 quoted here, he -- do you

1 recall him asking you about the -- what he maintains is a
2 condition precedent relative to stop work notices?

3 A I do.

4 Q Also on this slide, you relied on the language in
5 Section 2(g), "Site Safety." Is that the case?

6 A Yeah. I reference that here.

7 Q Okay. And could you read the last sentence of
8 Section 2(g) for us?

9 A It says:

10 "Any stoppage in work as a result of contractor's
11 willful, repeated, or unaddressed safety-related actions or
12 inactions be at the sole expense of contractor."

13 MR. BURWOOD: I have no further questions, Your
14 Honor.

15 THE COURT: Thank you.

16 MR. GUERKE: Nothing more, Your Honor.

17 THE COURT: Thank you for your testimony,
18 Mr. Slavis.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You may step down.

21 (Witness excused)

22 THE COURT: Ms. Ewald.

23 MS. EWALD: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MS. EWALD: Shelly Ewald for the record. The

1 defendant, Transcontinental Gas Pipeline Company, calls Brian
2 Triche as its next witness.

3 THE COURT: Mr. Triche.

4 BRIAN TRICHE, DEFENDANTS' WITNESS, SWORN

5 THE CLERK: Please state your full name and spell
6 your last name for the record.

7 THE WITNESS: Brian Triche, T-R-I-C-H-E.

8 THE CLERK: Thank you. You may be seated.

9 MS. EWALD: Your Honor, may I proceed?

10 THE COURT: Please.

11 MS. EWALD: Thank you very much.

12 DIRECT EXAMINATION

13 BY MS. EWALD:

14 Q Mr. Triche, have you prepared a demonstrative
15 presentation to accompany your expert testimony today?

16 A Yes, I have.

17 MS. EWALD: Your Honor, may I approach the bench
18 and the witness with the demonstrative that Mr. Triche has
19 prepared as well as his initial and rebuttal expert reports
20 for reference?

21 THE COURT: Yes.

22 MS. EWALD: Thank you.

23 BY MS. EWALD:

24 Q Good morning, Mr. Triche. If you could turn to page 2
25 of the demonstrative. It is dated August 20, 2023. see

1 now we're in September. Could you provide for the Court your
2 background in both education as well as in your work history?

3 A Okay. I am a managing director at Secretariat. My
4 primary focus is change order management, claims analysis,
5 especially on the qualification of additional cost as well as
6 scheduling for construction projects. That includes oil and
7 gas projects, infrastructure. Being in Houston, it's quite a
8 bit of oil and gas and pipeline projects as well.

9 Q And, Mr. Triche, do you have -- could you describe
10 briefly your educational background for the Court?

11 A Yes. I have a mechanical engineering from the
12 University of Texas and an MBA from Texas A&M.

13 Q And you had mentioned that you have worked in the oil
14 and gas industry, Mr. Triche. Approximately how many years
15 have you worked in the construction and oil and gas industry?

16 A About 25 years now.

17 Q And can you describe your work on -- in the oil and gas
18 industry with the approximate number of pipeline projects you
19 have worked on in your -- in your work history?

20 A So my work in oil and gas and pretty much all my work
21 is related to change management, whether it's been changes in
22 scope of work, in the cost of those changes as well as
23 schedule impacts. That work involves working for both owners
24 as well as contractors. On the owner side, it's typically
25 responding to a claim -- a change order from the owner.

1 On the contractor side, it's assisting the contractor
2 in analyzing what happened on the project and helping them
3 develop change orders as far as claims to submit to the
4 owner. In terms of pipeline projects, I'd say it's probably
5 20 to -- over 20 at this point throughout my 25-year career.
6 I'd say, at any time, I am working on a pipeline project in
7 those 25 years. That has included both U.S., North America
8 and South America.

9 Q Thank you, Mr. Triche. And have you ever testified as
10 an expert in court before?

11 A Yes.

12 Q And has your testimony as an expert witness ever been
13 stricken or excluded in a court before?

14 A No.

15 Q And I'd like you to turn to -- through the next slides,
16 3 and 4, and explain what you have set forth on these slides
17 with regard to your prior experience working on pipeline
18 projects.

19 A So the next couple of slides relate to specific
20 pipeline projects that I've worked on in the past five years
21 or so.

22 The first one is a large-diameter pipeline up in
23 Canada. This one is actually a termination for cause and
24 looking at cost to complete in terms of the contractor. In
25 that case, I'm working for the owner, and that one is still

1 actually ongoing.

2 I've also worked for the contractor in this case,
3 Strike Construction, on a Texas project. That was a large-
4 diameter project down in South Texas. I want to say it was
5 a couple of hundred miles long. In that case, it was change
6 order management, assisting the contractor, understanding
7 issues that happened as well as quantifying both a cost and
8 schedule impact of those changes on their work.

9 Q And you've mentioned -- in your slide, you mentioned
10 schedule analysis that you have performed. Can you explain
11 for the Court what schedule analyses that you have previously
12 performed in your work?

13 A Typically, on most projects that I get involved with,
14 not only is there a cost impact with change but there's also
15 a schedule impact. So you're looking at the plan schedule;
16 you're looking at the schedule updates; you're looking at the
17 as-built schedule to determine where those delays occurred
18 and then looking at the project documentation, interviews
19 with personnel to understand what was the root cause of those
20 delays.

21 Q And if you could turn to slide 5, Mr. Triche. Can you
22 describe the scope of your assignment in connection with the
23 ASR project?

24 A So I was asked to review Welded's performance on the
25 project as well as look at certain additional costs that were

1 occurred and then, finally, looked at the expert reports of
2 Contech.

3 Q And when you mentioned the expert reports of Contech,
4 do you understand that's Mr. Dennis Kakol?

5 A Yes.

6 Q And turning to slide 6, this list of documents, what
7 does it indicate?

8 A So this is just a general listing of the documents that
9 I reviewed during the course of my work: everything from the
10 contract, Amendment 1 schedules, lots of schedules, lots of
11 extra work requests -- which I think we've heard throughout
12 the last couple of weeks, trends -- weekly progress reports,
13 correspondence. Those sorts of project documents.

14 Q And you mentioned schedules. Did that include Welded's
15 weekly updated schedules as well as the final as-built
16 schedule in the project?

17 A Yes.

18 Q And if we turn to page -- or slide number 7.
19 Mr. Triche, did you reach a -- did you reach both
20 observations regarding the project and Welded's performance
21 as well as opinions regarding Welded's performance on the
22 project?

23 A I did.

24 Q And can you describe the summary that you have set
25 forth here at slide number 8 regarding those observations and

1 opinions?

2 A So the first one is there was an amendment to the
3 contract that resulted in a new estimate that totaled \$454.5
4 million. That estimate is approximately \$119 million over
5 the original contract estimate. When you look at the
6 schedule, the plan schedule had revised -- I'll call it
7 revised -- Amendment 1 completion date of June 14, 2018.
8 Welded actually achieved mechanical completion on
9 September 19, 2019, which is about three months late. I
10 don't think there's a lot of dispute as far as the
11 achievement of mechanical completion on September 19th.

12 Q And in connection with cost performance and the
13 incentive program, can you describe what you mean by that
14 bullet as well as what's shown in the box on the right-hand
15 bottom of your slide?

16 A Yes. So, what you're going to see on the right is -- I
17 understand that Welded invoiced \$768 million on this project.
18 The Amendment 1 contract estimate was 454 million. Welded in
19 its trends that it submitted to Transco total approximately
20 \$119 million, which explains, you know, certain overruns in
21 terms of cost on the project but does not explain the
22 additional 195 million is the amount invoiced in excess of
23 both the original contract or the Amendment 1 contract
24 estimate plus the trends.

25 Q And, Mr. Triche, you indicated that the invoiced amount

1 was \$768 million. Do you understand that to be the current
2 invoiced amount that -- that Welded, we believe, agrees upon?

3 A Yes.

4 Q Are you aware that, in fact, Welded did invoice over
5 \$800 million, I believe, altogether? Were you aware of that?

6 A I believe that's true. And the parties have now agreed
7 that it's 768 million, so I've included that here.

8 Q And turning to the next slide, slide number 9. Have
9 you quantified your analysis and opinions with regard to
10 Welded's performance on this project?

11 A Yes. So, there's, I guess, three categories that I put
12 this into. One is the schedule incentive program. And based
13 on my analysis of the schedule, I've identified --
14 quantified, I guess, the schedule disincentive of \$1.5
15 million. There's also -- I have been asked to quantify the
16 quantification of defective work, and that relates to, first,
17 the weld repairs. And I've given two alternatives.

18 One is based on -- and we'll get into this a little bit
19 later in more detail. But there's approximately 100 welds
20 that were reclassified from defective to approved. So I
21 provided two alternatives, one that allows for a
22 reclassification and one that doesn't. And then there's an
23 overall defective work cost of 2,018,000.

24 And then the last category is quantification of
25 increased cost, one of those being additional tie-ins in

1 excess of the plan number and then early mobilization of
2 labor, which is at \$5.8 million.

3 Q And we have heard --

4 MR. GUERKE: Your Honor, I just want to note for
5 the record that two of the items that Mr. Triche just
6 testified about are subject to Welded's pending motion in
7 limine. It's his quantification of defective work for
8 2,018,000 as well as opinions concerning the additional tie-
9 ins quantified at 2 million and some change. As set forth in
10 our motion, Your Honor, we think that there was no
11 methodology employed. It's not helpful for the trier of
12 fact. Mr. Triche just simply looked at two documents and did
13 simple math.

14 THE COURT: Okay. We'll deal with that when I
15 issue my opinion. It's preserved.

16 MR. GUERKE: Thank you, Your Honor.

17 THE COURT: And your response. And I think we
18 have a typo here, right? 2,032,000, is that the number?

19 THE WITNESS: It is 2,232,152, yes. Yes, ma'am.

20 BY MS. EWALD:

21 Q And, Mr. Triche, with regard to the safety quantified
22 by FTI Consulting -- I think we just heard from Mr. Slavis --
23 but what was your portion of the analysis with regard to
24 safety? And I appreciate we're going to get into more detail
25 as we go through it.

1 A So in terms of safety, I looked at the Welded daily
2 reports to see any indication of safety shutdowns or
3 stoppages.

4 Q Thank you. We'll turn to the next section in your
5 demonstrative, Mr. Triche, which is the background. And that
6 begins at slide number 11. I appreciate we're on day nine of
7 the ASR project trial, so if you could just provide us an
8 overview of ASR pipeline project, recognizing we've heard
9 much about it.

10 A Yes. So, I think we've seen the map on the right. But
11 it's a 178-mile project through Pennsylvania that includes
12 some ancillary work in terms of compressor stations.

13 Q And, Mr. Triche, if you could, turn to slide 12.
14 Have you also provided a background regarding the contract
15 and Welded's scope of work that you could summarize, please?

16 A Yes. The original contract was entered into on
17 August 10th, 2016, as a cost-reimbursable plus fixed-fee with
18 a -- I think we've heard a lot about equipment multiplier.
19 The original estimate from Welded was \$335 million. It was a
20 42-inch pipeline, and Welded was performing construction of
21 Spreads 5, 6, and 7.

22 Welded's general scope of work included the planning of
23 it, any environmental requirements, and then the actual
24 construction of the pipeline itself, which includes clearing,
25 grading, stringing the pipe, bending the pipe, welding it,

1 digging the ditch, lowering the pipe into the ditch, and then
2 backfill and testing the work. Then, finally, you'll
3 hydrotest the pipe, and then it can go into operation. And
4 then, additionally, there's cleanup and restoration by
5 Welded. I will note that Transco was actually supplying the
6 pipe itself.

7 Q And, Mr. Triche, the bullet point -- I'm sorry. Back
8 at slide number 12, the bullet point, the third from the
9 bottom, is:

10 "Install AC mitigation and cathodic protection."
11 That may be something we haven't heard too much about. Could
12 you explain what that entails?

13 A Yeah. So, AC mitigation and cathodic protection is a
14 method for protecting a pipe from erosion.

15 Q From --

16 A I'm sorry. From -- not erosion. Degradation of the
17 pipe.

18 Q And is -- does "AC" in that context stand for
19 "alternating current"?

20 A Yes.

21 Q And is that -- based on that there are stray currents
22 in the ground that if they come into contact with uncoated
23 portions of the pipe, can cause corrosion?

24 A It's a method of protecting a pipe from corrosion, so
25 it keeps the pipe safe.

1 Q Now we can turn to slide number 13, Mr. Triche. Can
2 you just recap briefly -- and I believe you described it in
3 your introduction -- the evolution of the contract through
4 Amendment 1?

5 A So there was an initial NTP permit on the project that
6 resulted in moving the actual execution portion of the work
7 to a later period in time which resulted in the parties
8 entering into Amendment 1 which acknowledged that late NTP --
9 original NTP allowing Welded to start the work.

10 At that time, Welded re-estimated the work based on
11 this time period of construction. And as I said before, the
12 estimate went from 335 million to \$454 million, which is an
13 additional 119 million, to cover certain specific costs.

14 Some of those are -- they were now going to have three
15 separate spreads instead of two. Originally, the plan was to
16 have -- Welded was going to have two spreads. One spread
17 would do 5 and half of 6, and then the other spread would do
18 the other half of 6 and then all of 7.

19 In order to kind of -- in order to help the schedule,
20 Welded moved to a three-spread work crew, which meant that
21 each crew would take one Spread 5, one Spread 6, and one
22 Spread 7. There was also going to be winter work now. So
23 that included the cost of winter construction, adverse
24 weather, and also reduced the production they were expecting
25 for each -- for the spreads.

1 Q And we'll have more details with regard to that reduced
2 production. I think it's coming up, Mr. Triche.

3 A Yes.

4 Q Was there also a change with regard to the notice to
5 proceed in mechanical completion date?

6 Yes. So Amendment 1 did also include a new revised NTP
7 estimate of October 2nd. And then it did revise mechanical
8 completion date to June 14th, 2019. I will note that
9 Amendment 1 actually attached a new plan schedule.

10 Q And was -- the attached schedule to Amendment 1, is
11 that what you considered as the baseline schedule for the
12 project?

13 A Yes.

14 Q And turning to slide number 14, can you describe --
15 does this illustrate the baseline schedule, Mr. Triche?

16 A Yes. So, if you look at the -- I'll start with the
17 graph below. On the bottom portion, the green is -- the
18 green bar is the plan schedule identified in the Amendment 1
19 schedule. So the plan schedule effectively. The blue bar is
20 the actual execution of the work by Welded.

21 The planned baseline schedule actually included a
22 June 12th completion date, two days earlier than the contract
23 mechanical completion of June 14th. And Welded actually
24 achieved mechanical completion on September 19th, a delay of
25 99 days.

1 Q And turning to the next slide, Mr. Triche, have you
2 summarized here additional information regarding Welded's
3 cost performance on the project?

4 A Yes. Again, the 768 -- the blue bar on the right is
5 the amount Welded invoiced that I believe the parties have
6 now agreed to, the \$768 million. When you look at the
7 Amendment 1 cost estimate of 454 million, the total amount of
8 the trends submitted by Welded on the project is \$119
9 million. The total amount of the estimate plus trends is the
10 \$573 million you see on the graph on the left, the green bar
11 and the yellow bar. And so trends were a way of Welded to
12 identify issues and the cost of those issues as well as the
13 schedule impact of those issues.

14 Q And you also have a note in a bullet point:

15 "Extra work requests total \$10 million." First,
16 what is your understanding with regard to extra work requests
17 and their status?

18 A So within the contract, it identifies extra work
19 requests as the method for changes to the contract. It's
20 effectively a change order, and that is the contractual
21 method that I understand to change the contract itself.
22 Trends appear to be more of a somewhat internal Welded
23 process that I believe they did actually submit to Transco.

24 But I understand that the official process of changing
25 the contract was through extra work requests.

1 Q And have you identified the amount of extra work
2 requests that were agreed on between the parties during the
3 project?

4 A Yes. It was the about \$10 million.

5 Q And turning to your next slide at slide 16.

6 Mr. Triche, what have you shown here with regard to Welded's
7 as-planned versus actual labor hours on the project?

8 A So I'll first point to the table on -- or the graphic
9 on the bottom. The green represents Welded's planned labor
10 hours that it expected for each section. So, for Section 5,
11 it had planned to expend 854,992 labor hours. And it
12 actually expended over 1.2. And the data for this comes from
13 Welded's own documents as they reported. So, you can see, in
14 total, Welded expended about 1.6 million labor hours more
15 than it had planned on the project.

16 Q And, Mr. Triche, looking at your bars, does that
17 indicate that the most significant overrun with regard to
18 labor hours from planned to actual was on Spread 7?

19 A Yes.

20 Q And you note that -- the planned labor hours, you
21 indicate they were included in Amendment 1 contract control
22 estimate. Is that what your reference is there?

23 A Yeah. So, the labor hours are based on the revised
24 estimate of Amendment 1, not the original contract.

25 Q And turning now to your next section, which is

1 "Analysis of Welded's schedule and performance."

2 Could you turn to the -- slide 18, which includes an
3 analysis of Welded's schedule, and provide the Court your
4 analysis regarding the schedule background that you found?

5 A Yeah. So within Amendment 1, it did revise the
6 mechanical completion date to allow for the revised notice to
7 proceed or NTP, which changed it to June 14th. And, again,
8 on the right, you'll see the baseline schedule that was
9 attached to Amendment 1.

10 Q And below the -- below your graphic, you indicate
11 actual NTP or actual notice to proceed. And what are you
12 indicating there?

13 A So within the Amendment 1 baseline schedule, it
14 indicated a planned NTP notice to proceed of October 2nd.
15 The actual notice to proceed was issued by Transco on
16 September 25, 2017. So it actually occurred about seven days
17 later.

18 Q And in your view, how did -- early notice to proceed,
19 would that be considered a benefit to the contractor?

20 A So, typically, an early notice to proceed is helpful to
21 a contractor. They get to start the work early. It extends
22 the amount of performance period. In this case, there is a
23 schedule incentive, and so that's also an advantage in terms
24 of getting the NTP early.

25 Q And turning to slide 19, Mr. Triche. Can you describe

1 what you have shown here with regard to the critical path of
2 the baseline schedule included within the contract?

3 A So within Amendment 1 -- we talked about the baseline
4 schedule. Welded used a scheduling software called
5 Primavera, which is a -- well, I won't say "probably." It is
6 the most widely used scheduling software in the construction
7 industry. It's basically the -- everybody uses it. If
8 they're not, it's odd.

9 So when you look at the Amendment 1 schedule, Section 5
10 or Spread 5 is the critical path. And when I say -- you
11 know, we've heard a lot about critical path. And just for
12 the benefit of the Court, the critical path is the longest
13 set of activities from the start of the project to achieving
14 mechanical completion. That can change throughout the
15 project, depending on what actually happens. The critical
16 path of this project goes through clearing, grading, then
17 digging the ditch, lowering in the pipe, tying it in, and
18 then the hydrotest, and then achieving mechanical completion.

19 Q And just going back, with regard to your explanation of
20 the critical path, Mr. Triche, can there be delays to a
21 project that if they're -- that are not on the critical path?
22 And if so, what is their impact, if any?

23 A So delays occur on a project. They can occur on
24 different activities, multiple activities. But unless that
25 activity is on the critical path, it's not going to impact

1 the final mechanical completion date. If the delay is -- if
2 that activity then becomes a critical activity, it can, but
3 not until the delay is long enough. But until an activity is
4 on the critical path that's delayed, there should be no
5 impact to the mechanical completion date.

6 Q And turning to slide number 20. Did you also review
7 the as -- what's called in your presentation the as-built
8 schedule? And, first, if you will, provide for the Court an
9 explanation of what an as-built schedule is and how it was
10 prepared in this case.

11 A So I'll back up a little bit. So, you have the
12 baseline schedule. And each month, Welded would issue a
13 schedule update. And in that schedule update, Welded
14 identifies how much work they had done in that period, when
15 activities such as clearing or grading actually started, the
16 progress of those activities, and then any date in which they
17 actually finished, if they finished during that month. So,
18 each month, there's a schedule update by Welded. When you
19 get to the end of the project, which in this case was
20 September of 2019, that last schedule update is effectively
21 your as-built schedule because it identifies the actual dates
22 that activities started and ended.

23 And so looking at the graphic on the right, this is,
24 you know, a summary representation of the plan schedule on
25 top in the green bars. The blue bars on the bottom are the

1 as-built dates that things actually -- that the activities
2 actually occurred from Welded's September 2019 schedule. I
3 did go through the as-built schedule and went back to the
4 contemporaneous project documents, such as Welded's weekly
5 progress reports, to confirm and validate the dates that the
6 schedule were saying were actual start and finish dates. So,
7 basically, the as-built data agrees -- the as-built data in
8 the schedule agrees with what was contemporaneously being
9 reported in Welded's progress reports.

10 Q Okay. Just to follow up on that, Mr. Triche. So,
11 within the progress reports, you would read them to identify
12 dates that certain activities were being performed or
13 completed?

14 A Correct. The weekly progress reports would identify
15 when clearing started and when clearing finished.

16 Q And with regard to -- and I think we've talked about
17 this previously -- the plan versus the actual NTP, how did
18 they differ?

19 A So the planned NTP date within the Amendment 1 schedule
20 was October 2nd, but actual NTP was issued by Transco on
21 September 25th, 2017.

22 Q And turning to slide number 21. Can you describe what
23 you observed with regard to the durations included within
24 Welded's baseline schedule?

25 A So the period of performance changed between the

1 original contract and the Amendment 1 schedule. And so what
2 I've looked at here is what was the original contract
3 schedule. And if you look at the table, there's the
4 original planned start date of March 1, 2017, with a finish
5 date of October 6th.

6 When you look at calendar days, that is an overall
7 project duration of 219 days. When you look at the Amendment
8 1 schedule, the actual notice to proceed is September 25th,
9 and the planned finish of June 14th allowed for 262 calendar
10 days, which means that the Amendment 1 schedule had a longer
11 duration of about 43 days.

12 Q And turning to the next slide, slide number 22. Have
13 you analyzed the -- what Welded -- or how Welded incorporated
14 winter weather into its plan schedule?

15 A Yeah. So Welded, in this case, developed an estimate
16 plan for Amendment 1. And within that estimate plan, Welded
17 indicated that it included and accounted for winter
18 construction now, which the original construction didn't,
19 weather conditions. It actually states that they added 35
20 percent for two and a half days a week of weather conditions
21 in the contract, which in the scheduling world, basically
22 cost float. It's the additional time because of conditions
23 or events that could occur.

24 Q And with regard to the note, the weather delay factor
25 on tie-in welding is 35 percent or 2.5 days per week, did you

1 draw any conclusions with regard to the connection with tie-
2 in welding in this weather factor?

3 A So they certainly allowed more time for Welded to
4 complete the work as compared to its original project
5 contract schedule.

6 Q And were -- was tie-in welding part of the critical
7 path activities, Mr. Triche, on this project?

8 A Yes.

9 Q And turning to slide number 23, you've mentioned that
10 adding this type of -- I guess I'd call it cushion -- or it's
11 actually float in the schedule. Can you describe how that
12 affected Welded's production rates, in your view?

13 A So with each crew, the schedule's really determined by
14 how much production that crew can get. So, for example, if
15 you look at grading, if they can get 2,000 feet per day,
16 that's -- that necessarily indicates what the schedule will
17 be. If they can only get 1,000 feet per day, the schedule
18 will be longer because they're getting less production on a
19 daily basis.

20 So, when you look at production, it's the number of
21 feet per day. So, for example, this bid run, if you look at
22 the kind of grayed-out -- it's difficult to see. But the
23 grayed-out snippet here, the bid run feet per day is what the
24 original contract estimated. So, for grading, they estimated
25 that they would get 2,662 feet per day. That was across

1 both -- remembering that they were only going to have two
2 spreads in the original contract, so each spread was going to
3 get 2,662 feet per day on average.

4 When you look at the next three columns, these are the
5 Amendment 1 production rates. So, you'll see Spread 5,
6 Spread 6, and Spread 7, they're actually showing different
7 production rates for each spread. And I think we've heard --
8 or we have heard that each spread was a little bit different.
9 Spread 5 was probably the hilliest and hardest spread. So,
10 you can see the production rate that they're estimating is a
11 little over 1,200 feet per day.

12 Spread 6 was kind of in between. It had a few hills,
13 but it also had some farmland. Nice and flat. So they were
14 expecting to get a little over 2,000 feet per day. Then if
15 you look at Spread 7, which was the easier farmland work,
16 they were going to get almost 2,600 feet per day. So that
17 translates to the schedule directly.

18 Q And with regard to the welding, we see here that was --
19 is the same analysis that you went through, Mr. Triche, for
20 grading. Does that similarly apply to the welding that was
21 originally anticipated and then the production rates that
22 were included in the revised contract amendment?

23 A Yes. So, it's the same process for each of the crews.

24 Q And that indicates that the original bid run had 2,964
25 feet per day, and it was reduced. And what was it reduced

1 for Spread 5 with regard to in Amendment 1?

2 A So Spread 5, the main line crew was 1,202 feet per day
3 for Welded. And then Spread 6 was 2,136. And then Spread 7
4 was 2,231 feet per day.

5 Q And that's in the section "Total welding main and tie-
6 in includes skips"?

7 A Yes.

8 Q I'd just draw your attention briefly to the box with
9 regard to the tie-in crew. And could you explain how the
10 tie-in welds per day were -- how that was reflected by
11 Welded?

12 A So you're going to see, in Spread 5, the number of tie-
13 in welds per day was at .31. So that indicates that they
14 were going to get a third of the tie-in completed each day.
15 In Spread 6 and 7, they were expecting to get 1.33, which
16 is -- they were going to be able to complete one and a third
17 tie-ins per day. So quite a bit more production in terms of
18 tie-ins on Spread 6 and 7, and that goes back to the fact
19 that Spread 5 is hillier, more difficult terrain.

20 Q And so just to summarize, Mr. Triche, with regard to
21 the weather factor -- the 35 percent weather factor, that was
22 reflected both in the schedule as well as in Welded's
23 anticipated production rates; is that right?

24 A Correct. The only other thing I'd like to identify on
25 here is, if you look at the main pipe gain, you'll see, just

1 above where we looked at the tie-in crew, they were expecting
2 to get anywhere from 14 to almost 30 welds per day with their
3 main line welding crew, which is, you know, your crew that
4 goes fast through the project and gets a lot of welds done on
5 a daily basis.

6 Q And perhaps Mr. -- and we may touch on some more
7 detail, Mr. Triche, but if you could just explain the -- the
8 difference between the main line pipe crew and the tie-in
9 welds, what the typical anticipated division of their labor
10 is.

11 A So your main line crews are -- your main line spread is
12 your clearing, grading ditching, welding, bending, welding in
13 the backfill. And the best way I've seen it described is a
14 moving assembly line. In this case, the work is
15 stationary -- the product is stationary, but the actual labor
16 moves along the pipeline. And so these crews start at Point
17 A. The main line crews start at Point A, and they go as fast
18 as they can to get to Point B. And in my experience, the
19 welding controls that progress.

20 Welding is -- is one of the harder portions of any
21 pipeline project. And so welding really controls the pace
22 that a spread can get. So, they go from Point A to Point
23 B, whereas your tie-in crews and your boring crews, they do
24 specific portions of the work, very specific portions.
25 You know, throughout the project, there may be 50 bores on

1 the project, but they don't occur right after each other.

2 They're -- at the beginning, there may not be another
3 bore until 2 miles down the right-of-way, and then the next
4 one is 500 feet, then the next one is 3 miles. So those two
5 crews, the boring crew and tie-in crew, are built. And their
6 scope of work is move around, skip from each bore to each
7 bore, skip from each tie-in to each tie-in and do that work
8 and move on to the next one. It may be 50 feet down the
9 right-of-way. It may be 2 miles down the right-of-way.

10 Q And turning to the next slide, Mr. Triche. It's slide
11 number 24. Can you describe what you have illustrated here
12 with regard to the durations of the crews? And I think you
13 need to -- you're in charge of advancing the slide. I think
14 I'm going to have to ask you do it.

15 Thank you, Mr. Triche. And so slide number 24 is an
16 analysis of Welded's performance, schedule, weather, and
17 float. Can you describe what you illustrate here with regard
18 to the crew duration?

19 A So this is specifically for Spread 5. And with
20 Amendment 1, as compared to the original contract, the
21 durations of the work were significantly increased. You'll
22 see here that in terms of the first column is the different
23 crews, the clearing crew, grading crew. And if we look at
24 the grading crew, you're going to see that the length of
25 Section 5 or Spread 5 was 90,990 feet. So that means from

1 milepost 1 to 17 miles of Spread 5 is 90,990 feet.

2 Remembering back to the previous slide, that big bid
3 progress per day is the original progress production that
4 Welded estimated under the original contract. So, for
5 example, on grading, they expected to get 2,622 feet per day.
6 When you divide that by the 90,990, that equates to 35 days
7 of work to complete all of Spread 5 by the clearing -- by the
8 grading crew. When you get into the dark blue portion, going
9 back to the previous slide and the production rates for
10 Spread 5, you'll remember -- I'll tell you that it was 1,282
11 feet per day that they planned to get.

12 When you divide that by the 90,000, that equates to 71
13 days of work. In the light -- lighter blue, I'll call it,
14 this is actually looking at the Amendment 1 schedule itself
15 and what was the duration of -- we'll work on stringing this
16 time. The actual workdays of duration for stringing was 81
17 days within the schedule, if you look at the planned schedule
18 and identify the workdays. So, from the original contract
19 schedule to the Amendment 1 schedule, there is a significant
20 increase in the duration allowed for the work to be performed
21 by Welded. In this case, stringing is an additional 50 days.

22 Q And is it your understanding, Mr. Triche, that that's
23 reflected both in the schedule and the cost estimate that
24 Welded prepared for Amendment 1?

25 A Yes.

1 Q And as we see here, you've quantified the percentage of
2 duration increase in those -- I would call them median blue,
3 the final two columns of your table?

4 A Correct.

5 Q And turning to the next slide of -- I guess, to
6 summarize your observations with regard to the schedule,
7 weather, and float that Welded included in Amendment 1, does
8 this describe -- can you just summarize what your conclusions
9 were in that regard?

10 A The overall conclusion is that Welded allowed for
11 significant time in its schedule to account for winter
12 construction, adverse weather, any conditions that could
13 occur in the new project execution period. And in this case,
14 it's -- for Spread 5, it's approximately 50 days.

15 Q Turning to your next slide, slide 25. Did you also
16 look at the weather conditions that Welded reported to
17 Transco throughout the project?

18 A So in its -- Welded, in its reports, identified the
19 actual number of weather days as compared to its reported
20 planned weather days. The interesting thing about the
21 Welded reports during the project is I identified 1.2 days
22 per week, which is different from the 2.5 we saw in their
23 estimate plan.

24 This particular chart here is for Spread 5 and is data
25 through April 29th, 2018, which, sitting through the last two

1 weeks of testimony, we've heard that in this - April/May, the
2 weather got better. You know, so if you look at this chart,
3 the blue in this case actually represents planned days of
4 lost days per week. And the green in this case is the actual
5 reported weather days by Welded during the project. So, in
6 this case, through April 29th, for Spread 5, it's indicating
7 a couple of days less actual weather days than the 1.2 days
8 per week that it's stating in its reports.

9 Q And based on the actual cumulative line, is that the
10 green line that we see here in Welded's reporting to Transco?

11 A Yes. I'm sorry. These are cumulative days of planned
12 weather and actual weather.

13 Q And does that green line indicate that sometime between
14 November and December of '17 that the actual cumulative days
15 were less than the planned cumulative days?

16 A Yes. Basically, beginning, you know, end of -- near
17 the end of 2017, the weather days, actual weather days were
18 less than the planned 1.2 weather days per week.

19 Q And as you mentioned, Mr. Triche, that the -- that
20 Welded included 2.5 weather days per week in their internal
21 estimate and reported 1.2 planned weather days to Transco,
22 what impact or effect would that have on the reporting as
23 viewed -- as viewed by a third party from looking at Welded's
24 report?

25 A So if you -- if Welded had used the 2.5 days per week,

1 as it stated in its estimate plan, that blue bar would be
2 quite a bit steeper and would indicate that there had been
3 even more -- or there would be even less actual days as
4 compared to the planned.

5 Q Turning to slide 26. Can you summarize your
6 conclusions with regard to the weather as it was -- as it was
7 included by Welded as well as the -- your observations
8 regarding the actual weather that occurred?

9 A So based on looking at all this information, going
10 through Welded's reports, going through the schedule, going
11 through the estimate plan, Welded included a lot of
12 additional time in its Amendment 1 schedule for adverse
13 weather conditions. Throughout the project, Welded was not
14 reporting that its weather days were more than what it had
15 planned. When you look at the -- and then you go to the
16 actual schedule, you can see that there's a tremendous
17 number of days added to the schedule for adverse weather,
18 working during the winter.

19 I'd also note that in my review of the trends and extra
20 work requests I didn't see any request for additional time
21 associated with weather which, again, would go back to their
22 reporting during the project, at least the way they were
23 reporting it, that there weren't more adverse weather days
24 than planned.

25 Q And you mentioned looking for weather time extensions

1 in the trends or extra work requests. Did you review all of
2 the trends and extra work requests that were submitted to
3 Transco during the project?

4 A I looked at every one I could find, yes. And there's a
5 log that I looked at.

6 Q And you indicate in the second-to-last bullet that the
7 actual weather conditions were not significantly worse than
8 historical averages. What did you do in that regard?

9 A So in that --

10 Q And then you mentioned two events in July of 2018, so
11 I'll just ask you to explain both of those issues.

12 A So there is a national -- let me get the name right --
13 national organization of aeronomical [sic] --

14 Q Atmospheric perhaps?

15 A Atmospheric -- I don't remember -- we call it NOAA in
16 my business but an acronym. And it is a government site in
17 which they track weather in certain stations on a daily
18 basis. So, you can go to the website and see, on May 1st,
19 2016, exactly how many inches of rain or snow occurred at
20 that specific weather station.

21 I looked at the Harrisburg weather station, which
22 looked like the closest for all three spreads. And when you
23 look at the time period from October of 2017, the actual
24 project execution period, through June of 2019, I believe
25 there were additional -- there were 2 inches of actual

1 rainfall over historical average. And in this case, NOAA
2 determines the historical average based on a 30-year average.
3 So historical average is based on the last 30 years.

4 There were two significant rain events. One was in
5 late July, and I believe the other one was in August. I
6 don't remember the date specifically that occurred in late
7 July and August.

8 Q And with regard to the two rain events that you
9 mentioned, did you see any request from Welded for a specific
10 number of days of time extension for those rain events?

11 A So Welded did -- I guess, did provide notice in terms
12 of letters saying there's a rain event on this date. But I
13 have not seen any actual quantification of the impact of
14 those two events.

15 Q And with respect to quantification of impact,
16 Mr. Triche, how does the contractor quantify impact based on
17 things like weather events? Do they -- would it require
18 schedule analysis addressing whether these were critical path
19 delays?

20 A So, typically, a contractor -- in construction projects
21 such as this, the contractor notifies the owner "we've had a
22 delay." They would identify the delay, how many days, which
23 activities on the schedule it had impacted. Identify those
24 activities, identify the number of days of delay, and then
25 identify whether that activity is on the critical path. And

1 that's done through an analysis of the schedule.

2 Q And did you see Welded do that in connection with these
3 weather events?

4 A I have not seen any analysis of schedule for any events
5 on this project by Welded.

6 Q And turning now to the next section of the -- your
7 demonstrative, Mr. Triche, which addresses the schedule
8 incentive. And I'll draw your attention to slide number 28.

9 A Yes.

10 Q Did you analyze the schedule incentive/disincentive
11 program to reach your opinions in this matter?

12 A I did. Amendment 1 contains a schedule incentive
13 program based on the June 14th mechanical completion date.
14 Actual mechanical completion was achieved on September 19th.
15 And that's a 97-calendar-day delay, which is -- which equates
16 to 13.9 weeks. The schedule incentive plan actually starts
17 with an incentive payment of \$5 million to Welded if it meets
18 the planned mechanical completion of June 14th. For each
19 week that Welded beats it, again, additional \$500,000. And
20 each week that it misses the mechanical completion date, they
21 get a deduction of \$500,000 per week. It does say that weeks
22 should be prorated.

23 Q And have you analyzed the -- have you determined
24 whether Welded was entitled to a schedule incentive or that
25 Transco is entitled to a schedule disincentive?

1 A I have.

2 Q And turning to the next slide, slide 29. Why don't we
3 come back to slide 29 and go to slide 30 at this time.

4 A Okay.

5 Q And slide 30, is this where you describe the delay
6 analysis, the methodology that you used?

7 A Yes, ma'am. So, what I did was I looked at the as-
8 planned schedule, I looked at the as-built schedule on the
9 project. I identified the actual critical path. And then I
10 looked at what time extensions were either approved or -- you
11 know, the approved time extensions on the project through the
12 EWR process. And so the only approved time extension that I
13 could find in an EWR was EWR 12 in which Transco approved a
14 time extension of six days at the beginning of the project.

15 Q And I believe you mentioned that you identified the
16 actual critical path of the project. I think we've heard
17 that the -- the planned critical path was Spread 5. What did
18 you identify as the actual critical path of the project?

19 A So I did identify Spread 5 as the actual critical path,
20 which didn't deviate from the plan. It could have. But in
21 this case, the actual critical path is Spread 5. And I think
22 we've heard quite a bit of testimony that Spread 5 was the
23 actual critical path in the last two weeks.

24 Q And turning to page -- or slide 31. Did you also
25 review -- I believe you testified you've looked at all of the

1 trends that were submitted by Welded?

2 A Yes, ma'am.

3 Q And what is your understanding with regard to the
4 categorization of trends versus EWRs? And how did that play
5 into your analysis?

6 A So, again, trends are what would appear to be a Welded
7 internal process that they did actually submit to Transco.

8 And I will say that having worked in construction
9 industry for quite a while, their -- "trends" actually go
10 back to Bechtel. It's actually a Bechtel term that has been
11 used for years and years and years. And it's a method for
12 identifying issues on a project early and then, you know,
13 trying to quantify them as best you can. And then those
14 should end up becoming a change order on the project. And in
15 this case, a change order on the project is referred to as an
16 EWR or extra work request.

17 Q And you say they may become a change order on a
18 project. Is that through a process of agreement with the
19 owner?

20 A Yes.

21 Q And so for a trend to become an EWR, the parties would
22 reach -- would have to reach an agreement during the project,
23 is that right, to your understanding?

24 A As I understand the contract -- the change order
25 provision of the contract, which I look at every contract

1 that I'm working on, and the change order provision is one of
2 the first provisions I look at because it's how the
3 companies administer a change on the project. And it's very
4 important.

5 There is a change order provision, I will say, in
6 almost every single contract, at least related to any sizable
7 project. But the change order provision of the contract is
8 an important method for the companies to allow for revisions
9 to the cost for the schedule of the project.

10 Q And did you do an analysis, Mr. Triche, of the -- we
11 see here under the heading "Lighthouse potential time
12 extension days," and we see you have arrived at a potential
13 time extension of four days. Can you describe your analysis
14 in connection with these trends?

15 A So if you look at the four trends -- so on the table on
16 the screen, you're going to see four trends. For example,
17 Trend 49 was on Spread 5. I concentrated on the critical
18 path spread, which is Spread 5. So those are the trends that
19 I primarily reviewed because it is the actual critical path.

20 So, for example, Trend Number 45 -- I'm sorry -- Trend
21 Number 49, the first line in that table relates to the
22 temporary court injunction. I believe Mr. Sztroin testified
23 about that last week, that it was a two-day delay. It never
24 made it to an actual EWR. But it is a -- basically, a work
25 stoppage of the entire spread, which would be, in my opinion,

1 a critical path delay. So, if the Court determines that
2 trends are an appropriate method of changing the contract,
3 then I've allowed for four days for delays associated --
4 identified in trends.

5 Q And was -- the four days that you quantified,
6 Mr. Triche, was it based on a review of whether those -- the
7 events that occurred had an impact on the actual critical
8 path of the project?

9 A Yes.

10 Q And in some cases, did you determine that while a trend
11 may have identified a certain number of days, that that did
12 not translate into a critical path for delay for the number
13 of days identified?

14 A Yes.

15 Q And so to -- I guess, to summarize, your conclusions
16 with regard to the trends, did you conclude that for the
17 Spread 5 critical path work, that trends could have had an
18 impact of four days, as identified by Welded and your
19 analysis?

20 A Yes, ma'am.

21 Q And so turning to slide number 32. Can you explain for
22 the Court the schedule disincentives that you identified in
23 your summary?

24 A So I provided two alternatives. Alternative 1 is
25 allowing for the six-day time extension in contract --

1 EWR 12, which totals \$1,500,000. Alternative 2 allows for
2 not 4 only the six-day time extension approved in EWR 12
3 but also the four days identified in Trend 49 and Trend 225.
4 And the total for Alternative 2 would be a, I guess,
5 disincentive to Welded of \$1,214,286.

6 Q And when you say, "a disincentive to Welded," would
7 that be a payment to Transco of \$1,214,286?

8 A Yes, ma'am.

9 Q And just stepping back from the analysis that you
10 performed, can you generally summarize for the Court what
11 the -- what -- your view of the delays that caused Spread 5
12 to be delayed in achieving mechanical completion until
13 September 19th of 2018?

14 A So when you look at Spread 5 and you look at the
15 progress of the various crews, there's just a lack of
16 progress. They weren't meeting the production rates that
17 they had planned. When you're not meeting your production
18 rates, there's delays to the project. Secondly, there was a
19 significant hydrotest failure on September 1st on Spread 5.
20 And those are the two primary issues that I have found in
21 Spread 5.

22 MS. EWALD: Your Honor, I'm about ready to move to
23 a new section. I believe we're right about halfway through
24 Mr. Triche's presentation, and perhaps it will go a little
25 bit quicker for the next hour. But I appreciate that we have

1 been going for two hours and 15 minutes. So, I can either
2 proceed through the presentation or we can take a short break
3 and return.

4 THE COURT: Let's take ten minutes and then we'll
5 return. Okay. We're in recess.

6 MS. EWALD: Thank you, Your Honor.

7 (Recess taken at 11:44 a.m.)

8 (Proceedings resumed at 11:54 a.m.)

9 THE COURT: Please be seated.

10 MS. EWALD: Your Honor, may I proceed?

11 THE COURT: You may.

12 MS. EWALD: Thank you.

13 BY MS. EWALD:

14 Q Mr. Triche, turning to the slide number 34 behind
15 "analysis comparison," were you also asked to review
16 Mr. Kakol's schedule analysis with regard to his conclusions
17 related to a schedule bonus?

18 A Yes, I did review.

19 Q And at slide 34, did you identify certain areas of
20 agreement that you had with Mr. Kakol?

21 A Yes. So, when I looked at Mr. Kakol's first report, we
22 agree that the plan schedule or baseline schedule should be
23 the Amendment 1 schedule and the revised mechanical
24 completion date should be June 14th, 2018. We also agreed
25 that Welded's September 2018 schedule update is the as-built

1 schedule for the actual dates. And then, finally, Mr. Kakol
2 does -- we do seem to agree that the appropriate method for
3 quantifying and identifying change is the EWR.

4 And you can see there on the bottom of his report he
5 states:

6 "Transco would execute some sort of change order,
7 also sometimes called an extra work request." And that's
8 really what defines a change order. From these statements by
9 Mr. Sztroin, I determined that the extra work request process
10 would be used for a scope change.

11 Q And so from your review of Mr. Kakol's report, did you
12 believe you were on the same page with regard to EWRs versus
13 trends?

14 A Yes.

15 Q And turning to slide number 35. Could you identify
16 what you saw with regard to the scope of Contech's evaluation
17 and your view of the methodology he employed?

18 A So Mr. Kakol evaluated four very specific alleged non-
19 Welded delay events, and those are permit delay of Amtrak, a
20 permit variance delay at I-76, the same with Pequea Creek and
21 I-81.

22 Q And the I-81 delay -- do you recall the circumstances
23 of the I-81 issue, Mr. Triche?

24 A Yes. I looked into that issue and found that Welded
25 had used a method for boring I-81 that wasn't allowed under

1 the existing permit.

2 Q And do you also recall that Welded and Transco received
3 a notice of violation with regard to an environmental issue
4 that occurred during that -- during that unauthorized
5 methodology?

6 THE COURT: Excuse me. Mr. Neiburg.

7 MR. NEIBURG: Your Honor, I'll just object on the
8 grounds of relevance. Mr. Kakol was here on the stand
9 and testified that he was not offering any opinion concerning
10 any non-Welded delay that related to I-81.

11 THE COURT: I vaguely recall that. I'm not
12 positive that I vaguely recall that.

13 MS. EWALD: It was included within his original
14 report, and Mr. Triche responded to it. And Mr. Triche has
15 an opinion with regard to the causes for the I-81 delay in
16 response to what Mr. Kakol included in his report. And so --

17 THE COURT: But it's not an issue now, is it?

18 MS. EWALD: I would say it may be an issue with
19 regard to a delay caused by Welded that wasn't considered by
20 Mr. Kakol and the impact of that. It may be a concurrent
21 delay, Your Honor, that Mr. Kakol no longer considers in his
22 analysis.

23 THE COURT: Okay. I'm not sure I understand the
24 current relevance of this, but I'll let you explore it
25 briefly. But I'm not -- I'm not sure I think it really had

1 an -- well, I don't think it had an impact on his opinion,
2 Mr. Kakol's opinion.

3 MS. EWALD: And I think ultimately -- I'll let
4 Mr. Triche testify of course, but I think the ultimate
5 analysis will be that it did not impact the critical path,
6 but I will let Mr. Triche testify.

7 THE COURT: Okay. So, they may be in vehement
8 agreement on this, but I'll hear it briefly.

9 MS. EWALD: Perhaps for different reasons.

10 BY MS. EWALD:

11 Q Mr. Triche, with regard to -- let's turn to your view
12 of Mr. Kakol's analysis first. And what do you understand
13 his methodology to be?

14 A So his methodology was impacted as-planned schedule
15 delay analysis in which you impact or identify a delay to the
16 project and impact -- insert that delay into the original
17 plan schedule.

18 Q And we can turn to the next slide. But, Mr. Triche,
19 before we do that, are there limitations with regard to the
20 impacted as-planned analysis, in your view?

21 A There are limitations. And I will say that the two
22 primary ones, in my view, are that the impacted as-planned is
23 a hypothetical delay analysis. It's prospective, which means
24 it's looking forward. The second -- you know, it doesn't
25 measure the actual delay. It measures a hypothetical delay.

1 It doesn't account for changes in the execution of the
2 project that actually occur. So those are the limitations
3 that I identify.

4 Q And on slide 36, there's a reference to the AACE
5 International Recommended Practice 29R-03 and the Society of
6 Construction Law Delay and Disruption Protocol. Can you just
7 briefly explain to the Court what these publications address?

8 A So the AACE, Association of Advancement of Cost
9 Engineers, and the Society of Construction Law put out these
10 practice -- these papers, recommendations as they relate to
11 schedule delay analyses. I will say they are very well
12 recognized in the construction industry. They're used by
13 scheduling professionals throughout the construction industry
14 and referenced. Yes.

15 Q And you have -- is that an excerpt at the bottom of the
16 page from the recommended practice regarding the impacted as-
17 planned methodology?

18 A Yes. It goes back to, you know, looking at potential
19 hypothetical delays as opposed to actual delays that occur on
20 the project.

21 Q And turning to page 37 in the slides. Are these
22 additional -- what did you show on slide 37 from the AACE
23 recommended practice?

24 A So this is a straight quote out of the AACE 29R-03
25 forensic schedule analysis document. And it identifies

1 issues with using an impacted as-planned schedule analysis to
2 measure delay. Again, it talks about it being a hypothetical
3 model, and it doesn't account for the way the project was
4 actually constructed.

5 Q And under the second bullet point, it indicates:

6 "Susceptible to unintended or intended
7 manipulation due to modeling if only one party's delays are
8 considered since the method cannot account for the impacted
9 delays not explicitly inserted."

10 Can you explain what -- can you explain your
11 understanding of that comment in the recommended practice?

12 A Yes. So, I don't think there was any intended
13 manipulation in this case. But what happens is it doesn't
14 look at the project as a whole. It looks at a project with
15 very narrow blinders on at one activity and one delay to that
16 activity that we'll see in this case. The four or three
17 delays that Mr. Kakol identifies are not on the critical
18 path.

19 Q And did Mr. Kakol consider any of Welded's delays to
20 the project in his analysis, to your understanding?

21 A Not with respect to these very specific delays, no.

22 Q And moving to slide number 38, I believe that is just a
23 summary of the impacted as-planned analysis. You indicate it
24 is the least reliable methodology. And is that -- are those
25 your words, Mr. Triche? Or what is your understanding of the

1 industry's view of impacted as-planned analysis?

2 A Depending on what you're using the analysis for.

3 Again, this is an after-the-fact. We know what
4 actually happened on the project. We know the as-built
5 schedule. So, in my view, it is the most -- or it is not
6 reliable for what it's being
7 used for.

8 Q So turning to slide number 39, did you have an
9 additional analysis of Mr. Kakol's -- Mr. Kakol's methodology
10 and what it showed?

11 A So, again, his analysis isn't based on the project's
12 critical path. Spread 5 was both the planned and as-built
13 critical path. Each of the delays identified by Mr. Kakol
14 are on either Spread 6 or Spread 7 and, therefore, not on the
15 critical path. Looking -- again, the critical path is those
16 activities which if delayed will impact the mechanical
17 completion date. And that only could have happened on
18 Spread 5.

19 The other thing that raises an issue is that the delays
20 identified by Mr. Kakol relate to crossings. And those
21 crossings are performed by crossing crews. They're -- as I
22 alluded to earlier, they're very specialized crews. They
23 move from road bore to road bore to stream crossing to stream
24 crossing. They don't have to start at Point A and go to
25 Point B. They skip around. That's what they're built to do.

1 If there's an issue with a bore, they can and easily do -- I
2 won't say "easily" -- but they can pick up and move to the
3 next bore that's available and ready for it to happen.

4 So, in this case, looking at Mr. Kakol's analysis, it's
5 almost as if those crews stop and are on standby for months
6 at a time and not doing it over, and that just didn't happen
7 on this project.

8 Q And when you say, "that just didn't happen on this
9 project," what is that based on, Mr. Triche?

10 A Looking at the schedule and where the work was done and
11 by which crews.

12 Q If we turn to slide number 40. Have you described the
13 actual performance of the work, in your view, related to
14 these issues?

15 A Yeah. So, this is probably a little complicated. But
16 when you look at the graphic on the right, the green bars
17 indicate work being done on various road bores in the as-
18 planned schedule. So, you can -- you know, you see it's a
19 very -- it's a very step, step, step, right.

20 In the blue is the as-built data, when these -- when
21 this work was actually done. And as you can see, that step
22 by step is no longer really done that way. The crews are
23 moving back and forth between them. And this is what happens
24 on pipeline construction projects like this. It is too
25 expensive to have a boring crew and a tie-in crew just sit

1 there doing nothing if there's available work for them.

2 Q And you indicate on this slide that Welded changed its
3 sequence. And did Mr. Kakol's analysis take into account
4 that changed sequence?

5 A No.

6 Q And you also indicate:

7 "The contract fails to account for other delays to
8 the work in its schedule evaluation."

9 What did you mean by that?

10 A As I said before, it's blinders on one delay -- on a
11 hypothetical delay that just never materialized in that way.

12 Q And turning to slide number 41. Have you analyzed the
13 impacts of the permit and permit variance issues that
14 Mr. Kakol identified, including Amtrak, I-76, and Pequea
15 Creek bore?

16 A Yes.

17 Q And starting with slide number 41, can you describe
18 what you've shown here with regard to the as-built schedule?

19 A So this is a -- this is one of Mr. Kakol's
20 demonstrative exhibits for the Amtrak. And what I have
21 identified here 6 with the, I guess, dark blue bar is that
22 this is when the Amtrak bore was actually performed, from
23 6/12 to 7/23. So, Mr. Kakol has identified 118 days -- 118
24 calendar days of delay related to the Amtrak bore.

25 If you look at that in terms of his new mechanical

1 completion date of September 19th, 2019, you're going to see
2 that there's an additional 87 days of delay after July 23rd
3 that he's claiming after the bore was actually completed.

4 Q And in your analysis, did you conclude whether this
5 Amtrak railroad bore issue had any impact on the actual
6 critical path of the project, Mr. Triche?

7 A I did not.

8 Q And the Amtrak road bore was on Spread 7; is that
9 right?

10 A Correct.

11 Q And you also identified that it was Spread 7,
12 Section 3.

13 Can you explain for the Court why you're calling out
14 Section 3 of Spread 7?

15 A So as part of Welded's scope of work, they had to
16 hydrotest the pipeline. And you hydrotest portions of the
17 pipeline. So, within Section -- or within Spread 7, there
18 were three sections that they were going to hydrotest
19 separately. So -- and for Amtrak, it was part of
20 Section 3 - - the Section 3 hydrotest.

21 So, once you complete all the work within Section 3,
22 you can then hydrotest it. Once it's welded together and all
23 the tie-ins have been made, all the crossings have been
24 completed, you can then hydrotest that section within -- in
25 this case, Section 3, within Spread 7.

1 Q And did you analyze whether the Amtrak railroad bore
2 had any impact on the hydrotesting of Spread 7, separate and
3 apart from whether it was the actual critical path of the
4 project?

5 A Yes.

6 Q And if we turn to slide 42. Can you explain to the
7 Court the circumstances that unfolded with regard to the
8 hydrotesting of Section 3 of Spread 7?

9 A Yes. So, if we look at the graphic below -- I'm trying
10 to do this as unpainfully as possible. The actual bore for
11 Amtrak was completed between June 12th and July 23rd. So,
12 that is -- you'll see "Amtrak" spelled incorrectly in the
13 light blue. But you can see there that the second row is the
14 actual conventional bore by Welded that occurred from
15 June 12th to July 2nd. Once the bore is made, it has to be
16 tied in -- that's the third line down -- which was performed
17 between June 19th and August 11th.

18 In the dark blue, which identifies the test and
19 completion work -- so that's your hydrotest work -- you will
20 see in that first row titled "Complete Test Section 3," that
21 means all the work within Test Section 3 had been completed
22 and allowed the hydrotest to begin. So, what you can see
23 there is that Test Section 3 wasn't completed until
24 August 23rd, 12 days after the tie-in of Amtrak was made.

25 Q And did you reach any conclusions with regard to the

1 timing, then, of the -- the tie-in to Amtrak in its relation
2 to the hydrotest event?

3 A So additional work occurred between August 11th and
4 August 23rd that had no relationship to the Amtrak bore,
5 which in my world, in my scheduling world, means that Amtrak
6 railroad bore wasn't driving even the completion of Test
7 Section 3 within Spread 7. So even if you're just looking at
8 Spread 7, it's not controlling the completion of Spread 7.

9 Q And if we turn to Slide 43 -- and, again, we're now
10 addressing the I-76 road bore, was the I-76 road bore also
11 within the Test Section 3 of Spread 7?

12 A Yes.

13 Q And what is your understanding of the events that
14 unfolded, with regard to the I-76 road bore?

15 A So, as I understand, there was a permit in place.
16 Welded requested a variance from that permit to include a
17 stream that would allow Welded to bore not only the road, but
18 the stream, at the same time, so it would be one bore.

19 Transco obtained that variance and at the end of the
20 day, Welded was unable to complete the bore all the way from
21 one side of the road past the stream and ended up boring only
22 the road itself, basically, going back to the original way
23 the bore was permitted.

24 And so when you look at that, the road bore
25 installation, the actual road bore of I-76 and then I'll kind

1 of move down to the graphic itself -- it's a little bit hard
2 to read -- but in the light blue is the I-76 bore work. And
3 you'll see that the approval was obtained on May 31st. In
4 the second row, paid up approval required for I-76 was
5 provided on May 31st --

6 Q And just to stop you there, that's where the stream
7 variance that Welded requested; is that right?

8 A Correct. Correct.

9 And then they actually began the bore on that day and
10 didn't complete it until July 9th in terms of the bore and
11 then pulling the pipe through the bore was completed on
12 July 21st, 2018. That is a duration of 51 days, which is in
13 excess of the plan duration to complete that bore of 15 days.

14 And that difference right there seems to be Welded's
15 effort to originally -- to bore both, the road and the stream
16 and then going back to the original bore.

17 Q And you indicate Contech does not address those days.

18 What do you mean by that?

19 A It's just not identified or even addressed in any
20 manner by Mr. Kakol.

21 Q And then you go on to describe the date that the
22 hydrotesting occurred and its relationship with the I-76 road
23 bore.

24 What were your conclusions in that regard?

25 A So within Spread 7, the I-76 was in Section 3 and the

1 work associated with I-76 was completed on August 11th,
2 including the tie-in. But the overall Test Section 3 wasn't
3 completed until August 23rd, the same day in relation to
4 Amtrak, which was 12 days after the I-76 bore and tie-in were
5 completed, which, again, in my world, means that the I-76
6 road bore was not driving completion of Section 3, which
7 would allow Section 3 to be hydrotested.

8 Q And we'll turn to Slide 44 in your presentation,
9 Mr. Triche.

10 Did you also consider the Pequea Creek bore? And if
11 you could describe for the Court where Pequea Creek is
12 located.

13 A So, Pequea Creek is, again, in Spread 7. This time,
14 Pequea Creek is in Section 2, as opposed to Section 3. This
15 one is also a little bit different in that Pequea Creek is an
16 activity in the schedule that includes a total of
17 approximately 8 miles of right-of-way and all the crossings
18 that are in that 8 miles. So there is no specific date that
19 they were going to do Pequea Creek based on this activity in
20 the schedule.

21 I know that there were some variances related to this
22 crossing in terms of some rock blasting and I think the
23 presence of an eagle's nest, but when you look at the
24 activities here, you're going to see that the variance was
25 finally provided on June 15th, 2018. The work at Pequea

1 Creek didn't start until June 29th and finished July 14th.

2 So it did take them about two weeks once they had the
3 variance to actually start the work and then that work
4 completed on July 14th, which was 17 days prior to Test
5 Section 2 being completed to allow the hydrotest of Section 2
6 to begin.

7 Q So just to summarize that testimony, Mr. Triche, the
8 Pequea Creek crossing was completed on what day? On
9 July 14th; is that right?

10 A July 14th, including the tie-in.

11 Q And then the rest of the Test Section 2 wasn't
12 completed until 17 days after that.

13 What were your conclusions in that regard?

14 A That Pequea Creek wasn't driving the completion of Test
15 Section 2 in Spread 7.

16 Q And then turning to Slide 45, you have what I believe
17 is a summary slide addressing Spread 7. And, again, it's
18 titled "As-built critical path."

19 Just to clarify, Spread 7 was not the critical path of
20 the project, do you agree with that?

21 A Correct. Probably a poor title choice.

22 In this regard, if you're only looking at Spread 7, I'm
23 looking at only Spread 7 and what drove the completion of
24 Spread 7 in this slide. But Spread 5 was the as-built
25 critical path.

1 Q So if you look at Spread 7 as a standalone project,
2 what, in your view, was driving the completion of Spread 7,
3 what activities?

4 A So, in my view, first, let me just explain the graphic
5 on the right. The graphic on the right is, basically, taking
6 the Pequea Creek work and the Amtrak work and I-76, as built
7 (indiscernible), plus, the other work that was going on.

8 So, for example, within Section 2, the Ironville Pike
9 work, which is another crossing, wasn't completed until
10 July 31st. That was the last work completed in Section 2,
11 Spread 7, that would then allow hydrotesting to start in
12 Section 2.

13 So in my scheduling word, Ironville Pike was driving
14 the completion of Spread 7, Test Section 2.

15 Q And did you also look at what was driving the
16 completion of Spread 7, Test Section 3?

17 A Similarly, the other work going on after Amtrak and
18 I-76 were completed was the Hossler Road crossing. Within
19 Test Section 3, that did not complete until August 23rd,
20 2018, which then allowed hydrotesting to start two days
21 later. So, in relation to Section 3, Spread 7, it's my
22 opinion that Hossler Road was driving the completion of
23 Spread 7, Test Section 3, not Amtrak Rise 76.

24 Q And in the final bullet point on Slide 45, you indicate
25 the as-built schedule indicates that the alleged delay events

1 in Section 7 Contech chose to evaluate, did not drive the
2 completion of Spread 7.

3 What are your final conclusions in that regard,
4 Mr. Triche?

5 A So, in that regard, even if you look at just Spread 7
6 and you look at the three delays identified by Mr. Kakol, it
7 is my opinion that those were not driving the completion of
8 Spread 7.

9 Q And then turning to Slide 46, is this your conclusion
10 with regard to the Contech schedule evaluation?

11 A Yes. So, I think it's first and foremost to say, you
12 know, in my opinion, looking at the critical path is
13 paramount when you're doing a scheduled delay analysis and in
14 that case, it's Spread 7. The delays identified by Mr. Kakol
15 are Spread 7 and, therefore, I think his analysis is flawed
16 in that regard.

17 Q And you identify significant issues.

18 Are those significant issues that you identify in
19 Mr. Kakol's analysis?

20 A Yeah, we talked about most of these throughout the
21 thing or throughout the last half hour or so. Again, the
22 delays are hypothetical. They're not the delays that
23 actually occurred on the -- the length of delays that
24 actually occurred on the progress on the project. It also
25 doesn't account for the way the work was actually performed

1 and when those bores were performed and when bores were
2 completed after.

3 And then, I think a good example is, you know,
4 Mr. Kakol identified the I-81 delay of 91 days. And while,
5 yes, it's a delay and it appears to be a Welded delay, you
6 know, even that delay didn't impact the Spread 5 actual
7 mechanical conclusion date, because it wouldn't on the
8 critical path.

9 Q And turning now to the quantification of increased
10 costs to the project. And as you mentioned in your summary
11 slides, Mr. Triche, this includes the issue of weld repairs
12 and cutouts, as well as defective work.

13 And first we'll turn to the issue of weld repairs.

14 A Uh-huh.

15 Q And I'll draw your attention -- excuse me -- I'll draw
16 your attention to Slide 48, which is an excerpt of contract
17 Section 1, Article 22, Section C, "Correction of defective
18 work." And there's an excerpt from the contract that relates
19 to allowable weld repairs of 5 percent and then a cost impact
20 to be calculated for weld repairs and cutouts over 5 percent.

21 Can you describe briefly for the Court what your
22 understanding of this provision was and what you did to
23 quantify it.

24 A So the contract allows for, I guess I'll call it
25 reimbursement to Transco if Welded's weld repairs are in

1 excess of 5 percent. It provides an amount per weld repair
2 of \$5,000. It allows for an amount of \$7500 per cutout if
3 the weld repairs are in excess of 5 percent for the total for
4 the project, you know, as a whole.

5 Q And just briefly, Mr. Triche, I'm not sure we heard too
6 much about cutouts.

7 Can you describe for the Court what a cutout is, as
8 compared to a weld repair.

9 A So a weld repair is where only a portion of the weld is
10 defective and they actually -- they don't have to replace
11 that weld. They're only repairing a portion of that weld.

12 It's a much quicker process than a cutout.

13 A cutout is where Welded actually cuts out the entire
14 weld and has to make -- put in what they call a "pup piece,"
15 it's a shorter piece of pipe, and make two welds to correct
16 or to complete the cutout.

17 Q And so if you're thinking about a cutout, it's a
18 cylindrical shape that is the basically the dimensions of the
19 pipe, but a small piece that cuts out the entire weld that's
20 been made; is that right?

21 A Yes, you cut out a certain distance on either side of
22 the weld. So you make two cuts, take that complete piece of
23 pipe out, put in a brand new piece of pipe -- they call it a
24 "pup piece" -- and then make two welds to put that little
25 piece into the pipeline itself.

1 Q And turning to Slide 49, did quantify, Mr. Triche, the
2 weld repairs in excess of the 5 percent allowance in the
3 contract?

4 A I did.

5 Q And what did you use to do that quantification?

6 A So, I used the contemporaneous project documents, both
7 of the Transco's daily construction report and JANX daily
8 reports.

9 Q And did they reports record on a daily basis, the weld
10 repairs and cutouts?

11 A Yes.

12 Q And can you -- they've been mentioned before, but can
13 you describe for the Court who JANX is?

14 A So JANX is a very well-known, (indiscernible) company,
15 non-destructive examination. So, they basically, once a weld
16 is made, come in and either x-ray it or ultrasound it to
17 approve that there's no defects in the weld.

18 Q And turning to Slide 50, did you observe Mr. Kakol's
19 analysis with regard to quantification of the weld repairs?

20 A Yes. So, when Mr. Kakol's rebuttal report, he provided
21 an analysis and, generally, the method that we both used to
22 quantify the weld repairs' cost is the same.

23 Q And then turning to Slide 51, can you describe your
24 analysis as you -- that you utilized to quantify the weld
25 repair numbers --

1 A So again --

2 Q -- repair cutout numbers.

3 A So, you have to start with the total number of welds
4 that were made on the project and that's so you can determine
5 what the 5 percent allowance is. So, in order to determine
6 the allowance, you take the 5 percent of the total welds on
7 the project performed by Welded.

8 So, using the Transco and JANX reports, I determined
9 the total number of welds performed by Welded.

10 Q And does the number that you reflect on Slide 51, the
11 10,324 total welds, is that the -- a number that you
12 quantified based on all the data that you reviewed?

13 A Yes.

14 Q And is it -- and did you believe that the review that
15 you did of the data is the most reliable identification of
16 the total number of welds on the project?

17 A Yes.

18 Q And so, turning to -- that gives us a total number of
19 welds, which is the denominator, I guess.

20 Can you describe, turning to Slide 52, how you
21 quantified the weld repairs and cutouts on the project.

22 A So, once you have the total number of welds, the
23 documents, the Transco and JANX reports also identify the
24 number of repairs made and the number of cutouts made by
25 spread.

1 Q And did you identify any differences between the JANX
2 and the Transco reports?

3 A So, there were differences. I will say that on
4 Spreads 6 and 7, they align pretty well. I mean, you know,
5 nothing that would cause alarm.

6 Now, on Spread 5, there were 101 welds that were
7 reclassified.

8 Q And that were shown in the JANX report.

9 Is that correct, Mr. Triche?

10 A That's correct.

11 Q And so, have you done two alternatives -- first of all,
12 stepping back, did you find that looking at either set of
13 data, did Welded's repair rate exceed the 5 percent
14 allowance?

15 A Yes, no matter -- irrespective of the re-classification
16 of 101 welds, Welded exceeded the 5 percent repair rate.

17 Q And can you describe for the Court the two calculations
18 you have performance, based on the data you observed?

19 A So, I provided two alternatives. One includes the 101
20 weld -- I'm sorry -- the 101 reclassified welds. And then
21 the second alternative excludes the 101 welds that were
22 reclassified.

23 And when I say, "reclassified," they were originally
24 rejected and then later, after an audit, were classified as
25 acceptable.

1 Q And do you -- can you explain the circumstances that
2 led to this -- the issue that you just described.

3 A So as I understand, in Spread 5, there were quite a few
4 transverse indications identified in the welds, which
5 resulted in JANX calling repairs or cutouts for those welds.

6 This apparently occurred after Welded switched from
7 mechanized welding to stick welding. I think we heard some
8 testimony that there were some, possibly some issues with
9 preheating the welds, at this time, too. And so, that is
10 kind of the genesis of where this whole issue in Spread 5 and
11 these 101 welds being reclassified arrived.

12 Q And as you understand it, Mr. Triche, how were these
13 weld repairs performed on the project?

14 A So, they are typically performed, and as I understand
15 on this project, were performed by a repair welder, who
16 essentially follows along after JANX comes and tests the
17 welds. They come through and make any repairs or cuts that
18 needs to be done.

19 Q And so turning to Slides 53 and 54, can you explain the
20 two alternative quantifications that you prepared based on
21 this -- the 101 welds that you just -- weld repairs you just
22 described.

23 A Yes. So when you're looking at -- in alternative one,
24 I didn't make any allowance for the 101 weld repairs that
25 were reclassified. So, essentially, you take the actual

1 welds completed at 10,324. We know from the reports that
2 there were a total repairs of 471, a total of cutouts of 314,
3 which gives you a total of 785.

4 In the middle, you'll see that 5 percent contract
5 allowance. That is simply the 10,324 welds multiplied by 5
6 percent. So the contract allowed for 516 weld repairs. So
7 that is less than the total number of repairs and cutouts and
8 that totals 269.

9 Now the little bit more difficult part of that is, you
10 know, what of those are repairs and what are cutouts?

11 What I did was I took the same ratio of actual repairs
12 and actual cutouts to the total and used that same repair to
13 the 269 repairs in excess of the 5 percent and applied that
14 same ratio to get the repairs and cutouts. You then
15 multiply, for example, the 161 repairs times the contractual
16 \$5,000-per-repair rate and you get \$805,000. In terms of
17 cutouts, there were 108. Multiplied by the contractual rate
18 of \$7500 per cutout, that gets you to \$810,000. The sum of
19 those two numbers is \$1,615,000.

20 Q And did you also do an analysis with regard to the 101
21 weld repairs that you talked about previously, with regard to
22 the --

23 A Sorry. Go ahead.

24 Q If you turn to Slide 54, Mr. Triche.

25 With regard to those 101 weld repairs that transpired

1 after the change to the stick welding on Spread 5, what was
2 the result of your analysis excluding those from the data?

3 Did Welded still exceed the 5 percent allowance on the
4 project?

5 A Yes, to both. It still exceeded the 5 percent contract
6 allowance. The method is exactly the same as alternative
7 one. It just excludes 101 weld repairs/cutouts.

8 Based on removing the 101 weld repairs, the total
9 amount is \$987,500.

10 Q And that is the combination of the repairs for \$545,000
11 and the cutouts for \$442,500?

12 A Yes.

13 Q Thank you, Mr. Triche.

14 Turn next to the quantification of defective work cost.
15 And here, you've identified contract provision Section 1,
16 Article 22, Section C.

17 You understand that clause to relate to correction of
18 defective work?

19 A Yes.

20 Q And contract Section 1, Article 7(a), do you understand
21 Article 7(a) to be a portion of the extra work request or
22 change order provision that you were describing for the Court
23 earlier?

24 A Yes.

25 Q And did you review the records in this case to

1 determine if Welded recorded the costs of defective,
2 deficient, non-conforming work that it performed on the
3 project?

4 A I did.

5 Q And turning to Slide 56, what did you find, with regard
6 to the documentation?

7 A So, there were two primary documents that I could find
8 that identified non-conforming or defective work. One is
9 Welded's non-conformance log, and that's shown on -- an
10 excerpt is shown on the screen. The other document that
11 identified rework or non-conforming work is Welded's progress
12 reports.

13 Q And turning to Slide 57, have you excerpted a portion
14 of those progress reports as it related to non-conforming
15 work?

16 A Yes. So, within each of Welded's progress reports,
17 there was a section on quality assurance for each spread and
18 then within that section, it identified estimated cost of
19 rework and provided different categories of the rework.

20 Q And I see that you have pointed to the last report,
21 dated September 23rd, 2018.

22 Between the non-conformance log and the progress
23 reports, did you analyze which was more complete?

24 A So, the non-conformance logs didn't extend as long as
25 the weekly progress reports, so I couldn't make that

1 correlation on the September 23rd, how it correlated to the
2 latest non-conformance log. But when you try to get to a
3 date range of a weekly report in a non-conformance log, the
4 totals in terms of the weekly report and the non-conformance
5 log totaled about the same. They were pretty close. I think
6 it was just probably date issues in terms of it because -- I
7 probably need to go back -- but let me go back one slide.

8 The non-conformance log, Welded's non-conformance log
9 actually provides a column identified as "estimate cost of
10 rework." It's about the tenth column from the left. And
11 then when you added that column, plus the weekly report
12 that's more of a total, they were similar.

13 Q And did the weekly progress reports go further in time
14 than the non-conformance log to your -- based on your
15 examination?

16 A Yes. So, I used the latest or the last Welded weekly
17 progress report of September 23rd to identify the estimated
18 cost of rework.

19 Q And you may have already stated this, Mr. Triche, I
20 apologize, but what was the total amount of rework, the
21 estimated cost of rework that Welded identified in its weekly
22 progress report?

23 A So, the total amount is 2,018,000.

24 Q And from your review, did you determine whether Welded,
25 to the extent it involved labor rework, did you determine

1 whether any equipment fee had been applied to the labor cost?

2 A Based on these two documents, I'm unable to discern
3 whether these amounts included equipment as either an
4 equipment multiplier or just equipment in general.

5 Q So, did you add any equipment fee multiplier?

6 A I stayed with the amounts that are identified on the
7 weekly progress report and did not add an equipment
8 multiplier.

9 Q And turning to Slide 58, Mr. Triche, I think we have
10 two more categories of increased costs that we're going to
11 address. And the first is additional tie-ins. The last is
12 early mobilization.

13 And turning to Slide 58, you've identified a
14 provision -- the provision in Section 2, Article 3 that
15 indicates the company and contractor will work together ahead
16 of the notice of proceed to jointly determine the execution
17 plan to achieve the lowest capital cost to build the project
18 in the allotted schedule.

19 And is it -- with respect to the additional tie-ins,
20 what did you -- first of all, why did you identify these
21 additional tie-ins as something to investigate?

22 A So, one, tie-ins were a fairly big topic on the project
23 when you look at contemporaneous records. There seemed to be
24 never a good plan as to the number of tie-ins that there
25 would be. It always seemed to be changing. And then the

1 total number of tie-ins was significantly more than they had
2 planned. It's certainly one of the issues that arose on the
3 project.

4 Q And turning to Slide 59, you may have already addressed
5 this issue in your prior testimony, Mr. Triche, but can you
6 explain the circumstances relating to mainline welds versus
7 tie-in welds and how it impacts scheduling costs on a
8 pipeline project in your experience.

9 A So, there's two different crews that performed the
10 welds on the pipeline. You've got the mainline welding crew
11 and you've got the tie-in crew. The tie-in crew, again, is a
12 specialized crew that's jumping around doing a weld here and
13 a weld here and then one over there. Your mainline crew
14 starts at Point A and they go to Point B and they do every
15 weld that they can.

16 I'll kind of go back to that production chart that we
17 saw earlier in the presentation that, you know, a mainline
18 welding crew can get anywhere between 14 and 30 welds per
19 day, whereas a tie-in crew is generally going to get one to
20 three tie-in welds per day. Doing tie-in welds is more
21 costly on a per-weld basis, primarily because the production
22 is so much greater by the mainline welding crew, as opposed
23 to the tie-in crew.

24 And I think it's interesting just to see the pictures
25 here. Mainline welds are made above the ditch. So the pipe

1 is sitting up on grade level. The welds are made up there.
2 For a tie-in, you're generally in the ditch making the weld,
3 which takes more time, because you have all the safety
4 procedures around working in an open ditch.

5 Q And just the orient the Court, the photos that you have
6 of -- the two bottom photos, do those demonstrate tie-in
7 welds in a ditch?

8 A Correct.

9 And then the photo on the top is actually the mainline
10 welding crew and that's the automatic welding being performed
11 in hutches [sic].

12 Q And I believe the photo you have on the top, Mr. Triche,
13 is that a photo from this project or is that a photo that you
14 found? I just want to make sure.

15 A It is a website photo. It is not from this project.

16 Q Is that typical --

17 A But it's representative.

18 Q -- of the type of mainline production that you would
19 see using automatic welders?

20 A Yes.

21 Q And the bottom two photos are ones that were from the
22 ASR project, correct?

23 A Correct.

24 Q And to look at the additional costs or increased costs
25 due to additional tie-ins, did you analyze the number of

1 labor hours and man-hours that were actually planned versus
2 incurred for the tie-ins?

3 A Yes.

4 Q And so, turning to Slide 60, can you explain to the
5 Court what your labor-hour analysis indicated?

6 A So based on Welded's contemporaneous reporting, you can
7 see the green bars are the planned number of tie-in labor
8 hours. The blue bars are the actual number of labor hours
9 expended by Welded on tie-ins.

10 So, for example, if you look at Spread 5, you'll that
11 they planned approximately 85,000 labor hours, but actually
12 spent 221,000 labor hours.

13 Q And if you turn to Slide 61, did you look at the -- in
14 numbers, did you look at the additional tie-ins that Welded
15 performed beyond its plan?

16 A Yes.

17 Identifying the planned number of tie-in welds
18 typically is not the most difficult process. In the
19 documents throughout the project, the planned number of tie-
20 in welds seemed to change quite often, depending on who was
21 writing the email or looking at it.

22 For the purposes of my analysis, I used the largest
23 number of planned tie-in welds that I could find in the
24 documents. I won't take us to our report, but I identify
25 probably six or seven different documents identifying what it

1 believed to be the planned number of tie-in welds and it
2 ranged from like 1600 to this 2641.

3 Q And by using the highest number of planned tie-in
4 welds, did that reduce your number of the increased number of
5 tie-in welds you identified on the project?

6 A It -- yes.

7 Q And so, you have identified it as the most conservative
8 number.

9 Is that because you used the highest planned number?

10 A Yes.

11 Q And what was the basis of the actual tie-in welds you
12 identified?

13 A So Welded's progress reports identified the number of
14 tie-in welds for each of the spreads. In September 2nd,
15 2018, identifies 2,944 total actual tie-in welds made across
16 all three spreads.

17 Q And so the difference or the increase between the tie-
18 in welds was 303; is that right?

19 A Correct.

20 Q And turning to Slide 62, did you investigate to see if
21 there were any reasons for those additional tie-in welds?

22 A Yes.

23 So I reviewed the trends in terms of trying to identify
24 reasons that the tie-in welds increased from the planned.
25 Welded actually submitted seven trends that identified,

1 essentially, hey, we need to make a tie-in weld here that we
2 planned to use our mainline welding crew to perform. And
3 those seven trends total an additional 49 tie-in welds that
4 were originally planned to be mainline welds.

5 Q And did you remove those -- what did you do, then, in
6 your analysis?

7 A So my analysis, then, was here's the actual number of
8 tie-in welds, less the plan, less the number of tie-in welds
9 identified by Welded in its trends. So that number went from
10 303 to 254.

11 And then the next step in the process was how do you
12 quantify those additional welds? What is the cost of
13 performance a weld with a tie-in crew, as opposed to a
14 mainline welding crew?

15 So in trend number 208, in Welded's trend number 208,
16 it actually performed that analysis. And that analysis so
17 based on, essentially, our mainline welding crew is made up,
18 typically, of this number of people, this equipment, and they
19 can do this number of welds per day. Similarly, they looked
20 at the tie-in crew. It's this number of people, this
21 equipment, and we can do two tie-in welds per day.

22 And then, I have to say this, but you do all the math,
23 right, and the incremental cost of the tie-in welds -- or a
24 weld made by a tie-in crew, as opposed to a mainline crew is
25 \$8,788.

1 Q And with regard to the 254 tie-in welds, are those the
2 tie-in welds that you could find within the Welded data, no
3 reason or explanation for them?

4 A Correct.

5 And so, that's the, you know, the actual planned, less
6 identifying Welded's trends of 254, multiplied by the
7 incremental rate of 8,788, totals \$2,232,152.

8 Q And one last topic, Mr. Triche.

9 Turning to Slide 63, did you have quantify increased
10 costs related to Welded's mobilization of labor that they
11 identified in trends?

12 A Yes.

13 Q And what did your analysis and investigation reveal,
14 with regard to the early mobilization of labor?

15 A So Welded submitted three trends; one for each spread
16 that is basically titled "Early cleaning and subsequent
17 activities to begin earlier than planned." And this relates
18 to the fact that the notice to proceed was actually issued on
19 September 25th, seven days earlier than the amendment one
20 scheduled plan date of October 2nd, 2017.

21 I will say that within these trends, there's multiple
22 components. Part of it is the early manpower for clearing
23 and crews. Others relate to environmental, adding
24 environmental manpower. And so, I've carved those out, but
25 generally, they relate to early mobilization.

1 Q And did you -- was Welded's scope of work changed in
2 any way that you could discern, regarding this early NTP?

3 A So, there is no change in scope. There is no change in
4 the work. Welded is essentially getting an additional seven
5 days to perform its work.

6 So, this one perplexed me from the beginning. I don't
7 think I've ever seen a contractor ask for millions of dollars
8 because they got to start the work seven days early and got,
9 we'll call it "additional float" in its schedule.

10 Q And if were turn to Slide 64, did you evaluate
11 whether -- did you evaluate Welded's progress in connection
12 with this mobilization of labor?

13 A So, I wanted to see what benefit the project got by the
14 early mobilization, so I looked at Welded's progress reports
15 to see what was the plan progress, primarily, at the end of
16 October to see was there really any significant increase in
17 the progress because of this additional early mobilization.

18 At the end of the day, there was very little to none or
19 less progress made than planned. I'll also note that one of
20 Transco's comments to trend 61 shown on the screen here
21 states, "Clearing did not get started and have enough done to
22 bring these crews in early." And that's apparently made by
23 Mr. Lee Bone, who is a Transco employee.

24 Q And so turning to Slide 65, I believe you may have
25 already described this, did you -- could you summarize your

1 analysis and then your quantification of the increased costs
2 related to this early mobilization.

3 A So, as it relates to these three trends, again, there's
4 no increase to the scope of the work. There's no change to
5 the scope of work. I consider it helpful to Welded. They
6 got some schedule float. It didn't result in additional
7 progress of the project as a whole.

8 And then in terms of quantifying it, I used the amounts
9 identified by Welded in its trend only for the early
10 mobilization. I excluded all the environmental aspects of
11 those three trends.

12 Q And for -- can you just recite what the amounts were
13 for each spread that you quantified based on looking at
14 Welded's reports.

15 A Yeah, so looking at the table at the bottom of
16 Slide 65, you'll see a Spread 5 total amount is \$1,870,500.

17 For Spread 6, the total amount is \$1,282,658. For
18 Spread 7, the total amount is \$2,666,200. For a grand total
19 for all three spreads of \$5,819,358.

20 Q Thank you, Mr. Triche.

21 And -- and in just the very last few slides, with
22 regard to site safety, I'm not going to read the contract to
23 anyone. That's set forth at page 66. We've seen these
24 provisions earlier today.

25 And I'd just like you to direct your attention to the

1 last two slides, 67 and 68, and explain what you did in
2 regard to identifying increased costs related to Welded's
3 safety record.

4 A So, Transco contemporaneously identified and kept track
5 of safety on the entire project as a whole. That's what was
6 identified in Slide 67. You can actually -- it's an Excel
7 file that you can actually, from a pull-down menu, identify
8 the numerous companies working on the project as a total.

9 You can pull down Welded and see what their safety is,
10 in terms of first day, lost time, restricted duty. So there
11 were a number of safety incidences identified by Transco in
12 its log and represented by this snippet on Slide 67.

13 Q And turning to Slide 68, did you also look at Welded's
14 documentation related to safety?

15 A Yes. So, within Welded's daily reports, I went through
16 and identified places in those or statements in those daily
17 reports that they identified safety stand-down or -- or
18 safety shutdown, or safety training.

19 You know, just to give a little background, these daily
20 reports are typically filled out by field people. They're
21 wanting to do the work, not paperwork, so they're not the
22 most descriptive in terms of the time that a shutdown
23 occurred or a stand-down occurred or the amount of time that
24 training.

25 Q So based on the daily reports that you reviewed, how

1 did you identify the -- or quantify time related to the
2 safety stand-downs and training?

3 A So, generally, sometimes it would provide data in terms
4 of a length of a shutdown. Other times, there was no
5 indication as to the amount of time.

6 Q And in that case what did you do?

7 A I just looked at it as half a day.

8 Q And did you provide that information to Mr. Slavis,
9 with regard to your quantification of those days and he
10 prepared a quantification of the amounts?

11 A Yes.

12 Q And then is -- what we have seen earlier today or --

13 A What we've heard.

14 Q Yes, we've heard that earlier today?

15 A Yes.

16 MS. EWALD: Your Honor, I believe this concludes
17 my presentation of Mr. Triche on direct.

18 THE COURT: Okay. Thank you.

19 Is this a good time to take a lunch break, then?

20 Let me ask you in terms of time, where we stand
21 and what you're envisioning.

22 MS. EWALD: Your Honor, we have looked at this
23 over the weekend and we've also discussed it with Plaintiff's
24 counsel. Prior to today, the parties had, together, used
25 approximately 43 and a half hours of trial time.

1 At the outset on day one, there was a discussion
2 where we all anticipated 60 hours of trial time for the 10
3 days of trial. Based on our historical average, it appears
4 that we'll realize probably about 50 --

5 THE COURT: We need an expert here, yeah? Okay.

6 MS. EWALD: We need a --

7 THE COURT: Based on our historical average,
8 right.

9 MS. EWALD: Our productivity analysis indicates
10 that it would probably be somewhere between 54 and 55 hours,
11 about one trial day less. And so what we would like to
12 propose, if it's possible, to work a little later tonight,
13 perhaps start a little later in the morning, so that we can
14 claw back about perhaps two and a half hours in that regard.

15 So that's what we would propose. Obviously, we
16 understand that the Court's schedule must accommodate -- may
17 not accommodate that.

18 I would say we also received the plaintiff's
19 rebuttal lineup yesterday afternoon and we don't have much
20 insight into -- we now know and, you know, expect who the
21 witnesses are and we anticipated at least three of them, but
22 we don't have much insight into how long that will take.

23 So I would have two asks, the first one I already
24 made with regard to time, the second ask would be that we had
25 some deposition designations to either play on a video or to

1 read into the record. It strikes me that perhaps the better
2 use of our time would be live testimony, as that testimony is
3 already in recorded, so to speak, and so I would seek Your
4 Honor's view in that regard. And I believe the parties have
5 already submitted all of the designations in advance anyway.
6 So I would prefer to have live testimony with the potential,
7 I guess, of reading in that deposition designations at the
8 end, if we have time.

9 And I'll turn it over to plaintiff's counsel.

10 THE COURT: Thank you.

11 MR. GUERKE: Your Honor, Kevin Guerke, for the
12 record.

13 As far as the total time that we've taken from the
14 beginning of the trial to today, the defendants have used
15 roughly four hours more than we have. And there was no
16 guarantee we were going to land on 60 hours, it was a
17 guesstimate on day one just so, if we got into a situation
18 where it was lopsided and we had to make a call on who's
19 taking up more time, that we have some kind of gauge there.
20 We don't think there's any need to add time, we hadn't
21 requested additional time. And, as I stated, the defendants
22 have used a lot more time than we have.

23 We have identified four rebuttal witnesses that
24 we've worked over the, you know, weekend to try to
25 streamline, if we could, and I think we're going to go back

1 at lunch and discuss our rebuttal witnesses and come up with
2 a plan on what to do with them. No matter who we call, we
3 think they would be relatively short, and we don't anticipate
4 any problem finishing tomorrow under any circumstance.
5 That's our view. I've been wrong on my time the last two
6 weeks, so take it for what it is.

7 The last part on the deposition designations, if
8 they want to read deposition designations into the record,
9 they can do that the same way we did. It should be in their
10 case and, you know, we'll take -- it will be turned over to
11 us and we can do our rebuttal after they're finished, but we
12 would be opposed to them waiting until the end of the case
13 and then opening up their case and then reading them, reading
14 the depositions.

15 THE COURT: Okay, so I get all of this, but what
16 I'm trying to figure out is that, within this, we should have
17 roughly equal time between the parties. I was surprised to
18 see our historical average. And one of the reasons I asked
19 before going to lunch was should we take a shorter lunch to
20 try to also claw back, if you will, some time.

21 So -- Mr. Triche, you don't have to be sitting up
22 there. I'm sorry, you can sort of stand down.

23 Do you all have lunch coming here or do you all go
24 back?

25 MR. GUERKE: We go back.

1 THE COURT: Okay, then you need the hour to go
2 back, and to be able to walk back and get your lunch and come
3 back.

4 So we'll take the hour, but we'll add time on
5 tonight. Let's see where we are and let's add time on
6 tonight. I don't know that you all know, but going late into
7 the evening is not normally a problem for me. So we're going
8 to add some time on tonight, and we'll see where we are with
9 witnesses and whether people have everything available. And
10 then, if we need to start a little bit earlier tomorrow
11 morning, we can do the same.

12 So we'll take our hour for lunch, but depending on
13 where we are with witnesses, we could certainly stay until 7,
14 7:30 tonight, and get some time back. I think it's --
15 because it's hard for me to judge where people are going to
16 come down ultimately, recognizing that the defendants have
17 taken, historically, significant more time. I don't know if
18 somebody can give me an update through lunch and we can come
19 back and see where we are then. If you all can do that, that
20 would be great, but I'm willing to give you the two days that
21 you have as fully as we can get them, so people can get their
22 case in.

23 MR. GUERKE: Thank you, Your Honor. And just to
24 add something, our rebuttal witnesses were rebutting
25 testimony we heard today and we plan to go discuss whether we

1 need them now at this break.

2 THE COURT: Fair enough, fair enough.

3 Okay, so we'll come back at 2:15.

4 MS. EWALD: Thank you, Your Honor.

5 THE COURT: Thank you. We're in recess.

6 MR. GUERKE: Thank you, Your Honor.

7 (Recess taken at 1:13 p.m.)

8 (Proceedings resumed at 2:17 p.m.)

9 THE COURT: Please be seated.

10 Mr. Triche, please retake the stand.

11 MR. NEIBURG: Good morning, Mr. Triche -- or good
12 afternoon, Mr. Triche, and Your Honor. For the record,
13 Michael Neiburg from Young Conaway on behalf of Welded.

14 May I approach the witness and the bench, Your
15 Honor?

16 THE COURT: You may. Thank you.

17 MR. NEIBURG: May I proceed, Your Honor?

18 THE COURT: You may.

19 MR. NEIBURG: Thank you.

20 CROSS-EXAMINATION

21 BY MR. NEIBURG:

22 Q Mr. Triche, you've testified about a few areas during
23 your direct testimony; correct?

24 A Yes.

25 Q So I'll bounce around, but I'll indicate which area I'm

1 talking about.

2 Let's first talk about your weld repair opinions.

3 A Yes.

4 Q Do you recall during your direct testimony that you
5 testified about two potential scenarios related to weld
6 repairs; right?

7 A Correct.

8 Q The first scenario is the one in which 1.6 million,
9 approximately, would be owed by Welded; right?

10 A Yes.

11 Q And, under the second scenario, 987,500 would be owed
12 by Welded; correct?

13 A Correct.

14 Q And the second scenario involves the issue of JANX
15 reclassifying 101 welds performed by Welded; correct?

16 A Correct.

17 Q And JANX had originally classified those welds as
18 defective; correct?

19 A Yes.

20 Q And, based upon that classification, it's your
21 understanding that those 101 welds were repaired; correct?

22 A Correct.

23 Q Now, JANX subsequently corrected its prior analysis and
24 reclassified those 101 welds; correct?

25 A They did.

1 Q And JANX was Transco's welding inspector; correct?

2 A Yes.

3 Q Transco engaged JANX; correct?

4 A Yes, that's my understanding.

5 Q And the contract provides that Welded is responsible
6 for weld repairs only in excess of the five percent weld
7 repair rates set forth in the contract provision you talked
8 about; correct?

9 A That is correct.

10 Q Now, if the Court determines that the 101 welds that
11 JANX reclassified are not counted towards the five percent
12 threshold, it's your opinion that Welded would be liable only
13 for \$987,500 on account of weld repairs; correct?

14 A If those 101 weld repairs are determined not to be
15 Welded's responsibility, I would agree, yes.

16 Q Let's talk about your testimony concerning additional
17 tie-in welds. You also testified that Transco is entitled to
18 costs associated with the number of tie-in welds above
19 planned; correct?

20 A I quantify the additional costs above planned less
21 those tie-ins that were identified by Welded during the
22 project as trends.

23 MR. NEIBURG: Mr. Zinkel, could you pull up JX-1
24 and go to page 54, please?

25 (Pause)

1 MR. NEIBURG: You know what, let's pull up slide
2 number 58 from the demonstrative that Mr. Triche used.

3 BY MR. NEIBURG:

4 Q Mr. Triche, I just want to confirm, this is the
5 contractual provision that you rely on in support of your
6 opinion concerning additional tie-in welds; correct?

7 A I certainly reviewed it and this was what I relied on
8 to look at that issue.

9 Q And for purposes of your additional tie-in weld
10 opinion, you did not cite or rely on other contractual
11 provisions; correct?

12 A I don't believe I cited any other contractual
13 provisions.

14 Q And this contract provision does not expressly address
15 tie-in welds; correct?

16 A No, it regards the planning and the execution of the
17 work.

18 Q And there are no provisions in the contract that
19 provide for the number of allowable tie-in welds; correct?

20 A I don't believe there's a portion of the contract that
21 addresses that other than Welded planning the work as
22 efficiently as possible -- or planning the work efficiently
23 to reduce the amount of capital cost.

24 Q And that -- you're referring to in your answer there
25 the contract provision we just looked at; correct?

1 A Yes.

2 Q And, again, there are no provisions in the contract
3 that expressly provide for the number of allowable tie-in
4 welds; correct?

5 A I don't believe there is one that expressly provides
6 for the number of planned tie-ins.

7 Q During the course of the project, Welded periodically
8 provided Transco with revised estimates of tie-in welds;
9 correct?

10 A Yes.

11 Q Now, you were here during the last two weeks when other
12 witnesses were testifying; correct?

13 A Yes.

14 Q Do you recall that Mr. Sztroin testified that Transco
15 directed Welded to increase the number of tie-in crews to
16 complete the project; correct?

17 A I do remember that testimony.

18 Q And it's your testimony that -- in terms of your
19 quantification, you indicate there are 254 additional tie-in
20 welds that are part of your quantification calculation;
21 correct?

22 A In excess of planned plus, I'll call them, changed --

23 Q And that was --

24 A -- trends.

25 Q -- planned was 303 above planned, and then you took out

1 the 49 that were reflected in trends; correct?

2 A Correct.

3 Q And I think you testified that you determined the
4 incremental cost per additional tie-in weld by looking at a
5 trend; correct?

6 A Correct.

7 Q And that was trend 208; correct?

8 A Correct.

9 MR. NEIBURG: If we could pull up D-1326, please?

10 BY MR. NEIBURG:

11 Q And, Mr. Triche, this is a July 11, 2018 email from
12 Hector Falcon to others at Transco. Do you see that?

13 A Yes.

14 Q And if you look at the attachments, do you see, the
15 fourth line down, trend number 208 is identified as an
16 attachment?

17 A Yes.

18 MR. NEIBURG: Mr. Zinkel, if you would go to
19 page 61 of this document?

20 BY MR. NEIBURG:

21 Q Mr. Triche, is it your understanding this is trend 208
22 that you looked at for purposes of determining the
23 incremental cost per additional tie-in weld?

24 A Yes.

25 MR. NEIBURG: Your Honor, I'll seek the admission

1 of just trend 208.

2 MS. EWALD: Your Honor, I don't have an objection
3 to 208, but I would say we can admit the whole document in
4 order to have the record reflect the entirety of the -- what
5 the exhibit was proposed to be.

6 MR. NEIBURG: I don't necessarily have an
7 objection, Your Honor, other than this is the only trend that
8 the witness is going to testify about and it's the only trend
9 that he relied on in forming his quantification of additional
10 tie-in costs?

11 THE COURT: Yeah, I'll admit it for trend 208.

12 (Exhibit D-1326 received in evidence)

13 MS. EWALD: Thank you, Your Honor.

14 BY MR. NEIBURG:

15 Q And I just want to walk through a couple steps,

16 Mr. Triche --

17 A Okay.

18 Q -- just so it's clear.

19 So, in the cost on the upper-right section, you see
20 61,517; correct?

21 A Yes.

22 Q And in the impact of trend change -- or description of
23 change, I'm sorry, it says they're going to do seven welds to
24 be performed by a tie-in crew; do you see that?

25 A Yes.

1 Q And you testified that, based upon this document, you
2 were able to quantify that the incremental cost per
3 additional tie-in weld is \$8,788; correct?

4 A Correct.

5 Q So, Mr. Triche, if the Court finds that the contract
6 does not allow Transco to recoup costs that were more than
7 planned, your quantification of damages relating to
8 additional tie-in welds would be zero; correct?

9 A If the Court finds that Transco does not get reimbursed
10 for those tie-ins above planned and trends, I would agree.

11 Q So let's talk about schedule incentive testimony.

12 Based upon your testimony earlier today, you also
13 provided two alternative scenarios with respect to a schedule
14 incentive penalty; correct?

15 A Yes.

16 Q And you referenced -- and you talked about it and your
17 demonstrative references AACE-recommended practice 29-03R,
18 forensic schedule analysis; do you recall that?

19 A Yes.

20 MR. NEIBURG: And if we could go to the
21 demonstrative, Mr. Zinkel, and go to slide 37?

22 BY MR. NEIBURG:

23 Q So, Mr. Triche, do you recall your testimony concerning
24 this slide where you indicated the AACE-recommended practice
25 provides caveats in connection with the impacted as-planned

1 analysis; correct?

2 A Yes.

3 Q And you refer to those as flaws or shortcomings of the
4 impacted as-planned analysis; correct?

5 A I think there are issues with -- for using that
6 analysis, yes.

7 Q And this same -- the same document that you reference
8 and rely on, the AACE-recommended practice, it actually
9 includes caveats for all potential methodologies to be used;
10 correct?

11 A Yes.

12 Q It also includes caveats relating to the as-planned
13 versus as-built methodology that you used; correct?

14 A I believe there are caveats for each one of the
15 recommended practices for schedule analysis.

16 MR. NEIBURG: Mr. Zinkel, if you could pull up D-
17 2052?

18 BY MR. NEIBURG:

19 Q This is the AACE-recommended practice manual that -- or
20 document that you testified about; correct?

21 A Yeah, if you could scroll down just to the bottom of
22 that page --

23 Q Sure.

24 A -- just to make sure. Yes.

25 Q And it's your understanding that the AACE refers to the

1 as-planned versus as-built methodology formally as 3.1
2 observational, slash, static, slash, gross, parenthetical MIP
3 3.1; correct?

4 A I believe that's correct, yes.

5 MR. NEIBURG: Mr. Zinkel, if you could go to
6 page 39?

7 BY MR. NEIBURG:

8 Q And, Mr. Triche, if you look in the middle of this page
9 where -- this 3.1, this is the as-planned versus as-built
10 methodology; correct?

11 A Yes.

12 Q And that's a common name for MIP 3.1; correct?

13 A Yes.

14 MR. NEIBURG: Mr. Zinkel, if you could go to
15 page 45, please? With focus on Section M, caveats.

16 BY MR. NEIBURG:

17 Q So, Mr. Triche, this section right here is the caveats
18 that this recommended practice identifies with respect to the
19 as-planned versus as-built methodology; correct?

20 A Yes.

21 Q And those include, the first bullet, "not suitable for
22 project durations extending into multiple dozens of update
23 periods." Did I read that correctly?

24 A You did.

25 Q And go to the third bullet point, "not suitable for

1 complicated projects with multiple critical paths." Did I
2 read that correctly?

3 A I'm sorry, I was -- I had the wrong bullet. Could you
4 read that again?

5 Q Sure. The third bullet point, "not suitable for
6 complicated projects with multiple critical paths."

7 A I did that.

8 Q Did I read that correctly?

9 A Yes.

10 Q And the next bullet right after that, "does not
11 consider the possibility of critical path shifts either
12 within periods or across the project." Do you see that?

13 A Yes.

14 Q And you have to skip a bullet point, starting with may
15 fail, and another caveat is the as-planned versus as-built,
16 may fail to identify all critical delays or time extensions
17 and typically does not adequately consider concurrency and
18 pacing issues. Did I read that correctly?

19 A You did.

20 Q So, Mr. Triche, you've been in the courtroom for over
21 two weeks; correct?

22 A I have.

23 Q And you've heard several witnesses talk about trends
24 and EWRs; correct?

25 A Yes.

1 Q And I think you testified earlier that you are familiar
2 with the baseline schedule under the contract; correct?

3 A Yes.

4 Q And that's attached as Exhibit 9 to the contract?

5 A Exhibit 9 to -- I believe it's --

6 Q Section 8?

7 A -- section 8, amendment 1.

8 Q And that baseline construction schedule is something
9 that both parties agreed to; correct?

10 A Correct.

11 Q Now, you testified earlier that spread 5 is the
12 critical path of spreads 5 through 7; correct?

13 A It is the critical path of the project to achieving
14 mechanical completion, yes.

15 Q And it was your testimony that spread 5 remain the
16 critical path because it was the last spread to reach
17 mechanical completion; correct?

18 A Correct.

19 Q And I believe one of your slides indicated it, but
20 spread 5 reached mechanical completion on September 19, 2018;
21 correct?

22 A Yes.

23 Q And that was just four days after spreads 6 and 7
24 achieved mechanical completion; correct?

25 A Yeah, I believe they achieved mechanical completion on

1 September 15th.

2 Q And you talked about during your direct testimony
3 EWR 12; do you recall that?

4 A I do.

5 Q And you indicated that EWR 12 included a six-day time
6 extension to the contract's mechanical completion date;
7 correct?

8 A It did, yes, sir.

9 Q And Transco approved EWR 12; correct?

10 A Transco approved EWR 12.

11 MR. NEIBURG: Now, if we could turn to D-860.

12 BY MR. NEIBURG:

13 Q So the --

14 A I've got it.

15 Q -- cover email is a February 26th, 2018 email from Mary
16 Lynn Murphy to others at Welded, and I just wanted to -- do
17 you see where Ms. Murphy says, please see attached approved
18 EWR 012-SP6 clearing. Do you see that?

19 A Yes.

20 MR. NEIBURG: If we could turn the page?

21 BY MR. NEIBURG:

22 Q And this is the EWR 12 that you testified about;
23 correct?

24 A Correct.

25 MR. NEIBURG: And is there a next page,

1 Mr. Zinkel, to this document? Yeah, okay.

2 BY MR. NEIBURG:

3 Q And this was -- your understanding is this was
4 digitally signed by David Sztroin on behalf of Transco;
5 correct?

6 A Yeah, that's what it -- yes, that's what it says.

7 Q And if you see right above the signature block, there's
8 a box that says, increase number of days six; correct?

9 A Yes.

10 Q And it's your understanding that this is the six-day
11 extension to the mechanical completion date that Transco
12 approved; correct?

13 A Correct.

14 Q EWR 12 relates to spread 6; correct?

15 A It does.

16 Q But it was your testimony that spread 6 was not the
17 critical path; correct?

18 A Spread 6 was not the critical path, I would agree, and
19 Transco approved it. So I accepted that approval. In my
20 opinion, I would have wanted to see that this activity being
21 delayed six days was on the critical path, but Transco
22 approved it.

23 Q And this six-day extension related to work on spread 6;
24 correct?

25 A Correct, it's on spread 6.

1 MR. NEIBURG: Mr. Zinkel -- Your Honor, actually,
2 I'll move for the admission of EWR 12. I don't know if we
3 need the cover email, but I'm happy to include it in the
4 record.

5 MS. EWALD: No objection, Your Honor.

6 THE COURT: Okay, then it's admitted.

7 (Exhibit D-860 received in evidence)

8 MR. NEIBURG: So just for the record, Your Honor,
9 that's D-860.

10 THE COURT: Yes, D-860.

11 MR. NEIBURG: Mr. Zinkel, if you could pull up
12 slide 32 of Mr. Triche's demonstrative, please?

13 BY MR. NEIBURG:

14 Q And I think, Mr. Triche, you acknowledged this earlier
15 during cross, but your schedule incentive analysis included
16 two alternatives; correct?

17 A Yes, sir.

18 Q And the first alternative is where you assert that
19 Transco is entitled to a 1.5 million schedule delay payment
20 on account of the actual mechanical completion date in
21 relation to the schedule incentive program; correct?

22 A Do you mind repeating that one? I'm sorry.

23 Q Sure, that was a bad question. I will strike it.

24 In alternative 1 you assert that Transco is entitled a
25 \$1.5 million schedule delay payment; correct?

1 A Yes.

2 Q And that's based on the schedule incentive program in
3 the contract?

4 A Correct.

5 Q And you say right there that that alternative allows
6 for the six-day time extension approved in EWR 12; correct?

7 A Yes.

8 Q In alternative 2, you say that Transco would be
9 entitled to a payment of approximately 1.2 million if trends
10 49 and 225 are included as contractual methods of change;
11 correct?

12 A Yes.

13 MR. NEIBURG: So if we could turn to D-2048A?

14 BY MR. NEIBURG:

15 Q So, Mr. Triche, do you recall that included as
16 Exhibit 2 to your initial report dated May 9, 2022 you
17 provided a trend analysis?

18 A Yes.

19 Q And you prepared this document; correct?

20 A I did, with help of people in my office, yes.

21 MR. NEIBURG: Mr. Zinkel, if we could turn to
22 page 3 of this?

23 BY MR. NEIBURG:

24 Q Approximately the middle of the page, we're going to
25 have to zoom in, you'll see the trend numbers; they are in

1 ascending order. If we could focus on trend 163?

2 Now, Mr. Triche, do you recall --

3 A I'm sorry, trend -- oh, I'm sorry, yes --

4 MR. NEIBURG: Can you blow it up --

5 THE WITNESS: -- trend 163.

6 MR. NEIBURG: -- Mr. Zinkel? Does it blow up?

7 THE WITNESS: I've got it now --

8 MR. NEIBURG: That's fine.

9 THE WITNESS: -- I've got it, I've got.

10 BY MR. NEIBURG:

11 Q Are you there where Mr. Zinkel yellow highlighted it?

12 A Yes.

13 Q Okay.

14 A Sorry, I didn't see the columns --

15 Q That's all right.

16 A -- I was looking at 246.

17 Q And do you recall the other day when both Mr. Hood and
18 Mr. Kakol testified about trend 163?

19 A I believe I was in the -- yes, I believe I was.

20 Q And this trend 163 relates to Pequea Creek variance
21 delays; correct?

22 A It does.

23 Q And in the trend status you indicate, quote-unquote,
24 "proceed to EWR." Do you see that?

25 A Yes, that would have come directly from the trend

1 itself.

2 MR. NEIBURG: And if we could go to the next page,
3 Mr. Zinkel? It's trend 231, if you could highlight that.
4 That would be great.

5 BY MR. NEIBURG:

6 Q And do you recall that both Mr. Hood and Mr. Kakol
7 testified last week about trend 231?

8 A Yes.

9 Q And to the far right under trend status it says, quote-
10 unquote, "client review." Correct?

11 A Yes, and that would have -- just for clarity, that
12 would have come directly from the trend itself.

13 Q To your knowledge, Transco never acted on either trend
14 163 or trend 231; correct?

15 A I don't know the status other than what the trend says.

16 Q Okay. To your knowledge, Transco never acted on either
17 trend 163 or trend 231; correct?

18 A I don't believe either were agreed by the parties to
19 equate to an EWR.

20 Q And you were in court when Mr. Kakol testified about
21 the Amtrak permit delay and the Pequea Creek permit variance
22 delay; correct?

23 A Yes.

24 Q And it's your opinion that you expressed earlier today
25 that those permitting delays do not change the mechanical

1 completion because they don't relate to critical path
2 activities; correct?

3 A They were not on the actual critical path, correct.

4 Q And it's your view that spread 5 was always the
5 critical path; correct?

6 A It was -- it was the critical path, yes.

7 Q The critical path or a critical path?

8 A It was the critical path to achieve mechanical
9 completion.

10 Q And you're aware that David Sztroin was Transco's
11 project manager for the ASR project; correct?

12 A Yes.

13 MR. NEIBURG: Mr. Zinkel, could you pull up
14 D-1292?

15 BY MR. NEIBURG:

16 Q So, Mr. Triche, do you recognize this was an email from
17 David Sztroin to Bob Smith --

18 A I do.

19 Q -- Marcus Hood and others?

20 A I do see that it's from David, Mr. Sztroin to Mr. Smith
21 at Welded.

22 Q And this was dated July 3, 2018; correct?

23 A Yes.

24 Q And I'll just read the first sentence. "Bob, as you
25 well know, the mechanical completion of spread 6 is the

1 critical path for the entire Atlantic Sunrise Expansion
2 Project."

3 Did I read that correctly?

4 A Yes.

5 Q And EWR related to spread 6; correct?

6 A I'm sorry, hold on one second.

7 Q I'm sorry, EWR 12 related to spread 6; correct?

8 A Yes, EWR 12 related to spread 6.

9 Q And EWR 12 extended the contract's mechanical
10 completion date by six days; correct?

11 A Transco agreed to approve EWR 12 for six days, yes.

12 MR. NEIBURG: Your Honor, I'm reminded I did not
13 move 2048A, which was Mr. Triche's trend analysis, into
14 evidence.

15 MS. EWALD: I have no objection, Your Honor, based
16 on his description. I apologize for this, I don't -- can't
17 find the exhibit number that you're on now, Mr. Neiburg.

18 MR. NEIBURG: Oh, I was just about to move on, but
19 it was D-1292.

20 THE COURT: Okay. So --

21 MS. EWALD: No objection, Your Honor.

22 THE COURT: -- Exhibit 2048A is admitted.

23 (Exhibit D-2048A received in evidence)

24 THE COURT: Did you ask for 1292?

25 MR. NEIBURG: Well, Your Honor, maybe I'm just

1 behaving because I know Mr. Triche was not on this email --

2 THE COURT: Okay.

3 MR. NEIBURG: -- and he doesn't reference it in
4 his analysis.

5 THE COURT: Okay, that's okay.

6 MR. NEIBURG: Should I misbehave, Your Honor?

7 (Laughter)

8 THE COURT: I don't know, you could ask Ms. Ewald.

9 MR. NEIBURG: That's all right, Your Honor. I
10 just wanted to bring it to the attention that --

11 THE COURT: That's fine.

12 MR. NEIBURG: -- Mr. Sztroin, the project manager
13 for Transco, identified in an email that spread 6 was the
14 critical path.

15 BY MR. NEIBURG:

16 Q So, Mr. Triche, let's talk about the Amtrak crossing
17 activity. You acknowledge there was a delay associated with
18 obtaining the Amtrak permit; correct?

19 A Yes, there was.

20 Q And Transco was responsible for getting the Amtrak
21 permit; correct?

22 A That was what I understand is the Amtrak permit is
23 provided by Transco.

24 Q Okay, I just want to make sure the record is clear.
25 Transco is responsible for getting the Amtrak permit;

1 correct?

2 A Yes, yes.

3 Q And Transco did not obtain the permit to enter Amtrak
4 property until June 12, 2018; correct?

5 A I believe that is the date, June 12th.

6 Q Slide 41 has it.

7 (Pause)

8 A Yes.

9 Q And the contract's mechanical completion date is
10 June 14, 2018; correct?

11 A That is correct.

12 MR. NEIBURG: And, Mr. Zinkel, if we could pull up
13 JX-1, page 856, please? Row 439, if you could highlight that
14 row, that would be great. Thank you.

15 BY MR. NEIBURG:

16 Q Mr. Triche, do you see this activity here on row 439,
17 identified as activity N1980 relating to Amtrak crossing?

18 A I do.

19 Q And do you see that the original duration of that
20 activity was planned to be 30 days; correct?

21 A Yes.

22 Q And I think your slide 41 reflects that the permit was
23 received on June 12 and the Amtrak crossing bore was
24 completed on July 23; correct?

25 A Yes.

1 Q And Welded could not start the Amtrak crossing activity
2 without the permit to enter; correct?

3 A Yes, that's what I understand.

4 Q You did not revise the contract's mechanical completion
5 date on account of the Amtrak permit delay even though the
6 permit was obtained only two days before the mechanical
7 completion date; correct?

8 A Correct, because it wasn't on the critical path to
9 completion of the --

10 Q And it took Welded --

11 A -- project.

12 Q -- from June 12 to July 23 to complete the bore;
13 correct?

14 A Yes, that was the actual performance period of the
15 bore.

16 Q Now let's talk about the Pequea Creek permit variance
17 delay. You did not revise the mechanical completion date on
18 account of the Pequea Creek permit variance delay; right?

19 A I did not, again, because it was not on the critical
20 path.

21 Q And Transco was responsible for obtaining the Pequea
22 Creek permit variance; correct?

23 A I believe they were responsible for getting the
24 variance that was requested by Welded.

25 Q And that related to blasting in the vicinity of eagle

1 nests; correct?

2 A That's what I understand is it relates to blasting and
3 then there was an eagle nest found in the area.

4 Q And the permit variance was obtained on June 15, 2018;
5 correct?

6 A Yes.

7 Q And that's one day after the June 14, 2018 mechanical
8 completion date; correct?

9 A Yes. And then they didn't actually start the work
10 until June 29th, two weeks later.

11 Q And you did not revise the mechanical completion date
12 on account of trend 163 relating to the Pequea Creek permit
13 variance delay; correct?

14 A Again, this is spread 7, which was not on the actual
15 critical path.

16 Q And you did not revise the mechanical completion date
17 on account of trend 231 relating to the Amtrak permit delay;
18 correct?

19 A Again, this is spread 7, which wasn't on the as-built
20 critical path.

21 MR. NEIBURG: If we could pull up PX-648, please?

22 THE WITNESS: Do you mind saying that again?

23 Sorry --

24 MR. NEIBURG: PX --

25 THE WITNESS: -- I've got too many things open.

1 MR. NEIBURG: Sorry, PX-648.

2 THE WITNESS: 648.

3 BY MR. NEIBURG:

4 Q Do you recall that -- oh, I'm sorry, I'll wait until
5 you're ready.

6 A I'm here.

7 Q Do you recall that Mr. Sztroin testified about this
8 email and attachment at length during his cross-examination?

9 A Yes, I believe he was questioned about this document.

10 Q And you understand that this was an internal Transco
11 document by which additional funding for the ASR project was
12 received from its parent company Williams; correct?

13 A Yes, that's what I've heard in the testimony this last
14 two weeks.

15 MR. NEIBURG: If we could go to page 15, please?

16 BY MR. NEIBURG:

17 Q And I'll just direct your attention to the top section,
18 V-5, spread 5, site conditions. Do you see that section?

19 A I do.

20 Q And starting with the second paragraph, during the
21 months of February and March, Eastern Pennsylvania
22 experienced quite a bit of precipitation in the form of both
23 snow and rain. Did I read that correctly?

24 A Yes.

25 Q And then if you go down below where it's the same

1 paragraph, but it starts with after several of these
2 incidents. It's in the middle, right?

3 And this reflects that after several of these
4 incidences of equipment sliding uncontrollably, the Williams
5 management team, with support from executive management,
6 instructed Welded to cease work in the very hilly areas of
7 the spread until conditions improved.

8 Do you see that?

9 A I do.

10 Q And if you could turn to page 22 of this document?

11 A I would comment on that, if you --

12 Q Mr. Triche, you --

13 A -- don't mind, back to that, is that they didn't stop
14 the entire scope of work, they -- it looks like they stopped
15 just the hilly portions.

16 Q My question was did I read that correctly?

17 A I'm sorry, you did read it correctly.

18 Q If you could go to page 22?

19 A Yes, sir.

20 Q The second paragraph. The winter weather has by far
21 exceeded expected impact, creating in some instances a
22 hazardous environment to work in. The hill crews in spread 5
23 were stopped for more than a month waiting for better working
24 conditions, as it became too slippery to safely continue
25 working. In all, the weather has continued to cause downtime

1 and slow progress way beyond even our revised path.

2 Did I read that correctly?

3 A You did.

4 Q And you did not revise the mechanical completion date
5 even though Welded's hill crews could not work on spread 5
6 for more than a month; correct?

7 A Yes. The hill crews, again, are very specialized
8 crews; it's not the main line welding crew that's going from
9 point A to point B. The hill crews are similar to the boring
10 crews and tie-in crews that move around the right-of-way,
11 depending on what work is available. It looks like in this
12 statement that the hill crews were stopped from working in
13 the hills, which most likely means they could have been
14 working in other areas of the project.

15 Q If you could look at the next paragraph?

16 A Okay.

17 Q Stick welding issues also contributed to a lack of
18 progress on spread 5 from January through March. Initially,
19 poor workmanship by welder was the root cause. Later, the
20 lack of progress was attributable to incorrect interpretation
21 of radiography by Williams' nondestructive examination NE
22 contractor.

23 Did I read that correctly?

24 A Yes.

25 Q And you did not revise the mechanical completion date,

1 notwithstanding that Transco's nondestructive examination
2 contractor was responsible for lack of progress on spread 5;
3 correct?

4 A So, again, I would -- you did read it correctly, I
5 would also let you know that there is a repair welder that
6 does this work along the right-of-way. It's not the main
7 line crews that do these repairs, so there should be very
8 little to -- very little impact to the overall progress of
9 the project.

10 And, again, in all these cases, Welded never, as far as
11 I've seen, submitted a trend or EWR related to these issues.

12 Q In this section right here in this document,
13 Mr. Sztroin, the project manager, reported that the lack of
14 progress was attributable to incorrect interpretation by
15 radiography; correct?

16 A Correct.

17 Q Mr. Triche, the calculation with respect to the
18 schedule incentive penalty or bonus is set forth in Exhibit 5
19 to Section 8 of the contract; correct?

20 A I'm pretty -- I think that's the one. If we could look
21 at it, just to make sure --

22 Q We can pull it up.

23 A -- I get the right exhibit.

24 MR. NEIBURG: Can you pull up JX-1, 842, please?

25 (Pause)

1 THE WITNESS: I'm getting there, I'm getting
2 there.

3 MR. NEIBURG: That's all right. Just let me know
4 after you've oriented yourself on 842.

5 THE WITNESS: You said 842?

6 MR. NEIBURG: Yeah, JX-1, 842, which is Exhibit 5
7 to Section 8.

8 THE WITNESS: Yes, I've got it now. Thank you.

9 BY MR. NEIBURG:

10 Q Are you familiar with this exhibit to the contract?

11 A Yes.

12 Q Now, to determine the schedule incentive, you look at
13 the delta between the contractual mechanical completion date
14 and the actual mechanical completion date, that's what you
15 did; correct?

16 A Yes, I looked at the contract mechanical completion
17 date as to when mechanical completion was actually achieved.

18 Q And then when you derive that schedule incentive
19 amount, it's then multiplied by a safety modifier; correct?

20 A Correct.

21 Q And you are not offering any opinions concerning the
22 calculation of a safety modifier; correct?

23 A I am not -- it appeared to be within this less than the
24 1.85, back if you -- it appears to be within the hundred
25 percent safety modifier, in my view, but I'm --

1 Q But you're not offering any opinions on the issue --

2 A No.

3 Q -- correct?

4 So let's turn our attention to your testimony
5 concerning defective work. You testified that Transco is
6 entitled to receive a little more than two million based on
7 Welded's alleged defective work; correct?

8 A Correct.

9 Q And during your testimony on that issue you reference a
10 nonconformance log; correct?

11 A Yes, sir.

12 MR. NEIBURG: If we could pull up -- well, we
13 don't need to pull it up.

14 BY MR. NEIBURG:

15 Q Does the term, quote-unquote, "defective work," appear
16 on the nonconformance log?

17 A We'd have to pull it up and look at it. I don't --

18 Q That's fine.

19 A -- remember if it's --

20 MR. NEIBURG: If we could pull up D-1320B? It's
21 a -- Your Honor, it's just easier if we see it in the native.
22 I thought we had the native.

23 (Pause)

24 BY MR. NEIBURG:

25 Q So, Mr. Triche, is it your understanding that the

1 defined term "defective work" does not appear on this
2 nonconformance log?

3 A If you don't mind going to the tab that's
4 nonconformance log in the middle?

5 Q Sure.

6 MR. NEIBURG: Do you see that, Mr. Zinkel? There
7 you go.

8 (Pause)

9 THE WITNESS: I haven't looked -- at least in the
10 title, the word defective does not appear. I would have to
11 look at each of the descriptions.

12 BY MR. NEIBURG:

13 Q The contract defines defective work; correct?

14 A If you could point me to that section, I'd appreciate
15 it.

16 MR. NEIBURG: If we could go to JX-1, page 23,
17 please?

18 (Pause)

19 BY MR. NEIBURG:

20 Q Do you see Article 22, Section B, entitled Defective
21 Work? And I'll just read it into the record -- just let me
22 know when you're there, Mr. Triche, and I'll --

23 A I'm actually here.

24 Q -- I'll do some short reading. The company may reject
25 defective, deficient, improper, unsound, or nonconforming

1 work or materials, all of which shall be deemed defective
2 work. For purposes of this article, all defective,
3 deficient, improper, unsound, or nonconforming, romanette
4 one, work or, romanette two, contract-provided materials
5 shall be referred to as, quote-unquote, defective work.

6 Did I read that correctly?

7 A Yes.

8 Q Do you recall that Mr. Hood and Mr. Sztroin testified
9 during this trial; correct?

10 A Correct.

11 Q And both of them were involved in the actual
12 construction of the ASR project; correct?

13 A Yes, they were out there.

14 Q And neither Mr. Hood nor Mr. Sztroin testified that
15 Transco actually rejected Welded's work as defective that's
16 listed on the nonconformance log; correct?

17 A I don't remember testimony either way.

18 Q As you sit here today, you're not aware of any
19 testimony in which a witness testified that Transco actually
20 rejected the work listed on the nonconformance log; correct?

21 A I don't -- the only way -- if you look at -- if we
22 would go back to the NCR log, there is an initiated by, and
23 you will see quality inspection --

24 MR. NEIBURG: Your Honor, I will just say that's
25 nonresponsive to my question. I asked specifically did

1 anyone testify.

2 THE COURT: Yeah --

3 THE WITNESS: Oh --

4 THE COURT: -- let's just answer the question and
5 Ms. Ewald can ask you any other questions.

6 THE WITNESS: Okay. I don't remember anybody
7 testifying that Transco rejected work as defective work --

8 BY MR. NEIBURG:

9 Q And you're not aware --

10 A -- I don't remember that.

11 Q -- of any testimony in which one of the witnesses
12 stated that Transco actually directed Welded to fix any items
13 listed on the nonconformance log; correct?

14 A If in testimony you mean sitting up here and -- I don't
15 remember that testimony.

16 Q And, as you sit here, you don't know whether Transco
17 actually ever directed Welded to correct any of the items
18 listed on the log; correct?

19 A Again, you would have to look at the log and see
20 initiated by.

21 Q And, as you sit here today, you don't know whether
22 Welded or anyone else ever performed the work for items
23 listed on the nonconformance log; correct?

24 A Some of this defective -- well, actually, pretty much
25 all this defective work is extremely dangerous if it's not

1 corrected before the pipeline goes into operation. So I
2 would hope that the work would be corrected.

3 Q So, first question, as you sit here today, you don't
4 actually know whether Welded or anyone else ever performed
5 the work; correct?

6 A Unfortunately, I can't say. I wasn't there, I don't
7 know if this work was ever corrected.

8 Q And you didn't hear any testimony from any other
9 witnesses that were involved in the project that the work was
10 actually done; correct?

11 A I don't remember that testimony one way or the other.

12 MR. NEIBURG: Mr. Zinkel, if we could go back to
13 the native D-1320B?

14 BY MR. NEIBURG:

15 Q So let's focus your attention on the log, row 13.

16 MR. NEIBURG: If we could highlight that, Mr.
17 Zinkel?

18 BY MR. NEIBURG:

19 Q Now, just look at the issue, slash, concern, weld
20 quality and possible weld cutouts. Did I read that
21 correctly?

22 A Yes.

23 MR. NEIBURG: If we could go to row number 46,
24 Mr. Zinkel?

25 //

1 BY MR. NEIBURG:

2 Q And in the column H description, possible weld cutout;
3 correct?

4 A Yes.

5 MR. NEIBURG: And if we go to row number 62,
6 Mr. Zinkel?

7 THE WITNESS: Could you go back to -- I'm sorry,
8 could you go back to row 46 one second? I just wanted to see
9 one thing.

10 MR. NEIBURG: Mr. Zinkel, you can go back to
11 row 46, please.

12 (Pause)

13 MR. NEIBURG: And if we could go to row 62?

14 BY MR. NEIBURG:

15 Q In the description here it says, welds rejected;
16 correct?

17 A I'm sorry, could you say that again? I was on the
18 wrong --

19 Q Sure. Column H, the description, it says, welds
20 rejected; correct?

21 A I do see weld rejected. I will point you to the
22 description that there are 17 welds that were originally
23 accepted by JANX. I did actually go back to JANX's reports
24 during this time period in March of 2018 and looked to see if
25 these were -- if there was a big number like 17 moved back to

1 rejected and I didn't see that.

2 So this is one where they were accepted originally and
3 then rejected, and I actually don't see that movement in
4 JANX's log during this time period, or any big number like
5 that.

6 Q Just so the record is clear, my question was this says
7 welds rejected; correct?

8 A Yes, after they were initially accepted by JANX
9 during --

10 Q And we already talked about your quantification of
11 weld repairs; correct?

12 A Correct.

13 Q And you separately quantified amounts owed in
14 connection with weld repairs and cutouts; correct?

15 A Correct.

16 Q And this nonconformance log lists at least three
17 examples of weld-related repairs or cutouts; correct?

18 A So I will take you back to the first one that you
19 identified and there's actually --

20 MR. NEIBURG: Your Honor, could I just --

21 THE WITNESS: -- no money associated --

22 MR. NEIBURG: -- could I ask --

23 THE WITNESS: -- with that one --

24 MR. NEIBURG: -- for an instruction?

25 THE COURT: Yes. Please just respond to the

1 questions that are being asked.

2 THE WITNESS: Okay.

3 THE COURT: Thank you, Your Honor.

4 MR. NEIBURG: Thank you, Your Honor.

5 THE WITNESS: I'm sorry, yes, there are three NCRs
6 that relate to weld rejections.

7 BY MR. NEIBURG:

8 Q And you would agree that any amounts on this log
9 relating to weld repairs should not be double counted and
10 they should not be included in your defective work
11 quantification; correct?

12 A If they are included in the weld repairs by JANX's
13 reports, they should not be included here because that would
14 be double dipping between the two defective -- or between the
15 two defective work categories.

16 Q So let's talk about your testimony earlier today about
17 the weather. And you never conducted a productivity analysis
18 to determine the effects of weather events on subsequent
19 days' productivity; correct?

20 A I did not.

21 Q You testified that weather on spreads 5, 6, and 7 is
22 not as bad as expected, that it fell within the average
23 weather conditions; correct?

24 A Among other things, yes.

25 MR. NEIBURG: Now, Mr. Zinkel, if we could again

1 pull up PX-648, please? And if we could go to page 14 of
2 this document.

3 THE WITNESS: I'm sorry, let me get there --

4 MR. NEIBURG: I'm sorry.

5 THE WITNESS: -- just one second.

6 MR. NEIBURG: Mr. Zinkel, I'll be focusing on the
7 weather section down below.

8 (Pause)

9 THE WITNESS: And what page was it again? I'm
10 sorry.

11 MR. NEIBURG: Page 14. Just let me know when
12 you've had a chance to review the section.

13 (Pause)

14 THE WITNESS: Okay, I've read it.

15 BY MR. NEIBURG:

16 Q And I'll just read the last sentence because I think
17 Mr. Sztroin read the others into the record or it was read
18 into the record. The last sentence says, as such, the number
19 of nonproductive days were significantly greater than the
20 number of recorded weather days.

21 Did I read that correctly?

22 A You did.

23 Q Now, there's a distinction between lost weather days
24 and nonproductive days relating to weather events; correct?

25 A According to this sentence, yes.

1 Q According to the sentence written by the project
2 manager for Transco; correct?

3 A Yes.

4 Q And this document is dated June 20, 2018; correct?

5 We can go back to the first page of that, it says it on
6 the cover?

7 A Yes, the cover does say June 20th, 2018.

8 Q I believe you mentioned that during your direct
9 testimony, but you understand that there were significant
10 rain events in July and late August into September of 2018;
11 correct?

12 A There were two significant events, weather events in --

13 Q And do you --

14 A -- late July --

15 Q I'm sorry.

16 A -- and then I don't remember the date in August that a
17 rain event occurred.

18 Q And do you recall Mr. Hood's testimony concerning
19 notices of force majeure events that Welded submitted to
20 Transco in connection with these significant weather events?

21 A Yes, I believe I mentioned those in my direct testimony
22 that there were two notices of force majeure without any
23 specificity to the dates associated with those events.

24 Q Let's talk about your testimony concerning safety. You
25 acknowledge that you did not quantify or calculate Transco's

1 alleged damages associated with what you refer to as the
2 increased cost relating to safety; correct?

3 A I identified days within Welded's progress -- or daily
4 reports that identified that there were safety downtime,
5 safety stoppages, safety meetings.

6 Q And I believe from your testimony and your
7 demonstrative, the contract provisions underlying your
8 safety-related opinions are Section 1, Article 12, and
9 Section 2, Article 3(g) of the contract; correct?

10 A Those are two -- those are the two provisions of the
11 contract that I reviewed.

12 Q Are those the two provisions of the contract that
13 underlie your opinion concerning safety-related issues?

14 A Yes, sir.

15 Q And in your report and now your testimony you didn't
16 cite to any stop-work notices issued by Transco; correct?

17 A I do not in this.

18 Q And you're not aware of any documents or testimony?

19 A I don't remember any testimony, but the daily reports
20 aren't that specific as to who ordered the stop-work.

21 Q So, as you sit here, you're not aware of any testimony
22 or documents reflecting that Transco issued any stop-work
23 notices; correct?

24 A I am -- I'm sorry, would you mind repeating that one
25 more time?

1 Q As you sit here, you're not aware of any documents or
2 testimony demonstrating that Transco issued stop-work
3 notices; correct?

4 A I don't remember one way or the other.

5 Q And do you recall during Mr. Pew's testimony, as well
6 as Mr. Sztroin's testimony, that they were shown a table
7 prepared by Justin Lamper of Transco?

8 A You're going to have to refresh my memory on that.
9 It's been a long two weeks.

10 MR. NEIBURG: Your Honor, I was hoping to avoid
11 it, but I'll just show it on the screen.

12 THE COURT: Yes.

13 MR. NEIBURG: Mr. Zinkel, if you could pull up
14 D-1876?

15 BY MR. NEIBURG:

16 Q And, Mr. Triche, does seeing this document remind you
17 that -- oh, I'm sorry.

18 A I'm getting there. Yes, I do remember this table.

19 Q And, again, just very briefly, this document prepared
20 by Transco reflects that Welded had 17 OSHA-recordable
21 incidences; correct?

22 A Yeah, looking at this table very quickly, yes.

23 Q And this table prepared by Transco reflects that Welded
24 had only two incidences of OSHA-recordable with lost time;
25 correct?

1 A Through the date of this report, yes.

2 Q And the date of the report is May 28, 2019; correct?

3 A That's when it was sent, I don't -- does it say what
4 date the information is through? I just --

5 MR. NEIBURG: If we go up to the top email,
6 Mr. Zinkel?

7 BY MR. NEIBURG:

8 Q And where Mr. Lamper indicates in the first sentence,
9 "I have populated the table you provided."

10 Do you see that?

11 A Yes.

12 Q Does that indicate that it looks like this table was
13 prepared on or about May 28th, 2019; correct?

14 A Yes.

15 MR. NEIBURG: And just if we go back to the table?
16 One last fact, Your Honor.

17 BY MR. NEIBURG:

18 Q And this table also reflects that Welded had four
19 safety stand-downs; correct?

20 A It does, yes.

21 Q And let's also talk about, I think this is your final
22 area of what you testified about, where you opined that
23 Transco is entitled to recoup roughly 5.8 million associated
24 with Welded's early mobilization of labor. Do you recall
25 that testimony?

1 A Yes.

2 Q And Transco issued the notice to proceed on
3 September 25, 2017; correct?

4 A Correct.

5 Q And that was approximately one week earlier than the
6 anticipated October 2, 2017 notice to proceed date?

7 A Yes.

8 Q And I think you testified and your slides reflected
9 that Welded submitted three trends associated with its early
10 mobilization; correct?

11 A Correct.

12 Q And those are trends 60, 61, and 62; correct?

13 A That is correct.

14 Q And there has been no testimony that Welded did not
15 incur the labor costs associated with early mobilization;
16 correct?

17 A I haven't seen any evidence that they have -- that they
18 have not incurred those.

19 Q And there's no contract provision that states Welded is
20 not entitled to receive its labor costs and equipment fee if
21 mobilization resulted in progress that was less than planned;
22 correct?

23 A Again, I think it goes back to --

24 MR. NEIBURG: Your Honor, if I may have that same
25 instruction, please?

1 THE COURT: Would you repeat the question for him?

2 MR. NEIBURG: Sure.

3 THE COURT: Yes, please answer the question.

4 BY MR. NEIBURG:

5 Q And you're not aware of any contract provision that
6 states Welded is not entitled to receive its labor costs and
7 equipment fee if mobilization resulted in progress that was
8 less than planned; correct?

9 A I don't remember that exact language in a contract
10 provision.

11 Q And Transco paid Welded's invoices related to Welded's
12 early mobilization of labor; correct?

13 A I had not looked at payment of invoices on this
14 project, so --

15 Q And you submitted your initial report on May 9, 2022;
16 correct?

17 A Yes.

18 Q And I believe you indicated that you reviewed the legal
19 pleadings in this case as part of your analysis; correct?

20 A They are listed on there, yes.

21 Q To your knowledge, did Transco assert a claim for
22 approximately \$5 million related to Welded's mobilization of
23 labor before your report was issued on May 9, 2022?

24 A I don't know.

25 Q Well, when you -- did you review any documents, legal

1 pleadings, that reflected that Transco asserted this claim
2 before your report was issued?

3 A If I did, I don't remember reading that.

4 Q Similarly, do you recall seeing any pleading or
5 document in which Welded -- or, I'm sorry, Transco asserted a
6 claim relating to additional tie-in welds prior to your
7 May 9, '22 report?

8 A I don't remember looking at that.

9 MR. NEIBURG: No further questions, Your Honor.

10 THE COURT: Thank you.

11 Redirect?

12 Mr. Triche, are you still good or --

13 THE WITNESS: Oh, yeah.

14 THE COURT: -- do you need a break? You're good?

15 THE WITNESS: No, I'm good. Thank you, though. I
16 appreciate the ask.

17 MS. EWALD: Your Honor, may I proceed?

18 THE COURT: You may.

19 MS. EWALD: Thank you. For the record, Shelly
20 Ewald for Transcontinental Gas Pipeline Company.

21 REDIRECT EXAMINATION

22 BY MS. EWALD:

23 Q Mr. Triche, I have just a few questions for you based
24 on the cross-examination.

25 Mr. Neiburg asked you about -- questions about whether

1 Transco had requested an increase in the number of tie-in
2 crews; do you remember that?

3 A Yes.

4 Q And, in your view would there be any connection on the
5 number of tie-in welds based on simply an increase in the
6 number of tie-in crews?

7 A So, if you look at the project documentation,
8 especially near the end, the number of tie-in welds that
9 needed to be done at the end of the project seemed to be an
10 ever-evolving, we don't know many, they keep increasing and,
11 because tie-in welds are on the critical path at this point,
12 what I believed Mr. Sztroin was asking was we need more tie-
13 ins to do those number of tie-ins. It's not typical, or in
14 my experience, that you add tie-in crews to do what a main
15 line welding crew would normally do.

16 If there's anything that I've seen that relates to
17 that, they will actually develop or put together kind of a --
18 they call it a mini-gang and it's basically a mini-main line
19 welding crew that goes through if they need help getting the
20 main line welds done. You don't put together and add tie-in
21 crews to do main line welding work. You're only getting one
22 to three a day, as opposed to a main line crew, so it's not
23 going to help production.

24 Q And Mr. Neiburg pointed you to some trends related to
25 Pequea Creek and to Amtrak that were in your big list of

1 trends attached to your report. Have you seen any evidence
2 that there was a EWR identified with the Pequea Creek or the
3 Amtrak trends?

4 A I have not.

5 Q And did you see any number of specific days of delay
6 identified by Welded with regard to those trends?

7 A I have not.

8 Q And you were asked some questions about Mr. Sztroin's
9 email identifying spread 6 at some point in the project in
10 his email as the critical path of the project. First of all,
11 with regard to spread 6, are any of the permit variance
12 delays identified by Contech on spread 6?

13 A No. The Amtrak, the Pequea, and I-76 are all on spread
14 7 and in fact the only one that Mr. Kakol originally
15 identified was I-81, which he has now not included as an
16 analysis and appears to be a Welded-responsible issue.

17 Q And just to complete that line of questioning, I-81 was
18 on spread 6; is that right?

19 A Yes, ma'am.

20 Q And, according to Mr. Kakol's analysis, I-81 caused
21 you -- do you recall a 91-day delay in his first report?

22 A I think it is 91 days.

23 Q And I'd like to turn back to the Exhibit Number 648
24 that you were asked about. It is page 14.

25 A Just give me a second.

1 Q Yes. And we have it on the screen as well, Mr. Triche,
2 it might be easier. I'm just going to ask you about --

3 A Okay.

4 Q -- one paragraph that Mr. Neiburg did not read, but in
5 that second paragraph from the bottom there's a reference to
6 the adjusted plan showing a continued 1.2 days a week of
7 downtime for weather reasons. Do you see that?

8 A Yes.

9 Q And is that consistent with your understanding that
10 Welded was reporting that their plan was 1.2 weather days per
11 week?

12 A Yes. So in my -- in the demonstrative that I
13 identified, Welded was reporting in its reports to Transco
14 the 1.2 days of downtime per week.

15 Q And did you determine that Welded in fact included two
16 and a half weather days per week in the schedule?

17 A So in their August 2017 estimate plan, they indicate
18 that they used 2.5 days per week of downtime.

19 Q And that was in their schedule and in their
20 productivity rates --

21 A Yes.

22 Q -- is that correct?

23 A It was certainly much closer to 2.5 if you look at
24 those product -- the production table that I went through, as
25 well as what the schedule actually is for amendment 1, the

1 plan schedule, it's certainly much, much, much closer to 2.5
2 than the 1.2.

3 Q And if we turn to slide 25 within the demonstrative
4 PowerPoint that you prepared, and this is the rain/snow date
5 tracker, spread 5. Can you -- where did you get this
6 graphic, Mr. Triche?

7 A So this comes from weeklies -- I'm sorry, from Welded's
8 progress report to Transco.

9 Q And at the time during the project, Welded was
10 reporting that even using 1.2 days of weather impacts per
11 week, beginning in sometime at the end of November, beginning
12 of December, that it was actually experiencing less actual
13 weather days than the plan of 1.2; is that what that graphic
14 shows?

15 A For spread 5, that's accurate.

16 Q And I believe you addressed this, there were questions
17 with regard to the issue of stick weld, the stick welding on
18 spread 5 where Welded decided to stop using mechanical
19 welding in favor of stick welding. And you were asked about
20 that and I believe you partially were answer -- or were
21 offering information with regard to repair welder. What were
22 you addressing there?

23 A So when there's -- when JANX or any third party in the
24 company identify -- or rejects a weld that needs to be
25 repaired, what happens is they have a repair welder that does

1 that work, and it's one or two, three guys that that is their
2 responsibility, their job on the project is to repair those
3 welds as they go on down the line.

4 Q And I'll just briefly turn to the NCR log that
5 Mr. Neiburg asked you about, I believe it's D-1302B. And
6 with regard to -- first of all, in the column initiated by in
7 the NCR log, do you understand that -- what do you understand
8 about who initiated NCRs on the job?

9 A So I think there were multiple people identifying
10 issues and nonconformance is basically work by Welded that
11 doesn't conform to the contract specifications.

12 Q And for -- under NCR status -- first of all, this
13 nonconformance log, is this something you have seen in your
14 prior experience on pipeline work, Mr. Triche?

15 A This type of log is pretty much on every construction
16 project because there are specifications in the contract that
17 the contractor must meet in order to get a good product at
18 the end of the day.

19 Q And for the NCR status that provides it as closed,
20 would that indicate to you that it has -- that the issue has
21 been addressed and that the -- and has been corrected by
22 Welded?

23 A That is typically the way they keep up with what's --
24 where the defect is. If it's still open, that typically
25 means that the correction has not been made, in my

1 experience. So closed typically means the correction has
2 been made at that point.

3 Q And on row number, I believe it is 62. We're looking
4 now at the NCR number 51 that Mr. Neiburg asked you about
5 with regard to these welds. And I understand that -- did you
6 investigate these reported welds, Mr. Triche, while preparing
7 your analysis of the defective work?

8 A Yes. So, in my review of these NCRs, I did want to
9 make sure that there was no overlap between weld repairs and
10 other defective work, so there wouldn't be -- I wouldn't --
11 there wouldn't be asking for costs in both areas that are the
12 same.

13 I will say that in -- I did look at this one
14 specifically because 17 is a fairly large number. JANX
15 actually accepted them originally. It looks like, after an
16 audit, they were determined to be rejected. So JANX's first
17 pass and in their daily reports would not indicate that they
18 had been repaired or cut out.

19 I did go back and look at the JANX reports in this time
20 to look and see was there a big jump in the number of repairs
21 or welds in the range of 17 during this time and after, and I
22 didn't see a big jump like that.

23 MS. EWALD: Thank you, Your Honor. I have no more
24 questions for Mr. Triche.

25 MR. NEIBURG: No further questions, Your Honor.

1 THE COURT: Thank you for your testimony,
2 Mr. Triche.

3 THE WITNESS: Thank you.

4 THE COURT: You can step down.

5 (Witness excused)

6 MS. EWALD: Your Honor, with respect to the time,
7 as we discussed earlier, and the deposition designation
8 reading, we certainly do want to enter deposition
9 designations into the record. I would request leave of the
10 Court to do that after the live testimony, if we have
11 witnesses ready and can proceed in that regard.

12 THE COURT: Well, let me ask what's left. Do you
13 have any further -- does Transco have any further witnesses on
14 their direct case?

15 MS. EWALD: We do not, Your Honor.

16 THE COURT: Okay. And in terms of Welded, we have
17 a rebuttal case?

18 MR. GUERKE: We do, Your Honor. It's going to be
19 brief.

20 THE COURT: Okay.

21 MR. GUERKE: We dropped two of our witnesses at
22 lunch, so we have two remaining, and we're prepared to put
23 them on after Transco completes its reading, unless Your
24 Honor wants to do it in a different order.

25 THE COURT: No. Can you tell us who your two

1 witnesses area?

2 MR. GUERKE: Sure, Scott Gray, who you heard from
3 last week, he was our quantification expert, and the other
4 expert is Dennis Kakol.

5 THE COURT: Okay. I think Transco should complete
6 its case. So, if you want to read deposition testimony into
7 the record, you should do that, and consistent with your
8 time, whatever time you have. But it sounds like with two --
9 with the rebuttal case, I think we're going to be okay over
10 today and tomorrow. That's what it sounds like.

11 MR. GUERKE: For sure, Your Honor. We expect to
12 be pretty short with our witnesses.

13 MS. EWALD: Your Honor, in that case, we will go
14 ahead and proceed with our reading.

15 THE COURT: Okay.

16 MR. BURWOOD: Good afternoon, Your Honor, Jonathan
17 Burwood, for the record.

18 THE COURT: Mr. Burwood, I noticed that you move
19 quickly. So recognize here you're reading, so you need to
20 move a little slower when you're reading because people tend
21 when they're reading to go faster. Just to --

22 MR. BURWOOD: I appreciate that, Your Honor.

23 THE COURT: Okay.

24 MR. BURWOOD: Your Honor, the first deposition
25 designation to be offered by Transco is from the deposition

1 of Scott Schoenherr, and this took place on March 23rd of
2 2021, and we're going to start at page 11, Line 10.

3 The question is, "Mr. Schoenherr, could you please
4 state your name for the record? I want to make sure I'm
5 pronouncing it correctly.

6 "Answer: Yes. Scott Dale Schoenherr."

7 Moving on to page 17, starting at line 22.

8 "Question: And what was your job title when you
9 joined Welded in 2016?

10 "Answer: General superintendent.

11 "Question: And what was the first project that
12 you worked on for Welded as the general superintendent when
13 you joined in 2016?

14 "Answer: So let me just clarify this whole
15 process. As the superintendent and then general
16 superintendent, so the general superintendent, there's not
17 really one project that I oversaw, they had several projects
18 ongoing. So I think the first -- probably the first one I
19 went to was Consumers Energy in Michigan, just for the simple
20 fact that their home office was in Perrysburg and that is
21 where my report was to. And the work that they had was
22 Michigan, not far away.

23 "Question: And thank you for that clarification.
24 So, as superintendent, do I understand it correctly that your
25 position was to supervise or oversee several different

1 projects?

2 "Answer: Okay. So the superintendent is assigned
3 to one project, the general superintendent, my roles and
4 responsibilities were to oversee five or six different
5 projects, or how many ever projects that they had going."

6 Moving on to page 30, starting at line 21.

7 "Question: And during your tenure as -- I don't
8 know if you have any preference between superintendent or
9 construction manager. During your tenure as superintendent,
10 where were you stationed?

11 "Answer: So the only preference I would have
12 there is either general superintendent or construction
13 manager, just to be clear that I wasn't assigned to a certain
14 project to run a job, which --

15 "Question: I understand.

16 "Answer: Okay, so that's all."

17 Moving to page 50, starting at line 9.

18 "Question: Just to take you back quick to the org
19 chart, Mr. Schoenherr, there's a dotted line between you and
20 Mr. Hood, the senior project manager, but I understand that
21 you reported to Mr. Hawkins; is that correct?

22 "Answer: That's a true statement, yes. And, just
23 to be clear on this, I think the reason for the dotted line
24 is that was to signify that I was not -- in my mind, I was
25 not going to be there 100 percent of the time. If I'm there

1 100-percent time, I think that line is solid."

2 Continuing at page 68, line 13.

3 "Question: And was the purpose of the payment to
4 the welders to cover the expense of the equipment they were
5 providing, i.e. the welding rigs?

6 "Answer: Yes.

7 "Question: And is that -- is it typical that the
8 welders provide their own welding rigs on these types of
9 pipeline projects?

10 "Answer: Most definitely.

11 "Question: And in instances where the welding
12 rigs aren't provided by the craft laborer, are they typically
13 rendered by the subcontractor?

14 "Answer: Yes."

15 MR. NEIBURG: Your Honor, I'm sorry, I think -- no
16 objection, just for completeness, Welded would read into the
17 record 67, line 6, through where Mr. Burwood picked up at
18 68, 12.

19 MR. BUCHANAN: I'll just take it from there.

20 "Question: And the vehicle allowance, was that to
21 cover the expenses of a craft labor person utilizing their
22 own vehicle on the job?

23 "Answer: That's a true statement, yes.

24 "Question: And, similarly, were welding rigs
25 provided by some of the craft union members?

1 "Answer: Yes. So --

2 "Question: And --

3 "Answer: -- go ahead.

4 "Question: What I was going to say, what
5 comprises a welding rig for purposes of a pipeline project or
6 construction like this -- pipeline construction like this
7 one?

8 "Answer: So if you were to look in the PLC, it's
9 spelled out very, very well in there, what comprises of that,
10 and I'll just take a stab at it. It's a welding, a truck
11 with a welder, you know, with a four-wheel crew cab dually --
12 I mean, they're most generally dually trucks, not always --
13 but, you know, to carry the machines and the small tools that
14 they have. Most generally, they're a flatbed dually truck
15 crew cab, single cab, you know, equivalent of a one-ton or
16 three-quarter-ton pickup.

17 "Question: And I might get this wrong, but is it
18 the operators that -- operators, welders that provide these
19 welding rigs?

20 "Answer: So it would be the -- so, as far as the
21 welding rigs go, that would be the -- it would be the
22 welders, you know, from the -- that each welder on the job is
23 supposed to provide a rig and get paid for their rig."

24 MR. BURWOOD: Your Honor, I'd just like to note
25 Transco's objection to the counter that was just read. You

1 know, we spent a considerable amount of time before trial
2 identifying designations and counters, and then again, more
3 recently, we identified the specific designations. We
4 weren't advised of that counter prior to this, so I just want
5 to note that objection.

6 THE COURT: Okay.

7 MR. BURWOOD: Continuing on with Mr. Schoenherr on
8 March 23rd, 2021 at page 136, starting at line 14.

9 "Question: Mr. Schoenherr, before the break, you
10 had mentioned a few pieces of equipment by name that were
11 used on the ASR project. I believe you referred to a piece
12 of equipment known as a Maruka. Can you explain what that
13 is?

14 "Answer: Sure. So the Maruka would be in the
15 instance, is a track machine with a bed on it and a cab, and
16 it's like a -- it would be like a flatbed pickup truck
17 almost, but it's capable of, with rubber tracks that can go
18 in the mud or down a right-of-way, or up and down hills, it's
19 used for different things. Sometimes you put air compressors
20 on it, straw, the blower, you know, the straw blower, mulch
21 blower, and then you just feed it with the tractor or you can
22 load bales, square bales on it.

23 "Question: And are Marukas typically utilized by
24 contractors doing similar projects?

25 "Answer: Yep.

1 "Question: And with regard to the attachment, you
2 had mentioned previously that the -- with regard to the
3 mulching exercise, in order to stabilize the right-of-way for
4 the Christmas break that a straw blower was attached to the
5 Maruka to basically lay down the straw for that exercise; is
6 that right?

7 "Answer: That's correct.

8 "Question: And is it typical to use attachments
9 such as a straw blower on Marukas in projects such as the ASR
10 pipeline project?

11 "Answer: Yes.

12 "Question: And is that typically equipment that
13 would be provided or leased by a contractor on similar
14 projects?

15 "Answer: Yes."

16 MR. NEIBURG: Your Honor, I'm sorry, I just want
17 to correct the record, both in terms of page 67, line 6, to
18 68:12, both parties during this designation process
19 designated that portion. Just for simply purposes of now we
20 thought, for completeness, Welded should read it into the
21 record.

22 Thank you, Your Honor. I won't ticky-tack again,
23 but --

24 THE COURT: Okay.

25 MR. BURWOOD: Moving on to page 145 of

1 Mr. Schoenherr's March 23rd, 2021 deposition, starting at
2 line 3:

3 "Question: And you responded to Mr. Brown's
4 comment about the ASR project as proceeding nicely and you
5 said, Bob, who is telling you the ASR project is proceeding
6 nicely? Do you see that?

7 "Answer: Sure, I read it once, yes.

8 "Question: And what did you mean -- or,
9 obviously, your question indicates that you didn't believe
10 the project was proceeding nicely at that time; correct?

11 "Answer: Let me check the date. January 2nd?
12 No, I would say I did not agree with that statement. I mean,
13 to me, I don't think it was. Were we meeting our
14 productivity? I mean, no. I would stand by that statement.
15 My take on his comment was he thought the project was going
16 nicely; he was referring to his software. I don't think his
17 software or that software where this project was, neither one
18 were doing well, nicely.

19 "Question: And was the ASR project not proceeding
20 nicely because of the lack of productivity that was being
21 experienced on the job?

22 "Answer: I would say that's a true statement,
23 yes.

24 "Question: And the other project performance
25 issues that were affecting the project would include problems

1 with quality as well?

2 "Answer: Yes.

3 "Question: And would you say there were also
4 problems relating to compliance with the environmental
5 requirements?

6 "Answer: Yes.

7 "Question: And were there also problems related
8 to the safety performance on the project?

9 "Answer: Yes."

10 Moving on to page 150, starting at line 19.

11 "Question: I was going to direct your attention
12 to the second line of Mr. McNabb's email, which indicates,
13 quote, in reviewing the current situation, the adherence to
14 schedule, productivity, and head count is not good. Included
15 herein is an analysis, end quote

16 "Based on your prior email, would you -- I would assume
17 you would agree with Mr. McNabb's conclusion that adherence
18 to schedule, productivity, and head count was not good in
19 January of 2018; correct?

20 "Answer: I would agree with that statement, yes."

21 MR. BURWOOD: Your Honor, I'm going to move on to
22 designations from the deposition of Dean McDowell, took place
23 on December 9 of 2020.

24 First designation is page 14, starting at line 5:

25 "Question: And, Mr. McDowell, do you understand

1 that you have been designated as a corporate representative
2 for Welded, LLP in your deposition?

3 "Answer: Yes. I have been brought up to speed on
4 that process, yes."

5 Moving ahead to page 114 of that same
6 transcript --

7 MR. NEIBURG: Your Honor, I'm sorry. I just want
8 to note for the record, my objection starting on the record
9 there at 1412 and the discussion that continued that the
10 parties stipulated to a standing objection, if testimony or a
11 question was outside the scope of the topics for which
12 Mr. McDowell was designated as 30(b)(6), so if you don't see
13 it at any part, it's because we stipulated at the beginning
14 right here.

15 THE COURT: You stipulated as to a standing
16 objection --

17 MR. NEIBURG: Correct.

18 THE COURT: -- as to beyond the scope?

19 MR. NEIBURG: Correct, Your Honor.

20 THE COURT: Okay. Got it.

21 MR. BURWOOD: Your Honor, continuing with
22 Mr. McDowell's deposition designation on December 9, 2020, at
23 page 114, line 4.

24 "Question: Do you know whether Welded applied a
25 50 percent equipment fee to the cost of these mechanic rig

1 rentals?

2 "Answer: I do not know that, no.

3 "Question: Do you think it would be appropriate
4 to do so?

5 "Mr. Neiburg: Object to form.

6 "Answer: I think that it would be -- depending on
7 how you classify it, it's a person's belonging. They're
8 paid -- if they're paid that mechanical or mechanic rig rate
9 through our payroll system, it would probably be a -- a
10 debatable issue."

11 Moving on to page 115, starting at line 9.

12 "Question: And with regard to welding rigs, is
13 this the type of equipment that's typically provided by a
14 contractor on pipeline projects?

15 "Answer: Yes.

16 "Mr. Neiburg: Object to form.

17 "Question by Ms. Ewald: And that's the purpose of
18 this equipment is to weld the pipe, correct?

19 "Answer: Yes. This -- this rig contains the
20 materials and tools necessary to weld the pipe."

21 Moving on in that same transcript to page 149,
22 starting at line 1:

23 "Question by Ms. Ewald: I'm showing you what's
24 been identified as McDowell Exhibit 22, and it is -- it's an
25 email. It's an email exchange from Mr. Scott Card from

1 Williams. He's asking Mr. Grindinger questions about the
2 January 2018 cash call and reconciliation invoice and he's
3 asking questions about support. He's asking questions about
4 the cash call amounts and we see Ms. Peters says to you
5 and -- strike that. And we see Ms. Peters say to you, 'We
6 need to take this over. Williams is going to audit us after
7 all these people are long gone and we will not have any of
8 the details because they are keeping it hush-hush on the
9 spread.'

10 Do you see that?

11 "Answer: I do, yes.

12 "Question: And so, at this point, Ms. Peters is
13 concerned about a potential audit in the future after all of
14 the field accountant people are gone, correct?

15 "Answer: That's correct, yes.

16 "Question: And she says that the -- that they are
17 keeping it hush-hush on the spread. Would that refer to the
18 field accountants on the various spreads?

19 "Answer: I believe that would.

20 "Mr. Neiburg: Object to form.

21 "Answer: Refer to the witness. What was that,
22 Mike?

23 "Mr. Neiburg: I was just saying object to form.
24 You can answer.

25 "The Witness: Thank you.

1 "Answer: I believe that her statement would refer
2 to our project, our project team in total, not just the field
3 accountants, but the -- she -- she was very frustrated.

4 "Question by Ms. Ewald: What was she worried that
5 they were keeping hush-hush on the spread?

6 "Mr. Neiburg: Object to form.

7 "Answer: I believe her concerns had more to do
8 with what we've been discussing here today, what is billable,
9 what is a -- what is included in the multiplier, how are they
10 determining that, that -- that's the best of my recollection.

11 But Holly had concerns, obviously, and her
12 concerns have already been shown in a couple of exhibits
13 today that an audit was obviously very high on her concern
14 list."

15 MR. NEIBURG: Your Honor, I'll just note for the
16 record that Welded indicated objections based on personal
17 knowledge and speculation as to what Mr. McDowell believed
18 Ms. Peters was saying.

19 THE COURT: Okay.

20 MR. BURWOOD: Moving on in that same transcript to
21 page 204, starting at line 10:

22 "Question: And after this meeting in March --
23 well, prior to this meeting in March, Welded was not paying
24 its subcontractors and vendors in the usual course of
25 business, correct?

1 "A: We were behind on payments, yes.

2 "Question: And that continued after the March
3 2018 meeting, correct?

4 "Answer: It did, yes.

5 "Question: And you were not making payments to
6 your -- to your subcontractors and vendors in the regular
7 course of business?

8 "Answer: We were late with our payments, yes."

9 MR. BURWOOD: I'm going to move on to the second
10 day of Mr. McDowell's deposition. It's dated December 11 of
11 2020, and I'm going to move to page 310, starting at line 19:

12 "Question to Mr. McDowell: And so with regard to
13 those vendors and subcontractors that have not been paid by
14 Welded but the funds had been provided by Transco to Welded
15 to pay them, was there any document that shows an accounting
16 between the funds paid by Transco and those accounts payable?

17 "Answer: There is no document to my knowledge
18 that would do a trace of funds of that nature, no."

19 Moving on to designations from the deposition of
20 Sean Singleton that took place on November 13 of 2020.

21 THE COURT: What day was that? I'm sorry.

22 MR. BURWOOD: November 13 of 2020, Your Honor.

23 THE COURT: Thank you.

24 MR. BURWOOD: And starting at line 9 of page 13,
25 the question was:

1 "Prior to joining Welded at -- did you have
2 experience working on other pipeline projects similar to the
3 ASR project?

4 "Answer: No."

5 Moving to page 20:

6 "Question: Mr. Singleton, were you responsible
7 for identifying the costs that were billable to Transco under
8 the contract?

9 "Answer: So I was responsible for the invoice
10 that went out and -- and ensuring that it was in compliance
11 with the contract. The -- so I came in in January. There
12 had been several invoices already sent out so, really, my --
13 I -- I didn't set up the -- this is -- this isn't structure.

14 Mostly it was, you know, reviewing the invoices
15 that came out under my purview and making sure they were
16 consistent with the contract so a light subtly between the
17 initial definition of what is and what isn't, which was not
18 me, which was the contract, and some subsequent, I guess,
19 guidance from -- from the folks on the job early on, but my
20 job was to ensure that what Sue created and issued was in
21 compliance with the contract."

22 MR. BUCHANAN: Your Honor -- sorry. Just to add a
23 question and answer immediately before that.

24 THE COURT: Okay.

25 MR. BUCHANAN: On line -- page 21, lines 3 to 9.

1 Question --

2 THE COURT: Brandon, can you hear?

3 THE CLERK: Yeah.

4 THE COURT: Okay.

5 MR. BURWOOD: Before or after?

6 MR. BUCHANAN: After.

7 MR. BURWOOD: After?

8 MR. BUCHANAN: Sorry. I said before but it's
9 after:

10 "Question: And what did you use to make those
11 decisions?

12 "Answer: Primarily the contract. Even though
13 there were -- primarily the contract. And then if -- because
14 I was not greatly familiar with -- with pipeline specific
15 equipment, there were a lot of discussions with Marcus Hood
16 on where this -- these pieces of equipment should fall."

17 MR. BURWOOD: Your Honor, continuing with the
18 designations from Mr. Singleton on November 13 of 2020,
19 moving forward to page 23, line 4:

20 "Question: And did you ever sit down with anyone
21 at Transco to go through the billable rules?

22 "Answer: No."

23 MR. BUCHANAN: And, again, Your Honor, the
24 previous question, page 22, line 5 to page 23, line 3:

25 "Question: And if there were -- if you had

1 questions, who was the -- was there a final arbiter of what
2 was billable?

3 "Answer: Yeah, it would've been Marcus."

4 MR. BURWOOD: Continuing with Mr. Singleton on
5 that same date, November 13, 2020, page 73, starting at
6 line 19:

7 "Question: Mr. Singleton, did you review the
8 execution plan prepared by Welded to achieve the lowest
9 capital costs to build the project?

10 "Answer: No.

11 "Question: And --

12 "Answer: And I'll say no, but the -- the
13 execution plan they're talking about here would've been
14 premobilization, pre -- pre-start. By the time I got to the
15 project, the project was well into execution and that -- that
16 plan, whatever it was, I did not review it."

17 MR. BUCHANAN: And picking up, Your Honor, on
18 page 74, line 5; page 75, line 3:

19 "Question: What steps did you, as project
20 controls manager, take to ensure that Welded achieve the
21 lowest capital costs to build the project.

22 "Mr. Guerke: Objection.

23 "Answer: I would say that the approach that I
24 took was to be transparent with Williams; that as we were
25 doing our forecasts, our forecasts were not Welded only

1 forecast updates. They -- they were with -- with Williams
2 and I don't recall how many of these forecasts we did
3 where -- where the Williams folks came to Mount Joy. We went
4 through spread-by-spread, line-by-line, of the different
5 elements of the forecast. So what did I do? You know, make
6 sure that the customer knew where the cost was, where it was
7 going, which at -- at that point in the project, you know,
8 is -- is really about all you can do. Once -- and there
9 are -- I'm sure you guys maybe do or don't know this.
10 Once -- I mean once you've passed 20 percent complete, it is
11 really, really hard to turn the direction of a project. In
12 fact, rarely does it happen. And by the time I got there,
13 the project was on a path and so the best thing for me to do
14 was to keep the customer informed."

15 MR. BURWOOD: Continuing on page 133, starting at
16 line 24:

17 "Question: And did you look at Mr. Grindinger --
18 you get his files when you became project controls manager?

19 "Answer: I got some of them. I'm sure I got some
20 of them but I -- a lot of the stuff I think went -- Jim --
21 went with Jim when Jim left.

22 "Question: Are you -- do you -- does that mean
23 you think Mr. Grindinger took his files with him, as opposed
24 to leaving them with Welded?

25 "Answer: Potentially. I -- they weren't on

1 project Share drives. They -- or at least they were not
2 evident on project Share drives. So did he take them with
3 him? I don't -- I don't know, but there was a lot of pieces
4 of information we couldn't find and whether they were missing
5 or we just couldn't find them, it was the same effect for --
6 for me and after I got there."

7 Your Honor, moving into the second day of
8 Mr. Singleton's deposition on November 24, 2020, and picking
9 up at page 251, line 12:

10 "Mr. Singleton, Mr. Ross has pulled up what I
11 think is Exhibit Number 29. It's an email from you to
12 several Welded personnel on the project. The subject is ASR
13 cost saving opportunities and you asked, I need -- 'I need'
14 and you say, 'I need of you to identify cost savings/
15 avoidance opportunities that we have given Williams that has
16 not been implemented and rough estimate if you have it.'

17 Mr. Singleton, did you receive any responses to
18 this email?

19 "Answer: I don't know. I don't -- I don't recall
20 if I did or if I didn't."

21 Moving into the deposition of Stephen Hawkins that
22 took place on December 7 of 2020, starting at page 243,
23 question at line 11:

24 "Question: So sitting here today, you -- would
25 you agree that the contract makes Welded responsible for

1 additional costs that are incurred due to the contractor's
2 actions and omissions?

3 "Answer: Yes. Depending on what acts and
4 omissions means, yes. I don't -- you would have to go over
5 each act and omission and whether it is an act or omission.
6 But, yes, I agree that that's what the language says."

7 MR. BUCHANAN: And then, Your Honor, just before
8 that page, 242, line 17 to page 243, line 10:

9 "Question: And this provision -- and, of course,
10 we have both probably read the language, indicates that there
11 will -- that no change or modification to any part of the
12 work or materials and equipment shall result in an adjustment
13 of the compensation or extension of the completion date where
14 the change, modification, or addition is due to contractors
15 or its subcontractor's acts, omissions, including, but not
16 restricted to, and then it has a list of items. Do you see
17 that?

18 "Answer: Yes.

19 "Question: And during the course of performance,
20 did Welded record any -- separately, any of the costs that it
21 incurred due to its or its subcontractor's acts or omissions
22 that caused an increase in the cost of the work?

23 "Answer: I'm not aware of any acts or omissions
24 that that would refer to that we have received notice of,
25 that we would've done that, so I don't know that we did and I

1 don't know that we had them."

2 MR. BURWOOD: Moving on to page 244 in
3 Mr. Hawkins' transcript, the question at line 7:

4 "Question by Ms. Ewald: Is it your understanding
5 as the corporate representative of Welded that Williams may
6 reject defective work and require Welded, at its sole cost
7 and expense, to correct defective work at any time prior to
8 completion and final acceptance?

9 "Mr. Guerke: Objection.

10 "Answer: Yes. If it's defective and we're
11 required to do it, we would do it under those definitions.

12 "Question by Ms. Ewald: And it would be at
13 Welded's sole cost and expense, correct?

14 "Mr. Guerke: Objection.

15 "Answer: Yeah, we would have. Sorry.

16 "Question by Ms. Ewald: With regard -- sorry.

17 "Answer: So hang on. It's, you know, defective,
18 deficient, improper, unsound, or non-conforming. Is that the
19 definition of defective? Deficient, improper is the
20 defective work. Yeah. If it fell into that category and --
21 and then we would be responsible."

22 Your Honor, moving on to the deposition John
23 McNabb that took place on November 6 of 2020. First
24 designation can be found at page 125 of the transcript, the
25 question starting at line 7:

1 "Question: And during the project, were people
2 who were doing their work in Perrysburg charged to the
3 project?

4 "Answer: Yes. Those who were supporting, like I
5 told you earlier, accounting and other functions, paying
6 bills, et cetera., that are reimbursable were being charged
7 to the project. This will indicate to you who was charging
8 in home office."

9 MR. BUCHANAN: Your Honor, we'd like to read in
10 some language, the passage just before that, on page 122,
11 line 8, to page 125, line 6:

12 "Ms. Ewald: And we're -- if you could scroll down
13 a little bit.

14 "Question: There is then a section on
15 construction that includes as field non-manual people all in
16 the Mount Joy office. Were all of these personnel --

17 "A: Some of these would've been in the spread
18 offices. When they moved to the field, when they opened up
19 the spread offices, these people would move to the spread
20 offices.

21 "Question: And that's indicated by Column E which
22 shows which spread they were being assigned to?

23 "Answer: Yeah. Yeah.

24 "Ms. Ewald: Okay. And if you could continue
25 going down the spreadsheet, Nate, you'll get to a portion of

1 engineering support from Houston. Do you see that? Nate,
2 you went past it. If you could go up a little bit to
3 Column -- there you go. It's rows 26 -- it's rows 63 to 67.

4 "Question: The engineering support from the
5 Houston office, do you know if those people were charged to
6 Williams or Transco?

7 "Answer: I believe they would be. They're an
8 essential part of doing the job. They would be preparing
9 grade plans and other engineering documents to support the
10 work going on in the field.

11 "Question: And even though they weren't -- even
12 though they weren't going to be assigned to work in the
13 field, they were chargeable, to your recollection?

14 "Answer: Absolutely.

15 "Question: And is there a reason why they weren't
16 considered home office support?

17 "Answer: Yes. Engineering is part of the
18 project. Home office support is not engineering. Okay?

19 "Question: And were you aware of any engineering
20 personnel who actually worked in the field in Pennsylvania?

21 "Answer: Yes. There would be some assigned to
22 the various crews.

23 "Ms. Ewald: And now, Nate, if you could go to the
24 bottom of this list, there's a section that is identified as
25 Home Office in Perrysburg. You have to keep going down a

1 little bit. There you go. You got to it.

2 "Question: So, there is home office support and
3 some of these people are -- have been identified above in the
4 Mount Joy -- in the field at Mount Joy as well. Do you know
5 why?

6 "Answer: They would've been here until they
7 moved. So if you look at the -- if you look, for example,
8 against my name, there's no money there. All zeros. They're
9 showing up and -- but you have to look at what's budgeted and
10 what's not. Okay? Like there's no full-time job on this
11 whole sheet, on this whole thing.

12 "Question: And the home office support categories
13 that are identified associated with Perrysburg, are those
14 typical home office overhead and management?

15 "Answer: Not overhead and management. They're
16 doing the accounting and other things that need to be done.
17 There's nothing -- Steve Hawkins isn't on this list, for
18 example. Okay? I'm home office. John McNabb at the top,
19 but I'm zero all the way across so there is no hours being
20 charged and no hours being budgeted. You have to look at
21 each individual and look at what they're doing. They're not
22 doing overhead. They're doing specific things to support the
23 actual execution of the project."

24 MR. BURWOOD: Your Honor, continuing at page 126
25 of Mr. McNabb's deposition transcript, the question at

1 line 20:

2 "Question: Was the agency fee associated with
3 the PTAG personnel charged to Transco?

4 "Answer: Absolutely. I believe it would not be
5 marked up, which is a significant issue.

6 "Question: When you say not marked up, what do
7 you mean?

8 "Answer: It would be direct. It would be billed
9 to the client at the cost, at a cost to Welded. There would
10 be no markup on it unless the contractor had a provision that
11 they marked up agency costs."

12 Staying on page 127, question at line 8:

13 "Did -- well, the agency personnel were marked up
14 by 50 percent for the equipment fee, correct?

15 "Answer: Yes, absolutely. They're not a labor
16 cost."

17 MR. BUCHANAN: And continuing on, Your Honor,
18 page 127, line 13, to page 128, line 8:

19 "Question: In sitting here today, your
20 recollection is that the agency, PTAG agency personnel, were
21 charged to Transco based on the cost to Welded, is that
22 right?

23 "Answer: That's correct, yeah. Let's understand
24 that agency personnel costs less than direct hires. You
25 didn't react to that.

1 "Question: I'll show you a few emails about that.

2 "Ms. Ewald: Nate, if we could pull up document
3 number 62, and there's a -- there's a spreadsheet that goes
4 with it that will be two exhibits, so I think it will be 16
5 and 17. McNabb Exhibit 16, marked for identification and
6 attached to the transcript.

7 "Answer: I want it on the record that I said that
8 agency personnel costs less than direct hire people.

9 "Question: I think that our court reporter got
10 that.

11 "Answer: Okay."

12 MR. BURWOOD: Continuing on with Mr. McNabb at
13 page 165, question at line 6:

14 "Question: And are welding rigs something that a
15 contractor typically provides on a project such as this?

16 "Answer: Yes."

17 Staying with Mr. McNabb, moving to page 212,
18 question at -- starting at line 6:

19 "Question: And to your knowledge, Transco -- you
20 never saw a labor hour that wasn't billed to Transco,
21 correct?

22 "Answer: Not that I'm aware of, yeah."

23 And, further down on page 212, starting at
24 line 24:

25 "Question: What about -- what about if you run

1 into problems that are due to Welded's acts and omissions, is
2 that the risk of Transco?

3 "Answer: As far as I'm concerned, yes. You
4 hired -- we hired Welded. You know their reputation and you
5 knew their repair rate and the rest of it, so you assume
6 you're going to pay for it again. If you didn't that's your
7 fault. Nobody else's."

8 Staying on page 213, question at line 18:

9 "Question: And non-conforming work, that was
10 Transco's problem too, correct?

11 "Answer: Yes, absolutely. Everything is your
12 problem. Everything. There is no exception to what's not
13 your problem on a cost reimbursable job. You are taking all
14 the risks. If I bid it lump sum, I'm taking the risk."

15 MR. BUCHANAN: Your Honor, just to put that
16 passage in context, page 210, line 24, to 213, line 24:

17 "Question: And the training expense, field office
18 rental, field office rental would not have been billed,
19 correct?

20 "Answer: That's my recollection, yes.

21 "Question: Do you know what --

22 "Answer: Training would've been billed.

23 "Question: What's that?

24 "Answer: Training would have been billed.

25 "Question: What about welder qualification, was

1 that --

2 "Answer: My opinion would have -- my opinion,
3 that would've been billed because it's specific training to
4 meet Williams' welding specifications, which are unique, and
5 you have to train your welders to meet. Every project was
6 through the same thing.

7 "Question: And any -- we see repairs to rental
8 equipment. Is there any entry that you're aware of on this
9 list for corrective or defective work entry?

10 "Answer: No, because it's treated as normal work.

11 "Question: And so it would be charged to Transco?

12 "Answer: Absolutely.

13 "Question: And so would the re-work?

14 "Answer: No, the term, cost reimbursable, means
15 cost reimbursable. If we prepare -- if we have a -- for
16 example, if we're bidding this lump sum -- this job lump sum,
17 we would bid in the lump sum the cost to repair by putting
18 it -- putting in an extreme amount of contingency on the lump
19 sum and so if we have a repair on the line on a cost
20 reimbursable job, you still have to pay for it, in my
21 opinion.

22 "And to your knowledge, Transco -- you -- you
23 never saw a labor hour that wasn't billed to Transco,
24 correct?

25 "Answer: Not that I'm aware of, yeah.

1 "Question: And that's --

2 "Answer: That's very specific. You pay for
3 everything until the job is finished -- until the job is
4 finished. You're assuming -- on a cost reimbursable job,
5 you're assuming all the risk as the owner, so don't be
6 surprised of the result.

7 "Question: And with regard to -- when you say
8 you're assuming all the risk, what do you mean by that?

9 "Answer: Well, if we run into problems with
10 weather, we run into problems with productivity, we run into
11 problems with having to do repairs, that's your risk.

12 "What about if you run into problems that are due
13 to Welded's acts and omissions, is that the risk of Transco?

14 "Answer: As far as I'm concerned, yes. You
15 hired -- we hired Welded. You -- you know their reputation
16 and you knew their repair rate and the rest of it and so you
17 assume you're going to pay for it again. If you didn't,
18 that's your fault. Nobody else's.

19 "Question: When you say you knew their
20 reputation, what did you mean by that?

21 "Answer: Well, you knew what the rate of safety
22 was. You've checked all those things before you awarded the
23 contract.

24 "Question: And, in fact, there were real
25 safety -- there was -- there were significant safety issues

1 on this job, is that right?

2 "Answer: I don't know. Can't speak to it. But
3 if there were, that's your problem, not ours.

4 "In non-conforming work, that was Transco's
5 problem too, correct?

6 "Yes, absolutely. Everything is your problem.
7 Everything. There was no exception to what's not your
8 problem on a cost reimbursable job if you're taking all the
9 risks. If I bid it lump sum, I'm taking the risk."

10 MR. BURWOOD: Your Honor, moving on to the last
11 witness for which Transco has deposition designation. The
12 witness is Mary Lynn Murphy. Her deposition took place on
13 December 8 of 2020.

14 Starting at page 76 of her transcript, question at
15 line 15:

16 "Question: And now, at the bottom of the labor
17 tab, we now see the welding rig rental, vehicle/ -- vehicle
18 rent/mileage and mechanic rig rental line items that were
19 previously -- previously on the 3 to 4 equipment tab,
20 correct?

21 "Answer: Yeah.

22 "Question: So the equipment that was originally
23 included within the equipment, the included equipment, has
24 now moved into the labor section of the report, correct?
25 Looks like it, yeah. I don't recall that."

1 Moving on to page 109 of Ms. Murphy's transcript,
2 question at line 13:

3 "Question: And there's also in the -- I would say
4 the fifth bullet point from the bottom says, 'Truck rentals
5 need to be moved from non-billable, sheet 3 to 4 equipment to
6 billable subcontracts.'

7 Do you know why truck rentals were moved from the
8 non-billable to the billable sheet?

9 "Answer: I don't recall why."

10 MR. BURWOOD: Your Honor, that's the extent of the
11 designations that we're offering into the record.

12 THE COURT: Okay. Thank you. Okay. So that
13 concludes Transco's direct case?

14 MS. EWALD: Yes it does, Your Honor. Thank you.

15 THE COURT: Thank you.

16 MR. GUERKE: Your Honor, Mr. Gray is out in one of
17 those rooms. Can we have a few minutes to go grab him?

18 THE COURT: Yeah. Let's come back at 4:15.

19 MR. GUERKE: Thank you.

20 (Recess taken at 4:06 p.m.)

21 (Proceedings resumed at 4:15 p.m.)

22 THE CLERK: Please rise.

23 THE COURT: Please be seated.

24 MR. GUERKE: Thank you, Your Honor. Kevin Guerke,
25 for Welded Construction, for the record. Our next witness is

1 Scott Gray. We'd like to call him to the stand, but I
2 understand Ms. Ewald has something she'd like to say before
3 we do that.

4 THE COURT: Okay.

5 MS. EWALD: Your Honor, I had spoken with
6 Mr. Neiburg about introducing Mr. Triche's CV as an exhibit
7 and then I -- I apologize I neglected to do so. It is a
8 portion of Exhibit D-2048, his first expert report, pages 89
9 through 94, and I will provide a copy -- I have provided a
10 copy to counsel, and may I approach, Your Honor --

11 THE COURT: You may.

12 MS. EWALD: -- to provide a copy to you?

13 MR. NEIBURG: No objection, Your Honor.

14 THE COURT: Thank you. It's admitted.

15 (Exhibit D-2048, received into evidence)

16 THE COURT: Okay.

17 MR. GUERKE: Thank you, Your Honor. Mr. Gray.

18 THE COURT: Mr. Gray, we're not going to re-swear
19 you in. You're -- you are now under oath again.

20 MR. GRAY: I understand, Your Honor. Thank you.

21 SCOTT GRAY, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN,

22 RESUMES STAND IN REBUTTAL

23 DIRECT EXAMINATION

24 BY MR. GUERKE:

25 Q Good afternoon, Mr. Gray.

1 A Good afternoon.

2 MR. GUERKE: Could you pull up Mr. Slavis'
3 demonstrative, page 38, please, slide 38?

4 BY MR. GUERKE:

5 Q Mr. Gray, I'm putting on the screen Mr. Slavis'
6 presentation slide number 38. Are you familiar with
7 Mr. Slavis' opinion as reflected on slide 38 of his trial
8 presentation?

9 A Yes, related to what's identified as unallowable
10 vehicle allowance costs, yes.

11 Q Did you review Mr. Slavis' opinions and quantification
12 related to what he identifies as costs for unallowable
13 vehicle allowances?

14 A Yes I did.

15 Q According to Mr. Slavis, how much did he determine was
16 unallowable vehicle allowance?

17 A As shown here on the slide, including the 50 percent
18 equipment fee, it's \$867,447.

19 Q Does Mr. Slavis' number include Union members
20 identified as operating engineers?

21 A Yes, equipment operators. Yeah.

22 Q Are you aware that it is Welded's position that certain
23 Union members are entitled to truck pay or vehicle allowance
24 according to NPLA Union pre-job agreements?

25 A Yes.

1 Q Are you familiar with the four pre-job agreements that
2 are relevant to this case?

3 A I've read them, yes.

4 MR. GUERKE: Could you pull up D-2047, please?
5 Actually, it's 2047(m) and then 2047(n).

6 BY MR. GUERKE:

7 Q Mr. Gray, I'm showing you what has been identified as
8 Exhibit D-2047(m). It is schedule 7 from Mr. Grays -- I'm
9 sorry, from Mr. Slavis' report. Are you familiar with this
10 schedule?

11 A Yes. This is the table that's reproduced on the page
12 that we were just looking at from the presentation.

13 MR. GUERKE: Could you turn to Exhibit D-2047(n),
14 please?

15 BY MR. GUERKE:

16 Q I'm showing you on the screen what has been marked as
17 D-2047(n). It is Schedule 7.1 from Mr. Slavis' schedules.

18 Are you familiar with this document?

19 A Yes. This is the source document for that summary that
20 we just looked at. It's an 83-page document. You can see at
21 the bottom this is page 1 of 83 out of Mr. Slavis' --
22 attached to Mr. Slavis' report in his calculation of this
23 amount for -- that he's identified as unallowable vehicle
24 allowance.

25 Q Did you quantify whether Union operators were part of

1 the \$867,447 Mr. Slavis determined was unallowable?

2 A Yes. Again, this is an 83-page document. You can see
3 in the third column from the right, which is entitled, Title.

4 You can see the operators there and many of the people
5 here are operators. There's -- as you go down, there's a
6 welder's helper, couple of welder's helpers and a laborer at
7 the bottom. But the majority are operators.

8 Q Could you walk us through the process that you went
9 through quantifying the Union operator's truck pay or vehicle
10 allowance included in Mr. Slavis' unallowable amounts.

11 A Yeah. I went through the 83 pages and, for every time
12 that -- every item that was identified as an operator, we --
13 I compiled the costs and so it -- basically going through 83
14 pages and adding up the costs that were identified just for
15 the operators.

16 Q What was the percentage of Union operators Mr. Slavis
17 disallowed for truck allowances?

18 A Well, of the total amount, the summary had -- you know,
19 I think the summary was \$587,000 in labor and then the
20 equipment, 50 percent markup on that, and of the labor number
21 of 587,000, it was about 85 percent of -- that 587,000 was
22 made up of equipment operators.

23 Q So 85 percent of Mr. Slavis' disallowed truck allowance
24 were made up of Union operators, is that fair?

25 A Correct. Again, the calculation has two pieces.

1 There's a labor piece, and then the 50 percent markup and so
2 it's 85 percent of the labor piece, which then transforms
3 into 85 percent of the equipment markup piece as well. But
4 the analysis I did has to be just of the labor amount.

5 MR. GUERKE: Okay. Thank you, Mr. Gray. Those
6 are my questions.

7 THE COURT: Do you have any cross on that?

8 CROSS-EXAMINATION

9 BY MS. EWALD:

10 Q Mr. Gray, for the record, my name is Shelly Ewald. I
11 represent Transcontinental Gas Pipeline Company, and I have
12 just a couple questions with regard to that testimony.

13 First of all, do you understand that Mr. Slavis
14 prepared his analysis based on the Exhibit 1 to Section 8 in
15 the contract?

16 A That's what he says in his report, yes.

17 Q And if we could just turn to Exhibit 1 to Section 8 of
18 the contract to take a look at it, and I believe --

19 A Do I have that here or are they going to put it on the
20 screen?

21 Q I hope you do, but we can put it on the screen.

22 A Okay.

23 Q And it is --

24 A Is it JX Exhibit 1?

25 Q It's JX Exhibit 1.

1 A Okay.

2 MS. EWALD: And the Section 8 is -- it's a bit
3 hard to read. It's at page 501 of the contract, JX-1, and if
4 we -- we see here on Exhibit 1 to the contract, if we could
5 highlight the column related to vehicle rental and the
6 operators, which is the -- I think the third group down.

7 BY MS. EWALD:

8 Q And is it your understanding, Mr. Gray, that the
9 operators as listed here on Exhibit 1, some of them had a yes
10 associated with vehicle rental and some of them were blank,
11 no indication of vehicle rental, correct?

12 A Yes, that's correct.

13 Q And with regard -- and, as I understand it, your
14 testimony with regard to your analysis of the 85 percent of
15 operator costs that were disallowed, is that based on looking
16 at the pre-job conference report?

17 A My quantification is based upon Mr. Slavis' spreadsheet
18 where he kind of -- he identified a total of 867,000 and I
19 looked at those line items that went into it.

20 Q And with regard to the -- your view of the operators
21 entitled to truck rental, was that based on the pre-job
22 conference report?

23 A You know, really -- I was informed by Welded that their
24 position is that the operators under the contract get truck
25 pay and I was asked to quantify how much that would be, not

1 to opine on whether they get it or -- whether they -- under
2 the contract, get it or not.

3 Q And I guess one last question with regard to -- I
4 believe you -- the pre-job conference reports that you
5 mentioned in your rebuttal testimony, do you -- have you seen
6 any evidence that those pre-job conference reports were
7 provided to Transco during the project?

8 A I don't know either way.

9 MS. EWALD: Thank you. I think that -- on
10 rebuttal, I don't think I can go out beyond the scope of
11 Mr. Guerke's examination, so I'll put all of my other binders
12 away.

13 THE COURT: Okay. Thank you, Mr. Gray.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused)

16 MR. NEIBURG: Good afternoon again, Your Honor.

17 Welded would call Dennis Kakol for brief rebuttal. I will do
18 my best to beat Mr. Guerke.

19 Your Honor, I may have Mr. Kakol reference
20 Mr. Triche's demonstrative.

21 Do you still have that binder? It was the Triche
22 cross binder or do you at least have that -- I think that's
23 all --

24 THE COURT: Yes.

25 MR. NEIBURG: Can I just approach to see?

1 THE COURT: You may. Okay. Mr. Kakol, we're not
2 going to swear you in again. You are under oath from the
3 previous time.

4 MR. KAKOL: Understand, Your Honor.

5 THE COURT: Thank you.

6 MR. NEIBURG: May I proceed, Your Honor?

7 THE COURT: You may.

8 DENNIS KAKOL, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN,
9 RESUMES STAND IN REBUTTAL

10 DIRECT EXAMINATION

11 BY MR. NEIBURG:

12 Q Good afternoon, Mr. Kakol. You were in the courtroom
13 when Mr. Triche testified today, correct?

14 A Yes, sir.

15 Q And have you had the opportunity to review the
16 demonstrative that Mr. Triche prepared in connection with his
17 testimony?

18 A Yes, sir.

19 Q So if you could turn to slides 55 through 57, and let's
20 focus on slide 57 of his demonstrative, and with respect to
21 Mr. Triche's defective work opinion, is it your understanding
22 that he quantifies that Transco is entitled to \$2,018,000 on
23 account of estimated costs of re-work?

24 A Yes, sir. That's my understanding.

25 Q And is your understanding that the source documents

1 primarily underlying Mr. Triche's opinion are the non-
2 conformance log and a Welded weekly progress report dated
3 September 23, 2018?

4 A Yes, sir.

5 Q And have you been able to review each of those
6 documents?

7 A I have.

8 Q And do you also recall during his cross examination
9 where I asked Mr. Triche to look at the non-conformance log?

10 A I do.

11 Q And do you recall during his testimony in which we
12 identified certain rows that appear to involve weld-related
13 repairs?

14 A Yes, sir.

15 Q Mr. Kakol, do you -- what is your understanding as to
16 how Mr. Triche quantified this \$2,018,000 of estimate costs
17 of re-work?

18 A Basically, he just summed up the estimated cost of re-
19 work from the three different spreads in one of the cost
20 reports, the last cost report, I believe.

21 Q Now, when you say cost report, do you mean the weekly
22 progress report?

23 A Yes, sir.

24 Q And it's the September 23, 2018 weekly progress report?

25 A That's what he has on slide 57.

1 Q And as part of your engagement here, were you asked to
2 prepare a rebuttal opinion as to Mr. Triche's defective work
3 opinion?

4 A Yes, sir.

5 Q And as part of your analysis in forming your rebuttal
6 opinion, did you see any document indicating that Transco
7 actually rejected the work identified on the non-conformance
8 log or progress report?

9 A I saw no document that indicated the -- Transco stating
10 a rejection. No, sir.

11 Q And putting aside the issue of whether Transco did or
12 did not direct Welded to make certain repairs, have you
13 formed an opinion as to the maximum amount that Transco would
14 be entitled to in connection with costs of re-work?

15 A I had in my report; yes, sir.

16 Q And what is that number?

17 A That number was 1,175,000.

18 Q Could you explain for the Court how you reached that
19 number?

20 A Sure. I went to the last -- I stated that, if you
21 assume that all the NCRs are defective work, that totaled up
22 from the last NCR report to be about one million three, and
23 then included in those NCRs was some Welded items. One of
24 them had no cost, one of them had 60,000, which I missed, and
25 then one of them had 200,000. I took out the 200,000 from

1 the one million three and I ended up with 1,175,000, which
2 was the number I thought would be the maximum that Welded
3 would have to be responsible for under defective work.

4 Q Okay. And if we could look at slide 57 again where you
5 see on the left side, do you see the three small screenshots
6 of spread 5, spread 6, and spread 7, quality assurance?

7 A I do, sir.

8 Q Is it your understanding these are screenshots from
9 Welded's September 23, 2018 weekly progress report?

10 A Yes, sir.

11 Q And do you see in each of these where it looks like
12 Mr. Triche had done a red square, there's an amount of
13 estimated costs of re-work. Do you see that?

14 A I do.

15 Q Do you have an understanding as to whether these
16 amounts also include costs of weld repair?

17 A Absolutely I do.

18 Q And do you have a sense of how much of these,
19 approximately, combined, relates to weld repair that's in the
20 estimated costs of re-work amounts?

21 A Yes I do. Mr. Triche worked that out. I think it's
22 \$986,000 for weld repair costs.

23 Q And, again, that would be a separately quantified
24 amount?

25 A Yes.

1 Q Correct?

2 A He did separately quantify it, but it's included in the
3 two million, so you got to take that out to come to the --

4 Q And you would agree with Mr. Triche that there should
5 not be any double counting on account of weld repairs?

6 A I do.

7 MR. NEIBURG: No further questions, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. EWALD:

10 Q Good afternoon, Mr. Kakol. For the record, my name is
11 Shelly Ewald, and I represent Transcontinental Gas Pipeline
12 Company. It's nice to see you again.

13 Mr. Kakol, I believe you prepared your analysis of
14 defective work based on -- based upon the NCR log, is that
15 right?

16 A That's correct.

17 Q And I believe you relied upon the NCR log that was
18 dated August 12, 2018, is that correct?

19 A I'd have to look, but I think that's about right.

20 Q And if we could pull up -- so if there are more NCRs
21 that were identified after the time referenced that -- or
22 after the NCR log that you utilized, that would not be
23 included in your analysis, is that right?

24 A In the one I did in the -- my report, you are correct,
25 ma'am.

1 Q And we can take a look at that just to make sure. It's
2 your rebuttal report, 543, and I don't believe you have a
3 copy of it there, do you, Mr. Kakol?

4 A I do not believe so, ma'am.

5 MS. EWALD: Your Honor, I have a binder that
6 includes Mr. Kakol's rebuttal report and some other
7 documents, but I'll just -- may I approach?

8 THE COURT: You may. Thank you.

9 THE WITNESS: Thank you, ma'am.

10 BY MS. EWALD:

11 Q And, Mr. Kakol, I believe it is page 10 and 11 of
12 Exhibit PX-543, and I will draw your attention -- I believe
13 you -- it is at the third full paragraph of your rebuttal
14 report. You indicate, I analyzed the amounts for estimated
15 costs of re-work contained in Welded's weekly progress
16 reports for the weeks ending June 22nd, 2018 through
17 August 12 of 2018. Do you see that?

18 A I do.

19 Q And so your analysis ended in August -- on August 12 of
20 2018, is that correct?

21 A For the estimated costs of re-work in the Welded weekly
22 progress report, yes, ma'am, that's correct.

23 Q Thank you. And turning to Mr. Triche's slide with
24 regard to the estimated costs of re-work at slide --
25 page 57 --

1 A Ma'am, I apologize. May I amend that answer?

2 Q Certainly.

3 A Yeah. For the paragraph you read where I was analyzing
4 amounts of estimated, yeah, it ends on August 12, but I also
5 did look at the report that's dated September 23, 2018 as
6 well.

7 Q Thank you, Mr. Kakol. Turning to slide 57 of
8 Mr. Triche's report, and do you see this is an excerpt from
9 the -- these weekly progress reports that Welded submitted
10 during the project. Do you see that the welding rejection
11 rates are reported separately from the estimated costs of re-
12 work at the top of the slide?

13 A I see that -- that's where -- yes, there is a block
14 that does have Welded NDE rejected -- NDE weld rejection
15 rate. I do see that.

16 Q And with -- and is it your understanding that that was
17 the way that Welded separately recorded the weld repairs
18 and -- or the rejected welds on the project?

19 A Separate from what, ma'am?

20 Q Separate from the estimate costs of re-work.

21 A No.

22 Q And --

23 A Well, may I amend? You're right. I mean there is a
24 block there that has a rate for rejects and there's another
25 section that -- marked in the red border about estimated

1 costs for re-work and I -- since they are two separate parts
2 in the same sheet, they are, in fact, separate. So I have to
3 say, yeah, they're separate.

4 Q And if you turn to page 9 of your expert report,
5 Exhibit 5 -- PX-543, we see the -- your analysis as set forth
6 in your report regarding the NCR log, with the last entry
7 dated June 26, 2018 contained NCRs related to welds such as
8 NCRs 2, 35, and 51. Do you see that?

9 A I do.

10 Q And under 2, it indicates the issue or concern was
11 possible weld cutout. Do you see that?

12 A I do.

13 Q And with 35, it was indicated as possible weld cutout.
14 Do you see that as well?

15 A I do.

16 Q And with regard to NCR number 51, that's the NCR that
17 Mr. Triche described in his testimony today regarding
18 these 17 welds, correct?

19 A That is correct.

20 Q And those are the three NCRs that you've identified in
21 your report relating to welds, correct?

22 A Yes, ma'am.

23 MS. EWALD: Thank you. I have no additional
24 questions for Mr. Kakol.

25 THE COURT: Thank you.

1 MR. NEIBURG: Your Honor, just to clarify the
2 record, I may have one or two questions --

3 THE COURT: Okay.

4 MR. NEIBURG: -- for Mr. Kakol. I promise. Thank
5 you, Your Honor.

6 Mr. Zinkle, could you pull up slide 57?

7 REDIRECT EXAMINATION

8 BY MR. NEIBURG:

9 Q Mr. Kakol, with reference to the red squares -- I'm
10 sorry. With respect to the red squares, estimated costs of
11 re-work, on your direct rebuttal examination, you indicated
12 that it's your understanding that these amounts include both
13 weld-related and non-weld-related issues, correct?

14 A Yes, sir. That's correct.

15 Q How do you know that?

16 A Because I talked with Mr. Marcus Hood about that
17 because I wanted to know what was in the numbers and that's
18 what he told me.

19 MR. NEIBURG: No further questions, Your Honor.

20 MS. EWALD: I guess I just have one follow-up
21 question.

22 RECROSS-EXAMINATION

23 BY MS. EWALD:

24 Q Mr. Kakol, going back to your expert report; that is
25 PX-543, and going back to that same page, page 9, and in your

1 report what you identified at the bottom of page 9 was three
2 NCRs from the log, correct?

3 A Yes, ma'am.

4 Q And you indicate at the top of the page, from the
5 above, I concluded that, contrary to the Lighthouse report,
6 some NCRs did relate to weld repairs, is that right?

7 A I think so. What paragraph are you talking?

8 Q The very top paragraph on the next page at page 10.

9 A Ah. Yes, ma'am; I see that.

10 MS. EWALD: Thank you, Mr. Kakol.

11 THE COURT: Thank you.

12 MR. NEIBURG: No further questions, Your Honor.

13 THE COURT: Okay. Thank you, Mr. Kakol. You can
14 stand down.

15 THE WITNESS: Yes, ma'am.

16 (Witness excused)

17 THE COURT: Anything else on rebuttal?

18 MR. GUERKE: No, Your Honor.

19 THE COURT: Okay.

20 MS. EWALD: Your Honor, may I just have a short
21 break to confer with my colleagues?

22 THE COURT: You may have ten minutes.

23 MS. EWALD: Thank you, Your Honor.

24 THE COURT: Thank you. We're in recess.

25 (Recess taken at 4:42 p.m.)

1 (Proceedings resumed at 4:52 p.m.)

2 THE CLERK: Please rise.

3 THE COURT: Please be seated. Ms. Ewald?

4 MS. EWALD: Thank you, Your Honor. I looked at
5 depositions. I have no more designations I want to read,
6 given the brevity of the rebuttal case.

7 So, Your Honor, and given the brevity of the
8 rebuttal case, we have no additional evidence to present.
9 Thank you.

10 THE COURT: Okay. Thank you. Then our
11 evidentiary portion of this hearing is closed a day in
12 advance, notwithstanding our horrible historical average.

13 Okay. So let's talk about next steps, and I don't
14 know if you all have talked about next steps.

15 MR. GUERKE: We have talked on our side, Your
16 Honor. We have not talked with Transco folks about it. We
17 have some suggestions, but we'll leave it to the Court to
18 instruct us.

19 THE COURT: Well, I would say let's gather
20 tomorrow and talk. I obviously want some time to think about
21 what I've heard and what I'm debating is whether I want any
22 post-trial briefing or I just want argument.

23 One thing I can tell you I want briefing on is the
24 burden of proof because we've given it some thought here and
25 it's not -- I think it's a little challenging. My initial

1 just, you know, inclination, I think consistent with case
2 law, is that if you are the one bringing the claim, you have
3 the burden of proof on your claim, so that Welded would have
4 the burden of proof on its complaint and the claims asserted
5 in the complaint. Transco would have the burden of proof on
6 its counterclaims, its proof of claim, et cetera.

7 What I think complicates this is that there are
8 issues that transcend both the claim and the counterclaim
9 because Welded is looking for money that wasn't paid on the
10 last invoices and Transco is trying to get back money that
11 was paid on previous invoices and some of them are for the
12 same category of fee expense. I'm not putting a spin on it.
13 Okay?

14 So that's where I need some assistance is if
15 there's an issue that's common to both the claim and the
16 counterclaim, how do I handle the burden of proof. So give
17 some thought to that. That is something I'm going to want
18 some briefing on, I know. That issue has jumped out at me as
19 I've been listening to the testimony over the last nine days.
20 I'm sure there are probably some other legal issues, if you
21 will, that I may require briefing on. I've got a lot of
22 briefing on a lot of issues already. I don't really need a
23 repeat of that.

24 So what I'm wondering is do I want argument, but I
25 really want argument after I've had time to digest some of

1 this and have intelligent questions to ask. So, I'll let you
2 all talk and see what you think as well and what you think
3 would be helpful for presentation to me by way of briefing or
4 argument and I will give that some thought too overnight.

5 I do know I have as many binders as I see back
6 there on carts, but that looks like a lot more than what's
7 been introduced into evidence, certainly, by way of through
8 the hearing today. So I'd like a sense from you all as to
9 what's in those binders and I have not looked at that exhibit
10 list, which was huge, and I can do that overnight. But I'd
11 like a sense of what those exhibits are and, if there's an
12 agreement on what should come in, why it should come in, if
13 it's not something that was used. So I'd like you all to
14 think about that too.

15 I'll see what else I can come up with overnight,
16 but I will tell you that I've spent a lot of summers in
17 Houston and in Shreveport and on oil and gas fields and I
18 wish I had paid more attention to well, what my uncle and my
19 cousins were saying.

20 Okay. So that's what I've got for tonight.
21 Anything else that I can answer for you all for tonight?

22 MR. GUERKE: Would you like us back tomorrow at a
23 certain time, Your Honor?

24 THE COURT: Let's go ahead and do 9:30 so that
25 then you all can be on your way after that and I'll give this

1 some thought.

2 MR. NEIBURG: Your Honor, just a slight addition
3 on that. Is it okay if this stuff stays here until after we
4 meet tomorrow and then we can --

5 THE COURT: Yes.

6 MR. NEUBURG: -- have it evacuated?

7 THE COURT: Yes. I just need my courtroom back on
8 Friday. I have a very contested matter on Friday, though I
9 may -- I won't see this many binders, but I'll have a lot of
10 people.

11 Okay. Thank you. Then have a good night. I'll
12 see you all in the morning.

13 MR. NEIBURG: Thank you, Your Honor.

14 (Proceedings concluded at 4:59 p.m.)
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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 12, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams September 12, 2023

Tracey J. Williams, CET-914
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For Reliable

/s/ Mary Zajaczkowski September 12, 2023

Mary Zajaczkowski, CET-531
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/s/ Coleen Rand September 12, 2023

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