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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

3

4

In the Matter of the Penalty )

Assessment Against )

5

) Docket No. PL-140180

MR. RANDY BUCHANAN )

6

)

In the Amount of \$5,000 )

7

)

8

BRIEF ADJUDICATIVE PROCEEDING - VOLUME I

9

Pages 1 - 62

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ADMINISTRATIVE LAW JUDGE MARGUERITE FRIEDLANDER

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9:33 A.M.

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MAY 28, 2014

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Washington Utilities and Transportation Commission

16

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0003

1 EXAMINATION INDEX

2

3	JOE SUBSITS	PAGE
4	Direct Examination by Mr. Shearer	8
5	Cross-Examination by Mr. McCool	21
6	Examination by Judge Friedlander	33

7

8	AARON DONAT	PAGE
9	Direct Examination by Mr. McCool	35
10	Cross-Examination by Mr. Shearer	39

11

12	RANDY BUCHANAN	
13	Direct Examination by Mr. McCool	41
14	Cross-Examination by Mr. Shearer	43
15	Redirect Examination by Mr. McCool	57
16	Examination by Judge Friedlander	58

17 EXHIBIT INDEX

18	EXHIBIT	A	R	DESCRIPTION
19	AJ-1	47		Photo image of excavated trench and exposed pipe (1 page)
20	AJ-2	47		Photo image of excavated trench and exposed pipe (1 page)
21	AJ-3	47		Photo image of excavated trench and exposed pipe (1 page)
22	AJ-4	47		Photo image of excavated trench and exposed pipe (1 page)
23	AJ-5	47		Photo image of excavated trench running parallel to service road (1 page)
24	AJ-6	47		Photo image of excavated trench and markings (1 page)
25	AJ-7	47		Photo image of excavated trench and exposed pipe (1 page)

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EXHIBIT INDEX (Continued)

2

EXHIBIT      A      R                      DESCRIPTION

3

AJ-8          47                      Photo image of excavated trench  
running parallel to service road  
(1 page)

4

5

AJ-9          47                      Photo image of excavator and  
excavated trench in view on the  
right side of the image (1 page)

6

7

AJ-10        47                      Photo image of excavated trench  
and markings (1 page)

8

9

AJ-11        47                      Photo image of excavated trench,  
exposed water line, and orange  
marking (1 page)

10

11

AJ-12        47                      Photo image of two markings and  
excavated trench in the background  
(1 page)

12

13

AJ-13        47                      Aerial photo image of excavated  
trench and marking (1 page)

14

15

16

AJ-14        50                      Penalty Assessment PL-140180,  
dated March 4, 2014, from Gregory  
J. Kopta to Mr. Randy Buchanan in  
the amount of \$5,000 for two  
violations of RCW 19.122.030  
(4 pages)

17

18

19

20

AJ-15        50                      Letter to Dave Lykken, Pipeline  
Safety Director, from Washington  
State Dig Law Safety Committee  
dated January 29, 2014, and  
outlining the Committee's penalty  
recommendations (2 pages)

21

22

AJ-16        50                      Complaint form from Tesoro  
Logistics Northwest Pipeline, LLC  
(1 page)

23

24

25

AJ-17        50                      Letter from Washington State Dig  
Law Safety Committee to Tesoro  
Logistics Northwest Pipeline, LLC  
representative providing notice of  
scheduled review (1 page)

0005

1

EXHIBIT INDEX (Continued)

2

EXHIBIT

A

R

DESCRIPTION

3

AJ-18

50

Letter from Washington State  
Dig Law Safety Committee to  
Mr. Randy Buchanan providing  
notice of scheduled review  
(1 page)

4

5

6

AJ-19

Email from Dave Christensen  
documenting contact with  
Mr. Randy Buchanan (1 page)

7

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AJ-20

Foreign Line Crossing Report  
from Tesoro dated 10/24/13  
(1 page)

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AJ- 21

Inspection and Repair Report  
from Tesoro dated 10/24/13  
(3 pages)

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OLYMPIA, WASHINGTON; MAY 28, 2014

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9:33 A.M.

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JUDGE FRIEDLANDER: Let's go on the

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record. Good morning, my name is Marguerite

7

Friedlander and I am the administrative law judge

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presiding over this Brief Adjudicative Proceeding. We

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are here today before the Washington Utilities and

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Transportation Commission on Wednesday, May 28th,

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2014, to begin a hearing in Docket PL-140180, to

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address a penalty assessed against Randy Buchanan in

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the amount of \$5,000.

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The purpose of the hearing today is to take

15

testimony in evidence from both parties on the issues

16

in this proceeding. My plan is to take appearances

17

first, then address any preliminary matters that the

18

parties may wish to raise, and then we will turn to

19

the testimony of witnesses.

20

Let's go ahead and allow the parties to make

21

appearances. We will begin with Staff.

22

MR. SHEARER: Brett P. Shearer,

23

Assistant Attorney General, appearing on behalf of

24

Commission Staff.

25

JUDGE FRIEDLANDER: Thank you.

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1           And let's go ahead, since this is our first  
2 meeting, and give full appearances, with the address,  
3 the physical address, e-mail address, telephone number  
4 and such.

5           MR. SHEARER: My business address is  
6 P.O. Box 40128, Olympia, Washington 98504, my phone  
7 number is (360) 664-1187, and e-mail is  
8 bshearer@utc.wa.gov.

9           JUDGE FRIEDLANDER: Thank you.

10          And appearing today on behalf of Mr. Buchanan?

11          MR. McCOOL: William D. McCool. Mailing  
12 address, P.O. Box 514, Walla Walla, Washington 99362;  
13 physical address, Suite 425, Denny Building, 6 East  
14 Alder Street, Walla Walla 99362; telephone number,  
15 (509) 525-2630; and the e-mail that I prefer is  
16 mccool52@yahoo.com. A secondary would be my office,  
17 assistyou@mccoollaw.net.

18          JUDGE FRIEDLANDER: Great, thank you.

19          So are there any preliminary procedural  
20 matters that need to be addressed at this time before  
21 we start with the testimony of witnesses?

22          Okay. Mr. Shearer, did you have something to  
23 add?

24          MR. SHEARER: The only matter we had  
25 was, we were substituting witnesses. Mr. Joe Subsits,

0008

1 chief engineer of the Pipeline Safety Program, will be  
2 testifying and sponsoring the exhibits, rather than  
3 Mr. Al Jones.

4 JUDGE FRIEDLANDER: Okay. Thank you for  
5 that clarification.

6 Let's go ahead and proceed to the witnesses.  
7 Since Staff has brought the penalty assessment,  
8 Mr. Shearer, would you like to begin?

9 MR. SHEARER: Yes, we call Mr. Joe  
10 Subsits.

11 JUDGE FRIEDLANDER: You can just remain  
12 standing and raise your right hand.

13 THE WITNESS: (Complies.)

14

15 JOE SUBSITS, witness herein, having been  
16 first duly sworn on oath, was  
17 examined and testified as follows:

18

19 JUDGE FRIEDLANDER: Thank you.

20 Mr. Shearer, you can proceed.

21

22 D I R E C T E X A M I N A T I O N

23 BY MR. SHEARER:

24 Q Can you please state your name for the record  
25 and spell your last name for the reporter here?



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1 A Joe Subsits, S-U-B-S-I-T-S.

2 Q And Mr. Subsits, what is your position and  
3 employment here at the Utilities and Transportation  
4 Commission?

5 A I am the chief engineer for the Washington  
6 Utilities and Transportation Pipeline Safety Program.

7 JUDGE FRIEDLANDER: I am sorry to  
8 interrupt. Is your microphone on?

9 THE WITNESS: It is.

10 JUDGE FRIEDLANDER: Okay. You might  
11 want to move it just a little bit closer.

12 THE WITNESS: Okay.

13 JUDGE FRIEDLANDER: Thank you.

14 BY MR. SHEARER:

15 Q And can you begin by describing your role in  
16 this violation today, RCW Chapter 19.122, in the case  
17 of UTC versus Randy Buchanan?

18 A I supervise our staff at the Pipeline Safety  
19 Engineers and I review their work on completion.

20 Q Okay. Let's begin. Can you please turn to  
21 Exhibit AJ-16?

22 A (Complies.)

23 Q And can you describe the nature of this  
24 document, please?

25 A It looks like a complaint form which was

0010

1 submitted by Tesoro to the Washington State Dig Law  
2 Safety Committee.

3 Q And under Basic Description, about halfway  
4 down the page, can you see the allegation for the  
5 depth of the trench, and state that, please?

6 A 3 feet.

7 Q Thank you.

8 And can you now turn to Exhibit AJ-20.

9 A (Complies.)

10 Q And describe the nature of that document,  
11 please.

12 A That is a Foreign Line Crossing Report, invite  
13 operators to describe encroachment or digging near  
14 their facilities.

15 Q And is there an allegation as to the alleged  
16 depth of the digging in this form as well?

17 A There is.

18 MR. McCOOL: By the way, we are going to  
19 object. I understand the rules of evidence don't  
20 apply in an administrative law proceeding, but the  
21 right of confrontation does. Unless Mr. Subsits has  
22 personal knowledge of these items so that he can be  
23 cross-examined on them, then we are going to object to  
24 this tribunal considering these kinds of documents.

25 JUDGE FRIEDLANDER: Mr. Shearer?

0011

1                   MR. SHEARER: One, the rules of evidence  
2 don't apply in these proceedings. As Your Honor  
3 knows, you are allowed to rely on the best evidence  
4 reasonably available and obtainable. Second, these  
5 documents are also public records and came in as -- in  
6 the ordinary -- they are also business records of the  
7 Commission that came in in the regular course of  
8 business.

9                   MR. McCOOL: And our response to that,  
10 Your Honor, is despite the fact that the rules of  
11 evidence do not apply, the fundamental right to  
12 confrontation does. My client is being accused of a  
13 violation of an RCW. Unless I am misunderstanding  
14 here, I don't believe Mr. Subsits has any personal  
15 knowledge of any of these items, so I can't  
16 cross-examine him on the contents of a document that  
17 he has no personal knowledge of.

18                   MR. SHEARER: But Mr. Subsits does in  
19 fact have the -- can refer to what the document says  
20 and that is the point of the questioning, to discuss  
21 what the Commission reasonably relied on in  
22 determining its assessment.

23                   MR. McCOOL: And our response to that  
24 would be, Your Honor, then anyone could. We wouldn't  
25 even need to have this witness. You could just be

0012

1 looking at these documents and form your own  
2 judgments.

3 JUDGE FRIEDLANDER: I guess I am  
4 misunderstanding here, Mr. McCool. Who exactly are  
5 you wanting to question?

6 MR. McCOOL: Whoever it was that  
7 authored these documents.

8 JUDGE FRIEDLANDER: It appears from the  
9 documents that Tesoro authored them.

10 MR. McCOOL: Then it should be a Tesoro  
11 witness that should be testifying to the contents, not  
12 Mr. Subsits, who just simply happens to look at them  
13 or review them, just as you or I could.

14 JUDGE FRIEDLANDER: Are you asking to  
15 cross-examine a Tesoro witness?

16 MR. McCOOL: I certainly am.

17 JUDGE FRIEDLANDER: Mr. Shearer, do you  
18 know if there is a Tesoro witness that is available?

19 MR. SHEARER: I believe there are Tesoro  
20 representatives in the room. Again, I am not sure how  
21 relevant that is in this proceeding. If Mr. McCool  
22 really wants to discuss it with them, we have no  
23 intention of calling a Tesoro witness.

24 JUDGE FRIEDLANDER: I believe that  
25 Mr. McCool is saying that he would like to call a

0013

1 Tesoro witness.

2 MR. SHEARER: Again, that's up to

3 Mr. McCool --

4 JUDGE FRIEDLANDER: Sure.

5 MR. SHEARER: -- from Staff's view.

6 JUDGE FRIEDLANDER: Sure.

7 MR. SHEARER: It doesn't go to support

8 his objection.

9 JUDGE FRIEDLANDER: Right, right.

10 And which of the Tesoro witnesses are you

11 asking to call?

12 MR. McCOOL: Any of the Tesoro witnesses

13 who actually authored any of these documents.

14 JUDGE FRIEDLANDER: So you don't

15 actually know who you want to call?

16 MR. McCOOL: Unless I misunderstand the

17 nature of the proceeding, the burden of proof is on

18 the UTC or its representatives. The attorney general

19 bears the burden of proof in this. Even though it is

20 only a preponderance, it is still their burden. We

21 respectfully submit that they can't sustain that

22 burden by handing to Your Honor a document without a

23 person who has personal knowledge of the contents of

24 that document and authored that document.

25 JUDGE FRIEDLANDER: And I am still

0014

1 unclear what you mean by "personal knowledge." Anyone  
2 who reads our public records has personal knowledge of  
3 what the contents of them are.

4 MR. McCOOL: That's right, but they are  
5 not the ones that created those contents.

6 JUDGE FRIEDLANDER: So you are saying  
7 the author?

8 MR. McCOOL: Absolutely.

9 JUDGE FRIEDLANDER: Okay. We will  
10 continue. I am a little unclear because -- I am still  
11 a little unclear as to your objection, given the fact  
12 that Mr. Shearer is only asking questions about what  
13 is contained in the -- as factual evidence in the  
14 actual documents. I guess I really don't understand  
15 how one of our employees can't testify to that.

16 MR. McCOOL: Well, the position that we  
17 are taking is that certainly anyone can read a public  
18 document, anybody. We could simply bring in a person  
19 who is literate, has at least a fifth or sixth grade  
20 education, and they could read into the record what is  
21 in the document. That doesn't mean that they have any  
22 personal knowledge of the manner in which the document  
23 itself was created, the basis of the knowledge of --  
24 for what -- where the contents were created.

25 JUDGE FRIEDLANDER: I think your

0015

1 objection is better explored as we get into the  
2 testimony of Mr. Subsits. If you have questions as to  
3 the authenticity of this document, then we will get  
4 into it then. As of right now, I think that is more  
5 of a continuing objection. I think I would -- I am  
6 going to hold that in abeyance and we will proceed  
7 with questioning.

8 MR. McCOOL: So just for the record, if  
9 we can, then, have a continuing objection to any  
10 witness who starts making reference to a document that  
11 they themselves did not create or author?

12 JUDGE FRIEDLANDER: No, I think this  
13 should be an objection for witness-specific -- a  
14 witness-specific objection, not a blanket objection.

15 MR. McCOOL: All right.

16 JUDGE FRIEDLANDER: Thank you.

17 Mr. Shearer?

18 BY MR. SHEARER:

19 Q Okay. Mr. Subsits, where were we?

20 On Exhibit AJ-21, the next one --

21 A I believe you wanted to know a depth.

22 Q Oh, yes, we didn't get a response on that.

23 A From the field sketch on the Foreign Line  
24 Crossing Report, it looks like the depth was 47 minus  
25 16 inches, so that would make it a 31-inch digging

0016

1 depth.

2 Q Thank you.

3 Can you please turn to Exhibit AJ-21?

4 A (Complies.)

5 Q And describe your understanding of this  
6 document, please.

7 A It looks like an Exposed Pipe Report. That is  
8 something that a pipeline operator is required to do  
9 when somebody is -- has exposed their pipeline.

10 Q Thank you.

11 And then can we now go to Exhibits AJ-1  
12 through AJ-13.

13 A (Complies.)

14 Q I will let you choose the description, but  
15 please provide a summary description of these photo  
16 images as you understand them.

17 A These are photos which, to my understanding,  
18 had been taken by Tesoro. They show digging activity  
19 alongside of a service road. It appears that the  
20 service road crosses a pipeline perpendicularly.  
21 There are pipeline markers located there, and  
22 subsequently there is yellow markings, which pipeline  
23 companies typically create to mark their pipeline  
24 aboveground. There is also an aerial view.

25 JUDGE FRIEDLANDER: Mr. Subsits, it



0017

1 might be more helpful to the Commission if you can go  
2 through each of the photographs separately and give us  
3 a description.

4 THE WITNESS: Sure.

5 A A-1 looks like an exposed pipe. It looks like  
6 plastic.

7 JUDGE FRIEDLANDER: Thank you.

8 A A-2 and 3 are all the same. A-4 also shows  
9 the exposed plastic near a service road. A-5, very  
10 similar. A-6 shows, it looked like, excavation along  
11 that service road.

12 JUDGE FRIEDLANDER: And I don't mean to  
13 interrupt. Just for clarification, I have A-5, but I  
14 am not really seeing a trench. Is what I am seeing --

15 THE WITNESS: The trench is on A-6.

16 JUDGE FRIEDLANDER: Okay. So A-5 is  
17 just a picture of the service road; is that correct?

18 THE WITNESS: A-5 was an exposure.

19 JUDGE FRIEDLANDER: Okay.

20 THE WITNESS: They often refer to that  
21 as a trench also.

22 JUDGE FRIEDLANDER: Okay.

23 A A-7 shows pipeline markers, and it looks like  
24 there was some digging on the side road closer to us.  
25 A-8 shows a trench with a 2-inch pipe alongside of it.

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1 A-9 also shows a wide angle shot of the trench along  
2 the service road. A-10 shows an excavator.

3 MR. McCOOL: Excuse me, Your Honor. I  
4 have a bit of a problem. I -- obviously I am not  
5 going to be testifying here, but I am trying to follow  
6 along here and it doesn't appear that the pictures are  
7 matching up with the testimony at all. I think he is  
8 either going one ahead or one behind.

9 JUDGE FRIEDLANDER: Yes, I think he may  
10 be going one ahead. Maybe we can go back to A-9.

11 THE WITNESS: Okay.

12 BY MR. SHEARER:

13 Q If you look in the upper right corner,  
14 Mr. Subsits, the numbers are of the pictures.

15 A Okay.

16 Q That will help.

17 A A-9 shows an excavator. A-10 shows excavation  
18 alongside of a service road with pipeline markers in  
19 the background, which shows where a pipeline crossed  
20 perpendicularly to where the excavation activity is  
21 taking place. A-11 is showing yellow spray paint  
22 perpendicular to the excavations. The yellow spray  
23 paint is the way pipeline operators mark the  
24 aboveground location of a pipe.

25 A-13 is another shot of the markers with the

0019

1 excavation activity across the dirt service road.  
2 A-14 is an aerial shot. It shows excavation activity  
3 with pipeline markers, in conjunction with pipeline  
4 markers perpendicular to that.

5 JUDGE FRIEDLANDER: I think you mean

6 A-13 --

7 THE WITNESS: A-13, yes.

8 JUDGE FRIEDLANDER: -- is the aerial  
9 view?

10 THE WITNESS: Yes.

11 Bu MR. SHEARER:

12 Q Thank you, Mr. Subsits.

13 Can you now turn to Exhibits AJ-17 and AJ-18?  
14 We will start with 17, please.

15 A 17 looks like a letter to Tesoro stating that  
16 they had received a request to review the alleged  
17 violations against Mr. Buchanan.

18 Q On to AJ-18, please.

19 A AJ-18 looks like it's a letter to Randy  
20 Buchanan stating that they are looking into the  
21 violations, the alleged violations.

22 Q And now can you please turn to Exhibit AJ-15?

23 A Okay.

24 Q Please discuss the nature of this document as  
25 you understand it.

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1           A    The Washington Dig Committee occasionally  
2   refers cases to the Pipeline Safety Program when they  
3   involve pipeline operators.  It looks like this is a  
4   case which has been referred to David Lykken, our  
5   Pipeline Safety Program Director, for an investigation  
6   into the alleged allegations.

7           Q    And it notes that the Dig Law Safety Committee  
8   had conducted it's review previously?

9           A    It looks like the recommended penalties by the  
10  review committee are listed on that document.

11          Q    Thank you.

12                  Now can you please turn to AJ-14, Exhibit  
13  AJ-14?

14          A    (Complies.)

15          Q    And please describe the nature of this  
16  document.

17          A    It looks like the Utilities and Transportation  
18  Commission's penalty assessment of Randy Buchanan,  
19  based on the investigation which was done by one of my  
20  engineers.

21          Q    And what evidence/information did the  
22  Commission's Pipeline Safety Division rely on in  
23  issuing this penalty assessment?

24          A    The evidence was based on submission of  
25  evidence by Tesoro, written evidence, as well as an

0021

1 interview which Al Jones conducted with Mr. Buchanan.

2 Q And was there any other information that the  
3 Commission relied on listed in that penalty  
4 assessment?

5 Let me rephrase that. The Commission reviewed  
6 the Dig Law Safety Committee's review --

7 A That's correct.

8 Q -- and report, correct?

9 A That's part of the...

10 Q Thank you, Mr. Subsits.

11 MR. SHEARER: I have no further  
12 questions, Your Honor.

13 JUDGE FRIEDLANDER: Thank you.

14 Mr. McCool?

15

16 C R O S S - E X A M I N A T I O N

17 BY MR. McCOOL:

18 Q Mr. Subsits, do you have any personal  
19 knowledge of who took the photograph in AJ-1?

20 A My understanding is it was a Tesoro  
21 representative.

22 Q The answer is you don't have any personal  
23 knowledge; isn't that right?

24 A I am just basing it on what I have been told.

25 Q In other words, you have no personal

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1 knowledge?

2 MR. SHEARER: I'm going to object. This  
3 seems irrelevant and a little bit like testifying.  
4 Mr. Subsits already testified where the exhibits came  
5 from and why he is relying on them in the Commission  
6 report. If counsel wants Mr. Subsits to admit that he  
7 didn't actually take the photos, I think that is  
8 already in the record pretty clearly.

9 BY MR. McCOOL:

10 Q Do you have personal firsthand knowledge of  
11 who took AJ-1?

12 A No, I don't.

13 Q What about with regard to AJ-2?

14 JUDGE FRIEDLANDER: Maybe what we should  
15 do is, if Mr. Subsits has knowledge of who actually  
16 took any of the photos, let's just go ahead and,  
17 rather than go through 13, 14 exhibits --

18 A I --

19 JUDGE FRIEDLANDER: Go ahead, please.

20 A I do not know specifically who took the  
21 photos, my understanding is a Tesoro representative,  
22 for A-1 through A-13.

23 JUDGE FRIEDLANDER: Let me --

24 MR. SHEARER: I apologize, Your Honor.

25 JUDGE FRIEDLANDER: If you are going to

0023

1 raise a question or clarify, that would be  
2 appropriate.

3 MR. SHEARER: I was just going to say,  
4 we are more than willing to stipulate to the fact that  
5 Mr. Subsits didn't take any of the photos.

6 JUDGE FRIEDLANDER: Thank you.

7 Mr. McCool?

8 BY MR. McCOOL:

9 Q With regard to No. 15, would it be fair to say  
10 that you, yourself, have had no contact with  
11 Mr. Buchanan?

12 A Mr. Buchanan has called me a couple of times.

13 Q Subsequent to these events occurring and  
14 subsequent to his notice from the WUTC that they were  
15 alleging violations, correct?

16 A I am not quite sure of the chronologic order  
17 of the paperwork, but he did call after he received  
18 notice from the Washington Dig Safety Committee.

19 Q Do you happen to recall when that was?

20 A Not exactly, no.

21 Q Would you look at AJ-16?

22 A (Complies.)

23 Q Do you have that in front of you?

24 A I do.

25 Q Okay. And look about two-thirds of the way

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1 down that page.

2 A Okay.

3 Q There are seven or eight lines in a row that  
4 refer to violation. One is address, date,  
5 information, company, phone, address, city, ZIP code,  
6 e-mail, employees. Do you see that section?

7 A Yes, I do.

8 Q What is the violation date on that?

9 A I don't see a date.

10 Q Okay. Are you --

11 A Oh, there is the violation date.

12 Q What is the violation date?

13 A It's 10/22/13.

14 Q And this is based on a complaint from Tesoro;  
15 is that right? That's what AJ-16 is, from your  
16 understanding?

17 A The complaint was to the Washington Dig Safety  
18 Committee.

19 Q Okay. There is an indication on the basic  
20 description on AJ-16.

21 A Okay.

22 Q Property owner was contacted. Refuses to call  
23 in any dig tickets.

24 Who was it that contacted Mr. Buchanan?

25 A I didn't produce this report.



0025

1 Q You have made reference to Al Jones  
2 interviewing or contacting Mr. Buchanan. Were you  
3 present either in person or by phone or anything as a  
4 part of that contact?

5 A I was not present.

6 Q So you have no personal knowledge of the  
7 contents of any conversation between Mr. Jones and  
8 Mr. Buchanan?

9 A He reported to us after that.

10 Q In other words, his version?

11 A It was his description of what happened.

12 Q Did he indicate to you that in any way the  
13 conversation was recorded with Mr. Buchanan's  
14 knowledge and permission?

15 A I have no knowledge of anything being  
16 recorded.

17 Q From your review of the documents, the nearest  
18 any of the excavation allegedly by Mr. Buchanan was  
19 within 16 inches of the pipeline?

20 A Let's see, according to the excavation report,  
21 it would be within 16 inches, yes -- oh, excuse me,  
22 let me repeat that.

23 (Pause in the proceedings.)

24 A That's correct, 16 inches.

25 BY MR. McCOOL:

0026

1 Q You base that on the idea that the pipe was 47  
2 inches and there was 16 inches above that for a total  
3 dig by your understanding of 31 inches; is that right?

4 A I am basing that on the information in the  
5 report here, Foreign Line Crossing Report.

6 Q You are --

7 A On the schematic on the sketch.

8 Q From your review of the records, do you see at  
9 any point where the gas line was exposed?

10 A I have no evidence of that.

11 Q In fact, your form AJ-21 indicates that it  
12 wasn't exposed, correct?

13 MR. SHEARER: Object as to relevance,  
14 Your Honor. The exposure of a pipeline doesn't  
15 have any --

16 JUDGE FRIEDLANDER: Mr. McCool?

17 MR. McCOOL: The rules of evidence don't  
18 apply here, we have just been told by counsel, so I  
19 guess we are not too worried about relevance.

20 JUDGE FRIEDLANDER: Oh, I would beg to  
21 differ.

22 MR. McCOOL: Well, I kind thought we are  
23 too, but...

24 JUDGE FRIEDLANDER: Yes, we are  
25 concerned about relevance, so if you could state the

0027

1 relevance of whether or not the pipe got exposed.

2 BY MR. McCOOL:

3 Q From what you have reviewed in the records --

4 JUDGE FRIEDLANDER: No, no, no. I'm  
5 sorry, could you explain to me the relevance of an  
6 exposed pipe?

7 MR. McCOOL: The relevance being that  
8 there was no danger to the pipe.

9 JUDGE FRIEDLANDER: That's not what the  
10 law asks. The law asks whether or not you dug within  
11 a certain amount of feet, the depth of how far you  
12 dug. In other words, it doesn't ask whether or not  
13 the pipe was exposed.

14 MR. McCOOL: I'll ask a different  
15 question.

16 JUDGE FRIEDLANDER: That's fine.

17 BY MR. McCOOL:

18 Q Mr. Subsits, do you have any personal  
19 knowledge that it in fact was Randy Buchanan that dug  
20 out there?

21 A Can you rephrase the question, please?

22 Q Yes. Do you have any personal knowledge that  
23 it was in fact Randy Buchanan that dug out there at  
24 the scene where these photographs are taken?

25 A I didn't physically witness it, but

0028

1 Mr. Buchanan has admitted to me on phone calls that he  
2 had.

3 Q Okay. And you have no photographs, aerial or  
4 otherwise, of him on a backhoe or operating a trencher  
5 or hand digging with a shovel or any of that stuff; is  
6 that correct?

7 A I have not seen it, no.

8 Q Well, have you seen any pictures from anyone,  
9 anywhere, at any time, aerial, ground photos, anything  
10 that shows that Mr. Buchanan was physically operating  
11 a backhoe or a trencher or hand-shovel digging  
12 anywhere out there?

13 A The only photos appear to be photos here which  
14 show some digging near a pipeline.

15 Q Right. You indicated that Mr. Buchanan  
16 admitted to you. Was that a recorded conversation?

17 A No, it was not.

18 Q When were those admissions made?

19 A I don't have the exact date. It must have  
20 been after the initial notice from the Dig Safety  
21 Committee.

22 Q Your best estimate of the date is when?

23 MR. SHEARER: Your Honor?

24 JUDGE FRIEDLANDER: Yes, Mr. Shearer?

25 MR. SHEARER: Mr. Subsits has already

0029

1 given his best estimate. It was sometime after the  
2 notification. Anything more than an approximate date  
3 is -- you are just asking Mr. Subsits to pick a date  
4 out of the air.

5 MR. McCOOL: Well, Your Honor, my  
6 response to that is, the witness is the one who should  
7 be testifying, not the attorney general. He can  
8 interpose an objection but not testified himself.

9 A It would --

10 JUDGE FRIEDLANDER: Before you answer,  
11 let me just address the objection.

12 I don't think Mr. Shearer is testifying. I  
13 think he is stating the rationale for the objection,  
14 in which case, I am fairly certain we are going to get  
15 a guess here. If you are comfortable with getting a  
16 guess, that's fine. We could always have Mr. Subsits  
17 check and provide information later, when he is back  
18 in his office. That may make a little bit more sense,  
19 if that's what you prefer.

20 MR. McCOOL: I would prefer that he  
21 answer the question.

22 JUDGE FRIEDLANDER: All right.  
23 Mr. Subsits, please answer to the best of your  
24 ability.

25 A It would have been after November 4th.

0030

1 BY MR. McCOOL:

2 Q Referring you to the exhibit that you have  
3 identified as A- or AJ-11.

4 A Okay.

5 Q Can you again identify that document?

6 A It looks like excavation alongside a service  
7 road, and there are some yellow markings perpendicular  
8 to that excavation. The yellow is normally used by  
9 pipeline companies to show where the pipeline is  
10 located.

11 Q Exactly. Now, typically, would you not agree,  
12 from your experience, that if you have a yellow  
13 marking like that, that's because somebody actually  
14 has called in a dig, so somebody from the utility  
15 comes out there and marks the spot?

16 A It is possible, but it can also be for the  
17 purposes of taking the photo. The company had already  
18 been notified about digging without a locate and they  
19 had marked that location just for the purposes of the  
20 photo, to show where the pipeline was located in  
21 conjunction with the excavation. The date here is  
22 10/21.

23 Q But no indication on that document as to when  
24 the yellow line that runs --

25 A I could not tell you when that line was put

0031

1 in, no.

2 Q Can you tell by whom that yellow -- or both of  
3 those yellow lines, because there appears to be one  
4 just a little bit between the red stake, left and  
5 right, across that photograph, would you agree with  
6 that, and then one that appears to be, let's say,  
7 somewhere between 10 and 20 feet?

8 A I see two yellow marks.

9 Q Thank you.

10 (Pause in the proceedings.)

11 JUDGE FRIEDLANDER: Do you need a  
12 minute, Mr. McCool?

13 MR. McCOOL: I do, Your Honor.

14 Thank you.

15 (Pause in the proceedings.)

16 BY MR. McCOOL:

17 Q Referring you back to AJ-16. Do you know who  
18 it was that purportedly contacted the property owner?

19 A I would not know who contacted the property  
20 owner.

21 Q Do you actually know for sure that the  
22 property owner himself was contacted or is it possible  
23 that it was some employee of the property owner?

24 A Are you talking in reference to A-16?

25 Q Yes, I am.

0032

1           A    No, based on that I couldn't tell.

2                               (Pause in the proceedings.)

3   BY MR. McCOOL:

4           Q    Once more referring to A- or AJ-16.  The  
5   indication at the bottom of that document, additional  
6   information, Mr. Buchanan was sent a letter by David  
7   Lykken and Anna Gill.  Is that an add-on to the bulk  
8   or the body of that document?

9           A    I would say it is.  Typically, when we get  
10   notice that somebody had called [sic] without calling  
11   for locates, we typically sent a letter out to the  
12   party that dug without locates, to inform them about  
13   the dig law.

14          Q    Now, on that part where it says he is still  
15   threatening to dig up our line, do we know who is  
16   authoring that?

17          A    Well, this document came from Tesoro.

18                               MR. McCOOL:  Thank you.  Nothing  
19   further.

20                               JUDGE FRIEDLANDER:  Thank you.

21                               Is there any redirect?

22                               MR. SHEARER:  No, Your Honor.

23                               JUDGE FRIEDLANDER:  All right.  I have a  
24   couple of clarifying questions for you, Mr. Subsits.

25



0033

1   E X A M I N A T I O N

2       BY JUDGE FRIEDLANDER:

3           Q     Can you explain to me the complaint process,  
4     as far as what typically happens in these cases, from  
5     beginning to, say, hearing?

6           A     The -- if a person digs without calling for  
7     locates, it is normally dealt with by the company.  
8     The company has various options in terms of how they  
9     can deal with the situation, in terms of trying to  
10    work with the landowner and education.

11           If the company feels the need, they could  
12    refer that violation to the -- the alleged violation  
13    to the Pipeline Dig Safety Committee, to which they  
14    will hear the case.  Sometimes, if we get notice from  
15    the operator, we will go ahead and we will send the  
16    notification letter from the Commission to the alleged  
17    violator, as we did, we talked about a little while  
18    ago, the letter to Mr. Buchanan from Dave Lykken and  
19    Anna Gill.  The case is heard before the Safety  
20    Committee and then they make a recommendation.  They  
21    generally refer pipeline safety-related cases to the  
22    Commission for penalty assessment.

23           Q     Right.  At which point the alleged violator  
24    has the opportunity to request a hearing before the  
25    Commission?

0034

1 A That's right.

2 Q Okay, thank you.

3 JUDGE FRIEDLANDER: I have no further  
4 clarification questions. If there is nothing further  
5 for this witness, then you are excused. Thank you.

6 Mr. Shearer, do you have any further  
7 witnesses?

8 MR. SHEARER: No, Your Honor.

9 JUDGE FRIEDLANDER: All right.

10 And so, Mr. McCool, do you have any witnesses?

11 MR. MCCOOL: We will call Aaron Donat.

12 JUDGE FRIEDLANDER: Mr. Donat, would you  
13 please step up to the witness stand and remain  
14 standing.

15 THE WITNESS: (Complies.)

16

17 AARON DONAT, witness herein, having been  
18 first duly sworn on oath, was  
19 examined and testified as follows:

20

21 JUDGE FRIEDLANDER: Please be seated.

22 THE WITNESS: (Complies.)

23 JUDGE FRIEDLANDER: Mr. McCool, I would  
24 imagine this is essentially a hostile witness in that  
25 he -- you are not presenting a witness for your side.

0035

1 I expect it to be very cordial. And the same for  
2 Mr. Donat. Thank you.

3 MR. McCOOL: Having worked for Tesoro  
4 Alaska Petroleum Corporation for four summers, I  
5 assure I will be cordial to the witness.

6 JUDGE FRIEDLANDER: Thank you.

7

8 D I R E C T E X A M I N A T I O N

9 BY MR. McCOOL:

10 Q Mr. Donat, are you the individual who actually  
11 sent in the complaint to the Dig Committee?

12 A Yes, sir.

13 Q When did you do that?

14 A I would have to look at the date that I filed  
15 the complaint.

16 Q Would it help you to look at the e-mail?

17 A If I had the exhibits, that would be  
18 wonderful.

19 Q It looks like the e-mail came in on  
20 November 4th.

21 JUDGE FRIEDLANDER: Could you please  
22 indicate, Mr. McCool, which exhibit you are  
23 referencing here?

24 BY MR. McCOOL:

25 Q In the upper right-hand corner do you see a

0036

1 little number that says AJ-16?

2 A Yes, sir.

3 JUDGE FRIEDLANDER: Thank you.

4 BY MR. McCOOL:

5 Q Mr. Donat, did you -- at the time that you  
6 filed this document with the Dig Committee, did you  
7 have personal firsthand knowledge about who did what,  
8 where and when?

9 A No, that information was given to me by  
10 another Tesoro representative on site.

11 Q Do you know who that representative was?

12 A Two people: Will Ricard and Yancey Everett.

13 Q Can you spell the last name of those two  
14 individuals, if you know? If you don't, we won't --

15 A I will give it my best shot. Ricard is  
16 R-I-C-A-R-D, and Everett is E-V-E-R-E-T-T.

17 Q Do you have any direct personal knowledge of  
18 who it was that purportedly spoke with Mr. Buchanan?

19 A I believe Will Ricard contacted him.

20 Q And that is on the basis of apparently what he  
21 probably told you?

22 A Yes, sir.

23 Q And did he actually tell you that he  
24 personally spoke with Mr. Buchanan or was it an  
25 employee of Mr. Buchanan?

0037

1           A    One was the employee who was actually on site,  
2   under the direction of Mr. Buchanan, and the other  
3   was, he contacted him via phone.

4           Q    Were you aware of the English speaking  
5   proficiency of the employee of Mr. Buchanan?

6           A    I am not aware of that, no.

7                   Well, excuse me, of Mr. Buchanan or of --

8           Q    Mr. Buchanan's employee.

9           A    His employee? I am not.

10          Q    Would you happen to know the name of that  
11   employee?

12          A    I do not.

13          Q    And that was not shared to you by Mr. Ricard  
14   or Mr. Everett?

15          A    Correct.

16          Q    Do you know how deep your line is?

17          A    It's approximately 4 feet.

18          Q    And just to make sure that we are correct for  
19   the record here, when I am referring to how deep your  
20   line is, I am referring to the top of that line, as  
21   opposed to the bottom?

22          A    I have not measured it, but my understanding  
23   is it is approximately 4 feet deep.

24          Q    Showing you what has been identified as A- or  
25   AJ-11, do you have any knowledge as to the creator of

0038

1 these yellow markings?

2 A These markings would have been laid down by  
3 Yancey Everett. He is our field inspector.

4 Q And do you know on what dates he would have  
5 laid those down?

6 A I do not.

7 Q Mr. Donat, did you ever make any telephone  
8 calls to Randy Buchanan?

9 A Yes, sir.

10 Q When were those calls approximately?

11 A Approximately, it would have been October 22nd  
12 or 23rd, when I found out that the incident occurred.

13 Q You never talked to him in person, that is in  
14 physical person, but by telephone; is that right?

15 A By telephone, yes, sir.

16 Q Has anyone on behalf of Tesoro and  
17 Mr. Buchanan reached any kind of an understanding or  
18 an agreement, what are the actual conditions of the  
19 easement across his property?

20 MR. SHEARER: I am going to object as to  
21 relevance, Your Honor.

22 JUDGE FRIEDLANDER: Mr. McCool?

23 MR. McCOOL: I will withdraw that and  
24 ask another one.

25 JUDGE FRIEDLANDER: Thank you.

0039

1 BY MR. McCOOL:

2 Q Are you aware of whether or not Mr. Buchanan  
3 knows the location of the pipeline across his  
4 property?

5 A In my conversations with Mr. Buchanan, he  
6 knows exactly where the pipeline is, but we do still  
7 need to mark it when we go out.

8 MR. McCOOL: Thank you. No further  
9 questions.

10 JUDGE FRIEDLANDER: Mr. Shearer, do you  
11 have any questions for this witness?

12 MR. SHEARER: Yes, Your Honor.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. SHEARER:

16 Q Mr. Donat, you had phone conversations with  
17 Mr. Buchanan. Can you briefly discuss the contents of  
18 those conversations?

19 A Initially, when I was contacted by Will  
20 Ricard, who is our field team leader and responsible  
21 for the operations in that area, he let me know that  
22 there was an incident where a dig had occurred without  
23 a Blue Stakes ticket. I contacted Mr. Buchanan to let  
24 him know that we do need to have those dig tickets  
25 called in whenever there is a dig that is going to be





0041

1 three minutes, yes.

2 JUDGE FRIEDLANDER: All right. Let's go  
3 off the record.

4 (A brief recess.)

5 JUDGE FRIEDLANDER: We will be back on  
6 the record.

7 Mr. Buchanan, if you will step up to the  
8 witness table and raise your right hand.

9 THE WITNESS: (Complies.)

10

11 RANDY BUCHANAN, witness herein, having been  
12 first duly sworn on oath, was  
13 examined and testified as follows:

14

15 JUDGE FRIEDLANDER: Thank you. Please  
16 be seated.

17 THE WITNESS: (Complies.)

18 JUDGE FRIEDLANDER: Mr. McCool?

19

20 D I R E C T E X A M I N A T I O N

21 BY MR. McCOOL:

22 Q Mr. Buchanan, state your name, spell your last  
23 name, give us your address for the record.

24 A Randy Buchanan, B-U-C-H-A-N-A-N, 35032 West  
25 Highway 12, Burbank, Washington 99323.

0042

1 Q Mr. Buchanan, according to Exhibit No. AJ-16,  
2 the violation date is listed as August -- excuse me,  
3 October 22, 2013. Were you contacted in person by  
4 anyone from Tesoro any time before October 22, 2013?

5 A No.

6 Q There is something in here, on the Form 16,  
7 that says, Property owner was contacted, refuses to  
8 call in dig tickets.

9 Did you have personal, in-person contact ever  
10 with a Tesoro representation [sic] any time at all  
11 before the 22nd of October?

12 A No.

13 Q There is an indication on this, AJ-16, that  
14 the violation date is 10/22/2013. Did you do any  
15 digging on 10/22/2013?

16 A No.

17 Q Do you have, or did you have an employee right  
18 around the first, or should I say the third week in  
19 October of 2013?

20 A Yes.

21 Q Do you know what that person's name is?

22 A Saul Lopez.

23 Q Is Mr. Lopez proficient or fluent in English?

24 A Broken.

25 Q Do you know whether or not he was contacted by

0043

1 any representative of either the Dig Committee or  
2 Tesoro?

3 A He told me somebody showed up and started  
4 yelling at him. A Tesoro representative.

5 MR. McCOOL: Nothing further.

6 JUDGE FRIEDLANDER: Thank you.

7 Is there any cross-examination, Mr. Shearer?

8 MR. SHEARER: Yes, Your Honor.

9

10 C R O S S - E X A M I N A T I O N

11 BY MR. SHEARER:

12 Q Mr. Buchanan, did you or one of your employees  
13 dig a trench on or about October 18th through the  
14 22nd, 23rd, somewhere in there?

15 MR. McCOOL: Your Honor, I am going to  
16 object. I realize, again, the rules of evidence don't  
17 apply, but he has asked literally three questions in  
18 one question, did you or your employee between certain  
19 dates. I think he needs to narrow it down and  
20 specify.

21 JUDGE FRIEDLANDER: That's fine. Mr. --

22 MR. SHEARER: I will rephrase, that's  
23 fine.

24 JUDGE FRIEDLANDER: Thank you.

25 BY MR. SHEARER:

0044

1 Q Did you dig a trench on or about mid to late  
2 October on your property?

3 A Yes.

4 Q Do you know what the approximate depth of that  
5 trench was?

6 A 32 inches. 30-some inches.

7 Q Did you contact the Washington State Call  
8 Before You Dig Committee, or the Washington Utilities  
9 Cooperation Council I believe is the term, prior to  
10 digging?

11 A I didn't know the law was what the law is.

12 Q Understandable.

13 MR. SHEARER: Thank you.

14 No further questions, Your Honor.

15 JUDGE FRIEDLANDER: Thank you.

16 Is there any redirect?

17 MR. McCOOL: No.

18 JUDGE FRIEDLANDER: I have no clarifying  
19 questions. Mr. Buchanan, you are excused. Thank you.

20 MR. McCOOL: We have no other witnesses.

21 JUDGE FRIEDLANDER: All right,  
22 thank you.

23 With regard to the exhibits that Staff has  
24 proffered, I assume that you would like these to be  
25 admitted into the record.

0045

1 MR. SHEARER: Yes, Your Honor.

2 JUDGE FRIEDLANDER: Is there any  
3 objection?

4 MR. McCOOL: To every one of them on the  
5 basis of no appropriate foundation for the  
6 photographs, no appropriate foundation for the creator  
7 of any of those documents, with the exception of  
8 AJ-16, which we do understand Mr. Donat was involved  
9 with.

10 JUDGE FRIEDLANDER: All right. Do you  
11 know what, I think that -- I think we should probably  
12 go through the exhibits, then, one by one. We will  
13 try to do this as quickly as possible. You can voice  
14 your objection again, given that we have heard all the  
15 testimony at this point.

16 MR. McCOOL: Certainly.

17 JUDGE FRIEDLANDER: Starting with  
18 AJ-1 -- actually, you know, given that the testimony  
19 has been the same for all of these photographs, let's  
20 just do them en masse, AJ-1 through AJ-13.

21 MR. McCOOL: Correct.

22 JUDGE FRIEDLANDER: Please state your  
23 objection again and then I will have Mr. Shearer  
24 respond.

25 MR. McCOOL: With regard to AJ-1 through

0046

1 AJ-13, there is no indication from any witness that  
2 authenticates those at all. They are not  
3 self-authenticating. Mr. Subsits didn't indicate that  
4 he was out there at the property ever, at any time.  
5 He is just relying on somebody who says that they are  
6 what they purport to be. Again, I understand the  
7 rules of evidence don't apply, but the right of  
8 confrontation should.

9 JUDGE FRIEDLANDER: And who are you  
10 saying you are not able to confront?

11 MR. McCOOL: Whoever it was that took  
12 the pictures --

13 JUDGE FRIEDLANDER: Okay.

14 MR. McCOOL: -- so that we can indicate  
15 that they really are what they purported to be.

16 JUDGE FRIEDLANDER: Mr. Shearer?

17 MR. SHEARER: We would voice again that  
18 these are business records and they come in the  
19 regular course of business to the Commission.  
20 Mr. Subsits was qualified to testify as to their --  
21 the impressions. As well as, Mr. Subsits' testimony  
22 only relies on his impressions of the contents of the  
23 photographs as they came to the Commission, and his  
24 reliance on them as documents that came to the  
25 Commission.

0047

1 JUDGE FRIEDLANDER: Mr. McCool, is  
2 Mr. Buchanan claiming that these photos don't  
3 represent what Staff has claimed they represent?

4 MR. McCOOL: He is not making any claim.  
5 As we understand it, maybe we are wrong about this, we  
6 believe the burden of proof is on the Commission -- on  
7 Mr. Buchanan.

8 JUDGE FRIEDLANDER: The burden of proof  
9 is on Staff to prove that the violation occurred.

10 MR. McCOOL: And what we are indicating  
11 is that the proponent of any piece of evidence is the  
12 one who is responsible for bearing the burden of  
13 production and the burden of persuasion, not  
14 Mr. Buchanan.

15 JUDGE FRIEDLANDER: Mr. Shearer, do you  
16 have anything to add?

17 MR. SHEARER: Just reiterating what we  
18 stated before, that Mr. Subsits was relying on the  
19 contents of these photos as they came to the  
20 Commission. We feel we have demonstrated their  
21 relevance and don't violate any of the rules.

22 JUDGE FRIEDLANDER: All right,  
23 thank you.

24 I am going to allow these photos to be  
25 admitted into evidence. They were generated in the

0048

1 normal course of business -- I shouldn't say  
2 "generated, strike that. They were filed in the  
3 normal course of business, and Mr. Subsits, as well as  
4 Mr. Jones, it would appear, whose testimony  
5 Mr. Subsits has adopted, has put faith in them.

6 I will, however, note that not all of the  
7 photographs have dates on them. I will take them for  
8 what they are, what I see in them, but they are  
9 admitted into evidence. The amount of weight that I  
10 give to them will be based on the actual photographs  
11 themselves.

12 So let's proceed to Exhibit AJ-14.  
13 Mr. McCool, what objection do you have to this  
14 exhibit?

15 MR. McCOOL: We object to the indented  
16 portions on -- or should I say subindented on Pages 1  
17 and 2 of 4 because they do constitute -- and again, I  
18 understand the rules of evidence don't apply, but the  
19 right of confrontation does, and there is indications  
20 in there about things that supposedly Mr. Buchanan  
21 said without indicating who he said them to.

22 JUDGE FRIEDLANDER: But the document  
23 itself doesn't say that the Commission has -- that the  
24 allegations are true. It says that these are  
25 violations that have been -- the penalty has been



0049

1 assessed based on these allegations. I get that you  
2 are denying the allegations themselves, but this is a  
3 public document that the Commission produces in order  
4 to alert your client that there is a penalty against  
5 him. This just lists the allegations themselves.

6 MR. McCOOL: Well, I think it goes  
7 farther than that, Your Honor, because on Page 2 it  
8 says, Your penalty is due and payable now. That sure  
9 sounds like a judgment to me.

10 JUDGE FRIEDLANDER: Well, yes, it was --  
11 it was found by the Dig Committee, is my  
12 understanding, that he had violated. This is based on  
13 the hearing that was held before the Dig Committee.

14 MR. McCOOL: And as I understand it, a  
15 hearing at which my client was not present.

16 MR. SHEARER: But he was properly  
17 notified and that is included in the exhibits as well.

18 JUDGE FRIEDLANDER: Right.

19 MR. SHEARER: These were simply  
20 allegations that the Commission listed in its penalty  
21 assessment.

22 MR. McCOOL: Other than the subindented  
23 indications in that document, we would not object to  
24 the balance of that document.

25 JUDGE FRIEDLANDER: All right. I am

0050

1 going to allow it. Again, the weight that is given to  
2 each exhibit is determined by the trier of fact. This  
3 just lists allegations that had been made against  
4 Mr. Buchanan. Yes, a penalty was assessed against  
5 him, but the allegations still stand, and they were  
6 the basis of the penalty to begin with. I am going to  
7 allow that into evidence.

8 Let's go to Exhibit No. 15.

9 MR. McCOOL: We don't object to that.

10 JUDGE FRIEDLANDER: Thank you. That  
11 will be admitted.

12 Exhibit No. 16?

13 MR. McCOOL: We do not object to No. 16.

14 JUDGE FRIEDLANDER: Thank you. That  
15 will be admitted.

16 Exhibit No. 17?

17 MR. McCOOL: No objections on No. 17.

18 JUDGE FRIEDLANDER: Thank you. That  
19 will be admitted.

20 Exhibit No. 18?

21 MR. McCOOL: No objection to that.

22 JUDGE FRIEDLANDER: Thank you. That  
23 will be admitted.

24 Exhibit No. 19?

25 MR. McCOOL: We do object to that.

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1 JUDGE FRIEDLANDER: And on what basis?

2 MR. McCOOL: On the basis that it does  
3 deny us the right of confrontation. Dave Christensen  
4 authored that letter. He should be here.

5 JUDGE FRIEDLANDER: Right. Okay, so you  
6 are saying that you didn't have the opportunity to  
7 confront Mr. Christensen --

8 MR. McCOOL: That's right.

9 JUDGE FRIEDLANDER: -- himself?

10 MR. McCOOL: Right. In other words, if  
11 the WUTC is providing a document for Your Honor to  
12 consider, which is what AJ-19 is, and that document  
13 talks about steps that Mr. Christensen took, talking  
14 about trying to contact Mr. Buchanan, not being  
15 successful, and all of those things, we have the right  
16 to confront him on that.

17 MR. SHEARER: Again, this is a document  
18 simply to show the reliance that the -- another  
19 document that the Commission used in reliance of  
20 its -- terms of its investigation and part of the  
21 investigation report. That is the context with which  
22 we are offering it to Your Honor, nothing more.

23 JUDGE FRIEDLANDER: Who is  
24 Mr. Christensen?

25 MR. SHEARER: Let me ask.

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1 (Pause in the proceedings.)

2 MR. SHEARER: He is the vice chair of  
3 the Dig Law Safety Committee, Your Honor. He actually  
4 works for the City of Renton.

5 JUDGE FRIEDLANDER: I see.

6 And in what context was this generated? Was  
7 this an exhibit that was used at the safety hearing?

8 MR. SHEARER: That's our understanding.

9 MR. McCOOL: Again, Your Honor, I have a  
10 real problem with the -- with counsel stating what his  
11 understanding of something is. If he is going to have  
12 a document before this tribunal, he should have  
13 somebody to identify where that comes from, instead of  
14 saying it is his understanding of where things are.  
15 He becomes a witness at that point.

16 JUDGE FRIEDLANDER: Is this a document  
17 that was generated and used at the safety hearing?  
18 Can you say for certain that it was?

19 MR. SHEARER: I cannot say for certain.  
20 It was a part of the investigation report that was  
21 forwarded on to the Commission from the Safety Review  
22 Committee.

23 JUDGE FRIEDLANDER: Okay. So -- okay.

24 MR. SHEARER: That's the extent of what  
25 I know.

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1 JUDGE FRIEDLANDER: Okay. This is kind  
2 of what I needed to know. After the Safety Committee  
3 has made a determination, how does the process go from  
4 there, as far as Staff are concerned?

5 MR. SHEARER: Under the statute, they  
6 provide written notification to Commission Staff and  
7 that goes to our Pipeline Safety Division. That  
8 includes a recommendation that a violation likely  
9 occurred. After that -- and they include a penalty  
10 recommendation as well. Staff reviews the information  
11 in this and conducts its own investigation within its  
12 own parameters and then decides whether to issue a  
13 penalty assessment based on that.

14 JUDGE FRIEDLANDER: So Staff will  
15 receive a packet of information on which the Safety  
16 Committee based its recommendation?

17 MR. SHEARER: Yes. That's where almost  
18 all the exhibits are from.

19 JUDGE FRIEDLANDER: I see.

20 MR. SHEARER: It's in that report that  
21 came from the Safety Committee.

22 JUDGE FRIEDLANDER: I see.

23 MR. SHEARER: Or Review Committee.  
24 Whatever the terminology is.

25 JUDGE FRIEDLANDER: And so the Safety

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1 Committee records are a matter of public record?

2 MR. SHEARER: I think they are. I'm not  
3 fully an expert, I have never dealt with the Safety  
4 Committee, but my understanding is they are public  
5 records and they would be subject to the  
6 Public Records Act.

7 JUDGE FRIEDLANDER: My knowledge of the  
8 Safety Committee is fairly limited as well. I think  
9 we should probably check into that.

10 Mr. McCool, did you have something to add?

11 MR. McCOOL: The only thing that I would  
12 add is that, again, once counsel starts saying "I  
13 think they are," that's certainly not sufficient  
14 evidence to show Your Honor anything.

15 JUDGE FRIEDLANDER: Why don't we go  
16 ahead and make sure. Here is my -- let's go ahead and  
17 find out. Counsel, if you would do that, as to  
18 whether or not these documents are public record.

19 Certainly, Mr. Buchanan had the opportunity to  
20 attend the Safety Committee hearing, so he could have  
21 gotten these documents at that point. The fact that  
22 he chose not to attend is another matter.

23 What I want to know is whether or not these  
24 are publicly available. If you can find that out, I  
25 will hold in abeyance the motion to exclude this

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1 exhibit from the record.

2 MR. SHEARER: I will certainly find that  
3 out.

4 JUDGE FRIEDLANDER: Okay. And if you  
5 could respond to Mr. McCool, as well as myself, within  
6 a day, I would appreciate it. I am expected to  
7 produce an order within ten business days, so we need  
8 to move on this pretty quickly.

9 MR. SHEARER: Yes, I will do that.

10 JUDGE FRIEDLANDER: Thank you.

11 Let's go on to Exhibit AJ-20.

12 Mr. McCool?

13 MR. McCOOL: Again, Your Honor, the  
14 problem is that we are not having the right to  
15 confront Mr. Everett, who appears at least to have  
16 been the person who generated that document.

17 JUDGE FRIEDLANDER: Mr. Shearer?

18 MR. SHEARER: I think we are on the same  
19 ground as we were on the last one. We will confirm as  
20 to whether or not this is public record and respond  
21 within a day.

22 JUDGE FRIEDLANDER: Thank you.

23 I assume, Mr. McCool, that the same objection  
24 applies to AJ-21?

25 MR. McCOOL: It would.

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1 JUDGE FRIEDLANDER: Okay.

2 MR. McCOOL: Thank you.

3 JUDGE FRIEDLANDER: Yes.

4 Let's go ahead and confirm or deny whether or  
5 not these are public record, Mr. Shearer. I will hold  
6 in abeyance my ruling on these three exhibits alone.

7 Is there anything else before I take the  
8 matter under advisement and we adjourn?

9 MR. McCOOL: There is. I would request  
10 permission to reopen and ask Mr. Buchanan a series --  
11 very short series of questions, two or three  
12 questions.

13 JUDGE FRIEDLANDER: And what is this in  
14 regards to?

15 MR. McCOOL: In regards to the actual  
16 dig, the dates, and the chronology, briefly.

17 JUDGE FRIEDLANDER: Mr. Shearer, do you  
18 have an objection?

19 MR. SHEARER: My understanding, those  
20 were already asked and answered.

21 MR. McCOOL: Well, they weren't by me.  
22 I think I need to flesh out or make more specific in  
23 re -- because there is actually an allegation here of  
24 two separate --

25 JUDGE FRIEDLANDER: That's correct.



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1 MR. McCOOL: -- locations.

2 JUDGE FRIEDLANDER: That's correct.

3 MR. McCOOL: We do want to address that  
4 briefly.

5 JUDGE FRIEDLANDER: That's fine.

6 I will remind you, you are still under oath.  
7 If you want to go ahead and take the witness stand.

8 THE WITNESS: (Complies.)

9 JUDGE FRIEDLANDER: Mr. McCool, please  
10 proceed.

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12 R E D I R E C T E X A M I N A T I O N

13 BY MR. McCOOL:

14 Q Mr. Buchanan, was your digging out there a  
15 situation where you dug on one occasion, then were  
16 contacted by individuals, and then in response to  
17 being contacted by those people then went out and dug  
18 again, or was your digging all a part of one process  
19 before you were contacted by anyone from Tesoro?

20 A I was finished doing all my work before I ever  
21 talked to a Tesoro representative. I never talked to  
22 anybody, I don't think, until the 22nd or 23rd, and it  
23 was Aaron.

24 Q From your perspective, it was just one dig,  
25 then?

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1           A    To me it should only be one dig, yes.

2                   MR. McCOOL:  Thank you.

3                   Nothing further.

4                   JUDGE FRIEDLANDER:  Mr. Shearer, do you  
5 have anything?

6                   MR. SHEARER:  No, I do not.

7                   JUDGE FRIEDLANDER:  So let me ask a  
8 clarifying question, if I might.

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10                           E X A M I N A T I O N

11 BY JUDGE FRIEDLANDER:

12           Q    You are saying that you only dug once?

13           A    I never talked to any -- I -- I never talked  
14 to anybody until I was finished with everything.  I  
15 wasn't even home when Tesoro showed up, I was  
16 returning the trencher.  I wasn't even on our  
17 property.  I never talked to anybody from Tesoro.  
18 They left messages on my phone, I listened to them a  
19 couple days later.  I don't answer phone calls that  
20 are blocked or unknown numbers.

21           Q    Right, but my question is, you only dug a  
22 trench --

23           A    I --

24           Q    -- once?

25           A    I trenched on Saturday, Sunday.  They had

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1 talked to my hired man. I dug with a backhoe on  
2 Monday evening, and then I talked to somebody on  
3 Tuesday or Wednesday.

4 Q And when you say Saturday, Sunday and Monday,  
5 when is that? October 20 --

6 A I picked up the trencher Friday afternoon and  
7 I returned it Monday morning at 9:37.

8 Q But we are talking October 18th --

9 A Yeah, well --

10 Q -- 19th, 20th?

11 A -- I think --

12 Q Where are we?

13 A I think the 21st was Monday. So I worked on  
14 Sunday, and I worked on Saturday, and I worked on -- I  
15 picked it up on Friday, and then I used the backhoe on  
16 Monday. But I didn't have any contact with any Tesoro  
17 representative.

18 Q What was the purpose of the trenching that was  
19 done after Tesoro talked with Mr. Lopez?

20 A They -- from what I understood from him is  
21 they wanted to see if the pipe was hit. I dug off to  
22 the side of the pipe and exposed the pipe with a  
23 shovel very slowly. Used -- I mean we have old  
24 irrigation pipe. I've dug lots of stuff up, I know  
25 how to be very careful. I must have been careful

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1 enough I didn't damage it. There was no damage done  
2 to it.

3 Q And for either of these trenching incidents,  
4 did you call the Call Before You Dig line?

5 A No, I didn't know the law changed last -- that  
6 year, in January of that year.

7 JUDGE FRIEDLANDER: Okay, thank you.

8 Are there any further questions of  
9 Mr. Buchanan?

10 MR. McCOOL: No.

11 JUDGE FRIEDLANDER: Okay.

12 MR. SHEARER: No.

13 JUDGE FRIEDLANDER: You are excused.

14 Thank you so much.

15 All right. Is there anything else?

16 MR. McCOOL: We have nothing further.

17 JUDGE FRIEDLANDER: Okay, thank you.

18 Mr. Shearer?

19 MR. SHEARER: No, I don't have any other  
20 witnesses or information.

21 JUDGE FRIEDLANDER: All right.

22 Thank you.

23 Why don't we do this. Mr. Shearer, when you  
24 find out whether or not the Public Records Act applies  
25 to the Safety Committee's work and their documents,

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1 will you file a letter with the Commission, it can be  
2 very short, but with copies to myself and Mr. McCool?

3 MR. SHEARER: Yes, Your Honor.

4 JUDGE FRIEDLANDER: Okay. I will take  
5 the matter itself, as well as those three -- the  
6 admission of those three exhibits under advisement.  
7 Again, I will produce an order, all things going well,  
8 within ten business days.

9 If there is nothing further, then this hearing  
10 is adjourned. Thank you both very much.

11 MR. SHEARER: Thank you, Your Honor.

12 MR. McCOOL: Thank you, Your Honor.

13 (Hearing concluded 10:54 a.m.)

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STATE OF WASHINGTON

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COUNTY OF KING

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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do hereby certify that the foregoing transcript is

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true and accurate to the best of my knowledge, skill

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and ability.

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